START

Title: FEDERAL REGISTER.

Volume: 62 Issues: 234-248
PAGES: 64263-67692

Date: DECEMBER 5 - DECEMBER 29, 1997

UMI Number: 2575.00

Note: REEL: 9 OF 10

UMI
300 North Zeeb Road
Ann Arbor, MI 48103

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–5–97
Vol. 62 No. 234

federal register

Friday
December 5, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–5–97
Vol. 62 No. 234
Pages 64263–64510

federal register

Friday
December 5, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see the announcement on the inside cover of this issue.

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 16, 1997 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 234
Friday, December 5, 1997

African Development Foundation
NOTICES
Meetings; Sunshine Act, 64349

Agriculture Department
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Cattle imported in-bond for feeding and return to Mexico, 64265–64266
Plant-related quarantine, domestic:
Karnal bunt disease—
Approved alternative treatments, 64263–64265
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64349–64350
Environmental statements; availability, etc.:
Nonregulated status determinations—
Monsanto Co. and Dekalb Genetics Corp.; genetically engineered corn line, 64350–64351

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 64351

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Children and Families Administration
RULES
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Emergency assistance, job opportunities and basic skills training, child care programs, etc.; regulations removed, 64301–64303
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64384–64385

Coast Guard
RULES
Vessels; small passenger vessel inspection and certification
Correction, 64303–64306

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64352–64353

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 64351–64352

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Macedonia, 64361
Philippines, 64361–64362
Sri Lanka, 64363
Special access and special regime programs; participation denial:
Quitman Manufacturing Co., 64363–64364

Community Development Financial Institutions Fund
RULES
Bank enterprise award program, 64440–64447
NOTICES
Grants and cooperative agreements; availability, etc.:
Bank enterprise award program, 64448–64449

Defense Department
See Engineers Corps
See Navy Department
NOTICES
Privacy Act:
Systems of records, 64364–64365

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64370–64371

Employment and Training Administration
NOTICES
Freedom of Information Act; implementation:
Apprenticeship program sponsor identities release; proposed procedure; comment request, 64452–64453

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 64403–64404

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Maricopa County, AZ; Rio Salado environmental restoration, 64365–64366
Environmental statements; notice of intent:
Bolsa Chica Wetlands, CA; restoration project, 64366–64367

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Louisiana; correction, 64284–64287
Hazardous waste:
Land disposal restrictions—
Treatment variances; standards clarification, 64504–64509
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Fluorine compounds, 64294–64301
Maleic hydrazide, 64287–64294
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 64329–64334
Radiation protection programs:
Spent nuclear fuel, high-level and transuranic radioactive wastes management and disposal; waste isolation pilot plant compliance—
Certification decision; public hearings, 64334–64335
NOTICES
Committees; establishment, renewal, termination, etc.:
FIFRA Scientific Advisory Panel, 64371–64375
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 64376
Weekly receipts, 64376
Coastal nonpoint pollution control programs; States and territories—
Florida et al., 64359–64360
Water pollution; discharge of pollutants (NPDES):
Texas, Oklahoma, and New Mexico; new and existing natural gas pipelines; discharges from hydrostatic testing; general permits, 64376–64378

Federal Aviation Administration
RULES
Airworthiness directives:
AlliedSignal, Inc.; correction, 64268
Class E airspace, 64268–64273
Class E airspace; correction, 64273
PROPOSED RULES
Class D airspace, 64321–64322
Class E airspace, 64322–64324
NOTICES
Meetings:
RTCA, Inc., 64436–64437

Federal Communications Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64378–64379
Common carrier services:
Telecommunications relay services; State certification; applications accepted, 64379

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 64379

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Northern States Power Co., 64371
Starghill Alternative Energy Corp., 64371

Federal Highway Administration
PROPOSED RULES
Engineering and traffic operations:
Uniform Traffic Control Devices Manual—
General provisions and school areas traffic control, 64324–64327
NOTICES
Environmental statements; notice of intent:
Grand Traverse County, MI, 64437

Federal Mediation and Conciliation Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Labor-management cooperation program, 64379–64382

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 64382
Formations, acquisitions, and mergers, 64382–64383
Meetings; Sunshine Act, 64383

Federal Transit Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Transit assistance programs; apportionments and allocations (1998 FY), 64456–64501

Fish and Wildlife Service
RULES
Endangered and threatened species:
Callippe silverspot butterfly, etc., 64306–64320
PROPOSED RULES
Endangered and threatened species:
Arkansas River shiner, 64337–64340
Kauai cave wolf spider and Kauai cave amphipod, 64340–64347
Endangered Species Convention:
Appendices and amendments
Sturgeon and paddlefish species, etc.; meetings, 64347–64348
Importation, exportation, and transportation of wildlife:
Humane and healthful transport of wild mammals, birds, reptiles, and amphibians to U.S., 64335–64337
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Jim Wells County, TX; aplomado falcon, 64395–64396

Food and Drug Administration
NOTICES
Human drugs:
New drug applications—
Zenith Goldline Pharmaceuticals; approval withdrawn, 64385–64387
Meetings:
Oncologic Drugs Advisory Committee, 64387
Memorandums of understanding:
Agriculture Department; aflatoxin control in peanuts, in-shell Brazil nuts, and in-shell pistachio nuts, 64387–64391
Reporting and recordkeeping requirements, 64391

General Services Administration
NOTICES
Environmental statements; notice of intent:
Governors Island, NY; excess Federal property disposal, 64383–64384

Geological Survey
NOTICES
Federal Geographic Data Committee:
Geologic data model standard development; comment request, 64396
Geologic map symbolization standard development; comment request, 64396–64397

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 64395

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Confederated Tribes of Umatilla Indian Reservation, OR, 64397

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Cold-rolled carbon steel flat products from—
Netherlands, 64354
Steel wire rope from—
Korea, 64354–64359
Antidumping and countervailing duties:
Administrative review requests, 64353–64354

International Trade Commission
NOTICES
Import investigations:
North American Free Trade Agreement (NAFTA)—
Mexico, articles from; probable economic effects on U.S. industries and consumers of accelerated elimination of U.S. tariffs, Round Two, 64402–64403
Organization, functions, and authority delegations:
Law Library; temporary closure, 64403

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Carbon Basin Area, WY; potential Federal coal planning decisions, 64397–64398
Meetings:
Resource advisory councils—
Northwest Colorado, 64398
Realty actions; sales, leases, etc.:
Oregon; correction, 64398
Survey plat filings:
Idaho, 64399
Minnesota, 64399

Library of Congress
RULES
Special research facilities assignment, 64279–64280

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
California; crude oil produced offshore; marine transportation, 64399–64401

National Credit Union Administration
RULES
Organization and operations:
Procedural rulings, notation voting, Board meetings, and agenda; clarification, 64266–64267

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64404–64405

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 64391–64392
National Institute on Aging, 64392
National Institute on Alcohol Abuse and Alcoholism, 64392
Research Grants Division special emphasis panels, 64392
Scientific Review Center special emphasis panels, 64393

National Oceanic and Atmospheric Administration
NOTICES
Environmental statements; availability, etc.:
Coastal nonpoint pollution control programs; States and territories—
Florida et al., 64359–64360
R/V COLUMBUS ISELIN grounding; NOAA and University of Miami; settlement agreement, 64360

National Park Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64401
Concession contracts; franchise fee determination guideline, 64402

Navy Department
NOTICES
Privacy Act:
Systems of records, 64367–64370

Nuclear Regulatory Commission
NOTICES
Regulatory guides; issuance, availability, and withdrawal, 64408
Applications, hearings, determinations, etc.:
Duke Energy Corp., 64405–64406
Entergy Gulf States, Inc., et al., 64406–64407
New York State Electric & Gas Corp., 64407
Northeast Nuclear Energy Co., 64407

Postal Service
RULES
Freedom of Information Act; implementation:, 64280–64284

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
RULES
Railroad Unemployment Insurance Act:
Recovery of benefits, 64273–64274
NOTICES
Privacy Act:
Systems of records, 64408–64409

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64409
Consolidated Tape Association and Quotation plans; amendments, 64414–64415
Self-regulatory organizations; proposed rule changes:
Government Securities Clearing Corp., 64415–64417
Municipal Securities Rulemaking Board, Inc., 64417–64419
National Association of Securities Dealers, Inc., 64419–64434
Options Clearing Corp., 64434–64435
Applications, hearings, determinations, etc.:
Federated Index Trust et al., 64409–64411
Strong Advantage Fund, Inc., et al., 64411–64414

Social Security Administration
RULES
Federal claims collection:
Information disclosure to consumer reporting agencies and overpayment recovery through administrative offset against Federal payments, 64274–64279
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64435

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing: certified laboratories meeting minimum standards, list, 64393–64395
Grants and cooperative agreements; availability, etc.:
Knowledge dissemination and substance abuse treatment conference programs; receipt date cancellation, 64395

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Montana, 64327–64329

Surface Transportation Board
NOTICES
Motor carriers:
Control exemptions—
Coach USA, Inc., 64437–64438
Railroad operation, acquisition, construction, etc.:
Burlington Junction Railway, 64438

Tennessee Valley Authority
NOTICES
Meetings; Sun[illegible] Act, 64435–64436

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 64436

Treasury Department
See Community Development Financial Institutions Fund

Separate Parts This Issue

Part II
Department of the Treasury, Community Development Financial Institutions Fund, 64440–64449

Part III
Department of Labor, Employment and Training Administration, 64452–64453

Part IV
Department of Transportation, Federal Aviation Administration, 64456–64501

Part V
Environmental Protection Agency, 64504–64509

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
301 64263

9 CFR
91 64265
93 64265

12 CFR
791 64266
1806 64440

14 CFR
39 64268
71 (5 documents) 64268, 64268, 64269, 64271, 64272, 64273, 64321
Proposed Rules:
71 (3 documents) 64321, 64322, 64323

20 CFR
340 64273
404 64274
422 64274

23 CFR
Proposed Rules:
655 64324

30 CFR
Proposed Rules:
926 64327

36 CFR
701 64279

39 CFR
262 64280
265 64280

40 CFR
52 64284
81 64284
180 (2 documents) 64287, 64294
185 64287
268 64504
Proposed Rules:
52 64329
194 64334

45 CFR
205 64301
232 64301
233 64301
235 64301
250 64301
251 64301
255 64301
256 64301
257 64301

46 CFR
114 64303
118 64303
117 64303
118 64303
1121 64303
122 64303
175 64303
177 64303
178 64303
180 64303
185 64303

50 CFR
17 64306
Proposed Rules:
14 64335
17 (2 documents) 64337, 64340
23 64347

Rules and Regulations

Federal Register
Vol. 62, No. 234
Friday, December 5, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–27]

RIN 0579–AA83

Karnal Bunt; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations by adding three alternative treatments for seed originating from a regulated area that will be planted within a regulated area. We are making this change based on new data that demonstrates that these treatments are sufficient to prevent the spread of Karnal bunt through planted seed. This action will reduce the regulatory burden on wheat growers and other affected persons in the regulated area.

DATES: Interim rule effective November 28, 1997. Consideration will be given only to comments received on or before February 3, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–27, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–016–27. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum X Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt in the United States are set forth in 7 CFR 301.89–1 through 301.89–14.

Section 301.89–4 sets forth requirements for the planting of Karnal bunt host crops in a regulated area. Wheat, durum wheat, and triticale may be planted in surveillance areas and restricted areas for seed, but not in restricted areas for regulated articles other than seed. If the wheat seed, durum wheat seed, or triticale seed to be planted originated within a regulated area, then, prior to planting, the seed must be tested and found free from spores and bunted wheat kernels and treated with a fungicide in accordance with § 301.89–13(d).

Section 301.89–13 provides treatment requirements for seed and regulated articles other than seed that originated within a regulated area. Section 301.89–13(d) provides two options for treating seed that originated within a regulated area and that will be planted within a regulated area. Those two treatment options are: (1) The seed is treated with 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. active ingredient (ai.)/gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed; or (2) the seed is treated with 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed.

Both of the treatment options require the use of a combination of two fungicides: Carboxin thiram and pentachloronitrobenzene. The two treatments differ only in the formulations of these fungicides. We established these double fungicide treatment options in a final rule, published in the **Federal Register** on October 4, 1996 (61 FR 52190–52213, Docket No. 96–016–14). At that time, our decision to require a double fungicide treatment was based on our experience controlling other kinds of plant diseases and on discussions with Karnal bunt experts from other countries. When the regulations were first established, we had had no prior experience with Karnal bunt in the United States. Therefore, initially, we decided on the double fungicide treatment options in an effort to establish safeguards that we could be certain would quickly and effectively control the spread of Karnal bunt.

Now, however, based on new information, we are amending the regulations to allow three alternative treatments for seed that originated in a regulated area and that will be planted in a regulated area. Specifically, we are allowing three different single fungicide treatments for such seed. Seed for planting in the regulated area may be treated with either Carboxin thiram or pentachloronitrobenzene, as follows: (1) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed; (2) with 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or (3) with 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed. We are adding these single fungicide treatment options based on research [1] that demonstrates that any of these single fungicide treatments, together with negative testing for Karnal bunt, is adequate to prevent the spread of Karnal bunt through planted seed. The research that demonstrated this was performed at the International Center for Maize and Wheat Improvement (CIMMYT) in Mexico, in cooperation with Gustafson, Inc. The research protocol involved

[1] Information on this research is available from the person listed under FOR FURTHER INFORMATION CONTACT.

adding *Tilletia indica* teliospores uniformly to a wheat seed source, applying the fungicides at the specified concentrations, and plating teliospores recovered from the wheat samples onto growth media to assess teliospore viability at 15, 60, 120, and 180 days after treatment. The results indicated that treatment with either of the fungicides Carboxin thiram or pentachloronitrobenzene was comparable in effectiveness to the double treatment using both.

These additional treatment options will offer more flexibility to wheat growers and other affected entities in regulated areas, and will also help minimize the use of pesticides and reduce the costs associated with treating seed originating in a regulated area that will be planted in a regulated area. This action will continue to prevent the spread of Karnal bunt through planted seed while addressing a concern that some growers have regarding a possible reduction in germination of seed treated with one of the double fungicide treatments. We are, however, continuing to offer double fungicide treatments as an alternative seed treatment to enable growers whose seed has already been treated in that manner, or growers who choose to continue to treat seed with a double fungicide treatment, to plant that seed in coming seasons.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Growers have expressed concern that the double fungicide treatment may negatively affect seed germination, and preliminary data from research commissioned by the Arizona Department of Agriculture and industry groups suggests that this effect may occur for at least some varieties of seed. This research data indicates that for the seed varieties tested, untreated seed germinated at a rate of 96.5 percent, while double treated varieties germinated at rates of 91 percent to 95 percent, depending on the seed variety.

Growers are ready to plant seed for this season's wheat crop. Although some seed has been treated with a double fungicide treatment, a significant portion of seed has not yet been treated. As discussed above, we have data indicating that the single fungicide treatments contained in this rule will effectively prevent the spread of Karnal bunt through planted seed, and amending the regulations to allow a single treatment will reduce the loss to growers. Immediate action is necessary to give growers the option of planting seed that has received a single fungicide treatment.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We expect this action to have a slight positive economic impact on growers and other affected persons in regulated areas. However, this emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

The environmental assessment and finding of no significant impact prepared for an earlier final rule provides a basis for the conclusion that the anti-fungicide treatments required under the Karnal bunt regulations do not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. (See Docket No. 96–016–14, October 4, 1996, 61 FR 52189.) Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89–13, paragraph (d) is revised to read as follows:

§ 301.89–13 Treatments.

* * * * *

(d) Seed for planting must be treated by one of the following methods:

(1) With 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed;

(2) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid and 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed;

(3) With 4.0 fluid ounces of Carboxin thiram (1.67 + 1.67 lb. ai./gal.) flowable liquid per 100 pounds of seed;

(4) With 6.8 fl. oz. of Carboxin thiram (10 percent + 10 percent, 0.91 + 0.91 lb. ai./gal.) flowable liquid per 100 pounds of seed; or

(5) With 3 fluid ounces of pentachloronitrobenzene (2.23 lb. ai./gal.) per 100 pounds of seed.

* * * * *

Done in Washington, DC, this 28th day of November.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31902 Filed 12–4–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 91 and 93

[Docket No. 94–076–2]

Cattle Imported in Bond for Feeding and Return to Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the animal exportation and importation regulations by removing provisions that allowed the temporary, in-bond importation of cattle from Mexico into the United States for feeding and return to Mexico for slaughter. That interim rule was necessary because the U.S. Customs Service, to comply with provisions of the North American Free Trade Agreement, had discontinued its collection of duties and cash bonds on cattle imported into the United States from Mexico; without a cash bond, we were unable to meaningfully penalize importers who failed to return those cattle to Mexico. We continue to believe that the termination of the in-bond program was necessary to prevent the dissemination of animal diseases into the United States by in-bond cattle that may have remained in the United States in violation of the regulations.

EFFECTIVE DATE: January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–6170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435), referred to below as the regulations, pertains to the importation of ruminants. Sections 93.424 through 93.429 of the regulations contain specific provisions regarding the importation of ruminants, including cattle, from Mexico.

Note: At the time the interim rule referred to in this document was published, the provisions described in the previous paragraph were located in 9 CFR part 92. However, on October 28, 1997, we published in the **Federal Register** (62 FR 56000–56026, Docket No. 94–106–9) a final rule that redesignated part 92 as part 93. In describing the actions taken in the interim rule, we will use the part and section numbers used in the interim rule; where appropriate, however, we will cross-reference part 92 citations with their current locations in part 93.)

In an interim rule published in the **Federal Register** on March 15, 1995 (60 FR 13896–13898, Docket No. 94–076–1), and effective March 30, 1995, we amended the regulations by removing § 92.427(e), "Cattle imported in bond for feeding and return to Mexico," in its entirety and by removing five references to the in-bond program that were found elsewhere in part 92 and in the animal export regulations in 9 CFR part 91. Before the effective date of the interim rule, § 92.427(e) of the regulations provided for the temporary importation of cattle from Mexico into the United States under U.S. Customs bond for feeding and return to Mexico for slaughter. Cattle imported under that in-bond program were exempt from some animal disease testing requirements that applied to the importation of other cattle from Mexico, but were subject to additional restrictions during the time they were in the United States that did not apply to other cattle imported from Mexico.

We solicited comments concerning the interim rule for 60 days ending May 15, 1995. We received six comments by that date. They were from a foreign government, foreign and domestic trade associations and industry groups, and a customs brokerage. One of the commenters strongly supported the interim rule, while the remaining five commenters opposed the discontinuation of the program. Their comments are discussed below.

Two commenters reported that they had experienced no problems with the in-bond program and felt that it could continue in the absence of a bond, but offered no specific evidence to support their position. Similarly, two other commenters stated that the in-bond program had presented no animal health problems in its 5 years of existence, so there was no reason to believe that the opposite would be true in the future. Those commenters stated that the safeguards contained in the in-bond program, such as the use of sealed vehicles for movement and the requirement that in-bond cattle be held in quarantined feedlots, had proven sufficient in the past to prevent the spread of disease, and could continue to do so. We agree that the quarantine and movement restrictions of the in-bond program were effective in mitigating the disease risk associated with in-bond cattle. However, as we stated in the interim rule, the actions of some importers led us to believe that the posting of a bond was necessary to ensure compliance with those provisions of the in-bond program. Without the authority to institute a bond system similar to that administered by the U.S. Customs Service at U.S. ports of entry on the Mexican border prior to January 1, 1994, we found that it was necessary to terminate the in-bond program in order to prevent animal diseases from being introduced into, and disseminated within, the United States.

One commenter stated that the Animal and Plant Health Inspection Service (APHIS) was incorrect in claiming that cattle imported temporarily for feeding and return to Mexico were no longer covered by a bond; Customs bonds do still apply, the commenter argued, so the in-bond program could continue. We noted in the interim rule that Customs and APHIS continued to allow temporary importations of cattle from Mexico even after January 1, 1994, when the Customs Service discontinued its collection of duties and cash bonds on imported Mexican cattle in order to comply with provisions of the North American Free Trade Agreement (NAFTA). From January 1, 1994, until March 30, 1995, the effective date of the interim rule, the entry of those cattle was covered by a

paperwork-only bond, with no money involved, so in terms of a Customs bond being applied to temporary importations of Mexican cattle, the commenter is correct. Our interim rule should have stated that cattle imported for feeding and return to Mexico were no longer covered by a cash bond, and that it was the absence of any cash bond that led to our determination that the in-bond program should be terminated.

One commenter contended that the interim rule violated the terms of NAFTA by instituting a sanitary measure without providing a risk assessment, considering alternatives and economic impacts, or providing the required 60-day notice to Mexico.

The interim rule contained a discussion of the increased disease risks associated with the in-bond program and the measures that had been in place to mitigate those risks. As stated in the interim rule, the additional risks stemmed largely from the fact that in-bond cattle were exempted from meeting certain testing requirements for brucellosis and tuberculosis; those risks had been mitigated by the quarantine and movement restrictions of the in-bond program, and the cash bond had served to ensure that the quarantine and movement restrictions were observed. The termination of the in-bond program was based on our determination that the loss of the cash bond rendered our mitigating measures less effective than we believed was necessary.

The interim rule also discussed alternatives to ending the in-bond program, e.g., continuing with a paperwork-only bond and the possibility of APHIS implementing its own bond system. Further, an economic analysis was provided in the interim rule to satisfy the requirements of Executive Order 12866 and the Regulatory Flexibility Act.

With regard to the 60-day notice, NAFTA allows a party to omit such notice when the party considers it necessary to take measures to address an urgent problem relating to sanitary and phytosanitary protection. In such cases, the party must: (1) Immediately provide a notification of the measures, including a brief description of the urgent problem; (2) provide a copy of such measures upon request; and (3) allow other parties and interested persons to make comments in writing and, upon request, discuss such comments and take such comments and the results of such discussions into account. All three of those requirements were satisfied by the interim rule in that it provided notification of our termination of the in-bond program 15 days prior to the effective date of that action; set forth a description of the urgent problem that led us to publish the interim rule without prior opportunity for public comment; provided a full description of the measures we were taking; and provided a 60-day comment period during which interested persons could submit comments for APHIS' consideration.

One commenter stated that the interim rule is an unjustified nontariff trade barrier because the rule was based not on animal health concerns, but on an administrative problem, i.e., the inability of the Customs Service to collect the bond. We disagree with that argument because Customs' inability to collect the bond is a reality mandated by NAFTA, not an "administrative problem" that could be solved by a change in procedure or a reallocation of resources. As explained above and in the interim rule, we found that the bond was an important factor in the enforceability of the restrictions designed to mitigate the higher disease risk posed by cattle imported under the in-bond program. If those restrictions were disregarded, there is the very real possibility that cattle that had not been tested for tuberculosis or brucellosis could be commingled with domestic livestock and spread disease; we regard that as an animal health concern.

As noted above, the interim rule removed § 92.427(e), which contained the in-bond program's provisions, and five references to those provisions found elsewhere in parts 91 and 92. Following the publication of the interim rule, it was brought to our attention that we failed to remove a sixth reference to the in-bond program from the regulations in § 92.427(c)(2) (current § 93.427(c)(2)). We are, therefore, removing that reference in this final rule.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12372, and the Paperwork Reduction Act.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 93

Animal diseases, Imports, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 9 CFR parts 91 and 92 (now 9 CFR parts 91 and 93) that was published at 60 FR 13896–13898 on March 15, 1995, is adopted as a final rule with the change set forth below.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.427 [Amended]

2. In § 93.427, in paragraph (c)(2), the second sentence is amended by removing the words "or in bond for temporary entry in accordance with § 93.427(e)".

Done in Washington, DC, this 1st day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31899 Filed 12–4–97; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board amends its rules to revise and clarify Board procedures relating to procedural rulings, notation voting, Board meetings, and the agenda. This amendment more clearly defines the procedures that are to be followed when a Board member appeals a procedural ruling and when matters are submitted to the Board for notation vote. Further, this amendment sets forth the authority of Board members to call a special meeting and place items on a regular meeting agenda.

DATES: Effective on December 5, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, Office of the General Counsel, at the above address or telephone (703) 518–6540. E-mail questions may be sent to ogcmail@ncua.gov.

SUPPLEMENTARY INFORMATION: Part 791 of NCUA Rules and Regulations (12 CFR part 791) governs the manner in which the Board conducts NCUA business; appeal of a procedural ruling, the use of notation votes, the recording of Board actions, and the scheduling and subject matter of Board meetings. At this time, § 791.4 is amended to provide that any Board member may appeal a procedural ruling, and that the Board member's appeal must be considered immediately by the Board.

In addition, § 791.4 is amended to provide that, for every matter submitted for a notation vote, a written memorandum and voting sheet is to be circulated to the office of each Board member simultaneously. Thus, the office of each Board member receives notice of matters for notation voting at the same time. Further, the rule is amended to specify that, if a Board member vetoes the use of notation voting for a particular matter, the matter must be placed on the agenda of the next regularly scheduled Board meeting that is to be held at least 10 days after the date of the veto.

Section 791.5 is amended to specify that a special meeting shall be called by the Chairman on the Chairman's own initiative or within fourteen days of a request from two Board members. The request must be made by submitting an NCUA B–1 form and Board Action Memorandum stating the specific action being recommended to the Board.

Section 791.6 is amended to establish that, although the Chairman determines the order of and the items to be placed on the agenda, any Board member may have an item placed on the agenda of the next regularly scheduled Board meeting. The request must be submitted at least ten days in advance of the next regularly scheduled meeting and accompanied by an NCUA B–1 form and a Board Action Memorandum that states the specific action being recommended to the Board.

Immediate Effective Date

Because these amendments concern the rules of NCUA Board procedure, prior notice and comment are not required by 5 U.S.C. 553. These amendments are effective upon publication in the **Federal Register**.

Regulatory Procedures

Regulatory Flexibility Act

NCUA certifies that part 791 will not have a significant impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required. The rule affects internal NCUA Board operations only. Thus, it will not result in any additional burden for regulated institutions. The purpose of the rule is to enhance the operations of the NCUA Board.

Paperwork Reduction Act

The amendments to the rule do not contain any collection of information requirements pursuant to the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Part 791 only applies to NCUA and the NCUA Board. Accordingly, NCUA has determined that the rule will not have a substantial impact on the states or state interests. Further, the rule will not preempt provisions of state law or regulations.

List of Subjects in 12 CFR Part 791

Administrative practice and procedure, Sunshine Act.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary to the Board.

Accordingly, NCUA amends 12 CFR part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

2. Section 791.4 is amended by revising paragraphs (a)(2), (b) introductory text and (b)(3) to read as follows:

§ 791.4 Methods of acting.

(a) * * *

(2) *Presiding officer.* The Chairman is the presiding officer, and in the Chairman's absence, the designated Vice Chairman shall preside. The presiding officer shall make procedural rulings. Any Board member may appeal a ruling made by the presiding officer. The appeal of a procedural ruling by the presiding officer shall be immediately considered by the Board, and a majority decision by the Board shall decide the procedural ruling.

(b) *Notation voting.* Notation voting is the circulation of written memoranda and voting sheets to the office of each Board member simultaneously and the tabulation of responses.

* * * * *

(3) *Veto of notation voting.* In view of public policy for openness reflected in the Sunshine Act, each Board member is authorized to veto the use of notation voting for the consideration of any particular matter, and thus require that the matter be placed on the agenda of the next regularly scheduled Board meeting that is held at least ten days after the date of the veto.

* * * * *

3. Section 791.5 is amended by revising paragraph (a)(2) to read as follows:

§ 791.5 Scheduling of board meetings.

(a) * * *

(2) *Special meetings.* The Chairman shall call special meetings either on the Chairman's own initiative or within fourteen days of a request from two Board members that is accompanied by an NCUA B–1 form and a Board Action Memorandum that states the specific action being recommended to the Board.

* * * * *

4. Section 791.6 is amended by revising paragraph (a) to read as follows:

§ 791.6 Subject matter of a meeting.

(a) *Agenda.* The Chairman is responsible for the final order of each meeting agenda. Items shall be placed on the agenda by determination of the Chairman or, at the request of any Board Member, an item will be placed on the agenda of the next regularly scheduled meeting provided that the request is submitted at least ten days in advance of the next regularly scheduled meeting and is accompanied by an NCUA B–1 form and a Board Action Memorandum that states the specific action being recommended to the Board.

* * * * *

[FR Doc. 97–31716 Filed 12–4–97; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–03; Amendment 39–10138; AD 97–19–18]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TSCP700–4B and –5 Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 97–19–18 applicable to AlliedSignal Inc. (formerly AiResearch and Garrett) TSCP700–4B and –5 Series Auxiliary Power Units (APUs) that was published in the **Federal Register** on September 22, 1997 (62 FR 49427). The Amendment number and AD number in the compliance section was inadvertently omitted. This document adds the Amendment number and AD number to the compliance section. In all other respects, the original document remains the same.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to AlliedSignal Inc. (formerly AiResearch and Garrett) TSCP700–4B and –5 Series Auxiliary Power Units (APUs), was published in the **Federal Register** on September 22, 1997 (62 FR 49427). The following correction is needed:

§ 39.13 [Corrected]

On page 49428, in the third column, in the Compliance Section, in the first line, "Amendment 39–XXXX" is corrected to read "Amendment 39–10138".

On page 49428, in the third column, in the Compliance Section, in the third and fourth line, "97–XX–XX AlliedSignal Inc.: Amendment 39–XXXX" is corrected to read "97–19–18 AlliedSignal Inc.: Amendment 39–10138."

Issued in Burlington, MA, on November 28, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–31894 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–29]

Amendment to Class E Airspace; Alliance, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Alliance Municipal Airport, Alliance, NE. The FAA has developed Nondirectional Radio Beacon (NDB) Runway (RWY) 12 and NDB RWY 30 Standard Instrument Approach Procedures (SIAP) to serve the Alliance Municipal Airport. The enlarged Class E surface area and Class E airspace area 700 feet Above Ground Level (AGL) will contain the new NDB RWY 12 and NDB RWY 30 SIAPs in controlled airspace. The intended effect of this rule is to provide additional controlled Class E surface area and Class E airspace extending upward from 700 feet AGL to accommodate these SIAPs.

DATES: *Effective date:* 0901 UTC, April 23, 1998.

Comment date: Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–29, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed NDB RWY 12 and NDB RWY 30 SIAPs at Alliance Municipal Airport, Alliance, NE. The amendment to Class E surface area and Class E 700 feet AGL airspace area at Alliance Municipal Airport will provide additional controlled airspace in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under IFR. The areas will be depicted on appropriate aeronautical charts. Class E surface areas are published in paragraph 6002 and Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ACE–29." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ACE NE E2 Alliance, NE [Revised]

Alliance Municipal Airport, NE
(lat. 42°03'12" N., long. 102°48'14" W.)
Alliance VOR/DME
(lat. 42°03'20" N., long. 102°48'16" W.)
Alliance NDB
(lat. 42°02'35" N., long. 102°47'58" W.)

Within a 4.3-mile radius of Alliance Municipal Airport and within 1.3 miles each side of the 124° bearing from the Alliance NDB extending from the 4.3-mile radius to 7 miles southeast of the NDB and within 2.6 miles each side of the 145° radial of the Alliance VOR/DME extending from the 4.3-mile radius to 8.7 miles southeast of the VOR/DME and within 2.6 miles each side of the 302° radial of the Alliance VOR/DME extending from the 4.3-mile radius to 5.7 miles northwest of the VOR/DME and within 1.3 miles each side of the 318° bearing from the Alliance NDB extending from the 4.3-mile radius to 7 miles northwest of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Alliance, NE [Revised]

Alliance Municipal Airport, NE
(lat. 42°03'12" N., long. 102°48'14" W.)
Alliance VOR/DME
(lat. 42°03'20" N., long. 102°48'16" W.)
Alliance NDB
(lat. 42°02'35" N., long. 102°47'58" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Alliance Municipal Airport and within 1.3 miles each side of the 124° bearing from the Alliance NDB extending from the 6.8-mile radius to 7 miles southeast of the NDB and within 3 miles each side of the 145° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 10.5 miles southeast of the VOR/DME and within 3 miles each side of the 302° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 8.7 miles northwest of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on October 15, 1997.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31700 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–21]

Amendment of Class E Airspace; New Braunfels Municipal, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment modifies the Class E airspace at San Antonio, TX. The development of Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) to runways (RWY) 13 and 17 and a Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME)–A SIAP at New Braunfels Municipal Airport, TX, has made this rule necessary. This action is intended to provide adequate additional controlled airspace extending from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at New Braunfels Municipal Airport, New Braunfels, TX.

DATES: *Effective date:* 0901 UTC, February 26, 1998.

Comment date: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–21, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation

Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 amends the Class E airspace at New Braunfels, TX. The development of GPS SIAP's to RWY 13 and RWY 17 and a VOR/DME–A SIAP at New Braunfels Municipal Airport, TX, has made this action necessary. The intended effect of this action is to provide additional controlled airspace extending 700 feet or more above the surface for aircraft executing the GPS SIAPs to RWYs 13 and 17 and a VOR/DME–A SIAP at New Braunfels Municipal Airport, New Braunfels, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ASW–21." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5—San Antonio, TX [Revised]

San Antonio International Airport, TX
(Lat. 29°32'01" N., long. 98°28'11" W.)
New Braunfels Municipal, TX
(Lat. 29°42'11" N., long. 98°02'28" W.)
San Antonio VORTAC
(Lat. 29°38'39" N., long. 98°27'41" W.)
Randolph VOR
(Lat. 29°38'39" N., long. 98°17'06" W.)
Stinson VOR
(Lat. 29°15'30" N., long. 98°26'37" W.)
Castroville Municipal, TX
(Lat. 29°20'33" N., long. 98°51'04" W.)
Castroville RBN
(Lat. 29°20'46" N., long. 98°50'57" W.)

That airspace extending upward from 700 feet above the surface within a 20-mile radius of San Antonio International Airport and within 6.9-mile radius of New Braunfels Municipal Airport and within 1.6 miles each side of the 080° radial of the San Antonio VORTAC extending from the 6.9-mile radius to 11.2 miles east of the New Braunfels Municipal Airport and within 4 miles each side of the 316° bearing from New Braunfels Municipal Airport extending from the 6.9-mile radius to 9.7 miles north of the airport and within 3 miles each side of the 331° bearing from New Braunfels Municipal Airport extending from the 6.9-mile radius to 9.7 miles northwest of the airport and within 4 miles each side of the 080° radial of the San Antonio VORTAC extending from the 6.9-mile radius to 9.7 miles east of the New Braunfels Municipal Airport and within 8 miles east and 4 miles west of the 144° radial of the Randolph VOR extending from the 20-mile radius to 20.6 miles southeast of the VOR and within 8 miles east and 4 miles west of the 152° radial of the Stinson VOR extending from the 20-mile radius to 16 miles south of the VOR and within a 6.5-mile radius of Castroville Municipal Airport and within 8 miles west and 4 miles east of the 170° bearing from the Castroville RBN extending from the RBN to 16 miles south of the RBN.

* * * * *

Issued in Fort Worth, TX, on November 5, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–31930 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–20]

Amendment of Class E Airspace; Camden, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment modifies the Class E airspace at Camden, AR. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to runway (RWY) 18 at Harrell Field has made this rule necessary. This action is intended to provide adequate additional controlled airspace extending from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Harrell Field, Camden, AR.

DATES: *Effective date:* 0901 UTC, February 26, 1998.

Comment date: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–AWS–20, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 amends the Class E airspace at Camden, AR. The development of the NDB SIAP to RWY 18 at Harrell Field has made this action necessary. The intended effect of this action is to provide additional controlled airspace extending 700 feet or more above the surface for aircraft executing the NDB RWY 18 SIAP to Harrell Field, Camden, AR.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ASW–20." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5—Camden, AR [Revised]

Camden, Harrell Field, AR
(Lat. 33°37'22" N., long. 92°45'49" W.)
El Dorado VORTAC
(Lat. 33°15'22" N., long 92°44'38" W.)

The airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Harrell Field and within 1.5 miles each side of the 357° radial of the El Dorado VORTAC extending from the 7.1-mile radius to 9.6 miles north of the airport and within 2.5 miles each side of the 013° bearing from Harrell Field extending from the 7.1-mile radius to 7.6 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on November 5, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–31931 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–16]

Establishment of Class E Airspace; Encino, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Encino, TX. The development of two Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) to runway (RWY) 13 and RWY 31 at El Coyote Ranch Airport has made this rule necessary. This action is intended to establish Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and executing the GPS SIAP's at El Coyote Ranch Airport, Encino, TX.

DATES: *Effective date:* 0901 UTC, February 26, 1998.

Comment date: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–16, Forth Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes Class E airspace, providing controlled airspace for IFR operations at El Coyote Ranch Airport, Encino, TX. The development of two GPS SIAP's to RWY 13 and RWY 31 at El Coyote Ranch Airport has made this rule necessary. This action will establish Class E airspace for aircraft operating at El Coyote Ranch Airport, Encino, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ASW–16." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C 106(g) 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5—Encino, TX [New]

Encino, El Coyote Ranch Airport, TX
(Lat. 26°51'30" N., long. 98°13'19" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of El Coyote Ranch Airport.

* * * * *

Issued in Fort Worth, TX, on November 6, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–31932 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–7]

Amendment to Class E Airspace; Belleville, KS; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a direct final rule, request for comments, that was published in the **Federal Register** on October 17, 1997 (62 FR 53943), Airspace Docket No. 97–ACE–7. The direct final rule amends the Class E airspace at Belleville Municipal Airport, Belleville, KS.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO, 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–27363, Airspace Docket No. 97–ACE–7, published on October 17, 1997 (62 FR 53943), revised the descriptions of the Class E airspace area at Belleville, KS. An error was discovered in the geographic coordinates for the Republican Nondirectional Radio Beacon (NDB). This action corrects that error.

Correction to Direct Final Rule; Request for Comments

Accordingly, pursuant to the authority delegated to me, the airspace description for the Belleville, KS, Class E airspace area, incorporated by reference in § 71.1, as published in the **Federal Register** on October 17, 1997 (62 FR 53943), (**Federal Register** Document 97–27363) is corrected as follows:

§71.1 [Corrected]

On page 53944, column 2, the geographic coordinates for the Republican NDB are corrected by removing "(Lat. 39°548'48"N. long. 97°39'30"W.)" and adding "(Lat. 39°48'48"N. long. 97°39'30"W.)" in its place.

Issued in Kansas City, MO, on October 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31698 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 340

RIN 3220–AB32

Recovery of Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: In an interim rule published August 1, 1997, the Railroad Retirement Board (Board) amended part 340 of its regulations to reflect its authority to compromise debts provided that the amount recoverable does not exceed $100,000 exclusive of interest. The amendment conformed the Board's regulations to present law. This document adopts the interim rule as final without change.

DATES: *Effective Date:* This regulation is effective August 1, 1997.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 8(b) of Public Law 101–552, enacted November 15, 1990, amended section 3711 of title 31 of the United States Code to increase from $20,000 to $100,000 (or a higher amount if so prescribed by the Attorney General) the amount of a claim that an agency is authorized to compromise. Consistent with the change in the law, the Board is amending § 340.13 of its regulations under the Railroad Unemployment Insurance Act to reflect this change in law.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a major rule for the purposes of Executive Order 12866. Therefore, no regulatory analysis is required. This rule does not involve any information collection requirements.

The Board published this rule as an interim final rule on August 1, 1997 (62 FR 41270), and comments were invited by September 30, 1997. No comments were received. Accordingly, the interim final rule is adopted as a final rule without change.

Dated: November 25, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–31905 Filed 12–4–97; 8:45 am]

BILLING CODE 7905–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 422

RIN 0960–AE09

Federal Old-Age, Survivors, and Disability Insurance; Disclosure of Information to Consumer Reporting Agencies and Overpayment Recovery Through Administrative Offset Against Federal Payments

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: In this final rule, we are making several revisions to our regulations dealing with debt collection. First, we are modifying the regulations dealing with the recovery of benefit overpayments under title II of the Social Security Act (the Act) to reflect statutory authority for the Social Security Administration (SSA) to selectively refer information to consumer reporting agencies and to recover title II overpayments through administrative offset by the Department of the Treasury against other Federal payments to which the overpaid individual may be entitled. These collection practices are limited to overpayments made to a person after he or she attained age 18 that are determined to be otherwise unrecoverable under section 204 of the Act after the individual ceases to be a beneficiary under title II of the Act. Second, as an independent agency in the executive branch of the U.S. Government, we are establishing a new subpart D in part 422 of title 20 of the Code of Federal Regulations which explains our rules on debt collection procedures for both administrative debts and for title II program overpayments determined to be otherwise unrecoverable under section 204 of the Act. These rules for the new subpart D address the reporting of delinquent debts to consumer and other credit reporting agencies and the use of administrative offset through the Department of the Treasury. Third, we are revising our rules on the recovery of title II program overpayments through the use of the Federal income tax refund offset (TRO) provisions to reflect that, beginning January 1, 1998, the Department of the Treasury, rather than the Internal Revenue Service (IRS), will administer the TRO program, and to reflect other changes in policies and procedures applied by the IRS and the Department of the Treasury in the TRO program.

EFFECTIVE DATE: This final rule is effective January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–5121. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Section 204 of the Act prescribes the methods SSA may use to recover Social Security benefits erroneously paid under title II of the Act (title II program overpayments), as distinguished from the methods SSA may use to collect other debts owed the agency (administrative debts) that are recoverable under other statutory authority. Until recently, SSA was authorized to recover title II program overpayments only through adjustment of future benefits payable to the overpaid individual or to others on the earnings record on which the overpayment was made, by direct recovery from the overpaid person (or the overpaid person's estate, if deceased), or by offset against Federal income tax refunds due from the Department of the Treasury. Amendments to section 204 of the Act by section 5 of Pub. L. 103–387 (1994) and section 31001(z)(2) of Pub. L. 104–134 (1996) permit SSA to use several debt collection procedures that have been available to Federal agencies (including SSA) by statute since 1982, but that SSA had been precluded from using to recover title II program overpayments. Among other things, these procedures include reporting delinquent debts to consumer and other credit reporting agencies and recovering debts by administrative offset against other Federal payments to which the debtor is entitled. Under section 204(f) of the Act (42 U.S.C. 404(f)), these additional debt collection procedures may be used to recover title II program overpayments only if the overpayment was made to a person after he or she attained age 18 and the overpayment has been determined to be otherwise unrecoverable under section 204 of the Act after the overpaid person is no longer entitled to benefits under title II of the Act.

Before we can refer information to consumer or other credit reporting agencies or refer a debt to the Department of the Treasury for administrative offset (either title II program overpayments or administrative debts), we must (1) send the debtor written notice (or, in the case of an individual for whom we do not have a current address, take reasonable action to locate and send written notice) describing the amount and nature of the debt, the action that we propose to take, and the debtor's rights to an explanation of the debt, to request us to review the debt, to dispute the accuracy of the information about the debt, and to inspect or copy our records about the debt; and (2) give the debtor at least 60 calendar days to present evidence that all or part of the debt is not past-due or not legally enforceable, or enter into a written agreement to pay the debt.

Prior to March 31, 1995, SSA was an operating division of the Department of Health and Human Services (DHHS). SSA relied on the DHHS rules at 45 CFR part 30 for debt collection (other than collection of title II program overpayments). The Social Security Independence and Program Improvements Act of 1994 (SSIPIA), Pub. L. 103–296, established SSA as an independent agency in the executive branch of the Federal government effective March 31, 1995, and vested general regulatory authority in the Commissioner of Social Security (the Commissioner). Under section 106(b) of the SSIPIA, DHHS regulations in effect immediately before March 31, 1995, which relate to functions now vested in the Commissioner by reason of SSA's independence, continue to apply to SSA until such time as they are modified, suspended, terminated, or repealed by the Commissioner. In this final rule, we are establishing a new subpart D in part 422 of our regulations which sets forth the SSA rules on debt collection for title II program overpayments that have been determined to be otherwise unrecoverable under section 204 of the Act and for administrative debts. At this time, we are setting forth in subpart D our rules on referral to consumer and other credit reporting agencies and referral to the Department of the Treasury for administrative offset. In the future, as we make the necessary systems changes and develop policies and procedures to enable us to use additional debt collection tools for recovery of title II program overpayments, we will modify subpart D of part 422. In the meantime, we will continue to rely on the definitions and additional collection methods contained in the DHHS regulations in 45 CFR part 30 to recover administrative debts owed the Federal government.

We are also revising our rules on the recovery of title II program overpayments through the withholding of amounts due to former beneficiaries as Federal income tax refunds to reflect the fact that, beginning January 1, 1998, the TRO program will be administered by the Department of the Treasury, Financial Management Service (FMS), instead of the IRS. The policy requiring agencies to delay referral of debts for TRO for three months after the right to collect first accrued has been rescinded. Also, the TRO program, as administered by FMS, will be ongoing rather than cyclical so that it will no longer be necessary for agencies to recertify amounts of a particular debt for collection by TRO each year. Instead, if the entire debt is not recovered in a given year, the case will remain with FMS for collection of the remainder by offset in succeeding years.

Public Comments

On August 7, 1997, we published proposed rules in the **Federal Register** at 62 FR 42439 and provided a 60-day period for interested individuals to comment. We received a total of three letters on the proposed rules: one from a private attorney, one from a disability law center, and one from a member of Congress. After carefully considering the comments received, we have decided to adopt the proposed rules with only a few clarifying changes. The comments and our responses to them are summarized below.

Comment: Two commenters objected to the proposed rules based on the assumption that the debtors subject to these rules have no input into the calculation of their debts and are without adequate protections.

Response: The debtors who will be selected for the new debt collection techniques are those from whom SSA has attempted numerous times to collect the debts, both by written notices and personal contacts. In the initial overpayment notice, SSA advises the debtor of the right to request reconsideration of the fact and amount of the debt, and thereby challenge the calculation and existence of the debt. In this same notice, SSA also advises the debtor about the right to request waiver. In addition, SSA's separate notice to the debtor of the Agency's intent to refer information about the debt to the Department of the Treasury and to the consumer reporting agencies offers the debtor the opportunity to request waiver, present evidence showing that the debt is not past-due and/or legally enforceable, and dispute the accuracy of information about the debt that we would refer. We believe that our procedures adequately protect individuals by allowing ample opportunity to the debtors to both dispute the amount of the overpayment and/or to request waiver.

Comment: One commenter asked the Agency not to issue final regulations until it: (1) runs a test program to assure that overpayments preventable by SSA are not occurring; (2) tests a program of appointing free advocates (who may be SSA employees) to counsel and represent those accused of receiving overpayments; and (3) assures that people accused of using overpayments understand that a report is made to a consumer reporting agency immediately unless they appeal or reach agreement with SSA.

Response: We are not adopting this comment. With regard to the commenter's first concern above, SSA has had a longstanding and comprehensive quality assurance program that reviews overpayments, including those preventable by SSA. The program studies significant samples of claims, identifying problem areas that need to be corrected. We believe this quality assurance program corresponds to the test program suggested by the commenter.

With regard to the commenter's second point, SSA already takes several steps toward helping overpaid individuals obtain representation. Information on the individual's right to seek and use representation is included in SSA's initial overpayment notices. In addition, SSA offers to provide information on advocacy groups that do not charge people who qualify for their services.

Regarding the commenter's third point, SSA will not report information to consumer reporting agencies immediately. SSA will wait at least 60 days after the date of the notice to report the delinquency to consumer reporting agencies. During the 60-day due process period, SSA provides the debtor with the opportunity to request review of the debt, dispute the accuracy of the information to be reported, request waiver, or enter into an installment agreement. All of these rights are clearly explained in the notice to the debtor.

Comment: One commenter objected to the practice of sending one pre-offset notice to the debtor explaining that the debt is being referred to the Department of the Treasury for TRO and that future tax refunds will be offset to recover the overpayment. The commenter believes that we should provide separate notices before subsequent offsets.

Response: This practice is consistent with the Department of the Treasury's existing process whereby no additional notice is necessary if there are multiple offsets in one year to recover an overpayment debt. It is also consistent with the Department of the Treasury's regulations and operating procedures which require notice at least 60 calendar days before the date of referral to the Department of the Treasury.

Comment: SSA's notices described in § 404.521 of the proposed rules should contain language explaining that the debtor may enter into a repayment agreement with SSA.

Response: Since the beginning of the TRO program, SSA's notices have contained such language. The notices issued under these final regulations also

contain the language which offers the opportunity to pay the debt by installments. One of the principles that SSA uses in the offset program is to extend to the debtor as many opportunities as possible to pay the debt voluntarily, rather than by offset. As long as the debtor repays by regular installments in accordance with his or her payment agreement with SSA, offset will not be used to collect the debt.

Comment: No referral to the Department of the Treasury should occur until all administrative reviews have been completed or until a decision of the Agency becomes final, in the event that no appeal is taken. In addition, recovery efforts by the SSA and the Department of the Treasury should be stopped until a waiver request received after referral to the Department of the Treasury has been given full consideration.

Response: When an individual submits a timely request for reconsideration of the initial overpayment decision and/or requests waiver of collection of the overpayment, SSA is precluded from any recovery action until SSA renders a decision affirming the initial determination and/or denying the waiver request. See *Califano* v. *Yamasaki*, 442 U.S. 682 (1979) and § 404.506. SSA is not required to refrain from taking collection action concerning a title II overpayment debt after a decision on a request for reconsideration of the initial overpayment determination is issued and after a determination on a request for waiver of recovery of the overpayment is made after the debtor had the opportunity for a prerecoupment personal conference. However, under the process adopted to implement these final regulations SSA would not select a title II overpayment debt for referral to the Department of the Treasury while an administrative appeal regarding that debt is pending.

Section 204(f) of the Act, as amended, authorizes SSA to collect such debts through administrative offset by the Department of the Treasury against Federal payments due the debtor when, among other things, SSA determines, under regulations, that such debts are otherwise unrecoverable under section 204 of the Act. In accordance with § 404.527(b) of these final regulations, SSA would not select a debt as "unrecoverable" until a reconsideration determination requested on the initial determination of overpayment, or an initial determination (after opportunity for a personal conference) on a request for waiver of collection, is issued and either the billing system sequence is completed or further collection action is suspended or terminated. The billing system sequence on a title II overpayment debt would not be completed, and collection action on such a debt would not be suspended or terminated, while an administrative appeal at any level of adjudication is pending on the matter. Thus, under these final regulations SSA would not select a title II overpayment debt for collection by the Department of the Treasury through offset against other Federal payments while an administrative appeal is pending at any level of adjudication on the fact or amount of the overpayment or on waiver.

Similarly, the changes in these regulations will not affect any former beneficiary's ability to request waiver. If the debtor requests waiver after a case has been referred, SSA will instruct the Department of the Treasury to cease collection efforts until the waiver request is adjudicated.

Comment: SSA should raise its monetary threshold for referral to the Department of the Treasury from $25 to $500.

Response: The $25 debt threshold is consistent with the regulations issued by Treasury and is used governmentwide. SSA has also determined it to be cost-effective. SSA will continue to use the $25 threshold in applying these rules.

Comment: The notice SSA will send to debtors informing them that the Agency intends to report their debts to consumer reporting agencies should include the right to request waiver of the overpayment.

Response: Unlike 31 U.S.C. 3720A(f) pertaining to the TRO notice to debtors, the statute (31 U.S.C. 3711(e)(1)(C)) pertaining to the notice to debtors about referral to consumer reporting agencies does not require an explanation of waiver. However, SSA notifies debtors about TRO, offset of other Federal payments and referral to consumer reporting agencies concurrently, and these notices explain the debtors' waiver rights. if the debtor requests waiver within the 60-calendar-day period allowed by the notice, SSA will not report the debt to the credit bureaus until the waiver request has been adjudicated.

Explanation of Changes to Regulations

We are revising our title II rules on TRO at §§ 404.520–404.526 to reflect several changes in the TRO process promulgated by the Department of the Treasury. Beginning January 1, 1998, we will be referring title II program overpayments for TRO to the Department of the Treasury, rather than to IRS. Section 404.520 is revised to delete the requirement that a debt may not be referred for TRO before the expiration of three months after our right to collect first accrued. Section 404.526 is also revised by deleting reference to the need to recertify an overpayment for TRO in cases where a tax refund is insufficient to recover the entire amount of an overpayment in a given year, reflecting the fact that the case will now remain with the Department of the Treasury for offset in succeeding years without need for recertification. In this final rule, we have inserted at the end of § 404.520(a) a reference to the current regulation of the Department of the Treasury (31 CFR 285.2) which supersedes the IRS regulation (26 CFR 301.6402–6) that was cited in the notice of proposed rulemaking.

We are adding a new § 404.527 to our regulations to explain that we will use the additional debt collection methods authorized by section 204(f) of the Act to recover title II program overpayments if the overpayment occurred after the individual attained age 18, and the overpayment has been determined to be otherwise unrecoverable under section 204 of the Act after the individual is no longer entitled to benefits under title II of the Act. Section 404.527 also contains the criteria under which we determine that an overpayment is "otherwise unrecoverable under section 204 of the Act." An overpayment debt will be determined to be unrecoverable when all of the following conditions are met: we completed our billing sequence or collection activity has been suspended or terminated in accordance with the Federal Claims Collection Standards in 4 CFR 104.2 and 104.3; there is no installment payment agreement or the overpaid person has failed to pay in accordance with such an agreement for two consecutive months; the overpaid individual has not requested waiver or, after appropriate review of such a request, we have determined that we will not waive collection of the overpayment; the overpaid person has not requested reconsideration of the initial overpayment determination or, after our review of such determination, we have affirmed such determination wholly or partially; we cannot collect the overpayment by adjusting benefits payable to individuals other than the overpaid person. For purposes of § 404.527, an overpayment will be deemed to be unrecoverable from an individual who lived in a separate household from the overpaid person when the overpayment occurred and who did not receive the overpayment.

Adjustment of benefits is waived when waiver is requested under these circumstances. See § 404.509.

We are adding to § 404.903 new paragraphs (t) and (u) to include in the list of administrative actions that are not initial determinations our determinations whether we will refer information about an overpayment debt to consumer reporting agencies and whether we will refer the debt to the Department of the Treasury for offset against other Federal payments due the overpaid person. Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart J of our regulations at 20 CFR Part 404, and they are not subject to judicial review.

We are also creating a new subpart D to part 422 of our regulations to contain our rules on certain debt collection practices and procedures. In § 422.301, we specify that the debt collection tools in subpart D may be used to recover both title II program overpayments the Commissioner has determined to be unrecoverable under section 204 of the Act and overdue administrative debts owed the agency.

In § 422.305, we explain that we will refer all overdue title II program debts over $25, found to be otherwise unrecoverable under section 204 of the Act, to consumer reporting agencies. We describe the information we must include in the notice we send to the debtor before we report the debt to a consumer reporting agency. We also explain in this section that, in cases where an individual disputes the information we propose to refer to a consumer reporting agency within 60 calendar days of our notice of our proposed referral, we will not send the information until we determine the correct information.

In § 422.306, we explain that we will refer all overdue administrative debts over $25 to credit reporting agencies. We also describe the information we must include in the notice we send to the debtor before we report the debt to a credit reporting agency. Examples of administrative debts are overpayments of employees' pay and allowances, debts for civil money penalties imposed under section 1140(b) of the Act, debts for unpaid fees for reimbursable services by SSA (e.g., disclosure of information), contractor debts, etc.

In § 422.310, we explain our rules relating to referring debts to the Department of the Treasury for administrative offset. Specifically, we explain that we will refer overdue debts over $25 to the Department of the Treasury for offset against any Federal payments due the debtor. We also describe the information we must include in the notice we send to the debtor before referring the debt to the Department of the Treasury for administrative offset.

In this final rule, we are revising the language of §§ 422.305(b)(2), 422.306(b)(2) and 422.310(c)(2) as it appeared in the proposed rules to clearly state that we will not refer information on debts to consumer reporting agencies or to the Department of the Treasury for administrative offset before the expiration of 60 calendar days from the dates of the notices described in those regulations.

In § 422.315, we explain that a debtor has the right to inspect or copy our records related to a debt before we refer the debt to a consumer or credit reporting agency or to the Department of the Treasury for administrative offset, and the procedures for exercising that right.

In § 422.317, we explain that a debtor has the right to have us review the debt. To exercise this right, the debtor must notify us within 60 calendar days from the date of our notice of proposed referral and give us evidence that he or she does not owe all or part of the debt, or we do not have the right to collect it. After our review of the evidence, we explain that we will issue written findings of our review. If the debtor requests review and submits evidence within the 60-day period, we will not refer the debt to consumer or credit reporting agencies or to the Department of the Treasury unless and until we have completed our review and sent our findings to the debtor that all or part of the debt is overdue and legally enforceable.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations will impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Programs No. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: December 2, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts F and J of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations are amended and a new subpart D is added to Part 422 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 404—[AMENDED]

1. The authority citation for subpart F of Part 404 is revised to read as follows:

Authority: Secs. 204, 205(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 404, 405(a), and 902(a)); 31 U.S.C. 3720A.

2. Section 404.520 is revised to read as follows:

§ 404.520 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

(a) The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due taxpayers who have an outstanding overpayment are set forth in §§ 404.520 through 404.526. These standards and procedures are authorized by 31 U.S.C. 3720A and are implemented through Department of the Treasury regulations at 31 CFR 285.2.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable, and eligible for tax refund offset under regulations issued by the Department of the Treasury. We will use these procedures to collect overpayments only from individuals who are not currently entitled to

monthly Social Security benefits under title II of the Act. We will refer an overpayment to the Department of the Treasury for offset against tax refunds no later than 10 years after our right to collect the overpayment first accrued.

3. Section 404.521 is amended by revising the introductory text to read as follows:

§ 404.521 Notice to overpaid individual.

A request for reduction of a Federal income tax refund will be made only after we determine that an amount is owed and past due and send the overpaid individual written notice. Our notice of intent to collect an overpayment through tax refund offset will state:

* * * * *

4. Section 404.526 is revised to read as follows:

§ 404.526 Tax refund insufficient to cover amount of overpayment.

If a tax refund for a given taxable year is insufficient to recover an overpayment completely, the case will remain with the Department of the Treasury for offset, assuming that all criteria for offset continue to be met.

5. Section 404.527 is added to subpart F to read as follows:

§ 404.527 Additional methods for recovery of title II benefit overpayments.

(a) *General.* In addition to the methods specified in §§ 404.502 and 404.520, an overpayment under title II of the Act is also subject to recovery under the rules in subpart D of part 422, provided:

(1) The overpayment occurred after the individual has attained age 18;

(2) The overpaid individual is no longer entitled to benefits under title II of the Act; and

(3) Pursuant to paragraph (b) of this section, we have determined that the overpayment is otherwise unrecoverable under section 204 of the Act.

(b) *When an overpayment is considered to be otherwise unrecoverable.* An overpayment under title II of the Act is considered to be otherwise unrecoverable under section 204 of the Act if all of the following conditions are met:

(1) Our billing system sequence has been completed (i.e., we have sent the individual an initial notice of the overpayment, a reminder notice, and a past-due notice) or collection activity has been suspended or terminated in accordance with the Federal Claims Collection Standards in 4 CFR 104.2 or 104.3.

(2) We have not entered into an installment payment arrangement with the overpaid individual or, if we have entered into such an arrangement, the overpaid individual has failed to make any payment for two consecutive months.

(3) The overpaid individual has not requested waiver pursuant to § 404.506 or § 404.522 or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(4) The overpaid individual has not requested reconsideration of the initial overpayment determination pursuant to §§ 404.907 and 404.909 or, after a review conducted pursuant to § 404.913, we have affirmed, in whole or in part, the initial overpayment determination.

(5) The overpayment cannot be recovered pursuant to § 404.502 by adjustment of benefits payable to any individual other than the overpaid individual. For purposes of this paragraph, an overpayment will be deemed to be unrecoverable from any individual who was living in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment.

6. In addition to the amendments set forth above, remove the acronym "IRS" and add, in its place, the words "Department of the Treasury" in the following places:

(a) Section 404.521(b);

(b) Section 404.522(b);

(c) Section 404.523 (a) and (c) (both places); and

(d) Section 404.525.

7. The authority citation for subpart J of Part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

8. Section 404.903 is amended by deleting the word "and" at the end of paragraph (r), replacing the period at the end of paragraph (s) with a semicolon, and adding paragraphs (t) and (u) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(t) Determining whether we will refer information about your overpayment to a consumer reporting agency (see §§ 404.527 and 422.305 of this chapter); and

(u) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 404.527 and 422.310 of this chapter).

PART 422—ORGANIZATION AND PROCEDURES

10. Subpart D is added to read as follows:

Subpart D—Claims Collection

Sec.

422.301 Material included in this subpart.
422.305 Report of overdue title II program overpayment debts to consumer reporting agencies.
422.306 Report of overdue administrative debts to credit reporting agencies.
422.310 Collection of overdue debts by administrative offset.
422.315 Review of our records related to the debt.
422.317 Review of the debt.

Subpart D—Claims Collection

Authority: Secs. 204(f), 205(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 404(f), 405(a), and 902(a)(5)); 31 U.S.C. 3711(e); 31 U.S.C. 3716.

§ 422.301 Material included in this subpart.

This subpart describes the procedures relating to collection of:

(a) Overdue administrative debts, and

(b) Overdue title II program overpayments described in § 404.527 of this chapter.

§ 422.305 Report of overdue title II program overpayment debts to consumer reporting agencies.

(a) *Debts we will report.* We will report to consumer reporting agencies all overdue title II program overpayment debts over $25.

(b) *Notice to debtor.* Before we report any such debt to a consumer reporting agency, we will send the debtor written notice of the following:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt to a consumer reporting agency at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (b)(6) or (b)(7) of this section;

(3) The specific information we will provide to the consumer reporting agency, including information that identifies the debtor (e.g., name, address, and social security number) and the amount, status, and history of the debt;

(4) The debtor has the right to a complete explanation of the debt;

(5) The debtor may dispute the accuracy of the information to be provided to the consumer reporting agency;

(6) The debtor may request a review of the debt by giving us evidence showing that he or she does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(7) The debtor may request an installment payment plan.

(c) *Disputing the information that we would send to consumer reporting agencies.* If a debtor believes that the information we propose to send to consumer reporting agencies is incorrect, the debtor may ask us to correct such information. If, within 60 calendar days from the date of our notice described in paragraph (b) of this section, the debtor notifies us that any information to be sent to consumer reporting agencies is incorrect, we will not send the information to consumer reporting agencies until we determine the correct information.

§ 422.306 Report of overdue administrative debts to credit reporting agencies.

(a) *Debts we will report.* We will report to credit reporting agencies all overdue administrative debts over $25. Some examples of administrative debts are as follows: overpayments of pay and allowances paid to employees, debts for civil monetary penalties imposed under section 1140(b) of the Act, debts for unpaid fees for reimbursable services performed by SSA (e.g., disclosures of information), and contractor debts.

(b) *Notice to debtor.* Before we report any administrative debt to a credit reporting agency, we will send the debtor written notice of the following:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt to a credit reporting agency at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (b)(6) or (b)(7) of this section;

(3) The specific information we will provide to the credit reporting agency, including information that identifies the debtor (e.g., name, address, social security number, and employer identification number) and the amount, status, and history of the debt;

(4) The debtor has the right to a complete explanation of the debt;

(5) The debtor may dispute the accuracy of the information to be provided to the credit reporting agency;

(6) The debtor may request a review of the debt by giving us evidence showing that he or she does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(7) The debtor may request an installment payment plan.

§ 422.310 Collection of overdue debts by administrative offset.

(a) *Referral to the Department of the Treasury for offset.* We will recover overdue debts by offsetting Federal payments due the debtor through the Treasury Offset Program (TOP). TOP is a Governmentwide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal payments owed the debtor.

(b) *Debts we will refer.* We will refer for administrative offset all overdue debts over $25.

(c) *Notice to debtor.* Before we refer any debt for collection by administrative offset, we will send the debtor written notice that:

(1) We have determined that payment of the debt is overdue;

(2) We will refer the debt for administrative offset at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period, the debtor pays the full amount of the debt or takes either of the actions described in paragraphs (c)(4) or (c)(5) of this section;

(3) The debtor may inspect or copy our records relating to the debt;

(4) The debtor may request a review of the debt by giving us evidence showing that the debtor does not owe all or part of the amount of the debt or that we do not have the right to collect it; and

(5) The debtor may request an installment payment plan.

§ 422.315 Review of our records related to the debt.

(a) *Notification by the debtor.* The debtor may request to inspect or copy our records related to the debt.

(b) *Our response.* In response to a request from the debtor described in paragraph (a) of this section, we will notify the debtor of the location and time at which the debtor may inspect or copy our records related to the debt. We may also, at our discretion, mail to the debtor copies of the records relating to the debt.

§ 422.317 Review of the debt.

(a) *Notification and presentation of evidence by the debtor.* A debtor who receives a notice described in § 422.305(b), § 422.306(b), or § 422.310(c) has a right to have us review the debt. To exercise this right, within 60 calendar days from the date of our notice, the debtor must notify us and give us evidence that he or she does not owe all or part of the debt or that we do not have the right to collect it. If the debtor does not notify us and give us this evidence within the 60 calendar-day period, we may take the action described in our notice.

(b) *Review of the evidence.* If the debtor notifies us and presents evidence within the 60 calendar-day period described in paragraph (a) of this section, we will not take the action described in our notice unless and until we consider all of the evidence and send the debtor our findings that all or part of the debt is overdue and legally enforceable.

(c) *Findings by SSA.* Following our review of all of the evidence presented, we will issue written findings, including the supporting rationale for the findings. Issuance of these findings will be the final Agency action on the debtor's request for review. If we find that the debt is not overdue or we do not have the right to collect it, we will not send information about the debt to consumer or other credit reporting agencies or refer the debt to the Department of the Treasury for administrative offset.

[FR Doc. 97–32008 Filed 12–4–97; 8:45 am]
BILLING CODE 4190–29–P

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 98–1]

Assignment of Special Research Facilities

AGENCY: Library of Congress.

ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to revise Library of Congress Regulation 815–3. The revised regulation will reflect the change in availability for assignment of study shelves, study desks and study rooms, the renaming of the responsible division from General Reading Rooms Division to Humanities and Social Sciences Division and to the Congressional Relations Office for study rooms for Congressional use.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Lana Kay Jones, Acting General Counsel, Office of the General Counsel, Library of Congress, Washington, D.C. 20540–1050. Telephone No. (202) 707–6316.

SUPPLEMENTARY INFORMATION: This Regulation states the Library's policy regarding the assignment of special research facilities, including study shelves, desks, and other facilities designed for the use of scholars

involved in extensive research using materials from the Library's collections.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Regulation

In consideration of the foregoing the Library of Congress amends 36 CFR part 701 to read as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 will continue to read as follows:

Authority: 2 U.S.C. 136.

2. Section 701.8 is revised to read as follows:

§ 701.8 Assignment of Special Research Facilities.

(a) *Study Shelves.* Individually-assigned reserve shelves are available adjacent to several reading rooms for the use of researchers whose work requires access to the same materials over an extended period of time. Shelves are assigned to applicants for a specific period through the Research Facilities Office, Humanities and Social Sciences Division. Shelves must be renewed at designated intervals.

(b) *Study desks.* A limited number of study desks are available for the use of researchers engaged in full-time research projects involving extensive use of materials requiring larger amounts of material drawn from the Library's collections, more work space, greater physical security, and/or a more private environment than might be possible in a reading room. Study desk areas shall not be used as a primary office from which the project undertaken is operated, nor as a business location. Study desks are initially assigned for a period not to exceed one year, with the assignment and termination dates determined by the Head of the Main Reading Room Section, Humanities and Social Sciences Division. The assignment of a study desk beyond the first year may be made by the Chief of the Humanities and Social Sciences Division for a maximum of two years from the first assignment when there is a demonstrated need for the continuation of the assignment. Assignments beyond two years require an exception to this part and shall be specifically authorized by the Associate Librarian for Library Services. Any researcher who demonstrates a continuing need for a facility beyond an expiration date may reapply, but priority will be given to applicants on the waiting list who meet the specific criteria.

(c) *Congressional use of study rooms.* Rooms 225A–225E in the James Madison Building are available for the exclusive use of Members of Congress and Committees for official research that requires use of the Library's collections or files in the Congressional Research Service. Assignment of study rooms shall be made in accordance with the Resolution of the Joint Committee on the Library of September 12, 1959, which states: "* * * occupancy of study rooms assigned to Members should not be delegated to others than members of their own office staff who are paid no less than 20 hours per week from U.S. Government funds and at a rate of not less than the minimum salary of a GS–3 clerk-typist * * *, and that Members should not request assignments of rooms for themselves merely for the purpose of sponsoring the work of private individuals and non-Government groups. * * *" Rooms are assigned for one year or the life of the project, whichever is less, with the assignment and termination dates determined by the Director of the Congressional Relations Office.

Dated: November 20, 1997.

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–31752 Filed 12–4–97; 8:45 am]

BILLING CODE 1410–04–P

POSTAL SERVICE

39 CFR Parts 262 and 265

Records and Information Management Definitions and Release of Information

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: The Postal Service is amending its regulations relating to the availability of records to the public. This rule is made necessary by amendments to the Freedom of Information Act, made by Public Law 104–231, the "Electronic Freedom of Information Act Amendments of 1996." The amendments address the availability of electronic records, the creation of a new electronic reading room, and procedural aspects, such as time limits, expedited processing, denial specifications, and reporting requirements.

DATES: The interim regulations take effect on December 5, 1997. Comments must be received on or before January 5, 1998.

ADDRESSES: Written comments may be mailed or delivered to Freedom of Information/Privacy Acts Officer, United States Postal Service, 475 L'Enfant Plaza, SW, Room 8800, Washington, DC 20260–5243.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (5 U.S.C. 552) was amended on October 2, 1996, by Public Law 104–231, the "Electronic Freedom of Information Act Amendments of 1996." Consistent with the amended law, the interim regulations:

a. Add a new category of reading room records consisting of any records processed and disclosed in response to a FOIA request that the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records. These and other reading room records created on or after November 1, 1996 also will be made available through the Postal Service's world wide web home page after November 1, 1997.

b. Define the term "record" to include electronic records; provide that the requester may choose the form or format in which to receive records; and state that the Postal Service will make reasonable efforts to search for records in electronic form or format unless such efforts would significantly interfere with the operation of its computer systems.

c. Extend the period for response from 10 to 20 working days as of October 2, 1997; provide for notification of the requester when that period cannot be met to arrange for an alternative time frame or a modified request; and establish a new procedure for handling requests for expedited processing.

d. Require the custodian to indicate on the released portion of a record the amount of information deleted and to include in a written response an estimate of the volume of any records withheld in full.

e. Change the annual reporting period from a calendar year to the fiscal year that, for most of the Executive branch, begins on October 1, and provide that those reports will be made available to the Attorney General and on the Postal Service's world wide web page.

Other interim changes update organizational titles and the schedule of fees for searching for records by computer.

The Postal Service has determined to place the amendments immediately into effect on an interim basis, because many of the key provisions implement statutory changes that take effect by force of law on October 2, 1997. Nonetheless, the Postal Service invites interested persons to submit written comments concerning the interim rule.

These comments will be considered before a final rule is adopted.

List of Subjects

39 CFR Part 262

Archives and records, Records and information management definitions.

39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees, Release of information.

For the reasons set out in the preamble, 39 CFR parts 262 and 265 are amended as set forth below.

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

1. The authority citation for part 262 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a; 39 U.S.C. 401.

2. Section 262.2(a) is revised to read as follows:

§ 262.2 Officials.

(a) *Records Custodian.* The postmaster or other head of a facility such as an area vice president, district manager, or head of a postal installation or department who maintains Postal Service records. Vice presidents are the custodians of records maintained at Headquarters. Senior medical personnel are the custodians of restricted medical records maintained within postal facilities.

* * * * *

3. Section 262.4 introductory text is revised to read as follows:

§ 262.4. Records.

Recorded information, regardless of media, format, or physical characteristics, including electronic data, developed or received by the Postal Service in connection with the transaction of its business and retained in its custody; for machine-readable records, a collection of logically related data treated as a unit.

* * * * *

PART 265—RELEASE OF INFORMATION

4. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

5. Section 265.3(a) is revised to read as follows:

§ 265.3 Responsibility.

(a) *Custodian.* Official records are in the custody of the postmaster or other head of a facility or department at which they are maintained, as defined at § 262.2(a). These custodians are responsible for responding in the first instance to requests from members of the public for Postal Service records.

* * * * *

6. Section 265.5 is revised to read as follows:

§ 265.5 Public reading rooms.

The Library of the Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–1641, serves as public reading room for the materials which are listed in paragraphs (a) (2), (3), (4) and (5) of § 265.6 as available for public inspection and copying. Any such material created by the Postal Service on or after November 1, 1996, also will be available, as of November 1, 1997, in electronic format at the Postal Service's world wide web site at http://www.usps.gov.

7. Section 265.6(a) is revised to read as follows:

§ 265.6 Availability of records.

(a) *Records available to the public on request*—(1) *General.* Postal Service records are available for inspection or copying at the request of any person, in accordance with the provisions of this part, except as otherwise provided by law or regulations, including but not limited to paragraphs (b) through (g) of this section. Certain categories of records of particular interest are available on a continuing basis as provided in paragraphs (a) (2), (3), and (4) of this section and are listed in a public index as provided in paragraphs (a) (4) and (5) of this section. Access to other records may be requested on an individual basis in accordance with the procedures provided in § 265.7. Official records which are maintained on an electronic storage medium will normally be made available, in accordance with this part, as an exact duplicate of the requested original in a form readable by the human eye, such as a computer print-out. On request, records will be provided in a different form or format if they are maintained in the requested form or format or if they can be readily reproduced in the requested form or format.

(2) *Opinions.* All final opinions and orders made in the adjudication of cases by the Judicial Officer, Administrative Law Judges, and Board of Contract Appeals, all final determinations pursuant to section 404(b) of title 39, United States Code, to close or consolidate a post office, or to disapprove a proposed closing or consolidation, and all advisory opinions concerning the private express statutes issued pursuant to 39 CFR 310.6, and all bid protest decisions are on file and available for inspection and copying at the Headquarters Library and at the Postal Service's world wide web site identified at § 265.5.

(3) *Administrative manuals and instructions to staff.* The manuals, instructions, and other publications of the Postal Service that affect members of the public are available through the Headquarters Library and at many post offices and other postal facilities. Those which are available to the public but are not listed for sale may be inspected in the Headquarters Library, at any postal facility which maintains a copy, or through the world wide web site identified at § 265.5. Copies of publications which are not listed as for sale or as available free of charge may be obtained by paying a fee in accordance with § 265.9.

(4) *Previously released records.* Records processed and disclosed after March 31, 1997, in response to a Freedom of Information Act request, which the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records, are available for inspection and copying at the Headquarters Library. Beginning November 1, 1997, any such records created by the Postal Service on or after November 1, 1996, also will be available at the Postal Service's world wide web site identified at § 265.5. Records described in this paragraph that were not created by, or on behalf of, the Postal Service generally will not be available at the world wide web site. Records will be available in the form in which they were originally disclosed, except to the extent that they contain information that is not appropriate for public disclosure and may be withheld pursuant to this section. Any deleted material will be marked and the applicable exemption(s) indicated in accordance with 265.7(d)(3). A general index of the records described in this paragraph is available for inspection and copying at the Headquarters Library. *[Beginning on or before December 31, 1999, the index also will be available at the Postal Service's world wide web site.]*

(5) *Public index.* (i) A public index is maintained in the Headquarters Library and at the world wide web site of all final opinions and orders made by the Postal Service in the adjudication of cases, Postal Service policy statements which may be relied on as precedents in the disposition of cases, administrative staff manuals and instructions that affect the public, and other materials which the Postal Service elects to index

and make available to the public on request in the manner set forth in paragraph (a) of this section.

(ii) The index contains references to matters issued after July 4, 1967, and may reference matters issued prior to that date.

(iii) Any person may arrange for the inspection of any matter in the public index in accordance with the procedures of § 265.7.

(iv) Copies of the public index and of matters listed in the public index may be purchased through the Headquarters Library with payment of fees as listed in the index or as provided in § 265.9.

(v) Materials listed in the public index that were created on or after November 1, 1996, will also be available beginning November 1, 1997, in electronic format at the Postal Service's world wide web site at http://www.usps.gov.

(6) *Listings of employees' names.* With written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

* * * * *

8. Section 265.6(e)(1) is amended by revising the citation "paragraph (a)(5)" to read "paragraph (a)(6)".

9. Section 265.7(a)(2) is amended by revising the citation "§ 265.6(a)(5)" to read "§ 265.6(a)(6)".

10. Sections 265.7 (b) and (c), (d)(1), (e)(1) and (f) (1) and (2) are revised and sections 265.7 (d)(3) and (g) are added to read as follows:

§ 265.7 Procedure for inspection and copying of records.

* * * * *

(b) *Responsibilities of the custodian.* (1) The custodian of the requested record is the person responsible for determining whether to comply with or to deny the request. A custodian who is not an Officer as defined in § 221.8 of this chapter, however, should not deny a request until he has obtained the advice of Chief Field Counsel. If denial of a request appears necessary, the custodian should seek advice as soon as possible after receipt of the request so as to provide adequate time for legal review. Denial must be made in accordance with paragraph (d) of this section.

(2) The custodian shall make the determination whether to release or deny the record(s) within 20 working days (i.e., exclusive of Saturdays, Sundays, and holidays) of receiving the request, and more rapidly if feasible. The custodian and the requester may, by mutual agreement, preferably in writing, establish a different response period.

(3) If a requested record cannot be located from the information supplied, the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his/her representative, in an attempt to provide a reasonable description of the records sought. If additional information is furnished, the request will be deemed to have been received by the custodian when sufficient additional information to identify and locate the record with a reasonable amount of effort has been received.

(4) The custodian shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the automated information system.

(5) The 20 working day response period allowed in paragraph (b)(2) of this section may be extended by the custodian, after consultation with the Chief Field Counsel or with the General Counsel if the custodian is at Headquarters, for a period not to exceed an additional 10 working days, except as provided in paragraph (b)(7) of this section, when, and to the extent, reasonably necessary to permit the proper processing of a particular request, under one or more of the following unusual circumstances:

(i) The request requires a search for and collection of records from a facility other than that processing the request.

(ii) The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records.

(iii) The request requires consultation:

(A) With another agency having a substantial interest in the determination of whether to comply with the request or

(B) Among two or more components of the Postal Service having substantial subject matter interest in the determination of whether to comply with the request.

(6) When the custodian finds that the additional time is required, he shall acknowledge the request in writing within the initial 20-day response period, state the reason for the delay, and indicate the date on which a decision as to disclosure is expected.

(7) If a request cannot be processed within the additional time provided by paragraph (b)(5) of this section, in spite of the exercise of due diligence, the custodian shall notify the requester of the exceptional circumstances preventing timely compliance and of the date by which it is expected that the determination will be made. The custodian also shall provide the requester an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange with the custodian an alternative time frame for processing the request or a modified request. The custodian shall nonetheless make a determination on the request as promptly as possible.

(8) If a requested record is known to have been destroyed, disposed of, or otherwise not to exist, the requester shall be so notified.

(c) *Compliance with request upon affirmative determination by custodian.* (1) When a requested record has been identified and is to be disclosed in whole or in part, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when and under what reasonable conditions, if any, including the payment of fees, the record will be available for inspection or copies will be available. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) Any fees authorized or required to be paid in advance by § 265.9(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.9(g).

(3) A custodian complying with a request may designate a representative to monitor any inspection or copying.

(d) *Denial of request.* (1) A reply denying a request in whole or in part shall be in writing, signed by the custodian or his designee, and shall include:

(i) A statement of the reason for, or justification of, the denial (e.g., records personal in nature), including, if applicable, a reference to the provision or provisions of 265.6 authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested.

(ii) If entire records or pages are withheld, a reasonable estimate of the number of records or pages, unless providing such estimate would harm an interest protected by the exemption relied upon.

(iii) The name and title or position of the person responsible for the denial of the request (see paragraph (d)(2) of this section).

(iv) A statement of the right to appeal and of the appeal procedure within the Postal Service (described in paragraph (e) of this section).

* * * * *

(3) When information is deleted from a record that is disclosed in part, the custodian shall indicate, on the released portion of the record, the amount of information deleted, unless including that indication would harm an interest protected by the exemption relied on. The indication must appear, if technically feasible, at the place in the record where such deletion is made.

(e) *Appeal procedure.* (1) If a request to inspect or to copy a record, or a request for expedited processing of the request, is denied, in whole or in part, if no determination is made within the period prescribed by this section, or if a request for waiver of fees is not granted, the requester may appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260–1100.

* * * * *

(f) *Action on appeals.* (1) The decision of the General Counsel or his designee constitutes the final decision of the Postal Service on the right of the requester to inspect or copy a record, or to expedited processing of the request, as appropriate. The General Counsel will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 working days from the time of the receipt by the General Counsel. The-20 day response period may be extended by the General Counsel or his designee for a period not to exceed an additional 10 working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (b)(5) of this section. The aggregate number of additional working days utilized pursuant to this paragraph (f)(1) and paragraph (b) of this section, however, may not exceed 10.

(2) The decision on the appeal shall be in writing. If the decision sustains a denial of a record, in whole or in part, or if it denies expedited processing, it shall state the justification therefor and shall inform the requester of his right to judicial review. In the case of records withheld, the decision also shall specify any exemption or exemptions relied on and the manner in which they apply to the record, or portion thereof, withheld.

* * * * *

(g) *Expedited processing*—(1) *Criteria.* A request for expedited processing of a request for records shall be granted when the requester demonstrates compelling need. For purposes of this paragraph, "compelling need" exists if:

(i) Failure of the requester to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or;

(ii) In the case of a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged federal government activity.

(2) *Request.* A request for expedited processing shall be directed in writing to the records custodian. The requester must provide information in sufficient detail to demonstrate compelling need for the records and certify this statement to be true and correct to the best of the requester's knowledge and belief.

(3) *Determination.* The records custodian shall make a determination of whether to provide expedited processing and notify the requester within ten days after the date of the request for expedited processing. If the request is granted, the records custodian shall process the request for records as soon as practicable. If the request for expedited processing is denied, the written response will include the procedures at paragraph (d) of this section for appealing the denial.

11. Section 265.10 is revised to read as follows:

§ 265.10 Annual report.

A report concerning the administration of the Freedom of Information Act and this part will be submitted to the Attorney General of the United States on or before February 1 of each year, with the first such report, for fiscal year 1998, due on or before February 1, 1999. Data for the report will be collected on the basis of a fiscal year that begins on October 1 of each year. The Attorney General, in consultation with the Director, Office of Management and Budget, will prescribe the form and content of the report. The report will be made available to the public at the Headquarters Library and on the Postal Service's world wide web site at http://www.usps.gov.

12. Appendix A to Part 265—Information Services Price List is revised to read as follows:

Appendix A to Part 265—Information Services Price List

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Service description	Price	Unit
Servers		
A. OS390 Servers:		
Batch or On-line Services	$1,350.00	Hour.
Media Charge (Tape Produced)	25.00	Volume.
Print	.10	Page.
B. Production Servers:		
(Running UNIX or NT OS) On-line Services	155.00	Hour.
Print	.13	Page.
C. Personal Computers:		
On-line search	6.25	15 minutes.
Print	.13	Page.
D. Personnel Charges:		
Software Systems Services	81.00	Hour.
Programming Services	70.00	Hour.
Manual Unit Services	48.00	Hour.

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 97–31598 Filed 12–4–97; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[LA–41–1–7355, FRL–5899–8]

Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Correction of the Designation for Lafourche Parish

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On July 17, 1997, EPA published a proposed rulemaking to correct the designation of Lafourche Parish, Louisiana, to nonattainment for ozone (62 FR 38237). One adverse comment letter was received during the 30-day comment period, and the issues raised in that letter are addressed in this document. Pursuant to the Clean Air Act (the Act), which allows EPA to correct its actions, EPA is today correcting the designation of Lafourche Parish to nonattainment for ozone.

DATES: This action is effective on January 5, 1998.

ADDRESSES: Copies of the information relevant to this action are available for inspection during normal hours at the following location: Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Anyone wishing to review this document at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

The specific rationale EPA used to correct the ozone designation of Lafourche Parish was explained in the proposed correction document (62 FR 38237, July 17, 1997) and will not be restated here. This document announces EPA's final action regarding the correction of Lafourche Parish to nonattainment for ozone.

II. Response to Comments

The EPA received an adverse comment letter dated August 15, 1997, from the Louisiana Mid-Continent Oil and Gas Association. The commentors believed that EPA either failed to consider or purposefully disregarded several factors. The EPA's responses to these comments are detailed below.

Comment: EPA failed to consider the odd shape of the parish and the location of the monitor with respect to sources in the parish.

Response: 40 CFR part 58, Ambient Air Quality Surveillance, Appendices D and E, describe EPA's monitoring network design and siting criteria for State or Local Air Monitoring Stations (SLAMS). The SLAMS make up the ambient air quality monitoring network which is required by 40 CFR 58.20 to be provided for in the State Implementation Plan (SIP). In general, the SLAMS monitor in Thibodaux was sited in accordance with 40 CFR part 58, Appendices C and D, to measure the maximum population exposure one could reasonably expect to occur in the Parish. The shape of Lafourche Parish and the location of the major emission points were taken into consideration by the State and EPA to determine the appropriate siting scales and monitoring objectives for ozone in Lafourche Parish.

Comment: EPA failed to consider the excellent compliance history of the Parish.

Response: The EPA considered the compliance history of Lafourche Parish, prior to and during 1995, as part of our evaluation and approval process for the Parish's ozone redesignation request. But despite the prior compliance history of Lafourche, the operative facts showed a violation of the standard that disqualified the area from redesignation to attainment. The language of section 107 (d)(3)(E)(i) and (d)(1)(A) provides that EPA may not redesignate an area unless the Administrator determines that the area has attained the standard. This is reinforced by other sections of the Act, including section 175A maintenance plan requirements, and section 172(c)(9) contingency measures. The EPA has long interpreted this language as requiring EPA to disapprove redesignation requests for areas that violate the standard while a redesignation request is pending. See Memorandum dated September 4, 1992, entitled Procedures for Processing Requests to Redesignate Areas to Attainment, p. 5; Pittsburgh-Beaver Valley nonattainment area (61 FR 19123, May 1, 1996); Richmond, Virginia (59 FR 22757, May 3, 1994), Birmingham, Alabama (62 FR 49154, September 19, 1997), Northern Kentucky portion of Cincinnati-Hamilton nonattainment area (61 FR 50718, September 27, 1996), and Detroit-Ann Arbor, (60 FR 12459, March 7, 1995). See also the opinion of the United States Court of Appeals for the Third Circuit in *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 121 F. 3rd. 106 (3rd Cir. 1997).

The Lafourche direct final approval notice itself stated: "If the monitoring data records a violation of the NAAQS before the direct final action is effective, the direct final approval of the redesignation will be withdrawn and a proposed disapproval substitute for the direct final approval." (60 FR 43021–22). Although such a violation was recorded during the comment period, EPA failed to withdraw the approval and substitute a disapproval, as it acknowledged would have been the appropriate course of action. The EPA's position is consistent with 40 CFR section 50.9, which states that the NAAQS for ozone is attained "when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million[] is equal to or less than 1, as determined by Appendix H." Appendix H explains the methodology for determining "attainment" of the ozone standard. If there are more than three exceedances over a three-year period at any of the monitoring sites, the area has not attained the standard.

The United States Court of Appeals for the Third Circuit, in evaluating EPA's disapproval of a redesignation request for an area that violated the standard while its request was pending, stated: "we accept the view that the EPA may not redesignate an area if the EPA knows that the area is not meeting the NAAQS. The EPA's redesignation of the Lafourche Parish redesignation was thus not proper." *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 121 F.3rd at 114. The commenters also complained that 1995 was an unusually warm year. But even if this were the case, this provides no grounds for excluding quality-assured monitored exceedances of the ozone standard. The EPA's applicable regulations governing ozone attainment provide no basis for excluding data due to exceptionally hot weather. 40 CFR section 50.9 appendix D and H and part 58. See Birmingham, 62 FR 49154, and the discussion contained therein.

Comment: The EPA failed to consider Lafourche Parish's performance with respect to the new 8-hour ozone standard.

Response: Compliance with the new 8-hour ozone standard is irrelevant to the issues in this rulemaking, which concerns only the area's failure to meet the 1-hour standard. The EPA's action here concerns only the requirement to meet the 1-hour standard. It should be noted, however, that data collected from 1993–1995 and 1994–1996 indicate that Lafourche Parish would also be in violation of the new 8-hour standard.

Comment: The EPA did not consider the time it took to complete the entire review process, from draft SIP to final notice.

Response: The EPA assumes the commentors are referring to the time it took to develop and act upon the redesignation request for Lafourche Parish. The Louisiana Department of Environmental Quality (LDEQ) submitted its initial redesignation request for Lafourche Parish during the Summer of 1993. However, the plan was found to be deficient in several areas, and did not demonstrate maintenance of the ozone standard. The EPA had the option to disapprove this initial request, or ask LDEQ to revise the request and resubmit the revision to us. The LDEQ submitted a revised redesignation request for Lafourche Parish to EPA on November 18, 1994. The direct final approval of that revised maintenance plan and redesignation request appeared in the **Federal Register** on August 18, 1995, some months after receiving the revised request. Although the entire period of EPA's review, measured from the date of the original redesignation request, was more than eighteen months (though EPA took less than that time period to consider the revised request), this does not alter EPA's authority to consider violations that occurred while its review was pending. *Southwestern Pennsylvania Growth Alliance* v. *Browner, supra.*

Comment: The EPA failed to consider the uniqueness of the weather trends and purposefully disregarded the clear and convincing demonstration by LDEQ of transport in 1995.

Response: the LDEQ submitted a modeling demonstration to EPA on July 31, 1996, to support its belief that the exceedances in Lafourche Parish in 1995 were the result of transport from the Baton Rouge area. As discussed in the September 5, 1996, response letter to LDEQ, EPA concluded that the modeling demonstration did not prove the overwhelming transport theory. Further, whether the cause of the ozone violation in 1995 was due to transport or local sources, the regulatory result would be the same, and would still result in a designation of nonattainment. The EPA carries the responsibility to protect and inform the public about health issues which, in the case of Lafourche Parish's violation of the ozone standard, require us to correct our rulemaking error and designate the area back to nonattainment. As in the case of the Pittsburgh-Beaver Valley nonattainment area that was the subject of the Southwestern Pennsylvania Growth Alliance case, there is here no adequate technical demonstration supporting a claim of transport-dominated nonattainment. See *SWPGA* v. *Browner*. supra. Moreover, even if there had been such a demonstration, the Act provides that an attainment area is one that "meets" the NAAQS, and EPA is prohibited from redesignating an area to attainment unless it determines that the area "has attained" the NAAQS. Thus, even if an area's nonattainment can be demonstrated to be caused by overwhelming transport, that does not entitle the area to be redesignated to attainment. This is made clear by the provisions of section 182(h), which establishes "rural transport" areas. In this section, Congress addressed the situation confronted by the most pristine areas which fail to meet the NAAQS, but make no significant contribution to the ozone concentrations in their area. For these areas, Congress provided some relief in the form of relaxed control requirements; however, Congress insisted on retaining the "nonattainment" designation for these areas that fail to meet the NAAQS due to overwhelming transport. Thus, although Congress provided relief for these areas, it did not change their nonattainment designations. In contrast, Congress did provide that transport may be taken into account in the classification of nonattainment areas (Act section 181(a)(4)). Thus Congress expressed its intent to allow limited adjustments for transport in the context of classifying nonattainment areas, but not for redesignations. See the discussion of this issue in *SWPGA* v. *Browner*.

Comment: The EPA did not consider or purposefully disregarded the President's directive to be flexible and minimize paperwork.

Response: On July 16, 1997, the President of the United States issued a Presidential Directive entitled Memorandum for the Administrator of the Environmental Protection Agency. This Presidential Directive required EPA to maximize common sense, flexibility, and cost-effectiveness when implementing the 8-hour ozone standard. However, this Presidential Directive also stated that the 1-hour standard will continue to apply in areas where air quality does not meet the current standard (62 FR 38421, July 18, 1997).

Comment: The EPA failed to consider the unnecessary paperwork and review burdens on LDEQ and EPA since compliance with both standards is expected by year-end 1998.

Response: This action will entail no unnecessary paperwork and review burdens. If the area attains the 1-hour standard and the 8-hour standard in the future, it will be eligible for appropriate designation to attainment of the 8-hour standard and revocation of the 1-hour standard.

III. Final Action

The EPA issued a direct final rule promulgating a change to the designation of Lafourche Parish, Louisiana, to attainment for ozone, and amended 40 CFR parts 52 and 81 accordingly (60 FR 43020, August 18, 1995). In today's action, EPA is correcting this error by changing the designation of Lafourche Parish to an ozone-nonattainment area, and classifying it as an incomplete data area. Today's action also amends 40 CFR parts 52 and 81 to reflect the change in designation. These actions are being taken in accordance with section 110(k)(6) of the Act.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, requires any Federal agency, when it develops a rule, to identify and address the impact of the rule on the small businesses and other small entities that will be subject to the rule (5 U.S.C. 603 and 604). This requirement applies to any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (605(b)). Besides small businesses, small entities include small governments with jurisdictions of less than 50,000 people and small nonprofit organizations. The Regulatory Flexibility Act requirement applies to any rule subject to notice and comment rulemaking requirements.

As set forth in the proposal, 62 FR 38238–239, this action is not subject to notice-and-comment rulemaking requirements, and therefore is also not subject to the RFA requirement to prepare regulatory flexibility analyses. Moreover, this action will not establish any requirements applicable to small entities. It simply corrects the

designation of the area by restoring the nonattainment designation that was erroneously changed to attainment. The RFA requires analyses of a rule's requirements as they would apply to small entities. If the rule does not apply to small entities, an RFA analysis is inapplicable.

Further, it is unlikely that this action will result in State imposition of control requirements that are different from those applicable in Lafourche Parish before the erroneous change in designation status. Under Title I of the Act, States are primarily responsible for establishing control requirements needed to attain and maintain the NAAQS. Louisiana has adopted an implementation plan that includes control requirements that apply to particular sources or categories of sources, depending on a number of factors, including the designation status of the area in which a source is located. As a result of today's action, Louisiana will once again have to apply some of those control programs in Lafourche Parish. Some of those programs may ultimately impose requirements on small entities in the Parish. However, these controls were applicable before the erroneous designation to attainment; correcting that mistake will only put the small entities in that area in the place they were prior to the mistake being made.

Beyond that, the purpose of the RFA is to promote Federal agency efforts to tailor a rule's requirements to the scale of the small entities that will be subject to it. That purpose cannot be served in the case of State control requirements. Some of the control requirements included in States' SIPs are prescribed to some extent by the Act. Even so, the only issue before EPA in actions such as this one is the proper designation of a particular area. The implementation consequences of a designation are beyond the scope of such actions, and indeed, beyond EPA's reach to the extent they are dictated by the Act itself or are left to States' discretion. In light of all the above, if the RFA were applicable to this action, the Agency would certify that it will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action simply corrects an error in the designation for the reasons described above and does not, in itself, impose any mandates.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks and wilderness areas, Designation of areas for air quality planning purposes.

Dated: November 26, 1997.

Jerry Clifford,

Acting Regional Administrator.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Under § 52.975, paragraph (f) is added to read as follows:

§ 52.975 Redesignations and maintenance plans; ozone.

* * * * *

(f) Lafourche Parish, Louisiana, is designated back to nonattainment for ozone. The original classification of incomplete data is retained.

PART 81—[AMENDED]

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

4. In § 81.319, the ozone table is amended by revising the entry for Lafourche Parish to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date	Type
. . . . .				
Lafourche Area:				
Lafourche Parish	January 5, 1998	Nonattainment ..		Incomplete data

LOUISIANA—OZONE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date	Type
. . . . .				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97–31912 Filed 12–4–97; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[OPP–300587; FRL–5754–5]

RIN 2070–AB78

Maleic hydrazide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) in or on rice commodities as well as tolerances for secondary residues in animal commodities. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on rice in Louisiana. This regulation establishes a maximum permissible level for residues of maleic hydrazide in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on September 30, 1998.

DATES: This regulation is effective December 5, 1997. Objections and requests for hearings must be received by EPA on or before February 3, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300587], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300587], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300587]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the herbicide maleic hydrazide (1,2-dihydro-3,6-pyridazinedione), in or on rice, grain at 105 part per million (ppm); rice, straw at 75 ppm; rice, hulls at 240 ppm; and rice, bran at 180 ppm. Additionally, the Agency is establishing tolerances for secondary residues in milk at 1.0 ppm; at 2.5 ppm in meat, 7 ppm in liver, 32 ppm in kidney, and 3 ppm in fat of cattle, goats, hogs, horses, and sheep; at 0.5 ppm in meat, liver, and fat of poultry; 1.4 ppm in poultry meat byproducts; and 0.5 ppm in eggs. These tolerances will expire and are revoked on September 30, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate

exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Maleic Hydrazide on Rice and FFDCA Tolerances

On June 19, 1997, the Louisiana Department of Agriculture and Forestry availed of itself the authority to declare the existence of a crisis situation within the State, thereby authorizing use under FIFRA section 18 of maleic hydrazide on rice to control red rice. Red rice is normally controlled by flood water management and rotating the rice crop to soybeans, where soybean herbicides are used that control red rice but are also phytotoxic to commercial rice. Over the last 5 years, farm land to be rotated into rice in 1997 has experienced three consecutive soybean seasons with poor control of red rice. This has resulted in increasing red rice infestations in the two intervening rice crop seasons, and a buildup of red rice seed in the soil. This situation gives rise to the possibility of an unprecedentedly high red rice infestation in 1997. Economic loss due to red rice occurs both through reductions in the yield of the rice crop and through reductions in the quality of the harvested crop. Because red rice and cultivated rice are closely related, there are few selective herbicides available; those that are have limited efficacy against red rice. The use of maleic hydrazide would not only increase yield and quality of the harvested crop this year, but would reduce red rice seed in the soil and therefore reduce the level of red rice infestation in the next rice crop. EPA has authorized under FIFRA section 18 the use of maleic hydrazide on rice for control of red rice in Louisiana. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of maleic hydrazide in or on rice. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on September 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on rice grain, bran, hulls and straw or in meat, milk, poultry or eggs after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether maleic hydrazide meets EPA's registration requirements for use on rice or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of maleic hydrazide by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Louisiana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for maleic hydrazide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic," risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants less than 1 year was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of maleic hydrazide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) on rice, grain at 105 ppm; rice, straw at 75 ppm; rice, hulls at 240 ppm; rice, bran at 180 ppm; time-limited tolerances are set at 2.5 ppm in meat, 7.0 ppm in liver, 32.0 ppm in kidney, and 3.0 ppm in fat of cattle, goats, hogs, horses, and sheep; 1.0 ppm in milk; 0.5 ppm in meat, liver, and fat of poultry; 1.4 ppm in poultry meat byproducts (except liver), and 0.5 ppm in eggs. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by maleic hydrazide are discussed below.

1. *Acute toxicity.* The Agency has determined that an acute dietary risk assessment is not required for this chemical.

2. *Short - and intermediate - term toxicity.* Based on the available data base, the Agency has concluded that determination of short-term Margin of Exposure (MOE) calculations is not required. For intermediate-term MOE calculations, the Agency recommends use of the NOEL of 29 milligrams/kilogram/day (mg/kg/day) from the 1–year feeding study in dogs. Decreased weight gain and reduced heart weight are the effects observed at the Lowest Effect Level (LEL) of 87 mg/kg/day.

3. *Chronic toxicity.* EPA has established the RfD for maleic hydrazide at 0.25 mg/kg/day. This RfD is based on a NOEL of 25 mg/kg/day taken from a 2–year feeding study in rats in which decreased weight gain in males was the effect observed at the LEL of 500 mg/kg/day. An uncertainty factor of 100 was assigned to allow for inter- and intra-species variability.

4. *Carcinogenicity.* Maleic hydrazide has been classified as a Group E–evidence of non-carcinogenicity for humans in two species--chemical by the Agency. A carcinogenic risk assessment is not required.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.175) for the residues of maleic hydrazide (1,2-dihydro-3,6-pyridazinedione), in or on dry bulb onions, potatoes and cranberries. Risk assessments were conducted by EPA to assess dietary exposures and risks from maleic hydrazide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Agency has determined that this risk assessment is not required.

ii. *Chronic exposure and risk.* Refined residue and percent of crop treated information were used in the chronic exposure analysis to calculate the Anticipated Residue Contribution (ARC) from published and proposed uses of maleic hydrazide. The use of tolerance level residues for potatoes and dry bulb onions as well as the use of high end anticipated residues for animal commodities results in overestimation of chronic dietary risk.

2. *From drinking water.* Review of available data indicate that maleic hydrazide is neither mobile nor persistent. There is no established Maximum Contaminant Level for residues of maleic hydrazide in drinking water. Health advisory levels for maleic hydrazide in drinking water have been established at the following levels: for a 10 kg child, 10 mg/liter (1–day and 10–day levels) and 5 mg/liter (long term level); for a 70 kg adult, 20 mg/liter (long term level).

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause maleic hydrazide to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with maleic hydrazide in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Maleic hydrazide is currently registered for use on the following residential non-food sites: outdoor non-food sites such as non-bearing citrus and ornamentals.

i. *Chronic exposure and risk.* Based on the uses registered, a chronic, non-dietary exposure scenario is not expected.

ii. *Short- and intermediate-term exposure and risk.* Maleic hydrazide is currently registered for use on outdoor non-food sites such as non-bearing citrus, ornamental shade trees and plants, turf, lawns, utility and highway rights of way, industrial areas and airports. There are no indoor uses.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Maleic hydrazide is a member of the hydrazide class of pesticides; another member of this class is Alar (daminozide). EPA does not have, at this time, available data to determine whether maleic hydrazide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, maleic hydrazide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that maleic hydrazide has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Chronic risk.* Using the ARC exposure assumptions described in Unit IV.B. of this preamble, EPA has concluded that aggregate exposure to maleic hydrazide from food will utilize 14% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year old (discussed in Unit IV.E. of this preamble). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to maleic hydrazide in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to maleic hydrazide residues.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Data to quantify intermediate-term exposure from non-occupational, non-dietary uses are not available at this time. In the absence of a quantitative estimate of exposure, the Agency believes that the large MOEs calculated for mixers, loaders and applicators of the product (1,000 to 1,800, where 100 is considered to be the level at which the Agency has reasonable certainty of no harm resulting from occupational exposure to the chemical) demonstrate that intermediate aggregate risk from non-occupational uses of maleic hydrazide is below the Agency's level of concern.

D. Aggregate Cancer Risk for U.S. Population

Maleic hydrazide has been classified as a Group E chemical. A carcinogenic risk assessment is not required for this chemical.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of maleic hydrazide, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental toxicity study in rats, the maternal (systemic) NOEL was 1,600 mg/kg/day, the highest dose tested (HDT). The developmental NOEL was 1,200 mg/kg/day, based on minor skeletal variations at the LOEL of 1,600 mg/kg/day. In a second developmental toxicity study in rats, the maternal and developmental NOELs were greater than 1,000 mg/kg/day, the HDT. The Agency concluded that skeletal variations observed in the first study occurred at doses above 1 mg/kg/day, the limit dose, and therefore were of minimal concern. In the developmental toxicity study in rabbits, the maternal and developmental NOELs were 1,000 mg/kg/day, the HDT.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the maternal NOEL was 500 mg/kg/day, based on decreased body weight at the LOEL of 1,500 mg/kg/day. The reproductive/developmental NOEL was 500 mg/kg/day, based on post-natal decrease in body weight of pups during lactation at the LOEL of 1,500 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* The toxicity data base for evaluating pre- and post-natal toxicity for maleic hydrazide is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study.

v. *Conclusion.* Based on review of the required studies, EPA concludes that reliable data support use of the standard hundredfold MOE/uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to maleic hydrazide from food will utilize between 14 and 54% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to maleic hydrazide in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to maleic hydrazide residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood. The residue of concern is maleic hydrazide (as specified in 40 CFR 180.175). The nature of the residue in animals is adequately understood for this section 18. The residue of concern is maleic hydrazide .

B. Analytical Enforcement Methodology

Adequate enforcement methodology (with spectrophotometric detection) for plants is available in PAM II to enforce the tolerance expression. An enforcement method has not been validated for animal commodities. However, a method for animal commodities is available, see Wood,

P.R., "Determination of Maleic Hydrazide Residues in Plant and Animal Tissue," *Analytical Chemistry*, 25, 1879 (1953).

C. Magnitude of Residues

Residues of maleic hydrazide at a 14–day PHI are not expected to exceed 105.0 ppm on rice grain, 75.0 ppm on rice straw, 240.0 ppm on rice hulls, 180.0 ppm on rice bran, and 75.0 on the processed commodity polished rice as a result of this section 18 use. Time-limited tolerances should be established for rice grain, straw, bran, and hulls at these levels.

No tolerances on animal commodities have been established for maleic hydrazide. Secondary residues in animal commodities resulting from this use on rice and the registered use on potatoes are not expected to exceed 2.5 ppm in meat, 7.0 ppm in liver, 32.0 ppm in kidney, and 3.0 ppm in fat of cattle, goats, hogs, horses, and sheep; 1.0 ppm in milk; 0.5 ppm in meat, liver, and fat of poultry; 1.4 ppm in poultry meat byproducts (except liver), and 0.5 ppm in eggs.

D. International Residue Limits

There are currently no Codex, Canadian, or Mexican limits for residues of maleic hydrazide in or on rice or animal commodities. Therefore, establishment of time-limited tolerances will not pose a concern for international harmonization.

E. Rotational Crop Restrictions.

There are no rotational crop restrictions in the section 18 or Federal label.

VI. Conclusion

Therefore, tolerances are established for residues of maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) in rice, grain at 105 ppm, rice, straw at 75 ppm, rice, hulls at 240 ppm, and rice, bran at 180 ppm. Additionally, tolerances are established for secondary residues of maleic hydrazide at 2.5 ppm in meat, 7 ppm in liver, 32 ppm in kidney, and 3 ppm in fat of cattle, goats, hogs, horses, and sheep; 1 ppm in milk; 0.5 ppm in meat, liver and fat of poultry; 1.4 ppm in poultry meat byproducts; and 0.5 ppm in eggs.

In addition because FQPA has eliminated the distinctions between tolerances for raw and processed food, OPP is transferring the food additive tolerances now found in § 185.3900 to § 180.175, and is removing § 185.3900.Therefore, to accomplish the transfer, and for the convenience of the user, OPP is revising § 180.175 in its entirety, although only paragraph (b) of § 180.175 is new.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 3, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300587] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This action finalizes a tolerance requirement under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 1997.

Linda A. Travers,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

i. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

ii. Section 180.175 is revised to read as follows:

§ 180.175 Maleic hydrazide; tolerances for residues.

(a) *General.* (1) Tolerances for residues of the herbicide and plant regulator maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) are established in or on the following raw agricultural commodities:

Commodity	Parts per million
Onions, dry bulb	15.0
Potatoes	50.0

(2) A food additive known as maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) may be present in potato chips when used in accordance with the following conditions:

(i) The food additive is present as a result of the application of a pesticide formulation containing maleic hydrazide to the growing potato plant in accordance with directions registered by the U.S. Environmental Protection Agency.

(ii) The label of the pesticide formulation containing the food additive conforms to labeling registered by the U.S. Environmental Protection Agency.

(iii) The food additive is present in an amount not to exceed 160 parts per million by weight of the finished food.

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide maleic hydrazide (1,2-dihydro-3,6-pyridazinedione) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat	3	9/30/98
Cattle, liver	7	9/30/98
Cattle, kidney	32	9/30/98
Cattle, meat	2.5	9/30/98
Eggs	0.5	9/30/98
Goats, fat	3	9/30/98
Goats, liver	7	9/30/98
Goats, kidney	32	9/30/98
Goats, meat	2.5	9/30/98
Hogs, fat	3	9/30/98
Hogs, liver	7	9/30/98
Hogs, kidney	32	9/30/98
Hogs, meat	2.5	9/30/98
Horses, fat	3	9/30/98
Horses, liver	7	9/30/98
Horses, kidney	32	9/30/98
Horses, meat	2.5	9/30/98
Milk	1	9/30/98
Poultry, fat	0.5	9/30/98
Poultry, liver	0.5	9/30/98
Poultry, meat	0.5	9/30/98
Poultry, meat byproducts (except liver)	1.4	9/30/98
Rice, bran	180	9/30/98
Rice, grain	105	9/30/98
Rice, hulls	240	9/30/98
Rice, straw	75	9/30/98
Sheep, fat	3	9/30/98

Commodity	Parts per million	Expiration/Revocation Date
Sheep, liver	7	9/30/98
Sheep, kidney	32	9/30/98
Sheep, meat	2.5	9/30/98

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[Amended]

2. In part 185:

i. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.3900 [Removed]

ii. Section 185.3900 is removed.

[FR Doc. 97–31553 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300586; FRL–5756–5]

RIN 2070–AB78

Fluorine Compounds; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the insecticidal fluorine compounds cryolite and/or synthetic cryolite (sodium aluminum fluoride) in or on the raw agricultural commodity (RAC) potatoes and in the processed animal feed commodity, potato waste. A petition requesting these tolerances was submitted by The Cryolite Task Force under the Federal Food Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170). The tolerance will expire on November 21, 2001.

DATES: This regulation is effective December 5, 1997. Objections and requests for hearings must be received by EPA on or before February 3, 1998.

ADDRESSES: Written objections and hearing requests, identified by the document control number, OPP–300586, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300586], must be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: OPP-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300586]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline Mosby, Environmental Scientist, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6792, e-mail: mosby-romney.jackie2epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued notices as follows regarding petitions for pesticide tolerances for insecticidal fluorine compounds in or on potatoes and in the processed animal feed, potato waste.

1. March 23, 1989 (54 FR 12009); PP 9F3739; filing notice;

2. April 3, 1991 (56 FR 13643); PP 1F3959 and FAP 1H5604; filing notice.

3. May 5, 1993 (58 FR 26687); PP 9F3739 and FAP 1H5604; final rule for time-limited tolerances.

4. May 8, 1996 (61 FR 20781) (FRL–5362–6); PP 9F3739 and FAP 1H5604; proposed rule for permanent tolerances.

The Agency did not publish a final rule establishing permanent tolerances prior to the enactment of the Food Quality and Protection Act (FQPA) of 1996. Because of new procedures under FQPA, The Cryolite Task Force, c/o Gowan Company, P.O. Box 5569, Yuma, AZ 85336 was required to submit a notice of filing requesting issuance of these tolerances in compliance with FQPA.

In the **Federal Register** of March 12, 1997 (62 FR 11437) EPA issued a notice of filing pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by The Cryolite Task Force. This notice contained a summary of the petition prepared by The Cryolite Task Force.

The petition requested that 40 CFR 180.145 be amended by establishing tolerances for residues of the insecticidal fluorine compounds cryolite and synthetic cryolite in or on potatoes at 2.0 parts per million (ppm) and processed potato waste at 22.0 ppm. These tolerances will expire on November 21, 2001.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established

tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cryolite and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of cryolite on potatoes at 2.0 ppm, and processed potato waste at 22.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cryolite are discussed below.

1. *Acute toxicity studies.* Oral, dermal, and inhalation studies place cryolite in toxicity category III, for acute dermal and in category IV for acute oral, and inhalation. No effects are observed in a skin irritation study, the eye irritation study shows it to be a moderate irritant to the eyes; and results of the dermal sensitization study shows it to be a non-sensitizer.

2. *Subchronic toxicity studies.* i. A 28-day range-finding feeding study conducted with cryolite in rats at dose levels of 0, 250, 500, 1,000, 2,000, 4,000, 10,000, 25,000 and 50,000 ppm in the diet (representing approximately 0, 25, 50, 100, 200, 400, 1,000, 2,500 and 5,000 milligrams/kilograms/day) (mg/kg/day) with the only compound related effect being a change in coloration and physical property of the teeth.

The NOEL was not determined. The LOEL is 250 ppm (25 mg/kg/day) based on dental fluorosis.

ii. A 90-day rat feeding study conducted with cryolite at dose levels of 0, 50, 5,000, and 50,000 ppm (corresponding to 0, 3.8, 399.2 and 4172.3 mg/kg/day in males and 0, 4.5, 455.9 and 4758.1 mg/kg/day in females).

The NOEL is 50 ppm (3.6 mg/kg/day) for effects other than fluoride accumulation. The LOEL is 5,000 ppm (399.2 mg/kg/day) based on lesions observed in the stomach. Fluoride accumulated at all dose levels.

iii. A 90-day dog feeding study conducted with cryolite at dose levels of 0, 500, 10,000, and 50,000 ppm (corresponding to 0, 17, 368 and 1692 mg/kg/day).

The NOEL is 10,000 ppm (368 mg/kg/day). The LOEL is 50,000 ppm (1,692 mg/kg/day) for effects other than fluoride accumulation. Fluoride accumulation occurred at all dose levels.

3. *Chronic/carcinogenicity studies.* i. A 2-year rat bioassay conducted by the National Toxicology Program (NTP) using sodium fluoride as the test material at dose levels of 0, 25, 100, and 175 ppm, in water, representing 0, 1.3, 5.2 and 8.6 mg/kg/day in males and 0, 1.3, 5.5 and 9.5 mg/kg/day in females.

Osteosarcoma of the bone was only observed in one male in the 100 ppm group and in three males in the 175 ppm group. NTP considers this to be equivocal evidence of carcinogenicity in male F344/N rats. The NOEL is less than 25 ppm (1.3 mg/kg/day). The LOEL is 25 ppm (1.3 mg/kg/day) based on mottling of teeth, dentine incisor dysplasia, increased serum, urine and bone fluoride levels in males and females and incisor odontoblast and incisor ameloblast degeneration in males. There was "equivocal evidence" of carcinogenic activity in male rats and "no evidence" of carcinogenic activity in female rats.

The NTP study utilizing sodium fluoride as the test material in lieu of cryolite or synthetic cryolite satisfies the guideline study requirement for both the rodent chronic feeding study and the rat carcinogenicity study. Fluoride has been identified as the residue of toxicological concern in cryolite and synthetic cryolite and the available data show that these compounds act as free fluoride.

ii. A 2-year mouse bioassay conducted by the NTP utilizing sodium fluoride as the test material at dose levels of 0, 25, 100, and 175 ppm, in water, representing 0, 2.4, 9.6 and 16.7 mg/kg/day in males and 0, 2.8, 11.3 and 18.8 mg/kg/day in females.

The NOEL is less than 25 ppm (2.4 mg/kg/day). The LOEL is 25 ppm (2.4 mg/kg/day) based on attrition of the teeth in males, discoloration and mottling of the teeth in males and females and increased bone fluoride in both sexes. There was "no evidence" of carcinogenic activity in male and female mice.

This study utilizing sodium fluoride in lieu of cryolite or synthetic cryolite as the test material satisfies the guideline study requirement for a mouse carcinogenicity study for the reason described above under item 3.i.

iii. A 1-year chronic dog feeding study conducted with Cryolite at dose levels of 0, 3,000, 10,000 and 30,000 ppm, representing 0, 95, 366 and 1,137 mg/kg/day in males and 0, 105, 387 and 1,139 mg/kg/day in females (in terms of fluoride the doses are 0, 51, 198, and 614 mg F/kg/day for males and 0, 57, 209 and 615 mg F/kg/day for females).

The NOEL (in terms of Cryolite) is less than 3,000 ppm (95 mg/kg/day in males and 105 mg/kg/day in females). The LOEL is 3,000 ppm (95 mg/kg/day) based on increases in emesis, nucleated cells in males, renal lesions and a decrease in urine specific gravity in females.

4. *Other studies/documents.* i. Mutagenicity studies including an Ames test (negative) at dose levels of 167, 500, 1670, 5,000, 7,500 and 10,000 ug/plate; an *in vitro* assay in human lymphocytes (negative) at 100, 500, and 1,000 µg/ml; and an unscheduled DNA synthesis study in rat hepatocytes (negative) at dose levels up to and including 50 µg/ml.

ii. Drinking water Criteria Document on Fluoride. Fluoride has been identified as the residue of toxicological concern in cryolite and synthetic cryolite and the available data show that these compounds which are approximately 52.8% fluoride, act as free fluoride.

The EPA Office of Drinking Water issued a Drinking Water Criteria Document on Fluoride (October 21, 1985) which presents summaries of experimental and clinical data on the health effects of fluoride in animals and humans. In general, the health effects of fluoride (F) include dental fluorosis and skeletal fluorosis.

B. Toxicological Endpoints

1. *Acute toxicity.* Based on the available toxicity data, EPA has determined that cryolite does not exhibit any adverse health effects occurring as a result of a one day or single dietary or non-dietary exposure.

2. *Short and intermediate-term toxicity.* Based on the available data, EPA has determined that cryolite does not exhibit any adverse heath effects occurring as a result of short- or intermediate-term dietary and non-dietary exposure.

3. *Chronic toxicity.* Rather than the establishment of the traditional Reference Dose (RfD), a weight-of-the-evidence risk assessment was determined by the Agency to be a more appropriate approach for the assessment of the dietary exposure to fluoride residues as a result of agricultural uses of cryolite for the following reasons:

i. National and international regulatory organizations (U.S. EPA Office of Water, U.S. DHHS, the Canadian Government, and the World Health Organization) have assessed potential health risks from exposure to fluoride. The endpoints and estimated effect levels documented by these organizations are similar.

ii. The U.S. Surgeon General (Koop, 1984 and Elders, 1994) has recommended a guideline level of exposure that should provide an adequate "margin of safety" based on a large amount of human data, including epidemiology studies.

iii. Animal data considered in evaluating the proposed regulations are consistent with human data with respect to dose related skeletal effects.

4. *Carcinogenicity.* Fluoride has been the subject of a comprehensive review by the National Research Council (National Academy of Sciences Subcommittee of Health Effects of Ingested Fluoride) who concluded that "... the available laboratory data are insufficient to demonstrate a carcinogenic effect of fluoride in animals." and that "... the weight of evidence from more than 50 epidemiological studies does not support the hypothesis of an association between fluoride exposure and increased cancer risk in humans." EPA is in agreement with the conclusions reached by the National Academy of Science (NAS).

The available information does not support the regulation of cryolite as a carcinogen and it has been classified as a Group D chemical (not classifiable as to human carcinogenicity).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.145) for the residues of cryolite In or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from cryolite as follows:

i. *Acute exposure and risk.* Based on the available acute toxicity data, EPA has determined that cryolite does not pose any acute dietary risk.

ii. *Chronic exposure and risk.* The weight-of-the-evidence dietary risk assessment was conducted utilizing the following factors. All calculations are based on 2 L/day water consumption and 70 kg adult.

a. There exists no directly applicable scientific documentation of adverse medical effects at levels of fluoride below 8 mg/L 0.23 mg/kg/day. (U.S. EPA. 1985. National Primary Drinking Water Regulations; Fluoride. Proposed Rulemaking. May 14, 1985, 50 FR 20166).

b. Less than 0.4% of the U.S. population (on public water supplies) is exposed to greater than 2 mg/L fluoride 0.057 mg/kg/day in the public water supply. (U.S. EPA. 1985. drinking Water Criteria Document on fluoride. U.S. EPA Office of Drinking Water, Washington, DC TR-832-5. pg. IV-3, Table IV-1.)

The dietary exposure estimates used reassessed tolerances and percent of crop treated. These exposure estimates are conservative since average residues were not calculated and monitoring data were not used to refine residue estimates.

Section 408(b)(2)(F) allows the Agency to use data n the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings:

(a) That data used are reliable and provided a valid basis for showing the percentage of food derived from a crop that is likely contain residues.

(b) That the exposure estimate does not underestimate the exposure for any significant subpopulation.

(c) Where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

Percent of crop treated estimates are derived from federal and market survey data. EPA considers these data reliable. Typically a range of estimates are supplied and the upper end of this range is used for the exposure assessment. By using this upper end estimate of percent crop treated, EPA is reasonably certain that exposure is not underestimated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows EPA to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by EPA. EPA has made these findings when appropriate with respect to the proposed tolerance. EPA has not provided for periodic reevaluation of the data on percent crop treated because this tolerance has a time-limitation.

2. *From drinking water—* i. *Acute exposure and risk.* Based on the available acute toxicity data, EPA has determined that fluoride does not pose any acute dietary risk.

ii. *Chronic exposure and risk.* Fluoride levels in public drinking water are regulated under the Safe Drinking Water Act. EPA has established a Maximum Concentration Limit (MCL) at 4.0 mg/L 0.114 mg/kg/day to protect against crippling skeletal fluorosis (April 2, 1986) (51 FR 11396). The MCL established on April 2, 1986 finalizes interim regulations set in the **Federal Register** of November 14, 1985 (50 FR 47142), and proposed in the **Federal Register** of May 14, 1985 (50 FR 20164). In addition, these **Federal Register** notices established a Secondary Maximum Contaminant Level (SMCL) at 2.0 mg/L 0.057 mg/kg/day for cosmetic effects (objectionable dental fluorosis) which are not considered to be adverse health effects by the Surgeon General.

As described above, less than 0.4% of the U.S. population (on public water supplies) is exposed to greater than 2 mg/L fluoride 0.057 mg/kg/day in the public water supply.

3. *From non-dietary exposure.* Cryolite is registered for use on ornamentals, a use which could result in residential, non-occupational exposure. It is not registered for indoor use. EPA has not estimated non-dietary or residential exposure from registered ornamental uses of cryolite because

i. There are no toxicological endpoints identified for cryolite.

ii. Fluoride occurs naturally in the environmental background and there would not be significant exposure to fluoride from the use of cryolite.

iii. It would not be appropriate since the available information regarding solubility and degradation indicates that there would likely be no appreciable dermal absorption. The Agency does not anticipate significant non-dietary exposure from the use of cryolite.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of

toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether cryolite has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cryolite does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cryolite has a common mechanism of toxicity with other substances. For the purpose of this time-limited tolerance, the Agency has considered risks from cryolite and from fluoride in intentionally fluoridated water.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Based on the available acute toxicity data, EPA has determined that cryolite does not pose any acute dietary risk.

2. *Chronic risk.* Fluoride is ubiquitous and may be present at low levels in air, soils and in foodstuffs that have not been treated with cryolite and/or synthetic cryolite as well as in drinking water. The atmospheric levels of fluoride and incidental dietary exposures to fluoride as a toothpaste additive or as a dental treatment contribute relatively little to the average level of dietary fluoride exposure and are not further considered in the exposure estimate.

Dietary exposure estimates using reassessed tolerance/including the subject tolerance for potatoes (which is estimated as approximately 0.00016 mg/kg/day) and percent of crops treated are approximately 0.020 mg/kg/day for the U.S. population and 0.028 mg/kg/day for the highest exposed subgroup (females 13 years old and over, nursing). These exposure estimates are conservative since average residues were not calculated and monitoring data were not used to refine residue estimates.

Therefore, it can be concluded that levels of fluoride in/on food from the agricultural use of Cryolite plus fluoride levels in U.S. drinking water supplies (0.057 mg/kg/day) results in a high-end daily dietary intake of fluoride of approximately 0.085 mg/kg/day. This is less than the Maximum Concentration Limit (MCL) of 4.0 mg/L 0.114 mg/kg/day, a level which provides no known or anticipated adverse health effect as determined by the Surgeon General.

Due to the fact that fluoride naturally occurs at low levels in food and air as well as drinking water, there is a low percentage of the population (0.4%) exposed to levels above the secondary Maximum Contaminant Level (2 mg/L) and below the MCL, dietary exposure from agricultural uses is low (typically much less than ca. 66% of the levels found in intentionally fluoridated water), and aggregate high-end exposure is estimated to be below the MCL, EPA concludes there is a reasonable certainty that no harm will result from aggregate exposure to fluoride residues.

3. *Short-and intermediate -term risk.* Short-and intermediate-term risk aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. As explained above, EPA does not anticipate significant non-dietary (residential) exposure from the use of cryolite.

E. Aggregate Cancer Risk for U.S. Population

As described above, the available information does not support the regulation of cryolite as a carcinogen and it has been classified as a Group D chemical (not classifiable as to human carcinogenicity).

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cryolite, EPA considered data from oral developmental toxicity studies in the rat and mouse; and a range-finding study in the rabbit as well as data from a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* A developmental toxicity study conducted with cryolite in rats at dose levels of 0, 750, 1,500, and 3,000 mg/kg/day (gavage) in which the NOEL for both developmental and maternal toxicity was 3,000 mg/kg/day. At this dose level, the only observation was whitening of the teeth of dams.

A developmental toxicity study conducted in female mice with Cryolite at dose levels of 0, 30, 100 and 300 mg/kg/day (gavage) in which the NOEL for maternal toxicity was 30 mg/kg/day and the LOEL was 100 mg/kg/day based on the occurrence of dark red contents of the stomach. Fetuses at the highest dose tested, 300 mg/kg/day exhibited bent ribs and bent limb bones.

A range-finding developmental toxicity study conducted in female rabbits with Cryolite at dose levels of 0, 10, 30, 100, 300 and 1,000 mg/kg/day (gavage) which showed only severe maternal effects at all doses. There were no developmental findings in the fetuses up to 30 mg/kg/day. At doses greater than 30 mg/kg/day, developmental findings were not observed due to the severe maternal toxicity.

A new rabbit developmental study is not required at this time since there are two acceptable rodent developmental studies (rat and mouse) showing no specific adverse developmental effects. In addition, the National Academy of Sciences (NAS) report supports this decision. It is unlikely that an additional rabbit developmental study would alter the risk evaluation for cryolite.

The rabbit range-finding study suggested that severe maternal toxicity occurred at lower doses than external developmental toxicity. However, following an extensive literature evaluation, the National Research Council (National Academy of Sciences Subcommittee of Health Effects of Ingested Fluoride) (NAS) determined that:

> There have been reports of adverse effects on reproductive outcomes associated with high levels of fluoride intake in many animal species. In most of the studies, however, the fluoride concentrations associated with adverse effects were far higher than those encountered in drinking water. ...
>
> Based on these findings, the subcommittee concludes that the fluoride concentrations associated with adverse reproductive effects in animals are far higher than those to which human populations are exposed. Consequently, ingestion of fluoride at current concentrations should have no adverse effects on human reproduction.

iii. *Reproductive toxicity study.* A 2-generation reproduction study conducted with Cryolite in the diet of rats at dose levels of 0, 200, 600, and 1,800 ppm (representing 0, 14, 42, and 128 mg/kg/day for males and 0, 16, 49, and 149 mg/kg/day for females, respectively, during premating) in which the LOEL for systemic toxicity was 200 ppm (15 mg/kg/day) based on dental fluorosis. The NOEL for decreased pup body weight was 46 mg/kg/day and, at the lowest dose tested (8 mg/kg/day) there was parental toxicity. Therefore, there was pup toxicity only in the presence of parental toxicity.

iv. *Pre- and post-natal sensitivity.* Based on current data requirements, the database relative to pre- and post-natal toxicity is complete. These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post-natal sensitivity.

v. *Conclusion.* Therefore, EPA concludes that reliable data support use of the weight-of-the-evidence risk assessment approach for the assessment of risks to infants and children associated with the use of cryolite and that an additional safety factor is not needed.

2. *Acute risk.* As described above, based on available acute toxicity data, EPA has determined that cryolite does not pose any acute dietary risk.

3. *Chronic risk.* The high end dietary exposure estimate for infants and children using reassessed tolerances and percent of crops treated is 0.024 mg/kg/day. This is lower than the exposure estimate of 0.028 mg/kg/day which was used in the Agency's determination of safety for the U.S. population described above.

EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fluoride residues.

4. *Short- or intermediate- term risk.* As described above, EPA has determined that cryolite does not exhibit any adverse health effects occurring as a result of short- or intermediate-term dietary and non-dietary exposure.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of the subject insecticides in plants and animals is adequately understood.

Open literature studies show that human and animal metabolism of cryolite and/or synthetic cryolite manifests itself as normal free fluoride metabolism. That is, dissociation occurs, producing free fluoride ions which are assimilated into bone. The residue of concern in animals is total fluoride.

Plant residues are inorganic surface residues of cryolite which are measured as total fluoride. Uptake and translocation of cryolite residues from soil is unlikely due to the low water solubility of cryolite.

B. Analytical Enforcement Methodology

An adequate analytical method (fluoride specific electrode) is available for enforcement purposes for plant and animal residues. The limit of quantitation is 0.05 ppm. Because cryolite is an inorganic ionic compound, the requirement for data using the multi-residue protocols in the Pesticide Analytical Manual (PAM) Vol. I is not applicable.

Because of the long lead time from establishing these tolerances, to publication of the enforcement methodology in the PAM Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from; Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.,Washington, DC 20460. Office location and telephone number; Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., VA 22202, (703)-305-5232.

C. Magnitude of Residues

It has been determined that residues of cryolite are not expected to exceed 2.0 ppm in potatoes and 22.0 ppm in processed potato waste.

Data submitted in support of the subject petition show background levels of fluoride in untreated potatoes ranged from 0.14 ppm to 0.31 ppm and are consistent with the ranges reported in the open literature. Levels of fluoride found in the treated potatoes ranged from 0.18 ppm to 0.94 ppm. The residue analytical method used for enforcing the subject tolerance and regulation cannot distinguish between the naturally occurring fluoride and the fluoride resulting from use of cryolite and/or synthetic cryolite.

A potato processing study showed that cryolite residues did not concentrate in potato chips, flakes or granules. Therefore, tolerances on these commodities are not required.

There is no reasonable expectation of finite fluoride residues in ruminant or poultry tissues as a result of livestock ingestion of cryolite and this situation falls under 40 CFR 180.6 (a)(3). Therefore, tolerances for cryolite residues in meat, milk, poultry, and eggs are not required.

D. International Residue Limits

No Codex Maximum Residue Limits (MRLs) for fluorine compounds (cryolite) exist. Therefore, there are no questions of compatibility with respect to Codex MRLs and U. S. tolerances.

E. Rotational Crop Restrictions

The residue available to rotational crops is expected to be negligible with

respect to the amount of free fluorine occurring naturally in soil.

F. Endocrine Effects

No evidence of such effects were reported in the toxicology studies described above. There is no evidence at this time that cryolite causes endocrine effects.

IV. Conclusion

Therefore, the tolerance is established for residues of cryolite in or on potatoes at 2.0 ppm and in potato waste from processing at 22.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 3, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300586] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 1997.

Linda A. Travers,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.145:

i. By designating paragraph (a) as paragraph (a)(1), by adding paragraph (a)(2), and by adding a heading to paragraph (a).

ii. By removing paragraph (c) and redesignating paragraph (b) as new paragraph (c) and adding a heading.

iii. By adding and reserving new paragraphs (b) and (d) with headings.

The amendments to § 180.145 read as follows:

§ 180.145 Fluorine compounds; tolerances for residues.

(a) *General.* * * *

(2) Time-limited tolerances are established for residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the commodities as follows:

Commodity	Parts per million	Expiration/revocation date
Potatoes	2.0	11/21/2001
Potatoes, waste from processing	22.0	11/21/2001

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–31920 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 205, 232, 233, 235, 250, 251, 255, 256, and 257

RIN 0970–AB84

Repeal of Obsolete Title IV–A and IV–F Program Rules

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule; removal.

SUMMARY: This document removes regulations governing certain programs repealed or eliminated under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, including: Emergency Assistance; Job Opportunities and Basic Skills Training; and three child care programs authorized under title IV–A of the Social Security Act. It also repeals some administrative rules of the AFDC program, because the program was repealed effective July 1, 1997.

DATES: Effective date is December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Mack Storrs, Director, Division of Self-Sufficiency Programs, Office of Family Assistance, ACF, at 202–401–9289.

SUPPLEMENTARY INFORMATION: On August 22, 1996, President Clinton signed The Personal Responsibility and Work Opportunity Reconciliation Act of 1996—or PRWORA—into law. This law replaced the nation's largest public assistance program, known as Aid to Families with Dependent Children, and affiliated programs, with a new block grant to States. It also made substantial changes to the Federal child care programs that served welfare recipients and other low-income families.

This legislation made a number of our existing regulations obsolete, effective July 1, 1997, or earlier. The purpose of this rulemaking is to remove many of the obsolete rules. Thus, this rulemaking reflects ACF's continuing commitment to the Administration's regulatory reinvention initiative. In particular, it responds to the first directive in the President's strategy—to "cut obsolete regulations." Through this rulemaking, we are eliminating approximately 82 pages of obsolete rules from the Code of Federal Regulations.

Aid to Families With Dependent Children and Emergency Assistance

Section 103(a) of PRWORA (Pub. L. 104–193) repealed the provisions in the existing part A of title IV of the Social Security Act and replaced them with provisions governing the new welfare block grant. Under section 116 of PRWORA, this change took effect on July 1, 1997, except in States that chose to implement their new welfare programs at an earlier date. The provisions that were repealed governed the existing programs of Aid to Families with Dependent Children (AFDC) and Emergency Assistance (EA).

The regulations for the Emergency Assistance program are found at 45 CFR 233.120. This rulemaking would remove this section of the regulation in its entirety.

The regulations for the AFDC program are found throughout Chapter II of Title 45 in the Code of Federal Regulations.

In this rulemaking we are removing only a limited number of administrative rules. They are those AFDC rules that address the AFDC Quality Control System (authorized under section 408 of the Social Security Act, as in effect under prior law), some provisions related to child support requirements and fraud control, and certain provisions related to financial penalties against the States under prior law.

We will make other conforming changes to the AFDC regulations at a later date. We must exercise care in repealing the AFDC rules because: (1) eligibility for other programs, such as title IV–E (Foster Care) and title XIX (Medicaid), retain a direct connection to the AFDC rules in effect prior to PRWORA; and (2) many of the AFDC provisions are intertwined with provisions for other assistance programs that were not repealed. (The most notable example of this latter problem is the overlap between the AFDC rules and the rules for the adult programs operated by the Territories under titles I, X, IV, and XVI of the Social Security Act.) To address these more sensitive and complicated conforming changes, we need to engage in additional analysis and consult with other Federal agencies and other interested groups. Thus, most of the conforming changes to the AFDC regulations will be reserved for future rulemaking efforts.

The IV–A Child Care Programs

Section 103(c) of PRWORA eliminated the child care provisions that were in title IV–A of the Social Security Act at the time of enactment. Under section 116(c) of PRWORA, the elimination of those provisions took effect on October 1, 1998. The new child care provisions in title VI of PRWORA took effect that same day.

The programs eliminated by PRWORA were: child care for AFDC recipients and JOBS participants under section 402(g) of the Act, transitional child care for former AFDC recipients under section 402(g) of the Act, and child care for at-risk families under

section 402(i) of the Act. The rules governing these three programs are found at parts 255, 256, and 257 of Chapter II. In this rulemaking, we are removing all of our child care regulations in these parts.

Section 603(b) of PRWORA created a new section 418 of the Social Security Act that provides new funding for child care assistance under title IV–A of the Social Security Act. Child care funds provided in section 418 are under the control of the lead agency in the State responsible for administering the Child Care and Development Block Grant (CCDBG) program, and they are subject to the rules of that program. Together, we refer to the two types of child care funding as "The Child Care and Development Fund," or CCDF.

The CCDBG regulations are found at 45 CFR part 98. On July 23, 1997, ACF issued an NPRM (at 62 FR 39610) to add the new IV–A child care provisions to part 98 and address the other changes necessitated by PRWORA.

Note that some of the provisions in part 255 (i.e., §§ 255.1(c), 255.1(d), 255.1(h), 255.2(c), 255.2(d), 255.2(e), 255.3(g), 255.3(h), 255.4(d), and 255.4(e)) address supportive services funded under the JOBS program. We are also removing all JOBS-related provisions in the regulations, as discussed below.

Because all the provisions in parts 255 through 257 deal with either child care or JOBS supportive services provisions (or both) that were eliminated, we are removing these three parts in their entirety.

Job Opportunities and Basic Skills Training (JOBS)

Finally, section 108(e) of PRWORA repeals title IV–F of the Social Security Act (i.e., the JOBS program). Under section 116 of PRWORA, this repeal is effective at the same time as the repeal of the AFDC program, or no later than July 1, 1997. With the exception of the rules on JOBS supportive services, which we have already discussed, the JOBS rules are found at parts 250 and 251 of Chapter II of title 45. In this rulemaking, we are removing these JOBS regulations in their entirety.

Effect of Rulemaking on Prior or Pending Actions

You should be aware that the regulations we are removing still would apply with respect to State actions and behavior that occurred before the effective date of the new legislation. Under the transition rules of PRWORA (see section 116(b)(2)–(3) of the Act), the provisions of the new law do not apply "with respect to * * * duties, functions, rights, claims, penalties, or obligations applicable to aid, assistance, or services provided before" such effective date. They also do not apply to "administrative actions and proceedings" authorized to commence before that date.

Thus, the regulatory provisions that we are removing will continue to apply to State actions that took place prior to the implementation of the new programs, and we would base any penalty, disallowance, or claims against the State on such regulations.

General Statutory Authority

We are publishing these rules under the general authority of section 1102 of the Social Security Act, 42 U.S.C. 1302. This section requires publication of rules that may be necessary for the efficient administration of the functions under the Social Security Act.

Regulatory Authority

We are issuing a final rule rather than a notice of proposed rulemaking because we have determined, for good cause, that publication of a proposed rule and solicitation of comments is unnecessary. This final rule removes only obsolete provisions and programs.

Furthermore, this final rule will be effective immediately upon publication. It is unnecessary to postpone the effective date since none of the provisions being removed are still in effect, and no time for implementation is required.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. Such consultation was not necessary or appropriate for this particular rulemaking effort because of its technical nature in removing only obsolete provisions.

However, we will be engaging in consultation on the subsequent rulemaking that we are planning to address the more complex conforming changes to the AFDC regulation.

These regulations respond to the President's directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative and the National Performance Review by cutting obsolete regulations and getting rid of yesterday's government. It entails no increase in cost or burden on State and local governments or other entities.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. Because of the nature of this rule, the Secretary certifies that it will not have a significant impact on small entities.

Paperwork Reduction Act

This rule contains no information collection activities subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act

The Department has determined that this rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to Families with Dependent Children, Computer technology, Grant programs—social programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 232

Aid to Families with Dependent Children, Child support enforcement, Grant programs—social programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 235

Aid to Families with Dependent Children, Fraud, Grant programs—social programs, Public assistance programs.

45 CFR Parts 250 and 251

Aid to Families with Dependent Children, Employment, Grant programs—social programs, Manpower training programs, Reporting and recordkeeping requirements, Vocational education.

45 CFR Parts 255 and 256

Aid to Families with Dependent Children, Day care, Education and training, Employment, Grant programs—social programs.

45 CFR Part 257

Day care, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalogue of Federal Domestic Assistance Programs: 93.560—Family Support Payments to States—Assistance Payments; 93.561—Job Opportunities and Basic Skills Training (JOBS); 93.574—Child Care for Families at Risk of Welfare Dependency)

Dated: November 14, 1997.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Under the authority of sections 116 of Pub. L. 104–193 and section 1302 of the Social Security Act, and for the reasons set forth in the preamble, we are amending Chapter II of title 45 of the Code of Federal Regulations, as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for Part 205 continues to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 608, 1302, and 1306(a).

2. Remove sections 205.40 through 205.43 (including the appendix to § 205.41) and 205.146.

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

1. Remove part 232 (including appendix A).

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 continues to read as follows:

Authority: 42 U.S.C. 301, 602, 602 (note), 606, 607, 1202, 1302, 1352, and 1382 (note).

2. Remove § 233.120.

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 235 continues to read as follows:

Authority: 42 U.S.C. 603, 616, and 1302.

2. Remove §§ 235.111, 235.112, and 235.113.

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

1. Remove part 250.

PART 251—PROGRAM PARTICIPANT EMPLOYMENT PROTECTION

1. Remove part 251.

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

1. Remove part 255.

PART 256—TRANSITIONAL CHILD CARE

1. Remove part 256.

PART 257—AT-RISK CHILD CARE PROGRAM

1. Remove part 257.

[FR Doc. 97–31770 Filed 12–4–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 170, 171, and 173 and Chapter I, Subchapters K and T

[CGD 85–080]

RIN 2115–AC 22

Small Passenger Vessel Inspection and Certification; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule [CGD 85–080] which was published on September 30, 1997 (62 FR 51326). The rule completely revised Coast Guard regulations that affect small passenger vessels of less than 100 gross tons in 46 CFR parts 170, 171, 173 and Chapter I, Subchapters K and T.

DATES: Effective on December 5, 1997.

ADDRESSES: A copy of the final rule as indicated in the preamble may be obtained via the Internet at http://www.dot.gov/dotinfo/uscg/hq/g-m/nmc/regs/fr97/9__16.htm or by writing Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric P. Christensen, Project Manager, Office of Operating and Environmental Standards, (G–MSO–2), phone 202–267–1181, telefax 202–267–4570.

SUPPLEMENTARY INFORMATION:

Need for Correction

The Coast Guard published a final rule in the **Federal Register** on September 30, 1997 (62 FR 51326), completely revising its regulations in 46 CFR parts 170, 171, and 173 and Chapter I, Subchapters K and T which affect small passenger vessels of less than 100 gross tons.

An incorrect document was inadvertently sent to the **Federal Register**. As published, the final rule contains information in its preamble and errors in the regulations that may prove to be misleading. Parts of the preamble need to be clarified and the regulations need to be corrected. These corrections merely conform the final rule to the document approved by the Commandant, USCG, DOT and OMB.

The Coast Guard acknowledges that publishing these correcting amendments immediately after publication of the final rule may confuse owners and operators of small passenger vessels. Therefore, the Coast Guard will make available via the Internet or upon request a copy of the final rule as it was to have been published. The Internet address is provided under **ADDRESSES**. A copy of the final rule may also be obtained by calling the Coast Guard at 202–267–1181 or by writing to the Coast Guard at the address provide under **ADDRESSES**.

For further clarification, the codified version in the CFR dated October 1, 1997, will contain an editorial note at the end of each part or section affected that it has been corrected by amendment published in the **Federal Register** on December 5, 1997.

Correction of the Preamble

In rule FR Doc. 97–25599 published on September 30, 1997 (62 FR 51326), make the following corrections to the preamble:

1. On page 51328, first column, paragraph (7), second sentence, remove the "resolved" and add, in its place, the word "addressed".

2. On page 51328, third column, paragraph (c), remove the text and add, in its place, the following:

"A recently published internal instruction titled "RISK BASED DECISION-MAKING & G–M BUSINESS PLAN GOALS" provides technical and administrative guidance to the field on how risk assessment and management can and should be used in support of Commandant (G–M)'s Business Plan goals."

3. On page 51329, third column, paragraph (7), line 27, after the word percent, add the words "passenger increase".

4. On page 51330, second column, after paragraph (15), add the following:

"(16) The Coast Guard has added a definition for wood vessel in subchapter

T to clarify which types of wood construction are subject to additional subdivision and lifesaving requirements presented in the IFR. The casualty data used throughout this rulemaking to justify the need for additional requirements for vessels constructed of wood shows the vessels involved were built using "traditional" plank-on-frame construction techniques. This type of construction requires the use of mechanical fastenings to maintain the integrity of the hull structure. The loss of fastener structural integrity can result in the "springing" of one or more planks and lead to catastrophic flooding. It is this type of construction that the Coast Guard has determined requires additional subdivision or lifesaving equipment requirements to provide an equivalent level of safety to steel, aluminum, and FRP construction. Many wood vessels have been constructed using cold molded, edge-glued epoxy, FRP over plywood, and other composite construction techniques that do not rely on mechanical fasteners to maintain hull integrity. Although these vessels are considered wood vessels for the purpose of certification, they will not be required to meet the additional subdivision and lifesaving requirements contained in Parts 179 and 180, respectively."

5. On page 51330, second column, under *Sections 114.540 and 175.540 Equivalents*, remove the words "and 175.540" from the heading, and remove the words "and 175.540(b)" from the text of the section.

6. On page 51334, first column, under *Section 116.438 Stairtowers, Stairways, Ladders, and Elevators*, add a new paragraph (1) to read as follows:

"(1) As previously discussed under sections 144.110 and 175.110, the Coast Guard has added a new paragraph (a) to § 116.438 for vessels carrying over 600 passengers or with overnight accommodations for more than 49 passengers.", and renumbered paragraphs (1), (2), and (3) as (2), (3), and (4), respectively.

7. On page 51334, second column, under *Section 116.500 Means of Escape*, in the heading remove the words "Section 116.500" and add, in their place, the words "Sections 116.500 and 177.500"; and remove the text and add, in its place, the following:

"Paragraphs 116.500(k)(1) and 177.500(j)(1) are revised to indicate that a ladder and a deck scuttle are acceptable as a second means of egress from crew spaces on any vessel, regardless of length. Difficulty has been encountered in the application of paragraph (h) in subchapter K. In the IFR, this paragraph indicated that the maximum allowable travel distance to a means of egress could not exceed 46 meters (150 ft). Means of egress is (and was in the IFR) defined as "a continuous and unobstructed way of exit travel from any point in a vessel to an embarkation station or area of refuge." The intent of § 116.500(h) is to limit the distance of travel to a protected area, such as a stairway, area of refuge, or embarkation station. Section 116.500(h) is revised to clarify that travel distance to an exit may not exceed 46 meters, measured as actual walking distance. A definition was added to § 114.400 to define "exit" as either an area protected as a stairway, or a door which leads to an area of refuge or an embarkation station. Sections 116.500(p)(1) and 177.500 (o)(1) are amended to change the maximum dimension for a space that is permitted to have a single means of escape from 3.6 meters to 30 square meters to be consistent with other subchapters.

8. On page 51335, first column, under *Section 177.900 Deck Rails*, in the heading remove the word "Section" and add, in its place, the words "Sections 116.900 and"; and, in the last sentence of paragraph (1) after the word "spacing", add the words "or wire mesh".

9. On page 51336, first column, under *Section 178.330 Simplified Stability Proof Test*, remove the text and add, in its place, the following:

"The Coast Guard has re-evaluated this section. The simplified stability test on passenger vessels less than 65 feet is done in accordance with § 178.330 (§ 171.030 in subchapter S for old subchapter T). The traditional method for conducting the simplified test is provided on Coast Guard form CG–4006 (Rev. 8–79). This form dates back to "Ancient" subchapter T in § 179.10–1, but the language in new subchapter T is quite similar. Basically, the total weight of all persons and other loads are to be on board and "distributed so as to provide normal operating trim and to simulate the vertical center of gravity (VCG), causing the least stable condition that is likely to occur in service." Form CG–4006 goes one step further. On page 2 of 8, paragraph (2), the weight distribution on board a vessel "having one upper deck above the main deck available to passengers * * *," has an additional safety factor thrown in that is not currently taken from or referenced in the regulations. The weight located on the one upper deck is the equivalent of 1.33 times the actual weight of passengers to be located there. The rationale for doing so is understood, however, one problem is it appears "arbitrary" with no reference in the regulations and no other apparent basis. It certainly does help to ensure the conservatism of the test, which has been proven by the test of time since it appears no subchapter T boats have been lost due to stability based upon this simple stability test. The Coast Guard affirms keeping the 1.33 safety factor for weight distribution on the upper deck, and has placed it in § 178.330(a)(4) of subchapter T and § 171.030(c) in subchapter S."

10. On page 51337, second column, under *Sections 117.71 and 180.71 Life Jackets*, paragraph (1), in line 12 after the number § 122.604, add the words "and 185.604", and at the end of paragraph (1), add the following sentence: "Paragraph (e) has been added to both sections to reference the appropriate marking requirements."

11. On page 51339, first column, under *Sections 118.300 and 181.300 Fire Pumps*, add a new paragraph (1) to read as follows:

"(1) As previously discussed in §§ 114.110 and 175.110, the Coast Guard amends § 118.300(c) by requiring vessels carrying more than 600 passengers to comply with subchapter H fire pump requirements."; at the end of the last sentence of paragraph (1) after the word "deleted" add the words "from paragraph (e) in both subchapters"; and renumber paragraph (1), (2), and (3) as (2), (3), and (4), respectively.

12. On page 51341, second column, before *Section 183.322 Multiple Generators*, add a new section to read as follows:

"*Section 120.312 Power sources on vessels of more than 19.8 meters (65 feet) in length with overnight accommodations for more than 49 passengers.*

As previously discussed in §§ 114.110 and 175.110, the Coast Guard amends the title of this section to include vessels carrying more than 600 passengers."

13. On page 51341, third column, under *Section 120.432 and 183.432 Emergency Lighting*, add the following paragraph to the end of the section:

"As previously discussed in §§ 114.110 and 175.110, the Coast Guard amends § 120.432(c) to include vessels carrying more than 600 passengers."

14. On page 51341, third column, after *Section 120.432 and 183.432 Emergency Lighting*, add a new section to read as follows:

"*Section 120.434 Lifeboat and liferaft floodlights on vessels of more than 19.8 meters (65 feet) in length with overnight accommodations for more than 49 passengers.*

As previously discussed in §§ 114.110 and 175.110, the Coast Guard amends § 120.434 to include vessels carrying more than 600 passengers."

15. On page 51341, third column, under *Sections 121.220 and 183.220 Cooking Equipment*, in the heading delete the number "183.220" and add, in its place, the number "184.220".

16. On page 51344, second column, paragraph (7), line 3, after the word "handrails", add the words "should be required to notify passengers of the dangers of low rails".

17. On page 51345, first column, under *Section 122.604 Lifesaving Equipment Markings*, in the heading delete the words "Section 122.604" and add, in their place, the words "Sections 122.604 and 185.604 and"; and add two new paragraphs at the end of the section to read as follows:

"One comment stated that the prescriptive lettering requirements for lifesaving equipment were unnecessary and not consistent with the subchapter W IFR.

The Coast Guard agrees, and has revised both sections by deleting prescriptive minimum letter size requirements."

18. On page 51345, second column, in Part 171—Special Rules Pertaining to Vessels Carrying Passengers, line 23 after the words "subpart K", add the words "of part 116."

List of Subjects

46 CFR Parts 114 and 175

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 115 and 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 116, 117, 119, 171, 178, 179, 180, and 182

Marine safety, Passenger vessels.

46 CFR Parts 118 and 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Parts 120 and 183

Electric power, Marine safety, Passenger vessels.

46 CFR Parts 121 and 184

Communications equipment, Marine safety, Navigation (water), Passenger vessels.

46 CFR Parts 122 and 185

Alochol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 173

Marine safety, Vessels.

46 CFR Part 177

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

Correction of Regulatory Text

Accordingly, 46 CFR parts 170, 171, and 173 and Chapter I, Subchapters K and T are corrected by making the following correcting amendments:

SUBCHAPTER K—SMALL PASSENGER VESSELS CARRYING MORE THAN 150 PASSENGERS OR WITH OVERNIGHT ACCOMMODATIONS FOR MORE THAN 49 PASSENGERS

PART 114—GENERAL PROVISIONS

1. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 114.900 also issued under 44 U.S.C. 3507.

§ 114.400 [Corrected]

2. In § 114.400(b), in the definition for "High Speed Craft", in the equation "V=3.7 × displ^{1667} H", add a decimal point before the number "1667".

PART 116—CONSTRUCTION AND ARRANGEMENT

3. The authority citation for part 116 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 116.439 [Corrected]

4. In § 116.439(e), remove the word "etc." and add, in its place, the words "or other obstructions".

§ 116.500 [Corrected]

5. In § 116.500(h), remove the word "be" immediately before the number "46".

PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

6. The authority citation for part 117 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

§ 117.130 [Corrected]

7. In § 117.130(b), remove the words "part 160, subparts 160.062 or 160.162, of this chapter" and add, in their place, the words "approval series 160.062 or 160.162".

§ 117.150 [Corrected]

8. In § 117.150(a), remove the words "part 160, subpart 160.163, of this chapter" and add, in their place, the words "approval series 160.163", and remove the words "part 160, subpart 160.175, of this chapter" and add, in their place, the words "approval series 160.175".

§ 117.175 [Corrected]

9. In § 117.175(f)(4), remove the words "part 161, subpart 161.010, of this chapter" and add, in their place, the words "approval series 161.010".

§ 117.200 [Corrected]

10. In § 117.200, in paragraph (a)(1), remove the words "part 160, subpart 160.151, of this chapter," and add, in their place, the words "approval series 160.151"; in paragraph (a)(2), remove the words "part 160, subpart 160.027, of this chapter," and add, in their place, the words "approval series 160.027"; and in paragraphs (a)(3) and (a)(4), remove the words "part 160, subpart 160.010, of this chapter," and add, in their place, the words "approval series 160.010".

§ 117.210 [Corrected]

11. In § 117.210(c), remove the words "complying with part 160, subpart 160.056, of this chapter" and add, in their place, the words "approved under approval series 160.056", and remove the words "part 160, subpart 160.156, of this chapter" and add, in their place, the words "approval series 160.156".

PART 118—FIRE PROTECTION EQUIPMENT

12. The authority citation for part 118 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 118.320 [Corrected]

13. In § 118.320(c)(1), remove the words "part 162, subpart 162.027, of this chapter" and add, in their place, the words "approval series 162.027".

PART 121—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

14. The authority citation for part 121 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 121.710 [Corrected]

15. In § 121.710, remove the words "part 160, subpart 160.041, of this chapter" and add, in their place, the words "approval series 160.041".

PART 122—OPERATIONS

16. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 122.604 [Corrected]

17. In § 122.604, in paragraph (a) introductory text, remove the words "at least 76 millimeters (3 inches) high"; in paragraph (d), add the words "and numbers" after the word "letters" and remove the words "in letters and numbers at least 40 millimeters (1.5 inches) high"; in paragraph (e) introductory text add the words "and numbers" after the word "letters" and remove the words "in letters and numbers at least 40 millimeters (1.5 inches) high".

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 175—GENERAL PROVISIONS

18. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 175.900 also issued under 44 U.S.C. 3507.

19. In § 175.400, in the definition for "High Speed Craft", in the equation "V = 3.7 × displ ^{1667} h", add a decimal point before the number "1667", and add, in alphabetical order, a definition for "wood vessel" to read as follows:

§ 175.400 Definitions of terms used in this subchapter.

* * * * *

Wood vessel means, for the purposes of subdivision and lifesaving equipment requirements in this subchapter, a traditionally-built, plank-on-frame vessel, where mechanical fasteners (screws, nails, trunnels) area used to maintain hull integrity.

* * * * *

PART 177—CONSTRUCTION AND ARRANGEMENT

20. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

21. In § 177.500, in paragraph (j)(1), remove the last word "and" and add, in its place, the word "or"; and revise paragraph (o)(1) to read as follows:

§ 177.500 Means of escape.

* * * * *

(o) * * *

(1) The space has a deck area less than 30 square meters (322 square feet);

* * * * *

PART 178—INTACT STABILITY AND SEAWORTHINESS

22. The authority citation for part 178 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 178.330 [Corrected]

23. In § 178.330(a)(4)(v), remove the equation

$$\text{"Weight on Upper Deck} = \frac{}{\text{\# of Passengers on Upper Deck}} \times \frac{}{\text{Wt per Passenger}} \times 1.33\text{"}$$

and add, in its place, the following equation:

"Weight on Upper Deck = (# of Passengers on Upper Deck) × (Wt per Passenger) × 1.33".

PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

24. The authority citation for part 180 continues to read as follows:

Authority: 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 180.130 [Corrected]

25. In § 180.130(b), remove the words "part 160, subparts 160.062 or 160.162, of this chapter" and add, in their place, the words "approval series 160.062 or 160.162".

§ 180.210 [Corrected]

26. In § 180.210(d), remove the words "complying with approval series 160.056" and add, in their place, the words "approved under approval series 160.156".

PART 185—OPERATIONS

27. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 185.604 [Corrected]

28. In § 185.604, in paragraph (a) introductory text, remove the words "at least 76 millimeters (3 inches) high"; in paragraph (d), add the words "and numbers" after the word "letters" and remove the words "in letters and numbers at least 40 millimeters (1.5 inches) high"; and, in paragraph (e) introductory text, add the words "and numbers" after the word "letters" and remove the words "in letters and numbers at least 40 millimeters (1.5 inches) high".

Dated: December 1, 1997.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–31895 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC32

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Callippe Silverspot Butterfly and the Behren's Silverspot Butterfly and Threatened Status for the Alameda Whipsnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for the callippe silverspot butterfly (*Speyeria callippe callippe*) and Behren's silverspot butterfly (*Speyeria zerene behrensii*) and threatened status for the Alameda whipsnake (Alameda striped racer) (*Masticophis lateralis euryxanthus*). The callippe silverspot butterfly is found at two sites on grasslands in the San Francisco Bay area. Behren's silverspot butterfly is found within coastal terrace prairie at one site in southern Mendocino County. These butterflies are imperiled by overcollecting, urban development, alien plant invasion and competition, and excessive livestock grazing. The Alameda whipsnake occurs in the northern coastal scrub and chaparral habitats of Contra Costa and Alameda counties. This snake and its associated habitat are threatened by fire suppression and related wildfire problems associated with lack of fuel reduction, urban development, genetic isolation, and excessive livestock grazing. This rule implements Federal protection and recovery provisions afforded by the Act for these animals.

DATES: Effective December 5, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours, at the Sacramento Field Office, U.S. Fish and Wildlife Service, 3310 El Camino Ave., Suite 130, Sacramento, California 95821.

FOR FURTHER INFORMATION CONTACT: Mike Westphal or Diane Windham, staff biologists, at the above address or by telephone (916/979–2725).

SUPPLEMENTARY INFORMATION:

Background

The callippe silverspot butterfly (*Speyeria callippe*) is a member of the brush foot family (Nymphalidae). The animal was described by J.A. Boisduval (1852) from specimens collected during the month of June by Pierre Lorquin in San Francisco, California (dos Passos and Grey 1947). It is a medium sized butterfly with a wingspan of approximately 5.5 centimeters (cm) (2.2 inches (in)). The upper wings are brown with extensive black spots and lines, and the basal areas are extremely melanic (dark-colored). Wing undersides are brown, orange-brown, and tan with black lines and distinctive black and bright silver spots. Basal areas of the wings and body are densely pubescent (hairy).

The discal area on the upper hind wings of the callippe silverspot butterfly is a darker, more extensive yellow than on the related Lilian's silverspot butterfly (*Speyeria callippe liliana*). The callippe silverspot butterfly is larger and has a darker ground color with more melanic areas on the basal areas of the wings than Comstock's silverspot butterfly (*Speyeria callippe comstocki*), another related taxon.

The callippe silverspot butterfly is found in native grassland and associated habitats (Thomas Reid Associates 1982; Steiner 1990; Mattoon, *in litt.*, November 22, 1992). The females lay their eggs on the dry remains of the larvae foodplant, Johnny jump-up (*Viola pedunculata*), or on the surrounding debris (Arnold 1981, Thomas Reid Associates 1982). Within about 1 week of hatching the larvae eat their egg shells. The caterpillars wander a short distance and spin a silk pad upon which they pass the summer and winter. The larvae are dark colored with many branching sharp spines on their backs.

The caterpillars immediately seek out the foodplant upon termination of their diapause in the spring. In May, after having gone through five instars, each larva forms a pupa within a chamber of leaves drawn together with silk. Adults emerge in about 2 weeks and live for approximately 3 weeks. Depending upon environmental conditions, the flight period of this single-brooded butterfly ranges from mid-May to late July. The adults exhibit hilltopping behavior, a phenomenon in which males and virgin or multiple-mated females seek a topographic summit on which to mate (Shields 1967).

Arnold (1983, 1985) conducted taxonomic studies on the subspecies of *Speyeria callippe* using wing characters. He concluded that the species consisted of 3 subspecies rather than the widely recognized and accepted 16 subspecies. Based on his study, the range of *Speyeria callippe callippe* would extend from Oregon to southern California and east into the Great Basin (Arnold 1985). A comprehensive analysis of this species found that the original classification remains more appropriate and that subspecies *callippe* is restricted to the San Francisco Bay region (Hammond 1986; Murphy unpublished). The Service recognizes the conclusions of Hammond (1986) and the distribution of the callippe silverspot butterfly as described by Sterling Mattoon (S. Mattoon, *in litt.*, November 22, 1992).

The callippe silverspot butterfly is known from 14 historic populations in the San Francisco Bay region. The historic range of the callippe silverspot butterfly includes the inner Coast Ranges on the eastern shore of San Francisco Bay from northwestern Contra Costa County south to the Castro Valley area in Alameda County (S. Mattoon, *in litt.*, November 22, 1992). On the west side of the Bay, it ranged from San Francisco south to the vicinity of La Honda in San Mateo County. Five colonies, including the one located at Twin Peaks in San Francisco have been extirpated for a variety of reasons. Currently, extant colonies are known only from private land on San Bruno Mountain in San Mateo County, and a city park in Alameda County (S. Mattoon, *in litt.*, November 22, 1992).

Behren's silverspot butterfly (*Speyeria zerene behrensii*) is also a member of the brush foot family (Nymphalidae). William H. Edwards described this taxon in 1869 based on an adult male collected by an unknown lepidopterist in Mendocino, California (Edwards 1869, dos Passos and Grey 1947). It is a medium-sized butterfly with a wingspan of approximately 5.5 cm (2.2 in). The upper surfaces are golden brown with numerous black spots and lines. Wing undersides are brown, orange-brown, and tan with black lines and distinctive silver and black spots. Basal areas of the wings and body are densely pubescent.

Behren's silverspot butterfly is similar in appearance to two other subspecies of *Speyeria zerene* (Howe 1975, Hammond 1980, McCorkle and Hammond 1988). The Oregon silverspot butterfly (*Speyeria zerene hippolyta*), federally listed as threatened, has lighter basal suffusion on the upper sides of the wings than Behren's silverspot butterfly. Another related taxon, the endangered Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*) is larger in size and also lighter in color than *Speyeria zerene behrensii*.

Behren's silverspot butterfly inhabits coastal terrace prairie habitat. The life history of Behren's silverspot butterfly is similar to the callippe silverspot butterfly. The females lay their eggs in the debris and dried stems of the larval foodplant, violet (*Viola adunca*) (McCorkle 1980, McCorkle and Hammond 1988). Upon hatching, the caterpillars wander a short distance and spin a silk pad upon which they pass the fall and winter. The larvae are dark-colored with many branching, sharp spines on their backs. The caterpillars immediately seek out the foodplant upon termination of their diapause in the spring. They pass through five instars before forming a pupa within a chamber of leaves that they draw together with silk. The adults emerge in about 2 weeks and live for approximately 3 weeks. Depending upon environmental conditions, the flight period of this single-brooded butterfly ranges from July to August. Adult males patrol open areas in search of newly emerged females.

The historic range of Behren's silverspot butterfly extends from the mouth of the Russian River in Sonoma County northward along the immediate coast to southern Mendocino County in the vicinity of Point Arena (S. Mattoon, *in litt.*, August 4, 1989). Six historic populations are known from coastal terrace prairie and associated habitats.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

The single extant population is located on private land near Point Arena in Mendocino County.

The Alameda whipsnake (Alameda striped racer) (*Masticophis lateralis euryxanthus*) is a member of the family Colubridae (Stebbins 1985). It was described by William J. Riemer (1954) from a total of six specimens collected in the vicinity of Berkeley, Alameda County, and near Somersville, Contra Costa County, and from Mount Diablo, Contra Costa County, California. The Alameda whipsnake is a slender, fast-moving, diurnal snake with a narrow neck and a relatively broad head with large eyes. The dorsal surface is colored sooty black with a distinct yellow-orange stripe down each side. The anterior portion of the ventral surface is orange-rufous colored, the midsection is cream colored, and the posterior and tail are pinkish. Adults range in length from 91 to 122 cm (3 to 4 feet (ft)).

The Alameda whipsnake inhabits the inner Coast Ranges in western and central Contra Costa and Alameda counties (Jennings 1983, McGinnis 1992, Swaim 1994). Urban development has fragmented the originally continuous range of the whipsnake into five populations centered in the (1) Sobrante Ridge, Tilden/Wildcat Regional Parks area to the Briones Hills, in Contra Costa County (Tilden-Briones population); (2) Oakland Hills, Anthony Chabot area to Las Trampas Ridge, in Contra Costa County (Oakland-Las Trampas population); (3) Hayward Hills, Palomares area to Pleasanton Ridge, in Alameda County (Hayward-Pleasanton Ridge population); (4) Mount Diablo vicinity and the Black Hills, in Contra Costa County (Mount Diablo-Black Hills population); and (5) Wauhab Ridge, Del Valle area to the Cedar Mountain Ridge, in Alameda County (Sunol-Cedar Mountain population). These populations all occur on private or public, non-Federal, land.

Due to the fragmentation of the range of the Alameda whipsnake, little or no interchange occurs among the five populations. The ability of the whipsnake to interchange among the first three populations described above is contingent on their dispersing over the Caldecott Tunnel in Contra Costa County and under Highway 580 in Alameda County at the Eden Canyon interchange, the Dublin Boulevard undercrossing, or where San Lorenzo Creek passes under the highway. The ability of the Alameda whipsnake to interchange between the Hayward-Pleasanton Ridge and Sunol-Cedar Mountain populations depends on their dispersing along Alameda Creek in Alameda County and crossing under Highway 680 where the creek passes under the highway, or crossing under the highway at Scott's Corner along Vallecitos Creek, or where two unnamed tributaries to Arroyo de la Laguna cross under Highway 680 north of Scott's Corner. The Mount Diablo-Black Hills population has no path for dispersal to any of the other populations.

The Alameda whipsnake is distinguished from the chaparral whipsnake (*Masticophis lateralis lateralis*) by its sooty black dorsum, by wider yellow-orange stripes that run laterally down each side, the lack of a dark line across the rostral, an uninterrupted light stripe between the rostral and eye, and the virtual absence of spotting on the venter of the head and neck.

The Alameda whipsnake is typically found in northern coastal scrub, coastal sage scrub and chaparral plant communities (Ornduff 1974, Swaim 1994), but may also occur in adjacent grasslands and oak and oak/bay woodlands (Swaim 1994). They demonstrate a preference for open-canopy stands and habitats with woody debris and exposed rock outcrops, and they tend to be found on southeast, south, and southwest facing slopes (Swaim 1994). This extremely fast-moving snake holds its head high off the ground to peer over grass or rocks for potential prey and is an active diurnal predator. Its diet includes lizards, small mammals, snakes, and nesting birds.

Radiotelemetry data suggest that Alameda whipsnakes can occupy home ranges varying in size from 1.9 to 8.7 hectares (ha) (5.0 to 21.5 acres (ac)). Home ranges of marked snakes overlapped (Swaim 1994). Some animals were recorded to have moved over 1.8 kilometers (km) (1 mile (mi)) while crisscrossing their areas (McGinnis 1992).

Alameda whipsnakes breed from March through June, with mating appearing to occur near the hibernacula of the female (Swaim 1994). Whipsnakes lay clutches of 6 to 11 eggs, May through July (Stebbins 1985), and the young hatch and emerge in the late-summer to early-fall (Swaim 1994).

Previous Federal Action

A proposed rule to list the callippe silverspot butterfly as endangered with critical habitat was published on July 3, 1978 (43 FR 28938). The critical habitat portion of this proposal was withdrawn by the Service on March 6, 1979 (44 FR 12382) because of procedural and other substantive changes in the Act by the amendments of 1978. The Service again published a proposed rule to designate critical habitat for the callippe silverspot butterfly on March 28, 1980 (45 FR 20503). The proposal to list the callippe silverspot butterfly and the reproposal of critical habitat were withdrawn on September 30, 1980 (45 FR 64607) because the Act amendments of 1978 required that the final rule for the species be completed within 2 years after the date of publication of the proposal to list it as endangered or threatened. This insect was listed as a category 2 candidate species in the Animal Notice of Review on May 22, 1984 (49 FR 21664) and January 6, 1989 (54 FR 554). Category 2 species were those taxa for which the Service had data that indicated listing was possibly appropriate, but for which substantial data on their biological vulnerability and threats was not currently available to support issuance of proposed listing rules. The callippe silverspot butterfly was listed as a category 1 species in the Animal Notice of Review on November 21, 1991 (56 FR 58804), because of increased threats from overcollecting (see Factor B in the "Summary of Factors Affecting the Species" section of this rule). Category 1 species were those taxa for which the Service had on file sufficient information on biological vulnerability and threats to support proposed listing rules. As announced in a notice published in the February 28, 1996, **Federal Register** (61 FR 7596), the designation of multiple categories of candidates has been discontinued, and only former category 1 species are now recognized as candidates for listing purposes.

Ms. Dee Warenycia petitioned the Service to list the callippe silverspot butterfly as an endangered species in a letter dated January 14, 1991, which was received on January 22, 1991. The Service completed a status review and determined that sufficient information existed to propose the species for listing. The 12-month petition finding was published on February 4, 1994, with the proposed rule (59 FR 5377).

On March 20, 1975, Behren's silverspot butterfly was listed as one of 42 insects whose status was being reviewed for listing as either endangered or threatened by the Service (40 FR 12691). This insect was listed as a category 2 species in the Animal Notice of Review on May 22, 1984 (49 FR 21664), and January 6, 1989 (54 FR 554). Dr. Dennis Murphy of Stanford University petitioned the Service to list Behren's silverspot butterfly as an endangered species in a letter dated June 28, 1989, which was received on June 29, 1989. The Service determined that the petition contained substantial information indicating that the action requested may be warranted and published notice of the 90-day finding on November 1, 1990 (55 FR 46080). It was listed as a category 1 species in the Animal Notice of Review on November 21, 1991 (56 FR 58804), on the basis of significant increases in habitat loss and threats occurring throughout its range. The 12-month petition finding was published with the proposed rule to list the species on February 4, 1994 (59 FR 5377).

On September 18, 1985, the Service published the Vertebrate Wildlife Notice of Review (50 FR 37958) which included the Alameda whipsnake as a category 2 candidate species for possible future listing as endangered or threatened. The January 6, 1989, Animal Notice of Review (54 FR 554) solicited information on its status as a category 2 candidate species. The Alameda whipsnake was moved to category 1 in the November 21, 1991, Animal Notice of Review (56 FR 58804) on the basis of significant increases in habitat loss and threats occurring throughout its range. On February 4, 1994, the Service published a proposed rule in the **Federal Register** (59 FR 5377) to list the Alameda whipsnake as an endangered species.

The processing of this final rule follows the Service's listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). This guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Under this guidance, highest priority (Tier 1) is given to processing emergency listings, and second highest priority (Tier 2) is given to resolving the listing status of outstanding proposed listings. The third highest priority (Tier 3) is assigned to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered status. The lowest priority (Tier 4) is given to processing critical habitat determinations, delistings, and other types of reclassifications. Processing of this final rule is a Tier 2 action.

Summary of Comments and Recommendations

In the February 4, 1994, proposed rule (59 FR 5377) and associated notifications, all interested parties were requested to submit factual information that might assist the Service in determining whether these taxa warrant listing. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Notices of this proposal were published in the *San Francisco Chronicle* and *San Mateo Times* on February 8, 1994, and the *Oakland Tribune* on February 10, 1994.

During the comment period, the Service received comments from 16 commenters. Six commenters supported the listing of all three taxa. Five commenters supported the listing of the callippe silverspot. The East Bay Regional Park District (EBRPD) supported the listing of the Alameda whipsnake. One commenter provided information on conservation methods for the callippe silverspot, but did not express an opinion on the listing. Letters from the City of Danville, California Department of Parks and Recreation (CDPR), and the U.S. National Biological Survey (now the Biological Resources Division of the U.S. Geological Survey) provided additional information on the Alameda whipsnake but did not express an opinion on the listing. No public hearing was requested.

On November 1, 1996, the Service published in the **Federal Register** (61 FR 56501) a notice reopening the comment period for 30 days for these taxa. The basis for this reopening was the length of time that had elapsed since closure of the initial comment period, changing procedural and biological circumstances, and the need to review the best scientific information available during the decision-making process. Specifically, the Service requested information regarding—(1) the known or potential effects of fire suppression and general fire management practices on the Alameda whipsnake and its habitat; (2) any other threats to these taxa; and (3) the size, number, or distribution of populations of these taxa. During the 30-day reopened comment period, the Service received comments from 10 entities and individuals. One commenter stated that the listing of the callippe silverspot butterfly would not be beneficial. Two commenters supported listing of all three taxa and one commenter expressed no opinion on the listing of all three taxa. The remaining letters mentioned only the Alameda whipsnake, with two supporting the listing, one opposing the listing, and three expressing no opinion. In accordance with the Service policy on peer review, published in the **Federal Register** on July 1, 1994 (59 FR 34270), the opinions of three independent scientists were also solicited. No responses were received from these specialists.

The Service has reviewed all of the written comments described above. New information received since publication of the proposed rule is incorporated in the "Background" and "Summary of Factors Affecting the Species" sections of this final rule. The issues raised in comments received and the Service's responses are summarized as follows:

Issue 1: One commenter disagreed that the Alameda whipsnake would not be impacted by construction and operation of the proposed Los Vaqueros Reservoir. The commenter stated that the snake would be adversely affected by the reservoir project if there are historic records of the snake from the areas that would be inundated.

Service Response: The quarrying operations for the Los Vaqueros project will not be undertaken at the location first proposed for the project, where an Alameda whipsnake was observed (Jones and Stokes 1992). The Service is not aware of any records showing that this species had ever occurred in the inundation zone.

Issue 2: One commenter stated that feral pigs (*Sus scrofa*) prey on snakes and other wildlife.

Service Response: The Service has incorporated this information in this final rule.

Issue 3: One commenter believed that commercial collecting of the Alameda whipsnake was an overstated threat and contended that this was incorrectly used as a justification for not designating critical habitat. Another commenter stated that the location of the callippe silverspot butterfly population at San Bruno Mountain was well known to butterfly collectors. He asserted that the threat of collecting was not a justification for determining that designation of critical habitat is not prudent for the callippe silverspot butterfly.

Service Response: Under section 4(a)(3)(A) of the Act and 50 CFR 424.12, the Secretary must designate critical habitat if such designation is prudent and determinable. Section 4(b)(2) of the Act further states that any area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. In the case of the

Alameda whipsnake and callippe silverspot butterfly, the Service believes that designation of critical habitat for these species would confer little, if any, conservation benefit to these species beyond that provided by listing. Application of the statute and its regulations are described in more detail in the "Critical Habitat" section of this rule.

Issue 4: Several commenters contended that the failure of the San Bruno Mountain Habitat Conservation Plan (HCP) is the primary cause of the decline of the callippe silverspot butterfly.

Service Response: In 1982, a Section 10(a)(1)(B) incidental take permit was issued to the cities of Brisbane, Daly City, South San Francisco, and the County of San Mateo for the endangered mission blue butterfly (*Icaricia icarioides missionensis*), San Bruno elfin butterfly (*Incisalia mossii bayensis*), and San Francisco garter snake (*Thamnophis sirtalis tetrataenia*). This permit and HCP is described in the "Available Conservation Measures" section of this rule. The Service is not aware of any documented evidence or data showing that the callippe silverspot butterfly is declining as a result of the San Bruno Mountain HCP. However, the HCP does not regulate collecting threats to the callippe silverspot butterfly or other butterfly species inhabiting San Bruno Mountain. Listing the callippe silverspot butterfly will provide this species with regulatory protection from collection and other impacts.

Issue 5: One commenter thought that designation of San Bruno Mountain as critical habitat for the callippe silverspot butterfly would lead to increased levels of environmental review and greater protection for the species.

Service Response: Critical habitat extends additional protection to listed species through section 7 of the Act by requiring that Federal agencies ensure that any actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. However, because development activities on callippe silverspot butterfly habitat on San Bruno Mountain have already been completed, designation of critical habitat would not provide additional benefits to the species. A section 10(a)(1)(B) HCP currently protects habitat in the area.

Issue 6: One commenter was concerned that particulate matter from vehicle exhaust and quarry operations may pose a significant threat to the callippe silverspot butterfly.

Service Response: The adult and early stages of the callippe silverspot butterfly and other lepidopterans may be prone to injury and mortality from dust because their respiratory apparatus (spiracles) are easily clogged. The Service is concerned that high levels of dust from quarry operations on San Bruno Mountain may adversely affect the butterflies in areas immediately bordering this location.

Issue 7: One commenter claimed that the three species are being used by environmentalists as "roadblocks" to economic uses of private property. Another commenter stated that public lands should be managed for productivity and sustainability and that the economic impact, customs, traditions and culture of local communities should be considered during the listing process.

Service Response: Under section 4(a)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions" (H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982)). As further stated in the legislative history, "* * * economic considerations have no relevance to determinations regarding the status of species * * *." Because the Service is specifically precluded from considering economic impacts, either positive or negative, in a decision on listing any species, the Service does not evaluate or consider the economic impacts of listing these species.

Section 2(a)(3) of the Act recognizes that species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. The Service recognizes that the species included in this listing have esthetic, ecological, education, historical and scientific value.

Issue 8: One commenter thought it would be prudent for the Service to indicate the percentage of Alameda whipsnake habitat lost since 1971, the year the species was listed as "threatened" under the California Endangered Species Act, to document the level of protection afforded the species with State listing.

Service Response: The Service mapped Alameda whipsnake habitat that was extant in 1970 and identified areas where conversion and encroachment into potential habitat had occurred from then until 1996. To the extent determinable from aerial photographs and slides, projects impacting habitat during the 1970–1996 period were mapped. Such projects included road construction and widening, subdivision construction and expansion, and brush removal. Approximately 25 projects in Alameda County and 41 projects in Contra Costa County either converted or encroached upon chaparral in the 1970–1996 period. The extent of conversion and encroachment ranged from approximately 0.8 to 2.0 ha (2 to 5 ac) to approximately 8 to 20 ha (20 to 50 ac) for larger projects. Freeway construction and residential and commercial development have added dispersal barriers measuring up to 4.8 km (3.0 mi) wide. The Service's conclusion, from this review, was that regional development has significantly fragmented the remaining Alameda whipsnake populations and that natural genetic exchange between the five remaining populations is unlikely.

A precise assessment of the amount of habitat loss is difficult, because Alameda whipsnakes are known to use adjacent habitats at a high level (McGinnis 1992), and may be found at distances up to approximately 500 meters (1,640 feet) from scrub and chaparral habitat and utilize riparian habitat as a corridor (Swaim 1994). The substantial amount of habitat loss documented by the Service brings into question the effectiveness of current regulatory protection which is further discussed under factor D in the "Summary of Factors" section of this rule.

The issues raised in comments received during the 30 days that the comment period was reopened and the Service's responses to these issues are summarized as follows:

Issue 9: Several commenters noted the benefits of fuels management for snake habitat maintenance and public safety. One commenter noted the difficulty in conducting prescribed burns near residential communities. Another commenter recommended that the Service explicitly recognize the tradeoff between protecting individual snakes from mortality during fuels management and the benefits of maintaining long-term suitable habitat conditions. The commenter further noted that restrictions on fuels treatment activities should meet appropriate standards for reasonableness, given the critical need to provide for public safety.

Service Response: The subject of the effects of fire suppression and general fire management practices on the Alameda whipsnake and its habitat was a factor in deciding to reopen the comment period. The Service is concerned that fire suppression has had, and continues to have, negative impacts on habitat for the Alameda whipsnake. Fire suppression is discussed in depth under factor E of the "Summary of Factors" section of this rule. The Service also recognizes the need for efficient fire control in urban areas and would work with appropriate management agencies to develop fuels management plans that protect the public while affording the maximum practicable conservation benefit to Alameda whipsnakes.

Issue 10: One commenter expressed concern that the proposed rule to list these taxa may not have complied with the regulatory policies announced by the Department of the Interior on July 1, 1994. In particular, the commenter expressed concern that the listing proposal had not been subjected to peer review, as required by the Notice of Policy Statement published in the **Federal Register** on that date (59 FR 34270).

Service Response: The proposed rule to list these taxa was published on February 4, 1994 (59 FR 5377), predating the Service's formal policy on peer review made final on July 1, 1994 (59 FR 34270). However, the list of interested parties to whom the Service sent the proposed rule for comment included several experts on the life history, taxonomy, and ecology of the taxa proposed for listing. During the reopened comment period discussed above in the "Previous Federal Actions" section, the opinions of three independent specialists were solicited in accordance with this policy. No responses were received from these specialists.

Issue 11: One commenter noted that because California has experienced severe fires during the past several years, fire suppression may not be a threat to the Alameda whipsnake.

Service Response: Several areas of California, particularly southern California, have recently experienced wildfires. Within the range of the Alameda whipsnake, however, there have been few large wildfires within the last 10 years with the notable exception of the Oakland Hills firestorm of 1991. Although this fire occurred within the range of the species, the burned areas were mostly located in developed portions of the Oakland Hills that did not contain habitat suitable for the whipsnake. Fire suppression practices that do not include controlled burning can lead to severe fires that damage both urban and wildlife areas, whereas controlled burning can benefit both wildlife habitat and reduce the risk of catastrophes such as the 1991 fire. Fire suppression is discussed in detail under factor E of the "Summary of Factors" section of this rule.

Issue 12: One commenter was concerned over the method by which information was gathered on private property.

Service Response: The Service is not aware of any information that was gathered without the permission of the property owner. Information was obtained from Environmental Impact Reports or Statements that are required under the California Environmental Quality Act (CEQA) or National Environmental Protection Act, reports and data summaries prepared by State agencies and independent scientists, information submitted during public comment periods, and other information published in the scientific journals or available in student dissertations.

Issue 13: One commenter stated that the Service did not use sound scientific information as indicated by its use of phrases such as "may be threatened."

Service Response: Section 4(b)(a)(A) of the Act requires that listing determinations be based on the best scientific and commercial data available. The Service has relied on the best available scientific and commercial data in making this listing determination. The data upon which this determination is based were collected by the petitioners and qualified scientists. The phrase "may be threatened," in particular, is used to indicate that a potential threat may become an actual one in the foreseeable future. The Service believes that it is sound and responsible science to acknowledge a lack of absolute certainty when that is the case.

Issue 14: One commenter asked what scientific information was used to determine what constitutes "inappropriate grazing levels."

Service Response: The final rule includes livestock grazing as one of many factors affecting the species, and ranks it as a contributing factor, rather than as a major factor. Indeed, this final rule states that some grazing could help to keep other plants from outcompeting the butterflies' host plants. Studies on Alameda whipsnakes that have been equipped with radiotelemetry units have shown that the whipsnake forages in grassland between stands of scrub. Livestock grazing that significantly reduces or eliminates plant cover in these grasslands would lead to an increased loss of snakes and their prey to other predators. The Service believes that livestock grazing, if appropriately managed, can benefit both the Alameda whipsnake and the two species of butterflies.

Issue 15: One commenter stated that involvement of State and local governments, as well as all types of land users, should be required prior to listing a species.

Service Response: To solicit comments from the public, a notice of the February 4, 1994, proposed rule (59 FR 5377) was published in the *San Francisco Chronicle* and *San Mateo Times* on February 8, 1994, and in the *Oakland Tribune* on February 10, 1994. In addition, appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. On November 1, 1996 (61 FR 56501), the Service reopened for public comment the proposed listing of the three species with a closing date of December 2, 1996, to allow further comments from the public.

Issue 16: One commenter stated that the expense of amending the San Bruno Mountain HCP to permit incidental take of callippe silverspot butterflies would preclude other habitat management activities.

Service Response: The Service will work with the permit holders involved in the San Bruno Mountain HCP to ensure that the process of amending their Section 10(a)(1)(B) permit will not cause undue diversion of funding from other habitat management activities.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the callippe silverspot butterfly (*Speyeria callippe callippe*) and Behren's silverspot butterfly (*Speyeria zerene behrensii*) should be classified as endangered species, and the Alameda whipsnake (*Masticophis lateralis euryxanthus*) should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the callippe silverspot butterfly (*Speyeria callippe callippe*), Behren's silverspot butterfly (*Speyeria zerene behrensii*), and Alameda whipsnake (*Masticophis lateralis euryxanthus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The primary causes of the decline in the callippe silverspot butterfly and

Behren's silverspot butterfly is the loss and degradation of habitat from human activities, including off-road vehicle use, trampling by hikers and equestrians, inappropriate levels of livestock grazing, and invasive exotic vegetation. Off-road vehicles and uncontrolled off-trail foot traffic pose a threat to the colonies of the two butterfly species. These activities could harass, injure, or kill individuals of the two species by trampling or crushing the early life stages, the foodplants of the larvae, or the adults' nectar sources. The Behren's silverspot butterfly also is imperiled by residential and commercial development.

The callippe silverspot butterfly was once considerably more widespread in the San Francisco Bay area, and at least five populations of this species have been eliminated by urban development and other causes. The species was known historically from 14 sites in San Mateo, Alameda, Sonoma, and Solano counties, only 2 of which are still extant. One of the known extant populations of the callippe silverspot butterfly is located in a city park in Alameda County. This colony is small and likely to be imperiled by anthropogenic and natural causes (S. Mattoon, *in litt.*, November 22, 1992). The population at San Bruno Mountain in San Mateo County is largely protected against further loss of habitat, which will remain undeveloped in perpetuity by virtue of the San Bruno Mountain HCP (Thomas Reid Associates 1982; S. Mattoon, *in litt.*, November 22, 1992). However, overcollection of specimens by lepidopterists at San Bruno Mountain and at sites where hybrids can be found in Solano County continues to pose a threat (see Factor B).

Behren's silverspot butterfly has been extirpated from a significant portion of its former range, which extended from the mouth of the Russian River in Sonoma County north to southern Mendocino County. One of the six historically known colonies was eliminated by a housing development (S. Mattoon, *in litt.*, August 7, 1989). Currently, this species is known from a single locality near Point Arena in Mendocino County (Sally DeBecker, Pacific Gas and Electric, *in litt.*, 1990). The site is subject to grazing by livestock. Although no development plans have been proposed for this site, urban development is occurring in the vicinity. No specimens have been observed at the sites of the other historically known colonies since 1987.

The current threats to the habitat of the Alameda whipsnake are urban development and associated impacts due to increased population densities, inappropriate grazing practices, and alteration of suitable habitat from fire suppression (see factor E below for a full discussion of the effects of fire suppression on Alameda whipsnake habitat). The central and western portions of Alameda and Contra Costa counties are highly urbanized and continue to be subject to increased urbanization. Habitat fragmentation from urban development and associated highway and road construction has led to isolation of the five populations by wholly preventing or severely reducing movement of individuals between areas of suitable habitat as described earlier in this rule. These activities have also reduced the total amount of suitable habitat available for the Alameda whipsnake. Swaim (1994) listed 55 historical localities for this species, of which only 25 are considered to be extant.

McGinnis (1992) documented colonies scattered throughout the range of the snake that are likely to be adversely impacted by various residential developments. In addition, the Service has identified numerous housing developments that threaten the Alameda whipsnake populations. Some housing developments in Alameda County will further fragment habitat areas of the Hayward-Pleasanton Ridge population. These developments include the proposed 200 ha (500 ac) Schaefer Ranch Project with approximately 474 homes, and the 58 ha (146 ac) Hansen Ranch Project, both of which could potentially impact suitable habitat for the Alameda whipsnake. The Schaefer Ranch contains suitable habitat and the adjacent Hansen Ranch is in close proximity to an Alameda whipsnake sighting (California Department of Fish and Game (CDFG), *in litt.*, February 13, 1998). In addition, the proposed dedication of approximately 64 ha (161 ac) of the Schaefer Ranch project to the EBRPD will increase public use and associated recreational impacts to habitat of the Alameda whipsnake. The proximity of urban development will also increase the likelihood of predation from domestic and feral cats to EBRPD lands that are otherwise protected from development (DelVecchio 1997) (see factor C below).

Two other proposed projects to the south affect the Hayward-Pleasanton Ridge population. The 632 ha (1,580 ac) Hayward 1900 project and the 156 ha (391 ac) Bailey Ranch are adjacent housing developments along Walpert Ridge in Hayward (Planning Collaborative 1995, City of Hayward 1996). Both the Walpert Ridge and the Bailey Ranch sites have habitat occupied by the Alameda whipsnake (McGinnis 1992). In addition, contiguous habitat exists between known occupied habitat to the west and east of the Bailey Ranch and Hayward 1900 development projects. Although Bailey Ranch has proposed mitigation to offset impacts to the Alameda whipsnake, both developments will further impact and fragment the Hayward-Pleasanton Ridge population. Hayward 1900 has proposed open space but is planning to construct trails and vineyards in the proposed open space (Planning Collaborative 1995). Vineyards, associated agricultural land uses, and trails could eliminate and fragment whipsnake habitat and further restrict the movement of snakes.

Within the Oakland-Las Trampas population, several proposed developments may impact Alameda whipsnakes and their habitat. Several of these proposed projects are located contiguous to the east side of Las Trampas Regional Wilderness and contain habitat known to be occupied by Alameda whipsnakes. The proposed 9 ha (22 ac) Rossmoor Neighborhood Nine Project would result in the direct loss of snake habitat and could potentially impact mitigation habitat previously provided to offset impacts from an earlier phase of the project (CDFG, *in litt.*, November 25, 1995). The proposed expansion of the Oakland Zoo could potentially impact suitable snake habitat (K. Swaim and S. McGinnis, Hayward State University, pers. comm., 1996). Some of these projects have, or may, set aside suitable habitat for the Alameda whipsnake, preserved either as open space or as mitigation for habitat losses associated with the project. Although these proposed developments may mitigate for impacts to Alameda whipsnakes, the undeveloped hillsides that support chaparral growth will be subject to increased fire suppression due to the close proximity of urban development. This fire suppression will result in habitat degradation and an increased probability of catastrophic wildfires as discussed under factor E below.

The Mount Diablo-Black Hills, Tilden-Briones, and Sunol-Cedar populations are indirectly threatened by urban development. The Mount Diablo-Black Hills population will be adversely affected by the urban expansion of the cities of Pittsburg, Oakley, Brentwood, and Antioch. These cities are projected to expand by over 40,000 units, which will result in increased visitation and associated impacts to nearby EBRPD parks and Mt. Diablo State Park. Specific developments such as the 115-unit Clayton Ranch (412 ha (1,030 ac)) and 5,200-unit Cowell Ranch (1,709 ha (4,272 ac)) will expose the eastern flank of the Mt. Diablo-Black Hills population to these indirect impacts of urbanization. The Mt. Diablo-Black Hills population is also subject to increased urban impacts on the south side from the proposed Dougherty Valley (2,400 ha (6,000 ac)) and Tassajara Valley (1,600 ha, (4,000 ac)) projects, which total over 17,000 units. The Tilden-Briones population will be subject to increased population pressure from the north by the approved 800-unit Franklin Canyon (392 ha (980 ac)) projects (Mooers, 1996). Additional developments are approved or proposed adjacent to the Sunol-Cedar population in the rapidly growing areas near Dublin and Pleasanton in Alameda County. These projects will increase human disturbance from recreational use on regional and state parks, and as urban development encroaches into the current open space buffers between existing developments and whipsnake habitat on public lands, the threat of predation and harassment from domestic and feral cats increases (Coleman *et al.* 1997). Predation threats are discussed in more detail under factor C below.

The past and ongoing fragmentation of Alameda whipsnake habitat makes some populations of this species more vulnerable to extinction. The Tilden-Briones and Oakland-Las Trampas populations occupy a narrow, interrupted band of ridgetop chaparral dividing the heavily urbanized Oakland/Berkeley region to the west from the rapidly urbanizing Highway 680 corridor to the east (USGS 1997). Habitat patches with high ratios of edge to interior are known to provide less value for some species than round or square patches provide (Jimerson and Hoover 1991; Saunders *et al.* 1991). In fragmented habitats, species most prone to extinction are those that depend on native vegetation, require combinations of different habitat types, require large territories, and exist at low densities (Saunders *et al.* 1991). Alameda whipsnakes have been shown to be associated with native Diablan sage scrub, to forage in adjacent grasslands, and to migrate along riparian corridors. While the home range of the Alameda whipsnake, estimated to vary between 2 and 9 ha (5 and 20 ac), is not large compared to that of some animals, the narrow habitats of the Tilden-Briones and Oakland-Las Trampas populations, less than 1.6 km (1 mi) wide in some places, may impose a significant constraint on the species. Few individuals have been captured during trapping studies conducted over thousands of trap days, indicating that Alameda whipsnakes may be sparse even in suitable habitat (Swaim 1994). These factors may combine to cause Alameda whipsnakes to be vulnerable to extinction in small habitat patches resulting from habitat fragmentation.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The callippe silverspot butterfly and Behren's silverspot butterfly are highly prized by insect collectors. Although no studies specifically document the impact of the removal of individuals on natural populations of either butterfly species, based on studies of another endangered nymphalid butterfly (Gall, 1984a and 1984b) and a lycaenid butterfly (Duffey 1968), both butterflies are vulnerable to impacts from collection due to their isolated, possibly small populations. Butterfly collectors have been observed on San Bruno Mountain (S. Stern, *in litt.*, June 21, 1994). Some of these specimens are being traded for other butterfly taxa or are being held by the collectors in anticipation of their greater value should the species be listed. The Service also is aware of reports that Behren's silverspot butterfly is actively sought by amateur lepidopterists. Both collecting from small colonies and scientific studies that repeatedly handle and mark individuals (particularly of females and in years of low abundance) could seriously damage the populations through loss of individuals and the resulting loss of genetic variability within the population (Singer and Wedlake 1981, Gall 1984b, Murphy 1988). Collection of females dispersing from a colony also can reduce the probability that new colonies will be founded. Collectors pose a threat because they may be unable to recognize when they are depleting butterfly colonies below the thresholds of survival or recovery, especially when they lack appropriate biological training or when they visit the area for a short period of time (Collins and Morris 1985).

An extensive commercial trade has been documented for the callippe silverspot butterfly and the Behren's silverspot butterfly, as well as for other imperiled and rare butterflies (U.S. Attorney's Office 1994, *United States v. Richard J. Skalski, Thomas W. Kral, and Marc L. Grinnell, Case No. CR932013, 1993*). The Service is concerned that issuance of a final rule for these animals that is not effective immediately upon publication will result in greatly intensified level of collecting and commercial trade in the callippe silverspot butterfly and Behren's silverspot butterfly. Because of the immediate threat posed by these on-going activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

The Alameda whipsnake does not appear to be particularly popular among reptile collectors; however, Federal listing could raise the value of the animals within reptilian trade markets and increase the threat of unauthorized collection above current levels (K. McCloud, U.S. Fish and Wildlife Service, Law Enforcement Division, pers. comm., 1994 and 1996). Even limited interest in the species among reptile collectors could pose a serious threat to smaller populations of the snake.

C. Disease or Predation

It appears that predation or disease do not pose a significant threat to the callippe silverspot butterfly or Behren's silverspot butterfly. The potential impact of disease on the Alameda whipsnake is unknown.

A number of native and exotic mammals and birds are known or likely to be predators of the Alameda whipsnake including the California kingsnake (*Lampropeltis getula californiae*), raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), opossum (*Didelphis virginianus*), coyote (*Canis latrans*), gray fox (*Vulpes cinereoargenteus*), and hawk (*Buteo* species). Urbanization can lead to increased numbers and access to habitat by native predators, leading to increased levels of predation on native fauna (Goodrich and Buskirk 1995). The recent introduction of the red fox (*Vulpes vulpes*), a species not native to this region of the State, poses an additional threat to the Alameda whipsnake. In situations where Alameda whipsnake habitat has become fragmented, isolated, and otherwise degraded by human activities, increased predatory pressure may become excessive, especially where alien species, such as rats (*Rattus* species), feral pigs (*Sus scrofa*), and feral and domestic cats (*Felis domestica*) and dogs (*Canis familiaris*) are introduced. These additional threats become particularly acute where urban development immediately abuts Alameda whipsnake habitat. A growing movement to maintain feral cats in parklands is an additional potential

threats from predation on wildlife (Coleman *et al.* 1997, Roberto 1995). The EBRPD is currently facing public pressure to allow private individuals to maintain feral cats on park lands (DelVecchio 1997). Although the actual impact of predation on Alameda whipsnakes under such situations has not been studied, feral cats are know to prey on reptiles, including yellow racers (Hubbs 1951), a fast, diurnal snake closely related to the Alameda whipsnake (Stebbins 1985). Predation pressure on Alameda whipsnakes may increase from maintained colonies of feral cats in Alameda whipsnake habitat.

D. The Inadequacy of Existing Regulatory Mechanisms

The callippe silverspot butterfly and Behren's silverspot butterfly are not specifically protected under any Federal, State or local law. The California Endangered Species Act (CESA) does not provide protection to insects (sections 2062, 2067 and 2068, Fish and Game Code). Although the San Bruno Mountain HCP provides protection from habitat destruction, butterfly collectors have been observed on San Bruno Mountain (S. Stern, *in litt.*, June 21, 1994) and unauthorized collection remains an ongoing threat. The extent of illegal trade in these and other butterfly species and the potential threat poaching poses to small populations is discussed in detail under factor B above.

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impact of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency. The CEQA provides that, when overriding social and economic considerations can be demonstrated, project proposals may go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to the point of insignificance. In addition, proposed revisions to CEQA guidelines, if made final, may weaken protections for threatened, endangered, and other sensitive species.

The CEQA and CESA afford the Alameda whipsnake some conservation benefits. The animal was listed as a threatened species by the State of California in 1971 (CDFG 1987). Although these State laws provide a measure of protection to the species, resulting in the formulation of mitigation measures to reduce or offset impacts for projects proposed in certain areas of Alameda whipsnake habitat, these laws are not adequate to protect the species in all cases. Further, only State, and not Federal, agencies are required to consult under CESA. In response to a comment on the proposed rule, the Service mapped Alameda whipsnake habitat that was extant in 1970 and identified areas where conversion and encroachment into suitable habitat has occurred since the State listed the Alameda whipsnake as threatened in 1971. Based upon this analysis, the Service has determined that approximately 25 projects in Alameda County, and approximately 41 projects in Contra Costa County, either converted or encroached upon suitable habitat from 1970 to 1996. The extent of conversion and encroachment ranged from approximately 2 to 5 ac to approximately 20 to 50 ac for larger projects. Although some of these projects were required to set aside and preserve suitable habitat for the Alameda whipsnake as open space or as mitigation for habitat losses associated with the project, many of these preserved areas remain threatened by fire suppression practices and catastrophic wildfire for the reasons identified and discussed in factor E below.

With appropriate management, areas of open space managed by the EBRPD, East Bay Municipal Utilities District (EBMUD), and Mount Diablo State Park, conservation strategies for Alameda whipsnake may be developed. Although these public lands include substantial areas occupied by the whipsnake, the quality of the habitat continues to decline because of surrounding urban encroachment. Urban encroachment also exacerbates the habitat fragmentation problems, and greatly restricts the ability of these agencies to conduct effective fire management practices that have the potential to sustain suitable habitat for the Alameda whipsnake and prevent catastrophic wildfires.

E. Other Natural or Man-Made Factors Affecting Their Continued Existence

The use of insecticides would threaten the callippe silverspot butterfly and the Behren's silverspot butterfly if use occurred in proximity to occupied habitat. Silverspot butterfly larvae are extremely sensitive to pesticides, and even the accumulation of runoff in the soil after spraying has proven lethal to the larvae of members of the genus *Speyeria* (Mattoon *et al.* 1971). However, the Service is not aware of plans to apply insecticides or pesticides on or near the habitat occupied by either of these two species.

Livestock grazing could threaten the two butterfly species if it occurs at harmful levels, such that the vegetation is overgrazed and the foodplants and nectar sources of these butterflies are eliminated or greatly reduced in abundance. Grazing animals can also trample the larval foodplants and adult nectar sources. Significant reduction or loss of these food sources could threaten the population viability of these butterflies. However, some livestock grazing could keep other plants from outcompeting the butterflies' host plants.

McGinnis (1992) has suggested that grazing has impacted the habitat of the Alameda whipsnake in many areas east of the Coast Range. Livestock grazing that significantly reduces or eliminates shrub and grass cover can be detrimental to this snake. Many snake species, including the Alameda whipsnake, avoid such open areas because of the increased danger from predators and the lack of prey (McGinnis 1992).

The invasion of California's native grassland and coastal prairie by alien plants has adversely affected native flora and fauna. Numerous non-native species have invaded these plant communities (Heady 1988, Heady *et al.* 1988). Introduced alien plants, such as iceplant (*Carprobrotus* sp.), gum trees (*Eucalyptus* spp.), and gorse (*Ulex europaeus*), often outcompete and supplant native vegetation. In the absence of control and eradication programs, invasive alien plants may eliminate the remaining native plants, including the host plants of Behren's and callippe silverspot butterflies. Adequate levels of *Viola* species are especially critical for the long term survival of populations of these butterflies (S. Mattoon, *in litt.*, August 4, 1989, and November 22, 1992). Non-native plants may also replace native vegetation in habitat for the Alameda whipsnake, potentially degrading the habitat and reducing the prey base. Radiotelemetry data indicate that Alameda whipsnakes tend to avoid dense stands of eucalyptus (Swaim 1994).

Periodic fires can be an important factor in maintaining the grassland and coastal prairie habitat of the callippe silverspot butterfly and the Behren's silverspot butterfly. Without fire, succession will eliminate the foodplants of the larvae of the two butterflies (Orsak 1980, Hammond and McCorkle 1984). Periodic cool, fast-moving fires appear important for the maintenance of the habitat of these two species. Dead grass and other vegetation from previous years may not decay quickly enough and may gradually accumulate to form a thick layer of thatch that smothers violets. The larvae of the silverspot butterflies may survive fires that move rapidly through grassland habitats, whereas hotter, slow-moving brush and woodland fires may kill them (Orsak 1980, Hammond and McCorkle 1984). In addition, under windy conditions, fast-moving grassland fires burn in patches that leave "islands" of unburned habitat where any butterflies present are not harmed.

The Alameda whipsnake is threatened directly and indirectly by the effects of fire suppression. Fire suppression exacerbates the effects of wildfires through the buildup of fuel (underbrush and woody debris), creating conditions for slow-moving, hot fires as described above. The highest intensity fires occur in the summer and early fall when accumulated fuel is abundant and dry. During this period, hatchling and adult Alameda whipsnakes are aboveground (Swaim 1994), and populations are likely to sustain the heaviest losses from fires. The development of a closed scrub canopy also results in a buildup of flammable fuels over time (Parker 1987, Rundel 1987). Fire suppression has led to the encroachment of nonindigenous and ornamental trees into grassland habitats, further increasing flammable fuel loads in and around Alameda whipsnake habitat.

Fire suppression can alter the structure of snake habitat by allowing plants to establish a closed canopy (Parker 1987) that will tend to create relatively cool conditions. Alameda whipsnakes have a higher mean active body temperature (33.4 degrees centigrade) and a higher degree of body temperature stability (stenothermy) than has been documented in any other species of snake under natural conditions (Swaim 1994). Alameda whipsnakes apparently can maintain this high, stable body temperature by using open and partially open and/or low growing shrub communities that provide cover from predators while providing a mosaic of sunny and shady areas between which Alameda whipsnakes can move to regulate their body temperatures (Swaim 1994). Tall, shaded stands of vegetation, such as poison oak (*Toxicodendron diversilobum*), coyote brush (*Baccharis pilularis*), or other vegetation may not provide the optimum temperature gradient for Alameda whipsnakes. Survey data show that Alameda whipsnakes are less likely to be found where these plant species create a closed canopy (Swaim 1994).

In addition, many of the native coastal scrub and chaparral plant species require periodic fires to stimulate new sprouting, seedling recruitment, and seed dispersal (Parker 1987; Keeley 1987, 1992). The natural fire frequency necessary to provide this stimulus in this habitat type is debated by scientists but ranges from 10 to 30 years (Keeley and Keeley 1987, Rundel 1987). Therefore, depending on the rate of fuel accumulation, prescribed burns can be conducted in areas where fires have been suppressed with a frequency of 10 to 30 years (J. Ferreira, CDPR, pers. comm. 1996).

The California Department of Forestry and Fire Protection (CDFFP) has primary authority for wildfire management in the State of California. Where joint jurisdiction exists, such as with regional or State park lands, a memorandum of understanding (MOU) is often developed. Through these MOUs, consideration of cultural, esthetic, and natural resources, can be addressed during planning and implementation of wildfire management. However, CDFFP has the final decision on wildfire management. The policy of the CDFFP for unprescribed fires, such as those resulting from lightning strikes, is to put them out immediately (B. Harrington, CDFFP, pers. comm. 1996). Similarly, while CDFFP is engaging in some prescribed burn programs, they remain hesitant to fully endorse prescribed burning, especially where there is an urban-parkland interface (CDFFP 1989; J. Di Donato, EBRPD, pers. comm. 1996).

The CDPR has management responsibilities for Mount Diablo State Park, where a considerable portion of the suitable whipsnake habitat occurs. Residential development has occurred around most of the perimeter of the Park (J. Ferreira, pers. comm. 1996). The urban-parkland interface has necessitated that CDPR, with CDFFP, develop and implement a wildfire management plan and program. According to a MOU with CDPR, the CDFFP is the designated lead agency on fire management in Mount Diablo State Park and, therefore, has the final decision on how to manage each fire on CDPR lands (CDPR and CDFFP 1995). The CDPR drafted the *Mount Diablo Wildfire Management Plan* for the Park in 1987. This plan originally sought to reduce the high levels of livestock grazing on parklands to an "interpretive level" to manage more successfully for wildlife values (J. Ferreira, pers. comm. 1996). Local ranchers who grazed cattle on or adjacent to parklands were opposed to this plan and gained the support of local fire agencies to continue grazing because grazing was seen as a form of fire management (J. Ferreira, pers. comm. 1996).

In 1995, grazing pressure was significantly reduced and CDPR took a new approach in fire management planning by revising the *Mount Diablo Wildfire Management Plan*. The revised plan was developed in coordination with CDFFP and outlines presuppression, suppression, and fire management programs (CDPR and CDFFP 1995). These programs identify areas for prescribed burns, fire breaks to be maintained, and unique cultural resources, rare and endangered plants, and structures. Rare and endangered animal species (including the Alameda whipsnake) are not specifically identified in the plan. The ultimate decision on "initial attack" of any given fire occurrence still lies with CDFFP, which generally prefers to suppress fires on Mount Diablo. In addition, CDFFP has been concerned about conducting prescribed burns due to the proximity of the urban-parkland interface (J. Ferreira, pers. comm., 1996).

Encroaching urban development has necessitated the implementation of *rigorous* fire suppression practices in and around suitable habitat areas for the Alameda whipsnake by land management agencies to protect people and property. The EBRPD guidelines state that opportunities for prescribed burning on their lands is limited because of the urban-parkland interface and the risk of the fire escaping control lines (EBRPD 1992). Another obstacle the regional climatic conditions required to conduct prescribed burning safely. Although the EBRPD has developed prescribed burning plans and strategies to manage their lands, implementation of these plans has been

hindered by the close proximity of adjacent residential and commercial development areas (J. Di Donato, pers. comm., 1996). Although the EBRPD is in the process of updating their prescribed burn program in response to the 1991 Oakland Hills firestorm, the public does not fully endorse prescribed burning (EBRPD 1995).

The breeding of closely related individuals can cause genetic problems in small populations, particularly the expression of deleterious genes (known as inbreeding depression). Both the callippe silverspot butterfly and the Behren's silverspot butterfly exist only as very small, isolated populations (S. Mattoon, *in litt.*, August 4, 1989, and November 22, 1992). Alameda whipsnakes tend to be relatively rare even in suitable habitat as is indicated by trapping studies that show low capture rates and relatively high recapture rates (about 3 captures, 1 recapture per 1,000 trap days) (Swaim 1994). Individuals and populations possessing deleterious genetic material are less able to adapt to changes in environmental conditions, even relatively minor changes. Further, small populations are vulnerable to the effects of genetic drift (the loss of genetic variability). This phenomenon also reduces the ability of individuals and populations to successfully respond to environmental stresses. Overall, these factors influence the survivability of smaller, genetically isolated populations of each of the three species listed herein.

The callippe silverspot butterfly, Behren's silverspot butterfly, and the Alameda whipsnake are all vulnerable to the effects of habitat fragmentation. Subdivision of natural land into smaller blocks of suitable habitat is often the result of human activities such as urban development, road construction, fire management policies, and inappropriate livestock grazing practices. Further reduction of population size and genetic interchange among populations through isolation, genetic drift, and inbreeding depression, may result in less vigorous and adaptable populations of these three species listed herein. Small, isolated populations are vulnerable to extinction from random fluctuations in population size or variations in population characteristics (e.g., sex ratios) caused by annual weather patterns, food availability, and other factors. Because most of the populations of these species are isolated from other conspecific populations, natural recolonization from other populations is unlikely or impossible, and the vulnerability of each population to natural events is high.

An additional threat to the San Bruno Mountain population of the callippe silverspot butterfly is the high level of dust from quarry operations in the vicinity. Adult and early stages of the taxon may be prone to injury and mortality from dust because their respiratory apparatus (spiracles) are easily clogged.

The Service has carefully assessed the best scientific and commercial information regarding past, present, and future threats faced by these species in determining this final rule. Based on this evaluation, the preferred action is to list the callippe silverspot butterfly and Behren's silverspot butterfly as endangered species, and the Alameda whipsnake as a threatened species. The current range restrictions of these species make them increasingly vulnerable to threats described above under factors A through E.

Urban development threatens both the callippe silverspot butterfly and Behren's silverspot butterfly. One of the two known extant colonies of the callippe silverspot butterfly is imminently imperiled, and both colonies are threatened by overcollection. The single known population of Behren's silverspot butterfly is similarly threatened. Available habitat and population levels are depleted to the extent that these butterflies are near the brink of extinction. Because the callippe silverspot butterfly and Behren's silverspot butterfly are in danger of extinction throughout all or a significant portion of their ranges, these species fit the definition of endangered as defined by the Act.

All five remaining populations of the Alameda whipsnake are threatened by a variety of factors. Each of these populations consist of several to numerous subpopulations with varying degrees of connectivity between them. In the western portion of the species' range, the Tilden-Briones population is threatened by a high potential for catastrophic wildfire and urban development. However, the remaining habitat, regional parklands, and municipal watersheds in this area overlap to the extent that a regional preserve may be possible. The Oakland-Las Trampas population is threatened by a high potential for catastrophic wildfire and the effects of habitat fragmentation and urban development. The Hayward-Pleasanton Ridge population is the most susceptible to extirpation. This population is scattered in distribution and is, therefore, more vulnerable to the effects of development and subsequent habitat fragmentation. In the eastern portion of the species' range, the Mount Diablo-Black Hills population is threatened by a high potential for catastrophic wildfire, development and its associated impacts, and inappropriate grazing practices. Because of the location of public lands and the potential for improved fire and grazing management on parklands, this population is a good candidate for recovery, if urbanization threats can be controlled. The Sunol-Cedar Mountain population is threatened by development and inappropriate grazing practices. Overall, the Oakland-Las Trampas and Hayward-Pleasanton Ridge populations are the most immediately imperiled with habitat fragmentation becoming prevalent enough to compromise their long-term viability.

In the proposed rule (59 FR 5377), the Service proposed to list the Alameda whipsnake as endangered based primarily on the threats of urbanization and invasive alien vegetation. The Service has reevaluated the available information, including information provided during the public comment period, regarding threats to the species. Urbanization and the negative effects of structural changes in both the native and alien vegetative component of whipsnake habitat continue to threaten the survival of the Alameda whipsnake. However, these threats are not now of sufficient magnitude to create a danger of extinction throughout all, or a significant portion, of the range of the species. The Service now concludes that the failure to implement appropriate fire management practices on public lands to sustain suitable Alameda whipsnake habitat, coupled with the rate of loss of suitable habitat on private lands, make it likely that the Alameda whipsnake will become in danger of extinction throughout all, or a significant portion, of its range in the foreseeable future. Because the Alameda whipsnake is likely to become an endangered species within the foreseeable future, this species fits the definition of threatened as defined by the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use

of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Callippe Silverspot and Behren's Silverspot Butterflies

As discussed under factor B in the "Summary of Factors Affecting the Species" section above, an extensive international commercial trade has been documented to exist for butterflies in general (Collins and Morris 1985) and for threatened or endangered species of butterflies in particular, which are accorded higher value because of the formal recognition of their rarity (*United States* v. *Richard J. Skalski, Thomas W. Kral, and Marc L. Grinnell*, Case No. CR932013, 1993). This trade includes several species of the genus *Speyeria*, including the callippe silverspot butterfly which was illegally collected after the species was proposed for listing under the Act, the Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), and the Oregon silverspot butterfly (*S. zerene hippolyta*), the last two of which are listed federally subspecies that are similar in appearance to the Behren's silverspot butterfly (*S. zerene behrensii*) included in this rule (Howe 1975, Hammond 1980, McCorkle and Hammond 1988). Illegal collecting has been observed at one of the two remaining sites for the callippe silverspot butterfly (S. Stern, *in litt.*, 1994).

The Service is also aware of reports that Behren's silverspot butterfly is actively sought by collectors. The fact that this species is not yet a commodity in illegal trade is likely attributable to the lack of specific knowledge of the location of its sole remaining population. Trade in these specimens is not limited to the occasional adult butterfly, but can include dozens of individuals and hundreds of larvae (*United States* v. *Richard J. Skalski, Thomas W. Kral, and Marc L. Grinnell*, Case No. CR932013, 1993). The effects that even limited collecting can have on small populations are discussed in detail under factor B in the "Summary of Factors Affecting the Species" section above. Because of the increased value of listed species, the illicit commercial trade in the callippe silverspot butterfly and Behren's silverspot butterfly would be likely to increase upon listing. Although the San Bruno Mountain locality is purportedly known to collectors (see issue 3 under the "Summary of Comments and Recommendations" section above), this is a large area (340 ha (850 ac)) and precise maps and descriptions of critical habitat, such as those which would appear in the **Federal Register** if critical habitat was designated, are not now available to the general public. The specific localities of the two other localities of the callippe or silverspot butterflies are not well known, but they are near roads or trails and could be easily accessed by the public if precise locality information is provided.

In addition, neither the callippe silverspot butterfly nor the Behren's silverspot butterfly would receive any benefit from the designation of critical habitat beyond that provided by listing. Critical habitat only applies to activities on Federal lands and activities on private lands involving Federal authorization or funding. All known populations of these species occur on non-Federal land. The only Federal land within the historical range of Behren's silverspot butterfly is a small parcel at the U.S. Coast Guard lighthouse at Point Arena. Although this installation is in close proximity to the only known site for this species, no specific records document any historical occurrence at this site. The habitat at this site, and elsewhere within the historical range of the species, is presumed to be currently unsuitable for the species. No activity involving a Federal action currently occurs on the sole site where the species remains. Even if a future Federal project were to occur in the area, it would require consultation with the Service pursuant to section 7 of the Act before it could be implemented. Because this butterfly exists only as a single, small population, any future activity involving a Federal action that would adversely modify critical habitat, that is, would appreciably diminish the value of the critical habitat for the survival and recovery of the species, would also likely jeopardize the species' continued existence.

Colonies of the callippe silverspot butterfly are known only to exist at two sites, both of which are privately owned. The callippe silverspot butterfly was considered during the formulation of the San Bruno Mountain HCP under the provisions of a section 10(a)(1)(B) of the Act. This HCP, in which the callippe silverspot butterfly was designated as a species of concern, permanently protects approximately 92 percent of its habitat on San Bruno Mountain. The HCP also includes management activities, funded by development projects, that benefit the butterfly including annual monitoring of the colonies on the site (V. Harris, *in litt.*, 1996). Habitat for the other known population is partially protected in a city park in Alameda County. No Federal actions, authorizations, or licensing currently occurs on this site. Although there are scattered Federal landholdings throughout the historical range of the callippe silverspot butterfly, there are no historical collections of this species from any Federal lands. Because of the extensive urbanization within its historical range, no suitable habitat remains for the species other than at the two sites at which it is currently known to persist (Orsak 1980; Steiner 1990; S. Mattoon, *in litt.*, 1992). Federal agency involvement, therefore, is not likely to occur on either of the two sites at which the callippe silverspot butterfly persists. Even if a future Federal project were to occur at either site, it would require consultation with the Service pursuant to section 7 of the Act before it could be implemented. Because only two small populations of this butterfly remain, any future activity involving a Federal action that would adversely modify critical habitat, that is, would appreciably diminish the value of the critical habitat for the survival and recovery of the species, would also likely jeopardize the species' continued existence.

Critical habitat designation in areas outside of the currently occupied territory of the callippe silverspot butterfly also would serve no purpose

because these areas are highly urbanized and essentially have no practical value for the survival and recovery of the species. In addition, activities within these areas are very unlikely to involve a Federal action which would trigger section 7 consultation. Furthermore, in the unlikely event that an activity involving a Federal action is proposed in one of these areas, it is very unlikely that the Service would determine that the activity would appreciably diminish the value of the area for the survival and recovery of the species because these areas essentially have no such value to the species currently. Critical habitat designation in areas outside of the currently occupied territory of the Behren's silverspot butterfly also would serve little purpose because activities within these areas are very unlikely to involve a Federal action which would trigger section 7 consultation.

The Service finds, therefore, that designation of critical habitat for the callippe silverspot butterfly and the Behren's silverspot butterfly is not prudent because doing so would make these butterflies more vulnerable to incidents of collection further contributing to their decline. Designation of critical habitat for the callippe silverspot butterfly and the Behren's silverspot butterfly is also not prudent because it would confer no benefit to the species beyond that provided by listing.

Alameda Whipsnake

As discussed earlier, the historical range of the whipsnake has been fragmented by urbanization into five populations, each of which is effectively isolated from the others. The core of each of these five populations is comprised of relatively large expanses of public, non-Federal lands, which comprise about 80 percent of known whipsnake habitat. Although these public lands are protected from development, other threats to the whipsnake remain, including the negative effects of fire suppression on the structure of whipsnake habitat, the indirect effects of urban development (e.g., increased recreational use of the public lands, increased predation by pets, etc.), and other factors discussed in the "Summary of Factors Affecting the Species" section above. The Service is not aware of any Federal lands within the range of the Alameda whipsnake, and activities involving a Federal action are not likely to occur on the public, non-Federal lands.

Private lands comprise the other 20 percent of known whipsnake habitat. There is a remote possibility of Federal agency involvement on these lands in the form of insurance provided by the Department of Housing and Urban Development (HUD) for housing loans. Such actions within whipsnake habitat, however, are likely to be rare. In addition, urban development will only occur along the periphery of the core areas of whipsnake populations. Because of the need for an active fire management program in the form of prescribed burns to maintain the necessary habitat structure for the whipsnake, areas slated for development in this urban-wildland interface do not offer suitable long-term habitat potential for the whipsnake and, therefore, cannot be considered to be habitat essential to the conservation of the species nor habitat requiring special management considerations. Even if Federal involvement in the form of housing loans were to occur in these areas, it would require consultation with the Service pursuant to section 7 of the Act before it could be implemented. The potential for the involvement of other Federal agencies within the historical range of the Alameda whipsnake is discussed in the "Available Conservation Measures" section below.

Critical habitat designation outside of the areas where the Alameda whipsnake currently occurs also would serve no purpose because these areas are not essential for the survival and recovery of the species. The Service believes that sufficient occupied habitat remains which, if managed for greater benefits for the Alameda whipsnake, would ensure the survival and provide for the recovery of the species.

Any potential conservation benefit from designation of critical habitat for the Alameda whipsnake is undermined by the risk of overcollection. The demand for live reptiles as collectibles and exotic pets has increased rapidly in recent years and the high level of demand by reptile collectors often encourages smuggling of wild-caught specimens (U.S. Fish and Wildlife Service 1996). While the Alameda whipsnake has not been particularly popular among reptile collectors in the past, the act of listing increases the attractiveness and value of listed entities to collectors, thereby potentially increasing the threat of unauthorized collection (K. McCloud, pers. comm. 1994, 1996). The identification of localities of the whipsnake through designation of critical habitat would exacerbate the threat of overcollection because many areas in which the whipsnake occurs are readily accessible by road or public trail. The effects that even limited collecting can have on small populations are discussed in detail under factor B in the "Summary of Factors Affecting the Species" section above. Because of the likelihood for an increase in the value of a species upon listing, any current illicit commercial trade in the Alameda whipsnake would likely increase with this listing.

Because of the expected rarity of Federal agency involvement and the low conservation value of lands on which Federal involvement is most likely to occur, the Service finds that critical habitat designation is not prudent for the Alameda whipsnake due to lack of any significant benefit beyond that conferred by listing. Moreover, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this snake more vulnerable to incidents of collection further contributing to its decline. Any benefit which might be derived from the designation of critical habitat for the Alameda whipsnake is outweighed by the increased threat of collection.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires recovery actions be carried out for all listed species. The protection required of Federal agencies and prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

As noted previously, HUD may insure housing loans in areas that presently support the Alameda whipsnake. Such actions are likely to be rare but these loans would be subject to review by the Service under section 7 of the Act.

Other Federal agencies that possibly could be affected if these animals are listed would include the Army Corps of Engineers and the Department of Transportation (Federal Highways Administration). Both agencies cooperate in projects within the historical range of the Alameda whipsnake. The projects, however, are typically confined to waterways and highways both of which occur in low-lying areas that no longer provide suitable habitat for the whipsnake. Such areas are surrounded by intense urban development and are, in combination with the urban areas, the primary landscape components that have already effectively isolated the five core populations of the whipsnake. Involvement by the Army Corps of Engineers or the Federal Highway Administration in the core areas that comprise the remaining habitat for the whipsnake is highly unlikely since these areas are comprised primarily of steep mountainous terrain where projects that impact regulated wetlands, flood control projects, and highway construction projects rarely occur. No populations of the callippe silverspot butterfly, Behren's silverspot butterfly, or Alameda whipsnake are known to occur on property owned by the Federal government.

One of the two known extant populations of the callippe silverspot butterfly is protected by the San Bruno Mountain HCP (USFWS permit number PRT 2–9818). In 1982, a Section 10(a) incidental take permit was issued to the cities of Brisbane, Daly City, South San Francisco, and the County of San Mateo, for the endangered mission blue butterfly, San Bruno elfin butterfly, and San Francisco garter snake. The permit allows for the loss of animals and habitat through urban development of approximately 344 ha (850 ac) of San Bruno Mountain. The HCP permanently protects about 1,114 ha (2,752 ac) of natural habitat at this site. The conference report on the 1982 amendments to the Act indicates that Congress intended HCPs to encompass both listed and unlisted species, especially unlisted species that may later require protection. Although the callippe silverspot butterfly was not included as a "covered" species in the Section 10(a) permit, the HCP included specific provisions for the butterfly in the event it did become listed by the Service. These provisions protect 92 percent of the species' habitat at the site through various mechanisms (such as landowner obligations for land dedications, open space set-asides, mitigation measures, and habitat enhancement), implement annual monitoring of its population, and allow for adaptive management to conserve the species. However, no specific provisions were included in the HCP to protect the callippe silverspot butterfly from poachers.

The listing of the callippe silverspot butterfly, Behren's silverspot butterfly, and the Alameda whipsnake will also bring sections 5 and 6 of the Act into effect. Section 5 authorizes acquisition of lands by the Secretary of the Interior (and Secretary of Agriculture in certain cases) for the purposes of conserving endangered and threatened species. Pursuant to section 6, the Service would be able to grant funds to affected states for management actions aiding in protection and recovery of these animals.

Listing the callippe silverspot butterfly and the Behren's silverspot butterfly as endangered and the Alameda whipsnake as threatened provides for the development of recovery plans for them. Such plans will bring together State and Federal efforts for conservation of the animals. The plans will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plans will set recovery priorities and estimate costs of various tasks necessary to accomplish them. They also will describe site-specific management actions necessary to achieve conservation of the species.

Listing of the Alameda whipsnake will likely result in the increased ability of public land agencies to promote management plans that address the need to manage for Alameda whipsnakes, including, but not limited to, increased ability to conduct prescribed burns, manage predators, control feral pigs and other feral animals, regulate recreational use, and develop educational programs for the benefit of the Alameda whipsnake.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species and 17.31 for threatened species set forth a series of prohibitions and exceptions that apply to all endangered wildlife and to threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions can apply to agents of the Service and State conservation agencies.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is increase public awareness of the effect of this listing on proposed and ongoing activities within a species' range.

With respect to the callippe silverspot butterfly or Behren's silverspot butterfly, the Service believes that neither observing the species (without capture) nor light to moderate grazing of its habitat by livestock would likely result in a violation of section 9.

With respect to the callippe silverspot butterfly or Behren's silverspot butterfly, the following actions likely would be considered a violation of section 9:

(1) Capture or collection of adults or any other life history stages;

(2) Collection, damage, or destruction of foodplants (*Viola* species) or other nectar sources within the species range; and,

(3) Destruction of the species' occupied habitat by actions including, but not limited to, road, street or highway construction; subdivision construction; application of herbicides or other chemical agents; brush removal; or off-road vehicle use.

With respect to the Alameda whipsnakes, the following actions likely would be considered a violation of section 9:

(1) Unauthorized collecting or handling of whipsnakes;

(2) Destruction or degradation of occupied whipsnake habitat by actions including, but not limited to, road construction, road widening, subdivision construction, brush removal, or off-road vehicle use; and,

(3) Destruction or degradation of occupied whipsnake habitat by livestock grazing if conducted following notification by the Service that such grazing constitutes "take" of whipsnakes.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened animal species under certain circumstances. Regulations governing permits are found in 50 CFR 17.22, 17.23, and 17.32. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, to alleviate economic hardship in certain circumstances, and/or for incidental take in connection with otherwise

lawful activities. For threatened species there are also permits for zoological exhibition, educational purposes or other purposes consistent with the purposes of the Act. Further information regarding regulations and requirements for permits may be obtained from the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmeutal Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited in this rule are available upon request from the Sacramento Field Office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are Mike Westphal, Sheila Larsen and Diane Windham, Sacramento Field Office (see **ADDRESSES** section).

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following in alphabetical order under REPTILES to the List of Endangered and Threatened Wildlife:

3. Amend § 17.11(h) by adding the following in alphabetical order under INSECTS to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
Whipsnake, Alameda (=striped racer, Alameda).	*Masticophis lateralis euryxanthus.*	U.S.A. (CA)	NA	T	628	NA	NA
INSECTS							
Butterfly, Behren's silverspot.	*Speyeria zerene behrensii.*	U.S.A. (CA)	NA	E	628	NA	NA
Butterfly, callippe silverspot.	*Speyeria callippe callippe.*	U.S.A. (CA)	NA	E	628	NA	NA

Dated: November 18, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–31836 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 234
Friday, December 5, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–19]

Proposed Establishment of Class D Airspace; Fayetteville (Springdale), AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace extending upward from the surface to and including 3,800 feet mean sea level (MSL), within a 4.4-mile radius of the Northwest Arkansas Regional Airport at Fayetteville (Springdale), AR. An air traffic control tower will provide air traffic control services for pilots operating at Northwest Arkansas Regional Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Northwest Arkansas Regional Airport, Fayetteville (Springdale), AR.

DATES: Comments must be received on or before February 3, 1998.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–19, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Forth Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 97–ASW–19." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class D airspace, controlled airspace extending upward from the surface to and including 3,800 feet MSL, at Northwest Arkansas Regional Airport, Fayetteville (Springdale), AR. The Northwest Arkansas Regional Airport is a new airport and provides service to the Fayetteville, Springdale, and Rogers, AR, area. An air traffic control tower at the airport will provide air traffic control services for aircraft operating at the airport, and the FAA anticipates that it will be commissioned on or about August 13, 1998. The intended effect of this proposal is to provide adequate Class D airspace for aircraft operating in the vicinity of Northwest Arkansas Regional Airport, Fayetteville (Springdale), AR.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposers to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW AR D Fayetteville (Springdale), Northwest Arkansas Regional Airport, AR [New]

Fayetteville (Springdale), Northwest Arkansas Regional Airport, AR
(Lat. 36°16'55"N., long. 094°18'25"W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.4-mile radius of Northwest Arkansas Regional Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on November 5, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–31929 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–04]

Proposed Establishment of Class E Airspace; Poplar, MT, and Revision of Class E Airspace, Wolf Point, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would establish Class E Airspace at Poplar, MT and revise Wolf Point, MT Class E 1,200-foot airspace. The development of a new Standard Instrument Approach Procedure (SIAP) at the Poplar Airport, Poplar, MT, utilizing the Global Positioning System (GPS) has made this proposition necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–04, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–04, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–04." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to establish Class E airspace at Poplar, MT and revise Class E airspace at Wolf Point, MT, in order to fully encircle the GPS Runway 9 SIAP to the Poplar Airport, Poplar, MT. This proposal would make a 700-foot Class E area within a 9.1 mile radius around the Poplar Airport while also amending adjacent 1200-foot Class E airspace at Wolf Point that would fully encompass the holding procedures associated with the Poplar Airport SIAP. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe, efficient use of the navigable airspace while protecting for safe flight operations under IFR at the Poplar Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Poplar, MT [New]

Poplar Airport, MT
(Lat. 48°07'00"N, long. 105°11'15"W)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of the Poplar, MT, airport.

* * * * *

ANM MT E5 Wolf Point, MT [Revised]

Wolf Point, L M Clayton Airport, MT
(Lat. 48°05'67"N, long. 105°34'50"W)
Wolf Point NDB
(Lat. 48°06'27"N, long. 105°36'12"W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Wolf Point NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°48'00"N, long. 104°58'00"W; to lat. 47°48'00"N, long. 106°00'02"W; to lat. 48°20'00"N, long. 106°00'02"W; to lat. 48°20'00"N, long. 104°58'00"W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on November 13, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–31927 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–14]

Proposed Amendment to Class E Airspace; Big Piney, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Big Piney, WY, Class E airspace. If amended, the proposal would provide additional airspace necessary to fully encompass a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Big Piney-Marbleton Airport, Big Piney, WY.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–14, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–14, Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) to amend Class E airspace at Big Piney, WY. This proposal is essential in order to fully contain a new GPS SIAP within controlled airspace located at the Big Piney-Marbleton Airport. The existing 1200-foot Class E airspace requires modification to fully encompass the missed approach holding procedures for the new SIAP. The revision to the existing 1200-foot Class E airspace will be an extension to the southeast from

approximately 21.4 to 33 nautical miles, thus fully encompassing the new SIAP.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Big Piney, WY [Revised]

Big Piney-Marbleton Airport, WY
(Lat. 42°35'06"N, long. 110°06'40"W)
Big Piney VOR/DME
(Lat. 42°34'46"N, long. 110°06'33"W)

That airspace extending upward from 700 feet above the surface within 4.8 miles southwest and 8.3 miles northeast of the Big Piney VOR/DME 134° and 314° radials extending from 4 miles northwest to 16.6 miles southeast of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7.9 miles southwest and 11.8 miles northeast of the Big Piney 134° and 314° radials extending from 10.1 miles northwest to 33 miles southeast of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on November 13, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–31928 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–97–3032]

RIN 2125–AE25

Revision of the Manual on Uniform Traffic Control Devices: General Provisions and Traffic Control for School Areas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); Request for Comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. This document proposes new text for the MUTCD in Part 1, General Provisions, and Part 7, Traffic Control for School Areas. The purpose of this effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before September 8, 1998.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Ms. Linda Brown, Office of Highway Safety, Room 3414, (202) 366–2192, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. The proposed text for Parts 1 and 7 of the MUTCD is available from the FHWA Office of Highway Safety (HHS–10). It is also available on the FHWA home page at the following Internet address: http://www.ohs.fhwa.dot.gov/devices/mutcd.html.

SUPPLEMENTARY INFORMATION: The 1988 MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments submitted and upon its own experience, the FHWA will issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices.

Although the MUTCD will be revised in its entirety, it will be done in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's recommendations for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Roadway-Rail Intersections. The proposed text for Parts 3, 4, and 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691.

This notice of proposed amendment is Phase 2 of the MUTCD rewrite effort and includes the proposed text for MUTCD Part 1, General Provisions, and MUTCD Part 7, Traffic Control for School Areas. The public will have an opportunity to review and comment on the remaining parts of the MUTCD in a future notice of proposed amendment. The FHWA invites comments on the proposed text for Part 1 and Part 7 of the MUTCD. A summary of the significant changes contained in these sections of the Manual is provided in this notice of proposed amendment.

The proposed new style of the MUTCD would be a 3-ring binder with 8½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing "shall" conditions; (2) Guidance—representing "should" conditions; (3) Options— representing "may" conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. For review purposes during this rewrite effort, dimensions will be shown in both metric and English units. This will make it easier to compare text shown in the 1988 Edition with the proposed new edition. However, the adopted final version of the new MUTCD will be solely in metric units.

This effort to rewrite and reformat the MUTCD will be an ongoing activity over the next 2–3 years. Some of the other issues which will be addressed in future notices of proposed amendment are: minimum retroreflectivity standards for signs and pavement markings; signing for low-volume rural roads; and traffic control for light-rail grade crossings. These proposed changes to the MUTCD are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

Discussion of Proposed Amendments to Part 1—General Provisions

The following items are the most significant proposed revisions to Part 1.

Introduction

Under the category heading STANDARD, the FHWA proposes to include the definition of "traffic control devices" which is also included in the proposed Section 1A.14, Definition of Words and Phrases. Also proposed is a discussion of 23 CFR part 655, subpart F, related to the MUTCD and the FHWA policies and procedures. Under the category heading SUPPORT, the FHWA proposes to include a discussion of the FHWA role and additional history regarding the MUTCD.

Purpose of Traffic Control Devices

In Section 1A.1, the FHWA proposes to use the term "road users" since it encompasses both motorized and non-motorized traffic.

Principles of Traffic Control Devices

In Section 1A.2, under the category heading GUIDANCE, the FHWA proposes to include "speed" as a consideration that should govern the design, operation, placement, and location of various traffic control devices since the traveling speed of road users can affect their ability to appropriately respond to the driving task.

In this same section, the FHWA proposes to include a reference to 23 CFR part 655, subpart F, which contains the policies and procedures that address the requirement for national uniformity of traffic control devices on all streets and highways. The last paragraph in this same section is new. The FHWA proposes to include this new discussion to make sure that the minimum capabilities of the road users as described in the Uniform Vehicle Code are considered when selecting, installing, and maintaining traffic control devices.

Design of Traffic Control Devices

In Section 1A.3, under the category heading STANDARD, the FHWA proposes to add the word "colors" to the statement that all signs shall be adopted using the procedures described in Section 1A.11. The FHWA also proposes adding a statement under the category heading OPTION to explain that State and local highway agencies may develop word message signs to notify road users of special regulations or to warn of special situations or hazards.

Maintenance of Traffic Control Devices

In Section 1A.5, the FHWA proposes to include language to explain the difference between functional and physical maintenance. Functional maintenance is required to determine if a certain traffic control device needs to be updated to meet current and changing traffic conditions. In addition, physical maintenance is recommended to ensure that the device is legible, visible, and operating properly.

Responsibility of Traffic Control Devices

In Section 1A.7, the FHWA proposes to reference 23 CFR 655.603 which adopts the MUTCD as the national standard for all traffic control devices on any street, highway, or bicycle trail open to public travel and which requires that any State or other Federal agency MUTCD shall be in substantial conformance with the national MUTCD.

Placement Authority

The 1988 MUTCD states that all traffic control devices must only be installed by a public authority or other official jurisdiction. The FHWA proposes to expand the wording in this sentence to cover not only traffic control devices but other signs and messages within the highway right-of-way. The 1988 MUTCD also states that any unauthorized sign placed on the highway right-of-way by a private organization or individual constitutes a public nuisance. The FHWA proposes to expand this wording to cover not only signs but any unauthorized traffic control device.

Engineering Study or Judgment Required

In the 1988 MUTCD the terms engineering judgment and engineering study were used interchangeably. The FHWA proposes to include distinct definitions in Section 1A.14 to explain the difference between these two terms.

Meaning of Standard, Guidance, Option, and Support

In Section 1A.10, the FHWA proposes to more clearly identify standards, guidance, option, and support information discussed in the new edition of the MUTCD by providing appropriate headings for all text. The FHWA also proposes to include a sentence explaining that figures, tables, and illustrations either complement the text and/or can constitute a standard, guidance, option, or support.

Manual Changes, Interpretations, and Authority to Experiment

In Section 1A.11, the FHWA proposes to include a new standard to indicate that devices that do not conform to the provisions of the MUTCD shall be prohibited unless the procedures discussed in this section are followed.

Definition of Words and Phrases

In Section 1A.14 under the category heading STANDARDS, the FHWA proposes to include a consolidated list of terms and their definitions which are used in and considered important for the uniform use of the MUTCD. This amendment contains a partial list which will be modified and completed in the future amendments for the proposed MUTCD. The amendments will also consider the need to repeat the definitions of some terms in applicable Parts of the MUTCD. The last two versions of the MUTCD defined most terms only in the text of applicable Parts, although previous editions contained a list similar to the list proposed. Only the term "roadway" was defined in Section 1A–9 Definition of Words and Phrases of the 1988 MUTCD. As in previous MUTCD editions, the terms which are not defined in the MUTCD shall be defined as in the MUTCD referenced documents.

In Section 1A–14, definitions are proposed for the following terms. These terms are used throughout the 1988 and proposed versions of the MUTCD but were not specifically defined in the 1988 version: "approach, engineering judgment, engineering study, highway (road and street), intersection, major roadway, minor roadway, median, network, retroreflectivity, road user, traffic, traffic control device, train, traveled way, vehicle, and warrant."

In Section 1A–14 the definition of "roadway" is proposed to be changed from the definition in the 1988 version of the MUTCD. The change would exclude sidewalks and shoulders used by bicycles from being part of the roadway. Also, the change would exclude, through the definition of vehicle, portions of the highway where trains, including some light rail, operate.

In Section 1A–14, definitions are proposed for the terms "arterial highway" and "collector highway." The definitions of these terms would refine the proposed standards for the center line and edge line warrants contained in two previous proposed amendments: one dated August 2, 1996, at 61 FR 40484 and one dated January 8, 1997, at 62 FR 691.

In Section 1A–14, the term "bicycle path" is proposed to replace the term "bicycle trail." This term will also be proposed in the future amendment for the rewrite of Part 9, Traffic Control for Bicycle Facilities.

In Section 1A–14, the definition for the term "average day" would be changed in order to provide more specific detail. "Average day" is used in Parts 2 and 4 and is defined in Part 4 of the 1988 MUTCD and in the proposed text for the rewrite of Part 4.

In Section 1A–14, the term "traffic gate" is proposed to replace the terms "resistance gate," "second gate," and "warning gate."

Discussion of Proposed Amendments to Part 7—Traffic Controls for School Areas

The following items are the most significant revisions to Part 7.

Need for Standards

In section 7A.1, a new Typical School Route Plan Map is proposed. Paragraph 5 of this same section would be modified to include middle and high schools in the development plans for school routes. Also, paragraph 7 would be modified to indicate that the various types of school area traffic control devices should also be included in a traffic control plan.

The discussions contained in the following sections of the 1988 MUTCD are proposed for deletion: Sections 7A–5 through 7A–10, 7B–1 through 7B–4, 7B–7 and 7B–8. The information contained in these sections can be found in Parts 1 and 2 of the MUTCD or in the Standard Alphabets for Highway Signs and Pavement Markings.

The new heading proposed for Section 7B–1 is "Size of School Signs" and a new Table 7B.1 would be added to show the dimensions and sizes as shown in the Standard Highway Signs Book. This eliminates the need to show the dimensions and sizes in the associated text discussion.

In section 7B.7, a new Figure 7–2 is proposed to provide guidance on the proper placement of the School Advance Warning Sign (S1–1).

In section 7B.8 under the GUIDANCE category, it is proposed that an engineering study should be conducted before installing the School Crosswalk Warning sign (S2–1).

In section 7B.10, the FHWA proposes changing the title to "Alternate Plates for School Speed Limit Assembly Signs'.

In section 7B.11, the FHWA proposes a new section to allow the option of installing a School Speed Zone Ahead Assembly Sign in advance of a School Speed Limit Sign or a School Speed Limit Assembly Sign. The School Speed Zone Ahead Assembly Sign would consist of the Reduced Speed Ahead Sign (R5–2a) with a SCHOOL plate (S4–3) mounted directly above it.

In section 7C–4, the following new guidance information is proposed: "In the absence of a marked crosswalk, the Stop line should be placed at the desired stopping point but should be placed no more than 9m (30 feet) nor less than 1.2m (4 feet) from the nearest edge of the intersecting traveled way."

The FHWA proposes deleting the discussion in Chapter 7D for school traffic signals and including a reference to the proposed text in the rewrite of Part 4.

The FHWA proposes to modify Chapter 7E, "Crossing Supervision" by deleting the discussion on legal authority for adult guards and student patrols since the States and local agencies are responsible for establishing laws regarding these crossing supervisors. For increased safety, the FHWA has also added a discussion in section 7E.4 to include guidance which provides that the uniforms they use should be of high-visibility material which may be seen during daytime, nighttime, and twilight hours.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations, expand guidance, and clarify application of traffic control devices. As noted previously, any expenses to public entities or the motoring public to implement the proposed changes would be minimal. Therefore, the FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. The proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that this amendment would override any existing State requirements regarding traffic control devices, it does so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32, 655.601, 655.602, and 655.603; 49 CFR 1.48)

Issued: November 25, 1997.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 97–31911 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–017]

Montana Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") and abandoned mine land reclamation plan (hereinafter, the "Montana plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for Montana's proposed statutes consist of revisions to statutes pertaining to the designation of the Montana State Regulatory Authority and reclamation agency under SMCRA, a statutory definition of "prospecting," revegetation success criteria for bond release, and prospecting under notices of intent. The amendment is intended to revise the Montana program to be consistent with the corresponding Federal regulations and SMCRA, and to improve program efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t., December 22, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, WY, 82601–1918; Telephone: (307) 261–5776.

Steve Welch, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620–0901, Telephone: (406) 444–4964.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program and Montana Plan

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administrated by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16, and 926.30.

On October 24, 1980, the Secretary of the Interior conditionally approved the

Montana plan as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana plan can be found in the October 24, 1980, **Federal Register** (45 FR 70445). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.20.

II. Proposed Amendment

By letter dated May 16, 1995, Montana submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MT–14–01). Montana submitted the proposed amendment in response to required program amendments at 30 CFR 926.16 (f) and (g), and at its own initiative. The provisions of Montana Code Annotated (MCA) that Montana proposed to revise were: 82–4–203, MCA (definitions); 82–4–204, MCA (rulemaking authority); 82–4–205, MCA (administration by Department of Environmental Quality); 82–4–221, MCA (mining permit required); 82–4–223, MCA (permit fee and surety bond); 82–4–226(8), MCA (prospecting permit); 82–4–226, MCA (prospecting permit); 82–4–227, MCA (refusal of permit); 82–4–231, MCA (submission of and action on reclamation plan); 82–4–232, MCA (area mining; bond; alternate plan); 82–4–235, MCA (inspection of vegetation—final bond release); 82–4–239, MCA (reclamation by regulatory authority); 82–4–240, MCA (reclamation after bond forfeiture); 82–4–242, MCA (funds received by regulatory authority); 82–4–251, MCA (noncompliance; suspension of permits); 82–4–254, MCA (violation; penalty; waiver). The proposed amendment consisted of statutory revisions enacted by the 1995 Montana Legislature.

OSM announced receipt of the proposed amendment in the June 5, 1995, **Federal Register** (60 FR 29521), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. MT–14–06). Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 5, 1995.

During its review of the amendment, OSM identified concerns relating to the definitions of "Board," "Commissioner," and "Director" at (MCA) 82–4–203 (6), (10), and (12); Board rules and Administration by Department at (MCA) 82–4–205; Inspection of vegetation—final bond release at (MCA) 82–4–235; the definition of "prospecting" at (MCA) 82–4–226(8); and Prospecting permit at (MCA) 82–4–226. OSM also addressed outstanding required program amendments at 30 CFR 926.16 (h), (i), and (j) as they related to prospecting. OSM notified Montana of the concerns by letter dated December 5, 1996 (Administrative Record No. MT–14–08). Montana responded in a letter dated November 6, 1997, by submitting a revised amendment and additional explanatory information (Administrative Record No. MT–14–11). The revisions to the amendment consist of new statutory language enacted by the 1997 Montana Legislature.

Montana proposes revisions to, and additional explanatory information for, the definitions of "Board," "Commissioner," and "Director" at (MCA) 82–4–203 (6), (10), and (12); Board rules and Administration by Department at (MCA) 82–4–205; Inspection of vegetation—final bond release at (MCA) 82–4–235; the definition of "prospecting" at (MCA) 82–4–226(8); and Prospecting permit at (MCA) 82–4–226.

Specifically, the revisions and additional explanatory information submitted by Montana includes the following:

1. Definition of "Director" in the Department of Environmental Quality at (MCA) 82–4–203(12)

Montana has defined the role of the "Director" in the newly created Department of Environmental Quality. Montana has provided explanatory information concerning the Department of Environmental Quality responsibilities in the implementation of the Montana program under SMCRA.

2. Board Rules and Administration by Department at (MCA) 82–4–204 and 82–4–205

Montana has revised the responsibilities of the "Board" and the "Department" to alleviate a duplication of duties.

3. Revegetation Criteria for Bond Release at (MCA) 82–4–235

The 1997 Montana Legislature revised 82–4–235(a) to delete language which would have allowed final bond release (in some cases) with introduced species providing a major or dominant component of the reclaimed vegetation.

4. Definition of "Prospecting" and Prospecting Permit at (MCA) 82–4–203(5) and 82–4–226(8)

Montana has submitted a revised definition of "prospecting." In addition, Montana has revised 82–4–226(8) to provide that prospecting under a notice of intent would only be allowed in those situations in which less than 250 tons of coal would be removed and on lands not determined to be unsuitable for mining.

5. Required Program Amendments at 30 CFR 926.16 (h), (i), and (j)

Montana has presented a revision to address required program amendment (h) concerning the removal of more than 250 tons of coal. (See above discussion.) Montana has presented explanatory information concerning required program amendments (i) and (j).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Montana program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 23, 1997.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 97–31810 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–189–0059; FRL–5932–3]

Approval and Promulgation of State Implementation Plans; California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the State of California to provide for attainment of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast). EPA is proposing to approve the SIP revision under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. The demonstration of attainment in the SIP depends, in part, upon reductions from an enhanced inspection and maintenance (I/M) program for motor vehicles. Since EPA has previously granted interim approval to the California I/M program, the Agency is proposing interim approval of the CO attainment demonstration portion of the plan.

DATES: Written comments on this proposal must be received by January 5, 1998.

ADDRESSES: Comments should be addressed to the EPA contact below.

The rulemaking docket for this notice, Docket No. 97–17, may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, California

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California

FOR FURTHER INFORMATION CONTACT: Dave Jesson (415) 744–1288, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Carbon Monoxide Problem

Carbon monoxide is a colorless, odorless gas emitted in combustion processes. In the South Coast, like most urban areas, CO comes primarily from tailpipe emissions of cars and trucks.[1] Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, and learning ability, and with illness and death for those who already suffer from cardiovascular disease, particularly angina or peripheral vascular disease.

Under section 109 of the CAA, EPA has established primary, health-related NAAQS for CO: 9 parts per million (ppm) averaged over an 8-hour period, and 35 ppm averaged over 1 hour. Attainment of the 8-hour CO NAAQS is achieved if not more than one non-overlapping 8-hour average in any consecutive 2-year period per monitoring site exceeds 9 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances).

The South Coast has continuously achieved the 1-hour NAAQS for the past 6 years. For this reason, the South Coast SIP and this action address primarily the 8-hour NAAQS. In 1995, the South Central Los Angeles County area recorded 13 exceedances of the 8-hour NAAQS, the largest number of CO exceedances within the SCAB and, in fact, within the country. Most of the CO exceedances in the SCAB occur during the months of January, November, and December, with peak concentrations typically around 7 a.m. and 10 p.m.

B. Clean Air Act Requirements

The Federal CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. Under section 107(d)(1)(C) of the Act, areas designated nonattainment prior to enactment of the 1990 amendments, including the South Coast, were designated nonattainment by operation of law.[2] Under section 186(a) of the Act,

[1] In the 1990 base year planning (winter) inventory for the South Coast, onroad vehicles accounted for approximately 80 percent of CO emissions, while nonroad engines and stationary sources contributed roughly 18 and 2 percent, respectively. Despite continued growth in vehicle use, the percent of CO emissions from onroad vehicles is predicted to decline to about 50 percent by the year 2010, as a result of the cleaner motor vehicles mandated by the California low-emission vehicle program.

[2] For a description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305. The nonattainment area includes all of Orange

Continued

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

each CO area designated nonattainment under section 107(d) was also classified by operation of law as either moderate or serious, depending on the severity of the area's air quality problem. CO areas with design values at and above 16.5 ppm, such as the South Coast, were classified as serious.

Section 172 of the Act contains general requirements applicable to SIPs for nonattainment areas. Sections 186 and 187 of the Act set out additional air quality planning requirements for CO nonattainment areas.

The most fundamental of these provisions is the requirement that CO nonattainment areas submit by November 15, 1992, a SIP demonstrating attainment of the NAAQS as expeditiously as practicable but no later than the deadline applicable to the area's classification: December 31, 1995, for moderate areas, and December 31, 2000, for serious areas like the South Coast. CAA sections 186(a)(1), 187(a)(7), and 187(b)(1). Such a demonstration must provide enforceable measures to achieve emission reductions each year leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area.

EPA has issued a "General Preamble" describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this proposed rulemaking action, EPA is applying these policies to the South Coast CO SIP submittal, taking into consideration the specific factual issues presented.

C. EPA Actions on Prior South Coast CO SIP Revisions

The South Coast Air Quality Management District (SCAQMD) adopted a CO plan on November 6, 1992. This plan was forwarded to the California Air Resources Board (CARB), which submitted the plan as a proposed revision to the California SIP on December 31, 1992. On April 29, 1993, CARB submitted a letter correcting certain adoption and implementation dates for measures under CARB's jurisdiction. On May 5, 1994, EPA proposed to approve in part and disapprove in part the SIP submittal (59 FR 23264). The proposed disapprovals derived from the State's failure, at the time, to adopt and submit regulations for an enhanced I/M program, since progress and attainment under the South Coast CO plan depended, to a large extent, on this program.

On December 28, 1994, CARB amended and submitted the South Coast Carbon Monoxide Attainment Plan (Revised), adopted by the SCAQMD on September 9, 1994. The 1994 CO plan provided technical amendments to the 1992 submittal and wholly superseded it.

On February 14, 1995, the Administrator signed final and direct final partial approval and partial disapproval of the revised South Coast CO plan, as part of a notice promulgating Federal Implementation Plans (FIPs) for California, including a CO FIP for the South Coast. Again, the disapproval actions were the result of the plan's dependence upon reductions from an enhanced I/M program, which had not yet been adopted.

On April 10, 1995, legislation was enacted mandating that the California FIPs "shall be rescinded and shall have no further force and effect" (Pub. L. 104–6, Defense Supplemental Appropriation, H.R. 889). At the time of enactment of this legislation, the FIP and SIP actions had not yet been published in the **Federal Register**.[3] Because the State was in the process of adopting legislation and regulations for an enhanced I/M program and developing a revised CO attainment plan, EPA did not reissue the South Coast CO SIP partial approval and partial disapproval actions. For this reason, the Agency's direct final approval and disapproval action did not become effective. As part of today's action, EPA is proposing to rescind the 1995 approval and disapproval actions taken on the 1994 CO SIP submittal.

On January 22, 1996, CARB submitted regulations adopted by the California Bureau of Automotive Repair for the implementation of an enhanced I/M program. California's program mandates loaded mode testing of all vehicles, with the majority of vehicles to be tested at test-and-repair facilities.

On March 18, 1996 (61 FR 10920), EPA proposed to grant interim approval to the enhanced I/M program and regulations, as meeting the high enhanced performance standard requirements of 40 CFR Part 51, Subpart S, as amended, and section 348(c) of the National Highway System Designation Act ("the Highway Act," Public Law 104–59, enacted on November 28, 1995). The Highway Act provides for approval of decentralized or test-and-repair programs for the full credit proposed by the state if the proposed credits reflect a good faith estimate and the program otherwise complies with the CAA. The approval remains effective for up to 18 months after the date of final rulemaking. After the 18-month period, permanent approval of the program is granted if the data collected on operation of the program demonstrates that the credits are appropriate. In order to ensure that at least 6 months of operational data can be collected to evaluate program performance, EPA requires program start-up no later than 12 months after the effective date of approval.

On January 8, 1997 (62 FR 1160), EPA finalized the interim approval of California's enhanced I/M program, effective February 7, 1997. This action set February 9, 1998, as the deadline for program start-up. The approval expires on August 7, 1998, or earlier if by such date the State has submitted as a SIP revision the required demonstration that the credits claimed for the program are appropriate and that the program is otherwise in compliance with the CAA, and EPA takes final action approving the revision.

EPA's final interim approval of California's enhanced I/M program also granted interim approval to the State's submittal as meeting the requirements of section 187(a)(6) of the Act for enhanced I/M for the South Coast. Section 187(a)(6) requires CO nonattainment areas with a design value greater than 12.7 ppm to implement enhanced I/M programs in the urbanized portion of the nonattainment area, as defined by the Bureau of Census, with 1980 populations of 200,000 or more.

On February 5, 1997, CARB submitted as a revision to the California SIP the 1997 Air Quality Management Plan for the South Coast Air Basin (SCAB), Antelope Valley, and Coachella Valley, adopted by the SCAQMD on November 15, 1996. This submittal, which included the South Coast Carbon Monoxide Attainment Plan (Revised), was found to be complete on April 1, 1997, with respect to portions of the AQMP relating to CO and nitrogen dioxide SIP requirements.[4] This 1997 CO plan supersedes all prior submittals.

This 1997 CO plan provides, among other things, a revised CO attainment demonstration based on updated vehicle

County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[3] On August 21, 1995 (60 FR 43468), EPA issued a notice of Congressional action rescinding the California FIP and also published notices relating to many of the SIP approvals included with the final FIP.

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

miles traveled (VMT) projections reflecting new forecasts prepared by the Southern California Association of Governments (SCAG), an amended Regional Mobility Element adopted by SCAG, revised motor vehicle emissions modeling, new emissions inventories, amended control measures, and updated areawide Urban Airshed Modeling (UAM) and hotspot (CAL3QHC) air quality modeling analyses using the updated inventories and improvements to other modeling inputs.

II. EPA Action

A. Summary of Proposed Action

In this document, EPA is proposing to approve the 1997 CO plan, with respect to the CAA requirements for notice and adoption, baseline and projected emissions inventory, and VMT forecasts. EPA proposes to grant interim approval to the CO attainment demonstration, quantitative milestones, and reasonable further progress. Along with EPA's prior interim approval of California's enhanced I/M program under section 187(a)(6) of the CAA and section 348(c) of the Highway Act, these interim approvals expire on August 7, 1998, or earlier if by such date California submits the required demonstration that the CO credits are appropriate.

As noted above, EPA is also proposing to rescind the Agency's partial approval and partial disapproval of the 1994 CO SIP submittal, taken on February 14, 1995.

B. Procedural Requirements

Both the SCAQMD and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of the plan and each of the plan amendments. The SCAQMD conducted numerous public workshops and public hearings prior to the adoption hearing on November 15, 1996, at which the 1997 AQMP was adopted by the Governing Board of the SCAQMD (Resolution No. 96–23). On January 23, 1997, the Governing Board of CARB adopted the plan (Resolution No. 97–1). The plan was submitted to EPA by Michael P. Kenny, Executive Officer of CARB, on February 5, 1997. The SIP submittal includes proof of publication for notices of SCAQMD and CARB public hearings, as evidence that all hearings were properly noticed. Therefore, EPA proposes to approve the 1997 CO plan as meeting the procedural requirements of section 110(a)(1) of the CAA.

C. Baseline and Projected Emissions Inventory

The revised and updated emissions inventory included in the 1997 CO plan is consistent with EPA's guidance documents.[5] This EPA guidance allows approval of California's motor vehicle emissions factors in place of the corresponding federal emissions factors. The motor vehicle emissions factors used in the plan were generated by the CARB EMFAC7G and BURDEN7G program. The gridded CO inventory for motor vehicles was then produced using an updated Caltrans Direct Travel Impact Model (DTIM2) (Systems Applications International, 1994) to combine EMFAC7G data with transportation modeling performed by SCAG.

SCAG provided the baseline socioeconomic data used in the plan. These forecasts include the following predicted growth through the CO attainment year.

1997 AQMP Baseline Socioeconomic Forecasts

[In millions]

Category	1993	2000	% growth
Population	13.8	14.8	7
Daily Vehicle Miles Traveled	293.3	317.9	8
Daily Vehicle Trips	31.2	33.2	6

EPA notes that these predictions assume that the key categories of VMT and daily trip levels will increase at growth rates considerably below long-term historic trends. This makes it particularly important for transportation agencies to track actual VMT and trip numbers carefully, and to trigger remedial actions, if necessary, before the plan fails to meet scheduled reduction targets.

The planning emissions inventory from the 1997 CO plan is summarized in the table below, "Carbon Monoxide Emissions by Major Source Category," from Table 5–3 in Appendix V of the 1997 AQMP.

Carbon Monoxide Emissions by Major Source Category

[In tons per day]

Source category	1993	1995	2000
Stationary Sources	127	170	297
Onroad Vehicles	5908	5381	3298
Other Mobile	1538	1637	1550
Total	7573	7188	5145

The sharp decline in baseline emissions from onroad vehicles and, consequently, the decrease in total CO emissions, from 1993–2000 is attributed to the adopted California motor vehicle and clean fuels regulations, and benefits from vehicle fleet turnover.

[5] See, for example, Emission Inventory Requirements for Carbon Monoxide State Implementation Plans, EPA—450/4–91–011; Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources, EPA—450/4–91–016; Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources, EPA—450/4–91–026d Revised.

The methodologies used to prepare the base year and projected emissions inventory, as described in Chapter 3 and Appendix 3 of the AQMP, are acceptable. Accordingly, EPA proposes to approve the 1997 CO plan with respect to the emissions inventory requirements of sections 172(c)(3) and 187(a)(1) the CAA.

D. Attainment Demonstration

The attainment demonstration includes both an areawide and a hot-spot modeling analysis at four heavily traveled intersections.

The areawide analysis was conducted using the Urban Airshed Model, according to EPA's "Guidance for Application of Urban Areawide Models for CO Attainment Demonstration" (1992). The UAM analysis uses a December 6–7, 1989 episode. This episode recorded a 1-hour CO concentration of 31 ppm and an 8-hour concentration of 21.8 ppm. These were the highest monitored values in recent years. The UAM analysis performed for the 1997 CO plan makes one significant change in the meteorological inputs: the mixing height was raised from 15 meters to 50 meters, to reflect the results of studies in the Lynwood area. The adjusted mixing height is also within the uncertainties of estimating night time mixing height.

Emissions used in the UAM analysis are shown in the table below, titled "Peak CO Emissions and South Coast UAM Results." These emissions, representing day-specific emissions, were disaggregated into 5 kilometer grid cells throughout the modeling domain.

PEAK CO EMISSIONS AND SOUTH COAST UAM RESULTS

[In ppm]

Scenario	Emissions (tpd)	Regional maximum (8-hour)	Maximum Lynwood (8-hour)	Regional maximum (1-hour)
1989 Base	9140	22.1	16.4	26.1
2000 Base	4511	7.7	6.6	10.7
2000 Control	4349	7.4	6.4	10.3

Source: 1997 AQMP, Appendix V, Tables 5–12 and 5–13.

The table shows the results of the UAM analysis for both the 8-hour and 1-hour average (the corresponding NAAQS are 9 ppm and 35 ppm). Concentrations for the 8-hour average are shown for the Lynwood receptor, since the monitor at this site typically records peak concentrations.

Model performance for the UAM simulation is within EPA's acceptable range of accuracy: +1 percent for the unpaired peak prediction, −25 percent for the paired peak prediction, and 22 percent for the paired absolute error. See 1997 AQMP, Appendix V, pages V–5–6 and V–5–7.

The predicted regional maximum 8-hour average CO concentration is 7.7 ppm in the year 2000, assuming no new control measures. The UAM analysis thus shows attainment with a margin of safety based solely on fully adopted regulations.

The SCAQMD also modeled a "control" scenario, which assumes a combined reduction of 173 tpd in the year 2000 from two CARB measures which are currently under development, M1 (Accelerated Retirement of Light-Duty Vehicles) and M2 (Improved Control Technology for Light-Duty Vehicles). These State measures have already been approved as part of the 1994 ozone SIP. Reductions from M1 and M2 are not needed for purposes of the attainment demonstration, but the control scenario illustrates additional ambient air quality improvements possible with a greater level of control.[5]

The hot-spot analysis was performed for four intersections (Lynwood, Hollywood, Westwood and Inglewood), using CAL3QHC (a roadway intersection model) and base case as well as worst case meteorological data. Projected peak 8-hour average hot-spot concentrations under base case meteorology were 2.1 ppm at Lynwood, 2.2 ppm at Inglewood, and 3.2 ppm at Westwood and Hollywood. Under worst case meteorology, concentrations are predicted to range from 3.5 ppm at Lynwood to 5.3 ppm at Hollywood.

The areawide analysis and hot-spot analysis concentrations were not aggregated, because CARB's 1991 study of CO in the Lynwood area indicated that the projected maximum hot-spot concentrations were at different times of day from the maximum areawide peak concentrations.

The hot-spot modeling follows applicable EPA guidelines and demonstrates attainment of the 8-hour CO standard for the year 2000 with the proposed control measures.

Because the enhanced I/M regulations have now been adopted, the 1997 CO plan demonstrates attainment with adopted measures, which reduce areawide emissions to 4511 tpd, substantially below the estimated carrying capacity of 4968 tpd. However, attainment depends, in part, upon specific reductions from the enhanced I/M program, which was granted interim approval in prior rulemaking. Therefore, under section 348(c) of the Highway Act, EPA proposes to grant interim approval to the 1997 CO plan with respect to the attainment demonstration requirement of section 187(a)(7) of the CAA.

E. Quantitative Milestones and Reasonable Further Progress (RFP)

EPA disapproved the 1994 South Coast CO SIP submittal with respect to the milestone and RFP requirement because the plan depended heavily upon reductions from the as yet unadopted enhanced I/M program to achieve scheduled progress and eventual attainment by the year 2000 deadline in the Act. EPA's interim approval of California's enhanced I/M regulations cures this defect and allows for interim approval of the milestone and RFP provision.

The 1997 CO plan shows steady annual reductions in CO emissions from 1993 through 2000, despite annual growth in VMT and stationary source emissions (see 1997 AQMP, Appendix V, Tables 5–1, 5–2, and 5–3). The CO emissions decline is displayed below in the summary table entitled "South Coast CO Emissions," taken from Table 5–3 in Appendix V of the 1997 AQMP.

[5] EPA approved M1 on January 8, 1997 (62 FR 1150). M2 was approved on August 21, 1995 (60 FR 43379) under the provisions of section 182(e)(5) of the CAA, which authorizes the Administrator to approve as part of an extreme ozone area SIP conceptual measures dependent upon new control technologies or new control techniques. EPA notes that the M2 reductions may help ensure maintenance of the CO NAAQS, but any reductions from this measure would not be creditable for purposes of the CO attainment SIP, because the State has committed to begin implementation of the measure in 2004–2005, several years beyond the year 2000 attainment deadline for CO.

SOUTH COAST CO EMISSIONS

[Planning Inventory—tpd]

Source category	1993	1995	2000
On-Road Vehicles	5908	5381	3298
Other Mobile	1538	1637	1550
Stationary Sources	127	170	297
Total	7573	7188	5145

In this action, therefore, EPA proposes to grant interim approval, under section 348(c) of the Highway Act, to the 1997 CO plan with respect to the RFP requirements in sections 171(1), 172(c)(2), and 187(a)(7) of the CAA.

F. Vehicle Miles Traveled (VMT) Forecast

Section 187(a)(2)(A) of the CAA requires the 1997 CO plan to contain a forecast of vehicle miles traveled (VMT) for each year until attainment of the CO NAAQS. Also, as required by section 187(a)(2)(A), the 1997 CO plan must provide for annual updates of the forecasts along with annual reports to be submitted regarding the extent to which the preceding annual forecasts proved to be accurate. These annual reports must contain estimates of actual VMT in each previous year for which the forecast was required, including the year prior to the report.

The 1997 CO plan revises VMT forecasts in the prior South Coast CO plans. The VMT forecasts have been updated by using new transportation modeling and incorporating more recent socioeconomic data compared with the VMT forecasts contained in the earlier plans. The required VMT forecasts for each year from 1993 through 2000 are displayed in Table 5–1 in Appendix V to the 1997 AQMP. The forecasts are broken down by 7 motor vehicle categories. Table 5–2 shows the CO emissions from each category for each year.

EPA proposes to approve these new VMT forecasts as meeting the section 187(a)(2)(A) requirement. Also, EPA proposes to approve the responsible agencies' commitments to revise and replace the VMT projections as needed and monitor actual VMT levels in the future.

G. Summary of Proposed EPA Actions

EPA proposes the following actions on elements of the South Coast CO Attainment Plan (Revised), as submitted on February 5, 1997:

(1) Approval of procedural requirements, under section 110(a)(1) of the CAA;

(2) Approval of baseline and projected emission inventories, under sections 172(c)(3) and 187(a)(1) of the CAA;

(3) Interim approval of attainment demonstration, under section 187(a)(7) of the CAA and section 348(c) of the Highway Act;

(4) Interim approval of quantitative milestones and reasonable further progress, under sections 171(1), 172(c)(2), and 187(a)(7) of the CAA and section 348(c) of the Highway Act; and

(5) Approval of VMT forecasts and the responsible agencies' commitments to revise and replace the VMT projections as needed and monitor actual VMT levels in the future, under section 187(a)(2)(A) of the CAA.

EPA also proposes to rescind EPA's prior partial approval and partial disapproval of the 1994 South Coast CO SIP submittal, taken on February 14, 1995. As discussed above, these actions have not been in effect, since the final rulemaking was never published in the **Federal Register**.

III. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA, do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

IV. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 and 182(b) of the CAA. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved or disapproved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 26, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–31915 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

RIN 2060–AE30

[FRL–5932–9]

Opportunity To Present Oral Testimony on EPA's Proposed Rule: "40 CFR Part 194, Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's (WIPP) Compliance With the 40 CFR Part 191 Disposal Regulations: Certification Decision;" Notice of Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Hearings.

SUMMARY: EPA will conduct public hearings to receive comments on the proposed certification decision, published October 30, 1997, for the Waste Isolation Pilot Plant (WIPP) in Carlsbad, Albuquerque, and Santa Fe, New Mexico.

DATES: The schedule for these hearings is as follows: Carlsbad, January 5, 1998, from 6:00 p.m. to 9:00 p.m. and January 6, 1998, from 9:00 a.m. to 4:00 p.m.; Albuquerque, January 7, 1998, from 12:00 Noon to 9:00 p.m. and January 8, 1998, from 9:00 a.m. to 12:00 Noon; and Santa Fe, January 8, 1998, from 3:00 p.m. to 9:00 p.m. and January 9, 1998, from 9:00 a.m. to 5:00 p.m. Procedures for these public hearings are detailed in the section entitled "Hearing Procedures" in **SUPPLEMENTARY INFORMATION.** Specific locations for each city is detailed in the section entitled **ADDRESSES.**

ADDRESSES: EPA's public hearings to accept comments on EPA's Proposed Compliance Certification Decision for the WIPP will be held on January 5–6, 1998, at the Pecos River Village Conference Center, Room #3, 711 Muscatel, Carlsbad, NM; on January 7–8 at the Albuquerque Convention Center, Aztec/Galisteo Room, 401 Second Street, NW, Albuquerque, NM; on January 8–9, 1998, at the Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM.

EPA's official docket for all rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act, as amended, is located in Washington, DC, in the Air Docket, Room M1500, Mailcode 6102, U.S. EPA, 401 M Street, SW, Washington, DC 20460. Information on EPA's radioactive waste disposal standards (40 CFR Part 191), the compliance criteria (40 CFR Part 194), and DOE's compliance certification application is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review at the following three EPA WIPP docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Mon–Thu, 10–9, Fri–Sat, 10–6, and Sun 1–5; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Mon–Thu, 8–9, Fri, 8–5, Sat–Sun, 1–5; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Mon–Thu, 8–12 Midnight, Fri, 8–5, Sat, 9–5, and Sun, 1–9.

Note: The dockets in New Mexico only contain major items from the official Air docket in Washington, DC, plus all those docu-ments added to the official docket since the October 1992 enactment of the WIPP LWA.

As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal Air docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Rafaela Ferguson, Office of Radiation and Indoor Air, (202) 564–9362 or call EPA's 24-hour toll-free WIPP Information Line, 1–800–331–WIPP.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1997, the Environmental Protection Agency (EPA) announced its proposed decision to issue to the Secretary of the Department of Energy (DOE) a "certification of compliance" for the Department of Energy's Waste Isolation Pilot Plant (WIPP), subject to several conditions related to: (1) waste characterization (to determine the radionuclides and other contents of waste disposal containers); (2) quality assurance programs at DOE waste generator sites; (3) implementation of passive institutional controls (PICs) (intended to warn future generations about the hazards of the radioactive waste buried in the WIPP); and (4) panel seals (used to contain the waste within compartments in the facility). In addition, DOE is required to report to EPA any change in the activities or conditions at the WIPP that differ from those described in the Compliance Certification Application (CCA), and to immediately inform EPA of any activities or conditions at the WIPP that might cause the WIPP to exceed the containment requirements of the disposal regulations. This proposal, entitled "Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations: Certification Decision; Proposed Rule," was published in the **Federal Register** at 62 FR 58791–58838 on October 30, 1997, which marked the start of a 120-day public comment period.

The WIPP is being constructed by DOE near Carlsbad, New Mexico, as a potential repository for the safe disposal of transuranic radioactive waste. Pursuant to the WIPP Land Withdrawal Act (WIPP LWA) of 1992, Pub. L. No. 102–579, as amended, EPA is required to perform several activities including certifying whether the WIPP will comply with EPA's radioactive waste disposal standards before DOE may commence disposal of radioactive waste at the WIPP. On October 29, 1996, DOE submitted a CCA containing information intended to demonstrate that WIPP will comply with the EPA's disposal regulations. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) on November 15, 1996, announcing receipt of the CCA and requesting comments on all aspects of DOE's application for 120 days until March 17, 1997. EPA conducted a preliminary review of the CCA and requested DOE to submit supplemental information. DOE submitted the additional information EPA requested and on May 22, 1997, the Agency announced that DOE's application was deemed to be "complete" (62 FR 27996–27998). EPA's finding that the CCA was complete commenced a statutory one-year period to determine, by rulemaking, whether WIPP will comply with the disposal regulations (WIPP LWA, section 8(d)(2); 40 CFR 194.11).

EPA has conducted an extensive independent technical review and evaluation (including confirmatory audits and inspections) of the DOE's CCA and supplemental materials based on the requirements specified in the WIPP Compliance Criteria at 40 CFR Part 194. In response to public comments, EPA subsequently extended the ANPRM public comment period until publication of the proposed rule, thus resulting in an approximately 264-day public comment period. All public comments received on or before August 8, 1997, were reviewed and considered as part of EPA's evaluation of the CCA. ANPRM comments received on or before August 8, 1997, were responded to in the Compliance Application Review Documents (CARDs), which are part of the proposed certification decision. Comments received from August 8, 1997, to October 30, 1997, will be responded to with comments on the proposed rule.

DOE is developing the Waste Isolation Pilot Plant (WIPP) near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of transuranic (TRU) radioactive waste. As defined by the WIPP LWA, as amended, TRU wastes are materials containing elements having atomic numbers greater than 92, in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste, with half-lives greater than twenty years. Most TRU wastes are items contaminated during the production of nuclear weapons, e.g., rags, equipment, tools, and organic and inorganic sludges.

The WIPP LWA, as amended, specifies the terms and conditions for DOE's activities at the WIPP and the regulatory requirements which apply throughout various stages of the repository's development including the requirement that before beginning disposal of radioactive wastes at the WIPP, DOE must demonstrate that the WIPP will comply with the EPA's radioactive wastes disposal standards, "Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes" (40 CFR Part 191).

Under the WIPP LWA, as amended, EPA is required to develop criteria for the Administrator's certification of compliance with the 40 CFR Part 191 disposal standards. EPA's final rule for the compliance criteria was published in the **Federal Register** on February 9, 1996, at 61 FR 5224–5245, approximately one year after proposal. On March 29, 1996, EPA issued the Compliance Application Guidance (CAG) which provided DOE with specific guidelines regarding the format and content of the compliance certification application and a clear description of the information that EPA would need to make its certification decision. The guidance provided in the CAG is within the framework established by 40 CFR Parts 194 and 191. On November 15, 1996, EPA published an ANPRM in the **Federal Register** at 61 FR 58499–58500, entitled "Decision to Certify Whether the Waste Isolation Pilot Plant Complies With the 40 CFR Part 191 Disposal Regulations and the 40 CFR Part 194 Compliance Criteria."

If EPA finalizes the decision that the WIPP meets its radioactive waste disposal standards, then DOE may continue to take necessary steps required prior to emplacement of TRU wastes in the repository. Following the initial emplacement of TRU wastes in the facility and throughout its operational phase, DOE will be required to submit a re-certification application to EPA every five years throughout the operational phase of the disposal system. The Agency will review the applications and determine whether the WIPP remains in compliance with the disposal standards.

Hearing Procedures

Those persons wishing to present testimony at the public hearings are requested to pre-register by calling EPA's toll-free WIPP Information Line at 1–800–331–WIPP between the hours of 11:00 a.m. and 7:00 p.m. Eastern Standard Time (EST) with the following information: Name/Organizational Affiliation (if any)/address/hearing date, location, time(s) available to testify, and a daytime telephone number. In order to be guaranteed an opportunity to testify, requests must be received by EPA no later than 12:00 p.m. EST on December 30, 1997. Speakers not registered in advance may register at the door, if time slots are available. Individuals testifying on their own behalf will be allowed 5 minutes. One individual may testify as the official representative or spokesperson on behalf of groups and organizations and will be allocated 10 minutes for an oral presentation. Time allowed is exclusive of any time consumed by questions from the government panel and answers to these questions. Requests to testify at a second or possibly third location will be accommodated, to the extent possible, once pre-registration has been completed. Written comments will be considered to the same extent as oral testimony and will be included as part of the official hearings transcripts. The hearing transcript will constitute the official record of the hearing. All written comments which are submitted outside of the public hearings must be received by the HQ EPA Air Docket by February 27, 1998. These comments will also be given EPA's full consideration. Thus, all comments received by EPA, whether written or oral, will be given equal consideration in development of the final rule.

The public will be permitted to inspect and comment on any re-certification application.

Dated: December 3, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–32041 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AD98

Humane and Healthful Transport of Wild Mammals, Birds, Reptiles and Amphibians to the United States; Notice of Reopening of Comment Period and Scheduling of Public Meetings

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public meetings and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Lacey Act Amendments of 1981, provides notice of the reopening of the comment period and the scheduling of two public meetings to receive input from the general public for the proposed amendment of 50 CFR part 14, covering the humane and healthful transport of wild mammals, birds, reptiles and amphibians to the United States. The comment period was extended to October 6, 1997 for this proposed rule and has, thus, closed. However, based on requests received, and in order to receive further input from the general public, the Service will reopen the comment period for a period of 30 days and hold two public meetings during that time. Therefore, additional written comments will be accepted during that time, and oral and written comments will be accepted at the public meetings.

DATES: A public meeting in New York City (Queens) will be held on January 17, 1998, from 1:00 pm–5:00 pm, and a public meeting in Los Angeles will be held on January 27, 1998, from 1:00 pm–5:00 pm. Comments in writing will be accepted by the Service beginning January 17, 1998, through February 17, 1998.

ADDRESSES: The public meeting in New York City will be held at St. John's University, Bent Hall Seminar Room, 8000 Utopia Parkway, Jamaica, NY 11439. The public meeting in Los

Angeles will be held at The Westin Hotel (Los Angeles Airport), 5400 West Century Boulevard, Los Angeles, CA 90045. Please note that the rooms for these meetings are accessible to the handicapped. Written comments can be presented to the Service at either of the public meetings or can be sent to: Director, U.S. Fish and Wildlife Service, Office of Management Authority either by mail, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203, or by fax (703) 358–2298.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce J. Weissgold or Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2095, fax (703) 358–2298.

SUPPLEMENTARY INFORMATION:

Background

On Friday, June 6, 1997, the Service published in the **Federal Register** (62 FR 31044) a proposed rule announcing the Service's intention to amend 50 CFR part 14 subpart J to further implement the requirements of the Lacey Act (18 U.S.C. 42 (c)) for reptiles and amphibians. On August 5, 1997, at the request of two commercial reptile importers, Underground Reptiles and the Reptile Service, the Service published a notice in the **Federal Register** (62 FR 42091) extending the comment period until September 6, 1997. The Lacey Act Amendments of 1981 (Pub. L. 87–79, 95 Stat. 1073) prohibit the importation into the United States of all wild animals and birds under inhumane or unhealthful conditions, and require that the United States Government promulgate regulations governing the importation of wildlife. The purpose of this rulemaking is to ensure the Lacey Act Amendments' consistency and enforceability extend across all species of wildlife, as described by Congress. On June 17, 1992, the Service finalized (57 FR 27094) the rules contained in 50 CFR part 14 subpart J, establishing rules for the humane and healthful transport of wild mammals and birds to the United States. This proposed rule, once finalized, will enable the Secretary of the Interior to meet the responsibilities of the Lacey Act for reptiles and amphibians.

Thus, to more fully implement the amendments of the Lacey Act, which requires the humane and healthful transport of all classes of wild animals and birds and the promulgation of regulations necessary to that end, the Service proposes to extend 50 CFR part 14 subpart J to include rules for the healthful and humane transport of reptiles and amphibians. Furthermore, many reptiles and amphibians are species included in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Parties to CITES have adopted a resolution that calls for all CITES-listed species to be packed and shipped in accordance with the International Air Transport Association (IATA) Live Animals Regulations. Therefore, the proposed rule would place these internationally accepted standards into the Code of Federal Regulations for reptiles and amphibians.

For this, and other reasons discussed in the June 6, 1997 **Federal Register** notice, the Service is proposing amendments to 50 CFR part 14 concerning humane and healthful transport of reptiles and amphibians into the United States.

The Service received numerous letters which indicated that there is a great deal of misunderstanding in the commercial reptile and amphibian community regarding the content of the proposed rule and the process followed by the Service while promulgating these regulations under the requirements of the Administrative Procedures Act. Basic confusion partially appears to be present as a result of misrepresentations of the Service's intent and scope of authority to regulate the transport of live reptiles and amphibians. Among the misrepresentations was the suggestion that the Service was moving towards the regulation of the domestic shipping of live reptiles and amphibians and their export, which the Service has neither the intent nor the statutory authority to address, as well as a misrepresentation about the current packing standards of IATA.

The Service received numerous comments on the proposed rule during the extended comment period, which closed October 6, 1997. Many of the comments received were form letters and reiterated the concerns that the proposed rule did not include sufficient "quantifying information" to justify its necessity, would not contribute to improving the humane and healthful transport of live reptiles and amphibians, and would substantially increase shipping costs for commercial traders. Other criticisms included complaints that the Service relied too heavily in drafting the proposed rule on input from "Animal Rights Activists," technical aspects of the proposed rule were burdensome and unnecessary, including the Service's proposals regarding the numbers of animals which could be packed in primary enclosures, temperature requirements, venomous/poisonous species shipping requirements, packing materials/techniques restrictions, and other related issues. The Service also received many individual letters expressing similar concerns. Conversely, the Service received many comments critical of the proposal to increase the numbers of small animals which can be packed per primary enclosure, relative to the current IATA standards. (The Service has proposed that five small snakes and lizards can be packed per primary enclosure, while IATA standards limit such packing configurations to one animal). In addition, the numerous criticisms were received regarding the Service's findings in the proposed rule which were made pursuant to Executive Order 12988. The Service will evaluate this in the development of the final rule.

The Service also received many comments supportive of the proposals related to several of the issues discussed above. Many letters generally supportive of the Service's proposed rule cited the Service's draft regulations on the numbers of animals which would be packed per primary enclosure, temperature requirements, and packing materials/techniques restrictions. Comments supportive of the proposed rule also cited the Service's proposal to bar the importation of reptiles and amphibians which have visible external parasites, and to require veterinary examination prior to dispatch, and veterinary certificates with shipments of live reptiles and amphibians entering the United States. Other letters generally supportive of the Service's proposed regulations cited importers' desire to cut costs in shipping animals, while others noted that the proposed prohibition on external parasites would help protect human and wildlife health by reducing the risks of the importation of pests with zoonotic or other transmittable diseases. Another supportive letter stated that the new regulations would keep species poorly suited for international transit from being shipped for the "pet trade," while another cited that it was incumbent on the government to "step in" and regulate the trade in common green iguanas (*Iguana iguana*) and other live reptiles because pet purchasers in the United States are unable to "make human, sensible and logical decisions on their own."

The Service also received numerous letters which indicated neither support nor opposition to the proposed rule, but instead offered constructive suggestions on making technical changes to the proposed regulations. Many of the technical changes suggested in the letters addressed the issues discussed above, such as temperature requirements, packing densities, materials requirements, venomous species shipping requirements, and other related issues.

In addition the Service has received numerous criticisms of the proposed rule from the commercial trade community involved in exporting hatchling farm raised turtles. The Service notes that this proposed rule does not affect the export of live reptiles and amphibians from the United States or their interstate (domestic) commerce. Under the Lacey Act Amendments of 1981, the Service does not have the statutory authority to regulate humane and healthful transport of live reptiles and amphibians being exported from the United States. Therefore, the only humane and healthful transport rules applicable to the export of non-CITES reptiles and amphibians from the United States are the IATA Live Animals Regulations, which are enforced privately by participating airlines. Exports of live CITES-listed reptiles and amphibians are still required to be shipped in accordance with IATA packing requirements, but that requirement is independent, and not related to, this proposed rulemaking. This proposed rule applies only to live reptiles and amphibians being imported into the United States.

In order to provide the public with additional opportunities to communicate with the Service regarding these proposed regulations, and to provide an opportunity to clarify misunderstandings in the public sector regarding this proposed rule, including its content and the process of Federal rulemaking, the Service will reopen the comment period from January 17–February 17, and hold two public meetings during that time, one in New York, NY, and one in Los Angeles, CA, as discussed above (see **DATES** and **ADDRESSES**). These two cities were selected by the Service because of the high volume of live reptiles and amphibians which are imported into the United States through local Fish and Wildlife Service designated ports, and the corresponding concentration of affected members of the general public. Interested members of the general public are encouraged to attend these meetings to communicate their opinions and pertinent factual information to the Service regarding the proposed regulations which can be utilized by the Service in preparation of a final rule.

Authority

The authority for this action is the Lacey Act, as amended (18 U.S.C. 42 (c)).

Dated: November 26, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–31925 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC62

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period on the Proposed Rule to List the Arkansas River Basin Population of the Arkansas River Shiner as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice reopening the public comment period.

SUMMARY: On August 3, 1994, the U.S. Fish and Wildlife Service (Service) proposed to list the Arkansas River basin population of the Arkansas (AR) River shiner (*Notropis girardi*) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act)(59 FR 39532). Public comments were solicited, three public hearings were held, and the last comment period expired on February 3, 1995 (60 FR 2070).

The enactment of Pub. L. 104–6 in April 1995, and a series of continuing resolutions from October 1, 1995, through April 26, 1996, established a moratorium against issuing final listings or critical habitat designations. The Service's listing program was essentially shut down and listing program personnel were reassigned to other duties. When the moratorium was lifted, the Service published guidance for assigning relative priorities to listing actions conducted under section 4 of the Act during Fiscal Year 1997 (61 FR 64475).

This species was proposed for endangered status in 1994. New information concerning the AR River shiner's status has since become available.

This notice identifies possible issues the public should be aware of and provides the public opportunity to comment on these issues. All previous comments submitted in response to the August 3, 1994, proposal, including comments that were received after the expiration of the previous comment periods, will be entered into the public record for the AR River shiner.

DATES: Comments from all interested parties must be received by January 5, 1998.

ADDRESSES: Written comments and materials should be sent to: Supervisor, Ecological Services Field Office, 222 South Houston, Suite A, Tulsa, Oklahoma 74127–8909. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Keh Collins at the above address (telephone 918/581–7458 ext. 230).

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994 (59 FR 39532), the Service proposed to list the Arkansas River basin population of the AR River shiner (*Notropis girardi*) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act)(16 U.S.C. 1531 *et seq.*). The introduced population which occurs in the Pecos River basin is not under consideration for protection under the Act because it is not native to the area.

Two public comment periods were established, with the last comment period expiring on February 3, 1995 (60 FR 2070). During the second comment period, the Service held three public hearings, one each in Kansas, Oklahoma, and Texas. The Service received 602 comments (letters and oral testimony) from 567 individuals or agencies, including a petition containing the names of 36 individuals. Contents of the written comments and oral statements obtained during the public hearings and comment periods were being evaluated at the time Public Law 104–6 was enacted.

The enactment of Pub. L. 104–6 in April 1995, and a series of continuing resolutions from October 1, 1995, through April 26, 1996, established a moratorium against issuing final listings or critical habitat designations. Funding for the Service's listing program was severely reduced or eliminated and listing personnel were reassigned to other duties, essentially shutting down the listing program.

On April 26, 1996, President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority granted under this Act to waive the listing moratorium. When the moratorium was lifted, the Service published guidance for assigning relative priorities to listing actions conducted under section 4 of the Act during Fiscal Year 1997 (61 FR 64475). Based on this priority system,

the listing of the Arkansas River basin population of the AR River shiner was assigned to Tier 2. Tier 2 includes processing of final decisions on pending proposed listings. The Service has determined that an additional comment period is needed to allow public comment on all relevant information that has arisen since the close of the last comment period for the AR River shiner.

Summary of Information Relevant to the Listing Decision

The Service has received information indicating that populations of AR River shiners in the Canadian River upstream from Lake Meredith may be stable (and not declining as suggested in the proposed rule).

1. Effects of the Bureau of Reclamations's Lake Meredith Salinity Control Project

In the proposed rule, the U.S. Bureau of Reclamation's (Bureau) Lake Meredith Salinity Control Project was identified as a significant, ongoing threat to the aggregations of AR River shiners that occur in the Canadian River between Ute Reservoir in New Mexico and Lake Meredith in Texas. Based on information available at the time of the proposed listing, the abundance of AR River shiners within this stream segment were believed to be declining and operation of the salinity control project would have resulted in significant reductions in stream flow, affecting habitat for the species within the Canadian River above Lake Meredith. New information (J.C. Williams, Canadian River Municipal Water Authority, *in litt.* 1997; Gene Wilde, Texas Tech University, *in litt.* 1997; Bureau 1995) does not support this assertion and the Service solicits questions and comments regarding this issue.

2. Influence of the High Plains Aquifer on Canadian River Stream Flows

New information provided by the U.S. Geological Survey, State of Texas, and High Plains Underground Water Conservation District clarified the influence of the High Plains aquifer (Ogallala Aquifer) on Canadian River stream flows, particularly upstream of Lake Meredith. The High Plains aquifer in Texas underlies all or portions of 48 counties of the Panhandle region. The aquifer is constricted in the vicinity of Randall and Potter counties, Texas, and this constriction is considered a subdivision boundary which divides the Southern High Plains from the Central High Plains regions (Dugan and Sharpe 1996). Groundwater in the Southern High Plains region moves in a southeasterly direction away from the Canadian River, based on the altitude of water levels within the aquifer (Peckham and Ashworth 1993). This region of the aquifer appears to have little influence, if any, over observed stream flows within the Canadian River in Texas.

Upstream of the Hutchinson-Roberts County line, including Lake Meredith, the Canadian River stream bed is below the elevation of the High Plains aquifer (John Ashworth, Texas Water Development Board, *in litt.* 1995). Induced recharge of the High Plains aquifer by the Canadian River within this segment, caused by a lowering of the water table, is not likely to occur. The primary influence of the High Plains aquifer on stream flow within this reach would be predominantly through spring flow and similar emissions (e.g., natural discharge) where the water table intersects the land surface (Peckham and Ashworth 1993, Brune 1981, Texas State Board of Engineers 1938a, 1938b).

The contribution of the High Plains aquifer to stream flows downstream of Lake Meredith, and the influence of groundwater pumping on observed stream flows, is difficult to determine with the existing information available to the Service. Considering the small amounts of springflow within this segment, reductions in such flows are not likely to have had a profound impact on stream flows or habitat for the AR River shiner. Any impact from a reduction or cessation of springflow is considerably less significant than the influence of Lake Meredith on current stream flows. The Service requests questions, comments, or any new information regarding the High Plains Aquifer. Information indicates that withdrawals from the High Plains aquifer may have affected stream flow within the Canadian River in Roberts and Hemphill counties, Texas, but the data necessary to confirm this assumption or determine the degree to which stream flows have been affected is lacking. Comments are sought on this particular issue, including any information that would clarify the influence of the High Plains aquifer on stream flows in this stream segment.

3. Susceptibility of Extant Populations to Catastrophic Events

The proposed rule indicated that the Arkansas River basin population was essentially limited to one river system and was extremely susceptible to extinction from a single catastrophic event. In making this determination, the Service essentially discounted the small aggregations of AR River shiners occurring in the Cimarron River and considered the artificially isolated aggregations upstream of Lake Meredith vulnerable to the same singular catastrophic event. Likewise, the Service considered any AR River shiner aggregations in the Beaver/North Canadian River to be the result of releases by commercial bait operators and such aggregations did not represent a naturally reproducing or self-sustaining population. Upon review of comments received during the comment periods, the Service has reassessed the significance of these factors in the status of the species.

Lake Meredith is an effective artificial barrier to movement of stream fishes and does provide a small degree of protection to AR River shiner aggregations upstream of Lake Meredith from introductions of nonnative fishes that might occur downstream of the reservoir. Essentially two separate events would be required to affect both the upstream and downstream aggregations. Consequently, the Service acknowledges that a single catastrophic event, such as establishment of the non-native Red River shiners, would not necessarily affect existing aggregations of AR River shiners in the Canadian/South Canadian River system simultaneously. However, aggregations of AR River shiners upstream of Lake Meredith are less numerous than those in the remainder of the Canadian/South Canadian River system and the risk of extinction for the Arkansas River basin population would increase if Red River shiners became established downstream of Lake Meredith.

Comments (from one individual) during the public comment period indicate that AR River shiners may still exist in the Beaver/North Canadian River near Turpin, Oklahoma. Likewise, AR River shiners may still occur in the Cimarron River. The Service recognizes that additional aggregations of AR River shiners may occur outside the Canadian/South Canadian River system. However, the viability of these aggregations is unknown and their present contribution to suryival of the Arkansas River basin population is likely to be minimal considering the small size of these aggregations.

The Service also did not adequately consider the importance of the Pecos River population to the survival of the Arkansas River basin population of the AR River shiner. The Pecos River population was accidentally established with individuals trans-located from the Arkansas River basin and could be used in conservation efforts following a severe drought within the Arkansas River basin. While the Pecos River population is nonnative and not currently proposed for protection under the Act, this population essentially represents a refugia population that could be utilized in restoration efforts. The Service requests any additional information, questions, or comments regarding AR River shiner aggregations.

4. Status of Population Above Lake Meredith

Recent (1995–96) data collected by Texas Tech University, supports the position of the Texas Parks and Wildlife Department (TPWD) for the aggregations of AR River shiners upstream of Lake Meredith. At the time of the publication of the proposed rule, AR River shiner aggregations upstream of Lake Meredith were believed to be declining in abundance. However, current data may indicate otherwise. While the number of AR River shiners collected upstream of Lake Meredith has declined since the 1950's, the relative abundance of the AR River shiner in this stream segment has remained almost constant. Except for 1990 collections, the relative abundance of AR River shiners within this stream segment has varied between 22 and 26 percent (Gene Wilde, Texas Tech University, *in litt.* 1997). The Service requests information on the aggregations of AR River shiners between Ute Reservoir and Lake Meredith.

5. The Memorandum of Understanding (MOU) Between the Service and the States of Texas and Oklahoma

On March 7, 1997, the Service met with representatives from four of the five affected State fish and wildlife conservation agencies and the Bureau to discuss conservation of the Arkansas River basin population of the AR River shiner. The Kansas Department of Wildlife and Parks was unable to send a representative to this meeting. The invited parties included those agencies with the responsibility, authority, and funding mechanisms to implement conservation actions for the AR River shiner.

Following this meeting, the Service and the states of Texas and Oklahoma cooperated in drafting a MOU outlining actions the agencies should undertake to conserve the species. The purpose of the draft MOU is twofold—(1) to establish a general framework for cooperation among the signatory parties to conserve the Arkansas River basin population of the AR River shiner, and (2) to seek commitments from the signatory states that will provide conservation benefits to the shiner, thereby lessening the likelihood of extinction.

The TPWD and the Oklahoma Department of Wildlife (ODWC) will accomplish the following actions under the MOU, to the extent that funding and authorities allow:

(A) Work in partnership with the Service and other State fish and wildlife resource agencies to develop and implement a detailed conservation strategy to address known and possible future threats to the AR River shiner, and recovery opportunities; implementation of the conservation strategy will be initiated within 18 months from the effective date of this MOU.

(B) Work in partnership with the Service to coordinate with other applicable State agencies and other stakeholders to develop adequate actions that eliminate or reduce threats to the AR River shiner and identify recovery actions for inclusion in the conservation strategy.

(C) Work in partnership with the Service to develop and implement a systematic program to annually monitor the distribution and abundance of the AR River shiner and other nongame fishes within the Arkansas River Basin within each State (the McClellan-Kerr Arkansas River Navigation System is exempt).

Likewise, the Service agreed to accomplish the following actions under the MOU, to the extent that funding and authorities allow:

(A) Work in partnership with the ODWC, TPWD and other State fish and wildlife resource agencies in the development of a conservation strategy that involves appropriate stakeholders, including applicable Federal and State agencies, that identifies appropriate measures needed to eliminate or reduce threats to the AR River shiner and initiate recovery actions. The Service will coordinate the first meeting with future coordination responsibilities determined by consensus.

(B) Seek to increase Endangered Species Act section 6 funds and assist in obtaining funds from other sources for states within the geographic range of the AR River shiner to assist in the conservation of this species as outlined in this MOU, the conservation strategy, and the recovery plan.

(C) If the species is listed as threatened, work cooperatively with the State fish and wildlife resource agencies in promulgating a 4(d) rule under the Act that encompasses the conservation strategy and other management/recovery actions developed by the Service in partnership with the State fish and wildlife resource agencies.

(D) Initiate delisting activities for the AR River shiner when protection under the Act is no longer warranted and the Service and State fish and wildlife resource agencies fulfill the obligations stipulated in the 4(d) rule, the conservation strategy, and recovery plan.

The draft MOU also contains an appendix specific to Texas that reflects the unique nature of the threats and recovery opportunities available in that State and will serve to guide development of the conservation strategy for the AR River shiner. The Texas appendix contains these principles—

(A) Conservation strategies will not restrict or regulate groundwater use of the High Plains Aquifer (formerly the Ogallala Aquifer) in Texas since, based on current knowledge, there is no hydrologic connection between groundwater resources of this aquifer and surface flows in the Canadian River in Texas. Conservation of the aquifer's water resources, however, is encouraged.

(B) Conservation strategies will not require releases of water from Lake Meredith, except as might be voluntarily agreed to by controlling authorities in contributing to the conservation and recovery of the species and its habitat.

(C) Existing (i.e., traditional, in the sense that they are ongoing) agricultural and land management activities as currently practiced adjacent to occupied AR River shiner habitat in Texas will not be adversely affected as part of developing and implementing conservation strategies, unless—(1) those practices are modified to adversely affect the species or its habitat, existing stream flow, or degradation of water quality; or (2) changes in those practices would benefit the species or its habitat, and are mutually agreed to by the landowner(s), TPWD, and the Service.

The draft MOU will become effective upon signature of all parties, and will remain in force until modified or terminated. The MOU may be modified at any time during the period of performance by mutual consent of the signatory parties. If changes to an appendix are warranted, the respective State and the Service may make such changes. If a proposed change to an appendix would affect other signatory states, then all signatory parties must consent to the change. This MOU, as drafted, may be terminated at any time during the period of performance, upon 30 days written notice, by any of the signatory parties.

The TPWD and the ODWC signed the draft MOU in early May. The State of Kansas declined to enter into the MOU due to staff and fiscal constraints (Steve

Williams, Secretary, Kansas Department of Wildlife and Parks, *in litt.* 1997).

Likewise, the State of New Mexico declined to enter into the MOU due to staff and fiscal constraints (Jerry A. Maracchini, Director, New Mexico Department of Game and Fish, *in litt.* 1997).

Public Comments Solicited

The Service solicits written comments on information described in this notice. All previous comments and information submitted in response to earlier comment periods on this proposed action will be considered. Communications received during this comment period may lead to a final regulation that differs from that presented in this notice.

References Cited

Brune, G. 1981. Springs of Texas volume I. Branch-Smith, Inc. Fort Worth, TX

Dugan, J.T. and J.B. Sharpe. 1996. Water-level changes in the High Plains aquifer predevelopment to 1994. Water-Resources Investigations Report 95–4208. U.S. Geological Survey. Lincoln, NE.

Peckham, D.S. and J.B. Ashworth. 1993. The High Plains aquifer system of Texas, 1980 to 1990 overview and projections. Texas Water Development Board. Austin, TX 34 pp.

Texas State Board of Water Engineers. 1938a. Oldham County, Texas records of wells and springs, driller's logs, water analysis and map showing location of wells and springs. WPA Project 6017–5674. State-Board of Water Engineers, U.S. Geological Survey, and Univ. Texas Bureau of Industrial Chemistry. Austin, TX. 50 pp.

Texas State Board of Water Engineers. 1938b. Potter County, Texas records of wells, springs, and representative earthen tanks, driller's logs, water analysis and map showing location of wells. WPA Ground-water Survey Project 5674. State Board of Water Engineers, Univ. Texas Bureau of Industrial Chemistry, and U.S. Geological Survey. Austin, TX. 52 pp.

U.S. Bureau of Reclamation. 1995. Final supplemental environmental assessment Lake Meredith Salinity Control Project Texas-New Mexico. Great Plains Region, Oklahoma-Texas Area Office. Oklahoma City, OK 57 pp.

Author

The primary author of this notice is Ken Collins, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

Authority

The authority for this action is 16 U.S.C. 1531–1544.

Dated: November 24, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–31840 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE39

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Cave Animals From Kauai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for two animals—the Kauai cave wolf spider (*Adelocosa anops*), and the Kauai cave amphipod (*Spelaeorchestia koloana*). These two species are found on the Hawaiian island of Kauai. The Kauai cave wolf spider is known from two populations, and Kauai cave amphipod is known from four populations. These animals and their habitats have been variously affected or are currently threatened by the following: Habitat degradation/loss from development; competition for space, water, and nutrients by naturalized, introduced animals; biological/chemical pesticide use; and an increased likelihood of extinction from proposed development activities and naturally occurring events. This proposal, if made final, would extend Federal protection and recovery provisions of the Act for these animal taxa. Additionally, Hawaii state regulations protecting these animals as endangered species would be triggered.

DATES: Comments from all interested parties must be received by February 3, 1998. Public hearing requests must be received by January 20, 1998.

ADDRESSES: Comments and material concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Pacific Islands Ecoregion Manager, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

The Kauai cave wolf spider (*Adelocosa anops*) and Kauai cave amphipod (*Spelaeorchestia koloana*) are known only from the Hawaiian island of Kauai. The Kauai cave wolf spider is known from two populations, and Kauai cave amphipod from four populations.

The Hawaiian archipelago includes eight large volcanic islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii), as well as offshore islets, shoals, and atolls set on submerged volcanic remnants at the northwest end of the chain (the Northwestern Hawaiian Islands). Each island was built sequentially from frequent, voluminous basaltic lava flows (Stearns 1985). The youngest island, Hawaii, is still volcanically active, and retains its form of coalesced, gently sloping, unweathered shield volcanoes. Vulcanism on the older islands has long since ceased, with subsequent erosion forming heavily weathered valleys with steep walls, and well-developed streams and soils (Zimmerman 1948).

In the formation of the islands, the lava flows create caves, cracks, gas pockets and smaller, interconnected subterranean spaces or mesocaverns (Howarth 1973; 1987a). While unique subterranean faunas have long been known from temperate continental cave systems, until the 1970's obligate cave inhabiting animals were thought to be absent from tropical and island systems (Howarth 1987a). In the last 3 decades, however, a remarkable assemblage of about 50 species of cave-adapted animals have been discovered in Hawaiian caves (Howarth 1972; 1987a, b). Cave adapted species have evolved directly from native surface dwelling ancestors in at least 12 groups of Hawaiian arthropods (Howarth 1991).

These obligate cave-dwellers are generally found on the younger islands where an abundance of unweathered lava flows exist (Howarth 1983c). On older islands, soil formation, erosion and siltation have filled in most subterranean voids thus eliminating the habitat for cave animals. The island of Kauai is the oldest of the eight major Hawaiian islands and was formed by a single shield volcano approximately 5.6 million years ago (Stearns 1985). Three million years of weathering eliminated most cave habitats formed during this initial vulcanism. Between 0.6 and 1.4 million years ago, the Koloa series of post-erosional lava flows again provided available habitat for subterranean animals. Subsequent erosion also filled in most of the habitat in the Koloa series of flows with the exception of a small area along the arid, southern coast.

Because of the age of this island and the extensive erosion, it was not originally expected to harbor any cave animals. However, in 1971, two eyeless cave arthropods, a spider and amphipod, were discovered from caves in the Koloa series lava flows of Kauai. These animals are known only from a single exposed lava flow in the "very rocky" to "extremely rocky" Waikomo soil series (U.S. Department of Agriculture, Soil Conservation Service 1972). This unweathered area covers approximately 10.5 square kilometers (4 square miles), and exhibits no blanketing by erosional sediments. The amphipod also occurs in a younger limestone cave formed on top of a portion of the exposed Koloa series flow. These animals are restricted to the dark, moist areas of larger caverns and smaller subterranean spaces. The amphipod is a detritivore and feeds primarily on rotting tree roots whereas the spider is a carnivore and preys upon the amphipod and alien arthropods that venture underground.

The land supporting these two animal species is privately owned, as are areas adjacent with potentially suitable habitat.

Discussion of the Two Animal Taxa Included in This Proposed Rule

Frank Howarth first discovered the Kauai cave wolf spider (*Adelocosa anops*) in Koloa Cave #2 in 1971, and it was formally described by Willis Gertsch (Gertsch 1973). This species is a member of the wolf spider family (Lycosidae). Spiders in this family are characterized by a distinct eye pattern, including two particularly large eyes in the middle row. The most conspicuously diagnostic character of the Kauai cave spider is its complete lack of eyes. This character is unique among wolf spiders and its distinction justifies the recognition of a separate genus for this taxon. A few species of wolf spider have reduced eyes, including another cave-adapted species on the island of Hawaii, but only in the Kauai cave wolf spider are the eyes entirely absent. Adults of the Kauai cave wolf spider are about 12.7 to 19.0 millimeters (0.5 to 0.75 inches) in total length with a reddish-brown carapace, pale abdomen and bright orange legs. The hind margin of each chelicera (biting jaw) bears three large teeth, two situated basally, and third at the distal end of the chelicera. The tibiae of the two anterior pairs of legs have four pairs of ventral spines, and tarsi (ultimate segments) and metatarsi (penultimate segments) of all legs bear unusually long and silky trichobothria (sensory hairs).

The Kauai cave wolf spider is a predator, and although blind, can detect the presence of potential food items and actively stalks its prey (Howarth 1983a). Although predation has not been observed in the field, the spider probably feeds primarily on the Kauai cave amphipod, and to a lesser extent on alien species of arthropods that periodically enter the cave system. Compared to most wolf spiders, the reproductive capacity of the Kauai cave wolf spider is extremely low, with only 15 to 30 eggs laid per clutch (Howarth 1981; Wells *et al.* 1983). Newly hatched spiderlings are unusually large, and carried on the back of the female for only a few days (Howarth 1991; Howarth and Mull 1992).

The Kauai cave wolf spider has been found only in two lava tube systems in the Koloa area of Kauai; specifically the Koloa Caves and Kiahuna Caves (Gertsch 1973; Frank Howarth, Bishop Museum, *in litt.* 1979). The spider is restricted to the dark zones of the caves and adjoining fissures. Similar to other Hawaiian cave-adapted spiders, this species is highly susceptible to desiccation (Hadley *et al.* 1981; Ahearn and Howarth 1982). The spider is active in the large caverns only during wetter times of the year (Howarth, *in litt.* 1979) or smaller areas that maintain a saturated atmosphere (Howarth 1981). Because of the seasonal and spatial movement of the spider in and out of areas accessible to biologists, survey methods have not been developed to obtain accurate population estimates.

Frank Howarth also discovered the Kauai cave amphipod (*Spelaeorchestia koloana*) along with the *Kauoi* cave wolf spider in Koloa Cave #2 in 1971. Because of the unusual attributes of a highly reduced pincher-like condition of the first gnathopod (cephalothoracic appendage) and the second gnathopod being mitten-like in both sexes, this taxon is placed in its own unique genus (*Spelaeorchestia*) within the family Talitridae (Bousfield and Howarth 1976). This species is also distinctive in its lack of eye facets and pigment, and extremely elongate, spiny, postcephalic appendages. Adult amphipods are 7 to 10 millimeters (0.25 to 0.4 inches) in length and very slender-bodied, with a hyaline cuticle. Gnathopod 1 is highly reduced and gnathopod 2 is mitten-like. Antenna 2 is slender and elongate, with the flagellum only slightly longer than the peduncle. Peraeopods (abdominal walking legs) are very elongate, with slender, attenuated claws. All pleopods (swimming legs) are reduced, with branches vestigial or lacking. Uropods (tail-like appendages) 1 and 2 have well developed prepeduncles, and brood plates in the mature female are vestigial or entirely absent.

The Kauai cave amphipod is a detritivore and has been observed feeding on rotting roots of *Pithecellobium dulce* (Manila tamarind) and *Ficus* sp. (fig), rotting sticks, branches and other plant material washed into the caves, and arthropod fecal material. In large cave passages, most individuals are found on or underneath roots or rotting debris. However, this amphipod does not appear to be particularly gregarious. When disturbed, this species typically moves slowly away rather than jumping like other amphipods. Nothing is known of the reproductive biology of this amphipod, but the vestigial brood plates of the female suggest they give birth to a small brood of large offspring (Bousfield and Howarth 1976; Poulson and White 1969).

While found in the same caves in the Koloa lava flow series as the Kauai cave wolf spider, the cave amphipod is also known from a short lava tube (cave #210) located 1 kilometer (0.6 miles) inland of the seaward Kiahuna Cave, and the Limestone Quarry Cave 7 kilometers (4.5 miles) to the east at Mahaulepu. The latter cave occurs in a calcareous sandstone hill formed from a cemented sand-dune that was deposited on top of a disjunct exposure of the Koloa lava formation during a higher stand of the sea (Stearns 1985). The limestone cave was formed by water erosion from the ocean and a still-active fresh water stream that runs through the lowest cave level. The amphipod probably colonized this cave by migrating from the underlying Koloa lava formation. No attempt has been made to estimate the population sizes of the cave amphipod.

The two cave animals are restricted to dark, moist areas of larger caverns and smaller subterranean spaces or mesocaverns (Howarth 1983a). As with the subterranean animals on younger Hawaiian islands (Howarth 1991), the small mesocaverns may be the primary habitat for these species. For example, the Kauai cave amphipod was not seen during initial surveys of Kiahuna cave #210 (Miura and Howarth 1978). On a subsequent survey however, the floor of a small, dead end passage was saturated with 40 liters (10 gallons) of water, and 24 hours later amphipods had moved into this area, presumably from the surrounding mesocaverns (Howarth, *in litt.* 1979; Howarth 1983a). On younger islands, these mesocaverns also allow animals to move among larger, adjacent lava tubes (Howarth 1991). However,

because these smaller voids become filled with erosional sediment in older flows like Koloa and as a result of surface disturbance (Hammatt *et al.* 1988; A. Asquith, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, *in litt.* 1994), it is unlikely that the Kauai cave animals can move among separate lava tube systems. Because distinct species can evolve in adjacent lava tubes even when cave animals can move extensively through mesocaverns (Hoch and Howarth 1993), it is prudent to consider the separate localities of these animals as different populations, even though intervening areas of potential habitat cannot be surveyed. Thus, the Koloa Caves #1 and #2 and adjacent areas are considered to harbor one population of the spider and one population of the amphipod. The seaward Kiahuna Caves #267 and #276 harbor another population of both the spider and amphipod. Kiahuna Cave #210 and the Limestone Quarry Cave each harbor populations of the cave amphipod.

The restricted area in which these animals occur is rapidly undergoing development. The shallow cave habitat is degraded or destroyed through surface alterations such as grading, blasting, paving, and placement of fill. These animals are also increasingly under risk from pesticide use and pollution associated with residential and golf course development.

Previous Federal Action

On June 16, 1976, the Service published in the **Federal Register** (43 FR 26084) a proposal to list the Kauai cave wolf spider as an endangered species and the Kauai cave amphipod as threatened. That proposal was withdrawn on September 2, 1980 (45 FR 58171) as a result of a provision in the 1978 Amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within 2 years of proposal or within 1 year after passage of the Amendments, whichever period was longer. An initial comprehensive notice of review for invertebrate animals was published on May 22, 1984 (49 FR 21664), in which the Kauai cave wolf spider and Kauai cave amphipod were treated as category 2 candidates for Federal listing. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. The Service published an updated notice of review for animals on January 6, 1989 (54 FR 554). In this notice the Kauai cave wolf spider and Kauai cave amphipod were treated as category 1 candidates for Federal listing. Category 1 taxa were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the notice of review for all animal taxa published by the Service on November 21, 1991 (58 FR 58804), the two Kauai cave arthropods were again listed as category 2 candidates. In the November 15, 1994, notice of review for all animal taxa (59 FR 58982), the two Kauai cave arthropods were elevated to category 1 candidates. Upon publication of the February 28, 1996, notice of review (61 FR 7596), the Service ceased using category designations and included the two cave arthropods as candidate species. Candidate species are those which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 6, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals. This proposed rule constitutes a Tier 3 action.

Summary of Factors Affecting These Species

Procedures found in section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Kauai cave wolf spider (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* These animals are restricted to a 10.5 square kilometers (4 square miles) coastal section of the Koloa series lava flows that have not been filled with erosional sediment. Surface modifications in this area directly impact the subterranean habitat that supports the spider and amphipod (Hammatt *et al.* 1988; Miller and Burgett 1995; Asquith, *in litt.* 1994). Prior to arrival of Polynesians in Hawaii the above ground habitat of this area was probably comprised of a coastal dry shrubland and would have included plants such as *Sida fallax* ('ilima), *Myoporum sandwicense* (naio), *Chamaesyce celastroides* ('akoko) and *Santalum ellipticum* ('iliahialo'e) (Gagne and Cuddihy 1990). On the islands of Maui and Hawaii, these plants are known to produce extensive root systems into underlying lava tube fissures (F. Howarth, Bishop Museum, pers. comm. 1994), and probably also formed the primary nutrient source for the cave ecosystem at Koloa.

The first thousand years of Polynesian habitation in Hawaii would have had little significant impact on the cave system at Koloa. With a rapid population increase after 1400 A.D. however, the expansion of agriculture from more favorable, mesic valleys and the use of fire to clear plant communities probably led to heavy modification of most leeward areas of the Hawaiian Islands (Kirch 1982; Cuddihy and Stone 1990). A perennial stream flowing directly through the Koloa area allowed Polynesians to develop extensive irrigated fields of *Colocasia esculenta* (taro), *Ipomoea batatas* (sweet potato) and *Saccharum officinarum* (sugar cane), as well as dry land cultivation of sweet potato (Handy and Handy 1972; Hammatt and Tomonari 1978; Hammatt *et al.* 1988; Sinoto 1975).

Field irrigation of traditional crops continued in the Koloa area until 1835 when the first sugar plantation in the Hawaiian Islands was established at Koloa. Thereafter most of the land with suitable top soil was used for large-scale sugar cane cultivation (Hammatt *et al.* 1988). This activity included the mechanical clearing of stones and boulders, and consolidation of smaller field plots. The surface modifications associated with these past agricultural activities would have greatly reduced underground root biomass through the destruction of perennial vegetation (Howarth 1981; Miller and Burgett 1995), and also increased sediment deposition in subterranean fissures (Hammatt *et al.* 1988; Asquith, *in litt.* 1994).

Thus, with the exception of a narrow 0.5 kilometer-wide (0.25 mile-wide) strip of particularly rocky land immediately along the coast, most of the potential habitat for both the spider and the amphipod was heavily modified prior to the 1950's. On interior lands, small areas of exposed pahoehoe lava, rock outcrops and the entrances to lava tubes were generally unsuited for cultivation of crops and were left less disturbed. In areas improved for pasture use, however, some cave entrances also were filled or covered (Hammatt *et al.* 1988; Howarth, *in litt.* 1977). The remaining pockets of uncultivated land around collapsed lava tubes and exposed lava probably served as refugia for the cave animals. Significantly, all the known populations of both the spider and amphipod are in areas never used for plantation sugar cane cultivation.

In the last 5 decades, the Koloa area has changed from an agriculture-based economy to one increasingly dependent on tourism (Kauai Office of Economic Development, *in litt.* 1994). Approximately 75 percent of the original habitat available for the cave animals is now designated as "urban" or "urban residential" (County of Kauai, *in litt.* 1994), and the population of the Koloa area is expected to double by the year 2015 (KPMG 1993). This population growth has lead to rapid growth in the number of homes, condominiums, and resort hotels originally centered along the coastal strip. In recent years, interior lands supporting both populations of the spider and all but one population of the amphipod have been rezoned from agriculture to urban usage and are undergoing development. With the construction of roads, residences, and golf courses, the subterranean habitat is degraded through the removal of perennial vegetation and its root systems, the collapse of lava tubes from heavy construction equipment, and increased siltation from grading and filling activities associated with landscaping and construction (Hammatt *et al.* 1988; Asquith, *in litt.* 1994). The population of the Kauai cave wolf spider in Koloa Cave #2 is directly threatened by a proposed bypass road that could destroy the most important section of the cave. The disjunct population of the amphipod in the limestone cave is threatened from a quarrying operation occurring directly above and adjacent to the cave system (Howarth, *in litt.* 1977, 1978; 43 FR 26084). Thus, most of the land that potentially harbored these animals has been highly modified and an estimated 75 percent of the area has probably been rendered uninhabitable. The remaining habitat, harboring virtually all known populations of the spider and amphipod, is being degraded by current land use or threatened with degradation by proposed development.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor, but unrestricted collecting for scientific purposes or excessive visits by individuals interested in exploring the lava tubes could result from increased publicity and would seriously impact both of the cave species (Howarth 1982; Culver 1992). Such disturbances by human visitation could also promote greater invasion by alien arthropod species.

C. *Disease and predation.* Several alien spiders including the brown violin spider (*Loxosceles rufescens*), *Dysdera crocata* (NCN) and the spitting spider (*Scytodes longipes*) have invaded the cave habitats in Koloa (Gerstch 1973; F. Howarth, pers comm. 1994; Asquith, *in litt.* 1994), and prey on immature stages of the Kauai cave wolf spider and probably all life stages of the cave amphipod (Howarth 1981). The American cockroach (*Periplaneta americana*) is abundant in some of the caves (Bousfield and Howarth 1976; Asquith, *in litt.* 1994) and probably opportunistically preys on immature cave amphipods (F. Howarth, pers. comm. 1994) and competes for space at amphipod food sources (Asquith, *in litt.* 1994). In the Limestone Quarry Cave, the introduced amphipod *Tallitroides topitotum* (NCN) may compete with the Kauai cave amphipod for detritus food (Bousfield and Howarth 1976; F. Howarth, pers. comm. 1994).

In addition, as noted in the Background section, the Kauai cave wolf spider is a predator. Although predation has not been observed in the field, this spider probably feeds primarily on the Kauai cave amphipod, and to a lesser extent on alien species of arthropods that periodically enter the cave system.

D. *The inadequacy of existing regulatory mechanisms.* The Kauai cave wolf spider and the Kauai cave amphipod are found entirely on private land. One population of the cave spider is provided some protection by a County ordinance requiring the landowner to conserve two Kiahuna lava tubes known to harbor the spider (County of Kauai Development Plan 1979). However, existing conservation measures under this ordinance protect only the cave entrances and not the surface footprint or adjacent mesocaverns which the animals require for habitat. Evaluation of one of the caves conserved under this ordinance showed significant degradation from surface disturbance over the dark zone (Asquith, *in litt.* 1994). In addition, this ordinance protects only a single population of each of the cave animals, which is not sufficient to ensure the continued existence of these species because all other populations are threatened and even the Kiahuna caves populations are susceptible to accidental events such as chemical spills.

There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these animals. However, Federal listing would automatically invoke listing under Hawaii State law. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the [Federal] Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter." Listing of these two arthropod species will therefore also invoke protection available under State law (see Available Conservation Measures).

E. *Other natural or manmade factors affecting its continued existence.* Insecticide use, coincident with the change to urban land development, poses a serious threat to the cave animals (Howarth and Stone 1993). While plantation-scale sugar cane cultivation in the Koloa area involves seasonal use of herbicides, intensive usage is generally limited to spot applications of glyphosate (Roundup), and generally no insecticides are used (Murdoch and Green 1989). Furthermore, in recent years most sugar cane cultivation in the area has been restricted to land with deep soil, which is generally unsuitable habitat for the cave animals.

Golf courses exist or are proposed for the land directly above or adjacent to both populations of the spider and all but one population of the amphipod. At least 30 different pesticides are used on golf courses in Hawaii, including insecticides to control pests of turf grass (Murdoch and Mitchell 1975; Murdoch and Green 1989). Most golf courses in Hawaii apply the insecticide Chlorpyrifos at the rate of 1 pound active ingredients per acre, one to three times per year, but rates and frequency of applications are sometimes much higher (Murdoch and Green 1989; Brennan *et al.* 1992). Predators such as the Kauai cave wolf spider are generally more susceptible to insecticides than the target pests (Croft 1990). Even if not killed outright, the sublethal effects of both insecticides and herbicides on the cave animals could include reduced fecundity, reduced life span, slowed development rate, and impaired

mobility and feeding efficiency (Messing and Croft 1990).

In addition to the use of pesticides on golf courses, pesticide usage on residential property also poses a threat. It is estimated that residential lots use more pesticides per unit area than either sugar cane cultivation or golf courses, and that 90 percent of this use involves insecticides. Much of this insecticide is applied directly to the ground for termite control (Hawaii Office of State Planning 1992). With an estimated increase of 4,000 houses in the Koloa area by the year 2015 (KPMG 1993), residential pesticides are considered a serious threat to the cave animals.

These cave animals are particularly susceptible to pesticides because of their tendency to seek water sources (Howarth 1983a; Asquith, *in litt.* 1994). Even if pesticides are not used directly above a lava tube, pesticides that leach into adjacent subterranean caverns with water from runoff or irrigation are serious threats because the animals may be attracted to the water and come into contact with the chemicals.

Biological control agents (living organisms used to control pests) are usually perceived as preferable to the use of chemicals because they represent less of a threat to human health and generally do not stimulate resistance in pests. Some of these organisms, however, attack species other than their intended targets and have caused or contributed to the decline and extinction of several Hawaiian insects (Gagne and Howarth 1985; Howarth 1983b; Howarth 1991). The nematode *Steinernema carpocapsae* (NCN) is. marketed for use against turf pests and has been petitioned for use on golf courses in Hawaii (Faust 1992). This nematode can infect at least 250 species of arthropods (Poinar 1979) including arachnids such as the Kauai cave wolf spider (Poinar and Thomas 1985). Biological control has been emphasized for golf course management in the Koloa area (Townscape 1993) and is a potential threat to the cave spider and amphipod.

The small number of populations of the Kauai cave wolf spider (two populations) and Kauai cave amphipod (four populations) increases the risk of extinction from naturally occurring events such as storms or earthquakes.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in proposing this rule. Based on this evaluation, the preferred action is to list the Kauai cave wolf spider and Kauai cave amphipod as endangered. These two species are threatened by one or more of the following: Habitat degradation and/or predation by alien arthropods; competition for space and nutrients with alien arthropods; habitat loss from agriculture, residential and resort development, and quarrying activities; human impacts from pesticide use and biological pest control. In addition, the small number of populations and limited distribution make these species particularly vulnerable to extinction from accidental or naturally occurring events. Because the two species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Therefore, listing both these species as endangered is proposed.

Critical habitat is not being proposed for the two species included in this rule, for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Kauai cave species. Service regulations (50 CFR 424.12(a)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service believes critical habitat is not prudent for the Kauai cave wolf spider and the Kauai cave amphipod because both of the above described situations exist. The entrances to the lava tube caves that provide habitat for these two species are at ground level appearing as holes on the surface, and normally would likely be overlooked by the casual observer. However, these caves are fragile ecosystems and the publishing of a critical habitat map, as required, would attract attention to the area, and could promote vandalism and cause habitat destruction through increased human activity. The same location information would have to be actively sought through additional inquiries if based only on the listing notices.

Many specialized cave species are exceedingly vulnerable to direct human disturbance (Howarth 1983) and human visitation to caves is a widespread problem (Culver 1992). Even if the human activity does not have harmful intent, it would likely result in increased foot traffic, introduction of foreign material, heat and drying from bodies and lamps, and destruction of tree roots and other cave animal food sources all of which would be detrimental to these species (Miura and Howarth 1978). The Kauai cave wolf spider completely lacks eyes and is restricted to dark zones of the caves and adjoining fissures. The spider is active only during wetter times of the year or in smaller cave areas that exhibit saturated atmosphere. This lack of sight and specific life requirement needs make the cave spider especially vulnerable to human intrusion from trampling, casual collection, and modifying the cave environment through changes in air circulation and humidity. The Kauai cave amphipod is generally associated with rotting sticks, branches and miscellaneous plant material, as well as other decomposing organic debris. When disturbed, this species typically moves slowly away rather than jumping like other amphipods. This behavioral pattern and the association with debris occurring on the cave floor make this species especially vulnerable to human activity such as foot traffic. Moreover, since the amphipod is thought to be an important food source for the Kauai cave wolf spider, adverse impacts to the amphipod could also affect the cave spider. For these reasons, the risks posed by human activity to these species that could result from publication of critical habitat maps is significant.

In addition, designation of critical habitat would not be beneficial to these species. Critical habitat designation provides protection only on Federal lands or on private lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. The two Kauai cave animals are known to occur only on private land and there presently is no Federal nexus through permitting or funding activities. Therefore, designation would provide no benefit at the present time.

However, even if Federal involvement through permitting or funding occurs sometime in the future, critical habitat would not provide any added conservation benefit to these species. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded or carried out by such agency, does not jeopardize the continued existence of a federally-listed species. The consequence of critical habitat designation is that Federal agencies must also ensure that their actions do not result in destruction or adverse modification of critical habitat. However, the prohibition on adverse modification would provide no benefit beyond that provided by the prohibition on jeopardy. The Kauai cave wolf spider has been found in only two lava tube systems and the Kauai cave amphipod in the same two systems and two other caves. If designated for these species, critical habitat would likely involve only occupied habitat because of the specific and unique life requirements of the two cave animals. Thus, because of these few locations of limited size, any activity that would adversely modify critical habitat would likely jeopardize the continued existence of the species as well. The designation of critical habitat would, therefore, afford no additional benefit.

In addition, in some cases, critical habitat may provide some benefits to a species by identifying areas important to a species conservation. However, in this case, this information can be disseminated through alternative means. All involved parties and landowners have been notified of the importance of the cave species habitat. The Service is also working with these landowners through the Partners for Wildlife program to fence the cave entrances to discourage human intrusion. Appropriate consultation and coordination with other Federal agencies, such as the Federal Highway Administration and the Department of Agriculture, will occur once the specific federally-supported activity that could affect the two cave species is proposed.

In summary, there would be substantial risks to these species by publicizing maps of the locations of their cave habitats. Weighed against the fact that there would be no additional benefit to the species, the Service finds that designation of critical habitat for the two cave animals is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed animals are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All known populations of the Kauai cave wolf spider and the Kauai cave amphipod are located on private property. Federally supported activities that could affect these taxa and their habitat in the future include, but are not limited to, the following—construction of roads and highways; construction of public or private facilities; construction of diversions for flood control; and the release of biological control agents.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these); import or export; transport in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of the policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession, delivery, or movement, including interstate transport, involving no commercial activity, of dead specimens of these taxa that were collected prior to the publication in the **Federal Register** of the final regulation adding these taxa to the list of endangered species; and

(2) Landscaping that does not include filling or grading the area above or adjacent to the surface footprint of the caves.

Potential activities involving these taxa that the Service believes will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Collection of specimens of these taxa for private possession or deposition in an institutional collection;

(2) The use of chemical insecticides that results in killing or injuring these taxa;

(3) The unauthorized release of biological control agents that attack any life stage of these taxa; and

(4) Habitat modification that results in actually killing or injuring these taxa by significantly impairing essential life sustaining requirements such as breeding, feeding and shelter. Such

habitat modification may include but may not be limited to: Removal or destruction of perennial vegetation within or adjacent to the surface footprint of the caves; construction, clearing, grading, digging, or filling within or adjacent to the surface footprint of the caves; blasting for construction in proximity to the caves; and alteration of the natural drainage of surface and subsurface water flow into the caves.

Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's endangered species act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Federal Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter..." (HRS, Sect. 195D–4(a)). Therefore, Federal listing will accord the species listed status under Hawaii State law. State regulations prohibit the removal, destruction, or damage of animals found on State lands. However, the regulations are difficult to enforce because of limited personnel. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)), cutting, collecting, uprooting, destroying, injuring, or possessing any listed species of plant on State or private land, or attempting to engage in any such conduct. The State law encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, Sect. 195AD–4 and 5).

Questions regarding specific activities should be directed to the Ecosystem Manager of the Service's Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.C. 11th Avenue, Portland, Oregon, 97232–4181 (503/231–6241; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be based on the best and most accurate information possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species; and

(5) Additional information regarding whether or not designating critical habitat would be prudent.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final determination that differs from this proposal.

The Endangered Species Act provides for at least one public hearing on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Ecoregion Manager (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** above).

Author: The author of this proposed rule is Dr. Adam Asquith, Ecological Services, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–3441).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, part 17, subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is proposed to be amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows—

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section § 17.11(h) is amended by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
ARACHNIDS							
Spider, Kauai cave wolf	*Adelocosa anops*	U.S.A. (HI)	NA	E		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
Amphipod, Kauai cave	*Spelaeorchestia koloana.*	U.S.A. (HI)	NA	E			

Dated: November 3, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–31839 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Listing of all Sturgeon and Paddlefish Species and Their Products in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its Implementation by the United States; Public Meetings

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: With this notice the U.S. Fish and Wildlife Service (Service) announces 2 public meetings to discuss the implementation of the listing of all sturgeon and paddlefish, and their products in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This listing decision was reached at the Tenth Conference of the CITES Parties (COP10) which was held in June of 1997. The listing becomes effective April 1, 1998. With the listing of all sturgeon and paddlefish species in CITES, this fishery product is now covered by the Service's regulations regarding import or export of wildlife. The focus of the meeting will be on aspects of importation of caviar and other sturgeon products into the United States.

DATES: A public meeting in New York City, NY will be held on January 17, 1998, from 8:00 am–12:00 noon, and a public meeting in Los Angeles, CA will be held on January 27, 1998, from 8:00 am–12:00 noon.

ADDRESSES: The public meeting in New York City will be held at St. John's University, Bent Hall Seminar Room, 8000 Utopia Parkway, Jamaica, NY 11439. The public meeting in Los Angeles will be held at The Westin (Los Angeles Airport) Hotel, 5400 West Century Boulevard, Los Angeles, CA 90045. Please note that the rooms for these meetings are accessible to the handicapped.

FOR FURTHER INFORMATION CONTACT: Dr. Rosemarie Gnam, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2095, fax (703) 358–2298.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the Convention. Currently, 143 countries, including the United States, are CITES Parties.

The Service is the lead agency for the implementation of CITES. As such, we are responsible for implementing recent decisions from the Tenth Conference of the Parties (COP10) which was held this past June in Zimbabwe. Among the decisions made at COP10, was to include all unlisted species of sturgeon and paddlefish in Appendix II of CITES. This listing becomes effective April 1, 1998 (see 62 FR 44627).

The order, Acipenseriformes, are a primitive group of approximately 27 species of fish, whose biological attributes make them vulnerable to intensive fishing pressure or other agents of elevated adult mortality. Although females produce large quantities of eggs, juvenile mortality is high; sturgeons are generally long-lived and slow to mature (reaching sexual maturity at 6–25 years); and depend on large rivers to spawn. Sturgeons are fished for meat and caviar, with caviar being the most valuable product and in highest demand in international trade. Many species of sturgeons, the primary source of commercial caviar, have experienced severe population declines worldwide because of both habitat destruction and excessive take for international trade. Some are at serious risk of extinction.

Sturgeons of the Caspian Sea produce what is claimed to be the highest quality caviar and are the source of more than 90% of the world caviar trade. Russia, Kazakhstan, Azerbaijan, Turkmenistan, and Iran now supply most of the caviar from the Caspian Sea. Since the mid-1970's very marked declines in the populations of all six of the Caspian Sea's sturgeon species have been noted, especially Beluga (*Huso huso*), Russian (*Acipenser gueldenstaedtii*), and stellate (*A. stellatus*) sturgeons. Five of the six species of Caspian Sea sturgeons are considered endangered by IUCN (the World Conservation Union). The problem has become exacerbated in recent years due to deteriorating fishery management and enforcement capabilities in the region, resulting in significant levels of poaching and illegal trade. The total present take is believed to far exceed sustainable levels.

In an effort to curtail the trade in illegally obtained (poached) caviar, and to ensure sustainable use and management of wild sturgeon, particularly those of the Caspian Sea, sturgeon were considered for listing in CITES. These concerns led to the development of the CITES listing proposal by Germany to include all presently unlisted species of sturgeons in Appendix II. CITES could provide a regulatory mechanism for import and export that could curtail the illegal caviar trade and reduce threat to the wild populations. The United States, both as a sturgeon range state and major importer of Caspian Sea caviar, agreed to co-sponsor the CITES listing proposal with Germany.

At COP10 held in Zimbabwe, this past June, the proposal to include all unlisted sturgeon species in CITES was adopted by consensus. Prior to COP10,

Short nosed sturgeon (*A. brevirostrum*) and Baltic sturgeon (*A. sturio*) were listed in CITES Appendix I and Atlantic sturgeon (*A. oxyrhynchus*) and American paddlefish (*Polydon spathula*) were listed in CITES Appendix II. Five of the newly listed species were listed in Appendix II because of their population status and trade levels: Beluga, Russian, stellate, Siberian (*A. baerii*), and ship or spiny (*A. nudiventris*) sturgeons. All other species of sturgeons not already listed in CITES before COP10 were included in Appendix II because of the similarity of appearance of their caviar to that of the Caspian Sea species. This includes the white sturgeon (*A. transmontanus*) from North America. The end result is that all sturgeon and paddlefish species worldwide, are now covered under the provisions of CITES.

The listing of sturgeon will provide a regulatory mechanism for the import and export of sturgeon and their products, thereby curtailing the illegal caviar trade and detriment to the wild populations, notably those of the Caspian Sea. It will ensure sustainable use and management of wild sturgeon stocks.

With the listing of all sturgeon and paddlefish species in CITES at COP10, this fishery product is now covered by the Service's regulations regarding import or export of wildlife. All sturgeon species, their parts and products, including meat and caviar, will have to be declared to the Service upon import or export, as well as meet applicable permit, port and licensing requirements.

These public meetings will provide an opportunity for the Service to meet with importers and exporters of sturgeon and their products, notably caviar, Customs brokers and other interested persons on the CITES listing. The Service will explain the wildlife regulations which will now affect sturgeon imports and exports, and how these requirements will be implemented. Given that the United States is the largest importer of caviar from the Caspian Sea region, focus of the meeting will primarily be on imports of caviar products, notably from Russia, Kazakhstan, Azerbaijan, Turkmenistan, and others.

The public meetings will be held in New York City and Los Angeles because of the high volume of caviar imports through these ports, and the corresponding concentration of affected members of the general public.

The Service has prepared a fact sheet, "Sturgeons and CITES" to help answer questions on the listing and its implementation. It is available from the Office of Management Authority upon request. Written requests should be sent to: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 700, Arlington VA 22203.

Author: This notice was prepared by Dr. Rosemarie Gnam, Office of Management Authority, U.S. Fish and Wildlife Service.

Dated: November 25, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–31926 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 234

Friday, December 5, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting; Board of Directors Meeting

TIME: 9:00 a.m.–12:00 noon.
PLACE: ADF Headquarters.
DATE: Wednesday, 10 December 1997.
STATUS: Open.

Agenda

Wednesday, 10 December 1997

9:00 a.m. Chairman's Report
10:00 a.m. President's Report
11:30 a.m. Executive Session (Closed)
12:00 noon Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 97–32101 Filed 12–3–97; 3:58 pm]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–088–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Virus-Serum-Toxin Act and regulations.

DATES: Comments on this notice must be received by February 3, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–088–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–088–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Virus-Serum-Toxin Act and regulations, contact Dr. David Espeseth, Director, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245 or e-mail despeseth@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Jenkins, Agency Support Service Specialist, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: Virus-Serum-Toxin Act and Regulations.

OMB Number: 0579–0013.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the importation, preparation, sale, or shipment of worthless, contaminated, dangerous or harmful veterinary biological products. This program is conducted under the Virus-Serum-Toxin Act (21 U.S.C. 151, *et seq.*) and the regulations issued thereunder (9 CFR, chapter I, subchapter E). Veterinary biological products are defined as all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, e.g., antibiotics), or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term "biological products" includes, but is not limited to, vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components that are of natural or synthetic origin, or that are derived from synthesizing or altering various substances or components of substances such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies.

To accomplish this mission, APHIS issues licenses to qualified establishments that produce biological products and issues permits to importers of such products. We also enforce requirements concerning production, packaging, labeling, and shipping of these products, and set standards for the testing of these products.

Fulfilling this responsibility requires us to employ a number of information-gathering tools such as establishment license applications, product license applications, product permit applications, product and test report forms, and field study summaries.

The information we obtain with the help of these documents enables us to ensure that biological products used in the United States are pure, safe, potent, and effective. If we did not collect this information, we would be unable to carry out this mission.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 2.2063 hours per response.

Respondents: U.S. importers of biological products, shippers, operators of establishments that produce or test biological products or that engage in product research and development.

Estimated number of respondents: 114.

Estimated number of responses per respondent: 298.73.

Estimated annual number of responses: 34,056.

Estimated total annual burden on respondents: 75,138 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of November.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31903 Filed 12–4–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–052–2]

Monsanto Co. and Dekalb Genetics Corp.; Availability of Determination of Nonregulated Status for Genetically Engineered Corn Line

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a corn line developed by Monsanto Company and Dekalb Genetics Corporation designated as GA21, which has been genetically engineered for tolerance to the herbicide glyphosate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Monsanto Company and Dekalb Genetics Corporation in their petition for a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: November 18, 1997.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and any written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ray Dobert, Biotechnology Evaluation, BSS, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8365. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1997, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 97–099–01p) from Monsanto Company of St. Louis, MO, and Dekalb Genetics Corporation of Mystic, CT (Monsanto/Dekalb), seeking a determination that a corn line designated as GA21, which has been genetically engineered for tolerance to the herbicide glyphosate, does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On August 13, 1997, APHIS published a notice in the **Federal Register** (62 FR 43311–43312, Docket No. 97–052–1) announcing that the Monsanto/Dekalb petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject corn line and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether the subject corn line posed a plant pest risk. The comments were to have been received by APHIS on or before October 14, 1997. APHIS received no comments on the subject petition during the designated 60-day comment period.

Analysis

Corn line GA21 has been genetically engineered to contain a modified corn 5-enolpyruvylshikimate-3-phosphate-synthase (EPSPS) gene, which, when expressed in the plant, confers tolerance to the herbicide glyphosate. The modified corn EPSPS gene was introduced into the parental inbred corn line AT by the particle acceleration method, and its expression is controlled in part by the rice actin promoter and intron and the NOS 3′ termination sequence derived from the plant pathogen *Agrobacterium tumefaciens.*

Corn line GA21 has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from a plant pathogen. However, evaluation of field data reports from field tests of the subject corn line conducted under APHIS notifications since 1994 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject corn plants' release into the environment.

Determination

Based on its analysis of the data submitted by Monsanto/Dekalb, and a review of other scientific data and field tests of the subject corn line, APHIS has determined that corn line GA21: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than corn developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not harm other organisms, including agriculturally beneficial organisms and threatened and endangered species; and (5) should not cause damage to raw or processed agricultural commodities. Therefore, APHIS has concluded that corn line GA21 and any progeny derived from hybrid crosses with nontransformed corn varieties will be just as safe to grow as traditionally bred corn lines that are not regulated under 7 CFR part 340.

The effect of this determination is that the Monsanto/Dekalb corn line designated as GA21 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of corn line GA21 or its progeny. However, importation of the subject corn line or seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the Monsanto/Dekalb corn line GA21 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 28th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31901 Filed 12–4–97; 8:45 am]

BILLING CODE 3410–34–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: December 15, 1997.

PLACE: National Archives at College Park, MD.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review of Assassination Records
2. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 97–32016 Filed 12–3–97; 10:50 am]

BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed additions to and deletions from Procurement List

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 5, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for the Marine Corps Air Station, Yuma, Arizona)
NPA: Arizona Industries for the Blind, Phoenix, Arizona

Office and Miscellaneous Supplies
(Requirements for the Marine Corps Air Station, Beaufort, North Carolina)
NPA: Lions Club Industries, Inc., Durham, North Carolina

Services

Janitorial/Custodial
Federal Building
648 Mission
Ketchikan, Alaska
NPA: REACH, Inc., Juneau, Alaska

Janitorial/Custodial
for the following Grand Rapids, Michigan locations:
VA Outpatient Clinic, 3019 Coit Avenue
Special Mental Health Clinic, 3000 Monroe Street
NPA: Hope Network, Grand Rapids, Michigan

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for deletion from the Procurement List.

The following commodity and services have been proposed for deletion from the Procurement List:

Commodity

Remover, Floor Polish
7930–00–045–6923

Services

Janitorial/Grounds Maintenance
U.S. Army Reserve Center
6401 Imperial Drive
Waco, Texas
Janitorial/Grounds Maintenance
U.S. Army Reserve Center
200 North New Road
Waco, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–31939 Filed 12–4–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 5, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 26 and October 17, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 50555 and 54041) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Character Lunch Bags
M.R. 402
Case, Radio Set
5895–00–889–3856

Services

Administrative Services
General Services Administration, PBS
Sacramento Field Office
650 Capitol Mall
Sacramento, California
Operation of Customer Supply Center
Hickam Air Force Base, Hawaii.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–31940 Filed 12–4–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Secrecy/License to Export.

Form Number(s): None.

Agency Approval Number: 0651–0034.

Type of Request: Extension of a currently approved collection.

Burden: 1,476 hours.

Number of Respondents: 2,187.

Avg. Hours Per Response: The PTO estimates the burden hours required by the public to gather, prepare, and submit the various petitions will range anywhere from 30 minutes (.5) to four hours, depending on the situation.

Needs and Uses: Existing patent laws and rules place limitations on the disclosure of inventions when such disclosure is determined by appropriate officials not to be in the national interest. A patent application must also be granted a license by the office to file an application for a patent from a foreign country. Regulations permit applicants to petition to have secrecy orders rescinded or modified or to reconsider a request for a license to submit a patent application abroad. This collection includes that information needed by PTO to review and decide such requests.

Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions, farms, Federal agencies or employees, and state, local, or tribal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C., 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C., 20503.

Dated: December 1, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31880 Filed 12–4–97; 8:45 am]

BILLING CODE: 3510–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Statutory Invention Registration.

Form Number(s): Agency—PTO/SB/94.

Agency Approval Number: 0651–0036.

Type of Request: Revision of a currently approved collection.

Burden: 34 hours.

Number of Respondents: 85.

Avg. Hours Per Response: 24 minutes.

Needs and Uses: When a person invents something solely for personal use, the inventor can register a "statutory invention" and have it published. Once published, it cannot be claimed by another person. The information provided by an inventor is used to determine if a statutory invention request should be granted.

Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions, farms, Federal agencies or employees, and state, local, or tribal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: December 1, 1997.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31881 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review: Not later than the last day of December 1997; interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping Duty Proceedings:	
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings, A–351–602	12/1/96–11/30/97
Brazil: Silicomanganese, A–351–824	12/1/96–11/30/97
Canada: Elemental Sulphur, A–122–047	12/1/96–11/30/97
Germany: Animal Glue and Inedible Gelatin, A–428–062	12/1/96–11/30/97
India: Stainless Steel Wire Rod, A–533–808	12/1/96–11/30/97
Japan: Business Telephone Systems & Subassemblies Thereof, A–588–809	12/1/96–11/30/97
Japan: Cellular Mobile Telephones and Subassemblies, A–588–405	12/1/96–11/30/97
Japan: Drafting Machines and Parts Thereof, A–588–811	12/1/96–11/30/97
Japan: Polychloroprene Rubber, A–588–046	12/1/96–11/30/97
Japan: P.C. Steel Wire Strand, A–588–068	12/1/96–11/30/97
Mexico: Porcelain-on-Steel Cooking Ware, A–201–504	12/1/96–11/30/97
New Zealand: Low-Fuming Brazing Copper Wire & Rod, A–614–502	12/1/96–11/30/97
South Korea: Welded ASTM A–312 Stainless Steel Pipe, A–580–810	12/1/96–11/30/97
Sweden: Welded Hollow Products, A–401–603	12/1/96–11/30/97
Taiwan: Business Telephone Systems & Subassemblies Thereof, A–583–806	12/1/96–11/30/97
Taiwan: Carbon Steel Butt-Weld Pipe Fittings, A–583–605	12/1/96–11/30/97
Taiwan: Porcelain-On-Steel Cooking Ware, A–583–508	12/1/96–11/30/97
Taiwan: Welded ASTM A–312 Stainless Steel Pipe, A–583–815	12/1/96–11/30/97
The People's Republic of China: Cased Pencils, A–570–827	12/1/96–11/30/97
The People's Republic of China: Porcelain-on-Steel Cooking Ware, A–570–506	12/1/96–11/30/97
The People's Republic of China: Silicomanganese, A–570–828	12/1/96–11/30/97
Countervailing Duty Proceedings:	
Mexico: Porcelain-on-Steel Cooking Ware, C–201–505	1/1/96–12/31/96

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1996)). Therefore, for

both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their request to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3085 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of December 1997. If the Department does not receive, by the last day of December 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 28, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97-31936 Filed 12-4-97; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-421-804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of the antidumping duty administrative review of Cold-Rolled Carbon Steel Flat Products from the Netherlands. This review covers the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0405 or 482-3833, respectively.

SUPPLEMENTARY INFORMATION: Due to the complexity of issues involved in this case, it is not practicable to complete this review within the original time limit. The Department is extending the time limit for completion of the final results until March 8, 1998, in accordance with Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. See memorandum to Robert S. La Russa from Joseph A. Spetrini regarding the extension of case deadline, dated November xx, 1997.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: November 24, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97-31937 Filed 12-4-97; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-811]

Steel Wire Rope from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke antidumping duty order in part.

SUMMARY: In response to requests by the petitioner, the Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers, and by six manufacturers/exporters of subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on steel wire rope from Korea. The review covers 15 manufacturers/exporters of the subject merchandise. The period of review is March 1, 1996, through February 28, 1997.

We have preliminarily found that, for certain exporters, sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of this administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and the normal value. Also, if these preliminary results are adopted in our final results of this administrative review, we intend to revoke the antidumping duty order with respect to Chung Woo Rope Co., Ltd., Ssang Yong Cable Manufacturing Co., Ltd. and Sung Jin Company, based on three years of sales at not less than NV. *See Intent to Revoke* section of this notice.

Interested parties are invited to comment on these preliminary results. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim, at (202) 482-2613, or John Brinkmann, at (202) 482-5288; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 353 (1997).

Case History

On March 26, 1993, the Department of Commerce (Department) published in the **Federal Register** an antidumping duty order on steel wire rope from the Republic of Korea. *See* 58 FR 16397. On March 7, 1997, the Department published a notice providing an opportunity to request an administrative review of this antidumping duty order for the period March 1, 1996, through February 28, 1997. *See* 62 FR 10521. On March 31, 1997, the petitioner requested an administrative review of 15 manufacturers/exporters of steel wire rope from Korea. On March 31, 1997, each of the following companies also requested that the Department conduct an administrative review of their sales: Chung Woo Rope Co., Ltd. (Chung Woo), Chun Kee Steel Wire Rope Co., Ltd. (Chun Kee), Kumho Wire Rope Manufacturing Co., Ltd. (Kumho), Manho Rope Manufacturing Co., Ltd. (Manho), Ssang Yong Cable Manufacturing Co., Ltd. (Ssang Yong) and Sun Jin Company (Sung Jin). In addition, Chung Woo, Kumho, Ssang Yong and Sung Jin each requested that the Department revoke the antidumping duty order with respect to their merchandise (*see Intent to Revoke* section of the notice below). We published a notice of initiation of this administrative review on April 24, 1997. *See* 62 FR 19988.

On April 2, 1997, the Department revoked the antidumping duty order on steel wire rope from the Republic of Korea with respect to Manho and Chun Kee, effective for entries of subject merchandise entered or withdrawn from warehouse on or after March 1, 1996 (*see Steel Wire Rope from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 62 FR 17171 (April 9, 1997) ("Steel Wire Rope Third Review Final")). Because the current review covers shipments of merchandise from the Republic of Korea during the period March 1, 1996 through February 28, 1997, on May 7, 1997, the Department terminated the review with respect to Manho and Chun Kee. (*See Steel Wire Rope from the Republic of Korea: Notice of Termination In Part of Antidumping Duty Administrative Review*, 62 FR 26776 (May 15, 1997)).

On April 28, 1997, we issued an antidumping questionnaire to the 13 remaining respondents. The Department received responses from Chung Woo, Kumho, Sung Jin and Ssang Yong in July 1997. The Department issued supplemental questionnaires to these companies on August 11, 1997. Responses to these questionnaires were received on August 25, 1997.

Chung Woo, Kumho, Ssang Yong and Sung Jin each requested revocation of the order with respect to their merchandise. The petitioner, on August 21, 1997, also requested verification of the responses of Chung Woo, Kumho, Ssang Yong and Sung Jin on grounds that each company had requested revocation of the order. Accordingly, the Department scheduled a verification of each company's response pursuant to section 782(i) of the Act. On September 2, 1997, Kumho submitted a letter requesting that the Department postpone the scheduled verification of its responses. According to Kumho, the company entered bankruptcy proceedings on August 20, 1997, and therefore was not able to participate in the verification during the scheduled time in September 1997. Subsequently, on October 10, 1997, Kumho submitted a letter withdrawing its request for revocation of the antidumping duty order. In that letter, Kumho stated that due to bankruptcy proceedings, it was impossible for the company to participate in a verification. Kumho also included in its submission certain documentation supporting its claim that the company is in bankruptcy. Due to this unusual circumstance, Kumho requested that the verification be cancelled on the grounds that its withdrawal of the request for revocation made verification unnecessary.

We would not have verified Kumho's responses in this review if Kumho had not requested revocation of the order with respect to its merchandise. The Department verified Kumho's responses in the preceding 1995/96 administrative review. In addition, the reason the petitioner gave for its request for verification of Kumho's responses was the company's request for revocation. Furthermore, the documentation Kumho provided to the Department sufficiently establishes its claim that the company is in bankruptcy. Therefore, on grounds that Kumho has withdrawn its request for revocation, we canceled the verification of the company. For the preliminary results, we are calculating a dumping margin based on Kumho's home market and U.S. sales databases submitted on July 9, 1997.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Non-Responding Companies

For two respondents, Jinyang Wire Rope Inc. (Jinyang) and Yeonsin Metal (Yeonsin), while we have confirmed that the questionnaires were delivered to the companies, we did not receive responses to our questionnaire. Accordingly, we are assigning to these companies a margin based on adverse facts available. *See Use of Facts Available* section of the notice below.

For four other respondents, Boo Kook Corporation (Boo Kook), Dong-Il Steel Manufacturing Co., Ltd. (Dong-Il), Hanboo Wire Rope (Hanboo) and Seo Jin Wire Rope (Seo Jin), the questionnaires were undelivered and returned to the Department. Thereafter, we received information from the U.S. Embassy in Seoul, South Korea, that two of these companies, Hanboo and Seo Jin, were closed. In accordance with our practice with respect to companies to which we cannot send a questionnaire, we are assigning to these companies the "All Others" rate from the less-than-fair-value (LTFV) investigation, which is 1.51 percent. *See Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong: Final Results of Antidumping Duty Administrative Review*, 59 FR 13926 (March 24, 1994).

With respect to Boo Kook and Dong-Il, the U.S. Embassy informed us of their new addresses. Subsequently on July 7, 1997, we sent the questionnaires to these two companies at their new addresses. While we have confirmed that the questionnaires were delivered to both companies, we did not receive responses to our questionnaire.

Accordingly, we are assigning these two companies a margin based on adverse facts available. *See Use of Facts Available* section of this notice below.

Non-Shippers

Two companies, Myung Jin Co., Ltd. and TSK Korea Co., Ltd. notified us that they did not have shipments of subject merchandise during the period of review (POR), and we have confirmed this with the United States Customs Service.

Use of Facts Available

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Boo Kook, Dong-Il, Jinyang, Yeon Sin, and Sungsan Special Steel Processing, Inc. (Sungsan). With respect to Boo Kook, Dong-Il, Jinyang, and Yeon Sin, we find that these firms have not provided "information that has been requested by the administering authority" because they did not respond to our antidumping questionnaire. Furthermore, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire and, thus, by not acting to the best of their ability.

Where the Department must resort to facts available because a respondent failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in selecting from among the facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information has probative value. (*See* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994).)

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (Feb. 22, 1996) (where the Department rejected the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For the previous three administrative reviews of this proceeding, we have used the highest rate from any prior segment of the proceeding, 1.51 percent, as best information or facts available. In our final results of the 1995/96 administrative review, however, we stated that this rate may no longer have the desired effect of inducing cooperation of potential respondents. *See* SAA at 868. Therefore, we stated that we would collect information bearing on this issue to permit us to make a determination whether the 1.51 percent rate is sufficiently adverse to effectuate the purpose of the facts available rule and, if necessary, adjust the rate accordingly. *See Steel Wire Rope Third Review Final*, 62 FR 17171, 17176. For purposes of these preliminary results, we continue to use 1.51 percent as adverse facts available. However, we are reconsidering the appropriateness of this rate as an adverse facts available rate and intend to adjust this rate for the final results, if necessary. To this end, we invite interested parties in this proceeding to submit comments or information concerning this issue. In particular, we invite interested parties to supply specific data that the Department could consider if its chooses to establish an adverse facts available rate that is more appropriate for uncooperative respondents. Moreover, we invite interested parties to comment on the methods and sources by which the Department could satisfy its statutory requirement to corroborate from independent sources any proposed adverse facts available rate.

With respect to Sungsan, we find the use of facts available is appropriate. Sungsan submitted a letter in response to our questionnaire on June 23, 1997. In the letter, Sungsan stated that the company does not produce steel wire rope. However, the company further stated that it purchased steel wire rope from other companies in Korea and did export a small quantity of the merchandise to the United States during the POR. Subsequently, on November 4, 1997, the Department sent a letter to Sungsan requesting additional information concerning the company's shipment of subject merchandise to the United States during the POR. Specifically, we requested Sungsan to identify the suppliers from which the company purchased the subject merchandise that was shipped to the United States during the POR and to confirm that the suppliers are not affiliated with Sungsan. Additionally, we requested that Sungsan clarify whether each of the suppliers had knowledge or reason to know that the products it sold to Sungsan were destined for the United States at the time of sale.

On November 14, 1997, Sungsan submitted its response to the Department's request for additional information. According to Sungsan, the supplier from which the company purchased the subject merchandise that it shipped to the United States during the POR is not affiliated with Sungsan. Furthermore, Sungsan stated that the supplier did not have knowledge that the merchandise it sold to Sungsan was destined for the United States at the time of sale. Based on this information, we conclude that Sungsan's sale to the United States during the POR is covered by this review and response to our questionnaire was required. Because Sungsan did not provide a full response to our questionnaire, we find that the application of a facts available rate is appropriate for Sungsan. However, in this case, the Department failed to notify Sungsan in a timely manner of the deficiencies in its response to our questionnaire. Accordingly, as facts available, we are assigning the respondent the "All Others" rate from the LTFV investigation, 1.51 percent, which has been used in prior segments of this proceeding as facts available.

Verification

As provided in section 782(i) of the Act, we verified information provided by Chung Woo, Sung Jin and Ssang Yong. We used standard verification procedures, including on-site inspection

of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports placed in the case file.

Export Price

For sales to the United States, the Department used export price (EP) as defined in section 772(a) of the Act for each of the respondents, because the subject merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and the use of constructed export price was not indicated by the facts of record.

We made company-specific adjustments as follows:

Chung Woo

We calculated EP based on packed, c.i.f. and c&f prices to unaffiliated purchasers in, or for exportation to, the United States. Where appropriate, we made deductions from the starting price for domestic inland freight, brokerage and handling, ocean freight, marine insurance, terminal handling charges, wharfage expenses, bill of lading issuing fees, export license fees, and container taxes, in accordance with section 772(c)(2)(A) of the Act.

The merchandise involved in certain U.S. and home market sales reported by Chung Woo was produced by unaffiliated suppliers. We included these sales by Chung Woo in our analysis because we determined that the suppliers did not know at the time of sale that the subject merchandise was to be exported to the United States. We compared these U.S. sales to the appropriate home market sales of merchandise produced by the same suppliers and sold by Chung Woo.

Kumho

We calculated EP based on packed, c.i.f. and c&f prices to unaffiliated purchasers in, or for exportation to, the United States. Where appropriate, we made deductions from the starting price for domestic inland freight, brokerage and handling, ocean freight, marine insurance, terminal handling charges, wharfage expenses, bill of lading issuing fees, container taxes, and container freight station expenses, in accordance with section 772(c)(2)(A) of the Act.

The merchandise involved in certain U.S. and home market sales reported by Kumho was produced by unaffiliated suppliers. We included these sales by Kumho in our analysis because we determined that the suppliers did not know at the time of sale that the subject merchandise was to be exported to the United States. We compared these U.S. sales to the appropriate home market sales of merchandise produced by the same suppliers and sold by Kumho.

Ssang Yong

We calculated EP based on packed, c.i.f. and c&f prices to unaffiliated purchasers in, or for exportation to, the United States. Where appropriate, we made deductions from the starting price for domestic inland freight, brokerage and handling, ocean freight, marine insurance and containerization expenses, in accordance with section 772(c)(2)(A) of the Act.

Sung Jin

We calculated EP based on packed, delivered to Korean port prices to unaffiliated purchasers in, or for exportation to, the United States. Where appropriate, we made deductions from the starting price for domestic inland freight and brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

Consistent with our practice in the previous review, we did not make any duty drawback adjustments claimed by Chung Woo, Kumho, or Ssang Yong because they were unable to demonstrate a connection between payment of import duties and receipt of duty drawback on exports of steel wire rope, and because they did not demonstrate that they had sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product (*see Steel Wire Rope From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part*, 61 FR 64058, 64059 (December 3, 1996)). Sung Jin did not claim any duty drawback adjustments for its sales to the United States.

No other adjustments to EP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of foreign like product each respondent sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act, because each company had sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value (NV) on the prices at which the foreign like product was first sold for consumption in the exporting country.

For all respondents, pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We compared EP sales to sales in the home market of identical or similar merchandise.

We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as the EP, in accordance with section 773(a)(1)(B)(i) of the Act. We increased home market price by the amount of U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and reduced it by the amount of home market packing costs in accordance with section 773(a)(6)(B) of the Act.

We made company-specific adjustments as follows:

Chung Woo

We calculated NV based on ex-factory or delivered prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses and, where appropriate, added U.S. postage fees, U.S. letter of credit fees, U.S. bank charges, and U.S. credit expenses.

Kumho

We calculated NV based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses and, where appropriate, added U.S. postage fees, U.S. letter of credit fees, U.S. bank charges, U.S. credit expenses and export recommendation fees.

Ssang Yong

We calculated NV based on f.o.b. or delivered prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses and, where appropriate, added U.S.

postage fees, U.S. letter of credit fees, U.S. bank charges, and U.S. credit expenses. We also made adjustments, where applicable, for differences in the physical characteristics of merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

While Ssang Yong made sales of merchandise produced by unaffiliated suppliers in the home market, it did not sell in the United States merchandise produced by unaffiliated suppliers. Accordingly, we have excluded those home market sales of merchandise produced by unaffiliated suppliers from our analysis.

Sung Jin

We calculated NV based on ex-factory or delivered prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses, and added U.S. credit expenses.

For all companies, prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary. No other adjustments were claimed or allowed.

Intent To Revoke

Chung Woo, Ssang Yong and Sung Jin requested, pursuant to 19 CFR 353.25(b), revocation of the order with respect to their sales of the subject merchandise and submitted the certification required by 19 CFR 353.25(b)(1).[1] In addition, in accordance with 19 CFR 353.25(a)(2)(iii), these companies have agreed in writing to their immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Department concludes under 19 CFR 353.22(f) that these companies, subsequent to revocation, sold merchandise at less than NV.

Based on the preliminary results in this review and the final results of the two preceding reviews (*see Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 55965 (October 30, 1996), and *Steel Wire Rope Third Review Final*), Chung Woo, Ssang Yong and Sung Jin have preliminarily demonstrated three consecutive years of sales at not less than NV.

Given the results of the two preceding reviews, if the final results of this review demonstrate that Chung Woo, Ssang Yong and Sung Jin sold the merchandise at not less than NV, and if we determine that it is not likely that these companies will sell the subject merchandise at less than NV in the future, we intend to revoke the order with respect to merchandise produced and exported by Chung Woo, Ssang Yong and Sung Jin.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates published by the Federal Reserve in effect on the dates of the U.S. sales. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period March 1, 1996, through February 28, 1997:

Manufacturer/exporter	Margin (percent)
Boo Kook Corporation	*1.51
Chung Woo Rope Co., Ltd.	0.00
Dong-Il Steel Manufacturing Co., Ltd.	*1.51
Hanboo Wire Rope, Inc.	1.51
Jinyang Wire Rope, Inc.	*1.51
Kumho Wire Rope Mfg. Co., Ltd.	0.04
Myung Jin Co.	[1]1.51
Seo Jin Rope	1.51
Ssang Yong Cable Manufacturing Co., Ltd.	0.02
Sung Jin Company	0.00
Sungsan Special Steel Processing	1.51
TSK Korea Co., Ltd.	[2]
Yeonsin Metal	*1.51

* Adverse Facts Available Rate.

[1] No shipments subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

[2] No shipments subject to this review. The firm has no individual rate from any segment of this proceeding.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with each argument: (1) a statement of the issues, and (2) a brief summary of the arguments. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For Chung Woo, Kumho and Ssang Yong, for duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. For Sung Jin, we do not have the information to calculate an estimated entered value. Accordingly, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of subject merchandise sold during the POR. This specific rate calculated for each importer will be used for the assessment of antidumping duties on the relevant entries of subject merchandise during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of steel wire rope from Korea entered, or withdrawn from warehouse, for consumption on or after the publication

[1] As discussed above in the *Case History* section of the notice, Kumho withdrew its request for revocation of the order on October 10, 1997. Accordingly, we do not intend to revoke the order with respect to merchandise produced and exported by Kumho in this review.

date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review (except no cash deposit will be required for those companies whose weighted-average margin is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 1.51 percent, the "all others" rate established in the LTFV investigation (58 FR 16397, March 26, 1993).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 751(d) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 353.22, and 19 CFR 353.25.

Dated: December 1, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–31938 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Conditional Approvals, Findings Documents, Responses to Comments, and Records of Decision

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the U.S. Environmental Protection Agency.

ACTION: Notice of Conditional Approval of Coastal Nonpoint Pollution Control Programs and Availability of Findings Documents, Responses to Comments, and Records of Decision for Florida, Mississippi, New Hampshire, New Jersey, New York, Puerto Rico and the U.S. Virgin Islands.

SUMMARY: Notice is hereby given of the conditional approval of the Coastal Nonpoint Pollution Control Programs (coastal nonpoint programs) and of the availability of the Findings Documents, Responses to Comments, and Records of Decision for Florida, Mississippi, New Hampshire, New Jersey, New York, Puerto Rico and the U.S. Virgin Islands. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995.

NOAA and EPA have approved, with conditions, the coastal nonpoint programs submitted by Florida, Mississippi, New Hampshire, New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands.

NOAA and EPA have prepared a Findings Document for each 6217 program submitted for approval. The Findings Documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each state and territory coastal nonpoint program. Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact prepared for the coastal nonpoint programs submitted by Florida, Mississippi, New Hampshire, New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands were made available for public comment in the **Federal Register**. Public comments were received and responses prepared on the programs submitted by Mississippi, New Hampshire, New Jersey, New York, and Florida. No public comments were received on the programs submitted by Puerto Rico and the U.S. Virgin Islands.

In accordance with the National Environmental Policy Act (NEPA), NOAA has also prepared a Record of Decision on each program. The requirements of 40 CFR Parts 1500–1508 (Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act) apply to the preparation of a Record of Decision. Specifically, 40 CFR section 1505.2 requires an agency to prepare a concise public record of decision at the time of its decision on the action proposed in an environmental impact statement. The Record of Decision shall: (1) state what the decision was; (2) identify all alternatives considered, specifying the alternative considered to be environmentally preferable; and (3) state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

In March 1996, NOAA published a programmatic environmental impact statement (PEIS) that assessed the environmental impacts associated with the approval of state and territory coastal nonpoint programs. The PEIS forms the basis for the environmental assessments NOAA has prepared for each state and territorial coastal nonpoint program submitted to NOAA and EPA for approval. In the PEIS, NOAA determined that the approval and conditional approval of coastal nonpoint programs will not result in any significant adverse environmental impacts and that these actions will have an overall beneficial effect on the environment. Because the PEIS served only as a "framework for decision" on individual state and territorial coastal nonpoint programs, and no actual decision was made following its publication, NOAA has prepared a EPA Record of Decision on each individual state and territorial program submitted for review.

Copies of the Findings Documents, Responses to Comments, and Records of Decision may be obtained upon request from: Joseph A. Uravitch, Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3155, x195.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: December 1, 1997.

Captain Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency.

[FR Doc. 97–31835 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Settlement Agreement on the R/V Columbus Iselin Grounding Between the United States on Behalf of the National Oceanic and Atmospheric Administration (NOAA) and the University of Miami

AGENCY: The U.S. Department of Justice of behalf of NOAA, Department of Commerce.

ACTION: Notice of settlement between the United States, on behalf of NOAA acting as the natural resource trustee, and the University of Miami.

SUMMARY: The United States, on behalf of NOAA, and the University of Miami (collectively referred to as the "Parties") enter into this Settlement Agreement ("Agreement") to settle civil claims for damages for injury to Sanctuary resources, civil penalties, response costs, and forfeiture arising from the August 10 to 12, 1994, grounding of the R/V COLUMBUS ISELIN ("ISELIN") in the Looe Key National Marine Sanctuary, now part of the Florida Keys National Marine Sanctuary. This settlement is entered into by the Parties pursuant to section 312 of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431 *et seq.*

Proposed Action

Notice is hereby given that on November 22, 1997 a settlement has been entered into between the Parties to resolve claims against the University of Miami and the R/V COLUMBUS ISELIN for destruction or loss of, or injury to, Sanctuary resources pursuant to section 312 of the NMSA, as amended, as a result of the August 10 to 12, 1994, grounding of the R/V COLUMBUS ISELIN in the Looe Key National Marine Sanctuary. The Agreement provides for cash payments to NOAA for implementation of structural and biological restoration of the grounding site, compensatory restoration, and long term monitoring, and to reimburse NOAA for damage assessment costs and emergency response costs incurred by NOAA.

A. Cash Payments

(1) The University of Miami shall pay to NOAA, two million and nine hundred thousand dollars ($2,900,000.00). This sum will pay for the implementation of restoration, monitoring, damage assessment costs, compensatory restoration for interim losses of sanctuary resources, permitting and environmental compliance costs, as a result of the ISELIN grounding. (2) The amount identified in A. (1) above is in addition to payment already received by NOAA from the University of Miami in the amounts of: (a) Two hundred thousand dollars ($200,000) in civil penalties; (b) one hundred and forty six thousand, forty seven dollars and sixty cents ($146,047.60); and one hundred and fourteen thousand, ninety nine dollars and seventy-seven cents ($114,099.77) for response and damage assessment costs; and (c) six hundred thousand dollars ($600,000.00) for restoration planning.

B. Use of Funds

(1) Restoration of Natural Resources. Funds received by NOAA identified in A.(1) above will be used for (a) structural and biological restoration of coral reef injured at the grounding site, (b) biological monitoring, (c) off-site compensatory restoration, and (d) project management and oversight. Restoration activities at the grounding site will include: (i) Stabilizing the underlying physical structure of the coral reef habitat; (ii) re-creating the physical structure of the coral reef habitat; and, (iii) enhancing the rate of recovery of the biological community through the transplantation of coral, sponges, and sea fans. Biological monitoring will be used to evaluate the effectiveness of the restoration at the sito and design any mid-course corrections to those restoration measures. Off-site compensatory restoration projects will be designed to enhance the long-term health of the coral reefs. The projects will include field and lab-based methods for enhancing the recovery rates of coral and other benthic invertebrates through the transplantation and culture of corals and benethic invertebrates. Projects also will be designed to minimize the risk of future major vessel groundings in the vicinity of coral reef habitats.

(2) Restoration of Cultural Resources. Artifacts which were dislodged by the vessel during the grounding and subsequent rubble and ship debris removal activities have been conserved by NOAA. The parties agree that NOAA shall be the permanent custodian and conservator of the cultural resources. Funds received from the University will reimburse NOAA for costs incurred to conserve the artifacts as well as to ensure long-term curation.

(3) Reimbursement of Costs Incurred by the Government. Funds identified in A.(2) above will be used to reimburse NOAA for costs incurred for emergency response activities during the grounding, rubble and ship debris removal, and damage assessment costs.

Public Comment

NOAA will receive comments from the public on the settlement agreement for a period of thirty (30) days from the date of this publication. Comments on the settlement agreement should be addressed to Sharon Shutler, Office of General Counsel for Natural Resources, NOAA, 1315 East-West Highway, SSMC#3, Silver Spring, MD 20910–3282.

Effective Date of the Agreement.

The effective of the settlement agreement will be upon completion of the public comment period, notification to the University from NOAA that it has accepted the settlement agreement, and payment by the University to NOAA of $2.9 million. Payment from the University will be made within 15 days of receipt of such notice.

For Further Information Contact: Copies of the settlement agreement may be obtained from Harriet Sopher, Sanctuaries and Reserves Division, National Ocean Service, NOAA, SSMC#4, 11th floor, 1305 East-West Highway, Silver Spring, MD 20910; or Billy Causey, Marathon office of the Florida Keys National Marine Sanctuary, P.O. Box 500368, 5550 Overseas Highway, Main House, Marathon, FL 33050.

Dated: November 22, 1997.

Monica Medina,

General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

[FR Doc. 97–31854 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

December 1, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of November 7, 1997 between the Governments of the United States and the Former Yugoslav Republic of Macedonia establishes limits for certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 1998 through December 31, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for Categories 434, 435 and 443 have been reduced for carryforward applied in 1997.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of November 7, 1997 between the Governments of the United States and the Former Yugoslav Republic of Macedonia, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period beginning on January 1, 1998 extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month limit
433	20,400 dozen.
434	9,575 dozen.
435	25,638 dozen.
443	157,987 numbers.
448	61,200 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated September 11, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[Doc.97–31885 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

December 1, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed the Philippines of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the Federal Register at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	1,778,722 dozen.
331/631	5,760,064 dozen pairs.
333/334	278,639 dozen of which not more than 40,002 dozen shall be in Category 333.
335	181,366 dozen.
336	660,007 dozen.
338/339	2,205,492 dozen.
340/640	979,367 dozen.
341/641	883,755 dozen.
342/642	570,873 dozen.
345	170,005 dozen.
347/348	2,000,023 dozen.
350	150,499 dozen.
351/651	622,650 dozen.
352/652	2,445,309 dozen.
359–C/659–C[1]	845,963 kilograms.
431	170,585 dozen pairs.
433	3,359 dozen.
443	40,616 numbers.
445/446	27,742 dozen.
447	7,713 dozen.
633	36,784 dozen.
634	456,391 dozen.
635	347,263 dozen
636	1,720,018 dozen.
638/639	2,265,641 dozen.
643	878,616 numbers.
645/646	754,665 dozen.
647/648	1,206,794 dozen.
649	7,616,022 dozen.
650	107,717 dozen.
659–H[2]	1,417,273 kilograms.
847	940,051 dozen.
Group II	
200–227, 300–326, 332, 359–O[3], 360, 361, 362, 363, 369–S[4], 369–O[5], 400–414, 434–438, 440, 442, 444, 448, 459pt.[6], 464, 469pt.[7], 600–611, 613–629, 644, 659–O[8], 666, 669–O[9], 670–O[10], 831, 833–838, 840–846, 850–858 and 859pt.[11], as a group.	189,927,480 square meters equivalent.
Sublevel in Group II	
361	1,901,046 numbers.
369–S	430,919 kilograms.
604	2,015,470 kilograms.
611	5,705,190 square meters.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[3] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (359pt.).

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 29, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the Federal Register notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed the Philippines of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31884 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Sri Lanka

December 1, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing and carryforward. In a previous notice, Category 369–S was reduced for swing to Categories 352/652. That reduction to Category 369–S is being cancelled and, instead, the limit for Category 840 is being reduced to account for the swing to Categories 352/652. As a result, the 1997 adjusted limit for Categories 352/652 remains unchanged.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 66246, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1997 and extends through December 31, 1997.

Effective on December 8, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
314	5,198,149 square meters.
363	10,648,762 numbers.
369–D[2]	523,786 kilograms.
369–S[3]	889,698 kilograms.
840	148,203 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31882 Filed 12–4–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

December 1, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access Progam.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Quitman Manufacturing Company (Quitman) has violated the requirements for participation in the Special Access Program, and has suspended Quitman from participation in the Program for the period December 1, 1997 through February 28, 1998.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Quitman during the period December 1, 1997 through February 28, 1998, and to prohibit entry by or on behalf of Quitman under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 62 FR 49206, published on September 19, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 1, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended the Quitman Manufacturing Company (Quitman) from participation in the Special Access Program for the period December 1, 1997 throgh February 28, 1998. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Quitman during the period December 1, 1997 through February 28, 1998. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Quitman manufactured from fabric exported from the United States during the period December 1, 1997 through February 28, 1998.

Sincerely,
Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc.97–31883 Filed 12–4–97; 8:45 am]
BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD
ACTION: Notice to Add a System of Records.

SUMMARY: The Office of the Secretary proposes to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The system is identified as DHA 08, Health Affairs Survey Data Base.
DATES: This proposed action will be effective without further notice on January 5, 1998 unless comments are received which result in a contrary determination.
ADDRESSES: Send comments to OSD Privacy Act Coordinator, Washington Headquarters Services, Correspondence and Directives Directorate, Directives and Records Division, 1155 Defense Pentagon, Washington, DC 20301–1155.
FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.
SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 21, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: November ; 1997.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 08

SYSTEM NAME:
Health Affairs Survey Data Base.

SYSTEM LOCATION:
Primary location: Directorate of Information Management, Fort Detrick, MD 21702–5020.

Secondary locations: Survey distribution and response tracking files are located at the contractor facilities.

Survey result data files are located at the Office of the Assistant Secretary of Defense (Health Affairs), the Commanders and Intermediate Commanders of the Services Medical Treatment Facilities, the Surgeons General of the Military Services and Regional Managers of TRICARE facilities. The addresses for the secondary locations may be obtained from the Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Annual Beneficiary Survey: Individuals eligible for health care under Title 10 (including active duty personnel, reserve personnel and their family members (dependents); retired Armed Forces personnel and their family members; surviving dependents of deceased active duty and retired personnel; and certain others including individuals and their dependents affiliated with the U.S. Coast Guard, U.S. Public Health Service and the National Oceanic and Atmospheric Administration.

Customer Satisfaction Survey: Active duty members of the Armed Forces, civilian personnel, and contract personnel serving as health care providers for individuals eligible for health care under Title 10 in military medical and dental treatment facilities and other treatment settings.

CATEGORIES OF RECORDS IN THE SYSTEM:
Annual Beneficiary Survey: Name, rank, age, gender, race, address, sponsor Social Security Number and family member prefix code of individuals who will be surveyed; verification that a survey has been completed and returned by the individual; and response data from the completed surveys.

Customer Satisfaction Survey: Medical and dental care provider name, provider type, specialty and rank; medical treatment facility, and clinic where care was provided; and response data from the completed surveys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Assistant Secretaries of Defense; 10 U.S.C. 1071 (NOTE); 10 U.S.C. Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):
Annual Beneficiary Survey: The survey collects information concerning beneficiary attitudes, perceptions, and opinions about their individual health and health care (including access to care, health status, use of care, familiarity with programs and services available, and satisfaction with care received) in order to assess, plan, evaluate, and improve quality, efficiency, convenience and cost effectiveness of health care services. This process includes analyses of information related to special interest health care subjects, including health status, in order to validate current and/or forecast future health care needs or to implement plans in response to new health care requirements. Retaining beneficiary specifics allows for individual follow-up to improve response rates; scientific analysis of the data; and to validate survey responses by comparing responses to independent sources of data.

Customer Satisfaction Survey: The survey collects information concerning beneficiary attitudes, perceptions, and opinions about health care provided during specific visits (including access to care, quality of care, satisfaction with how care was delivered, satisfaction with the specific care provider, and satisfaction with care received) in order to assess, plan, evaluate, and improve quality, efficiency, convenience and cost effectiveness of health care services. This process includes analyses of information related to special interest health care subjects, including health status, in order to validate current and/or forecast future health care needs or to implement plans in response to new health care requirements. Specific care provider information is analyzed in order to alert medical authorities to potential problem areas where additional educational and corrective measures may be required in order to improve customer satisfaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:
In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Electronic records stored on magnetic and/or optical media.

RETRIEVABILITY:
Annual Beneficiary Survey:
1. Beneficiary Records: Records of beneficiaries who have or have not responded to the survey may be retrieved by patient identifiers such as name, address, sponsor Social Security Number, family member prefix code, and demographic categories such as age, sex, military rank group (officer/enlisted/civilian).
2. Response Records: Survey data is normally retrieved using demographic or other non-personalized elements.
3. The beneficiary and response records contain a randomly generated code which permits the identification of the survey respondent.

Customer Satisfaction Survey:
1. Beneficiary Records: Records of beneficiaries who have been mailed a survey may be retrieved by name and address, but the beneficiary identifying personal data is deleted 20 days after the mailing of the survey when follow-up correspondence (a reminder) is sent to all individuals being surveyed.
2. Response Records: Records of care providers who furnished care at a specific facility/clinic may be retrieved only by the facility/clinic commander by name, rank (if military), provider type (e.g., physician, clinical nurse, etc.) and specialty (e.g., pediatrician.

SAFEGUARDS:
Media at the primary location are stored in a locked cage in a controlled access area when not in use; when maintained at the contract location, media are stored in cabinets or storage areas when not being used and are placed in a locked container or space within a building that is secured after hours. Result data that includes patient or provider identification is maintained in locked storage cabinets or locked areas in buildings that are secured after hours. Only authorized personnel who have received Privacy Act training are permitted access to information in the system.

Specific instructions are provided MTF commanders on the safeguards required in handling and maintaining Customer Satisfaction Survey information.

RETENTION AND DISPOSAL:
Hard copy surveys are destroyed after the information contained in survey responses is entered into a computer system.

Annual Beneficiary Survey: Data files with beneficiary specifics and results will be retained until an appraisal and schedule is obtained from the National Archives and Records Administration.

Customer Satisfaction Survey: Data files with results and provider specifics will be retained until an appraisal and schedule is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:
Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

NOTIFICATION PROCEDURE:
Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Deputy Assistant Secretary of Defense (Health Budgets and Programs)/Program Review and Evaluation, Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Annual Beneficiary Survey: A beneficiary should provide full name, sponsor's Social Security Number, family member prefix, and current address and telephone number of the individual.

Customer Satisfaction Survey: A health care provider should provide name, current address, telephone number, and name of the medical facility and clinic should be supplied.

RECORD ACCESS PROCEDURES:
Individuals seeking access to records about themselves contained in this system should address written inquiries to the Deputy Assistant Secretary of Defense (Health Budgets and Programs), Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Annual Beneficiary Survey: A beneficiary should provide full name, sponsor's Social Security Number, family member prefix, and current address and telephone number of the individual.

Customer Satisfaction Survey: A health care provider should provide name, current address, telephone number, and name of the medical facility and clinic should be supplied.

CONTESTING RECORD PROCEDURES:
The OSD rules for accessing records and for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:
Sources include Services medical and dental treatment facilities and facilities contracted by DoD to perform medical care for Military members, former members and dependents. Survey information is provided by the individual patient or a parent or guardian of the individual patient. Demographic information that may be related to the patient is provided by the Defense Enrollment Eligibility Reporting System (DEERS), the Ambulatory Data System (ADS), and the Composite Health Care System (CHCS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:
None.
[FR Doc. 97–31866 Filed 12–4–97; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Availability of the Draft Environmental Impact Statement (DEIS) for the Proposed Rio Salado Environmental Restoration, Salt River and Indian Bend Wash, Cities of Phoenix and Tempe, Maricopa County, AZ

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.
ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers has prepared a Draft Environmental Impact Statement and a Feasibility Report for the Proposed Rio Salado Environmental Restoration which will restore native type habitat along a five mile stretch of the Salt River in downtown Phoenix, and along lower Indian Bend Wash, and along the Salt River upstream and downstream of Tempe Town Lake in the City of Tempe.

The proposed project will restore 550 acres in the Phoenix reach and 150 acres in Tempe. In the Phoenix Reach, a 200 foot wide incised low flow channel will be constructed in the river bottom to carry storm flows of less than the ten year event. The low flow channel will contain four pools connected by a perennial stream which will stretch for 2.5 miles, as well as 51 acres of aquatic strand habitat. In addition to the low flow channel the project calls for the establishment of 58 acres of wetland marsh, 99 acres of cottonwood/willow riparian habitat, and 130 of mesquite upland on the benches, banks and overbanks of the river channel. Irrigation water for the habitat will be supplied from the shallow aquifer through six wells located on both banks of the river. The proposed project would

also include the construction of maintenance roads along the river channel, which would also serve as recreational trails. Three park areas are planned for construction on the overbanks of the channel to serve as public gateways to the river.

In the Tempe Reach the proposal is to supply water, from an existing well, to Indian Bend Wash at McKellips Road, allow the water to flow downstream to a point just above the confluence with the Salt River, where it will be piped by gravity flow to a location just above the upstream dam to Tempe Town Lake. The water will pond across the Salt River, and will be pumped out on the south bank, and piped downstream past the Town Lake, where it will be reintroduced to the Salt River. The habitat to be established in the Tempe reach consists of 50 acres of aquatic strand, 16 acres of wetland marsh, 20 acres of cottonwood/willow, and 30 acres of mesquite upland.

The proposed project is expected to have significant beneficial environmental impacts. Restoring native riparian and wetland vegetation to the Salt River is expected to benefit several native wildlife species and threatened and endangered species. No long-term adverse ecological or environmental health effects are expected due to the proposed environmental restoration. No significant impacts are expected to occur.

FOR FURTHER INFORMATION CONTACT: For further information on the Draft Feasability Report contact Mr. Mike Ternak, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–WC, 3636 N. Central Avenue, Phoenix AZ 85012–1936 at (602) 640–2003, and for information on the DEIS contact Mr. Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 532711, Los Angeles CA 90053 at (213) 452–3860.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers has prepared a DEIS to assess the environmental effects associated with the proposed Rio Salado environmental restoration. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

Scoping: The Army Corps of Engineers conducted two scoping meetings prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. These meetings were held in the City of Tempe on June 10, 1996, and in the City of Phoenix on June 11, 1996.

Two public hearings to receive comments on the DEIS will be held in conjunction with the public meetings to present the feasibility report. The public hearings are to be held in the City of Tempe on January 7, 1998 from 7 to 9 p.m. at the City of Tempe Police Auditorium, 120 E. 5th Street, Tempe, AZ 85281, and in the City of Phoenix on January 8, 1998 from 7 to 9 p.m. at the Phoenix City Council Chambers, 200 W. Jefferson Street, Phoenix, AZ 85003. The location, date, and time of the public hearings will be announced in the local news media, and separate notice will also be sent to all parties on the project mailing list.

Individuals and agencies may present oral or written comments relevant to the DEIS by attending either of the two public hearings, or by mailing the information to Mr. Alex Watt at the address below prior to January 20, 1998. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft DEIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 532711, Los Angeles CA 90053.

Availability of the Draft EIS: Copies of the DEIS are available for review at the following locations:

City of Phoenix, Planning Department, 200 W. Washington Street, 6th Floor, Phoenix, AZ.
City of Tempe, Rio Salado Project Office, 31 E. 5th Street, 2nd Floor, Tempe, AZ.
Phoenix Central Library, 1221 N. Central Ave., Phoenix, AZ.
Ocotillo Branch Library, 102 W. Southern, Phoenix, AZ.
Harmon Branch Library, 411 W. Yavapai St., Phoenix, AZ.
Arizona State University, Hayden, Library, Reference Department, Tempe, AZ.
University of Arizona, Main Library, Main Reference Department, 1510 E. University, Tucson, AZ.
Flood Control District of Maricopa County, 2801 West Durango, Phoenix, AZ.
U.S. Army Corps of Engineers, Planning Section C, 3636 N. Central Avenue, Suite 740, Phoenix, AZ.
U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, 911 Wilshire Boulevard, 14th Floor, Los Angeles, CA.

For a copy of the DEIS or for further information, please contact Mr. Mike Ternak, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–WC, 3636 N. Central Avenue, Phoenix, AZ 85012–1936 at (602) 640–2003.

Written comments on the DEIS can be sent to Mr. Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 532711, Los Angeles, CA 90053 or Faxed to him at (213) 452–4204.

Dated: November 25, 1997.

Robert L. Davis,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–31942 Filed 12–4–97; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of Army

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Bolsa Chica Wetlands Restoration Project, Orange County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Los Angeles District, DoD.

ACTION: Notice of Intent.

SUMMARY: The Corps, the U.S. Fish and Wildlife Service (Service), and the California State Lands Commission (CSLC) propose to restore the Bolsa Chica Wetlands by dredging approximately 1.5 million cubic yards of material from the interior, and creating full and managed tidal areas through the construction of a new ocean inlet at the southeastern corner of the project site and interior culvert placement.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the EIS/EIR may be directed to Ms. Ruth Bajza Villalobos, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, California, 90053–2325, (213) 452–3840.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

On behalf of a Federal/State interagency Steering Committee, the Corps, the Service and the CSLC are proposing to restore the Bolsa Chica wetlands to enable the restoration of habitats offsetting the biological impacts of future port development and expansion at both the Ports of Los Angeles and Long Beach. The proposed project will restore wetland and aquatic functions at Bolsa Chica as oil extraction is phased out and contamination is removed. The Bolsa Chica Wetlands have been acquired through the use of funds provided by the Ports of Los Angeles and Long Beach, and title to the property is held by the California State Lands

Commission. The project goal is to retain existing fish and wildlife resources and, to the extent feasible, the enhancement thereof. Further, the ecosystem resulting from implementation of the plan should be naturalistic, biologically diverse, productive, and estuarine in nature. That is, it shall be predominately salt water influenced, but incorporate biologically beneficial freshwater influences. In addition, the acreage of waters and wetlands in the lowland should not be diminished. The proposed Concept Plan for restoration would consists of: (1) Acquisition of approximately 880 acres in the Bolsa Chica lowlands; (2) restoration of wetlands and habitat areas in Bolsa Chica Lowlands, including approximately 384 acres of full tidal and 220 acres of managed tidal; (3) monitoring activities to determine the condition of the restored habitats on a regular basis and the necessary operation, maintenance and management of the project feature and its associated physical features, both during and after construction of those physical features, and (4) necessary maintenance/management of the restored wetland. The Concept Plan involves the dredging of approximately 1.5 million cubic yards of material from the interior of the wetland, the construction of a new stabilized tidal inlet through the existing beach, and associated bridges as required to maintain traffic flows through the area.

2. Alternatives

A series of informal public workshops were held to solicit public input into the development of preliminary project alternatives. These preliminary alternatives conceptually include the "No Action" Scenario; water management measures; the Concept Plan, as described above; alternate scenarios for routing floodwaters from the existing Garden Grove-Wintersburg flood control channel through the project area; alternate locations for a new tidal inlet; and alternate ways to restore tidal influence to the wetland (such as culverts or a non-jettied inlet). These preliminary project alternatives, along with the proposed action and the No Action scenarios, will be screened down into a series of final alternatives. These final alternatives will be carried forward into detailed analyses pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, as amended) and the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code, Sections 21000–21177).

3. Scoping Process

The Corps, Service and CSLC, on behalf of all 8 Project Steering Committee agencies, are preparing a joint Environmental Impact Statement/ Report (EIS/R) to address potential impacts associated with implementing their respective discretionary actions associated with the proposed project. The Corps and the Service are the Lead Federal Agencies for compliance with NEPA for the project, and the CSLC is the Lead State Agency for compliance with the CEQA for the non-Federal aspects of the project. The Draft EIS/R (DEIS/R) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DEIS/R will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final EIS/R (FEIS/R) will address the comments received on the DEIS/R during public review, and will be furnished to all who commented on the DEIS/R, and is made available to anyone that requests a copy during the 30-day public comment period. The final step involves, for the federal EIS, preparing a Record of Decision (ROD) and, for the state EIR, certifying the EIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Corps and the Service from among the alternatives presented in the FEIS/R. The ROD can be published immediately after the FEIS public comment period ends. A certified EIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with respect to CEQA. A formal scoping meeting to solicit public comment on the proposed action and alternatives will be held on December 11, 1997 at 7:00 P.M., in the Huntington Beach City Council Chambers, Huntington Beach, California.

Dated: November 26, 1997.

Robert L. Davis,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–31941 Filed 12–4–97; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy

ACTION: Notice of a System of Records

SUMMARY: An administrative oversight occurred when a listed change to a system of records notice published on November 20, 1997, at 62 FR 62020 was not incorporated into the notice, as amended. Therefore, the notice is being republished in its entirety.

EFFECTIVE DATE: December 5, 1997.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

An administrative oversight occurred when a listed change to a system of records notice published on November 20, 1997, at 62 FR 62020 was not incorporated into the notice, as amended. Therefore, the notice is being republished in its entirety.

Dated: November 28, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01752–1

SYSTEM NAME:

Family Advocacy Program System.

SYSTEM LOCATION:

Navy Case Files: Family Service Center, Family Advocacy Center, and/or Medical Treatment Facilities at the local naval activity that services the local beneficiaries. Official mailing addresses for naval activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

Marine Corps Family Advocacy Program Records: Marine Corps installations with a Family Service Center. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of records notices.

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities.

All beneficiaries reported for abusing or neglecting such victims.

Victims/offenders not associated with the Department of the Navy and who are not generally entitled to care at Navy medical and dental facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy Family Advocacy Case Files:

(a) Victim's file consists of risk assessment which includes the following forms: incident report, eligibility decision, demographics, safety assessment, safety response, risk focused assessment reports (DOMAINS I, II, IV, V, VI, VII), risk assessment matrix, risk assessment summary, risk assessment findings, intervention plan, and Case Review Committee presentation; video/audio tapes of contact with victim; case notes about victim; Family Advocacy Program generated correspondence regarding abuse or neglect of victim; Original copy of DD Form 2486; Privacy Act Statement signed by victim; contacts with children who are not victims of abuse or neglect, and other supporting data assembled relevant to the abuse or neglect and generated by FAP staff that are specific to the victim.

(b) Offender's file consists of assessment with offender; demographics; video-audio tapes of contacts with offender; case notes on contacts with offender; case notes about offender; risk focused assessment report DOMAIN III (alleged offender characteristics); Family Advocacy Program (FAP) generated correspondence regarding offender; Privacy Act Statement signed by offender; and other supporting data assembled relevant to the abuse or neglect and generated by the FAP staff that are specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Marine Corps Program Family Advocacy Program Files:

(a) Victim's file consists of client's fact sheet (demographics); Privacy Act Statement signed by victim; Limits of Privacy Statement signed by victim; initial assessment; CRC Case Assessment with risk assessment; audio/video tapes of contact with victim; safety plan; notes on collateral contacts about victim; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; original copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the victim.

(b) Offender's file consists of client's fact sheet (demographics); Privacy Act Statement signed by offender; Limits of Privacy Statement signed by offender; initial assessment; CRC Case Assessment; audio/video tapes of contacts with offender; case notes on collateral contacts regarding offender; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Both the Navy and Marine Corps Central Registries contain data elements extracted from DD 2486, Child/Spouse Abuse Incident Report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 6400.1, 6400.1-M, 6400.2; Secretary of the Navy Instruction 1752.3A; OPNAVINST 1752.2A; BUMEDINST 6320.22; and MCO 1752.3B (FAP SOP); and E.O. 9397 (SSN).

PURPOSE(S):

To collect information pertaining to the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect.

To provide headquarters centralized case management of child sexual abuse incidents (for Navy only).

To provide pertinent case-related information to DoD and DON officials, other than Commanding Officers, responsible for specific case interventions in abuse and/or neglect incidents (e.g., clinical counselors providing counseling/treatment to victims and/or offenders, medical personnel providing medical treatment to victims and/or offenders).

To provide specific data on assessed risk, safety needs, case status, and recommended actions to commanding officers of FAP involved service members.

To provide case specific information to headquarters personnel for necessary review and oversight.

Purposes of the Central Registries: To support local FAP case management to include tracking of individuals, identification of prior FAP involvement, and monitoring of caseloads.

To support FAP budget and staffing requirements and policy changes.

To support the BUPERS flagging and assignment control process for FAP involved service members.

To provide information in support of the 'Installation Records Check (IRC)' required by OPNAVINST 1700.9D for screening applicants for any position which involves the care and/or supervision of children.

To provide the Defense Manpower Data Center (DMDC) with non-identifying data from the Navy Central Registry data tapes.

To support FAP research efforts.

To respond to public and/or other government agencies' requests for aggregate data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Executive Branch of government in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse or neglect.

To federal, state or local government agencies when it is deemed appropriated to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To contractors, private and public individuals/organizations for authorized health research in the interest of the federal government and the public. When not considered necessary, client identification data shall be eliminated from records used for research studies.

To officials and employees of federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

NOTE: Records of identity, diagnosis, prognosis or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in 42 U.S.C. 290dd-2, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, microfilm, magnetic tape, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Victim's file is retrieved by name of victim, case number, their Social Security Number, and/or year of incident.

Alleged offender's file is retrieved by alleged offender's name, case number, their Social Security Number and/or year of incident.

Central registry data is retrieved by any identifying data element on the DD Form 2486.

SAFEGUARDS:

These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Access to records or information or the central registry is limited to those officials who have been properly screened and trained and/or have a need to know consistent with the purpose for which the information was collected. The threshold for 'need to know' is strictly limited to those officials who are responsible for the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect. Also pertinent information is limited to DoD and DON officials responsible for intervening in abuse and/or neglect incidents.

Information maintained on a computer requires password protection. Computer terminals are located in supervised areas with access controlled system.

Family Advocacy Program Staff will ensure that the in-take assessment and clinical notes are not duplicated and placed in both the victim and alleged offender's files.

RETENTION AND DISPOSAL:

Family Advocacy Program case records are maintained at the activity 4 years after the last entry in the file. If there is no subsequent activity 4 years after closure, the records are transferred to the National Personnel Records Center, 9600 Page Boulevard, St. Louis, MO 63132–5100, where they are retained for 50 years and then destroyed.

Navy Central Registry data base is retained permanently at the Naval Medical Information Management Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry data is retained permanently by the Commandant of the Marine Corps (MHF-20), Headquarters. U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

Case Files: Commanding officers of installations with Family Service Centers, Medical Treatment Facilities, or Family Advocacy Centers at naval and marine corps activities. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information in the case files about themselves should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to determine whether this system of records contains information in the Navy Central Registry about themselves shall address written inquiries for Navy case to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120.

For the Marine Corps Central Registry address written inquiries to the Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Requests should contain the full name and Social Security Number of the individual.

Individuals seeking to determine whether this system of records contains information in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370–6610.

Requests should contain the full name and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves in the case files should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to access information from the Navy Central Registry about themselves shall address written inquiries for the Navy Central Registry to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120;

For the Marine Corps Central Registry address written inquiries to the Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Request should contain the full name and Social Security Number of the individual.

Individuals seeking to access records about themselves contained in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370–6610.

Requests should contain the full name and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Victim; offender; other DoD component Central Registries; medical and dental records; educational institutions; medical facilities; private practitioners; law enforcement agencies; public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 97–31865 Filed 12–4–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 3, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 1, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: Research on Charter Schools and Student with Disabilities.
Frequency: On occasion.
Affected Public: Individuals or households; State, local or Tribal Gov't SEAs or LEAs.
Reporting Burden and Recordkeeping:
Responses: 832.
Burden Hours: 1,632.
Abstract: The success to date of the charter schools movement has resulted from the opportunities the schools provide for site-based management free of many regulations, and for instructional and other innovations, parent choice, specialized services to specific populations, and public accountability. This data collection will allow the Department of Education to assemble information on the reasons parents are enrolling students with disabilities in charter schools, the services provided by the schools, the schools' outcome goals, the student outcome measures the schools employ, and the students' success in the schools. Subjects will include educators, parents, and students.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: A Study of Charter Schools.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping:
Responses: 4,611.
Burden Hours: 2,365.
Abstract: This four-year study of charter schools will examine the impact of charter schools on student achievement, on education reform, and on an array of other issues. The study includes an annual survey of the universe of charter schools and intensive site visits at a sample of charter schools.

[FR Doc. 97–31848 Filed 12–4–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–610–000]

Northern States Power Company (Minnesota Company); Notice of Filing

December 1, 1997.

Take notice that on November 10, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Continental Energy Services, L.L.C.

NSP requests that the Commission accept both the agreements effective October 15, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31853 Filed 12–4–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4680–000]

Starghill Alternative Energy Corporation; Notice of Issuance of Order

December 2, 1997.

Starghill Alternative Energy Corporation (Starghill) submitted for filing a rate schedule under which Starghill will engage in wholesale electric power and energy transactions as a marketer. Starghill also requested waiver of various Commission regulations. In particular, Starghill requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Starghill.

On November 24, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Starghill should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Starghill is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interest will be adversely affected by continued approval of Starghill's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 24, 1997.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31897 Filed 12–4–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00514; FRL–5758–6]

Nominations to the FIFRA Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel (SAP) established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Panel was created on November 28, 1975, and made a statutory Panel by amendment to the FIFRA, dated October 25, 1988. Public comment on the nominations is invited, as these comments will be used to assist the agency in selecting nominees to the Panel.

DATES: Comments should be postmarked no later than January 5, 1998.

ADDRESSES: By mail, submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132,

Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone: (703) 305–5805.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, "OPP–00514." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M.St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 819B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone: (703) 305-5369/7351; e-mail: dorsey.larry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Amendments to the FIFRA enacted November 28, 1975, include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. in accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions. The Panel shall also make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by agency scientists.

II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued (dated October 2, 1996) in accordance with the requirements of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770 (5 U.S.C. appl). The qualifications of members as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No persons shall be ineligible to serve on the Panel by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). The Deputy Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR part 3, subpart F, Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the Deputy Administrator, before being formally appointed, is required to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Deputy Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, educational background, employment history, and scientific publications. The Agency is required to publish in the **Federal Register** the name, address, and professional affiliations of each nominee and to seek public comment on the nominees.

B. Applicability of Existing Regulations

With respect to the requirements of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special government employees, which include advisory committee members, will apply to the members of the Scientific Advisory Panel. These regulations appear at 40 CFR part 3, subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d), EPA, in March 1997, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill three vacancies occurring on the Panel. The Agency requested nomination of experts in the fields of pediatric medicine, environmental fate and transport, and human health risk assessment methods. In addition, nominees should have a general background in planning, conducting, or evaluating environmental toxicology, exposure, or epidemiology studies in animals and/or in humans (particularly children and infants). NIH responded by letter dated April 18, 1997, enclosing a list of 20 nominees; NSF responded by letter dated May 7, 1997, with a list of 8 nominees.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill three vacancies occurring during the calendar year, 1998.

Nominees for the Field of Pediatric Medicine

1. Cynthia Bearer, Assistant Professor, Department of Pediatrics, Rainbow Babies and Childrens Hospital, Case Western Reserve University, Cleveland, Ohio.

Expertise: Neonatology, biochemistry, pediatric environmental health.

Education: B.A. (Mathematics), Smith College, Northampton, MA, 1972; Ph.D. (Biochemistry), Case Western Reserve University, Cleveland, OH, 1977; M.D. (Pediatrics), Johns Hopkins University, Baltimore, MD, (1982).

Professional experience: Assistant in Pediatrics, Children's Hospital, Barnes Hospital, and Jewish Hospital, St. Louis, Missouri, 1987-1989; Director, Division of Pediatric Environmental Health, Children's Hospital Oakland Research Institute, Oakland, CA; Director, Divisions of Neonatology and Pediatric Environmental Health, Tod Children's Hospital, Youngstown, Ohio, 1992-1994; Assistant Professor, Department of Pediatrics, Division of Neonatology, Rainbow Babies and Childrens Hospital, Cleveland, Ohio, 1994 to present.

Concurrent positions: Assistant Professor, Department of Neurosciences, Case Western Reserve University, 1994 to present.

Research: Pulmonary hypertension and maternal smoking, fetal alcohol syndrome, apoptosis and NCAM expression in reaggregating cultures.

2. Archie Bleyer, Head, Division of Pediatrics, M.D. Anderson Cancer Center, Houston, Texas.

Expertise: Pediatric medicine.

Education: B.S. (Life Sciences) Massachusetts Institute of Technology, Cambridge, MA, 1965; M.D., University of Rochester, Rochester, NY, 1969; Postgraduate training in Pediatrics, University of Washington and Children's Hospital, Seattle, 1971; Pediatric Oncology, National Cancer Institute, Bethesda, MD, 1974; Hematology/ Oncology, University of Washington and Children's Hospital, Seattle, 1975.

Professional experience: Staff Physician, Children's Hospital and Medical Center, Seattle, WA, 1975-1990; University of Texas, M.D. Anderson Cancer Center, Houston, TX, 1990 to present.

Concurrent positions: Professor of Pediatrics and Head, Division of Hematology/Oncology, University of Texas School of Medicine at Houston, 1990 to present.

Research: Pediatric oncology.

3. Phillip Landrigan, M.D., Chair, Department of Community Medicine and Director of Environmental and Occupational Medicine, Mount Sinai Medical Center, New York, New York.

Expertise: Toxicology, Epidemiology, Pediatrics.

Education: B.A., Boston College, Chestnut Hill, MA, 1959; M.D., Harvard, Cambridge, MA, 1967; M.S. (Occupational Medicine), University of London, England, 1977.

Professional experience: Instructor, Pediatrics, Harvard Medical School, Cambridge, MA, 1969-1970; Chief, Environmental Hazards Activity, Centers for Disease Control, Atlanta, GA, 1970-1979; Visiting Fellow, London School of Hygiene and Tropical Medicine, London, England, 1976-1977; Assistant Clinical Professor of Environmental Health, University of Cincinnati, Cincinnati, OH, 1981-1986; Mount Sinai School of Medicine, New York, NY, 1985 to present.

Research: Heavy metal poisoning, pesticide intoxication, solvent neuropathy, chronic lung disease, chemically induced renal disease, and occupational carcinogenesis.

4. Gary Meyers, Professor of Neurology and Pediatrics, University of Rochester School of Medicine and Dentistry, Rochester, NY.

Expertise: Pediatrics, neurology, toxicology.

Education: M.D., University of Kansas School of Medicine, Lawrence, KS 1966.

Professional experience: Professor of Neurology and Pediatrics, University of Alabama School of Medicine and Dentistry, Tuscaloosa, AL, 1978-1990; Professor of Neurology and Pediatrics, University of Rochester School of Medicine and Dentistry, Rochester, NY, 1990 to present.

Research: Health hazards of methylmercury, mental retardation, education of the handicapped.

5. Herbert Needleman, Lead Research Group, Bellefield Towers, University of Pittsburgh, Pittsburgh, PA.

Expertise: Pediatrics, child psychiatry, toxicology.

Education: B.S., Muhlenberg College, Allentown, PA; M.D., University of Pennsylvania, Philadelphia, PA.

Professional experience: Assistant Professor of Psychiatry, Temple University, Philadelphia, PA, 1971-1980; Associate Professor of Psychiatry, Harvard Medical School, Cambridge, MA, 1980-1981, Professor of Child Psychiatry and Pediatrics, University of Pittsburgh School of Medicine, Pittsburgh, PA, 1981 to present.

Research: lead poisoning, effects of lead during pregnancy on infant development, learning disabilities.

6. Leslie Robison, Director, Division of Pediatric Epidemiology and Clinical Research, University of Minnesota, Minneapolis, Minnesota.

Expertise: Epidemiology.

Education: B.S. (Public Health), University of California, Los Angeles, CA, 1976; MPH and Ph.D. (Public Health and Epidemiology), University of Minnesota, Minneapolis, MN, 1979 and 1982, respectively.

Professional experience: Joined Division of Epidemiology, University of Minnesota School of Public Health in 1982; served in a number of teaching and administrative positions through the present.

Research: Investigations relating to cause and development of cancer in children, with a particular interest in childhood leukemia. Also involved in evaluation of childhood cancer survivors to identify treatment-related late effects.

7. Mary S. Wolff, Professor of Community Medicine, Division of Environmental and Occupational Medicine, Mount Sinai Medical Center, New York, New York.

Expertise: Pediatrics.

Education: B.A. (Chemistry), Wellesley College, Wellesley, MA, 1965; M. Phil (Organic Chemistry) and Ph.D. (Organic Chemistry), Yale University, New Haven, CN, 1969 and 1970, respectively.

Professional experience: Involved in numerous studies of persons exposed both occupationally and through the ambient environment to organochlorine pesticides and polychlorinated biphenyls.

Research: Interests center around application of biological markers to determine exposures of humans to chemicals that occur in the environment (air pollutants, lead, polycyclic aromatic hydrocarbons, solvents, pesticides, and halogenated hydrocarbons.) Currently focusing on breast cancer risks associated with environmental exposures and the genetic determinants of these risks, on genetic and environmental influences on reproductive development, and on dietary modulation of environmental exposures.

Nominees for the Field of Environmental Fate and Transport:

1. May Berenbaum, Department of Entomology, University of Illinois, Urbana, IL.

Expertise: Plant biology, entomology.

Education: B.S. (Biology) Yale University, New Haven, CT, 1974; Ph.D. (Ecology and Evolutionary Biology), Cornell University, Ithaca, NY, 1980.

Professional experience: Professor, Departments of Entomology and Plant Biology and Department of Ecology, Ethology, and Evolution, University of Illinois at Urbana-Champaign, IL, 1980 to present.

Research: Phototoxicity of plant secondary metabolites--insect and mammalian perspectives, plant-insect interactions.

2. Louis Guillette, Professor, Department of Zoology, University of Florida, Gainesville, FL.

Expertise: Reproductive biology, endocrinology.

Education: B.S. (Biology) New Mexico Highlands University, Las Vegas, NM, 1976; M.A. and Ph.D. (Biology), University of Colorado, Boulder, CO, 1979 and 1981, respectively.

Professional experience: Teaching positions at University of Northern Colorado, Greely, CO (1980); Wichita State University, Wichita, KS (1981-1985); University of Florida, Gainesville, FL, 1985 to present; Adjunct Professor, University of Otago, Dunedin, New Zealand (1994 to present); Director and Scientific Director of the Biotechnologies for the Ecological, Evolutionary, and Conservation Sciences (BEECS) Program and the BEECS Reproductive Analysis Laboratory, University of Florida (1992-1994).

Research: Evolution of viviparity in the different vertebrate classes; structure, function, and evolution of vertebrate oviduct, extraembryonic membranes and placentae; environmental contaminants as hormones; environmental contaminant influences on reproductive activity and embryonic development; biology of the corpus luteum; hormonal control of birth and gestation length; stress and reproduction; reproductive biology of high elevation vertebrates; comparative reproductive anatomy and physiology; and comparative endocrinology.

3. Ernest Hodgson, Head, Department of Toxicology, North Carolina State University, Raleigh, NC.

Expertise: Toxicology.

Education: B.S. (Zoology and Physiology), University of Durham, England, 1955; Ph.D. (Entomology and Biochemistry), Oregon State University, Corvallis, OR, 1960.

Professional experience: Assistant, Salmon migration studies, Ministry of Agriculture and Fisheries, England, 1954-1955; teaching and administrative positions, North Carolina State University, Raleigh, NC, 1961 to present.

Research: Biochemical toxicology, particularly the mammalian FAD-containing microsomal monooxygenase, the cytochrome P450 dependent monooxygenase system, resistance to toxicants, and comparative aspects of xenobiotic metabolism.

4. Fumio Matsumura, Chair, Department of Environmental Toxicology, University of California, Davis, CA.

Expertise: Toxicology.

Education: B.A. (Toxicology), University of Tokyo, Japan, 1957; M.S. (Toxicology), University of Alberta, Edmonton, Canada, 1959; Ph.D. (Toxicology of Pesticides and Related Chemicals), University of Western Ontario, London, Canada, 1961.

Professional experience: Professor, Entomology, University of Wisconsin, Madison, WI, 1964-1977; Professor of Entomology, Director of Pesticide Research Center, and Coordinator of Laboratory for Pesticide Biotechnology, Michigan State University, East Lansing, MI, 1977-1987; Professor, Departments of Entomology and Environmental Toxicology, Associate Director of Toxic Substances Program and Center for Ecological Health Research (EPA Supported), and Director of Center for Environmental Health Sciences (NIEHS supported), University of California, Davis, CA, 1987 to present.

Research: Biochemical toxicology of chlorinated organic pollutants.

5. Beth Mileson, Senior Scientist, International Life Sciences Institute, Washington, DC.

Expertise: Toxicology, air quality.

Education: B.A. (Biology), George Washington University, Washington, DC, 1981; M.S. (Biology/Zoology), George Washington University, 1984; Ph.D. (Toxicology), University of North Carolina, Chapel Hill, NC, 1989.

Professional experience: Research Associate, Duke University Medical Center for the Study of the Aging, Durham, NC, 1989-1991; Toxicologist, North Carolina Division of Air Quality, 1992-1996; Senior Scientist, ILSI Risk Science Institute, Washington, DC, 1996 to present.

Research: Common mechanisms of toxicity, methods for evaluation of peripheral nervous system acetylcholinesterase activity.

6. Arnold Schecter, Professor of Preventive Medicine, State University of New York Health Science Center, Syracuse, NY, and College of Medicine, Binghampton, NY. Also Visiting Scientist at National Institutes of Environmental Health Sciences, Research Triangle Park, NC.

Expertise: Chlorinated dioxins and related chemicals in human breast milk, environmental health.

Education: B.S. (Physiology/Neurophysiology), University of Chicago, Chicago, IL, 1957; M.D., Howard University Medical School, Washington, DC, 1962; MPH, Columbia University School of Public Health, New York, NY, 1976.

Professional experience: Clinical Associate Professor, New Jersey Medical School, 1975-1979; Commissioner of Health, Broome County, Binghampton, New York, 1979-1981; Professor, State University of New York, Health Science Center, Syracuse, and College of Medicine, Binghampton, New York, 1979 to present.

Research: Dioxins, Agent Orange, drug and alcohol dependence.

7. John J. Stegeman, Senior Scientist, Woods Hole Oceanographic Institution, Woods Hole, M.A. (background material unavailable).

8. Frederick vom Saal, Professor of Biology, University of Missouri, Columbia, MO.

Expertise: Neurobiology, sociobiology, biology of reproduction, behavioral ecology, pharmacology, endocrinology.

Education: B.A. (Psychobiology) New York University, Washington Square College, New York; M.S. and Ph.D. (Neurobiology), Rutgers University, New Brunswick, NJ, 1974 and 1976, respectively.

Professional experience: Biology teacher, Peace Corps, Somalia and Kenya, 1969-1970; Biology Teacher, Marymount International School, Paris, France, 1970-1972; Researcher, Institute of Reproductive Biology, University of Texas, Austin, TX, 1976-1979; Visiting Professor, Center for Human Reproduction, College of Physicians and Surgeons, Columbia University, New York, NY, 1990-1991; Professor, Biological Sciences, University of Missouri, Columbia, MO, 1979 to present.

Research: Long-term consequences of exposure during embryonic life of the brain and reproductive organs to natural hormones and man-made endocrine-disrupting chemicals.

9. Christopher Wilkinson, Technology Services Group, Inc., Washington, DC.

Expertise: Toxicology.

Education: B.S., University of Reading, England, 1961; Ph.D. (Entomology), University of California, Riverside, CA, 1961.

Professional experience: Associate Professor, Pest Infestation Lab, Agricultural Research Council, England, 1965-1966; Professor of Insect Toxicology, Cornell University, Ithaca, NY, 1978-1984; Managing Toxicologist, Versar, Inc., Springfield, VA, 1985-1992; Toxicologist, Technology Services Group, Inc., Washington. DC, 1993 to present.

Research: Structure-activity relationships and mode of action of synergists; biochemistry, comparative biochemistry of microsomal drug metabolism.

Nominees for the Field of Human Health Risk Assessment Methods

1. Ronald Atlas, Department of Biology, University of Louisville, Louisville, KY.

Expertise: Microbiology, genetics.

Education: B.S. (Biology), State University of New York at Stony Brook, 1968; M.S. (Microbiology) and Ph.D. (Microbiology), Rutgers the State University, New Brunswick, NJ, 1970 and 1972, respectively.

Professional experience: Research/Teaching Assistant and Fellow, Rutgers, New Brunswick, NJ, 1968-1972; Resident Research Associate, Jet Propulsion Laboratory, Pasadena, CA, 1972-1973; Professor of Biology, Associate Dean, and Acting Chairman, Department of Microbiology and Immunology, University of Louisville, Louisville, KY, 1973 to present.

Research: Oil pollution, interactions of petroleum and microorganisms.

2. Michael Bowers, Professor and Director, Blandy Experimental Farm, Orland E. White Arboretum, University of Virginia, Boyce, VA.

Expertise: Ecology, habitat/population modeling.

Education: B.S. (Zoology and Botany) and M.S. (Zoology), Brigham Young University, Provo, UT, 1978 and 1979, respectively; Ph.D. (Ecology and Evolutionary Biology), University of Arizona, Tuscon, AZ, 1984.

Professional experience: Research Professor, Division of Environmental Biology, University of California, Los Angeles,CA, 1984-1985; Professor and Researcher, Department of Environmental Sciences and Blandy Experimental Farm, University of Virginia, 1985 to present.

Research: Conservation ecology, environmental risk management.

3. Edward J. Calabrese, Professor of Toxicology and Director of Northeast Regional Environmental Public Health Center, Amherst, MA.

Expertise: Human Health Risk Assessment Methods.

Education: B.A. and M.A. (Biology), State College, Bridgewater, MA, 1968 and 1972, respectively; Ph.D. (Physiology/Toxicology) and EdD (Science Education), University of Massachusetts, Amherst, MA, 1973 and 1974, respectively.

Professional experience: Environmental Research Director, Massachusetts Public Interest Group, 1973-1974; Assistant Professor, Department of Occupational and Environmental Medicine, and Assistant Director, Environmental Health Resource Center, University of Illinois, Urbana-Champaign, IL 1974-1976; Professor, Environmental Toxicology, and Director of Northeast Regional Environmental Public Health Center, Amherst, MA, 1976 to present.

Research: Air, soil, and water pollution.

4. Damstra Terri, International Programme on Chemical Safety, World Health Organization, Research Triangle Park, NC.

Expertise: Women's Health, Environmental Chemicals and Nervous System Toxicology.

Education: B.A. (Biology), Calvin College, Grand Rapids, MI, 1964; Ph.D. (Biology), University of Chicago, Chicago, IL, 1969.

Professional experience: Associate Professor in Biochemistry, University of North Carolina, Chapel Hill, NC, 1976-1996; Special Assistant to the Director, Center for Bioenvironmental Research, Tulane/Xavier Universities, New Orleans, LA, 1996-1997; Associate Director for International Programs, Associate Director for Science Coordination, Acting Deputy Director, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, 1981 to present.

Research: Pollutants in breast milk, hazardous wastes, environmental mutagens and carcinogens, and sustainable development.

5. Elaine Faustman, Department of Environmental Health, University of Washington, Seattle, WA.

Expertise: Animal Toxicology.

Education: B.A., Hope College, Holland MI, 1976; Ph.D. (Pharmacology/Toxicology), Michigan State University, Lansing, MI, 1981; Postdoctoral (Toxicology), University of Washington, Seattle, WA, 1981-1983.

Professional experience: Professor of Environmental Health, University of Washington, Seattle, WA, 1983 to present.

Research: Developmental toxicity of direct acting alkylating agents in rodent embryos, short-term tests for teratogens.

6. Tyrone Hayes, Assistant Professor, Department of Integrative Biology, University of California, Berkeley, CA.

Expertise: Reproductive Biology, Endocrinology.

Education: B.A. and M.A. (Biology), Harvard University, Cambridge, MA, 1988 and 1989, respectively; Ph.D. (Integrative Biology), University of California, Berkeley, CA, 1993.

Professional experience: Consultant, Biosystems, Tiburon, CA, 1990 to present; Adjunct Postdoctoral Fellow, National Institutes of Health, Bethesda, M.D., 1994; research and teaching positions, University of California Berkeley, CA, 1994 to present.

Research: The role of steroids in growth and development of amphibians.

7. Michael Gallo, Environmental and Occupational Health Science Institute, Piscataway, NJ.

Expertise: Human Health Risk Assessment Methods (additional background material unavailable).

8. Carol Litchfield, Associate Professor, Department of Biology, George Mason University, Fairfax, VA.

Expertise: Microbiology, bioremediation.

Education: B.S. and M.S. (Biology), University of Cincinnati, Cincinnati, OH, 1958 and 1960, respectively.

Professional experience: Professor, Rutgers - The State University of New Jersey, Marine Microbial Ecology Research Program and Center for Coastal and Environmental Studies, New Brunswick, NJ, 1971-1979; Supervisory Research Microbiologist, Aquatic Toxicology, Microbiological Fouling and Control, E.I. duPont de Nemours Co., Haskell Laboratory, Newark, DE, 1981-1986; Supervisory Research Microbiologist and Senior Scientific Consultant, environmental remediation consulting firms, 1986-1993, Associate Professor, George Mason University, Fairfax, VA, 1993 to present.

Research: Biodegradation, hazardous wastes.

9. Christopher Portier, Head, Toxicokinetics Faculty, National Institute of Environmental Health Sciences, Research Triangle Park, NC; Adjunct Professor of Biostatistics, University of North Carolina School of Public Health, Chapel Hill, NC.

Expertise: Human health risk assessment methods

Education: B.S. (Mathematics), Nicholls State University, Thibodaux, LA, 1977; M.S. and Ph.D. (Biostatistics), University of North Carolina, Chapel Hill, NC, 1979 and 1981, respectively.

Professional experience: Head, Risk Methodology Section, Division of Biometry and Risk Assessment, and Head, Toxicokinetics Faculty, National Institute of Environmental Health Sciences, Research Triangle Park, NC, 1979 to present.

Research: Risk assessment methodology.

10. Gary Sayler, Director, Center for Environmental Biotechnology, University of Tennessee, Knoxville, TN.

Expertise: Microbiology, bioremediation, molecular biology.

Education: B.S. (Bacteriology), North Dakota State University, Fargo, ND, 1971; Ph.D. (Bacteriology/Biochemistry), University of Idaho, Moscow, ID, 1974.

Professional experience: Researcher, National Institute of Environmental Health Sciences, Research Triangle Park, NC, 1980-1985; Research and teaching positions, University of Tennessee, Knoxville, TN, 1988 to present.

Research: Managing biodegradative microbial communities, molecular environmental diagnostic applications in hazardous waste bioremediation.

11. Ana Soto, Associate Professor, Anatomy and Cell Biology, Tufts University of Medicine, Boston, MA.

Expertise: Endocrinology.

Education: B.S. (Biology) Colegio Elizalde, Buenos Aires, Argentina, 1967; M.D., University of Buenos Aires, Argentina, 1970.

Professional experience: Instructor, Departments of Physiology and Biological Chemistry, University of Buenos Aires School of Sciences, Argentina, 1971-1973; Research Associate, Tufts Cancer Center, Boston, MA, 1973-1976; Fellow, Foundation de L'Industrie Farmaceutique, Hospital Debrousse, Lyon, France; Professor, Department of Anatomy and Cell Biology, Tufts University of Medicine, Boston, MA, 1977 to present.

Research: Breast cancer, effects of pesticides on human estrogen-sensitive cells.

12. Thomas Webster, Boston University School of Public Health, Department of Environmental Health, Boston, MA.

Expertise: Human health risk assessment. (Additional background material unavailable.)

List of Subjects

Environmental protection.

Dated: November 25, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 97–31919 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5487-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 17, 1997 Through November 21, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–L65292–ID Rating EO2, Caribou National Forest, Implementation, Federal Phosphate Leasing Proposal for the Manning Creek and Dairy Syncline Tracts, Caribou County, ID.

Summary: EPA expressed environmental objections about project impacts on water quality, including 303(d) listed waters. Specific mitigation measures need to be included in the Final EIS.

Final EISs

ERP No. F–AFS–L60103–AK, Swan Lake-Lake Tyee Intertie Project, Electrical Transmission Line and Associated Facilities Construction and Operation, Northwestern Portion of Revillagigedo Island from Upper Carroll Inlet to Behm Canal and the Northeastern Portion of Cleveland Peninsula from Spacious Bay to Bradfield Canal, Special-Use-Permit Issuance, Tongass.

Summary: EPA expressed environmental concerns with the methodologies used and conclusions drawn about cumulative effects within the project corridor.

Dated: December 2, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–31916 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5486-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed November 24, 1997 Through November 28, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970457, Final EIS, FHW, NC, US–17/Wilmington Bypass Transportation Improvement Program, Updated Information, TIP R–2633C, Construction from I–40 to US 421, Funding, NPDES and US Coast Guard and COE Section 10 and 404 Permits, New Hanover County, NC, Due: January 5, 1998, Contact: Nicholas L. Graf, P.E. (919) 856–4346.

EIS No. 970458, Final EIS, IBR, CA, American River Water Resources Investigation, Implementation, Placer, Suter, EL Dorado, Sacramento and San Joaquin Counties, CA, Due: January 5, 1998, Contact: Al Candlish (916) 978–5187.

EIS No. 970459, Draft EIS, FHW, CA, CA–58, Transportation Corridor, Route Adoption and Purchases Right-of-Way Acquisition Project, between CA–99 in the Bakersfield Metropolitan Area and Interstate 5 in Kern County, Funding and COE Section 404 Permit, Kern County, CA, Due: January 25, 1998, Contact: John R. Schultz (916) 498–5041.

EIS No. 970460, Final EIS, COE, CA, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, Construction, Mining-Use-Permit and COE Section 404 Permit, City of Healdsburg, Sonoma County, CA, Due: January 5, 1998, Contact: Peter Straub (415) 977–8443.

EIS No. 970461, Draft EIS, AFS, CA, Ansel Adams, John Muir, Dinkey Lakes and Monarch Wildernesses, Proposed New Management Direction, Amending the Land and Resource Management Plans for the Inyo, Sierra and Sequoia National Forests, Implementation, Inyo, Madera, Mono and Fresno Counties, CA, Due: March 6, 1998, Contact: Robert Hawkins (619) 873–2400.

EIS No. 970462, Final EIS, NOA, GA, State of Georgia Coastal Management Program, Comprehensive Coastal Land and Water Use Activities, Approval and Implementation, GA, Due: January 5, 1998, Contact: Joshua Lott (301) 713–3117.

EIS No. 970463, Draft EIS, BLM, AK, Northeast National Petroleum Reserve-Alaska (NPR–A), Integrate Activity Plan, Multiple-Use Management, for Land within the North Slope Borough, AK, Due: February 10, 1998, Contact: Gene Terland (907) 271–3369.

Dated: December 2, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–31917 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5932-4]

Notice of Proposed NPDES General Permits for Discharges From Hydrostatic Testing of New and Existing Natural Gas Pipelines in Texas (TXG670000), Oklahoma (OKG670000) and New Mexico (NMG670000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft NPDES general permits.

SUMMARY: EPA Region 6 is proposing to issue general NPDES permits authorizing discharges resulting from the hydrostatic testing of new and existing natural gas pipelines in Texas, Oklahoma and New Mexico. These permits cover discharges resulting from the hydrostatic testing, as required by Department of Transportation regulations 49 CFR Part 192, Subpart J, or equivalent State rules, of new as well as existing pipelines for natural gas. As proposed, the permits have the following requirements for hydrostatic test water discharges from new natural gas pipelines: Limits on oil and grease, total suspended solids and pH, and a limit of no acute toxicity if the hydrostatic test fill water is obtained from a source other than the receiving water to which the hydrostatic test water is discharged. For hydrostatic test water discharges from existing natural gas pipelines, the permits have the same limits as for new pipelines (limits on oil and grease, total suspended solids, pH and, in some cases, no acute toxicity) as well as a limit on benzene.

DATES: Comments on these proposed permits must be submitted by February 3, 1998.

ADDRESSES: Comments on these proposed permits should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665-7516. Copies of the complete fact sheet and proposed permits may be obtained from Ms. Turner. The fact sheet and proposed permits can also be found on the internet at http://www.epa.gov/earth1r6/6wq/6wq.htm. In addition, the current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Turner 24 hours advanced notice.

SUPPLEMENTARY INFORMATION:

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of facilities discharging waste waters resulting from the hydrostatic testing of new and existing natural gas pipelines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of these permits. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341).

Those statutory provisions require that NPDES permits include effluent limitations requiring that authorized discharges: (1) Meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

Two types of technology-based effluent limitations must be included in the permits proposed here. With regard to conventional pollutants, i.e., pH, BOD, oil and grease, TSS and fecal coliform, CWA section 301 (b)(1)(E) requires effluent limitations based on "best conventional pollution control technology" (BCT). With regard to nonconventional and toxic pollutants, CWA section 301(b)(2) (A), (C), and (D) require effluent limitations based on "best available pollution control technology economically achievable" (BAT), a standard which generally represents the best performing existing technology in an industrial category or subcategory. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges prior to March 31, 1989 under CWA 301(b)(1)(A).

National guidelines establishing BPT, BCT and BAT standards have not been promulgated for discharges from the hydrostatic testing of pipelines. The BCT and BAT requirements for these discharges have, therefore, been established using best professional judgement, as required by CWA section 402(a)(1). The following limits are proposed:

Texas (TXG670000)	Daily maximum
Benzene [1]	50 µg/l
Oil and Grease	15 mg/l
Total Suspended Solids, pH 6.0–9.0 Std. Units.	90 mg/l
Oklahoma (OKG670000)	**Daily maximum**
Benzene [1]	50 µg/l
Oil and Grease	15 mg/l
Total Suspended Solids, pH 6.5–9.0 Std. Units.	45 mg/l
New Mexico (NMG67000)	**Daily maximum**
Benzene [1]	50 µg/l
Oil and Grease	15 mg/l
Total Suspended Solids, pH 6.0–9.0 Std. Units.	90 mg/l

[1] Benzene limit applies to discharges from existing natural gas pipelines.

Requirements applicable for TXG670000, OKG670000 and NMG670000:

There shall be No Acute Toxicity as determined by requiring greater than 50% survival in 100% effluent using a 24 hour acute test. Sampling for the toxicity test shall be made on the fill water prior to being used in the hydrostatic test. This toxicity limit applies only to fill water taken from a source different from the receiving water to which it is discharged. This toxicity limit does not, however, apply to fill water whose source is a municipal drinking water supply.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permits contain limitations intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with the applicable state's water quality standards and the corresponding implementation plans. The Region has solicited certification from the Railroad Commission of Texas for TXG670000, the Oklahoma Corporation Commission for OKG670000 and the New Mexico Environment Department for NMG670000.

B. Endangered Species Act

The proposed limits are sufficiently stringent to assure state water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA is seeking written concurrence from the United States Fish and Wildlife Service and National Marine Fisheries Service on this determination.

C. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

D. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12866.

E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

F. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *"

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA thinks it is unlikely that this proposed permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the proposed permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The proposed permit issuance also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. Compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. EPA Region 6 therefore concludes that the permits proposed today will not have a significant impact on a substantial number of small entities.

Dated: November 25, 1997.

Oscar Ramirez, Jr.,

Deputy Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 97–31913 Filed 12–4–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 28, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 5, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0785.

Title: Changes to the Board of Directors of the National Exchange Carrier Association (NECA) and the Federal-State Joint Board on Universal Service, CC Docket Nos. 97–21 and 96–45.

Form No.: FCC Form 457.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 5,000 respondents, 20,000 responses.

Estimated Time Per Response: 5 hours (avg).

Frequency of Response: Reporting requirements—on occasion, quarterly, semi-annually, and monthly.

Cost to Respondents: $7,560,500.

Total Annual Burden: 86,250 hours.

Needs and Uses: The Universal Service Worksheet, FCC Form 457, will be submitted by contributors to universal service. Contributors are asked to submit semi-annually information regarding their end-user telecommunications revenues. The FCC Form 457 will be used by the Administrator of the Universal Service Support Mechanisms to calculate individual contributions. Contributors will also be required to submit quarterly contributions to universal service. Contributors may also submit information in order to get credits against their contributions. Additionally, contributors may submit monthly credit information, but this

provision has been adopted to ensure timely acknowledgement of services rendered.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31888 Filed 12–4–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571; DA 97–2527]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted

Released: December 1, 1997.

Notice is hereby given that the states listed below have applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225. These rules are codified at 47 CFR 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments on or before January 5, 1997. Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

A number of state TRS programs currently holding FCC certification have failed to apply for recertification. Applications received after October 1, 1997, for which no extension has been requested before October 1, 1997, must be accompanied by a petition explaining the circumstances of the late-filing and requesting acceptance of the late-filed application.

File No: TRS–97–41.

Applicant: Louisiana Relay Administration Board, State of Louisiana.

File No: TRS–97–51.

Applicant: Rhode Island Division of Public Utilities and Carriers, State of Rhode Island.

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31887 Filed 12–4–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday December 9, 1997, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum re: Proposed Rule Amending Part 309—E–FOIA.

DISCUSSION AGENDA:

Memorandum and resolution re: The Corporation's 1998 Annual Budget.

Memorandum and resolution re: Proposed Amendments to Part 325 (Market Risk Capital Rules).

Memorandum re: 1997 Alternative Dispute Resolution Annual Report to the Board.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 2, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–32017 Filed 12–3–97; 10:50 am]

BILLING CODE 6714–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation for Labor-Management Committees FY 1998

A. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 1998 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit and an optional video tape may be found in

Section H. A copy of the Labor Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels. A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1998, competition will be open to company/plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under the other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in specific and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area of company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using September 15, 1998, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identifications of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) an assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) an assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

The total FY 1998 appropriation for this program is $1.5 million, of which at least $750,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category. A maximum of $400,000 of the $1.5 million appropriation has been reserved for the limited continuation of FY96-funded grantees.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support industry-specific national-scope initiatives and/or regional industry models with high potential for widespread replication that have been solicited by the Director of the Service.

FMCS reserves the right to retain up to an additional five percent of the FY98 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be extended or continued for a limited time at a 40 percent cash match ratio. Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient

appropriations for expansion and continuation projects are available, these grants may be extended or continued for a limited time at a 40 percent cash match ratio. The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing company/plant or single department public sector applicants;
—Up to $50,000 over 18 months for new company/plant committee or single department public sector applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and multi-departmental public sector committee applicants;
—Up to $100,000 per 18-month period for new area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY98 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 2, 1998. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Customer Grant Review Boards. The Board(s) will recommend selected applications for further funding consideration. The Director, Labor-Management Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY98 grant applicants will be notified of results and all grant awards will be made before September 15, 1998. Applications submitted after the May 2 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Program Services.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street NW., Washington, DC 20427; or calling 202-606-8181.

John Calhoun Wells,
Director, Federal Mediation and Conciliation Service.

[FR Doc. 97-31859 Filed 12-4-97; 8:45 am]
BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 19, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Harold Gary Morse, Oxford, Florida, Mark Morse Irrevocable Trust, Lady Lake, Florida, Jennifer Boone Irrevocable Trust, Lady Lake, Florida, and Tracy Mathews Irrevocable Trust, Lady Lake, Florida; to acquire additional voting shares of Villages Bancorporation, Inc., Lady Lake, Florida, and thereby indirectly acquire First Bank of the Villages, Lady Lake, Florida.

Board of Governors of the Federal Reserve System, December 1, 1997.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 97-31838 Filed 12-4-97; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to acquire 100 percent of the voting shares of Keystone Heritage Group, Inc., Lebanon, Pennsylvania, and thereby indirectly acquire Lebanon Valley National Bank, Lebanon, Pennsylvania.

Board of Governors of the Federal Reserve System, December 1, 1997.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 97-31834 Filed 12-4-97; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 10, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Cost of Federal Reserve Bank notes in 1998.

Discussion Agenda:

2. Proposed 1998 Federal Reserve Bank budgets.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 3, 1997.

William W. Wiles,
Secretary of the Board.

[FR Doc. 97-32014 Filed 12-3-97; 10:50 am]
BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, December 10, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 3, 1997.

William W. Wiles,
Secretary of the Board.

[FR Doc. 97-32015 Filed 12-3-97; 10:50 am]
BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS)

SUMMARY: The General Services Administration (GSA) hereby gives notice it intends to prepare an Environmental Impact Statement pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), as implemented by GSA's Order PBS P 1095.4B to dispose of excess federal property known as Governors Island in New York, New York.

The EIS will evaluate the proposed project, the no-action alternative, and any other reasonable alternatives identified through the scoping process. Scoping will be accomplished through direct mail correspondence with interested persons, parties, and organizations and through Public Scoping Meetings to be held in Manhattan and Brooklyn. GSA will publish a Public Notice of these meetings and all subsequent meetings in local newspapers approximately seven to ten days prior to each event.

WRITTEN COMMENTS/FURTHER INFORMATION: As part of the Public Scoping process, GSA solicits your written comments on the scope of alternatives and potential impacts at the following address: Peter A. Sneed, Senior Program Analyst, Portfolio Management Division, General Services Administration, 26 Federal Plaza, Room 1609, New York, NY 10278. Written comments should be received no later

than January 2, 1998. Requests for further information may also be forwarded to this address.

SUPPLEMENTARY INFORMATION: The GSA is anticipating the preparation of an Environmental Impact Statement on a proposal to dispose of excess federal property in New York, New York. GSA will serve as the lead agency and scoping will be conducted consistent with NEPA regulations and guidelines.

GSA invites interested individuals, organizations, and Federal, State, and local agencies to participate in defining the reasonable alternatives to be evaluated in the EIS, and in identifying any significant social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific impacts to be evaluated and suggesting alternatives that minimize adverse significant impacts while achieving similar objectives. Comments may also identify issues which are not significant or which have been covered by prior environmental review. Scoping should be limited to commenting on alternatives and the merit of the proposal rather than indicating preferences. There will be an opportunity to comment on preferences upon completion of the Draft Environmental Impact Statement (DEIS).

Mailing List: If you wish to be placed on the project mailing list to receive future or further information as the EIS develops, contact Peter A. Sneed at the address noted above.

Project Purpose, Historical Background, and Project: On October 16, 1995, the United States Coast Guard (USCG) announced it would close Governors Island by the end of summer 1997. The decision to close Governors Island was made in response to the Presidential mandate to meet the goals of the National Performance Review and the Government Performance and Results Act. The present organization of Governors Island will transition to a 60-person Caretaker Detachment that will provide security, fire protection and facility maintenance. Disposal of the Island is the responsibility of the General Services Administration. On August 5, 1997, President Clinton signed into law, legislation for the sale of Governors Island. This special legislation incorporated as part of the Balanced Budget Act of 1997 directs the Administrator of General Services Administration to sell Governors Island at fair market value. The State and City of New York have right of first offer to purchase all or part of the Island at fair market value.

Alternatives: The EIS will examine the short and long term impacts on the natural and built environment. Potential impact assessment will include but not be limited to changes in land use and zoning, changes to air and water quality, changes to traffic patterns, and impacts to historic and cultural resources.

The EIS will also examine measures to mitigate significant unavoidable adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under Section 106 of the Natural Historic Preservation Act to identify potential impacts to existing historic or cultural resources.

The EIS would consider a no-action alternative and an action alternative which would identify several reuse options. The no-action alternative (no-sale) would keep Governors Island in Federal ownership. The preferred action alternative is the sale of Governors Island.

Procedures: The Draft EIS will be prepared at the completion of and based upon a scoping report. The Draft EIS will then be made available for public and agency review and comment with a public hearing being held during this comment period. A Final EIS would be prepared following conclusion of the comment period to address issues raised on the Draft EIS.

Dated: November 28, 1997.

Robert Martin,

Acting Regional Administrator (2A).

[FR Doc. 97–31858 Filed 12–4–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Interim Tribal TANF Data Report.

OMB No.: New Collection.

Description: This information is being collected to meet the statutory requirements of section 411 of the Social Security Act and section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It consists of desegregated demographic and program information that will be used to determine participation rates and other statutorily required indicators for the Tribal Temporary Assistance for Needy Families (Tribal TANF) program.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report	18	4	451	32,472
Estimated Total Annual Burden Hours: 32,472				

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including though the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 25, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–31855 Filed 12–4–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0480]

Zenith Goldline Pharmaceuticals; Withdrawal of Approval of 11 Abbreviated Antibiotic Applications and 105 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 11 abbreviated antibiotic applications (AADA's) and 105 abbreviated new drug applications (ANDA's). Zenith Goldline Pharmaceuticals notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: Zenith Goldline Pharmaceuticals, 140 Legrand Ave., Northvale, NJ 07647, has informed FDA that the drug products listed in the following table are no longer marketed and has requested that FDA withdraw approval of the applications. Zenith Goldline Pharmaceuticals has also, by its request, waived its opportunity for a hearing.

Application No.	Drug
AADA 60–072	Penicillin G Potassium Powder, 100,000 units/5 milliliters (mL), 200,000 units/5 mL, 250,000 units/5 mL, 400,000 units/5 mL, 500,000 units/5 mL
AADA 60–073	Penicillin G Potassium Tablets USP, 100,000 units/Tab, 200,000 units/Tab, 250,000 units/Tab, 400,000 units/Tab, 500,000 units/Tab
AADA 60–104	Chlortetracycline Hydrochloride (HCl) Capsules USP, 250 milligrams (mg)
AADA 60–518	Penicillin V Potassium Tablets USP, 125 mg, 250 mg, 500 mg
AADA 60–519	Penicillin V Potassium Powder, 125 mg/5 mL, 250 mg/5 mL
AADA 60–692	Ampicillin Capsules USP (Trihydrate), 250 mg, 500 mg
AADA 60–765	Ampicillin Capsules USP (Trihydrate), 250 mg, 500 mg
AADA 61–183	Ampicillin for Oral Suspension USP, 125 mg/5 mL, 250 mg/5 mL
AADA 61–468	Tetracycline Syrup, 125 mg/5 mL
AADA 62–237	Erythromycin Estolate Capsules USP, 250 mg
AADA 62–762	Cephradine Capsules USP, 250 mg, 500 mg
ANDA 70–360	Diazepam Tablets USP, 2 mg
ANDA 70–361	Diazepam Tablets USP, 5 mg
ANDA 70–362	Diazepam Tablets USP, 10 mg
ANDA 70–935	Perphenazine and Amitriptyline HCl Tablets USP, 2 mg/10 mg
ANDA 70–936	Perphenazine and Amitriptyline HCl Tablets USP, 2 mg/25 mg
ANDA 70–937	Perphenazine and Amitriptyline HCl Tablets USP, 4 mg/10 mg
ANDA 70–938	Perphenazine and Amitriptyline HCl Tablets USP, 4 mg/25 mg
ANDA 70–939	Perphenazine and Amitriptyline HCl Tablets USP, 4 mg/50 mg
ANDA 71–154	Ibuprofen Tablets USP, 200 mg (Round)
ANDA 71–458	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/15 mg
ANDA 71–459	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/25 mg
ANDA 71–460	Methyldopa and Hydrochlorothiazide Tablets USP, 500 mg/30 mg
ANDA 71–461	Methyldopa and Hydrochlorothiazide Tablets USP, 500 mg/50 mg
ANDA 71–552	Propranolol HCl and Hydrochlorothiazide Tablets USP, 40 mg/25 mg
ANDA 71–553	Propranolol HCl and Hydrochlorothiazide Tablets USP, 80 mg/25 mg
ANDA 72–040	Ibuprofen Tablets USP, 200 mg (Caplet)
ANDA 72–063	Propranolol HCl Tablets USP, 10 mg
ANDA 72–066	Propranolol HCl Tablets USP, 20 mg
ANDA 72–067	Propranolol HCl Tablets USP, 40 mg
ANDA 72–068	Propranolol HCl Tablets USP, 60 mg
ANDA 72–069	Propranolol HCl Tablets USP, 80 mg
ANDA 80–078	Nitrofurantoin Tablets (Microcrystalline) 50 mg, 100 mg
ANDA 80–143	Trisulfapyrimidines Tablets USP
ANDA 80–215	Propylthiouracil Tablets USP, 50 mg
ANDA 80–270	Isoniazid Tablets USP, 100 mg
ANDA 80–283	Prednisone Tablets USP, 5 mg
ANDA 80–378	Prednisolone Tablets USP, 5 mg
ANDA 80–630	Cortisone Acetate Tablets USP, 25 mg
ANDA 80–735	Dimenhydrinate Tablets USP, 50 mg
ANDA 80–762	Diphenhydramine HCl Capsules USP, 25 mg, 50 mg
ANDA 80–779	Chlorpheniramine Maleate Tablets USP, 4 mg
ANDA 83–035	Vitamin A Capsules USP, 50,000 units
ANDA 83–077	Propoxyphene Compound Capsules

Application No.	Drug
ANDA 83–180	Niacin Tablets USP, 500 mg
ANDA 83–190	Vitamin A Palmitate Capsules, 50,000 units
ANDA 83–416	Dexamethasone Tablets USP, 0.75 mg
ANDA 83–461	Pentobarbital Sodium Capsules USP, 50 mg, 100 mg
ANDA 83–484	Butabarbital Sodium Tablets USP, 15 mg
ANDA 83–536	Cortisone Acetate Tablets USP, 25 mg
ANDA 83–549	Chlorpromazine HCl Tablets USP, 10 mg, 25 mg, 50 mg
ANDA 83–568	Reserpine and Hydrochlorothiazide Tablets USP, 0.1 mg/50 mg
ANDA 83–570	Chlordiazepoxide HCl Capsules USP, 25 mg
ANDA 83–571	Reserpine and Hydrochlorothiazide Tablets USP, 0.125 mg/25 mg
ANDA 83–572	Reserpine and Hydrochlorothiazide Tablets USP, 0.1 mg/25 mg
ANDA 83–573	Reserpine and Hydrochlorothiazide Tablets USP, 0.125 mg/50 mg
ANDA 83–574	Chlorpromazine HCl Tablets USP, 100 mg
ANDA 83–575	Chlorpromazine HCl Tablets USP, 200 mg
ANDA 83–597	Propoxyphene HCl Capsules USP, 32 mg
ANDA 83–603	Promethazine HCl Tablets USP, 25 mg
ANDA 83–604	Promethazine HCl Tablets USP, 12.5 mg
ANDA 83–610	Isoniazid Tablets USP, 300 mg
ANDA 83–613	Promethazine HCl Tablets USP, 50 mg
ANDA 83–741	Chlordiazepoxide HCl Capsules USP, 5 mg
ANDA 83–742	Chlordiazepoxide HCl Capsules USP, 10 mg
ANDA 83–750	Triamcinolone Tablets USP, 4 mg
ANDA 83–784	Meclizine HCl Tablets USP, 12.5 mg
ANDA 83–876	Hydralazine HCl and Hydrochlorothiazide Tablets, 25 mg/15 mg
ANDA 83–877	Reserpine, Hydralazine HCl, and Hydrochlorothiazide Tablets USP, 0.1 mg/25 mg/15 mg
ANDA 84–040	Butabarbital Sodium Tablets USP, 30 mg
ANDA 84–133	Prednisone Tablets USP, 10 mg
ANDA 84–134	Prednisone Tablets USP, 20 mg
ANDA 84–181	Meprobamate Tablets USP, 600 mg
ANDA 84–291	Reserpine, Hydralazine HCl and Hydrochlorothiazide Tablets USP, 0.1 mg/25 mg/15 mg
ANDA 84–351	Brompheniramine Maleate Tablets USP, 4 mg
ANDA 84–437	Hydralazine HCl Tablets USP, 25 mg
ANDA 84–443	Hydralazine HCl Tablets USP, 10 mg
ANDA 84–469	Hydralazine HCl Tablets USP, 50 mg
ANDA 84–473	Isosorbide Dinitrate Sublingual Tablets USP, 2.5 mg
ANDA 84–474	Isosorbide Dinitrate Sublingual Tablets USP, 5 mg
ANDA 84–549	Quinidine Sulfate Tablets USP, 200 mg
ANDA 84–581	Hydralazine HCl Tablets USP, 100 mg
ANDA 84–648	Methocarbamol Tablets USP, 500 mg
ANDA 84–649	Methocarbamol Tablets USP, 750 mg
ANDA 84–658	Hydrochlorothiazide Tablets USP, 50 mg
ANDA 84–689	Bethanechol Chloride Tablets USP, 25 mg
ANDA 84–976	Meclizine HCl Tablets USP, 25 mg
ANDA 85–273	Triprolidine and Pseudoephedrine Hydrochlorides Tablets USP, 2.5 mg/60 mg
ANDA 85–441	Butalbital Compound Tablets USP, 50 mg/325 mg
ANDA 85–553	Phenterimine HCl Tablets, 8 mg
ANDA 85–611	Phendimetrazine Tartrate Tablets USP, 35 mg
ANDA 85–612	Phendimetrazine Tartrate Tablets USP, 35 mg
ANDA 85–682	Phendimetrazine Tartrate Tablets USP, 35 mg
ANDA 85–869	Secobarbital Sodium Capsules USP, 100 mg
ANDA 86–035	Isosorbide Dinitrate Tablets USP, 10 mg
ANDA 86–329	Phentermine HCl Capsules USP, 30 mg
ANDA 87–004	Spironolactone and Hydrochlorothiazide Tablets USP, 25 mg/25 mg
ANDA 87–008	Dipyridamole Tablets USP, 25 mg
ANDA 87–108	Spironolactone Tablets USP, 25 mg
ANDA 87–186	Ergoloid Mesylates Tablets USP (Sublingual), 0.5 mg
ANDA 87–216	Hydroxyzine HCl Tablets USP, 10 mg
ANDA 87–316	Dipyridamole Tablets USP, 50 mg
ANDA 87–320	Dipyridamole Tablets USP, 75 mg
ANDA 87–353	Chlorpropamide Tablets USP, 250 mg
ANDA 87–410	Hydroxyzine HCl Tablets USP, 25 mg
ANDA 87–411	Hydroxyzine HCl Tablets USP, 50 mg
ANDA 87–555	Chlorthalidone Tablets USP, 25 mg
ANDA 87–769	Sulfinpyrazone Tablets USP, 100 mg
ANDA 87–786	Methyclothiazine Tablets USP, 5 mg
ANDA 87–947	Chlorthalidone Tablets USP, 50 mg
ANDA 88–218	Phenylbutazone Capsules USP, 100 mg
ANDA 88–356	Hydralazine HCl and Hydrochlorothiazide Capsules, 25 mg/25 mg
ANDA 88–357	Hydralazine HCl and Hydrochlorothiazide Capsules, 50 mg/50 mg
ANDA 88–358	Hydralazine HCl and Hydrochlorothiazide Capsules, 100 mg/50 mg
ANDA 88–840	Chlorpropamide Tablets USP, 100 mg

Application No.	Drug
ANDA 88–932	Reserpine and Hydroflumethiazide Tablets, 0.125 mg/50 mg

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective January 5, 1998.

Dated: November 17, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–31879 Filed 12–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 18, 1997, 8:30 a.m. to 5:05 p.m., and December 19, 1997, 8 a.m. to 4:35 p.m.

Location: Holiday Inn, Versailles Ballrooms I, II, and III, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Jannette O'Neill-Gonzalez, or Robinette Taylor, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 18, 1997, the committee will discuss: (1) New drug application (NDA) supplement 16–295/S–029, Droxia® (hydroxyurea capsules, USP), for the treatment of sickle cell anemia in adult patients to prevent painful crises and to reduce the need for blood transfusions; and (2) NDA 20–798, Depocyt® (cytarabine lipid-particle injection), for the intrathecal treatment of neoplastic meningitis of patients with solid tumors, lymphoma, or leukemia. On December 19, 1997, the committee will discuss: (1) Biologics licensing application (BLA) supplement 97–0501, Proleukin/Aldesleukin (recombinant human interlukin-2), for the treatment of adult patients with metastatic melanoma; and (2) NDA 20–806, Neomark® (broxuridine for injection), for use as a cell proliferation marker to determine the labeling index in breast cancer.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 10, 1997. Oral presentations from the public will be scheduled between approximately 8:35 a.m. and 9:05 a.m. on December 18, 1997, and between approximately 8:05 a.m. and 8:35 a.m. on December 19, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 10, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the December 18, 1997, Oncologic Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Oncologic Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 26, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–31808 Filed 12–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0442]

Memoranda of Understanding Between the Food and Drug Administration and the United States Department of Agriculture

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) have revised three memoranda of understanding (MOU's) with regard to control of aflatoxin in peanuts, in-shell Brazil nuts, and in-shell pistachio nuts. The purpose of the MOU's is to set forth the responsibility for aflatoxin testing of domestic and imported raw peanuts, imported in-shell Brazil nuts, and imported in-shell pistachio nuts.

DATES: The MOU's became effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Henry Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–0631.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's signed by FDA and other departments, agencies, and organizations shall be published in the **Federal Register**, the agency is publishing three revised MOU's between FDA and USDA that set forth the responsibility for aflatoxin testing of domestic and imported raw peanuts, imported in-shell Brazil nuts, and imported in-shell pistachio nuts.

Dated: November 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

The text of the three MOU's follows: Agreement No.

225–96–2001
Revision 1
12–25–MU–335
Revision 1

Memorandum of Understanding Between the Science and Technology Division of the Agricultural Marketing Service, United States Department of Agriculture and the Food and Drug Administration, Department of Health and Human Services

PROJECT ..... Aflatoxin testing of domestic and imported peanuts

LEADERS ..... Administrator, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA) and Associate Commissioner for Regulatory Affairs, Food and Drug Administration (FDA), Department of Health and Human Services (HHS)

LOCATIONS ..... Albany, Ashburn, Blakely, Camilla, and Dawson, Georgia, Dothan, Alabama, Aulander, North Carolina, Madill, Oklahoma, and Suffolk, Virginia

HEADQUARTERS ..... Washington, DC
EFFECTIVE DATE ..... October 1, 1997

LEGAL AUTHORITY ..... The Agricultural Marketing Act of 1946, and the Federal Food, Drug, and Cosmetic Act of 1938, as Amended

REVISION ..... This is a revision of and shall supersede Memorandum of Understanding, FDA-225–96–2001, effective October 1, 1995, between FDA and AMS.

ORGANIZATION ..... The organization shall consist of the leaders, qualified analytical chemists and physical science technicians provided and supervised by the AMS Aflatoxin Supervisor, and technical contacts provided and supervised by the Chief, Technical Services Branch, Science and Technology Division (S&TD), AMS.

BACKGROUND ..... Aflatoxins are toxic metabolites produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*. If present in sufficient amounts, they may cause acute toxicity and are known to be carcinogens for some animals. Peanuts, tree nuts, corn, and other small grains are susceptible to aflatoxin contamination. The Peanut Administrative Committee (PAC) administers Marketing Agreement 146 with USDA oversight to control the aflatoxin problem in peanuts and ensure the wholesomeness of peanuts moving into channels for human consumption. The Peanut Marketing Agreement requirement for domestic edible peanuts is 15 parts per billion (ppb) total aflatoxins or less. Imported peanuts must meet the same requirement as domestic peanuts, and importers of peanuts must offer each lot of the product to USDA or a PAC-approved laboratory for inspection before introducing that lot into United States commerce.

RESPONSIBILITIES:

AMS intends to:

1. Continue to provide oversight to the PAC in the administration of the Marketing Agreement for peanuts to control the incidence and levels of total aflatoxins in domestically produced peanuts.
2. Monitor and inspect imported raw peanuts upon effective date of peanut import regulations.
3. Perform all aflatoxin assays using the official methods in the current "Instruction Manual for Aflatoxin Testing", United States Department of Agriculture, Agricultural Marketing Service, Science and Technology Division, Technical Services Branch.
4. Issue aflatoxin certificates as (1) "negative" if the level is not over 15 ppb; (2) number if the level is over 15 ppb.
5. Provide FDA with a copy of the certificate of total aflatoxins analysis and the name of the applicant on each lot, both domestic and imported, found to exceed 15 ppb total aflatoxins and the analysis certificate on any lot on request.

FDA Intends to:

1. Maintain its administrative guideline at 20 ppb on objective samples recognizing that good manufacturing practices remove significant quantities of unfit peanuts and that levels of total aflatoxins are reduced by heating.
2. Not object to the offering of lots of peanuts to processors where certificates show levels of total aflatoxins above 25 ppb but to examine routinely finished products from such lots. Such lots of raw peanuts may be subject to action in cases where there is not a reasonable assurance that the finished product will contain no more than 20 ppb total aflatoxins.

AMS and FDA mutually agree to:

1. Designate a person to serve as a central contact to whom communications dealing with this agreement or matters affected thereby may be first referred for attention.

For the Food and Drug Administration: Director, Division of Programs and Enforcement Policy, HFS–305 (currently Terry C. Troxell, Ph.D.) Office of Plant and Dairy Foods and Beverages Center for Food Safety and Applied Nutrition, 200 C. Street S.W., Washington, D.C. 20204, Telephone: 202–205–5321

For the Agricultural Marketing Service: Director, Science and Technology Division (currently William J. Franks, Jr.) USDA, AMS 14th & Independence Avenue, S.W. Washington, D.C. 20090–6456, Telephone: 202–720–6496.

2. Maintain close working relations with each other, both in headquarters as well as in the field.
3. Work with industry toward greater efficiency in connection with improvement of the testing program.

BASIS OF COOPERATION—This Memorandum of Understanding defines in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds. Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in the Memorandum of Understanding must be in accord with Department rules and regulations and in each instance based upon appropriate finance papers. Expenditures made by FDA will be in accord with its rules and regulations.

Nothing in this agreement modifies other existing agreements, nor does it preclude entering into separate agreements setting forth procedures for special programs that can be handled more efficiently and expeditiously by such special agreement.

The responsibilities assumed by the cooperating parties under this Memorandum of Understanding are contingent upon funds being available from which expenditures legally may be made.

DURATION—This agreement will continue in force indefinitely. It may be amended or terminated by mutual consent of the parties in writing. It may be terminated by either party upon 30 days' notice in writing to the other party.

This agreement is hereby approved for the Agricultural Marketing Service.

Done at Washington, D.C. on October 1, 1997,
Barbara A. Chaffey,
Deputy Administrator, Marketing Programs
Agricultural Marketing Service.

This agreement is hereby approved for the Food and Drug Administration:
Done at Washington, D.C. on October 1, 1997,
Ronald G. Chesemore,
Associate Commissioner for Regulatory Affairs.

Agreement No.
225–96–2002
Revision 1
12–25–MU–334
Revision 1

Memorandum of Understanding Between the Science and Technology Division of the Agricultural Marketing Service, United States Department of Agriculture and the Food and Drug Administration, Department of Health and Human Service

PROJECT ..... Voluntary aflatoxin testing of imported in-shell Brazil nuts

LEADERS ..... Administrator, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA) and Associate Commissioner for Regulatory Affairs, Food and Drug Administration (FDA), Department of Health and Human Services (HHS)

LOCATIONS ..... Blakely, Georgia, and Dothan, Alabama

HEADQUARTERS ..... Washington, DC

EFFECTIVE DATE ..... October 1, 1997

LEGAL AUTHORITY ..... The Agricultural Marketing Act of 1946, and the Federal Food, Drug, and Cosmetic Act of 1938, as Amended

REVISION ..... This is a revision of and shall supersede Memorandum of Understanding, FDA–225–96–2002, effective October 1, 1995, between FDA and AMS.

ORGANIZATION ..... The organization shall consist of the leaders, qualified analytical chemists and physical science technicians provided and supervised by the AMS Aflatoxin Supervisor, and technical contacts provided and supervised by the Chief, Technical Services Branch, Science and Technology Division (S&TD), AMS.

BACKGROUND ..... Aflatoxins have been shown to cause cancer in certain laboratory animals. Aflatoxins are produced by the mold *Aspergillus flavus* and may contaminate various kinds of foods, including Brazil nuts. FDA and AMS have cooperated with United States importers in a program for sampling and aflatoxin testing of imported Brazil nuts. Neither AMS nor FDA has a formal agreement with the Brazil nut importers. Under this voluntary program, importers of Brazil nuts offer each lot of the product to USDA for inspection prior to its introduction into United States commerce. USDA is responsible for sampling and testing each lot for total aflatoxins in accordance with procedures prescribed by FDA and for issuing an analysis certificate for each lot tested.

RESPONSIBILITIES:

AMS intends to:

1. Draw samples in accordance with the following schedule:

TABLE I.—LOTS PACKED IN CONTAINERS WEIGHING 50 LBS. OR LESS

Number of bags in lot	Number of bags sampled	Total pounds in sample	Approximate no. of nuts
500 or less	60	20	1,000
501–1,800	120	40	2,000
1,801–4,500	180	60	3,000

TABLE II.—LOTS PACKED IN CONTAINERS WEIGHING 51 TO 120 LBS.

Number of bags in lot	Number of bags sampled	Total pounds in sample	Approximate no. of nuts
200 or less	20	20	1,000
201–800	40	40	2,000
801–2,000	60	60	3,000

2. Perform aflatoxin assay.

(a) Shell and Kernel Analysis.

The entire sample of shells and kernels will be ground in a vertical cutter mixer. A well-mixed portion of the ground composite will be assayed chemically for total aflatoxins, using the BF method as described in the book of Official Methods of Analysis of AOAC International, 16th ed., Vol. II, Sec. 49.2.09. The total aflatoxins level will be calculated on the basis of the nut kernel, assuming the kernel constitutes half the weight of the total in-shell nut.

(b) Kernel Analysis

The entire sample is individually shelled. Those kernels that have an obviously inedible appearance will be discarded. The remaining kernels will be composited and ground with the addition of an inert grinding aid. A well-mixed portion of the ground composite will be assayed as described in paragraph (a) above.

3. Report Results

(a) A separate analysis certificate will be issued for each lot. Appropriate identification marks will be shown on each certificate so that the report can be related to the specific lot sampled.

(b) Provide appropriate FDA District Office the results of aflatoxin analysis for lots that may be subject to action under the Food, Drug, and Cosmetic Act and

analysis certificate on any lot upon request.

FDA intends to:

1. Notify AMS of the criteria FDA will use concerning total aflatoxins levels in lots to determine whether they may be subject to action under the Food, Drug, and Cosmetic Act.
2. Review results of aflatoxin analysis for lots provided by AMS to determine whether they may be subject to action under the Food, Drug, and Cosmetic Act.

AMS and FDA mutually agree to:

1. Designate a person to serve as a central contact to whom communications dealing with this agreement or matters affected thereby may be first referred for attention.

For the Food and Drug Administration: Director, Division of Programs and Enforcement Policy, HFS–305 (currently Terry C. Troxell, Ph.D.), Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, 200 C. Street S.W. Washington, D.C. 20204, Telephone: 202–205–5321

For the Agricultural Marketing Service: Director, Science and Technology Division (currently William J. Franks, Jr.) USDA, AMS 14th & Independence Avenue, S.W. Washington, D.C. 20090–6456, Telephone: 202–720–6496.

2. Maintain close working relations with each other, both in headquarters as well as in the field.
3. Work with industry toward greater efficiency in connection with improvement of the testing program.

BASIS OF COOPERATION—This Memorandum of Understanding defines in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds. Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in the Memorandum of Understanding must be in accord with Department rules and regulations and in each instance based upon appropriate finance papers. Expenditures made by FDA will be in accord with its rules and regulations.

Nothing in this agreement modifies other existing agreements, nor does it preclude entering into separate agreements setting forth procedures for special programs that can be handled more efficiently and expeditiously by such special agreement.

The responsibilities assumed by the cooperating parties under this Memorandum of Understanding are contingent upon funds being available from which expenditures legally may be made.

DURATION—This agreement will continue in force indefinitely. It may be amended or terminated by mutual consent of the parties in writing. It may be terminated by either party upon 30 days' notice in writing to the other party.

This agreement is hereby approved for the Agricultural Marketing Service.
Done at Washington, D.C. on October 1, 1997,
Barbara A. Chaffey,
Deputy Administrator, Marketing Programs
Agricultural Marketing Service.

This agreement is hereby approved for the Food and Drug Administration:
Done at Washington, D.C. on October 1, 1997,
Ronald G. Chesemore,
Associate Commissioner for Regulatory Affairs.

Agreement No.
225–96–2003
Revision 1
12–25–MU–336
Revision 1

Memorandum of Understanding between the Science and Technology Division of the Agricultural Marketing Service, United States Department of Agriculture and the Food and Drug Administration Department of Health and Human Services

PROJECT	Voluntary aflatoxin testing of imported in-shell pistachio nuts
LEADERS	Administrator, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA) and Associate Commissioner for Regulatory Affairs, Food and Drug Administration (FDA), Department of Health and Human Services (HHS)
LOCATIONS	Blakely, Georgia, and Dothan, Alabama
HEADQUARTERS	Washington, DC
EFFECTIVE DATE	October 1, 1997
LEGAL AUTHORITY	The Agricultural Marketing Act of 1946, and the Federal Food, Drug, and Cosmetic Act of 1938, as Amended
REVISION	This is a revision of and shall supersede Memorandum of Understanding, FDA 225–96–2003, effective October 1, 1995, between FDA and AMS.
ORGANIZATION	The organization shall consist of the leaders, qualified analytical chemists and physical science technicians provided and supervised by the AMS Aflatoxin Supervisor, and technical contacts provided and supervised by the Chief, Technical Services Branch, Science and Technology Division (S&TD), AMS.
BACKGROUND	Aflatoxins have been shown to cause cancer in certain laboratory animals. Aflatoxins are produced by the mold Aspergillus flavus and may contaminate various kinds of foods, including pistachio nuts. FDA and AMS have cooperated with United States importers in a program for sampling and aflatoxin testing of imported pistachio nuts. Neither AMS nor FDA has a formal agreement with the pistachio nut importers. The program is conducted on a voluntary basis whereby importers of pistachio nuts offer each lot of the product to USDA for inspection before introducing that lot into United States commerce. USDA is responsible for sampling and testing each lot for total aflatoxins in accordance with procedures prescribed by FDA and for issuing an analysis certificate for each lot tested.

RESPONSIBILITIES:

AMS intends to:

1. Draw samples in accordance with the following schedule:

TABLE I.

Total weight of lot	Percent of containers sampled	Total sample weight
75,000 lb or less	Minimum of 20%	Shelled–25 lb In-shell–50 lb

TABLE I.—Continued

Total weight of lot	Percent of containers sampled	Total sample weight
More than 75,000 lb to 150,000 lb	Minimum of 20%	Shelled–50 lb In-shell–100lb

For lots with total weight greater than 150,000 pounds, a sample will be selected from 20 percent of the containers in the lot and consist of 25 lb of shelled nuts or 50 lb of in-shell nuts for each multiple of 75,000 lb (e.g., 150,000 to 225,000 lb requires a 3-fold sample of 75 lb shelled or 150 lb of in-shell nuts).

2. Perform aflatoxin assay.

(a) In-Shell Lots.

The entire sample of shells and kernels will be ground in a vertical cutter mixer. A well-mixed portion of the ground composite will be assayed chemically for total aflatoxins, using either of the two methods for aflatoxin assay in pistachios described in the book of Official Methods of Analysis of AOAC International, 16th ed., Vol. II, Sec. 49.2.23. The aflatoxin level will be calculated on a kernel weight basis.

(b) Shelled Lots

The entire sample shall be ground, including those kernels which have an obvious inedible appearance. A well-mixed portion of the ground composite will be assayed as in paragraph 2.(a) above.

3. Report Results

(a) A separate analysis certificate will be issued for each lot. Appropriate identification marks will be shown on each certificate so that the report can be related to the specific lot sampled.

(b) Provide appropriate FDA District Office the results of aflatoxin analysis for lots that may be subject to action under the Food, Drug, and Cosmetic Act and analysis certificate on any lot upon request.

FDA intends to:

1. Notify AMS of the criteria FDA will use concerning total aflatoxins levels in lots to determine whether they may be subject to action under the Food, Drug, and Cosmetic Act.
2. Review results of aflatoxin analysis for lots provided by AMS to determine whether they may be subject to action under the Food, Drug, and Cosmetic Act.

AMS and FDA mutually agree to:

1. Designate a person to serve as a central contact to whom communications dealing with this agreement or matters affected thereby may be first referred for attention.

For the Food and Drug Administration: Director, Division of Programs and Enforcement Policy, HFS–305 (currently Terry C. Troxell, Ph.D.) Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition 200 C. Street S.W. Washington, D.C. 20204 Telephone: 202–205–5321

For the Agricultural Marketing Service: Director, Science and Technology Division (currently William J. Franks, Jr.) USDA, AMS 14th & Independence Avenue, S.W. Washington, D.C. 20090–6456, Telephone: 202–720–6496.

2. Maintain close working relations with each other, both in headquarters as well as in the field.
3. Work with industry toward greater efficiency in connection with improvement of the testing program.

BASIS OF COOPERATION—This Memorandum of Understanding defines in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Each party will handle and expend its own funds. Any and all expenditures from Federal funds in the Department of Agriculture made in conformity with the plans outlined in the Memorandum of Understanding must be in accord with Department rules and regulations and in each instance based upon appropriate finance papers. Expenditures made by FDA will be in accord with its rules and regulations.

Nothing in this agreement modifies other existing agreements, nor does it preclude entering into separate agreements setting forth procedures for special programs that can be handled more efficiently and expeditiously by such special agreement.

The responsibilities assumed by the cooperating parties under this Memorandum of Understanding are contingent upon funds being available from which expenditures legally may be made.

DURATION—This agreement will continue in force indefinitely. It may be amended or terminated by mutual consent of the parties in writing. It may be terminated by either party upon 30 days' notice in writing to the other party.

This agreement is hereby approved for the Agricultural Marketing Service.
Done at Washington, D.C. on October 1, 1997,
Barbara A. Chaffey,
Deputy Administrator, Marketing Programs
Agricultural Marketing Service.

This agreement is hereby approved for the Food and Drug Administration:
Done at Washington, D.C. on October 1, 1997,
Ronald G. Chesemore,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 97–31809 Filed 12–4–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0496]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Reporting and Recordkeeping Requirements for Manufacturers and Distributors of Electronic Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1997 (62 FR 45665), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0025. The approval expires on October 31, 2000.

Dated: November 27, 1997.
William K. Hubbard,
Associate Commissioner for Policy Coordination.

[FR Doc. 97–31943 Filed 12–4–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Coronary Stent Angioplasty: Factors Affecting Restenosis (Telephone Conference Call).
Date: January 6, 1998.
Time: 9:00 a.m.
Place: 6701 Rockledge Drive, Room 7214, Bethesda, Maryland 20892.
Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Specialized Centers of Research in Acute Lung Injury.
Date: January 7–8, 1998.
Time: 8:00 a.m.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Contact Person: Anne P. Clark, Ph.D., Two Rockledge Center, Room 7186, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0280.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Specialized Centers of Research in Neurobiology of Sleep and Sleep Apnea.

Date: January 8, 1998.
Time: 8:30 a.m.
Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209.
Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: November 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31832 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of SEP: National Institute on Aging Special Emphasis Panel, Nutritional Probe of Aging, (Teleconference).
Date of Meeting: December 18, 1997.
Time of Meeting: 2:00 p.m. to adjournment.
Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.
Purpose/Agenda: To review a revised program project grant application.
Contact Person: Dr. Paul Lenz, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: December 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31831 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate grant applications.
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
Date of Meeting: December 5, 1997.
Time: 8:00 A.M. to adjournment.
Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Sean O'Rourke, 6000 Executive Boulevard, Suite 409, Rockville, MD 20892–7003, 301–443–2861.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The proposal and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health.)

Dated: November 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31833 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Microbiological and Immunological.
Date: December 10, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5110 (Telephone Conference).
Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31829 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: December 4, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.
Name of SEP: Microbiological and Immunological.
Date: December 11, 1997.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 5112, Telephone Conference.
Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301)-435–1169.
Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Chemistry and Related Sciences.
Date: December 2, 1997.
Time: 11:30 a.m.
Place: NIH, Rockledge 2, Room 4172, Telephone Conference.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31830 Filed 12–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)
Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400
Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745
Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051 (formerly: Jewish Hospital of Cincinnati, Inc.)
American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917
CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171
Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784 / 915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)
LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734
MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515 / 800–526–6339
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 1518 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891
PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200 / 800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272
Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 / 972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.).
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788 / 254–771–8379
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–6300 / 800–999-LABS
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital Toxicology Laboratory, P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
St. Lawrence Hospital & Healthcare System, Toxicology Laboratory, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 / 800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratories for the conduct of forensic urine drug testing required by Department of Transportation regulations:

Dynacare Kasper Medical Laboratories, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 / 403–451–3702
MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–31945 Filed 12–4–97; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA) Cancellation of Receipt Date for SAMHSA Conference Grant Applications

AGENCY: Center for Substance Abuse Prevention and Center for Substance Abuse Treatment, SAMHSA.

ACTION: Cancellation of January 10, 1998 Application Receipt Date.

SUMMARY: SAMHSA's Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) are canceling the January 10, 1998, receipt date for applications for the following grant programs:

CSAP's Knowledge Dissemination Conference Grants (CFDA No. 93.174)
CSAT's Substance Abuse Treatment Conference Grants (CFDA No. 93.218)

To be placed on a mailing list for an application kit and current programmatic guidelines, potential applicants should contact: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, Maryland 20847–2345, Tele: 1–800–729–6686; TDD: 1–800–487–4889, Web Address: www.health.org.

For information regarding future receipt dates or for programmatic assistance, potential applicants should contact the following individuals:

CSAP:
Ms. Luisa del Carmen Pollard, Division of Prevention Application and Education, CSAP, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–0377, E-mail address: lpollard@samhsa.gov

CSAT:
Mr. George Kanuck, Office of Policy Coordination and Planning, CSAT, Rockwall II Building, Suite 840, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–5050, E-mail address: gkanuck@samhsa.gov

Dated: December 2, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–31886 Filed 12–4–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–32]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 25, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–31492 Filed 12–4–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ACTION: Notice of availability.

SUMMARY: The Peregrine Fund (J. Peter Jenny; applicant) has applied for an amendment to its incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act) issued by the U.S. Fish and Wildlife Service (Service) on December 16, 1996, under permit number PRT–814839. The amendment requests that Jim Wells County, Texas (556,332 acres) be added to the 14 county area in Texas where The Peregrine Fund already has a permit for incidental take in association with their aplomado falcon (*Falco femoralis septentrionalis*) reintroduction program.

DATES: Written comments on the amendment application should be received on or before January 5, 1998.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., P.O. Box 1306, Albuquerque, New Mexico 87103. In addition, the amendment application will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the Service's Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058. Written comments concerning the application should be submitted to the Field Supervisor, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058. Please refer to the amendment to PRT–814839 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Edith A. Erfling, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058; (281) 286–8282.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Aplomado falcon. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: This amendment to permit PRT–814839 would authorize incidental take on an additional 556,332 acres of Jim Wells County, Texas, again, only on land that is enrolled in the "safe harbor" program for that purpose.

To facilitate the reintroduction of the aplomado falcon, The Peregrine Fund is currently authorized to take aplomado falcons, incidental to lawful land-use activities, on specific lands enrolled in

The Peregrine Fund's "Safe Harbor" program.

Renne Lohoefener,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 97–31892 Filed 12–4–97; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal to Develop the "FGDC Standard for a Geologic Data Model" as a Federal Geographic Data Committee Standard

ACTION: Notice; request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a "FGDC Standard for a Geologic Data Model." If the proposal is approved, the standard will be developed following the FGDC standards development and approval process. If the standard is adopted by the FGDC, it must be followed by all Federal agencies collecting geologic data directly or indirectly, through grants, partnerships, or contracts.

In its assigned Federal leadership in the development of the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

DATES: Comments must be received on or before December 19, 1997.

CONTACT AND ADDRESSES: The complete proposal is included in this notice. It is also posted at Internet address: http://www.fgdc.gov/Standards/Documents/Proposals/geomod.html

Comments may be submitted via Internet mail or by submitting an electronic copy on diskette. Send comments via Internet to: gdc-geomod@www.gdc.gov. Comments e-mailed as attachments must be in ASCII format.

A soft copy version may be submitted on a 3.5 x 3.5 diskette in WordPrefect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments, to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the "FGDC Standard for a Geologic Data Model".

Project Title: FGDC Standard for Geologic Data Model.

Date of Proposal: April 18, 1997, revised: July 14, 1997.

Type of Standard Proposed: Logical Data Model.

Submitting Organization: FGDC Geologic Data Subcommittee.

Point of Contact: David R. Soller, USGS.

Objectives: The objective of this standard is to create a logical data model that will describe the various critical entities of a geologic map and the relations among them.

Scope: This standard will describe how geologic map information will be configured in digital format, and will not proscribe methods by which geologic maps will be made. Geologic maps are very diverse in the type of information contained. The developers of the geologic map data model recognize this diversity, but will focus on the elements of geologic maps that are common to all or at least most geologic maps. In recognition of the diversity of information in geologic maps, the data model is being designed to allow for development of extensions to the standard. The intent is to develop and propose a standard that is widely accepted by map producers using a wide variety of computer and software systems.

Justification/Benefits: Geologic maps are produced by various State and Federal agencies, according to various locally-developed guidelines for content and form. A geologic data model is needed by the geoscience community to provide consistency to the map data that are archived and served to the public and to promote the exchange of digital map data. The model will aid in the development of systematic mapping coverage for the Nation, and will facilitate production of a variety of derivative map products from a geologic map database, as mandated by the Geologic Mapping Act of 1992.

Development Approach: A Geologic Data Model working map group has been formed through an agreement between the Association of American State Geologists (AAQSG) Digital Geologic Mapping Committee and the USGS National Geologic Map Database project. The working group is staffed by technical experts from the USGS, the State geological surveys, and the Geological Survey of Canada. The following steps will be taken:

- Define the general framework of the model (done—the working group has defined an entity-relationship model)
- Develop the model through presentation and discussion at public forums, and prepare it for general public review (in progress)
- Provide to the public a document describing the model and an implementation of the model (e.g., a set of ArcView software tools) for informal evaluation among the USGS, AASG, Geological Survey of Canada, the Geologic Data Subcommittee, and other interested parties (Summer, 1997)
- Revise the document according to comments received (late 1997)
- Prepare a formal document containing the revised model and implementation for consideration by the Geologic Data Subcommittee (Spring, 1998)
- After final Subcommittee comment, submit to the FGDC (Spring, 1998)

Related Standards: Geological Survey of Canada logical data model used for FieldLog software; British Geological Survey Logical Data Model (Technical Report WO/93/20R).

Development and Completion Schedule: see Development Approach.

Resources Required: The USGS, AASG, and Geological Survey of Canada are providing the resources to develop the model. The GDS will require resources to develop a draft for public review.

Potential Participants: The USGS, the AASG, the Geological Survey of Canada, and professional societies.

Other Targeted Authorization Bodies: None. However, the GDS will consider whether to propose the standard to other standards organizations such as ASTM.

Dated: November 25, 1997.

John Fischer,

Acting Chief, National Mapping Division.

[FR Doc. 97–31812 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Comment on the Proposal To Develop the "FGDC Standard for Geologic Map Symbolization" as a Federal Geographic Data Committee Standard

ACTION: Notice; request for comments.

SUMMARY: The FGDC is soliciting public comments on the proposal to develop a "FGDC Standard for Geologic Map Symbolization." If the proposal is approved, the standard will be developed following the FGDC standards development and approval process. If the standard is adopted by the FGDC, it must be followed by all Federal agencies portraying geologic data in map form directly or indirectly (through grants, partnerships, or contracts).

In its assigned Federal leadership in the development of the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that FGDC standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review the proposal and comment on the objectives, scope, approach, and usability of the proposed standard; identify existing related standards; and indicate their interest in participating in the development of the standard.

DATES: Comments must be received on or before December 19, 1997.

CONTACT AND ADDRESSES: The complete proposal is included in this notice. It is also posted at Internet address: http://www.fgdc.gov/Standards/Documents/Proposals/geosym.html.

Comments may be submitted via Internet mail or by submitting an electronic copy on diskette. Send comments via Internet to: gdc-geosym@www.fgdc.gov. Comments e-mailed as attachments must be in ASCII format.

A soft copy version may be submitted on a 3.5 x 3.5 diskette in Word Perfect 5.0 or 6.0/6.1 format, along with one hardcopy version of the comments, to the FGDC Secretariat (attn: Jennifer Fox) at U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the "FGDC Standard for Geologic Map Symbolization."

Project Title: FGDC Standard for Geologic Map Symbolization.

Date of Proposal: April 18, 1997, revised: July 14, 1997.

Type of Standard Proposed: Data Symbology.

Submitting Organization: FGDC Geologic Data Subcommittee.

Point of Contact: David R. Soller, USGS.

Objectives: The objective is to provide a national standard for geologic map symbols, colors, and patterns in order to provide geologic map products that have a standard appearance.

Scope: The scope of this project covers cartographic symbols and patterns that are on geologic maps. The scope includes colors that are used to convey areas of particular formation, age, or lithology.

Justification/Benefits: Geologic maps are produced by various State and Federal agencies, according to various locally-developed guidelines for content and form. National or regional standards for symbolizing geologic map elements do not exist. Locally developed standards or guidelines used by a geologic mapping agency have not been widely adopted. A national standard is needed to provide a standard cartographic product to the end-user. Because most new maps are produced from digital files, this standard must be robust enough to be implemented in digital form on a variety of hardcopy output devices.

Development Approach: This standard will be based on symbolization contained in USGS Open-file Report 95–525 "(draft) Cartographic and digital standard for geologic map information." The approach will be as follows:

- Conduct a review of USGS OFR95–525 to determine elements of the document that should be further developed as a FGDC draft standard (this review was released as USGS Open-file Report 96–725 and is available on-line at http://ncgmp.usgs.gov/ngmdbproject/standards/carto/OFR95–525review.html).
- The review concluded that the symbols, colors, and patterns in the document should be converted to digital form for consideration as a FGDC standard and for general use within the USGS. This conversion is underway within the USGS.
- The digital symbols will form the basis of a draft standards document to be prepared by the Geologic Data Subcommittee late in 1997.
- The document will then be submitted to FGDC for review.

Related Standards: The proposed standard will be based on symbolization contained in USGS Open-file Report 95–525 "(draft) Cartographic and digital standard for geologic map information." Potential relation to ISO Standard 710, 1974, Parts 1–7 will be evaluated.

Development and Completion Schedule:

- In late summer, 1997, the USGS will finish a first draft of the digital symbols to be contained in the standard.
- The Geologic Data Subcommittee will evaluate those symbols, and in late 1997, the Geologic Data Subcommittee will begin compiling the digital symbols into a draft FGDC standards document.
- In the first quarter of 1998, the document will be submitted to FGDC for review.

Resources Required: The USGS is supporting development of the standards document and the implementation.

Potential Participants: The USGS, the Association of American State Geologists, the Geologic Data Subcommittee, professional societies, and private companies.

Other Targeted Authorization Bodies: None.

Dated: November 25, 1997.

John Fischer,

Acting Chief, National Mapping Division.

[FR Doc. 97–31811 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment IV to the Gaming Compact Between the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon, which was executed on September 3, 1997.

DATES: This action is effective December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas H. Hartman, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: November 21, 1997.

Michael J. Anderson,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 97–31918 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1990–00]

Carbon Basin Area; Potential Federal Coal Planning Decisions; Carbon Co., WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of an Environmental Assessment for a Planning Review of the Carbon Basin Area, Carbon County, Wyoming, and Potential Federal Coal Planning Decisions for the area.

SUMMARY: The Carbon Basin planning review area is located approximately 40 miles east of the town of Rawlins and 12 miles southeast of the town of Hanna, all located in Carbon County, Wyoming. The planning review is being conducted because an application to lease Federal coal in the Carbon Basin area has been submitted and Federal coal planning decisions were not made for the area during development of the Great Divide Resource Management Plan (RMP).

DATES: The 45 day comment/review period for the environmental assessment will begin the day following the publication of this notice.

ADDRESSES: Comments should be addressed in writing to the Great Divide Resource Area, Bureau of Land Management, Attn: Karla Swanson, Area Manager, 1300 North Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Interested parties may direct questions or concerns to obtain further information from Brenda Vosika-Neuman or John Spehar, who can be visited at the above address or reached by telephone: 307–328–4200.

SUPPLEMENTARY INFORMATION: Ark Land Company, St. Louis, Missouri, has filed an application with the Bureau of Land Management (BLM) to obtain a coal lease on approximately 4,145 acres of Federal coal lands located in the Carbon Basin area. Ark Land Company, through its affiliate, Arch of Wyoming, Inc., (Arch) has conducted coal mining operations in the Hanna Basin Region of Carbon County since 1972. The depletion of recoverable coal reserves in the Hanna Basin has led Arch to identify additional (local) coal resources in the Carbon Basin area that could utilize the existing infrastructure and meet existing contracts and/or long-term commitments. The Carbon Basin area is in close proximity to the Hanna Basin coal fields and provides a logical continuation of the Hanna Basin mining operations.

In 1982, a Federal coal lease was issued for approximately 60 percent of the Federal coal lands located in the Carbon Basin. Because this lease was still in effect at the time the current BLM land use plan (the Great Divide Resource Management Plan RMP–1990) covering the Carbon Basin area was prepared, it was exempt from the coal screening/planning requirements. However, development of this lease was never pursued and the lease expired in 1992. Also, at the time the Great Divide RMP was prepared, there was no other interest expressed by industry in obtaining Federal coal leases in the area. As a result of these two factors, the coal screening/planning process was not conducted on the area and there were no coal planning decisions for any of the Federal coal lands in the Carbon Basin area included in the Great Divide RMP.

The Federal Coal Leasing Amendments Act of 1976 requires that Federal coal lands must first be identified in a comprehensive land use plan before they can be considered for leasing. Because no coal planning decisions were made for the Carbon Basin coal area in the Great Divide RMP, a planning review, which includes conducting the coal screening/planning process and an environmental analysis, must be completed and documented before the BLM can consider leasing Federal coal in the Carbon Basin. The Ark Land Company coal lease application, or any future applications to lease coal in the Carbon Basin, cannot be given consideration until a planning review is conducted on the Federal coal lands involved and a determination is made that some or all of the lands are open to consideration for coal leasing and development.

Dated: November 26, 1997.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 97–31909 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Friday, January 9, 1998, in Glenwood Springs, Colorado.

DATE: Friday, January 9, 1998.

ADDRESSES: For further information, contact Joann Graham, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; telephone (970) 244–3037.

SUPPLEMENTARY INFORMATION: The meeting will be held at the Garfield County Courthouse, 109 8th Street, Room 301, Glenwood Springs, Colorado. Agenda items include subcommittee reports and status of the roadless inventory review.

All resource advisory council meetings are open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meetings. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: November 24, 1997.

Mark T. Morse,

District Manager, Craig and Grand Junction Districts.

[FR Doc. 97–31851 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–08–3110–00–H040, GP8–0049]

Notice of Direct Sale of Public Lands in Klamath County, Oregon—Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In the Notice of Direct Sale of Public Lands in Klamath County, Oregon beginning on page 53019 in the issue of Friday, October 10, 1997 Volume 62, Number 197 make the following correction:

On page 53019 in the third column, the first sentence in paragraph one of the Summary lists the appraised fair market value as $645,000.00. The appraised fair market value should be changed to $625,400.00.

Dated: November 25, 1997.

A. Barron Bail,

Area Manager, Klamath Falls Resource Area.

[FR Doc. 97–31850 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land management

[ID–957–1020–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. November 25, 1997.

The plat representing the dependent resurvey of portions of the Sixth Auxiliary Meridian East (east boundary) and subdivisional lines, the subdivisional lines, the subdivision of section 25, and a metes-and-bounds survey in section 25, T. 7 N., R. 24 E., Boise Meridian, Idaho, Group 974, was accepted November 25, 1997.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 30, and metes-and-bounds surveys in section 30, T. 7 N., R. 25 E., Boise Meridian, Idaho, Group 974, was accepted November 25, 1997.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the surveys of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: November 25, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–31907 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–00–4442] ES–048576, Group 158, Minnesota

Notice of Filing of Plat of Survey; Minnesota, Stay Lifted

On Thursday, March 20, 1997, there was published in the **Federal Register**, Volume 62, Number 54, on page 13393, a notice entitled, "Notice of Filing of Plat of Survey; Minnesota, Stayed." Said notice referenced the stay of the plat of the dependent resurvey of portions of the west and north boundaries, a portion of the subdivisional lines, and the subdivision of sections 6, 7, 8, 9, 16 and 33, Township 145 North, Range 38 West, Fifth Principal Meridian, Minnesota, accepted January 23, 1997.

The protest against the survey was withdrawn on September 3, 1997, and the plat of survey accepted January 23, 1997, was officially filed in Eastern States Office, Springfield, Virginia, at 7:30 a.m., on September 4, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: November 25, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–31852 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Marine Transportation of Federal Outer Continental Shelf (OCS) Crude Oil Produced Offshore California

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed Notice to Lessees and Operators (NTL).

SUMMARY: MMS proposes to issue an NTL concerning information requirements on marine transportation of OCS crude oil produced offshore California. MMS recognizes that the State of California and its localities have concerns about potential impacts on the environment from the transportation of such oil. The proposed NTL would assist Federal lessees and operators and State and local governments in meeting their responsibilities and addressing their concerns in this area.

DATES: MMS will consider all comments received by February 3, 1997.

ADDRESSES: Mail or hand-carry comments to MMS Pacific Region; 770 Paseo Camarillo; Camarillo, CA 93010; Attention: E. Aronson. E-mail comments to transportation.ntl@mms.gov.

FOR FURTHER INFORMATION CONTACT: Ellen Aronson at 805–389–7511 or e-mail to transportation.ntl@mms.gov.

SUPPLEMENTARY INFORMATION: On June 17, 1996, Deputy Secretary of the Interior John Garamendi issued a Policy Directive to MMS, which provides in pertinent part that:

The policies of the State of California and the county of Santa Barbara prefer that oil and gas production, including offshore resources, be transported by onshore pipeline, rather than by offshore tanker, whenever pipelines are economically and technically feasible.

The Minerals Management Service (MMS) regulates activities which occur within OCS lease boundaries, and generally up to the point of landfall.

The MMS policies should particularly attempt to ensure that new and, where appropriate, amended Development and Production Plans adequately reflect the principle that transportation of OCS crude be consistent with State and local policies.

Statutory Authority

The Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. 1331 *et seq.*, provides the Secretary of the Interior with broad authority relating to the development and production of mineral resources of the OCS. The Secretary is required to provide for the suspension or temporary prohibition of activities if a threat of serious, irreparable, or immediate harm or damage to the marine, coastal, or human environment exists. The Secretary may also take action to cancel a lease if continued activity under it would probably cause serious harm to such environments and the threat of such harm will not decrease to an acceptable level in a reasonable period of time. 43 U.S.C. 1334(a). The Secretary may also disapprove or require modification of a new Development and Production Plan (DPP) if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the marine, coastal or human environment. 43 U.S.C. 1351(h)(1). To carry out these responsibilities, MMS must monitor those activities proximately related to the development and production of oil and gas resources on the OCS and safeguard against activities that may threaten the environment.

Through the OCSLA, the Congress has also recognized the OCS activities may have significant impacts on the States. The OCSLA emphasizes that State and local governments whose interests are affected by activities on the OCS are entitled to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals located in the OCS. 43 U.S.C. 1332(4)(C). Furthermore, the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized. 43 U.S.C. 1332(5).

MMS performs its statutory responsibilities with respect to development activities principally through the approval and periodic review of DPP's. 43 U.S.C. 1351; 30 CFR 250.34. The lessee or operator must

provide a wide range of information that enables the MMS Regional Supervisor to take action on the plan. This includes assessing the effects on the environment expected as a result of implementing the plan, identifying specific and cumulative impacts that may occur both onshore and offshore, and the measures proposed to mitigate these impacts.[1]

States that have coastal management programs approved by the Secretary of Commerce under the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, as well as their local governments, play a critical role in the review of both new and revised DPP's, primarily through the Federal consistency section of the CZMA. 16 U.S.C. 1456. The part of the consistency section dealing with OCS exploration plans and DPP's specifies the authorities and responsibilities of Federal lessees, the Secretary of the Interior, and the coastal States affected by OCS operations. 16 U.S.C. 1456(c)(3)(B).

This OCS-specific provision of the CZMA requires that any person who submits a DPP to the Secretary of the Interior under the OCSLA shall attach to the plan a certification that each activity described in the plan which affects the land, water, or natural resources of the State's coastal zone complies with the enforceable policies of the State's management program, and will be carried out in a manner consistent with that program. Generally, under this provision and under section 25(d) of the OCSLA (43 U.S.C. 1351(d)), the Secretary of the Interior may not grant a license or permit for any such activity unless the State concurs with the consistency certification attached to the DPP. Further, under section 25(h)(1)(B) of the OCSLA (43 U.S.C. 1351(h)(1)(B)), the Secretary shall disapprove the entire DPP if the State does not concur with the certification. Section 25(h)(1) of the OCSLA also provides that any modification to a DPP required by the Secretary, involving activities for which a Federal license or permit is required and that affect coastal zone resources, must receive concurrence of the certification by the affected State.[2]

Conclusion

MMS strongly supports the right of California to exercise its Federal consistency authorities under the CZMA and believes that consistency is an important tool for the State and its local governments to address, among other factors, the marine transportation component of DDP's. MMS encourages California to review the enforceable marine transportation policies in its coastal management program. The State should determine whether such policies: (1) Meet the definition of "enforceable policy" in section 304(6a) of the CZMA; (2) are of sufficient clarity and specificity to make consistency determinations understandable; and (3) incorporate, to the extent consistent with State law and the CZMA, the marine transportation policies of local governments.

The MMS Pacific OCS Region *recognizes that the marine* transportation of OCS crude oil may cause significant impacts on the marine, coastal, and human environments and contribute to the cumulative environmental risks of an OCS development project. To respond to the level of concern regarding marine transportation of OCS crude in California, to reaffirm the agency's commitment to strong coastal State and local involvement in OCS decisions, and to implement Deputy Secretary Garamendi's Policy Directive regarding Federal support of State and local policies with respect to the transportation of Pacific OCS crude oil, the MMS Pacific OCS Region adopts the following procedures for addressing new DPP's and proposed changes in the marine transportation component of existing DPP's for leases offshore California.

COMMENTS INVITED: The proposed NTL is designed to assist Federal lessees and operators and State and local governments in meeting their responsibilities and concerns regarding marine transportation of Federal OCS crude oil produced offshore California. Comments on the proposed NTL are invited.

Dated: December 1, 1997.

J. Lisle Reed,

Regional Director, Pacific OCS Region, Minerals Management Service.

United States Department of the Interior, Minerals Management Service, Pacific OCS Region

Proposed Notice to Lessees and Operators of Federal Oil and Gas Leases, Pacific OCS Region

NTL 97– _____

Effective Date: _____

Lessee Responsibilities for Information on the marine Transportation of Federal Outer Continental Shelf (OCS) Crude Oil Produced Offshore California

In General: The Marine transportation of OCS minerals is an activity that the Secretary of the Interior has determined must be described in detail in a Development and Production Plan (DPP). As such, it is an activity that requires the approval of the Secretary and the concurrence of the State with the certification of federal consistency. Proposed changes in the marine transportation component of a DPP may require a revision to an approved DPP, and such revision is also subject to Secretarial approval (delegated to the Regional Supervisor). This revision would need the concurrence of the State with the required certification of Federal consistency unless it is overridden on appeal to the Secretary of Commerce as authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act (CZMA).

New DPP's: To address the concerns of *California State and local governments about* potential significant effects of oil spills, particularly those from tankering activity, in the State's sensitive marine ecosystem, lessees or operators preparing new DPP's should pay special attention to the marine transportation component of their plans. Such lessees and operators are advised to develop plans to transport the OCS minerals in a manner that is consistent with the enforceable marine transportation policies of the State's CZM program.

Specifically, the procedures of 30 CFR 250.34 shall be followed in the preparation and submission of a new DPP, including the requirement for certification of coastal zone consistency as provided in 15 CFR part 930. Concurrence by California with the certification is a necessary condition for approval of the new DPP by the Regional Supervisor unless the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of the CZMA.

Revised DPP's: The conditions and procedures under which revisions to existing DPP's are required are generally provided for in sections 25(h)(3) and 25(i) of the OCSLA and implemented in MMS' regulations at 30 CFR 250.34(q). Based on those authorities, the Regional Supervisor will conduct periodic reviews of existing DPP's based on changes in information and onshore or offshore conditions affecting or affected by the DPP activities. The Regional Supervisor will pay particular attention to any change in the marine transportation component of the DPP and, specifically, to tankering activity. If a lessee or operator acting under an approved DPP anticipates any change in the mode, manner, or degree of marine transportation of OCS crude activity described in the plan, the lessee or operator shall provide information related to such changes to the Regional Supervisor.

Based on the Regional Supervisor's periodic review or the lessee or operator's notification, the Regional Supervisor will notify appropriate State and local officials about such changes and provide to the State and local officials copies of the information submitted by the lessee or operator. If the Regional Supervisor determines that the proposed change in activity requires a revision to the DPP, the Regional Supervisor will order a revision to the DPP. If the Regional Supervisor determines that a proposed revision either ordered by the Regional Supervisor or initiated by the operator could result in significant change to previously identified and evaluated impacts or to one not previously identified or evaluated, the proposed revision shall be subject to all of the procedures contained in 30 CFR 250.34, including the requirement, under 250.34(b)(13), that a certification of coastal zone consistency be submitted with the revision. The Regional Supervisor may not approve the revision unless the State concurs with the certification, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of the CZMA. The Regional Supervisor shall prepare the appropriate environmental documentation under the National Environmental Policy Act for the decision to approve, require further modifications to, or *disapprove revisions to DPP's.*

This notice is provided to assist lessees and operators in planning the development of the Pacific OCS leases. Questions concerning this information should be directed to the Regional Supervisor for Development, Operations, and Safety at (805) 389–7560.

The collection of information referred to in this notice provides clarification, description, or interpretation of requirements contained in 30 CFR Part 250, Subpart B. The Office of Management and Budget has approved the collection of information required by these regulations and assigned OMB Control Number 1010–0049. This notice does not impose additional information collection requirements subject to the Paperwork Reduction Act of 1995.

Regional Supervisor, Office of Development, Operations, and Safety, Pacific OCS Region, Minerals Management Service.

Date

[FR Doc. 97–31944 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–MR–M

[1] 30 CFR 250.34(b)(11).

[2] Procedures to implement the CZMA consistency certification section are set forth generally in 15 CFR part 930. The OCS-specific provisions regarding new or amended DPP's are processed in accordance with Subpart E of those regulations (15 CFR 930.70 *et seq.*).

DEPARTMENT OF THE INTERIOR

National Park Service

60-day Notice of Intention to Request Clearance of Collection of Information—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, and 376 Units of the National Park System.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) is proposing in 1998 to conduct customer service studies at all 376 parks in the National Park System to establish baseline data for the customer satisfaction measurement program that NPS is instituting in response to the requirements of the Government Performance and Results Act of 1993. NPS proposes further to conduct similar customer satisfaction surveys in each year following 1998 at some to all of the parks in the National Park System, with the total number of parks surveyed each year determined following an analysis of the results of the 1998 survey.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed customer service studies listed above. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting these surveys annually is to obtain visitor's opinions about the existing quality of services and facilities provided in units of the National Park System. Results of all surveys will be used by NPS managers to improve visitor services and facilities in the parks. In addition, results of the 1998 surveys will be used to establish baseline information about the quality of services and facilities provided to the visitors. The baseline established in 1998 will permit NPS to analyze whether future annual customer satisfaction surveys could be conducted on a rotating sample of parks, thereby reducing the total burden on visitors while ensuring efficient and accurate collection of visitor satisfaction information. This approach will permit NPS to respond positively and efficiently to the Government Performance and Results act while better serving the visitors to the parks.

DATES: Public comments will be accepted on or before February 3, 1998.

SEND COMMENTS TO: Dr. Gary Machlis, NPS Visiting Chief Social Scientist, Cooperative Park Studies Unit, College of Forestry, Wildlife and Range Sciences, University of Idaho, Moscow, Idaho 83844–1133, phone: 208–885–7054.

FOR FURTHER INFORMATION CONTACT: Sandy Watson. Voice: 208–885–7054; Fax: 208–885–4261, Email: <swatson@uidaho.edu>.

SUPPLEMENTARY INFORMATION:

Title: Customer Satisfaction Surveys in the National Park System.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information concerning visitor opinions about the services and facilities that the National Park Service provides in each unit of the National Park System. The proposed information to be collected from visitors in these parks is not available from existing records, sources, or observations either regularly or comprehensively.

Automated data collection: At the present time, the proposed data collection process will use machine readable, pre-addressed, postage paid customer survey cards to increase the speed with which respondents are able to answer the survey instrument and provide their responses to the NPS. Beyond this method to accelerate the response time, there is no automated way to gather this information, since gathering it requires asking visitors to evaluate the services and facilities that they used during their individuals and unique park visits.

Description of Respondents: A sample of visitors to each park.

Estimated average number of respondents: The number depends on the size of the park being surveyed and is estimated to average about 200 respondents per park.

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 0.033 hours (2 minutes).

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: An average of 6.6 hours per park and a total in 1998 for all parks of 2507 hours. If a sample of parks is taken in each of 1999 and 2000, rather than a total survey of all parks in each year, the total burden in each of those years would be significantly less than 2507 hours per year.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 97–31891 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Request for Comments on the National Park Service Franchise Fee Determination Guideline

SUMMARY: The National Park Service (NPS) is considering revising that portion of its concession management guideline (NPS–48) that concerns the franchise fees to be charged NPS concessioners. This portion of NPS–48 (Chapter 24, Section D) was adopted on December 31, 1986, after receipt and consideration of public comment solicited by an August 7, 1985 **Federal Register** notice. It was amended on July 20, 1995, after consideration of public comment received in response to a January 17, 1995, **Federal Register** notice. It was clarified on August 11, 1997, after consideration of public comment received in response to a May 28, 1997, **Federal Register** notice.

NPS invites further public comment on Section D, Chapter 24, or NPS–48 in order to assist it in considering possible revisions to the document. Comments may suggest, among other matters, specific proposed changes to Section D as it now exists or alternative methods, in concept or in detail, for dealing with concession contract franchise fees. All written comments received will be duly considered by NPS.

COMMENT DATE: Comments on this notice must be received no later than January 5, 1998 to be assured of consideration.

SUPPLEMENTARY INFORMATION: NPS notes that NPS–48 is an agency staff manual and as such is not required to be published in the **Federal Register** pursuant to 5 U.S.C. 552 nor promulgated as a rule after public notice and comment pursuant to 5 U.S.C. 553. In addition, NPS notes that the rulemaking requirements of 5 U.S.C. 553, even if otherwise applicable to an agency staff manual such as NPS–48, are expressly not applicable to matters relating to agency management or personnel or to public property, loans, grants, benefits or contracts. NPS–48, as a matter concerning the administration of public property and contracts, falls within this exemption to the extent it may be considered a rule or regulation within the meaning of 5 U.S.C. 553. Nonetheless, NPS, as a matter of policy, seeks further public comment on Section D of Chapter 24, NPS–48, for the reasons stated above.

Dated: November 14, 1997.

Robert K. Yearout,

Concession Program Manager.

[FR Doc. 97–31890 Filed 12–4–97; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–387]

North American Free Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles From Mexico, Round Two

AGENCY: United States International Trade Commission.

ACTION: Amendment to scope of the investigation.

EFFECTIVE DATE: December 1, 1997.

SUMMARY: Following receipt on November 25, 1997, of a request from the Office of the United States Trade Representative (USTR), the Commission amended the scope of its investigation No. 332–387, North American Free Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles from Mexico, Round Two, to add three subheadings of the Harmonized Tariff Schedule of the United States (HTS), 2918.90.05, 2918.90.43, and 2918.90.47, to the list of articles for which the USTR is seeking the Commission's advice. The purpose of the investigation, conducted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), is to provide the President, with respect to specified articles, of the Commission's judgment as to the probable economic effect of the immediate elimination of the U.S. tariff under the North American Free Trade Agreement (NAFTA) on domestic industries producing like or directly competitive articles and on consumers.

FOR FURTHER INFORMATION CONTACT: General information may be obtained from the project leader, Carl Seastrum (202–205–3493), Minerals, Metals, Machinery, and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the products listed in this expanded scope notice, contact Elizabeth Howlett (202–205–3365) of the Energy, Chemicals, and Textiles Division of the Office of Industries. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The Commission's notice of institution of the investigation and the scheduling of a public hearing was published in the **Federal Register** of November 6, 1997 (62 FR 60100). As stated by the USTR in her letter of October 20, 1997, requesting the investigation, the Governments of the United States, Mexico, and Canada have agreed to enter into consultations to consider accelerated elimination of the import duty on certain articles. The accelerated elimination of tariffs in this second round of negotiations between the United States and Mexico will be pursued on a reciprocal basis in response to petitions submitted to the Governments of Canada, Mexico, and the United States. The USTR included with its original request a list of products to be considered for immediate reciprocal elimination of tariffs. The Commission will submit its report no later than February 17, 1998. USTR has indicated that it may classify all or part of the Commission's report as Confidential.

Public Hearing

A public hearing will be held on January 7, 1998, and continuing, if necessary on January 8, 1998, as announced in the notice published on November 6, 1997. Persons wishing to appear at the public hearing to offer testimony concerning the probable economic effect of the immediate elimination of the U.S. tariffs on HTS subheadings 2918.90.05, 2918.90.43, and 2918.90.47 should file a request to testify with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, not later than 5:15 p.m., December 18, 1997. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., December 19, 1997. For all other articles subject to this investigation, all the dates announced in the notice published on November 6, 1997, will remain the same.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the investigation. Written statements should be submitted by the close of business on January 14, 1998. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by the public. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: December 2, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–31924 Filed 12–4–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Temporary Closure of the Law Library

AGENCY: United States International Trade Commission.

ACTION: Temporary closure to the public of the Commission's Law Library.

SUMMARY: Because of office relocations during painting and recarpeting, the Commission's Law Library will be closed to the public beginning Monday, December 15, 1997, and will be reopened to the public on Monday, January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Steven J. Kover or Maureen E. Bryant, Law Librarians, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3287.

Issued: December 2, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–31923 Filed 12–4–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determination frequently and in large volume causes procedures to be practical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
- NY970043 (Feb. 14, 1997)

Volume II

Maryland
- MD970001 (Feb. 14, 1997)
- MD970002 (Feb. 14, 1997)
- MD970015 (Feb. 14, 1997)
- MD970023 (Feb. 14, 1997)
- MD970026 (Feb. 14, 1997)
- MD970031 (Feb. 14, 1997)
- MD970037 (Feb. 14, 1997)
- MD970046 (Feb. 14, 1997)
- MD970055 (Feb. 14, 1997)
- MD970056 (Feb. 14, 1997)
- MD970058 (Feb. 14, 1997)

Pennsylvania
- PA970007 (Feb. 14, 1997)
- PA970008 (Feb. 14, 1997)
- PA970021 (Feb. 14, 1997)
- PA970023 (Feb. 14, 1997)
- PA970024 (Feb. 14, 1997)
- PA970040 (Feb. 14, 1997)
- PA970052 (Feb. 14, 1997)
- PA970054 (Feb. 14, 1997)
- PA970063 (Feb. 14, 1997)

Volume III

Kentucky
KY970001 (Feb. 14, 1997)
KY970004 (Feb. 14, 1997)
KY970025 (Feb. 14, 1997)
KY970027 (Feb. 14, 1997)
KY970028 (Feb. 14, 1997)
KY970029 (Feb. 14, 1997)

Volume IV

Minnesota
MN970008 (Feb. 14, 1997)
MN970061 (Feb. 14, 1997)
Ohio
OH970002 (Feb. 14, 1997)
OH970003 (Feb. 14, 1997)
OH970012 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)

Volume V

Iowa
IA970005 (Feb. 14, 1997)
IA970032 (Feb. 14, 1997)
Louisiana
LA970001 (Feb. 14, 1997)
LA970004 (Feb. 14, 1997)
LA970005 (Feb. 14, 1997)
LA970009 (Feb. 14, 1997)
LA970012 (Feb. 14, 1997)
LA970014 (Feb. 14, 1997)
LA970015 (Feb. 14, 1997)
LA970017 (Feb. 14, 1997)
LA970018 (Feb. 14, 1997)
LA970045 (Feb. 14, 1997)
LA970055 (Feb. 14, 1997)
New Mexico
NM970001 (Feb. 14, 1997)

Volume VI

Colorado
CO970001 (Feb. 14, 1997)
CO970011 (Feb. 14, 1997)
CO970016 (Feb. 14, 1997)
CO970025 (Feb. 14, 1997)
Wyoming
WY970004 (Feb. 14, 1997)

Volume VII

Hawaii
HI970001 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 26th day of November, 1997.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–31539 Filed 12–4–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services, Office of Library Services, Submission for OMB Review; 1998 Indian Library Services Application and Guidelines, 1998 Native Hawaiians Library Services Application and Guidelines; Comment Request

AGENCY: Institute of Museum and Library Services.

ACTION Notice.

SUMMARY: The Institute of Museum and Library Services, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(a)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Institute of Museum and Library Services is soliciting comment concerning two new collections entitled, 1998 Indian Library Services Application and Guidelines and 1998 Native Hawaiians Library Services Application and Guidelines.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

The agency is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the address section below on or before February 3, 1998.

ADDRESSES: Submit written comments or requests for additional information to: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506. Comments may also be submitted by e-mail to imlsinfo@imls.fed.us.

Background

Pub. L. 104–208 enacted on September 30, 1996 contains the Library Services and Technology Act, a reauthorization and refocusing of federal library programs. This legislation calls upon the Director of the Institute of Museum and Library Services to award grants to Indian tribes and to organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912) to enable such tribes and organizations to carry out activities to:

• Establish or enhance electronic linkages among or between libraries electronically link libraries with educational, social or information services; assist libraries in accessing information through electronic networks;

• Encourage libraries in different areas, and encourage different types of libraries, to establish consortia and share resources; or

• Pay costs for libraries to acquire or share computer systems and telecommunications technologies; and

• Target library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families and incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) applicable to family size involved.

Type of Review: New collection.

Agency: Institute of Museum and Library Services.

Title: 1998 Indian Library Services Application and Guidelines.

OMB Number: N/A.

Affected Publics: Indian Tribes.

Total Respondents: 225.

Frequency: annually.

Total Responses: 250.

Average Time per Response: 2 hours.

Estimated Total Burden Hours: 500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Type of Review: New collection.

Agency: Institute of Museum and Library Services.

Title: 1998 Native Hawaiians Library Services Application and Guidelines.

OMB Number: N/A.

Affected Publics: organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).

Total Respondents: 1.

Frequency: annually.

Total Responses: 1.

Average Time per Response: 4 hours.

Estimated Total Burden Hours: 4.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: November 26, 1997.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 97–31889 Filed 12–4–97; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Seneca, South Carolina.

The proposed amendments would replace the current Technical Specifications (TS) with a set of TS based on NUREG–1430, "Standard Technical Specifications—Babcock and Wilcox Plants," Revision 1, dated April 1995. The adoption of NUREG–1430 is part of an initiative to standardize and improve the TS for Babcock and Wilcox nuclear power plants.

The changes in the current TS can be grouped into five categories: administrative changes, more restrictive technical changes, less restrictive technical changes, relocation of details to other licensee controlled documents, and relocation of specifications to other licensee controlled documents. Administrative changes to the current TS are changes that result in no increase or decrease in restrictions or flexibility. These changes are intended to make the TS easier to use. More restrictive technical changes are either more conservative than the corresponding requirements in the current TS, or are additional restrictions that are not contained in the current TS. Less restrictive technical changes reduce either the scope or magnitude of requirements or add flexibility and are usually made as a result of operating experience. In most cases, these relaxations to the TS have been previously granted by the NRC to other plants. Relocation of details involves removal from the current TS and relocation to other licensee controlled documents. Typically, these details are of system design or function, or procedural details on surveillances. And finally, relocation of specifications involves requirements that are in the current TS but do not meet the criteria set forth in the Commission's Policy Statement on Technical Specification Improvement. Once these items have been relocated, the licensee generally would be able to revise them under the provisions of 10 CFR 50.59 without a license amendment.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 5, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the

proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated October 28, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 1st day of December 1997.

For the Nuclear Regulatory Commission.

Herbert Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31873 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

In the Matter of Entergy Gulf States, Inc., Cajun Electric Power Cooperative, Inc. (River Bend Station, Unit No. 1); Order Approving Transfer of License for River Bend Station, Unit No. 1

I

Entergy Gulf States, Inc. (EGSI) owns 70-percent of River Bend Station, Unit No. 1 (RBS), a single-unit nuclear power plant. Cajun Electric Power Cooperative, Inc. (Cajun) owns the remaining 30-percent interest in the facility. EGSI and Cajun are governed by Facility Operating License No. NPF–47 issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR part 50) on November 20, 1985. Under this license, EGSI has the authority to possess the facility and act as agent for Cajun. Entergy Operations, Inc., has the authority under the license to act as agent for EGSI and possess the facility, and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility. Both EGSI and Entergy Operations, Inc. are subsidiaries of Entergy Corporation (Entergy). The RBS facility is located in West Feliciana Parish, Louisiana.

II

In 1994, Cajun filed for protection under Chapter 11 of the Bankruptcy Code. Cajun is represented by Mr. Ralph R. Mabey, Chapter 11 Trustee. In an application dated October 15, 1997, the Trustee requested NRC's consent to a proposed transfer of the 30-percent share of RBS currently owned by Cajun to EGSI. EGSI and Entergy Operations, Inc. endorsed and consented to the request by Cajun. Upon completion of the transfer, EGSI will become the sole owner of RBS and Entergy Operations, Inc. will remain the plant operator. On October 24, 1997, a Notice of Consideration of Approval of Transfer of License and Issuance of Conforming Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing was published in the **Federal Register** (62 FR 55432). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on November 19, 1997 (62 FR 61835).

The transfer to EGSI of the license for RBS to the extent it is held by Cajun is subject to the license transfer provisions of 10 CFR 50.80. Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application dated October 15, 1997, and other information before the Commission, the NRC staff has determined that EGSI is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. These findings are supported by a Safety Evaluation dated November 28, 1997.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, the Commission consents to the proposed transfer of license described herein from Cajun to EGSI, subject to the following: (1) The issuance of approved amendments fully reflecting the transfer approved by this Order at the time such transfer is effected, and (2) should the transfer not be completed by June 30, 1998, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

For further details with respect to this action, see Cajun's submittals requesting approval of the transfer of the license and a conforming license amendment dated October 15, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 28th day of November 1997.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31872 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

New York State Electric & Gas Corporation; Nine Mile Point Nuclear Station, Unit No. 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding an indirect transfer of the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2), to the extent held by New York State Electric & Gas Corporation (NYSEG). The transfer would be to a holding company, not yet named, to be created over NYSEG in accordance with an executed "Agreement Concerning the Competitive Rate and Restructuring Plan of New York State Electric & Gas Corporation" forwarded by letters dated October 20 and 27, 1997. NYSEG is licensed by the Commission to own and possess an 18 percent interest in NMP2.

By application dated September 18, 1997, NYSEG informed the Commission of a proposed corporate restructing under which NYSEG would become a subsidiary of a newly formed holding company. The outstanding shares of NYSEG's common stock (other than shares for which appraisal rights are properly exercised would be exchanged on a share-for-share basis for common stock of the holding company, such that the holding company will own all of the outstanding common stock of NYSEG. Under this restructuring, NYSEG would divest its interest in coal-fired power plants, but would continue to be an "electric utility" as defined in 10 CFR 50.2 engaged in the transmission, distribution and, in the case of NMP2 and hydroelectric facilities, the generation of electricity. NYSEG would retain its ownership interest in NMP2 and continue to be a licensee of NMP2. No direct transfer of the operating license or ownership interests in NMP2 will result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation, which is responsible for operating and maintaining NMP2.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the NYSEG application dated September 8, 1997, as supplemented October 20 and 27, 1997. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC, and at the local public document room located at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland this 26th day of November 1997.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31869 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its May 5, 1997, application for proposed amendment to Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

The proposed amendment to Technical Specifications 3.9.1.2 and 3.9.1.3 and their Bases would have allowed the crediting of soluble boron for maintaining k-effective at less than or equal to 0.95 within the spent fuel pool rack matrix following a seismic event of a magnitude greater than or equal to an operating basis earthquake.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 16, 1997 (62 FR 38135). However, by letter dated November 11, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 5, 1997, and the licensee's letter dated November 11, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at 2 the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 14th day of November 1997.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31870 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guides; Availability

The Nuclear Regulatory Commission has updated the Regulatory Guide List to advise of the wide range of regulatory guides that are available and to list all published versions of each guide. The Regulatory Guide Series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Single copies of the Regulatory Guide List may be obtained free of charge by writing the Information Management Division, Attention: Printing, Graphics and Distribution Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax at (301) 415–5272. Single copies of regulatory guides, both final and draft guides, may also be obtained free of charge at this address.

Regulatory guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides and the list of guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of November 1997.

For the Nuclear Regulatory Commission.

Joseph A. Murphy,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 97–31871 Filed 12–4–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes To Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed change to a system of records.

SUMMARY: The purpose of this document is to give notice of a proposed routine use in one system of records and an addition to the categories of records in the same system.

DATES: The amendment to the categories of records shall become effective as proposed without further notice in 40 calendar days from the date of this publication unless OMB approves the RRB request for waiver of the 40-day advanced notice requirement for new or altered system reports, in which case the altered system, with the exception of the proposed routine use, will become effective as of the date the waiver is granted. The routine use will be effective not earlier than 30 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, (312) 751–4548.

SUPPLEMENTARY INFORMATION: Since 1938, the Railroad Retirement Board (RRB) has provided current railroad workers with a yearly statement of their commulative service and compensation. (This information is contained in Privacy Act System of Records RRB–5, Master File of Employees Creditable Compensation.) For many years, the statements were mailed to the railroad employers for distribution to their workers. Beginning in 1985 railroad employers were given the option of furnishing the RRB with address information for their employees, in which case, the RRB would mail the statements to the employees. In time, all of the Class I (large) railroads, which account for over 80% of railroad workers, plus many of the medium-size railroads elected this option, so that today the RRB mails over 96 percent of the service and compensation statements directly to the rail employees.

Originally, address information furnished by the railroad employer was kept in computerized tape format for 1 year until the following year's submissions from railroad employers. Beginning in 1994, the RRB began to retain the address information in an on-line environment, so that it could be accessed by computer terminal along with various service and compensation data about a particular employee.

The proposed routine use ("q" for RRB–5) would authorize the RRB to disclose to a Member of Congress the name and address of a Member's railroad worker constituent in order that the Member could communicate with him or her about legislation affecting the railroad retirement or unemployment/sickness insurance system.

The Railroad Retirement Board has determined that this proposed routine use meets the compatibility requirement because it is a necessary and proper use. The RRB previously published routine uses allowing disclosure of name and address information of retirement annuitants and unemployment and sickness claimants to Members of Congress (RRB–21, "x"; RRB–22, "ff"). Thus, publication of this proposed routine use would bring this system of records into conformity with the other two main systems of records containing name and address information with respect to disclosure to Members of Congress for the same purpose.

On November 17, 1997, the Railroad Retirement Board filed an altered system report for this system with the chairmen of the designated Senate and House committees and with the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circular No. A–130, Appendix I.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–5

System name:

Master File of Railroad Employees' Creditable Compensation—RRB

* * * * *

This section is revised to read as follows:

Categories of records in the system:

Individual name, social security number, claim number, date of birth, sex, race, last employer identification number, amount of daily pay rate if under $100, ICC occupation code, creditable service and compensation from 1937 to date, and home address.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

A new paragraph "q" is added to read as follows:

q. The name and address of a railroad worker may be released to a Member of Congress when the Member requests it in order that he or she may communicate with the worker about legislation which affects the railroad retirement or railroad unemployment and sickness insurance program.

[FR Doc. 97–31906 Filed 12–4–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension: Form BD/Rule 15b1–1, SEC File No. 270–0019, OMB Control No. 3235–0012.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information described below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Form BD/Rule 15b1–1, Application for Registration as Broker or Dealer

Sections 15(b) (1) and (2) of the Securities Exchange Act of 1934 authorizes the Commission to prescribe by rule an application form for registration that contains such information about broker-dealers that is necessary or appropriate in the public interest or for the protection of investors. Similarly, Section 15B(a)(2) of the Exchange Act authorizes the Commission to prescribe an application form for registration of municipal securities dealers, and Section 15C(a)(2) of the Exchange Act authorizes the Commission to prescribe an application form for registration of government securities broker-dealers. Section 15C(a)(1)(B) further provides that registered broker-dealers engaging in government securities activities use provide the Commission with notice of such activities, in such form as the Commission may prescribe. To implement the foregoing statutory provisions of the Exchange Act, the Commission has promulgated, pursuant to Rule 15b1–1, 17 CFR 240.15b1–1, Form BD (17 CFR 249.501), the uniform application for broker-dealer registration. Form BD requires the applicant or registrant filing the form to provide the Commission with certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD is designed to permit the Commission to determine whether the applicant meets the statutory requirements to engage in the securities business. Form BD also is used to register as broker-dealers with certain self-regulatory organizations ("SROs") and all of the states.

For fiscal year 1996, the Commission received approximately 840 full form BDs for an initial or successor applications for registration as a broker-dealer, non-bank municipal securities dealer, or non-bank government securities broker-dealer (pursuant to Rule 15b1–1, 15b1–3, 15b1–4, 15Ba2–2(a), 15Ba2–4, 15Ba2–5, 15Ca2–1, 15Ca2–3, and 15Ca2–4). Although the time necessary to complete Form BD will vary depending on the nature and complexity of the applicant's securities business, Commission staff estimates that the average time necessary to complete the full form is approximately 2.75 hours. Thus, the total burden hours for the filing of a full form BD is 2,310 hours (2.75 × 840).

In addition to full form BDs, applicants are required to file amendments to Form BD when information originally reported changes or becomes inaccurate. For fiscal year 1996, the Commission received approximately 15,000 amendments. The staff estimates that the average time necessary to complete an amendment is approximately 0.33 hours. Thus, the total burden hours for the filing of a form BD amendments is 4,950 hours (0.33 × 15,000). In sum, the total annual burden for Form BD and Form BD amendments is 7,260 hours (2,310 + 4,950).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the equality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Considerations will be given to comments and suggestions submitted in writing on or before February 3, 1998.

Please direct your comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

Dated: November 25, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31845 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22919; 812–10680]

Federated Index Trust, et al.; Notice of Application

December 1, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without shareholder approval, of a new sub-advisory agreement ("New Agreement") for a period of up to 120 days following the date of a change in control of ANB Investment Management and Trust Company (the "Subadviser") (but in no event later than May 30, 1998) (the "Interim Period"). The order also would permit the Subadviser to receive all fees earned under the New Agreement following shareholder approval.

Applicants: Subadviser and Federated Index Trust (the "Trust").

Filing Date: The application was filed on November 25, 1997.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 24, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Trust, c/o John W. McGonigle, Esq., Federated Investors Funds, 5800 Corporate Drive, Pittsburgh, Pennsylvania 15237–7000. Subadviser,

One North LaSalle St., Chicago, Illinois 60690.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust currently offers three series: Federated Max-Cap Fund, Federated Mid-Cap Fund and Federated Mini-Cap Fund (each a "Portfolio"). The assets of the Trust are managed by Federated Management (the "Adviser") pursuant to an investment management agreement between the Adviser and the Trust on behalf of each Portfolio. The Subadviser provides sub-advisory services to each Portfolio under an existing sub-advisory agreement ("Existing Agreement") between the Adviser and the Subadviser. The Subadviser is an investment adviser registered under the Investment Advisers Act of 1940.

2. Under an agreement dated October 3, 1997, between Northern Trust Corporation ("Northern Trust") and First Chicago Investment Management Company ("First Chicago"), Northern Trust has agreed to purchase the Subadviser for cash (the "Transaction"). As a result of the Transaction, the Subadviser will become a wholly-owned subsidiary of Northern Trust. Applicants expect consummation of the Transaction on December 31, 1997.

3. Applicants believe that the Transaction will result in an assignment of the Existing Agreement. Applicants request an exemption to permit: (i) The implementation, during the Interim Period, prior to obtaining shareholder approval, of the New Agreement, and (ii) the Subadviser to receive from each Portfolio all fees earned under the New Agreement if, and to the extent, the New Agreement is approved by the shareholders of each Portfolio. The requested exemption will cover the Interim Period beginning on the date the Transaction is consummated and continuing through the date on which the New Agreement is approved or disapproved by the shareholders of each Portfolio, but in no event later than May 30, 1998. Applicants state that the New Agreement will be identical in substance to the Existing Agreement.

4. On November 20, 1997, the Trust's board of trustees (the "Board") held in-person meetings for the purpose of considering and approving the New Agreement to evaluate whether the terms of the New Agreement are in the best interests of the Portfolios and their shareholders. At the meeting, the Board, including a majority of members who are not "interested persons" of the Trust, as that term is defined in section 2(a)(19) of the Act (the "Independent Trustees"), voted unanimously in accordance with section 15(c) of the Act to approve the New Agreement and to submit the New Agreement to shareholders of each of the Portfolios at meetings expected to be held on or about February 13, 1998 (the "Meetings"). Applicants expect that proxy materials for the Meetings will be mailed on or about December 30, 1997.

5. The Subadviser believes that the requested relief is necessary to permit continuity of investment management for each Portfolio during the Interim Period so that services to the Portfolios would not be disrupted.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Subadviser during the Interim Period under the New Agreement will be paid into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (a) to the Subadviser only upon approval of the New Agreement by the shareholders of the Portfolios; or (b) to the relevant Portfolio if the Interim Period has ended and its New Agreement has not received the requisite shareholder approval. Before any such release is made, the Independent Trustees of the Trust will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, following the completion of the Transaction, control of the Subadviser will transfer to Northern Trust. Applicants believe, therefore, that the Transaction will result in an "assignment" of the Existing Agreement and that the Existing Agreement will terminate according to its terms.

3. Rule 15a–4 provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) the new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that because of the benefits to First Chicago, the Subadviser's parent, arising from the Transaction, applicants may not rely on rule 15a–4.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the timing of the Transaction was determined by First Chicago and Northern Trust and arose primarily out of business considerations unrelated to the Trust, including the time needed to obtain federal banking approvals for the Transaction. Applicants believe that allowing the Subadviser to continue to provide investment advisory services to the Portfolios during the Interim Period is in the best interests of the Portfolios and their shareholders to avoid any interruption in services to the Portfolios and is in keeping with the spirit of the provisions of rule 15a–4 and with the purpose of section 15 of the Act.

6. Applicants submit that the scope and quality of services provided to each Portfolio during the Interim Period will not be diminished. During the Interim Period, each Portfolio would operate under the New Agreement, which is anticipated to be identical in substance to the Existing Agreement, except for its effective date. Applicants submit that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, each Portfolio should receive, during the Interim Period, the same investment advisory services, provided in the same manner at the same fee levels, and by substantially the same personnel as before the closing of the Transaction.

7. Applicants contend that the best interests of shareholders of the Portfolios would be served if the Subadviser receives fees for its services during the Interim Period. Applicants state that the fees are a substantial part of the Subadviser's total revenues and, thus, are essential to maintaining its ability to provide services to the Portfolios. In addition, the fees to be paid during the Interim Period are at the same rate as the fees paid under the Existing Agreement, which has been approved by the shareholders of each respective Portfolio.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreement will have substantially the same terms and conditions as the Existing Agreement, except for its effective date.

2. Fees earned by the Subadviser in respect of the New Agreement during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to the Subadviser in accordance with the New Agreement, after the shareholder approvals are obtained, or (b) to the respective Portfolio, in the absence of such approval with respect to such Portfolio.

3. The Trust will hold meetings of shareholders to vote on approval of the New Agreement on or before the 120th day following the termination of the Existing Agreement (but in no event later than May 30, 1998).

4. Either the Subadviser or the Adviser will bear the costs of preparing and filing the application, and costs relating to the solicitation of shareholder approval of the Portfolios necessitated by the Transaction.

5. The Subadviser will take all appropriate steps so that the scope and quality of advisory and other services provided to the Portfolios during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the Independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Subadviser will apprise and consult with the Board to assure that the Trustees, including a majority of the Independent Trustees of the Trust, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31875 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22918; 812–10668]

Strong Advantage Fund, Inc., et al.; Notice of Application

November 28, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1.

Summary of the Application: Applicants request an order to permit certain investment companies to deposit their uninvested cash balances in joint accounts to be used to enter into short-term investments.

Applicants: Strong Advantage Fund, Inc., Strong Asia Pacific Fund, Inc., Strong Asset Allocation Fund, Inc., Strong Common Stock Fund, Inc., Strong Conservative Equity Funds, Inc., Strong Corporate Bond Fund, Inc., Strong Discovery Fund, Inc., Strong Equity Funds, Inc., Strong Government Securities Fund, Inc., Strong Heritage Reserve Series, Inc., Strong High-Yield Municipal Bond Funds, Inc., Strong Income Funds, Inc., Strong Institutional Funds, Inc., Strong International Bond Fund, Inc., Strong International Stock Fund, Inc., Strong Money Market Fund, Inc., Strong Municipal Funds, Inc., Strong Municipal Bond Fund, Inc., Strong Short-Term Bond Fund, Inc., Strong Short-Term Global Bond Fund, Inc., Strong Short-Term Municipal Bond Fund, Inc., Strong Special Fund II, Inc., Strong Total Return Fund, Inc., Strong Variable Insurance Funds, Inc. ("Funds"), Strong Capital Management, Inc. (the "Adviser") and Strong Funds Distributors, Inc. (the "Distributor").

Filing Dates: The application was filed on June 2, 1997 and amended on October 6, 1997. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 23, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Hundred Heritage Reserve, Menomonee Falls, Wisconsin 53051.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each Fund is incorporated under the laws of the State of Wisconsin and registered under the Act as an open-end management investment company. All of the Funds are series companies that may issue one or more classes of shares.

2. The Adviser, incorporated under the laws of the State of Wisconsin, is an investment adviser registered under the Investment Advisers Act of 1940. The Adviser acts as each Fund's investment manager, provides the Funds with various administrative services, and acts as transfer and dividend disbursing agent for the Funds. The Distributor, incorporated under the laws of the State of Wisconsin, is a broker-dealer registered under the Securities Exchange Act of 1934. The Distributor is an indirect subsidiary of the Adviser

and acts as principal underwriter of each of the Funds.

3. Applicants request that any relief granted pursuant to the application also apply to all other registered investment companies and series thereof that are part of the same group of investment companies (as defined in rule 11a–3 under the Act) and: (a) for which the Adviser, or a person controlling, controlled by, or under common control with the Adviser may in the future act as investment adviser; or (b) for which the Distributor, or a person controlling, controlled by, or under common control with the Distributor may in the future act as principal underwriter. The Funds that intend to rely on the requested order are named as applicants. Funds for which the Adviser or Distributor acts as investment adviser and/or principal underwriter in the future will not rely on the requested relief except upon the terms and conditions contained in the application.

4. All of the Funds are authorized by their investment policies to invest at least a portion of their uninvested cash balances in short-term liquid assets, including repurchase agreements, high-grade commercial paper, U.S. Government securities and other short-term debt obligations ("Short-Term Investments").

5. The assets of the Funds are held by Firstar Trust Company and/or Brown Brothers Harriman & Co. as custodians (collectively, the "Custodian"), neither of which controls, is controlled by or is under common control with, any of the Funds or the Adviser. At the end of each trading day, some or all of the funds may have uninvested cash balances in accounts at their respective Custodian that would not otherwise be invested in portfolio securities by the Adviser. Generally, such cash balances of the Funds are, or would be, invested in short-term liquid assets, such as commercial paper, U.S. Treasury bills, shares of certain Funds that value their net assets in reliance on rule 2a–7 under the Act,[1] and repurchase agreements.

6. Applicants propose that the Funds deposit uninvested cash balances that remain at the end of the trading day into one or more joint accounts (the "Joint Accounts") and that the daily balances of the Joint Accounts be invested in Short-Term Investments. Each Fund would invest through a Joint Account only to the extent that the Fund intends to invest in Short-Term Investments consistent with its respective investment objectives, policies and restrictions. The decision to employ a Joint Account for each fund will be based on the same factors as the decision to make any other investment in Short-Term Investments for the Fund.

7. Currently, the Adviser must enter into repurchase agreements and purchase other money market instruments separately on behalf of each Fund. This requires the Adviser to monitor multiple sources of cash availability, to allocate opportunities among the Funds, to execute multiple trades in similar securities on any given day and to settle the trades in a number of separate accounts. The sole purpose of the Joint Accounts will be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for some or all Funds necessary to manage their respective daily account balances.

8. The Adviser will not charge any additional or separate fees for operating or advising the Joint Accounts and will have no monetary participation in the Joint Accounts, but would continue to receive from each Fund its asset-based advisory fee with respect to each Fund's assets. The Adviser will be responsible for investing funds held by the Joint Accounts, establishing accounting and control procedures, and ensuring fair treatment of the Funds. All purchases through a Joint Account will be subject to the same systems and standards for acquiring investments for individual Funds.

9. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (February 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the SEC's published statements on repurchase agreements, and represent that the repurchase agreement transactions entered into through a Joint Account will comply with future positions of the SEC to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the SEC sets forth guidelines with respect to other Short-Term Investments, all such investments made through any Joint Account will comply with those guidelines.

Applicants' Legal Analysis

1. Section 17(d) and rule 17d–1 prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order.

2. The Funds, by participating in the Joint Accounts, and the Adviser, by managing the Joint Accounts, could be deemed to be "joint participants * * * in a transaction" within the meaning of section 17(d) of the Act. In addition, the Joint Accounts could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1 under the Act.

3. Rule 17d–1 provides, in part, that no affiliated person of any registered investment company and no affiliated person of such a person, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company is a participant, and which is entered into, adopted or modified subsequent to the effective date of the rule, unless an application regarding such joint enterprise, arrangement of profit-sharing plan has been filed with the SEC and has been granted by an order.

4. The Funds may earn a higher rate of return on investments effected through the Joint Accounts relative to the returns the Funds could earn individually. Under most market conditions, it is generally possible to negotiate a rate of return on larger repurchase agreements and other Short-Term Investments that is higher than the rate available on smaller repurchase agreements and other Short-Term Investments. The Joint Accounts also may increase the number of dealers and issuers willing to enter into Short-Term Investments with the Funds and may reduce the possibility that the Funds' cash balances remain uninvested.

5. The Joint Accounts may result in certain administrative efficiencies and a reduction of the potential for errors by reducing the number of trade tickets and cash wires that must be processed by the sellers of Short-Term Investments, the Custodian, and the Adviser's accounting and trading departments.

6. Applicants assert that no Fund will be in a less favorable position as a result of the Joint Accounts. Applicants believe that each Fund's investment in a Joint Account would not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, of any other Fund. Each Fund's liability on any Short-Term Investment will be limited to its interest in such investment; no Fund will be jointly liable for the investments of any other Fund.

7. Although the Adviser will realize some benefits through administrative convenience and some possible reduction in clerical costs, the Funds will be the primary benefactors of the Joint Accounts because the Joint Accounts may result in higher returns and will be a more efficient means of administering daily cash investments.

8. Applicants submit that the proposed operation of the Joint Accounts, as described in the application, is consistent with the provisions, policies and purposes of the Act, and that no Fund will participate in the Joint Accounts on a basis different from or less advantageous than that of any other Fund.

Applicants' Conditions

Applicants will comply with the following as conditions to any order granted by the SEC:

1. A separate custodial cash account will be established with the Custodian for each Joint Account into which each Fund will be permitted to have deposited daily some or all of its uninvested net cash balances. A Fund may transfer a portion of its daily cash balances to more than one Joint Account. The Joint Accounts will not be distinguishable from any other accounts maintained by the Funds at the Custodian, except that monies from the Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have any indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient means of aggregating individual transactions in Short-Term Investments which would otherwise require daily management by the Adviser of each Fund's uninvested cash balances.

2. Cash in the Joint Accounts, as directed by the Adviser, will be invested in one or more of the following: (a) repurchase agreements which are "collateralized fully" as defined in rule 2a–7 under the Act; (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term money market instruments, that constitute "Eligible Securities" (as defined in rule 2a–7 under the Act). The repurchase agreements entered into through the Joint Accounts will have remaining maturities of 60 days or less, and any other Short-Term Investments will have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. No Fund will be permitted to invest in a Joint Account unless the Short-Term Investments in such Joint Account will comply with the investment policies and guidelines of that Fund.

3. All assets held in the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules, or orders.

4. Each Fund that values its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Accounts in which such Fund has an interest (determined on a dollar weighted basis), for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

5. In order to ensure that there will be no opportunity for any Fund to use any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason, although each Fund will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in the Joint Accounts will be solely at its option, and no Fund will be obligated to invest in the Joint Accounts or to maintain any minimum balance in the Joint Accounts. In addition, each Fund will retain the sole rights of ownership to any of its assets invested in the Joint Accounts, including interest payable on such assets invested in the Joint Accounts.

6. The Adviser will administer the investment of cash balances in and operation of the Joint Accounts as part of its general duties under the existing or any future advisory agreements it has with the Funds and will not collect any additional or separate fees for advising the Joint Accounts.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The boards of directors of the Funds (each a "Board" and collectively, the "Boards") will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each of the Boards will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the Board of each Fund will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with such procedures and will only permit a Fund to continue to participate therein if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Each Fund's participation in a Joint Account (i.e., its proportionate share of the Short-Term Investments effected through the Joint Accounts) will be documented daily on its books and on the books of the Custodian. Each Fund will maintain records (in conformity with section 31 of the Act and the rules thereunder) documenting, for any given day, its aggregate investment through each Joint Account and its *pro rata* share of each Short-Term Investment transaction made through such Joint Account.

10. Each investment made through a Joint Account will satisfy the investment criteria of each Fund participating in the joint investment.

11. Not every Fund participating in a Joint Account necessarily will have its cash invested in every Short-Term Investment entered into through the Joint Account. However, to the extent that a Fund's cash is applied to a particular investment made through a Joint Account, the Fund will participate in and own a proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Fund.

12. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity, except if: (a) the Adviser believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Funds owning a *pro rata* share of the investment, because of a credit downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. The Adviser may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Funds prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Funds and the transactions will not adversely affect other Funds participating in the Joint Account. In no case would an early termination by less than all Funds be permitted if it would reduce the principal amount or yield received by other Funds in the Joint Accounts or otherwise adversely affect the other Funds. Each Fund in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

13. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and, for any Fund that is an

[1] Applicants have obtained an exemptive order from the SEC that permits certain Funds to purchase shares of affiliated Funds that are money market funds, in excess of the limitations prescribed in section 12(d)(1) of the Act, for cash management purposes. *See Strong Advantage Fund, Inc.*, Investment Company Act Release Nos. 22308 (Oct. 31, 1996) (notice) and 22356 (Nov. 26, 1996) (order).

open-end investment company registered under the Act, subject to the restriction that the Fund may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities and any similar restrictions set forth in the Fund's investment restrictions and policies, if the Adviser cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31847 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39370; File No. SR–CTA/CQ–97–3]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of Third Charges Amendment to the Second Restatement of the Consolidated Tap Association Plan and Second Charges Amendment to the Restated Consolidated Quotation Plan

November 26, 1997.

Pursuant to rule 11Aa3–2 of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 25, 1997, the Consolidated Tap Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants ("Participants") filed with the Securities and Exchange Commission ("Commission" or "SEC") amendments to the Restated CTA Plan and CQ Plan. The amendments remove from the Plans' rate schedules the Network A "one-cent-per-quote packet" fees for the interrogation services that vendors offer on a pay-for-use basis and recreate the former Network A Class G program classification charge for automated voice response services. The Participants recently established these charges pursuant to the second charges amendment to the Second Restatement of the CTA Plan and the first charges amendment to the Restated CQ Plan.

Pursuant to Rule 11Aa3–2(c)(3)(i), the CTA and CQ Participants have designated the amendments as establishing or changing fees and other charges collected on behalf of all of the sponsors and participants, which renders the amendments effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments from interested persons on the amendments.

[1] 15 U.S.C. 78k–1.

I. Purpose of the Amendments

A. Rule 11Aa3–2

The Participants under the Plans that make Network A last sale information and quotation information available (the "Network A Participants") recently established a pricing alternative for vendors of, and subscribers to, certain Network A market data interrogation services.[2] That alternative consists of a fee of one cent for each real-time "quote packet" that vendors disseminate to subscribers on a pay-for-use basis during the hours that the Network A Participants are open for trading (a "per-quote charge").

At the same time, the Network A Participants also classified their Class G program classification charge as a display device fee, based upon device equivalents. That fee is set for any month at the device fee that would apply for a number of devices equal to the maximum number of inquiries to which a vendor's automated voice response system responds simultaneously during that month. As we stated in the September Plan Amendments, the reclassification left the amount and calculation of the charges unchanged. It did not affect the amounts payable by any vendor.

The amendments remove the per-quote charge from the CTA and CQ Plan rate schedules and re-establish the Class G program classification charge in a manner identical to its form prior to the September Plan Amendments. The reason for these amendments is to comply with a request of the staff of the Commission's Division of Market Regulation which received an unfavorable comment letter.[3]

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Network A Participants are submitting this proposed plan amendment pursuant to Rule 11Aa3–2(c)(3)(i) under the Act. In doing so, the Participants are putting the revisions to the CTA and CQ Plan rate schedules into effect upon the filing of the amendments with the Commission. As a result, the removal of the per-quote charge from the CTA and CQ Plan schedules, and the re-instatement of the Class G program classification charge, will take effect upon submission of the plan amendments with the Commission. After filing the amendments with the Commission, the Network A Participants will notify affected vendors of the rate schedule changes as necessary.

[2] *See* Securities Exchange Act Release No. 39235 (October 14, 1997); 62 FR 54886 (October 22, 1997) ("September Plan Amendments").

[3] *See* letter from Sam Scott Miller, Vice President and Associate Counsel, Orrick, Herrington & Sutcliff LLP, to Jonathan G. Katz, Secretary, SEC, dated October 28, 1997.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

The Participants believe the proposed amendments will impose no burden on competition.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Under Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan, each of the Participants must execute a written amendment to the Plan before an amendment to that Plan can become effective.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A).

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) and the text of the amendments.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 (Solely in Its Application to the Amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

See Item I(A).

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The CTA has designated this proposal as establishing or changing fees and other charges collected on behalf of all of the sponsors and participants which under Section 11Aa3–2(c)(3)(i) of the Act renders the proposal effective upon receipt of this filing by the Commission.

The Commission may summarily abrogate the amendments within sixty days of its filing and require refiling and approval of the amendments by Commission order pursuant to 11Aa3–2(c)(3)(iii), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31878 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30-3(a)(27)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39372; File No. SR–GSCC–97–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Election of Directors

November 28, 1997

On July 23, 1997, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission (the "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and on August 18, 1997, amended the proposed rule change (File No. SR–GSCC–97–07). Notice of the proposal was published in the **Federal Register** on September 22, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies GSCC's Shareholder. Agreement ("Agreement"),[3] By-laws, and Certificate of Incorporation relating to GSCC's procedures for election of directors and to restrictions currently placed on transfers of GSCC's securities. As described more fully below, the proposed rule change amends GSCC's procedures in four major categories: (a) nomination and election process for board members, (b) composition of the board, (c) restrictions on issuance and transfer of shares, and (d) miscellaneous.

A. Nomination and Election Process for Board Members

Similar to the process in place at NSCC and other clearing corporations, GSCC has a nominating committee that will be responsible for nominating candidates for election as participant directors to the board.[4] NSCC will continue to nominate and to elect two directors to the board outside the nominating committee process. The board seat for a management representative and for the GSCC president also will remain outside the nominating committee process.

The nominating committee consists of five individuals, a majority of whom are representatives from active participants. With the exception of the initial nominating committee, an individual cannot serve on the nominating committee if he or she has served on the board or the nominating committee within the past year. The term of a nominating committee member is two years, and the terms of nominating committee members are staggered.[5]

With the exception of the first nominating committee, incoming nominating committee members will be designated by the board after consideration of the recommendations of current nominating committee members. The participant category is irrelevant for purposes of the selection of nominating committee members. However, as a general guideline, the individuals serving on the nominating committee will reflect GSCC's overall membership and potential membership base.

Participants will be provided an opportunity early in the nomination process to suggest one nominee for each open board seat. After consideration of the participants' suggestions, the nominating committee will then select its candidates. The nominating committee will nominate one nominee for each open participant director seat. Participants will then be notified of the nominating committee's slate of candidates for open board seats.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39068 (September 12, 1997), 62 FR 49546.

[3] The Agreement was first executed in 1988 before GSCC had a set of rules in place. GSCC currently has forty-six shareholders, each of which is a party to the Agreement. The National Securities Clearing Corporation ("NSCC") is the largest shareholder, holding approximately eighteen percent of GSCC's shares.

[4] The procedures governing the selection of the nominating committee are contained in Section 2.B of the Agreement, and the nomination procedures are contained in Section 2.C of the Agreement. The prior nomination process for participant directors was open to all members with every member being able to nominate any shareholder member, including itself. However, a member was restricted to submitting nominations only for its own correlative participant category (*i.e.*, broker participants nominated broker participant directors, clearing agent bank participants nominated clearing agent bank participant directors, and all other participants nominated dealer participant directors). The election process involved ballots being circulated to every member with such voting being similarly limited to one's own correlative participant category.

[5] Initially, one class with two individuals will be designated for a one year term, and another class with three individuals will be designated for a two year term. After these initial terms, both classes will serve two year terms. Therefore, subsequent nominating committees will have two staggered classes of members.

After being notified of the nominating committee's selections, participants can nominate additional nominees with a petition signed by the lesser of seven participants or five percent of GSCC's participants. Each participants may only sign one petition for each open board seat.

If no nominating petitions have been filed by participants, the nominating committee will certify to the shareholders the participant directors selected by the nominating committee. Shareholders will then be bound to cast their votes supporting the nominating committee selections at the annual meeting.

However, if participants have filed one or more formal nominating petitions, GSCC will circulate ballots to all participants and will permit them to cast their votes to fill each open participant director seat in the contested participant category or categories. Active comparison only participants are entitled to one vote per open board seat. Active clearing agent bank participants are entitled to two votes per open seat. Active netting participants are entitled to two votes per open seat. In addition, each netting member will receive another two votes for approximately every ten million dollars of its clearing fund deposit up to an additional ten votes. Affiliated members will be considered one participant for purposes of determining voting entitlements. Cumulative voting rights have been eliminated.

Based upon the recommendation of the outgoing executive committee, the incoming board will designate the chairman of the board.[6] The chairman will be elected for a one year term with no overall term limit other than the six year term limit applicable to all participant directors.

B. Composition of the Board

The proposal removes the specific board composition requirements from the Agreement so that the Agreement outlines only board parameters such as a maximum number of board seats and a minimum required number of categories of directors that will be represented.[7] Pursuant to the By-laws, the board is empowered to make changes within the Agreement's broad parameters, including changing the size or composition requirements of the board in order to reflect membership demographics and other criteria.[8]

The current board composition has been recategorized as one management director, one at-large director, two NSCC directors, six general user participant directors, three broker participant directors, and two clearing agent bank directors.[9] Many of the related definitions of the participant categories have been expanded. The Agreement's definition of "broker" is broadened to include any entity regulatory engaged in the business of effecting transactions in any securities eligible for processing by GSCC on behalf of participants.[10] "Clearing agent bank" is more broadly defined essentially to mean any commercial bank member of the Federal Reserve System that provides clearing services with respect to GSCC eligible securities on behalf of others for at least ten percent of GSCC's participants and that provides those services using its own Federal Reserve account.[11] The terms "general user participant" and "general user participant director" are used instead of "dealer participant" and "dealer participant director.[12] The definition of "general user participant" is essentially any participant that is not a broker or clearing agent bank, including futures commission merchants and registered investment companies.

Finally, GSCC directors are currently limited to serving two consecutive three year terms on the board. Under the revisions, the current term limits are retained for all but the vice chairman and management director, who will not have term limits. Furthermore, the Agreement specifies that there must be a one year absence from the board before a former director is eligible for a new overall six year term limit. The three staggered classes of directors are retained. The By-laws specify the categories of directors that compose each of the three classes.

C. Restrictions on Issuance and Transfer of GSCC Shares

GSCC is removing the price restrictions on its shares, which currently require that both Class A and Class B shares generally must be issued, sold, or transferred at a price of $500 per share. However, under the revisions GSCC generally will not be able to sell shares at less than current book value.

Pursuant to the revisions, GSCC may issue Class A shares to an existing Class A shareholder, participant, or affiliate of a participant rather than only to participants not already holding Class A shares.[13] GSCC's authority to issue new Class B shares is removed from the Agreement.[14]

Class A shareholders may now sell Class A shares to any existing Class A shareholder, participant, or affiliate of a participant in lots of 300 shares.[15] However, no shareholder other than NSCC may own more than five percent of Class A shares unless such shares are held as a result of acquisition, merger, or a comparable event. Similarly, shareholders may sell Class B shares to any existing shareholder, participant, or affiliate of a participant in lots of 200 shares.

The proposed rule change extends GSCC's right of first refusal to any sale or transfer of shares by any shareholder.[16] GSCC may purchase such shares at the lesser of the agreed price or the current book value. GSCC may resell such securities for a price at least equal to the book value unless the board approves a lower price.

GSCC has the right to repurchase Class A shares from participant shareholders provided that each participant shareholder is required to sell to GSCC the same percentage of Class A shares and NSCC continues to hold twenty percent of GSCC's Class A shares unless NSCC agrees otherwise. Pursuant to the proposal, GSCC may offer to repurchase shares at any price determined by the board or may require that the shares be sold to it at current book value.

[6] Prior to the amendment, there was no provision in the Agreement for selecting the chairman of the board.

[7] Section 2.A of the Agreement.

[8] Before changing the number of directors, GSCC must file a proposed rule change with the Commission.

[9] Prior to the amendment, the Agreement provided for twelve participant directors consisting of six dealer participant directors, three broker participant directors, and three clearing agent bank participant directors.

[10] "Broker" was previously defined as an entity regularly engaged in the business of effecting transactions specifically in treasury securities and specifically for the account of primary dealers and aspiring primary dealers.

[11] "Clearing agent bank" was defined as any clearing bank regularly used by brokers, primary dealers, and aspiring primary dealers for the clearance and settlement of transactions in treasury securities.

[12] "Dealer participant" was defined as a primary dealer or an aspiring primary dealer that is a participant. All references to primary and aspiring dealers have been removed from the Agreement.

[12] If GSCC issues additional Class A shares, NSCC has the right to request that enough additional Class A shares be issued to it in order for NSCC to retain its twenty percent holdings in GSCC.

[14] The board recently stated its intention to repurchase the existing Class B shares when GSCC is determined to be adequately capitalized, which is expected to occur by year end 1997.

[15] Previously, the Agreement contained restrictions on transfers of Class A shares by participant shareholders including a requirement that the Class A shareholder must transfer all of its Class A shares and that the transfer must be to a single participant not already holding Class A shares.

[16] Prior to this proposed rule change, GSCC had a right of first refusal only with respect to NSCC's sale of its Class A shares.

The revisions authorize GSCC to issue shares in response to an extraordinary corporate action (*e.g.*, a joint business venture). Pursuant to such an issuance, GSCC may exchange or transfer such shares for cash in any amount or for any noncash consideration.

If a shareholder ceases to be a GSCC participant, GSCC may mandate the sale to itself of shares of such a shareholder at book value.[17] However, the proposal also authorizes GSCC to offer to repurchase shares for any price determined by the board under such circumstances.

D. Miscellaneous Amendments

The proposal deletes loss allocation provisions in the Agreement that are redundant with the loss allocation provisions set forth in GSCC's rules. All timing references and procedures specific to the period between 1988 and 1991 contained in the Agreement are removed. In addition, provisions naming a specific individual to hold one NSCC director seat and another specific individual to act as the management director for purposes of the 1988 annual meeting are removed.

The supermajority voting requirements[18] with respect to future amendments of the Agreement are removed. However, GSCC retains the requirement that an affirmative vote of at least eighty percent of the entire board is required to change its business from that of a registered clearing agency including any change that would put GSCC in the business of being a broker or of performing brokered transactions. Moreover, for the protection of its shareholders and members, any change of business that puts GSCC in competition with clearing agent banks is subject to a veto by a unanimous vote of all the clearing agent bank directors and one other participant director.

II. Discussion

Section 17A(b)(3)(C)[19] of the Act requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors. In the release announcing standards for the registration of clearing agencies ("Standards Release"), the Division of Market Regulation ("Division") stated that rather than prescribing a single method for providing fair representation, the Division would evaluate each clearing agency's procedures on a case-by-case basis.[20] The Standards Release provided several examples of procedures that could be used to satisfy the fair representation requirement, including solicitation of board of directors nominations from all participants and selection of director candidates by a nominating committee selected by the participants.

The Commission believes that GSCC's proposal is consistent with its obligations under the Act because it provides participants with a meaningful opportunity to participate in GSCC's election process. The board, which should be responsive to participant concerns, will designate the members of the nominating committee. GSCC participants will have the opportunity both informally and formally to nominate candidates for board seats. If there is a contested election, GSCC participants will have the opportunity to vote for participant directors. Therefore, the Commission believes that GSCC's procedures should provide fair representation to its members.

The Commission also believes that the changes to the composition of the board will provide enhanced fair representation. Several classes of participants that did not fit within the eligible categories of participant directors are now represented by the general user participant category. Thus, the Commission believes that GSCC's proposal is consistent with its obligations to assure the fair representation of participants.

The Commission finds that the removal of certain restrictions on the issuance and transfer of GSCC shares may assist GSCC in operating efficiently as a clearing agency. By exercising its right of first refusal, GSCC will be able to ensure that ownership of GSCC is limited to industry participants. Thus, GSCC's primary focus will continue to be on the clearance and settlement of securities. Also, GSCC may be better able to respond quickly to new business ventures by having the ability to issue shares in connection with new operations.

Finally, the Commission finds that the remaining miscellaneous amendments to the Agreement, such as the deletion of the loss allocation provision, the removal of obsolete references, and the removal of the supermajority voting requirements, provide for a more flexible and efficient operation of GSCC and, therefore, are consistent with the requirements of the Act. For example, by eliminating supermajority voting requirements, GSCC will be able to make necessary changes in its operations on an expedited basis.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–97–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31878 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

[17] Previously, GSCC had the discretionary right to repurchase its shares provided that GSCC repurchases all of the shares for $500 per share.

[18] Prior to the proposed rule change, the Agreement set forth a number of supermajority board voting requirements that had to be met in order to make certain changes to the Agreement, including classification of directors, procedures for electing and replacing directors, provisions related to loss allocation, and procedures and requirements for amending the Agreement.

[19] 15 U.S.C. 78q–1(b)(3)(C).

[20] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 30086.

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39378; File No. SR–MSRB–97–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to its Arbitration Code

December 1, 1997.

I. Introduction

On May 22, 1997, the Municipal Securities Rulemaking Board, Inc. ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule G–35, the Board's Arbitration Code. The proposed rule change would create two new sections: Section 37 would state that the Board will not accept any new arbitration claims filed on or after January 1, 1998; and Section 38 would provide that, as of January 1, 1998, every bank dealer (as defined in Rule D–8) shall be subject to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. ("NASD") for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. New Section 38 would further provide that each bank dealer shall be subject to, and shall abide by, the NASD's Code of Arbitration Procedure as if the bank dealer were a "member" of the NASD.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38935 (August 14, 1997), 62 FR 44501 (August 21, 1997). One comment letter was received on the proposal.[3] The Exchange submitted Amendment No. 2 to the proposed rule filing on November 13, 1997.[4] This order approves the proposed rule change, as amended.

II. Description

The Board's arbitration program, which is limited to the resolution of disputes involving municipal securities, has been in effect since December, 1978. The Board has determined that, effective January 1, 1998, it will no longer accept any new claims filed with its arbitration program. The Board will, however, continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998, but will discontinue its arbitration program when all such cases have been closed.[5]

Currently, any customer or securities dealer with a claim, dispute, or controversy against a dealer involving its municipal securities activities may submit that claim to the arbitration forum of any SRO of which the dealer is a member, including the NASD. Bank dealers, however, are unique in that they are subject to the Board's rules but are not members of any other SRO. In light of the Board's decision not to accept any new arbitration claims on or after January 1, 1998, the proposed rule change amends Rule G–35 to state this and to provide an alternative forum for claims involving the municipal securities activities of bank dealers. The proposed rule change accomplishes this by subjecting every bank dealer, as of January 1, 1998, to the NASD's Code of Arbitration Procedure for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. In addition, the proposed rule change requires that bank dealers abide by the NASD's Code just as if they were members of the NASD for purposes of arbitration.

Pursuant to the proposed rule change, the bank regulatory agencies (i.e., the Office of Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation) would continue to be responsible for the inspection and enforcement of bank dealers' municipal securities activities, including arbitration. Thus, for example, a bank dealer's failure to pay an arbitration award rendered pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G–35, since it is that rule, as amended, that subjects bank dealers' to the NASD's Code. Similarly, a bank dealer's refusal to submit to arbitration pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G–35. The NASD would notify the Board of any such violations and the Board, in turn, would contact the appropriate bank regulatory agency.

In addition, the proposed rule change will amend Rule G–35, Section 31(h), to make publicly available the names of arbitrators on all customer awards rendered through the Board's arbitration program after May 10, 1989.[6]

III. Summary of Comments

The Commission received one comment letter relating to the proposed rule change.[7] The commenter states that his company collects arbitration awards and that they obtain information on these awards through the Public Awards Program of the various arbitration forums, which they can then make available to people who seek information about past arbitration awards. The commenter states that parties and counsel seek the past history of arbitrators that are appointed to hear their cases; therefore, they need to know the names of the arbitrators who decided particular awards. The commenter states that the NASD currently makes arbitrator names for public arbitration awards publicly available (and do so retroactively to May 10, 1989), and that the MSRB is the only SRO that does not make arbitrator names publicly available.

The commenter wants to know whether MSRB cases that will be arbitrated by the NASD will be made public, along with the names of the arbitrators. The commenter requests that the MSRB make publicly available its public arbitration awards, including the arbitrator names, retroactively to May 10, 1989 and prospectively in the future, so that the NASD will be able to continue its practice of making a list of arbitrators' past awards to parties when they appoint arbitrators.

IV. Discussion

The Commission finds that the proposed rule change is consistent with Sections 15B(b)(2) (C) and (D) of the Act, which provide, respectively, that the Board's rules be designed, in general, to protect investors and the public interest, and, if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities because the proposed rule change ensures that there is a fair arbitration forum available for all MSRB arbitration claims.[8]

The Commission believes that it is consistent with the Act to allow the MSRB to send its arbitration cases to the NASD for arbitration, in part because the Board believes its declining caseload makes it difficult to justify the cost of continuing to operate its own arbitration program.[9] The Commission also believes that procedurally the proposed rule change should adequately ensure that all arbitration cases that would be subject to the MSRB arbitration process will be provided for under the NASD's arbitration program. Those MSRB members who are also NASD members, or members of another SRO with an arbitration forum, will be able to use that SRO's arbitration forum.[10] Those MSRB members who are not also members of another SRO (the bank dealers) will now be deemed "members" of the NASD for purposes of arbitrating claims involving the municipal securities activities of bank dealers. The proposed rule change accomplishes this by subjecting every bank dealer, as of January 1, 1998, to the NASD's Code of Arbitration Procedure for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. In addition, the proposed rule change requires that bank dealers abide by the NASD's Code just as if they were members of the NASD for purposes of arbitration.

In addition, the Commission believes that the proposed rule change adequately provides for the enforcement of amended Board Rule G–35 because the enforcement mechanism for bank dealers would not be altered. The bank regulatory agencies[11] would continue to be responsible for the inspection and enforcement of bank dealers' municipal securities activities, including arbitration. A bank dealer's failure to pay an arbitration award rendered pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G–35, since it is that rule, as amended, that subjects bank dealers to the NASD's Code. Similarly, a bank dealer's refusal to submit to arbitration pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G–35. The NASD would notify the Board of any such violations and the Board, in turn, would contact the appropriate bank regulatory agency.

Finally, the Board provides adequate measures for the transition from the MSRB arbitration forum to the NASD arbitration forum. Even though the Board will no longer accept any new claims filed with its arbitration program after January 1, 1998, it will continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998. The Board will then discontinue its arbitration program when all such cases have been closed.[12]

The Commission notes that the MSRB stated that the Board will cover any costs associated with the NASD arbitrating cases involving the bank dealers that are not covered by the fees bank dealers will pay as parties to an arbitration proceeding, until such time as the NASD receives approval to amend its fees to cover such costs. As members of the NASD for arbitration purposes, bank dealers will pay the same arbitration fees as NASD members. The NASD has also stated that if the number of cases received from the MSRB were to increase substantially, the NASD would want to revisit the fee issue.[13]

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 is responsive to the commenter's request that the Board publicly disclose the names of arbitrators on all customer-related awards rendered after May 10, 1989 by amending Rule G–35 to make those names publicly available. This amendment should help facilitate the NASD's administration of municipal securities arbitration claims, and will allow the public to receive more accurate and complete information on an arbitrator's past arbitration activities, where an arbitrator appointed in a case has previously served as an arbitrator in the Board's program but has never served as an NASD arbitrator. Accordingly, the Commission believes that it is consistent with Section 15B of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–97–4 and should be submitted by December 29, 1997.

V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–MSRB–97–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31874 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

---

[3] *See* letter from Richard P. Ryder, Editor, Securities Arbitration Commentator, to Margaret H. McFarland, Deputy Secretary, Commission, dated September 10, 1997.

[4] Amendment No. 2 was submitted in response to the comment letter received on the proposed rule filing. Amendment No. 2 states that the Board has reviewed the comment letter and has determined to amend its arbitration code to make publicly available the names of arbitrators for all customer awards rendered after May 10, 1989. The Board believes that this amendment will facilitate the NASD's administration of those arbitration claims received after January 1, 1998 involving the municipal securities activities of brokers, dealers and municipal securities dealers where an arbitrator appointed to such a case previously served as an arbitrator in the Board's program but has never served as an NASD arbitrator. *See* letter from Jill C. Finder, Assistant General Counsel, MSRB, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated November 12, 1997.

[5] At such time, the Board will submit a filing to the Commission to delete sections 1 through 36 of Rule G–35, as well as new Section 37, and to rescind Rule A–16 on arbitration fees and deposits.

[6] *See* Amendment No. 2, *supra* note 4.

[7] *See supra* note 3.

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] According to the Board, its caseload grew steadily for a time: for example, 21 cases were received in 1980, 82 in 1986, and 115 in 1988. Between 1978 and 1993, the NASD automatically transferred to the Board's arbitration program any claims received involving municipal securities, and until approximately 1993 the majority of the Board's cases were received in this manner. The NASD also transferred cases (other than those involving municipal securities) to other self-regulatory organizations ("SROs"), such as the New York Stock Exchange and the American Stock Exchange, if the particular claim arose out of a transaction in that SRO's market. In 1993, the NASD amended its arbitration code to require a customer's consent before it could transfer a case to another SRO. The practical effect of this amendment has been to virtually halt the transfer of municipal cases to the Board's arbitration program because customers choose to remain at the NASD. Consequently, the Board's caseload has declined dramatically from 115 cases received in 1988 to 10 cases received in 1996. As of the time of the filing of the proposed rule change, the Board had received two cases in 1997.

[10] The Commission notes that if another SRO wanted to eliminate its arbitration program and send its cases to the NASD, it would be required to file a rule filing under Section 19(b) of the Act, and the Commission would independently consider any such filing.

[11] The Office of Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation.

[12] The Commission notes that the Board has stated that at that time it will submit a filing to the Commission to delete sections 1 through 36 of Rule G–35, as well as new Section 37, and to rescind Rule A–16 on arbitration fees and deposits.

[13] The Commission notes that if the NASD were to file a proposed rule change to amend fees that apply to its members, and that also apply to the bank dealers, it would be able to file that change under Section 19(b)(3)(A) of the Act, if it otherwise met the criteria. However, if the NASD were to file a proposed rule change that only affected fees for the bank dealers, that change would have to be filed under Section 19(b)(2) of the Act so that the bank dealers would have adequate notice and time to comment on the proposal.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39357; File No. SR–NASD–97–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Computer Assisted Execution Service and Intermarket Trading System/Computer Assisted Execution Service Fees

November 25, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] notice is hereby given that on November 10, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or

[1] § 15 U.S.C. 78s(b)(1).

"Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 21, 1997, the Association submitted to the Commission an amendment to the proposed rule changes.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Exchange Act, the NASD, through its wholly-owned subsidiary, Nasdaq, is herewith filing a proposed rule change to amend the Computer Assisted Execution Service ("CAES) and Intermarket Trading System/Computer Assisted Execution Service ("ITS/CAES") fee structure from a per share fee to per trade fee. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7010. System Service

(a)–(c) No change.

(d) Computer Assisted Execution Service.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per [share] *trade* transaction charge [applicable to the market-maker side of a transactional] plus equipment related charges.

(1) Service Charges

$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges

(A) [$.005 per share] *As of November 1, 1997, $0.50 per execution* shall be paid by [the member which receives an order executed through CAES to buy or sell a Nasdaq Stock Market or listed security] *any CAES market maker that executes a CAES order or any part of a CAES order.*

(B) As of January 1, 1998, $0.50 per execution shall be paid by any order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part.

[(B)] (C) [$.005 per share] *As of November 1, 1997, $1.00 per commitment* shall be paid by [the] *any* member which sends *or receives* a commitment through the ITS/CAES linkage to buy or sell a listed security *that is executed in whole or in part.*

(e)–(n) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the CAES and ITS/CAES fee structure from a per share fee to a per trade fee. Presently, there is a $0.005 per share fee (no maximum) assessed on Consolidated Quote Service ("CQS") market makers[3] for trades executed through CAES (no charge on order entry firms) and a $0.005 per share fee (no maximum) assessed on CQS market makers for commitments to trade sent through the ITS/CAES linkage. Because CQS market makers are now obligated under the SEC's Limit Order Display Rule to display individual limit orders up to 9,900 shares and aggregate all "displayable" limit orders at the same price level, however, Nasdaq believes it is now appropriate to assess CAES and ITS/CAES fees on a per trade basis. Since the order sizes now displayable under the new rule may not represent a market maker's exclusive proprietary interest, Nasdaq believes that a fee structure based on a per share calculation is no longer the fairest or best means to assess CAES and ITS/CAES fees.

Nasdaq notes that other fees applicable to Nasdaq market participants are assessed on a per trade basis, *e.g.*, the present SelectNet fee is $2.50 per side of each transaction,[4] and the fee for the Small Order Execution System ("SOES") is 50 cents for each order entered by an order entry firm or market maker, and 50 cents for each execution by a market maker. The current CAES and ITS/CAES per share fee structure, however, does not provide for any upper limit on fees.

Presently, the average CAES fee per trade using a per share calculation is $7.97. Nasdaq believes that adoption of the proposed per trade fee structure for CAES and ITS/CAES will result in an overall reduction of fees and establish a more consistent fee structure for all Nasdaq execution and order routing systems.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 15A(b)(5) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

New per trade fees established by paragraphs (A) and (C) of the rule will be effective November 1, 1997. The fees established by paragraph (B) will become effective on January 1, 1998 to allow ITS/CAES users adequate time to prepare for the implementation of these charges as well as allow Nasdaq to establish appropriate billing procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[2] See Letter from Robert Aber, Vice President and General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc. ("Nasdaq"), to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated November 21, 1997 ("Amendment No. 1"). The amendment adds language to the notice explaining that one of the purposes of the proposed rule is to create a per transaction fee structure that is fairer to market makers who, under the Order Display Rules, are required to display interest that may not be their own. The amendment also clarifies that the proposed rule is imposing a new fee on order entry firms. The filing of an amendment to a proposed rule change filed under Section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder results in a resetting of the 60 day period during which the Commission summarily may abrogate the change in the self-regulatory organization's rules. *See* 15 U.S.C. 78s(b)(3)(C).

[3] A *CQS market maker* is a dealer that, with respect to a reported security, holds itself out as being willing to buy and sell such security for its own account on a regular and continuous basis otherwise than on a national securities exchange in amounts of less than block size and that is registered as such.

[4] This fee has been temporarily reduced to $1.25 per side through December 31, 1997. *See* Exchange Act Release No. 39248 (October 16, 1997), 62 FR 55296 (October 23, 1997).

[5] Through paragraph (B) of the proposed rule imposes a new fee on order entry firms, Nasdaq believes that such a fee is necessary to more equitably distribute transaction costs.

[6] 15 U.S.C. 78*o*–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, in that the proposal establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–82 and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31843 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1989).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39350; File No. SR–NASD–97–57]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers Inc. Relating to the Electronic Delivery of Information Between Members and Their Customers

November 25, 1997.

I. Introduction

On July 30, 1997,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change setting forth the policy of NASD Regulation, Inc. ("NASD Regulation" or "NASDR") regarding electronic delivery of information between members and their customers. A notice of the proposed rule change appeared in the **Federal Register** on September 11, 1997.[4] The Commission received one comment letter addressing the proposed rule change.[5] This order approves the proposed rule change.

II. Description of Proposal

The Association filed with the Commission a Notice of Members ("NTM") which establishes the NASDR's policy regarding electronic delivery of information between members and their customers. The NASDR policy will allow members to use electronic media to electronically transmit documents that they are required or permitted to furnish to customers under Association rules and to receive electronic communications from customers. The NTM states that use of electronic media is permitted provided members comply with certain guidelines outlined in Commission Release Nos. 34–37182[6] and 33–7233.[7] In these releases, the Commission addresses the procedural aspects of how broker-dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media provided that they comply with certain prescribed requirements.

The NTM summarizes the Commission procedures, which address, among other things, content, notice, access, evidence to show delivery, and communication of personal financial information, and consent. The NTM also lists current Association rules that require or permit communications between members and their customers for which electronic delivery may be used in accordance with the standards contained in the Commission releases. The policy established in the NTM will also apply to a new rule or an amendment to an existing rule that requires or permits communications between members and their customers unless NASDR specifies otherwise at the time of adoption of the rule or amendment.

III. Summary of Comments

The Commission received one comment letter addressing this proposal.[8] While the ICI Letter generally supports the NASDR's NTM, it recommends certain additions to the list of NASD rules contained in the NTM,[9] and responds to a request for comment issued in the notice.[10]

The additional rules that ICI believes should be added to the list of NASD rules contained in the NTM are: Rule 2210 (d) and (f); IM–2210–3; Rule 2830(d); Rule 2830(k)(7); Rule 2830(l)(1)(C); and Rule 3010(g)(2).[11] ICI believes that Rules 2210(d), 2210(f) and IM–2210–3, which outline standards for when members communicate with the public, should be included to confirm that their disclosure and other requirements may be satisfied using electronic media where the communication itself is made through

[1] On August 27, 1997, the NASD amended the exhibit attached to the rule filing. *See* letter from Mary N. Revell, Associate General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated August 26, 1997.

[2] 15 U.S.C. 78*s*(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 39025 (September 5, 1997); 62 FR 47858.

[5] Letter from Joseph P. Savage, Assistant Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated October 2, 1997 ("ICI Letter").

[6] *See*, Securities Exchange Act Release No. 37182, May 9, 1996; 61 FR 24644, May 15, 1996, (Commission's interpretation concerning the delivery of information through electronic media in satisfaction of broker-dealer and transfer agent requirements to deliver information under the Act and the rules thereunder).

[7] *See*, Securities Act Release No. 7233, Oct. 6, 1995; 60 FR 53458, Oct. 13, 1995, (Commission's interpretation concerning the use of electronic media as a means of delivering information required to be disseminated pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940).

[8] *See supra* note 5.

[9] ICI Letter at pp. 2–3.

[10] *See supra* note 4, at p. 47859, n.6.

[11] ICI Letter, p. 3.

electronic media.[12] Rule 2830 applies to the activities of members in connection with investment company securities.[13] ICI notes that Rules 2830(d), 2830(k)(7), and 2830(l)(1)(C), which apply to sales charges, execution of investment company portfolio transactions, and dealer concessions, respectively, should be included in the NTM to confirm that electronic disclosure meets the requirements in these rules in the case of a prospectus that is delivered electronically.[14] Concerning Rule 3010(g)(2), which defines the term "branch office," ICI believes that the NTM should clarify the requirements of the rule may be satisfied through electronic delivery of sales material.[15]

In its response, the NASDR does not agree that these rules should be added to the NTM.[16] According to the NASDR, "the rules the ICI suggests adding to the NTM do not specifically address the delivery of information between broker/dealers and customers, but instead concern substantive obligations that arise under NASD rules regardless of whether information is submitted in electronic or non-electronic form." [17] Notwithstanding its decision to exclude the rules from the NTM, the NASDR agrees that the disclosure requirements of Rules 2210(d), 2210(f), IM–2210–3, and 3010(g)(2) may be satisfied using electronic media where the communication itself is made electronically.[18] The NASDR also agrees that the disclosure requirements of Rules 2830(d), 2830(d)(4), 2830(k)(7), and 2830(l)(1)(C) may be met if the prospectus is electronically delivered.[19]

In the notice, the Commission requested comment on what types of security measures broker-dealers employ or will employ to reasonably assure themselves that the responses they receive electronically from customers are authentic.[20] According to ICI, while no formal survey of its membership was conducted, one member has indicated that it requires each customer who wishes to communicate electronically regarding his or her securities account, provide his or her social security number, customer account number, and personal identification number before electronic access to the account will be allowed.[21] For certain institutional clients, another member uses a security system which includes encryption technology and a password requirement.[22]

The Commission reiterates its concern that adequate security measures must be implemented by members to protect customers' personal financial information and to prevent unauthorized transactions when "receiving" or "obtaining" electronic responses from their customers. The Commission recognizes that the security measures instituted will vary depending on the computer's hardware and software capabilities, as well as, on the information being sent or received. However, an effort should be made to secure customers' information, as the two ICI members have done, by developing procedures and improving technology, when feasible.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15A(b)(6) [23] of the Act.[24] Pursuant to Section 15A(b)(6), the proposed rule change benefits the public, because it not only allows customers easy and efficient access to account information, but also requires an evaluation of systems and procedures by members to ensure that the privacy of personal information is maintained. In using the Commission's releases as a guide,[25] the Association has established a uniform policy concerning electronic delivery of information which should allow members and member organizations to satisfy their delivery obligations under the federal securities laws and the Association's rules. This uniform policy should simplify compliance by members and member organizations and aid the Association in monitoring the same.

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NASD–97–57) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31844 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

[12] *Id.*

[13] *See* NASD Manual, Conduct Rules, Rule 2830, p. 4621.

[14] ICI Letter, p. 3.

[15] *Id.*

[16] Letter from Mary N. Revell, Associate General Counsel, NASD Regulation, Inc., to Katherine England, Assistant Director, SEC, dated November 13, 1997 ("NASDR Letter"), p. 2.

[17] *Id.* at p. 2.

[18] *Id.*

[19] *Id.* at pp. 2–3.

[20] *See supra* note 10.

[21] ICI Letter at p. 2.

[22] *Id.*

[23] Section 15A(b)(6) requires the Commission to determine that an Association's rules are designed to prevent fraudulent acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[24] Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[25] *See supra* notes 6 and 7.

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39361; File No. SR–NASD–97–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Tape Recording of Conversations

November 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 12, 1997, as amended on November 17, 1997,[2] NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed Rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed Rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend National Association of Securities Dealers, Inc. ("NASD" or "Association") Rule 3010 to require tape recording of conversations where members hire more than a specified percentage of registered persons from certain firms that have been expelled or that have had their broker/dealer registrations revoked for egregious violations of sales practice Rules. The proposed Rule change also includes a conforming Rule change to Rule 9610. Below is the text of the proposed Rule change. Proposed new language is in italics.

Conduct Rules

Rule 3010. Supervision

(a) No change

(b) Written Procedures

(1) Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable rules of this Association.

(2) Tape recording of conversations

(i) Each member that either is notified by NASD Regulation or otherwise has actual knowledge that it meets one of the criteria in paragraph (b)(2)(viii) relating to the employment history of its registered persons at a Disciplined Firm as defined in paragraph (b)(2)(x), shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered representatives.

(ii) The member must establish the supervisory procedures required by this paragraph within 30 days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of this paragraph.

(iii) The procedures required by this paragraph shall include tape-recording all telephone conversations between the member's registered representatives and both existing and potential customers.

(iv) The member shall establish reasonable procedures for reviewing the tape recordings made pursuant to the requirements of this paragraph to ensure compliance with applicable securities laws and regulations and applicable rules of this Association. The procedures must be appropriate for the member's business, size, structure, and customers.

(v) All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each member shall catalog the retained tapes by registered representative and date.

(vi) Such procedures shall be maintained for a period of two years from the date that the member establishes the procedures required by the provisions of this paragraph.

(vii) By the 30th day of the month following the end of each calendar quarter, each member firm subject to the requirements of this paragraph shall submit to the Association a report on the member's supervision of the telemarketing activities of its registered representatives.

(viii) The following members shall be required to adopt special supervisory procedures over the telemarketing activities of their registered representatives:

** A firm with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been employed by one or more Disciplined Firms within the last two years;*

** A firm with at least ten but fewer then twenty registered persons, where four or more of its registered persons have been employed by one or more Disciplined Firms within the last two years;*

** A firm with at least twenty registered persons, where 20% or more of its registered persons have been employed by one or more Disciplined Firms within the last two years.*

(ix) For purposes of this Rule, the term "registered person" means any person registered with the Association as a representative, principal, or assistant representative pursuant to Rule 1020, 1030, 1040, and 1110 Series.

(x) For purposes of this Rule, the term "disciplined firm" means a member that, in connection with sales practices involving the officer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or its subject to an order of the Securities and Exchange Commission revoking its registration as a broker/dealer.

(xi) Pursuant to the Rule 9600 Series, the Association may exempt any member from the requirements of this paragraph unconditionally or on specified terms and conditions upon a satisfactory showing that the member's supervisory procedures ensure compliance with applicable securities laws and regulations and applicable rules of the Association.

(3) The member's written supervisory procedures shall set forth the supervisory system established by the member pursuant to Rule 3010(a) above, and shall include the titles, registration status and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable securities laws and regulations, and the rules of this Association. The member shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective. Such record shall be preserved by the member for a period of not less than three years, the first two years in an easily accessible place.

(4) A copy of member's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained in each OSJ and at each location where supervisory activities are conducted on behalf of the member. Each member shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations including the rules of this Association, and as changes occur in its supervisory system, and each member shall be responsible for communicating amendments through its organization.

(c) through (f) No change

(g) Definitions

(1) through (3) No change

* * * * *

Rule 9600. Procedures for Exemptions

Rule 9610. Application

(a) File With General Counsel

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, *3010*, 3350, 11870, or 11900, Interpretive Material 2110–1, or Rule G–37 shall file a written application with the Office of General Counsel of NASD Regulation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed Rule change and discussed any comments it received on the proposed Rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

[2] On November 17, 1997, NASD Regulation filed Amendment No. 1 with the Commission. In Amendment No. 1, the NASD clarified that firms will be required to establish procedures required by the Rule when either information supplied by NASD Regulation or the firm's actual knowledge indicates that it is the subject of the Rule, and added a new provision defining the term, "registered person," and moving the definition of a "disciplined firm" to a different location in the Rule for ease of reference. *See* Letter from Mary N. Revell, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Office of Market Supervision, Division of Market Regulation (November 17, 1997).

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Background

At its meeting in July 1996, the NASD Regulation Board of Directors authorized the staff to issue a Notice to Members soliciting comment on proposed changes to NASD supervisory Rule 3010 to require the tape-recording of telephone conversations of registered representatives in certain circumstances. The original Rule was developed both to respond to concerns expressed in the *Joint Regulatory Sales Practice Sweep ("Sweep") Report*[3] regarding the need for heightened supervision of certain registered representatives with troubled regulatory and compliance records and also to address the particular problems that occur when a firm hires a large number of individuals who formerly worked at a firm that has been expelled or has had its registration revoked in connection with sales practice violations (a "Disciplined Firm") where they were inadequately supervised and trained.

The Sweep was an initiative involving the staffs of the NASD, the SEC, the New York Stock Exchange, and representatives of the North American Securities Administrators Association (collectively, the "Working Group") to review the sales-practice activities of selected registered representatives and the hiring, retention, and supervisory practices of the brokerage firms employing them in order to identify possible problem registered representatives, review their sales practices, and assess whether adequate hiring, retention, and supervisory mechanisms are in place.[4] The Sweep Report was released on March 18, 1996.

One of the key findings of the Sweep Report was that some firms are willing to employ registered representatives with a history of disciplinary actions or customer complaints. Based on this finding, the Working Group collectively recommended that firms that hire registered representatives with a recent disciplinary history involving sales practice abuse or other customer harm should implement special supervisory procedures tailored to the individual registered representative, which include a heightened level of scrutiny of the registered representative's activities by his or her supervisor, for a period of time.[5] The Sweep Report recommended that, if firms fail to establish such special supervisory procedures, the self-regulatory organizations ("SROs") should consider revising their rules to specifically require that registered representatives with a recent history of disciplinary actions involving sales practice abuse or other customer harm be placed under special supervision by the firm for a period of time.

The NASD and the NYSE have issued a memorandum discussing the Sweep Report and providing guidance on actions firms could take to provide heightened supervision of problem registered representatives.[6] While the special procedures designed to provide a heightened level of supervision recommended by the Sweep Report and described in the NASD/NYSE memorandum may provide adequate supervision of associated persons in most circumstances, NASD Regulation proposes to adopt specific procedures in certain situations in order to provide the level of supervision required by Rule 3010.

NASD Regulation proposes to amend NASD Rule 3010 to require firms that hire a specified number of individuals from Disciplined Firms to tape-record telephone conversations between their registered representatives and existing and potential customers. The proposed Rule would apply when a firm hires a substantial number of registered persons from a firm or firms that have been expelled or had their registrations revoked for sales practice abuse. The measures described by the rule are designed to prevent a reoccurrence of sales practice abuse or other customer harm that caused the Disciplined Firm to be expelled or have its registration revoked. The proposal is similar to an interpretation adopted by the National Futures Association ("NFA") in 1993 to combat abusive cold calling.[7] The NFA's interpretation is discussed below.

Notice to Members 96–59 and Original Proposal

Notice to Members 96–59 ("Notice to Members"), containing the original proposed Rule ("original proposal" or "original Rule"), was issued in September 1996. The requirements of the original Rule would have been triggered whenever a significant portion of a member's work force was comprised of associated persons who formerly were employed by a Disciplined Firm or firms or when the firm itself was a Disciplined Firm. The original proposal defined a Disciplined Firm, for purposes of the Rule, as one that had been disciplined (*i.e.*, expelled, suspended, or enjoined) by a regulatory entity, an SRO, or a court within the previous five years for telemarketing or sales-practice abuses in connection with the solicitation, offer, or sale of securities.

Under the original proposal as described in the Notice to Members, if more than 20 percent of a member's sales force of associated persons previously were employed by a Disciplined Firm, the member would have been required to adopt special written procedures to supervise the telemarketing activities of its associated persons. Firms that were themselves Disciplined Firms also would have been required to adopt these procedures. The procedures would have required, at a minimum, that the employer member tape record all telephone conversations between all of its associated persons and both existing and potential customers, and maintain these procedures for two years. For each firm that was itself a Disciplined Firm, at the end of the two-year period, the NASD would have conducted an evaluation to determine whether, and for how long, the firm would continue to be subject to the requirements of the Rule. The Rule also would have required firms subject to the taping requirement to review the tapes periodically to ensure compliance with securities laws and NASD rules, to submit reports to the NASD on their supervision of telemarketing activities, and to retain and index the tapes.

Comments and Response

Comments on the proposed Rule were requested by October 31, 1996. Of the 42 comments received in response to the Notice to Members, 39 were opposed to the proposal, including those filed by the Securities Industry Association, Lehman Brothers, Merrill Lynch, Morgan Stanley, and Smith Barney.[8]

[3] Staffs of the NASD, New York Stock Exchange, North American Securities Administrators Association, and the Office of Compliance Inspections and Examinations, SEC, *Joint Regulatory Sales Practice Sweep: A Review of the Sales Practice Activities of Selected Registered Representatives and the Hiring, Retention, and Supervisory Practices of the Brokerage Firms Employing Them* (March 1996).

[4] *Id.* at I.

[5] *Id.* at II, iv.

[6] NASD Notice to Members 97–19 (April 1997); NYSE Information Memo 97–20 (April 15, 1997).

[7] *See* Letter from Lynn K. Gilbert, Deputy Director, Commodity Futures Trading Commission, to Daniel J. Roth, General Counsel, NFA (January 19, 1993).

[8] NASD Regulation received the following comment letters: (1) Letter from Brian C. Underwood, A.G. Edwards & Sons, Inc. ("Edwards"), dated October 31, 1996; (2) Letter from Kevin P. Howe, American Express Financial Advisors ("AEFA"), dated October 31, 1996; (3) Letter from G. Thomas Mitchell, Aurora Insurance and Securities, Inc. ("Aurora"), dated October 10, 1996; (4) Letter from Jerome Snyder, Barington Capital Group, L.P. ("Barington"), dated October 23, 1996; (5) Letter from Leslie D. Smith, Berthel Fisher Company ("Berthel"), dated October 25, 1996; (6) Letter from Walter I. Miller, Capital Growth Planning, Inc. ("Capital"), dated September 24, 1996; (7) Letter from Sanford D. Greenberg, Chatfield Dean & Co. ("Chatfield Dean"), dated October 31, 1996; (8) Letter from Neil Lawrence Lane, Citicorp Investment Services ("CIS"), dated October 31, 1996; (9) Letter from David J. Master, Coastal Securities ("Coastal"), dated October 31, 1996; (10) Letter from John Polanin, Jr., Cowen & Company ("Cowen"), dated November 7, 1996; (11) Letter from Richard L. Sandow, Cullum & Sandow Securities, Inc. ("Cullum"), dated October 17, 1996; (12) Letter from Gregg Thaler, Duke & Company, Inc. ("Duke I"), dated October 10, 1996; (13) Letter from William Rotholz, Duke & Company, Inc. ("Duke II"), dated October 29, 1996; (14) Letter from Shannon Braymen, Duncan-Smith Securities, Inc. ("Duncan-Smith"), dated October 22, 1996; (15) Letter from James H. Pyle et al., E.E. Powell & Company, Inc., dated October 21, 1996; (16) Letter from Nancy K. Port, Equity Services, Inc. ("ESI"), dated October 30, 1996; (17) Letter from Rick Fetterman, Fetterman Investments, Inc., dated October 1, 1996; (18) Letter from Herbert O. Sontz, GKN Securities ("GKN"), dated October 31, 1996; (19) Letter from Lawrence E. Wesneski, Hoak Breedlove Wesneski & Co. ("Hoak"), dated October 21, 1996; (20) Letter from Cabell B. Birdsong, Investors Security Company, Inc. ("ISC"), dated October 22, 1996; (21) Letter from David A. Rich, Jefferies & Company, Inc., dated November 8, 1996; (22) Letter from Thomas P. Koutris, John Hancock Distributors, Inc., dated September 23, 1996; (23) Letter from A.E. Monahan, Keystone Capital Corporation ("Keystone"), dated October 7, 1996; (24) Letter from Paul B. Uhlenhop, Lawrence, Kamin, Saunders & Uhlenhop ("Lawrence, Kamin"), dated October 29, 1996; (25) Letter from Kathryn S. Reimann, Lehman Brothers Inc. ("Lehman"), dated October 31, 1996; (26) Letter from Kenneth S. Spirer, Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), dated November 14, 1996; (27) Letter from Jack G. Levin, Montgomery Securities ("Montgomery"), dated January 16, 1997; (28) Letter from Frederick W. Bogdan, Morgan Stanley & Co., Incorporated ("Morgan Stanley"), dated October 30, 1996; (29) Letter from Dennis S. Kaminski, Mutual Service Corporation ("MSC"), dated October 29, 1996; (30) Letter from Richard Berenger, Nathan & Lewis Securities, Inc. ("Nathan & Lewis"), dated October 18, 1996; (31) Letter from Douglas L. Dunahay, Neidiger/Tucker/Bruner Inc. ("Neidiger"), dated October 29, 1996; (32) Letter from Edward T. Borer, Philadelphia Corporation ("PC"), dated October 17, 1996; (33) Letter from Michael Flannigan, Protective Group Securities Corporation ("PGSC"), dated September 24, 1996; (34) Letter from Robert A. Fitzner, Jr., RAF Financial Corporation ("RAF"), dated October 29, 1996; (35) Letter from Glen P. Hackmann, Robert W. Baird & Co., Incorporated ("Baird"), dated October 31, 1996; (36) Letter from Douglas F. Schofield, Schofield Investments, Inc., dated September 18, 1996; (37) Letter from Richard O. Scribner, Allen B. Holeman, and C. Evan Stewart, Securities Industry Association ("SIA"), dated November 4, 1996; (38) Letter from Dov S. Schecter, Smith Barney Inc. ("Smith Barney"), dated October 31, 1996; (39) Letter from Patrick G. Haayes, Stratton Oakmont, Inc. ("Stratton"), dated October 30, 1996; (40) Letter from Walter H. Schlobohm, dated February 10, 1997; (41) Letter from John Maceranka, The Windmill Group, Inc., dated September 28, 1996; and (42) Letter from Stanley J. Allen Jr., Yee, Desmond, Schroeder & Allen, Inc. ("Yee"), dated October 28, 1996.

Most of the commenters support what they see as NASD Regulation's objective in proposing the taping Rule and agree that something should be done to deter a firm from recruiting groups of registered persons of dubious ethics or training from a Disciplined Firm. They also agree that firms and registered persons who have engaged in sales practice abuses should be disciplined. However, they don't agree with the proposal contained in the Notice to Members and have raised a number of concerns. Many of the commenters object to the concept of taping as a regulatory requirement, and fear that requiring taping in the circumstances described in the proposed Rule is the beginning of a new regulatory regime that may require even more comprehensive taping.

The definition of Disciplined Firm is too broad: Many of the commenters believe the definition of Disciplined Firm in the original Rule was too broad because it did not take into account the nature of the event that led to the disciplinary problem.[9] For example, a firm could be included in the definition because of an injunction resulting from a technical or inadvertent violation of state law or as the result of a consensual injunction involving only a fraction of the firm's employees or business activities. One commenter believes that the definition should be limited to firms that have been permanently barred from the securities industry due to telemarketing or sales practice abuses.[10]

In response, the definition has been revised to include only firms that have been expelled from membership in a securities industry SRO or that have had their registration as a broker/dealer revoked by the SEC in connection with sales practice violations.

The Rule is too broad: Commenters believe the original Rule was too broad in several respects.[11] First, they believe that the Rule would unfairly punish firms and individuals with good disciplinary and compliance records for actions of others of which they have no knowledge and over which they have no control.[12] Second, they believe the Rule should apply only to persons who were employed by a Disciplined Firm at the time of the disciplinary event or within a specified time prior to the event.[13] Finally, commenters believe that the Rule should apply only to personnel who have sales contact with customers (*i.e.*, registered representatives) and that clerical and ministerial employees, who have no opportunity for sales practice abuse, should be excluded from both the 20% calculation and from the taping requirement.[14]

NASD Regulation has responded to these comments in two ways. First, the Rule has been revised to apply only to firms that hire a specified percentage of individuals who were employed at a Disciplined Firm within the last two years. Second, only registered persons, and not other employees, would be counted in determining whether the firm meets the percentage criterion for triggering the taping obligation. Third, only sales personnel would be subject to the taping requirement, since sales activities and contacts with customers or potential customers are the focus of this Rule. Thus, there is no reason to include back office personnel in either the percentage calculation or to require taping of their conversations.

The Rule does not achieve the stated purpose: The Notice to Members soliciting comment on the original proposal states that the purpose of the original proposed Rule is to respond to the Sweep Report recommendation that firms should adopt heightened supervisory procedures tailored to individual registered representatives with troubled regulatory and compliance records. Some of the commenters believe that the original Rule goes beyond the scope of the Sweep Report, and that it will not be effective in achieving the Sweep Report goal difficulties a firm would encounter when attempting to obtain the information that would be required to comply with the Rule.

NASD Regulation believes that the narrower focus of the Rule will result in lower compliance costs, at least for the industry as a whole. First, fewer firms will meet the criteria in the Rule and will be subject to the requirement, and costs, of tape recording conversations. Also, the Rule has been revised to utilize a tiered structure of determining whether a firm must comply with the Rule, with a higher permissible percentage of registered persons from Disciplined Firms being applied to smaller firms; this should result in a more equitable impact on small firms. Finally, with respect to the practical compliance difficulties raised by the Advisory Council, the NASD Regulation staff has spent a significant amount of time since the comment period closed in October responding to this issue and devising methods whereby NASD Regulation can reduce the difficulties and costs of compliance. As a result of

[9] *See, e.g.*, letters from Edwards, Coastal, Cullum, ESI, Keystone, Lehman, Montgomery, Morgan Stanley, and Baird.

[10] *See* letter from Smith, Barney.

[11] *See, e.g.*, letters from Edwards, Aurora, Barington, Chatfield Dean, CIS, Coastal, Cullum, Duke II, ESI, ISC, Lehman, Morgan Stanley, Nathan & Lewis, PC, PGSC, RAF, Baird, Smith Barney, SIA, and Stratton.

[12] *See, e.g.*, letters from Lehman and Morgan Stanley.

[13] *See, e.g.*, letters from Edwards, Morgan Stanley, Nathan & Lewis, PC, SIA, and Stratton.

[14] *See, e.g.*, letters from Edwards, Barington, Chatfield Dean, Cullum, Duke II, ESI, ISC, Morgan Stanley, Baird, and Stratton.

research, NASD Regulation staff believes that it can assist firms by providing them with all the relevant information they require to determine whether they are in compliance with the Rule. However, comment is specifically requested on the cost of compliance with the Rule.

Privacy concerns: Many commenters stated that the Rule would result in an invasion of the privacy of both a firm's customers as well as the firm's associated persons, which would be especially unfair both to firms and associated persons that do not have disciplinary histories. Commenters also believe that the Rule would conflict with federal and state wiretapping laws. Finally, they are concerned that the Rule does not restrict the accessibility and appropriate use of heightened supervision because taping is not an effective means to supervise sales personnel.[15]

In response, NASD Regulation believes that restricting application of the Rule to only the most egregious situations, *i.e.*, employees who formerly were employed at firms that were expelled from the industry, addresses some of these concerns. Also, NASD Regulation believes that the in terrorem effect of tape recording all telephone conversations may be useful in deterring sales practice abuses. In addition, NASD Regulation notes that the Rule is designed to go beyond the problems raised by hiring individual problem registered representatives and is meant to address the concerns raised when a firm hires a large number of individuals who formerly were employed by a Disciplined Firm where they were inadequately trained and supervised.

The costs of the Rule are too great: Some commenters believe that the costs of the original Rule will be too high, particularly considering the limited benefits that will be achieved. The commenters state that the costs for purchasing tape-recording equipment, hiring personnel to review the tapes, and record retention would be enormous.[16] Also, some commenters state that the Rule would have a disproportionate effect on small firms both in terms of the costs and because small firms are more likely to become subject to the 20% threshold.[17] Finally, while not discussed in a formal comment letter, the Advisory Council raised as an issue the practical effect of the tapes.[18]

As stated above, because the Rule has been revised to address only the most egregious situations, the impact on privacy will be minimized. Also, if the Rule is adopted, NASD Regulation will inform NASD members that, in complying with this Rule, they must also comply with federal and state civil and criminal statutes governing the tape recording of conversations. This is the same approach the NFA has taken with respect to this issue.[19]

Each state has a statute governing wiretapping; there also is a federal statute governing wiretapping and electronic surveillance.[20] The federal statute and the majority of the state statutes permit taping of telephone conversations with the consent of one party ("one-party statutes"); a minority of state statutes require the consent of all parties to the conversation ("two-party statutes"). Three issues arise from the proposed Rule: what is necessary to comply with one-party statutes; what is necessary to comply with two-party statutes; and how to comply where a conversation occurs between a person in a one-party state and a person in a two-party state.

In one-party statute states, the only issue is whether the registered representative knows of and consents to the tape recording. Since the recording requirement would run to the firm, and the equipment would be the firm's, it might be argued that the firm, and not the representative, is doing the recording. Therefore, it would be necessary for the firm to insure that the representative has notice and consents to the tape recording of his or her telephone conversations. This could be accomplished through a clause in an employment agreement or employee handbook or other written notice to the representative.

In two-party statute states, it would be necessary to insert on the firm's telephone line a recording stating that all telephone conversations are being taped, similar to customer service lines in other industries. Some states require a system of beeps or buzzers that sound throughout the conversation. Another possibility is to insert a clause into the customer agreement notifying customers that their calls will be tape recorded. Some states also have a "business use exception" to the two-party statute consent requirement, but it is worded and applied differently in each state.

The issue of choice of law for conversations between persons in one-party statute and two-party statute states is an open issue that depends on the individual laws of each state and the individual facts. Firms would be required to independently determine that state laws are satisfied. The safest course of action in each case would be to notify their representatives and customers that their telephone calls are being tape recorded. If all parties know of the tape recording, then there is no violation of any statute.

Proposed Rule

As revised, the proposed Rule would apply whenever a specified percentage of a member firm's sales force is comprised of registered persons who were employed within the last two years by a firm that has been expelled from membership in a securities industry SRO or has had its registration as a broker/dealer revoked by the SEC.[21] The requisite percentage varies depending on the size of the firm, from 40 percent for a small firm to 20 percent for a larger firm. The firm must establish the required supervisory procedures within 30 days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of the Rule.

Under the proposed Rule, if a significant portion of a member's sales force previously was employed by a Disciplined Firm, the member would be required to adopt special written procedures to supervise the telemarketing activities of its registered representatives. The procedures would require, at a minimum, that the member tape-record all telephone conversations between all of its registered representatives and both existing and potential customers, and maintain these procedures for two years. The Rule would require firms to ensure that they tape record all regularly used means of telecommunications, including cellular phones. The Rule also would require firms subject to the taping requirement to establish reasonable procedures for reviewing the tape recordings to ensure compliance with securities laws and NASD rules, to submit reports to the NASD on their supervision of telemarketing, and to retain and catalog the tapes.

While each firm will be responsible for meeting its own obligations under the Rule, NASD Regulation will provide firms with all of the information that they need to determine if they are subject to the requirements of the Rule. NASD Regulation believes that firms should be able to rely on the accuracy of the information provided to them, and that a firm should be disciplined for failure to comply with the Rule only if it has actual knowledge of information that would make the firm subject to the Rule that is inconsistent with information provided by NASD Regulation to the firm that indicated that the firm was not subject to the Rule.

NASD Regulation will compile and maintain several lists that firms will be able to review on a quarterly basis to assist them to determine if they are in compliance with the Rule. The primary list that will be prepared will be a list of firms that meet the definition of Disciplined Firm.[22] Two additional lists will be prepared that should be helpful. One list will contain an alphabetical listing of all registered persons who had worked for Disciplined Firms within the last two years. Another list will be complied containing the same list of people grouped according to the firm for which they currently work. In order to alert firms that they are approaching the percentage that would make them subject to the requirements of the Rule, the second list will contain a computation of the percentage of all registered persons at the firm represented by registered persons who had been employed at a Disciplined Firm within the last two years.

The Rule is thus very similar to an NFA interpretation concerning supervision of telemarketing activity.[23] NFA member firms subject to the requirements of the interpretation must tape record all sales solicitations.[24] The NFA interpretation applies to firms that meet criteria relating to the percentage of the firm's associated persons who formerly were employed at a firm that was closed down and barred from the industry through enforcement actions for deceptive telemarketing practices.[25] These firms are required by the NFA interpretation to tape record sales solicitations. An NFA member subject to these procedures may seek a waiver of the taping requirement upon a satisfactory showing that its current supervisory procedures provide effective supervision over its employees, including enabling the member to identify potential problem areas before customer abuse occurs. The NFA has rarely granted such waivers. In one instance, a waiver was granted to a firm that did not engage in telemarketing and had only institutional customers. In two other instances, partial waivers were granted to firms that hired outside consultants. NFA informed NASD Regulation that they were not satisfied with the work performed by the outside consultants and would not grant such waivers in the future.[26] In response to commenter requests, NASD Regulation has included a waiver provision in the proposed Rule, and also has proposed a conforming change to the Rule 9600 Series.[27]

Statutory Basis

NASD Regulation believes that the proposed Rule change is consistent with Section 15A(b)(6) of the Act,[28] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that requiring members that hire more than a certain percentage of registered representatives who formerly were employed by a Disciplined Firm will further these requirements.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed Rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed Rule change was published for comment in NASD Notice to Members 96–59 (September 1996). Forty-two comments were received in response to the Notice.[29]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission requests comments on all aspects of the proposal as well as the following specific items.

1. Should customers be notified by firms that their calls are being taped? Should firms be required to obtain their customers' written consent to be taped? Why or why not?

2. Should registered representatives subject to the Rule be notified by the firms that their calls are being taped? Why or why not?

3. In light of the information already available on the Central Registration Depository, is a list of all registered persons who have worked for a Disciplined Firm within the last two years necessary to ensure compliance with the Rule? Would such a publicly available list be used in other ways (for example, as a screening device for applicants for registered representative positions)?

The Commission also is soliciting comments concerning whether the Rule captures the appropriate registered persons in the percentage calculation that triggers the taping requirement. The Rule would apply whenever a specified percentage of a member firm is comprised of registered persons who were employed within the last two years by a firm that has been expelled from

---

[15] *See, e.g.*, letters from CIS, Duke II, ESI, Lehman, Merrill Lynch, MSC, Nathan & Lewis, and SIA.

[16] *See, e.g.*, letters from Berthel, CIS, Coastal, Duke II, ESI, GKN, Keystone, Lehman, Morgan Stanley, Nathan & Lewis, Baird, and Smith Barney.

[17] *See, e.g.*, letters from Capital, Cowen, Duncan-Smith, Hoak, SIA, and Yee.

[18] *See, e.g.*, letters from AEFA, Duke II, Lawrence, Kamin, Lehman, Morgan Stanley, MSC, Neidiger, Montgomery, SIA, and Smith Barney.

[19] *See* Interpretive Notice to NFA Compliance Rule 2–9, *Supervision of Telemarketing Activity*, 9021 (February 18, 1997).

[20] 18 U.S.C. §§ 2519 *et seq.*

[21] The revised definition of Disciplined Firm includes only expelled and revoked firms in order to focus, at least initially, on the most egregious cases with the greatest supervisory and disciplinary problems. This approach is similar to the one taken by the NFA, and will allow us to gain experience with the implementation of the Rule before we consider expanding the definition of Disciplined Firm to include firms that have been suspended from SRO membership or from SEC registration.

[22] For the two-year period 1995–1996, 14 firms met the definition of Disciplined Firm: 4 firms were expelled from SRO membership and 10 had their registration revoked.

[23] *See* Interpretive Notice to NFA Compliance Rule 2–9, *Supervision of Telemarketing Activity*, ¶ 9021 (February 18, 1997).

[24] NASDR states that no NFA member firm is currently taping sales solicitations. Due to recent changes to the NFA interpretation that were approved by the Commodity Futures Trading Commission in December, 1996, seven new firms became subject to the requirements of the interpretation, but all are in the process of seeking waivers from the taping requirement. If these firms do not obtain waivers from the NFA, or adjust their personnel numbers, they will be required to tape-record conversations.

[25] In early 1997, 44 firms met the NFA definition of Disciplined Firm. *See* Interpretive Notice to NFA Compliance Rule 2–9, *Supervision of Telemarketing Activity*, ¶ 9021 (February 18, 1997).

[26] Telephone conversation between Mary N. Revell, Associate General Counsel, NASD, and Daniel Driscoll, Vice President, Compliance, NASD (February 26, 1997).

[27] *See, e.g.*, letters from Edwards, Berington, Cullum, Duke I, Duke II, Duncan-Smith, GKN, Hoak, Morgan Stanley, Baird, and Montgomery.

[28] 15 U.S.C. § 78o–3(b)(6).

[29] *See* discussion *supra* Section II(A) Comments and Response.

membership in an SRO or has had its registration as a broker-dealer revoked by the SEC. The requisite percentage varies from 40 to 20 percent, depending on the size of the firm.

4. As proposed, the Rule captures registered persons who have worked at a Disciplined Firm within the past two years. Is the proposed time frame appropriate?

5. Should the percentage of registered persons counted in the calculation exclude registered persons who have worked at a Disciplined Firm within the past two years, but who themselves have no disciplinary history or customer complaints?

6. Should the percentage of registered persons counted in the calculation include registered persons who may not have worked at a Disciplined Firm, but who have, as individuals, been barred by the Commission from association with any broker, dealer, investment adviser, investment company, or municipal securities dealer?

7. Should firms with fewer than five registered persons be excepted from the Rule?

8. As proposed, the Rule limits the taping requirement to registered representatives in conversation with existing or potential customers. Should the taping requirement apply to registered principals in conversation with existing or potential customers? Should it apply to any other associated person of a member firm?

9. What are the estimated costs to comply with the Rule? Please comment generally on the benefits and costs of the Rule, as well as ways to reduce the costs while preserving the benefits of the Rule.

Persons making written submissions should file six copies thereof with Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should File No. SR–NASD–97–69 in the caption above and should be submitted by December 29, 1997.

For the Commission, by the Division of the Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31846 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39371; File No. SR–NASD–97–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Punitive Damages in Arbitration

November 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 8, 1997,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend the NASD's Code of Arbitration Procedure to add a new rule relating to the award of punitive damages. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Rules of the Association

10000. Code of Arbitration Procedure

10300. Uniform Code of Arbitration

10336. Punitive Damages

This Rule explains when a party may seek punitive damages, what standards and limitations apply to the claim, and what the arbitration award must state.

(a) The Availability of Punitive Damages

(1) This Rule applies to any claim that must be arbitrated under Rule 10301 between a public customer and a member, or between a public customer and an associated person.

(2) A party may request punitive damages if, at the time the party files a claim, the party is a citizen of a state that allows its courts to award punitive damages for the same type of claim.

(3) A member or an associated person may request punitive damages from a public customer only if the public customer is a citizen of a state that allows its courts to award punitive damages for one or more of the public customer's claims.

(4) A party seeking punitive damages must state the amount in its claim.

(5) For purposes of this Rule, the term "claim" means any dispute or controversy described in the Statement of Claim (including Counterclaims, Third-Party Claims, and Cross-Claims) for which the claimant is seeking any form of remedy.

(b) Arbitrators to Apply State Standard

(1) When arbitrators decide whether to award punitive damages, they will apply the same standard of conduct applied by courts in the state where the requesting party is a citizen at the time a claim is filed.

(2) Arbitrators will apply this standard even if the parties signed a choice of law agreement that specifies a different state.

(c) Limitations on the Amount and Availability of Punitive Damages

(1) Punitive damages may be awarded in an amount up to two times compensatory damages or $750,000, whichever is less.

(2) For purposes of this paragraph only, compensatory damages do not include attorneys' fees, costs of arbitration, or post-award interest.

(3) Arbitrators cannot award punitive damages if they have already awarded multiple damages for the same claim under:

(A) the Racketeer Influenced and Corrupt Organizations Act (RICO), or

(B) any other federal or state statute that provides for multiple damages awards.

(4) The limitations in this Rule apply even if state laws differ.

(d) Statement in Award

If the arbitrators award compensatory and punitive damages, they must state separately the amount they awarded for each.

---

[30] 17 CFR 200.30–3(a)(12).

[1] The NASD filed Amendment Nos. 1 and 2 to the proposed rule filing on October 17, 1997 and November 14, 1997, respectively, the substance of which is incorporated into the notice. *See* letters from Joan C. Conley, Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated October 17, 1997 ("Amendment No. 1") and November 14, 1997 ("Amendment No. 2") respectively.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In January 1996, the NASD's Arbitration Policy Task Force ("Task Force")[2] released its report on Securities Arbitration Reform. The Task Force Report made numerous recommendations to improve the arbitration process. Since the Report was released, NASD Regulation has been engaged in a major effort to implement the Task Force recommendations.

The proposed rule change relates to the Task Force recommendations concerning the availability of punitive damages in securities arbitration. In brief, the Task Force recommended that punitive damages remain available in NASD arbitration, subject to a cap. The Task Force's recommendations are described in more detail below.

Summary of Proposed Rule Change

The proposed rule change would apply only to arbitration disputes between public customers and member firms (or their associated persons).[3] The proposed rule change would allow a customer to seek punitive damages in arbitration if the state of which he or she is a citizen would allow punitive damages for the same type of claim in court. In deciding whether an award of punitive damages is warranted, the arbitration panel will look to the standard of conduct for the award of punitive damages applied in the state of which the party requesting punitive damages is a citizen at the time the claim is filed. That state's law is to be applied without regard to any contrary choice-of-law provision contained in the parties' agreement. The proposed rule requires a party requesting an award of punitive damages to specify in the claim the amount of punitive damages requested, and provides that punitive damages may be awarded in an amount up to two times compensatory damages or $750,000, whichever is less.

Background

Damages are defined as pecuniary compensation that may be recovered by any person who has suffered loss, detriment, or injury to his person, property, or rights through the unlawful act, omission, or negligence of another.[4] Damages may be compensatory or punitive, according to whether they are awarded (1) as compensation, indemnity, or restitution for harm sustained by a party (compensatory);[5] or (2) as other damages awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future (punitive).[6] Punitive damages usually are awarded only if compensatory damages have been sustained.[7]

For many years, courts and legal scholars debated whether punitive damages should be available in arbitration proceedings. In 1992, the Securities Industry Conference on Arbitration ("SICA")[8] approved an amendment to the Uniform Code of Arbitration which provided that arbitrators may grant any remedy or relief that they deem just and equitable and that would have been available in a court with jurisdiction over the same dispute. This provision has not been adopted by any SRO.[9] As noted, as in 1994, the NASD formed the Task Force to study the securities arbitration process administered by the NASD and to make suggestions for reform. The NASD has followed the Task Force's recommendations, described below, in developing the proposed rule.

In 1995, the Supreme Court addressed the availability of punitive damages in securities arbitration in a case involving the NASD's arbitration forum. *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*[10] The *Mastrobuono* case involved a brokerage firm's client agreement that contained a New York "choice-of-law" provision and a provision requiring any controversy arising out of the parties' transactions to be arbitrated according to the rules of the NASD or the NYSE.[11] The choice-of-law provision required that disputes be decided according to New York law, which allowed courts, but not arbitrators, to award punitive damages.[12] With regard to the arbitration provision, the Court examined the NASD's rules, because the parties had elected to proceed in arbitration at the NASD.[13] The Court cited an NASD rule providing that arbitrators may award "damages and other relief,"[14] and determined this language to be broad enough to include punitive damages.[15] In addition, the Court observed that the Arbitrator's Manual provided to NASD arbitrators stated that "arbitrators can consider punitive damages as a remedy."[16] The Court concluded that the choice-of-law provision introduced an ambiguity into an agreement that would otherwise allow punitive damages awards. The Court construed the ambiguity against the brokerage firm that drafted the agreement, thus enforcing the award of

---

[2] The NASD formed the Arbitration Policy Task Force in September 1994 for the purposes of studying the securities arbitration process administered by the NASD and of making suggestions for reform. The Task Force, chaired by David S. Ruder, former Chairman of the SEC, delivered its Report to the NASD Board in January 1996.

[3] The proposed rule change does not apply to industry and clearing controversies that may be arbitrated pursuant to the Rule 10200 Series, such as disputes between or among member firms, associated persons, and other industry parties. The NASD will address punitive damages for these disputes in a separate filing.

[4] *Black's Law Dictionary* 389 (6th ed. 1990).

[5] *Restatement (Second) of Torts* § 903 (1979). The word "damages" is used in the Restatement of Torts in the same sense in which it is used in the Restatement of Contracts. *See id.* § 902 cmt. a (1979).

[6] *Restatement (Second) of Torts* § 908 (1979). "In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant." *Id.*

[7] *See Restatement (Second) of Torts* § 908 cmt. c (1979) and cases cited therein. Some courts allow recovery of punitive damages when only nominal damages have been awarded. *Id.*

[8] SICA is a group composed of representatives of the self-regulatory organizations ("SROs") that provide arbitration forums, public investors, and the securities industry. Staff of the SEC attend as non-voting invitees. Currently, there are ten SRO representatives, three public investor representatives, and one representative from the securities industry.

[9] In 1994, the New York Stock Exchange ("NYSE") held a symposium on issues significant in securities arbitration, including punitive damages. *Symposium: New York Stock Exchange, Inc. Symposium on Arbitration in the Securities Industry*, 63 Fordham L. Rev. 1495 (1995).

[10] 514 U.S. 52, 131 L. Ed. 2d 76, 115 S. Ct. 1212 (1995).

[11] 514 U.S. at 58–59.

[12] *See Garrity* versus *Lyle Stuart, Inc.*, 353 N.E.2d 793 (1976). Since *Mastrobuono* was decided, a New York appellate court has held that, with respect to arbitrations governed by the Federal Arbitration Act, which preempts the *Garrity* rule, the arbitration of punitive damages claims is required unless the parties have unequivocally agreed otherwise. *Mulder* versus *Donaldson, Lufkin & Jenrette*, 648 N.Y.S.2d 535 (1996).

[13] 514 U.S. at 60–61.

[14] This is currently Rule 10330(e).

[15] 514 U.S. at 61.

[16] *Id.* The Arbitrator's Manual was compiled by members of SICA to explain the Uniform Code of Arbitration.

punitive damages to the customers.[17] The *Mastrobuono* decision left open the possibility that a more clearly drafted agreement might permit, exclude, or limit punitive damages.[18]

Trends in State and Federal Law

In the past few years, the United States Congress and several state legislatures have acted to place limits on the amount of punitive damages that may be recovered in court proceedings. Although many of these new laws relate to causes of action that would not normally be alleged in securities arbitrations, such as personal injury and product liability, the number of statutes restricting the award of punitive damages is an indication of growing legislative concern. Some examples of state and federal laws are provided below.

A review of NASD arbitration records indicates that about half of all claimants in the past three years have been residents of California, New York, Florida, New Jersey, Texas, Illinois, or Michigan; over 40% of all claimants lived in the first three listed states.[19] State laws are constantly evolving; however, it appears that all seven of the above states allow for the award of punitive damages for some types of tort actions;[20] five states have some statutory limitations on punitive damages;[21] and two states have no statutory limit on the amount that may be awarded, although case law allows the trial or appellate courts to reduce the amount awarded by the trier of fact.[22] Two states provide for payment of a share of the award to the state in certain circumstances.[23] In some of the states, punitive damages requests must be separately pleaded or tried, or are otherwise subject to special procedures to avoid prejudice to the defendant.[24] As noted earlier, many of the state statutes described above relate to claims that one would not expect to find in securities arbitrations.

At the federal level, Congress has acted to provide for punitive damages in two specific areas, while at the same time placing limits on the amounts that may be recovered.[25]

[17] 514 U.S. at 62.

[18] Under the NASD's rules, however, parties are not allowed to include in their arbitration agreements "any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award." Rule 3110(f)(4). This rule was not at issue in *Mastrobuono* because the Mastrobuonos' contract was executed prior to the effective date of the rule. 514 U.S. at 61 n.6. The NASD intends to amend Rule 3110(f) to be consistent with the proposed rule change.

[19] This informal survey of claims filed in 1994, 1995, and 1996 counted the number of separate claimants from each state; there could have been several claimants in one case. It also considered each claimant's mailing address, which may or may not have been the claimant's domicile for legal purposes. In about 2% of cases, only the address of the claimant's attorney was provided; these addresses were omitted from the survey. Furthermore, the survey did not differentiate between types of claimants, so it includes member firms and associated persons who were claimants in industry disputes. Therefore, these figures are only approximate.

[20] *California*, Cal. Civ. Code § 3294 (West Supp. 1996) (punitive damages are available for "breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. * * *"); New York, *see, e.g., Kelly* v. *Defoe*, 636 N.Y.S. 2d 123 (N.Y. App. Div. 1996) (holding that punitive damages are available under case law for certain tort actions, but are not generally awarded to redress private wrongs); Florida, Fla. Stat. Ann. § 768.73(1)(a) (1996) (punitive damages are allowed in civil actions based on negligence, strict liability, products liability, misconduct in commercial transactions, professional liability, or breach of warranty, and involving willful, wanton, or gross misconduct); New Jersey, N.J. Stat. § 2A:15–5.12 (West Supp. 1996) (punitive damages are awarded "if the plaintiff proves, by clear and convincing evidence, that the harm suffered was (caused) by actual malice or accompanied by wanton and willful disregard. * * *"); Texas, Tex. Civ. Prac. & Rem. Code §§ 41.002, 41.003 (1997) (punitive damages are generally allowed, unless excluded by statute, upon a finding of fraud or malice, and must be proven by clear and convincing evidence); Illinois, 735 Ill. Comp. Stat. Ann. 5/2–1115.05(b) (1997) (punitive damages are available for certain tort actions involving injury to person or property where it is proven "by clear and convincing evidence that the defendant's conduct was with evil motive or with a reckless and outrageous indifference to a highly unreasonable risk of harm and with a conscious indifference to the rights and safety of others"), *see, e.g., Siegel* v. *Levy Org. Dev. Co.*, 607 N.E. 2d 194, 200 (Ill. 1992) ("If a plaintiff can demonstrate gross deception or willful and wanton misconduct, the determination as to whether plaintiff is entitled to exemplary damages lies with the trier of fact."); Michigan, *see, e.g., Veselenak* v. *Smith*, 327 N.W.2d 261 (Mich. 1982) (exemplary damages are awardable where the defendant commits a voluntary act that inspires feelings of humiliation, outrage, and indignity, and where the conduct was malicious or so willful and wanton as to demonstrate a reckless disregard of the plaintiff's rights); punitive damages are also available in Michigan under specific statutes for causes of action inapplicable in securities arbitration. *See infra* note 22.

[21] In Florida, punitive damages may be awarded in an amount up to three times compensatory damages in certain civil actions involving willful, wanton, or gross misconduct. Fla. Stat. Ann. § 768.73(1)(a) (1996). Florida law requires, however, that 35% of the punitive damages award be payable to the state or a medical trust fund. *See id.* § 768.73(2)(b). This effectively reduces the amount payable to the winning party to less than two times compensatory damages. In New Jersey, the cap on punitive damages is five times the compensatory damages or $350,000, whichever is greater. N.J. Rev. Stat. § 2A:15–5.14(b) (1996) (certain causes of action are exempted from the cap). In Texas, the cap on punitive damages is the greater of two times "economic" damages plus one times non-economic damages up to $750,000, or $200,000. Tex. Civ. Prac. & Rem. Code § 41.008 (1997). For purposes of this provision, economic damages are defined as "compensatory damages for pecuniary loss" and excludes damages for "physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society." *See id.* § 41.001. In Illinois, punitive damages are available for physical injury or property damage in an amount up to three times economic damages, 735 Ill. Comp. Stat. Ann. 5/2–1115.05(a) (1997) (as noted below, the court may apportion this amount among the plaintiff, the attorney, and a state agency). In Michigan, there is a cap for flagrant or repeated wage law violations of two times wages and benefits due, Mich. Stat. Ann. § 17.277(18) (Law. Co-op. 1996), and a treble damages provision for violations of the funds transfer facilities law resulting in injury to business or property. *See id.* § 23.1137(28).

[22] The two states with no specific cap on punitive damages are California, Cal. Civ. Code § 3294 (West Supp. 1996), and New York. In California, however, courts requires a "reasonable relationship" between actual and punitive damages. *Torres* v. *Automobile Club of Southern California*, 15 Cal. 4th 771, 781, 937 P. 2d 290 (Ca. 1997). *See infra* note 38. In addition, Michigan courts have held that the purpose of exemplary damages is not to punish the defendant, but to render the plaintiff whole; therefore, when compensatory damages can make the injured party whole, exemplary damages must not be awarded. *See, e.g., Jackson Printing Co.* v. *Teresa*, 425 N.W.2d 791, 794 (Mich. Ct. App. 1988) (citations omitted).

[23] In Florida, 35% of the award is payable to the state's General Revenue Fund. Fla. Stat Ann § 768.73(2)(b) (1996). In cases of injury or death, 35% is paid to a medical fund instead. In Illinois, for cases involving physical injury, the court may apportion the award among the plaintiff, the plaintiff's attorney, and the Illinois Department of Rehabilitation Services. 735 Ill. Comp.Stat. Ann. 5/2–1207 (1997).

[24] California's Civil Code prohibits claims for punitive damages from stating the amount sought, Cal. Civ. Code § 3295(c) (West Supp. 1996), and provides that a court "shall, on application of any defendant, preclude the admission of evidence of that defendant's profits or financial condition until after the trier of fact returns a verdict for plaintiff awarding actual damages and finds that a defendant is guilty of malice, oppression, or fraud in accordance with Section 3294." *See id.* § 3295(d). These restrictions safeguard defendants by ensuring that they are not coerced into settlements to avoid unwarranted intrusions into their private financial affairs, and by minimizing potential prejudice to them in front of a jury. *Torres* v. *Automobile Club of Southern California*, 15 Cal. 4th 771, 777, 937 P. 2d 290 (Ca. 1997). In Florida, the Supreme Court has recently issued revised Standard Jury Instructions—Civil Cases for use in bifurcated proceedings in which, during the second stage of the proceeding, evidence is presented and argued that will allow the jury to determine the amount of punitive damages, if any, that should be awarded. 689 So. 2d 1042; 1997 Fla. LEXIS 22 (February 13, 1997). In New Jersey, punitive damages must be specifically "prayed for" in the complaint. N.J. Stat Ann. § 2A:15–5.11 (West Supp. 1996). In cases involving a punitive damages claim, the defendant may seek a bifurcated trial. *See id.* § 2A:15–5.13(a). A Michigan statute provides that punitive damages may not be recovered in libel actions unless the plaintiff has first given the defendant notice and an opportunity to publish a retraction. Mich. Stat. Ann. § 27A.2911(2)(b) (Law. Co-op. 1996).

[25] In the Civil Rights Act Amendments of 1991 (P.L. 102–166), Congress agreed to a compromise in which compensatory and punitive damages became available for violations of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973, conditioned on the right to a jury trial on the underlying claim, proof of intentional discrimination (as opposed to disparate impact), a finding (for the award of punitive damages) that the employer acted with "malice or with reckless indifference to the federally protected rights of an aggrieved individual," and a cap of $50,000 to $300,000 for combined compensatory and punitive damages, depending on the number of persons employed by the defendant. 42 U.S.C. § 1981a. In the Futures Trading Practices Act of 1992, Congress provided for the award of punitive damages in the amount of two times actual damages for certain violations of the future trading laws. Under that Act, punitive damages are only available for certain claimants who prove a "willful and intentional" violation in the execution of an order on the floor of a contract market. 7 U.S.C. § 25(a)(3).

Task Force Report

In its Report, the Task Force noted that the subject of punitive damages has generated widespread controversy and polarization between the investor and broker/dealer communities.[26] The Task Force observed that about 50% of all new arbitration claims include a claim for punitive damages, although punitive damages are awarded in only about 1% of cases. The Task Force Report expressed the opinion that the existence of a punitive damages claim can lead to more adversarial litigation, as respondents use every available tactic to defend themselves against a potentially enormous award. The Task Force Report also noted the views of some claimants' lawyers that it could be considered malpractice for them to omit punitive damages claims. After interviewing many interested groups and individuals, and after numerous discussions, the Task Force recommended that:

- punitive damages remain available in NASD arbitration, subject to a cap;
- the cap on punitive damages be the lesser of two times compensatory damages or $750,000;
- damages under the Racketeer Influenced and Corrupt Organizations Act ("RICO")[27] and punitive damages not be awarded for the same claim;
- punitive damages be available to an investor where they would be available in court for the same types of claims, in the state where the investor is domiciled;
- the standard of conduct justifying the award of punitive damages be based on state law where the investor is domiciled;
- the award specify the amount given for compensatory damages and the amount given for punitive damages; and
- where requested by the party against whom the award is rendered, the award describe the conduct giving rise to the award.[28]

The Task Force noted that the cap on punitive damages finds support by analogy to recently enacted state and federal statutes imposing limitations on punitive damages.[29] The Task Force recommended further that any predispute arbitration agreement between the parties expressly provide for the award of punitive damages (subject to their availability for the same types of claims in state court), refer to the relevant NASD Rule, and provide that the parties' agreement to permit punitive damages in arbitration preempts any state arbitration law to the contrary.[30] The Task Force's research indicated that this type of agreement would comport with existing law under the Federal Arbitration Act ("FAA"),[31] which has been held to preempt conflicting state law.[32]

Positions of Interested Organizations

In order to carry out the recommendations of the Task Force, NASD Regulation considered the views of various organizations and reviewed relevant federal and state law. In particular, NASD Regulation considered letters from and conversations with representatives of the Public Investors Arbitration Bar Association ("PIABA"), SICA, and the Securities Industry Association ("SIA").

Attorneys and groups representing investors argued that arbitration should afford the same types of relief as would be available in court, including punitive damages. These groups contended that, since virtually all firm agreements with their customers contain a clause mandating arbitration of disputes arising under the agreement, customers are unable to take their claims to court but must proceed in arbitration. Such groups generally oppose any limitation on punitive damages, such as ceilings on the amount that may be awarded, or ratios of punitive damages to compensatory damages. For example, PIABA expressed the initial opinion that there should be no cap on punitive damages, as such damages provide a "significant and important curb on customer abuse."[33]

Public members of SICA, *i.e.*, those not affiliated with the securities industry or with the SROs, sent a letter to the Chairman of the NASD shortly before the NASD Board of Governors met to consider the proposed rule change.[34] In the letter, the public members stated their view that the proposed punitive damages rule would result in an arbitrary limitation of arbitrators' authority to award punitive damages, and would conflict with an NASD rule prohibiting arbitration agreements from containing limitations on arbitrators' authority. The public members also expressed the opinion that the issue should be returned to SICA for development of an acceptable resolution.

Representatives of the broker-dealer community, however, recommended limiting or prohibiting the award of punitive damages in arbitration. The SIA expressed the views that: (i) Arbitration claimants do not have an absolute right to punitive damages; rather, punitive damages are purely discretionary on the part of the jury or arbitrator in order to punish a person for conduct that is outrageous to society as a whole; (ii) punitive damages were devised to serve the purposes of punishment and deterrence, but, in the securities industry, state and federal regulators already have a broad arsenal of weapons to use against wrongdoers; (iii) arbitration does not offer the due process safeguards that are available in court; for example, the rules of evidence do not apply in arbitration; there are no set standards of proof, such as preponderance of the evidence, clear and convincing evidence, or reasonable doubt; and there is no right to appeal the award except on very narrow grounds; (iv) arbitration cases are difficult to settle due to the threat of punitive damages; because claimants hope for larger awards in arbitration through an award of punitive damages, they are less willing to settle cases at what firms consider a "reasonable" amount; and (v) the chief advantage of arbitration, its relatively speedy resolution of a dispute by ordinary individuals using notions of simple justice, will be lost as the process becomes more complex and more like the court system.

The SIA stated that its Board had recommended that the cap be reduced to $250,000 or one times compensatory damages, whichever is less.[35] The SIA noted that $750,000 is greater than the total net capital of half of the member firms of the SIA and of an additional several thousand firms that are members of the NASD. The SIA contended that, since arbitration awards are very difficult to appeal, there should be reasonable restraints on punitive damages to avoid endangering the viability of the vast majority of NASD members.

[26] *See* Task Force Report at 35 *et seq.*

[27] 18 U.S.C. 1961 *et seq.*

[28] *See* Task Report at 40–46.

[29] *Id.* at 43.

[30] The Task Force's recommendations concerning the contents of predispute arbitration agreements are under consideration by NASD Regulation.

[31] 9 U.S.C. 1 *et seq.* (Supp. 1997).

[32] *See, e.g., Allied-Bruce Terminix Cos., Inc.* v. *Dobson*, 513 U.S. 265, 130 L. Ed. 2d 753, 115 S. Ct. 834 (1995).

[33] Letter from L. Jerome Stanley, 1995–96 PIABA President, to Deborah Masucci, Vice President and Director of Arbitration (March 15, 1996).

[34] Letter from SICA Public Members to Daniel P. Tully (December 9, 1996).

[35] Letter from A.B. Krongard, SIA Chairman, to Mary Alice Brophy, Chairman, NASD Regulation (June 7, 1996).

Other suggestions made by the SIA were that the term "compensatory damages" be defined as "out-of-pocket losses," based upon the difference in price between purchases and sales of the investment (or current value, if still held); that the term "exemplary damages" be used instead of "punitive damages"; that a uniform national standard of conduct be used to determine when punitive damages are appropriate; that the rule specify that exemplary damages may be awarded "up to" the stated cap, to clarify that the cap is not an automatic amount; that the applicable state law to determine whether punitive damages are available be that of the investor's domicile at the time the transaction occurred; and that the award of punitive damages be considered in a separate proceeding from the rest of the case (a process often referred to as "bifurcation").

Purpose of Proposed Rule Change

During the past several years, interested parties have been unable to reach a consensus on punitive damages, and NASD Regulation believes that it must take action at this time to implement a punitive damages rule. After reviewing the positions of various interested groups, NASD Regulation adopted an amendment to the code of Arbitration Procedure that generally follows the Task Force recommendations, with minor changes considered appropriate. NASD Regulations believes that the proposed rule change best effectuates the interests of providing a forum to investors that provides appropriate relief while limiting the potential for awards that are disproportionate based on the claims alleged.

NASD Regulation recognizes that it is not appropriate or feasible to eliminate the availability of punitive damages in arbitration so long as public customers are required by most member firms to sign predispute arbitration agreements. At the same time, NASD Regulation realizes that some of the safeguards against excessive punitive damages awards that may be available to defendants in court are not available in arbitration, such as special pleading requirements for requests of punitive damages,[36] separate hearings for the liability and damages phases of the case,[37] post-trial review of the award by a judge,[38] and judicial appeals on the merits of the decision rather than on the narrower grounds for overturning an arbitration award.[39] Therefore, NASD Regulation believes it has balanced these considerations fairly in endorsing the recommendation of the Task Force that a cap on punitive damages is necessary and appropriate if punitive damages are to be permitted in the NASD Regulation forum.

The cap on punitive damages of the lesser of two times compensatory damages or $750,000 is believed to be appropriate in an industry that is already subject to extensive regulatory oversight. As discussed above, the $750,000 amount is larger than the net capital requirement of many NASD member firms.[40] Therefore, a cap of $750,000 provides a significant deterrent to egregious behavior, since it could threaten a firm's continued operations. Considering the fact that arbitration by its nature is more informal than a court proceeding, with relaxed rules of evidence and procedure, and the fact that arbitration awards may be modified or vacated only on very narrow grounds, NASD Regulation believes that the limitation on the amount of punitive damages is reasonable.

Description of Proposed Rule Change

The proposed rule has been drafted using the "plain English" principles of written communication that the Commission has encouraged. NASD Regulation believes the proposed rule will be easier for all arbitration participants to understand, most notably participants who represent themselves (*pro se* parties). Unlike the NASD's Membership and Conduct Rules, which are mainly referred to and applied by member firms, their compliance officers, and their attorneys, the Code of Arbitration Procedure is often used by *pro se* parties who are not attorneys and who are usually coming into contact with the dispute resolution process for the first time.[41] In such circumstances, plain English rules are particularly important. In conformity with plain English principles, the term "arbitrators" has been used instead of "arbitration panel" in the proposed rule change. This usage is not meant to imply that the proposed rule change applies only to cases heard by more than one arbitrator; rather, it applies to any arbitration panel, which may be composed of one or more arbitrators.

Proposed new Rule 10336 provides in paragraph (a)(1) that it applies only to disputes between a public customer and a member or between a public customer and an associated person. Therefore, the proposed rule will not apply to disputes between or among members and associated person ("industry disputes").[42]

Proposed paragraph (a)(2) states that a party may request an award of punitive damages if a court (not an arbitration panel) of the state of which that party is a citizen, at the time the claim is filed, could award punitive damages for the same type of claim.[43] A party seeking punitive damages may, either at the party's option or at the request of the arbitrators, brief the applicable state law in order to demonstrate to the arbitrators that his or her state does allow the award of punitive damages in its courts for the same type of claim. Thus, the party's citizenship at the time of filing, rather than at the time of the underlying transaction(s), determines the applicable state law. This facet of the proposed rule follows the Task Force's recommendation rather than the SIA's suggestion. NASD Regulation believes this provision will be considerably easier to administer, especially where several transactions or events take place over a long period of time, during which time the party seeking punitive damages could have moved one or more times.

Proposed paragraph (a)(3) was added to address the situation in which an investor lives in a state that does not allow the recovery of punitive damages for the investor's claims. In that situation, the rule would prevent a member firm (or associated person) which is a citizen of a state that permits punitive damages from seeking punitive damages against the investor. If the investor has several claims and is able to request punitive damages for any one of them, then the member or associated person may also request punitive damages as allowed under relevant state law.

Proposed paragraph (a)(4) requires a party requesting an award of punitive damages to specify in its claim the amount of punitive damages it is requesting. Specification is required because the amount of the claim determines the size of the arbitration panel appointed, the member surcharge, the claimant's filing fees, and the hearing session fees.

Proposed paragraph (a)(5) defines the term "claim" for purposes of the proposed rule as including any dispute or controversy described in a Statement of Claim (including Counterclaims, Third-Party Claims, and Cross-Claims) for which the claimant is seeking any form of remedy, in order to reduce the verbiage needed each time the term "claim" is used.

Proposed paragraph (b)(1) provides that the standard of conduct to be applied is that of the state of which the party requesting punitive damages is a citizen at the time the claim is filed. This follows the Task Force recommendation and conforms to paragraph (a)(2) in looking to state law to determine what conduct justifies an award of punitive damages.

Proposed paragraph (b)(2) specifies that the standard of paragraph (b)(1) applies regardless of any choice-of-law provision in the parties' predispute arbitration agreement. This provision is intended to avoid the situation in which a member firm inserts a choice-of-law clause in its customer agreements that specifies use of the law of a state that does not allow, or that strictly limits, the award of punitive damages in arbitration. Often that state is the one in which the member firm is headquartered, but it may not be the state in which the customer lives or in which the customer did business with the member firm. The NASD believes it is fairer to apply the law of the state in which the customer is a citizen at the time the claim is filed, rather than to apply the law of a state specified in a choice-of-law provision that the customer may not have noticed or understood when opening an account some months or years earlier. Paragraph (b)(2) applies only to the availability of punitive damages, and not to the substantive claims, which would still be subject to applicable choice-of-law and conflicts of law principles to the extent not inconsistent with other NASD rules.

Proposed paragraph (c) sets out the limitations discussed earlier, stating in (c)(1) that punitive damages may be awarded in an amount up to two times compensatory damages or $750,000, whichever is less. The use of the phrase "up to" makes clear that the limitation is not a standard amount to be awarded in every case. The amount of the cap is the same as contained in the Task Force's recommendation.

The Task Force intentionally did not define compensatory damages, leaving it to the discretion of the arbitrators. This choice reflected the fact that there are different theories of loss for compensatory damages, such as out-of-pocket loss or lost opportunity costs, that may be appropriate in different circumstances. The proposed rule deviates only in a minor respect from this recommendation. The definition of compensatory damages set out in proposed paragraph (c)(2) excludes attorneys' fees, other costs of arbitration, and post-award interest. Such amounts may continue to be awarded, but simply are not considered for purposes of the formula in paragraph (c)(1) for punitive damages. Arbitrators, however, may include pre-award interest in compensatory damages for purposes of paragraph (c)(1) if they have awarded such interest.

Proposed paragraph (c)(3) makes clear that punitive damages are not to be awarded in addition to the multiple damages allowed by RICO or other similar statutes for the same claim.[44] This recommendation is in accordance with the Task Force's recommendation that arbitrators be precluded from awarding both RICO damages and punitive damages for the same claim. The term "multiple" was used instead of "treble" to be more comprehensive, since there may be state and federal statutes that provide for automatic doubling, tripling, or other multiples of compensatory damages. For purposes of the proposed rule, a statute providing for punitive damages in an amount equal to (one times) compensatory damages would not be considered to be "multiple." Likewise, a statute providing for punitive damages in an amount "up to" a certain multiple of compensatory damage would not be considered to be "multiple" for purposes of paragraph (c)(3) because the actual amount of punitive damages is discretionary rather than automatic. In the latter two cases, the amount of punitive damages would be subject to the cap in the NASD rule.

Proposed paragraph (c)(4) states that the limitations of paragraph (c) supersede any applicable state law on the size of punitive damage awards. This may result in a higher or lower award of punitive damages in arbitration than would be available under state law. As noted above, NASD Regulation believes this result is fair, in that it provides uniform remedies for claimants in different states (if there state allows punitive damages), as well as a consistent limit of liability for member firms with offices in several states. In addition, the disciplinary processes of NASD Regulation (as well as of the SEC, the state securities regulators, and federal and state criminal authorities) remain available to customers who feel they have been wrongly treated by their broker-dealers.

Finally, proposed paragraph (d) requires the arbitrators to set forth separately in their award the amounts awarded for compensatory and punitive damages. This requirement is in accordance with the Task Force's recommendation and not opposed by the SIA and PIABA. The paragraph does not require arbitrators to describe the facts and conduct upon which the award of punitive damages was based, or to set forth their reasons for not awarding punitive damages. The Task Force had recommended that, where requested by the party against whom the award is rendered, the arbitrators should describe the conduct giving rise to the award. NASD Regulation believes such explanations could slow the completion of the arbitration. They also would create uncertainly as to the date of the award for appeal purposes. However, parties will continue to be allowed to request an opinion of the arbitrators as described in the Arbitration Procedures booklet compiled by SICA and distribution to all public customer claimants. Under this practice, a party must make any such request no later than the date of the hearing, and the arbitration panel

[36] *See supra* note 24.

[37] *See supra* note 24.

[38] *See, e.g., Brewer* v. *Second Baptist Church*, 197 P. 2d 713 (Cal. 1948) (if a jury awards excessive exemplary damages, there is an adequate remedy by way of an appropriate motion before the trial court or by appeal).

[39] Under the Federal Arbitration Act, for example, arbitration awards may be vacated on the following grounds: (1) Where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. 9 U.S.C. § 10(a) (Supp. 1997).

[40] The $750,000 amount is also larger than the annual revenue of most member firms. The Report of the Select Committee on Structure and Governance of the NASD Board of Governors ("Rudman Report") observed that, "Most NASD member firms are relatively small. Approximately 55% report gross revenues from their securities business below $680,000. 80% report gross securities revenues under $4 million. Fewer than 5% report gross revenues over $80 million. The number of NASD member firms that generate securities revenues over $375 million is only 43, or 0.6% of the membership." Rudman Report at C–11 (Sept. 15, 1995).

[41] NASD Regulation estimates that as many as one-third of all claims filed involve a *pro se* party. *See* Securities Arbitration Commentator, Vol. VIII, No. 9 (February 1997). The number of *pro se* parties is much higher for smaller claims; more than three-quarters of claims involving $10,000 or less involved *pro se* claimants. *Id.*

[42] *See supra* note 3.

[43] This may mean that punitive damages will become available under the proposed rule change when they were not previously available in arbitration proceedings in a particular state. For example, in Illinois, courts have held that punitive damages may be awarded in arbitration, but only where the parties have expressly agreed to the arbitrators' authority to award punitive damages. *City of Chicago v. American Federation of State, County and Municipal Employees*, 1996 WL 496825 at *3, 669 N.E. 2d 1311 (Ill. App. Ct. 1996), *citing Edward Electric Co. v. Automation, Inc.*, 593 N.E. 2d 833, 843 (Ill. App. Ct. 1992).

[44] NASD Regulation did not agree with the SIA's suggestion that RICO awards be limited to the formula for other punitive damages, and believes that the same RICO damages should be available in arbitration as in court. We note, however, that federal RICO damages for fraud in the purchase or sale of securities are available when a criminal conviction has been obtained for the same conduct. 18 U.S.C. § 1964 (1995).

has the discretion to grant or deny the request.

All newly approved NASD arbitrators who have not presided at a hearing are required to attend a training program, which includes information on the awarding of punitive damages. If the proposed rule change is approved, Office of Dispute Resolution staff will make appropriate changes to the arbitrator training and education materials to reflect the requirements of the new rule.

NASD Regulation is requesting that the proposed rule change be effective within 45 days of SEC approval.[45]

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[46] in that it will promote just and equitable principles of trade by providing an additional remedy for wrongdoing by broker/dealers and their associated persons, and it will protect investors and the public interest by clarifying that punitive damages are available in the NASD Regulation arbitration forum, where they would be available under relevant state law for similar court proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–47 and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31877 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

[45] NASD Regulation consents to an extension of the time projects specified in Section 19(b)(2) of the Act until the SEC is prepared to approve NASD Regulation's yet-to-be-filed rule filing proposing to amend Rule 3110(f) to revise the requirements for customer predispute arbitration agreements used by members. NASD Regulation intends to amend the rules governing customer predispute arbitration agreements to give effect to the punitive damages rule proposed herein and the eligibility rule proposed in SR–NASD–97–44. The purpose of the extension is to permit the SEC to act simultaneously on this rule filing, the yet-to-be-filed rule filing proposing to amend Rule 3110(f), and the eligibility rule proposed in SR–NASD–97–44.

[46] 15 U.S.C. 78o3(b)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39365; File No. SR–OCC–97–2]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of Proposed Supplement to Options Disclosure Document Regarding Mutual Fund Index Options

November 26, 1997.

On November 13, 1997, The Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 ("Act"),[1] five definitive copies of a Supplement to its options disclosure document ("ODD"), which describes, among other things, the risks and characteristics of trading in options on mutual fund indexes.

The Commission has approved an options exchange proposal to list and trade options on particular mutual fund indexes.[2] OCC now proposes this Supplement, which is to be read in conjunction with the more general ODD entitled "Characteristics and Risks of Standardized Options," that provides disclosures to specifically accommodate the introduction of mutual fund index options and to reflect current rules of options markets on which mutual fund index options are approved for trading. Pursuant to Rule 9b–1, the Supplement will have to be provided to investors in mutual fund index options whose account is approved for trading standardized options.

The Commission has reviewed the ODD Supplement and finds that it complies with Rule 9b–1 under the Act. The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and risks of options generally. The Supplement provides additional information regarding mutual fund index options sufficient to further describe the special characteristics and risks of these products.

Rule 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the protection of investors.[3] The Commission has reviewed the Supplement, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the Supplement as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[4] that the proposed Supplement (SR–ODD–97–2) regarding mutual fund index options is approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

[1] 17 CFR 240.9b–1.

[2] *See* Securities Exchange Act Release No. 39244 (October 15, 1997) (order approving proposed rule change by the Chicago Board Options Exchange, Incorporated, relating to the listing and trading of options on the Lipper Analytical/Salomon Brothers Growth and Growth & Income Fund Indexes).

[3] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[4] 17 CFR 240.9b–1.

[5] 17 CFR 200.30–3 (a)(39).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31842 Filed 12–4–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

Work Incapacitation and Reintegration Study—0960–0543. The purpose of this study is to identify those incentives and interventions that are most successful in assisting persons who are disabled due to a back condition to return to work. The information collected will be used primarily to complete a cross-national analysis of this issue. Data will also be gathered on subjects of particular importance in the U.S. The findings will provide policy-makers with information that will be highly useful in establishing disability policy. The respondents are persons entitled to Social Security Disability Insurance, Supplemental Security Income or State Temporary Disability Insurance benefits due to a back condition.

Number of Respondents: 800.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 800 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: December 1, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–31864 Filed 12–4–97; 8:45 am]

BILLING CODE 4190–29–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1499).

TIME AND DATE: 9 a.m. (EST), December 9, 1997.

PLACE: Cocke County High School Auditorium, 216 Hedrick Drive, Newport, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on October 15, 1997.

New Business

B—Purchase Awards

B1. Contract with Motion Industries, Inc., for mechanical drive parts and bearings for use at all TVA locations.

B2. Increase in Blanket Purchase Order No. 96P1E–186526 with Hydro Group, Inc., for post tensioning services at Chickamauga Lock and Fontana Dam.

C—Energy

C1. Delegation of authority to the Executive Vice President, or a designated representative, to enter into an agreement with the Metropolitan Government of Davidson County for the assignment to TVA of various environmental credits to be included with the purchase of electric power from the Bordeaux Landfill Gas Project.

E—Real Property Transactions

E1. Public auction of 0.06 acre of the Browns Ferry Nuclear Plant property to resolve an encroachment by a private residence, Tract No. XBFSP–1.

E2. Modification of a permanent easement affecting approximately 0.92 acre at the Cadiz Primary Substation, to allow the City of Cadiz, Kentucky, to construct a police station, jail, offices, and other buildings needed for city operations, Tract No. XCADSSA–1E.

E3. Grant of a permanent easement to the Warren County Water District for a sewerline easement over approximately 0.29 acre of TVA's new Bowling Green, Kentucky, Customer Service Center property, Tract No. XTBCSC–1S.

E4. Abandonment of easement rights affecting approximately 19.5 acres of Shelby Substation railroad spur track right-of-way, Shelby and Tipton Counties, Tennessee, Tract Nos. SSRR–1,–2,–3,–4,–5,–6,–7,–7A, and –8.

E5. Sale of noncommercial, nonexclusive permanent easement to R. Todd Tiller affecting 0.06 acre of Tellico Lake shoreline in Monroe County, Tennessee, Tract No. XTELR–199RE.

E6. Grant of a permanent easement to Hamilton County, Tennessee, for a wastewater pump station and access road affecting 0.22 acre of land on Chickamauga Lake, Tract No. XTCR–193PS.

E7. Deed modification to allow residential development by Harbor Lights Marina on 11.23 acres of former TVA land on Chickamauga Lake, Hamilton County, Tennessee, Tract No. XCR–67.

Unclassified

F1. Approval to file condemnation cases in connection with the following power transmission line: Spring City Flood Damage Reduction Project, Rhea County, Tennessee, Tract No. SCFP–72.

Information Items

1. Approval for the issuance, exchange, and sale of TVA Power Bonds.
2. Approval relating to the sale of options to enter into interest rate swap arrangements ("Options") associated with call provisions on previously issued TVA Power Bonds.
3. Extension of the program offering incentives for TVA employees and retirees to purchase efficient electric appliances for their homes (Buy Electric Program).
4. Approval for the sale of TVA Power Bonds and authorization and delegation of authority to enter into currency swap arrangements with Merrill Lynch Derivative Products.
5. Filing of condemnation cases along the Freeport-Miller Transmission Line in DeSoto County, Mississippi.
6. Research and Development Agreement with Pure Energy Corporation and delegation of authority to the Executive Vice President, Resource Group, or a designated representative, to take the necessary actions to implement the agreement.
7. Contract with Bloomberg, L.P., for TVA to receive financial data.

8. Approval for the sale of TVA Power Bonds for refinancing the existing debt.
9. Modification and extension of Contract No. P–97P01–197103 with Sugar Camp Coal Company.
10. Approval of the Chief Financial Officer's power system operating budget and power system capital budget for fiscal year 1998.
11. Approval to execute an agreement with Vanguard Research, Inc., to supply a commercial-scale Plasma Energy Pyrolysis System demonstration of a new patented technology for treating military waste streams.
12. Modification of term coal Contract Nos. P–95P08–120446 and P–97P01–200000 for Shawnee, Colbert, and Widows Creek Fossil Plants.
13. Approval of new Labor Relations Agreements between TVA and the International Brotherhood of Teamsters.
14. Grant of a permanent easement for a water intake site, a pump station, waterlines, and an access road for South Blount County Utility District affecting approximately 3.67 acres of land on Tellico Lake in Monroe County, Tennessee, Tract No. XTTELR–36E.
15. Approval to add 750,000 tons per year of subbituminous coal to the Thunder Basin Coal Company contract for the Allen and Shawnee Fossil Plants under Requisition 35, Request for Proposals of Subbituminous Term Coal.
16. Approval to enter into a contract with Borg-Warner Protective Services Corporation for security services at nuclear plants and some office locations.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: December 2, 1997.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 97–32002 Filed 12–3–97; 10:50 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 28, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each Application. Following the Answer period DOT may process the Applications by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1642.

Date Filed: November 28, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 26, 1997.

Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for renewal of its Route 729 authority between Cleveland, Ohio and London Gatwick, England and the right to integrate its Route 729 authority with Continental's certificate and exemption authority to serve other points.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–31849 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 188; Minimum Aviation System Performance Standards for High Frequency Data Link

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Special Committee 188 meeting to be held January 7–9, 1998, starting at 1:00 p.m. on Wednesday, January 7, and 9:00 a.m. on January 8 and 9. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

January 7: Working Group 1 Minimum Aviation System Performance Standards (MASPS); January 8: Continue Working Group 1; January 9: Plenary Session.

The agenda of the Plenary Session will be as follows: (1) Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Approval of the Summary of the Previous Meeting; (4) Review of Working Group 1 (MASPS) Work; (5) Discussion of Air Mobility Command Data Link Initiatives; (6) Review Activities of Other Standards Groups; (7) Open Discussion; (8) Dates and Places of Next Meetings; (9) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 28, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–31933 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 191; Collaborative Decisionmaking and Near-Term Procedures

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 191 meeting to be held January 6, 1998, starting at 10:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Old Business/Action Items; (3) RTCA Special Committee 191 Scope and Structure Briefing; (4) User Perspective Briefing; (5) Working Group Charters, Progress, and Status (NAS Status Information, CDM, Collaborative Routing); (6) Review of Action Items; (7) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 28, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–31934 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Traverse City, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed construction of a new Boardman River crossing with a connection between US–31 south of Traverse City and US–31 east of Traverse City, Grand Traverse County, Michigan. The project will provide an alternate route around Traverse City which may function as a local, interim by-pass for Traverse City. The proposed project will mostly follow existing roadways in the Traverse City area.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Environmental Programs and Field Operations Engineer, Federal Highway Administration, 315 W. Allegan Street, Lansing, Michigan 48933, Telephone (517) 377–1880 or Mr. Mark Dionise, Urban Program Manager, Local Agency Programs, Bureau of Highways, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 373–9570.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation (MDOT), and the Grand Traverse County Road Commission, is preparing an Environmental Impact Statement (EIS) for the proposed construction of a new Boardman River crossing with a connection between US–31 south of Traverse City and US–31 east of Traverse City, Michigan. The proposed project will replace the existing one-lane Cass Road Bridge over the Boardman River with a new bridge with connections to US–31 both south of and east of Traverse City. The completion of this project will provide an alternate route around Traverse City and will relieve congestion on US–31 through downtown Traverse City. The existing Cass Road Bridge will remain in place, but will be closed to traffic upon completion of the project.

The alternatives under consideration include (1) No Build, (2) the re-construction and connection of Hartman and Hammond Roads along with the study of a suitable connection to US–31 east of Traverse City, and (3) Transportation System Management (TSM) improvements to existing roads in the study area to relieve congestion.

An Environmental Assessment had been prepared for the replacement of the Cass Road Bridge which is located on the Boardman River dam. The Cass Road Bridge and Boardman dam complex has been determined to be eligible for the National Register of Historic Places. The Environmental Assessment analyzed the social, environmental, and economic impacts of various alternative locations for replacement of the Cass Road Bridge. A preferred alternative for a new bridge across the Boardman River, connecting Hartman Road with Hammond Road, upgrading Hartman Road from two lanes to four and five lanes with a new intersection location at U–31, upgrading Hammond Road from two lanes to four and five lanes, and closing the existing Cass Road Bridge was presented at a public hearing on June 24, 1997. As a result of the public hearing, it was determined to revise the scope of the proposed project to include alternatives to connect this project with US–31 east of Traverse City and to prepare an Environmental Impact Statement on this proposed action. A scoping document will be prepared describing the proposed action to solicit comments from appropriate Federal, State, and local agencies. Citizen involvement is also being solicited in the process. A public hearing will be held on the Draft Environmental Impact Statement. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

Comments, and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action are addressed and all significant issues identified. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 25, 1997.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 97–31908 Filed 12–4–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33506]

Coach USA, Inc.—Control Exemption—Browder Tours, Inc. and El Expreso, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of filing of Petition for Exemption.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier in control of 28 motor passenger carriers at the time of filing its petition,[1] seeks an exemption under 49 U.S.C. 13541 from the prior approval requirements of 49 U.S.C. 14303(a)(5) to acquire control of Browder Tours, Inc. (Browder) and El Expreso, Inc. (El Expreso), through acquisition of all of the outstanding shares of stock of the two motor passenger carriers.[2]

DATES: Comments must be filed by January 5, 1998. Petitioner may file a reply by January 14, 1998.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 33506 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. Also, send one copy of comments to petitioner's representatives: Betty Jo Christian and David H. Coburn, Steptoe

[1] Coach currently controls the Nation's second largest group of motor passenger carriers. *See Coach USA, Inc.—Control Exemption—America Charters, Ltd.*, STB Finance Docket No. 33393 (STB served Oct. 3, 1997), slip op. at 1. Since the filing of the instant petition on October 31, 1997, Coach has been authorized to acquire control of an additional three motor passenger carriers in *Coach USA, Inc., and Leisure Time Tours—Control and Merger Exemption—Van Nortwick Bros., Inc., The Arrow Line, Inc., and Trentway-Wager, Inc.*, STB Finance Docket No. 33428 (STB served Nov. 13, 1997).

In addition to the instant petition, Coach has two other pending petitions: *Coach USA, Inc. and K-T Contract Services, Inc.—Control and Merger Exemption—Gray Line Tours of Southern Nevada*, STB Finance Docket No. 33431 (STB served Aug. 22, 1997), in which it seeks an exemption to acquire control of one additional motor passenger carrier, and *Coach USA, Inc.—Control Exemption—Air Travel, Inc.; Airlines Acquisition Co., Inc.; and Transportation Management Services, Inc.*, STB Finance Docket No. 33471 (STB served Nov. 14, 1997), in which it seeks to acquire control of three additional motor passenger carriers.

[2] The stock of Browder and El Expreso was placed in an independent voting trust to avoid any unlawful control pending disposition of this proceeding.

& Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach, a noncarrier, seeks an exemption to acquire control of two motor carriers of passengers: (1) Browder Tours, Inc. (MC–236290), a Tennessee corporation that is authorized to operate as a common carrier of passengers in interstate commerce over irregular routes transporting passengers in charter and special services between points in the United States, other than Alaska and Hawaii;[3] and (2) El Expreso, Inc. (MC–244195), a Texas-based corporation that is authorized to operate as a common carrier of passengers in interstate commerce over regular routes transporting passengers between various points within Texas, including points on the U.S./Mexico border, as well as between points in several southeastern states.[4]

Coach reported, at the time it filed this petition for exemption, that it controlled 28 motor carriers of passengers. Coach claims that its acquisition of control of the two motor carriers through the acquisition of their stock will not inhibit competition or reduce transportation options available to the public. Coach asserts that the two carriers do not compete with any Coach-owned carrier.

Petitioner also claims that the acquisition of control of the two carriers will allow each carrier to offer improved service at lower costs. This will be made possible by the coordination of functions, centralized management, financial support, rationalization of resources, and economies of scale that are anticipated from the common control. Coach also states that all collective bargaining agreements will be honored and that employee benefits will improve. Additional information may be obtained from petitioner's representatives.

A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street and Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: November 25, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31922 Filed 12–4–97; 8:45 am]

BILLING CODE 4915–00–P

[3] Browder focuses on tour and charter operations in Tennessee and nearby states.

[4] El Expreso focuses on providing service to persons traveling between Mexico and the United States, as well as to persons traveling between Texas and other states.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33518]

Burlington Shortline, Inc., d/b/a Burlington Junction Railway—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Burlington Shortline, Inc., d/b/a Burlington Junction Railway (BSL), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 9,205 feet, or 1.74 miles, of rail line owned by The Burlington Northern and Santa Fe Railway Company (BNSF) between a point 247 feet south of BNSF's mainline switch east of BNSF's equipment maintenance facility at Burlington, IA, and a point 9,452 feet south of BNSF's mainline switch, in the vicinity of Burlington, Des Moines County, Iowa. BSL will interchange traffic with BNSF at Burlington.

The transaction was expected to be consummated on or after the November 24, 1997 effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33518, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John D. Heffner, Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036.

Decided: December 1, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31921 Filed 12–4–97; 8:45 am]

BILLING CODE 4915–00–P

federal register

Friday
December 5, 1997

Part II

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Part 1806

Bank Enterprise Award Program; Interim Rule

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award (BEA) Program; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505–AA71

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award (BEA) Program administered by the Community Development Financial Institutions Fund (Fund). The purpose of the BEA Program is to encourage insured depository institutions to increase their level of activities in the form of loans, investments, services, and technical assistance within distressed communities and to provide financial assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The BEA Program rewards participating insured depository institutions for increasing their activities in economically distressed communities and investing in CDFIs. The revisions contain a number of changes which clarify current requirements, but do not change them. This rule also simplifies current requirements and updates various references, and contains one revision that the Fund believes will generally inure to the benefit of insured depository institutions. Specifically, the revision clarifies the measured value of renewed loans and rolled over time deposits to include the entire amount of the renewed loans and rolled over deposits. However, in order to facilitate implementation of the BEA program regulations by participating insured depository institutions, the complete text of the regulations, as amended, is published by this interim rule.

DATES: Interim rule effective December 5, 1997; comments must be received on or before April 6, 1998.

ADDRESSES: All comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. Comments may be inspected at the above address between 9:30 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Director, the Community Development Financial Institutions Fund at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Community Development Financial Institutions Fund (Fund) was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the authorizing statute. The Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry. This initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left behind by the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, revitalizing neighborhoods, developing affordable housing, and unleashing the economic potential of small businesses. The Fund recognizes the important role traditional financial institutions have played, and should continue to play, in serving the credit needs of distressed communities and their residents. As a means of facilitating increased activity and innovation among traditional financial institutions, these revised regulations amend the Bank Enterprise Award (BEA) Program, which has its roots in the Federal Deposit Insurance Corporation Improvement Act of 1991. The BEA Program was significantly modified as part of the Act to enable it to function as a companion to the Community Development Financial Institutions (CDFI) Program. Together, the CDFI Program and BEA Program will promote activity among the spectrum of financial institutions that serve distressed communities.

The purpose of the BEA Program is to encourage insured depository institutions to increase loans, services, and technical assistance within distressed communities and to make Equity Investments or engage in CDFI Support Activities. The BEA Program rewards participating insured depository institutions for increasing their activities in economically distressed communities and investing in CDFIs. Applicants participate in the Program through a competitive process which evaluates applications based on the value of proposed increases in their specified activities. Program participants receive monies only after successful completion of the specified activities.

Elsewhere in this issue of the **Federal Register** is a separate Notice of Funds Availability (NOFA) for this Program. A final regulation will be published after receipt and consideration of public comments. The Fund previously promulgated an interim regulation with a request for comment, which was published in the **Federal Register** on March 7, 1997 (62 FR 10679). No comments were received in response to the March 7, 1997 interim rule. Since these regulations were last amended, the Fund has identified several provisions that need to be updated, clarified, or simplified.

II. Summary of Changes

Authorities

The current rule contains a list of authorities. This interim rule updates the list by adding 12 U.S.C. 4713, 12 U.S.C. 1834a, and 31 U.S.C. 321. Such authorities concern the promulgation of regulations, procedures and guidelines. The current rule lists 12 U.S.C. 4703 note with a reference to Pub. L. 104–19. The Fund is deleting the reference to this public law, for purposes of regulatory economy and because there is more than one public law underlying the section 4703 note.

Definition of Community Services

Section 1806.103(p)(1) of the current rule defines the forms of assistance that constitute Community Services. This interim rule does not change the definition of what constitutes Community Services, but it clarifies that all forms of such assistance may be provided by officers, employees, or agents (contractual or otherwise) of the Applicant. This revision conforms with the Fund's interpretation of the current rule.

Measuring the Value of Renewed Loans and Rolled Over Deposits

Section 1806.202(c)(1) of the current rule provides that for purposes of calculating BEA Program awards, the Fund will assess the value of Equity Investments, loans, grants, and deposits at the original amount of such investments, loans, grants or deposits. Section 1806.202(c)(1) of the current rule excludes the value of any loans which are renewed, rolled over, or refinanced in an amount equal to or less than the principal amount outstanding at the time of refinancing. Because the Fund believes that the interim rule in its current form: (1) Appears too restrictive with regard to loans; and (2) is unclear with regard to renewed loans and rolled over time deposits, the Fund is revising § 1806.202(c)(1) as follows.

With regard to loans, the Fund believes that where a loan matures, is fully paid, and is then renewed during an applicable Baseline or Assessment period, the renewed loan constitutes a new origination. As such, the Fund will assess the full principal amount of the renewed loan in calculating a BEA Program award. However, the Fund is not changing the current interim rule with regard to refinancings. Specifically, where a loan is refinanced during an applicable Baseline or Assessment period, the Fund will only assess the value of any increase in the principal amount of the refinanced loan.

With regard to deposits, the Fund will assess the full amount of any deposit which is rolled over during an applicable Baseline or Assessment period. For example, where an Applicant made a time deposit with an insured CDFI, e.g. a five year certificate of deposit with an interest rate materially below market rates, which matures and is rolled over during an Assessment Period, the Fund will assess the full amount of the rolled over time deposit in calculating a BEA Program award.

Estimated Award Amounts for Development and Service Activities

The current rule at 12 CFR 1806.203(c)(3) describes a calculation step for estimating an award amount for Development and Service Activities. This step requires adding the weighted values of deposit liabilities and Financial Services to yield a service score. This revised rule corrects an omission to the step by adding Community Services. This addition conforms with previous and the most current BEA Program Application packets.

For purposes of regulatory economy, the Fund is deleting the parenthetical reference in § 1806.203(c)(5) of the current rule, which references the Act. This deletion is technical in scope and will have no substantive effect on the implementation of the BEA Program.

Application Contents for Equity Investment and CDFI Support Activities

Section 1806.206(b)(9) of the current rule describes the collection of information requirements set forth in the Application packet for those Applicants proposing to engage in CDFI Related Activities. The current rule describes the Application packet as requiring each Applicant to submit a narrative description of each CDFI in which it proposes to engage in CDFI Related Activities and a description of the amount, terms, and conditions of the assistance to be provided or, alternatively, a list of potential CDFIs and a description of the Applicant's investment, lending, or selection criteria. However, the most recently revised Application packet, which has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995, simplifies the collection of information from Applicants. Specifically, the revised Application packet requires Applicants to list the potential CDFIs to which they may provide assistance and provide a description of the amount, terms, and conditions for such assistance. Because the revised Application packet does not require a narrative description of each potential CDFI or a description of the Applicant's investment, lending or selection criteria, the Fund is revising § 1806.206(b)(9) in this interim rule to accurately reflect the collection of information requirements set forth in the most current Application packet.

III. Rulemaking Analysis

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in this interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1505–0153. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of the collections of information should be directed to the Director, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these revised interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

The Fund is promulgating this revised interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553, because the BEA Program involves grants and is thereby exempt from the procedural requirements of the APA pursuant to 5 U.S.C. 553(a)(2). The Fund also finds good cause for dispensing with a notice of proposed rulemaking because such advance notice and public procedure are unnecessary. First, most of the changes in this interim rule are minor or technical amendments which do not affect the substance of the regulation. Second, the changes to this interim rule are narrow in scope, clarify existing requirements, and inure to the benefit of the regulated community, namely insured depository institutions, by making participation in the BEA Program easier for Applicants, reducing regulatory burden, and clarifying the measured value of renewed loans and rolled over time deposits.

The Fund also is making this interim rule effective upon publication without providing the 30-day period between publication and effective date contemplated by the APA because, as noted above, the BEA Program involves grants and is thereby exempt from the procedural requirements of the APA found at 5 U.S.C. 553(d). The Fund also believes that an immediate effective date is necessary for the convenience of the persons affected. Specifically, an immediate effective date will minimize the risk of confusion on the affected community by ensuring that there will be a single and uniform regulation in effect during the Assessment Period, which as stated in the NOFA published elsewhere in this issue of the **Federal Register**, will begin on January 1, 1998. The Fund also believes that an immediate effective date is appropriate because this interim rule inures to the benefit of the affected community by removing a potential restriction on the measured value of renewed loans and rolled over time deposits.

Comment

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

IV. Catalog of Federal Financial Assistance Numbers

Bank Enterprise Award Program—21.021.

List of Subjects in 12 CFR Part 1806

Banks, banking, Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, 12 CFR part 1806 is revised to read as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Subpart A—General Provisions

Sec.
1806.100 Purpose.
1806.101 Summary.
1806.102 Relationship to the Community Development Financial Institutions Program.
1806.103 Definitions.
1806.104 Waiver authority.
1806.105 OMB control number.

Subpart B—Awards

1806.200 Community eligibility and designation.
1806.201 Qualified Activities.
1806.202 Measuring activities.
1806.203 Estimated award amounts.
1806.204 Selection process.
1806.205 Actual award amounts.
1806.206 Applications for Bank Enterprise Awards.

Subpart C—Terms and Conditions of Assistance

1806.300 Award Agreement; sanctions.
1806.301 Records, reports and audits of Awardees.
1806.302 Compliance with government requirements.
1806.303 Fraud, waste and abuse.
1806.304 Books of account, records and government access.
1806.305 Retention of records.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

Subpart A—General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to encourage insured depository institutions to make Equity Investments and carry out CDFI Support Activities and Development and Service Activities to revitalize distressed urban and rural communities.

§ 1806.101 Summary.

(a) Under the Bank Enterprise Awards Program, the Fund makes awards to selected Applicants that:

(1) Invest in or otherwise support Community Development Financial Institutions;

(2) Increase lending and investment activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria. Applicants are selected to participate in the program through a competitive application process. Awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

§ 1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

(1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);

(2) Received assistance from the Community Development Financial Institutions Program within the preceding 12-month period; or

(3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and CDFI Support Activities (except technical assistance) provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

§ 1806.103 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Agricultural Loan* means an origination of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);

(c) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(e) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability (NOFA) in which an Applicant will carry out Qualified Activities;

(f) *Award Agreement* means a formal agreement between the Fund and an Awardee pursuant to § 1806.300;

(g) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(h) *Bank Enterprise Award* means an award made to an Applicant pursuant to this part;

(i) *Bank Enterprise Award Program* means the program authorized by section 114 of the Act and implemented under this part;

(j) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(k) *Business Loan* means an origination of a loan used for commercial or industrial activities (other than an Agricultural Loan, Commercial Real Estate Loan, Multi-Family Loan or Single Family Loan);

(l) *Commercial Real Estate Loan* means an origination of a loan (other than a Multi-Family Loan or a Single Family Loan) used for commercial purposes to finance construction and land development or an origination of a loan that is secured by real estate and used to finance the acquisition or rehabilitation of a building used for commercial purposes;

(m) *Community Development Financial Institution* (or CDFI) means an entity whose certification as a CDFI under § 1805.201 of this chapter is in effect as of the end of the applicable Assessment Period (the Assessment Period in which the Qualified Activity takes place) and that meets the requirements of § 1805.200(b) through (h) of this chapter at the time of the Qualified Activity, subject to the rest of this paragraph (m). If an Applicant is proposing to make an Equity Investment or engage in CDFI Support Activities with an uncertified CDFI, the uncertified CDFI may apply for certification by submitting the information described in § 1805.701(b) of this chapter. In order for the Applicant to be eligible to receive an award for its activity, the required information with respect to the uncertified CDFI shall be submitted to the Fund as specified in the applicable NOFA published in the **Federal Register**, and certification must be completed by the end of the applicable Assessment Period as specified in the applicable NOFA. Notwithstanding anything in this paragraph (m) to the contrary, an Applicant may receive an award pursuant to this part for assistance provided to an uncertified CDFI that, at the time of the Qualified Activity, does not meet the requirements of § 1805.200(b) through (h) of this chapter if:

(1) The Applicant requires the uncertified CDFI to refrain from using the assistance provided until the entity is certified;

(2) The uncertified CDFI is certified by the end of the applicable Assessment Period; and

(3) The Applicant retains the option of recapturing said assistance in the event that the uncertified CDFI is not certified by the end of the applicable Assessment Period;

(n) *CDFI Related Activities* means Equity Investments and CDFI Support Activities;

(o) *CDFI Support Activity* means assistance provided by an Applicant or its Subsidiary to a CDFI that is integrally involved in a Distressed Community in the form of the origination of a loan, technical assistance, or deposits if such deposits are:

(1) Uninsured and committed for a term of at least three years; or

(2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the Fund) below market rates;

(p) *Community Services* means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of technical assistance to Residents in managing their personal finances through consumer education programs;

(2) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community;

(3) Provision of technical assistance to, or servicing the loans of, Low- or Moderate-Income homeowners and homeowners located in the Distressed Community; and

(4) Other services provided for Low- and Moderate-Income persons in a Distressed Community or enterprises integrally involved in a Distressed Community deemed appropriate by the Fund;

(q) *Consumer Loan* means an origination of a loan to one or more individuals for household, family, or other personal expenditures;

(r) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200;

(s) *Development and Service Activities* means activities described in § 1806.201(b)(4) that are carried out by the Applicant or its Subsidiary;

(t) *Equity Investment* means financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an Equity Investment by the Fund;

(u) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, and other comparable services as may be specified by the Fund that are provided to Low- and Moderate-Income persons in the Distressed Community or enterprises integrally involved with the Distressed Community;

(v) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) of the Act (12 U.S.C. 4703(a));

(w) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund;

(x) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(y) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

(z) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(aa) *Multi-Family Loan* means an origination of a loan secured by a five- or more family residential property;

(bb) *Project Investment* means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is integrally involved with a Distressed Community and formed for the sole purpose of engaging in a project or activity, approved by the Fund, related to commercial real estate, single family housing, multi-family housing, business or agriculture (as defined in this part);

(cc) *Qualified Activities* means CDFI Related Activities and Development and Service Activities;

(dd) *Resident* means an individual domiciled in a Distressed Community;

(ee) *Single Family Loan* means an origination of a loan secured by a one-to-four family residential property;

(ff) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation; and

(gg) *Unit of General Local Government* means any city, county town, township, parish, village or other general purpose political subdivision of a State or Commonwealth of the United States, or general purpose subdivision thereof, and the District of Columbia.

§ 1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153.

Subpart B—Awards

§ 1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out CDFI Support Activities or Development and Service Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is integrally involved with such a Distressed Community. In the case of an Applicant proposing to make an Equity Investment, the Fund reserves the right to request information on Distressed Communities served by such a CDFI should such information be deemed necessary by the Fund to complete the selection process described in § 1806.204. In the case of an Applicant that proposes to carry out both CDFI Support Activities and Development and Service Activities it may designate different Distressed Communities for these two categories of activity.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the minimum area eligibility requirements contained in this paragraph (b).

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(iii) (A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) The area is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as published by the U.S. Bureau of the Census in the 1990 decennial census; and

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census Share calculation method. U.S. Bureau of Labor Statistics data and information necessary for Census Share calculations may be obtained from the Fund.

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* Upon request, the Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be a Distressed Community. A prospective Applicant is encouraged to contact the Fund prior to filing an application to determine if an area meets the minimum area eligibility requirements.

§ 1806.201 Qualified Activities.

(a) *CDFI Related Activities.* An Applicant may receive a Bank Enterprise Award for making an Equity Investment or carrying out CDFI Support Activities during an Assessment Period.

(b) *Development and Service Activities.* (1) *General.* An Applicant may receive a Bank Enterprise Award for carrying out Development and Service Activities during an Assessment Period.

(2) *Area served.* The Development and Service Activities listed in paragraphs (b)(4)(i) through (x) of this section must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(i) Undertaken in the Distressed Community; or

(ii) Provided to Low- and Moderate-Income Residents or enterprises integrally involved in the Distressed Community.

(3) *Priority factors.* Each Development and Service Activity is assigned a priority factor. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity.

(4) *Development and Service Activities.* Development and Service Activities are listed in this paragraph with their corresponding priority factors:

(i) Deposit liabilities in the form of savings or other demand or time accounts accepted from Residents at offices located within the Distressed Community (priority factor = 1.0);

(ii) Financial Services (priority factor = 1.2);

(iii) Community Services (priority factor = 1.4);

(iv) Consumer Loans (priority factor = 1.2);

(v) Single Family Loans and related Project Investments (priority factor = 1.4);

(vi) Multi-Family Loans and related Project Investments (priority factor = 1.6);

(vii) Commercial Real Estate Loans and related Project Investments (priority factor = 1.6);

(viii) Business Loans, Agricultural Loans, and related Project Investments of $100,000 or less (priority factor = 1.9);

(ix) Business Loans, Agricultural Loans, and related Project Investments of more than $100,000 through $250,000 (priority factor = 1.8); and

(x) Business Loans and related Project Investments of more than $250,000 through $1,000,000 and Agricultural Loans and related Project Investments of more than $250,000 through $500,000 (priority factor = 1.7).

(c) *Limitation.* Financial assistance provided by an Applicant for which the Applicant receives benefits through the Low Income Housing Tax Credit authorized pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, as defined in this part, for the purposes of calculating or receiving an award.

§ 1806.202 Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in the values of Qualified Activities between the Baseline Period and Assessment Period will be used in determining award amounts. If an Applicant is seeking assistance only for CDFI Related Activities, it should only report its activities for CDFI Related Activities categories. If an Applicant is seeking assistance only for Development and Service Activities, it should only report its activities for Development and Service Activities categories. If an Applicant is seeking assistance for both

CDFI Related Activities and Development and Service Activities, it should report its activities for both types of categories. If an Applicant is unable to report its activities in the aforementioned manner, the Applicant shall provide an explanation satisfactory to the Fund as to why it cannot report required information and simultaneously submit to the Fund a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund. The dates of the Baseline Period and Assessment Period will be published in a NOFA for each funding round.

(b) *Exception.* An Applicant may select not to report its deposit liabilities as described in § 1806.201(b)(4)(i). In such a case, an Applicant's deposit liabilities will not be considered in calculating the service score pursuant to § 1806.203(c).

(c) *Value.* The Fund will assess the value of:

(1) Equity Investments, loans, grants and deposits described in § 1806.103 at the original amount of such investments, loans, grants or deposits. Where a loan matures, is fully paid and is then renewed, the Fund will assess the value of the principal amount of the renewed loan. Where a deposit, such as a certificate of deposit, matures and is then rolled over, the Fund will assess the value of the full amount of the rolled over deposit. However, where an existing loan is refinanced, the Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Deposit liabilities at the face dollar amount of monies deposited as measured by comparing the net change in the amount of applicable funds (as described in § 1806.201(b)(4)(i)) on deposit at the Applicant institution during the period described in this paragraph (c)(2). An Applicant shall measure the net changes in deposit liabilities during:

(i) The Baseline Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Assessment Period, by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(3) Financial Services, Community Services, and CDFI Support Activities consisting of technical assistance based on the administrative costs of providing such services; and

(4) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant.

(d) *Closed transactions.* A transaction shall be considered to have been carried out during the Baseline Period or the Assessment Period if:

(1) The documentation evidencing the transaction:

(i) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively, as specified in the applicable NOFA; and

(ii) Constitutes a legally binding agreement between the Applicant and a borrower or investee which specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the Fund); and

(2) An initial disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction, (both as determined by the Fund).

(e) *Reporting.* An Applicant shall report Qualified Activities on the basis of transactions that were:

(1) Completed during the Baseline Period; and

(2) Are expected to be completed during the Assessment Period and disbursed by the Applicant to a borrower or investee within the period described in § 1806.205(a).

§ 1806.203 Estimated award amounts.

Award amounts will be determined at the sole discretion of the Fund and estimated as described in this section.

(a) *Equity Investments.* The estimated award amount for an Equity Investment will be equal to 15 percent (or such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment between the Baseline Period and Assessment Period.

(b) *CDFI Support Activities.* If an Applicant is not a CDFI, the estimated award amount for CDFI Support Activities will be equal to 11 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period. If Applicant is a CDFI, the estimated award amount for CDFI Support Activities will be equal to 33 percent of the anticipated increase in the dollar amount of such support between the Baseline Period and Assessment Period.

(c) *Development and Service Activities.* The estimated award amount for Development and Service Activities will be calculated as follows:

(1) *Step 1.* For each type of Development and Service Activity, subtract the value in the Baseline Period from the estimated value for the Assessment Period to yield a remainder;

(2) *Step 2.* Multiply the remainder for each Development and Service Activity by the assigned priority factor to yield a weighted value for each activity;

(3) *Step 3.* Add the weighted values for deposit liabilities, Financial Services and Community Services to yield a service score;

(4) *Step 4.* Add the weighted values for all other categories of Development and Service Activities to yield a development score. If the development score is negative, an Applicant will be ineligible to receive a Bank Enterprise Award. If the development score is positive, go to Step 5;

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score;

(6) *Step 6.* Add the service score (or adjusted service score if applicable) and the development score to yield a total score; and

(7) *Step 7.* If the Applicant is:

(i) A CDFI, multiply the total score by 15 percent to yield an estimated award amount; or

(ii) Not a CDFI, multiply the total score by 5 percent to yield an estimated award amount.

§ 1806.204 Selection process.

(a) *Availability* of funds. All awards are subject to the availability of funds. If the amount of funds available during a funding round is sufficient for all estimated award amounts, an Applicant that meets all of the program requirements specified in this part shall receive an award that is calculated in the manner specified in § 1806.205. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

(b) *Priority of categories*—(1) *General.* The Fund will rank an Applicant's estimated award amount for Qualified Activities according to the priority categories described in this paragraph (b). All Applicants in the first priority category will be selected as Awardees before Applicants in the second priority category. Selections within each priority category will be based on the relative rankings within each such category, subject to the availability of funds.

(2) *First priority.* (i) If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to Applicants that propose to engage in CDFI Related Activities in the following order:

(A) Equity Investments in CDFIs serving Distressed Communities;

(B) Equity Investments in CDFIs not serving Distressed Communities; and

(C) CDFI Support Activities.

(ii) *Ranking Equity Investments.* Estimated awards for Equity Investments may be ranked within each applicable priority subcategory based on the extent to which an Applicant proposes to reduce the percentage used to calculate its award amount (e.g., an Applicant that chooses to reduce its award to 13 percent will be ranked higher than an Applicant that reduces its award to 14 percent). The Applicant, however, may not reduce its award percentage below 12 percent. For Applicants that propose the same percentage, estimated awards will be ranked by the ratio of the proposed Equity Investment to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(iii) *Ranking CDFI Support Activities.* Estimated awards for CDFI Support Activities may be ranked based on the ratio of the proposed CDFI Support Activity to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(3) *Second priority.* (i) If the amount of funds available during a funding round is sufficient for all CDFI Related Activities but insufficient for all estimated award amounts, second priority will go to Applicants that propose to engage in Development and Service Activities.

(ii) *Ranking Development and Service Activities.* Estimated awards for Development and Service Activities may be ranked by the ratio of the total score to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of the submission of an application. If the ratios of two Applicants are the same, the estimated awards will be ranked based on the degree of the poverty of each Applicant's Distressed Community.

(4) *Combined awards.* If an Applicant receives an award for more than one priority category described in this section, the award amounts will be combined into a single Bank Enterprise Award.

§ 1806.205 Actual award amounts.

(a) *General.* The Fund will assess an Applicant's success in achieving the Qualified Activities projected in its application. The extent of such success will be measured based on the activities that were actually carried out during the Assessment Period and expected to be disbursed to an investee, borrower, or other recipient within three years of the end of the applicable Assessment Period. The Fund reserves the right to extend this period on a case-by-case basis where it has a high degree of confidence that disbursement will occur and the activity will promote the purposes of the Act. Subject to § 1806.204 and any recapture sanction for failure to perform pursuant to this part, the actual award amount that an Awardee will receive will be equal to the estimated award previously calculated and (if necessary) adjusted pursuant to this section.

(b) *Achievement.* If an Applicant carries out all or a portion of its projected Qualified Activities and satisfies all program requirements described in this part, its award amount will be calculated on a pro-rata basis to reflect the increase in activities actually carried out except that if:

(1) The amount of funds available is insufficient for all estimated award amounts; and

(2) An Applicant carries out less than 75 percent of its projected Qualified Activities, the Fund in its sole discretion, may limit the amount or deny an award.

(c) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) Using the calculation and selection process contained in this part:

(i) To increase an award amount of an Awardee for achievement in excess of the projected Qualified Activities; or

(ii) To select Applicants not previously selected;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(d) *Limitation.* The Fund, in its sole discretion, may deny or limit the amount of an award for any reason, including if an Applicant submits an application based on unrealistic Assessment Period projections.

§ 1806.206 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability.* An Applicant shall submit an application for a Bank Enterprise Award in accordance with this section and the applicable NOFA published by the Fund in the **Federal Register**. The NOFA will advise potential Applicants with respect to obtaining an application packet and will establish submission deadlines. The NOFA also will establish any other requirements or restrictions applicable for the funding round including any restrictions on award amounts. After receipt of an application, the Fund may request clarifying or technical information on materials submitted as part of such application.

(b) *Application contents.* Each application must contain the information required in the application packet, which includes:

(1) A copy of the Applicant's certificate of insurance issued by the Federal Deposit Insurance Corporation and a copy of the Applicant's incorporation, charter, organizing, formation, or otherwise establishing documents to be used to establish eligibility for an award;

(2) A completed Bank Enterprise Award Rating and Calculations worksheet. (If an Applicant intends to complete a merger with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that represents the projected activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed.);

(3) A narrative summary of each Qualified Activity expected to be performed in the Assessment Period;

(4) The asset size of the Applicant, as reported in its most recent Report of Condition or Thrift Financial Report, to its Appropriate Federal Banking Agency;

(5) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(6) Certifications that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(7) A copy of the Applicant's most recent annual report;

(8) In the case of an Applicant proposing to engage in Development and Service Activities, a completed Distressed Community Designation worksheet and a map and narrative description of the Distressed Community;

(9) In the case of an Applicant proposing to engage in CDFI Related Activities:

(i) *Equity Investment.* An Applicant shall submit a list of potential CDFIs to which assistance may be provided, and a description of the amount, terms and conditions of any Equity Investment that may be provided.

(ii) *CDFI Support Activities.* An Applicant shall submit:

(A) A list of potential CDFIs to which assistance may be provided and a description of the amount, terms and conditions of the assistance that may be provided; and

(B) Information that indicates that each CDFI to which an Applicant proposes to provide CDFI Support Activities is integrally involved within a Distressed Community, a completed Distressed Community Designation worksheet, and a map and narrative description of the Distressed Community.

Subpart C—Terms and Conditions of Assistance

§ 1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee shall:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the award and pursue any other available legal remedies.

(c) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund will, to the maximum extent practicable, provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, will provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.301 Records, reports and audits of Awardees.

At the end of an Assessment Period, each Applicant shall submit to the Fund:

(a) *Worksheet.* A Bank Enterprise Award worksheet that reports the Qualified Activities actually carried out during the Assessment Period;

(b) *Certification.* A certification that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period; and

(c) *Documentation.* The Applicant shall make available the following:

(1) With respect to Equity Investments and CDFI Support Activities, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(2) With respect to Development and Services Activities where the original amount of the value of the activity is $250,000 or greater, the Applicant shall submit documentation that meets the conditions described in § 1806.202(d);

(3) With respect to Development and Services Activities where the original amount of the value of the activity is less than $250,000, the Applicant shall submit a schedule that describes the original amount, census tract served, and the dates of execution, initial disbursement, and final disbursement of the instrument; and

(4) Any other information reasonably requested by the Fund in order to document or otherwise assess the validity of information provided by the Applicant to the Fund.

§ 1806.302 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

§ 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503.

Dated: November 25, 1997.

Maurice A. Jones,

Acting Deputy Director.

[FR Doc. 97–31452 Filed 12–4–97; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award (BEA) Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as "the Fund") to provide incentives to insured depository institutions for the purpose of promoting investments in or other support to Community Development Financial Institutions ("CDFIs") and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms in an interim rule (12 CFR part 1806) published elsewhere in this issue of the **Federal Register**. This interim rule implements the Bank Enterprise Award (BEA) Program. The Fund reserves the right to award funds under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA and subject to funding availability, the Fund intends to make available up to $25 million in BEA Program funds. The Fund reserves the right to award in excess of $25 million if it deems it appropriate.

DATES: Applications may be submitted at any time after December 5, 1997. The deadline for receipt of an application is 6 p.m. Eastern Standard Time on February 12, 1998. Applications received after that date and time will not be accepted and will be returned to the sender. Any entity seeking certification as a CDFI (as described in 12 CFR 1805.200) for the purposes of 12 CFR part 1806 are strongly encouraged to submit the Application Form for Certification, the contents of which are described in 12 CFR 1805.701(b) (1) through (8), by February 12, 1998. If an entity fails to submit such Application by this deadline, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program. In addition, with respect to all requests for certification, the Fund reserves the right to request clarifying or technical information after reviewing materials submitted as described in 12 CFR 1805.701(b) (1) through (8). If the entity seeking certification does not respond to such requests in a timely manner, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program.

ADDRESSES: Applications shall be sent to: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Washington DC 20005. Applications sent by fax will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Washington DC 20005, (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increase the availability of credit and investment capital in distressed communities, the Community Development Banking and Financial Institutions Act of 1994 (Act) authorizes a portion of funds appropriated to the Fund to be made available for distribution through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991 although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be complementary initiatives that support a wide range of community development activities and facilitate partnerships between traditional lenders and CDFIs. This NOFA invites applications from insured depository institutions for the purpose of promoting community development activities and revitalization.

II. Eligibility

The Act specifies that eligible applicants must be insured depository institutions as defined in 12 U.S.C. 1813(c)(2).

III. Designation of Distressed Community

In accordance with 12 CFR 1806.200(d), in the case of applicants carrying out Qualified Activities requiring the designation of a Distressed Community (as defined in 12 CFR 1806.103(r)), the Fund will provide prospective Applicants with data and other information to help identify areas eligible to be Distressed Communities. The Fund is requiring all applicants to contact the BEA Help Desk at (202) 622–8662 to obtain such necessary data and information.

IV. Designation Factors

The revised interim rule published separately in this issue of the **Federal Register** (12 CFR part 1806) describes the process for selecting applicants to receive assistance and for determining award amounts. The rating and selection process will give priority to applicants in the following priority of categories: Equity Investments in CDFIs serving Distressed Communities, Equity Investment in CDFIs not serving Distressed Communities, CDFI Support Activities, and Development and Services Activities (as such activities are defined in the revised interim rule). Assistance amounts will be calculated based on increases in Qualified Activities that occur during a 6-month Assessment Period in excess of activities that occurred during a 6-month Baseline Period. In general, estimated award amounts for applicants making Equity Investments in CDFIs will be equal to 15 percent of the projected increase in such activities. An applicant may choose to accept less than the maximum amount of assistance in order to increase the ranking of its application. Estimated award amounts for CDFI applicants for carrying out CDFI Support Activities will be equal to 33 percent of the projected increase in such activities. Estimated award amounts for non-CDFI applicants for carrying out CDFI Support Activities will be equal to 11 percent of the projected increase in such activities. The revised interim rule establishes the ranking and selection process. For an applicant pursuing Development and Service Activities, a multi-step procedure is outlined in the interim rule that will be used to calculate the estimated award amount. In general, if an applicant is a CDFI, such estimated award amount will be equal to 15 percent of the total score calculated in the multi-step procedure. If an applicant is not a CDFI, such estimated award amount will be equal to 5 percent of the total score calculated in the multi-step procedure. In ranking and funding such applicants within each category, the Fund will apply criteria contained in the revised interim rule. The Fund, in its sole discretion, may adjust the estimated award amount that an applicant may receive prior to the end of the Assessment Period. The Fund may, in its sole discretion, establish any limitations on the maximum amount that may be awarded to an applicant. The Fund reserves the right to limit the amount of an award to any Awardee if deemed appropriate.

V. Baseline Period and Assessment Period Dates

As part of its application, an applicant shall report the Qualified Activities that it actually carried out during a 6-month Baseline Period. Such Baseline Period will begin on January 1, 1997, and end on June 30, 1997. An applicant shall also project the Qualified Activities that it expects to carry out during a 6-month Assessment Period. Such Assessment Period will begin on January 1, 1998, and end on June 30, 1998. Applicants selected to participate in the Program during the Assessment Period will be required to submit to the Fund a Final Report of Qualified Activities actually carried out during the Assessment Period. The deadline for receipt of the Final Report is 6 p.m. Eastern Standard Time on July 31, 1998. The Fund will evaluate the performance of applicants in carrying out projected activities to determine actual award amounts.

Authority: 12 U.S.C. 4703, 4703 note; 12 U.S.C. 1834a; 12 CFR part 1806.

Maurice A. Jones,

Acting Deputy Director, Community Development Financial Institutions Fund.

[FR Doc. 97–31451 Filed 12–4–97; 8:45 am]

BILLING CODE 4810–70–P

federal register

Friday
December 5, 1997

Part III

Department of Labor

Employment and Training Administration

Bureau of Apprenticeship and Training Proposed Procedure and Policy; Request for Comment; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Bureau of Apprenticeship and Training Proposed Procedure and Policy; Request for Comment

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Procedure for Releasing Identities of Program Sponsors; Request for Comment.

SUMMARY: In October 1993, both President Clinton and Attorney General Janet Reno asked that each Federal department and agency review its commitment to the Freedom of Information Act (FOIA) and to the principles of openness in Government. Subsequently, then U.S. Labor Secretary Robert B. Reich directed this Department to ensure commitment with both the letter and spirit of the FOIA. In furtherance of those goals, the Bureau of Apprenticeship and Training, (BAT) a bureau within the Employment and Training Administration, is proposing a procedure and policy to release the identities of apprenticeship program sponsors registered and recognized by the BAT. The BAT seeks written comments on this policy and procedure.

DATES: Written comments must be received by February 3, 1998.

ADDRESSES: Send written comments to Anthony Swoope, Director, BAT, ETA, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Marion M. Winters, FOIA Coordinator for BAT, Telephone: (202) 219–5921 (Ext. 118) (this is not a toll-free number). FAX (202) 219-5011.

SUPPLEMENTARY INFORMATION:

Background

In October 1993, both President Clinton and Attorney General Reno asked each Federal department's agency to review its commitment to the Freedom of Information and to the principle of openness in government. In accordance with this directive, the BAT, a component of the Labor Department, re-examined its disclosure policies to see if the purposes of the FOIA could be better fostered. The Department of Labor is fully committed to these directives. In an effort to implement this Administration's policy, the Department's BAT wishes to clarify its position on the release of the fact of the existence of an apprenticeship program as well as the identities of participating apprenticeship program sponsors.

The BAT administers and promotes this nation's apprenticeship and training programs. Individuals join an apprenticeship program to learn the skills the program has to offer as well as to obtain employment. Apprenticeship is a relationship between an employer and an employee during which the employee, or apprentice, learns a trade. The training lasts a specified length of time. An apprenticeship covers all aspects of the trade and includes both on-the-job training and related instruction.

Apprenticeship programs are sponsored and operated on a voluntary basis by employer, employee associations, or partnership between employers and labor unions. The sponsor of an apprenticeship program plans, administers and pays for the program. When an apprentice is accepted into a program, he or she and the sponsor sign an apprenticeship agreement. The apprentice agrees to perform the work faithfully and complete the related study, and the sponsor agrees to make every effort to keep the apprentice employed and to comply with the standards established for the program. An apprenticeship program must meet certain requirements set down by BAT.

BAT regulations require that apprenticeship programs be registered with BAT or a federally approved State Apprenticeship Agency. Registered programs must meet federally approved standards relating to job duties, related instruction, wages, and safety and health conditions. Apprentices who successfully complete registered programs receive certificates of completion from the U.S. Department of Labor or a federally approved State Apprenticeship Agency.

Further Background

In the past, when BAT received FOIA requests for information concerning apprenticeship programs, it would notify the appropriate sponsor and seek his/her views regarding the effect disclosure of the relevant data would have on their competitive business position. This procedure was followed because of BAT's understanding of Executive Order 12600 (29 CFR 70 et. seq; 29 CFR 70.26).

Executive Order 12600, issued May 30, 1989, requires Federal Agencies to notify submitters of commercial information (apprenticeship program sponsors) if its potential release could be considered sensitive to business interests. In its effort to comply with Executive Order 12600, BAT referred all records to submitters for their comments regarding a proposed release of the information. Regrettably, *this included even the existence of an apprenticeship program.* BAT sought views of sponsors on whether the disclosure of the existence of a registered program could be harmful to its proprietary interests.

Discussion

BAT does not believe the relevant information is proprietary to the sponsor. This information belongs to the government as well as to the sponsors and apprentices. It has been BAT's experience that when we have contacted sponsors and sought their comments on any commercial harm they would experience by the publication of the fact that a registered program exists, the vast majority offered no objection. There is little basis, if any, for supporting a claim of negative proprietary impact on sponsors by identifying their participation as an apprenticeship program sponsor. It is BAT's understanding that in an overwhelming number (if not in all) State Apprenticeship Council (SAC) states the fact of the existence of apprenticeships programs is released to the public. Requests for disclosure are honored whether received by telephone, FAX, or mail.

Conclusion

Publication of the apprenticeship program sponsors will bring many benefits. It would stimulate the establishment of more apprenticeship programs. It will encourage students who may not otherwise investigate other options by these programs sponsors to learn about alternative training programs that serve as an important pathway to registered apprenticeship. A publication of BAT's 35,000 or more organizations offering apprenticeship training would be a welcome addition on the shelves of thousands of libraries across the country. Traditionally associated with the skilled trades, apprenticeship is now available in over 800 occupations. BAT is exploring identification of apprenticeship programs that it has registered to be publicized on its WEB page. The adoption of this procedure is in keeping with the administration's desire for more openness in government operation to FOIA users.

Request for Comments

Please provide us with your comments regarding the policy to release the identities of apprenticeship program sponsors registered and recognized by the BAT. The BAT seeks written comments on this policy and procedure. In particular, we welcome comments from the apprenticeship

community on the relationship, if any, to their business interests of disclosure of the existence of a registered apprenticeship program.

Signed at Washington, D.C., this 1st day of December 1997.

Anthony Swoope,

Director, Bureau of Apprenticeship and Training, Employment and Training Administration.

[FR Doc. 97–31861 Filed 12–4–97; 8:45 am]

BILLING CODE 4510–30–P

federal register

Friday
December 5, 1997

Part IV

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 1998 Apportionments, Allocations and Program Information; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 1998 Apportionments, Allocations and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1998 (Pub. L. 105–66), was signed into law by President Clinton on October 27, 1997. Pending further consideration of a multi-year authorization next Spring, Congress has passed a six-month extension of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), known as the Surface Transportation Extension Act of 1997. This act, signed by President Clinton on December 1, 1997, provides additional funding authorizations for the transit, highway, and highway safety programs for the period October 1, 1997, through March 31, 1998. The previous authorizations, under ISTEA, were effective through September 30, 1997.

Funding for the Federal Transit Administration (FTA) is derived from two sources: the general funds of the Treasury and motor fuel taxes deposited into the Mass Transit Account of the Highway Trust Fund. The 1998 DOT Appropriations Act provides $240,000,000 in general funds for the formula programs under 49 U.S.C. Sections 5307, 5311, and 5310. It also provides general funds in the amount of $52,250,000 for the transit planning and research programs of 49 U.S.C. Sections 5303, 5313(b), and 5311(b). The Surface Transportation Extension Act of 1997 provides an additional $1,328,400,000 for formula programs in the form of contract authority from the Mass Transit Account for a total of $1,568,400,000 for the formula programs.

The capital programs are funded exclusively with trust funded resources. The Surface Transportation Extension Act of 1997 provides $1,131,600,000 in new contract authority, consisting of $452,640,000 each for the Fixed Guideway Modernization and New Starts categories and $226,320,000 for the Bus category. The obligational authority for New Starts when combined with $392,000,000 in unobligated contract authority for New Starts remaining under ISTEA exceeds the obligation limitation in the 1998 DOT Appropriations Act of $800,000,000. Therefore, this notice contains allocations to make $800,000,000 for New Starts available for obligation.

This Notice contains (1) a listing of the full amount of the fiscal year 1998 apportionments and allocations for the formula, capital, and transit planning and research programs, including both trust funds and general funds, based on the 1998 Appropriations Act and Federal transit laws; and (2) a listing of apportionments and allocations based on the fiscal year 1998 available funds for the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Elderly and Persons with Disabilities Program, the Rural Transit Assistance Program, the Capital Program, the Metropolitan Planning Program, and the State Planning and Research program, in accordance with the 1998 DOT Appropriations Act and the Surface Transportation Extension Act of 1997. As soon as authorizing legislation covering the remainder of the fiscal year, April 1, 1998, through September 30, 1998, has been enacted, the entire apportionment will be made available. If the reauthorization act affects the distribution of funds within the programs, FTA will republish the apportionments and allocations in their entirety, taking the provisions of both the 1998 DOT Appropriations Act and the reauthorization act into consideration. In any case, even though the Surface Transportation Extension Act of 1997 provides contract authorizations for the period October 1, 1997, through March 31, 1998, funding is available to grantees throughout the typical period of availability for each specific program. For example, Urbanized Area Formula Program funding is available to the grantees for fiscal year 1998 plus the next three years through fiscal year 2001. In the interim, grantees are able to obligate the fiscal year 1998 available apportionments, allocations, and carryover balances remaining under the various FTA formula and capital programs.

Also included in this Notice is a listing of prior year unobligated earmarks for the Section 5309 New Starts and Bus Programs as in previous year notices. In addition, the FTA policy regarding pre-award authority to incur project costs, as well as other pertinent program information, is included.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Patricia Levine, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Elderly and Persons with Disabilities Program, the Rural Transit Assistance Program, or the Capital Program; or Robert Stout, Director, Office of Planning Operations, (202) 366–6385, for general information concerning the Metropolitan Planning Program and the State Planning and Research Program.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

I. BACKGROUND
II. OVERVIEW OF APPROPRIATIONS FOR GRANT PROGRAMS
A. General
B. Funds Available for Obligation
C. Project Management Oversight
III. EXPANDED DEFINITION OF CAPITAL
A. Preventive Maintenance
B. Operating Assistance for Urbanized Areas Less Than 200,000 In Population
IV. DEPARTMENTAL INITIATIVES
A. FTA Home Page on the Internet
B. State Infrastructure Banks
V. SECTION 5307 URBANIZED AREA FORMULA PROGRAM
A. Total Urbanized Area Formula Apportionments
B. Data Used for Urbanized Area Formula Apportionments
C. Adjustments for Energy and Operating Efficiencies
D. Urbanized Area Formula Fiscal Year 1998 Apportionments to Governors
E. Urbanized Area Formula Operating Assistance Limitations
F. Statewide Operating Assistance Limitations
G. Designated Transportation Management Areas
H. Urbanized Area Formula Funds Used for Highway Purposes
VI. SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM AND SECTION 5311(b) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP)
A. Nonurbanized Area Formula Program
B. Rural Transit Assistance Program (RTAP)
VII. SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES PROGRAM
VIII. SURFACE TRANSPORTATION PROGRAM "FLEXIBLE" FUNDS USED FOR TRANSIT PURPOSES (Title 23, U.S.C.)
A. Transfer Process
B. Matching Share for Flexible Funds
C. Other Funds Transferred to FTA
IX. SECTION 5309 CAPITAL PROGRAM
A. Fixed Guideway Modernization
B. New Starts
C. Bus
X. UNIT VALUES OF DATA FOR SECTION 5307 URBANIZED AREA FORMULA PROGRAM, SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM, AND SECTION 5309 FIXED GUIDEWAY MODERNIZATION PROGRAM
XI. SECTION 5303 METROPOLITAN PLANNING PROGRAM AND SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM
A. Metropolitan Planning Program
B. State Planning and Research Program
C. Data Used for Metropolitan Planning Apportionments and State Planning and Research Apportionments
D. FHWA Metropolitan Planning Program and State Planning and Research Program
E. Local Match Waiver for Job Access Planning Activities
F. Planning Emphasis Areas
G. Federal Planning Certification Reviews
H. Consolidated Planning Grant
XII. PERIOD OF AVAILABILITY OF FUNDS
XIII. NOTICE OF PRE-AWARD AUTHORITY TO INCUR PROJECT COSTS
A. Background
B. Current Coverage
C. Conditions
D. Environmental, Planning and Other Requirements
XIV. RAIL FIXED GUIDEWAY SYSTEMS: STATE SAFETY OVERSIGHT (49 CFR PART 659)
XV. ELECTRONIC GRANT MAKING AND MANAGEMENT INITIATIVES
A. Background
B. Graphical User Interface
C. Fiscal Year 1998 Emphasis
XVI. 1998 ANNUAL LIST OF CERTIFICATIONS AND ASSURANCES
XVII. QUARTERLY APPROVAL OF GRANTS
XVIII. GRANT APPLICATION PROCEDURES
TABLES
1. FTA FY 1998 APPROPRIATIONS AND FUNDS AVAILABLE FOR GRANT PROGRAMS
2. FTA FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS
3. FTA FY 1998 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS
4. FTA FY 1998 Section 5310 elderly and persons with disabilities apportionments
5. FTA FY 1998 sectuib 5309 fixed guideway modernization apportionments
6. FTA FY 1998 section 5309 new start allocations
6A. FTA prior year unobligated section 5309 new start allocations
7. FTA FY 1998 section 5309 bus allocations
7A. FTA prior year unobligated section 5309 BUS allocations
8. FTA FY 1998 section 5303 metropolitan planning apportionments and section 5313(b) state planning and research apportionments
9. Unit values of data—FTA FY 1998 formula grant apportionments

I. Background

Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to the Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned by statutory formula to the Governors for capital, operating and administrative assistance in nonurbanized areas. The Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to the Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. Funds appropriated for the Metropolitan Planning Program are apportioned by a statutory formula to the Governors for allocation by them to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof. Appropriated funds for the State Planning and Research Program also are apportioned to states by a statutory formula. New Start funds identified for specific projects in the 1998 DOT Appropriations Act and Bus fund allocations in the accompanying Conference Report are also included in this Notice.

II. Overview of Appropriations for Grant Programs

A. General

In fiscal year 1998, the appropriation and obligation limitation for the Urbanized Area Formula Program and the Nonurbanized Area Formula Program is $2,437,780,611. Of this amount, 94.50 percent ($2,303,702,677) would be available to the Urbanized Area Formula Program, and 5.50 percent ($134,077,934) would be available to the Nonurbanized Area Formula Program. The other program appropriations contained in this Notice are as follows: $4,500,000 for the Rural Transit Assistance Program (RTAP); $62,219,389 for the Elderly and Persons with Disabilities Program; $39,500,000 for the Metropolitan Planning Program; $8,250,000 for the State Planning and Research Program; and $2,000,000,000 in obligation limitation for the Capital Program. Of the Capital Program amount, $800,000,000 is for Fixed Guideway Modernization, $800,000,000 is for New Starts, and $400,000,000 is for Bus.

Table 1 displays the amounts of obligation limitation and appropriations for these programs, including adjustments and final apportionment and allocation amounts. Also included is a listing of amounts for the formula and capital programs based on the fiscal year 1998 available funds. The following text provides a narrative explanation for the funding levels and other factors affecting these apportionments and allocations.

B. Funds Available for Obligation

Because the Surface Transportation Extension Act of 1997 only provides contract authority through March 31, 1998, FTA is publishing both (1) the apportionment and allocation tables that contain the full program levels in the DOT Appropriations Act for fiscal year 1998; and (2) the apportionments and allocations based on the fiscal year 1998 available funds for the various programs. The column titled "FY 1998 Apportionment" includes both trust funds (contract authority) and general funds, and does not represent the amount that is actually available for obligation at this time. Rather, it reflects the total dollar amount of obligation limitation and appropriations in the 1998 DOT Appropriations Act, once a full year contract authority is made available. Only funds shown in the column titled "FY 1998 Available Apportionment," may be obligated pending further reauthorizing legislation.

C. Project Management Oversight

49 U.S.C. Section 5327 allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available under the Capital Program; the Urbanized Area Formula Program, the Nonurbanized Area Formula Program; the National Capital Transportation Act, as amended; and an additional one-quarter of one percent of Capital Program funds to contract with any person to oversee the construction of any major project under these statutory programs and to conduct safety, procurement, management and financial reviews and audits.

The 1998 DOT Appropriations Act states "That none of the funds in this Act shall be available for the execution of contracts under section 5327(c) of title 49, United States Code, in an aggregate amount that exceeds $15,000,000." Accordingly, the Project Management Oversight (PMO) amount takes into account both the 1998 DOT Appropriations Act and Federal transit laws. The obligation limitation and appropriations for the Sections 5307, 5311, and 5309 Programs, and the National Capital Transportation Act, as amended, total $4,637,780,611. The higher amount as authorized under Federal transit laws was reduced to the $15,000,000 required by the 1998 DOT Appropriations Act by taking a pro rata reduction across all categories of the four programs. Therefore, .32343056 of one percent of the funds appropriated within the obligation limitation and appropriation for the Urbanized Area Formula Program; the Nonurbanized

Area Formula Program; the Capital Program; and the National Capital Transportation Act, as amended, for fiscal year 1998, have been reserved for these purposes before apportionment of the funds.

III. Expanded Definition of Capital

A. Preventive Maintenance

Effective for fiscal year 1998, preventive maintenance will be eligible for Federal assistance as a capital expense with a Federal/local share ratio of 80/20 in the FTA formula programs. Thus preventive maintenance is an eligible capital cost under the Section 5307 Urbanized Area Formula Program; the Section 5310 Elderly and Persons with Disabilities Program; and the Section 5311 Nonurbanized Area Formula Program. This provision does not apply to the Section 5309 Capital Program. This change implements Section 316 of the 1998 DOT Appropriations Act, in which Congress amended the definition of an eligible capital project under the FTA formula programs to add preventive maintenance.

Since the DOT Appropriations Act covers only Federal fiscal year 1998, this new policy applies only to funds within the obligation limitation and appropriation in the DOT Appropriations Act for fiscal year 1998. It does not apply to carryover funds apportioned in previous years.

Preventive maintenance costs for fiscal year 1998 are defined as all maintenance costs. For general guidance as to the definition of eligible maintenance costs, the grantee should refer to the definition of maintenance in the most recent National Transit Database (NTD) reporting manual. During fiscal year 1998 a grantee may continue to request assistance for capital expenses under the FTA policies governing associated capital maintenance items (spare parts), maintenance of vehicles leased under contract, and vehicle overhauls; or a grantee may choose to capture all maintenance under preventive maintenance, and also may continue to request operating assistance within the grantee's operating assistance limitation at the 50/50 match share. However, a grantee may not count the same costs twice. Preventive maintenance costs eligible for FTA capital assistance from fiscal year 1998 appropriations are those costs incurred by a grantee within a local fiscal year ending during calendar 1997, or thereafter. If a grantee purchases service instead of operating service directly, and maintenance is included in the contract for that purchased service, then the grantee may apply for capital assistance under preventive maintenance for the actual maintenance costs of the purchased service.

For accounting purposes, the grantee is cautioned not to confuse the fact that an item generally considered to be an operating expense is now eligible for FTA capital assistance. Generally accepted accounting principles and the grantee's accounting system determine those costs that are to be accounted for as operating costs. The National Transit Database Reporting System (NTD) follows generally accepted accounting principles, and so a grantee reporting to the NTD must report the operating costs the grantee has incurred as operating regardless of grant eligibility as capital. Nevertheless, under provisions of the fiscal year 1998 Appropriations Act, some of those operating costs, while continuing to be accounted for as operating costs in the grantee's accounting records, are now eligible for FTA capital assistance.

B. Operating Assistance for Urbanized Areas Less Than 200,000 in Population

Section 316 of the 1998 DOT Appropriations Act further amended the definition of a capital project to include "financing the operating costs of equipment and facilities used in mass transportation in urbanized areas with a population of less than 200,000".

A grantee in an urbanized area of less than 200,000 in population may elect to employ this amended definition of capital and request 80 percent Federal assistance for funding net operating expenses, or the grantee may choose to use the fiscal year 1998 operating assistance limitations published in this notice and apply for operating assistance at the 50 percent Federal share. If operating expenses are applied for as capital costs, the operating assistance limitation does not apply. The net operating expenses eligible for capital funding under the amended definition of capital will be determined according to guidance in FTA Circular 9030.1B, Appendix D. As for preventive maintenance, only fiscal year 1998 funds may be used for operating assistance as a capital cost.

IV. Departmental Initiatives

A. FTA Home Page on the Internet

FTA provides extended customer service by making available transit information on the FTA Home Page web site, including this Apportionment Notice. Also posted on the web site are FTA program circulars: C9030.1B, Urbanized Area Formula Program: Grant Application Instructions, dated October 10, 1996; C9040.1D, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, dated May 8, 1997; C9070.1D, Elderly and Persons with Disabilities Program Guidance and Application Instructions, dated October 22, 1997; C9300.1, Capital Program: Grant Application Instructions, dated September 29, 1995; 4220.1D, Third Party Contracting Requirements, dated April 15, 1996; C5010.1B, Grant Management Guidelines, dated September 7, 1995; and C8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Program Grants, dated October 25, 1996. The fiscal year 1998 Annual List of Certifications and Assurances is also posted on the FTA web site. Other documents on the FTA web site of particular interest to public transit providers and users include the 1996 Statistical Summaries of FTA Grant Assistance Programs, and the National Transit Database Profiles.

The FTA Home Page may be accessed at: http://www.fta.dot.gov. FTA circulars and other guidance are at: http://www.fta.dot.gov/program.

Grantees should check our web site frequently to keep up to date on new postings.

B. State Infrastructure Banks

The State Infrastructure Bank (SIB) pilot program was authorized in the National Highway System Designation Act of 1995. It allows the creation of state-level institutions that can use Federal Highway Administration (FHWA) and FTA funds to make loans and loan guarantees (and other forms of credit enhancement) to transit and highway projects. The SIBs may earn interest on deposits of Federal funds, and they may charge below-market interest rates on long-term loans.

In 1996, ten (10) states were designated to establish SIBs. On June 19, 1997, an additional 29 states were designated to participate in the SIB Pilot Program. The Secretary of Transportation has awarded $150,000,000 in capitalization funding to these 29 designated states.

V. Section 5307 Urbanized Area Formula Program

A. Total Urbanized Area Formula Apportionments

In addition to the appropriated fiscal year 1998 Urbanized Area Formula funds of $2,303,702,677, the apportionment also includes $7,162,381 in deobligated funds which have become available for reapportionment for the Urbanized Area Formula Program as provided by 49 U.S.C. 5336(i).

Table 2 displays the amount apportioned for the Urbanized Area Formula Program. After the .32343056 of one percent for PMO is reserved ($7,450,879), the amount appropriated for this program is $2,296,251,798. The funds to be reapportioned, described in the previous paragraph, have then been added. Thus, the total amount apportioned for this program is $2,303,414,179.

Table 2 also shows by urbanized area and state the amount of funds which are currently available. The total of $1,444,234,826 includes $1,441,735,458 in fiscal year 1998 trust funded contract authority and general fund appropriation, $7,162,381 in deobligated funds from previous years which have become available for reapportionment, minus $4,663,013 for PMO. The available operating assistance limitation in the amount of $150,000,000 is also shown on Table 2.

B. Data Used for Urbanized Area Formula Apportionments

Data from the 1996 NTD (49 U.S.C. 5335) Report Year submitted in late 1996 and early 1997 have been used to calculate the fiscal year 1998 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. The population and population density figures used in calculating the Urbanized Area Formula are from the 1990 Census.

C. Adjustments for Energy and Operating Efficiencies

49 U.S.C. 5336(b)(2)(E) provides that, if a recipient of Urbanized Area Formula Program funds demonstrates to the satisfaction of the Secretary that energy or operating efficiencies would be achieved by actions that reduce revenue vehicle miles but provide the same frequency of revenue service to the same number of riders, the recipient's apportionment under 49 U.S.C. 5336(b)(2)(A)(i) shall not be reduced as a result of such actions. One recipient has submitted data acceptable to FTA in accordance with this provision. Accordingly, the revenue vehicle miles used in the Urbanized Area Formula database to calculate the fiscal year 1998 Urbanized Area Formula apportionment reflect the amount the recipient would have received without the reductions in mileage.

D. Urbanized Area Formula Fiscal Year 1998 Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each state is shown on Table 2. Table 2 also contains the total apportionment amount attributable to each of the urbanized areas within the state. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed below in Section G, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

E. Urbanized Area Formula Operating Assistance Limitations

The fiscal year 1998 limitations on the amount of Urbanized Area Formula funds that may be used for operating assistance are shown on Table 2 with the fiscal year 1998 apportionment.

The operating assistance limitations for all urbanized areas have been adjusted by 49 U.S.C. 5336(d)(2) to reflect the increase in the Consumer Price Index (CPI) for all urban consumers during the most recent calendar years. *The CPI Detailed Report*, December 1996, published by the Department of Labor (DOL), establishes that the calendar year 1996 CPI increase for all urban consumers is 3.3 percent. This increase was applied against the base operating assistance limitation calculated in accordance with 49 U.S.C. 5336(d)(2).

These adjustments result in an overall national fiscal year 1998 authorized operating assistance limitation level of $1,178,642,366. However, the 1998 DOT Appropriations Act limits the nationwide availability for operating assistance to a maximum of $150,000,000. Further, it maintains the level of transit operating assistance to urbanized areas of less than 200,000 in population at 75 percent of the amount of operating assistance such areas received in fiscal year 1995. Accordingly, the operating assistance limitation published in this Notice takes into account both the 1998 DOT Appropriations Act and Federal transit laws. Therefore, the higher operating assistance limitation as authorized under Federal transit laws ($1,178,642,366) was reduced to the $150,000,000 required by the 1998 DOT Appropriations Act by taking a pro rata reduction across all categories of grantees. Further, the operating assistance limitation to urbanized areas less than 200,000 in population was adjusted to $92,949,803 or 75 percent of the amount of their fiscal year 1995 level of $123,933,070.

The operating assistance limitation of $85,791 for Flagstaff, Arizona (a newly designated urbanized area under 200,000 in fiscal year 1996), was then added to the amount of the fiscal year 1995 level, thereby increasing the fiscal year 1998 level for these areas to $93,035,594. The remaining $56,964,406 of the $150,000,000 was prorated to urbanized areas above 200,000 in population, as authorized by the 1998 DOT Appropriations Act.

Consistent with the 1998 Conference Report, the Secretary hereby directs each area of 1,000,000 or more in population to give priority consideration to the impact of reductions in operating assistance on smaller transit authorities operating within the area, and to consider the needs and resources of such transit authorities when the limitation is distributed among all transit authorities operating in the area.

F. Statewide Operating Assistance Limitations

49 U.S.C. 5307(f) specifies that in any case in which a statewide agency or instrumentality is responsible under state laws for the financing, construction and operation, directly, by lease, contract or otherwise, of public transportation services, and when such statewide agency or instrumentality is the designated recipient of FTA funds, and when the statewide agency or instrumentality provides service among two or more urbanized areas, the statewide agency or instrumentality shall be allowed to apply for operating assistance up to the combined total permissible amount of all urbanized areas in which it provides service, regardless of whether the amount for any particular urbanized area is exceeded. However, the amount of operating assistance provided for another state or local transportation agency within the affected urbanized areas may not be reduced.

G. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as transportation management areas (TMAs), in accordance with 49 U.S.C. Section 5305. These designations were formally made in a **Federal Register** notice dated May 18, 1992 (57 FR 21160), signed by the Federal Highway Administrator and the Federal Transit Administrator. Additional areas may be designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. As of October 1, 1997, two additional TMAs have been formally designated: Petersburg, Virginia, comprised solely of the Petersburg,

Virginia, urbanized area; and Santa Barbara, Santa Maria, and Lompoc, California, which were combined and designated as one TMA.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries, which have been established by the MPO for the designated TMA, also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate Urbanized Area Formula program "Governor's Apportionment" funds for urbanized areas with less than 200,000 in population is restricted.

As required by 49 U.S.C. 5307(a)(2), a recipient(s) must be designated to dispense the Urbanized Area Formula funds attributable to TMAs. Those urbanized areas that do not already have a designated recipient must name one and notify the appropriate FTA regional office of the designation. This would include those urbanized areas with less than 200,000 in population that may receive TMA designation independently, or those with less than 200,000 in population which are currently included within the boundaries of a larger designated TMA. In both cases, the Governor would only have discretion to allocate Governor's Apportionment funds attributable to areas which are outside of designated TMA boundaries. In order for the FTA and Governors to know which urbanized areas under 200,000 in population are included within the boundaries of an existing TMA, and so that they can be identified in future **Federal Register** notices, each MPO whose TMA planning boundaries include these smaller urbanized areas is asked to identify such areas to the FTA. This notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 Seventh Street, SW, Washington, DC 20590, no later than July 1 of each fiscal year. To date, FTA has been notified of the following urbanized areas with less than 200,000 in population that are included within the planning boundaries of designated TMAs:

Designated TMA	Small urbanized area included in TMA boundaries
Baltimore, Maryland	Annapolis, Maryland.
Dallas-Fort Worth, Texas	Denton, Texas.
	Lewisville, Texas.
Houston, Texas	Galveston, Texas.
	Texas City, Texas.
Orlando, Florida	Kissimmee, Florida.
Philadelphia, Pennsylvania	Pottstown, Pennsylvania.
Pittsburgh, Pennsylvania	Monessen, Pennsylvania.
	Steubenville-Weirton, OH-WV-PA (PA portion).
Seattle, Washington	Bremerton, Washington.
Washington, DC-MD-VA	Frederick, Maryland (MD portion).

H. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA, except for those amounts which can be used for the payment of operating expenses, are also available for highway projects if the following three conditions are met: (1) Such use must be approved by the MPO after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990 (ADA); and (3) funds may be available for highway projects under title 23, U.S.C., only if funds used for the state or local share of such highway projects are eligible to fund either highway or transit projects.

Urbanized Area Formula funds which are designated for highway projects will be transferred to and administered by the Federal Highway Administration (FHWA). The MPO should notify FTA of its intent to program FTA funds for highway purposes.

VI. Section 5311 Nonurbanized Area Formula Program and Section 5311(b) Rural Transit Assistance Program (RTAP)

A. Nonurbanized Area Formula Program

The fiscal year 1998 Nonurbanized Area Formula apportionments to the states totaling $134,819,045 are displayed in Table 3. Of the $134,077,934 appropriated, .32343056 of one percent ($433,649) was reserved for PMO. In addition to the current appropriation and obligation limitation, the funds available for apportionment include $1,174,760 in deobligated funds from fiscal years prior to 1996.

Table 3 also shows a state-by-state apportionment of the amount of funds which are currently available. The total of $84,813,897 includes $83,910,529 in fiscal year 1998 trust funded contract authority and general fund appropriation, $1,174,760 in prior year carryover available to be reapportioned, minus $271,392 for PMO.

The population figures used in calculating these apportionments are from the 1990 Census.

The Nonurbanized Formula Program provides capital, operating and administrative assistance for areas less than 50,000 in population. Each state must spend no less than 15 percent of its fiscal year 1998 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the state are being adequately met. Fiscal year 1998 Nonurbanized Area Formula grant applications must reflect this level of programming for intercity bus or include a certification from the Governor.

B. Rural Transit Assistance Program (RTAP)

The fiscal year 1998 RTAP allocations to the states totaling $4,678,778 are also displayed on Table 3. This amount includes $4,500,000 in fiscal year 1998 appropriated funds, and $178,778 in prior year deobligated funds, which have become available for reallocation for this program.

Table 3 also shows a state-by-state allocation of RTAP funds. RTAP is totally general funded in fiscal year 1998; therefore, the entire appropriated amount of $4,500,000 is currently available plus $178,778 in reapportioned funds.

The funds are allocated to the states to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the states' administration of the Nonurbanized Area Formula Program.

VII. Section 5310 Elderly and Persons With Disabilities Program

A total of $62,221,661 is apportioned to the states for fiscal year 1998 for the Elderly and Persons with Disabilities Program. In addition to the fiscal year 1998 appropriation of $62,219,389, the fiscal year 1998 apportionment also includes $2,272 in prior year unobligated funds which have become available for reapportionment for the Elderly and Persons with Disabilities Program. Table 4 shows each state's apportionment.

Table 4 also shows a state-by-state allocation of the amount of funds which are currently available. The total of $42,756,285 includes $42,754,013 in fiscal year 1998 trust funded contract authority and general fund appropriation, and $2,272 in reapportioned funds.

The formula for apportioning these funds uses 1990 Census population data for persons aged 65 and over and for persons with disabilities.

The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the state that non-profit organizations in the area are not readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement the Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year.

VIII. Surface Transportation Program "Flexible" Funds Used for Transit Purposes (Title 23, U.S.C.)

A. Transfer Process

"Flexible" DOT funds, such as Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, or others, which are designated for use in transit projects, are transferred from the FHWA to FTA after which FTA approves the project and awards a grant. Flexible funds designated for transit projects must result from the metropolitan and state planning and programming process, and must be included in an approved State Transportation Improvement Program (STIP) before the funds can be transferred. In order to initiate the transfer process, the grantee must submit a completed application to the FTA Regional Office, and must notify the state highway/transportation agency that it has submitted an application which requires a transfer of funds. Once the state highway/transportation agency determines that the state has sufficient obligation authority, the state agency notifies FHWA that the funds are to be used for transit purposes and requests that the funds be obligated by FHWA as a transfer project to FTA. The flexible funds transferred to FTA will be placed in an urbanized area or state account for one of the three existing formula programs—Urbanized Area, Nonurbanized Area, or Elderly and Persons with Disabilities.

The flexible funds are then treated as FTA formula funds, although they retain a special identifying code. They may be used for any purpose eligible under these FTA programs except for operating expenses. All FTA requirements are applicable to transferred funds. Flexible funds should be combined with regular FTA formula funds in a single annual grant application.

B. Matching Share for Flexible Funds

The provisions of Title 23, U.S.C. regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, flexible funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by the FHWA.

There are three instances in which a higher than 80 percent Federal share would be maintained. First, in states with large areas of Indian and certain public domain lands, and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that state. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land states. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using flexible funds administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA. The third instance includes the 100 percent Federal safety projects; however, these are subject to a nationwide 10 percent program limitation.

C. Other Funds Transferred to FTA

Certain demonstration projects authorized in Title 23 are specified to be used for transit projects and are more appropriately administered by FTA. In such cases, FHWA has transferred the funds to FTA for administration. Since these funds are not STP flexible funds, they are transferred into the appropriate Capital Program category (Bus, New Starts, or Fixed Guideway Modernization) for obligation and are administered as Capital projects.

IX. Section 5309 Capital Program

A. Fixed Guideway Modernization

Fixed Guideway Modernization funds are allocated by formula. Statutory percentages were established to allocate the first $497,700,000 to 11 fixed guideway areas. The next $70,000,000 is allocated one-half to these 11 urbanized areas and one-half to other urbanized areas with fixed guideways which are at least seven years old on the basis of the Urbanized Area Formula Program fixed guideway tier formula factors. The remaining funds are allocated to all of these urbanized areas as one universe. For fiscal year 1998, there is a $800,000,000 obligation limitation for fixed guideway modernization. After deducting the .32343056 of one percent for oversight ($2,587,445), $797,412,555 would be available for apportionment to the specified urbanized areas for Fixed Guideway Modernization funding. Table 5 displays these apportionments.

Table 5 also shows a state and area allocation of the fiscal year 1998 funds which are currently available. The total of $451,176,024 includes $452,640,000 in fiscal year 1998 trust-funded contract authority, minus $1,463,976 for PMO, distributed on a pro rata basis as directed in the Surface Transportation Extension Act of 1997.

Funds apportioned for this section must be used for capital projects to modernize or improve fixed guideway systems. The expanded definition of capital to include preventive maintenance does not apply to the Fixed Guideway Modernization Program.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A

request for the start-up service dates for fixed guideways has been incorporated into the NTD reporting system to ensure that all eligible fixed guideway data is included in the calculation of these apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting one mile or less of fixed guideway mileage under the NTD are not included. Urbanized areas should be aware that the formula allocating Fixed Guideway Modernization funds may be changed under a new authorization act.

B. New Starts

The fiscal year 1998 obligation limitation for New Starts is $800,000,000.

The Project Management Oversight (PMO) reduction was applied to this amount and subtracted on a pro rata basis from all 65 projects specified in the 1998 DOT Appropriations Act. For fiscal year 1998, this amount is $2,587,445. This amount was computed by applying .32343056 of one percent to the obligation limitation. After subtracting this amount from the $800,000,000, a total of $797,412,555 is available for obligation. The final allocation for each of these projects, which also reflects the PMO reduction, is contained in Table 6 of this **Federal Register** notice.

The Surface Transportation Extension Act of 1997 provides $452,640,000 for New Starts. This obligational authority for New Starts when combined with $392,000,000 in unobligated contract authority for New Starts remaining under ISTEA exceeds the obligation limitation in the 1998 Appropriations Act of $800,000,000. Therefore, $800,000,000 minus $2,587,445 for PMO is currently available.

Prior year unobligated appropriations for New Starts in the amount of $299,434,442 remain available for obligation in fiscal year 1998. These allocations are displayed in Table 6A.

C. Bus

The fiscal year 1998 obligation limitation for Bus is $400,000,000. In addition Congress reprogrammed $975,000 in unobligated Bus funds originally appropriated in fiscal year 1995, yielding an overall total of $400,975,000. This entire amount was allocated to projects specified in the 1998 DOT Appropriations Act. After deducting the .32343056 of one percent for oversight ($1,293,722) from the 1998 appropriated amount ($400,000,000), $399,681,278 remains available for projects.

The Conference Report accompanying the 1998 DOT Appropriations Act earmarked all of the fiscal year 1998 Bus funds to specified states or localities for bus and bus-related projects. Where funds were earmarked to states, in most cases, there were additional suballocations to local entities. In Louisiana the suballocation is included in the Conference Report; however, a letter dated October 14, 1997, from Chairman Frank R. Wolf of the House Appropriations Committee clarifies the amount of suballocations within the State. This clarification is reflected in the Bus allocations displayed in Table 7.

The conference report directs the FTA to make available to the state of Michigan for the procurement of buses and bus-related equipment funds ($4,000,000) originally provided in the fiscal year 1995 Department of Transportation and Related Agencies Appropriations Act for a passenger intermodal transit center in Detroit, Michigan.

The Conferees also direct the FTA to reallocate funds in the amount of $4,962,500, made available in Public Law 103–331 for the Twin Cities Central Corridor project and not obligated by the end of fiscal year 1997, and make these funds available for similar bus and bus facilities projects in the Twin Cities Central Corridor.

Also shown in Table 7 is a state and area allocation of the fiscal year 1998 funds which are currently available. The total of $226,563,012 includes $226,320,000 in fiscal year 1998 trust funded contract authority, $975,000 in reprogrammed funds, minus $731,988 for PMO.

All bus projects must be eligible for FTA funding under FTA Circular 9300.1 in order to be approved by FTA. In previous years, there have been funds allocated for projects which were subsequently found to be ineligible for FTA assistance. Applicants with projects listed in Table 7 are advised to consult early in the fiscal year with the appropriate regional office regarding the project to ensure its eligibility for funding. This early consultation is especially critical when exercising pre-award authority.

Because the .32343056 of one percent for PMO was subtracted from the amount appropriated, each bus project identified in the Conference Report receives .32343056 of one percent less than the funding level contained in the report. No funds remain available for discretionary allocation by the Federal Transit Administrator. Table 7 displays the allocations of the fiscal year 1998 Bus funds by state and area.

Prior year unobligated appropriations for Bus in the amount of $188,761,911 remain available for obligation in fiscal year 1998, and are displayed in Table 7A.

X. Unit Values of Data for the Section 5307 Urbanized Area Formula Program, Section 5311 Nonurbanized Area Formula Program, and Section 5309 Capital Fixed Guideway Modernization

For technical assistance purposes, the dollar unit values of data derived from the computations of the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, and the Capital Fixed Guideway Modernization apportionments are included in this Notice in Table 9. To determine how a particular apportionment amount was developed, areas may multiply their population, population density, and data from the NTD by these unit values.

XI. Section 5303 Metropolitan Planning Program and 5313(b) State Planning and Research Program

A. Metropolitan Planning Program

The fiscal year 1998 Metropolitan Planning apportionment to states for MPOs to be used in urbanized areas totals $39,625,587. This amount includes $39,500,000 in fiscal year 1998 appropriated funds, and $125,587 in prior year deobligated funds which have become available for reallocation for this program. A basic allocation of 80 percent of this amount ($31,700,470) is distributed to the states based on a statutory formula for subsequent state distribution to each urbanized area, or parts thereof, within each state. A supplemental allocation of the remaining 20 percent ($7,925,117) is also provided to the States based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 8 contains the final state apportionments for the combined basic and supplemental allocations. Each state, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the state. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable, that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in fiscal year 1991 (minimum MPO allocation). Each state formula must include a provision for the minimum MPO allocation. Where the state and MPOs

desire to use a new formula not previously approved by FTA, the state or MPO must submit the new formula to the appropriate FTA Regional Office for prior approval.

The Metropolitan Planning Program is totally general funded in fiscal year 1998; therefore, the entire appropriated amount of $39,500,000 is currently available plus $125,587 in reapportioned funds.

B. State Planning and Research Program

The fiscal year 1998 apportionment for the State Planning and Research Program totals $8,472,086. This amount includes $8,250,000 in fiscal year 1998 appropriated funds, and $222,086 in prior year deobligated funds which have become available for reallocation to this program. Final state apportionments, based on a statutory formula for this program, are also contained on Table 8. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, management training and cooperative research. In addition, a state may authorize a portion of these funds to be used to supplement planning funds allocated by the State to its urbanized areas as the state deems appropriate.

The State Planning and Research Program is totally general funded in fiscal year 1998; therefore, the entire appropriated amount of $8,250,000 is currently available plus $222,086 in reapportioned funds.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each state by administrative formula in fiscal year 1991 was used as a "hold harmless" base in calculating funding to each State.

D. FHWA Metropolitan Planning Program and State Planning and Research Program

Last year, estimated apportionments for the corresponding FHWA planning programs were provided along with the FTA apportionments. This year, no information will be available for the FHWA apportionments since their programs have not been reauthorized.

E. Local Match Waiver for Job Access Planning Activities

Federal, state, and local welfare reform initiatives may require the development of new and innovative public and other transportation services to ensure that former welfare recipients have adequate mobility for reaching employment opportunities. In recognition of the key role that transportation plays in ensuring the success of welfare-to-work initiatives, FTA and FHWA are permitting the waiver of the local match requirement for job access planning activities undertaken with Metropolitan Planning Program and State Planning and Research Program funds. FTA and FHWA will support requests for waivers when they are included in metropolitan Unified Planning Programs and State Planning and Research Programs and meet all other appropriate requirements.

F. Planning Emphasis Areas

This notice includes newly developed transportation Planning Emphasis Areas (PEAs). The PEAs were prepared to advise state and local officials and transit operators of the national issues that warrant consideration in carrying out the metropolitan and statewide transportation planning process. The four major PEA themes were developed to promote general consistency between the planning initiatives being advanced in the metropolitan and statewide planning processes and national policy goals likely to be included in the reauthorized transportation legislation, as well as consistency with the USDOT Strategic Plan currently being finalized. Consideration of the PEAs in each state and metropolitan area, as appropriate in the Unified Planning Work Programs and State Planning Work Programs, is expected to reflect their unique challenges and goals. The Office of Planning anticipates working with a broad cross-section of stakeholders in preparing clarifying language and possible ways to relate the PEAs to the statewide and metropolitan planning processes.

Goals developed as part of USDOT's strategic planning process are designed to ensure the highest quality of surface transportation which promotes the Nation's economic and community vitality and environmental quality. Towards these goals, transportation Planning Emphasis Areas are prepared to advise state and local officials of the national issues that warrant consideration in carrying out the metropolitan and statewide transportation planning process (the planning process). Consideration of the emphasis areas in each state and metropolitan area is expected to reflect their unique challenges and goals. MPOs, states and transit operators may want to explore opportunities for local governments, the private sector, academic and research centers, environmental and human service agencies and other stakeholders to participate in the transportation planning process.

1. System Management and Operation

Planning for effective and efficient transportation system management and operation with ongoing performance monitoring preserves capacity, maximizes personal mobility and freight movement, ensures user safety and system security, and improves and maintains structural integrity. Innovative technologies, such as those included in Intelligent Transportation Systems (ITS), can improve communications, operational efficiencies, safety and system performance. Effectively managed transportation systems support the national Welfare-to-Work initiative by providing access to employment opportunities and support economic development by reducing the time for moving people and freight. The development of non-traditional transportation services to meet emerging new markets would help improve accessibility and mobility.

2. Financial Planning

A cooperative planning process which considers innovative funding sources, such as State Infrastructure Banks (SIBs), assists with developing sound transportation financial planning processes with accurate estimates of reasonably available funds, costs for system expansion, and future operation and maintenance costs. Coordinated activities to develop transportation plans will be improved with rigorous analysis of the financial dimensions of proposed major infrastructure investments.

3. Environmental and Community Impact

Local planning processes are encouraged to give early consideration of the natural environment and communities affected by transportation planning and project activities. Air quality issues are a key concern in some metropolitan areas. Coordinated planning for transportation and land use management will help to create sustainable communities with protection of natural resources, concentration of new development in suitable areas, and control of sprawl with infill development of under-utilized areas. State and local officials may choose to evaluate their decisionmaking process to determine how well it responds to community needs, as called for in the Livable Communities initiative. Consideration may be given to joint development of

transportation infrastructure projects along with facilities providing goods and services to communities and neighborhoods.

4. Transportation and Equity

Transportation planning processes should address the equitable distribution of mobility benefits and possible adverse environmental and health impacts created by federally funded transportation investments and activities. The benefits of Federal transportation investments should be equitably distributed as required by Title VI. Planning processes should evaluate proposed transportation investments to ensure they do not disproportionately create adverse human health and environmental impacts on low-income and minority populations.

G. Federal Planning Certification Reviews

Federal certification of the planning process is conducted in a Transportation Management Area (TMA), which is an urbanized area over 200,000 in population or other urbanized area designated by the Secretary of Transportation (the Secretary). The Secretary is responsible for certifying, at least once every three years, that the metropolitan transportation planning process in the TMA is being carried out under applicable provisions of Federal law. More detail on these reviews can be found in the September 8, 1997, **Federal Register** notice, which announced the metropolitan planning processes that will jointly be reviewed by FTA and FHWA and requested comments on the metropolitan planning processes under review.

Dates for site visits for the TMAs to be reviewed in fiscal year 1998 are being established and are available on the FTA Home Page at http://www.fta.gov/office/planning.

For further information regarding Federal certifications of the planning process contact: For FTA: Mr. Charles Goodman, FTA Metropolitan Planning Division (TPL–12), 202–366–1944; or Scott Biehl, FTA Office of Chief Counsel (TCC–30), 202–366–4063. For FHWA: Mr. Sheldon Edner, FHWA Metropolitan Planning Division (HEP–20), 202–366–4066; or Reid Alsop, FHWA Office of the Chief Counsel (HCC–31), 202–366–1371.

H. Consolidated Planning Grant

In fiscal year 1997, FTA and FHWA began offering states the option of participating in a pilot Consolidated Planning Grant (CPG) program. Thirteen states have agreed to participate in the pilot. In fiscal year 1997, more than $33.9 million was obligated for 11 CPG pilot states. The total obligations are approximately two-thirds FHWA planning funds and one-third FTA planning funds. One of our original goals in developing the CPG pilot was to give states and MPOs more control over their planning resources with a combination of broader financial controls and greater flexibility in the management of their planning activities. As part of the pilot, grants can be made with a "blended" ratio, if appropriate, to address different FTA and FHWA Federal matches. The blended ratio would allow billing at a single ratio determined on the relative shares of FTA and FHWA planning funds.

To further reduce paperwork for our customers, the CPG pilot offers the states two options for carrying the CPGs over from year to year. The first option is to treat the CPG much as FHWA grants are treated currently; that is, as basically annual grants with a yearly close-out, deobligation and reobligation cycle. The second option is to treat the CPG more like an FTA grant, but with even greater flexibility. Under this second option, the CPG grant would stay open for a multi-year period to be determined by the state (and MPO, jointly, for Metropolitan Planning funds) with the approval of the Federal Government. New apportionments will be added by a grant amendment as the funds become available. So far, over one-half of the current CPG grantees plan to follow this second option.

The FTA is exploring with FHWA the potential for extending FTA's pre-award authority to the entire CPG program. This would allow states to continue their planning program activities from year to year with the assurance (granted to all FTA grantees in the annual **Federal Register** notice) that eligible costs can later be converted to a regularly funded Federal project without the need for prior approval or authorization from the granting agency.

FTA will also be providing an enhancement to its Electronic Grant Making and Management (EGMM) program that is now used to request planning grants, obligate funds, monitor fund balances and grant status, and file financial and status reports for the CPG. These enhancements will benefit all grants including the CPG. For further information on participating in the CPG Pilot, contact Ms. Candace Noonan, Intermodal and Statewide Planning Division (TPL–11) at (202) 366–1648.

XII. Period of Availability of Funds

The funds apportioned under the Urbanized Area Formula Program, the Fixed Guideway Modernization Program, the Metropolitan Planning Program and the State Planning and Research Program in this notice will remain available to be obligated by FTA to recipients for three fiscal years following fiscal year 1998. Any of these apportioned funds unobligated at the close of business on September 30, 2001, will revert to FTA for reapportionment under these respective programs.

Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two fiscal years following fiscal year 1998. Any such funds remaining unobligated at the close of business on September 30, 2000, will revert to FTA for reapportionment among the states under the Nonurbanized Area Formula Program. Funds allocated to States under the Elderly and Persons with Disabilities Program in this Notice must be obligated by September 30, 1998. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the states under the Elderly and Persons with Disabilities Program. The 1998 DOT Appropriations Act includes a provision requiring that fiscal year 1998 New Starts and Bus funds not obligated for their original purpose as of September 30, 2000, shall be made available for other discretionary projects within the respective categories of the Capital Program. Similar provisions in the 1997 and 1996 DOT Appropriations Acts required that fiscal year 1997 Bus and New Starts funds that are not obligated by September 30, 1999, shall also be made available for other discretionary Bus or New Start projects, respectively, and fiscal year 1996 Bus and New Starts funds unobligated by September 30, 1998, shall be made available for other discretionary Bus or New Start projects, respectively.

XIII. Notice of Pre-Award Authority to Incur Project Cost

A. Background

Since fiscal year 1994, FTA has provided grantees pre-award authority to cover planning and capital costs prior to grant award. Previous to this grantees had authority to incur costs for operating assistance prior to grant award. This automatic pre-award spending authority permitted a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. In order to ensure eligibility for future FTA funds, grantees are encouraged to consult with the appropriate regional office prior to exercising pre-award authority.

B. Current Coverage

In fiscal year 1998, authority to incur costs for Fixed Guideway Modernization Formula, Metropolitan Planning, Urbanized Area Formula, Elderly and Persons with Disabilities, Nonurbanized Area Formula, and State Planning and Research in advance of possible future Federal participation is provided to fiscal year 1998 funds apportioned and allocated in this notice. This pre-award authority also applies to Capital Bus funds identified in this notice. Pre-award authority for carryover amounts for these programs was provided in the *FTA Fiscal Year 1997 Apportionments and Allocations Federal Register* notice. This pre-award authority is also extended to projects intended to be funded with STP or CMAQ funds transferred to FTA in fiscal year 1998. Pre-award authority applies to FTA funds and flexible funds provided the conditions in C and D below are met. The pre-award authority does not apply to Capital New Start funds. Preaward authority also applies to preventive maintenance costs incurred within a local fiscal year ending during calendar year 1997, or thereafter, under the formula programs cited above.

C. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1) This pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that the FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee which prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of this authority will be eligible for credit toward local match or reimbursement if the FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal-local match ratio at the time the funds are obligated.

(6) For funds to which this authority applies, the authority expires with the lapsing of fiscal year 1998 funds.

D. Environmental, Planning and Other Federal Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA), and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed *before* state or local funds are advanced for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771) the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 51) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented thereby. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs either for activities expected to be funded by New Start funds, or for activities requiring funding beyond fiscal year 1998, it must first obtain a written LONP from the FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

XIV. Rail Fixed Guideway Systems: State Safety Oversight (49 CFR Part 659)

There are 19 states and the District of Columbia in which rail fixed guideway transit systems operate. These states and the District of Columbia must comply with 49 U.S.C. Section 5330, by designating an agency to oversee the safety and security for those rail fixed guideway systems, which are not regulated by the Federal Railroad Administration. On December 27, 1995, FTA issued a final regulation implementing the State Safety Oversight provisions of Section 5330. Compliance with safety provisions of the rule was required by January 1, 1997. Compliance with the security provisions of the final rule is required by January 1, 1998. Codified at 49 CFR part 659, the State Safety Oversight regulation delineates responsibilities of the state, the oversight agency, the transit agency, and the FTA.

A State Oversight Agency must establish a "System Safety and Security Program Standard," review and approve a transit agency's System Safety and Security Program Plan, conduct investigations of accidents and unacceptable hazards, conduct on-sight safety reviews, and report annually to FTA. Rail transit systems must develop and implement a System Safety and Security Program Plan, classify and report accidents and unacceptable hazards, develop corrective action plans, and conduct on-going safety audits. On-site safety reviews by the State Oversight Agency and audits by the transit agency must measure the effectiveness of the Plan and identify how and where to improve the system safety and security process.

The Administrator of the FTA may withhold up to five percent of the amount required to be apportioned for use in any state or affected urbanized area in such state under FTA's formula program for urbanized areas for any fiscal year beginning after September 30, 1997, if the state in the previous fiscal year has not met the requirements of this part and the Administrator determines that the state is not making adequate efforts to comply with this part. States which are not in compliance have been notified of their status. Affected grantees will be notified of any fiscal year 1998 funds to be withheld for non-compliance.

XV. Electronic Grant Making and Management Initiatives

A. Background

In 1994 FTA began the Electronic Grant Making and Management (EGMM) initiative. The EGMM program is a paperless electronic grant application, review, approval, acceptance and management process. This program started as a pilot effort and involved 10 grantees nationwide to serve as pilots. By fiscal year 1997 120 grantees were participating in the FTA EGMM program for the grant application process. Over 558 grantees were on line for various management activities such as filing of financial status reports and narrative status reports. In addition, grantees may use EGMM for the electronic signature of annual certifications and assurances.

B. Graphical User Interface

The latest enhancement to the EGMM program is the Graphical User Interface program, otherwise known as GUI. GUI is a windows based program and therefore is more user friendly than the original EGMM system. With GUI, the user can rely on a limited number of windows, each with a user friendly menu bar. As this windows based environment is not directly interfacing with the FTA mainframe computer, problems of slowness of the connection are eliminated. In addition, GUI will provide greater compatibility with other systems, allowing more data migration by providing opportunities to simplify the information entry process. GUI is now being tested with a limited number of grantees. Following this testing, it will be made available to all EGMM grantees. Please contact the FTA Regional office to learn about this new enhancement to EGMM and the hardware and software requirements.

C. Fiscal Year 1998 Emphasis

In fiscal year 1998 FTA continues to strongly encourage grantees to become EGMM grantees for grant application and approval as well as for grant management activities if they have not already done so. We also encourage all grantees to file the fiscal year 1998 Certifications and Assurances electronically using the EGMM system. A major goal is the completion of the pilot phase of GUI and the conversion of our EGMM grantees to the new enhanced EGMM system.

XVI. 1998 Annual List of Certifications and Assurances

The Fiscal Year 1998 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements notice was published in the **Federal Register** on October 14, 1997. It appears as Part IV on pages 53512 through 53522. This October 14 document contains two major changes to the previous year's **Federal Register** publication. (1) Starting with fiscal year 1998, all applicants for FTA Capital Program or Formula Program assistance, and current grantees with an active project financed with FTA Capital Program or Formula Program assistance will be required to provide the Appendix A Certifications and Assurances within 90 days from the date of the October 14 publication or with its first grant application in fiscal year 1998, whichever comes first. (2) The attorney signature from previous years on the single signature page will no longer be acceptable. FTA requires a current attorney's affirmation of the applicant's legal authority to certify compliance with fiscal year 1998 FTA funding assistance. This does not affect the electronic opportunity for a grant applicant's authorized representative to electronically enter a PIN in the On-Line Program, offered to applicants through the Grant Management Information System (GMIS), indicating that a current valid 1998 attorney's signature is on file. The fiscal year 1998 Annual List of Certifications and Assurances is accessible on the Internet at www.fta.dot.gov/. Any questions regarding this document may be addressed to the appropriate Regional Office or to Pat Berkley, Office of Program Management, Federal Transit Administration, (202) 366–6470.

XVII. Quarterly Approval of Grants

The FTA has established a quarterly approval and release cycle for processing grants. All Urbanized Area Formula, Nonurbanized Area Formula, Elderly and Persons with Disabilities, Capital, Metropolitan Planning, and State Planning and Research grants are processed on a quarterly basis. This includes grants using STP or CMAQ funds.

If completed applications are submitted to the appropriate FTA Regional Office no later than the first business day of the quarter, FTA will award grants by the last business day of the quarter.

In order to expedite the grant approval process within the quarterly approval structure, grants which are complete and have received the required Transit Employee Protective Certification from the Department of Labor (DOL) will be approved before the end of the quarter. There are only two factors which would delay FTA approval of the project beyond the end of a quarter. First is a failure by DOL to issue a Transit Employee Protective Certification where such certification is a prerequisite to a grant approval, and second is the failure of FHWA to actually transfer flexible funds.

For an application to be considered complete, all required activities such as inclusion of the project in a locally approved Transportation Improvement Program (TIP), a Federally approved State Transportation Improvement Program (STIP), intergovernmental reviews, environmental reviews, all applicable civil rights, anti-drug, clean air requirements and submission of all requisite certifications and documentation must be completed. The application must be in approvable form with all required documentation and submissions on hand, except for the labor protection certification which is issued by DOL. Incomplete applications will not be processed, but if the missing components are supplied, applications will be considered in the next quarter.

It is the policy of FTA to expedite grant application reviews and speed program delivery by reducing the number of grant applications. To this end, FTA strongly encourages grant applicants to submit only one application per fiscal year for each formula program. The single application should contain the fiscal year's capital (including flexible funds), planning and operating elements.

XVIII. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. Formula grant applications should be prepared in conformance with the following FTA Circulars: Urbanized Area Formula Program: Grant Application Instructions—C9040.1B, October 10, 1996; Nonurbanized Area Formula Program Guidance and Grant Application Instructions—C9040.1D, May 8, 1997; Section 5310 Elderly and Persons with Disabilities Program Guidance and Application Instructions—C9070.1D, October 22, 1997; Section 5309 Capital Program: Grant Application Instructions—C9300.1, September 29, 1995; and Program Guidance and Application Instructions for Metropolitan Planning Program Grants—C8100.1B, October 25, 1996. Applications for STP "flexible" fund grants should be prepared in the same manner as the apportioned funds under the Urbanized Area Formula, Nonurbanized Area Formula, or Elderly and Persons with Disabilities Programs. Guidance on preparation of applications for State Planning and Research funds

may be obtained from each FTA Regional Office. Copies of circulars are available from FTA Regional Offices as well as the FTA Home Page on the Internet.

Issued on: December 2, 1997.

Gordon J. Linton,

Administrator.

BILLING CODE 4910-57-U

TABLE 1

FEDERAL TRANSIT ADMINISTRATION

FY 1998 APPROPRIATIONS AND FUNDS AVAILABLE FOR GRANT PROGRAMS

SOURCES OF FUNDS	FY 1998 APPROPRIATIONS	*FY 1998 FUNDS AVAILABLE*
SECTION 5307 URBANIZED AREA FORMULA PROGRAM AND SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$2,437,788,611	*$1,525,645,987*
SECTION 5307 URBANIZED AREA FORMULA PROGRAM	$2,303,702,677	*$1,441,735,458*
94.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		
Less Oversight (.32343056 of 1 percent)	(7,450,879)	*(4,663,013)*
Reapportioned Funds Added	*7,162,381*	*7,162,381*
Total Apportioned	$2,303,414,179	*$1,444,234,826*
Operating Assistance Limitation	$150,000,000	*$150,000,000*
SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$134,977,934	*$83,910,529*
5.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		
Less Oversight (.32343056 of 1 percent)	(433,649)	*(271,392)*
Reapportioned Funds Added	*1,174,760*	*1,174,760*
Total Apportioned	$134,819,845	*$84,813,897*
SECTION 5311(b) RTAP PROGRAM	$4,500,000	*$4,500,000*
Reapportioned Funds Added	178,778	*178,778*
Total Apportioned	$4,678,778	*$4,678,778*
SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES PROGRAM	$62,219,389	*$42,754,013*
Reapportioned Funds Added	2,272	*2,272*
Total Apportioned	$62,221,661	*$42,756,285*
SECTION 5309 CAPITAL PROGRAM	$2,000,000,000	*$1,478,960,000*
SECTION 5309 FIXED GUIDEWAY MODERNIZATION	$800,000,000	*$452,640,000*
Less Oversight (.32343056 of 1 percent)	(2,587,445)	*(1,463,976)*
Total Apportioned	$797,412,555	*$451,176,024*
SECTION 5309 NEW STARTS	$800,000,000	*$800,000,000*
Less Oversight (.32343056 of 1 percent)	(2,587,445)	*(2,587,445)*
Total Allocated	$797,412,555	*$797,412,555*
SECTION 5309 BUS	$400,000,000	*$226,320,000*
Less Oversight (.32343056 of 1 percent)	(1,293,722)	*(731,988)*
Reprogrammed Funds	975,000	*975,000*
Total Allocated	$399,681,278	*$226,563,012*
SECTION 5303 METROPOLITAN PLANNING PROGRAM	$39,500,000	*$39,500,000*
Reapportioned Funds Added	125,587	*125,587*
Total Apportioned	$39,625,587	*$39,625,587*
SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM	$8,250,000	*$8,250,000*
Reapportioned Funds Added	222,886	*222,886*
Total Apportioned	$8,472,886	*$8,472,886*
TOTAL APPROPRIATIONS (Above Grant Programs)	$4,552,250,000	*$3,099,610,000*

Page 1 of 15 pages

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
OVER 1,000,000 IN POPULATION	$1,695,106,878	$44,501,476	*$1,062,827,196*	*$44,501,476*
200,000-1,000,000 IN POPULATION	386,348,509	12,462,930	*242,553,829*	*12,462,930*
50,000-200,000 IN POPULATION	221,459,592	93,035,594	*138,854,601*	*93,035,594*
NATIONAL TOTAL	$2,303,414,179	$150,000,000	*$1,444,234,826*	*$150,000,000*

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
Amounts Apportioned to Urbanized Areas Over 1,000,000 in Population:				
Atlanta, GA	$33,563,442	$522,720	*$21,044,192*	*$522,720*
Baltimore, MD	27,966,141	836,655	*17,534,698*	*836,655*
Boston, MA	64,000,425	1,570,816	*40,128,104*	*1,570,816*
Chicago, IL-Northwestern IN	152,550,404	4,351,943	*95,648,715*	*4,351,943*
Cincinnati, OH-KY	11,424,379	453,194	*7,163,856*	*453,194*
Cleveland, OH	19,893,765	829,196	*12,473,340*	*829,196*
Dallas-Fort Worth, TX	31,015,068	743,577	*19,446,368*	*743,577*
Denver, CO	20,582,640	507,634	*12,905,263*	*507,634*
Detroit, MI	27,626,734	1,840,863	*17,321,891*	*1,840,863*
Ft Lauderdale-Hollywood-Pompano Bch, FL	15,689,474	631,351	*9,837,261*	*631,351*
Houston, TX	34,105,533	781,343	*21,384,082*	*781,343*
Kansas City, MO-KS	7,848,454	384,082	*4,920,961*	*384,082*
Los Angeles, CA	155,482,274	4,909,929	*97,496,990*	*4,909,929*
Miami-Hialeah, FL	30,004,773	721,206	*18,863,076*	*721,206*
Milwaukee, WI	14,457,431	469,900	*9,064,773*	*469,900*
Minneapolis-St. Paul, MN	20,739,471	626,541	*13,003,595*	*626,541*
New Orleans, LA	12,931,516	568,363	*8,108,028*	*568,363*
New York, NY-Northeastern NJ	492,969,034	11,371,052	*309,090,332*	*11,371,052*
Norfolk-Virginia Beach-Newport News, VA	10,116,875	361,027	*6,343,255*	*361,027*
Philadelphia, PA-NJ	87,668,336	2,737,314	*54,962,888*	*2,737,314*
Phoenix, AZ	18,302,162	404,818	*11,475,410*	*404,818*
Pittsburgh, PA	24,978,923	817,085	*15,661,721*	*817,085*
Portland-Vancouver, OR-WA	18,665,277	378,598	*11,703,081*	*378,598*
Riverside-San Bernardino, CA	13,869,169	216,389	*8,695,933*	*216,389*
Sacramento, CA	10,643,675	299,264	*6,673,557*	*299,264*
San Antonio, TX	15,131,089	393,778	*9,487,155*	*393,778*
San Diego, CA	31,783,015	628,324	*19,927,869*	*628,324*
San Francisco-Oakland, CA	89,835,876	1,672,986	*56,326,363*	*1,672,986*
San Jose, CA	23,719,669	568,483	*14,872,172*	*568,483*
San Juan, PR	25,194,931	646,034	*15,797,157*	*646,034*
Seattle, WA	42,829,556	530,880	*26,854,022*	*530,880*
St. Louis, MO-IL	19,734,636	824,867	*12,373,567*	*824,867*
Tampa-St. Petersburg-Clearwater, FL	13,908,204	449,110	*8,469,610*	*449,110*
Washington, DC-MD-VA	76,202,527	1,452,314	*47,778,791*	*1,452,314*
TOTAL	$1,695,106,878	$44,501,476	*$1,062,827,196*	*$44,501,476*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in Population :				
Akron, OH	$4,841,196	$198,178	*$3,035,417*	*$198,178*
Albany-Schenectady-Troy, NY	5,421,182	192,211	*3,399,067*	*192,211*
Albuquerque, NM	4,349,741	132,830	*2,727,276*	*132,830*
Allentown-Bethlehem-Easton, PA-NJ	3,734,283	208,963	*2,341,335*	*208,963*
Anchorage, AK	1,894,860	65,584	*1,187,571*	*65,584*
Ann Arbor, MI	2,875,230	84,265	*1,802,762*	*84,265*
Augusta, GA-SC	1,450,360	67,126	*909,372*	*67,126*
Austin, TX	9,815,913	126,410	*6,154,552*	*126,410*
Bakersfield, CA	2,850,748	82,423	*1,787,412*	*82,423*
Baton Rouge, LA	2,412,864	110,143	*1,512,358*	*110,143*
Birmingham, AL	3,355,019	202,324	*2,103,588*	*202,324*
Bridgeport-Milford, CT	5,010,853	175,655	*3,141,793*	*175,655*
Buffalo-Niagara Falls, NY	9,793,358	515,601	*6,140,411*	*515,601*
Canton, OH	1,459,419	97,050	*915,052*	*97,050*
Charleston, SC	2,336,928	92,013	*1,465,248*	*92,013*
Charlotte, NC	4,713,132	110,924	*2,955,122*	*110,924*
Chattanooga, TN-GA	1,972,468	83,621	*1,236,733*	*83,621*
Colorado Springs, CO	3,259,080	83,011	*2,043,385*	*83,011*
Columbia, SC	2,197,786	93,936	*1,378,005*	*93,936*
Columbus, GA-AL	1,361,748	70,383	*853,812*	*70,383*
Columbus, OH	8,895,475	373,955	*5,577,441*	*373,955*
Corpus Christi, TX	3,083,818	73,863	*1,933,045*	*73,863*
Davenport-Rock Island-Moline, IA-IL	2,322,844	96,107	*1,456,417*	*96,107*
Dayton, OH	9,256,897	248,838	*5,803,994*	*248,838*
Daytona Beach, FL	2,670,588	66,739	*1,674,452*	*66,739*
Des Moines, IA	2,062,061	93,603	*1,292,907*	*93,603*
Durham, NC	2,611,822	68,789	*1,637,685*	*68,789*
El Paso, TX-NM	7,017,166	153,097	*4,399,745*	*153,097*
Fayetteville, NC	1,343,417	63,304	*842,319*	*63,304*
Flint, MI	3,060,995	130,206	*1,919,235*	*130,206*
Fort Myers-Cape Coral, FL	1,765,640	48,615	*1,107,051*	*48,615*
Fort Wayne, IN	1,571,585	92,844	*985,380*	*92,844*
Fresno, CA	4,259,881	124,943	*2,670,433*	*124,943*
Grand Rapids, MI	3,221,334	132,060	*2,019,768*	*132,060*
Greenville, SC	1,462,828	63,831	*916,688*	*63,831*
Harrisburg, PA	1,793,157	96,402	*1,124,305*	*96,402*
Hartford-Middletown, CT	6,963,481	195,632	*4,366,085*	*195,632*
Honolulu, HI	16,712,691	242,285	*10,478,758*	*242,285*
Indianapolis, IN	7,411,257	325,542	*4,646,839*	*325,542*
Jackson, MS	1,600,898	76,957	*1,003,703*	*76,957*
Jacksonville, FL	6,337,864	172,487	*3,973,824*	*172,487*
Knoxville, TN	1,936,354	76,717	*1,214,090*	*76,717*
Lansing-East Lansing, MI	2,682,399	99,032	*1,631,697*	*99,032*
Las Vegas, NV	11,350,546	117,557	*7,116,764*	*117,557*
Lawrence-Haverhill, MA-NH	2,638,462	72,773	*1,654,308*	*72,773*
Lexington-Fayette, KY	1,556,842	110,392	*976,135*	*110,392*
Little Rock-North Little Rock, AR	2,315,467	88,271	*1,451,791*	*88,271*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in Population (continued):				
Lorain-Elyria, OH	1,081,127	66,587	*677,864*	*66,587*
Louisville, KY-IN	8,283,667	332,478	*5,193,838*	*332,478*
Madison, WI	3,736,106	84,931	*2,342,529*	*84,931*
McAllen-Edinburg-Mission, TX	1,119,999	70,560	*702,237*	*70,560*
Melbourne-Palm Bay, FL	2,801,174	59,990	*1,756,329*	*59,990*
Memphis, TN-AR-MS	7,411,453	308,137	*4,646,962*	*308,137*
Mobile, AL	1,704,668	85,867	*1,068,823*	*85,867*
Modesto, CA	2,334,390	84,510	*1,463,657*	*84,510*
Montgomery, AL	1,080,222	87,373	*677,297*	*87,373*
Nashville, TN	4,365,977	142,865	*2,737,457*	*142,865*
New Haven-Meriden, CT	7,983,564	197,384	*5,005,674*	*197,384*
Ogden, UT	2,488,159	59,658	*1,560,070*	*59,658*
Oklahoma City, OK	4,025,582	197,732	*2,523,980*	*197,732*
Omaha, NE-IA	4,596,831	202,787	*2,882,202*	*202,787*
Orlando, FL	11,301,675	149,215	*7,086,121*	*149,215*
Oxnard-Ventura, CA	5,754,319	115,722	*3,607,943*	*115,722*
Pensacola, FL	1,560,459	64,671	*978,404*	*64,671*
Peoria, IL	1,563,379	90,107	*980,235*	*90,107*
Providence-Pawtucket, RI-MA	12,952,750	405,070	*8,121,341*	*405,070*
Provo-Orem, UT	2,404,553	69,446	*1,507,648*	*69,446*
Raleigh, NC	2,435,612	62,317	*1,527,123*	*62,317*
Reno, NV	2,837,057	71,840	*1,778,827*	*71,840*
Richmond, VA	4,795,131	165,060	*3,006,535*	*165,060*
Rochester, NY	5,775,980	264,595	*3,621,525*	*264,595*
Rockford, IL	1,487,344	82,920	*932,561*	*82,920*
Salt Lake City, UT	10,228,839	209,274	*6,413,456*	*209,274*
Sarasota-Bradenton, FL	3,177,602	108,029	*1,992,349*	*108,029*
Scranton-Wilkes-Barre, PA	2,661,738	148,461	*1,668,903*	*148,461*
Shreveport, LA	2,190,645	89,975	*1,373,529*	*89,975*
South Bend-Mishawaka, IN-MI	1,798,966	98,290	*1,127,948*	*98,290*
Spokane, WA	4,827,840	95,376	*3,027,043*	*95,376*
Springfield, MA-CT	5,001,617	173,282	*3,136,001*	*173,282*
Stockton, CA	2,924,057	114,418	*1,833,377*	*114,418*
Syracuse, NY	3,785,163	162,453	*2,373,287*	*162,453*
Tacoma, WA	8,171,972	132,788	*5,123,806*	*132,788*
Toledo, OH-MI	4,060,306	191,849	*2,545,801*	*191,849*
Trenton, NJ-PA	4,046,743	169,388	*2,537,297*	*169,388*
Tucson, AZ	6,832,007	141,921	*4,283,651*	*141,921*
Tulsa, OK	3,695,897	134,373	*2,317,318*	*134,373*
West Palm Bch-Boca Raton-Delray Bch, FL	11,485,105	141,430	*7,201,131*	*141,430*
Wichita, KS	2,569,226	116,249	*1,610,898*	*116,249*
Wilmington, DE-NJ-MD-PA	4,983,717	171,931	*3,124,779*	*171,931*
Worcester, MA-CT	3,577,049	99,242	*2,242,801*	*99,242*
Youngstown-Warren, OH	2,021,415	152,887	*1,267,422*	*152,887*
TOTAL	$386,848,509	$12,462,930	*$242,553,029*	*$12,462,930*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population:				
ALABAMA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	**$4,155,019**	**$1,970,561**	***$2,605,188***	***$1,970,561***
Anniston, AL	400,780	231,980	*251,288*	*231,980*
Auburn-Opelika, AL	321,546	129,622	*201,609*	*129,622*
Decatur, AL	366983	152,422	*230,097*	*152,422*
Dothan, AL	308,237	133,304	*193,264*	*133,304*
Florence, AL	429,422	235,002	*269,247*	*235,002*
Gadsden, AL	379,537	233,057	*237,969*	*233,057*
Huntsville	1,204,818	504,984	*755,418*	*504,984*
Tuscaloosa, AL	743,696	350,190	*466,296*	*350,190*
ALASKA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	**$0**	**$0**	***$0***	***$0***
ARIZONA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	**$1,087,601**	**$292,757**	***$681,923***	***$292,757***
Flagstaff, AZ	427,864	85,791	*268,270*	*85,791*
Yuma, AZ-CA (AZ)	659,737	206,966	*413,653*	*206,966*
ARKANSAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	**$1,587,516**	**$798,674**	***$995,368***	***$798,674***
Fayetteville-Springdale, AR	438,127	168,344	*274,704*	*168,344*
Fort Smith, AR-OK (AR)	596,410	275,251	*373,947*	*275,251*
Pine Bluff, AR	403,041	269,436	*252,706*	*269,436*
Texarkana, TX-AR (AR)	149,938	85,643	*94,011*	*85,643*
CALIFORNIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	**$24,317,143**	**$6,801,253**	***$15,246,787***	***$6,801,253***
Antioch-Pittsburg, CA	1,375,193	345,636	*862,243*	*345,636*
Chico, CA	600,457	185,098	*376,473*	*185,098*
Davis, CA	728,893	213,010	*457,014*	*213,010*
Fairfield, CA	885,267	255,671	*555,069*	*255,671*
Hemet-San Jacinto, CA	738,574	195,698	*463,084*	*195,698*
Hesperia-Apple Valley-Victorville, CA	942,286	265,938	*590,761*	*265,938*
Indio-Coachella, CA	446,596	126,070	*280,014*	*126,070*
Lancaster-Palmdale, CA	1,584,815	162,437	*993,675*	*162,437*
Lodi, CA	620,447	175,169	*389,019*	*175,169*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
CALIFORNIA (Continued):				
Lompoc, CA	381,051	107,558	*238,918*	*107,558*
Merced, CA	677,434	188,067	*424,749*	*188,067*
Napa, CA	707,844	266,728	*443,817*	*266,728*
Palm Springs, CA	881,856	180,689	*552,921*	*180,689*
Redding, CA	509,904	149,645	*319,708*	*149,645*
Salinas, CA	1,341,823	423,192	*841,319*	*423,192*
San Luis Obispo, CA	635,440	179,409	*398,419*	*179,409*
Santa Barbara, CA	2,075,863	700,123	*1,301,561*	*700,123*
Santa Cruz, CA	1,073,485	376,707	*673,022*	*376,707*
Santa Maria, CA	976,594	227,014	*612,322*	*227,014*
Santa Rosa, CA	1,893,588	449,066	*1,187,225*	*449,066*
Seaside-Monterey, CA	1,272,398	521,284	*797,791*	*521,884*
Simi Valley, CA	1,204,416	306,429	*755,166*	*306,429*
Vacaville, CA	731,169	206,423	*458,441*	*206,423*
Visalia	835,155	225,542	*523,640*	*225,542*
Watsonville, CA	460,101	129,889	*288,482*	*129,889*
Yuba City, CA	734,140	236,597	*460,304*	*236,597*
Yuma, AZ-CA (CA)	2,614	1,564	*1,639*	*1,564*
COLORADO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	**$4,480,672**	**$1,839,230**	***$2,809,370***	***$1,839,230***
Boulder, CO	997,017	412,508	*625,127*	*412,508*
Fort Collins, CO	830,420	294,588	*520,671*	*294,588*
Grand Junction, CO	472,008	189,506	*296,450*	*189,506*
Greeley, CO	664,183	283,630	*416,441*	*283,630*
Longmont, CO	605,263	170,885	*379,498*	*170,885*
Pueblo, CO	910,981	488,113	*571,183*	*488,113*
CONNECTICUT:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	**$14,702,762**	**$4,543,229**	***$9,218,594***	***$4,543,229***
Bristol, CT	706,223	297,793	*442,800*	*297,793*
Danbury, CT-NY (CT)	2,460,646	492,302	*1,542,818*	*492,302*
New Britain, CT	1,322,395	626,111	*829,138*	*626,111*
New London-Norwich, CT	1,064,141	533,937	*667,213*	*533,937*
Norwalk, CT	2,687,937	676,464	*1,635,170*	*676,464*
Stamford, CT-NY (CT)	3,318,354	1,016,038	*2,080,600*	*1,016,038*
Waterbury, CT	3,223,066	900,584	*2,020,855*	*900,584*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
DELAWARE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$338,834	$95,414	*$211,946*	*$95,414*
Dover, DE	338,834	95,414	*211,946*	*95,414*
FLORIDA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$10,302,524	$3,152,975	*$6,459,657*	*$3,152,975*
Deltona, FL	342,555	96,684	*214,781*	*96,684*
Fort Pierce, F	820,583	205,216	*514,504*	*205,216*
Fort Walton Beach, FL	795,448	258,405	*498,744*	*258,405*
Gainesville, FL	1,019,417	351,847	*639,172*	*351,847*
Kissimmee, FL	474,813	134,039	*297,707*	*134,039*
Lakeland, FL	1,042,155	345,542	*653,429*	*345,542*
Naples, FL	685,880	146,868	*430,045*	*146,868*
Ocala, FL	468,737	147,105	*288,881*	*147,105*
Panama City, FL	691,440	234,999	*433,531*	*234,999*
Punta Gorda, FL	452,160	127,629	*283,503*	*127,629*
Spring Hill, FL	345,652	97,565	*216,723*	*97,565*
Stuart, FL	683,105	170,246	*378,145*	*170,246*
Tallahassee, FL	1,162,085	393,861	*728,624*	*393,861*
Titusville, FL.	332,656	93,895	*208,575*	*93,895*
Vero Beach, FL	421,297	118,916	*264,152*	*118,916*
Winter Haven, FL.	652,541	230,158	*409,141*	*230,158*
GEORGIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,510,706	$2,169,758	*$2,828,201*	*$2,169,758*
Albany, GA.	558,708	316,131	*350,308*	*316,131*
Athens, GA.	535,672	197,454	*335,865*	*197,454*
Brunswick, GA	308,261	87,007	*193,279*	*87,007*
Macon, GA.	1,001,396	542,798	*627,873*	*542,798*
Rome, GA.	314,255	149,674	*197,037*	*149,674*
Savannah, GA	1,310,221	689,903	*821,585*	*689,903*
Warner Robins, GA	482,193	186,791	*302,334*	*186,791*
HAWAII:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,198,826	$475,852	*$751,661*	*$475,852*
Kailua, HI	1,198,826	475,852	*751,661*	*475,852*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
IDAHO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,372,693	$809,759	*$1,487,673*	*$809,759*
Boise City, ID	1,451,884	469,898	*910,328*	*469,898*
Idaho Falls, ID	520,472	146,933	*326,335*	*146,933*
Pocatello, ID	400,337	192,928	*251,010*	*192,928*
ILLINOIS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$10,868,126	$5,371,412	*$6,814,287*	*$5,371,412*
Alton, IL	587,346	372,784	*368,265*	*372,784*
Aurora, IL	1,644,985	723,464	*1,031,401*	*723,464*
Beloit, WI-IL (IL)	75,067	25,498	*47,067*	*25,498*
Bloomington-Normal, IL	946,216	382,645	*593,275*	*382,645*
Champaign-Urbana, IL	1,335,295	616,763	*837,227*	*616,763*
Crystal Lake, IL	536,136	151,340	*336,156*	*151,340*
Decatur, IL	751,643	446,782	*471,278*	*446,782*
Dubuque, IA-IL (IL)	17,509	8,765	*10,978*	*8,765*
Elgin, IL	1,186,612	636,793	*744,002*	*636,793*
Joliet, IL	1,372,867	953,579	*860,283*	*953,579*
Kankakee, IL.	538,497	262,596	*337,636*	*262,596*
Round Lake Beach-McHenry, IL-WI (IL)	781,410	209,575	*489,942*	*209,575*
Springfield, IL.	1,095,343	580,828	*686,777*	*580,828*
INDIANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$6,338,764	$3,063,742	*$3,974,388*	*$3,063,742*
Anderson, IN	512,352	303,284	*321,244*	*303,284*
Bloomington, IN	764,556	287,968	*479,374*	*287,968*
Elkhart-GosheN, IN	766,279	288,505	*480,455*	*288,505*
Evansville, IN-KY (IN)	1,419,525	712,185	*890,038*	*712,185*
Kokomo, IN	515,957	265,091	*323,504*	*265,091*
Lafayette-West Lafayette, IN	1,025,753	439,016	*643,144*	*439,016*
Muncie, IN	754,058	435,588	*472,792*	*435,588*
Terre Haute, IN	580,284	332,105	*363,837*	*332,105*
IOWA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,450,748	$1,777,815	*$2,163,611*	*$1,777,815*
Cedar Rapids, IA	1,072,377	542,576	*672,378*	*542,576*
Dubuque, IA-IL (IA)	521,966	302,695	*327,272*	*302,695*
Iowa City, IA	617,876	287,305	*387,407*	*287,305*
Sioux City, IA-NE-SD (IA)	570,671	311,588	*357,809*	*311,588*
Waterloo-Cedar Falls, IA	667,858	413,651	*418,745*	*413,651*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
KANSAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,675,445	$759,970	*$1,050,501*	*$759,970*
Lawrence, KS	634,456	217,653	*397,803*	*217,653*
St. Joseph, MO-KS (KS)	5,237	3,866	*3,284*	*3,866*
Topeka, KS	1,035,752	538,451	*649,414*	*538,451*
KENTUCKY:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,320,524	$635,567	*$827,966*	*$635,567*
Clarksville, TN-KY (KY)	161,131	73,054	*101,029*	*73,054*
Evansville, IN-KY (KY)	197,865	45,056	*124,061*	*45,056*
Huntington-Ashland, WV-KY-OH ((KY)	394,576	218,446	*247,398*	*218,446*
Owensboro, KY	566,952	299,011	*355,478*	*299,011*
LOUISIANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,910,860	$1,868,922	*$2,452,098*	*$1,868,922*
Alexandria, LA	570,706	326,140	*357,831*	*326,140*
Houma, LA	401,434	192,233	*251,698*	*192,233*
Lafayette, LA	987,459	428,989	*619,134*	*428,989*
Lake Charles, LA	793,209	413,989	*497,340*	*413,989*
Monroe, LA	754,221	393,577	*472,894*	*393,577*
Slidell, LA	403,831	113,994	*253,201*	*113,994*
MAINE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,702,077	$808,464	*$1,067,198*	*$808,464*
Bangor, ME	349,748	152,758	*219,291*	*152,758*
Lewiston-Auburn, ME	406,402	215,633	*254,813*	*215,633*
Portland, ME	868,981	409,648	*544,849*	*409,648*
Portsmouth-Dover-Rochester, NH-ME (ME)	76,946	30,425	*48,245*	*30,425*
MARYLAND:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,892,791	$751,514	*$1,186,775*	*$751,514*
Annapolis, MD	616,485	228,635	*386,534*	*228,635*
Cumberland, MD-WV (MD)	327,880	180,307	*205,580*	*180,307*
Frederick, MD	444,824	125,567	*278,904*	*125,567*
Hagerstown, MD-PA-WV (MD)	503,602	217,005	*315,757*	*217,005*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
MASSACHUSETTS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$7,496,319	$4,010,979	*$4,700,172*	*$4,010,979*
Brockton, MA	1,369,355	966,707	*858,582*	*966,707*
Fall River, MA-RI (MA)	1,335,566	628,972	*837,397*	*628,972*
Fitchburg-Leominster, MA	541,231	265,581	*339,350*	*265,581*
Hyannis, MA	386,496	109,085	*242,332*	*109,085*
Lowell, MA-NH (MA)	1,695,046	997,173	*1,062,789*	*997,173*
New Bedford, MA	1,468,840	695,995	*920,959*	*695,995*
Pittsfield, MA	349,869	211,988	*219,367*	*211,988*
Taunton, MA	349,916	135,478	*219,396*	*135,478*
MICHIGAN:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$6,397,059	$3,283,763	*$4,010,940*	*$3,283,763*
Battle Creek, MI	534,275	313,820	*334,989*	*313,820*
Bay City, MI	596,871	343,896	*374,237*	*343,896*
Benton Harbor, MI	431,733	211,224	*270,695*	*211,224*
Holland, MI	484,541	136,779	*303,806*	*136,779*
Jackson, MI	596,543	327,621	*374,031*	*327,621*
Kalamazoo, MI	1,288,207	614,106	*807,703*	*614,106*
Muskegon, MI	785,753	414,697	*492,665*	*414,697*
Port Huron, MI	517,120	218,257	*324,233*	*218,257*
Saginaw, MI	1,162,016	703,363	*728,581*	*703,363*
MINNESOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,279,724	$1,090,931	*$1,429,380*	*$1,090,931*
Duluth, MN-WI (MN)	554,756	358,439	*347,830*	*358,439*
Fargo-Moorhead, ND-MN (MN)	320,764	152,304	*201,118*	*152,304*
Grand Forks, ND-MN (MN)	70,300	37,533	*44,078*	*37,533*
La Crosse, WI-MN (MN)	34,437	12,455	*21,592*	*12,455*
Rochester, MN	625,708	287,183	*392,317*	*287,183*
St. Cloud, MN	673,759	243,017	*422,445*	*243,017*
MISSISSIPPI:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,957,190	$906,680	*$1,227,154*	*$906,680*
Biloxi-Gulfport, MS	1,211,753	552,169	*759,766*	*552,169*
Hattiesburg, MS	377,667	166,061	*236,797*	*166,061*
Pascagoula, MS	367,770	188,450	*230,591*	*188,450*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
MISSOURI:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,697,035	$1,205,239	*$1,691,032*	*$1,205,239*
Columbia, MO	532,464	222,473	*333,853*	*222,473*
Joplin, MO	373,937	158,607	*234,457*	*158,607*
Springfield, MO	1,256,141	512,465	*787,597*	*512,465*
St. Joseph, MO-KS (MO)	534,493	311,694	*335,125*	*311,694*
MONTANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,795,419	$865,821	*$1,125,723*	*$865,821*
Billings, MT	692,421	332,854	*434,146*	*332,854*
Great Falls, MT	645,696	324,442	*404,850*	*324,442*
Missoula, MT	457,302	208,525	*286,727*	*208,525*
NEBRASKA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,995,955	$783,608	*$1,251,458*	*$783,608*
Lincoln, NE	1,909,613	747,115	*1,197,322*	*747,115*
Sioux City, IA-NE-SD (NE)	86,342	36,493	*54,136*	*36,493*
NEVADA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$0	$0	*$0*	*$0*
NEW HAMPSHIRE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,423,888	$930,889	*$1,519,722*	*$930,889*
Lowell, MA-NH (NH)	4,961	1,136	*3,111*	*1,136*
Manchester, NH	1,016,899	425,529	*637,091*	*425,529*
Nashua, NH	812,541	270,768	*509,461*	*270,768*
Portsmouth-Dover-Rochester, NH-ME (NH)	590,287	233,456	*370,059*	*233,456*
NEW JERSEY:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,836,483	$1,162,152	*$1,151,470*	*$1,162,152*
Atlantic City, NJ	1,323,682	913,408	*829,945*	*913,408*
Vineland-Millville, NJ	512,801	248,744	*321,525*	*248,744*
NEW MEXICO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,000,864	$346,371	*$627,038*	*$346,371*
Las Cruces, NM	555,540	185,079	*348,322*	*185,079*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
NEW MEXICO (Continued):				
Santa Fe, NM	444,524	161,292	*278,716*	*161,292*
NEW YORK:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$5,548,675	$2,887,397	*$3,479,085*	*$2,887,397*
Binghamton, NY	1,392,738	753,963	*873,243*	*753,963*
Danbury, CT-NY (NY)	18,877	4,225	*11,836*	*4,225*
Elmira, NY	571,983	328,474	*358,582*	*328,474*
Glens Falls, NY	393,289	163,510	*246,591*	*163,510*
Ithaca, NY	396,938	112,851	*248,879*	*112,851*
Newburgh, NY	515,436	283,473	*323,177*	*283,473*
Poughkeepsie, NY	1,082,741	630,599	*678,876*	*630,599*
Stamford, CT-NY (NY)	128	109	*80*	*109*
Utica-Rome, NY	1,176,625	690,993	*737,741*	*690,993*
NORTH CAROLINA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$9,007,746	$3,807,386	*$5,647,834*	*$3,807,386*
Asheville, NC	695,284	313,739	*435,941*	*313,739*
Burlington, NC	504,369	238,562	*316,238*	*238,562*
Gastonia, NC	738,517	363,832	*463,048*	*363,832*
Goldsboro, NC	383,529	162,993	*240,472*	*162,993*
Greensboro, NC	1,588,403	686,529	*995,925*	*686,529*
Greenville, NC	441,593	124,657	*276,877*	*124,657*
Hickory, NC	421,158	173,702	*264,065*	*173,702*
High Point, NC	710,228	357,277	*445,311*	*357,277*
Jacksonville, NC	685,698	205,012	*429,931*	*205,012*
Kannapolis, NC	495,815	207,368	*310,373*	*207,368*
Rocky Mount, NC	395,704	111,702	*248,106*	*111,702*
Wilmington, NC	647,229	259,914	*405,811*	*259,914*
Winston-Salem, NC	1,301,919	602,897	*815,736*	*602,897*
NORTH DAKOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,758,190	$694,941	*$1,097,366*	*$694,941*
Bismarck, ND	504,681	217,303	*316,434*	*217,303*
Fargo-Moorhead, ND-MN (ND)	729,898	285,401	*457,645*	*285,401*
Grand Forks, ND-MN (ND)	515,611	192,237	*323,287*	*192,237*
OHIO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,812,213	$2,454,959	*$3,017,246*	*$2,454,959*
Hamilton, OH	994,642	413,830	*623,638*	*413,830*
Huntington-Ashland, WV-KY-OH (OH)	253,289	123,238	*158,812*	*123,238*
Lima, OH	543,683	296,760	*340,838*	*296,760*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
OHIO (Continued):				
Mansfield, OH	524,828	297,105	*329,066*	*297,105*
Middletown, OH	683,870	286,086	*428,785*	*286,086*
Newark, OH	416,674	171,899	*261,254*	*171,899*
Parkersburg, WV-OH (OH)	61,700	31,162	*38,686*	*31,162*
Sharon, PA-OH (OH)	40,687	28,995	*25,510*	*28,995*
Springfield, OH	791,053	453,628	*495,908*	*453,628*
Steubenville-Weirton, OH-WV-PA (OH)	284,592	194,158	*178,438*	*194,158*
Wheeling, WV-OH (OH)	217,275	166,098	*136,231*	*166,098*
OKLAHOMA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$748,995	$386,416	*$469,618*	*$386,416*
Fort Smith, AR-OK (OK)	13,140	6,655	*8,239*	*6,655*
Lawton, OK	735,855	379,761	*461,379*	*379,761*
OREGON:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,985,989	$1,425,107	*$2,449,845*	*$1,425,107*
Eugene-Springfield, OR	1,838,634	725,646	*1,152,819*	*725,646*
Longview, WA-OR (OR)	12,228	5,369	*7,667*	*5,369*
Medford, OR	568,223	194,556	*356,274*	*194,556*
Salem, OR	1,486,904	499,536	*932,285*	*499,536*
PENNSYLVANIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$10,210,946	$5,129,718	*$6,402,238*	*$5,129,718*
Altoona, PA	697,590	408,051	*437,362*	*408,051*
Erie, PA	1,794,431	929,251	*1,125,104*	*929,251*
Hagerstown, MD-PA-WV (PA)	6,147	3,855	*3,854*	*3,855*
Johnstown, PA	643,290	437,207	*403,316*	*437,207*
Lancaster, PA	1,622,398	697,678	*1,017,239*	*697,678*
Monessen, PA	441,519	211,581	*276,831*	*211,581*
Pottstown, PA	418,977	118,272	*262,698*	*118,272*
Reading, PA	1,893,866	1,168,504	*1,187,449*	*1,168,504*
Sharon, PA-OH (PA)	293,323	184,335	*183,913*	*184,335*
State College, PA	610,476	258,976	*382,767*	*258,976*
Steubenville-Weirton, OH-WV-PA (PA)	2,132	681	*1,337*	*681*
Williamsport, PA	511,743	277,812	*320,862*	*277,812*
York, PA	1,275,134	591,515	*799,506*	*591,515*
PUERTO RICO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$9,432,754	$3,312,139	*$5,914,311*	*$3,312,139*
Aguadilla, PR	825,239	245,837	*517,423*	*245,837*
Arecibo, PR	771,883	284,696	*483,467*	*284,696*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
PUERTO RICO (Continued):				
Caguas, PR	2,019,356	615,765	*1,266,131*	*615,765*
Cayey, PR	597,849	168,563	*374,348*	*168,563*
Humacao, PR	516,734	145,877	*323,991*	*145,877*
Mayaguez, PR	1,110,283	453,778	*696,094*	*453,778*
Ponce, PR	2,470,532	1,056,142	*1,549,016*	*1,056,142*
Vega Baja-Manati, PR	1,122,558	341,472	*703,841*	*341,472*
RHODE ISLAND:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$600,421	$246,288	*$376,462*	*$246,288*
Fall River, MA-RI (RI)	137,642	54,179	*86,301*	*54,179*
Newport, RI	462,779	192,109	*290,161*	*192,109*
SOUTH CAROLINA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,542,719	$1,013,149	*$1,594,279*	*$1,013,149*
Anderson, SC	341,975	158,795	*214,418*	*158,795*
Florence, SC	351,748	166,525	*220,545*	*166,525*
Myrtle Beach, SC	368,874	104,116	*231,283*	*104,116*
Rock Hill, SC	391,665	149,201	*245,573*	*149,201*
Spartanburg, SC	682,799	319,995	*428,088*	*319,995*
Sumter, SC	405,698	114,517	*254,372*	*114,517*
SOUTH DAKOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,262,534	$523,345	*$791,687*	*$523,345*
Rapid City, SD	402,098	177,805	*252,115*	*177,805*
Sioux City, IA-NE-SD (SD)	11,274	4,219	*7,069*	*4,219*
Sioux Falls, SD	849,162	341,321	*532,423*	*341,321*
TENNESSEE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,953,999	$887,865	*$1,225,152*	*$887,865*
Bristol, TN-Bristol, VA (TN)	182,640	90,241	*114,515*	*90,241*
Clarksville, TN-KY (TN)	445,308	167,264	*279,207*	*167,264*
Jackson, TN	337,856	148,661	*211,333*	*148,661*
Johnson City, TN	513,782	228,788	*322,140*	*228,788*
Kingsport, TN-VA (TN)	475,213	252,911	*297,957*	*252,911*
TEXAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$18,092,227	$7,687,065	*$11,343,782*	*$7,687,065*
Abilene, TX	641,883	322,174	*402,459*	*322,174*
Amarillo, TX	1,190,549	544,163	*746,472*	*544,163*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
TEXAS (Continued):				
Beaumont, TX	818,839	$436,937	*513,410*	*$436,937*
Brownsville, TX	1,190,154	343,413	*746,224*	*343,413*
Bryan-College Station, TX	797,211	248,808	*499,850*	*248,808*
Denton, TX	430,632	121,550	*270,085*	*121,550*
Galveston, TX	456,802	263,556	*286,414*	*263,556*
Harlingen, TX	584,929	213,740	*366,749*	*213,740*
Killeen, TX	1,118,807	322,616	*701,489*	*322,616*
Laredo, TX	1,413,013	440,079	*885,956*	*440,079*
Lewisville, TX	497,127	140,316	*311,697*	*140,316*
Longview, TX	489,111	205,890	*306,671*	*205,890*
Lubbock, TX	1,392,961	634,745	*873,383*	*634,745*
Midland, TX	610,326	258,553	*382,673*	*258,553*
Odessa, TX	677,073	408,081	*424,523*	*408,081*
Port Arthur, TX	738,584	418,221	*463,090*	*418,221*
San Angelo, TX	634,663	269,195	*397,932*	*269,195*
Sherman-Denison, TX	317,690	197,337	*199,191*	*197,337*
Temple, TX	360,666	147,551	*226,137*	*147,551*
Texarkana, TX-AR (TX)	291,029	142,859	*182,474*	*142,859*
Texas City, TX	773,610	308,822	*485,051*	*308,822*
Tyler, TX	604,941	272,311	*379,297*	*272,311*
Victoria, TX	419,359	282,360	*262,937*	*282,360*
Waco, TX	913,586	436,203	*572,816*	*436,203*
Wichita Falls, TX	728,682	387,585	*456,882*	*387,585*
UTAH:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$361,607	$102,073	$226,727	$102,073
Logan, UT	361,607	102,073	226,727	102,073
VERMONT:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$634,513	$244,385	$397,838	$244,385
Burlington, VT	634,513	244,385	397,838	244,385
VIRGINIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,211,866	$2,010,460	$2,640,828	$2,010,460
Bristol, TN-Bristol, VA (VA)	130,027	54,597	81,527	54,597
Charlottesville, VA	605,623	258,207	379,724	258,207
Danville, VA	343,921	182,428	215,638	182,428
Fredericksburg, VA	403,773	113,974	253,164	113,974
Kingsport, TN-VA (VA)	24,549	15,609	15,392	15,609
Lynchburg, VA	576,161	290,441	361,251	290,441
Petersburg, VA	730,413	414,079	457,967	414,079
Roanoke, VA	1,397,399	681,125	876,165	681,125

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1998 APPORTIONMENT	FY 1998 OPERATING ASSISTANCE LIMITATION	*FY 1998 AVAILABLE APPORTIONMENT*	*AVAILABLE OPERATING ASSISTANCE LIMITATION*
WASHINGTON:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,988,286	$1,441,915	$2,495,628	$1,441,915
Bellingham, WA	468,956	178,042	*294,034*	*178,042*
Bremerton, WA	908,455	218,876	*569,599*	*218,876*
Longview, WA-OR (WA)	396,812	172,874	*248,800*	*172,874*
Olympia, WA	706,785	220,296	*443,152*	*220,296*
Richland-Kennewick-Pasco, WA	737,333	328,900	*462,306*	*328,900*
Yakima, WA	761,945	322,927	*477,737*	*322,927*
WEST VIRGINIA				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,059,849	$1,811,406	$1,918,016	$1,811,406
Charleston, WV	1,230,605	668,361	*771,586*	*668,361*
Cumberland, MD-WV (WV)	14,718	10,483	*9,228*	*10,483*
Hagerstown, MD-PA-WV (WV)	3,717	2,443	*2,331*	*2,443*
Huntington-Ashland, WV-KY-OH (WV)	690,910	434,965	*433,199*	*434,965*
Parkersburg, WV-OH (WV)	444,344	275,348	*278,602*	*275,348*
Steubenville-Weirton, OH-WV-PA (WV)	191,176	128,467	*119,867*	*128,467*
Wheeling, WV-OH (WV)	483,579	291,339	*303,203*	*291,339*
WISCONSIN:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$8,374,272	$3,935,089	$5,250,647	$3,935,089
Appleton-Neenah, WI	1,533,477	655,709	*961,486*	*655,709*
Beloit, WI-IL (WI)	328,704	155,628	*206,097*	*155,628*
Duluth, MN-WI (WI)	143,981	94,707	*90,276*	*94,707*
Eau Claire, WI	600,643	237,885	*376,602*	*237,885*
Green Bay, WI	1,164,686	506,229	*730,255*	*506,229*
Janesville, WI	442,839	194,329	*277,157*	*194,329*
Kenosha, WI	804,867	483,440	*504,650*	*483,440*
La Crosse, WI-MN (WI)	638,971	276,146	*400,633*	*276,146*
Oshkosh, WI	557,642	282,563	*349,640*	*282,563*
Racine, WI	1,243,118	621,866	*779,432*	*621,866*
Round Lake Beach-McHenry, IL-WI (WI)	466	99	*292*	*99*
Sheboygan, WI	525,480	238,772	*329,424*	*238,772*
Wausau, WI	390,278	187,716	*244,703*	*187,716*
WYOMING:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$876,704	461,199	$549,691	$461,199
Casper, WY	402,166	247,399	*252,157*	*247,399*
Cheyenne, WY	474,538	213,800	*297,534*	*213,800*
TOTAL	$221,459,592	$93,035,594	$138,854,691	$93,035,594

TABLE 3

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

STATE	FY 1998 SECTION 5311 APPORTIONMENT	FY 1998 RTAP ALLOCATION	*FY 1998 AVAILABLE SECTION 5311 APPORTIONMENT*	*FY 1998 AVAILABLE RTAP ALLOCATION*
Alabama	$3,220,398	$99,894	*$2,025,934*	*$99,894*
Alaska	480,231	57,440	*302,110*	*57,440*
America Samoa	68,448	11,060	*43,060*	*11,060*
Arizona	1,409,906	71,842	*886,901*	*71,842*
Arkansas	2,574,574	89,888	*1,619,650*	*89,888*
California	6,283,697	147,355	*3,953,038*	*147,355*
Colorado	1,341,318	70,781	*843,816*	*70,781*
Connecticut	1,216,702	68,851	*765,420*	*68,851*
Delaware	303,538	54,703	*190,954*	*54,703*
Florida	4,039,438	112,584	*2,541,187*	*112,584*
Georgia	4,708,565	122,951	*2,962,131*	*122,951*
Guam	194,855	13,019	*122,582*	*13,019*
Hawaii	528,465	58,188	*332,454*	*58,188*
Idaho	1,066,162	66,518	*670,716*	*66,518*
Illinois	4,319,845	116,928	*2,717,590*	*116,928*
Indiana	4,172,872	114,651	*2,625,130*	*114,651*
Iowa	2,684,033	91,584	*1,688,510*	*91,584*
Kansas	2,135,063	83,079	*1,343,156*	*83,079*
Kentucky	3,524,523	104,606	*2,217,257*	*104,606*
Louisiana	2,915,035	95,163	*1,833,832*	*95,163*
Maine	1,406,618	71,793	*884,896*	*71,793*
Maryland	1,756,095	77,208	*1,104,750*	*77,208*
Massachusetts	1,882,001	79,158	*1,183,956*	*79,158*
Michigan	5,096,780	128,965	*3,206,355*	*128,965*
Minnesota	2,932,902	95,440	*1,845,072*	*95,440*
Mississippi	2,862,132	94,344	*1,800,551*	*94,344*
Missouri	3,416,076	102,926	*2,149,034*	*102,926*
Montana	863,675	63,381	*543,333*	*63,381*
Nebraska	1,303,176	70,190	*819,821*	*70,190*
Nevada	425,467	56,592	*267,659*	*56,592*
New Hampshire	1,126,526	67,453	*708,691*	*67,453*
New Jersey	1,610,693	74,955	*1,013,278*	*74,955*
New Mexico	1,266,249	69,618	*796,590*	*69,618*
New York	5,669,833	137,844	*3,566,860*	*137,844*
North Carolina	6,023,837	143,316	*3,789,058*	*143,316*
North Dakota	638,726	59,896	*401,819*	*59,896*
Northern Marianas	63,431	10,983	*39,904*	*10,983*
Ohio	6,131,870	145,002	*3,857,525*	*145,002*
Oklahoma	2,621,311	90,612	*1,649,052*	*90,612*
Oregon	2,081,344	82,247	*1,309,362*	*82,247*
Pennsylvania	6,840,165	155,976	*4,303,109*	*155,976*
Puerto Rico	2,044,857	81,669	*1,285,905*	*81,669*
Rhode Island	261,847	54,057	*164,726*	*54,057*
South Carolina	3,014,560	96,705	*1,896,443*	*96,705*
South Dakota	778,557	62,062	*489,786*	*62,062*
Tennessee	3,891,452	110,291	*2,448,091*	*110,291*
Texas	8,215,938	177,294	*5,168,602*	*177,294*
Utah	590,189	59,144	*371,285*	*59,144*
Vermont	696,098	60,785	*437,911*	*60,785*
Virgin Islands	148,988	12,308	*93,727*	*12,308*
Virginia	3,450,150	103,454	*2,170,470*	*103,454*
Washington	2,417,477	87,454	*1,520,821*	*87,454*
West Virginia	2,055,552	81,847	*1,293,136*	*81,847*
Wisconsin	3,551,752	105,028	*2,234,387*	*105,028*
Wyoming	496,753	57,696	*312,504*	*57,696*
TOTAL.....	$134,819,045	$4,678,778	*$84,813,897*	*$4,678,778*

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS

STATE	FY 1998 APPORTIONMENT	*FY 1998 AVAILABLE APPORTIONMENT*
Alabama	$1,077,810	*$742,859*
Alaska	181,002	*161,315*
America Samoa	52,205	*51,430*
Arizona	951,875	*661,195*
Arkansas	757,127	*534,909*
California	5,775,667	*3,791,821*
Colorado	741,333	*524,667*
Connecticut	847,523	*593,527*
Delaware	266,369	*216,672*
District of Columbia	264,493	*215,455*
Florida	3,904,479	*2,575,839*
Georgia	1,393,604	*947,639*
Guam	132,334	*129,756*
Hawaii	335,184	*261,296*
Idaho	342,701	*266,171*
Illinois	2,528,718	*1,683,714*
Indiana	1,333,137	*908,428*
Iowa	812,931	*571,096*
Kansas	683,692	*487,289*
Kentucky	1,033,493	*714,121*
Louisiana	1,036,792	*716,261*
Maine	425,119	*319,615*
Maryland	1,041,632	*719,399*
Massachusetts	1,494,391	*1,012,995*
Michigan	2,165,445	*1,448,146*
Minnesota	1,056,129	*728,799*
Mississippi	735,946	*521,174*
Missouri	1,351,757	*920,503*
Montana	315,531	*248,552*
Nebraska	486,010	*359,100*
Nevada	365,018	*280,642*
New Hampshire	345,580	*268,037*
New Jersey	1,791,409	*1,205,599*
New Mexico	429,057	*322,169*
New York	4,133,305	*2,724,224*
North Carolina	1,583,068	*1,070,498*
North Dakota	270,598	*219,414*
Northern Marianas	52,014	*51,306*
Ohio	2,638,426	*1,754,855*
Oklahoma	893,710	*623,477*
Oregon	831,823	*583,346*
Pennsylvania	3,160,669	*2,093,509*
Puerto Rico	789,789	*556,089*
Rhode Island	379,870	*290,273*
South Carolina	864,320	*604,419*
South Dakota	291,138	*232,734*
Tennessee	1,270,199	*867,615*
Texas	3,263,857	*2,160,422*
Utah	400,751	*303,814*
Vermont	243,008	*201,524*
Virgin Islands	134,312	*131,038*
Virginia	1,320,844	*900,457*
Washington	1,185,993	*813,011*
West Virginia	635,202	*455,845*
Wisconsin	1,210,555	*828,938*
Wyoming	288,717	*179,287*
TOTAL.....	$62,221,661	*$42,756,285*

TABLE 5

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

STATE/AREA	FY 1998 APPORTIONMENT	*FY 1998 AVAILABLE APPORTIONMENT*
AZ Phoenix	$907,346	*$514,402*
CA Los Angeles	12,028,480	*6,818,828*
CA Sacramento	1,080,265	*612,306*
CA San Diego	4,167,132	*2,362,146*
CA San Francisco	52,132,486	*29,511,727*
CA San Jose	4,912,242	*2,784,726*
CO Denver	981,069	*556,103*
CT Hartford	559,246	*317,052*
CT Southwestern Connecticut	32,620,129	*18,463,443*
DE Wilmington	362,872	*205,709*
DC Washington	20,508,350	*11,623,316*
FL Ft. Lauderdale	1,316,125	*746,104*
FL Jacksonville	41,142	*23,319*
FL Miami	3,802,009	*2,154,920*
FL Tampa	36,475	*20,678*
FL West Palm Beach	990,760	*561,643*
GA Atlanta	8,442,657	*4,784,576*
HI Honolulu	297,537	*168,694*
IL Chicago/Northwestern Indiana	109,299,655	*61,886,453*
LA New Orleans	2,198,348	*1,223,907*
MD Baltimore	3,279,666	*1,858,852*
MD Baltimore Commuter Rail	13,539,895	*7,668,197*
MA Boston	54,945,005	*31,110,851*
MA Lawrence-Haverhill	539,690	*305,948*
MA Worcester	488,029	*276,679*
MI Detroit	201,347	*114,110*
MN Minneapolis	2,430,250	*1,377,621*
MO St. Louis	1,442,983	*817,776*
NJ Northeastern New Jersey	67,904,285	*38,357,140*
NJ Trenton	347,752	*197,093*
NY Buffalo	460,905	*261,235*
NY New York	275,002,766	*155,808,453*
OH Cleveland	10,886,614	*6,161,618*
OH Dayton	1,777,917	*1,007,920*
PA Philadelphia/Southern New Jersey	77,245,242	*43,768,761*
PA Pittsburgh	15,446,826	*8,615,655*
PR San Juan	620,717	*351,849*
OR Portland	1,270,565	*720,128*
RI-MA- Providence	886,604	*502,552*
TN Chattanooga	30,646	*17,374*
TX Dallas	562,895	*319,085*
TX Houston	2,610,328	*1,479,729*
VA Norfolk	495,637	*281,000*
WA Seattle	7,590,294	*4,302,749*
WA Tacoma	452,708	*256,665*
WI Madison	276,844	*156,932*
TOTAL	$797,412,555	*$451,176,024*

TABLE 6

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 NEW START ALLOCATIONS

PROJECT LOCATION AND DESCRIPTION	*FY 1998 AVAILABLE ALLOCATION*
AZ Phoenix- Metropolitan Area Transit	*3,987,062*
CA Los Angeles- Metrorail- MOS-3 Project	*61,301,090*
CA San Bernardino Metrolink Project	*996,766*
CA Orange County Transitway Project	*1,993,530*
CA Sacramento- LRT Extension	*20,234,344*
CA San Diego Mid-Coast Corridor Project	*1,495,150*
CA San Diego Mission Valley East Corridor Project	*996,766*
CA San Diego Oceanside-Escondido Light Rail Project	*2,990,300*
CA San Francisco- BART Extension to the Airport Project	*29,803,294*
CA San Jose- Tasman West LRT Project	*21,330,786*
CO Denver- Southwest Corridor Project	*22,925,610*
CO Roaring Fork Valley Rail	*1,993,530*
FL Fort Lauderdale- Tri-County Commuter Rail Project	*7,974,126*
FL Miami- North 27th Avenue Project	*4,983,828*
FL Miami- Metro Dade East-West Corridor Project	*4,983,828*
FL Orlando- Lynx Light Rail Project	*31,697,150*
FL Tampa Bay Regional Rail Project	*996,766*
GA Atlanta- North Springs Project	*44,455,750*
GA Atlanta- DeKalb County Light Rail Project	*996,766*
IL Chicago- Wisconsin Central Commuter Rail Project [METRA]	*2,990,300*
IN Northern Indiana South Shore Commuter Rail Project	*3,987,062*
IN Indianapolis- Northeast Corridor Project	*1,245,957*
LA New Orleans- Canal Street Corridor Project	*5,980,594*
LA New Orleans- Desire Streetcar Project	*1,993,530*
MA Boston- South Boston Piers (MOS-2) Transitway Project	*46,100,413*
MA Boston- Urban Ring	*996,766*
MD MARC- Commuter Rail Improvements	*30,899,736*
MN Twin Cities Transitways Projects	*11,961,188*
MO St. Louis- Metrolink St. Clair LRT Extension Project	*29,902,970*
MO Springfield-Branson Commuter Rail	*498,383*
MS Jackson- Intermodal Corridor project	*2,990,300*
NC Charlotte- South Corridor Transitway Project	*996,766*
NC Research Triangle Park Project	*11,961,188*

TABLE 6

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 NEW START ALLOCATIONS

PROJECT LOCATION AND DESCRIPTION	*FY 1998 AVAILABLE ALLOCATION*
NJ Urban Core (Secaucus Transfer)	*26,912,674*
NJ Urban Core (Hudson-Bergen)	*59,805,941*
NV Las Vegas Clark County- Fixed Guideway Project	*4,983,828*
NY New York- East Side Access Project	*19,935,314*
NY New York- St. George Ferry Terminal Project	*2,491,914*
NY New York- Whitehall Ferry Terminal	*2,491,914*
NY Nassau Hub Rail Link EIS	*498,383*
OH Canton-Akron-Cleveland [Northeast Ohio] Commuter Rail	*1,993,530*
OH Cleveland- Blue Line Extension to Highland Hills Project	*797,413*
OH Cleveland- Berea Red Line Extension to Hopkins Int. Airport	*697,736*
OH Cleveland- Waterfront Line Extension	*996,766*
OH Toledo Rail Project	*996,766*
OH Cincinnati- Northeast/Northern Kentucky Rail Line Project	*498,383*
OK Oklahoma City- MAPS Corridor Transit Project	*1,594,825*
OR Portland- Westside/Hillboro Project	*63,194,945*
PA Pittsburgh- Airport Busway Project	*4,983,828*
PA Strawberry Hill/Diamond Branch Rail Project	*498,383*
PR San Juan- Tren Urbano	*14,951,485*
SC Charleston- Monobeam Rail Project	*1,495,150*
TN Memphis- Regional Rail Project	*996,766*
TX Austin- Capital Metro	*996,766*
TX Dallas- North Central Light Rail Extension Project	*10,964,424*
TX Dallas- Ft. Worth RAILTRAN Project	*7,974,126*
TX Galveston- Rail Trolley [Diesel] System Project	*1,993,530*
TX Houston- Regional Bus Project	*50,934,727*
TX Houston- Advanced Regional Bus Project	*996,766*
UT Salt Lake City- South LRT Project	*63,194,945*
UT Salt Lake City- Regional Commuter Rail	*3,987,062*
VA Tidewater [Norfolk] Rail Project	*1,993,530*
VA Virginia Railway Express- Commuter Rail Project	*1,993,530*
VT Burlington-Essex Commuter Rail	*4,983,828*
WA Seattle-Tacoma Commuter and Light Rail Projects	*17,941,782*
TOTAL (All Allocations Above).....	*$797,412,555*

TABLE 6A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

PROJECT LOCATION AND DESCRIPTION	FY 1996 UNOBLIGATED ALLOCATION	FY 1997 UNOBLIGATED ALLOCATION	*TOTAL PRIOR YEAR UNOBLIGATED ALLOCATION*
AK Hollis- Ketchikan Ferry Project	0	6,345,416	*6,345,416*
AR Little Rock- Junction Bridge Project	0	1,986,046	*1,986,046*
CA Los Angeles- Metrorail- MOS-3	0	69,511,602	*69,511,602*
CA Orange County Transitway	0	2,979,069	*2,979,069*
CA San Diego Mid-Coast Extension	0	1,489,534	*1,489,534*
CT Hartford- Griffin Light Rail Project	0	993,023	*993,023*
FL Jacksonville- Automated Skyway Express Extension	0	14,895,343	*14,895,343*
FL Miami- North 27th Avenue Project	0	993,023	*993,023*
FL Miami- Metro Dade East-West Corridor Project	0	1,489,534	*1,489,534*
GA Atlanta- North Springs Project	0	63,960,604	*63,960,604*
IL Chicago- Transit Improvements	0	22,343,015	*22,343,015*
LA New Orleans- Canal Street Corridor Project	4,939,902	7,944,183	*12,884,085*
LA New Orleans- Desire Streetcar Project	0	1,986,046	*1,986,046*
MO St. Louis- Metrolink Project	0	3,405,809	*3,405,809*
MS Jackson- Intermodal Corridor	0	5,461,626	*5,461,626*
NC Research Triangle Park- Regional Transit Plan	0	1,986,046	*1,986,046*
NJ Burlington-Gloucester Line [*]	0	0	*1,488,750*
NY New York- Whitehall Ferry Terminal [*]	2,469,951	3,723,836	*8,675,037*
OK Oklahoma City- MAPS Corridor Transit System	0	1,986,046	*1,986,046*
PR San Juan- Tren Urbano	0	6,058,367	*6,058,367*
TN Memphis- Regional Rail Plan	1,234,976	3,017,796	*4,252,772*
TX Dallas- Ft. Worth RAILTRAN	0	15,143,599	*15,143,599*
TX Houston- Regional Bus Plan	0	40,306,799	*40,306,799*
VA Virginia Railway Express- Commuter Rail Project	0	2,979,069	*2,979,069*
VT Burlington-Charlotte Commuter Rail	1,862,090	993,023	*2,855,113*
WA Seattle-Renton-Tacoma Light Rail Project	0	2,979,069	*2,979,069*
TOTAL (All Allocations Above).....	$10,506,919	$284,957,523	*$299,434,442*

[*] Carryover totals include FY 1995 funds in the amount of $3,970,000 exteaded for obligation by the FY 1998 Appropriations Conference Report for New York City - Whitehall Ferry [$2,481,250]; and Burlington - Glouchester Commuter Rail [$1,488,750]

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
ALABAMA			
Birmingham/Jefferson County	Buses	$2,990,320	*$1,695,090*
Birmingham	Downtown intermodal transportation facility, phase 2	5,980,641	*3,390,182*
Gadsden	Buses and vans	99,677	*56,525*
Huntsville	Intermodal center, phase 1	4,983,868	*2,825,151*
Mobile	Southern market historic intermodal center	996,774	*565,030*
Mobile	Municipal pier intermodal waterfront access rehabilitation project	996,774	*565,030*
Mobile	Bus replacement	1,495,160	*847,545*
Mobile	Intermodal facility	5,482,254	*3,107,666*
Montgomery	Bus replacement	1,495,160	*847,545*
Tuscaloosa	Bus replacement	996,774	*565,030*
ARIZONA			
Phoenix	Buses and bus facilities	4,485,481	*2,542,636*
Tuscon	Intermodal center	996,774	*565,030*
CALIFORNIA			
Folsom	Multimodal facility	1,495,160	*847,545*
Foothill	Transit bus maintenance facility	8,970,962	*5,085,272*
I-5 Consortium Cities Joint Powers Authority	Facilities	4,983,868	*2,825,151*
Inglewood	Transit center project	498,387	*282,515*
Lake Tahoe	Intermodal center	996,774	*565,030*
Long Beach	Buses and bus facilities	1,495,160	*847,545*
Marina/Ft. Ord	Buses and multimodal center	996,774	*565,030*
Mendocino County	Buses	797,419	*452,024*
Modesto	Bus maintenance facility	1,744,354	*988,803*
Rialto	Metrolink depot	1,096,451	*621,533*
Riverside County	Buses and bus facility	2,342,418	*1,327,821*
Riverside County	Transit vehicle ITS communications	996,774	*565,030*
Sacramento	Bus facility	996,774	*565,030*
San Joaquin (Stockton)	Bus facilities	1,993,547	*1,130,061*
Santa Clara	Buses	2,491,934	*1,412,576*
Santa Cruz Metropolitan Transit District	Buses and bus facility	996,774	*565,030*
San Ysidro Border	Intermodal center	498,387	*282,515*
Solano County	Buses and bus-related equipment	1,196,128	*678,036*
Sonoma County	Bus facilities	996,774	*565,030*
Unitrans	Maintenance facility	996,774	*565,030*
Woodland	Transfer facility	199,355	*113,006*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
CALIFORNIA (cont'd)			
Yolo County	Buses and paratransit vehicles	996,774	*565,030*
Yosemite area	Regional transportation solution	498,387	*282,515*
COLORADO	Buses and bus facilities	5,482,254	*3,107,666*
CONNECTICUT			
Bridgeport	Buses and bus facilities	1,993,547	*1,130,061*
Bridgeport	Intermodal center	3,737,901	*2,118,863*
New Haven	Bus facility	1,196,128	*678,036*
DELAWARE	New Castle bus facility	1,495,160	*847,545*
FLORIDA			
Daytona Beach	Intermodal facility	1,993,547	*1,130,061*
Florida Citrus Connection	Buses	1,495,160	*847,545*
Lakeland	Transit buses	996,774	*565,030*
Lakeworth	Buses and bus facilities	996,774	*565,030*
LYNX	Buses and bus facilities	2,990,321	*1,695,091*
Metro-Dade County	Buses and bus facilities	4,983,868	*2,825,151*
Orlando	Intermodal facility	996,774	*565,030*
Palm Beach County	Buses and bus facilities	1,993,547	*1,130,061*
Tampa (Hillsborough County)	HARTline buses and bus facilities	1,495,160	*847,545*
Volusia County	Buses and bus facilities	1,993,547	*1,130,061*
GEORGIA			
Chatham	Bus facility	3,987,094	*2,260,121*
MARTA	Buses	4,983,868	*2,825,151*
HAWAII: Honolulu	Buses and bus facilities	4,983,868	*2,825,151*
ILLINOIS	Buses and bus facilities	4,485,481	*2,542,636*
INDIANA			
Indianapolis	Buses	1,993,547	*1,130,061*
South Bend	Intermodal facility	1,993,547	*1,130,061*
IOWA			
Statewide	Buses and bus facilities	2,741,127	*1,553,833*
Sioux City	Park and ride facility	1,245,967	*706,288*
KANSAS	Johnson County bus maintenance/ operations facility	996,774	*565,030*
LOUISIANA	Statewide buses and bus facilities		
Baton Rouge	Bus related facilities	598,064	*339,018*
Jefferson Parish	Buses	1,196,128	*678,036*
Lafayette	Bus-related facility	747,580	*423,773*
Lake Charles	Buses	149,516	*84,755*
LA DOTD	Vans and equipment	697,741	*395,521*
Monroe	Buses and bus-related equipment	797,419	*452,024*
New Orleans	Buses and bus-related facilities	8,970,962	*5,085,272*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
LOUISIANA (cont'd)			
Shreveport	Buses and bus-related facility	398,709	*226,012*
St. Tammany Parish	Bus and bus-related facility	299,032	*169,509*
MARYLAND	Buses and bus facilities	7,974,188	*4,520,242*
MASSACHUSETTS			
Franklin RTA	Buses	498,387	*282,515*
Greenfield Montague Transportation Area	Buses	697,741	*395,521*
South Station	Intermodal transporation center	996,774	*565,030*
Springfield	Intermodal center	996,774	*565,030*
Worcester	Union station	2,990,321	*1,695,091*
MICHIGAN	Buses and bus facilities	7,475,801	*4,237,727*
MINNESOTA			
Metropolitan Council transit Operations	Buses and bus facilities	8,970,962	*5,085,272*
St. Paul	Snelling bus garage	1,495,160	*847,545*
MISSISSIPPI	Jackson bus facility	1,993,547	*1,130,061*
MISSOURI			
Kansas City	Buses and fare box collection system	3,488,707	*1,977,606*
Kansas City	Union Station intermodal center	4,485,481	*2,542,636*
State of Missouri	Buses and bus facilities	7,974,188	*4,520,242*
NEVADA			
Clark County	Buses	7,974,188	*4,520,242*
Reno, Washoe County Regional Transportation Commission	Buses and bus facilities	1,495,160	*847,545*
NEW JERSEY	NJ Transit alternative fuel buses	5,980,641	*3,390,182*
NEW MEXICO			
Albuquerque	Uptown transit center	996,774	*565,030*
	Demo of universal electric transportation subsystems (DUETS)	996,774	*565,030*
Las Cruces, Santa Fe and Albuquerque	Park and ride	996,774	*565,030*
Santa Fe	Buses and bus facilities	996,774	*565,030*
Statewide	Buses and bus facilities	3,737,901	*2,118,863*
NEW YORK			
Nassau County and Long Island	Buses and bus facilities (Goodwill Games)	996,774	*565,030*
Nassau County	Natural gas buses	4,983,868	*2,825,151*
New Rochelle	Intermodal facility	1,495,160	*847,545*
New York City	Natural gas buses	7,475,801	*4,237,727*
NFTA	HUBLINK program	996,774	*565,030*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
NEW YORK (cont'd)			
Poughkeepsie	Intermodal facility	1,993,547	*1,130,061*
Rensselaer County	Intermodal facility	1,868,950	*1,059,432*
Staten Island/Brooklyn	Mobility project	996,774	*565,030*
Suffolk County	Buses	2,143,063	*1,214,815*
Syracuse	Buses	4,286,126	*2,429,630*
Westchester County	Buses	4,983,868	*2,825,151*
Yonkers	Intermodal facility	1,993,547	*1,130,061*
NORTH CAROLINA			
Chapel Hill University of North Carolina	Buses	996,774	*565,030*
Statewide	Buses and bus facilities	4,983,868	*2,825,151*
OHIO	Buses and bus facilities	12,459,669	*7,062,878*
OREGON			
Eugene-Springfield-Land County	Buses and bus facilities	996,774	*565,030*
Lane Transit District	Bus system	996,774	*565,030*
Salem and Cervallis	Buses and bus facilities	996,774	*565,030*
PENNSYLVANIA			
Allegheny County	Buses	996,774	*565,030*
Armstrong Mid-County	Buses and bus facility	199,355	*113,006*
Berks Area Reading	Transit intermodal facility	498,387	*282,515*
Cambria County	Buses and bus facilities	797,419	*452,024*
Fayette and Somerset	Buses, vans, and bus facilities	598,064	*339,018*
Indiana County	Buses	498,387	*282,515*
Lackawanna County	Paratransit vans	299,032	*169,509*
Lawrence County	Buses	996,774	*565,030*
Lehigh and Northampton	Buses	996,774	*565,030*
Mid Mon Valley transit authority	Buses	747,580	*423,773*
New Castle area transit authority	Buses	747,580	*423,773*
North Philadelphia	Intermodal facility	996,774	*565,030*
Philadelphia Eastwick	Intermodal center	996,774	*565,030*
Schuylkill County	Buses	199,355	*113,006*
Scranton	Buses and bus facility	1,495,160	*847,545*
SEPTA	Buses	7,475,802	*4,237,727*
Towanda Borough	Intermodal bus facility	1,993,547	*1,130,061*
Wilkes-Barre	Intermodal facility	1,495,160	*847,545*
Williamsport	Buses and bus facility	1,245,967	*706,288*
Statewide	Bus and bus facilities projects	3,987,094	*2,260,121*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
SOUTH CAROLINA			
Columbia	Buses and facility	1,993,547	*1,130,061*
Pee Dee Regional Planning Authority	Buses and facilities	2,990,320	*1,695,090*
Virtual Transit Enterprise	Integration of transit information processing systems	996,774	*565,030*
SOUTH DAKOTA	Statewide bus and bus facilities	2,242,740	*1,271,318*
TENNESSEE	Buses and bus facilities	7,974,188	*4,520,242*
TEXAS			
Austin	Buses	2,990,320	*1,695,090*
Brazos Transit Authority	Transit facilities and buses	2,990,320	*1,695,090*
Corpus Christi	Bus facilities	1,943,708	*1,101,809*
El Paso	Buses	996,774	*565,030*
Fort Worth	Buses	1,495,160	*847,545*
Galveston	Alternatively fueled vehicles	1,993,547	*1,130,061*
Rural Texas	Bus replacement program	2,491,934	*1,412,576*
UTAH			
Utah Transit Authority Olympic	Park and ride lots	1,993,547	*1,130,061*
Park City Transit	Buses	398,709	*226,012*
Utah Transit Authority	Bus acquisition	1,993,547	*1,130,061*
Utah Transit Authority Olympic	Intermodal transportation centers	2,491,934	*1,412,576*
Statewide	Buses and bus facilities	1,993,547	*1,130,061*
VERMONT			
Burlington	Multimodal center	1,495,160	*847,545*
Statewide	Bus and bus facilities	996,774	*565,030*
VIRGINIA			
Clarendon canopy project		249,193	*141,258*
Falls Church	Electric buses	398,709	*226,012*
Dulles corridor	Buses and bus facilities	2,491,934	*1,412,576*
Richmond	Multimodal center	2,491,934	*1,412,576*
WASHINGTON			
Bremerton	Buses and transportation center	996,774	*565,030*
Clelan- Douglas	Multimodal center	996,774	*565,030*
Community Transit	Knoch Park facility	1,495,160	*847,545*
	Intermodal center	2,491,934	*1,412,576*
King County	Multimodal facility	996,774	*565,030*
King County	Metro commuter intermodal connector	1,495,160	*847,545*
King County	Park and ride lots	4,983,868	*2,825,151*

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1998 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PURPOSE	FY 1998 ALLOCATION	*FY 1998 AVAILABLE ALLOCATION*
WASHINGTON (cont'd)			
Olympic Peninsula International Gateway	Transportation Center	996,774	*565,030*
Snohomish County	Buses	2,491,934	*1,412,576*
Tacoma Dome station project		1,495,160	*847,545*
Thurston County	Intercity buses	996,774	*565,030*
Whatcom Transportation Authority	Facilities	1,495,160	*847,545*
WEST VIRGINIA			
Huntington	Intermodal Facility and buses	6,977,415	*3,955,212*
Statewide	Buses and bus facilities, communications and computer systems	9,220,155	*5,226,530*
WISCONSIN			
Milwaukee	Rail station rehabilitation	996,774	*565,030*
Wisconsin Transit System	Buses	12,958,055	*7,345,393*
TOTAL		$399,681,278	*$226,563,012*

Table 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1997:	
AR Statewide	$2,679,750
AR Little Rock	992,500
CA Eureka	992,500
CA Fairfield City	1,389,500
CA Folsom	496,250
CA Foothill	4,714,375
CA Lake Tahoe	1,256,505
CA North Orange County	198,500
CA Norwalk	992,500
CA Riverside County	992,500
CA San Joaquin	2,729,375
CA Santa Barbara (MTD)	1,985,000
CA Santa Cruz (MTD)	1,985,000
CA San Ysidro Border	992,500
CA Sonoma County	992,500
CA Thousand Oaks	595,500
CA Yolo County	1,985,000
DE Statewide	6,947,500
FL Miami Beach	992,500
FL Tampa (Hillsborough area RTD)	2,779,000
FL Ybor	992,500
GA Chatham	1,052,050
GA MARTA	1,985,000
IA Statewide	3,693,668
IA Fort Dodge	688,160
IA Ottumwa	60,940
IA Sioux City	2,143,800
IA Iowa Department of Transportation	1,261,368
IN Indianapolis (metro)	992,500
IN South Bend	5,455,322

Table 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1997 (Cont'd):	
KS Statewide	992,500
KS Johnson City	2,183,500
KY Statewide	3,970,000
KY Owensboro	99,250
LA Statewide	10,087,104
MA Boston	$992,500
MA Hyannis/Cape Cod	3,225,625
MA Lowell	992,500
MI Statewide	4,722,500
MS Jackson	992,500
MS Jackson	3,473,750
MO Kansas City	6,451,250
MO Statewide	4,290,225
MO St. Louis	1,736,875
NY Buffalo	992,500
NY New Rochelle	1,240,625
NY Syracuse	1,985,000
NY Westchester County	496,250
NC Statewide	1,170,000
OR Hood River	173,688
OR Salem	1,836,125
PA Statewide	634,300
PA Armstrong County MID-County	260,035
PA Berks Area Reading Transit	397,000
PA Erie	1,985,000
PA Indiana County	674,900
SC Spartanburg	1,488,750
TX El Paso	2,481,250
TX Galveston	496,250
TX Liberty, Montgomery, Polk Counties	1,013,170

Table 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1997 (Cont'd):	
UT Salt Lake City	5,458,750
UT Logan	2,382,000
VT Statewide	188,125
VT Burlington	1,488,750
VT Urban & Rural	169,375
VA Reston	496,250
VA Virginia Beach	992,500
WA Bremerton	1,985,000
WA Everett	2,977,500
WA Port Angeles	992,500
WA Seattle Metro/King County	$3,970,000
WI Statewide	1,572,325
WY Freemont County	992,500
TOTAL FY 1997 Allocations	$140,214,560
FY 1996:	
AR Statewide	$794,000
CA Coachella Valley	496,250
CA San Diego	4,674,500
CT Norwich	1,488,750
HI Honolulu	3,970,000
IL Statewide	1,428,601
LA New Orleans	2,977,500
LA St. Bernard Parish	1,488,750
MO Kansas City	6,171,250
NY Albany	4,962,500
NY Buffalo	496,250
NY Rensselaer	5,833,750
NY New Rochelle	744,375

Table 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1996 (Cont'd):	
NY Westchester County	2,233,125
NC State	1,250,000
OH State	2,200,000
PA Philadelphia	992,500
PA Erie	3,970,000
TN Nashville	297,750
TX El Paso	1,465,000
VT Marble Valley	612,500
TOTAL FY 1996 Allocations	$48,547,351
TOTAL (All Allocations Above)	$188,761,911

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

1998 SECTION 5303 METROPOLITAN PLANNING AND SECTION 5313(b) STATE PLANNING AND RESEARCH APPORTIONMENTS

STATE	FY 1998 SECTION 5303 AVAILABLE APPORTIONMENT	FY 1998 SECTION 5313(b) AVAILABLE APPORTIONMENT
Alabama	$344,882	$92,758
Alaska	158,502	42,360
Arizona	618,722	133,897
Arkansas	158,502	42,360
California	6,661,928	1,283,833
Colorado	514,015	119,873
Connecticut	453,689	123,799
Delaware	158,502	42,360
District of Columbia	212,404	42,360
Florida	2,112,873	513,684
Georgia	754,563	164,380
Hawaii	158,502	42,360
Idaho	158,502	42,360
Illinois	2,312,151	427,436
Indiana	564,428	135,746
Iowa	176,442	47,522
Kansas	202,912	51,351
Kentucky	245,802	64,370
Louisiana	438,000	112,321
Maine	158,502	42,360
Maryland	928,920	180,552
Massachusetts	1,119,360	238,473
Michigan	1,470,219	293,024
Minnesota	585,964	119,526
Mississippi	158,502	42,360
Missouri	695,407	148,286
Montana	158,502	42,360
Nebraska	158,502	42,360
Nevada	170,912	45,931
New Hampshire	158,502	42,360
New Jersey	1,955,753	334,215
New Mexico	158,502	42,360
New York	3,975,833	711,632
North Carolina	463,930	126,681
North Dakota	158,502	42,360
Ohio	1,371,909	335,598
Oklahoma	252,356	68,276
Oregon	286,490	71,589
Pennsylvania	1,909,473	363,351
Rhode Island	165,658	42,360
South Carolina	263,305	71,926
South Dakota	158,502	42,360
Tennessee	414,485	111,816
Texas	2,663,133	573,309
Utah	242,743	66,523
Vermont	158,502	42,360
Virginia	868,837	193,069
Washington	698,557	162,065
West Virginia	158,502	42,360
Wisconsin	557,792	124,254
Wyoming	158,502	42,360
Puerto Rico	423,708	107,140
TOTAL	$39,625,587	$8,472,086

TABLE 9

Federal Transit Administration - Unit Values of Data
Fiscal Year 1998 Formula Grant Apportionments

			FY 1998 APPORTIONMENTS	FY 1998 FUNDS AVAILABLE
Section 5307 Urbanized Area Formula Program - Bus Tier				
Urbanized Areas Over 1,000,000:				
Population			$2.43741676	$1.52825411
Population x Density			$0.00062516	$0.00039197
Bus Revenue Vehicle Mile			$0.34472862	$0.21613895
Urbanized Areas Under 1,000,000:				
Population			$2.20274993	$1.38111858
Population x Density			$0.00097008	$0.00060824
Bus Revenue Vehicle Mile			$0.42276377	$0.26507181
Bus Incentive (PM denotes Passenger Mile):				
Bus PM x Bus PM ÷ Operating Cost			$0.00412867	$0.00258867
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier				
Fixed Guideway Revenue Vehicle Mile			$0.46535454	$0.29177611
Fixed Guideway Route Mile			$26,427	$16,569
- Commuter Rail Floor	$4,986,111	$3,126,279		
Fixed Guideway Incentive:				
Fixed Guideway PM x Fixed Guideway PM ÷ Operating Cost			$0.00039964	$0.00025057
- Commuter Rail Incentive Floor	$228,941	$143,545		
Section 5307 Urbanized Area Formula Program - Areas Under 200,000				
Population			$3.97701806	$2.49358020
Population x Density			$0.00198731	$0.00124604
Section 5311 Nonurbanized Area Formula Program				
Areas Under 50,000				
Population			$1.46340428	$0.92061934

Section 5309(m)(1)(A) Capital Program - Fixed Guideway Modernization

	Tier 3	Tier 4
Legislatively Specified Areas:		All Areas:
Revenue Vehicle Mile	$0.02988368	$0.13418473
Route Mile	$2,093.71	$7,584.44
Other Areas:		
Revenue Vehicle Mile	$0.15951697	
Route Mile	$4,438.10	

[FR Doc. 97–31910 Filed 12–2–97; 1:48 pm]
BILLING CODE 4910–57–C

federal register

Friday
December 5, 1997

Part V

Environmental Protection Agency

40 CFR Part 268
Clarification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[No. F-97-TV2F-FFFFF; FRL-5832-5]

Clarification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today finalizing clarifying amendments to the rule authorizing treatment variances from the national Land Disposal Restrictions (LDR) treatment standards. The clarifying changes adopt EPA's longstanding interpretation that a treatment variance may be granted when treatment of any given waste to the level or by the method specified in the regulations is not appropriate, whether or not it is technically possible to treat the waste to that level or by that method. In response to comment, the Agency is indicating in the rule the circumstances when application of the national treatment standard could be found to be "inappropriate", specifically where the national treatment standard is unsuitable from a technical standpoint or where the national treatment standard could lead to environmentally counterproductive results by discouraging needed remediation.

In addition, EPA proposed to reissue the treatment variance granted to Citgo Petroleum under the clarified standard. The Agency is not taking further action on this part of the proposal because, due to changes in Citgo's remediation plans for its Lake Charles Louisiana facility, this particular variance has become moot. The Agency is consequently withdrawing the Citgo variance.

EFFECTIVE DATE: These final regulations are effective December 5, 1997.

ADDRESSES: The official record for this rulemaking is located at the RCRA Information Center at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The RCRA Information Center is open from 9:00 a.m. to 4:00 EST p.m., Monday through Friday, except Federal holidays. The Docket Identification Number for today's action is F–97–TV2F–FFFFF. Appointments to review docket materials are recommended. Appointments may be made by calling (703) 603–9230. Individuals reviewing docket materials may copy a maximum of 100 pages from any one docket at no cost. Additional copies may be made at a cost of $0.15 per page. In addition, the docket index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing electronic information.

FOR FURTHER INFORMATION CONTACT: For general information on RCRA, land disposal treatment variances, and this rule contact the RCRA Hotline, between 9:00 a.m. and 6:00 p.m. EST, Monday through Friday, except Federal holidays. The RCRA Hotline can be reached toll free on (800) 424–9346 or, from the Washington D.C. area, on (703) 412–9810. Hearing impaired can reach the RCRA Hotline on TDD (800) 553–7672 or, in the Washington D.C. area, on TDD (703) 412–3323. For detailed information on specific aspects of this rulemaking, contact Elizabeth McManus on (703) 308–8657.

SUPPLEMENTARY INFORMATION:

Accessing Today's Rule and Supporting Information Electronically

Today's final rule, its docket index and the following supporting materials are available electronically and may be accessed through the Internet: To access these documents electronically: "Use of Site-Specific Land Disposal Restriction Treatability Variances Under 40 CFR 268.44(h) During Cleanups" U.S. EPA guidance memorandum from Michael Shapiro, Director EPA Office of Solid Waste and Steve Luftig, Director EPA Office of Emergency and Remedial Response, Jan. 8, 1997.

WWW: Http://www.epa.gov/epaoswer/hazwaste/ldr/ldr-rule.htm

FTP: ftp.epa.gov

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer/hazwaste/ldr/ldr-rule.htm.

Table of Contents

I. Background
II. Clarified Standard for Granting Treatment Variances
A. Clarification of "inappropriate" standard
B. Compliance With Statutory Provisions for LDR Treatment
III. Responses to Comment
IV. Withdrawal of Citgo Treatment Variance
V. State Authorization
II. Regulatory Requirements
A. Regulatory Impact Analysis Pursuant to Executive Order 12866
B. Regulatory Flexibility Analysis
C. Unfunded Mandates Reform Act
D. Submission to Congress and the General Accounting Office

I. Background

The essential requirement of the Land Disposal Restrictions (LDR) statutory provisions is that hazardous wastes must not be land disposed until hazardous constituent concentrations in the wastes are at levels at which threats to human health and the environment are minimized, and land disposal is otherwise protective of human health and the environment. RCRA sections 3004 (d), (e), (g) and (m); 56 FR at 41168, August 19, 1991; 62 FR at 26062, May 12, 1997. These requirements normally are satisfied by prohibiting disposal of hazardous wastes until the wastes' hazardous constituent concentrations reflect the performance achievable by the Best Demonstrated Available Treatment technology (BDAT). 62 FR at 26062, May 12, 1997.

EPA recognized from the inception of the LDR program, however, that there would be circumstances when these technology-based treatment standards might not be either achievable or appropriate. Accordingly, EPA adopted a treatment variance provision (codified in 40 CFR 268.44; 51 FR at 40605–40606, Nov. 7, 1986) providing that:

> Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the Administrator for a variance from the treatment standard. The petitioner must demonstrate that because the physical or chemical properties of the waste differs significantly from the wastes analyzed in developing the treatment standard, the waste cannot be treated to [the] specified levels or by the specified methods.

A treatment variance takes the form of an alternative LDR treatment standard. Nationally applicable variances and site-specific variances that are approved using rulemaking procedures are codified in the Table to § 268.44, 40 CFR 268. 44(o). Site-specific variances that are approved using non-rulemaking procedures are not codified.

As set out in more detail in the May 12 notice, EPA has interpreted the first sentence of the treatment variance provision as creating two independent tests under which treatment variance applications can be considered: first, where the waste in question cannot be treated to levels or by the methods established in the rules; and second, where such treatment may be possible but is nevertheless "not appropriate". 62 FR at 26059, May 12, 1997. EPA has further viewed the second sentence of the treatment variance provision—which refers to a demonstration that the waste differs chemically or physically from those the Agency analyzed in developing the standard—as applying only to the technical infeasibility part of the standard. 62 FR at 26059, May 12, 1997. However, EPA now recognizes that the existing rule, as drafted, might be read to require a demonstration that a waste is physically or chemically different along with a showing that it cannot be treated to a specified level or by a particular method whenever a treatment variance is sought, including situations where the otherwise applicable treatment standard is technically possible but, nonetheless, inappropriate. This was not EPA's intent, and EPA initiated this rulemaking to remove any drafting ambiguity in the rule.

II. Clarified Standard for Granting Treatment Variances

EPA is finalizing the proposed amendment to the rule, with two changes. First, EPA is clarifying the situations under which treatment variances may be approved because the otherwise applicable LDR treatment standard is "inappropriate." Second, the Agency is adding language that explicitly requires alternative LDR treatment standards approved through the treatment variance process to satisfy the requirement that treatment standards result in substantial treatment of hazardous constituents in the waste so that threats posed by the waste's land disposal are minimized, and also indicates that special considerations may arise in satisfying this standard if the waste is to be used in a manner constituting disposal.[1]

A. Clarification of "Inappropriate" Standard

The Agency proposed amended language simply stating that a treatment variance could be granted if it is "inappropriate" to require treatment to the level or by the method set out in the rules. 62 FR at 26081, May 12, 1997. In the preamble to the proposal, the Agency provided examples as to the situations when application of the otherwise applicable standard could be inappropriate. 62 FR at 26059–26060, May 12, 1997. In response to comment maintaining that the rule language was impermissibly open-ended, EPA has decided to include language codifying more particularly when a standard could be "inappropriate". These circumstances are drawn from EPA's practice in applying the existing rule and are consistent with the examples discussed in the preambles to the proposal and the HWIR-Media proposal. 61 FR at 18810, April 29, 1996.

The first circumstance is when imposition of BDAT treatment, while technically possible, remains unsuitable or impractical from a technical standpoint. The chief example is when a treatment standard would result in combustion of large amounts of mildly contaminated soil or wastewater. 55 FR at 8760 and 8761, March 8, 1990; 61 FR at 18806–18808, April 29, 1996 and other sources cited therein. The same reasoning could apply when media is contaminated with metal contaminants and also contains low levels of organic contaminants. In such a case, it may be inappropriate to require combustion treatment of the organic contaminants both because it may be inappropriate to combust media generally and because it may be inappropriate to combust wastes where metals are the chief hazardous constituent.[2] Another potential example of where treatment for organic contaminants may be technically inappropriate is when a waste contains low concentrations of non-volatile organic contaminants (for example, concentrations slightly exceeding a Universal Treatment Standard) and the waste, for legitimate reasons, has been stabilized. If the mobility of the non-volatile organic contaminants has been reduced, it might be inappropriate to require further treatment of the non-volatile organic contaminants. Cf. 61 FR at 55724, Oct. 28, 1996 where EPA made a similar finding. Still another example of a situation where the otherwise applicable LDR treatment standard is technically inappropriate could be a case where BDAT treatment could expose site workers to acute risks of fire or explosion and an alternative technology would not. 62 FR at 26060, May 12, 1997. In all these types of circumstances, notwithstanding that it is technically possible to achieve the standard by using the best demonstrated available technology, it could be inappropriate to do so.

The second set of circumstances where treatment to the limit of best demonstrated available technology might be inappropriate involves cases where imposition of the otherwise applicable treatment standard could result in a net environmental detriment by discouraging aggressive remediation. The example EPA and authorized states have encountered most often to date is where federal rules allow the option of leaving wastes in place,[3] and a facility then has the choice of pursuing the legal option of leaving the wastes in place or opting to excavate thereby triggering treatment to standards based on the performance of best demonstrated available technology, which can be very expensive. 62 FR at 26059, May 12, 1997, and other sources there cited.[4] In these circumstances, a treatment variance can provide an intermediate option of more aggressive remediation, which may include substantial treatment of the removed waste before disposal of that treatment residue—a net environmental benefit over leaving untreated waste in place. 61 FR at 55720–22, May 12, 1997. In EPA's experience, this situation often occurs when BDAT treatment would require that wastes be treated to achieve constituent concentrations that fall below protective site-specific cleanup levels, thus increasing remediation costs for treatment of excavated wastes. In these instances, EPA has indicated that consideration of a treatment variance is typically warranted (because imposition of the otherwise applicable treatment standard would discourage aggressive remediation and is, therefore, inappropriate) and that, if a variance is approved, protective, site-specific cleanup levels may be used as

[1] EPA is also restoring language to 40 CFR 268.44(a) and (h) that was inadvertently deleted when EPA proposed this clarification and redrafting the introductions to both provisions. These changes are made to restore the inadvertently deleted text and to make the difference between national and site-specific variances more clear, as follows. The 40 CFR 268.44(a) national variance is waste-specific—it could apply to the same type of waste at numerous sites. National variances are obtained by petitioning the Administrator and, as set out in 40 CFR 268.44(b), petitions are processed using the procedures set out in 40 CFR 260.20. The 40 CFR 268.44(h) variance is site-specific—it applies only to a certain waste generated at a particular site. Site-specific variances are obtained by petitioning the Administrator, or the Administrator's delegated representative, or an authorized state. Petitions for site-specific variances are processed on a site-by-site basis and are not required to be processed using the procedures set out in 40 CFR 260.20. Further explanation on this issue is included in the Response to Comments Document for today's action in the response to comments submitted by the Department of Energy. EPA regards the restoration of inadvertently deleted language and the associated clarifications as a technical correction and may, thus, make the changes immediately in this final rule.

[2] Although it should also be noted that it is often routine and obviously appropriate to combust organic-contaminated hazardous wastes and to stabilize the combustion residues to reduce metal mobility: see, e.g. treatment standards for F024 wastes in 40 CFR 268.40.

[3] Examples are where wastes can remain within an "area of contamination", where remedy selection requirements allow a balancing of treatment and containment strategies and where RCRA regulations allow the option of closing a regulated unit with wastes left in place.

[4] Another recent example of such a treatment variance was granted to Dow Chemical Co. by EPA Region V. In this case, the company could legally leave wastes within an area of contamination but requested instead that the wastes be exhumed for more secure disposal in a subtitle C landfill. Viewing this as a net environmental benefit, and further finding that no other treatment but combustion was available to reduce the relatively low levels of hazardous constituents (chlorinated dibenzo-dioxins and furans), the Region found the existing treatment requirement inappropriate and granted the variance. Treatment Variance for Dow Chemical Co., June 10, 1997, Response to Comment Document pp. 15–17.

alternative LDR treatment standards. See recent EPA guidance on LDR treatment variances: Jan 8, 1997 memorandum, "Use of Site-Specific Land Disposal Restriction Treatability Variances Under 40 CFR 268.44(h) During Cleanups" from Michael Shapiro, Director EPA Office of Solid Waste and Steve Luftig, Director EPA Office of Emergency and Remedial Response and information on compliance with statutory provisions for LDR treatment, below. In addition, see "Hazardous Waste: Remediation Waste Requirements Can Increase the Time and Cost of Cleanups" U.S. General Accounting Office, GAO/RCED–98–4, October 1997.

EPA is accordingly codifying qualifying language stating that treatment variances can be granted where the underlying standard is not appropriate either because it is technically inappropriate or because requiring LDR treatment is environmentally inappropriate in that it could discourage aggressive remediation.

Finally, it must be remembered that this amended rule does not command issuance of treatment variances any more than the existing rule does. Like the existing rules, the amended rules set out circumstances when treatment variances may be considered. The actual determination of whether an otherwise applicable LDR treatment standard is "unachieveable" or technically or environmentally "inappropriate" is a fact-specific determination depending largely on site-and waste-specific circumstances.

B. Compliance With Statutory Provisions for LDR Treatment

As stated in the proposal all treatment variances must be consistent with the root requirement of RCRA section 3004 (m): that treatment be sufficient to minimize threats to human health and the environment posed by land disposal of the waste. See 62 FR at 26060/1, May 12, 1997 ("alternative treatment standards [established by a treatment variance] must comply with the statutory standard of RCRA section 3004(m) by minimizing threats to human health and the environment"). In order to ensure that there is no ambiguity over application of this requirement in the context of alternative LDR treatment standards developed through the treatment variance process, EPA is adding regulatory language that explicitly requires the decision-maker to determine that a revised treatment standard is sufficient to minimize threats posed by land disposal. Cf. 61 FR at 55721, October 23, 1996 (finding that alternate standard in treatment variance does minimize threats posed by land disposal). In making this determination, however, EPA (or authorized State) may consider risks posed by land disposal not only of the treated residue, but also the risks posed by the continuation of any existing land disposal of the untreated waste, that is, the risks posed by leaving previously land disposed waste in place. Thus, for example, in a remediation setting, it is appropriate (and likely necessary) to consider risks posed by leaving previously land disposed waste in place as well as risks posed by land disposal of the waste after it is removed and treated. Cf. 61 FR at 55721, October 28, 1996 (fact-specific determination that threats posed by land disposal are adequately minimized when treatment variance will lead to clean closure of large surface impoundment, substantial treatment of removed waste, and disposal of treatment residue in a subtitle C landfill) and 61 FR at 18808, April 29, 1996, and other sources cited therein (determination that the policy considerations which argue for BDAT as the basis for technology-based standards for as-generated wastes do not always support a BDAT approach in the remediation context).

In addition, when making a determination as to whether the statutory provisions for LDR treatment have been satisfied, EPA may, of course, condition any particular variance to apply only in certain circumstances if the facts warrant. There is, at least, one potentially recurring circumstance when such conditioning may be warranted for treatment variances. Under current regulation, hazardous waste-derived products can be used in a manner constituting disposal provided the waste meets the LDR treatment standards. 40 CFR 266.23. The exemption was premised on findings that hazardous wastes would meet requirements reflecting rigorous treatment which typically destroys, removes, or immobilizes hazardous constituents to the limit of available technology. 53 FR at 31198, August 17, 1988. In order to ascertain whether this exemption is still justifiable for wastes which receive treatment variances on the ground that the treatment standard is inappropriate, EPA is noting that as part of a determination of whether threats are minimized under the circumstances, consideration should be given to whether this exemption should continue to apply.[5] This would entail a fact-specific determination, and notice as to how the determination might be made would have to accompany each such treatment variance. For example, in situations where the decision-maker determines that use of a product derived from hazardous waste in a manner constituting disposal would likely not be adequately protective even if that hazardous waste derived product complied with an alternative land disposal treatment standard established through a treatment variance, the treatment variance approval could include a condition that restricted use of the treated hazardous waste in a manner constituting disposal.

EPA also notes that the Subpart CC rules, relating to control of air emissions from tanks, containers, and surface impoundments managing hazardous waste, state that if a waste has met the LDR treatment standard set out in 40 CFR 268.40 (the generally-applicable treatment standards, normally the Universal Treatment Standards), the waste is not subject to further Subpart CC controls.[6] See 40 CFR 264.1082 (c) (4) and 265.1082 (c) (4)) and 61 FR at 59941, November 25, 1996. The limitation to wastes that have achieved the generally-applicable treatment standard in fact means that the exemption is unavailable to wastes receiving treatment variances that alter the generally-applicable standards for organic hazardous constituents. EPA is confirming here that this literal reading is intentional.

III. Responses to Comment

Most comments supported the Agency's proposal, or suggested that there was no need to clarify the standard in the existing rule. The main negative comment came from the Environmental Defense Fund, raising a number of points.

First, the commenter argued that the Agency's own closure rules for impoundments create the environmentally adverse incentive to leave wastes in place and thus create the dilemma to adopt alternative treatment standards. The comment urges

[5] As EPA explained in the May 12, 1997, **Federal Register** notice, however, remediation activities involving replacement of treated soils or other wastes onto the land is not a type of use constituting disposal. The activity is a type of supervised remediation, and is not the type of unsupervised recycling activity covered by the use constituting disposal provisions. 62 FR at 26063, May 12, 1997.

[6] It should be noted that the Subpart CC standards do not apply to waste management units used solely for on-site treatment or storage of hazardous waste that is generated as the result of remedial activities required by RCRA corrective action authorities, CERCLA authorities, or similar Federal or State authorities. See 40 CFR 264.1080 (b) (5) and 265.1080 (b) (5).

amendment of the closure standards for impoundments.

While it is correct that the closure rules for surface impoundments (and landfills) create more opportunities to close with wastes left in place than do closure standards for tanks, piles, containment buildings, and drip pads, EPA did not, and is not, reopening any of the closure standards in this proceeding.[7] In developing the standards for closure of surface impoundments, EPA allowed the option of leaving wastes in place because of the practical difficulties of removing large volumes of waste from impoundments, many of which had been operating over long periods of time, and the recognition that, when properly capped, some former surface impoundments can safely contain wastes during and after post-closure care. 47 FR at 32320 and 32321, July 26, 1982. EPA also required, in the closure performance standards, that releases must be minimized or controlled at units where waste is left in place. 47 FR at 32320 and 32321, July 26, 1982. In situations where such minimization or control is not achievable, the closure performance standard would not be met and closure with waste in place would not be available under the regulations. In these respects, EPA's closure regulations for surface impoundments are identical to those for landfills, where waste is purposefully disposed of in the land-based units. EPA is re-evaluating the relationship between requirements for closure of regulated units, including surface impoundments, and requirements for RCRA corrective action and will take this comment under consideration during the re-evaluation. In the meantime, the Agency nevertheless intends to act now in order to assure that the treatment variance option continues to provide a potential intermediate alternative between full removal of waste followed by treatment to the extent of best demonstrated technology on the one hand and no waste removal at all on the other.

Second, the commenter argued that the circumstances under which treatment variances could be approved based on the "inappropriate" standard were not adequately defined. The commenter then went on to note that most of the situations in which the Agency contemplated using the "inappropriate" standard occurred in the remediation setting and suggested that the Agency either wait until completion of the ongoing rulemaking relating to management of contaminated environmental media, or limit the scope of the variance to remediation situations.[8]

EPA has addressed the comments regarding the specificity of the "inappropriate" standard by adding clarifying language, based on discussion in May 12, 1997 proposal, to the final regulations as discussed above. Regarding the second part of this comment, EPA does not believe it should await the outcome of the HWIR-Media proceeding to finalize the clarifying amendment to the treatment variance rules. EPA also notes that nothing in this rule forecloses any of the actions proposed in the HWIR Media proposal, including further definition of situations where treatment variances are appropriate—for example, codification of the type of "minimize threat" variance determination discussed in the HWIR-Media proposal. 61 FR at 18810–18812, April 29, 1996. The Agency is continuing to evaluate and review comments on this part of the HWIR-Media proposal.

The Agency is persuaded by the commenter's observation regarding use of treatment variances in the context of remediation. Accordingly, in response to this comment, EPA has chosen to expressly limit approval of treatment variances using the "environmentally inappropriate" test to remediation wastes. In this context, remediation waste includes all solid and hazardous wastes and all media (including groundwater, surface water, soils and sediments) and debris, which contain listed hazardous waste or which themselves exhibit a hazardous waste characteristic when such wastes are generated during remediation, such as RCRA corrective action, CERCLA cleanup, and cleanup under a state program. This definition is consistent with the existing definition of remediation waste in 40 CFR 260.10 except that it is not limited to wastes generated for purposes of corrective action under 40 CFR 264.101 or RCRA Section 3008(h). Since site-specific land disposal restriction treatment variances will undergo review and approval by either EPA or an authorized state, EPA does not believe it is necessary to limit the eligible wastes to corrective action cleanups.

Finally, the commenter went on to argue that the open-ended proposal effectively reopened the question of whether site-specific treatment variances (40 CFR 268.44 (h)) could be issued without going through notice-and-comment rulemaking, the argument being that each such variance would establish a new criterion for what "not appropriate" means.

Site-specific treatment variances can be granted without using rulemaking procedures. 53 FR at 31199–31200, August 17, 1988. EPA did not reopen this issue in this proceeding, which just is adopting clarifying amendments which reflect EPA's longstanding practice and interpretation of the treatment variance rules. 62 FR at 26059, May 12, 1997. However, to ensure there is no ambiguity over the application of treatment variances, EPA is restoring language to 268.44(h) indicating that the alternative LDR treatment standards established through the treatment variance process are site-specific. This language has always been part of 268.44(h) and was inadvertently omitted in the proposal of this clarifying rule. In any case, the amendment adopted today contains explicit qualifying language so that whatever basis, if any, existed for the commenter's argument is no longer present.

The same commenter, in oral conversations with Agency officials as well as in public comments, maintained the importance of allowing opportunity for public participation whenever a site-specific treatment variance is being considered. These opportunities are already provided. The Agency stated in 1988, when adopting 40 CFR 268. 44(h), "[t]he Agency agrees as a matter of policy to allow opportunity for public notice and comment prior to granting a nonrulemaking variance from the treatment standard. Because circumstances under which one might apply for a site-specific variance vary, vehicles for public comment will be specified on a case-by-case basis." 53 FR at 31200, August 17, 1988. In response to this commenter's concerns, however, EPA has decided to indicate in the rule that opportunity for public participation must be provided when granting or denying any site-specific treatment variance. In doing so, the Agency is simply repeating in the rule what it wrote in the August 1988 preamble. The Agency does not view this step as creating a new regulatory requirement or altering existing practice and, by adding the August 1988 preamble language to the rule, is not intending to

[7] The rules for most regulated units in essence require clean closure, with wastes being allowed to be left in place only after a showing that wastes remaining after initial removal and decontamination cannot be practically removed or decontaminated. See e.g., closure standards for piles in 40 CFR 265.258. The closure rules for impoundments and landfills do not contain these provisions, but rather provide alternative standards for closing with wastes in place or for clean closure. See, e.g., 40 CFR 265.228.

[8] EPA proposed regulations addressing contaminated media at 61 FR 18780, April 29, 1996 and has not yet taken final action on this proposal.

reopen the issue (settled in 1988) of whether site-specific treatment variances can be approved or denied without going through rulemaking procedures.

IV. Withdrawal of Citgo Treatment Variance

EPA granted a treatment variance to Citgo Petroleum on October 28, 1996 for wastes presently disposed in a large surface impoundment awaiting closure. 61 FR 55718, October 28, 1996. Because the company had the legal option of closing the impoundment with waste in place (assuming the technical standards for such closure could be justified), and was virtually certain to pursue that option if treatment of the waste to the limit of best demonstrated technology was required, EPA found that it was an environmentally superior result to assure clean closure and partial treatment. *Id.* at 55721. The variance was in essence used as an incentive to assure aggressive clean closure and the associated waste treatment. EPA, as part of the May 12 notice, proposed to reissue the variance under the clarified regulatory standard. 62 FR at 26062–26061, May 12, 1997.

Since the variance was granted, Citgo has chosen to pursue the legal option of seeking to close the impoundment with waste left in place. Because of Citgo's decision, EPA believes there is no longer any basis for the Citgo treatment variance. If the company's application for closure in place is granted, the variance is moot. If the application is not granted, then the company will have to clean close the impoundment and it will not be necessary to use the variance to create a voluntary incantive for them to do so. Thus, in either case, the basis for granting the variance no longer exists. Accordingly, EPA is withdrawing the Citgo treatment variance in today's Notice. Citgo is aware of the Agency's thinking, has discussed the issue with EPA, and agrees not to oppose withdrawal of the variance.

V. State Authorization

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Today's rule is being promulgated pursuant to section 3004(m) of RCRA (42 U.S.C. 6924(m)), a provision added by HSWA.[9] Therefore, the Agency is adding today's rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

EPA originally indicated that states could not be authorized to review and approve national treatment variances pursuant to 40 CFR 268.44(a) because such variances could result in nationally-applicable standards for a new waste treatability group. 52 FR at 25783, July 8, 1987. In the HWIR-Media proposal, EPA clarified that states could seek authorization to review and approve site-specific treatment variances pursuant to 40 CFR 268.44(h). 61 FR at 18828, April 29, 1996.

The site-specific variance provision is less stringent than the generally applicable LDR program (i.e., the underlying treatment standard from which a variance is sought). Since today's final rule clarifies the existing regulations, for authorization purposes it is considered as stringent as, but no more stringent than the existing site-specific variance regulations. Thus, states are not required to adopt regulations equivalent to 268.44(h) either in its current form or in the clarified form promulgated today. Although States are not required to adopt regulations for site-specific LDR treatment variances, EPA strongly encourages States to adopt and become authorized for the clarified standards established today and is committed to expediting the state authorization process for this rule. In the meantime, EPA will continue to review and approve (as appropriate) treatment variance applications in all States.

VI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant" regulatory action as one that "is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The Agency considers today's final rule to be nonsignificant as defined by the Executive Order and therefore not subject to the requirement that a regulatory impact analysis has to be prepared. Today's rule clarifies and codifies, in regulatory language, existing EPA standards for the application of a treatability variance where the treatment standard is not appropriate for the restricted waste subject to the standard. Thus, because today's rule clarifies and codifies existing EPA interpretation of the treatability variance provision, no incremental costs are associated with this rulemaking.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*; as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 [SBREFA]) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

EPA has codified regulatory language in today's rule that petitioners of restricted wastes that wish to obtain a treatment variance do not have to show technical infeasibility when the treatment technology is not appropriate to the waste. This regulatory language clarifies long standing and current Agency interpretation of the 268.44 that the two tests of technical infeasibility and inappropriateness are independent.

[9] Under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed to carry out these requirements and prohibitions in all states, including the issuance of permits, until the state is granted authorization to do so.

(See above discussion and 61 FR 55718 at 55720–21, October 28, 1996; 53 FR at 31200, August 17, 1988; 55 FR 8666 and 8760, March 8, 1990; 61 FR 18780 and 18811, April 29, 1996.) Because this regulatory language codifies existing EPA interpretation of current regulations, it imposes no costs or economic impacts on small entities applying for treatability variances.

Because this clarification does not impose an adverse economic impact to any small entity that is either generator of restricted waste or an owner/operator of a treatment, storage or disposal facility managing such waste that is petitioning the Agency for a variance from the treatment standard, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with the statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

Because this regulatory language codifies current EPA interpretation of existing treatability variance language and thus imposes no costs, EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. As stated above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: December 1, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.44 is amended to revise paragraphs (a) and (h), add paragraph (m), and remove paragraph (p) as follows:

§ 268.44 Variance from a treatment standard.

(a) Based on a petition filed by a generator or treater of hazardous waste, the Administrator may approve a variance from an applicable treatment standard if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must either demonstrate that:

(i) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media); or

(ii) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

* * * * *

(h) Based on a petition filed by a generator or treater of hazardous waste, the Administrator or his or her delegated representative may approve a site-specific variance from an applicable treatment standard if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must either demonstrate that:

(i) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media); or

(ii) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

(3) Public notice and a reasonable opportunity for public comment must be provided before granting or denying a petition.

* * * * *

(m) For all variances, the petitioner must also demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, EPA may take into account whether a treatment variance should be approved if the subject waste is to be used in a manner constituting disposal pursuant to 40 CFR 266.20 through 266.23.

* * * * *

[FR Doc. 97–31914 Filed 12–4–97; 8:45 am]
BILLING CODE 6560–50–P

Reader Aids

Federal Register
Vol. 62, No. 234
Friday, December 5, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
Administrative Orders:
Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619

5 CFR

213 63627
315 63627
410 63630
591 63630

7 CFR

17 63606
301 ..... 64133, 64263
401 63631
454 63631
457 ..... 63631, 63633
1412 63441
Proposed Rules:
70 63471
610 64174
729 63678

8 CFR

213a 64048
299 64048

9 CFR

78 64134
91 64265
93 64265

10 CFR

30 63634
32 63634
50 63825
70 63825
73 63640
Proposed Rules:
50 ..... 63892, 63911
70 63911

12 CFR

8 64135
226 63441
516 64138
543 64138
545 64138
552 64138
556 64138
563 64138
614 63644
703 64146
704 64148
791 64266
1806 64440
Proposed Rules:
404 64177
405 64177
708a 64185
708b 64187

14 CFR

39 ..... 63622, 63828, 63830, 63831, 63835, 63836, 64268
71 ..... 64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273
97 ..... 63447, 63449, 63451
255 63837
1260 63452
Proposed Rules:
39 ..... 63473, 63475, 63476, 63624, 63912, 63914
71 ..... 63916, 63917, 64321, 64321, 64322, 64323

16 CFR

401 64154

20 CFR

255 64161
340 64273
404 64274
422 64274
Proposed Rules:
211 64188
422 63681

21 CFR

101 ..... 63647, 63653
179 ..... 64102, 64107
Proposed Rules:
200 64048

22 CFR

Proposed Rules:
22 63478
51 63478
53 63478

23 CFR

1327 63655
Proposed Rules:
655 64324

26 CFR

Proposed Rules:
1 64190

28 CFR

0 63453

29 CFR

1614 63847

30 CFR

Proposed Rules:
917.....63684
926.....63685, 64327

32 CFR

Proposed Rules:
199.....64191
901.....63485

33 CFR

117.....63847

36 CFR

701.....64279

Proposed Rules:
1.....63488
14.....63488
327.....64192

37 CFR

202.....63657

Proposed Rules:
253.....63502
255.....63506

38 CFR

21.....63847, 63848
36.....63454

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

52.....63454, 63456, 63658, 64284
64.....63662
70.....63662
71.....63662
80.....63853
81.....64284
180.....63662, 63858, 64048, 64287, 64294
185.....64048, 64284, 64287
186.....64048
261.....63458
268.....64504

Proposed Rules:
52.....63687, 64329
80.....63918
81.....63687
112.....63812
194.....64327

41 CFR

301.....63796

42 CFR

417.....63669

Proposed Rules:
1001.....63689

45 CFR

205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301

46 CFR

114.....64303
116.....64303
117.....64303
118.....64303
1121.....64303
122.....64303
175.....64303
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
73.....63674

Proposed Rules:
73.....63690

49 CFR

219.....63464, 63675
225.....63675
240.....63464

Proposed Rules:
Ch. X.....64193

50 CFR

20.....63608
17.....64306
222.....63467
622.....63677
648.....63872
660.....63676
679.....63877, 63878, 63880

Proposed Rules:
14.....64335
17.....64337, 64340
23.....64347
679.....63690

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 5, 1997

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Fuels and fuel additives—
Gasoline deposit control additives; transferred gasoline; oxygenate content identification requirement removed; published 11-6-97
Air quality implementation plans; approval and promulgation; various States:
Connecticut; published 10-6-97
Hazardous waste:
Land disposal restrictions—
Metal wastes and mineral processing wastes treatment standards, etc.; clarification; published 12-5-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Fluorine compounds; published 12-5-97
Maleic hydrazide; published 12-5-97

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Private land mobile services—
Automatic vehicle monitoring systems; published 10-6-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Emergency assistance, job opportunities and basic skills training, child care programs, etc.; regulations removed; published 12-5-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Home health agency physician certification regulations; published 11-5-97

INTERIOR DEPARTMENT
Land Management Bureau
Patent preparation and issuance; CFR subpart removed; published 11-5-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Callippe silverspot butterfly, etc.; published 12-5-97

LIBRARY OF CONGRESS
Special research facilities assignment; published 12-5-97

NATIONAL CREDIT UNION ADMINISTRATION
Organization and operations:
Procedural rulings, notation voting, Board meetings, and agenda; clarification; published 12-5-97

POSTAL SERVICE
Freedom of Information Act; implementation:; published 12-5-97

SOCIAL SECURITY ADMINISTRATION
Supplemental security income:
Aged, blind, and disabled—
U.S. residency, definition; religious record of birth or baptism as evidence of citizenship, etc.; published 11-5-97

TRANSPORTATION DEPARTMENT
Coast Guard
Vessels; small passenger vessel inspection and certification
Correction; published 12-5-97

TRANSPORTATION DEPARTMENT
Computer reservation systems; carrier-owned:
Contract clauses barring carriers from choosing participation level; adoption and enforcement; prohibition subject to exception; published 11-5-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 10-31-97
Allied Signal, Inc.; published 12-5-97
Avions Pierre Robin; published 11-13-97
Dornier; published 10-29-97
Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A.; published 10-29-97
Partenavia Costruzioni Aeronauticas, S.p.A; published 10-29-97
Pilatus Aircraft, Ltd.; published 10-29-97
Raytheon; published 10-31-97
SIAI Marchetti, S.r.l.; published 10-29-97

TREASURY DEPARTMENT
Community Development Financial Institutions Fund
Bank enterprise award program; published 12-5-97

RULES GOING INTO EFFECT DECEMBER 6, 1997

OFFICE PERSONNEL MANAGEMENT
Family and medical leave; published 12-5-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Farm Service Agency
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts; comments due by 12-9-97; published 12-2-97
Program regulations:
Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
IFQ survivorship transfer provisions; modification; comments due by 12-8-97; published 11-6-97
Scallop; comments due by 12-9-97; published 11-24-97
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 12-8-97; published 10-23-97
Northeastern United States fisheries—
Northeast multispecies; comments due by 12-12-97; published 11-12-97

COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Practice rules; trademark trial and appeal board proceedings; comments due by 12-10-97; published 11-4-97

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Ohio; comments due by 12-10-97; published 8-12-97
Pennsylvania; correction; comments due by 12-8-97; published 11-6-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glyphosate oxidoreductase; comments due by 12-8-97; published 10-8-97
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 12-8-97; published 11-6-97

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
North American Numbering Plan administration—
Carrier identification codes; comments due by 12-8-97; published 10-29-97

Common carriers:
Telecommunications carrier interceptions; comments due by 12-12-97; published 11-28-97
Television broadcasting:
Two-way transmissions; multipoint distribution service and instructional television fixed service licensees participation; comments due by 12-9-97; published 11-6-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Insured State banks and savings associations; activities; comments due by 12-11-97; published 9-12-97

FEDERAL ELECTION COMMISSION
Rulemaking petitions:
Bopp, James, Jr.; comments due by 12-8-97; published 11-6-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Child support enforcement program:
Quarterly wage and unemployment compensations claims reporting to National Directory of New Hires, comments due by 12-8-97; published 10-7-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Replacement housing factor in modernization funding; comments due by 12-9-97; published 9-10-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Illinois Cave amphipod; comments due by 12-8-97; published 10-9-97

JUSTICE DEPARTMENT
Drug Enforcement Administration
Comprehensive Methamphetamine Control Act of 1996; implementation:
Pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products; transaction reporting requirements; comments due by 12-8-97; published 10-7-97

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards, etc.:
Longshoring and marine terminals; piggybacking of two containers using twist locks; comments due by 12-8-97; published 10-9-97

OFFICE OF MANAGEMENT AND BUDGET
Management and Budget Office
Freedom of Information Act; implementation; comments due by 12-8-97; published 10-9-97

POSTAL SERVICE
Domestic Mail Manual:
Perishable contents; ancillary service endorsements; comments due by 12-8-97; published 11-7-97

TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades:
BellSouth Winterfest Boat Parade; comments due by 12-8-97; published 11-7-97

TRANSPORTATION DEPARTMENT
Computer reservation systems, carrier-owned; comments due by 12-9-97; published 10-30-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 12-8-97; published 11-6-97
Avions Pierre Robin; comments due by 12-8-97; published 11-7-97
Dornier; comments due by 12-8-97; published 11-7-97
Eurocopter Deutschland GmbH; comments due by 12-8-97; published 10-9-97
EXTRA Flugzeugbau GmbH; comments due by 12-8-97; published 11-5-97
HOAC Austria; comments due by 12-8-97; published 11-7-97
MT-Propeller Entwicklung GMBH; comments due by 12-8-97; published 10-7-97
Saab; comments due by 12-8-97; published 11-7-97
Teledyne Continental Motors; comments due by 12-9-97; published 10-10-97
Class E airspace; comments due by 12-8-97; published 11-6-97

TREASURY DEPARTMENT
Customs Service
Organization and functions; field oranization, ports of entry, etc.:
Orlando-Sanford Airport, FL; port of entry; comments due by 12-8-97; published 11-7-97

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Exemptions from currency transactions reporting; comments due by 12-8-97; published 9-8-97

VETERANS AFFAIRS DEPARTMENT
Health care professionals; reporting to State licensing boards; policy; comments due by 12-8-97; published 10-8-97
Loan guaranty:
Refinancing loans; interest rate reduction requirements; comments due by 12-8-97; published 10-8-97

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1254/P.L. 105–131
To designate the United States Post Office building located at 1919 West Bennett Street in Springfield, Missouri, as the "John N. Griesemer Post Office Building". (Dec. 2, 1997; 111 Stat. 2562)

S. 156/P.L. 105–132
Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (Dec. 2, 1997; 111 Stat. 2563)

S. 476/P.L. 105–133
To provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000. (Dec. 2, 1997; 111 Stat. 2568)

S. 738/P.L. 105–134
Amtrak Reform and Accountability Act of 1997 (Dec. 2, 1997; 111 Stat. 2570)

S. 1139/P.L. 105–135
Small Business Reauthorization Act of 1997 (Dec. 2, 1997; 111 Stat. 2592)

S. 1161/P.L. 105–136
To amend the Immigration and Nationality Act to authorize appropriations for refugee and entrant assistance for fiscal years 1998 and 1999. (Dec. 2, 1997; 111 Stat. 2639)

S. 1193/P.L. 105–137
Aviation Insurance Reauthorization Act of 1997 (Dec. 2, 1997; 111 Stat. 2640)

S. 1559/P.L. 105–138
To provide for the design, construction, furnishing, and equipping of a Center for Historically Black Heritage within Florida A&M University. (Dec. 2, 1997; 111 Stat. 2642)

S. 1565/P.L. 105–139
To make technical corrections to the Nicaraguan Adjustment and Central American Relief Act. (Dec. 2, 1997; 111 Stat. 2644)

S.J. Res. 39/P.L. 105–140
To provide for the convening of the Second Session of the One Hundred Fifth Congress. (Dec. 2, 1997; 111 Stat. 2646)

Last List December 4, 1997

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The Index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register



Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5421

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions for one year:

___ **LSA (List of CFR Sections Affected),** (LCS) for $27 per year.
___ **Federal Register Index** (FRSU) $25 per year.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice.* You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before the shown date.

```
AFR SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before the shown date.

```
AFRDO SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. (Price includes regular domestic postage and handling, and is subject to change.) International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

105th Congress, 2nd Session, 1998

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 105th Congress, 2nd Session, 1998.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code: * 6216

S3

☐ **YES,** enter my subscription(s) as follows:

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 105th Congress, 2nd Session, 1998 for $190 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) 12/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

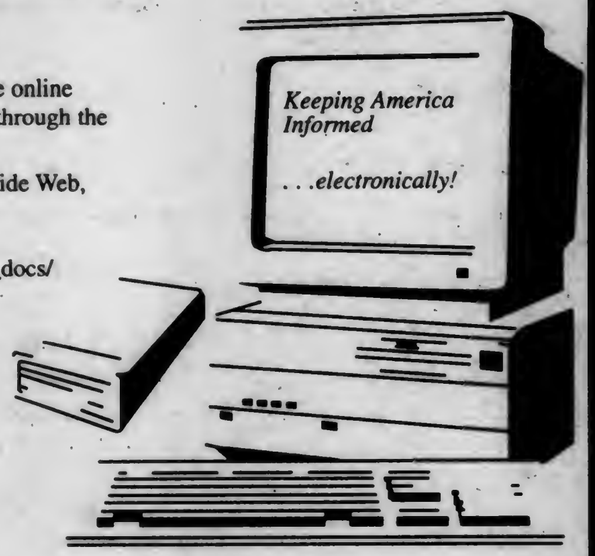
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.access.gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)



Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–8–97
Vol. 62 No. 235

federal register

Monday
December 8, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–8–97
Vol. 62 No. 235
Pages 64511–64676

federal register

Monday
December 8, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see the announcement on the inside cover of this issue.

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 16, 1997 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 235
Monday, December 8, 1997

Agency for International Development
NOTICES
Title II development program proposals:
Final draft guidelines (1999 FY) and annual results report (1997 FY); availability, 64598

Agriculture Department
See Food and Consumer Service
See Rural Utilities Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64555–64556

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Nellis Air Force Range, NV, 64573

Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64628–64631

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64591–64592
Organization, functions, and authority delegations:
Children, Youth and Families Administration, 64592–64593

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 64573

Defense Department
See Air Force Department

Drug Enforcement Administration
PROPOSED RULES
Schedules of controlled substances:
Sibutramine; placement into Schedule IV, 64526–64527

Education Department
NOTICES
Meetings:
Historically Black Colleges and Universities Capital Financing Advisory Board, 64573–64574
President's Board of Advisors on Historically Black Colleges and Universities, 64574
Postsecondary education:
Federal Perkins loan, Federal work-study, and Federal supplemental educational opportunity grant programs—
Fiscal operations report and application; filing closing date, 64674–64675

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department

Energy Efficiency and Renewable Energy Office
NOTICES
Consumer products; energy conservation program:
Representative average unit costs of energy sources—
Electricity, natural gas, heating oil, propane, and kerosene, 64574–64575

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri; correction, 64522
Hazardous waste:
Treatment, storage, and disposal facilities and hazardous waste generators—
Tanks, surface impoundments, and containers; organic air emission standards; clarification, 64636–64671
PROPOSED RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Test method 207; measurement of isocyanate emissions from stationary sources, 64532–64542
Air quality implementation plans; approval and promulgation; various States:
California, 64543–64544
NOTICES
Solid wastes:
Monitored natural attenuation use for remediation of contaminated soil and groundwater at various sites; policy clarification, 64588–64589

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Allison Engine Co., 64517–64519
Bombardier, 64519–64521
General Electric Co., 64513–64514
Pratt & Whitney, 64514–64517
Robinson Helicopter Co., 64511–64513
VOR Federal airways, 64521
PROPOSED RULES
Airworthiness directives:
Pratt & Whitney, 64523–64525
Class E airspace, 64525–64526
NOTICES
Aviation Rulemaking Advisory Committee; task assignments, 64621–64623
Exemption petitions; summary and disposition; correction, 64634

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Southern California Edison Co., 64584

Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 64575–64576
ANR Pipeline Co., 64576
Columbia Gas Transmission Corp., 64576–64577
El Paso Natural Gas Co., 64577–64578
Entergy Arkansas, Inc., 64578
Koch Gateway Pipeline Co., 64578
Mojave Pipeline Co., 64578–64579
NorAm Gas Transmission Co., 64579
Pacific Gas Transmission Co., 64579
Paiute Pipeline Co., 64579–64583
Panhandle Eastern Pipe Line Co., 64580
Sea Robin Pipeline Co., 64580–64581
Southeastern Natural Gas Co., 64581
Southern Natural Gas Co., 64581–64583
Transcontinental Gas Pipe Line Corp., 64583
USGen Power Services, L.P., 64583
Wyoming Interstate Co., Ltd., 64583

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 64589
Formations, acquisitions, and mergers, 64589–64590
Permissible nonbanking activities, 64590

Federal Trade Commission
NOTICES
Prohibited trade practices:
Dow Chemical Co., 64590–64591

Financial Management Service
See Fiscal Service

Fiscal Service
PROPOSED RULES
Marketable book-entry Treasury bills, notes, and bonds; sale and issue; uniform offering circular:
Fungible stripped interest components for Treasury inflation-indexed securities, 64528–64532
NOTICES
Surety companies acceptable on Federal bonds:
Executive Risk Indemnity Inc., 64631–64632

Fish and Wildlife Service
NOTICES
Environmental statements; notice of intent:
National Bison Range Complex, MT; comprehensive conservation plan, 64595–64596

Food and Consumer Service
RULES
Commodity supplemental food program:
Caseload assignment, 64511
NOTICES
Food stamp program:
Alaska, Hawaii, Guam and Virgin Islands; maximum allotments, 64556–64557
Maximum allotments and income eligibility standards and deductions, 64557–64558

Food and Drug Administration
RULES
Food for human consumption:
Food labeling—
Dietary supplements, nutrition and ingredient labeling; compliance policy guide (vitamin products for human use—low potency), revocation; correction, 64634
NOTICES
Meetings:
Mammography quality, States as certifiers demonstration project, informational conference; and States participation application package availability, 64593
Reporting and recordkeeping requirements, 64593–64594

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 64598

Geological Survey
NOTICES
World Energy Project; contribution acceptance from Amoco Overseas Exploration Co., 64596

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 64584–64588

Hearings and Appeals Office, Interior Department
PROPOSED RULES
Hearings and appeals procedures:
Stay of decisions, 64544–64545

Housing and Urban Development Department
RULES
Community development block grants:
New York small cities program
Correction, 64634
Low income housing:
Housing assistance payments (Section 8)—
Fair market rent schedules for rental certificate, loan management, property disposition, moderate rehabilitation, and rental voucher programs; correction, 64521–64522
NOTICES
Grants and cooperative agreements; availability, etc.:
Fair housing initiatives program, 64594–64595

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Hearings and Appeals Office, Interior Department
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64632–64633

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Circular welded non-alloy steel pipe and tube from—
Mexico, 64564–64568
Circular welded non-alloy steel pipe from—
Korea, 64559–64564
Countervailing duties:
Hot-rolled lead and bismuth carbon steel products from—
United Kingdom, 64568–64572

North American Free Trade Agreement (NAFTA); binational panel reviews:
Steel wire rod from—
Canada, 64572

Justice Department
See Drug Enforcement Administration
See Foreign Claims Settlement Commission

Labor Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64598–64599

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Alaska Resource Advisory Council, 64596
Meetings:
Resource advisory councils—
Alaska, 64597
Eastern Washington, 64597
John Day-Snake, 64597
Realty actions; sales, leases, etc.:
New Mexico, 64597–64598

National Aeronautics and Space Administration
PROPOSED RULES
Acquisition regulations:
Contruction contracts, dismantling, demolishing, or removing improvements; equitable adjustments, 64545–64546

National Archives and Records Administration
NOTICES
Organization, functions, and authority delegations:
Microfilm Research Room at Archives I Building; temporary closure, 64599

National Highway Traffic Safety Administration
PROPOSED RULES
Anthropomorphic test devices:
Side impact test dummies; dynamic crash test, 64546–64554
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 64623–64624

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine mammals, 64572–64573

National Science Foundation
NOTICES
Senior Executive Service:
Performance Review Board, membership, 64599–64600

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
PECO Energy Co. et al., 64601–64602
Public Service Electric & Gas Co. et al., 64602–64603
Applications, hearings, determinations, etc.:
Public Service Electric & Gas Co. et al., 64600

Office of United States Trade Representative
See Trade Representative, Office of United States

President's Council on Integrity and Efficiency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 64604–64606

Public Debt Bureau
See Fiscal Service

Public Health Service
See Food and Drug Administration

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
Kodiak Electric Association, Inc., 64558–64559

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 64611
Options price reporting authority, 64611–64612
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 64612–64613
New York Stock Exchange, Inc., 64613–64618
Applications, hearings, determinations, etc.:
Janus Investment Fund et al., 64606–64611

Trade Representative, Office of United States
NOTICES
Meetings:
Industry Sector Advisory Committees—
Small and minority business, 64618
Trade Policy Staff Committee:
World Trade Organization agreement on sanitary and phytosanitary measures application; triennial review; comment request, 64618–64620

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
NOTICES
Privacy Act:
Systems of records, 64620–64621

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Fiscal Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64625–64628
Organization, functions, and authority delegations:
Deputy Assistant Secretary (Human Resources), 64624–64625

Separate Parts In This Issue

Part II
Environmental Protection Agency, 64636–64671

Part III
Department of Education, 64674–64675

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
247.....64511

14 CFR
39 (5 documents).....64511, 64513, 64514, 64517, 64519, 64523
71.....64521
Proposed Rules:
39.....64523
71.....64525

21 CFR
101.....64634
Proposed Rules:
1308.....64526

24 CFR
570.....64634
888.....64521

31 CFR
Proposed Rules:
356.....64526

40 CFR
52.....64522
264.....64636
265.....64636
270.....64636
Proposed Rules:
51.....64532
52.....64543

43 CFR
Proposed Rules:
4.....64544

48 CFR
Proposed Rules:
1843.....64545
1852.....64545

49 CFR
Proposed Rules:
572.....64546

Rules and Regulations

Federal Register
Vol. 62, No. 235
Monday, December 8, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service[1]

7 CFR Part 247

Commodity Supplemental Food Program—Caseload Assignment

AGENCY: Food and Consumer Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action announces that no adverse comments were received in response to the direct final rule which amends the provisions of the Commodity Supplemental Food Program regulations to provide for the allocation of a single caseload to State agencies each year, instead of the allocation of two separate caseloads, one for women, infants, and children, and one for the elderly. This rule was published in the **Federal Register** on October 23, 1997 (62 FR 55142).

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch , Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Description

On October 23, 1997, the Department published a direct final rule which amends regulatory requirements in part 247 to assign participating State agencies a single caseload, instead of separate women-infants-children, and elderly, caseloads in order to streamline and simplify program management at the State and local level, and provide State agencies with greater flexibility in caseload management. The rule provided a 30-day comment period and stipulated that unless the Department received written adverse comments, or written notice of intent to submit adverse comments, the rule would become effective on December 8, 1997, which is 45 days after publication in the **Federal Register**. Since no adverse comments were received, this notice confirms the rule's effective date as December 8, 1997.

Dated: December 3, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–32060 Filed 12–8–97; 8:45 am]

BILLING CODE 3410–30–U

[1] The agency name of the Food and Consumer Service was changed to the Food and Nutrition Service by order of the Secretary of Agricluture on November 25, 1997.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–04–AD; Amendment 39–10228; AD 97–25–05]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R22 helicopters with a Lycoming 0–360–J2A engine installation. This AD requires replacing the carburetor and carburetor air temperature (CAT) gage with an improved carburetor that does not require manual leaning of the fuel/air mixture during flight, and a remarked CAT gage; and revising the Rotorcraft Flight Manual to remove the reference to leaning the engine. This amendment is prompted by a report from the Civil Aviation Authority of Great Britain that cautioned that the mixture control could inadvertently be placed in the idle cutoff position during in-flight manual leaning of the fuel/air mixture in the carburetor of the Lycoming 0–360–J2A engine. The actions specified by this AD are intended to prevent inadvertent placement of the mixture control to the idle cutoff position during in-flight leaning of the engine, which could result in an engine shutdown and subsequent loss of control of the helicopter.

DATES: Effective January 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508; fax (310) 539–5198. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the

Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5265; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Robinson Helicopter Company (Robinson) Model R22 helicopters with a Lycoming O–360–J2A engine installation was published in the **Federal Register** on May 19, 1997 (62 FR 27211). That action proposed to require replacing the carburetor and carburetor air temperature (CAT) gage with an improved carburetor that does not require manual leaning of the fuel/air mixture during flight, and remarking the CAT gage; and inserting revision procedures into the Rotorcraft Flight Manual that remove the reference to leaning the engine.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter requests that "or later" be inserted following the revision and date of the kit instructions to allow for possible changes. The FAA does not concur with this request. The kit instructions contain information that is most generally contained in the body of a manufacturer's service bulletin. Subsequent revisions to these instructions will be evaluated by the FAA and if a change is warranted, issuance of a subsequent AD is the proper procedure for making such a change. Additionally, the phrase "or a later FAA-approved revision" is removed from paragraph (b) of the AD. As with the kit instructions, if the FAA deems it necessary to require the insertion into the Rotorcraft Flight Manual of revised procedures, issuance of a subsequent AD is the proper procedure for making such a change.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of this AD.

The FAA estimates that 50 helicopters of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,641 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $197,050.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 97–25–05 Robinson Helicopter Company: Amendment 39–10228. Docket No. 97–SW–04–AD.

Applicability: Model R22 helicopters, serial number (S/N) 2571 through 2664, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 50 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent inadvertent placement of the mixture control to the idle cutoff position during in-flight leaning of the engine, which could result in an engine shutdown and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the MA–4–5 carburetor and carburetor air temperature (CAT) gage, part number (P/N) C604–6, and replace them with an airworthy MA–4SPA carburetor and remarked CAT gage, P/N A604–2, in accordance with Robinson Helicopter Company R22 Service Bulletin SB–82, dated March 3, 1997, and Robinson Helicopter Company KI–114 O–360 Engine Carburetor Change Kit instructions, Revision A, dated March 6, 1997.

(b) Upon completion of paragraph (a) of this AD, insert the FAA-approved R22 Pilot's Operating Handbook Section 9, Supplements 7 (R22 Beta II) and 8 (R22 Mariner II), revised February 6, 1997, into the R22 Rotorcraft Flight Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Robinson Helicopter Company R22 Service Bulletin SB–82, dated March 3, 1997, and Robinson Helicopter Company KI–114 O–360 Engine Carburetor Change Kit instructions, Revision A, dated March 6, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508; fax (310) 539–5198. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 12, 1998.

Issued in Fort Worth, Texas, on November 25, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–31677 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–21–AD; Amendment 39–10232; AD 97–25–08]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CJ610 Series Turbojet and CF700 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CJ610 series turbojet and CF700 series turbofan engines. This action requires removal from service of possibly defective turbine torque rings and compressor drive shafts which may have been manufactured from contaminated material; and replacement with serviceable parts. This amendment is prompted by a report of a cooling plate removed from a GE CT58 series engine that was found to have an iron-rich inclusion that came from a contaminated heat lot. Parts on GE CJ610 series and CF700 series engines which were manufactured from the same and similar heat lots may also be contaminated. The actions specified in this AD are intended to prevent turbine torque ring or compressor drive shaft failure due to a manufacturing defect, which could result in an uncontained engine failure.

DATES: Effective January 2, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, *Attention*: Rules Docket No. 97–ANE–21–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7146, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration received a report that certain turbine torque rings and compressor drive shafts installed on General Electric Company (GE) CJ610 series turbojet and CF700 series turbofan engines were forged with a contaminated alloy that could reduce the life of the part. The FAA has determined that certain heat lots of A286 material were produced with iron-rich inclusions during the vendor's normal Vacuum Induction Melt (VIM) process. The manufacturer discovered a cooling plate removed from a GE CT58 series turboprop engine had been manufactured from this heat lot and was found with an inclusion. This heat lot was also used to manufacture turbine torque rings and compressor drive shafts on GE CJ610 series turbojet and CF700 series turbofan engines. This condition, if not corrected, could result in turbine torque ring or compressor drive shaft failure due to a manufacturing defect, which could result in an uncontained engine failure.

The FAA has reviewed and approved the technical contents of GE CF700 Service Bulletin (SB) No. A72–155, dated May 22, 1997, and GE CJ610 SB No. A72–147, dated May 22, 1997, that describes procedures for removing affected turbine torque rings and compressor drive shafts from service, and replacing with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent an uncontained engine failure and damage to the aircraft. This AD requires removing affected turbine torque rings and compressor drive shafts from service, and replacing with serviceable parts. The actions are required to be accomplished in accordance with the SBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket Number 97–ANE–21–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–25–08 General Electric Company: Amendment 39–10232. Docket 97–ANE–21–AD.

Applicability: General Electric Company (GE) CJ610 series turbojet and CF700 series turbofan engines, with turbine torque rings and compressor drive shafts identified in GE CF700 Service Bulletin (SB) No. A72–155, dated May 22, 1997, and GE CJ610 SB No. A72–147, dated May 22, 1997. These engines are installed on but not limited to the following aircraft: Learjet 20 series, Israel Aircraft Industries Westwind series, Hansa Jet, Aero Commander Jet Commander, Dassault Falcon 20 series, Sabreliner 265 series.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent turbine torque ring or compressor drive shaft failure due to a manufacturing defect, which could result in an uncontained engine failure, accomplish the following:

(a) For GE CF700 series turbofan engines, accomplish the following in accordance with GE CF700 SB No. A72–155, dated May 22, 1997:

(1) Remove from service affected turbine torque rings, listed by serial number (S/N) in paragraph 1. A.(3a) of GE CF700 SB No. A72–155, dated May 22, 1997, and replace with serviceable parts, within 50 hours time in service (TIS), or 60 days after the effective date of this AD, whichever occurs first.

(2) Remove from service affected turbine torque rings and compressor drive shafts, listed by S/N in GE paragraph 1.A.(3b) of GE CF700 SB No. A72–155, dated May 22, 1997, and replace with serviceable parts, within 300 hours TIS, or 12 months after the effective date of this AD, whichever occurs first.

(b) For GE CJ610 series turbojet engines, accomplish the following in accordance with GE CJ610 SB No. A72–147, dated May 22, 1997:

(1) Remove from service affected turbine torque rings, listed by S/N in paragraph 1.A.(3a) of GE CJ610 SB No. A72–147, dated May 22, 1997, and replace with serviceable parts, within 50 hours TIS, or 60 days after the effective date of this AD, whichever occurs first.

(2) Remove from service affected turbine torque rings and compressor drive shafts, listed by S/N in paragraph 1.A.(3b) of GE CJ610 SB No. A72–147, dated May 22, 1997, and replace with serviceable parts, within 300 hours TIS, or 12 months after the effective date of this AD, whichever occurs first.

(c) After the effective date of this AD, installation of uninstalled affected parts identified by S/N in the SBs referenced in paragraphs (a) and (b) of this AD is prohibited.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following GE service documents:

Document No.	Pages	Date
CF700 SB No. A72–155	1–9	May 22, 1997.
Total Pages: 9.		
CJ610 SB No. A72–147	1–9	May 22, 1997.
Total Pages: 9.		

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 2, 1998.

Issued in Burlington, Massachusetts, on November 26, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–31862 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–04; Amendment 39–10234; AD 97–25–10]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT9D series turbofan engines, that currently requires initial and repetitive eddy current inspection (ECI) or fluorescent penetrant inspection (FPI) for cracks in first stage high pressure turbine (HPT) disk cooling air holes. This amendment requires initial and repetitive FPI for cracks in cooling air holes of additional first stage HPT disks, and replacement with serviceable parts. In addition, this amendment requires initial and repetitive FPI for cracks in tie bolt holes of certain other affected second stage HPT disks installed in PW JT9D series turbofan engines. This amendment is prompted by reports of a cracked cooling air hole on one first stage HPT disk, and a cracked tie bolt hole on one second stage HPT disk. The actions specified by this AD are intended to prevent turbine disk failure due to cooling air hole or tie bolt hole cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective January 12, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 91–04–10, Amendment 39–6859 (56 FR 5343, February 11, 1991), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, was published in the **Federal Register** on March 19, 1997 (62 FR 12979). That action proposed to require initial and repetitive fluorescent penetrant inspections (FPI) for cracks in cooling air holes of affected first stage high pressure turbine (HPT) disks, and, if necessary, replacement with serviceable parts. In addition, the action proposed to require initial and repetitive FPI for cracks in tie bolt holes of all affected second stage HPT disks. Finally, that action proposed to require reporting findings of cracked turbine disks.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that since the root cause of the crack which was found on the cooling hole of the improved disk, part number (P/N) 840301, was caused by improper tooling application (use of reamer instead of a carbide insert) at the specified supplier, only the suspect supplier and lots should be affected by the AD. The commenter maintains that if the FAA suspects PW's qualified carbide insert machining process, every maintenance process requiring the manufacturer's qualification should always require FAA qualification in future. The Federal Aviation Administration (FAA) does not concur. The improved disk, P/N 840301, is manufactured with the new reamer tooling method; however, a disk of this P/N was found with cooling hole cracking. The reamer method was introduced by manufacturers to preclude abusive machining that was found using the carbide insert method. Investigation has shown that both the carbide insert method and the reamer method are subject to the same abusive machining phenomenon. The FAA approves manufacturing and maintenance processes, which are updated as necessary.

The same commenter requests that the FAA and PW develop an inspection procedure that can detect not only a crack but detect whether a severely worked layer of material exists or not, so that unnecessary repetitive inspections can be minimized by removing those disks. The FAA does not concur. It is not possible to detect 100% of the possible cracking conditions in the field using current inspection methods. Therefore, repetitive inspections are necessary for disks that are in service because cracking can propagate in fatigue from a layer of severely worked material resulting from the manufacturing process.

The same commenter requests the FAA extend the initial inspection requirement for disks that have been previously inspected, noting that the AD as proposed would allow 1,500 cycles in service (CIS) before initial inspection for disks never inspected while only 250 CIS for disks that have been inspected but that have accumulated more than 3,500 CIS since last inspection. The FAA does not concur. The current AD, effective in 1991, requires repetitive inspections of disks installed in JT9D–59A, –70A, –7Q, and –7Q3 engines at intervals not to exceed 3,500 CIS. Therefore, the example cited by the commenter should not occur, as disks installed in JT9D–59A or –7Q engines should never exceed 3,500 CIS since last inspection. Only if a disk installed in a JT9D–7R4 engine had exceeded 3,500 CIS since last inspection would the requirement to inspect no later than 250 CIS after the effective date of this AD apply. This inspection requirement was considered in the risk analysis and the FAA has determined that it is necessary. The commenter does not indicate how many JT9D–7R4 engines might be affected by the 250 CIS initial inspection requirement. Individual operators can apply for an adjustment to that compliance time under paragraph (d) of the AD.

One commenter states that the mandated use of FPI does not provide all possible assurance that defective HPT disks will be removed from service. The commenter believes that eddy current inspection, or a combination of the two methods, would clearly provide a greater probability of crack detection. The FAA does not concur. The first stage turbine cooling air holes and second stage tie bolt holes have low aspect ratios. The FAA has determined that FPI of low aspect ratio holes is adequate for detecting cracks in these locations.

One commenter states that there appears to be anomalies in the requirements for disks that have been in service for over 6,000 cycles since new (CSN), as stated in paragraph (b)(1)(i) of the compliance section. The commenter maintains that as the paragraph reads in the proposed rule, this inspection will always occur later than accumulating 8,000 CSN if CSN is greater than 6,000 on the effective date of the AD. The FAA concurs and has changed this paragraph to require inspection within 2,000 CIS if a disk has over 6,000 CSN on the effective date of the AD.

The same commenter suggests that at next engine shop visit would be sufficient as an interval for cooling hole and tie bolt hole inspections. The FAA does not concur. Since the timing of engine shop visits varies widely between operators, the use of shop visits to define inspection intervals in ADs does not provide adequate objectivity on which to assess the effectiveness of the required actions in addressing the unsafe condition. The FAA has determined that a maximum of 2,000 CIS interval is required.

Subsequent to the publication of the proposed rule, two JT9D–7R4D/E operators indicated that the 6,000 CIS re-inspection interval for second stage turbine hub tie bolt hole mismachining would require them to remove engines prematurely due to their high-cycle utilization rate. The FAA has determined through a review of risk analysis that the additional risk involved in extending the re-inspection interval from 6,000 CIS to 8,000 CIS is sufficiently low and has changed the re-inspection interval accordingly.

In addition, the manufacturer has recommended that Special Process Operation Procedure (SPOP) 70 be used in lieu of SPOP 84 in order to permit the inspection of the second stage turbine hub tie bolt holes when the second stage turbine rotor is removed from the HPT module assembly without necessitating the removal of the second stage turbine blades. The FAA concurs and has changed the reference to the inspection procedure accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6859 (56 FR 5343, February 11, 1991) and by adding a new airworthiness directive, Amendment 39–10234, to read as follows:

97–25–10 Pratt & Whitney: Amendment 39–10234. Docket 97–ANE–04 Supersedes airworthiness directive (AD) 91–04–10, Amendment 39–6859.

Applicability: Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, and –7R4E1 (AI–500) series turbofan engines, installed on but not limited to Airbus Industrie A300 and A310, Boeing 747 and 767, and McDonnell Douglas DC–10 series aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent turbine disk failure due to cooling hole or tie bolt hole cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For first stage high pressure turbine (HPT) disks, part numbers (P/Ns) 768001, 792701, 812901, 819801, 840501, 840401, 840701, 840601, and 840301, installed in PW JT9D–59A, –70A, –7Q, and –7Q3 engines, accomplish the following:

(1) Disks that have not been fluorescent penetrant inspected or eddy current inspected since introduction into service, perform an initial fluorescent penetrant inspection (FPI) for cracks in all 40 cooling air holes in accordance with PW Turbojet Engine Standard Practices Manual, P/N 585005, Chapter/Section 70–33, Special Process Operation Procedure (SPOP) 84, as follows:

(i) Disks with 3,500 cycles since new (CSN) or more on the effective date of this AD, inspect prior to accumulating 5,000 CSN, or within 1,500 cycles in service (CIS) after the effective date of this AD, whichever occurs later.

(ii) Disks with less than 3,500 CSN on the effective date of this AD, inspect prior to accumulating 5,000 CSN.

(2) Disks that have been reoperated in accordance with PW Service Bulletin (SB) No. 5815, Revision 2, dated July 31, 1992, or prior revisions, that have not been fluorescent penetrant inspected or eddy current inspected since reoperation, perform an initial FPI for cracks in all 40 cooling air holes in accordance with PW Turbojet Engine Standard Practices Manual, P/N 585005, Chapter/Section 70–33, SPOP 84, as follows:

(i) Disks with 3,500 CIS or more since reoperation on the effective date of this AD, inspect prior to accumulating 5,000 CIS since reoperation, or within 1,500 CIS after the effective date of this AD, whichever occurs later.

(ii) Disks with less than 3,500 CIS since reoperation on the effective date of this AD, inspect prior to accumulating 5,000 CIS since reoperation.

(3) Disks that have been fluorescent penetrant inspected, or eddy current inspected, since introduction into service or since reoperation, in accordance with PW SB No. 5744, Revision 3, dated March 31, 1993, or prior revisions, or PW JT9D–7Q, –7Q3 Engine Manual, P/N 777210, 72–51–00, Inspection –03, or PW JT9D–59A, –70A Engine Manual, P/N 754459, 72–51–00, Heavy Maintenance Check –03, perform an FPI for cracks in all 40 cooling air holes, prior to accumulating 3,500 CIS since last FPI or ECI, or within 250 CIS after the effective date of this AD, whichever occurs later, in accordance with PW Turbojet Engine Standard Practices Manual, P/N 585005, Chapter/Section 70–33, SPOP 84.

(4) Thereafter, perform FPI for cracks in all 40 cooling air holes at intervals not to exceed 3,500 CIS since last FPI, in accordance with PW Turbojet Engine Standard Practices Manual, P/N 585005, Chapter/Section 70–33, SPOP 84.

(5) Prior to further flight, remove from service cracked disks, and replace with serviceable parts.

(b) For second stage HPT disks, P/N 5001802–01, installed in PW JT9D–7R4D, –7R4D1, –7R4E, and –7R4E1 (AI–500) engines, accomplish the following:

(1) Disks that have not been fluorescent penetrant inspected since introduction into service, perform an initial FPI for cracks in all 30 tie bolt holes in accordance with PW Turbojet Engine Standard Practices Manual, P/N 585005, Chapter/Section 70–33, SPOP 70, as follows:

(i) Disks with 6,000 CSN or more on the effective date of this AD, inspect within 2,000 CIS after the effective date of this AD.

(ii) Disks with less than 6,000 CSN on the effective date of this AD, inspect prior to accumulating 8,000 CSN.

(2) Disks that have been fluorescent penetrant inspected since introduction into service, perform an FPI for cracks in all 30 tie bolt holes, prior to accumulating 8,000 CIS since last FPI, or within 250 CIS after the effective date of this AD, whichever occurs later, in accordance with PW Turbojet Engine Standard Practices Manual, P/N 585005, Chapter/Section 70–33, SPOP 70.

(3) Thereafter, perform FPI for cracks in all 30 tie bolt holes at intervals not to exceed 8,000 CIS since last FPI, in accordance with PW Turbojet Engine Standard Practices Manual, P/N 585005, Chapter/Section 70–33, SPOP 70.

(4) Prior to further flight, remove from service cracked disks, and replace with serviceable parts.

(c) Report findings of cracked turbine disks within 48 hours after inspection to Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199, Internet: "Tara.Goodman@faa.dot.gov". Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on January 12, 1998.

Issued in Burlington, Massachusetts, on November 28, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–31965 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–31–AD; Amendment 39–10233; AD 97–25–09]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company Model 250–C40B Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allison Engine Company Model 250–C40B turboshaft engines. This action requires installation of a placard requiring pilots to record torque level and time in service operating above 86% engine torque until the defective parts have been replaced, no later than December 31, 2000, or when certain maintenance actions are accomplished, or when certain operational restrictions are exceeded, whichever occurs earliest. This amendment is prompted by a report from Allison Engine Company of a manufacturing defect in certain helical power takeoff gearshaft assemblies, identified by serial numbers. The actions specified in this AD are intended to prevent fatigue failure of the helical power takeoff gearshaft assembly, which could result in a loss of engine power and inflight engine shutdown.

DATES: Effective December 23, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 23, 1997.

Comments for inclusion in the Rules Docket must be received on or before February 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420; telephone: (317) 230–6674. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, ACE–118C, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) received a report from Allison Engine Company of a manufacturing defect discovered in certain helical power takeoff gearshaft assemblies, part number (P/N) 23056617, installed on Model 250–C40B turboshaft engines. The manufacturing defect was discovered while measuring the depth of the case hardening of the gear. The manufacturing defect was caused by excessive removal of case hardened material from the gear during manufacturing. This condition, if not corrected, could result in fatigue failure of the helical power takeoff gearshaft assembly, which could result in a loss of engine power and inflight engine shutdown.

The FAA has reviewed and approved the technical contents of Allison Alert Commercial Engine Bulletin (CEB) No. A–72–5009, dated May 21, 1997, that lists by serial number (S/N) 49 affected engines, gearboxes, and gears. This CEB also describes procedures for replacement of affected helical power takeoff gearshaft assemblies with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent a loss of engine power and inflight engine shutdown. This AD requires installation of a placard requiring pilots to record torque and time in service operating above 86% engine torque until replacement of defective helical power takeoff gearshaft assemblies with serviceable parts, and then the placard can be removed. The compliance times were determined based upon an analysis of the effect of gearbox assembly torque loading on component life. The actions are required to be accomplished in accordance with the CEB described previously.

The operational limitations imposed by this AD have been coordinated with the Rotorcraft Directorate.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–31–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–25–09 Allison Engine Company: Amendment 39–10233. Docket 97–ANE–31–AD.

Applicability: Allison Engine Company Model 250–C40B turboshaft engines, with engines, gearboxes, and gears identified by serial number (S/N) in Allison Alert Commercial Engine Bulletin (CEB) No. A–72–5009, dated May 21, 1997. The 250–C40B engine is installed on and limited to the twin-engine Bell Helicopter Textron 430 series helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the helical power takeoff gearshaft assembly, which could result in a loss of engine power and inflight engine shutdown, accomplish the following for part number (P/N) 23056617, identified by S/N in Allison Alert CEB No. A–72–5009, dated May 21, 1997:

(a) Prior to further flight, install the following placard on the instrument panel in clear view of the pilot, "RECORD TORQUE AND TIME ABOVE 86% ENGINE TORQUE." The placard shall be manufactured of a material that cannot be easily defaced or erased, and the lettering shall be block-style and at least ⅛ inches in height. Additionally, the color and lettering must contrast with the background (color of placard material) such that it is legible.

(b) Remove from service affected helical power takeoff gearshaft assemblies, P/N 23056617, and replace with serviceable parts, in accordance with Allison Alert CEB No. A–72–5009, dated May 21, 1997, when the first of the following conditions exists:

(1) At the time of turbine overhaul; or

(2) During gearbox disassembly for any reason; or

(3) If any of the operational restrictions listed in paragraph (c) of this AD are exceeded; or

(4) No later than December 31, 2000.

(c) After the effective date of this AD, observe the following operational restrictions at all times, until paragraph (b) of this AD is complied with by installing serviceable helical power takeoff gearshaft assemblies:

(1) Total operational time accumulated on the suspect helical power takeoff gearshaft assemblies may not exceed 1,750 hours time in service (TIS). Engines are to be operated in the torque sharing mode only.

(2) Operation of the engine at power between 86% torque and 93% torque is limited to one hour prior to reaching 1,750 hours TIS.

(3) Operation of the engine above 93% torque will require replacement of the helical power takeoff gearshaft assemblies. Any previously recorded time (Electronic Control Unit (ECU)), Integrated Instrument Display System ((IIDS) or Log Book) must be accounted for. Operators will be allowed four hours of operation at torque levels less than 86% torque to ferry the aircraft to a maintenance facility for replacement of the assembly unless any of the following have been exceeded:

(i) Operation of the engine between 93% torque and 105% torque for more than six minutes requires replacement of the assembly before further flight.

(ii) Operation of the engine between 105% torque and 110% torque for more than ninety seconds requires replacement of the assembly before further flight.

(d) Revise the limitations section of the FAA-approved Rotorcraft Flight Manual (RFM) by inserting a copy of this AD. Thereafter, except as provided in paragraph (g) of this AD, no alternative limitations may be approved for affected helical power takeoff gearshaft assemblies, P/N 23056617.

(e) After replacing parts in accordance with paragraph (b) of this AD, remove the placard and the AD required by paragraphs (a) and (d) of this AD.

(f) For the purposes of this AD, a serviceable helical power takeoff gearshaft assembly is one not identified by S/N in Allison Alert CEB No. A–72–5009, dated May 21, 1997.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) and paragraph (c)(3) of this AD to operate the aircraft to a location where the requirements of this AD can be accomplished.

(i) The actions required by this AD shall be done in accordance with the following Allison Alert CEB:

Document No.	Pages	Date
A–72–5009 ..... Total pages: 5.	1–5	May 21, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420; telephone: (317) 230–6674. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on December 23, 1997.

Issued in Burlington, Massachusetts, on November 28, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–31966 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–286–AD; Amendment 39–10235; AD 97–25–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 Series Airplanes Modified in Accordance With Supplemental Type Certificate (STC) SA6003NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B16 series airplanes. This action requires disabling the remote fuel/defuel panel in the cockpit. This action also provides for an optional modification of the remote fuel/defuel panel, which would terminate the requirement to disable the panel. This amendment is prompted by reports of in-flight failure of the panel that resulted when a circuit breaker on a battery bus opened due to insufficient current flow capacity. The actions specified in this AD are intended to prevent the circuit breakers from opening during flight, which could result in irreversible loss of engine indicating and fuel quantity systems in the cockpit.

DATES: Effective December 23, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 23, 1997.

Comments for inclusion in the Rules Docket must be received on or before January 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–286–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier Aviation Services, 1255 East Aeropark Boulevard, Tucson, Arizona 85706. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of three in-flight occurrences of loss of all engine indicating and fuel quantity systems in the cockpit on certain Bombardier Model CL–600–2B16 series airplanes. In each case, the internal fuel/defuel panel had been left in the "ON" position for an extended period of time. When the panel was switched off, all engine and fuel quantity indications were lost; subsequent attempts to cycle the panel power back on were unsuccessful. Investigation revealed an opened circuit breaker. It was determined that, if power to the remote fuel/defuel panel is left on for up to approximately one hour, the controlling circuit breaker on the battery bus will have insufficient capacity to hold the current flow and, as a result, may open during flight. This condition, if not corrected, could result in irreversible loss of engine indicating and fuel quantity systems in the cockpit.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin SB TUS–28–20–02–1, dated November 13, 1997, which describes procedures for disabling the remote fuel/defuel panel in the cockpit. Bombardier also has issued Service Bulletin SB TUS–28–20–02, dated November 13, 1997, which describes procedures for modifying the remote fuel/defuel panel; accomplishment of this modification eliminates the need to disable the panel. The modification involves replacing certain circuit breakers for the fuel/defuel power and fuel quantity displays with new circuit breakers, and adding three 4-pole relays to allow switching of fuel quantity when the internal fuel panel is selected.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of engine indicating and fuel quantity systems in the cockpit in the event a circuit breaker opens during flight. This AD requires disabling the remote fuel/defuel panel in the cockpit. This AD also provides for an optional modification of this panel, which would terminate the requirement to disable the panel. The actions are required to be accomplished in accordance with the service bulletins described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–286–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–25–11 Bombardier, Inc. (Formerly Canadair): Amendment 39–10235. Docket 97–NM–286–AD.

Applicability: Model CL–600–2B16 series airplanes that have been modified in accordance with Supplemental Type Certificate SA6003NM, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the circuit breaker on the battery bus from opening during flight, which could result in irreversible loss of engine indicating and fuel quantity systems in the cockpit, accomplish the following:

(a) Within 5 days after the effective date of this AD, disable the remote fuel/defuel panel, in accordance with Bombardier Service Bulletin SB TUS–28–20–02–1, dated November 13, 1997.

(b) Modification of the remote fuel/defuel panel in accordance with Bombardier Service Bulletin SB TUS–28–20–02, dated November 13, 1997, permits the remote fuel-defuel panel to be enabled, and constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Bombardier Service Bulletin SB TUS–28–20–02–1, dated November 13, 1997; or Bombardier Service Bulletin SB TUS–28–20–02, dated November 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier Aviation Services, 1255 East Aeropark Boulevard, Tucson, Arizona 85706. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 23, 1997.

Issued in Renton, Washington, on December 1, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31968 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–17]

Establishment of VOR Federal Airway; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the establishment of Federal Airway 607 (V–607) between Mendocino, CA, and Arcata, CA, until further notice. The FAA is taking this action due to a procedural change requiring the addition of an intersection on V–607. The addition of the intersection necessitates additional flight inspection.

DATES: The effective date of 0901 UTC, January 1, 1998, is delayed until further notice.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Airspace Docket No. 97–AWP–17, published in the **Federal Register** on October 27, 1997, (62 FR 55502), established V–607 between Mendocino, CA, and Arcata, CA. A need to establish an intersection at the dogleg of the Arcata 153° radial and the Mendocino 346° radial requires additional flight inspection and delays the effective date of V–607 until further notice.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

The effective date of the final rule, Airspace Docket 97–AWP–17, as published in the **Federal Register** on October 27, 1997 (62 FR 55502), is hereby delayed until further notice.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on November 26, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32036 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4232–C–03]

Fair Market Rents for the Section 8 Housing Assistance Payments Program—Fiscal Year 1998; Correction

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of Fiscal Year 1998 Fair Market Rents (FMRs); correction.

SUMMARY: This notice corrects final FY 1998 Fair Market Rents for two areas, the Duluth-Superior, Minnesota-Wisconsin MSA and the Des Moines, Iowa MSA, published in the **Federal Register** on September 26, 1997 (62 FR 50724).

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Operations Division, Office of Rental Assistance, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Alan Fox, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–9426, Extension 328 (e-mail; alan__fox@hud.gov). Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the "800" TTY number, telephone numbers are not toll free.)

Correction

Accordingly, in FR Doc 97–25506, a document published on September 26, 1997 (62 FR 50724) is corrected as follows:

1. On page 50741, in the table under Iowa, Metropolitan FMR Areas, the entries for Des Moines are corrected to read as follows:

1998 Fair Market Rent	Number of Bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
Des Moines, IA MSA	$348	$440	$542	$704	$739

2. On page 50752, in the table under the Minnesota Metropolitan FMR Areas, the FMR for 0 bedroom units in the Minnesota part of the MSA (St. Louis County, MN) and on page 50779, under the Wisconsin Metropolitan FMR Areas, the Wisconsin part of the MSA (Douglas County, WI) the correct FMRs for both counties are as follows:

1998 Fair Market Rent	Number of Bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
Duluth-Superior MN–WI MSA: (St Louis County, MN)	$272	$351	$451	$602	$701

1998 Fair Market Rent	Number of Bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
(Douglas County, WI)	$272	$351	$451	$602	$701

Dated: November 26, 1997.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 97–31969 Filed 12–5–97; 8:45 am]

BILLING CODE 4210–62–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–039–1039; FRL–5929–2]

Approval and Promulgation of Implementation Plans; State of Missouri; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final notification of failure to attain; correction.

SUMMARY: This document corrects an error in the EPA's August 15, 1997, determination of the Herculaneum, Missouri, nonattainment area's failure to attain the National Ambient Air Quality Standard (NAAQS) for lead.

DATES: This action is effective on December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Aaron J. Worstell at (913) 551–7787.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA published a document in the August 15, 1997, **Federal Register** (62 FR 43647) of the determination that the Doe Run-Herculaneum nonattainment area had failed to attain the National Ambient Air Quality Standard for lead (Pb) by June 30, 1995, as required under the provisions of the Clean Air Act and the Missouri State Implementation Plan. In section I of the document, the table entitled "Lead Ambient Air Quality Data—Vicinity Of The Doe Run Primary Smelter" incorrectly denotes the Herculaneum monitor as the Asarco monitor. The table is corrected to read as follows:

Lead Ambient Air Quality Data—Vicinity of the DOE Run Primary Smelter

CALENDAR QUARTERLY VALUES

[Micrograms of lead per cubic meter of air (μg/m³)]

Date	Hi-vol monitor locations							
	S Dunklin 29–099–0 014	H Dunklin 29–099–0 005	H Golf course 29–099–0 006	H North 29–099–0 009	H Ursaline 29–099–00 10	H Rutz 29–099–0011	H Div. manager 29–099–0 013	H Broad Street 29–099–0015
1995:								
3rd	1.4	1.2	0.3	0.3	0.2	1.0	1.2	*4.1*
4th	*1.9*	*1.7*	0.4	0.8	0.1	*1.6*	1.3	*6.3*
1996:								
1st	*2.3*	*1.9*	0.3	0.4	0.1	1.4	.8	*2.3*
2nd	*1.6*	1.2	0.5	0.1	0.2	*2.4*	0.8	*5.7*
3rd	0.8	0.6	0.1	0.2	0.3	0.7	0.5	*4.0*
4th	*1.7*	*1.8*	0.1	0.5	0.3	1.4	0.9	*1.6*

Notes:

[1] (S) = State monitor, (H) = Herculaneum monitor.

[2] Italicized Quarterly Air Quality Values exceed the National Ambient Air Quality Standard (NAAQS) for lead; the NAAQS for lead is 1.5 μg/m³ and is the arithmetic mean of a series of daily (24-hour) values from hi-vol monitors measuring particulate matter, within a 3-month (calendar quarter) period.

This minor correction does not alter the EPA's failure to attain determination, nor does it alter the effective date of September 15, 1997, as specified in the original document.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (P. L. 104–4), or require prior consultation with state officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: 42 U.S.C. 7401—7671q.

Dated: October 29, 1997.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 97–31270 Filed 12–5–97; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 62, No. 235
Monday, December 8, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–38]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines, that would have required removal of web material at ten bosses on the diffuser case assembly, inspections, shotpeening of the area, and remarking the diffuser case assemblies with a new part number. That proposal was prompted by reports of cracks in the aft corners of the bosses. This action revises the proposed rule by adding initial and repetitive on-wing eddy current inspections (ECI) of the affected bosses for cracks, and replacement, if found cracked, with serviceable parts. In addition, this action revises the initial accomplishment time for the previously proposed actions. Finally, this action adds further etches, fluorescent penetrant inspections (FPIs), x-ray inspections, and shotpeening to the shop requirements, and provides an optional terminating action in the form of a redesigned diffuser case. The actions specified by this proposed AD are intended to prevent diffuser case assembly rupture, which could result in an uncontained engine failure, engine fire, and damage to the aircraft.

DATES: Comments must be received by February 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–38, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–38." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–38, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 23, 1995 (60 FR 43730). That NPRM would have required removing webs of material at ten bosses on the diffuser case assembly, performing a fluorescent penetrant inspection (FPI) and x-ray inspection of the reworked area, performing furnace stress relief if a local stress relief had been previously accomplished, shotpeening the reworked area, and remarking the diffuser case assemblies with a new part number. That NPRM was prompted by reports of cracks at the aft corners of bosses on the diffuser case assembly. No engine failures have resulted from these cracks. The cracks occur in webs of material at 10 diffuser case bosses that were a result of a machining operation during original manufacture. The webs of material create stress concentrations that can cause a crack to start. That condition, if not corrected, could result in diffuser case assembly rupture, which could result in an uncontained engine failure, engine fire, and damage to the aircraft.

Since the issuance of that NPRM, the FAA received three comments regarding the actions proposed by this AD.

One commenter states basic concurrence with the intent of the AD, but recommends a change in the accomplishment time, from the next shop visit, not to exceed 6,000 cycles in service (CIS) after the effective date of this AD, to the next diffuser module

disassembly after the effective date of this AD. The commenter states that the original accomplishment time causes an undue scheduling burden, and estimates that an additional $469,608 will be incurred without the revision to the accomplishment time. The FAA concurs. The FAA has revised the accomplishment time, and has added initial and repetitive on-wing and shop eddy current inspections (ECI) of the bosses to mitigate any additional safety risk incurred by the extension of the accomplishment time.

One commenter recommends a change to the work hours estimate in the economic analysis. The commenter states that 44 work hours of labor are necessary to perform the actions required by this AD, instead of the 20 work hours specified in the NPRM, and indicates that 44 work hours is more consistent with the maintenance environment of airlines and repair facilities. The FAA concurs, and has revised the economic analysis accordingly, but has increased the work hours estimate further in this supplemental NPRM to include the time required to accomplish the additional actions proposed in this supplemental NPRM.

In addition, since issuance of the NPRM, the FAA has determined the need to enhance the AD by adding further etches, fluorescent penetrant inspections (FPIs), x-ray inspections, and shotpeening to the shop requirements. The FAA estimates that an additional two hours of labor will be necessary to access and perform the enhanced inspection of the diffuser case. The FAA also has determined the need to clarify, based on overhaul shop concerns regarding repairable diffuser cases, that cracks under the rail are acceptable as long as total weld bead length is less than 1.5 inches. This supplemental NPRM has been revised accordingly to incorporate these changes.

Finally, this supplemental NPRM references PW Service Bulletin (SB) No. JT9D–7R4–72–527, Revision 3, dated April 16, 1997, Revision 2, dated July 12, 1996, and Revision 1, dated May 3, 1996, that describes the on-wing ECIs required by this AD, and SB No. JT9D–7R4–72–469, Revision 3, dated January 24, 1996, that describes the new shop procedures required by this AD. In addition, installation of diffuser case, part number 815736, in accordance with the requirements of PW SB No. JT9D–7R4–72–533, dated August 29, 1996, constitutes terminating action for this AD.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 690 engines of the affected design in the worldwide fleet. The FAA estimates that 137 engines would be affected by this proposed AD, that it would take approximately 46 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $378,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 95–ANE–38.

Applicability: Pratt & Whitney (PW) JT9D–7R4 series turbofan engines, installed on but not limited to Airbus A300, A310 series, and Boeing 747, 767 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent diffuser case assembly rupture, which could result in an uncontained engine failure, engine fire, and damage to the aircraft, accomplish the following:

(a) For assembled diffuser case assembly, Part Numbers (P/Ns) 789996, 789996–002, 789996–003, 790541, 790541–002, 790541–003, 798379, 798379–003, 798379–004, 5000366–002, 5000366–021, 5000366–022, 5004770–01, 5004770–022, and 5004770–023, perform initial on-wing eddy current inspection (ECI) or initial and repetitive fluorescent penetrant inspection (FPI) or ECI shop inspections of the diffuser case bosses in accordance with PW Service Bulletin (SB) No. JT9D–7R4–72–527, Revision 3, dated April 16, 1997, or Revision 2, dated July 12, 1996, or Revision 1, dated May 3, 1996, within 250 cycles in service (CIS) after the effective date of this AD, as follows:

(1) For assembled diffuser cases in the shop, that have not been previously inspected in accordance with any one of the requirements of the SBs cited in paragraph (a) of this AD, perform an initial FPI or ECI of both rear corners of all 10 diffuser case mounting bosses and 2 case mount pads in accordance with any one of the SBs cited in paragraph (a) of this AD, or,

(i) If cracks are found, perform repairs in accordance with the applicable Engine Manual, Chapter/Section 72–41–02, Repair–28.

(ii) Thereafter, perform inspections within 650 CIS since last inspection, in accordance with any one of the SBs cited in paragraph (a) of this AD.

(2) For assembled diffuser cases that are installed on-wing, that have not been previously inspected in accordance with any of the requirements of this AD, perform an initial ECI of both rear corners of boss six, located at the six o'clock position, in accordance with any one of the SBs cited in paragraph (a) of this AD:

(i) If a crack indication is found, borescope or FPI the area where the crack was indicated, in accordance with any one of the SBs cited in paragraph (a) of this AD. Depending on the crack size, accomplish the following:

(A) The diffuser case may continue in service provided it is inspected at intervals not to exceed 50 CIS since last borescope inspection, if the circumferential crack dimension "B", is less than 0.5 inches long, and the axial crack dimension "A" is less than 0.8 inches long, in accordance with any one of the SBs cited in paragraph (a) of this AD.

(B) The diffuser case may continue in service for a maximum of 5 CIS, if the axial crack dimension "A" is equal to or greater than 0.8 inches but less than or equal to 1.0 inch, in accordance with any one of the SBs cited in paragraph (a) of this AD.

(C) Remove from service prior to further flight the diffuser case when the axial crack dimension "A" is greater than 1.0 inch, in accordance with any one of the SBs cited in paragraph (a) of this AD.

(ii) Diffuser cases with no cracks at boss six, perform an ECI at intervals not to exceed 650 CIS since the last boss 6 inspection, in accordance with any one of the SBs cited in paragraph (a) of this AD.

(b) At the next diffuser module disassembly when all hardware is stripped off the diffuser case, but not to exceed 6,000 CIS after the effective date of this AD, inspect diffuser cases, P/Ns 790541, 798379, 789996, 5004770–01, or 5000366–02, for existence of web material at ten boss locations, in accordance with PW SB No. JT9D–7R4–72–469, Revision 3, dated January 24, 1996.

(1) Rework the diffuser case assembly in accordance with PW SB No. JT9D–7R4–72–469, Revision 3, dated January 24, 1996. This rework removes web material at 10 boss locations.

(2) Perform an etch and an ultra-high fluorescent penetrant inspection (FPI) of the reworked areas in accordance with PW SB No. JT9D–7R4–72–469, Revision 3, dated January 24, 1996, to ensure that there are no crack indications.

(3) If a crack indication is discovered, repair, and perform an ECI and an FPI in accordance with Engine Manual Section 72–41–02, Repair–28, or remove the diffuser case from service and replace with a serviceable part.

(4) Perform an x-ray inspection of the reworked areas (all 10 boss locations and 2 mount pad locations) in accordance with PW SB No. JT9D–7R4–72–469, Revision 3, dated January 24, 1996, to ensure that there are no crack indications. Additionally, the x-ray inspection is performed to assure that there are no cracks, incomplete fusion, incomplete penetration, voids, porosity, or inclusions from previous local weld repairs. If any of these defects are discovered, repair per PW JT9D–7R4 Engine Manual, Section 72–41–02, Repair–28, or remove the diffuser case from service and replace with a serviceable part.

(5) Determine if local stress relief was performed previously, and if weld repairs have been performed at any of the boss locations described in the above SB, through reviewing maintenance records. If maintenance records cannot be located, or maintenance records indicate that a weld repair with no stress relief or a weld repair with a local stress relief that has been performed at any of the 10 boss locations or 2 mount pad locations, perform furnace stress relief and FPI of the diffuser case assemblies in accordance with PW SB No. JT9D–7R4–72–469, Revision 3, dated January 24, 1996.

(6) Shotpeen the reworked areas in accordance with PW SB No. JT9D–7R4–72–469, Revision 3, dated January 24, 1996.

(7) Remark the diffuser case assembly with a new part number in accordance with PW SB No. JT9D–7R4–72–469, Revision 3, dated January 24, 1996.

(c) At the next shop visit, but not to exceed 6,000 CIS after the effective date of this AD, for diffuser case assembly, P/Ns 790541–002, 790541–003, 798379–003, 798379–004, 789996–002, 789996–003, 5000366–021, 5000366–022, 5004770–022, and 5004770–023, that have been previously reworked to remove web material at any boss locations prior to the effective date of this AD in accordance with the original issue of PW SB No. JT9D–7R4–72–469, dated October 2, 1992, accomplish the following:

(1) Unless maintenance records indicate that x-ray inspections were performed at the last shop visit where diffuser case repairs were accomplished at the 10 boss locations, prior to the effective date of this AD, in accordance with PW JT9D–7R4 Engine Manual, Section 72–41–02, Repair–28, perform an x-ray inspection of all 10 boss locations and 2 mount pad locations in accordance with the x-ray requirements of PW JT9D–7R4 Engine Manual, Section 72–41–02, Repair–28.

(2) Determine if any previous weld repairs have been performed at any of the boss locations described in the above SB through reviewing maintenance records. If maintenance records cannot be located, or maintenance records indicate that a weld repair with no stress relief or with a local stress relief has been performed at any of the boss locations, perform furnace stress relief, FPI, and shotpeen diffuser case assemblies in accordance with PW SB No. JT9D–7R4–72–469, Revision 3, dated January 24, 1996.

(d) For the purpose of this AD, shop visit is defined as separation of diffuser case at "K" and "M" flanges.

(e) For the purpose of this AD, an assembled diffuser case in the shop is defined as a diffuser case either mounted or dismounted from the engine, but with external hardware removed to perform the inspections.

(f) Installation of diffuser case, P/N 815736, in accordance with the requirements of PW SB No. JT9D–7R4–72–533, dated August 29, 1996, constitutes terminating action for this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 28, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–31967 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–26]

Proposed Amendment to Class E Airspace; New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at New Bern, NC. The required weather observation information is available on a continuous basis to the air traffic control providing service to New Bern, Craven County, NC, Airport. Therefore, the Class E surface area airspace at New Bern, NC, meets the requirement for modification from part time to continuous.

DATES: Comments must be received on or before January 7, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 97–ASO–26, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ASO–26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at New Bern, NC. The required weather observation information is available on a continuous basis to the air traffic control facility providing service to New Bern, Craven County, NC, Airport. Therefore, the Class E surface area airspace at New Bern, NC, meets the requirement for modification from part time to continuous. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO NC E2—New Bern, NC [Revised]

New Bern, Craven County Regional Airport, NC
(Lat 35°04'21" N, long. 77°02'37" W)
New Bern VOR/DME
(Lat 35°04'23" N, long 77°02'42" W)

Within a 4-mile radius of Craven County Regional Airport and within 2.4 miles each side of New Bern VOR/DME 038° and 210° radials, extending from the 4-mile radius northeast and southwest of the VOR/DME.

* * * * *

Issued in College Park, Georgia, on November 24, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–32035 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA No. 173P]

Schedules of Controlled Substances: Proposed Placement of Sibutramine into Schedule IV

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Acting Deputy Administrator of the DEA to place the substance, sibutramine, including its salts and optical isomers into Schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (DHHS) that sibutramine be added to Schedule IV and on an evaluation of the relevant data by the DEA. If finalized, this action will impose the regulatory controls and criminal sanctions of Schedule IV on those who handle sibutramine and products containing sibutramine.

DATES: Comments, objections, and requests for a hearing must be received on or before January 7, 1998.

ADDRESSES: Comments, objections and requests for a hearing should be submitted in quintuplicate to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:
Sibutramine is an amphetamine analogue pharmacologically similar to other anorectic agents that produce central nervous system stimulation and amphetamine-like effects in humans and animals. Sibutramine hydrochloride will be marketed under the trade name of MERIDA as an oral anorectic for the long term management of obesity.

The Acting Deputy Administrator of the DEA received a letter dated November 12, 1997 from the Acting Assistant Secretary for Health, on behalf of the Secretary of the DHHS, recommending that the substance, sibutramine, and salts and isomers thereof, be placed into Schedule IV of the CSA (21 U.S.C. 801 *et seq.*). Enclosed with the letter from the Assistant Secretary was a document prepared by the Food and Drug Administration (FDA) entitled "Basis for the Recommendation for Control of Sibutramine and its Salts in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider [21 U.S.C. 811(b)] and the summarized recommendations regarding the placement of sibutramine into Schedule IV of the CSA.

The factors considered by the Assistant Secretary for Health with respect to the drug sibutramine were:

(1) Its actual or relative potential for abuse.

(2) Scientific evidence of its pharmacological effect, if known.

(3) The state of current scientific knowledge regarding the drug or other substance.

(4) Its history and current pattern of abuse.

(5) The scope, duration, and significance of abuse.

(6) What, if any, risk there is to the public health.

(7) Its psychic or physiological dependence liability.

(8) Whether the substance is an immediate precursor of a substance already controlled under the CSA.

Relying on the scientific and medical evaluation and the recommendation of the Assistant Secretary of Health, the FDA New Drug Application (NDA) approval on November 22, 1997, and a DEA review, the Acting Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Sibutramine has a low potential for abuse relative to the drugs or other substances in Schedule III.

(2) Sibutramine has a currently accepted medical use in treatment in the United States.

(3) Abuse of sibutramine may lead to limited physical dependence and psychological dependence relative to the drugs or other substances in Schedule III.

Interested persons are invited to submit their comments, objections or requests for a hearing, in writing, with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537. Attention: DEA Federal Register Representative/CCR. In the event that comments, objections or requests for a hearing raise one or more issues which the Acting Deputy Administrator finds warrants a hearing, the Acting Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking on the record after opportunity for a hearing. Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, Section 3(d)(1).

The Acting Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small-business entities. Sibutramine is a new drug in the United States; recent approval of the product and its labeling by the FDA will allow it to be marked once it is placed into Schedule IV of the CSA. This proposed rule, if finalized, will allow these entities to have access to a new pharmaceutical product.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule, if finalized, does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure; drug traffic control, narcotics, prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Acting Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

§ 1308.14 [Amended]

2. Section 1308.14 is proposed to be amended by redesignating the existing paragraph (e)(10) as (e)(11) and adding a new paragraph (e)(10) to read as follows:

§ 1308.14 Schedule IV

* * * * *

(10) Sibutramine 1675

* * * * *

Dated: December 2, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–31951 Filed 12–5–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Treasury" or "Department") is proposing for comment an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This proposed amendment includes changes necessary to make fungible stripped interest components for Treasury inflation-indexed securities, which the Department began issuing in January 1997. In addition, the proposed amendment makes certain technical clarifications and conforming changes.

DATES: Comments must be received on or before February 6, 1998.

ADDRESSES: Written comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street N.W., Room 515, Washington, D.C. 20239–0001. Comments may also be sent via the Internet to the Government Securities Regulations Staff at govsecreg@bpd.treas.gov. When sending comments via the Internet, please use an ASCII file format and provide your full name and mailing address. Comments received will be available for public inspection and downloading from the Internet and for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

This proposed amendment has also been made available for downloading from Public Debt's web site at the following address: www.publicdebt.treas.gov.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director), Chuck Andreatta or Kurt Eidemiller (Government Securities Specialists), Department of the Treasury, Bureau of the Public Debt, Government Securities Regulations Staff (202) 219–3632.

SUPPLEMENTARY INFORMATION:

I. Background

31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.[1]

In January 1997, the Department began issuing a new type of marketable security, referred to as a Treasury inflation-indexed security,[2] whose principal value is adjusted for inflation as measured by the United States Government.[3] The Department believes the issuance of these new securities will reduce interest costs to the Treasury over the long term and broaden the types of debt instruments available to investors in U.S. financial markets.

A. Inflation-Indexed STRIPS

Inflation-indexed securities are eligible for the STRIPS (Separate Trading of Registered Interest and Principal of Securities) program immediately upon their issuance by the Treasury. STRIPS is the Department's program under which eligible securities are authorized to be separated into principal and interest components (interest components are also referred to as "TINTS"). Such components are maintained in book-entry accounts, and transferred separately in the Treasury/Reserve Automated Debt Entry System ("TRADES" or the commercial book-entry system). Unlike TINTS from fixed-principal securities, interest components stripped from an inflation-indexed security are currently not fungible (i.e., they are not interchangeable) with interest components stripped from a different inflation-indexed security, even if the components have the same maturity (payment) date.[4]

Making such stripped interest components fungible (i.e., interchangeable and having the same CUSIP number) is a more complicated process than it is for fixed-principal interest components because of the way in which inflation-indexed securities adjust for inflation. Interest payments and the inflation-adjusted principal amount paid at maturity are calculated based on the amount of inflation, as measured by changes in the CPI,[5] that has occurred since the original issue date of the security.

Although the CPI is announced monthly, a unique "reference CPI" can be calculated for any particular date using an interpolative process described in Appendix B of the uniform offering circular.[6] Each inflation-indexed security has a unique reference CPI value applicable to the security's original issue date.[7] This is the starting point for measuring inflation for the period the security is outstanding. To calculate interest payments or the principal value at maturity of an inflation-indexed security, the par amount is adjusted for inflation by application of an "index ratio," which is the ratio of the reference CPI applicable to the interest payment or maturity date divided by the reference CPI applicable to the original issue date. Stripped principal and interest components with the same maturity date that are created from securities with different issue dates have different index ratios at maturity. This makes providing for fungibility of the interest components somewhat complicated.

Due to this complexity, inflation-indexed interest components were not made fungible when the securities were first offered in January 1997. As a result, while the rules currently permit inflation-indexed securities to be stripped into separate principal and interest components, interest components from the outstanding 5-year and 10-year inflation-indexed notes are not fungible even though some components would have the same maturity (payment) date. In the preamble to the final rule amendments to accommodate inflation-indexed securities, the Department stated that it would "continue to work on making interest components fungible in a manner that is operationally feasible."[8] The Department recognizes that making stripped inflation-indexed interest components fungible is important to

[1] The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR Part 356.

[2] To date the Department has issued only inflation-indexed notes. 31 CFR Part 356 also accommodates offerings of inflation-indexed bonds, which the Department intends to begin issuing in 1998.

[3] 62 FR 846 (January 6, 1997).

[4] See 31 CFR 356.31(f).

[5] CPI refers to the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor.

[6] See 31 CFR Part 356, Appendix B, Section I, Paragraph B, for a detailed explanation of the indexing process and application of the index ratio and reference CPI.

[7] If the security's dated date is different from the original issue date, then the reference CPI for the dated date is used. See 31 CFR 356.2 for the definition of dated date. This preamble discussion assumes that the original issue date and the dated date are the same and therefore uses only the term original issue date.

[8] 62 FR 846, 848 (January 6, 1997).

developing a liquid market for these components.

Over the last several months, the Department has worked with market participants to develop a methodology that will enable interest components stripped from different inflation-indexed securities to be fungible. The Department requests comments from market participants on the following proposed methodology and any related aspects of this proposal. Specifically, comments are requested on any operational issues, including the time needed to make any necessary automated system changes, and the extent to which making inflation-indexed TINTS fungible would help in the continued development of a liquid market for inflation-indexed securities.

B. Proposed Methodology for Fungible Inflation-Indexed STRIPS

To make TINTS from different inflation-indexed securities fungible, the TINTS would be converted to a common reference CPI value of 100. This would be accomplished by calculating an "adjusted value" (see sections 356.2 and 356.31(c) of the proposed rule). The adjusted value of each TINT would be calculated by multiplying the par amount of the inflation-indexed security to be stripped by the security's semiannual interest rate, and then multiplying this amount by the ratio of 100 divided by the reference CPI for the security's original issue date. For example, an inflation-indexed security with a par amount of $1 million, an interest rate of 3½%, and an issue-date reference CPI of 162.00000 would have an adjustment factor for each TINT of $1 million × (0.035)/2 × (100/162), or $10,802.47. Inflation-indexed TINTS would be maintained in accounts and transferred at their "adjusted value." This is in contrast to stripped principal components, which would be maintained and transferred at their par amount.

All inflation-indexed TINTS with the same maturity date would have the same CUSIP number, regardless of the underlying inflation-indexed security from which the interest components were stripped. Such TINTS would be considered to be the same security and would therefore be fungible. Fungibility would apply to TINTS only; stripped principal components would not be fungible. TINTS from inflation-indexed securities would not be fungible with any interest components stripped from fixed-principal securities.

By converting to adjusted values, all inflation-indexed TINTS having the same maturity date would become fungible. They would be bought and sold on the basis of their adjusted values, regardless of the underlying security from which they were stripped. Similarly, for purposes of reconstituting an inflation-indexed security from its separate stripped unmatured interest and principal components, an investor could obtain any needed TINTS at the adjusted value required for the particular inflation-indexed security to be reconstituted. For example, to reconstitute $1 million of an inflation-indexed security with an interest rate of 3½% and an issue-date reference CPI of 162.00000, a holder would submit to the Federal Reserve Bank of New York the principal component and all unmatured TINTS, each TINT having an adjusted value of $1 million × (0.035)/2 × (100/162), or $10,802.47.

When a TINT matures, its payment amount would be calculated by multiplying the adjusted value by the reference CPI for the maturity date, divided by 100. For example, for an adjusted value of $10,802.47 and a maturity-date reference CPI of 167.00000, the payment amount would be $10,802.47 × (167/100), or $18,040.12. The end result is that a holder of an inflation-indexed TINT stripped from a security of a given par amount would receive, except for a possible slight difference due to rounding procedures, a payment amount at maturity that is the same as the interest payment received by a holder of a fully-constituted security of the same par amount.[9]

C. Payment Differences

The possible difference in payment amount between a stripped interest component and an interest payment from a fully-constituted security results primarily from rounding the index ratio. The size of the differences is a function of both the interest rate of the fully-constituted security and the level of the CPI on the payment date. These differences are quite small. For example, for an inflation-indexed security with an interest (coupon) rate of 4% or less[10] and a reference CPI of 200 or less on the payment date, the maximum payment difference per $1 million of par is $0.11 (higher or lower). Over a range of securities offerings, these payment differences generally would be revenue neutral—they would benefit neither the Treasury nor STRIPS investors. Further, revising Treasury's rounding conventions would require market participants and the Department to modify their automated systems to accommodate this change. Since the payment differences are *de minimis* and revenue neutral, the costs of such systems changes would outweigh their benefits. Therefore, the Department has determined not to change its current rounding conventions to eliminate these differences.

D. Minimum and Multiple Amounts for Stripping

In order to make the calculation of adjusted values and payment amounts for inflation-indexed TINTS as precise as possible, adjusted values would be calculated—and transferred and maintained—to the penny (e.g., $10,802.47). Therefore, in effect there would be no required multiple amounts for inflation-indexed TINTS. This is in contrast to fixed-principal TINTS, which must be transferred and maintained in multiple amounts of $1,000. Some market participants that plan to participate in the inflation-indexed STRIPS market might need to modify their automated systems to accommodate holding Treasury securities to the penny (i.e., to two decimal places).

The minimum par amount of a fully-constituted inflation-indexed security that could be submitted to the Federal Reserve Bank of New York for stripping would be $1,000, with any larger amounts in multiples of $1,000. Except for the requirement that they be expressed to the penny, there would be no required minimum adjusted value for the resulting TINTS. This is in contrast to minimum and multiple stripping requirements for fixed-principal securities, under which, for any given interest rate, the fully-constituted security must be submitted in a specific minimum and multiple par amount in order to produce TINTS that are themselves in minimum and multiple amounts of $1,000.[11]

No changes are being proposed at this time to the current STRIPS program for fixed-principal securities. However, the Department will consider at a later date the desirability of making changes to the minimum and multiple requirements for fixed-principal TINTS similar to the proposed requirements for inflation-indexed TINTS, i.e., discontinuing the $1,000 minimum-to-hold and multiple requirement, and permitting fixed-principal TINTS to be held in amounts to the penny.

[9] In this example, a holder of $1 million of the fully-constituted security would receive an interest payment of $18,040.05.

[10] To date, the interest (coupon) rates on the two issues of Treasury inflation-indexed notes have been 3⅜% and 3⅝%.

[11] 31 CFR Part 356, Exhibit C includes a table that provides, for each interest rate from ⅛% to 20%, the corresponding minimum par amount of the fully-constituted security required to produce TINTS that are in multiples of $1,000.

E. Index Contingencies

The CPI is expressed in relative terms in relation to a particular time base reference period for which the level is set at 100. The current CPI reference period is 1982–84. The Department understands that, sometime during the next two years, the Bureau of Labor Statistics (BLS) plans to rebase the CPI to a 1993–95 base period. Once this new base period goes into effect, subsequent issuances of Treasury inflation-indexed securities would be issued using the new base period. In other words, the reference CPI of the original issue date will reflect the new reference period and thus will generally be a lower number than the issue-date reference CPIs of those inflation-indexed securities issued prior to the effective date of the new base reference period.

When this new reference period goes into effect, Treasury understands that BLS will continue to publish CPI figures for the 1982–84 base period as well as publish figures for the new 1993–95 base period. Interest payments, and principal payments at maturity, for unstripped inflation-indexed securities issued while the 1982–84 base period was in effect will continue to be calculated using reference CPI numbers derived from this base period.

Allowing inflation-indexed TINTS issued during one base reference period to be fungible with those issued during other base reference periods could enhance their liquidity. Fungibility could be achieved through, for example, the use of a conversion factor that would, in effect, transform the adjusted values of all inflation-indexed TINTS with 1982–84 base-period reference CPIs to values based on the 1993–95 base period. However, such a process would likely result in additional payment differences of a similar nature and magnitude as those described previously. As was the case with those payment differences, payment differences caused by the transformation of adjusted values to a new base period would generally be revenue neutral over a range of securities offerings. Since, for each rebasing, there would be a one-time conversion for those outstanding inflation-indexed securities, Treasury would provide this conversion factor to market participants so that they could modify their systems accordingly. The CPI has been rebased approximately every 10 years so, during the maturity period of a 30-year inflation-indexed bond, rebasing could occur two or three times. The Department solicits comment from market participants on whether the benefits of increased supply, and thus additional liquidity, of specific fungible inflation-indexed TINTS would justify the cost and inconvenience of having additional small payment discrepancies, possible automated system changes to accommodate a conversion factor, and increased complexity of the rules.

A different index contingency would occur if the Treasury were to replace the CPI with a different measure of inflation for the purpose of indexing securities because the CPI was discontinued or "fundamentally" altered as described in the preamble to the final rule amendment to accommodate inflation-indexed securities.[12] The Department is not aware of any plans to discontinue or fundamentally change the CPI, but it is important for market participants to understand the effect that such an event would have on outstanding inflation-indexed securities. The Department has determined that TINTS stripped from inflation-indexed securities issued under different indices would not be fungible.

F. Fungibility of TINTS Created Prior to Effective Date of Amendment

As of October 31, 1997, none of the currently outstanding inflation-indexed securities has been stripped. If these securities were to be stripped prior to the effective date of a final rule making inflation-indexed TINTS fungible, the resulting TINTS would be converted to fungible TINTS since it is the Department's goal, where possible, to make all TINTS from inflation-indexed securities fungible. Specifically, if a market participant decides to strip an inflation-indexed security prior to the effective date for making STRIPS fungible, Treasury will convert any outstanding inflation-indexed TINTS by retiring them and issuing new fungible inflation-indexed TINTS. If necessary, Treasury will provide public notice informing participants of the effective conversion date. Also, detailed instructions regarding the conversion to fungible STRIPS will be provided.

G. Taxation

There are no new tax issues related to making inflation-indexed TINTS fungible. The tax treatment as noted in current 31 CFR 356.32 applies.

II. Section-by-Section Analysis

This proposed amendment, when finalized, would include the necessary revisions to make fungible the stripped interest components of marketable Treasury inflation-indexed securities. This rule would amend sections 356.2 and 356.31 and add a new section IV to Appendix B of the uniform offering circular.

A. Section 356.2—Definitions

The term *adjusted value* has been added to the listing of definitions in § 356.2. This term refers specifically to interest components stripped from inflation-indexed securities.

B. Section 356.31—STRIPS

Changes have been made to § 356.31 to reflect the STRIPS program more completely. The section has been reorganized to distinguish more clearly the features of fixed-principal STRIPS from inflation-indexed STRIPS. Most of the significant modifications to this section have been made in paragraph (c), which only discusses inflation-indexed securities.

Specifically, new paragraph (c)(1) provides that the minimum and multiple par amount of an inflation-indexed security that may be stripped would be $1,000. New paragraph (c)(2), except for a revised title, is essentially the same as current paragraph (e), since the treatment of principal components stripped from inflation-indexed securities does not change under this proposal. New paragraph (c)(3) describes the calculation of the adjusted value for interest components; clarifies that interest components stripped from inflation-indexed securities would be maintained and transferred at their adjusted value; describes the fungibility of these components; and explains how the payment amount would be calculated from the adjusted value. New paragraph (d), which discusses reconstitution, is essentially the same as current paragraph (g) except that the sentence stating that interest components stripped from inflation-indexed securities are not interchangeable has been deleted. New paragraph (e) is the same as current paragraph (h).

C. Appendix B to Part 356

A new Section IV has been added to Appendix B to provide the formulas and an example for calculating the adjusted value and the payment amount for inflation-indexed TINTS. The previous Section IV has been renumbered as Section V.

D. Exhibit C to Part 356

The title of Exhibit C has been revised to indicate that the exhibit, which contains minimum par amounts of securities for stripping at various interest rates, applies only to fixed-principal STRIPS.

[12] 62 FR 846, 849 (January 6, 1997).

III. Procedural Requirements

This proposed rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866. Although this rule is being issued in proposed form to secure the benefit of public comment, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). Since no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There is no new collection of information contained in this proposed rule and, therefore, the Paperwork Reduction Act does not apply. The collections of information in 31 CFR Part 356 have been previously approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535–0112. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

Dated: December 1, 1997.

Gerald Murphy,

Fiscal Assistant Secretary.

For the reasons set forth in the preamble, 31 CFR Chapter II, Subchapter B, Part 356, is proposed to be amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by adding in alphabetical order the definition of "Adjusted value" to read as follows:

§ 356.2 Definitions.

* * * * *

Adjusted value means, for an interest component stripped from an inflation-indexed security, an amount derived by multiplying the semiannual interest rate by the par amount and then multiplying this value by 100 divided by the Reference CPI of the original issue date (or dated date, when the dated date is different from the original issue date). (See Appendix B, Section IV, to this part for an example of how to calculate the adjusted value for interest components stripped from an inflation-indexed security.)

* * * * *

3. Section 356.31 is revised to read as follows:

§ 356.31 STRIPS.

(a) *General.* A note or bond may be designated in the offering announcement as eligible for the STRIPS program. At the option of the holder, and generally at any time from its issue date until its call or maturity, any such security may be "stripped," i.e., divided into separate principal and interest components. A short or long first interest payment and all interest payments within a callable period are not eligible to be stripped from the principal component. The CUSIP numbers and payment dates for the principal and interest components are provided in the offering announcement if not previously announced.

(b) *Treasury fixed-principal securities*—(1) *Minimum par amounts required for STRIPS.* For a fixed-principal security to be stripped into the components described above, the par amount of the security must be in an amount that, based on its interest rate, will produce a semiannual interest payment in a multiple of $1,000. Exhibit C to this part provides the minimum par amounts required to strip a fixed-principal security at various interest rates, as well as the corresponding interest payments. Amounts greater than the minimum par amount must be in multiples of that amount. The minimum par amount required to strip a particular security will be provided in the press release announcing the auction results.

(2) *Principal components.* Principal components stripped from fixed-principal securities are maintained in accounts, and transferred, at their par amount. The principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security.

(3) *Interest components.* Interest components stripped from fixed-principal securities are maintained in accounts, and transferred, at their original payment value, which is derived by applying the semiannual interest rate to the par amount. When an interest component is created, the interest payment date becomes the maturity date for the component. All such components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal component.

(c) *Treasury inflation-indexed securities.* (1) *Minimum par amounts required for STRIPS.* The minimum par amount of an inflation-indexed security that may be stripped into the components described in paragraph (a) of this section is $1,000. Any par amount to be stripped above $1,000 must be in a multiple of $1,000.

(2) *Principal components.* Principal components stripped from inflation-indexed securities are maintained in accounts, and transferred, at their par amount. At maturity, the holder will receive the inflation-adjusted principal value or the par amount, whichever is greater. (See § 356.30.) The principal components have a CUSIP number that is different from the CUSIP number of the fully-constituted (unstripped) security.

(3) *Interest components.* Interest components stripped from inflation-indexed securities are maintained in accounts, and transferred, at their adjusted value, which is derived by multiplying the semiannual interest rate by the par amount and then multiplying this value by 100 divided by the Reference CPI of the original issue date (or dated date, when the dated date is different from the original issue date). See Appendix B, Section IV, to this part for an example of how to calculate an adjusted value. When an interest component is created, the interest payment date becomes the maturity date for the component. All such components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. All interest components have CUSIP numbers that are different from the CUSIP number of any fully-constituted security and any principal component. At maturity, the payment to the holder will be derived by multiplying the adjusted value of the interest component by the Reference CPI of the maturity date, divided by 100. See Appendix B, Section IV, to this part for an example of how to calculate an actual payment amount from an adjusted value.

(d) *Reconstituting a security.* Stripped interest and principal components may be reconstituted, i.e., restored to their fully-constituted form. A principal component and all related unmatured interest components, in the appropriate minimum or multiple amounts or adjusted values, must be submitted together for reconstitution. Interest components stripped from inflation-

indexed securities are different from interest components stripped from fixed-principal securities and, accordingly, are not interchangeable for reconstitution purposes.

(e) *Applicable regulations.* Unless otherwise provided in this part, notes and bonds stripped into their STRIPS components are governed by subparts A, B, and D of part 357 of this chapter.

4. Appendix B to part 356 is amended by revising the list of section headings at the beginning of the appendix to read as follows:

Appendix B to Part 356—Formulas and Tables

I. Computation of Interest on Treasury Bonds and Notes.
II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices.
III. Formulas for Conversion of Inflation-Indexed Security Yields to Equivalent Prices.
IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Indexed Interest Components.
V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills.

* * * * *

5. Appendix B to Part 356 is amended by redesignating Section IV as Section V and adding a new Section IV to read as follows:

* * * * *

IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Indexed Interest Components

Note: Valuing an interest component stripped from an inflation-indexed security at its adjusted value enables this interest component to be interchangeable (fungible) with other interest components that have the same maturity date, regardless of the underlying inflation-indexed security from which the interest components were stripped. The adjusted value provides for fungibility of these various interest components when buying, selling, or transferring them, or when reconstituting an inflation-indexed security.

Definitions

C=the regular annual interest rate, payable semiannually, e.g., 3.625% (the decimal equivalent of a 3–⅝% interest rate)
Par=par amount of the security to be stripped
Ref $CPI_{Issue\ Date}$=reference CPI for the original issue date (or dated date, when the dated date is different from the original issue date) of the underlying (unstripped) security
Ref CPI_{Date}=reference CPI for the maturity date of the interest component
AV=adjusted value of the interest component
PA=payment amount at maturity by Treasury

Formulas

AV=Par (C/2)(100/Ref $CPI_{Issue\ Date}$) (rounded to 2 decimals with no intermediate rounding)
PA=AV (Ref CPI_{Date}/100) (rounded to 2 decimals with no intermediate rounding)

Example. A 10-year inflation-indexed note paying 3½% interest is issued on January 15, 1999, with the second interest payment on January 15, 2000. The Ref CPI on January 15, 1999 (Ref $CPI_{Issue\ Date}$) is 174.62783, and the Ref CPI on January 15, 2000 (Ref CPI_{Date}) is 179.86159. Calculate the adjusted value and the payment amount at maturity of the interest component.

Definitions

C=3.50%
Par=$1,000,000
Ref $CPI_{Issue\ Date}$=174.62783
Ref CPI_{Date}=179.86159

Resolution

For a par amount of $1 million, the adjusted value of each stripped interest component is $1,000,000 (.035/2)(100/174.62783), or $10,021.31 (no intermediate rounding).

For an interest component maturing on January 15, 2000, the payment amount is $10,021.31×(179.86159/100), or $18,024.49 (no intermediate rounding).

* * * * *

6. Exhibit C to Part 356 is amended by revising the heading to read as follows:

Exhibit C to Part 356—Minimum Par Amounts for Fixed-Principal STRIPS

* * * * *

[FR Doc. 97–31953 Filed 12–5–97; 8:45 am]
BILLING CODE 4810–39–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5930–6]

RIN 2060–AG88

Preparation, Adoption, and Submittal of State Implementation Plans; Appendix M, Test Method 207

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to add a validated stationary source test method for the measurement of isocyanate emissions from stationary sources to the Code of Federal Regulations. This method, validated according to EPA Method 301 criteria, would be used to reliably collect and analyze gaseous isocyanate emissions from stationary sources such as flexible foam manufacturers, automobile paint spray booths, and the pressed board industry. Specifically, methylene diphenyl diisocyanate (MDI), methyl isocyanate (MI), hexamethylene 1,6-diisocyanate (HDI), and 2,4-toluene diisocyanate (TDI) are the gaseous pollutants in source emissions to be measured. The test method is entitled, "A Method for Measuring Isocyanates in Stationary Source Emissions," and will be added to 40 CFR Part 51, Appendix M, as Test Method 207. This method will provide a tool for state and local governments, representatives of private industry, and the U.S. Government to reliably monitor stationary sources for isocyanate emissions with a validated stationary source method. Additionally, this method will allow the U.S. Environmental Protection Agency to comply with the requirements of the Clean Air Act Amendments of 1990 for monitoring these hazardous air pollutants. Prior to the development of this method, no other "validated" method has been available to monitor these highly reactive hazardous emissions. Isocyanates are used extensively in the production of polyurethane materials such as flexible foam, enamel wire coatings, paint formulations, and in binders for the pressed board industry. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed method.

DATES: *Comments.* Comments must be received on or before February 23, 1998.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 29, 1997, a public hearing will be held January 22, 1998 beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a meeting will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by December 29, 1997.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (Mail Code: 6102), Attention: Docket Number A–96–06, U.S. Environmental Protection Agency, Room M–1500, First Floor, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Center, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Frank Wilshire, Methods Branch (MD–44), Air Measurements Research Division, National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2785.

Docket. Docket No. A–96–06, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air Docket Section, Room M–1500, First Floor, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Frank Wilshire, at the address listed under *Public Hearing*, or Gary McAlister, Source Characterization Group B (MD–19), Emissions Monitoring and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1062.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

A. Summary of Proposed Method

The U.S. Environmental Protection Agency, under the authority of Title III of the Clean Air Act Amendments of 1990, requires the development of a validated (per EPA Method 301 criteria) stationary source sampling and analysis method for the following isocyanates: methyl isocyanate, methylene diphenyl diisocyanate, hexamethylene 1,6-diisocyanate, and 2,4-toluene diisocyanate. The isocyanate sampling method developed is a modification of the EPA Method 5 sampling train (no filter and the addition of impingers), employing impingers and a derivatizing reagent [1-(2-pyridyl)piperazine in toluene] to immediately stabilize the isocyanates upon collection. Collected samples are analyzed under laboratory conditions sufficient to separate and quantify the isocyanates, using high performance liquid chromatography with ultra violet detection.

B. Comments and Responses on Draft

The proposed method is available by request. Requests should be made to: Frank Wilshire (MD–44), Methods Branch, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. To date, over thirty-five copies of the isocyanate method have been requested by representatives of the private sector, state and local governments, industry trade associations, and the Canadian Government.

On June 7, 1995 a presentation was made before members of the Analytical and Environmental Subcommittee of the International Isocyanate Institute to review the method and address the timetable and procedure for including the isocyanate method in the Code of Federal Regulations (CFR). Members of the Subcommittee were enthusiastic about the method and inquired when it might be included in the Code of Federal Regulations. To date, no technical comments have been received from other sources. Oral comments have been received by many of those requesting copies of the method, suggesting publication of the method in the CFR. This action would establish a reference method for the collection and analysis of isocyanates from stationary sources and aid in standardizing monitoring of isocyanate emissions from these sources.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentation will be limited to 15 minutes each. Any member of the public may file a written statement with the EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Air Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Air Docket Section in Washington, D.C. (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) Allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review except for interagency review materials [Section 307(d)(7)(A)].

C. Office of Management and Budget Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA is required to judge whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, this action has been determined to be "not significant."

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless that Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because the overall impact of these amendments is a net decrease in requirements on all entities including small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The rule does not change any information collection requirements subject of Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule

that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, nor does this action significantly or uniquely impact small governments, because this action contains no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Hazardous air pollutants, Polyurethane production, Flexible foam manufacturing, Enamel wire coatings, Manufactured wood products, Isocyanates.

Dated: November 25, 1997.

Carol M. Browner,

Administrator.

It is proposed that 40 CFR part 51 be amended to read as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

2. Appendix M to part 51 is amended by adding Method 207 in numerical order to read as follows:

Appendix M to Part 51—Recommended Test Methods for State Implementation Plans

* * * * *

Method 207—A Method for Measuring Isocyanates in Stationary Source Emissions.

Note: This method is not inclusive with respect to specifications (e.g., equipment and supplies) and sampling procedures essential to its performance. Some material is incorporated by reference from other EPA methods. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least Method 1, Method 2, Method 3, and Method 5 found in Part 60 of this title.

1.0 Scope and Application.

1.1 This method is applicable to the collection and analysis of isocyanate compounds from the emissions associated with manufacturing processes. The following is a list of the isocyanates and the manufacturing process at which the method has been evaluated:

Compound name	CAS No.	Detection limits [a] (ng/m³)	Manufacturing process
2,4-Toluene Diisocyanate (TDI)	584–8 4–9	106	Flexible Foam Production.
1,6-Hexamethylene Diisocyanate (HDI)	822–0 6–0	396	Paint Spray Booth.
Methylene Diphenyl Diisocyanate (MDI)	101–6 8–8	112	Pressed Board Production.
Methyl Isocyanate (MI)	624–8 3–9	228	Not used in production.

[a] Estimated detection limits are based on a sample volume of 1 m³ and a 10-ml sample extraction volume.

2.0 Summary of Method.

2.1 Gaseous and/or aerosol isocyanates are withdrawn from an emission source at an isokinetic sampling rate and are collected in a multicomponent sampling train. The primary components of the train include a heated probe, three impingers containing the derivatizing reagent in toluene, an empty impinger, an impinger containing charcoal and an impinger containing silica gel.

2.2 The impinger contents are concentrated to dryness under vacuum, brought to volume with acetonitrile (ACN) and analyzed with a high pressure liquid chromatograph (HPLC).

3.0 Definitions. Not Applicable.

4.0 Interferences.

4.1 The greatest potential for interference comes from an impurity in the derivatizing reagent, 1-(2-pyridyl)piperazine (1,2-PP). This compound may interfere with the resolution of MI from the peak attributed to unreacted 1,2-PP.

4.2 Other interferences that could result in positive or negative bias are; (1) alcohols that could compete with the 1,2-PP for reaction with an isocyanate; and (2) other compounds that may coelute with one or more of the derivatized isocyanates.

4.3 Method interferences may be caused by contaminants in solvents, reagents, glassware, and other sample processing hardware. All these materials must be routinely shown to be free from interferences under conditions of the analysis by preparing and analyzing laboratory method (or reagent) blanks.

4.3.1 Glassware must be cleaned thoroughly before using. The glassware should be washed with laboratory detergent in hot water followed by rinsing with tap water and distilled water. The glassware may be cleaned by baking in a glassware oven at 400 °C for at least one hour. After the glassware has cooled, the glassware should be rinsed three times with methylene chloride and three times with acetonitrile. Volumetric glassware should not be heated to 400 °C. Instead, after washing and rinsing, volumetric glassware may be rinsed with ACN followed by methylene chloride and allowed to dry in air.

4.3.2 The use of high purity reagents and solvents helps to reduce interference problems in sample analysis.

5.0 Safety.

5.1 The toxicity of each reagent has been precisely defined. Each isocyanate can produce dangerous levels of hydrogen cyanide (HCN). The exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of Occupational Safety and Health Administration (OSHA) regulations regarding safe handling of the chemicals specified in this method. A reference file of material safety data sheets should also be made available to all personnel involved in the chemical analysis. Additional references to laboratory safety are available.

6.0 Equipment and Supplies.

6.1 Sample Collection. The following items are required for sample collection:

6.1.1 A schematic of the sampling train used in this method is shown in Figure 207–1. This sampling train configuration is adapted from EPA Method 5 procedures, and, as such, most of the required equipment is identical to that used in EPA Method 5 determinations. The only new component required is a condenser coil.

6.1.2 Construction details for the basic train components are given in APTD–0581 (see Martin, 1971, in Section 16.0, References); commercial models of this equipment are also available. Additionally, the following subsections list changes to APTD–0581 and identify allowable train configuration modifications.

6.1.3 Basic operating and maintenance procedures for the sampling train are described in APTD–0576 (see Rom, 1972, in Section 16.0, References). As correct usage is important in obtaining valid results, all users should refer to APTD–0576 and adopt the operating and maintenance procedures outlined therein unless otherwise specified. The sampling train consists of the components detailed below.

6.1.3.1 Probe Nozzle. Glass with sharp, tapered (30° angle) leading edge. The taper shall be on the outside to preserve a constant internal diameter. The nozzle shall be buttonhook or elbow design. A range of nozzle sizes suitable for isokinetic sampling should be available in increments of 0.16 cm (1/16 in.), e.g., 0.32–1.27 cm (1/8–1/2 in.), or larger if higher volume sampling trains are used. Each nozzle shall be calibrated according to the procedures outlined in Paragraph 10.1.

6.1.3.2 Probe liner. Borosilicate or quartz-glass tubing with a heating system capable of maintaining a probe gas temperature of 120±14 °C (248±25 °F) at the exit end during sampling. (The tester may opt to operate the equipment at a temperature lower than that specified.) Because the actual temperature at the outlet of the probe is not usually monitored during sampling, probes constructed according to APTD–0581 and using the calibration curves of APTD–0576 (or calibrated according to the procedure outlined in APTD–0576) are considered acceptable. Either borosilicate or quartz glass probe liners may be used for stack temperatures up to about 480 °C (900 °F). Quartz glass liners shall be used for temperatures between 480 and 900 °C (900 and 1650 °F). (The softening temperature for borosilicate is 820 °C (1508 °F), and for quartz glass 1500 °C (2732 °F).) Water-cooling of the stainless steel sheath will be necessary at temperatures approaching and exceeding 500 °C.

6.1.3.3 Pitot tube. Type S, as described in Section 2.1 of promulgated EPA Method 2 or other appropriate devices (see Vollaro, 1976 in Section 16.0, References). The pitot tube shall be attached to the probe to allow constant monitoring of the stack-gas velocity. The impact (high-pressure) opening plane of the pitot tube shall be even with or above the nozzle entry plane (see EPA Method 2, Figure 2–6b) during sampling. The Type S pitot tube assembly shall have a known coefficient, determined as outlined in Section 4.0 of promulgated EPA Method 2.

6.1.3.4 Differential Pressure Gauge. Inclined manometer or equivalent device as described in Section 2.2 of promulgated EPA Method 2. One manometer shall be used for velocity-head (delta P) readings and the other for orifice differential pressure (delta H) readings.

6.1.3.5 Impinger Train. Six 500 mL impingers are connected in series with leak-free ground-glass joints following immediately after the heated probe. The first impinger shall be of the Greenburg-Smith design with the standard tip. The remaining five impingers shall be of the modified Greenburg-Smith design, modified by replacing the tip with a 1.3-cm (½-in.) I.D. glass tube extending about 1.3 cm (½ in.) from the bottom of the outer cylinder. The first, second and third impingers shall contain known quantities of the derivatizing reagent in toluene with the first impinger containing 300 mL and 200 mL in the second and third. The fourth impinger remains empty. The fifth impinger is filled with a known amount (⅔ full) of activated charcoal and the sixth with a known amount of desiccant. A water-jacketed condenser is placed between the outlet of the first impinger and the inlet to the second impinger to reduce the evaporation of toluene from the first impinger.

6.1.3.6 Metering System. The necessary components are a vacuum gauge, leak-free pump, temperature sensors capable of measuring temperature to within 3 °C (5.4 °F), dry-gas meter capable of measuring volume to within 1%, and related equipment, as shown in Figure 207–1. At a minimum, the pump should be capable of four cubic feet per minute (cfm) free flow, and the dry-gas meter should have a recording capacity of 0–999.9 cubic feet (cu ft) with a resolution of 0.005 cu ft. Other metering systems capable of maintaining sampling rates within 10% of isokineticity and of determining sample volumes to within 2% may be used. The metering system must be used with a pitot tube to enable checks of isokinetic sampling rates. Sampling trains using metering systems designed for flow rates higher than those described in APTD–0581 and APTD–0576 may be used, if the specifications of this method are met.

6.1.3.7 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in. Hg). Often the barometric reading may be obtained from a nearby National Weather Service station, in which case the station value (which is the absolute barometric pressure) is requested and an adjustment for elevation differences between the weather station and sampling point is applied at a rate of minus 2.5 mm Hg (0.1 in. Hg) per 30-m (100 ft) elevation increase (vice versa for elevation decrease).

6.1.3.8 Gas density determination equipment. Temperature sensor and pressure gauge (as described in Sections 2.3 and 2.4 of EPA Method 2, and gas analyzer, if necessary (as described in EPA Method 3). The temperature sensor ideally should be permanently attached to the pitot tube or sampling probe in a fixed configuration such that the tip of the sensor extends beyond the leading edge of the probe sheath and does not touch any metal. Alternatively, the sensor may be attached just before use in the field. Note, however, that if the temperature sensor is attached in the field, the sensor must be placed in an interference-free arrangement with respect to the Type S pitot tube openings (see promulgated EPA Method 2, Figure 2–7. As a second alternative, if a difference of no more than 1% in the average velocity measurement is to be introduced, the temperature sensor need not be attached to the probe or pitot tube.

6.1.3.9 Calibration/Field-Preparation Record. A permanent bound laboratory notebook, in which duplicate copies of data may be made as they are being recorded, is required for documenting and recording calibrations and preparation procedures (i.e., silica gel tare weights, quality assurance/quality control check results, dry-gas meter, and thermocouple calibrations, etc.). The duplicate copies should be detachable and should be stored separately in the test program archives.

6.2 Sample Recovery. The following items are required for sample recovery:

6.2.1 Probe Liner. Probe and nozzle brushes; Teflon® bristle brushes with stainless steel wire or Teflon® handles are required. The probe brush shall have extensions constructed of stainless steel, Teflon®, or inert material at least as long as the probe. The brushes shall be properly sized and shaped to brush out the probe liner and the probe nozzle.

6.2.2 Wash Bottles. Three. Teflon® or glass wash bottles are recommended; polyethylene wash bottles should not be used because organic contaminants may be extracted by exposure to organic solvents used for sample recovery.

6.2.3 Glass Sample Storage Containers. Chemically resistant, borosilicate amber glass bottles, 500-mL or 1,000-mL. Bottles should be tinted to prevent the action of light on the sample. Screw-cap liners shall be either Teflon® or constructed to be leak-free and resistant to chemical attack by organic recovery solvents. Narrow-mouth glass bottles have been found to leak less frequently.

6.2.4 Graduated Cylinder and/or Balances. To measure impinger contents to the nearest 1 ml or 1 g. Graduated cylinders shall have subdivisions not >2 mL. Laboratory balances capable of weighing to ±0.5 g or better are required.

6.2.5 Plastic Storage Containers. Screw-cap polypropylene or polyethylene containers to store silica gel and charcoal.

6.2.6 Funnel and Rubber Policeman. To aid in transfer of silica gel or charcoal to container (not necessary if silica gel is weighed in field).

6.2.7 Funnels. Glass, to aid in sample recovery.

6.3 Crushed Ice. Quantities ranging from 10–50 lb may be necessary during a sampling run, depending on ambient air temperature.

6.4 Stopcock Grease. The use of silicone grease is not permitted. Silicone grease usage is not necessary if screw-on connectors and Teflon® sleeves or ground-glass joints are used.

6.5 Sample Analysis. The following items are required for sample analysis.

6.5.1 Rotary Evaporator. Buchii Model EL–130 or equivalent.

6.5.2 1000 ml round bottom flask for use with a rotary evaporator.

6.5.3 Separatory Funnel. 500-ml or larger, with Teflon® Stopcock.

6.5.4 Glass Funnel. Short stemmed or equivalent.

6.5.5 Vials. 15-ml capacity with Teflon® lined caps.

6.5.6 Class A Volumetric Flasks. 10-ml for bringing samples to volume after concentration.

6.5.7 Filter Paper. Scientific Products Grade 370 Qualitative or equivalent.

6.5.8 Buchner Funnel. Porcelain with 100 mm ID or equivalent.

6.5.9 Erlenmeyer Flask. 500-ml with side arm and vacuum source.

6.5.10 HPLC with at least a binary pumping system capable of a programmed gradient.

6.5.11 Column. Alltech Altima C18, 250 mm × 4.6 mm ID, 5μm particle size (or equivalent).

6.5.12 Guard Column. Alltech Hypersil ODS C18, 10 mm × 4.6 mm ID, 5μm particle size (or equivalent).

6.5.13 UV detector at 254 nm.

6.5.14 Data system for measuring peak areas and retention times.

7.0 Reagents and Standards.

7.1 Sample Collection Reagents.

7.1.1 Charcoal. Activated, 6–16 mesh. Used to absorb toluene vapors and prevent them from entering the metering device. Use once with each train and discard.

7.1.2 Silica Gel. Indicating type, 6–16 mesh. If previously used, dry at 175 °C (350 °F) for 2 hours before using. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used, subject to the approval of the Administrator.

7.1.3 Impinger Solution. The impinger solution is prepared in the laboratory by mixing a known amount of 1-(2-pyridyl) piperazine (purity 99.5+ %) in toluene (HPLC grade or equivalent). The actual concentration of 1,2-PP should be approximately four times the amount needed to ensure that the capacity of the derivatizing solution is not exceeded. This amount shall be calculated from the stoichiometric relationship between 1,2-PP and the isocyanate of interest and preliminary information about the concentration of the isocyanate in the stack emissions. A concentration of 130 μg/ml of 1,2-PP in toluene can be used as a reference point. This solution should be prepared in the laboratory, stored in a refrigerated area away from light, and used within ten days of preparation.

7.2 Sample Recovery Reagents.

7.2.1 Toluene. Distilled-in-glass grade is required for sample recovery and cleanup (see Note to 7.2.2 below).

7.2.2 Acetonitrile. Distilled-in-glass grade is required for sample recovery and cleanup.

Note: Organic solvents from metal containers may have a high residue blank and should not be used. Sometimes suppliers transfer solvents from metal to glass bottles; thus blanks shall be run before field use and only solvents with a low blank value (<0.001%) shall be used.

7.3 Reagent grade chemicals should be used in all tests. All reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available.

7.3.1 Toluene, $C_6H_5CH_3$. HPLC Grade or equivalent.

7.3.2 Acetonitrile, CH_3CN (ACN). HPLC Grade or equivalent.

7.3.3 Methylene Chloride, CH_2CL_2. HPLC Grade or equivalent.

7.3.4 Hexane, C_6H_{14}. Pesticide Grade or equivalent.

7.3.5 Water, H_2O. HPLC Grade or equivalent.

7.3.6 Ammonium Acetate, $CH_3CO_2NH_4$.

7.3.7 Acetic Acid (glacial), CH_3CO_2H.

7.3.8 1-(2-Pyridyl) piperazine, (1,2-pp). Aldrich, 99.5+% or equivalent.

7.3.9 Absorption Solution. Prepare a solution of 1-(2-pyridyl) piperazine in toluene at a concentration of 40 mg/300 ml. This solution is used for method blanks and method spikes.

7.3.10 Ammonium Acetate Buffer Solution (AAB). Prepare a solution of ammonium acetate in water at a concentration of 0.1 M by transferring 7.705 g of ammonium acetate to a 1000 ml volumetric flask and diluting to volume with HPLC Grade water. Adjust pH to 6.2 with glacial acetic acid.

8.0 Sample Collection, Preservation, Storage and Transport.

8.1 Because of the complexity of this method, field personnel should be trained in and experienced with the test procedures in order to obtain reliable results.

8.2 Preliminary Field Determinations.

8.2.1 Select the sampling site and the minimum number of sampling points according to EPA Method 1 or as specified by the Administrator. Determine the stack pressure, temperature, and range of velocity heads using EPA Method 2. It is recommended that a leak-check of the pitot lines (see promulgated EPA Method 2, Section 3.1) be performed. Determine the stack gas moisture content using EPA Approximation Method 4 or its alternatives to establish estimates of isokinetic sampling-rate settings. Determine the stack-gas dry molecular weight, as described in promulgated EPA Method 2, Section 3.6. If integrated EPA Method 3 sampling is used for molecular weight determination, the integrated bag sample shall be taken simultaneously with, and for the same total length of time as, the sample run.

8.2.2 Select a nozzle size based on the range of velocity heads so that changing the nozzle size in order to maintain isokinetic sampling rates is not necessary. During the run, do not change the nozzle. Ensure that the proper differential pressure gauge is chosen for the range of velocity heads encountered (see Section 2.2 of promulgated EPA Method 2).

8.2.3 Select a suitable probe liner and probe length so that all traverse points can be sampled. For large stacks, to reduce the length of the probe, consider sampling from opposite sides of the stack.

8.2.4 A typical sample volume to be collected is 1 dscm (35.31 dscf). The sample volume can be adjusted as required by analytical detection limit constraints and/or estimated stack concentrations. A maximum limit should be determined to avoid exceeding the capacity of the reagent.

8.2.5 Determine the total length of sampling time needed to obtain the identified minimum volume by comparing the anticipated average sampling rate with the volume requirement. Allocate the same time to all traverse points defined by EPA Method 1. To avoid timekeeping errors, the length of time sampled at each traverse point should be an integer or an integer plus one-half min.

8.2.6 In some circumstances (e.g., batch cycles) sampling for shorter times at the traverse points may be necessary and to obtain smaller gas-sample volumes. In these cases, the Administrator's approval must first be obtained.

8.3 Preparation of Sampling Train.

8.3.1 During preparation and assembly of the sampling train, keep all openings where contamination can occur covered with Teflon® film or aluminum foil until just before assembly or until sampling is about to begin.

8.3.2 Place 300 ml of the impinger absorbing solution in the first impinger and 200 ml each in the second and third impingers. The fourth impinger shall remain empty. The fifth and sixth impingers shall have 400 g of preweighed charcoal and 200–300 g of silica gel, respectively.

8.3.3 When glass probe liners are used, install the selected nozzle using a Viton®-A O-ring when stack temperatures are <260 °C (500 °F) and a woven glass-fiber gasket when temperatures are higher. See APTD–0578 (Rom, 1972) for details. Other connecting systems using Teflon® ferrules may be used. Mark the probe with heat-resistant tape or by another method to denote the proper distance into the stack or duct for each sampling point.

8.3.4 Set up the train as shown in Figure 207–1. During assembly, do not use any silicone grease on ground-glass joints. Connect all temperature sensors to an appropriate potentiometer/display unit. Check all temperature sensors at ambient temperature.

8.3.5 Place crushed ice around the impingers.

8.3.6 Turn on the condenser coil coolant recirculating pump and begin monitoring the gas entry temperature. Ensure proper gas entry temperature before proceeding and again before any sampling is initiated. It is important that the gas entry temperature not exceed 50 °C (122 °F), thus reducing the loss of toluene from the first impinger.

8.3.7 Turn on and set the probe heating systems at the desired operating temperatures. Allow time for the temperature to stabilize.

8.4 Leak-Check Procedures.

8.4.1 Pre-test leak-check.

8.4.1.1 Because the additional connection in the train (over the EPA Method 5 Train) increases the possibility of leakage, a pre-test leak-check is required.

8.4.1.2 After the sampling train has been assembled, turn on and set the probe heating systems at the desired operating temperatures. Allow time for the temperatures to stabilize. If a Viton® A O-ring or other leak-free connection is used in assembling the probe nozzle to the probe liner, leak-check the train at the sampling site by plugging the nozzle and pulling a 381-mm Hg (15-in. Hg) vacuum. Leakage rates greater than 4% of the average sampling rate or >0.00057 m³/min (0.020 cfm), whichever is less, are unacceptable.

Note: A lower vacuum may be used, if it is not exceeded during the test.

8.4.1.3 The following leak-check instructions for the sampling train described in APTD–0576 and APTD–0581 may be helpful. Start the pump with the fine-adjust valve fully open and the coarse-adjust valve completely closed. Partially open the coarse-adjust valve and slowly close the fine-adjust valve until the desired vacuum is reached. Do *not* reverse direction of the fine-adjust valve; this will cause impinger contents to back up in the train. If the desired vacuum is exceeded, either leak-check at this higher vacuum or end the leak-check, as shown below, and start over.

8.4.1.4 When the leak-check is completed, first slowly remove the plug from the inlet to the probe. When the vacuum drops to 127 mm (5 in.) Hg or less, immediately close the coarse-adjust valve. Switch off the pumping system and reopen the fine-adjust valve. Do not reopen the fine-adjust valve until the coarse-adjust valve has been closed. This prevents the reagent in the impingers from being forced backward into the probe and silica gel from being entrained backward into the fifth impinger.

8.4.2 Leak-Checks During Sampling Run.

8.4.2.1 If, during the sampling run, a component change becomes necessary, a leak-check shall be conducted immediately after the interruption of sampling and before the change is made. The leak-check shall be done according to the procedure outlined in Paragraph 8.4.1, except that it shall be done at a vacuum greater than or equal to the maximum value recorded up to that point in the test. If the leakage rate is no greater than 0.00057 m³/min (0.020 cfm) or 4% of the average sampling rate (whichever is less), the results are acceptable, and no correction will need to be applied to the total volume of dry gas metered. If a higher leakage rate is obtained, the tester shall void the sampling run.

Note: Any "correction" of the sample volume by calculation reduces the integrity of the pollutant concentration data generated and must be avoided.

8.4.2.2 Immediately after a component change, and before sampling is restarted, a leak-check similar to a pre-test leak-check must also be conducted.

8.4.3 Post-Test Leak-Check.

8.4.3.1 A leak-check of the sampling train is mandatory at the conclusion of each sampling run. The leak-check shall be performed with the same procedures as those with the pre-test leak-check, except that it shall be conducted at a vacuum greater than or equal to the maximum value reached during the sampling run. If the leakage rate is no greater than 0.00057 m³/min (0.020 cfm) or 4% of the average sampling rate (whichever is less), the results are acceptable, and no correction need be applied to the total volume of dry gas metered. If, however, a higher leakage rate is obtained, the tester shall either record the leakage rate, correct the sample volume (as shown in Section 6.3 of Method 5), and consider the data obtained of questionable reliability, or void the sampling run.

8.5 Sampling-Train Operation.

8.5.1 During the sampling run, maintain an isokinetic sampling rate to within 10% of true isokinetic, unless otherwise specified by the Administrator.

8.5.2 For each run, record the data required on a data sheet such as the one shown in Figure 207–2. Be sure to record the initial dry-gas meter reading. Record the dry-gas meter readings at the beginning and end of each sampling time increment, when changes in flow rates are made before and after each leak-check, and when sampling is halted. Take other readings shown by Figure 207–2 at least once at each sample point during each time increment and additional readings when significant changes (20% variation in velocity-head readings) require additional adjustments in flow rate. Level and zero the manometer. Because the manometer level and zero may drift due to vibrations and temperature changes, make periodic checks during the traverse.

8.5.3 Clean the stack access ports before the test run to eliminate the chance of collecting deposited material. To begin sampling, verify that the probe heating system is at the specified temperature, remove the nozzle cap, and verify that the pitot tube and probe are properly positioned. Position the nozzle at the first traverse point, with the tip pointing directly into the gas stream. Immediately start the pump and adjust the flow to isokinetic conditions. Nomographs, which aid in the rapid adjustment of the isokinetic sampling rate without excessive computations, are available. These nomographs are designed for use when the Type S pitot-tube coefficient is 0.84±0.02 and the stack-gas equivalent density (dry molecular weight) is equal to 29±4. APTD–0576 details the procedure for using the nomographs. If the stack-gas molecular weight and the pitot-tube coefficient are outside the above ranges, do not use the nomographs unless appropriate steps (Shigehara, 1974, in Section 16.0, References) are taken to compensate for the deviations.

8.5.4 When the stack is under significant negative pressure (equivalent to the height of the impinger stem), take care to close the coarse-adjust valve before inserting the probe into the stack, to prevent the impinger solutions from backing into the probe. If necessary, the pump may be turned on with the coarse-adjust valve closed.

8.5.5 When the probe is in position, block off the openings around the probe and stack access port to prevent unrepresentative dilution of the gas stream.

8.5.6 Traverse the stack cross section, as required by EPA Method 1 or as specified by the Administrator, being careful not to bump the probe nozzle into the stack walls when sampling near the walls or when removing or inserting the probe through the access port, in order to reduce the chance of extracting deposited material.

8.5.7 During the test run, make periodic adjustments to keep the temperature of the condenser at the proper levels; add more ice and, if necessary, salt to maintain the temperature. Also, periodically check the level and zero of the manometer.

8.5.8 A single train shall be used for the entire sample run, except in cases where simultaneous sampling is required in two or more separate ducts or at two or more different locations within the same duct, or in cases where equipment failure requires a change of trains. In all other situations, the use of two or more trains will be subject to the approval of the Administrator.

8.5.9 At the end of the sample run, close the coarse-adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final dry-gas meter reading, and conduct a post-test leak-check. Also, leak-check the pitot lines as described in EPA Method 2. The lines must pass this leak-check in order to validate the velocity-head data.

8.5.10 Calculate percent isokineticity (see Section 6.11 of Method 5) to determine whether the run was valid or another test run should be performed.

8.6 Sample Recovery.

8.6.1 Preparation.

8.6.1.1 Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool. When the probe can be handled safely, wipe off all external particulate matter near the tip of the probe nozzle and place a cap over the tip to prevent losing or gaining particulate matter. Do not cap the probe tip tightly while the sampling train is cooling down because this will create a vacuum in the train.

8.6.1.2 Before moving the sample train to the cleanup site, remove the probe from the sample train and cap the open outlet, being careful not to lose any condensate that might be present. Cap the impinger inlet. Remove the umbilical cord from the last impinger and cap the impinger.

8.6.1.3 Transfer the probe and the impinger/condenser assembly to the cleanup area. This area should be clean and protected from the weather to reduce sample contamination or loss.

8.6.1.4 Save a portion of all washing solutions (toluene/acetonitrile) used for the cleanup as a blank. Transfer 200 ml of each solution directly from the wash bottle being used and place each in a separate, prelabeled glass sample container.

8.6.1.5 Inspect the train prior to and during disassembly and note any abnormal conditions.

8.6.2 Sample Containers.

8.6.2.1 Container No. 1. With the aid of an assistant, rinse the probe/nozzle first with toluene and then with acetonitrile by tilting and rotating the probe while squirting the solvent into the upper end of the probe so that all of the surfaces are wetted with solvent. When using these solvents insure that proper ventilation is available. Let the solvent drain into the container. If particulate is visible, use a Teflon® brush to loosen/remove the particulate and follow with a second rinse of each solvent. After weighing the contents of the first impinger, add it to container No. 1 along with the toluene and acetonitrile rinses of the impinger. (Acetonitrile will always be the final rinse.) If two liquid layers are present add both to the container. After all components have been collected in the container, seal the container, mark the liquid level on the bottle and add the proper label.

8.6.2.2 Container No. 2. After weighing the contents of the second, third and fourth impingers, add them to container No. 2 along with the toluene and acetonitrile rinses of the impingers, the condenser and all connecting glassware. After all components have been collected in the container, seal the container, mark the liquid level on the bottle and add the proper label.

8.6.3 The contents of the fifth and sixth impingers (charcoal and silica gel) can be discarded after they have been weighed.

8.6.4 Sample Preparation for Shipment. Prior to shipment, recheck all sample containers to ensure that the caps are well secured. Seal the lids with Teflon® tape. Ship

all samples upright, packed in ice, using the proper shipping materials as prescribed for hazardous materials. The samples must be stored at 4°C between the time of sampling and concentration. Each sample should be extracted and concentrated within 30 days after collection and analyzed within 30 days after extraction. The extracted sample must be stored at 4°C.

9.0 Quality Control.

9.1 Sampling. See EPA Manual 600/4–77–027b for Method 5 quality control.

9.1.1 Field Blanks. Field blanks must be submitted with the samples collected at each sampling site. The field blanks include the sample bottles containing aliquots of sample recovery solvents, and impinger solutions. At a minimum, one complete sampling train will be assembled in the field staging area, taken to the sampling area, and leak-checked at the beginning and end of the testing (or for the same total number of times as the actual test train). The probe of the blank train shall be heated during the sample test. The train will be recovered as if it were an actual test sample. No gaseous sample will be passed through the sampling train.

9.1.2 Reagent Blanks. An aliquot of toluene, acetonitrile and the impinger solution will be collected in the field as separate samples and returned to the laboratory for analysis to evaluate artifacts that may be observed in the actual samples.

9.2 Analysis.

9.2.1 The correlation coefficient for the calibration curve must be 0.995 or greater. If the correlation coefficient is less than 0.995, the HPLC system should be examined for problems, and a new calibration curve should be prepared and analyzed.

9.2.2 A solvent blank should be analyzed daily to verify that the system is not contaminated.

9.2.3 A calibration standard should be analyzed prior to any samples being analyzed, after every 10 injections and at the end of the sample set. Samples must be bracketed by calibration standards that have a response that does not vary by more than 10% of the target value. If the calibration standards are outside the limit, the samples must be reanalyzed after it is verified that the analytical system is in control.

9.2.4 A method blank should be prepared and analyzed for every 10 samples concentrated (Section 11.4).

9.2.5 A method spike should be prepared and analyzed for every 20 samples. The response for each analyte should be within 20% of the expected theoretical value of the method spike (Section 11.3).

10.0 Calibration and Standardization.

Note: Maintain a laboratory log of all calibrations.

10.1 Probe Nozzle. Probe nozzles shall be calibrated before their initial use in the field. Using a micrometer, measure the inside diameter of the nozzle to the nearest 0.025 mm (0.001 in.). Make measurements at three separate places across the diameter and obtain the average of the measurements. The difference between the high and low numbers shall not exceed 0.1 mm (0.004 in.). When nozzles become nicked, dented, or corroded, they shall be reshaped, sharpened, and recalibrated before use. Each nozzle shall be permanently and uniquely identified.

10.2 Pitot Tube Assembly. The Type S pitot tube assembly shall be calibrated according to the procedure outlined in Section 4 of promulgated EPA Method 2, or assigned a nominal coefficient of 0.84 if it is not visibly nicked, dented, or corroded and if it meets design and intercomponent spacing specifications.

10.3 Metering System.

10.3.1 Before its initial use in the field, the metering system shall be calibrated according to the procedure outlined in APTD–0576. Instead of physically adjusting the dry-gas meter dial readings to correspond to the wet-test meter readings, calibration factors may be used to correct the gas meter dial readings mathematically to the proper values. Before calibrating the metering system, it is suggested that a leak-check be conducted. For metering systems having diaphragm pumps, the normal leak-check procedure will not detect leakages within the pump. For these cases the following leak-check procedure is suggested: Make a 10-min calibration run at 0.00057 m^3/min (0.020 cfm); at the end of the run, take the difference of the measured wet-test and dry-gas meter volumes and divide the difference by 10 to get the leak rate. The leak rate should not exceed 0.00057 m^3/min (0.020 cfm).

10.3.2 After each field use, the calibration of the metering system shall be checked by performing three calibration runs at a single intermediate orifice setting (based on the previous field test). The vacuum shall be set at the maximum value reached during the test series. To adjust the vacuum, insert a valve between the wet-test meter and the inlet of the metering system. Calculate the average value of the calibration factor. If the calibration has changed by more than 5%, recalibrate the meter over the full range of orifice settings, as outlined in APTD–0576.

10.3.3 Leak-check of metering system. That portion of the sampling train from the pump to the orifice meter (see Figure 207–1) should be leak-checked prior to initial use and after each shipment. Leakage after the pump will result in less volume being recorded than is actually sampled. Close the main valve on the meter box. Insert a one-hole rubber stopper with rubber tubing attached into the orifice exhaust pipe. Disconnect and vent the low side of the orifice manometer. Close off the low side orifice tap. Pressurize the system to 13–18 cm (5–7 in.) water column by blowing into the rubber tubing. Pinch off the tubing and observe the manometer for 1 min. A loss of pressure on the manometer indicates a leak in the meter box. Leaks, if present, must be corrected.

Note: If the dry-gas-meter coefficient values obtained before and after a test series differ by >5%, either the test series shall be voided or calculations for test series shall be performed using whichever meter coefficient value (i.e., before or after) gives the lower value of total sample volume.

10.4 Probe Heater. The probe-heating system shall be calibrated before its initial use in the field according to the procedure outlined in APTD–0576. Probes constructed according to APTD–0561 need not be calibrated if the calibration curves in APTD–0576 are used.

10.5 Temperature Sensors. Each thermocouple must be permanently and uniquely marked on the casing; all mercury-in-glass reference thermometers must conform to ASTM E–1 63 specifications. Thermocouples should be calibrated in the laboratory with and without the use of extension leads. If extension leads are used in the field, the thermocouple readings at ambient air temperatures, with and without the extension lead, must be noted and recorded. Correction is necessary if the use of an extension lead produces a change >1.5%.

10.5.1 Dry-gas meter thermocouples. For the thermocouples used to measure the temperature of the gas leaving the impinger train three-point calibration at ice-water, room-air, and boiling-water temperatures is necessary. Accept the thermocouples only if the readings at all three temperatures agree to ±2°C (3.6°F) with those of the absolute value of the reference thermometer.

10.5.2 Probe and stack thermocouples. For the thermocouples used to indicate the probe and stack temperatures, a three-point calibration at ice-water, boiling-water, and hot-oil-bath temperatures must be performed; it is recommended that room-air temperature be added, and that the thermometer and the thermocouple agree to within 1.5% at each of the calibration points. A calibration curve (equation) may be constructed (calculated) and the data extrapolated to cover the entire temperature range suggested by the manufacturer.

10.6 Barometer. Adjust the barometer initially and prior to each test series to agree to within ±2.5 mm Hg (0.1 in. Hg) of the mercury barometer or the corrected barometric pressure value reported by a nearby National Weather Service Station (same altitude above sea level).

10.7 Balance. Calibrate the balance before each test series, using Class-S standard weights; the weights must be within ±0.5% of the standards, or the balance must be adjusted to meet these limits.

10.8 High Performance Liquid Chromatograph. Establish the retention times for each of the isocyanates of interest using the chromatographic conditions provided in Section 11.5.1. The retention times provided in Table 11.5.1–1 are provided as a guide to relative retention times. Prepare derivatized calibration standards (concentrations expressed in terms of the free isocyanate, Section 12.4) according to the procedure in Section 10.8.1. Calibrate the chromatographic system using the external standard technique (Section 10.8.2)

10.8.1 Preparation of calibration standards. Prepare a 100 µg/ml stock solution of the isocyanates of interest from the individual isocyanate-urea derivative as prepared in Sections 11.1.1 and 11.1.2. This is accomplished by dissolving 1 mg of each isocyanate-urea derivative in 10 ml of ACN. Calibration standards are prepared from this stock solution by making appropriate dilutions of aliquots of the stock into ACN. Calibrate the instrument from 1 to 20 µg/ml for HDI, TDI and MDI, and from 1 to 80 µg/ml for MI using at least six calibration points.

10.8.2 External standard calibration procedure. Analyze each derivatized

calibration standard using the chromatographic conditions listed in Section 11.5.1 and tabulate peak area against concentration injected. The working calibration curve must be verified on each working day by the measurement of one or more calibration standards. If the response for any analyte varies from the target response by more than 10%, the test must be repeated using a fresh calibration standard(s) after it is verified that the analytical system is under control. Alternatively, a new calibration curve may be prepared for that compound.

11.0 Analytical Procedure.

11.1 Preparation of isocyanate derivatives.

11.1.1 HDI, TDI, MDI.

11.1.1.1 Dissolve 500 mg of each isocyanate in individual 100 ml aliquots of $MeCl_2$, except MDI which requires 250 ml of $MeCl_2$. Transfer a 5-ml aliquot of 1,2-pp (see Section 7.3.8) to each solution, stir and allow to stand overnight at room temperature. Transfer 150 ml aliquots of hexane to each solution to precipitate the isocyanate-urea derivative. Using a Buchner funnel, vacuum filter the solid-isocyanate-urea derivative and wash with 50 ml of hexane. Dissolve the precipitate in a minimum aliquot of $MeCl_2$. Repeat the hexane precipitation and filtration twice. After the third filtration, dry the crystals at 50 °C and transfer to bottles for storage. The crystals are stable for at least 21 months when stored at room temperature in a closed container.

11.1.2 MI.

11.1.2.1 To prepare a 200 µg/ml stock solution of methyl isocyanate-urea, transfer 60 mg of 1,2-pp to a 100-ml volumetric flask containing 50 ml of $MeCl_2$. Carefully transfer 20 mg of methyl isocyanate to the volumetric flask and shake for 2 minutes. Dilute the solution to volume with $MeCl_2$ and transfer to a bottle for storage. Methyl isocyanate does not produce a solid derivative and standards must be prepared from this stock solution.

11.2 Concentration of Samples.

11.2.1 Transfer each sample to a 1000-ml round bottom flask. Attach the flask to a rotary evaporator and gently evaporate to dryness under vacuum in a 65 °C water bath. Rinse the round bottom flask three times each with two ml of ACN and transfer the rinse to a 10-ml volumetric flask. Dilute the sample to volume with ACN and transfer to a 15-ml vial and seal with a Teflon® lined lid. Store the vial at 4 °C until analysis.

11.3 Preparation of Method Spikes.

11.3.1 Prepare a method spike for every twenty samples. Transfer 300 ml of the absorption solution to a 1000-ml round bottom flask. Transfer 1 ml of a 100 µg/ml standard containing the isocyanate-urea derivatives of interest. Follow the procedure outlined in Section 11.2.1 for sample concentration. This will result in a method spike with a theoretical concentration of 10 µg/ml.

11.4 Preparation of Method Blanks.

11.4.1 Prepare a method blank for every ten samples by transferring 300 ml of the absorption solution to a 1000-ml round bottom flask and concentrate as outlined in Section 11.2.1.

11.5 Chromatographic Analysis.

11.5.1 Chromatographic Conditions.

Column	C18, 250 mm x 4.6 mm ID, 5µm particle size.
Mobile Phase	Acetonitrile/Ammonium Acetate Buffer.
Gradient	10:90 (v/v) ACN:AAB to 60:40 (v/v) ACN:AAB over 30 minutes.
Flow Rate	2 ml/min.
UV Detector	254 nm.
Injection Volume	50 µl.

11.5.2 Analysis.

11.5.2.1 Analyze samples by HPLC, using conditions established in Section 11.5.1.

11.5.2.2 The width of the retention time window used to make identifications should be based upon measurements of actual retention time variations of standards over the course of a day.

Three times the standard deviation of a retention time for a compound can be used to calculate a suggested window size; however, the experience of the analyst should weigh heavily in the interpretation of the chromatograms.

11.5.2.3 If the peak area exceeds the linear range of the calibration curve, the sample should be diluted with ACN and reanalyzed.

12.0 Data Analysis and Calculations.

Same as in Method 5, Section 6, with the following additions.

12.1 Perform Calculations. Round off figures after the final calculation to the correct number of significant figures.

12.2 Nomenclature. Same as Method 5, Section 6.1 with the following additions:

A_s = Response of the sample, area counts.

b = Y-intercept of the linear regression line, area counts.

C_I = Concentration of a specific isocyanate compound in the sample, µg/ml.

M = Slope of the linear regression line, area counts-ml/µg.

m_I = Mass of isocyanate in the total sample.

V_F = Final volume of concentrated sample, typically 10 ml.

$$\text{Amount of the isocyanate-urea} = \text{Amount of free isocyanate} * \left(\frac{\text{Molecular weight of the isocyanate-urea}}{\text{Molecular weight of the isocyanate}}\right) \quad \text{Eq. 207-1}$$

$V_{m(std)}$ = Volume of gas sample measured by the dry-gas meter, corrected to standard conditions, dscm (dscf).

12.3 Conversion from isocyanate to the isocyanate-urea derivative. The equation for converting the amount of free isocyanate to the corresponding amount of isocyanate-urea derivative is as follows:

The equation for converting the amount of isocyanate-urea derivative to the corresponding amount of free isocyanate is as follows:

$$\text{Amount of the isocyanate} = \text{Amount of isocyanate-urea} * \left(\frac{\text{Molecular weight of the isocyanate}}{\text{Molecular weight of the isocyanate-urea}}\right) \quad \text{Eq. 207-2}$$

12.4 Calculate the correlation coefficient, slope, and intercepts for the calibration data using the least squares method for linear regression. Concentrations are expressed as the x-variable and response is expressed as the y-variable.

12.5 Calculate the concentration of isocyanate in the sample:

$$C_I = \frac{(A_s - b)}{M} \quad \text{Eq. 207-3}$$

12.6 Calculate the total amount collected in the sample by multiplying the concentration (µg/ml) times the final volume of ACN (10 ml).

$$m_I = C_I V_F \quad \text{Eq. 207-4}$$

12.7 Calculate the concentration of isocyanate (µg/dscm) in the stack gas.

$$C_S = K \frac{m_I}{V_{m(std)}} \quad \text{Eq. 207-5}$$

Where:

K = 35.31 ft^3/m^3 if $V_{m(std)}$ is expressed in English units.

= 1.00 m^3/m^3 if $V_{m(std)}$ is expressed in metric units.

13.0 Method Performance.

13.1 Method Performance Evaluation. Evaluation of analytical procedures for a selected series of compounds must include the sample-preparation procedures and each associated analytical determination. The analytical procedures should be challenged by the test compounds spiked at appropriate levels and carried through the procedures.

13.2 Method Detection Limit. The overall method detection limits (lower and upper) must be determined on a compound-by-

compound basis because different compounds may exhibit different collection, retention, and extraction efficiencies as well as the instrumental minimum detection limit (MDL). The method detection limit must be quoted relative to a given sample volume. The upper limits for the method must be determined relative to compound retention volumes (breakthrough). Method Detection Limits may vary due to matrix effects and instrument conditions.

13.3 Method Precision and Bias. The overall method precision and bias must be determined on a compound-by-compound basis at a given concentration level. The method precision value would include a combined variability due to sampling, sample preparation, and instrumental analysis. The method bias would be dependent upon the collection, retention, and extraction efficiency of the train components. From evaluation studies to date using a dynamic spiking system, acceptable method biases (per EPA Method 301) have been determined for all four isocyanates. A precision of less than 10% relative standard deviation (RSD) has been calculated from field test data sets which resulted from a series of paired, unspiked and spiked trains.

14.0 Pollution Prevention. Not Applicable.

15.0 Waste Management. Not Applicable.

16.0 References.

1. Martin, R.M., Construction Details of Isokinetic Source-Sampling Equipment, Research Triangle Park, NC, U.S. Environmental Protection Agency, April 1971, PB–203 060/BE, APTD–0581, 35 pp.

2. Rom, J.J., Maintenance, Calibration, and Operation of Isokinetic Source Sampling Equipment, Research Triangle Park, NC, U.S. Environmental Protection Agency, March 1972, PB–209 022/BE, APTD–0576, 39 pp.

3. Schlickenrieder, L.M., Adams, J.W., and Thrun, K.E., Modified Method 5 Train and Source Assessment Sampling System: Operator's Manual, U.S. Environmental Protection Agency, EPA/600/8–85/003 (1985).

4. Shigehara, R.T., Adjustments in the EPA Nomograph for Different Pitot Tube Coefficients and Dry Molecular Weights, Stack Sampling News, 2:4–11 (October 1974).

5. U.S. Environmental Protection Agency, 40 CFR Part 60, Appendix A, Methods 1–5.

6. Vollaro, R.F., A Survey of Commercially Available Instrumentation for the Measurement of Low-Range Gas Velocities, Research Triangle Park, NC, U.S. Environmental Protection Agency, Emissions Measurement Branch, November 1976 (unpublished paper).

17.0 Tables, Diagrams, Flowcharts, and Validation Data.

TABLE 1.—MOLECULAR WEIGHT OF THE FREE ISOCYANATES AND THE ISOCYANATE-UREA DERIVATIVE

Analyte	MW (free isocyanate)	MW (Derivative)
1,6–HDI	168	494.44
2,4–TD	174.16	500.56
MDI	250.25	576.65

TABLE 2.—MOLECULAR WEIGHT OF FREE METHYL ISOCYANATE AND METHYL ISOCYANATE-UREA DERIVATIVE

Analyte	MW (free isocyanate)	MW (Derivative)
MI	57.1	220.32

TABLE 3.—RETENTION TIMES OF THE FOUR ISOCYANATES

Compound	Retention time (minutes)
MI	10.0
1,6–HDI	19.9
2,4–TDI	27.1
MDI	27.3

BILLING CODE 6560–50–P

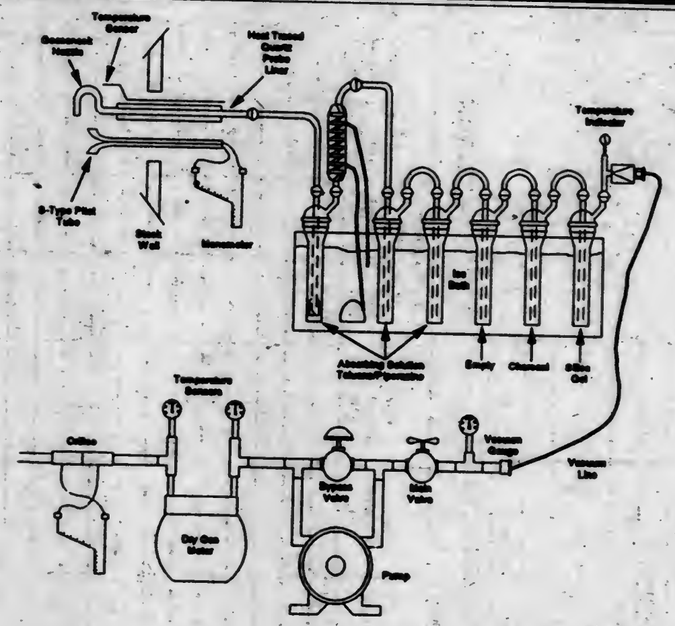


Figure 207-1-1. Sampling Train Configuration for Isocyanates

FIELD DATA

Run ____
Page 1 of ____

Diagram of Duct

Height of Location (ft)	
Duct Dimensions (in)	
Filter Number	
Assumed Moisture (%)	
O2 (%)	
CO2 (%)	
O2/CO2 Method	
Moisture Collected (g)	
Final Leak Check	

Probe Length and Type	
Nozzle ID (in.)	
Meter Box Number	
Meter ΔH@	
Y-d	
K Factor	
Probe Heater Setting (°F)	
Heater Box Setting (°F)	
Initial Leak Check	

Read and Record all Data Every ____ Minutes

Traverse Point Number	Sampling Time (min)	Clock Time (24-hr)	Gas Meter Reading Vm (ft³)	Velocity Head ΔP (in H2O)	Orifice Pressure Differential ΔH (in H2O)	Flue Gas Temperature (°F)	Probe Temperature (°F)	Filter Temperature (°F)	Dry Gas Meter Temperature Inlet (°F)	Dry Gas Meter Temperature Outlet (°F)	Impinger Exit (°F)	Pump Vacuum (in. Hg)

Comments:

[FR Doc. 97–32045 Filed 12–5–97; 8:45 am]
BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0060; FRL–5832–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from architectural coatings.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rulemaking will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, EPA's general rulemaking authority, plan submissions, and enforceability guidelines.

DATES: Comments must be received on or before January 7, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Comments must be submitted to Andrew Steckel at the Region IX office listed above. Copies of the rule revisions and EPA's evaluation report of this rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Bay Area Air Quality Management District (BAAQMD) Rule 8–3, Architectural Coatings. This rule was submitted by the California Air Resources Board to EPA on July 23, 1996.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or preamended Act), that included the San Francisco Bay Area. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

On November 12, 1993, BAAQMD submitted a request for redesignation to attainment of the ozone standard. Subsequently, EPA evaluated and approved BAAQMD's request and the San Francisco Bay Area was reclassified as an attainment area.[1]

The State of California submitted many rules for incorporation into its SIP on July 23, 1996, including the rule being acted on in this document. This document addresses EPA's proposed action for Bay Area Air Quality Management District Rule 8–3, Architectural Coatings. The Bay Area Air Quality Management District adopted Rule 8–3 on December 20, 1995. This submitted rule was found to be complete on October 30, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[2] and is being proposed for approval into the SIP.

The Bay Area Air Quality Management District Rule 8–3 controls volatile organic compound (VOC) emissions from architectural coatings. VOCs contribute to the production of ground-level ozone and smog. This rule was originally adopted as part of the district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 110(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, this rule was evaluated against the SIP enforceability guidelines found in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 Federal Register" (EPA's "Blue Book") and the EPA Region IX—California Air Resources Board document entitled "Guidance Document for Correcting VOC Rule Deficiencies" (April 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On January 24, 1985, EPA approved into the SIP a version of Rule 8–3, Architectural Coatings that had been adopted by the BAAQMD on May 18, 1983. The BAAQMD Rule 8–3 submitted on July 23, 1996 includes the following significant changes from the current SIP:

- Section 8–3–112, 8–3–227, 8–3–305, 8–3–402, and 8–3–403 remove the small business exemption, definition, and all references to it;
- Sections 8–3–212 and 8–3–213 consolidate the industrial maintenance finishes (topcoats) and industrial maintenance primers definitions;
- Section 8–3–233 revises the varnish definition;
- Section 8–3–236 through 8–3–245 define volatile organic compounds (VOCs) and nine subcategories of industrial maintenance coatings;
- Section 8–3–304 changes the effective date of VOC limits from September 1, 1989 to September 1, 1987;
- Section 8–3–306 provides that the most restrictive VOC limit shall apply; and
- Section 8–3–403 removes labeling requirements for coatings subject to interim VOC limits which have now expired.

[1] The San Francisco Bay Area was redesignated to attainment and was classified by operation of law pursuant to Sections 107(d) upon the date of enactment of the CAA. See 60 FR 98 (May 22, 1995). The EPA is proposing to redesignate the San Francisco Bay Area back to nonattainment for ozone based on a number of violations of the National Ambient Air Quality Standards (NAAQS).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

The BAAQMD staff report for Rule 8–3 states that the rule amendments will not change any existing VOC limits. EPA has evaluated the submitted rule and has determined that it is enforceable and strengthens the applicable SIP. Therefore, Bay Area Air Quality Management District Rule 8–3, Architectural Coatings is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and pursuant to EPA's authority under section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and 301 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 23, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–32043 Filed 12–5–97; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA63

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the comment period an additional 60 days on the Department of the Interior's Office of Hearings and Appeals' proposal to amend its rules to provide that, except as otherwise provided by law or other regulation, a decision will be stayed, if it is appealed, until there is a dispositive decision on the appeal.

DATES: Comments are due to the agency on or before February 6, 1998.

ADDRESSES: Send written comments to Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Comments received will be available for public inspection during regular business hours (9 a.m. to 5 p.m.) in the Office of the Director, Office of Hearings and Appeals, 11th Floor, 4015 Wilson Boulevard, Arlington, VA. Persons wishing to inspect comments are requested to call in advance at (703) 235–3810 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Bruce Harris, Deputy Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 235–3750.

SUPPLEMENTARY INFORMATION: On August 19, 1997, the Department of the Interior proposed to amend the regulation contained at 43 CFR 4.21 (August 28, 1997, 62 FR 45606). Comments to this proposed rule were to be received on or before September 29, 1997.

On October 3, 1997, the Department of the Interior extended the comment period an additional 60 days until December 2, 1997, in response to requests received from the National Mining Association and the Rocky Mountain Oil and Gas Association (RMOGA). (62 FR 51822).

The Director of the Office of Hearings and Appeals (OHA) received several letters requesting an additional extension of the comment period beyond December 2, 1997. In a letter dated November 21, 1997, RMOGA requested an additional 45-day extension of the comment period, to allow for receipt of data requested in a Freedom of Information Act (FOIA) request, and full analysis of the data and preparation of a thoughtful response to the proposed change. In addition, by letter dated November 19, 1997, ARCO Permian, a member of RMOGA, requested additional time to respond after review of the response to the RMOGA's FOIA request. By letter dated November 25, 1997, the Natural Gas Supply Association, the Mid-Continent Oil and Gas Association, the Domestic Petroleum Council, the National Ocean Industries Association, the Independent Petroleum Association of America, and the American Petroleum Institute requested a 60-day extension of the comment period to allow time for a complete and extensive analysis of the impact of adoption of this proposal on normal and planned activities by the oil and gas industry onshore and offshore, particularly in light of the Bureau of Land Management's (BLM's) proposed rulemaking published in the **Federal Register** on October 17, 1996. Finally, by letter dated November 24, 1997, Senator Frank H. Murkowski, Senator Larry E. Craig, and Senator Craig Thomas of the United States Senate Committee on Energy and Natural Resources, strongly urged the Director of OHA to extend the comment period for an additional 60 days, to allow the Committee to host a meeting with constituents to discuss the proposed change to 43 CFR 4.21 and the material requested by RMOGA under the Freedom of Information Act, as well as BLM's proposed rule to modify its appeal regulation.

The OHA has determined that an extension of time to obtain additional comments on the proposed rule is warranted and, therefore, the requested extension is granted. This notice announces that 60-day extension to the comment period.

Dated: December 2, 1997.

Barry E. Hill,

Director.

[FR Doc. 97–31963 Filed 12–5–97; 8:45 am]

BILLING CODE 4310–RK–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1843 and 1852

Equitable Adjustments Under Contracts for Construction, Dismantling, Demolishing, or Removing Improvements

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This is a proposed rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to set forth a clause that may be used for equitable adjustments under contracts for construction, and dismantling, demolishing, or removing improvements that are contemplated to be fixed-price and exceed the simplified acquisition threshold.

DATES: Comments must be received on or before February 6, 1998.

ADDRESSES: Submit comments to Mr. Joseph Le Cren, NASA Headquarters, Code HK, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

Some NASA field installations have used clauses containing ceilings on indirect costs and profit as a means for handling equitable adjustments under construction contracts. Instead of each installation using its own clause, there is a consensus that it would be in both NASA's and the contractors' interests to have a standard clause to establish greater consistency throughout the agency. The proposed clause also would reduce the administrative burden associated with the development of an equitable adjustment clause on an installation-by-installation or contract-by-contract basis.

Neither the use of the proposed clause nor the language contained in it would be mandatory. This flexibility is being provided so that the clause is used only when it is considered appropriate and to allow for differences, such as in terminology, that exist in the construction industry in different parts of the United States. The ceiling indirect cost and profit rates contained in the clause, although not mandatory, are benchmarks as to what is generally considered reasonable. The rates are considered reasonable based on NASA's experience with equitable adjustments for construction. In addition, the ceiling rates contained in the proposed clause are the same as those that have been used for many years by both the General Services Administration and the Department of Veterans Affairs. The rates used by these agencies have significance since they have much larger construction budgets than NASA.

Impact

NASA certifies that this proposed regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1843 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1843 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1843 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1843—CONTRACT MODIFICATIONS

1843.205–70 [Amended]

2. In section 1843.205–70, the designated paragraphs (a), (b), and (c) are redesignated as paragraphs (a)(1), (2) and (3), and a new paragraph (b) is added to read as follows:

1843.205–70 NASA contract clause.

* * * * *

(b) the contracting officer may insert a clause substantially as stated at 1852.243–72, Equitable Adjustments, in solicitations and contracts for—

(1) Dismantling, demolishing, or removing improvements; or

(2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.243–72 [Added]

3. Section 1852.243–72 is added to read as follows:

1852.243–72 Equitable Adjustments.

As prescribed in 1843.205–70(b), insert the following clause.

Equitable Adjustments

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the "Suspension of Work" clause (FAR 52.242–14), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. "Commission" is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

	Overhead (percent)	Profit (percent)	Commission (percent)
To Contractor on work performed by other than its own forces	.....	.....	10
To first tier subcontractor on work performed by its subcontractors	.....	.....	10
To Contractor and/or subcontractors on work performed with their own forces	10	10	.....

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

[FR Doc. 97–31935 Filed 12–5–97; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–97–3144]

RIN 2127–AG74

Side Impact Anthropomorphic Test Dummy

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes specifications and qualification requirements for a newly-developed anthropomorphic test dummy. The dummy would be used in compliance testing under an earlier companion proposal to amend the standard on head impact protection. The earlier proposal would facilitate the introduction of dynamic side impact protection devices by permitting vehicle manufacturers to comply with alternative performance requirements. To demonstrate compliance with those requirements, that proposal specifies a dynamic crash test which uses the new dummy.

DATES: Comment closing date: Comments on this notice must be received by NHTSA no later than January 22 1998.

ADDRESSES: Any comments should refer to the docket and notice number of this notice and be submitted (preferably in 10 copies) to: U.S. Department of Transportation, Docket Management Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590:

For non-legal issues: Stan Backaitis, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–4912, facsimile (202) 366–4329, electronic mail "sbackaitis@nhtsa.dot.gov".

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820, electronic mail "omatheke@nhtsa.dot.gov".

SUPPLEMENTARY INFORMATION:

I. Background

This proposal supplements an earlier proposal previously published in the **Federal Register** that would amend Federal Motor Vehicle Safety Standard (FMVSS) No. 201, Head Impact Protection. [62 FR 45202] The earlier companion proposal would facilitate the introduction of dynamic side impact protection devices by permitting vehicle manufacturers to comply with alternative performance requirements. To demonstrate compliance with those requirements, that proposal specifies a dynamic crash test. In the test, a vehicle would be propelled sideways at a speed of 29 km/h (18 mph) into a 254 mm (10 inch) rigid pole. An anthropomorphic test dummy would be in the outboard front seat on the struck side of the vehicle. This notice proposes the specifications and calibration requirements for that test dummy.

The dummy proposed in this notice is based on two existing dummies, the part 572, subpart F anthropomorphic test device (Side Impact Dummy or SID) that is used in testing under FMVSS 214, Side Impact Protection, and the part 572, subpart E anthropomorphic test device (Hybrid III or HIII) that is used in testing under FMVSS 208, Occupant Crash Protection. The proposed dummy would combine the head and neck of the Hybrid III (HIII) with the torso and extremities of the Side Impact Dummy (SID) through the use of a redesigned neck bracket. The agency tentatively concludes that the resulting SID/HIII dummy would be operational and adequate for use in the proposed rule.

II. Agency Proposal

The specifications for the proposed side impact dummy would consist of (1) a drawing package containing all of the technical details of the neck bracket used for mating the SID torso with the HIII head and neck assembly, (2) a parts list, and (3) a SID/HIII user manual containing instructions for inspection, assembly, disassembly, use, and adjustments of dummy components. These drawings and specifications would ensure that the dummies would be the same in their construction. The performance calibration tests proposed in this NPRM would serve to assure that the SID/HIII responses are within the established biomechanical corridors and further assure the uniformity of dummy assembly, structural integrity, and adequacy of instrumentation. As a result, the repeatability of the dummy's performance in dynamic testing would be ensured.

The dummy would be instrumented with an accelerometer array for measurement of accelerations in the head during impacts. The rule would specify the manner and location of installation of sensors to reduce variability in their measurements that might otherwise result from differences in location and mounting.

Drawings and specifications for the SID/HIII are available for examination in the NHTSA Docket Section. Copies of those materials and the user manual may also be obtained from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, Md. 20705, tel. (301) 210–5600. In addition, an engineering drawing for the neck bracket and the neck brackets themselves are available on a short term loan basis from the NHTSA Vehicle Research and Test Center, East Liberty, Ohio 43319, tel. (937) 666–4511.

A. Description

On August 26, 1997, NHTSA published a notice of proposed rulemaking [62 FR 45202] containing amendments to Standard No. 201. The proposed amendments, offered in an effort to provide maximum flexibility to manufacturers in developing dynamic head protection systems, include an optional test procedure incorporating a full scale side impact test with a 29 km/h (18 mph) side impact into a 254 mm (10 inch) rigid pole. In this test, the subject vehicle would be propelled into the pole so that the pole would impact at the center of gravity of the head of a seated dummy positioned on the designated front outboard seating position of the struck side.

Since the free motion headform (FMH) used in Standard 201 testing cannot be used for evaluating HIC in such an impact and the Hybrid III head and neck assembly appears to be the most biofidelic test device currently available for evaluating head injury in side impacts, the agency is proposing that the Hybrid III head and neck be used with the existing SID dummy for this test. The Hybrid III head and neck currently provides the best means for evaluating head injury in this test while the use of the SID torso affords an opportunity to collect meaningful data relating to thoracic injuries.

The SID (part 572; subpart F) body and lower extremities would be combined with the Hybrid III (part 572; subpart E) head and neck assembly to form a new dummy test device called SID/HIII (part 572; subpart M). The SID/HIII at 170 lbs is approximately 1.2 lbs heavier than the SID, due to the incremental weight increase of the Hybrid III neck component and the new neck bracket. However, the SID/HIII is approximately 2.0 lbs lighter than the Hybrid III 50th percentile dummy (172 lbs +/−2.4 lbs). Therefore, the weight of the SID/HIII dummy would be within the limits of the existing SID and Hybrid III dummies. The new neck bracket is designed so that the seating height of the SID and the SID/HIII would be nearly identical. To accommodate the new neck bracket, the design of the existing upper and middle shoulder foam pads were revised from one piece to two piece right and left mirror image designs without altering either the padding's peripheral shape and its thickness or its attachment to the torso. Relative to the SID, the head center of gravity (head CG) of the SID/HIII is, however, 0.75 inch higher and 0.25 inch more forward when the Hybrid III head/neck assembly is mounted to the SID torso using the new neck bracket. This change also more correctly reflects the head and neck orientation of a seated occupant. As discussed in the Preliminary Regulatory Evaluation (PRE) for the earlier companion proposal to amend Standard 201, agency test data established that this minor discrepancy of the head CG location would not have any significant effect on the HIC, TTI and Pelvis-G responses. Detailed descriptions of the SID/HIII dummy test device are given in the proposed part 572, subpart M, S572.110 through S572.116.

B. Biofidelity of the SID/HIII Dummy in Lateral Impact

The agency has tentatively concluded that the Hybrid III head and neck is the most biofidelic configuration now available for assessing injuries to the head and neck in side impacts. That conclusion was based on testing of the three side impact dummies; BioSid,[1] EuroSid and SID. The testing was performed in 1990 by two GM researchers (Mertz and Irwin) using the latest biofidelity test conditions and requirements agreed to by Working Group 5 of ISO/T22/SC12 at that time. A total of 4 sets of tests were performed. Because BioSid uses the Hybrid III head and neck assembly, the test data generated to verify the lateral impact response characteristics of the BioSid head/neck system are believed by NHTSA to be useful in predicting the performance of the SID/HIII dummy.

The agency's review of these tests, which is discussed in greater detail in the PRE prepared for the August 26, 1997 NPRM proposing changes to Standard 201, indicates that the Hybrid III head-neck assembly has sufficient biofidelity for assessing side impact protection. Using the ISO/SC12/WG5 methodology and biofidelity rating system for the assessment of the various body segments, NHTSA rates the SID/HIII dummy "Fair" for side impact application purposes. In comparison, the BioSid received a "Fair" rating while the SID and the EuroSid were both deemed to be "Marginal." None of the dummies evaluated received a rating greater than "Fair"—which exceeds the ISO/SC12/WG5 recommended acceptable level for a dummy test device. Although a better side impact dummy may be developed in the future, based on the above analysis, NHTSA tentatively concludes that, for the immediate future, the SID/HIII is a sufficient and an acceptable test device to evaluate the risk of injury to the head in case of a side impact.

C. Test Results of the SID/HIII Dummy

(1) Repeatability and Reproducibility Tests

In 1990, NHTSA issued a final rule amending FMVSS No. 214 to require full scale side crash tests to evaluate side impact protection of passenger vehicles. The rule specified the use of the SID dummy as a human surrogate to assess the risk of injury in side crashes. Two alternative dummy development efforts, the EuroSid-1 and the BioSid, were in progress at that time. The BioSid uses the Hybrid III head/neck system. NHTSA evaluated the BioSid in 1988 and compared its performance to the SID. A series of lateral impact calibration tests were performed in 1990 using two BioSid dummies. It was concluded that the calibration responses of the BioSid are both repeatable and reproducible to within the response boundaries generally accepted for anthropomorphic test dummies. The results of the lateral head drop tests and lateral neck pendulum tests of those two BioSid dummies are listed in Table IV–8 of the PRE prepared for the August 26, 1997 NPRM proposing amendments to Standard 201. The agency also conducted two additional lateral head drop tests and five neck pendulum tests using the head/neck components of a third dummy. The test results also are listed in Table IV–8 of the PRE.

Based on those test data, the repeatability of the dummy head/neck certification response was found to be exceptionally good. The coefficient of variation for each dummy component is extremely small, ranging from 0.97 percent to 2.6 percent. The reproducibility of the head/neck system response of the two BioSid dummies that were manufactured by one manufacturer at the same period of time is also excellent because the coefficient of variation is within the 5 percent norm. When the test data of the third dummy is added for the reproducibility

[1] The BioSid dummy was developed in response to concerns regarding the SID and EuroSid dummies. It was developed by a Side Impact Dummy Task Force created under the sponsorship of the Society of Automotive Engineers Human Biomechanics and Simulation Standards Commitee (SAE–HBSSC).

evaluation, the coefficient of variation of the neck rotation angle in lateral bending motion increases to approximately 5.5 percent which is just slightly outside the range of the "excellent" reproducibility rating. It is within the "good" reproducibility rating that is generally defined by a coefficient of variation ranging between 5 percent and 10 percent. Although as a result of the additional dummy test the deviations of the head acceleration and the neck moment responses also increase, they are still within the "excellent" reproducibility rating range.

(2) Durability Tests

BMW recently conducted a series of side-to-pole impact tests to assess the effectiveness of its inflatable tubular structure (ITS) system in side impact protection. On April 19, 1996, BMW submitted its confidential test data to NHTSA as part of the BMW comments on the ANPRM announcing the proposed amendments to Standard 201. [61 FR 9136] The dummy test device used in the BMW ITS evaluation tests is a SID dummy with the Hybrid III head/neck system whose seated height is approximately 0.75 inches higher than that of the SID. However, it was also noted that the head CG of the BMW dummy was about 1.5 inches higher than that of the SID dummy.

It is possible that a taller seated dummy, particularly whose head CG is substantially higher, may exhibit modified head/neck kinematics and/or dynamic responses in a lateral impact, which could lead to the design of different head protection systems. The agency tentatively concludes that it is reasonable to modify the existing neck bracket in order to maintain the dummy's seated height within the range of heights of 50th percentile male dummies. For this reason, the NHTSA modified neck bracket provides a means to approximate the original SID seated height and the head/neck posture while minimizing the increase in the height of the head CG of the SID/HIII dummy by approximately 0.75 inch. Inasmuch as the above changes minimize the dimensional and mass distribution deviations from the currently specified SID, the new neck bracket is included in the construction of the SID/HIII dummy.

A total of nine sled lateral impact tests were conducted by NHTSA to assess the durability of the new neck bracket and its potential effects on dummy responses. The sled buck consisted of a bench seat with low friction surfaces and two rigid loading plates on the impacted side at the lateral end of the seat. The lower plate was up to the dummy's shoulder height and was covered with 4 inch thick cushion (Ethafoam LC 220). The non-padded upper plate was at the head height level.

In each test, the SID/HIII was seated on the bench with the torso in an upright position. The sled buck was oriented at a right angle to the direction of sled travel and accelerated to a speed of 18 mph. The direction of motion of the dummy was horizontal, parallel to the seating surface and perpendicular to and toward the loading plates. The test matrix consisted of three tests each for the Part 572 Subpart F SID dummy, the SID with the Hybrid III head/neck using the Subpart F neck bracket, and the SID/HIII dummy with the new neck bracket.

The test results, contained in Table IV–10 of the PRE prepared for the August 26, 1997 NPRM proposing amendments to Standard 201, indicate that the proposed new neck bracket is structurally sufficient and durable for the intended purpose. There was no sign of bracket damage in head impacts producing a HIC value as high as approximately 5,000. This impact severity is beyond the norm of the head-to-upper interior impact test responses. Most important, the new neck bracket would bring the head height down to the normal range of the 50th percentile male seated dummy and does not have significant effects on the HIC, TTI and pelvis-g responses.

D. Proposed Calibration Tests

The agency proposes that the following calibration test specifications and procedures, which make use of the existing dummy test fixtures and equipment, be adopted for the SID/HIII:

1. Head Drop Test Specifications

The head is dropped from 200 mm onto a flat, steel plate such that its midsagittal plane makes a 35 degree angle with respect to the impact surface and its anterior-posterior axis is horizontal. When the dummy head is dropped in accordance with the above test procedure, the following specifications are to be met:

a. The resultant acceleration of the center of gravity of the head shall be between 120 and 150 G.

b. The resultant acceleration-time curve shall be unimodal such that no oscillation after the main acceleration peak shall exceed 15 percent of the peak resultant head acceleration.

c. The longitudinal acceleration component shall not exceed 15 G.

2. Neck Pendulum Test Specifications

The proposed test procedure is similar to the Hybrid III neck test, except the entire head/neck assembly is rotated 90 degrees when attached to the neck pendulum. The pendulum is identical to that used in the Hybrid III neck calibration tests and the impact velocity is between 6.89 and 7.13 m/s. When the neck is tested in accordance with the proposed test procedure, the following specifications are to be met:

a. The pendulum deceleration pulse is to be characterized in terms of its change (decrease) in velocity as obtained by integrating the pendulum accelerometer output.

Time (ms)	Pendulum Delta-V (m/s)
10	1.96 to 2.55.
20	4.12 to 5.10.
30	5.73 to 7.01.
40 to 70	6.27 to 7.64.

b. The maximum rotation of the midsagittal plane of the head shall be 64 to 78 degrees with respect to the pendulum. The decaying head rotation vs. time curve shall cross the zero angle between 50 to 70 ms after reaching its peak value.

c. The moment about the x-axis which lies in the midsagittal plane of the head at the level of the occipital condyles shall have a maximum value between 86 and 108 Nm. The decaying moment vs. time curve shall first cross zero moment between 40 and 60 ms after reaching its peak value.

The following formula is to be used to calculate the moment about the occipital condyles when using the six-axis neck transducer:

$M=Mx+0.01778 Fy$

Where Mx and Fy are the moment and force measured by the transducer and expressed in terms of Nm and N, respectively.

d. The maximum rotation of the head with respect to the pendulum shall occur between 0 and 20 ms after peak moment.

3. Temperature Sensitivity and Time Between Tests

The calibration test specifications for the Hybrid III head and neck components apply. The lateral head drop tests would be conducted at 18.9–25.6 degrees C at a relative humidity from 10–70 percent. The lateral neck pendulum tests would be conducted at 20.6–22.2 degrees C at a relative humidity from 10–70 percent.

The head and neck components would be soaked at these conditions for at least four hours before testing. A waiting period of two hours would be required between two consecutive tests using the same head component. A waiting period of at least thirty (30) minutes would be required between successive tests on the same neck.

III. Rulemaking Analyses and Notices

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Polices and Procedures

This notice was not reviewed pursuant to E.O. 12866, "Regulatory Planning and Review." NHTSA has considered the impacts of this rulemaking action and determined that it is not significant within the meaning of the Department of Transportation's regulatory policies and procedures.

The proposed amendments would not require any vehicle design changes but would instead only specify the construction of a new neck bracket to join existing components to create the test dummies used to evaluate a vehicle's compliance with Standard No. 201 under one of three test options. The agency believes that the cost of the new neck bracket is approximately $200 to $300. The neck bracket is the only new hardware that would be required for those already employing the SID and HIII dummies for compliance testing to standards other than Standard 201. Costs associated with the use of the proposed SID/HIII in the optional side impact test proposed in the August 26, 1997 NPRM are estimated to be $1,750 for calibration tests for the head, neck, lumbar spine, thorax and pelvis. Therefore, the impacts of the proposed amendments would be so minimal that a full regulatory evaluation is not required.

The agency has prepared a Preliminary Regulatory Evaluation describing the economic and other effects of the rulemaking action proposing amendments to Standard No. 201 requiring the use of this proposed test dummy. Summary discussions of many of those effects are provided above. For persons wishing to examine the full analysis, a copy is being placed in the docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354) requires each agency to evaluate the potential effects of a proposed rule on small businesses. Modifications to dummy designs affect motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or less.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to perform testing that would require use of the SID/HIII test device and would be much more likely to contract with a larger manufacturer or a test facility to perform such testing. For this reason, NHTSA believes that this proposal would not have a significant impact on any small business.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Public Law 96–511), there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism) and Unfunded Mandates Act

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

In issuing this proposal for specifications to create a new test dummy by joining components of two existing dummies with a new neck bracket, the agency notes, for the purposes of the Unfunded Mandates Act, that it is pursuing the least cost alternative. Also, as noted above, this test device will be used if a manufacturer chooses one of three options to test for compliance with Standard 201. As the selection of that option would not be required by this proposal or by the earlier companion proposal, and as this rulemaking does not require use of this new test dummy, this rulemaking does not impose new costs. While manufacturers choosing to test for compliance under the optional tests requiring use of the proposed test dummy would incur additional costs, these costs would be negligible.

F. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon

receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, it is proposed that 49 CFR part 572 be amended as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. A new Subpart M, consisting of sections 572.110 through 572.116 would be added to read as follows:

Subpart M—Side Impact Hybrid Dummy 50th Percentile Male

Sec.

572.110 Incorporated materials.
572.111 General description.
572.112 Head assembly.
572.113 Neck assembly.
572.114 Thorax.
572.115 Lumbar spine and pelvis.
572.116 Instrumentation and test conditions.

Subpart M—Side Impact Hybrid Dummy 50th Percentile Male

§ 572.110 Incorporated materials.

(a) The drawings, specifications, and manual referred to in this subpart that are not set forth in full are hereby incorporated in this part by reference. These materials are thereby made part of this subpart.

(b) The materials incorporated in this part by reference are available for examination in the general reference section of Docket No. 88–07, Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC.

§ 572.111 General description.

(a) The dummy consists of component parts and component assemblies defined in drawing SA–SIDH3–M001, dated 4/19/1997, which are described in approximately 200 drawings and specifications that are set forth in §§ 572.32, 572.33 and 572.41(a)(3), (4), (5) and (6), and in the drawing of the Adaptor Bracket 96–SIDH3–001.

(1) The head assembly consists of the assembly specified in subpart E (§ 572.32) and conforms to each of the drawings subtended under drawing 78051–61X rev. C.

(2) The neck assembly consists of the assembly specified in subpart E (§ 572.33) and conforms to each of the drawings subtended under drawing 78051–90 rev. A.

(3) The thorax assembly consists of the assembly shown as number SID 053 and conforms to each applicable drawing subtended by number SA–SID M030 rev. A.

(4) The lumbar spine consists of the assembly specified in subpart B (§ 572.9(a)) and conforms to drawing SA 150 M050 and drawings subtended by SA–SID M050 rev. A.

(5) The abdomen and pelvis consist of the assembly specified in subpart B (§ 572.9) and conform to the drawings subtended by SA 150 M060, the drawings subtended by SA 150 M060 rev. A and the drawings subtended by SA–SID–087 sheet 1 rev. H, and SA–SID–87 sheet 2 rev. H.

(6) The lower limbs consist of the assemblies specified in subpart B (§ 572.10) shown as SA 150 M060 and SA 150 M061 in Figure 1 and SA–SID–M060 and SA–SID–M061 and conform to the drawings subtended by those numbers.

(7) The neck mounting adaptor bracket conforms to drawing 96–SIDH3–001.

(8) Upper and middle shoulder foams conform to drawing 96–SIDH3–006.

(b) The structural properties of the dummy are such that the dummy conforms to the specifications of this Subpart in every respect both before and after being used in vehicle tests specified in Standard No. 201.

(c) Disassembly, inspection and assembly procedures, external dimensions, weight and drawing list are set forth in the SIDH3 User's Manual, dated May 1997.

(d) Sign convention for signal outputs is given in the reference document SAE J1733 of 1994–12, "Sign Convention for Vehicle Crash Testing", SAE, Warrendale, Pa.

§ 572.112 Head assembly.

The head assembly consists of the head (drawing 78051–61X, rev. C) with the neck transducer structural replacement (drawing 78051–383X, rev. P) and three (3) accelerometers that are mounted in conformance to S572.36(c).

(a) *Test Procedure.* (1) Soak the head assembly in a test environment at any temperature between 18.9 to 25.6 degrees C. (66 to 78 degrees F.) and at a relative humidity from 10 percent to 70 percent for a period of at least four (4) hours prior to its application in a test.

(2) Clean the impact surface of the head skin and impact plate surface with 1,1,1 trichloroethane or equivalent prior to the test.

(3) Suspend the head, as shown in Figure 51, so that the midsagittal plane makes an angle of 35 +/−1 degrees with the impact surface and its anterior-posterior axis is horizontal +/−1 degree.

(4) Drop the head from a height of 200 +/−0.25 mm (7.87 +/−0.01 inches), measured from the lowest point on the head, by a means that ensures a smooth, clean release into a rigidly supported flat horizontal steel plate, which is 50 +/−2 mm thick and 610 +/−10 mm square. The plate shall have a clear, dry surface and has any microfinish of 8 to 80 microinch/inch rms.

(5) Allow at least two (2) hours between successive tests on the same head.

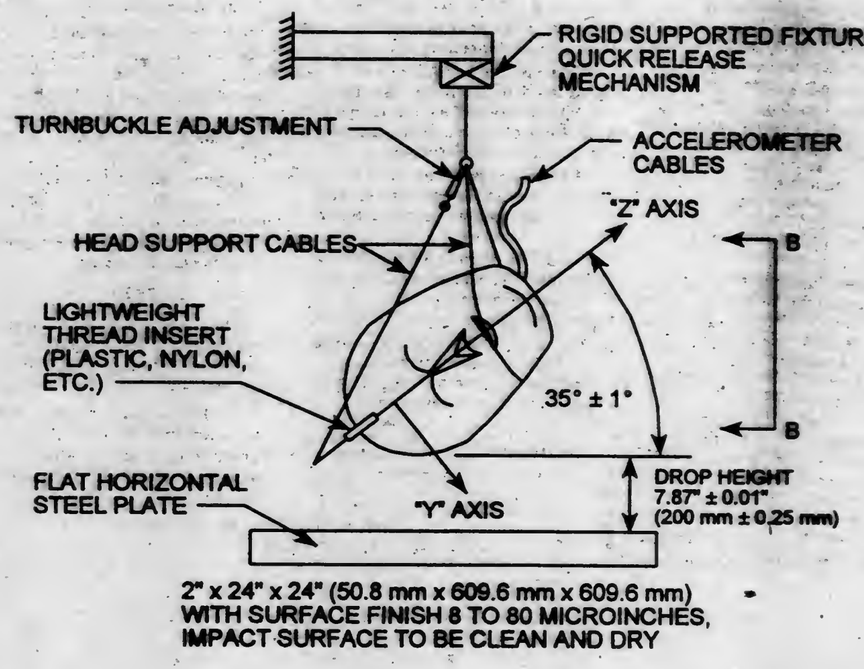
(b) *Performance Criteria.* (1) When the head assembly is dropped in accordance with S572.112(a), the measured peak resultant acceleration shall be between 120 and 150 G's.

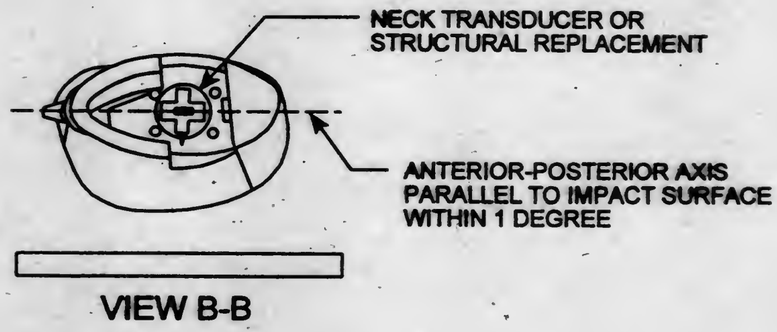
(2) The resultant acceleration-time curve shall be unimodal to the extent that oscillations occurring after the main acceleration pulse shall not exceed 15 percent (zero to peak) of the main pulse. The longitudinal acceleration vector shall not exceed 15 G's.

BILLING CODE 4910–59–P

Figure 51

HEAD DROP TEST





VIEW B-B

BILLING CODE 4910–59–C

§ 572.113 Neck assembly.

The head/neck assembly (consisting of the parts 78051–61X, rev. C; –84; –90, rev. A; –94; –98; –104, revision F; –303, rev. E; –305; –306; –307, rev. X) which has a six axis neck transducer (drawing C–1709, revision D) installed in conformance with S572.36(d).

(a) *Test Procedure.* (1) Soak the head and neck assembly in a test environment at any temperature between 20.6 to 22.2 degrees C. (69 to 72 degrees F.) and at a relative humidity from 10 percent to 70 percent for a period of at least four (4) hours prior to its application in a test.

(2) Torque the jamnut (78051–64) on the neck cable (78051–301, rev. E) to 1.35+/−0.27 Nm (1.0 +/−0.2 ft-lb) before each test.

(3) Using neck brackets 78051–303 and −307, mount the head/neck assembly to the part 572 pendulum test fixture (see S572.33, Figure 22) so that the midsagittal plane of the head is vertical and perpendicular to the plane of motion of the pendulum's longitudinal centerline (see S572.33, Figure 20, except that the direction of the head/neck assembly is rotated around the superior-inferior axis by an angle of 90 degrees). Install suitable transducers or other devices necessary for measuring the "D" plane (horizontal surface at the base of the skull) rotation with respect to the pendulum's longitudinal centerline. The rotation can be measured by placing a transducer at the occipital condyles and another at the intersection of the centerline of the neck and the line extending from the base of the neck as shown in Figure 52.

(4) Allow the neck to flex without the head or neck contacting any object.

(5) Release the pendulum and allow it to fall freely from a height to achieve an impact velocity of 6.89 to 7.13 m/s (22.6 to 23.4 ft/sec) measured at the center of the pendulum accelerometer.

(6) Time zero is defined as the time of initial contact between the striker plate and the pendulum deceleration medium.

(7) Allow a period of at least thirty (30) minutes between successive tests on the same neck assembly.

(b) *Performance Criteria.* (1) The pendulum deceleration pulse is to be characterized in terms of decrease in velocity as obtained by integrating the pendulum acceleration output.

Time (ms)	Pendulum Delta-V (m/s)
10	1.96 to 2.55.
20	4.12 to 5.10.
30	5.73 to 7.01.
40 to 70	6.27 to 7.64.

(2) The maximum rotation of the midsagittal plane of the head shall be 64 to 78 degrees with respect to the pendulum's longitudinal centerline. The decaying head rotation vs. time curve shall cross the zero angle between 50 to 70 ms after reaching its peak value.

(3) The moment about the x-axis which coincides with the midsagittal plane of the head at the level of the occipital condyles shall have a maximum value between 88 and 108 Nm. The decaying moment vs. time curve shall first cross zero moment between 40 and 60 ms after reaching its peak value. The following formula is to be used to calculate the moment about the occipital condyles when using the six-axis neck transducer:

M=Mx+0.01778 Fy

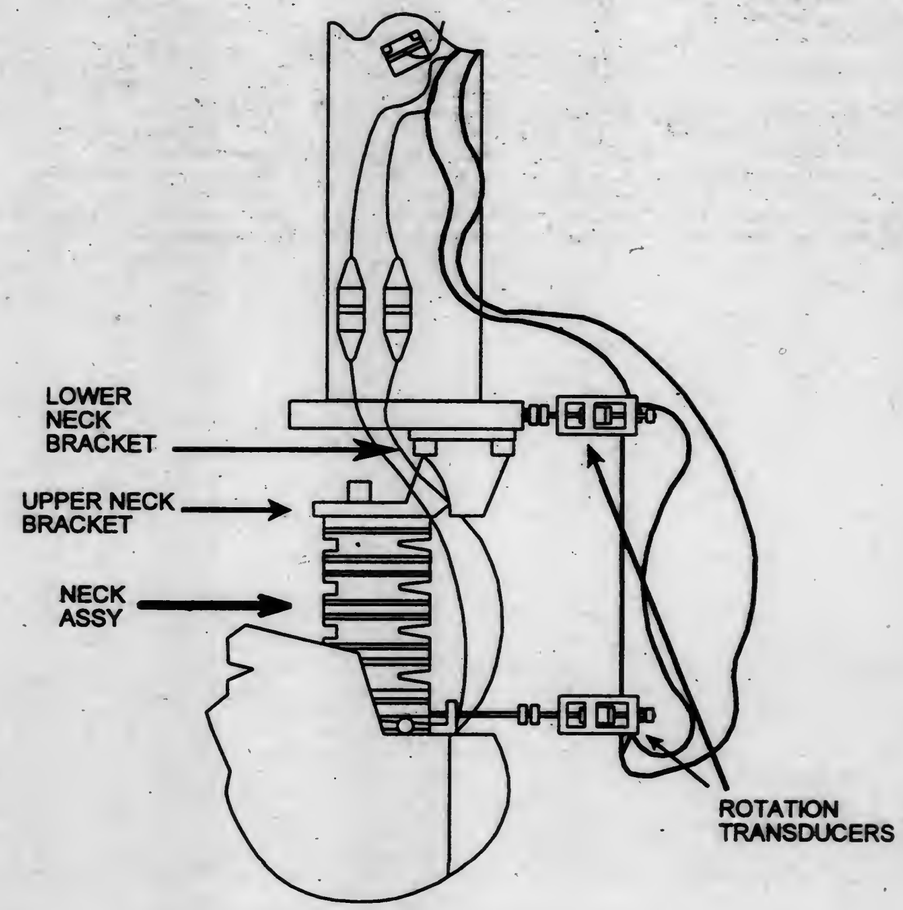
Where Mx and Fy are the moment and force measured by the transducer and expressed in terms of Nm and N, respectively.

(4) The maximum rotation of the head with respect to the pendulum's longitudinal centerline shall occur between 0 and 20 ms after peak moment.

BILLING CODE 4910–59–P

Figure 52

NECK PENDULUM TEST



BILLING CODE 4910–59–C

§ 572.114 Thorax.

The specifications and test procedure for the thorax are identical to those set forth in § 572.42.

§ 572.115 Lumbar spine and pelvis.

The specifications and test procedure for the lumbar spine and pelvis are identical to those set forth in § 572.43.

§ 572.116 Instrumentation and test conditions.

(a) The test probe for lateral thoracic and pelvis impact tests are the same as those specified in S572.44(a).

(b) Accelerometer mounting in thorax is the same as specified in S572.44(b).

(c) Accelerometer mounting in pelvis is the same as specified in S572.44(c).

(d) Head Accelerometer mounting is the same as specified in S572.36(c).

(e) Neck transducer mounting is the same as specified in S752.36(d).

(f) Instrumentation and sensors used must conform to the Recommended Practice SAE J–211 (Mar 1995)—Instrumentation for Impact Test.

(g) The mountings for the spine, rib and pelvis accelerometers shall have no resonance frequency within a range of 3 times the frequency range of the applicable channel class.

(h) Limb joints of the test dummy are set at the force between 1 to 2 g's, which just supports the limb's weight when the limbs are extended horizontally forward. The force required to move a limb segment does not exceed 2 g's throughout the range of the limb motion.

(i) Performance tests are conducted at any temperature from 20.6 to 22.2 degrees C. (69 to 72 degrees F.) and at any relative humidity from 10 percent to 70 percent after exposure of the dummy to those conditions for a period of at least four (4) hours.

(j) For the performance of tests specified in S572.42 and S572.43, the dummy is positioned the same as specified in S572.44(h).

Issued on November 26, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–31611 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 62, No. 235

Monday, December 8, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 5, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **Natural Resources Conservation Service**

Title: Application for Payment.
OMB Control Number: 0578–0018.
Summary of Collection: Respondents submit an application for payment when a conservation practice as prescribed by their contract is completed.
Need And Use Of The Information: The information is used to provide cost-share payments to program participants.
Description of Respondents: Farms; Individuals or households.
Number of Respondents: 21,500.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 8,062.
Emergency Processing of This Submission Has Been Requested by *December 17, 1997.*

- **Agricultural Marketing Service**

Title: Reporting and Recordkeeping Requirements under Regulations (Other than Rules of Practice) under the Perishable Agricultural Commodities Act, 1930.
OMB Control Number: 0581–0031.
Summary Of Collection: The Perishable Agricultural Commodities Act establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables. It protects growers, shippers, and distributors by prohibiting unfair practices.
Need And Use Of The Information: The Perishable Agricultural Commodities Act requires nearly all commission merchants, dealers, and brokers buying or selling fruits and/or vegetables in interstate or foreign commerce to be licensed. The information collected is used to administer licensing provisions under the Act.
Description Of Respondents: Business or other for-profit; Individuals or households; Farms.
Number Of Respondents: 25,550.
Frequency Of Responses: Recordkeeping; Reporting: On occasion; Annually.
Total Burden Hours: 118,806.

- **Food and Consumer Service**

Title: Food Distribution Forms.
OMB Control Number: 0584–0293.
Summary of Collection: Information collected includes agreements and contracts with recipient agencies and storage facilities, inventory reports and audits.
Need and Use of the Information: The information is used to ensure the efficient and effective administration of Food Distribution Programs at Federal, State, and local levels.
Description of Respondents: State, Local or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.
Number of Respondents: 396,893.
Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Quarterly; Semi-annually; Annually.
Total Burden Hours: 1,157,508.

- **Food and Consumer Service**

Title: Annual Report NET Program, 7 CFR Part 3016.40.
OMB Control Number: 0584–0062.
Summary of Collection: State agencies submit an annual performance report of the Nutrition and Education Training Program.
Need and Use of the Information: The information is used to monitor accomplishments.
Description of Respondents: State, Local or Tribal Government.
Number of Respondents: 56.
Frequency of Responses: Recordkeeping; Reporting: Annually.
Total Burden Hours: 896.

- **Agricultural Marketing Service**

Title: Fresh Bartlett Pears Grown in Oregon and Washington, M.O. 931.
OMB Control Number: 0581–0092.
Summary of Collection: Information is collected from handlers and growers for appointing committee members, conducting referendums, and reporting on shipments and disposition of product.
Need and Use of the Information: The information is used to administer Marketing Order 931.
Description of Respondents: Business or other for-profit.
Number of Respondents: 1,565.
Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Biennially; Semi-Monthly.
Total Burden Hours: 1,176.

- **Agricultural Marketing Service**

Title: Apricots Grown in Designated Counties in Washington, M.O. No. 922.
OMB Control Number: 0581–0095.

Summary of Collection: Information is collected from respondents for appointing committee members, conducting referendums, and requesting waivers for inspection.

Need and Use of the Information: The information is used to administer Marketing Order 922.

Description of Respondents: Business or other for-profit.

Number of Respondents: 430.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Biennially.

Total Burden Hours: 39.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–32032 Filed 12–5–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

RIN 0584–AC58

Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Consumer Service, USDA.

ACTION: General notice.

SUMMARY: By this notice, the Department of Agriculture is updating for Fiscal Year 1998 the maximum food stamp allotments for participating households in Alaska, Hawaii, Guam, and the Virgin Islands. These annual adjustments, required by law, take into account changes in the cost of food and statutory adjustments since the amounts were last calculated.

EFFECTIVE DATE: This notice is effective December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302, or telephone at (703) 305–2516. The e-mail address is Margaret_Batko@FCS.USDA.GOV.

SUPPLEMENTARY INFORMATION:

Implementation

As required by Section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012 (o), State agencies should have implemented this action on October 1, 1997, based on advance notice of the new amounts. As required by regulations published at 47 FR 46485 (October 19, 1982), annual statutory adjustments to the maximum allotment levels and income eligibility standards are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related notice to 7 CFR part 3015, subpart V (48 FR 29916, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The Under Secretary for Food, Nutrition, and Consumer Services has certified that this action will not have a significant economic impact and will not have an impact on a substantial number of small entities. The action will increase the amount of money spent on food through increases in food stamp benefits. However, this money will be distributed among all eligible food stamp vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or record keeping requirements subject to review by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FCS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Background

Thrifty Food Plan (TFP) and Allotments

As provided for in Section 3(o) of the Act, the TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan provides for a diet required to feed a family of four persons consisting of a man and woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFPs for Alaska and Hawaii are based on an adjusted average for the six-month period that ends with June 1997. Since the Bureau of Labor Statistics (the source of food price data) no longer publishes monthly information to compute Alaska and Hawaii TFPs, the adjusted average provides a proxy for actual June 1997 TFP costs. The adjusted average is equal to January-June 1997 TFP costs for Alaska and Hawaii increased by the average percentage difference between the cost of the TFP in Alaska and Hawaii in June and the January-June average in 1986 (a 1.53 percent increase over January-June costs in Alaska and 1.82 percent increase in Hawaii).

For the period January through June 1997, the average cost of the TFP was $502.90 in Alaska, and $645.50 in Hawaii. The proxy in Alaska for actual June 1997 TFP costs was $510.59. This proxy is multiplied by three separate adjustment factors to create three TFPs for Urban Alaska, Rural I Alaska, and Rural II Alaska. The proxy in Hawaii for actual June 1997 TFP costs was $657.24. The June 1997 cost of the TFP was $602.20 in Guam and $525.30 in the Virgin Islands.

The maximum food stamp allotment is paid to households that have no net income. For households with some type of income, their allotments are determined by reducing the maximum allotment for their household size by 30 percent of the household's net income in accordance with Section 8 (a) of the Act, 7 U.S.C. 2017 (a). To obtain the maximum food stamp allotment for each household size, the TFP costs are divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result rounded down to the nearest dollar.

Pursuant to Section 3 (o) (3) of the Act, maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and the District of Columbia, so they are based upon either the lower of their respective TFPs or the TFP for rural II Alaska.

MAXIMUM ALLOTMENT AMOUNTS [1]—OCTOBER 1997, AS ADJUSTED

Household Size	Urban Alaska	Rural I Alaska	Rural II Alaska	Hawaii	Guam [2]	Virgin Islands [2]
1	$154	$196	$239	$197	$180	$157
2	283	360	439	361	331	288
3	405	516	628	517	474	413
4	514	656	798	657	602	525
5	611	779	948	780	715	623
6	733	935	1,138	936	858	748
7	810	1,033	1,257	1,035	948	827
8	926	1,181	1,437	1,183	1,083	945
Each Additional Member	+116	+148	+180	+148	+135	+118

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, and 1.00 percent of the TFP and rounding.

[2] Adjusted to reflect changes in the cost of food in the 48 States and D.C., which correlate with price changes in these areas. Maximum allotments in these areas cannot exceed those in Rural II Alaska.

Dated: November 17, 1997.

Yvette S. Jackson,

Administrator, Food and Consumer Services.

[FR Doc. 97–31973 Filed 12–5–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food And Consumer Service

RIN 0584–AC57

Food Stamp Program: Maximum Allotments for the 48 States and the District of Columbia, and Income Eligibility Standards for the 48 States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Consumer Service, USDA.

ACTION: General notice.

SUMMARY: The purpose of this notice is to update for Fiscal Year 1998 the maximum allotment levels, which are the basis for determining the amount of food stamps which participating households receive and the gross and net income limits for food stamp eligibility. These adjustments, required by law, take into account changes in the cost of living and statutory adjustments since the amounts were last calculated.

DATES: This notice is effective December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2516. The e-mail address is Margaret_Batko@FCS.USDA.GOV.

SUPPLEMENTARY INFORMATION:

Implementation

As required by Section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012(o), State agencies should have implemented the adjustments to the maximum food stamp allotments reflected in this notice on October 1, 1997, based on advance notice of the new amounts. In accordance with regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the maximum allotment levels and income eligibility standards are issued by general notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The Under Secretary for Food, Nutrition and Consumer Services has certified that this action will not have a significant economic impact and will not have an impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FCS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FCS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Income Eligibility Standards

The eligibility of households for the Food Stamp Program, except those in which, in accordance with Section 5(a) of the Act, 7 U.S.C. 2014(a), all members are receiving "benefits under a State program funded under part A of title IV of the Social Security Act [], supplemental security income [SSI] benefits under title XVI of the Social Security Act [], or aid to the aged, blind, or disabled under title I, X, XIV, or XV of the Social Security Act. * * *", is determined by comparing their incomes to the appropriate income eligibility standards (limits). Pursuant to Section 5(c)(2) of the Act, households containing an elderly or disabled member are required to have qualifying net incomes, while households which do not contain an elderly or disabled member must have qualifying net incomes *and* qualifying gross incomes. Households in which all members are receiving Social Security Act title IV benefits or SSI are "categorically eligible;" under 7 CFR 273.2(j)(2) their incomes do not have to be below the income limits.

As provided in Section 5(c)(1) of the Act, the net and gross income limits applicable to food stamp eligibility are derived from the Federal income poverty guidelines established under Section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2). The net income limit is 100 percent of the poverty line. The gross income limit is 130 percent of the poverty line. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated each October 1. Instructions for implementation of the required adjustments for October 1, 1997, were issued by the Deputy Administrator of the Food and Consumer Service, Food Stamp Program, in a July 29, 1997, memorandum to all State Food Stamp Program Directors. The revised income eligibility standards for the 48 States (including the District of Columbia, Guam and the Virgin Islands), Alaska and Hawaii are as follows:

FOOD STAMP PROGRAM—OCTOBER 1, 1997–SEPTEMBER 30, 1998

Household size	48 States[1]	Alaska	Hawaii
Net Monthly Income Eligibility Standards (100 Percent of Poverty Level)			
1	$658	$823	$ 756
2	885	1,106	1,017
3	1,111	1,390	1,278

FOOD STAMP PROGRAM—OCTOBER 1, 1997–SEPTEMBER 30, 1998—Continued

Household size	48 States[1]	Alaska	Hawaii
4	1,338	1,673	1,539
5	1,565	1,956	1,800
6	1,791	2,240	2,060
7	2,018	2,523	2,321
8	2,245	2,806	2,582
Each add. member	+227	+284	+261
Gross Monthly Income Eligibility Standards (130 Percent of Poverty Level)			
1	$855	$1,070	$983
2	1,150	1,438	1,322
3	1,445	1,806	1,661
4	1,739	2,175	2,000
5	2,034	2,543	2,339
6	2,329	2,911	2,678
7	2,623	3,280	3,018
8	2,918	3,648	3,357
Each add. Member	+295	+369	+340
Gross Monthly Income Eligibility Standards For Households Where Elderly Disabled Are A Separate Household (165 Percent of Poverty Level)			
1	$1,085	$1,358	$1,248
2	1,459	1,825	1,678
3	1,833	2,293	2,108
4	2,207	2,760	2,539
5	2,581	3,228	2,969
6	2,955	3,695	3,399
7	3,329	4,163	3,830
8	3,703	4,630	4,260
Each add. Member	+374	+468	+431

[1] Includes District of Columbia, Guam, and the Virgin Islands.

Thrifty Food Plan (TFP) and Allotments

As provided for in Section 3(o) of the Act, the TFP is a plan for the consumption of foods of different types (food groups) that a household might use to provide nutritious meals and snacks for household members. The plan reflects a diet required to feed a family of four persons consisting of a man and a woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing food stamp allotments. "Allotment" is defined in Section 3(a) of the Act as "the total value of coupons a household is authorized to receive during each month." Food stamp allotments are adjusted periodically to reflect the changes in food cost levels indicated in the changing amounts of the TFP. Prior to the amendment of Section 3(o) of the Act by Section 804 of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, allotment amounts were established on each October 1 at 103% of the cost of the TFP in the previous June. Amended Section 3(o)(4) of the Act now provides that the TFP will be adjusted each October 1 to reflect the exact cost, or 100%, of the TFP for the previous June, rounding the results to the nearest lower dollar increment for each household size, except that on October 1,1996, the TFP was not to have been reduced below the amounts in effect on September 30, 1996.

To obtain the maximum food stamp allotment for each household size for the period October 1, 1997, to September 30, 1998, June 1997 TFP costs for the above described four-person household were divided by four, multiplied by the appropriate household size and economy of scale factor, in accordance with Section 3(o)(1) of the Act, and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households with no net income. For a household with income, the household's allotment is determined by reducing the maximum allotment for the household's size by 30 percent of the individual household's net income in accordance with Section 8(a) of the Act, 7 U.S.C. 2017(a). The following table shows the current allotments for the 48 States and the District of Columbia.

FOOD STAMP PROGRAM—OCTOBER 1, 1997–SEPTEMBER 30, 1998

[Maximum Food Stamp Allotments]

Household size	48 States[1]
1	$122
2	224
3	321
4	408
5	485
6	582
7	643
8	735
Each Additional Person	+92

[1] 48 States and the District of Columbia.

Dated: November 25, 1997.

Yvette S. Jackson,

Administrator, Food and Consumer Service.

[FR Doc. 97–31972 Filed 12–5–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Kodiak Electric Association, Inc.; Finding of no Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1506), and RUS Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Kodiak Electric Association, Inc. (KEA), of Kodiak, Alaska. The proposed project consists of constructing a 5.0 to 7.5 megawatt (MW) combustion turbine cogeneration power plant, a substation, a fuel storage tank, and an approximately four mile-long 69 kV transmission line. The purpose of the project is to increase KEA's generation capacity to meet future power demand, to produce steam for the U.S. Coast Guard for space heating, and to increase reliability of electric power service to KEA customers including the U.S. Coast Guard. The need for this project was established in KEA's 1994 Power Requirements Study, 1994 Power Generation Study, and 1996 Power Generation Study Supplement.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Engineering and Environmental Staff, Rural Utilities Service, 1400 Independence Avenue, SW, Stop 1571, Washington, DC 20250–1571, telephone (202) 720–1784, e-mail: nislam@rus.usda.gov.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that KEA prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER, which includes input from federal, state, and local agencies, has been reviewed and adopted as RUS's Environmental Assessment for the project in accordance with 7 CFR 1794.61. RUS has concluded that the BER represents an accurate assessment of the environmental impacts of the project. Based on coordination with appropriate federal and state agencies, potential impacts to water quality, air quality, wetlands, federally listed threatened or endangered species, cultural resources, noise levels, and visibility can either be avoided through project design or mitigated to less than significant levels. The project should have no impact on floodplains, important farmland, prime forest land, or formally classified areas and would be consistent with the policies of the Alaska Coastal Management Program.

Alternatives to the project as proposed were considered, including alternative power generation sites, alternative transmission line routes, alternative fuel delivery and storage facilities, various alternative energy sources, power demand and load management alternatives, and the no-action alternative. RUS has considered these alternatives and has concluded that the project, as proposed, will allow KEA to provide adequate and reliable electric service to its customers on Kodiak Island, including the U.S. Coast Guard, with minimum adverse impacts.

Copies of the BER and FONSI are available for review at RUS at the aforementioned address or may be reviewed at or obtained from the offices of KEA, P.O. Box 787, Kodiak, Alaska, 99615, Telephone (907) 486–7700. Copies are also available for public review at the Kodiak City Library and the U.S. Coast Guard Integrated Support Command Administration Building, Second Deck.

Dated: December 2, 1997.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 97–32030 Filed 12–5–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of circular welded non-alloy steel pipe from the Republic of Korea.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. The period of review is November 1, 1995 through October 31, 1996. This review covers imports of pipe from four producers/exporters.

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the U.S. price and normal value.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Marian Wells, or Rosa Jeong, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4087, 482–6309, and 482–1278 respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations, codified at 19 CFR part 353, April 1997.

Background

Since the publication of *Notice of Extension of Time Limit for Preliminary Results, Partial Termination of Antidumping Duty Administrative Review and Initiation of Changed Circumstances Review*, on July 15, 1997 (62 FR 37865), the following has occurred.

On July 25, 1997, the Department issued a supplemental questionnaire to Korea Iron and Steel Co., Ltd. (KISCO) and Union Steel Manufacturing Co., Ltd. (Union) asking about issues of affiliation. The companies responded to the affiliation questions on August 6, 1997. We notified Union and KISCO in an October 22, 1997, letter that their responses should be consolidated into one response (*see* "Collapsing Union and KISCO" in this notice). The Department received a consolidated response from these companies on November 17, 1997.

On October 30, 1997, we requested respondents to resubmit their data using purchase order/contract date, as opposed to invoice date, as date of sale for U.S. transactions. We received partially updated sales databases with

the new date of sale from SeAH Steel Corporation (SeAH) and Shinho Steel Co., Ltd. (Shinho) on November 17, 1997. (In the case of Hyundai Pipe Co. Ltd. (Hyundai), this information had been previously requested and supplied to the Department.) Union/KISCO's collapsed submission received on November 17, 1997 did not include the change in the date of sale.

Supplemental questionnaires were sent to respondents in November 1997. Responses to our supplemental questionnaires regarding level of trade (LOT) were received by November 13, 1997. Additional supplemental questionnaires responses from all respondents are due December 3, 1997.

We intend to issue the final results of this review not later than 120 days after publication of these preliminary results.

Scope of Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela* (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Collapsing KISCO and Union

On May 22 and June 30, 1997, the petitioners, Allied Tube and Conduit Corporation, Sawhill Tubular Division-Armco, Inc. and Wheatland Tube Company, argued that because of the strong possibility of manipulation of prices and production, the Department should treat Union and KISCO as a single, collapsed entity and calculate a single combined antidumping duty rate for both companies. In determining whether companies should be collapsed, the Department makes three inquiries. First, the Department examines whether the companies in question are "affiliated" within the meaning of section 771(33) of the Act. Second, the Department examines whether the companies in question have similar production facilities, such that retooling would not be required to shift production from one company to another. Third, the Department examines whether there exists other evidence indicating a significant potential for the manipulation of prices or production. The types of factors the Department considers in determining whether there is a significant potential for the manipulation of prices or production include: (1) The level of common ownership; (2) the existence of interlocking officers or directors (*e.g.*, whether managerial employees or board members of one company sit on the board of directors of the other affiliated parties); and (3) the existence of intertwined operations. *See Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 60 FR 65284 (December 19, 1995) (Korean Steel).

In the first administrative review of this order, the petitioners also argued that Union and KISCO should be collapsed, and the Department agreed. *See Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 62 FR 55574 (October 27, 1997) (*Pipe First Review*). In the present proceeding, we again closely analyzed the relevant factors in light of the information on record of the present review. We determined that the factors that led to the collapsing decision in the first review continue to exist in the present review. Therefore, we have collapsed Union and KISCO and calculated a single antidumping duty rate for the collapsed entity.

Date of Sale

When determining which sales fall within the period of review (POR), respondents used either invoice date, tax invoice date, or shipment date (collectively referred to hereafter as "invoice date") as the date of sale. Most respondents claimed that the invoice date is what is maintained in their corporate records and that use of invoice date is in accordance with the Department's stated practice (*see* Memorandum from Susan G. Esserman "Date of Sale Methodology Under New Regulations," March 29, 1996).

Based on our review of the responses, we determined invoice date should not be used as the date of sale for U.S. transactions. (For home market transactions, we find that invoice date reasonably approximates the date on which the material terms of sale are made and have used this as our date of sale.) While each company has a slightly different U.S. sales process, consistent throughout the responses is the notion that price and quantity are established, then the factory produces the subject merchandise, and finally, after a significant period of time, the product is shipped and an invoice is issued. Based on this understanding of the companies' U.S. sales process, we instructed respondents to report as the date of sale the date that will reasonably approximate the time at which the material terms of sale are set (*see*, Memorandum for Richard W. Moreland, dated October 30, 1997).

The above-mentioned change in the U.S. date of sale necessitated changes to the U.S. sales listings of respondents to correct the date of sale. As a consequence of the change in the U.S. date of sale, home market sales listings also have to be revised to include sales of identical and similar merchandise that are contemporaneous with U.S. sales. Due to the late date on which we informed respondents of the need to change the U.S. date of sale, all respondents were not able to modify fully their U.S. and home market sales listings in time for these preliminary results of review. Therefore, we have used the most current sales listings available to the Department. Hyundai, SeAH, and Shinho partially revised their U.S. sales listings by changing the date of sale for previously reported transactions. Union/KISCO was unable to provide a collapsed sales listing reflecting the change in the U.S. date of sale in time for these preliminary results. As a result, we are using invoice date as the date of Union/KISCO's U.S. sales. Furthermore, for all respondents, we have made comparisons to constructed value (CV) for U.S. sales that do not have contemporaneous home market sales matches.

Resales of Subject Merchandise

Some companies purchase subject merchandise from unaffiliated manufacturers and then further manufacture it into products also within the scope of this review. For purposes of these preliminary results, we have included sales of all such further-manufactured subject merchandise in our analysis.

SeAH

During the POR, SeAH purchased a small quantity of subject merchandise from an unaffiliated producer, and subsequently resold the merchandise in the United States. According to SeAH, the unaffiliated producer was aware of the ultimate destination of the merchandise at the time of sale to SeAH (*see* SeAH response of March 24, 1997, p. 33).

In their June 24, 1997 submission, petitioners argue that products purchased from the unaffiliated producer and resold by SeAH should be included in SeAH's U.S. and home market sales listings. To support this argument, petitioners cite to *Gray Portland Cement and Clinker from Japan*, 61 FR 67308 (December 20, 1997) (*Cement and Clinker*).

Regarding U.S. sales, the Department examines the first party in the distribution chain selling with the knowledge that the merchandise is destined for the U.S. *See* 19 CFR 353.41(b), *Certain Pasta from Italy: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postpone of Final Determination*, 60 FR 1344, 1348–1349 (January 19, 1996) (Pasta from Italy). In SeAH's case, the unaffiliated producer knew at the time of the sale to SeAH that the merchandise was destined for the United States. Therefore, the appropriate export price for that merchandise would be the price between the unaffiliated producer and SeAH (*see Pasta from Italy*). Moreover, the unaffiliated producer would be the appropriate party to be reviewed with respect to these resales.

The case cited by petitioners dealt with home market sales. Contrary to petitioners' assertions, the Department excluded all resales of merchandise purchased from an unaffiliated producer from its foreign market value (FMV) calculation in *Cement and Clinker* to the extent that they were separately identifiable. It was only in those cases where resales were inextricably commingled with the respondent's own product sales and where the inclusion of these resales did not distort the FMV calculation that the Department allowed them to be included among the respondent's home market sales. Therefore, this precedent does not provide a basis for including resales of this merchandise in the home market in our calculation of normal value (NV). Consequently, products purchased from this unaffiliated producer and resold into the U.S. market have not been included among SeAH's U.S. or home market sales listings.

Product Comparisons

We calculated monthly, weighted-average, NVs. Where possible, we compared U.S. sales to sales of identical merchandise in Korea. When identical merchandise was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the most similar foreign like product (*see* section 771(16)(B) and (C) of the Act).

Export Price and Constructed Export Price

For sales to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and 772(b) of the Act, as appropriate.

In accordance with sections 772(a) and (c) of the Act, we calculated an EP where the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. In accordance with sections 772(b), (c) and (d) of the Act, we calculated a CEP for sales made by affiliated U.S. resellers that took place after importation into the United States. EP and CEP were based on the packed C&F, delivered, CIF duty paid, or ex-dock duty paid price to unaffiliated purchasers in, or for exportation to, the United States. As appropriate, we made deductions for discounts and rebates, including early payment discounts. We added to U.S. price amounts for duty drawback, pursuant to section 772 (c)(1)(B) of the Act, to the extent that such rebates were not excessive (*see Pipe First Review*). We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs brokerage, U.S. customs duties, harbor maintenance fees, merchandise processing fees, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, we deducted from CEP those selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses (credit costs, introduction allowances, and warranty expenses), inventory carrying costs, and indirect selling expenses, where applicable. Credit expenses were offset by interest revenues, where applicable. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of each company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

Certain respondents reported sales in the home market of "overrun" merchandise (*i.e.*, sales of a greater quantity of pipe than the customer ordered due to overproduction). Respondents claimed that we should disregard "overrun" sales in the home market as outside the ordinary course of trade.

Section 773(a)(1)(B) of the Act provides that normal value shall be based on the price at which the foreign like product is sold in the usual commercial quantities and in the ordinary course of trade. Ordinary course of trade is defined in section 771(15) of the Act. We analyzed the following criteria to determine whether "overrun" sales differ from other sales of commercial pipe: (1) ratio of overrun sales to total home market sales; (2) number of overrun customers compared to total number of home market customers; (3) average price of an overrun sale compared to average price of a commercial sale; (4) profitability of overrun sales compared to profitability of commercial sales; and (5) average quantity of an overrun sale compared to the average quantity of a commercial sale. Based on our analysis of these criteria and on an analysis of the terms of sale, we found certain overrun sales to be outside the ordinary course of trade. This analysis is consistent with

the analysis sustained by the Court of International Trade in *Laclede Steel Co. V. United States*, Slip. Op. 94–114 (1995).

Hyundai and SeAH had sales in the home market to affiliated customers. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length and included those sales in our calculation of NV pursuant to 19 CFR 353.45(a).

We made adjustments for differences in packing in accordance with section 773(a)(6)(A) and B(i) of the Act. We also made adjustments for movement expenses, consistent with section 773(a)(6)(B) of the Act, for inland freight. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR. 353.56. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales (credit expenses as offset by interest revenue) and adding U.S. direct selling expenses (credit costs, introduction allowances, and warranty expenses). For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on home market sales. Since no respondent had U.S. direct selling expenses other than those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act, we made no additions to normal value in making COS adjustments. We also made adjustments, where applicable, for indirect selling expenses incurred on home market sales to offset commissions in EP calculations; specifically, we deducted from normal value the lesser of (1) the amount of commission paid on a U.S. sale for a particular product, or (2) the amount of indirect selling expenses incurred on the home market sales for a particular product, including inventory carrying costs in accordance with 19 CFR 353.56.

Level of Trade/CEP Offset

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the URAA at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP. When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market.

We determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 23760, 23761(May 1, 1997). *See*, also, 19 CFR 351.412 (62 FR 27296, 27414–27415 (May 19, 1997)) for a concise description of this practice.

In implementing these principles in this review, we obtained information from each respondent regarding the marketing stage involved in the reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. (For further information on the LOT analysis for each company, *see* the Memorandum from the team to S. Kuhbach of December 1, 1997.) Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting prices before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

When CEP sales have been made in the United States, in SeAH's case, section 773(a)(7)(B) of the Act establishes that a CEP "offset" may be made provided that two conditions exist: (1) NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP; and (2) the data available do not permit a determination that there is a pattern of consistent price differences between sales at different levels of trade in the comparison market.

Shinho, Hyundai, and KISCO/Union

Based on an analysis of the selling functions, class of customers, and level of selling expenses, we found that sales made by Shinho, Hyundai and KISCO/Union were at a single stage in the marketing process in both the home market and the United States (*i.e.*, one LOT exists in home market and one LOT exists in the United States with respect to each company). Moreover, because the stages of marketing in the two markets were not substantially dissimilar, we have preliminarily found that sales in both markets are at the same LOT and consequently no LOT adjustment is warranted.

SeAH

With respect to SeAH's EP sales, we found that sales were made at a single stage in the marketing process in both the home market and the United States, and that these stages of marketing were not substantially dissimilar. Therefore, we have preliminarily found that SeAH's EP and home market sales are at the same LOT and that no LOT adjustment is needed.

SeAH asserts that its home market sales are at a more advanced LOT than its CEP sales because the CEP LOT does not include inventory maintenance or expenses associated with arranging for freight. We have preliminarily determined that these differences in selling activities are not substantial and, therefore, that SeAH's home market and CEP sales are made at the same marketing stages. Consequently, we preliminarily determine that SeAH's home market and U.S. sales are at the same LOT and no CEP offset is warranted.

Cost of Production Analysis

Based on timely allegations filed by the petitioners, the Department initiated a cost of production (COP) investigation of Union/KISCO to determine whether sales were made at prices below the COP. *See* Memoranda from Craig Matney to Office Director Susan Kuhbach, dated June 24 and June 25, 1997.

Because we disregarded sales below the COP in the less-than-fair-value (LTFV) investigation for Hyundai, SeAH, and Shinho (*see Circular Welded Non-Alloy Steel Pipe from Korea: Notice of Final Court Decision and Amended Final Determination*, 60 FR 55833, November 3, 1995 (Pipe LTFV)), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of these companies' home market.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials, fabrication and general expenses, and packing costs.

B. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act. Moreover, based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all contemporaneous sales of a specific product were made at prices below the COP, we calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

We found that all respondents made home market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

Constructed Value

Where NV could not be based on home market sales either because (1) there were no contemporaneous sales of a comparable product or (2) all contemporaneous sales of the comparison product failed the COP test, we compared U.S. prices to CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the cost of materials of the product sold in the United States, plus amounts for general expenses, home market profit and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the "Calculation of COP" section of this notice, above. In accordance with section 773(e)(2)(A), we used the actual amounts incurred and realized by respondents in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate general expenses and home market profit.

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 353.56 for COS differences. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on home market sales. We also made adjustments, where applicable, for indirect selling expenses incurred on home market sales to offset U.S. commissions in EP comparisons; specifically, we deducted from normal value the lesser of: (1) The amount of commission paid on a U.S. sale for a particular product, or (2) the amount of indirect selling expenses incurred on the home market sales for a particular product.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act. Currency conversions were made at the rates certified by the Federal Reserve Bank. Section 773A(a) directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a "fluctuation." It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 35188, 35192 (July 5, 1996). The benchmark rate is defined as the rolling average of the rates for the past 40 business days.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period November 1, 1995, through October 31, 1996:

Manufacturer/exporter	Margin (percent)
Hyundai	4.10
Union/KISCO	2.36
Shinho	3.34
SeAH	7.71

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within ten days of publication. If requested, a hearing will be held March 2, 1998. Interested parties may submit case briefs pertaining to non-verification issues by January 12, 1998. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than January 20, 1998. Briefs pertaining to verification issues must be submitted by February 26, 1998, with rebuttal briefs not later than March 5, 1998. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with the methodology in *Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea* (62 FR 55574, October 27, 1997), we calculated exporter/importer-specific assessment values by dividing the total dumping duties due for each importer by the number of tons used to determine the duties due. We will direct Customs to assess the resulting per-ton dollar amount against each ton of the merchandise entered by these importers' during the review period.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of steel wire rope from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review (except no cash deposit will be required for those companies whose weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or

final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 4.80 percent, the "all others" rate established in the less-than-fair-value investigation. *See Pipe LTFV.*

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 751(d) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 353.22.

Dated: December 1, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32063 Filed 12–5–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and partial termination of review.

SUMMARY: In response to requests from two respondents, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. This review covers two manufacturers and exporters of the subject merchandise. The period of review ("POR") is November 1, 1995, through October 31, 1996.

With respect to Tuberia Nacional, S.A. de C.V. ("TUNA"), this review has now been terminated as a result of the withdrawal request for administrative review by TUNA, the interested party that requested review of TUNA. We preliminarily determine the dumping margin for Hylsa S.A. de C.V. ("Hylsa") to be 7.90 percent during the POR. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding should also submit with their arguments (1) A statement of the issues, and (2) a brief summary of the arguments.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak or Linda Ludwig, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–0182 (Kabak), or (202) 482–3833 (Ludwig).

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 C.F.R. Part 353 (April 1, 1997). Where appropriate, we have cited the Department's new regulations, codified at 19 C.F.R. Part 351 (62 Fed. Reg. 27296, May 19, 1997). While not binding on this review, the new regulations serve as a restatement of the Department's policies.

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the 1995/96 review period on November 4, 1996 (61 FR 56663). On November 27, 1996, respondents Hylsa and TUNA requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. We initiated this review on December 16, 1996. *See* 61 FR 66017 (December 16, 1996). On February 4, 1997, TUNA requested a withdrawal from the proceeding.

Pursuant to 19 CFR 353.22(a)(5) of the Department's regulations, the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review. TUNA's request for withdrawal was timely and there were no requests for review from other interested parties. Therefore, the Department is terminating this review with respect to TUNA. This notice is in accordance with section 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On June 16, 1997, the Department published a notice of extension of the time limit for the preliminary results in this case to December 2, 1997. *See Extension of Time Limit for Antidumping Duty Administrative Reviews*, 62 FR 36488 (July 8, 1997).

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

The POR is November 1, 1995 through October 31, 1996. This review covers sales of circular welded non-alloy steel pipe and tube by Hylsa.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the manufacturing facilities of Hylsa, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the verification reports, the public versions of which are available at the Department of Commerce, in the Central Records Unit (CRU), Room B099.

Product Comparisons

In accordance with section 771(16) of the Act, we considered each circular welded non-alloy steel pipe and tube product produced by the respondents, covered by the descriptions in the "Scope of the Review" section of this notice, *supra*, and sold in the home market during the POR, to be a foreign like product for purposes of determining appropriate product comparisons to U.S. sales of circular welded non-alloy steel pipe and tube. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix VI of the Department's December 23, 1996, antidumping questionnaire. In making the product comparisons, we matched each foreign like product based on the physical characteristics reported by the respondent and verified by the Department.

The Department's practice is to use a methodology which avoids distortions due to high inflation in instances where high inflation existed during the period of review. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, Certain Welded Carbon Steel Pipe and Tube from Turkey* 62 Fed. Reg. 61629 (October 2, 1997). In this case, consistent with our prior practice, we determined that high inflation existed during the period of review. *See* Letter to Shearman & Sterling from the Department (May 7, 1997). In order to take into account the rate of inflation in Mexico during the POR, we compared each U.S. sale to sales of the foreign like product in the same month. Where there were no sales of identical merchandise in the home market to compare to U.S. sales within the same month, we compared U.S. sales to the next most similar foreign like product which was sold in the same month. *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review* 61 FR 68708 (December 30, 1996). *See also Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review* 62 FR 32014 (July 10, 1997) (in which the Department continued to compare foreign like products and subject merchandise in this manner).

Fair-Value Comparisons

To determine whether sales of circular welded non-alloy steel pipe by Hylsa to the United States were made at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A (d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Date of Sale

Hylsa reported the date of the invoice as the date of sale for all home market and U.S. sales. For the home market co-export rebate sales with two reported invoice dates (original invoice issue date and revised invoice issue date), Hylsa reported the revised invoice date as the date of sale.

Export Price

We used EP as defined in section 772(a) of the Act. We calculated EP based on prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling and U.S. customs duties.

Section 776 (a) (2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c) (1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782 (i), the administering authority * * * shall, subject to section 782 (d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776 (b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

In this case, the Department has applied partial facts available for various expenses and adjustments. Based on our verification of Hylsa's sales responses, we rejected as unverifiable additional foreign inland freight, additional foreign brokerage fees and additional U.S. brokerage fees. Although information was provided to the Department, and the Department attempted to verify this information at the verification of Hylsa (see Sales Verification Report), the information could not be verified as provided in section 782(i) of the Act. By not providing verifiable information for foreign inland freight, foreign brokerage and U.S. brokerage expenses when such information was available to Hylsa, we have determined that Hylsa failed to cooperate by not acting to the best of its ability to comply with a request for information. Consequently, the use of adverse partial facts available under section 776(b) of the Act is warranted. We deducted the reported foreign inland freight, which was paid by the customer and included in the reported gross unit price. Rather than use reported additional foreign inland freight, as facts available we further deducted the highest calculated differential between reported and actual foreign inland freight charges incurred for five sales reviewed at verification, (*see* Analysis Memo). We deducted the reported foreign and U.S. brokerage charges, which were paid by the

customer and included in the reported gross unit price. Rather than use reported additional foreign and U.S. brokerage charges, as facts available we further deducted the highest calculated differential between reported and actual foreign and U.S. brokerage charges incurred for five sales reviewed at verification (*see* Analysis Memo).

Hylsa acts as importer of record on its U.S. sales and thereby pays all antidumping duty deposits. During the course of this proceeding, petitioners requested that the Department examine the issue of reimbursement where the producer/exporter is the importer of record. Section 353.26 of the Department's regulations states that "[i]n calculating the United States price, the Secretary will deduct the amount of any antidumping duty which the producer or reseller: (i) [p]aid directly on behalf of the importer; or (ii) [r]eimbursed to the importer." 19 CFR 353.26(a)(1). It has been our practice that separate corporate entities must exist as producer/reseller and importer in order to invoke the regulation. In the present case, the U.S. importer of record, Hylsa, is also the same corporate entity that produces and exports the subject merchandise. In such a case, there is no separate company or separate U.S. subsidiary, wholly owned or otherwise, that acts as the importer of record. Rather, the importer and exporter are one and the same corporate entity. In this case, there can be no payment made to, or on behalf of, the importer within the meaning of the regulation. In accordance with our practice, the Department interprets its reimbursement regulation as inapplicable in this case. However, we will consider this issue further for the final results, and we invite comments on this issue.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade, including sales that benefitted from co-export rebates and short-length discounts.

Sales to affiliated customers in the home market which were determined not to be at arm's-length were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the starting prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 353.45(a) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's-length. *See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan* 62 FR 60472 (November 10, 1997). We included those sales that passed the arm's length test in our analysis (see 19 CFR 353.45(a)).

Where appropriate, in accordance with 773(a)(6)(A) of the Act, we deducted credit expenses, warranties, advertising, insurance, packing, and certain discounts, and we added interest revenue. The Department discovered certain discrepancies and inconsistencies with Hylsa's freight data which rendered the data unverifiable or unreliable within the meaning of section 782(e) of the Act. At verification, the Department examined additional inland freight reported by Hylsa. Despite the Department's efforts, the data provided by Hylsa could not be verified. In accordance with section 782(e) of the Act, we rejected as unverifiable additional inland freight (see Sales Verification Report). Therefore, we denied adjustment for reported additional inland freight. Furthermore, due to discrepancies found as a result of verification and in accordance with section 782(e) of the Act, we disallowed deduction of inland freight expenses reported for co-export rebate sales made during 1996. The Department also found inconsistencies concerning the allocation of both early payment discounts and interest revenue for late payments (*see* Sales Verification Report). Therefore, consistent with section 782 (e) of the Act, we denied deductions from the reported price for early payment discounts allocated to sales to which interest revenue was also allocated.

We increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and decreased NV by home market packing costs in accordance with section 773(a)(6)(B) of the Act. We made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In its questionnaire responses, Hylsa stated that there were no differences in its selling activities by customer categories within each market. In order to confirm independently the absence of separate levels of trade within or between the U.S. and home markets, we examined Hylsa's questionnaire responses for indications that Hylsa's functions as a seller differed qualitatively or quantitatively among customer categories. Where possible, we further examined whether each selling function was performed on a substantial portion of sales.

Hylsa sold to end-users in the U.S. market. In the home market, Hylsa sold to local distributors and end-users. Hylsa performed essentially the same selling functions for sales to all its home-market customers, as well as to U.S. customers. Thus, our analysis of the questionnaire response leads us to conclude that sales within or between each market are not made at different levels of trade. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, we have not made a level of trade adjustment because all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) is not appropriate.

Cost-of-Production Analysis

Petitioners alleged, on April 4, 1997, that Hylsa sold circular welded non-alloy steel pipes and tubes in the home market at prices below COP. Based on these allegations, in accordance with 773(b) of the Act, the Department determined, on May 6, 1997, that it had reasonable grounds to believe or suspect that Hylsa had sold the subject merchandise in the home market at prices below the COP. *See Letter* to Shearman and Sterling (May 7, 1997) and *Decision Memorandum* (May 6, 1997). We therefore initiated a cost investigation with regard to Hylsa in order to determine whether the respondent made home-market sales during the POR at prices below their COP within the meaning of section 773(b) of the Act. Before making any fair-value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Hylsa's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling, general, and administrative expenses ("SG&A"), and packing costs in accordance with section 773(b)(3) of the Act. Based on our verification of the cost response submitted by Hylsa, we adjusted the reported COP to reflect certain adjustments to the cost of manufacturing and general and administrative expenses (*see* Analysis Memo).

B. Test of Home-Market Prices

We used the respondent's weighted-average COP, as adjusted (see above), for the period August 1, 1995, through November 30, 1996. We compared the weighted-average COP figures to home-market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices (not including VAT), less any applicable movement charges, discounts, and rebates.

C. Results of COP Test

In accordance with section 773(b)(2)(C), where less than 20 percent of Hylsa's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a Hylsa's sales during the POR were at prices less than the COP, we determine such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act, and not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded such below-cost sales of Hylsa. Where all contemporaneous sales of a comparison product were disregarded, we calculated NV based on CV.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Hylsa's cost of materials, fabrication, SG&A, U.S. packing costs, interest expenses as reported in the U.S. sales database and profit. As noted above, we recalculated Hylsa's COM and general and administrative expenses based on our verification results. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. Where we compared CV to EP, we added the lesser of home market commissions or U.S. indirect selling expenses to CV.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See Cut-to-Length Steel Plate from Belgium: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 48213 (citing *Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915 (March 6, 1996)). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Circular welded non-alloy steel pipes and tubes

Producer/Manufacturer/Exporter	Hylsa
Weighted-Average Margin	7.90%

Parties to this proceeding may request disclosure within five days of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of the administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

The following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of circular welded non-alloy steel pipe from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of review; (2) for exporters not covered in this review, but covered in the LTFV investigation or previous review, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation or the most recent previous review; (3) if the exporter is not a firm covered in this review, a previous review, or the

original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 36.62 percent, the "All Others" rate in the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

We will calculate importer-specific duty assessment rates as a per ton unit value for EP sales. To calculate the per ton unit value for assessment, we summed the margins on U.S. sales with positive margins, and then divided this sum by the total entered tonnage of all U.S. sales.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: December 2, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32064 Filed 12–5–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. The period covered by this administrative review is January 1, 1996 through December 31, 1996. For information on the net subsidy for each reviewed company, as well for all non-reviewed companies, please see the "Preliminary Results of Review" section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated in the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel, Suzanne King, or Dana Mermelstein, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 15327) the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. On March 7, 1997, the Department published a notice of "Opportunity to Request an Administrative Review" (62 FR 10521) of this countervailing duty order. We received a timely request for review from Inland Steel Bar Co., an interested party to this proceeding. We initiated the review, covering the period January 1, 1996, through December 31, 1996, on April 24, 1997 (62 FR 19988).

In accordance with 19 CFR 355.22(a), this review covers only those producers or exporters for which a review was specifically requested. Accordingly, this review covers British Steel Engineering Steels Holdings, British Steel Engineering Steels Limited, and British Steel plc.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are hot-rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellarium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this proceeding is dispositive.

Change in Ownership

(I) Background

On March 21, 1995, British Steel plc (BS plc) acquired all of Guest, Keen & Nettlefolds' (GKN) shares in United Engineering Steels (UES), the company which produced and exported the subject merchandise to the United States during the original investigation. Thus, UES became a wholly-owned subsidiary of BS plc and was renamed British Steel Engineering Steels (BSES).

Prior to this change in ownership, UES was a joint venture company formed in 1986 by British Steel Corporation (BSC), a government-owned company, and GKN. In return for shares in UES, BSC contributed a major portion of its Special Steels Business, the productive unit which produced the subject merchandise. GKN contributed its Brymbo Steel Works and its forging business to the joint venture. BSC was privatized in 1988 and now bears the name BS plc.

In the investigation of this case, the Department found that BSC had received a number of nonrecurring subsidies prior to the 1986 transfer of its Special Steels Business to UES. *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom*, 58 FR 6237, 6243 (January 27, 1993) (*Lead Bar*).

Further, the Department determined that the sale to UES did not alter these previously bestowed subsidies, and thus the portion of BSC's pre-1986 subsidies attributable to its Special Steels Business transferred to UES. *Lead Bar* at 6240.

In the 1993 certain steel products investigations, the Department modified the allocation methodology developed for *Lead Bar*. Specifically, the Department stated that it would no longer assume that all subsidies allocated to a productive unit follow it when it is sold. Rather, when a productive unit is spun-off or acquired, a portion of the sales price of the productive unit represents the reallocation of prior subsidies. *See* the General Issues Appendix (*GIA*), appended to the *Final Countervailing Duty Determination; Certain Steel Products From Austria*, 58 FR 37217, 37269 (July 9, 1993) (*Certain Steel*). In a subsequent Remand Determination, the Department aligned *Lead Bar* with the methodology set forth in the "Privatization" and "Restructuring" sections of the *GIA*. *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Remand Determination* (October 12, 1993) (*Remand*).

(II) Analysis of BS plc's Acquisition of UES

On March 21, 1995, BS plc acquired 100 percent of UES. In determining how this change in ownership affects our attribution of subsidies to the subject merchandise, we relied on Section 771(5)(F) of the Act, which states that a change in ownership does not require a determination that past subsidies received by an enterprise are no longer countervailable, even if the transaction is accomplished at arm's length. The Statement of Administrative Action, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (SAA), explains that the aim of this provision is to prevent the extreme interpretation that the arm's length sale of a firm automatically, and in all cases, extinguishes any prior subsidies conferred. While the SAA indicates that the Department retains the discretion to determine whether and to what extent a change in ownership eliminates past subsidies, it also indicates that this discretion must be exercised carefully by considering the facts of each case. SAA at 928.

In accordance with the Act and the SAA, we examined the facts of BS plc's acquisition of GKN's shares of UES, and we determined that the change in ownership does not render previously bestowed subsidies attributable to UES no longer countervailable. However, we also determined that a portion of the purchase price paid for UES is attributable to its prior subsidies. Therefore, we reduced the amount of the subsidies that "traveled" with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 62 FR 53306 (October 14, 1997) (*Lead Bar 95 Final Results*) and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 16555 (April 7, 1997) (*Lead Bar 95 Preliminary Results*). To calculate the amount of UES's subsidies that passed through to BS plc as a result of the acquisition, we applied the methodology described in the "Restructuring" section of the *GIA*. *See GIA*, 58 FR at 37268–37269. This determination is in accordance with our changes in ownership finding in *Final Affirmative Countervailing Duty Determination; Pasta From Italy*, 61 FR 30288, 30289–30290 (June 14, 1996), and our finding in the 1994 administrative review of this case, in which we determined that "[t]he URAA is not inconsistent with and does not overturn the Department's *General Issues Appendix* methodology or its findings in the *Lead Bar Remand Determination*." *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377, 58379 (November 14, 1996).

With the acquisition of UES, we also had to determine whether BS plc's remaining subsidies are attributable to the subject merchandise. Where the Department finds that a company has received untied countervailable subsidies, to determine the countervailing duty rate, the Department attributes those subsidies to that company's total sales of domestically produced merchandise, including the sales of 100-percent-owned domestic subsidiaries. If the subject merchandise is produced by a subsidiary company, and the only subsidies in question are the untied subsidies received by the parent company, the countervailing duty rate calculation for the subject merchandise is the same as described above. Similarly, if such a company purchases another company, as was the case with BS plc's purchase of UES, then the current benefit from the parent company's allocable untied subsidies is attributed to total sales, including the sales of the newly acquired company. *See, e.g., GIA*, 58 FR at 3762 ("the Department often treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy"); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany*, 58 FR 37315 (July 9, 1993). Accordingly, in the *Lead Bar 95 Final Results*, we determined that it is appropriate to collapse BSES with BS plc for purposes of calculating the countervailing duty for the subject merchandise. BSES, as a wholly-owned subsidiary of BS plc, continues to benefit from the remaining benefit stream of BS plc's untied subsidies.

In collapsing UES with BS plc, we also determined that UES's untied subsidies "rejoined" BS plc's pool of subsidies with the company's 1995 acquisition. All of these subsidies were untied subsidies originally bestowed upon BSC (BS plc). After the formation of UES in 1986, the subsidies that "traveled" with the Special Steels Business were also untied, and were found to benefit UES as a whole. *See Lead Bar 95 Final Results; Lead Bar 95 Preliminary Results.*

(III) Calculation of Benefit

To calculate the countervailing duty rate for the subject merchandise in 1996, we first determined BS plc's benefits in 1996, taking into account all spin-offs of productive units (including the Special Steel Business) and BSC's full privatization in 1988. *See Final Affirmative Countervailing Duty Determination; Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993) (*UK Certain Steel*). We then calculated the amount of UES's subsidies that "rejoined" BS plc after the 1995 acquisition, taking into account the reallocation of subsidies to GKN. *See Lead Bar 95 Final Results; Lead Bar 95 Preliminary Results.* As indicated above, in determining both these amounts, we followed the methodology outlined in the *GIA*. After adding BS plc's and UES's benefits for each program, we then divided that amount by BS plc's total sales of merchandise produced in the United Kingdom in 1996.

Allocation Methodology

In *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995), the U.S. Court of International Trade ruled against the Department's allocation methodology, which relied on U.S. Internal Revenue Service information on the industry specific average useful life

of assets for determining the allocation period for non-recurring subsidies. In accordance with the Court's remand order, the Department calculated a company-specific allocation period based on the AUL of non-renewable physical assets for BS plc. This allocation period was 18 years. This remand determination was affirmed by the Court on June 4, 1996. *British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996).

The Department's acquiescence to the CIT's decision in the *Certain Steel* cases resulted in different allocation periods between the *UK Certain Steel* and *Lead Bar* proceedings (18 years vs. 15 years). Different allocation periods for the same subsidies in two proceedings involving the same company generate significant inconsistencies. Moreover, UES became a wholly-owned subsidiary of BS plc in 1995. In the 1995 review of *Lead Bar*, in order to maintain a consistent allocation period across the *UK Certain Steel* and *Lead Bar* proceedings, as well as in the different segments of *Lead Bar*, we altered the allocation methodology previously used to determine the allocation period for non-recurring subsidies previously bestowed on BSC and attributed to UES. In the 1995 review, we applied the company-specific 18-year allocation period to all non-recurring subsidies. *See Lead Bar 95 Final Results*. Based on our decision in the 1995 administrative review of this order, we preliminarily determine that it is appropriate in this review to continue to allocate all of BSC's non-recurring subsidies over BS plc's company-specific average useful life of renewable physical assets (*i.e.*, 18 years).

Analysis of Programs

I. Programs Conferring Subsidies

(A) Equity Infusions

In each year from 1978/79 through 1985/86, BSC/BS plc received equity capital from the Secretary of State for Trade and Industry pursuant to section 18(1) of the Iron and Steel Acts 1975, 1981, and 1982. According to section 18(1), the Secretary of State for the Department of Trade and Industry may "pay to the Corporation (BSC) such funds as he sees fit." The Government of the United Kingdom's equity investments in BSC/BS plc were made pursuant to an agreed external financing limit which was based upon medium-term financial projections. BSC's performance was monitored by the Government of the United Kingdom on an ongoing basis and requests for capital were examined on a case-by-case basis. The UK government did not receive any additional ownership, such as stock or additional rights, in return for the capital provided to BSC/BS plc under section 18(1) since it already owned 100 percent of the company.

In *Lead Bar* (58 FR at 6241), the Department found BSC/BS plc to be unequityworthy from 78/79 through 1985/86, and thus determined that the Government of the United Kingdom's equity infusions were inconsistent with commercial considerations. Although, prior to the formation of UES, BSC's section 18(1) equity capital was written off in two stages (£3,000 million in 1981 and £1,000 million in 1982) as part of a capital reconstruction of BSC, the Department determined that BSC/BS plc benefitted from these equity infusions, notwithstanding the subsequent write-off of equity capital. Therefore, the Department countervailed the equity investments as grants given in the years the equity capital was received. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

Because the Department determined in *Lead Bar* that the infusions are non-recurring, we have allocated the benefits over BS plc's company-specific average useful life of renewable physical assets (18 years).

Although uncreditworthiness was not specifically alleged or investigated during the investigation on lead bar, in *UK Certain Steel* the Department found that BSC/BS plc was uncreditworthy from 1977/78 through 1985/86. 58 FR at 37395. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding. Therefore, we have used a discount rate which includes a risk premium to calculate the benefit from the grants. *See, e.g., Final Affirmative Countervailing Duty Determinotions: Certain Steel Products From Mexico*, 58 FR 37352, 37354 (July 9, 1993) (*Mexican Steel*).

To calculate the benefit to the subject merchandise from this program, we first summed the benefit to BS plc from all infusions allocated to 1996. Then, we determined the portion of that benefit still remaining with BS plc after accounting for privatization and spin-offs. To that we added the portion of UES's subsidies under this program that "rejoined" BS plc with the acquisition. *See* the "Change in Ownership" section of the notice. We then divided the result by BS plc's total sales of merchandise produced in the United Kingdom in 1996. On this basis, we preliminarily determine the net subsidy for this program to be 4.69 percent *ad valorem* in 1996.

(B) Regional Development Grant Program

Regional development grants were paid to BSC/BS plc under the Industry Act of 1972 and the Industrial Development Act of 1982. In order to qualify for assistance under these two Acts, an applicant had to be engaged in manufacturing and located in an assisted area. Assisted areas are older, industrial regions identified as having deep-seated, long-term problems such as high levels of unemployment, migration, slow economic growth, derelict land, and obsolete factory buildings. Regional development grants were given for the purchase of specific assets. According to the Government of the United Kingdom, the program involved one-time grants, sometimes disbursed over several years.

BSC/BS plc received regional development grants during the period between fiscal years 1978/79 and 1985/86. The Department found this program countervailable in *Lead Bar* (58 FR at 6242), because it is limited to specific regions. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

In *Lead Bar*, we determined that, because each grant required a separate application, these grants are non-recurring. Accordingly, we have calculated the benefits from this program by allocating the benefits over BS plc's company-specific average useful life of renewable physical assets (18 years). Since BSC/BS plc was uncreditworthy from 1978/79 through 1985/86 (as discussed under the "Equity Infusions" section, above), we have used a discount rate which includes a risk premium (*see Mexican Steel*, 58 FR at 37354) to calculate the benefits from these grants.

To calculate the benefit from this program, we followed the methodology described above in the section on "Equity Infusions". On this basis, we preliminarily determine the net subsidy for this program to be 0.15 percent *ad valorem* in 1996.

(C) National Loan Funds Loan Cancellation

In conjunction with the 1981/1982 capital reconstruction of BSC, section 3(1) of the Iron and Steel Act of 1981 extinguished certain National Loans Fund (NLF) loans, as well as the interest accrued thereon, at the end of BSC's 1980/81 fiscal year. Because this loan cancellation was provided specifically to BSC, the Department determined in *Lead Bar* (58 FR at 6242) that it provided a countervailable benefit. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

We calculated the benefit for this review using our standard methodology for non-recurring grants. We allocated the benefits from this loan cancellation over BS plc's company-specific average useful life of renewable physical assets (18 years). Because BSC/BS plc was found to be uncreditworthy in 1981/82 (as discussed under "Equity Infusions" section, above), we have used a discount rate which includes a risk premium. *See Mexican Steel*, 58 FR at 37354.

To calculate the benefit from this program, we followed the methodology described above in the section on "Equity Infusions". On this basis, we preliminarily determine the net subsidy for this program to be 0.44 percent *ad valorem* in 1996.

II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily find that the producers and/or exporters of the subject merchandise subject to this review did not apply for or receive benefits under these programs during the POR:

(A) New Community Instrument Loans
(B) ECSC Article 54 Loan Guarantees
(C) NLF Loans
(D) ECSC Conversion Loans
(E) European Regional Development Fund Aid
(F) Article 56 Rebates
(G) Regional Selective Assistance
(H) ECSC Article 56(b)(2) Redeployment Aid
(I) Inner Urban Areas Act of 1978
(J) LINK Initiative
(K) European Coal and Steel Community (ECSC) Article 54 Loans/Interest Rebates

III. Program Previously Determined To Be Terminated

Transportation Assistance

The Department found this program to be terminated in the 1995 administrative review of this countervailing duty order. *See Lead Bar 1995 Final Results.*

IV. Other Programs Examined

We also examined the following programs:

BRITE/EuRAM and Standards Measurement and Testing Program

BS plc received assistance under these two European Union programs to fund research and development. The European Union claimed that assistance provided under both of these programs is non-countervailable in accordance with Article 8.2(a) of the WTO Agreement on Subsidies and Countervailing Measures and section 771(5B)(B) of the Act (which provide that certain research and development subsidies are not countervailable). We preliminarily determine that it is not necessary to determine whether BRITE/EuRAM and the Standards Measurement and Testing Program qualify for non-countervailable treatment because combined, the assistance provided under both of these programs would result in a rate of less than 0.005 percent *ad valorem*, and thus would have no impact on the overall countervailing duty rate calculated for this POR. For this same reason we have not conducted a specificity analysis of these programs. *See, e.g., Final Affirmative Countervailing Duty Determinotion: Steel Wire Rod from Germany*, 62 FR 54990, 54995–54996 (October 22, 1997); *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997) and *Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 64062, 64065 (December 3, 1996); *Final Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring ("LHF") From Canada*, 62 FR 5201 (February 4, 1997); *Industrial Phosphoric Acid From Isroel; Final Results of Countervailing Duty Administrative Review*, 61 FR 53351 (October 11, 1996) and *Industrial Phosphoric Acid From Israel; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 28845 (June 6, 1996).

Preliminary Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we have calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As discussed in the "Change in Ownership" section of the notice, above, we are treating British Steel plc and British Steel Engineering Steels as one company for purposes of this proceeding. For the period January 1, 1996 through December 31, 1996, we preliminarily determine the net subsidy for British Steel plc/British Steel Engineering Steels (BS plc/BSES) to be 5.28 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties for BS plc/BSES at 5.28 percent *ad valorem*. The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of 5.28 percent of the f.o.b. invoice price on all shipments of the subject merchandise from BS plc/BSES/UES, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 60 FR 54841 (October 26, 1995). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by

this order are the cash deposit rates in effect at the time of entry.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology; interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38, are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: December 1, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32062 Filed 12–5–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904, NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On November 21, 1997, Ispat Sidbec Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A second request was also filed on November 21, 1997 on behalf of the Gouvernement du Quebec. Panel review was requested of the final countervailing duty determination made by the International Trade Administration, respecting Steel Wire Rod From Canada. This determination was published in 62 **Federal Register** 54972, on October 22, 1997. The NAFTA Secretariat has assigned Case Number USA–97–1904–08 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 21, 1997, requesting panel review of the final countervailing duty determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 22, 1997);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 5, 1998); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 2, 1997.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 97–31952 Filed 12–5–97; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120197B]

Marine Mammals; Scientific Research Permit No.782–1399

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, 7600 Sand Point Way NE, Bin C15700, Seattle, Washington 98115–0070, has been issued a permit to import and export marine mammal specimens for scientific purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment. (see **SUPPLEMENTARY INFORMATION**)

SUPPLEMENTARY INFORMATION: On August 7, 1997, notice was published in the **Federal Register** (62 FR 442511) that a request for a scientific research permit to import and export marine mammal specimen materials had been submitted by the above-named institution. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966 (16 U.S.C. 1151 *et seq.*).

Issuance of this permit as required by the ESA is based on a finding that such permit: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which are the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. Documents are available in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2289 (508/281–9250);

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5301);

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg., 1, Seattle, WA 98115–0070 (206/526–6150); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907–586–7221).

Dated: December 2, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–32071 Filed 12–5–97; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, December 16, 1997, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bunk Beds

The staff will brief the Commission on options for Commission action to address entrapment hazards associated with bunk beds.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: December 4, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–32209 Filed 12–4–97; 2:30 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, December 18, 1997 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Upholstered Furniture

The staff will brief the Commission on options for Commission action to address the risk of fires caused by small open flame ignition of upholstered furniture and the staff's evaluation of the cigarette ignition resistance of upholstered furniture. These issues were initially raised in a petition (FP 93–1) submitted by the National Association of State Fire Marshals (NASFM).

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: December 4, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–32210 Filed 12–4–97; 2:30 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Legislative Environmental Impact Statement (LEIS) for Nellis Air Force Range Renewal (NAFR)—Cooperating Agencies

SUMMARY: The Air Force is currently preparing a Legislative Environmental Impact Statement (LEIS) to assess the potential environmental impacts of the proposed renewal of the Nellis Air Force Range (NAFR) Nevada. The current land withdrawal and reservation of the NAFR was established by the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606) for the period ending November 6, 2001. This notice identifies the following federal agencies as cooperating agencies for the NAFR Range Renewal LEIS: The U.S. Department of Energy, U.S. Fish and Wildlife Service, and the Bureau of Land Management. Notice of Intent was published in the **Federal Register** on May 31, 1996.

DATES: See summary section for related date.

ADDRESSES: HQ ACC/CEVP, 129 Andrews Street, Suite 102, Langley Air Force Base, VA 23665.

FOR FURTHER INFORMATION CONTACT: Ms. Sheryl K. Parker, (804) 764–9334.

Authority Citation: 42 U.S.C. 4321–4347; 40 CFR parts 1500–1508; Pub. L. 99–606.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–32057 Filed 12–5–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Historically Black Colleges and Universities Capital Financing Advisory Board; Meeting

AGENCY: Historically Black Colleges and Universities Capital Financing Advisory Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Historically Black Colleges and Universities Capital Financing Advisory Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act..

DATE AND TIME: December 19, 1997, 9:00 a.m.–4:00 p.m.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza S.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carl S. Person, Executive Director, Historically Black Colleges and Universities Capital Financing Advisory Board, U.S. Department of Education, Washington, DC 20202–5139, telephone (202) 708–8328.

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Capital Financing Advisory Board is established under section 727 of the Higher Education Act of 1965. as amended in 1992 (20 U.S.C. 1132c–6). The Board is established to provide advice and counsel to the Secretary of Education and the designated bonding authority for the Historically Black Colleges and Universities Capital

Financing Program as to the most effective and efficient means of implementing construction financing on historically Black college and university campuses and to advise Congress regarding the progress made in implementing the program.

The meeting of the Board is open to the public. The agenda includes a briefing by members of the designated bonding authority on the status of loan activities, an overall assessment of the program, and reauthorization issues.

Records are kept of all Committee proceedings, and are available for public inspection at the office of the Historically Black Colleges and Universities Capital Financing Advisory Board, U.S. Department of Education, Washington, DC 20202–5139, from the hours of 9:00 a.m. to 4:00 p.m.

Dated: December 2, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–31974 Filed 12–5–97; 8:45 am]

BILLING CODE 4401–01–M

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Change in meeting time.

SUMMARY: On Wednesday, November 26, 1997, on page 63138 in column 1, the Department of Education published a notice for the President's Board of Advisors on Historically Black Colleges and Universities meeting. The time of the meeting has been changed to 11:00 a.m.–5:00 p.m. all other information printed is correct.

DATE AND TIME: December 18, 1997 from 11:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton City Centre Hotel located at 1143 New Hampshire Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sterling Henry, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, SW, the Portals Building, Suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

Dated: December 1, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–32003 Filed 12–5–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 1998. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, Pub. L. No. 94–163, 89 Stat. 871, as amended, (EPCA).

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective January 7, 1998 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA (Act)[1] requires that DOE prescribe test procedures for the determination of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by Section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by Section 323(c) of the Act.

The Department last published representative average unit costs of residential energy for use in the Conservation Program for Consumer Products on November 18, 1996. (61 FR 58679). Effective January 7, 1998, the cost figures published on November 18, 1996, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 1998 representative average unit after-tax costs of electricity, natural gas, No. 2 heating oil, and propane and kerosene prices found in this notice. The cost projections for heating oil, electricity, and natural gas are found in the fourth quarter, 1997, EIA *Short-Term Energy Outlook*, DOE/EIA–0226 (97/4Q) and reflect the mid-price scenario. Projections for residential propane and kerosene prices are derived from their relative prices to that of heating oil, based on 1996 averages for these three fuels. The sources for these price data are the preliminary *Petroleum Marketing Annual 1996* and the September 1997 *Monthly Energy Review* (DOE/EIA–0035(97/09). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800. The preliminary *Petroleum Marketing Annual 1996* is available at the following Internet address: http://www.eia.doe.gov/oil_gas/pmm/12pmmframe.html. Persons who are without access to the Internet, and who want copies of the applicable tables of the preliminary *Petroleum Marketing Annual 1996*, can obtain them from the Department's Office of Codes and Standards (phone: (202) 586–9127).

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended. 42 U.S.C. §§ 6291–6309.

The 1998 representative average unit costs stated in Table 1 are provided pursuant to Section 323(b)(4) of the Act and will become effective January 7, 1998. They will remain in effect until further notice.

Issued in Washington, DC, on November 28, 1997.

Joseph Romm,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1998)

Type of energy	Per million Btu[1]	In commonly used terms	As required by test procedure
Electricity	$24.68	8.42¢/kWh[2,3]	$ .0842/kWh.
Natural gas	6.19	61.9¢/therm[4] or $6.36/MCF[5,16]	.00000619/Btu.
No. 2 Heating Oil	6.85	95¢/gallon[7]	.00000685/Btu.
Propane	10.39	95¢/gallon[8]	.00001039/Btu.
Kerosene	7.48	$1.01/gallon[9]	.00000748/Btu.

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 97–32046 Filed 12–5–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–99–000]

Algonquin Gas Transmission Company; Notice of Application

December 2, 1997.

Take notice that on November 24, 1997, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77252–1642, filed in Docket No. CP98–99–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct, own, operate and maintain certain facilities to provide up to 33,000 dekatherms per day of firm transportation service to Dighton Power Associates Limited Partnership (DLP) at a proposed gas-fired electric generation plant to be constructed in Dighton, Massachusetts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin states that in order to implement the proposed firm transportation service, Algonquin will install, construct, own, operate and maintain new facilities consisting of dual taps, a meter station and appurtenant facilities on Algonquins's existing 12-inch G–1 Line and 20-inch G–1 Loop Line in Dighton, Massachusetts, 1.5 mile of 12-inch loop extension on Algonquin's existing E–1 system in New London County, Connecticut, and uprate two of the compressor units at Algonquin's existing Southeast, New York compressor station from 4,250 horsepower to 4,700 horsepower, and uprate two of the compressor units at Algonquin's existing Burrillville, Rhode Island, compressor station from 5,500 horsepower to 5,700 horsepower.

Algonquin estimates the construction cost of the proposed facilities to be $4,662,000, which will be financed through revolving credit arrangements and short-term loans, and from funds on hand.

Algonquin requests a Preliminary Determination on non-environmental issues by June 1, 1998, with final approval by August 1, 1998, so that the proposed facilities can be placed in service on or about January 1, 1999 for the purpose of providing any necessary interruptible transportation service for start-up and testing at the gas-fired electric generation plant. Algonquin states that the Rate Schedule AFT–1 firm transportation service will commence on or about March 1, 1999 for a term of 20 years.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before December 23, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process.

Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31977 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–68–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1997.

Take notice that on November 26, 1997, ANR Pipeline Company [ANR] tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective December 1, 1997:

Twenty-ninth Revised Sheet No. 8
Twenty-ninth Revised Sheet No. 9
Twenty-eighth Revised Sheet No. 13
Thirty-third Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $1.6 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2.5 million to $1.6 million, based primarily upon a one-time refund from Northern Border Pipeline Company.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31995 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–102–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

December 2, 1997.

Take notice that on November 25, 1997, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP98–102–000 a request pursuant to Sections 157.205 and 157.212(a) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212(a)) seeking NGA certification under Part 157 blanket construction procedures for an existing point of delivery originally authorized under NGPA Section 311 to Ohio Cumberland Gas Company in Holmes County, Ohio, under the blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that it seeks NGA certification in order that it may be used to provide both Part 284 Subpart B and G transportation. Columbia's proposed quantities to be delivered at the existing point of delivery are 400 Dth/day and 146,000 Dth/Annually. Columbia states that the end use of gas is for Industrial purposes to serve a new Asphalt Plant. Columbia states that the quantities of natural gas to be provided through the new point of delivery will be within its authorized level of service. Columbia contends that there is no impact on its existing design day and annual obligations to its customers as a result of the NGA certification of the existing point of delivery for transportation service. Additionally, Columbia notes that it installed interconnecting facilities which included a 2-inch tap and 15 feet of small diameter pipe. Columbia states that the facilities were placed in-service on September 8, 1997.

Columbia asserts that it obtained the appropriate environmental clearances from the Ohio State Historic Preservation Office and the United States Department of Interior, Fish and Wildlife Service for its proposed construction. Columbia contends that the cost to construct the new point of delivery was $15,000. Columbia notes that the transportation service to be provided through the new point of delivery will be from service provided under Columbia's Rate Schedule, Storage Service Transportation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31979 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–59–000 and RP96–140–007]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1997.

Take notice that on November 25, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No, 1, the following tariff sheets to become effective January 1, 1998:

Original Sheet No. 99O
Original Sheet No. 99P

Pursuant to the prior agreements of the parties following Columbia's first filing to recover Accrued-But-Not-Paid Gas Costs, this filing should be sub-docketed under the RP96–140 docket number.

Columbia states that the instant filing is being submitted pursuant to Article VII, Section C, Accrued-But-Not-Paid Gas Costs, of the "Customer Settlement" in Docket No. GP94–02, et al., approved by the Commission on June 15, 1995 (71 FERC 61,337 (1995)). The Customer Settlement became effective on November 28, 1995, when the Bankruptcy Court's November 1, 1995 order approving Columbia's Plan of Reorganization became final. Under the terms of Article VII, Section C, Columbia is entitled to recover amounts for Accrued-But-Not-Paid Gas Costs. As directed by Article VII, Section C, the tariff sheets contained herein are being filed in accordance with Section 39 of the General Terms and Conditions of the Tariff, to direct bill the Accrued-But-Not-Paid Gas Costs that have been paid subsequent to November 28, 1995.

Columbia states that the instant filing reflects Accrued-But-Not-Paid Gas Costs in the amount of $9,636.40 plus applicable FERC interest of $180.13. This is Columbia's seventh filing pursuant to Article VII, Section C, and Columbia reserves the right to make the appropriate additional filings pursuant to that provision. The allocation factors on Appendix F of the Customer Settlement were used as prescribed by Article VII, Section C.

Columbia states that copies of its filing have been mailed to all parties on the Commission's service list in Docket No. RP96–140 and RP–140–002, and to each of Columbia's firm customers, interruptible customers, and affected state commissions. Columbia also agrees to make available for this filing the data that it was required to provide in its June 13, 1996 compliance filing in Docket No. RP96–140–002 pursuant to a protective agreement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31989 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–60–000]

Columbia Gas Transmission Corporation; Notice of Filing

December 2, 1997.

Take notice that on November 25, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing Attachment A to the filing, which details, by customer, the historical load factors calculated using total firm entitlements for the 12-month period ended October 31, 1997.

Columbia states that this filing is being submitted pursuant to the Commission's November 12, 1997 Order in Docket Nos. RP97–149–002 and RP97–391–000, in which the Commission approved GRI's 1998 funding formula continuing the 1997 funding formula with allocated RD&D program costs to its members. Since the approved charges for 1998 are the same as the GRI charges approved for 1997, no revision is required in Columbia's presently effective Sheet Nos. 25 through 28, but the charges to certain of Columbia's firm customers will change based upon the revised historical load factor calculations.

Columbia states that this filing is to reflect Columbia's changes to its firm customers' load factors reflected in the calculations on Attachment A. As stated above, any new customer added after January 1, 1998 will be billed GRI each month based on the actual throughput for each prior month of service until a 12-month history is established. Nevertheless, Columbia is filing Attachment A to the filing so as to insure that the load factors resulting from the calculations are a matter of public record.

Columbia states that copies of its filing have been mailed to all parties on the Commission's service list in Docket No. RP96–140 and RP96–140–002, and to each of Columbia's firm customers, interruptible customers, and affected state commissions. Columbia also agrees to make available for this filing the data that it was required to provide in its June 13, 1996 compliance filing in Docket No. RP96–140–002 pursuant to a protective agreement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31990 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–009]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1997.

Take notice that on November 26, 1997, El Paso Natural Gas Company (El Paso) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective December 1, 1997:

Tenth Revised Sheet No. 30
Fifth Revised Sheet No. 31
Fourth Revised Sheet No. 32

El Paso states that the above tariff sheets are being filed to implement

negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31985 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–64–000]

El Paso Natural Gas Company; Notice of Tariff Filing

December 2, 1997.

Take notice that on November 26, 1997, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1–A, to become effective January 1, 1998:

Fourth Revised Sheet No. 256
Fourth Revised Sheet No. 257

El Paso states that the tendered tariff sheets update the identification of low and high load factor shippers for purposes of assessing the Gas Research Institute's (GRI) surcharges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31993 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–19–000]

Entergy Arkansas, Inc.; Notice of Filing

December 2, 1997.

Take notice that on November 26, 1997, Entergy Arkansas, Inc., filed additional information in the above referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31976 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–61–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1997.

Take notice that on November 25, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, to become effective January 1, 1998:

Seventh Revised Sheet No. 5200

Koch states that the above referenced tariff sheet is being filed to revise its imbalance trading form to be consistent with Section 20.1(A)(1) of the General Terms and Conditions. Koch states that this Section of its tariff provides that each month's imbalance will be traded with imbalances incurred for the same month.

Koch also states that it has served copies of the instant filing upon each affected customer, state commissions, and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31991 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–19–006]

Mojave Pipeline Company; Notice of Compliance Filing

December 2, 1997.

Take notice that on November 26, 1997, Mojave Pipeline Company (Mojave) tendered a letter for acceptance by the Federal Energy Regulatory Commission (Commission), in compliance with the Commission's order dated August 6, 1997 at Docket No. RP97–19–006.

Mojave states that the August 6 order required it to file revised tariff sheets no later than December 1, 1997 submitting its own pro forma trading partner agreement (TPA) or adopting the GISB model TPA. Mojave states that it will continue to use its pro forma TPA accepted by the August 6 order and that no tariff revisions are required at this time.

Mojave states that copies of the filing were served upon all parties of record in this proceeding, in accordance with the requirements of Section 385.2010 of the Commission's Rules of Practice and Procedure.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31984 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–028]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1997.

Take notice that on November 26, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective December 1, 1997:

Second Revised Sheet No. 7M

NGT states that the purpose of this filing is to report a modification to an existing negotiated rate term.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31962 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–528–001]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1997.

Take notice that on November 26, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective November 1, 1997:

Substitute Second Revised Sheet No. 196A

NGT states that this tariff sheet is filed herewith to comply with the order issued in this docket on October 30, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31988 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–86–000]

Pacific Gas Transmission Company; Notice of Compliance Filing

December 2, 1997.

Take notice that on November 26, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Eighteenth Revised Sheet No. 5; and as part of its FERC Gas Tariff, Second Revised Volume No. 1: Fifteenth Revised Sheet No. 7. PGT requests that the above-referenced tariff sheets become effective January 1, 1998.

PGT asserts that the purpose of this filing is to comply with Paragraphs 37 and 23 of the terms and conditions of First Revised Volume No. 1–A and Second Revised Volume No. 1, respectively, of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages." These tariff changes reflect that PGT's fuel and line loss surcharge percentage will remain at 0.0007% per Dth per pipeline-mile for the six-month period beginning January 1, 1998. Also included, as required by Paragraphs 37 and 23, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31999 Filed 12–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–306–004]

Paiute Pipeline Company; Notice of Compliance Filing

December 2, 1997.

Take notice that on November 26, 1997, Paiute Pipeline Company (Paiute)

tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets:

Substitute Fifth Revised Sheet No. 10
Substitute Sixth Revised Sheet No. 10
Substitute Seventh Revised Sheet No. 10
Second Revised Sheet No. 21
First Revised Sheet No. 25A
First Revised Sheet No. 25B
Original Sheet No. 25C
First Revised Sheet No. 28

Paiute indicates that the purpose of its filing is to comply with the Commission's order issued October 21, 1997 in Docket No. RP96–306–002, by which the Commission approved an offer of settlement filed by Paiute on July 1, 1997. Paiute requests that the proposed tariff sheets be permitted to become effective consistent with the effective dates prescribed in the settlement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31983 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–101–000]

Panhandle Eastern Pipe Line Company; Notice of Application for Abandonment

December 2, 1997.

Take notice that on November 25, 1997, Panhandle Eastern Pipe Line Company (Panhandle), 5400 Westheimer Court, Houston, TX 77251–1642, filed, in Docket No. CP98–101–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment by sale to Citizens Gas Fuel Company (Citizens), the Adrian lateral and appurtenant facilities located in Lenawee County, Michigan, as more fully set forth in the application, which is on file with the Commission and open for public inspection.

Panhandle is seeking authorization to abandon the Adrian Lateral facilities which include: 8.1 miles of 4-inch pipeline and 8.1 miles of 6-inch pipeline and appurtenant facilities, the existing metering facility and appurtenant equipment, with the exception of the electronic gas measurement equipment, all located in Lenawee County, Michigan. Panhandle indicates that its use of these facilities has been limited to delivering natural gas to Citizens in order to serve its various local distribution customers. Panhandle says that upon abandonment and transfer of the lateral, Citizens will include the facilities as part of its local distribution system and will continue to provide service to its customers. Panhandle states the facilities to be transferred are fully depreciated. Panhandle proposes to sell the facilities to Citizens for the sum of Ten Dollars ($10.00).

Panhandle states that its total system capacity will not be affected by this abandonment; that no customers presently served by Panhandle will have service terminated; nor will there be any changes to Panhandle's existing tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31978 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–411–005]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

December 2, 1997.

Take notice that on November 25, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheet pursuant to Section 154.203 of the Commission's Regulations and Section 4 of the Natural Gas Act to become effective November 8, 1997:

Second Revised Sheet No. 7a

On July 1, 1997, Sea Robin submitted a filing with the Commission in the above-captioned docket to create a new rate schedule on Sea Robin's system to provide a new, flexible firm service for any eligible shipper. Such new, firm service, Rate Schedule FTS–2, provided firm transportation at a volumetric rate provided that shippers maintain a throughput level of 80% of Maximum Daily Quantity (MDQ). In the Commission's "Order Accepting and Suspending Tariff Sheets Subject to Conditions" dated July 31, 1997, the Commission accepted Sea Robin's filing subject to certain conditions. Sea Robin made a compliance filings with the Commission on August 15, 1997, and October 14, 1997, to place the tariff sheets into effect on August 4, 1997.

The July 31 Order recognized that acceptance of the filing was subject to the outcome of Sea Robin's rehearing petition in Docket No. RP95–167. On December 31, 1996, Sea Robin filed a Stipulation and Agreement (Stipulation) in Docket No. RP95–167 under which it intended to resolve all of the issues in the proceeding and to implement revised rates effective January 1, 1997. The Stipulation Lowered Sea Robin's interruptible transportation (IT) rate to $0.0800/Dth and lowered its firm transportation (FT) demand rate to $2.26/Dth and FT commodity rate to $0.0040/Dth (Settlement Rates).

On April 22, 1997, the Commission issued its Order on Settlement Establishing Just and Reasonable Rates (April 22 Order), which required Sea Robin to reduce both its existing rates and Settlement Rates under Section 5(a) of the Natural Gas Act, 15 U.S.C. 717d(a)(1996) to $0.074/dth for IT service and $2.12/dth demand and $0.003/dth commodity for FT service. On rehearing of the April 22 Order, however, the Commission issued an order dated November 3, 1997, which accepted the settlement rates as just and reasonable. When Sea Robin filed its flex-firm rate schedule on July 1, 1997, with the rates contained in the April 22 Order, Sea Robin specifically stated that "any rates proposed to be charged hereunder will be subject to the outcome of Sea Robin's rehearing request." Accordingly, consistent with the Commission's November 3 Order, Sea Robin has filed the revised tariff sheet to implement the Settlement Rates for service under Rate Schedule FTS–2 as approved by the November 3 Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with the Rule 211 of the Commission's Rules of Practice and Procedures (18 CFR Section 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31987 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–3–000]

Southeastern Natural Gas Company; Notice of Petition for Rate Approval

December 2, 1997.

Take notice that on November 24, 1997, Southeastern Natural Gas Company (Southeastern) filed pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for approval of transportation rates for firm and interruptible service provided pursuant to the blanket certificate issued to Southeastern under Section 284.224 of the Commission's regulations.

Southeastern's existing rates were established by a settlement approved by the Commission in an order issued March 28, 1996. The March 28 order requires Southeastern to file a petition for rate approval on or before November 23, 1997, to justify its existing rates or to establish new rates. Since the November 23 deadline fell on a Sunday, Southeastern made its filing on the next succeeding business day.

Southeastern states that copies of its November 24 filing have been served upon its existing blanket certificate transportation customers.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not served to make Protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31981 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–63–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

December 2, 1997.

Take notice that on November 26, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of December 1, 1997.

Tariff Sheets Applicable to Contesting Parties

Thirty Fifth Revised Sheet No. 14
Fifth Sixth Revised Sheet No. 15
Thirty Fifth Revised Sheet No. 16
Fifty Sixth Revised Sheet No. 17
Thirty Eight Revised Sheet No. 29

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge, due to an increase in GSR billing units effective December 1, 1997.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31992 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–69–000]

Southern Natural Gas Company; Notice of Settlement Compliance Filing

December 2, 1997.

Take notice that on November 28, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective January 1, 1998:

Twentieth Revised Sheet No. 14A
Twenty-Sixth Revised Sheet No. 15A
Twentieth Revised Sheet No. 16A
Twenty-Sixth Revised Sheet No. 17A
Eleventh Revised Sheet No. 18A

Southern asserts that the purpose of this filing is to comply with the Commission's Order issued on September 29, 1995, which approved the Stipulation and Agreement (Settlement) filed by Southern on March 15, 1995 in Docket Nos. RP89–224–012, et al. In accordance with Article VII of the Settlement, Southern has made this filing to recover a GSR volumetric surcharge based on an estimate of its unrecovered GSR costs as of December 31, 1997 and its projected 1998 costs.

Paragraph 17 of Article VII of the Settlement provides for Southern to file by December 1 of each year to collect unrecovered gas supply realignment (GSR) costs through its GSR volumetric surcharge, to be effective for the parties supporting the Settlement beginning January 1 of the following year. The proposed GSR volumetric surcharge of $.002/Dth reflects a reduction from the $.0084/Dth surcharge currently in effect.

Southern states that copies of the filing were served upon Southern's customers, intervening parties and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31996 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–70–000]

Southern Natural Gas Company; Notice of Revised Tariff Sheets

December 2, 1997.

Take notice that on November 28, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1998:

Thirty-Seventh Revised Sheet No. 14
Twenty-First Revised Sheet No. 14a
Fifty-Eighth Revised Sheet No. 15
Twenty-Seventh Revised Sheet No. 15a
Thirty-Seventh Revised Sheet No. 16
Twenty-First Revised Sheet No. 16a
Fifty-Eighth Revised Sheet No. 17
Twenty-Seventh Revised Sheet No. 17a
Thirty-Second Revised Sheet No. 16
Twelfth Revised Sheet No. 18a

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern's storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as necessary to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of its rates under Rate Schedules FT, FT–NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31997 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–71–000]

Southern Natural Gas Company; Notice of GSR Cost Recovery Filing

December 2, 1997.

Take notice that on November 28, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of January 1, 1998.

Tariff Sheets Applicable to Contesting Parties

Thirty-Sixth Revised Sheet No. 14
Fifty-Seventh Revised Sheet No. 15
Thirty-Sixth Revised Sheet No. 16
Fifty-Seventh Revised Sheet No. 17
Thirty-First Revised Sheet No. 18
Thirty-Ninth Revised Sheet No. 29

Tariff Sheets Applicable to Supporting Parties

Nineteenth Revised Sheet No. 14a
Twenty-Fifth Revised Sheet No. 15a
Nineteenth Revised Sheet No. 16a
Twenty-Fifth Revised Sheet No. 17a

Southern sets forth in the filing its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under unrealigned gas supply contracts as well as sales function costs during the period August 1, 1997 through October 31, 1997. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31998 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–67–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

December 2, 1997.

Take notice that on November 26, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A to the filing. Such tariff sheets are proposed to be effective January 1, 1998.

Transco states that the purpose of the instant filing is to reflect, for purposes of assessing Transco's GRI surcharge, the reclassification of: (1) Baltimore Gas & Electric Company from the low load factor category to the high load factor category; (2) Delmarva Power & Light Company, City of Laurens, South Carolina, New Jersey Natural Gas Company and Penn Fuel Gas, Inc. from the high load factor category to the low load factor category; and (3) Commonwealth Gas Services, City of Richmond, Virginia, TEMCO (Hopewell), Virginia Natural Gas and Mid Louisiana Gas Company eliminated as GRI eligible delivery customers. In that regard, Transco has calculated the firm transportation service load factors for the 12 month period October 1996 through September 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31994 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–58–000]

USGen Power Services, L.P.; Notice of Filing

December 2, 1997.

Take notice that USGen Power Services, L.P., on November 13, 1997, tendered for filing a correction to the September 19, 1997 filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31975 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–003]

Wyoming Interstate Company, Ltd.; Notice of Filing of Tariff Sheets

December 2, 1997.

Take notice that, on November 26, 1997, Wyoming Interstate Company, Ltd. (WIC) tendered for filing, via its "Motion to Place Suspended Rates in Effect," the following revised tariff sheets:

First Revised Volume No. 1

Substitute Seventh Revised Sheet No. 5
Substitute Third Revised Sheet No. 5A

Second Revised Volume No. 2

Substitute Seventh Revised Sheet No. 4

According to WIC, this filing reflects the elimination, from the costs underlying the Docket No. RP97–375 rates, of costs associated with facilities not placed in service by November 30, 1997. This elimination was required by the Commission's "Order Accepting and Suspending Filing, Subject to Refund and Conditions, and Establishing Hearing" in Docket No. RP97–375–000, *Wyoming Interstate Company, Ltd.*, 79 FERC (CCH) ¶ 61,399 (1997) (Ordering Paragraph (B)).

WIC states that a full copy of its filing is being served on each jurisdictional customer, interested state commission, and each party that has requested service as well as upon each party appearing on the Commission's official service list for Docket No. RP97–375.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspections in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–31995 Filed 12–5–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1933-011 & 2198-007]

Southern California Edison Company; Notice of Availability of Final Environmental Assessment

December 2, 1997.

A final environmental assessment (EA) is available for public review. The final EA analyzes the environmental impacts of an application by Southern California Edison Company (licensee) to relocate project facilities. The licensee proposes constructing a new penstock to replace part of the existing flowline for the Santa Ana River (SAR) 1 and 2 Hydroelectric Project No. 1933-011 and all of the flowline for the SAR 3 Hydroelectric Project No. 2198-007. The licensee proposes to construct a new powerhouse to replace both the SAR 2 and SAR 3 powerhouses. The U.S. Army Corps of Engineers is building a new flood control dam in the Santa Ana River Canyon below the SAR 1 and 2 Project. The Seven Oaks Dam will inundate and destroy the SAR 2 powerhouse and the SAR 3 flowline rendering both projects inoperable. The licensee's proposed construction would allow it to continue to operate the projects. Both projects are on the Santa Ana River and its tributaries in San Bernardino County, California.

The final EA finds that the application to relocate project facilities would not constitute a major federal action significantly affecting the quality of the human environment. The final EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission in cooperation with the U.S. Department of Agriculture—Forest Service, San Bernardino National Forest, Big Bear Ranger District. Copies of the final EA can be obtained by calling the Commission's Public Reference room at (202) 208-1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97-31980 Filed 12-5-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of May 19 Through May 23, 1997

During the week of May 19 through May 23, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 26, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 34, Week of May 19 Through May 23, 1997

Appeal

Bonita L. Haynes, 5/23/97, VFA-0290

The DOE granted in part a Freedom of Information Act (FOIA) Appeal filed by Bonita L. Haynes. Haynes sought the release of two names withheld from a memo released to her by the DOE's Office of the Inspector General (IG). In its decision, the DOE found that the IG's withholding of one of the names was appropriate under FOIA Exemptions 6 and 7(C). However, the DOE also found that the IG's withholding of the other name was not appropriate under the justification furnished by the IG. Accordingly, the matter was remanded to the IG.

Requests for Exception

Greenville Automatic Gas Co., 5/22/97, VEE-0043

Greenville Automatic Gas Company filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering Greenville's request, the DOE found that the firm was not experiencing any type of hardship or gross inequity. Accordingly, exception relief was denied.

Hampton Gas Company, Inc. 5/22/97, VEE-0041

Hampton Gas Company, Inc., filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering Hampton's request, the DOE found that the firm was not experiencing any type of hardship or gross inequity. Accordingly, exception relief was denied.

Western Star Propane, Inc., 5/22/97, VEE-0040

Western Star Propane, Inc., filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering Western's request, the DOE found that the firm was not experiencing any type of hardship or gross inequity. Accordingly, exception relief was denied.

Refund Application

Department of the Interior/Bureau of Indian Affairs, 5/19/97, RF272-74747

The DOE approved an Application for Refund filed by the Department of the Interior/Bureau of Indian Affairs in the Subpart V crude oil refund proceeding. The DOE determined that the claimed volumes were not purchased through the Defense Logistics Agency (DLA) and, therefore, not covered by the refund granted DLA in a separate case.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Averitt Express	RG272-00105	5/22/97
B.F. Walker, Inc. et al	RF272-98728	5/22/97
Crude Oil Supplemental Refund Dist	RB272-00110	5/22/97
L.C. Kruse & Sons, Inc	RG272-00845	5/23/97

Name	Case No.	Date
Hart Well Drilling Co	RG272-00676	
P.Q. Corporation	RG272-00941	
Mrs. Annabelle Bressler et al	RK272-01328	5/19/97
Nortar, Inc. (F/K/A/ American Tar Co)	RC272-00364	5/23/97
Nortar, Inc	RK272-03941	
Pioneer Talc Co./Zemex	RK272-04426	5/23/97
Schaefler Trucking, Inc	RG272-93	5/20/97
Township of Montclair et al	RF272-86026	5/19/97
Yvonne Van Pembrook et al	RK272-01753	5/19/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Empire Drilling Company	RD272-65942
Emulsion Products	RD272-67919
Gardner Industries	RD272-67920
Honeywell, Inc	RD272-67216
Lock Joint Tube, Inc	RK272-4341
Morgan County, Missouri	RF272-86015
Nox-Crete, Inc	RR272-00101

[FR Doc. 97-32048 Filed 12-5-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of August 25 Through August 29, 1997

During the week of August 25 through August 29, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 26, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 46

Week of August 25 through August 29, 1997

Appeal

Burlin Mckinney, 8/28/97, VFA-0322

The DOE granted in part and denied in part an appeal of withholding of documents at DOE's Y-12 plant in Oak Ridge, Tennessee that relate to beryllium. The DOE found that the determination of DOE's Oak Ridge Operations Office, that it could not justify the high costs and burdensome effort to review the records, was inadequate in light of the requirements of the Freedom of Information Act and the DOE regulations. The DOE therefore remanded the case to the Oak Ridge Operations Office for a new determination releasing the documents or explaining the basis for withholding information with specific reference to one or more FOIA exemptions.

Personnel Security Hearing

Personnel Security Hearing, 8/29/97, VSO-0147

An Office of Hearings and Appeals Hearing Officer issued an opinion against restoring the security clearance of an individual whose clearance had been suspended because the Department of Energy had obtained derogatory information that fell within 10 CFR 710.8(k)(1). In reaching his conclusion, the Hearing Officer found that the individual had used methamphetamine and had not shown reformation. In addition, the Hearing Officer found that current inconsistencies in the individual's testimony support the charge that the individual is not being honest, reliable and trustworthy within the meaning of 10 CFR 710.8(l).

Refund Application

Vessels Gas Processing Co./Farmland Industries, Inc., 8/27/97, RF354-00009

The DOE issued a Decision and Order concerning an Application for Refund filed by Farmland Industries, Inc. (Farmland), an agricultural cooperative. Farmland sought a portion of the settlement fund obtained by the DOE through a Consent Order settlement with Vessels Gas Processing Co. The DOE granted Farmland a total refund of $338,343 ($217,221 principal plus $121,122 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Cape Ann Tool Co. et al	RF272–94520	8/28/97
City of Orlando et al	RF272–76387	8/25/97
Farmer's Oil Co. of Outlook et al	RF272–94783	8/29/97
M.R. Paving & Excavating	RK272–04016	8/25/97
United Cooperative Assoc. et al	RK272–01507	8/29/97
Vessels Gas Processing Co./Williams Energy	RF354–00010	8/29/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Farmers Elevator Co-op. Assn	RF272–98982
Five Star Moving & Storage	RK272–4503

[FR Doc. 97–32049 Filed 12–5–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of August 18 Through August 22, 1997

During the week of August 18 through August 22, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 26, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 47, Week of August 18 Through August 22, 1997

Appeals

Curry Contracting Co., Inc., 8/18/97 VFA–0321

Curry Contracting Co., Inc., appealed a determination issued to it by the Oak Ridge Operations Office. In its Appeal, Curry asserted that Oak Ridge failed to conduct an adequate search for OSHA reports, award and incentive fee contracts at the Office of Scientific and Technical Information Building, and reports pertaining to itself that it requested pursuant to the FOIA. The DOE determined that Oak Ridge had performed an adequate search. Consequently, Curry's Appeal was denied.

Information Focus on Energy, 8/19/97 VFA–0310

Information Focus on Energy, Inc. (IFE) appealed a determination by the Albuquerque Operations Office that partially denied IFE's request for information. In considering the Appeal, the DOE ordered the Director to either release names withheld pursuant to Exemption 6 or provide a detailed explanation for withholding any such information. Thus, the DOE granted IFE's Appeal.

Los Alamos Study Group, 8/18/97 VFA–0316

The Los Alamos Study Group appealed a determination by the Albuquerque Operations Office (AO) that denied a request for information made under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE confirmed that the AO correctly determined that the records the LASG sought are neither "agency records" within the meaning of the FOIA nor subject to release under the DOE regulations. Accordingly, the DOE denied the Appeal.

William H. Payne, 8/18/97, VFA–0315

The Department of Energy granted in part a Privacy Act Appeal that was filed by William H. Payne. The Director of the Freedom of Information and Privacy Acts Division (the Director) had denied a request for amendment that Mr. Payne filed pursuant to the Privacy Act because the document that Mr. Payne wished to amend is the property of a DOE contractor. In the Decision, the DOE concluded that if the document were located in a "Privacy Act system of records" pursuant to the contractor's agreement with the DOE, the document would be subject to the Act, and a decision on the merits of Mr. Payne's Appeal should be issued. The OHA, therefore, remanded the matter to the Director for a search of the Privacy Act systems of records.

Refund Application

Enron Corporation/, Amerigas Propane, Inc., RF340–23; Field & McGrady Special, RF340–177; Larry's Bottled Gas Co., 8/21/97, RF340–71

The DOE granted an Application for refund filed on behalf of Field & McGrady Special in the Enron Corporation special refund proceeding. The DOE found that Field & McGrady was the proper recipient of a refund based on petroleum purchases made by Val-Cap, Inc., a dissolved corporation. The partners in Field & McGrady are the same people who were the shareholders of Val-Cap at the time of Val-Cap's dissolution.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Northeast Cooperatiave et al.	RK272–01486	8/21/97
Prince Bros., Inc. et al.	RK272–02259	8/21/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Consolidated Gas Supply Corp.	RF340–198
Dallas Gas & Electric, Inc ..	RF340–200
Four Winds Marine Service, Inc.	RF272–86058
Goodwill Industries of W. N.Y. Inc.	RK272–3405
Gulf Chartering & Marine Services, Ltd.	RF272–74834
Personnel Security Hearing	VSO–0158
Public Service Company of NC, Inc.	RF340–199

[FR Doc. 97–32050 Filed 12–5–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of July 14 Through July 18, 1997

During the week of July 14 through July 18, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 26, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 42, Week of July 14 Through July 18, 1997

Appeal

Tri-State Drilling, Inc., 7/18/97, VFA–0304

The DOE's Office of Hearings and Appeals granted in part a Freedom of Information Act Appeal filed by Tri-State Drilling, Inc. Tri-State sought the release of unsuccessful bids for a specific contract that the Bonneville Power Administration (BPA) withheld in their entirety. The DOE found that BPA's withholding was not sufficiently explained and justified in its determination letter. Accordingly, the Appeal was remanded to BPA and denied in all other aspects.

Personnel Security Hearings

Personnel Security Hearing, 7/14/97, VSO–0128

A Hearing Officer recommended that access authorization be restored when it was uncontested that the individual used an illegal drug on one occasion. The individual's statements that she had only used illegal drugs on one occasion were corroborated by independent evidence. This evidence included the results of twenty-one random drug tests administered over a long period of time. The Hearing Officer also found that it was unlikely that the individual would use illegal drugs again.

Personnel Security Hearing, 7/16/97, VSO–0141

A Hearing Officer found that an individual had successfully mitigated security concerns arising from an allegation that the individual had molested his former foster child. Accordingly, the Hearing Officer recommended that the individual's access authorization be restored.

Petition for Special Redress

Philip P. Kalodner, 7/16/97, VSG–0001

Philip P. Kalodner requested a "class fee" for his participation in the agency's enforcement proceeding against Occidental Petroleum Corporation. The DOE denied the request on the ground that the purported class, Subpart V claimants, had no cause of action or right of intervention with respect to an agency enforcement proceeding. The DOE rejected Mr. Kalodner's contention that provisions in subparts O and V of the DOE procedural regulations authorized the requested fee. Finally, the DOE rejected Mr. Kalodner's arguments based upon fairness.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Crude Oil Supple Refund.	RB272–00114 ..	7/18/97
Enron Corporation/XCEL Products Co., Inc.,.	RF340–203	7/16/97
Jim's Electrical Service et al.	RK272–04455 ..	7/18/97
Lee FS Inc.	RG272–00178 ..	7/15/97
Naknek Electric Assoc., Inc..	RJ272–45	7/16/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Bethlehem Steel Corp.	RG272–00088
VA Medical Center	RF272–90205

[FR Doc. 97–32051 Filed 12–5–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of September 1 Through September 5, 1997

During the week of September 1 through September 5, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 26, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 49, Week of September 1 Through September 5, 1997

Appeal

Hanford Advisory Board, 9/2/97, VFA–0323

The Hanford Advisory Board filed an Appeal of a Determination issued to it in response to a request under the Freedom of Information Act (FOIA). The Appellant had asked for portions of a proposal made by Fluor Daniel Hanford (FDH). In its Determination, the

Richland Operations Office (ROO) denied the request pursuant to Exemption 3 of the FOIA and the National Defense Authorization Act of 1997 (NDAA), which generally prohibits the release of proposals. The DOE found that the NDAA applied to a proposal that was issued prior to the effective date of the statute. The DOE also found that the requested proposal did not meet the requirements of the NDAA's exception to non-disclosure for proposals set forth or incorporated by reference into the final contract. However, because it appeared that the DOE had released information from the proposal in news conferences and press releases, the agency had waived Exemption 3 protection as to that information. Accordingly, the Appeal was granted and the case was remanded to the ROO for further action.

Refund Application

Pillsbury Company, RC272–97810; Seneca Foods Corporation, 9/5/97, RK272–4055

The DOE rescinded a refund to one company and denied a Supplemental Refund to a another company in the crude oil refund proceeding. Pillsbury Company (Pillsbury) had received a crude oil refund based on the purchases by its affiliate, the Green Giant Co. (Green Giant). Later, the DOE found that another affiliate of Pillsbury, Burger King Corporation (BK), had received a refund from the Surface Transporters Escrow in the Stripper Well refund proceedings. By filing the Stripper Well proceeding, BK waived Pillsbury's right to receive any refund in the crude oil refund proceeding. Accordingly, Pillsbury's crude oil refund was rescinded. The DOE rejected Pillsbury's argument that because Seneca Foods Corporation had assumed the liabilities of Green Giant when it purchased its assets, Seneca should be required to repay the refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Rollings Farms et al.	RK272–02995	9/5/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Buesing Corporation	RK272–03411
Towle Manufacturing Company.	RK272–4144

[FR Doc. 97–32052 Filed 12–5–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5932–5]

Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites; OSWER Directive 9200.4–17; Interim Final

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This Directive clarifies the U.S. Environmental Protection Agency's (EPA) policy regarding the use of Monitored Natural Attenuation for the remediation of contaminated soil and groundwater at sites regulated under Office of Solid Waste and Emergency Response (OSWER) programs. These include programs administered under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), the Resource Conservation and Recovery Act (RCRA), the Office of Underground Storage Tanks (OUST), and the Federal Facilities Restoration and Reuse Office (FFRRO). The Directive is intended to promote consistency in how monitored natural attenuation remedies are proposed, evaluated, and approved. As a policy document, it does not provide technical guidance on evaluating Monitored Natural Attenuation remedies. This Directive is being issued as Interim Final and may be used immediately. It provides guidance to EPA staff, to the public, and to the regulated community on how EPA intends to exercise its discretion in implementing national policy on the use of Monitored Natural Attenuation. The document does not, however, substitute for EPA's statutes or regulations, nor is it a regulation itself and, thus, it does not impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA may change this guidance in the future, as appropriate.

ADDRESSES:

Electronic Access. This document can be accessed in electronic form through the Internet (at http://www.epa.gov/swerust1/directiv/d9200417.htm).

Order Copies. To order paper copies of this report, please call the U.S. Environmental Protection Agency's (EPA) RCRA, Superfund, OUST & EPCRA Hotline at (800) 424–9346 or DC Area Local (703) 412–9810 or TDD (800) 553–7672 or TDD DC Area Local (703) 412–3323 Monday through Friday between 9 a.m. and 6 p.m. EST.

Docket. This document is available at three OSWER dockets:

(1) The UST Docket is open to the general public by appointment only between the hours of 9 a.m. and 4 p.m. EST Monday through Friday. No security clearance is necessary. Visitors may make photocopies of documents. The street address is: Office of Underground Storage Tanks Docket, 1235 Jefferson Davis Highway, 13th Floor, Arlington, VA 22202. Telephone numbers are (703) 603–9231 (voice mail) and (703) 603–9163 (fax).

(2) The RCRA Docket is located in the RCRA Information Center (RIC). The RIC is open to the public from 9 a.m. to 4 p.m., Monday through Friday, however, it is recommended that visitors call ahead to make an appointment so that the material they wish to view is ready when they arrive. Patrons may call for assistance at (703) 603–9230, send a fax to (703) 603–9234, or send an E-mail to rcra-docket@epamail.epa.gov. Patrons may write to: RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The RIC is located at 1235 Jefferson Davis Highway, Ground Level, Arlington, VA 22202.

(3) The Superfund Docket is open to the general public by appointment only between the hours of 9 a.m. to 4 p.m. Monday through Friday. No clearance is necessary and requestors of documents must make their own photocopies. There is no photocopying charge for documents less than 266 pages in length. The street address of the Superfund Docket/Document Information Center is 1235 Jefferson Davis Highway, Ground Level, Arlington, VA 22202. The telephone numbers are (703) 603–9232 and (703) 603–9240 (fax). The E-mail address is: superfund.docket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For further information on the OSWER Monitored Natural Attenuation Directive Workgroup and the Interim Final Directive, contact Hal White, via E-mail at white.hal@epamail.epa.gov, telephone at (703) 603–7177, fax at (703) 603–9163, or via U.S. Mail to US EPA (5403G), 401 M Street, SW, Washington DC 20460.

SUPPLEMENTARY INFORMATION: EPA will review and evaluate additional comments received on this Interim Final Directive prior to its release as "Final" guidance.

Dated: November 17, 1997.

Anna Hopkins Virbick,

Director, Office of Underground Storage Tanks.

[FR Doc. 97–32044 Filed 12–5–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 22, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. John Ryburn Stipe, Forrest City, Arkansas; to acquire additional voting shares of Forrest City Financial Corporation, Forrest City, Arkansas, and thereby indirectly acquire Forrest City Bank, N.A., Forrest City, Arkansas.

Board of Governors of the Federal Reserve System, December 2, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–31949 Filed 12–5–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to merge with United Bankshares, Inc., Miami, Florida, and thereby indirectly acquire United National Bank, Miami, Florida.

Board of Governors of the Federal Reserve System, December 2, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–31947 Filed 12–5–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. First Empire State Corporation, and Olympia Financial Corp., both of Buffalo, New York; to acquire up to 19.9 percent of the voting shares of OnBancorp, Inc., Syracuse, New York, and thereby indirectly acquire OnBank & Trust Co., Syracuse, New York. Olympia Financial Corp., also has applied to become a bank holding company and to acquire Manufactures and Traders Trust Company, Buffalo, New York.

In connection with these applications, Applicants also have applied to acquire Franklyn First Savings Bank, Wilkes-Barre, Pennsylvania, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Firstrust Corporation, New Orleans, Louisiana; to acquire 86.39 percent of the voting shares of Peoples Bank of Louisiana, Amite, Louisiana.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Gifford Bancorp, Inc. Employee Stock Ownership Plan, Gifford, Illinois; to acquire 48.8 percent of the voting shares of Gifford Bancorp, Inc., Gifford, Illinois, and thereby indirectly acquire Gifford State Bank, Gifford, Illinois.

D. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer

Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Security Corporation, Salt Lake City, Utah; to merge with Rio Grande Bancshares, Inc., Las Cruces, New Mexico, and thereby indirectly acquire First National Bank of Dona Ana County, Las Cruces, New Mexico, and First National Bank of Chaves County, Roswell, New Mexico.

Board of Governors of the Federal Reserve System, December 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-32055 Filed 12-5-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Bank of the Ozarks, Little Rock, Arkansas; to acquire Heritage Banc Holding, Inc., Little Rock, Arkansas, and thereby indirectly acquire HEARTLAND Community Bank, F.S.B., Little Rock, Arkansas, and thereby engage in the operation of a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 2, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-31548 Filed 12-5-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 971-0105]

The Dow Chemical Company; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 6, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. & Pennsylvania Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, Federal Trade Commission, 6th & Pennsylvania Ave., N.W., H-374, Washington, DC 20580. (202) 326-2932, or Howard Morse, Federal Trade Commission, 6th & Pennsylvania Ave., N.W., S-3627, Washington, DC 20580. (202) 326-2949.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for November 28, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from The Dow Chemical Company.

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The Dow Chemical Company, a Midland, Michigan based company and producer of chemicals, plastics, and agricultural and consumer products, announced on August 5, 1997, a cash tender offer to acquire all of the share of Sentrachem Limited, a South African chemical company that operates in the U.S. through its wholly-owned subsidiary, Hampshire Chemical Company. Hampshire and Dow, through its Chemical Division, produce aminopolycarboxylic chelating agents, also known as chelants. Hampshire produces chelants in Nashua, New Hampshire and Deer Park, Texas, and chelant intermediates in Lima, Ohio. Dow produces chelants in Freeport, Texas.

The proposed administrative complaint alleges that the proposed acquisition may substantially lessen competition in the research, development, manufacture, and sale of chelants, which are chemicals used in cleaners, pulp and paper, water treatment, photography, agriculture, and food and pharmaceutical applications to neutralize and inactivate metal ions. The proposed complaint alleges that the United States is the relevant geographic market for evaluating the acquisition's effect on chelants because the shipping costs of chelants, which are sold mostly in a liquid solution, are high and there are too many uncertainties and delays inherent in long distance shipping.

The proposed complaint alleges that Hampshire and Dow are the two leading

of only three producers of chelants in the United States; with a combined market share of over 70 percent. With only one competitor, the acquisition would likely lead to an unilateral price increase, 1992 Horizontal Merger Guidelines § 2.22.

Entry into the chelant market would not be timely, likely, or sufficient to deter or offset the adverse effects of the acquisition on competition because a new entrant would have to build both a chelant production plant and a plant to produce hydrogen cyanide ("HCN"), a key input in the production of chelants, which would take over two years and entail large fixed, and mostly sunk, costs. In order to recoup its investment, a new entrant would need to obtain a market share at least as large as that held by any of the current domestic producers, which would be difficult because of the significant amount of chelant sales that are subject to long term supply agreements.

The proposed Order would remedy the alleged violation by preserving the competition that would otherwise be lost as a result of Dow's acquisition. The proposed Order requires Dow, simultaneously with its acquisition of Sentrachem, to divest Hampshire's Chelant Business to Akzo Nobel N.V., a Dutch chemical company that is a leading European producer of chelants with strong chelant technology. Dow must divest, among other things, all rights of Hampshire relating to the research, development and manufacture of chelants in the United States and the distribution and sale of chelants in North America, including Hampshire's Lima, Ohio facility and its contract for the supply of HCN at Lima. Once it acquires the Hampshire Chelant Business, Akzo will build additional chelant capacity at the Lima, Ohio facility, which will curtail the need for inefficient, hazardous HCN shipments from the site.

The proposed Order sets certain Milestones that must be met to accomplish the construction of the additional chelant capacity at Lima. The Milestones include the submission of complete permits for the additional capacity within one year after the Order becomes final, and the installation of the structural steel within one year after the additional capacity is permitted. In the event any of the Milestones has not been achieved, Dow must reacquire the Hampshire Chelant Business from Akzo. The proposed Order further requires that upon its reacquisition of the business, Dow or a trustee will divest the Hampshire Business Unit, which, in addition to the Hampshire Chelant Business, includes other Hampshire businesses and Hampshire facilities at Nashua, New Hampshire and Deer Park, Texas. The proposed Order requires Dow to maintain the viability and marketability of the Hampshire Business Unit in the interim. This crown jewel provision provides an incentive for realizing the additional chelant capacity at the Lima, Ohio facility in a timely manner. The crown jewel also ensures that the Order will result in effective relief by requiring a divestiture of all of Hampshire in the event that any Milestone is not achieved.

The proposed Order requires Dow to toll manufacture chelants for Akzo from Hampshire's Nashua and Deer Park facilities while Akzo builds additional chelant capacity at Lima. The proposed Order also contains a firewall provision that requires Dow to maintain the confidentiality of the Hampshire Chelant Business form Dow's Competing Chelant Business.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement of the proposed Order.

Donald S. Clark,

Secretary.

[FR Doc. 97-32033 Filed 12-5-97; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: 45 CFR Part 303.72—Request for collection of past-due support by Federal tax refund offset and administrative offset.

OMB No.: 0970-0161.

Description: The Office of Child Support Enforcement (OCSE) operates the Tax refund offset TROP. The TROP was enacted by Congress on August 13, 1981 (Pub. L. 97-35, section 2331). This is a computerized system operated by the Office of Child Support Enforcement (OCSE) within the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS) and State child support agencies. The TROP was established to recover delinquent AFDC child support debts with ongoing cooperation of states and local child support agencies.

The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) signed by the President in November 1990, expanded the Program to include a provision for non-AFDC cases.

In 1996 the Debt Collection Improvement Act (Pub. L. 104-134) further expanded the program to increase the collection of nontax debts owed to the Federal Government and to assist families in collecting past-due child support. It required the development and implementation of procedures necessary to collect past-due support by administrative offset by agencies. As a result, this program is now known as the Tax Refund and Administrative Offset Program (TROP/ADOP).

Purpose: Pursuant to Public Laws 97-35 enacted by Congress on August 13, 1981, Pub. L. 101-508 signed by the President in November 1990 and Pub. L. 104-134 enacted into law on April 26, 1996, the Debt Collection Improvement Act of 1996, and pursuant to the Executive Order 13019 dated September 28, 1996, the OCSE will match the tax refund records against Federal payment certification records and Federal financial assistance records. The purpose is to facilitate the collection of delinquent child support obligations *from* persons who may be entitled or eligible to receive certain Federal payments or Federal assistance. State child support agencies submit cases of delinquent child support claims to the OCSE for submission to the Financial Management Service (FMS). These cases are sent by on-line dial-up access via personal computer, tape and cartridge via mail, Mitron tape, file transfer, or electronic data transmission. The Office of Child Support Enforcement serves as a conduit between state child support enforcement agencies and the FMS by processing weekly updates of collection data and distributing the information back to the appropriate State child support agency. The information will be disclosed by OCSE to state child support agencies for use in the collection of child support debts, through locate action wage withholding or other enforcement actions.

Respondents: State, District of Columbia, Guam, Puerto Rico, and Virgin Islands Governments.

Respondents: State and local governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response (minutes)	Total burden hours
Sub/test tape & Data Spec	1,744	52	5	7,557.3
Sub/test tape & Data Spec	54	52	5	234
Withdrawal notice	1,744	5	2	291
Pre-offset notice	54	87,075	2	15,673.5
Case Cert	54	52	3	140.4
Payment Infor	26	1	10	4.3
Local office contact phone address	1,744	1	30	872
Request for update	54	52	5	234
Federal Tax Offset contact	54	1	2	1.8
Update Spec	54	1	2	1.8
Issuance of pre-offset notice	54	1	2	1.8
Contact point for OCSE Pre-offset notice	30	1	1	0.9
Non-TANF Tax Refund Offset Information	1,744	40,735	10	6,789.2
Offset notice address/phone number change	54	1	10	9.0
Personal computer data	54	1	5	4.5
Notice of intention	25	1	2	0.8

Estimated Total Annual Burden Hours: 31,816.3.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: December 1, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–32054 Filed 12–5–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families; Statement of Organization, Function, and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, Administration for Children and Families (ACF) as follows: Chapter KB, Administration on Children, Youth and Families (ACYF) (61 FR 50028), as last amended September 24, 1996. This Notice consolidates the child abuse and neglect functions within the Children's Bureau.

I. Amend Chapter KB as follows:

KB.10 Organization. Delete in its entirety and replace with the following:

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KBA)
Division of Program Evaluation (KBB)
Head Start Bureau (KBC)
Program Operations Division (KBC1)
Program Support Division (KBC2)
Children's Bureau (KBD)
Office of Child Abuse and Neglect (KBD1)
Division of Policy (KBD2)
Division of Program Implementation (KBD3)
Division of Data, Research and Innovation (KBD4)
Division of Child Welfare Capacity Building (KBD5)
Family and Youth Services Bureau (KBE)
Child Care Bureau (KBG)
Program Operations Division (KBG1)
Policy Division (KBG2)

II. Delete paragraph D in its entirety and replace with the following:

D. The Children's bureau is headed by an Associate Commissioner who advises the Commissioner, Administration on Children, Youth and Families, on matters related to child welfare, including child abuse and neglect, child protective services, family preservation and support, adoption, foster care and independent living. It recommends legislative and budgetary proposals, operational planning system objectives and initiatives, and projects and issue areas for evaluation, research and demonstration activities. It represent ACYF in initiating and implementing interagency activities and projects affecting children and families, and provides leadership and coordination for the programs, activities, and subordinate components of the Bureau.

1. Office on Child Abuse and Neglect provides leadership and direction on the issues of child maltreatment and the prevention of abuse and neglect under the Child Abuse Prevention and Treatment Act (CAPTA). It is the focal point for interagency collaborative efforts, national conferences and special initiatives related to child abuse and neglect, and for coordinating activities related to the prevention of abuse and neglect and the protection of children at-risk. It supports activities to build networks of community-based, prevention-focused family resource and support programs through the Community-Based Family Resource and Support Program. It supports improvement in the systems which handle child abuse and neglect cases, particularly child sexual abuse and exploitation and maltreatment related fatalities, and improvement in the investigation and prosecution of these cases through the Children's Justice Act.

2. Division of Policy provides leadership and direction in policy development and interpretation under titles IV–B and IV–E of the Social Security Act, and the Basic State Grant under the Child Abuse Prevention and Treatment Act. It writes regulations and interprets policy for the Bureau's formula and entitlement grant programs, and responds to requests for policy clarification from ACF Regional Offices and a variety of other sources.

3. Division of Program Implementation provides leadership and direction in the operation and review of programs under titles IV–B and IV–E of the Social Security Act, and the Basic State Grant under the Child Abuse Prevention and Treatment Act. It develops program instructions, information memoranda, and annual reports. It analyzes State Plans and develops State profiles and other reports; participates in monitoring and reviewing State information systems to ensure the accuracy and relevancy of the data. It is responsible for the Monitoring Team, which schedules and coordinates the monitoring of State reviews and ensures effective corrective action if necessary. It works with appropriate other agencies and organizations on the implementation and oversight of relevant sections of the Indian Child Welfare Act. It is the focal point for financial issues, including disallowances, appeals, and the decisions of the Departmental Appeals Board (DAB). It responds to client and constituent correspondence received electronically and from a variety of sources.

4. Division of Data, Research and Innovation provides leadership and direction in program development, innovation, research and in the management of the Bureau's information systems under titles IV–B and IV–E of the Social Security Act, and under the Child Abuse Prevention and Treatment Act. It defines critical issues for investigation and makes recommendations regarding subject areas for research, demonstration and evaluation. It administers the Bureau's discretionary grant programs, and awards project grants to State and local agencies and organizations nationwide. It provides direction to the Crisis Nurseries and Abandoned Infants Resource Centers. It is responsible for the Data and Technology Team which analyzes and disseminates program data from the Adoption and Foster Care Analysis and Reporting System (AFCARS), and the National Child Abuse and Neglect Data System (NCANDS); develops systematic methods of measuring the impact and effectiveness of various child welfare programs; performs statistical sampling functions; provides comprehensive guidance to States, local agencies and others on data collection issues, and performance and outcome measures; and is the focal point for technology development within the Bureau.

5. Division of Child Welfare Capacity Building provides leadership and direction in the areas of training, technical assistance and information dissemination under titles IV–B and IV–E of the Social Security Act, and under the Child Abuse Prevention and Treatment Act. Either directly or through the Resource Centers, it provides training and technical assistance to assist service providers, State and local governments and tribes, and strengthen headquarters and regional office staff. It manages section 426 discretionary training grants and title IV–E training. It directs the operations and activities of the National Center on Child Abuse and Neglect Information Clearinghouse and the National Adoption Information Clearinghouse. It identifies best practices for treating troubled families and preventing abuse and neglect. It participates in the development of grant announcements, and manages certain discretionary grant projects. It develops and issues a periodic newsletter, and is the focal point for conference and meeting planning activities for the Bureau.

III. Delete Paragraph F in its entirety.

Dated: November 25, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–31964 Filed 12–5–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Mammography Quality; States as Certifiers Demonstration Project, Informational Conference; Availability of the "Application Package for Participation in the States as Certifiers Demonstration Project;" Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing the following meeting: "Mammography Quality, States as Certifiers Demonstration Project, Informational Conference." FDA is also announcing the availability of the "Application Package for Participation in the States as Certifiers Demonstration Project." FDA is planning to implement a 1-year demonstration project on State certification of mammography facilities, which is scheduled to begin on July 1, 1998. Participation in the program is voluntary, and will be limited to a few qualified States to be selected by FDA.

Date and Time: The meeting will be held on December 15, 1997, 11:30 a.m. to 4 p.m. Completed "Application Packages for Participation in the States as Certifiers Demonstration Project" must be submitted to FDA by February 16, 1998.

Location: The meeting will be held at 16071 Industrial Dr., Gaithersburg, MD 20877.

Contact Person: Miguel R. Kamat, Center for Devices and Radiological Health (HFZ–240), 1350 Piccard Dr., Rockville, MD 20850, 301–827–2968.

Registration: Registration for this meeting is not required.

Electronic Access: Persons interested in obtaining a copy of the application package may do so by using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the WWW. Updated on a regular basis, the CDRH home page includes the "Application Package for Participation in the States as Certifiers Demonstration Project."

The CDRH home page may be accessed at http://www.fda.gov/cdrh. The "Application Package for Participation in the States as Certifiers Demonstration Project" will be available at http://www.fda.gov/cdrh/dmqrp.html.

Dated: November 28, 1997.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 97–32082 Filed 12–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0329]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Changes to an Approved Application" has been approved by the Office of

Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 24, 1997 (62 FR 39890 to 39903), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0315. The approval expires on September 30, 2000.

Dated: December 2, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32024 Filed 12–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0321]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Advisory Opinions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 1997 (62 FR 43534), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0193. The approval expires on September 30, 2000.

Dated: December 2, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32079 Filed 12–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0323]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Notice of Participation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 7, 1997 (62 FR 42561), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0191. The approval expires on September 30, 2000.

Dated: December 2, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32080 Filed 12–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0265]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Investigational Device Exemptions Reports and Records—21 CFR 812" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 1997 (62 FR 38097), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0078. The approval expires on September 30, 2000.

Dated: December 2, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32081 Filed 12–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3778–N–04]

Notice of Public Meeting and Request for Comments on Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of public meeting and request for comments on Fair Housing Initiatives Program (FHIP).

SUMMARY: This Notice invites interested parties to attend a public meeting and/or to submit written comments on the Department's administration of FHIP funding, including criteria and/or incentives to be included in the FY 1998 FHIP Notice of Funding Availability (NOFA) for activities that assist the Department in its efforts to double enforcement actions under the Fair Housing Act.

DATES: The public meeting will be held on December 15, 1997 at 2:00 p.m. The written comment Due Date is December 19, 1997.

ADDRESSES: Persons interested in attending the public meeting are invited to attend in Room 10233, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Persons interested in submitting written comments are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000; telephone number (202) 708–0800 (this is not a toll free number). Persons who use a text telephone (TTY) may call 1–800–290–1617.

SUPPLEMENTARY INFORMATION: The Fair Housing Initiatives Program is an essential component in the enforcement of the Fair Housing Act and in the Department's commitment to doubling its enforcement actions. In anticipation of the next round of funding under the FHIP, the Department desires to provide an opportunity for comment from prior grantees and applicants, potential applicants and any other interested parties, on the administration of FHIP funding, application procedures for funding in general, and on the content of *FHIP NOFAs* in particular. The Department is also interested in suggestions regarding criteria and/or incentives to include in the FY 1998 FHIP Notice of Funding Availability (NOFA) to assist the Department in its efforts to double enforcement actions under the Fair Housing Act. In addition to suggestions, the Department welcomes comments on the merits of: bonus points for activities that result in enforcement actions by HUD; requirements that specific types of cases be filed with HUD; and incentives for other cooperative activities that further the Department's enforcement program. Enforcement actions are defined as issuance of a charge by HUD or referral by HUD to the Department of Justice for enforcement. The Department will consider the comments received in response to this Notice when formulating plans for the disposition of funds appropriated for Fiscal Year 1998.

Dated: December 3, 1997.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 97–32151 Filed 12–4–97; 11:12 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Environmental Statements; Availability, etc.: National Bison Range Complex, MT: Comprehensive Conservation Plan

AGENCY: Fish and Wildlife Service.

ACTION: Notice of intent to prepare a comprehensive conservation plan.

SUMMARY: This notice advises that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan (CCP) and associated environmental document for the National Bison Range Complex in northwestern Montana. The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by January 7, 1998.

ADDRESSES: Comments and requests for more information to Project Leader, Attention Planning Team, National Bison Range Complex, 132 Bison Range Road, Moiese, Montana 59824.

FOR FURTHER INFORMATION CONTACT: Dave Wiseman, Refuge Manager 406–644–2211.

SUPPLEMENTARY INFORMATION: The Service has initiated Comprehensive Conservation Planning for the National Bison Range Complex. The Complex includes the National Bison Range; Ninepipe, Pablo, and Swan River National Wildlife Refuges; and the Northwest Montana Wetland Management District. Each National Wildlife Refuge has purposes for which it was established. Those purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses occur on the refuge. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each national wildlife refuge's establishing purposes.

In 1908, the first purchase of land for the exclusive protection of wildlife occurred when Congress appropriated money for the establishment of the National Bison Range "for a permanent national bison range for the herd of bison." (45 Stat. 267–8) and subsequently in 1921 "as refuges and breeding grounds for birds," (Executive Order 3596). Ninepipe and Pablo National Wildlife Refuges were established as easement refuges in 1921 "as a refuge and breeding ground for native birds," (Executive Order 3503-Ninepipe, Executive Order 3504—Pablo). The Tribes have the right to use these for all purposes consistent with the permanent refuge easements. Swan River National Wildlife Refuge was established in 1973 "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds," (Migratory Bird Conservation Act, 16 U.S.C. 715–715r). Finally, the Northwest Montana Wetland Management District are lands acquired "as Waterfowl Production Areas" subject to "all of the provisions of such Act (Migratory Bird Conservation Act) * * * except the inviolate sanctuary provisions," (Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718).

The National Bison Range Complex is an integral part of the community in northwestern Montana. The National Bison Range, Ninepipel and Pablo National Wildlife Refuges, and that portion of the Wetland Management District in Lake County, Montana lie within the exterior boundaries of the Flathead Indian Reservation of the Confederated Salish and Kootenai Tribes. The units of the Complex that are not within the reservation include the Swan River National Wildlife Refuge and that portion of the Wetland Management District in Flathead County, Montana. The Comprehensive Conservation Plan will define how the Complex is managed, not who manages it. Therefore, this planning effort is separate from the Confederated Salish and Kootenai Tribes' compacting requests for management authority. The Service and the Tribes have discussed working together to develop the CCP.

The Service may contract with the Tribes for resource personnel or services as needed. The Service will conduct the planning process providing the Tribes, as well as other governments, agencies, organizations, and the public with an opportunity to participate in the scoping and public comment process.

The Service is requesting input for concerns, ideas, and suggestions for the future management of the National Bison Range Complex. Anyone interested in providing input is invited to respond to the following three questions.

(1) What makes the National Bison Range Complex (or any specific unit) special or unique for you?

(2) What problems or issues do you want to see addressed in the Comprehensive Conservation Plan?

(3) What improvements would you recommend for the National Bison Range Complex (or any specific unit)?

The Service has provided the above questions for your optional use. There is no requirement to provide information to the Service. The Planning Team developed these questions to facilitate finding out more information about individual issues and ideas concerning the National Bison Range Complex. Comments received by the Planning Team will be used as part of the planning process, individual comments will not be reference in our reports or directly responded to.

There will also be an opportunity to provide input at open houses scheduled for late January 1998 to scope issues and concerns (schedule can be obtained from the National Bison Range at above address). All information provided voluntarily by mail, phone, or at public meetings becomes part of the official public record (e.g., names, addresses, letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental document will be available for review in June 1999.

Dated: November 26, 1997.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 97–32007 Filed 12–5–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice to accept contribution from private sources.

SUMMARY: The United States Geological Survey (USGS) is accepting a $25,000 contribution per year for two years from Amoco Overseas Exploration Company to support the World Energy Project.

ADDRESSES: If any other parties are interested in making contributions for the same or similar purposes, please contact Mr. Vito Nuccio of the U.S. Geological Survey, Central Region Energy Resources Team, Mail Stop 939, Denver Colorado 80225–0046; telephone (303) 236–1854; e-mail vnuccio@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: November 21, 1997.

P. Patrick Leahy,

Chief, Geologic Division.

[FR Doc. 97–32000 Filed 12–5–97; 8:45 am]

BILLING CODE 4210–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–74]

Committees, Establishment, Renewal, Termination, etc: Alaska Resource Advisory Council; Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for Alaska Resource Advisory Council.

SUMMARY: The Bureau of Land Management, Alaska State Office, is soliciting nominations for the Alaska Resource Advisory Council. The council provides advice and recommendations to BLM on land use planning and management of 90 million acres of public lands in Alaska. Public nominations will be considered for 30 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10—15 member citizen-based advisory councils as established and authorized under the Federal Advisory Committee Act. Council members represent the various interests concerned with the management of the public lands in Alaska. These include three categories:

- Category One—Representatives of energy and mining development, timber industry, off-road vehicle use and developed recreation.
- Category Two—Representatives of environmental and resource conservation organizations and archaeological or historic interests.
- Category Three—Representatives of state and local government, Alaska Natives, academicians involved in natural sciences, and the public-at-large.

BLM is currently seeking nominations to fill vacancies in categories one and two.

Individuals may nominate themselves or others. Nominees must be residents of the State of Alaska, and will be evaluated on the basis of education, training, experience of the issues, and knowledge of Alaska's public lands. Nominees should have a demonstrated commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations and a completed nomination form.

ADDRESSES: To request a nomination package, contact External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

DATES: All nominations should be received on or before January 7, 1998.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, Bureau of Land Management, Alaska State Office, (907) 271–5555.

Dated: November 24, 1997.

Tom Allen,

State Director.

[FR Doc. 97–32005 Filed 12–5–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00;GP8–0057]

Notice of Meeting of the Eastern Washington Resource Advisory Council

AGENCY: Interior, Bureau of Land Management, Spokane District.

ACTION: Meeting of the Eastern Washington Resource Advisory Council; January 15, 1998, in Spokane, Washington.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on January 15, 1998. The meeting will convene at 7:00 p.m., at Doubletree Hotel Spokane/City Center, Spokane Falls Ballroom, 322 N. Spokane Falls Court, Spokane, Washington, 99201; (509) 455–9600. The meeting will adjourn upon completion of business, but no later than 10:00 p.m. Public comments will be heard from 7:30 p.m. until 9:00 p.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. The purposes of the meeting are to discuss the Draft Eastside Environmental Impact Statement and to receive an update on the status of the Standards for Rangeland Health and Livestock Grazing Guidelines.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 North Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated: December 2, 1997.

Joseph K. Buesing,

District Manager.

[FR Doc. 97–32001 Filed 12–5–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–74]

Notice of Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council Meeting.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Thursday, January 22, 1998, from 9 a.m. until 4:30 p.m. and Friday, January 23, 1998, from 8:30 a.m. until 4 p.m. The council will review BLM land management issues and take public comment on those issues. The meeting will be held in the Denali Room on the 4th floor of the Anchorage Federal Building at 7th and C Street.

Public comments will be taken from 2–3 p.m. Thursday, January 22. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: November 25, 1997.

Tom Allen,

State Director.

[FR Doc. 97–32006 Filed 12–5–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–00; GP8–0053]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District; Interior.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon, January 13, 1998.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on January 13, 1998 beginning at 8:00 a.m. at the Yellowhawk Community Health Center, Umatilla Reservation, Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 1:00 p.m. Topics to be discussed by the Council will include the Interior Columbia Basin Ecosystem Management Project, implementation of Standards for Rangeland Health and Guidelines for Livestock Grazing on public lands, and an update on the Oregon Governor's Forest Health Advisory Committee.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE. Third Street, P.O. Box 550, Prineville, Oregon 97754, or call 541–416–6700.

Dated: November 26, 1997.

James L. Hancock,

District Manager.

[FR Doc. 97–32059 Filed 12–5–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–01; NMNM96528]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; R&PP Act classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Dona Ana County, New Mexico under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). Dona Ana County proposes to use the land for a Juvenile Correctional and Rehabilitative Facility.

T. 23 S., R. 1 W., NMPM
Sec. 33, E½NE¼, south of the frontage road paralleling Interstate Highway 10.
Containing 56 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before January 22, 1998.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–4349.

SUPPLEMENTARY INFORMATION:

Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein. Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before January 22, 1998,

interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a Juvenile Correctional and Rehabilitative Facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Juvenile Correctional and Rehabilitative Facility.

Dated: December 2, 1997.

Josie Banegas,

Acting District Manager.

[FR Doc. 97–32004 Filed 12–5–97; 8:45 am]

BILLING CODE 4310–VC–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Title II Fiscal Year 1998 Development Program Proposal Final Draft Guidelines and FY 1997 Annual Results Report

Pursuant to Section 207(b) of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480), as amended, notice is hereby given that the final draft P.L. 480 Title II guidelines for fiscal year 1999 Program Proposals and Fiscal Year 1997 Annual Results Reports is being made available to interested parties for the required thirty-day comment period.

Individuals who wish to receive a copy of the draft guidelines should contact: Office of Food for Peace, Agency for International Development, 1300 Pennsylvania Avenue (RRB 7.06–153), Washington, DC 20523–0809. Contact person: Gwen Johnson, (202) 712–0664. Individuals who have questions or comments on the draft guidelines, should contact David Nelson at (202) 712–1828.

The thirty-day comment period will begin on the date that this announcement is published in the **Federal Register**.

Dated: November 20, 1997.

William T. Oliver,

Director, Office of Food for Peace, Bureau for Humanitarian Response.

[FR Doc. 97–31904 Filed 12–5–97; 8:45 am]

BILLING CODE 6116–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 25–97]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME

Monday, December 15, 1997, 9:30 a.m. to 5:00 p.m.

Wednesday, December 17, 1997, 9:30 a.m. to 5:00 p.m.

Monday, December 22, 1997, 9:30 a.m. to 5:00 p.m.

Monday, December 29, 1997, 9:30 a.m. to 5:00 p.m.

Wednesday, December 31, 1997, 9:30 a.m. to 5:00 p.m.

SUBJECT MATTER: (1) Oral Hearings and Hearings on the Record on Objections to Individual Proposed Decisions on Claims of Holocaust Survivors Against Germany; (2) Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

STATUS: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, December 3, 1997.

Judith H. Lock,

Administrative Officer.

[FR Doc. 97–32152 Filed 12–4–97; 9:18 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

December 3, 1997.

The Department of Labor has submitted the ETA 9068 (Formula Grants) and ETA 9068–1 (Competitive Grants) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by December 31, 1997. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Todd Owen ((202) 219–5096, x.143).

Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of response.

Agency: Employment and Training Administration.

Title: Welfare-to-Work Formula (ETA 9068)/Competitive Cumulative Quarterly Status Reports (ETA 9068–1).

OMB Number: 1205–New.

Frequency: Quarterly.

Affected Public: (1) WtW Formula Grants: States, local governments, and Private Industry Councils; and (2) WTW Competitive Grants: Eligible applicants from Business or other for profit and non-profit institutions. The Welfare to Work program is a new program designed to assist States in finding unsubsidized employment. The quarterly financial status reports are due to the Employment and Training Administration in order to evaluate the program, for program planning and management, to measure regulatory compliance, and for audit purposes.

DOL, ETA Reporting Burden for WtW Formula and Bonus Grants (ETA 9068)

Requirements	1st year	2nd year	3rd year	4th year
Number of Reports Per Entity Per Quarter	1	1	2	2.
Total Number of Reports Per Entity Per Year	3	4	8	8.
Number of Hours Required for Recording/Reporting Per Quarter Per Report	40 minutes	80 minutes	120 minutes	80 minutes.
Total Number of Hours Required for Recording/Reporting Hours Per Entity Per Year.	2	5	8	5.
Number of Entities Reporting	55	55	55	55.
Total Number of Hours Required for Recording/Reporting Burden Per Year	110	293	440	293.
Total Burden Cost @$10.50 per hour.	$1,155.00	$3,080.00	$4,620.00	$3,080.00.

NOTE: Formula Grants will only be issued in years 1 and 2; Grantees may be eligible for a Bonus grant in year 3. All grants funds will be tracked in the same automated format.
In year 1, formula grants will not be allotted until the 2nd qtr.

DOL, ETA Reporting Burden for WtW Competitive Grants (ETA 9068–1)

Requirements	1st year	2nd year	3rd year	4th year
Number of Reports Per Entity Per Quarter	1	1	2	2.
Total Number of Reports Per Entity Per Year	3	4	4	4.
Number of Hours Required for Recording/Reporting Per Quarter Per Report	40 minutes	80 minutes	120 minutes	80 minutes.
Total Number of Hours Required for Recording/Reporting Hours Per Entity Per Year.	2	5	8	5.
Estimated Number of Entities Reporting	200	200	200	200.
Total Number of Hours Required for Recording/Reporting Burden Per Year	400	1,067	1,600	1,067.
Total Burden Cost @$10.50 per hour.	$4,200.00	$11,200.00	$16,800.00	$11,200.00

NOTE: Competitive Grants to be awarded in years 1 and 2. Estimate 200 grants will be awarded to eligible applicants. All grant funds will be tracked in the same automated format.
In year 1, Competitive grants will not be let until the 2nd quarter.

Description: This request for emergency clearance of the WtW Formula and Competitive Cumulative Quarterly Status report formats is necessary so that the Department may collect financial data from the States and other grant recipients on a quarter basis. The information will provide a means for the Secretary of Labor to manage and evaluate the program as well as to develop a formula for measuring State performance to be utilized in determining and awarding bonuses to States. These performance bonuses are authorized under the Act in Section 403(a)(5)(E).

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 97–32056 Filed 12–5–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Temporary Closing of Microfilm Research Room at National Archives Building

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA plans to close the Microfilm Research Room at the National Archives Building (Room 400) from January 12 to 16, 1998, to refurnish the room and install new equipment. Any changes to these dates will be posted in the fourth floor lobby outside the Microfilm Research Room. Researchers may also obtain updated information by calling or contacting NARA at the telephone number or email address shown in the **FOR FURTHER INFORMATION CONTACT** section.

DATES: January 12 to 16, 1998.

ADDRESSES: The Microfilm Research Room is located in the National Archives Building at 700 Pennsylvania Ave., NW, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Jo Ann Williamson, Chief, Archives I, User Services Branch, Tel. 202–501–5400. E-mail inquiries: <inquire@nara.gov>.

Dated: December 1, 1997.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 97–32058 Filed 12–5–97; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Performance Review Board for Office of Inspector General Senior Executive Service positions.

SUMMARY: This announcement of the membership of the National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Wilkinson, Jr., at the above address or (703) 306–1180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Office of Inspector General

Senior Executive Service Performance Review Board is as follows:

Charles E. Hess, Chairman, Audit and Oversight Committee, National Science Board, Chairperson
Linda P. Massaro, Director, Office of Information and Resource Management, Executive Secretary
Judith S. Sunley, Assistant to the Director.

Dated: December 3, 1997.

John F. Wilkinson, Jr.,

Director, Division of Human Resource Management.

[FR Doc. 97–32074 Filed 12–5–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Philadelphia Electric Company; Delmarva Power and Electric Company; Atlantic City Electric Company; Salem Nuclear Generating Station, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order, under 10 CFR 50.80 of the indirect transfer of control of Atlantic City Electric Company's (ACE) and Delmarva Power and Light Company's (DP&L) interests in the Salem Nuclear Generating Station (SNGS), Units 1 and 2, licenses to the extent effected by a proposed merger and restructuring of Atlantic Energy, Inc. (the parent holding company of ACE) and DP&L, resulting in the formation of a new holding company, Conectiv, Inc., under which ACE and DP&L would become wholly owned subsidiaries. Atlantic Energy, Inc. will cease to exist. Public Service Electric and Gas Company (PSE&G), Philadelphia Electric Company (PECo), DP&L, and ACE are co-holders of Facility Operating Licenses Nos. DPR–70 and DPR–75, issued for operation of the SNGS, Units 1 and 2, located in Lower Alloways Creek Township, Salem County, New Jersey. PSE&G, the licensed operator of the facilities, and PECo are not involved in the proposed merger and restructuring. An application filed by ACE and DP&L under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge (Counsel for ACE and DP&L) informed the Commission of the proposed merger and corporate restructuring.

According to the proposed plan, there will be no significant change in ownership, management, or sources of funds for operation, maintenance, or decommissioning of the SNGS, Units 1 and 2, due to the corporate restructuring. ACE and DP&L will continue to hold the licenses, and no direct transfer of the licenses will occur.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after appropriate notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to the proposed action, see the application filed by ACE and DP&L under cover of a letter dated April 30, 1997, as supplemented November 7, 1997, from John H. O'Neill, Jr., Shaw, Pittman, Potts & Trowbridge (Counsel for ACE and DP&L), which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey.

Dated at Rockville, Maryland, this 2nd day of December 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32018 Filed 12–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric and Gas Company, Atlantic City Electric Company, Hope Creek Generating Station; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order, under 10 CFR 50.80, of the indirect transfer of control of Atlantic City Electric Company's (ACE) interest in the Hope Creek Generating Station (HCGS) license to the extent effected by a proposed merger of Atlantic Energy, Inc. (the parent holding company of ACE) and Delmarva Power & Light Company (DP&L), resulting in the formation of a new holding company, Conectiv, Inc., under which ACE and DP&L would become wholly owned subsidiaries. Atlantic Energy, Inc. will cease to exist. Public Service Electric and Gas Company, not involved in the merger, is co-holder of Facility Operating License No. NPF–57, along with ACE, issued for operation of the HCGS, located in Lower Alloways Creek Township, Salem County, New Jersey. An application filed by ACE under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, Counsel for ACE and DP&L, informed the Commission of the proposed corporate restructuring.

According to the proposed plan, there will be no significant change in ownership, management, or sources of funds for operation, maintenance, or decommissioning of the HCGS due to the corporate restructuring. ACE will continue to hold the license, and no direct transfer of the license will occur.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after appropriate notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to the proposed action, see the application filed by ACE under cover of a letter dated April 30, 1997, as supplemented November 7, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge (Counsel for ACE and DP&L), which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey.

Dated at Rockville, Maryland, this 2nd day of December 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Regulation.

[FR Doc. 97–32022 Filed 12–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company, Peach Bottom Atomic Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order, under 10 CFR 50.80, of the indirect transfer of control of the interests in the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, licenses to the extent effected by a proposed merger of Atlantic Energy, Inc. (the parent holding company of Atlantic City Electric Company (ACE)) and Delmarva Power & Light Company (DP&L), resulting in the formation of a new holding company, Conectiv, Inc. ACE is co-holder of Facility Operating Licenses Nos. DPR–44 and DPR–56, along with Public Service Electric and Gas Company (PSE&G), PECO Energy Company (PECO), and DP&L, issued for operation of the PBAPS, Units 2 and 3, located in Peach Bottom Township, York County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the indirect transfer of the interests in PBAPS to the extent effected by the proposed merger of Atlantic Energy, Inc. and DP&L, resulting in the formation of a new holding company, Conectiv, Inc., under which ACE and DP&L would become wholly owned subsidiaries. No direct transfer of the licenses as held by ACE and DP&L would occur. PECO, the licensed operator of the facilities, and PSE&G are not involved in the merger and restructuring.

The proposed action is in accordance with an application filed by ACE and DP&L under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, Counsel for ACE and DP&L.

The Need for the Proposed Action

The proposed action is required to enable the proposed merger and restructuring of Atlantic Energy, Inc., ACE and DP&L to occur to the extent indirect transfers of control of the licenses will be effected by the merger and restructuring.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no physical or operational changes as a result of the proposed action. The corporate merger and restructuring will not affect the qualifications or organizational affiliation of the personnel who operate the facilities, as PECO, not involved in the merger, will continue to be responsible for the operation of PBAPS, Units 2 and 3.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action will not affect nonradiological plant effluents and will have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Peach Bottom Atomic Power Station, Units 2 and 3," April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on September 15, 1997, the staff consulted with the Pennsylvania State official, Mr. S. Maingi of the State of Pennsylvania, Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application filed by ACE and DP&L under cover of a letter dated April 30, 1997, as supplemented November 7, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge (Counsel for ACE and DP&L), which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1061, Harrisburg, Pennsylvania.

Dated at Rockville, Maryland, this 2nd day of December 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32020 Filed 12–5–97; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Company, Public Service Electric And Gas Company, Delmarva Power And Light Company, Atlantic City Electric Company, Peach Bottom Atomic Power Station, Units 2 And 3; Notice Of Consideration Of Approval Of Application Regarding Proposed Corporate Restructuring

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order, under 10 CFR 50.80, of the indirect transfer of control of Atlantic City Electric Company's (ACE) and Delmarva Power and Light Company's (DP&L) interests in the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, licenses to the extent effected by a proposed merger and restructuring of Atlantic Energy, Inc. (the parent holding company of ACE) and DP&L, resulting in the formation of a new holding company, Conectiv, Inc., under which ACE and DP&L would become wholly owned

subsidiaries. Atlantic Energy, Inc., will cease to exist. PECO Energy Company, Public Service Electric and Gas Company (PSE&G), DP&L, and ACE are co-holders of Facility Operating Licenses Nos. DPR–44 and DPR–56, issued for operation of PBAPS, Units 2 and 3, located in Peach Bottom Township, York County, Pennsylvania. PECO, the licensed operator of the facilities, and PSE&G are not involved in the proposed merger and restructuring. An application filed by ACE and DP&L under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, Counsel for ACE and DP&L, informed the Commission of the proposed merger and corporate restructuring.

According to the proposed plan, there will be no significant change in ownership, management, or sources of funds for operation, maintenance, or decommissioning of PBAPS, Units 2 and 3, due to the corporate restructuring. ACE and DP&L will continue to hold the licenses, and no direct transfer of the licenses will occur.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after appropriate notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to the proposed action, see the application filed by ACE and DP&L under cover of a letter dated April 30, 1997, as supplemented November 7, 1997, from John H. O'Neill, Jr., Shaw, Pittman, Potts & Trowbridge (counsel for ACE and DP&L), which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania.

Dated at Rockville, Maryland, this 2nd day of December 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32021 Filed 12–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Atlantic City Electric Company; Philadelphia Electric Company; Delmarva Power and Light Company; Salem Nuclear Generating Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order, under 10 CFR 50.80, of the indirect transfer of control of the interests in the Salem Nuclear Generating Station (SNGS), Units 1 and 2, licenses to the extent effected by a proposed merger of Atlantic Energy, Inc. (the parent holding company of Atlantic City Electric Company (ACE) and Delmarva Power & Light Company (DP&L), resulting in the formation of a new holding company, Conectiv, Inc. ACE is co-holder of Facility Operating Licenses Nos. DPR–70 and DPR–75, along with Public Service Electric and Gas Company (PSE&G), Philadelphia Electric Company (PECo), and DP&L issued for operation of the SNGS, Units 1 and 2, located in Lower Alloways Creek Township, Salem County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of the interests in SNGS to the extent effected by the proposed merger of Atlantic Energy, Inc. and DP&L, resulting in the formation of a new holding company, Conectiv, Inc., under which ACE and DP&L would become wholly owned subsidiaries. No direct transfer of the licenses as held by ACE and DP&L would occur. PSE&G, the licensed operator of the facilities, and PECo are not involved in the merger and restructuring.

The proposed action is in accordance with an application filed by ACE and DP&L under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, Counsel for ACE and DP&L.

The Need for the Proposed Action

The proposed action is required to enable the proposed merger and restructuring of Atlantic Energy, Inc., ACE, and DP&L to occur to the extent indirect transfers of control of the licenses will be effected by the merger and restructuring.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no physical or operational changes as a result of the proposed action. The corporate merger and restructuring will not affect the qualifications or organizational affiliation of the personnel who operate the facilities, as PSE&G, not involved in the merger, will continue to be responsible for the operation of SNGS, Units 1 and 2.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action will not affect nonradiological plant effluents and will have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement" for Salem Nuclear Generating Station, Units 1 and 2, April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on October 21, 1997, the staff consulted with the New Jersey State official, Mr. R. Pinney of the State of New Jersey, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application filed by ACE and DP&L under cover of a letter dated April 30, 1997, as supplemented November 7, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge (Counsel for ACE and DP&L), which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey.

Dated at Rockville, Maryland, this 2nd day of December 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32019 Filed 12–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric and Gas Company and Atlantic City Electric Company; Hope Creek Generating Station, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order, under 10 CFR 50.80 of the indirect transfer of control of Atlantic City Electric Company's (ACE) interests in the Hope Creek Generating Station (HCGS) license to the extent effected by a proposed merger of Atlantic Energy, Inc. (the parent holding company of ACE) and Delmarva Power & Light Company (DP&L), resulting in the formation of a new holding company, Conectiv, Inc. ACE is co-holder of Facility Operating License No. NPF–57, along with Public Service Electric and Gas Company (PSE&G), issued for operation of the HCGS, located in Lower Alloways Creek Township, Salem County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the indirect transfer of the interest in HCGS to the extent effected by the proposed merger of Atlantic Energy, Inc. and DP&L, resulting in the formation of a new holding company, Conectiv, Inc., under which ACE and DP&L would become wholly owned subsidiaries. ACE would continue to be a co-licensee of HCGS, and no direct transfer of the license would occur. PSE&G is not involved in the proposed merger.

The proposed action is in accordance with an application filed by ACE under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, Counsel for ACE and DP&L.

The Need for the Proposed Action

The proposed action is required to enable the proposed merger and restructuring of Atlantic Energy, Inc., ACE, and DP&L to occur to the extent an indirect transfer of the license will be effected by the merger and restructuring.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no physical or operational changes as a result of the proposed action. The corporate merger and restructuring will not affect the qualifications or organizational affiliation of the personnel who operate the facilities, as PSE&G, not involved in the merger, will continue to be responsible for the operation of HCGS.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action will not affect nonradiological plant effluents and will have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of the Hope Creek Generating Station," NUREG–1074, December 1984.

Agencies and Persons Consulted

In accordance with its stated policy, on October 21, 1997, the staff consulted with the New Jersey State official, Mr. R. Pinney of the State of New Jersey, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application filed by ACE under cover of a letter dated April 30, 1997, as supplemented November 7, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge (Counsel for ACE and DP&L), which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey.

Dated at Rockville, Maryland, this 2nd day of December 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 97–32023 Filed 12–5–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

President's Council on Integrity and Efficiency

Senior Executive Service Performance; Review Board Membership

AGENCY: President's Council on Integrity and Efficiency (PCIE), Department of Energy.

ACTION: Notice of Senior Executive Service Performance Review Board membership.

SUMMARY: This notice sets forth the names and titles of the current membership of the PCIE Performance Review Board.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Individual offices of (the) Inspector General.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General's Act of 1978, as amended, has created independent audit and investigative units—Offices of (the) Inspector General—at 61 Federal agencies. In 1981, the President's Council on Integrity and Efficiency (PCIE) was established by Executive Order as an interagency committee charged with promoting integrity and effectiveness in Federal programs. The PCIE is chaired by the Office of Management and Budget's Deputy Director for Management, and comprised principally of the 29 Presidentially appointed Inspectors General (IGs). The primary objectives of the PCIE are (1) mounting collaborative efforts to address integrity, economy and effectiveness issues that transcend individual Federal agencies; and (2) increasing the professionalism and effectiveness of IG personnel throughout the Government.

II. PCIE Performance Review Board

Under 5 U.S.C. 4314(c) (1)–(5) and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards are to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the President's Council on Integrity and Efficiency Performance Review Board are as follows:

Members	Title
AGENCY FOR INTERNATIONAL DEVELOPMENT	
Everett L. Mosley	Deputy Inspector General.
Carol L. Levy	Assistant Inspector General for Investigations.
C. Michael Flannery	Assistant Inspector General for Security.
Robert S. Perkins	Legal Counsel.
DEPARTMENT OF AGRICULTURE	
Joyce Fleischman	Deputy Inspector General.
Paula F. Hayes	Assistant Inspector General for Policy Development & Resources Management.
James R. Ebbitt	Assistant Inspector General for Audit.
Richard D. Long	Deputy Assistant Inspector General for Audit.
Robert W. Young, Jr	Deputy Assistant Inspector General for Audit.
Craig L. Beauchamp	Assistant Inspector General for Investigations.
Jon E. Novak	Deputy Assistant Inspector General for Investigations.
Christine Jung	Deputy Assistant Inspector General for Investigations.
DEPARTMENT OF COMMERCE	
Elizabeth T. Barlow	Counsel to the Inspector General.
George E. Ross	Assistant Inspector General for Audits.
DEPARTMENT OF DEFENSE	
Nicholas T. Lutsch	Assistant Inspector General for Administration & Information Management.
Robert J. Lieberman	Assistant Inspector General for Auditing.
William G. Dupree	Assistant Inspector General for Investigations.
Russell A. Rau	Assistant Inspector General for Policy & Oversight.
Clifford F. Broome	Director for Departmental Inquiries.
Joel J. Leson	Deputy Assistant Inspector General for Administration & Information Management.
David K. Steensma	Deputy Assistant Inspector General for Auditing.
Donald E. Davis	Deputy Assistant Inspector General for Audit Policy & Oversight.
John F. Keenan	Deputy Assistant Inspector General for Investigation.
DEPARTMENT OF ENERGY	
Gregory H. Friedman	Deputy Inspector General for Audit Services.
Michael W. Conley	Deputy Inspector General for Inspections.
Judith D. Gibson	Assistant Inspector General for Resource Management.
Herbert Richardson	Assistant Inspector General for Investigations.
Stanley R. Sulak	Director, Audit Policy, Plans & Programs.
DEPARTMENT OF HEALTH AND HUMAN SERVICES	
Michael F. Mangano	Principal Deputy Inspector General.
Thomas D. Roslewicz	Deputy Inspector General for Audit Services.

Members	Title
Joseph E. Vengrin	Assistant Inspector General for Audit Policy/Oversight.
George Reeb	Assistant Inspector General for Health Care Financing Audits.
Joe Green	Assistant Inspector General for Public Health Service Audits.
John A. Ferris	Assistant Inspector General for Human, Family & Department Services Audits.
John E. Hartwig	Deputy Inspector General for Investigations.
Robert E. Richardson	Assistant Inspector General for Criminal Investigations.
George Grob	Deputy Inspector General for Evaluation & Inspections.
Dennis J. Duquette	Deputy Inspector General for Management & Policy.
D. McCarty Thornton	Counsel to the Inspector General.
Lewis Morris	Assistant Inspector General for Litigation Coordination.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
John J. Connors	Deputy Inspector General.
Kathryn M. Kuhl-Inclan	Assistant Inspector General for Audit.
Michael R. Phelps	Deputy Assistant Inspector General for Audit.
Phillip Newsome	Deputy Assistant Inspector General for Investigation.
Judith Hetherton	Counsel to the Inspector General.
DEPARTMENT OF THE INTERIOR	
Richard N. Reback	Chief of Staff and General Counsel.
John R. Sinclair	Assistant Inspector General for Investigations.
DEPARTMENT OF JUSTICE	
Robert L. Ashbaugh	Deputy Inspector General.
Mary W. Demory	Assistant Inspector General for Inspections.
Howard L. Sribnick	General Counsel.
DEPARTMENT OF LABOR	
Patricia Dalton	Deputy Inspector General.
Sylvia Horowitz	Assistant Inspector General for Management & Counsel.
John Getek	Assistant Inspector General for Audit.
F.M. Broadaway	Assistant Inspector General for Investigations.
DEPARTMENT OF STATE	
John C. Payne	Deputy Inspector General.
Richard Mellon	Deputy Inspector General.
M. Milton MacDonald	Assistant Inspector General for Audits.
James K. Blubaugh	Assistant Inspector General for Inspections.
Robert S. Terjesen	Assistant Inspector General for Investigations.
Jon Wiant	Assistant Inspector General for Security & Intelligence Oversight.
DEPARTMENT OF TRANSPORTATION	
Raymond J. DeCarli	Deputy Inspector General.
Roger P. Williams	Senior Counsel.
Lawrence H. Weintrob	Assistant Inspector General for Auditing.
Todd J: Zinser	Assistant Inspector General for Investigations.
Wilbur L. Daniels	Deputy Assistant Inspector General for Maritime and Departmental Programs.
Patricia J. Thompson	Deputy Assistant Inspector General for Surface Transportation.
Alexis M. Stefani	Deputy Assistant Inspector General for Aviation.
John L. Meche	Deputy Assistant Inspector General for Financial, Economic and Information Technology.
DEPARTMENT OF THE TREASURY	
Richard Calahan	Deputy Inspector General.
Dennis Schindel	Assistant Inspector General for Audit.
Raisa Otero-Cesario	Assistant Inspector General for Investigations.
Gary Whittington	Assistant Inspector General for Policy, Planning & Resources.
William Pugh	Deputy Assistant Inspector General for Financial Audits.
John Balakos	Associate Inspector General for Program Audits.
James Cottos	Special Technical Advisor to the Inspector General.
DEPARTMENT OF VETERANS AFFAIRS	
Michael J. Costello	Assistant Inspector General for Investigations.
David H. Gamble	Deputy Assistant Inspector General for Investigations.
Michael G. Sullivan	Assistant Inspector General for Auditing.

Members	Title
Michael Slachta, Jr	Deputy Assistant Inspector General for Auditing.
John H. Mather, M.D	Assistant Inspector General for Healthcare Inspections.
Maureen T. Regan	Counselor to the Inspector General.
ENVIRONMENTAL PROTECTION AGENCY	
Nikki Tinsley	Acting Inspector General.
Kenneth Konz	Assistant Inspector General for Audit.
John Jones	Assistant Inspector General for Management.
Allen Fallin	Assistant Inspector General for Investigations.
Emmet Dashiell	Deputy Assistant Inspector General for Investigations.
FEDERAL EMERGENCY MANAGEMENT AGENCY	
Richard Skinner	Deputy Inspector General.
Nancy Hendricks	Assistant Inspector General for Audits.
Paul Lillis	Assistant Inspector General for Investigations.
GENERAL SERVICES ADMINISTRATION	
Joel S. Gallay	Deputy Inspector General.
Kathleen S. Tighe	Counsel to the Inspector General.
James E. Henderson	Assistant Inspector General for Investigations.
Gary Seybold	Deputy Assistant Inspector General for Investigations.
William E. Whyte, Jr	Assistant Inspector General for Auditing.
Eugene L. Waszily	Deputy Assistant Inspector General for Auditing.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	
Richard D. Triplett	Assistant Inspector General for Investigations.
NUCLEAR REGULATORY COMMISSION	
David C. Lee	Deputy Inspector General.
Thomas J. Barchi	Assistant Inspector General for Audits.
James E. Childs	Assistant Inspector General for Investigations.
OFFICE OF PERSONNEL MANAGEMENT	
Joseph R. Willever	Deputy Inspector General.
Harvey D. Thorp	Assistant Inspector General for Audits.
Gary S. Yauger	Assistant Inspector General for Investigations.
RAILROAD RETIREMENT BOARD	
William H. Tebbe	Assistant Inspector General for Investigations.
SMALL BUSINESS ADMINISTRATION	
Karen S. Lee	Deputy Inspector General.
Phyllis K. Fong	Assistant Inspector General for Management and Legal Counsel.
Peter L. McClintock	Assistant Inspector General for Auditing.
Thomas C. Cross	Assistant Inspector General for Inspection and Evaluation.
SOCIAL SECURITY ADMINISTRATION	
James G. Huse, Jr	Deputy Inspector General.
Thomas J. Blatchford	Assistant Inspector General for Investigations.
Pamela J. Gardiner	Assistant Inspector General for Audit.
Daniel R. Devlin	Deputy Assistant Inspector General for Audit.

Dated: December 1, 1997.

John C. Layton,

Inspector General, Department of Energy, and Vice Chair, PCIE.

[FR Doc. 97–32047 Filed 12–5–97; 8:45 am]

BILLING CODE 6450–01–U

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22922; 812–10458]

Janus Investment Fund, et al.; Notice of Application

December 2, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act") under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Summary of Application: Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

Applicants: Janus Investment Fund, Janus Aspen Series, Janus Capital Corporation ("Janus Capital"), any person controlling, controlled by, or under common control with Janus Capital, and any open-end management investment company registered under the Act for which Janus Capital or any person controlling, controlled by, or under common control with Janus Capital serves as investment adviser.[1]

FILING DATES: The application was filed on December 9, 1996 and amended on July 9, 1997, and November 7, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, Janus Capital Corporation, 100 Fillmore Street, Denver, CO 80206–4923.

FOR FURTHER INFORMATION CONTACT: Lisa McCree, Attorney Adviser, (202) 942–0562 (Office of Investment Company Regulation, Division of Investment Management), or Mercer E. Bullard, Special Counsel, (202) 942–0659 (Office of Chief Counsel, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC, 20549 (tel. 202–942–8090).

[1] All existing Funds (defined below) that currently intend to rely on the order have been named as applicants, and any other existing or future Funds that subsequently rely on the order will comply with the terms and conditions in the application.

Applicants' Representations

1. Janus Investment Fund is registered under the Act as an open-end management investment company and organized as a Massachusetts business trust. Janus Aspen Series is registered under the Act as an open-end management investment company and organized as a Delaware business trust. Janus Investment Fund and Janus Aspen Series have, respectively, nineteen and nine separate portfolios (each a "Fund"). Janus Capital is registered as an investment adviser under the Investment Advisers Act of 1940. Kansas City Southern Industries, Inc., a publicly traded holding company whose primary subsidiaries are engaged in asset management, transportation and information processing, owns approximately 83% of the outstanding voting stock of Janus Capital. Each Fund has entered into an investment advisory agreement with Janus Capital under which Janus Capital exercises discretionary authority to purchase and sell securities for the Funds. Janus Capital also provides administrative services to the Funds.

2. In 1995, each Fund, Janus Capital and Janus Service Corporation, the Funds' transfer agent, obtained an order under section 17(d) and rule 17d–1 permitting them and certain other registered investment companies (collectively, "Joint Account Participants") to deposit uninvested cash balances that remain at the end of a trading day in one or more joint trading accounts (each a "Joint Account") to be used to enter into short-term investments. Janus Capital invests the cash in the Joint Account as part of its duties under its existing advisory contract with each Joint Account Participant and does not charge any additional fee for this service.

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments, either directly or through the Joint Account. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a portfolio security sold by a Fund has been delayed. Currently, the Funds have credit arrangements with their custodians (*i.e.*, overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs.

4. If the Funds were to borrow money from their custodians under their current arrangements or under other credit arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

5. Applicants request an order that would permit the Funds to enter into lending agreements ("Interfund Lending Agreements") under which the Funds would lend money directly to and borrow money directly from each other through a credit facility for temporary purposes ("Interfund Loan"). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds might also continue to maintain committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their custodians.

6. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has

undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

8. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks or short-terms loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rather higher than they otherwise could obtain from investing their cash through the Joint Account in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

9. The interest rate charged to the Funds on any Interfund Loan would be the average of the Repo Rate and the Bank Loan Rate, as defined below. The Repo Rate for any day would be the highest rate available to the Joint Account Participants from investments in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by Janus Capital each day an Interfund Loan is made according to a formula established by the trustees of the Funds (the "Trustees") designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Trustees periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the benchmark rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Trustees.

10. The credit facility would be administered by Janus Capital's money market investment professionals (including the portfolio manager for the money market funds ("Money Market Funds")) and fund accounting department (collectively, the "Cash Management Team"). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. As in the case of the Joint Account, Janus Capital on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Once it had determined the aggregate amount of cash available for loans and borrowing demand the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. All allocations will require approval of at least one member of the Cash Management Team who is not the Money Market Funds' portfolio manager. After Janus Capital has allocated cash for Interfund Loans, it will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio manager of the Money Market Funds. The Money Market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Team believed to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

12. Janus Capital would: (i) Monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Trustees concerning any transactions by the Funds under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by each Fund's Trustees, including a majority of Trustees who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure that both borrowing and lending Funds participate on an equitable basis.

13. Janus Capital would administer the credit facility as part of its duties under its existing management or advisory and service contract with each Fund and would receive no additional fee as compensation for its services. Janus Capital or companies affiliated with it may collect standard pricing, recordkeeping, bookkeeping and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

14. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. The prospectus of each Fund discloses that the Fund may borrow money for temporary purposes in amounts up to 25% of its total assets. Each non-Money Market Fund may mortgage or pledge securities as security for borrowings in amounts up to 15% of its net assets. Each of the Money Market Funds may mortgage or pledge securities only to secure permitted borrowings. As a fundamental policy, each Fund may lend securities or other assets if, as a result, no more than 25% of its total assets would be lent to other parties.

15. The prospectus of each Fund currently discloses that Funds advised by Janus Capital intend to seek permission from the SEC to borrow money from or lend money to each other. If applicants' requested order is granted, the Statement of Additional Information ("SAI") of each Fund will disclose all material facts about intended participation in the credit facility. All borrowings and loans by the Funds will be consistent with the organizational documents and investment policies of the respective Funds.

16. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having Janus Capital as their common investment adviser.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with potential adverse interests to and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) Janus Capital would administer the program as a disinterested fiduciary; (ii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Joint Account; (iii) the Interfund Loans would not involve a greater risk than such other investments; (iv) the lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that Janus Capital would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantages to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will

be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, Janus Capital will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is more favorable to the lending Fund than the Repo Rate and more favorable to the borrowing Fund than the quoted Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 25% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No equity, taxable bond or Money Market Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 5%, 7.5% or 10%, respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold to cover either shareholder redemptions or sales fails, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day the most recent loan was made, will not exceed the greater of 125% of the fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. Janus Capital's Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without intervention of the portfolio manager of the Fund (except the portfolio manager of the Money Market Funds acting in her or his capacity as a member of the Cash Management Team). All allocations will require approval of at least one member of the Cash Management Team who is not the Money Market Funds' portfolio manager. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio manager of the Money Market Funds has access to loan demand data). Janus Capital will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio manager of the Money Market Funds.

13. Janus Capital will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Boards of Trustees concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. The Trustees of each Fund, including a majority of the Independent Trustees: (a) will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of such Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, Janus Capital will promptly refer such loan for arbitration to an independent arbitrator selected by the Trustees of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and commercial bank borrowings, and such other information presented to the Fund's Trustees in connection with the review required by conditions 13 and 14.

17. Janus Capital will prepare and submit to the Trustees for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all funds are treated fairly. After the credit facility commences operations, Janus Capital will report on the operations of the credit facility at the Trustees' quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund that is a registered investment company shall prepare an annual report that evaluates Janus Capital's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) that the Interfund Rate will be higher than the Repo Rate but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility unless it has fully disclosed in its SAI all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32029 Filed 12–5–97; 8:45 am]

BILLING CODE 8010–01–M

[2] If the dispute involves Funds with separate Boards of Trustees, the Trustees of each Fund will select an independent arbitrator that is satisfactory to each party.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 8, 1997.

A closed meeting will be held on Thursday, December 11, 1997, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, December 11, 1997, at 2:30 p.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 4, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32168 Filed 12–4–97; 11:06 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39390; File No. SR–OPRA–97–5]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Revising the Allocation of Revenues Between OPRA's Basic Accounting Center and OPRA's Index Option Accounting Center

December 1, 1997.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Exchange Act"), notice is hereby given that on November 5, 1997, the Options Price Reporting Authority ("OPRA"),[1] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The amendment revises the allocation of revenues between OPRA's basic accounting center and the index option accounting center. OPRA has designated this proposal as concerned solely with administration of the Plan, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(i) under the Exchange Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to revise revenue allocations under the Plan between OPRA's basic accounting center and the index option accounting center. Currently, the Plan provides for

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("PHLX").

allocation of revenues on the basis of a 75% allocation to the basic accounting center and 25% to the index option accounting center. Because OPRA has not yet unbundled the index option service and has no current plans to do so, there is no specified portion of the system revenues derived from the index option service. When OPRA adopted the fixed allocations several years ago, the allocations reflected the relative market share at the time. However, the volume of index options has decreased relative to that of equity options, so that the current allocation formula no longer reflects the relative market share of index and equity options. Therefore, the amendment proposes to replace the existing allocation formula with a formula that is expressly based on current relative market share, so that as relative market share changes from time to time, it will no longer be necessary to amend the OPRA Plan in order to maintain a fair and appropriate allocation of these revenues. The proposed Plan amendment will change the allocations from a fixed basis to a relative market share basis until such time as OPRA might impose separate charges for access to information and facilities pertaining to index option securities.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–97–5 and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31960 Filed 12–5–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39373; File No. SR–DTC–97–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Revisions to the Procedures for Running Call Lotteries on Issues of Book Entry Only Securities

November 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 2, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–97–14) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend DTC's procedures for running call lotteries for book-entry only ("BEO") issues of securities. Under the revisions, DTC will run lotteries using its participants' positions as of the close of business on the day DTC announces the lottery instead of the call publication date.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise DTC's call lottery procedures for BEO securities.[4] Currently, DTC's call lottery process allocates partially called securities[5] among participants having positions in the called securities based on the participants' positions on the call publication date.[6] Under the proposed rule change, DTC will run the call lotteries using participants' positions as of the close of business on the day DTC announces the call lottery. The proposed rule change does not set forth any other amendments to DTC's call lottery procedures.

DTC believes that changing its procedures solely for BEO securities will reduce the number of short positions without any adverse impact to its participants because DTC believes that the publication date is less relevant to BEO securities than other types of securities. According to DTC, issuers of BEO securities generally do not publish partial call notices. Instead, the issuers inform DTC of the call notice because DTC is the securities' holder of record. DTC will then notify its participants. While an issuer may inform DTC of a publication date, DTC believes that this is done only for purposes of DTC's lottery and that the date has no real significance. As a result of the expected fewer short positions, DTC believes that its participants will save on depository charges which are 130 percent of the current market value of short positions. DTC's participants also will save on the costs associated with reconciling short positions and the costs associated with purchasing securities to cover short positions.

DTC believes that the proposed rule change is consistent with the requirements of the Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder because it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has solicited participant comments on the proposed rule change. It has taken into account participant responses to earlier proposed alternatives to revising the call lottery procedures in developing this rule change. The Reorganization Division Inc. of the Securities Industry Association wrote DTC to express its support for revising the call lottery procedures for BEO securities.[7]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–97–14 and should be submitted by December 29, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31962 Filed 12–5–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39368; File No. SR–NYSE–97–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Pilot for Allocation Policy and Procedures

November 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 26, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the effectiveness of the pilot program relating to the Exchange's Allocation Policy and Procedures until January 16, 1998. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of a pilot program relating to the Exchange's Allocation Policy and Procedures. The Exchange's Allocation Policy and Procedures are intended: (1) To ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security; and (4) to contribute to the strength of the specialist system.

---

[2] 17 CFR 200.30–3(a)(20).

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of DTC's proposed call lottery procedures is attached as Exhibit A to DTC's proposed rule change, which is available for inspection and copying at the Commission's Public Reference room or through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] For a discussion of DTC's call lottery process, refer to Securities Exchange Act Release Nos. 21523 (November 27, 1984), 49 FR 47352 (File No. SR–DTC–84–09) (filing and immediate effectiveness of proposed rule change); 30552 (April 2, 1992) 57 FR 12352 (File No. SR–DTC–90–02) (order temporarily approving a proposed rule change by the DTC relating to the establishment of a procedure to recall certain deliveries which have created short positions as a result of call lotteries); 35034 (November 30, 1994) 59 FR 63396 (File Nos. SR–DTC–94–08 and SR–DTC–94–09) (order granting temporary approval of proposed rule changes to establish procedures to recall certain deliveries which have created short positions as a result of call lotteries and rejected deposits); and 36651 (December 28, 1995) 61 FR 429 (File No. SR–DTC 95–21) (order granting accelerated permanent approval of a proposed rule change concerning short position reclamation procedures).

[5] The terms of certain issues allows the issuer to call part of the outstanding security for redemption at certain times during the issue's life. This type of security is referred to as a callable security. Callable securities are either preferred stock or bonds which the issuer is permitted or required to redeem before the stated maturity. Generally when an issuer calls a security, the issuer's trustee publishes notice that the issue has been called or in the case of registered securities, mails notice to the registered holders.

[6] The call publication date is the date on which the issuer gives notice of the redemption.

[7] Letter from Brad F. Lesowitz, President, Reorganization Division, Inc., Securities Industry Association to Donald F. Donahue, Executive Vice President, DTC (April 4, 1997). A copy of the letter is attached as Exhibit C to DTC's proposed rule change, which is available for inspection and copying at the Commission's Public Reference room or through DTC.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange recently implemented, on a pilot basis, a revised Allocation Policy and Procedures to amend the procedures by which the Exchange selects a specialist for newly listing companies.[3] The Exchange's pilot program provides listing companies with two options, either: (1) to have their specialist unit selected by the Allocation Committee according to existing allocation criteria, with company input permitted in the form of a "generic letter" which may describe desired general characteristics of a specialist unit, but may not mention particular units or describe characteristics that would be applicable to a readily identifiable specialist unit; or (2) to make the final selection of a specialist unit from among three to five units selected by the Allocation Committee, with a generic letter from the company describing desired specialist unit characteristics permitted, as in (1) above. In the case of both options, if a generic letter is submitted, the letter would be distributed to all specialist units along with allocation data sheets ("green sheets").

On October 6, 1997, the Commission approved an extension of the pilot program until November 28, 1997 to continue to study its effects.[4] On October 20, 1997, the NYSE requested that the Commission grant permanent approval of the Allocation Policy and Procedures, as amended.[5] The proposed amendments relate to sections of the policy dealing with listing company input, spin-offs and related companies. Subsequently, Commission staff determined that the Commission required more time to consider the Exchange's request to make permanent the amendments to the Allocation Policy and Procedures. Therefore, at the request of Commission staff, the Exchange proposes to extend the Allocation Policy and Procedures pilot program until January 16, 1998.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[6] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that extending the effectiveness of the Allocation Policy and Procedures until January 16, 1998 is consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated between specialist units to ensure fairness and equal opportunity in the process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(e)(6)[8] thereunder because it does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange requests that the Commission waive the provision in Rule 19b–4(e)(6)(iii)[9] requiring written notice of the NYSE's intent to file the proposed rule change at least five days prior to the filing date. The Commission grants the Exchange's request to waive the prefiling requirement because the proposed merely continues an existing pilot program for a limited duration.

A proposed rule change filed under Rule 19b–4(e) does not become operative prior to thirty days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds good cause for the proposed rule change to become operative prior to the thirtieth day after the date of the filing, November 26, 1997. The Commission notes that accelerating the operative date of the proposed rule change will enable the Exchange to continue its Allocation Policy and Procedures pilot program on an uninterrupted basis. The Commission further notes that it has previously solicited comments on the pilot program and no comments were received. Further, the extension of the existing pilot is of limited duration, only until January 16, 1998. For the foregoing reasons, the proposed rule change will become operative on November 28, 1997.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–32 and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32027 Filed 12–5–97; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 38372 (March 7, 1997), 62 FR 13421 (March 21, 1997) (notice of filing and immediate effectiveness of File No. SR–NYSE–97–04).

[4] *See* Securities Exchange Act Release No. 39206, 62 FR 53679 (October 15, 1997) (order approving File No. SR–NYSE–97–27).

[5] *See* Securities Exchange Act Release No. 39268 (October 30, 1997), 62 FR 60297 (November 7, 1997) (noticing File No. SR–NYSE–97–30).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(6).

[9] 17 CFR 240.19b–4(e)(6)(iii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39379; File No. SR–NYSE–97–17]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Amend the Exchange's Wireless Data Communications Initiatives

December 1, 1997.

I. Introduction

On May 28, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify certain aspects of its program for the use of wireless data communications technology that allows a member in a trading crowd or elsewhere on the trading floor to communicate with other locations on the floor by means of a hand-held wireless device.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38786 (June 30, 1997), 62 FR 36597 (July 8, 1997). No comments were received on the proposal. This order approves the proposed rule change.

II. Description

In 1995, the Committee approved a proposed rule change of the Exchange[3] that allowed the Exchange to introduce wireless data communications technology onto the Exchange trading floor. The Exchange believes that such technology expedites, and makes more efficient, the process by which members receive and execute orders. The technology involves the floor-based use of wireless hand-held data communications devices. To effect that initiative, the Exchange undertook to develop and install a wireless data communications infrastructure on its floor. It determined to allow private vendors, as well as the Exchange itself, to offer hand-held device services to Exchange members.

As described at length in the 1995 Filing, the Exchange's plan has been to introduce the new technology in four phases:

(1) In Phase I, the Exchange supervised and monitored three "proof-of-concept" pilot programs on the floor of the Exchange.

(2) In Phase II, the Exchange monitored and supervised additional, more structured, pilot testing of independent wireless data communications services, including that offered by the Exchange.

(3) In Phase III, the Exchange will conduct on the floor a preproduction pilot test of its wireless data communications system infrastructure, will supervise the installation and testing of the infrastructure and will move its own wireless data communications system to the infrastructure. In addition, the Exchange will continue to allow pilot testing of private vendors' wireless data communications services.

(4) In Phase IV, the Exchange will direct the production roll-out of the wireless data communications infrastructure and the migration of vendors to the infrastructure.

The Exchange had completed Phase I prior to the time of its submission of the 1995 Filing. Since then, the Exchange has completed Phase II and recently entered into Phase III.

Specifically, the purposes of the proposed rule change are: (1) To modify the types of wireless data communications that the Exchange will permit over the infrastructure; (2) to clarify that a vendor cannot provide wireless data communications services to Exchange members unless it is a member organization of the Exchange; and (3) to introduce the forms of agreement and provisions pursuant to which the Exchange will allow vendors and member organizations to provide wireless data communications services to members on the trading floor of the Exchange in the production roll-out environment.

First, the Exchange proposes to modify the types of wireless communications permitted over the infrastructure. The 1995 Filing specified as follows:

> A vendor's Phase II pilot program must restrict wireless data communications to communications between a hand-held device used by a member on the floor and a terminal in a floor booth location. The Exchange will prohibit all floor-based wireless data communications between any other points.

The Exchange limited communications during the Phase II pilot programs to communications between a booth terminal and a floor-based hand-held device and will continue that limitation during Phase III pilot programs. However, the Exchange proposes the ultimate addition of communications between two hand-held devices on the floor.

As during the pilot programs, the Exchange will continue to prohibit wireless data communications either from a booth terminal or from a location on the trading floor to a location off of the floor. However, the same as under the pilot programs, a member subscribing to a wireless data communications service, whether from the Exchange or from a private vendor, may effect communications between a floor booth terminal and a member's off-floor system in the same "wired" manner as it can today, subject to applicable rules and policies. In addition, the subscribing member's booth terminal may interface with the Exchange's Common Message Switch ("CMS") in order to allow the member to enter orders into the Exchange's SuperDOT System complex. That interface would not differ from today's booth/CMS interfaces and would be subject to existing CSM interface standards.

Next, the Exchange proposes to only provide access to its wireless communications infrastructure to vendors that are member organizations. The Exchange anticipates that some member organizations that are interested in vending those services will enter into contracts with non-member organizations (e.g., traditional wireless data device vendors that desire to function as agents or contractors of the member organization) and that those contracts will delegate many of the service functions to those other entities. The Exchange is willing to permit that use of agents and contractors, so long as the member organization remains responsible for the performance of those functions and guarantees the performance of the agents and contractors.

Additionally, the Exchange included as part of the 1995 Filing, a form of agreement (the "Pilot Program Vendor Form") pursuant to which the Exchange would allow vendors of wireless data communications services to provide those services to Exchange members for the purposes of the Phase I and Phase II pilot testing. Now that the pilot testing period is completed, the Exchange has derived from the Pilot Program Vendor Form two different forms of agreement that are designed for use by member organizations that wish to provide wireless data communications services to members in the Exchange's production roll-out wireless data communications environment. One of those forms (the "Associated Member Form") allows a member organization to provide such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 35931 (June 30, 1995), 60 FR 35767 (July 11, 1995) ("1995 Filing").

services to members that are officers, partners and employees of the member organization. The other form (the "Revised Vendor Form") allows a member organization to provide such services to other members.

The primary differences of substance between the Pilot Program Vendor Form and the Revised Vendor Form are as follows. The Revised Vendor Form eliminates: (1) References to the creation and installation of the infrastructure; (2) permission to use radio bands other than that which the Exchange provides through its infrastructure; (3) a requirement that members migrate to the infrastructure once it becomes available; and (4) a limited Exchange obligation to support the communications equipment of private vendors.

Also, the Revised Vendor Form clarifies that only member organizations may vend wireless data communications services on the Exchange's floor, but allows the member organization to delegate functions to agents and contractors, so long as the member organization guarantees the performance of the agents and contractors. The Revised Vendor Form will allow communications between members using hand-held devices at two different locations on the trading floor, as well as between a member using a hand-held device on the floor and a member at a booth terminal, as the Exchange permitted in the pilot programs.

In addition, the Revised Vendor Form will not contain the restriction on participating vendors that they refrain from discriminating among the members to whom they are willing to provide their vendor services.[4] The Exchange believes that the completion of the infrastructure means that the technology necessary to allow every member to enjoy wireless data communications services will be available, whether from a vending member organization or from the Exchange. In Phase IV, the production roll-out phase, the Exchange will therefore allow vending member organizations to enter into such wireless data communications arrangements with members as they may see fit. For instance, a member organization may vend a wireless data communication service to Exchange members, but may offer preferential terms and conditions to members with which it is affiliated. As a result, the Revised Vendor Form will eliminate: (1) the several provisions found in the Pilot Program Vendor Form that require the vendor to provide wireless data communications services only on unbiased, non-discriminatory grounds; and (2) the provision that limits the scope of any pilot program to 25 members.

The Revised Vendor Form also will eliminate the provision that prohibits a vendor from representing that it is the sole vendor of wireless data communications services on the Exchange floor. Finally, the Exchange proposes to add to the Revised Vendor Form a provision that prohibits a vending member organization from introducing its service, or from modifying its equipment or transmission methodology, until the Exchange has seen the service or the modification operate satisfactorily. In addition, the Revised Vendor Form grants the Exchange the right to test a service and related equipment.[5]

The vendor agreement form requires the vendor to prepare a description of its service for attachment to the form. *Attachment A* to the form ("the Revised Vendor Service Description") sets forth the information that the Exchange requires the vendor to include in the service description. The Exchange proposes to eliminate, from that required information, information that completion of the infrastructure makes irrelevant. In addition, the Exchange proposes to add to those required items of information the vendor's method and location for storing devices when not in use. Furthermore, the Exchange proposes to clarify that among the rules and regulations with which the vendor is required to comply are all health and safety standards.[6]

As an important element of the Pilot Program Vendor Form, the Exchange required a vendor of a Phase I or II pilot program to provide its service to a member only pursuant to a written contract with the member. The Exchange required that contract to govern six elements of the vendor-member relationship[7] and to include certain provisions designed to protect the interests of the Exchange and its members. The Exchange set forth those requirements in an *Attachment B* to the Pilot Program Vendor Form. For the purpose of the Revised Vendor Form, the Exchange is proposing to amend those contract requirements in the manner set forth in *Attachment B* to *Exhibit A* (the "Revised Vendor-Member Agreement Terms"). The amendments: reflect the fact that the Exchange will now permit communications between members using hand-held devices at two different locations on the floor; remove the requirement that the vendor-member agreement must govern the six prescribed elements of the relationship; remove the Exchange-imposed termination requirements for terminations by the vendor or the subscribing member; and add that NYSE rules apply.

For the production roll-out phase, the Exchange has prepared the Associated Member Form for use by a member organization that wishes to provide wireless data communications services on the Exchange's trading floor solely to officers, partners and employees of the member organization that are Exchange members.[8]

The Associated Member Form contains provisions that are almost identical in substance to those found in the Revised Vendor Form, except that the Associated Member Form requires the member organization to take responsibility for the actions of its members and to assure that its members will comply with all provisions of the Form as well as with relevant laws, rules and regulations. For that reason, the Exchange does not propose to require the member organization to enter into an agreement with a subscriber to its wireless data communications service if the subscriber is an Exchange member that is an officer, partner or employee of the member organization. As a result, the Exchange does not propose to impose on the member organization a set of terms and conditions—for application between the member organization and its members—that parallel those set forth in the Revised Vendor-Member Agreement Terms. However, the proposed rule change does add to the Associated Member Form a paragraph similar to one found in the Revised Vendor-Member Agreement Terms stating that if the Exchange determines that any Associated Member has failed to comply with the rules, policies and procedures of the NYSE, the Commission, or the Federal Communications Commission ("FCC"), then the vendor (customer) has to stop providing the Service to that Associated Member immediately, upon notice to the customer or after a reasonable amount of time after notice.

As in respect of Phase II, the Exchange reserves the right to limit the number of vendors that may provide wireless data communications systems on the floor during Phase IV, based on the ability of the Exchange to maintain its regulatory oversight responsibilities in a satisfactory manner. In addition, as the Exchange gains experience with the use of wireless data communications technology on its floor, it may determine that additional restrictions, such as in respect of permissible transmissions or hardware, are warranted.

The Exchange does not currently plan to charge vendors or Exchange members or member organizations for the privilege of providing wireless data communications services during Phase IV, although it reserves its right to do so. If the Exchange does determine to impose Phase IV charges or any other charges, it would first seek Commission approval of any such charge.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public, by continuing to expedite and improve the efficiency of the process by which members receive and execute orders on the floor of the Exchange.[11]

The Commission believes that allowing communications between two hand-held devices located at two different positions on the floor is consistent with the Act and the original pilot approval because it will expedite and allow for more efficient processing of orders and dissemination of information among members on the floor, by eliminating the current necessary step of communicating with the booth terminal. A member may rely on the information it receives from another member on the floor through a hand-held wireless device to make trading decisions, without having to first communicate with the booth. The Commission notes the pilot testing has demonstrated that the Exchange's wireless data communications infrastructure has the capacity to accommodate those communications. The Commission also notes that the restriction will still apply that any order or information coming from off the floor must go to a booth terminal before it can be transmitted to someone on the floor of the Exchange.

The Commission also believes that it is consistent with the Act to allow the Exchange to provide access to its wireless data communications infrastructure only to vendors that are member organizations because only member organizations are subject to the Exchange's Constitution, rules, and oversight. The Exchange notes that the only vendors that participated in wireless data communications service pilot tests during Phases I and II were a member organization of the Exchange and a party affiliated with a member organization of the Exchange. It is unlikely that this restriction will dampen the availability of available vendors, given that member organizations will be allowed to contract out the provided vendor services.

The Commission believes that the proposed changes to the Pilot Program Vendor form, resulting in two separate forms, the Revised Vendor Form and the Associated Member Form, are consistent with the Act. The Commission believes that the proposed changes that eliminate references to the creation and installation of the infrastructure, permission to use radio bands other than that which the Exchange provides through its infrastructure, the requirement that members migrate to the infrastructure once it becomes available, and a limited Exchange obligation to support the communications equipment of private vendors, are reasonable because the Exchange will use the Revised Vendor Form in an environment in which the Exchange will already have completed the development and installation of its wireless data communications infrastructure.

In addition, because the Exchange limited the scope of the Phase I and II pilot programs and will similarly limit Phase III pilot programs, the Exchange insisted that each participating vendor refrain from discriminating among the members to whom it was willing to provide its pilot service through the end of Phase III. However, the completion of the infrastructure means that the technology necessary to allow every member to enjoy wireless data communications services will be available, whether from a vending member organization or from the Exchange. Therefore, in Phase IV, the production roll-out phase, the proposed rule change will allow vending member organizations to enter into such wireless data communications arrangements with members as they may see fit. The Commission believes that this portion of the proposed rule change will not result in unfair discrimination between customers, issuers, brokers, and dealers, in part because the NYSE's own system will be available to everyone,[12] which means that a member will always be able to have access to wireless data communication services. The Commission notes that eliminating the non-discriminatory requirements allows both vendors and potential customer/members to negotiate more freely regarding various aspects of the service.

The Commission believes that the proposed rule change that eliminates from the Revised Vendor Form the provision that prohibits a vendor from representing that it is the sole vendor of wireless data communications services on the Exchange floor is reasonable under the Act because the Exchange feels certain that all members will be aware that the Exchange and certain member organizations will provide service alternatives.[13]

Finally, the Commission believes that the addition to the Revised Vendor Form of a provision that prohibits a vending member organization from introducing its service, or from modifying its equipment or transmission methodology, until the Exchange has seen the service or the modification operate satisfactorily, and allows the Exchange to test the service

---

[4] The Commission notes that the anti-discrimination restrictions will still apply through the completion of Phase III.

[5] Finally, the proposed rule change provides that: the NYSE is not liable to the vendor, any Authorized Service Recipient, or any other person, for lost profits; and that the vendor cannot represent that the NYSE provides the service, except for the infrastructure and certain other equipment in support of the wireless data communications services.

[6] The service description as so amended (the "Revised Vendor Service Description") is set forth in *Attachment A* to *Exhibit A* of the rule filing.

[7] Responsibility for losses; training; system maintenance and support; technological limitations; the availability of equipment and spare parts; and service charges.

[8] A copy of the Associated Member Form is attached to the filing as *Exhibit B*. Attached as *Attachment A* to that form is a service description (the "Associated Member Service Description"), modified from the Revised Vendor Service Description as necessary to reflect the associated member context.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] Phone call between Santo Famularo, NYSE and Heather Seidel, Attorney, Market Regulation, Commission, on October 3, 1997.

[13] The Exchange has represented that it will circulate a bulletin to its members informing them that there will be service alternatives through Exchange members and the Exchange itself. Telephone conversation between Santo Famularo, NYSE, and Heather Seidel, Attorney, Market Regulation, Commission, on November 25, 1997.

or related equipment, is consistent with the Act. The Commission believes that this change gives the Exchange sufficient authority to oversee its infrastructure by strengthening the Exchange's contractual safeguards at a time [14] when the Exchange will allow vendors to have access to the Exchange's infrastructure, unlike Phases I and II, and when the Exchange may not have the same degree of communication with vending member organizations as it has had during the earlier phases.[15]

The Commission believes that the Revised Vendor-Member Agreement Terms [16] are consistent with the Act.[17] The proposed change that will remove the requirement that the vendor-member agreement must govern the six prescribed elements of that relationship is reasonable under the Act because it allows both the vendor and the member greater flexibility in fashioning a service agreement that is agreeable to both parties. Now that there will be no restriction on the number of customers a vendor may have,[18] and the Exchange's service will be available to all parties who wish to utilize it, it is reasonable to allow the vendors and members more freedom in structuring their service agreements, within the boundaries set forth in the Revised Vendor Form and its attachments. Also, the provision that adds that the NYSE Constitution and rules apply is consistent with the Act because the NYSE is charged with ensuring that its members (and hence, the vendors and their customers) comply with the NYSE rules.

The Commission notes that the Associated Member Form contains provisions that are almost identical in substance to those found in the Revised Vendor Form.[19] However, under the proposed rule change, the Associated Member Form requires the member organization to take responsibility for the actions of its members and to assure that its members will comply with all provisions of the Form as well as with relevant laws, rules and regulations. For that reason, the Exchange does not propose to require the member organization to enter into an agreement with a subscriber to its wireless data communications service if the subscriber is an Exchange member that is an officer, partner or employee of the member organization; as a result, the proposed rule change does not impose on the member organization a set of terms and conditions that parallel those set forth in the Revised Vendor-Member Agreement Terms. The Commission believes that this portion of the proposed rule change is consistent with the Act because it still provides for sufficient control over the vendor-customer relationship and notes that the proposed rule change does provide that the vendor must terminate its relationship with an Associated Member whom the Exchange has determined has failed to comply with the rules, policies, and procedures of the NYSE, the Commission, or the FCC.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSE–97–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32028 Filed 12–5–97; 8:45 am]

BILLING CODE 8010–01–M

[14] The Commission notes that the Revised Vendor Form is to be used only during Phase IV.

[15] The Commission believes that the proposed changes to the Revised Vendor Service Description, which sets forth the information that the Exchange requires the vendor to include in the service description, are consistent with the Act because the proposed changes eliminate the requirement of certain information that completion of the infrastructure makes irrelevant.

[16] *See supra* note 7 and accompanying text.

[17] The proposed rule change that permits communications between members using hand-held devices at two different locations on the floor is incorporated into this document and is consistent with the Act for the same reasons discussed above.

[18] The vendor must still not exceed capacity.

[19] Therefore, the Commission believes that the reasoning behind approving the changes to the Revised Vendor Form also applies to the Associated Member Form, for the similar proposed changes.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC 14) will hold a meeting on December 15, 1997 from 9:15 a.m. to 4:00 p.m. The meeting will be open to the public from 9:15 a.m. to 1:00 p.m. and closed to the public from 1:00 p.m. to 4:00 p.m.

DATES: The meeting is scheduled for December 15, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 4830, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–4792 or Bill Daley, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 14 will hold a meeting on December 15, 1997 from 9:15 a.m. to 4:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 1:00 p.m. to 4:00 p.m. The meeting will be open to the public and press from 9:15 a.m. to 1:00 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Pale Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 97–31950 Filed 12–5–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on the Triennial Review of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement")

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments with respect to the review by the World Trade Organization (WTO) Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") of the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement"). At the conclusion of the Uruguay Round, the WTO signatories agreed to review the SPS Agreement three years after its entry into force. The review is expected to focus on progress in implementing the SPS Agreement, including provisions relating to the requirement that measures be based on science and risk assessment, to transparency and notification procedures, harmonization of international sanitary and phytosanitary standards, and distinctions between the levels of sanitary and phytosanitary protection established in different situations. In particular, the United States will be assessing the contribution that implementation of the SPS Agreement makes to the reduction of unjustified barriers to agricultural trade, while preserving the United States' ability to protect human, animal and plant life and health. Comments received will be considered by the Executive Branch in formulating U.S. positions and objectives relating both to the scope of the review and to the specific issues to be considered by the SPS Committee during the review process.

DATES: Public comments are due by noon, January 9, 1998.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: John Ellis, Director for Sanitary and Phytosanitary Affairs, Office of WTO and Multilateral Affairs, USTR, (202–395–3063).

SUPPLEMENTARY INFORMATION: The Chairman of the TPSC invites written comments from the public on issues to be address in the course of the review by the WTO SPS Committee of the WTO SPS Agreement. The review will begin at the tenth meeting of the SPS Committee, scheduled for March 15–16, 1998 in Geneva, and will be on the Committee's agenda for the three other SPS Committee meetings scheduled in 1998, to take place in June, September and November.

Background

During the Uruguay Round of multilateral trade negotiations, a primary U.S. negotiating objective was to obtain substantial commitments for liberalization of international agricultural trade. The resulting WTO Agreement on Agriculture, which requires the elimination of many non-tariff barriers and the phased reduction of tariffs on agricultural products, is providing significant new market access opportunities for U.S. agricultural exports.

The United States was aware during the Uruguay Round that unjustified sanitary and phytosanitary (SPS) measures have often restricted U.S. agricultural exports, even after tariffs or other non-tariff barriers have been reduced or eliminated. To address this problem, the SPS Agreement was negotiated to ensure that WTO members would not impose protectionist trade barriers disguised as SPS measures. The importance of the SPS Agreement to agricultural trade is reflected in Article 14 of the Agreement on Agriculture, which emphasizes that WTO members have agreed to give effect to the SPS Agreement.

The SPS Agreement reflects a careful balance of rights and obligations. The Agreement safeguards WTO members' rights to adopt and implement regulations to protect human, animal and plant life or health (including food safety and environmental measures), and to establish the level of protection of life and health they deem to be appropriate. The United States has a strong interest in preserving these rights, which ensure the ability to maintain the U.S. standards of public health and environmental protection.

At the same time, the SPS Agreement establishes obligations designed to ensure that an SPS measure is in fact intended to protect against the risk asserted, rather than to serve as a disguised trade barrier. In particular, the Agreement requires that a measure adopted to protect human, animal and plant life and health be based on science and a risk assessment, and that it be no more restrictive than is necessary to achieve the intended level of human, animal or plant health protection.

The same balance is sought in the SPS Agreement's provisions relating to international sanitary and phytosanitary standards, guidelines and recommendations. Recognizing that the harmonization of international standards may contribute both to improved protection of human, animal and plant life and health and to the removal of unnecessary trade barriers, the Agreement calls for each WTO member to use relevant international standards as a basis for establishing its SPS measures, subject to other provisions of the Agreement. At the same time, the Agreement makes clear that it does not require "downward harmonization," and that no WTO member is required to adopt an international standard if doing so would result in a lower level of human, animal or plant health protection than that government has determined to be appropriate.

In the SPS Committee, the United States has pushed aggressively for full and effective implementation of WTO members' commitments under the SPS Agreement. For example, the United States has provided strong leadership in promoting implementation of the Agreement's transparency and notification provisions, in order to ensure effective surveillance of WTO members' SPS measures. Members' notifications of new SPS measures and other important information are now available on the WTO's internet home page (http://www.wto.org). The SPS Agreement's notification procedures, which provide an opportunity for the United States to comment on other WTO members' draft SPS measures in advance, have proven to be increasingly useful in identifying potential trade problems and facilitating the resolution of differences before trade is actually affected.

In recent years, the United States has successfully resolved a number of bilateral trade problems associated with the application of SPS measures in key overseas markets. In these negotiations, reference to the requirements of the SPS Agreement has been an important factor in U.S. trading partners' decisions to eliminate or modify scientifically unjustified SPS measures. The United States has also made active use of the procedures of the WTO Dispute Settlement Body (DSB) to push for the removal of scientifically unjustified SPS measures which have a major impact on U.S. exports.

Persons submitting written comments on the review of the SPS Agreement should provide a statement, in twenty copies, by noon, January 9, 1998, to Gloria Blue, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room 503, 600 17th Street, NW., Washington, DC 20508. Non-confidential information received will be available for public inspection by appointment in the USTR Reading Room, Room 101, Monday through Friday, 9:30 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be

accompanied by a non-confidential summary thereof.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.

[FR Doc. 97–32053 Filed 12–5–97; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Privacy Act of 1974; Notice To Add a System of Records

AGENCY: Operating Administrations, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Department of Transportation is proposing to add a system of records to its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Crystal M. Bush at (202) 366–9713 (Telephone), (202) 366–7066 (Fax), crystal.bush@ost.dot.gov (Internet Address).

SUPPLEMENTARY INFORMATION: The purpose is to establish a system of records to collect and manage the data needed to provide a nationwide pool of vessel and vessel owner information that will help in identification and recovery of stolen vessels and deter vessel theft and fraud.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 2, 1997 to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

DOT/CG 590

SYSTEM NAME:

Vessel Identification System (VIS).

SECURITY CLASSIFICATION:

VIS is unclassified, sensitive.

SYSTEM LOCATION:

United States Coast Guard (USCG), Operations Systems Center, 175 Murrall Drive, Martinsburg, WV 25401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with established relationship(s)/association to vessels that are state-numbered and/or titled and U.S. Coast Guard-documented, and that are included in the Vessel Identification System (VIS). Specifically, owners or agents of such vessels, as well as lienholders.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Records containing vessel identification information and vessel characteristics on state-numbered and/or titled vessels or Coast Guard-documented vessels including: vessel name (if Coast Guard-documented), make of vessel or name of vessel builder, manufacturer year/year vessel built, vessel model year, title number, Coast Guard official number, certificate of number assigned by the state including expiration date, hull identification number, length of vessel, type of vessel, hull type, propulsion type, fuel type, primary use, endorsements (if Coast Guard documented), and hailing port name endorsements (if Coast Guard documented).

b. Records containing personal information including: name of each owner, address of principal place of residence of at least one owner, mailing address if different than the principal place of residence, and either an owner's social security number, date of birth and driver's license number, or other individual identifier. If a vessel owner is a business, the business address and taxpayer identification number will be included.

c. Records containing lienholder and insurance information including: name of lienholder, and city and state of principal place of residence or business of each lienholder.

d. Records containing law enforcement information including: law enforcement status code (stolen, recovered, lost, destroyed, or abandoned), law enforcement hold, reporting agency, originating case number, National Crime Information Center (NCIC) number, VIS user identification, incident location, last sighted date/time/location, law enforcement contact and phone number, and hours of operations.

e. Records containing vessel registration information including: registration and, if applicable title number including effective and expiration date, issuing authority, and, for Coast Guard documented vessels, the official number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 U.S.C. 12501–07.

PURPOSE(S):

The primary purpose of VIS is to provide a nationwide pool of state-numbered and/or titled and U.S. Coast Guard-documented vessels that will assist in identification and recovery of stolen vessels, deter vessel theft and fraud, and other purposes relating to the ownership of vessels.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Federal, state and local law enforcement officials for law enforcement purposes including the recovery and return of stolen property and to deter vessel theft and fraud.

b. Federal and state numbering and titling officials for the purposes of tracking, registering and titling vessels.

c. National Crime Information Center data contained in VIS will only be released to National Crime Information Center authorized users.

d. Disclosure may be made to agency contractors who have been engaged to assist the agency in the performance of a contract service or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

e. See DOT Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of all records is in an automated database operated and maintained by the U.S. Coast Guard.

RETRIEVABILITY:

Records are retrieved by:

a. Vessel hull identification number (HIN).

b. State certificate of number.

c. Title number.

d. U.S. Coast Guard official number.

e. USCG vessel name and hailing port.

f. Vessel owner or business name.

g. Vessel owner's social security number or alternate identifier (e.g., DOB, driver's license number, or taxpayer identification number).

SAFEGUARDS:

The VIS falls under the guidelines of the United States Coast Guard Operations System Center (OSC) in Martinsburg, WV. This computer facility has its own approved System Security Plan, which provides that:

a. The system will be maintained in a secure computer room with access restricted to authorized personnel only.

b. Access to the building must be authorized and is limited.

c. VIS will support different access levels for fields in the same record. These levels will allow different classes of users access to specific information as governed by Federal privacy laws.

d. VIS will control access by requiring that users provide a valid account name and password. VIS will contain a function that tracks system usage for other authorized users (i.e., non-participating states, commercial institutions, and private individuals). VIS will require users to change access control identifiers at six month intervals.

The U.S. Coast Guard will operate the VIS in consonance with Federal security regulations, policy, procedures, standards and guidance for implementing the Automated Information Systems Security Program.

e. Only authorized DOT personnel and authorized U.S. Government contractors conducting system maintenance may access VIS records.

f. Access to records are password protected and the scope of access for each password is limited to the official need of each individual authorized access.

g. Additional protection is afforded by the use of password security, data encryption, and the use of a secure network, National Law Enforcement Telecommunications System (NLETS).

RETENTION AND DISPOSAL:

a. Records of active cases will be retained until they become inactive; inactive cases will be archived and retained for 50 years. Records will be selected to be archived into an off-line file for any vessel that has been inactive for a period of 10 years. A vessel is inactive when the State number and/or Coast Guard Document have expired with the exception of the vessels that have a law enforcement hold and vessels with a law enforcement status of stolen.

b. Daily backups shall be performed automatically. The backups will be comprised of weekly full backups followed by daily incremental backups; a log of transactions is maintained daily for recovery purposes.

c. Copies of backups are stored at an off-site location.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, United States Coast Guard Headquarters, Information Resource Division, System Development Division (G–MRI–3), 2100 2nd Street, SW, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Submit a written request noting the information desired and for what purpose the information will be used. The request must be signed by the individual or his/her legal representative. Send the request to: USCG Headquarters, Commandant (G–SII), 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

All information entered into the VIS is gathered from participating states and the National Crime Information Center (NCIC) in the course of normal routine business. VIS information will be accessible through the Coast Guard Data Network (CGDN), National Law Enforcement Telecommunications System (NLETS), the Internet, and dial-up modem. VIS shall also interface with the Coast Guard's existing Merchant Vessel Documentation System (MVDS) DOT/CG 591 to provide participating states with information on USCG documented vessels and interface with the Motorboat Registration System to provide participating states with information on vessels registered by the Coast Guard for the state of Alaska.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(2). However, in specific cases where maintenance of information results in the denial of a right, privileges or benefits to which the individual is entitled, the information will be released in accordance with section (k)(2). This provides in part that material compiled for law enforcement purposes may be withheld from disclosure to the extent the identity of the source of the information would be revealed by disclosing the investigatory record, and the source has received an express promise that his/her identity would be held in confidence. Additionally, material received prior to 27 September 1974 will be withheld, if the source received an implied promise that his/her identity would be held in confidence.

Dated: November 19, 1997.

Eugene K. Taylor, Jr.,
Director, Information Resource Management, Department of Transportation.

[FR Doc. 97–32061 Filed 12–5–97; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues; New Tasks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of new tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Manager, Transport Standards Staff, ANM–110, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone (425) 227–2190, fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine issues. These issues involve the airworthiness standards for transport category airplanes in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135. The corresponding European airworthiness standards for transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, JAR–E, and JAR–P, respectively. The corresponding Canadian Standards are contained in Chapters 525, 533, and 535 respectively.

The Tasks

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization tasks:

Task 1. As a short-term project, consider the need for a regulation that requires installation of ice detectors, aerodynamic performance monitors, or another acceptable means to warn

flightcrews of ice accumulation on critical surfaces requiring crew action (regardless of whether the icing conditions are inside or outside of Appendix C of 14 CFR Part 25). Also consider the need for a Technical Standard Order for design and/or minimum performance specifications for an ice detector and aerodynamic performance monitors. Develop the appropriate regulation and applicable standards and advisory material if a consensus on the need for such devices is reached. (Schedule: September 1998, Reach agreement on proposed rule; January 1999, NPRM package delivered to FAA from ARAC; March 1999, Publish NPRM; March 2000, Publish Final Rule.)

As long-term projects:

Task 2. Review National Transportation Safety Board recommendations A–96–54, A–96–56, and A–96–58, and advances in ice protection state-of-the-art. In light of this review, define an icing environment that includes supercooled large droplets (SLD), and devise requirements to assess the ability of aircraft to safely operate either for the period of time to exit or to operate without restriction in SLD aloft, in SLD at or near the surface, and in mixed phase conditions if such conditions are determined to be more hazardous than the liquid phase icing environment containing supercooled water droplets. Consider the effects of icing requirement changes on 14 CFR part 23 and part 25 and revise the regulations if necessary. In addition, consider the need for a regulation that requires installation of a means to discriminate between conditions within and outside the certification envelope. (Schedule: September 1999, Reach technical agreement; January 2000, NPRM package delivered to FAA from ARAC; March 2000, Publish NPRM; March 2001, Publish Final Rule.)

Task 3. Propose changes to make the requirements of 14 CFR 23.1419 and 25.1419 the same (Schedule: September 1999, Reach technical agreement; January 2000, NPRM package delivered to FAA from ARAC; March 2000, Publish NPRM; March 2001, Publish Final Rule)

Task 4. Harmonize 14 CFR §§ 23.1419, 25.1419, 25.929, and 25.1093 and JAR 23.1419, 25.1419, 25.929, and 25.1093. (Schedule: September 1999, Reach technical agreement; January 2000, NPRM package delivered to FAA from ARAC; March 2000, Publish NPRM; March 2001, Publish Final Rule)

Task 5. Consider the effects icing requirement changes may have on 14 CFR §§ 25.773(b)(1)(ii), 25.1323(e), 25.1325(b) and revise the regulations if necessary. (Schedule: September 1999, Reach technical agreement; January 2000, NPRM Package delivered to FAA from ARAC; March 2000, Publish NPRM; March 2001, Publish Final Rule (if necessary)).

Task 6. Consider the need for a regulation on ice protection of angle of attack probes (Schedule: September 1999, Reach technical agreement; January 2000, NPRM package delivered to FAA from ARAC; March 2000, Publish NPRM; March 2001, Publish Final Rule (if necessary)).

Task 7. Develop or update advisory material pertinent to items 2 through 6 above. (Schedule: October 2000, Advisory material package delivered to FAA from ARAC; March 2001, Publish advisory material).

If ARAC determines rulemaking action (e.g., NPRM, supplemental NPRM, final rule, withdrawal) should be taken, or advisory material should be issued or revised, it has been asked to prepare the necessary documents, including economic analysis, to justify and carry out its recommendation(s).

ARAC Acceptance of Tasks

ARAC has accepted these tasks and has chosen to assign them to a new Ice Protection Harmonization Working Group (IPHWG) under the Transport Airplane and Engine issue. The new working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned tasks. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

The IPHWG will coordinate with the Flight Test Harmonization Working Group, other harmonization working groups, organizations, and specialists as appropriate. Other affected groups, organizations, and specialists may include but not be limited to the Powerplant Installation Harmonization Working Group, Engine Harmonization Working Group, General Aviation Manufacturers Association (GAMA), human factors specialists, and meteorologists. Coordination with the Flight Test Harmonization Working Group will be necessary to ensure that the IPHWG does not initiate work on issues already being addressed by the Flight Test group. Coordination with GAMA will be necessary to ensure that the proposed NASA Advanced General Aviation Transport Experiment project is considered throughout the process of accomplishing the short and long term projects. The IPHWG will request ARAC assignment of tasks to existing working groups if necessary. The IPHWG will identify to ARAC the need for additional new working groups when existing groups do not have the appropriate expertise to address certain tasks.

Working Group Activity

The Ice Protection Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider Transport Airplane and Engine Issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. For each task, draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each meeting of ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Group

The Ice Protection Harmonization Working Group will be composed of experts having an interest in the assigned tasks. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Ice Protection Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on November 24, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–32034 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3163]

Decision That Nonconforming 1995 Ferrari F50 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1995 Ferrari F50 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1995 Ferrari F50 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1995 Ferrari F50), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective December 8, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer R–90–006) petitioned NHTSA to decide whether 1995 Ferrari F50 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on August 18, 1997 (62 FR 44030) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice, from Fiat Auto U.S.A., Inc. (Fiat), the U.S. representative of Ferrari, S.p.A., the vehicle's manufacturer. In its comment, Fiat observed that non-U.S. certified 1995 Ferrari F50 passenger cars are equipped with manual 3-point seat belts while their U.S. certified counterparts are equipped with motorized 2-point shoulder belts and manual 2-point lap belts. Fiat contended that modification of a non-U.S. certified 1995 Ferrari F50 for compliance with the automatic restraint requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, would be very difficult, if not impossible, owing to the fact that the vehicle has a carbon body. Fiat additionally observed that the petitioner inaccurately described the vehicle as having "rear belts," in view of the fact that it is a two seater. With respect to the requirements of FMVSS No. 210, *Seat Belt Assembly Anchorages*, Fiat claimed that non-U.S. certified 1995 Ferrari F50 passenger cars have 3-point anchorages, while their U.S. certified counterparts have 4-point anchorages. Addressing the requirements of FMVSS No. 214, *Side Impact Protection*, Fiat contended that U.S. certified 1995 Ferrari F50 passenger cars have a steel beam inside their doors that cannot be simply added to the non-U.S. certified version of the vehicle.

NHTSA afforded J.K. an opportunity to respond to Fiat's comments. With respect to Fiat's comments regarding FMVSS No. 208 and 210 compliance issues, J.K. responded that the automatic belt system that is supplied on the U.S. certified 1995 Ferrari F50 bolts on to existing mounts that are on the seats and door frames of the non-U.S. certified version of the vehicle. J.K. additionally acknowledged that the reference to rear seat belts in the petition was in error since the 1995 Ferrari F50 has no rear seat. With respect to the FMVSS No. 214 compliance issue raised by Fiat, J.K. stated that the door beams in the U.S. certified 1995 Ferrari F50 are bolt-on components that can be easily installed on the non-U.S. certified version of the vehicle without the need for fabrication or welding.

NHTSA has reviewed each of the issues that Fiat has raised regarding J.K.'s petition. NHTSA believes that J.K.'s responses adequately address each of those issues. NHTSA further notes that the modifications described by J.K. are consistent with its finding that a non-U.S. certified 1995 Fiat F50 is "capable of being readily altered to comply with all Federal motor vehicle safety standards."

NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–226 is the eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1995 Ferrari F50 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1995 Ferrari F50 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CAR 593.8; delegations of authority at 49 CAR 1.50 and 501.8.

Issued on: December 2, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–32037 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3164]

Decision That Nonconforming 1988–1989 Audi 80 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1988–1989 Audi 80 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1988–1989 Audi 80 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1988–1989 Audi 80), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of December 8, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania (Champagne) (Registered Importer R–90–009) petitioned NHTSA to decide whether 1988–1989 Audi 80 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on August 5, 1997 (62 FR 42156) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice, from Volkswagen of America, Inc. (Volkswagen), the U.S. representative of Audi AG, the vehicle's manufacturer. In its comment, Volkswagen observed that the alterations identified in the petition are the minimum that are necessary to conform non-U.S. certified 1988–1989 Audi 80 passenger cars to the applicable Federal motor vehicle safety standards. Volkswagen further observed that in addition to differences in the bumper system, modifications were made to the body components and structure of U.S. certified 1988–1989 Audi 80 passenger cars to achieve compliance with the Bumper Standard found in 49 CFR part 581.

Petitioners for eligibility determinations are not required to submit arguments in support of the capability of a non-conforming vehicle to comply with the Bumper Standard. Under statute, eligibility determinations are based solely on the capability of a vehicle to comply with the Federal motor vehicle safety standards. However, a passenger motor vehicle that does not meet the Bumper Standard at the time of importation must be brought into compliance after importation in order to comply with the law. Therefore, a vehicle eligibility notice affords a forum through which issues of compliance with the Bumper Standard can be raised and discussed. However, NHTSA has no authority to deny an eligibility petition solely on the basis that the vehicle is incapable of being conformed to meet the Bumper Standard.

Volkswagen's first observation, as described above, appears to be generally supportive of the petition. Although Volkswagen's second observation identifies a potential need for alterations beyond those specified in the petition to conform non-U.S. certified 1988–89 Audi 80 passenger cars to the Bumper Standard, the company nowhere contends that these alterations cannot be readily made. The petitioner and other RIs seeking to import 1988–89 Audi 80s under this exemption should recognize Volkswagen's concern and may be assured that NHTSA will carefully examine data they submit in support of their certification of compliance with the Bumper Standard.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–223 is the eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1988–1989 Audi 80 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1988–1989 Audi 80 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CAR 593.8; delegations of authority at 49 CAR 1.50 and 501.8.

Issued on: December 2, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–32038 Filed 12–5–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–53]

Delegation of Authority to Make Decisions on Appeals of the Initial Denial of Records Under the Freedom of Information Act

Dated: December 1, 1997.

1. Delegation

a. This Directive delegates to the Deputy Assistant Secretary (Human Resources) the authority to make appeal decisions on the initial denial of records or other adverse determinations made by the Office of Equal Opportunity Program under 5 U.S.C. 552; 5 U.S.C. 552a; and 31 Code of Federal Regulations (CFR) Part 1, Subparts A and C.

b. This Directive delegates to the Director, Office of Equal Opportunity Program, the authority to make appeal decisions on the initial denial of records and other adverse determinations made by the Regional Complaint Centers under 5 U.S.C. 552; 5 U.S.C. 552a; and 31 CFR Part 1, Subparts A and C.

2. Authority

a. Treasury Order 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 31 CFR Part 1, Subparts A and C.

3. Reference

Treasury Directive 25–05, "The Freedom of Information Act," dated January 18, 1996.

4. Expiration Date

This Directive expires three years from the date of issuance unless superseded or cancelled prior to that date.

5. Office of Primary Interest

Office of Equal Opportunity Program, Office of the Deputy Assistant Secretary (Human Resources), Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 97–32025 Filed 12–5–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 1, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (PD)

OMB Number: 1535–0104.
Form Number: PD F 2066.
Type of Review: Extension.
Title: Application by Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as Amended.
Description: Form 2066 is used as an application by survivors for payment of a bond or check issued under the Armed Forces Leave Act of 1946 to veterans of World War II.
Respondents: Individuals or households.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 200 hours.

OMB Number: 1535–0105.
Form Number: PD F 2481.
Type of Review: Extension.
Title: Application for Recognition as Natural Guardian of Minor Not Under Legal Guardianship and for Disposition of Minor's Interest in Registered Securities.
Description: The form is used by the natural guardian or a minor not under legal guardianship to request proper disposition of securities registered in the name of a minor.
Respondents: Individuals or households.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 13 hours.

OMB Number: 1535–0108.
Form Number: PD F 2471.
Type of Review: Extension.
Title: Certificate to Support Application for Relief on Account of Lost, Stolen or Destroyed United States Securities.
Description: The form is executed by individuals to support an application for relief on account of lost, stolen or destroyed United States securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 200 hours.
Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–31954 Filed 12–5–97; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

November 24, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0949.
Form Number: IRS Form 2587.
Type of Review: Extension.
Title: Application for Special Enrollment Examination.
Description: This information relates to the determination of the eligibility of individuals seeking enrollment status to practice before the Internal Revenue Service.
Respondents: Individual or households.
Estimated Number of Respondents/ Recordkeepers: 8,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 6 minutes.
Frequency of Response: Other (one-time filing).
Estimated Total Reporting/ Recordkeeping Burden: 25,550 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–31955 Filed 12–5–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 1, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to conduct the survey described below in mid-December 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by December 12, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–031–G.
Type of Review: Revision.
Title: North Florida District Office of Research and Analysis (DORA's) On-Line Filing Program Survey.
Description: The purpose of this survey is to determine what IRS can do to improve On-Line filing and to encourage taxpayers to file On-Line.
Respondents: Individuals or households.
Estimated Number of Respondents: 4,000.
Estimated Burden Hours Per Response: 5 minutes.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 167 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–31956 Filed 12–5–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 1, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in early-December 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by December 4, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–032–G.
Type of Review: Revision.
Title: 1997 IRS Communications Tracking Study.
Description: The purpose of this study is to collect information to (1) accurately and objectively establish a "benchmark" of current levels of taxpayers awareness of IRS electronic filing options as the communications program unfolds. The survey will provide crucial communications information and guidance to ensure the maximum numbers of taxpayers are aware of the electronic filing options.

The information obtained from the survey will be used to determine the effectiveness of the communications program in increasing taxpayer awareness of their electronic filing options. This research program is also designed to provide strategic communications guidance to ensure the key target audience of e-filing is exposed to this message. In addition, the information obtained will be utilized to determine the benefits and limitations of public service announcement (PSA) market advertising and paid market advertising.

Respondents: Individuals or households.
Estimated Number of Respondents: 3,200.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 534 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–31957 Filed 12–5–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

December 1, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0002.
Form Number: IRS Form CT–2.
Type of Review: Extension.
Title: Employee Representative's Quarterly Railroad Tax Return.
Description: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement taxes are due. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.
Respondents: Individual or households.
Estimated Number of Respondents/Recordkeepers: 28.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	26 min.
Learning about the law or the form.	14 min.
Preparing the form	31 min.
Copying, assembling and sending the form to the IRS.	17 min.

Frequency of Response: Quarterly.
Estimated Total Reporting/Recordkeeping Burden: 165 hours.
OMB Number: 1545–0043.
Form Number: IRS Form 972.
Type of Review: Extension.
Title: Consent of Shareholder to Include Specific Amount of Gross Income.
Description: Form 972 is filed by shareholders of corporations to elect to include an amount in gross income as a dividend. The IRS uses Form 972 as a check to see if an amended return is filed to include the amount in income and to determine if the corporations claimed the correct amount.
Respondents: Individual or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 400.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 min.
Learning about the law or the form.	3 min.
Preparing the form	14 min.
Copying, assembling, and sending the form to the IRS.	31 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 412 hours.
OMB Number: 1545–0135.
Form Number: IRS Form 1138.
Type of Review: Extension.
Title: Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback.
Description: Form 1138 is filed by corporations to request an extension of time to pay their income taxes, including estimated taxes. Corporations may only file for an extension when they expect a net operating loss carryback in the tax year and want to delay the payment of taxes from a prior tax year.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 2,033.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	3 hr., 21 min.
Learning about the law or the form.	42 min.
Preparing and sending the form to the IRS.	47 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 9,819 hours.
OMB Number: 1545–0236.
Form Number: IRS Form 11–C.
Type of Review: Extension.
Title: Occupational Tax and Registration Return for Wagering.
Description: Form 11–C is used to register persons accepting wagers (Internal Revenue Code section 4412). IRS uses this form to register the respondent, collect the annual stamp tax (Internal Revenue Code section 4412), and to verify that the tax on wagers is reported on Form 730.
Respondents: Business or other-for profit, Individual or households.
Estimated Number of Respondents/Recordkeepers: 11,500.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 hr., 10 min.
Learning about the law or the form.	34 min.
Preparing the form	1 hr., 38 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 110,975 hours.
OMB Number: 1545–1143.
Form Number: IRS Form 706–GS(D–1).
Type of Review: Extension.
Title: Notification of Distribution From a Generation-Skipping Trust.
Description: Form 706–GS(D–1) is used by trustees to notify the IRS and distributees of information needed by distributees to computer the Federal Generation Skipping Trust (GST) tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individual or households.
Estimated Number of Respondents/Recordkeepers: 80,000.
Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping	1 hr., 33 min.
Learning about the law or the form.	1 hr., 46 min.
Preparing the form	41 min.
Coying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 348,000 hours.
OMB Number: 1545–1144.
Form Number: IRS Form 706–GS(D).
Type of Review: Extension.
Title: Generation-Skipping Transfer Return for Distributions.
Description: Form 706–GS(D) is used by the distributees to compute and report the Federal Generation-Skipping Transfer (GST) tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individual or households.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 min.
Learning about the law or the form.	13 min.
Preparing the form	24 min.
Copying, assembling, and sending the form to the IRS.	19 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,030 hours.
OMB Number: 1545–1145.
Form Number: IRS Form 706–GS(T), Schedule A and Schedule B.
Type of Review: Extension.
Title: Generation-Skipping Transfer Tax Return for Terminations.
Description: Form 706–GS(T) is used by trustees to compute and report the Federal Generation-Skipping Transfer (GST) tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individual or households.
Estimated Number of Respondents/Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 706–GS(T)	Schedule A	Schedule B
Recordkeeping	40 min	13 min	13 min.
Learning about the law or the form	29 min	17 min	7 min.
Preparing the form	32 min	38 min	20 min.
Copying, assembling, and sending the form to the IRS	20 min	20 min	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 690 hours.
OMB Number: 1545–1558.
Revenue Procedure Number: Revenue Procedure 97–43 and Revenue Ruling 97–39.
Type of Review: Extension.
Title: Procedures for Electing Out of Exemptions Under Section 1.475(c)–1 (Revenue Procedure 97–43); and Mark to Market Accounting Method for Dealers in Securities (Revenue Ruling 97–39).
Description: Revenue Procedure 97–43 provides taxpayers automatic consent to change to mark-to-market accounting for securities after the taxpayer elects under 1.475(c)–1, subject to specified terms and conditions. Revenue Ruling 97–39 provides taxpayers additional mark-to-market guidance in a question and answer format.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 20,000.
Estimated Burden Hours Per Respondent: 27 hours, 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 550,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–31958 Filed 12–5–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

December 2, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0029.
Form Number: IRS Forms 941, Schedule B (Form 941); 941–PR, Schedule B (941–PR); 941–SS, and 941–V.
Type of Review: Extension.
Title:
Employer's Quarterly Federal Tax Return (Form 941);
Employer's Record of Federal Tax Liability (Schedule B, Form 941);
Planilla Para La Declaración Trimestral Del Patrónó (Form 941–PR);
Registro Suplementario De La Obligación Contributiva Federal Del Patrónó (Schedule B, Form 941–PR);
Employer's Quarterly Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands (Form 941–SS); and
Payment Voucher (Form 941–V).
Description: Form 941 is used by employers to report payments made to employees subject to income tax and Social Security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report Social Security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report Social Security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.
Respondents: Business or other for-profit, individual or households, not-for-profit institutions, Federal Government, State, Local or Tribal Governments.
Estimated Number of Respondents/ Recordkeepers: 12,494,773.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
941	11 hr., 43 min	28 min	1 hr., 37 min	16 min
941 Schedule B	2 hr., 40 min	0 min	2 min	0 min
941–PR	7 hr., 0 min	6 min	12 min	0 min
941–PR Schedule B	2 hr., 40 min	0 min	2 min	0 min
941–SS	7 hr., 16 min	0 min	13 min	0 min
941–V	14 min	0 min	0 min	0 min

Frequency of Response: Quarterly.
Estimated Total Reporting/ Recordkeeping Burden: 318,978,543 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 97–31959 Filed 12–5–97; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notice of Firearms Manufactured or Imported.

DATES: Written comments should be received on or before February 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nereida Levine, National Firearms Act Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8330.

SUPPLEMENTARY INFORMATION:

Title: Notice of Firearms Manufactured or Imported.
OMB Number: 1512–0025.
Form Number: ATF F 2 (5320.2).
Abstract: ATF F 2 (5320.2) is used by a federally qualified firearms manufacturer or importer to report firearms manufactured or imported and to have these firearms registered in the National Firearms Registration and Transfer Record (NFRTR) as proof of the lawful existence of the firearm.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 590.
Estimated Time Per Respondent: 30 minutes.
Estimated Total Annual Burden Hours: 5,900.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.
John W. Magaw,
Director.
[FR Doc. 97–32065 Filed 12–5–97; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Monthly Report—Export Warehouse Proprietor.

DATES: Written comments should be received on or before February 6, 1998 to be assured of consideration.

ADDRESS: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION:

Title: Monthly Report—Export Warehouse Proprietor.
OMB Number: 1512–0115.
Form Number: ATF F 5220.4 (2140).
Abstract: ATF F 5220.4 is a report that is completed and filed by proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products. The report provides a summation of all transactions at the export warehouse and accounts for the untaxable products being handled by these proprietors. No tax will be paid on the tobacco products if they are properly exported.
Current Actions: The only change to this information collection is an increase in the number of respondents therefore resulting in an increase in burden hours.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 221.
Estimated Time Per Respondent: 48 minutes.
Estimated Total Annual Burden Hours: 2,148.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.
John W. Magaw,
Director.
[FR Doc. 97–32066 Filed 12–5–97; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Explosives Transaction Record.

DATES: Written comments should be received on or before February 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650

Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gail H. Davis, Firearms, Explosives and Arson Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8053.

SUPPLEMENTARY INFORMATION:

Title: Explosives Transaction Record.
OMB Number: 1512–0184.
Form Number: ATF F 5400.4.
Abstract: The Explosives Transaction Record is used to verify the qualification and identification of unlicensed persons wishing to purchase explosive materials from licensed dealers, as well as the location in which the explosives are intended for storage and/or use. ATF uses the information in its investigations and inspections to establish leads and determine compliance.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit, individuals or households.
Estimated Number of Respondents: 1,140.
Estimated Time Per Respondent: 20 minutes.
Estimated Total Annual Burden Hours: 7,227.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.
John W. Magaw,
Director.
[FR Doc. 97–32067 Filed 12–5–97; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Special Tax Renewal Registration and Return and Special Tax Location Registration Listing.

DATES: Written comments should be received on or before February 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert P. Ruhf, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8188.

SUPPLEMENTARY INFORMATION:

Title: Special Tax Renewal Registration and Return and Special Tax Location Registration Listing.
OMB Number: 1512–0500.
Form Number: ATF F 5630.5R and ATF F 5630.5RC.
Abstract: All of the information requested on ATF F 5630.5R and ATF F 5630.5RC is essential to the functions of collecting, processing and accounting for alcohol, tobacco and/or firearms special tax payments. The forms identify the taxpayer, tax classes and the particular premises covered by the return.
Current Actions: The only change to this information collection is a decrease in the number of respondents.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 350,000.
Estimated Time Per Respondent: 15 minutes.
Estimated Total Annual Burden Hours: 87,500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.
John W. Magaw,
Director.
[FR Doc. 97–32068 Filed 12–5–97; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plant (DSP) Processing Records and Reports.

DATES: Written comments should be received on or before February 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marsha D. Baker, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8177.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plant (DSP) Processing Records and Reports.
OMB Number: 1512–0198.
Form Number: ATF F 5110.28.
Recordkeeping Requirement ID Number: ATF REC 5110/3.
Abstract: The information collected is necessary to account for and verify the processing of distilled spirits in bond. The information is used to audit plant operations, monitor industry activities for the efficient allocation of personnel resources and the compilation of statistics. The record retention requirement for this information collection is 3 years.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 134.
Estimated Time Per Respondent: 2 hours.
Estimated Total Annual Burden Hours: 3,886.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.
John W. Magaw,
Director.
[FR Doc. 97–32069 Filed 12–5–97; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Signing Authority for Corporate Officals.

DATES: Written comments should be received on or before February 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Majorie D. Ruhf, Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Signing Authority for Corporate Officials.
OMB Number: 1512–0188.
Form Number: ATF F 5100.1.
Abstract: ATF collects this information in order to assure that only individuals authorized by a regulated business sign the form on the business' behalf. The form identifies the corporation, the individual or office authorized to sign, and documents the authorization. The permittee is required to keep copies of all qualifying documents for 3 years after final discontinuance.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Time Per Respondent: 15 minutes.
Estimated Total Annual Burden Hours: 250.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.
John W. Magaw,
Director.
[FR Doc. 97–32070 Filed 12–5–97; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Executive Risk Indemnity Inc.

SUMMARY: (Dept. Circ. 570, 1997 Rev., Supp. No. 4).

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch (202) 874–6507.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, on page 35558 to reflect this addition:

Executive Risk Indemnity Inc.
BUSINESS ADDRESS: 82 Hopmeadow Street, P.O. Box 2002, Simsbury, CT, 06070–7683. PHONE: (860) 408–2000. UNDERWRITING LIMITATION: $12,001,000. SURETY LICENSES: AL, AK, AZ, AR, CA, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Certificates of Authority expire on June 30 each year, unless revoked prior

to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00509–8.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: December 1, 1997.

Charels F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–32078 Filed 12–5–97; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4506, request for Copy or Transcript of Tax Form.

DATES: Written comments should be received on or before February 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Copy or Transcript of Tax Form.

OMB Number: 1545–0429.

Form Number: 4506.

Abstract: Internal Revenue Code section 7513 allows taxpayers to request a copy of a tax return or related documents. Form 4506 is used for this purpose. The information provided will be used for research to locate the tax form and to ensure that the requestor is the taxpayer or someone authorized by the taxpayer to obtain the documents requested.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 914,540.

Estimated Time Per Respondent: 1 hr., 4 min.

Estimated Total Annual Burden Hours: 969,412.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 25, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32076 Filed 12–5–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041 and Related Schedules D, J, and K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041 and related Schedules D, J, and K–1.

DATES: Written comments should be received on or before February 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Estates and Trusts (Form 1041), Capital Gains and Losses (Schedule D), Accumulation Distribution for a Complex Trust (Schedule J), Beneficiary's Share of Income, Deductions, Credits, etc. (Schedule K–1).

OMB Number: 1545–0092.

Form Number: Form 1041 and related Schedules D, J, and K–1.

Abstract: IRC section 6012 requires that an annual income tax return be filed for estates and trusts. The data is used by the IRS to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.

Current Actions:

The following changes were made:

Form 1041:

Page 2

Line 6 was added to Schedule A for an adjustment necessitated by Internal Revenue Code section 1202.

Other Information—Line 9 was added to identify those returns with potential for generation-skipping transfer tax.

Page 3

Line 11 was added to Schedule I for the new section 1202 adjustment.

New Part IV was necessitated by the capital gain changes in the Taxpayer Relief Act of 1997 (TRA 97). Because capital gain rates may not be below the alternative minimum tax rates, fiduciaries must calculate the capital gains minimum tax on Schedule I.

Schedule D

Line 4 was deleted to reduce burden and save space.

Parts II and III were revised to reflect the capital gain changes in TRA 97. The old Part V was moved to the instructions and made into a worksheet. Old Part VI was renumbered as Part V. The new Tax Computation Using Maximum Capital Gain Rates has been completely revised as required by TRA 97.

Schedule K–1

New lines 4a and 4b were added to reflect changes made by TRA 97. The beneficiaries need this breakdown of long-term capital gain to complete their own Schedule D.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 3,242,585.

Estimated Time Per Respondent: 107 hr., 21 min.

Estimated Total Annual Burden Hours: 348,095,641.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 26, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32077 Filed 12–5–97; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 62, No. 235
Monday, December 8, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

Food Labeling; Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements; Compliance Policy Guide, Revocation

Correction

In rule document 97–24739 beginning on page 49826, in the issue of Tuesday, September 23, 1997, make the following correction:

§ 101.4 [Corrected]

On page 49848, in § 101.4(h)(1), in the first column, in the first line, "pressed" should read "be expressed".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR-4155-F-02]

RIN 2506-AB91

Community Development Block Grants: New York Small Cities Program

Correction

In rule document 97–30940, beginning on page 62912, in the issue of Tuesday, November 25, 1997, make the following correction:

On page 62912, in the second column, under **Discussion of Public Comments**, in the second line, "July " should read "June".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–55]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

Correction

In notice document 97–30775, beginning on page 62665, in the issue of Monday, November 24, 1997, make the following correction:

On page 62665, in the second column, in **Petitions for Exemption**, in the 12th line, *Docket No.*: "29041" should read "29014".

BILLING CODE 1505-01-D

federal register

Monday
December 8, 1997

Part II

Environmental Protection Agency

40 CFR Part 264, et al.
Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, and 270

[IL–64–2–5807; FRL–5931–7]

RIN 2060–AG44

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification and technical amendment.

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has promulgated standards (59 FR 62896, December 6, 1994) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. (The standards are known colloquially as the "subpart CC" standards due to their inclusion in subpart CC of parts 264 and 265 of the RCRA subtitle C regulations). These air standards control organic emissions from certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

Since publication of the final standards on December 6, 1994, the EPA has given public notice and taken comment on several proposed revisions to the final rule, and has made corresponding amendments. In response to public comments and inquiries, today's action makes clarifying amendments to certain regulatory text, and provides clarification of certain preamble language that was contained in previous documents for this rulemaking.

DATES: These amendments are effective December 8, 1997.

ADDRESSES: This document is available on the EPA's Clean-up Information Bulletin Board (CLU–IN). To access CLU–IN with a modem of up to 28,800 baud, dial (301) 589–8366. First time users will be asked to input some initial registration information. Next, select "D" (download) from the main menu. Input the file name "RCRA–FIN.ZIP" to download this document. Follow the on-line instructions to complete the download. More information about the download procedure is located in Bulletin 104; to read this type "B 104" from the main menu. For additional help with these instructions, telephone the CLU–IN help line at (301) 589–8368.

Docket. The supporting information used for the subpart CC rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, F–94–CE2A–FFFFF, F–95–CE3A–FFFFF, F–96–CE3F–FFFFF, and F–96–CE4A–FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Review of docket materials is conducted at the Virginia address; the public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA docket office is RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information about the RCRA Air Rules, or specific rule requirements of RCRA rules, please contact the RCRA Hotline, toll-free at (800) 424–9346. Contacts for specific information are listed in the **SUPPLEMENTARY INFORMATION** section of this preamble.

SUPPLEMENTARY INFORMATION:

Regulated Entities: The entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Businesses that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).
Federal Government	Federal agencies that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a):

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the amendments to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 264.1030 and § 265.1030 of the RCRA subpart AA rules, § 264.1050 and § 265.1050 of the RCRA subpart BB rules, and § 264.1080 and § 265.1080 of the RCRA subpart CC air rules.

Informational Contacts

If you have questions regarding the applicability of this action to a particular situation, or questions about compliance approaches, permitting, enforcement and rule determinations, please contact the appropriate regional representative below:

Region I

Stephen Yee, (617) 565–3550; Jim Gaffey, 565–3437; U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203–0001

Region II

Abdool Jabar, (212) 637–4131; John Brogard, 637–4162; Jim Sullivan, 637–4138; U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866

Region III

Linda Matyskiela, (215) 566–3420; Andrew Clibanoff, 566–3391; U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107

Region IV

Denise Housley, (404) 562–8495; Rick Gillam, 562–8498; Jan Martin, 562–8593; Anita Shipley, 562–8466; Donna Wilkinson, 562–8490; Judy Sophianolpoulos, 562–8604; David Langston, 562–8588; U.S. EPA, Region IV, 61 Forsyth Street, Atlanta, GA 30303

Region V

Jae Lee, (312) 886–3781; Uylaine McMahan, 886–4454; Mike Mikulka, 886–6760; Ivonne Vicente, 886–4449; Wen Huang, 886–6191; U.S. EPA, Region V, 77 West Jackson Street, Chicago, IL 60604

Region VI

Michelle Peace, (214) 665–7430; Teena Wooten, 665–2279; U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733

Region VII

Ed Buckner, (913) 551–7621; Ken Herstowski, 551–7631; U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101

Region VIII

Mindy Mohr, (303) 312–6525; Janice Pearson, 312–6354; U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466

Region IX

Stacy Braye, (415) 774–2056; Jean Daniel, 774–2128; U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Region X

Linda Liu, (206) 553–1447; David Bartus, 553–2804; U.S. EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101

For questions about testing or analytical methods mentioned in this document, please contact Ms. Rima Dishakjian, Emission Measurement Center (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443. For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2363, electronic mail address, "aston.michele@epamail.epa.gov."

Background

Section 3004(n) of RCRA requires EPA to develop standards to control air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) as may be necessary to protect human health and the environment. This requirement echoes the general requirement in RCRA section 3004(a) and section 3002(a)(3) to develop standards to control hazardous waste management activities as may be necessary to protect human health and the environment. The Agency has issued a series of regulations to implement the section 3004(n) mandate; these regulations control air emissions from certain process vents and equipment leaks (part 264 and part 265, subparts AA and BB), and emissions from certain tanks, containers, and surface impoundments (the subpart CC standards, which are the primary subject of today's action).

The EPA today is making technical amendments to the final subpart AA, BB, and CC standards, and providing interpretations for certain provisions of those rules. Since the publication of the final subpart CC rule (59 FR 69826, December 4, 1994), the EPA has published four **Federal Register** documents that delayed the effective date of that rule. The first (60 FR 26828, May 19, 1995) revised the effective date of the standards to be December 6, 1995. The second (60 FR 56952, November 13, 1995) revised the effective date of the standards to be June 6, 1996. The third (61 FR 28508, June 5, 1996) further postponed the effective date for the rule requirements until October 6, 1996, and the fourth (61 FR 59931, November 25, 1996) established the ultimate effective date of December 6, 1996. The EPA has also issued an indefinite stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

On August 14, 1995, the EPA published a **Federal Register** document entitled, "Proposed rule; data availability" (60 FR 41870) and opened RCRA docket F–95–CE3A–FFFFF to accept comments on revisions that the EPA was considering for the final subpart CC standards. The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. Throughout 1996 and into the present year, the EPA also engaged in repeated discussions with representatives of the groups filing petitions for review challenging the subpart CC standards.

To further inform the affected public of the major clarifications, compliance options, and technical amendments being considered, the EPA conducted a series of seminars during August and September of 1995. At that time, a total of six seminars were held nationally. An updated series of six seminars was held in September through December 1996 and two additional seminars were held March and April of 1997 in conjunction with an industry trade association. (Refer to EPA RCRA Docket No. F–95–CE3A–FFFFF.) During these seminars, additional comments were received on the RCRA air rules for tanks, surface impoundments, and containers. These comments were also considered by the EPA in developing this final action.

On February 9, 1996, the EPA published a **Federal Register** document (61 FR 4903), "Final rule; technical amendment," which made clarifying amendments in the regulatory text of the final standards, corrected typographical and grammatical errors, and clarified certain language in the preamble to the final rule to better convey the EPA's original intent.

On November 25, 1996, the EPA published a **Federal Register** document (61 FR 59932), "Final rule" that amended provisions of the final subparts AA, BB, CC rules to better convey the EPA's original intent, to provide additional flexibility to owners and operators who must comply with the rules, and to change the effective date of the requirements contained in the subpart CC rules to be December 6, 1996.

Today's action makes technical amendments to the final subparts AA, BB, CC rules in order to clarify the regulatory text of the final standards; interpret those standards; correct typographical, printing, and grammatical errors; and clarify certain language published in the preambles of previous **Federal Register** documents, to better convey the EPA's original intent.

Today's amendments include one change to 40 CFR Part 270, to correct a typographical error made in the December 6, 1994 final rule. The text listing the sections of regulatory requirements that must be included in the general inspection schedule incorrectly listed "245.193(i)" where section 264.193(i) was intended. This was obviously a typographical error, as all of the sections listed in that provision are from 40 CFR part 264; the sections are listed in numeric order, and "245.193(i)" was very obviously out of place. Further, no section 245.193(i) exists; in fact, no 40 CFR 245 exists. Today's amendment corrects this typographical error.

Outline

The information presented in this preamble is organized as follows:

I. Subpart B—General Facility Standards
II. Subpart E—Manifest System, Recordkeeping, and Reporting
III. Subpart AA—Air Emission Standards for Process Vents
  A. Applicability
  B. Definitions
  C. Standards: Closed-Vent Systems and Control Devices
  D. Recordkeeping Requirements
IV. Subpart BB—Air Emission Standards for Equipment Leaks
  A. Applicability
  B. Standards: Closed-Vent Systems and Control Devices
  C. Alternative Standards for Valves
  D. Recordkeeping Requirements
  E. Open-ended Valves and Lines
V. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers
  A. Applicability and Definitions
  B. Schedule for Implementation of Air Emission Standards
  C. Standards: General

D. Waste Determination Procedures
E. Standards: Tanks
F. Standards: Surface Impoundments
G. Standards: Containers
H. Standards: Closed-Vent Systems and Control Devices
I. Recordkeeping and Reporting Requirements
J. Appendix VI to Part 265
VI. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Regulatory Flexibility
E. Unfunded Mandates Act
F. Immediate Effective Date
VII. Legal Authority

I. Subpart B—General Facility Standards

Today's action removes §§ 264.1091(b) and 265.1091(b) from the list of sections in §§ 264.15 and 265.15, respectively. Sections 264.15 and 265.15 contain a list of provisions from which inspection items and frequencies are required to be included in the general facility inspection schedule. The inspection requirements for floating roof tanks that were in §§ 264.1091(b) and 265.1091(b) of subpart CC as promulgated, were incorporated into §§ 264.1084 and 265.1085 by the November 25, 1996, final rule amendments (61 FR 59944). That action also removed and reserved §§ 264.1091(b) and 265.1091(b). Therefore, the EPA is revising this provision to reference the paragraphs that now contain the inspection requirements. The EPA is also correcting a previous omission, by including a reference to the sections of subpart CC that include inspections requirements.

II. Subpart E—Manifest System, Recordkeeping, and Reporting

Today's action also removes §§ 264.1091(b) and 265.1091(b) from the list of sections from which monitoring, testing, or analytical data, and corrective action requirements must be included in the facility operating record. The monitoring and testing requirements for floating roof tanks that were in §§ 264.1091(b) and 265.1091(b) of subpart CC as promulgated, were incorporated into §§ 264.1084 and 265.1085 by the November 25, 1996 final rule amendments (61 FR 59944) and, as just noted, §§ 264.1091(b) and 265.1091(b) were removed and reserved. Therefore, the EPA is revising this provision to reference the paragraphs that now contain the appropriate requirements, and including a reference to provisions of subpart CC that were previously omitted through an oversight.

III. Subpart AA—Air Emission Standards for Process Vents

A. Applicability

In today's action, the EPA is amending §§ 264.1030(b)(3), 264.1050(b)(3), 265.1030(b)(3), and 265.1050(b)(3) to make clear the EPA's original intent as to when recycling units are subject to the subpart AA and BB rules. The EPA made clear in the November 25, 1996 preamble that recycling units which are otherwise exempt from RCRA subtitle C regulation under 40 CFR 261.6(c)(1) are not subject to subpart AA and BB standards unless some other unit at the facility has to obtain a RCRA permit. See 61 FR at 59932–33, and 59935. The Agency also showed how the existing regulation could be interpreted to give this result. *Id.* at 59935. Put another way, Subparts AA and BB are applicable to recycling units at permitted TSDF and interim status TSDF. Also, at both TSDF and generator facilities (generators' 90-day accumulation units), subparts AA and BB are applicable to units that are not recycling units. However, the EPA believes that the rule language can be drafted to make this point more clearly, and is doing so in today's rule, for both subpart AA and BB.

The EPA is further clarifying that the RCRA "permit-as-shield" provisions do not apply to the subpart AA (or the subpart BB or CC standards); see Section VI.E of the preamble to the final rule, 59 FR 62910, December 6, 1994. This means that owners and operators receiving permits before the date those rules became effective must nevertheless comply with the subpart AA (and the subpart BB and CC) regulatory standards. The EPA is adding a sentence to § 264.1030(c) which essentially cross-references the existing § 270.4(d) provision stating that "permit-as-a shield" does not apply to these units.

The EPA has previously amended 40 CFR 270.4 (see 59 FR 62952, December 6, 1994) to require that owners and operators of TSDF that have been issued final permits prior to December 6, 1996, comply with the air standards under 40 CFR part 265, subparts AA, BB, and CC until the facility's permit is reviewed or reissued by the EPA. As was explained in Section VIII.A of the preamble to the final rule (59 FR 62920, December 6, 1994), this amendment eliminates application of the "permit-as-a-shield" practice for these air standards but does not require that the EPA or the TSDF owner or operator initiate a permit modification to add the requirements of 40 CFR part 264, subparts AA, BB, or CC. The EPA believes that this minimizes the administrative burden on the TSDF owner or operator as well as limits the additional burden on the permitting resources of the EPA. However, when a permit is reopened or subject to renewal, or when a TSDF owner or operator submits a Class 3 modification request pertaining to an existing unit or addition of a new unit subject to these standards, then the applicable requirements of 40 CFR part 264, subparts AA, BB, and CC will be incorporated into the modified permit conditions.

The EPA is also amending the applicability provision of subpart AA by adding a new § 264.1030(d) and § 265.1030(d). This provision states that a process vent is not subject to the subpart AA standards provided the owner or operator certifies that all subpart AA-regulated process vents at the facility are equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified in Part 60, 61, or 63. The EPA adopted a similar provision for units subject to subpart CC as part of the November 1996 amendments (see § 264.1080(d) and § 265.1080(d) of subpart CC) and the logic for applying the same exemption in the same manner to subpart AA process vents is identical. The preamble discussion at Section IV.C, 61 FR 59938–59939 (November 25, 1996) explains at length why this exemption avoids unnecessary duplication with CAA requirements, all of which discussion applies equally here. The EPA in fact intended that the exemption apply to subpart AA process vents as well (since there is no basis for distinguishing between subpart AA and CC units for this purpose), but inadvertently omitted the exemption from subpart AA when it codified the subpart CC exemption. Today's amendment corrects that oversight.

This exemption is, however, implemented slightly differently from the parallel exemption for subpart CC units. Both of the compliance approaches allowed under the existing subpart AA rules require emission control or emission limits on a facility-wide basis. See 40 CFR 264.1032(a)(1) and (a)(2). Thus, to be equally protective of human health and the environment, the EPA considers it necessary that any alternative compliance demonstration require control of all of the process vents at the facility that would have otherwise been regulated under subpart AA. Therefore, today's exemption is only available at a facility where each and every process vent that would otherwise be subject to subpart AA is equipped with, and operating air emission controls, in compliance with an applicable CAA standard under Parts 60, 61, or 63. As with the similar provisions in subparts BB and CC, to comply with the requirements at paragraphs § 264.1030(d) or § 265.1030(c), the emissions from each subpart AA process vent must be routed through an air emission control device; a vent that is in compliance with a CAA standard under an exemption from control device requirements is not in compliance with those provisions of subpart AA. Despite this minor restriction, the EPA considers this alternative to provide the facility owner or operator with a broader degree of compliance flexibility, and less extensive monitoring, recordkeeping, and reporting requirements under RCRA, and therefore to warrant promulgation.

The EPA has received inquiries as to whether portable equipment that otherwise meets the definition of a unit subject to the subpart AA, BB, or CC regulations, is subject to the requirements of subparts AA, BB, and CC. The literal language of the regulations clearly applies, since there is no exemption for portable equipment in the regulations. Nor does the EPA consider that such an exemption is appropriate. Portable equipment that is used to manage hazardous waste consistent with the applicability requirements of these subparts would emit the same volume of organics that stationary equipment would emit. The EPA therefore considers it appropriate to subject portable equipment to the same control requirements as stationary, or non-portable equipment. By this interpretation, the EPA is not extending the applicability of the AA, BB, or CC standards; rather, the EPA is merely clarifying that these standards do not contain any exemption or special criteria for portable equipment. Moreover, the fact that such portable equipment may also be used for non-hazardous waste applications has no bearing on the EPA's intent to regulate the portable equipment during instances when it is used for hazardous waste applications. The EPA does not consider that fact to affect the need to control the equipment when it is in hazardous waste service.

B. Definitions

"In light liquid service" was defined in § 264.1031 to be consistent with the definition of "in light liquid service" in the NSPS for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (40 CFR part 60, subpart VV). It was the EPA's intent that the determination of "in light liquid service" be based on the organic content of a liquid. However, questions have been raised by the regulated community regarding how to account for water in the determination of "in light liquid service." In response to the questions, the definition of "in light liquid service" in § 264.1031 is revised by changing "* * * the vapor pressure of one or more of the components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 °C is equal to or greater than 20 percent by weight * * *" to read as follows "* * *the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 °C is equal to or greater than 20 percent by weight* * *" This revision clarifies that the definition applies only to the organic components of the waste stream; not to non-organic chemicals that meet the vapor pressure criteria (e.g., water). The revised definition is consistent with the definition of "in light liquid service" in the recently promulgated NESHAP for equipment leaks (40 CFR part 63, subpart H).

C. Standards: Closed-Vent Systems and Control Devices

The final subpart AA air emission standards for process vents provided up to an 18-month implementation schedule after the effective date that a facility becomes subject to the provisions of subpart AA, for installation and operation of closed-vent systems and control devices. The February 9, 1996 (61 FR 4911) revisions to §§ 264.1033(a)(2) and 265.1033(a)(2) extended the implementation schedule to as much as 30 months, consistent with the requirements of subpart CC. Consistent with this existing provision, today's revisions clarify that units which become newly subject after the subpart AA effective date of December 21, 1990 as a result of an EPA regulatory change or statutory change, are also provided a 30-month implementation schedule. The provision is also amended to clarify that units which become newly subject to subpart AA after that effective date due to any reason other than an EPA regulatory change or statutory amendment are not allowed to comply using an implementation schedule; they must be in compliance on the date that the unit first becomes subject to subpart AA.

A printing correction is also being made to this section in § 265.1033(f)(2)(vi)(B). The degree symbol was inadvertently printed in lower case rather than as a superscript; today's action corrects this.

The November 25, 1996, amendments to the subpart CC standards (at § 265.1086(c)(2)(i)) for control devices and closed-vent systems, added provisions to allow up to 240 hours per year for periods of planned, routine maintenance of a control device; during such time, the control device is not required to meet the performance requirements for emission reductions specified in the rule. The EPA's rationale for adding this allowance to subpart CC is explained in the preamble to those amendments at 61 FR 59948. The EPA has determined that, based on the nature of the affected operation or the type of unit that is being served by the control device, there are circumstances in which a limited allowance for control device down-time during maintenance is reasonable. For example, the EPA made a similar allowance of up to 240 hours for control device performance in the HON requirements for storage vessels, i.e., tanks, (see § 63.119(e)(3)); this allowance was made based on consideration of the fact that a HON facility with affected storage vessels normally would not have adequate excess storage tank capacity to handle emptying an affected tank(s) each time the control device serving the vessel(s) is shut down for routine maintenance. It is also important to note that the HON regulation did not extend this same routine maintenance allowance for control devices to other types of units, or to affected process vents; the HON allowance is only for control devices serving storage vessels. The EPA has judged that the operational practices of process vents are significantly different from those of storage vessels, and thus do not warrant a similar allowance for control device down-time.

In the amendments to the subpart CC rule that were published in November 1996, the EPA adopted the provision from the HON, and further extended and broadened the control device allowance in applying it to control devices that serve not only tanks but also surface impoundments and containers (see § 264.1067(c)(2)(i)). The decision to extend the allowance to the subpart CC hazardous waste management units was also based on the consideration of typical operational practices of affected TSDF. Within the waste management industry, the quantities and compositions of the waste managed vary widely over time; also, many regulated waste management units (i.e., tanks and impoundments)

have vent flow rates low enough that several units are controlled using a single device. For several waste management units served by a single control device, it is not feasible in most cases to have enough excess storage capacity to handle all the units that would be served by a single control device. Therefore, the EPA included the control device maintenance allowance in the subpart CC standards for containers and surface impoundments, as well as for tanks. As in the case of the HON, the EPA does not consider it appropriate to extend the control device allowance for maintenance time to control devices serving process vents. Therefore, the EPA is not extending the control device maintenance allowance to subpart AA process vents.

It also has come to the attention of the EPA that some commenters have misinterpreted the language relating to the accuracy of the temperature monitoring devices that the EPA specified in the subpart AA standards for closed-vent systems and control devices, found at §§ 264.1033(f) and 265.1033(f). As these commenters interpret the rule language, the EPA has specified a degree of accuracy that precludes monitoring devices with greater accuracy than is specified in the regulations. This is not the EPA's intent, and the Agency does not consider this to be a reasonable interpretation of the rule. At numerous places in this rule and other rules, the EPA has specified the accuracy of temperature monitoring devices by requiring "an accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ±0.5°C, whichever is greater." It is implicit in the use of this language that the EPA is providing a range of accuracy with which the monitoring device must comply or conform. For example, the term "±1 percent" indicates that the accuracy of the device must fall within the range from plus 1 percent to minus 1 percent. Any device that has an accuracy within this range complies with the rule requirement. It was not the intent of the EPA to preclude the use of devices with greater (i.e., better) accuracy than the absolute value specified.

D. Recordkeeping Requirements

Commenters have stated that the requirement at § 265.1035(c)(10)(iv) to record the maximum instrument reading measured by Method 21 after a leak has been successfully repaired or determined to be not repairable is unnecessary. They contend that because other rules which require use of EPA Method 21, such as the Off-Site Waste and Recovery Operations NESHAP (40 CFR part 63, subpart DD), do not require this instrument reading, the requirement should be removed. Although subpart DD to part 63 does not contain a similar recordkeeping requirement for the instrument reading, as part of the information recorded when a leak is detected using Method 21, various other regulations do have similar requirements (see § 63.181(d)(4) of 40 CFR part 63, subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks). The EPA continues to believe that this information is useful in the implementation and enforcement of the air emission regulations. Instrument monitoring after a repair is an indication of the success of the repair, information which EPA considers commensurate with the initial leak monitoring requirements at § 265.1033(k)(1)(i). Instrument monitoring upon determination that a leak is not repairable is an indication of the severity of the organic emissions that will continue to be emitted from the non-repairable equipment, which EPA considers valuable information for the implementation and future review of its organic air emissions standards. Therefore, EPA will maintain this recordkeeping requirement.

IV. Subpart BB—Air Emission Standards for Equipment Leaks

A. Applicability

Today's action adds appropriate language to the subpart BB applicability provisions to cross reference and clarify that the EPA has modified the "permit-as-a-shield" practice for implementation of the subpart BB (as well as the subpart AA and CC) RCRA air rules. The modification of this practice affects owners and operators of existing TSDF for which final RCRA permits have been issued by the EPA. Paragraph (c) in § 264.1050 and § 265.1050 is being revised to clarify that the owner or operator is subject to the requirements of 40 CFR part 265, subpart BB until such date that the owner or operator receives a final RCRA permit incorporating the requirements of 40 CFR part 264, subpart BB.

The EPA has previously amended 40 CFR 270.4 (see 59 FR 62952, December 6, 1994) to require that owners and operators of TSDF that have been issued final permits prior to December 6, 1996, comply with the air standards under 40 CFR part 265, subparts AA, BB, and CC until the facility's permit is reviewed or reissued by the EPA to include the part 264 standards. As is explained in Section VIII.A of the preamble to the final rule (59 FR 62920, December 6, 1994), this amendment eliminates application of the "permit-as-a-shield" practice for these air standards, but does not require that the EPA or the TSDF owner or operator initiate a permit modification to add the requirements of 40 CFR part 264, subparts AA, BB, or CC. The EPA considers the existing regulatory text to accurately convey this intent, and is providing this preamble discussion in response to commenters' requests.

B. Standards: Closed-Vent Systems and Control Devices

The final subpart BB air emission standards for equipment leaks referenced the subpart AA closed-vent system and control device requirements to provide up to an 18-month implementation schedule after the effective date that a facility becomes subject to the provisions of subpart BB, for installation and operation of closed-vent systems and control devices. The February 9, 1996 (61 FR 4911) revisions to §§ 264.1060 and 265.1060 added a paragraph to extend the implementation schedule to as much as 30 months, consistent with the requirements of subpart CC. Today's amendments clarify that units that begin operation after the subpart BB effective date of December 21, 1990, and that become subject to the requirements of subpart BB because of an EPA regulatory change or a statutory change after December 21, 1990, are also provided a 30-month implementation schedule. The provision is also amended to clarify that units which become newly subject to subpart BB after that effective date due to any reason other than an EPA regulatory change or a statutory amendment are not allowed to comply using an implementation schedule; they must be in compliance on the date that the unit first becomes subject to subpart BB. In recognition that facilities have been on notice since 1990 of the applicability of subparts AA and BB, and since 1991 of the applicability of subpart CC, the EPA considers it reasonable to expect facilities that become newly-subject to these subparts, through other than a statutory or EPA regulatory change, to be in compliance with the provisions on the date that they become newly subject.

C. Alternative Standards for Valves

Clarifying language is being added to the alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair. The EPA has received comments on the ambiguity of the skip period leak detection and repair provisions as codified. The codified language is ambiguous because it gives no indication of how the alternative work practice that involves two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent which allows the owner or operator to skip one of the quarterly leak detection periods [§ 264.1062(b)(2) or § 265.1062(b)(2)] interacts with the alternative work practice that involves five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent which allows the owner or operator to skip three of the quarterly leak detection periods [§ 264.1062(b)(3) or § 265.1062(b)(3)]. Nor is the codified language clear on whether the periods with the percentage of valves leaking equal to or less than 2 percent need to be repeated after the initial skipped periods, or if the owner or operator is allowed to continue on the skip period schedule once the criteria have been met for one period.

In order to clarify the EPA's intent regarding the skip monitoring alternatives, paragraphs in § 264.1062(b) and § 265.1062(b) are being amended to more fully explain that, if the specified criteria are met under the alternatives, the owner or operator can monitor for leaks once every six months (i.e., under § 264.1062(b)(2)) or once every year (i.e., under § 264.1062(b)(3)). If an owner or operator is monitoring equipment every six months, under § 264.1062(b)(2), he is not complying with the five consecutive quarterly leak detection requirements of § 264.1062(b)(3), and thus does not qualify to begin monitoring once every year. Essentially, if an owner or operator meets the requirements of subsection (b)(2), he may choose to either begin monitoring every six months, or he may choose to continue quarterly monitoring in an attempt to meet the requirements of subsection (b)(3); complying with the provision of subsection (b)(2) excludes the opportunity to comply with the requirements of subsection (b)(3).

Once an owner or operator meets the qualifications of either subsection (b)(2) or subsection (b)(3), he is then allowed to continue the skip monitoring of that provision as long as the percentage of valves found leaking by the semiannual or annual monitoring is equal to or less than 2 percent. These clarifying amendments reflect the Agency's prior intent regarding the implementation of the alternative standards for valves.

D. Recordkeeping Requirements

The recordkeeping provisions of subpart BB are being amended to eliminate any owner or operator burden caused by regulatory overlap. The subpart BB recordkeeping provisions in § 264.1064(m) and § 265.1064(m) are being amended to allow any equipment that contains or contacts hazardous waste that is subject to subpart BB and also subject to regulations in 40 CFR part 60, 61, or 63 to determine compliance with subpart BB by documentation of compliance with the relevant provisions of the Clean Air Act rules codified under 40 CFR part 60, part 61, or part 63. Because compliance with subpart BB is demonstrated through recordkeeping, this recordkeeping revision has the effect of exempting equipment that would otherwise be subject to subpart BB from subpart BB requirements, provided the equipment is operated, monitored and repaired in accordance with an applicable CAA standard, and appropriate records are kept to that effect.

As is described in Section III.A of this preamble regarding the potential regulatory overlap of the RCRA air rules and Clean Air Act regulations, the EPA is providing this exemption to reduce the possibility of duplicative or conflicting requirements for those TSDF units using organic emission controls in compliance with a NESHAP but which are also subject to requirements under the RCRA standards. The EPA considers this to be the most appropriate approach to ensure that air emissions from equipment managing hazardous waste are controlled to the extent necessary to protect human health and the environment. This exemption was originally included with the promulgation of subpart BB on June 21, 1990 (55 FR 25454), in the same format, but with more specificity as to the CAA regulations. As discussed in Section III.A. of this preamble, it was clearly the Agency's intent to apply the same rationale explained in the November 25, 1996 preamble at 61 FR 59938, to extend the applicability exemption to subpart BB equipment operated, monitored and repaired in accordance with an applicable CAA standard under 40 CFR part 60, 61, or 63.

The November 25, 1996 final rule amendments added a provision to the applicability of subpart BB that excludes equipment that contains or contacts affected hazardous waste for a period of less than 300 hours per calendar year. See 61 FR at 59937. One commenter has requested that the Agency clarify whether equipment which is not in service, but contains hazardous waste residue, is considered to be in contact with hazardous waste. The EPA considers the language of the provision explicit on this point; the amount of time that equipment contains hazardous waste, whether at operating capacity or as a residue, is considered

time that the equipment "contains or contacts" hazardous waste. Thus, if subpart BB equipment contains subpart BB-regulated hazardous waste residues for more than 300 hours during a calendar year, that equipment would not be exempt from subpart BB under the provisions at § 264.1050(f) or § 265.1050(f). The EPA purposefully worded the provision to say, "contains or contacts" because the emissions from the equipment are related to the organic hazardous waste that is in the equipment; even if the process or equipment is not in service, the organic hazardous waste in contact with the equipment has the potential to volatilize, and EPA considers it necessary to subject the equipment to the requirements of subpart BB. Thus, EPA is today reiterating that the regulation at § 264.1050(f) and § 265.1050(f) requires the equipment to be void of subpart BB-regulated waste for a minimum of 300 hours per calendar year.

The same commenter inquired whether, for the purposes of this same provision, the period of time which the equipment contains or contacts subpart BB-regulated waste must be consecutive (e.g. 290 consecutive hours), or if it could be the sum of shorter periods (e.g., ten periods of 29 hours each). The provision was intended to exempt equipment that does not contain or contact subpart BB-regulated waste a total of 300 hours of more during a calendar year. This provision was adopted from similar provisions of the Hazardous Organic NESHAP promulgated under 40 CFR 63.160. See preamble discussion at 61 FR 59937, November 25, 1996. It is implicit in reading the language at 40 CFR 63.160(a) that the EPA intended the requirement to refer to a sum, or total, of 300 hours per calendar year, as opposed to a single period of 300 hours. The EPA is today amending regulatory text at 264.1050(f) and 265.1050(e) and the associated recordkeeping requirements at 264.1064(g)(6) and 265.1064(g)(6) to remove the phrase, "a period of" and thus, remove any ambiguity as to the Agency's intent that for this regulatory requirement, instances during which equipment contains or contacts subpart BB-regulated waste need not be consecutive; it is only required that the sum of all time that the equipment contains or contacts subpart BB-regulated waste is less than 300 hours per calendar year.

E. Open-Ended Valves and Lines

Several comments have been received regarding the requirements for open-

ended lines or valves as they relate to gravity piping. Commenters expressed concern that gravity feed piping that is equipped with an open valve or line does not meet the requirements of the subpart BB standards. Subpart BB requires that each open-ended valve or line be equipped with a cap, blind flange, plug, or a second valve when managing hazardous wastes with an organic content equal to or greater than 10 percent by weight. The commenters have suggested that the EPA amend the subpart BB requirements to state that the EPA considers a drain system that meets the requirements of 40 CFR part 63, subpart RR, National Emission Standards for Individual Drain Systems to be a closed system. The EPA has examined this issue and has found no technical basis for making a change to the existing rule. Moreover, the Part 63 subpart RR requirements are intended for control of waste in organic concentrations on the order of magnitude with the 500 ppmw action level of the subpart CC standards, whereas the subpart BB standards in parts 264 and 265 are applicable to equipment that contacts waste with an organic concentration of 10 percent by weight. There is a significant difference in the level of required control between the two standards. The EPA does not consider it appropriate to allow the subpart RR drain system requirements to substitute for the more extensive open-ended valve and line requirements of subpart BB, because application of the subpart RR standards to subpart BB equipment would not provide an equivalent level of organic emission control as would be achieved by compliance with the applicable subpart BB requirements. Facility owners or operators with gravity feed piping that requires a vent to facilitate draining can comply with the subpart BB and CC standards by installing organic emission control equipment on the pipe vent. The control requirements in subpart BB are appropriate and adequate for control of open-ended lines and valves.

V. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

A. Applicability and Definitions

In §§ 264.1080 and 265.1080, the EPA is revising the effective date of the subpart CC rules to be December 6, 1996. This revised effective date was established in the November 25, 1996 amendments, but this regulatory change was inadvertently omitted from that action. Today's revision corrects this oversight.

In § 265.1081, the definition of "in light material service" is revised to correct a typographical error to capitalize the T in "the" as follows, "* * * The vapor pressure of one or more of the organic constituents * * *"

B. Schedule for Implementation of Air Emission Standards

The final subpart CC standards allow the owner or operator to prepare an implementation schedule for installation of control equipment that cannot be installed and in operation by the effective date of the rule (See § 265.1082(a)(2)). The EPA intended that the implementation schedule apply to any capital projects implemented by the owner or operator to comply with the subpart CC requirements. (See 61 FR at 4905, February 9, 1996.) This intent was expressed in the 1994 final rule; see Hazardous Waste TSDF Background Information for Promulgated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, EPA–453/R–94–076b ("BID") page 9–7, which states that the owner's or operator's approach to complying with the air emission control requirements under the subpart CC standards may involve a major design and construction project which requires longer than 18 months to complete (e.g., replacing a large open surface impoundment with a series of covered tanks). To further clarify this intent, § 265.1082 is revised by today's action to specify that compliance can be demonstrated through an implementation schedule when either: (1) control equipment or waste management units can not be installed and in operation by the rule effective date; or (2) modifications of production or treatment processes to satisfy subpart CC exemption criteria in accordance with § 265.1083(c) can not be completed by the rule effective date. In either case, the implementation schedule must be entered into the facility record, and must contain information demonstrating that the facility will be in compliance with all of the requirements of subpart CC, no later than December 8, 1997. The revisions to the schedule for implementation also incorporate the revised effective date of December 6, 1996.

Commenters have questioned whether compliance activities other than those involving the installation of equipment or the modification of processes may be accomplished under an implementation schedule. For example, whether a facility can delay compliance past the rule effective date for monitoring or testing requirements. The preamble to the February 9, 1996 **Federal Register** document clarified that "The EPA expects such instances to be rare, but in the event a facility cannot implement any technical requirement of subparts AA, BB, or CC, it is the EPA's intent that the owner or operator document the necessity for a delay in the facility operating record. To be in compliance with the rule, the necessary documentation must be in place by (the rule effective date)." See 61 FR at 4905, February 9, 1996. The EPA maintains that there may be circumstances in which a facility owner or operator can not be in compliance with certain monitoring or testing requirements by the effective date of the standards. For example, if a facility owner or operator is unable to begin operation of a control device prior to the rule effective date, he would not be able to perform the required monitoring of that device by that date either. However, to be in compliance with the subpart CC rules, the owner or operator must be in compliance with all the rule requirements as soon as is practicable, but no later than December 8, 1997.

(Note: The only exceptions to this final compliance date are those requirements applicable to certain tanks in which stabilization operations are performed, which must be in compliance no later than June 8, 1998 (see 59 FR at 62912, December 6, 1994)), and requirements delayed by the Regional Administrator, as discussed below in this section of today's preamble.

Today's action is also amending regulatory language to clarify that owners or operators of facilities and units that become newly subject to the requirements of subpart CC after December 8, 1997, because of an action other than an EPA regulatory change or a statutory change under RCRA, must comply with all applicable rule requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to subpart CC); the 30-month implementation schedule does not apply in this case. The EPA considered this to be implicit in the existing language of paragraph (b) of § 265.1082. The Agency is adding new language in response to questions and comments from affected facilities regarding interpretation of the rule requirements regarding implementation schedules. The new provision will be codified as paragraph 265.1082(c).

One commenter expressed concern regarding the initial monitoring of closed-vent systems. They noted that delayed compliance is allowed under the rules for routine monitoring of those systems that are either inaccessible or unsafe to monitor, and requested that similar provision be allowed for initial monitoring that may be delayed due to

weather or process conditions. The EPA has examined this issue and has concluded that a change in the rule is not appropriate. The industry has been on notice for several years that the subpart CC rules would require these monitoring inspections. Any facilities that become newly subject to the subpart through an EPA regulatory amendment or statutory amendment are typically allowed at least 6 months from the date of publication of the action; the EPA considers this to have been sufficient notice to adequately prepare for, and perform, the necessary monitoring.

As published in the December 6, 1994, final rule, paragraph (c) of § 265.1082 allowed the EPA Regional Administrator to "extend the implementation date for control equipment at a facility, on a case by case basis * * *." In the preamble to the final rule (see 59 FR 62919, December 6, 1994, and the amendments to the rule published November 25, 1996, (see 61 FR 59938), the EPA stated its intent to include the provision to allow the Regional Administrator to extend the implementation date in situations beyond the owner or operators's control, and that this extension would be available only in "situations such as delays in State permit processing." The Agency went even further in placing constraints on these limited conditions by identifying situations associated with permit processing where the allowance would not apply (see 59 FR 62919). It is clear from the literal reading of the provision that the EPA fully intends that the Regional Administrator's extension of an implementation schedule is only allowable for a capital project implemented by a facility owner or operator to comply with the subpart CC air emission control requirements. It is also clear that the Agency does not intend that this Regional Administrator allowance for implementation schedule extensions apply to anything other than the installation of air emission control equipment. Today's action re-designates this provision as paragraph 265.1082(d) to allow the regulatory amendment described above in this section of today's preamble to be codified as subsection (c); however, the provision for Regional Administrator extensions of the final rule compliance date is not changed.

C. Standards: General

Today's amendments are further clarifying that the subpart CC RCRA air rules apply only to units managing a hazardous waste; to this effect, the EPA is adding the word "hazardous" in front of the word "waste" in §§ 264.1082(b) and 265.1083(b). This point has been made by the EPA throughout the proposal and promulgation of the subpart CC rules (see 59 FR 62896, December 6, 1994, and 61 FR 4906, February 9, 1996); however, there have remained some questions and uncertainties regarding applicability of the rules to non-hazardous wastes. The changes being made today are intended to provide additional emphasis that only hazardous wastes are subject to the subpart CC controls.

Paragraph 265.1083(c)(2)(i) is revised to correct a typographical error in the symbol for the exit concentration limit; the symbol should be C subscript t "(C_t)."

In addition, §§ 264.1082(c)(3) and 265.1083(c)(3) have been revised to add as an exempt unit a surface impoundment used for biological treatment of hazardous waste in accordance with subpart CC requirements. The EPA intended to exempt surface impoundments used for biological treatment from the subpart CC control requirements. The preamble to the final rule in Section VII(A)(5) (59 FR 62917, December 6, 1994) clearly states "* * * air emission controls are not required for a surface impoundment in which biological treatment of a hazardous waste is performed under the same conditions specified in the rule for tanks." However, surface impoundments performing biological treatment were inadvertently left out of the biological treatment unit exemption in the November 25, 1996, final rule amendments (61 FR 59954).

The EPA has received a number of inquiries asking for interpretations of the provision of the subpart CC rules which states that wastes that meet applicable Land Disposal Restriction (LDR) treatment standards for organic hazardous constituents are exempt from the subpart CC air emission standards. Section 264.1082(c)(4) exempts from the RCRA subpart CC air emission standards:

"A tank, surface impoundment, or container for which all hazardous wastes placed in the unit * * *

"(i) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under Table "Treatment Standards for Hazardous Waste" in 40 CFR 268. 40 * * *"

A parallel exemption for interim status facilities is found at § 265.1083(c)(4). Under these provisions, tanks, surface impoundments, and containers receiving hazardous wastes that meet the concentration limits for organics applicable to the waste under the generally-applicable treatment standards of the LDR program are not subject to the subpart CC air emission control regulations. See 61 FR 59941 in the preamble and 59954 in the rule (Nov. 25, 1996).

A number of members of the regulated industry (including the Environmental Technology Council, Chemical Waste Management, and the Chemical Manufacturers Association) have inquired as to how this provision applies to situations where the wastes in question are not yet prohibited from land disposal or consist of mixtures of different hazardous wastes. This preamble answers those questions. Copies of correspondence between EPA and these entities have been placed in the public docket for the rule.

The key phrase in the above exemption is what treatment standards are "applicable to the waste." EPA interprets this phrase expansively to include the treatment standard for organics that would apply to the waste whether or not the waste is currently prohibited, so that the exemption may apply to wastes not yet required to be treated for organics as a precondition to land disposal. Under this interpretation, hazardous wastes could be exempt from subpart CC regulation if they meet the treatment standards for organics that would ultimately be required as a precondition to land disposal. This is a reasonable construction of the rule's language (the phrase "applicable to the waste" is ambiguous as to its precise scope), and is supported by the preamble to the rule (which says that the exemption can apply to wastes that are not prohibited, see 61 FR 59941). In addition, this reading is consistent with the exemption's underlying principle: if hazardous wastes meet generally-applicable LDR treatment standards for organics, their concentrations of organics are in virtually every case going to be less than warrants control under the subpart CC rules (i.e., volatile organic concentrations will be less than 500 ppmw).

The EPA recognizes that it could interpret the language to apply only to hazardous wastes that are prohibited and actually subject to a treatment standard for organics. This more restrictive interpretation does not seem desirable because hazardous wastes which actually meet treatment standards for organics are likely to have been treated to remove or destroy the organics and thus not warrant regulation under subpart CC. On the other hand, it is EPA's further interpretation that this exemption does not apply to hazardous

wastes for which there would be no treatment standards for organics, namely wastes that are listed solely because of inorganic content. There is no potentially "applicable" organic treatment standard for such wastes, and the exemption thus does not apply. In addition, such wastes would not likely be treated for organic constituents; so in the event they contain higher concentrations of organics, this particular LDR exemption should not apply. Such wastes may, however, be exempt from the subpart CC rules because they contain less than 500 ppmw volatile organics at the point of waste origination (40 CFR 264.1082(c)(1)).

The following principles set out how the EPA interprets the rule for this subpart CC exemption in specific situations:

1. Listed Waste

(A) If the waste is already subject to an LDR treatment standard for organics (for example, the organic spent solvent listed as F001), the waste is not subject to subpart CC if it meets the treatment standards for organic hazardous constituents in that waste (e.g. the treatment standards for organics in F001 set out in § 268.40);

(B) If the waste is newly listed so that no treatment standard under § 268.40 has yet been established, determine if the waste was listed for organic constituents in Part 261 Appendix VII and if so, if the waste meets the Universal Treatment Standards (UTS) for those constituents (set out in § 268.40) then the waste is exempt from subpart CC. The EPA considers the UTS to be "applicable" because it is clear that this is the standard which will apply when the waste is prohibited;

(C) If the waste is listed only because it contains inorganic constituents (e.g. electroplating wastewater treatment sludge (F006)), then it is not eligible for the LDR exemption at § 264.1082(c)(4) but could be exempt for other reasons, such as containing less than 500 ppmw volatile organics at the point of waste origination. This is true whether or not the waste is already a prohibited hazardous waste, or is newly listed.

2. Mixtures of Listed Wastes

The same principles as presented above apply when mixtures of listed wastes are involved:

(A) If the mixture contains listed wastes for which there are organic concentration limits in § 268.40 and newly listed wastes listed (in Appendix VII of Part 261) for organic hazardous constituents, the waste would be exempt from subpart CC if it meets the treatment standards in § 268.40 *and* the treatment standards to which the newly listed waste will be subject. Thus, to be exempt under § 264.1082(c)(4), a mixture of F001 wastes and FXXX (a hypothetical newly listed waste listed for presence of benzene) would have to meet the treatment standards for the organic hazardous constituents set out in § 268.40 for F001 plus UTS for benzene;

(B) If the mixture contains listed wastes for which there are organic concentration limits in § 268.40 and listed wastes with treatment standards only for inorganic constituents (or which is newly listed, and is listed only due to presence of inorganic hazardous constituents), the waste mixture would be eligible for the § 264.1082(c)(4) variance if it meets the organic concentration limits in § 268.40. Thus, a mixture of F001 and F006 wastes would be exempt from subpart CC if it meets the treatment standard for F001 organic hazardous constituents;

(C) If the mixture consists of listed wastes which are exclusively subject to, or are listed for, inorganic hazardous constituents, the mixture is not eligible for the § 264.1082(c)(4) exemption.

Finally, part of the "applicable" LDR standard for listed wastes is that the standard not be achieved by impermissible dilution (as set out in § 268.3 and several EPA interpretations, such as in 60 FR 11706–11708 (March 2, 1995)). Impermissible dilution could involve not only mixing an agent to the waste to increase volume without contributing to the treatment process, but also allowing volatilization from the waste without capture and destruction of the organic emissions. 52 FR at 25779 (July 8, 1987); *Chemical Waste Management v. EPA*, 976 F. 2d 2, 17 (D.C. Cir. 1992). In essence, this means that the LDR standards need to be achieved by treatment that destroys or removes the organic hazardous constituent (or the wastes may meet the treatment standard as generated). See 60 FR 11708. The subpart CC rules likewise contain provisions prohibiting dilution as a means of making a waste eligible for an exemption from the rule (see, e.g., § 265.1083(c)(2)(vi)). Thus, to be eligible for this exemption from the subpart CC standards, listed wastes must either meet treatment standards for organics by treatment which destroys or removes hazardous organic constituents, or the wastes must meet those standards as generated.

3. Characteristic Wastes

The first principle to bear in mind regarding characteristic hazardous wastes is that the subpart CC rule no longer applies once these wastes are decharacterized, i.e., no longer exhibit a characteristic of hazardous waste. This is because the subpart CC rules only apply to wastes that are identified or listed as hazardous. See, e.g., § 265.1080(a). Also, since the rules do not prohibit any method which removes a hazardous characteristic, dilution can be used for this purpose; see § 261.3(d)(1). Thus, in the discussion that follows, it must be understood that all references to characteristic hazardous wastes are to wastes which continue to exhibit a characteristic.

Characteristic wastes can be identified because of the presence of organic hazardous constituents, but also can contain organic "underlying hazardous constituents"—hazardous constituents present at levels exceeding the Universal Treatment Standards but which do not cause the waste to exhibit a characteristic; see § 268.2(i). Such hazardous constituents typically must be treated to meet UTS before a characteristic waste is land disposed (see *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 16–18), and so UTS can be considered to be an applicable standard for purposes of the subpart CC exemption under discussion in this preamble.

Principles applicable to specific situations involving characteristic hazardous wastes are therefore:

(A) Since subpart CC controls do not apply to nonhazardous wastes, these standards do not apply as the result of managing decharacterized wastes.

(B) If the waste exhibits ignitability, corrosivity, or reactivity (or is a mixture which exhibits one or more of these characteristics), then the waste is exempt from subpart CC if it meets treatment standards for any of the organic underlying hazardous constituents which are present (and the waste is no longer subject to subpart CC if it no longer exhibits a characteristic, whether or not treatment standards for underlying hazardous constituents are achieved). In this example, these characteristic wastes are prohibited and subject to the requirement to treat for underlying hazardous constituents, so that these standards clearly are applicable;

(C) If the waste or waste mixture exhibits a characteristic for an organic hazardous constituent (so-called Toxicity Characteristic (TC) organic wastes), then the waste must meet the treatment standard for that constituent plus UTS for any organic underlying hazardous constituent. These are the current requirements set out in Part 268 for the waste and so are clearly applicable;

(D) If the waste or waste mixture exhibits a characteristic for a metal, the waste would be exempt from subpart CC if it meets UTS for any organic underlying hazardous constituent which may be present. This result comes from the *Chemical Waste Management* opinion cited above (although the EPA has not yet amended the Part 268 rules to reflect the court's holding with respect to these wastes), and so can be viewed as applicable standards for purposes of the subpart CC exemption.

4. Examples

A number of examples that illustrate the EPA intent and interpretation of the subpart CC LDR exemption are summarized below.

1. F001 + F006. Listed organic plus listed inorganic. Meet treatment standards for organics in F001;

2. F001 + D018. Listed organic plus organic TC. Meet treatment standards for F001, treatment standards for benzene, and treatment standards for any organic underlying hazardous constituent in the D018 waste (or eliminate the D018 characteristic before the waste is managed in a tank, container or surface impoundment, in which case only the treatment standards for F001 waste would have to be satisfied for the exemption to apply);

3. F001 + D008. Listed organic plus TC metal. Meet treatment standards for F001 plus treatment standards for any organic underlying hazardous constituents which may be present in the D008 waste (or eliminate the D008 characteristic before the waste is managed in a tank, container or surface impoundment, leaving the F001 standard as the applicable treatment standard);

4. F006 + D018 + D008. Listed inorganic, TC organic, TC inorganic. Meet treatment standard for benzene and for organic underlying hazardous constituents in D018 and D008 wastes;

5. F006. Ineligible for § 264.1082(c)(4) exemption.

There have also been questions regarding whether this LDR exemption applies to mixtures that would meet the organic constituent concentration limits specified for the hazardous wastes in the mixture but for the contribution of organic constituents from the decharacterized wastes in the mixture. The EPA interprets the rule so that the LDR exemption does not apply in these circumstances. First, the language of the rule refers to "all hazardous waste placed in the unit" having to meet the treatment standard, which logically means meeting the standard at the point the hazardous waste is placed in the unit. Second, it is reasonable to look at the point of mixing as a new point of waste origination in keeping with the overall thrust of the provision to reserve the exemption for wastes which actually are treated. See 54 FR at 26633 (June 23, 1989) where the EPA noted a similar view in the LDR context. The EPA also notes that this interpretation is consistent with other provisions of the rule where the Agency has indicated expressly that organic removal is to be evaluated in the context of each individual waste stream entering a treatment process. See section § 265.1083(c)(2)(v)(C).

The last issue addressed on this topic in today's preamble concerns the relationship of this exemption and treatment variances under the LDR program. The EPA notes that the exemption from subpart CC standards applies only to hazardous wastes that have been treated to meet the treatment standards set out in 40 CFR 268.40. This language excludes alternative standards which are established as part of the treatment variance process, which alternative standards are codified in 40 CFR 268.44. This distinction is intentional. As the EPA recently noted in the rulemaking amending the treatment variance standards, it is possible that a treatment variance may result in a standard which does not fully remove volatile organics to the extent contemplated in creating the subpart CC exemption. For this reason, the EPA has indicated explicitly that such wastes may remain subject to the subpart CC rules. The EPA reiterates that approach here.

The EPA is today amending the treatment demonstration provision for valuing waste analysis results below the limit of detection for an analytical method. In response to comments, EPA is today revising paragraphs (A) and (B) of § 264.1082(c)(2)(ix) and § 265.1083(c)(2)(ix). The change to paragraph (A) is being made in recognition that a relatively high blank value for Method 25D does not necessarily indicate that a waste stream has failed to meet the treatment demonstration requirements of § 265.1083(c)(2)(i) through (vi). The blank value required in paragraph 4.4 of EPA Reference Method 25D (codified in appendix A to 40 CFR part 60) is an indication of the organics contained in the Polyethylene Glycol, not the organics in the waste. For a Method 25D analytical result, the method instructs the operator to report the value of the instrument results minus the blank value. In a circumstance that the instrument results are higher than the blank value, the reported Method 25D result would not be non-detect, but rather, would be a numerical concentration value. In circumstances that the instrument results are equal to the blank value, the reported result would be non-detect. In the circumstance resulting in a non-detect, the Agency does not consider it appropriate to require the facility owner or operator to compare the treatment results of paragraphs (c)(2)(i) through (vi) in § 264.1082 and § 265.1083 to one-half of the blank value, as was required by the regulatory requirement being revised today. Therefore, the Agency is adding a provision that allows the facility owner or operator to substitute a value of 25 ppmw for a non-detect Method 25D result, if one-half the Method 25D blank value is more than 25 ppmw. The Agency has selected the value of 25 ppmw because it represents 95 percent reduction of organics in a waste stream of 500 ppmw, the required percent reduction for a waste stream with a VO concentration equal to the action level for the subpart CC standards.

No default value similar to the 25 ppmw value described here is included in the provisions for non-detect results in waste determinations performed to determine whether the hazardous waste is below 500 ppmw at its point of waste origination. See 265.1084(a)(3). Such a provision is necessary in situations where an owner or operator is attempting to demonstrate a process has achieved 95 percent reduction of organics, because the concentration of the stream exiting the process unit may need to be demonstrated to be as low as 25 ppmw. Such is not the case with waste determinations performed to demonstrate that the hazardous waste stream is below the subpart CC action level of 500 ppmw, where the waste determination need only demonstrate that the waste is below 500 ppmw. The valuing of non-detects for waste determinations performed at the point of waste origination is discussed further in the following section of this preamble.

The EPA is revising paragraph (B) of § 264.1082(c)(2)(ix) and § 265.1083(c)(2)(ix) to clarify the Agency's intent that the level of detection for an analytical method other than method 25D is the sum of the limits of detection for each of the regulated compounds in the waste sample. As previously written, the provision did not clearly indicate that for purposes of this subpart, only the detection limits for organic compounds with Henry's Law greater than or equal to 0.1 Y/X are required to be summed, to establish the limit of detection for an analytical method.

The EPA is also adding a reference to organic hazardous constituents in paragraph (c)(4)(ii) of § 264.1082 (which applies when the LDR standard is a designated method of treatment), to make clear that this provision requires treatment of organics. With this revision, § 264.1082(c)(4)(ii) now conforms to § 264.1082(c)(4)(i). A conforming change is being made to the requirement for interim status facilities, at § 265.1083(c)(4)(ii).

D. Waste Determination Procedures

Paragraphs in § 264.1083(a)(2) and § 265.1084(a)(2) are revised by changing "The average VO concentration of a hazardous waste at the point of waste origination may be determined * * *" to read as follows: "For a waste determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous waste at the point of waste origination may be determined * * *" This waste determination requirement was explained in Section VII.A.3, *Waste Determination Procedures*, of the preamble to the final rule (59 FR 62915, December 6, 1994) as follows: "A determination of the volatile organic concentration of a hazardous waste is required by the subpart CC standards only when a hazardous waste is placed in a tank, surface impoundment, or container subject to the rule that does not use air emission controls in accordance with the requirements of the rule. A TSDF owner or operator is not required to determine the volatile organic concentration of the waste if it is placed in a tank, surface impoundment, or container using the required air emission controls." Consistent with this statement, the EPA is slightly revising the current rule to make clear that the average VO concentration determination is required only for hazardous waste placed in a unit not using subpart CC air emission controls and not otherwise exempt from using subpart CC air emission controls.

Today's action also revises § 265.1084(a)(3)(ii)(B) to clarify the EPA's intent regarding the number of samples required for a waste determination. The amended paragraph states (as did the published rule language at § 265.1084(a)(5)(iv)(A) (see 59 FR 62939, December 6, 1994)), that the average of four or more sample results constitutes a waste determination for the waste stream. This amended paragraph further clarifies that one or more waste determinations may be needed to represent the average VO concentration over the complete range of waste compositions and quantities that occur during the entire averaging period (due to normal variations in the operating conditions for the source or process generating the hazardous waste stream). Therefore, to determine the average VO concentration of a waste stream generated by a process with large seasonal variations in waste quantity, or fluctuations in ambient temperature, several waste determinations (of four or more samples each) will be required.

The affected public has been fully informed of the EPA's intent regarding the fact that four samples constitute a waste determination, and that one or more waste determinations may be needed to characterize the waste stream's VO concentration over the averaging period. To inform the public of the technical requirements and compliance options in the amended subpart CC RCRA air rules, the EPA conducted a series of six seminars during August and September of 1995 and an additional six seminars during August through November of 1996. During these seminars, the EPA presented a thorough discussion of the details associated with making a waste determination. (Refer to EPA RCRA Docket No. F–95–CE3A–FFFFF, Item No. F–95–CE3A–S0017 and Docket No. F–96–CE3A–FFFFF.)

In another clarifying revision, in each citation of Method 8260(B) and Method 8270(C) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, the reference to version (B) or (C) is being deleted by today's action. The citations that are being revised were added by the November 25, 1996, final rule amendments (61 FR 59932) to the following paragraphs of § 265.1084: (a)(3)(iii), (a)(3)(iii)(F), (a)(3)(iii)(G), (b)(3)(iii), (b)(3)(iii)(F), and (b)(3)(iii)(G).

It was the EPA's intent that the current version of each of these methods, as applicable to the waste being measured, be used in making a waste determination, not necessarily the specific versions cited. At the time the November 25, 1996 amendments were published, the versions 8260(B) and 8270(C) were only proposed methods; the published versions were 8260(A) and 8270(B). Specifying these particular versions was an inadvertent error, which is being corrected by today's action. As was stated in Section IV.F, *Waste Determination Procedures*, of the preamble to the final rule amendments (61 FR 59942, November 25, 1996), after extensive review, the EPA decided that as alternatives to using Method 25D for direct measurement of VO concentration in a hazardous waste for the subpart CC RCRA air rules, it was appropriate to add Methods 624, 625, 1624, and 1625 (all contained in 40 CFR part 136, appendix A) and Methods 8260(B) and 8270(C) (both in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" in EPA publication SW–846) when these methods are used under certain specified conditions. It was noted that for each of these methods, there is a published list of chemical compounds which the EPA considers the method appropriate to measure. The owner or operator may only use these methods to measure compounds that are contained on the list associated with that method, unless specified validation procedures are also performed. It was further noted that for the purpose of a waste determination, the owner or operator must evaluate the mass of all VO compounds in a waste that have Henry's Law value above the 0.1 Y/X value. Therefore, it is the EPA's position that the owner or operator is responsible for determining that the analytical method being used for a waste determination is sufficient to evaluate all of the applicable organic compounds that are contained in the waste.

(Note: Today's action includes a revised list of known compounds with a Henry's Law value less than or equal to 0.1 Y/X, contained in appendix VI of subpart 265; the revisions correct typographical errors, and format the list to be alphabetical.)

Also in today's action, a printing error that placed § 265.1084(a)(3)(iii)(A) at the end of § 265.1084(a)(3)(iii) has been corrected. In addition, in the November 25, 1996 final rule amendments, because of a typographical error in § 265.1084(a)(3)(iii)(G), the words "introduction and analysis" were omitted from the sample handling steps for which site-specific procedures must be documented in the quality assurance program to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption. Today's amendments revise § 265.1084(a)(3)(iii)(G) to read as follows: "Documentation of site specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps."

Several commenters have stated that the subpart CC provisions for treatment of non-detect values in the analysis of treated waste samples, contained in §§ 264.1082(c)(ix) and 265.1083(c)(2)(ix), should also apply to waste determinations at the point of waste origination, for purposes of determining compliance with the 500 ppmw VO concentration action level of the standards. Commenters requested this application of the non-detect policy to waste determinations because a waste determination consists of the average of four or more samples, and some of the samples analyzed may yield results that are below the analytical method's limit of detection. The commenters' concern is the same rationale that led EPA to amend the provisions at sections 264.1082 and 265.1083 in the November 25, 1996 final rule amendments; without such a provision, the owner or operator does not have a way to assign a numeric value for a non-detect reading, when computing the average of four or more waste samples to calculate a waste determination. The same logic applies to both circumstances, and it was obviously an oversight that EPA did not include this provision in the November 25, 1996 final rule amendments. Thus, the EPA is today adding to the waste determination provisions at § 265.1084(a)(3)(iv), a provision for valuing non-detect analytical results. The new rule language provides the appropriate guidance on the valuing of non-detects in the calculation of the average of four or more samples for a waste determination.

(Note: A corresponding amendment is not required at § 265.1084(b)(3)(iv) for treated hazardous waste because those rules, specifically § 264.1082(c)(2)(ix) and § 265.1083(c)(2)(ix), contain provisions for valuing non-detects when determining performance of an organic destruction or removal process.)

The EPA today is also amending regulatory language to reflect a clarification that was addressed in the November 25, 1996 rulemaking preamble (61 FR at 59943), but was inadvertently omitted from the regulatory text. This amendment adds two new paragraphs to the waste determination provisions, § 265.1084(a)(3)(v) and (b)(3)(v), to state that EPA would determine compliance with the subpart CC regulations based on the same test method used by the facility owner or operator, provided the owner or operator had used a test method appropriate for the waste. The appropriateness of an analytical method is described in paragraphs § 265 (a)(3)(iii) and (b)(3)(iii), respectively. The November 25, 1995 preamble to the final rule amendments (61 FR 59943) stated that, "* * * as long as one of the allowable test methods is being used for direct measurement of the VO concentration of a hazardous waste, the EPA would only enforce against the facility on that basis (i.e., using the same test method), unless the method used is not appropriate for the hazardous waste managed in the unit." Today's amendments add a paragraph to the analysis section of the final rule's waste determination procedures at § 265.1084 (a) and (b) to codify this intended provision.

As published in the November 25, 1996 final rule amendments (61 FR 59975), paragraph 265.1084(a)(4)(iv) provides that the results of a direct measurement of average VO concentration shall be used to resolve a disagreement between the Regional Administrator and the owner or operator regarding a determination of the average VO concentration of a hazardous waste stream using knowledge. To clarify that in such cases where there is disagreement regarding use of knowledge, the owner or operator has the discretion to choose an appropriate test method or methods, the following sentence has been added to § 265.1084(a)(4)(iv): "The owner or operator may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of paragraph (a)(3)(iii) of this section."

The EPA is also clarifying the waste determination requirements for treated wastes. Prior to today's amendment, the subpart CC regulatory text required analysis of all treated waste. As explained below, a waste determination is unnecessary for a waste treated by either a boiler or industrial furnace (BIF) operated in accordance with subpart H to 40 CFR part 266, or a hazardous waste incinerator operated in accordance with subpart O to 40 CFR parts 264 or 265; the EPA is amending the rule to clarify this. Today's action revises paragraph (b)(1) of §§ 264.1083 and 265.1084 to require that the owner or operator perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of paragraphs (c)(2)(i) through (c)(2)(vi) of §§ 264.1082 and 265.1083, respectively. Those specific paragraphs are cited in today's amended rule language to clarify that a waste determination is only required for a hazardous waste placed in a waste management unit exempted under one of the treatment demonstration options that is a performance standard, as opposed to an equipment specification standard. As was noted in Section VII.A.2.b, *Treated Hazardous Waste*, of the final rule preamble (59 FR 62914, December 6, 1994), provisions for hazardous waste treatment are specified in the subpart CC standards for the following processes: (1) An organic destruction, biological degradation, or organic removal process that reduces the organic content of the hazardous waste and is designed and operated in accordance with certain conditions specified in the rule; (2) a hazardous waste incinerator that is designed and operated in accordance with the requirements of 40 CFR part 264 subpart O or 40 CFR part 265 subpart O; or (3) a BIF that is subject to the requirements of 40 CFR part 266 subpart H.

Under today's amendments to the rule, the EPA is clarifying its original intent, that a waste determination is required only for a treated hazardous waste placed in a waste management unit, if the unit is exempt from air emission control requirements under provisions contained in paragraphs (c)(2)(i) through (c)(2)(vi) of §§ 264.1082 and 265.1083. The EPA requires waste demonstrations for those treatment demonstration options to ensure that the treatment conditions specified in subpart CC have been met. As explained in the December 1994 final rule preamble (59 FR at 62914, December 6, 1994), the waste demonstration results are required to indicate that a sufficient mass of organic constituents have been removed or destroyed from a regulated waste stream, prior to it being placed in a hazardous waste management unit that is not equipped with air emission controls. The treatment demonstration options listed in paragraphs (c)(2)(i) through (viii) of §§ 264.1082 and 265.1083 are based on the treatment process achieving a 95% reduction by weight of organic constituents in the waste. For the provisions of (c)(2)(i) through (c)(2)(vi) of §§ 264.1082 and 265.1083, the treatment process is not specified in the regulation; rather the requirement is based on the removal efficiency of the treatment process. Thus, to demonstrate compliance, EPA considers it necessary that the owner or operator perform waste determinations to demonstrate the appropriate removal efficiency has been achieved. However, the treatment demonstration provisions of paragraph (c)(2)(vii) in §§ 264.1082 and 265.1083 require that the hazardous waste be treated in an incinerator that is designed and operated in accordance with the requirements of subpart O in 40 CFR part 264 or part 265; and the treatment demonstration provisions of paragraph (c)(2)(viii) in §§ 264.1082 and 265.1083 require that the hazardous waste be treated in a BIF that is designed and operated in accordance with the requirements of 40 CFR part 266, subpart H. The EPA considers compliance with those combustion standards to be sufficient demonstration that the organics in the waste will be destroyed by 95 percent or more, by weight, and does not consider a waste

determination necessary. The EPA has consistently given verbal guidance that waste determinations are not required for waste treated in the above-mentioned specific units, and is today making an amendment to the regulatory text to make the regulatory requirements consistent with this guidance.

In a further clarification, the EPA intended that the owner or operator use the same test method to determine the average VO concentration at the point of waste treatment as is used at the point of waste origination, if these values are to be used to determine the effectiveness of a treatment system. As was stated in Section IV.F, *Waste Determination Procedures*, of the preamble to the final rule amendments (61 FR 59942, November 25, 1996), "The main point that must be reemphasized regarding direct measurement of VO concentration is that, although the EPA is amending the rule to allow various test methods other than Method 25D to be used in a waste determination, the owner or operator must use a test method(s) that is appropriate for the compounds contained in the waste. The method(s) used for the waste determination must be suitable for and must reflect or account for all compounds in the waste with a Henry's Law constant equal to or greater than 0.1 Y/X at 25 degrees Celsius."

Since the effectiveness of a waste treatment process must be judged on the basis of the process's capacity to reduce the organics in waste relative to their concentration at the point of waste origination or at the point of entry to the treatment system, the method(s) used for the waste determination at the point of waste treatment must be appropriate to detect and measure the compounds in the waste at the point of waste origination; to put the measurements on a common basis and provide an accurate comparison, the EPA considers it necessary that the method(s) used at the point of waste origination must be the same as the method(s) used at the point of waste treatment. To clarify this requirement, which the EPA has heretofore considered implicit, the following sentence is being added to § 265.1084(b)(3)(iii): "When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) or § 265.1083(c)(2)(i) through (c)(2)(vi) are met, then the waste samples shall be prepared and analyzed using the same method(s) as were used in making the initial waste determination(s) at the point of waste origination or at the point of entry to the treatment system." (Only the waste determination provisions in part 265 are being revised in connection with this rule clarification and the following rule clarification, because the subpart CC waste determination protocols are contained in part 265, and the part 264 standards cross-reference part 265.)

Because of a printing error, the equations for calculating the actual organic mass removal rate in § 265.1084(b)(8)(iii) and for calculating the actual organic mass biodegradation rate in § 265.1084(b)(9)(iv) were out of place in the November 25, 1996 amendments (61 FR 59978). This document corrects the placement of these equations.

In a further clarification to the waste determination procedures of subpart CC, paragraph 265.1084(d)(5)(ii) required that a mixture of methane in air at a concentration of approximately, but less than, 10,000 ppmw be used to calibrate the detection instrument used to determine no detectable organic emissions. It was the EPA's intent that the calibration procedure be consistent with the procedure specified in the subpart BB equipment leak test methods and procedures at §§ 264.1063 and 265.1063, as they reference the same monitoring procedure. Paragraph (b)(4)(ii) of §§ 264.1063 and 265.1063 specifies that calibration gases for the detection instrument shall be, "A mixture of methane or n-hexane and air at a concentration of approximately, but less than 10,000 ppm methane or n-hexane. Consistent with this requirement, today's action revises the requirement for calibration gases in parts 264 and 265 to provide the owner or operator the choice of using a mixture of methane or n-hexane and air.

E. Standards: Tanks

Commenters have questioned whether a facility owner or operator is permitted to install a closure device on a tank manifold system or header vent when a series of tanks have their vents (i.e., tank openings) connected to a common header. In many tanks systems, tank vents are connected to a manifold or central header, and a closure device (or pressure/vacuum device such as a conservation vent) is installed on the header rather than on the individual tanks. Prior to today's amendment, the subpart CC level 1 tank requirements at paragraph (2)(2)(iii) in § 264.1084 and § 265.1085 could have been interpreted to require that each opening on a Level 1 tank fixed roof must be either equipped with a closure device or connected through a closed-vent system to a control device, with no allowance for the closure device or pressure/vacuum device to be installed on the tank manifold system. The EPA did not intend the regulatory requirement to disallow a closure device or pressure/vacuum device from being installed on a tank manifold system. The EPA is aware that such tank manifold or vent header systems provide a degree of emissions reduction which is derived from vapor balancing between tanks during unloading and inter-tank transfers; the EPA clearly did not intend to discourage their use. The EPA is therefore amending the subpart CC tank standards to provide that a closure device can be installed on a manifold vent header for Level 1 tanks, by revising paragraph (c)(2)(iii) in § 264.1084 and § 265.1085.

In the November 25, 1996 final rule amendments, the EPA promulgated a provision that allowed a facility to install and operate air emission control devices on Level 1 tanks. As published, the regulatory language for that provision inadvertently made it mandatory that these control devices be operating at all times when hazardous waste is managed in the tank, even at times of routine maintenance. The EPA is amending the rules today to clarify that the control device is not required to be operating during specified periods, including those instances it is necessary to provide access to the tank for performing routine inspections, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port or hatch to maintain or repair equipment. Paragraph (B) is being revised in § 264.1084(c)(2)(iii) and § 265.1085(c)(2)(iii) to better convey this intent.

In the amendments to the final rule published on November 25, 1996 (61 FR 59944), the preamble at Section G. *Standards: Tanks* that discussed the revisions to the subpart CC tank standards, stated "* * * an option is being provided allowing the use of an enclosure vented through a closed-vent system to an enclosed combustion device or a control device designed and operated to reduce the total organic content of the inlet vapor stream by at least 95 percent by weight," in order to comply with the tank level 2 air emission control requirements. However, the latter portion of this statement was incorrect and the EPA is clarifying that it was the EPA's intent that only enclosed combustion devices can be used as control devices under this alternative to comply with the Tank

Level 2 air emission control requirements. It should also be noted that the regulation as amended by the November 25,1996 **Federal Register** document (at §§ 264.1084(d)(5) and 265.1085(d)(5)) was correct and did not contain the statement regarding the use of a (non-combustion) "control device designed and operated to reduce the total organic content of the inlet vapor stream by at least 95 percent by weight." Since publication of the November 25, 1996 preamble, the EPA has consistently and repeatedly provided verbal clarification in all forums where the subject of level 2 tank enclosures has been raised, that the noted preamble text is incorrect, and that level 2 tanks operated inside an enclosure must be vented to an enclosed combustion device. The EPA provided this information publicly at each of the six seminars EPA conducted in September through December of 1996; additionally, an industry trade association provided this same clarification at the two seminars the industry trade group conducted in March and April of 1997 (these seminars are discussed in the Background section of today's preamble). Additionally, the requirement for enclosed combustion devices on level 2 tank enclosures was strongly affirmed in the accompanying printed materials for each of these EPA and industry trade group seminars; those printed materials were distributed to all seminar attendees, and to additional members of EPA and the regulated community, for informational purposes and peer review. Further, the RCRA Hotline has been clarifying the regulatory text requirement for enclosed combustion devices to callers who have raised the topic to Hotline representatives. The requirement for enclosed combustion devices on level 2 tank enclosures is not being amended by today's action. However, the EPA is currently considering a future amendment to this requirement that would allow owners or operators to operate a Level 2 tank enclosure vented to an alternate control device, provided they make certain site-specific demonstrations. The reason EPA currently requires enclosure emissions to be vented to an enclosed combustion device is because organic concentrations in air within the enclosure are very dilute, due to the inherent dilution in the enclosure, and are often less than 100 ppm organics by volume. It is not clear to the EPA that control devices other than enclosed combustion devices, can reduce organics in such a dilute vent stream by the 95 percent control efficiency required the subpart CC standards. The EPA has agreed to investigate the possibility whereby a facility could make a case-by-case demonstration of a non-combustion control device efficiency; the EPA would require the demonstration to show that a mass of organics would be removed from a given waste, using a particular enclosure and control device, equivalent to 95 percent reduction of organics in the tank headspace, if the tank were to be equipped with a discreet cover. Though such a demonstration would likely be fairly detailed and costly, commenters have indicated that they would be interested in pursuing such an option if it were included in the subpart CC tank enclosure requirements. The EPA considers that such an equivalency would be consistent with the existing tank standards; if a technically feasible and verifiable equivalency demonstration technique can be developed, this could be a reasonable alternative to the requirement for enclosed combustion devices under the Level 2 tank enclosure control option. The EPA will continue to investigate this option, and if a viable approach can be developed, will publish a future amendment to incorporate it into the subpart CC Level 2 tank standards.

The EPA has received inquiries as to whether doors are allowed to be open on level 2 tank enclosures, and how doors are regarded under the provisions for natural draft openings (NDO) in the "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B ("Criteria T") requirements. The Criteria T evaluation of NDO is intended to evaluate the effectiveness of the enclosure at capturing emissions from within the enclosure. Therefore, for purposes of Criteria T, the evaluation of the enclosure must be conducted on the enclosure as it is operated during hazardous waste management operations. If the enclosure has a door that is closed during waste operations, then the open doorway would not be considered an NDO; however, cracks or openings that exist around the door when it is closed would be considered NDO. Doors on enclosures are often very large, to accommodate waste transportation vehicles; thus, the effectiveness of an enclosure is severely altered by the positioning of such a door. Obviously, if a door is normally open during times when hazardous waste is managed in the enclosed tank, the open doorway would be considered an NDO.

By this clarification, the EPA is not precluding the opening of enclosure doors. The EPA considers it appropriate to allow enclosure doors to be open for the same circumstances that tank covers can be open under paragraph 265.1085(g)(2)(i)(A) and similar paragraphs for tanks equipped with fixed roofs—when necessary to provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Also commensurate with paragraph 265.1085(g)(2)(i)(A), following completion of the activity, the owner or operator should promptly secure the door in the position it was in during the evaluation of the NDO.

It also warrants clarification that the enclosure door (and other openings not accounted for as Criteria T NDO) must be closed at all times that hazardous waste is managed in the enclosed tank (unless the tank is exempt from subpart CC air emission control requirements), not just when waste is being treated in the tank. The EPA considers it inherently obvious within the tank standards that the enclosure around a tank must be operated in the same manner in which it was evaluated for the Criteria T requirements. Specifically, paragraphs § 264.1084(i)(1) and § 265.1085(i)(1) require that the enclosure be designed and operated in accordance with the Criteria T.

The EPA recognizes that it is not feasible to require all waste transfer to and from a tank enclosure to be conducted by enclosed transfer systems. However, the EPA does consider it reasonable to interpret the provisions of § 264.1084(i)(1) and § 265.1085(i)(1) to require that the enclosure be operated in the same manner in which it was evaluated for compliance with Criteria T. Thus, the EPA is clarifying that enclosure doors and other openings not evaluated as NDO shall be closed when hazardous waste is managed inside the enclosure, except when it is necessary to open the door or opening for waste transfer, equipment access, or worker access.

In the December 6, 1994 final regulation, the regulatory text at §§ 264.1084(g) and 265.1085(g) allowed that an owner or operator may install and operate a safety device on tank covers, closed-vent systems and control devices. The amendments published on November 25, 1996 amended the tank requirements; in those amendments, the provision for safety devices was inadvertently omitted from the tank requirements for floating roof covers. Today's action adds new paragraphs 264.1084(e)(4), 264.1084(f)(4), 265.1085(e)(4), and 265.1085(f)(4) stating that safety devices are allowed

on both internal and external floating roof tank covers.

Today's action amends § 264.1084(f)(3)(iii) to correct a typographical error. The sentence "Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this subpart * * *" is revised to read as follows, "Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this section * * *" Also, to correct another typographical error in § 264.1084(f)(3)(i)(D)(4) and § 265.1085(f)(3)(i)(D)(4), the phrase "* * * and then dividing the sum for each seal type by the nominal perimeter of the tank." is revised to read as follows."* * * and then dividing the sum for each seal type by the nominal diameter of the tank."

In the November 25, 1996 final rule amendments (61 FR 59932), an exemption from the control requirements of subpart CC was added for a tank, surface impoundment, or container for which all the hazardous waste placed in the unit meets the Land Disposal Restrictions (LDR) as specified in §§ 264.1082(c)(4) and 265.1083(c)(4). However, the EPA inadvertently failed to add this exemption based on meeting applicable LDR treatment standards to the exemption from the closed system transfer requirements. Today's change adds paragraph (iii) under §§ 264.1084(j)(2) and 265.1085(j)(2) to correct this oversight. It was originally the EPA's intent to make this conforming amendment for closed system transfer requirements in the November 25, 1996 action. The basic structure of the subpart CC rule is that once a hazardous waste is subject to the provisions of the rule, all containers, tanks, and impoundments managing the waste are subject to the rule's requirements. However, once a waste is treated to destroy or remove organics in a manner specified in the rule, downstream tanks, containers, and surface impoundments are not subject to the subpart CC air requirements to operate the units with covers and/or control devices.

(Note: Recordkeeping, monitoring, reporting and testing requirements may apply to those downstream units.) See Section VII.A.2.b, *Treated Hazardous Waste*, of the preamble to the final rule (59 FR 62914, December 6, 1994). The EPA inadvertently failed to codify this core principle for closed system transfer and is correcting the omission in today's rule.

F. Standards: Surface Impoundments

Today's action corrects a typographical error in §§ 264.1085(b)(2) and 265.1086(b)(2) by revising the phrase "* * * paragraph (d) of this sections." to read "* * * paragraph (d) of this section." Also, the EPA is clarifying the requirements of §§ 264.1085(d)(1)(iii) and 265.1086(d)(1)(iii) by making a non-substantive editing change. "Factors to be considered when selecting the materials for * * *" is redrafted to read "Factors to be considered when selecting the materials of construction * * *" To correct another typographical error in §§ 264.1085(d)(2)(i)(B) and § 265.1086(d)(2)(i)(B), "To remove accumulated sludge or other residues from the bottom of surface impoundment." is revised to read, "To remove accumulated sludge or other residues from the bottom of the surface impoundment."

As is discussed regarding tanks, in Section E of this preamble, the EPA inadvertently failed to add the exemption for hazardous wastes that have been treated to meet applicable LDR treatment standards to the exemption from the closed system transfer requirements for hazardous waste that is transferred to a surface impoundment. Today's action adds this exemption to the exemptions from closed system transfer requirements in §§ 264.1085(e)(2)(iii) and 265.1086(e)(2)(iii).

G. Standards: Containers

The EPA has received comments from the regulated community regarding the inspection requirements for containers; these comments clearly indicate a widespread misinterpretation of the rule requirements relevant to container inspections. Numerous commenters referenced in their statements to the EPA that the language in § 264.1086(c)(4)(i) and (d)(4)(i), and the corresponding paragraphs in 40 CFR part 265, require a visual inspection to occur within 24 hours after acceptance of each regulated container which is transported to a regulated facility and which contains hazardous waste at the time it arrives at the facility. They also noted that the requirement for an inspection to be conducted within a 24-hour time frame is unnecessarily burdensome in some limited and infrequent situations.

The visual container inspection requirement is intended to provide means for the facility owner or operator to ensure that the container has no visible openings or gaps through which organics could be emitted; see Section IV.I.3 of the preamble, 61 FR 59948, November 25, 1996. The amended container regulations published November 25, 1996, did not specify the time frame in which the initial visual inspection must be conducted. The regulation states, "In the case when * * * the container is not emptied (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)) within 24 hours after the container is accepted at the facility, the owner or operator shall visually inspect the container * * *" The 24-hour period in the rule language refers to the time limit on emptying the container that triggers the visual inspection; the rule language in § 265.1087(c)(4)(i) and (d)(4)(i), and the corresponding paragraphs in 40 CFR part 265, as published in November 1996, do not specify the time frame in which the visual inspections must be conducted. However, it is the intent of the EPA that the initial inspection be subject to the same time requirements as were set out in the December 6, 1994, final regulation (see 40 CFR 265.1089(f)(1) of the December 6, 1994 published regulation (at 59 FR 62947)). Specifically, the container inspection must be conducted on or before the date that the container is initially subject to the subpart CC container standards. Thus, for a container with hazardous waste that is transported to a regulated facility, the inspection of the container is required on or before the date that the container is accepted at the facility.

In those situations where it would be infeasible to inspect a container on the date it is accepted at the facility, for the purpose of compliance with the subpart CC container standards, it would be acceptable for the container to be inspected prior to that date. For example, if an owner or operator of an affected facility accepts a shipment of containers that arrives at the TSDF on a truck, and the TSDF owner or operator is unable to conduct a visual inspection of the containers at the time of acceptance of the container shipment, it is acceptable under the rule to have the generator or transporter perform the visual inspection of the individual containers before or during loading of the containers onto the truck for transport to the affected facility. The transporter or generator could provide the recipient TSDF with some level of information (e.g., written documentation) to confirm the inspection has been conducted on or before the date that the container is accepted at the facility. It is likely that the TSDF owner or operator would then perform their own visual inspection when possible, (e.g., at the time that the containers are unloaded from the truck at the TSDF). The EPA considers the use of generator or transporter supplied information to comply with the visual inspection requirements similar to owner or operator use of generator

information regarding the organic content of a hazardous waste as a means to comply with the waste determination (i.e., VO concentration determination) requirements of the rule. It should be noted that in either case, it is ultimately the responsibility of the owner or operator of the affected facility to be in compliance with all the applicable regulatory requirements. The EPA is amending the language in § 264.1086(c)(4)(i) and (d)(4)(i), and the corresponding paragraphs in 40 CFR part 265, to clarify that the 24-hour period noted in the rule refers to the time frame for emptying a container, and that this 24-hour criterion then triggers the need for a visual inspection that must be conducted on or before the date that the container is accepted at the facility.

The amendment to §§ 264.1086 (c)(4)(i) and (d)(4)(i), and the corresponding language in part 265, also clarify the phrase "accepted at the facility." For the purposes of this inspection requirement for containers, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest of the appendix to 40 CFR part 262 (EPA Form 8700–22), as required under subpart E of this part, at § 264.71 and § 265.71. The instructions to EPA Form 8700–22 at Item 20, Facility Owner or Operator: Certification of Receipt of Hazardous Materials Covered by This Manifest Except as Noted in Item 19, state, "Print or type the name of the person accepting the waste on behalf of the owner or operator of the facility. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt." The EPA considers acceptance of the waste to occur at the time of manifest signature. This has been the EPA's consistent interpretation of this phrase, and is the guidance that EPA has supplied both verbally and in written seminar materials.

The EPA has received questions regarding when the opening of a cover or closure device is allowed on containers. Several of these questions have concerned the opening of the vent on vacuum trucks during loading operations and the opening of containers vents to allow venting of vapors for the purpose of worker safety. With regard to vacuum trucks, the EPA has always intended the subpart CC final rules to allow containers to vent emissions directly to the atmosphere during filling operations. This would include use of a vacuum system to fill a tank truck (i.e., a container under RCRA). Although the December 6, 1994 final rules only allowed the opening through which waste was transferred to be open during waste transfer, this was inadvertent; the EPA intended to allow venting during waste transfer operations, either through the opening through which the waste is transferred, or through a second opening that would serve as a vent. To this effect, the EPA amended the subpart CC rules on February 9, 1996 to clarify this point (see 61 FR 4909). The fact that EPA is not requiring control of vacuum trucks is also discussed in the document *Hazardous Waste Treatment, Storage, and Disposal Facilities—Background Information for Promulgated Organic Air Emission Standards for Tanks, Surface Impoundments, and containers;* see EPA–453/R–94–076b, November 1994, Section 6.6.5. where it is clear that the EPA is fully aware that a practical means of controlling the exhaust from the vacuum pump on a vacuum truck has not been demonstrated. The EPA is now reiterating that these types of systems are allowed under the subpart CC container rules.

In response to commenters, EPA is providing clarification that venting of containers for worker safety is also allowed under the subpart CC container rules. Provision (iii) of §§ 264.1086(c)(3) and 265.1087(c)(3), which allows opening of a closure device or cover when access inside is needed, would allow the owner or operator to vent a container prior to sending a worker into a tanker or other container for clean-out. This type of venting is necessary to avoid an unsafe condition when entering a confined space. For example, venting both before and during the cleaning operations is needed to reduce the organic vapor concentration below the lower explosive limit (LEL) for worker safety. In addition, provision (v) of §§ 264.1086(c)(3) and 265.1087(c)(3), which allows opening of a safety device at any time clearly shows the EPA intent regarding the implementation measures necessary to avoid an unsafe condition. The EPA considers that the current rule language allows this type of venting for maintenance of worker safety, and is providing this preamble discussion in response to requests from commenters.

An additional interpretive clarification is required, regarding the transfer requirements to, from, and among hazardous waste containers, specifically when transfers occur in conjunction with hazardous waste stabilization operations.

The first clarification addresses whether the addition of sorbent materials is considered to be waste stabilization for the purposes of compliance with subpart CC, and thus, whether such activities are required to be conducted in containers equipped with level 3 controls. There has been specific inquiry as to whether the subpart CC level 3 container standards apply in situations where an owner or operator "transfers" hazardous waste from one container, such as a bulk container or roll off box, to a second unit, and adds the sorbent to the waste after each scoop of waste is placed in the second unit. The container standards at § 264.1086(b)(2) state that, "* * * the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in paragraph (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere." In its definition of waste stabilization at 40 CFR 265.1081, the EPA has stated that stabilization includes the elimination of free liquids, but does "not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid." The associated preamble language clearly defined what activities EPA was excluding from the waste stabilization definition. See 61 FR at 4905, February 9, 1996. That preamble discussion stated, "The EPA is also amending the term "waste stabilization" to specifically exclude the process of adding non-reactive absorbent material to the surface of a waste. The EPA recognizes that to meet certain criteria under the Land Disposal Restrictions, or to prevent the introduction of liquid into certain combustion devices, owners or operators apply absorbent material to the surface of wastes just prior to disposal. In such procedures, the container is opened, absorbent material is placed on the surface of the waste to absorb a relatively small amount of liquid, and the container is closed. No mixing or agitation is involved in the process."

It is clear from the text of the regulation, as well as the February 9, 1996 preamble discussion, that addition of absorbent, even with very limited mixing or agitation, must be performed in compliance with the container level 3 standards. In fact, this is the literal meaning of the provision—such "transfer" operations result in mixing of the sorbent material with the waste, a condition that qualifies as waste stabilization under subpart CC, and requires container level 3 controls. (See also the discussion of the EPA's intentions regarding requirements for containers in the February 9, 1996

preamble at 61 FR 4903, which makes clear that a hazardous waste transfer operation conducted as described above would not satisfy the EPA's stated intent with regard to the general transfer requirements of the container standards. Therefore, the type of transfer operation described above can only occur if the containers meet the container level 3 requirements. The EPA repeats that this requirement has a sound environmental basis. Containers would remain open to the environment during such operations, and the volatile hazardous constituents will be released. The reaction of the sorbent materials with the hazardous waste would, in fact, be likely to increase the volatilization of the organics in the waste, while the container would remain uncovered as subsequent layers of waste and sorbent were applied. Such a situation would result in organic emissions that the EPA considers most appropriately controlled under the container level 3 requirements, and the rules so require.

The EPA recognizes, however, that there are circumstances where addition of sorbent is not stabilization and therefore will not trigger subpart CC container standards. This is why the rule states that stabilization "does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid." The chief example EPA has provided of such an activity is addition of sorbent just prior to the final disposition of the material (the situation given in the February 9, 1996 preamble discussion). Other examples would involve situations where tanks are covered immediately after addition of sorbent and stay covered thereafter.

Examples could occur when sorbent is added to a container at the end of a work day, or at the final completion of a waste transfer. The EPA's technical basis for allowing sorbent material to be placed on the waste surface in these limited situations, we repeat, is that any potential for volatilization to the atmosphere of the organics in the waste would be prevented by the immediate application of the container cover.

A similar issue has come to the attention of EPA, regarding the container standards at § 264.1086(d)(2) and § 265.1087(d)(2), which require that transfer of hazardous waste in or out of a container "* * * be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical * * *" This provision was an amendment to the more extensive transfer requirements that were promulgated in the December 6, 1994 rule. The November 25, 1996 amendment also revised the tank and surface impoundment transfer requirements such that only transfer between and among subpart CC-regulated tanks and surface impoundments are required to be conducted in an enclosed transfer system. This amendment was made in recognition that it is often impractical for waste in containers to be transferred to tanks or surface impoundments through an enclosed system. However, it is the EPA's intent that transfer of hazardous waste among containers, and between containers and surface impoundments or tanks, be conducted in a manner to minimize waste exposure to the atmosphere. See § 264.1084(j), § 264.1085(e), § 264.1086(d)(2) and corresponding paragraphs in part 265.

Members of the regulated community have questioned whether it is possible to evade these less extensive transfer requirements by including an intervening non-subpart CC unit when performing a transfer of hazardous waste. Specifically, certain regulated facilities have discussed transferring waste from a subpart CC-regulated unit (e.g., a tank or container) to a unit not subject to subpart CC (e.g., the floor of a containment building), then subsequently transferring the waste to a second subpart CC-regulated unit. Since the containment building is not a unit regulated by subpart CC, the subpart CC standards do not impose transfer requirements to or from containment buildings; thus, the facilities suggest that the subpart CC transfer requirements would be met. As noted above, the subpart CC container requirements state that transfer of hazardous waste to and from a regulated container shall be conducted in a manner which minimizes the waste's exposure to the atmosphere, considering practical factors. The EPA considers an unnecessary and open-air transfer of waste to or from a container, conducted in whole or in part, to avoid the subpart CC container (or tank) requirements, to not meet the obvious intent of the container transfer requirement (e.g., see 264.1086(d)(2)). The EPA is aware of waste transfer methods that would be more effective in minimizing exposure of the waste to the atmosphere—the owner or operator is responsible for conducting waste transfer in such a manner as to minimize exposure of the hazardous waste to the atmosphere. Rather than leaving this issue open to interpretation, the EPA will instruct permit writers to invoke omnibus authority under RCRA section 3005(c)(3) to assure control of such transfers where necessary to protect human health and the environment.

There are other aspects of the container standards that also require some further clarification; one point that needs some additional explanation is in regard to the Department of Transportation (DOT) compliance demonstration option for containers. The subpart CC container standards, as amended November 25, 1996, allow three options for compliance demonstration, one of which is through compliance with certain applicable DOT regulations for packaging of hazardous materials for transportation. Commenters have stated that they consider the specification in subpart CC, as to which DOT packaging requirements qualify for that compliance option, to have resulted in an overly stringent requirement. However, the EPA has clarified that demonstration of compliance through the use of certain DOT packagings is only one approach to demonstrating compliance with the container standards. The regulated industry has indicated to EPA that the vast majority of hazardous waste that is shipped in DOT transport packagings meets the requirements for container level 1 standards. Thus, if a facility owner or operator is using a DOT packaging which is not among those specified under the subpart CC container standards, the facility owner or operator must conduct a visual inspection to determine that there are no visible openings, cracks, etc. in the container. See § 265.1087(c)(1)(ii). The EPA considers the existing regulatory language to adequately convey this intent, and is including this preamble discussion in response to commenters' requests.

The container option to comply with applicable DOT packaging regulations, described at 40 CFR 265.1087(f) and 264.1086(f), includes four requirements which must all be met to comply with the subpart CC compliance demonstration. The regulatory language of that paragraph clearly indicates (in fact, literally indicates) that compliance with all four of the subparagraphs at § 265.1087(f)(1) through § 265.1087(f)(4) is required, since the requirements are not presented as alternatives. The following paragraphs provide a detailed description of each of the four requirements found at § 265.1087(f).

The first requirement, found at 40 CFR 265.1087(f)(1), specifies that the container must meet the applicable requirements specified in 40 CFR part 178 or part 179. It is EPA's intent to require that in order to comply with 40 CFR part 265.1087(f), a container must

be subject to 49 CFR part 178 or part 179; it is also the EPA's intent to require that such a container be in compliance with all the requirements of 49 CFR parts 178 and 179 that are applicable. (Again, this is the direct and literal reading of the provision.) In developing the final rule, the EPA determined that containers subject to and in compliance with these requirements would achieve the appropriate level of air emission control; see the preamble discussion at Section IV.I.1, 61 FR 59947, November 25, 1996. The Agency could not make that finding for containers not subject to these provisions. A container not subject to 49 CFR part 178 or 179 is thus not eligible to comply with the subpart CC rule through the requirements of 40 CFR 265.1087 (c)(1)(i) or (d)(1)(i), nor the corresponding paragraphs in 40 CFR part 264; it would have to comply with the subpart CC rule through the requirements of 40 CFR 265.1087 (c)(1)(ii), (c)(1)(iii), (d)(1)(ii) or d(1)(iii), or the corresponding paragraphs in 40 CFR part 264, as appropriate.

The second requirement within 40 CFR 265.1087(f) for DOT-compliant containers stipulates that the hazardous waste must be managed in the DOT container in accordance with all the requirements contained in 49 CFR part 107 subpart B, part 172, part 173, and part 180 that are applicable to that container and the waste managed in that container. The EPA listed these regulatory parts because they were characterized by the industry and by DOT as the parts which describe the requirements for management of hazardous waste, for the types of containers that are specified in 49 CFR parts 178 and 179. The reference to 49 CFR part 107 subpart B is included to recognize the exemptions for containers that have been determined by DOT to be equivalent or superior to those required within 49 CFR part 178 and 179 standards.

The third and fourth requirements, listed in 40 CFR 265.1087(f)(3) and (f)(4) and their corresponding paragraphs in 40 CFR part 264, state that, "* * * For the purpose of complying with this subpart, no exceptions to the 40 CFR part 178 and part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section," and "For a lab pack that is managed in accordance with the requirements of 40 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for combination packagings specified in 40 CFR 173.12(b)." These requirements indicate that the DOT-authorized container must be in compliance with all applicable requirements in 49 CFR parts 178 and 179. Paragraph 265.1087(f)(3) of the subpart CC rule specifically means that for the purposes of the subpart CC rule provisions, compliance with 49 CFR parts 178 and 179 is required, and no exceptions to those provisions are allowed (unless the container were a lab pack, as described in § 265.1087(f)(4)). As with the earlier provisions discussed above, this is the literal meaning of the provision. There are many exceptions, both explicit and implicit, to the 49 CFR part 178 and 179 standards which are contained in other sections of the DOT standards. The EPA's intent in 40 CFR 265.1087(f)(3) is to disallow any regulatory provision which removes or alters a requirement contained in 49 CFR parts 178 or 179, regardless of where that disallowing regulatory provision is codified, or whether that provision is specifically described as an "exception." For instance, 49 CFR 173.28(e) states that a non-reusable container may be reused for certain circumstances; however, the allowance of that paragraph would not be recognized for compliance with the subpart CC container standards at 40 CFR 265.1087(f) or 40 CFR 264.1086(f). As another example, 49 CFR 173.204 contains an implicit exception for certain hazardous materials that states, "packaging need not conform to the requirements of part 178." However, if that packaging were used to manage a hazardous waste subject to the container regulations of the subpart CC rule, the effect of 40 CFR 265.1087(f)(3) would be to require that, for compliance with the subpart CC rule, such packaging must comply with the requirements of 49 CFR part 178. In this example, 40 CFR 265.1087(f) and 264.1086(f) would disallow the exception to 49 part 178 provided by 49 CFR 173.204. Thus, as a general matter, 40 CFR 265.1087(f) and 264.1086(f) have the intended effect of requiring strict compliance with all applicable requirements of 49 CFR parts 178 and 179 (other than the exception for lab packs at 49 CFR 173.12(b)), for the purpose of the DOT compliance option within the subpart CC container standards. Strict compliance with these provisions is necessary to ensure that the emission reduction intended by the rule is achieved.

Today's action also corrects two typographical errors in § 264.1086. In § 264.1086(c)(2), "* * * Organic vapor permeability, the effects of the contact with the hazardous waste * * *" is revised to read as follows, "Organic vapor permeability; the effects of the contact with the hazardous waste * * *" and in § 264.1086(d)(2), "* * * any one of the following: a submerged-fill pipe * * *" is revised to read as follows, "* * * any one of the following: A submerged-fill pipe * * *"

For containers required to use Level 2 controls under the subpart CC standards, one option under the final rules requires that the hazardous waste be managed in a "container that operates with no detectable organic emissions." (See §§ 264.1086(d)(ii) and 265.1087(d)(ii).) The test for conducting no detectable organic emissions for the purpose of complying with this requirement must be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. However, under subpart CC, there are no requirements for periodic Method 21 leak monitoring of containers. (See Section IV.I.3 of the preamble to the final rule, 61 FR 59948, November 25, 1996.) Any Method 21 monitoring to determine if the containers operate with no detectable organic emissions is conducted at the owner's or operator's discretion. In order to clarify this point, the EPA has amended the language in paragraph (g) of the container standards.

H. Standards: Closed-Vent Systems and Control Devices

The inspection and monitoring requirements under paragraph (c) of § 264.1087 and § 265.1088 are being amended to clarify that the inspection and monitoring procedures specifically cited in paragraph (c)(7) are applicable to closed-vent systems as well as to the control devices. The reference to closed-vent system in paragraph (c)(7) was inadvertently left out of the sentence specifying what shall be inspected and monitored; however, the procedures specified in the paragraph did cite the requirements applicable to closed-vent systems, and it was thus the EPA's intent that closed-vent systems be included.

The EPA has received several comments concerning how a TSDF owner or operator would demonstrate compliance with the 95 percent removal requirement (see § 265.1088(c)(1)(i)) for a vent stream with low concentration organic vapor entering an organic air emission control device. The commenters contended that the 95 percent removal or destruction performance demonstration is not feasible for low concentration organic streams. However, the EPA has not at this time found adequate technical reasons to change the 95 percent control requirement. Similar requirements have been included in other regulations controlling air emissions from process vents on hazardous and non-hazardous

waste management operations (e.g., subpart DD in 40 CFR part 63) and guidance regarding compliance with the 95 percent control requirement has been published by the EPA, see EPA–450/3–89–021, *Hazardous Waste TSDF—Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks*; or EPA–450/3–91–007, *Alternative Control Technology Document—Organic Waste Process Vents*. The EPA has also published guidance regarding the control of low concentration organic vapor streams; see EPA–450/R–95–003, *Survey of Control Technologies for Low concentration Organic Vapor Gas Streams*.

It has been suggested that the EPA include the use of an activated carbon adsorption control system as a specified technology and/or use of surrogate compounds to demonstrate compliance. Again, the EPA does not have an adequate technical basis to revise the control device requirements to include a carbon adsorption control equipment specification. Carbon adsorption systems require considerable constituent and other site-specific information for proper control device design, unlike combustion systems, for which organic control efficiency is less dependent on the particular organic constituent present in the gas stream. Therefore, the EPA has not included a carbon adsorption equipment specification in the rule as an alternative to the 95 percent organic removal efficiency demonstration.

Commenters also have requested that the EPA amend the control device requirements of the rule to allow that the temperature sensor for condensers be placed in the coolant exhaust rather than in the exhaust vent stream from the condenser exit. The EPA selected this monitoring location because its was judged that monitoring the exhaust gas provided a better and more direct characterization of the performance of the condenser. In addition, the standards for closed-vent systems and control devices in subpart AA (see § 264.1033(i)) allow that "an alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control devices's design specifications." This same allowance is not contained in the part 265 standards for interim status facilities because the rules do not have provisions for reporting and thus there is no direct mechanism for Agency review of the appropriateness of the alternative parameter. The EPA did not seek to burden the owner or operator of interim status facilities with the additional reporting requirements associated with the technical demonstration of equivalent characterization of performance. For those facilities that are monitoring an alternative parameter, e.g., condenser coolant exhaust rather than the condenser vent stream exhaust, in compliance with provisions of a Clean Air Act regulation such as the HON, the owner or operator of the unit may be able to comply with the RCRA air rules through one of the Clean Air Act applicability exemptions contained in the RCRA air rules at §§ 264.1030(d) and 265.1030(d) of subpart AA and §§ 264.1080(b)(7) and 265.1080(b)(7) of subpart CC. The EPA continues to believe that the monitoring requirements specified in the 40 CFR part 265 rules are reasonable, and the EPA does not consider it appropriate to allow alternative parameters to be monitored without a mechanism for Agency review of the alternative approach (e.g., a Clean Air Act or RCRA permit). Therefore, the EPA is not amending the rule in this regard.

As previously noted in Section III.C of this preamble, the November 25, 1996, amendments to the subpart CC standards for control devices and closed vent systems (at § 265.1088(c)(2)(i)), added provisions to allow up to 240 hours per year for periods of planned routine maintenance of a control device, during which time the control device is not required to meet the performance requirements for emission reductions specified in the rule. The EPA has received comments that control devices such as boilers, industrial furnaces, and incinerators often require routine maintenance that takes longer than 10 days per year. In connection with this, the commenters also requested that the EPA provide an extension to the repair period so long as the owner or operator documents the decision to use an extension by including certain material in the operating record. The EPA considers the emissions from hazardous waste to be a significant source of nationwide organic air emissions, and does not consider it appropriate to lengthen the time that a control device may be out of service for routine maintenance, while hazardous waste is being managed in the unit. As promulgated in December 1994, the subpart CC standards did not allow provisions for planned maintenance time, because the modeled emission reductions attributed to the implementation of these standards were based on control device operation at all times that affected waste is managed in a unit requiring a control device. In the November 1996 amendments, the EPA revised the control device provisions in recognition that planned or routine maintenance of control devices, within reason, would limit the unplanned malfunctions. However, the EPA continues to consider that 240 hours per year is an appropriate maximum amount of time for hazardous waste to be managed in units without the required control device operating. Thus, the EPA is not amending this provision. Instances of control device down time beyond the allowed 240 hours for maintenance would be considered periods in which the facility is not in compliance with the control requirements of the rule.

The EPA is today clarifying that the requirements for management of spent carbon, at § 264.1088(c)(3)(ii) and § 265.1089(c)(3)(ii) apply only to carbon that is a hazardous waste. This clarification has been made in both the February 9, 1996 technical amendments (see 61 FR at 4910) and the November 25, 1996 final rule amendments (see 61 FR at 59936). When amending the regulatory text at § 264.1087(c)(3)(ii) and § 265.1088(c)(3)(ii) in the November 25, 1996 action, the EPA inadvertently omitted the phrases that state the requirement applies to carbon that is a hazardous waste, and the requirement applies regardless of the VO concentration of the carbon. These statements had been included in the regulatory text prior to that November 25 **Federal Register** document; today's amendment clarifies the EPA's intent by correcting that omission.

I. Recordkeeping and Reporting Requirements

In the November 25, 1996 final rule amendments (61 FR 59952 and 59971) to parts 264 and 265, the subpart CC applicability was amended to exempt any hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. Though the requirement for owner or operator certification was established at § 264.1080(b)(7), the EPA inadvertently failed to add the associated recordkeeping requirement to the recordkeeping sections of subpart CC. In order to establish minimum recordkeeping requirements for those units that are exempted from the subpart because the unit is in compliance with control requirements under a Clean Air Act regulation, the subpart CC recordkeeping requirements are being amended by today's action. A new paragraph (j) is being added to § 264.1089 and § 265.1090 that requires the owner or operator to record and maintain: (1) a certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified in 40 CFR parts 60, 61, or 63; and (2) identification of the specific requirements with which the unit is in compliance.

Adding these requirements also necessitated a change to paragraph (a) of § 264.1089 and § 265.1090 in order to include paragraph (j) in the list of information specified for recordkeeping under the subpart.

In addition, today's action corrects typographical errors in § 264.1089(a) and § 265.1090(a). In the last sentence of § 264.1089(a), "* * * air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1084(d) of this subpart." is revised to read as follows, "* * * air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1080(d) or § 264.1080(b)(7), respectively, of this subpart." Similarly, in the last sentence of § 265.1090(a), "* * * air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1084(d) of this subpart" is revised to read as follows, "* * * air emission controls specified in §§ 265.1085 through 265.1088 of this subpart in accordance with the conditions specified in § 265.1080(d) or § 265.1080(b)(7), respectively, of this subpart."

Also in the recordkeeping sections of subpart CC, paragraph (f) of § 264.1089 and § 265.1090 are being amended to provide the full citation referenced in the paragraph; the references to § 264.1082(c)(2) and § 265.1083(c)(2) are being expanded to state (c)(2)(i) through (c)(2)(vi)" in paragraph (f) to cover specifically each of the exemption options, for which a waste determination for a treated hazardous waste is required.

In a further correction, paragraph (b)(1)(ii)(B) of § 264.1089 and § 265.1090 is being amended to correct the sentence structure and eliminate the redundant phrase "the following information."

J. Appendix VI to Part 265

Appendix VI to part 265 is revised and reprinted in total. The revisions made by today's action correct printing errors in the November 25, 1996, final rule amendments (61 FR 59993), reformat the list to be alphabetical, correct typographical errors in compound names (for example, dimethyl hydrazine (1,) is corrected to read 1,1-dimethyl hydrazine), and add CAS numbers that were not available in the November 25, 1996, final rule amendments.

There has been some uncertainty among the regulated community with respect to whether or not cyanide (CN) is classified as an "organic" compound. For purposes of subpart CC, cyanide is listed in Appendix VI to Part 265 as one of the compounds with a Henry's Law Constant less than 0.1 Y/X and as such it is not necessary to quantify CN as a part of the volatile organic concentration determination.

VI Administrative Requirements

A. Docket

Six RCRA dockets contain information pertaining to today's rulemaking: (1) RCRA docket number F–91–CESP–FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal; (2) RCRA docket number F–92–CESA–FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation; (3) RCRA docket number F–94–CESF-FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal; (4) RCRA docket number F–94–CE2A–FFFFF, which contains information pertaining to waste stabilization operations performed in tanks; (5) RCRA docket number F–95–CE3A–FFFFF, which contains information about potential final rule revisions made available for public comment; and (6) RCRA docket number F–96–CE4A–FFFFF, which contains a copy of each of the comment letters submitted in regard to the revisions that the EPA was considering for the final subpart CC standards. The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated RCRA air rules were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1593.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's amendments to the RCRA air rules should have only a minor impact on the information collection burden estimates made previously, and that impact is expected to be a reduction. The changes consist of new definitions, alternative test procedures, clarifications of requirements, and additional compliance options. The changes are not additional requirements, but rather, are reductions in previously published requirements. The overall information-keeping requirements in the rule are being reduced. Consequently, the ICR has not been revised.

C. Executive Order 12866

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to the OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The RCRA subpart CC air rules published on December 6, 1994, were considered significant under Executive Order 12866, and a regulatory impact analysis (RIA) was prepared. The amendments published today clarify the

rule, provide more compliance alternatives, make certain regulatory provisions more lenient, and correct structural problems with the drafting of some sections. The OMB has evaluated this action, and determined it to be non-significant; thus it did not require their review.

D. Regulatory Flexibility

This rule is not subject to notice and comment rulemaking requirements and therefore is not subject to the Regulatory Flexibility Act. However, for the reasons discussed in the December 6, 1994 **Federal Register** (59 FR 62923), this rule does not have a significant impact on a substantial number of small entities. The changes to the rule do not add new control requirements to the December 1994 rule. The amendments in fact reduce the already-existing requirements. Therefore, the amendments are also not considered significant.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) given that it amends the rule published in 1994 to reduce the extent of regulation.

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Immediate Effective Date

The EPA has determined to make today's action effective immediately. The EPA believes that the corrections being made in today's action are either interpretations of existing regulations which do not require prior notice and opportunity for comment, or are technical corrections of obvious errors in the published rules (for example, corrections to regulations inconsistent with or not carrying out statements in the preamble or Background Information Document). Comment on such changes is unnecessary, within the meaning of 5 U.S.C. 553(b)(3)(B). In addition, the EPA notes that many of these clarifications result from the public meeting process, so that the Agency has provided a measure of opportunity for comment.

VII. Legal Authority

These regulations are amended under the authority of sections 2002, 3001–3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921–6927, 6930, and 6974).

List of Subjects

40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Inspection, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, TSDF, Waste determination.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Air pollution, Confidential business information, Hazardous waste, Permit modification, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

Richard D. Wilson,

Acting Asssistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 264, 265, and 270 of the Code of Federal Regulations are amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart B—General Facility Standards

2. Section 264.15 is amended by revising paragraph (b)(4), and leaving the "COMMENT" at the end of the paragraph to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable.

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

3. Section 264.73 is amended by revising paragraph (b)(6) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252—264.254, 264.276, 264.278, 264.280, 264.302—264.304, 264.309, 264.347, 264.602, 264.1034(c)—264.1034(f), 264.1035, 264.1063(d)—264.1063(i), 264.1064, and 264.1082 through 264.1090 of this part.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

4. Section 264.1030 is amended by revising paragraphs (b)(3) and (c), leaving the "NOTE" at the end of paragraph (c), and adding paragraph (e), to read as:

§ 264.1030 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

(c) For the owner and operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of 40 CFR 270.50(d). Until such date when the owner and operator receives a final permit incorporating the requirements of this subpart, the owner and operator is subject to the requirements of 40 CFR 265, subpart AA.

* * * * *

(e) The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

* * * * *

5. Section 264.1031 is amended by revising the definition of "In light liquid service" to read as follows:

§ 264.1031 Definitions.

* * * * *

In light liquid service means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20°C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20°C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

* * * * *

6. Section 264.1033 is amended by revising paragraph (a)(2) to read as follows:

§ 264.1033 Standards: Closed-vent systems and control devices.

(a) * * *

(2)(i) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(ii) Any unit that begins operation after December 21, 1990, and is subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(iii) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(iv) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997, due to an action other than those described in paragraph (a)(2)(iii) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

7. Section 264.1050 is amended by revising paragraphs (b)(3), (c) and (f) to read as follows:

§ 264.1050 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

(c) For the owner or operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of 40 CFR 270.50(d). Until such date when the owner or operator receives a final permit incorporating the requirements of this subpart, the owner or operator is subject to the requirements of 40 CFR part 265, subpart BB.

* * * * *

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of §§ 264.1052 through 264.1060 of this subpart if it is identified, as required in § 264.1064(g)(6) of this subpart.

* * * * *

8. Section 264.1060 is revised to read as follows:

§ 264.1060 Standards: Closed-vent systems and control devices.

(a) Owners and operators of closed-vent systems and control devices subject to this subpart shall comply with the provisions of § 264.1033 of this part.

(b)(1) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(2) Any unit that begins operation after December 21, 1990, and is subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(3) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award or contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(4) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997, due to an action other than those described in paragraph (b)(3) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

9. Section 264.1062 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 264.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

* * * * *

(b) * * *

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every six months) for the valves subject to the requirements in § 264.1057 of this subpart.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in § 264.1057 of this subpart.

* * * * *

10. Section 264.1064 is amended by revising paragraphs (g)(6) and (m) to read as follows:

§ 264.1064 Recordkeeping requirements.

* * * * *

(g) * * *

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

* * * * *

(m) The owner or operator of a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to § 264.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

11. Section 264.1080 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

* * * * *

(c) For the owner and operator of a facility subject to this subpart who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 of this chapter or reviewed in accordance with the requirements of 40 CFR 270.50(d) of this chapter. Until such date when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of 40 CFR 270.50(d), the owner and operator is subject to the requirements of 40 CFR part 265, subpart CC.

* * * * *

12. Section 264.1082 is amended by revising paragraphs (b), (c)(2)(ix)(A), (c)(2)(ix)(B), (c)(3) and (c)(4)(ii) to read as follows:

§ 264.1082 Standards: General.

* * * * *

(b) The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in §§ 264.1084 through 264.1087 of this subpart, as applicable to the hazardous waste management unit, except as provided for in paragraph (c) of this section.

(c) * * *

(2) * * *

(ix) * * *

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A, or a value of 25 ppmw, whichever is less.

(B) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius.

(3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of paragraph (c)(2)(iv) of this section.

(4) * * *

(ii) The organic hazardous constituents in the waste have been treated by the treatment technology established by the EPA for the waste in 40 CFR 268.42(a), or have been removed or destroyed by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

* * * * *

13. Section 264.1083 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 264.1083 Waste determination procedures.

(a) * * *

(2) For a waste determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous waste at the point of waste origination shall be determined in accordance with the procedures specified in 40 CFR 265.1084(a)(2) through (a)(4).

(b) * * *

(1) An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in waste management units exempted under the provisions of § 264.1082(c)(2)(i) through (c)(2)(vi) of this subpart from using air emission controls in accordance with standards specified in §§ 264.1084 through 264.1087 of this subpart, as applicable to the waste management unit.

* * * * *

14. Section 264.1084 is amended by revising paragraph (c)(2)(iii) introductory text and paragraph (c)(2)(iii)(B), adding paragraph (e)(4), revising paragraph (f)(3)(i)(D)(*4*) and paragraph (f)(3)(iii) itroductory text, adding paragraph (f)(4), and adding paragraph (j)(2)(iii) to read as follows:

§ 264.1084 Standards: Tanks.

* * * * *

(c) * * *

(2) * * *

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

* * * * *

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as provided for in paragraphs (c)(2)(iii)(B) (*1*) and (*2*) of this section.

(*1*) During periods when it is necessary to provide access to the tank for performing the activities of paragraph (c)(2)(iii)(B)(*2*) of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(*2*) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

* * * * *

(e) * * *

(4) Safety devices, as defined in 40 CFR 265.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (e) of this section.

(f) * * *

(3) * * *

(i) * * *

(D) * * *

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

* * * * *

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (f)(3)(ii) of this section, the owner or operator shall notify the Regional Administrator in advance of each inspection to provide the Regional Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Regional Administrator of the date and location of the inspection as follows:

* * * * *

(4) Safety devices, as defined in 40 CFR 265.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (f) of this section.

* * * * *

(j) * * *

(2) * * *

(iii) The hazardous waste meets the requirements of § 264.1082(c)(4) of this subpart.

* * * * *

15. Section 264.1085 is amended by revising paragraphs (b)(2), (d)(1)(iii), and (d)(2)(i)(B) and adding paragraph (e)(2)(iii) to read as follows:

§ 264.1085 Standards: Surface impoundments.

* * * * *

(b) * * *

(2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in paragraph (d) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

* * * * *

(2) * * *

(i) * * *

(B) To remove accumulated sludge or other residues from the bottom of the surface impoundment.

* * * * *

(e) * * *

(2) * * *

(iii) The hazardous waste meets the requirements of § 264.1082(c)(4) of this subpart.

* * * * *

16. Section 264.1086 is amended by revising paragraphs (c)(2), (c)(4)(i), (d)(2), (d)(4)(i), and paragraph (g) introductory text to read as follows:

§ 264.1086 Standards: Containers.

* * * * *

(c) * * *

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (c)(1)(iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

* * * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the

container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to 40 CFR part 262 (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

* * * * *

(d) * * *

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

* * * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to 40 CFR part 262 (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

* * * * *

(g) To determine compliance with the no detectable organic emissions requirement of paragraph (d)(1)(ii) of this section, the procedure specified in § 264.1083(d) of this subpart shall be used.

* * * * *

17. Section 264.1087 is amended by revising paragraphs (c)(3)(ii) and (c)(7) to read as follows:

§ 264.1087 Standards: Closed-vent systems and control devices.

* * * * *

(c) * * *

(3) * * *

(ii) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of 40 CFR 264.1033(n), regardless of the average volatile organic concentration of the carbon.

* * * * *

(7) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 40 CFR 264.1033(f)(2) and 40 CFR 264.1033(l). The readings from each monitoring device required by 40 CFR 264.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

18. Section 264.1089 is amended by revising paragraphs (a), (b)(1)(ii)(B), and (f)(1) and adding paragraph (j) to read as follows:

§ 264.1089 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements of this subpart shall record and maintain the information specified in paragraphs (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraphs (i) and (j) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraphs (i) and (j) of this section shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the conditions specified in § 264.1080(d) or § 264.1080(b)(7) of this subpart, respectively.

(b) * * *

(1) * * *

(ii) * * *

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of § 264.1084 of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

* * * * *

(f) * * *

(1) For tanks, surface impoundments, and containers exempted under the hazardous waste organic concentration conditions specified in § 264.1082(c)(1) or §§ 264.1082(c)(2)(i) through (c)(2)(vi) of this subpart, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 264.1083 of this subpart.

* * * * *

(j) For each hazardous waste management unit not using air emission controls specified in §§ 264.1084 through 264.1087 of this subpart in accordance with the requirements of § 264.1080(b)(7) of this subpart, the owner and operator shall record and maintain the following information:

(1) Certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

(2) Identification of the specific requirements codified under 40 CFR part 60, part 61, or part 63 with which the waste management unit is in compliance.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

19. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart B—General Facility Standards

20. Section 265.15 is amended by revising paragraph (b)(4) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090 of this part, where applicable.

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

21. Section 265.73 is amended by revising paragraph (b)(6), and leaving the "COMMENT" at the end of the paragraph, to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by §§ 265.19, 265.90, 265.94, 265.191, 265.193, 265.195, 265.222, 265.223, 265.226, 265.255, 265.259, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302 through 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this part.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

22. Section 265.1030 is amended by revising paragraph (b)(3), leaving the "NOTE" at the end of paragrpah (b)(3), and adding paragraph (d), to read as follows:

§ 265.1030 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or container) and is not a recycling unit under the requirements of 40 CFR 261.6.

(d) The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

23. Section 265.1033 is amended by revising paragraphs (a)(2) and (f)(2)(vi)(B) to read as follows:

§ 265.1033 Standards: Closed-vent systems and control devices.

(a) * * *

(2)(i) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the requirements of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(ii) Any unit that begins operation after December 21, 1990, and is subject to the requirements of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(iii) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(iv) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997, due to an action other than those described in paragraph (a)(2)(iii) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

* * * * *

(f) * * *

(2) * * *

(vi) * * *

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius (°C) or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

24. Section 265.1050 is amended by revising paragraphs (b)(3) and (e) to read as follows:

§ 265.1050 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.34(a) (i.e., a "90-day" tank or

container) and is not a recycling unit under the provisions of 40 CFR 261.6.

* * * * *

(e) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of §§ 265.1052 through 265.1060 of this subpart if it is identified, as required in § 265.1064(g)(6) of this subpart.

* * * * *

25. Section 265.1060 is revised to read as follows:

§ 265.1060 Standards: Closed-vent systems and control devices.

(a) Owners and operators of closed-vent systems and control devices subject to this subpart shall comply with the provisions of § 265.1033 of this part.

(b)(1) The owner or operator of an existing facility who can not install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

(2) Any units that begin operation after December 21, 1990, and are subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 30-month implementation schedule does not apply.

(3) The owner or operator of any facility in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by this subpart can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(4) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997 due to an action other than those described in paragraph (b)(3) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

26. Section 265.1062 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 265.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

* * * * *

(b) * * *

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every six months) for the valves subject to the requirements in § 265.1057 of this subpart.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in § 265.1057 of this subpart.

* * * * *

27. Section 265.1064 is amended by revising paragraphs (g)(6) and (m) to read as follows:

§ 265.1064 Recordkeeping requirements.

* * * * *

(g) * * *

(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

* * * * *

(m) The owner or operator of any facility with equipment that is subject to this subpart and to leak detection, monitoring, and repair requirements under regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to § 265.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulation at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

28. Section 265.1080 is amended by revising paragraphs (b)(1) and the introductory paragraph of (c) to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(1) A waste management unit that holds hazardous waste placed in the unit before December 8, 1996, and in which no hazardous waste is added to the unit on or after December 8, 1996.

* * * * *

(c) For the owner and operator of a facility subject to this subpart who has received a final permit under RCRA section 3005 prior to December 6, 1996, the following requirements apply:

* * * * *

29. Section 265.1081 is amended by revising the definition of "In light material service" to read as follows:

§ 265.1081 Definitions.

* * * * *

In light material service means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

* * * * *

30. Section 265.1082 is revised to read as follows:

§ 265.1082 Schedule for implementation of air emission standards.

(a) Owners or operators of facilities existing on December 6, 1996 and subject to subparts I, J, and K of this part shall meet the following requirements:

(1) Install and begin operation of all control equipment or waste management units required to comply with this subpart and complete modifications of production or treatment processes to satisfy exemption criteria in accordance with § 265.1083(c) of this subpart by December 6, 1996, except as provided for in paragraph (a)(2) of this section.

(2) When control equipment or waste management units required to comply with this subpart cannot be installed and in operation or modifications of production or treatment processes to satisfy exemption criteria in accordance with § 265.1083(c) of this subpart cannot be completed by December 6, 1996, the owner or operator shall:

(i) Install and begin operation of the control equipment and waste management units, and complete modifications of production or treatment processes as soon as possible but no later than December 8, 1997.

(ii) Prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for control equipment, waste management units, and production or treatment process modifications; initiation of on-site installation of control equipment or waste management units, and modifications of production or treatment processes; completion of control equipment or waste management unit installation, and production or treatment process modifications; and performance of testing to demonstrate that the installed equipment or waste management units, and modified production or treatment processes meet the applicable standards of this subpart.

(iii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than December 6, 1996.

(iv) For facilities not subject to § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility no later than December 6, 1996.

(b) Owners or operators of facilities and units in existence on the effective date of a statutory or EPA regulatory amendment that renders the facility subject to subparts I, J, or K of this part shall meet the following requirements:

(1) Install and begin operation of control equipment or waste management units required to comply with this subpart, and complete modifications of production or treatment processes to satisfy exemption criteria of § 265.1083(c) of this subpart by the effective date of the amendment, except as provided for in paragraph (b)(2) of this section.

(2) When control equipment or waste management units required to comply with this subpart cannot be installed and begin operation, or when modifications of production or treatment processes to satisfy exemption criteria of § 265.1083(c) of this subpart cannot be completed by the effective date of the amendment, the owner or operator shall:

(i) Install and begin operation of the control equipment or waste management unit, and complete modification of production or treatment processes as soon as possible but no later than 30 months after the effective date of the amendment.

(ii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, enter and maintain the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than the effective date of the amendment, or

(iii) For facilities not subject to § 265.73 of this part, the owner or operator shall enter and maintain the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility site no later than the effective date of the amendment.

(c) Owners and operators of facilities and units that become newly subject to the requirements of this subpart after December 8, 1997 due to an action other than those described in paragraph (b) of this section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the 30-month implementation schedule does not apply).

(d) The Regional Administrator may elect to extend the implementation date for control equipment at a facility, on a case by case basis, to a date later than December 8, 1997, when special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment, and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of this subpart.

31. Section 265.1083 is amended by revising paragraphs (b), (c)(2)(i), (c)(2)(ix)(A), (c)(2)(ix)(B), (c)(3), and (c)(4)(ii) to read as follows:

§ 265.1083 Standards: General.

* * * * *

(b) The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in §§ 265.1085 through 265.1088 of this subpart, as applicable to the hazardous waste management unit, except as provided for in paragraph (c) of this section.

(c) * * *

(2) * * *

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_t) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

* * * * *

(ix) * * *

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A, or a value of 25 ppmw, whichever is less.

(B) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius.

(3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of paragraph (c)(2)(iv) of this section.

(4) * * *

(ii) The organic hazardous constituents in the waste have been treated by the treatment technology established by the EPA for the waste in 40 CFR 268.42(a), or have been removed or destroyed by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

* * * * *

32. Section 265.1084 is amended by adding paragraphs (a)(3)(v) and (b)(3)(v) and by revising paragraphs (a)(2), (a)(3)(ii)(B), (a)(3)(iii) introductory text, (a)(3)(iii)(A), (a)(3)(iii)(F) introductory text, (a)(3)(iii)(G), (a)(3)(iii)(G)(*1*), (a)(3)(iv), (a)(4)(iv), (b)(1), (b)(3)(ii)(B), (b)(3)(iii) introductory text, (b)(3)(iii)(F) introductory text, (b)(3)(iii)(G) introductory text, (b)(3)(iv), (b)(8)(iii), (b)(9)(iv), and (d)(5)(ii) to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(2) For a waste determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous waste at the point of waste origination shall be determined using either direct measurement as specified in paragraph (a)(3) of this section or by knowledge as specified in paragraph (a)(4) of this section.

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

* * * * *

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (a)(3)(iii)(A) through (a)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (a)(3)(iii)(B) through (a)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (a)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the concentration of each individual chemical constituent measured in the waste by a method other than Method 25D may be corrected to the concentration had it been measured using Method 25D by multiplying the measured concentration by the constituent-specific adjustment factor (f_{m25D}) as specified in paragraph (a)(4)(iii) of this section. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

(A) Method 25D in 40 CFR part 60, appendix A.

* * * * *

(F) Method 8260 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8260. The quality assurance program shall include the following elements:

* * * * *

(G) Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8270. The quality assurance program shall include the following elements:

(*1*) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.

* * * * *

(iv) Calculations.

(A) The average VO concentration ($\bar{C}$) on a mass-weighted basis shall be calculated by using the results for all waste determinations conducted in accordance with paragraphs (a)(3) (ii) and (iii) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

where:

$\bar{C}$ = Average VO concentration of the hazardous waste at the point of waste origination on a mass-weighted basis, ppmw.

i = Individual waste determination "i" of the hazardous waste.

n = Total number of waste determinations of the hazardous waste conducted for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous waste stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous waste during the averaging period, kg/hr.

C_i = Measured VO concentration of waste determination "i" as determined in accordance with the requirements of paragraph (a)(3)(iii) of this section (i.e. the average of the four or more samples specified in paragraph (a)(3)(ii)(B) of this section), ppmw.

(B) For the purpose of determining C_i, for individual waste samples analyzed in accordance with paragraph (a)(3)(iii) of this section, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(*1*) If Method 25D in 40 CFR part 60, Appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

(*2*) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius.

(v) Provided that the test method is appropriate for the waste as required under paragraph (a)(3)(iii) of this section, the EPA will determine compliance based on the test method used by the owner or operator as recorded pursuant to § 265.1090(f)(1) of this subpart.

(4) * * *

(iv) In the event that the Regional Administrator and the owner or operator disagree on a determination of the average VO concentration for a hazardous waste stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in paragraph (a)(3) of this section shall be used to establish compliance with the applicable requirements of this subpart. The Regional Administrator may perform or request that the owner or operator perform this determination using direct measurement. The owner or operator may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of paragraph (a)(3)(iii) of this section.

(b) * * *

(1) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of § 265.1083 (c)(2)(i) through (c)(2)(vi) of this subpart from using air emission controls in accordance with standards specified in §§ 265.1085 through 265.1068 of this subpart, as applicable to the waste management unit.

* * * * *

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

* * * * *

(iii) *Analysis.* Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) of this part, or § 265.1083(c)(2)(i) through (c)(2)(vi) of this subpart are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (b)(3)(iii)(B) through (b)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (b)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the concentration of each individual chemical constituent measured in the waste by a method other than Method 25D may be corrected to the concentration had it been measured using Method 25D by multiplying the measured concentration by the constituent-specific adjustment factor (f_{m25D}) as specified in paragraph (b)(4)(iii) of this section. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

* * * * *

(F) Method 8260 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8260. The quality assurance program shall include the following elements:

* * * * *

(G) Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (incorporated by reference—refer to § 260.11(a) of this chapter). Maintain a formal quality assurance program consistent with the requirements of Method 8270. The quality assurance program shall include the following elements:

* * * * *

(iv) *Calculations.* The average VO concentration ($\bar{C}$) on a mass-weighted basis shall be calculated by using the results for all waste determinations conducted in accordance with paragraphs (b)(3)(ii) and (iii) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

where:

$\bar{C}$=Average VO concentration of the hazardous waste at the point of waste treatment on a mass-weighted basis, ppmw.

i=Individual waste determination "i" of the hazardous waste.

n=Total number of waste determinations of the hazardous waste conducted for the averaging period (not to exceed 1 year).

Q_i=Mass quantity of hazardous waste stream represented by C_i, kg/hr.

Q_T=Total mass quantity of hazardous waste during the averaging period, kg/hr.

C_i=Measured VO concentration of waste determination "i" as determined in accordance with the requirements of paragraph (b)(3)(iii) of this

section (i.e. the average of the four or more samples specified in paragraph (b)(3)(ii)(B) of this section), ppmw.

(v) Provided that the test method is appropriate for the waste as required under paragraph (b)(3)(iii) of this section, compliance shall be determined based on the test method used by the owner or operator as recorded pursuant to § 265.1090(f)(1) of this subpart.

* * * * *

(8) * * *

(iii) The MR shall be calculated by using the mass flow rate determined in accordance with the requirements of paragraph (b)(8)(ii) of this section and the following equation:

$MR = E_b - E_a$

Where:

MR=Actual organic mass removal rate, kg/hr.

E_b=Waste volatile organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

E_a=Waste volatile organic mass flow exiting process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

* * * * *

(9) * * *

(iv) The MR_{bio} shall be calculated by using the mass flow rates and fraction of organic biodegraded determined in accordance with the requirements of paragraphs (b)(9)(ii) and (b)(9)(iii) of this section, respectively, and the following equation:

$MR_{bio} = E_b \times F_{bio}$

Where:

MR_{bio}=Actual organic mass biodegradation rate, kg/hr.

E_b=Waste organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(5)(iv) of this section, kg/hr.

F_{bio}=Fraction of organic biodegraded as determined in accordance with the requirements of paragraph (b)(9)(iii) of this section.

* * * * *

(d) * * *

(5) * * *

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

* * * * *

33. Section 265.1085 is amended by revising the introductory text of paragraph (c)(2)(iii), revising (c)(2)(iii)(B), adding paragraph (e)(4), revising paragraph (f)(3)(i)(D)(4), adding paragraph (f)(4), and adding paragraph (j)(2)(iii) to read as follows:

§ 265.1085 Standards: Tanks.

* * * * *

(c) * * *

(2) * * *

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

* * * * *

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as provided for in paragraphs (c)(2)(iii)(B)(*1*) and (*2*) of this section.

(*1*) During periods it is necessary to provide access to the tank for performing the activities of paragraph (c)(2)(iii)(B)(*2*) of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(*2*) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for the removal of accumulated sludge or other residues from the bottom of the tank.

* * * * *

(e) * * *

(4) Safety devices, as defined in § 265.1081 of this subpart, may be installed and operated as necessary on any tank complying with the requirements of paragraph (e) of this section.

(f) * * *

(3) * * *

(i) * * *

(D) * * *

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

* * * * *

(4) Safety devices, as defined in 40 CFR 265.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (f) of this section.

* * * * *

(j) * * *

(2) * * *

(iii) The hazardous waste meets the requirements of § 265.1083(c)(4) of this subpart.

* * * * *

34. Section 265.1086 is amended by revising paragraphs (b)(2), (d)(1)(iii), and (d)(2)(i)(B) and adding paragraph (e)(2)(iii) to read as follows:

§ 265.1086 Standards: Surface impoundments.

* * * * *

(b) * * *

(2) A cover that is vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (d) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

* * * * *

(2) * * *

(i) * * *

(B) To remove accumulated sludge or other residues from the bottom of the surface impoundment.

* * * * *

(e) * * *

(2) * * *

(iii) The hazardous waste meets the requirements of § 265.1083(c)(4) of this subpart.

* * * * *

35. Section 265.1087 is amended by revising paragraphs (c)(4)(i), (d)(4)(i), and the introductory text of paragraph (g) to read as follows:

§ 265.1087 Standards: Containers.

* * * * *

(c) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to 40 CFR part 262 (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at 40 CFR 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

* * * * *

(d) * * *

(4) * * *

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in 40 CFR 261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to 40 CFR part 262 (EPA Forms 8700–22 and 8700–22A), as required under subpart E of this part, at § 265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

* * * * *

(g) To determine compliance with the no detectable organic emissions requirements of paragraph (d)(1)(ii) of this section, the procedure specified in § 265.1084(d) of this subpart shall be used.

* * * * *

36. Section 265.1088 is amended by revising paragraphs (c)(3)(ii) and (c)(7) to read as follows:

§ 265.1088 Standards: Closed-vent systems and control devices.

* * * * *

(c) * * *

(3) * * *

(ii) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of 40 CFR 265.1033(m), regardless of the average volatile organic concentration of the carbon.

* * * * *

(7) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in 40 CFR 265.1033(f)(2) and 40 CFR 265.1033(k). The readings from each monitoring device required by 40 CFR 265.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

37. Section 265.1090 is amended by revising paragraphs (a), (b)(1)(ii)(B), and (f)(1) and adding paragraph (j) to read as follows:

§ 265.1090 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements in this subpart shall record and maintain the information specified in paragraphs (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraphs (i) and (j) of this section, records required by this section shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraphs (i) and (j) of this section shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in §§ 265.1085 through 265.1088 of this subpart in accordance with the conditions specified in § 265.1080(d) or § 265.1080(b)(7) of this subpart, respectively.

(b) * * *

(1) * * *

(ii) * * *

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 265.1085 of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

* * * * *

(f) * * *

(1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in § 265.1083(c)(1) or § 265.1084(c)(2)(i) through (c)(2)(vi) of this subpart, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 265.1084 of this subpart.

* * * * *

(j) For each hazardous waste management unit not using air emission controls specified in §§ 265.1085 through 265.1088 of this subpart in accordance with the provisions of § 265.1080(b)(7) of this subpart, the owner and operator shall record and maintain the following information:

(1) Certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

(2) Identification of the specific requirements codified under 40 CFR part 60, part 61, or part 63 with which the waste management unit is in compliance.

* * * * *

38. Part 265, Appendix VI is revised to read as follows:

Appendix VI to Part 265—Compounds With Henry's Law Constant Less Than 0.1 Y/X

Compound name	CAS No.
Acetaldol	107–89–1
Acetamide	60–35–5
2-Acetylaminofluorene	53–96–3
3-Acetyl-5-hydroxypiperidine.	
3-Acetylpiperidine	618–42–8
1-Acetyl-2-thiourea	591–08–2
Acrylamide	79–06–1
Acrylic acid	79–10–7
Adenine	73–24–5
Adipic acid	124–04–9
Adiponitrile	111–69–3
Alachlor	15972–60–8
Aldicarb	116–06–3
Ametryn	834–12–8
4-Aminobiphenyl	92–67–1
4-Aminopyridine	504–24–5
Aniline	62–53–3
o-Anisidine	90–04–0
Anthraquinone	84–65–1
Atrazine	1912–24–9
Benzenearsonic acid	98–05–5
Benzenesulfonic acid	98–11–3
Benzidine	92–87–5
Benzo(a)anthracene	56–55–3
Benzo(k)fluoranthene	207–08–9
Benzoic acid	65–85–0
Benzo(g,h,i)perylene	191–24–2
Benzo(a)pyrene	50–32–8
Benzyl alcohol	100–51–6
gamma-BHC	58–89–9
Bis(2-ethylhexyl)phthalate	117–81–7
Bromochloromethyl acetate.	
Bromoxynil	1689–84–5
Butyric acid	107–92–6
Caprolactam (hexahydro-2H-azepin-2-one)	105–60–2
Catechol (o-dihydroxybenzene)	120–80–9
Cellulose	9004–34–6
Cell wall.	
Chlorhydrin (3-Chloro-1,2-propanediol)	96–24–2
Chloroacetic acid	79–11–8
2-Chloroacetophenone	93–76–5
p-Chloroaniline	106–47–8
p-Chlorobenzophenone	134–85–0
Chlorobenzilate	510–15–6
p-Chloro-m-cresol (6-chloro-m-cresol)	59–50–7
3-Chloro-2,5-diketopyrrolidine.	
Chloro-1,2-ethane diol.	
4-Chlorophenol	106–48–9
Chlorophenol polymers (2-chlorophenol & 4-chlorophenol)	95–57–8 & 106–48–9
1-(o-Chlorophenyl)thiourea	5344–82–1
Chrysene	218–01–9
Citric acid	77–92–9
Creosote	8001–58–9
m-Cresol	108–39–4
o-Cresol	95–48–7
p-Cresol	106–44–5
Cresol (mixed isomers)	1319–77–3
4-Cumylphenol	27576–86
Cyanide	57–12–5
4-Cyanomethyl benzoate.	
Diazinon	333–41–5
Dibenzo(a,h)anthracene	53–70–3
Dibutylphthalate	84–74–2
2,5-Dichloroaniline (N,N'-dichloroaniline)	95–82–9
2,6-Dichlorobenzonitrile11	1194–65–6
2,6-Dichloro-4-nitroaniline	99–30–9
2,5-Dichlorophenol	333–41–5
3,4-Dichlorotetrahydrofuran	3511–19
Dichlorvos (DDVP)	62737
Diethanolamine	111–42–2
N,N-Diethylaniline	91–66–7

Compound name	CAS No.
Diethylene glycol	111–46–6
Diethylene glycol dimethyl ether (dimethyl Carbitol)	111–96–6
Diethylene glycol monobutyl ether (butyl Carbitol)	112–34–5
Diethylene glycol monoethyl ether acetate (Carbitol acetate)	112–15–2
Diethylene glycol monoethyl ether (Carbitol Cellosolve)	111–90–0
Diethylene glycol monomethyl ether (methyl Carbitol)	111–77–3
N,N'-Diethylhydrazine	1615–80–1
Diethyl (4-methylumbelliferyl) thionophosphate	299–45–6
Diethyl phosphorothioate	126–75–0
N,N'-Diethylpropionamide	15299–99–7
Dimethoate	60–51–5
2,3-Dimethoxystrychnidin-10-one	357–57–3
4-Dimethylaminoazobenzene	60–11–7
7,12-Dimethylbenz(a)anthracene	57–97–6
3,3-Dimethylbenzidine	119–93–7
Dimethylcarbamoyl chloride	79–44–7
Dimethyldisulfide	624–92–0
Dimethylformamide	68–12–2
1,1-Dimethylhydrazine	57–14–7
Dimethylphthalate	131–11–3
Dimethylsulfone	67–71–0
Dimethylsulfoxide	67–68–5
4,6-Dinitro-o-cresol	534–52–1
1,2-Diphenylhydrazine	122–66–7
Dipropylene glycol (1,1'-oxydi-2-propanol)	110–98–5
Endrin	72–20–8
Epinephrine	51–43–4
mono-Ethanolamine	141–43–5
Ethyl carbamate (urethane)	5–17–96
Ethylene glycol	107–21–1
Ethylene glycol monobutyl ether (butyl Cellosolve)	111–76–2
Ethylene glycol monoethyl ether (Cellosolve)	110–80–5
Ethylene glycol monoethyl ether acetate (Cellosolve acetate)	111–15–9
Ethylene glycol monomethyl ether (methyl Cellosolve)	109–86–4
Ethylene glycol monophenyl ether (phenyl Cellosolve)	122–99–6
Ethylene glycol monopropyl ether (propyl Cellosolve)	2807–30–9
Ethylene thiourea (2-imidazolidinethione)	9–64–57
4-Ethylmorpholine	100–74–3
3-Ethylphenol	620–17–7
Fluoroacetic acid, sodium salt	62–74–8
Formaldehyde	50–00–0
Formamide	75–12–7
Formic acid	64–18–6
Fumaric acid	110–17–8
Glutaric acid	110–94–1
Glycerin (Glycerol)	56–81–5
Glycidol	556–52–5
Glycinamide	598–41–4
Glyphosate	1071–83–6
Guthion	86–50–0
Hexamethylene-1,6-diisocyanate (1,6-diisocyanatohexane)	822–06–0
Hexamethyl phosphoramide	680–31–9
Hexanoic acid	142–62–1
Hydrazine	302–01–2
Hydrocyanic acid	74–90–8
Hydroquinone	123–31–9
Hydroxy-2-propionitrile (hydracrylonitrile)	109–78–4
Indeno (1,2,3-cd) pyrene	193–39–5
Lead acetate	301–04–2
Lead subacetate (lead acetate, monobasic)	1335–32–6
Leucine	61–90–5
Malathion	121–75–5
Maleic acid	110–16–7
Maleic anhydride	108–31–6
Mesityl oxide	141–79–7
Methane sulfonic acid	75–75–2
Methomyl	16752–77–5
p-Methoxyphenol	150–76–5
Methyl acrylate	96–33–3
4,4'-Methylene-bis-(2-chloroaniline)	101–14–4
4,4'-Methylenediphenyl diisocyanate (diphenyl methane diisocyanate)	101–68–8
4,4'-Methylenedianiline	101–77–9
Methylene diphenylamine (MDA).	
5-Methylfurfural	620–02–0

Compound name	CAS No.
Methylhydrazine	60–34–4
Methyliminoacetic acid.	
Methyl methane sulfonate	66–27–3
1-Methyl-2-methoxyaziridine.	
Methylparathion	298–00–0
Methyl sulfuric acid (sulfuric acid, dimethyl ester)	77–78–1
4-Methylthiophenol	106–45–6
Monomethylformamide (N-methylformamide)	123–39–7
Nabam	142–59–6
alpha-Naphthol	90–15–3
beta-Naphthol	135–19–3
alpha-Naphthylamine	134–32–7
beta-Naphthylamine	91–59–8
Neopentyl glycol (dimethyloipropane)	126–30–7
Niacinamide	98–92–0
o-Nitroaniline	88–74–4
Nitroglycerin	55–63–0
2-Nitrophenol	88–75–5
4-Nitrophenol	100–02–7
N-Nitrosodimethylamine	62–75–9
Nitrosoguanidine	674–81–7
N-Nitroso-n-methylurea	684–93–5
N-Nitrosomorpholine (4-nitrosomorpholine)	59–89–2
Oxalic acid	144–62–7
Parathion	56–38–2
Pentaerythritol	115–77–5
Phenacetin	62–44–2
Phenol	108–95–2
Phenylacetic acid	103–82–2
m-Phenylene diamine	108–45–2
o-Phenylene diamine	95–54–5
p-Phenylene diamine	106–50–3
Phenyl mercuric acetate	62–38–4
Phorate	298–02–2
Phthalic anhydride	85–44–9
alpha-Picoline (2-methyl pyridine)	109–06–8
1,3-Propane sultone	1120–71–4
beta-Propiolactone	57–57–8
Proporur (Baygon).	
Propylene glycol	57–55–6
Pyrene	129–00–0
Pyridinium bromide	39416–48–3
Quinoline	91–22–5
Quinone (p-benzoquinone)	106–51–4
Resorcinol	108–46–3
Simazine	122–34–9
Sodium acetate	127–09–3
Sodium formate	141–53–7
Strychnine	57–24–9
Succinic acid	110–15–6
Succinimide	123–56–8
Sulfanilic acid	121–47–1
Terephthalic acid	100–21–0
Tetraethyldithiopyrophosphate	3689–24–5
Tetraethylenepentamine	112–57–2
Thiofanox	39196–18–4
Thiosemicarbazide	79–19–6
2,4-Toluenediamine	95–80–7
2,6-Toluenediamine	823–40–5
3,4-Toluenediamine	496–72–0
2,4-Toluene diisocyanate	584–84–9
p-Toluic acid	99–94–5
m-Toluidine	108–44–1
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1
Triethanolamine	102–71–6
Triethylene glycol dimethyl ether.	
Tripropylene glycol	24800–44–0
Warfarin	81–81–2
3,4-Xylenol (3,4-dimethylphenol)	95–65–8

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

39. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

40. Section 270.14 is amended by revising paragraph (b)(5) to read as follows:

§ 270.14 Contents of part B: General requirements.

* * * * *

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b) of this part. Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088 of this part.

* * * * *

[FR Doc. 97–31792 Filed 12–5–97; 8:45 am]
BILLING CODE 6560–50–P

federal register

Monday
December 8, 1997

Part III

Department of Education

Office of Postsecondary Education; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.038, 84.033, and 84.007]

Office of Postsecondary Education; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an "Application for Approval to Participate in Federal Student Financial Aid Programs" (ED Form E40–34P, OMB #1840–0098) to participate in the Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs for the 1998–99 award year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1) for one or more of the "campus-based programs" for the 1998–99 award year to submit to the Secretary an "Application for Approval to Participate in Federal Student Financial Aid Programs" and all required supporting documents for an eligibility and certification determination.

The campus-based programs are the Federal Perkins Loan Program, the Federal Work-Study Program, and the Federal Supplemental Educational Opportunity Grant Program and are authorized by title IV of the Higher Education Act of 1965, as amended. The 1998–99 award year is July 1, 1998, through June 30, 1999.

DATES: *Closing date:* To participate in the campus-based programs in the 1998–99 award year, a currently ineligible institution must mail or hand-deliver its "Application for Approval to Participate in Federal Student Financial Aid Programs" on or before January 13, 1998. The application and all the required supporting documents for an eligibility and certification determination must be submitted to the Institutional Participation Division at one of the addresses indicated below.

ADDRESSES: *Applications and Required Documents Delivered by Mail.* The application for approval to participate and required supporting documents delivered by mail must be addressed to the U.S. Department of Education, Institutional Participation Division, Room 3522, Regional Office Building 3, 600 Independence Avenue, SW., Washington, DC 20202–5323.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use certified or at least first class mail. Institutions that submit applications for approval to participate and required supporting documents after the closing date will not be considered for funding under the campus-based programs for award year 1998–99.

Applications and Required Documents Delivered by Hand. An application for approval to participate and required supporting documents delivered by hand must be taken to the U.S. Department of Education, Institutional Participation Division, Room 3522, Regional Office Building 3, (GSA Building), 7th and D Streets, SW., Washington, DC 20407.

The Department will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An application for approval to participate for the 1998–99 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1998–99 to any currently ineligible institution unless the institution files its "Application for Approval to Participate in Federal Student Financial Aid Programs" and other required supporting documents by the closing date. If the institution submits its application for approval to participate or other required supporting documents after the January 13, 1998 closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1999–2000 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary but has previously filed a FISAP; or

(2) An additional location of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution but has been included in the institution's 1998–99 FISAP.

The Secretary wishes to advise institutions that the institutional eligibility form, "Application for Approval to Participate in Federal Student Financial Aid Programs," should not be confused with the FISAP form that institutions were required to submit electronically by October 1, 1997, in order to be considered for funds under the campus-based programs for the 1998–99 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 673.

(3) Federal Perkins Loan Program, 34 CFR Part 674.

(4) Federal Work-Study Program, 34 CFR Part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(7) New Restrictions on Lobbying, 34 CFR Part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(9) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact: Liz Neverson or John Frohlicher, Institutional Participation Division, Initial Participation Branch, U.S. Department of Education, Room 3522, Regional Office Building 3, 600 Independence Avenue, SW., Washington, DC 20202–5343. Telephone: (202) 260–3270.

For technical assistance concerning the FISAP or other operational procedures of the campus-based programs, contact: Sandra K. Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, DC 20026–0781. Telephone: (202) 708–9751.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

(**Program Authority:** 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

Dated: November 28, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–32075 Filed 12–5–97; 8:45 am]

BILLING CODE 4000–01–U

Reader Aids

Federal Register

Vol. 62, No. 235

Monday, December 8, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
Administrative Orders:
Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619

5 CFR

213 63627
315 63627
410 63630
591 63630

7 CFR

17 63606
247 64511
301 ..... 64133, 64263
401 63631
454 63631
457 ..... 63631, 63633
1412 63441
Proposed Rules:
70 63471
610 64174
729 63678

8 CFR

213a 64048
299 64048

9 CFR

78 64134
91 64265
93 64265

10 CFR

30 63634
32 63634
50 63825
70 63825
73 63640
Proposed Rules:
50 ..... 63892, 63911
70 63911

12 CFR

8 64135
226 63441
516 64138
543 64138
545 64138
552 64138
556 64138
563 64138
614 63644
703 64146
704 64148
791 64266
1806 64440
Proposed Rules:
404 64177
405 64177
708a 64185
708b 64187

14 CFR

39 ..... 63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519
71 ..... 64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521
97 ..... 63447, 63449, 63451
255 63837
1260 63452
Proposed Rules:
39 ..... 63473, 63475, 63476, 63624, 63912, 63914, 64523
71 ..... 63916, 63917, 64321, 64321, 64322, 64323, 64525

18 CFR

401 64154

20 CFR

255 64161
340 64273
404 64274
422 64274
Proposed Rules:
211 64188
422 63681

21 CFR

101 ..... 63647, 63653, 64634
179 ..... 64102, 64107
Proposed Rules:
200 64048
1308 64526

22 CFR

Proposed Rules:
22 63478
51 63478
53 63478

23 CFR

1327 63655
Proposed Rules:
655 64324

24 CFR

570 64634
888 64521

26 CFR

Proposed Rules:
1 64190

28 CFR
0.....63453

29 CFR
1614.....63847

30 CFR
Proposed Rules:
917.....63684
926.....63685, 64327

31 CFR
Proposed Rules:
356.....64528

32 CFR
Proposed Rules:
199.....64191
901.....63485

33 CFR
117.....63847

36 CFR
701.....64279
Proposed Rules:
1.....63488
14.....63488
327.....64192

37 CFR
202.....63657
Proposed Rules:
253.....63502
255.....63506

38 CFR
21.....63847, 63848
36.....63454

39 CFR
111.....63850
262.....64280
265.....64280

40 CFR
52.....63454, 63456, 63658, 64284, 64522
64.....63662
70.....63662
71.....63662
80.....63853
81.....64284
180.....63662, 63858, 64048, 64287, 64294
185.....64048, 64284, 64287
186.....64048
261.....63458
264.....00000
265.....00000
268.....64504
270.....00000
264.....64636
265.....64636
270.....64636
264.....64636
265.....64636
270.....64636
264.....64636
265.....64636
270.....64636
Proposed Rules:
51.....64532
52.....63687, 64329, 64543
80.....63918
81.....63687
112.....63812
194.....64327

41 CFR
301.....63798

42 CFR
417.....63669
Proposed Rules:
1001.....63689

43 CFR
Proposed Rules:
4.....64544

45 CFR
205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
258.....64301
257.....64301

46 CFR
114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR
20.....63864
22.....63864
25.....64167
73.....63674
Proposed Rules:
73.....63690

48 CFR
Proposed Rules:
1843.....64545
1852.....64545

49 CFR
219.....63464, 63675
225.....63675
240.....63464
Proposed Rules:
Ch. X.....64193
572.....64546

50 CFR
20.....63608
17.....64306
222.....63467
622.....63677
648.....63872
660.....63876
679.....63877, 63878, 63880
Proposed Rules:
14.....64335
17.....64337, 64340
23.....64347
679.....63690

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 8, 1997

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Kiwifruit grown in—
California; published 11-7-97
Marketing orders; expenses and assessment rates; published 11-7-97
AGRICULTURE DEPARTMENT
Food and Consumer Service
Commodity supplemental food program:
Caseload assignment; published 10-23-97
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Michigan; published 11-6-97
Missouri; correction; published 12-8-97
Air quality planning purposes; designation of areas:
Arizona; published 11-6-97
Hazardous waste:
Treatment, storage, and disposal facilities and hazardous waste generators—
Tanks, surface impoundments, and containers; organic air emission standards; clarification; published 12-8-97
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
South Carolina; published 11-4-97
GENERAL SERVICES ADMINISTRATION
Freedom of Information Act; implementation:
Agency records and informational materials; public availability; published 11-6-97
SECURITIES AND EXCHANGE COMMISSION
Securities:
Lost securityholders; transfer agent requirements; published 10-7-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; published 11-21-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Farm Service Agency
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts; comments due by 12-9-97; published 12-2-97
Program regulations:
Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97
AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97
AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97
AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Community programs guaranteed loan program; comments due by 12-8-97; published 10-7-97
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
IFQ survivorship transfer provisions; modification; comments due by 12-8-97; published 11-6-97
Scallop; comments due by 12-9-97; published 11-24-97
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 12-8-97; published 10-23-97
Northeastern United States fisheries—
Northeast multispecies; comments due by 12-12-97; published 11-12-97
COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Practice rules; trademark trial and appeal board proceedings; comments due by 12-10-97; published 11-4-97
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Ohio; comments due by 12-10-97; published 8-12-97
Pennsylvania; correction; comments due by 12-8-97; published 11-6-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glyphosate oxidoreductase; comments due by 12-8-97; published 10-8-97
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 12-8-97; published 11-6-97
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
North American Numbering Plan administration—
Carrier identification codes; comments due by 12-8-97; published 10-29-97
Common carriers:
Telecommunications carrier interceptions; comments due by 12-12-97; published 11-28-97
Television broadcasting:
Two-way transmissions; multipoint distribution service and instructional television fixed service licensees participation; comments due by 12-9-97; published 11-6-97
FEDERAL DEPOSIT INSURANCE CORPORATION
Insured State banks and savings associations; activities; comments due by 12-11-97; published 9-12-97
FEDERAL ELECTION COMMISSION
Rulemaking petitions:
Bopp, James, Jr.; comments due by 12-8-97; published 11-6-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Child support enforcement program:
Quarterly wage and unemployment compensations claims reporting to National Directory of New Hires; comments due by 12-8-97; published 10-7-97
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Replacement housing factor in modernization funding; comments due by 12-9-97; published 9-10-97
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Illinois Cave amphipod; comments due by 12-8-97; published 10-9-97
JUSTICE DEPARTMENT
Drug Enforcement Administration
Comprehensive Methamphetamine Control Act of 1996; implementation:
Pseudoephedrine, phenylpropenolamine, and combination ephedrine drug products; transaction reporting requirements; comments due by 12-8-97; published 10-7-97
LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards, etc.:
Longshoring and marine terminals; piggybacking of two containers using twist locks; comments due by 12-8-97; published 10-9-97
OFFICE OF MANAGEMENT AND BUDGET
Management and Budget Office
Freedom of Information Act; implementation; comments due by 12-8-97; published 10-9-97
POSTAL SERVICE
Domestic Mail Manual:
Perishable contents; ancillary service

endorsements; comments due by 12-8-97; published 11-7-97

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:
BellSouth Winterfest Boat Parade; comments due by 12-8-97; published 11-7-97

TRANSPORTATION DEPARTMENT

Computer reservation systems, carrier-owned; comments due by 12-9-97; published 10-30-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 12-8-97; published 11-6-97
Avions Pierre Robin; comments due by 12-8-97; published 11-7-97
Dornier; comments due by 12-8-97; published 11-7-97
Eurocopter Deutschland GmbH; comments due by 12-8-97; published 10-9-97
EXTRA Flugzeugbau GmbH; comments due by 12-8-97; published 11-5-97
HOAC Austria; comments due by 12-8-97; published 11-7-97
MT-Propeller Entwicklung GMBH; comments due by 12-8-97; published 10-7-97
Saab; comments due by 12-8-97; published 11-7-97
Teledyne Continental Motors; comments due by 12-8-97; published 10-10-97
Class E airspace; comments due by 12-8-97; published 11-6-97

TREASURY DEPARTMENT

Customs Service

Organization and functions; field oranization, ports of entry, etc.:
Orlando-Sanford Airport, FL; port of entry; comments due by 12-8-97; published 11-7-97

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Exemptions from currency transactions reporting; comments due by 12-8-97; published 9-8-97

VETERANS AFFAIRS DEPARTMENT

Health care professionals; reporting to State licensing boards; policy; comments due by 12-8-97; published 10-8-97

Loan guaranty:
Refinancing loans; interest rate reduction requirements; comments due by 12-8-97; published 10-8-97

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1254/P.L. 105–131
To designate the United States Post Office building located at 1919 West Bennett Street in Springfield, Missouri, as the "John N. Griesemer Post Office Building". (Dec. 2, 1997; 111 Stat. 2562)

S. 156/P.L. 105–132
Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act (Dec. 2, 1997; 111 Stat. 2563)

S. 476/P.L. 105–133
To provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000. (Dec. 2, 1997; 111 Stat. 2568)

S. 738/P.L. 105–134
Amtrak Reform and Accountability Act of 1997 (Dec. 2, 1997; 111 Stat. 2570)

S. 1139/P.L. 105–135
Small Business Reauthorization Act of 1997 (Dec. 2, 1997; 111 Stat. 2582)

S. 1161/P.L. 105–136
To amend the Immigration and Nationality Act to authorize appropriations for refugee and entrant assistance for fiscal years 1998 and 1999. (Dec. 2, 1997; 111 Stat. 2639)

S. 1193/P.L. 105–137
Aviation Insurance Reauthorization Act of 1997 (Dec. 2, 1997; 111 Stat. 2640)

S. 1559/P.L. 105–138
To provide for the design, construction, furnishing, and equipping of a Center for Historically Black Heritage within Florida A&M University. (Dec. 2, 1997; 111 Stat. 2642)

S. 1565/P.L. 105–139
To make technical corrections to the Nicaraguan Adjustment and Central American Relief Act. (Dec. 2, 1997; 111 Stat. 2644)

S.J. Res. 39/P.L. 105–140
To provide for the convening of the Second Session of the One Hundred Fifth Congress. (Dec. 2, 1997; 111 Stat. 2646)

Last List December 4, 1997

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly: It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A "●" precedes each entry that is now available on-line through the Government Printing Office's *GPO Access* service at http://www.access.gpo.gov/nara/cfr. For information about *GPO Access* call 1-888-293-6498 (toll free).

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512–1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2250.

Title	Stock Number	Price	Revision Date
●1, 2 (2 Reserved)	(869–032–00001–8)	$5.00	Feb. 1, 1997
●3 (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
●4	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
●1–699	(869–032–00004–2)	34.00	Jan. 1, 1997
●700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
●1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
●0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
●27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
●53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
●210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
●300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
●400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
●700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
●900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
●1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
●1200–1499	(869–032–00016–6)	33.00	Jan. 1, 1997
●1500–1899	(869–032–00017–4)	53.00	Jan. 1, 1997
●1900–1939	(869–032–00018–2)	19.00	Jan. 1, 1997
●1940–1949	(869–032–00019–1)	40.00	Jan. 1, 1997
●1950–1999	(869–032–00020–4)	42.00	Jan. 1, 1997
●2000–End	(869–032–00021–2)	20.00	Jan. 1, 1997
●8	(869–032–00022–1)	30.00	Jan. 1, 1997
9 Parts:			
●1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
●200–End	(869–032–00024–7)	33.00	Jan. 1, 1997
10 Parts:			
●0–50	(869–032–00025–5)	39.00	Jan. 1, 1997
●51–199	(869–032–00026–3)	31.00	Jan. 1, 1997
●200–499	(869–032–00027–1)	30.00	Jan. 1, 1997
●500–End	(869–032–00028–0)	42.00	Jan. 1, 1997
●11	(869–032–00029–8)	20.00	Jan. 1, 1997
12 Parts:			
●1–199	(869–032–00030–1)	16.00	Jan. 1, 1997
●200–219	(869–032–00031–0)	20.00	Jan. 1, 1997
●220–299	(869–032–00032–8)	34.00	Jan. 1, 1997
●300–499	(869–032–00033–6)	27.00	Jan. 1, 1997
●500–599	(869–032–00034–4)	24.00	Jan. 1, 1997
●600–End	(869–032–00035–2)	40.00	Jan. 1, 1997
●13	(869–032–00036–1)	23.00	Jan. 1, 1997
14 Parts:			
●1–59	(869–032–00037–9)	44.00	Jan. 1, 1997
●60–139	(869–032–00038–7)	38.00	Jan. 1, 1997
140–199	(869–032–00039–5)	16.00	Jan. 1, 1997
●200–1199	(869–032–00040–9)	30.00	Jan. 1, 1997
●1200–End	(869–032–00041–7)	21.00	Jan. 1, 1997
15 Parts:			
0–299	(869–032–00042–5)	21.00	Jan. 1, 1997
●300–799	(869–032–00043–3)	32.00	Jan. 1, 1997
●800–End	(869–032–00044–1)	22.00	Jan. 1, 1997
16 Parts:			
●0–999	(869–032–00045–0)	30.00	Jan. 1, 1997
●1000–End	(869–032–00046–8)	34.00	Jan. 1, 1997
17 Parts:			
●1–199	(869–032–00048–4)	21.00	Apr. 1, 1997
●200–239	(869–032–00049–2)	32.00	Apr. 1, 1997
●240–End	(869–032–00050–6)	40.00	Apr. 1, 1997
18 Parts:			
●1–399	(869–032–00051–4)	46.00	Apr. 1, 1997
●400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
19 Parts:			
●1–140	(869–032–00053–1)	33.00	Apr. 1, 1997
●141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
●200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
●1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
●400–499	(869–032–00057–3)	46.00	Apr. 1, 1997
●500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
21 Parts:			
●1–99	(869–032–00059–0)	21.00	Apr. 1, 1997
●100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
●170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
●200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
●300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
●500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
●600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
●800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
●1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
1–299	(869–032–00068–9)	42.00	Apr. 1, 1997
●300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
●23	(869–032–00070–1)	26.00	Apr. 1, 1997
24 Parts:			
●0–199	(869–032–00071–9)	32.00	Apr. 1, 1997
200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
500–699	(869–032–00073–5)	18.00	Apr. 1, 1997
●700–1699	(869–032–00074–3)	42.00	Apr. 1, 1997
●1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
●25	(869–032–00076–0)	42.00	Apr. 1, 1997
26 Parts:			
●§§ 1.0–1–1.60	(869–032–00077–8)	21.00	Apr. 1, 1997
●§§ 1.61–1.169	(869–032–00078–6)	44.00	Apr. 1, 1997
●§§ 1.170–1.300	(869–032–00079–4)	31.00	Apr. 1, 1997
●§§ 1.301–1.400	(869–032–00080–8)	22.00	Apr. 1, 1997
●§§ 1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
●§§ 1.441–1.500	(869–032–00082–4)	22.00	Apr. 1, 1997
●§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
●§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
●§§ 1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
●§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
●§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
●§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
●2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
●40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
●50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
●300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
500–599	(869–032–00094–8)	6.00	[4] Apr. 1, 1990
●600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
1–199	(869–032–00096–4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
200-End	(869-032-00097-2)	17.00	Apr. 1, 1997
28 Parts:			
1-42	(869-032-00098-1)	36.00	July 1, 1997
●43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
●0-99	(869-032-00100-6)	27.00	July 1, 1997
●100-499	(869-032-00101-4)	12.00	July 1, 1997
●500-899	(869-032-00102-2)	41.00	July 1, 1997
●900-1899	(869-032-00103-1)	21.00	July 1, 1997
●1900-1910 (§§ 1900 to 1910.999)	(869-032-00104-9)	43.00	July 1, 1997
1910 (§§ 1910.1000 to end)	(869-032-00105-7)	29.00	July 1, 1997
●1911-1925	(869-032-00106-5)	19.00	July 1, 1997
1926	(869-032-00107-3)	31.00	July 1, 1997
●1927-End	(869-032-00108-1)	40.00	July 1, 1997
30 Parts:			
●1-199	(869-032-00109-0)	33.00	July 1, 1997
200-699	(869-032-00110-3)	28.00	July 1, 1997
●700-End	(869-032-00111-1)	32.00	July 1, 1997
31 Parts:			
●0-199	(869-032-00112-0)	20.00	July 1, 1997
200-End	(869-032-00113-8)	42.00	July 1, 1997
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-032-00114-6)	42.00	July 1, 1997
●191-399	(869-032-00115-4)	51.00	July 1, 1997
●400-629	(869-032-00116-2)	33.00	July 1, 1997
●630-699	(869-032-00117-1)	22.00	July 1, 1997
●700-799	(869-032-00118-9)	28.00	July 1, 1997
●800-End	(869-032-00119-7)	27.00	July 1, 1997
33 Parts:			
1-124	(869-032-00120-1)	27.00	July 1, 1997
125-199	(869-032-00121-9)	36.00	July 1, 1997
●200-End	(869-032-00122-7)	31.00	July 1, 1997
34 Parts:			
●1-299	(869-032-00123-5)	28.00	July 1, 1997
●300-399	(869-032-00124-3)	27.00	July 1, 1997
●400-End	(869-032-00125-1)	44.00	July 1, 1997
●35	(869-032-00126-0)	15.00	July 1, 1997
36 Parts			
●1-199	(869-032-00127-8)	20.00	July 1, 1997
200-299	(869-032-00128-6)	21.00	July 1, 1997
300-End	(869-032-00129-4)	34.00	July 1, 1997
●37	(869-032-00130-8)	27.00	July 1, 1997
38 Parts:			
0-17	(869-032-00131-6)	34.00	July 1, 1997
●18-End	(869-032-00132-4)	38.00	July 1, 1997
●39	(869-032-00133-2)	23.00	July 1, 1997
40 Parts:			
●1-49	(869-032-00134-1)	31.00	July 1, 1997
●50-51	(869-032-00135-9)	23.00	July 1, 1997
52 (52.01-52.1018)	(869-032-00136-7)	27.00	July 1, 1997
52 (52.1019-End)	(869-032-00137-5)	32.00	July 1, 1997
●53-59	(869-032-00138-3)	14.00	July 1, 1997
60	(869-032-00139-1)	52.00	July 1, 1997
●61-62	(869-032-00140-5)	19.00	July 1, 1997
●63-71	(869-032-00141-3)	57.00	July 1, 1997
●72-80	(869-032-00142-1)	35.00	July 1, 1997
●81-85	(869-032-00143-0)	32.00	July 1, 1997
86	(869-032-00144-8)	50.00	July 1, 1997
●87-135	(869-032-00145-6)	40.00	July 1, 1997
●136-149	(869-032-00146-4)	35.00	July 1, 1997
●150-189	(869-032-00147-2)	32.00	July 1, 1997
●190-259	(869-032-00148-1)	22.00	July 1, 1997
●260-265	(869-032-00149-9)	29.00	July 1, 1997
●266-299	(869-032-00150-2)	24.00	July 1, 1997
●300-399	(869-032-00151-1)	27.00	July 1, 1997
●400-424	(869-032-00152-9)	33.00	[6] July 1, 1996
●425-699	(869-032-00153-7)	40.00	July 1, 1997
●700-789	(869-032-00154-5)	38.00	July 1, 1997
●790-End	(869-032-00155-3)	19.00	July 1, 1997
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
●1-100	(869-032-00156-1)	14.00	July 1, 1997
101	(869-032-00157-0)	36.00	July 1, 1997
●102-200	(869-032-00158-8)	17.00	July 1, 1997
201-End	(869-032-00159-6)	15.00	July 1, 1997
42 Parts:			
●1-399	(869-028-00163-7)	32.00	Oct. 1, 1996
●400-429	(869-028-00164-5)	34.00	Oct. 1, 1996
●430-End	(869-028-00165-3)	44.00	Oct. 1, 1996
43 Parts:			
●1-999	(869-028-00166-1)	30.00	Oct. 1, 1996
●1000-end	(869-028-00167-0)	45.00	Oct. 1, 1996
●44	(869-028-00168-8)	31.00	Oct. 1, 1996
45 Parts:			
●1-199	(869-028-00169-6)	28.00	Oct. 1, 1996
●200-499	(869-028-00170-0)	14.00	[5] Oct. 1, 1995
*●500-1199	(869-032-00168-5)	29.00	Oct. 1, 1997
●1200-End	(869-028-00172-6)	36.00	Oct. 1, 1996
46 Parts:			
●1-40	(869-028-00173-4)	26.00	Oct. 1, 1996
●41-69	(869-028-00174-2)	21.00	Oct. 1, 1996
●70-89	(869-028-00175-1)	11.00	Oct. 1, 1996
●90-139	(869-028-00176-9)	26.00	Oct. 1, 1996
●140-155	(869-028-00177-7)	15.00	Oct. 1, 1996
●156-165	(869-028-00178-5)	20.00	Oct. 1, 1996
●166-199	(869-028-00179-3)	22.00	Oct. 1, 1996
*●200-499	(869-032-00177-4)	21.00	Oct. 1, 1997
*500-End	(869-032-00178-2)	17.00	Oct. 1, 1997
47 Parts:			
●0-19	(869-028-00182-3)	35.00	Oct. 1, 1996
●20-39	(869-028-00183-1)	26.00	Oct. 1, 1996
●40-69	(869-028-00184-0)	18.00	Oct. 1, 1996
●70-79	(869-028-00185-8)	33.00	Oct. 1, 1996
●80-End	(869-028-00186-6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1-51)	(869-028-00187-4)	45.00	Oct. 1, 1996
●1 (Parts 52-99)	(869-028-00188-2)	29.00	Oct. 1, 1996
●2 (Parts 201-251)	(869-028-00189-1)	22.00	Oct. 1, 1996
●2 (Parts 252-299)	(869-028-00190-4)	16.00	Oct. 1, 1996
●3-6	(869-028-00191-2)	30.00	Oct. 1, 1996
●7-14	(869-028-00192-1)	29.00	Oct. 1, 1996
●15-28	(869-028-00193-9)	38.00	Oct. 1, 1996
●29-End	(869-028-00194-7)	25.00	Oct. 1, 1996
49 Parts:			
●1-99	(869-028-00195-5)	32.00	Oct. 1, 1996
●100-185	(869-028-00196-3)	50.00	Oct. 1, 1996
*186-199	(869-032-00193-6)	11.00	Oct. 1, 1997
●200-399	(869-028-00198-0)	39.00	Oct. 1, 1996
●400-999	(869-028-00199-8)	49.00	Oct. 1, 1996
●1000-1199	(869-028-00200-5)	23.00	Oct. 1, 1996
●1200-End	(869-028-00201-3)	15.00	Oct. 1, 1996
50 Parts:			
●1-199	(869-028-00202-1)	34.00	Oct. 1, 1996
●200-599	(869-028-00203-0)	22.00	Oct. 1, 1996
●600-End	(869-028-00204-8)	26.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-032-00047-6)	45.00	Jan. 1, 1997
Complete 1997 CFR set		951.00	1997
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
Complete set (one-time mailing)		264.00	1996
Complete set (one-time mailing)		264.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5419

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions in 24x microfiche format:

___ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

___ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1993
(Book I) $51.00
1993
(Book II) $51.00
1994
(Book I) $56.00
1994
(Book II) $52.00
1995
(Book I) $60.00
1995
(Book II) $65.00
1996
(Book I) $66.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

(Rev. 12/97)

Now Available Online

through

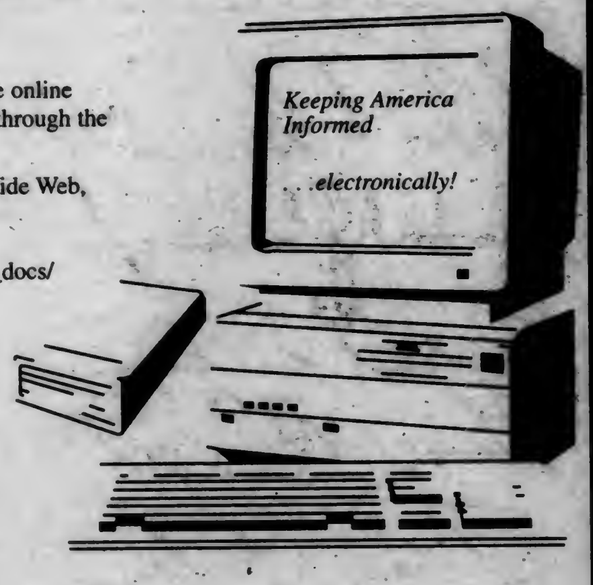
GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE



Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.access.gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–9–97
Vol. 62 No. 236

federal register

Tuesday
December 9, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–9–97
Vol. 62 No. 236
Pages 64677–65004

federal register

Tuesday
December 9, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see the announcement on the inside cover of this issue.

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations
WHO: Sponsored by the Office of the Federal Register.
WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.
WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 16, 1997 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 236
Tuesday, December 9, 1997

Agriculture Department
See Animal and Plant Health Inspection Service
See Cooperative State Research, Education, and Extension Service
See Food Safety and Inspection Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 64813

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Pine shoot beetle, 64677–64680

Assassination Records Review Board
NOTICES
Formal determinations on records release; correction, 64801

Children and Families Administration
See Refugee Resettlement Office

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Higher education challenge program, 64992–64994

Defense Department
See Air Force Department
See Navy Department
RULES
Federal Acquisition Regulation (FAR):
Commercial bills of lading; small package shipments, 64936
Contractor overhead rates; final settlement, 64915–64916
Contractor personnel compensation, 64930–64931
General Accounting Office bid protests; conformation, 64933–64934
Independent research and development/bid and proposal costs ceiling; requirement removed (1996 FY and beyond), 64931–64932
Information Technology Management Reform Act of 1996; implementation, 64914–64915
Introduction, 64912–64913
New Mexico gross receipts and compensating tax, 64930
Novation and related agreements, 64934–64936
Part 30 deviations, 64913–64914
Preaward survey of prospective contractor; quality assurance, 64936–64939
Simplified acquisition procedures reorganization; electronic commerce use, 64916–64929
Small entity compliance guide, 64952–64953
Technical corrections, 64940–64952
Trade sanction exemptions; reporting requirements, 64929–64930
Travel reimbursement, 64932–64933
NOTICES
Grants and cooperative agreements; availability, etc.:
Institutions of higher education ineligible for Federal funds; list, 64813
Meetings:
Women in Services Advisory Committee, 64813

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
Arkay Packaging Corp. et al., 64801–64802

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64816

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
School-to-work opportunities partnerships; State and local systems, 64886–64894

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
NP Energy Inc., 64816–64817

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Ethylene oxide commercial sterilization and fumigation operations, 64736–64738
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana, 64725–64736
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 64722–64725
Toxic substances:
Significant new uses—
Polyalkylene polyamine, 64738–64740
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Arizona, 64794–64795
Toxic substances:
Significant new uses—
Methylenebistrisubstituted aniline-, etc., 64795–64799
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64828–64829

Confidential business information and data transfer, 64829–64830
Municipal solid waste landfill permit programs; adequacy determinations:
Alaska et al., 64830–64831
Pesticide registration, cancellation, etc.:
EcoSoil Systems et al., 64831–64832

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Export-Import Bank
NOTICES
Meetings:
Advisory Committee, 64832

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 64832–64833

Federal Aviation Administration
RULES
Airworthiness directives:
Bombardier, 64680–64682
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 64777–64778, 64787–64789
Boeing, 64779–64780
Dornier, 64784–64785
Eurocopter France, 64785–64787
Fokker, 64775–64777
Grumman, 64780–64782
SAAB, 64782–64784
NOTICES
Advisory circulars; availability, etc.:
Transport category rotorcraft certification; correction, 64910

Federal Communications Commission
RULES
Common carrier services:
Foreign participation in U.S. telecommunications market; effective competitive opportunities test changes, 64741–64759
North American Numbering Plan administration—
Local exchange carriers; four-digit carrier identification code implementation schedule; waiver petitions, 64759–64765
NOTICES
Common carrier services:
Local multipoint distribution services—
Auction and filing requirements in 28 GHz and 31 GHz bands, 64833–64835
Auction no. 17; postponement, 64833

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Open access; non-discriminatory transmission services provided by public utilities—
Wholesale competition promotion; stranded costs recovery by public and transmitting utilities, 64688–64715
Open access same-time information system (formerly real-time information networks) and standards of conduct for public utilities, 64715–64720
NOTICES
Electric rate and corporate regulation filings:
Florida Power Corp. et al., 64824–64828
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 64817
Colorado Interstate Gas Co., 64817
El Paso Natural Gas Co., 64817–64818
Empire District Electric Co., 64818
Granite State Gas Transmission, Inc., 64818
Iroquois Gas Transmission System, L.P., 64818–64819
KN Interstate Gas Transmission Co., 64819
Koch Gateway Pipeline Co., 64819–64820
NorAm Gas Transmission Co., 64820
Northern Natural Gas Co., 64820–64821
Panhandle Eastern Pipe Line Co., 64821
Questar Pipeline Co., 64821–64822
South Carolina Electric & Gas Co., 64822
Southern Natural Gas Co., 64822
SR Hydropower of Brockway Mills, Inc., et al., 64822
Texas Eastern Transmission Corp.; correction, 64910
Transcontinental Gas Pipe Line Corp. et al., 64823
Virginia Electric & Power Co., 64823
West Texas Gas, Inc., 64823
Williams Natural Gas Co., 64824
Williston Basin Interstate Pipeline Co., 64824

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Spotsylvania and Stafford Counties, VA, 64907

Federal Maritime Commission
NOTICES
Agreements filed, etc., 64835
Freight forwarders licenses:
Pathfinder Logistics et al., 64835
Water and ocean freight forwarders:
Anti-rebate certifications, failure to file; tariff cancellations, 64835–64845

Federal Reserve System
RULES
Organization, functions, and authority delegations:
Banking Supervision and Regulation Division, Director, 64996
PROPOSED RULES
Bank holding companies and change in bank control (Regulation Y):
Real estate appraisals, 64997–64999
Truth in lending (Regulation Z):
Official staff commentary; update, 64769–64775
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64845–64846
Reporting and recordkeeping requirements, 64846

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Namibian cheetah, 64800
Red wolf, 64799–64800

Food and Drug Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64847–64848

Medical devices; premarket approval:
ALLERGAN Medical Optics; Model SA40N AMO Array Multifocal Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens, 64848
Prescription drugs; user fees (1998 FY), 64849–64851
Reporting and recordkeeping requirements, 64851

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Chilling processes; retained water in poultry products; protocols for obtaining data, 64767–64769

Foreign Assets Control Office
RULES
Foreign assets control regulations:
North Korea; outstanding claims held by U.S. nationals; reporting requirements, 64720–64722

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 64846–64847

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Commercial bills of lading; small package shipments, 64936
Contractor overhead rates; final settlement, 64915–64916
Contractor personnel compensation, 64930–64931
General Accounting Office bid protests; conformation, 64933–64934
Independent research and development/bid and proposal costs ceiling; requirement removed (1996 FY and beyond), 64931–64932
Information Technology Management Reform Act of 1996; implementation, 64914–64915
Introduction, 64912–64913
New Mexico gross receipts and compensating tax, 64930
Novation and related agreements, 64934–64936
Part 30 deviations, 64913–64914
Preaward survey of prospective contractor; quality assurance, 64936–64939
Simplified acquisition procedures reorganization; electronic commerce use, 64916–64929
Small entity compliance guide, 64952–64953
Technical corrections, 64940–64952
Trade sanction exemptions; reporting requirements, 64929–64930
Travel reimbursement, 64932–64933
Freedom of Information Act; implementation, 64740–64741

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Refugee Resettlement Office

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64851–64852

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Fresh cut flowers from—
Colombia, 64802–64803
Hot-rolled lead and bismuth carbon steel products from—
United Kingdom, 64803–64806
Countervailing duties:
Refrigeration compressors from—
Singapore, 64806–64808
Welded carbon steel pipes and tubes and welded carbon steel line pipe from—
Turkey, 64808–64813

Justice Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64885–64886

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Wage and Hour Division

Land Management Bureau
NOTICES
Oil and gas leases:
Utah, 64883

Mine Safety and Health Administration
PROPOSED RULES
Metal and nonmetal mine and coal mine safety and health:
Underground mines—
Roof-bolting machines use; safety standards, 64789–64790

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Commercial bills of lading; small package shipments, 64936
Contractor overhead rates; final settlement, 64915–64916
Contractor personnel compensation, 64930–64931
General Accounting Office bid protests; conformation, 64933–64934
Independent research and development/bid and proposal costs ceiling; requirement removed (1996 FY and beyond), 64931–64932
Information Technology Management Reform Act of 1996; implementation, 64914–64915
Introduction, 64912–64913
New Mexico gross receipts and compensating tax, 64930
Novation and related agreements, 64934–64936
Part 30 deviations, 64913–64914
Preaward survey of prospective contractor; quality assurance, 64936–64939
Simplified acquisition procedures reorganization; electronic commerce use, 64916–64929
Small entity compliance guide, 64952–64953
Technical corrections, 64940–64952
Trade sanction exemptions; reporting requirements, 64929–64930
Travel reimbursement, 64932–64933

NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Power Efficiency Corp., 64895

National Communications System
NOTICES
Meetings:
Telecommunications Service Priority System Oversight Committee, 64895

National Institute of Standards and Technology
RULES
Advanced technology program; policy and procedures, 64682–64687

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 64852–64853
National Institute of Allergy and Infectious Diseases, 64853
National Institute on Drug Abuse, 64853–64854
National Library of Medicine, 64854
Scientific Review Center special emphasis panels, 64854–64855
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Collateral Therapeutics, 64855

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Scallop, 64766
Northeastern United States fisheries—
Atlantic surf clam and ocean quahog, 64765–64766

National Park Service
NOTICES
Meetings:
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 64883
National Register of Historic Places:
Pending nominations, 64883–64884

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 64895

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 64895

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Naval Sea Systems Command; relocation from Arlington, VA, to Washington Navy Yard, Washington, DC, 64813–64816

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 64896
Organization, functions, and authority delegations:
Local public document room relocation and establishment—
Ft. St. Vrain Nuclear Generating Station, CO; closure, 64897
Applications, hearings, determinations, etc.:
Northeast Nuclear Energy Co., 64895–64896

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
PROCLAMATIONS
Special observances:
Pearl Harbor Remembrance Day, National (Proc. 7058), 65003–65004

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
Vernalis Adaptive Management Plan, CA; flow objectives, 64884–64885

Refugee Resettlement Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Newly arriving refugees; discretionary grants, 64856–64883

Securities and Exchange Commission
RULES
Investment companies:
Registration fees; calculation methods and payment requirements; update, 64687–64688
Securities and investment companies:
Money market funds; rules and forms; technical amendments, 64968–64990
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 64901–64902
Options Clearing Corp., 64902–64903
Philadelphia Stock Exchange, Inc., 64903–64905
Applications, hearings, determinations, etc.:
Public utility holding company filings, 64897–64899
Seligman Capital Fund, Inc., et al., 64899–64901

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64905
Disaster loan areas:
Florida, 64905–64906
License surrenders:
767 L.P., 64906
Hanover Capital Corp., 64906
LaSung Investment & Finance Co., 64906
Rainbow Bridge Capital Corp., 64906

Thrift Supervision Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64908–64909

Trade Representative, Office of United States
NOTICES
Meetings:
Industry Sector Advisory Committees—
Capital goods, 64906–64907
Unfair trade practices, petitions, etc.:
Turkey; U.S. films; box office revenues; discriminatory tax imposition; investigation termination, 64907

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration

Treasury Department
See Foreign Assets Control Office
See Thrift Supervision Office

Veterans Affairs Department
RULES
Medical benefits:
Veterans' Health Care Eligibility Reform Act of 1996; implementation—
Sensori-neural aids (eyeglasses, contact lenses, hearing aids); furnishing guidelines, 64722
PROPOSED RULES
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Attorney fee matters, 64790–64794
NOTICES
Legal interpretations; General Counsel-precedent opinions:
Veterans' benefits under VA administered laws; summary; correction, 64910

Wage and Hour Division
RULES
Student-learners, apprentices, learners, messengers, and student workers; employment; regulations consolidation, 64956–64966

Separate Parts In This Issue

Part II
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 64912–64953

Part III
Department of Labor, Wage and Hour Division, 64956–64966

Part IV
Securities and Exchange Commission, 64968–64990

Part V
Department of Agriculture, Cooperative State Research, Education, and Extension Service, 64992–64994

Part VI
Federal Reserve, 64996–64999

Part VII
The President, 65003–65004

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7058 65003

7 CFR
301 64677

9 CFR
Proposed Rules:
381 64767
441 64767

12 CFR
265 64996
Proposed Rules:
225 64997
226 64769

14 CFR
39 64680
Proposed Rules:
39 (8 documents) 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787

15 CFR
295 64682

17 CFR
230 64968
239 64968
270 64968
274 (2 documents) 64687, 64968

18 CFR
35 64688
37 64775

29 CFR
520 64956
521 64956
522 64956
523 64956
527 64956

30 CFR
Proposed Rules:
57 64789
75 64789

31 CFR
500 64720

38 CFR
17 64722
Proposed Rules:
20 64790

40 CFR
52 (2 documents) 64722, 64725
63 64736
81 64725
721 64738
Proposed Rules:
52 64794
721 64795

41 CFR
105–60 64740

47 CFR
43 64741
52 64759
63 64741
64 (2 documents) 64741, 64759

48 CFR
Ch. 1 (2 documents) 64912, 64952
1 (2 documents) 64913, 64940
2 64914
4 (2 documents) 64915, 64916
5 64914
6 64916
7 64914
8 (2 documents) 64914, 64916
9 64914
12 (2 documents) 64914, 64916
13 (2 documents) 64914, 64916
16 (2 documents) 64914, 64916
17 64914
19 (3 documents) 64914, 64916, 64940
22 64914
25 64929
29 64930
31 (3 documents) 64930, 64931, 64932
32 (2 documents) 64914, 64916
33 (2 documents) 64914, 64933
34 64914
37 64914
38 64914
39 64914
41 64916
42 (4 documents) 64915, 64931, 64934, 64940
43 64916
45 64914
46 64914
47 64936
49 64916
51 64914
52 (3 documents) 64914, 64915, 64916
53 (5 documents) 64914, 64916, 64934, 64936, 64940

50 CFR
648 64765
679 64760
Proposed Rules:
17 (2 documents) 64799, 64800

Rules and Regulations

Federal Register
Vol. 62, No. 236
Tuesday, December 9, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–100–1]

Pine Shoot Beetle; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations to add 78 counties in Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin to the list of quarantined areas. This action is necessary to prevent the spread of the pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

DATES: Interim rule effective December 3, 1997. Consideration will be given only to comments received on or before February 9, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–100–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–100–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Christine K. Markham, Regional Program Manager, PPQ, APHIS, 505 South Lenola Road, Suite 201, Moorestown, NJ, 08057–1549, (609) 753–5073; or Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8717, E-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees. PSB can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur, and in the new growth of healthy trees. During "maturation feeding," young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Adults can fly at least one kilometer, and infested trees and pine products are often transported long distances; these factors may result in the establishement of PSB populations far from the location of the original host tree. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), spruce (*Larix* spp.), and larch (*Picea* spp.) are not hosts of PSB.

Surveys recently conducted by State and Federal inspectors revealed additional areas infested with PSB in eight States that were previously known to contain infested areas (Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, and West Virginia) and one area infested with PSB in a State that was not previously known to contain infested areas (Wisconsin). Copies of the surveys may be obtained by writing to either of the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

In accordance with these criteria, we are designating Boone, Bureau, De Kalb, La Salle, Lee, McLean, Ogle, Piatt, Putnam, and Stephenson Counties, IL; Carroll, Fountain, Madison, Randolph, Warren, and Wayne Counties, IN; Garrett and Washington Counties, MD; Alcona, Alpena, Antrim, Benzie, Charlevoix, Crawford, Emmet, Gladwin, Grand Traverse, Kalkasa, Lake, Luce, Mackinac, Manistee, Mason, Mecosta, Missaukee, Montmorency, Muskegon, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, and Wexford Counties, MI; Cayuga, Schuyler, Seneca, Tompkins, Wayne, and Yates Counties, NY; Allen, Auglaize, Defiance, Hancock, Hardin, Harrison, Henry, Hocking, Jefferson, Licking, Logan, Marion, Mercer, Morrow, Perry, Putnam, Union, and Van Wert Counties, OH; Cambria, Indiana, Potter, Somerset, and Washington Counties, PA; Brooke and Ohio Counties, WV; and Grant County, WI, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50–3(c).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent PSB from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive

and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

The PSB regulations impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of PSB into noninfested areas of the United States. This rule amends these regulations by adding 78 counties in 9 States to the list of quarantined areas. This action is necessary to prevent the spread of PSB, a pest of pine products, into noninfested areas of the United States.

Currently, there are approximately 1,046 nursery operations in the 78 newly regulated counties. Of those, approximately 717 are considered small entities. We have not determined the size of the remaining 329 nursery operations in the following 6 counties: Boone County, IL; Muskegon and Ottawa Counties, MI; Wayne County, NY; Allen County, OH; and Indiana County, PA. Small nurseries are defined as those entities with annual sales of less than $150,000. Most of these nurseries, both large and small, specialize in production of deciduous landscape products, but some also produce rooted pine Christmas trees and some pine nursery stock. Most of the nurseries that produce rooted pine Christmas trees and pine nursery stock will not be notably affected by this rule, either because these commodities comprise a very minor share of their products or because they serve largely local populations.

Other Christmas tree producers and logging operations in the 78 newly regulated counties may also be affected by this rule. However, at this time, we are unable to determine the number of these types of small entities in the newly regulated counties. We invite comments to help us determine the number of these types of small entities that may incur benefits or costs from the implementation of this rule.

Affected businesses can maintain markets outside the regulated areas by arranging for inspections and the issuance of certificates or limited permits, or by fumigating or cold treating the regulated articles. Inspection is provided at no cost during normal business hours. However, there may be imputed costs to the businesses in preparing for the inspections and possible marketing delays. Such costs and inconveniences may be more likely for producers of live pine nursery stock, since inspection is required of each live plant before it may be moved to a nonregulated area. For producers in these counties who already have their trees inspected for other pests, another inspection may be a relatively small burden, especially when compared to the societal benefits of minimizing the human-assisted movement of PSB.

The alternative to this interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because the quarantine of the 78 counties listed in this document is necessary to prevent the artificial spread of PSB.

This interim rule contains no reporting or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of pine products from these 78 newly regulated counties will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to either of the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.50–3 is amended as follows:

a. In paragraph (c), under Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, and West Virginia, by adding new counties in alphabetical order to read as set forth below.

b. In paragraph (c), by adding, in alphabetical order, a new entry for Wisconsin to read as set forth below.

c. By revising paragraph (d) to read as set forth below.

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

ILLINOIS

Boone County. The entire county.
Bureau County. The entire county.
* * * * *
De Kalb County. The entire county.
* * * * *
La Salle County. The entire county.
* * * * *
Lee County. The entire county.
* * * * *
McLean County. The entire county.
Ogle County. The entire county.
Piatt County. The entire county.
Putnam County. The entire county.
Stephenson County. The entire county.
* * * * *

INDIANA

* * * * *
Carroll County. The entire county.
* * * * *
Fountain County. The entire county.
* * * * *
Madison County. The entire county.
* * * * *
Randolph County. The entire county.
* * * * *
Warren County. The entire county.
Wayne County. The entire county.
* * * * *

MARYLAND

* * * * *
Garrett County. The entire county.
Washington County. The entire county.

MICHIGAN

Alcona County. The entire county.
Alpena County. The entire county.
Antrim County. The entire county.
* * * * *
Benzie County. The entire county.
* * * * *
Charlevoix County. The entire county.
* * * * *
Crawford County. The entire county.
* * * * *
Emmet County. The entire county.
* * * * *
Gladwin County. The entire county.
Grand Traverse County. The entire county.
* * * * *
Kalkasa County. The entire county.
* * * * *
Lake County. The entire county.
* * * * *
Luce County. The entire county.
Mackinac County. The entire county.
* * * * *
Manistee County. The entire county.
Mason County. The entire county.
Mecosta County. The entire county.
* * * * *
Missaukee County. The entire county.
* * * * *
Montmorency County. The entire county.
Muskegon County. The entire county.
Newaygo County. The entire county.
* * * * *
Oceana County. The entire county.
Ogemaw County. The entire county.
Osceola County. The entire county.
Oscoda County. The entire county.
Otsego County. The entire county.
Ottawa County. The entire county.
Presque Isle County. The entire county.
* * * * *
Wexford County. The entire county.

NEW YORK

* * * * *
Cayuga County. The entire county.
* * * * *
Schuyler County. The entire county.
Seneca County. The entire county.
* * * * *
Tompkins County. The entire county.
Wayne County. The entire county.
* * * * *
Yates County. The entire county.

OHIO

Allen County. The entire county.
* * * * *
Auglaize County. The entire county.
* * * * *
Defiance County. The entire county.
* * * * *
Hancock County. The entire county.
Hardin County. The entire county.
Harrison County. The entire county.
Henry County. The entire county.
Hocking County. The entire county.
* * * * *
Jefferson County. The entire county.
* * * * *
Licking County. The entire county.
Logan County. The entire county.
* * * * *
Marion County. The entire county.
* * * * *
Mercer County. The entire county.
Morrow County. The entire county.
* * * * *
Perry County. The entire county.
* * * * *
Putnam County. The entire county.
* * * * *
Union County. The entire county.
Van Wert County. The entire county.
* * * * *

PENNSYLVANIA

* * * * *
Cambria County. The entire county.
* * * * *
Indiana County. The entire county.
* * * * *
Potter County. The entire county.
Somerset County. The entire county.
* * * * *
Washington County. The entire county.
* * * * *

WEST VIRGINIA

Brooke County. The entire county.
* * * * *
Ohio County. The entire county.

WISCONSIN

Grant County. The entire county.

(d) A map of the quarantined areas follows:

BILLING CODE 3410–34–P



BILLING CODE 3410-34-C

Done in Washington, DC, this 3rd day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-32194 Filed 12-8-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-37-AD; Amendment 39-10236; AD 97-25-12]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-44 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model CL-44 series airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Effective January 13, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Flight Test Pilot, Systems and Flight Test Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7514; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model CL-44 series airplanes was published in the **Federal Register** on May 28, 1997 (62 FR 28813). That action proposed to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Withdraw the Proposal

One commenter, the manufacturer, considers that a revision to the Limitations Section of the AFM, issued on December 6, 1996, fully meets the intent of the proposed rule. Therefore, the manufacturer concludes that an AD for the Model CL-44 series airplane is not required.

The FAA does not concur that inserting the AFM revision referenced by the commenter into the AFM provides an adequate method of compliance with the final rule. That revision does not contain reference to the fact that failure to observe the prohibition may cause loss of airplane control, and as such, does not completely meet the intent of the rule. The FAA acknowledges that revising the AFM to add the phrase "loss of airplane control" as a consequence of failure to observe the prohibition would provide adequate compliance with the requirements of the final rule. Therefore, the FAA will consider requests for approval of an alternative method of compliance in accordance with the provisions of paragraph (b) of this AD.

Request to Clarify That No Accidents Occurred on the CL-44

This same commenter notes that the text of the proposed rule does not make it clear that no accidents have occurred on Model CL-44 series airplanes as a result of ground propeller beta range being used improperly during flight. The commenter requests that the FAA clarify this in the final rule.

The FAA acknowledges that no accidents have occurred involving Model CL-44 series airplanes that have been attributed to ground propeller beta range being used improperly during flight. However, the FAA considers that the wording of the Summary section of the proposed rule that states, "This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight," is correct. The fact that the FAA did not specifically name each manufacturer and airplane model on which those incidents or accidents occurred does not negate the fact that such incidents and accidents did occur on airplanes equipped with turboprop engines. The FAA finds that no change to the final rule is necessary.

Clarification of the Rule

Since the issuance of the NPRM, the FAA has noted that operations manuals for certain airplanes equipped with Dart turboprop engines may contain reference to "ground fine pitch" rather than "operations below the flight idle stop," as specified in the proposed rule. Although the operations manuals refer to both of those phrases, the FAA finds that some clarification is necessary. Therefore, the FAA has added the phrase "(i.e., ground fine pitch)" in paragraph (a) of the final rule as a parenthetical definition of "operations below the flight idle stop" in the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 1 Bombardier Model CL-44 series airplane of U.S. registry will be affected by this AD, that it will take approximately 1 work hour to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $60 for the one affected airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-25-12 Bombardier, Inc. (Formerly Canadair): Amendment 39-10236. Docket 97-NM-37-AD.

Applicability: All Model CL-44 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Positioning of power levers below the flight idle stop (i.e., ground fine pitch) while

the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on January 13, 1998.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-32112 Filed 12-8-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 295

[Docket No. 970822200-7272-02]

RIN 0693-AB44

Advanced Technology Program

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology (NIST) is issuing a final rule which amends the implementing regulations for the Advanced Technology Program (ATP). Major changes include an increase in the cost-sharing requirement for large companies applying as single proposers in future competitions; modification of the ATP evaluation criteria for project selection to place greater emphasis on joint ventures and consortia with a broad range of participants; and a new rule for the valuation of transfers between separately-owned joint venture members which applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.

EFFECTIVE DATE: This rule is effective December 9, 1997.

FOR FURTHER INFORMATION CONTACT:

To receive additional program information, contact Barbara Lambis at (301) 975-4447.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology is issuing a final rule which amends regulations found at part 295 of title 15 of the Code of Federal Regulations, which implements the Advanced Technology Program (ATP). In a statement to Congress in March of 1997, Secretary of Commerce William M. Daley announced a Departmental study of several issues raised by Members of Congress and others concerning the policies and procedures of the ATP. The study was designed to make recommendations for possible changes to improve the effectiveness of the program. Following issuance of a 30-day notice of opportunity for public comment on ways to improve the operation of the ATP, recommendations for possible changes were made to improve the effectiveness of the program.

In order to implement the recommendations and the decisions of Secretary Daley, the National Institute of Standards and Technology is today issuing changes to the operating procedures of the Advanced Technology Program found at part 295 of title 15 of the Code of Federal Regulations. These changes strengthen the fundamental mission of the ATP: for Government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation. Such a unique government-industry research partnership fosters the acceleration not only of dramatic gains in existing industries, but also acceleration of the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets and work to spawn industries of the 21st century. Furthermore, the changes also ensure that the fundamental strengths of the ATP remain unchanged, especially the requirement that the ATP continue to be a wholly merit-driven program based on peer review.

Description of the Changes

Changes to part 295 include revisions on the following topics (please see the analysis of comments below for additional details):

- Revised section 295.32(b) increases the cost-sharing requirement for large companies applying as single proposers in future competitions. "Large businesses," as the term is defined in the revised Sec. 295.2(k), are required to cost-share at a minimum of 60 percent.
- The term "large business" is defined as including any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds. In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.
- The ATP evaluation criteria for project selection are modified to: (1) place greater emphasis on joint ventures and consortia with a broad range of participants; and (2) better define the multi-step selection process based on all of the criteria in Sec. 295.6.
- A new rule is established in Sec. 295.25 regarding the valuation of transfers between separately-owned joint venture members. The rule applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned venture members.
- Also, a number of administrative and clerical changes are proposed to be implemented to part 295 for consistency and clarity.

Summary of Comments

On September 17, 1997, NIST published a notice of proposed rulemaking in the **Federal Register** (62 FR 48802). In response to this notice three letters were received; one from a not-for-profit research organization, one from a U.S.-owned for-profit company, and one from an individual. An analysis of the comments follows.

Section 295.2 Definitions—(1 Comment)

One commenter stated that the definition of "matching funds" under Section 295.2(1) eliminates reference to in-kind contribution of personnel and requested clarification on whether NIST considers personnel costs to be a cash contribution that would not be subject to the 30 percent limitation on in-kind.

NIST Response: Under the ATP program, personnel contributions are considered as "cash" contributions when made by funding recipients and, therefore, would not be subject to the 30 percent limitation.

Section 295.3 Eligibility of United States and Foreign-Owned Businesses—(1 Comment)

One commenter stated that Section 295.3, "Eligibility of United States and foreign-owned business", is unfair to U.S. citizens and makes the goal outlined in Section 295.1 "Purpose", nearly impossible to achieve. The commenter believes that we should use the best technology in the world to achieve the ATP goals of "high pay-off." The commenter suggests that the ownership rule be changed to that of individual representatives who must be U.S. citizens regardless of employer, and believes this would be fair to all U.S. citizens, who have a right to be employed in the U.S. by any legal entity. The commenter concludes that change would make it possible for participating coalitions to consider the best technology in the world to help the U.S. develop the best economic growth in a competitive, global economy.

NIST Response: The statutory authority for the ATP, Section 28 of the NIST Act [15 U.S.C. 278n), stipulates ATP eligibility requirements. Only Congress has the authority to amend this statute. We therefore cannot make any changes based on these comments.

Section 295.6 Criteria for Selection—(1 Comment)

One commenter requested clarification of what it meant by "cost-sharing" in section 295.6(d)(1), Level of commitment of proposer, which refers to contributions of personnel, equipment, facilities, and cost-sharing.

NIST Response: The "level of commitment" criterion reflects the extent to which a proposer has demonstrated a commitment to the project with, for example, cash, personnel, scientific equipment, and research facilities. Cost-sharing as used in this selection criteria includes cash and in-kind contributions and the level of the total contribution, i.e., low, average, or high.

Section 295.12 Special Reporting and Auditing Requirements—(2 Comments)

One commenter suggested that the ATP award stipulate the reporting requirements needed and stated that the audit requirements are a duplication of government surveillance and are not in the spirit of contractor self governance programs. Companies which have resident cognizant Federal auditors should be allowed to utilize such auditors to conduct the audits rather that having to incur additional expenses to hire an outside Certified Public Account (CPA). The commenter recommends that the audit requirement apply on an as-needed basis for firms who do not have systems to support government contracting.

NIST Response: Each ATP award includes guidance on the financial, business, and technical reporting requirements. The audit requirement is not meant to be duplicative of existing government audit surveys. Resident cognizant Federal auditors may conduct the required audits in lieu of a private CPA firm.

A second commenter noted that 295.12 is noted as being revised and then removed.

NIST Response: This is a typographical error. Section 295.12 is being revised; however, section 295.14 is being removed.

Section 295.25 Special Rule for the Valuation of Transfers Between Separately-Owned Joint Venture Members—(1 Comment)

One commenter stated that section 295.25 will serve as a disincentive for small companies to become joint venture partners and they will likely only provide products and services as subcontractors. The commenter further stated that the proposed special rule is not mandated under the ATP statute and further appears to be at odds with the ATP objective and with all other government pricing principles. The commenter supports the use of GSA schedule price as a method of valuing products and services and asserts that the use of other pricing methods for the ATP program could jeopardize preexisting agreements. He also disagrees that transferred services should be included in the 30 percent restriction on in-kind contributions.

NIST Response: The ATP is a cost-shared, high-risk research and development program and, therefore, it is expected that participants share in risk taking. The issues related to an equitable valuation of transfers among joint venture participants appear to be unique to this program, therefore, guidelines from other Federal programs would not necessarily apply. In the ATP, reimbursement of the government's share of the costs is based on actual costs incurred during the period of cost sharing rather than on recovering sunk costs (previously incurred R&D costs). The Department of Commerce deems this approach to be a reasonable compromise between a very strict interpretation of the intent of the ATP legislation and the more traditional policy of using GSA Schedule pricing as the basis for valuation. The strict interpretation would, for example, result in a transfer of previously-developed software from one joint venture participant to another being valued for matching funds purposes essentially at zero. We recognize that such an interpretation would cause hardship for many ATP proposers, hence the compromise. ATP recognizes that some small companies may not have the resources to contribute a significant portion of the cost-sharing, however, joint ventures often have a mix of other medium and/or large businesses that, in the aggregate, can provide the required cost-sharing.

Section 295.32 Limitations on Assistance—(1 Comment)

Section 295.32(b), which raises the cost sharing of a single company to 60 percent, and Section 295.6, regarding the evaluation criteria, will make it more difficult for single companies to participate. The commenter further states that no rationale is given for the changes.

NIST Response: ATP agrees that the change could make it more difficult for some large businesses to participate in ATP as single company proposers. There has been much heated debate in the Congress and elsewhere concerning cost sharing in ATP and the role of large firms applying as single company proposers. Many people have expressed the viewpoint that large businesses should be expected to support more than 50 percent of the total project cost. (Under the previous rule, large companies with very low indirect costs could recover more than 50 percent of total project costs.) DOC believes that the change will result in a broader consensus that the ATP's policies for large businesses are fair and appropriate.

Additional Information

Effective Date of the Final Rule

This final rule relating to grants, benefits, and contracts is exempt from the delayed effective date requirement, and accordingly, under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), is therefore being made effective immediately without a 30 day delay in effective date.

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient

to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic effect on a substantial number of small entities. (5 U.S.C. 605(b)). This is because there are only a small number of awardees and thus only a small number of awards will be given to small businesses. Specifically, based on past experience and currently foreseen budges, the ATP would expect to receive only a few hundred proposals annually from small businesses, and from these, to make under 100 awards. The program is entirely voluntary for the participants that seek funding.

Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains collection of information requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act (PRA). The collection of information requirements have been approved under OMB Control Number 0693–0009. The public reporting burden per respondent is estimated to range between 20 and 30 hours per submission of the proposal and 3 hours annually for recipients of financial assistance to provide monitoring reports. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Comments on the burden estimates, or any other aspect of the information requirements, should be addressed to Barbara Lambis, Room A333, Administration Building National Institute of Standards and Technology, Gaithersburg, MD 20899.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

Executive Order 12372

Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

List of Subjects in 15 CFR Part 295

Inventions and patents, Laboratories, Research, Science and technology, Scientists.

Dated: December 3, 1997.

Elaine Bunten-Mines,

Director, Program Office.

For reasons set forth in the preamble, Title 15, part 295 of the Code of Federal Regulations is amended as follows:

PART 295—ADVANCED TECHNOLOGY PROGRAM

1. The authority citation for Part 295 continues to read as follows:

Authority: 15 U.S.C. 278n.

2. Section 295.1 is revised to read as follows:

§ 295.1 Purpose.

(a) The purpose of the Advanced Technology Program (ATP) is to assisted United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies. These technologies are:

(1) High risk, because the technical challenges make success uncertain;

(2) High pay-off, because when applied they offer significant benefits to the U.S. economy; and

(3) Emerging and enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications.

(b) The rules in this part prescribe policies and procedures for the award of cooperative agreements under the Advanced Technology Program in order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, cooperative agreements, and contracts to carry out its mission, the rules in this part address only the award of cooperative agreements. The Program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.

(c) In carrying out the rules in this part, the Program endeavors to put more emphasis on joint ventures and consortia with a broad range of participants, including large companies, and less emphasis on support of individual large companies.

3. Section 295.2(c) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(c) The term *direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the ATP project and associated reasonable fringe benefits such as medical insurance. Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project. ATP shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

* * * * *

4. Section 295.2 is further amended by revising the reference "§ 295.2(r)" in paragraph (d) to read "§ 295.2(q)" and by removing paragraph (e), redesignating paragraphs (f) through (k) as paragraphs (e) and through (j), removing paragraph (n), redesignating paragraphs (o) through (r) as paragraphs (n) through (q), and adding new paragraph (k) to read as follows:

§ 295.2 Definitions.

* * * * *

(k) The term *large business* for a particular ATP competition means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds required by § 295.7(a). In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.

* * * * *

5. The newly designated § 295.2(g) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(g) The term *indirect costs* means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

* * * * *

6. The newly designated § 295.2(h) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(h) The term *industry-led joint research and development venture* means a joint research and development venture that consists of two or more separately-owned, for-profit businesses that perform research and development in the project; control the venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. An independent research organization may perform administrative tasks on behalf of an industry-led joint research and development venture, such as handling receipts and disbursements of funds and making antitrust filings.

* * * * *

7. Redesignated § 295.2(j)(1)(vi) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(j) * * *

(1) * * *

(vi) Any combination of the purposes specified in paragraphs (j)(1) (i), (ii), (iii), (iv) and (v) of this section, and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in paragraph (j)(2) of this section.

* * * * *

8. Section 295.2(l) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(l) The term *matching funds or cost sharing* means that portion of project costs not borne by the Federal government. Sources of revenue to satisfy the required cost share include cash and in-kind contributions. Cash contributions can be from recipient, state, county, city, or other non-federal sources. In-kind contributions can be made by recipients or non-federal third parties (except subcontractors working on an ATP project) and include but are not limited to equipment, research tools, software, and supplies. Except as specified at § 295.25, the value of in-kind contributions shall be determined in accordance with OMB Circuler A–110, Subpart C, Section 23. The value of in-kind contributions will be prorated according to the share of total use dedicated to the ATP program. ATP restricts the total value of in-kind contributions that can be used to satisfy the cost share by requiring that such contributions not exceed 30 percent of the non-federal share of the total project costs. ATP shall determine the allowability of matching share costs in accordance with applicable federal cost principles.

* * * * *

9. Section 295.3(c) is added as follows:

§ 295.3 Eligibility of United States and foreign-owned businesses.

* * * * *

(c) Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner(s) must either become a citizen or ownership must be transferred to a U.S. citizen(s).

10. Section 295.4 is revised to read as follows:

§ 295.4 The selection process.

(a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. A source evaluation board (SEB) is established to ensure that all proposals receive careful consideration. In the first step, called "preliminary screening," proposals are eliminated that do not meet the requirements of this part or the Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage is that the proposal: is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high risk R&D; is not industry-led; is significantly overpriced or underpriced given the scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to § 295.7; or, in the case of joint ventures, requests more than a minority share of funding. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal or forward it to a later stage in the review process based upon the earlier review.

(b) In the second step, referred to as the "technical and business review," proposals are evaluated under the criteria found in § 295.6. Proposals judged to have the highest merit based on the selection criteria receive further consideration and are referred to as "semifinalists."

(c) In the third step, referred to as "selection of finalists," the Program prepares a final scoring and ranking of semifinalist proposals. During this step, the semifinalist proposers may be asked to make oral presentations on their proposals at NIST, and in some cases site visits may be required. Subject to the provisions of § 295.6, a list of ranked finalists is submitted to the Selecting Official.

(d) In the final step, referred to as "selection of awardees," the Selecting Official selects funding recipients from among the finalists, based upon: (1) The rank order of the proposals on the basis of all selection criteria (§ 295.6);

(2) Assuring an appropriate distribution of funds among technologies and their applications; and

(3) The availability of funds. The Selecting Official is responsible for ensuring that only proposals that meet the Program selection criteria receive awards. The Program reserves the right to withhold awards in any case where a search of Federal records discloses information that raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.

(e) If a joint venture is ranked as a finalist, but the Program determines that the joint venture contains weaknesses in its structure or cohesiveness that may substantially lessen the probability of the proposed program being completed successfully, the Program may inform the proposer of the deficiencies and enter into negotiations with the proposer in an effort to remedy the deficiencies. If appropriate, funding up

to 10 percent of the amount originally requested by the proposer may be awarded by the Program to the proposer to assist in overcoming the organizational deficiencies. If the Program determines within six months of this award that the organizational deficiencies have been corrected, the Program may award the remaining funds requested by the proposer to that proposer.

(f) NIST reserves the right to negotiate with proposers selected to receive awards the cost and scope of the proposed work, e.g., to add or delete a task(s) to improve the probability of success or to make the proposal more consistent with ATP's mission.

11. Section 295.6 is revised to read as follows:

§ 295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposal for funding under this Program, and their respective weights, are listed in this section. No proposal will be funded unless the Program determines that it has high scientific and technical merit, no matter how meritorious the proposal might be with respect to the other selection criteria. Similarly, no proposal will be funded that does not require Federal support or that is product development rather than high risk R&D. Each of the subfactors within a selection criterion shall be weighted equally.

(a) *Scientific and technical merit* (30 percent).

(1) Quality, innovativeness, and cost-effectiveness of the proposed technical program, that is, uniqueness with respect to current industry practice. Proposers shall compare and contrast their approaches with those taken by other domestic and foreign companies working in the same field.

(2) Appropriateness of the technical risk and feasibility of the project, that is, is there a sufficient knowledge base to justify the level of technical risk involved, and is the risk commensurate with the potential payoff. Projects should press the state of the art while still having credibility with regard to technical approach.

(3) Coherency of the technical plan and clarity of vision of the technical objectives, and the degree to which the technical plan meets the project and, in the case of focused program competitions, program goals.

(4) Integrated, forward-looking, team approach to the project. This factor includes the extent to which the R&D team will take into account aspects such as research and raw material suppliers and considerations of manufacturability and requirements of customers, regulatory concerns, safety issues, and environmental impacts. It also includes the extent to which all of the necessary technical disciplines will be brought into the R&D and how R&D, manufacturing, and marketing will work together in an integrated fashion.

(5) Potential broad impact on U.S. technology and knowledge base.

(b) Potential net broad-based economic benefits (20 percent). Potential to improve U.S. economic growth, taking into account the timeliness of the proposal; that is, the potential project results will not occur too late or too early to be competitively useful, and the degree to which ATP support is essential for the achievement of the broad-based benefits from the proposed R&D and appropriateness of proposed R&D for ATP support. This criterion takes into consideration the likelihood of the results being achieved in the same general time frame by the proposer or by other U.S. researchers without ATP support, and whether other Federal agencies or other sponsors are already funding very similar kinds of work. Projects will not be selected if the Program judges that Federal support is not needed. In assessing the potential for broad-based economic benefits, emphasis is placed on a strong potential for spillover benefits extending well beyond those accruing to the awardee(s). Benefits are compared against the costs of the proposal to determine cost-effectiveness of the proposal.

(c) Adequacy of plans for eventual commercialization (20 percent).

(1) Evidence that if the project is successful, the proposers will pursue further development of the technology toward commercial application, either through their own organization(s) or through others.

(2) Degree to which proposal identifies potential applications of the technology and provides evidence that the proposer has credible plans to assure prompt and widespread use of the technology if the R&D is successful and to ensure adequate protection of the intellectual property by the participant(s) and, as appropriate, by other U.S. businesses.

(d) Level of commitment and organization structure (20 percent).

(1) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and cost-sharing. Extent to which the proposer assigns the company's best people to the project. Priority given to this work in relation to other company activities.

(2) For joint ventures, the extent to which the joint venture has been structured (vertical integration, horizontal integration, or both) so as to include sufficient participants possessing all of the skills required to complete successfully the proposed work.

(3) For joint ventures, the extent to which participation by small businesses is encouraged and is a key component of the proposal.

(4) Appropriateness of subcontractor/supplier/collaborator participation and relationships (where applicable). For large company single proposers, the extent to which subcontractor teaming arrangements are featured and are a key component of the proposal.

(5) Clarity and appropriateness of management plan. Extent to which the proposers have clarified who is responsible for each task, and the chain of command. Extent to which those responsible for the work have adequate authority and access to higher level management.

(e) Experience and qualifications (10 percent).

(1) Adequacy of proposer's facilities, equipment, and other technical, financial, and administrative resources to accomplish the proposed program objectives. This factor includes consideration of resources possessed by subcontractors to the proposer or other collaborators.

(2) Quality and appropriateness of the technical staff to carry out the proposed work program and to identify and overcome barriers to meeting project objectives.

(3) Past performance of the company or joint venture members in carrying out similar kinds of efforts successfully, including technology application. Consideration of this factor in the case of a start-up company or new joint venture, will take into account the past performance of the key people in carrying out similar kinds of efforts.

12. Section 295.12 is revised to read as follows:

§ 295.12 Special reporting and auditing requirements.

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with the Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor "best effort" progress toward overall project goals. The purpose of the business reporting system is to monitor project performance against the Program's mission as required by the Government Performance and Results Act (GPRA) mandate for program evaluation. The audit standards to be applied to ATP awards are the "Government Auditing Standards" (GAS) issued by the Comptroller General of the United States (also known as yellow book standards) and the ATP program-specified audit guidelines. The ATP program-specific audit guidelines include guidance on the number of audits required under an award. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these audits. The Department of Commerce's Office of Inspector General (OIG) reserves the right to conduct audits as deemed necessary and appropriate.

13. Section 295.14 is removed.

14. Section 295.22 is revised to read as follows:

§ 295.22 Limitations on assistance.

(a) An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

(b) The total value of any in-kind contributions used to satisfy the cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

15. Section 295.25 is added to subpart B as follows:

§ 295.25 Special rule for the valuation of transfers between separately-owned joint venture members.

(a) *Applicability.* This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.

(b) *Rule.* The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs; provided, however, that in no event shall the aggregate of these allowable costs exceed 30 percent of the non-Federal share of the total cost of the joint research and development program.

(c) *Definition.* The term "best customer price" shall mean the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

16. Sections 295.31 and 295.32 are revised to read as follows:

§ 295.31 Qualification of proposers.

Awards under this subpart will be available to all businesses, subject to the limitations set out in §§ 295.3 and 295.32.

§ 295.32 Limitations on assistance.

(a) The Program will not directly provide funding under this subpart to any governmental entity, academic institution or independent research organization.

(b) For proposals submitted to ATP after December 31, 1997, awards to large businesses made under this subpart shall not exceed 40 percent of the total project costs of those awards in any year of the award.

(c) Awards under this subpart may not exceed $2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs, profits, or management fees shall be available for awards made under this subpart.

(d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

17. In part 295 remove the word "applicants" or "applicant" and add in its place the word "proposers" or "proposer" in the following places: § 295.7(a), (b) and (c); § 295.21 section heading; subpart C heading; and § 295.31 section heading.

[FR Doc. 97–32215 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 274

[Release Nos. 33–7478; IC–22920; File No. S7–19–97]

RIN 3235–AG73

Update of Registration Form to Reflect Fee Rate Change for Registration of Certain Investment Company Securities

AGENCY: Securities and Exchange Commission.

ACTION: Amendments to form.

SUMMARY: The Securities and Exchange Commission ("Commission") is updating the fee rate information in the instructions to the form under the Investment Company Act of 1940 that prescribes the method by which certain investment companies calculate and pay registration fees on securities they issue (the form was last published at 62 FR 47941 (Sept. 12, 1997)). On November 28, 1997, legislation was enacted that sets a new fee rate of $295 per $1,000,000 offered or sold (prorated for amounts less than $1,000,000). Registration fees under this new rate are calculated by multiplying the aggregate offering or sales amount by .000295. This amendment updates the reference to the current fee rate in the instructions to the form.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Robin S. Gross, Staff Attorney, Office of Regulatory Policy at (202) 942–0690, or Carolyn A. Miller, Senior Financial Analyst, Office of Financial Analysis at (202) 942–0513, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is amending Instruction C.9 to Form 24F–2 [17 CFR 274.24] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act").

Form 24F–2 is the Form on which certain investment companies file an annual notice of securities sold pursuant to rule 24f–2 under the Investment Company Act [17 CFR 270.24f–2]. The Instruction to Item 5(vii) explains that the multiplier for calculation of the registration fee is determined by the Commission in accordance with section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)]. The Instruction informs filers of the multiplier that was in effect as of the date of the most recent printing of the Form, but indicates that this rate is subject to change from time to time, without notice, by act of Congress through appropriations for the Commission or other laws.

On November 28, 1997, legislation was enacted that sets the fee rate at $295 per $1,000,000 offered or sold (prorated for amounts less than $1,000,000). Fees will be calculated by multiplying the aggregate offering or sales amount by .000295.

The Commission is amending the Instruction to Item 5(vii) of Form 24F–2 to reflect the change in the fee rate.

Statutory Authority

The Commission is amending Form 24F–2 pursuant to the authority set forth in sections 24 and 38(a) of the

Investment Company Act [15 U.S.C. 80a–24, –37(a)].

Text of Form Amendments

For the reasons set out in the preamble, Form 24F–2, referenced in § 274.24, Title 17, Chapter II of the Code of Federal Regulations, is amended as follows:

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

2. Form 24F–2 (referenced in § 274.24) is amended by revising the second and third sentences of Instruction C.9 to Item 5(vii) to read as follows:

Note: Form 24F–2 does not, and the amendments will not, appear in the *Code of Federal Regulations*.

Form 24F–2

Annual Notice of Securities Sold Pursuant to Rule 24f–2

* * * * *

Instructions

* * * * *

C. Computation of Registration Fee

* * * * *

9. Item 5(vii)—* * * As of November 28, 1997, the fee rate was $295 per $1,000,000 offered or sold (prorated for amounts less than $1,000,000). The registration fee is calculated by multiplying the aggregate offering or sales amount by .000295. * * *

* * * * *

For the Commission, by the Office of the Secretary, pursuant to delegated authority.

Dated: December 2, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31961 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–003 and RM94–7–004; Order No. 888–B]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

Issued November 25, 1997.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission affirms, with certain clarifications, the fundamental calls made in its order on rehearing of the final rule in this proceeding. The final rule directed public utilities to open their transmission lines to competitors and to offer them the same charges and conditions they apply to themselves. The rule also gave utilities an opportunity to seek recovery of certain stranded costs, i.e., costs that were prudently incurred to serve customers that use open access transmission under the final rule to shift to another power supplier. The Commission in this order clarifies its position on recovery of stranded costs in the case of municipalizations and municipal annexations, where customers previously served by a public utility become customers of a municipal utility instead.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT:

David D. Withnell (Legal Information—Docket No. RM95–8–003), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2063.

Deborah B. Leahy (Legal Information—Docket No. RM94–7–004), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2039.

Daniel T. Hedberg (Technical Information—Docket No. RM95–8–003), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0243.

Joseph M. Power (Technical Information—Docket No. RM94–7–004), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0243.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington, D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

Table of Contents

I. Introduction
II. Public Reporting Burden
III. Background
IV. Discussion
A. Open Access Issues
1. Discounting
2. Reciprocity
3. Indemnification/Liability
4. Qualifying Facilities (QF)/Real Power Loss Service
5. Right of First Refusal/Reservation of Transmission Capacity
6. Energy Imbalance Service
a. Appropriate bandwidth for small utilities
b. Settlements establishing a deviation bandwidth or minimum imbalance
7. Transmission Provider "Taking Service" Under Its Tariff for Power Purchased on Behalf of Bundled Retail Customers
a. Jurisdiction
b. Purchases for retail native load
8. Indirect Unbundled Retail Transmission in Interstate Commerce
9. Mobile-Sierra
10. Tariff Issues
a. Load served "behind-the-meter"
b. Definition of "Native Load Customers"
c. Schedule changes
d. Restriction on making firm sales from designated network resources
e. Reactive Power
f. Network Operating Agreements
g. Network customers with loads and resources in multiple control areas
h. Network customer designation of load
11. Waivers of Order Nos. 888 and 889
12. Financial Independence of ISO Employees
13. Distribution Charges
14. Tight Power Pools
a. Non-pancaked rates
b. Coordination transactions
15. Legal Authority
16. Ancillary Services
17. Fair Market Value
18. Pre-Existing Transmission-Only Contracts
19. Apportionment of Transmission Revenues For Public Utility Holding Companies And Power Pools
20. Accounting for Transmission Provider's Own Use of its System
B. Stranded Cost Issues
1. Municipal Annexation
2. Pre-existing Transmission Rights
3. Load Growth and Excess Capacity
4. G&T and Distribution Cooperatives
5. Treatment of Contracts Extended or Renegotiated Without a Stranded Cost Provision
6. Customer Expectations of Continued Service at Below-Market Rates
7. Miscellaneous
V. Environmental Statement
VI. Regulatory Flexibility Act Certification
VII. Information Collection Statement
VIII. Effective Date
Appendix A (List of Petitioners)
Appendix B (Tariff Revision)

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey.

I. Introduction

In this order, the Commission affirms, with certain clarifications, the fundamental calls made in Order No. 888–A.[1]

II. Public Reporting Burden

This order on rehearing issues a minor revision to Order Nos. 888 and 888–A.[2] We find, after reviewing this revision, that it does not increase or decrease the public reporting burden.

Order No. 888 contained an estimated annual public reporting burden based on the requirements of the Open Access Final Rule and the Stranded Cost Final Rule.[3] Using the burden estimate contained in Order No. 888 as a starting point, we evaluated the public burden estimate in light of the revision contained in this order and assessed whether the estimate needed revision. We have concluded, given the minor nature of the revision, that our estimate of the public reporting burden of this order on rehearing remains unchanged from our estimate of the public reporting burden contained in Order Nos. 888 and 888–A. The Commission has conducted an internal review of this conclusion and has assured itself that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information required by Order Nos. 888 and 888–A, as revised and clarified by this order on rehearing, and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in Order Nos. 888 and 888–A, for the collection, efficient management, and use of the required information.

Persons wishing to comment on the collections of information required by Order Nos. 888 and 888–A, as modified by this order on rehearing, should direct their comments to the Desk Officer for FERC, Office of Management and Budget, Room 3019 NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile: 202–395–7285. Comments must be filed with the Office of Management and Budget within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Michael Miller, 202–208–1415.

III. Background

In Order No. 888, the Commission required all public utilities that own, operate or control interstate transmission facilities to offer network and point-to-point transmission services (and ancillary services) to all eligible buyers and sellers in wholesale bulk power markets, and to take transmission service for their own uses under the same rates, terms and conditions offered to others. Order No. 888 required functional separation of the utilities' transmission and power marketing functions (also referred to as functional unbundling) and the adoption of an electric transmission system information network. To implement the requirements of comparable open access transmission, the Commission required all public utilities that own, operate or control interstate transmission facilities to file open access non-discriminatory transmission tariffs that contain minimum terms and conditions of non-discriminatory transmission service. In Order No. 888, the Commission established rules for discounting practices, provisions governing priority of service and curtailment, and a right of first refusal for all firm transmission customers. In addition, Order No. 888 conditioned the use of a public utility's open access service on the agreement that, in return, it is offered reciprocal service by non-public utilities that own or control transmission facilities.

With regard to stranded costs, Order No. 888 gives utilities the opportunity to seek to recover legitimate, prudent, and verifiable wholesale stranded costs associated with serving customers under wholesale requirements contracts executed on or before July 11, 1994 that do not contain explicit stranded cost provisions, and costs associated with serving retail-turned-wholesale customers. The opportunity to seek stranded costs is limited to situations in which there is a direct nexus between the availability and use of a Commission-required transmission tariff and the stranding of the costs. The Commission adopted a revenues lost approach for calculating a utility's stranded costs, and determined that stranded costs should be recovered from the customer that caused the costs to be incurred. The Commission decided in Order No. 888 to be the primary forum for addressing the recovery of stranded costs caused by retail-turned-wholesale customers, but not to be the primary forum in cases involving existing municipal utilities that annex retail customer service territories. Order No. 888 also clarified whether and when the

[1] As described further below, the Commission is making one revision to the pro forma open access transmission tariff. *See infra* Section IV.A.10.f and Appendix B. Because of this single revision and its minor nature, the Commission concludes that it would be administratively burdensome to require all public utilities with pro forma open access transmission tariffs on file with the Commission to submit compliance tariffs to reflect the revision. Accordingly, the Commission will amend all pro forma open access transmission tariffs currently on file with the Commission to incorporate the tariff revision and no tariff compliance filings will be necessary.

[2] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,046 (1997).

[3] 61 FR 21540, 21543; FERC Stats. & Regs. ¶ 31,036 at 31,636 (1996). In Order No. 888-A, the Commission concluded that its estimate of the public reporting burden in that order on rehearing remained unchanged from its estimate in Order No. 888. 62 FR 12274, 12280; FERC Stats. & Regs. ¶ 31,048 at 30,183 (1997).

Commission may address stranded costs caused by retail wheeling and the extent of the Commission's jurisdiction over unbundled retail transmission. The Commission determined that the only circumstance in which it will entertain requests for the recovery of stranded costs caused by unbundled retail wheeling is when the state regulatory authority does not have authority under state law to address stranded costs when the retail wheeling is required.

Order No. 888 further addressed the circumstances under which utilities and their wholesale customers may seek to modify contracts made under the old regulatory regime, taking into account the goals of reasonably accelerating customers' ability to benefit from competitively priced power and at the same time ensuring the financial stability of electric utilities during the transition to competition. The Commission determined that pre-existing contracts would continue to be honored until such time as they were revised or terminated. The Commission also found that those who were operating under pre-existing requirements contracts containing *Mobile-Sierra* clauses would nonetheless be allowed to seek reform of the contracts on a case-by-case basis, and that public utilities would be allowed to file to amend their *Mobile-Sierra* contracts for the limited purpose of providing an opportunity to seek recovery of stranded costs, without having to make a public interest showing that such cost recovery should be permitted.

In Order No. 888–A, the Commission reaffirmed its basic determinations in Order No. 888, with certain clarifications. For example, it revised the discounting requirements to better permit the ready identification of discriminatory discounting practices while also providing greater discount flexibility, and it clarified several aspects of the reciprocity condition. It also clarified that if utilities under *Mobile-Sierra* contracts seek to modify provisions that do not relate to stranded costs, they will have the burden of showing that the provisions are contrary to the public interest. In addition, the Commission reconsidered its decision in Order No. 888 not to be the primary forum for determining stranded cost recovery in cases involving municipal annexation and concluded that such cases should fall within the Commission's province.

In this order, the Commission affirms, with certain clarifications, the fundamental calls made in Order No. 888–A.

IV. Discussion

A. Open Access Issues

1. Discounting

A number of entities seek rehearing and/or clarification of the Commission's modified discounting policy that requires transmission providers to offer the same discount over all unconstrained paths to the same point of delivery.[4] Several of these entities assert that the Commission's modified policy encourages discriminatory behavior.[5] NRECA and TDU Systems argue that the Commission's policy opens the door to customer-by-customer discrimination (including discrimination by the transmission provider in favor of its native load customers) because it is likely that only one or a few customers would want transmission service to a particular delivery point. They also assert that the transmission provider unreasonably could discount service on a path where it has load, but decline discounts to another delivery point halfway along the same path.[6] They further contend that the Commission's new policy "swings the pendulum too far in the direction of allowing price discrimination" by the transmission monopolist. According to TDU Systems, the Commission's policy "does not confine the transmission provider's incentive to give discounts for its own transmission uses to those instances, and only those instances, in which such discounts are economically justified." TDU Systems adds that "the OASIS reporting will be inadequate to remedy discrimination in discounting short-term non-firm transmission, since the transactions will be over before complaints can even be filed."[7]

TAPS likewise asserts that "[b]y allowing transmission providers to select the delivery points meriting a discount, the Commission is encouraging discriminatory behavior that it will be unable to remedy" through an after-the-fact complaint proceeding.[8] It maintains that the Commission's approach "makes it less likely that transmission providers will provide competitors non-firm transmission service at rates reflecting the lower quality of the service (if the Commission permits non-firm transmission rates to be capped at the firm rate)."[9] It notes that TAPS members—

> have experienced withdrawal of discounts they have enjoyed under the Order No. 888 discounting policy and have seen evidence that the revised policy will be applied by transmission providers to offer discounts to each other, in the hope, expectation, or tacit agreement that they will be offered reciprocal discounts on the other transmission provider's system when requested, while a transmission dependent utility must always pay full freight. [10]

APPA asserts that the Commission properly required all discount negotiations to occur on the OASIS, but erroneously removed the requirement that affiliate discounts be offered for all service on unconstrained paths. It argues that the Commission "has failed to balance its policy of ending discrimination in wholesale transmission services with the objective to send proper price signals to transmission providers and customers."[11] Under the Commission's modified approach, APPA believes that transmission providers can offer discounts on a very selective basis—"public utility transmission providers will have the ability to provide discounts to affiliates in ways that exclude smaller utilities, including municipal utilities, from receiving those same discounts."[12]

These entities propose several approaches to resolve the competitive problems they believe are associated with the Commission's modified approach to discounting. NRECA states that the Commission should revert to its Order No. 888 policy or require that discounts be offered on all unconstrained paths serving all similarly situated customers. NRECA and TDU Systems (which supports the second alternative) state that the alternative approach could be accomplished by requiring discounts on all unconstrained "posted paths," or, if a discount is provided within a particular unconstrained area, the transmission provider should be required to offer the same discount on all unconstrained paths within the same area. Similarly, TAPS states that the Commission should revert to its Order No. 888 policy or, at a minimum, "the discounts should be extended to all delivery points in the same unconstrained portion of the transmission provider's transmission

[4] Arizona, NRECA, TAPS, and TDU Systems. APPA also raises this issue, but APPA filed its request for rehearing out-of-time on April 4, 1997. APPA failed to file its rehearing request within the 30 day period required by the Federal Power Act. *See* 16 U.S.C. 825l(a). Accordingly, we will not accept the rehearing request for filing, but will accept the pleading as a motion for reconsideration.

[5] NRECA, TDU Systems, TAPS and APPA.

[6] *See also* TAPS.

[7] TDU Systems at 8–10.

[8] TAPS at 17.

[9] *Id.* at 18 (footnote omitted).

[10] *Id.*

[11] APPA at 17.

[12] *Id.* at 19.

system plus other similarly situated customers (from an operational/cost, rather than competitive, viewpoint)."[13] Moreover, APPA states that the Commission should revert to Order No. 888 or, in the alternative, "should require uniform discounts across interfaces and within control areas, or, at a minimum, within unconstrained zones."[14]

TAPS adds that the best way to promote efficient transmission usage and competitive bulk power markets is "to set non-firm rates at the lowest reasonable rate, in accordance with the Commission's statutory mandate * * *. It is unreasonable to rely on discounting, especially delivery point-specific discounts, to ensure that customers are not charged firm rates for interruptible, low priority, non-firm service."[15] It requests that the Commission clarify that it will actively exercise its responsibility to ensure that customers are not overcharged for non-firm service.

Arizona, on the other hand, seeks to narrow the Commission's revised discounting policy. It requests that the Commission allow a transmission provider to offer varying degrees of discount depending upon whether—

> (1) transactions over a particular path alleviate constraints on another transmission path, (2) certain transmission paths are loaded to a different degree than other paths, and (3) initial discounts encourage a sufficient number of transactions. [16]

For example, it asserts that "there could be multiple paths to the same delivery point, with each path potentially warranting different discounting treatment. A steep discount may be appropriate on one unutilized transmission path to encourage counter-wheeling transactions that will alleviate constraints on another path into the delivery point, whereas a smaller discount (or no discount at all) may be appropriate on another unconstrained, but highly valued, path into the delivery point."[17]

With respect to its second point, Arizona asserts that a transmission path with relatively little available transmission capability (ATC) deserves a lower discount than a transmission path with relatively high ATC. It urges the Commission to clarify "whether a transmission path that has an ATC equal to 80% of [total transmission capability (TTC)] should be discounted to the same degree as a transmission path that has an ATC equal to only 30% of TTC."[18] As to its third point, it seeks clarification that it "may initially offer a steep discount on a transmission path into a particular delivery point to encourage transactions, but reduce the discount as more and more transactions take place over that path."[19]

American Electric Power System (AEP) responds to TAPS' assertion that transmission providers will only offer discounts to each other as evidenced by a printout from AEP's OASIS under which TAPS contends "discounts are now available only to delivery points of other transmission providers, not those of TDUs."[20] AEP indicates that, contrary to TAPS' assertion, it offers discounts to any transmission customer that has alternatives to using AEP's transmission system. It notes that this is consistent with the Order No. 888–A statement that a transmission provider should discount only if necessary to increase throughput on its system. It also adds that no customer is being charged rates that exceed a just and reasonable, cost-based rate. According to AEP, "[t]o charge customers without alternatives less than the cost-based rate would be unduly discriminatory to AEP's native load customers who would otherwise have to make up the revenues not recovered from such customers."[21] Moreover, because discounting must be conducted through the OASIS, AEP declares that there is no chance that a transmission provider will use discounting for any purpose other than to increase throughput. AEP also opposes TAPS' request to establish a price cap for non-firm service below that for firm service. It claims that such a change would allow customers on largely unconstrained transmission systems such as AEP's to game the system by requesting non-firm service priced at a low level with the knowledge that the service is essentially the equivalent of firm service.

Commission Conclusion. We deny the requests for rehearing of our discounting policy. In Order No. 888–A, we addressed certain concerns raised by various parties on rehearing regarding our prior discounting policy and adopted a more balanced approach that would provide incentives to transmission providers to operate the transmission grid efficiently while ensuring that they do so in a not unduly discriminatory manner.[22] Our balanced approach requires that (1) a transmission provider should discount only if necessary to increase throughput on its system, (2) any offer of a discount and the details of any agreed upon discount transaction must be posted on the OASIS (including any negotiation, *i.e.*, any offers and counteroffers, of the discount), and (3) a transmission provider must offer the same discount for the same time period on all unconstrained paths that go to the same point(s) of delivery.

We believe that this approach is a reasonable and workable means to permit transmission providers to provide discounts in a not unduly discriminatory manner. Transmission providers will not have unnecessary restrictions on their ability to increase throughput on their transmission systems, which accrues to the benefit of all of their firm customers, while OASIS will allow the Commission and other users of the system to monitor for instances of unduly discriminatory behavior by such transmission providers.[23]

In this regard, we also disagree that posting of discounts on OASIS is inadequate for short-term discounts because the transactions will be over before a complaint could be filed. All complaint proceedings occur after the fact, but we believe that such proceedings nevertheless act as a deterrent to improper behavior. The Commission will not be reluctant to impose appropriate sanctions in instances where transmission providers engage in unduly discriminatory discounting practices. Moreover, any alternative would likely require a preapproval process that could, as parties to this proceeding have argued, shut down a substantial portion of the hourly transactions in short-term markets that depend upon discounted transmission to go forward.

We see no need at this time to adopt a more restrictive discounting policy

[13] TAPS at 19.

[14] APPA at 20.

[15] TAPS at 20.

[16] Arizona at 4.

[17] *Id.* at 5 (footnote omitted).

[18] *Id.* at 6 n.12.

[19] *Id.* at 6 (footnote omitted).

[20] AEP at 3. On April 17, 1997, AEP filed an answer to the request for clarification and rehearing of TAPS. In the circumstances presented, we will accept the answer notwithstanding our general prohibition on allowing answer notwithstanding our general prohibition on allowing answers to rehearing requests. *See* 18 CFR 385.713(d).

[21] *Id.* at 4 (emphasis in original).

[22] FERC Stats. & Regs. ¶ 31,048 at 30,274–76.

[23] With respect to Arizona's request that a transmission provider be allowed to offer varying degrees of discount depending on the circumstances, we note that this Rule does not reach that level of specificity. A transmission provider is free to implement any discounting proposal which it believes can increase throughput without doing so in an unduly discriminatory manner, provided that the proposal offers the same discount for the same period to all eligible customers on all unconstrained paths that go to the same point(s) of delivery. However, if challenged on complaint, it should be prepared to defend its method. The only alternative is to require no discounting, an approach we reject as contrary to firm customers' interests and efficient grid use.

that could hinder a transmission provider's ability to increase throughput on its system based solely on allegations that the transmission provider may act in an unduly discriminatory manner. The opportunity to monitor the discounting behavior of transmission providers through OASIS will provide data that will allow the Commission to evaluate the adequacy and effectiveness of its discounting policy.[24] Until we see evidence that our discounting policy will not work or see patterns of unduly discriminatory discounting practices, we will continue the Order No. 888–A discounting policy, with the OASIS safeguards in place.

2. Reciprocity

Several entities raise a variety of issues with respect to the Commission's reciprocity condition. NRECA and TDU Systems request clarification that the amendment to section 6 of the pro forma tariff that deleted the words "in interstate commerce" was intended to affect only the reciprocity obligation of foreign transmission customers and not the reciprocity obligation of transmission customers located in the United States.[25] They seek clarification that transmission customers within the United States need provide reciprocal service only on facilities used for the transmission of electric energy in interstate commerce and not over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce.

Also with respect to section 6 of the pro forma tariff, NEPOOL takes issue with the additional language that provides that reciprocity applies to "all parties to a transaction that involves the use of transmission service under the Tariff, including the power seller, buyer and any intermediary, such as a power marketer."[26] It asserts that the breadth of this language could cause New Brunswick Power Corporation (New Brunswick), a Canadian utility that has engaged in economy and emergency transactions with NEPOOL and made unit sales to New England buyers, to cease or reduce sales in New England. According to NEPOOL, New Brunswick has indicated a concern that it does not have the legal authority to implement a generic open access tariff in New Brunswick. Thus, NEPOOL requests that the Commission provide that where a seller is simply continuing to make sales in the same manner as it did before Order Nos. 888 and 888–A, and is legally unable to provide reciprocity, the reciprocity requirement will not be applicable to it.[27]

TAPS takes issue with the Commission's modified "safe harbor" procedure set forth in Order No. 888–A that permits a non-public utility to provide reciprocal service only to the transmission provider from whom it receives open access transmission service. TAPS believes that the Commission's modification is "an unnecessary step backwards from its expressed aim of remedying past undue discrimination and providing non-discriminatory open access."[28] It believes that the transmission provider's access to third party systems will be superior to that of its customers that support the transmission grid. According to TAPS, a customer would be at a disadvantage because it would be forced to resort to a filing under section 211. Thus, it asserts that the safe harbor should be available only to those that offer open access to all eligible wholesale transmission customers. "At the very least, [it argues,] the special protections offered by the safe harbor should be available only if the non-jurisdictional utility makes its tariff available to the long term customers of the transmission provider."[29]

RUS seeks rehearing and/or clarification with respect to a number of reciprocity related issues. RUS first complains that there is confusion regarding the alternatives available to non-public utilities. It asserts that in certain places in Order No. 888–A the Commission indicates that it will no longer allow bilateral agreements (*e.g.*, "Alternatively, bilateral agreements for transmission service provided by a public utility will not be permitted."), but that in other places the Commission encourages the use of bilateral agreements (*e.g.*, "A non-public utility may also satisfy reciprocity through bilateral agreements with a public utility."). It also notes that Order No. 888–A appears to substitute public utility waivers for the alternative of bilateral agreements. In any event, however, it argues that

> [p]ublic utilities have no incentive to enter into bilateral agreements or to waive the reciprocity requirement for a non-public utility that owns transmission. Indeed, these so-called options effectively invite public utilities to deny access to non-public utilities that have not filed open access tariffs. If a non-public utility cannot qualify for a waiver from the Commission, the public utility can, by denying a waiver or refusing to enter into a bilateral agreement, force the non-public utility to file a reciprocal tariff with the Commission. Moreover, requiring a non-public utility to seek a waiver—whether from the public utility or the Commission—is inconsistent with the Commission's assertions that the provision of open access by non-public utilities is not required, but merely voluntary.[30]

RUS takes issue with the following statement in Order No. 888–A, claiming that it mischaracterizes the RUS program and RUS as anti-competitive:

> With respect to TDU System's assertion that reciprocal service should not have to be rendered if it would interfere with RUS loan financing, we note that we have already indicated that reciprocal service need not be provided if tax-exempt status would be jeopardized. If TDU Systems is arguing that we should not require reciprocal service if RUS attaches such a condition in its regulation of RUS-financed cooperatives, we reject such argument. Such cooperatives have the option to seek bilateral service agreements. [Order No. 888–A, mimeo at 316].

RUS maintains that it does not place any prohibitions, restrictions, or conditions on financing to electric systems based on rendering reciprocal service. It states that while the Rural Electrification Act places restrictions on RUS financing, it does not prohibit cooperatives from obtaining financing for facilities through non-RUS sources.

RUS seeks clarification that the statement in Order No. 888–A that "the seller as well as the buyer in the chain of a transaction involving a non-public utility will have to comply with the reciprocity condition" does not mean that if a G&T uses an open access tariff, both the G&T and its distribution system are subject to the reciprocity provision.

RUS also states that although the Commission acknowledges that it lacks jurisdiction to enforce rates charged by non-public utilities in reciprocal open access tariffs and to adjudicate stranded cost claims of non-public utilities, the Commission has indicated that if a non-public utility includes a stranded cost component in a reciprocity tariff, "the Commission will review that stranded cost provision if a public utility claims that the stranded cost component, as applied, violates the principle of comparability."[31] According to RUS, "any comparability determination with respect to stranded cost or other provisions contained in a non-public utility's open access tariff will involve the exercise of Commission jurisdiction over a non-public utility's open access

[24] As the market evolves, the Commission may need to take up a broad array of transmission pricing issues. It may well develop that a long-term solution to any problems raised by discounting requires fundamental changes to the transmission pricing methods currently in place in the electric industry.

[25] NRECA at 13–14; TDU Systems at 13–14.

[26] NEPOOL at 7.

[27] *Id.* at 7–8.

[28] TAPS at 22.

[29] *Id.* at 23 (footnote omitted).

[30] RUS at 10–11.

[31] *Id.* at 12.

transmission tariff as well as a determination of the legitimacy of the non-public utility's stranded cost claims."[32] RUS says that the Commission has not indicated that it will apply the comparability standard to the transmission rates that rural cooperatives charge members and non-members in a manner that will take into account the unique characteristics of a cooperative system, the inherent differences between members and non-members, and the intended beneficiaries of the RE Act.

Commission Conclusion. With respect to NRECA and TDU Systems' requested clarification of the deleted words "in interstate commerce" from section 6 of the pro forma tariff, we reiterate that transmission customers in the United States must provide reciprocal transmission service "over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer."[33] Thus, a transmission customer must provide transmission service over *all transmission* facilities that it owns, controls or operates. This includes transmission facilities in both interstate and intrastate commerce. Such a customer, however, need not provide reciprocal service over facilities used solely in local distribution.

We recently addressed concerns similar to those raised by NEPOOL as to the applicability of the reciprocity condition to a Canadian utility selling power to a U.S. utility. In an order addressing Ontario Hydro's motion for a stay of the reciprocity provision of Order Nos. 888 and 888–A as those orders apply to transmission-owning foreign entities, we explained that the reciprocity condition does not apply

> in circumstances where a Canadian utility sells power to a U.S. utility located at the United States/Canada border, title to the electric power transfers to the U.S. border utility, and the power is then resold by the U.S. border utility to a U.S. customer that has no affiliation with, and no contractual or other tie to, the Canadian utility. The reciprocity provision thus does not in any way affect historical Canadian-United States buy-sell arrangements, *i.e.*, those involving sales to U.S. border utilities who then resell power to purchasers that have no contractual or other transactional link to the Canadian seller. For these types of historical sales, a Canadian seller is no worse off under Order Nos. 888 and 888–A than it was prior to the orders' issuance. Additionally, Order Nos. 888 and 888–A do not disrupt any pre-Order No. 888 power sales contracts under which Ontario Hydro sells to U.S. utilities, or any pre-Order No. 888 transmission contracts under which it purchases transmission from U.S. utilities.[34]

Thus, Order Nos. 888 and 888–A do not disrupt any existing agreements, as defined in those orders, between New Brunswick and any of its U.S. customers. Moreover, to the extent any of New Brunswick's transactions are buy-sell arrangements of the type described above, such transactions also are not affected by Order Nos. 888 and 888–A. However, if New Brunswick seeks to sell power under new agreements or through new coordination transactions, such transactions are subject to Order Nos. 888 and 888–A and New Brunswick would have to agree to provide reciprocal open access transmission, unless waived by the U.S. public utility or this Commission.

TAPS' rehearing request with respect to the safe harbor procedure was not timely filed. In Order No. 888, the Commission explicitly stated that "we intend that reciprocal service be limited to the transmission provider."[35] The Commission also stated, in establishing the safe harbor procedure, that "[w]e are aware that many non-public utilities are very willing to offer reciprocal access, and that some are willing to provide access to all eligible customers through an open access tariff."[36] Thus, it was clear that a non-public utility could meet reciprocity under the safe harbor procedure by agreeing to provide service only to the transmission provider or to any eligible customer. Nothing in Order No. 888–A changed this approach. The Commission's discussion of the safe harbor procedure in Order No. 888–A was limited to *Santee Cooper*[37]—a company-specific case decided subsequent to Order No. 888. The Commission noted that while the company in that case chose to offer an open access tariff to all eligible customers, "Order No. 888 provides, as a condition of service, that reciprocal access be offered to only those transmission providers from whom the non-public utility obtains open-access service."[38]

We also disagree with TAPS' assertion that the Commission has taken "an unnecessary step backwards from its expressed aim of remedying past undue discrimination and providing non-discriminatory open access." We explicitly stated in Order No. 888 our rationale for requiring that reciprocal access be offered only to the transmission provider from whom the non-public utility obtains open access service:

> We believe the reciprocity requirement strikes an appropriate balance by limiting its application to circumstances in which the non-public utility seeks to take advantage of open access on a public utility's system.[39]

With respect to RUS' concerns regarding the availability of bilateral agreements, we clarify the distinction between the two different circumstances: (1) That of a *non-public* utility seeking transmission service from a public utility, and the requirement imposed on the public utility in providing the service; and (2) that of a *public* utility seeking transmission from a non-public utility, and what is sufficient for the non-public utility to provide reciprocal transmission service. As we stated in Order No. 888–A, if a *non-public* utility seeks service from a public utility, that public utility should, except in unusual circumstances, provide the service "pursuant to the open access tariff and not pursuant to separate bilateral agreements."[40] On the other hand, if a *public* utility seeks service from a non-public utility through the reciprocity condition, Order No. 888–A provides that the non-public utility may provide that service pursuant to a bilateral agreement to satisfy its reciprocity obligation.[41]

We do not agree with RUS that public utilities will have no incentive to take service under bilateral agreements or to waive the reciprocity condition for non-public utilities. If a public utility needs transmission service from a non-public utility to maximize its profits or to make sales or purchases on behalf of its native load, then it should not care whether it takes service from the non-public utility under a bilateral agreement or an open access tariff. However, we recognize that even if the public utility does not need transmission service from a non-public utility, it may use the reciprocity condition as a reason to deny transmission service. But this is no different from the situation non-public utilities were in prior to the issuance of Order No. 888 when utilities could outright deny any transmission service. In that situation, the only recourse for the non-public utility was to file a request for service under section 211. The same is true post-Order No. 888.[42]

[32] *Id.*

[33] *See* FERC Stats. & Regs. at 30,513.

[34] Order Clarifying Order No. 888 Reciprocity Condition and Requesting Additional Information, 79 FERC ¶61,182 at (1997) (footnotes omitted); *see also* Order Denying Motion for Stay, 79 FERC ¶61,367 (1997).

[35] FERC Stats. & Regs. at 31,760.

[36] *Id.* at 31,761.

[37] South Carolina Public Service Authority, 75 FERC ¶61,209 at 61,701 (1996).

[38] FERC Stats. & Regs. ¶31,048 at 30,289.

[39] FERC Stats. & Regs. ¶31,036 at 31,762.

[40] FERC Stats. & Regs. ¶31,048 at 30,285.

[41] *Id.* at 30,289.

[42] Of course, the flip side is equally true. If a public utility seeks service from a non-public

Continued

In any event, should a public utility refuse to provide transmission service based on a claim that the non-public utility requesting transmission service is not willing to provide reciprocal service, the non-public utility may always file a transmission tariff under the safe harbor procedure. We do not see this as any burden as the Commission has made available for interested entities a complete open access tariff that would require little modification to file.[43] Moreover, as we have explained, this reciprocal tariff, filed under the safe harbor procedure, need only be made available to the public utility (or utilities) from whom the non-public utility obtains open access transmission service. Further, if, as RUS seems to imply, the cooperatives do not want to provide *any* service, that is fundamentally at odds with the basic reciprocity provision and the fairness/competition concepts that underlie it.

We also reject RUS' argument that requiring a non-public utility to seek a waiver is inconsistent with the Commission's assertion that the reciprocity condition is voluntary. First, we did not require that non-public utilities seek a waiver, but merely provided a waiver as an option for them to pursue. Moreover, the waiver option (from the public utility or the Commission) is available only if a non-public utility *voluntarily* chooses to request open access transmission service from a public utility. As we explained in Order No. 888–A:

> we are not *requiring* non-public utilities to provide transmission access. Instead, we are conditioning the use of public utility open access tariffs, by all customers including non-public utilities, on an agreement to offer comparable (not unduly discriminatory) services in return.[44]

We will clarify for RUS that the Commission's statement that "the seller as well as the buyer in the chain of a transaction involving a non-public utility will have to comply with the reciprocity condition" does not apply to member distribution cooperatives when their G&T cooperative obtains open access transmission service. We did not intend this statement to change our position with respect to cooperatives and reaffirm our prior pronouncement that

> If a G&T cooperative seeks open access transmission service from the transmission provider, then only the G&T cooperative, and not its member distribution cooperatives, should be required to offer transmission service.[45]

Finally, we disagree with RUS' claim that "any comparability determination with respect to stranded cost or other provisions contained in a non-public utility's open access tariff will involve the exercise of Commission jurisdiction over a non-public utility's open access transmission tariff as well as a determination of the legitimacy of the non-public utility's stranded cost claims."[46] In Order No. 888–A, the Commission explained that a non-public utility that chooses voluntarily to offer an open access tariff for purposes of demonstrating that it meets the reciprocity condition can include a stranded cost provision in its tariff, but adjudication of any stranded cost claims under that tariff would not be subject to our jurisdiction. We said that although we would not determine the rate of a non-public utility (including the stranded cost component of the rate), "we would review a public utility's claim that it is entitled to deny service to a non-public utility because the stranded cost component of the non-public utility's transmission rate is being applied in a way that violates the principle of comparability."[47] In reviewing a public utility's claims that a non-public utility is applying its stranded cost provision in a non-comparable (or discriminatory) manner, we would not be exercising jurisdiction over the non-public utility or its rates. We simply would be enforcing the reciprocity condition. As we said in Order No. 888–A, "[i]t would not be in the public interest to allow a non-public utility to take non-discriminatory transmission service from a public utility at the same time it refuses to provide comparable service to the public utility."[48]

3. Indemnification/Liability

Several petitioners argue that the Commission erroneously established a new standard of liability for transmission providers—simple negligence—that is contrary to the weight of authority in states across the country.[49] They claim that the Commission's standard would expose transmission providers and their native load customers to potentially enormous liability, including large consequential damage awards.[50] EEI also argues that the Commission has made no finding that a change in the standard is needed to remedy alleged undue discrimination nor, it argues, has the Commission demonstrated any reason to change the liability standard. According to EEI, the proper standard is "gross negligence."

Similarly, Puget argues that the Commission erroneously refuses to allow the express exclusion of consequential and indirect damages. It argues that the exception language in section 10.2 of the pro forma tariff ("except in cases of negligence or intentional wrongdoing by the Transmission Provider") should be changed to "except in cases of and to the extent of comparative or contributory negligence or intentional wrongdoing by the Transmission Provider." It further argues that Order No. 888 should be revised to exclude liability for special, incidental, consequential or indirect damages.

Coalition for Economic Competition states that the Commission erroneously relied upon a gas decision as a basis for adopting an ordinary negligence standard. It asserts that the characteristics of gas and electric service and the risks associated with each are very different: (1) the wires for electric transmission are located above ground and more susceptible to outages than buried pipelines and (2) the electric grid is more complex, with the potential for a single problem to affect a significant number of customers over a large geographic area. Thus, it argues, electric transmission providers face a much greater exposure to liability than gas transporters.

EEI and KCPL request that the Commission clarify whether states have authority to establish the scope of a utility's liability in providing federally mandated transmission service, as provided for in Order No. 888–A. Because of some uncertainty on this issue and the fact that 25 states do not have reported decisions on the issue, EEI indicates that there is likely to be significant litigation, which may lead to uncertainty between the parties to the

utility, the only way it may be able to seek such service is by filing a section 211 application.

[43] We note that since issuance of Order No. 888, ten non-public utilities have filed reciprocity tariffs, including cooperatives.

[44] FERC Stats. & Regs. ¶ 31,048 at 30,285 (emphasis in original).

[45] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,286. We note that this does not prevent an eligible entity from filing a section 211 request with a "distribution" cooperative.

[46] RUS at 12.

[47] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,384 n.527.

[48] *Id.* at 30,285.

[49] *See* KCPL and Coalition for Economic Competition. EEI also raises this issue, but EEI filed its request for rehearing out-of-time on April 4, 1997 with a request that the Commission accept the rehearing request because it has occurred at the very start of the proceeding, no response is required by any other party and there will be no prejudice to any other party. EEI failed to file its rehearing request within the 30 day period required by the Federal Power Act. *See* 16 U.S.C. 825l(a). Accordingly, we will not accept the rehearing request for filing, but will accept the pleading as a motion for reconsideration.

[50] *See* Coalition for Economic Competition, EEI.

interstate service transaction. If the Commission determines that states do not have authority, EEI and KCPL assert that the Commission should establish a rule of liability based on a standard of gross negligence. If the Commission determines that states do have the authority to establish the scope of a transmission provider's liability, EEI, as well as KCPL, assert that the Commission "should clarify that states are preempted from attaching liability to actions taken by a transmission provider in compliance with the provisions of its filed pro forma tariff" and "should make an affirmative statement that it is expressing no opinion on whether a transmission provider should be liable, for public policy reasons, for acts of ordinary negligence."[51]

Coalition for Economic Competition further maintains that

> while the Commission directs transmission providers to rely on state law for protection against liability, it ignores the policies established at the state level which already address the issue. As a result, FERC is reallocating the risks associated with the transmission of electricity. To the extent that reallocation forces utilities to experience an additional financial burden, captive customers will be forced to pay more—more than the parties agreed would be their fair share. [52]

Furthermore, Coalition for Economic Competition states that case law may not protect the utility and its captive customers from the costs associated with the reallocation of risk:

> Frequently, the outcome of a case is closely related to any applicable tariff language that embodies that state's public policy as set by its regulatory commission. If the *pro forma* liability provision differs from the standards used in a particular state, the applicability and usefulness of that state's prior court decisions is unclear. [53]

Coalition for Economic Competition also asserts that the Commission appears to be sending contradictory signals, citing a recent decision (*New York State Electric & Gas Corporation*, 78 FERC ¶ 61,114 (1997)) in which the Commission rejected a provision in an open access tariff that acted as a choice of law provision. It argues that issues involving which jurisdiction provides the most appropriate forum, and which law should apply, are likely to be contested issues. In sum, Coalition for Economic Competition states that "the Commission's reliance on state law leaves a wide open gap in which the outcome of potential claims is completely unknown, and the risk to which transmission providers are exposed is increased even more."[54]

Commission Conclusion. The tariff provisions on Force Majeure and Indemnification, as clarified in Order No. 888–A, provide certain limited protections to the transmission provider as well as its customers, when they faithfully attempt to carry out their duties under the tariff. The petitioners want the Commission to extend these limited protections to other situations or otherwise set forth definitive rules on liability in various situations that might arise under the tariff. We believe that the tariff provisions strike the right balance, and we will not here attempt to define the consequences of every conceivable breach that might occur under the tariff. Nor will we use the tariff, as some appear to want us to do, as an instrument for defining exclusive and preemptive federal laws for liability for all damages that might arise from the operation of the transmission system.

The Force Majeure provision of the tariff, in its essence, provides that neither the transmission provider nor the customer will be liable to the other when they behave in all respects properly, but unpredictable and uncontrollable force majeure events prevent compliance with the tariff. The Indemnification provision of the tariff, in its essence, provides that when the transmission provider behaves in all respects properly, the customer will indemnify the transmission provider from claims of damage to third parties arising from the service provided under the tariff. Under the terms of the tariff, the transmission provider may not rely on the protections provided by the Force Majeure clause or the Indemnification Clause for acts or omissions that are the product of negligence or intentional wrongdoing. Likewise, the customer may not rely on the protections provided by the Force Majeure clause for acts or omissions that are the product of negligence or intentional wrongdoing.

Contrary to the contention of EEI, the Force Majeure and Indemnification provisions do not establish a new simple negligence standard of liability for transmission providers. As we explained in Order No. 888–A, the issue of whether liability will attach to certain acts or omissions by a transmission provider is a different question from whether a customer should be obligated to indemnify the transmission provider in such circumstances.[55] In Order Nos. 888 and 888–A, the Commission has made no finding and expressed no opinion concerning whether a transmission provider should be held liable for damages to third parties arising from the transmission provider's acts or omissions of simple negligence, and the tariff language should not be construed as preempting the appropriate tribunal's consideration of whether liability should attach for acts or omissions of the transmission provider that injure third parties.

While the Commission has not established an exclusive and preemptive liability standard for electric utilities, EEI and the Coalition for Economic Competition would have us do so. They seek exculpatory language in the tariff that would protect the transmission provider from liability in all cases, except where gross negligence has been shown. Both acknowledge in their rehearing requests that such an exculpatory standard would in some regions alter the current liability standards, citing a study which concludes that 25 states have addressed the issue, with 21 of the 25 finding a gross negligence standard appropriate. Both argue that the Commission could eliminate potential uncertainties and conflicts among tribunals by determining a comprehensive and exclusive federal standard that accords with the determinations of the majority of states that have addressed this issue. EEI and KCP&L also question whether reference to state law is appropriate at all, suggesting that the Commission must develop a comprehensive federal standard of liability for service under the tariffs. We do not believe that such a determination is necessary or appropriate at this time.

First, we note that there is no question that the Commission has exclusive jurisdiction to determine the reasonableness of rates, terms, and conditions for the transmission of electric energy in interstate commerce.[56] Moreover, it is clear that state tribunals may not second-guess or collaterally attack Commission determinations of the reasonableness of filed rates, terms, and conditions.[57] On the other hand, it is likewise clear that the Commission's jurisdiction to consider disputes arising under jurisdictional tariffs does not as a matter of law preclude state courts from also entertaining such disputes in the

[51] EEI at 7; KCPL at 7–8.

[52] Coalition for Economic Competition at 7.

[53] *Id.* at 8.

[54] *Id.* at 9.

[55] FERC Stats. & Regs. ¶ 31,048 at 30,301.

[56] 16 U.S.C. 824b; *see, e.g.*, Nantahala Power & Light Company v. Thornburg, 476 U.S. 953, 963–66 (1986); FPC v. Southern California Edison Company, 376 U.S. 205 (1964); Public Utilities Commission v. Attleboro Steam & Electric Company, 273 U.S. 83 (1927).

[57] *See, e.g.*, Mississippi Power & Light Company v. Mississippi *ex rel* Moore, 487 U.S. 354, 374–75 (1988); Gulf States Utilities Company v. Alabama Power Company, 824 F.2d 1465, 1471–72, *amended*, 831 F.2d 557 (5th Cir. 1987).

appropriate circumstances.[58] In determining whether the Commission will exercise jurisdiction in such cases, the Commission is guided by the principles set forth in *Arkansas Louisiana Gas Company* v. *Hall*.[59] Application of these principles suggests the possibility that tribunals other than the Commission may be called upon to adjudicate disputes arising from service under the tariff.

With that background, the concerns expressed by EEI and KCP&L concerning the need for a uniform federal liability standard closely resemble the concerns addressed by the court in *United Gas Pipe Line Company* v. *FERC*.[60] In that case, the Commission had approved a tariff that limited a pipeline's liability to claims of "negligence, bad faith, fault or wilful misconduct" and the pipeline appealed, arguing that a uniform standard of liability should be established that was more protective of the pipeline. The court rejected the claim that there was a need for a uniform federal standard more favorable to the pipeline. As the court explained, "uniformity of result is needed only to protect the federal interest, that is, only to exculpate [the pipeline] from contract liability in all cases not based on [the pipeline's] fault. Uniformity of exculpation beyond those cases is not a matter of federal concern" because in such instances "liability flows only from [the pipeline's] mismanagement."[61] This same reasoning applies here. It is appropriate for the Commission to protect the transmission provider through the tariff provisions on Force Majeure and Indemnification from damages or liability that may occur when the transmission provider provides service without negligence, but to leave the determination of liability in other instances to other proceedings.[62]

4. Qualifying Facilities (QF)/Real Power Loss Service

NIMO and EEI[63] seek rehearing of the Commission's clarification in Order No. 888–A that a

QF arrangement for the receipt of Real Power Loss Service or ancillary services from the transmission provider or a third party for the purpose of completing a transmission transaction is not a sale-for-resale of power by a QF transmission customer that would violate our QF rules.[64]

NIMO argues that the Commission's clarification is inconsistent with the criteria for QF status under sections 3(17) and 3(18) of the FPA and the Commission's precedent. NIMO argues that the Commission has decided that a QF can only sell the net output of its facility without losing QF status. According to NIMO, allowing QFs to purchase Real Power Loss Service will result in QFs selling in excess of their net output at avoided cost.[65]

Finally, NIMO argues that if the Commission wishes to allow QFs to purchase power to compensate for line losses from third parties, and to include such power in their sales, it must do so only after a rulemaking in which it has noticed its intention to amend its QF regulations.[66]

Commission Conclusion. As a preliminary matter, we reject NIMO's argument that the Commission could only grant the clarification provided in Order No. 888–A after a rulemaking in which it noticed its intent to amend its QF regulations. All of the QF cases cited by NIMO in its rehearing request involve the Commission clarifying its rules in case-specific situations. For example, in *Occidental Geothermal, Inc.* (*Occidental*), the Commission was required to define the term "power production capacity" of a facility as that term was used in 18 CFR 292.204(a).[67] The Commission did so without issuing a notice of proposed rulemaking and seeking comments.

Moreover, the issue raised by NIMO and EEI is whether the Commission's clarification would result in a facility losing QF status, as defined in sections 3(17) and 3(18) of the FPA. The Conference Report on PURPA provides:

> The new paragraphs 17(C) and 18(B) of the definitions provide that the Commission shall determine, by rule, *on a case-by-case basis, or otherwise*, that a small power production facility or a cogeneration facility is a qualifying small power production facility or cogeneration facility, as the case may be.[68]

Accordingly, NIMO's argument that the Commission has improperly amended its PURPA regulations is wrong.

The substantive issue raised on rehearing is an issue of first impression.[69] In *Occidental*, *Turners Falls*, as well as in *Power Developers, Inc.*,[70] *Malacha Power Project, Inc.* (*Malacha*),[71] and *Pentech Papers, Inc.*,[72] the Commission found that QFs were permitted to sell only the net output of their power production facilities as measured at the point of interconnection with the electric utility to which they were interconnected. The Commission did not decide the question of whether "the receipt of Real Power Loss Service or ancillary services from the transmission provider or a third party for the purpose of completing a transmission transaction" would be a sale-for-resale of power by a QF that would violate the Commission's QF rules.

At first glance, it would appear that Real Power Loss Service and ancillary services fall within the definition of "supplementary power" as defined in 18 CFR 292.101(b)(8).[73] If this were in fact the case, the precedent cited above would be relevant because supplementary power would be subtracted from gross output to determine the net output available for sale and, pursuant to *Turner Falls*, any sale in excess of the net output would result in a loss of QF status. However, if Real Power Loss Service and ancillary services are part of the costs of transmission, they are not covered

[58] *See, e.g.*, Pan American Petroleum Corporation v. Superior Court of Delaware, 366 U.S. 656, 662, 666 (1961).

[59] 7 FERC ¶ 61,175, *reh'g denied*, 8 FERC ¶ 61,031 (1979).

[60] 824 F.2d 417 (5th Cir. 1987).

[61] 824 F.2d 427.

[62] Some of the rehearing requests concerning indemnification/liability raise issues that previously were raised on rehearing of Order No. 888 and were addressed by the Commission in Order No. 888–A. *See* Coalition for Economic Competition argument that the circumstances of electric transmission require a different result than the gas pipeline cases and Puget arguments that the negligence language of the indemnification provision should be changed to reference comparative or contributory negligence and that the tariff should exclude transmission provider liability for special, incidental, consequential, or indirect damages. The Commission will not further address such issues in this proceeding.

[63] As discussed above, EEI filed its request for rehearing out-of-time. Accordingly, we are treating EEI's pleading as a motion for reconsideration.

[64] FERC Stats. & Regs. ¶ 31,048 at 30,237 (1997). *See also* Puget.

[65] On April 21, 1997, Granite State Hydropower Association filed an answer to NIMO's rehearing request arguing that gross sales are permissible for QFs. In the circumstances presented, we will accept the answer notwithstanding our general prohibition on allowing answers to rehearing requests. *See* 18 CFR 385.713(d).

[66] EEI supports NIMO's arguments.

[67] 17 FERC ¶61,231 (1981).

[68] H.R. Rep. No. 95–1750, Public Utility Regulatory Policies Act, 95th Cong. 2d Sess. 89 (1978) (emphasis added). *See also* Turners Falls Limited Partnership, 55 FERC ¶61,487 at 62,670 n.33 (1991) (*Turners Falls*).

[69] We note that other aspects of the "net/gross" issue are pending before the Commission in separate proceedings and will be addressed by the Commission in subsequent orders. *See* Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P., *et al.* (Docket Nos. EL94–10–000 and QF86–177–001); Carolina Power & Light Company v. Stone Container Corporation (Docket Nos. EL94–62–000 and QF85–102–005); and Niagara Mohawk Power Company v. Penntech Papers, Inc. (Docket Nos. EL96–1–000 and QF86–722–003).

[70] 32 FERC ¶61,101 (1985).

[71] 41 FERC ¶61,350 (1987).

[72] 48 FERC ¶61,120 (1989).

[73] Supplementary power is defined as "electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself."

under the definition of "supplementary power."

As the Commission explained in its Notice of Proposed Rulemaking, Small Power Production and Cogeneration-Rates and Exemptions:

> The costs of transmission are not a part of the rate which an electric utility to which energy is transmitted is obligated to pay the qualifying facility. These costs are part of the costs of interconnection, and are the responsibility of the qualifying facility * * *. The electric utility to which the electric energy is transmitted has the obligation to purchase the energy at a rate which reflects the costs that it can avoid as a result of making such a purchase.[74]

This view was adopted by the Commission in Order No. 69, Small Power Production and Cogeneration Facilities, Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978.[75] There the Commission defined "'interconnection costs' as the reasonable costs of * * * transmission * * *."[76] It is also consistent with the Commission's findings in 18 CFR 292.303(d) that if a QF transmits its output to an electric utility with which it is not interconnected, the rate for the purchase of such energy "shall not include any charges for transmission." Thus, all that remains is to determine whether Real Power Loss Service and ancillary services are part of the costs of transmission.

Ancillary services as defined in Order Nos. 888 and 888-A are part of the costs of transmission services. In Order No. 888, we defined ancillary services as those services "that must be offered with basic transmission service under an open access transmission tariff."[77] We noted that these services are those "needed to accomplish transmission service while maintaining reliability within and among control areas affected by the transmission service."[78] Thus, there is no question that ancillary services are part of the cost of transmission and therefore are included among the interconnection costs a QF is responsible for.

Real Power Loss Service is an interconnected operations service.[79] It is thus not a service which a transmission provider is *required* to provide under its open access transmission tariff. Nevertheless, the Commission recognized that a transmission customer must make provisions for Real Power Loss. As the Commission noted, a customer "cannot take basic transmission service without such a provision."[80] As a result, we find that Real Power Loss Service is also a part of the cost of transmission and included among the interconnection costs a QF is responsible for.

Consistent with 18 CFR 292.303(d), however, a QF purchasing Real Power Loss Service shall have its purchase rate adjusted up or down consistent with 18 CFR 292.304(e)(4).[81] In other words, while a QF can never sell more power than its net output at its point of interconnection with the grid, its location in relation to its purchaser (and thus its losses) may be relevant in the calculation of the avoided cost which it is entitled for the power it does deliver to its electric utility purchaser. However, as explained above, the receipt of Real Power Loss Service or ancillary services is not a sale-for-resale of power. Rather, they are part of the costs of transmission which the QF must bear, in the absence of an agreement to share such costs with the transmitting utility.

5. Right Of First Refusal/Reservation Of Transmission Capacity

NRECA, TDU Systems and TAPS seek clarification that the rights of network customers to reserve capacity to serve their own retail load are comparable to a transmission provider's right to reserve transmission capacity for its retail native load. They point to language in Order No. 888–A that supports their interpretation, but note that other language concerning the Right of First Refusal (ROFR) mechanism seems to provide an advantage to transmission providers in serving their retail native load.

NRECA and TDU Systems argue that the Commission improperly allows a transmission provider to reserve capacity as needed to serve its existing native load customers, but the cooperative wholesale power or firm transmission customer has only a right of first refusal that requires it to match competing bids, which exposes it to matching an incremental rate or opportunity cost rate capped at the cost of system expansion. They assert that "[t]o the extent the transmission provider is able to continue to provide service to its retail native load at average embedded transmission costs, so too should the network customer have the right to continued service at average embedded-cost rates, rather than at incremental-cost rates or opportunity-cost rates capped only at the cost of system expansion."[82] TDU Systems requests that the Commission clarify that

> the ROFR provisions allow an existing network customer to continue to reserve transmission capacity at rates that remain comparable to the transmission provider's service to its retail native load.[83]

Similarly, NRECA requests the Commission to clarify that

> firm transmission customers for which the transmission provider has a planning requirement are on an equal footing with the transmission provider's retail load in reserving transmission capacity. The Commission accordingly should clarify that the ROFR provisions allow existing firm transmission customers for which the transmission provider has a planning requirement to continue to reserve their existing transmission capacity at rates that remain comparable to the transmission provider's existing service to its retail native load.[84]

TAPS asks the Commission to clarify that

> its discussion of the rights of a transmission provider to reserve and reclaim capacity needed for native load growth apply with equal force to capacity needed for network customers for which the transmission provider is equally responsible for planning its system. The Commission should also clarify that the transmission provider's reclamation/reservation right cannot be used to withdraw capacity currently or reasonably forecasted to be used by a network customer.[85]

TDU Systems further requests that the Commission clarify the rate an existing transmission customer would have to match to retain its reservation priority. It requests that the Commission clarify that the customer need match only the undiscounted tariff rate of general applicability and not the highest rate the transmission provider is then collecting

[74] FERC Stats. & Regs., Proposed Regulations 1977–1981, ¶32,039 at 32,437 (1979). *See also id.* at 32,447 (costs of transmission constitute interconnection costs and must be borne by QF unless transmitting utility agrees to share them).

[75] FERC Stats. & Regs., Regulations Preambles 1977–1981, ¶30,128 (1980).

[76] *Id.* at 30,866. *See also* 18 CFR 292.101(b)(7).

[77] FERC Stats. & Regs., ¶31,036 at 31,705 (footnote omitted).

[78] *Id.*

[79] *Id.* at 31,709.

[80] *Id.*

[81] In Order No. 69, the Commission noted:

> Subparagraph (4) addresses the costs or savings resulting from line losses. An appropriate rate for purchases from a qualifying facility should reflect the cost savings actually accruing to the electric utility. If energy produced from a qualifying facility undergoes line losses such that the delivered power is not equivalent to the power that would have been delivered from the source of power it replaces, then the qualifying facility should not be reimbursed for the difference in losses. If the load served by the qualifying facility is closer to the qualifying facility than it is to the utility, it is possible that there may be net savings resulting from reduced line losses. In such cases, the rates should be adjusted upwards.

Order No. 69 at 30,885–86.

[82] TDU Systems at 6; NRECA at 5.

[83] TDU Systems at 7.

[84] NRECA at 7.

[85] TAPS at 33.

from any customer, *i.e.*, an incremental rate based on an upgrade for a particular customer.

Commission Conclusion. In Order No. 888–A, we addressed concerns raised by transmission providers that the right of first refusal may prohibit them from recalling capacity needed for native load growth, by clarifying that the transmission provider may reserve existing capacity for retail native load growth. While the Commission's conclusion in Order No. 888–A, in the context of the treatment of retail native load, is correct, a transmission provider may also reserve existing capacity for both its own wholesale native load growth and network customers' load growth. As the Commission originally explained in Order No. 888:

> public utilities may reserve existing transmission capacity needed for native load growth *and network transmission customer load growth* reasonably forecasted within the utility's current planning horizon.[86]

Accordingly, in order to allay the concerns of NRECA, TDU Systems and TAPS, we clarify that network transmission customers are afforded the same treatment as the transmission provider on behalf of native load (retail and wholesale requirements customers) in terms of the reservation of existing transmission capacity by the transmission provider.

Regarding NRECA's and TDU Systems' allegation that a transmission provider's right to reserve existing transmission capacity for its retail native load is superior to a firm transmission customer's right of first refusal, we note that it is not clear if NRECA and TDU Systems' argument pertains to network transmission customers or to point-to-point transmission customers. The right of a transmission provider to reserve existing transmission capacity on behalf of network transmission customers is discussed above. The reservation priority of transmission capacity for point-to-point transmission customers is different because point-to-point transmission customers do not undertake the same payment obligation as either network transmission customers or the transmission provider on behalf of native load customers. As the Commission explained in Order No. 888–A in the context of reservation of existing capacity:

> We note that network service is founded on the notion that the transmission provider has a duty to plan and construct the transmission system to meet the present and future needs of its native load and, by comparability, its third-party network customers. In return, the native load and third-party network customers must pay all of the system's fixed costs that are not covered by the proceeds of point-to-point service. This means that native load and third-party network customers bear ultimate responsibility for the costs of both the capacity that they use and any capacity that is not reserved by point-to-point customers. In this regard, native load and third-party network customers face a payment risk that point-to-point customers generally do not face.[87]

Additionally, we note that a firm transmission customer may always elect to take network transmission service in lieu of point-to-point transmission service, thereby obtaining rights to reserve existing transmission capacity that are comparable to the rights of other network customers and the transmission provider on behalf of native load.

Furthermore, unless prohibited by the terms of the existing transmission customer's contract, there is nothing to prevent an existing point-to-point transmission customer from seeking to extend the term of its contract. An existing transmission customer may also enter into an additional agreement for point-to-point transmission service and reassign such capacity until needed or choose a service commencement date concurrent with the termination of its existing contract.

TDU Systems asserts that Order No. 888–A "leaves unresolved whether the customer must pay the undiscounted rate of general applicability for tariff service at the time of conversion or the highest rate the transmission provider is then collecting from any customer," such as an incremental cost-based rate.[88] We clarify that the right of first refusal does not require an existing transmission customer to match the highest rate the transmission provider is then collecting from *any* customer. The highest rate collected from *any* customer may involve a different service than that service received by the existing customer, which may result in an inappropriate comparison. In this regard, the Commission stated in Order No. 888–A that the purpose of the right of first refusal is to be a tie-breaker and, therefore, the competing requests should be substantially the same in all respects.[89] Accordingly, we clarify that the existing transmission customer exercising its right of first refusal will be required to match the term of service requested by another potential customer and may be required to pay the transmission provider's maximum filed transmission rate. However, the rate must be for substantially similar service of equal or greater duration.

TDU Systems also asks whether the maximum rate that a customer must match in exercising its right of first refusal would include an incremental cost-based rate for an upgrade to a competing customer or if the customer is required to match only the undiscounted tariff rate of general applicability. The right of first refusal is predicated on an existing customer continuing to use its transmission rights in the *existing* transmission system. The right of first refusal acts as a tiebreaker to determine whether the competing eligible customer or the existing transmission customer gets the existing transmission capacity. Accordingly, the maximum rate for such *existing* transmission capacity would be the just and reasonable transmission rate on file at the time the customer exercises its right of first refusal.[90]

In conclusion, we believe that we have struck an appropriate balance between our goals of: (1) Protecting the rights of retail and wholesale native loads and network customers by allowing the transmission provider to reserve existing transmission capacity for their projected load growth and (2) providing existing firm transmission customers with a priority over new requests for firm transmission service to continue receiving transmission service from existing transmission capacity when there is insufficient existing capacity available to accommodate all requests for transmission service.

6. Energy Imbalance Service

a. Appropriate bandwidth for small utilities. APPA argues that the Commission's revision in Order No. 888–A to the deviation bandwidth did not go far enough and does not address the requirements of *all* small utilities, *i.e.*, utilities that sell no more than 4 million MWh annually.[91] It asserts that the Commission has adequately remedied the problem for those small utilities serving load with a peak demand of less than 20 MW, but not for those utilities serving loads with greater peak demands.

To remedy the problem, APPA asks the Commission to revise the minimum bandwidth to provide a minimum deviation bandwidth of 2 MW for utilities serving load with a peak demand of less than 20 MW, 5 MW for utilities serving load less than 100 MW, and 7.5 MW for all other small utilities.

Commission Conclusion. We deny APPA's motion for reconsideration.[92] As the Commission explained in Order No. 888–A, the deviation bandwidth was developed "to promote good scheduling practices by transmission customers. It is important that the implementation of each scheduled transaction not overly burden others."[93] The Commission reaffirmed its use of the 1.5 percent energy imbalance bandwidth as "consistent with what the industry has been using as a standard and is as close to an industry standard as anyone can set at this time."[94] However, the Commission recognized the needs of small customers and raised the minimum energy imbalance from one megawatthour per hour to two megawatthours per hour. In doing so, the Commission sought to balance its primary goal of promoting good scheduling practices with its commitment to provide as much relief as possible to small customers. Larger minimum deviation bandwidths, as proposed by APPA, could only unnecessarily jeopardize this balance at the expense of good scheduling practices.

Moreover, in Order No. 888–A, the Commission provided all customers, including small customers, further options to deal with any difficulties that may be experienced as the result of the minimum deviation bandwidth set forth in Order No. 888–A:

> To help customers with the difficulty of forecasting loads far in advance of the hour, the Final Rule pro forma tariff permits schedule changes up to twenty minutes before the hour at no charge. By updating its schedule before the hour begins, a transmission customer should be able to reduce or avoid energy imbalance and associated charges. However, we will allow the transmitting utility and the customer to negotiate and file another bandwidth more flexible to the customer, subject to a requirement that the same bandwidth be made available on a not unduly discriminatory basis.[95]

APPA has simply not shown that the minimum deviation or the procedures to reduce or avoid energy imbalance charges or to negotiate another bandwidth do not provide adequate relief for small customers. Nor has APPA shown that larger bandwidths could be implemented without unduly undermining good scheduling practices.

b. Settlements establishing a deviation bandwidth or minimum imbalance. TDU Systems states that Order No. 888–A allows a transmission provider and a customer to negotiate and file another bandwidth more flexible to the customer on a not unduly discriminatory basis. but if a settlement was approved subject to the outcome of Order No. 888, it must be revised in the subsequent compliance filing to reflect the language in the pro forma tariff. Accordingly, TDU Systems seeks clarification that if such a settlement contains a bandwidth above 1.5% or a minimum imbalance above 2 MW, those amounts need not be revised downward to conform to the pro forma tariff.[96]

Commission Conclusion. We will not grant the clarification sought by TDU Systems. In Order No. 888–A, we explicitly stated that

> service provided pursuant to a settlement that was expressly approved subject to the outcome of Order No. 888 on non-rate terms and conditions must be revised in the subsequent compliance filing to reflect the language contained in the pro forma tariff.[97]

This is consistent with our desire to have all public utilities at the same starting line as open access is implemented in the electric industry:

> By initially requiring a standardized tariff, we intend to foster broad access across multiple systems under standardized terms and conditions.[98]

However, as we also recognized, "public utilities are free to file under section 205 to revise the tariffs (*e.g.*, to reflect various settlement provisions) and customers are free to pursue changes under section 206."[99] Thus, the settlement discussed by TDU Systems must be revised to conform to the pro forma tariff, but the public utility transmission provider to the settlement may then make another filing with the Commission to seek a change to the bandwidth contained in the pro forma tariff.

7. Transmission Provider "Taking Service" Under Its Tariff for Power Purchased on Behalf of Bundled Retail Customers

a. Jurisdiction. IL Com states that the Commission agreed with IL Com's jurisdictional arguments on rehearing of Order No. 888 and made the following appropriate clarifications in Order No. 888–A:

> In a situation in which a transmission provider purchases power on behalf of its retail native load customers, the Commission [FERC] *does not have* jurisdiction over the transmission of the purchased power to the bundled retail customers insofar as the transmission takes place over such transmission provider's facilities. [quoting Order No. 888–A at 117–18 (emphasis added)].
>
> * * * * *
>
> [The Commission] *does have* jurisdiction over transmission service associated with sales to any person for resale, and such transmission must be taken under the transmission provider's pro forma tariff. [quoting Order No. 888–A at 118 (emphasis added)].[100]

However, IL Com argues that the Commission

> nevertheless neglected to revise § 35.28(c)(2) and § 35.28(c)(2)(i) to incorporate these clarifications into the Rule. Therefore, [IL Com] reiterates its request that the words "for sale for resale" be inserted into the Rule after the word "purchases" in § 35.28(c)(2) and "purchase" in § 35.28(c)(2)(i) to codify the Order 888–A clarification concerning the extent of required power purchase unbundling.[101]

CCEM, however, argues that the Commission's disclaimer of jurisdiction over the transmission in interstate commerce of purchased power headed for retail customers is contrary to the FPA's assertion of jurisdiction over all transmission of electric energy in interstate commerce.[102] It states that

> [t]he Commission has already embraced the proposition that it has the statutory authority and mandate to require utilities to adopt tariffs that will ensure all market participants comparable access to transmission services. It must now extend that authority and mandate to apply to all transmission service.[103]

CCEM further argues that the Commission's failure to assert jurisdiction over interstate transmission of purchased power to retail customers is contrary to precedent under the Natural Gas Act (NGA).[104] It cites to *Mississippi River Transmission Corp.* v. *FERC*, 969 F.2d 1215 (D.C. Cir. 1992), stating that the court affirmed the Commission's interpretation of NGA section 1(b) as authorizing the Commission to regulate the price of natural gas transportation service that

---

[86] FERC Stats. & Regs. ¶ 31,036 at 31,694 (emphasis added).

[87] FERC Stats. & Regs. ¶ 31,048 at 30,220.

[88] TDU Systems at 8.

[89] FERC Stats. & Regs. ¶ 31,048 at 30,197.

[90] Depending on the rate design on file for the existing capacity, a customer exercising its right of first refusal could face an average embedded cost-based rate, an incremental cost-based rate, a flow-based rate, a zonal rate, or any other rate design that the Commission may have approved under section 205 of the FPA.

[91] APPA at 21–23 (citing Blue Creek Hydro, Inc., 77 FERC ¶ 61,232 at 61,941 (1996), in which the Commission used the 4 million Mwh level for determining small utilities eligible for waiver of the requirements of Order No. 889).

[92] As discussed above, APPA filed its request for rehearing out-of-time. Accordingly, we are treating APPA's pleading as a motion for reconsideration.

[93] FERC Stats. & Regs. ¶ 31,048 at 30,232.

[94] *Id.* at 30,232.

[95] *Id.*

[96] TDU Systems at 12–13.

[97] FERC Stats. & Regs. ¶ 31,046 at 30,233.

[98] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,734.

[99] Order No. 888–A, FERC Stats. & Regs. ¶ 31,046 at 30,234 (footnote omitted).

[100] IL Com at 8.

[101] *Id.* at 8–9.

[102] CCEM at 2–6.

[103] *Id.* at 4.

[104] *Id.* at 4–6 (citing Mississippi River Transmission Corp. v. FERC, 969 F.2d 1215 (D.C. Cir. 1992)).

MRT provided in support of certain firm direct sales.

If the Commission does not grant rehearing as requested by CCEM, CCEM argues that "the Commission should nevertheless clarify that its jurisdictional disclaimer does not extend to power pool transmission services."[105] It asserts that because pools themselves do not have native load and do not purchase power on behalf of native load, "when a public utility takes poolwide service to transmit purchased power, it should be required to take that service on an unbundled basis pursuant to the power pool's open-access tariff."[106] In this regard, it states that it is "aware that certain public utilities claim that the Commission's disclaimer of jurisdiction extends to their uses of poolwide transmission service to transmit purchased power to their captive, native loads."[107]

CCEM further argues that the Commission's failure to require that all transmission service be taken under an open access tariff is arbitrary and irreconcilable with the Commission's concurrent determination in connection with the rules pertaining to stranded cost recovery that it has jurisdiction over the rates, terms and conditions of unbundled interstate transmission services by public utilities to retail customers, and that it has the authority to address retail stranded costs through its jurisdiction over such services. It adds that experience from restructuring the natural gas industry (Order Nos. 436 and 636) shows the need to unbundle and separately regulate transmission provided in connection with retail service.

Commission Conclusion. CCEM's arguments with respect to the Commission's disclaimer of jurisdiction over bundled retail transmission are the same arguments it raised on rehearing of Order No. 888 (and were addressed by the Commission)[108] or should have raised on rehearing of Order No. 888. We will not accept CCEM's invitation to further address this issue.

In response to CCEM's request for clarification regarding power pool transactions, we note that all power pool transactions must be taken under the terms of the pool-wide pro forma tariffs that were filed on compliance to Order No. 888.[109] The appropriateness of the terms and conditions contained in those pool-wide pro forma tariffs will be addressed on a case-by-case basis when the Commission addresses the merits of the various pools' compliance filings.

Finally, we deny IL Com's request to modify sections 35.28(c)(2) and 35.28(c)(2)(i) of the Commission's regulations. The additional language proposed by IL Com simply will not work. As we describe in more detail in section 7.b below, it is not possible, as a practical matter, to divide a single power purchase made on behalf of both wholesale and retail native load such that the transmission provider takes service under the terms and conditions of the pro forma open access transmission tariff for the wholesale part of the purchase and under the terms and conditions of a different tariff for the retail part. Thus, the entire purchase transaction must be undertaken pursuant to the terms and conditions of the pro forma open access transmission tariff. The language proposed by IL Com does not recognize the indivisible nature of single power purchases made on behalf of both wholesale and retail native load.

b. Purchases for retail native load. TAPS argues that the Commission significantly contracts its functional unbundling requirement and the associated Standards of Conduct "by exempting from functional unbundling all use by a transmitting utility of its own transmission system to serve bundled retail native load."[110] By exempting a key aspect of the transmission provider's activities in wholesale markets from the open access rules, TAPS asserts, comparability is destroyed and the market is severely distorted. It emphasizes that

> because of the interdependence, elasticity and fungibility of purchases on behalf of unbundled retail load with the transmission provider's other wholesale marketing activities, there is little, if anything, left of functional unbundling.[111]

TAPS states that Order No. 888–A leaves unclear issues critical to comparability, "such as request procedures and priority for usage of limited interface capability applicable to the transmission provider's use of transmission for economy imports for retail bundled load."[112] It argues that without clearly established rules that put the transmission provider in the same position as network customers, the transmission provider will have a competitive advantage.

TAPS further argues that the Commission's approach defeats the Commission's Standards of Conduct and allows transmission provider employees involved in the transmission function to "share operational and reliability information with employees engaged in making economic and other purchases for retail bundled load on a preferential basis as compared with other transmission customers or the transmission provider's 'wholesale' merchant function."[113] Further, it asserts that the Commission's approach to functional unbundling will encourage a transmission provider to retain its preferential access to transmission service and information and discourage it from joining an ISO, under which it would lose its preferential treatment.

TAPS concludes by arguing that "[c]ontrary to the Commission's suggestion, constriction of functional unbundling is not required by limitations on the Commission's jurisdiction."[114] It asserts that the Commission has provided no support for its position and adds that the Commission's position cannot be reconciled with its treatment of transmission agreements between jurisdictional and non-jurisdictional entities whereby the Commission stated that its authority over a jurisdictional contract involving a public utility cannot be impaired by virtue of the fact that the other party is non-jurisdictional.

Commission Conclusion. While we have reiterated our view that the Commission does not have jurisdiction over the rates, terms and conditions of *bundled* retail service, based on the comments received on rehearing, we believe certain clarifications need to be made. As a practical matter, we do not believe that it is possible to divide a *single* power purchase made on behalf of both wholesale and retail native load such that the transmission provider takes service under the open access non-rate terms and conditions for the part of the purchase that goes to wholesale native load, but takes service under different terms and conditions for the part of the purchase that goes to retail native load. Because the power purchase transaction (including the delivery across the transmission provider's system to both wholesale and retail customers) is indivisible, and because the transmission of the purchased power to the wholesale native load customer must be done pursuant to the open access tariff, this means that the entire transaction *de facto* must be pursuant to the non-rate terms and conditions of the tariff.

Concerning the Standards of Conduct requirement that public utilities separate their *wholesale* power marketing functions from their transmission operations, the Commission did not require separation of the *retail* power marketing function because the state has jurisdiction over retail power marketing and over bundled retail transmission. However, here too we believe further clarification is necessary. First, the public utility has no choice pursuant to Order Nos. 888 and 888–A but to separate its wholesale power marketing function (including power purchase transactions made by the marketing function on behalf of wholesale native load) from the transmission operations function. This means that those persons in the company that are involved in wholesale power purchases as well as wholesale sales cannot interact with the transmission personnel other than through the OASIS. Thus, to the extent they are making purchases on behalf of wholesale as well as bundled retail native load as part of a single purchase, they will have to abide by the separation of function requirement. As discussed above, such a purchase is not divisible. Additionally, it is conceivable that there could be a separate retail marketing function for native load and a separate wholesale marketing function for native load. If a challenge is made to the way a utility organizes its functions, then the utility bears the burden of demonstrating that it is maintaining a separate staff to perform retail marketing functions. Furthermore, in such cases, it would clearly be inappropriate for the retail staff to share transmission information with the wholesale marketing staff.

8. Indirect Unbundled Retail Transmission in Interstate Commerce

Referencing the Commission's conclusion that section 212(h) does not prohibit the Commission from ordering public utilities to provide indirect unbundled retail transmission in interstate commerce, BPA states that it appears that the Commission intended to clarify its jurisdiction to order retail transmission in certain limited, interstate situations—namely, to ensure that state initiatives would not be frustrated by the failure of neighboring states to undertake similar initiatives. Where a state has not mandated retail access, but a local utility agrees to provide retail access,[115] BPA argues that it should not be required to distribute another supplier's power to its customers.

BPA also argues that section 212(h)(2) prohibits orders requiring "indirect retail transmission." It declares that the Commission ignored section 212(h)(2), which it asserts prohibits orders requiring indirect retail transmission. BPA contends that, if it and other transmitting utilities are required to provide indirect retail transmission, BPA's ability to meet its statutory obligation to recover all of the costs of the Federal Columbia River Power System and the Commission's ability to meet its statutory obligation to ensure that BPA's rates are sufficient to assure repayment of the federal investment in the power system will be placed at risk.

Commission Conclusion. We disagree with BPA that we ignored section 212(h)(2) in concluding that we have the authority to order indirect retail transmission in interstate commerce to accommodate retail access programs ordered by a state or voluntary retail delivery by the local utility. We clarify that while section 212(h)(2) may limit the Commission in certain circumstances, as a general matter, we believe we can order indirect interstate transmission services necessary to accommodate direct retail access programs that are state ordered or voluntary. Clearly, whether section 212(h) would prohibit the Commission from ordering transmission in a particular circumstance would depend upon the facts presented, including who the transmission requestor is, who the seller of energy is, and who is transmitting or delivering the energy and over what facilities. If parties wish to raise section 212(h)(2) in a particular case, they may do so; however, we do not believe Congress intended section 212(h)(2) to be used as a competitive shield against state-ordered retail access programs or voluntary retail access by local utilities.[116]

9. Mobile-Sierra

Met Ed objects to what it describes as the Commission's asymmetric treatment of customers and suppliers in Order No. 888–A. First, it argues that the existence of uneven bargaining power prior to Order No. 888 (that is referred to in Order No. 888–A) does not provide a rational basis for imposing different standards for customer-initiated and supplier-initiated requests for modification of existing contracts. It says that the Commission does not identify the specific manner in which existing wholesale contracts would lose their just and reasonable character due to changes in the electric industry. "Just as competitive wholesale markets may present opportunities to buyers that are less costly than existing contracts, they may also give sellers greater opportunities to reach new buyers who would be willing to pay more than customers under existing below-cost contracts. If the Commission's initiatives to expand wholesale markets provide a rational basis for making it easier for buyers to modify existing contracts, then these initiatives equally provide a basis to ease the burden on sellers."[117]

Second, Met Ed argues that because the existence of uneven bargaining power was not universal, it cannot provide the basis for a uniform refusal to apply a just and reasonable standard in evaluating all supplier-initiated requests for modification (other than of stranded cost provisions). "The Commission cannot properly distinguish customers from suppliers based on a premise that is only true in the 'majority' of the cases, particularly when the Commission has the ability to make the appropriate determination on a case-by-case basis."[118]

Third, Met Ed says that the Commission's distinction between customers and suppliers is not rationally related to the purpose of Order No. 888. It contends that broad competition is not furthered by a policy that would hold suppliers, but not customers, to the terms of existing unfavorable contracts. Met Ed states that ending the subsidies reflected in long-term below-cost contracts promotes the most efficient use of power supply resources. According to Met Ed, Order No. 888-A's treatment of existing contracts will exacerbate stranded costs (a utility would not be able to obtain relief from a wholesale contract that does not cover its costs, while a customer under another contract could obtain a modification or termination of the contract). "Even if the Commission persists in its conclusion that it can reasonably distinguish requests for modifications by customers from those by utilities because existing contracts

---

[105] *Id.* at 6.
[106] *Id.*
[107] *Id.*
[108] FERC Stats. & Regs. ¶ 31,048 at 30,225–26.
[109] *See* MidContinent Area Power Pool, et al., 78 FERC ¶ 61,203 (1997) (Order Accepting for Filing and Suspending Proposed Pool-Wide and Single-System Holding Company Open Access Transmission Tariffs and Revised Tariffs, and Deferring Further Action), *reh'g pending.*
[110] TAPS at 4 and 6–14.
[111] *Id.* at 5.
[112] *Id.* at 9.
[113] *Id.* at 10–11.
[114] *Id.* at 14.
[115] *See also* Puget at 27.
[116] BPA's arguments that requiring indirect retail wheeling may put at risk its ability to meet its statutory obligation to recover all of the costs of the Federal Columbia River Power System and the Commission's ability to meet its statutory obligation to ensure that BPA's rates are sufficient to assure repayment of the federal investment in the power system are speculative and more appropriately addressed in a fact-specific proceeding if and when this possible risk may arise. Moreover, BPA may propose appropriate stranded cost provisions.
[117] Met Ed at 6.
[118] *Id.* at 7.

reflect one sided bargaining, it should clarify that it will not make such a distinction when customers had other options at the time the contracts were executed."[119]

Commission Conclusion. Met Ed has not raised issues not previously addressed by the Commission. Concerning its argument that uneven bargaining power was not universal, Order No. 888 clearly recognized that this was the case.[120] However, we clarify that, in determining whether to modify an existing contract, we will look at, among other things, whether a customer had other supply options available to it at the time it negotiated its existing contract. We agree with Met Ed that the existence of uneven bargaining power may not have been "universal" and clarify that utilities are free to present to the Commission, on a case-by-case basis, arguments that their contracts are no longer in the public interest or just and reasonable, and therefore should be modified.

10. Tariff Issues

a. Load served "behind-the-meter." Central Maine states that the Commission required all of a wholesale network customer's load "behind-the-meter" to be included in its load-ratio share. It asserts, however, that the Commission "failed to state whether the utility also must include all of a retail customer's load 'behind-the-meter' in computing the load-ratio share."[121] It indicates that it is concerned that it cannot identify the "behind-the-meter" generation that its retail customers own and operate. Central Maine maintains that "[o]nly if the utility invests significant effort and incurs substantial expense to install metering technology will it have the ability to monitor its retail customers."[122] In any event, Central Maine believes that the Commission did not intend to require utilities to determine their retail customers "behind-the-meter" load when calculating network customers' load-ratio shares. Moreover, the Commission cannot require a non-jurisdictional wholesale customer to determine its retail customers "behind-the-meter" load. Thus, if FERC required jurisdictional companies to make such a determination, the load-ratio share of network non-jurisdictional wholesale customers would always be understated. The Commission should clarify Order No. 888–A so that it is clear that utilities are not required to meter retail customer's "behind-the-meter" load.[123]

Commission Conclusion. Central Maine's concern regarding the identification of a retail customer's "behind-the-meter" generation and load is unclear. The Commission's discussion in Order Nos. 888 and 888–A regarding the treatment of behind-the-meter generation and load specifically pertained to an individual network customer's designated network generation and load. If Central Maine's concern pertains to the calculation of a transmission provider's total network load, including the load of the transmission provider's retail native load customers, such an inquiry is beyond the scope of Order Nos. 888 and 888–A and should be addressed on a case-by-case basis.

b. Definition of "Native Load Customers." Dairyland argues that the definition of "Native Load Customers" in section 1.19 of the pro forma tariff is limited to wholesale and retail *power* customers and "could be read not to encompass the native loads of parties to transmission joint use and construction agreements but who are not *power* customers of the Transmission Provider."[124] It proposes that the following clause be added to the end of section 1.19: "including obligations arising from transmission joint use agreements in effect as of July 9, 1996."[125] Dairyland argues that the Commission should recognize these agreements and modify the definition so that "transmission facilities constructed and operated to meet the reliable electric needs of each party's native load customers are treated comparably, without regard to whether either party is or is not a 'power' customer of the other."[126] It further indicates that its primary concern in seeking this modification is in terms of priority under the pro forma tariff for curtailment and reservations and believes that its status and rights are unclear.

Commission Conclusion. We believe that Dairyland's argument is misplaced and deny its request for rehearing. In *Allegheny Power Systems, Inc., et al.*,[127] we found that Dairyland's joint use agreements "are in the nature of bilateral transmission agreements and are not superseded or otherwise affected by Interstate Power's compliance tariff. Thus, any changes to the definition of 'native load customers' are not necessary."[128] Accordingly, any change to the definition of native load customers contained in the pro forma tariff would have no affect on Dairyland's joint use agreements.

We also note that Dairyland has stated that under its joint use agreement "the native loads of Dairyland and the native loads of the public utility party to the agreement were to be treated comparably in terms of transmission service utilizing the transmission facilities."[129] Thus, Dairyland already is obtaining the comparable treatment that it is apparently seeking through its proposal to change the definition of native load contained in the pro forma tariff.

c. Schedule changes. NRECA states that Order No. 888–A provided that schedule changes for firm point-to-point service were not limited up to twenty minutes before the start of each clock hour, but could be set at a reasonable time limitation that is generally accepted in the region and consistently adhered to by the transmission provider. NRECA requests rehearing to not only permit, but also to require, scheduling changes during emergency conditions.[130] It asserts that the Commission should make this revision consistent with the language of section 30.4 of the pro forma tariff that permits network resources to be rescheduled in response to an emergency or other unforeseen condition. In any event, if "schedule changes are not permissible in such situations, at least any associated penalties, *e.g.*, punitive charges for energy imbalances exceeding the 1.5% 'deadband,' should be waived."[131]

Commission Conclusion. We deny NRECA's rehearing request to require transmission providers to make schedule changes requested by customers during emergency conditions. It is the responsibility of transmission customers to make arrangements for emergencies, such as operating reserves for the loss of a power supplier's generation source. If an emergency arises, a transmission provider should not be required to accept a customer-requested schedule change, though we would expect the transmission provider to permit a schedule change to the extent possible. Granting NRECA's request would ignore the fact that requiring the transmission provider to accept a requested scheduling change may not be consistent with maintaining system reliability.

Moreover, an emergency situation does not automatically cause a customer to use Energy Imbalance Service or to pay a penalty. For example, if a customer resource becomes unavailable due to an emergency situation, but is replaced by an equivalent amount of reserves, the customer would remain in balance if its load meets the schedule.[132] However, if the emergency is the cause of the customer's energy imbalance, that is, the transmission provider is unable to deliver the scheduled energy, the customer should not be responsible for paying an Energy Imbalance Service penalty.

d. Restriction on making firm sales from designated network resources. NRECA argues that section 30.4 of the pro forma tariff unreasonably restricts network customers' ability to make firm sales from their generation and that similar restrictions do not apply to transmission providers' own generation resources.[133] It asserts that this restriction on network customers "is unnecessarily limiting both the number of competitors and the array of generation products available, as well as skewing the market in favor of generation sales by incumbent public utility transmission providers."[134] If the Commission does not change its position, NRECA states that the Commission should at least provide network customers greater flexibility in designating network resources under section 30.1 of the pro forma tariff:

> the Commission should at least grant network customers the ability to designate network resources over shorter time periods (*e.g.*, one month) or permit the network customer to designate its network resources in a manner that varies by season or by month to track projected variations in network loads plus reserve requirements. This would provide network customers more flexibility in using their network resources to make firm off-peak sales to loads other than their network loads when it makes economic sense to do so, while still ensuring that adequate resources are committed to meet the network load and reserve requirements of the period.[135]

TDU Systems adds that if the Commission does not change its position, "transmitting utilities should be required to designate their network resources, and those resources, too, should be restricted to serving the transmitting utilities' network loads."[136]

Commission Conclusion. We disagree with NRECA, as well as TDU Systems, that the restrictions set forth in section 30.4 of the pro forma tariff do not also apply to a transmission provider's own generation resources. In Order No. 888, we explicitly stated that

> a transmission provider taking network service to serve network load under the tariff also is required to designate its resources and is subject to the same limitations required of any other network customer.[137]

In addition, we note that, contrary to NRECA's assertion, the pro forma tariff does not prevent network customers from designating network resources over shorter time periods or in a manner that varies by season or by month. It only prohibits network customers from making sales from *designated* network resources. The purpose of the prohibition is to ensure that such resources are available to meet the network customer's network load on a non-interruptible basis. Sections 30.2 and 30.3 of the pro forma tariff already provide network customers with a significant level of flexibility. Specifically, a network customer that seeks to engage in firm sales from its current designated network resources may terminate the generating resource (or a portion of it) as a network resource and request, as set forth in section 29 of the pro forma tariff, that the same generation resource be designated as a network resource effective with the end of its power sale. We note that network customers, as well as the transmission provider's merchant function, must obtain point-to-point transmission service for off-system sales.

e. Reactive Power. NY Com states that under Order No. 888–A "a transmission customer may satisfy part of its obligation [to supply reactive power service] through self-provision or purchases from generating facilities under the control of the control area operator."[138] It requests clarification that the phrase "under the control of the control area operator" refers only to generators with continuously operating automatic voltage control (AVC). NY Com argues that units that do not have AVC and operate "flat out" do not support reliability and increase operating difficulty and inflict higher costs because system operators need to monitor local voltage levels and anticipate changing reactive support requirements.

The Independent Power Producers of New York, Inc. (NY IPPs) responds to NY Com's request that only generators with continuously operating AVC be allowed to self supply reactive power.[139] It asserts that "[t]here is no reason to suppose that the Commission intended that suppliers of reactive power without AVC should not receive credit for the service they render."[140] It claims that NY Com's assertion that generators that do not have AVC and operate flat out cannot supply reactive power without inflicting higher costs on the system "shows a fundamental misunderstanding of the operations of an electric generator."[141] It maintains that

> [t]he ability to provide reactive support at full power output without imposing higher system costs has nothing to do with whether a generator has AVC. Rather, the ability to provide reactive power support stems from the design of the generator itself, specifically the rating of the rotor and stator windings.

The NYPSC's assertion that providing reactive support manually "increases operating difficulty and inflicts higher costs because system operators need to actively monitor local voltage levels, and anticipate changing local voltage levels" is both unsupported and irrelevant.[142] Moreover, it asserts that "[t]o the extent that generators with AVC that self provide reactive support render a more valuable service than those that self provide reactive support without AVC, they should be credited accordingly—but that does not mean that generators without AVC should not be credited at all for self providing reactive support."[143] In addition, NY IPPs responds to NY Com's assertion that it has discouraged the practice of manual voltage support by requiring non-utility generators to either use AVC or pay a fee based on the absorption of reactive power. It states that NY Com's requirement "that non-utility generators *pay* a utility when the generator *absorbs reactive power at the utilities' request* is

---

[119] *Id.* at 10.

[120] *See, e.g.*, FERC Stats. & Reg ¶ 31,048 at 30,193.

[121] Central Maine at 2.

[122] *Id.* at 3.

[123] *Id.*

[124] Dairyland at 4 (emphasis in original).

[125] Dairyland notes that it filed a supplemental rehearing request on this issue that the Commission accepted as a motion for reconsideration. It asserts that the Commission did not address its issue in Order No. 888–A, but instead described the arguments as being similar to an argument it rejected that joint planning is a sufficient criterion to be considered a "Native Load Customer" and that construction and operation by the transmission provider should not be necessary for native load status to be conferred.

[126] *Id. at 6.*

[127] 80 FERC ¶ 61,143 at 61,555 (1997).

[128] We further note that Interstate Power Company did not file on December 31, 1996, as provided in Order No. 888, to modify its joint use agreements with Dairyland. *See* 18 CFR 35.28(c)(1)(iii). Thus, those agreements must not prohibit transmission over the facilities to third parties and, accordingly, remain in effect as existing bilateral transmission agreements.

[129] Dairyland at 6.

[130] *See also* TAPS at 35–36; TDU Systems at 24–25.

[131] NRECA at 16; *see also* TAPS at 36–37.

[132] *See* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,233 (emergency situations caused by loss or failure of facilities should be addressed in the transmission customer's service agreement (or the generation supplier's separate interconnection agreement) and not as part of Energy Imbalance Service).

[133] *See also* TDU Systems at 16–21.

[134] NRECA at 17; *see also* Dairyland at 8.

[135] NRECA at 18.

[136] TDU Systems at 21.

[137] FERC Stats. & Regs. ¶ 31,036 at 31,753–54.

[138] NY Com at 15–16.

[139] On April 11, 1997, NY IPPs filed an answer to the request for clarification of NY Com. In the circumstances presented, we will accept the answer notwithstanding our general prohibition on allowing answers to rehearing requests. *See* 18 CFR 385.713(d).

[140] NY IPPs at 3.

[141] *Id.*

[142] *Id.* at 3–4.

[143] *Id.* at 4.

currently the subject of litigation in the United States District Court for the Northern District of New York."[144]

TAPS is concerned that without specific tariff language some transmission providers will try to deny reactive power credits to transmission customers that should otherwise receive such credits. It suggests that the following language should be added to the pro forma tariff:

> The service agreement of the transmission customer that can supply at least a part of the reactive service it requires, either through self-supply or purchases from a third party, shall specify the generating sources made available by the transmission customer that provide reactive support.[145]

TAPS also asks the Commission to clarify that the phrase "under the control of the control area operator" refers to "the reactive production or absorption capability of the generator and not necessarily to the generator's ability to produce real power."[146] It states that

> while a generator's real power output may be on automatic generation control (AGC) and dispatched economically, its reactive power output usually is not on automatic control or dispatched on a moment-by-moment basis. Rather, the plant operator separately regulates the output of the two kinds of power. As a result, a customer can give the control area operator the ability to rely upon the customer's generation to produce or absorb reactive power independent of control over the unit's real power output, for example, by the customer's setting its generator's voltage regulator to respond to the needs of the control area as established by the control area operator. Thus, the Commission's statement that "a customer who controls generating units equipped with automatic voltage control equipment may be able to use those units to help control the voltage locally and reduce the reactive power requirement of the transaction," [Order No. 888–A at 150–51], should not be read to require that the entire generating unit be under the control area operator's control.[147]

Furthermore, TAPS argues that comparable standards should be applied to customer-owned and transmission provider facilities. "The control area operator should not be permitted to refuse the offer of a customer to turn over to the control area operator the control of the reactive capabilities of the customer's generating facilities."[148] Moreover, it asserts that "[i]f the control area operator is able to rely upon its own or its customer's facilities to produce or absorb reactive power, then rate base treatment or credits, respectively, are appropriate."[149]

Commission Conclusion. We do not agree with NY Com's assertion that the phrase "generating facilities under the control of the control area operator" refers only to generators with AVC. We clarify that what is "under the control of the control area operator" in Schedule 2 of the pro forma tariff is the reactive production and absorption capability of the generator and not the generator's ability to produce real power. With regard to the dispute between NY Com and NY IPPs concerning the appropriate reduction in charges for Reactive Supply and Voltage Controls from Generation Sources Service, we find that this dispute is fact-specific and beyond the scope of this proceeding.

There is no need to add the specific language to the pro forma tariff as requested by TAPS. As stated in Order No. 888–A, the Commission specifically requires that a transmission customer's service agreement specify all reactive supply arrangements, including the generating resources made available by the transmission customer that provide reactive support.

In response to TAPs' other concern, we note that Order No. 888 requires that a transmission customer obtain or provide ancillary services for *its* transactions. We do not intend that requirement to provide a means for a generation owner to compel a transmission provider to purchase services it may not need. As we stated in Order No. 888–A, a third party may offer ancillary services voluntarily to other customers if technology permits. However, simply supplying some duplicative ancillary services (*e.g.*, providing reactive power at low load periods or providing it at a location where it is not needed) in ways that do not reduce the ancillary services costs of the transmission provider or that are not coordinated with the control area operator does not qualify for a reduced charge.

f. Network Operating Agreements. TAPS asks that section 29.1 of the pro forma tariff be modified to permit a network customer to request that a network operating agreement be filed on an unexecuted basis, just as it may request a network service agreement to be filed on an unexecuted basis. It asserts that this would "permit service to commence, pending resolution of disputed matters, and would reduce the ability of the transmission provider to use the network operating agreement as a competitive tool."[150]

Commission Conclusion. In Order No. 888–A, in response to TAPS' argument that to avoid improper use of operating agreements by transmission providers the Commission should either permit network operating agreements to be filed in unexecuted form or include a network operating agreement as part of the pro forma tariff, we rejected mandating a particular network operating agreement but indicated that

> If a transmission provider wishes to include a generic form of network operating agreement in its pro forma tariff (to be modified as required and as mutually agreed to on a customer-specific basis), it may propose to do so in a section 205 filing or it may file an unexecuted network operating agreement in a section 205 filing.
>
> To the extent a customer believes a transmission provider is engaging in unduly discriminatory practices via the network operating agreement, the customer may file a section 206 complaint with the Commission.[151]

On rehearing, TAPS points out that our approach would still permit a transmission provider to delay the commencement of service. We recognize this and will permit a network customer to request that a network operating agreement be filed on an unexecuted basis, just as we have allowed a network customer to request that a network service agreement be filed on an unexecuted basis. Accordingly, we will modify section 29.1 of the pro forma tariff by adding the following language to the end of section 29.1: ", or requests in writing that the Transmission Provider file a proposed unexecuted Network Operating Agreement."[152]

g. Network customers with loads and resources in multiple control areas. TDU Systems argues that Order No. 888–A does not respond to its "core contention that network service under the pro forma tariff does not provide them comparable service."[153] It argues that

> [r]equiring the network customer to assign a designated network resource to a single control area, and arbitrarily limiting the ability of a network customer to schedule the output of network resources between and among control areas by limiting the output of those resources to network load in a single control area, effectively prevents the network customer from operating an integrated system.[154]

Thus, it requests that the Commission "rule that TDU systems with loads and resources in multiple control areas may designate as Network Resources for each control area the totality of their resources that meet the owned, purchased, or leased requirement of section 1.25 of the tariff."[155]

TDU Systems further asserts that a network customer can integrate loads and resources in multiple control areas only by purchasing network service in each control area and point-to-point service for transmission between the control areas. Thus, it argues,

> [A]bsent a regional network tariff, the Commission should require the provision of service to network customers with loads and resources located on multiple systems under a rate that recovers the customer's load ratio share—but no more—of the transmission owners' collective transmission investment in the control areas that the customer straddles.[156]

Commission Conclusion. We disagree with TDU Systems that network service under the pro forma tariff does not provide network customers with comparable service. Significantly, a network customer with resources and loads in multiple control areas is simply not similarly situated to a transmission provider serving native load located entirely within the transmission provider's single control area. Unlike a transmission provider serving load entirely within a single control area, a network customer with resources and loads in multiple control areas must not only integrate its resources and loads within the individual control areas, but must also arrange transmission services (network or point-to-point) for transactions occurring between and among the multiple control areas in which it seeks to transact business. However, we emphasize that if a transmission provider has resources and loads in multiple control areas, it must treat network customers that also have resources and loads in multiple control areas on a comparable basis.

In this regard, we also disagree with TDU Systems' assertion that we have required a network customer to assign a designated network resource to a single control area and limit the scheduling of such resources to serve load in a single control area. Tariff sections 30.6 and 31.3 allow for the designation of both network resources and network loads that are not physically interconnected with the transmission provider. Under the pro forma tariff, a network customer that seeks network service for all of its loads in multiple control areas may designate all such loads as network loads.[157] By designating all of its loads as network loads, such network customer will receive comparable service *in* each control area and will have the ability to schedule the output of network resources between and among control areas, just as a transmission provider or other network customer would need to do to serve load in an adjacent control area.

TDU Systems is concerned with the rates it must pay to the various control area operators to integrate its resources and loads. In rejecting TDU Systems' virtually identical argument in Order No. 888–A, we explained:

> Because the additional transmission service to non-designated network load outside of the transmission provider's control area is a service for which the transmission provider must separately plan and operate its system beyond what is required to provide service to the customer's designated network load, it is appropriate to have an additional charge associated with the additional service.[158]

h. Network customer designation of load. TDU Systems asks the Commission to clarify that open access transmission providers must credit or eliminate double charges arising from the inability of network customers to designate less than all of the load at a delivery point as network load. TDU Systems asks the Commission to make the following points clear:

> first, there will be no double recovery of either transmission costs *or* ancillary costs that are being recovered in the existing bundled generation supply agreement; second, as the Commission properly noted in requiring the unbundling of bilateral economy energy coordination transactions, the transmission provider will not be permitted to recover more under the new arrangement for those [transmission and ancillary] services than it does under the existing bundled generation supply agreement; and third, the transmission provider is required to achieve these results by using one of the alternatives stated in Order No. 888–A at the transmission customer's election or by an alternative arrangement agreed upon by the customer.[159]

It concludes that "[i]f the Commission relegates the customer to a section 206 complaint proceeding, it has reversed the burden of proof on the transmission provider to show that its increased rate is just and reasonable."

Commission Conclusion. As noted by TDU Systems, we stated in Order No. 888–A that

> the Commission did not intend for a transmission provider to receive two payments for providing service to the same portion of a transmission customer's load. Any such double recovery is unacceptable and inconsistent with cost causation principles.[160]

We intended this language to apply broadly and, accordingly, clarify that it applies to transmission costs *and* ancillary costs. Moreover, while we expect transmission providers to design rates that will avoid double recovery of such transmission costs or ancillary costs, we believe that this is a fact-specific issue that is appropriately addressed on a case-by-case basis.[161] Finally, while we indicated in Order No. 888–A that a transmission customer may file a complaint under section 206 with the Commission to address any claims of double recovery, the transmission customer would most likely raise this issue in the section 205 proceeding in which the transmission provider files to initiate the particular service with the transmission customer. Indeed, it would be in such a section 205 proceeding in which this transitional problem would first arise and the transmission customer would first have the opportunity to challenge any possible double recovery.

11. Waivers of Order Nos. 888 and 889

NRECA states that the Commission's policy on waivers of Order Nos. 888 and 889 provides that such waivers terminate upon a request for service or a complaint. It argues that permitting the termination of a waiver upon a complaint improperly subjects the utility to baseless complaints and significantly diminishes the value of the waiver. It asserts that a waiver of Order No. 889 should terminate only upon a finding by the Commission that there is a valid basis for the complaint.[162] Similarly, it asserts that a waiver of Order No. 888 should terminate "only upon a Commission order finding that, in light of changed circumstances or new evidence, the waiver should not be

---

[144] *Id.* (emphasis in original).

[145] TAPS at 28.

[146] *Id.* at 29.

[147] *Id.* at 30.

[148] *Id.*

[149] *Id.*

[150] *Id.* at 34.

[151] FERC Stats. & Regs. ¶ 31,048 at 30,325.

[152] *See* Appendix B and note 1 *supra.*

[153] TDU Systems at 15.

[154] *Id.*

[155] *Id.* at 18.

[156] TAPS at 18 n.36.

[157] Alternatively, a network customer with resources and load in multiple control areas may elect to designate only such load that is located in a single control area as its designated network load and separately arrange for transmission service (*e.g.*, point-to-point service) to serve load in adjacent control areas from generation resources located in the control area in which it designated its network load. Here too the network customer would be receiving comparable transmission service because a transmission provider or any other network customer seeking to serve load in an adjacent control area would also have to arrange for point-to-point transmission service to make the service possible.

[158] FERC Stats. & Regs. ¶ 31,048 at 30,255.

[159] TDU Systems at 23.

[160] FERC Stats. & Regs. ¶ 31,048 at 30,261–62.

[161] In this regard, we will not mandate that a transmission provider accept a customer-specified approach to resolving any double recovery concerns.

[162] *See also* TDU Systems at 10–12 (raising similar arguments with respect to waivers of Order No. 889).

continued and the utility should be required to file the pro forma tariff."[163]

Commission Conclusion. NRECA's request for rehearing with respect to the termination of a waiver of Order No. 888 should have been raised on rehearing of Order No. 888, which first established that a waiver would be granted if, among other things, the utility "commits to file an open access tariff within 60 days of a request to use its facilities and to comply with the rule in all other ways."[164] Nothing set forth in Order No. 888–A changed this requirement. Accordingly, NRECA's request for rehearing was not timely filed.

However, we note that the Commission, in a recent order modifying the circumstances under which a waiver of Order No. 889[165] will be revoked,[166] addressed this very issue:

> we will not, however, alter our determination that a utility that has been granted waiver of Order No. 888 is required to file a pro forma tariff within 60 days after it receives a request for transmission service and must comply with any additional requirements that are effective on the date of the request. The filing with the Commission of a pro forma tariff places significantly less burden on a utility than does full compliance with Order No. 889, and we continue to believe that 60 days from receipt of a request for service provides sufficient time for such compliance.[167]

12. Financial Independence of ISO Employees

NEPOOL expresses concern that the requirement in Order No. 888–A that ISO employees sever *all* financial ties "can be interpreted to foreclose the Commission from even considering the merits of provisions for ownership of securities by ISO employees contained in NEPOOL's ISO proposal that is now pending before the Commission in Docket Nos. OA97–237–000 and ER97–1079–000."[168] It contends that severance of all financial ties would impose an economic hardship on certain NEPOOL employees in pension and stock ownership plans of market participants through the years. In particular, it notes that many of the existing NEPOOL staff have accumulated Northeast Utilities stock in their pension or other employee benefit plans, but that the market price of that stock has recently declined significantly. However, NEPOOL has required ISO employees to divest themselves of such securities in excess of $50,000 within six months of their employment by the ISO. Thus, NEPOOL requests that the Commission clarify that it could waive the requirement that ISO employees sever *all* financial ties with market participants in compelling circumstances or clarify the acceptable length of a transition period during which they may continue to hold such securities.

Commission Conclusion. In a recent order conditionally authorizing the establishment of an ISO by NEPOOL, the Commission specifically addressed the concerns raised here by NEPOOL.[169] The Commission rejected NEPOOL's proposal to allow employees to possess securities of market participants as long as the value does not exceed $50,000. The Commission reaffirmed its strong commitment, set forth in Order Nos. 888 and 888–A, to ensure that an ISO is truly independent and that employees of an ISO are financially independent of market participants. However, the Commission recognized, as it had in Order No. 888–A, that there may be a need for flexibility with respect to the length of a transition period and that this matter is best addressed on a case-by-case basis.

13. Distribution Charges

NY Com seeks clarification of the Commission's statement that a utility is free to include a "distribution charge" in a customer's service agreement and/or the network customer's network operating agreement.[170] In particular, it requests that the Commission clarify that it did not intend to preempt state jurisdiction, but rather that when a term, condition or rate is required for local distribution service, the state determination will apply. It asserts that such a clarification would avoid forum shopping that would otherwise occur. In the alternative, it requests rehearing, arguing that the Federal Power Act, its legislative history and case law all dictate against Commission jurisdiction over local distribution.

Commission Conclusion. We clarify, as requested by NY Com, that when a term, condition or rate is required for *local* distribution service the state determination applies. We reiterate that we believe there is always a local distribution service element of a retail transaction, through which the state may impose charges on the retail customer. We also reiterate, however, that where a public utility is delivering unbundled energy to a supplier that then resells the energy to an end-user, the Commission has exclusive jurisdiction over the public utility's facilities used to effect the transaction without regard to their being labeled "transmission," "distribution," or "local distribution."[171] Moreover, where a public utility is delivering unbundled energy from a third-party supplier directly to an end user, the particular facts of the case will determine which of the facilities are FERC-jurisdictional transmission facilities and which are state-jurisdictional local distribution facilities.[172]

14. Tight Power Pools

a. Non-pancaked rates. NY Com seeks clarification of the following statement in Order No. 888–A:

> Order No. 888 does not require a non-pancaked rate structure unless a non-pancaked rate structure is available to pool members. Although the Commission has encouraged the industry to reform transmission pricing, the Commission's current policy does not mandate a specific transmission rate structure.[173]

It argues that this statement conflicts with other statements that "require power pools to file joint pool-wide tariffs and to offer all transmission services that they are *capable* of providing."[174] NY Com asks that the Commission clarify that utility members of tight power pools must provide transmission service jointly under a single tariff. It states that this is the best way to eliminate undue discrimination. It argues that tight power pools must provide, pursuant to prior Commission orders, all transmission services that they are reasonably capable of providing and must file joint tariffs to provide transmission service on a pool-wide basis.

Commission Conclusion. NY Com appears to be confusing *services* that a power pool is capable of providing with *pricing methodologies* that a power pool may elect to use. While the Commission required that by December 31, 1996 all pool transactions be taken under a joint pool-wide tariff on file with the Commission, the Commission did not mandate a specific transmission rate structure for such tariff.[175] As we stated in Order No. 888–A, the primary goal for pooling arrangements is to ensure comparability regarding transmission services offered on a pool-wide basis. Thus, comparability is achieved if the same service is provided at the same or comparable rate to both pool and non-pool members.[176]

b. Coordination transactions. Otter Tail requests that the Commission clarify the following statement in Order No. 888–A:

> We do not find it to be unduly discriminatory to provide *some pool-wide transmission services* to members under a pooling agreement and to provide *other transmission services* to members under the individual tariff of each member, as long as members and non-members have access to the same transmission services on a comparable basis and pay the same or a comparable rate for transmission.[177]

It asks the Commission to clarify that this statement

> Is meant only to indicate that in the case of *different* services, one service (e.g., wholesale transactions) can be offered to all potential customers under the pool tariff, but another service (e.g., ancillary services) may not be offered to any customers under the pool tariff. Otter Tail specifically requests that the Commission clarify that where the *same* service is involved, pools cannot discriminate against certain transactions based solely on the transaction's duration, that is, pool-wide tariffs cannot exclude longer term transactions but include short-term transactions.[178]

In its case, Otter Tail is concerned that MAPP limits coordination transactions under the pool to those with a duration of two years or less and thereby prevents any longer term service from using the pool tariff. It argues that MAPP's tariff does not comply with Order No. 888 because it does not offer pool-wide service for *all* coordination transactions, regardless of duration. Otter Tail further argues that excluding the benefits of pool-wide service for coordination transactions based only on the length of term is contrary to, and incompatible with, Congress' and the Commission's goal to promote competition at the generation level and permits pools to exercise market power.

Commission Conclusion. We disagree with Otter Tail. As we stated in Order No. 888–A, the primary goal of Order No. 888's requirements for pooling arrangements, including "loose" pools, such as MAPP, is to ensure comparability regarding transmission services that are offered on a pool-wide basis.[179] In the case of the MAPP agreement, pool transactions are limited to periods not to exceed two years for *all* members.[180] Comparability is achieved if all parties, both pool members and non-pool members, are treated in a non-discriminatory fashion as to access to transmission services, the types of transmission services and the rates paid for such transmission services.

In addition, Order No. 888 requires loose pools to take service under a joint pool-wide tariff for all pool transactions.[181] If transactions of more than two years in duration are not pool transactions, then transmission for those transactions need not be pursuant to the pool-wide tariff, and instead would be provided pursuant to the individual companies' pro forma tariffs. This is consistent with our finding in Order No. 888–A that we will not require pool members to offer transmission services to third parties that the pool members do not provide to themselves on a poolwide basis.[182]

15. Legal Authority

Puget states that the Commission does not have the legal authority to require public utilities to file open access tariffs and argues that Order No. 888 does not contain any specific finding that any rate, term or condition of Puget's tariff is unjust, unreasonable or unduly discriminatory or preferential.

Commission Conclusion. The Commission set forth its legal authority to require public utilities to file open access tariffs in Order No. 888. Puget's request for rehearing with respect to this issue should have been raised on rehearing of Order No. 888 and therefore was not timely filed.[183]

16. Ancillary Services

Puget argues that ancillary services such as reactive power and voltage control cannot be considered merely ancillary to the provision of transmission service, but are significant generation services that should be subject to market rates. Puget asserts that "[i]t is wholly inappropriate for the Commission to provide for the sale of power as an ancillary service under the pro forma tariff; instead, utilities such as [Puget] should be compensated for the sale of such power at market based rates."[184] It argues that the Commission "must recognize that ancillary services are generation related and should be priced at market in order to be consistent."[185]

Commission Conclusion. Puget raises issues that were previously addressed in Order No. 888. In that order the Commission determined that ancillary services are transmission related and indicated that market-based pricing for ancillary services would be addressed on a case-by-case basis. Puget's request for rehearing with respect to these issues should have been raised on rehearing of Order No. 888 and therefore was not timely filed.

17. Fair Market Value

Puget argues that Order No. 888–A improperly shuts the door on the pricing of transmission property at fair market value. Citing footnote 261 of Order No. 888–A,[186] Puget asserts that the Commission changed its policy from Order No. 888 and claims that in Order No. 888–A "the Commission ruled that each utility is now expressly limited by the transmission pricing policy to charging only embedded costs for existing transmission facilities to competitors and others even though rates for generation assets are priced at market."[187] Puget argues that Order No. 888–A achieves "the effect of a condemnation by forcing [Puget] and other integrated electric utilities to allow competitors to use private utility property, but at less than fair market value."[188] Puget further argues that the Constitution "does not permit the taking of private property of one citizen to

---

[163] NRECA at 12.

[164] FERC Stats. & Regs. ¶ 31,036 at 31,853.

[165] Open Access Same-Time Information System and Standards of Conduct, *Final Rule*, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889–A, 62 FR 12484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889–B, published elsewhere in this issue of the **Federal Register**, FERC Stats. & Regs. ¶_____ (1997).

[166] NRECA's request with respect to the revocation of waivers of Order No. 889 is addressed in Order No. 889–B, which is being issued concurrently with this Order. In Order No. 889–B, the Commission notes that in Central Minnesota Municipal Power Agency, *et al.*, 79 FERC ¶ 61,260 (1997) (*Central Minnesota*), it already has revised its approach concerning the revocation of waivers of Order No. 889 to provide that such waivers will remain effective until the Commission takes action in response to a complaint, rather than until 60 days after a complaint to the Commission.

[167] *Central Minnesota*, 79 FERC at 62,127 (1997).

[168] NEPOOL at 2.

[169] New England Power Pool, 79 FERC ¶ 61,374 (1997), *reh'g pending*.

[170] NY Com at 5–12.

[171] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,969 (Appendix G) and Allegheny Power System, Inc., *et al.*, 80 FERC ¶ 61,143 at 61,551–52 (1997).

[172] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,969.

[173] NY Com at ¶2.

[174] *Id.* at 13 (emphasis in original).

[175] However, as explained in Order No. 888–A, the Commission did require that all transmission rate proposals filed in compliance with Order Nos. 888 and 888–A be cost based and meet the standard for conforming proposals set out in the Commission's Transmission Pricing Policy Statement. *See* 18 CFR 2.22.

[176] Order No. 888–A, FERC Stats. & Regs. ¶ 31,046 at 31,728.

[177] Otter Tail at 3 (emphasis added by Otter Tail).

[178] *Id.* at 4 (emphasis in original).

[179] FERC Stats. & Regs. ¶ 31,046 at 31,241.

[180] Mid-Continent Area Power Pool Rate Schedule, FERC No. 5.

[181] FERC Stats. & Regs. ¶ 31,036 at 31,728.

[182] *See* FERC Stats. & Regs. ¶ 31,046 at 30,241.

[183] We note that Puget filed a rehearing request of Order No. 888, but did not challenge the Commission's authority to require public utilities to file open accesss tariffs.

[184] Puget at 18.

[185] *Id.* at 19.

[186] Footnote 261, which is in the section entitled Opportunity Cost Pricing, provides in relevant part that "[u]nder the Commission's transmission pricing policy, utilities are limited to charging the higher of embedded costs or opportunity/incremental costs."

[187] Puget at 21.

[188] *Id.* at 21–22.

benefit competitors or other private citizens." It contends that

[T]he voluntary provision of transmission service to noncompetitors in an entirely cost-based integrated system is not the same as a forced provision of service and use of property by a competitor under a new set of regulations treating generation at market rates.[189]

Puget goes on to argue that

Order 888 erroneously asserts that there "simply cannot be an unconstitutional taking of property when public utilities continue to have the right to file for and receive rates that provide them a reasonable opportunity to recover their prudently incurred costs." 62 Fed. Reg. at 12,433. For example, by illegally requiring unbundling of generation assets at market without at the same time providing for utility recovery of the fair market value of its transmission property, the Commission is attempting to deprive public utilities of fair market value compensation.[190]

In conclusion, Puget declares that "[t]he Commission cannot create a situation in which generation is sold at a new market-based rate and transmission is limited to an old historic embedded-cost rate. Neither the Constitution nor the FPA will permit such a result."[191]

Commission Conclusion. We reject Puget's rehearing request. Puget makes a far-ranging argument that Order No. 888–A improperly shuts the door on the pricing of transmission property at fair market value. It bases its argument entirely on a single footnote in Order No. 888–A that has been taken completely out of context. The footnote in Order No. 888–A cited by Puget merely recites the Commission's longstanding policy as to opportunity cost pricing.[192] Indeed, in the sentence to which that footnote is attached, the Commission explicitly stated that it "does not believe that any changes are necessary to its policy on opportunity cost recovery."[193] Moreover, the entire discussion to which that footnote applies is in a section entitled "Opportunity Cost Pricing."[194]

18. Pre-Existing Transmission-Only Contracts

Soyland argues that the Commission's *Mobile-Sierra* findings must apply not only to wholesale requirements contracts but also to unbundled transmission-only contracts. It asserts that "[t]here is no legitimate reason to deny unbundled, transmission-only customers timely and meaningful access to the open access regime and competitive markets on the same terms as requirements customers."[195] It contends that it faced the same problem as requirements customers—"use of transmission monopoly power to force a purchase of power as a condition to getting transmission access to deliver owned resources from off-system."[196]

Moreover, it asserts that the Commission has not explained how or why requirements contracts and transmission-only contracts should be treated differently as a result of the past and continuing changes in the industry. Soyland further states that utilities had the upper hand over "customers who executed unbundled transmission and power supply contracts simultaneously; together, such contracts are the functional equivalent of bundled partial requirements contracts, and should not be subject to a different standard for contract reform."[197]

Commission Conclusion. Soyland's rehearing request addresses an issue that should have been raised on rehearing of Order No. 888. In that order, the Commission explicitly indicated that customers under *requirements* contracts executed on or before July 11, 1994 that contained *Mobile-Sierra* clauses should have the opportunity to demonstrate that their contracts no longer are just and reasonable.[198] Soyland's opportunity to request that we expand the scope of the contracts covered to include unbundled transmission-only contracts was on rehearing of Order No. 888.[199] Accordingly, Soyland's request for rehearing with respect to this issue was not timely filed.

19. Apportionment of Transmission Revenues for Public Utility Holding Companies and Power Pools

TDU Systems asks the Commission to clarify that the "apportionment of credits for customer transmission facilities among the operating companies of a utility holding company or in power pools should be subject to Commission approval." TDU Systems states that the method of crediting transmission customers for operating companies' uses of their own and each other's transmission facilities in setting transmission rates must meet the Commission's comparability standards and should not be filed on a unilateral basis. Similarly, it requests that customer credits for pool participants' use of their own and each other's transmission facilities should be subject to Commission review in approving the pool's transmission rates and tariff terms and conditions.[200]

Commission Conclusion. TDU Systems' rehearing request addresses issues that should have been raised on rehearing of Order No. 888. In Order No. 888, the Commission stated that credits for customer-owned facilities should be addressed on a case-by-case basis.[201] Accordingly, TDU Systems' request for rehearing with respect to these issues was not timely filed.

20. Accounting for Transmission Provider's Own Use of Its System

TDU Systems argues that the Commission's requirement that a transmission provider's methodology to credit customers for the transmission provider's off-system sales be addressed in compliance filings and will depend on the rate design is insufficient.[202] It argues that this ignores that

Comparability has a time dimension, requiring the prompt crediting of such charges if they are not automatically accounted for in the rate design. Thus, the order fails to address whether a new kind of rate mechanism is needed if comparability is to be ensured on an ongoing basis under open-access transmission, just as the Commission years ago approved the use of fuel-adjustment clauses to deal with more volatile fuel prices. Requiring parties to resolve this issue in individual compliance filings does not address this generic problem. The Commission should provide more guidance to public utilities as to what crediting mechanisms are necessary if comparability is to be achieved.[203]

Commission Conclusion. In Order No. 888–A, the Commission explained that an automatic pass-through mechanism for revenue credits raises a number of potential problems including: "(1) use of estimates versus actuals; (2) the appropriate time period to be utilized and (3) firm versus non-firm distinctions."[204] The Commission further noted that the appropriate treatment of revenue credits for off-system sales is dependent on the rate design used by a transmission provider and concluded that this issue is not appropriately resolved on a generic basis. Despite these identified problems, TDU Systems continues to request that the Commission adopt an automatic revenue credit mechanism without attempting to address such problems or proposing an appropriate mechanism to accomplish its request.

To bolster its proposal, TDU Systems claims that automatic treatment of revenue credits is comparable to the Commission treatment of fuel charges through the use of an automatic fuel adjustment charge. We disagree. An automatic fuel cost adjustment clause was determined to be appropriate because of the unpredictability of fuel prices.[205] TDU Systems has not demonstrated that revenue credits warrant the same treatment.[206]

Moreover, TDU Systems has not demonstrated that the lack of an automatic credit mechanism is likely to result in unjust and unreasonable rates. For example, the Commission's traditional means of accounting for transmission revenues from non-firm uses of the transmission system is to reflect a representative level of revenue credits (based on historical and/or projected revenue levels) in each rate case, which has the effect of lowering the transmission rate for all firm transmission users.[207] TDU Systems has not shown why a similar rate case approach to revenue credits (as opposed to an automatic credit mechanism) is not appropriate, particularly for all transmission providers. In any event, we would anticipate little or no difference between the results of an automatic revenue credit mechanism and our traditional approach and TDU Systems has not shown otherwise.

Finally, TDU Systems' proposal is one-sided in that it would only require the automatic passthrough of revenues from the *transmission provider's* use of the transmission system for off-system sales. As the Commission stated in Order No. 888–A,

revenue from the transmission component of *all* off-system uses of the transmission system *(whether by the transmission provider or a transmission customer)* must be treated on a comparable basis, whether through rate design or through revenue credits.[208]

B. Stranded Cost Issues[209]

1. Municipal Annexation

In Order No. 888, the Commission decided that it would not be the primary forum for stranded cost recovery in situations in which an existing municipal utility annexes territory served by another utility or otherwise expands its service territory.[210] In Order No. 888–A, the Commission reconsidered this decision and concluded that it would be the primary forum for stranded cost recovery in a discrete set of municipal annexation cases, namely, those involving existing municipal utilities that annex retail customer service territories and, through the availability of Commission-required transmission access, use the transmission system of the annexed customers' former supplier to access new suppliers to serve the annexed load.[211]

A number of petitioners seek rehearing or reconsideration[212] of the Commission's decision in Order No. 888–A to be the primary forum for stranded cost recovery in the case of municipal annexations.[213] Some oppose this decision for the same reasons that they opposed the Commission's decision to be the primary forum for stranded cost recovery in the case of new municipal utilities. For example, some entities argue that the Commission does not have any authority with respect to costs in retail rate base that may be stranded as a result of the annexation of electric service territory by a municipal utility.[214] A number of petitioners also contend that municipal annexation occurs pursuant to state or local law, not federal law, and that every facet of municipal annexation, including compensation and valuation, is governed by state or local authorities.[215]

Several submit that annexation is a form of franchise competition that predated Order No. 888, that transmission access was available (though not as readily as after Order No. 888) for many franchise competitors utilizing annexation,[216] and that annexations have occurred and will continue to occur based upon motivations removed from the open access regime.[217] CAMU states that

[a]nnexations have occurred and will continue to occur in a[n] unbroken string based upon motivations entirely removed from this Commission's open access regime. There is simply no reason to assume that the open access rule will accelerate the pace of annexations. [218]

NARUC asks the Commission to grant rehearing as a matter of policy. It argues that the Commission's assertion of authority to address stranded cost issues related to annexation will force the Commission to inject itself into state-established processes to second-guess a state commission's cost recovery determinations. According to NARUC, this will require the Commission to resolve difficult factual issues to match specific generation and transmission facilities with specific annexed customers.[219]

CAMU similarly contends that the Commission's assertion that it is the primary forum for the resolution of annexation-related stranded cost issues will introduce needless procedural complications. CAMU submits that various state-created mechanisms exist for the identification and payment of just compensation in the case of municipal annexations. It questions

---

[189] *Id.* at 26.

[190] *Id.*

[191] *Id.* at 27.

[192] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,739–40; Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,263–66.

[193] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,625.

[194] *Id.* at 30,263.

[195] Soyland at 8.

[196] *Id.*

[197] *Id.* at 10.

[198] FERC Stats. & Regs. ¶31,036 at 31,664.

[199] In this regard, we note that other entities did file rehearing requests of Order No. 888 seeking to expand the scope of the contracts covered by the Commission's *Mobile-Sierra* findings. *See* Order No. 888–A, FERC Stats. & Regs. ¶31,048 at 30,190–91.

[200] TDU Systems at 33–34.

[201] *See* FERC Stats. & Regs. ¶31,036 at 31,742.

[202] TDU Systems at 34–35.

[203] *Id.* at 34–35.

[204] FERC Stats. & Regs. ¶31,048 at 30,310.

[205] *See* Treatment of Purchased Power in the Fuel Cost Adjustment Clause for Electric Utilities, FERC Stats. & Regs. ¶30,524 at 30,800 (1983).

[206] In Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, 81 FERC ¶_____ (1997), issued concurrently with this order on rehearing, the Commission made an exception to its general approach to revenue credits and allowed monthly crediting of non-firm transmission revenues. However, this was done in the context of a major restructuring of a tight power pool.

[207] *See, e.g.*, Pennsylvania Power Company, 26 FERC ¶61,354 at 61,781 (1984).

[208] FERC Stats. & Regs. ¶31,048 at 30,310 (emphasis added).

[209] Some of the rehearing requests raise issues that previously were raised on rehearing of Order No. 888 and were addressed by the Commission in Order No. 888–A. The Commission will not further address such issues in this proceeding. For example, Puget repeats some of the same arguments that it raised in its request for rehearing of Order No. 888 concerning the federal causes of stranded costs, the Commission's alleged abdication of its legal authority to ensure recovery of stranded costs associated with bypass and retail wheeling, the application of the reasonable expectation test to departing retail customers, and the Commission's failure to include deferred costs in the revenues lost formula. The Commission addressed these concerns in Order No. 888–A. *See* FERC Stats. & Regs. ¶31,048 at 30,358–62, 30,424, 30,426–27. TDU Systems reiterates its objection to the Commission's elimination of the section 35.15 prior notice of termination requirement for power sales contracts executed after July 9, 1996 that terminate by their own terms. The Commission addressed TDU Systems' concerns in this regard in Order No. 888–A. *See* FERC Stats. & Regs. ¶31,048 at 30,392, 30,393–94.

[210] FERC Stats. & Regs. ¶31,036 at 31,818.

[211] FERC Stats. & Regs. ¶31,048 at 30,408–09.

[212] As discussed above, APPA filed its request for rehearing out-of-time. Accordingly, we are treating APPA's pleading as a motion for reconsideration.

[213] *See* APPA, CAMU, IL Com, NARUC, TAPS. TDU Systems, on the other hand, argues that the Commission should permit non-public utilities providing reciprocal transmission service to recover stranded costs arising from municipal annexation. TDU Systems submits that allowing public utilities to seek stranded cost recovery arising from municipal annexation exacerbates the unequal and unduly discriminatory treatment accorded transmission dependent utilities and electric cooperatives.

[214] *See* APPA at 11–12; IL Com at 4–5; NARUC at 2–3.

[215] *E.g.*, APPA at 12–13; NARUC at 3; TAPS at 24–25. APPA objects that federal regulation of stranded costs associated with municipal annexation results in the establishment of overlapping federal/state authority that precludes the execution of state laws by state authority in a matter normally within the power of the state, in violation of the Tenth Amendment. APPA at 13.

[216] APPA at 11; *see also* NARUC at 3.

[217] CAMU at 2.

[218] *Id.*

[219] NARUC at 3–4.

how the Commission will offset against stranded cost recovery any compensation provided under state law and whether the Commission will await the completion of state proceedings before it addresses the issue.[220] CAMU asks the Commission to defer to existing state mechanisms and to be the primary forum for the resolution of stranded cost recovery issues in annexation situations only where there is no state procedure for stranded cost recovery.

IL Com argues that determining whether the availability of wholesale open access is the principal cause of the stranding of public utility costs would be administratively difficult.[221] IL Com also submits that the Commission's expectation that parties raise retail-turned-wholesale stranded cost claims before this Commission in the first instance is internally inconsistent with, and contradictory to, its statements that it will give great weight in its proceedings to a state's view of what might be recoverable and will deduct any recovery a state has permitted from departing retail-turned-wholesale customers from the costs for which the utility will be allowed to seek recovery under the Rule.[222]

Commission Conclusion. After careful consideration of the arguments raised on rehearing, we have decided not to grant rehearing, but we do provide further clarification of our decision in Order No. 888–A to be the primary forum for stranded cost recovery in certain cases involving municipal annexation. As a policy matter, we will consider recovery of stranded costs that potentially could arise as a result of municipal annexation but only when there is a sufficient nexus in such cases to the Commission's Open Access Rule. To clarify, this determination to be the primary forum is not a blanket determination for all cases involving annexation. A determination of what circumstances make Commission review appropriate will be made on the facts pertinent to individual cases. The Commission has limited the opportunity to seek stranded cost recovery under the Rule to situations in which the availability and use of wholesale open access transmission enable a generation customer to escape a current power supplier to obtain cheaper power supplies. Annexations occur for a myriad of reasons that may have nothing to do with seeking less expensive power supplies (for example, tax or zoning considerations or consolidation of local public services). These reasons existed before adoption of Order No. 888 and, absent the nexus to the new availability of these transmission services, would not require us to consider the stranded costs from annexation in the first instance. On the other hand, an existing municipal utility that has newly-annexed territory may use an open access tariff of the annexed customers' former power supplier. Accordingly, the Commission does not believe it is necessary to reverse its previous position that annexations may raise jurisdictional stranded cost issues but instead provides this clarification.

In the course of reviewing the rehearing petitions on annexation, the Commission has also had the opportunity to reflect on the rationale for our decision to be the primary forum for addressing the recovery of stranded costs associated with retail-turned-wholesale customers (including a newly-formed municipal utility). We wish to further elaborate upon and clarify our prior discussions about recovery of costs stranded by retail-turned-wholesale customers.[223]

First, in setting forth our position on costs stranded in certain retail-turned-wholesale and municipal annexation situations, the Commission recognized that states may also have jurisdiction over retail-turned-wholesale stranded costs and that state adjudications of such costs may precede consideration of them here.[224] Moreover, we indicated that "we are not second-guessing the states as to what a utility may recover under state law."[225] As we stated in Order No. 888–A and reiterate here,

Our decision to be the primary forum for recovery of stranded costs from retail-turned-wholesale customers is not intended to prevent or to interfere with the authority of a state to permit any recovery from departing retail customers, such as by imposing an exit fee prior to creating the wholesale entity.[226]

In making this statement, the Commission clearly recognized that it may indeed be the states that first address the difficult stranded cost issues associated with the formation of new municipal utilities or other wholesale entities. The Commission contemplated then, as now, that it would nevertheless adjudicate these stranded cost issues where states lack authority to do so or where, based on the record before us, they fail to provide a forum.[227]

Second, as the Commission stated in Order No. 888–A,

if the state has permitted any recovery from departing retail-turned-wholesale customers [for example, if it imposed an exit fee prior to, or as a condition of, creating the wholesale entity], such amount will not be stranded for purposes of this Rule. We will deduct that amount from the costs for which the utility will be allowed to seek recovery under this Rule from the Commission.[228]

Further, we will take into account state findings on cost determinations associated with retail-turned-wholesale situations and "we will give great weight in our proceedings to a state's view of what might be recoverable."[229] We believe it is important to emphasize that in those instances where states do address stranded costs associated with retail-turned-wholesale customers and in cases of municipal annexation, we intend to give substantial deference to their determinations.

2. Pre-existing Transmission Rights

TAPS requests clarification that the required nexus between the availability and use of Commission-required transmission access and the stranding of costs would not be met "if the municipal utility, including as expanded through annexation, possessed rights to transmission prior to Order No. 888 and EPAct (for example, NRC license conditions and the like)."[230] TAPS submits that "[t]he utility exercising these transmission rights should not be subject to stranded costs claims before the Commission simply because the municipal utility chooses to use the Commission's preferred open access tariff, instead of a bilateral or other arrangement available under pre-existing rights."[231]

Commission Conclusion. We will deny TAPS' requested clarification. The existence of rights to transmission prior to Order No. 888 would not, in and of itself, indicate that the customer should be relieved of potential stranded cost liability under Order Nos. 888 and 888–A.[232] It may be that a customer with some right to transmission service prior to Order No. 888 (for example, as a consequence of NRC license conditions), was unable to reach an alternative supplier through the use of that transmission. Thus, notwithstanding the existence of pre-existing transmission rights, and depending on the facts of a particular case, it may be that the utility incurred costs based on a reasonable expectation of continuing to serve the customer.

On this basis, the Commission will not conclusively presume that a customer with a pre-existing right to transmission service could never be subject to a stranded cost obligation under Order Nos. 888 and 888–A. Similarly, the Commission will not conclusively presume that the mere existence of a pre-existing right to transmission service precludes any reasonable expectation of continued service by the utility. However, the existence of pre-existing transmission rights, and any circumstances surrounding them, may be used as evidence in the determination of whether the utility had a reasonable expectation of continuing to serve a customer.[233]

3. Load Growth and Excess Capacity

Boston Edison seeks rehearing of the Commission's finding in Order No. 888-A that a "cost is not stranded if it is fully recovered in the cost-based rates paid by native load."[234] It submits that this phrase

Suggests that the cost of capacity released by a departing wholesale customer can and should be recovered in the rates of the remaining retail and wholesale customers if the remaining customers' load or load growth will be sufficient to absorb the released capacity. . . . Such cost shifting directly contradicts the cost responsibility principles set forth in Order No. 888 [*i.e.*, direct assignment].[235]

Boston Edison objects that the rationale for this policy reversal is not articulated in Order No. 888–A.

Commission Conclusion. At the outset, we reiterate that we remain committed to the cost responsibility principles established in Order No. 888 and continue to believe that a departing wholesale customer should be responsible for the costs it strands. Our statement that a "cost is not stranded if it is fully recovered in the cost-based rates paid by native load" was not meant to impiy that the cost of capacity released by a departing wholesale customer should always be recovered in the rates of the remaining retail and wholesale customers through load growth. Rather, our discussion of load growth correctly recognizes that in some instances a utility can meet native load growth with existing capacity freed-up by the departure of wholesale load. If a utility can recover the costs of existing capacity freed up by a departing customer from another customer or group of customers, the expected revenues should be reflected in the CMVE component of the formula.[236] Moreover, our requirement that a utility reflect in the CMVE component of the formula the revenues it expects to receive from the sale of the released capacity does not automatically result in remaining customers being forced to subsidize a departing customer's stranded cost obligation as Boston Edison posits. Rather, the rate treatment of the released capacity needed to meet the load growth of native load customers is an open issue that is properly addressed in future rate proceedings.

In short, the revenues lost approach already takes account of the marketability of the released capacity and appropriately incorporates load growth associated with remaining retail and wholesale customers and does not contradict the cost responsibility principle set forth in Order Nos. 888 and 888–A.

4. G&T and Distribution Cooperatives

RUS seeks rehearing and clarification of the Commission's determination in Order No. 888–A that, unless stranded costs arise as a result of a section 211 order to a G&T cooperative, G&T cooperatives may not seek (through the Commission) recovery of stranded costs from the customers of their distribution members. RUS argues that the customers of a G&T cooperative's distribution members, as well as the distribution members themselves, meet the Commission's pro forma tariff definition of "native load customer" with respect to the G&T. It says that, "as native load customers, both distribution members and their customers should be responsible to a G&T for stranded costs arising from their use of Commission-required transmission access, or from state mandated retail wheeling."[237]

RUS also questions the Commission's assertion that ""to treat a G&T cooperative and its member distribution systems as a single economic unit for stranded cost purposes would be inconsistent with the Commission's decision not to treat cooperatives as a single unit for the purposes of Order No. 888's reciprocity provision."[238] RUS asserts that different treatment for different purposes is justified because the relevant issues with respect to the application of the reciprocity requirement on a system-wide basis and the ability to recover stranded costs on a system-wide basis are different. RUS submits that the Commission confuses corporate affiliation with economic integration, and that lack of corporate affiliation does not preclude economic integration. RUS says that although G&T cooperatives and their distribution members are operationally separate, G&T cooperatives and their distribution members function in many ways like a single economic unit. According to RUS, G&Ts undertake an obligation to construct and operate their systems to meet the reliable electric needs of their distribution members and customers of their distribution members, and G&T cooperatives and their members are bound together by long-term requirements contracts.

RUS states that, as single economic units, G&T cooperatives or distribution members both should be able to seek recovery of stranded costs from the customers of distribution members. RUS contends that "the Commission's reliance on distribution members to seek to recover stranded costs 'through contracts with [their] customers or through the appropriate regulatory authority' is misplaced" because "[d]istribution members—many of which are not subject to state commission jurisdiction—may have neither an appropriate regulatory forum through which to seek stranded cost recovery, nor the ability to seek to recover stranded costs incurred by their

---

[220] CAMU at 3–5. CAMU notes that some state compensation statutes require the annexing municipality to pay "expectation" damages for a defined future period based upon revenues received from the annexed area. CAMU says that this element of damage, which is applied in addition to payment for condemned facilities, is meant to liquidate claims for lost service territory, idled generation assets and other business opportunities, but the awards do not separately value each of these elements of damage. CAMU questions how the Commission is going to ascertain what element of recovery pertains specifically to stranded costs if a state has adopted this liquidated damages approach. *Id.* at 5.

[221] IL Com at 5.

[222] *Id.* at 5–6.

[223] In so doing, we also reiterate our concern (expressed in Order Nos. 866 and 888–A) that there may be circumstances in which customers and/or utilities could attempt, through indirect use of open access transmission, to circumvent the ability of any regulatory commission—either this Commission or state commissions—to address recovery of stranded costs. In Order Nos. 888 and 888–A, we reserved the right to address such situations on a case-by-case basis. Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,819; Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,409.

[224] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,819; Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,405.

[225] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,405.

[226] *Id.* at 30,410.

[227] *See* City of Las Cruces, New Mexico, 80 FERC ¶61,160 (1997).

[228] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,405. *See also* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,819.

[229] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,405.

[230] TAPS at 27.

[231] *Id.*

[232] As we explained in Order No. 888–A, we declined to include "exercise of pre-existing contract rights for transmission and designation of wholesale loads" as an example of a situation for which stranded costs may not be sought because we are not prepared to make individual factual determinations in the context of the Rule. The Commission will address specific requests for stranded cost recovery on the facts presented and the merits of the particular request. FERC Stats. & Regs. ¶ 31,048 at 30,358.

[233] *See* Duquesne Light Company, 79 FERC ¶ 61,116 at 61,520 (1997).

[234] FERC Stats. & Regs. ¶31,048 at 30,440.

[235] Boston Edison at 3.

[236] *See* City of Alma, Michigan, 80 FERC ¶61,265 at 61,961 (1997).

[237] RUS at 16.

[238] *Id.* (citing Order No. 888–A, FERC Stats. & Regs. ¶31,048 at 30,366).

G&T cooperatives to serve native load customers."[239]

Finally, RUS argues that failing to permit G&T cooperatives to seek recovery of stranded costs arising from the loss of native load customers due to Commission-required transmission access or the lack of state commission authority to permit stranded cost recovery will result in unduly discriminatory treatment of cooperatives. Where G&T costs are stranded by the ability of customers of distribution members to switch suppliers through Commission-required transmission access, RUS submits that there is a direct nexus between Commission-required access and the stranding of costs. In the case of retail stranded costs, RUS says that many state regulatory authorities do not have the authority under state law to regulate distribution or G&T cooperatives, thereby creating a regulatory gap. RUS states that

> [f]ailure to allow a G&T the opportunity to recover stranded costs caused by [the] departure of any of its native load customers, including both distribution members and the customers of the distribution members, will drastically reduce the G&T's ability to cover its costs, including payments on RUS-financed debt, thereby endangering the existence of the G&T itself and exposing Federal taxpayers to the risk of massive loan defaults.[240]

Commission Conclusion. We will deny RUS' rehearing request. To grant the request would require the Commission to reach beyond its regulatory authority (and allow entities not subject to our sections 205 and 206 jurisdiction an opportunity to recover stranded costs) and would broaden the scope of the Order Nos. 888 and 888–A stranded cost recovery mechanism.[241] Indeed, RUS' rehearing request appears to be based on a misunderstanding of the limited scope of the stranded cost recovery mechanism contained in Order Nos. 888 and 888–A.

The stranded cost recovery provisions in Order Nos. 888 and 888–A apply, in the case of wholesale stranded costs, to public utilities[242] and transmitting utilities.[243] In the case of stranded costs associated with retail wheeling customers, the provisions of the Rule apply only to public utilities.[244] The Commission has limited the opportunity for public utilities and transmitting utilities to seek stranded cost recovery under Order Nos. 888 and 888-A primarily to two discrete situations: (1) costs associated with customers under wholesale requirements contracts executed on or before July 11, 1994 (referred to as "existing wholesale requirements contracts") that do not contain an exit fee or other explicit stranded cost provision; and (2) costs associated with retail-turned-wholesale customers (including bundled retail customers of a utility that become bundled retail customers of a new municipal utility).[245]

As the Commission explained in Order No. 888–A, if a cooperative obtains its financing through RUS, it is *not* a public utility subject to our jurisdiction under sections 205 and 206 of the FPA. Although we have no objection to these G&T cooperatives being able to seek cost recovery (including recovery of costs on behalf of their distribution cooperatives) through the appropriate regulatory or contractual channels, this Commission does not have authority to allow them to seek recovery of stranded costs unless they do so in conjunction with transmission access that they are required to provide through a section 211 order. In the latter case, a G&T cooperative that is a transmitting utility could seek recovery of stranded costs if it is ordered to provide transmission services that permit its distribution cooperative to reach another supplier *and* if it had a requirements contract with the distribution cooperative that was executed on or before July 11, 1994 that did not contain an exit fee or other explicit stranded cost provision.[246]

As we also explained in Order No. 888–A, a G&T cooperative that *is* a public utility (a non-RUS financed cooperative) would have to have a jurisdictional wholesale requirements contract with its distribution cooperative in order to be able to seek recovery of stranded costs under Order No. 888's stranded cost recovery provisions. We said that, in the case of a jurisdictional G&T cooperative, the request that the G&T be treated as a single economic unit with the distribution cooperative (such that departure of a distribution cooperative's retail customer would be treated as resulting in stranded costs for the G&T cooperative for which the G&T could seek recovery) is, in effect, a request for recovery of stranded costs from an indirect customer. In Order No. 888–A, we explained why the Commission does not believe it is appropriate or feasible to allow a public utility (or a transmitting utility under section 211 of the FPA) to seek recovery of stranded costs from an indirect customer (*i.e.*, a customer of a wholesale requirements customer of the utility) under the Rule. We indicated that "[t]he reasonable expectation analysis would apply only to the direct wholesale customer of the utility, not to the indirect customer. It is up to the direct wholesale customer of the utility, through its contracts with its customers or through the appropriate regulatory authority, to seek to recover such costs from its customers."[247] We explained that commenters had provided no basis for making an exception in the case of cooperatives. Further, we said that "to treat a G&T cooperative and its member distribution cooperatives as a single economic unit for stranded cost purposes would be inconsistent with the Commission's decision not to treat cooperatives as a single unit for purposes of Order No. 888's reciprocity provision."[248]

[239] *Id.* at 17.

[240] *Id.* at 19.

[241] RUS expresses concern in its rehearing request that distribution members "may have neither an appropriate regulatory forum through which to seek stranded cost recovery, nor the ability to seek to recover stranded costs incurred by their G&T cooperatives to serve native load customers." RUS at 17. However, presumably when a retail customer of a distribution cooperative switches suppliers, the retail customer would still have to use the distribution lines of the distribution cooperative to receive its power. RUS has not explained why the distribution cooperative cannot assess a charge to recover stranded costs when the retail customer uses those lines.

[242] A "public utility" is defined under section 201(e) of the FPA as "any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of sections 210, 211, or 212)." 16 U.S.C. 824(e).

[243] A "transmitting utility" is defined under section 3(23) of the FPA as "any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale." 16 U.S.C. 796(23).

[244] As we explained in Order No. 888–A, our decision to entertain (in certain limited circumstances) requests to recover stranded costs associated with retail wheeling customers applies to public utilities only because it is based on our jurisdiction under sections 205 and 206 of the FPA over the rates, terms, and conditions of retail transmission in interstate commerce. FERC Stats. & Regs. ¶ 31,048 at 30,419. Since RUS-financed cooperatives are not public utilities subject to our jurisdiction under sections 205 and 206 of the FPA, we do not have authority to allow them to seek recovery under Order Nos. 888 and 888–A of stranded costs associated with retail wheeling customers.

[245] Whether a G&T cooperative's member distribution cooperatives and the customers of the distribution cooperatives meet the definition of "native load customer" under the open access tariff (as RUS submits they do) is not relevant for purposes of the stranded cost recovery mechanism set forth in Order Nos. 888 and 888–A.

[246] FERC Stats. & Regs. ¶31,048 at 30,366.

[247] *Id.*

[248] *Id.* We continue to believe that it would be inconsistent to treat G&T cooperatives and their member distribution cooperatives differently for purposes of the reciprocity condition and stranded cost recovery, notwithstanding RUS' argument to the contrary.

Although RUS refers in its rehearing request to a scenario in which costs may be stranded by the ability of customers of a distribution cooperative to switch suppliers through the use of Commission-required transmission access, the scenario RUS posits is not one for which Order Nos. 888 and 888–A would permit an opportunity for recovery. Because the Commission cannot order retail wheeling, the principal way in which the retail customers of a distribution cooperative could use Commission-required transmission access (and trigger stranded costs on the part of the distribution cooperative) would appear to be through municipalization (*i.e.*, through the creation of a new wholesale entity to obtain power supplies on their behalf in lieu of obtaining power from the distribution cooperative). In such a scenario, however, since the distribution cooperative (if RUS-financed) would not be a Commission-jurisdictional public utility or transmitting utility, it would not be allowed to seek stranded cost recovery under Order Nos. 888 and 888–A.

5. Treatment of Contracts Extended or Renegotiated Without a Stranded Cost Provision

In Order No. 888–A, the Commission clarified that it will consider on a case-by-case basis whether to waive the provisions of 18 CFR 35.26 (which define a "new wholesale requirements contract" as "any wholesale requirements contract executed after July 11, 1994, *or extended or renegotiated to be effective after July 11, 1994*" (emphasis added)) and treat a contract extended or renegotiated (without adding a stranded cost provision) to be effective after July 11, 1994, but before March 29, 1995, as an existing contract for stranded cost purposes.[249]

Port of Seattle opposes the Commission's decision in this regard. It argues that the Commission in Order No. 888–A sided with Puget on an issue that is being litigated between Port of Seattle and Puget in a separate proceeding (Docket No. ER96–714), and that the Commission improperly prejudiced Port of Seattle by not addressing the concerns expressed by Port of Seattle in the underlying case.[250] It submits that Order No. 888–A was not the forum in which it expected the final decision in Docket No. ER96–714 to be made, and that its procedural rights have been violated. Port of Seattle asks the Commission on rehearing to withdraw any determination, reference or statement in Order No. 888–A that addresses the issues pending in Docket No. ER96–714.

Port of Seattle further argues that the Commission improperly granted Puget an exclusive waiver of (or private exception to) the Rule's definition of "new" contracts.

Commission Conclusion. We will deny Port of Seattle's request for rehearing. Port of Seattle misconstrues the scope of the Commission's decision and its effect on the pending proceeding in Docket No. ER96–714–001. The Commission's decision in Order No. 888–A to consider on a case-by-case basis whether to waive the provisions of 18 CFR 35.26 and treat a contract extended or renegotiated to be effective after July 11, 1994, but before March 29, 1995, as an existing contract for stranded cost purposes does *not* constitute a ruling on the merits in the pending proceeding in Docket No. ER96–714–001. In Order No. 888–A, the Commission has gone no further than to state that the matter should be considered on a case-by-case basis, and to acknowledge that the issue, as between Puget and Port of Seattle, is pending in Docket No. ER96–714–001.[251] Contrary to Port of Seattle's claim, Order No. 888–A does not grant Puget a waiver of the Rule's definition of "new wholesale requirements contract."

6. Customer Expectations of Continued Service at Below-Market Rates

TDU Systems seeks rehearing of the Commission's decision not to adopt a generic mechanism to allow existing requirements customers with below-market rates a means to continue to receive power beyond the contract term at the pre-existing contract rate if the customer had a reasonable expectation of continued service. TDU Systems states that the Commission's decision rests on the conclusion that, even if customers generally expected to stay on a supplier's system beyond the contract term, it is not likely that most customers could have expected to continue service at the existing rate. TDU Systems maintains that this finding rests on a false distinction between the rate the wholesale requirements customer reasonably could have expected to pay and the rate the wholesale requirements seller reasonably could have expected to collect. It says that neither stranded costs nor "stranded benefits"[252] arise from a right to, or expectation of, a grandfathered rate. TDU Systems contends that "stranded benefits" arise because, prior to open access transmission, wholesale requirements customers had a reasonable expectation of continuing to receive wholesale service at just and reasonable cost-based rates. It argues that when open access transmission allows the supplier to charge a higher market-based rate instead, the customer's expectation of continued cost-based service is destroyed, and the customer may lose the benefits it had under the prior regulatory regime.

TDU Systems submits that while Order No. 888-A suggests that customers could not reasonably expect to continue paying their existing rate, the revenues lost approach to quantifying stranded costs assumes that sellers reasonably expected to continue collecting a cost-based rate equal to the existing rate. TDU Systems says that the Commission's best estimate of the seller's lost revenue from a wholesale requirements contract is based on the seller's existing, cost-based, just and reasonable rate—the same existing cost-based rate that the Commission in Order No. 888–A finds the captive requirements customer had no reasonable expectation of continuing to pay. TDU Systems says these findings directly contradict one another.[253]

TDU further challenges the Commission's statement that "it is not clear" that the customer could show it reasonably expected continued service "at the existing contract rate (which may be below the market price)" because the utility might have filed changed rates during the contract term or sought new rates at the end of the contract term. TDU Systems submits that before open access, established Commission policy would only have allowed the monopoly utility to charge its captive wholesale requirements

[249] FERC Stats. & Regs. ¶ 31,048 at 30,396.

[250] Port of Seattle at 7. Port of Seattle also contends that the Commission mischaracterized Port of Seattle's position when it referred to Puget's statement that the parties were working within the context of the stranded cost NOPR, which provided that the utility had three years from the date of the publication of the final rules to negotiate or file for stranded cost recovery. Port of Seattle says its assumption and position was that Puget made the business decision not to include a stranded cost or exit fee provision in its letter agreement, thus preventing its recovery of any stranded costs. *Id.* at 8.

[251] We note that a certification of an uncontested offer of settlement in that proceeding is pending before the Commission.

[252] TDU Systems uses the term "stranded benefits" to refer to the benefits to a wholesale requirements customer that may be lost if "open access transmission forces [the customer] to buy power at market-based rates" instead of at cost-based rates. TDU Systems at 25.

[253] *Id.* at 27–28.

customer a cost-based rate, whether that rate was above or below market price.[254]

TDU Systems asks the Commission to adopt a generic mechanism to allow customers to demonstrate and recover their stranded benefits, just as it has done for the recovery of utility stranded costs. If the Commission is unwilling to promulgate such a generic rule, TDU Systems asks that the Commission clarify the standard that a customer must meet in seeking relief under section 206. It says that although Order No. 888-A states that a customer may file a petition under section 206 "to show that the contract should be extended at the existing contract rate," the issue is not whether to extend a contract at the existing rate, but whether to continue requirements service at a cost-based rate. It asks the Commission to correct its description in Order No. 888–A of the standard the customer must meet in a case-by-case proceeding and the relief the Commission would provide.

Commission Conclusion. As discussed below, we will deny TDU Systems' request for rehearing on this issue, but will grant, in part, its request for clarification.

In Order No. 888–A, the Commission rejected TDU Systems' request that the Commission provide a generic mechanism to allow existing requirements customers a means to continue to receive power beyond the contract term at the pre-existing contract rate if the customer had a reasonable expectation of continued service. The Commission noted that TDU Systems had requested that the customer be given the choice of extending its existing contract at existing rates for a period corresponding to the customer's expectation of continued service or receiving a "stranded benefits" payment from the utility consisting of the difference between what the customer must pay for new supplies and what it paid under the contract.[255] We concluded that we did not have a sufficient basis on which to make generic findings or provide a generic formula for addressing this issue:

> Utilities' expectations may have resulted in millions of dollars of investments on behalf of certain customers and the possibility of shifting the costs of those investments to other customers that did not cause the costs to be incurred. In the case of customers' expectations, however, even if customers generally expected to stay on a supplier's system beyond the contract term, it is not likely that most customers could have expected to continue service *at the existing rate* unless specified in the contract.

Moreover, the consequences of customers' expectations as a general matter would not have the potential to shift significant costs to other customers.[256]

At the same time, however, we indicated that a customer under a contract may exercise its procedural rights under section 206 of the FPA to show that the contract should be extended at the existing contract rate. We noted that the customer also may make such a showing in the context of a utility's proposed termination of a contract pursuant to the § 35.15 notice of termination (approval) requirement, which the Commission has retained for power supply contracts executed prior to July 9, 1996 (the effective date of Order No. 888).

TDU Systems has not persuaded us that our decision to address this issue on a case-by-case, not a generic, basis is in error. Notwithstanding TDU Systems' arguments, we continue to believe that the extent to which a customer could demonstrate a reasonable expectation of continued service at the existing contract rate (or at a cost-based rate, if that was the customer's expectation) is best addressed on a case-by-case basis. As we explained in Order No. 888–A, we do not intend to prejudge whether a requirements customer could ever make such a showing, nor do we intend to preclude a customer from attempting to make such a showing in appropriate circumstances.

In response to TDU Systems' request that the Commission clarify the standard that a requirements customer must meet in seeking relief under section 206, we clarify that a customer may exercise its procedural rights under section 206 to show *either* that the contract should be extended at the existing contract rate or, as TDU Systems suggests, that the contract should be extended at a cost-based rate. However, the relief that the Commission would provide in such a case is a matter that is more appropriately determined on a case-by-case basis based on the particular facts and circumstances.

7. Miscellaneous

IL Com seeks rehearing of the following sentence in Order No. 888–A: "It was not unreasonable for the utility to plan to continue serving the needs of its wholesale requirements customers *and retail customers*, and for those customers to expect the utility to plan to meet their needs."[257] IL Com objects that this sentence prejudges the reasonable expectation issue.[258] It asks that the Commission withdraw the quoted sentence in full or, at a minimum, withdraw the reference to retail customers in the quoted sentence.

IL Com also seeks clarification of the Commission's statement in Order No. 888–A that "[i]f a former wholesale requirements customer *or a former retail customer* uses the new open access to reach a new supplier, the utility is *entitled* to seek recovery of legitimate, prudent and verifiable costs that it incurred under the prior regulatory regime to serve that customer."[259] IL Com asks the Commission to withdraw the words "or a former retail customer" from this sentence and to clarify that it is not prejudging utilities' entitlement to retail stranded cost recovery and is not imposing a "legitimate, prudent and verifiable" standard for the recovery of retail stranded costs.[260]

Commission Conclusion. The Commission statements that are the subject of IL Com's request for rehearing initially appeared in Order No. 888[261] and were repeated in Order No. 888–A's summarization of Order No. 888. IL Com's request for rehearing with respect to these statements should have been raised on rehearing of Order No. 888 and therefore was not timely filed. However, we clarify that while we will not withdraw our statements, the statements are not intended to prejudge the reasonable expectation issue as it might apply to any state proceedings on retail stranded costs.

V. Environmental Statement

In Order No. 888–A, the Commission denied requests for rehearing on eight categories of issues relating to the Commission's analysis of environmental issues. No rehearing requests were filed concerning Order No. 888–A's analysis of environmental issues.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[262] requires rulemakings to either contain a description and analysis of the effect that the proposed or final rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities. In Order No. 888, the Commission certified that the Open Access and Stranded Cost Final Rules would not impose a significant economic impact on a substantial number of small entities. In Order No. 888–A, the Commission addressed requests for rehearing that questioned this certification and that the final rule would not impose a significant economic impact on a substantial number of small entities. No rehearing requests of Order No. 888–A were filed on this issue and the Commission finds no reason to alter its previous findings on this issue.

VII. Information Collection Statement

Order No. 888 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB).[263] Given that this order on rehearing makes only minor revisions to Order Nos. 888 and 888–A, none of which is substantive, OMB approval for this order will not be necessary. However, the Commission will send a copy of this order to OMB, for informational purposes only.

The information reporting requirements under this order are virtually unchanged from those contained in Order Nos. 888 and 888–A. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395–3087].

VIII. Effective Date

The tariff change to Order Nos. 888 and 888–A made in this order on rehearing (see footnote 1) will become effective on February 9, 1998. The current requirements of Order Nos. 888 and 888–A will remain in effect until this order becomes effective.

By the Commission.

Lois D. Cashell,

Secretary.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A—Order No. 888–B: List of Petitioners

1. American Public Power Association, Colorado Association of Municipal Utilities, Municipal Electric Systems of Oklahoma, and Utah Associated Municipal Power Systems (APPA)[1]
2. Bonneville Power Administration (BPA)
3. Arizona Public Service Company (Arizona)
4. Boston Edison Company, Central Vermont Public Service Corporation, Florida Power Corporation, Montaup Electric Company, and Wisconsin Public Service Corporation (Boston Edison)
5. Coalition for a Competitive Electric Market (CCEM)[2]
6. Central Maine Power Company (Central Maine)
7. Coalition for Economic Competition (Coalition for Economic Competition)[3]
8. Colorado Association of Municipal Utilities (CAMU)
9. Dairyland Power Cooperative (Dairyland)
10. Edison Electric Institute (EEI)[4]
11. Illinois Commerce Commission (IL Com)
12. Kansas City Power & Light Company (KCPL)
13. Metropolitan Edison Company (Met Ed)
14. National Association of Regulatory Utility Commissioners (NARUC)
15. National Rural Electric Cooperative Association (NRECA)
16. New England Power Pool Executive Committee (NEPOOL)
17. Public Service Commission of the State of New York (NY Com)[5]
18. Niagara Mohawk Power Corporation and PURPA Reform Group (NIMO)[6]
19. Otter Tail Power Company (Otter Tail)
20. Puget Sound Energy, Inc. (Puget)[7]
21. Rural Utilities Service, USDA (RUS)
22. Port of Seattle (Port of Seattle)
23. Soyland Power Cooperative, Inc. (Soyland)
24. Transmission Access Policy Study Group and certain of its Members (TAPS)[8]
25. Transmission Dependent Utility Systems (TDU Systems)[9]

[1] APPA filed its request for rehearing out-of-time on April 4, 1997. As discussed in Order No. 888–B, the Commission is accepting this pleading as a motion for reconsideration.

[2] CNG Energy Services Corp., Coastal Electric Services Company, Destec Power Services, Inc., Enron Power Marketing, Inc., Koch Energy Trading, Inc., NorAm Energy Services, Inc., and Vitol Gas & Electric Services, Inc.

[3] General Public Utilities Corp., Illinois Power Co., Long Island Lighting Co., and New York State Electric & Gas Corp.

[4] EEI filed its request for rehearing out-of-time on April 4, 1997. As discussed in Order No.888–B, the Commission is accepting this pleading as a motion for reconsideration.

[5] Independent Power Producers of New York, Inc. (NY IPPs) filed an answer on April 11, 1997.

[6] Granite State Hydropower Association filed an answer on April 21, 1997.

[7] Formerly Puget Sound Power & Light Company.

[8] American Municipal Power-Ohio, Inc., Illinois Municipal Electric Agency, Indiana Municipal Power Agency, Littleton Electric Light Department, Massachusetts Municipal Wholesale Electric Company, Michigan Public Power Agency, Municipal Energy Agency of Mississippi, Municipal Energy Agency of Nebraska, New Hampshire Electric Cooperative, Inc., Northern California Power Agency, Virginia Municipal Electric Association No. 1, on behalf of itself and its members (City of Franklin, City of Manassas, Harrisonburg Electric Commission, Town of Blackstone, Town of Culpepper, Town of Elkton, and Town of Wakefield), and Wisconsin Public Power, Inc. The operating companies of the American Electric Power System (AEP) filed an answer on April 17, 1997.

[9] Arkansas Electric Cooperative Corporation, Golden Spread Electric Cooperative, Inc., Holy Cross Electric Association, Kansas Electric Power Cooperative, Inc., Magic Valley Electric Cooperative, Inc., Mid-Tex Generation and Transmission Electric Cooperative, Inc., North Carolina Electric Membership Corporation, Oklahoma Municipal Power Authority, Old Dominion Electric Membership Corporation, and Seminole Electric Cooperative, Inc.

(Name of Transmission Provider) Open Access Transmission Tariff Original Sheet No.

Revision to Pro Forma Open Access Transmission Tariff Pursuant to Order No. 888–B

Appendix B

29.1 Condition Precedent for Receiving Service: Subject to the terms and conditions of Part III of the Tariff, the Transmission Provider will provide Network Integration Transmission Service to any Eligible Customer, provided that: (i) The Eligible Customer completes an Application for service as provided under Part III of the Tariff, (ii) the Eligible Customer and the Transmission Provider complete the technical arrangements set forth in Sections 29.3 and 29.4, (iii) the Eligible Customer executes a Service Agreement pursuant to Attachment F for service under Part III of the Tariff or requests in writing that the Transmission Provider file a proposed unexecuted Service Agreement with the Commission, and (iv) the Eligible Customer executes a Network Operating Agreement with the Transmission Provider pursuant to Attachment G, *or requests in writing that the Transmission Provider file a proposed unexecuted Network Operating Agreement.*

[FR Doc. 97–31841 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM95–8–002; Order No. 889–B]

Open Access Same-Time Information System and Standards of Conduct

Issued November 25, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final order; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying the requests for rehearing of its order on rehearing of the final rule in this proceeding. The final rule required public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to create or participate in an Open Access Same-Time Information System (OASIS) in conformance with Commission regulations. The final rule also required

[254] *Id.* at 28–29

[255] FERC Stats. & Regs. ¶31,048 at 30,391.

[256] *Id.* at 30,393 (emphasis in original).

[257] *Id.* at 30,351 (emphasis added by IL Com).

[258] IL Com at 9–10.

[259] FERC Stats. & Regs. ¶31,048 at 30,351 (emphasis added by IL Com).

[260] IL Com. at 10–11.

[261] *See* FERC Stats. & Regs. ¶31,036 at 31,789.

[262] 5 U.S.C. 601–612.

[263] The OMB control number for this collection of information is 1902–0096.

those public utilities to implement standards of conduct to functionally separate transmission and wholesale merchant functions. The order on rehearing made minor revisions to the final rule and implemented a revised transmission discounting policy. This order denies the requests for rehearing filed by six interested persons in response to the order on rehearing of the final rule.

EFFECTIVE DATE: November 25, 1997.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283.

William C. Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0849.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0321.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey.

Order Denying Rehearing of Order No. 889–A

Issued November 25, 1997.

I. Introduction

In this order, we deny the requests for rehearing of Order No. 889–A, our order on rehearing of Order No. 889.[1]

II. Background

In Order No. 889–A, the Commission addressed over 40 requests for rehearing of Order No. 889 and affirmed the major findings made therein. We did, however, make certain minor revisions to fine-tune the regulations at 18 CFR Part 37 and to implement a revised transmission discounting policy that we adopted and described in detail in Order No. 888–A, our order on rehearing of Order No. 888.[2]

The revised transmission discounting policy necessitated a number of changes to the Standards of Conduct and to the Open Access Same-Time Information (OASIS) posting requirements in 18 CFR Part 37. These were:

(1) Deleting §§ 37.4(b)(5)(v) and 37.4(b)(5)(vi);

(2) Adding a provision at § 37.6(c)(3) to require, among other things, that any offer of a discount for basic transmission service must be announced to all potential customers solely by posting on the OASIS;

(3) Revising § 37.6(c)(4) to no longer treat the posting of transmission service transactions involving the Transmission Provider's (or any affiliate's) generation merchant function any differently from the posting of transactions involving non-affiliates except that transactions involving the Transmission Provider's wholesale merchant function or affiliates must be identified;

(4) Adding a provision at § 37.6(d)(2) to require, among other things, that any offer of a discount for ancillary service provided by the Transmission Provider in support of its provision of basic transmission service must be announced to all potential customers solely by posting on the OASIS;

(5) Revising § 37.6(d)(3) on ancillary services to be consistent with our revision to § 37.6(c)(4);

(6) Revising § 37.6(e)(1)(I) to require that, except for next-hour service, requests for transmission and ancillary service must be posted prior to the Transmission Provider responding to these requests;

(7) Adding a provision, at § 37.6(e)(1)(ii), that during Phase I, while requests for next-hour service need to be posted on the OASIS as soon as possible and in any event within one hour of receiving the request, they need not be posted on the OASIS prior to being acted on;

(8) Adding a provision, at § 37.6(e)(1)(iii), that provides that in the event that a discount is being requested for ancillary services that are not in support of the Transmission Provider's provision of basic transmission service, such a request need not be posted on the OASIS;

(9) Expanding, in § 37.6(e)(1)(iv), the information required to be posted on the status of requests for transmission and ancillary service; and

(10) Deleting the provision, formerly found in § 37.6(e)(1)(iii) and the revised § 37.6(e)(3)(I), to disallow masking the identity of parties to transactions.

We also made nine minor revisions in Order No. 889–A to the regulations in 18 CFR Part 37 that were unrelated to our revised transmission discounting policy. These were:

(1) Amending the definition of "wholesale merchant function" in § 37.3(e);

(2) Amending §§ 37.4(b)(5)(iii) and 37.6(g)(4) to require Transmission Providers to post on the OASIS the information that they already were required to keep, detailing the circumstances and manner in which they exercise their discretion under any terms of the tariff;

(3) Substituting the phrase "sales made to any person for resale made by the wholesale merchant function or any affiliate" for the phrase "wholesale purchases or sales made on behalf of its own power customers, or those of an affiliate" in § 37.4(b)(5)(iv), to be consistent with the revised definition of "wholesale merchant function";

(4) Amending § 37.6(b)(1) to clarify the meaning of the term "interconnection" as used in the definition of "posted path";

(5) Amending § 37.6(b)(3)(ii) to clarify that firm available transmission capability (ATC) and nonfirm ATC for unconstrained posted paths must be separately posted;

(6) Amending § 37.6(e) to clarify that the provision applies to requests for ancillary service and that requests for service must be posted before the Transmission Provider responds to the request;

(7) Amending § 37.6(g)(3) to require that notices of transfers of personnel posted on the OASIS, as described in § 37.4(b)(2), remain available for the same time period as audit information in § 37.7(b);

(8) Amending § 37.7(b) to shorten, from 90 days to 20 days, the time during which ATC/total transmission capability (TTC) postings must remain available for download on the OASIS (the data will, however, remain available upon request for three years from the date when they are first posted); and

(9) Deleting § 37.8, because the compliance date for Part 37 had already passed.

In response to the issuance of Order No. 889–A, requests for rehearing were filed by six interested persons.[3]

III. Public Reporting Burden

This order on rehearing makes no changes to Order No. 889–A or the regulations found at 18 CFR Part 37. Consequently, the public reporting burden associated with issuance of this order is unchanged from what we estimated when we issued Order Nos. 889 and 889–A. The Commission has conducted an internal review of this conclusion and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information required by Order Nos. 889 and 889–A, as clarified by this order on rehearing, and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.

Persons wishing to comment on the collections of information required by this order on rehearing should direct their comments to the Desk Officer for FERC, Office of Management and Budget, Room 3019 NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile 202–395–7285. Comments must be filed with the Office of Management and Budget within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Michael Miller, 202–208–1415.

IV. Discussion

The rehearing requests collectively raise four major issues. We will deny rehearing on each of these issues as discussed below.

A. Section 37.1—Applicability

The Commission's Waiver Policy

In Order Nos. 888 and 889, the Commission determined that requests for waiver would be better decided on a case-by-case basis so that the Commission could evaluate them based on individual circumstances, rather than as part of a generic rulemaking.[4] In Order No. 889, we stated that the Commission would develop, in the context of individual adjudications, a mechanism that would allow small public utilities to seek a waiver of some or all of the Open Access requirements, including the requirements to establish and/or participate in an OASIS and to develop Standards of Conduct. This same waiver mechanism was made applicable to small non-public utilities seeking waiver from all or part of the reciprocity condition.

Consistent with this approach, the Commission, in Order Nos. 888–A and 889–A, recounted the waiver standards enunciated by the Commission in a series of orders dealing with companies' specific requests for waiver of all or some of the requirements of Order Nos. 888 and 889, and declined to revise the standards established in those case-by-case determinations.[5]

Additionally, in Order No. 889–A, the Commission recited the arguments raised in the requests for rehearing of the Commission's waiver policy as it related to the Commission's OASIS and Standard of Conduct requirements under Order No. 889. The Commission explained that, in a series of orders, it had developed waiver criteria that took into account potential burdens on small entities and at the same time balanced the need to prevent undue discrimination and affiliate abuse in interstate power markets, and that this flexible waiver approach adequately addressed the concerns raised on rehearing. The Commission concluded that an order on rehearing of a final rulemaking was not the proper vehicle for a company to request a company-specific waiver or to challenge the Commission's waiver policy. It further explained that waivers are appropriately addressed on a case-by-case basis, which permits the Commission to review the specific facts of each waiver application and permits affected parties to intervene and make their views known to the Commission.[6]

Rehearing Requests. On rehearing, NRECA argues that the Commission should modify its waiver policy so that waivers terminate upon issuance of a Commission order, and not upon the filing of a complaint or request for service.[7] NRECA argues that a waiver should be terminated not when an entity files a complaint, but when the Commission issues an order finding that the complaint has merit.[8]

This same basic argument is also made by TDU Systems.[9] TDU Systems argues that the Commission's current waiver policy makes a waiver a "mirage", terminable by a baseless complaint made solely to drive up a competitor's costs by triggering

---

[1] Open Access Same-Time Information System and Standards of Conduct, *Final Rule*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, 61 FR 21737 (May 10, 1996), *Order on Reh'g*, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049, 62 FR 12484 (March 14, 1997).

[2] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, *Final Rule*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 61 FR 21540 (May 10, 1996), *Order on Reh'g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, 62 FR 12274 (March 14, 1997).

[3] Requests for rehearing of Order No. 889–A were filed by Coalition for a Competitive Electric Market (CCEM), National Rural Electric Cooperative Association (NRECA), Transmission Access Policy Study Group (TAPS), and Transmission Dependent Utility Systems (TDU Systems). In addition, requests for rehearing of Order No. 889–A nominally were filed by Puget Sound Energy, Inc. (Puget Sound) and by the United States Department of Agriculture (USDA), although these rehearing requests raise no specific issues related to Order No. 889–A.

[4] *See* Order No. 888, FERC Stats. & Regs. at 31,654, Order No. 889, FERC Stats. & Regs. at 31,596.

[5] *See* Order No. 888–A, FERC Stats. & Regs. at 30,293 and 30,332–34, Order No. 889–A, FERC Stats. & Regs. at 30,554–55. We did, however, in Order No. 888–A, provide some clarification of the Commission's waiver policy. *See* FERC Stats. & Regs. at 30,334.

[6] *See* Order No. 889–A, FERC Stats. & Regs. at 30,555.

[7] At the time of NRECA's rehearing, the Commission's policy on the expiration of waivers provided that

[w]aiver of the requirement to establish and maintain an information system (*i.e.*, an OASIS) will be granted unless and until an entity evaluating its transmission needs complains that it could not get information necessary to complete its evaluation. Waiver of the standards of conduct will be granted unless and until an entity complains that a public utility has used its access to information about transmission to unfairly benefit the public utility's own or the public utility's affiliates' sales. Compliance must be made within 60 days of the complaint.

Order No. 889–A, FERC Stats. & Regs. at 30,555 and Black Creek Hydro, Inc., *et al.*, Order on Reh'g and Granting Waivers of Order No. 889, 77 FERC ¶ 61,232 at 61,941 (1996).

[8] NRECA Rehearing Request at p. 11.

[9] TDU Systems Rehearing Request at pp. 10–12.

unnecessary compliance with the OASIS and Standards of Conduct requirements.[10] Moreover, TDU Systems argues that such a complaint, terminating a waiver of Order No. 889 requirements, should be based on a "good faith" request for transmission service and a prima facie case that adequate information about a respondent's transmission service is unavailable, or that preferential treatment is being given to the respondent's wholesale merchant function.[11]

Commission Conclusion. In a company-specific order issued subsequent to the date of NRECA's and TDU Systems' rehearing requests, the Commission modified its waiver policy in the manner requested by the two parties.[12] Specifically, the Commission has reconsidered its policy of automatically revoking waivers of the requirements of Order No. 889 on the filing of a complaint and has determined that, henceforth, waivers will remain effective until the Commission takes action in response to a complaint.

B. Sections 37.3 (Definitions) and 37.4 (Standards of Conduct)

Definition of "Wholesale Merchant Function" and Employees Engaged in Wholesale Purchases for Bundled Retail Customers

In Order No. 889, in § 37.6(e), the Commission defined the "wholesale merchant function" as the "sale for resale, *or purchase for resale*, of electric energy in interstate commerce." [Emphasis added]. On rehearing of Order No. 889, Consolidated Edison Company of New York, Inc. (ConEd) argued that the Commission had exceeded its authority by requiring "transmission providers to functionally separate interstate electricity transmission and wholesale merchant functions (wholesale sales and purchases of electricity in interstate commerce)."[13] ConEd asserted that wholesale purchases of electricity in interstate commerce on behalf of native load customers are bundled retail electric service transactions that are local distribution and not subject to the Commission's authority.

In Order No. 889–A, we considered ConEd's argument and stated as follows:

> We agree with ConEd to the extent that when a utility uses its own transmission system to transmit purchased power to retail load customers we have no jurisdiction over the transmission that is included in the bundled sale of power to the retail native load. Upon further consideration, we conclude that our definition of "wholesale merchant function" (in § 37.3(e)) should be modified to delete the phrase, "* * *, or purchase for resale, * * *" because this clause creates confusion and is not necessary.[14]

We explained that when a utility purchases power for its retail native load customers, this is not a sale for resale. We further explained that,

> [i]n contrast, when a utility purchases power for its wholesale native load, the transmission of purchased power to the wholesale customer is really part of a transaction that includes a wholesale sale of power to a third party.[15]

In Order No. 889–A, the Commission also explained that the Standards of Conduct do not mandate that Transmission Providers assign employees making purchases on behalf of bundled retail customers to the group performing wholesale merchant functions. Specifically, we stated:

> The standards of conduct's separation of functions currently prohibit a Transmission Provider's employees engaged in transmission system operations and reliability functions from giving preference to wholesale purchases or sales made on behalf of its own wholesale customers or those of affiliates. The standards of conduct do not, however, dictate whether bundled retail merchant functions are to be grouped with the wholesale merchant function or with the transmission operations and reliability function.
>
> Thus, FIT Utilities' request to allow dispatchers to buy power to serve retail load is consistent with the regulations. As discussed above, the regulations do not prohibit Transmission Providers from assigning the responsibility for making purchases to serve bundled retail customers to the transmission operations and reliability function.

Rehearing Requests. On rehearing, CCEM argues that the Commission erred by modifying the definition of "wholesale merchant function" and by revising provisions of the Standards of Conduct to exempt transmission service provided in conjunction with a Transmission Provider's wholesale purchases for bundled retail sales.[16] CCEM also argues that the Commission erred when it found that it lacks jurisdiction over transmission service that is bundled with the sale of power to a utility's retail native load.[17] It argues that artificial distinctions between wholesale and retail transactions should be avoided. CCEM further argues that the Commission should insist that all transmission providers and customers face the same unbundled market.

Similarly, TAPS argues that the Commission's change in the definition of "wholesale merchant function" unwisely narrows the scope of the Standards of Conduct rules.[18] TAPS further argues that a Transmission Provider's use of its own transmission system to make wholesale purchases for bundled retail load should not be exempted from functional unbundling and functional separation requirements.[19] TAPS argues that the Commission erred by watering down the functional unbundling requirements in the Standards of Conduct by excluding wholesale purchases for bundled retail customers from the requirement to functionally unbundle.

Commission Conclusion. Nothing in the rehearings convinces us to modify the definition of "wholesale merchant function" or to otherwise modify our decision on this issue reached in Order No. 889–A. However, we will repeat here certain clarifications we have made in response to similar arguments made in requests for rehearing of Order No. 888–A.

Although we reiterate our view that the Commission does not have jurisdiction over the rates, terms and conditions of *bundled* retail service, as a practical matter, we do not believe that it is possible to divide a *single* power purchase made on behalf of both wholesale and retail native load such that the transmission provider takes service under the open access non-rate terms and conditions for the part of the purchase that goes to wholesale native load, but takes service under different terms and conditions for the part of the purchase that goes to retail native load. Because the power purchase transaction (including the delivery across the transmission provider's system to both wholesale and retail customers) is indivisible, and because the transmission of the purchased power to the wholesale native load customer must be done pursuant to the open access tariff, this means that the entire transaction *de facto* must be pursuant to the non-rate terms and conditions of the tariff.

Concerning the Standards of Conduct requirement that public utilities separate their *wholesale* power marketing functions from their transmission operations, the Commission did not require separation of the *retail* power marketing function because the state has jurisdiction over retail power marketing and over bundled retail transmission. However, here too we believe further clarification is necessary. First, the public utility has no choice pursuant to Order Nos. 888 and 888–A but to separate its wholesale power marketing function (including power purchase transactions made by the marketing function on behalf of wholesale native load) from the transmission operations function. This means that those persons in the company that are involved in wholesale power purchases as well as wholesale sales cannot interact with the transmission personnel other than through the OASIS. Thus, to the extent they are making purchases on behalf of wholesale as well as bundled retail native load as part of a single purchase, they will have to abide by the separation of function requirement. As discussed above, such a purchase is not divisible. Additionally, it is conceivable that there could be a separate retail marketing function for native load and a separate wholesale marketing function for native load. If a challenge is made to the way a utility organizes its functions, then the utility bears the burden of demonstrating that it is maintaining a separate staff to perform retail marketing functions. Furthermore, in such cases, it would clearly be inappropriate for the retail staff to share transmission information with the wholesale marketing staff.

C. Section 37.6—Information To Be Posted on an Oasis

Transmission Discounting Policy

In Order No. 889–A, we explained that the Commission was adopting a revised discounting policy in Order No. 888–A that necessitated changes to the OASIS and Standards of Conduct regulations found in 18 CFR Part 37. These changes entailed three principal requirements.

First, any offer of a discount for transmission and/or ancillary services made by the Transmission Provider must be announced to all potential customers solely by posting on the OASIS.

Second, any customer-initiated requests for discounts of transmission and/or ancillary services must occur solely by posting on the OASIS, regardless of whether the customer is the Transmission Provider's wholesale merchant function, an affiliate, or a non-affiliate.

Third, once the Transmission Provider and customer agree to a discounted transaction for transmission and/or ancillary services, the details immediately must be posted on the OASIS. This requirement is equally applicable regardless of whether the customer is the Transmission Provider's wholesale merchant function, an affiliate, or a non-affiliate.

Rehearing Request. On rehearing, TAPS argues that the Commission's policy on transmission discounting should be modified to minimize the potential for self dealing and other abuses.[20] Specifically, TAPS argues that the Commission's revised discounting policy in Order No. 888–A, by allowing delivery point-specific discounts, offers a means for transmission providing utilities to offer each other reciprocal discounts, while requiring transmission dependent utilities to pay full freight. TAPS argues that if a transmission provider offers a discount to itself or any other transmission user, the transmission provider should be required to offer the discount either on all unconstrained paths, or, at a minimum, to all delivery points in the same unconstrained portion of the transmission provider's transmission system and to other similarly situated customers. TAPS argues that there is no justification for a transmission provider to refuse to offer a discount to delivery points located along the same electrical path as the discounted transaction.[21]

Commission Conclusion. In Order No. 888-B, being issued concurrently with this order, the Commission has considered various requests for rehearing of the discounting policy announced in Order Nos. 888-A and 889-A. Among these requests for rehearing is that submitted by TAPS, wherein TAPS raises the same discounting issue as that raised in its request for rehearing of Order No. 889-A.[22] As we are denying rehearing of this issue in Order No. 888-B, for the reasons discussed therein, we similarly deny rehearing of this issue in this order.

As we explain in Order No. 888-B, the revised discounting policy announced in Order No. 888-A is the result of a careful balancing of incentives to operate the transmission grid efficiently while ensuring that the grid is not operated in an unduly discriminatory manner. After a review of the requests for rehearing, the Commission concludes, in Order No. 888-B, that it properly balanced these concerns in Order No. 888-A. For this reason, the Commission denies the requests for rehearing of this issue in Order No. 888-B, and we do the same here.

D. Section 37.6—Information to be Posted on an Oasis

Deletion of Masking Provision

In Order No. 889-A, the Commission deleted § 37.6(e)(1)(iii) and revised § 37.6(e)(3)(I) to remove provisions that directed Transmission Providers posting transmission service requests on the OASIS to honor requests from parties to transactions to mask their identities during the negotiating period and for 30 days from the date when the request for service was accepted, denied, or withdrawn. The Commission deleted the masking provision in response to certain arguments raised on rehearing of Order No. 889 and to implement the discounting policy announced in Order No. 888-A.

Rehearing Request. CCEM argues that the Commission erred by eliminating the customer identity/transaction masking provision.[23] CCEM contends that this revision was not based on reasoned decision-making. CCEM argues that by revealing a transmission requester's identity, competitors—particularly public utilities with captive native loads—can learn commercially sensitive information that will allow them to misappropriate the service requester's marketing efforts and transactions. CCEM argues that this is a larger problem than it was previously because the Commission has now expanded the information to be posted on the status of requests for transmission and ancillary services to include information about: (1) points of delivery and receipt; (2) length and type of service; and (3) identification of ancillary service transactions associated with a transmission service transaction.

CCEM also argues that eliminating the 30-day masking provision allows the Standards of Conduct to be undercut by allowing wholesale merchant employees to obtain market information in a manner giving them an advantage over unaffiliated marketers. CCEM does not agree that masking inhibits market participants from making informed choices and notes that all relevant information except a requester's identity already would be available. CCEM argues that a requester's identity is neither critical nor important to a competitor pursuing "its own interests".

Commission Conclusion. We find CCEM's arguments unpersuasive. While

---

[10] TDU Systems Rehearing Request at p. 11.

[11] TDU Systems Rehearing Request at p. 12.

[12] Central Minnesota Municipal Power Agency, *et al.*, Order on Requests for Disclaimer of Jurisdiction and for Waiver of Order Nos. 888 and 889, 79 FERC ¶ 61,260 at 62,127 (1997).

[13] ConEd Rehearing Request of Order No. 889 at p. 2.

[14] FERC Stats. & Regs. at 30,552.

[15] *Id.*

[16] CCEM Rehearing Request at pp. 5–6.

[17] CCEM Rehearing Request at p. 5.

[18] TAPS Rehearing Request at pp. 3–5.

[19] TAPS Rehearing Request at pp. 3–5.

[20] TAPS Rehearing Request at pp. 5–6.

[21] TAPS Rehearing Request at p. 6.

[22] TAPS Rehearing Request of Order No. 888-A at pp. 17–20.

[23] CCEM Rehearing Request at pp. 2–5.

CCEM makes much of the so-called "uneven playing field" that it allegedly will endure without the masking provision, we find this concern to be unfounded. The Order No. 889 version of §§ 37.6(e)(1)(iii) and 37.6(e)(3)(I) treated all market participants making a request for transmission service (or whose transactions were curtailed or interrupted) equally, by allowing parties to such transactions to mask their identities for thirty days, upon request. The current (Order No. 889-A) version treats all market participants making a request for transmission service (or whose transactions are curtailed or interrupted) equally, by requiring the identity of parties to such transactions to be posted. Although the Commission has revised its policy on masking, all market participants making a request for transmission service, whether affiliated or non-affiliated with the Transmission Provider are treated equally in both instances. Thus, under the revised rule, the playing field is just as level as before.

Moreover, we are not persuaded that eliminating the masking provision will have the dire anticompetitive consequences that CCEM predicts. To the contrary, we continue to believe that fuller disclosure of customer and transaction information is necessary to implement the discounting provisions added by Order Nos. 888–A and 889–A and to ensure that customers (actual or potential) are able to detect any affiliate abuse or undue discrimination.

If actual experience proves different, CCEM or other interested persons may bring these facts to our attention and we will consider taking appropriate remedial action.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[24] requires any proposed or final rule issued by the Commission to contain a description and analysis of the impact that the proposed or final rule would have on small entities or to contain a certification that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Order No. 889 contained a certification under section 605(b) of the RFA that the OASIS Final Rule would not impose a significant economic impact on a substantial number of small entities within the meaning of the RFA.[25]

Given that Order No. 889–A made only minor revisions to Order No. 889, none of which was substantive, that this order makes no revisions to Order No. 889–A, and that we are granting waivers from the requirements of the OASIS Final Rule to small entities where appropriate, we reaffirm our earlier certification in Order Nos. 889 and 889–A that the requirements in 18 CFR Part 37, to establish and participate in an OASIS and to comply with the Standards of Conduct, will not have a significant economic impact on a substantial number of small entities and that no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

VI. Environmental Statement

As explained in Order Nos. 888–A and 889–A, Order Nos. 888 and 889 were the joint subjects of the Final Environmental Impact Statement issued in the Open Access NOPR proceeding in Docket Nos. RM95–8–000 and RM94–7–001 on April 12, 1996. Given that this order makes no revisions to Order No. 889–A, no separate environmental assessment or environmental impact statement has been prepared in this proceeding.

VII. Information Collection Statement

As explained in Order Nos. 889–A, Order No. 889 contained an information collection statement for which the Commission obtained approval from the Office of Management and Budget (OMB).[26] Given that Order No. 889–A made only minor revisions to Order No. 889, none of which was substantive, and given that this order makes no revisions to Order No. 889–A, OMB approval for this order will not be necessary. However, the Commission will send a copy of this order to OMB, for informational purposes only.

The information reporting requirements under this order are unchanged from those contained in Order No. 889–A. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention Michael Miller, Information Services Division, (202) 208–1415], and the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087].

The Commission Orders

As discussed in the body of this order, the requests for rehearing are hereby denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31856 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–P

[24] 5 U.S.C. 601–612.

[25] *See* Order No. 889, FERC Stats. & Regs. at 31,626.

[26] OMB Control No. 1902–0173.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations: Reporting of Claims of U.S. Nationals Against the Government of North Korea

AGENCY: Office of Foreign Assets Control

ACTION: Final rule; amendment.

SUMMARY: The Office of Foreign Assets Control is amending the Foreign Assets Control Regulations to require the reporting, no later than March 9, 1998, of all outstanding claims held by U.S. nationals against the Government of North Korea or any North Korean government entity. The reports are needed to obtain information, on a one–time basis, for planning and administrative purposes in contemplation of future claims settlement negotiations. The control number assigned by the Office of Management and Budget to this information collection requirement is also included.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Loren L. Dohm, Chief, Blocked Assets Division, tel.: 202/622–2440, or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document can also be downloaded in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem, dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control ("OFAC") is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through OFAC's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) touch–tone telephone.

Background

The Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), are being amended to establish a mandatory, one–time census with respect to all outstanding claims of U.S. nationals against the Government of North Korea or any North Korean government entity.

Section 500.602 is added to the Regulations to require all U.S. nationals having such claims to report the claims by letter, including the information required by paragraph (f) of that section, by March 9, 1998. The definition of the term "U.S. national" is contained in § 500.602(g). Observance of the filing deadline is extremely important. The reports are needed to obtain information, on a one–time basis, for planning and administrative purposes in contemplation of future claims settlement negotiations.

For naturalized U.S. citizens, only claims arising after becoming a U.S. citizen should be reported. Similarly, an entity must have been organized under the laws of a U.S. jurisdiction at the time of loss to have a reportable claim.

The submission of a report of a claim against the Government of North Korea or a North Korean government entity does not constitute the filing with the United States Government of a formal claim for compensation. No formal claims adjudication program currently exists. However, failure to file a complete report with respect to claims in a timely fashion would constitute not only a failure to comply with the Regulations, but would also prevent the inclusion of the information in U.S. Government planning and may therefore be prejudicial to the interests of the claimant and other U.S. claimants. Espousal of claims of U.S. nationals against a foreign government is within the discretion of the United States Government.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

This final rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collection of information contained in this final rule has been submitted to and approved by the Office of Management and Budget ("OMB") pending public comment, and has been assigned control number 1505–0160. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in the Regulations is contained in new § 500.602 of the Regulations. This information is needed by the Office of Foreign Assets Control and the U.S. Department of State for planning and administrative purposes in contemplation of future claims settlement negotiations. The likely respondents and recordkeepers are individuals and business organizations.

New § 500.602(e) provides that "[r]eports submitted pursuant to this section are regarded as privileged and confidential." It is the policy of the Office of Foreign Assets Control to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a).

Estimated total one–time reporting and/or recordkeeping burden: 100 hours.

The estimated one–time burden per respondent/recordkeeper varies from 1 hour to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents and/or recordkeepers: 50.

Estimated frequency of responses: 1.

Comments are invited on: (a) whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimated capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the above information, the accuracy of estimated average burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, control number 1505–0160, Washington, DC 20503, with a copy to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than February 9, 1998. Comments on aspects of the Regulations other than those involving collections of information should not be sent to the OMB.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, banking, Blocking of assets, Cambodia, Exports, Fines and penalties, Finance, Foreign claims, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions, Trusts and estates, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p.748.

Subpart F—Reports

2. Section 500.602 is added to Subpart F to read as follows:

§ 500.602 Reporting of claims of U.S. nationals against North Korea.

(a) *Requirement for reports.* Reports are required to be filed on or before March 9, 1998, in the manner prescribed in this section, with respect to all

outstanding claims held by United States nationals against the Government of North Korea or any North Korean government entity.

(b) *Who must report.* A report must be submitted by each U.S. national having a claim outstanding against the Government of North Korea or any North Korean government entity. Reports should be submitted only by persons who were U.S. citizens or entities organized under the laws of a U.S. jurisdiction on the date of the loss.

(c) *How to register.* U.S. nationals filing reports of claims must submit a letter containing the information required by paragraph (f) of this section. The letter must be sent to the Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, to arrive by March 9, 1998. A copy of the submission should be kept by the claimant.

(d) *Certification.* Every report shall bear the signature of the claimant or a person authorized by the claimant to sign the report. The signature will certify that, to the best of the reporter's knowledge, the statements set forth in the report, including any papers attached to or filed with the report, are true and accurate, and that all material facts in connection with the report have been set forth.

(e) *Confidentiality of reports.* Reports submitted pursuant to this section are regarded as privileged and confidential.

(f) *Contents of report.* The report must contain the following information (with responses numbered to correspond with the numbers used below):

(1) Identification of claimant.

(i) Claimant's Legal Name.

(ii) Claimant's Address.

(iii) Telephone number of individual to contact regarding the report.

(iv) If claimant is a naturalized citizen of the United States, state the place and date of naturalization.

(v) If claimant is a corporation or business, state the place of incorporation and principal place of business.

(2) Information concerning claim.

(i) Amount of loss in U.S. dollars (indicate exchange or interest rates and relevant dates utilized for any currency translation or interest calculation).

(ii) Describe the circumstances of the loss. Include the date of the loss and a description of the property, business, obligation, injury or other damage which is the subject of the claim.

(g) *Definition of United States national.* For purposes of this section, the term *United States national* or *U.S. national* means:

(1) An individual who is a citizen of the United States;

(2) An individual who, though not a citizen of the United States, owes permanent allegiance to the United States, and is not an alien; or

(3) A partnership, corporation, or other juridical entity organized under the laws of the United States or any jurisdiction within the United States.

(h) *Definition of the Government of North Korea; North Korean government entity.* For purposes of this section:

(1) The term *Government of North Korea* means the government of the territory of Korea north of the 38th parallel of north latitude, as well as any political subdivision, agency, or instrumentality thereof, or any territory, dependency, colony, protectorate, mandate, dominion, possession, or place subject to the jurisdiction thereof as of the "effective date."

(2) The term *North Korean government entity* means any corporation, partnership, or association, or other organization, wherever organized or doing business, that is owned or controlled by the Government of North Korea.

Subpart I—Miscellaneous Provisions

3. Section 500.901 is amended by adding a sentence to the end thereof to read as follows:

§ 500.901 Paperwork Reduction Act notice.

* * * The information collection requirement in § 500.602 has been approved by the Office of Management and Budget and assigned control number 1505–0160.

Dated: November 10, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 19, 1997.

James E. Johnson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 97–32094 Filed 12–3–97; 3:54 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AI60

Guidelines for Furnishing Sensorineural Aids (e.g., Eyeglasses, Contact Lenses, Hearing Aids)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms the Department of Veterans Affairs (VA) medical regulations concerning when VA will furnish veterans with sensorineural aids (e.g., eyeglasses, contact lenses, hearing aids), which implement a requirement imposed in the Veteran's Health Care Eligibility Reform Act of 1996, Public Law 104–262.

DATES: Effective Date: This final rule is effective December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Frederick Downs, Jr., Chief Consultant, Prosthetics and Sensory Aids Service Strategic Healthcare Group (113), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–8515.

SUPPLEMENTARY INFORMATION: On June 3, 1997, VA published in the **Federal Register** an interim final rule with request for comments (62 FR 30240). This added a new section (17.149, 38 CFR part 17). A 60-day comment period ended August 4, 1997, and one comment was received. However, that comment dealt with resources rather than substantive content of the interim final rule.

Based on the rationale set forth in the interim final rule document, we are adopting the provisions of the interim final rule as a final rule without change. This final rule also affirms the information in the interim final rule document concerning the Regulatory Flexibility Act.

Approved: December 1, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–32106 Filed 12–8–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA042–4065; FRL–5925–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania New Source Review and Emissions Registry Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision requires major new and modified sources of volatile organic compounds (VOCs), nitrogen oxides (NO_X), particulate matter (PM), particulate matter with an aerodynamic diameter of less than 10 microns (PM–10), PM–10 precursors, sulfur oxides (SO_X), carbon monoxide (CO), or lead (Pb) to meet certain new source review (NSR) permitting requirements if they are proposing to locate in a designated nonattainment area. These requirements also apply to major new and modified sources of VOC and NO_X proposing to locate in the ozone transport region (OTR). The intended effect of this action is to grant limited approval of Pennsylvania's NSR requirements.

EFFECTIVE DATE: This final rule is effective on January 8, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink (3AT00), (215) 566–2104.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1997 (62 FR 24060), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed limited approval of Pennsylvania's NSR requirements for major new and modified sources locating in areas designated nonattainment for a given pollutant, and, in the case of VOC or NO_X sources, if they are being located in the OTR. The formal SIP revision submittal, which was submitted by Pennsylvania on February 4, 1994, also included associated new definitions and revisions to existing definitions, emissions banking requirements, and procedures for an emissions reductions credit (ERC) registry. The definitions are codified in section 121.1 of Pennsylvania's air pollution control regulations. The NSR, emissions banking and ERC registry provisions are codified in Sections 127.201 through 127.217 of Pennsylvania's air pollution control regulations, and replace the existing SIP provisions, which were codified at Section 127.61 through 127.73. A description of Pennsylvania's revised NSR and emissions banking and ERC registry requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. This action is being taken pursuant to section 110 of the Clean Air Act.

Public Comments Received and EPA's Responses

During the public comment period following publication of the NPR, EPA received three public comments from interested parties. A summary of those comments and EPA responses is provided below.

Comment 1: The first commenter agrees with EPA's proposed rulemaking action, particularly to the extent it supports the use of "shutdown" credits for new source offsets.

EPA's Response: None required.

Comment 2: The second commenter, Duquesne Light Company (Duquesne), an electric utility that serves the greater Pittsburgh area, takes issue with EPA's proposed limited approval action and contends that EPA must take limited approval/limited disapproval action so that the Pennsylvania Department of Environmental Protection (PADEP) may correct deficiencies in its rule which render it more stringent than federal requirements for NSR promulgated under the Clean Air Act. Duquesne argues that because PADEP has not adopted the federal definition of "actual emissions," its regulation is, de facto, more stringent with regard to NSR-related baselines, particularly those associated with creating emission reduction credits (ERCs) for use as emission offsets. Duquesne asserts that Pennsylvania's de facto approach to defining actual emissions cannot be characterized as an alternative wording that is at least as stringent as EPA's definitions because PADEP's approach is, in effect, more stringent than the EPA's definitions. Duquesne comments that, under Pennsylvania law, PADEP is not allowed to make such a "more stringent" demonstration for its NSR program. Duquesne references section 4.2 of the Pennsylvania Air Pollution Control Act (APCA) and argues that it mandates that PADEP's regulations "* * * shall be no more stringent than those required by the federal Clean Air Act," unless the Pennsylvania Environmental Quality Board (PA EQB) has made a determination that such regulations are "reasonably necessary" to exceed minimum Clean Air Act requirements. Duquesne contends that the PA EQB has not made the required determination for PADEP's NSR regulations.

EPA's Response: EPA disagrees with this commenter that because Pennsylvania has not adopted the federal definition of "actual emissions," EPA must take limited approval/limited disapproval action on the NSR SIP revision. The Clean Air Act requires that states adopt, for inclusion into the SIP, permitting requirements for the construction and modification of new major sources and major modifications in nonattainment areas (and for major sources and major modifications of VOC and NO_X in the OTR). Federal rules generally require that the SIP include legally enforceable procedures to determine whether the construction and modification of any facility, building, structure, or installation, or combination of these will result in a violation of applicable portions of the control strategy; or interfere with attainment or maintenance of a national standard in the State in which the proposed source or modification is located or in a neighboring State. Such SIP provisions must include the means by which a State or local agency responsible for final decision making on applications for approval to construct or modify will prevent such construction and modification if it would result in either of the two situations described above. EPA has determined that Pennsylvania's NSR-related definitions and NSR-related regulations, as a whole, are designed to be consistent with the tenets used in the design of the relevant and required attainment plans and their associated control strategies. EPA also disagrees that PADEP's NSR regulations must be revised because they are, de facto, more stringent than federal NSR requirements. EPA notes that the federal NSR regulations that apply to this action do provide that a State's NSR program may be more stringent than federal requirements. Consequently, a comment that a SIP revision is more stringent that the federal minimum requirements generally is not a basis for EPA to disapprove the revision.

EPA has determined pursuant to Section 110(a)(2)(E) of the Clean Air Act and 40 CFR section 51, Appendix V, that Pennsylvania has provided the necessary assurances that it has adequate authority to implement the SIP revision and that it has followed all of the procedural requirements of Pennsylvania laws and constitution in adopting the submittal.[1]

Section 4.2 of Pennsylvania's APCA (35 P.S. 4004.2) provides, in pertinent part:

(b) Control measures or other requirements adopted under subsection (a) of this section shall be no more stringent than those required by the federal Clean Air Act unless

[1] See, letter from Thomas J. Maslany, Director, Air, Radiation and Toxics Division, USEPA, to Arthur A. Davis, Secretary, Department of Environmental Resources, dated February 28, 1994.

authorized or required under this act or specifically required by the Clean Air Act. This requirement shall not apply if the [Environmental Quality Board] determines that it is reasonably necessary for a control measure or other requirement to exceed minimum Clean Air Act requirements in order for the Commonwealth:

(1) to achieve and maintain the ambient air quality standards, * * *

The issue of whether Pennsylvania's NSR regulations exceeded the requirements of the Clean Air Act and therefore was prohibited by the APCA was raised during Pennsylvania's public comment period. The PA EQB, in its response to comments, stated that the final regulations comply with the requirements of section 4.2 of the APCA. (See, Pennsylvania Bulletin 443, 447, January 15, 1994)

Duquesne also asserts that the Pennsylvania EQB has not determined in accordance with subsection (b) of section 4.2 of the APCA that the NSR regulations at issue are "reasonably necessary" to "exceed minimum Clean Air Act requirements" (footnote 1 on page four of Duquesne's May 29, 1997 comment letter). Duquesne's assertion is incorrect as shown by the express findings of the PA EQB contained in the Board Order adopting the regulations. The PA EQB Order approving the NSR regulations specifically provides:

The EQB finds that:

(4) These regulations are necessary for the Commonwealth to achieve and maintain ambient air quality standards . . . (Pennsylvania Bulletin 443,458 January 15, 1994 which was part of PADEP's February 4, 1994 SIP revision submission).

Consequently, EPA believes that the PA EQB has made the requisite finding for the adoption of rules and regulations more stringent than those required by the Clean Air Act.

Comment 3: The third commenter, Eichleay Environmental, a Division of Eichleay Engineers Inc. (Eichleay), neither specifically agrees nor disagrees with EPA's proposed action. Rather Eichleay states that EPA's limited approval of Pennsylvania's SIP revision suggests "begrudging agreement" with Pennsylvania's ERC program. Eichleay states its belief that "Pennsylvania's program is, if anything, too restrictive." Eichleay provides several suggestions for preserving the value and longevity of ERCs which would require changes to Pennsylvania's regulations.

EPA's Response: EPA disagrees with the commenter that the proposed limited approval action suggests EPA's "begrudging agreement" with Pennsylvania's ERC program or any other provision of PADEP's NSR SIP submittal. EPA's rationale for its proposed limited approval of the Pennsylvania NSR SIP revision is articulated clearly in the notice of proposed rulemaking. EPA's rationale is based entirely upon its review of Pennsylvania's regulations and their conformance with federal NSR requirements. As noted above, Eichleay's comments on EPA's notice of proposed rulemaking included suggestions for changes to Pennsylvania's NSR regulations. Under the Clean Air Act, EPA is limited to taking action on SIP revision requests as submitted by the Governor or his designee, and has no authority to unilaterally modify state regulations via the SIP approval process.

Final Action

EPA is granting limited approval to Pennsylvania's revised NSR and emissions banking and ERC registry provisions, as well as the associated definitions of terms, submitted by PADEP on February 4, 1994 as a revision to the Pennsylvania SIP. The revised provisions strengthen the SIP and meets the NSR requirements of the Clean Air Act. Accordingly, this action revises 40 CFR section 52.2020 by adding paragraph (c)(107) to reflect EPA's approval action. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting limited approval of Pennsylvania's NSR-related regulations including its provisions for emissions banking and an ERC registry may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: November 7, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40 of the Code of Federal regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 amended by adding paragraphs (c)(107) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(107) Revisions to the Pennsylvania Regulations, Chapter 127 by the Pennsylvania Department of Environmental Protection

(i) Incorporation by reference.

(A) Letter of February 4, 1994 from the Pennsylvania Department of Environmental Protection transmitting revisions to the New Source Review Provisions.

(B) Revisions to the following Pennsylvania Department of Environmental Quality Regulations, effective January 15, 1994:

(1) Addition of Chapter 127, Subchapter E, New Source Review, Sections 127.201 through 127.217 inclusive, effective January 15, 1994.

(2) Deletion of Chapter 127, Subchapter C, Sections 127.61 through 127.73.

(ii) Additional materials consisting of the remainder of the February 4, 1994 State submittal pertaining to Chapter 127, Subchapter E.

[FR Doc. 97–32189 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN77–2; FRL–5933–3]

Approval and Promulgation of Air Quality Implementation Plans, and Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve an ozone maintenance plan submitted as a State Implementation Plan (SIP) revision request and a redesignation request submitted by the State of Indiana for the purpose of redesignating Vanderburgh County (Evansville) from marginal nonattainment to attainment of the one-hour ozone national ambient air quality standard. Besides being based on information contained in the State's redesignation request, the approval of this redesignation request is also based on review of the ozone data for this area over the three most recent years, 1995 through 1997. EPA finds the State's maintenance plan and redesignation request to be acceptable and notes that, based on the most recent three years of ozone data, the area is currently attaining the one-hour ozone standard. This action does not address the area's attainment of the recently promulgated eight-hour ozone standard, which will be addressed in future rulemaking.

DATES: This action is effective December 9, 1997.

ADDRESSES: Copies of the State's redesignation request and maintenance plan, EPA's analyses (technical support documents and proposed and final rulemakings), and public comments on EPA's proposed rulemaking are available for inspection at the following address:

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Edward Doty at (312) 886–6057.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, codified at 42 U.S.C. 7401–7671q. Pursuant to section 107(d)(4)(A) of the Clean Air Act (CAA or the Act), Vanderburgh County, Indiana was designated as nonattainment for the one-hour ozone standard and was classified as marginal (see 56 FR 56694 (November 6, 1991)).

The Indiana Department of Environmental Management (IDEM) submitted an ozone redesignation request and maintenance plan as a SIP revision for Vanderburgh County on November 4, 1993. On July 8, 1994 (59 FR 35044), EPA published a direct final rulemaking approving the redesignation of Vanderburgh County to attainment of the ozone standard. On the same day, a proposed rulemaking was also published in the **Federal Register** which established a 30-day public comment period for the redesignation approval and noted that, if adverse comments were received regarding the final rulemaking, EPA would withdraw the direct final rulemaking and would address the comments through a revised final rulemaking. EPA received adverse comments, and published a withdrawal of the direct final rulemaking on August 26, 1994 (59 FR 44040).

Subsequent to the July 8, 1994 direct final rulemaking, EPA was informed by IDEM that a possible violation of the ozone standard had been monitored at a privately-operated industrial site owned by the Aluminum Corporation of America (Alcoa) in Warrick County. Warrick County (designated as attainment for ozone) adjoins Vanderburgh County to the east. Because Warrick County can be considered to be a nearby area downwind of Vanderburgh County on certain days, EPA questioned whether the monitored violation in Warrick County should be considered in any subsequent rulemaking on the redesignation of Vanderburgh County. IDEM indicated its intent to investigate the high ozone values and requested that EPA not act on the redesignation request pending the outcome of that technical investigation. IDEM completed its investigation and submitted the results to the EPA on June 5, 1995. IDEM's investigation concluded that the Alcoa peak ozone concentrations were unusual during the period of the monitored ozone standard violation, were biased high (relative to peak ozone concentrations at other area monitoring sites during the May through June, 1994 time period), and were not

representative of the Vanderburgh County nonattainment area peak ozone levels. IDEM recommended that EPA proceed with the redesignation of Vanderburgh County to attainment so that the maintenance plan could become federally enforceable.

Due to the large extent of additional data received after the July 8, 1994 direct final rulemaking and the extent of public comments on that rulemaking, EPA concluded that it was appropriate to repropose rulemaking for this redesignation action. EPA evaluated all available information, including public comments on the July 8, 1994 direct final rulemaking, and proposed to approve the redesignation of Vanderburgh County to attainment of the ozone standard on March 14, 1997 (62 FR 12137).

Based on the available information at the time of the March 14, 1997 proposed rulemaking, EPA proposed to take final action approving the redesignation of Vanderburgh County to attainment if any of the following three events occurred: (1) If Warrick County attained the ozone standard prior to final rulemaking action by the EPA on the Vanderburgh County redesignation; (2) if EPA determined that Vanderburgh County did not significantly contribute to an ozone nonattainment problem in Warrick County; or (3) if the EPA determined that the information available is not sufficient to determine whether or not Vanderburgh County significantly contributed to a nonattainment problem in Warrick County. EPA also solicited public comment on whether the 1994 Warrick County ozone standard violation data should be excluded from consideration of the Vanderburgh County ozone attainment status.

On July 18, 1997, EPA promulgated a new National Ambient Air Quality Standard (NAAQS) for ozone, replacing the one-hour, 0.12 parts per million standard with an eight-hour, 0.08 parts per million standard (62 FR 38856). EPA is in the process of developing guidance and proposed rules to implement the new ozone standard based on a Presidential Directive signed on July 16, 1997, and published in the **Federal Register** on July 18, 1997. Today's action is a redesignation to attainment for Vanderburgh County for the one-hour, 0.12 parts per million standard and approval of the maintenance plan as it relates to the one-hour standard only. EPA's decision to redesignate Vanderburgh County to attainment and to approve the maintenance plan as a SIP revision is based on the requirements of section 107 of the Act and existing EPA policy and guidance as they pertain to the one-hour standard. Today's decision does not in any way make a determination regarding Vanderburgh County's attainment status for the newly promulgated eight-hour standard. Decisions regarding the attainment status of areas for the new eight-hour ozone NAAQS will be made by EPA at a later date.

II. Current Air Quality

A violation of the one-hour, 0.12 parts per million ozone standard occurs in an area when the annual average number of expected daily exceedances of the ozone standard exceeds 1.0 at any site in the area based on the most recent 3 years of ozone data. Therefore, the condition for a violation of the ozone standard would generally require that more than 3 exceedances of the ozone standard be monitored during the 3 most recent years of monitoring at any site in the area.

To review the ozone data for possible ozone standard violations, one must consider the defined ozone season for the area. The ozone season is that portion of the year when one may expect relatively high ozone concentrations exceeding the standard. Outside of this period, ozone standard exceedances are rarely or never recorded. The calculation of expected ozone standard exceedance rates takes into account the potential for ozone standard exceedances on days during the ozone season with invalid or missing data. For the State of Indiana, including the Evansville area, the ozone season is defined in 40 CFR Part 52 to be April through September.

Review of current ozone data for the period of 1995 through 1997 for the Evansville area, including Vanderburgh, Posey, and Warrick Counties, shows that the one-hour ozone standard has not been violated in the area during the most recent 3 years. Only a single exceedance of the one-hour ozone standard was monitored in the area during this 3-year period: 0.131 parts per million, recorded at the Booneville site in Warrick County in 1995. IDEM, in an October 3, 1997 letter to the EPA, confirmed that there were no current ozone standard violations in the area and that the ozone data for the area through September, 1997 were quality assured. The October 3, 1997 letter listed the four highest daily one-hour ozone concentrations at all ozone monitoring sites in the Evansville area (including those in Posey, Vanderburgh, and Warrick Counties) during each year for the 1995 through 1997 period, confirming the lack of ozone standard violations in the area during this period.

Based on the current ozone monitoring data, it has been determined that the ozone standard has been attained in the Evansville area. As noted in the proposed rulemaking (62 FR 12138), this, along with approval of Indiana's maintenance plan and the State having met the redesignation requirements of section 107(d)(3)(E) of the CAA, forms the basis for final approval of IDEM's redesignation request for Vanderburgh County. It should be noted that the lack of an ozone standard violation for the period of 1995 through 1997 moots the issues surrounding the ozone standard violation monitored in 1994 at the Alcoa site.

III. Responses to Public Comments

EPA received 20 sets of comments on the March 14, 1997 proposed rulemaking, including 89 individual comments with significant overlap (the comments have been grouped into several general categories and are addressed below in summary form). All of these comment sets contained comments generally critical of EPA's proposed approval of the redesignation or of the proposed technical basis for the approval. The following discussion addresses the comments with one general exception. Those comments addressing EPA's treatment of the 1994 Alcoa ozone standard violation or emission contributions to that standard violation are not generally addressed, since those comments are rendered moot by the 1995 through 1997 monitored ozone data demonstrating attainment of the standard at the Alcoa site and at other sites in the Evansville area as a whole.

A. Air Quality and Designation Timing

1. Comment

Several commenters note that EPA and IDEM failed to redesignate Vanderburgh County to nonattainment in 1988 or 1989 following a violation of the ozone standard in the 1986 through 1989 time period. The commenters note that, had EPA or IDEM done so, Vanderburgh County would have been subject to stationary source Reasonably Available Control Technology (RACT) requirements under the pre-1990 CAA.

Response

It is true that a monitor in Vanderburgh County recorded a violation of the one-hour ozone standard during the 1987–1989 time period. The decisive ozone standard exceedance was recorded in 1989 and was not reported in quality assured form to the EPA until the last half of 1989,

in keeping with quality assurance and data reporting requirements.

During 1990, EPA was considering how to address the new ozone standard violation in the Evansville area. Under the CAA prior to its 1990 revision, EPA could not unilaterally redesignate an area to nonattainment without an initiating request from the State containing the area. EPA could, however, request a SIP revision under section 110 of the CAA to address an air quality problem despite the lack of a nonattainment designation. Under section 110 of the CAA, this "SIP-call" can require the State to address the problem in a timely manner, but cannot prescribe specific measures, such as the adoption of RACT rules, which can only be required in areas specifically designated as nonattainment.

Before a SIP-call could be used in the Evansville area, the CAA was revised. Under section 182 of the revised CAA, Vanderburgh County was classified as a marginal nonattainment area for ozone. Under section 182(a) of the revised CAA, sources located in marginal ozone nonattainment areas are not subject to new RACT requirements (sources in marginal nonattainment areas are subject only to correction of existing RACT regulations). It should also be noted that the SIP-call process would have extended well past the November 15, 1990 adoption time of the CAA revisions.

2. Comment

A commenter concurs with EPA's proposed rule that, if no ozone standard violation is monitored in Vanderburgh County or in its downwind environs during the 1995 through 1997 time period, the Clean Air Act would allow Vanderburgh County to be redesignated to attainment of the ozone standard. The commenter believes, however, that no action should be taken to redesignate Vanderburgh County until all of the data have been quality assured, demonstrating that there have been no ozone standard violations through 1997 and through the entire 1995–1997 period. To do otherwise would be premature and probably illegal. Other commenters also oppose the redesignation of Vanderburgh County until all of the data in the region, including Warrick County, demonstrate monitored attainment of the ozone standard.

Response

As noted above, on October 3, 1997, IDEM confirmed that the 1997 ozone data for Vanderburgh, Posey, and Warrick Counties had been quality assured through September (the end of the defined ozone season). The 1995 through 1997 ozone data demonstrate that no violation of the ozone standard has occurred in the Evansville area, including in Posey and Warrick Counties, during the most recent 3 years.

B. Regional Air Quality Impacts

1. Comment

Commenters note that industrial source emissions must be "cleaned-up" in Vanderburgh County as well as in its surrounding counties before the area can be redesignated to attainment. The commenters believe that a regional ozone problem exists in the area. The commenters state that emission reductions in Vanderburgh County only would not be sufficient to address the regional ozone problem of the Evansville area (Vanderburgh, Gibson, Posey, and Warrick Counties).

Response

As noted above, attainment of the ozone standard has been monitored in the entire area. This was accomplished without the implementation of a region-wide emission reduction program mandating controls beyond emission reductions already required in the area, such as those resulting from the implementation of the Federal Motor Vehicle Emission Control Program (FMVCP).

With regard to the regional nature of the area's peak ozone concentrations, it should be noted that the Ozone Transport Assessment Group (OTAG) process has reached closure, with the participating States recommending a range of possible Oxides of Nitrogen (NO_x) emission reduction requirements to the EPA. On November 7, 1997 (62 FR 60318), the EPA proposed rulemaking that would require States to meet statewide NO_x emission budgets. The implementation of requirements to attain the NO_x emission budgets in the eastern United States should significantly reduce the amount of ozone transported into the Evansville area or generated by Evansville emissions and transported to downwind areas. Assuming that the rulemaking is finalized, the State of Indiana is expected to reduce regional NO_x emissions to comply with the allowed NO_x emission budget. These NO_x emission reductions should reduce regional ozone levels.

In addition, the commenters cite no policy requiring such a region-wide emission reduction. Since Vanderburgh County is a marginal nonattainment area, the CAA does not require emission reductions over a larger region, such as a metropolitan statistical area.

2. Comment

A commenter notes that, when the State was asked to put a monitor in Posey County in 1988, the State refused, saying that what happened in Vanderburgh County from an emissions control standpoint would also happen in the contiguous counties. The commenter believes that, in reality, the State only contemplated emission controls in Vanderburgh County, for which the nonattainment designation was imposed. The commenter believes that this restriction of emission controls was wrong given that emissions in surrounding counties exceed those in Vanderburgh County.

Response

Based on Indiana's 1990 base year Volatile Organic Compound (VOC) emissions inventory for the Evansville area, emissions of VOC in Vanderburgh County exceeded those from any of the surrounding counties. Based on this fact and the fact that, at the time of the designation of Vanderburgh County as nonattainment for ozone, the ozone standard violation was limited to Vanderburgh County, it was appropriate to assume that the emission control measures should focus on Vanderburgh County. In addition, since only Vanderburgh County was designated as nonattainment for ozone, it was reasonable to focus attention on emission controls there.

The commenters provide no data showing that emissions of VOC in the surrounding counties, on a county-by-county basis or as an area total, exceed those in Vanderburgh County.

3. Comment

A commenter notes that, in 1988, the commenter was assured by the State that, if Vanderburgh County was designated as nonattainment for ozone, all of the surrounding counties would be given the same designation. Only Vanderburgh County, however, was proposed for the nonattainment status. To the commenter, it appears that political and industrial interests in the counties surrounding Vanderburgh County were able to persuade the State to make only Vanderburgh County nonattainment. Meanwhile, EPA and IDEM have refused to discuss ozone precursor emission controls for the surrounding counties.

Response

Designation of Vanderburgh County only and not the entire metropolitan area as nonattainment for ozone is

entirely consistent with the requirements for marginal nonattainment area designations under section 107(d)(4)(A)(iv) of the CAA. IDEM acted within the requirements and limits of the CAA in selecting only Vanderburgh County as the marginal ozone nonattainment area. This decision was supported given that the ozone standard violation in the 1987 through 1989 period was limited to Vanderburgh County, and that the VOC emissions of Vanderburgh County exceeded those of any of the surrounding counties at that time.

4. Comment

A commenter states that, according to section 107(d)(1)(A)(i) of the CAA, the State and the Administrator are required to find that an area is nonattainment if it does not meet (or contributes to ambient air quality in a nearby area that does not meet) an air quality standard. The commenter believes that clearly Posey, Gibson, and Warrick County emissions contributed to the ozone standard violation that occurred in Vanderburgh County. The entire area should have been designated as nonattainment for ozone.

Response

In addition to responses to similar comments above, it is noted that no modeling data or similar ozone production and transport analyses exist which would indicate that emissions from Posey, Gibson, and Warrick Counties contributed to the 1988–1989 ozone standard violation in Vanderburgh County. Until such data are made available, one can not draw this conclusion other than through speculation. Given the data available and the requirements of section 107(d)(4)(A)(iv) of the CAA (this section of the CAA only defines minimum nonattainment area sizes for areas classified as serious or above for ozone, the State is given more discretion in selecting the size of nonattainment areas for areas classified as marginal or moderate nonattainment), EPA believes that the State of Indiana acted in keeping with the requirements of the CAA in selecting only Vanderburgh County as the nonattainment area.

C. Ozone Transport Assessment Group

1. Comment

Commenters question the need for the EPA to rely on OTAG-related emission reductions (expected to be required through future rulemaking), since these emission reductions are not yet tangible and are not sufficient to avoid ozone problems during hot summers. Reliance on "possible" future emission reductions from OTAG while ignoring the Alcoa ozone standard violation is incongruous and explains why poor air quality continues in the Evansville area.

Response

Although EPA mentioned the potential benefits from OTAG-related emission reductions in the proposed rulemaking, it did not rely on these future emission reductions as a basis for the proposed redesignation of Vanderburgh County. The Evansville area has attained the ozone standard without these emission reductions. In addition, the State's maintenance plan for this area shows continued maintenance of the ozone standard without considering the impacts of these emission reductions.

In discussing the OTAG-related emission reductions expected in the near future, the EPA was simply noting that these emission reductions would lower the background ozone concentrations in the Evansville area, further lowering the ozone concentrations in the area. Such decreases in ozone concentrations would act to reduce the risk of future violations of the one-hour and eight-hour ozone standards. The State of Indiana actively participated in the OTAG process and is expected to reduce NO_X emissions to comply with the resulting NO_X emission budget. This NO_X emission reduction is expected to reduce area ozone levels and transport of ozone into downwind areas.

2. Comment

A commenter notes that EPA's reliance on emission reductions resulting from OTAG is unacceptable until EPA is sure what rules will come out of the OTAG process. It is the commenter's understanding that the OTAG process has nearly broken down. Deadlines have been missed. It is not clear what ozone precursor emission reductions will result from this process. In addition, EPA does not offer proof that OTAG controls will be implemented or that resulting emission reductions will be of sufficient quantity to achieve the ozone standard in the Evansville area. To rely on conjecture that OTAG emission reductions will occur is not consistent with the Congressional intent of making the air healthy in the Evansville area.

Response

As noted above, the EPA has not relied on OTAG-related emission reductions to attain the ozone standard in the Evansville area. The area has attained the ozone standard without such future emission reductions.

The OTAG process has not broken down. The OTAG process has reached closure, and the OTAG States have recommended a range of possible NO_X emission reduction requirements to the EPA. EPA proposed a SIP-call on November 7, 1997 in response to the recommendations of OTAG. Therefore, it is likely, assuming that the rulemaking is finalized, that significant NO_X emission reductions in the eastern half of the United States will result from the OTAG process. These emission reductions should also lower ozone levels in the Evansville area in the future, but are not being relied on to meet or to maintain the one-hour ozone standard in the Evansville area.

D. Source Growth and the Maintenance Plan

1. Comment

Several commenters believe that the maintenance plan submitted with Indiana's redesignation request is outdated and should be updated to reflect the emission increases that have occurred or are expected to occur in the region as a result of source growth. The commenters note the source impacts of new sources, such as A.K. Steel, the Casino Aztar River Boat (indirect traffic growth), and the Toyota truck plant to be located in neighboring Gibson County. The commenters believe that these new sources lead to increases in population, vehicle miles traveled, and industrial emissions, invalidating the existing maintenance plan. The commenters state that EPA should review the maintenance plan in light of these new emissions and that the maintenance plan submitted in 1993 is obsolete.

Response

Although the maintenance plan was submitted in 1993, prior to the source growth noted by the commenters, and uses 1990 as the attainment base year, EPA sees no reason to disapprove the maintenance plan based on source growth in recent years. This conclusion is based on several reasons. First, despite any source growth, Vanderburgh County is currently attaining the ozone standard and has continuously attained the standard throughout the period during which the redesignation request has been pending. To the extent that the Alcoa monitor indicated nonattainment during this period, the nonattainment problem was not monitored in Vanderburgh County itself, but rather in neighboring Warrick County (current data shows that Warrick County is also attaining the one-hour ozone standard). Therefore, the source growth has not prevented attainment of the standard in Vanderburgh County. Second, in the case of the future emissions from the Toyota truck plant, IDEM, through the source permit development process, has evaluated the ozone impacts of these emissions on the Evansville area, including potential impacts on critical ozone monitoring sites in Warrick County. The State has concluded that increased ozone precursor emissions from this facility will not cause an ozone standard violation at any of the monitoring sites. Finally, the maintenance plan submitted by IDEM contains provisions for addressing unexpected emission increases. As noted in the March 14, 1997 proposed rulemaking (62 FR 12141), IDEM commits to periodically review area emissions and to conduct a review of the ozone impacts of increasing emissions if the VOC, NO_X, or Carbon Monoxide (CO) emissions in the area increase above the 1990 level. If the review indicates that the increased emissions have the potential to cause a violation of the ozone standard, IDEM would determine and adopt the emission controls needed to eliminate the potential air quality problem. Therefore, increasing emissions should not present a problem for maintenance of the ozone standard in this area as long as IDEM implements the maintenance plan.

As additional insurance toward maintenance of the standard, it should be noted that, based on the adopted maintenance plan, if increasing emissions do cause a future violation of the standard, IDEM is committed to select emission control measures from the contingency measure list for implementation toward attainment of the ozone standard.

Finally, it is noted that the commenters have presented no air quality analyses to demonstrate that the new sources (or indirect sources) in the area have the potential to cause future violations of the ozone standard. The EPA continues to find Indiana's maintenance plan to be acceptable.

2. Comment

Because of recent source growth in Vanderburgh County and in Southwestern Indiana, a commenter believes that the EPA should not redesignate Vanderburgh County to attainment of the ozone standard until the State implements an equitable program that regulates hydrocarbon emissions (VOC emissions) from industrial sources.

Response

Under section 107(d)(3)(E)(v) of the CAA, EPA may not approve the redesignation of an area to attainment of a standard until the State has met all requirements applicable to the area under section 110 and part D of the CAA. As stated in the proposed rulemaking for the Vanderburgh County redesignation, the EPA believes that the State of Indiana has complied with the requirements of the CAA as they pertain to the Evansville ozone situation (the CAA requirements, as noted above, do not require additional VOC emission controls for industrial sources in the Evansville area). In addition, as noted above, the area has attained the one-hour ozone standard without the implementation of additional VOC emission controls on industrial sources. Therefore, EPA has no basis for requiring additional emission controls on industrial sources.

3. Comment

A commenter notes that he had expected the 1990 ozone nonattainment designation for Vanderburgh County to have resulted in emission reductions in the area. Instead of emission reductions, the commenter believes that the available information points to industrial and mobile source growth. The commenter believes that local economic development efforts have increased since Vanderburgh County became nonattainment for ozone with resulting increases in the number of polluting industries.

Response

Responses to comments 1 and 2 of this subsection generally address this comment. With regard to the last point of the comment, there is no evidence that local economic development efforts have focused on attracting polluting industries to Vanderburgh County since Vanderburgh County became nonattainment for ozone. In fact, it should be noted that a Toyota truck plant has chosen to locate in Gibson County (an ozone attainment area) rather than in Vanderburgh County, where a larger labor force may be found. The nonattainment designation of Vanderburgh County, thus, may have been a factor in the location of this plant outside of Vanderburgh County. Therefore, the commenter's last point is not supported.

4. Comment

Commenters note that EPA's and IDEM's use of 1990 as a base year for the maintenance plan is not an accurate reflection of the current conditions. The commenters state that Evansville's economy has significantly changed in the last few years, and it follows that ozone precursor emission data would be very different if data from 1994 and 1995 were used for decision making in 1997 and 1998. The commenters believe that the current data should be used as a matter of policy and common sense.

Response

As noted above, Indiana's maintenance plan for the Evansville area commits the State to periodically review the area's emissions and to take action if the VOC, NO_X, or CO emissions in Vanderburgh County increase to levels above those in 1990. If emissions have significantly increased in a manner previously not accounted for in the maintenance plan, a periodic review of the emissions should detect this growth and should lead to corrective actions, if determined to be needed to prevent an ozone standard violation. In addition, it should be noted that the choice of 1990 as the maintenance demonstration base year was appropriate when IDEM prepared the redesignation request in 1993.

Also as noted above, the area is currently attaining the ozone standard. If emissions have increased to above-1990 levels, this would imply that emission levels higher than those in 1990 could be sustained without violating the ozone standard. Requiring the maintenance plan to be revised to incorporate the higher emissions would not result in a requirement for additional emission controls to compensate for the increase in emissions, but would allow one to assume that emissions exceeding the 1990 levels (assuming emissions have increased to levels above the 1990 levels) would not cause a violation of the one-hour ozone standard. The current maintenance plan encourages the State to maintain lower emissions in the area.

5. Comment

A commenter notes that, according to recent press releases, several firms, including GE Plastics in Posey County and American Steel Extrusion in Vanderburgh County, have applied to IDEM for permits to increase VOC emissions with no offsets from other sources as required by the Act.

Response

This is not an issue relevant to the redesignation at hand, but, instead, is relevant to new source review requirements. The commenters should address this issue through comments on the new source permits when they are reviewed under Indiana's source

permitting procedures. Indiana allows for public review of such new source permits.

In addition, if the emissions in the area do increase as result of the source permit revisions, IDEM would have to take these emission increases into account under the periodic emissions review covered by the maintenance plan. If the emissions increases are determined to have a potential to cause a future ozone standard violation, the State would have to activate emission control measures to mitigate the problem.

Finally, it should be noted that, since Vanderburgh County is being redesignated to attainment for ozone, new sources will not be required to obtain future offsets for new source growth.

6. Comment

A commenter notes that the EPA has failed to meet the tests required under section 107(d)(3)(E) of the Clean Air Act. The commenter believes that the EPA has erred in not meeting the test of section 107(d)(3)(E)(i) since there is a current (1994) violation of the ozone standard in the Evansville area. The EPA has also erred in not meeting the test of section 107(d)(3)(E)(iii), which sets the requirement that permanent and enforceable emission reductions be shown to be responsible for the observed improvement in air quality. The commenter questions how the EPA can make a declaration of the connection between emission reductions and air quality given that no SIP has ever been put into place for the Evansville area as was required by the Clean Air Act when Vanderburgh County was designated as nonattainment for ozone.

The commenter notes that during the years of 1988 through 1993, when the area was first recommended for redesignation to attainment, the only reductions in ozone precursors came about as a result of a serious economic slump. Several VOC emitters shut down, resulting in the improved air quality observed. As soon as the local economy rebounded, monitors in the area again showed exceedances of the standard, including the Warrick County ozone standard violation.

The commenter notes that, in the past several years, there has been a large economic development, which will cause further air quality deterioration. The Toyota truck plant in Gibson County has been permitted to emit 3,490 tons of VOC per year just seven miles north of Vanderburgh County. The General Electric facility in Posey County has undergone substantial growth. A soybean processing plant is scheduled for construction in Posey County that will emit as much as 1,400 tons of VOC per year. In addition, in Posey County, the Countrymark Refinery is increasing emissions to near-capacity levels.

In Warrick County, the Alcoa facility has increased emissions significantly. In addition, a new cold rolled steel facility (A.K. Steel) is under construction with plans to add a hot rolled mill in the next phase of expansion.

Within Vanderburgh County, power plants which operated at limited capacity are gearing toward total capacity operation due to the deregulation of the electric utility industry. The Evansville area sports the largest concentration of coal-fired power plants in the United States, with 3 of the top 10 plants in the United States located within this area.

The Casino Aztar River Boat has led to significantly higher vehicle traffic within the last year. In addition, growth in the retail sector during the last two years has led to significant traffic growth.

All of these facts concerning source growth dispute any EPA declaration that reductions in ozone precursors have taken place in this area.

Response

At the time IDEM submitted the redesignation request in 1993, VOC and NO_x emission reductions had occurred, contributing to the air quality improvement observed subsequent to 1988. These emission reductions have occurred primarily through source closures, which IDEM has made permanent and enforceable through the termination of source permits, and through mobile source emission reductions pursuant to the Federal Motor Vehicle Emission Control Program (FMVCP). At the time of the redesignation request submittal, it was appropriate to give credit to these permanent and enforceable emission reductions as contributors to the observed air quality improvement in the Evansville area.

With regard to recent emission impacts from new source growth, it is acknowledged that such source growth has occurred. It is noted, however, that this does not constitute a problem for Indiana's maintenance plan. The maintenance plan for the area contains contingency measures triggered by increases in emissions exceeding the 1990 attainment year emissions levels. If the periodic review of VOC and NO_x emissions shows increases to levels exceeding the 1990 levels, IDEM has committed to initiate a study of the impact of the emissions increase on air quality and to take action in terms of additional emission controls if the analyses indicate the emission increases have a potential to cause a future ozone standard violation. Therefore, the maintenance plan contains safeguards against the impacts of unexpected emission increases, and the EPA sees no reason at this time to disapprove the maintenance plan on the basis of any recent emission increases.

It is noted that the maintenance plan did assume some future growth in emissions would occur as a result of changes in the economy and, nonetheless, demonstrated maintenance of the ozone standard in Vanderburgh County for 10 years into the future. Moreover, despite any recent emission increases from new source growth, the 1995 through 1997 ozone data demonstrate continuing attainment of the ozone standard in Vanderburgh County and current attainment of the ozone standard in surrounding counties. Although part of this attainment may be due to favorable meteorology, it must be noted that this attainment period includes 1995, a year particularly noted for meteorological conditions favorable to high ozone concentrations. Despite this, ozone standard exceedances were not prevalent in the Evansville area during this period (a single ozone standard exceedance of 0.131 parts per million was recorded at the Booneville site in 1995, with no other exceedances in the area). Obviously, the growth in VOC emissions did not contribute to an ozone standard violation in 1995 despite favoreble meteorological conditions. Equally important, despite new source growth, no ozone standard exceedances were recorded in the area during the 1995 through 1997 period. These observations argue against the concerns of the commenter regarding the impacts of new source growth.

Although the emission increases resulting from source growth bear watching through the maintenance plan, the fact that these emission increases exist does not lead to the conclusion that the maintenance plan is flawed or should be disapproved.

E. Action Committee for Ozone Reduction Now

The proposed rulemaking described a public forum process used in the Evansville area to select contingency measures for possible adoption and implementation. Although this public forum has resulted in the selection of possible emission control measures which may further improve ozone levels in the Evansville area, it should be noted that the State has not relied on these measures to attain the one-hour standard, the EPA has not relied on these measures as a basis for its approval of Indiana's redesignation request for Vanderburgh County.

The group formed to carry out the selection of possible control measures was given the title of the Action Committee for Ozone Reduction Now (ACORN). The following comments relate to EPA's discussion of ACORN and the selected emission control measures.

1. Comment

A commenter notes that, through participation in the ACORN process, the following concerns may be raised with regard to the resulting emission control measures:

a. There are no requirements for enforcement of the proposed emission reductions;

b. The proposed emission reductions do not address the regional nature of the ozone problem in Vanderburgh County. The commenter believes that the high ozone levels monitored in Vanderburgh County may be attributed to ozone precursor emissions outside of Vanderburgh County; and,

c. The proposed emission reductions do not address the ozone impacts of the area's expanding population, increasing traffic, and increasing industrial emissions.

Response

The following addresses the three issues:

a. The ACORN process, as discussed in the proposed rulemaking led to recommendations for the following four emission control measures: (1) High volume low pressure (HVLP) paint gun change outs for autobody refinishing and paint spraying operations; (2) Stage I gasoline vapor recovery during loading of underground storage tanks at gasoline service stations; (3) establishment of a pollution prevention and education task force; and (4) use of less polluting gasoline. To implement measures (1), (2), and (4) in an enforceable manner, the State must adopt the measures in the form of enforceable regulations. IDEM has informed the EPA that the State is in the process of adopting measures (1) and (2), and are giving further consideration to measure (4), which is not being processed for adoption at this time. Implementation and enforcement of the measures in the future will help maintain the ozone concentrations in the area at below-standard levels.

The third measure, establishment of a pollution prevention and education task force, may not lead to specific regulations, but will probably lead to a list of suggested pollution prevention procedures. Since pollution prevention procedures may be applied to many sources and source categories, it is impossible for the State to develop emission control regulations for all or most source categories. The State, however, may take an active role in promoting the use of such procedures. It is not clear at this time whether the pollution prevention task force has actually been established or, if so, whether the task force has made specific recommendations for pollution prevention measures. In addition, it should be noted that this process may be community-based, with local residents and industries taking the lead rather than the State;

b. See responses to comments in subsection B. above; and

c. See responses to comments in subsection D. above.

2. Comment

A commenter notes that, since Vanderburgh County was redesignated as nonattainment for ozone, no formal program was implemented to reduce ozone levels, and nothing has been done to implement the ACORN proposals.

Response

As noted in the proposed rulemaking, since Vanderburgh County is classified as a marginal ozone nonattainment area and since the area was not subject to RACT rule correction requirements or to vehicle inspection/maintenance program correction requirements, the State is not required by the CAA to develop new emission control regulations for this area. The State has met all requirements relevant to the marginal nonattainment status of this area.

With regard to the implementation of the ACORN proposals, see the response above.

3. Comment

A commenter notes that reliance on IDEM, local officials, and ACORN for local controls is unacceptable for several reasons. First, the ACORN proposals are minimal in scope and the ACORN process has broken down. Second, the ACORN emission reductions, if they occur, are voluntary pollution prevention techniques. Although the voluntary approach has been available in the past, industries have failed to reduce emissions. The commenter believes that the voluntary emission reductions must be backed by RACT requirements on any industry that fails to make a documented effort to reduce emissions.

Response

The ACORN process has not broken down and has reached conclusion with the recommendation of the four emission control measures discussed above. These measures have the potential to produce significant emission reductions. Stage I emission controls, use of cleaner fuels, and use of HVLP spray guns have the potential to produce significant emission reductions if supported by State adopted regulations. Pollution prevention, if aggressively pursued and promoted, also has a potential for significant emission reductions. Regardless of the emission controls selected, the emission controls will be useful in offsetting the impacts of source growth and will lower the potential for future ozone standard exceedances. (These emission reductions will contribute toward attainment of the eight-hour ozone standard.)

With regard to RACT, because of the marginal ozone nonattainment classification of Vanderburgh County and section 182(a) of the CAA, RACT is not required in Vanderburgh County. In addition, because of the attainment of the ozone standard during the 1995 through 1997 period, the implementation of RACT is not needed to attain the one-hour ozone standard.

4. Comment

A commenter notes that EPA's proposed redesignation is loaded with supposition, hope, and wishes that the paper pushing of industries and ACORN will pay off in attaining and maintaining the standard. The proposed redesignation, however, misses the point of the CAA which is to improve the health of humans. No amount of wishing will change the ill health that local residents experience in the summer months, when industrial emissions are trapped by the meteorological inversions that are common in the area. Calling the area "attainment" will not reduce one pound of pollution and will hasten degradation of the region's air by allowing massive increases in pollution in the one county that is nonattainment.

Response

The Clean Air Act, in part D, specifies the minimum requirements for State ozone control plans for various ozone classifications. The State of Indiana has met the requirements for marginal areas in Vanderburgh County. Given the 1995 through 1997 attainment of the ozone standard and the State's compliance with SIP requirements, Vanderburgh

County qualifies for the designation of attainment.

5. Comment

While the commenter participated in the ACORN process and endorses the recommendations it has made, the commenter notes that it was the belief of the ACORN participants that the proposals that came out of the process would do little to actually reduce ozone precursors. In addition, nowhere in EPA's notice of proposed rulemaking nor in its associated technical support document does the EPA offer any concrete evidence that the air quality will be improved to healthful levels as a result of the recommendations of ACORN, even if fully implemented.

The commenter notes that ACORN provided only the "lowest common denominator" approach and offered a bare minimum emission control proposal on which the group could reach consensus. The commenter believes this allowed the industry to write its own regulations because the industrial sector of the ACORN group stifled the solutions offered by the citizen representatives.

For EPA to claim that ACORN's recommendations reflect the desire of the community is dishonest. It was apparent to the commenter that ACORN was used by IDEM to achieve a no-action, minimal result that would satisfy the industry and appease the public.

Response

As noted above, the 1995 through 1997 ozone data demonstrate that the Evansville area has attained the ozone standard without the implementation of the ACORN recommendations. EPA is not relying on the impacts of the ACORN-related controls to justify the redesignation of Vanderburgh County to attainment of the ozone standard. Nonetheless, it must also be noted that source growth is anticipated in this area. (EPA sees no data countering IDEM's source growth estimates for Vanderburgh County contained in the maintenance plan. Much of the large source growth has occurred outside of Vanderburgh County. The maintenance plan only deals with emission changes within Vanderburgh County. EPA does not require the State to consider source growth outside of the existing nonattainment area as part of the maintenance plan.) Although not yet quantified, it must be recognized that the ACORN measures, if implemented, have the potential to offset source growth impacts.

Insufficient data are available to allow the EPA or IDEM to determine the full extent of the emission impacts of ACORN's recommendations. Until adopted regulations are in place and pollution prevention recommendations have been selected, it is impossible to determine all of the emission impacts. Nonetheless, assuming that emission control regulations are adopted, it must be concluded that the ACORN recommendations could lead to significant emission reductions.

EPA has never stated that the ACORN recommendations represent the wishes of the entire public in the Evansville area. Since ACORN had wide representation from government, industry, and the public, it must be assumed that some people involved in the ACORN process may have raised some objections to the recommended emission control measures or may have recommended emission controls not finally selected. The indication that the ACORN recommendations are a consensus opinion implies some level of dissent on selected emission control measures as well as on the emission control measures not selected.

6. Comment

A commenter notes that the reliance on Pollution Prevention (P2), if it is ever implemented, as a voluntary measure to gain nearly two-thirds of the total ACORN-recommended emission reduction is very suspect. Throughout the ACORN process, proponents of the P2 approach informed the officials that P2 is purely "market driven" and would carry no cost to anyone except the cost to local government for staffing a P2 office to provide education and support for P2 efforts. The commenter believes that this supposition can not be supported.

It is obvious that market driven P2 has been available in the area's history to cure the area's air pollution problem. If P2 can be achieved at no cost to industry, it would have already been in place for economic reasons. The fact is that P2 is little more than a hope, wish, and dream for most of the area's industry and it will require substantial capital investment for whomever takes this path.

The commenter believes EPA's reliance on a voluntary emission reduction program in an area with a history of resisting air pollution controls does not comply with the intent of the CAA. The commenter believes that P2 should be backed up with a requirement for the implementation of RACT for sources that fail to make a good faith effort to reduce their emissions using P2 techniques. The imposition of RACT gives industries incentives to implement P2 techniques.

Response

P2 programs are designed to reduce emissions through process changes that should be economically advantageous to the industries, such as process changes to reduce waste and the need for raw materials, lowering production costs. If P2 programs are successfully established, some industries should take advantage of the programs from an economic standpoint.

The EPA has never placed significant reliance on voluntary programs in areas with continuing air quality problems and ozone classifications requiring definitive emission controls under the CAA. Nonetheless, the EPA has seen the merit in promoting P2 programs as supplements to other controls. Since P2 programs are intended to provide industries with economic incentives to reduce emissions, one can assume that the industries will adopt such programs if the programs are implementable and well understood by the industrial representatives. P2 implementation does require significant efforts to document P2 approaches and to properly educate the applicable industries. Significant up-front investments may be needed, but should result in long term payoffs through lowered production costs. EPA acknowledges that such efforts may not be easy or quickly embraced by the industries.

Again, as already indicated above, RACT cannot be required in the Evansville area given the area's marginal ozone classification.

7. Comment

With regard to the proposal of ACORN relative to paint spray guns, a commenter notes that, according to local automobile refinishing shop owners, the proposal to require HVLP painting guns is virtually unenforceable. The commenter believes that the proposed ordinance will simply require such establishments to have only one HVLP apparatus in each of the refinishing shops with no requirement for the complete conversion of the painting operations.

Response

The EPA has been informed by IDEM that the State of Indiana is in the process of developing a regulation to require the use of HVLP units in the larger automobile refinishing shops. The EPA sees no reason why the State would be unable to produce a regulation requiring the use of HVLP units for all applicable coating operations. Naturally, the State may wish to exclude smaller shops from the application requirements of such a rule.

F. New Ozone Standard

1. Comment

Commenters question the need for a redesignation now just prior to promulgation of a new ozone standard (this comment was prepared prior to the July 18, 1997 promulgation of the revised ozone standard). The commenters question whether this is to permit new industries to develop before the new standard goes into effect.

Response

The designation being considered in this action is pertinent to only the one-hour standard. Designations for the eight-hour standard will be made in the future in accordance with the process for designating areas under the new standard and this redesignation rulemaking action has no relevance for that future designation action. Moreover, it would be inappropriate to maintain the one-hour nonattainment designation, if no longer applicable, on the assumption that the Evansville area might be designated as nonattainment for the eight-hour ozone standard in the future.

2. Comment

A commenter states that, taken within the context of the proposed (now promulgated) ozone standard, it does not make sense to proceed with the redesignation of Vanderburgh County under the one-hour standard. It appeared to the commenter that the EPA was proposing the redesignation so that it could occur prior to the implementation of the new ozone standard, providing the EPA with an additional three years of time before strict enforcement of whatever changes in the ozone standard are made. The commenter notes that this undermines the efforts of local citizens to clean up the air quality in the area.

Response

As noted above, the original one-hour ozone standard and the new eight-hour ozone standard are considered to be separable in terms of requiring emission controls and determining the area's attainment status. To do otherwise would result in the Evansville area being arbitrarily treated differently than other areas in the country which are currently attaining the one-hour standard or for which the one-hour standard may be revoked on the basis of air quality data attaining the one-hour standard (see discussion below regarding the revocation of the one-hour standard).

G. Toxics and Health Concerns

1. Comment

A resident, who lives close to the Alcoa facility in Warrick County, believes that the toxic emissions from this company are very harmful and detrimental to the local environment, including causing pitting and dark spots on building surfaces. The commenter believes that many residents in the area suffer with breathing problems.

Response

The EPA is very concerned about breathing problems caused by toxic emissions and other air pollutants. It is recommended that the commenter contact both EPA and IDEM with specific information on this problem to allow further considerations. Nonetheless, it should be noted here that the issue at hand is the ozone attainment status of Vanderburgh County. The EPA is unaware of any data linking air pollutant emissions from the Alcoa facility with an ozone standard violation in the Evansville area (including Warrick County) during the 3 most recent years.

2. Comment

A commenter notes that evidence of increased respiratory distress is mounting in area residents and that there is evidence that air quality is often the cause of a sickness that crosses the socioeconomic and age related population strata. This sickness is referred to by area doctors as the "Evansville Crud," an upper respiratory malady that depletes body energy and causes coughing and fluid drainage from the respiratory system.

Response

EPA acknowledges that air pollution may be causing some respiratory problems in residents in this area. It is not clear that these problems are due to the impacts of ozone, which is the focus of this rulemaking. The commenter provides no data linking elevated ozone concentrations to the observed health problems. The EPA sees no reason to delay the redesignation based on the summarized health problems. The commenter is encouraged to work with health experts and IDEM to determine the actual pollutants responsible for the health problems and to determine the appropriate emission control measures.

3. Comment

A commenter believes that EPA and IDEM have failed to demonstrate that the respiratory health of Vanderburgh County residents has improved due to improved air quality. Although the commenter realizes that such a test is not required by the CAA, the commenter believes that, since the ozone standard is health-based, some criteria for assessing the impact of unhealthful air on a population could be warranted in lieu of proof that emissions have been reduced. Since it is clear that emissions have not been reduced in and around Evansville, some quantitative criteria based on health impacts should be offered to justify the redesignation to attainment.

Response

A redesignation action requires EPA to determine that certain statutory criteria have been met. EPA has made those findings here, including the finding that the one-hour standard has been attained. Monitoring attainment of the one-hour standard is an indicator of improved air quality. Given that the ozone monitors in the Evansville area, including all ozone monitors in Posey, Vanderburgh, and Warrick Counties, have indicated attainment of the ozone standard, one can conclude, based on the one-hour standard, that ozone levels are lower now than in 1988 or 1994, when violations of the one-hour standard were monitored in the area.

4. Comment

A commenter notes that, if the EPA and IDEM had done their jobs eight years ago when Vanderburgh County went out of compliance with the ozone standard in 1988, her daughter and thousands of others may not have developed asthma in the first place. She notes that RACT on industrial sources should have been put in place under the pre-1990 Clean Air Act and thinks that, if this had been done, air quality would have been better by now. She thinks EPA and IDEM have stalled in enforcing emission controls to benefit polluting industries and only respond favorably to the wishes of the industries.

Response

The EPA and IDEM have sought to comply with the current requirements of the CAA. Because of the time involved in redesignating areas to nonattainment of the standard, and the additional time for the State to develop air quality plans and regulations and to implement those regulations, RACT rules could not have been adopted until well after the 1990 revision of the CAA. The revised CAA set forth limited emission control requirements for marginal ozone nonattainment areas, such as Vanderburgh County, eliminating the requirement to implement new RACT rules in this area. In any event, Vanderburgh County is currently in

attainment of the standard and qualifies for redesignation to attainment.

5. Comment

A commenter asserts that the EPA is not using current data in the determination of the amount of pollution in the area. The commenter questions what EPA thinks the TRI database is for, and wants to know if the EPA is familiar with the thousands of journals which are reporting alarming increases in many diseases related to pollution. The commenter asserts that EPA and IDEM are violating the rights of citizens by not cleaning up pollution.

Response

The Toxic Release Inventory (TRI) database identifies the sources and emission rates of known hazardous compounds and heavy metals. Only to the extent that some of these compounds are VOC does the TRI database provide information relating to ozone precursor emissions. TRI-based VOC emissions are only a subset of the total VOC emissions involved in the formation of ozone. Generally, TRI–VOC emissions are already incorporated into the larger ozone-related VOC emission inventories maintained by the State and by the EPA.

The EPA is aware of the growing number of journal entries indicating adverse health effects due to various pollutants. Several thousand articles and study reports were reviewed in conjunction with the recent tightening revisions of the ozone and fine particulate standards. Within the constraints of the CAA, the EPA is taking action to provide additional protection for individuals subject to the harmful effects of air pollution. Nonetheless, the issue here is whether or not Vanderburgh County (and its downwind environs) continues to violate the one-hour ozone standard. The data indicate that this is not the case. With regard to the tightened standards, the Evansville area will be independently evaluated for attainment of these standards in the future. If the area is found to be violating one or both of these standards, additional emission control measures may be warranted at that time.

H. Miscellaneous Comments

1. Comment

A commenter contends that the maintenance plan seems to lack concrete plans of action and is not legally enforceable. The commenter doubts the merits of such a plan and fails to see how it will protect the public's health from future ozone standard violations.

Response

The maintenance plan outlines the procedures that the State will take if a future violation of the one-hour ozone standard occurs or if the VOC emission total in Vanderburgh County increases to a level exceeding the 1990 attainment year level (see a discussion later in this rulemaking for possible impacts of an anticipated revocation of the one-hour ozone standard). In the event of an ozone standard violation, it is clear that the State, within one year of the determination of the ozone standard violation, must select additional emission reduction controls sufficient to prevent future ozone standard violations. The maintenance plan lists a number of emission control measures that the State will consider for implementation and elimination of the air quality problem. The State is free to select the appropriate emission control strategy, but must demonstrate to the EPA that the emission controls will be adequate to prevent future ozone standard violations, and must adopt such measure or measures within the year following the confirmation of the ozone standard violation. In the case of emission increases above the attainment year level, the State must initiate a study to determine if additional emission controls are needed to prevent a future ozone standard violation. EPA views these commitments to be adequate and enforceable.

2. Comment

A commenter states that putting Vanderburgh County on the attainment list is "false advertisement." This implies that Vanderburgh County could continue ignoring its air quality problems. Controlling emissions from gasoline and use of low pressure paint shop sprayers may be well and good, but industry should also clean up its emissions. These emissions reductions should occur throughout the entire region.

Response

The regional control component of this comment has been dealt with in responses to regional control comments above.

Again, it is noted that the CAA does not require RACT controls in the Evansville area. This is due to the fact that Vanderburgh County has been classified as a marginal ozone nonattainment area.

Redesignating Vanderburgh County to attainment is not "false advertisement," since it recognizes the improvement in ozone levels in the Evansville area. It should also be noted that the redesignation does not send the signal that the State or local officials can simply forget about the impacts of the area's emissions on ozone levels. The State will need to continue to track ozone levels and VOC emissions in the area and will need to take corrective actions if future ozone standard violations occur or if future VOC emissions climb above attainment levels.

3. Comment

A commenter notes that neither IDEM nor EPA has done anything to require further NO_X emission reductions (beyond those required under title IV of the CAA) from coal-fired electric power plants both in the immediate region as well as in downwind areas in southern Illinois and Kentucky.

Response

This is the purpose of the OTAG–related SIP–call referenced in the proposed rulemaking and earlier in this final rulemaking. To reduce the impacts of ozone and ozone precursor transport, such NO_X emission reductions will be required in the near future. As noted above, on November 7, 1997 EPA published a proposed rulemaking that will require States in the eastern half of the United States to reduce NO_X emissions to achieve prescribed NO_X budgets. The State of Indiana was an active participant in the OTAG process, which led to the NO_X emission budget proposed for Indiana.

IV. Ozone Standard Revocation

On July 16, 1997, President Clinton concurred with the EPA on the revision of the ozone standard to an eight-hour averaged level. As part of that concurrence, President Clinton requested the EPA to revoke the one-hour standard for areas currently attaining the ozone standard. This standard revocation was to occur within a 90 day period following the concurrence (the standard revocation had not occurred at the time of the publication of the current action).

The revocation, as planned by the EPA, will consider 1994 through 1996 data in selecting appropriate areas for revocation.

Based on 1994 through 1996 data, Vanderburgh County may be subject to revocation of the one-hour standard.

If the revocation of the one-hour standard becomes effective for Vanderburgh County, the attainment status designation for this area will be replaced by a notification of the revocation of the one-hour standard.

Future rulemaking and guidance on EPA's transition policy (policy addressing the transition from the application of the one-hour ozone standard to the eight-hour ozone standard) will address the implications of this standard revocation for the area's maintenance plan and other ozone-related emission control requirements.

V. Conclusions

None of the public comments reviewed here warrants reversal of EPA's proposed approval of the redesignation of Vanderburgh County to attainment of the one-hour ozone standard and approval of the State's maintenance plan for this area as a SIP revision. Monitoring of ozone for the 1995 through 1997 period in Vanderburgh County and its adjoining Posey and Warrick Counties shows no violations of the one-hour ozone standard, demonstrating that this area has attained the one-hour ozone standard.

As noted above, on July 16, 1997 the EPA promulgated a revised eight-hour standard for ozone. The current rulemaking makes no judgments regarding the attainment of the revised ozone standard in the Evansville area. The attainment status of this area relative to the new ozone standard will be addressed in a future rulemaking.

VI. Final Rulemaking Action

EPA is approving the ozone redesignation request and the ozone maintenance plan submitted by Indiana on November 4, 1993 as they apply to Vanderburgh County. EPA is, therefore, redesignating Vanderburgh County to attainment of the one-hour ozone standard. The EPA has completed its analysis of the redesignation request and SIP revision request based on a review of the materials presented and in consideration of the current, 1995 through 1997, ozone data in the area, including ozone monitoring data in Posey, Vanderburgh, and Warrick Counties.

In taking this action, the EPA has taken into consideration all relevant public comments on the March 14, 1997 proposed rulemaking. None of the public comments were found to form the basis for a reversal of the proposed approval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated here does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Volatile Organic Compounds, and Nitrogen dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 2, 1997.

David A. Ullrich,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.777 is amended by adding paragraph (s) to read as follows:

§ 52.777 Control Strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(s) Approval—On November 4, 1993, the State of Indiana submitted a maintenance plan and a request that Vanderburgh County be redesignated to attainment of the one-hour National Ambient Air Quality Standard for

ozone. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Clean Air Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Indiana ozone State Implementation Plan.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.315 the ozone table is amended by revising the entry for "Evansville Area: Vanderburgh County" to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE

Designated areas	Designation		Classification	
	Date	Type	Date	Type
Evansville area: Vanderburgh County.	December 9, 1997	Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 97–32186 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5933–6]

RIN 2060–AC28

National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Today's action suspends, on an interim final basis, the National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations (EO NESHAP). The suspension allows affected sources subject to the EO NESHAP to defer compliance with the NESHAP for one year until December 6, 1998. This action does not change the level of the standards or the intent of the NESHAP promulgated in 1994.

DATES: This action is effective December 4, 1997.

Under section 307(b)(1) of the Clean Air Act (Act), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this interim final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: Docket. Docket No. A–88–03, category VIII Amendments, containing information considered by the EPA in developing this rule, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the original EO NESHAP.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate EPA regional or Office of Enforcement and Compliance Assurance (OECA) representative:

Region I: Greg Roscoe, Air Programs Enforcement Office Chief, U.S. EPA, Region I, JFK Federal Building (SEA), Boston, MA 02203, Telephone number (617) 565–3221

Region II: Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007, Telephone number (212) 637–4080, Fax number (212) 637–3998

Region III: Walter K. Wilkie, U.S. EPA, Region III (3AT12), 841 Chestnut Building, Philadelphia, PA 19107, Telephone number (215) 566–2150, Fax number (215) 566–2114

Region IV: Lee Page, U.S. EPA, Region IV (AR–4), 100 Alabama Street, SW, Atlanta, GA 30303–3104, Telephone number (404) 562–9131, Fax number (404) 562–9095

Region V: Howard Caine (AE–17J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, Telephone number (312) 353–9685, Fax number (312) 353–8289

Region VI: Sandra A. Cotter (6EN–AT), U.S. EPA, Region VI (6PD–R), 1445 Ross Avenue, Dallas, TX 75202–2733, Telephone number (214) 665–7347, Fax number (214) 665–7446

Region VII: Bill Peterson, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, Telephone number (913) 551–7881

Region VIII: Heather Rooney, U.S. EPA, Region VIII (8ART–AP), 999 18th Street, Suite 500, Denver, CO 80202–2405, Telephone number (303) 312–6971, Fax number (303) 312–6826

Region IX: Christine Vineyard, U.S. EPA, Region IX (Air–4), 75 Hawthorne Street, San Francisco, CA 94105, Telephone number (415) 744–1197

Region X: Chris Hall, Office of Air Quality (OAQ–107), U.S. EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101–9797, Telephone number (206) 553–1949 or (800) 424–4372 x1949

OECA: Julie Tankersley, U.S. EPA, OECA (2223A), 401 M Street, SW, Washington, DC 20460, Telephone number (202) 564–7002, Fax number (202) 564–0050.

For information concerning the analyses performed in developing this interim final rule, contact Mr. David Markwordt, Policy, Planning and Standards Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0837 or fax number (919) 541–0942. For information concerning the accident investigations, contact Mr. Craig Matthiessen, Chemical Emergency Preparedness and Prevention Office (5101), Office of Solid Waste and Emergency Response, U.S. EPA, 401 M Street, SW, Washington, DC 20460, telephone number (202) 260–9781.

SUPPLEMENTARY INFORMATION: An electronic version of this rule is available for download from the EPA Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. If more information on the operation of the TTN is needed, contact the systems operator at (919) 541–5384. The TTN is also available on the Internet (access: http://ttnwww.rtpnc.epa.gov).

The information presented in this preamble is organized as follows:

I. Background and Summary of Action
II. Summary of and Rationale for Suspension of the Rule
III. Administrative Requirements
A. Paperwork Reduction Act
B. Executive Order 12866, Unfunded Mandates Reform Act, and Regulatory Flexibility Act
C. Submission to Congress and the Comptroller General

I. Background and Summary of Action

On December 6, 1994 (59 FR 62585), the EPA promulgated the EO NESHAP which regulates emissions of ethylene oxide from new and existing commercial sterilization and fumigation operations using 1 ton or more of EO per year. The regulated category and entities affected by today's action are the sources described in 40 CFR 63.360. That provision includes commercial operations using ethylene oxide as a sterilant and fumigant in the production of medical equipment and supplies, and in miscellaneous sterilization and fumigation operations at both major and area sources. Note that this description is not intended to be exhaustive but, rather, to provide a guide for readers interested in this compliance extension. To determine whether your facility is affected by today's action, you should carefully examine the applicability criteria in 40 CFR 63.360. If you have questions about the applicability of today's action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

In July 1997, the Agency learned of reports of explosions at ethylene oxide sterilization and fumigation facilities. EPA does not want matters associated with the December 1997 compliance date to possibly compromise safety. Therefore, the Agency is suspending the EO NESHAP for one year until December 6, 1998.

II. Summary of and Rationale for Suspension of the Rule

As noted above, in July 1997, the Agency learned of reports of explosions at ethylene oxide facilities. Several of these explosions occurred at facilities subject to the EO NESHAP. The precise cause of the explosions is still uncertain at this time. The Agency, however, wishes to adopt a cautious approach in order to assure public and worker safety and, consequently, immediately began conducting a preliminary investigation to determine if the emission control equipment mandated by 40 CFR part 63, subpart O was in any way associated with the cause of the problems at these facilities.

In a July 18, 1997 memorandum, the director of EPA's Office of Air Quality Planning and Standards (OAQPS) asked all Regional Air Division Directors and Regional Air Toxics Coordinators to inform all ethylene oxide facilities of the recent incidents and the potential safety problem. Because subpart O's December 1997 compliance date had not yet been triggered, this memorandum also recommended that, if the owners or operators of the facilities had any safety concern, they should disconnect the control units until the matter could be examined further.

EPA does not know the extent to which the explosions that have occured to date were related to the installation of control equipment to comply with the EO NESHAP. However, the Agency wishes to err, if at all, on the side of safety. Accordingly, the Agency is today suspending the EO NESHAP for one year, until December 6, 1998 pursuant to the authority inherent to EPA's general rulemaking authority under CAA section 301(a), 42 U.S.C. 7601(a).

CAA section 301(a) grants the Administrator of the EPA the authority "to prescribe such regulations as are necessary to carry out his functions under this Act." Given the unique circumstances and uncertainty surrounding the EO NESHAP, as described in this notice, EPA believes that it is necessary to suspend this rule for the safety of the public and workers in and around EO facilities. This action is consistent with the objectives of the Clean Air Act as stated in section 101(b), 42 U.S.C. § 7401(b), "The purposes of this subchapter are * * * to promote the public health and welfare and the productive capacity of its population * * *"

The original EO NESHAP and today's action suspending that rule are promulgated pursuant to CAA section 307(d), 42 U.S.C. 7607(d), which requires that any rule subject to that section be issued only after the public has received notice of, and an opportunity to comment on, the rule. However, section 307(d)(1) exempts from those requirements any rule for which the Agency finds under the Administrative Procedure Act, 5 U.S.C. § 553(b), that providing prior notice-and-comment would be impracticable, unnecessary or contrary to the public interest.

EPA believes the circumstances presented here provide good cause to take this action without prior notice-and-comment. EPA finds that providing prior notice-and-comment would be impracticable and contrary to the public interest based on the potential ongoing danger to public and worker safety posed by the recent incidents at ethylene oxide facilities. There is simply not enough time to provide notice-and-comment procedures before the current compliance date of December 6, 1997 arrives, and until the compliance date is extended, sources are faced with having to install control equipment in time to meet the current compliance date. Only by omitting notice-and-comment from this action can EPA provide sources affected by the EO NESHAP with timely legal relief from the current compliance date, while EPA investigates the situation. Consequently, this action is being promulgated without prior notice-and-comment as provided for in CAA section 307(b)(1) and is immediately effective as provided for in CAA section 112(d)(10).

Nonetheless, EPA is providing 30 days for submission of public comments. EPA will consider all written comments submitted in the allotted time period to determine if any change to this action is necessary.

In addition, the OAQPS Director has requested that the appropriate Regional Offices, in cooperation with the Office of Solid Waste and Emergency Response's Chemical Emergency Preparedness and Prevention Office (CEPPO), and the Regional CEPPO program offices, visit the facilities where the incidents have occurred to gather all relevant information. In suspending the EO NESHAP and directing this investigation effort, the Administrator wishes to remind the public and the regulated community that the role of the EPA has been and continues to be protection of public

health and the environment in a way that is consistent with safety concerns.

As mentioned above, EPA has been investigating and will continue to investigate the cause of these incidents. During the one year suspension period, the Agency will provide the public with the results of the investigation. At the conclusion of the one year period, EPA expects to have addressed any safety concerns with the EO NESHAP requirements. If the Agency finds that changes to the EO NESHAP are necessary to address safety concerns, EPA will conduct a rulemaking to promulgate a revised standard and sources will be given adequate opportunity to comply with the revised rule. If, however, EPA concludes that no changes are necessary, EO facilities will be expected to be in compliance with the EO NESHAP by December 6, 1998.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the EO NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060–0283) may be obtained from Ms. Sandy Farmer, Information Policy Branch (2136); U.S. EPA; 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740.

Today's action has no impact on the information collection burden estimates made previously. Today's action merely suspends the EO NESHAP for one year. This change does not impose new requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866, Unfunded Mandates Reform Act, and Regulatory Flexibility Act

Today's action serves to reduce the burden on certain sources by temporarily suspending the EO NESHAP. Consequently, under Executive Order 12866, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Since this action is not subject to notice-and-comment rulemaking requirements under the APA or any other law, it is also not subject to sections 202, 204 or 205 of the Unfunded Mandates Reform Act (UMRA). In addition, since this action does not impose annual costs of $100 million or more and will not significantly or uniquely affect small governments, the Agency has no obligations under section 203 of UMRA. Moreover, since this action is not subject to notice-and-comment requirements under the APA or any other statute as discussed above, it is not subject to section 603 or 604 of the Regulatory Flexibility Act.

C. Submission to Congress and the Comptroller General

EPA submitted a report containing this action and other information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in today's **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule is effective immediately pursuant to 5 U.S.C. 808(2) because the EPA for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest, for the reasons stated previously.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Ethylene oxide sterilization, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 4, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Part 63, Subpart O of the Code of Federal Regulations, is hereby suspended until December 6, 1998.

[FR Doc. 97–32328 Filed 12–5–97; 1:16 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50608E; FRL–5746–2]

RIN 2070–AB27

Polyalkylene Polyamine; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as polyalkylene polyamine which is the subject of premanufacture notice (PMN) P–89–963. This rule would require certain persons who intend to manufacture, or import this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or importing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: This rule is effective January 8, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

This final SNUR would require persons to notify EPA at least 90 days before commencing the manufacture or import of P–89–963 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take

action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUR notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background and Response to Comments

EPA published a direct final SNUR for the chemical substance, which was the subject of (PMN) P–89–963 and a TSCA 5(e) consent order issued by EPA, in the **Federal Register** of June 8, 1993 (58 FR 32227). EPA received a notice of intent to submit adverse comments for this chemical substance following publication. Therefore, as required by § 721.160, the final SNUR for P–89–963 was withdrawn on December 19, 1994 (59 FR 65248) (FRL–4758–2), and a proposed rule on the substance was issued on December 19, 1994 (59 FR 65289) (FRL–4758–3).

The background and reasons for the SNUR were set forth in the preamble to the proposed rule. EPA received comments from the current manufacturer of the PMN substance. EPA's response to the comments and changes to the proposed rule are discussed in this document.

All but one of the comments can be summarized as follows: Since the 5(e) consent order requires only that manufacturers and importers be subject to hazard communication requirements concerning environmental effects, water release restrictions, and recordkeeping requirements, the SNUR should reflect similar regulation, and processors should not be subject to these SNUR requirements. EPA agrees with this clarification. The proposed SNUR would have required that only manufacturers notify the Agency if the substance was released to water. In addition, EPA is revising both the hazard communication and recordkeeping sections to make it clear that only manufacturers and importers are subject to the requirements of the SNUR.

The other comment was that since the toxicity testing (a 28-day oral study in rats) required by the 5(e) consent order at a designated production volume limit had already been completed and submitted to EPA, the corresponding production volume limit in the proposed SNUR should not be included in the final SNUR. EPA agrees and accordingly has eliminated this notification requirement from the final SNUR. In addition, the hazard communication requirements designated in the proposed SNUR at § 721.72 (a)(2)(i)(A) and (B) have been eliminated. These requirements would have compelled manufacturers, importers, or processors to incorporate into a Material Safety Data Sheet (MSDS) any risks to human health and methods for protecting against such risk, if such risks were demonstrated by the results of toxicity testing required under the section 5(e) consent order. EPA eliminated these requirements, since the order and the SNUR no longer require toxicity testing and the test data already submitted did not warrant additional hazard communication notification.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on June 8, 1993, as a direct final rule, that date will serve as the date after which uses would be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses that would be regulated through this SNUR after June 8, 1993, would have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, and importers of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in the final rule. The Agency's complete economic analysis is available in the public record for this final rule (OPPTS–50608E).

VI. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50608E (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI) is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

VII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995

(Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.6193 to subpart E to read as follows:

§ 721.6193 Polyalkylene polyamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as a polyalkylene polyamine (PMN P–89–963) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(i), (g)(4) (users minimize release to water), and (g)(5) are applicable to manufacturers and importers.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers and importers of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 97–32179 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–60

RIN 3090–AG65

Public Availability of Agency Records and Informational Materials

AGENCY: Office of Management and Workplace Programs, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising its regulations that implement the Freedom of Information Act (FOIA), to incorporate the time limit provisions of the Electronic Freedom of Information Act Amendments of 1996.

DATES: This rule is effective December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Cunningham, GSA Freedom of Information Act (FOIA) Officer (202–501–3415); or Helen C. Maus, Office of General Counsel (202–501–1460).

SUPPLEMENTARY INFORMATION: This rule was not submitted to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, because it is not a significant regulatory action as defined in Executive Order 12866.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Administrator certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b) this rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Comprehensive Summary

The regulations of which this interim rule is a part implement the FOIA, that codified Pub. L. 89–487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.). The revision incorporates the time limit provisions of the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231, 110 Stat. 3048), changing response time for initial requests from 10 working days to 20 working days. The remaining provisions of the 1996 amendments will be incorporated in a forthcoming edition of the regulations.

Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553 (APA). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports with and is consistent with the statutory authority and requirements set forth in the Electronic Freedom of Information Act Amendments of 1996 concerning time limits for responding to initial FOIA requests and administrative appeals with no issues of policy or discretion. Accordingly, opportunity for prior public comment is unnecessary and contrary to the public interest, and we are issuing this revised regulation as a final rule.

List of Subjects in 41 CFR Part 105–60

Freedom of information.

For the reasons set out in the preamble, 41 CFR Part 105–60 is amended as follows:

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

1. The authority citation for 41 CFR Part 105–60 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 40 U.S.C. 486(c).

Subpart 105–60.4—Described Records

2. Sections 105–60.402, 105–60.402–1, and 105–60.402–2 are revised to read as follows:

§ 105–60.402 Procedures for making records available.

Sections 105–60.402–1 and 105–60.402–2 set forth initial procedures for making records available when they are requested, including administrative procedures to be exhausted prior to seeking judicial review by an appropriate United States District Court.

§ 105–60.402–1 Submission of requests.

For records located in the GSA Central Office, the requester must submit a request in writing to the GSA FOIA Officer, General Services Administration (CAI), 1800 F Street, NW., Washington, DC 20405. Requesters may FAX requests to (202) 501–2727, or submit a request by e-mail to gsa.foi@gsa.gov. For records located in the Office of Inspector General, the requester must submit a request to the FOIA Officer, Office of Inspector General, General Services Administration, 1800 F Street NW., Room 5324, Washington, DC 20405. For records located in the GSA regional offices, the requester must submit a request to the FOIA Officer for the relevant region, at the address listed in § 105–60.303(a). Requests should include the words "Freedom of Information Act Request" prominently marked on both the face of the request letter and the envelope. The 20-workday time limit for agency decisions set forth in § 105–60.402–2 begins with receipt of a request in the office of the official identified in this section, unless the provisions under §§ 105–60.305–8 and 105–60.305–12(d) apply. Failure to include the words "Freedom of Information Act Request" or to submit a request to the official identified in this section will result in processing delays. A requester with questions concerning a FOIA request should contact the GSA FOIA Office, General Services Administration (CAI), 1800 F Street, NW., Washington, DC 20405, (202) 501–2691.

§ 105–60.402–2 Response to initial requests.

GSA will respond to an initial FOIA request that reasonably describes requested records, including a fee waiver request, within 20 workdays (that is, excluding Saturdays, Sundays, and legal holidays) after receipt of a request by the office of the appropriate official specified in § 105–60.402–1. This letter will provide the agency's decision with respect to disclosure or nondisclosure of the requested records, or, if appropriate, a decision on a request for a fee waiver. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter. In unusual circumstances, as described in § 105–60.404, GSA will inform the requester of the agency's need to take an extension of time, not to exceed an additional 10 workdays.

Dated: November 24, 1997.

David J. Barram,

Administrator.

[FR Doc. 97–31489 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43, 63, and 64

[IB Docket No. 97–142, FCC 97–398]

Foreign Participation in the U.S. Telecommunications Market

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On November 25, 1997, the Federal Communications Commission adopted a Report and Order that creates a new regulatory framework for international telecommunications. This action is a result of the recent World Trade Organization agreement on basic telecommunications services recently concluded wherein 69 countries, including the United States and virtually all of its major trading partners, agreed to open their markets for basic telecommunications services to competition from foreign carriers. Due to these changed circumstances, the Commission initiated a proceeding to revisit its rules governing foreign participation in the U.S. telecommunications market. In addition, the Commission's order addresses related issues raised in petitions for reconsideration of the Foreign Carrier Entry Order. The new rules will have significant benefits for consumers. Entry by foreign suppliers of telecommunications services will stimulate the U.S. market for international services, creating incentives for carriers to offer existing services at lower prices and adopt innovative new services to attract residential and small business customers. Further opening the U.S. market to foreign carrier entry, along with U.S. carrier entry into foreign markets, will allow carriers to capitalize on newly found efficiencies by offering one-stop shopping, which allows customers to have a single service provider in multiple markets, thereby reducing administrative costs to users.

This final rule contains information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the information collections contained in the final rule.

DATES: The amendments to §§ 43.51(d) and 64.1001(b) are effective January 8, 1998. All other regulations contain information collection requirements and are not effective until approved by the Office of Management and Budget (OMB), subject to 5 U.S.C. § 801(a)(3). A document announcing the effective date of these regulations will be published in the **Federal Register**.

The agency reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998. If these final rules are postponed, the agency will give timely notice in the **Federal Register**.

Written comments by the public on the information collection requirements are due February 9, 1998.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Douglas A. Klein, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–0424; Susan O'Connell, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1484. For additional information concerning the information collections contained in this Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. On June 4, 1997, the Commission released a Notice of Proposed Rulemaking in the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97–142 (62 FR 32966, June 17, 1997). The Notice proposed changes to the rules and policies governing foreign participation in the U.S. market for basic telecommunications services that had been previously adopted by the Commission in the *Foreign Carrier Entry* proceeding. The Commission initiated this proceeding to consider more appropriate rules in the liberalized competitive environment that will exist when the recent World Trade Organization (WTO) agreement on basic telecommunications services takes effect on January 1, 1998. The WTO agreement was concluded on February 15, 1997, when 69 countries, including the United States and virtually all of its major trading partners, agreed to open their markets for basic telecommunications services to competition from foreign carriers. This agreement covers 95 percent of the global market for basic telecommunications services. Sixty-five of these countries, including the United States, have committed to enforce fair rules of competition for basic telecommunications services that are modeled on U.S. law and regulations. Fifty-two of these countries, which account for approximately 90 percent of telecommunications revenues in WTO Member countries, have granted market access for international services. Thus, most of the world's major trading nations have made binding commitments to transition rapidly from monopoly provision of basic telecommunications services to open entry and procompetitive regulation of these services.

2. The order removes the effective competitive opportunities (ECO) test and replaces it with an open entry standard. In its *Foreign Carrier Entry Order*, the Commission adopted the ECO test as part of an overall public interest analysis for both international Section 214 authorizations and indirect foreign ownership of common carrier radio licenses under Section 310(b)(4). (*See* 60 FR 67332, December 29, 1995.) The Commission replaces the ECO test with a rebuttable presumption that applications for Section 214 authority from carriers from WTO countries do not pose concerns that would justify denial of an application on competitive grounds. The Commission also adopts a rebuttable presumption that WTO country applicants filing cable landing license applications, as well as applications to exceed the 25 percent foreign ownership benchmark in a common carrier radio licensee under Section 310(b)(4) of the Act, similarly do not pose such competitive concerns. The Commission finds that adopting a presumption in favor of entry will have significant public interest benefits.

3. The Commission recognizes, however, that in exceptional circumstances, entry into the U.S. market by an applicant affiliated with a foreign telecommunications carrier from a WTO country may pose competitive risks by virtue of the applicant's ability to exercise market power in a relevant foreign market. In such exceptional circumstances, the Commission will have the ability to attach additional conditions to or even deny a particular application. The Commission believes this approach provides protection against possible competitive harms while favoring neither foreign nor domestic applications.

4. The Commission also intends to apply its new open entry policies to cable landing license applicants. The Commission will continue, however, to analyze each application while seeking the approval of the State Department as required by Executive Order 10530. The Commission will no longer routinely impose a restriction on foreign ownership of cable landing stations. Should the Department of State, pursuant to Executive Order 10530, condition its approval of a particular cable landing license on such a restriction, the Commission will include a condition to that effect in the particular cable landing license. Any such restriction would be necessary to protect the national security of the United States.

5. In the *Foreign Carrier Entry Order*, the Commission adopted an ECO test as part of the public interest analysis under Section 310(b)(4) for applicants seeking authority to acquire greater than 25 percent indirect foreign ownership in a common carrier radio licensee. In this *Order*, the Commission replaces the current ECO test as applied to foreign investment from WTO Member countries in common carrier radio licenses with its new open entry policies. The Commission retains its general requirement that such licensees seek Commission approval before they accept foreign ownership that would put them over the 25 percent benchmark under Section 310(b)(4). The Commission will also continue to require licensees who have already received approval to exceed the 25 percent benchmark up to a certain level of indirect foreign ownership to seek further approval in order to increase that level of indirect foreign ownership. The Commission will continue to use the "principal place of business" test to determine the nationality or "home market" of foreign investors, but it will consider other means of determining an applicant's nationality if requested to do so by an applicant or if so advised by the Executive Branch.

6. The Commission will treat aeronautical enroute and aeronautical fixed services in the same manner as it treats common carrier services under Section 310(b)(4) and not apply an ECO test to indirect foreign ownership by entities from WTO Member countries. The Commission declines to address the rule limiting the number of aeronautical enroute licenses to one per location because the rule is beyond the scope of this proceeding. The Commission does, however, suggest several options for parties seeking to provide aeronautical services in the United States.

7. The Commission will continue to apply the ECO and equivalency tests to non-WTO Member countries. The Commission believes that continuing to apply the ECO test to non-WTO Member countries may encourage some of those countries to take unilateral or bilateral steps toward opening their markets to competition and may provide incentives for them to join the WTO. In the case of Section 214 applications to provide facilities-based, resold switched, and resold non-interconnected private line services, the Commission will continue to apply the ECO test as part of the public interest inquiry when presented with an application from a foreign carrier or a carrier affiliated with a foreign carrier where the foreign carrier is from a non-WTO Member country and has market power in the destination market. The ECO test will be applied in a similar manner as part of the Commission's analysis under Section 2 of the Submarine Cable Landing License Act. The Commission will maintain the equivalency test as part of its standard for permitting the provision of switched services over private lines, whether facilities-based or through resale, for non-WTO Member countries. The ECO test will be applied as part of the Commission's general public interest analysis under Section 310(b)(4) regarding foreign investment by entities from non-WTO Member countries in common carrier radio licensees. The Commission will retain the ECO test as the threshold standard for permitting accounting rate flexibility with carriers from countries that are non-WTO Members.

8. In the Notice, the Commission noted that there were outstanding petitions for reconsideration of the *Foreign Carrier Entry Order*. In light of the WTO Agreement, the Commission requested comment on whether it should, for purposes of countries that are not WTO Members, apply the ECO test to U.S. carriers that own more than 25 percent of, or control, a foreign carrier from a non-WTO country. In the *Order*, the Commission recognizes that in the more liberalized environment that will result from the WTO Basic Telecom Agreement it will become increasingly difficult to define a "U.S. carrier" for the purpose of distinguishing between U.S.-carrier and foreign-carrier ownership of carriers. In addition, the GATS principle of National Treatment obligates the U.S. Government to treat investments by carriers from WTO Member countries no less favorably than it treats investments by domestic carriers. Thus, the Commission modifies its conclusion in the *Foreign Carrier Entry Order* and it will apply the ECO test where a U.S. carrier, or a company that owns more than 25 percent of a U.S. carrier, owns a controlling interest in a foreign carrier that has market power in a non-WTO country.

9. Given the new open entry approach, the Commission found it necessary to revise the competitive safeguards governing foreign-affiliated carrier provision of basic telecommunications services in the U.S. market and, more broadly, U.S. carrier dealings with foreign carriers. The Commission establishes a regulatory framework that modifies or eliminates rules that could hamper competition while balancing a need to monitor and detect anticompetitive behavior in the U.S. market without imposing burdensome regulations. For the purposes of applying the dominant carrier safeguards and No Special Concessions rule, the Commission creates a rebuttable presumption that a foreign carrier with less than 50 percent market share in each of the relevant markets on the foreign end of a U.S. international route lacks sufficient market power to affect competition adversely in the U.S. market. The Commission states that this presumption is rebuttable. Carriers may file petitions with the Commission seeking a declaratory ruling on whether a foreign carrier with a market share of 50 percent or more in any relevant market should be allowed to grant a special concession or be regulated as non-dominant because it lacks the ability to affect competition adversely in the U.S. market.

10. The Commission narrows its No Special Concessions rule to allow U.S. carriers to accept special concessions granted by foreign carriers that do not possess market power in a relevant foreign market without first obtaining specific approval from the Commission. The Commission concludes that its No Special Concessions rule should be limited to exclusive dealings involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of U.S. basic international service. The Commission did not adopt its proposal to specify a prohibition on special concessions involving the joint handling of basic U.S. traffic originating or terminating in third countries.

11. The Commission prohibits U.S. carriers from receiving proprietary or confidential information obtained by any foreign carrier in the course of its regular business dealings with a competing U.S. carrier, unless the competing U.S. carrier provides its specific permission in writing. Where a U.S. carrier is affiliated with a foreign carrier, the proprietary or confidential information of other U.S. carriers obtained by that foreign affiliate may not be used for any purpose other than for conducting the correspondent relationships with the carriers from whom the information was obtained. This rule will serve as a general requirement on all existing, pending, and future authorizations to provide U.S. international services.

12. The Commission concludes that safeguards are necessary given the privacy and anticompetitive effects that may result from the use of foreign-derived U.S. customer proprietary network information (CPNI). Under Section 222(a) of the Communications Act, every telecommunications carrier has a duty to protect the confidentiality of customer information. The Commission finds that if a U.S. carrier desires to make use of foreign-derived CPNI pertaining to a specific U.S. customer, it must first obtain appropriate consent from that customer. In doing so, the U.S. carrier also must notify the customer that he or she may require the U.S. carrier to disclose the CPNI to unaffiliated third parties upon written request by the customer. The Commission finds that these procedures will balance Section 222's privacy and competitive issues while not burdening or preventing U.S. carriers from offering one-stop shopping options.

13. The Commission declines to address issues raised by parties concerning the benchmark authorization conditions imposed on facilities-based carriers in the *Benchmarks Order* (62 FR 45758, August 29, 1997). The Commission will condition a carrier's facilities-based authorization to serve an affiliated market on the foreign carrier offering U.S.-licensed international carriers a settlement rate for the affiliated market at or below the relevant benchmark adopted in the *Benchmarks Order*.

14. The Commission addresses the issue of whether to apply its benchmark condition to authorizations to provide switched resale service from the United States to an affiliated market, which was not resolved in the *Benchmarks Order*. The Commission declines to apply the settlement rate benchmark condition to switched resale providers. The Commission finds that a switched reseller is less likely to attempt a predatory price squeeze. The Commission also finds here that it would be easier to detect a price squeeze in the switched resale context than in the facilities-based contest. The easier detection should deter switched resellers from attempting a price squeeze and will allow the Commission to take action in the event a carrier does attempt a price squeeze. The Commission will monitor the switched resale market carefully, and if it finds substantial evidence of anticompetitive behavior that causes harm to competition and consumers in the U.S. market, it may reconsider its decision not to apply the benchmark condition to the provision of switched resale. The Commission also adopts a quarterly traffic and revenue reporting requirement that applies to switched resellers that possess market power on the foreign end of the route and that have settlement rates with U.S. carriers.

15. The Commission adopts a dominant carrier regulatory framework aimed at detecting and deterring anticompetitive behavior in the U.S. market by foreign carriers and their

affiliated U.S. carriers. It will retain a single-tier dominant carrier regulatory approach and classify any U.S.-licensed carriers as dominant on a particular route if it is affiliated with a foreign carrier that possesses market power in a relevant market on the foreign end of that route. The Commission did not adopt its proposal to ban exclusive arrangements involving joint marketing, customer steering, and the use of foreign market telephone customer information. The Commission adopts its tentative conclusion to continue its current regulatory treatment of co-marketing and other non-equity business arrangements between U.S. carriers and their foreign counterparts that affect the provision of U.S. international services. The Commission also found that it would be an unnecessary burden to apply dominant classification to all non-equity arrangements absent a finding of substantial risk of competitive harm. The Commission also declined to adopt a filing requirement for non-equity business relationships.

16. The Commission adopts a number of competitive safeguards as part of its dominant carrier regulatory framework. Dominant foreign-affiliated carriers will be permitted to file tariffs on one day's notice with a presumption of lawfulness rather than the current fourteen-day advance notice. The Commission also eliminates its prior approval requirement for circuit additions and discontinuances on the dominant route. The Commission declines to adopt a quarterly notification of circuit additions or discontinuances requirement. If the Commission finds that an affiliated carrier is engaged in anticompetitive behavior, it may apply the prior approval requirement on that route.

17. Although the Commission currently has in place a number of safeguards to prevent anticompetitive behavior, it finds that a minimal level of structural separation for dominant carriers is necessary. The Commission will require a foreign-affiliated U.S. international carrier regulated as dominant to provide service in the U.S. market through a corporation that is separate from the foreign affiliate, maintain separate books of account, and not jointly own switching and transmission facilities with its foreign carrier affiliate.

18. The *Order* imposes a number of reporting requirements to assist the Commission in monitoring and detecting anticompetitive behavior. Foreign-affiliated dominant carriers will be required to file quarterly traffic and revenue reports for their dominant routes. The Commission requires that each dominant foreign-affiliated carrier file quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services it procures from its foreign affiliate, including, but not limited to, correspondent or other basic facilities procured on behalf of customers of joint venture offerings. Although the Commission does not dictate the format for the provisioning and maintenance reports, the Commission describes the information that it requires. The Commission directs the International Bureau to adopt a standard reporting manual if it feels that one would be helpful, and permits the Bureau to modify the contents of the filing requirements as necessary. Carriers subject to this requirement will be able to seek a protective order to ensure that parties to whom confidential information is made available limit the persons who will have access to the information and the purposes for which the information will be used.

19. All dominant foreign-affiliated facilities-based carriers will file quarterly circuit status reports. Although the Commission proposed quarterly notifications of circuit changes, the quarterly circuit status reports will provide information that can be more readily compared to the information provided by all U.S. international carriers on an annual basis under Section 43.82 of our rules. The Commission does not require dominant foreign-affiliated private line resale carriers to file quarterly circuit status reports, given that they rely on underlying U.S. facilities-based carriers to make arrangements with their affiliated carriers. The Commission directs the International Bureau to modify the Section 43.82 reporting manual as necessary to accommodate these changes. The Commission recognizes that the quarterly circuit status reports contain commercially sensitive information similar to the provisioning and maintenance reports. Thus, the Commission will allow dominant foreign-affiliated carriers to request the standard protective order for the three quarterly circuit status reports that dominant foreign-affiliated carriers must file.

20. The Commission does not adopt an expedited procedure to prevent competitive harm in the U.S. market. Rather, the Commission will rely on the various remedies currently available for addressing anticompetitive conduct. The Commission does, however, adopt a general rule that would enable it to impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes. The Commission notes that it is presently reviewing its rules to ensure that the Commission provides a forum for the prompt resolution of all formal complaints against telecommunications carriers involving claims of unreasonably discriminatory or otherwise unlawful conduct in violation of the Communications Act or its rules.

21. In the *Flexibility Order* (62 FR 5535, February 6, 1997), the Commission developed a new approach for permitting alternative settlement arrangements. In this proceeding, the Commission will no longer apply the ECO test as a threshold standard for determining when to permit accounting rate flexibility. Instead, it will apply a rebuttable presumption that flexibility is permitted for carriers from WTO Member countries. In order to rebut this presumption, a party opposing a flexible arrangement must demonstrate that the foreign carrier is not subject to competition in its home market from multiple (more than one) facilities-based carriers that possess the ability to terminate international traffic and serve existing customers in the foreign market. The Commission also makes minor changes to conform its procedures for U.S. carriers to enter into an alternative payment arrangements, and it will apply the new policies and procedures to all flexibility petitions pending before the Commission in any procedural status at the time the new rules become effective. The Commission will continue to apply the safeguards developed in the *Flexibility Order* (62 FR 5535, February 6, 1997). The Commission will continue to allow the proponent of an alternative settlement arrangement with a carrier from a WTO Member country to make an alternative showing where the presumption in favor of flexibility can be rebutted.

22. The *Order* streamlines the Section 214 applications of carriers that demonstrate clearly and convincingly that the foreign carrier affiliate has less than a 50 percent market share in each relevant terminating market in the destination foreign country (international, intercity, and local exchange access). Streamlined processing of Section 214 applications will be available to any applicant whose foreign affiliate is from a WTO Member country if the applicant requests authority only to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers. Streamlining will be available for foreign-affiliated carriers not otherwise eligible for streamlined processing as long as the applicant certifies that it will comply with the dominant carrier regulations of the *Order*. In addition, the Commission will streamline applications for assignments and transfers of control of Section 214 authorizations in circumstances where an initial Section 214 application filed by the assignee or transferee would be eligible for streamlined processing. The Commission will streamline Section 310(b)(4) requests when they meet the criteria described in the *Order*. In all circumstances, Commission staff will have discretion to deem an application ineligible for streamlined processing either because it raises market power concerns or because an Executive Branch agency raises concerns with respect to issues within its expertise. In such cases the Commission will issue a public notice that the application has been removed from the streamlined process, and within ninety days of the public notice it will either issue an order acting upon the application or provide public notice that, because the application raises issues of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

23. The Commission amends its rules to raise the level of foreign ownership that requires prior notification from 10 percent to greater than 25 percent. This change will eliminate the requirement that authorized carriers notify the Commission before accepting foreign carrier investments of 25 percent or less. An authorized carrier will, however, be required to notify the Commission sixty days before it, or a company that owns more than 25 percent of it, acquires a direct or indirect controlling interest in a foreign carrier.

24. The Commission dismisses arguments that the Commission's public interest analysis is invalid under the General Agreement on Trade in Services (GATS). The Commission states that the *Order* establishes the parameters for reviewing applications to provide international services. The Commission also found that its safeguards are consistent with the GATS.

25. Finally, the Commission disposes of the pending petitions for reconsideration of the *Foreign Carrier Entry Order* because of their close relationship with the substance of this proceeding.

26. The Commission states that it will largely rely on reporting requirements, rather than restrictions on capacity changes or service options, to prevent carriers from causing competitive harm in the U.S. market. The Commission declines to adopt its proposal for a supplemental tier of dominant carrier safeguards for U.S. carriers affiliated with foreign carriers that do not face facilities-based competition on the foreign end of a particular route. The Commission retains authority to impose sanctions, in the event it finds evidence of anticompetitive conduct.

Final Regulatory Flexibility Analysis

27. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the Notice of Proposed Rulemaking in this proceeding. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. This analysis also serves as the FRFA for the issues disposed of here on reconsideration of the *Foreign Carrier Entry Order*.

Need for, and Objectives of, the Rules and Policies Adopted Here

28. This Report and Order and Order on Reconsideration adopts a liberalized standard for participation by foreign and foreign-affiliated entities in the U.S. telecommunications markets. This open entry standard will apply to the provision of international telecommunications services under Section 214 of the Communications Act, indirect foreign ownership of common carrier radio licensees under Section 310(b)(4), and cable landing licenses under the Submarine Cable Landing License Act. It also revises the Commission's regulatory safeguards governing the provision of international telecommunications services in light of recent changes in the world's telecommunications market and the Commission's liberalized standard for participation by foreign and foreign-affiliated entities. The Commission has deemed these changes appropriate in light of the recent World Trade Organization (WTO) Basic Telecommunications Services Agreement and the worldwide trend toward deregulation and competition in the provision of telecommunications services. Our objective is to increase competition in the U.S. telecommunications markets while minimizing the risk of anticompetitive harm and encouraging foreign governments to open their telecommunications markets. In light of the changed circumstances that will result from the WTO Basic Telecom Agreement and our nearly two years of experience with our current rules on market entry and regulation of foreign-affiliated entities, we find that reducing entry barriers for applicants affiliated with entities from WTO Member countries is the appropriate way to accomplish that objective. The Commission believes that it is no longer necessary to apply the "effective competitive opportunities" (ECO) test developed in the 1995 *Foreign Carrier Entry Order* to countries that are Members of the WTO. Instead, we will rely primarily on regulatory safeguards and benchmark settlement rates to reduce the potential for anticompetitive conduct in the U.S. market. We revise some of those safeguards in this Order.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

29. No comments were submitted specifically in response to the IRFA. Nevertheless, we have considered, in developing these rules and policies, any potential significant economic impact on small entities. We have attempted to minimize the burdens imposed on all entities, including small entities, in order to promote participation by new entrants in the U.S. telecommunications markets.

30. NextWave raised comments in response to the Notice specific to the impact of our policy toward indirect foreign investment in C-block and F-block licensees. Those blocks, known as "entrepreneur" blocks, are reserved for small businesses and entrepreneurs. NextWave states that it and other entrepreneurial carriers are dependent on financing from a variety of sources, including foreign investment, and that access to foreign capital is vital to their financial viability. NextWave argues that indirect foreign investment in C-block and F-block licensees presents "no conceivable risk to competition" because those licenses are held by entrepreneurs who are new entrants into the markets. NextWave proposes that, for that reason, the Commission should conclude that indirect foreign investment in C-block and F-block personal communications systems (PCS) licensees by any entity whose home market is a WTO Member country serves the public interest and should not be subject to prior Commission approval. NextWave also urges the Commission, in the alternative, to establish an expedited process and timetable for addressing applications to exceed the 25 percent benchmark for indirect foreign ownership of common carrier wireless licensees.

31. Telephone and Data Systems (TDS) proposed that the Commission permit without prior approval any amount of indirect foreign ownership of common carrier radio licensees held in the form of registered securities when

the foreign investor is not a carrier and comes from one of the 64 other WTO Member countries that has committed to enforce fair rules of competition for basic telecommunications. Under TDS's proposal, the Commission would continue to require prior approval for investors from other WTO Member countries, for investors from non-WTO countries, and from all foreign carriers. TDS suggested that we scrutinize filings with the Securities and Exchange Commission to monitor foreign ownership of registered securities and that we rely on revocation, instead of prior approval, to protect the public interest pursuant to Section 310(b)(4). TDS states that adoption of its proposal would significantly reduce burdens on common carrier radio licensees, who currently must research the nationalities of their individual shareholders in order to remain in compliance with the restrictions on foreign ownership.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

32. We received no comments in response to our estimates in the IRFA of the number of small entities to which the proposed rules would apply. We conclude that the IRFA's estimates are the best available estimates of the number of small entities that the rules we adopt here will affect and that those estimates are sufficiently useful in enabling us to attempt to minimize the economic impact of our rules on small entities.

33. The RFA generally defines *small entity* as having the same meaning as the terms *small business, small organization, and small governmental jurisdiction* and defines small business as having the same meaning as the term small business concern under section 3 of the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities. The Small Business Act defines *small business concern* as one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

34. The rules adopted in this Order apply only to entities providing international common carrier services pursuant to Section 214 of the Communications Act; entities providing domestic or international wireless common carrier, aeronautical enroute, or aeronautical fixed services under Section 309 of the Act; and entities licensed to construct and operate submarine cables under the Cable Landing License Act.

35. Because the small incumbent local exchange carriers (LECs) subject to these rules are either dominant in their fields of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definitions of *small entity* and small business concern. Accordingly, our use of the terms small entities and *small businesses* does not encompass small incumbent LECs. Out of an abundance of caution, however, for the purposes of this FRFA, we will consider small incumbent LECs to be within this analysis, where a small incumbent LEC is any incumbent LEC that arguably might be defined by the SBA as a "small business concern."

Section 214 International Common Carrier Services

36. Entities providing international common carrier service pursuant to Section 214 of the Act fall into the SBA's Standard Industrial Classification (SIC) categories for Radiotelephone Communications (SIC 4812) and Telephone Communications, Except Radiotelephone (SIC 4813). The SBA's definition of *small entity* for those categories is one with fewer than 1,500 employees. We discuss below the number of small entities falling within these two subcategories that may be affected by the rules adopted in this *Order*.

37. The most reliable source of information regarding the number of international common carriers is the data that we collect annually in connection with the *Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet)*. In 1995, 445 toll carriers filed TRS fund worksheets. We believe that between 50 and 200 carriers failed to file TRS fund worksheets. We believe also that fewer than 10 toll carriers had 1,500 or more employees. Thus, at most 635 international carriers would be classified as small entities. Many TRS filers, however, are affiliated with other carriers, and therefore the number of aggregated carriers is far fewer than the preceding estimate. Of the 445 toll filers, 239 reported no carrier affiliates. Adding 50 non-filers gives a lower estimate of 289 international carriers that would be classified as small entities. Thus, our best estimate of the total number of small entities is between 289 and 635. We are unable at this time to estimate with greater precision the number of international carriers that would qualify as small business entities under the SBA's definition. While not all of these entities may have provided international service in 1995, we expect that many of these entities will seek to do so in the future, as will additional entrants into the market.

b. Title III Common Carrier Services

38. *Cellular licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The closest applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular services carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular services carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small cellular service carriers.

39. *220 MHz Radio Services.* Because the Commission has not yet defined a small business with respect to 220 MHz radio services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity employing less than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) For Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years, and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies. Given the fact that nearly all radiotelephone companies employ fewer than 1,000 employees, with respect to the approximately 3,800 incumbent licensees in this service, we will consider them to be small businesses under the SBA definition.

40. *Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging services. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition

applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. At present, there are approximately 74,000 Common Carrier Paging licensees. We estimate that the majority of common carrier paging providers would qualify as small businesses under the SBA definition.

41. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, we estimate that fewer than 117 mobile service carriers are small entities.

42. *Broadband Personal Communications Services (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has defined *small entity* in the auctions for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenue of not more than $15 million for the preceding three calendar years. These regulations defining *small entity* in the context of broadband PCS auctions have been approved by the SBA. No small business within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small businesses won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully; therefore, there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

43. *Narrowband PCS.* The Commission does not know how many narrowband PCS licenses will be granted or auctioned, as it has not yet determined the size or number of such licenses. Two auctions of narrowband PCS licenses have been conducted for a total of 41 licenses, out of which 11 were obtained by small businesses owned by members of minority groups and/or women. Small businesses were defined as those with average gross revenues for the prior three fiscal years of $40 million or less. For purposes of this FRFA, the Commission is utilizing the SBA definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500 persons. Not all of the narrowband PCS licenses have yet been awarded. There is therefore no basis to determine the number of licenses that will be awarded to small entities in future auctions. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective narrowband PCS licensees can be made, we assume, for purposes of the evaluations and conclusions in this FRFA, that all the remaining narrowband PCS licenses will be awarded to small entities.

44. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules. A significant subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems (the parameters of which are defined in Sections 22.757 and 22.759 of the Commission's Rules). Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them have fewer than 1,500 employees.

45. *Air-Ground Radiotelephone.* The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

46. *Specialized Mobile Radio Licensees (SMR).* Pursuant to Section 90.814(b)(1) of our rules, the Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) licenses to firms that had revenues of less than $15 million in each of the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations or how many of these providers have annual revenues of less than $15 million. We do know that one of these firms has over $15 million in revenues. We assume that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected includes these 60 small entities.

47. *Microwave Video Services.* Microwave services includes common carrier, private operational fixed, and broadcast auxiliary radio services. At present, there are 22,015 common carrier licensees. Inasmuch as the Commission has not yet defined *small business* with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with less than 1,500 employees. Although some of these companies may have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of common carrier microwave service providers that would qualify under the SBA's definition. We therefore estimate that there are fewer than 22,015 small common carrier licensees in the microwave video services.

48. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. Some of those licensees are common carriers. We are unable at this

time to estimate the number of licensees that would qualify as small under the SBA's definition.

49. *Local Multipoint Distribution Service (LMDS).* The Commission has so far licensed only one licensee in this service, and that licensee is not providing service as a common carrier. There will be a total of 986 LMDS licenses. Licensees will be permitted to decide whether to provide common carrier service, and we have no way of estimating how many will choose to do so. Because there will be no restrictions on the number of licenses a given entity may acquire, we have no way of estimating how many total licensees there will be. We also cannot estimate the number of common carrier licensees that will qualify as small entities.

50. *Space Stations (Geostationary).* Very few systems are currently operated on a common carrier basis. Because we do not collect information on annual revenue or number of employees of all these licensees, we cannot estimate with precision the number of such licensees that may constitute a small business entity. It is likely that no more than one such entity that is currently operating as a common carrier would constitute a small business entity. There may be a small increase in the number of such entities in the future as a result of recent licensing action in the Ka-band.

51. *Space Stations (Non-geostationary).* These systems by and large do not operate as common carriers. Because we do not collect information on annual revenue or number of employees, we cannot estimate with precision whether any carrier that may choose to operate on a common carrier basis constitutes a small business entity. The trend is for such systems to operate on a non-common carrier basis. These systems, of which there will be a limited number, by and large are not yet operational and are still being licensed and constructed.

52. *Earth Stations.* The vast majority of earth stations licensed by the Commission are not operated on a common carrier basis. Earth stations that communicate with non-geostationary and Ka-band satellite systems may operate on a common carrier basis but these systems are not yet operational and are still being licensed and constructed. We are unable to estimate at this time the number of earth stations communicating with such systems that may operate on a common carrier basis and, of those, the number that will be licensed to small business entities.

c. Aeronautical Enroute and Aeronautical Fixed Licenses

53. The Commission has not adopted a definition of small business specific to the aeronautical enroute and aeronautical fixed services. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are 45 licensees providing aeronautical enroute and aeronautical fixed services, including Aeronautical Radio Inc. (ARINC) and its affiliates. All of the licensees are small businesses except ARINC, which has approximately 2,000 employees. We therefore conclude that there are 44 small businesses providing aeronautical enroute and aeronautical fixed services.

d. Submarine Cable Landing Licenses

54. The new rules and policies adopted in this *Order* will affect all holders of and future applicants for cable landing licenses, whether or not they operate their cables as common carriers. It is difficult to estimate how many applications for cable landing licenses will be filed in coming years, but that number will likely increase if we adopt our proposal to lower the barriers to granting licenses for cables to WTO Member countries. Since 1992, there have been approximately 40 applications for cable landing licenses. The total number of licensees is difficult to determine, because many licenses are jointly held by several licensees. Our rules will also permit more current licensees to accept additional investment from entities from WTO Member countries.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

55. The rules and policies adopted in this *Report and Order and Order on Reconsideration* will affect large and small entities. We will require that U.S. carriers whose foreign affiliates have market power maintain or provide certain records regarding their foreign affiliates. Our rules will in most cases reduce the burdens that are currently imposed on such carriers, and we anticipate that the remaining requirements will not impose a significant economic burden, particularly on small entities. A variety of skills may be required to comply with the proposed requirements, but all of the skills that may be required are of the type needed to conduct a carrier's normal course of business. No additional outside professional skills should be required, with the possible exception of preparing an initial Section 214 or cable landing license application and of preparing a submission for our consideration under Section 310(b)(4), most of which will be simplified by the rules and policies we adopt here.

56. An applicant for a Section 214 authorization or a cable landing license will no longer be required to show either that an affiliated foreign carrier lacks market power or that the destination country provides effective competitive opportunities (ECO) to U.S. carriers so long as it shows that the destination country is a Member of the World Trade Organization. Similarly, entities holding or seeking to hold common carrier wireless licenses or aeronautical enroute or aeronautical fixed licenses that have more than 25 percent indirect foreign investment will not need to demonstrate that the home markets of the foreign investor or investors from WTO Members offer effective competitive opportunities for U.S. investors in the analogous service sector.

57. Authorized international common carriers will no longer be required to notify the Commission before accepting investments by foreign carriers (or their affiliates) between 10 percent and 25 percent. We have retained a requirement that authorized carriers notify the Commission before accepting investment greater than 25 percent. We have added a requirement that authorized carriers notify the Commission before they (or their affiliates) acquire a direct or indirect controlling interest in a foreign carrier; previously, those interests were subject only to a post hoc notification requirement. We continue to require authorized carriers to notify the Commission within 30 days after acquiring a direct or indirect interest greater than 25 percent in a foreign carrier if the acquisition of that interest has not otherwise been reported.

58. We have narrowed the application of our "No Special Concessions" rule, which prohibits carriers from entering into exclusive arrangements with foreign carriers. That rule will now apply only to carriers' dealings with foreign carriers that have sufficient market power in their home markets to adversely affect competition in the U.S. market. Carriers wishing to enter into alternative settlement arrangements with foreign carriers operating in WTO Member countries will presumptively be allowed to do so. That presumption may be overcome where an opponent demonstrates that there are not multiple facilities-based carriers operating in the foreign carrier's market.

59. To ensure fair competition among authorized carriers and to be consistent with our policy governing the confidentiality of competing carrier information, all U.S. carriers will be prohibited from receiving proprietary or confidential information about competing U.S. carriers obtained by any foreign carrier in the course of its regular business dealings with the competing U.S. carrier, unless the U.S. carrier provides specific written permission. We will also require U.S. carriers desiring to make use of foreign-derived customer proprietary network information (CPNI) pertaining to a specific U.S. customer to first obtain approval from that customer and notify that customer that the customer may require the carrier to disclose the CPNI to unaffiliated third parties.

60. An authorized carrier affiliated with a foreign carrier will be subject to additional requirements. Its authorization to serve the affiliated market will be conditioned on the foreign affiliate's offering to all U.S.-licensed carriers a settlement rate at or below the benchmark adopted for that country in the Commission's recent *Benchmarks Order*. Foreign-affiliated carriers classified as dominant are subject to additional reporting, recordkeeping, and compliance requirements. In this *Order*, we substantially reduce the initial showing that a foreign-affiliated carrier must make in order to be presumptively classified as non-dominant by adopting a presumption that a foreign carrier with less than 50 percent market share in certain relevant terminating markets does not have sufficient market power to affect competition adversely in the U.S. market. We remove existing dominant carrier requirements that we find to be unnecessarily burdensome and adopt a narrowly tailored dominant carrier framework designed to address specific concerns of anticompetitive behavior. We replace the requirement that dominant carriers file tariffs on fourteen days' advance notice with a one-day advance notice requirement, and we will accord these tariff filings a presumption of lawfulness. We will no longer require foreign-affiliated carriers to obtain Commission approval before adding or discontinuing circuits on the dominant route. We require dominant carriers to provide service on the affiliated route through a corporation that is separate from its foreign affiliate, maintain separate books of account, and not jointly own switching or transmission facilities with its foreign affiliate. Carriers regulated as dominant will be required to file quarterly traffic and revenue reports, provisioning and maintenance reports, and circuit status reports on the dominant affiliated route. We decline to adopt the proposal in the Notice to ban exclusive arrangements involving joint marketing, customer steering, and the use of foreign market telephone customer information.

61. Finally, we impose a reporting requirement on switched resellers that are affiliated with a foreign carrier that has sufficient market power on the foreign end of a route to affect competition adversely in the U.S. market. We will require these resellers to file quarterly traffic and revenue reports for their switched resale traffic on the affiliated route.

Federal Rules That May Duplicate, Overlap, or Conflict With the Rules Adopted Here

62. None.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. We have taken significant steps to minimize the procedural burdens imposed on all affected entities. The application of the rules we adopt in this *Order* does not vary depending on the size of the entities involved. Some regulations may be more burdensome on large carriers than on small carriers because large carriers may be more likely to be dominant or to operate on a facilities basis than are small carriers. That is, small carriers may be more likely to operate as resellers of switched international services, which are less likely to be subject to our most stringent regulation.

64. The revisions to our policies toward evaluating Section 214 and cable landing license applications will significantly reduce burdens on many current and potential international common carriers. A foreign-affiliated carrier seeking to serve an affiliated route will no longer be required to show either that its affiliate lacks market power or that the destination country provides effective competitive opportunities (ECO) to U.S. carriers so long as it shows that the destination country is a Member of the World Trade Organization. We believe this to be a minimal burden for most small entities and a significantly lesser burden than the detailed showings required to demonstrate either that the affiliate lacks market power or that the destination country provides ECO. The ECO test, in particular, has proven to be unusually burdensome both on applicants and on the Commission.

65. Similarly, the revisions to our policy toward evaluating Section 310(b)(4) requests by common carrier radio licensees and aeronautical licensees to accept indirect foreign investment greater than 25 percent will significantly reduce the burdens on licensees (and prospective licensees) seeking to accept investment from entities in WTO Member countries. Those applicants will no longer be required to show that the home market of the investor offers effective competitive opportunities for U.S. investors in the analogous service sector. This will make those applications much simpler and less time-consuming and, more importantly, will make it much easier for licensees to accept foreign investment and for prospective licensees to plan their business affairs. Common carrier radio licensees will continue to be required to seek Commission approval before accepting indirect foreign investment above a level for which they have previously received Commission approval.

66. We have taken steps to facilitate entry into the U.S. market for international telecommunications services by small carriers. Small carriers often enter the market, at least initially, by reselling the switched services of other authorized international carriers. In this *Order*, we change our procedural rules to afford streamlined processing to any applicant whose foreign affiliate is from a WTO Member country if the applicant requests authority to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers. We also will streamline process the Section 214 application of any foreign-affiliated applicant whose affiliate is from a WTO Member and that demonstrates clearly and convincingly that the foreign affiliate has less than a 50 percent market share in certain relevant terminating markets in the destination foreign country. In addition, we will streamline process the Section 214 application of any applicant whose affiliate is from a WTO Member and is not otherwise eligible for streamlined processing if the applicant certifies that it will comply with our dominant carrier regulations. Streamlined applications, unless they are removed from the streamlined process, are granted 35 days from the date they are placed on public notice.

67. In revising our regulations that apply to authorized international common carriers, we have developed a targeted approach designed to monitor and detect anticompetitive behavior in the U.S. market without imposing regulations that are more burdensome than necessary. In doing so, we have

attempted to minimize burdens on entities that are unlikely to pose a threat to competition. We also have removed restrictions on whole categories of activities that we have concluded do not pose a threat to competition in the developing competitive marketplace. Our approach relies in large part on reporting requirements, rather than restrictions on capacity changes or service options, to prevent affiliated carriers from causing competitive harms in the U.S. international services market.

68. We have significantly reduced the scope of our rule that prohibits carriers from entering into certain exclusive arrangements with foreign carriers. Our "No Special Concessions" rule will now prohibit accepting certain specified arrangements only from foreign carriers that have sufficient market power in their home markets to adversely affect competition in the U.S. market. We adopt a presumption that foreign carriers with less than 50 percent market share in the relevant terminating markets do not have such sufficient market power. We anticipate that delineating those arrangements that are subject to the prohibition and adopting this presumption will significantly clarify the circumstances in which authorized carriers will be permitted to accept special concessions from foreign carriers. This more targeted rule also will allow authorized carriers substantially more flexibility in arranging their business affairs.

69. Carriers wishing to enter into alternative settlement arrangements with foreign carriers operating in WTO Member countries will presumptively be allowed to do so. This presumption may be overcome by a demonstration that there are not multiple facilities-based carriers operating in the foreign carrier's market. We expect to allow alternative settlements more as a rule than as an exception, and the issue of whether there are multiple facilities-based carriers operating in the foreign market will be less burdensome than the issue of whether the foreign market offers effective competitive opportunities, which is the standard being replaced.

70. We have declined, in this *Order*, to adopt certain proposals in the Notice that would have restricted the business strategies of carriers classified as dominant. Instead, we will impose reporting requirements that will enable us to detect and deter anticompetitive behavior. We have declined to adopt proposals in the *Notice* to ban exclusive arrangements involving joint marketing, customer steering, and the use of foreign market telephone customer information. We have found that such proscriptive safeguards would be unduly burdensome and could unnecessarily impede business activities. We choose to rely instead on the general prohibition on accepting special concessions combined with additional reporting and disclosure requirements, instead of proscriptive safeguards, for carriers with foreign affiliations. We have also relieved carriers of the requirement to notify the Commission of investments by foreign carriers of 10 percent or more; they now must report an investment by a foreign carrier only when that investment exceeds 25 percent. We conclude that none of the safeguards we impose specifically on carriers classified as dominant will impose significant economic burdens.

71. We have also declined to impose on switched resellers a condition that their foreign affiliates maintain settlement rates at or below the benchmark settlement rates we adopted in the *Benchmarks Order*. We find that such a condition would be unnecessarily burdensome inasmuch as resellers have less ability to engage in anticompetitive conduct than facilities-based carriers and we have a greater ability to detect anticompetitive conduct by switched resellers. Imposing a benchmark condition on switched resellers would impose significant economic impact on resellers, many of whom are small entities, that could prevent some new entrants from entering the U.S. market and affect the ability of existing carriers to provide service. To address concerns about traffic distortions related to resale, however, we have decided to impose a requirement on switched resellers that are affiliated with a carrier that has sufficient market power to affect competition adversely in the U.S. market. We will require those resellers to file quarterly traffic and revenue reports for their traffic on the affiliated route in order to enable the Commission to determine whether switched resellers are engaging in anticompetitive conduct.

72. In the Notice, we sought comment on whether to adopt, as an additional dominant carrier safeguard, some level of structural separation between a U.S. carrier and its affiliated foreign carrier. We adopt here a requirement that a foreign-affiliated U.S. international carrier regulated as dominant provide service in the U.S. market through a corporation that is separate from the foreign affiliate, maintain separate books of account, and not jointly own switching and transmission facilities with its foreign carrier affiliate. We find that, without such separation, discrimination, cost-misallocation, and the possibility of a predatory price squeeze by such a foreign-affiliated carrier would have the potential to cause substantial harm to consumers, competition, and production efficiency in the U.S. international services market. These requirements will not impose a significant burden on such carriers because most foreign-affiliated carriers operating in the United States do so in a manner that is consistent with the requirements we adopt here. We have considered imposing more stringent structural separation requirements but have found them to be unnecessary and to potentially impose a significant burden on foreign-affiliated carriers that operate in the U.S. market.

73. We are unable to adopt NextWave's proposal to state that indirect foreign investment in C-block and F-block PCS licensees by any entity whose home market is a WTO Member country serves the public interest and will not be subject to prior Commission approval. We have found that prior approval is necessary in all instances of indirect foreign investment in excess of 25 percent because of the need to review such investments for national security, law enforcement, foreign policy, and trade concerns as well as for the exceptional case that poses a very high risk to competition. We do, however, adopt NextWave's alternative proposal to establish an expedited process and timetable for addressing those applications: These applications will generally be added to the International Bureau's streamlined process and usually granted within 35 days from the date the International Bureau places the application on public notice. We expect that application of our open entry standard and streamlined process will both minimize procedural burdens on small entities and present substantial new opportunities for obtaining foreign capital.

74. We are unable to adopt TDS's proposal to disregard investments in common carrier radio licensees by non-carriers held as publicly traded securities. We accept the concerns of Executive Branch agencies that a prior approval process is necessary for all investments and that even small investments in publicly traded securities could, if aggregated, nevertheless create a degree of control or influence over a licensee that would be contrary to U.S. national security or law enforcement issues.

75. We have also decided not to adopt a policy that a common carrier radio licensee need not seek Commission approval before accepting increases in indirect foreign ownership once they have obtained Commission authority to exceed 25 percent indirect foreign ownership. We have determined that every such increase requires Commission review in order to consider the effect of the ownership on national security and law enforcement interests.

76. We conclude that these steps we have taken to minimize significant economic impact on small entities will advance the small business goals of Section 257 of the Act, as added by the Telecommunications Act of 1996.

Report to Congress

77. The Commission will send a copy of this Report and Order and Order on Reconsideration, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). A summary of this Report and Order and Order on Reconsideration, and a copy of this FRFA, will also be published in the **Federal Register**, *see* 5 U.S.C. § 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act of 1995 Analysis

78. This Report and Order contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due February 9, 1998. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information.

79. Public reporting burden for the collections of information is estimated as follows:

OMB Control Number: 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Type of Review: Revision of existing collection.

Respondents: Business or other For-Profit.

Number of Respondents: 3,251.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 145,895 hours.

Estimated costs per respondent: $3,192.

Needs and Uses: The information collections pertaining to Parts 1 and 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections contained in amendments to § 63.10 of the Commission's rules are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have market power. The information collected pursuant to part 61 of the rules is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934.

80. The information collections under § 310(b)(4) of the Act are necessary to determine, under that section, whether a greater than 25 percent indirect foreign ownership interest in a U.S. common carrier ratio licensee would be inconsistent with the public interest.

81. We do not anticipate that the rules will have any impact on the paperwork burden imposed under the Commission's *Flexibility Policy* established in the *Fourth Report and Order*, CC Docket No. 90–337, Phase I (62 FR 5535, February 6, 1997), OMB Control Nos. 3060–0160 and 3060–0764.

Ordering Clauses

82. Accordingly, *it is ordered* that, pursuant to Sections 1, 2, 4(i), 201, 203, 205, 214, 303(r), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 152, 154(i), 201, 205, 214, 303(r), 310, the policies, rules, and requirements discussed herein *are adopted* and parts 43, 63, and 64, 47 CFR parts 43, 63, and 64 *are revised*.

83. *It is further ordered* that authority is delegated to the Chief, International Bureau as discussed in this Order.

84. *It is further ordered* that the petitions for reconsideration in IB Docket No. 95–22 *are granted* in part, *denied* in part, and *deferred* as discussed in this Order.

85. *It is further ordered* that the Commission's Office of Managing Director shall send a copy of this Report and Order and Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

86. *It is further ordered* that the policies, rules, and requirements established in this decision shall take effect January 8, 1998 or in accordance with the requirements of 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507. The Commission will publish a document at a later date announcing the effective date. The Commission reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998.

List of Subjects in 47 CFR Parts 43, 63, and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Parts 43, 63, and 64 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 continues to read as follows:

Authority: 47 U.S.C. 154.

2. § 43.51 is amended by revising paragraph (d) to read as follows:

§ 43.51 Contracts and concessions.

* * * * *

(d) Any U.S. carrier that interconnects an international private line to the U.S. public switched network, at its switch, including any switch in which the carrier obtains capacity either through lease or otherwise, shall file annually with the Chief of the International Bureau a certified statement containing the number and type (e.g., a 64-kbps circuit) of private lines interconnected in such a manner. The certified statement shall specify the number and type of interconnected private lines on a country specific basis. The identity of the customer need not be reported, and the Commission will treat the country of origin information as confidential. Carriers need not file their contracts for such interconnections, unless they are specifically requested to do so. These reports shall be filed on a consolidated basis on February 1 (covering international private lines interconnected during the preceding January 1 to December 31 period) of each year. International private lines to countries for which the Commission has authorized the provision of switched

basic services over private lines at any time during a particular reporting period are exempt from this requirement.

3. § 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(c) Each common carrier engaged in the resale of international switched services that has an affiliation with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. For purposes of this paragraph, "affiliation" is defined in § 63.18(h)(1)(i) of this chapter and "foreign carrier" is defined in § 63.18(h)(1)(ii) of this chapter.

* * * * *

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403, 533 unless otherwise noted.

2. § 63.10 is revised to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

(a) Unless otherwise determined by the Commission, any party authorized to provide an international communications service under this part shall be classified as either dominant or non-dominant for the provision of particular international communications services on particular routes as set forth in this section. The rules set forth in this section shall also apply to determinations of regulatory status pursuant to §§ 63.11 and 63.13. For purposes of paragraphs (a)(1) through (a)(3) of this section, "affiliation" and "foreign carrier" are defined as set forth in § 63.18(h)(1)(i) and (ii), respectively. For purposes of paragraphs (a)(2) and (a)(3) of this section, the relevant markets on the foreign end of a U.S. international route include: international transport facilities or services, including cable landing station access and backhaul facilities; inter-city facilities or services; and local access facilities or services on the foreign end of a particular route.

(1) A U.S. carrier that has no affiliation with, and that itself is not, a foreign carrier in a particular country to which it provides service (i.e., a destination country) shall presumptively be considered non-dominant for the provision of international communications services on that route;

(2) Except as provided in paragraph (a)(4) of this section, a U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is a monopoly provider of communications services in a relevant market in a destination country shall presumptively be classified as dominant for the provision of international communications services on that route; and

(3) A U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is not a monopoly provider of communications services in a relevant market in a destination country and that seeks to be regulated as non-dominant on that route bears the burden of submitting information to the Commission sufficient to demonstrate that its foreign affiliate lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. If the U.S. carrier demonstrates that the foreign affiliate lacks 50 percent market share in the international transport and the local access markets on the foreign end of the route, the U.S. carrier shall presumptively be classified as non-dominant.

(4) A carrier that is authorized under this part to provide to a particular destination country a particular international communications service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services), shall presumptively be classified as non-dominant for the provision of the authorized service. The existence of an affiliation with a U.S. facilities-based international carrier shall be assessed in accordance with the definition of affiliation contained in § 63.18(h)(1)(i) of this chapter, except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."

(b) Any party that seeks to defeat the presumptions in paragraph (a) of this section shall bear the burden of proof upon any issue it raises as to the proper classification of the U.S. carrier.

(c) Any carrier classified as dominant for the provision of particular services on particular routes under this section shall comply with the following requirements in its provision of such services on each such route:

(1) File international service tariffs on one day's notice without cost support;

(2) Provide services as an entity that is separate from its foreign carrier affiliate, in compliance with the following requirements:

(i) The authorized carrier shall maintain separate books of account from its affiliated foreign carrier. These separate books of account do not need to comply with Part 32 of this chapter; and

(ii) The authorized carrier shall not jointly own transmission or switching facilities with its affiliated foreign carrier. Nothing in this section prohibits the U.S. carrier from sharing personnel or other resources or assets with its foreign affiliate;

(3) File quarterly reports on traffic and revenue, consistent with the reporting requirements authorized pursuant to § 43.61, within 90 days from the end of each calendar quarter;

(4) File quarterly reports summarizing the provisioning and maintenance of all basic network facilities and services procured from its foreign carrier affiliate or from an allied foreign carrier, including, but not limited to, those it procures on behalf of customers of any joint venture for the provision of U.S. basic or enhanced services in which the authorized carrier and the foreign carrier participate, within 90 days from the end of each calendar quarter. These reports should contain the following: the types of circuits and services provided; the average time intervals between order and delivery; the number of outages and intervals between fault report and service restoration; and for circuits used to provide international switched service, the percentage of "peak hour" calls that failed to complete;

(5) In the case of an authorized facilities-based carrier, file quarterly circuit status reports within 90 days from the end of each calendar quarter in the format set out by the § 43.82 annual circuit status manual, with two exceptions: activated or idle circuits must be reported on a facility-by-facility basis; and the derived circuits need not be specified in the three quarterly reports due on June 30, September 30, and December 31. For purposes of this paragraph, "facilities-based carrier" is defined in § 63.18 note 2 to paragraph (h).

(d) A carrier classified as dominant under this section shall file an original and two copies of each report required by paragraphs (c)(3), (c)(4), and (c)(5) of this section with the Chief, International Bureau. The carrier shall include with its filings separate computer diskettes for the reports required by paragraphs (c)(3) and (c)(5), in the format specified by the § 43.61 and § 43.82 filing manuals, respectively. The carrier shall also file one paper copy of these reports, accompanied by the appropriate computer diskettes, with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of § 63.10(c).

3. § 63.11 is revised to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that have or propose to acquire an affiliation with a foreign carrier.

(a) Any carrier authorized to provide international communications service under this part shall notify the Commission sixty days prior to the consummation of either of the following acquisitions of direct or indirect controlling interests in or by foreign carriers:

(1) acquisition of a direct or indirect controlling interest in a foreign carrier (as defined in § 63.18(h)(1)(ii)) by the authorized carrier, or by any entity that directly or indirectly controls the authorized carrier, or that directly or indirectly owns more than 25 percent of the capital stock of the authorized carrier; or

(2) acquisition of a direct or indirect interest in the capital stock of the authorized carrier by a foreign carrier or by an entity that directly or indirectly controls a foreign carrier where the interest would create an affiliation within the meaning of § 63.18(h)(1)(i)(B).

(b) Any carrier authorized to provide international communications service under this part that becomes affiliated with a foreign carrier within the meaning of § 63.18(h)(1) that has not previously notified the Commission pursuant to this section or § 63.18 shall notify the Commission within thirty days after acquiring the affiliation. In particular, acquisition by an authorized carrier (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the authorized carrier) of a direct or indirect interest in a foreign carrier that is greater than 25 percent but not controlling is subject to this paragraph but not to paragraph (a).

(c) The notification required under paragraphs (a) and (b) of this section shall contain a list of the affiliated foreign carriers named in paragraphs (a) and (b) of this section and shall state individually the country or countries in which the foreign carriers are authorized to provide telecommunications services to the public. It shall additionally specify which, if any, of these countries is a Member of the World Trade Organization; which, if any, of these countries the U.S. carrier is authorized to serve under this part; what services it is authorized to provide to each such country; and the FCC File No. under which each such authorization was granted. The notification shall certify to the information specified in this paragraph.

(1) The carrier also should specify, where applicable, those countries named in paragraph (c) of this section for which it provides a specified international communications service solely through the resale of the international switched services of U.S. facilities-based carriers with which the resale carrier does not have an affiliation. Such an affiliation is defined in § 63.18(h)(1)(i), except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."

(2) The carrier shall also submit with its notification:

(i) The ownership information as required to be submitted pursuant to § 63.18(h)(2); and

(ii) A "special concessions" certification as required to be submitted pursuant to § 63.18(i).

(d) In order to retain non-dominant status on the affiliated route, the carrier notifying the Commission of a foreign carrier affiliation under paragraph (a) or (b) of this section should provide information to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(e) After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within 14 days of the public notice.

(1) In the case of a notification filed under paragraph (a) of this section, the Commission, if it deems it necessary, will by written order at any time before or after the submission of public comments impose dominant carrier regulation on the carrier for the affiliated routes based on the provisions of § 63.10.

(2) The Commission will, unless it notifies the carrier in writing within 30 days of issuance of the public notice that the investment raises a substantial and material question of fact as to whether the investment serves the public interest, convenience and necessity, presume the investment to be in the public interest. If notified that the investment raises a substantial and material question, then the carrier shall not consummate the planned investment until it has filed an application under § 63.18 and submitted the information specified under § 63.18(h)(5) or (6) as applicable, and § 63.18(h)(7) and (8), as applicable, and the Commission has approved the application by formal written order.

(f) All authorized carriers are responsible for the continuing accuracy of certifications with regard to affiliations with foreign carriers made under this section and under § 63.18. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible, and in any event within thirty days, file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided, *except that* the carrier shall immediately inform the Commission if at any time the representations in the "special concessions" certification provided under paragraph (c)(2)(ii) of this section or § 63.18(i) are no longer true. *See* § 63.18(i). This information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10.

Note to § 63.11: "Control" as used in this section includes actual working control in whatever manner exercised and is not limited to majority stock ownership.

4. § 63.12 is revised to read as follows:

§ 63.12 Processing of international Section 214 applications.

(a) Except as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 shall be granted by the Commission 35 days after the date of public notice listing the application as accepted for filing.

(b) Issuance of public notice of the grant shall be deemed the issuance of Section 214 certification to the applicant, which may commence operation on the 36th day after the date of public notice listing the application as accepted for filing, but only in accordance with the operations proposed in its application and the rules, regulations, and policies of the Commission.

(c) The streamlined processing procedures provided by paragraphs (a) and (b) of this section shall not apply where:

(1) The applicant has an affiliation within the meaning of § 63.18(h)(1)(i) with a foreign carrier in a destination market, and the Commission has not yet made a determination as to whether that foreign carrier lacks sufficient market power in that destination market to affect competition adversely in the U.S. market, unless the applicant clearly demonstrates in its application at least one of the following:

(i) The applicant qualifies for a presumption of non-dominance under § 63.10(a)(3);

(ii) The affiliated destination market is a WTO Member country and the applicant qualifies for a presumption of non-dominance under § 63.10(a)(4); or

(iii) The affiliated destination market is a WTO Member country and the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10, without prejudice to its right to petition for reclassification at a later date; or

(2) The applicant has an affiliation within the meaning of § 63.18(h)(1)(i) with a dominant U.S. carrier whose international switched or private line services the applicant seeks authority to resell (either directly or indirectly through the resale of another reseller's services), unless the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10 (without prejudice to its right to petition for reclassification at a later date); or

(3) The applicant seeks authority to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of switched services over private lines; or

(4) The application is formally opposed by a pleading meeting the following criteria:

(i) The caption and text of the pleading make it unmistakably clear that the pleading is intended to be a formal opposition;

(ii) The pleading is served upon the other parties to the proceeding; and

(iii) The pleading is filed within the time period prescribed for the filing of objections or comments; or

(5) The Commission has informed the applicant in writing, within 28 days after the date of public notice accepting the application for filing, that the application is not eligible for streamlined processing under this section.

(d) Any complete application that is subject to paragraph (c) of this section will be acted upon only by formal written order, and operation for which such authorization is sought may not commence except in accordance with such order. The Commission will issue public notice that the application is ineligible for streamlined processing. Within 90 days of the public notice, the Commission will issue an order acting upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

5. § 63.13 is revised to read as follows:

§ 63.13 Procedures for modifying regulatory classification of U.S. international carriers from dominant to non-dominant.

Any party that desires to modify its regulatory status from dominant to non-dominant for the provision of particular international communications services on a particular route should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

6. § 63.14 is revised to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

(a) Any carrier authorized to provide international communications service under this part shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, as described in paragraph (c) of this section, and from agreeing to accept special concessions in the future. For purposes of this section, "foreign carrier" is defined in § 63.18(h)(1)(ii).

(b) For purposes of this section and §§ 63.11(c)(2)(ii) and 63.18(l), a special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of basic telecommunications services where the arrangement is not offered to similarly situated U.S.-licensed carriers and involves:

(1) Operating agreements for the provision of basic services;

(2) Distribution arrangements or interconnection arrangements, including pricing, technical specifications, functional capabilities, or other quality and operational characteristics, such as provisioning and maintenance times; or

(3) Any information, prior to public disclosure, about a foreign carrier's basic network services that affects either the provision of basic or enhanced services or interconnection to the foreign country's domestic network by U.S. carriers or their U.S. customers.

(c) A U.S. carrier that seeks to enter a special concession with a foreign carrier bears the burden of submitting information, as part of the requirement to file the agreement with the Commission pursuant to § 43.51, sufficient to demonstrate that the foreign carrier lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. If the U.S. carrier makes a showing that the foreign carrier lacks 50 percent market share in the international transport and the local access markets on the foreign end of the route, the U.S. carrier will presumptively be allowed to agree to accept the special concession.

(d) Any party that seeks to defeat the presumption in paragraph (c) of this section shall bear the burden of proof upon any issue it raises as to the ability of the foreign carrier to affect competition adversely in the U.S. market.

7. § 63.17 is amended by revising paragraph (b) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(b) Except as provided in paragraph (b)(4) of this section, a U.S. common carrier, whether a reseller or facilities-based carrier, may engage in "switched hubbing" to countries for which the Commission has not authorized the provision of switched basic services over private lines provided the carrier complies with the following conditions:

(1) U.S.-outbound switched traffic shall be routed over the carrier's authorized U.S. international private lines to a country for which the Commission has authorized the provision of switched services over private lines (i.e., the "hub" country), and then forwarded to the third country only by taking at published rates and reselling the international message telephone service (IMTS) of a carrier in the hub country;

(2) U.S.-inbound switched traffic shall be carried to a country for which the Commission has authorized the provision of switched services over private lines (i.e., the "hub" country) as part of the IMTS traffic flow from a third country and then terminated in the United States over U.S. international private lines from the hub country;

(3) U.S. common carriers that route U.S.-billed traffic via switched hubbing shall tariff their service on a "through" basis between the United States and the ultimate point of origination or termination;

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(6).

8. § 63.18 is amended to revise paragraphs (e), (h) and (i) and to add new paragraph (k) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) One or more of the following statements, as pertinent:

(1) If applying for authority to acquire interests in facilities previously authorized by the Commission in order to provide international basic switched, private line, data, television and business services to all international points, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to the terms and conditions of paragraph (e)(1) of this section.

(ii) Comply with the following terms and conditions:

(A) Authority to provide services to all international points under this part extends to those countries for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If an applicant is affiliated with a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)), the applicant shall not commence service on any such route until it receives specific authority to do so under paragraph (e)(6) of this section.

(B) The applicant may only provide service using half-circuits on appropriately licensed U.S. common and non-common carrier facilities (under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. 34 et al.) provided that these facilities do not appear on an exclusion list published by the Commission and any necessary overseas connecting facilities. Applicants may not use non-U.S. licensed facilities unless and until the Commission specifically approves their use and so indicates on the exclusion list, and only then for service to the countries indicated thereon.

(C) The applicant may provide service to any country not included on an exclusion list published by the Commission.

(D) The applicant may provide international basic switched, private line, data, television and business services.

(E) The authority granted under this paragraph shall be subject to all Commission rules and regulations and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See § 63.12.

(2) If applying for authority to resell the international services of authorized U.S. common carriers for the provision of international basic switched, private line, data, television and business services to all international points, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to the terms and conditions of § 63.18(e)(2).

(ii) Comply with the following terms and conditions:

(A) Authority to provide resold services to all international points under this part extends to those countries and services for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstances, in which case an applicant shall not commence service until it receives specific authority to do so under paragraph (e)(6) of this section:

(*1*) An application to provide switched resold services to a non-WTO Member country where the applicant is affiliated with a foreign carrier; and

(*2*) An application to resell private line services to a destination market where the applicant is affiliated with a foreign carrier and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)).

(B) The applicant may resell the international services of any authorized common carrier, except affiliated carriers regulated as dominant on the route to be served, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points;

(C) The applicant may resell private line services for the provision of international switched basic services only in circumstances where the Commission has specifically authorized the provision of switched basic services over private lines to the particular country at the foreign end of the private line. In making determinations about particular destination countries, the Commission will follow the policies adopted in IB Docket Nos. 96–261 and 97–142 (these documents are available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov). The Commission will provide public notice of its decisions to authorize the provision of switched basic services over private lines to particular countries.

(D) The authority granted under this paragraph shall be subject to all Commission rules and regulations, including the limitation in § 63.21 on the use of private lines for the provision of switched services, and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See §§ 63.12, 63.21.

(3) If applying for authority to provide international switched basic services over resold private lines between the United States and a WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines, the applicant shall demonstrate either that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 or that the country affords resale opportunities equivalent to those available under U.S. law. If applying for authority to provide international switched basic services over resold private lines between the United States and a non-WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines, the applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 and that the country affords resale opportunities equivalent to those available under U.S. law. With regard to showing that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral or multilateral agreements between the administrations involved. Parties must demonstrate that the foreign country at the other end of the private line provides U.S.-based carriers with:

(i) The legal right to resell international private lines, interconnected at both ends, for the provision of switched services;

(ii) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

(iii) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(iv) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

(4) Any carrier authorized under this section to acquire and operate international private line facilities other than through resale may use those private lines to provide switched basic services only in circumstances where the Commission has previously authorized the provision of switched services over private lines to the particular country at the foreign end of the private line. The Commission will provide public notice of its decisions to authorize the provision of switched services over private lines to particular countries pursuant to its policies adopted in IB Docket Nos. 96–261 and 97–142. This provision is subject to the following exceptions and conditions:

(i) The applicant shall not initiate such service on a particular route absent a grant of specific authority under paragraph (e)(6) of this section in circumstances where the applicant is affiliated with a carrier in the country at the foreign end of the private line and the Commission has not determined that the foreign carrier lacks sufficient market power in the country at the foreign end of the private line to affect competition adversely in the U.S. market. See § 63.10(a).

(ii) The applicant is subject to all applicable Commission rules and regulations, including the limitation § 63.21 on the use of private lines for the provision of switched services, and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See §§ 63.12, 63.21.

(A) Except as provided in paragraph (e)(4)(ii)(B) of this section, any carrier that seeks to provide international switched basic services over its authorized private line facilities between the United States and a WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 or that the country affords resale opportunities equivalent to those available under U.S. law. With regard to showing that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include the information required by paragraph (e)(3) of this section.

(B) No formal application is required under paragraph (e)(4) of this section in circumstances where the carrier's previously authorized private line facility is interconnected to the public switched network only on one end—either the U.S. or the foreign end—and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(5) If applying for authority to acquire facilities through the transfer of control of a common carrier holding international Section 214 authorization, or through the assignment of another carrier's existing authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Paragraph (g) of this section is not applicable, and only the transferee/assignee needs to complete paragraphs (h) through (k) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(6) If applying for authority to acquire facilities or to provide services not covered by § 63.18(e) (1) through (5), the applicant shall provide a description of the facilities and services for which it seeks authorization. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization. Applicants for new submarine cable facilities also shall include a list of the proposed owners of the cable, their voting interests and ownership interests by segment in the cable.

* * * * *

(h) A certification as to whether or not the applicant is, or has an affiliation with, a foreign carrier.

(1) The certification shall state with specificity each foreign country in which the applicant is, or has an affiliation with, a foreign carrier. For purposes of this certification:

(i) Affiliation is defined to include:

(A) A greater than 25 percent ownership of capital stock, or controlling interest at any level, by the applicant, or by any entity that directly or indirectly controls or is controlled by it, or that is under direct or indirect common control with it, in a foreign carrier or in any entity that directly or indirectly controls a foreign carrier; or

(B) A greater than 25 percent ownership of capital stock, or controlling interest at any level, in the applicant by a foreign carrier, or by any entity that directly or indirectly controls or is controlled by a foreign carrier, or that is under direct or indirect common control with a foreign carrier; or by two or more foreign carriers investing in the applicant in the same manner in circumstances where the foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of basic international telecommunications services in the United States. A U.S. carrier also will be considered to be affiliated with a foreign carrier where the foreign carrier controls, is controlled by, or is under common control with a second foreign carrier already found to be affiliated with that U.S. carrier under this section.

(ii) Foreign carrier is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC–88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(2) In support of the required certification, each applicant shall also provide the name, address, citizenship and principal businesses of its ten percent or greater direct and indirect shareholders or other equity holders and identify any interlocking directorates.

(3) Each applicant that proposes to acquire facilities through the resale of the international switched or private line services of another U.S. carrier shall additionally certify as to whether or not the applicant has an affiliation with the U.S. carrier(s) whose facilities-based service(s) the applicant proposes to resell (either directly or indirectly through the resale of another reseller's service). For purposes of this paragraph, affiliation is defined as in paragraph (h)(1)(i) of this section, except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."

(4) Each applicant and carrier authorized to provide international communications service under this part is responsible for the continuing accuracy of the certifications required by paragraphs (h)(1) through (3) of this section. Whenever the substance of any such certification is no longer accurate, the applicant/carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10.

(5) Any applicant that seeks to operate as a U.S. facilities-based international carrier to a particular country and that is a foreign carrier in that country, or directly or indirectly controls a foreign carrier in that country, or has an affiliation within the meaning of paragraph (h)(1)(i)(B) of this section with a foreign carrier in that country shall provide the following information:

(i) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(ii) The applicant's affiliated foreign carrier lacks sufficient market power in the named foreign country to affect competition adversely in the U.S. market; or

(iii) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's international facilities-based market. An effective competitive opportunities demonstration should address the following factors:

(A) The legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(B) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services;

(C) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(*1*) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(*2*) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(*3*) Protection of carrier and customer proprietary information;

(D) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(E) Any other factors the applicant deems relevant to its demonstration.

(6) Any applicant that proposes to resell the international switched or non-interconnected private line services of another U.S. carrier for the purpose of providing international communications services to the named foreign country and that is a foreign carrier in that country, or directly or indirectly controls a foreign carrier in that country, or has an affiliation within the meaning of paragraph (h)(1)(i)(B) of this section with a foreign carrier in the destination country shall provide the following information (see also paragraph (h)(7) of this section):

(i) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(ii) The applicant's affiliated foreign carrier lacks sufficient market power in the named foreign country to affect competition adversely in the U.S. market; or

(iii) The named foreign country provides effective competitive opportunities to U.S. carriers to resell international switched or non-interconnected private line services, respectively. An effective competitive opportunities demonstration should address the following factors:

(A) The legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(B) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for the provision of the relevant resale service;

(C) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(*1*) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(*2*) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(*3*) Protection of carrier and customer proprietary information;

(D) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(E) Any other factors the applicant deems relevant to its demonstration.

(7) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international communications services to the named foreign country and that is a foreign carrier in that country or has an affiliation with a foreign carrier in that country shall either provide in its application a showing that would satisfy § 63.10(a)(3) or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

(8) With respect to regulatory classification under § 63.10, each applicant that certifies that it has an affiliation with a foreign carrier in a named foreign country and that desires to be regulated as non-dominant for the provision of particular international communications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(i) Each applicant shall certify that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and will not enter into such agreements in the future. This certification shall be viewed as an ongoing representation to the Commission, and applicants/carriers shall immediately inform the Commission if at any time the representations in their certifications are no longer true. Failure to so inform the Commission will be deemed a material misrepresentation to the Commission. For purposes of this section, "special concession" is defined in § 63.14(b) and "foreign carrier" is defined in paragraph (h)(1)(ii) of this section.

* * * * *

(k) If the applicant desires streamlined processing pursuant to

§ 63.12, a statement of how the application qualifies for streamlined processing.

9. § 63.21 is amended to revise paragraph (a); to redesignate paragraph (e) as paragraph (h); and to add paragraphs (e), (f), and (g) to read as follows:

§ 63.21 Conditions applicable to international Section 214 authorizations.

* * * * *

(a) Carriers may not use their authorized facilities-based or resold international private lines for the provision of switched basic services between the United States and a WTO Member country unless and until the Commission has determined that the country at the foreign end of the private line provides equivalent resale opportunities or that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 (this document is available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov). Carriers may not use their authorized facilities-based or resold international private lines for the provision of switched basic services between the United States and a non-WTO Member country unless and until the Commission has determined that the country at the foreign end of the private line provides equivalent resale opportunities and that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261. (*See* § 63.18(e)(3)–(4).) If at any time the Commission finds, after an initial determination of compliance for a particular country, that the country no longer provides equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, carriers shall comply with enforcement actions taken by the Commission. This condition shall not apply to a carrier's use of its authorized facilities-based private lines to provide service as described in § 63.18(e)(4)(ii)(B).

* * * * *

(e) Authorized carriers may not access or make use of specific U.S. customer proprietary network information that is derived from a foreign network unless the carrier obtains approval from that U.S. customer. In seeking to obtain approval, the carrier must notify the U.S. customer that the customer may require the carrier to disclose the information to unaffiliated third parties upon written request by the customer.

(f) Authorized carriers may not receive from a foreign carrier any proprietary or confidential information pertaining to a competing U.S. carrier, obtained by the foreign carrier in the course of its normal business dealings, unless the competing U.S. carrier provides its permission in writing.

(g) The Commission reserves the right to review a carrier's authorization, and, if warranted, impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation of Part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k). Interpret or apply 47 U.S.C. 201, 218, 226, 228, 254(k), 276 unless otherwise noted.

2. § 64.1001 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 64.1001 International settlements policy and modification requests.

* * * * *

(b) If the accounting rate referred to in § 43.51(e)(1) of this chapter is lower than the accounting rate in effect in the operating agreement of another carrier providing service to or from the same foreign point, and there is no modification in the other terms and conditions referred to in § 43.51(e)(1) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(c) If the amendment referred to in § 43.51(e)(2) of this chapter is a simple reduction in the accounting rate, and there is no modification in the other terms and conditions referred to in § 43.51(e)(2) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(d) If the operating agreement or amendment referred to in §§ 43.51(e)(1) and (e)(2) of this chapter is not subject to notification under paragraphs (b) and (c) of this section, the carrier must file a modification request under paragraph (f) of this section.

* * * * *

3. § 64.1002 is revised to read as follows:

§ 64.1002 Alternative settlement arrangements.

(a) A communications common carrier engaged in providing switched voice, telex, telegraph, or packet switched service between the United States and a foreign point may seek approval to enter into an operating agreement with a foreign telecommunications administration containing an alternative settlement arrangement that does not comply with the requirements of § 43.51(e)(1) and § 63.14 of this chapter and § 64.1001 by filing a petition for declaratory ruling in compliance with the requirements of this section.

(b) A petition for declaratory ruling must contain the following:

(1) Information to demonstrate that:

(i) The alternative settlement arrangement is on a route between the United States and a World Trade Organization Member; or

(ii) For an alternative settlement arrangement on a route between the United States and a non-World Trade Organization Member:

(A) The Commission has made a previous determination that the effective competitive opportunities test in § 63.18(h)(5)(iii) of this chapter has been satisfied on the route covered by the alternative settlement arrangement; or

(B) The effective competitive opportunities test in § 63.18(h)(5)(iii) of this chapter is satisfied on the route covered by the alternative settlement arrangement; or

(iii) The alternative settlement arrangement is otherwise in the public interest.

(2) A certification as to whether the alternative settlement arrangement affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies.

(3) A certification as to whether the parties to the alternative settlement arrangement are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.

(4) A copy of the alternative settlement arrangement if it affects more than 25 percent of the outbound traffic or 25 percent of the inbound traffic on the route to which the alternative settlement arrangement applies, or if it is between parties that are affiliated, as defined in § 63.18(h)(1)(i) of this chapter, or that are involved in a non-equity joint venture affecting the provision of basic services on the route to which the alternative settlement arrangement applies.

(5) A summary of the terms and conditions of the alternative settlement arrangement if it does not come within the scope of paragraph (b)(4) of this section. However, upon request by the International Bureau, a full copy of such alternative settlement arrangement must be forwarded promptly to the International Bureau.

(c) If the petition for declaratory ruling contains a certification under paragraph (b)(1)(i) of this section that the proposed alternative settlement arrangement is for service on a route between the United States and a World Trade Organization Member, a party may oppose the petition under paragraph (f) of this section with a showing that the participating carrier on the foreign end of the route does not have multiple (more than one) international facilities-based competitors. In such a case, the petitioning party may make a showing under paragraph (b)(1)(iii) of this section, pursuant to paragraph (g) of this section.

(d) An alternative settlement arrangement filed for approval under this section cannot become effective until the petition for declaratory ruling required by paragraph (a) of this section has been granted under paragraph (f) of this section.

(e) On the same day the petition for declaratory ruling has been filed, the filing carrier must serve a copy of the petition on all carriers providing the same or similar service with the foreign carrier identified in the petition.

(f) All petitions for declaratory ruling shall be subject to a 21-day pleading period for objections or comments, commencing the day after the date of public notice listing the petition as accepted for filing. A petition for declaratory ruling shall be deemed granted as of the 28th day without any formal staff action provided that:

(1) The petition is not formally opposed by a pleading meeting the following criteria:

(i) The caption and text of the pleading make it unmistakably clear that the pleading is intended to be a formal opposition;

(ii) The pleading is served upon the other parties to the proceeding; and

(iii) The pleading is filed within the time period prescribed; or

(2) The International Bureau has not notified the filing carrier that grant of the petition may not serve the public interest and that implementation of the proposed alternative settlement arrangement must await formal staff action on the petition.

(g) If objections or comments are filed, the petitioning carrier may file a response pursuant to § 1.45 of this chapter. Petitions that are formally opposed must await formal action by the International Bureau before the proposed alternative settlement arrangement may be implemented.

[FR Doc. 97–32013 Filed 12–5–97; 10:03 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[DA 97–2528]

Petitions for Waiver of the Four-Digit Carrier Identification Code (CIC) Implementation Schedule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 3, 1997, the Network Services Division of the Commission's Common Carrier Bureau, released an Order granting extensions to certain local exchange carriers (LECs) of the January 1, 1998 deadline for implementing four-digit carrier code identification codes (CIC). The Order is intended to respond to waiver requests received from certain LECs.

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION:

Adopted: December 2, 1997;
Released: December 3, 1997.

I. Introduction

Carrier identification codes (CICs) are numeric codes that enable local exchange carriers (LECs) providing interstate interexchange access services to identify the interstate interexchange carrier (IXC) that the originating caller wishes to use to transmit its interstate call.[1] LECs use the CICs to route traffic to the proper IXC and to bill for the interstate access service provided. CICs facilitate competition by enabling callers to use the services of telecommunications service providers either by presubscription or by dialing a carrier access code, or CAC, which incorporates that carrier's unique Feature Group D CIC.[2] Originally, CICs were unique three-digit codes (XXX) and CACs were five-digit codes incorporating the CIC (10XXX).

2. On April 11, 1997, in the *CICs Second Report and Order*,[3] the Commission approved an industry plan to expand Feature Group D CICs from three to four digits on the ground that it was a reasonable method of meeting future demand for CICs as the supply of three-digit codes was exhausted.[4] The industry agreed that as the expansion from three to four-digit CICs occurred, and as carriers replaced their five-digit CACs with seven-digit CACs, a transition, or permissive dialing period, was needed. The industry, however, was unable to agree on the length of the transition.[5] In its 1994 *CICs NPRM*, the Commission proposed a six-year period.[6] In the *CICs Second Report and Order*, however, because of the rapidly depleting pool of available three-digit

[1] Most access providers are incumbent local exchange carriers (incumbent LECs) that provide access customers with circuits that interconnect to the local carrier's public switched telephone network. Commission rules require that "interstate access services should be made available on a non-discriminatory basis and, as far as possible, without distinction between end user and IC [interexchange carrier] customers." Petition of First Data Resources, Inc., Regarding the Availability of Feature Group B Access Service to End Users, *Memorandum Opinion and Order*, 1986 WL 291786 (rel. May 28, 1986) at para. 13. Typical access customers include interexchange carriers, wireless carriers, competitive access providers, and large corporate users.

[2] Feature Group D access, or "equal access," is known in the industry as "One-plus" ("1+") dialing. This type of access allows calls to be routed directly to the caller's carrier of choice. Feature Group D/equal access offers features, including presubscription, not generally available through other forms of access. In 1988, the Industry Carriers Compatibility Forum (ICCF), operating under the Alliance for Telecommunications Industry Solutions (ATIS), Carrier Liaison Committee (CLC), began to develop a two-part plan to convert and expand three-digit Feature Group D CICs to four digits. The second part of the plan, originally scheduled to occur in the third quarter of 1993, contemplated expansion of three-digit Feature Group D CICs to four digits and eventual elimination of the 10XXX CAC format. *See* Letter of October 13, 1989, from G.J. Handler, Vice President, Network Planning, Bell Communications Research (Bellcore), to Richard M. Firestone, Chief, Common Carrier Bureau, Federal Communications Commission at 2 (Handler Letter). The ICCF's plan was published in 1991. *See Expansion of Carrier Identification Code Capacity for Feature Group D (FGD)*, Bellcore Technical Reference TR–NWT–001050, Issue 1 (April 1991) (ICCF Expansion Plan, April 1991). In 1994, the expansion of Feature Group D CICs was scheduled for the first quarter of 1995. *See* Administration of the North American Numbering Plan, *Notice of Proposed Rulemaking*, CC Docket No. 92–237, 9 FCC Rcd 2068, 2076 (1994) (59 FR 24103 (5/10/94) (*CICs NPRM*). In January 1997, the ICCF became part of the Network Interconnection Interoperability Forum (NIIF), which also operates under the auspices of the CLC.

[3] Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Second Report and Order*, CC Docket No. 92–237, FCC 97–125 (released April 11, 1997) (62 FR 19056 (April 18, 1997)) (*CICs Second Report and Order*).

[4] *See CICs Second Report and Order* at para. 28.

[5] *See* Handler Letter at 2.

[6] *See CICs NPRM*, 9 FCC Rcd at 2076–77.

CICs, the Commission decided to end the transition on January 1, 1998. The Commission also denied requests to "grandfather" (*i.e.*, to permit carriers to continue to use) previously assigned three-digit CICs that are in use at the end of the transition.[7] The Commission's decisions were intended to advance the pro-competitive objectives of the Communications Act of 1934 (the Communications Act or the Act),[8] as amended by the Telecommunications Act of 1996 (1996 Act).[9]

3. On October 22, 1997, in the *CICs Order on Reconsideration*,[10] the Commission modified the decision in the *CICs Second Report and Order* regarding the length of the transition during which three and four-digit Feature Group D CICs co-exist, and created a "two-step" end to the transition to four-digit CICs. Under the *CICs Order on Reconsideration*, all LECs that provide equal access must have completed switch changes to recognize four-digit CICs by January 1, 1998, the end of the first phase. The second phase, which ends on June 30, 1998, is intended to allow interexchange carriers time to prepare their networks for, and educate their customers about, the replacement of three-digit CICs by four-digit CICs. After June 30, 1998, only four-digit CICs and seven-digit CACs will be recognized. The Commission also affirmed its decision in the *CICs Second Report and Order* not to grandfather the use of three-digit CICs and five-digit CACs that are in use during the transition.

4. Several small LECs have filed petitions for waiver of the *CICs Second Report and Order*'s January 1, 1998 conversion deadline.[11] Hardy requests an extension until April 30, 1998; Pierce requests an extension until May 1, 1998; Northeast, Pioneer, Hartington, and Jefferson request extensions until June 30, 1998; Hartman requests an extension until July 1, 1998; and Clarks, Eustis/Home, and Henderson request extensions until January 1, 2000. The LECs generally argue that extensions are warranted because the operating system software they need to upgrade to four-digit CIC capability is not currently available and is very costly.

5. In this Order, we conclude that, for the reasons discussed below: (1) The petitions of Hardy, Pierce, Northeast, and Pioneer should be granted, by extending for them the switch conversion deadline for four-digit CIC capability for the time periods requested; (2) the petitions of Hartman, Clarks, Eustis/Home, and Henderson should be granted in part, by extending for them the switch conversion deadline for four-digit CIC capability, but only until June 30, 1998, and should be denied in part, to the extent they request extensions beyond that date; and (3) the petitions of Hartington and Jefferson should be dismissed as moot.

II. Petitions

A. Request for Extension Until April 30, 1998

6. Hardy, an incumbent LEC serving rural areas of West Virginia,[12] that has provided interLATA equal access since 1992,[13] requests an extension of the switch conversion deadline until April 30, 1998. Hardy claims that it is technically infeasible for it to comply with the January 1, 1998 deadline. Hardy currently operates an Alcatel E-10-Five switch. Hardy asserts that the software required to accept four-digit Feature Group D CICs was not available when it purchased the interLATA equal access software from Altcatel in March 1990.[14] Hardy asserts that Alcatel has notified Hardy that it will not provide the software upgrades for four-digit CICs.[15] Hardy explains that it needs to comply with the Rural Utilities Service (RUS) requirements (a process it started in early 1997) to deploy a new switch that would include, among other things, four-digit CIC capability. Hardy asserts that the requested extension of time until April 30, 1998, will enable it to continue its efforts to select, purchase, and deploy a switch capable of providing the four-digit CIC function.[16]

B. Request for Extension until May 1, 1998

7. Pierce, a small, rural LEC providing equal access, requests an extension of the switch conversion deadline until May 1, 1998.[17] Pierce claims that it is technically and economically infeasible for it to comply with the January 1, 1998 deadline.[18] Pierce operates two Northern Telecom (Nortel) switches, using operating systems software release version 404.41, which does not have four-digit CIC capability.[19] Pierce asserts that since May 1997, it has made good faith efforts to purchase an updated release, but that Nortel has not responded to confirm either price or acceptance of the order for the software.[20] Pierce asserts that it is currently trying to negotiate with Nortel. Once contracts are signed, a lead time of 180 days is expected, which Pierce claims would mean a mid-1998 implementation date.[21] Pierce asserts that the Commission's grant of a waiver in the present case is consistent with Commission precedent recognizing the technical and economic burdens imposed on small and rural LECs in implementing software upgrades and granting waivers when those burdens are demonstrated.[22]

[7] *See CICs Second Report and Order* at para. 46.

[8] 47 U.S.C. §§ 151 *et seq.*

[9] Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996); *see* Joint Explanatory Statement of the Committee of the Conference, H.R. Rep. No. 458, 104th Cong., 2d Sess. 113.

[10] Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Order on Reconsideration, Order on Application for Review, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 92–237, FCC 97–386 (released October 22, 1997) (62 FR 55762 (October 28, 1997)) (*CICs Order on Reconsideration*). Prior to the release of the *CICs Order on Reconsideration*, on October 9, 1997, the Commission issued a *Further Notice of Proposed Rulemaking* in this docket. *See* Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Further Notice of Proposed Rulemaking and Order*, CC Docket No. 92–237, FCC 97–364 (released October 9, 1997) (62 FR 54817 (October 22, 1997) (*CICs FNPRM*). The issues raised in the *CICs FNPRM* are unrelated to the waiver petitions we address here.

[11] *See Petition for Limited Waiver of Clorks Telecommunications Co.*, CC Docket No. 92–237, October 2, 1997 (*Clorks Petition*); *Joint Petition for Limited Waiver of Eustis Telephone Exchange, Inc. and Home Telephone Company of Nebraska*, CC Docket No. 92–237, October 2, 1997 (*Eustis/Home Petition*); *Petition for Limited Waiver of Hardy Telecommunications, Inc.*, CC Docket No. 92–237, September 23, 1997 (*Hardy Petition*); *Response to Inquiry by Hardy Telecommunications, Inc.*, CC Docket No. 92–237, September 29, 1997 (*Hardy Response to Inquiry*); *Petition for Waiver of Hartington Telecommunications Co., Inc.*, CC Docket No. 92–237, October 9, 1997 (*Hartington Petition*); *Errata to Petition for Waiver of Hartington Telecommunications Co., Inc.*, CC Docket No. 92–237, October 10, 1997 (*Hartington Errata to Petition*); *Petition for Limited Waiver of Hartman Telephone Exchanges, Inc.*, CC Docket No. 92–237, October 6, 1997 (*Hartman Petition*); *Petition for Limited Waiver of Henderson Telephone Company*, CC Docket No. 92–237, October 2, 1997 (*Henderson Petition*); *Petition for Waiver of Jefferson Telephone Company*, CC Docket No. 92–237, October 23, 1997 (*Jefferson Petition*); *Petition for Limited Waiver of Pierce Telephone Company, Inc.*, CC Docket No. 92–237, November 5, 1997 (*Pierce Petition*); *Petition for Waiver of Northeast Nebraska Telephone Company*, CC Docket No. 92–237, November 5, 1997 (*Northeast Petition*); *Petition for Limited Waiver of Pioneer Telephone Cooperative, Inc.*, CC Docket No. 92–237, November 14, 1997 (*Pioneer Petition*).

[12] Hardy serves approximately 2,600 access lines. *See Hardy Petition* at 1.

[13] *See Hardy Response to Inquiry.*

[14] *See id.*

[15] *See Hardy Petition* at 2–3.

[16] *See id.*

[17] *See Pierce Petition* at 1 and 3. Pierce serves approximately 1,870 access lines. *See id.* at n.3.

[18] *See id.* at 1–2.

[19] *See id.* at 2.

[20] *See id.* at 3.

[21] *See id.*

[22] *See id.* at 3–4, *citing* Rules and Policies Regarding Calling Number Identification Service—Caller ID, *Order and Fourth Notice of Proposed Rulemaking*, CC Docket No. 91–281, 10 FCC Rcd 13796, 13808 (1995)(60 FR 63491 (December 11, 1995)) (*Caller ID Order*).

C. Requests for Extensions until June 30, 1998

8. Northeast, Pioneer, Hartington, and Jefferson, all rural LECs, request extensions of the switch conversion deadline until June 30, 1998. Northeast and Hartington serve Nebraska, Pioneer serves Oklahoma, and Jefferson serves South Dakota.[23] Hartington and Jefferson assert that they do not provide Feature Group D equal access, because they have never received a request for equal access.[24] Northeast asserts that since April 15, 1997, it has provided equal access in three of its 12 exchanges, notwithstanding that it has never received a request for equal access.[25] Pioneer asserts that all of its 77 end offices were converted to equal access by May 1, 1996.[26] Pioneer asserts that 65 of its exchanges, serving approximately 88 percent of its access lines, are four-digit CIC capable.[27] Pioneer's extension request, therefore, applies to the 12 non-conforming exchanges.[28] Northeast asserts that the switching equipment providing equal access in each of the three exchanges is not four-digit CIC capable at this time.[29] Northeast, Hartington, and Jefferson all assert that no IXCs with four-digit CICs have shown an interest in serving their exchange areas.[30] Each argues that, even it were to receive a request for equal access, the market it serves is small and the company would be allowed three years after a bona fide request to begin providing equal access.[31] Northeast, Hartington and Jefferson all assert that, for these reasons, granting their waiver requests would not thwart the Commission's policy goal of expansion of competition in the interexchange market.[32] Northeast, Hartington, and Jefferson indicate that they have demonstrated an intent to implement four-digit CIC capability as soon as practicable.[33]

Northeast asserts that it began negotiations to replace switching equipment at its three equal access exchanges shortly after the Commission released the April 1997 *CICs Second Report and Order*.[34] Northeast asserts that, after months of negotiations, it ordered new, four-digit CIC capable, switching equipment for two of the exchanges in October 1997.[35] Northeast asserts that the equipment is scheduled to be delivered by mid-December 1997, and installed by mid-February 1998.[36] Northeast asserts that negotiations are ongoing for the third exchange.[37] Northeast asserts that for this exchange, it expects that the new, four-digit CIC compliant switch will be ordered shortly after Northeast's next board meeting on November 18, 1997, delivered in early 1998, and installed during the first quarter of 1998.[38] Northeast also asserts that it interprets the recent *CICs Order on Reconsideration and Second Further Notice of Proposed Rulemaking* as not requiring Northeast to comply with the January 1, 1998 conversion deadline, because it has never received a bona fide request for equal access.[39] Northeast asserts, therefore, that it may not need to request a waiver of the January 1, 1998 conversion deadline, but states that it is doing so, out of an abundance of caution.[40]

Pioneer asserts that grant of its request will allow Pioneer to complete its network reconfiguration and deploy new switch facilities in the most rational and efficient manner. This will, in turn, benefit its customers, who will be spared the costs of an abrupt change in Pioneer's plan.[41] Pioneer states that in January 1995, it began a series of network-wide equipment upgrades to bring new services to its customers, including the four-digit CIC function. Pioneer asserts that upon issuance of the *CICs Second Report and Order*, it accelerated its network conversion to four-digit CICs, a process it had anticipated being completed by the year 2000, under the originally proposed six-year transition.[42] Pioneer contends that its conversion process was delayed when an area code split was ordered, beginning on November 1, 1997, affecting 62 of its 77 exchanges.[43] For the 12 exchanges for which it seeks an extension, Pioneer argues that it would be economically infeasible to meet the January 1, 1998 deadline.[44] After exploring all reasonable alternatives, Pioneer asserts that additional time is needed, until June 30, 1998, to convert these 12 exchanges. Pioneer notes that its request would ensure compliance when the permissive dialing period ends, and would, therefore, mean that the only IXCs affected by the grant of this waiver request would be those IXCs using new four-digit CICs.[45]

Hartington has entered into a contract with Nortel for the purchase of four-digit CIC compliant switching equipment, but claims that installation and testing of the new equipment may not occur until March 1998, at the earliest.[46] Like Clarks and Eustis/Home, Jefferson uses Nortel operating systems software release version 403.31. Jefferson asserts that it discovered that to achieve four-digit CIC capability, an upgrade costing approximately $100,000 would be necessary.[47] Jefferson also notes that the company is in the process of being sold, and expresses concern about spending $100,000 on switching upgrades.[48]

D. Request for Extension Until July 1, 1998

12. Hartman, a small LEC[49] serving Nebraska that has provided equal access since 1995, requests an extension of the switch conversion deadline until July 1, 1998.[50] Hartman uses Nortel operating systems software release version 405.10, and argues that, to obtain four-digit CIC

[23] Northeast operates 4,120 access lines in twelve exchanges. *See Northeast Petition* at 2. Hartington operates 1,600 access lines serving 3,000 people. *See Hartington Petition* at 2. Pioneer serves approximately 50,000 access lines through 77 end offices. *See Pioneer Petition* at 2. Jefferson operates 550 access lines serving 1,100 people. *See Jefferson Petition* at 2.

[24] Hartington asserts that it does not pass CICs in its signalling (*Hartington Petition* at 2) and that Hartington customers make long distance calls through Feature Group C dialing arrangements. If customers wish to use the services of an IXC other than AT&T for interLATA calls, they may use either a credit card service or Feature Group B dialing arrangement (*Hartington Errata to Petition*). Jefferson asserts that its customers connect with competing long distance carriers through Feature Group B and C dialing. *See Jefferson Petition* at 2.

[25] *See Northeast Petition* at 2. These three exchanges have a total of 1,149 access lines. *See id.*

[26] *See Pioneer Petition* at 2. Pioneer asserts that it began the equal access conversion process in 1991. *Id.*

[27] *Id.* at 3.

[28] *Id.* These exchanges are Apache, Arnett, Buffalo, Canton, Chester, Drummond, Fort Supply, Gage, Longdale, Quinlan, Shattuck, and Waynoka.

[29] *See Northeast Petition* at 2.

[30] *See Northeast Petition* at 5; *Hartington Petition* at 3–4; *Jefferson Petition* at 4.

[31] *See Jefferson Petition* at 5–6; *Hartington Petition* at 4; *Jefferson Petition* at 4. Jefferson also notes that this is particularly true given that IXCs have until June 30, 1998 to convert their own services to four-digit CICs. *See Jefferson Petition* at 5–6.

[32] *See Northeast Petition* at 5–6; *Hartington Petition* at 3–4; *Jefferson Petition* at 4.

[33] *See Northeast Petition* at 7; *Hartington Petition* at 5; *Jefferson Petition* at 6.

[34] *See Northeast Petition* at 2.

[35] *See id.* at 2–3.

[36] *See id.* at 3. Northeast asserts that installation of new switching equipment is a more complicated and lengthy process than installation of software upgrades. *See id.* at n.5.

[37] *See id.* at 3.

[38] *See Id.*

[39] *See id.* at 3–4, *citing CICs Order on Reconsideration* at n.75 and *CICs Second FNPRM* at para. 84.

[40] *See Northeast Petition* at 4.

[41] *See Pioneer Petition* at 9.

[42] *See id.* at 2–3.

[43] *Id.* at 3.

[44] *Id.* at 4.

[45] *Id.* at 4 and 9.

[46] *See Hartington Petition* at 2.

[47] *See Jefferson Petition* at 2 and n.3.

[48] *Id.* at 6.

[49] Hartman operates 450 access lines serving three exchanges on the Nebraska/Kansas border. *See Hartman Petition* at 3.

[50] *See id.* at 1.

capability, the company will need to upgrade this software and buy additional equipment.[51] Hartman asserts that, after months of negotiations, it has signed a contract with Nortel to upgrade to release 406.10, but argues that, because Nortel has been overwhelmed with upgrade requests, the delivery date for the upgrade is uncertain.[52] Hartman asserts that it has considered other manufacturers but has discovered that it would not be economical to purchase the equipment from them.[53] Like Pierce, Hartman refers to Commission precedent granting waivers when technical and economic burdens imposed on small and rural LECs in implementing software upgrades are demonstrated.[54]

E. Requests for Extension Until January 1, 2000

13. Clarks, Eustis/Home, and Henderson each request a two-year extension of the switch conversion deadline, until January 1, 2000. Each is a small LEC[55] that currently is providing equal access.[56] Each asserts that compliance with the January 1, 1998 conversion requirement is technically and economically infeasible because the operating system software needed to upgrade to four-digit CIC capability is not currently available and is very costly. None of the companies routinely performs upgrades to its Nortel switches, and each asserts that due to the large number of update requests, Nortel has a long waiting list of LECs seeking to obtain the new software releases.[57] Clarks and Eustis/Home both use Nortel operating systems software release version 403.31. They state that they have been considering upgrading to Nortel's operating systems software release version 410.10, but argue that the process is lengthy due to Nortel's long waiting list.[58] Eustis/Home asserts that it does not expect to receive the new release until mid-1998.[59] Henderson uses Nortel operating systems software release version 402.52. Henderson asserts that it expects a mid-1998 implementation, based on contract negotiations with Nortel. Henderson notes, however, that if it decides to purchase new equipment from another manufacturer, implementation could take several more months.[60] Like Pierce and Hartman, Clarks, Eustis/Home, and Henderson refer to Commission precedent granting waivers when technical and economic burdens imposed on small and rural LECs in implementing software upgrades are demonstrated.[61]

14. Clarks, Eustis/Home, and Henderson argue that to obtain four-digit CIC capability, they must upgrade software or hardware and purchase additional equipment. Clarks notes that it is considering purchasing a new switch, which requires completion of RUS requirements, followed by installation of the equipment. The total process assertedly would take 18–20 months.[62] Eustis/Home also argues that switch replacement would take 18–20 months.[63] Henderson asserts that it is making good faith efforts to purchase an updated release, but argues that Nortel has refused to deal with Henderson using the RUS contract, and negotiations are taking months.[64] Eustis/Home and Henderson assert that they have also consulted with Stromburg-Carlson and Mitel about updated releases.[65]

III. Discussion

15. The Commission may waive any provision of its rules, in whole or in part, if good cause is shown.[66] An applicant for waiver must demonstrate that special circumstances warrant a deviation from the general rule and that such deviation will serve the public interest.[67] In evaluating each petition for waiver before us here, we have weighed the following factors: the LEC's diligence in upgrading its switches; the availability from manufacturers of products required to accomplish the upgrade; and the impact of an extension of the conversion deadline on the IXCs served by the LEC's switches and on customers' ability to reach IXCs through CAC dialing.

16. *Requests for Extension of Hardy, Pierce, Northeast, Pioneer and Hartman.* We find that the petitions for waiver filed by Hardy, Pierce, Northeast, Pioneer, and Hartman demonstrate the special circumstances meriting a waiver of the January 1, 1998 conversion deadline. First, each has demonstrated that it is diligently working to upgrade or replace its switches. For example, Hardy initiated the RUS process to deploy a new switch with the four-digit CIC capability in early 1997, when it learned that its switch vendor does not provide software upgrades to implement four-digit CICs capability. Pierce has been working to purchase four-digit CIC capable upgrades since May 1997, shortly following the release of the *CICs Second Report and Order* establishing the January 1, 1998 deadline for LEC conversion to four-digit CICs. Similarly, Northeast states that it began negotiations to replace its switching equipment shortly after the release of the *CICs Second Report and Order* in April 1997. After months of negotiations, Northeast has now ordered new, four-digit CIC capable, switching equipment for two of its exchanges, expects to place an order for its third switch in November 1997, and anticipates installation of all of the required new equipment during the first quarter of 1998. Pioneer states that it began a series of network-wide equipment upgrades, that would include four-digit CIC capability, in January 1995 and accelerated that conversion following the release of the *CICs Second Report and Order.* Although its conversion process was delayed by an area code split, Pioneer requests an extension for only 12 of its 77 exchanges and only until the end of the permissive dialing period on June 30, 1998. Hartman indicates that it is making good faith efforts to purchase updated software; indeed, Hartman states that it has signed a contract with Nortel for an upgraded operating systems software release.

17. Second, based on their petitions, we conclude that Hardy, Pierce, Northeast, and Hartman have demonstrated that the product needed to accomplish the upgrade to their individual networks is not readily available from switch manufacturers, which has delayed their ability to meet the January 1, 1998 conversion deadline. In Hardy's case, Alcatel has notified it that it will not provide the software upgrades necessary to implement four-digit CIC capability. Thus, Hardy must select, purchase and deploy a new switch capable of providing the four-digit CIC function.

[51] *See id.* at 2–3.

[52] *Id.*

[53] *See id.*

[54] *See id.* at 4, *citing Caller Id Order, cited* at n.22, *supra.*

[55] Clarks and Henderson each serves 1000 access lines, and Eustis/Home combined serves 1300 access lines. *See Clarks Petition* at n.3; *Henderson Petition* at n.3; *Eustis/Home Petition* at n.3. Eustis and Home are commonly owned. *See Eustis/Home Petition* at 1.

[56] Clarks states that it has been providing equal access since 1989. Eustis/Home and Henderson do not indicate when they began providing equal access.

[57] *See Clarks Petition* at 3; *Eustis/Home Petition* at 3.

[58] *See Clarks Petition* at 3; *Eustis/Home Petition* at 3.

[59] *See Eustis/Home Petition* at 3.

[60] *See Henderson Petition* at 3.

[61] *See e.g., Clarks Petition* at 4, *citing Caller Id Order, cited* at n.22, *supra.*

[62] *See Clarks Petition* at 3.

[63] *See Eustis/Home Petition* at 3.

[64] *See Henderson Petition* at 3.

[65] *See Eustis/Home Petition* at 3.

[66] *See* 47 C.F.R. § 1.3.

[67] *Northeast Cellular Telephone Co.* v. *FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio* v. *FCC,* 418 F.2d 1153 (D.C. Cir. 1969).

Pierce has been unable to obtain from Nortel the product necessary to upgrade its Nortel switches. Pierce estimates that upgrades can be operational, however, 180 days after a contract with Nortel is signed. Northeast maintains that replacement switching equipment was purchased only after months of negotiations. Hartman asserts that, because Nortel has been overwhelmed with upgrade requests, the delivery date for its upgrade is uncertain. In Pioneer's case, although it does not claim that replacement switching equipment is unavailable, we note that Pioneer also is replacing its switching equipment, rather than implementing an upgrade to its existing equipment. Thus, we conclude that the absence of this claim is not dispositive of its petition.

18. Third, we conclude that the impact of an extension of the conversion deadline on the IXCs served by Hardy, Pierce, Northeast, Pioneer, and Hartman, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed by a denial of their petitions for waiver. Hardy, Pierce, Northeast, Pioneer, and Hartman are small, rural LECs serving a limited number of access lines. Hardy operates in West Virginia, serving 2,600 access lines. Pierce, a local exchange carrier in Nebraska, serves about 1,870 access lines. Northeast also operates in Nebraska, serving about 1,150 access lines. Hartman operates 450 access lines serving three exchanges on the Nebraska/Kansas border. Pioneer operates in Oklahoma, and although it serves approximately 50,000 access lines, only 14 percent of those access lines are affected by its request for an extension of the January 1, 1998 conversion deadline.[68] Hardy, Pierce, Northeast and Pioneer have not requested an extension of the conversion deadline beyond June 30, 1998. Accordingly, the grant of their requested waivers will not affect or interfere with the end of the permissive dialing period on June 30, 1998. Hartman requests an extension of the conversion deadline until July 1, 1998, only one day after the end of the permissive dialing period. As explained below, we grant Hartman an extension until June 30, 1998, which will not affect or interfere with the end of the permissive dialing period.

19. We recognize that the grant of these extensions will shorten or eliminate the time we provided for IXCs to prepare their networks and to educate their customers, in creating a two-step transition in our *Order on Reconsideration.* We find, however, that the technical and economic burden on these LECs that would be imposed by a denial of the extensions outweighs the burden to the IXCs and their customers. Each petitioner asserts that, even if it were technically feasible, it would suffer undue economic burden in attempting to meet the January 1, 1998 conversion deadline. Further, the economic burdens imposed by a denial of the extensions would be borne by the LECs' customers. We note, moreover, that only IXCs that have been issued a four-digit CIC (who cannot currently receive CAC calls originating with the LECs' customers) will be affected by the grant of the waivers. The petitioners' networks can, and will continue to, accept CAC calling for IXCs with three-digit CICs until the transition ends on June 30, 1998. Although we recognize the potential anticompetitive effects of the dialing disparity and seek to minimize them, we believe that those effects are outweighed by the economic and technical burdens likely to be imposed on the LECs by a failure to extend the conversion deadline for them. Thus, on balance, we find that the impact of an extension of the conversion deadline on the IXCs served by Hardy, Pierce, Northeast, Pioneer, and Hartman, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed by a denial of the extension requests.

20. We find that the conversion extension dates requested by Hardy and Pierce are reasonable. Hardy's and Pierce's requests for extensions until April 30, 1998, and May 1, 1998, respectively, allow for at least a brief period of time during which the IXCs served by these LEC switches can coordinate the conversion with them and can educate their customers about the necessary dialing changes.

21. We also find the amount of additional time requested by Northeast and Pioneer, until June 30, 1998, to be reasonable. On June 30, the permissive dialing period will end. We recognize that granting the extension until June 30, 1998, will effectively eliminate the benefits of the two-step transition created by the Commission in the *CICs Order on Reconsideration* for the IXCs served by these LECs' limited number of access lines. As noted above, we conclude, however, that the burden on the LECs that would be imposed by a denial of the extension outweighs the burden to IXCs and their customers. We reject Northeast's interpretation of the Commission's actions as requiring conversion by a LEC only if it is providing equal access in response to a request. The *CICs Order on Reconsideration,* in requiring that LECs providing equal access convert to four-digit CIC capability by January 1, 1998, does not distinguish between those LECs providing equal access voluntarily and those providing it in response to a request. This is consistent with the Commission's requirement in the *Independent Telephone Company Equal Access Report and Order,*[69] issued over twelve years ago, that companies not receiving a request for equal access implement equal access as soon as practicable.[70]

22. We also find that Hartman's request for an extension until July 1, 1998, is generally reasonable. Because the permissive dialing period ends on June 30, 1998, we grant Hartman's request until that date, rather than until July 1, 1998, to avoid disruption to IXCs and to the public when the permissive dialing period ends on June 30, 1998.

23. *Requests for Extension of Clarks, Eustis/Home, and Henderson.* We find that Clarks', Eustis/Home's, and Henderson's requested extensions, until January 1, 2000, are unreasonable. While we find that these LECs warrant an extension of the conversion deadline, we find that these LECs have failed to demonstrate the reasonableness of the amount of time they request, and to explain why, after seven months, a decision as to whether to replace their switches as a means of becoming four-digit CIC compliant has not been reached. As explained below, we grant extensions of the conversion deadline to Clarks, Eustis/Home, and Henderson, but only until June 30, 1998, which should be sufficient time for them to upgrade their switches.

24. Clarks, Eustis/Home, and Henderson all argue that switch replacement may be necessary before their networks are four-digit CIC compliant. Both Clarks and Eustis/Home assert that if switch replacement is necessary, they would not be ready to convert for 18–20 months. Henderson, while asserting that it could expect mid-1998 implementation of a switch upgrade, asserts that implementation could take several more months if it decides to purchase new equipment from a different manufacturer. We

[68] Pioneer states that currently 65 of its existing exchanges, serving approximately 86 percent of its access lines, are capable of providing the four-digit CIC function by the January 1, 1998 deadline. *See Pioneer Petition* at 3.

[69] *See* In the Matter of MTS and WATS Market Structure Phase III, *Report and Order,* CC Docket No. 78–72, 100 F.C.C.2d 860 (1985)(*Independent Telephone Company Equal Access Order*).

[70] *See id.* at para. 48, *cited in CICs Second FNPRM* at para. 83.

recognize, based on Hardy's experience, that if Clarks, Eustis/Home, and Henderson decide to replace their switches, which would involve the RUS funding approval process, the entire process could take as long as 16 months.[71] Clarks, Eustis/Home, and Henderson have not yet decided, however, whether to pursue that course of action, instead of upgrading existing ones, as a means of becoming four-digit CIC compliant. None of these carriers, who assertedly began considering conversion options as early as April 1997, has explained why, after seven months, a decision as to whether to replace their switches, a process which they all assert is a lengthy one, has not been reached. Hardy states that it began the RUS process for deploying a new switch in early 1997, and asks for an extension until only April 30, 1998; Clarks, Eustis/Home, and Henderson, on the other hand, began considering options at most only three months later than Hardy, yet request extensions of two years, rather than four months, as requested by Hardy.

25. Based on their petitions, we find that a more limited extension is warranted. Clarks, Eustis/Home, and Henderson warrant extensions of the conversion deadline to upgrade their switches because each has demonstrated diligence in pursuing switch upgrades, and the unavailability from manufacturers of products required to accomplish the upgrade. The impact of an extension on the IXCs served by them, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed in the absence of an extension.

26. First, Clarks, Eustis/Home, and Henderson have demonstrated that they are diligently working to upgrade their switches. Each asserts that, upon issuance of the *CICs Second Report and Order* in April 1997, it began assessing the steps necessary to meet the January 1, 1998 conversion deadline. Clarks currently is negotiating with Nortel regarding upgrade costs, for the updated operating system software necessary to accept four-digit CICs, and the equipment necessary to operate the software. Eustis/Home has been taking bids from several sources to obtain the fairest price for upgrades, and, in the past few months, has been communicating with vendors in addition to Nortel (such as Stromburg-Carlson and Mitel), regarding the purchase of software. Henderson is in the process of negotiations with Nortel regarding contract specifics for switch upgrades.

27. Second, based on their petitions, we conclude that Clarks, Eustis/Home, and Henderson have demonstrated that the product needed to accomplish the upgrade to their individual networks is not readily available from switch manufacturers, delaying their ability to meet the January 1, 1998, conversion deadline. Each petitioner asserts that Nortel has informed it that Nortel has a long waiting list for upgrades. Eustis/Home is currently on the waiting list for an updated version of the operating system software, but cannot expect to receive it before mid-1998. Henderson also estimates a mid-1998 implementation, based on the assumption that, once a contract is signed, approximately 180 days are needed for implementation.

28. Third, we conclude that the impact of an extension of the conversion deadline on the IXCs served by Clarks, Eustis/Home, and Henderson, and on the ability of those LECs' customers to reach IXCs through CAC dialing, does not outweigh the burden on the LECs that would be imposed absent an extension. Clarks, Eustis/Home, and Henderson are small, rural LECs serving a limited number of access lines. Clarks and Henderson each serves 1000 access lines, and Eustis/Home (which are commonly owned) combined serves 1300 access lines. Because, as discussed below, we are granting these LECs extensions only until June 30, 1998, the extensions will not affect or interfere with the end of the permissive dialing period on June 30, 1998.

29. We find that, based on the record, an extension until June 30, 1998, should provide sufficient time for Clarks, Eustis/Home, and Henderson to upgrade their existing switches. The burdens on IXCs and their customers of an extension beyond June 30, 1998, however, are much greater. An extension beyond that date will make it difficult for the IXCs served by them to educate their customers about the changes in dialing patterns and will affect the IXCs' customers' ability to reach them. The burdens imposed on IXCs and their customers of a longer extension outweigh any burdens that might be imposed on these LECs by our failure to extend the conversion deadline beyond June 30, 1998.

30. Consistent with our desire to avoid requiring parties to incur inefficient cost expenditures, if Clarks, Eustis/Home, and Henderson, decide to replace their switches, we will consider further extension requests from them, provided they demonstrate that they have continued to work diligently towards conversion. Any party seeking a further extension should be prepared to provide detailed documentation of the steps taken, since issuance of this Order, to achieve switch conversion by June 30, 1998. Because a grant of a further extension, even for the slightest amount of time, will cause disruption to callers if all equal access LEC end offices are not converted to recognize four-digit CICs once the permissive dialing period has ended, we will scrutinize closely any request for a further extension. For this reason, we expect any further extension requests to be for the shortest amount of time practicable.

31. Finally, we note that the *CICs Order on Reconsideration*, in addition to requiring four-digit CIC conversion by equal access LECs as of January 1, 1998, also requires that LECs must offer a standard intercept message beginning on or before June 30, 1998, explaining that a dialing pattern change has occurred and instructing the caller to contact its IXC for further information.[72] The Commission requires that, in developing an intercept message, LECs must consult with IXCs and reach agreement on the content of the message and on the period of time during which the message will be provided.[73] We emphasize that the LECs to whom we grant conversion extensions here must comply with the Commission's intercept message requirement.

32. *Requests for Extension of Hartington and Jefferson.* Hartington and Jefferson both state that they do not provide equal access. As noted above, in the *CICs Order on Reconsideration*, the Commission modified the decision in the *CICs Second Report and Order* regarding the length of the transition during which three and four-digit Feature Group D CICs co-exist, and created a "two-step" end to the transition to four-digit CICs, with January 1, 1998, the end of the first phase, being the deadline for LECs providing equal access to complete switch changes to recognize four-digit CICs.

33. In the *CICs Second FNPRM*, issued concurrently with the *CICs Order on Reconsideration*, the Commission, noting that some independent incumbent LECs in rural and isolated areas do not provide equal access, stated that a requirement that all LEC end office switches be upgraded to accept four-digit CICs by January 1, 1998, may have the unintended effect of requiring those LECs that have never received a bona fide request for equal access or that are not subject to a specific timetable for providing equal access nonetheless to upgrade their end offices to offer equal access by January 1, 1998.[74] The Commission noted that such a requirement would modify the Commission's equal access implementation schedule for non-GTE independent telephone companies, set by the 1985 *Independent Telephone Company Equal Access Report and Order*. As more than twelve years have passed since adoption of the *Independent Telephone Company Equal Access Report and Order*, the Commission, in the *CICs Second FNPRM*, tentatively concluded that eventually all LEC end offices should be required to provide equal access.[75] Because the *CICs Order on Reconsideration* requires January 1, 1998 switch conversion to accommodate four-digit CICs only by those LECs providing equal access, however, and because Hartington and Jefferson are not providing equal access, we dismiss their petitions as moot.

[71] If Hardy began this process on January 1, 1997, and is ready for implementation by April 30, 1998, the total amount of time required would be 16 months.

[72] *See CICs Order on Reconsideration* at para. 26.

[73] *See id.*

[74] *See CICs Second FNPRM* at para. 84.

[75] Specifically, the *CICs Second FNPRM* tentatively concluded that (1) LECs with stored program-controlled (SPC) switches that have not received a bona fide request for equal access should be required to upgrade their facilities to provide equal access and to accept four-digit CICs within three years of the effective date of an *Order* adopted in this proceeding; and (2) LECs whose end-offices are equipped with non-SPC switches should be required to provide equal access and to convert their switches to accept four-digit CICs when they next replace their switching facilities. *See CICs Second FNPRM* at para. 84.

IV. Ordering Clauses

34. *It is ordered*, pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Hardy Telecommunications Inc., *is granted*, by extending for it the switch conversion deadline for four-digit CIC capability until April 30, 1998.

35. *It is further ordered*, pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Pierce Telephone Company, Inc., *is granted*, by extending for it the switch conversion deadline for four-digit CIC capability until May 1, 1998.

36. *It is further ordered*, pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Waiver of Northeast Nebraska Telephone Company *is granted*, by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998.

37. *It is further ordered*, pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Pioneer Telephone Cooperative, Inc., *is granted*, by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998.

38. *It is further ordered*, pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Hartman Telephone Exchanges, Inc., *is granted in part*, by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part*, to the extent Hartman requests extension beyond that date.

39. *It is further ordered*, pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Clarks Telecommunications Co. *is granted in part*, by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part*, to the extent Clarks requests extensions beyond that date.

40. *It is further ordered*, pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Joint Petition for Limited Waiver of Eustis Telephone Exchange, Inc. and Home Telephone Company of Nebraska, *is granted in part*, by extending for them the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part*, to the extent Eustis and Home request extension beyond that date.

41. *It is further ordered*, pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Limited Waiver of Henderson Telephone Company *is granted in part*, by extending for it the switch conversion deadline for four-digit CIC capability until June 30, 1998, and *denied in part*, to the extent Henderson requests extension beyond that date.

42. *It is further ordered*, pursuant to authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Waiver of Hartington Telecommunications Co., Inc., *is dismissed as moot.*

43. *It is further ordered*, pursuant to authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Waiver of Jefferson Telephone Company *is dismissed as moot.*

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–32177 Filed 12–4–97; 4:03 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 900124–0127; I.D. 112897E]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Minimum Clam Size for 1998

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Suspension of surf clam minimum size limit.

SUMMARY: NMFS informs the public that the minimum size limit of 4.75 inches (12.07 cm) for Atlantic surf clams is suspended for the 1998 fishing year. The intended effect is to relieve the industry from a regulatory burden that is not necessary as the vast majority of surf clams harvested are larger than the minimum size limit.

DATES: January 1, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) allows the Regional Administrator, Northeast Region, NMFS, to suspend annually by publication of an announcement in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action

may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.07 cm) and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density-dependent factors.

At its August 1997 meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Scientific and Statistical Committee and Surf Clam/Ocean Quahog Committee and voted to recommend that the Regional Administrator suspend the minimum size limit for surf clams in 1998. Commercial surf clam shell length data for 1997 indicate that only 15.25 percent of the samples were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and publishes this announcement to suspend the minimum size limit for Atlantic surf clams for the period January 1, 1998, through December 31, 1998.

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 3, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32195 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970613136–7136–01; I.D. 120297A]

Scallop Fishery Off Alaska, Scallops in the Northeast District of Registration Area K

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; Inseason adjustment; request for comments.

SUMMARY: NMFS is closing the fishery for scallops in the Northeast District of Registration Area K to prevent overfishing for scallops in this District. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 3, 1997, until 2400 hrs, A.l.t., June 30, 1998. Comments must be received at the following address no later than 4:30 p.m., A.l.t., December 18, 1997.

ADDRESSES: Comments may be sent to Susan Salveson, Chief, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The scallop fishery off Alaska in the exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery Off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart F of 50 CFR part 600 and 50 CFR part 679.

The 1997 total allowable catch for scallops in Registration Area K, which includes the Northeast District, was established by the 1997–98 Harvest Specifications (62 FR 34182, June 25, 1997) as 400,000 pounds (181.4 metric tons (mt)) of shucked scallop meat. As of November 17, 1997, 96,000 pounds (43.54 mt) of shucked scallop meat have been caught in the Northeast District.

The Alaska Department of Fish and Game, Commercial Fisheries Management and Development Division, has monitored the scallop fishery in the Northeast District since the fishery opened on August 11, 1997. Harvest rates peaked in early September and have declined steadily. The Alaska Department of Fish and Game is concerned for the localized depletion of the scallop stocks in the Northeast District.

The Administrator, Alaska Region, NMFS, has determined, in accordance with §§ 679.63(a), 679.25(a)(1)(i), and 679.25(a)(2)(i)(A), that on the basis of the best available scientific information, the closure of the scallop season within the Northeast District of Area Registration K is necessary to prevent overfishing of this stock of scallops. Therefore, NMFS is prohibiting the taking and retention of scallops in the Federal waters of the Northeast District of Registration Area K.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent localized overfishing for scallops in the Northeast District of Registration Area K. Accordingly, under 5 U.S.C 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.63 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 3, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32072 Filed 12–3–97; 2:52 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 236
Tuesday, December 9, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 441

[Docket No. 97–052N]

Retained Water in Poultry Products; Protocols for Obtaining Data on Meat and Poultry Chilling Processes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is notifying the public of its interest in receiving and reviewing protocols for obtaining data on chilled, ready-to-cook poultry products and simultaneously requesting comments on the principles which it has tentatively identified to guide its review of those protocols. The data may be used: to benchmark the effectiveness of washing, chilling, and draining operations in minimizing pathogen growth and moisture retention in poultry products; and to develop proposed new regulations limiting retained moisture in poultry products. FSIS views the data collection as a necessary step in strengthening the basis for its regulations in the wake of a recent Federal District Court decision setting aside as "arbitrary and capricious" the regulatory limits on moisture absorption and retention in ready-to-cook whole chickens and turkeys. FSIS and the poultry industry have relied on these limits for many years to gauge the effectiveness of chilling processes in meeting the regulatory objective of minimizing moisture retention in poultry products. Any new regulatory limits on moisture retention must be based on sound data. The Agency is willing to review protocols developed according to the specifications published in this document or alternative protocols that may be suggested by commenters.

In view of a recent petition from a meat and poultry industry association, FSIS is also willing to review similar protocols for obtaining data on processes for the chilling of raw meat carcasses and parts.

DATES: Comments on the protocol specifications discussed in this document should be received on or before January 8, 1998.

ADDRESSES: Please send an original and two copies of comments to FSIS Docket Clerk, DOCKET #97–052, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia F. Stolfa, Assistant Deputy Administrator for Regulations and Inspection Methods Development, FSIS, Room 402 Annex Building, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION: FSIS carries out the mandates of the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) to ensure that meat, meat food, and poultry products prepared for interstate and foreign commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. The Agency maintains continuous inspection oversight of operations in meat and poultry slaughtering and processing establishments. Among the requirements enforced by the Agency are those having to do with the post-evisceration handling and storage of carcasses and parts.

Dressed carcasses typically move through washes and sprays to remove slaughter debris and foreign matter before being conveyed to chilled, refrigerated, or frozen. FSIS regulations governing the chilling of livestock and poultry carcasses reflect accepted commercial practices. Prior to shipment, livestock carcasses have traditionally been air-chilled and shipped in refrigerated trucks or railroad cars; they are commonly divided into primal and subprimal parts at the slaughtering establishment, cut-up, or boned-out and boxed before being shipped frozen or refrigerated. Prior to shipment, livestock carcasses are usually held in large cooling rooms and may be subject to spraying or "misting" processes intended to prevent them from shrinking. It is technologically feasible and commercially practical to air-chill livestock carcasses, combining this process with a spray system in a manner that, on average, does not result in an increase in the carcass weight. The regulations affecting chilled livestock carcasses and parts concern the sanitation conditions of storage or transport.

Poultry carcasses have traditionally been immersion-chilled and are shipped as chill-packed, ice-packed, or frozen. The poultry chilling regulations require that carcasses be chilled to 40 °F or less within a specified time after slaughter and limit the amount of retained water in product.

Poultry carcasses are chilled in immersion chilling tanks filled with water or water and ice to remove animal heat and inhibit microbial growth. Modern chillers are equipped with refrigeration units and systems for controlling water flow volume, direction, and agitation. They are efficient and effective, but inevitably, immersion-chilled poultry carcasses absorb water, mostly under the skin. The absorption of water during chilling has been considered acceptable in good commercial practice since the 1940's as a trade-off to gain the food-safety benefits of rapid chilling. The immersion chilling of poultry was considered good commercial practice in 1957, when Congress enacted the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) (PPIA).

The Department promulgated regulations limiting moisture absorption in poultry in 1959, 1961, and 1970 (December 1, 1959, 24 FR 9566; July 19, 1961, 26 FR 6471; October 7, 1970, 35 FR 739). The regulations, covering the various kinds and weight classes of frozen, ice-packed, and chilled poultry, allow processors flexibility in adjusting their chilling systems as long as the maximum water absorption limits are not exceeded. Each processor establishes procedures to comply with the chilling and water absorption control requirements. Inspectors sample carcasses each day from each chilling system before washing and after chilling, and with limited draining time to determine if the poultry is in compliance with the absorbed moisture limits. If the moisture limits are exceeded, the poultry is retained until enough moisture has drained to allow the birds to be in compliance.

As a practical matter, establishments must keep their overall moisture absorption averages below the maximum limitations to meet the water absorption limits on a day-to-day basis.

The average percentage below the limits varies from establishment to establishment, depending on the individual operation. Most poultry establishments consistently comply with the water control requirements.

The moisture retention limits and other differences between the meat and poultry inspection regulations have become a focus of attention. Early in 1996, for example, FSIS received a petition from several national livestock industry associations concerning perceived inequities between the meat and poultry regulations. Among other issues, the petitioners questioned the difference between water absorption allowances for meat and for poultry.

FSIS has studied the regulations to determine where the regulatory treatment of different species can be made the same. In 1992, FSIS commissioned the Research Triangle Institute (RTI) to compare the two sets of regulations. In June 1993, RTI issued a comprehensive report, which attributed the differences on water absorption to "traditional industry practice."[1] FSIS has also adopted a regulatory reform plan that will lead to a consolidated set of regulations that apply to all inspected species. The Agency's "Pathogen Reduction; Hazard Analysis and Critical Control Points Systems" (PR/HACCP) final rule (61 FR 38806; July 25, 1996) and the recent proposed rulemaking on sanitation (62 FR 45046; August 25, 1997) are examples of initiatives in this plan.

In 1994, a group of poultry consumers and red meat producers brought an action against the Department in a Federal District Court challenging several differences in the regulatory requirements for meat and poultry, including the regulations which allow the absorption and retention of water in chilled poultry.

Plaintiffs in *Kenney et al.* v. *Glickman* alleged that poultry products containing absorbed water were both economically adulterated and misbranded within the meaning of the PPIA. They also alleged that the regulations violated the Administrative Procedure Act because they were arbitrary and capricious when compared to the regulatory prohibition on absorbed water in meat carcasses. The Court found that poultry containing absorbed water was not economically adulterated or misbranded under the PPIA. However, the Court also found that the regulation specifying moisture absorption and retention limits for ready-to-cook poultry that is to be frozen, cooked, or consumer-packaged as whole poultry (9 CFR 381.66(d)(2)) was arbitrary and capricious because the rulemaking record failed to adequately explain how the particular water retention levels were set and why meat and poultry should be treated differently.

[1] From the "Summary Report" in RTI Report: *Comparison of USDA Meat and Poultry Regulations. Title 9 CFR: Subchapter A, Subchapter C,* June 1993.

Need for Current Data on Chilling and Moisture Retention

The Court left in place the general requirement at 9 CFR 381.66(d)(1) for establishments to minimize moisture absorption and retention in poultry at the time of packaging. The Court also left standing the regulations at 9 CFR 381.66 (d)(3)–(d)(6) controlling the amount of retained moisture in chickens and turkeys that are to be cut up or ice-packed. But the Court's decision left FSIS with no regulatory maximum limit for retained moisture in chilled or frozen whole poultry carcasses.

FSIS believes it is necessary to clarify what percentages, if any, are permissible in raw meat and poultry, and under what circumstances. Otherwise, the controversy that was brought to a head in the *Kenney* case will remain unresolved—a situation the Agency considers unsatisfactory. FSIS needs better quantitative information before considering whether to amend the current requirements limiting moisture retention in poultry products, and particularly in ready-to-cook whole birds. For example, FSIS needs baseline data reflecting the performance capabilities of technology now in use in inspected establishments. The data should be collected under acceptable protocols in accordance with the specifications described below.

On October 2, 1997, the American Meat Institute, a trade association representing meat and poultry slaughtering and processing establishments, petitioned the Department to allow incidental levels of moisture in meat and poultry as part of chilling practices that improve food safety. In view of this petition, FSIS also is willing to consider data on processes for the chilling of meat carcasses and parts. The data should be collected under acceptable protocols in accordance with the specifications described below, as applicable in meat establishments.

Protocol for Gathering Moisture Retention Data

A protocol should state a purpose. The Agency would prefer that the purpose be to determine the amount or percentage of moisture absorption and retention that is inevitable using a particular chilling system while achieving the regulatory pathogen reduction performance standard for *Salmonella* (for chickens) as set forth in the PR/HACCP final rule and the time/temperature requirements set forth in 9 CFR 381.66.

The protocol should state the type of washing and chilling system used by the establishment. For poultry establishments, the main chiller types, identified by the mechanism used to transport the birds through the chiller or to agitate the water in the chiller, are the drag-through, the screw type, and the rocker-arm type.

The protocol should also describe the configuration of the chiller system components, modifications of the components, and steps in the chilling process. The description should include the number of chillers in a series and arrangements of chilling system components, and the number of evisceration lines feeding into a chiller system. If there is a pre-chilling step in the process, its purpose and the type of equipment used should be accurately described. Any mechanical or design changes made to the chilling equipment should be described.

All special features in the chilling process, such as antimicrobial treatments, should be described. Also, the length and velocity of the dripping line should be described, as well as the time allowed for dripping. Any special apparatus, such as a mechanism for squeezing excessive moisture from chilled birds, should be explained.

Next, the protocol should contain a description of variable factors in the chilling system that affect water absorption and retention. Such factors are typically considered to be the time in chiller water, the water temperature, and agitation. The protocol should consider air agitation, where applicable.

Additional factors that may affect water-absorption and retention are scalding temperature and the pressure or amount of buffeting applied to birds by feather removal machinery, and the resultant loosening of the skin. Another factor that should be considered is the method used to open the bird for evisceration. Commenters may suggest additional factors that should be considered.

The protocol should also state the standards to be met by the chilling system. For example, the chilling system may be designed simply to achieve a reduction in temperature of ready-to-cook poultry to less than 40 °F. within the time limit specified by the regulations, or in less time. As to the standard for pathogen minimization, the *Salmonella* pathogen reduction standards, as set forth in the PR/HACCP final rule, have been suggested. Although there is not yet an applicable *Salmonella* standard for turkeys, commenters are free to suggest a practicable standard for use in gathering data on turkeys under the protocols here suggested. Commenters are also free to suggest the use of other microbiological targets, such as a standard for reduction in generic *E. coli* counts or reductions in numbers of other microorganisms.

Finally, the protocol should describe the testing methods to be employed both for measuring water absorption and retention and for sampling and testing product for pathogen reductions. With respect to the latter, FSIS recommends the methods to be used for *E. coli* and *Salmonella* testing under the PR/HACCP final rule. The number of samples, the type of samples, the sampling time period and the type of testing or measurement should be included in the protocol. There also should be a provision for reporting data obtained, summarizing the results and drawing conclusions.

FSIS requests that interested parties submit their comments on the foregoing protocol specifications at their earliest opportunity, and preferably by the date indicated in the **DATES** section of this document. Should FSIS decide to issue a notice of proposed rulemaking on retained moisture, sound, readily available data will be needed during the comment period to avoid a protracted rulemaking.

Done at Washington, DC: December 3, 1997.

Thomas J. Billy,

Administrator, Food Safety Inspection Service.

[FR Doc. 97–32193 Filed 12–8–97; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0992]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update addresses increased rates for credit card accounts triggered by events such as late payments or exceeding credit limits. It provides guidance on "same-as-cash" transactions in open-end plans. It also addresses how creditors may determine whether credit is an open-end plan or a closed-end transaction. In addition, the proposed update discusses issues such as the treatment of annuity costs in reverse mortgage transactions and transaction fees imposed on checking accounts with overdraft protection.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments should refer to Docket No. R–0992, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: For Subparts A and B (open-end credit), Jane E. Ahrens, Senior Attorney, or Obrea O. Poindexter, Staff Attorney; for Subparts A, C, and E (closed-end credit and reverse mortgages), Ms. Ahrens or James A. Michaels, Senior Attorney, or Michael E. Hentrel, Staff Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 1998; to the extent the revisions impose new requirements on creditors, compliance would be optional until October 1, 1998, the effective date for mandatory compliance.

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(2) Advertisement

Comment 2(a)(2)–1 is revised to address communications to consumers about existing accounts. In response to requests for guidance, the proposed comment provides examples of communications that are and are not advertisements.

2(a)(18) Downpayment

Proposed comment 2(a)(18)–3 gives guidance on how a creditor discloses the downpayment in a credit sale if a trade-in is involved and if the amount of the existing lien on the trade-in exceeds its value. The comment clarifies that creditors should disclose zero and not a negative amount.

2(a)(20) Open-end Credit

The Board has been asked by Attorneys General of several states to provide additional guidance concerning how to determine whether credit is an open-end plan or a closed-end transaction. The Attorneys General are concerned that some retailers selling big-ticket items have established questionable "revolving charge accounts" to finance the purchase of such items, resulting in consumers making major purchases without adequate information about the true cost of the transactions. Proposed comment 2(a)(20)–3 includes factors that creditors, particularly those engaged in credit sales, should consider in determining the difference between an open-end plan and a closed-end transaction. Proposed comment 2(a)(20)–5 clarifies when a line of credit is not self-replenishing.

2(a)(24) Residential Mortgage Transaction

Comment 2(a)(24)–5 is revised for clarity. No substantive change is intended.

Proposed comment 2(a)(24)–7 clarifies that the definition of a residential mortgage transaction includes a loan for financing the construction of a primary dwelling on land already owned by the consumer.

Section 226.4—Finance Charge

4(a) Definition

4(a)(2) Special Rule: Closing Agent Charges

Comment 4(a)(2)–2 is revised to address charges to conduct a closing for a real estate-secured transaction. Creditors may exclude from the finance charge a lump-sum settlement or closing fee that includes a charge for conducting or attending a closing if the lump-sum fee is primarily for services listed in § 226.4(c)(7), even if the lump-sum fee includes incidental costs for services that are otherwise considered finance charges. The comment clarifies that charges for conducting or attending the closing are finance charges and may not be excluded from the finance charge unless the charge is incidental to the lump-sum fee.

4(b) Examples of Finance Charges

Paragraph 4(b)(2)

Comment 4(b)(2)–1 is revised to clarify that a service charge on a checking or other transaction account with a credit feature is a finance charge only if the charge on the account exceeds the charge for a similar account without a credit feature.

4(d) Insurance

Comment 4(d)–11 is revised for clarification. Under § 226.4(d), amounts paid for insurance or debt cancellation coverage may be excluded from the finance charge if the creditor discloses the fee or premium for the initial term of coverage, among other conditions. Comment 4(d)–11 contains examples of what constitutes the initial term of coverage, and also gives creditors, in certain circumstances, the option of providing the cost disclosure for one year of coverage if it is clearly labeled as such.

The proposed revision clarifies that the initial term of coverage is based on the period that the insurer or creditor is initially obligated to provide. It also clarifies that the fact that a consumer is permitted to cancel the coverage at any time does not signify that creditor may treat the initial term of coverage for purposes of this regulation as the period covered by the consumer's first payment. Where the fee or premium for the coverage is assessed periodically and the consumer is under no obligation to continue making the payments, creditors have the option of providing disclosures on the basis of one year of coverage. Creditors also have this option if the initial term of the insurance is not clear.

Subpart B—Open-end Credit

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Proposed comment 5a(b)(1)–7 clarifies that if the APR will increase upon a stated event (such as the consumer's making a late payment or exceeding the credit limit), the card issuer must disclose the increased rate, along with the condition for increasing the rate. Providing only a general description of the condition, such as stating that the rate will increase if the consumer "fails to remain in good standing," is not an adequate description.

5a(b)(9) Late-Payment Fee

Proposed comment 5a(b)(9)–2 addresses cross references to the APR disclosure required under § 226.5a(b)(1), where the APR will increase due to a late payment.

5a(b)(10) Over-the-Limit Fee

Proposed comment 5a(b)(10)–2 addresses cross references to the APR disclosure required under § 226.5a(b)(1), where the APR will increase if the credit limit is exceeded.

Section 226.6—Initial Disclosure Statement

6(a) Finance Charge

6(a)(2) Annual Percentage Rate

Proposed comment 6(a)(2)-11 clarifies that if the APR will increase upon a stated event (such as the consumer's making a late payment or exceeding the credit limit), the card issuer must include the increased rate in the disclosures required under § 226.6(a)(2), along with the condition that will trigger the increase.

Section 226.7—Periodic Statement

Some creditors offer open-end plans with a deferred payment feature that allows consumers to avoid finance charges if the purchase balance is paid by a certain date. An example of these "same as cash" features would permit a consumer purchasing a $500 item in January to avoid any finance charge on the purchase if the $500 balance is paid by March 31. Proposed comment 7–3 gives guidance on same-as-cash transactions. To ease compliance, three cross-references to the proposed comment are added to provisions of § 226.7 addressing balances to which periodic rates are applied, the amount of the finance charge, and free-ride periods. Comment is requested on whether to add a similar cross-reference under § 226.5(b)(2), which addresses the timing of periodic statements for open-end plans offering free-ride periods.

Section 226.14—Determination of Annual Percentage Rate

14(c) Annual Percentage Rate for Periodic Statements

Revisions to two comments are proposed. Comment 14(c)–5 addresses the calculation of the APRs for multifeatured plans that charge transaction fees in addition to periodic rates. In response to requests for guidance, the comment clarifies that creditors may separately consider each feature in calculating the denominator.

Multifeatured plans are defined to include plans with features such as purchases, cash advances, or overdraft checking, or plans with groups of transactions with different pricing structures. (See comment 7–1). Creditors may disclose APRs separately for each feature or may state a composite APR for the whole plan. Some creditors offer cash advances with fees that vary if the cash advance is obtained by check, at a proprietary ATM, or at a foreign financial institution. They treat each fee structure as a "feature." Appendix F gives instructions for calculating the APR when the finance charge includes interest and transaction fees. Appendix F requires creditors to include in the denominator: (1) the balance subject to a transaction fee, plus (2) the balance subject to periodic rates, less the amount of the balance subject to a transaction charge. The appendix is silent on calculating the denominator when separate features are involved.

Comment 14(c)–5 clarifies that separate features may be considered in calculating the denominator. The proposal does not attempt to define "feature" for purposes of the APR calculation. Comment is requested on how to retain flexibility for creditors in defining features of an open-end plan while guarding against distinctions among account services that artificially lower the APR on a consumer's periodic statement. An example of distinctions that serve to lower the APR is the situation where the creditor treats as individual features each possible method of obtaining a cash advance, even though there are no real differences in pricing or operational characteristics. Comment is also requested on whether a creditor should separately disclose the balances related to each feature under § 226.7(e), if features are treated separately for purposes of calculating the denominator in the APR computation.

Comment 14(c)–10 addresses the treatment of fees imposed on transactions that occur late in a billing cycle and are impracticable to post until the following billing cycle. The comment would be revised to provide broader guidance for calculating the APR when finance charges posted in the billing cycle include charges relating to activity in prior cycles, such as adjustments relating to error resolution. It is intended to provide uniformity and simplify compliance for the variety of circumstances under which adjustments may occur. For instances in which adjustments from prior cycles would produce a negative APR in the current cycle, the comment incorporates the calculation rule from § 226.14(c)(3)—the APR should never be less than the APR corresponding to the periodic rate imposed on the account.

Subpart C—Closed-end Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule

Proposed comment 18(g)–4 clarifies the requirements for disclosing the timing of payments. It explains that creditors must include the calendar date when the beginning payment is due and clarifies that reference to the occurrence of a particular event, for example, disclosing that the first payment is due "30 days after the completion of construction," is not sufficient. If a precise date is unknown, the creditor must estimate a date and label the disclosure as an estimate.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.33—Requirements for Reverse Mortgages

33(c) Projected Total Cost of Credit

33(c)(1) Costs to Consumer

Under § 226.33, the disclosed cost of a reverse mortgage transaction must contain all costs and charges paid by the consumer, including the cost of any annuity, whether the annuity purchase is mandatory or voluntary or whether it is made through the creditor or a third party. In implementing this rule, the Board stated its belief that the Congress intended a broad application of the terms "costs and charges." (60 FR 15468, March 24, 1995.) Proposed comment 33(c)(1)–2 provides further guidance for determining when an annuity is purchased as part of a reverse mortgage transaction.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0992, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with new **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction*, the following amendments would be made:

a. Under *Paragraph 2(a)(2) Advertisement.*, paragraph 1. would be revised;

b. Under *Paragraph 2(a)(18) Downpayment.*, a new paragraph 3. would be added;

c. Under *Paragraph 2(a)(20) Open-end credit.*, paragraphs 3. and 5. would be revised; and

d. Under *Paragraph (2)(a)(24) Residential mortgage transaction.*, paragraph 5. would be revised and a new paragraph 7. would be added.

The additions and revisions would read as follows:

* * * * *

Supplement I—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

§ 226.2 Definitions and Rules of Construction.

2(a) Definitions.

2(a)(2) Advertisement.

1. *Coverage.* Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers that availability of credit transactions, whether in visual, oral, or print media, are covered by the regulation.

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

B. Announcements on radio, television, or public address system.

C. Direct mail literature or other printed material on any exterior or interior sign.

D. Point-of-sale displays.

E. Telephone solicitations.

F. Price tags that contain credit information.

G. Letters sent to customers as part of an organized solicitation of business.

H. Messages on checking account statements offering auto loans at a stated annual percentage rate.

I. Communications promoting a new open-end plan or closed-end transaction.

ii. The term does *not* include:

A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.

B. Informational material, for example, interest rate and loan term memos, distributed only to business entities.

C. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

D. News articles the use of which is controlled by the news medium.

E. Market research or educational materials that do not solicit business.

►F. Communications about an existing account (for example, a promotion in connection with an existing credit card account).◄

* * * * *

2(a)(18) Downpayment.

* * * * *

►3. *Effect of existing liens.* In a credit sale, the "downpayment" may only be used to reduce the cash price. For example, when the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value

of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not -$2,000.◀

* * * * *

2(a)(20) Open-end credit.

* * * * *

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with the consumer under the credit plan as a whole and need not believe the consumer will reuse a particular feature of the plan.

►i. *Factors.* Each credit plan may differ, and no one factor will determine whether a creditor reasonably contemplates repeated transactions. Some of the factors to be considered in determining whether a creditor could reasonably contemplate repeated transactions are:

A. Whether the line of credit is limited to the purchase of a certain product if it is a product that consumers would not likely purchase in multiples. The greater the variety of products available for purchase under the credit line, the more likely it is that the creditor reasonably contemplates repeated transactions. Some creditors may not offer a variety of products for purchase, but given the nature of the creditor's products or services, it is nonetheless likely that consumers will make repeated purchases—as in the case of gasoline companies that issue credit cards.

B. Whether the creditor establishes a line of credit for the purpose of enabling the consumer to purchase a designated item. It is more likely that a creditor reasonably contemplates repeated transactions if a consumer may use the credit to purchase any one of a number of items. For example, if a retailer of pianos establishes a line of credit for the purpose of the consumer purchasing a piano, it is unlikely that the creditor can reasonably contemplate repeated transactions.

C. If the creditor establishes a line of credit to finance the consumer's purchase of a designated item, the amount of the transaction relative to the credit made available to the consumer. The larger the amount of the transaction, the less likely it is that the creditor reasonably contemplates repeated transactions. For example, if a retailer of satellite dishes makes credit of $5,000 available to a consumer for the purchase of a satellite dish, and the cost of the satellite dish is $4,500, it is not likely the creditor contemplates repeated transactions. The fact that the retailer sells other products that are nominal in amount (compared with the cost of the major purchase) is not a sufficient basis to contemplate repeated transactions.

D. The extent to which a creditor reasonably solicits customers with its line of credit to make additional purchases under the credit line. For example, if a home improvement contractor issues a private label credit card with a $10,000 limit to a consumer paying for roof repairs in the amount of $9,000, and sends monthly solicitations for aluminum siding, the creditor does not reasonably contemplate repeated transactions.

E. Whether the creditor has information on consumers with the credit line showing that consumers have made repeat purchases. The more information that shows that consumers have made repeat purchases, the more likely it is that the creditor reasonably contemplates repeated transactions.

ii. *Standard.*◀ A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that a particular consumer does not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with the consumer. For example:

A. It would be more reasonable for a thrift institution chartered for the benefit of its members to contemplate repeated transactions with a member than for a seller of aluminum siding to make the same assumption about its customers.

B. It would be more reasonable for a bank to make advances from a line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan.

* * * * *

5. *Reusable line.* i. The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. ►However, a line of credit generally is not self-replenishing where the initial line of credit is less than, or not much more than, the amount of an item purchased to open the credit line or, based on the minimum monthly payments, the principal reduction is so nominal that the credit line is not reusable for an extended period of time.◀ The creditor may verify credit information such as the consumer's continued income and employment status or information for security purposes. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment.

ii. For example:

A. Under a closed-end commitment, the creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt.

iii. This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the economy, the creditor's financial condition, or the consumer's creditworthiness. (The rules in § 226.5b(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any present credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.

* * * * *

2(a)(24) Residential mortgage transaction.

* * * * *

5. *Acquisition.* ►i. A residential mortgage transaction finances the acquisition of a consumer's principal dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some title to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under § 226.18(q) or § 226.19(a) (assumability policies and early disclosures for residential mortgage transactions). However, the rescission rules of §§ 226.15 and 226.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage allowing the buyer to assume the mortgage where the buyer previously purchased the property and agreed with the seller to make the mortgage payments, § 226.20(b) does not apply (assumptions involving residential mortgages). ◀[A transaction is not "to finance the acquisition" of the consumer's principal dwelling (and therefore is not a residential mortgage transaction) if the consumer had previously purchased the dwelling and acquired some title to the dwelling, even though the consumer has not acquired full legal title. Thus, the following types of transactions are not a residential mortgage transactions:

• The financing of a balloon payment due under a land sale contract.

• An extension of credit made to a joint owner of property to buy out the other joint owner's interest.

As a result, in giving the disclosures for these transactions several provisions of the regulations are not applicable, for example, the exceptions to the right of rescission (§§ 226.23(f)(1) and 226.15(f)(1), the early disclosure requirement (§ 226.19(a)), and the disclosure concerning assumability (§ 226.18(q)). In the following situation, by contrast, since the transaction is not a residential mortgage transaction, no disclosures are required by § 226.20(b) and therefore the right of rescission does not apply:

• A written agreement between a creditor holding a seller's mortgage and the buyer of the property which allows the buyer to assume the mortgage, where the buyer previously purchased the property and agreed with the seller to make the mortgage payments.

* * * * *

►7. *Construction on previously acquired vacant land.* A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.◀

* * * * *

3. In Supplement I to Part 226, under *Section 226.4—Finance Charge*, the following amendments would be made:

a. Under *Paragraph 4(a)(2).*, paragraph 2. would be revised;

b. Under *Paragraph 4(b)(2).*, paragraph 1. would be revised; and

c. Under *Paragraph 4(d) Insurance and debt cancellation coverage.*, paragraph 11. would be revised; paragraph 12. would be redesignated as paragraph 13.; and a new paragraph 12. would be added.

The revisions and additions would read as follows:

* * * * *

226.4 Finance Charge.

4(a) Definition.

* * * * *

4(a)(2) Special rule: closing agent charges.

* * * * *

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a)[;]►. A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and incidental to◀ a lump-sum fee for real estate closing costs [may be] excluded under § 226.4(c)(7).

* * * * *

4(b) Examples of finance charges.

* * * * *

Paragraph 4(b)(2).

1. *Checking account charges.*►A checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 226.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit, while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge.

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning the item on a similar account without a credit feature; the $5 charge is not a finance charge. ◀[The checking or transaction account charges discussed in § 226.4(b)(2) include, for example, the following situations:

• An account with an overdraft line of credit incurs a $4.50 service charge, while an account without a credit feature has a $2.50 service charge; the $2.00 difference is a finance charge. If the difference is not related to account activity, however, it may be excludable as a participation fee. (See the commentary to § 226.4(c)(4).)

• A service charge of $5.00 for each item that triggers an overdraft credit line is a finance charge. However, a charge imposed uniformly for any item that overdraws a checking account, regardless of whether the items are paid or returned and whether the account has a credit feature or not, is not a finance charge.]

* * * * *

4(d) Insurance and debt cancellation coverage.

* * * * *

11. *Initial term.* i. The initial term of the insurance ►or debt cancellation◀ coverage determines the period for which a premium amount ►or fee◀ must be disclosed, ►unless the one-year option discussed under comment 4(d)-12 is available. For purposes of § 226.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage before that term expires.

ii. For example:

A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though monthly premiums are paid and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.◀ [In some cases the initial term is clear, for example a property insurance policy on an automobile written for one year (even though the term of the credit transaction is four years) or a credit life insurance policy for the term of the credit transaction purchased by paying or financing a single premium. In other cases, however, it may not be clear what the initial term of the insurance is, for example, when the consumer agrees to pay a premium that is assessed periodically and the consumer is under no obligation to continue making the payments. In cases such as this, the cost disclosure may be made on the basis of a premium for one year of insurance coverage. The premium must be clearly labeled as being for one year.]

►12. *Initial term; alternative.* i. A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage after making the initial payment.

ii. For example:

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an initial term of 30 years even though premium payments are made monthly and the consumer is not required to continue the coverage after making the initial payment. The creditor has the option of making disclosures on the basis of coverage for one-year.◀

* * * * *

4. In Supplement I to Part 226, under *Section 226.5a—Credit and Charge Card Applications and Solicitations*, the following amendments would be made:

a. Under *Paragraph 5a(b)(1) Annual Percentage Rate.*, a new paragraph 7. is added;

b. Under *Paragraph 5a(b)(9) Late Payment Fee.*, a new paragraph 2. is added; and

c. Under *Paragraph 5a(b)(10) Over-the-Limit Fee.*, a new paragraph 2. is added.

The additions would read as follows:

* * * * *

Subpart B—Open End Credit

* * * * *

§ 226.5a Credit and Charge Card Applications and Solicitations.

* * * * *

5a(b) Required Disclosures.

5a(b)(1) Annual Percentage Rate.

* * * * *

►7. *Increased penalty rates.* If the initial rate will increase upon the occurrence of a specified event such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose along with the initial rate the increased penalty rate that would apply. The issuer must also disclose the specific condition or conditions for imposing the increased rate, such as "22% APR, if 60 days late." The issuer may disclose the period for which the increased rate will remain in effect, such as "until you make three timely payments." A creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.◀

* * * * *

5a(b)(9) Late Payment Fee.

* * * * *

►2. *Increased penalty rates.* If the annual percentage rate will increase as a result of late payments, the disclosures under § 226.5a(b)(9) must include a reference to the disclosures required under § 226.5a(b)(1).◀

5a(b)(10) Over-the-Limit Fee.

* * * * *

►2. *Increased penalty rates.* If the annual percentage rate will increase as a result of the cardholder's exceeding the credit limit, the disclosures under § 226.5a(b)(10) must

include a reference to the disclosures required under § 226.5a(b)(1).◄

* * * * *

5. In Supplement I to Part 226, *Section 226.6—Initial Disclosure Statement*, under *Paragraph 6(a)(2).*, a new paragraph 11. would be added to read as follows:

* * * * *

Section 226.6—Initial Disclosure Statement

* * * * *

6(a) Finance charge.

* * * * *

Paragraph 6(a)(2).

* * * * *

►11. *Increased penalty rates.* If the annual percentage rate will increase upon the occurrence of a specified event such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose along with the initial rate the increased penalty rate that would apply. The issuer must also disclose the specific condition for imposing the increased rate, such as "22% APR, if 60 days late." The issuer may disclose the period for which the increased rate will remain in effect. A creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.◄

* * * * *

6. In Supplement I to Part 226, under *Section 226.7—Periodic Statement*, the following amendments would be made:

a. Under introductory text, a new paragraph 3. would be added;

b. Under *Paragraph 7(e) Balance on which finance charge computed.*, a new paragraph 10. would be added;

c. Under *Paragraph 7(f) Amount of finance charge.*, a new paragraph 9. would be added; and

d. Under *Paragraph 7(j) Free-ride period.*, a new paragraph 2. would be added.

The additions would read as follows:

* * * * *

§ 226.7 Periodic Statement.

* * * * *

►3. *Same-as-cash transactions.* Some creditors offer a deferred payment feature for purchases in which consumers avoid finance charges if the purchase balance is paid in full by a certain date. For example, no finance charge is imposed on a $500 purchase made in January if the $500 balance is paid by March 31.

i. *Balances subject to periodic rates.* Under § 226.7(e), creditors must disclose the balances subject to periodic rates during a billing cycle. The deferred payment balance ($500 in this example) is not subject to a periodic rate for billing cycles between the date of purchase and the payment due date. Periodic statements sent for those billing cycles should not include the deferred payment balance in the balance disclosed under § 226.7(e). At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than the term used to identify the balance disclosed under § 226.7(e).

ii. *Amount of finance charge.* Under § 226.7(f), creditors must disclose finance charges imposed during a billing cycle. For some same-as-cash purchases, the creditor may impose a finance charge from the date of purchase if the deferred payment balance ($500 in this example) is not paid in full by the due date, but will not impose finance charges for billing cycles between the date of purchase and the payment due date. Periodic statements for billing cycles preceding the payment due date should not include in the finance charge disclosed under § 226.7(f) the amounts a consumer may owe if the deferred payment balance is not paid in full by the payment due date. In this example, the February periodic statement should not identify as finance charges interest attributable to the $500 January purchase. At the creditor's option, this amount may be disclosed on periodic statements provided it is identified by a term other than "finance charge."

iii. *Free-ride period.* Assuming monthly billing cycles ending at month-end and a free-ride period ending on the 25th of the following month, here are two examples illustrating how a creditor may comply with the requirement to disclose the free-ride period applicable to a deferred payment balance ($500 in this example), and with the 14-day rule for mailing or delivering periodic statements before imposing finance charges (see § 226.5):

A. The creditor could include the $500 purchase on the periodic statement reflecting account activity for February and sent on March 1 and identify March 31 as the payment due date for the $500 purchase. (The creditor could also identify March 31 as the payment due date for any other amounts due on March 25.)

B. The creditor could include the $500 purchase on the periodic statement reflecting activity for March and sent on April 1 and identify April 25 as the payment due date for the $500 purchase, permitting the consumer to avoid finance charges if the $500 is paid in full by April 25.◄

* * * * *

7(e) Balance on which finance charge computed.

* * * * *

►10. *Same-as-cash transactions.* See comment 7–3(i).◄

7(f) Amount of finance charge.

* * * * *

►9. *Same-as-cash transactions.* See comment 7–3(ii).◄

* * * * *

7(j) *Free-ride period.*

* * * * *

►2. *Same-as-cash transactions.* See comment 7–3(iii).◄

* * * * *

7. In Supplement I to Part 226, *Section 226.14—Determination of Annual Percentage Rate*, under *Paragraph 14(c) Annual percentage rate for periodic statements.*, paragraph 5. and paragraph 10. would revised to read as follows:

* * * * *

§ 226.14 Determination of Annual Percentage Rate.

* * * * *

14(c) Annual percentage rate for periodic statements.

* * * * *

5. *Transaction charges.* i. Section 226.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3% of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the "other amounts on which a finance charge was imposed" figure. ►In a multifeatured plan, creditors may separately consider each bona fide feature in the calculation of the denominator.◄ For further explanation and examples of how to determine the components of this formula, see appendix F.

* * * * *

10. ◄*Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance that occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected in the annual percentage rate for the billing cycle in which the charges are posted. If the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. Balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, the transaction was impracticable to post in the previous cycle due to its timing, or the charge relates to an adjustment such as the resolution of a billing error dispute or an unintentional posting error. An annual percentage rate calculated under this paragraph shall not be less than the highest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year.◄ (*Transactions at end of billing cycle.* The annual percentage rate reflects transactions and charges imposed during the billing cycle. However, it may be impracticable to post a transaction that occurs at the end of a billing cycle until the following cycle, such as a cash advance that occurs on the last day of a billing cycle and is posted to the account in the following cycle. A card issuer that uses the date of the transaction to figure finance charges should calculate the annual percentage rate as follows for the billing cycle in which the transaction and charges are posted:

i. The denominator is calculated as if the transaction occurred on the first day of the billing cycle; and

ii. The numerator includes the amount of the transaction charge plus all finance charges derived from the application of the periodic rate to the amount of the transaction (including all charges from a prior cycle).]

* * * * *

8. In Supplement I to Part 226, *Section 226.18—Content of Disclosures*, under *Paragraph 18(g) Payment schedule.*, the 18(g) heading would be revised, and a new paragraph 4. would be added to read as follows:

* * * * *

Subpart C—Closed End Credit

* * * * *

§ 226.18 Content of Disclosures.

* * * * *

[Paragraph] 18(g) Payment schedule.

* * * * *

►4. *Timing of payments.* Creditors must disclose when payments are due, including the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due "monthly beginning on July 1, 1998." A reference to the occurrence of a particular event, for example, disclosing that the first payment is due "30 days after the completion of construction," is not sufficient. If the beginning-payment date is unknown, the creditor must use an estimated date and label the disclosure as an estimate pursuant to § 226.17(c).◄

* * * * *

9. In Supplement I to Part 226, *Section 226.33—Requirements for Reverse Mortgages*, under *Paragraph 33(c)(1) Costs to consumer*, in paragraph 2., a new sentence is added at the end of the paragraph to read as follows:

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 226.33 Requirements for Reverse Mortgages.

* * * * *

33(c) Projected total cost of credit.

Paragraph 33(c)(1) Costs to consumer.

* * * * *

2. *Annuity costs.* * * * ►For example, this includes the costs of an annuity that a creditor offers, arranges, assists the consumer in purchasing, or that the creditor is aware the consumer is purchasing as a part of the transaction.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–31896 Filed 12–8–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–248–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. This proposal would require inspection of the wing leading edge sections for the correct amount of bleed air exhaust holes, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent malfunction of the wing leading edge thermal anti-ice system, which could result in reduced controllability of the airplane and/or reduced structural integrity of the wing due to overheating.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–248–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. The RLD advises that, during assembly of a Fokker Model F28 Mark 0100 series airplane, it was discovered that the number of bleed air exhaust holes in one of the wing leading edge sections was not in conformity with type design. Subsequent investigation revealed that some spare wing leading edge sections did not have any bleed air exhaust holes present.

Missing bleed air exhaust holes may cause improper bleed air circulation within the wing thermal anti-ice system. This condition, if not corrected, could result in malfunction of the wing leading edge thermal anti-ice system, which could result in reduced controllability of the airplane and/or reduced structural integrity of the wing due to overheating.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–57–032, dated August 21, 1995, which describes procedures for a one-time visual inspection of the wing leading edge sections for the correct amount of bleed air exhaust holes, and rework of the wing leading edge sections to add the correct amount of holes, if necessary. The service bulletin also describes procedures for visual inspection of the adjacent structure of certain wing leading edge sections to detect heat damage, and repair, if necessary. The service bulletin references Fokker Component Service Bulletin D14000–57–004, dated August 21, 1995, as an additional sources of service information for a one-time visual inspection of the wing leading edge sections held in spares for the correct amount of bleed air exhaust holes, and rework of the wing leading edge sections to add the correct amount of holes, if necessary. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA No. 1995–087 (A), dated August 31, 1995, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Fokker Service Bulletin SBF100–57–032, dated August 21, 1995, specifies that operators are to contact the manufacturer for repair instructions if any heat damage is found. However, this proposed AD would require that the repairs be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 131 Fokker Model F28 Mark 0070 and Mark 0100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $7,860, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 97–NM–248–AD.

Applicability: All Model F28 Mark 0070 and Mark 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the wing leading edge thermal anti-ice system, which could result in reduced controllability of the airplane and/or reduced structural integrity of the wing due to overheating, accomplish the following:

(a) Within 60 days after the effective date of this AD, inspect all wing leading edge sections for the presence of the correct number of bleed air exhaust holes, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–032, dated August 21, 1995. If any missing holes are detected, prior to further flight, accomplish paragraph (a)(1) and (a)(2) of this AD, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin:

(1) Rework the affected wing leading edge section(s) to add the correct number of holes, and

(2) Perform a visual inspection of the auxiliary spar or front spar, as applicable, to detect heat damage. If any heat damage is detected, prior to further flight, repair the affected structure in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) As of the effective date of this AD, no person shall install a wing leading edge section, unless it has been inspected for the presence of the correct number of bleed air exhaust holes, and reworked, if necessary, to add the correct number of holes, in accordance with Fokker Component Service Bulletin D14000–57–004, dated August 21, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1995–087 (A), dated August 31, 1995.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32113 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–280–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes. This proposal would require removal of certain landing gear attachment pins, and replacement of the pins with serviceable pins. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent wear of the attachment pins, which could result in collapse of the main landing gear.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–280–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72 series airplanes. The DGAC advises that failed main landing gear (MLG) pins have been found during routine inspections. The failure has been traced to inadequate quality control of the MLG attachment pins during manufacture. Failure of the MLG attachment pins, if not corrected, could result in collapse of the MLG.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin No. ATR72–32–1036, and No. ATR72–32–1037, both dated June 19, 1996, which describe procedures for removal of certain attachment pins of the MLG, and replacement of the pins with serviceable pins. The Aerospatiale service bulletins reference Messier-Dowty Service Bulletin No. 631–32–125, dated May 7, 1996, and No. 631–32–126, dated May 7, 1996, as the appropriate sources of service information for accomplishment of these actions. The DGAC classified the Aerospatiale service bulletins as mandatory and issued French airworthiness directive 96–096–029(B), dated May 9, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to

this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $42,120, or $1,080 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 97–NM–280–AD.

Applicability: Model ATR72 series airplanes; as identified in Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996, and Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been otherwise modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wear of the landing gear attachment pins, which could result in collapse of the main landing gear (MLG), accomplish the following:

(a) Within 12 months after the effective date of this AD, remove the MLG leg hinge pins and side brace assembly center pins having the part numbers (P/N) specified in paragraph B. of the Planning Information of Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996; and replace the pins with serviceable pins, in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631–32–125, dated May 7, 1996.

(b) Prior to the accumulation of 15,000 landings since the last overhaul of the MLG, or within 8 years since the last overhaul of the MLG, whichever occurs first: Remove the MLG swinging lever/barrel pins and shock absorber/universal joint hinge pins having the P/N's specified in paragraph B. of the Planning Information of Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996; and replace the pins with serviceable pins; in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631–32–126, dated May 7, 1996.

Note 2: Serviceable pins include those that have been removed, inspected, and marked with green paint in accordance with Messier-Dowty Service Bulletin No. 631–32–125, dated May 7, 1996; or Messier-Dowty Service Bulletin No. 631–32–126, dated May 7, 1996; as applicable.

(c) As of the effective date of this AD, no person shall install any MLG pin having a part number identified in Aerospatiale Service Bulletin No. ATR72–32–1036, dated June 19, 1996, or Aerospatiale Service Bulletin No. ATR72–32–1037, dated June 19, 1996, on any airplane unless that pin is considered to be serviceable in accordance with the applicable service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 96–096–029(B), dated May 9, 1996.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32111 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–65–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley; and rerouting of wiring, and installing clamps and sleeves, if necessary. This proposal is prompted by reports of inadequate clearance between the galley power feeder wiring and passenger oxygen system tubing. The actions specified by the proposed AD are intended to prevent such inadequate clearance, which could result in a fire in the ceiling area above the door 4 galley due to chafing of wiring on oxygen system tubing.

DATES: Comments must be received by January 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2670; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received reports of inadequate clearance between the galley power feeder wiring and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley on a number of Model 747–400 series airplanes, including one in assembly. Inadequate clearance between wiring and oxygen tubing can result in chafing of the wiring on the tubing, and resultant electrical arcing, which could damage the oxygen tubing. If the damaged tubing is pressurized, oxygen could leak in the vicinity of the electrical arcing. This condition, if not corrected, could result in a fire in the ceiling area above the door 4 galley.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997, which describes procedures for a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley; and rerouting of wiring, and installing clamps and sleeves, if necessary, to obtain adequate separation.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Differences Between the Alert Service Bulletin and This Proposed AD

The alert service bulletin separates affected airplanes into two groups (Groups 1 and 2), and recommends compliance within 90 days and 18 months, respectively, for those groups. In addition to providing oxygen to passengers in the event of an in-flight depressurization, the oxygen system on Group 1 airplanes also can provide therapeutic oxygen. The oxygen tubing on Group 1 airplanes is always pressurized with oxygen because of this therapeutic oxygen feature. The oxygen tubing on Group 2 airplanes is only pressurized when the passenger oxygen system is activated in the event of depressurization. Chafing of wires on pressurized oxygen tubing (i.e., Group 1 airplanes) represents a greater fire hazard; therefore, the alert service bulletin recommends earlier compliance for that group.

The manufacturer has advised the FAA that most Group 1 airplanes have already voluntarily accomplished the actions specified in the alert service bulletin, and no cases of chafing have been found. In light of this, the FAA has determined that a compliance time of 18 months for both Group 1 and Group 2 airplanes will provide an acceptable level of safety.

Cost Impact

There are approximately 452 Boeing Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed

actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,320, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 97–NM–65–AD.

Applicability: Model 747–400 series airplanes; as listed in Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the galley power feeder and static ground wiring on passenger oxygen system tubing in the forward ceiling area above the Door 4 galley, which could result in a fire, accomplish the following:

(a) Within 18 months after the effective date of this AD: Perform a one-time inspection of the separation between the galley power feeder and static ground wiring, and the adjacent passenger oxygen system tubing in the forward ceiling area above the door 4 galley, in accordance with Boeing Alert Service Bulletin 747–25A3137, dated March 13, 1997. If the separation is outside the limits specified in the alert service bulletin, prior to further flight, reroute the wiring, and install clamps and sleeves in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32110 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–75–AD]

RIN 2120–AA64

Airworthiness Directives; Grumman Model TS–2A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Grumman Model TS–2A series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power, caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Frank Hoerman, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 527–5371; fax (562) 625–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–75–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since turbo-propeller powered Grumman Model TS–2A series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other turbo-propeller powered Grumman Model TS–2A series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on the single U.S. operator is estimated to be $60.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Grumman: Docket 97–NM–75–AD.

Applicability: All Model TS–2A series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power, caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32109 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–97–AD]

RIN 2120–AA64

Airworthiness Directives; SAAB Model Saab 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all SAAB Model Saab 2000 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved airplane flight manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since SAAB Model Saab 2000 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other SAAB Model Saab 2000 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 3 SAAB Model Saab 2000 series airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $180, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab: Docket 97–NM–97–AD.

Applicability: All Model Saab 2000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Positioning of power lever(s) below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and subsequent loss of engine power.

It is prohibited to activate BETA OVRD in flight."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32108 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–62–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–62–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since Dornier Model 328–100 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other Dornier Model 328–100 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 60 Dornier Model 328–100 series airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier: Docket 97–NM–62–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Power levers selection below Flight Idle (FI) gate is prohibited during flight.

WARNING: Movement of any power lever behind the flight idle (FI) gate during flight could lead to loss of airplane control from which recovery may not be possible."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32119 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–21–AD]

Airworthiness Directives; Eurocopter France Model SA 365N, N1 and AS 365N2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France (Eurocopter) Model SA–365N, N1 and AS–365N2 helicopters. This proposal would require inspections of the main gearbox suspension diagonal cross-member (diagonal cross-member) for cracks, and removal of the diagonal cross-member and replacement with an airworthy diagonal cross-member if any crack is found. This proposal is prompted by several reports of the discovery of cracks in diagonal cross-members. The actions specified by the proposed AD are intended to prevent failure of the diagonal cross-member which could cause the main gearbox to pivot, resulting in severe vibrations and a subsequent forced landing.

DATES: Comments must be received by February 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region,

Attention: Rules Docket No. 97–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–21–AD. The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Model SA–365N, N1 and AS–365N2 helicopters. The DGAC advises that a crack has been discovered in a diagonal cross-member of an affected helicopter.

Eurocopter has issued Eurocopter France Telex Service No. 05.00.37, dated February 20, 1997, which specifies checks (inspections) of the diagonal cross-member, part number (P/N) 365A38–3023–20, –21, –22, –23, or –24, for cracks using a flexible borescope with a 90° angle, or a video assembly with optical fiber illumination, or any other appropriate device that makes it possible to visually inspect the center area of the component; and replacement of the diagonal cross-member before further flight if a crack is detected. Modifying the affected model helicopters in accordance with MOD 0763B80 by installing a diagonal cross-member, P/N 356A38–3062–20, constitutes a terminating action for the requirements of this AD. The DGAC classified this service telex as mandatory and issued AD 97–093–041(AB)R1, dated July 30, 1997, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Model SA–365N N1 and AS–365N2 helicopters of the same type design registered in the United States, the proposed AD would require inspections of the diagonal cross-member for cracks, and replacement with an airworthy diagonal cross-member if any crack is found.

The FAA estimates that 47 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one work hour per helicopter to inspect the diagonal cross-member and 10 work hours per helicopter to replace the diagonal cross-member, if necessary, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9,950. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $498,670, assuming one inspection per helicopter, and replacement of a diagonal cross-member on each helicopter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, Federal 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 97–SW–21–AD.

Applicability: Model SA–365N, N1 and AS–365N2 helicopter with diagonal crossmembers, part number (P/N) 365A38–3023–20, –21, –23, or –24, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired, so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main gearbox suspension diagonal cross-member (diagonal cross-member), which could cause the main gearbox to pivot, resulting in severe vibrations and a subsequent forced landing, accomplish the following:

(a) For Model SA–365N and N1 helicopters, prior to the accumulation of 50,000 operating cycles; and for Model AS–365N2 helicopters, prior to the accumulation of 30,000 operating cycles:

Note 2: The Master Service Recommendations and the flight log contain accepted procedures that are used to determine the cumulative operating cycles on the rotorcraft.

(1) Inspect the diagonal cross-member for cracks in the area of the center bore hole, using a borescope with a 90° angle drive, or a video assembly with optical fiber illumination, or any other appropriate device that makes it possible to visually inspect the center area of the part.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at intervals not to exceed 500 operating cycles, or 100 hours time-in-service, whichever occurs first.

(b) If any crack is found as a result of the inspections required by paragraphs (a)(1) or (a)(2) of this AD, remove the diagonal cross-member and replace it with an airworthy diagonal cross-member.

(c) Installation of modification MOD 073B80 that installs a diagonal cross-member, P/N 356A38–3062–20, constitutes a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD97–093–041(AB)R1, dated July 30, 1997.

Issued in Fort Worth, Texas, on December 2, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–32117 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by January 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–228–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop.

The FAA notes that both Model ATR–42 and ATR–72 series airplanes are equipped with an electro-mechanical gate device that is designed to protect against the positioning of power levers below the flight idle stop in flight. The gate device has an override feature that allows access to beta during a landing roll, in the event of certain system failures. If a certain type of failure occurs, access to beta is available in flight. A pilot who is accustomed to protection that the electro-mechanical gate device provides may inadvertently access beta in flight. Further, a pilot may deliberately access beta in flight using the override feature.

In light of this, the FAA considers that the revision of the AFM is necessary to ensure that pilots are reminded that positioning of power levers below the flight idle stop while the airplane is in flight is prohibited, even though an electro-mechanical gate device is installed. The FAA further considers this to be a minimum action to ensure that pilots do not carry over certain flight habits from an airplane design that mitigates the effects of beta in flight to an airplane design that does not.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on Model ATR–42 and ATR–72 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Cost Impact

The FAA estimates that 144 Aerospatiale Model ATR–42 and ATR–72 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,640, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 97-NM-228-AD.

Applicability: All Model ATR–42 and ATR–72 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32120 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57 and 75

RIN 1219–AA94

Safety Standards for the Use of Roof-Bolting Machines in Underground Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Recent accidents in underground coal mines involving roof-bolting machines indicate the need to modify the design of such machines and require additional safety features. The accident history involving use of these machines prompted the Mine Safety and Health Administration (MSHA) to evaluate roof-bolting machines currently in use, primarily focusing on potential hazards to the machine operators during the drilling and roof-bolt installation procedures. As a result of the evaluation of accidents, MSHA is in the early stages of establishing design criteria and operating procedures for roof-bolting machines in underground mines. This notice seeks to obtain additional information and data on machine design, operating procedures, and miners' experiences with roof-bolting machines.

DATES: Submit comments on or before February 9, 1998.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203. Commenters are encouraged to submit comments on a computer disk or via e-mail to psilvey@msha.gov along with an original hard copy or via telefax to: 703–235–5551.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

An estimated 2,500 roof-bolting machines are currently in use at underground coal, potash, trona, and salt mines in the United States. The machines are used to install many types of roof bolts and other support materials into the mine roof.

Between January 1984 and April 1994, 16 fatal accidents occurred involving the operation and maintenance of roof-bolting machines. In a six-week period in early 1994, three operators of roof-bolting machines were killed while operating the machines in coal mines. Two were crushed between the drill head and machine frame while bolting the rib, and the other was crushed between the drill head boom and canopy when the fast-feed boom lift lever was inadvertently activated. Responding to these accidents, on April 4, 1994, MSHA formed and chaired the Roof-Bolting-Machine Committee (committee) with representatives from the U.S. Bureau of Mines and the West Virginia Office of Miners' Health, Safety, and Training, to review accident data, to visit mines to observe roof-bolting practices, and to interview miners. Additionally, the committee met with four major roof-bolting machine manufacturers, who provided data and technical information on machine design and function.

The study focused on boom and mast-type roof-bolting machines and did not include continuous mining machines with integral bolters. Primarily, the committee examined the potential hazards to the roof-bolter operators during the drilling and roof-bolt installation procedures.

Following this study, the committee issued a Report of Findings (Report) on roof bolter safety on July 8, 1994 outlining problems and potential solutions for reducing roof-bolting accidents. These findings are summarized below. Copies of the Report are available to the public at all MSHA district offices; from MSHA's Office of Standards, Regulations, and Variances, by calling 703–235–1910; and through MSHA's Home Page on the Internet, at http://www.msha.gov.

The committee was reconvened on October 21, 1996. The purpose of this meeting was to determine whether any new technology or design changes had occurred beyond those included in the committee's 1994 Report. The committee identified one design change, a new valve developed by a manufacturer to prevent its two-handed, fast-feed valve from being bypassed.

The committee also reviewed MSHA accident data for the period from April 1994 through December 1996. (The report covered January 1984 through March 25, 1994.) Although there have been numerous accidents and injuries, there have been no fatalities related to the operation of roof-bolting machines in either coal or metal and nonmetal mines since the issuance of the roof-bolter safety report. An analysis of the data confirmed that accidents directly related to the operation and maintenance of roof-bolting machines continue to occur.

II. Findings

The committee identified several roof-bolting-related problem areas which may have contributed to or caused the accidents. These included: (1) inadvertent actuation of controls, particularly the drill-head, fast-feed control lever, which contributed to approximately 50 percent of the fatal accidents; (2) work position location; (3) retrieval of drill steel; (4) resin insertion; (5) location of controls; and (6) control malfunction. In addition, the committee identified various other areas for improvement in future roof-bolting machine design.

III. General Issues

The committee developed ten possible solutions to address problems with existing roof-bolting machines. The solutions are as follows:

1. Installing two-handed, fast-feed controls that prevent actuation of drill-head feed controls while the machine operators are positioned in pinch-point areas.

2. Installing a drill-head raise shutoff. This device would be installed in the drill-head raise pinch point and would immediately stop the hydraulic oil flow to the drill-head feed cylinder, thus preventing the feed cylinder from being raised and accidentally injuring the operator.

3. Installing auxiliary controls for the canopy raise/lower and boom swing functions to eliminate the pinch point where operators have been injured by the swinging boom.

4. Installing control guarding or double-acting fast-feed controls, or both, to prevent inadvertent activation.

5. Providing visual identification of pinch-point areas to alert the operator of the danger area.

6. Installing self-centering controls to prevent continued machine movement when the control lever is released.

7. Securing the rotating drill steels or wrench to prevent the operator from becoming entangled in these moving machine components.

8. Installing insertion/retrieval devices (resin insertion tools or drill steel retrieval) to eliminate the need for the operator to extend his body into a pinch point or climb onto the boom.

9. Standardizing location of controls to prevent inadvertent actuation of controls due to different roof-bolting machine control layouts.

10. Conducting a pre-operational inspection of machine controls to detect malfunctions prior to operation.

These possible solutions are intended to address the problems with roof-bolting machines and to prevent accidents. MSHA requests miners, mine operators, manufacturers, and other interested parties to comment on the qualitative and quantitative potential benefits and costs of compliance associated with adoption of these solutions, and any alternatives to these solutions.

Although MSHA is considering development of a proposed rule to address the hazards associated with roof-bolting machines, the Agency also solicits comment from the public on alternatives, other than rulemaking, to address safety hazards on roof-bolting machines used in the mines today.

IV. Specific Issues

Because a roof-bolting machine standard would apply to both coal and metal and nonmetal mining industries, commenters should provide specific justification for their positions based on sound engineering, work practices, and mining conditions. MSHA requests comment on the technological and economical feasibility and benefits of the solutions suggested in the Report of Findings and in this notice. Specifically, MSHA seeks input on the following issues: the current availability of technology to retrofit existing machines with two-handed fast-feed controls, double-acting fast-feed controls, control guarding, visual identification markers to alert the operator of the pinch point area, self-centering controls, or insertion/retrieval devices; the impact on the design and operation of existing machines if retrofitting were to be required; the impact of available technology on newly-purchased machines; the costs to manufacturers and mine operators of available technology; and any other information that is relevant to the findings in the Report. Commenters are encouraged to provide information specific to their mining conditions.

V. Impact

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations, and propose regulations on the basis that the benefits justify the costs. Regulatory agencies also are required to base decisions on the best reasonably obtainable scientific, technical, economic, and other data and information concerning the need for and the consequences of the proposed regulations.

MSHA is in the early stages of developing a proposed rule. The Agency anticipates that the benefit of a safety standard addressing design criteria and operating procedures for the use of roof-bolting machines in underground mines would be the prevention of fatalities and injuries which occur when these machines are operated.

VI. Public Participation

MSHA requests comments on the specific issues addressed in this notice as well as those addressed in the Report of Findings. Interested parties are particularly encouraged to be as specific as possible in addressing each of MSHA's possible solutions and in suggesting alternatives to these solutions. MSHA also requests that commenters include specific examples and cost estimates to support their rationale to assist the Agency in evaluating and analyzing their comments.

List of Subjects in 30 CFR Parts 57 and 75

Mine safety and health, Underground mining.

Dated: December 3, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–32203 Filed 12–8–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AI98

Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Rules of Practice of the Board of Veterans' Appeals (Board) to discontinue VA's paying attorney fees from past-due benefits, establish safeguards in the case of "disinterested third-party" payers, and simplify certain notice procedures. We believe that discontinuance of VA's paying attorney fees from past-due benefits is warranted because the administrative resources that it consumes would be better spent in activities more directly beneficial to veterans; the establishment of safeguards regarding "disinterested third-party" payers will help prevent circumvention of the law restricting payments by claimants and appellants; and simplified notice procedures relating to motions to review attorney-fee agreements or to challenge expense charges are adequate for establishing proof of service.

DATES: Comments must be received on or before February 9, 1998.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI98". All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits.

This document proposes to amend the Board's Rules of Practice to (1) exercise the option provided in 38 U.S.C. 5904(d)(3) not to pay attorney fees directly to an attorney out of past-due benefits; (2) establish safeguards where a "disinterested third party" pays an attorney's fees or salary on behalf of a claimant or appellant; and (3) simplify notice procedures in connection with motions to review fee agreements for reasonableness and to review a representative's expenses.

Paying Attorney Fees From Past-Due VA Benefits

Beginning during the Civil War, and continuing for more than a century, attorneys and agents were forbidden from charging more than $10 for services in connection with a claim for veterans benefits. In 1988, the "Veterans' Judicial Review Act" (VJRA), Pub. L. No. 100–687, Div. A, § 104, 102 Stat. 4105, 4108–09 (1988), removed that limitation, and provided that, under certain circumstances, an attorney or agent could charge a "reasonable" fee for such services. 38 U.S.C. 5904.

VJRA permitted a veteran to pay an attorney directly or, under certain conditions, to have the attorney paid by VA directly out of "past-due benefits" awarded in connection with a successful claim. Specifically, section 5904(d) of title 38, United States Code, as added in 1988 by VJRA and modified in 1992 by Pub. L. 103–446, permits the Secretary of Veterans Affairs to pay an attorney's fee directly to an attorney out of past-due VA benefits if (1) an agreement between the attorney and the client provides for such a payment; (2) the total fee is contingent on whether or not the matter is resolved in a manner favorable to the claimant; and (3) the total fee does not exceed 20 percent of past-due benefits. In 1992, VA added § 20.609 to title 38 of the Code of Federal Regulations, by which, among other things, the Secretary undertook to exercise this discretionary authority.

This document proposes to change the regulations to state that VA will not pay attorney fees out of past-due benefits. This proposal is based on a number of reasons.

First, the program puts a strain on the already overburdened Veterans Benefits Administration (VBA), which operates VA's 58 regional offices. Paying attorney fees from past-due benefits requires that some of the money due a claimant be withheld pending a determination—made by the Board of Veterans' Appeals—that the agreement meets the statutory and regulatory requirements for payment. Because almost all awards of benefits are made at individual regional offices, and because section 5904 permits VA to pay attorney fees only from past-due benefits, VBA has had to develop strict and complex procedures for withholding money. This in turn has required the designation of at least one "attorney fee coordinator" at each of the 58 regional offices, the involvement of at least one employee from the finance activity and from the agent cashier at those offices, as well as a significant amount of correspondence between the Board and the various regional offices on this issue—direct participation by as many as 175 VBA employees.

Second, the anticipated growth in attorney representation before VA has not materialized. The percentage of appellants represented by attorneys in completed Board proceedings has varied only slightly during the period 1993–96: 3.0 percent (786/26,400) (1993); 3.9 percent (861/22,045) (1994); 3.1 percent (873/28,195) (1995); and 3.4 percent (1,160/33,944) (1996).

Third, few attorneys ever qualify for payment from past-due benefits. In every case which results in the payment of past-due benefits and in which an attorney has filed an agreement with the claimant to be paid directly from past-due benefits, the Board makes a determination as to whether the agreement meets the statutory and regulatory standards for payment. Of the 110,584 decisions the Board issued during fiscal years 1993 through 1996, only 222 were decisions on fee agreements in which an attorney was to be paid from past-due benefits awarded. Those 222 decisions made over four years have required the special support of as many as 175 VBA employees per year, most of whom would have been spending their time in activities more directly benefiting veterans and their families: deciding claims and coordinating benefit payments.

Finally, a recently-completed study ordered by Congress recommends that VA get out of the business of paying attorney fees. Thus, the Veterans' Claims Adjudication Commission, established by Congress to determine means for increasing the efficiency of the VA system for claims disposition, found that:

> The provision for payment by VA of attorney fees from past-due benefits is administratively cumbersome and distorts the role of government. Attorney representatives and veterans should be expected to transact fee payments between themselves. VA should not be involved in these transactions. * * * The provision for VA to compensate attorneys from awards of past-due benefits thrusts VA into a business that is excessively far from its central purpose. VA is not well suited to perform this function, and the requirement that it do so represents a significant opportunity cost. The resources used for this purpose would be better spent in activities of more direct benefit to veterans.

The Veterans' Claims Adjudication Comm'n, *Report to Congress* 130 (Dec. 1996). VA concurs in those findings and the conclusion.

While we believe that the right to hire an attorney is an important one, we do not believe that eliminating payment by the Department will materially affect the availability of such services. We think that a veteran is as able as anyone else to transact a fee payment without the intervention of the Department. These proposed amendments will not interfere with a claimant's ability to pay attorney fees directly to his or her attorney out of past-due benefits.

For all these reasons, we propose to amend 38 CFR 20.609(h), which provides the rules for payment of attorney fees from past-due benefits, by deleting all the current text and replacing it with the following statement: "The Department of Veterans Affairs will not pay fees directly to an attorney at law from past-due benefits."

Safeguards Where a "Disinterested Third Party" Pays an Attorney's Fee

In 1988, VA amended part 14 of title 38, Code of Federal Regulations, to reflect an opinion from the Office of Legal Counsel of the Department of Justice which concluded that the then-current $10 fee limitation did not apply to third parties not standing to benefit from a veteran's claim. 53 FR 52416, 52418 (Dec. 28, 1988) (38 CFR 14.634(a) (1989)). VA has incorporated the exception for third parties not standing to benefit from a veteran's claim into the current rules governing the payment of attorney fees. An organization, governmental entity, or other disinterested third party may pay attorney fees under circumstances in which a claimant or appellant may not, for example, when there has been no final Board decision with respect to an issue. *See* 38 CFR 20.609(d)(2).

In dealing with this exception over the years, we have reviewed fee agreements that list individuals as "disinterested third parties" who appear to be no more than "straw men," i.e., nominal fee payers who really serve as a mere conduit for a prohibited payment

by a claimant or appellant. Typically, such "disinterested third parties" will agree to pay a fee equal to some percentage of the amount of any past-due benefits awarded the claimant, contingent on a successful outcome. Indeed, some contracts we have reviewed call for payment of a percentage of the actual past-due benefits by these third parties, a legally impossible feat because of the nonassignability of veterans benefits under 38 U.S.C. 5301.

In this context, VA's General Counsel has informally advised that, if a third party acts as a mere conduit for a prohibited payment by a claimant, the exception in the regulation would not apply.

Accordingly, we propose three amendments to Rule 609(d)(2) (38 CFR 20.609(d)(2)), relating to payment of fees by disinterested third parties.

First, we propose to prohibit, in any case involving a third-party payer, a fee which is contingent, in whole or in part, on whether or not the matter is resolved in a manner favorable to the claimant or appellant. The contingent fee functions as a financing device that enables a client to assert and prosecute an otherwise unaffordable claim. *See, e.g.*, Lester I. Brickman, Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?, 37 UCLA L. Rev. 29, 43 (1989). If a third party agrees to pay an attorney to represent a veteran (or other claimant) because the law bars the attorney from charging the veteran a fee, the issue of "financing" the cost of the litigation through a successful outcome is moot: By definition, a disinterested third party will receive no benefit from any award to the veteran, so that the outcome can generate no funds with which to pay the attorney. Nevertheless, we have seen a number of agreements in which a "disinterested third party" agrees to pay an amount equal to some percentage of a veteran's past-due benefits, an arrangement that appears to merely set the stage for a transfer from the veteran to the third party to the attorney. In our view, making a fee to be paid by a disinterested third party contingent on the outcome of the claim encourages the parties to break the law. Accordingly, we propose to bar contingent fees in such circumstances.

Second, we propose to establish a presumption that a person who is the spouse, child, or parent of the claimant or appellant, or who resides with the claimant or appellant, is not a disinterested third party. In our view, persons in such relationships usually have some financial or other interest in the success of the claim and are therefore unlikely to be disinterested.

Finally, we propose to require that the attorney or agent file a statement certifying that no agreement exists under which the claimant or appellant will provide anything of value to the third party in return for payment of the fee or salary. We believe that it is the responsibility of an attorney, as an officer of the court, and an agent, as a licensee of VA, to make appropriate inquiries. *Cf.* Fed. R. Civ. P. 11(b) (signature of attorney on court papers certifies, among other things, inquiry by the attorney which is reasonable under the circumstances). We also propose to amend Rule 609(g) (38 CFR 20.609(g)), relating to fee agreements, to clarify that any agreement for the payment of fees must include the name and mailing address of the disinterested third party. This will allow VA to advise such third parties of legal requirements regarding disinterested third parties.

Simplifying Notice Procedures

Both Rule 609(i) (38 CFR 20.609(i)), relating to motions to review attorney fee agreements, and Rule 610(d) (38 CFR 20.610(d)), relating to motions challenging expenses, require service of papers on opposing parties by certified mail, return receipt requested, and require filing signed certificates of receipt with the Board. We do not believe that this level of proof is necessary to ensure that all parties receive copies of various material. Accordingly, we propose to amend both rules to provide that proof of service in such cases will be by filing a statement with the Board certifying that copies have been sent to the other parties by first-class mail, postage prepaid. This is in line with general rules of service in the Federal Rules of Civil Procedure. Fed. R. Civ. P. 5(d) (generally, a certificate of service by a party (or attorney) is sufficient proof of service).

Other Changes

In addition to the changes noted above, we propose to make nonsubstantive changes required for purposes of clarity. We also propose to make changes to correspond to new organization names within the Board.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only the processing of claims by VA and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: December 1, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In subpart A, § 20.3, paragraphs (n), (o), and (p) are redesignated as paragraphs (o), (p), and (q), respectively; and a new paragraph (n) is added to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(n) *Past-due benefits* means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

* * * * *

3. In subpart G, § 20.609, paragraphs (d)(2), (f), (g), (h), and (i) are revised and paragraph (j) is added to read as follows:

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) * * *

(2) *Payment of fee by disinterested third party.* (i) An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: "I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid."

* * * * *

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in Rule 20.3(n) (§ 20.3(n) of this part), will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran, the name of each disinterested third-party payer (see paragraph (d)(2)), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans' Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Chief Counsel (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420.

(h) *Payment of fees by Department of Veterans Affairs directly to an attorney-at-law from past-due benefits.* The Department of Veterans Affairs will not pay fees directly to an attorney at law from past-due benefits.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable; must be accompanied by all evidence the moving party desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Such motions (other than motions by the Board) must be filed at the following address: Office of the Chief Counsel (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The other parties may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the Court of Veterans Appeals.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 5902, 5904, 5905)

4. In subpart G, § 20.610, paragraph (d) is revised, and paragraph (e) is added to read as follows:

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable; must be accompanied by all evidence the claimant or appellant desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to the representative. Such motions must be filed at the following address: Office of the Chief Counsel (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420. The representative may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to the claimant or appellant, setting forth the address to which the copy was mailed. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this

chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

[FR Doc. 97–32107 Filed 12–8–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ059–0005; FRL–5933–4]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Maricopa County's Ordinance P–7, Maricopa County Trip Reduction Ordinance, as a revision to the Arizona State Implementation Plan (SIP). EPA's final approval of this proposed rule will incorporate it into the federally approved SIP. EPA has evaluated the rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before January 8, 1998.

ADDRESSES: Comments may be mailed to: Frances Wicher, Office of Air Planning, (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the ordinance and EPA's evaluation of the ordinance is available for public inspection at EPA's Region 9 office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office Of Air Planning (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

Maricopa County is designated nonattainment and classified as a serious area for ozone, carbon monoxide (CO), and particulate matter. See 62 FR 60001 (November 6, 1997), 61 FR 39343 (July 29, 1996) and 60 FR 30046 (June 7, 1995). Emissions from motor vehicles contribute substantially to exceedances of the national ambient air quality standards for all three pollutants in the Maricopa area. Over the years the State has adopted a comprehensive motor vehicle emission control program including a number of transportation control measures to address this problem.

In 1988, the Arizona legislature adopted a trip reduction program for Maricopa County (see 1988 Session, Arizona House Bill (H.B.) 2206, section 23, codified at Arizona Revised Statutes (A.R.S.) Title 49, Chapter 3, Article 8) and directed Maricopa County to implement the program.

The State submitted this program in its 1988 Carbon Monoxide Plan for the Maricopa County nonattainment area and EPA approved the program as part of its approval of that plan. 53 FR 30224 (August 10, 1988) and 40 CFR 52.120(c)(65)(i)(A)(*1*). In 1990, EPA's approval of the 1988 CO plan was vacated by the Ninth Circuit Court of Appeals in *Delaney* v. *EPA*, 898 F. 2d 687 (1990). EPA subsequently restored its approval of the control measures in that plan, including the trip reduction program. 56 FR 3219 (January 29, 1991).

Since 1988, the legislature has revised the trip reduction program several times to tighten the trip reduction goals, decrease the threshold size of employers subject to the program from 100 to 50 employees, extend the program to schools, and to otherwise revise the program. In addition, the legislature directed Maricopa County to "make and enforce" an ordinance consistent with A.R.S. 49–588 (Requirements for major employers). A.R.S. 49–474.01(B) (1993 6th Special Session, H.B. 2001, section 24). On May 26, 1994, in compliance with the statute, the County subsequently adopted Maricopa County Environmental Services Department (MCESD), Ordinance No. P–7 Maricopa County Trip Reduction Ordinance.

II. Maricopa County Trip Reduction Ordinance

MCESD Ordinance No. P–7 was submitted as a SIP revision by the Arizona Department of Environmental Quality to EPA on August 31, 1995. The submittal became complete by operation of law under CAA section 110(k)(1)(B) on February 29, 1996.

The ordinance requires employers with 50 or more employees or schools with 50 or more employees or students to, among other things, conduct and submit annually an employee/student commute survey (section 7(A)); disseminate information on alternative modes and other trip reduction measures (section 7(E)); develop and submit a trip reduction plan designed to meet target reductions in single-occupant-vehicle (SOV) trips and vehicle miles traveled (VMT) (section 7(C)); and implement the trip reduction plan (section 7 (B) and (D)).

Failure to meet trip reduction goals does not constitute a violation of the ordinance if the employer or school is attempting in good faith to meet the goals (section 13(C)(2)); however, failure to comply with other specific requirements of the ordinance, such as the failure to submit or to implement an approved trip reduction plan, do constitute violations of the ordinance and are subject to penalties as provided in A.R.S. 49–593(D).

The Maricopa County Trip Reduction Program is staffed by the Maricopa County Trip Reduction Program Staff under MCESD. The 1996 annual report on the program states that in 1996, 2,501 employment sites were processed, more than 570,000 employees and students were surveyed, and more than 1,500 trip reduction plans were reviewed. The report demonstrates that the program has been effective in reducing both SOV trips and VMT in the Maricopa area. See Annual Report 1996, Maricopa County Trip Reduction Program, MCESD.

III. Clean Air Act Requirements

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

There are currently no Clean Air Act requirements mandating trip reduction programs (also known as employer commute options or ECO programs). The CAA Amendments of 1990 required severe and above ozone nonattainment areas and serious CO nonattainment areas to adopt ECO programs (see sections 182(d)(1)(B) and 187(b)(2), respectively, of the Clean Air Act as amended on November 15, 1990). However, prior to the July 1996 reclassification of the Maricopa area from a moderate to a serious CO nonattainment area, Congress passed legislation amending section 182(d)(1)(B) to make the adoption and implementation of ECO programs voluntary (Public Law 104–70, § 1, 109 Stat. 773, signed into law on December 23, 1995). Therefore, to be approvable, the ordinance need only meet the general SIP provisions of CAA section 110(a) (1) and (l) and EPA's regulations and policies implementing these provisions.

IV. EPA Evaluation

EPA has evaluated the submitted ordinance and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Specifically, the ordinance is enforceable and there is evidence of sufficient personnel, funding, and authority under State law for Maricopa County to carry out the program. Finally, this ordinance is more stringent than the existing SIP-approved trip reduction program in both applicability (50 employee threshold versus 100 employee threshold in the SIP-approved rule) and in the overall trip and VMT reduction goals. As a result, this ordinance, if approved into the SIP, will strenghten the SIP and not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. CAA section 110(l). Therefore, EPA is proposing to approve MCESD's Ordinance P–7, Maricopa County Trip Reduction Ordinance (May 26, 1994) under section 110(k)(3) of the CAA as meeting the requirements of section 110 (a) and (l).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Carbon monoxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 1, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–32185 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50629; FRL–5752–6]

RIN 2070–AB27

Proposed Revocation of Significant New Use Rules for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke significant new use rules (SNURs) for 12 substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent order or the premanufacture notice (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: Written comments must be received by EPA by January 8, 1998.

ADDRESSES: Each comment must bear the docket control number OPPTS–50629 and the name(s) of the chemical substance(s) subject to the comment. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit III. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each portion. This claim must be made

at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT:
Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

In the **Federal Register** referenced for each substance, EPA issued a SNUR establishing significant new uses for the substances listed in Unit II. of this preamble, OPPTS–50582, August 15, 1990 (55 FR 33303); OPPTS–50585, September 28, 1990 (55 FR 39899); OPPTS–50589, April 17, 1991 (56 FR 15784); OPPTS–50601, September 23, 1992 (57 FR 44070); OPPTS–50613, October 4, 1993 (58 FR 51706); and OPPTS–50620, March 1, 1995 (60 FR 11042) (FRL–4868–4). Because of additional data EPA has received for these substances, EPA is hereby proposing to revoke the SNURs.

I. Rationale for Revocation of the Rules

During EPA's review of the PMNs submitted under section 5(a)(1)(A) of TSCA for the chemical substances subject to this revocation, EPA concluded that promulgation of SNURs under section 5(a)(2) was warranted based on the fact that activities not described in the section 5(e) consent order or the PMN might result in significant changes in human or environmental exposure. Based on these findings, SNURs were promulgated defining such activities as "significant new uses."

Based on new data, EPA has revoked, or will revoke the section 5(e) consent orders that are the basis for these SNURs and no longer finds that activities not described in the section 5(e) consent orders or the PMN may result in significant changes in human or environmental exposure nor constitutes "significant new uses." The proposed revocation of SNURs for these substances is consistent with this finding. When this revocation becomes final, notice of intent to manufacture, import, or process these substances for a significant new use will no longer be required. In addition, export notification under section 12(b) of TSCA will no longer be required on the basis of these substances being subject to SNURs.

II. Proposed Revocations and Background

EPA is proposing to revoke the significant new use and recordkeeping requirements under 40 CFR part 721, subpart E for the following chemical substances. In this unit, EPA provides a description for each substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), the date of the revocation of the section 5(e) consent order (where applicable), a summary of the reason for revoking the rule, **Federal Register** reference, docket number, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substances is contained in the rulemaking record referenced below in Unit III. of this preamble.

PMN Number P–87–90

Chemical name: (generic) Methylenebistrisubstituted aniline-.
CAS number: Not available.
Revocation of section 5(e) consent order: September 11, 1997.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33305).
Docket number: OPPTS–50582.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: 90-Day Dietary Study in Rats: Based on toxic effects in the liver and lungs to both males and females, the lowest observed adverse effect level (LOAEL) was 300 parts per million (ppm) (23.4 milligrams/kilograms/day (mg/kg/day) and 28.2 mg/kg/day) and the no observed adverse effect level (NOAEL) was 100 ppm (7.6 mg/kg/day and 8.5 mg/kg/day) respectively. There were no effects noted in the target areas of the eyes and the reproductive organs of the males or females. In addition, three mutagenicity studies, a mouse micronucleus assay, a bacterial mutation assay, and a chromosomal aberration study were conducted. The results demonstrated that the PMN substance is not a gene or chromosome mutagen and confirmed previous negative results in Salmonella typhimurium and *in vitro* in human lymphocytes.
CFR citation: 40 CFR 721.700 (Formerly 40 CFR 721.1395).

PMN Number P–91–55

Chemical name: (generic) Alkylcarbamic acid, alkynyl ester.
CAS number: Not available.
Revocation of section 5(e) consent order: March 11, 1997.
Federal Register *publication date and reference:* September 23, 1992 (57 FR 44064).
Docket number: OPPTS–50601.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The following test data for structurally analogous material was submitted under the terms of the 5(e) consent order. The data showed the 96-hour LC_{50} for fish was 85.0 milligrams/liter (mg/L) and the 48-hour LC_{50} for daphnids was 60.0 mg/L.
CFR citation: 40 CFR 721.2840.

PMN Number P–84–527

Chemical name: (generic) Unsaturated amino ester salt.
CAS number: Not available.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33304).
Docket number: OPPTS–50582.
Basis for revocation: Based on the Agency's analysis of the test data submitted under a voluntary testing program for acrylates, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time,
Toxicity results: Two long-term dermal bioassays on triethylene glycol diacrylate and triethylene glycol dimethacrylate demonstrated no evidence of carcinogenicity under the test conditions. Refer to Proposed Revocation of SNURs for Certain Acrylate Substances published in the **Federal Register** of June 2, 1997 (62 FR 29688) (FRL–5595–1), for further background information on these test results.
CFR citation: 40 CFR 721.2860 (Formerly 40 CFR 721.980).

PMN Number P–84–537

Chemical name: (generic) Unsaturated amino alkyl ester salt.
CAS number: Not available.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33304).
Docket number: OPPTS–50582.
Basis for revocation: Based on the Agency's analysis of the test data submitted under a voluntary testing program for acrylates, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Two long-term dermal bioassays on triethylene glycol diacrylate and triethylene glycol dimethacrylate demonstrated no evidence of carcinogenicity under the test conditions. Refer to Proposed Revocation of SNURs for Certain Acrylate Substances published in the **Federal Register** of June 2, 1997 (62 FR 29688) (FRL–5595–1), for further background information on these test results.
CFR citation: 40 CFR 721.2880 (Formerly 40 CFR 721.983).

PMN Number P–90–549

Chemical name: (generic) Benzoate ester.
CAS number: Not available.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15790).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The substance is not a chromosome mutagen *in vivo* in the mouse micronucleus assay. The 28-day repeated dose oral study in rats demonstrated a NOAEL of 150 mg/kg/day and a LOAEL of 1,000 mg/kg/day based on behavioral changes, liver effects, and blood effects. An oral developmental toxicity study in rats demonstrated a NOAEL of 300 mg/kg/day for both maternal and developmental toxicity. At 1,000 mg/kg/day there was both maternal body weight loss and a decrease in fetal weight in addition to reductions in the incidence of fetal ossification.
CFR citation: 40 CFR 721.2940 (Formerly 40 CFR 721.570).

PMN Numbers P–88–1303, P–88–2177, and P–90–212

Chemical name: Ethane, 1,1-dichloro-1-fluoro-.
CAS number: 1717–00–6.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15791).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Rat Inhalation Carcinogenicity Study: The only significant effects noted were a statistically significant increased incidence of benign testicular interstitial cell tumors in male rats in the mid and high dose ranges (5,000 ppm and 15,000–20,000 ppm). The high dose was ⅓ of the 4-hour LC_{50}. Two Generation Inhalation Reproductive Study: The substance demonstrated reproductive and developmental toxicity at 20,000 ppm. Adult systemic toxicity was evident at 8,000 ppm and 20,000 ppm. The LOAEL was 8,000 ppm and the NOAEL was 2,000 ppm. A Neurobehavioral and Neuropathological Effects Study in Rats: The only effect noted was a significant reduction in brain weight in females exposed to the highest concentration (rats were dosed at 15,000 ppm for 16 weeks and 2 days and observed for effects until week 21 of the study).
CFR citation: 40 CFR 721.3200 (Formerly 40 CFR 721.1007).

PMN Number P–89–776

Chemical name: (generic) Substituted benzenesulfonic acid, alkáli metal salt.
CAS number: Not available.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15790).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Inhalation Developmental Toxicity Studies in Rats and Rabbits: No effects were noted at determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The substance was not a chromosome mutagen *in vivo* in the mouse micronucleus assay. The no observed effect level (NOEL) for the 90-day oral study in rats is 50 mg/kg/day based on increased liver weights and clinical chemistry changes indicative of hepatotoxicity at 316 mg/kg/day and higher.
CFR citation: 40 CFR 721.4640 (Formerly 40 CFR 721.566).

PMN Number P–86–1662

Chemical name: (generic) Halogenated phosphate ester.
CAS number: Not available.
Revocation of section 5(e) consent order: December 7, 1995.
Federal Register *publication date and reference:* October 4, 1993 (58 FR 51707).
Docket number: OPPTS–50613.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: An oral 28-day repeated dose neurotoxicity study in hens: An NOAEL of 1,000 mg/kg/day was established based on a decrease of brain neurotoxic esterase in the spinal cord and a NOEL of 500 mg/kg/day was established based on no effects observed at this dose level (the next lower dose tested).
CFR citation: 40 CFR 721.5990.

PMN Number P–91–831

Chemical name: Propane, 1,1,1,2,3,3,3-heptafluoro-.
CAS number: 431–89–0.
Federal Register *publication date and reference:* September 23, 1992 (57 FR 44071).
Docket number: OPPTS–50601.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Inhalation Developmental Toxicity Studies in Rats and Rabbits: No effects were noted at

100,000 ppm (the maximum dose tested) in rats or rabbits. No effects were noted in the rangofinding studies at 200,000 ppm. 90-day Inhalation Study in Rats: No effects noted at 78,167 ppm. Cardiac Sensitization Inhalation Study in dogs: The substance is a cardiac sensitizer at 14 percent concentration (140,000 ppm) in air. The NOAEL is estimated at 9.7 percent concentration in air based on no adverse effects noted at 9 percent concentration in air and distinctly irregular heartbeats noted at 10.5 percent concentration in air.
CFR citation: 40 CFR 721.8125.

PMN Number P–90–583

Chemical name: (generic) Reaction product of alkylphenol, tetraalkyl titanate and tin complex.
CAS number: Not available.
Revocation of section 5(e) consent order: May 31, 1995.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15793).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The acute oral LC_{50} is greater than 2,000 mg/kg/day. The mouse micronucleus assay and the ames assay were negative. The 28-day repeated dose oral study in rats demonstrated a NOAEL of 150 mg/kg/day and a LOAEL of 1,000 mg/kg/day.
CFR citation: 40 CFR 721.9260 (Formerly 40 CFR 721.2085).

PMN Number P–89–844

Chemical name: 1,3,5-Triazine-2,4,6-triamine, hydrobromide.
CAS number: 29305–12–2.
Revocation of section 5(e) consent order: January 17, 1996.
Federal Register *publication date and reference:* September 28, 1990 (55 FR 39905).
Docket number: OPPTS–50585.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as "significant new uses" in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: A 1-generation oral (dietary) reproductive study in rats demonstrated a NOAEL of 1,600 ppm. At 4,000 ppm there was reduced maternal food consumption during lactation, reduced paternal body weight (bwt), and reduced offspring survival and bwt.
CFR citation: 40 CFR 721.9780 (Formerly 40 CFR 721.2188).

PMN Number P–94–1009

Chemical name: (generic) Trifunctional aliphatic blocked urethane cross-linker.
CAS number: Not available.
Federal Register *publication date and reference:* March 1, 1995 (60 FR 11045).
Docket number: OPPTS–50620.
Basis for revocation: Pursuant to 40 CFR 720.75(e), the submitter withdrew the PMN. Therefore, a new PMN is required before anyone may commence manufacture or import. Since the PMN requirement is applicable to the substance, a SNUR is unwarranted at this time and EPA is revoking the SNUR.
CFR citation: 40 CFR 721.9962.

III. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50629 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–50629. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

IV. Regulatory Assessment Requirements

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Since this final rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled "Enhancing the Intergovernmental Partnership" (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this proposed rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, 721.9962 [Removed]

2. By removing §§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, and 721.9962.

[FR Doc. 97–32180 Filed 12–8–97; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Delist the Red Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to delist the red wolf (*Canis rufus*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating that delisting this species may be warranted.

DATES: The finding announced in this notice was made on August 28, 1997.

ADDRESSES: Information, comments, or questions regarding this petition may be submitted to the Red Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: V. Gary Henry (704/258–3939, Ext. 226) at the above address.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the petition is found to present the required information, the Service is also required to promptly commence a review of the status of the species.

The Service has made a finding on a petition to delist the red wolf (*Canis rufus*). The petition, dated August 5, 1995, was submitted by Mr. Rob Gordon, Executive Director, National Wilderness Institute, and was received by the Service on August 15, 1995.

The processing of this petition conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will continue to process the backlog of rulemakings during fiscal year 1997 following two related events: (1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (tier 1), second highest priority (tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions. The processing of this petition falls under tier 3. At this time, the Southeast Region has no pending tier 1 actions and pending tier 2 actions are near completion. Additionally, the guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). The Service announced an extension on October 23, 1997 (62 FR 55268), of the guidance for fiscal year 1997. The 1997 guidance will remain in effect until final guidance for fiscal year 1998 is published in the **Federal Register**.

The petition presents the contention that the red wolf is a gray wolf (*Canis lupus*)/coyote (*C. latrans*) hybrid and references six literature citations to support the discussion of wolf/coyote hybridization. One of these citations includes four separate papers. The petition also cites two references regarding the reason for delisting other species. The petitioner concluded that those delistings were due to errors in the original data and contends that delisting the red wolf is also valid because of original data error. The petitioner also contends that since the red wolf is a cross between two species that are secure and plentiful, the red wolf is not the best available repository of genetic material of an endangered species that could be recovered through back-breeding.

The Service has reviewed the petition, the literature cited in the petition, other available literature and data, and has consulted with experts on wolves and molecular genetics. On the basis of the best scientific and commercial information available, the Service finds that the petition does not present substantial information indicating that delisting this species may be warranted. The following three points summarize the reasons for this finding:

1. Neither the submitted data nor other available data provides conclusive evidence for the contention that the red wolf is a wolf/coyote hybrid.

The petition included attached literature references. These references consisted of a July 1995 *Scientific American* article by Robert K. Wayne and John L. Gittleman and the list of further reading references in that same article. The petition states that substantial new evidence in the form of peer-reviewed scientific papers demonstrates the hybrid origin of the red wolf, and references the research of Wayne and Gittleman as the basis, thus indirectly focusing on the Wayne and Gittleman article. This article is not a peer-reviewed paper and only the senior author has published original research regarding the red wolf. The Service has reviewed the references, along with other data, to determine their content, significance, and relevance to the petitioned action. The Service views the data presented in the petition as (1) a selective misrepresentation of the information contained in the cited references and (2) a misrepresentation of the available scientific and commercial data.

An earlier petition to delist the red wolf as a hybrid based on the mitochondrial DNA (mtDNA) results of Wayne and Jenks (1991) was found not to present substantial information to indicate that delisting was warranted (57 FR 1246; 1992). Much of the supporting evidence for that conclusion is repeated in the finding for this petition. However, the primary focus in this finding is the results and interpretations regarding the nuclear DNA results of Roy *et al.* (1996); Roy *et al.* (1994); and Roy *et al.* (1994).

2. The petition misinterprets recent DNA data as constituting conclusive evidence of hybrid origin of the red wolf.

The DNA studies referenced in the petition support the hypothesis of past hybridizations between the three *Canis* species and that the extent of hybridization between wolves and coyotes in the southeastern United States was extensive. However, the data do not provide evidence of any continuing coyote influence on nuclear DNA in red wolves, and selective captive breeding provides a likely scenario for the possible elimination of such coyote nuclear DNA from existing red wolves. The data do not provide conclusive evidence of the hybrid origin of red wolves or any evidence of phenotypic, morphological, or behavioral traits of coyotes persisting in red wolves.

3. The best scientific and commercial data available support the continued listing of the red wolf.

The Service is required to use the best scientific and commercial data available when making a decision regarding listing or delisting. As discussed above, the scientific data supporting hybridization in red wolves came from a few related studies. These studies suggest past hybridization, but provide no support for continuing hybridization in the existing red wolf populations. The remainder of the relevant scientific data shows that historic and current red wolves lack coyote, gray wolf, or hybrid phenotypic and morphological traits. Dowling *et al.* (1992) and Cronin (1993) specifically address the fact that all available data must be applied to the question and that molecular characters are only one piece of the puzzle and are no more valid than other types of scientific evidence, including morphology, behavior, ecology, ontogeny, and paleontology.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Red Wolf Recovery Coordinator (see **ADDRESSES** section).

Author. The primary author of this document is V. Gary Henry, Red Wolf Recovery Coordinator (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C 1531 *et seq.*).

Dated: August 28, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–31837 Filed 12–8–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Reopening of Comment Period on Status Review for Cheetah in Namibia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review; reopening of comment period.

SUMMARY: The Service gives notice that the comment period on the status review of the Cheetah in Namibia, as initiated in response to a petition to reclassify the species in that country from endangered to threatened, will be reopened.

DATES: Comments and information may be submitted through February 1, 1998.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; U.S. Fish and Wildlife Service; Arlington, Virginia 22203 (Fax number 703–358–2276). The petition finding, supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at this address.

FOR FURTHER INFORMATION CONTACT:

Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 19, 1996 (61 FR 11181), the U.S. Fish and Wildlife Service (Service) announced the 90-day finding that a petition to reclassify the cheetah (*Acinonyx jubatus*) in Namibia from endangered to threatened had presented substantial information indicating that the requested action may be warranted. A status review was initiated, with the original comment period ending July 17, 1996. Subsequently, the Service received two new documents that may have major relevance to this issue: a management plan for the cheetah prepared by the Government of Namibia and a final report on a cheetah workshop held by the World Conservation Union (IUCN). In order to consider this new information and any comments thereon, the Service has decided to reopen the comment period until February 1, 1998, and will provide copies of the indicated documents upon request. All comments and information will be considered in making a final decision on whether the requested action is warranted, and will be included in the administrative record.

Authority: Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 19, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–31970 Filed 12–8–97; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 62, No. 236

Tuesday, December 9, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Additional Releases, and Corrections: Correction

AGENCY: Assassination Records Review Board.

ACTION: Correction.

SUMMARY: In notice document 97–31904 beginning on page 64,195 in the December 4, 1997, make the following correction: On page 64,200 in the second column and on page 64,201 in the third column the documents listed below were published as Additional Releases in Full but should have been published as Open in Full by Review Board vote in that notice. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

FBI Documents: Opened in Full:

124–10201–10406; 0; n/a

124–10214–10038; 0; n/a

Dated: December 4, 1997.

Thomas E. Samoluk,

Deputy Director.

[FR Doc. 97–32204 Filed 12–8–97; 8:45 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 10/18/97–11/17/97

Firm name	Address	Date petition accepted	Product
Arkay Packaging Corporation	22 Arkay Drive, Hauppauge, NY 11787.	10/23/97	Folding Cartons, Boxes and Cases of Non-Corrugated Paper and Paper Board.
Britt Kennedy Signs, Inc	100 East Chestnut, Amite, LA 70422.	10/30/97	Sign, Name, Address and Similar Plates.
Cedarbrook Manufacturing Corporation.	240 Roberts Avenue, Philadelphia, PA 19144.	10/30/97	Metal Household and Doll Furniture.
MacConnell Research Corporation.	11339 B Sorrento Valley Road, San Diego, CA 92121.	11/04/97	Precision Instruments Used in the Analysis of Blood and Other Liquids.
Autopoint, Inc	1310 Pinefield Avenue, Janesville, WI 53545.	11/07/97	Ball Point Pens.
Ajusta Manufacturing, Inc	821 North River Road, West Bend, WI 53095.	11/07/97	Components of Hydraulic Mechanisms for Jacks, Hospital Beds and Automotive Convertible Tops.
Barnhart Industries, Inc	P.O. Box 278, Barnhart, MO 63012.	11/07/97	Soft Sewing Notions, Garters, Orthodontic Headgear.
Comstock Creations, Inc	190 Sawyer Drive, Durango, CO 81301.	11/07/97	Statuettes and Other Ornaments of Base Metal (Pewter).
RBA Manufacturing Co	217 South Marion Street, Malden, MO 63863.	11/10/97	Women's Lingerie, Children's Clothing and Novelty Items for the Christmas Industry.
Bula, Inc	72 Suttle Street, Durango, CO 81301.	11/12/97	Hats and Other Headgear of Knit Fabric and Wind Jackets.
Faulhaber Company (The)	21–31 Hamilton Street, Monroeville, OH 44847.	11/12/97	Saddles for Bicycles and Lawn Tractors, and Bicycle Parts.
Pryor Novelty Company, Inc	Highway 52, Tuscumbia, MO 65082.	11/13/97	Cedar Wood Novelty Gift Boxes and Chests.
Kaysam Worldwide, Inc	55 Shepherds Lane, Totowa, NJ 07512.	11/17/97	Ceiling, Pilot and Sounding Meteorological Balloons.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of

Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance)

Dated: November 24, 1997.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 97–32156 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On October 14, 1997, the Department of Commerce (the Department) published the final results and partial rescission of the ninth administrative review of the antidumping duty order on certain fresh cut flowers from Colombia (62 FR 53287). Based on the correction of ministerial errors made in those final results with respect to two manufacturer/exporters, and the subsequent changes in duty absorption amounts and the rate for non-selected respondents, we are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Zak Smith, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4087 and (202) 482–1279, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR Part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On October 14, 1997, we published a notice of *Final Results and Partial Rescission of Antidumping Duty Administrative Review (Final Results)*. We received timely allegations of ministerial errors made in the final results by Hosa Ltda (Hosa) and Maxima Farms Group (Maxima) on October 22 & 23, 1997, respectively.

Scope of Review

Imports covered by these reviews are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

Alleged Ministerial Errors

Hosa

Issue 1: Calculation of CEP Profit

In our final results, HOSA claims that the Department erred by failing to include indirect selling expenses incurred in Colombia in calculating constructed export price (CEP) profit.

DOC Position: We agree with HOSA that we failed to include indirect selling expenses incurred in Colombia in calculating CEP profit. We intended to include indirect selling expenses and have made this correction for the amended final results. We note that this omission was unique to HOSA.

Issue 2: Returned Flowers

HOSA alleges that the Department erred in its calculation of costs associated with returned flowers. HOSA claims that the Department should have used cost of production (COP) rather than constructed value (CV), because CV includes an amount for profit.

DOC Position: The question of whether to use CV or COP is a methodological issue. Our use of CV in this calculation was intentional. Therefore, in accordance with 19 CFR 353.28(d), we do not consider this to be a ministerial error (*see*, 19 CFR 353.28(d) (1996)).

Issue 3: Calculation of Indirect Selling Expenses

While reviewing the above allegations, we discovered an additional ministerial error. When generating the multiplier used in the calculation of indirect selling expenses for CV we did not use the correct number of minicarnations sold in all markets. We have corrected this error.

Maxima

Issue 1: Calculation of Number of Stems of Export-Quality Standard Carnations Sold

Maxima alleges that we failed to increase the number of export-quality stems of standard carnations sold to reflect information obtained at verification regarding home market sales.

DOC Position: We agree with Maxima that the number of stems of export-quality standard carnations sold should be increased by the number of stems sold in the home market. We intended to increase the number pursuant to information gathered at verification and have corrected this error in these amended final results.

Issue 2: Input of Monthly Number of Stems of Minicarnations Transshipped to Third Country

Maxima claims that the final digits of the monthly volumes of minicarnations transshipped through the United States were omitted.

DOC Position: We agree with Maxima and have made this correction in these amended final results.

Duty Absorption

As a result of correcting these ministerial errors, the amount of U.S. sales through affiliated importers has also changed:

Name of company	*Percentage of U.S. affiliated importer sales with margins*
Hosa	15.83
Maxima	31.61

Amended Final Results of Review

As a result of these amended final results, we determine the following percentage weighted-average margins to exist for Hosa and Maxima (both selected respondents) for the period of review (March 1, 1995 through February 29, 1996):

	Percent
Hosa Group	2.01
Horticultura de la Sabana S.A.	
Hosa Ltda.	
Innovacion Andina S.A.	
Minispray S.A.	
ProHosa Ltda.	
Maxima Farms Group	3.02
Agricola los Arboles S.A.	
Colombian D.C. Flowers	
Polo Flowers	
Rainbow Flowers	
Maxima Farms Inc.	

Based on the above, the new rate for those companies not selected as respondents is 2.25 percent.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Act.

Dated: December 2, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32211 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom in response to requests by respondents, British Steel Engineering Steels Limited (BSES) and Glynwed Metal Processing Ltd. (Glynwed), and petitioner, Inland Steel Bar Company. This review covers the period March 1, 1996 through February 28, 1997.

We have preliminarily determined that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment (1) a statement of the issue and (2) a brief summary of the comment.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill, Gideon Katz or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 19 CFR Part 353 (1996).

SUPPLEMENTAL INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom on March 22, 1993 (58 FR 15324). On March 7, 1997 we published in the **Federal Register** (62 FR 10521) a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom covering the period March 1, 1996 through February 28, 1997.

In accordance with 19 CFR 353.22(a)(1), BSES and Glywed requested that we conduct an administrative review of their sales, and the petitioner, Inland Steel Bar Company, requested that we conduct an administrative review of BSES's sales. We published a notice of initiation of this antidumping duty administrative review on April 24, 1997 (62 FR 19988). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

This review covers two manufacturers/exporters, BSES and Glynwed, and the period March 1, 1996 through February 28, 1997.

Verification

As provided in section 782(1) of the Act, we verified information provided by BSES using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

United States Price

We based United States price on export price (EP), as defined in section 772(a) of the Act, because the merchandise was sold directly by the exporter to unaffiliated U.S. purchasers prior to the date of importation and constructed export price was not indicated by other facts of record.

BSES

The Department calculated EP for BSES based on packed, delivered prices to customers in the United States. We made deductions, where applicable, for foreign inland freight, FOB charges in the United Kingdom, ocean freight, marine insurance, U.S. Customs duties, brokerage and handling charges, merchandising processing fees, and U.S. inland freight charges, in accordance with 19 CFR 353.41(d). We also made an adjustment for invoice corrections (billing adjustments) made after shipment.

BSES's sales in the United Kingdom and the United States were made in quantities of less than 25 metric tons and 25 metric tons or more. As in all prior segments of the proceeding, where possible we matched U.S. sales to U.K. sales within the same quantity group: 25 tons or more, or less than 25 tons. (*See*,

e.g., Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 58 FR 6207, January 27, 1993; and *Final Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 62 FR 18744, April 17, 1997.

Glynwed

The Department calculated EP for Glynwed based on packed, delivered prices to customers in the United States. We made deductions, where applicable, for international freight (including foreign inland freight, U.S. inland freight, ocean freight, and vessel loading and handling charges), marine insurance, U.S. Customs duties, brokerage and handling charges, in accordance with 19 CFR 353.41(d). We also made an adjustment for invoice corrections (billing adjustments) made after shipment.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, the Department compared each company's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because each company's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV.

Many of BSES's and Glynwed's home market sales were made to affiliated original equipment manufacturers (OEMs). It is the Department's practice, in situations where home market sales are made to affiliated parties, to determine whether sales to affiliated parties might be appropriate to use as the basis of NV by comparing prices of those sales to prices of sales to unaffiliated parties, on a model-by-model basis. *See Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.* 60 FR 10900, February 28, 1995. (*See* Preliminary Results, 59 FR 9463, February 28, 1994, for discussion.) Because both BSES and Glynwed made home market sales to affiliated OEMs during the period of review (POR), we tested these OEM sales to ensure that, on average, the affiliated-party sales were made at arm's length. To conduct this test, for each company, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, invoice corrections, rebates, and packing. As a result of our arm's-length test, we disregarded each company's sales to the affiliated OEM customers in the home market where the prices charged to these affiliated customers were less than 99.5 percent of the prices charged to unaffiliated customers. *See Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 62 FR 53817, October 16, 1997. We did not require respondents to provide downstream sales by the affiliated OEM customers because these customers further manufactured the subject merchandise into merchandise not covered by the order. Both BSES and Glynwed also sold through affiliated resellers to unaffiliated customers and reported these unaffiliated-customer transactions. We used these unaffiliated transactions in our determination of NV.

Leaded Rod Sales

BSES did not report its home market sales of leaded rod produced by Scunthorpe Rod Mill (SRM) and Templeborough Rod Mill (TRM), affiliated parties of BSES, claiming that such merchandise would not match to its sales of leaded bar to the United States. (Neither BSES nor its affiliates sold leaded rod to the United States during the POR.) BSES provided a list of all SRM's and TRM's leaded rod products, including their product characteristics and product identification control numbers. In addition, BSES provided a sales file that identified every leaded rod product that SRM and TRM produced or sold during the POR. Upon examination of this information, we preliminarily determine that the leaded rod produced by SRM and TRM was neither identical to nor most similar to BSES's sales of leaded bar to the United States during the POR.

Residuals

BSES's product identification number (CONNUM) contains a residual code as one of the physical characteristics in the model matching criteria. Residuals result from impurities in the scrap used for the production of leaded bar. Petitioner claims that, with the inclusion of the residual code, the model match is too narrowly defined, thereby significantly reducing the number of matches possible between U.S. and home market sales. During verification, we found that customers specify the residual level on purchase orders as part of the description of chemical composition. Therefore, we preliminarily determine that residuals are an essential part of the product, and have continued to use residuals, as we have done in prior reviews, as a physical product characteristic for purpose of model matching. *See, e.g., Final Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 62 FR 18744, April 17, 1997.

Dimensional Ranges

Petitioner argues that respondent should have reported dimensional ranges rather than specific dimensions, claiming that small differences in dimensions will have no effect on cost or commercial value.

The Department found at verification that customers request certain specific dimensions for the home market products and the U.S. products, and BSES produces to those exact dimensional specifications. In addition, we have no information on the record indicating what, if any, dimensional ranges might be more appropriate than specific dimensions for matching purposes. Therefore, the Department is continuing to use specific dimension as one of the physical characteristics for matching purposes for these preliminary results.

Home Market Rebates

During the POR, BSES offered rebates to its customers in the home market.

Petitioner argues that the Department should require BSES to tie rebates to individual transactions and calculate each individual rebate over only those sales benefitting from the rebate rather than over all sales made by the purchaser. During verification, we found that BSES has reported rebates that were specific to individual transactions. Therefore, for these preliminary results, the Department has adjusted home market prices for rebates as reported.

General and Administrative Expenses

Petitioner contends that BSES's reported general and administrative (G&A) expenses appear to be low.

During verification, we examined G&A expenses and found that all such expenses were reported in total.

Cost of Production Analysis

Pursuant to section 773(b) of the Act, for this POR, we initiated an investigation of sales at less than cost of production (COP) of BSES. We did this because in the administrative review of BSES for the most recent period (as of the time our decision to initiate a COP investigation was made) we disregarded from our calculations BSES's home market sales found to be below the COP. *See Final Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 62 FR 18744, April 17, 1997. Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department had reasonable grounds to believe or suspect that sales at less than the cost of production may have occurred during this review period.

Glynwed was not covered in a prior review or the original investigation of sales at less than fair value (LTFV), and the Department did not receive a sales below cost allegation for Glynwed. Therefore, the COP analysis is only applicable to BSES.

Before making any NV comparisons for BSES, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of BSES's cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by BSES in its questionnaire responses. As we deducted selling expenses from home market prices, we also deducted selling expenses from calculated COPs.

B. Test of Home Market Prices

After calculating COP, we tested whether home market sales of lead and bismuth steel were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted recovery of all costs within a reasonable period of time. We compared the model-specific COP to the reported home market prices less any applicable movement charges, rebates, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a specific model were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a specific model during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act, and because, based on our comparisons of prices to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, as defined in section 773(b)(2)(D) of the Act. Based on this test, we disregarded certain below-cost sales made by BSES.

Price-to-Price Comparisons

Pursuant to section 777A(d)(2), we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product where there were sales at prices above COP, as discussed above. We based NV on packed, delivered prices to unaffiliated purchasers in the home market, and to affiliated purchasers in the home market to the extent that prices were at arm's-length. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market price for invoice corrections, rebates, and inland freight. We also made a circumstance-of-sale adjustment for differences in credit insurance and product liability insurance expenses pursuant to section 773(a)(6)(C)(iii) of the Act. Because home market credit insurance expenses and product liability insurance expenses are incurred on a sale-by-sale basis and directly related to sales, we have treated these expenses as direct selling expenses in both the home market and the U.S. market. Accordingly, we made the circumstance-of-sale adjustments by adding the amounts of U.S. credit insurance and product liability insurance for each U.S. sale to the NV, and subtracting the home market amounts from NV. We also added U.S. commissions for each U.S. sale to the NV. In order to adjust for differences in packing between the two markets, we increased home market price by U.S. packing costs and reduced it by home market packing costs. Prices were reported net of value added taxes (VAT) and, therefore, no deduction for VAT was necessary. We made adjustments, where appropriate, for physical differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act.

Constructed Value

We only used constructed value with respect to BSES. In accordance with section 773(e) of the Act, we calculated CV based on the sum of BSES's cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. We used the costs of materials, fabrication, and general and administrative expenses as reported in the CV portion of BSES's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of BSES's questionnaire response. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by BSES in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We based selling expenses and profit on the information reported in the home market sales portion of BSES's questionnaire response. For selling expenses, we used the average per-unit home market selling expenses of home market sales of the foreign like product, exclusive of sales disregarded under the cost test, weighted by the total quantity sold for these sales. For actual profit, we first calculated the difference between the home market sales value and home market COP, for all home market sales of the foreign like product in the ordinary course of trade, and divided the sum of these differences by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

Commission Offset

Because there are commissions on U.S. sales and not on home market sales for both BSES and Glynwed, we made an adjustment for indirect selling expenses in the home market to offset the U.S. commissions, in accordance with 19 CFR 353.56(b)(1).

We based the commission offset amount on the amount of the home market indirect selling expenses. We limited the home market indirect selling expense deduction by the amount of the commissions incurred on sales to the United States.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
British Steel Engineering Steels Limited (BSES) (formerly United Engineering Steels Limited)	3/1/96–2/28/97	11.90
Glynwed Metal Processing Ltd. (Glynwed)	3/1/96–2/28/97	7.69

Parties to the proceeding may request disclosure within 5 business days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Pursuant to 19 CFR 353.38, any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 25.82 percent, the "all others" rate established in the LTFV investigation (58 FR 6207, January 27, 1993).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22.

Dated: December 1, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32213 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–559–001]

Preliminary Results of Countervailing Duty Administrative Review: Certain Refrigeration Compressors From the Republic of Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Rick Johnson, Office of Antidumping/Countervailing Duty Enforcement, Group III, Office IX, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3434, or 482–0165, respectively.

SUMMARY: In response to requests by the Government of the Republic of Singapore (GOS), Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), and the petitioner, Tecumseh Products Company (Tecumseh), the Department of Commerce (the Department) is conducting an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. This review covers the GOS, MARIS, and AMS. AMS was the sole exporter of the subject merchandise to the United States during the period April 1, 1995, through March 31, 1996, the period of review (POR). We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the POR.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with their argument (1) a statement of the issue and (2) a brief summary of the argument.

Applicable Statute

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on or after January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) in accordance with the Uruguay Round Agreements Act (URAA).

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1996, the GOS, MARIS, and AMS, requested an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (*Certain Refrigeration Compressors from the Republic of Singapore: Suspension of Countervailing Duty Investigation*, ("*Refrigeration Compressors*") 48 FR 51167, 51170 (November 7, 1983)). On November 19, 1996, petitioner also requested an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We initiated the review on December 16, 1996 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 61 FR 66017, (December 16, 1996)). The Department is now conducting this review in accordance with section 751 of the Tariff Act and 19 CFR 355.22. The Department issued a questionnaire on April 9, 1997, and received a joint questionnaire response from the GOS, MARIS, and AMS, on May 27, 1997. On May 27, 1997, the Department extended the time limit for completing these preliminary results until December 2, 1997 (*Extension of Time Limit for Countervailing Duty Administrative Review*, 62 FR 28672, (May 27, 1997)). Subsequently, the Department sent out a supplemental questionnaire on September 23, 1997 and received a joint supplemental questionnaire response on October 7, 1997. We conducted verification in Singapore of the questionnaire responses of the GOS, MARIS, and AMS on October 29 and 31, 1997.

Scope of the Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classified under *Harmonized Tariff Schedule* (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review period is April 1, 1995 through March 31, 1996, and includes 2 programs. The review covers one producer and one exporter of the subject merchandise, MARIS and AMS, respectively. These two companies, along with the GOS, are the signatories to the suspension agreement.

Under the terms of the suspension agreement, the GOS agrees to offset completely the amount of the net bounty or grant determined to exist by the Department in this proceeding with respect to the subject merchandise. The offset entails the collection by the GOS of an export charge applicable to the subject merchandise exported on or after the effective date of the agreement. *See Refrigeration Compressors*, 48 FR 51167, 51170 (November 7, 1983).

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part VI

The Production for Export Programme under Part VI of the Economic Expansion Incentives Act allows a 90-percent tax exemption on a company's export profit if the GOS designates a company as an export enterprise. In the investigation, the Department preliminarily found this program to be countervailable because "this tax exemption is provided only to certified export enterprises." *See Preliminary Affirmative Countervailing Duty Determination: Certain Refrigeration Compressors from the Republic of Singapore*, 48 FR 39109, 39110 (August 29, 1983). MARIS is designated as an export enterprise and used this tax exemption during the period of review. AMS was not designated an export enterprise under Part VI of the Economic Expansion Incentives Act for the period of review.

According to the Export Enterprise Certificate awarded to MARIS in a letter dated May 12, 1981, MARIS is to receive this benefit on the production of compressors, electrical parts and accessories for refrigerators, and plastic refrigerators. To calculate the benefit, we divided the tax savings claimed by MARIS under this program by the f.o.b. value of total exports of products receiving the benefit for the period of review.

MARIS' response to the Department's countervailing duty questionnaire for this review, which we confirmed at verification, shows that MARIS deducted export charges levied pursuant to the suspension agreement in arriving at an adjusted profit figure, which was then used to calculate exempt export profit for the review period. In the 90–91 administrative review, the Department determined that the amount of the export charge deduction must be added "back to MARIS' export profit in calculating MARIS' tax savings in order to offset the deduction of the export charges in the review period." *See Preliminary Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore*, 57 FR 31175 (July 14, 1992), affirmed in *Final Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore*, 57 FR 46539 (October 9, 1992). Therefore, as the Department did in the 92–93 administrative review, in calculating the benefit from this program, we have added back this deduction. On this basis, we preliminarily determine the benefit from this program during the review period to be 0.23 percent of the f.o.b. value of the merchandise.

(2) Financing Through the Monetary Authority of Singapore

Under the terms of the suspension agreement, MARIS and AMS agreed not to apply for or receive any financing provided by the rediscount facility of the Monetary Authority of Singapore (MAS) for shipments of the subject merchandise to the United States. At verification, we confirmed that, during the period of review neither MARIS nor AMS received any financing through the MAS on subject merchandise exported to the United States. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

Preliminary Results of Review

The suspension agreement states that the GOS will offset completely with an export charge the net bounty or grant calculated by the Department. We preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charges in effect for the period April 1, 1995 through March 31, 1996. We also preliminarily determine the net bounty or grant to be 0.23 percent of the f.o.b. value of the merchandise for the April 1, 1995 through March 31, 1996 review period.

Following the methodology outlined in section B.4 of the agreement, the Department preliminarily determines that, for the period April 1, 1995 through March 31, 1996, a negative adjustment may be made to the provisional export charge rate in effect. The adjustments will equal the difference between the provisional rate in effect during the review period and the rate determined in this review, plus interest. The provisional rate, established in the notice of the final results of the 90–91 administrative reviews of the suspension agreement (*See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review*, 57 FR 46539, 46540 (October 9, 1992)) was 5.52 percent. This rate was in effect from April 1, 1995 through March 12, 1996. On March 13, 1996, the Department established in the notice of the final results of the 92–93 administrative review of the suspension agreement a new provisional rate of 3.00 percent (*See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review*, 61 FR 10315 (March 13, 1996)). If the Department's preliminary results do not change in the final, we will notify the GOS that it may refund or credit, in accordance with section B.4.c of the agreement, the difference between the above amounts and the 0.23 percent, plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department. The Department will notify the GOS of these adjustments after publication of the final results of this review.

Furthermore, if the final results of this review remain the same as these

preliminary results, the Department intends to notify the GOS that the provisional export charge rate on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 0.23 percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject refrigeration compressors into the United States. Our information indicates that the two signatory companies accounted for 100 percent of imports into the United States from Singapore of this merchandise during the review period.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 2, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32212 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe From Turkey; Preliminary Results and Partial Recission of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on certain welded carbon steel pipes and tubes and welded carbon steel line pipe from Turkey. For information on the net subsidy for each reviewed company for each class or kind of merchandise, as well as for all non-reviewed companies, see the *Preliminary Results of Reviews* section of this notice. If the final results remain the same as these preliminary results of administrative reviews, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Reviews* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cheri Caddy, Office of Countervailing Duty/Antidumping Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–2849.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 7984) the countervailing duty orders on certain welded carbon steel pipes and tubes (welded pipe and tube) and certain welded carbon steel line pipe (line pipe) from Turkey. On March 7, 1997, the Department published a notice of "Opportunity to Request Administrative Review" (62 FR 10521) of these countervailing duty orders. We received timely requests for reviews from Borusan Birlesik Boru Fabrikalari A.S. (BBBF) and Borusan Ihracat Ithalat ve Dagitim A.S. (Dagitim) (Borusan Group). We also received a timely request from Wheatland Tube Company and Maverick Tube Corporation (petitioners) to conduct reviews of Erciyas Boru Sanayii ve Ticaret A.S. (Erbosan), Yucel Boru ve Profil Endustrisi A.S. (Yucel Boru), Bant Boru Sanayii ve Ticaret A.S. (Bant Boru), Erkboru Profil San ve Tic A.S. (Erkboru), Borusan Group, and Mannesmann—Sumerbank Boru Endustrisi T.A.S. (Mannesmann). We initiated the reviews covering the period January 1, 1996 through December 31, 1996 on April 24, 1997 (62 FR 19988).

In accordance with 19 CFR 355.22(a), the review on welded pipe and tube covers Erbosan, Yucel Boru, Bant Boru, Erkboru, and the Borusan Group. The review on line pipe covers Mannesmann, Yucel Boru, Bant Boru, and Erkboru. These reviews also cover 21 programs.

Erbosan, Yucel Boru, Bant Boru and Erkboru reported that they did not export welded pipe and tube or line pipe to the United States during the period of review (POR). Information obtained from the U.S. Customs Service (Customs) confirmed the companies' statements. Therefore, we are rescinding the reviews with respect to Erbosan, Yucel Boru, Bant Boru and Erkboru. The companies subject to these reviews are the Borusan Group for welded pipe and tube and Mannesmann for line pipe. Although the Borusan Group produces both welded pipe and tube and line pipe, they only exported welded pipe and tube to the United States during the POR.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act.

Scope of Reviews

Imports covered by these reviews are shipments from Turkey of two classes or kinds of merchandise: (1) Certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–135, A–500, or A–501; and (2) certain welded carbon steel line pipe with an outside diameter of 0.375 inch or more, but not over 16 inches, and with a wall thickness of not less than .065 inch. These products are produced to various American Petroleum Institute (API) specifications for line pipe, most notably API–L or API–LX. These products are classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10 and 7306.30.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. *Pre-Shipment Export Credit:* The Export Credit Bank of Turkey (Turk Eximbank) provides short-term pre-shipment export loans to exporters through intermediary commercial banks. The program is designed to support export-related industries from the initial stage of production. Loans are made to exporters who commit to export within a specified period of time. Generally, loans are extended for 120 days for industrial goods and cover 50 to 75 percent of the FOB export value. During the POR, both companies under review were eligible for pre-shipment export loans amounting to 50 percent of the FOB value of exports, for a maximum of 120 days. These loans are denominated in Turkish Lira (TL) and repaid in TL. The interest rate charged on these pre-shipment loans is established by Turk Eximbank and is tied to the Central Bank's rediscount rate.

In the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey* 61 FR 30366 (June 14, 1996) (*Pasta*), and in *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews* (62 FR 16782; April 8, 1997) and *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews* (62 FR 43984; August 18, 1997) (*Pipe and Tube*), the Department found this program countervailable because receipt of the loans is contingent upon export performance and the interest rate paid on these loans is less than the amount the recipient would pay on a comparable commercial loan. In *Pasta*, we found that these loans were tied to specific destinations; however, in the *Pipe and Tube* reviews, we found these loans to be untied. In *Pipe and Tube*, we verified that although an exporter files a loan application in which the export destination is listed, the actual destination of the shipments may be different from the one(s) stated in the loan application. The exporter has to show only that an export has taken place, and provide the foreign currency exchange receipts from the commercial bank to close out the loan with Turk Eximbank. Because the loans are not specifically tied to a particular destination at the time of approval, we determined that the pre-shipment loan program is an untied export loan program. *Pipe and Tube* at 43986. No information has been submitted to the record of this review to warrant reconsideration of that finding. Therefore, we preliminarily determine in these reviews that the pre-shipment loan program is an untied export loan program.

Pursuant to section 771(5)(E)(ii) of the Act, a benefit shall be treated as conferred "in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." In this case, as the benchmark interest rate, *i.e.*, the rate the recipient would pay on a comparable commercial loan that could actually be obtained by it, we are using company-specific interest rates on comparable commercial loans to calculate the benefit for any pre-shipment loans that were taken out by the Borusan Group or Mannesmann in 1995 and repaid in 1996, and for any pre-shipment loans that were taken out in 1996 and repaid in 1996. Because the rates on commercial loans provided by the Borusan Group and Mannesmann include the customary Bank and Insurance and Services Tax (BIST) of 5 percent of the interest rate and the Resource Utilization Support Fund (RUSF) fee of 6 percent of the interest rate, we have not added these customary bank fees to the benchmark interest rates.

In addition, because Turkey continues to experience persistently high levels of inflation, based on a Consumer Price Index rate of approximately 80 percent during the POR, we also preliminarily determine that it is appropriate to use monthly average short-term interest rates for our benchmark where such rates are available (*see Pasta* at page 30367; *Pipe and Tube* at 43987). In the previous review, when monthly company-specific interest rates were not available, we used monthly average interest rates charged by a commercial bank in Turkey on domestic loans during the POR (*see e.g., Pipe and Tube* at 16783 and 43984). However, these commercial bank rates are unavailable for this POR.

Accordingly, for Mannesmann, in those months where monthly company-specific interest rates were not available, we used, as the benchmark interest rate, the weighted average interest rate for the closest month preceding and closest month following the month in which the company took out a pre-shipment loan. Using these benchmarks, we continue to find pre-shipment export loans to Mannesmann countervailable because the interest rate charged is less than the rate for comparable commercial loans that the company could actually obtain in the market.

With respect to the Borusan Group, the company did not have monthly company-specific interest rates. However, it did obtain short-term commercial loans on which interest was paid quarterly. As such, we preliminarily determine that it is appropriate to use company-specific quarterly average short-term interest rates as the benchmark interest rates for this company, because, like the monthly rates, these rates incorporate the impact of high inflation. For one month in the POR, where quarterly commercial interest rates were not available, we used the rate from the following quarter as our benchmark. Using these benchmarks, we continue to find pre-shipment export loans to the Borusan Group countervailable because the interest rate charged is less than the rate for comparable commercial loans that the company could actually obtain in the market.

To determine the benefit, we calculated the countervailable subsidy as the difference between actual interest paid on pre-shipment loans during the POR and the interest that would have been paid using the benchmark interest rates. This difference was divided by the company's total export sales during the POR. We adjusted the sales figure to account for foreign exchange differences ("kur farki"), which resulted from the changes in the U.S. dollar/Turkish lira exchange rates. We made the adjustments because despite Turkey's high rate of inflation, Turkish companies do not index any of the figures, other than fixed assets, in their financial statements to account for inflation. Therefore, if we did not make these adjustments, the result would be equivalent to indexing export sales for inflation and thus, would inflate the denominator while the program benefits (the numerator) would remain unindexed. Such a result would unfairly distort the Department's calculation. *Pipe and Tube* at 43988. On this basis,

we preliminarily determine the countervailable subsidy to be 0.19 percent ad valorem for the Borusan Group for welded pipe and tube, and 0.29 percent ad valorem for Mannesmann for line pipe.

2. *Investment Allowances:* The General Incentives Program (GIP) is designed to increase investment in Turkey and to expand the Turkish economy. Under the GIP, companies may apply to the Undersecretariat of Treasury (UT) for investment incentive certificates. The investment incentive certificates entitle the holders to a number of specified benefits, such as investment allowances, related to an investment project. The investment allowance provides companies with a corporate tax exemption of between 30 percent and 100 percent of their total fixed investment depending upon the geographic location, sector and the value of the investment. During the POR, for purposes of GIP, Turkey was divided into three types of geographic regions: (1) Developed; (2) normal; and (3) priority. Companies located in any of the lesser-developed priority regions are entitled to higher rates of deduction than companies located in the developed or normal regions.

Mannesmann and the Borusan Group claimed an investment allowance on their corporate income tax returns filed during the POR. The Borusan Group is located in a region eligible for an investment allowance of 40 percent, while Mannesmann, because it is located in a developed region, is only eligible for the minimum investment allowance of 30 percent, the minimum investment allowance provided to all companies under GIP regardless of location or type of industry. *See e.g., Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Preliminary Results of Countervailing Duty Administrative Review*, 52 FR 47621, 47622 (December 15, 1987), *Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Review*, 53 FR 9791 (March 25, 1988), and *Pipe and Tube* at 16784; 43984.

Pursuant to section 771(5A)(D), the Department previously determined that the minimum 30 percent investment allowance provided to all sectors and geographic regions within Turkey is not countervailable because the 30 percent investment allowance is not limited to a specific enterprise or industry or group thereof, nor limited to companies located in specific regions. However, because the Borusan Group received a 40 percent investment allowance, which is 10 percent higher than the minimum 30 percent allowance provided to all sectors and geographic regions within Turkey, the difference results in a higher tax savings to the company due to its geographic location. Therefore, we preliminarily determine that the 10 percent difference results in a countervailable subsidy. *See also Industrial Phosphoric Acid from Israel; Preliminary Results of Countervailing Duty Administrative Reviews*, 61 FR 8255, 8257 (March 4, 1996) and *Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 28841 (June 6, 1996). We also previously determined that the benefits under this program are "recurring" because once a company has a fixed asset investment project approved, it becomes eligible to deduct an investment allowance from its corporate income tax returns; therefore, the receipt of the benefit is automatic and continues year to year. *Pipe and Tube* at 16784 and 43984.

To calculate the benefit for the Borusan Group, we first multiplied its total fixed investment by 10 percent, which is the amount the Borusan Group receives above the 30 percent allowance provided to all industries throughout Turkey. We then computed the company's tax rate. The company paid four separate corporate taxes. These included a 25 percent corporate tax, an interim tax in the amount of 10 percent of the corporate tax, a "stopaj" tax equal to 10 percent of 75 percent of its net taxable income, and a fund tax equal to 10 percent of the "stopaj" tax. The sum of these taxes equals a total corporate tax rate of 35.75 percent. We then multiplied the countervailable portion of the investment allowance deduction by the tax rate of 35.75 percent, and obtained the tax savings for the company. Next, we divided the tax savings by the company's total sales, adjusted for foreign exchange differences, as described above. On this basis, we preliminarily determine the countervailable subsidy to be 0.02 percent *ad valorem* for the Borusan Group for welded pipe and tube, and zero for Mannesmann for line pipe.

3. *Foreign Exchange Loan Assistance:* The Government of the Republic of Turkey (GRT) Resolution Number: 94/5782, Article 4, effective June 13, 1994 concerning the encouragement of exportation, allows commercial banks to exempt certain fees provided that the loans are used in the financing of exportation and other foreign exchange earning activities. We previously determined that this program is specific and, therefore, countervailable within the meaning of section 771(5A)(B), because the exemption of the fees is contingent upon export performance. *Pipe and Tube* at 43991.

During the POR, in connection with merchandise exported to the United States, the Borusan Group received and paid interest on a foreign currency loan from a commercial bank and was exempted from paying the BIST fee of 5 percent of the interest rate and the RUSF fee of 6 percent of the principal. Unlike pre-shipment loans that are denominated in TL where the RUSF fee is 6 percent of the interest rate, the RUSF fee for foreign currency loans is calculated as 6 percent of the principal. Mannesmann did not use the foreign exchange loan assistance in connection with merchandise exported to the United States during the POR.

We have previously determined that the BIST and RUSF fee exemptions are a direct transfer of funds from the GRT providing a benefit in the amount of the exemption. *Pipe and Tube* at 43991. We have also determined in *Pipe and Tube* at 16784 and 43984, that the benefits are recurring because once the company obtains a foreign currency loan, it is automatically exempted from paying the fees.

To calculate the benefit for this program, we computed the exempted fees on the interest or principal, where appropriate, of the Borusan Group foreign currency loan. The loan is dollar denominated. Therefore, we converted these exempted fee amounts to TL using the exchange rate in effect during the month in which the loan was received, and divided the result by the company's total exports of the subject merchandise to the United States, adjusted for foreign exchange differences, as described above. In *Pipe and Tube* at 43991, we used the actual interest exchange rate on the foreign exchange loan documentation examined at verification and that was part of the record in that proceeding. However, in this proceeding, no information was available on the record regarding the actual interest exchange rate on the foreign exchange loan. Therefore, we preliminarily determine that the fees were established when the loan was granted, and calculated the benefit using the exchange rate in effect on that date. On this basis, we preliminarily determine the net subsidy to be 0.43 percent *ad valorem* for the Borusan Group for welded pipe and tube, and zero for Mannesmann for line pipe.

4. *Freight Program:* The GRT Decree number 93/43, effective October 13, 1993, provided freight rebate payments to exporters in the amount of $50 per ton for merchandise exported on Turkish vessels, and $30 per ton for merchandise exported on non-Turkish vessels. In February 1994, pursuant to GRT Decree 94/4, the rebate was capped at 15 percent of the FOB value of the goods (an increase over the original 10 percent cap). Benefits under this program were provided in the form of 30 percent cash and 70 percent treasury bonds with one-and two-year maturity dates. (In the prior review, the examined companies only received two year bonds). Companies were eligible to receive interest on bonds on the one-year anniversary date of the issuance of the bonds and on the date of the maturity of the bonds. The program was terminated on December 31, 1994, and there will be no payments on shipments made after January 1, 1995.

In *Pipe and Tube*, we determined that these cash grants and bonds are countervailable export subsidies within the meaning of section 771(5A)(B) of the Act. The cash grants and bonds are a direct transfer of funds from the GRT providing a benefit in the amount of the cash grants and bonds. We also determined that the benefits under the Freight Program are "recurring," because once a company has exported and submitted documentation to the Central Bank it becomes eligible for the cash grants or bonds. The receipt of benefits is automatic and continued throughout the life of the program. (*Pipe and Tube* at 43990.) *See also Allocation Section of the General Issues Appendix in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37268–69, July 9, 1993) ("*General Issues Appendix*").

During the POR, Mannesmann received cash under the freight rebate program based on exports made between October 1993 and December 1994. Mannesmann also received one- and two-year bonds during the POR with respective maturity dates of 1997 and 1998. The Borusan Group also received cash during the POR based on exports made between October 1993 and December 1994. In addition, the Borusan Group received interest payments during the POR on bonds with maturity dates after the POR.

The Department's practice has been to deem the benefit to be received at the time of export, if the benefit is calculated as a percentage of the FOB value and the amount of the benefit is known at the time of export. *See e.g., Castings* at 44843. Although the benefit under the Freight Program is calculated based on tonnage and not as a percentage of export value, we note that a benefit determined by the amount of the tonnage may also be known at the time of export.

However, as previously determined in *Pipe and Tube*, the facts in this case establish that the exporter did not know the amount of benefit at the time of export. Although the freight payments were stated in U.S. dollars per ton, the benefit was not tied to the U.S. dollar. Therefore, the TL amount ultimately received by the exporter was not necessarily equivalent to U.S. $50 or U.S. $30 per ton. In this regard, the freight program at issue differs from the Export Performance Credit program, where the benefits received in TL were tied to the U.S. dollar. Under that program, we found that the exporter knew at the time of export the benefit to be received, because the exporter received the TL equivalent of the U.S. dollar amount, which was based upon a percentage of the FOB value at the time of export. Therefore, although the exporter ultimately received more TL than if the benefit had been paid at the time of export, due to Turkey's high level of inflation, the exporter still received the equivalent in TL of the U.S. dollar amount which was based upon the percent of FOB value and was known at the time of the export. *Pipe and Tube* at 16787 and 43984. In fact, in February 1995, two months after the termination of the Freight Program, the GRT announced that the benefit from this program would be based on the exchange rate that was in effect on December 31, 1994, regardless of when the shipments occurred. Moreover, given the high inflation rate in Turkey at the time of the shipments (based on a CPI rate of approximately 65 percent in 1993, and 114 percent in 1994), and the GRT's decision on the exchange rate, there was no way for the exporter to predict at the time of export what the benefit would be. This position is consistent with the Department's analysis of a similar program in *Pasta* where we determined that the benefit should be treated as having been bestowed when the cash was received rather than earned. (*See* discussion of *Payments for Exports on Turkish Ships* program in *Pasta* at 30369). As such, we previously determined that the benefits under this program are bestowed when the cash is received with respect to the cash payments, and not when the benefit is earned.

With regard to the bonds portion of the rebate, we previously determined that the benefits from the bonds are bestowed on the date of maturity. *See Pipe and Tube* at 43991. This is due to the fact that, even though there were no restrictions on the sale or transfer of the bonds, because of the rate of inflation, there was no secondary market to allow exporters to convert their bonds to cash. Therefore, the exporters have no choice but to hold the bonds until maturity. *See also Pasta* at page 30368.

The benefits under the freight program are made on a shipment-by-shipment basis. Therefore, where a benefit is tied or can be tied to exports to the United States, we calculate the *ad valorem* subsidy rate by dividing the benefit by the firm's total exports to the United States, adjusted for foreign exchange differences. *See, e.g., Notice of Final Results of Countervailing Duty Administrative Review: Roses and Other Cut Flowers from Columbia*, 52 FR 48847, 48848 (December 28, 1987). We have calculated the benefit for the Borusan Group and the benefit for Mannesmann from this program by dividing the total amount of freight rebates received during the POR by each respondent for exports to the United States by their total exports to the United States during the POR. On this basis, we preliminarily determine the net subsidy to be 2.61 percent *ad valorem* for the Borusan Group for welded pipe and tube, and 3.36 percent *ad valorem* for Mannesmann for line pipe.

5. *Incentive Premium on Domestically Obtained Goods:* Companies holding investment incentive certificates under the GIP are eligible for a rebate of the 15 percent VAT paid on locally-sourced machinery and equipment. Imported machinery and equipment are subject to the VAT and are not eligible for the rebate. (*Pasta* at 30369). The Department determined in *Pasta* that these VAT rebates are countervailable subsidies within the meaning of section 771(5)(D)(ii) of the Act because the rebates constitute revenue foregone by the GRT, and they provide a benefit in the amount of the VAT savings to the company. Also, they are specific under section 771(5A)(C) because their receipt is contingent upon the use of domestic goods rather than imported goods. Further, the Department determined that the benefits under the Incentive Premium program are "recurring," because once a company has received an investment incentive certificate it becomes eligible for the Incentive Premium benefits. The receipt of benefits is automatic and continues from year to year.

Mannesmann did not use this program during the POR. For the rebates received by the Borusan Group during the POR, we divided the amount received by the company's total sales during the POR, adjusted for foreign exchange differences. On this basis, we preliminarily determine that the net countervailable subsidy to be 0.01 per

cent *ad valorem* for the Borusan Group for welded pipe and tube, and zero for Mannesmann for line pipe.

B. Other Program Preliminarily Determined to Confer Subsidies

Deduction from Taxable Income for Export Revenues: In 1995, the Ministry of Finance amended Article 19 of the Income Tax Law by issuing Section 1 of Article 40, to allow companies that export goods or services to deduct 0.5 percent of their hard currency income derived from these export activities from their corporate income taxes.

We preliminary determine that this tax exemption is a countervailable subsidy within the meaning of section 771(5)(D)(ii) of the Act. The exemption represents revenue forgone by the GRT and provides a benefit in the amount of the tax savings to the company. Also, the subsidy is specific under section 771(5A)(B) because its receipt is contingent upon export performance. The Borusan Group and Mannesmann claimed this deduction on their tax returns filed during the POR.

To calculate the countervailable subsidy, we divided the tax savings realized during the POR by the company's total export sales during the POR, adjusted for foreign exchange differences. On this basis, we preliminarily determine the countervailable subsidy from this program to be less than 0.005 percent ad valorem for the Borusan Group for welded pipe and tube, and 0.16 percent *ad valorem* for Mannesmann for line pipe.

II. Programs Preliminarily Determined to be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

1. Resource Utilization Support Fund
2. State Aid for Exports Program
3. Advance Refunds of Tax Savings
4. Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility (Eximbank)
5. Past Performance Related Foreign Currency Export Loans (Eximbank)
6. Export Credit Insurance (Eximbank)
7. Subsidized Turkish Lira Credit Facilities
8. Subsidized Credit for Proportion of Fixed Expenditures
9. Fund Based Credit
10. Export Incentive Certificate Customs Duty & Other Tax Exemptions
11. Resource Utilization Support Premium (RUSP)
12. Regional Subsidies
    a. Additional Refunds of VAT (VAT + 10%)
    b. Postponement of VAT on Imported Goods
    c. Land Allocation (GIP)
    d. Taxes, Fees (Duties), Charge Exemption (GIP)

Preliminary Results of Review

In accordance with 19 C.F.R. section 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to each administrative review. For the period January 1, 1996 through December 31, 1996, we preliminarily determine the net subsidy to be as follows:

	Assessment Rate (percent)
Manufacturer/Exporter of Line Pipe	
Mannesmann	3.81
Manufacturer/Exporter of Pipe and Tube	
Borusan Group	3.26

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect a cash deposit of 3.26 percent of the f.o.b. invoice price on all shipments of pipe and tube from the Borusan Group, and 3.81 percent of the f.o.b. invoice price on all shipments of line pipe from Mannesmann, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR section 355.22(a). Pursuant to 19 CFR section 355.22(g), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR section 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR section 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies under each order at the most recent company-specific or country-wide rate applicable to the company under that order. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Review*, 53 FR 9791. These rates shall apply to all non-reviewed companies, including those companies for which the reviews are being rescinded, until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

Public Comments

Parties to these proceedings may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR section 355.38.

Representatives of parties to these proceedings may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR section 355.38, are due. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: December 1, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32214 Filed 12–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prevents military recruiter access to the campus or students or maintains a policy against ROTC. It also implements the requirements set forth in the Omnibus Consolidated Appropriations Act of 1997 and 32 CFR Part 216. Currently, a single institution is ineligible for contracts of grants, the Washington College of Law of American University, Washington, DC.

Recently, William Mitchell College of Law reported modifications to school policies sufficient to merit removal from the list of ineligible schools.

ADDRESSES: Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: William J. Carr, (703) 697–8444.

SUPPLEMENTARY INFORMATION: On October 6, 1997 (62 FR 52091), the Department of Defense published 32 CFR part 216 as an interim rule. This rule requires that the Department of Defense semi-annually publish a list of the institutions of higher education ineligible for Federal funds due to a policy or practice that either prohibits, or in effect prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students or that has an anti-ROTC policy. On November 18, 1997 (62 FR 61495), the Department of Defense published a list of the institutions of higher education ineligible for Federal Funding; this listing updates and supersedes that listing.

Dated: December 3, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–32084 Filed 12–8–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: Pursuant to Section10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming Quarterly Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Executive Committee Meeting is to provide transitional training to the incoming 1998 Executive Committee members and an awards ceremony for the 1997 Executive Committee members. The Meeting will be open to the public, unless otherwise noted below.

DATES: December 8, 1997, 9:15 a.m.–11:30 a.m.

ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Kay Troutt, USAF, or CDR Deborah R. Goodwin, USN, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D749, Washington, DC 20301–4000; telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: Meeting agenda:

Monday December, 1997

Time	Event
7:10–9:00 a.m	DACOWITS member's arrive/Breakfast (closed to public).
9:15–9:30 a.m	Introductions (3E869—SecDef Conf Rm, open to public).
9:30–10:00 a.m	Executive Committee Transition (open to public).
10:00–11:00 a.m	Subcommittee Reviews (open to public).
11:00–11:30 a.m	Executive Committee Presentations (open to public).
11:30–1:00 p.m	Lunch (closed to public).
1:30–4:00 p.m	Transition training for members (closed to public).

Late submission due to scheduling conflict.

Dated: December 2, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 97–32083 Filed 12–8–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Spring General Board Meeting in support of the HQ USAF Scientific Advisory Board will meet in Colorado Springs, CO, on April 22–24, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for 1998 Summer Study.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–32225 Filed 12–8–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Realignment of the Naval Sea Systems Command

AGENCY: Department of the Navy, DoD.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy announces its decision to relocate the Naval Sea Systems Command from leased spaces in Arlington, Virginia to the Washington Navy Yard, Washington DC.

DATES: This Record of Decision is effective December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Peeling, Office of the Chief of Naval Operations (N456), Crystal Plaza #5, 2211 South Clark Place, Arlington, VA 22244, (703) 604–1232.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision is provided as follows:

Notice of Record of Decision for the Realignment of the Naval Sea Systems Command.

Pursuant to the Defense Base Closure and Realignment Act of 1990 (DBCRA), Pub.L. 101–510, Section 102(2)C of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations for implementing NEPA procedures (40 CFR 1500–1508), the Department of the Navy (Navy) announces its decision to relocate the Naval Sea Systems Command (NAVSEA) from leased space in Arlington, Virginia to the Washington Navy Yard (WNY) Washington, DC. The realignment will be accomplished as set out in Alternative One described in the Final Environmental Impact Statement (FEIS) as the preferred alternative.

The Recommendations of the 1995 Defense Base Closure and Realignment (DBCR) Commission, which were approved by the President and accepted by the Congress, directed the Navy to relocate NAVSEA to the WNY or other Government-owned property in the metropolitan Washington, DC area. Section 2904 of the DBCRA requires the completion of this realignment no later than six years from the date the President transmitted the recommendations of the 1995 DBCR Commission to Congress. Consequently, the Navy must complete the NAVSEA realignment no later than July 2001.

In response to the 1995 DBCR Commission recommendation, the Navy established criteria for screening available sites in the metropolitan Washington, DC area. To qualify as a receiver site for NAVSEA, each site must: (1) have sufficient capacity to accommodate the office space required for the 4,100 NAVSEA employees. Based upon a detailed analysis of NAVSEA space needs, one million square feet of office and associated space is required to accommodate NAVSEA personnel and functions; (2) have sufficient capacity to allow location of NAVSEA facilities in a single building or in a closely related complex of buildings; (3) have the capacity to meet National Capital Planning Commission (NCPC) criteria that large federal employment centers be served by public transportation and that federal development be consistent with local development plans and policies; and (4) be available to the Navy on a timely and unencumbered basis, so that NAVSEA's realignment can be completed by July 2001.

Using these criteria, the Navy evaluated eighteen Navy-owned or occupied sites in the metropolitan Washington, DC area. Of these sites, only the Washington Navy Yard met the criteria to accommodate a realigned NAVSEA. Fifteen of those sites did not have sufficient physical capacity to accommodate NAVSEA due to lack of available buildable land and were eliminated from detailed analysis. The Naval Surface Warfare Center at White Oak, Maryland had sufficient buildable land, but was eliminated from detailed analysis because it was identified for closure by the 1995 DBCR Commission. Federal Office Building 2 (Navy Annex) in Arlington, Virginia also had sufficient space, but was eliminated from detailed analysis because the facility could not be cleared of its current occupants, renovated, and re-occupied by NAVSEA by July 2001. Additionally, the Office of the Secretary of Defense owns the Navy Annex and plans to dispose of the property after renovation of the Pentagon is complete.

To determine whether other government-owned property in the metropolitan Washington, DC area would be available for NAVSEA use, the Navy sent letters to the Army and Air Force requesting that they identify any properties which could be utilized. Both services responded by letter that no suitable property in the Washington, DC metropolitan area under their ownership could be made available. Additionally, the Navy considered General Services Administration (GSA) property for potential use by NAVSEA. However, because the WNY already has been shown to have sufficient capacity to accommodate a command the size of NAVSEA, use of GSA property would be inconsistent with Federal Property Management Regulations, 41 CFR Ch 101.

While a No-Action alternative was initially identified, it was eliminated from detailed analysis because Section 2905(c) of the DBCRA expressly exempts decisions to close or realign facilities from NEPA analysis. The four construction alternatives focused on a group of existing buildings within the western area of the WNY. The alternatives vary in the degree of renovation, demolition and new construction required. Alternative One is a mixture of renovation of existing buildings and demolition and new construction. Alternative Two includes the renovation of existing facilities to meet the office space requirement and construction of a twelve level parking garage. Alternative Three favors demolition and new construction over renovation. Alternative Four involves extensive demolition and new construction and a minor amount of renovation.

Alternative One, identified as the Preferred Alternative in the FEIS, provides excellent functionality for the NAVSEA Headquarters. Components of NAVSEA, which must work closely together, are located in a small number of tightly clustered buildings. The employee parking garage is sited directly in the center of the NAVSEA complex with optimum pedestrian access to NAVSEA occupied buildings. The garage can be laid out in a highly efficient four bay configuration, and is served on two sides by two collector streets. Although Alternative One involves potentially adverse impacts on cultural resources due to the demolition of several buildings, the Navy developed a mitigation plan for these impacts. The District of Columbia Office of Historic Preservation and the Advisory Council on Historic Preservation reviewed and approved that plan. The mitigation plan is documented in a Memorandum of Understanding signed by the Navy, the District of Columbia Office of Historic Preservation and the Advisory Council on Historic Preservation on 23 December 1996.

Alternative Two, which consists entirely of renovating existing WNY buildings and involves no demolition, is the environmentally preferable alternative because it minimizes adverse effects on cultural resources. However, it fragments NAVSEA offices into six separate buildings. This dispersed configuration would adversely affect the functioning of NAVSEA as a systems command headquarters. Additionally, the retention of all the existing WNY buildings leaves no suitable site for the required employee parking garage. The garage would be forced into an awkward and inefficient linear configuration allowing only one bay of parking spaces with extensive external ramping to serve its twelve levels. Also, the garage would be served by only one collector street, increasing the potential for traffic conflicts and bottlenecks within the base.

Alternatives Three and Four were not selected because they would have greater adverse impacts on cultural resources than either Alternative One or Two and they do not offer significantly better functionality than Alternative One.

There are no significant environmental impacts resulting from implementation of Alternative One. The Navy will implement all practical means to avoid or minimize other impacts to the environment. The mitigation measures are summarized at pages 4–28 through 4–31 of the FEIS.

Comments Received on the FEIS: In response to the FEIS, the Navy received comments from one private individual, an environmental planning group associated with the General Services Administration Southeast Federal Center, and the Arlington County (Virginia) Chamber of Commerce. The Environmental Protection Agency (EPA) informed the Navy that it could not comment within the 30-day comment period. To date, the Navy has received no comments from EPA. Responses to similar comments are grouped by issue of concern.

All commentors expressed concern over impacts to local traffic in the vicinity of the WNY. The Navy considered traffic as one of the more important issues of concern related to the proposed action, and acquired the services of a professional traffic consultant familiar with local/regional transportation to conduct studies, analyze potential impacts and advise the Navy concerning traffic related matters. The results of these efforts are contained in the FEIS and a WNY Traffic Management Plan. Although the Navy does not have the authority to regulate off-base traffic or personal privileges of its employees with regard to travel to or from their place of employment, it will limit the development of new parking at the WNY, and modify internal circulation and increase operation of the M Street and Isaac Hull Gate to mitigate potential impacts to local traffic from the mandated realignment. The results of traffic analysis for the proposed action show that the resulting traffic related impacts will not be significant.

The Arlington County Chamber of Commerce expressed concern that the Navy Annex was not included in the FEIS as a reasonable alternative for the NAVSEA Headquarters. The Navy provided a discussion in the FEIS of the criteria and rationale used to identify reasonable alternatives and a brief discussion of the reasons for eliminating other alternatives. As stated in the Background Section of the FEIS, office space at the Navy Annex is currently occupied by Headquarters Marine Corps and the Bureau of Naval Personnel and is therefore unavailable to meet the requirements in terms of space and timing. Utilization of Navy Annex as the receiver site for NAVSEA Headquarters is infeasible because it cannot be vacated of its existing tenants, renovated for new occupancy and re-occupied by NAVSEA within the legally mandated six year timeframe. In addition the property is owned by the Department of Defense, which does not intend to retain this building beyond the completion of the Pentagon renovation project. As a result, it is not analyzed as a feasible alternative in the FEIS.

The Arlington County Chamber of Commerce expressed concern over the adequacy of contamination studies data at the WNY relative to assessing the risks to relocated personnel, and disposal of contaminated materials encountered through project construction. Investigation of contamination at the WNY is being conducted in accordance with established procedures of the Installation Restoration Program and in coordination with the Environmental Protection Agency. These protocols are designed to guide property owners and regulators in deducing the presence of contamination and, if necessary, the appropriate remedial actions. A risk assessment for employees at the WNY, conducted in accordance with Environmental Protection Agency guidelines for contaminated sites, found that there is no significant risk to office workers at the Installation. In direct support of the DBCRA relocation, the Navy also conducted an environmental site investigation of the buildings which will be affected by the NAVSEA projects (Baker, November 1997). The report included several recommendations which will be incorporated into the construction contract to mitigate potential impacts. These mitigations are identified in Section 4.8 of the FEIS. Implementation of the recommendations/mitigation will serve to fully protect construction workers, employees at the WNY, individuals in the surrounding community and the environment. As discussed in the FEIS, specific requirements will be included in the construction contract for the NAVSEA facilities to deal with contaminated materials encountered during construction. These requirements implement applicable regulatory procedures for appropriate treatment and/or disposal of contaminated materials should such materials be found during construction.

The Arlington County Chamber of Commerce also expressed concern that construction of facilities for NAVSEA at the WNY would impede future remediation efforts at the Installation. Surface soil contamination within the project site (former coal storage area), has been remediated. Implementation of Alternative One will not impede future remediation efforts, if required, because it does not significantly affect access to subsurface soil or ground water. Future remediation of subsurface contaminants, if required, would most likely involve a flushing method which would be unaffected by implementation of Alternative One.

The Arlington County Chamber of Commerce expressed concern over the effects of stormwater runoff from the project site. As stated in the FEIS, the project site is covered by impermeable surfaces and construction at the project site will not increase surface runoff. Surface contamination within the project site, associated with the former coal storage pit, has been remediated as part of the Installation Restoration Program. An approved Erosion and Sediment Control Plan for the project will be implemented to contain eroded materials on-site. Water associated with excavation sites will be tested and treated prior to discharge into the sanitary system in coordination with the District Water and Sewer Authority Pretreatment Office. Stormwater control structures will be incorporated into the project design in accordance with regulatory guidance. The repair and/or replacement of existing stormwater conveyances structures throughout the Installation will be completed as part of the National Pollution Discharge Elimination System Permit requirements for the Installation.

The Arlington County Chamber of Commerce expressed concern that airborne material from construction activities will impact surrounding communities. Airborne contaminants associated with project construction will be controlled through the implementation of specific plans prepared in accordance with regulatory guidance. These include an Asbestos Plan, Lead (paint) Removal and Disposal Plan, an erosion and Sediment Control Plan, and various construction related requirements such as the application of dust suppressants, wet mopping, vacuuming, wet cutting and covering open bed haul trucks. Controlling airborne pollutants at the source protects construction workers, WNY employees and the surrounding community.

The Arlington County Chamber of Commerce expressed concern that the FEIS failed to address Environmental Justice issues with regard to the effectiveness of onsite mitigation to protect the surrounding community and that implementation of the DBCRA action takes precedence over Installation Restoration Program efforts at the WNY. The protection provided to on-site personnel through implementation of project related mitigation would extend to those outside the immediate area of the project site. As discussed in the FEIS, the NAVSEA DBCRA action is separate from remediation at the WNY conducted under the Installation Restoration Program. Each has its own regulatory guidelines, scheduling and funding. Development of facilities at the WNY and implementation of the DBCRA realignment of NAVSEA has no bearing on the priority for scheduling of activities conducted under the authority of Installation Restoration Program. Moreover, the relocation of NAVSEA to the WNY will bring jobs to the area and has the potential to benefit current residents of the neighborhood.

The Navy carefully considered all comments received on the FEIS. The FEIS fully addresses all of the issues and concerns identified in the comments received on the FEIS. Therefore, no additional discussion is necessary in this Record of Decision.

Based on the analysis contained in the FEIS and support provided in the administrative record, I select Alternative One to implement the realignment of NAVSEA.

Dated: December 1, 1997.

Duncan Holeday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 97–32104 Filed 12–8–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 3, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Uniform Data System for Assistive Technology Devices and Services.

Frequency: On occasion.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,346.

Burden Hours: 271.

Abstract: Assistive technology (AT) devices and the services can increase opportunities for education, employment, independence, and integration for persons with disabilities. However, many of these individuals have not gained access to AT, despite several federal initiatives to address their AT needs. This data collection will allow the Department of Education to assemble information on the types of AT currently used by this nation's disabled and the funding sources for these devices and services, as specified in the Technology-Related Assistance for Individuals with Disabilities Act, as amended. Subjects will represent two groups: AT service providers (e.g., district special education coordinators, vocational rehabilitation counselors, and state AT project personnel) and (B) consumers of AT devices and services.

[FR Doc. 97–32147 Filed 12–8–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–165]

Application to Export Electric Energy; NP Energy Inc.

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of application.

SUMMARY: NP Energy Inc. (NP Energy), a power marketer, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 8, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Diane Stubbs (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 25, 1997, NP Energy applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada, as a power marketer, pursuant to section 202(e) of the FPA. Specifically, NP Energy has proposed to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S.

NP Energy would arrange for the exported energy to be transmitted to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. Each of these transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions, comments and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with David G. Schwartz, General Counsel, NP Energy Inc., 3650 National City Tower, 101 South Fifth Street, Louisville, KY 40202 and Margaret A. Moore/John Buchovecky, Van Ness Feldman, Seventh Floor, 1050 Thomas Jefferson Street, NW., Washington, DC 20007–3877.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on December 3, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 97–32178 Filed 12–8–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–65–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 1998:

Thirty-Third Revised Sheet No. 32
Thirty-Third Revised Sheet No. 33
Thirteenth Revised Sheet No. 34

CNG states that the purpose of this filing is to coordinate its rate increase as to small customers with the effective date of CNG's ongoing general rate proceeding in Docket No. RP97–406.

CNG states that copies of its filing have been mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32133 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–66–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Fourth Revised Sheet No. 11, with an effective date of January 1, 1998.

CIG states that the filing is being made pursuant to CIG's First Revised Volume No. 1, General Terms and Conditions, Article 21.5—Account No. 858 Stranded Costs.

CIG states that copies of its filing were served upon the company's jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32134 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–78–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC

Gas Tariff, the following tariff sheets, to become effective January 1, 1998:

Second Revised Volume No. 1–A

Twelfth Revised Sheet No. 20
Seventh Revised Sheet No. 22
Thirteenth Revised Sheet No. 23
Sixteenth Revised Sheet No. 24
Thirteenth Revised Sheet No. 26
Twelfth Revised Sheet No. 27
First Revised Sheet Nos. 33 through 35

Third Revised Volume No. 2

Forty-second Revised Sheet No. 1–D.2
Thirty-fifth Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its rates for inflation, to revise the Risk Sharing Amounts, and to revise the Reservation Add-On, all as permitted by Sections 25.1 and 25.2 of the Volume No. 1–A Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32141 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DA96–206–002]

The Empire District Electric Company; Notice of Filing

December 3, 1997.

Take notice that on September 3, 1997, The Empire District Electric Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 15, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32128 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–4–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, for effectiveness on January 1, 1998:

Tenth Revised Sheet No. 21
Eleventh Revised Sheet No. 22

According to Granite State, the revised tariff sheets above state a surcharge to pass through and collect from its firm transportation customers certain incremental electric power costs that Granite State is obligated to pay Portland Pipe Line Corporation under the terms of a lease of a pipeline from Portland Pipe Line. Granite State further states that the tracking surcharge for the electric power costs was approved by the Commission as part of the settlement in Docket No. RP97–8–000. According to Granite State, the tracking surcharge is adjusted quarterly and the surcharge on the above tariff sheets is applicable for the first quarter of 1998.

Granite State states that copies of its filing have been served on its firm and interruptible transportation customers and on the regulatory agencies of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32142 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–001]

Iroquois Gas Transmission Systems, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 16, 1997:

Substitute Second Revised Sheet No. 50A
Substitute Original Sheet No. 50B
Substitute Second Revised Sheet No. 107A
Substitute Second Revised Sheet No. 121
Substitute Second Revised Sheet No. 122
Substitute Second Revised Sheet No. 123

Iroquois states that this filing is being made to comply with the Commission's November 13, 1997 order in the above-referenced docket, which direct Iroquois to modify its recent negotiated rate tariff filing within 15 days of its order, by filing revised tariff sheets to be effective November 16, 1997.

Iroquois states that, in compliance with that order, it has (i) revised the definitions of "Negotiated Rate" and "Negotiated Rate Formula," (ii) clarified how it will evaluate negotiated rates or bids at negotiated rates when allocating capacity or dealing with capacity releases or right of first refusal, (iii) revised the provision dealing with accounting for costs and revenues associated with negotiated rates, and (iv) removed language added to the provision dealing with segmented capacity releases.

Iroquois also states that copies of its filing were served upon all customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32131 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–110–002]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 48. The proposed effective date of this revised tariff sheet is December 1, 1997.

Iroquois states that the instant filing is submitted to comply with the Commission's November 18, 1997 letter order in the captioned proceeding. That order accepted a proposed change in the deferred asset surcharge, but required Iroquois to update the zonal allocation factors set forth on Sheet No. 48 to reflect the zonal allocation factors underlying the currently effective rates. The instant filing complies with that order. Iroquois requests a waiver of Section 154.207 of the Commission's regulations to permit the tariff sheet to become effective on December 1, 1997.

Iroquois states that copies of its filing were served on all parties, all jurisdictional customers and all interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32145 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–103–000]

KN Interstate Gas Transmission Company; Notice of Request under Blanket Authorization

December 3, 1997.

Take notice that on November 26, 1997, KN Interstate Gas Transmission Company, (KNI) P.O. Box 281304, Lakewood, Colorado 80228, filed in the above docket a request pursuant to Sections 157.205(b) of the Commission's Regulations, under the Natural Gas Act [18 CFR 157.205(b)] for authorization to install and operate one new delivery tap located in Scott County, Kansas. This tap will be added as a delivery point to provide transportation service to Allied Energy Services, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, KNI states that Allied, as a provider of energy services, has requested the addition of a delivery point under a transportation service agreement with KNI. KNI states that the proposed delivery point would be located on KNI's main transmission system in Kansas and would facilitate the delivery of natural gas to Allied for sale to a direct retail customer. KNI states further that the cost of the valve and tap is estimated at $20,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32123 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–497–002]

Koch Gateway Pipeline Company; Notice of Refund Report

December 3, 1997.

Take notice that on December 1, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing a final reconciliation report of the Sea Robin Pipeline Company (Sea Robin) Account No. 858 surcharge. On September 29, 1997 Koch filed in Docket No. RP97–497–001, its intentions to terminate the collection of the Sea Robin Account No. 858 surcharge. In a Letter Order dated the 14th October, the Commission accepted these tariff sheets with an effective date of October 1, 1997. This report reflects the amount refunded to each shipper plus the applicable interest earned since October 1, 1997.

Koch has served copies of this filing upon each person on the official service list compiled by the Secretary in this proceeding as well as each affected customer, state commission, and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32130 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–62–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective December 1, 1997:

Third Revised Sheet No. 196A

NGT states that this tariff sheet is filed to remove certain language that is no longer applicable as a result of GISB.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commisson's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32132 Filed 12–8–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–72–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on January 1, 1998:

39 Revised Sheet No. 50
39 Revised Sheet No. 51
37 Revised Sheet No. 53

Northern states that this filing establishes the 1997–1998, System Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32135 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–73–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1998:

41 Revised Sheet No. 50
41 Revised Sheet No. 51

Northern states that the filing revises the current GSR surcharge which is designed to recover Northern's gas supply realignment costs and applicable carrying charges. Therefore, Northern has filed the 41 Revised Sheet No. 50 and 51 to revise the GSR surcharge effective January 1, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32136 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–74–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 Surcharge and completes the Stranded Account No. 858-Reverse Auction surcharge, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Fortieth Revised Sheet Nos. 50 and 51 and the Thirty Eighth Revised Sheet No. 53 to be effective January 1, 1998.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32137 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–75–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective January 1, 1998.

Panhandle states that it has not completed the recovery of the Miscellaneous Stranded Costs as of September 30, 1997 and accordingly this filing implements a Miscellaneous Stranded Cost Reservation Surcharge of $0.01 per Dt. applicable to Rate Schedules FT, EFT, and LFT, a Miscellaneous Stranded Cost Reservation Surcharge of 0.06¢ per Dt. applicable to Rate Schedule SCT and a Miscellaneous Stranded Cost Volumetric Surcharge of 0.8¢ per Dt. applicable to Rate Schedules IT and EIT to be in effect during the twelve month Section 18.14 Reconciliation Recovery Period. Panhandle proposes a January 1, 1998 effective date.

Panhandle further states that the derivation of the Miscellaneous Stranded Cost Reservation Surcharge applicable to Rate Schedules FT, EFT, LFT and SCT results in a rate that is less than $0.01 per Dt. and thus, would result in a zero rate for the Miscellaneous Stranded Cost Reservation Surcharge and the underrecovery of the remaining Miscellaneous Stranded Costs. Accordingly, Panhandle proposes to implement a Miscellaneous Stranded Cost Reservation Surcharge of $0.01 per Dt. applicable to Rate Schedules FT, EFT and LFT and a 0.06¢ Miscellaneous Stranded Cost Reservation Surcharge applicable to Rate Schedule SCT to recover the remaining unrecovered balance. As soon as practicable after the amounts surcharged equal or exceed the unrecovered balance, Panhandle will suspend further application of the surcharge, file a final reconciliation report and provide invoice credits, with applicable carrying charges for any excess collections.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32138 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–55–000]

Questar Pipeline Company; Notice of Tariff Filing

December 3, 1997.

Take notice that on November 28, 1997, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 5 and Original Volume No. 3, Nineteenth Revised Sheet No. 8, to be effective January 1, 1988.

Questar states that the tendered tariff sheets restate for the calendar year 1998 a 1.4% gas reimbursement rate for tracking fuel-use and lost-and-unaccounted-for gas as required by Section 12.14 of the General Terms and Conditions of Part 1 of Questar's tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah, and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32143 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–561–000]

South Carolina Electric & Gas Company; Notice of Filing

December 3, 1997.

Take notice that on October 29, 1997, South Carolina Electric & Gas Company tendered for filing a report that summarizes transactions that occurred July 1, 1997, through September 30, 1997, pursuant to the Market-Based Tariff accepted by the Commission in Docket Nos. ER96–1085–000 and ER96–3073–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 12, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32127 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–104–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

December 3, 1997.

Take notice that on November 26, 1997, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–104–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to construct and operate a new delivery point for service to King Finishing Company (King), under Southern's blanket certificate issued in Docket Nos. CP82–406–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to King at a new delivery point on Southern's Wrens-Savannah Line in Screven County, Georgia. Southern states that the estimated cost of the construction and installation of the facilities is approximately $227,500. Southern asserts that it will transport gas on behalf of King under Southern's Rate Schedule IT. Southern further asserts that the installation of the proposed facilities will have no adverse effect on Southern's ability to provide its firm deliveries.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32124 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3131–032]

SR Hydropower of Brockway Mills, Inc. SR Hydropower, Inc.; Notice Accepting Late Filing and Establishing Deadline for Responses

December 3, 1997.

On November 1, 1996, Paul V. Nolan, as attorney for the Town of Rockingham, Vermont, filed a motion to intervene, protest, and comments, as well as a complaint and request for investigation relating to events surrounding an application filed August 16, 1996, by SR Hydropower of Brockway Mills, Inc. to surrender its license in Project No. 3131. On December 16, 1996, John Rais filed on behalf of SR Hydropower, Inc. and/or SR Hydropower of Brockway Mills, Inc. a response to Rockingham's November 1, 1996 filings.

On June 2, 1997, Paul Nolan, on behalf of Rockingham filed a letter with the Commission, asserting that the December 16, 1996 filing by John Rais was not timely filed, nor was a copy of the filing served on Rockingingham or Nolan, and should not be accepted for filing. In the June 2, 1997 filing, Nolan answered, in part, certain allegations by Rais concerning a conflict of interest in Nolan's representation of Rockingham in this matter, but reserved the right to respond in full if the Commission should accept Rais's December 16, 1996 filing.

In light of the circumstances described in Rais's December 16, 1996 filing, and the fact that Rockingham has now received a copy of the filing, the filing is accepted. Any further answers to the allegations in that filing concerning Nolan's conflict of interest, or any other matter, must be made by December 19, 1997.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32129 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–105–000]

Transcontinental Gas Pipe Line Corporation and Texas Gas Transmission Corporation; Notice of Application

December 3, 1997.

Take notice that on November 26, 1997, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1396, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP98–105–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon existing Section 7(c) exchange agreements between Transco and Texas Gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco and Texas Gas propose to abandon existing Section 7(c) exchange agreements under Transco's Rate Schedules X–25 and X–55 and Texas Gas' Rate Schedules X–20 and X–50. Transco and Texas Gas, by letter dated July 12, 1996, stated they have agreed to terminate these services, and request abandonment of the exchange agreements to be effective as of the date of the Commission's order approving abandonment.

Transco and Texas Gas further state that the proposed abandonment will not impact either of the certificate holder's peak day or annual deliveries and neither pipeline's tariff prohibits the proposed elimination of rate schedules. Transco and Texas declare no gas has flowed from these points after August 1, 1991, and do not propose to abandon any facilities pursuant to the instant application. Transco and Texas Gas state that no service to any of its other customers will be affected by the abandonment authorizations requested herein.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 24, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32125 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4496–001]

Virginia Electric and Power Company; Notice of Filing

December 3, 1997.

Take notice that on November 17, 1997, Virginia Electric and Power Company tendered for filing a revised form of network integration service agreement providing for its use of its transmission system in connection with requirements service to its wholesale power customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 16, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32126 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ98–2–35–000]

West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on December 1, 1997, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1998:

1st Rev Twenty-Fifth Revised Sheet No. 4

WTG states that the tariff sheet and the accompanying explanatory schedules constitute its quarterly PGA filing submitted pursuant to the purchased gas adjustment provisions of Section 19 of the General Terms and Conditions of its tariff. WTG states that copies of the filing were served upon its customers and affected state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32146 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-2-43-000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1997.

Take notice that on November 26, 1997, Williams Natural Gas Company (WNG) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective January 1, 1998:

Second Revised Volume No. 1

Sixth Revised Sheet No. 6B

Original Volume No. 2

Fourth Revised Sheet No. 362

WNG states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 1997.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97-32144 Filed 12-8-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-76-000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

December 3, 1997.

Take notice that on December 1, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 1998.

Williston Basin states that it is proposing to offer a new type of operational balancing agreement to be entered into on a non-discriminatory basis between Williston Basin and the controlling party who controls the delivery of gas into Williston Basin's system at a telemetered receipt point, all as more fully explained in the filing which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97-32139 Filed 12-8-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-77-000]

Williston Basin Interstate Pipeline Company; Notice of Removal of Gas Research Institute Funding Unit Rates

December 3, 1997.

Take notice that on December 1, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets to become effective January 1, 1998:

Second Revised Volume No. 1

Twenty-eighth Revised Sheet No. 15
Thirty-first Revised Sheet No. 16
Twenty-seventh Revised Sheet No. 18
Twenty-fourth Revised Sheet No. 21

Original Volume No. 2

Seventy-second Revised Sheet No. 11B

Williston Basin states that on September 16, 1997, it gave advance notice of its resignation from the Gas Research Institute (GRI), in order to give GRI the opportunity to factor such resignation into its planning for funding and all other purposes. Williston Basin further states its future participation in GRI has become untenable due to the uncertainty surrounding GRI's requested and required funding needs both now and into the future. Therefore, the revised tariff sheets reflect the removal of the GRI Funding Unit rates from all applicable rate schedules.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97-32140 Filed 12-8-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC95-136-000, et al.]

Florida Power Corporation, et al., Electric Rate and Corporate Regulation Filings

December 2, 1997.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. AC95-136-000]

Take notice that on November 3, 1997, Florida Power Corporation, tendered for filing a letter seeking approval to begin accruing the increase amount of $1,213,656 on a wholesale basis, retroactive to January 1, 1995. FPC states that it is only seeking approval for an increase in the accrual amount, not in rates.

Comment date: December 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. GPU Power Ireland, Inc.

[Docket No. EG98-10-000]

On November 21, 1997, GPU Power Ireland, Inc. (Applicant), of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a Delaware corporation which has been formed to develop a base load peat-fired power plant to be located in East Midlands, Ireland (the Facility). All of the electric energy produced by the Facility will be sold at wholesale to Electricity Supply Board, a statutory corporation with principal offices at 27 Lower Fitzwilliam Street, Dublin 2, Ireland.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. New Energy Ventures, Inc.

[Docket No. ER96-1387-006]

Take notice that on November 5, 1997, Energy Ventures, Inc. (NEV), submitted for filing its quarterly informational reporting regarding transactions to which it was party during the third quarter of 1997 pursuant to its Market-Based Rate Sales Tariff accepted by the Federal Energy Regulatory Commission in Docket No. ER96-1387-000.

Comment date: December 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER98-615-000]

Take notice that on November 10, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and AIG Trading Corp., (AIG).

Cinergy and AIG are requesting an effective date of October 21, 1997.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER98-616-000]

Take notice that on November 10, 1997, Boston Edison Company (Boston Edison) of Boston, Massachusetts, filed a rate schedule containing the rate and non-rate terms and conditions pursuant to which it will for a temporary period purchase the capacity, energy and ancillary services from its to-be divested fossil fuel generating units from the party, whose identity is not now known, acquiring those facilities for periods following the divestiture. Boston Edison has asked that the Commission accept the rate schedule and allow it to become effective on January 10, 1998.

Also take notice that Boston Edison's filing recites that Boston Edison will resubmit the rate schedule identifying the party who has won the bid to acquire its generation and hopes that the revised rate schedule can be submitted by December 5, 1997. Boston Edison's filing states that it will ask the Commission to accept that resubmission and allow the revised rate schedule to become effective on January 10, 1998.

Boston Edison states that its filing has been served on its wholesale requirements customers, on the Massachusetts Department of Public Utilities and, since one of its generators is located in Maine, on the Maine Public Utilities Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER98-617-000]

Take notice that on November 10, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Tenaska Power Services Co.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER98-618-000]

Take notice that on November 10, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Company Services, Inc. (Southern), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric Power Company.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER98-619-000]

Take notice that on November 10, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Company Services, Inc. (Southern), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric Power Company.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Long Island Lighting Company

[Docket No. ER98-620-000]

Take notice that on November 10, 1997, Long Island Lighting Company (LILCO) filed Electric Power Service Agreements entered into as of the following dates by LILCO and the following parties:

Purchaser/Electric Power Service Agreement Date

Constellation Power Source, Inc.—September 25, 1997
New Energy Ventures, L.L.C.—September 25, 1997

The Electric Power Service Agreements listed above were entered into under LILCO's Power Sales Umbrella Tariff. LILCO has proposed modifications to the Power Sales Umbrella Tariff in its November 3, 1997, filing. Upon the Commission's approval of LILCO's proposed modifications, Constellation Power Source, Inc., and

New Energy Ventures, L.L.C., will take service subject to the modified Power Sales Umbrella Tariff.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of November 1, 1997, for the Electric Power Service Agreements listed above because in accordance with the policy announced in Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶61,139, clarified and reh'g granted in part and denied in part, 65 FERC ¶61,081 (1993), service will be provided under an umbrella tariff and each Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service. LILCO has served copies of this filing on the customers which are a party to each of the Electric Power Service Agreements and on the New York State Public Service Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Union Electric Company

[Docket No. ER98–621–000]

Take notice that on November 10, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and Associated Electric Cooperative, Inc., USGen Power Services, L.P., Virginia Electric & Power Company and Williams Energy Services Company. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. North Star Power Marketing, L.L.C.

[Docket No. ER98–622–000]

Take notice that on November 10, 1997, North Star Power Marketing, L.L.C., tendered for filing proposed approval of its FERC Electric Rate Schedule, (Volume No. 1.)

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Atlantic City Electric Company

[Docket No. ER98–623–000]

Take notice that on November 10, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing a service agreement under which Atlantic Electric will sell capacity and energy to Constellation Power Source, Inc., (Constellation) under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreement be accepted to become effective on October 12, 1997.

Atlantic Electric states that a copy of the filing has been served on Constellation.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER98–624–000]

Take notice that on November 12, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Duke Power, a division of Duke Energy Corporation for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER98–625–000]

Take notice that on November 12, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with Penn Power Company d/b/a Penn Power Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Penn Power Company d/b/a Penn Power Energy as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER98–626–000]

Take notice that on November 12, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with Strategic Energy Partners, Ltd., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Strategic Energy Partners, Ltd., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER98–627–000]

Take notice that on November 12, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 21, 1997, with PP&L, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds PP&L, Inc., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ER98–628–000]

Take notice that on November 12, 1997, Commonwealth Edison Company (ComEd), submitted for filing Firm Service Agreements with Commonwealth Edison Company, in its wholesale merchant function (ComEd WMD), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 28, 1997, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon ComEd WMD, and the Illinois Commerce Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER98–629–000]

Take notice that on November 12, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and El Paso Energy Marketing Company (EPE), dated November 1, 1997. This Service Agreement specifies that EPE has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and EPE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER98–630–000]

Take notice that on November 12, 1997, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy) filed executed Retail Transmission Service Agency Agreements between GPU Energy and Strategic Energy Partners, Ltd., dated October 31, 1997.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997, for the Retail Transmission Service Agency Agreements.

GPU Energy will be serving a copy of the filing on the Pennsylvania Public Utility Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER98–631–000]

Take notice that on November 12, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service to Williams Energy Services Company (Williams Energy) pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on November 13, 1997.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. New York State Electric & Gas Corporation

[Docket No. ER98–632–000]

Take notice that on November 12, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR part 35, service agreements under which NYSEG may provide capacity and/or energy to DPL Energy, Inc. (DPL), LG&E Energy Marketing Inc. (LG&E), NorAm Energy Services, Inc. (NorAm), and Tennessee Valley Authority (TVA)(collectively, the Purchasers) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with DPL, LG&E, NorAm, and TVA become effective as of November 13, 1997.

The Service Agreements are subject to NYSEG's Application for Approval of Corporate Reorganization which was filed with the Commission on September 1, 1997, and was assigned Docket No. EC97–52–000.

NYSEG has served copies of the filing upon the New York State Public Service Commission, DPL, LG&E, NorAm, and TVA.

Comment date: May 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER98–633–000]

Take notice that on November 12, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Florida Power Corporation (FPC).

Cinergy and FPC are requesting an effective date of November 7, 1997.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company

[Docket No. ER98–634–000]

Take notice that on November 12, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER98–635–000]

Take notice that on November 12, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Revised Form of Service Agreement (FSA) for Firm Point-to-Point Transmission Service between Niagara Mohawk and the Power Authority of the State of New York (Power Authority) for retail delivery of High Load Factor Fitzpatrick Power to BOC Gases in Selkirk, New York. This Revised Form of Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

By its terms, service under the Original FSA filed on July 23, 1997, was to begin with approval by the Commission of the Settlement Agreement between Niagara Mohawk, the Power Authority and the New York State Department of Public Service dated May 22, 1997, and filed with the Commission in Docket No. EL97–29–000 (the May 22, 1997, Settlement Agreement). Service under the Original FSA was to terminate no later than August 31, 1997. The parties to the Original FSA now desire to extend the date for termination of that agreement indefinitely to be terminated upon thirty (30) days written notice by the Power Authority to Niagara Mohawk. Accordingly, Niagara Mohawk herewith tenders six copies of a Revised FSA pursuant to 205 of the Federal Power Act, 16 USC 824d (1993), and 35.13 of the Commission's Rules and Regulations, 19 CFR 35.42. This Revised FSA is identical in all respects to the Original FSA, except that the termination date has been changed.

In order to implement terms of the May 22, 1997, Settlement Agreement, Niagara Mohawk respectfully requests waiver of the Commission's 60-day notice requirement to permit service to be provided under the Revised FSA retroactive to July 1, 1997.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Co.

[Docket No. ER98–636–000]

Take notice that on November 12, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies), submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that the filing has been served on the affected customers and on the Public Utility Commission of Texas.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Louisville Gas and Electric Company

[Docket No. ER98–637–000]

Take notice that on November 12, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and CMS Marketing, Services and Trading, Inc., under Rate GSS.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. ER98–638–000]

Take notice that on November 12, 1997, PECO Energy Company (PECO), filed a Service Agreement dated October 29, 1997, with Cinergy Resources, Inc. (CRI), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CRI as a customer under the Tariff.

PECO requests an effective date of October 29, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to CRI and to the Pennsylvania Public Utility Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Tampa Electric Company

[Docket No. ER98–639–000]

Take notice that on November 13, 1997, Tampa Electric Company (Tampa Electric), tendered for filing service agreements with Auburndale Power Partners, Limited Partnership (Auburndale) for firm and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of October 17, 1997, for the service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Auburndale and the Florida Public Service Commission.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. PECO Energy Company

[Docket No. ER98–640–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and CNG Retail Services Corp. (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32173 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5833–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Retrofit /Rebuild Requirements for 1993 and Earlier Model Year Urban Buses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Retrofit /Rebuild Requirements for 1993 and Earlier Model Year Urban Buses, EPA ICR Number 1702, OMB Control Number 2060–0302, expiration date: 01–31–98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 9, 1998.

ADDRESSES: U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Attn: Engine Programs & Compliance Division, Retrofit/Rebuild Program 6403J. Interested persons may obtain a copy of the ICR without charge upon request in writing or by telephone or E-mail at the appropriate number below.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Telephone Number: (202) 564–9259, Facsimile Number: (202) 565–2057, E–MAIL Number: Erb.Anthony@epamail.EPA.GOV.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which operate urban bus fleets in regulated areas and equipment manufacturers who manufacture retrofit/rebuild components for certification.

Title: Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (OMB Control No. 2060–0302; EPA ICR No. 1702.) expiring 01/31/98.

Abstract: Section 219(d) of the Clean Air Act, as amended in 1990, requires that the EPA promulgate regulations for urban buses that: (a) Operate in Metropolitan Statistical Areas (MSA) or consolidated MSA's with a 1980 population of 750,000 or more (the program could be expanded in the future to MSA's of less than 750,000, under section 219(c) of the CAA); (b) are not subject to the 1994 or later urban bus standards; and (c) have their engines replaced or rebuilt after January 1, 1995.

The CAA Amendments require the subject urban buses be retrofitted to comply with an emission standard that reflects the best retrofit technology and maintenance practices reasonably achievable. Under these provisions, EPA set new requirements for pre-1994 model year urban buses effective January 1, 1995, when urban bus engines are rebuilt or replaced. The program requires that the particulate emissions level of the urban bus engines be reduced to a level below the engines' original particulate level through the use of retrofit/rebuild equipment that is certified by EPA. The program will phase itself out as pre-1994 urban buses are retired from fleets.

The original ICR for the urban bus retrofit/rebuild program was approved by OMB on 07/22/94 for use through 07/31/97 and later approved for extension until 01/31/97. Candidate equipment is approved under an EPA certification program and if it meets cost guidelines is required to be used. If no equipment is certified for a particular engine the operator is required to restore the equipment to its original or updated configuration based on the currently available rebuild kits on the market. As of July 1997, seven parties have certified ten separate equipment kits under the program over a two year period. It is estimated that 5 equipment certifiers will certify equipment during a given year at an hourly expenditure of an average of 170 hours per certification application including testing, application reporting and follow-up on issues. In addition, each certifier is expected to spend approximately 40 hours per year on record keeping. EPA will conduct 1 audit each year of a certifier of equipment to review production records and manufacturing operations to ensure kits are built and shipped as specified in the certification notification. The burden associated with each certifier audit is estimated to be 24 hours for the certifier to accompany EPA staff, pull records and review associated paperwork.

This regulation effects approximately 150 bus operators who operate fleets of urban buses in areas that are affected. It is estimated that each operator will spend 10 hours per year reviewing regulatory requirements. EPA will request that up to 50 of these operators submit information on their fleet each year to demonstrate compliance with program requirements. It is estimated that each operator will require 8 hours to summarize the requested information for submittal. No burden hours are associated with the record keeping of this information as it is expected that the required records will be kept by operators during the normal course of business. EPA will also conduct up to 12 audits of urban bus operator fleets to ensure compliance with the regulations. These on-site audits involve travel by EPA staff to the site, a review of fleet records and physical inspection of the buses. The burden associated with the audits is expected to be 40 hours for each operator audited. This includes 12 hours preparing records, 20 hours accompanying EPA auditors during the audit and 8 hours to follow-up on issues. The hourly cost associated with the above requirements is estimated to average $64.13 for each of the above burden areas.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: It is estimated that the annual reporting burden for this request will amount to 6,173 hours. It is estimated that average annual reporting burden for affected parties will amount to 29 hours per response, the proposed frequency of response is annual, and it is estimated that there will be 163 respondents with an average of 1.3 responses each per year . The cost burden to respondents or record keepers resulting from collection of this information is estimated to be $366,000 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 26, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–32187 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140264; FRL–5757–8]

Access to Confidential Business Information by U.S. Consumer Product Safety Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the U.S. Consumer Product Safety Commission (CPSC), 4340 East West Highway, Room 600–20, Bethesda, Maryland, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm.

E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under a Memorandum of Understanding (MOU) dated September 23, 1986, CPSC agreed to EPA procedures governing access to CBI submitted to EPA under TSCA. In accordance with 40 CFR 2.306(h), EPA has determined that CPSC will require access to CBI submitted to EPA under all sections of TSCA to perform successfully their responsibilities under the Consumer Product Safety Act and TSCA. CPSC personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined CBI.

In a previous notice published in the **Federal Register** of November 5, 1992 (57 FR 52775; FRL–4173–1), CPSC was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to grant CPSC a 5-year extension to its TSCA CBI access under the existing MOU.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide the CPSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this MOU will take place at EPA Headquarters and CPSC's 4340 East West Highway, Room 600–20, Bethesda, MD site.

CPSC will be authorized access to TSCA CBI at its facility under the *TSCA Confidential Business Information Security Manual*. Before access to TSCA CBI is authorized at CPSC's site, EPA will perform the required inspection of its facility, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, CPSC will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2002.

CPSC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 20, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–32181 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140263; FRL–5757–7]

Access to Confidential Business Information by Geologics Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Geologics, Incorporated, 5510 Cherokee Avenue, Suite 260, Alexandria, Virginia and Geologics' subcontractor, Eastern Research Group (ERG), 110 Hartwell Avenue, Lexington, Massachusetts for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA occurred as a result of Agency approval of a waiver request dated September 30, 1997, granting Geologics Incorporated, and their Sub-contractor ERG immediate access to TSCA CBI. This waiver was necessary to allow Geologics and ERG to assist with providing technical, administrative, and computer database support to the new chemicals program.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W7–0036, contractor Geologics, Inc., of 5510 Cherokee Avenue, Suite 260, Alexandria, VA, and ERG of 110 Hartwell Avenue, Lexington, MA, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing technical, administrative, and computer database support to the new chemicals program.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W7–0036, Geologics and ERG will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. Geologics and ERG personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide Geologics and ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Geologics and ERG will be authorized access to TSCA CBI at EPA Headquarters under the EPA *TSCA Confidential Business Information Security Manual*.

Clearance for access to TSCA CBI under this contract may continue until July 31, 2002.

Geologics and ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 20, 1997.

Oscar Morales,

Acting Director, Information Management Division, Pollution Prevention and Toxics.

[FR Doc. 97–32182 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5933–5]

Extension of Period of Submission of Section 111(d) Plans for Existing Municipal Solid Waste (MSW) Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Administrator has determined that it is necessary to extend the submission deadline for section 111(d) Plans for MSW landfills for the States of Alaska, Idaho, Illinois, Kentucky, New York, North Carolina, South Carolina, Tennessee, Texas and Washington as described below. The reasons for this action are set forth in the memorandum, Reasons for Extending Municipal Solid Waste Landfill Section 111(d) Plan Submittal, which is located in the docket and on EPA's website. These Plans, which are required under section 111(d) of the Clean Air Act for existing landfills (40 CFR part 60, subpart B), describe how the State or Local air pollution agency or Indian Tribe will implement the MSW landfill emission guidelines. The guidelines were promulgated on March 12, 1996 under 40 CFR part 60, subpart Cc (61 FR 9905). The section 111(d) Plans were due December 12, 1996.

ADDRESSES: Office of Air Radiation Docket and Information Center (Air Docket 6102), Room M 1500, U.S. Environmental Protection Agency, Attention: Docket No. A–97–37, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying. The Air Docket may be called at (202) 260–7548. The EPA's Office of Air and Radiation Policy and Guidance website: http://www.epa.gov/ttn/oarpg/amend.html

FOR FURTHER INFORMATION CONTACT: For New York, Ms. Christine DeRosa, EPA Region II, 290 Broadway, 25th floor, New York, New York 10007, telephone (212) 637–4022; For Kentucky, North Carolina, South Carolina, and Tennessee, Mr. Scott Davis, EPA Region IV, 61 Forsyth Street, S.W., Atlanta, GA 30303, telephone (404) 562–9127; for Illinois, Mr. Randolph Cano, EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604, telephone (312) 886–6036; for Texas, Mr. Mick Cote, EPA Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, telephone (214) 665–7219; for Alaska, Idaho and Washington, Ms. Catherine Woo, EPA Region X, 1200 Sixth Ave., Seattle, WA 98101, telephone (206) 553–1814.

SUPPLEMENTARY INFORMATION: The EPA promulgated standards of performance for new MSW landfills and emission guidelines for existing MSW landfills on March 12, 1996. These standards of performance and emission guidelines, which were developed under section 111 of the Clean Air Act (CAA), regulate emissions of nonmethane organic compounds from MSW landfills. Section 111(d) of the CAA requires States to submit a Plan to the EPA that addresses how States will regulate, implement and enforce standards of performance on existing MSW landfills. This requirement is codified under 40 CFR 60.23.

However, the EPA Administrator is allowed to extend the period for submission of a section 111(d) Plan under 40 CFR 60.27 whenever he or she determines it is necessary. Alaska, Idaho, Illinois, Kentucky, New York, North Carolina, South Carolina, Tennessee, Texas and Washington have all shown good faith in developing and committing to submit their Plans by the dates specified in this notice. Based on EPA's analysis of the State requests, the following extensions are granted: Alaska, Idaho and Tennessee are granted extensions to December 31, 1997; South Carolina is granted an extension to January 15, 1998; Kentucky is granted an extension to February 15, 1998; Washington is granted an extension to May 31, 1998; North Carolina is granted an extension to July 1, 1998; New York is granted an extension to July 5, 1998 and Illinois and Texas are granted extensions to July 31, 1998. The memorandum, Reasons for Extending Municipal Solid Waste Landfill Section 111(d) Plan Submittal, mentioned previously, documents their efforts and explains why EPA is granting an extension for the section 111(d) Plan submittals to these State air pollution agencies.

(Authority: 42 U.S.C. 7401–7671q)

Dated: December 3, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–32190 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30443; FRL–5756–3]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by January 8, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number (OPP–30443) and the file symbols to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Michael Mendelsohn	5th floor, CS #1, 703–308–8715, e-mail: mendelsohn.mike@epamail.epa.gov.	2800 Crystal Drive, Arlington, VA
Linda Hollis	5th fl., CS #1, 703–308–8733, e-mail: hollis.linda@epamail.epa.gov.	Do.
Suku Oonnithan	5th fl., CS #1, 703–308–8524, e-mail: oonnithan.suku@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Product Containing a New Active Ingredient Not Previously Registered

1. File Symbol: 70688–R. Applicant: EcoSoil Systems, 10890 Thornmint Road, Suite 200, San Diego, CA 92127.

Product Name: Ping Fungicide. Fungicide. Active Ingredient: *Pseudomonas aureofaciens*, strain Tx-1* at 1.0 percent. Proposed classification/Use: None. For the control diseases on turfgrass. (Mike Mendelsohn)

2. File Symbol: 524–UOI. Applicant: Monsanto Company 700 14th St., NW., Suite 1100, Washington, DC 20005. Product Name: Potato Leafroll Virus Replicase Protein. Plant-Pesticide. Active ingredient; Potato Leafroll Virus Replicase Protein and the genetic material necessary for its production at 7 percent. Proposed classification/Use: None. This pure form of the plant-pesticide, PLRV replicase protein as expressed in potato cells is for use on potatoes. (Linda Hollis)

3. File Symbol: 70644–R. Applicant: LidoChem Inc., 20 Village Court, Hazlet, NJ 07730. Product Name: eKsPunge. Fungicide. Active ingredient: Monopotassium Phosphate (KH_2PO_4 at 100 percent. Proposed classification/Use: None. For the control of powdery mildew on apples, cherries, cucumbers, grapes, mangoes, melons, nectarines, peaches, peppers, plums, summer and winter squash, tomatoes, watermelons, and roses. (Suku Oonnithan)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30443] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–30443]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the Public Information and Records Integrity Branch, Information Resources and Services Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805) to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: November 20, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–32184 Filed 12–8–97; 8:45 am]
BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Advisory Committee has been established pursuant to the Export-Import Bank Act of 1945, as amended, to advise Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Thursday, December 11, 1997, at 9:30 a.m. to 11:45 a.m. The meeting will be held at Export-Import Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: The meeting agenda will include a discussion of the Best Practices paper.

PUBLIC PARTICIPATION: The meeting will be Open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Gloria Cabe, Room 1214, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3525, not later than December 9, 1997. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 9, 1997, Gloria Cabe, Room 1214, 811 Vermont Avenue, N.W., Washington, D.C. 20571, Voice: (202) 565–3955 or TDD: (202) 565–3377. Publication of this notice was inadvertently delayed.

FURTHER INFORMATION: For further information, contact Gloria Cabe, Room 1214, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3525.

Kenneth Hansen,

General Counsel.

[FR Doc. 97–32247 Filed 12–5–97; 11:06 am]
BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATES AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 11, 1997, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

OPEN SESSION

A. *Approval of Minutes*
B. *Report*
—Farm Credit System Building Association Quarterly Report
C. *New Business*
Regulation
—BC Loan Discounting [12 CFR Part 614] (Direct Final)
* *CLOSED SESSION*
D. *Report*
—OGC Litigation Report

Note: * Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (10).

Dated: December 5, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–32327 Filed 12–5–97; 12:49 pm]
BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA–97–2352]

LMDS Auction No. 17 Postponed

Released: November 10, 1997.

Report No. AUC–17–C (Auction No. 17)

In an effort to provide a greater opportunity for prospective applicants to participate in the upcoming Local Multipoint Distribution Service ("LMDS") auction, the Commission is postponing the LMDS auction, originally scheduled to begin on December 10, 1997, until February 18, 1998. This postponement will further opportunities for businesses to access additional sources of capital to further the advent of new competition in the cable television and local telephony marketplaces.

In addition, applicants will be able to take advantage of the World Trade Organization agreement to pursue additional sources of financing and investment. The Commission has proposed amendments to its rules in response to the WTO agreement. Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Order and Notice of Proposed Rule Making*, 12 FCC Rcd 7847, 62 FR 32966, June 17, 1997. Once the Commission has adopted final rules in this proceeding, the Wireless Telecommunications Bureau will release a public notice explaining how these amendments will affect LMDS applicants.

Except for the filing dates and auction schedule, information provided in previous public notices and the LMDS Bidder Information Package remains unchanged. The new schedule is as follows:

FCC Form 175 filing: 5:30 p.m., ET Tuesday, January 20, 1998
Upfront Payments: 6 p.m. ET, Monday, February 2, 1998
Mock Auction: 9 a.m. ET–3 p.m. ET, Friday, February 13, 1998
Auction Begins: 9 a.m. ET Wednesday, February 18, 1998

For further information, please contact Louis Sigalos of the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division, at (202) 418–0660.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32011 Filed 12–8–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA–97–2497]

Spectrum Auction Schedule for 1998; Public Notice

Released: November 25, 1997.

Report No. AUC–17–C (Auction No. 17)

This Public Notice apprises potential applicants of important dates for several auctions that will be conducted in 1998. The dates listed below may be subject to change. A brief summary of the wireless services to be auctioned is provided below. More detailed information concerning each of these auctions has been provided or will be provided at a later date. The wireless services to be auctioned are:

Local Multipoint Distribution Service ("LMDS")

This auction will consist of 986 LMDS licenses in the 28 GHz and 31 GHz bands. Two licenses will be offered in each of 493 Basic Trading Areas ("BTAs") and BTA-like areas in the United States. One license, in frequency block A, will authorize service on 1,150 megahertz of spectrum in both the 28 GHz and 31 GHz bands. Block A of the New York BTA is encumbered by a pre-existing licensee in the New York Metropolitan Statistical Area. The incumbent licensee, CellularVision of New York, is entitled to interference protection. The second license, in frequency block B, will authorize service on 150 megahertz of spectrum in the 31 GHz band. Each frequency block encompasses the following spectrum:

Block A (1,150 megahertz): 28 GHz band: 27,500–28,350 MHz and 29,100–29,250 MHz and 31 GHz band: 31,075–31,225 MHz.
Block B (150 megahertz): 31 GHz band: 31,000–31,075 and 31,225–31,300 MHz.

Operations to take place in the 29,100–29,250 MHz band are governed by 47 CFR 101.103(g) and (h), 101.113(c), 101.133(d), and 101.147(t), which are new provisions designed to facilitate the sharing of this spectrum by LMDS, GSO/FSS gateways, and MSS feeder link licenses. These provisions allow only hub-to-subscriber transmissions by LMDS licensees in this band.

Key Dates

Short form (FCC Form 175) Application Deadline: January 20, 1998.
Upfront Payment Deadline: February 2, 1998.
Electronic Bid Submission Software Order Deadline: February 2, 1998.
Mock Auction Date: February 13, 1998.
Auction Commencement Date: February 18, 1998.

Further details on this spectrum may be found in the *LMDS First Report and Order*, CC Docket No. 92–297, 11 FCC Rcd 19005, 61 FR 44177, August 28, 1996; *LMDS Second Report and Order*, CC Docket No. 92–297, FCC 97–82, 62 FR 16514, April 7, 1997 (recon. pending); *LMDS Order on Reconsideration*, CC Docket No. 92–297, FCC 97–166, 62 FR 28373, May 23, 1997; *LMDS Second Order on Reconsideration*, CC Docket No. 92–297, FCC 97–323, 62 FR 48787, September 17, 1997; *Public Notice*, "Auction of Local Multipoint Distribution Service," DA 97–2081, 62 FR 53629, October 15, 1997; *Public Notice*, "Comment Sought on Reserve Prices or Minimum Opening Bids for LMDS Auction," DA 97–2224, 62 FR 55642, October 27, 1997; *Public Notice*, "LMDS Auction Postponed Until February 18, 1998," DA 97–2352 (released November 10, 1997); *Public Notice*, "Opportunity for Reply Comment on Reserve Prices or Minimum Opening Bids for LMDS Auction Extended," DA 97–2420 (released November 18, 1997); and the LMDS auction Bidder Information Package.

220 MHz Service

This auction will consist of 908 licenses in the Phase II 220 MHz service, with three nationwide, 30 Regional Economic Area Groupings ("220 MHz REAGs") and 875 Economic Area ("EA") licenses. The licenses encompass the following channels:

	Channels
Nationwide Block:	
Channels 51–60	10
Channels 81–90	10
Channels 141–150	10
EA Block:	
A: Channel Groups 2, 13	10
B: Channel Groups 3, 16	10
C: Channel Groups 5, 18	10
D: Channel Groups 8, 19	10
E: Channel Groups 171–180	10

The Channel Groups indicated in the allocation plan are the 5-channel, non-contiguous assignments identified as "Group Nos. 1, 2, 3" *etc.*, in Section

90.721 of the Commission's Rules, 47 CFR 90.721.

	Channels
220 MHz REAG Block:	
F: Channel Groups 1, 6, 11 ..	15
G: Channel Groups 4, 9, 14 ..	15
H: Channel Groups 7, 12, 17	15
I: Channel Groups 10, 15, 20	15
J: Channel Groups 186–200	15

Key Dates

Short form (FCC Form 175) Application Deadline: April 20, 1998.
Upfront Payment Deadline: May 4, 1998.
Auction Commencement Date: May 19, 1998.

Further details on this spectrum may be found in the *220 MHz Second Report and Order*, PR Docket No. 89–552, GN Docket No. 93–252, FCC 96–27, 11 FCC Rcd 3668, 61 FR 3841, February 2, 1997 (recon. pending); and *220 MHz Third Report and Order* and *Fifth Notice of Proposed Rulemaking*, PR Docket No. 89–552, RM–8506, GN Docket No. 93–252, PP Docket No. 93–253, FCC 97–57, 62 FR 16004, April 3, 1997 (recon. pending). Public notices and a bidder information package will provide upfront payment information and specific terms and conditions concerning the auction.

The FCC services also tentatively plans to conduct spectrum auctions for the following services:

Broadband Personal Communications Services ("PCS") C Block Re-auction—3rd Quarter, 1998
39 GHz—3rd Quarter, 1998
Paging (929—31 MHz band)—3rd Quarter, 1998
800 MHz Specialized Mobile Radio ("SMR") (Lower 80 and General Category Channels)—3rd Quarter, 1998
Location Monitoring Services ("LMS")—3rd Quarter, 1998
Public Coast Stations—4th Quarter, 1998
Pending Analog Broadcast Licenses for Commercial Radio and Television Stations—4th Quarter, 1998

FCC Auctions Telephone Number and Internet Site

All interested parties should contact the FCC National Call Center at 888-CALL-FCC (888–225–5322), Option #2, to request to be put on the mailing list for bidder information packages for the auction or auctions in which they are interested in participating. By doing so, potential applicants ensure that they will receive a bidder information package detailing the specific terms and conditions of the auction. This is the only telephone number to contact to be placed on a mailing list for upcoming auctions.

In order to keep apprised of the FCC's auction schedule (which is subject to change), reports and orders, public notices, and all other relevant auction-related documents, the FCC strongly advises that all interested parties regularly visit its Internet web site. The World Wide Web ("www") URL address for the Auctions Home Page is: http://www.fcc.gov/wtb/auctions.html.

Bidder Alerts

- The Commission does not approve any individual investment proposal, nor does it provide a warranty with respect to any license being auctioned. Potential applicants and investors are reminded that winning a license in an FCC spectrum auction is not a guarantee of success in the marketplace.
- The FCC makes no representations or warranties about the use of spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies, or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding, as they would with any new business venture.
- The Federal Trade Commission (FTC) has found that some unscrupulous individuals have designed investment schemes around licenses auctioned or to be auctioned by the FCC. Investors or potential investors with inquiries or complaints about specific investment offerings may call the National Fraud Information Center, 1–800–876–7060, or visit that organization's Internet web site at www.fraud.org. They also may contact their state attorney general or state corporations office. The FTC and the Securities and Exchange Commission (SEC) receive complaints on investment fraud and offer consumer education materials. Investors or potential investors may contact the FTC at (202) 326–3128 or visit its Internet web site at www.ftc.gov, and may contact the SEC at (202) 942–7040 or visit its Internet web site at www.sec.gov.
- Potential applicants should also be aware that several pending rulemaking proceedings are considering changes to many of the Commission's auctions rules, including whether to continue to permit small businesses to pay for licenses won in installment payments and with respect to attribution of gross revenues of investors in and affiliates of small businesses. Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, WT Docket No. 97–82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, FCC 97–60, 12 FCC Rcd 5686, 62 FR 13540, March 21, 1997; Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band By the Private Land Mobile Radio Service, PR Docket No. 89–552, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, FCC 97–57, 62 FR 16004, April 3, 1997 (recon. pending); Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 97–59, 12 FCC Rcd 2732, 62 FR 11616, March 12, 1997 (recon. pending); and Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *Memorandum Opinion and Order*, FCC 97–224, 62 FR 41225, July 31, 1997). Changes have been adopted with respect to foreign ownership of U.S. telecommunications facilities. Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97–142, Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95–22, *Report and Order and Order on Reconsideration*, FCC 97–398 (adopted November 25, 1997). Finally, potential applicants should be aware that when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive) the recently enacted Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established, unless the Commission determines that a reserve price or minimum bid is not in the public interest. Section 3002(a), Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997); 47 U.S.C. 309(j)(4)(F). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 CFR 1.2104(c) and (d). The Commission is presently considering the use of minimum opening bids in the LMDS auction, and will comply with the requirements of the Balanced Budget Act with respect to the other auctions listed herein. *Public Notice*, "Comment Sought on Reserve Prices or Minimum Opening Bids for LMDS Auction," DA 97–2224, 62 FR 55642, October 27, 1997; and *Public Notice*, "Opportunity for Reply Comment on Reserve Prices or Minimum Opening Bids for LMDS Auction Extended," DA 97–2420 (released November 18, 1997).

For further information contact LaVonia Connelly, Ruby Hough, or Lisa Hartigan, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 97–32012 Filed 12–8–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 203–009857–006.
Title: Florida-Caribbean Cruise Association.
Parties:
Cape Canaveral Cruise Line
Carnival Cruise Lines
Celebrity Cruises
Costa Cruise Lines
Cunard Line Ltd.
Disney Cruise Line
Holland America Line
Norwegian Cruise Line
Premier Cruises
Princess Cruises
Regal Cruises
Royal Caribbean International

Synopsis: The proposed amendment restates the Agreement. In addition, it makes changes to the composition of the Agreement's executive committee and to the Agreement's membership eligibility provisions.

Agreement No.: 202–011375–035.
Title: Trans-Atlantic Conference Agreement.
Parties:
Atlantic Container Line AB
Cho Yang Shipping Co., Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
P&O Nedlloyd B.V.
Hapag-Lloyd Container Linie GmbH
Mediterranean Shipping Co., S.A.
DSR-Senator Lines
Pol-Atlantic
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
Hyundai Merchant Marine Co., Ltd.
P&O Nedlloyd Limited
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.

Synopsis: The proposed modification establishes guidelines concerning the application of the inland portions of through rates, currency adjustment factor options, and other assessorial charges in successive years of multi-year service contracts.

Agreement No.: 232–011566–001.
Title: NSCSA/Wallenius Line Space Charter Agreement.
Parties: National Shipping Company of Saudi Arabia, Wallenius Rederierna AB.

Synopsis: The proposed modification extends the duration of the Agreement until December 31, 2000. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: December 3, 1997.
Ronald D. Murphy,
Assistant Secretary.
[FR Doc. 97–32115 Filed 12–8–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Pathfinder Logistics, 10406 8th Avenue So, Seattle, WA 98168–1503, Arthur L. Griffin, Sole Proprietor

J–L International, 63–25B Bourton Street, #2B, Rego Park, NY 11374, James Lee, Sole Proprietor.

Apparel Transportation, Inc., 3101 Northwest 74th Avenue, Miami, FL 33122, *Officers:* Leo Del Calvo, Jr., President; Antonio Yunta, Vice President.

Dated: December 3, 1997.
Ronald D. Murphy,
Assistant Secretary.
[FR Doc. 97–32085 Filed 12–8–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Cancellation of Tariffs of Common Carriers by Water in the Foreign Commerce of the United States and Suspension of Ocean Freight Forwarder Licenses for Failure To File Anti-Rebate Certifications

The Federal Maritime Commission's regulations at 46 CFR 582.1(a) and 582.3(a) require every common carrier by water and licensed ocean freight forwarder in the foreign commerce of the United States to file an Anti-Rebate Certification ("ARC") with the Commission no later than December 31 of each even-numbered year.

By certified letter dated August 1, 1997, the Commission wrote to certain common carriers and/or licensed ocean freight forwarders who had failed to file the ARC due in December 1996. In that letter, and in a notice published in the **Federal Register** on August 22, 1997 ("Notice"), the Commission advised that, if within 45 days of the certified letter's date, they had not either filed an ARC or established that it had been filed, the tariffs of the common carriers would be cancelled in accordance with 46 CFR 514.1(c)(1)(iii)(C) and/or the licenses of the ocean freight forwarders would be suspended in accordance with 46 CFR 510.16(a)(6).

There were 656 common carriers and/or licensed ocean freight forwarders listed in the Notice. Five hundred four (504) of these carriers/forwarders filed the required ARC. Accordingly, these parties have satisfied the filing requirement, thus their tariffs will not be cancelled nor will their licenses be suspended. (These parties are listed in Attachment C.) The remaining parties either did not respond by filing an ARC or if they did respond indicated that they are no longer operating as common carriers in the foreign commerce of the United States or as ocean freight forwarders.

Accordingly, notice is hereby given that the foreign tariffs for the common carriers listed in Attachment A are cancelled effective the date of publication of this notice in the **Federal Register.** Notice is further given that the ocean freight forwarder licenses for the firms listed in Attachment B are suspended effective the date of publication of this notice in the **Federal Register.** This suspension shall remain

in effect until such time as the license is reinstated by the Commission after an anti-rebate certification is filed. The firms listed in Attachments A and B were notified of this action by certified mail, return receipt requested on November 25, 1997. Notice is further given that the common carriers and licensed ocean freight forwarders listed in Attachment C have either filed ARC's, cancelled their foreign tariffs or have had their ocean freight forwarder licenses revoked for other reasons.

Therefore, it is ordered that the tariffs of the carriers listed in Attachment A are cancelled.

It is further ordered that the ocean freight forwarder licenses of the firms listed in Attachment B are suspended until such time as the license is reinstated by the Commission.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

Attachment A—Organization Name

Org. No.	
012259	A.L.S. Associazione Logistica Spedizionieri S.R.L.
013287	A.R.T. Ocean Navigation Shipping Line Limited.
010653	Abacus Transports & Forwarder Ltd.
000155	ABC Containerline N.V.
011106	ACB Ocean Line, Inc.
012296	Agriculture Investment Export, Inc.
011312	Agroiat, Inc.
012741	Aurora Express International Inc.
013180	B.R. Seaxpress Ltd.
013378	Bahamas Provider Line Ltd.
011633	Baltic Shipping Co. (U.S.A.), Inc.
013151	Benemerito, Lisenio R.
011956	Best Container Line Ltd.
013177	Biscayne Shipping S.A., Inc.
008366	Black Sea Shipping Company.
013838	Black Sea Transport Ltd.
014204	Borsan Agencies Inc.
012074	Breakthrough International Co., Inc.
012094	C.B. Marine & Engineering Pty. Ltd.
011620	Cargo Systems Worldwide, Inc.
007486	Carib-Ocean Shipping, Inc.
012194	Caspian Shipping Company.
012581	Catcor Services Inc.
013211	China Eastern Express (H.K.) Ltd.
011603	Choi, Michael.
007956	Chu Kong Shipping Co., Ltd.
011723	Columbia Shipping, Inc. (Houston).
013527	Comet Lines Agency, Inc.
013208	Commnet Transportation, Inc.
012840	Compania Argentina de Navegacion Interoceanica S.A.
012817	Conterm Freight (F.E.) Pte Ltd.
013110	Conterm Freight (Thailand) Co., Ltd.
007318	Continental Seacorp Shipping, Ltd.
011017	Cuban Caribbean Shipping, Inc.
012597	Daily Smart Shipping Co., Ltd.
013009	Dutch Air B.V.
013470	EES Shipping (NSW) Pty. Ltd.
014481	Embona U.S.A.
005696	Empresa Lineas Maritimas Argentinas S.A.
013753	Esmeralda Shipping Company.
014358	Espiritu, Eugenio S.
012383	Eternal Chain Shipping Enterprises Limited.
009318	Eurasia Express (HK) Co., Ltd.
012450	Express International Forwarding.
013358	Express Shipping Lines, Inc.
010625	Fly Dragon Shipping Ltd.
010804	Foong Sun Shipping (Pte) Ltd.
007529	Genesis Container Line, Ltd.
012443	Greensky Shipping Ltd.
012528	Griffiths Line, Inc.
008016	Guardship America, Inc.
010414	Hill & Delamain Group Ltd.
007837	Hub City Los Angeles Terminals, Inc.
010362	Ideal Consolidators Ltd.
013244	Independent Marine Consultants Inc.
013121	Inter-Maritime Container Lines Inc. (IMCL).
008625	Interglobal Shipping Company Limited.
013101	International Moving Service, Ltd.
005934	Interoceanica Ltda.
012331	Intrans Consolidators, Inc.
010834	Isla Dominicana de Petroleos Corporation.
013908	Italcal Group, Inc.
013088	Jefferson Shipping Ltd.

Org. No.	
010878	Jiang Tong Company Limited.
007132	Joldar Ltd.
013441	K & M Shipping, Inc.
006938	Kaitone Shipping Co., Ltd.
006585	Kam International Line.
011670	Keantrans Shipping Company.
008054	Kirk Line, Ltd.
011792	Ko, Young Hee.
013382	Larimar Shipping, Inc.
010674	Laser Lines Ltd. AB.
012020	Lockson Services Limited.
013544	Marine Logistics, Inc.
012859	Maritima de Quintana Roo, S.A. de C.V.
009916	Mercury Ocean Fright Forwarder Co., Ltd.
008617	Meridian Shipping Line, Inc.
012060	Mexican Gulf Line.
012821	Mexus Ro/Ro Line, Inc.
013687	Myung Ma Trans Co., Ltd.
001818	National Shipping Corporation of the Philippines.
011235	Navieros Interamericanos, S.A.
011046	Navimar Lines, C.A.
008125	Nihon Unyu Kaisha, Ltd.
009792	Novocargo USA, Inc.
013132	Ocean Eagle Container Line Inc.
013134	Ocean General Inc.
011192	Oceanic Lloyd Limited.
012513	Orion Maritime Ltd.
011284	P & L Shipping Ltd.
013062	Pacific Freight Services Limited.
012046	Pearl Delta Shipping Co., Ltd.
012106	Pinoy Cargo Freight Forwarders, Inc.
011090	Polar Steamship and Commerce Company Inc.
012641	Portserv Limited.
012637	Prime Trade & Transportation Limited.
013015	Professional Cargo Services Int'l Inc.
013090	Project Asia Steamship Limited.
000858	Randy Express, Inc.
011683	Rapid Transport Ltd.
006214	Rokuchu Marine Corporation.
013590	Rola Shipping Company Limited.
014108	Royal Marine Shipping, Inc.
010477	Saga Transport (HK) Ltd.
011626	Savannah Sound Maritime Company Limited.
013241	Schwaben Express, Inc.
012737	Sea Road Shipping, S.A.
008237	Sekin Transport International Ltd.
007364	Shu, Frank Tao-Ching.
012602	Shui Nam Navigation (H.K.) Ltd.
013102	Siam Paetra International Co., Ltd.
012031	Sino-Place Limited (California).
013235	Southeastern Shipping Lines, Ltd.
012566	Sovereign Container Lines Limited.
010387	Sungwoo Shipping Co., Ltd.
011961	Sunlex Shipping Limited.
014010	Sunny Island Frieght Services Inc.
012689	TCA SRL.
011704	Tellux Shipping Ltd.
008426	Textiles Trans International Ltd.
013807	Titan Carriers Limited.
011196	Top Harbour Shipping Ltd.
013755	Totalmar Transporte C.A.
000545	Trade Ocean Line, Ltd.
008414	Trans Power International Forwarder Corp.
013716	Transeurochart Company Ltd.
012307	Translink Shipping Ltd.
012843	Treasure Coast Transport Company, Inc.
013653	Trenton Container Line Ltd.
011715	Tropical Freight Consolidators, Inc.
010397	Trust Forwarder & Consolidator, Inc.
007836	United American Consolidators, Corp.
014083	United States Ukraine Shipping, Inc.
000073	Universal Alco Ltd.
014424	Universal Transports Ltd.
011317	Vane Sail Shipping Company Ltd.

Org. No.	
011366	Venexpress Lines, Inc.
012357	Venture Shipping Inc.
012138	Vietnam Sea Transport and Chartering Company.
011161	Votainer Far East BV.
013148	Wan Hai Lines Ltd.
012232	Woodlines Shipping Limited.
011614	World-Track Pacific Lines Ltd.
013954	Worldway Shipping Inc.
011963	Zhu Sheng Transportation (HK) Co Ltd.

Attachment B—Organization Name

Org. No.	
007546	Artpak Transport Ltd.
012753	Calberson Inc.
011684	Global International Forwarders Inc.
006477	Kelly International Forwarding Co., Inc.
009347	Sam Young Transportation, Inc.
005125	Saudinvest Transportation & Traffic Services.

Attachment C—Organization Name

Org. No.	
006419	A A A Forwarding Company.
006882	A.H. Carter & Associates, Inc.
004328	A.R. Savage & Son, Inc.
013867	A.L.S. International Transportation (U.S.A.) Inc.
005268	AAA Freight Forwarding Company, Inc.
005629	ABB Intertrade Inc.
012035	ABBA Shipping Lines, Inc.
006585	ABC Freight Forwarders, Inc.
012754	ABCO International Freight (H.K.) Ltd.
013885	Able Freight Services, Inc.
013182	Acap, Consolacion P.
006438	Accord Shipping Co., Inc.
013924	Ace Forwarding, Inc.
002158	Ace Shipping Corp.
006667	Aempec System, Inc.
012161	Aero Expedited, Inc.
014251	Air & Ocean International, Inc.
004758	Air-Mar Shipping, Inc.
012283	Air-Sea International, Inc.
004901	Air/Sea Forwarding Specialist, Inc.
011458	Airconex, Inc.
014510	Akerni & Co., Inc.
010398	Albini & Pitigliani Spa.
012917	Alcala, Lucia.
013901	All American Worldwide, Inc.
011489	All-ways Cargo Services, Inc.
012603	Alliance Brokers International, Inc.
012507	Allyn International Services, Inc.
009922	Almcorp Project Trantsport, Inc.
004180	Alonso Shipping Company.
012297	Alpha International Cargo Services, L.P.
012523	AMCO Shipping International Limited.
013900	Amerford FMS, Inc.
014015	America Worldwide Inc.
012290	American Business Lines Inc.
013847	American International Brokerage, Inc.
012730	American Lines, Inc.
011604	American One Freight Forwarders, Inc.
005617	American Packing & Shipping, Inc.
013341	American President Business Logistics Services, Ltd.
012847	American Ship Management, Inc.
008795	Amzone International, Inc.
009482	ANR Inc.
014362	AP Transport Services, Inc.
004894	Arabian National Shipping Corp.
004252	Araujo, Ramon.

Org. No.	
011331	Arawak Bahamas Ltd.
010800	Arawak Caribbean Line, Ltd.
012163	Armstrong Transfer & Storage Company, Inc., Atlanta, Georgia.
014211	Arriaga & Associates, Inc.
013672	Asia Star Forwarders Co., Ltd.
009536	Associated Customhouse Brokers Inc.
007353	Associated International Consultants, Inc.
008033	Atlantic International Freight Forwarders Inc.
014347	Atlantic Pacific International, Inc.
007864	Atlantic Transport Co. Ltd.
010650	Aust-Asia Worldwide Shipping Pty. Ltd.
011588	Aviation Import/Export Incorporated.
012180	AXO Industries, Inc.
010791	B & A Brokers Inc.
000330	Babuyan Carriers S.A.
013116	Bahl, Vandana C.
014336	Baltazar, Harry O.
013859	Baltrans USA, Inc.
004852	Banis, Chris T.
004249	Barlan Shipping Company Inc.
014100	Barnett Trading, Inc.
014388	Bauhinia International Corp.
006396	Ben-G Incorporated.
014353	Benchmark Transportation Services, Inc.
008672	Bermuda Export Sea Transfer Ltd.
013454	Best Shipping Inc.
004360	Bill Polkinhorn, Inc.
005367	Blackstar Transport Services, Inc.—Acts.
013747	Blair, Elaine.
009796	BLN Express Company.
012159	Blue Star Shipping Corp.
009341	Bridgeport Shipping Lines, Inc.
004874	BWI Corporation.
008135	C & F Worldwide Agency Corp.
006893	Calabro, Francis J.
013155	Calberson Oversees SA.
011178	Caliber Customs Brokers and Freight Forwarders, Inc.
007467	Camelot Company, The.
004750	Cancetty, Fernando L.
011223	Capital Distribution Services Ltd.
013436	Caraval, Inc.
012836	Cargo Co-Ordinators Shipping (H.K.) Ltd.
000685	Cargo Forwarding Inc.
007462	Cargo Import Brokers, Inc.
011359	Cargo Link Services Limited.
014463	Cargo Maritime Services, Inc.
010672	Cargo Transport Inc.
012809	Cargomax International Inc.
012626	Caribbean Freight Forwarders, Inc.
013360	Caribbean Transport Line S.A.
009555	Caribe Express, Inc.
013846	Caribwarp Inc.
011507	Carinter Miami, Inc.
004474	Carl Matusek, Inc.
012482	Cast Logistics (U.S.A.) Limited.
012551	CCCA/FNC.
005647	CDM Transportation Services, Inc.
005409	Celaya-Guerin International, Inc.
011982	CGM Tour du Monde.
009495	Chang, Kil Moon.
008681	Chemical Leaman Tank Lines, Inc.
000747	China National Foreign Trade Transportation Corp.
000749	China Navigation Co. Ltd., The.
008752	China Trading Service Co. Ltd.
004773	Chipman Corporation.
009750	Chun, Song Nam.
011725	City Network Inc.
014105	CJC International Services Inc.
006487	Cole Forwarding, Inc.
013594	Columbia Coastal Transport, Incorporated.
011158	Columbia Shipping Inc. (SFO).
005535	Combined Transport Systems, Inc.
007827	Combitainer Ltd.
010199	Combuilt Services International Ltd.

Org. No.	
011948	Comet Technology Corp.
000784	Compagnie Maritime D'Affretement.
000688	Compania Trasatlantica Espanola, S.A.
009356	Compass Marine Services (U.S.A.), Inc.
009410	Connections International.
013022	Consolidated Incorporated of Orlando.
004536	Constable & Madison Inc.
010360	Conterm AB.
014223	Continental Express International, Inc.
009556	Contrak Forwarding Company.
004561	Corrigan Moving and Storage Co.
011369	Cruz, Adalberto Jesus.
013350	D. Lee Krause & Company, Ltd.
012783	Da-Ma's Forwarding, Inc.
012914	Dartrans Limited.
014180	Def Limited.
011002	Demetrios Air Freight Company, Inc.
004729	Demopoulos, Seraphim Steven.
014121	Deniz Nakliyati T.A.S.
004931	Dependable Freight Forwarding, Inc.
013804	Deugro Ocean Transport, Inc.
014403	Deugro Projects USA, Llc.
009677	Deutsche NAH-OST Linien GMBH & Co. KG.
012394	DFDS Transport Inc.
014279	Diaz, Jose Gregorio.
004674	Diaz, Richard.
013674	Dimerc USA, Inc.
005338	Dimerco Express (USA) Corp.
005379	Din, Akhtar, L. Kim.
013784	Dollar America Exchange, Inc.
007962	Dolphin Brokerage International Inc.
013890	Dolphin Int'l Transportation Co., Ltd.
006900	Duchess Shipping, Inc.
004764	Dulles International Customhouse Brokerage Corp.
013548	Dynasty Customs Broker Inc.
004660	E. C. McAfee Co. Customhouse Brokers.
013135	E.R.A. Freight Forwarding Inc.
004763	Eagle International, Ltd.
012055	Eastern-Trans (U.S.A.) Inc.
010924	Echlin Sales Company, The.
005471	Edward J. Zarach & Associates, Inc.
014306	EFES Cargo U.S.A., Inc.
014117	EMC Shipping, Inc.
004782	Erting, Jorgen A.
013328	ESL Express, Inc.
013808	ETA Import & Export Ltd.
009316	Eurasia Express Co., Ltd.
010742	European Shipping Transport (E.S.T.) B.V.
013043	Everich Shipping Ltd.
012110	Executive Freight Consolidators, Inc.
014169	Expedited Transportation Services Inc.
007361	Express Packing & Forwarding, Inc.
013001	F.P. International Corporation.
007086	Fairway Express, Inc.
005060	Fast Air Sea Transport, Inc.
008607	Fast Cargo U.S., (L.A.), Inc.
014229	Fast Transportation Services, Inc.
004512	Federal Warehouse Company.
009876	Fiorino Shipping S.R.L.
005657	Florida Overseas Services, Inc.
011469	Frama Forwarding Corp.
009928	Freight Forwarders Inc.
012196	Frontier Container Line, Inc.
010937	Frontier International Shipping Company, Inc.
010450	Galaxy Freight Service Ltd.
004618	Gatell International, Inc.
004446	Gateway Agency, Inc.
006441	General Brokerage Services Inc.
006443	General Express Management Corp.
007984	General Ocean Freight Container Line.
004321	General Shipping Co Inc.
004661	Glen Ellyn Storage Corporation.
013396	Global Forwarding Ltd.
013005	Global-Link Resources, Inc.

Org. No.	
012334	GLSL Shipping & Chartering GMBH.
005879	GobNait Container Line.
000445	Golden Gate Container Line, Inc.
012179	Goldmar Cargo, Inc.
012543	Graebel/Houston Movers, Inc.
006783	Great Abaco Shipping Co., Ltd.
013214	Great Way Trading & Transportation, Inc.
013826	GSG Investment Inc.
013852	Gulf & Orient Steamship Co.
010633	Hanshin Air Cargo USA Inc.
004078	Haras and Co., Inc.
012293	Hawthorne, Dennis.
010218	HC Hansa Cargo Transport GMBH.
008783	Helka Express International Ltd.
002222	Hercules Packing, Shipping & Moving Co. Inc.
006473	Hernandez, Jorge M.
010968	Hero Shipping Co., Ltd.
004230	Hirshbach & Smith, Inc.
008791	Hol-Mar International, Inc.
013855	Houng, Tina.
012522	Hudson Int'l Transport (Taiwan) Corp.
013582	Huo, Shu-Liang.
005504	Hydra Management, Inc.
011463	I.C.C. Products Inc.
005300	Import Brokers, Inc.
011047	Innovative Logistics Incorporated.
014114	Inter-Jet Ocean Transport, Inc.
011115	Intercontinental Cargo Express, Ltd.
013046	Intergroup Shipping (Asia) Ltd.
011950	Intermodal Logistics Systems, Inc.
012801	International Express Cargo Services, Inc.
013168	International Express Consolidators Co.
014016	International Logistics, Inc.
013976	International Ocean-Air Services, Inc.
012006	Intertraffic-Tfi Pty. Ltd.
004120	Inticobal Inc.
013120	Intransit Services, Inc.
010682	Ireland, David L.
011951	Island Cargo Consolidators, Inc.
011274	Island Shipping and Trading, Ltd.
004426	J.D. Smith Co., Inc.
004364	J.R. Michels, Incorporated
004755	J.T. Scura, Incorporated
006466	Jackie International Corp.
005460	Janel Group of Los Angeles, Inc., The.
013333	Jaro International L.L.C.
009776	Jewett-Cameron Lumber Corporation.
014322	Johnson Storage & Moving Co.
005560	Johnson, Jean H.
013246	Joint Cargo Movements, Inc.
004680	Jones, Richard L.
004872	Jorge Blanch, Inc.
004212	Joseph C. Murray & Co., Inc.
010550	Jumbo Protectors Ltd.
014130	K-Pasa, Inc.
013745	Kahng, Heywal Soo.
011316	KC International Inc.
012635	KCTC International Ltd.
005464	Kim, Young S.
007592	Kirk Freight Line Ltd.
011677	KNL International, Inc.
013794	Koberg, Manfred J.
013881	Koerber, Wesley S.
012999	Kollyns International Co., Ltd.
011226	Koninklijke Frans Maas Groep N.V.
010192	Kunyoung Shipping Co., Ltd.
001585	La Flor de Mayo Express, Inc.
005039	La-Rama Shipping Company, Inc.
007045	Laparkan Trading Limited.
012876	Latino S.A.
013910	Lead Young Sea & Air Freight Co., Limited.
013376	Leo Transport Corporation Ltd.
004912	Levine, Michael.
009340	Logistics Service (HK) Co., Ltd.

Org. No.	
011037	Long Transportation Services, Inc.
006633	Loor International Forwarders, Inc.
004562	M & H Brokerage, Inc.
010420	M&M Militzer & Munch GMBH Internationale Spedition.
002550	M.A.T. International Shipping, Inc.
009840	Mac-Nels Agencies PTE Ltd.
004917	Mahoney, John F.
004116	Manriquez, Honorato and Manriquez, Rachelle.
010361	Mapcargo International.
005305	Marshall, Robert Gage.
005528	Martinez, Miriam.
013085	Maverick Distribution Services Inc.
007003	Mazzarella, Al.
004124	Mc Carty, John T.
012129	Med-Pacific Express.
011005	Medina-Luque, Carlos G.
013617	Megatrans International Inc.
013984	Meier, Fleura.
006489	Meteor Air Freight Inc.
004685	Metro Worldwide Shipping Inc.
010395	Metzger Und Richner Transport AG.
004421	Middleton Group, Inc.
013066	Mina-Saito, Josephine D.
009839	Montemar S.A.
004796	Monti Forwarding Corp.
004713	Montiel, Omar.
012788	Moon, Myung Ku.
005558	Morgan Systems International, Inc.
010515	Multicargo S.R.L.
011326	Multimodal Services (NY) Inc.
014342	Mundo Shipping Corp.
011010	Munoz, Margaret V.
014252	Murphy Shipping & Commercial Services, Inc.
012875	Naimoli, Anthony.
001511	Naviera Consolidada S.A.
011112	Network Trading, Corp.
012233	New Bight Enterprise Limited.
010584	New Zealand Van Lines Ltd.
014240	NG Enterprises, Inc.
011114	Nippon Express Hawaii, Inc.
013473	Nishida, Guy Timothy.
012757	Ocean Conco Line, Inc.
011481	Oceanic Freights, Inc.
010713	Oceantower Forwerder Service Inc.
012158	Oceanwide Shipping Inc.
009620	Omega & Associates, Inc.
012399	Otim-Organizzazione Trasporti Internazionali E Marittimi S.P.A.
013974	Overseas Mahanm Inc.
013556	P.I. Express, Inc.
013506	Pacific Direct Line Ltd.
013559	Packer, Matt.
011029	Pagoda Container Line Corp.
013690	Park, Insoo.
006435	Parkerco, Inc.
013086	Partec Forwarding Corporation.
009949	Pasha Terminal Company, Inc.
005606	Pegasus (N.Y.) Inc.
009527	Penbroke Marine Services, Inc.
013888	Perform' Air International Inc.
004939	Perryman, Mojonier Company.
013767	Petcon Container Lines Ltd.
004505	Phil Thomas & Son International Co.
013949	Phoenix Caribbean Shipping Line (USA) Ltd.
005021	Pike Shipping Company, Inc.
013831	Pilot Air Freight Corp.
013166	Pioneer General, Inc.
005503	PLI, Inc.
004801	Posey International, Inc.
011596	Princess Forwarding, Inc.
013522	Pro-Well Sea Consolidators & Forwarding Ltd.
013536	Procargo Inc.
005372	Projects Transportation International, Ltd.
013589	Promate Freight Service, Inc.
013565	Quality Logistics, Inc.

Org. No.	
013903	Quantum International Forwarding Ltd.
013721	Quartet International
014085	Quick Cargo Services Corp.
013362	R & F Rolap Enterprises, Inc.
002503	R. A. Leslie & Company, Inc.
005436	R. E. Delgado, Inc.
005294	Ram's Cargo Brokers, Inc.
002520	Rank International Forwarding, Inc.
011318	Red Oak Industries, Inc.
014360	Reliable Van & Storage Co., Inc.
012923	Respond Cargo Services Corporation.
006730	Rhein Express International Ltd.
004131	Richard Murray & Company.
006478	Riggs, Kathleen Tansey.
004786	Ripple, Harvey E.
011003	Robert J. Semany & Co.
004752	Robertson Forwarding Co., Inc.
006509	Rock-It Cargo USA, Inc.
014218	Rodi International Corp.
004969	Rome International Freight Consultants, Inc.
005246	Ross Freight Company, Inc.
010187	Royal Cargo Corporation.
013793	RSB Logistic Services Inc.
006487	Rutherford International Group Ltd.
014146	S O S Global Express, Inc.
006018	S.T.S. International Inc.
004437	Sack and Menendez, Inc.
013264	Saco Shipping GMBH.
010545	Safco International Freight Corp.
011547	Safe Ocean Forwarders, Inc.
009932	Sagawa World Express, Inc.
004111	Salben Shipping Company, Inc.
007950	Samonte, Ramon A.
010732	Samson Transport Company (UK) Ltd.
007000	San Diego, Danilo P.
013604	Sanchez, Carlos B.
006515	Satcorp Shipping Inc.
014541	Satt International Forwarding Inc.
009688	SBA Consolidators, Inc.
001083	Scanfreight Continental N.V.
004578	Schick Moving & Storage Company.
005645	Schneider, Richard.
012577	SCN Container Line, Inc.
013499	SCR International Freight Forwarding, Inc.
014063	Sea & Air Transport, Inc.
006517	Sea To Sea Foreign Freight Forwarder Inc.
006300	Sea-Span Shipping, Ltd.
010860	Seair Export Import Services, Inc.
011981	Seatop Shipping Ltd.
006933	Seaway International, Inc.
011015	Sec Line Ltd.
013872	Seiwa America, Inc.
010921	Senko Co., Ltd.
004878	Sequoia Forwarders Co.
006645	Servco California, Inc.
001133	Sesko Marine Trailers, Inc.
011135	Shannon International, Inc.
004687	Shenk, David W.
013175	Shippers, Inc.
013635	Siemens, III, William J.
012808	Simmons International Express, Inc.
014004	Simpson, Duane D.
012256	Single Source Transportation, Inc.
009494	Smith, Virginia A.
012011	Sofrana Holding Limited.
013281	Solano, Paula.
006522	Solmar Logistics Inc.
004953	Soto, Alfonso X.
004323	Southern Steamship Agency, Inc.
013137	Southern World International, Inc.
012969	Special Commodities Services, L.L.C.
013583	Spencer, Eldon D.
010931	Stalco Forwarding Services, Inc.
010474	Stallion Cargo Inc.

Org. No.	
014226	Stallion Freight U.S.A. LLC.
012462	Star Trans-Pacific International Forwarding Co. Ltd.
004375	Stevens Shipping & Terminal Company.
006525	Stewart Corporation.
001203	Sunmar Shipping, Inc.
013929	Sunrise American Shipping, Corp.
011185	Sunshine Freight Forwarders, Inc.
013646	Super Bridge Shipping Limited.
011517	Super Cargo International Services, Inc.
013557	Superior Shipping, Inc.
004253	T.A. Coleman & Co., Inc.
013627	Tampa Bay Ocean Services, Inc.
014020	Tan, Gary Yenkok.
014213	Terrace Express, Inc.
013661	Thienvanich, Lersvidhya.
004347	Thomas E. Flynn and Co.
012789	Thomas Griffin International, Inc.
013320	Thor Air Freight Corp.
013393	Time Definite Services, Inc.
013423	Todd, Richard.
006867	Total Ex-Port of Florida, Inc.
004016	Total Ex-Port, Inc.
005398	Trade Winds Forwarding, Inc.
012588	Trans Arabian Shipping Co. Inc.
007388	Trans Continental Cargo, Inc.
012276	Trans-Freight Inc.
013195	Trans-Global Expeditors Forwarding, Inc.
009963	Trans-Hemisphere Shipping Services, Corporation.
011628	Transbridge International, Inc.
010857	Transnation Freight Services, Inc.
011001	Transpo Service, Ltd.
014363	Transport & Freight Forwarding International Co., Ltd.
013573	Transporte Dos Rios de Navegacion, C.A.
013174	Transway International Co., Ltd.
002768	Transworld Lines, Inc.
014392	Transworld Shipping Ltd.
012149	Trapaga-Torres, Gloria Veronica.
013115	Tresset Corporation.
013841	Trimex International Ltd.
011382	Trutainer N.V.
012909	U.S. Cargo, Inc.
014281	U.S. International Forwarding Agency, Inc.
004930	U.S.A. Shipping Corporation.
007474	U.S.A. Tecmarine, Inc.
014286	Unimar Maritime Limited.
014416	Union International America, Inc.
013052	Unishipping.
008833	United Abeco Shipping Company Limited.
012781	United States Auto & Cargo Exporters Corp.
012895	United Trans-Trade Inc.
014139	Universal Logistic Forwarding Co., Ltd.
005452	Uryu, Takashi.
013309	V N Cargo, Inc.
006539	Valencia Shipping Agencies Inc.
012440	Van Esch Trading and Shipping B.V.
012424	Venconav USA Ltd.
013789	Venezuela, Republica de—Ministerio de la Defensa—Armada.
011585	Vialoma Trading Corp.
013930	Victoria Line, Inc.
005341	Viking Sea Freight Inc.
011453	Vil International, Inc.
011152	Vin-Shinyei (China) Limited.
013880	VIP Transport, Inc.
013968	Voit, Timothy Allan.
006178	Wada, Hiroyuki.
012177	Weimer, Alex G.
009330	Welgrow International, Inc.
011007	Welgrow Ocean Transportation, Inc.
004106	Westfeldt Brothers Forwarders, Inc.
004888	Westwind Overseas Limited.
013613	Wilson Freight (Far East) Limited.
014119	Winfield Shipping Inc.
013229	Winfull Transportation Co., Ltd.
006229	Winsor Grain, Inc.

Org. No.	
009362	Wisco International Forwarders, Inc.
005505	Withers Transfer & Storage of Coral Gables Inc.
013129	World Cargo Corporation.
004544	World Freight Forwarders, Inc.
009601	Worldwide Exhibition Services, Inc.
013496	Worldwide Freight Systems, Inc.
012899	Wren, Lori Ann.
013487	Wright Kerr Tyson Limited.
009339	Yamato Transport (HK) Ltd.
013822	Yamato Transport (S) PTE Ltd.
009346	YK Shipping International (USA), Inc.
009889	Youngs Consolidators Ltd.
006552	Yowell Transportation Services, Inc.
009709	Zonn Agency.

[FR Doc. 97–32116 Filed 12–8–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System
ACTION: Notice

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instruments will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimates of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 9, 1998.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed forms and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the implementation of the following reports:

1. Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity
Agency form number: FR 3036
OMB control number: 7100-0288
Frequency: one-time survey
Reporters: The proposed survey has three parts: a pre-survey questionnaire, a turnover survey, and a survey of outstanding derivatives contracts. The pre-survey questionnaire and the turnover portion of the survey would include all financial institutions that are significant dealers in the foreign exchange market in the United States. The derivatives outstanding portion of the survey would cover a smaller set of firms because market making in derivatives markets is more concentrated.
Annual reporting hours: 8,187
Estimated average hours per response: Pre-survey questionnaire: 5 minutes; Turnover survey: 50 hours; Derivatives outstanding survey: 15 hours for FR 2436 respondents (there are proposed to be thirteen), 60 hours for others
Number of respondents: Pre-survey questionnaire and turnover survey: 144; Derivatives outstanding survey: 26.Small businesses are not affected.

General description of report: This information collection would be voluntary (12 U.S.C. 248(a)(2), 353-359, and 3105(c)) and would be given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The proposed Central Bank Survey of Foreign Exchange and Derivatives Market Activity is part of an ongoing triennial series. The data from the survey would provide information about the size and structure of the global markets for foreign exchange and financial derivatives transactions. The Federal Reserve would be one of forty-four central banks conducting surveys. Aggregate results from each central bank's survey will be provided to the Bank for International Settlements, which will compile global market statistics. The proposed survey would be conducted in April and June of 1998 by the Federal Reserve Bank of New York.

The proposed survey has two parts, a turnover survey and a survey of outstanding derivatives contracts. The proposed changes from the 1995 survey are intended to reduce the reporting burden. The most significant revisions are those made to the derivatives outstandings part of the survey to align it with the Semiannual Report of Derivatives Activity (FR 2436) which is discussed below.

2. Report title: Semiannual Report of Derivatives Activity
Agency form number: FR 2436
OMB control number: 7100-0284
Frequency: semiannual
Reporters: large U.S. dealers of over-the-counter (OTC) derivatives
Annual reporting hours: 2,600
Estimated average hours per response: 100
Number of respondents: 13
Small businesses are not affected.

General description of report: This information collection would be voluntary (12 U.S.C. 248(a), 353-359, and 461) and would be given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2436 is proposed to collect derivatives market statistics from a sample of thirteen large U.S. dealers of OTC derivatives. The report would collect information on notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, equity- and commodity-linked over-the-counter derivatives instruments across a range of underlying currencies, interest rates, and equity markets.

This collection of information would complement the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036) and would be implemented concurrently with the 1998 FR 3036. The FR 2436 would collect similar data on the outstanding volume of derivatives, but not on derivatives turnover. As with the FR 3036, the Federal Reserve would conduct this report in coordination with other central banks and would forward the aggregated data furnished by U.S. reporters to the Bank for International Settlements, which would publish global market statistics that are aggregations of national data.

Board of Governors of the Federal Reserve System, December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-32157 Filed 12-8-97; 8:45AM]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping Requirements Associated with Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y
Agency form number: none
OMB Control number: 7100-0250
Frequency: on occasion
Reporters: state member banks and bank holding company (BHC) subsidiaries
Annual reporting hours: 61,220 (27,940 for state member banks and 33,280 for BHC subsidiaries
Estimated average hours per response: .25
Number of respondents: 2,040 (1,016 state member banks and 1,024 BHC subsidiaries)
Small businesses are affected.

General description of report: This recordkeeping is mandatory (U.S.C. Sections 3310, 3331-3351). Since the Federal Reserve does not collect this information, confidentiality under the Freedom of Information Act (FOIA) is generally not at issue. The issue of the confidentiality of the information, however, might arise if the Federal Reserve were to obtain a copy of the appraisal during an examination or inspection. In such a case, the documents would be exempt (5 U.S.C. 552(b)(8)). The information also would be exempt if disclosure would likely cause substantial harm to the institution from which it was obtained (5 U.S.C. 552(b)(4)).

Abstract: This information collection is a recordkeeping requirement contained in the Board's Regulation H (12 C.F.R. 208.18) and Regulation Y (12 C.F.R. 225.61) that implements Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The purpose of the statute is to provide that federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals used in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

The Federal Deposit Insurance Corporation, the Office of the Controller of the Currency, and the Office of Thrift Supervision have parallel requirements for the institutions they supervise.

Board of Governors of the Federal Reserve System, December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-32158 Filed 12-8-97; 8:45AM]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of public hearing on December 18.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Thursday, December 18, 1997 from 1:00 P.M. to 4:00 P.M. in room 7C13 of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The purpose of the hearing is to hear testimony from interested parties on Accounting for Internal Use Software. Those interested in testifying should contact Wendy Comes, Executive Director, no later than one week prior to the hearing. Also, they should at the same time provide a short biography and written copies of their testimony.

Any interested person may attend the hearing as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy M. Comes, Executive Staff Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512-7357. E-Mail to: ComesW.fasab@gao.gov. Fax: 202-512-7366.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: December 3, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97-32191 Filed 12-8-97; 8:45 am]

BILLING CODE 1610-01-M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of December meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Friday, December 19, 1997, from 9 a.m. to 4 p.m. in Room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss the following issues: (1) Natural Resources; (2) Credit Reform proposed amendments; (3) Social Insurance; (4) follow-up issues from the public hearing on accounting for internal use software of December 18; and (5) the addition of new projects for 1998.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 3B18, Washington, DC 20548, or call (202) 512-7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: December 3, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97-32192 Filed 12-8-97; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N-0496]

Agency Emergency Processing Request Under OMB Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The purpose of the proposed collection of information is to enable FDA to comply in a timely manner with the congressional mandate in section 504 of the Federal Food Drug and Cosmetic Act (the act) as added by the Animal Drug Availability Act (ADAA) of 1996, which requires that distributors of animal feeds containing a veterinary feed directive (VFD) drug notify FDA of their intent to engage in distribution. FDA is requesting OMB approval within 10 days of receipt of this clearance submission.

DATES: Submit written comments by December 19, 1997.

ADDRESSES: Submit written comments to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA and 5 CFR 1320.13 because the information is needed so that FDA can process letters from animal feed distributors notifying the agency of their intent to distribute animal feeds containing VFD drugs as mandated by the ADAA.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Newley added section 504 of the act (21 U.S.C. 354) created a new class of drugs for use in animal feed, referred to as VFD drugs, which are limited to use only under the professional supervision of a licensed veterinarian. Under section 504(a)(3)(C) (21 U.S.C. 354(a)(3)(C)), a distributor must upon first engaging in the distribution of animal feeds containing VFD drugs notify the agency of its name and place of business. The information the agency needs to implement this statutory requirement includes the following specific information: Distributor name, site street address, mailing address (if different), city state, zip code, name and title of individual submitting the letter, the date signed, and a statement acknowledging the intent to distribute. The information will be used as confirmation of distributors for this new class of drugs. To date, FDA has received letters from approximately 500 distributors. FDA is working diligently to implement procedural regulations for VFD drugs. Thus, approval of this request by OMB will allow FDA to obtain the information that distributors must provide under section 504(a)(3)(C) as well as provide the agency with a listing of distributors legally authorized to distribute animal feeds containing VFD drugs.

Respondents to this collection of information are animal feed and animal drug distributors. FDA estimates the

burden of the proposed collection of information is as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
354(a)(3)(C)	20,000	1	1 (initial only)	.25	5,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate for this proposed burden was derived from agency records and past experience concerning animal feed distribution.

Dated: December 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97-32163 Filed 12-8-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M-0498]

ALLERGAN Medical Optics; Premarket Approval of Model SA40N AMO®ARRAY® Multifocal Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Medical Optics, Irvine, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Model SA40N AMO®Array® Multifocal Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 5, 1997, of the approval of the application.

DATES: Petitions for administrative review by January 8, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ashley A. Boulware, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2053.

SUPPLEMENTARY INFORMATION: On September 3, 1996, Allergan Medical Optics, Irvine, CA 92612-9534, submitted to CDRH an application for premarket approval of Model SA40N AMO®Array® Multifocal Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lens. The device is a multifocal intraocular lens and is indicated for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed and who may benefit from useful near vision without reading add and increased spectacle independence across a range of distances where the potential visual effects associated with multifocality are acceptable. The lens is intended for placement in the capsular bag. The lens is available in powers of +16 to +24 diopters.

On July 10, 1997, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 5, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 8, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health

[FR Doc. 97-32165 Filed 12-8-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 1998

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for Fiscal Year (FY) 1998. The Prescription Drug User Fee Act of 1992 (the PDUFA), as amended by the Food and Drug Administration Modernization Act of 1997 (the FDAMA), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Fees for applications for FY 1998 were set by the FDAMA, subject to adjustment for inflation. Total application fee revenues fluctuate with FDA application review workload. Fees for establishments and products are based on the revenues to be derived from applications.

FOR FURTHER INFORMATION CONTACT: Michael E. Roosevelt, Office of Financial Management (HFA-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-5088.

SUPPLEMENTARY INFORMATION:

I. Background

The PDUFA (Pub. L. 102-571), as amended by the FDAMA (Pub. L. 105-115), establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biologic products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)). Under the PDUFA, as amended, one-third of the total user fee revenue for each FY must come from each of the three types of fees.

For 1998 through 2002, under the amendments enacted in the FDAMA, the total fee revenues and fee rates for application fees are set in the statute, but are to be adjusted annually for cumulative inflation since 1997. In addition, total application fee revenues are structured to increase or decrease each year as the number of applications submitted to FDA increases or decreases.

For 1998 through 2002, FDA is authorized to set fee rates for establishment and for product categories each year, so that the total fee revenue from each of these two categories will equal the total revenue FDA expects to collect from application fees that year. This procedure continues the arrangement under which one-third of the total user fee revenue comes from each of the three types of fees.

This notice establishes fee rates for FY 1998 for application, establishment, and product fees. These fees are retroactive to October 1, 1997, and will remain in effect through September 30, 1998. Prior to the enactment of the FDAMA, only half of the application fee was due upon submission of the application, and the second half was due when FDA issued an action letter after review of the application. Beginning in FY 1998, the entire application fee is due upon submission of the application to FDA. For fees already paid on applications and supplements submitted on or after October 1, 1997, FDA will bill applicants for the difference between fees paid and fees due under the new fee schedules and under the new requirement that application fees be paid in full at the time an application is submitted. For applications and supplements submitted after December 31, 1997, the new fee schedule must be used. Invoices for establishment and product fees for FY 1998 will be issued in December 1997, using the new fee schedules.

II. Inflation and Workload Adjustment Process

The PDUFA, as amended by the FDAMA, provides that fee rates for each FY shall be adjusted by notice in the **Federal Register**. The adjustment must reflect the greater of : (1) The total percentage change that occurred during the preceding FY in the Consumer Price Index (the CPI) (all items; U.S. city average), or (2) the total percentage pay change for that FY for Federal employees, as adjusted for any locality-based payment applicable to employees stationed in the District of Columbia. The FDAMA provides for this annual adjustment to be cumulative and compounded annually after 1997 (see 21 U.S.C. 379h(c)).

The FDAMA also structures the total application fee revenue to increase or decrease each year as the number of applications submitted to FDA increases or decreases. This provision allows revenues to rise or fall as FDA's workload rises or falls. To implement this provision each year, FDA will estimate the number of applications it anticipates receiving, based on its actual receipts the previous year, and making an allowance for waivers and refunds. FDA has made similar estimates each year since 1993 under the PDUFA fee setting process. The number of applications estimated by this process will then be multiplied by the inflation-adjusted statutory application fee. This calculation will produce the FDA's estimate of total application fee revenues to be received each year.

The PDUFA also provides that FDA shall adjust the rates for establishment and product fees so that the total revenues from each of these categories will be equal to the revenues FDA expects to collect from application fees that year. The PDUFA, as amended, provides that the new fee rates based on these calculations be published within 60 days after the end of each FY (21 U.S.C. 379h(c)(2)).

III. Inflation and Workload Adjustment for Application Fees and Total Application Fee Revenue

The FDAMA provides that the application fee rates set out in the statute be adjusted each year for cumulative inflation. It also provides for total application fee revenues to increase or decrease, based on increases or decreases in FDA's application review workload.

A. Inflation Adjustment to Application Fees

Application fees are assessed at different rates for qualifying applications depending on whether the applications require clinical data on safety or effectiveness (other than bioavailability or bioequivalence studies) (21 U.S.C. 379h(a)(1)(A), and 379(h)(b)). Applications that require clinical data are subject to the full application fee. Applications that do not require clinical data and supplements that require clinical data are assessed one-half the fee of applications that require clinical data. If FDA refuses to file an application or supplement, 75 percent of the application fee is refunded to the applicant (21 U.S.C. 379h(a)(1)(D)).

The application fees described above are set out in the FDAMA for 1998 ($250,704 for applications requiring clinical data, and $125,352 for applications not requiring clinical data or supplements requiring clinical data) (21 U.S.C. 379h(b)(1)), but must be adjusted for inflation. For FY 1997, the total increase in the CPI was 2.15 percent, whereas the increase in applicable Federal salaries for FY 1998 is 2.45 percent. The higher of these, 2.45 percent, is to be used for computing the inflation adjustment for FY 1998. Since

1998 is the first year after 1997, the base year from which inflation accumulates and is compounded, there is no cumulative, compounded inflation from previous years to be added to this percentage for FY 1998. The adjusted application fee rates are computed by applying the inflation percentage for FY 1998 (102.45 percent) to the FY 1998 statutory application fee rates stated above. For FY 1998 the adjusted application fee rates are $258,846 for applications requiring clinical data, and $128,423 for applications not requiring clinical data or supplements requiring clinical data. These amounts must be submitted with all applications during FY 1998.

B. Workload Adjustment and Total Application Fee Revenue

Total application fee revenues for 1998 will be determined by the number of applications FDA receives from October 1, 1997, through September 30, 1998, multiplied by the fee rates calculated in the preceding paragraph. Before fees can be set for establishment and product fee categories, each of which are to equal total revenues FDA collects from application fees, FDA must estimate its total 1998 application fee revenues. To do this, FDA calculates the number of full application fees FDA received in 1997 and uses that figure as a basis for estimating 1998 application volume.

For FY 1997, FDA received, filed, and assessed fees for 118 applications that require clinical data, 19 applications that did not require clinical data, and 127 supplements that require clinical data. Because applications that do not require clinical data and supplements that require clinical data are assessed only one-half the full fee, the equivalent number of these applications subject to the full fee is determined by summing these categories and dividing by 2. This amount is then added to the number of applications that require clinical data to arrive at the equivalent number of applications subject to full application fees.

In addition, as of September 30, 1997, FDA assessed fees for one application that required clinical data, one application that did not require clinical data, and one supplement, all of which were refused filing or withdrawn before filing. After refunds, the full application paid one-fourth the full application fee and is counted as one-fourth of an application, and the application that did not require clinical data and the supplement each paid one-eighth of the full application fee and are each counted as one-eighth of an application.

Using this methodology, the approximate equivalent number of applications that required clinical data and were assessed fees in FY 1997 was 192, before any further decisions were made on requests for waivers or reductions. Under the FDAMA small businesses will receive a full waiver for their first application (rather than waiver of half the fee as was the case under the PDUFA). In addition, the FDAMA excludes from fees bulk biological products that are further manufactured, and provides new exceptions for certain orphan product applications and certain supplements for pediatric indications. Because of these changes, in FY 1998 FDA estimates that approximately 40 fewer equivalents of full applications will generate fees, or fees for them will be subject to waivers or reductions. This number is a substantial increase over the estimate that FDA would waive or reduce 16 equivalents of full fee applications made 1 year ago when fees for 1997 were established. Therefore, FDA estimates that approximately 152 equivalent applications that require clinical data will qualify for fees in FY 1998, after allowing for possible waivers or reductions.

The following calculations summarize the determination of FY 1998 application estimates, based on 1997 data:

- 118 applications that require clinical data, + (19+2) applications that do not require clinical data, + (127+2) supplements that require clinical data, + (1+4) applications that require clinical data and which FDA refuses to file or the sponsor withdraws before filing + (2+8) supplements which FDA refuses to file or the sponsor withdraws before filing minus 40 waivers, reductions or exceptions = 152 (the estimated number of "full fee" applications for FY 1998 based on FY 1997 experience, and rounded up).

The total FY 1998 application fee revenue is estimated by multiplying the adjusted application fee rate ($256,846) by the equivalent number of applications projected to qualify for fees in FY 1998 (152), for a total estimated application fee revenue in 1998 of $39,040,592. This is the amount of revenue that FDA is also expected to derive from establishment fees and from product fees.

IV. Fee Calculations for Establishment, and Product Fees

A. Establishment Fees

The FY 1997 establishment fee was based on an estimate of 250 establishments subject to fees. In FY 1997, 263 establishments qualified for fees before any decisions on requests for waivers or reductions were made. Under the FDAMA, the basis for assessment of establishment fees is amended. The responsibility for the fee is placed on the applicant whose product is manufactured at the facility, and not on the owner of the facility. Contract manufacturing establishments will now be subject to fees, to be paid by the applicant whose product is manufactured at that establishment. FDA believes this will subject additional establishments to fees, and estimates that approximately 275 establishments will qualify for fees in FY 1998 after allowing for possible waivers or reductions. Thus, the number 275 is used in setting the new establishment fee rate. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($39,040,592), by the estimated 275 establishments, for an establishment fee rate for FY 1998 of $141,966 (rounded to the nearest dollar).

B. Product Fees

The FY 1997 product fee was based on an estimate that 2,200 products would be subject to product fees in FY 1997. For FY 1997, 2,267 products qualified for fees before any decisions on requests for waivers or reductions were made. FDA estimates that only 2,100 products will qualify for product fees in FY 1998, after allowing for the fact that about 140 antibiotic products and 11 products manufactured by state governments that paid fees in 1997 will no longer be subject to fees in 1998 under the FDAMA, and for the fact that an additional 17 large volume parenteral products that were subject to fees in 1997 are now regulated as generic drugs and will not be subject to fees in 1998. Accordingly, the FY 1998 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($39,040,592) by the estimated 2,100 products for a product fee rate of $18,591 (rounded to the nearest dollar).

V. Adjusted Fee Schedules for FY 1998

The fee rates for FY 1998 are set out in the following table:

Fee category	Fee rates for FY 1997
Applications	
Requiring clinical data	$256,846
Not requiring clinical data	$128,423
Supplements requiring clinical data	$128,423
Establishments	$141,966
Products	$18,591

VI. Implementation of Adjusted Fee Schedule

A. Application Fees

Any application or supplement subject to fees under the PDUFA that is submitted after December 31, 1997, must be accompanied by the appropriate application fee established in the new fee schedule. FDA will bill applicants who submitted application fees between October 1, 1997, and December 31, 1997, based on the adjusted rate schedule.

B. Establishment and Product Fees

By December 31, 1997, FDA will issue invoices for establishments and product fees for FY 1998 under the new fee schedules. Payment will be due by January 31, 1998. FDA will issue invoices in October 1998 for any products and establishments subject to fees for FY 1998 that qualify for fees after the December 1997 billing.

Dated: December 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32164 Filed 12–8–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0151]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Applications for Exemption from Preemptions of Medical Device Requirements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 1997 (62 FR 27059), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0129. The approval expires on July 31, 2000.

Dated: December 2, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32166 Filed 12–8–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0286]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Administrative Detention and Banned Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 1997 (62 FR 38095), the agency announced that the proposed information 3collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0114. The approval expires on September 30, 2000.

Dated: November 30, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32167 Filed 12–8–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–484]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection without change; *Title of Information Collection:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations 42 CFR 410.38 and 42 CFR 424.5; *Form Number:* HCFA–484 (OMB approval #0938–0534); *Use:* To determine oxygen is reasonable and necessary pursuant to Medicare Statute, Medicare claims for home oxygen therapy must be supported by the treating physician's statement and other information including estimate length of need (# of months), diagnosis codes (ICD–9) and:

1. Results and date of the most recent arterial blood gas PO_2 and/or oxygen saturation tests.

2. The most recent arterial blood gas PO_2 and/or oxygen saturation test performed EITHER with the patient in a chronic stable state as an outpatient, OR

within two days prior to discharge from an inpatient facility to home.

3. The most recent arterial blood gas PO_2 and/or oxygen saturation test performed at rest, during exercise, or during sleep.

4. Name and address of the physician/provider performing the most recent arterial blood gas PO_2 and/or oxygen saturation test.

5. If ordering portable oxygen, information regarding the patient's mobility within the home.

6. Identification of the highest oxygen flow rate (in liters per minute) prescribed.

7. If the prescribed liters per minute (LPM), as identified in item 6, are greater than 4 LPM, provide the results and date of the most recent arterial blood gas PO_2 and/or oxygen saturation test taken on 4 LPM.

If the PO_2 = 56–59, or the oxygen saturation = 89%, then evidence of the beneficiary meeting at least one of the following criteria must be provided.

8. The patient having dependent edema due to congestive heart failure.

9. The patient having cor pulmonale or pulmonary hypertension, as documented by P pulmonale on an EKG or by an echocardiogram, gated blood pool scan or direct pulmonary artery pressure measurement.

10. The patient having a hematocrit greater than 56%.

Form HCFA–484 obtains all pertinent information and promotes national consistency in coverage determinations; *Frequency:* Other (as needed); *Affected Public:* Individuals/households, business or other for profit, and not for profit institutions; *Number of Respondents:* 300,000; *Total Annual Responses:* 300,000; *Total Annual Hours Requested:* 50,000.

To obtain copies of the supporting statement, and any related forms referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 2, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–32100 Filed 12–8–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of National Cancer Institute Director's Consumer Liaison Group Meeting

Notice is hereby given that the National Cancer Institute will hold its first public meeting of the Director's Consumer Liaison Group, beginning at 9:00 a.m. on December 17, 1997 and ending at 3:00 p.m. on December 18, 1997 at the Pooks Hill Marriott, Bethesda, MD. Seating is limited and will be on a first-come, first-served basis.

The National Cancer Institute (NCI), the federal government's primary agency for cancer research, is bringing together fifteen (15) consumer-advocates to create a two-way street that enables them to interact directly with the scientific community at NCI on a wide range of programs and issues. The 15-member DCLG is made up of people involved in cancer advocacy and who reflect the breadth and diversity among those whose lives are touched by cancer. The DCLG will also help NCI to widen the pool of qualified consumer-advocates who can be called upon to serve on NCI advisory committees and other groups.

The members are (in alphabetical order):

Paula E. *Bowen*, Brooklyn, N.Y.
Susan Lowell *Butler*, Alexandria, Va.
Manuel H. *Castillo*, Dayton, Ohio
Kerry J. *Dewey*, Missoula, Mont.
M. Venus *Gines*, Lithonia, Ga.
Felicia Schanche *Hodge*, Berkeley, Calif.
Michael *Katz*, New York, N.Y.
Susan A. *Leigh*, Tucson, Ariz.
Ruth Chiang *Lin*, Short Hills, N.J.
Gena H. *Love*, Albuquerque, N.M.
Susan *McCarthy*, Vancouver, Wash.
Daniel M. *Moore*, Jr., Decatur, Ill.
Lillouise *Rogers*, Chicago, Ill.
Susan K. *Stewart*, Highland Park, Ill.
Brad *Zebrack*, Ann Arbor, Mich.

The majority of the newly appointed DCLG members are cancer survivors, but family members of cancer patients and health professionals involved in cancer advocacy are represented. The cancer experience of the group includes prostate, breast, kidney, ovarian, cervical, lung, bladder, and brain cancer, Hodgkin's disease, leukemia, sarcoma, and myeloma. The group represents Asian American, Native American, Hispanic, African American, and non-Hispanic white persons, the young and old, men and women, the medically underserved, and people from all geographic areas of the country, both rural and urban. The constituencies represented by the members include advocacy organizations that represent both specific cancers and all cancers. DCLG members will serve three-year terms. The three-fold purpose of the DCLG will be to:

- Serve as a primary forum for discussing issues and concerns and exchanging viewpoints that are important to the broad development of NCI program and research priorities.
- Help develop and establish processes, mechanisms, and criteria for identifying appropriate consumer advocates to serve on a variety of NCI program and policy advisory committees.
- Establish and maintain strong collaborations between NCI and the cancer advocacy community.

One purpose of this first meeting is to decide how the group will do its work. For example, how it will select a chair and identify members who will serve in the future. The DCLG will also discuss how it will communicate internally and with the broad advocacy community it represents. In addition, the group will begin discussion on several key issues for the Institute. The most pressing issues faced by cancer patients today, as described in the candidates' applications, include: Access to and availability of reliable cancer information; access to effective, high-quality treatment, including clinical trials; increased rehabilitation, psychosocial support, and other survivor concerns; and participation in setting research priorities. NCI may also begin issues to the attention of the group.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Elaine C. Lee, in the Office of Liaison Activities, National Cancer Institute, Building 31, Room 10A06; or by calling telephone No. 301 594–3194 or sending a fax to 301 480–7558. For additional information, contact Ms. Lee at the above address.

Dated: December 2, 1997.

Marvin Kalt,

Director, Division of Extramural Activities, National Cancer Institute.

[FR Doc. 97–32089 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: SBIR Phase I—Innovative Approaches to Clinical Trials 1 Informatics (Telephone Conference Call).

Date: December 15, 1997.

Time: 2:30 p.m. to Adjournment.

Place: National Cancer Institute, Executive Plaza North, Conference Room 640, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Wilna Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To review, discuss and evaluate responses to Request for Proposal.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32090 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Unsolicited R01 (Telephone Conference Call).

Date: December 16, 1997.

Time: 12:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 4C01, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Dennis Lang, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C16, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32087 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications and contract proposals.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—"Internet-Based Research Support for Drug Abuse Researchers").

Date: December 10, 1997.

Time: 9:00 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—"Development of a Computerized Neuropsychological Testing Programs").

Date: December 17, 1997.

Time: 9:00 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel (Contract Review)—"Analytical Techniques Programs").

Date: December 19, 1997.

Time: 11:30 a.m.

Place: National Institute on Drug Abuse, NIH, 5600 Fishers Lane, Room 10–49, Rockville, MD 20857.

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—"Develop Prevention Research Dissemination").

Date: January 7, 1998.

Time: 9:00 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mr. Lyle Furr, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel (Conference Grants).

Date: January 8, 1998.

Time: 9:00 a.m.

Place: National Institute on Drug Abuse, NIH, NIDA Conference Room 10–05, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Dr. William C. Grace, Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–2755.

The meetings will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the

applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32093 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings of the Board of Regents, the Extramural Programs Subcommittee, Planning Subcommittee and the Subcommittee on Outreach and Public Information

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 27–28, 1998, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on January 26 in the 5th-Floor Conference Room, Building 38A, from 1 p.m. to 2:45 p.m., and will be closed to the public. The Planning Subcommittee will meet on January 26 in the 5th-Floor Conference Room, Building 38A, from 3:15 p.m. to 4:30 p.m., and will be open to the public. The Subcommittee on Outreach and Public Information will meet on January 27 in Conference Room B, Building 38, from 8 a.m. to 9:00 a.m., and will be open to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 3:30 p.m. on January 27 and from 9 a.m. to adjournment on January 28 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Mrs. Bonnie Kaps at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the entire meeting of the Extramural Programs Subcommittee on January 26 will be closed to the public from 2 p.m. to 3:30 p.m. and the regular Board meeting on January 27 will be closed from approximately 3:30 p.m. to 4:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32091 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: December 17–19, 1997.

Time: 8:30 a.m.

Place: Embassy Suites, Chevy Chase, MD.

Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Clinical Sciences.

Date: December 17, 1997.

Time: 2:15 p.m.

Place: NIH, Rockledge 2, Room 4136, Telephone Conference.

Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1212.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: December 23, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20897, (301) 435–1783.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32086 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: December 3, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 6178, Telephone Conference.

Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–0178.

Name of SEP: Behavioral and Neurosciences.

Date: December 9, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Dr. Larry Stanford, Scientific Review Administrator, 6701 Rockledge Drive, Room 5184, Bethesda, Maryland 20892, (301) 435–1255.

Name of SEP: Clinical Sciences.

Date: December 10, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4106, Telephone Conference.

Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Biological and Physiological.

Date: December 10, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6178, Telephone Conference.

Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

Name of SEP: Biological and Physiological.

Date: December 11, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6178, Telephone Conference.

Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Behavioral and Neurosciences.

Date: January 16, 1998.

Time: 8:30 a.m.

Place: The Williard Hotel, Washington, DC.

Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.693, National Institutes of Health, HHS)

Dated: December 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32092 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Therapeutic Uses of Blood Vessel Growth Promoting Peptides Including Vascular Endothelial Growth Factor (VEGF) and Basic Fibroblast Growth Factor (FGF) for Cardiovascular Disease and Conditions Such as Myocardial Ischemia

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a domestic exclusive license to practice the inventions embodied in the patent referred to below to Collateral Therapeutics of San Diego, California. The patent rights in these inventions have been assigned to the government of the United States of America. The patent to be licensed is: "Method To Foster Myocardial Blood Vessel Growth And Improve Blood Flow To The Heart", U.S. Patent Application Serial No. 07/799,830 filed November 27, 1991, which issued as U.S. Patent No. 5,244,460 on September 14, 1993.

DATES: Only written comments and/or applications for a license which are received by NIH on or before February 9, 1998 will be considered.

ADDRESSES: Requests for a copy of this patent, inquiries, comments, and other materials relating to the contemplated license should be directed to: J. Peter Kim, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056, ext. 264; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The present invention relates to improvements in the treatment of diseases, and more particularly to procedures and compositions used to foster myocardial blood vessel growth and improve blood flow to the heart. The present invention provides a method for facilitating in a damaged heart or a heart in need of improved circulation the growth of cardiac blood vessels while reducing the risk of undesired vascularization in other areas of the body. The method comprises: (a) Inserting a catheter into a coronary artery and providing an infusion port accessible to the administration of coronary drug injections; (b) injecting an effective amount of a blood vessel growth promoting peptide into the heart; and (c) periodically repeating such injection on subsequent days until improved cardiac blood flow has been obtained. The subject invention may be applied to treating cardiovascular disease and conditions including myocardial ischemia and atherosclerosis of the coronary arteries. Such a therapy can potentially be used to partially or completely replace blocked coronary arteries with new blood vessels without affecting the degree of vascularity in the area of the body.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. Copies of the subject issued patent are available upon request.

Dated: December 1, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–32088 Filed 12–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Availability of Discretionary Grants for Services to Newly Arriving Refugees, Including: Promoting Increased Placement of Newly Arrived Refugees [1] in Preferred Communities; Responding to Unanticipated Arrivals or Significant Increases in Arrivals of Refugees to Communities Where Adequate or Appropriate Services do not Exist; Providing Orientation Services in Local Communities; Providing Mental Health Services on Behalf of Refugees in Local Communities; Supporting Ethnic Community Self-Help

AGENCY: Office of Refugee Resettlement, ACF, DHHS.

SUMMARY: This ORR standing announcement invites submission of grant applications for funding, on a competitive basis, in six categories: (1) to promote the increase of refugee placements in communities where they have ample opportunities for early employment and sustained economic independence; (2) to provide services to unanticipated arrivals, i.e., refugees who have arrived without prior notice in communities where adequate or appropriate services for these refugees do not exist; (3) to provide ethnically- and linguistically-matched orientation services to newly arriving refugees in the local communities; (4) to provide technical assistance to the grantees including those funded under Category 3, orientation; (5) to provide mental health orientation, staff development, and technical expertise to improve services for newly arriving refugee populations, and (6) to assist ethnic organizations to build bridges among newcomer communities and community resources.

This notice revises previous publications. The programs numbered (1) and (2) above were first published as Categories 1 and 2 of the notice published in the **Federal Register** on May 18, 1994 (59 FR 25929). The notice was revised January 17, 1995 (60 FR 3416). A Category 3, Ethnic Community Organizations, added in the revision of January 17, 1995, was canceled as published in the **Federal Register** on February 15, 1996 (61 FR 6016). The next revision was published in the **Federal Register** on June 25, 1996 (61 FR 32833) with new categories, numbered 3, Orientation, 4, Orientation Technical Assistance, and 5, Mental Health Services. This notice retains the five categories in the June 25, 1996 announcement, and restores and revises the Ethnic Community Organization program as Category 6.

This announcement supersedes all prior announcements of the same name.

The categories are summarized as follows:

Category 1—Preferred Communities: To increase placement of arriving refugees in preferred communities where refugees have opportunities to attain early employment and sustained economic independence without public assistance. Eligible applicants are agencies which resettle refugees under a Reception and Placement Cooperative Agreement with the Department of State or the Department of Justice. Preferred communities awards will be Cooperative Agreements. ORR's involvement will include: review and approval of preferred community sites and review and approval of the design of program reports on progress toward project goals and outcomes.

Category 2—Unanticipated Arrivals: To provide services for significant numbers of, or increases in, the number of unanticipated refugees who have arrived in communities that are unable to provide adequate or appropriate services. The arrivals may be new populations to the U.S., or new to the location requesting additional resources. The arrivals may also be a significant and unanticipated additional number of a particular ethnic group in a community. Awards in this category will be grants.

Category 3—Orientation: To provide funds for grantees to serve newly arriving refugees through orientation services that are ethnically-and linguistically-matched to the targeted refugee population.

Under Category 3, applications will be accepted for orientation programs designed to provide newly arriving refugees with information on local resources, community services and institutions, American mores, customs, laws, responsibilities associated with being new residents of their communities, and other appropriate topics.

Applications will be accepted from prospective grantees to provide services in communities where new refugees are arriving and where available orientation materials are not appropriate or adequate. Awards in this category will be made as grants.

Category 4—Technical Assistance to Orientation Grantees: To provide technical assistance to orientation projects awarded under Category 3 and other orientation programs serving refugees.

Category 5—Mental Health Services: To improve services to newly arrived populations who have been made vulnerable in their resettlement by having suffered mental and/or physical torture prior to or during their escape. Applications are encouraged from agencies that support resettlement services by providing staff development consultation to staff who work directly with traumatized populations and orientation activities for the new populations and for the mainstream mental health providers. In addition, and if appropriate to the newly arriving refugee populations, projects may be funded to develop technical knowledge concerning particular groups and the clinical interventions that effectively treat them. The knowledge and experience gained by these projects will be made available throughout the refugee resettlement program.

Category 6—Ethnic Community Organizations Program. This program is to provide assistance to ethnic organizations comprised of and representative of newly arrived refugee populations to build bridges among newcomer refugee communities and community resources. The applications will be accepted from a national, regional (multi-state), or local level and may include efforts to address community building, community and family strengthening, cultural adjustment orientation, and mutually supportive functions such as information exchange, leadership training, and resource development.

Categories 1, 3, 4, and 5 solicit applications for project periods up to three years. Category 6 solicits applications for project periods up to five years. Awards, on a competitive basis, will be for one-year budget periods. Applications for continuation grants, to extend activities beyond the one-year budget period, will be entertained on a noncompetitive basis in subsequent years within the project period, subject to the availability of funds, timely and successful completion of activities during the budget period, and determination that such continuations would be in the best interest of the Government.

Awards for Category 2 will be for a single 17-month budget period. Applicants should view these resources as a temporary solution to an emergency created by unanticipated arrivals. ORR expects that by the end of the project period, States will have incorporated services for these particular refugees into their refugee services network funded by ORR social service formula allocations.

Projects and services allowed under this announcement for each category are described below. *Each application will be considered for one category only and must state specifically for which category the application is being submitted.* An applicant may apply for more than one category; however, each category must be applied for in a separate application.

Available Funds: In FY 1998, ORR expects to make individual new grant awards in amounts ranging from approximately $100,000 to $300,000. Amounts in subsequent years will depend upon the availability of funding, need, and the best interests of the Government. Approximately $800,000 will be available for awards under *Preferred Communities;* $500,000 under *Unanticipated Arrivals;* $400,000 for *Orientation;* $400,000 under *Orientation Technical Assistance;* $400,000 for *Mental Health;* and $1,000,000 for *Ethnic Community Organizations.*

The Director reserves the right to award more or less than the funds described above depending upon the quality of the applications, or such other circumstances as may be deemed to be in the best interest of the Government. Applicants may be required to reduce the scope of selected projects to accommodate the amount of the approved grant award.

Authorization: Authority for this activity is contained in Section 412(c)(1)(A) of the Immigration and Nationality Act, which authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed— * * * (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services." In addition, section 412(a)(2)(B)–(C) gives the Director the responsibility to promote and encourage refugee resettlement in communities where the prospects for early self-sufficiency are good and the history of welfare utilization is low.

Application Submission: This announcement contains forms and instructions for submitting an application. *Applications must stipulate the category for which funding is being sought.* Applicants may submit applications for more than one category; however, each category must be applied for in a separate application.

Standing Announcement: This is a standing announcement, effective until canceled or modified by the Director of the Office of Refugee Resettlement. The Director will observe the following closing dates for all categories: January 31 and June 30, of FY 1998, and each subsequent year.

Organization of this Announcement: This standing announcement consists of two parts: Part I. the program categories under which grants will be awarded and Part II. general application information and guidance.

Eligible Applicants: For Categories 2, 3, 4, 5 and 6, eligible applicants are public and private nonprofit organizations.

Refugee serving organizations, especially local ethnic communities when applying under category 6, are encouraged to build coalitions in applying under this announcement. The activities funded by these grants are intended to serve as a catalyst to bring the community together to address the economic and social problems of refugee families and the refugee community. The goal in all cases should be to build and strengthen the community's capacity to serve its members in improving the quality of life and standard of living for refugee families. If an application represents a consortium (that is, the applicant includes other types of agencies among its membership), the single organization identified as applicant by the Authorized Representative's signature on the SF–424, Box 18.d, will be the grant recipient and will have primary administrative and fiscal responsibilities. An applicant entity must be a nonprofit organization.

For Category 1, eligible applicants are public and private non-profit agencies which currently resettle newly arriving refugees under a Reception and Placement cooperative agreement with the Department of State or with the Department of Justice. This announcement is restricted to these agencies because placements of new arrivals occur under the terms of the cooperative agreements, and no other agencies place new arrivals or participate in determining their resettlement sites. Applications shall include documentation that the applicant is a recipient of a Reception and Placement Grant. Applications lacking this documentation will not be considered.

For Further Information:

Concerning Categories 1, *Preferred Communities,* and 5, *Mental Health Services,* contact: Ms. Marta Brenden, Program Officer, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW 6th Floor, Washington, DC 20447, Tel: (202) 205–3589, E-mail: mbrenden@acf.dhhs.gov.

Concerning Category 2, *Unanticipated Arrivals,* contact: Ms. Sue Benjamin, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW 6th Floor, Washington, DC 20447, Tel: (202) 401–4851, E-mail: sbenjamin@acf.dhhs.gov.

Concerning Category 3, *Orientation,* and 4, *Orientation Technical Assistance,* contact:

Ms. Kathy Do, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW 6th Floor, Washington, DC 20447, (202) 401–4579, E-mail: kdo@acf.dhhs.gov.

Concerning Category 6, *Ethnic Community Organizations,* contact: Ms. Anna Mary Portz, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW 6th Floor, Washington, DC 20447, (202) 401–1196, E-mail: aportz@acf.dhhs.gov.

Part I. Program Categories Under Which Grants Will be Awarded

Category 1: Preferred Communities: Grants to Support Preferred Communities

A. Purpose and Scope

The purpose is to provide funds to be applied toward the costs associated with increasing the numbers of refugees placed in preferred communities and with reducing the numbers of refugees placed in high impact sites.

A proposed preferred community should have the following: (1) favorable circumstances described below, (2) services that meet the needs of arriving refugees for achieving self-sufficiency, and (3) reception of a minimum of 100 new refugees annually. ORR will consider exceptions to the annual

[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

standard where the applicant provides substantial justification for the request and documents the community's history of arrivals, the period of time needed to reach a level of 100 new refugees, and the record of outcomes for achieving self-sufficiency soon after arrival.

Applicants must plan within their own network for improved placements. They may also consider planning cooperatively with other prospective applicants to create cost-effective, co-located resettlement services where, for example, the pool of newly arriving refugees for each network is too small to warrant individual offices.

Preferred Community sites refer to those localities where refugees have the best opportunities to achieve early employment and sustained economic independence without public assistance. Preferred communities should have a history of low welfare utilization by refugees. In addition, refugees should have the potential for earned income at a favorable level relative to the cost of living and to public assistance benefits in such communities. These communities should also have a moderate cost of living; good employment opportunities in a strong, entry-level labor market; affordable housing; low out-migration rates for refugees; religious facilities, if important to the refugees; local community support; receptive school environments; and other related community features that contribute to a favorable quality of life for arriving refugees.

Applicants may wish to consider the following "arrival" categories of refugees for preferred community sites:

Free cases: Those refugees who are determined in the allocation process to be "free cases," that is, unrelated or without family ties to persons already living in the communities.

New refugee populations: Refugees who have no or few existing communities in the United States.

Other refugees: The applicant may identify refugees in the reception process who would accept the opportunity for resettlement in a preferred community: e.g., refugees who would otherwise be resettled under the rubric of "family reunification," but who in fact are distant relatives and friends. These refugees may elect placement in a preferred community where there are opportunities described above.

B. Preferred Community Site Selection

ORR recognizes that changes in the selection of resettlement sites of refugees may result in changes to an applicant agency's network and should be preceded by careful attention and planning. Thus, as part of the application preparation, it will be incumbent upon the applicant to: (1) consult with ORR about prospective preferred sites; (2) propose sites that are either already listed within the applicant's Cooperative Agreement with the Department of State (DOS) or that will be proposed for DOS approval; (3) coordinate with other voluntary agencies whose local affiliates place refugees in the same sites; (4) inform and coordinate with State governments for site selection, adequate services, and program strategies to be developed; and (5) plan and coordinate locally with community resources, such as schools and public health agencies.

The application must, for the first budget year, specify the sites selected with a description of each site and the rationale for its selection. Applicants are encouraged to include planning activities in their application. The application should specify one or more preferred communities and should also propose to include one or more unspecified sites to be determined following planning activities during the course of each budget year. There should also be a description of coordination activities that occurred prior to the selection, and the ongoing evaluation and planning for placement in preferred communities. Additional sites proposed under approved applications during the period of the project will require ORR's concurrence under the terms of the Cooperative Agreement.

Preferably, the selected sites should be those that have had successful refugee placements and have the capacity for additional successful placements. However, the sites may be ones where refugees have not previously been placed, but which have all the elements of a successful refugee resettlement community, listed in Section D. 2, below.

Allowable activities for the preferred communities include services that would otherwise be provided through the State formula social services. ORR formula social services funding is awarded to States proportionate to the number of refugee arrivals during the previous three years and does not take into account newly arrived refugees. Grantees should view Preferred Communities award as a *temporary solution* to the increase in refugee placements in preferred communities.

Therefore, planning for the application and implementing the program must be done in concert with State Refugee Coordinators to assure an orderly transition and complement of services. The applicant shall describe and document this coordination and planning in the application. ORR anticipates that ORR formula social service funds provided to the States will reflect, over time, the increase in arrivals.

C. Allowable Activities

ORR will accept applications for the following activities:

(1) services needed for the increased placements in the preferred communities, (2) project planning and coordination activities, and (3) national and local project management costs associated with these activities.

D. Application Content

The application must include the following:

1. Description of the proposed program. Include the rationale for meeting the goals of this Announcement: i.e., the increased placement of refugees in preferred communities and the diversion of refugees from communities with histories of extended use of welfare. Descriptions should include anticipated improved resettlement opportunities; the employment services available in the new location, including those to be funded under this grant, if awarded; and the cost implications in both the impacted and preferred sites for the population shifts in local resettlement services.

2. A description and rationale for sites from which placements will be diverted. A list of the designated and potential sites and the rationale for each site with respect to the following criteria: o Local community support (e.g., letters, financial and in-kind donations, news clippings that the community supports the placement of these refugees in their area); o State consultation (e.g., copies of letters; notes of planning/coordination meetings);

- Local community support (e.g., letters, financial and inkind donations, news clippings that the community supports the placement of these refugees in their area);
- State consultation (e.g., copies of letters; notes of planning/coordination meetings);
- Evidence of availability of entry level and other appropriate employment opportunities (e.g., letters from current and repeating employers of refugees);
- History of low out-migration rates for proposed sites, with documentation for the last two years;
- Moderate cost of living (e.g., needs and payment standards from TANF programs from the State, statements of voluntary agency affiliates, statements from refugees);
- Low welfare benefit levels relative to earnings potential;
- Qualified staff—give job descriptions and resumes, as available, and show how staff will be linguistically and culturally suited to assist the prospective refugees;
- Affordable housing—provide average rental costs for apartments of a specified number of bedrooms and describe access to and distance from services and potential employment.

3. A description of the caseload: e.g., free cases, ethnicity, new or existing ethnic group, interventions to be used to promote stability of placements, proposed numbers, proposed placement schedule, and back-up strategy should the proposed placement schedule fail.

4. A description of national and local project management. A statement of expected outcomes, e.g., refugee arrivals and participants in social services, such as, employment. Number expected to enter employment; 90 day retention rates and/or welfare avoidance, reductions, and terminations; expected hourly wage and the number of jobs with health benefits. Projected outcomes must include the increase in placements in Preferred Communities and the diversion of placements from communities where there is a history of extended welfare use.

5. A description of the national and local planning process, of coalitions formed to support the new placements, and the consultative process used to support the implementation. If several local agencies are planning a coordinated project, e.g., placing refugees from the same ethnic groups in the same designated sites, describe the coordination of these plans. Include discussion of anticipated outcomes of the placement strategy for new arrivals.

6. Budget, including line items and a narrative justification for each line. Clearly state the costs for national and local planning and project coordination. Discuss relationship between costs proposed for this grant and costs (e.g., for services) which will be covered by existing refugee or mainstream funding.

E. Application Review Criteria

Preferred Communities applications will be reviewed, scored and ranked utilizing the following criteria:

1. Clarity of description of proposed program and soundness of rationale for achieving the goals of the Announcement. Reasonableness of cost implications in both the impacted and preferred communities. Adequacy of the anticipated improved resettlement opportunities as well as the diversion of placements from sites with histories of extended welfare usage. Soundness of refugee social services in the new community and choice of services to be funded by this grant. (20 Points)

2. Clear and comprehensive description of the preferred sites proposed in terms of community support, Federal, State, and local government consultation, and linkages, cost-of-living, out-migration history, housing, and employment availability, welfare benefit levels relative to potential earnings, and quality of life features, such as school environment and available religious facilities. Adequacy of description of sites from which refugees will be diverted and the rationale for diverting cases from them. (25 Points)

3. Appropriateness to the targeted population of the proposed diversion, and strategies to be used to promote stability of placements. (15 Points)

4. Adequacy of national and local management, including objectives and outcomes, reporting procedures, outcome measures, data collection and monitoring. (10 Points)

5. Adequacy of planning process and reasonableness of anticipated outcomes. (15 Points)

6. Reasonableness of the budget and adequacy of line item narrative; coordination of these grant funds with other funds. (15 Points)

Category 2—Unanticipated Arrivals or Increases in Arrivals of Refugees to Communities Where Adequate or Appropriate Services Do Not Exist

A. Purpose and Scope

This program is intended to provide communities with the capability to respond to the social services needs of refugees whose resettlement in the applicant's community is unanticipated and who are not included in ORR's social service formula allocation to the State in which they are placed. The funds may be used to enable communities to establish or expand existing services in situations, where: (1) the existing service system does not have culturally and linguistically compatible staff; or (2) where refugee services do not presently exist; or (3) where the service capacity is not sufficient to accommodate significant increases in arrivals.

Examples of situations for which applicants may compete for a grant under this program include: (1) the unexpected arrival of more than 100 refugees in the community where the formula services funds are committed to social services for the current refugee population, but there are no available resources to fund culturally and linguistically appropriate services for the unanticipated number of arrivals, or (2) the State formula social service dollars are sufficient for most services, but the unanticipated population has unusual social service needs; and the services currently funded will not be sufficient for the new arrivals.

Applications will be accepted only for proposals for services in communities which have received, or expect to receive, minimally 100 or more persons within a one year period as an unanticipated population to a single local community. This is a minimum, not a standard. The reasonableness of the proposal will depend, in part, on the ratio of unanticipated arrivals to the anticipated resettlement caseload in the applicant's community. The applicant must establish that the unanticipated number is significant relative to the resident population by documenting arrivals, both anticipated and unanticipated. The application must describe the time period of unanticipated arrivals, i.e., the start date when the unanticipated arrivals began and the length of time over which the arrivals are expected to continue. Applications which do not satisfy the requirement for documentation will not be considered.

ORR encourages the formation of coalitions of organizations which propose to serve the new population(s) jointly, with one agency designated as grantee, responsible for administration of the project. ORR will only support the establishment of services that are culturally and linguistically appropriate to the new arrivals.

This grant program is intended to supplement a State's existing refugee services network by responding to unmet needs of new refugee populations shortly after arrival in the community. Grantees should view these resources, therefore, as a *temporary* solution to insufficient services necessitating program adjustment due to the unanticipated arrival of a refugee population in a specific community. ORR's expectation is that the State will have incorporated services for these new populations into its refugee services network, funded by formula social service dollars, by the end of the grant project period. In the grantee's final report, the transition of the services should be discussed indicating whether the services are now supported by the State, other public or private resources, or are no longer needed, with supporting information on the target population.

B. Allowable Services

ORR will accept applications under this announcement for projects specifically providing unanticipated arrivals the type of activities generally funded by States under their social services formula allocation, in accordance with section 412(c)(1) of the Immigration and Nationality Act for refugee social services. In general, such service categories are defined as employment services, language training, and other support services, such as orientation activities. Applications under this section should indicate appropriate bilingual and bicultural services will be provided. Services provided by all grantees, whether private or public, must comport with the regulations at 45 CFR sections 400.147, 400.150, and 400.154–.156 regarding eligibility for services, scope of services and priorities for services.

C. Application Content

1. Statement of purpose and need. A description of the target population(s); presence, or absence of prior presence, of an ethnic population in the community(ies); documentation of the arrivals of the population(s), including first date of admission; expected duration of the arriving population; number (at least 100 refugees per year) of unanticipated arrivals relative to the expected admissions; identification and description of the need(s) for social services; discussion of the relative significance of the unanticipated arrivals to the expected arrivals and the impact on available services; letter from the national voluntary agency(ies) substantiating that there will be an unanticipated arrival of at least 100 or more refugees or entrants of the target population or secondary migrants.

2. Description of the planning process. A list of organizations by name and their role in the project activities, and a list of all organizations in the community(ies) providing services to the unanticipated refugees. Summary of the planning activities with lists of participants, dates of meetings and summary and results of the discussions. Letters of support from the resettlement network agencies who either participate in the project or whose work with refugees will be affected by the proposed grant activities.

3. Organizational qualifications. Demonstration of organizational qualifications of the agency proposed to act as fiscal agent for the project. For each organization proposed for project activities, include staff and position information with biographical sketch of known staff or summary of desired qualifications and position activities.

4. Project goals. Statement of outcomes and performance measures that will demonstrate impact of the project on the arriving refugees. Plan for continuation of services following the period of grant support. Letter from State Coordinator acknowledging the presence of unanticipated arrivals and stating their openness to discuss continuation of support at the close of the project.

5. Project line item budget and budget justification. A line item budget and narrative justification which conform to Block 15 of the SF 424 object class categories. The justification must include estimation methods, unit costs, and whatever quantitative detail is sufficient for the calculation to be replicated.

D. Application Review Criteria

1. Quality of the description of the target population; the justification of the significance of the unanticipated arrival population relative to the expected arrivals; their need for services; and a letter from the national voluntary agency(ies). (15 points)

2. Quality and appropriateness of the planning process and the resulting project strategy; evidence of appropriate collaboration with other refugee service providers and public and private organizations serving the unanticipated refugees; and adequacy and reasonableness of the strategy and proposed activities to achieve the projected outcomes. (35 points)

3. Qualifications of the organization(s) proposed to carry out the project activities; evidence of collaboration; capability in acting as fiscal agent, if applicable. (15 points)

4. Quality of the project goals; appropriateness of the performance measures to the project activities; appropriateness of the performance outcomes in demonstrating desirable impact on the target population of arriving refugees. (20 points)

5. Appropriateness and reasonableness of the costs in the budget; clarity and reasonableness of the line item narrative justification. Evidence that the budget items reflect the project activities. (15 points)

Category 3—Community Orientation Activities and Assistance Program Grants for Local Communities

A. Purpose and Scope

Since 1992, the majority of refugee arrivals in the United States represent ethnically diverse populations from such countries as Russia, Somalia, Bosnia, Croatia, and Iraq. Compared to the pre-1992 refugees, mainly Southeast Asians who were provided overseas classroom orientation training, the majority of the post-1992 refugees have not attended a pre-departure formal cultural orientation program in preparation for their new life in the United States.

Funding constraints and restrictive conditions at some transit and departure locations, where refugees are processed for entry into the U.S., contribute to the lack of preparation for life in a new country. This is particularly evident where new refugee arrivals do not have access to pre-departure orientation organized by resettlement agencies funded under the auspices of the U.S. Department of State, Bureau for Population, Refugees, and Migration.

In addition to scarce, pre-arrival orientation, there are few communities in the U.S. where new arrivals can join members of their own ethnic group. Notwithstanding, information about American life and resources are usually provided through friends or through word-of-mouth. Service providers who come into contact with new arrivals may not be sufficiently knowledgeable of the culture and values of the new arrivals. Furthermore, limited bilingual and bicultural resources further exacerbate the assistance effort as well as the new arrivals' process of integration into their communities.

ORR is aware that to assist these new arrivals to become economically self-sufficient and self-reliant within their newly resettled communities, a comprehensive, culturally and linguistically appropriate orientation program is key. Additionally, a cross-cultural training and orientation program for local refugee and mainstream service providers may enhance their assistance efforts with newly arriving refugees and reduce the conflict or friction of cultural and social misunderstandings.

B. Objectives of ORR

1. To provide comprehensive culturally and linguistically appropriate orientation training to newly arrived refugee families through bilingual, bi-cultural staff representative of the new arrivals' cultural and linguistic make-up.

2. To identify sub-groups (e.g., home-bound women, the elderly, and youth) of new arrivals who are more likely to face significant cultural obstacles to their transition to a new life and to provide them specialized orientation training customized to their specific needs.

3. To provide orientation and cross-cultural training to refugee and mainstream service providers on new refugee populations.

4. To provide training to refugee caseworkers and interpreters to improve their ability to deliver culturally and linguistically appropriate services to new refugee populations.

5. To provide the mainstream community with information about new refugee populations resettled in their community.

6. To provide new ethnic communities with small amounts of funds to form advisory groups for the purpose of community and grass roots organizing.

C. Allowable Orientation Activities for

1. *Newly Arriving Refugee Populations.* Conducting outreach (for example, home visits and ethnic group meetings) to new arrivals to determine needs.

Convening a local work group/task force on orientation. The composition of the group must include representatives of the ethnic composition of new arrivals. The primary purpose of the orientation work group is to plan and consult with local new arrivals and ethnic communities on the type of orientation materials, services, and training design which best fit their needs.

Adapting, if necessary, existing orientation materials to ensure that materials are culturally appropriate for the target population.

Designing and implementing an orientation and cross-cultural training program by bilingual and bicultural staff for the newly arriving refugee population, taking into consideration training customized to the specific informational needs of each group, for example, heads of households, home-bound women, youth, and the elderly.

Designing and implementing a mechanism of ensuring customer feedback and assessment of each training session. Customers' feedback must be incorporated for improvement of future training.

Compiling records and materials of training activities into a training package for replication with other new arrivals.

2. *Refugee and Mainstream Service Providers and the Community-at-Large.* Planning and consulting with refugee and mainstream service providers on their need for information on new arrivals, and providing training to service providers, caseworkers, and interpreters to improve their ability to deliver culturally and linguistically appropriate services to new refugee populations.

Designing a mechanism of ensuring customer feedback and conducting assessment of each training session. Customers' feedback will be incorporated into future training.

Compiling records and materials of training activities into a training package for future replication with other new arrivals.

Conducting public relations activities, such as providing information via a newsletter, informational brochures or video, and attending community meetings to provide to the community-at-large information about new refugee arrivals resettled in their community.

3. *Ethnic Community Groups.* Convening or assisting in convening, members of newly arriving ethnic communities to form their own advisory board for self-help purposes.

Recording all community assistance activities in the form of reports and case studies for future use by other ethnic communities in community organizing and development.

D. Application Content. Applications for the Community Orientation and Assistance Program should contain a detailed description of proposed activities and a plan of action, including a timetable for implementation, and anticipated measurable outcomes and benefits which directly meet the needs of the target population to be served. These areas should be addressed:

1. An understanding and knowledge of the unique characteristics, cultural background, and needs of the target groups to be served, including discussion of the service methodology that would be linguistically and culturally appropriate for each target group.

2. An understanding of the domestic and overseas orientation services as well as how linkage and coordination can be established between the overseas and domestic service providers to maintain continuity of services to meet the orientation needs of the new arrivals.

3. Planning and consultation with the target population, e.g., new arrivals and refugee and mainstream service providers, to design and implement an orientation program that best fits their needs. How the applicant proposes to provide a comprehensive and coordinated project design, implementation timelines, and achieving measurable outcomes.

4. Convening, or assist in convening, members of the newly arriving ethnic groups in their effort toward organizing for self-help. Description of how the proposed advisory groups are to be established.

5. Public relations activities with the community-at-large focusing on mutual understanding and good will between the refugees and local communities.

6. Customer feedback and assessment of the training as well as the project's progress, and how the results of customers' feedback will be used.

E. Application Review Criteria

1. Demonstrated knowledge of the unique characteristics of the various populations to be served; demonstrated experience in the provision of orientation service and/or training; and knowledge of which service modality best fits each target population. (25 points)

2. Demonstrated understanding of overseas and domestic orientation services, and the appropriateness of the proposed plan for linkage and coordination. (10 points)

3. Adequacy and applicability of the project management plan in the areas of planning, designing, implementing, timelines, and proposed measurable outcomes. Qualifications of the applicant to carry out all the proposed activities successfully. (25 points)

4. Demonstrated reasonableness and cost effectiveness in the budget with reference to the use of bilingual and bicultural staff in all professional capacities, the staffing plan, and qualifications of key personnel. (15 points)

5. Demonstrated knowledge of refugee ethnic communities, and experience in community organizing and development. (10 points)

6. Appropriateness of proposed project's measurable outcomes. (15 points)

Category 4—National Technical Assistance Project in Refugee Orientation, Cross-cultural Training and Alliance Building

A. Purpose and Availability of Funds:

This section announces the availability of Fiscal Year 1998 funds for a national technical assistance project for refugee orientation, cross-cultural training, and alliance building in communities heavily impacted by recent refugee arrivals. The purpose of this category is to respond to the immediate needs of States, refugee and/or local service agencies, and mainstream agencies: for training and technical assistance in cross-cultural awareness and knowledge; for skills enhancement in resolving and mediating cross-cultural conflict between and among refugee and non-refugee groups; and for providing culturally and linguistically appropriate

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

service methodologies to refugee communities.

The successful applicant will provide group training and technical assistance in approximately twelve (12) sites identified as impacted by new refugee arrivals, and may include the grantees funded under Category 3 of this announcement. Partnerships with ORR customers, e.g., States, other grantees, community-based organizations (CBOs), and other Federal agencies, will be initiated to coordinate nationally in the areas of conflict resolution and mediation and to enhance knowledge of cross-cultural understanding and alliance building.

ORR anticipates funding one project through the mechanism of a cooperative agreement. ORR will be closely involved in the review and approval of the following: site selection criteria, sites and recipients of the technical assistance and training, training curricula, assessment tools, on-site training and technical assistance sessions and materials, and all project-related reports.

B. Allowable Activities

Proposed activities should be tailored to reflect the orientation, cross-cultural and mediation needs of local communities. The types of activities which ORR may fund include, but are not limited to, the following:

1. Convening a national training and technical assistance work group for project consultation and design, to identify expert trainers, and to develop strategies for dissemination of project outcomes;

2. Identifying proven best practices in cross-cultural conflict resolution and alliance building for the purpose of adapting them to the training and technical assistance needs of the project participants;

3. Identifying the needs of State and local agencies for assistance in orientation, conflict resolution and mediation strategies, and culturally and linguistically appropriate service delivery;

4. Developing a training plan of orientation, conflict resolution and mediation for local communities which includes expanding the involvement and participation of non-refugee local agencies through such activities as group training and on-site individualized sessions for all agencies which interface with newly arrived refugees;

5. Developing assessment and evaluation tools, and conducting assessment of project activities;

6. Developing a list of training and technical resources, and devising a system for updating and transferring training technology for future use;

7. Establishing an electronic medium for dissemination of information and refugee training resources for use by other practitioners.

C. Application Content

1. A discussion of the purpose of the technical assistance and training activities to be conducted under the scope of the grant.

2. A comprehensive description of the plan for providing coordination of project activities at the local, state, and regional levels.

3. A comprehensive list of proposed sites for the technical assistance OR a comprehensive list of criteria for site selection.

4. A discussion of the proposed plan for technical assistance and training for each site and target group.

5. A description of the process to form a national training and technical assistance workgroup. A list of the criteria for selection of the task force members.

6. A description of the management of the plan for implementation of all project activities.

7. A description of the expected measurable outcomes for each project activity.

8. A list of the proposed project's key personnel and/or consultants.

9. A proposed budget with narrative justifying each line item.

D. Application Review Criteria

Applications will be reviewed and scored on a competitive basis against the following evaluative criteria. Points are awarded only to applications which respond to this competitive area and to these criteria:

1. The extent to which the purpose of the project is met, including how the training and technical assistance needs of local sites are identified and proposed to be met, and the benefits (measurable outcomes vs. process outcomes) to be gained by each target group. (15 points)

2. The comprehensiveness of the proposed plan for coordination of project services at the local, state, and regional level. The extent to which the proposed sites (or site characteristics, if specific sites have not been selected) are appropriate and directly related to the objectives of the project. (10 points)

3. The criteria for selection (e.g., qualifications and experience in working with refugees, and in fields related to the objectives of the project) of proposed members of the national training and technical assistance workgroup. (5 points)

4. The quality of the plan of operation and management. The extent to which the plan of management ensures implementation of project activities and customer feedback, the adequacy of proposed resources, and the ability of the applicant to deliver the services in a timely manner. (20 points)

5. The quality of the proposed training and technical assistance plan for each site and target group, the appropriateness of training and personnel resources, and the degree to which the training will increase the capacity of the trainees to provide quality services to their refugee clients and/or increase the capability of the trainees to design and implement cross-cultural and conflict resolution strategies. (20 points)

6. The qualifications and experiences of key personnel and/or consultants in working with the target population and in fields related to the objectives of the project. (10 points)

7. The quality of the proposed plan of assessment of project activities, and appropriateness of proposed project measurable outcomes (versus process outcomes). (10 points)

8. The cost-effectiveness and reasonableness of the proposed budget, and budget narrative. (10 points)

Category 5—Mental Health Services

A. Purpose and Scope

The condition of a refugee's physical and mental health is a major factor affecting resettlement and socio-economic adjustment. The most serious mental health conditions, such as depression, anxiety-related disorders, and post traumatic stress disorders are often seen in refugees who have experienced severe trauma, physical abuse, and torture.

Most refugees receive pre- and post-arrival health screening at the time of their entry into the United States. It is through screenings that physical health conditions are diagnosed and treated. Serious mental health conditions are sometimes identified by health screeners and service providers, but more frequently they are not diagnosed until much later in the resettlement process. These mental health conditions interfere with a refugee's progress toward economic self-sufficiency. Especially vulnerable are refugees who have experienced traumatic events, such as the death of relatives, loss of home, and witnessing of atrocities, either before they leave their country of origin and/or during migration. Some have experienced physical and psychological torture, deprivation, hunger, isolation, and violence. In addition, refugees are often further traumatized during the resettlement process because their cultural backgrounds are in sharp contrast with mainstream American social and cultural practices.

For many, resettlement means mastering a new language and adjusting to U.S. society and its economy, its expectations, customs, and cultural values, which may be significantly different from their own. These challenges confront all refugees, but are more difficult for those who suffered major physical, social, economic and political losses.

Less serious, but also a barrier to economic self-sufficiency, are transitory emotional difficulties which can be characterized as social adjustment problems. If not adequately addressed, these may accumulate over time and hamper the resettlement process. Often these problems are handled by supportive bilingual resettlement staff and ESL teachers who have an understanding of the refugees' plight and are sensitive to the challenges and difficulties refugees face. This support often facilitates the refugees' transition to their adoptive country and lessens the impact of migration-related stressors, contributing to the refugees' progress towards self-sufficiency.

Beyond the support from resettlement staff, volunteers, and ESL teachers, refugees frequently do not receive mental health services. Most community mental health services do not have bilingual staff who match the local refugee groups. Also, refugees are often not receptive to mental health services because of the stigma attached to mental illness. Direct service workers can become overwhelmed by working with individuals who have experienced torture and other trauma. Regular consultation for direct case workers from experienced mental health professionals can provide useful feedback to improve services to refugees disabled by trauma and supportive professional relationships.

B. Objectives of ORR

ORR seeks to provide resources to local community organizations to address the need for mental health interventions in the refugees' communities in the following ways: staff development training for bilingual caseworkers, ESL teachers, and volunteers; orientation of refugees to promote understanding and utilization of supportive assistance; and orientation of mainstream mental health providers to the refugee program, to arriving refugee populations, and to multi-cultural perspectives for effective treatment of refugees. It is ORR's intent that direct service workers, such as bilingual case managers, ESL teachers, and volunteers who often provide important support to refugees, have the benefit of regular consultation for the purpose of increasing their effectiveness in working with refugees who are experiencing the results of torture and social adjustment issues due to migration.

Also, ORR seeks to promote an increase in the level of awareness of available mental health services among newly arriving refugee populations that have experienced significant trauma. In addition to staff development and orientation, it is permissible as part of this project to provide direct clinical services to refugee patients in order to expand knowledge and technical expertise related to refugee groups that have experienced torture and other trauma. The technical knowledge of each group and the effective treatment strategies gained through each project shall be made available through written reports and oral presentations to the ORR refugee resettlement program at conferences convened by ORR, to the mental health community projects funded by ORR, and to the Community Mental Health Services, SAMHSA (PHS). However, the main objective of this category is the expansion and dissemination of information on effective treatment to direct workers providing services to the particular refugee group with associated trauma.

C. Allowable Activities

ORR will accept applications under this Category for the following activities: (1) ongoing mental health professional consultation, supervision, and training for bilingual caseworkers, ESL teachers, and volunteers in working with refugees who are in the process of resettlement and exhibiting extreme behaviors; (2) orientation to U.S. mental health services for newly arriving refugees; (3) orientation of mental health professionals to newly arriving refugees and the programs of resettlement; and (4) development of a body of technical knowledge and expertise concerning newly arriving refugees who have experienced severe trauma and the clinical interventions that are therapeutically effective with them.

D. Application Content

1. A description of the target population(s) and their need for the proposed project activities: i.e., orientation; staff development; or development of technical assistance.

2. A description of the planning process used in developing the application: the names of the organizations and the roles played in the planning; a comprehensive list of all organizations in the community working with the target population; and the manner by which all direct service professional staff will benefit from the project's orientation, consultation and training services.

3. A description of the project strategy: orientation; staff development; and development of technical assistance to address the target populations' need for mental health services as listed under "allowable activities."

4. A statement of the status of need for services and the projected outcomes expected from the services provided.

5. A description of the management plan providing oversight, monitoring, and program reports, including the applicant agency's qualifications to carry out the proposed activities; and key personnel, including consultants for professional mental health services.

6. A line-item budget with narrative justification for each item.

E. Application Review Criteria

1. Adequacy of the description of the target population(s) and the need for proposed activities. (10 points)

2. Demonstration that the planning process is community-wide and comprehensive in addressing the needs of direct service staff for ongoing professional consultation, supervision, and training in working with refugees exhibiting needs for mental health services. (20 points)

3. Appropriateness and adequacy of the strategy of services proposed. (30 points)

4. Relevance and appropriateness of the proposed program outcomes to the project's objectives. (20 points)

5. Adequacy of the management plan, monitoring plan, and proposed program reports. Appropriateness of key personnel and consultants implementing the project. (10 points)

6. Reasonableness of the budget; the completeness of the line-item narrative. Cost-effectiveness of the budget in providing for the services. (10 points)

Category 6—Ethnic Community Organizations

A. Purpose and Scope

Respondents to this program category will be of two general types:

(1) Multi-site or national ethnic organizations which propose to develop or strengthen local ethnic agencies and/or a national network of ethnic community agencies for purposes of linking refugees to community resources; or,

(2) Emerging local ethnic organizations which seek to function as

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

bridges between newly arrived refugee groups and mainstream local resources and organizations.

ORR expects to make approximately 4 national and 6 local awards in this program area.

A community is self-sufficient when it has the capacity to generate and control its own resources, determine its own goals, set priorities, plan and mobilize community members, including the elderly, women and youth, to work together to achieve these goals, and to create collaborations with others from within and outside the community to further these goals.

ORR recognizes that one key to strengthening communities is the development of strong community based organizations (CBOs). A strong ethnic organization can tap into the community's desire for self-help, improve services, nurture leaders, raise funds from various sources, explore housing and economic opportunities, collaborate with mainstream agencies and groups, and at the same time, remain accountable to the community.

Strong CBOs can also facilitate positive interaction between refugees and established residents in mainstream communities. The ability to organize and to voice their concerns collectively gives refugees a better sense of identity and hope for their own and their community's future. Refugee self-help organizations can be important building blocks for effective resettlement and can function as bridges between the refugee community and local resources.

Many refugees who arrived in this country during the past two decades have already organized themselves into self-help groups in order to assist their own members, to foster long term community growth, to preserve their cultural heritage, and to assist community members in securing employment and other social services. More newly arrived refugee groups, who have come to the United States in recent years, have not yet organized into self-help groups; consequently, they may be experiencing barriers to accessing mainstream resources and full participation in the economic, social, and political activities of the larger community. They lack information about the process of building community capacity.

Effective program models for self-help groups result in:

- Creating a shared, dynamic vision of the community's future which inspires members to work together to secure that future;
- Moving refugees from being recipients of services and assistance to being active partners in their integration into community;
- Linking individual self-sufficiency to community self-sufficiency;
- Developing effective leadership within the organization;
- Allowing local communities to apply their own cultural, political and socio-economic values to long term strategies and programs;
- Creating close connections among community needs, program, and service delivery systems;
- Providing avenues for resources that are generated locally (through service delivery or economic development) to remain within the community;
- Fostering collaboration among refugee and mainstream service providers, policy makers, and public and private institutions.

In recognition of the special vulnerability of newly arrived populations, ORR proposes through this announcement to provide funds to ethnic organizations established among refugee groups who have arrived in this country since 1991. Target populations range from a minimum of 2,000 to a maximum of 50,000 arrivals from a single country between FY 1992 and FY 1996. (ORR has dedicated other resources toward the ethnic populations experiencing 100,000 or more arrivals during this period.)

Further, at least 50% of the specific ethnic population currently in the U.S. should have arrived during the past five years. According to ORR's data, this includes refugee populations from the former Yugoslavia, Haiti, Iraq, Somalia, Sudan, and Liberia. Awards, however, will not be based solely on population numbers, but will be based on the justification and documentation of the applicant, including such factors as community service needs and available resources. If an applicant can demonstrate that its ethnic arrivals meet the minimum threshold of 2,000 for the same period and correlate with the above description, the organization representing that refugee population may submit an application for funds under this announcement. The application must provide documentation that includes the name, alien number, date of birth, and date of arrival in the U.S. for each refugee claimed.

In continuation applications under this category, for the subsequent second through fifth budget periods, applicants must demonstrate adequate progress toward project goals and outcomes to be eligible for continuation funding. In subsequent year continuation applications, the grantee will be asked to document receipt of non-ORR funds from other sources toward cost-sharing of the project's activities. The requirement will be not less than 10% of the requested funding for the third year award, 20% for the fourth year award, and 30% for the fifth year award. The cost-sharing may be in cash or in-kind contributions.

B. Allowable Activities

Successful *national* organization applicants to this notice may propose activities which may include, but are not limited to, the following:

- Technical assistance and support to local ethnic organizations
- Ethnic community development
- Leadership training
- Resource development
- Public education and agency linkage through an Internet site
- Information dissemination on ethnic-specific issues
- Convening of national or regional meetings
- Development or translation of ethnic-specific publications

Successful *local* self-help organization applicants to this notice may propose any of the following activities:

- Public education activities designed to inform the refugee community about issues essential to functioning effectively in the new society;
- Orientation and assistance to parents in connecting with school systems and other local public or private institutions;
- Information services on health care—information on access to health care for the uninsured, on health insurance, on health maintenance organizations, on the importance of preventive health, and on available universal coverage services, e.g., immunizations;
- Pairing refugee individuals or families with community volunteers;
- Leadership training for such activities as community organizing, fund raising, non-profit management;
- Education and training to prepare refugees to become citizens;
- Information and training on the roles of men and women in the U.S. culture, and against child abuse, sexual harassment and coercion, and domestic violence, including bilingual staff assistance for women's shelters and techniques for protection;
- Activities designed to improve relations between refugees and the law enforcement communities;
- Developing and operating community centers which serve the designated, newly arrived refugee population.

The above are examples of services. Applicants may propose other services, to the extent they are consistent with the goals stated above, and may request funds to cover core or general operating expenses. In all instances, however, activities must be designed to supplement, rather than to supplant, the existing array of refugee services available in the community.

Applicants must give assurance that their governing bodies, boards of directors, or advisory bodies are knowledgeable and responsive to refugee concerns. This can be demonstrated through majority refugee representation on these bodies or through some other way. Women should be included on these representative bodies, as well.

While activities proposed do not have to be directly employment related, planning and coalition building should be guided by the overarching goal of improving the economic condition of refugee families and of giving them the information needed to adjust socially and economically to their new country and their new communities.

Non-Allowable Activities: Funds will not be awarded to applicants for the purpose of engaging in activities of a distinctly political nature, activities designed exclusively to promote the preservation of a specific cultural heritage, or activities with an international objective (i.e., activities related to events in the refugees' country of origin).

C. Application Content

Applications for Ethnic Community Organizations at the local or national level (as specified on the SF–424 Application for Federal Assistance, Boxes 11. and 12.) should contain the following information:

1. A discussion of the national or local focus relevant to the refugee ethnicity which the applicant seeks to represent or serve including numbers and dates of arrival, and an analysis of the need for this project with reference to the specified population;
2. A description of the applicant's expertise (organizational or leadership), to include a project staffing plan with staff and consultant (if proposed) qualifications, evidence of applicant (but not necessarily the ethnic organization's) nonprofit incorporation, a list of Board of Directors or representative refugee advisors indicated with gender, and a discussion of how directors or advisors were chosen;
3. A statement of the project goals and objectives with anticipated outcomes and results of benefit to the local or national ethnic community;
4. A description of local or national ethnic community planning and support to work collaboratively on the project. If the project is designed to enhance ethnic leadership, the application should describe how these individuals have been or will be identified and how the overall community will be brought into the plan;
5. A proposed plan of action, including the scope of activities and a timetable for implementation;
6. An estimated line item budget narrative with a detailed justification of how the applicant arrived at estimated costs.

D. Application Review Criteria

Each project proposal will be rated individually by an independent review panel using the criteria described below. Local-level projects and national/multi-state projects will be ranked separately. In making awards, the Director will exercise some discretion to ensure that a range of ethnicities are supported in their self-help efforts under this program.

1. Degree to which the applicant understands the focus and need of the relevant ethnic group, as evidenced by the discussion presented. (10 points)
2. Applicant's capacity, including any enhancement due to proposed partners or consultants, to implement the proposed plan of action. (15 points)
3. Appropriateness of goals and the extent to which outcomes proposed are measurable. (20 points)
4. Evidence of ethnic community involvement in the project planning, suitable identification of project leaders as appropriate, and support for the plan of action. (15 points)
5. Clarity and appropriateness of the project design, plan of action and timetable for implementation, and likelihood that proposed activities and results will benefit the community. (30 points)
6. The budget is reasonable, clearly presented, sufficiently detailed, and cost effective. (10 points)

Part II. General Application Information and Guidance

All applications which meet the stipulated deadline and other requirements will be reviewed competitively and scored by an independent review panel of experts in accordance with ACF grants policy and the criteria stated below. The results of the independent review panel scores and explanatory comments will assist the Director of ORR in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by the reviewers. Highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: comments of reviewers and of ACF/ORR officials; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; and investigative reports. Final funding decisions will be made by the Director of ORR.

A. Application Preparation and Submission

Availability of Forms—Attachments contain all of the standard forms necessary for the application for awards under this announcement. Further, copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the following office: Office of Refugee Resettlement, 370 L'Enfant Promenade S.W., Washington, D.C. 20447, Telephone: (202) 401–9251.

B. Forms, Certifications, Assurances, and Disclosure

1. Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The instructions and forms required for submission of applications are included. The forms may be reproduced for use in submitting applications. An application with an original signature and two copies is required.

The two letter designations for the Categories of the Standing Announcement Discretionary Grants are: category 1, RP; category 2, RU; category 3, RO; category 4, RB; category 5, RM; and category 6, RE. The applicant should identify each application accordingly on the face page of the SF 424, item 11.

2. Budget and Budget Justification—Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. According to the instructions for completing the SF–424A and the preparation of the budget and budget justification, "Federal resources" refers only to the ACF/ORR grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel: Costs of employee salaries and wages. Identify the project director and for each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies.

Fringe Benefits: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF/ORR-sponsored workshops should be detailed in the budget.

Equipment: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies: Costs of all tangible personal property other than that included under the Equipment category. Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, etc. Contracts with secondary recipient organizations, including delegate agencies (if applicable), should be included under this category.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if procurement without competition is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Provide computations, a narrative description and a justification for each cost under this category.

Indirect Costs: This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

An applicant proposing to charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the agreement, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income: The estimated amount of income, if any, expected to be generated from this project.

Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information. Program income generated under any Federal grant resulting from this announcement shall be used in one of the following ways: (1) deducted from the total project costs, (2) under cost-sharing used for allowable costs to satisfy this requirement, (3) added to funds committed to the project and used to further program objectives. For 1 or 2, the income should be used for current costs unless the awarding agency authorizes deferral to a later period. For 3, there is no requirement to request prior approval to defer use of program income for a later period.

Non-Federal Resources: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

3. Applicants must provide the following certifications. Copies of the forms and assurances are located at the end of this announcement.

a. Certification regarding lobbying if your anticipated award exceeds $100,000.

b. Certification regarding environmental tobacco smoke. By signing and submitting the applications, applicant provides certification that they will comply with the requirements of the Pro-Children Act of 1994 (P.L. 103–227, Part C—Environmental Tobacco Smoke) and need not mail back the certification with the application.

c. Certification regarding debarment, suspension, and other Ineligibility. By signing and submitting the applications, applicant provides certification that they are not presently debarred, suspended or otherwise ineligible for this award and therefore need not mail back the certification with the application.

d. Drug-Free Workplace Act of 1988.

C. Deadline

1. Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline date or sent on or before the deadline date and received by ORR in time for the independent review. Applications should be mailed to: Office of Refugee Resettlement, Administration for Children and Families, Division of Community Resettlement, 370 L'Enfant Promenade, S.W., Sixth Floor, Washington, D.C. 20447, *Attention: Standing Competition.*

Applicants must ensure that a legibly dated U.S. Postal Service postmark, or a legibly dated, machine produced postmark of a commercial mail service appears on the envelope/package containing the application(s). An acceptable postmark from a commercial carrier is one which includes the carrier's logo/emblem and shows the date the package was received by the commercial mail service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand-carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the Administration for Children and Families, Office of Refugee Resettlement, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend the deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

4. Once an application has been submitted, it is considered as final and no additional materials will be accepted by ACF.

D. Nonprofit Status

Applicants other than public agencies must provide evidence of their nonprofit status with their applications. Any of the following is acceptable evidence: (1) A copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code; or (2) a copy of the currently valid IRS tax exemption certificate.

E. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities."

As of June 15, 1997, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions need take no action in regard to E.O. 12372: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau.

All remaining jurisdictions participate in the E.O. process and have established Single Points of Contact (SPOCs). A list of the Single Points of Contact for each State and Territory is included as Appendix A of this announcement.

Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them to the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that ORR can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Community Resettlement, 6th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

F. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. Law 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations, including program announcements. All information required by this is covered under the OMB Approval No. 0970–0139, ACF Uniform Project Description.

G. Applicable Regulations

Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

H. Reporting Requirements

Grantees are required to file the Financial Status Report (SF–269) semi-annually and Program Progress Reports on a quarterly basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities.

Although ORR does not expect the proposed components/projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures by budget line item.

The official receipt point for all reports and correspondence is the ORR Division of Community Resettlement. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Project Officer named in the award letter. The mailing address is: 370 L'Enfant Promenade S.W., Sixth Floor, Washington, D.C. 20447.

A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

(The Catalog of Federal Domestic Assistance [CFDA] number assigned to this announcement is 93.576)

Dated: December 1, 1997.

Leonard Glickman,

Acting Director, Office of Refugee Resettlement.

OMB State Single Point of Contact Listing

ARIZONA

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–1305

ARKANSAS

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

CALIFORNIA

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

DELAWARE

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

DISTRICT OF COLUMBIA

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

FLORIDA

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

GEORGIA

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 565–3855 or (404) 656–3829, FAX: (404) 656–7938

ILLINOIS

Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

INDIANA

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

IOWA

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

KENTUCKY

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

MAINE

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

MARYLAND

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–3265, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

MICHIGAN

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266

MISSISSIPPI

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

MISSOURI

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

NEVADA

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

NEW HAMPSHIRE

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

NEW MEXICO

Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

NORTH CAROLINA

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

NORTH DAKOTA

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

OHIO

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

RHODE ISLAND

Kevin Nelson, Review Coordinator, Department of Administration/ Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

SOUTH CAROLINA

Rodney Grizzle, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 331, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0356

TEXAS

Tom Adams, Governor's Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

UTAH

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

WEST VIRGINIA

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

WISCONSIN

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

WYOMING

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capitol, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–7446, FAX: (307) 632–3909

TERRITORIES

GUAM

Mr. Giovanni, T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

PUERTO RICO

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

NORTH MARIANA ISLANDS

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Northern Mariana Islands 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 644–2289, FAX: (670) 644–2272

VIRGIN ISLANDS

Nelson Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC DOES NOT HAVE A "STATE SINGLE POINT OF CONTACT." STATES WITHOUT "STATE SINGLE POINTS OF CONTACT" INCLUDE: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Palau, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes in the list will only be made upon formal question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

BILLING CODE 4184–01–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision. If Revision, enter appropriate letter(s) in box(es) ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):	A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify)
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE:	9. NAME OF FEDERAL AGENCY:
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING: a. Federal	$ .00	16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (REV 4-92)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Instructions For The SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the Address Provided By The Sponsoring Agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State, if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities.)

13. Self-explanatory.

14. List of applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C — NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E — BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16 - 19)	$	$	$	$

SECTION F — OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 4-92) Page 2

Instructions for the SF 424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple function or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals in Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project.

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.c. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1506 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (41 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A–133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184–01–P

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements
(Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). 7. If the workplace identified to the agency changes during the
performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo
contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1)The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug
abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or
otherwise receiving actual notice of such conviction. Employers of
convicted employees must provide notice, including position title,
to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has
designated a central point for the receipt of such notices. Notice
shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the
requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification is this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact that person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a low tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other

remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BILLING CODE 4184-01-P

OMB No. 9999-0000
OMB No. 0925-0418
(Approved for use through 12/31/97

Protection of Human Subjects
Assurance Identification/Certification/Declaration
(Common Federal Rule)

POLICY: Research activities involving human subjects may not be conducted or supported by the Departments and Agencies adopting the Common Rule (56FR28003, June 18, 1991) unless the activities are exempt from or approved in accordance with the common rule. See Section 101(B) the common rule for exemptions. Institutions submitting applications or proposals for support must submit certification of appropriate Institutional Review Board (IRB) review and approval to the Department or Agency in accordance with the common rule. Institutions with an assurance of compliance that covers the research to be conducted on file with the Department, Agency or the Department of Health and Human Services (HHS) should submit certification of IRB review and approval with each application or proposal unless otherwise advised by the Department or Agency. Institutions which do not have such an assurance must submit an assurance and certification of IRB review and approval within 30 days of a written request from the Department or Agency.

1. Request Type
☐ ORIGINAL
☐ FOLLOWUP
☐ EXEMPTION

2. Type of Mechanism
☐ GRANT ☐ CONTRACT ☐ FELLOWSHIP
☐ COOPERATIVE AGREEMENT
☐ OTHER: _____

3. Name of Federal Department or Agency and, if known, Application or Proposal Identification No.

4. Title of Application or Activity

5. Name of Principal Investigator, Program Director, Fellow, or Other

6. Assurance Status of this Project *(Respond to one of the following)*

☐ This assurance, on file with the Department of Health and Human Services, covers this activity:

Assurance identification no. M-_____ IRB identification no._____

☐ This Assurance, on file with *(agency/dept.)*_____, covers this activity:

Assurance identification no._____ IRB identification no._____ *(if applicable)*

☐ No assurance has been filed for this project. This institution declares that it will provide an Assurance and Certification of IRB review and approval upon request.

☐ *Exemption status:* Human subjects are involved, but this activity qualifies for exemption under Section 101 (b), paragraph_____.

7. Certification of IRB Review *(Respond to one of the following IF you have an Assurance on file)*

☐ This activity has been reviewed and approved by the IRB in accordance with the common rule and any other governing regulations and subparts on *(date)*_____ by: ☐ Full IRB Review or ☐ Expedited Review.

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by the common rule will be reviewed and approved before they are initiated and that appropriate further certification will be submitted.

8. Comments

9. The official signing below certifies that the information provided above is correct and that, as required, future reviews will be performed and certification will be provided.

10. Name and Address of Institution

11. Phone No. *(with area code)*

12. Fax No. (with area code)

13. Name of Official

14. Title

15. Signature

16. Date

Authorized for local reproduction

Public reporting burden for this collection of information is estimated to average 5 minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: PHS Reports Clearance Officer (0990-0020 and 0925-0418), Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201. Attn: PRA. *Do not return the completed form to this address.*

OPTIONAL FORM 310 (Rev. 1-95)
Sponsored by HHS/PHS/NIH

BILLING CODE 4184-01-C

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For material change only Year_____ Quarter_____ date of last report_____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known.* Congressional District, *if known*	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*:
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

Items 11 through 15 are deleted.

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184-01-C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded soley by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 97–32073 Filed 12–8–97; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–62159]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease VTU–62159 for lands in Duchesne County, Utah, was timely filed and required rentals accruing from November 1, 1997, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–62159, effective November 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 97–32153 Filed 12–8–97; 8:45 am]
BILLING CODE 4310–DQ–M

DEPARTMENT OF INTERIOR

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Wednesday, December 17, 1997; 1:30–4:00 p.m.

Address: Zephyr Park Community Center, Schadt Avenue, Whitehall, PA 18052.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Pub. L. 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: December 2, 1997.

Gerald R. Bastoni,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 97–32153 Filed 12–8–97; 8:45 am]
BILLING CODE 8320–PE–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 29, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 24, 1997.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Sitka Borough-Census Area

Sitka US Post Office and Court House, 100 Lincoln St., Sitka, 97001584

Yukon-Koyukuk Borough-Census Area

Sourdough Inn, Jct. of First and Sled Sts., Fort Yukon, 97001585

ARIZONA

Yavapai County

Clarkdale Historic District, Roughly along Main St., roughly bounded by Verde R. including industrial smelter site., Clarkdale, 97001586

CALIFORNIA

Calaveras County

Copperopolis Armory, 695 Main St., Copperopolis, 97001588

Copperopolis Congregational Church, 411 Main St., Copperopolis, 97001587

FLORIDA

Leon County

Jacksonville, Pensacola and Mobile Railroad Company Freight Depot, 918 Railroad Ave., Tallahassee, 97001589

MONTANA

Ravalli County

Summers—Quast Farmstead, 1288 Eastside Hwy., Corvallis, 97001590

NEW MEXICO

Bernalillo County

Enchanted Mesa Trading Post (Route 66 Through New Mexico MPS), 9612 Central Ave. SE, Albuquerque, 97001595

Hilltop Lodge (Route 66 Through New Mexico MPS), 5410 Central Ave. SW,

Albuquerque, 97001597
Horn Oil Co. and Lodge
(Route 66 through New Mexico MPS),
1720 Central Ave. SW,
Albuquerque, 97001591
La Puerta Lodge
(Route 66 Through New Mexico MPS),
9710 Central Ave. SE,
Albuquerque, 97001596

Sandoval County

Santo Domingo Indian Trading Post
(Route 66 Through New Mexico MPS),
Rt. 66 crossing of AT&SF RR tracks at
Domingo,
Domingo, 97001592

NORTH CAROLINA

Transylvania County

St. Philip's Episcopal Church
(Transylvania County MPS),
317 E. Main St.,
Brevard, 97001594

Wake County

Royal Baking Company, Former
3801 Hillsborough St.,
Raleigh, 97001593

TEXAS

Atascosa County

Atascosa County Courthouse,
Circle Dr.,
Jourdanton, 97001598

Harris County

Eppes, Ned A. and Linda S., House,
5322 Institute Ln.,
Houston, 97001599

WYOMING

Converse County

Jenne Block,
301 Center St.,
Douglas, 97001600

Sweetwater County

Slovenski Dom,
513 Bridger Ave.,
Rock Springs, 97001601.

[FR Doc. 97–32098 Filed 12–8–97; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Flow Objectives for the Vernalis Adaptive Management Plan (VAMP), California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement/environmental impact report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 as amended, the Bureau of Reclamation (Reclamation), in cooperation with the U.S. Fish and Wildlife Service (Service), proposes to prepare a joint environmental impact statement/environmental impact report (EIS/EIR) on the water made available on the San Joaquin River and its tributaries to provide pulse flows at Vernalis during April and May and to help meet anadromous fish flow objectives. The San Joaquin River Group Authority (Authority) will be the lead agency under the California Environmental Quality Act.

Reclamation proposes to contract for water on the San Joaquin River and its tributaries under Pub. L. 102–575, Title 34, Section 3406(b)(3) of the Central Valley Project Improvement Act (CVPIA). The water would be made available to Reclamation from the San Joaquin River Group Authority (Authority). The purpose of the proposed project is to use the water to provide a pulse flow at Vernalis during April and May and other flows identified by the CVPIA water acquisition program. This water is needed to support the Vernalis Adaptive Management Plan (VAMP) which is being implemented to provide protective measures for fall-run chinook salmon and to gather scientific information on the effects of various flows in the lower San Joaquin River, Central Valley Project and State Water Project export pumping rates, operation of a fish barrier, and survival of salmon smolts through the Delta. Water is needed also to provide environmental benefits in the lower San Joaquin River, San Joaquin River tributaries, and Delta. The EIS/EIR will address potential impacts to the environment which may result from the modified flows in the San Joaquin River and its tributaries.

Reclamation and the Authority seek public input on alternatives, concerns, and issues to be addressed in the EIS/EIR. A series of scoping meetings will be held to receive oral and written comments.

DATES: Public scoping meetings will be held as follows:

- Tuesday, January 6, 1998, from 1:00 to 3:00 p.m. at the Miller-Lux Building, First Floor, 830 Sixth Street, Los Banos, California, 93635.
- Wednesday, January 7, 1998, from 1:00 to 3:00 p.m. at the Fairfield Community Center, Studio C, 1000 Kentucky Street, Fairfield, California, 94533.
- Thursday, January 8, 1998, from 6:00 to 8:00 p.m. at the Modesto Irrigation District, (South Entrance) Multi-Purpose Room, Second Floor, 1231 Eleventh Street, Modesto, California, 95354.

Written comments on the project scope should be sent to Reclamation by January 13, 1998. Comments received after this date will be considered, but will not be included in the resulting scoping report.

The draft EIS/EIR should be available for public review in September or October 1998.

ADDRESSES: Written comments on the project scope should be sent to Michael Delamore, Program Manager, South-Central California Office, 2666 N. Grove Industrial Drive, Suite 106, Fresno, California, 93727; or Dan M. Fults, Friant Water Users Authority, 1521 I Street, Sacramento, California, 95814.

FOR FURTHER INFORMATION CONTACT: Mr. Delamore, telephone (209) 487–5039, fax (209) 487–5130; or Mr. Fults, telephone (916) 441–1931, fax (916) 441–1581.

SUPPLEMENTARY INFORMATION: In May 1995, the State Water Resources Control Board (State Board) adopted a Water Quality Control Plan (WQCP) for the San Francisco/Sacramento-San Joaquin Delta Estuary. The WQCP included water quality and flow objectives pertaining to the San Joaquin River basin. During 1997, Reclamation purchased water within the San Joaquin River system to help meet the WQCP's defined flow objectives. The science supporting the flow objective for the San Joaquin River as measured at Vernalis has been disputed. In an effort to clarify the science for the flow objective and resolve the dispute, the San Joaquin River interests collaborated to identify feasible actions to protect the San Joaquin River's fish resources and to implement the State Board's fishery objectives. This collaboration led to a scientifically-based adaptive fishery management plan known now as VAMP. This VAMP Agreement provides the basis for the project information described below.

The VAMP will be implemented through experimental flows on the San Joaquin River and export pumping flow rates with an Old River fish barrier during the 1-month period each year, from approximately April 15 to May 15, in the spring of each year. Additional attraction flows are targeted for October. The experimental design of the VAMP will use the water identified by this action in various regimes, depending upon smolt survival and passage through the Delta.

In addition to the total water from the VAMP Agreement, an additional amount of water may be contracted for release at any time during the year. The EIS/EIR will analyze the impacts of a maximum amount of water in any year over the period 1999–2009 for release to the San Joaquin River and its tributaries. (Specific quantities of water from the VAMP Agreement and from willing sellers are currently under negotiation and will be identified in the EIS/EIR.)

Issues or resources that may be affected by the proposed project that will be evaluated in the EIS/EIR are the following: surface water, groundwater, biological resources (vegetation, wildlife, fisheries), land use (including agriculture), recreation, cultural resources, and environmental justice. Impacts to other resources would be evaluated if public scoping determines the need for such an evaluation. Cumulative impacts and other short-term and long-term impacts required by CEQA and NEPA will be evaluated as well.

The Draft EIS/EIR will analyze a range of alternatives that include, but are not limited to, the no-action alternative and other flow regimes in support of VAMP and related San Joaquin River flows under Section 3406(b)(3). The impact analysis may include combinations of one or more alternatives as well as other alternatives identified during the public scoping process. Alternatives to the proposed project have not yet been identified and will depend upon the results of public scoping. Alternatives to be evaluated in depth in the EIS/EIR need to be consistent with the project purpose described above.

Dated: December 2, 1997.
Kirk C. Rodgers,
Deputy Regional Director.
[FR Doc. 97–32155 Filed 12–8–97; 8:45 am]
BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Community Policing to Combat Domestic Violence progress reports.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 9, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Community Policing to Combat Domestic Violence Progress Reports.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local governments, private non-profit organizations, individuals, education institutions, hospitals, and private commercial organizations (if legislation allows). Other: None.

The information collected is used to determine grantee progress on its Community Policing to Combat Domestic Violence grant. Completion of such report is a condition of the grant award. Upon receipt and review, the agency will notify the grantee if it is not in compliance with the terms and conditions of its grant award under this program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 336 respondents at 8 hours per response. The information will be collected once from each respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,688 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 3, 1997.
Robert B. Briggs,
Department Clearance Officer, United States Department of Justice.
[FR Doc. 97–32148 Filed 12–8–97; 8:45 am]
BILLING CODE 4410–21–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Problem Solving Partnerships progress reports.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 9, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

If your have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Problem Solving Partnerships Report on Analysis.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local governments, private non-profit organizations, individuals, education institutions, hospitals, and private commercial organizations (if legislation allows). Other: None.

The information collected is used to determine grantee progress on its Problem Solving Partnerships (PSP) Grant. Completion of such report is a condition of the PSP grant award. Upon receipt and review, the agency will notify the grantee if it is not in compliance with the terms and conditions of its grant award under this program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 470 respondents at 8 hours per response. The information will be collected once from each respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,760 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 3, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–32149 Filed 12–8–97; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for engaging employers in State and local School-to-Work (STW) systems through efforts undertaken by industry groups and trade associations.

SUMMARY: *This notice contains all of the necessary information and forms needed to apply for grant funding.* The Departments of Labor and Education jointly invite proposals for approximately 3—5 new awards in FY 1998, as authorized under section 403 of the School-to-Work Opportunities Act of 1994 (the Act). These awards will provide support to industry groups and trade associations to undertake outreach, technical assistance, and other activities to engage and to build the capacity of employers to participate in STW systems. As a result of the products developed and activities carried out, awardees will be asked to provide clear, quantifiable evidence that they are significantly increasing the numbers of employers in their industry who are participating in STW activities.

DATES: Applications for grant awards will be accepted commencing December 9, 1997. The closing date for receipt of applications is January 23, 1998, at 4 P.M., (Eastern Time) at the address below. Telefacsimile (FAX) applications *will not be honored.*

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Laura Cesario, Reference: SGA/DAA 98–003, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C., 20210.

FOR FURTHER INFORMATION CONTACT: Division of Acquisition and Assistance, telephone: (202) 219–8694 (this is not a toll free number). This solicitation will also be published on the Internet, on the Employment and Training Administration's Home Page at http://www.doleta.gov. Award notifications will also be published on this Home Page.

Industry/Trade Association Solicitation

I. Purpose

To invite proposals to support industry and trade associations to undertake outreach, technical assistance, and other activities to engage and to build the capacity of employers to participate in STW systems.

II. Background

The School-to-Work Opportunities Act was signed into law by the President on May 4, 1994. Jointly administered by the Departments of Labor and Education, this Act is a new approach to education that seeks to better prepare all American youth for careers in high skill, high wage jobs and to strengthen the linkages between what is learned in school with work. Under the Act, venture capital grants are provided to States and local communities to undertake systemic reform. Grants are for a limited duration with the Federal investment declining over time. These investments are intended to support the one-time costs of States and local communities to restructure learning experiences for all students. The Act also provides a set-aside of funds for national activities to support School-to-Work system-building nationwide. These funds are used for technical assistance and capacity building, for outreach, and for research and evaluation. Section 403 of the Act, relating to training and technical assistance, specifically directs the Secretaries to "work in cooperation with * * * employers and their associations * * * to increase their capacity to develop and implement effective School-to-Work programs."

III. Statement of Work

Employer Participation in STW

Changes in our economy, technology and global competition are driving forces behind efforts to improve the academic performance and career preparedness of today's youth. Among its purposes, the National School-to-Work Opportunities Act was enacted to: "utilize workplaces as active learning environments in the educational process by making employers joint partners with educators in providing opportunities for all students to participate in high-quality, work-based learning experiences." Work-based learning is one of the three key components within a STW system (school-based learning and connecting activities are the other two). Thus, employer participation is critical for the implementation and sustainability of STW systems. Employers participate in STW systems through a number of different activities involving students, teachers and with State and local governing bodies. *The Employer Participation Model,* published by the National Employer Leadership Council, outlines more than 50 different opportunities for employer involvement in STW. States and local communities are actively working to engage employers in becoming partners and active participants within their STW systems.

Status of Employer Investments

Prior to this year, the two Departments through the National School-to-Work Office have made a number of investments to support employer knowledge and participation in aspects of emerging STW systems. A major investment included support for the establishment and development of the National Employer Leadership Council (NELC), the mission of which has been to enlist the leadership of highly visible CEOs of major companies in order to promote STW at the highest levels of corporate business. Another significant investment included one through an existing ETA grant to the National Alliance of Business (NAB). The purpose of this project was to promote participation in STW through ETA's workforce development infrastructure featuring a partnership comprised of NAB, NELC, the Association of Private Industry Councils, and the National Employer Council. The National STW office also invested in outreach activities and specific publications targeted to business entities and employers. Additional investments have been made in the research and evaluation area to collect data on employer participation. Such data has been collected from three sources: (1) The National Employer Survey conducted by the University of Pennsylvania's Center on Educational Quality of the Workforce, (2) the School to Work progress measure system, and (3) The Bureau of Labor Statistics' National Longitudinal Survey of Youth Data Collection.

There is preliminary information that supports the notion that the investments made to date on employer participation are having a modest impact, and that there is an extremely long way to go before employer participation can be considered at scale and sufficiently sustainable. The recently released evaluation of STW work systems conducted by Mathematica Policy Research revealed that employers are playing an active role in local partnerships, participating widely in governing boards and in about a quarter of the cases are actually chairing these bodies. They are offering varied forms of work based learning opportunities, hosting teacher internships and contributing to curriculum development. However, according to the Mathematica report, partnerships face major challenges to recruit large numbers of employers. The report concludes that "Employer recruiting will have to expand participation manyfold beyond 1996 levels if the goals States are setting for workplace activity are to be realized."

Other research such as the National Employer Leadership Survey conducted by the Center on Educational Quality of the Workforce suggests that employers, under the right circumstances are more than ready and eager to participate in STW programs. However, as key stakeholders, contributors to and major beneficiaries of STW, they will require more clear linkages and more focused attention than has been typically occurring. It is also clear that other stakeholders, particularly educators, need to be better connected and attuned to employer perspectives.

These reports and past experience with national employer investments obviously suggest that stronger and more strategic employer investments will be necessary if the entire STW system can really be brought to scale and confidently sustained.

Industry Focus

On June 18, 1997, the National Advisory Council for STW Opportunities held its third meeting. Advisory Council members were asked to consider and provide their input to the two Departments on key issues surrounding sustainability of the STW initiative. Employer participation was identified as a key area of consideration. Among the suggestions made by Council members was for the Departments to make strategic investments with industry associations to conduct outreach and develop the capacity of employers to participate in STW systems.

The Departments agree that engaging employers by industry sectors and through industry groups and trade associations has the potential to capture a critical mass of STW business partners. In addition, when industries are partners with education they can be engaged in the design of portable, industry recognized credentials that certifies that a student has mastered skills at least as challenging as skill standards endorsed by the National Skill Standards Board or those developed under an approved State plan. Through the resources of several industry-specific business associations, affiliate networks of national and State trade associations can link to small and large employers and use the associations' infrastructures to develop the capacity of employers to participate in local STW partnerships.

Industries which already have a solid base of employer participation to build upon, provide jobs that lead to high wage careers for students; or are projected to grow are considered to be of high priority by the Departments for making strategic investments.

The Mathematica national evaluation report and occupational and industry outlook data prepared by the Bureau of Labor Statistics (BLS) data, identify industries that show significant potential for building employer participation in STW. Mathematica's national evaluation report provides baseline information on leading industries in which students have paid workplace experiences through jobs obtained either outside of school or through school. The data was collected through student surveys in eight states and identified the following industries as the leading employers of students: retail trade; manufacturing, transportation, and utilities; finance, insurance, and real estate; automotive repair; health service; and education, public administration and legal/social services. BLS data on growth industries and occupations and on industries expected to need a high number of replacement workers confirm that these are the leading industries for job opportunities and growth.

Employer Investment Categories

Reaching a critical mass of employer participation and sustaining the effort will require that both private and public sector employers are knowledgeable enough to want to participate, that there is research—both hard evidence and anecdotal examples—to demonstrate the conditions under which there is return on the investment when they participate, that employer participation is easily facilitated, that other stakeholders are ready and knowledgeable enough to partner with employers, that employers are able to influence other institutions for mutual benefit, that employers help infuse STW into other systems, and that investments in employer participation grow and leverage other resources. Based on lessons learned from previous investments, results of research and

evaluative data gathering, and the degree of employer participation required for bringing STW to scale, activities for employer engagement can be clustered around the following broad investment categories.

1. *Products and activities that enable employer participation and build a knowledge base of employers.* This includes but is not limited to those activities that address barriers to participation, provide more information to employers, organize employer events, highlight effective and best practices, and generally provide outreach to the employer community.

2. *Educating other stakeholders about business need and business culture.* Educators especially need a better grounding on how to work effectively in partnership with employers. Previous experience tells us that employer involvement becomes tenuous when they are in a ready posture to participate but schools and others are not ready to engage employers.

3. *Employers influencing institutions.* There are multiple and complex institutional entities that necessarily interact with business in STW. Policies and practices of these institutions are often out of line with business and industry need and are often inadvertently misaligned with economic trends that affect their own effectiveness. Thus, there is a need for business influence on not only education, but other initiatives.

4. *Advocating for Intermediaries.* The process of connecting schools with employers and students with employers can be time consuming and challenging given the institutional and cultural barriers described above. One successful approach has been the use of intermediary organizations that connect the two. Demonstrating and researching the features of intermediary relationships that are particularly effective in linking schools and employers will be especially valuable to bringing STW to scale. As one report states: "Employers want a reliable intermediary much more than they want incentives."

5. *Research.* Anecdotal stories of success and effectiveness are useful, but lack wide scale generalization. Research is needed that empirically demonstrates the benefit of employer participation in STW and those variables likely to contribute to effective employer involvement and employer return on investment.

6. *Building employer capacity.* There is a need to address industry specific needs as well as to tie STW participation into each industry's evolving skill standards. There are a host of other ways in which to flexibly address employer needs as agents of STW implementation.

While the intensity and mix of activities that will lead to scale and sustainability of employer participation is best determined on an industry-by-industry basis, the Departments believe that it is beneficial to all industries involved to coordinate efforts across industries to share lessons learned, discuss common issues and share related products. The Departments expect that successful applicants will coordinate activities and share results.

IV. Application Process

Eligible Applicants: Any Industry or Trade Association or a Nonprofit Organization in Partnership Groups

Potential applicants however, should note the Departments' priority in supporting industry groups that can demonstrate that they have a strong base of STW participation to build upon, are in growth industries, or have high potential for providing jobs that provide career pathways for new job entrants. High priority industries include: retail trade; manufacturing, transportation and utilities; finance, insurance and real estate; automotive repair; health service; and education, public administration and legal/social services. In preparing the proposal, please use the following headings and respond to the information in each of the following categories.

1. *Industry and Project.* Identify the industry, sponsoring association (or nonprofit organization) and title of the proposal. Provide information on the number and percentage of industry and mix (large and small) employers that will be represented by this proposal.

2. *Project Proposal.* Provide a detailed work plan that includes a description of the proposed activities, with accompanying time lines, and the target audiences for these activities. The offeror should demonstrate how the proposed work plan will contribute to bringing STW to scale and how it will lead to sustainability. Indicators demonstrating whether the work plan is likely to help bring STW to scale include:

- Showing the impact/usefulness at the national, state, and local levels and demonstrating an "outreach" effort to enhance this impact.
- Articulating how the planned activities will build linkages between the business and education communities in measurable ways, including and especially through the use of intermediary organizations.
- Connecting to emerging industry recognized skill standards.
- Identifying opportunities/activities/materials for teacher's professional development in the area of employer engagement.
- Identifying innovative approaches to work based learning that can accommodate any student.

Indicators showing whether the plan demonstrates sustainability after the federal investment has ended include:

- Providing a realistic plan for institutionalizing the endeavor beyond merely a specific project level.
- Extracting and documenting the common lessons applicable to other interested entities within a targeted industry, occupation or sector.
- Identifying both federal and non-federal funding sources that amplify and outlast the federal investment.
- Describing in business terms how it is a solution to a business problem or address a business need.
- Identifying clear roles for major stakeholder groups such as industry, organized labor, educators, parents and students.

3. *Connecting to related initiatives and entities.* The offeror should demonstrate how its proposed plan of activities will build upon existing or create new *coalitions* that maximize business involvement and participation in STW; and/or connect with other entities with similar experiences and interests to identify related products, resources, funding and interests in order to take advantage of activities in the larger arena of STW implementation; and/or involve the public and private sectors in ways that capitalize on, and connect to, existing, infrastructures and overall workforce development systems; and/or connect to existing industry skill standards development efforts, including the work of the emerging Voluntary Partnerships funded by the National Skill Standards Board.

4. *Results.* The offeror should provide specific and quantifiable outcomes that are anticipated from the proposed plan of activities. In identifying outcomes, the offeror should also explain how it will collect data, document results and use these results in ongoing working relationships with members.

5. *Capability.* The offeror should demonstrate the capability of the organization and the key staff assigned to undertake the work plan, including examples of prior related efforts that demonstrate success in providing outreach and capacity building of member firms.

V. Application Submittal

Applicants must submit an original and three (3) copies of their proposal. The applications shall be divided into two distinct parts: Part I—which contains Standard Form (SF) 424, "Application for Federal Assistance," (Appendix A) and "Budget Information Sheet," (Appendix B). All copies of the SF 424 must have original signatures of the designated fiscal agent. Applicants shall indicate on the SF–424 the organization's IRS status. The Catalog of Federal Domestic Assistance number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice. Applicants must describe their plan in light of each of the Evaluation Criteria. No cost data or reference to price shall be included in this part of the application. Applicants must limit the program narrative section to no more than 30 double-spaced pages, on one side only. This includes any attachments. Applications that fail to meet the page limitation requirement will not be considered.

VI. Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) Was sent by the U.S. Postal Service Express Mail Next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. The term "post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

VII. Hand Delivered Proposals

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 P.M., (Eastern Time), on the closing date. Telegraphed and/or faxed applications will not be honored.

Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

VIII. Funding Availability and Period of Performance

The Departments expect to make up to 5 awards with a maximum total investment for these projects of $6 million. The period of performance will be for 24 months from the date the grant is awarded. The Departments may, at their option, provide additional funds for a third year at a lower level of funding, depending upon fund availability and performance of the awardee.

IX. Review Process

A careful evaluation of applications will be made by a technical review panel, who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The government may elect to award the grants with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

Evaluation Criteria

1. The extent to which the organization represents a critical mass of employers within a growth industry. (25 Points)

- Is this the lead organization for the industry?
- Is this a growth industry?
- Is this an industry in which there is already significant participation in work place experiences for teachers and/or students?
- Does the industry offer jobs that provide pathways to high wage careers?
- Is the industry and/or lead organization currently involved in the development and use of skill standards within education and training systems?

2. The extent to which the proposed plan will leverage the infrastructure of a national industry or trade association in order to reach a critical mass of employers who will participate in and benefit from STW. (25 Points)

- Is the plan specific as to the activities proposed and how these activities will result in broad employer participation?
- Does the proposal clearly demonstrate how the activities proposed will bring employer participation in STW systems to scale?
- Does the plan clearly demonstrate how the organization plans to build upon existing venues for reaching member firms?
- Are the outcomes proposed specific and realistic?

3. The extent to which the proposal addresses the system-building elements of STW. (25 Points)

- Is it clear how other critical stakeholders will be involved at the State and local levels?
- Does the proposal address how the activities will connect with State and local STW system initiatives?
- Does the proposal include how this project will relate to other industry associations and business coalitions?
- Does the proposal address the activities that connect employers with schools at the local level and how these activities will be accomplished?
- Does the proposal address how the activities will connect and leverage other national initiatives which promote industry involvement in the development and use of skill standards?

4. The extent to which the proposed plan is likely to produce sustainable employer engagement in STW after the federal investment has ended. (25 Points)

- Is there evidence of non-grant funding that amplifies the federal investment and that is likely to contribute to sustaining the project's impact?
- Is the proposal specific as to the business needs and problems that the proposed activities are designed to address?

X. Reporting Requirements

Applicants selected as grantees will be required to provide the following information:

A. To facilitate exchange of information, the Departments expect to convene grantees for meetings of approximately one-day duration on a quarterly basis. It is anticipated that half the meetings will be in Washington, D.C., and the remaining at locations to be determined.

B. Semi-annual progress reports in a format to be determined.

C. Standard Form 269, Financial Status Report Form, on a quarterly basis.

D. Final Project Report.

Signed at Washington, D.C., this 2nd day of December 1997.

Janice E. Perry,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance, SF Form 424

Appendix B: Budget Information Sheet

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 1 7 - 2 4 9

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits(Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		
9. Indirect Cost(Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution	$		
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel:* Show salaries to be paid for project personnel.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period.

6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. *Total, Direct Costs:* Add lines 1 through 7.

9. *Indirect Costs:* Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. *Training /Stipend Cost:* (If allowable)

11. *Total Federal funds Requested:* Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 97-32206 Filed 12-8-97; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97-166]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Power Efficiency Corporation of Hackensack, New Jersey, has applied for an exclusive license to practice the inventions described and claimed in the following patents: 4,266,177, entitled "POWER FACTOR CONTROL SYSTEM FOR A.C. INDUCTION MOTORS"; 4,404,411 entitled "MOTOR POWER FACTOR CONTROLLER WITH A REDUCED VOLTAGE STARTER", 4,417,190 entitled "CONTROL SYSTEM FOR AN INDUCTION MOTOR ENERGY RECOVERY"; 4,426,614 ENTITLED "PULSED THYRISTER TRIGGER CONTROL CIRCUIT"; 4,433,276 entitled "MOTOR POWER CONTROL CIRCUIT FOR A.C. INDUCTION MOTORS", 4,459,528 entitled "PHASE DETECTOR FOR THREE-PHASE POWER FACTOR CONTROLLER", and 4,469,998 entitled "THREE-PHASE POWER FACTOR CONTROLLER WITH INDIVIDUAL EMP SENSING;"; each of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Marshall Space Flight Center.

DATES: Responses to this notice must be received by February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Robert L. Broad, Jr., Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Huntsville, Alabama 35812, telephone (205) 544-0021, fax (205) 544-0258.

Dated: December 1, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97-32205 Filed 12-8-97; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Tuesday, January 27, 1998 from 9 a.m. to 4:00 p.m. The meeting will be held at The Citadel in Charleston, SC.

—Opening/Administrative Remarks
—Status of the TSP Program
—Working Group Reports
—CPAS Program Update

Anyone interested in attending or presenting additional information to the Committee, please contact LCDR Angela Abrahamson, Manager, TSP Program Office, (703) 607-4930, or Betty Hoskin (703) 607-4932 by January 15, 1998.

Dennis Bodson,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 97-32099 Filed 12-8-97; 8:45 am]
BILLING CODE 3910-05-M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 30, 1997, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on December 3, 1997 to the following applicant:

Charles R. Stearns, Permit No. 98-017

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97-32208 Filed 12-8-97; 8:45 am]
BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda—National Transportation Safety Board

TIME AND DATE: 9:30 a.m., Tuesday, December 16, 1997.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6789C Pipeline Accident Report: Propane Gas Explosion, San Juan Gas Company, Inc./Enron Corp., San Juan, Puerto Rico, November 21, 1996.

6931 Safety Study: Protecting Public Safety Through Excavation Damage Prevention.

NEWS MEDIA CONTACT: Telephone: (202) 314-6100.

FOR MORE INFORMATION CONTACT: Ray Smith, (202) 314-6065.

Dated: December 5, 1997.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 97-32362 Filed 12-5-97; 2:33 pm]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-245]

Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 1); Exemption

I

The Northeast Nuclear Energy Company (NNECO or licensee) is the holder of Facility Operating License No. DPR-21, which authorizes operation of Millstone Nuclear Power Station, Unit No. 1 (MNPS1), at a rated power level not in excess of 2011 megawatts (thermal). MNPS1 is a boiling water reactor located at the licensee's site in New London County, Connecticut. The license provides among other things, that it is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Sections III.D.2.(a) and III.D.3 of Option A of Appendix J to Title 10 of the *Code of Federal Regulations* (10 CFR) part 50 require the performance of local leak rate (Type B) and containment isolation valve (Type C) tests (hereafter collectively referred to as local leak rate tests (LLRT)) at intervals no greater than 2 years. By letter dated October 16, 1997, NNECO requested a one-time scheduler exemption from the requirement to perform these tests at intervals no greater than 2 years. The requested exemption would permit NNECO to delay performing the Type B and Type C tests until startup from the current Cycle 15 refueling outage (RF015). RF015 is currently scheduled to end in June 1998.

The licensee requested the exemption pursuant to 10 CFR 50.12. This regulation allows the Commission to grant exemptions from the requirements of 10 CFR part 50 which are "[a]uthorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." However, the "Commission will not consider granting an exemption unless special circumstances are present." Section 50.12(a)(2) lists the criteria for qualifying as a special circumstance. On the basis of the information submitted by the licensee, the NRC staff evaluated the licensee's request against 10 CFR 50.12(a)(2)(ii), which states "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

III

The underlying purpose of the requirement to perform Type B and Type C testing at intervals not to exceed 2 years is to protect the public by assuring that leakage through the primary reactor containment does not exceed allowable values. The licensee's facility is currently in an extended outage. During this outage, primary containment integrity is not required to be maintained. The primary containment, along with the emergency core cooling system, was designed to limit the offsite doses to values less than those specified in 10 CFR Part 100 in the event of a break in the primary system piping. Thus, containment integrity is required whenever the potential for loss of the primary reactor system integrity could result in significant offsite doses. Concern about such a condition exists whenever the reactor is critical and above atmospheric pressure. In this case, MNPS1 has been shut down for an extended period of time and primary containment integrity is not required. Primary containment integrity will not be required until MNPS1 restarts (currently scheduled for June 1998). As long as MNPS1 remains shut down, containment integrity is not required and, therefore, testing for containment integrity is not required to adequately protect the public. The public will continue to be adequately protected as long as the Type B and Type C testing is satisfactorily completed prior to restarting from RF015.

IV

On the basis of the above discussion, the staff finds that the licensee's request for exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security as specified in 10 CFR 50.12(a)(1). Additionally, the staff finds that application of the regulations in this particular circumstance would not serve, nor is it necessary to achieve, the underlying purpose of the rule. Therefore, the licensee's requested scheduler exemption from the 2-year testing requirements of Sections III.D.2.(a) and III.D.3 of Option A of Appendix J to 10 CFR part 50 is granted.

V

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant impact on the environment (62 FR 63736).

This exemption is effective upon issuance and shall expire when containment integrity is required for startup from the current refueling outage.

Dated at Rockville, Maryland, this 2nd day of December 1997.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation

[FR Doc. 97–32162 Filed 12–8–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 8, 15, 22, and 29, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 8

Thursday, December 11

2:00 p.m.—Affirmation Session (public meeting)

a. Final Rule—Deliberate Misconduct by Unlicensed Persons

b. Order Denying a Motion to Quash Six Subpoenas Issued by the Office of Investigations (Contact: Bob McOsker, 301–415–1651)

2:05 p.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7)

Friday, December 12

9:00 a.m.—Meeting with Northeast Nuclear on Millstone (Public meeting) (Contact: Bill Travers, 301–415–1200)

Week of December 15—Tentative

Wednesday, December 17

2:00 p.m.—Briefing on Integration and Evaluation of Results from Recent Lessons-Learned Reviews (including 50.09 Process Improvements) (public meeting) (Contact: Eileen McKenna, 301–415–2189)

3:30 p.m.—Affirmation Session (public meeting) (if needed)

Thursday, December 18

10:00 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (public meeting) (Contact: John Larkins, 301–415–7360)

Week of December 22—Tentative

There are no meetings the week of December 22.

Week of December 29—Tentative

There are no meetings the week of December 29.

* The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 4, 1997.

William M. Hill, Jr.,

SECY, Tracking Officer, Office of the Secretary.

[FR Doc. 97–32274 Filed 12–5–97; 10:27 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–267]

Ft. St. Vrain Nuclear Generating Station; Closing of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) is closing the local public document room (LPDR) for records pertaining to the Ft. St. Vrain Nuclear Generating Station located at the Weld Library District, Lincoln Park Branch, Greeley, Colorado, effective December 21, 1997.

This Library has served as the LPDR for the Ft. St. Vrain Nuclear Generating Station for 17 years. The decision to officially close the LPDR was made since the NRC has terminated the Ft. St. Vrain operating license and released the decommissioned site for unrestricted use. Therefore, effective December 21, 1997, the LPDR will be closed.

Persons now interested in information pertaining to this facility or any other NRC activity may contact the NRC Public Document Room by calling toll-free 1–800–397–4209 or writing to NRC Public Document Room, Washington, D.C. 20555–0001.

Dated at Rockville, Maryland, this 4th day of December 1997.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Information Management Division, Office of the Chief Information Officer.

[FR Doc. 97–32161 Filed 12–8–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26788]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 3, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 28, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Conectiv, et al.

[70–9095]

Conectiv, Inc. ("Conectiv"), not currently subject to the Act,[1] Delmarva Power & Light Company ("Delmarva"), a public utility company, and its subsidiaries, Delmarva Industries, Inc., Delmarva Energy Co., and Support Conectiv, Inc. ("Support Conectiv"), all located at 800 King Street, Wilmington, Delaware 19899–0231; Delmarva Services Company, Conectiv Services, Inc., Conectiv Communications, Inc., Delmarva Capital Investments, Inc., DCI I, Inc., DCI II, Inc., Delmarva Capital Technology Co., DCTC-Burney, Inc., Pine Grove, Inc., Pine Grove Landfill, Inc., Pine Grove Hauling Company, Delmarva Capital Realty Company, Christiana Capital Management, Inc. Post and Rail Farms, Inc., Delmarva Operating Services Company, DelStar Operating Company, DelWest Operating Company, DelCal Operating Company, Conectiv Solutions, Inc., Conectiv Enterprises, Inc., and Conectiv Energy, Inc., all located at 252 Chapman Road, P.O. Box 6066, Newark, Delaware 19714; Atlantic City Electric Company ("Atlantic Electric"), a public utility holding company currently claiming an exemption from regulation under section 3(a)(1) of the Act from all provisions except section 9(a)(2), and its subsidiaries, Deepwater Operating Company, Atlantic Energy Enterprises, Inc., and Atlantic Energy International, Inc., all located at 6801 Black Horse Pike, Egg Harbor Township, New Jersey 08234; ATE Investment, Inc., Atlantic Generation, Inc., Pedrick Limited, Inc., Pedrick General, Inc., Vineland Limited, Inc., Vineland General, Inc., Atlantic Southern Properties, Inc., Atlantic Thermal Systems, Inc., Atlantic Jersey Thermal Systems, Inc., ATS Operating Systems, Inc., CoastalComm, Inc., Atlantic Energy Technology, Inc., Binghamton General, Inc., Binghamton Limited, Inc., The Earth Exchange, Inc., and Atlantic Paxton Cogeneration, Inc., all located at 5100 Harding Highway, Mays Landing, New Jersey 08330 (collectively, "Applicants" or "Conectiv System"), have filed an application-delcaration under sections 6, 7, 9, 10, 12 and 13 under the Act and rules 43, 45, 46, and 54 under the Act.

Conectiv has previously filed an application-declaration with the Commission under section 9(a)(2) of the Act seeking approvals relating to the proposed acquisition by Conectiv of securities of Delmarva, and merger into Conectiv of Atlantic Energy, Inc. ("Atlantic"), parent of Atlantic Electric, (collectively, these transactions are referred to as the "Merger"), and for other related transactions including the formation of Support Conectiv as a subsidiary service company in accordance with the provisions of rule 88 under the Act. A notice of the Merger U–1 was issued on October 3, 1997 (HCAR No. 26763). Each of the entities that will be directly and indirectly owned subsidiaries of Conectiv upon consummation of the transactions described in the Merger U–1 is referred to individually as a "Subsidiary" and collectively as "Subsidiaries".[2] Following the consummation of the Merger, Conectiv will have two utility subsidiaries, Delmarva and Atlantic Electric (the "Utility Subsidiaries"). All of Conectiv's direct and indirect Subsidiaries, other than the Utility

[1] Conectiv will register as a holding company under the Act upon consummation of the transactions contemplated in File No. 9069 ("Merger U–1").

[2] Applicants state that for purposes of sections in the application-declaration related to non-utility financing, guarantees, changes in capital stock of wholly-owned subsidiaries, and dividends out of capital or unearned surplus by non-utility subsidiaries, the terms "Subsidiary" and "Subsidiaries" shall also include other direct or indirect subsidiaries that Conectiv may form after the Merger with either the approval of the Commission, under the Rule 58 exemption or under Section 34 of the Act. Thus, future Rule 58 and exempt telecommunication companies ("ETCs") are included in the term "Subsidiaries" for purposes of these sections.

Applicants also state that for purposes of sections in the Form U–1 related to the Money Pool, the terms "Subsidiary" and "Subsidiaries" will only include those companies specifically named on the cover and signature pages of the application-declaration and specifically exclude Conectiv Communications, Inc. and CoastalComm., Inc. both wholly-owned ETCs. Applicants further request the Commission to reserve jurisdiction over the participation in the Conectiv System Money Pool of future companies formed by Conectiv.

Subsidiaries shall be referred to as "Non-Utility Subsidiaries."

Applicants propose to enter into numerous types of financing transactions to meet Conectiv's capital requirements immediately following the Merger and to plan future financing. Applicants request authorization to engage in the financing transactions through December 31, 2000 ("Authorization Period") described below.

Financings by each Applicant will be subject to the following limitations: (i) the effective cost of money on long-term debt securities will not exceed 300 basis points over comparable term U.S. Treasury securities and the effective cost of money on short-term securities will not exceed 300 basis points over the comparable term London Interbank Offered Rate; (ii) maturity of indebtedness will not exceed 50 years; (iii) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale or distribution of a security will not exceed 5% of the principal amount of the financing; and (iv) Conectiv represents that at all times during the Authorization Period its common equity will be at least 30% of its consolidated capitalization.

The proceeds from the sale of securities in external financing transactions will be used for general and corporate purposes including: (i) the financing of capital expenditures of the Conectiv System; (ii) the financing of working capital requirements of the Conectiv System; (iii) the acquisition, retirement, or redemption of existing securities; and (iv) direct or indirect investment in companies authorized under the Merger U–1 and in other rule 58 companies and ETCs.

1. Conectiv External Financing

a. *Common Stock.* Conectiv requests authorization to issue common stock, par value $0.01 per share, up to an aggregate amount of $500 million. Of this amount, Conectiv proposes that $100 million be issued as consideration for the acquisition by Conectiv or a Non-Utility Subsidiary of securities of a business (the acquisition of which is exempt under rule 58 or section 34 of the Act, or which has been authorized in the Merger U–1). Conectiv requests authorization to issue up to 10 million shares of Conectiv common stock (or options to purchase such shares) pursuant to benefit plans and the dividend reinvestment plan. The number of shares to be issued under the benefit plans will not exceed 5 million.

b. *Long-term Debt.* Conectiv requests authorization to issue long-term debt securities in an amount, when combined with the issuances of common stock (other than for benefit plans or the Conectiv Dividend Reinvestment Plan), not to exceed $500 million. The long-term debt securities would include notes, debentures and medium-term notes issued under an indenture ("Conectiv Indenture") and/or borrowings from banks and other financial institutions.[3] Specific terms of any borrowings will be determined by Conectiv at the time of issuance and will comply with the parameters of financing authorization stated earlier.

c. *Short-term Debt.* Conectiv requests authorization to have outstanding at any one time, up to $500 million of short-term debt consisting of borrowings under a revolving credit facility with a group of banks, the issuance of commercial paper[4] and the sale of bid notes under bid-note agreements ("Bid-Note Agreements").[5] The short-term debt will be used to refund pre-Merger short-term debt, to provide for the reissuance of pre-Merger letters of credit and to provide financing for general corporate purposes, working capital requirements and Subsidiary capital expenditures until long-term financing can be obtained.

d. *Hedging Transactions.* Conectiv requests authorization to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Conectiv would employ interest rate swaps as a means of prudently managing the risk associated with any of its outstanding debt issued under this authorization by (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, (iii) limiting the impact of changes in interest rates resulting from variable rate debt and (iv) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities.

2. Subsidiary Financing

Applicants request authorization for Delmarva to issue up to $275 million of short-term debt consisting of commercial paper, unsecured bank loans and borrowings under the Conectiv system money pool. These issuances of securities will comply with the parameters for financing described above. Any short-term borrowings by Delmarva, when combined with short-term borrowings by Conectiv, will not exceed $500 million at any time during the Authorization Period. In addition the Applicants request authorization for the Utility Subsidiaries to enter into hedging transactions of the same type and under the same conditions as those identified above for Conectiv.

3. Other Securities

The Applicants request authorization to issue other types of securities within the parameters of this Application-Declaration during the Authorization Period. The Applications request that the Commission reserve jurisdiction over the issuance of additional types of securities.

[3] Applicants state that the Conectiv Indenture will permit the issuance of a wide variety of unsecured debt securities in one or more series. The Conectiv Indenture will contain numerous variable terms, such as principal amount, interest rate, redemption terms, denominations, events of default, etc. The Conectiv Indenture contains no negative covenants or restrictions.

Borrowings from banks and other financial institutions will be unsecured debt and will rank *pari passu* with debt securities issued under the Conectiv Indenture and the Conectiv short-term Credit Facility (described in footnote 4 below).

[4] Conectiv anticipates entering into a revolving credit facility (the "Credit Facility") with a group of banks on or before the effective date of the Merger in order to repay existing obligations of certain Subsidiaries. A portion of the Credit Facility may be used to support letters of credit issued by Conectiv or the Subsidiaries in the ordinary course of business. Also, if a Utility Subsidiary issues commercial paper, it may be made a party to the Credit Facility as a backup for the commercial paper.

The interest rates on the Credit Facility are expected to be based on a triple option pricing formula as follows: (1) prime rate, (2) LIBOR plus a margin, or (3) CD plus a margin. Maturities on loans under the LIBOR rate option are expected to be for 1, 2, 3 or 6 months. Maturities on loans under the CD rate option are expected to be for 30, 60, 90 or 180 days. All of these loans will be evidenced by promissory notes. It is expected that the Credit Facility will contain negative covenants consistent with those covenants required by bank lenders for comparable bank facilities. The Credit Facility will be unsecured debt of Conectiv and will rank *pari passu* with debt issued under the Conectiv Indenture and any long-term securities issued directly to banks or other financial institutions.

It is anticipated that the sale of commercial paper will be in established domestic or European commercial paper markets. It will be sold to dealers at the discount rate or coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. The credit Facility will serve as backup for Conectiv's commercial paper program.

[5] Conectiv request authorization to enter into individual Bid-Note Agreements with one or more commercial banks which may or may not be lenders under the Credit Facility. The Bid-Note Agreements would permit Conectiv to negotiate with one or more banks to purchase promissory notes ("Bid Notes") directly from Conectiv. The Bid Notes would bear interest rates comparable to or lower than, those available through other forms of short-term borrowing with similar terms requested in the application-declaration. The maturity of any Bid Note would not exceed 270 days.

4. Guarantees

Conectiv requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of Subsidiaries in an aggregate amount not to exceed $350 million. In addition, the Non-Utility Subsidiaries request authority to enter into arrangements with each other similar to those described with respect to Conectiv in an aggregate amount not to exceed $100 million. Applicants state that the debt guaranteed will comply with the parameters for financing.

5. Conectiv System Money Pool

Conectiv and the Subsidiaries request authorization to establish a Conectiv system money pool ("System Money Pool"). Conectiv may invest, but not borrow from the System Money Pool. Also, Delmarva and Atlantic Electric would be authorized to borrow up to $275 million and $250 million, respectively, from the System Money Pool.[6] No other participant in the System Money Pool would be permitted to have borrowings from the System Money Pool exceeding $25 million at any one time outstanding during the Authorization Period. Support Conectiv will administer the System Money Pool on an "at cost" basis. Support Conectiv will act strictly in an agency capacity, and not as principal, with regard to funds deposited in the System Money Pool by other participants.

6. Changes in Capital Stock of Wholly-Owned Subsidiaries and Dividends Out of Capital or Unearned Surplus by Non-Utility Subsidiaries

Applicants request authority to change the terms of any wholly-owned Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by Conectiv or other immediate parent company. A Subsidiary would be able to change the par value, or change between par and no-par stock, without additional Commission approval. Any action by a Utility Subsidiary would be subject to and would only be taken upon receipt of necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

In addition, Conectiv requests the flexibility to withdraw capital from a Non-Utility Subsidiary with excess funds through a dividend out of capital surplus to the full extent permitted by the law of the state where the Non-Utility Subsidiary is incorporated.

7. Financing Entities

The Subsidiaries seek authorization to organize new corporations, trusts, partnerships or other entities created for the purpose of facilitating financings. These entities will issue to third parties income preferred securities or other securities authorized or issued under an exemption. In addition, authority is requested for (i) the issuance of debentures or other evidences of indebtedness by any of the Subsidiaries to a financing entity in return for the proceeds of the financing, (ii) the acquisition by any of the Subsidiaries of voting interests or equity securities issued by the financing entity to establish any such Subsidiary's ownership of the financing entity and (iii) the guarantees by the Applicants of such financing entity's obligations.

Applicants also request that (i) Delmarva be authorized to retain Delmarva Power Financing I, a wholly-owned trust, that has issued trust preferred securities and loaned the proceeds to Delmarva and (ii) Atlantic Electric be authorized to retain Atlantic Capital I, a wholly-owned trust, that has issued trust preferred securities and loaned the proceeds to Atlantic Electric.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32170 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

[6] As noted in footnote 2 above, the only Subsidiaries to be included in the System Money Pool are those companies specifically named on the cover and signature pages of the application-declaration, but specifically excluding Conectiv Communications, Inc. and CoastalComm. Inc., both wholly-owned ETCs.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22923; 812–10460]

Seligman Capital Fund, Inc., et al.; Notice of Application

December 3, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under (i) section 6(c) of the Investment Company Act of 1940 (the "Act") granting an exemption from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g) and 23(a) of the Act and rule 2a–7 under the Act; (ii) sections 6(c) and 17(b) granting an exemption from section 17(a) of the Act; and (iii) section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered investment companies to enter into deferred compensation arrangements with certain of their directors. The order would supersede an existing order (the "Existing Order").[1]

APPLICANTS: Seligman Capital Fund, Inc., Seligman Cash Management Fund, Inc., Seligman Common Stock Fund, Inc., Seligman Communications and Information Fund, Inc., Seligman Frontier Fund, Inc., Seligman Growth Fund, Inc., Seligman Henderson Global Fund Series, Inc., Seligman High Income Fund Series, Seligman Income Fund, Inc., Seligman Municipal Fund Series, Inc., Seligman Municipal Series Trust, Seligman New Jersey Municipal Fund, Inc., Seligman Pennsylvania Municipal Fund Series, Seligman Portfolios, Inc., Seligman Quality Municipal Fund, Inc., Seligman Select Municipal Fund, Inc., Seligman Value Fund Series, Inc., and Tri-Continental Corporation (collectively, the "Funds"), J. & W. Seligman & Co., Incorporated ("Seligman"), and any registered open-end or closed-end investment companies for which Seligman or any entity controlling, controlled by, or under common control with Seligman serves as investment adviser.[2]

FILING DATES: The application was filed on December 12, 1996, and amended on May 15, 1997, and on October 27, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on December 29, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC, 20549. Applicants, c/o J. & W. Seligman & Co., Incorporated, 100 Park Avenue, New York, New York 10017, attn: Frank J. Nasta.

FOR FURTHER INFORMATION CONTACT:

[1] *Liberty Cash Management Fund, Inc.*, Investment Company Act Release Nos. 13196 (Apr. 27, 1983) (notice) and 13271 (May 25, 1983) (order).

[2] Any existing Funds that currently intend to rely on the order have been named as applicants, and any other existing or future registered investment companies that subsequently rely on the order will comply with its terms and conditions.

Lisa McCrea, Attorney Adviser (202) 942–0562 (Office of Investment Company Regulation, Division of Investment Management), or Mercer E. Bullard, Special Counsel (202) 942–0659 (Office of Chief Counsel, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act, except for Seligman Quality Municipal Fund, Inc., Seligman Select Municipal Fund, Inc. and Tri-Continental Corporation, which are closed-end management investment companies registered under the Act. Certain Funds are money market funds that are subject to rule 2a–7 under the Act. Seligman or an affiliate of Seligman serves as the investment adviser to each of the Funds.

2. Each Fund pays annual fees and meeting attendance fees to directors who are not employees of Seligman or its affiliates ("Unaffiliated Directors"). The Existing Order permits the Funds to adopt deferred compensation plans ("Plans") for their Unaffiliated Directors. Under the Plans, Unaffiliated Directors' fees are credited to an account on the Fund's books ("Deferred Fee Account") when the fees otherwise would have been payable. Amounts in each Deferred Fee Account bear interest at a rate equivalent to the 90-day U.S. Treasury Bill rate. Applicants request an order that would supersede the Existing Order to permit a modified deferred compensation plan ("Modified Plan").

3. Under the Modified Plan, applicants propose an alternative rate of return for the Deferred Fee Accounts. The Unaffiliated Directors would choose a rate of return equal to either (i) the 90-day U.S. Treasury Bill rate, or (ii) the rate of return on the shares of any of the Funds ("Underlying Securities") designated by the Director ("Investment Fund Rate").

4. If an Unaffiliated Director chooses an Investment Fund Rate, the value of the Deferred Fee Account (or a specified portion thereof) will be periodically adjusted as if the deferred fees had been invested in the Underlying Securities. The Deferred Fee Account will be credited or charged with book adjustments representing all dividends, distributions and other earnings and all realized gains and losses and unrealized appreciation or depreciation to the same extent as if the amounts credited to an account had actually been invested in Underlying Securities.

5. The Modified Plan provides that the participating Fund will be under no obligation to the Unaffiliated Director to purchase, hold or dispose of any investments. If the Fund chooses to purchase investments to cover all or a portion of its obligations under the Modified Plan, the investments will continue to be a part of the general assets and property of the Fund.

6. A Fund (other than a money market fund) may elect to cover its obligations under a Modified Plan with its general investment assets, or by purchasing Underlying Securities. Any Fund that is a money market fund will purchase and hold Underlying Securities in an amount equal to the value of the Deferred Fee Accounts. If the Underlying Securities are not purchased, the amounts credited to the Deferred Fee Accounts will be invested as part of the Fund's general investment operations, in which case there will not be an exact match between the Fund's liability for deferred fees and the value of the Deferred Fee Account. Any mismatch will be *de minimis* in relation to the net assets of the Fund.

7. If an Unaffiliated Director dies before receiving all amounts in the Deferred Fee Account, the amounts will be paid in a lump sum to any beneficiaries designated by the Director or, in the absence of a designation, to the Director's estate. No deferred amount may be transferred or assigned by an Unaffiliated Director except by will or the laws of descent and distribution.

8. The Modified Plan will not obligate a Fund to retain an Unaffiliated Director or to pay any (or any particular level of) Director's fees to any Director. Rather, it will permit an Unaffiliated Director to elect deferral of Director's fees that she or he otherwise would receive on a current basis from each Fund. The proposed arrangement will not affect the voting rights of the shareholders of any of the Funds.

Applicants' Legal Analysis

1. Applicants request an order that would supersede a prior order under (i) section 6(c) of the Act granting an exemption from Sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) of the Act and rule 2a–7 under the Act; (ii) sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act; and (iii) section 17(d) of the Act and rule 17d–1 under the Act to permit applicants to enter into deferred compensation arrangements with their Unaffiliated Directors.

2. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if an to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that, for the reasons discussed below, the requested relief satisfies this standard.

3. Sections 18(a) and 18(f)(1) of the Act generally prohibit registered closed-end and open-end investment companies, respectively, from issuing senior securities. Section 18(c) generally provides that registered closed-end investment companies may not have outstanding more than one class of senior security representing indebtedness. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Modified Plan does not possess the characteristics that led to concerns underlying these provisions. The Modified Plan will not induce speculative investments by any Fund or provide opportunity for manipulative allocation of a Fund's expenses and profits. Applicants expect the liabilities for deferred fees to be *de minimis* in relation to a Fund's net assets and that the Modified Plan will not affect control of any Fund.

4. Section 22(f) generally prohibits restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies unless the restriction is disclosed in the registration statement and does not contravene SEC rules and regulations. Applicants submit that the Modified Plan will clearly set forth any restriction on transferability and will not adversely affect the interests of the Unaffiliated Directors, a Fund or its shareholders.

5. Sections 22(g) and 23(a) generally prohibit registered open-end and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. Applicants believe that each Fund's obligation to make payments under the Modified Plan would not be issued for services, but in return for the Fund not being required to pay those fees on a current basis.

6. Section 13(a)(3) prohibits a registered investment company from deviating without shareholder vote from any investment policy that is changeable only if authorized by shareholder vote. The relief requested from section 13(a)(3) would extend only to the Funds with a fundamental investment restriction that prohibits investments in the securities of investment companies ("Restricted Funds"). Applicants state that each Restricted Fund has a fundamental investment restriction prohibiting it from investing in securities of other investment companies, except in connection with a merger, consolidation, acquisition or reorganization, or except as permitted by the Act. Applicants believe that purchases by the Restricted Funds of shares of any other Fund under the Modified Plan will not violate the Fund's policies because the purchases serve solely to offset the Fund's liabilities under the deferred fee arrangements, and, thus, have no impact on a Fund's investment results from the perspective of the shareholders. The value of the Underlying Securities will be *de minimis* in relation to the total assets of each Restricted Fund. Each Fund will disclose in its Statement of Additional Information the existence of the deferred fee arrangements. Each Restricted Fund also will disclose that, for the limited purpose of the deferred fee arrangements, it may invest in Underlying Securities.

7. Rule 2a–7 imposes certain restrictions on the investments of money market funds that use the amortized cost method or the penny-rounding method of computing their per share price. These restrictions would prohibit each Fund that is a money market fund from investing in the shares of any other Fund. Applicants submit that the requested exemption will permit the Funds to achieve an exact matching of Underlying Securities with the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements will not affect the Fund's net asset value. Applicants assert that the amounts involved in all cases will be *de minimis* in relation to the total net assets of each Fund and will have no effect on the per share net asset value of the Funds.

8. Section 17(a) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3)(C) defines the term *affiliated person* of another person to include any person controlling, controlled by, or under common control with such other person. Because the Funds share the same investment adviser, directors, and many officers, applicants believe that each Fund might be deemed to be under common control with all other Funds.

9. Applicants assert that section 17(a) is designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they are associated or to acquire controlling interests in these kinds of enterprises and other types of "overreaching." Applicants believe that the purchase and sale of securities issued by the Funds under the Modified Plan will not implicate the concerns underlying section 17(a), but merely will facilitate the matching of liabilities for deferred Unaffiliated Directors' fees with the Underlying Securities that would determine the amount of a Fund's liability.

10. The SEC may exempt a proposed transaction from section 17(a) when: the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person involved, and the transaction is consistent with the policies of the investment company and with the general purposes of the Act. Applicants assert that the terms of the deferred fee arrangements are fair and reasonable and show an absence of overreaching because the purchases and sales of Underlying Securities will be made at net asset value and market prices, which are the same prices at which the Unaffiliated Directors may purchase shares of the Funds outside of the Modified Plan. Applicants believe that the relief requested satisfies the standards of sections 6(c) and 17(b).

11. Section 17(d) and rule 17d-1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the SEC. Rule 17d-1 provides that the SEC will consider whether the participation of an investment company is consistent with the provisions, policies and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants believe the Modified Plan may be construed to be a joint arrangement under section 17(d) and rule 17d-1. Applicants assert that deferral of Unaffiliated Directors' fees would have a negligible effect on each Fund's assets, liabilities, net assets and net income per share. Applicants believe that deferral of an Unaffiliated Director's fees essentially would maintain the parties, viewed both separately and in their relationship to one another, in the same position as if these fees were paid on a current basis.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the condition that, with respect to the requested relief from rule 2a-7 under the Act, any Fund that is a money market fund that values its assets by the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between the Fund's liability to pay deferred fees and the assets that offset that liability.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32169 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39087; File No. SR–DTC–97–13]

Self-Regulatory Organizations; the Depository Trust Company; Order Approving a Proposed Rule Change Regarding the Branch Deposit Service

December 2, 1997.

On June 30, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–97–13) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the Federal Register on September 19, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC currently operates a branch deposit service ("BDS") through which DTC participants may route securities certificates and related documentation from their branches and other satellite offices directly to DTC rather than routing them through the participants' own central locations for processing before they are deposited at DTC.[3] The rule change permits DTC to enter into contracts with individual participants to provide customized processing services

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39075 (September 12, 1997), 62 FR 49270.

[3] For a complete description of BDS, refer to Securities Exchange Act Release No. 34000 (August 25, 1994), 59 FR 45317 [File No. SR–DTC–94–05] (order approving proposed rule change).

under BDS. Under the proposed rule change, DTC will not be obligated to enter into any such contracts with participants or to offer the same terms under any such contracts to all participants. DTC has advised the Commission that it will base all fees charged for customization of BDS based on a consistently applied methodology.

II. Discussion

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should increase the use of BDS by DTC's participants. This increase in use should improve efficiency in the processing of securities certificates by eliminating most of the certificate processing responsibilities of those participants electing to use BDS and by reducing the movement of physical securities certificates. This reduction in the processing and movement of physical securities certificates also should improve efficiency by reducing the instances of erroneous processing and loss that sometimes occur with physical certificates.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32172 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39386; File No. SR–OCC–97–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding the Stock Loan/Hedge System

December 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 11, 1997, The Options Clearing Corp. ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's by-laws governing OCC's stock loan/hedge system ("HEDGE system") to eliminate the requirements with respect to the accounts in which stock loan positions must be maintained.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Base for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The HEDGE system is a clearing system for stock loans between OCC clearing members.[3] To date, OCC has approved only a few clearing members as stock lenders under the HEDGE system. OCC believes that the HEDGE system will have positive effects on OCC's risk profile and on the stock loan marketplace generally and would like to open the HEDGE system to a broader group of clearing members. However, OCC has determined that the HEDGE system's requirements with respect to the accounts in which stock loan positions must be maintained seriously limit clearing members' ability to use the HEDGE system.

OCC's by-laws governing the HEDGE system[4] currently treat stock loans as if they were pledges of loaned securities subject to the Commission's hypothecation rules.[5] The hypothecation rules limit the circumstances under which a broker-dealer may pledge securities carried for the account of any customer[6] and specifically prohibit broker-dealers from pledging securities carried for the account of any customer under circumstances that will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such broker or dealer under a lien for a loan made to such broker or dealer.[7] Accordingly, under the HEDGE system's account segregation rules, a clearing member that desires to lend stock must (1) first determine whether the stock is a customer or proprietary security; and (2) if the stock is a customer security, effect the loan through its OCC customers' account (or where permitted through its OCC market-maker's account).

According to OCC, stock loans historically have not been subject to the hypothecation rules and clearing members do not identify the stock in their "loan boxes" as to origin (*i.e.*, as customer or proprietary). OCC also has advised the Commission that ordinary over-the-counter stock loan transactions are not subject to the hypothecation rules. Therefore, according to OCC, clearing members that desire to loan stock through the HEDGE system find it difficult, if not impossible, to comply with the HEDGE system's account segregation requirements. OCC believes that clearing members are unlikely to change their systems just to be able to use the HEDGE system. As a result, OCC does not expect to be able to achieve broad-based participation in the HEDGE system with its current account segregation requirements.

OCC has determined that there is no legal reason for OCC's by-laws to treat stock loans under the HEDGE system as hypothecations. Therefore, OCC has concluded that it may eliminate the HEDGE system's account segregation requirements for stock loans without violating or causing clearing members to violate the Commission's hypothecation rules.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[8] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any material impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–11 and should be submitted by December 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32171 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] For a complete description of the HEDGE system, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 [File No. SR–OCC–92–34] (order approving proposed rule change establishing HEDGE system).

[4] OCC By-Laws, Article XXI, Section 5.

[5] 17 CFR 240.8c–1 and 240.15c2–1.

[6] For purposes of the hypothecation rules, the term "customer" includes registered broker-dealers so long as they are not affiliated in specified ways with the broker-dealer effecting the pledge. 17 CAR 240.8c–1(b)(1), 240.15c2–1(b)(1). References to "customers" and "non-customers" herein are based on the definition in the hypothecation rules.

[7] 17 CAR 240.15c2–1(a)(2). *See also* 17 CFR 240.8c–1(a)(2) (providing the same requirements as Rule 15c2–1(a)(2) except that its scope is limited to exchange members and brokers and dealers that transact business through exchange members.

[8] 15 U.S.C. 78q–1(b)(3)(A).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39382; File No. SR–Phlx–97–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating To Adopting a Definition of "Foreign Broker-Dealer" Into its Options Rules

December 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4, thereunder,[2] notice is hereby given that on November 3, 1997,[3] the Philadelphia Stock Exchange, Inc. ("Phlx") or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b–4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx is proposing to adopt a definition of "foreign broker-dealer," which will treat such broker-dealers like their U.S. broker-dealer counterparts, thus precluding foreign broker-dealers from receiving treatment as customers under the various option rules.

In accordance with the foregoing, the Phlx is proposing to adopt Rule 1000(b)(41) to define the term "foreign broker-dealer" as follows:

The term "foreign broker-dealer" means any person or entity that is registered, authorized or licensed, or required to be, by a foreign governmental agency or foreign regulatory organization to perform the function of a broker or a dealer in securities, or both. The terms "broker" or "dealer" mean the same as set out in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, as amended, provided that a broker or dealer may be a bank.[5] For purposes of Rules 1014, 1015, 1033 and 1080, the term broker-dealer includes foreign broker-dealers, which are not public customers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On November 28, 1997, the Philadelphia Stock Exchange, Inc. amended the filing to clarify its intent that the rule filing be deemed effective upon filing pursuant to Rule 19b–4(e)(6)(iii). *See* letter from J. Keith Kessel, Counsel, Philadelphia Stock Exchange, Inc., to Mignon McLemore, Esquire, Division of Market Regulation, SEC, dated November 24, 1997.

[4] The Exchange has represented that this proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. The Exchange did not provide the required five business day advance notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act. However, the Commission has determined to waive the pre-filing requirement. *See supra* note 3.

[5] Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 provide:

"(4) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank."

"(5) The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

[9] 17 CFR 200.30–3(a)(12).

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx is proposing to amend its option rules by adopting a definition of "foreign broker-dealer" to ensure that foreign broker-dealer orders shall receive the same treatment as U.S. broker-dealer orders for option orders on the Exchange, as opposed to customer treatment. The definition has been designed to provide an objective standard for the enforcement of applicable option rules and to substantially resemble the Pacific Exchange's definition.[6]

By ensuring that foreign broker-dealers receive the same treatment as U.S. broker-dealers, this proposed rule change shall consequently ensure that forging broker-dealers are not afforded a competitive advantage solely because they are registered outside of the U.S.[7] For instance, both foreign and U.S. broker-dealers would not receive customer treatment as specified in Rule 1015[8] regarding Quotation Guarantees, in Rule 1014[9] and the concept of priority/parity contemplated therein regarding Obligations and Restrictions Applicable to Specialists and Registered Options Traders, in Rule 1033(a)[10] regarding Size of Bid/Offer and 10-up Guarantee, and in Rule 1080[11] regarding the Phlx Automated Options Market (AUTOM) and Automatic Executive System (AUTO–X).

In consideration of the globalization of these securities markets, the customer trading and protection rules should be consistently applied so that foreign broker-dealers trading options on the Phlx do not have an unfair competitive advantage over U.S. broker-dealers. Based upon the objective nature of the proposed definition, the Phlx will be able to verify whether a person or entity is registered, authorized or licensed by a foreign governmental agency or a foreign regulatory organization to operate as a broker-dealer. Furthermore, as a member of Intermarket Surveillance Group ("ISG"), the Phlx may obtain information from other ISG members regarding the accounts of persons or entities entering orders for execution on the Phlx, including whether the order is that of a broker-dealer or a customer. The Phlx may also obtain information from foreign exchanges and foreign regulatory authorities with whom the Phlx either has an effective surveillance sharing agreement or from a foreign exchange or regulatory authority that is subject to a memorandum of understanding with the Commission that would require, upon appropriate request, that those entities provide such information to the Exchange.

By restricting foreign broker-dealers from receiving volume guarantees and gaining access to the automatic execution system, the Phlx seeks to ensure that such broker-dealers do not exhaust such procedures or facilities, which were intended for customers. Likewise, allowing Registered Options Traders ("ROTs") to retain priority over or have parity with both foreign and U.S. broker-dealers will enhance ROTs' ability to fulfill their market making responsibilities.

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, as well as, prevent the unfair discrimination among customers, issuers, brokers or dealers. Furthermore, the proposed rule change is designed to be consistent with Section 11A(a)(1)(C)(ii) of the Act in that it will promote fair competition among brokers and dealers and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule chance will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has been filed by the Exchange as a "noncontroversial" rule change pursuant to paragraph (e)(6) of Rule 19b–4.[12] Consequently, the rule change shall become operative 30 days after the date of filing, or such shorter time as the Commission may designate, if the change (1) does not significantly affect the projection of investors of the public interest and (2) does not impose any significant burden on competition, pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and subparagraph (e)(6) of Rule 19b–4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from November 28, 1997, the date on which it was filed,[14] it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[6] *See* Securities Exchange Act Release No. 38420, (March 19, 1997); 62 FR 14486, (March 26, 1997) (order approving SR–PSE–96–46).

[7] A non-broker-dealer customer executing a trade through a foreign broker-dealer shall receive treatment as a customer.

[8] Rule 1015(a)(viii) provides in relevant part that "floor brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible floor broker must advise the crowd of that fact prior to bidding/offering."

[9] Rule 1014(g)(i) provides in relevant part that "for purposes of this rule, an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a member broker-dealer. Orders of controlled accounts must yield priority to customer orders, but not to other controlled account orders.

[10] Rule 1033(a) provides in relevant part that "the Exchange may require that specialists and ROTs be responsible for ensuring that public orders are filled to a minimum depth of ten contracts at the best quoted bid or offer."

[11] Rule 1080(b)(i) provides in relevant part that "for purposes of AUTOM, an agency order is an order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer or any account in which a broker-dealer has any direct or indirect interest." Rule 1080(c) provides in relevant part that "AUTO–X is a feature of AUTOM that automatically executes public customer market orders up to the number of contracts permitted by the Exchange. AUTOM orders not eligible for AUTO–X are executed manually."

[12] 17 CFR 240.19b–4(e)(6).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] The thirty day delayed implementation date is triggered from the most recent amendment to the filing. *See* Securities Exchange Act Release No. 35123 (Dec. 20, 1994); 59 FR 66602 (Dec. 28, 1994).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–50 and should be submitted by December 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–32103 Filed 12–8–97; 8:45 am]
BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

[15] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION:

Title: "SBIC Financial Reports."
Type of Request: Extension of a currently approved collection.
Form No: 468.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 305.
Annual Burden: 5,185.

Title: "Portfolio Financing Report."
Type of Request: Extension of a currently approved collection.
Form No: 1031.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 2,100.
Annual Burden: 420.

Comments: Send all comments regarding these information collections to Cathy Fields, Program Analyst, Office of Investment Division, Small Business Administration, 409 3rd Street, S.W., Suite 6300, Washington, D.C. 20416. Phone No: 202–205–6512.

Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimate, and ways to enhance the quality.

Title: "Application Forms for the 8(A) Program."
Type of Request: Extension of a currently approved collection.
Form No: 1010B-Prop., 1010B-Part., 1010B-Corp.
Description of Respondents: Economically and Socially Disadvantaged Individuals.
Annual Responses: 1.
Annual Burden: 55,000.

Title: "Program Evaluation SBA 7 (A) Loan Program."
Type of Request: Extension of a currently approved collection.
Form No: N/A.
Description of Respondents: 7(A) Loan Applications.
Annual Responses: 1,700.
Annual Burden: 312.

Comments: Send all comments regarding these information collections to Arthur Collins, Assistant Administrator, Office of Program Development, Small Business Administration, 409 3rd Street, S.W., Suite 8000, Washington, D.C. 20416. Phone No: 202–205–6416.

Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimate, and ways to enhance the quality.

Dated: December 3, 1997.

Jacqueline White,
Chief, Administrative Information Branch.

[FR Doc. 97–32202 Filed 12–8–97; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2991]

State of Florida

Osceola County and the contiguous Counties of Brevard, Highlands, Indian River, Lake, Okeechobee, Orange, and Polk in the State of Florida constitute a disaster area as a result of damages caused by a fire which occurred on November 14, 1997 in the Highway 192 Flea Market in the City of Kissimmee. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 26, 1998 and for economic injury until the close of business on August 26, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 7.625%.

Homeowners without credit available elsewhere 3.812%.

Businesses with credit available elsewhere 8.000%.

Businesses and non-profit organizations without credit available elsewhere 4.000%.

Others (including non-profit organizations) with credit available elsewhere 7.125%.

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere 4.000%.

The number assigned to this disaster for physical damage is 299105 and for economic injury the number is 967100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 26, 1997.

Aida Alvarez,
Administrator.

[FR Doc. 97–32200 Filed 12–8–97; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2992]

State of Florida

Orange County and the contiguous Counties of Brevard, Lake, Osceola, Polk, and Seminole in the State of Florida constitute a disaster area as a result of damages caused by a fire which occurred on November 17, 1997 in the East Colonial Flea Market in Orange County. Applications for loans for physical damage may be filed until the close of business on January 26, 1998 and for economic injury until the close of business on August 26, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 7.625%.
Homeowners without credit available elsewhere: 3.812%.
Businesses with credit available elsewhere: 8.000%.
Businesses and non-profit organizations without credit available elsewhere: 4.000%.
Others (including non-profit organizations) with credit available elsewhere: 7.125%.

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 4.000%.

The number assigned to this disaster for physical damage is 299205 and for economic injury the number is 967200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 26, 1997

Aida Alvarez,

Administrator.

[FR Doc. 97–32201 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of license of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of New York, dated October 24, 1997, the United States Small Business Administration hereby revokes the license of 767 Limited Partnership, a New York limited partnership, to function as a small business investment company under the Small Business Investment Company License No. 02/02–0464 issued to 767 Limited Partnership on June 18m 1984 and said license is hereby declared null and void as of October 24, 1997.

United States Small Business Administration

Dated: December 2, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32197 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of New York, dated August 25, 1997, the United States Small Business Administration hereby revokes the license of The Hanover Capital Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–0102 issued to The Hanover Capital Corporation on June 22, 1961, and re-issued on May 11, 1987, and said license is hereby declared null and void as of September 9, 1997.

United States Small Business Administration

Dated: November 25, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32199 Filed 12–08–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Central District of California, entered July 23, 1997, the United States Small Business Administration hereby revokes the license of LaSung Investment and Finance Company, a California corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/09–5251 issued to LaSung Investment and Finance Company on March 7, 1980 and said license is hereby declared null and void as of July 23, 1997.

United States Small Business Administration

Dated: November 25, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32198 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Administration Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of New York, dated August 4, 1997, the United States Small Business Administration hereby revokes the license of Rainbow Bridge Capital Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–5297 issued to Rainbow Bridge Capital Corporation on June 12, 1980 and said license is hereby declared null and void as of December 2, 1997.

United States Small Business Administration

Dated: December 2, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32196 Filed 12–8–97; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Capital Goods (ISAC–2)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Capital Goods (ISAC 2) will hold a meeting on December 10, 1997 from 9:00 a.m. to 1:30 p.m. The meeting will be open to the public from 1:00 p.m. to 1:30 p.m. and closed to the public from 9:00 a.m. to 1:00 p.m.

DATES: The meeting is scheduled for December 10, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 1859, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–0609 or Bill Daley, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 2 will hold a meeting on December 10, 1997 from 9:00 a.m. to 1:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 9:00 a.m. to 1:00 p.m. The meeting will be open to the public and press from 1:00 p.m. to 1:30 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Pete Felix,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 97–32114 Filed 12–8–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–105]

Termination of Section 302 Investigation: Practices of the Government of Turkey Regarding the Imposition of a Discriminatory Tax on Box Office Revenues

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination and monitoring.

SUMMARY: On June 12, 1996, the United States Trade Representative (USTR) initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(b)(1)), with respect to certain acts, policies and practices of the Government of Turkey that may result in the discriminatory treatment of U.S. films in Turkey. Following consultations with the United States under the auspices of the World Trade Organization (WTO), Turkey agreed to equalize any tax imposed on box office receipts from the showing of domestic and imported films. Having reached a satisfactory resolution of the issues under investigation, the USTR has determined to terminate this section 302 investigation and monitor implementation of the agreement under section 306 of the Trade Act.

EFFECTIVE DATE: This investigation was terminated on December 3, 1997.

ADDRESSES: Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Stephen R. Fox, Deputy Director for Intellectual Property (202) 395–6864, or Geralyn Ritter, Assistant General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: On June 12, 1996, the USTR initiated an investigation under section 302(b)(1) of the Trade Act with respect to whether certain laws and regulations of the Government of Turkey affecting the taxation of box office revenues generated from the showing of foreign-origin films that may result in the discriminatory treatment of U.S. films in Turkey are actionable under section 301(a). See 61 FR 30646 of June 17, 1996. The investigation specifically considered whether Turkey's Law on Municipal Revenues (Law No. 2464) which imposes a 25% municipality tax on box office revenues generated from the showing of foreign films, but not the revenue generated from the showing of domestic films is inconsistent with Turkey's obligations under Article III of the General Agreement on Tariffs and Trade 1994 (GATT 1994), administered by the World Trade Organization (WTO). Pursuant to section 303(a) of the Trade Act, the USTR requested consultations with the Government of Turkey under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

Resolution of Dispute

In consultations between the Government of the United States and the Government of Turkey on July 23, 1996 under the WTO DSU procedures, Turkey agreed to equalize, as soon as reasonably possible, any tax imposed in Turkey on box office receipts from the showing of domestic and imported films. Based on these consultations, Turkey and the United States notified the WTO Dispute Settlement Body on July 14, 1997 that they have agreed to terminate consultations on this matter and that the Untied States has formally withdrawn this matter from further attention under the provisions of the DSU. On the basis of the measures Turkey has agreed to undertake in order to provide a satisfactory resolution to the matter under investigation, the USTR has decided to terminate this section 302 investigation. Pursuant to section 306 of the Trade Act, the USTR will monitor Turkey's implementation of its obligations under Article III of the GATT 1994 with respect to taxation of box offices revenues generated by the showing of domestic and imported films.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–32174 Filed 12–8–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement—Outer Connector

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice is to extend the comment period on the Draft EIS for the Outer Connector in the Counties of Spotsylvania and Stafford from November 28, 1997, to December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. J. Bruce Turner, Transportation Planner, Federal Highway Administration, 1504 Santa Rosa Road, Suite 205, Richmond, Virginia 23229, telephone (804) 281–5111.

SUPPLEMENTARY INFORMATION: The FHWA, in conjunction with the Virginia Department of Transportation, has determined that it is in the public interest to extend the comment period for this draft environmental impact statement.

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued on November 26, 1997.

J. Bruce Turner,

Transportation Planner, Richmond, Virginia.

[FR Doc. 97–32102 Filed 12–8–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Community Reinvestment Act Regulations (12 CFR Part 563e).

DATES: Written comments should be received on or before February 9, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0012. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Theresa Stark, Compliance Policy Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7054.

SUPPLEMENTARY INFORMATION:

Title: Community Reinvestment Act Regulations (12 CFR 563e).

OMB Number: 1550–0012.

Form Number: N/A.

Abstract: This information collection is required by the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*). The public and OTS use the information to assess a thrift's community lending record.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1,231.

Estimated Time Per Respondent: 16.1 average hours.

Estimated Total Annual Burden Hours: 1,982 average hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–32095 Filed 12–8–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Minimum Security Devices.

DATES: Written comments should be received on or before February 9, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0062. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Larry Clark, Compliance Policy Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5628.

SUPPLEMENTARY INFORMATION:

Title: Minimum Security Devices.

OMB Number: 1550–0062.

Form Number: N/A.

Abstract: The Bank Protection Act and OTS implementing regulations require savings associations to establish security devices and procedures. Written security program allows OTS to evaluate whether savings associations have adopted policies and procedures to ensure compliance with law and regulations.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1231.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 1,464 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–32096 Filed 12–8–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Application for Issuance of Subordinated Debt Securities.

DATES: Written comments should be received on or before February 9, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0030. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

Copies of the Form with instructions are available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days or from PubliFax, OTS'' Fax-on-Demand system, at (202) 906–5660.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schear, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Application for Issuance of Subordinated Debt Securities.

OMB Number: 1550–0030.

Form Number: OTS Form 1344.

Abstract: The application provides OTS with the information needed to determine if a proposed issuance of securities will benefit the thrift institution or create an unreasonable risk to the Savings Association Fund.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 5.

Estimated Time Per Respondent: 46 average hours.

Estimated Total Annual Burden Hours: 228 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 2, 1997.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–32097 Filed 12–8–97; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 62, No. 236
Tuesday, December 9, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-85-000]

Texas Eastern Transmission Corporation; Notice of Application for Abandonment

Correction

In notice document 97–30686 beginning on page 62767, in the issue of Tuesday, November 25, 1997, the Docket number is corrected to read as set forth above.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 29-2B, Certification of Transport Category Rotorcraft

Correction

In notice document 97–30358 appearing on page 61859 in the issue of Wednesday, November 19, 1997, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

Correction

In notice document 97–31329 beginning on page 63603 in the issue of Monday, December 1, 1997, make the following correction:

On page 63604, in the 3rd column, under the heading "VAOPGCPREC 28-97" and the subheading "*Held*", the 10th line should read "Effective Date: July 24, 1993".

BILLING CODE 1505-01-D

federal register

Tuesday
December 9, 1997

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I
Federal Acquisition Regulations (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter I

Federal Acquisition Circular 97–03; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–03. Each rule follows this document in the order listed below. A companion document, the Small Entity Compliance Guide, follows this FAC and may be located on the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, 202) 501–4755. Please cite FAC 97–03 and specific FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 97–03 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Analyst
I	Part 30 Deviations	97–014	Nelson.
II	Information Technology Management Reform Act of 1996	96–319	Nelson.
III	Final Overhead Settlement	95–017	Klein.
IV	Reorganization of FAR Part 13, Simplified Acquisition Procedures	94–772	Linfield.
V	Reporting Trade Sanction Exemptions	97–021	Linfield.
VI	New Mexico Gross Receipts and Compensating Tax	97–018	Moss.
VII	Compensation of Certain Contractor Personnel	96–325	Nelson.
VIII	Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond.	95–032	Nelson.
IX	Travel Reimbursement (Interim)	97–007	Nelson.
X	Protests to GAO	97–009	O'Neill.
XI	Novation and Related Agreements	95–034	Klein.
XII	Commercial Bills of Lading, Small Package Shipments	97–017	Klein.
XIII	Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance	96–022	Klein.
XIV	Technical Amendments		

Item I—Part 30 Deviations (FAR Case 97–014)

This final rule amends FAR 1.402 to remove the prohibition against authorizing deviations from FAR part 30, Cost Accounting Standards Administration, except for subsections 30.201–3 and 30.201–4, or the Cost Accounting Standards Board rules and regulations.

Item II—Information Technology Management Reform Act of 1996 (FAR Case 96–319)

The interim rule published as Item I of FAC 90–41 is converted to a final rule. This rule implements the Information Technology Management Reform Act of 1996 (Division E of Pub. L. 104–106). The final rule differs from the interim rule in that it makes a clarifying revision to paragraph (c) of the definition of "information technology" at FAR 2.101.

Item III—Final Overhead Settlement (FAR Case 95–017)

This final rule amends FAR parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by (1) extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractor's fiscal year, (2) permitting extensions to the 6-month time period for exceptional circumstances only, and (3) providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

Item IV—Reorganization of FAR Part 13, Simplified Acquisition Procedures (FAR Case 94–772)

This final rule revises FAR part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213–4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be used in lieu of individual clauses prescribed in the FAR.

Item V—Reporting Trade Sanction Exemptions (FAR Case 97–021)

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative of such exemptions within 30 days after contract award.

Item VI—New Mexico Gross Receipts and Compensating Tax (FAR Case 97–018)

This final rule amends FAR 29.401–6 to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation.

Item VII—Compensation of Certain Contractor Personnel (FAR Case 96–325)

The interim rule published as Item XI of FAC 90–45 is converted to a final rule with a minor clarifying amendment at FAR 31.205–6(p)(1). The rule implements Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201). Section 809 places a Governmentwide ceiling of $250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during fiscal year 1997.

Item VIII—Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond (FAR Case 95–032)

This final rule amends the cost principle at FAR 31.205–18, Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs, and deletes FAR subpart 42.10, Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs. The rule removes, for fiscal year 1996 and beyond, the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

Item IX—Travel Reimbursement (FAR Case 97–007)

This interim rule amends FAR 31.205–46 to raise, from $25 to $75, the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This change is consistent with a recent amendment to the Federal Travel Regulation.

Item X—Protests to GAO (FAR Case 97–009)

This final rule amends the protest procedures at FAR 33.101 and 33.104 to conform with revisions made to the General Accounting Office Bid Protest Regulations.

Item XI—Novation and Related Agreements (FAR Case 95–034)

This final rule amends FAR subpart 42.12 to expand and clarify procedures for processing novation agreements, and for determining when use of a novation agreement is appropriate.

Item XII—Commercial Bills of Lading, Small Package Shipments (FAR Case 97–017)

This final rule amends FAR 47.303–17 to raise the threshold for requiring receipted freight bills for small package shipments from $25 to $100, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges from $100 to $250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

Item XIII—Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance (FAR Case 96–022)

This final rule revises Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications, and to conform the language in the form to the current language in FAR part 46.

Item XIV—Technical Amendments

This document makes technical corrections to FAR 1.201–1, 19.811–1, and 42.203. Standard Forms 33, 1435, 1436, and 1437 are reissued to reflect changes to internal references as a result of the rewrite of FAR part 15. Standard Form 279 is reissued to provide accounting for purchases under the commercial test.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–03 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–03 is effective February 9, 1998, except for Items VI, IX, and XIV, which are effective December 9, 1997.

Dated: November 22, 1997.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: November 28, 1997.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: November 18, 1997.

Tom Luedtke,

Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 97–31813 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 97–03; FAR Case 97–014; Item I]

RIN 9000–AH77

Federal Acquisition Regulation; Part 30 Deviations

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the prohibition against authorizing deviations from certain sections pertinent to cost accounting standards administration. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 97–014.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 1.402, Policy, to remove the prohibition against authorizing deviations from FAR Part 30 (except for subsections 30.201–3 and 30.201–4, or the Cost Accounting Standards Board (CASB) rules and regulations). This prohibition was added to the FAR when the CASB rules and regulations were added to FAR part 30. Since only the CASB has authority to waive CAS, the FAR part 30 deviation prohibition at FAR 1.402 was added to preclude the granting of a CAS waiver by other than the CASB. The prohibition was intended to apply to the CASB rules and regulations, not to the administration of CAS. Accordingly, the prohibition with respect to certain portions of FAR part 30 is no longer necessary since the CASB rules and

regulations have been removed from FAR part 30 and promulgated separately by the CASB in 48 CFR Chapter 99.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 96–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 1 is amended as set forth below:

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR part 1 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 1.402 is amended by revising the penultimate sentence to read as follows:

1.402 Policy.

* * * Deviations are not authorized with respect to 30.201–3 and 30.201–4, or the requirements of the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR Appendix)). * * *

[FR Doc. 97–31814 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

[FAC 97–03; FAR Case 96–319; Item II]

RIN 9000–AH75

Federal Acquisition Regulation; Information Technology Management Reform Act of 1996

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with change.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with change, the interim rule published as Item I of Federal Acquisition Circular 90–41 on August 8, 1996. The rule amends the Federal Acquisition Regulation (FAR) to implement the Information Technology Management Reform Act (ITMRA) of 1996, Division E of Pub. L. 104–106. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 96–319.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 61 FR 41467, August 8, 1996. Twelve comments from four respondents were received during the public comment period. All comments were considered in the development of the final rule. In response to public comments on the interim rule, the definition of "information technology" at FAR 2.101 has been clarified.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. The analysis is summarized as follows:

ITMRA requires a simplified, clear, and understandable process in the FAR for acquiring information technology. No issues were raised in response to the Initial Regulatory Flexibility Analysis. The rule applies to all entities, large and small, that propose to perform, or are awarded, Government contracts for information technology. There are no statistics available on the exact number of small businesses that submit bids or proposals for contracts for information technology. However, based on information provided by the Federal Procurement Data System, a total of 29,879 awards were made to small businesses during fiscal year 1996 under information technology product codes with a total dollar value of $4,443,176,000. The rule imposes no new reporting, recordkeeping, or other compliance requirements. There are no practical alternatives that will effectively implement ITMRA. The final rule simplifies and streamlines the process of acquiring information technology, and minimizes the economic burden of such acquisitions, while expanding opportunities for small entities to participate in Federal information technology contracts.

A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR Parts 2, 5, 7, 8, 9, 12, 13, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53, which was published at 61 FR 41467, August 8, 1996, is adopted as a final rule with the following change:

PART 2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for 48 CFR Part 2 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 2.101 is amended in the definition of "Information technology" by revising paragraph (c) to read as follows:

2.101 Definitions.

* * * * *

Information technology * * *

* * * * *

(c) The term *information technology* does not include—

(1) Any equipment that is acquired by a contractor incidental to a contract; or

(2) Any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

* * * * *

[FR Doc. 97–31815 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 42, and 52

[FAC 97–03; FAR Case 95–017; Item III]

RIN 9000–AG87

Federal Acquisition Regulation; Final Overhead Settlement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to improve the process of final settlement of contractor overhead rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–03, FAR case 95–017.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by—

- Extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractors fiscal year;
- Permitting extensions to the 6-month time period for exceptional circumstances only; and
- Providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

A proposed rule was published in the **Federal Register** on July 29, 1996 (61 FR 39518). Fourteen sources submitted comments. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and do not require settlement of contractor indirect cost rates.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 42, and 52

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.703 [Amended]

2. Section 4.703 is amended in paragraph (b)(3) by removing "90-day" each time it appears (twice).

PART 42—CONTRACT ADMINISTRATION

3. Section 42.705–1 is amended by revising paragraph (b)(1) to read as follows:

42.705–1 Contracting officer determination procedure.

* * * * *

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216–7 or 52.216–13, the contractor shall submit to the contracting officer and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 5 of the Defense Contract Audit Agency Pamphlet (DCAAP) No. 7641.90, Information for Contractors. The Model can be obtained by—

(i) Contacting Internet address http://www.dtic.mil/dcaa;

(ii) Sending a telefax request to Headquarters DCAA, ATTN: CMO, Publications Officer, at (703) 767–1061;

(iii) Sending an E-Mail request to *CMO@hql.dcaa.mil; or

(iv) Writing to: Headquarters DCAA, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

* * * * *

4. Section 42.705–2 is amended by revising paragraph (b)(1) to read as follows:

42.705–2 Auditor determination procedures.

* * * * *

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer and auditor a final indirect cost rate proposal in accordance with 42.705–1(b)(1).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.216–7 is amended by revising the date of the clause and paragraph (d)(2) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Feb 1998)

* * * * *

(d) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

* * * * *

6. Section 52.216–13 is amended by revising the date of the clause; in the introductory text of paragraph (c) by removing the word "below" and inserting "of this clause"; and by revising paragraph (c)(2) to read as follows:

52.216–13 Allowable Cost and Payment—Facilities.

* * * * *

Allowable Cost and Payment Facilities (Feb 1998)

* * * * *

(c) * * *

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

* * * * *

7. Section 52.216–15 is amended by revising the date of the clause and paragraph (b) to read as follows:

52.216–15 Predetermined Indirect Cost Rates.

* * * * *

Predetermined Indirect Cost Rates (Feb 1998)

* * * * *

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(2) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

* * * * *

[FR Doc. 97–31816 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53

[FAC 97–03; FAR Case 94–772; Item IV]

RIN 9000–AH24

Federal Acquisition Regulation; Reorganization of FAR Part 13, Simplified Acquisition Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reorganize part 13 for clarity and to make other changes to facilitate the use of electronic commerce in Government contracting. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–03, FAR case 94–772.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises FAR part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213–4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be used in lieu of individual clauses prescribed in the FAR.

This effort was initiated as a result of public comments received during the comment period on FAR case 94–770, published in the **Federal Register** as an interim rule on July 3, 1995 (60 FR 34741). A proposed rule was published in the **Federal Register** on September 13, 1996 (61 FR 48532).

Thirteen public comments were received in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis has been performed. A copy of the analysis may be obtained from the FAR Secretariat. The analysis is summarized as follows:

This rule amends the Federal Acquisition Regulation (FAR) by reorganizing the structure and material of part 13 in a manner that would be clear to those individuals that are newly authorized to make micro-purchases. The Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355) authorized individuals other than contracting officers to make purchases under $2,500 (micro-purchases). Also, the rule takes into account the anticipated impact on the workload of agency procurement personnel of evaluating the many sources that may respond electronically to contract actions that are initiated with widespread electronic public notice. Changes made by the rule will better enable agencies to capture the benefits of using electronic commerce in these situations. There were no public comments received in response to the initial regulatory flexibility analysis. Changes in FAR part 52 may affect a significant number of small entities that participate in Federal agency procurements. The provisions and clauses in this FAR part generally are not required for micro-purchases. It is estimated that 40 percent of the contract actions below $25,000 are micro-purchases. Approximately 50 percent of all contract actions of $100,000 or less are annually awarded to small business concerns. The rule will impose no new reporting, recordkeeping, or other compliance requirements on large or small entities. The changes to part 52 may have more impact on small business concerns than large business concerns because these changes make it more imperative that small business concerns have electronic capability to receive and transmit procurement information. This rule authorizes the incorporation by reference of any provision or clause used by an agency contracting activity, provided that provision or clause was accessible electronically to an offeror or prospective contractor. The changes in part 52 should also result in a reduction in the number of pages that a prospective contractor will have to submit with its offer to the Government. An alternative that was considered was making solicitation provisions and clauses available to prospective contractors at the time they registered with the Central Contractor Registration (CCR). In order to conduct electronic commerce with any agency of the Federal Government, a potential contractor must register with the CCR. However, providing provisions and clauses at the time of registration with the CCR does not appear to be practical, since the prospective contractor would not have any assurance that the provisions and clauses were current at the time it wanted to participate in an agency procurement.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 4, 6, 8, 12, 13, 16, 19, 32, 41, 43, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 4, 6, 8, 12, 13, 6, 19, 32, 41, 43, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.800 [Amended]

2. Section 4.800 is amended to revise the reference in the parenthetical to read "13.106–3(b)".

PART 6—COMPETITION REQUIREMENTS

6.001 [Amended]

3. Section 6.001 is amended in paragraph (a) by revising the references "13.602" and "subpart 13.6" to read "13.501" and "subpart 13.5", respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 [Amended]

4. Section 8.404 is amended in the first sentence of paragraph (b)(4) by revising the parenthetical to read "(see 13.303–2(c)(3))".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

5. Section 12.102 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

12.102 Applicability.

* * * * *

(d) * * *

(2) Using the Standard Form 44 (see 13.306);

(3) Using the imprest fund (see 13.305); or

* * * * *

12.203 [Amended]

6. Section 12.203 is amended in the last sentence of the undesignated paragraph by revising the reference "subpart 13.6" to read "subpart 13.5".

12.206, 12.301, and 12.602 [Amended]

7. In the following sections, remove "13.106–2" and insert "13.106": 12.206, 12.301(c)(2), 12.602(a), and 12.602(b).

8. Part 13 is revised to read as follows:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.000 Scope of part.
13.001 Definitions.
13.002 Purpose.
13.003 Policy.
13.004 Legal effect of quotations.
13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.
13.006 Inapplicable provisions and clauses.

Subpart 13.1—Procedures

13.101 General.
13.102 Source list.
13.103 Use of standing price quotations.
13.104 Promoting competition.
13.105 Synopsis and posting requirements.
13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.
13.106–1 Soliciting competition.
13.106–2 Evaluation of quotations or offers.
13.106–3 Award and documentation.

Subpart 13.2—Actions at or Below the Micro-Purchase Threshold

13.201 General.
13.202 Purchase guidelines.

Subpart 13.3—Simplified Acquisition Methods

13.301 Governmentwide commercial purchase card.
13.302 Purchase orders.
13.302–1 General.
13.302–2 Unpriced purchase orders.
13.302–3 Obtaining contractor acceptance and modifying purchase orders.
13.302–4 Termination or cancellation of purchase orders.
13.302–5 Clauses.
13.303 Blanket purchase agreements (BPAs).
13.303–1 General.
13.303–2 Establishment of BPAs.
13.303–3 Preparation of BPAs.
13.303–4 Clauses.
13.303–5 Purchases under BPAs.
13.303–6 Review procedures.
13.303–7 Completion of BPAs.
13.303–8 Optional clause.
13.304 [Reserved]
13.305 Imprest funds and third party drafts.

13.305–1 General.
13.305–2 Agency responsibilities.
13.305–3 Conditions for use.
13.305–4 Procedures.
13.306 SF 44, Purchase Order—Invoice—Voucher.
13.307 Forms.

Subpart 13.4—Fast Payment Procedure

13.401 General.
13.402 Conditions for use.
13.403 Preparation and execution of orders.
13.404 Contract clause.

Subpart 13.5—Test Program for Certain Commercial Items

13.500 General.
13.501 Special documentation requirements.

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). Subpart 13.5 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding $5,000,000, including options. See part 12 for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602–5 for simplified procedures to be used when acquiring architect-engineer services.

13.001 Definitions.

As used in this part—

Authorized individual means a person who has been granted authority, in accordance with agency procedures, to acquire supplies and services in accordance with this part.

Governmentwide commercial purchase card means a purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

Imprest fund means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

Purchase order means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

Third party draft means an agency bank draft, similar to a check, that is used to acquire and to pay for supplies and services. (See Treasury Financial Management Manual, Section 3040.70.)

13.002 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to—

(a) Reduce administrative costs;

(b) Improve opportunities for small, small disadvantaged, and women-owned small business concerns to obtain a fair proportion of Government contracts;

(c) Promote efficiency and economy in contracting; and

(d) Avoid unnecessary burdens for agencies and contractors.

13.003 Policy.

(a) Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases at or below the micro-purchase threshold). This policy does not apply if an agency can meet its requirement using—

(1) Required sources of supply under part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts);

(2) Existing indefinite delivery/indefinite quantity contracts; or

(3) Other established contracts.

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500 and not exceeding $100,000 is reserved exclusively for small business concerns and shall be set aside (see 19.000 and subpart 19.5). See 19.502–2 for exceptions.

(2) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by part 19. If the solicitation is oral, however, information substantially identical to that in the provision shall be given to potential quoters.

(c) The contracting office shall use simplified acquisition procedures for contract actions exceeding $50,000 after December 31, 1999, only if the office's cognizant agency has certified full FACNET capability in accordance with 4.505–2. This limitation does not apply to acquisitions of commercial items conducted using subpart 13.5.

(d) The contracting officer shall not use simplified acquisition procedures to acquire supplies and services if the anticipated award will exceed the simplified acquisition threshold (or $5,000,000, including options, for acquisitions of commercial items using Subpart 13.5). Do not break down requirements aggregating more than the simplified acquisition threshold (or for commercial items, the threshold in subpart 13.5) or the micro-purchase threshold into several purchases that are less than the applicable threshold merely to—

(1) Permit use of simplified acquisition procedures; or

(2) Avoid any requirement that applies to purchases exceeding the micro-purchase threshold.

(e) An agency that has specific statutory authority to acquire personal services (see 37.104) may use simplified acquisition procedures to acquire those services.

(f) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions.

(g) For contract actions exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold, agencies shall maximize the use of FACNET, when practicable and cost-effective (see 4.506), to acquire supplies and services (including construction, research and development, and architect-engineer). FACNET also may be used for contract actions exceeding the simplified acquisition threshold. Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

(h) Authorized individuals shall make purchases in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. For acquisitions not expected to exceed—

(1) The simplified acquisition threshold for other than commercial items, use any appropriate combination of the procedures in parts 13, 14, 15, 35, or 36, including the use of Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)); or

(2) $5 million for commercial items, use any appropriate combination of the procedures in parts 12, 13, 14, and 15 (see paragraph (d) of this section).

(i) In addition to other considerations, contracting officers shall—

(1) Promote competition to the maximum extent practicable (see 13.104);

(2) Establish deadlines for the submission of responses to solicitations that afford suppliers a reasonable opportunity to respond (see 5.203);

(3) Consider all quotations or offers that are timely received. For evaluation of quotations or offers conducted through FACNET, see 13.106–2(b)(3); and

(4) Use innovative approaches, to the maximum extent practicable, in awarding contracts using simplified acquisition procedures.

13.004 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at 2.101. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.302–4 for procedures on termination or cancellation of purchase orders.)

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) and (b) (Anti-Kickback Act of 1986). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.).

(2) 40 U.S.C. 270a (Miller Act). (Although the Miller Act does not apply to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material (see 28.102) are still required if the contract exceeds $25,000.).

(3) 40 U.S.C. 327—333 (Contract Work Hours and Safety Standards Act—Overtime Compensation).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug-Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act). (Only the requirement for providing the estimate of recovered material utilized in the performance of the contract is inapplicable.)

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).

(8) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).

(b) The Federal Acquisition Regulatory (FAR) Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the acquisition of property or services, on the list set forth in paragraph (a) of this section. The FAR Council may make exceptions when it determines in writing that it is in the best interest of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of paragraph (b) of this section do not apply to laws that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section 4101, Public Law 103–355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator, Office of Federal Procurement Policy (OFPP), to include any applicable provision of law not included on the list set forth in paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator, OFPP, will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within 60 days of receiving the petition.

13.006 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103–355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

(a) 52.203–5, Covenant Against Contingent Fees.

(b) 52.203–6, Restrictions on Subcontractor Sales to the Government.

(c) 52.203–7, Anti-Kickback Procedures.

(d) 52.215–2, Audits and Records—Negotiation.

(e) 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation.

(f) 52.223–6, Drug-Free Workplace, except for individuals.

(g) 52.223–9, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

Subpart 13.1—Procedures

13.101 General.

(a) In making purchases, contracting officers shall—

(1) Comply with the policy in 7.202 relating to economic purchase quantities, when practicable;

(2) Satisfy the procedures described in subpart 19.6 with respect to Certificates of Competency before rejecting a quotation, oral or written, from a small business concern determined to be nonresponsible (see subpart 9.1);

(3) Use United States-owned excess or near-excess foreign currency, if appropriate, in making payments under simplified acquisition procedures (see subpart 25.3); and

(4) Provide for the inspection of supplies or services as prescribed in 46.404.

(b) In making purchases, contracting officers should—

(1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an "all-or-none" or "multiple award" basis provided suppliers are so advised when quotations or offers are requested;

(2) Incorporate provisions and clauses by reference in solicitations and in awards under requests for quotations, provided the requirements in 52.102 are satisfied;

(3) Make maximum effort to obtain trade and prompt payment discounts (see 14.408–3). Prompt payment discounts shall not be considered in the evaluation of quotations; and

(4) Use bulk funding to the maximum extent practicable. Bulk funding is a system whereby the contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

13.102 Source list.

(a) Each contracting office should maintain a source list (or lists, if more

convenient). New supply sources for the list may be obtained from a variety of sources, including the Procurement Automated Source System (PASS) of the Small Business Administration and the Central Contractor Registration (CCR) Data Base (see 4.503). The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

(1) Small business.

(2) Small disadvantaged business.

(3) Women-owned small business.

(b) The status information may be used as the basis to ensure that small business concerns are provided the maximum practicable opportunities to respond to solicitations issued using simplified acquisition procedures.

13.103 Use of standing price quotations.

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations may be used if—

(a) The pricing information is current; and

(b) The Government obtains the benefit of maximum discounts before award.

13.104 Promoting competition.

The contracting officer shall promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase.

(a) The contracting officer shall not—

(1) Solicit quotations based on personal preference; or

(2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.

(b) If using simplified acquisition procedures and not using FACNET, maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to 5.101 and an exception under 5.202 is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

13.105 Synopsis and posting requirements.

(a) The contracting officer shall comply with the public display and synopsis requirements of 5.101 and 5.203 unless—

(1) FACNET is used for an acquisition at or below the simplified acquisition threshold; or

(2) An exception in 5.202 applies.

(b) When acquiring commercial items, the contracting officer may use a combined synopsis/solicitation. In such cases, a separate solicitation is not required. The contracting officer must include enough information to permit suppliers to develop quotations or offers.

13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

13.106–1 Soliciting competition.

(a) *Considerations.* In soliciting competition, the contracting officer shall consider the guidance in 13.104 and the following before requesting quotations or offers:

(1)(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(2) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, *e.g.*, past performance and quality). Contracting officers are encouraged to use best value. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Soliciting from a single source.* (1) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (*e.g.*, urgency, exclusive licensing agreements, or industrial mobilization).

(2) For sole source acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to subpart 13.5, the requirements at 13.501(a) apply.

(c) *Soliciting orally.* (1) The contracting officer shall solicit quotations orally to the maximum extent practicable, if—

(i) The acquisition does not exceed the simplified acquisition threshold;

(ii) FACNET is not available or the contracting office has a written determination that it is not practicable or cost-effective to purchase via FACNET (see 4.506); and

(iii) Notice is not required under 5.101.

(2) However, an oral solicitation may not be practicable for contract actions exceeding $25,000 unless covered by an exception in 5.202.

(d) *Written solicitations.* If obtaining electronic or oral quotations is uneconomical or impracticable, the contracting officer should issue paper solicitations for contract actions likely to exceed $25,000. The contracting officer shall issue a written solicitation for construction requirements exceeding $2,000.

(e) *Use of options.* Options may be included in solicitations, provided the requirements of subpart 17.2 are met and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures.

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including FACNET) if doing so would not interfere with the efficient conduct of the acquisition. For an acquisition conducted through FACNET, an agency must respond to telephonic or facsimile inquiries only if it is unable to receive inquiries through FACNET.

13.106–2 Evaluation of quotations or offers.

(a) *General.* (1) The contracting officer shall evaluate quotations or offers—

(i) In an impartial manner; and

(ii) Inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(2) Quotations or offers shall be evaluated on the basis established in the solicitation.

(3) All quotations or offers shall be considered (see paragraph (b) of this subsection).

(b) *Evaluation procedures.* (1) The contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in part 14 or 15 may be used.

(2) If using price and other factors, ensure that quotations or offers can be evaluated in an efficient and minimally burdensome fashion. Formal evaluation plans and establishing a competitive range, conducting discussions, and scoring quotations or offers are not required. Contracting offices may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance—

(i) Does not require the creation or existence of a formal data base; and

(ii) May be based on information such as the contracting officer's knowledge of and previous experience with the supply or service being acquired, customer surveys, or other reasonable basis.

(3) For acquisitions conducted using FACNET, the contracting officer may—

(i) After preliminary consideration of all quotations or offers, identify from all quotations or offers received one that is suitable to the user, such as the lowest priced brand name product, and quickly screen all lower priced quotations or offers based on readily discernible value indicators, such as past performance, warranty conditions, and maintenance availability; or

(ii) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced of the quotations or offers having the highest past performance rating possible represents the best value when compared to any lower priced quotation or offer.

13.106–3 Award and documentation.

(a) *Basis for award.* Before making award, the contracting officer shall determine that the proposed price is fair and reasonable.

(1) Whenever possible, base price reasonableness on competitive quotations or offers.

(2) If only one response is received, include a statement of price reasonableness in the contract file. The statement may be based on—

(i) Market research;

(ii) Comparison of the proposed price with prices found reasonable on previous purchases;

(iii) Current price lists, catalogs, or advertisements;

(iv) A comparison with similar items in a related industry;

(v) Value analysis;

(vi) The contracting officer's personal knowledge of the item being purchased;

(vii) Comparison to an independent Government estimate; or

(viii) Any other reasonable basis.

(3) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(b) *File documentation and retention.* Keep documentation to a minimum. Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see subpart 4.8). The following illustrate the extent to which quotation or offer information should be recorded:

(1) *Oral solicitations.* The contracting office should establish and maintain records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) *Written solicitations* (see 2.101). For acquisitions not exceeding the simplified acquisition threshold, limit written records of solicitations or offers to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(3) *Special situations.* Include additional statements—

(i) Explaining the absence of competition if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold (does not apply to an acquisition of utility services available from only one source); or

(ii) Supporting the award decision if other than price-related factors were considered in selecting the supplier.

(c) *Notification.* For acquisitions that do not exceed the simplified acquisition threshold and for which automatic notification is not provided through FACNET, notification to unsuccessful suppliers shall be given only if requested or required by 5.301.

(d) *Request for information.* If a supplier requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the contract award decision shall be provided (see 15.503(b)(2)).

Subpart 13.2—Actions at or Below the Micro-Purchase Threshold

13.201 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603–3).

(b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases (see 2.101).

(c) Purchases at or below the micro-purchase threshold may be conducted using any of the methods described in subpart 13.3, provided the purchaser is authorized and trained, pursuant to agency procedures, to use those methods.

(d) Micro-purchases do not require provisions or clauses, except as provided at 32.1103. This paragraph takes precedence over any other FAR requirement to the contrary, but does not prohibit the use of any clause.

(e) The requirements in part 8 apply to purchases at or below the micro-purchase threshold.

13.202 Purchase guidelines.

(a) *Solicitation, evaluation of quotations, and award.* (1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.603–3(b) considers the price to be reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(i) The contracting officer or individual appointed in accordance with 1.603–3(b) suspects or has information to indicate that the price may not be reasonable (*e.g.*, comparison to the previous price paid or personal knowledge of the supply or service); or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available (*e.g.*, a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(b) *Documentation.* If competitive quotations were solicited and award was made to other than the low quoter, documentation to support the purchase may be limited to identification of the solicited concerns and an explanation for the award decision.

Subpart 13.3—Simplified Acquisition Methods

13.301 Governmentwide commercial purchase card.

(a) The Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. The Governmentwide commercial purchase card may be used by contracting officers and other individuals designated in accordance with 1.603–3. The card may

be used only for purchases that are otherwise authorized by law or regulation.

(b) Agencies using the Governmentwide commercial purchase card shall establish procedures for use and control of the card that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4–4500) and that are consistent with the terms and conditions of the GSA Federal Supply Service Contract Guide for Governmentwide Commercial Purchase Card Service. Agency procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. Agency procedures should encourage use of the card in greater dollar amounts by contracting officers to place orders and to pay for purchases against contracts established under part 8 procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor.

(c) The Governmentwide commercial purchase card may be used to—

(1) Make micro-purchases;

(2) Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or

(3) Make payments, when the contractor agrees to accept payment by the card.

13.302 Purchase orders.

13.302–1 General.

(a) Except as provided under the unpriced purchase order method (see 13.302–2), purchase orders generally are issued on a fixed-price basis. See 12.207 for acquisition of commercial items.

(b) Purchase orders shall—

(1) Specify the quantity of supplies or scope of services ordered;

(2) Contain a determinable date by which delivery of the supplies or performance of the services is required;

(3) Provide for inspection as prescribed in part 46. Generally, inspection and acceptance should be at destination. Source inspection should be specified only if required by part 46. When inspection and acceptance will be performed at destination, advance copies of the purchase order or equivalent notice shall be furnished to the consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of supplies;

(4) Specify f.o.b. destination for supplies to be delivered within the United States, except Alaska or Hawaii, unless there are valid reasons to the contrary; and

(5) Include any trade and prompt payment discounts that are offered, consistent with the applicable principles at 14.408–3.

(c) The contracting officer's signature on purchase orders shall be in accordance with 4.101 and the definitions at 2.101. Facsimile and electronic signature may be used in the production of purchase orders by automated methods.

(d) Limit the distribution of copies of purchase orders and related forms to the minimum deemed essential for administration and transmission of contractual information.

(e) In accordance with 31 U.S.C. 3332, electronic funds transfer (EFT) may be required for payments. See 32.1103 for instructions for use of the appropriate clause in purchase orders. When obtaining verbal quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order. Contracting officers shall not accept EFT payment data. The contractor shall provide all such data directly to the payment office.

13.302–2 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

(1) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(2) The purchase is for—

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Material available from only one source and for which cost cannot readily be established; or

(iii) Supplies or services for which prices are known to be competitive, but exact prices are not known (*e.g.*, miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued on paper or electronically. A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow up on each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.106–3(a)), process the invoice for payment.

13.302–3 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written (see 2.101) acceptance of the purchase order by the contractor.

(b) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(c) A contractor's written acceptance of a purchase order modification may be required only if—

(1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

13.302–4 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with—

(1) 12.403(d) and 52.212–4(l) for commercial items; or

(2) Part 49 or 52.213–4 for other than commercial items.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required (*i.e.*, the purchase order shall be considered canceled).

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed in paragraph (a) of this subsection.

13.302–5 Clauses.

(a) Each purchase order (and each purchase order modification (see 13.302–3)) shall incorporate all clauses prescribed for the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213–2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (*i.e.*, any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213–3, Notice to Supplier, in unpriced purchase orders.

(d) The contracting officer may use the clause at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items (see 12.301). The clause—

(1) Is a compilation of the most commonly used clauses that apply to simplified acquisitions; and

(2) May be modified to fit the individual acquisition to add other needed clauses, or those clauses may be added separately. Modifications (*i.e.*, additions, deletions, or substitutions) must not create a void or internal contradiction in the clause. For example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

13.303 Blanket purchase agreements (BPAs).

13.303–1 General.

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established for use by an organization responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such organizations, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt an agency from the responsibility for keeping obligations and expenditures within available funds.

13.303–2 Establishment of BPAs.

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) The use of this procedure would avoid the writing of numerous purchase orders.

(4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

(b) After determining a BPA would be advantageous, contracting officers shall—

(1) Establish the parameters to limit purchases to individual items or commodity groups or classes, or permit the supplier to furnish unlimited supplies or services; and

(2) Consider suppliers whose past performance has shown them to be dependable, who offer quality supplies or services at consistently lower prices, and who have provided numerous purchases at or below the simplified acquisition threshold.

(c) BPAs may be established with—

(1) More than one supplier for supplies or services of the same type to provide maximum practicable competition;

(2) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period; or

(3) Federal Supply Schedule contractors, if not inconsistent with the terms of the applicable schedule contract.

(d) BPAs should be prepared without a purchase requisition and only after contacting suppliers to make the necessary arrangements for—

(1) Securing maximum discounts;

(2) Documenting individual purchase transactions;

(3) Periodic billings; and

(4) Incorporating other necessary details.

13.303–3 Preparation of BPAs.

Prepare BPAs on the forms specified in 13.307. Do not cite accounting and appropriation data (see 13.303–5(e)(4)).

(a) The following terms and conditions are mandatory:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.303–5(b)).

(4) *Individuals authorized to purchase under the BPA.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(5) *Delivery tickets.* A requirement that all shipments under the agreement, except those for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips that shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(6) *Invoices.* One of the following statements shall be included (except that the statement in paragraph (a)(6)(iii) of this subsection should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated, provided that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers,

magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(b) If the fast payment procedure is used, include the requirements stated in 13.403.

13.303–4 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in this part that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise (*e.g.*, see 22.305(a), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.303–5 Purchases under BPAs.

(a) Use a BPA only for purchases that are otherwise authorized by law or regulation.

(b) Individual purchases shall not exceed the simplified acquisition threshold. However, agency regulations may establish a higher threshold consistent with the following:

(1) The simplified acquisition threshold and the $5,000,000 limitation for individual purchases do not apply to BPAs established in accordance with 13.303–2(c)(3).

(2) The limitation for individual purchases for commercial item acquisitions conducted under subpart 13.5 is $5,000,000.

(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.003(b) and subpart 19.5 also apply to each order.

(d) If, for a particular purchase greater than the micro-purchase threshold, there is an insufficient number of BPAs to ensure maximum practicable competition, the contracting officer shall—

(1) Solicit quotations from other sources (see 13.105) and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if—

(i) Recurring requirements for the same or similar supplies or services seem likely;

(ii) Qualified sources are willing to accept BPAs; and

(iii) It is otherwise practical to do so.

(e) Limit documentation of purchases to essential information and forms as follows:

(1) Purchases generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if necessary to ensure that the supplier and the purchaser agree concerning the transaction.

(3) Unless a paper document is issued, record essential elements (*e.g.*, date, supplier, supplies or services, price, delivery date) on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the supplier's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the supplies or services. However, if the purchase is assigned to another activity for administration, the authorized Government representative shall document receipt and acceptance of supplies or services by signing and dating the agency specified form after verification and after notation of any exceptions.

13.303–6 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this subsection are being followed.

13.303–7 Completion of BPAs.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

13.303–8 Optional clause.

The clause at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), may be used in BPAs established under this section.

13.304 [Reserved]

13.305 Imprest funds and third party drafts.

13.305–1 General.

Imprest funds and third party drafts may be used to acquire and to pay for supplies or services. Policies and regulations concerning the establishment of and accounting for imprest funds and third party drafts, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies also shall be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.305–2 Agency responsibilities.

Each agency using imprest funds and third party drafts shall—

(a) Periodically review and determine whether there is a continuing need for each fund or third party draft account established, and that amounts of those funds or accounts are not in excess of actual needs;

(b) Take prompt action to have imprest funds or third party draft accounts adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

(1) Designation of personnel authorized to make purchases using imprest funds or third party drafts; and

(2) Documentation of purchases using imprest funds or third party drafts, including documentation of—

(i) Receipt and acceptance of supplies and services by the Government;

(ii) Receipt of cash or third party draft payments by the suppliers; and

(iii) Cash advances and reimbursements.

13.305–3 Conditions for use.

Imprest funds or third party drafts may be used for purchases when—

(a) The imprest fund transaction does not exceed $500 or such other limits as have been approved by the agency head;

(b) The third party draft transaction does not exceed $2,500, unless authorized at a higher level in accordance with Treasury restrictions;

(c) The use of imprest funds or third party drafts is considered to be advantageous to the Government; and

(d) The use of imprest funds or third party drafts for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.305–1.

13.305–4 Procedures.

(a) Each purchase using imprest funds or third party drafts shall be based upon an authorized purchase requisition, contracting officer verification statement, or other agency approved method of ensuring that adequate funds are available for the purchase.

(b) Normally, purchases should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using imprest funds or third party drafts.

(d) Forms prescribed at 13.307(e) may be used if a written order is considered necessary (*e.g.*, if required by the supplier for discount, tax exemption, or other reasons). If a purchase order is used, endorse it "Payment to be made from Imprest Fund" (or "Payment to be made from Third Party Draft," as appropriate).

(e) The individual authorized to make purchases using imprest funds or third party drafts shall—

(1) Furnish to the imprest fund or third party draft cashier a copy of the document required under paragraph (a) of this subsection annotated to reflect—

(i) That an imprest fund or third party draft purchase has been made;

(ii) The unit prices and extensions; and

(iii) The supplier's name and address; and

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving—

(i) The supplier's name and address;

(ii) List and quantity of items supplied;

(iii) Unit prices and extensions; and

(iv) Cash discount, if any.

13.306 SF 44, Purchase Order—Invoice—Voucher.

The SF 44, Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It also can be used as a receiving report, invoice, and public voucher.

(a) This form may be used if all of the following conditions are satisfied:

(1) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of contingency operations. Agencies may establish higher dollar limitations for specific activities or items;

(2) The supplies or services are immediately available;

(3) One delivery and one payment will be made; and

(4) Its use is determined to be more economical and efficient than use of other simplified acquisition procedures.

(b) General procedural instructions governing the form's use are printed on the form and on the inside front cover of each book of forms.

(c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using this form.

(d) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.307 Forms.

(a) *Commercial items.* For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.

(b) *Other than commercial items.*

(1) Except when quotations are solicited via FACNET, other electronic means, or orally, the SF 1449; SF 18, Request for Quotations; or an agency form/automated format may be used. Each agency request for quotations form/automated format should conform with the SF 18 or SF 1449 to the maximum extent practicable.

(2) Both SF 1449 and OF 347, Order for Supplies or Services, are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices. An agency form/automated format also may be used.

(c) *Forms used for both commercial and other than commercial items.*

(1) OF 336, Continuation Sheet, or an agency form/automated format may be used when additional space is needed.

(2) OF 348, Order for Supplies or Services Schedule—Continuation, or an agency form/automated format may be used for negotiated purchases when additional space is needed. Agencies may print on these forms the clauses considered to be generally suitable for purchases.

(3) SF 30, Amendment of Solicitation/Modification of Contract, or a purchase order form may be used to modify a purchase order, unless an agency form/automated format is prescribed in agency regulations.

(d) SF 44, Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form that may be used as outlined in 13.306.

(e) SF 1165, Receipt for Cash—Subvoucher, or an agency purchase order form may be used for purchases using imprest funds or third party drafts.

Subpart 13.4—Fast Payment Procedure

13.401 General.

(a) The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a certification that the contractor—

(1) Has delivered the supplies to a post office, common carrier, or point of first receipt by the Government; and

(2) Shall replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

(b) The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.402 Conditions for use.

If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

(a) Individual purchasing instruments do not exceed $25,000, except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance.

(c) Title to the supplies passes to the Government—

(1) Upon delivery to a post office or common carrier for mailing or shipment to destination; or

(2) Upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed-price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure—

(1) Documentation of evidence of contractor performance under fast payment purchases;

(2) Timely feedback to the contracting officer in case of contractor deficiencies; and

(3) Identification of suppliers that have a current history of abusing the fast payment procedure (also see subpart 9.1).

13.403 Preparation and execution of orders.

Priced or unpriced contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

(a) A requirement that the supplies be shipped transportation or postage prepaid.

(b) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.302–2(c)).

(c) The following statement on the consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

13.404 Contract clause.

The contracting officer shall insert the clause at 52.213–1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.402 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

Subpart 13.5—Test Program for Certain Commercial Items

13.500 General.

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding $5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

(b) For the period of this test, contracting activities shall employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in subpart 12.3.

(d) The authority to issue solicitations under this subpart shall expire on January 1, 2000. Contracts may be awarded after the expiration of this authority for solicitations issued before the expiration of the authority.

13.501 Special documentation requirements.

(a) *Sole source acquisitions.* (1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in part 6. However, contracting officers shall—

(i) Conduct sole source acquisitions, as defined in 6.003, under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section; and

(ii) Prepare sole source justifications using the format at 6.303–2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996).

(2) Justifications and approvals are required under this subpart only for sole source acquisitions.

(i) For a proposed contract exceeding $100,000, but not exceeding $500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(ii) For a proposed contract exceeding $500,000, the approval shall be by the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304(a)(3) or (a)(4). This authority is not delegable.

(b) *Contract file documentation.* The contract file shall include—

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR subpart 13.5 were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.

PART 16—TYPES OF CONTRACTS

16.701 [Amended]

9. Section 16.701 is amended in the parenthetical by revising "subpart 13.2" to read "13.303".

16.703 [Amended]

10. Section 16.703 is amended in paragraph (c)(1)(vi) by revising the citation "13.303" to read "13.403".

PART 19—SMALL BUSINESS PROGRAMS

19.1006 [Amended]

11. Section 19.1006 is amended in paragraph (c)(1)(i) by removing "13.105 or".

PART 32—CONTRACT FINANCING

32.1103 [Amended]

12. Section 32.1103 is amended in paragraph (a)(1) by revising the reference "13.103(e)" to read "13.003(f)" and in paragraph (b)(2) by revising "13.103(e)" to read "13.301".

PART 41—ACQUISITION OF UTILITY SERVICES

41.202 [Amended]

13. Section 41.202 is amended in paragraph (c)(1) by revising the reference "subpart 13.5" to read "13.302".

PART 43—CONTRACT MODIFICATIONS

43.301 [Amended]

14. Section 43.301 is amended in paragraph (a)(2)(iii) by revising the reference "13.503" to read "13.302–3".

PART 49—TERMINATION OF CONTRACTS

49.002 [Amended]

15. Section 49.002 is amended in paragraph (a) by revising the reference "13.504(b)" to read "13.302–4".

16. Section 49.501 is amended by adding the following text as the second sentence:

49.501 General.

* * * This subpart does not apply to contracts that use the clause at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). * * *

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.101 [Amended]

17. Section 52.101 is amended in paragraph (e)(2)(i) by removing the semicolon after the word "authorized" and replacing it with "(see 52.102);".

18. Section 52.102 is revised to read as follows:

52.102 Incorporating provisions and clauses.

(a) Provisions and clauses should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they—

(1) Are used with one or more alternates or on an optional basis;

(2) Are prescribed on a "substantially as follows" or "substantially the same as" basis, provided they are used verbatim;

(3) Require modification or the insertion by the Government of fill-in material (see 52.104); or

(4) Require completion by the offeror or prospective contractor. This instruction also applies to provisions completed as annual representations and certifications.

(b) Except for provisions and clauses prescribed in 52.107, any provision or clause that can be accessed electronically by the offeror or prospective contractor may be incorporated by reference in solicitations and/or contracts. However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Agency approved provisions and clauses prescribed in agency acquisition regulations, and provisions and clauses not authorized by subpart 52.3 to be incorporated by reference, need not be incorporated in full text, provided the contracting officer includes in the solicitation and contract a statement that—

(1) Identifies all provisions and clauses that require completion by the offeror or prospective contractor;

(2) Specifies that the provisions and clauses must be completed by the offeror or prospective contractor and must be submitted with the quotation or offer; and

(3) Identifies to the offeror or prospective contractor at least one electronic address where the full text may be accessed.

(d) An agency may develop a group listing of provisions and clauses that apply to a specific category of contracts. An agency group listing may be incorporated by reference in solicitations and/or contracts in lieu of citing the provisions and clauses individually, provided the group listing is made available electronically to offerors and prospective contractors.

(e) A provision or clause that is not available electronically to offerors and prospective contractors shall be incorporated in solicitations and/or contracts in full text if it is—

(1) A FAR provision or clause that otherwise is not authorized to be incorporated by reference (see subpart 52.3); or

(2) A provision or clause prescribed for use in an agency acquisition regulation.

(f) Provisions or clauses may not be incorporated by reference by being listed in the—

(1) Provision at 52.252–3, Alterations in Solicitations; or

(2) Clause at 52.252–4, Alterations in Contract.

52.102–1 and 52.102–2 [Removed]

19. Sections 52.102–1 and 52.102–2 are removed.

20. Section 52.213–1 is revised to read as follows:

52.213–1 Fast Payment Procedure.

As prescribed in 13.404, insert the following clause:

Fast Payment Procedure (Feb 1998)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* (1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice "FAST PAY."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall prepare the receiving report on the prescribed form or, alternatively, shall include the following information on the invoice, in addition to that required in paragraph (c)(1) of this clause:

(i) A statement in prominent letters "NO RECEIVING REPORT PREPARED."

(ii) Shipment number.

(iii) Mode of shipment.

(iv) At line item level—

(A) National stock number and/or manufacturer's part number;

(B) Unit of measure;

(C) Ship-To Point;

(D) Mark-For Point, if in the contract; and

(E) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *Fast pay container identificotion.* The Contractor shall mark all outer shipping containers "FAST PAY."

(End of clause)

52.213–2 [Amended]

21. Section 52.213–2 is amended in the introductory text by revising the reference "13.506(b)" to read "13.302–5(b)".

52.213–3 [Amended]

22. Section 52.213–3 is amended in the introductory text by revising the reference "13.506(c)" to read "13.302–5(c)".

23. Section 52.213–4 is added to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in 13.302–5(d), insert the following clause:

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Feb 1998)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222–3, Convict Labor (Aug 1996) (E.O. 11755).

(ii) 52.233–3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(2) Listed below are additional clauses that apply:

(i) 52.225–11, Restrictions on Certain Foreign Purchases (Oct 1996).

(ii) 52.232–1, Payments (Apr 1984).

(iii) 52.232–8, Discounts for Prompt Payment (May 1997).

(iv) 52.232–11, Extras (Apr 1984).

(v) 52.232–25, Prompt Payment (Jun 1997).

(vi) 52.232–33, Mandatory Information for Electronic Funds Transfer Payment (Aug 1996).

(vii) 52.233–1, Disputes (Oct 1995).

(viii) 52.244–6, Subcontracts for Commercial Items and Commercial Components (Oct 1995).

(ix) 52.253–1, Computer Generated Forms (Jan 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222–20, Walsh-Healey Public Contracts Act (DEC 1996) (41 U.S.C. 35–45) (Applies to supply contracts over $10,000 in the United States).

(ii) 52.222–26, Equal Opportunity (APR 1984) (E.O. 11246) (Applies to contracts over $10,000).

(iii) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984) (38 U.S.C. 4212) (Applies to contracts over $10,000).

(iv) 52.222–36, Affirmative Action for Handicapped Workers (APR 1984) (29 U.S.C. 793) (Applies to contracts over $2,500).

(v) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988) (38 U.S.C. 4212) (Applies to contracts over $10,000).

(vi) 52.222–41, Service Contract Act of 1965, As Amended (MAY 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over $2,500).

(vii) 52.223–5, Pollution Prevention and Right-to-Know Information (MAR 1997) (E.O. 12856) (Applies to services performed on Federal facilities).

(viii) 52.225–3, Buy American Act—Supplies (JAN 1994) (41 U.S.C. 10) (Applies to supplies, and to services involving the furnishing of supplies, if the contract was—

(A) Under $25,000; or

(B) Set aside for small business concerns, regardless of dollar value).

(2) Listed below are additional clauses that may apply:

(i) 52.209–6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JULY 1995) (Applies to contracts over $25,000).

(ii) 52.211–17, Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) 52.247–29, F.o.b. Origin (JUN 1988) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247–34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252–2, Clauses Incorporated by Reference (FEB 1998).* This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

_____

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance.* The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

24. Sections 52.252–1 and 52.252–2 are revised to read as follows:

52.252–1 Solicitation Provisions Incorporated by Reference.

As prescribed in 52.107(a), insert the following provision:

Solicitation Provisions Incorporated by Reference (Feb 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

_____

_____

[Insert one or more Internet addresses]

(End of provision)

52.252–2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause:

Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

_____

_____

[Insert one or more Internet addresses]

(End of clause)

PART 53—FORMS

53.213 and 53.243 [Amended]

25. Amend the internal references throughout 53.213 and 53.243 as indicated in the following table:

Location	Remove	Insert
53.213(a)	13.107 both times it appears	13.307(b)
53.213(b)	13.503(b)	13.307(c)(3)
3.213(c)	13.505(b)	13.306
53.213(d)	13.404(e)	13.307(e)
53.213(e)	13.107(c)	13.307(c)(1)
53.213(f)(1)	13.505	13.307
53.213(f)(2)	13.202	13.303–2
53.213(f)(2)	13.204(e)	13.303–5
53.243 undesignated paragraph	13.503(b)	13.302–3

[FR Doc. 97–31817 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97–03; FAR Case 97–021; Item V]

RIN 9000–AH89

Federal Acquisition Regulation; Reporting Trade Sanction Exemptions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the reporting requirements for trade sanction exemptions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–03, FAR case 97–021.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from the trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative (USTR) of such exemptions within 30 days after contract award. FAR Subpart 25.10 implements sanctions imposed by the President (58 FR 31136, May 28, 1993) pursuant to the Trade Agreements Act (19 U.S.C. 2515), as amended by Title VII of Public Law 100–418 (The Buy American Act of 1988). The Buy American Act of 1988 also amended 41 U.S.C. 10b–1 to permit agency heads to waive application of the sanctions for certain contracts after providing notification to Congress.

The Buy American Act of 1988 included a sunset provision (Section 7004) by which amendments to 19 U.S.C. 2515 and 41 U.S.C. 10b–1 expired on April 30, 1996. However, the sanctions imposed by the President remain in effect until the President amends or terminates them. The requirement to notify Congress is no longer in effect. Since the USTR is delegated by the President with administering the sanctions, the requirement to notify the USTR has been retained.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–021), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.1000 is revised to read as follows:

25.1000 Scope of subpart.

This subpart implements sanctions imposed by the President (58 FR 31136, May 28, 1993) pursuant to section 305(g)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)). These sanctions apply to countries that discriminate against U.S. products or services in Government procurement. This subpart does not apply to the Department of Defense. For thresholds that are unique to individual agencies (*e.g.*, Power Marketing Administration of the Department of Energy), see agency regulations.

3. Section 25.1002 is amended by revising paragraph (c)(2) to read as follows:

25.1002 Trade sanctions.

* * * * *

(c) * * *

(2) When a determination is made according to this paragraph (c), the agency shall notify the United States Trade Representative within 30 days after contract award.

* * * * *

[FR Doc. 97–31818 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 29

[FAC 97–03; FAR Case 97–018; Item VI]

RIN 9000–AH79

Federal Acquisition Regulation; New Mexico Gross Receipts and Compensating Tax

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–03, FAR case 97–018.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 29.401–6 by adding the Defense Special Weapons Agency to the list in paragraph (c)(1) as an agency that has entered into an agreement with the State of New Mexico to eliminate double taxation under New Mexico's Gross Receipts and Compensating Tax Act. Because participating Federal agencies may or may not be executive agencies, the term "executive" has been deleted in paragraphs (b) and (c)(1).

B. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which requires the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 29

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 29 is amended as set forth below:

PART 29—TAXES

1. The authority citation for 48 CFR Part 29 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

29.401–6 [Amended]

2. Section 29.401–6 is amended in the introductory text of paragraph (b) and paragraph (c)(1) by removing "executive"; and also in the list following paragraph (c)(1) by adding, in alphabetical order, "United States Defense Special Weapons Agency;".

[FR Doc. 97–31819 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–03; FAR Case 96–325; Item VII]

RIN 9000–AH50

Federal Acquisition Regulation; Compensation of Certain Contractor Personnel

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published as Item XI of Federal Acquisition Circular 90–45 on January 2, 1997. The rule amends the Federal Acquisition Regulation (FAR) to implement Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201) by placing a Governmentwide ceiling on allowable compensation costs for contractor personnel in senior management positions under contracts that are awarded during fiscal year 1997. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 96–325.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** at 62 FR 269, January 2, 1997. The preamble to the interim rule erroneously contained an effective date of January 1, 1997; the rule applies to contracts awarded on or after the date the rule was published (January 2, 1997).

This final rule differs from the interim rule by making an editorial change for clarity. At FAR 31.205–6(p)(1), "that exceed" replaces the phrase "in excess of."

Public comments were received from 11 sources. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR Part 31, which was published at 62 FR 269, January 2, 1997, is adopted as a final rule with the following change:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–6 is amended by revising paragraph (p)(1) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(p) * * * (1) For contracts awarded during fiscal year 1997, costs incurred from October 1, 1996, through September 30, 1997, for compensation of an officer in a senior management position that exceed $250,000 per year are unallowable (Section 809 of Public Law 104–201).

* * * * *

[FR Doc. 97–31820 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 42

[FAC 97–03; FAR Case 95–032; Item VIII]

RIN 9000–AH37

Federal Acquisition Regulation; Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) allowable cost criteria for Independent Research and Development (IR&D)/Bid and Proposal (B&P) costs for fiscal year 1996 and beyond, by removing the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the final rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 95–032.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published on November 14, 1996 (61 FR 58452). The final rule differs from the proposed rule by revising the last sentence at FAR 31.205–18(e) for clarification and by deleting "and B&P" from the heading at 31.205–18(d) to better convey the subject matter of the paragraph.

Public comments were received from four sources. The comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 42

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 31 and 42 are amended as set forth below:

1. The authority citation for 48 CFR Parts 31 and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205–18 is amended in paragraph (a) by removing definitions for "Contractor", "Covered contract", "Covered segment", and "Major contractor"; by revising paragraph (c) and the heading of paragraph (d); and adding paragraph (e)(3) to read as follows:

31.205–18 Independent research and development and bid and proposal costs.

* * * * *

(c) *Allowability.* Except as provided in paragraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

(d) *Deferred IR&D costs.* * * *

* * * * *

(e) * * *

(3) Costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

PART 42—CONTRACT ADMINISTRATION

Subpart 42.10 [Reserved]

3. Subpart 42.10 is removed and reserved.

[FR Doc. 97–31821 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–03; FAR Case 97–007; Item IX]

RIN 9000–AH76

Federal Acquisition Regulation; Travel Reimbursement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to increase from $25 to $75 the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective:* December 9, 1997.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 9, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW., Room 4035, Washington, DC 20405

E-Mail comments submitted over the Internet should be addressed to:

farcase.97–007@gsa.gov

Please cite FAC 97–03, FAR case 97–007, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–03, FAR case 97–007.

SUPPLEMENTARY INFORMATION:

A. Background

On October 28, 1996, GSA published Federal Travel Regulation (FTR) Amendment 50, in the **Federal Register** (61 FR 55577), to streamline the process of travel reimbursement claims. One of the FTR changes was to raise, from $25.00 to $75.00, the maximum travel expense amount which may be claimed without the requirement for a supporting receipt.

In concert with the FTR change, this rule amends the cost principle at FAR 31.205–46 to increase, from $25.00 to $75.00, the threshold at which contractor personnel must provide a receipt to support travel expenditures.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–03, FAR case 97–007), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the interim rule contains information collection requirements. The collection of this information is currently cleared under Office of Management and Budget number 9000–0088. The increase in the receipt threshold is expected to reduce the existing burden hours. Copies of the form and supporting documents reducing the burden hours may be obtained from the FAR Secretariat. Estimated number of respondents: 5,800; responses per respondent: 10; total burden hours: 14,500; frequency of report: on occasion.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to make the cost principle consistent with the newly revised Federal Travel Regulations and to remove the unnecessarily burdensome recordkeeping requirement for travel expenses between $25.00 and $75.00, as quickly as possible. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–46 is amended by revising paragraph (a)(3)(iv) to read as follows:

31.205–46 Travel costs.

(a) * * *

(3) * * *

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to paragraph (a)(7) of this subsection, and provided that a receipt is required for each expenditure of $75.00 or more. The approved justification required by paragraph (a)(3)(ii) and, if applicable, paragraph (a)(3)(iii) of this subsection must be retained.

* * * * *

[FR Doc. 97–31822 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 97–03; FAR Case 97–009; Item X]

RIN 9000–AH81

Federal Acquisition Regulation; Protests to GAO

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to conform with revisions to the General Accounting Office (GAO) Bid Protest Regulations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–03, FAR case 97–009.

SUPPLEMENTARY INFORMATION:

A. Background

The GAO published a final rule amending its Bid Protest Regulations in the **Federal Register** on July 26, 1996 (61 FR 39039). Several conforming amendments to FAR Part 33 are necessary to reflect the current GAO Bid Protest Regulations. The definition of "day" in FAR 33.101 is amended to exclude Saturdays, Sundays, and Federal holidays from being counted if such day is the last day of the period after the act, event, or default. FAR 33.104 is amended to require agencies to include a best estimate of the contract value in an agency report of a protest; and to require agencies to provide to all parties, at least 5 days prior to the filing of a report, a list of documents the agency intends to release or withhold, and reasons for proposed withholding. The time within which agencies are required to provide additional documents requested by a protester is reduced from 5 to 2 days. The time within which protesters or other interested parties are required to furnish comments on an agency report is reduced from 14 to 10 days, or from 7 to 5 days if an express option is used; or, if a hearing is held, from 7 to 5 days. Language is added to require a protester to file its claim for costs with the contracting agency within 60 days after receipt of GAO's recommendation that the agency pay the protester its costs.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–009), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 33 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

33.101 [Amended]

2. Section 33.101 is amended in paragraph (b)(1) under the definition of "Day" by removing the word "legal" and inserting "Federal" in its place; and by removing paragraph (c).

3. Section 33.104 is amended by—

a. Redesignating (a)(3)(iii) as (a)(3)(iv), and adding a new (a)(3)(iii);

b. Revising newly designated (a)(3)(iv)(B); removing (a)(3)(iv)(C); redesignating (a)(3)(iv)(D) as (a)(3)(iv)(C);

c. Replacing "5" with "2" in paragraphs (a)(4)(ii)(A) and (a)(4)(ii)(B);

d. Replacing "14" with "10" and "7" with "5" each time it appears in paragraph (a)(6);

e. Adding "the agency" before the word "report" in the third sentence of paragraph (e);

f. Revising paragraph (h) to read as follows:

33.104 Protests to GAO.

* * * * *

(a) * * *

(3) * * *

(iii) At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall provide to all parties and the GAO a list of those documents, or portions of documents, that the agency has released to the protester or intends to produce in its report, and those documents that the agency intends to withhold from the protester and the reasons for the proposed withholding. Any objection to the scope of the agency's proposed disclosure or nondisclosure of the documents must be filed with the GAO and the other parties within 2 days after receipt of this list.

(iv) * * *

(A) * * *

(B) The contracting officer's signed statement of relevant facts, including a best estimate of the contract value, and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest

file that may be necessary to determine the merits of the protest; and

* * * * *

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant, and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.

(2) The protester shall file its claim for costs with the contracting agency within 60 days after receipt of the GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

(3) The agency shall attempt to reach an agreement on the amount of costs to be paid. If the agency and the protester are unable to agree on the amount to be paid, the GAO may, upon request of the protester, recommend to the agency the amount of costs that the agency should pay.

(4) Within 60 days after the GAO recommends the amount of costs the agency should pay the protester, the agency shall notify the GAO of the action taken by the agency in response to the recommendation.

(5) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (h)(2) of this section

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and 5 CFR 304.105; or

(ii) For attorney's fees that exceed $150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorney's fees for small businesses.

(6) Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs that have not yet been paid.

(7) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government, and those exclusions should be reflected in the cost agreement.

(8) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

[FR Doc. 97–31823 Filed 12–8–97; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 53

[FAC 97–03; FAR Case 95–034; Item XI]

RIN 9000–AH18

Federal Acquisition Regulation; Novation and Related Agreements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to facilitate the processing of novation and related agreements. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–03, FAR case 95–034.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this rule is to facilitate the process of novating contracts and to provide guidelines for contracting officers, while preserving the Government's interests in business combinations affecting its contracts. A proposed rule was published in the **Federal Register** on August 21, 1996 (61 FR 43294). Eighteen comments were received from six respondents. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because novation agreements generally affect only a relatively small number of large and small business entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 42 and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 42 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

2. Section 42.1203 is amended by revising paragraphs (b) and (c); redesignating paragraphs (d) through (f) as (f) through (h), respectively; and adding new paragraphs (d) and (e) to read as follows:

42.1203 Processing agreements.

* * * * *

(b) The responsible contracting officer shall—

(1) Identify and request that the contractor submit the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change. This information should include the items identified in 42.1204 (e) and (f) or 42.1205(a), as applicable;

(2) Notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts; and

(3) Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.

(c) Upon receipt of the necessary information, the responsible contracting officer shall determine whether or not it is in the Government's interest to recognize the proposed successor in interest on the basis of—

(1) The comments received from the affected contract administration offices and contracting offices;

(2) The proposed successor's responsibility under subpart 9.1, Responsible Prospective Contractors; and

(3) Any factor relating to the proposed successor's performance of contracts with the Government that the Government determines would impair the proposed successor's ability to perform the contract satisfactorily.

(d) The execution of a novation agreement does not preclude the use of any other method available to the contracting officer to resolve any other issues related to a transfer of contractor assets, including the treatment of costs.

(e) Any separate agreement between the transferor and transferee regarding the assumption of liabilities (*e.g.*, long-term incentive compensation plans, cost accounting standards noncompliances, environmental cleanup costs, and final overhead costs) should be referenced specifically in the novation agreement.

* * * * *

3. Section 42.1204 is amended by—

a. Revising the section heading and paragraph (a) introductory text, (a)(1), and the introductory text of (a)(2);

b. Redesignating paragraphs (b), (c), (d), and (e) as (c), (e), (h), and (i), respectively;

c. Adding new paragraphs (b), (d), (f), and (g); and

d. Revising newly redesignated paragraph (e) to read as follows:

42.1204 Applicability of novation agreements.

(a) 41 U.S.C. 15 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of—

(1) All the contractor's assets; or

(2) The entire portion of the assets involved in performing the contract. (See 14.404–2(l) for the effect of novation agreements after bid opening but before award.) Examples of such transactions include, but are not limited to—

* * * * *

(b) A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government (see 42.1203(e)).

* * * * *

(d) When considering whether to recognize a third party as a successor in interest to Government contracts, the responsible contracting officer shall identify and evaluate any significant organizational conflicts of interest in accordance with subpart 9.5. If the responsible contracting officer determines that a conflict of interest cannot be resolved, but that it is in the best interest of the Government to approve the novation request, a request for a waiver may be submitted in accordance with the procedures at 9.503.

(e) When a contractor asks the Government to recognize a successor in interest, the contractor shall submit to the responsible contracting officer three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

(1) The document describing the proposed transaction, *e.g.*, purchase/sale agreement or memorandum of understanding.

(2) A list of all affected contracts between the transferor and the Government, as of the date of sale or transfer of assets, showing for each, as of that date, the—

(i) Contract number and type;

(ii) Name and address of the contracting office;

(iii) Total dollar value, as amended; and

(iv) Approximate remaining unpaid balance.

(3) Evidence of the transferee's capability to perform.

(4) Any other relevant information requested by the responsible contracting officer.

(f) Except as provided in paragraph (g) of this section, the contractor shall submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:

(1) An authenticated copy of the instrument effecting the transfer of assets; *e.g.*, bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(4) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

(5) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

(6) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants.

(7) Evidence that any security clearance requirements have been met.

(8) The consent of sureties on all contracts listed under paragraph (e)(2) of this section if bonds are required, or a statement from the transferor that none are required.

(g) If the Government has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the Government's interests are adequately protected with an alternative formulation of the information, the responsible contracting officer may modify the list of documents to be submitted by the contractor.

NOVATION AGREEMENT

* * * * *

PART 53—FORMS

53.242–1 [Amended]

4. Section 53.242–1 is amended by revising "42.1203(f)" to read "42.1203(h)".

53.243 [Amended]

5. Section 53.243 is amended by revising "42.1203(f)" to read "42.1203(h)".

[FR Doc. 97–31824 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 47

[FAC 97–03; FAR Case 97–017; Item XII]

RIN 9000–AH78

Federal Acquisition Regulation; Commercial Bills of Lading, Small Package Shipments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to raise the threshold for requiring receipted freight bills for small package shipments, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–03, FAR case 97–017.

SUPPLEMENTARY INFORMATION:

A. Background

Based upon the benefits encountered during a 6-month test conducted by the Defense Finance and Accounting Service, Denver Center, this rule amends FAR 47.303–17 to raise the threshold for requiring receipted freight bills for small package shipments from $25 to $100, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges from $100 to $250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–03, FAR case 97–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a revised paperwork burden reflecting a decrease in burden as a result of the increase to thresholds will be forwarded to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 47:

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 47 is amended as set forth below:

PART 47—TRANSPORTATION

1. The authority citation for 48 CFR part 47 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

47.303–17 [Amended]

2. Section 47.303–17 is amended in paragraph (d)(1) by removing "$25" and inserting "$100"; in (d)(2) by removing "$100" and inserting "$250"; and in the second sentence of paragraph (e) by replacing "47.303–17(d)(1)" with "paragraph (d)(2) of this subsection" and "$25" with "$250".

[FR Doc. 97–31825 Filed 12–8–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAC 97–05; FAR Case 96–022; Item XIII]

RIN 9000–AH74

Federal Acquisition Regulation; Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications and to conform the language in the form to the current quality assurance guidance in the FAR. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–05, FAR case 96–022.

SUPPLEMENTARY INFORMATION:

A. Background

Revision of the Standard Form 1406 is necessary due to the cancellation of military specifications, such as MIL–Q–9858 and MIL–I–45208, which are cited in the form, and to conform the language in the form to the current language in FAR Part 46.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 96–022), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 53 is amended as set forth below:

PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

53.209–1 [Amended]

2. Section 53.209–1 is amended in paragraph (d) by revising "(Rev 9/88)" to read "(Rev 11/97)".

3. Section 53.301–1406 is revised to read as follows:

BILLING CODE 6820–EP–P

53.301–1406 Preaward Survey of Prospective Contractor—Quality Assurance.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR QUALITY ASSURANCE	SERIAL NO. *(For surveying activity use)*	OMB No.: 9000-0011 Expires: 10/31/2000
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

SECTION I - RECOMMENDATION

1. RECOMMEND: ☐ AWARD ☐ NO AWARD *(Provide full substantiation for recommendation in 4. NARRATIVE)*

2. IF PROSPECTIVE CONTRACTOR RECEIVES AWARD, A POST AWARD CONFERENCE IS RECOMMENDED. ☐ YES ☐ NO

3. AN ON-SITE SURVEY WAS PERFORMED. ☐ YES ☐ NO

4. NARRATIVE

IF CONTINUATION SHEETS ATTACHED - MARK HERE ☐

5. SURVEY MADE BY			6. SURVEY REVIEWING OFFICIAL		
A. SIGNATURE	B. DATE SIGNED		A. SIGNATURE	B. DATE REVIEWED	
C. NAME			C. NAME		
D. OFFICE			D. OFFICE		
E. AREA CODE	F. TELEPHONE NUMBER	G. EXT.	E. AREA CODE	F. TELEPHONE NUMBER	G. EXT.

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable.

STANDARD FORM 1406 (REV. 11-97)
Prescribed by GSA
FAR (48 CFR) 53.209-1(d)

SECTION II - COMPANY AND SOLICITATION DATA

1. BRIEFLY DESCRIBE HOW QUALITY ASSURANCE RESPONSIBILITIES ARE ACCOMPLISHED.

2. QUALITY ASSURANCE OFFICIALS CONTACTED

A. NAME	B. TITLE	C. YEARS OF QUALITY ASSURANCE EXPERIENCE

3. APPLICABLE CONTRACT QUALITY REQUIREMENTS

A. NUMBER	B. TITLE	C. TAILORING *(If any)*

4. ☐ IDENTICAL OR ☐ SIMILAR ITEMS HAVE BEEN ☐ PRODUCED, ☐ SUPPLIED, OR ☐ SERVICED BY PROSPECTIVE CONTRACTOR

If similar items, identify:

SECTION III - EVALUATION CHECKLIST

STATEMENTS		YES	NO
1. These items (where applicable to the contract) are understood by the prospective contractor.	A. Exhibits, technical data, drawings, specifications, and approval requirements.		
	B. Preservation, packaging, packing, and marking requirements.		
	C. Other *(Specify)*		
2. Records available indicate that the prospective contractor has a satisfactory quality performance record during the past twelve (12) months for similar items.			
3. Used, reconditioned, or remanufactured material and former Government surplus material will be furnished by the prospective contractor. *(If Yes, explain in Section I NARRATIVE)*			
4. Prospective contractor will require unusual assistance from the Government. *(If Yes, explain in Section I NARRATIVE)*			
5. Did prospective contractor fulfill commitments to correct deficiencies, as proposed on previous surveys, when awarded that contract? *(If No, explain in Section I NARRATIVE)*			
6. Quality verification personnel	NUMBER SKILLED / NUMBER SEMI-SKILLED		
7. Quality verification to production personnel ratio.	RATIO :		
THE FOLLOWING ARE AVAILABLE AND ADEQUATE. *(If not applicable, show "N/A" in "Yes" column.)*			
8. Inspection and test equipment, gauges, and instruments for first article and production *(including solicitation specified equipment)*.			
9. Calibration/metrology program.			
10. Quality system procedures and controls.			
11. Control of specifications, drawings, changes and modifications, work/process instructions.			
12. System for determining inspection, test, and measurement requirements.			
13. Purchasing: Processes for selecting qualified suppliers and assuring the quality of purchased materials.			
14. Product identification, segregation, traceability, and maintenance.			
15. Government furnished property controls.			
16. Process controls.			
17. Nonconforming product: System for timely identification, disposition, correction of deficiencies, and corrective and preventative action.			
18. Preservation, storage, packaging, packing, marking, and delivery controls.			
19. Records *(such as: inspection, test, status, corrective actions, calibration, etc.)*			
20. Controls for investigation of customer complaints and correction of deficiencies.			
21. Design controls system.			
22. Computer software *(deliverable and/or non-deliverable)* quality assurance program.			
23. Management review and internal quality audits.			
24. Quality assurance training program.			
25. Installation and servicing quality assurance program.			
26. Statistical techniques.			

STANDARD FORM 1406 (REV. 11-97) BACK

[FR Doc. 97–31826 Filed 12–8–97; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 19, 42, and 53

[FAC 97–03; Item XIV]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Corrections.

SUMMARY: This document makes technical corrections to FAR sections 1.201–1, 19.811–1, and 42.203. SF 33, SF 1435, SF 1436, and SF 1437 are being reissued in order to reflect changes to internal references as a result of the rewrite of Part 15 of the Federal Acquisition Regulation. SF 279 is being reissued to provide accounting for purchases under the commercial test.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 1, 19, 42, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 1, 19, 42, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201–1 [Amended]

2. Section 1.201–1 is amended in the first sentence of paragraph (a) by removing the word "Regulatory" and inserting "Regulations" in its place.

PART 19—SMALL BUSINESS PROGRAMS

3. Section 19.811–1 is amended in the introductory text of paragraph (c) by revising the first and second sentences to read as follows:

19.811–1 Sole source.

* * * * *

(c) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in paragraphs (a) and (b) of this subsection, use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document shall contain the information in paragraphs (b) (1), (2), and (3) of this subsection. * * *

* * * * *

PART 42—CONTRACT ADMINISTRATION

42.203 [Amended]

4. Section 42.203 is amended at the end of paragraph (a) by removing "4.201(c)" and inserting "4.201(d)" in its place.

PART 53—FORMS

53.204–2 [Amended]

5. Section 53.204–2 is amended in paragraph (a) by revising the revision date to read "(Rev. 10/97)".

53.214 [Amended]

6. Section 53.214 is amended in paragraph (c) by revising the revision date to read "(Rev. 9/97)".

53.215–1 [Amended]

7. Section 53.215–1 is amended in paragraph (c) by revising the revision date to read "(Rev. 9/97)".

53.249 [Amended]

8. Section 53.249 is amended in paragraphs (a)(2), (a)(3), and (a)(4) by revising the revision dates to read "(Rev. 9/97)", and by removing the last sentence of each paragraph.

BILLING CODE 6820–EP–P

9. Section 53.301–33 is revised to read as follows:

53.301–33 Solicitation, Offer and Award.

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF PAGES

2. CONTRACT NUMBER	3. SOLICITATION NUMBER	4. TYPE OF SOLICITATION: ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NUMBER

7. ISSUED BY CODE

8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in _____ until _____ local time _____ *(Hour)* *(Date)*

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE *(NO COLLECT CALLS)* AREA CODE	NUMBER	EXT.	C. E-MAIL ADDRESS

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

OFFER *(Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52.232-8)*	10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)

14. ACKNOWLEDGMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NUMBER AREA CODE	NUMBER	EXT.	☐ 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: ☐ 10 U.S.C. 2304(c) ( ) ☐ 41 U.S.C. 253(c) ( )	23. SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)*	ITEM

24. ADMINISTERED BY *(If other than Item 7)* CODE	25. PAYMENT WILL BE MADE BY CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is unusable

STANDARD FORM 33 (REV. 9-97)
Prescribed by GSA - FAR (48 CFR) 53.214(c)

10. Section 53.301–279 is revised to read as follows:

53.301–279 Federal Procurement Data System (FPDS)—Individual Contract Action Report.

FEDERAL PROCUREMENT DATA SYSTEM (FPDS) INDIVIDUAL CONTRACT ACTION REPORT

INTERAGENCY REPORT CONTROL NUMBER 0266-GSA-GU

1. REPORTING AGENCY CODE (FIPS PUB 95-2) (No.)
2. CONTRACT NUMBER (Left justified; use no special characters) (15 Pos.)
3. MODIFICATION NUMBER (Left justified; cannot exceed 4 characters) (4 Pos.)
4. CONTRACTING OFFICE ORDER NUMBER (Left justified; cannot exceed 15 characters) (15 Pos.)
5. CONTRACTING OFFICE CODE (6 alpha-numeric character code) (6 Pos.)
6. ACTION DATE (4 digit calendar year and 2 digit month, e.g., 200012) (6 Pos.)
7. TYPE OF DATA ENTRY (1 Pos.) A. Original B. Deleting C. Correcting
8. REPORT PERIOD (4 digit fiscal year and 1 digit quarter, e.g., 20001) (5 Pos.)
9. KIND OF CONTRACT ACTION (1 Pos.)

A. Initial Letter Contract
B. Definitive Contract Superseding Letter Contract
C. New Definitive Contract
D. Purchase Order/BPA Calls Using Simplified Acquisition Procedures
E. Order Under Single Award Indefinite Delivery Contract
F. Order Under BOA
G. Order/Modification Under Federal Schedule
H. Modification
J. Termination for Default
K. Termination for Convenience
L. Order Under Multiple Award Contract
Z. Initial Load of Federal Schedule Contract

10. DOLLARS OBLIGATED OR DEOBLIGATED THIS ACTION (Right justified; round to nearest 1000; use fixed format) (9 Pos.)
11. TYPE OF OBLIGATION (1 Pos.) A. Obligated B. Deobligated
12. PRINCIPAL PRODUCT OR SERVICE (FPDS Product Service Code Manual) (4 Pos.)
13. PRINCIPAL STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE (OMB SIC Manual) (4 Pos.)
14. COMMERCIAL ITEM ACQUISITION (1 Pos.) Y - Yes N - No
15. CONTRACTOR NAME (30 Pos.)
16. CONTRACTOR IDENTIFICATION NUMBER (9 Pos.)
17a. PRINCIPAL PLACE OF PERFORMANCE (State and City Code FIPS 55-3) (5 Pos.) STATE CITY
17b. FOREIGN COUNTRY (FIPS 10-3) (2 Pos.)
18. CONTRACT FOR FOREIGN GOVT. OR INTERNATIONAL ORGANIZATION (1 Pos.) Y - Yes N - No
19. TARIFF OR REGULATED (No-CICA) (1 Pos.) Y - Yes N - No
20. MULTI-YEAR CONTRACT (1 Pos.) Y - Yes N - No
21. RESERVED FOR FPDS (2 Pos.)
22. COUNTRY OF MANUFACTURE (FIPS 10-3) (2 Pos.)
23. SYNOPSIS OF PROCUREMENT PRIOR TO AWARD (1 Pos.) A. Synopsized prior to award B. Not synopsized due to urgency C. Not synopsized for other reasons
24. TYPE OF CONTRACT OR MODIFICATION (1 Pos.)

A. Fixed-Price Redetermination
B. Fixed-Price
C. Fixed-Price with Economic Price Adjustment
L. Fixed-Price Incentive
M. Cost-Plus-Award-Fee
S. Cost - No Fee
T. Cost Sharing
U. Cost-Plus-Fixed-Fee
V. Cost-Plus-Incentive-Fee
Y. Time and Materials
Z. Labor Hour

25. CICA APPLICABILITY (1 Pos.)

A. CICA Applicable
B. Purchase Order/BPA Calls Using Simplified Acquisition Procedures
C. Subject to Statutes Other Than CICA
D. Pre-CICA
E. Competitive Acquisitions Under Test Program

26. SOLICITATION PROCEDURES (Complete only if Item 25 = A) (1 Pos.)

A. Full and Open Competition - Sealed Bid
B. Full and Open Competition - Competitive Proposal
C. Full and Open Competition - Competitive
D. Architect - Engineer
E. Basic Research
F. Multiple Award Schedule
G. Alternative Sources
H. Reserved
J. Reserved
K. Sole Source
L. Set-Aside - Other Than Full and Open Competition

27. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION (Complete only if Item 26 = B) (1 Pos.)

A. Unique Source
B. Follow-on Contract
C. Unsolicited Research Proposal
D. Patent/Data Rights
E. Utilities
F. Standardization
G. Only One Source - Other
H. Urgency
J. Mobilization, Essential R&D Capability, or Expert Services
L. Reserved
M. International Agreement
N. Authorized by Statute
P. Authorized for Resale
Q. National Security
R. Public Interest

28. NUMBER OF OFFERS RECEIVED (Complete only if Item 26 = A or B) (2 Pos.)

A. 1
B. 2-5
C. 6-10
D. 11-15
E. 16-20
F. 21-50
G. Over 50

29. EXTENT COMPETED (1 Pos.)

A. Competed Action
B. Not Available for Competition
C. Follow-on to Competed Action
D. Not Competed

30. TYPE OF CONTRACTOR (1 Pos.)

A. Small Disadvantaged Business
B. Other Small Business
C. Large Business
D. JWOD Nonprofit Agency
T. Nonprofit Educational Organization
F. Nonprofit Hospital
G. Other Nonprofit Organization
H. State/Local Govt - Educational
J. State/Local Govt - Hospital
E. Other State/Local Government
L. Foreign Contractor
M. Domestic Contractor Performing Outside U.S.
U. Historically Black College/ University or Minority Institution (HBCU/MI)

31. WOMEN-OWNED BUSINESS (1 Pos.) Y - Yes N - No

32. PREFERENCE PROGRAM (1 Pos.)

A. Situated in HUBZone
B. Sole Source Award
C. Reserved
D. Small Business Set-Aside
E. Reserved
F. Reserved
G. Buy Indian/Indian Organization
H. No Preference Program or Not Listed
J. Small Disadvantaged Business Set-Aside

33. SUBCONTRACTING PLAN (Small, Small Disadvantaged, or Women-Owned Small Business) (1 Pos.) A. Required B. Not Required
34. SUBJECT TO LABOR STATUTES (1 Pos.) A. Walsh-Healey Act B. Reserved C. Service Contract Act D. Davis-Bacon Act E. Not Subject to Walsh-Healey, Service Contract, or Davis-Bacon
35. ESTIMATED CONTRACT COMPLETION DATE (4 digit calendar year and 2 digit month, e.g., 200012) (6 Pos.)
36. CONTRACTOR'S TIN (9 Pos.)
37. COMMON PARENT'S NAME (30 Pos.)
38. COMMON PARENT'S TIN (9 Pos.)
39. RESERVED FOR FPDS (4 Pos.)
40. RESERVED FOR FPDS (1 Pos.)
41. RESERVED FOR FPDS (6 Pos.)

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (Applicable to AGR, DOE, DOC, DOI, DOT, EPA, GSA, HHS, SBA, and VA)

42. DEMONSTRATION TEST PROGRAM (1 Pos.) Y - Yes N - No
43. EMERGING SMALL BUSINESS (1 Pos.) Y - Yes N - No
44. SMALL BUSINESS RESERVE (COMBO) (1 Pos.) Y - Yes N - No
45. SIZE OF SMALL BUSINESS (1 Pos.) NUMBER OF EMPLOYEES OR AVERAGE ANNUAL GROSS REVENUE

A. 50 or Less
B. 51 - 100
C. 101 - 250
D. 251 - 500
E. 501-750
F. 751 - 1,000
G. Over 1,000
M. 1,000,000 or Less
N. 1,000,001 - 2,000,000
P. 2,000,001 - 3,500,000
R. 3,500,001 - 5,000,000
S. 5,000,001 - 10,000,000
T. 10,000,001 - 17,000,000
Z. Over 17,000,000

46. RESERVED FOR FPDS (10 Pos.)
47. OPTIONAL REPORTED DATA ELEMENTS (30 Pos.)
48. FOR AGENCY INTERNAL USE

49. CONTRACTING OFFICER OR REPRESENTATIVE

a. TYPED NAME
b. SIGNATURE
c. TELEPHONE AREA CODE NUMBER
d. DATE SUBMITTED

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 279 (REV. 10-97)
Prescribed by GSA-FAR (48 CFR) 53.304-3(a)

11. Section 53.301–1435 is revised to read as follows:

53.301–1435 Settlement Proposal (Inventory Basis).

SETTLEMENT PROPOSAL (INVENTORY BASIS)

OMB No.: 9000-0012
Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO(S).

CONTRACTOR WHO SENT NOTICE OF TERMINATION
NAME
ADDRESS (Include ZIP Code)

If moneys payable under the contract have been assigned, give the following:
NAME OF ASSIGNEE
ADDRESS (Include ZIP Code)

COMPANY
STREET ADDRESS
CITY AND STATE (Include ZIP Code)
NAME OF GOVERNMENT AGENCY
GOVERNMENT PRIME CONTRACT NO.
CONTRACTOR'S REFERENCE NO.
EFFECTIVE DATE OF TERMINATION
PROPOSAL NO.
CHECK ONE ☐ INTERIM ☐ FINAL

SF 1439, SCHEDULE OF ACCOUNTING INFORMATION ☐ IS ☐ IS NOT ATTACHED (If not, explain below)

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED: ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED: ON HAND: INCLUDED IN THIS PROPOSAL (d)	UNFINISHED OR NOT COMMENCED: TO BE COMPLETED (Partial termination only) (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use columns (b) and (c) only where partial proposal has been filed) TOTAL PREVIOUSLY PROPOSED (b)	(Use columns (b) and (c) only where partial proposal has been filed) INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
1	METALS				
2	RAW MATERIALS (other than metals)				
3	PURCHASED PARTS				
4	FINISHED COMPONENTS				
5	MISCELLANEOUS INVENTORY				
6	WORK-IN-PROCESS				
7	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT				
8	OTHER COSTS (from Schedule B)				
9	GENERAL AND ADMINISTRATIVE EXPENSES (from Schedule C)				
10	TOTAL (Items 1 to 9 inclusive)				
11	PROFIT (explain in Schedule D)				
12	SETTLEMENT EXPENSES (from Schedule E)				
13	TOTAL (Items 10 to 12 inclusive)				
14	SETTLEMENTS WITH SUBCONTRACTORS (from Schedule F)				
15	ACCEPTABLE FINISHED PRODUCT				
16	GROSS PROPOSED SETTLEMENT (Items 13 thru 15)				
17	DISPOSAL AND OTHER CREDITS (from Schedule G)				
18	NET PROPOSED SETTLEMENT (Item 16 less 17)				
19	ADVANCE, PROGRESS & PARTIAL PAYMENTS (from Schedule H)				
20	NET PAYMENT REQUESTED (Item 18 less 19)				

(When the space provided for any information is insufficient, continue on a separate sheet.)

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is unusable

STANDARD FORM 1435 (REV. 9-97)
Prescribed by GSA - FAR (48 CFR) 53.249(a)(2)

SCHEDULE A - ANALYSIS OF INVENTORY COST *(Items 4 and 6)*

Furnish the following information (unless not reasonably available) for inventories of finished components and work-in-progress included in this proposal:

	TOTAL DIRECT LABOR	TOTAL DIRECT MATERIALS	TOTAL INDIRECT EXPENSES	TOTAL
FINISHED COMPONENTS				
WORK-IN-PROGRESS				

NOTE: Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, and G.

SCHEDULE B - OTHER COSTS *(Item 8)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES *(Item 9)*

DETAIL OF EXPENSES	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D - PROFIT *(Item 11)*

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE E - SETTLEMENT EXPENSES *(Item 12)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS *(Item 14)*

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G - DISPOSAL AND OTHER CREDITS *(Item 17)*

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included in Item 15.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE H - ADVANCE, PROGRESS AND PARTIAL PAYMENTS *(Item 19)*

DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and15.406 Table 15-2).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

12. Section 53.301–1436 is revised to read as follows:

53.301–1436 Settlement Proposal (Total Cost Basis).

SETTLEMENT PROPOSAL (TOTAL COST BASIS)

OMB No.: 9000-0012
Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO *(Check one)*: ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO(S).

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

If moneys payable under the contract have been assigned, give the following:

NAME OF ASSIGNEE

ADDRESS *(Include ZIP Code)*

COMPANY

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO. | CONTRACTOR'S REFERENCE NO.

EFFECTIVE DATE OF TERMINATION

PROPOSAL NO. | CHECK ONE: ☐ INTERIM ☐ FINAL

SF 1439, SCHEDULE OF ACCOUNTING INFORMATION ☐ IS ☐ IS NOT ATTACHED *(If not, explain below)*

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED			UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER
		PREVIOUSLY SHIPPED AND INVOICED (b)	ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	ON HAND: PAYMENT NOT TO BE RECEIVED THROUGH INVOICING (d)	SUBSEQUENTLY COMPLETED AND INVOICED* (e)	NOT TO BE COMPLETED (f)	(g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use Columns (b) and (c) only where progress proposal has been filed) TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
1	DIRECT MATERIAL				
2	DIRECT LABOR				
3	INDIRECT FACTORY EXPENSE *(from Schedule A)*				
4	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT *(SF 1432)*				
5	OTHER COSTS *(from Schedule B)*				
6	GENERAL AND ADMINISTRATIVE EXPENSES *(from Schedule C)*				
7	TOTAL COSTS *(Items 1 thru 6)*				
8	PROFIT *(Explain in Schedule D)*				
9	TOTAL *(Items 7 and 8)*				
10	DEDUCT FINISHED PRODUCT INVOICED OR TO BE INVOICED*				
11	TOTAL *(Item 9 less Item 10)*				
12	SETTLEMENT EXPENSES *(from Schedule E)*				
13	TOTAL *(Items 11 and 12)*				
14	SETTLEMENTS WITH SUBCONTRACTORS *(from Schedule F)*				
15	GROSS PROPOSED SETTLEMENT *(Items 13 thru 14)*				
16	DISPOSAL AND OTHER CREDITS *(from Schedule G)*				
17	NET PROPOSED SETTLEMENT *(Item 15 less 16)*				
18	ADVANCE, PROGRESS & PARTIAL PAYMENTS *(from Schedule H)*				
19	NET PAYMENT REQUESTED *(Item 17 less 18)*				

*Column (e), Section I, should only be used in the event of a partial termination, in which the total cost reported in Section II should be accumulated to date of completion of the continued portion of the contract and the deduction for finished product (Item 10, Section II) should be the contract price of finished product in Column (b), (c), and (e), Section I.

NOTE: File inventory schedules (SF 1428, 1429, 1430, and 1432) for allocable inventories on hand at date of termination (See 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is unusable

SCHEDULE A - INDIRECT FACTORY EXPENSE *(Item 3)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

NOTE: Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B - OTHER COSTS *(Item 5)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES *(Item 6)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D - PROFIT *(Item 8)*

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE E - SETTLEMENT EXPENSES *(Item 12)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS *(Item 14)*

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G - DISPOSAL AND OTHER CREDITS *(Item 16)*

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included on SF 1428.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

179-005-97-10

SCHEDULE H - ADVANCE, PROGRESS AND PARTIAL PAYMENTS *(Item 19)*			
DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

STANDARD FORM 1436 (REV. 9-97) PAGE 4

13. Section 53.301–1437 is revised to read as follows:

53.301–1437 Settlement Proposal for Cost—Reimbursement Type Contracts.

SETTLEMENT PROPOSAL FOR COST-REIMBURSEMENT TYPE CONTRACTS

OMB No.: 9000-0012
Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

To be used by prime contractors submitting settlement proposals on cost-reimbursement type contracts under Part 49 of the Federal Acquisition Regulation. Also suitable for use in connection with terminated cost-reimbursement type subcontracts.

COMPANY	PROPOSAL NUMBER	CHECK ONE ☐ PARTIAL ☐ FINAL
STREET ADDRESS	GOVERNMENT PRIME CONTRACT NO.	REFERENCE NO.
CITY AND STATE *(Include ZIP Code)*	EFFECTIVE DATE OF TERMINATION	

ITEM (a)	TOTAL PREVIOUSLY SUBMITTED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL SUBMITTED TO DATE (d)
1. DIRECT MATERIAL	$	$	$
2. DIRECT LABOR			
3. INDIRECT FACTORY EXPENSE			
4. SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT			
5. OTHER COSTS			
6. GENERAL AND ADMINISTRATIVE EXPENSE			
7. TOTAL COST *(Items 1 thru 6)*	$	$	$
8. FEE			
9. SETTLEMENT EXPENSES			
10. SETTLEMENTS WITH SUBCONTRACTORS			
11. GROSS PROPOSED SETTLEMENT *(Items 7 thru 10)*			
12. DISPOSAL AND OTHER CREDITS			
13. NET PROPOSED SETTLEMENT *(Item 11 less 12)*	$	$	$
14. PRIOR PAYMENTS TO CONTRACTOR	$	$	$
15. NET PAYMENT REQUESTED *(Item 13 less 14)*	$	$	$

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 10) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is unusable

STANDARD FORM 1437 (REV. 9-97)
Prescribed by GSA - FAR (48 CFR) 53.249(d)(4)

[FR Doc. 97–31827 Filed 12–8–97; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter I

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 97–03 which amends the FAR. The rules marked with an asterisk (*) are those for which a final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Further information regarding these rules may be obtained by referring to FAC 97–03 which precedes this notice. This document may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755.

LIST OF RULES IN FAC 97–03

Item	Subject	FAR Case	Analyst
I	Part 30 Deviations	97–014	Nelson.
II*	Information Technology Management Reform Act of 1996	96–319	Nelson.
III	Final Overhead Settlement	95–017	Klein.
IV*	Reorganization of FAR Part 13, Simplified Acquisition Procedures	94–772	Linfield.
V	Reporting Trade Sanction Exemptions	97–021	Linfield.
VI	New Mexico Gross Receipts and Compensating Tax	97–018	Moss
VII	Compensation of Certain Contractor Personnel	96–325	Nelson.
VIII	Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond	95–032	Nelson.
IX	Travel Reimbursement (Interim)	97–007	Nelson.
X	Protests to GAO	97–009	O'Neill.
XI	Novation and Related Agreements	95–034	Klein
XII	Commercial Bills of Lading, Small Package Shipments	97–017	Klein
XIII	Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance	96–022	Klein
XIV	Technical Amendments.		

Item I—Part 30 Deviations (FAR Case 97–014)

This final rule amends FAR 1.402 to remove the prohibition against authorizing deviations from FAR Part 30, Cost Accounting Standards Administration, except for subsections 30.201–3 and 30.201–4, or the Cost Accounting Standards Board rules and regulations.

Item II—Information Technology Management Reform Act of 1996 (FAR Case 96–319)

The interim rule published as Item I of FAC 90–41 is converted to a final rule. This rule implements the Information Technology Management Reform Act of 1996 (Division E of Public Law 104–106). The final rule differs from the interim rule in that it makes a clarifying revision to paragraph (c) of the definition of "information technology" at FAR 2.101.

Item III—Final Overhead Settlement (FAR Case 95–017)

This final rule amends FAR Parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by (1) extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractor's fiscal year, (2) permitting extensions to the 6-month time period for exceptional circumstances only, and (3) providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

Item IV—Reorganization of FAR Part 13, Simplified Acquisition Procedures (FAR Case 94–772)

This final rule revises FAR Part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial purchase card. FAR Part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213–4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be used in lieu of individual clauses prescribed in the FAR.

Item V—Reporting Trade Sanction Exemptions (FAR Case 97–021)

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative of such exemptions within 30 days after contract award.

Item VI—New Mexico Gross Receipts and Compensating Tax (FAR Case 97–018)

This final rule amends FAR 29.401–6 to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation.

Item VII—Compensation of Certain Contractor Personnel (FAR Case 96–325)

The interim rule published as Item XI of FAC 90–45 is converted to a final rule with a minor clarifying amendment at FAR 31.205–6(p)(1). The rule implements Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104–201). Section 809 places a Governmentwide ceiling of $250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during fiscal year 1997.

Item VIII—Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond (FAR Case 95–032)

This final rule amends the cost principle at FAR 31.205–18, Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs, and deletes FAR Subpart 42.10, Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs. The rule removes, for fiscal year 1996 and beyond, the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

Item IX—Travel Reimbursement (FAR Case 97–007)

This interim rule amends FAR 31.205–46 to raise, from $25 to $75, the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This change is consistent with a recent amendment to the Federal Travel Regulation.

Item X—Protests to GAO (FAR Case 97–009)

This final rule amends the protest procedures at FAR 33.101 and 33.104 to conform with revisions made to the General Accounting Office Bid Protest Regulations.

Item XI—Novation and Related Agreements (FAR Case 95–034)

This final rule amends FAR Subpart 42.12 to expand and clarify procedures for processing novation agreements, and for determining when use of a novation agreement is appropriate.

Item XII—Commercial Bills of Lading, Small Package Shipments (FAR Case 97–017)

This final rule amends FAR 47.303–17 to raise the threshold for requiring receipted freight bills for small package shipments from $25 to $100, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges from $100 to $250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

Item XIII—Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance (FAR Case 96–022)

This final rule revises Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications, and to conform the language in the form to the current language in FAR Part 46.

Item XIV—Technical Amendments

This document makes technical corrections to FAR 1.201–1, 19.811–1, and 42.203. Standard Forms 33, 1435, 1436, and 1437 are reissued to reflect changes to internal references as a result of the rewrite of FAR Part 15. Standard Form 279 is reissued to provide accounting for purchases under the commercial test.

Dated: December 1, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 97–31828 Filed 12–8–97; 8:45 am]
BILLING CODE 6820–EP–P

federal register

Tuesday
December 9, 1997

Part III

Department of Labor

Wage and Hour Division
29 CFR Part 520 et al.
Employment of Student-Learners, Apprentices, Learners, Messengers, and Student Workers; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 520, 521, 522, 523 and 527

RIN 1215–AB10

Employment of Student-Learners, Employment of Apprentices, Employment of Learners, Employment of Messengers, and Employment of Student Workers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is removing the regulation found at 29 CFR Part 527 and consolidating the regulations found at 29 CFR Parts 520, 521, 522, and 523, into a single Part 520. These rules were promulgated under section 14(a) of the Fair Labor Standards Act (FLSA), and provided for employment under special certificates of categories of workers who may be paid less than the statutory minimum wage to prevent the curtailment of employment opportunities. These workers include apprentices, messengers and learners, including student-learners and student-workers. Employers must apply for special certificates issued by the Wage and Hour Division of the U.S. Department of Labor which state the terms and conditions of employment at subminimum wages. Many of the provisions of these individual regulations were duplicative and have been merged into one comprehensive document. The language and context of the rules have been simplified, shortened and formatted to make them easier to use while the essential requirements of the regulations have been maintained. The substantive criteria used to determine an employer's eligibility to receive a certificate under these programs remain generally unchanged.

EFFECTIVE DATE: These rules are effective on February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, D.C. 20210: telephone (202) 219–7640. This is not a toll free number. Copies of this final rule in alternative formats may be obtained by calling (202) 219–7640, (202) 219–4634 (TDD). The alternative formats available are large print, electronic file on computer disk and audio-tape.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This final rule contains reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The reporting requirements contained in §§ 520.403, 520.501 and 520.502 of this rule were submitted to and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned OMB Control No. 1215–0192.

No comments were received from the public regarding this burden or these regulatory provisions.

No substantive changes have been made in this final rule which affect the information collection and recordkeeping requirements and estimated burdens previously submitted to OMB and discussed in the proposed rule.

II. Background

Section 14(a) of the FLSA provides for employment under special certificates of categories of workers who may be paid less than the statutory minimum wage to prevent the curtailment of employment opportunities. These workers include messengers, learners (including student-learners and student-workers), and apprentices.

Separate regulations were established for each of these subminimum wage categories with many provisions common to all the separate rules. These rules were also issued before the enactment of the Administrative Procedure Act and other laws and regulations that impact the content of regulations. The regulations which are the subject of this final rule, formerly found at 29 CFR Parts 520, 521, 522, 523, and 527, were promulgated pursuant to the FLSA and establish a certificate system for employment of these classes of workers at subminimum wages. Employers must apply for special certificates issued by the Wage and Hour Division of the U.S. Department of Labor, which state the terms and conditions of employment at subminimum wages.

Under former Part 522, now consolidated into Part 520, learners could be employed at less than the applicable minimum wage in certain skilled occupations. Certificates specified the number and proportion of learners authorized on any date, the subminimum wage rates permitted during the learning period, and length of the learning period in each occupation (ranging by occupation from 160 to 960 hours, and normally limited to not more than one year; new or expanding plants not more than six months). Certificates were conditioned upon there being an inadequate supply of qualified, experienced workers and the applicant making reasonable efforts to recruit experienced workers. The use of learners could not create unfair competitive labor cost advantages nor depress wages or working standards for experienced workers in comparable work. Employers submitted separate applications for each establishment and demonstrated that efforts to hire experienced workers were ineffective.

Under former Part 520, student-learners were pupils at least sixteen years old (eighteen if employed in certain hazardous occupations) who were enrolled in an accredited school, college or university and who were employed part-time under a bona fide vocational training program approved by a State board of vocational education. Certified student-learners were required to be paid no less than 75 percent of the applicable minimum wage, with limits on the number of hours of employment training each week at subminimum wages. Employment of a student-learner could not have the effect of displacing an employee of the establishment, nor depress wages or working standards for experienced workers in comparable work, nor impair the development or continuation of apprenticeship standards in the occupation or industries. Separate applications had to be submitted for each student-learner, describing the vocational training program in detail and demonstrating how it related to the jobs to be performed by the student-learner.

Under former Part 527, student-workers were pupils enrolled in an educational institution who were at least 16 years old (18 if employed in certain hazardous occupations) and who were employed on a part-time basis in shops owned by the educational institution for the purpose of enabling the students to defray part of their school expenses. Student-workers employed under a special certificate were required to be paid no less than 75 percent of the applicable minimum wage. Certificates specified the number of students authorized on any day, the rates permitted during the training period, and length of the training period for each occupation (which were not to exceed one school year). Certificates were submitted by each educational institution seeking to employ student-workers. As discussed in Section IV of this preamble, Part 527 has been deleted pursuant to this final rule.

Under former Part 521, now consolidated into Part 520, apprentices at least sixteen years old (eighteen if employed in certain hazardous occupations) could be employed at less than the applicable minimum wage in skilled trades under registered apprenticeship programs. Apprentices were required to receive a progressively increasing schedule of wages which averaged at least 50 percent of the journeyman level rate over the period of apprenticeship (one year or more [2,000 or more hours] of work experience). The Department of Labor's Bureau of Apprenticeship and Training (BAT) establishes criteria and registration procedures for both individual apprentices and employer apprenticeship plans.

Under former Part 523, now consolidated into Part 520, messengers employed primarily to deliver letters and messages could be paid subminimum wages to prevent curtailment of employment opportunities. Applications could be filed by an employer or an employee or group of employers or employees.

The use of these certificates was prevalent when the wages paid in many industries were equal to or very near the minimum wage. As the prevailing wage rates increased to levels well above the statutory minimum wage, fewer employees were willing to work at subminimum wage rates. Over the last twenty-five years, very few employers have applied for special certificates, except in the student-learner program.

The learner program, which includes learners, student-learners, and student-workers, historically was one of the largest subminimum wage programs. As wage rates rose in many industries employing learners and an adequate supply of experienced workers was available, the use of learner certificates declined. At its peak in 1962, over 2,200 certificates covering more than 46,000 learners were issued. No applications to employ learners have been received since 1995. The use of student-learner certificates rose to over 17,000 in 1975, but has fallen in recent years. Currently fewer than 800 student-learner certificates are issued each year. Because of the narrow focus of the student-worker program, the most certificates ever issued was 33 (covering 1,320 workers) in 1961.

About 900 apprentice certificates were issued in 1967, mostly in the Caribbean area (838). Regulations issued by the BAT no longer permit the payment of subminimum wages to apprentices. The Wage and Hour Division, therefore, has not issued any special certificates for apprentices since 1987.

On March 29, 1976, the Secretary of Labor presented a report to Congress in response to the directive of section 4(d)(2) of FLSA to conduct studies on the justification or lack thereof of each special exemption issued under section 14 of the Act. The Secretary reported that section 14(d), added by the 1974 FLSA Amendments, which made provision for a minimum wage and overtime exemption without requiring a special certificate for elementary or secondary school students employed by their schools, may have the impact of eliminating the need for the student-worker program. The Secretary recommended, however, that section 14(a) continue to make provisions for special employment of student-workers until the impact of section 14(d) could be evaluated.

No regulations regarding the provisions of section 14(d) were promulgated. In the absence of regulations, the Department decided to take no action with respect to public or private elementary or secondary school students employed by their schools in various school-related work programs if their employment complied with the FLSA child labor provisions. Since enactment of section 14(d), no student-worker certificates have been issued.

In his report of March 29, 1976, the Secretary of Labor also recommended that the provisions authorizing subminimum wages for messengers be deleted from the FLSA. He also determined that the special provisions for learners could no longer be justified and should be limited to student-workers and student-learners. The report also recommended that the provisions for apprentices be retained until the impact of proposed BAT regulations could be evaluated. No action was taken on these recommendations and the section 14 requirements remain in the FLSA; thus there is a continuing need for these rules.

III. Comments to the Proposed Rule

A Proposed Rule with a 60-day comment period was published in the **Federal Register** on February 14, 1997 (62 FR 7094). No public comments were received in response to the Proposed Rule. The Department is adopting that proposal with only one minor editorial modification in this final rule. That modification, the removal of the word "agreement" before the word "contains" in the definition of apprenticeship agreement, is being done to correct an inadvertent error and remove any confusion.

IV. Discussion

This final rule removes the regulation at 29 CFR Part 527, Employment of Student-Workers, and reserves the part. Section 14(d) of the FLSA makes provision for a minimum wage and overtime exemption for elementary or secondary school students employed by their schools where such employment is an integral part of the regular education program. In the absence of regulations regarding section 14(d), the Department has taken no action with respect to public or private elementary or secondary school students employed by their school in various school-related work programs if employed in compliance with the FLSA child labor provisions. Since section 14(d) of the FLSA was enacted in 1974, no applications for student-worker certificates have been submitted by any type of school, elementary, secondary or any other. Part 527 is therefore unnecessary.

Additionally, this final rule merges the regulations formerly at 29 CFR Parts 520, 521, 522, and 523 into one new Part 520 and reserves the remaining three sections. This final rule also eliminates repetition of text contained in each separate regulation. Those sections overtaken by requirements of the Administrative Procedure Act were also deleted. The essential requirements contained in the former regulations are maintained in this revision. The language and context of the regulations have been simplified, shortened, and formatted to make them easier to understand.

As discussed above, the use of special certificates to employ messengers, learners, and apprentices at subminimum wages has declined considerably. It is appropriate to replace extended pages of obsolete regulations by consolidating these rules. This final rule, where possible, supplants the language containing specific requirements with more general criteria common to all of the programs. The Department does not expect to increase the number of certificates issued under this final rule because the economic conditions stated above are unchanged.

The specific criteria formerly contained in 29 CFR Parts 520, 521, 522, and 523 will be replaced by the requirements of 29 CFR Part 520, subparts D and E. Applicants are now required to demonstrate that the criteria for issuance of special certificates have been met. Those situations where special certificates will not be issued have been clarified.

The final rule eliminates the previous industry-specific learning periods for learners and replaces them with a standardized period of 240 hours absent extraordinary circumstances relating to a particular occupation warranting a longer learning period. The final rule also removes the different learner program standards for new plants and established plants.

The requirement to publish in the **Federal Register** a list of learner certificates issued has been removed as they are so few in number in recent years and no purpose is served by the publication of such a list. Interested parties may contact the agency for this information. This final rule removes any requirement that a hearing be held when an interested party objects to a certificate being issued or denied and replaces it with an informal reconsideration procedure that is more responsive to such parties. The period for requesting reconsideration and review has been extended to 60 days to accommodate those programs that previously required publishing a list of certificates issued in the **Federal Register**. The final rule also removes a section which allowed nonregistered apprenticeship agreements to be submitted for consideration when applying for a special certificate. Only properly registered apprenticeship agreements will be accepted in the future.

The final rule permanently fixes, as the basis for establishing the special minimum wages that may be paid to messengers and learners (including student-learners) under section 14(a), the minimum wage applicable under section 6(a). This precludes combining the use of the youth opportunity wage established under section 6(g) with the special minimum wages authorized by section 14(a). The Department has determined that the minimum wage applicable under section 6(a), which is greater than the youth opportunity wage, is both a necessary and a sufficient basis to establish special minimum wages which prevent the curtailment of employment opportunities as required by section 14(a).

The final rule also permanently sets the subminimum wage rate that may be paid messengers and learners at 95 percent of the minimum wage required by section 6(a) of the FLSA. This reflects the historical difference between the minimum wage and the authorized subminimum wage rate for learners, but it has always been stated in these sections as a dollar amount (*i.e.* $4.10 per hour, $3.65 per hour). By setting the authorized subminimum wage at a fixed percentage of the applicable minimum wage, the Department will no longer have to amend these sections each time the minimum wage is changed. All certificates issued under this rule will list the authorized subminimum wage rate.

The final rule incorporates the Division's long-standing policy of limiting the availability of special certificates for messengers to those firms whose principal business is the delivery of such letters and messages.

The changes discussed above will have no significant effect on the current operation of these programs.

Executive Order 12866 and Significant Regulatory Actions

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866. The consolidation of the current regulations at 29 CFR Parts 520, 521, 522, and 523, and the removal of Part 527 does not affect the current operation of any program and this action will not: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Executive Order 12875 and Section 202 of the Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any federal mandate that may result in increased expenditures by either state, local and tribal governments in the aggregate, or by the private sector.

Regulatory Flexibility Analysis

This rule will not have a significant economic impact on a substantial number of small entities. The obligations and responsibilities established under the existing regulations will remain essentially the same under the final rule. The Department has certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration. Therefore, no Regulatory Flexibility Analysis is required.

Document Preparation: This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 520

Clothing, Electronic products, Manpower training programs, Messengers, Minimum wages, Students, Vocational education.

29 CFR Part 521

Manpower training programs, Minimum wages, Vocational education, Wage and Hour Division.

29 CFR Part 522

Cigar and cigarettes, Clothing, Electronic products, Manpower training programs, Minimum wages, Wage and Hour Division.

29 CFR Part 523

Minimum wage, Messengers, Wage and Hour Division.

29 CFR Part 527

Minimum wages, Students, Wage and Hour Division.

Signed at Washington, D.C. on the 2nd day of December, 1997.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR Part 520, 29 CFR Part 521, 29 CFR Part 522, 29 CFR Part 523, and 29 CFR Part 527 are amended as set forth below.

PART 521—[REMOVED AND RESERVED]

1.–2. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is amended by removing part 521.

PART 522—[REMOVED AND RESERVED]

3. Under the authority of Sec. 14, 52 Stat. 1062, 1064 [29 U.S.C. 214); secs. 2–12, 60 Stat. 237–244 (5 U.S.C. 1001–1011), 29 U.S.C. 214, Title 29, Code of Federal Regulations is amended by removing part 522.

PART 523—[REMOVED AND RESERVED]

4. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is amended by removing part 523.

PART 527—[REMOVED AND RESERVED]

5. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is amended by removing part 527.

6. Under the authority of Sec. 14, 52 Stat. 1068, as amended, 29 U.S.C. 214, Title 29, Code of Federal Regulations is amended by revising part 520 to read as follows:

PART 520—EMPLOYMENT UNDER SPECIAL CERTIFICATE OF MESSENGERS, LEARNERS (INCLUDING STUDENT-LEARNERS), AND APPRENTICES

Subpart A—[Reserved]

Subpart B—What Are the General Provisions Governing the Employment of Messengers, Learners (Including Student-Learners), and Apprentices at Subminimum Wages?

Sec.

520.200 What is the legal authority for payment of wages lower than the minimum wage required by section 6(a) of the Fair Labor Standards Act?
520.201 How are those classifications of workers which may be paid subminimum wages under section 14(a) of the Fair Labor Standards Act defined?
520.202 How do persons who want to apply for a particular certificate find out what is needed?
520.203 What records does an employer have to keep when subminimum wage certificates are granted? How long do they have to be kept?
520.204 If someone does not agree with the Department of Labor's decision on a certificate, can the decision be appealed?
520.205 How do these rules affect other Federal, state and local laws and collective bargaining agreements?

Subpart C—Definitions

520.300 Definitions.

Subpart D—Messengers, Learners (Excluding Student-Learners), and Apprentices

520.400 Who are messengers, learners, and apprentices?
520.401 Are there any industries, occupations, etc. that do not qualify for a certificate to employ messengers, learners, or apprentices at subminimum wages?
520.402 How do I obtain authority to employ messengers, learners, or apprentices at subminimum wages?
520.403 What information is required when applying for authority to pay less than the minimum wage?
520.404 What must I demonstrate in my application for a messenger, learner, or apprentice certificate to receive a favorable review?
520.405 Must I notify my employees that I am applying for a certificate to employ messengers and/or learners at subminimum wages?
520.406 What happens once I have submitted my request for authorization to pay messengers, learners, or apprentices subminimum wages?
520.407 What is the subminimum wage for messengers and what must I do to comply with the terms of my certificate?
520.408 What is the subminimum wage for learners and what must I do to comply with the terms of my certificate?
520.409 When will authority to pay apprentices special minimum wages become effective and what is the special minimum wage rate?
520.410 How long does a messenger, learner, or apprentice certificate remain in effect?
520.411 Does a certificate authorizing payment of subminimum wages to messengers and/or learners remain in effect during the renewal process?
520.412 What records, in addition to those required by Part 516 of this chapter and section 520.203 of this part, must I keep relating to the employment of messengers, learners, or apprentices under special certificate?

Subpart E—Student-Learners

520.500 Who is a student-learner?
520.501 How do I obtain authority to employ student-learners at subminimum wages?
520.502 What information must an application to employ student-learners at subminimum wages contain?
520.503 What must I demonstrate in my application for a student-learner certificate to receive a favorable review?
520.504 When will authority to pay student-learners subminimum wages become effective?
520.505 How will I be notified that my request to employ student-learners at subminimum wages has been denied and can I appeal the denial?
520.506 What is the subminimum wage for student-learners and what must I do to comply with the terms of my student-learner certificate?
520.507 How long does my certificate remain in effect?
520.508 What records, in addition to those required by Part 516 of this chapter and section 520.203 of this part, must I keep when student-learners are employed?

Authority: Sec. 14, 52 Stat. 1062, 1064 (29 U.S.C. 214); secs. 2–12, 60 Stat. 237–244; (5 U.S.C. 1001–1011); 52 Stat. 1068, as amended, 29 U.S.C. 214.

Subpart A—[Reserved]

Subpart B—What are the General Provisions Governing the Employment of Messengers, Learners (Including Student-Learners), and Apprentices at Subminimum Wages?

§ 520.200 What is the legal authority for payment of wages lower than the minimum wage required by section 6(a) of the Fair Labor Standards Act?

Section 14(a) of the Fair Labor Standards Act provides, in order to prevent curtailment of employment opportunities, for the payment of special minimum wage rates to workers employed as messengers, learners (including student-learners), and apprentices under special certificates issued by the Department of Labor.

§ 520.201 How are those classifications of workers which may be paid subminimum wages under section 14(a) of the Fair Labor Standards Act defined?

(a) A messenger is a worker who is primarily engaged in delivering letters and messages for a firm whose principal business is the delivery of such letters and messages.

(b) A learner is a worker who is being trained for an occupation, which is not customarily recognized as an apprenticeable trade, for which skill, dexterity and judgment must be learned and who, when initially employed, produces little or nothing of value. Except in extraordinary circumstances, an employee cannot be considered a "learner" once he/she has acquired a total of 240 hours of job-related and/or vocational training with the same or other employer(s) or training facility(ies) during the past three years. An individual qualifying as a "learner" may only be trained in two qualifying occupations.

(c) A student-learner is a student who is at least sixteen years of age, or at least eighteen years of age if employed in an occupation which the Secretary has declared to be particularly hazardous, who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a "bona fide vocational training program" as defined in subpart C of this part.

(d) An apprentice is a worker, at least sixteen years of age unless a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade through a registered

apprenticeship program. Training is provided through structured on-the-job training combined with supplemental related theoretical and technical instruction. This term excludes pre-apprentices, trainees, learners, and student-learners. The terms learner and student-learner are defined in subpart C of this part. Standards governing the registration of apprenticeship programs are established and administered by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (BAT) and are found in Regulations, 29 CFR Part 29.

(e) Additional terms used in this part are defined in subpart C of this part.

§ 520.202 How do persons who want to apply for a particular certificate find out what is needed?

The application process, terms, conditions and requirements of certificates and other matters are discussed in subparts D and E of this part. Messengers, learners (excluding student-learners), and apprentices are discussed in subpart D of this part and student-learners in subpart E of this part.

§ 520.203 What records does an employer have to keep when subminimum wage certificates are granted? How long do they have to be kept?

(a) In addition to other records required under the recordkeeping requirements (part 516 of this chapter), the employer is required to keep records specific to certification under section 14(a) of the Fair Labor Standards Act. All workers employed under a subminimum wage certificate shall be designated as such on the employer's payroll records. Further recordkeeping requirements are described in each applicable subpart of this part (see §§ 520.412 and 520.508 of this part).

(b) Employers must maintain and preserve all required records for at least three years from the last date of employment under a subminimum wage program. The employer's copy of the application and the certificate shall also be maintained for three years. Such records shall be kept secure and accessible at the place of employment or where payroll records are customarily maintained. All records must be available for inspection and copying by the Administrator.

§ 520.204 If someone does not agree with the Department of Labor's decision on a certificate, can the decision be appealed?

(a) Any person, applicant, trade union, association, etc. who does not agree with action granting or denying a certificate (pursuant to §§ 520.406 and 520.505) may, within 60 days of that action or such additional time as the Administrator may allow, file with the Administrator a petition for review. The decision of the Administrator becomes final unless such a written request is timely filed.

(b) Such requests should contain a statement of the additional evidence which the person believes may materially affect the decision and establish that there were reasonable grounds for failure to present such evidence during the original certification process.

(c) If a request for reconsideration or review is granted, the Administrator, to the extent it is deemed appropriate, may afford other interested persons an opportunity to present data and views.

(d) The Administrator may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this part.

§ 520.206 How do these rules affect other Federal, state and local laws and collective bargaining agreements?

No provision of this part, or of any special minimum wage certificate issued thereunder, shall excuse noncompliance with any other Federal or state law or municipal ordinance or collective bargaining agreement establishing higher standards.

Subpart C—Definitions

§ 520.300 Definitions.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, or his/her authorized representative.

Apparel industry means the manufacturing of the following products as referred to in subpart D of this part:

(1) Rainwear means the manufacture of waterproofed garments and raincoats from oiled cloth or other materials, whether vulcanized, rubberized, cravenetted, or otherwise processed.

(2) Leather and sheep-lined clothing means the manufacture of leather, leather-trimmed and sheeplined garments for men, women or children.

(3) Women's apparel division of the apparel industry for the manufacture of women's, misses', and juniors' dresses means the production of women's, misses' and juniors' dresses; washable service garments; blouses from woven or purchased knit fabric; women's, misses', children's and infants' underwear, nightwear and negligees from woven fabrics; corsets and other body supporting garments from any material; infants' and children's outerwear; and other garments similar to them.

(4) Robes, means the manufacture of robes from any woven material or from purchased knitted materials, including, without limitation, men's, women's and children's bath, lounging and beach robes and dressing gowns.

Apprentice means a worker, at least sixteen years of age unless a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade through a registered apprenticeship program. Training is provided through structured on-the-job training combined with supplemental related theoretical and technical instruction. This term excludes pre-apprentices, trainees, learners, and student-learners. The terms learner and student-learner are defined in this subpart.

Apprenticeship agreement means a written agreement between an apprentice and either his/her employer, or an apprenticeship committee acting as agent for employer(s), which contains the terms and conditions of the employment and training of the apprentice.

Apprenticeship committee means those persons designated by the sponsor to act for it in the administration of the program. A committee may be "joint", i.e., it is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be "unilateral" or "non-joint" and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

Apprenticeship program means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirements for a written apprenticeship agreement.

BAT means the Bureau of Apprenticeship and Training, Employment and Training Administration, United States Department of Labor.

Bona fide vocational training program means a program authorized and approved by a state board of vocational education or other recognized educational body that provides for part-time employment training which may be scheduled for a part of the work day or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student-learner's course by an accredited school, college, or university.

Department means the United States Department of Labor.

Experienced worker means a worker whose total experience in an authorized learner occupation in the industry, including vocational training, within the past three years is equal to or greater than 240 hours or such other period as authorized by a learner certificate issued pursuant to the regulations in this part.

Experienced worker available for employment means an experienced worker residing within the area from which the plant/business customarily draws its labor supply or within a reasonable commuting distance of such area, and who is willing and able to accept employment in the plant/business; or an experienced worker residing outside of the area from which the plant/business customarily draws its labor supply, who has in fact made himself or herself available for employment at the plant/business.

FLSA means the Fair Labor Standards Act of 1938 as amended (29 U.S.C. 201 *et seq.*).

Learner means a worker who is being trained for an occupation, which is not customarily recognized as an apprenticeable trade, for which skill, dexterity and judgment must be learned and who, when initially employed produces little or nothing of value. Except in extraordinary circumstances, an employee cannot be considered a "learner" once he/she has acquired a total of 240 hours of job-related and/or vocational training with the same or other employer(s) or training facility(ies) during the past three years. An individual qualifying as a "learner" may only be trained in two qualifying occupations.

Learning period means a period of time measured in work hours and vocational training hours that is normally required to fully train an inexperienced worker in a particular occupation within an industry where the learner is employed. The learning period will not exceed 240 hours for any qualifying occupation except in extraordinary circumstances where the employer demonstrates that the occupation to be learned requires an extended period of specialized training.

Men's and boys' clothing industry means the industry which manufactures men's, youths', and boys' suits, coats, and overcoats.

Messenger means a worker who is primarily engaged in delivering letters and messages for a firm whose principal business is the delivery of such letters and messages.

Minimum wage means the wage rate required by section 6 of FLSA. For purposes of this part, subminimum wage rates are based exclusively on the applicable minimum wage provided by section 6(a) of FLSA.

Recognized apprenticeship agency means either a state apprenticeship agency recognized by the BAT, or if no such apprenticeship agency exists in the state, the BAT.

Registered apprenticeship program or agreement means a program or agreement which has been approved by a recognized apprenticeship agency as meeting the basic standards of apprenticeship adopted and published by BAT.

Secretary or Secretary of Labor means the Secretary of Labor, United States Department of Labor or his/her authorized representative.

Shoe manufacturing industry means the manufacture or partial manufacture of footwear from any material and by any process except knitting, vulcanizing of the entire article or vulcanizing (as distinct from cementing) of the sole to the upper, including the manufacturing of the following: athletic shoes; boots; boot tops; burial shoes; custom-made boots or shoes; moccasins; puttees, except spiral puttees; sandals; shoes completely rebuilt in a shoe factory; slippers. This term also includes the manufacture from leather or from any shoe-upper material of all cut stock and findings for footwear, including bows, ornaments, and trimmings. It also includes the manufacture of cutsoles; midsoles; insoles; taps; lifts; rands; toplifts; bases; shanks; boxtoes; counters; stays; stripping; sock linings; and heel pads. Shoe manufacturing also includes the manufacture of heels from any material except molded rubber, but not including the manufacture of woodheel blocks; the manufacture of cut upper parts for footwear, including linings, vamps and quarters; and the manufacture of pasted shoe stock; as well as the manufacture of boot and shoe patterns. However, the manufacture of cut stock and findings is included within this definition only when performed by companies engaged in the production of shoes who incorporate most of the cut stock and findings in the manufacture of their product(s).

Skilled trade means an apprenticeable occupation which possesses all of the following characteristics:

(1) It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training.

(2) It is clearly identified and commonly recognized throughout an industry.

(3) It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.

(4) It requires related instruction to supplement the on-the-job training.

(5) It is not merely a part of an apprenticeable occupation and does not fall into any of the following categories: marketing; sales administration; administrative support; executive and managerial; professional and semi-professional occupations (this category covers occupations for which entrance requirements customarily include education of college level).

Standards of apprenticeship means the apprenticeship program is an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, which meets the requirements established by BAT, and is subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

State means any state of the United States or the District of Columbia or any territory or possession of the United States.

Student-learner means a student who is at least sixteen years of age, or at least eighteen years of age if employed in an occupation which the Secretary has declared to be particularly hazardous, who is receiving instruction in an accredited school, college or university and who is employed by an establishment on a part-time basis, pursuant to a bona fide vocational training program.

Subminimum wage means the rates which may be paid under temporary authorization or under certificate as provided by section 14(a) of FLSA and this part.

Vocational Training Program. See "Bona fide vocational training program".

Wage and Hour Division means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

Subpart D—Messengers, Learners (Excluding Student-Learners), and Apprentices

§ 520.400 Who are messengers, learners, and apprentices?

The terms messenger, learner, and apprentice are defined in subpart C of this part.

§ 520.401 Are there any industries, occupations, etc. that do not qualify for a certificate to employ messengers, learners, or apprentices at subminimum wages?

(a) Certificates to employ messengers at subminimum wages are available to only those establishments engaged in the business of providing messenger service, i.e., the delivery of letters and messages. Requests for such certificates are uniformly denied to applicants whose principal business purpose is not the delivery of messages and letters.

(b) All applications for special certificates authorizing the employment of learners at subminimum wage rates in the manufacture of products in the following industries shall be denied (definitions for all listed activities can be found in subpart C of this part):

(1) In the apparel industry:

(i) Rainwear

(ii) Leather and sheep-lined clothing

(iii) Women's apparel division of the apparel industry for the manufacture of women's misses', and juniors' dresses;

(iv) Robes

(2) Shoe manufacturing industry

(3) Men's and boys' clothing industry.

(c) No certificates will be granted authorizing the employment of learners at subminimum wage rates as homeworkers; in maintenance occupations such as guard, porter, or custodian; in office and clerical occupations in any industry; or in operations of a temporary or sporadic nature.

(d) Authorization to employ apprentices at subminimum wages will only be granted if permitted by the BAT regulations (29 CFR Part 29).

§ 520.402 How do I obtain authority to employ messengers, learners, or apprentices at subminimum wages?

(a) Employers wishing to employ messengers, learners, or apprentices as defined in subpart C of this part at subminimum wages must apply for authority to do so from the Administrator at the Wage and Hour Division's Regional Office having administrative jurisdiction over the geographic area in which the employment is to take place. To obtain the address of the Regional Office which services your geographic area, please contact your local Wage and Hour Office (under "Department of Labor" in the blue pages of your local telephone book).

(b) In the case of messengers, such application may be filed by an employer or group of employers. Preferential consideration will be given to applications filed by groups or organizations which are deemed to be representative of the interests of a whole industry or branch thereof.

§ 520.403 What information is required when applying for authority to pay less than the minimum wage?

(a) A separate application must be made for each plant or establishment requesting authorization for employment of messengers and/or learners at subminimum wages, on the official form furnished by the Wage and Hour Division, containing all information required by the form including:

(1) Information concerning efforts made by the applicant to obtain experienced workers in occupation(s) for which learners are requested;

(2) The occupations/industry in which the messenger(s) and/or learner(s) are to be employed;

(3) A statement explaining why employment of messenger(s) and/or learners(s) at subminimum wages is needed to prevent curtailment of employment opportunities;

(4) The number of messengers and/or learners the applicant anticipates employing at subminimum wages under special certificate;

(5) If requesting authorization for the employment of learners at subminimum wages for a learning period greater than 240 hours, information pertinent to the extraordinary circumstances necessitating such a request. While each such request will be considered on its own merit, it is anticipated that such authorizations would be limited to occupations requiring an extended period of specialized training;

(6) The number of messengers and/or learners hired at subminimum wages during the twelve-month period prior to making application;

(7) Total number of nonsupervisory workers in the particular plant or establishment for which a certificate is requested;

(8) The number of experienced workers in the learner occupations and their straight-time average hourly earnings during the last payroll period and the corresponding payroll period in the prior year; and

(9) The type of equipment to be used by learners.

(b) For apprentices, the employer or apprenticeship committee must submit a copy of the registered apprenticeship program.

(c) Any applicant may also submit such additional information as may be pertinent. Applications which fail to provide the information required by the form may be returned to the applicant with a notation of deficiencies and without prejudice against submission of a new or revised application.

(The information collection requirements contained in paragraphs (a), (b) and (c) were approved by the Office of Management and Budget under control number 1215–0192.)

§ 520.404 What must I demonstrate in my application for a messenger, learner, or apprentice certificate to receive a favorable review?

(a) The application must demonstrate that a certificate is necessary in order to prevent the curtailment of opportunities for employment.

(b) The issuance of a messenger and/or learner certificate must not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage rates or working standards of experienced workers performing work of a like or comparable character in the industry.

(c) Abnormal labor conditions such as a strike, lock-out, or other similar condition, must not exist at the plant or establishment for which a messenger and/or learner certificate is requested.

(d) It must be shown that an adequate supply of qualified experienced workers is not available for employment in those occupations for which authorization to pay subminimum wages to learners has been requested; that the experienced workers presently employed in the plant or establishment in occupations in which learners are requested are afforded an opportunity, to the fullest extent possible, for full-time employment upon completion of the learning period; and that learners are available for employment.

(e) Reasonable efforts must have been made to recruit workers paid at least the minimum wage in those occupations in which certificates to employ learners at subminimum wages have been requested. This includes the placement of an order with the local State or Territorial Public Employment Service Office (except in possessions where there is no such office) not more than fifteen days prior to the date of application. Written evidence from such office that the order has been placed shall be submitted by the employer with the application.

(f) The occupation or occupations in which learners are to receive training must involve a sufficient degree of skill to necessitate an appreciable learning period.

(g) An apprenticeship program must conform with or substantially conform with the standards of apprenticeship as defined in subpart C of this part.

(h) There must be no serious outstanding violations involving the employee(s) for whom a certificate is being requested nor any serious outstanding violations of a certificate previously issued, nor any serious violations of the FLSA which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

§ 520.405 Must I notify my employees that I am applying for a certificate to employ messengers and/or learners at subminimum wages?

Upon making application for a messenger and/or learner certificate or for renewal thereof, an employer shall post a copy of the first page of the completed application form in a conspicuous place in each department of the plant or establishment where he/she proposes to employ messengers and/or learners at subminimum wage rates. Such notice shall remain posted until the application is acted upon by the Administrator.

(The information collection requirements contained in paragraphs (a), (b) and (c) were approved by the Office of Management and Budget under control number 1215–0192.)

§ 520.406 What happens once I have submitted my request for authorization to pay messengers, learners, or apprentices subminimum wages?

(a) All applications submitted for authorization to pay wages lower than those required by section 6(a) of the FLSA will be considered and acted upon (issued or denied) subject to the conditions specified in §§ 520.403 and 520.404 of this part.

(b) If, in the case of messengers and/or learners, available information indicates that the requirements of this part are satisfied, the Administrator shall issue a special certificate which will be mailed to the employer. If a special certificate is denied, the employer shall be given written notice of the denial. If a messenger and/or learner certificate is denied, notice of such denial shall be without prejudice to the filing of any subsequent application.

(c) If, in the case of apprentices, the apprenticeship agreement and other available information indicate that the requirements of this part are satisfied, the Administrator shall issue a special certificate. The special certificate, if issued, shall be mailed to the employer or the apprenticeship committee and a copy shall be mailed to the apprentice. If a special certificate is denied, the employer or the apprenticeship committee, the apprentice and the recognized apprenticeship agency shall be given written notice of the denial. The employer shall pay the apprentice the minimum wage applicable under section 6(a) of the FLSA from the date of receipt of notice of such denial.

§ 520.407 What is the subminimum wage for messengers and what must I do to comply with the terms of my certificate?

(a) A messenger certificate, if issued, shall specify:

(1) The subminimum wage rate of not less than 95 percent of the applicable minimum wage required by section 6(a) of the FLSA; and

(2) The effective and expiration dates of the certificate.

(b) The employer shall post a copy of the messenger certificate during its effective period in a conspicuous place where it can be readily seen by employees.

(c) No messenger shall be hired under a messenger certificate while abnormal labor conditions such as a strike, lock-out, or other similar condition, exist.

§ 520.408 What is the subminimum wage for learners and what must I do to comply with the terms of my certificate?

(a) All learner certificates shall specify:

(1) The subminimum wage rate of not less than 95 percent of the applicable minimum wage required by section 6(a) of the FLSA;

(2) The number or proportion of learners authorized to be employed on any one day;

(3) The occupations in which learners may be employed;

(4) The authorized learning period of not more than 240 hours, except in extraordinary situations as discussed in § 520.403; and

(5) The effective and expiration dates of the certificate.

(b) Learners properly hired prior to the date on which a learner certificate expires may be continued in employment at subminimum wage rates for the duration of their authorized learning period under the terms of the certificate, even though the certificate may expire before the learning period is completed.

(c) The employer shall post a copy of the learner certificate during its effective period and thereafter until all authorized learners have completed their learning period(s). The certificate shall be posted in a conspicuous place in each department of the plant where learners are to be employed.

(d) No learners shall be hired under a learner certificate if, at the time the employment begins, experienced workers capable of equaling the performance of a worker of minimum acceptable skill are available for employment. Before hiring learners during the effective period of the certificate, the employer shall place an order for experienced workers with the local State or Territorial Public Employment Service Office (except in possessions where there is no such office) or have such an active order on file. Written evidence that an order has been placed or is on active file shall be maintained in the employer's records.

(e) No learner shall be hired under a learner certificate while abnormal labor conditions such as a strike, lock-out, or other similar condition exist in the plant or establishment.

(f) For each individual learner, the number of hours of previous employment and hours of vocational or similar facility(ies) training must be deducted from the authorized learning period if within the past three years the learner has been employed or received vocational training in a given occupation and industry.

(g) If experienced workers are paid on a piece rate basis, learners shall be paid at least the same piece rates as experienced workers employed on similar work in the plant and shall receive earnings based on such piece rates whenever such earnings exceed the subminimum wage rates permitted in the certificate.

§ 520.409 When will authority to pay apprentices special minimum wages become effective and what is the special minimum wage rate?

(a) An apprenticeship program which has been registered with a recognized apprenticeship agency shall constitute a temporary special certificate authorizing the employment of an apprentice at the wages and under the conditions specified in such program until a special certificate is issued or denied. This temporary authorization is, however, conditioned on the requirement that within 90 days from the beginning date of employment of the apprentice, the employer or the apprenticeship committee shall send one copy of each apprenticeship agreement, with evidence of registration, to the appropriate Regional Office of the Wage and Hour Division.

(b) The wage rate specified by the apprenticeship program becomes the special minimum wage rate that must be paid unless the Administrator issues a certificate modifying the terms and conditions of employment of apprentices at special minimum wages.

§ 520.410 How long does a messenger, learner, or apprentice certificate remain in effect?

(a) Messenger and/or learner certificates may be issued for a period of not longer than one year.

(b) Each special apprentice certificate shall specify the conditions and limitations under which it is granted, including the periods of time during

which subminimum wage rates may be paid pursuant to a registered apprenticeship program.

(c) No certificate may be issued retroactively.

(d) The Administrator may amend the provisions of a certificate when necessary to correct omissions or defects in the original certificate or reflect changes in this part.

§ 520.411 Does a certificate authorizing payment of subminimum wages to messengers and/or learners remain in effect during the renewal process?

(a) Application for renewal of a messenger and/or learner certificate shall be made on the same form as described in this section and employees shall be advised of such renewal application in the same manner as explained in § 520.405. No effective messenger and/or learner certificate shall expire until action on an application for renewal shall have been finally determined, provided that such application has been properly executed in accordance with the requirements, and filed with and received by the Administrator not less than fifteen nor more than thirty days prior to the expiration date. A final determination means either the granting of or initial denial of the application for renewal of a messenger and/or learner certificate, or withdrawal of the application. A "properly executed application" is one which contains the complete information required on the form, and the required certification by the applicant.

(b) A renewal certificate will not be issued unless there is a clear showing that the conditions set forth in section 520.404 of this part still prevail.

§ 520.412 What records, in addition to those required by Part 516 of this chapter and section 520.203 of this part, must I keep relating to the employment of messengers, learners, or apprentices under special certificate?

(a) Each worker employed as a messenger, learner, or apprentice under a certificate shall be designated as such on the employer's payroll records. All such messengers, learners, or apprentices shall be listed together as a separate group on the payroll records, with each messenger's, learner's, or apprentice's occupation being shown.

(b) At the time learners are hired, the employer shall also obtain and keep in his/her records a statement signed by each employee showing all applicable experience which the learner had in the employer's industry, including vocational training, during the preceding three years. The statement shall contain the dates of such previous employment, names and addresses of employers, the occupation or occupations in which the learner was engaged and the types of products upon which the learner worked. The statement shall also contain information concerning pertinent training in vocational training schools or similar training facilities, including the dates of such training and the identity of the vocational school or training facility. If the learner has had no applicable experience or pertinent training, a statement to that effect signed by the learner shall likewise be kept in the employer's records.

(c) The employer shall maintain a file of all evidence and records, including any correspondence, pertaining to the filing or cancellation of job orders placed with the local State or Territorial Public Employment Service Office pertaining to job orders for occupations to be performed by learners.

(d) Every employer who employs apprentices under temporary or special certificates shall preserve for three years from the last effective date of the certificate copies of the apprenticeship program, apprenticeship agreement and special certificate under which such an apprentice is employed.

(e) Every apprenticeship committee which holds a certificate under this part shall keep the following records for each apprentice under its control and supervision:

(1) The apprenticeship program, apprenticeship agreement and special certificate under which the apprentice is employed by an employer;

(2) The cumulative amount of work experience gained by the apprentice, in order to establish the proper wage at the time of his/her assignment to an employer; and

(3) A list of the employers to whom the apprentice was assigned and the period of time he/she worked for each employer.

(f) The records required in this section, including a copy of the application(s) submitted and any special certificate(s) issued, shall be kept and made available for inspection for at least three years from the expiration date of the certificate(s).

Subpart E—Student-Learners

§ 520.500 Who is a student-learner?

The term student-learner is defined in subpart C.

§ 520.501 How do I obtain authority to employ student-learners at subminimum wages?

(a) Employers wishing to employ student-learners at subminimum wages must apply for authority to do so from the Administrator at the Wage and Hour Division's Regional Office having administrative jurisdiction over the geographic area in which the employment is to take place. To obtain the address of the Regional Office which services your geographic area, please contact your local Wage and Hour Office (under "Department of Labor" in the blue pages of your local telephone book).

(b) Application must be made on the official form furnished by the Wage and Hour Division and must be signed by the employer, the appropriate school official and the student-learner. A separate application must be filed by the employer for each student-learner the employer proposes to employ at subminimum wages.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1215–0192.)

§ 520.502 What information must an application to employ student-learners at subminimum wages contain?

Student-learner applications must contain:

(a) A statement clearly outlining the vocational training program and showing, particularly, the processes in which the student-learner will be engaged when in training on the job;

(b) A statement clearly outlining the school instruction directly related to the job;

(c) The total number of workers employed in the establishment;

(d) The number and hourly wage rates of experienced workers employed in the occupation in which the student-learner is to be trained;

(e) The hourly wage rate or progressive wage schedule which the employer proposes to pay the student-learner;

(f) The age of the student-learner;

(g) The period of employment training at subminimum wages;

(h) The number of hours of employment training a week and the number of hours of school instruction a week;

(i) A certification by the appropriate school official that the student named on the application form will be receiving instruction in an accredited school, college, or university and will be employed pursuant to a bona fide vocational training program, as defined in subpart C of this part. The certification by the school official must satisfy the following conditions:

(1) The application must be properly executed in conformance with § 520.501 of this subpart;

(2) The employment training must conform with the provisions of § 520.503 (a), (c), (d), and (g) and paragraphs (a) and (c) of § 520.506;

(3) The occupation must not be one for which a student-learner application was previously submitted by the employer and a special certificate was denied by the Administrator.

(The information collection requirements contained in paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) were approved by the Office of Management and Budget under control number 1215–0192.)

§ 520.503 What must I demonstrate in my application for a student-learner certificate to receive a favorable review?

Each student-learner application must demonstrate that:

(a) The training program under which the student-learner will be employed is a bona fide vocational training program as defined in subpart C of this part;

(b) The employment of the student-learner at subminimum wages authorized by the special certificate must be necessary to prevent curtailment of opportunities for employment;

(c) The student-learner is at least sixteen years of age, or at least eighteen years of age if employed in any occupation which the Secretary has declared to be particularly hazardous (see part 570, subpart E, of this chapter, but note the specific exemptions for student-learners in several of the orders);

(d) The occupation for which the student-learner is receiving preparatory training requires a sufficient degree of skill to necessitate a substantial learning period;

(e) The training is not for the purpose of acquiring manual dexterity and high production speed in repetitive operations;

(f) The employment of a student-learner will not have the effect of displacing a worker employed in the establishment;

(g) The employment of the student-learners at subminimum wages must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character;

(h) The occupational needs of the community or industry warrant the training of student-learners;

(i) There are no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or serious violations of any other provisions of the FLSA by the employer which provide reasonable grounds to conclude that the terms of the certificate would not be complied with, if issued;

(j) The issuance of such a certificate would not tend to prevent the development of apprenticeship programs in accordance with the regulations applicable thereto (subpart D of this part) or would not impair established apprenticeship standards in the occupation or industry involved; and

(k) The number of student-learners to be employed in one establishment is not more than a small proportion of its work force.

§ 520.504 When will authority to pay student-learners subminimum wages become effective?

(a) Certification by the appropriate school official on an application for a special student-learner certificate shall constitute a temporary authorization. This temporary authorization is effective from the date such application is forwarded to the Wage and Hour Division in conformance with § 520.501.

(b) At the end of 30 days, this application shall become the permanent special student-learner certificate unless, after review, the Administrator denies the application, issues a certificate with modified terms and conditions, or expressly extends the period of review.

§ 520.505 How will I be notified that my request to employ student-learners at subminimum wages has been denied and can I appeal the denial?

(a) If, after review, an application is denied, notification of denial will be made to the appropriate school official, the employer and the student. This notification will occur within 30 days following the date such application was forwarded to the Wage and Hour Division, unless additional time for review is considered necessary or appropriate.

(b) If additional time for review is considered necessary or appropriate, the proper school official, the employer, and the student shall be so notified. To the extent feasible, the Administrator may provide an opportunity to other interested persons to present data and views on the application before denying a special student-learner certificate.

(c) Whenever a notification of denial is mailed to the employer, such denial shall be without prejudice to any subsequent application, except under the circumstances referred to in § 520.502(i)(3).

(d) Section 520.204 of this part describes the procedures for requesting reconsideration of a decision to grant or deny a certificate.

§ 520.506 What is the subminimum wage for student-learners and what must I do to comply with the terms of my student-learner certificate?

(a) The special minimum wage rate paid to student-learners shall be not less than 75 percent of the applicable minimum under section 6(a) of the FLSA.

(b) Compliance with items listed for favorable review of a student-learner application (§ 540.503) must be demonstrated.

(c)(1) The number of hours of employment training each week at subminimum wages pursuant to a certificate, when added to the hours of school instruction, shall not exceed 40 hours, except that authorization may be granted by the Administrator for a greater number of hours if found to be justified by extraordinary circumstances.

(2) When school is not in session on any school day, the student-learner may work a number of hours in addition to the weekly hours of employment training authorized by the certificate; provided,

(i) The total hours worked shall not exceed 8 hours on any such day, and

(ii) A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked on such day.

(3) During the school term, when school is not in session for the entire week, the student-learner may work at his/her employment training a number of hours in the week in addition to those authorized by the certificate; provided,

(i) The total hours shall not exceed 40 hours in any such week, and

(ii) A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked in such week.

(d) A special student-learner certificate shall not constitute authorization to pay a subminimum wage rate to a student-learner in any week in which he/she is employed for a number of hours in addition to the number authorized in the certificate, except as provided in paragraphs (c)(1), (2), and (3) of this section.

§ 520.507 How long does my certificate remain in effect?

(a) A special student-learner certificate shall be effective for a period not to exceed the length of one school year unless a longer period is found to be justified by extraordinary circumstances. These circumstances must be explained in detail at the time of application. While each such request

will be considered on its own merit, it is anticipated that such authorizations would be limited to occupations requiring an extended period of specialized training;

(b) No certificate shall authorize employment training beyond the date of graduation.

(c) No special student-learner certificate may be issued retroactively.

§ 520.508 What records, in addition to those required by Part 516 of this chapter and section 520.203 of this part, must I keep when student-learners are employed?

Any worker employed as a student-learner shall be identified as such on the payroll records, with each student-learner's occupation and rate of pay being shown. Notations should be made in the employer's records when additional hours are worked by reason of school not being in session.

[FR Doc. 97–32009 Filed 12–8–97; 8:45 am]
BILLING CODE 4510–27–P

federal register

Tuesday
December 9, 1997

Part IV

Securities and Exchange Commission

17 CFR Parts 230, 239, 270, and 274
Technical Revisions to the Rules and Forms Regulating Money Market Funds; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270 and 274

[Release Nos. 33–7479; IC–22921; S7–29–96]

RIN 3235–AE17

Technical Revisions to the Rules and Forms Regulating Money Market Funds

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments to rules and forms under the Securities Act of 1933 and the Investment Company Act of 1940 that govern money market funds. Technical amendments to rule 2a–7 under the Investment Company Act of 1940, the rule regulating money market funds, among other things, revise terminology used in the rule to reflect common market usage and resolve certain interpretive issues under the rule. Amendments to the advertising rules applicable to money market funds, among other things, clarify the formula used by money market funds to calculate yield.

DATES: *Effective Date:* The rule and form amendments adopted in this Release will become effective February 10, 1998. *Compliance Date:* See Section III of this Release.

FOR FURTHER INFORMATION CONTACT: David P. Mathews, Senior Counsel, Office of Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting technical amendments to rule 2a–7 [17 CFR 270.2a–7] ("rule 2a–7" or the "rule")[1] under the Investment Company Act of 1940 [15 USC 80a–1, *et seq.*] ("1940 Act"), the rule governing the operations of money market funds ("funds").[2] The Commission is adopting conforming amendments to rules 2a41–1, 12d3–1, 17a–9 and 31a–1 under the 1940 Act [17 CFR 270.2a41–1, 270.12d3–1, 270.17a–9 and 270.31a–1] to reflect the amendments to rule 2a–7. The Commission also is adopting amendments to rule 482 [17 CFR 230.482] under the Securities Act of 1933 [15 USC 77a, *et seq.*] ("1933 Act") and rule 34b–1 under the 1940 Act [17 CFR 270.34b–1]; and to Forms N–1A [17 CFR 239.15A and 274.11A], N–3 [17 CFR 239.17a and 274.11b] and N–4 [17 CFR 239.17b and 274.11c].

[1] Unless otherwise noted, all references to "rule 2a–7, as amended," or any paragraph of the rule, will be to 17 CFR 270.2a–7 as amended by this Release.

[2] Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)] ("Release 21837"). Unless otherwise noted, all references to the "1996 Amendments" in this Release are to rule 2a–7 as adopted in Release 21837. The compliance date for the 1996 Amendments to rule 2a–7 was suspended pending the adoption of technical amendments. See *infra* note 5 and accompanying text.

[3] The portfolio or credit quality provisions of the rule generally limit funds to investments in U.S. dollar-denominated securities that present minimal credit risks and that are, at the time of acquisition, "eligible securities" as defined by the rule. See paragraph (c)(3) of rule 2a–7, as amended ("portfolio quality standards" or "credit quality standards"). "Eligible security" is defined in paragraph (a)(10) of rule 2a–7, as amended.

[4] The diversification provisions of the rule generally limit the amount of assets that a fund may invest in a single issuer of securities, and the amount of assets that may be subject to credit enhancements, such as letters of credit or puts, provided by the same credit enhancement provider. See paragraph (c)(4) of rule 2a–7, as amended ("diversification standards").

[5] Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 22135 (Aug. 13, 1996) [61 FR 42786 (Aug. 19, 1996)]. The Commission suspended the 1996 Amendments' compliance date for rules 2a–7, 2a41–1, 12d3–1 and 31a–1 under the 1940 Act. [17 CFR 270.2a–7, 2a41–1, 12d3–1 and 31a–1]. The compliance date was not suspended with respect to the adoption of rule 17a–9 under the 1940 Act [17 CFR 270.17a–9] and the 1996 Amendments' revisions of the rules and forms relating to money market fund disclosure, advertising and reporting.

I. Technical Amendments to Rule 2a–7

A. Background

On March 21, 1996, the Commission adopted amendments to rule 2a–7 under the 1940 Act ("1996 Amendments") to tighten the rule's risk-limiting conditions imposed on tax exempt money market funds and to address the treatment under the rule of certain instruments, such as asset backed securities.[2] These risk-limiting conditions include requirements that a fund limit itself to investing in high quality securities[3] and that the fund's portfolio be diversified.[4] After the adoption of the 1996 Amendments, industry participants raised numerous questions concerning the application of the amendments in different contexts. The Commission thereafter suspended the compliance date of certain of the 1996 Amendments pending the proposal and adoption of technical amendments to address these concerns.[5]

On December 10, 1996, the Commission issued a release proposing technical amendments to rule 2a–7 ("Proposing Release").[6] The proposed amendments would: (1) codify certain interpretive views expressed by the Division of Investment Management;[7] (2) revise terminology used in the rule to reflect common market usage; (3) modify certain of the 1996 Amendments so that the rule's treatment of certain instruments (*e.g.*, guarantees) more closely reflects the treatment of those instruments by the financial markets; and (4) make certain other technical corrections. The Commission also proposed amendments to clarify the Commission's advertising rules regarding how money market funds calculate current yield and represent short-term total return in conjunction with current yield quotations.

The Commission received comments on the proposed amendments from seventeen commenters, including nine mutual fund complexes.[8] Commenters supported the proposed technical amendments to rule 2a–7, and suggested further amendments to certain provisions of the rule primarily relating to the treatment of asset backed securities. Most commenters that addressed the proposed amendments to the Commission's advertising rules relating to money market fund yield and total return generally supported them. The Commission is adopting the technical amendments substantially as proposed, with certain modifications that reflect, in part, many of the commenters' suggestions. The Commission also is establishing a new compliance date for the 1996 Amendments, as further amended by the technical amendments adopted in this Release.[9]

B. Discussion

1. Guarantees

a. Definition of "Guarantee". Rule 2a–7 currently characterizes certain features that enhance the credit or liquidity of portfolio securities as "puts" and "unconditional puts."[10] To clarify terminology used in rule 2a–7, the Commission proposed to replace these terms with a new term—"guarantee"—that would include a wide-range of arrangements designed to unconditionally support the credit of the issuer of a security.[11] Commenters generally supported the proposed amendments, which the Commission is adopting substantially as proposed.[12]

b. Credit Substitution. Since 1986, rule 2a–7 has permitted a fund to rely exclusively on the credit quality of the issuer of an "unconditional demand feature" in determining whether a security meets the rule's credit quality standards.[13] The 1996 Amendments also permitted a fund to exclude from the rule's issuer diversification standards a security subject to an unconditional demand feature provided by a person that does not control, or is not controlled by or under common control with, the issuer of the security ("non-controlled person").[14] Reflected in this approach is the recognition that the holder of a security typically relies exclusively on the credit quality of the issuer of the unconditional demand feature in deciding to invest in the security.

In addition to enhancing credit quality, money market funds also rely on demand features to shorten the maturities of adjustable rate securities or provide a source of liquidity.[15] Because of the significance of demand features to a money market fund's ability to maintain a stable net asset value, the 1996 Amendments further provided that a demand feature is not eligible for fund investment unless (i) The demand feature (or the issuer of the demand feature) is rated by an NRSRO ("Rating Requirement");[16] and (ii) arrangements are in place for a fund holding a security subject to a demand feature to be given notice in the event of a change in the identity of the issuer of the demand feature ("Notification Requirement").

The Commission proposed to extend these provisions to other types of guarantees commonly held by funds, such as bond insurance, letters of credit and similar unconditional guarantees.[17] Like securities subject to unconditional demand features, securities subject to guarantees typically trade on the basis of the credit of the guarantor, rather than the issuer. Commenters strongly supported the proposed amendments, which the Commission is adopting as proposed.[18]

Under the rule as amended, a fund holding a security subject to a guarantee (as defined in the rule) may rely exclusively on the credit quality of the issuer of the guarantee in determining whether the security meets the rule's credit quality standards.[19] In addition, securities subject to guarantees issued by non-controlled persons are not subject to the rule's issuer diversification standards.[20]

c. Rating Requirement for Guarantees. The 1996 Amendments precluded funds from investing in securities subject to demand features (whether unconditional or conditional) that have not received a short-term rating from an NRSRO. The Commission proposed, in light of its proposal to extend the rule's treatment of unconditional demand features to all guarantees, to extend the Rating Requirement to guarantees, subject to certain exceptions.[21] Commenters generally supported the proposal, which the Commission is adopting substantially as proposed.

Under rule 2a–7, as amended, all guarantees must be rated by an NRSRO,[22] except (i) a guarantee issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the guarantee,[23] (ii) a guarantee with respect to a repurchase agreement ("repo") that is collateralized fully,[24] (iii) a guarantee issued by the

[6] Technical Revisions to the Rules and Forms Regulating Money Market Funds, Investment Company Act Release No. 22383 (Dec. 10, 1996) [61 FR 66621 (Dec. 18, 1996)] ("Proposing Release").

[7] See Investment Company Institute (pub. avail. May 9, 1996).

[8] The comment letters and a summary of the comments prepared by the Commission staff are available to the public and are included in File No. S7–29–96.

[9] The new compliance date is discussed *infra* in Section III.B. of this Release.

[10] The 1996 Amendments defined a "put" as the right to sell a specified underlying security within a specified period of time at a specified exercise price that may be sold, transferred or assigned only with the underlying security. An "unconditional put" was defined as a put (including any guarantee, financial guarantee (bond) insurance, letter of credit or similar unconditional credit enhancement) that by its terms would be readily exercisable in the event of default in payment of principal or interest on the underlying security. See paragraphs (a)(16) and (a)(27) of rule 2a–7, as adopted by the 1996 Amendments.

[11] See Proposing Release, *supra* note , at n.7 and accompanying text.

[12] Under the new definition, a guarantee is any unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the guarantee (if required), principal plus accrued interest when due upon default. Paragraph (a)(15) of rule 2a–7, as amended. In order to permit guarantees that are payable at any time, the Commission has eliminated a requirement in the proposed definition that the issuer of the guarantee be obligated to pay upon default "at a specified time." The Commission also is adopting amendments to the credit quality and diversification provisions of the rule to incorporate the new term "guarantee," as discussed *infra* in Sections I.B.1.b. and c. of this Release. The definition of "guarantee" is for purposes of rule 2a–7 only, and is not intended to have any effect on the status of these investments under other provisions of the 1940 Act or under other federal securities laws.

[13] See Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14983 (Mar. 12, 1986) [51 FR 9773 (Mar. 21, 1986)]. A "demand feature" means (i) a feature exercisable either: (A) at any time on no more than 30 calendar days' notice, or (B) at specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or (ii) a feature permitting the holder of an asset backed security unconditionally to receive principal and interest within 397 calendar days of making demand. An "unconditional demand feature" is a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities. See paragraphs (a)(6) and (a)(26) of rule 2a–7, as amended.

[14] Under the 1996 Amendments, a security subject to an unconditional demand feature from a person in a control relationship with the issuer of the security (*i.e.*, one that controls, is controlled by or under common control with the issuer) remains subject to the issuer diversification standards in order to reduce a fund's exposure to credit risks presented by a single economic enterprise. See Release 21837, *supra* note 2, at nn.42–47 and accompanying text.

[15] Tax exempt funds, for example, typically invest in long-term adjustable rate securities subject to demand features. The interest rates on these securities periodically adjust to reflect short-term rates. The demand features permit funds to demand payment of the security at relatively short intervals, and if unconditional, also serve to enhance credit quality—thus providing the basis for making the securities eligible for money market fund investment.

[16] "NRSRO" is the acronym used in rule 2a–7 to stand for a "nationally recognized statistical rating organization." See paragraph (a)(17) of rule 2a–7, as amended. NRSROs are designated as such by the Commission's Division of Market Regulation through the no-action letter process for purposes of the Commission's net capital rule [17 CFR 240.15c3–1].

[17] Proposing Release, *supra* note 6, at nn. 8–16 and accompanying text.

[18] See paragraphs (c)(3)(iii) (determination of whether a security meets the rule's credit quality standards may be based exclusively on the credit quality of the security's guarantee); (c)(4)(i) (excluding securities subject to guarantees from non-controlled persons from the rule's issuer diversification standards); (a)(10)(iii)(A) (extending the Rating Requirement to guarantees); (a)(10)(iii)(B) (extending the Notification Requirement to guarantees); and (a)(16) (definition of "guarantee issued by a non-controlled person") of rule 2a–7, as amended. The amended rule also permits a fund that holds a security subject to a guarantee and a conditional demand feature to substitute the rating of the guarantee for the rating of the underlying security. Paragraph (c)(3)(iv)(C) of rule 2a–7, as amended. Consistent with the amended rule, however, a fund must also consider the rating of the conditional demand feature in evaluating the credit quality of the entire instrument. Paragraph (c)(3)(iv)(A) of rule 2a–7, as amended.

[19] Paragraph (c)(3)(iii) of rule 2a–7, as amended.

[20] Paragraph (c)(4)(i) of rule 2a–7, as amended. Guarantees, however, are subject to the guarantee and demand feature diversification standards of paragraphs (c)(4)(iii), (c)(4)(iv) and (c)(5) of rule 2a–7, as amended. A security subject to a guarantee that is provided by a person in a control relationship with the issuer of the security remains subject to the rule's issuer diversification standards. See paragraphs (a)(16) (definition of "guarantee issued by a non-controlled person") and (c)(4)(i) of rule 2a–7, as amended.

[21] Proposing Release, *supra* note 6, at nn. 17–24 and accompanying text.

[22] Paragraph (a)(10)(iii)(A) of rule 2a–7, as amended. Unlike the 1996 Amendments, which required a short-term rating, the amended rule allows any rating from an NRSRO to satisfy the Rating Requirement.

[23] Paragraph (a)(10)(iii)(A)(*1*) of rule 2a–7, as amended. The Commission proposed to exclude this type of guarantee from the Rating Requirement because a guarantor that guarantees securities issued by a person in a control relationship with the guarantor may not be in the business of lending its credit, and such a requirement may be burdensome and result in a diminished supply of high quality, eligible securities available for money market fund investment.

[24] Paragraph (a)(10)(iii)(A)(*2*) of rule 2a–7, as amended. The Commission has relaxed the Rating

Continued

U.S. Government,[25] or (iv) a guarantee not relied upon for quality, maturity or liquidity purposes.[26] Conditional demand features, which are not within the definition of a "guarantee" under the amended rule, are not subject to the Rating Requirement.[27]

d. Demand Features and Guarantees Not Relied Upon. The 1996 Amendments permitted a fund that is not relying on a particular put to disregard that put for purposes of meeting rule 2a–7's put and demand feature diversification standards. The Commission is revising the rule to extend this provision to guarantees, and to expand the provision to permit funds to disregard a demand feature or a guarantee that is not relied upon to satisfy the rule's credit quality or maturity standards, or for liquidity, for all purposes under the rule.[28]

2. Diversification and Credit Quality Standards Applicable to Issuers

a. Second Tier Securities. Rule 2a–7 provides that a taxable fund may not invest more than one percent of its total assets in second tier securities issued by a single issuer.[29] In the case of tax exempt funds, this one percent limitation on investments in second tier securities applies only to second tier "conduit securities" that are issued by municipalities, but whose ultimate obligors are not government or municipal entities.[30] The Commission is adopting the proposed amendments to the rule that clarify that these limitations are not applicable to a security that is guaranteed by a non-controlled person.[31] Securities subject to guarantees from non-controlled persons are subject only to the rule's guarantee and demand feature diversification standards.[32]

b. Repurchase Agreements. Rule 2a–7 permits a fund to "look-through" a repo to the underlying collateral and disregard the counterparty in determining compliance with the rule's diversification standards if the obligation of the counterparty is "collateralized fully." The 1996 Amendments sought to define "collateralized fully" to limit the collateral to that which could be liquidated promptly even in the event of bankruptcy of the counterparty.

Because of questions concerning the treatment of cash and other types of collateral not specifically addressed in the 1996 Amendments, the Commission proposed to revise the "look-through" provisions of the rule to focus on the treatment of the repo under applicable insolvency law rather than exclusively on the type of collateral. Under the proposed amendments, a repo would be "collateralized fully" if (i) the collateral consists entirely of cash, Government securities, or other securities that are rated in the highest rating category by the requisite NRSROs, and (ii) upon an event of insolvency with respect to the seller, the repo qualifies under a provision of applicable insolvency law providing an exclusion from any "general stay" of creditors rights against the seller.[33]

Commenters supported the proposed revisions, but three commenters urged that the rule's language be modified to refer to an "automatic stay" rather than a "general stay." These commenters pointed out that even repos protected from automatic stays under federal insolvency law may be subject to a court-ordered general stay obtained by the Securities Investor Protection Corporation ("SIPC") or the Federal Deposit Insurance Corporation ("FDIC"). Because no provision of insolvency law protects a purchaser of a repo from such orders, the proposed amendments might have precluded money market funds from relying on the rule's "look-through" provision for most repos, even though it is the policy of both SIPC (as to broker-dealer counterparties) and FDIC (as to bank counterparties) generally to allow the prompt liquidation of repos in insolvency proceedings.[34]

The Commission is adopting the proposed amendments, revised in part to reflect the commenters' suggestions.[35] The Commission notes that, under the revised rule, a fund entering into a repo collateralized by Government securities (which most are) should be able to conclude that the repo qualifies for "look-through" treatment (assuming the other requirements of the rule are met), while funds wishing to enter into repos using less traditional forms of collateral may rely on opinions of bankruptcy counsel.[36]

c. Refunded Securities. Money market funds often invest in "refunded securities," which are securities the payment for which is funded and secured by Government securities placed in an escrow account. Rule 2a–7 permits a fund to "look-through" refunded securities to the escrowed Government securities in determining its compliance with the rule's issuer diversification standards under certain conditions.[37] One condition contained in the 1996 Amendments required certification by an independent public accountant that the escrowed Government securities, or any subsequent substitution of the escrowed securities, would satisfy all payments of principal, interest and applicable premiums on the refunded securities (collectively, the "accountant's certification"). The Proposing Release noted that NRSROs, in rating refunded securities, typically require an independent third party to make the same determination.[38] Therefore, the Commission proposed, and is now adopting, an amendment to the rule eliminating the accountant's certification requirement if a refunded security has received a rating from an NRSRO in the highest category for debt obligations.[39]

d. Three-Day Safe Harbor. Rule 2a–7 permits a taxable or national fund to invest up to twenty-five percent of its total assets in the first tier securities of a single issuer for up to three business days ("three-day safe harbor"). The Commission proposed, and is adopting, amendments that restore unintentionally omitted language from the rule text stating that a fund relying on the three-day safe harbor may not make more than one investment in reliance on the safe harbor at any time during the three day period.[40]

e. Government Guarantees. Two commenters suggested that the Commission exclude guarantees issued by the U.S. Government from the rule's guarantee and demand feature diversification standards as finally amended, and thus treat government guarantees in the same manner as securities issued directly by the U.S. Government.[41] The Commission is amending the demand feature and guarantee diversification standards accordingly.[42]

f. Definition of "Rated Security". Two commenters recommended that the Commission adopt a new defined term, "rated security," which would permit rule 2a–7's definitions of "unrated security," "eligible security" and "first tier security" to be shortened and clarified. The Commission is adopting the new term "rated security" and amending other provisions in the rule to incorporate the new term.[43]

3. Asset Backed Securities and Synthetic Securities

The 1996 Amendments revised rule 2a–7 to accommodate asset backed securities and synthetic securities (collectively "ABS"). Rule 2a–7 defines an ABS as a fixed income security[44] issued by a "special purpose entity" substantially all of the assets of which consist of "qualifying assets."[45] Rule 2a–7 provides separate credit quality,[46] diversification[47] and maturity[48] standards for ABSs. The ABSs covered by the rule include interests in pools of receivables, such as credit card debt, as well as short-term synthetic tax exempt securities.[49]

a. Rating Requirement. In recognition of the independent legal, structural and credit analysis conducted by NRSROs before assigning a rating to an ABS, the

---

Requirement with respect to guarantees of repos that are "collateralized fully." One commenter noted that funds often rely on unconditional puts (*i.e.*, "guarantees" under the amended rule's terminology) with respect to "term repos"—which are repos for periods longer than one day. The puts could be exercised if a repo counterparty's credit quality deteriorated or to cover short-term cash outflows. The issuers of unconditional puts with respect to term repos are typically government securities dealers that are not rated by NRSROs. Since a repo that is "collateralized fully" already has significant protection from the risk of a counterparty's default or insolvency, requiring puts (or guarantees) of such repos to be rated would add little additional protection, and could cause funds to forgo a beneficial method of liquidity enhancement. See *infra* Section I.B.2.b. of this Release (treatment of repos that are "collateralized fully").

[25] Paragraph (a)(10)(iii)(A)(*3*) of rule 2a–7, as amended; see *infra* Section I.B.2.e. of this Release (discussing guarantees issued by the U.S. Government).

[26] Paragraph (c)(5) of rule 2a–7, as amended; see also *infra* Section I.B.1.d. of this Release (demand features and guarantees not relied upon).

[27] A conditional demand feature is any demand feature that is not an unconditional demand feature. Paragraph (a)(6) of rule 2a–7, as amended.

[28] Paragraph (c)(5) of rule 2a–7, as amended. A fund holding securities subject to demand features or guarantees that are not being relied upon for credit quality, maturity or liquidity must establish written procedures requiring periodic re-evaluations of this determination. Paragraph (c)(9)(ii) of rule 2a–7, as amended. Funds are not required to establish procedures concerning demand features and guarantees not relied upon if they do not hold such instruments. *Id.*

[29] A "second tier security" is an eligible security that is not a first tier security. Paragraph (a)(22) of rule 2a–7, as amended. "First tier securities" are (i) securities that have received short-term debt ratings in the highest category from the requisite NRSROs; (ii) comparable unrated securities; (iii) securities issued by money market funds; and (iv) Government securities. Paragraph (a)(12) of rule 2a–7, as amended. "Requisite NRSROs" means (i) any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or (ii) if only one NRSRO has issued a rating with respect to a security or class of debt obligations of an issuer, that NRSRO. Paragraph (a)(21) of rule 2a–7, as amended.

[30] "Conduit securities" are issued to finance non-government projects, such as private hospitals, housing projects, or industrial development projects. See paragraph (a)(7) of rule 2a–7, as amended (definition of "conduit security").

[31] Paragraphs (c)(4)(i)(C) (*1*) and (*2*) of rule 2a–7, as amended. Rule 2a–7 also limits a taxable fund and a tax exempt fund to investing no more than five percent of total assets in second tier securities and second tier conduit securities respectively ("five percent quality test"). Paragraph (c)(3)(ii) of rule 2a–7, as amended (portfolio quality standards—second tier securities). The amendments do not make substantive changes to the five percent quality test. Thus, a taxable fund, for example, could not invest more than five percent of its total assets in second tier securities subject to a second tier demand feature. The amendments, however, reorganize the rule text to include the five percent quality test in paragraph (c)(3) of the rule, which addresses portfolio quality standards, rather than paragraph (c)(4), which addresses diversification standards.

[32] Paragraphs (c)(4)(iii) and (c)(4)(iv) of rule 2a–7, as amended.

[33] Proposing Release, *supra* note 6, at nn. 30–38 and accompanying text.

[34] The United States Bankruptcy Code [11 U.S.C. 559] protects certain repos from the automatic stay provision, but provides that SIPC may obtain a court order barring the closeout of repo transactions with member broker-dealer firms. As a matter of policy, however, SIPC honors repos and allows their liquidation under most circumstances. See Letter dated February 4, 1986, from Michael E. Don, Deputy General Counsel of SIPC, to Robert A. Portnoy, Deputy Executive Director and General Counsel of the Public Securities Association. FDIC, as conservator or receiver for insolvent depository institutions, similarly has the ability to avoid contracts entered into by such institutions, but may not avoid transfers of property in connection with repos under most circumstances. See 12 U.S.C. 1821(e)(8)(A), (C) and (D); FDIC Statement of Policy on Qualified Financial Contracts (Dec. 12, 1989).

[35] Paragraph (a)(5)(iv) of rule 2a–7, as amended. Commenters also suggested that the text of this provision refer only to applicable "federal" insolvency law. Although repos entered into by funds typically involve domestic counterparties subject to federal insolvency law, funds may enter into repos with non-U.S. counterparties that are not subject to federal insolvency laws. Therefore, the amended rule continues to apply to any applicable insolvency law.

[36] In addition, a money market fund must evaluate the repo counterparty's creditworthiness in order to minimize the risk that money market funds will enter into repos with parties that present a serious risk of becoming involved in bankruptcy proceedings. The Commission previously published a release setting forth the conditions under which the Division of Investment Management would not recommend enforcement action under section 12(d)(3) of the 1940 Act [15 U.S.C. 80a–12(d)(3)] (limiting fund investments in certain securities-related businesses) if an investment company entered into a repo with persons engaged in securities-related businesses. Securities Trading Practices of Registered Investment Companies, Investment Company Act Release No. 13005 (Feb. 2, 1983) [48 FR 5824 (Feb. 9, 1983)] ("Repo Release"). Among other things, the Repo Release requires that the repo be "fully collateralized." The definition of "fully collateralized" in the Repo Release does not include all of the conditions in rule 2a–7. A money market fund entering into a repo that is "collateralized fully" within the meaning of paragraph (a)(5) of rule 2a–7, as amended, will be deemed to meet the "fully collateralized" requirement of the Repo Release. Investment companies other than money market funds are not required to comply with this provision of rule 2a–7 to be deemed to hold repos that are "fully collateralized" for purposes of the Repo Release.

[37] Paragraph (c)(4)(ii)(B) of rule 2a–7, as amended. This "look-through" treatment would not be available to refunded securities subject to a swap agreement (*i.e.*, the payments from the escrowed Government securities are exchanged for payments made by a swap counterparty) because the swap counterparty, rather than the escrowed Government securities, acts as the ultimate source of payment for the refunded securities. See J.P. Morgan Structured Obligations Corp. (pub. avail. July 27, 1994); see generally *infra* Section I.B.3.d. of this Release (swap arrangements).

[38] See, e.g., Standard & Poor's Municipal Finance Criteria, 176–77 (1996).

[39] Paragraph (a)(20)(iii) of rule 2a–7, as amended (definition of "refunded security").

[40] Paragraph (c)(4)(i)(A) of rule 2a–7, as amended. The three-day safe harbor is not available for single state funds. Single state funds, however, are required to be diversified only as to seventy-five percent of their assets, and so have available a twenty-five percent basket to accommodate purchases in excess of five percent of fund assets. Paragraph (c)(4)(i)(B) of rule 2a–7, as amended.

[41] A security guaranteed as to principal and interest by a U.S. Government agency is a "Government security" as defined in section 2(a)(16) of the 1940 Act [15 U.S.C. 80a–2(a)(16)] and paragraph (a)(14) of rule 2a–7, as amended. Investments in Government securities are excluded from the rule's issuer diversification standards because they are presumed to present little, if any, credit risks. The same rationale applies to a security guaranteed by a U.S. Government agency, which by definition also is a "Government security."

[42] Paragraph (c)(4)(iii) of rule 2a–7, as amended. Guarantees issued by the U.S. Government are deemed to be first tier securities. Paragraph (a)(12)(iv) of rule 2a–7, as amended (definition of "first tier security").

[43] A "rated security" is defined generally as (i) a security (or the issuer with respect to a comparable security) that has received a short-term rating from an NRSRO; or (ii) a security subject to a guarantee if the guarantee (or the guarantor with respect to a comparable guarantee) has received a short-term rating from an NRSRO. A security is not a rated security, however, if it is subject to an external credit support agreement that was not in effect when the security was assigned its rating, unless the security has received a short-term rating reflecting the existence of the credit support agreement, or the credit support agreement has received a short-term rating. Paragraph (a)(19) of rule 2a–7, as amended. The Commission is making conforming amendments to paragraphs (a)(10) (definition of "eligible security") and (a)(12) (definition of "first tier security") of rule 2a–7, as amended, and amending the definition of "unrated security." Under the amended definition, an "unrated security" is a security that is not a "rated security." Paragraph (a)(28) of rule 2a–7, as amended.

[44] For purposes of rule 2a–7's definition of "asset backed security," the term "fixed income security" has the same meaning as that term is defined in rule 3a–7(b)(2) under the 1940 Act [17 CFR 270.3a–7(b)(2)]. Rule 3a–7 excludes structured financings, such as ABSs, from the definition of "investment company."

[45] Paragraph (a)(3) of rule 2a–7, as amended. Paragraph (a)(3) defines "special purpose entity" as a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle holders to receive payments from the cash flows of the "qualifying assets." Paragraph (a)(3) defines "qualifying assets" as either fixed or revolving financial assets that by their terms convert into cash within a finite time period.

[46] Paragraph (a)(10)(ii)(B) of rule 2a–7, as amended.

[47] Paragraph (c)(4)(ii)(D) of rule 2a–7, as amended.

[48] Paragraph (d) of rule 2a–7, as amended.

[49] A synthetic security is created typically by placing a long-term fixed rate municipal bond into a trust that issues short-term variable or floating rate securities subject to a conditional demand feature. This process effectively converts long-term fixed rate bonds into short-term variable or floating rate demand instruments that meet the rule's maturity requirements. Synthetic securities were developed to address a shortage in the supply of short-term tax exempt securities eligible for money market fund investment. See Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] at nn.100–05 and accompanying text ("Release 19959") (discussing the development and characteristics of synthetic securities).

1996 Amendments required that all ABSs purchased by money market funds receive a rating from an NRSRO.[50] In light of the role that NRSROs have played in the development of structured finance, the Commission believed that this ABS rating requirement was appropriate and would not be burdensome.

The Commission proposed to further amend the rule to exclude from this rating requirement ABSs substantially all of the qualifying assets of which consist of municipal securities.[51] The Commission was persuaded by the assertions of industry participants that, as applied to these ABSs, the rating requirement was burdensome and unnecessary.[52] Commenters generally supported the amendment, which the Commission is adopting as proposed.[53]

b. Diversification Standards. i. Look-Through to Secondary ABSs. Rule 2a–7 treats the special purpose entity as the issuer of the ABS and requires the rule's issuer diversification standards to be met with respect to the special purpose entity. The rule contains an exception to this treatment, which requires a fund to "look-through" the special purpose entity to any issuer of qualifying assets whose obligations constitute ten percent or more of the principal amount of the qualifying assets of the special purpose entity ("ten percent obligor"). For diversification purposes, a fund must treat these ten percent obligors as if they issued a proportionate amount of the special purpose entity.[54] The "look-through" to ten percent obligors is designed to ensure that a fund does not invest indirectly more than five percent of its assets in a particular issuer.

Some or all of the qualifying assets of certain ABSs ("primary ABSs") also consist of other ABSs ("secondary ABSs"). The Commission proposed amendments to clarify that a ten percent obligor of a primary ABS that is also the issuer of secondary ABSs would be deemed to have issued a portion of the assets of the primary ABS that such secondary ABSs represent. For purposes of identifying ten percent obligors, the proposed amendments provided that a fund should "continue down the chain" of ten percent obligors until a special purpose entity with no ten percent obligors is reached.[55] Commenters supported this general approach, which the Commission is adopting, but raised several concerns that have led the Commission to further revise and clarify the rule.

One commenter observed that the benefits and materiality of the required "look-through" to secondary ABSs diminish rapidly. This commenter asserted that the risks posed by remote special purpose entities are likely to be outweighed by the costs incurred by funds to create compliance systems that identify, and treat as proportionate issuers, ten percent obligors beyond those comprising the qualifying assets of secondary ABSs. The Commission agrees and has amended the ABS "look-through" provision so that, instead of "continuing down the chain" indefinitely, funds are required to identify and treat as proportionate issuers of a primary ABS only ten percent obligors of the primary ABS and ten percent obligors of any secondary ABSs.[56]

Another commenter urged that a particular type of ABS issuer, a "restricted special purpose entity," be excluded from treatment as a ten percent obligor under the rule, and thus not be counted for diversification purposes. A "restricted special purpose entity" is one that does not issue its ABSs to anyone other than another specific ABS issuer. For example, a company that provides financing for automobile purchasers may establish a restricted special purpose entity to securitize its automobile loans. The restricted special purpose entity will only sell ABSs to another special purpose entity that issues ABSs to money market funds or other investors. No diversification risk would appear to be posed to funds in this instance because funds cannot directly or indirectly invest in the restricted special purpose entity (*i.e.*, a secondary ABS) other than through the purchase of ABSs from a particular primary ABS issuer.[57] The Commission has decided to further amend the rule to exclude restricted special purpose entities from treatment as ten percent obligors.[58]

ii. Demand Features and Guarantees Securing Obligations of Ten Percent Obligors. The Commission is adopting a proposed amendment to clarify that in the case of any ten percent obligors deemed to be issuers for purposes of the rule's diversification standards, any demand features or guarantees supporting the obligations of the ten percent obligors are treated as being held by the fund and are subject to the rule's demand feature and guarantee diversification standards.[59]

[50] The 1996 Amendments excluded unrated ABSs from the definition of an "eligible security."

[51] Proposing Release, *supra* note, at nn.41–43 and accompanying text.

[52] Industry participants noted that when ABSs consist of a large pool of financial assets, such as credit card receivables, they may not be susceptible to conventional means of credit risk analysis because credit quality is based on an actuarial analysis of a pool of financial assets, rather than a single issuer. The credit analysis for synthetic structures and municipal pools whose qualifying assets consist of one or a few municipal issuers, however, is typically no different than that required for a security directly issued by a municipality. Since many synthetic securities are not rated, applying the ABS rating requirement to them would have restricted the available supply of ABSs suitable for money market fund investment. ABSs involving large pools of financial assets, on the other hand, are typically rated.

[53] Paragraph (a)(10)(ii)(B) of rule 2a–7, as amended. An ABS subject to a guarantee is not itself required to be rated. Under rule 2a–7, as amended, an ABS subject to a guarantee that has received a short-term rating is considered a "rated security." Paragraph (a)(19) of rule 2a–7, as amended. Moreover, an ABS subject to a guarantee may be determined to be an eligible security based solely on whether the guarantee is an eligible security. Paragraph (c)(3)(iii) of rule 2a–7, as amended.

[54] Paragraph (c)(4)(ii)(D)(*1*)(*i*) of rule 2a–7, as amended.

[55] Proposing Release, *supra* note, at nn. 48–50 and accompanying text. The approach set forth in the Proposing Release was illustrated in materials prepared by the staff of the Division of Investment Management and made available at the 1996 ICI Conference on Money Market Fund Regulation. See Materials for 1996 ICI Conference on Money Market Fund Regulation: Asset Backed Securities and Synthetic Securities—Application of Paragraph (c)(4)(vi)(A)(*4*) of Rule 2a–7 (May 9, 1996).

[56] Paragraphs (c)(4)(ii)(D)(*1*)(*i*) and (*ii*) of rule 2a–7, as amended. Under this provision, funds must "look through" to any ten percent obligor of a primary ABS, and to any ten percent obligor of a secondary ABS, and treat each such obligor as an issuer of a portion of the primary ABS. Funds need not, however, "look-through" to the qualifying assets of any ten percent obligor of a "tertiary ABS" (*i.e.*, a ten percent obligor of a secondary ABS that is itself a special purpose entity issuing ABSs) for purposes of compliance with the rule's diversification standards. Although the rule does not specifically prohibit a multi-layered ABS designed to avoid the "look-through" to secondary ABSs, the Commission would collapse the multiple layers of such an ABS and view remote ten percent obligors as proportionate issuers for purposes of determining compliance with the rule's issuer diversification standards. The Appendix to this Release illustrates the operation of the "look-through" to secondary ABSs under the amended rule.

[57] This commenter further noted that compliance costs of tracking ten percent obligors may cause funds to avoid any ABS whose issuer discloses the existence of ten percent obligors. Since a large number of ABSs may be structured such that all or a significant portion of ten percent obligors are restricted special purpose entities, allowing funds to disregard these ten percent obligors would further increase the supply of desirable ABSs for money market fund investment, avert the imposition of unnecessary constraints on the asset backed commercial paper market, and expose funds to little, if any, additional risks.

[58] Paragraph (c)(4)(ii)(D)(*2*) of rule 2a–7, as amended. The amended rule provides that a restricted special purpose entity may issue its securities to other persons that control, are controlled by or are under common control with, the restricted special purpose entity if such persons are not ABS issuers.

[59] Paragraph (c)(4)(ii)(D)(*3*) of rule 2a–7, as amended. If the fund is not relying on a demand feature or guarantee of a ten percent obligor for purposes of credit quality or maturity, or for liquidity, the fund may disregard the demand feature or guarantee for all purposes. See paragraph (c)(5) of rule 2a–7, as amended.

iii. Special Purpose Entity Cap. In the Proposing Release, the Commission explained that it was possible under the rule for a large portion of a fund to be exposed to a single ABS, as a result of a fund investing in a special purpose entity with one or more ten percent obligors.[60] The Commission noted that this could expose the fund to an undue amount of structural risk (*e.g.*, the risk that the special purpose entity might be affected by the bankruptcy of its sponsor), and requested comment whether the rule should restrict fund investment in the obligations of a single special purpose entity.

Although the three industry participants that responded to the request for comment urged adoption of such a cap, the Commission has decided not to amend the rule in this manner. The Commission is concerned that such a cap would add complexity to the rule without meaningfully limiting structural risks. While a cap would limit a fund's investment in a particular special purpose entity, it would not prevent a fund from investing large amounts of its assets in multiple identically-structured special purpose entities established by the same sponsor. A structural flaw in an ABS that exposes investors in one special purpose entity to the bankruptcy of the sponsor would likely affect all of the special purpose entities similarly structured. Therefore, the Commission is not persuaded that a cap would effectively contain a fund's exposure to structural risk, and in any event, rule 2a–7 looks to the ratings of the NRSROs to provide an independent review of ABS structures.[61] Fund advisers, however, should consider the fund's exposure to structural risk when evaluating whether an investment in a particular ABS is consistent with the fund's objective of maintaining a stable net asset value.

iv. Sponsor-Provided Demand Features and Guarantees. Rule 2a–7 provides that a fund may not invest, with respect to seventy-five percent of its total assets, more than ten percent of its total assets in securities issued by or subject to puts from the same institution (or under the amended rule's terminology, "guarantee" or "demand feature").[62] A fund is not subject to the ten percent limitation with respect to the remaining twenty-five percent of its total assets ("twenty-five percent basket") if the securities held in the basket are first tier securities and the puts are issued by non-controlled persons.[63] As a result, a fund holding an ABS subject to a put from its sponsor is not able to include this investment in its twenty-five percent basket if the sponsor is in a control relationship with the special purpose entity.[64]

The twenty-five percent basket is restricted to securities subject to puts from non-controlled persons in order to minimize a fund's exposure to the credit risk of a single economic enterprise and limit the aggregate exposure to the risks of related, active businesses.[65] Permitting a fund to invest more than ten percent of its total assets in an ABS subject to a demand feature or guarantee issued by a sponsor, however, would not have this effect, because the special purpose entity, unlike an active enterprise, is a limited purpose vehicle created solely for the purpose of issuing fixed income securities based on the cash flow of the qualifying assets. Therefore, the Commission proposed to amend rule 2a–7 to allow funds to treat a demand feature or guarantee from an ABS sponsor as a demand feature or guarantee from a non-controlled person. Commenters supported the proposed amendment, which the Commission is adopting as proposed.[66]

v. First Loss Guarantees. Some ABSs are supported by a guarantee that covers all losses up to an amount of expected losses likely to be experienced by the ABS. Because a fund's exposure to such a "first loss guarantee" is similar to its exposure to a guarantee of the entire security,[67] the 1996 Amendments required a fund to treat a first loss guarantor as a guarantor of the entire ABS. Commenters urged that first loss guarantees be treated similar to other fractional guarantees under the rule and raised numerous questions about the application of the provision to certain ABS structures.

The Commission continues to believe that investment in an ABS subject to a first loss guarantee can potentially result in a fund being overexposed to the credit risk of the first loss guarantor. The number and nature of questions raised by the 1996 Amendments, however, have convinced the Commission that these risks are better managed by the fund's investment adviser. The Commission, therefore, is revising the rule to permit funds to treat a first loss guarantee as any other fractional guarantee when calculating compliance with the rule's guarantee and demand feature diversification standards.[68] Advisers should, however, carefully consider potential exposure to the credit risks of a first loss guarantor when evaluating whether investment in an ABS is consistent with the fund's objective of maintaining a stable net asset value.

c. Periodic Determinations Regarding Ten Percent Obligors. The 1996 Amendments required a fund to adopt written procedures requiring periodic determinations of the number of ten percent obligors deemed to be issuers of all or a portion of an ABS. The Commission is amending this requirement so that periodic determinations are not required with

[60] Proposing Release, *supra* note 6, at n.52 and accompanying text.

[61] NRSROs, prior to assigning a rating, not only analyze the quality of the assets underlying an ABS, but also conduct an independent analysis of the structural integrity of the ABS. *See* Release 19959, supra note 49, at nn.106–12 and accompanying text.

[62] Paragraph (c)(4)(iii) of rule 2a–7, as amended.

[63] *Id.* The amended rule refers to such instruments as guarantees or demand features from "non-controlled persons." See paragraphs (a)(9) and (a)(16) of rule 2a–7, as amended. The Appendix to this Release illustrates the operation of the twenty-five percent basket under the amended rule when securities are subject to guarantees or demand features from multiple providers.

[64] This may occur, for example, if an ABS sponsor owns a residual equity interest in the special purpose entity. In this case, the ABS sponsor might "control" the special purpose entity within the meaning of section 2(a)(9) of the 1940 Act [15 U.S.C. 80a–2(a)(9)]. See Proposing Release, *supra note* 6, at n.54 and accompanying text. An ABS sponsor may not, however, be deemed to "control" the special purpose entity under other federal securities laws or for other purposes.

[65] Release 21837, *supra* note 2, at n.73 and accompanying text.

[66] Paragraphs (a)(9) ("demand feature issued by a non-controlled person") and (a)(16) ("guarantee issued by a non-controlled person") of rule 2a–7, as amended. Although a guarantee provided by a person in a control relationship with the issuer of the underlying security is excluded from the Rating Requirement for guarantees, the exclusion does not apply to a sponsor-provided guarantee of an ABS under the amended rule. Thus, sponsor-provided guarantees of ABSs must be rated. Paragraph (a)(10)(iii)(A) of rule 2a–7, as amended; see also *supra* Section I.B.1.c. of this Release.

[67] The failure of a first loss guarantor covering the first ten percent of all losses likely to be incurred by an ABS is likely to have a more significant effect on the value of the ABS than the failure of a fractional guarantor supporting only a portion of any losses incurred.

[68] Paragraph (c)(4)(iv)(A) of rule 2a–7, as amended. ABSs also may be subject to "second loss guarantees" that guarantee a specific amount of losses in excess of losses covered by a first loss guarantee. Funds should treat second loss guarantees of ABSs in the same manner as any other fractional guarantees or demand features under the amended rule. Sponsors of ABSs may provide additional credit risk protection by structuring an offering such that the value of qualifying assets in the pool exceeds the amount of the ABS offering. For example, a $1 billion ABSs offering might be collateralized by an asset pool of $1.1 billion. The $100 million of "overcollateralization" may be applied to cover any first losses incurred before drawing upon third party guarantees or other credit enhancements. Although overcollateralization would be relevant in determining whether the ABS presents minimal credit risks, this type of seller-provided credit enhancement does not fall within the rule's definition of a guarantee or demand feature and may be disregarded for purposes of the rule's diversification standards. See paragraphs (a)(8) (definition of "demand feature") and (a)(15) (definition of "guarantee") of rule 2a–7, as amended.

respect to any ABS that a fund's board of directors initially has determined will never have, or is unlikely to have, any ten percent obligors.[69] This determination may be based upon a structural analysis of the ABS or upon representations in the offering materials or governing documents of an ABS that it will never have ten percent obligors. Funds also must maintain a record of this determination.[70]

d. Swap Arrangements. The Proposing Release noted that certain ABSs may consist of qualifying assets whose cash flow has been "swapped" to a financial institution (the "swap counterparty") that ultimately acts as the primary source of payment to funds holding the ABSs (*i.e.*, a "total return swap"). The Commission requested comment whether the swap counterparty in this instance should be treated as the issuer of the ABSs for diversification purposes and on the appropriate treatment of swaps and similar arrangements under the rule.

Commenters suggested various approaches to the treatment of swaps under the rule.[71] All acknowledged, however, the difficulty of addressing swaps and similar arrangements by rule due to the constantly evolving nature of swap transactions and the wide variations in the types of swaps used to structure ABSs offerings. The Commission has determined not to amend the rule at this time to specifically address the treatment of swaps or similar arrangements. Swaps and similar arrangements that fall within the rule's definition of a guarantee or demand feature, however, should be treated as such for purposes of guarantee and demand feature diversification.[72] A fund's adviser, however, should seek to ensure that investments by the fund in securities subject to swap arrangements are consistent with rule 2a–7's overriding policy of limiting funds to investments that are consistent with maintaining a stable net asset value and do not expose the fund excessively to credit risks posed by swap counterparties.

4. Other Amendments to Rule 2a–7

a. Investments in Other Money Market Funds. The 1996 Amendments permitted a fund ("acquiring fund") to treat an investment in another money market fund ("acquired fund") as a first tier security, but limited investment in any single money market fund to no more than five percent of fund assets. The 1996 Amendments created an exception, however, for a fund investing substantially all of its assets in shares of another money market fund in reliance on section 12(d)(1)(E) of the 1940 Act (*e.g.*, a master-feeder arrangement).[73] The 1996 Amendments deemed this type of a fund to be in compliance with rule 2a–7's diversification standards if the acquiring fund's board of directors reasonably believed that the acquired fund is in compliance with rule 2a–7.

Several commenters pointed out that, as a result of Commission exemptive orders[74] and amendments to the 1940 Act's limitations on "funds of funds" arrangements,[75] some money market funds may now invest more than five percent but less than substantially all of their assets in shares of another money market fund. The Commission is amending the rule to expand the exception to cover all investments by a fund in the shares of another money market fund in excess of the otherwise applicable issuer diversification standards.[76]

Under the amended rule, shares of money market funds are considered to be first tier securities,[77] and are thus subject to the rule's issuer diversification standards with respect to first tier securities.[78] A fund may, however, within the limitations of section 12(d)(1) of the 1940 Act, invest in shares of another money market fund in excess of the rule's issuer diversification standards, but only if the acquiring fund's board of directors reasonably believes that the acquired fund is in compliance with rule 2a–7.[79]

b. Definition of Eligible Security—Certain Unrated Securities. Under the 1996 Amendments, an unrated security that was a long-term security when issued, but had a remaining maturity of less than 397 calendar days when purchased by the fund, was an eligible security based on whether the security is comparable in quality to a rated security (*i.e.*, one with a short-term rating), unless the unrated security had received a long-term rating from any NRSRO that was not within the three highest categories of long-term ratings. The Commission is adopting a proposed amendment to the rule permitting a fund to treat such a security as an eligible security if that security has a long-term rating from the "requisite NRSROs"[80] within the three highest rating categories.[81]

c. Additional Amendments. The Commission proposed additional amendments designed to further clarify and make technical corrections to the rule. Commenters supported the amendments, and the Commission is adopting them as follows:

(i) Acquisition of Portfolio Securities. The Commission is adding the new defined term "acquisition" to make the rule more uniform in its application to

[69] Paragraph (c)(9)(iv) of rule 2a–7, as amended. The board of directors may delegate this determination, and most other determinations required by the rule, to the fund's adviser or to the officers of the fund. The board, however, may not delegate certain specific determinations required under rule 2a–7. See paragraph (e) of rule 2a–7, as amended.

[70] Paragraph (c)(10)(v) of rule 2a–7, as amended.

[71] Six commenters addressed this issue and generally suggested that a swap counterparty acting as the primary source of payment to a fund be treated as an issuer and subject to the issuer diversification standards. Most of these commenters suggested that counterparties in swaps that support or guarantee the obligations of an ABS issuer or other party to pay (but are not the sole source of payment on the ABS) be treated as guarantees subject to the guarantee and demand feature diversification standards.

[72] See paragraphs (a)(8), (a)(15), (c)(4)(iii) and (c)(4)(iv) of rule 2a–7, as amended.

[73] 15 USC 80a–12(d)(1)(E).

[74] See, *e.g.*, Daily Money Fund, *et al.*, Investment Company Act Release Nos. 22285 (Oct. 16, 1996) (Order) and 22236 (Sept. 20, 1996) (Notice).

[75] In 1996, the 1940 Act's restrictions on fund investments in other funds were relaxed by, among other things, adding new section 12(d)(1)(G) [15 USC 80a–12(d)(1)(G)] that excepts "affiliated" funds of funds from the restrictions of section 12(d)(1)(A) under certain conditions. See The National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[76] Paragraph (c)(4)(ii)(E) of rule 2a–7, as amended.

[77] Paragraph (a)(12) of rule 2a–7, as amended.

[78] See paragraph (c)(4)(i) of rule 2a–7, as amended.

[79] Paragraph (c)(4)(ii)(E) of rule 2a–7, as amended. A taxable or national fund could take advantage of the three day safe harbor of paragraph (c)(4)(i)(A) and a single state fund could use its "twenty-five percent basket" under paragraph (c)(4)(i)(B) to invest up to twenty-five percent of fund assets in the securities of a single money market fund without the board making a "reasonable belief" finding, even though, in both cases, the investment would be in excess of five percent of fund assets. Under the rule, an acquiring fund that holds securities of a particular issuer ("Issuer A"), and invests in shares of an acquired fund that also holds securities of Issuer A, would not aggregate those positions to determine its compliance with the rule's diversification standards with respect to Issuer A.

[80] Paragraph (a)(21) of rule 2a–7, as amended (definition of "requisite NRSROs").

[81] Paragraph (a)(10)(ii)(A) of rule 2a–7, as amended. For example, an unrated "stub" security may have long-term ratings from three NRSROs. One of these NRSROs may give the security a long-term rating in the NRSRO's fourth highest category, which would have precluded the fund from purchasing the security before the adoption of these amendments. Under the revised rule, however, the fund may look to the other ratings and treat the security as an eligible security if the two other NRSROs have given the security long-term ratings within one of their three highest long-term rating categories. If any NRSRO has given the security (or the issuer of the security with respect to a class of debt obligations that is comparable in priority and security) a short-term rating, however, the short-term rating would override the long-term ratings and reference to long-term ratings would be unnecessary to determine whether the security was an eligible security. Long-term ratings may be relevant, however, to an evaluation of whether the issuer presents minimal credit risks under paragraph (c)(3)(i) of rule 2a–7, as amended.

fund investments and to clarify that the failure of a fund to exercise a demand feature does not have similar consequences under the rule as a decision to "rollover" commercial paper.[82]

(ii) Single State Funds. The Commission is amending the definition of a "single state fund" to include a fund seeking to "maximize" the amount of income exempt from income taxes of a particular state.[83]

(iii) Standby Commitments. As proposed, the Commission has deleted the term "standby commitment" and all references to that term from the rule.[84]

(iv) Downgrades, Defaults, and Other Events. The Commission is amending the rule to require a fund's board of directors to reassess whether an unrated or second tier security continues to present minimal credit risks only when the fund's adviser (or other person delegated portfolio management responsibilities) becomes aware that the security has been downgraded by any NRSRO below that NRSRO's two highest short-term rating categories.[85]

(v) Recordkeeping Requirements. The Commission is adding rule text inadvertently omitted from the 1996 Amendments that requires the board of directors to document minimal credit risk determinations of portfolio securities.[86]

(vi) Holding Out. Using new rulemaking authority, the Commission is restating the rule's prohibition on a fund's use of names suggesting that it is a money market fund, unless it complies with rule 2a–7.[87]

[82] Paragraph (a)(1) of rule 2a–7, as amended.

[83] Paragraph (a)(23) of rule 2a–7, as amended. The effect of the amendment would be to permit this type of a fund to take advantage of the twenty-five percent basket in determining compliance with the rule's diversification standards, even if it did not primarily distribute income exempt from state income taxes. See paragraph (c)(4)(i)(B) of rule 2a–7, as amended; *see also* Proposing Release, *supra* note 6, at nn.66–68 and accompanying text.

[84] See Proposing Release, *supra* note 6, at nn.69–71 and accompanying text. Under the amended rule, a standby commitment that meets the definition of a demand feature must be treated as such. See paragraph (a)(8) of rule 2a–7, as amended (definition of "demand feature"). A standby commitment that is not a demand feature is not subject to the rule's credit quality or diversification standards.

[85] Paragraph (c)(6)(i)(A)(2) of rule 2a–7, as amended; see Proposing Release, *supra* note 6, at n.72 and accompanying text.

[86] Paragraph (c)(10)(iii) of rule 2a–7, as amended; see Proposing Release, *supra* note 6, at nn.74–75 and accompanying text.

[87] Paragraph (b) of rule 2a–7, as amended. The National Securities Markets Improvement Act of 1996 [Pub. L. 104–290, 110 Stat. 3416 (1996)] amended Section 35(d) of the 1940 Act [15 USC 80a–34(d)] to make it unlawful to adopt as a fund name or title, or as a title of fund securities, words that the Commission finds are materially deceptive or misleading, and to authorize the Commission to define names and titles deemed to be "materially deceptive and misleading."

II. Amendments to the Advertising Rules Applicable to Money Market Funds

The Commission is adopting amendments to the Commission's money market fund advertising rules and forms to clarify the formula used by money market funds to calculate yield and to reduce the potential for investors being misled or confused by the presentation of a money market fund's short-term total return.

A. Calculation of Yield

The Commission proposed to amend its money market fund yield formula to clarify that only investment income may be included in the yield of a money market fund. Three commenters supported the amendment; one opposed it and urged the Commission to specifically permit inclusion of non-investment income. The Commission is concerned that inclusion of non-investment income will distort yield and diminish the utility of money market fund yield to investors. The Commission, therefore, has decided to adopt the proposed amendment to the money market fund yield formula.[88]

B. Use of Total Return

The Proposing Release noted that some money market fund advertisements have used short-term total return instead of yield and expressed concern that many investors may not understand the difference.[89] The Commission proposed to amend its rules to require that total return quotations in advertisements and sales literature cover a period of at least one year, and that such quotations be accompanied by a quotation of current yield, computed in accordance with Commission rules and set forth with equal prominence.

All commenters that addressed this proposal objected to the proposed requirement that total return quotations cover at least one year. They argued that the proposal would preclude total return quotations during a fund's first year and in other circumstances in which the purpose of the advertisement was other than to circumvent the Commission's yield formula. The Commission has decided not to require all money market fund total return quotations to cover a period of one year. Instead, the Commission is revising its rules to require that (i) quotations of total return be accompanied by quotations of current yield and that both quotations be placed next to each other and shown in the same size print,[90] and (ii) if there is a material difference between the quoted total return and the quoted yield, a statement that the yield quotation more closely reflects the current earnings of the fund than the total return quotation.[91]

III. Effective Date/Compliance Date

A. Effective Date

The rule amendments adopted in this Release will become effective February 10, 1998. The Office of Management and Budget has determined that the technical amendments to rule 2a–7 are "major rules" and the amendments to the Commission's money market fund advertising rules and forms are "minor rules" under Chapter 8 of the Administrative Procedure Act,[92] which was added by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").[93] SBREFA requires all final agency rules to be submitted to Congress for review and requires generally that the effective date of a major rule be delayed for sixty days pending Congressional review. A major rule may become effective at the end of the sixty-day review period, unless Congress passes a joint resolution disapproving the rule.[94]

B. Compliance Dates

The Proposing Release requested comment whether the Commission should provide for a six-month

[88] See Item 22 of Form N–1A [17 CFR 239.15A and 274.11A], Item 25 of Form N–3 [17 CFR 239.17a and 274.11b], and Item 21 of Form N–4 [17 CFR 239.17b and 274.11c], as amended.

[89] Proposing Release, *supra* note 6, at n.81 and accompanying text. As a result, investors may assume incorrectly that a fund quoting the higher total return figure is a better performing fund than other money market funds quoting yield. For example, during a period of declining interest rates, the fund's total return will be higher than its current yield because it will include periods of time during which the fund held higher yielding securities. In addition, investors may incorrectly assume that the higher "total return" is the yield they can expect to receive upon an investment in the fund.

[90] Quotations of total return and current yield in an advertisement delivered electronically must be presented together and in a manner that presents each quotation with identical prominence in light of the particular electronic medium used to transmit the advertisement.

[91] See paragraph (d)(2) of rule 482 under the 1933 Act, as amended [17 CFR 230.482(d)(2)]; paragraph (b)(1)(ii)(C) of rule 34b–1 under the 1940 Act, as amended [17 CFR 270.34b–1(b)(1)(ii)(C)].

[92] 5 USC 801.

[93] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996). Under SBREFA, a rule is "major" if it is likely to result in (i) an annual effect on the economy of $100 million or more, (ii) a major increase in costs or prices for consumers or individual industries, or (iii) significant adverse effects on competition, investment, or innovation. 5 USC 804(2).

[94] 5 USC 801(a)(3).

transition period for compliance.[95] Commenters supported a six-month period to give fund boards of directors sufficient time to review and approve fund procedures. Several commenters also suggested that the "grandfathering" of certain securities provided for by the release adopting the 1996 Amendments be extended,[96] whereas one commenter opposed such extension. The Commission has decided to delay the date for compliance with the amended rule for six months and to extend the "grandfathering" of fund investments in certain securities, as described below.

1. General Compliance Date

All money market funds must be in compliance with rule 2a–7, as amended, (and with conforming amendments reflecting the revisions to rule 2a–7) by July 1, 1998, except with respect to "grandfathered securities" as provided below.[97] Funds must comply with the amendments to the advertising rules and forms applicable to money market funds by February 10, 1998.

2. "Grandfathered" Securities

To minimize disruption to funds and markets as a result of the adoption of these amendments, the Commission is "grandfathering" certain securities first issued on or before February 10, 1998 that do not meet the following requirements of the amended rule:

(i) The Rating Requirement for guarantees;[98]

(ii) The Notification Requirement, which provides that, in order for a security subject to a guarantee or demand feature to be an eligible security, the fund must receive notice from the demand feature or guarantee provider (or another institution) if there is a substitution of the provider of the demand feature or guarantee;[99]

(iii) The requirements for ABSs regarding maturity determinations and ratings;[100]

(iv) The requirement that a demand feature and a guarantee include the ability to recover principal and any accrued interest; [101] and

(v) The requirement that a security subject to a conditional demand feature is an eligible security only if the fund's board of directors makes certain determinations regarding the conditional demand feature's exercisability.[102]

A fund may continue to hold these "grandfathered" securities or acquire these securities provided that they satisfy the other provisions of the rule, as amended, and are issued on or before February 10, 1998.

IV. Cost/Benefit Analysis and Effects on Competition, Efficiency and Capital Formation

A. Technical Amendments to Rule 2a–7

The technical amendments to rule 2a–7 make refinements and corrections to the 1996 Amendments. They are intended to permit money market funds the maximum amount of flexibility in selecting their investments consistent with the objective of maintaining a stable net asset value. This additional flexibility will promote market efficiency by allowing funds to invest in a wider variety of instruments that present risks consistent with that objective. For example, the technical amendments expand the investment opportunities of funds, without increasing risks, by allowing funds to substitute the credit quality of guarantee providers for the issuers of securities subject to guarantees (instead of only those subject to unconditional demand features) for purposes of compliance with the rule's credit quality standards. By resolving interpretive issues, the technical amendments also address competitive inequities that might arise among funds if, for example, funds draw different conclusions as to the permissibility of a particular investment that may increase fund yield.

As discussed above,[103] the 1996 Amendments tighten the risk-limiting conditions of rule 2a–7 applicable to tax exempt money market funds and clarify the rule's treatment of certain instruments, such as ABSs. The technical amendments potentially will benefit investors to the extent that rule 2a–7, as finally amended, operates to decrease the likelihood that a fund will not maintain a stable net asset value and provides investors greater opportunities to obtain higher yields without exposure to risks inconsistent with their investment expectations.

The costs of the technical amendments to funds and fund advisers (and ultimately fund shareholders) are likely to be minimal, since the amendments do not impose additional procedural requirements or reporting burdens on funds. The Commission believes that the direct or indirect benefits derived from the technical amendments cannot be quantified because it is impossible to predict with certainty how funds will structure their portfolio holdings in response to these amendments.[104] In addition, any costs or benefits are likely to affect not only funds, but also a wide variety of market participants.[105]

In the Proposing Release, the Commission requested specific comment on the costs and benefits associated with the proposals. No commenters provided specific estimates of any costs or benefits. One noted generally the increase in time and costs incurred to document compliance with rule 2a–7 since 1991, and suggested that procedural requirements focus less on periodic reviews of existing information and more on actions required by a board or fund managers in response to new information.[106] In response to these concerns, the technical amendments create exceptions to the rule's periodic review requirements when those requirements are not necessary to prevent the fund from inadvertently holding ineligible securities.[107]

Section 2(c) of the 1940 Act provides that whenever the Commission is engaged in rulemaking and is required to consider whether an action is necessary or appropriate in the public interest, the Commission also must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[108] For the reasons stated in the cost/benefit analysis above, the Commission has concluded that the technical amendments will promote efficiency, competition and capital formation.

B. Amendments to Advertising Rules Applicable to Money Market Funds

The amendments to the Commission's advertising rules and forms applicable to money market funds are designed to clarify the formula used by money market funds to calculate yield and reduce the potential for investors being misled or confused by the presentation of a money market fund's short-term total return. They benefit funds and fund investors by clarifying the yield formula and codifying accepted practices under the current rules. The amendments are intended to preserve the consistency of advertised yield and to maintain the ability of investors to compare yields quoted by various funds.

The Commission anticipates that the costs of these amendments to funds and investors are likely to be minimal. No commenters responded to the Commission's request for specific estimates of costs or benefits associated with the proposed rule amendments. One commenter stated that the proposal to clarify that only investment income may be included in a fund's yield would benefit neither funds nor investors, because it would discourage funds from identifying sources of safe, non-investment income, encourage funds to increase yield through riskier investments, and deprive investors of information regarding consistent sources of non-investment income.[109] The Commission believes, however, that the rule will benefit investors by ensuring that a money market fund's yield is consistently advertised and represents only income that reflects the performance of the fund's investment portfolio.[110]

V. Paperwork Reduction Act

As set forth in the Proposing Release, certain provisions of the amendments adopted in this Release contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[111] The collection of information requirements contained in these amendments were submitted to the Office of Management and Budget ("OMB") for review in accordance with section 3507(d) of the PRA. The title for the collection of information is "Rules Regulating Money Market Funds." The collection of information requirements are in accordance with section 3507 of the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. OMB approved the PRA submission with respect to these amendments and assigned OMB control numbers with respect to the rules amended by this Release.[112]

Responses to the collection of information requirements for the rules and forms amended by this Release are mandatory. The collection of information requirements under rule 2a–7 are designed to enable the Commission staff to ascertain a money market funds' compliance with the rule and ensure that funds have in place procedures for collecting information necessary to make the required determinations regarding portfolio securities. Most responses required by rule 2a–7 and requested by or submitted to the Commission will be kept confidential to the extent permitted by relevant statutory and regulatory provisions.[113] The collection of information required by rule 34b–1, rule 482, Form N–1A, Form N–3 and Form N–4, and which is disclosed in fund prospectuses, registration statements and advertisements, is public and is not kept confidential by the Commission.

The Supporting Statement to this Paperwork Reduction Act submission notes that, because the technical amendments to rule 2a–7 clarify existing reporting and recordkeeping obligations, it is estimated that they will have no effect on the annual reporting burden of money market funds. The amendments to the advertising rules and forms applicable to money market funds are estimated to impose no substantive additional paperwork burdens on funds. The Commission is aware of only one money market fund that has sought to include income other than investment income in its yield calculation, and very few money market funds that quote any type of total return in their advertisements. If total return is quoted, however, an insignificant additional burden is required only if the quoted yield differs materially from quoted total return, which the Commission believes occurs infrequently.

VI. Summary of Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis ("IRFA") regarding the proposed amendments, which was prepared in accordance with 5 U.S.C 603, was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C 604 regarding the adoption of technical amendments to rule 2a–7 and the adoption of amendments to the Commission's advertising rules applicable to money market funds.

The FRFA discusses the need for, and objectives of, the rule amendments. The FRFA explains that the technical amendments to rule 2a–7 address many of the questions and issues raised by industry participants after the adoption of the 1996 Amendments. The objective of the technical amendments is to refine

---

[95] *See* Proposing Release, *supra* note 6, at nn.84–85 and accompanying text.

[96] The 1996 Amendments "grandfathered" fund investments in certain securities issued on or before June 3, 1996.

[97] Rule 2a–7 requires a fund to meet the rule's diversification standards with respect to a particular issuer on the date the fund acquires a security of that issuer. Paragraphs (c)(4)(i) and (ii) (with respect to issuer diversification) and (c)(4)(iii) and (iv) (with respect to diversification of demand features and guarantees) of rule 2a–7, as amended. A tax exempt fund holding a greater percentage of its total assets in the securities of an issuer than the applicable diversification standard permits as of July 1, 1998 may not purchase additional securities or "roll over" current holdings until the purchase or roll over of such securities will not cause the fund to exceed the applicable diversification standards immediately after the purchase or roll over. Funds are not required to exercise puts or otherwise dispose of portfolio holdings to meet the new diversification standards.

[98] Paragraph (a)(10)(iii)(A) of rule 2a–7, as amended.

[99] Paragraph (a)(10)(iii)(B) of rule 2a–7, as amended.

[100] Paragraphs (a)(8)(i) (definition of demand feature for ABSs) and (a)(10)(ii)(B) (rating requirement for ABSs) of rule 2a–7, as amended. Funds are required, however, to apply the issuer diversification standards for ABSs in accordance with Section I.B.3.b. of this Release, *supra*. *See* paragraph (c)(4)(ii)(D) of rule 2a–7, as amended.

[101] Paragraphs (a)(8) and (a)(15) of rule 2a–7, as amended.

[102] Paragraph (c)(3)(iv)(B) of rule 2a–7, as amended.

[103] *See supra* Section I.A. of this Release.

[104] For example, many money market funds currently do not invest in ABSs, or invest only in those ABSs that do not raise the diversification issues addressed in this Release. The Commission expects that more funds will invest in ABSs, although there is no empirical basis for predicting the size of that expected effect.

[105] Many of the complex money market fund instruments affected by the technical amendments are specifically designed to comply with rule 2a–7. The primary effect of the amendments will be to change how those instruments are structured, rather than to prohibit funds from investing in currently-available money market instruments. Thus, to the extent the amendments impose costs or provide benefits, these costs and benefits may be shared by funds, investors, issuers, and the investment banks or other entities that structure money market instruments.

[106] The technical amendments do not require additional periodic reviews. The rule's procedural requirements, including periodic reviews of certain determinations, were adopted before the proposal of the technical amendments. The costs and benefits of these procedures were analyzed previously in connection with the adoption of rule 2a–7 in 1983, and in connection with amendments to rule 2a–7 in 1986, 1991 and 1996.

[107] For example, the amended rule does not require periodic determinations of the number of ten percent obligors of an ABS that the board determines will never have, or is unlikely to have, ten percent obligors. *See* paragraphs (c)(9)(iv) and (c)(10)(v) of rule 2a–7, as amended.

[108] 15 USC 80a–2(c).

[109] According to this commenter, the inability to advertise non-investment income also would have an adverse effect on competition in the industry.

[110] The Commission believes that it is not relevant to consider the costs to funds identified by the commenter in connection with these amendments. The amendments are intended to clarify the existing money market fund yield formula, and as noted in the Proposing Release, the existing yield formula does not permit the inclusion of non-investment income in yield. *See* Proposing Release, *supra* note 6, at n.83 and accompanying text. In addition, the Commission believes that any such costs are in fact quite limited, since it is aware of only one fund that has sought to include non-investment income in its calculation of yield.

[111] 44 U.S.C 3501—3520.

[112] OMB control numbers are as follows: rule 2a–7 (3235–0268; expires Mar. 31, 2000); rule 34b–1 (3235–0346, expires Mar. 31, 2000); rule 482 (3235–0074, expires Mar. 31, 2000); Form N–1A (3235–0307, expires May 31, 2000); Form N–3 (3235–0316, expires Mar. 31, 2000); and Form N–4 (3235–0318, expires Apr. 30, 2000).

[113] If the board of directors takes action with respect to defaulted securities, events of insolvency or deviations in share price, however, funds must file an exhibit to Form N-SAR describing the action. This collection of information under rule 2a–7 is public and is not kept confidential by the Commission. See paragraph (c)(10)(vii) of rule 2a–7, as amended.

and correct the 1996 Amendments, and thereby permit money market funds the maximum amount of flexibility in selecting their investments consistent with the objective of maintaining a stable net asset value. The FRFA explains that the amendments to the advertising rules applicable to money market funds clarify that only investment income may be included in the yield of a money market fund and reduce the potential for investors being misled or confused by the presentation of a money market fund's short-term total return.

The FRFA estimates that out of the approximately 650 investment companies registered with the Commission that have one or more portfolios that are money market funds, a total of 130 would be considered small entities. The FRFA indicates that the technical amendments to rule 2a–7 and the amendments to the advertising rules and forms applicable to money market funds would effect small entities in the same manner as other funds subject to these rules.

The FRFA explains that neither the technical amendments to rule 2a–7 nor the amendments to the advertising rules applicable to money market funds impose any substantive additional reporting, recordkeeping or other compliance burdens. Finally, the FRFA states that in adopting the amendments the Commission considered (a) the establishment of differing compliance requirements that take into account the resources available to small entities; (b) simplification of the requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from the rules for small entities. The FRFA states that the Commission concluded that different requirements for small entities with respect to either the technical amendments to rule 2a–7 or the amendments to the advertising rules applicable to money market funds are unnecessary and would be inconsistent with investor protection, and that the adopted amendments are not design standards.

Cost/benefit information reflected in the "Cost/Benefit Analysis" section of this Release also is reflected in the FRFA. A copy of the FRFA may be obtained by contacting David P. Mathews, Senior Counsel, Mail Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Statutory Authority

The Commission is amending rule 2a–7 and the advertising rules and forms applicable to money market funds under the exemptive and rulemaking authority set forth in sections 6(c) [15 USC 80a–6(c)], 8(b) [15 USC 80a–8(b)], 22(c) [15 USC 80a–22(c)], 34(b) [15 USC 80a–33(b)], 35(d) [15 USC 80a–34(d)] and 38(a) [15 USC 80a–37(a)] of the Investment Company Act of 1940. The authority citations for the amendments to the rules and forms precede the text of the amendments.

VIII. Text of Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 239, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is amending chapter II, title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 79l(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.482 is amended by revising paragraph (d) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(d) In the case of a money market fund:

(1) Any quotation of the money market fund's yield in an advertisement shall be based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–3 (§§ 239.17a and 274.11b of this chapter), or Form N–4 (§§ 239.17b and 274.11c of this chapter) and may include:

(i) A quotation of current yield that identifies the length of and the date of the last day in the base period used in computing that quotation; or

(ii) A quotation of effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to an identical base period and is presented with equal prominence.

(2) Accompany any quotation of the money market fund's total return in an advertisement with a quotation of the money market fund's current yield under paragraph (d)(1)(i) of this section. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The general authority citation for Part 270 is revised to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(b), 80a–37, 80a–39 unless otherwise noted;

* * * * *

4. Section 270.2a–7 is revised to read as follows:

§ 270.2a–7 Money market funds.

(a) *Definitions.*

(1) *Acquisition* (or *Acquire*) means any purchase or subsequent rollover (but does not include the failure to exercise a Demand Feature).

(2) *Amortized Cost Method* of valuation means the method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's Acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors.

(3) *Asset Backed Security* means a fixed income security (other than a Government security) issued by a Special Purpose Entity (as defined in this paragraph), substantially all of the assets which consist of Qualifying Assets (as defined in this paragraph). *Special Purpose Entity* means a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle their holders to receive payments that depend primarily on the cash flow from Qualifying Assets, but does not include a registered investment company. *Qualifying Assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(4) *Business Day* means any day, other than Saturday, Sunday, or any customary business holiday.

(5) *Collateralized Fully* in the case of a repurchase agreement means that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the money market fund reasonably could

expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the Resale Price (as defined in paragraph (a)(5)(v) of this section) provided in the agreement;

(ii) The money market fund or its custodian either has actual physical possession of the collateral or, in the case of a security registered on a book entry system, the book entry is maintained in the name of the money market fund or its custodian;

(iii) The collateral consists entirely of cash items, Government Securities or other securities that at the time the repurchase agreement is entered into are rated in the highest rating category by the Requisite NRSROs; and

(iv) Upon an Event of Insolvency with respect to the seller, the repurchase agreement would qualify under a provision of applicable insolvency law providing an exclusion from any automatic stay of creditors' rights against the seller.

(v) *Resale Price* means the Acquisition price paid to the seller of the securities plus the accrued resale premium on such Acquisition price. The accrued resale premium shall be the amount specified in the repurchase agreement or the daily amortization of the difference between the Acquisition price and the resale price specified in the repurchase agreement.

(6) *Conditional Demand Feature* means a Demand Feature that is not an Unconditional Demand Feature. A Conditional Demand Feature is not a Guarantee.

(7) *Conduit Security* means a security issued by a Municipal Issuer (as defined in this paragraph) involving an arrangement or agreement entered into, directly or indirectly, with a person other than a Municipal Issuer, which arrangement or agreement provides for or secures repayment of the security. *Municipal Issuer* means a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A Conduit Security *does not* include a security that is:

(i) Fully and unconditionally guaranteed by a Municipal Issuer; or

(ii) Payable from the general revenues of the Municipal Issuer or other Municipal Issuers (other than those revenues derived from an agreement or arrangement with a person who is not a Municipal Issuer that provides for or secures repayment of the security issued by the Municipal Issuer); or

(iii) Related to a project owned and operated by a Municipal Issuer; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a Municipal Issuer.

(8) *Demand Feature* means:

(i) A feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise. A Demand Feature must be exercisable either:

(A) At any time on no more than 30 calendar days' notice; or

(B) At specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or

(ii) A feature permitting the holder of an Asset Backed Security unconditionally to receive principal and interest within 397 calendar days of making demand.

(9) *Demand Feature Issued By A Non-Controlled Person* means a Demand Feature issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the Demand Feature (*control* means "control" as defined in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a Special Purpose Entity with respect to an Asset Backed Security.

(10) *Eligible Security* means:

(i) A Rated Security with a remaining maturity of 397 calendar days or less that has received a rating from the Requisite NRSROs in one of the two highest short-term rating categories (within which there may be sub-categories or gradations indicating relative standing); or

(ii) An Unrated Security that is of comparable quality to a security meeting the requirements for a Rated Security in paragraph (a)(10)(i) of this section, as determined by the money market fund's board of directors; *Provided, however,* that:

(A) A security that at the time of issuance had a remaining maturity of more than 397 calendar days but that has a remaining maturity of 397 calendar days or less and that is an Unrated Security is not an Eligible Security if the security has received a long-term rating from any NRSRO that is not within the NRSRO's three highest long-term ratings categories (within which there may be sub-categories or gradations indicating relative standing), unless the security has received a long-term rating from the Requisite NRSROs in one of the three highest rating categories;

(B) An Asset Backed Security (other than an Asset Backed Security substantially all of whose Qualifying Assets consist of obligations of one or more Municipal Issuers, as that term is defined in paragraph (a)(7) of this section) shall not be an Eligible Security unless it has received a rating from an NRSRO.

(iii) In addition, in the case of a security that is subject to a Demand Feature or Guarantee:

(A) The Guarantee has received a rating from an NRSRO or the Guarantee is issued by a guarantor that has received a rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security to the Guarantee, *unless*:

(*1*) The Guarantee is issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the Guarantee (other than a sponsor of a Special Purpose Entity with respect to an Asset Backed Security);

(*2*) The security subject to the Guarantee is a repurchase agreement that is Collateralized Fully; or

(*3*) The Guarantee is itself a Government Security; and

(B) The issuer of the Demand Feature or Guarantee, or another institution, has undertaken promptly to notify the holder of the security in the event the Demand Feature or Guarantee is substituted with another Demand Feature or Guarantee (if such substitution is permissible under the terms of the Demand Feature or Guarantee).

(11) *Event of Insolvency* means, with respect to a person:

(i) An admission of insolvency, the application by the person for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the person of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors; or

(ii) The institution of similar proceedings by another person which proceedings are not contested by the person; or

(iii) The institution of similar proceedings by a government agency responsible for regulating the activities of the person, whether or not contested by the person.

(12) *First Tier Security* means any Eligible Security that:

(i) Is a Rated Security that has received a short-term rating from the Requisite NRSROs in the highest short-term rating category for debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(ii) Is an Unrated Security that is of comparable quality to a security meeting the requirements for a Rated Security in paragraph (a)(12)(i) of this section, as determined by the fund's board of directors; or

(iii) Is a security issued by a registered investment company that is a money market fund; or

(iv) Is a Government Security.

(13) *Floating Rate Security* means a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(14) *Government Security* means any "Government security" as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(15) *Guarantee* means an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the Guarantee (if required), the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an Unconditional Demand Feature, an obligation that entitles the holder to receive upon exercise the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A Guarantee includes a letter of credit, financial guaranty (bond) insurance, and an Unconditional Demand Feature (other than an Unconditional Demand Feature provided by the issuer of the security).

(16) *Guarantee Issued By A Non-Controlled Person* means a Guarantee issued by:

(i) A person that, directly or indirectly, does *not* control, and is not controlled by or under common control with the issuer of the security subject to the Guarantee (*control* means "control" as defined in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a Special Purpose Entity with respect to an Asset Backed Security.

(17) *NRSRO* means any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of § 240.15c3–1 of this Chapter, that is not an "affiliated person," as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of, or any insurer or provider of credit support for, the security.

(18) *Penny-Rounding Method* of pricing means the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(19) *Rated Security* means a security that meets the requirements of paragraphs (a)(19)(i) or (ii) of this section, in each case subject to paragraph (a)(19)(iii) of this section:

(i) The security has received a short-term rating from an NRSRO, or has been issued by an issuer that has received a short-term rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the security; or

(ii) The security is subject to a Guarantee that has received a short-term rating from an NRSRO, or a Guarantee issued by a guarantor that has received a short-term rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the Guarantee; but

(iii) A security is not a Rated Security if it is subject to an external credit support agreement (including an arrangement by which the security has become a Refunded Security) that was not in effect when the security was assigned its rating, unless the security has received a short-term rating reflecting the existence of the credit support agreement as provided in paragraph (a)(19)(i) of this section, or the credit support agreement with respect to the security has received a short-term rating as provided in paragraph (a)(19)(ii) of this section.

(20) *Refunded Security* means a debt security the principal and interest payments of which are to be paid by Government Securities ("deposited securities") that have been irrevocably placed in an escrow account pursuant to agreement between the issuer of the debt security and an escrow agent that is not an "affiliated person," as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of the debt security, and, in accordance with such escrow agreement, are pledged only to the payment of the debt security and, to the extent that excess proceeds are available after all payments of principal, interest, and applicable premiums on the Refunded Securities, the expenses of the escrow agent and, thereafter, to the issuer or another party; *provided* that:

(i) The deposited securities shall not be redeemable prior to their final maturity;

(ii) The escrow agreement shall prohibit the substitution of the deposited securities unless the substituted securities are Government Securities; and

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant shall have certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities; *Provided, however,* an independent public accountant need not have provided the certification described in this paragraph (a)(20)(iii) if the security, as a Refunded Security, has received a rating from an NRSRO in the highest category for debt obligations (within which there may be sub-categories or gradations including relative standing).

(21) *Requisite NRSROs* means:

(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund acquires the security, that NRSRO.

(22) *Second Tier Security* means any Eligible Security that is not a First Tier Security. *Second Tier Conduit Security* means any Conduit Security that is an Eligible Security that is not a First Tier Security.

(23) *Single State Fund* means a Tax Exempt Fund that holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state and, where applicable, subdivisions thereof.

(24) *Tax Exempt Fund* means any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(25) *Total Assets* means, with respect to a money market fund using the Amortized Cost Method, the total amortized cost of its assets and, with respect to any other money market fund, the total market-based value of its assets.

(26) *Unconditional Demand Feature* means a Demand Feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(27) *United States Dollar-Denominated* means, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(28) *Unrated Security* means a security that is not a Rated Security.

(29) *Variable Rate Security* means a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(b) *Holding Out and Use of Names and Titles.* (1) It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)), to hold itself out to investors as a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3) and (c)(4) of this section.

(2) It shall constitute the use of a materially deceptive or misleading name or title within the meaning of section 35(d) of the Act (15 U.S.C. 80a–34(d)) for a registered investment company to adopt the term "money market" as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or to adopt a name that suggests that it is a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(3) For purposes of this paragraph, a name that suggests that a registered investment company is a money market fund or the equivalent thereof shall include one that uses such terms as "cash," "liquid," "money," "ready assets" or similar terms.

(c) *Share Price Calculations.* The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by any registered investment company ("money market fund" or "fund"), notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and of §§ 270.2a–4 and 270.22c–1 thereunder, may be computed by use of the Amortized Cost Method or the Penny-Rounding Method; *Provided, however,* that:

(1) *Board Findings.* The board of directors of the money market fund shall determine, in good faith, that it is in the best interests of the fund and its shareholders to maintain a stable net asset value per share or stable price per share, by virtue of either the Amortized Cost Method or the Penny-Rounding Method, and that the money market fund will continue to use such method only so long as the board of directors believes that it fairly reflects the market-based net asset value per share.

(2) *Portfolio Maturity.* The money market fund shall maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share or price per share; *Provided, however,* that the money market fund will not:

(i) Except as provided in paragraph (c)(2)(ii) of this section, Acquire any instrument with a remaining maturity of greater than 397 calendar days; or

(ii) In the case of a money market fund not using the Amortized Cost Method, Acquire a Government Security with a remaining maturity of greater than 762 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds ninety days.

(3) *Portfolio Quality*—(i) *General.* The money market fund shall limit its portfolio investments to those United States Dollar-Denominated securities that the fund's board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to any rating assigned to such securities by an NRSRO) and that are at the time of Acquisition Eligible Securities.

(ii) *Second Tier Securities.* Immediately after the Acquisition of any Second Tier Security:

(A) *Taxable Funds.* A money market fund that is not a Tax Exempt Fund shall not have invested more than five percent of its Total Assets in securities that are Second Tier Securities; and

(B) *Tax Exempt Funds.* A money market fund that is a Tax Exempt Fund shall not have invested more than five percent of its Total Assets in Conduit Securities that are Second Tier Conduit Securities.

(iii) *Securities Subject to Guarantees.* A security that is subject to a Guarantee may be determined to be an Eligible Security or a First Tier Security based solely on whether the Guarantee is an Eligible Security or First Tier Security, as the case may be.

(iv) *Securities Subject to Conditional Demand Features.* A security that is subject to a Conditional Demand Feature ("Underlying Security") may be determined to be an Eligible Security or a First Tier Security only if:

(A) The Conditional Demand Feature is an Eligible Security or First Tier Security, as the case may be;

(B) At the time of the Acquisition of the Underlying Security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the Conditional Demand Feature not being exercisable will occur; and

(*1*) The conditions limiting exercise either can be monitored readily by the fund, or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(*2*) The terms of the Conditional Demand Feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the Demand Feature in accordance with its terms; and

(C) The Underlying Security or any Guarantee of such security (or the debt securities of the issuer of the Underlying Security or Guarantee that are comparable in priority and security with the Underlying Security or Guarantee) has received either a short-term rating or a long-term rating, as the case may be, from the Requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories (within which there may be sub-categories or gradations indicating relative standing) or, if unrated, is determined to be of comparable quality by the money market fund's board of directors to a security that has received a rating from the Requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories, as the case may be.

(4) *Portfolio Diversification*—(i) *Issuer Diversification.* The money market fund shall be diversified with respect to issuers of securities Acquired by the fund as provided in paragraphs (c)(4)(i) and (c)(4)(ii) of this section, other than

with respect to Government Securities and securities subject to a Guarantee Issued By A Non-Controlled Person.

(A) *Taxable and National Funds.* Immediately after the Acquisition of any security, a money market fund other than a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; *Provided, however,* that such a fund may invest up to twenty-five percent of its Total Assets in the First Tier Securities of a single issuer for a period of up to three Business Days after the Acquisition thereof; *Provided, further,* that the fund may not invest in the securities of more than one issuer in accordance with the foregoing proviso in this paragraph at any time.

(B) *Single State Funds.* With respect to seventy-five percent of its Total Assets, immediately after the Acquisition of any security, a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; *Provided, however,* that a Single State Fund shall not invest more than five percent of its Total Assets in securities issued by the issuer of the security unless the securities are First Tier Securities.

(C) *Second Tier Securities—(1) Taxable Funds.* Immediately after the Acquisition of any Second Tier Security, a money market fund that is not a Tax Exempt Fund shall not have invested more than the greater of one percent of its Total Assets or one million dollars in securities issued by that issuer that are Second Tier Securities.

(*2*) *Tax Exempt Funds.* Immediately after the Acquisition of any Second Tier Conduit Security, a money market fund that is a Tax Exempt Fund shall not have invested more than the greater of one percent of its Total Assets or one million dollars in securities issued by that issuer that are Second Tier Conduit Securities.

(ii) *Issuer Diversification Calculations.* For purposes of making calculations under paragraph (c)(4)(i) of this section:

(A) *Repurchase Agreements.* The Acquisition of a repurchase agreement may be deemed to be an Acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is Collateralized Fully.

(B) *Refunded Securities.* The Acquisition of a Refunded Security shall be deemed to be an Acquisition of the escrowed Government Securities.

(C) *Conduit Securities.* A Conduit Security shall be deemed to be issued by the person (other than the Municipal Issuer) ultimately responsible for payments of interest and principal on the security.

(D) *Asset Backed Securities—(1) General.* An Asset Backed Security Acquired by a fund ("Primary ABS") shall be deemed to be issued by the Special Purpose Entity that issued the Asset Backed Security, *Provided, however:*

(*i*) *Holdings of Primary ABS.* Any person whose obligations constitute ten percent or more of the principal amount of the Qualifying Assets of the Primary ABS ("Ten Percent Obligor") shall be deemed to be an issuer of the portion of the Primary ABS such obligations represent; and

(*ii*) *Holdings of Secondary ABS.* If a Ten Percent Obligor of a Primary ABS is itself a Special Purpose Entity issuing Asset Backed Securities ("Secondary ABS"), any Ten Percent Obligor of such Secondary ABS also shall be deemed to be an issuer of the portion of the Primary ABS that such Ten Percent Obligor represents.

(*2*) *Restricted Special Purpose Entities.* A Ten Percent Obligor with respect to a Primary or Secondary ABS shall not be deemed to have issued any portion of the assets of a Primary ABS as provided in paragraph (c)(4)(ii)(D)(*1*) of this section if that Ten Percent Obligor is itself a Special Purpose Entity issuing Asset Backed Securities ("Restricted Special Purpose Entity"), and the securities that it issues (other than securities issued to a company that controls, or is controlled by or under common control with, the Restricted Special Purpose Entity and which is not itself a Special Purpose Entity issuing Asset Backed Securities) are held by only one other Special Purpose Entity.

(*3*) *Demand Features and Guarantees.* In the case of a Ten Percent Obligor deemed to be an issuer, the fund shall satisfy the diversification requirements of paragraph (c)(4)(iii) of this section with respect to any Demand Feature or Guarantee to which the Ten Percent Obligor's obligations are subject.

(E) *Shares of Other Money Market Funds.* A money market fund that Acquires shares issued by another money market fund in an amount that would otherwise be prohibited by paragraph (c)(4)(i) of this section shall nonetheless be deemed in compliance with this section if the board of directors of the Acquiring money market fund reasonably believes that the fund in which it has invested is in compliance with this section.

(iii) *Diversification Rules for Demand Features and Guarantees.* The money market fund shall be diversified with respect to Demand Features and Guarantees Acquired by the fund as provided in paragraphs (c)(4)(iii) and (c)(4)(iv) of this section, *other than* with respect to a Demand Feature issued by the same institution that issued the underlying security, or with respect to a Guarantee or Demand Feature that is itself a Government Security.

(A) *General.* Immediately after the Acquisition of any Demand Feature or Guarantee or security subject to a Demand Feature or Guarantee, a money market fund, with respect to seventy-five percent of its Total Assets, shall not have invested more than ten percent of its Total Assets in securities issued by or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, subject to paragraphs (c)(4)(iii) (B) and (C) of this section.

(B) *Second Tier Demand Features or Guarantees.* Immediately after the Acquisition of any Demand Feature or Guarantee (or a security after giving effect to the Demand Feature or Guarantee) that is a Second Tier Security, a money market fund shall not have invested more than five percent of its Total Assets in securities issued by or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee.

(C) *Demand Features or Guarantees Issued by Non-Controlled Persons.* Immediately after the Acquisition of any security subject to a Demand Feature or Guarantee, a money market fund shall not have invested more than ten percent of its Total Assets in securities issued by, or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, unless, with respect to any security subject to Demand Features or Guarantees from that institution (other than securities issued by such institution), the Demand Feature or Guarantee is a Demand Feature or Guarantee Issued By A Non-Controlled Person.

(iv) *Demand Feature and Guarantee Diversification Calculations—(A) Fractional Demand Features or Guarantees.* In the case of a security subject to a Demand Feature or Guarantee from an institution by which the institution guarantees a specified portion of the value of the security, the institution shall be deemed to guarantee the specified portion thereof.

(B) *Layered Demand Features or Guarantees.* In the case of a security subject to Demand Features or Guarantees from multiple institutions that have not limited the extent of their obligations as described in paragraph (c)(4)(iv)(A) of this section, each

institution shall be deemed to have provided the Demand Feature or Guarantee with respect to the entire principal amount of the security.

(v) *Diversification Safe Harbor.* A money market fund that satisfies the applicable diversification requirements of paragraphs (c)(4) and (c)(5) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) and the rules adopted thereunder.

(5) *Demand Features and Guarantees Not Relied Upon.* If the fund's board of directors has determined that the fund is not relying on a Demand Feature or Guarantee to determine the quality (pursuant to paragraph (c)(3) of this section), or maturity (pursuant to paragraph (d) of this section), or liquidity of a portfolio security, and maintains a record of this determination (pursuant to paragraphs (c)(9)(ii) and (c)(10)(vi) of this section), then the fund may disregard such Demand Feature or Guarantee for all purposes of this section.

(6) *Downgrades, Defaults and Other Events—(i) Downgrades—(A) General.* Upon the occurrence of either of the events specified in paragraphs (c)(6)(i)(A) (*1*) and (*2*) of this section with respect to a portfolio security, the board of directors of the money market fund shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders:

(*1*) A portfolio security of a money market fund ceases to be a First Tier Security (either because it no longer has the highest rating from the Requisite NRSROs or, in the case of an Unrated Security, the board of directors of the money market fund determines that it is no longer of comparable quality to a First Tier Security); and

(*2*) The money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware that any Unrated Security or Second Tier Security held by the money market fund has, since the security was Acquired by the fund, been given a rating by any NRSRO below the NRSRO's second highest short-term rating category.

(B) *Securities to Be Disposed Of.* The reassessments required by paragraph (c)(6)(i)(A) of this section shall not be required if, in accordance with the procedures adopted by the board of directors, the security is disposed of (or matures) within five Business Days of the specified event and, in the case of events specified in paragraph (c)(6)(i)(A)(*2*) of this section, the board is subsequently notified of the adviser's actions.

(C) *Special Rule for Certain Securities Subject to Demand Features.* In the event that after giving effect to a rating downgrade, more than five percent of the fund's Total Assets are invested in securities issued by or subject to Demand Features from a single institution that are Second Tier Securities, the fund shall reduce its investment in securities issued by or subject to Demand Features from that institution to no more than five percent of its Total Assets by exercising the Demand Features at the next succeeding exercise date(s), absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund.

(ii) *Defaults and Other Events.* Upon the occurrence of any of the events specified in paragraphs (c)(6)(ii)(A) through (D) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any Demand Feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(A) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(B) A portfolio security ceases to be an Eligible Security;

(C) A portfolio security has been determined to no longer present minimal credit risks; or

(D) An Event of Insolvency occurs with respect to the issuer of a portfolio security or the provider of any Demand Feature or Guarantee.

(iii) *Notice to the Commission.* In the event of a default with respect to one or more portfolio securities (other than an immaterial default unrelated to the financial condition of the issuer) or an Event of Insolvency with respect to the issuer of the security or any Demand Feature or Guarantee to which it is subject, where immediately before default the securities (or the securities subject to the Demand Feature or Guarantee) accounted for ½ of 1 percent or more of a money market fund's Total Assets, the money market fund shall promptly notify the Commission of such fact and the actions the money market fund intends to take in response to such situation. Notification under this paragraph shall be made telephonically, or by means of a facsimile transmission or electronic mail, followed by letter sent by first class mail, directed to the attention of the Director of the Division of Investment Management.

(iv) *Defaults for Purposes of Paragraphs (c)(6) (ii) and (iii).* For purposes of paragraphs (c)(6) (ii) and (iii) of this section, an instrument subject to a Demand Feature or Guarantee shall not be deemed to be in default (and an Event of Insolvency with respect to the security shall not be deemed to have occurred) if:

(A) In the case of an instrument subject to a Demand Feature, the Demand Feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; or

(B) The provider of the Guarantee is continuing, without protest, to make payments as due on the instrument.

(*7*) *Required Procedures: Amortized Cost Method.* In the case of a money market fund using the Amortized Cost Method:

(i) *General.* In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at a single value.

(ii) *Specific Procedures.* Included within the procedures adopted by the board of directors shall be the following:

(A) *Shadow Pricing.* Written procedures shall provide:

(*1*) That the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) from the money market fund's amortized cost price per share, shall be calculated at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions;

(*2*) For the periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and

(3) For the maintenance of records of the determination of deviation and the board's review thereof.

(B) *Prompt Consideration of Deviation.* In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, the board of directors shall promptly consider what action, if any, should be initiated by the board of directors.

(C) *Material Dilution or Unfair Results.* Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

(8) *Required Procedures: Penny-Rounding Method.* In the case of a money market fund using the Penny-Rounding Method, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors undertakes, as a particular responsibility within the overall duty of care owed to its shareholders, to assure to the extent reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the single price established by the board of directors.

(9) *Specific Procedures: Amortized Cost and Penny-Rounding Methods.* Included within the procedures adopted by the board of directors for money market funds using either the Amortized Cost or Penny-Rounding Methods shall be the following:

(i) *Securities for Which Maturity is Determined by Reference to Demand Features.* In the case of a security for which maturity is determined by reference to a Demand Feature, written procedures shall require ongoing review of the security's continued minimal credit risks, and that review must be based on, among other things, financial data for the most recent fiscal year of the issuer of the Demand Feature and, in the case of a security subject to a Conditional Demand Feature, the issuer of the security whose financial condition must be monitored under paragraph (c)(3)(iv) of this section, whether such data is publicly available or provided under the terms of the security's governing documentation.

(ii) *Securities Subject to Demand Features or Guarantees.* In the case of a security subject to one or more Demand Features or Guarantees that the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (c)(3) of this section), maturity (pursuant to paragraph (d) of this section) or liquidity of the security subject to the Demand Feature or Guarantee, written procedures shall require periodic evaluation of such determination.

(iii) *Adjustable Rate Securities Without Demand Features.* In the case of a Variable Rate or Floating Rate Security that is not subject to a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section, written procedures shall require periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the security to have a market value that approximates its amortized cost value.

(iv) *Asset Backed Securities.* In the case of an Asset Backed Security, written procedures shall require the fund to periodically determine the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section; *Provided, however,* written procedures need not require periodic determinations with respect to any Asset Backed Security that a fund's board of directors has determined, at the time of Acquisition, will not have, or is unlikely to have, Ten Percent Obligors that are deemed to be issuers of all or a portion of that Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section, and maintains a record of this determination.

(10) *Record Keeping and Reporting—*(i) *Written Procedures.* For a period of not less than six years following the replacement of such procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in paragraphs (c)(6) through (c)(9) and (e) of this section shall be maintained and preserved.

(ii) *Board Considerations and Actions.* For a period of not less than six years (the first two years in an easily accessible place) a written record shall be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the board of directors' meetings.

(iii) *Credit Risk Analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks and the NRSRO ratings (if any) used to determine the status of the security as an Eligible Security, First Tier Security or Second Tier Security shall be maintained and preserved in an easily accessible place.

(iv) *Determinations With Respect to Adjustable Rate Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determination required by paragraph (c)(9)(iii) of this section (that a Variable Rate or Floating Rate Security that is not subject to a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

(v) *Determinations with Respect to Asset Backed Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (c)(9)(iv) of this section (the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section). The written record shall include:

(A) The identities of the Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section), the percentage of the Qualifying Assets constituted by the securities of each Ten Percent Obligor and the percentage of the fund's Total Assets that are invested in securities of each Ten Percent Obligor; and

(B) Any determination that an Asset Backed Security will not have, or is unlikely to have, Ten Percent Obligors deemed to be issuers of all or a portion of that Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section.

(vi) *Evaluations with Respect to Securities Subject to Demand Features or Guarantees.* For a period of not less

than three years from the date when the evaluation was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (c)(9)(ii) (regarding securities subject to one or more Demand Features or Guarantees) of this section.

(vii) *Inspection of Records.* The documents preserved pursuant to this paragraph (c)(10) shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)). If any action was taken under paragraphs (c)(6)(ii) (with respect to defaulted securities and events of insolvency) or (c)(7)(ii) (with respect to a deviation from the fund's share price of more than 1/2 of 1 percent) of this section, the money market fund will file an exhibit to the Form N–SAR (17 CFR 274.101) filed for the period in which the action was taken describing with specificity the nature and circumstances of such action. The money market fund will report in an exhibit to such Form any securities it holds on the final day of the reporting period that are not Eligible Securities.

(d) *Maturity of Portfolio Securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except as provided in paragraphs (d)(1) through (d)(8) of this section:

(1) *Adjustable Rate Government Securities.* A Government Security that is a Variable Rate Security where the variable rate of interest is readjusted no less frequently than every 762 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A Government Security that is a Floating Rate Security shall be deemed to have a remaining maturity of one day.

(2) *Short-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) *Long-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a Demand Feature, shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) *Short-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day.

(5) *Long-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a Demand Feature, shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) *Repurchase Agreements.* A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(7) *Portfolio Lending Agreements.* A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money Market Fund Securities.* An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the Acquired money market fund is required to make payment upon redemption, unless the Acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(e) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section (other than the determinations required by paragraphs (c)(1) (board findings); (c)(6)(i)(C) (rule for certain securities subject to second tier Demand Features); (c)(6)(ii) (defaults and other events); (c)(7)(i) (general required procedures: Amortized Cost Method); (c)(7)(ii)(A) (shadow pricing), (B) (prompt consideration of deviation), and (C) (material dilution or unfair results); and (c)(8) (required procedures: Penny Rounding Method) of this section) provided:

(1) *Written Guidelines.* The Board shall establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (c)(3) of this section) and procedures under which the delegate makes such determinations:

(2) *Oversight.* The Board shall take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security or Event of Insolvency with respect to the issuer of the security or any Guarantee to which it is subject that requires notification of the Commission under paragraph (c)(6)(iii) of this section) to assure that the guidelines and procedures are being followed.

5. Section 270.2a41–1 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 270.2a41–1 Valuation of standby commitments by registered investment companies.

(a) A standby commitment means a right to sell a specified underlying security or securities within a specified period of time and at an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise, that may be sold, transferred or assigned only with the underlying security or securities. A standby commitment entitles the holder to receive same day settlement, and will be considered to be from the party to whom the investment company will look for payment of the exercise price. A standby commitment may be assigned a fair value of zero, Provided, That:

* * * * *

6. Section 270.12d3–1 is amended by revising paragraph (d)(7)(v) to read as follows:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(d) * * *

(7) * * *

(v) Acquisition of Demand Features or Guarantees, as these terms are defined in §§ 270.2a–7(a)(8) and 270.2a–7(a)(15) respectively, provided that, immediately after the acquisition of any Demand Feature or Guarantee, the company will not, with respect to 75 percent of the total value of its assets, have invested more than ten percent of the total value of its assets in securities underlying Demand Features or Guarantees from the same institution. For the purposes of this section, a Demand Feature or Guarantee will be considered to be from the party to whom the company will look for payment of the exercise price.

* * * * *

7. Section 270.17a–9 is amended by revising the cite to "paragraph (a)(9)" in the introductory paragraph to read "paragraph (a)(10)".

8. Section 270.31a–1 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

§ 270.31a–1 Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(b) * * *

(1) * * * In the case of a money market fund, also identify the provider of any Demand Feature or Guarantee (as defined in § 270.2a–7(a)(8) or § 270.2a–7(a)(15) respectively) and give a brief description of the nature of the Demand Feature or Guarantee (*e.g.*, unconditional demand feature, conditional demand feature, letter of credit, or bond insurance) and, in a subsidiary portfolio investment record, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, value, and account for each investment.

* * * * *

9. Section 270.34b–1 is amended by revising paragraph (b) (the Note remains unchanged) to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(b)(1) Except as provided in paragraph (b)(3) of this section:

(i) In any sales literature that contains performance data for an investment company, include the disclosure required by paragraph (a)(6) of § 230.482 of this chapter.

(ii) In any sales literature for a money market fund:

(A) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the money market fund with a quotation of current yield specified by paragraph (d)(1)(i) of § 230.482 of this chapter;

(B) Accompany any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the money market fund with a quotation of current yield specified in paragraph (d)(1)(i) of § 230.482 of this chapter; and

(C) Accompany any quotation of the money market fund's total return with a quotation of the money market fund's current yield specified in paragraph (d)(1)(i) of § 230.482 of this chapter. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(iii) In any sales literature for an investment company other than a money market fund that contains performance data:

(A) Include the total return information required by paragraph (e)(3) of § 230.482 of this chapter;

(B) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the company with a quotation of current yield specified by paragraph (e)(1) of § 230.482 of this chapter; and

(C) Accompany any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the company with a quotation of tax equivalent yield specified in paragraph (e)(2) and current yield specified by paragraph (e)(1) of § 230.482 of this chapter.

(2) Any performance data included in sales literature under paragraphs (b)(1)(ii) or (iii) of this section must meet the currentness requirements of paragraph (f) of § 230.482 of this chapter.

(3) The requirements specified in paragraph (b)(1) of this section shall not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act (15 U.S.C. 80a–29), containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor shall the requirements of paragraphs (e)(3)(ii) and (f) of § 230.482 of this chapter apply to any such periodic report containing any other performance data.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80e–37, unless otherwise noted.

* * * * *

11. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

12. Part B, Item 22(a) of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

(a) Adding in paragraphs (i) and (ii) the phrase "and income other than investment income" after the phrase "exclusive of capital changes" in each paragraph.

(b) Adding at the end of Instruction 2 the following: "Exclude income other than investment income."

Note: Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

13. Item 25(a) of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

(a) Adding in paragraphs (i) and (ii) the phrase "and income other than investment income" after the phrase "exclusive of capital changes" in each paragraph.

(b) Adding at the end of Instruction 3 the following: "Exclude income other than investment income."

Note: Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

14. Guide 38 to Form N–3 (Money Market Fund Investments in Other Money Market Funds) (referenced in §§ 239.17a and 274.11b) is amended by revising the last sentence to read as follows:

* * * Paragraph (c)(4)(ii)(E) of rule 2a–7 describes the obligations of a fund that invests its assets in another money market fund.

Note: Guide 38 to Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

15. Part B, Item 21(a) of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

(a) Adding in paragraphs (i) and (ii) the phrase "and income other than investment income" after the phrase "exclusive of capital changes" in each paragraph.

(b) Adding at the end of Instruction 3 the following: "Exclude income other than investment income."

Note: Form N–4 does not and the amendments will not appear in the Code of Federal Regulations.

By the Commission.

Dated: December 2, 1997.

Margaret H. McFarland,

Deputy Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–P

APPENDIX

Illustration: Guarantee and Demand Feature Diversification Calculations For Securities Subject to Multiple Demand Features and Guarantees[1]

With respect to securities subject to multiple demand features or guarantees upon which a fund is relying, a fund must first analyze each credit enhancement provider individually to determine whether securities issued by or subject to demand features or guarantees from the same provider exceed ten percent of total assets. If so, then those securities are placed in the twenty-five percent basket. Once placed in the basket, however, the value of each security is counted only once for purposes of calculating the amount of the twenty-five percent basket available for additional investments.

FACTS: A fund invests 9% of its total assets in Security A, which is guaranteed by a letter of credit ("LOC") issued by ABC Bank and subject to a conditional demand feature issued by XYZ Bank. The fund invests 5% of its total assets in Security B, which is guaranteed by a LOC issued by ABC Bank. The fund invests 5% of its total assets in Security C, which is subject to a conditional demand feature issued by XYZ Bank. Assume that the fund holds no other securities subject to guarantees or demand features provided by ABC Bank or XYZ Bank and that no other entity has guaranteed, or issued conditional demand features with respect to, over 10% percent of the fund's assets.

ANALYSIS: For purposes of the demand feature and guarantee diversification standards:

- 14% percent of the fund's total assets (Securities A and B) are subject to guarantees or demand features from ABC Bank. 14% of the fund's total assets (Securities A and C) are subject to guarantees or demand features from XYZ Bank.
- The fund must include Securities A, B and C in its twenty-five percent basket. The amount of investments in the twenty-five percent basket is calculated to be 19% of the fund's total assets (9% + 5% + 5%). This represents the aggregate value of all of the fund's securities subject to guarantees and demand features issued by ABC Bank and XYZ Bank.

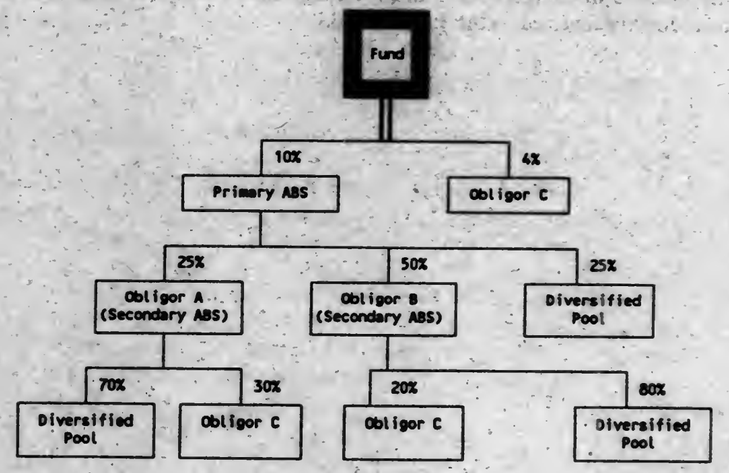
[1] See Section I.B.3.b.iv. of the Release (discussing the twenty five percent basket with respect to the demand feature and guarantee diversification standards).

Illustration: "Look-Through" to Secondary ABSs Under the Rule's ABS Issuer Diversification Standards[2]

Any ten percent obligor of a primary or secondary ABS is deemed to have issued a portion of the assets of the primary ABS that such ten percent obligor represents. To prevent double counting, obligations of each ten percent obligor are netted against the obligations of the special purpose entity ("SPE") for which it is a ten percent obligor. All netted obligations issued by the same direct or indirect ten percent obligor are aggregated when calculating a fund's total investment in any particular security.

FACTS

A fund invests 10% of its assets directly in an ABS ("Primary ABS") issued by an SPE. The fund also invests 4% of its assets directly in securities issued by Obligor C. Obligor C is not an SPE issuing ABSs. 25% of the Primary ABS's qualifying assets is invested in Obligor A and 50% of the Primary ABS's qualifying assets is invested in Obligor B. Obligor A is an SPE with 30% of its qualifying assets invested in securities issued by Obligor C. Obligor B is an SPE with 20% of its qualifying assets invested in securities issued by Obligor C.[3]



[2] See Section I.B.3.b.i. of the Release.

[3] Reference to "Diversified Pool" in this illustration means that no other obligor's obligations constitute 10% or more of the pool of qualifying assets of the special purpose entity issuing ABSs.

ANALYSIS

For issuer diversification purposes, the fund has invested as follows:

- 1.75% of fund assets in Obligor A ([25% x 10%] - [30% x 25% x 10%]). The portion indirectly invested in Obligor C through Obligor A (.75%) is netted against the portion indirectly invested in Obligor A (2.5%).

- 4% of fund assets in Obligor B ([50% x 10%] - [20% x 50% x 10%]). The portion indirectly invested in Obligor C through Obligor B (1%) is netted against the portion indirectly invested in Obligor B (5%).

- 5.75% of fund assets in Obligor C ([[30% x 25% x 10%] + [20% x 50% x 10%]] + 4%). The portion indirectly invested in Obligor C (1.75%) (i.e., .75% through Obligor A + 1% through Obligor B) is added to the amount directly invested in Obligor C (4%).[4] In this example, the fund's investment in Obligor C would exceed the 5% limit on investments in securities of a single issuer.[5]

- 2.5% of fund assets in the Primary ABS (10% - [1.75% + 4% + 1.75%]). The portion deemed indirectly invested in Obligors A, B and C through the Primary ABS is netted against the amount directly invested in the Primary ABS.

---

[4] If Obligors A or B (i.e., secondary ABSs) had, in addition to Obligor C, another ten percent obligor that was an SPE issuing ABSs (i.e., a "tertiary ABS"), the amended rule would not require the fund to "look through" to the qualifying assets of any ten percent obligors of such "tertiary ABS" for purposes of compliance with the issuer diversification standards.

[5] See paragraph (c)(4)(i)(A) of rule 2a-7, as amended.

[FR Doc. 97-32026 Filed 12-8-97; 8:45 am]
BILLING CODE 8010-01-C

federal register

Tuesday
December 9, 1997

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service Higher Education Challenge Grants Program for Fiscal Year 1998; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service Higher Education Challenge Grants Program for Fiscal Year 1998; Solicitation of Applications

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the Higher Education Challenge Grants Program for Fiscal Year (FY) 1998. Proposals are hereby requested from eligible institutions as identified herein for competitive consideration of Challenge Grant awards.

DATES: Proposals must be received by February 23, 1998. Forms indicating intent to submit a proposal are due January 22, 1998.

FOR FURTHER INFORMATION CONTACT: Howard E. Sandberg, Ph.D., Higher Education Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2251; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2251; telephone: (202) 720–1973; e-mail: hsandberg@reeusda.gov.

SUPPLEMENTARY INFORMATION: This Program is subject to the provisions found at 7 CFR Part 3405, 62 FR 39316, July 22, 1997. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.217, Higher Education Challenge Grants Program.

Authority

The authority for this program is contained in section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(1)). Under this authority, subject to the availability of funds, the Secretary of Agriculture, who has delegated the authority to the Administrator of CSREES, may make competitive grants, for a period not to exceed 5 years, to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct programs to respond to identified State, regional, national or international educational needs in the food and agricultural sciences.

Purpose of the Program

Grants will be made to U.S. colleges and universities to strengthen their teaching programs in the food and agricultural sciences in the targeted need areas as described herein. The Higher Education Challenge Grants Program is designed to stimulate and enable colleges and universities to provide the quality of education necessary to produce baccalaureate or higher degree level graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. It is intended that projects supported by the program will: (1) address a State, regional, national, or international educational need; (2) involve a creative or nontraditional approach toward addressing that need which can serve as a model to others; (3) encourage and facilitate better working relationships in the university science and education community, as well as between universities and the private sector, to enhance program quality and supplement available resources; and (4) result in benefits which will likely transcend the project duration and USDA support.

Eligibility

Proposals may be submitted by land-grant and other U.S. colleges and universities offering a baccalaureate or first professional degree in at least one discipline or area of the food and agricultural sciences. Each applicant must have a demonstrable capacity for, and a significant ongoing commitment to, the teaching of food and agricultural sciences generally and to the specific need and/or subject area(s) for which a grant is requested. In addition, a grantee institution must meet the definition of a college or university as defined in 7 CFR 3405.2(f), 62 FR 39316, July 22, 1997. An institution eligible to receive an award under this program includes a research foundation maintained by an eligible college or university.

Available Funds

CSREES anticipates that the amount available for project grants under this program in FY 1998 will be approximately $4,067,250. Awards will be based on merit evaluation of proposals by peer review panels and internal staff review.

Targeted Need Areas Supported

For FY 1998, proposals must address one or more of the following targeted need areas: (1) Curricula Design and Materials Development; (2) Faculty Preparation and Enhancement for Teaching; (3) Instruction Delivery Systems; and (4) Student Experiential Learning. A description of these targeted need areas can be found in the Scope of Program section of 7 CFR 3405.6, 62 FR 39316, July 22, 1997. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology).

Degree Levels Supported

For FY 1998, proposals must be directed to undergraduate studies leading to a baccalaureate degree. For purposes of this program, proposals directed to the first professional degree in veterinary medicine also are allowable. Projects directed to the graduate level of study will not be supported.

Proposal Submission Limitations

There is no limit on the number of proposals any one institution may submit. In addition, there is no limit on the number of proposals which may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution.

Project Duration

A regular, complementary, or joint project proposal may request funding for a project period of 18 months to three-years duration.

Matching Requirement

Each grant recipient under the Higher Education Challenge Grants Program is required to match the grant funds awarded on a dollar-for-dollar basis from a non-Federal source(s). The cash contributions toward matching from the institution should be identified in the column "Applicant Contributions to Matching Funds" of the Higher Education Budget, Form CSREES–713. The cash contributions of the institution and third parties as well as non-cash contributions should be identified on Line N., as appropriate, of Form CSREES–713.

Maximum Grant Amount

For a regular or complementary project proposal, the maximum funds that may be requested from CSREES under this program to cover allowable costs during the project period are $80,000. (The total Federal contribution to the budget for a regular or complementary project proposal may not exceed $80,000.) For a joint project proposal, the maximum funds that may be requested from CSREES under this program to cover allowable costs during the project period are $160,000. (The total Federal contribution to the budget for a joint project proposal may not exceed $160,000). Please refer to the Administrative Provisions for this program at 7 CFR 3405.2, 62 FR 39316, July 22, 1997, for the definitions of regular, complementary, and joint project proposals.

Note: These maximums are for the total duration of the project, not per year.

Funding Limitations Per Institution

The maximum total funds that may be awarded to an institution under this program in FY 1998 are $200,000. Of funds awarded for either joint, complementary, or regular project proposals, only the grant funds retained by the grantee institution will count against the grantee institution's maximum of $200,000. Funds awarded by lead institutions to other colleges and universities through subcontracts or subgrants will count against each respective institution's maximum of $200,000.

Maximum Number of Grants Per Institution

For FY 1998, a maximum of three grants may be awarded to any one institution under the Higher Education Challenge Grants Program.

Evaluation Criteria

For the FY 1998 competition, the peer review panel(s) will consider the following criteria and weights to evaluate proposals submitted for funding:

Note: In accordance with 7 CFR 3405.15, the evaluation criteria specified below differs from and takes precedence over the evaluation criteria in the administrative regulations.

Evaluation criterion	Weight
(a) Potential for addressing a State, regional, national or international need This criterion assesses the potential of the project to add value by advancing the quality of food and agricultural sciences higher education and producing graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. This criterion includes the following elements: impact, innovation, expected products and results, and continuation plans. (1) Impact—Does the project address a clearly documented State, regional, national, or international need? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period? (2) Innovation—Is the project based on an innovative or a non-traditional approach toward solving a higher education problem. (3) Products and results—Are the expected products and/or results of the project clearly explained? Will the project contribute to an improvement in the quality or diversity of the Nation's food and agricultural scientific and professional expertise base? (4) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?	65 points.
(b) Potential of submitting institution(s) to successfully complete project objectives This criterion assesses the soundness of the proposed approach, the adequacy of human and physical resources available to carry out the project, the institution's commitment to the project, partnerships and collaborative efforts, its cost-effectiveness, and the extent to which the total budget adequately supports the project. (1) Proposed approach—Are the objectives achievable, logical, and based on review of literature? Is the plan of operation managerially, educationally, and/or scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Is the timetable realistic? (2) Resources—Are there adequate institutional resources to carry out the project? Do the project personnel possess requisite expertise to complete successfully the project? Have personnel committed adequate effort to achieve stated objectives and anticipated outcomes? Will the project have adequate administrative support to carry out the proposed activities? Will the project have access to needed resources such as instrumentation, facilities, computer services, library, and other instruction support resources? (3) Institutional commitment—Is there evidence to substantiate that the institution has a long term commitment to support the result(s) and/or product(s) produced by this project, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the institution's strategic plans? (4) Partnerships and collaborative efforts— Will the project expand partnership ventures among disciplines at a university, between colleges and universities, or with the private sector? Will the arrangements for partner(s) and/or collaborator(s) enhance dissemination of the result(s) and/or product(s)? (5) Budget and cost-effectiveness—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget for three or more institutions explained clearly and in sufficient detail? Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?	70 points.
(c) Effectiveness of evaluation plan and potential for dissemination of the result(s) and/or products to other institutions and for utilization by other institutions. This criterion assesses the adequacy of the evaluation strategy, the quality of outcome measures, the expertise and availability of human resources to conduct the evaluation, the record of the key personnel in disseminating advancements in education, e.g., publishing educational articles in peer reviewed journals, the adequacy of the plan for dissemination, and the potential for utilization by other institutions.	65 points.

Evaluation criterion	Weight
(1) Evaluation—Does the proposal contain a well-designed plan to evaluate results of the project? Will this plan provide conclusions suitable for convincing a peer review audience of the accomplishment? Does it allow for continuous and/or frequent feedback during the life of the project? Does the evaluation plan contain outcome measures? Are the outcome measures capable of assessing the quality and usefulness of project results and products? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can the outcome measures provide an objective evaluation? Is the outcome assessment designed in such a way that it can assist faculty at other institutions in deciding whether to use project results or products?	
(2) Dissemination—Is there a commitment to submit the results of the project evaluation to peer review by the academic community in the food and agricultural sciences? Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, and/or use by faculty development or research/teaching skills workshops?	
(3) Utilization—Is it probable that other institutions will adapt the result(s) and/or product(s) of this project for their own use? Can the project serve as a model for others? If successful, is the project likely to lead to education reform? Is the product(s) and/or result(s) likely to provide a significant contribution to the advancement of higher education in the food and agricultural sciences? Are partner(s) and/or collaborator(s) committed to utilize the product(s) and/or result(s)?	

Program Application Materials

An application kit containing program application materials will be made available to eligible institutions upon request. These materials include the Administrative Provisions, forms, instructions, and other relevant information needed to prepare and submit grant applications. Copies of the application kit may be requested from Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting an application kit for the FY 1998 Challenge Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail), and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application kit for the FY 1998 Challenge Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

When and Where To Submit Proposals

An original and seven (7) copies of a proposal must be submitted. Each copy of the proposal must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package. Proposals submitted through the mail must be received on or by February 23, 1998. Proposals submitted through the U.S. mail should be sent to the following address: Challenge Grants Program; Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. Hand-delivered proposals (brought in person by the applicant or through a courier service) must be delivered on or by February 23, 1998, at the following address: Challenge Grants Program; c/o Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W., Washington, DC 20024. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Intent To Submit a Proposal

For the FY 1998 competition, Form CSREES–711, "Intent to Submit a Proposal," is requested for the Higher Education Challenge Grants Program and is due January 22, 1998. Send Form CSREES–711 to Higher Education Programs; Mail Stop 2251; USDA; 1400 Independence Avenue, SW; Washington, DC 20250–2251. Form CSREES–711 also may be faxed to the Higher Education Programs office at (202) 720–2030.

Program Contacts

The Higher Education Challenge Grants Program is managed by the CSREES Higher Education Programs office. For further information concerning the FY 1998 program, contact Dr. Howard Sandberg, National Program Leader for Agricultural Sciences Education, CSREES, USDA, at (202) 720-1973; or via the Internet at: hsandberg@reeusda.gov.

Done at Washington, D.C., this 3rd day of December 1997.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–32246 Filed 12–8–97; 8:45 am]
BILLING CODE 3410–22–P

federal register

Tuesday
December 9, 1997

Part VI

Federal Reserve System

12 CFR Parts 265 and 225
Rules Regarding Delegation of Authority; Final Rule
Real Estate Appraisals; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0991]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is delegating to the Director of the Division of Banking Supervision and Regulation the Board's authority to determine in individual cases that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution. This delegation of authority is intended to aid in the efficient processing of requests for individual exemptions from the Board's appraisal regulation.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Deneen L. Donnley-Evans, Staff Attorney (202/736–5567), Legal Division; or Virginia M. Gibbs, Senior Supervisory Financial Analyst, (202/452–2521), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In 1990, in accordance with the mandates of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 USC 3331 *et seq.*, the federal banking agencies adopted appraisal regulations for federally related transactions within their jurisdiction, and exempted certain real estate-related transactions from the appraisal requirements of Title XI. In June 1994, several existing exemptions to the appraisal regulation were modified and new exemptions were added, including an exemption for individual transactions for which the Board determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution. *See* 12 CFR 265.7. The Board is delegating the authority to determine that an appraisal is not necessary to protect Federal financial and public policy interest or the safety and soundness of a financial institution to the Director of the Division of Banking Supervision and Regulation or the Director's delegee.

Administrative Procedure Act

The Administrative Procedure Act (5 USC 553(b)(A)) exempts "rules of agency organization, procedure, or practice" from the notice of proposed rulemaking and public comment requirements. As the Board's delegation rules fall under this exemption, the Board is adopting these amendments without notice-and-comment procedures.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act (5 USC 601 *et seq.*), the Board hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 USC Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 USC 3501 *et seq.*) is contained in this notice.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies) Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR part 265 as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248 (i) and (k).

2. Section 265.7 is amended by adding paragraph (c)(6) to read as follows:

§ 265.7 Functions delegated to Director of Division of Banking Supervision and Regulation.

* * * * *

(c) * * *

(6) *Appraisal not required.* To determine pursuant to 12 CFR 225.63(b)(12) that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of an institution.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32159 Filed 12–8–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0990]

Real Estate Appraisals

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is soliciting comments on a proposed amendment to subpart G of the Board's Regulation Y, Appraisal Standards for Federally Related Transactions, to exempt any transaction involving the underwriting or dealing of mortgage-backed securities from the Board's appraisal requirements. This amendment would permit a bank holding company or a nonbank subsidiary of a bank holding company engaged in underwriting and dealing in securities (a so-called section 20 subsidiary) to underwrite and deal in mortgage-backed securities without demonstrating that the loans underlying the securities are supported by appraisals that meet the Board's appraisal requirements.

The Board is proposing this amendment to address concerns raised by bank holding companies regarding the inability of section 20 subsidiaries to actively participate in the commercial mortgage-backed securities (CMBS) market due to the appraisal restrictions of subpart G.

DATES: Comments must be received on or before January 8, 1998.

ADDRESSES: Comments should refer to Docket No. R–0990 and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C., 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45am and 5:15pm, and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP–500 between 9:00am and 5:00pm weekdays, except as provided in § 261.8 of the Board of Governors' Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Norah M. Barger, Assistant Director (202/452–2402), or Virginia M. Gibbs, Senior Supervisory Financial Analyst, (202/452–2521), Division of Banking Supervision and Regulation; or Deneen L. Donnley-Evans, Staff Attorney (202/736–5567), Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3331 *et seq.*, directed the federal banking agencies (the agencies) to publish appraisal rules for federally related transactions within the jurisdiction of each agency. The stated purpose of the legislation is to provide that federal financial and public policy interests in real estate-related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, and by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.[1]

Section 1121(4) of FIRREA, 12 U.S.C. 3350(4), defines a federally related transaction as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser. Section 1121(5), in turn, defines a real estate-related financial transaction as any transaction that involves: (1) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (2) the refinancing of real property or interests in real property, and (3) the use of real property or interests in real property as security for a loan or investment, *including mortgage-backed securities* (emphasis added).[2] In enacting Title XI, Congress envisioned that competent appraisals in these transactions would reduce the risk of loss to the deposit insurance funds, regulated institutions, and the secondary markets, arising from a financial institution's lending activities where real estate is taken as collateral.

In 1990, in accordance with the mandates of Title XI, the agencies adopted appraisal regulations for federally related transactions within their jurisdiction, and exempted certain real estate-related transactions from the appraisal requirements of Title XI. In June 1994, several existing exemptions to the appraisal regulation were modified and new exemptions were added. At that time, the agencies clarified that a regulated institution investing in a mortgage-backed security or similar instrument need not obtain new Title XI appraisals for the underlying loans so long as the loans met regulatory appraisal requirements for the institution at the time the real estate-secured loan was originated.[3] This requirement also applies to the activity of underwriting and dealing in mortgage-backed securities.

In adopting this requirement, the agencies did not foresee that requiring evidence that the loans underlying mortgage-backed securities had appraisals would be a difficult task. The mortgage securities market consisted of securitized 1-to-4 family residential loans, most of which were generated in accordance with the agencies' appraisal requirements. The appraisal regulation appears not to have hindered the secondary market in 1-to-4 family mortgages, for two reasons. First, the Federal National Mortgage Association (Fannie Mae) and the Federal National Mortgage Corporation (Freddie Mac) dominate the market for the underwriting and dealing of residential mortgage-backed securities, and neither bank holding companies nor their investment banking competitors have large stakes in this market. Second, banks and bank holding companies have not been prevented from investing in such securities, even though the underlying mortgages may not have conforming appraisals, because the interagency appraisal regulations contain an exemption for any transaction that qualifies for sale to, or involves a residential real estate transaction in which the appraisal conforms to the appraisal standards of, a United States government or government-sponsored agency, including Fannie Mae and Freddie Mac. However, recent developments in the emerging CMBS market, including the recovery of the commercial real estate market, the wider acceptance of collateralized securities, the significant expansion of the CMBS market, and the operation of the agencies' appraisal regulations, have worked to bar banking organizations from actively participating in the CMBS market's growth.

Proposed Amendment

The Board proposes to amend its real estate appraisal regulation to permit bank holding companies and their nonbank subsidiaries to underwrite and deal in mortgage-backed securities without demonstrating that the loans underlying the securities are supported

[1] *See* Title XI's Statement of Purpose. 12 U.S.C. 3331.

[2] *See* 12 U.S.C. 3350(5).

[3] *See* 59 FR 29482 (1994).

by appraisals that meet the Board's appraisal requirements. However, in practice, the proposed amendment would only apply to the section 20 subsidiaries because, to date, section 20 subsidiaries are the only regulated-institution affiliates permitted to underwrite or deal, to a limited extent, in corporate debt and equity securities.[4]

The CMBS Securities Market

The CMBS market has been in existence since the mid-1980s, with banking organizations, investment banks, and insurance companies serving as the primary underwriters of CMBS. Recently, there has been significant growth in new CMBS issues. In 1996, $30 billion of new CMBS were issued, a 50 percent increase over the $20 billion issued in 1994, and new issuances of $25 billion to $35 billion are expected in 1997.[5] Approximately 90 percent of the tranches of new CMBS issues are rated investment grade.

In recent years, the majority of new CMBS issuances have involved loans originated by nonbank financial companies that are not subject to the agencies' appraisal requirements.[6] While the Board has not studied whether these companies generally obtain appraisals conforming to Title XI requirements upon origination of the underlying loans, anecdotal evidence suggests that many of the underlying loans originated by these institutions do not have Title XI conforming appraisals. In addition, although commercial bank participation as lenders and investors in this market is expected to increase as larger national and regional banking organizations reenter the real estate lending business, banking organizations and their affiliates currently are precluded from actively participating in this market because the majority of the loans underlying CMBS issuances do not have Title XI conforming appraisals.

Policy Considerations

As noted above, Title XI's purpose and intent was to protect "federal financial and public policy interest" in real estate-related transactions.[7] Those "federal interests" were described in predecessor legislation and accompanying Congressional reports as encompassing the federal government's role as: (1) regulator and insurer of financial institutions; (2) guarantor or lender on mortgage loans; (3) as a direct party itself in real estate-related transactions; and (4) as the overseer of financial markets and real estate-related investments therein.[8]

The Board believes that permitting section 20 subsidiaries to underwrite and deal in mortgage-backed securities without obtaining appraisals that meet the Board's appraisal requirements will not lead to substantial losses for bank holding companies or pose a systemic risk to the banking system. The Board notes that section 20 subsidiaries have the expertise necessary to evaluate the credit risks involved in underwriting and dealing mortgage-backed securities. In this regard, the Board notes that, section 20 subsidiaries are subject to an operational and managerial infrastructure inspection prior to being permitted to engage in corporate underwriting. Periodic inspections verify that proper underwriting and risk management procedures are in place.

When a section 20 subsidiary serves as lead underwriter, it is responsible for performing adequate due diligence. In other instances, such as the dealing of an outstanding debt security, a section 20 subsidiary may rely on the due diligence performed by independent rating agencies. These due diligence efforts often include analyses of factors such as payment history, mortgage and security structure, borrower's income or property cash flow, credit enhancements, and seasoning. In most CMBS transactions, the underlying loans have demonstrated their ability to perform over some period of time. As the underlying commercial real estate loans in the CMBS season, the Board believes that appraisals obtained at origination become increasingly less relevant to the CMBS investment decision because the market assumptions upon which the appraisals were based become obsolete. Further, the public rating or due diligence that must be obtained for CMBS provides information that is at least as sufficient for assessing risks as requiring new appraisals if appraisals were not obtained at loan origination. For residential mortgage-backed securities, the market is well established with very clear standards for loan documentation and underwriting. In light of the foregoing, the Board concludes that permitting section 20 subsidiaries to underwrite and deal in CMBS without demonstrating that the loans underlying the CMBS are supported by appraisals that meet the Board's appraisal requirements would not adversely affect financial markets and real estate investments therein.

Regulatory Flexibility Act Analysis

This proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because, if adopted, the proposal would not impose additional burdens on bank holding companies or their section 20 subsidiaries.

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in this proposal.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828o, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 331–3351, 3907, and 3909.

2. In subpart G, § 225.63 is amended by removing the word "or" at the end of paragraph (a)(11), by redesignating paragraph (a)(12) as paragraph (a)(13), and by adding a new paragraph (a)(12) to read as follows:

§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

[4] Consistent with the Board's policy of imposing operating restrictions according to risk, the Board also proposes to permit section 20 subsidiaries to underwrite and deal in both residential and commercial mortgage-backed securities without demonstrating that the loans underlying the securities are supported by appraisals that meet the Board's appraisal requirements. In this regard, the Board notes that residential mortgage-backed securities are considered far less risky than CMBS as 1-to-4 family residential mortgages have one of the lowest historical loss rates of any credit-related asset class. The Board expects this exemption to affect a relatively small number of transactions because, as previously noted, the vast majority of loans underlying residential mortgage-backed securities meet the appraisal standards of Fannie Mae or Freddie Mac, and thus qualify for an exemption under the agencies' appraisal regulations. *See e.g.* 12 CFR 225.63(a)(10).

[5] Between 1992 and 1996, approximately $100 billion of CMBS were issued, all of which are still outstanding.

[6] For example, of the $30 billion of new CMBS issued in 1996, only $2.4 billion involved the collateralization of loans underwritten by commercial banks.

[7] *See* Title XI's Statement of Purpose. 12 U.S.C. 3331.

[8] *See Real Estate Appraisal Reform Act of 1988*, H.R.Rep. No. 100–101, 100th Cong., 2d Sess., pt. 1 at 19 (1988); 135 CONG. REC. H10, 709 (daily ed. November 20, 1997) (statement of Rep. Barnard).

(12) The transaction involves underwriting or dealing in mortgage-backed securities; or

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: December 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32160 Filed 12–8–97; 8:45 am]

BILLING CODE 6210–01–P

federal register

Tuesday
December 9, 1997

Part VII

The President

Proclamation 7058—National Pearl Harbor Remembrance Day, 1997

Federal Register
Vol. 62, No. 236
Tuesday, December 9, 1997

Presidential Documents

Title 3—

The President

Proclamation 7058 of December 5, 1997

National Pearl Harbor Remembrance Day, 1997

By the President of the United States of America

A Proclamation

December 7, 1941, marked a turning point in the history of our Nation, a defining moment that would alter the lives of millions of Americans and change forever America's destiny. On that quiet Sunday morning, the forces of Imperial Japan attacked the U.S. naval base at Pearl Harbor in Hawaii, killing or injuring more than 3,000 Americans, crippling our Pacific Fleet, and critically damaging our airpower. In that moment of supreme crisis, the essential greatness at the core of the American spirit was revealed. Our response was not despair, but determination. Inspired by the leadership of President Franklin Roosevelt and buoyed by his faith that we ultimately would prevail, America went to war.

Looking back across the years, we rightly are still awed by what the American people accomplished during World War II. United in spirit and purpose after the attack on Pearl Harbor, millions of men and women joined the Armed Forces; by war's end, some 15 million had served. They fought fiercely and with uncommon courage in battlefields across the globe. In the Pacific, step by bloody and painstaking step, they took back the islands captured by Imperial Japanese forces in the days after Pearl Harbor. The names of those battles still resonate through the years: Coral Sea, Midway, Guadalcanal, Iwo Jima. On the western front, facing the daunting power of the Nazi war machine, Americans and our Allies struggled and died to liberate Europe, fighting in the stormy North Atlantic, in the searing heat of North Africa, and in the flak-filled skies over France and Germany.

Americans on the home front responded with equal gallantry and strength. Stepping forward to close the gap left by departing servicemen, the very young, the elderly, minority workers, and women filled America's factories and shipyards. Working around the clock, they built the ships, planes, tanks, and guns that armed the forces of freedom and made our Nation the "Arsenal of Democracy." In fields, on farms, and in neighborhood Victory Gardens, they produced the food to sustain our Nation, our troops, and our Allies. Millions left their homes to do their part, and few American families were untouched by the hardships and sacrifices demanded by this unprecedented effort.

While more than half a century separates us from the attack on Pearl Harbor, we still can learn much from the example, achievements, and heroic deeds of those Americans who preserved the flame of liberty and passed it around the world. They taught us that America is the world's best hope for freedom and democracy and that we must never shrink from the responsibilities of that leadership. They taught us the need for constant vigilance, a powerful military, and strength of character. They showed us that, when Americans are united in heart and mind, there is nothing we cannot accomplish together.

As we remember Pearl Harbor, let us also remember and give thanks for that great and gallant leader, Franklin D. Roosevelt, whose memorial we dedicated earlier this year in our Nation's Capital. In December of 1941, in one of our Nation's darkest hours, he proclaimed his faith in the ultimate victory of freedom over tyranny that, sadly, he did not live to see:

With confidence in our armed forces, with the unbounding determination of our people, we will gain the inevitable triumph. So help us God.

The Congress, by Public Law 103–308, has designated December 7, 1997, as "National Pearl Harbor Remembrance Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 7, 1997, as National Pearl Harbor Remembrance Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of the Americans who served at Pearl Harbor. I also ask all Federal departments and agencies, organizations, and individuals to fly the flag of the United States at half-staff on this day in honor of those Americans who died as a result of the attack on Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–32428
Filed 12–8–97; 12:10 pm]
Billing code 3195–01–P

Reader Aids

Federal Register
Vol. 62, No. 236
Tuesday, December 9, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail info@fedreg.nara.gov	
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
7056 64127
7057 64131
7058 65003
Administrative Orders:
Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619

5 CFR
213 63627
315 63627
410 63630
591 63630

7 CFR
17 63606
247 64511
301 ..... 64133, 64263, 64677
401 63631
454 63631
457 ..... 63631, 63633
1412 63441
Proposed Rules:
70 63471
610 64174
729 63678

8 CFR
213a 64048
299 64048

9 CFR
78 64134
91 64265
93 64265
Proposed Rules:
381 64767
441 64767

10 CFR
30 63634
32 63634
50 63825
70 63825
73 63640
Proposed Rules:
50 ..... 63892, 63911
70 63911

12 CFR
8 64135
226 63441
265 64996
516 64138
543 64138
545 64138
552 64138
556 64138
563 64138
614 63644
703 64146
704 64148
791 64266
1806 64440
Proposed Rules:
225 64997
226 64769
404 64177
405 64177
708a 64185
708b 64187

14 CFR
39 ..... 63622, 63626, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680
71 ..... 64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521
97 ..... 63447, 63449, 63451
255 63837
1260 63452
Proposed Rules:
39 ..... 63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787
71 ..... 63916, 63917, 64321, 64321, 64322, 64323, 64525,

15 CFR
295 64682

17 CFR
230 64968
239 64968
270 64968
274 ..... 64687, 64968

18 CFR
35 64688
37 64715
401 64154

20 CFR
255 64161
340 64273
404 64274
422 64274
Proposed Rules:
211 64188
422 63681

21 CFR
101 ..... 63647, 63653, 64634
179 ..... 64102, 64107
Proposed Rules:
200 64048

1306.....64526

22 CFR

Proposed Rules:
22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:
655.....64324

24 CFR

570.....64634
888.....64521

26 CFR

Proposed Rules:
1.....64190

28 CFR

0.....63453

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847

30 CFR

Proposed Rules:
57.....64789
75.....64789
917.....63684
926.....63685, 64327

31 CFR

500.....64720

Proposed Rules:
356.....64528

32 CFR

Proposed Rules:
199.....64191
901.....63485

33 CFR

117.....63847

36 CFR

701.....64279

Proposed Rules:
1.....63488
14.....63488
327.....64192

37 CFR

202.....63657

Proposed Rules:
253.....63502
255.....63506

38 CFR

17.....64722
21.....63847, 63848
36.....63454

Proposed Rules:
20.....64790

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

52.....63454, 63456, 63858, 64284, 64522, 64722, 64725
63.....64736
64.....63662
70.....63662
71.....63662
80.....63853
81.....64284, 64725
180.....63662, 63858, 64048, 64287, 64294
185.....64048, 64284, 64287
186.....64048
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
721.....64738

Proposed Rules:
51.....64532
52.....63687, 64329, 64543, 64738
80.....63916
81.....63687
112.....63812
194.....64327
721.....64738

41 CFR

105–60.....64740
301.....63798

42 CFR

417.....63669

Proposed Rules:
1001.....63689

43 CFR

Proposed Rules:
4.....64544

45 CFR

205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
258.....64301
257.....64301

46 CFR

114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
63.....64741
64.....64741, 64759
73.....63674

Proposed Rules:
73.....63690

48 CFR

Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19.....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31.....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42.....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52.....64914, 64915, 64916
53.....64914, 64916, 64934, 64936, 64940

Proposed Rules:
1843.....64545
1852.....64545

49 CFR

219.....63464, 63675
225.....63675
240.....63464

Proposed Rules:
Ch. X.....64193
572.....64546

50 CFR

20.....63608
17.....64306
222.....63467
622.....63677
648.....63872, 64765
660.....63876
679.....63877, 63878, 63880, 64760

Proposed Rules:
14.....64335
17.....64337, 64340, 64799, 64800
23.....64347
679.....63690

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 9, 1997

COMMERCE DEPARTMENT
National Institute of Standards and Technology
Advanced technology program; policy and procedures; published 12-9-97

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
New Mexico gross receipts and compensating tax; published 12-9-97
Technical corrections; published 12-9-97
Travel reimbursement; published 12-9-97

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; √Avapproval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana; published 12-9-97

FEDERAL RESERVE SYSTEM
Organization, functions, and authority delegations:
Banking Supervision and Regulation Division, Director; published 12-9-97

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
New Mexico gross receipts and compensating tax; published 12-9-97
Technical corrections; published 12-9-97
Travel reimbursement; published 12-9-97
Freedom of Information Act; implementation; published 12-9-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
New Mexico gross receipts and compensating tax; published 12-9-97
Technical corrections; published 12-9-97
Travel reimbursement; published 12-9-97

SECURITIES AND EXCHANGE COMMISSION
Investment companies:
Registration fees; calculation methods and payment requirements; update; published 12-9-97

TREASURY DEPARTMENT
Foreign Assets Control Office
Foreign assets control regulations:
North Korea; outstanding claims held by U.S. nationals; reporting requirements; published 12-9-97

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Veterans' Health Care Eligibility Reform Act of 1996; implementation—
Sensori-neural aids (eyeglasses, contact lenses, hearing aids); furnishing guidelines; published 12-9-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hazelnuts grown in Oregon and Washington; comments due by 12-15-97; published 10-14-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classifications; comments due by 12-15-97; published 10-15-97
Plant-related quarantine, domestic:
Oriental fruit fly; comments due by 12-15-97; published 10-14-97
Plant-related quarantine, foreign:
Tomatoes from Morocco and Western Sahara, etc.; comments due by 12-15-97; published 10-16-97

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Carrageenam, locust bean gum and xanthan gum blend used as binder in cured pork products; comments due by 12-19-97; published 11-19-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut and red king crab; comments due by 12-18-97; published 12-3-97
Marine mammals:
Endangered fish or wildlife—
Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
Incidental taking—
Vandenberg AFB, CA; missile and rocket launches, aircraft flight test operations, and helicopter operations; comments due by 12-15-97; published 11-14-97

DEFENSE DEPARTMENT
Acquisition regulations:
Contract performance reporting outside the United States; comments due by 12-16-97; published 10-17-97
Government property; comments due by 12-16-97; published 10-17-97

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practice standards; comments due by 12-18-97; published 11-18-97

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida; comments due by 12-15-97; published 11-13-97
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 12-19-97; published 11-19-97

FARM CREDIT ADMINISTRATION
Farm credit system:
Leasing activities; comments due by 12-15-97; published 10-15-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arkansas; comments due by 12-15-97; published 10-31-97
Florida; comments due by 12-15-97; published 10-31-97
Illinois; comments due by 12-15-97; published 10-31-97
Michigan; comments due by 12-15-97; published 10-31-97
Oregon; comments due by 12-15-97; published 10-31-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Interest on deposits:
Payment of interest; exception to prohibition; comments due by 12-15-97; published 10-16-97

FEDERAL LABOR RELATIONS AUTHORITY
Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Real Estate Settlement Procedures Act:
Mortgage brokers; disclosure of fees; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT
Indian Affairs Bureau
Law and order on Indian reservations:
Courts of Indian Offenses and law and order code
Correction; comments due by 12-15-97; published 11-14-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
Mobile River Basin, AL; three aquatic snails as endangered and three aquatic snails as threatened; comments due by 12-16-97; published 10-17-97

Newcomb's snail; comments due by 12-15-97; published 11-12-97

St. Andrew Beach mouse; comments due by 12-16-97; published 10-17-97

INTERIOR DEPARTMENT

Conflict of interests:

Ethical conduct for Department of Interior employees; supplemental standards; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Louisiana; comments due by 12-19-97; published 11-19-97

Montana; comments due by 12-17-97; published 12-2-97

Ohio; comments due by 12-17-97; published 12-2-97

Surface coal mining and reclamation operations:

Ownership and control, permit application process, and improvidently issued permits; comments due by 12-15-97; published 10-29-97

INTERNATIONAL TRADE COMMISSION

Freedom of Information Act and Privacy Act; implementation; comments due by 12-17-97; published 11-17-97

JUSTICE DEPARTMENT

Drug Enforcement Administration

List I chemicals; manufacturers, distributors, importers and exporters; registration:

Pseudoephedrine and phenylpropanolamine products; temporary distribution registration exemption; comments due by 12-16-97; published 10-17-97

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Early release consideration; drug abuse treatment and intensive confinement center programs; comments due by 12-15-97; published 10-15-97

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards:

Tuberculosis, occupational exposure to; comments due by 12-16-97; published 10-17-97

NATIONAL RAILROAD PASSENGER CORPORATION

Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

North Carolina; comments due by 12-15-97; published 10-16-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 12-19-97; published 11-19-97

AlliedSignal Inc.; comments due by 12-16-97; published 10-17-97

Bombardier; comments due by 12-18-97; published 11-18-97

Dassault; comments due by 12-15-97; published 11-13-97

Dornier; comments due by 12-15-97; published 11-13-97

Robinson Helicopter Co.; comments due by 12-16-97; published 10-17-97

Short Brothers plc; comments due by 12-19-97; published 11-19-97

SOCATA-Groupe AEROSPATIALE; comments due by 12-15-97; published 11-7-97

Class E airspace; comments due by 12-15-97; published 10-31-97

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Federal payments; conversion (two phases) of checks to electronic fund transfer; comments due by 12-16-97; published 9-16-97

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:

Form W-8; electronic filing; comments due by 12-15-97; published 10-14-97

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before the shown date.

```
AFR SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before the shown date.

```
AFRDO SMITH212J                  DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. (Price includes regular domestic postage and handling, and is subject to change.) International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

105th Congress, 2nd Session, 1998

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 105th Congress, 2nd Session, 1998.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code
*** 6216**

S3

Charge your order. It's Easy!

☐ **YES**, enter my subscription(s) as follows:

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 105th Congress, 2nd Session, 1998 for $190 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) 12/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



(Rev. 12/97)

Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Now Available Online

through

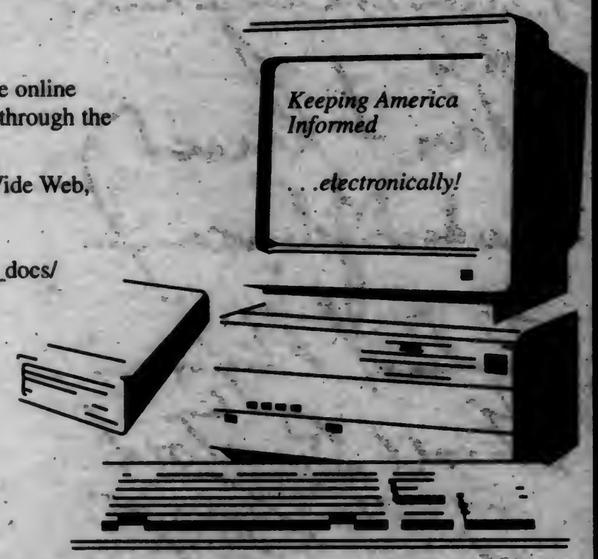
GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE



Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.access.gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 7/23)

Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–10–97
Vol. 62 No. 237

federal register

Wednesday
December 10, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–10–97
Vol. 62 No. 237
Pages 65005–65196

federal register

Wednesday
December 10, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see the announcement on the inside cover of this issue.

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations
WHO: Sponsored by the Office of the Federal Register.
WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.
WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
WHEN: December 16, 1997 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 237
Wednesday, December 10, 1997

Agency for Health Care Policy and Research
NOTICES
Meetings; advisory committees:
December, 65083

Agricultural Marketing Service
NOTICES
Perishable Agricultural Commodities Act; implementation:
Civil penalties for misrepresentation or misbranding; legislative changes, 65058

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Animal and Plant Health Inspection Service
RULES
Mexican border regulations; CFR part removed, 65007–65009

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
South Dakota, 65061
Virginia—
Cancellation, 65061

Coast Guard
RULES
Ports and waterways safety:
Bellingham Bay, WA; safety zone, 65022
Regattas and marine parades:
Puerto Rico PRO-TOUR Offshore Race, PR, 65021–65022
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65122–65123

Commerce Department
See Economic Analysis Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65061–65062

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65068–65069

Defense Department
See Defense Information Systems Agency
RULES
Privacy Act; implementation, 65020–65021

Defense Information Systems Agency
NOTICES
Environmental statements; availability, etc.:
Defense Megacenters and related facilities; consolidation and regionalization, 65069–65070

Delaware River Basin Commission
NOTICES
Hearings, 65070–65071

Economic Analysis Bureau
PROPOSED RULES
International services surveys:
Foreign direct investments in U.S.—
BE-12; benchmark survey-1997; reporting requirements, 65043–65044

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65071

Employment and Training Administration
NOTICES
Adjustment assistance:
Century Manufacturing Co. et al., 65095
CMS Nomeco Oil and Gas Co., 65095–65096
Dallco Industries, Inc., 65096
Dyna-Craft Industries, Inc., 65096
Dyna-Craft Industries, Inc., et al., 65096–65098
Ithaca Industries, Inc., 65098
Jennmar Corp. of Tennessee, 65098–65099
Marathon Electric et al., 65099
Martin Mills, Inc. et al., 65099–65100
SMS Textile Mills et al., 65100–65101
Solvay Animal Health, Inc., 65101
Standard Products Co., 65101–65102
Thomas & Betts, 65102
Agency information collection activities:
Proposed collection; comment request, 65102–65104
NAFTA transitional adjustment assistance:
Levi Strauss and Co., 65104–65105

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Perchloroethylene; dry cleaning facilities, 65022–65025
Air quality planning purposes; designation of areas:
California, 65025–65030
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyromazine, 65030–65036
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Perchloroethylene; dry cleaning facilities, 65049
Air quality implementation plans; approval and promulgation; various States:
Wisconsin, 65046–65049

NOTICES
Pesticide, food, and feed additive petitions:
J P BioRegulators Inc., 65077–65079

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace, 65011–65012
de Havilland, 65009–65011
Class C airspace, 65012–65013
Class E airspace, 65013—65016
IFR altitudes, 65016–65019
PROPOSED RULES
Class E airspace, 65040–65042
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65123

Federal Communications Commission
RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Universal service policy; support mechanisms, 65036–65038
PROPOSED RULES
Common carrier services:
Uniform system of accounts; interconnection, 65053–65055

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Basic provisions and various crop insurance provisions, 65130–65177

Federal Election Commission
PROPOSED RULES
Contribution and expenditure limitations and prohibitions:
Corporate and labor organizations—
Qualified nonprofit corporations, 65040

Federal Emergency Management Agency
NOTICES
Meetings:
Technical Mapping Advisory Council, 65079

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65071–65072
Electric rate and corporate regulation filings:
Magellan Utilities Development Corp. et al., 65075–65077
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 65072–65073
Colorado Interstate Gas Co., 65073
Mid Louisiana Gas Co., 65073
National Fuel Gas Supply Corp., 65073–65074
Natural Gas Pipeline Company of America, 65074
Tennessee Gas Pipeline Co., 65075

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Montgomery and Frederick Counties, MD, 65123–65124

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
York International Co. et al., 65079

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
New Jersey Transit Rail Operations, Inc., 65124

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65080
Banks and bank holding companies:
Change in bank control, 65081
Formations, acquisitions, and mergers, 65081
Permissible nonbanking activities, 65081–65082
Meetings; Sunshine Act, 65082–65083

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Lincomycin soluble powder, 65020
NOTICES
Committees; establishment, renewal, termination, etc.:
Center for Biologics Evaluation and Research Review, 65083
Scientific Counselors Board, 65083–65084
Food additive petitions:
Goodyear Tire and Rubber Co., 65084
Medical devices; premarket approval:
IMX PSA and AxSYM PSA assay, 65084–65085

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Ohio
Abbott Manufacturing, Inc.; infant formula and adult nutritional products manufacturing plant, 65062–65063
Texas
Fossil Partners L.P.; watches, sun glasses, and leather goods distribution facility, 65063

Forest Service
NOTICES
Environmental statements; notice of intent:
Eagle Bird Project; Idaho Panhandle National Forests, ID, 65058–65060

Geological Survey
NOTICES
Environmental statements; availability, etc.:
Species at Risk Program, 65090–65091

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Idaho, 65060

Health and Human Services Department
See Agency for Health Care Policy and Research
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration

See Inspector General Office, Health and Human Services Department
See Public Health Service

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65085

Health Resources and Services Administration
NOTICES
Competitive comprehensive grants preview (1998 FY); availability; correction, 65085
Grants and cooperative agreements; availability, etc.:
Primary care research, 65085–65086
Primary care training programs, 65086
National vaccine injury compensation program:
Petitions received, 65086–65088

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Single family mortgagee's original approval agreement; termination, 65180–65182
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65089–65090

Inspector General Office, Health and Human Services Department
PROPOSED RULES
Health care programs; fraud and abuse:
Health Insurance Portability and Accountability Act—
Safe harbor provisions and special fraud alerts development; comments request, 65049–65053

Interior Department
See Geological Survey
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental statements; availability, etc.:
Mexicali Wastewater Collection and Treatment Project, 65105

International Trade Administration
NOTICES
Antidumping:
Viscose rayon staple fiber from—
Finland, 65063–65067
Oversees trade missions:
1998 trade missions (February through September); application opportunity, 65067

International Trade Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65092
Import investigations:
Economic effects of significant U.S. import restraints; second biennial update, 65092–65093
Hardware logic emulation systems and components, 65093–65094

Justice Department
See Prisons Bureau
NOTICES
Meetings:
President's Advisory Board on Race, 65094

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65094–65095

Land Management Bureau
NOTICES
Public land orders:
Arizona, 65091
Oregon, 65091–65092

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

National Archives and Records Administration
NOTICES
Meetings:
Still photographs, aerial film, maps, and drawings; reproductions services program; vendors terms, 65105–65106

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 65124–65127
Motor vehicle safety standards; exemption petitions, etc.:
Toyota Technical Center, U.S.A., Inc., 65127

National Institute of Standards and Technology
NOTICES
Meetings:
CD-metrology below 0.25 microns; cooperative research and development consortium; establishment and participation, 65067–65068

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf and South Atlantic fisheries—
Gulf of Mexico reef fish, 65056–65057
Magnuson Act provisions, 65055–65056

Nuclear Regulatory Commission
PROPOSED RULES
Source material; domestic licensing:
Licensing exemption petitions—
Chromalloy Tallahasse, 65039–65040
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65106
Applications, hearings, determinations, etc.:
Bear Creek Uranium Co., 65106–65107
Umetco Minerals Corp., 65107–65108

Personnel Management Office
NOTICES
Meetings:
National Partnership Council, 65108

Presidential Documents
ADMINISTRATIVE ORDERS
Burma; report to Congress regarding conditions and U.S. policy (Presidential Determination No. 97-6 of December 2, 1997), 65005

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Correspondence of inmates; restricted special mail procedures, 65184–65186
Correspondence of pretrial inmates; general mail procedures, 65186

Public Debt Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65128

Public Health Service
See Agency for Health Care Policy and Research
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Centers for Disease Control and Prevention, 65088–65089

Railroad Retirement Board
NOTICES
Supplemental annuity program; determination of quarterly rate of excise tax, 65108

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous liquid transportation—
Liquefied compressed gasses in cargo tank motor vehicles, 65188–65195

Securities and Exchange Commission
RULES
Securities:
Prospectus delivery; T+3 securities transactions settlement; authority citation; CFR correction, 65019
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 65112–65113
Cincinnati Stock Exchange, Inc., 65113–65114
Municipal Securities Rulemaking Board, 65114–65115
New York Stock Exchange, Inc., 65116–65117
Philadelphia Stock Exchange, Inc., 65117–65119
Applications, hearings, determinations, etc.:
Nationwide Life Insurance Co. et al., 65108–65112

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Man and biosphere program—
Tropical forest resources in Mexico, Belize, and Guatemala; management, harvesting, utilization, and marketing research, 65119–65120

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 65044–65046

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Kansas City Southern Lines, Inc. et al., 65127–65128

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65120–65121
Privacy Act:
Systems of records, 65121–65122

Treasury Department
See Public Debt Bureau

Separate Parts In This Issue

Part II
Department of Agriculture, Federal Crop Insurance Corporation, 65130–65177

Part III
Department of Housing and Urban Development, 65180–65182

Part IV
Department of Justice, Bureau of Prisons, 65184–65186

Part V
Department of Transportation, Research and Special Programs Administration, 65188–65195

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 98–6 of December 2, 1997 65005

7 CFR
319 65007
320 65007
330 65007
352 65007
457 65130

10 CFR
Proposed Rules:
40 65039

11 CFR
Proposed Rules:
114 65040

14 CFR
39 (2 documents) 65009, 65011
71 (5 documents) 65012, 65013, 65014, 65015
95 65016
Proposed Rules:
71 (2 documents) 65040, 65041

15 CFR
Proposed Rules:
806 65043

17 CFR
230 65019

21 CFR
520 65020

24 CFR
201 65180
202 65180
203 65180

28 CFR
540 (2 documents) 65184, 65196

30 CFR
Proposed Rules:
917 65044

32 CFR
320 65020

33 CFR
100 65021
165 65022

40 CFR
63 65022
81 65025
180 65030
Proposed Rules:
52 65046
63 65049

42 CFR
Proposed Rules:
1001 65049

47 CFR
54 65036
Proposed Rules:
32 65053

49 CFR
171 65188

50 CFR
Proposed Rules:
600 (2 documents) 65055
622 65056
648 (2 documents) 65055

Federal Register
Vol. 62, No. 237
Wednesday, December 10, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–6 of December 2, 1997

Report to Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Policy Toward Burma" in section 570(d) of the FY 1997 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

1) progress toward democratization in Burma;

2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and

3) progress made in developing a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Law and Order Restoration Council (SLORC) and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the attached report fulfilling this requirement to the appropriate committees of the Congress and to arrange for publication of this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 2, 1997.

[FR Doc. 97–32476
Filed 12–9–97; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 62, No. 237
Wednesday, December 10, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 320, 330, and 352

[Docket No. 97–037–2]

Removal of Mexican Border Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the regulations at 7 CFR part 320, "Mexican Border Regulations," which serve to prevent the introduction into the United States of plant pests from Mexico by regulating the importation of vehicles, soil, and other materials from Mexico. The regulations at 7 CFR part 330, "Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage," serve to prevent the introduction into the United States of plant pests from all foreign countries, including Mexico, by regulating the importation of plant pests themselves, as well as vehicles, soil, and other materials. The provisions in the "Mexican Border Regulations" to prevent the entry of plant pests from Mexico are covered in part 330. Therefore, the regulations in part 320 are unnecessary and will be removed. This action meets the President's regulatory reform goal of removing redundant Federal regulations.

EFFECTIVE DATE: January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Petit de Mange, Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 7 CFR part 320, "Mexican Border Regulations," serve to prevent the entry into the United States of plant pests from Mexico by regulating the importation of vehicles, soil, and other materials from Mexico. These regulations were established to carry out the Mexican Border Act (7 U.S.C. 149), which authorizes the Secretary of Agriculture to inspect, clean, and, when necessary, disinfect railway cars, other vehicles, and materials entering the United States from Mexico.

The regulations at 7 CFR part 330, "Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage," serve to prevent the dissemination of plant pests into or within the United States by regulating the movement of plant pests, means of conveyance, earth, stone and quarry products, garbage, and certain other products and articles into or through the United States. The regulations at part 330 are authorized by the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*).

On August 14, 1997, we published in the **Federal Register** (62 FR 43487–43489, Docket No. 97–037–1) a proposal to remove the Mexican Border Regulations and all references to these regulations in title 7 and to correct some erroneous references to a section in 7 CFR part 319 that no longer exists. We proposed this action in accordance with the President's Regulatory Reform Initiative. We do not believe that the Mexican Border Regulations are necessary for the U.S. Department of Agriculture (USDA) to prevent the introduction of plant pests from Mexico into the United States via imported vehicles, soil, and other materials. We believe that the Mexican Border Regulations are redundant because of the existence of part 330, which regulates the importation of plant pests themselves, as well as vehicles, soil, and other materials, from any foreign country, including Mexico.

We solicited comments concerning our proposal for 60 days ending October 14, 1997. We received two comments by that date. They were from organizations representing the interests of California avocado producers. The comments are discussed below.

The commenters contend that the Mexican Border Regulations are not unnecessary and question USDA's authority to remove these regulations. The commenters state that these regulations are mandated by law. One commenter stated that it is critical for our agency to adhere to the Congressional Review of Agency Rulemaking Act of 1996, which requires Federal agencies to submit copies of final rules to Congress prior to their effective dates.

According to the Mexican Border Act, the Secretary of Agriculture is "authorized and directed to promulgate such rules and regulations *as he may deem necessary* to regulate the entry into the United States of railway cars and other vehicles and freight, express, baggage, and other materials which may carry" plant pests and diseases (emphasis added). The Secretary is not legally bound by the law to promulgate any regulations, much less a specific part of the Code of Federal Regulations for the exclusive purpose of administering the Mexican Border Act. However, we believe that the regulations in 7 CFR part 330 carry out the Mexican Border Act. To make this point clear, we are adding through this final rule the citation for the Mexican Border Act (7 U.S.C. 149) to the list of authority citations in part 330. As with all final rules prepared by our agency, we will submit a copy of this final rule to Congress prior to the rule's effective date.

One commenter requested that USDA reaffirm in the final rule "that Part 330 stands as a comprehensive regulatory program directed at preventing the introduction and/or dissemination of plant pests and diseases into the United States." The commenter further requested that USDA reaffirm that the regulations in part 330 cover all the products (regulated vehicles, articles, and materials) currently covered by part 320.

The regulations in part 330 do not constitute a program per se. The purpose of the regulations in part 330, as stated in § 330.101, is "to prevent the dissemination of plant pests into the United States, or interstate, by regulating the movement of plant pests into or through the United States, or interstate, and the movement of means of conveyance, earth, stone and quarry products, garbage, and certain other

products and articles. * * *" In carrying out our mission of protecting U.S. agriculture, our agency administers these regulations through several programs. We reiterate that all of the items covered in part 320 are also covered in part 330. According to § 330.105, " * * * all plant pests; means of conveyance and their stores; baggage; mail; plants; plant products; soil; stone and quarry products under § 330.300; garbage; *and any other product or article of any character whotsoever which an inspector considers may be infested or infected by or contain a plant pest*, arriving in the United States from any place outside thereof for entry into or movement through the United States shall be subject to inspection * * *" (emphasis added).

The commenters questioned the timing of our proposal. They expressed particular concern because, as of November 1, Mexican avocados have been allowed to be imported into 19 northeastern States of the United States. In addition, one commenter questioned the timing of this rulemaking action because of recent incidents of food safety problems related to imported produce and the recent Presidential initiative to increase food safety inspections of fruit and vegetables overseas. The commenter also stated that the timing was inappropriate in light of the current attempt by the Administration to obtain "fast-track" authority for the President to negotiate new trade agreements.

Our agency has no authority in regard to food that poses threats to human health. We inspect imported agricultural products and other articles to ensure that they do not introduce foreign agricultural pests and diseases that could harm U.S. crops. Ensuring food safety is the responsibility of other Federal agencies. However, this rulemaking will have no impact on either food safety or crop protection, because it does not change any inspection procedures or authorities. In addition, the Administration's attempt to gain fast-track authority in regard to trade is a political issue outside our jurisdiction. Consequently, this rulemaking action is entirely unrelated to and has no bearing on this issue. In regard to the importation of Mexican avocados, the timing of this action is purely coincidental. However, this action will in no way change our ability to take regulatory action, should the need arise, in regard to imported Mexican avocados. We have ample authority under part 330 and other parts of title 7 to take any necessary action in the unlikely event imported Mexican avocados are found to present a threat to U.S. agriculture.

The commenters were concerned that elimination of the Mexican Border Regulations could somehow weaken U.S. quarantine security and, therefore, present a risk of avocado pest introduction. One commenter was concerned that the purpose of the Mexican Border Regulations is "to prevent the introduction of insect pests and diseases," while the purpose of the Federal plant pest regulations is "to prevent the dissemination of plant pests into the United States." The commenter was particularly concerned that "dissemination in this context is something less than introduction." The commenter believes that the standard for prevention of plant pests is higher in the Mexican Border Regulations than in the Federal plant pest regulations.

Elimination of the Mexican Border Regulations is merely an administrative action to remove redundant Federal regulations. This action will have no effect on any regulatory activities performed by our agency to protect U.S. agriculture. We take action on imported products based on the phytosanitary risk they present. Moreover, part 320 provides neither more nor less authority than part 330 in regard to regulating articles imported from Mexico. Our treatment of regulated articles from Mexico will be the same under part 330 as it has been under part 320.

In regard to the difference between the terms "introduction" and "dissemination" as they are used, respectively, in parts 320 and 330, we believe that the intent of both usages is the same: The prevention of threats to U.S. plant health from exotic pests. However, we believe the commenter's interpretation of the level of quarantine security implied by the two words is actually reversed. Our agency considers preventing the dissemination of a pest into the United States to mean preventing *any entry* of the pest. Whereas the *NAPPO Compendium of Phytosanitary Terms* (a publication that defines terminology used by the North American Plant Protection Organization) defines introduction as "entry and establishment of a pest" and "entry of a pest, resulting in establishment."

One commenter stated that ensuring quarantine security should be USDA's overriding goal and that this goal should not be "sacrificed" to facilitate trade. The commenter further stated that the Mexican Border Regulations require "*as a condition of entry* into the United States from Mexico all articles and materials * * * shall be subject to examination by an inspector," while the Federal plant pest regulations require that USDA "employ procedures * * * which will *impose a minimum of impediment to foreign commerce*" (emphasis added by commenter).

In fulfilling our agency's mission of protecting American agriculture, ensuring quarantine security is our primary objective. However, providing quarantine security by the least restrictive means has always been a philosophical tenet of our agency and is consistent with the sanitary and phytosanitary principles of the World Trade Organization. While few importations of agricultural products present absolutely no risk of pest or disease introduction, we would never allow the importation of any foreign product or article under circumstances that we thought would compromise phytosanitary security. In regard to the differing language used in parts 320 and 330 pertaining to inspection of imported articles, again, we believe the language in the two parts means the same thing. Moreover, the commenter did not cite relevant language from part 330. The complete sentence quoted by the commenter reads, "The Deputy Administrator shall employ procedures to carry out this purpose which will impose a minimum of impediment to foreign commerce and travel *whenever practicable, consistent with proper precaution against plant pest dissemination*" (emphasis added). We believe this language indicates that quarantine security is the ultimate priority and that facilitating trade and travel are secondary goals.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The purpose of this rule is to remove redundant regulations from title 7 of the CFR. No segment of U.S. society will be affected by this regulatory action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and

(3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 320

Imports, International boundaries, Mexico, Plant diseases and pests, Quarantine, Transportation.

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR, chapter III, is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.8–27 [Removed]

2. Section 319.8–27, "Applicability of Mexican Border Regulations," is removed.

§ 319.69a [Amended]

3. In § 319.69a, paragraph (c), the reference to "§ 319.37'16a" is removed and a reference to "§ 319.37–9" is added in its place.

PART 320—[REMOVED]

4. Under the authority of 7 U.S.C. 149 and 150ee and 21 U.S.C. 136 and 136a, 7 CFR, chapter III, is amended by removing "PART 320—MEXICAN BORDER REGULATIONS".

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

5. The authority citation for part 330 is revised to read as follows:

Authority: 7 U.S.C. 147a, 149, 150bb, 150dd-150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(c).

§ 330.105 [Amended]

6. In § 330.105, paragraph (a), third sentence, the reference to "320," is removed.

§ 330.300 [Amended]

7. Section § 330.300 is amended as follows:

a. In the introductory text, by removing the reference to ", § 319.37–16a," in the first sentence, and by removing the entire last sentence.

b. In paragraph (a), by removing the reference to ", § 319.37–16a," and the words ", or part 320".

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

8. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

§ 352.1 [Amended]

9. In § 352.1, paragraphs (b)(14), (b)(15), (b)(16), and (b)(24), the reference to "320," is removed.

§ 352.2 [Amended]

10. In § 352.2, in paragraph (a), the first sentence, and in paragraph (b), the reference to "320," is removed.

§ 352.5 [Amended]

11. In § 352.5, paragraph (d), the reference to "320," is removed both times it appears.

§ 352.10 [Amended]

12. In § 352.10, the reference to "320," is removed in the following places.

a. Paragraph (a), third sentence.

b. Paragraph (b)(1), sixth sentence.

c. Paragraph (b)(2), second sentence.

§ 352.13 [Amended]

13. In § 352.13, the reference to "320," is removed.

Done in Washington, DC, this 4th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32245 Filed 12–9–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–120–AD; Amendment 39–10238; AD 97–25–14]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes, that requires repetitive inspections of certain refuel/defuel tube assemblies in the engine nacelles for fuel leakage, and corrective action, if necessary. This amendment will also require eventual modification of all tube assemblies, which will terminate the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fuel leaks and consequent increased risk of engine fires.

DATES: Effective January 14, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7504; fax (516) 256–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on October 6, 1997 (62 FR 52051). That action proposed to require repetitive inspections of certain refuel/defuel tube assemblies in the engine nacelles for fuel leakage, and corrective action, if necessary. It also proposed to require eventual modification of all tube assemblies, which would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 95 Model DHC–8–100, –200, and –300 series airplanes of U.S. registry will be affected by this AD.

The inspection will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $34,200, or $360 per airplane, per inspection cycle.

The modification (specified in Part 2 of the Accomplishment Instructions in the referenced alert service bulletin) will take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $500. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $133,000, or $1,400 per airplane.

The modification (specified in Part 3 of the Accomplishment Instructions in the referenced service bulletin) will take approximately 36 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,600 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $357,200, or $3,760 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–25–14 De Havilland, Inc.: Amendment 39–10238. Docket 97–NM–120–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes; as listed in Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leaks and consequent increased risk of engine fires, accomplish the following:

(a) Within 30 days after the effective date of this AD, inspect the five refuel/defuel tube assemblies in the engine nacelles to detect fuel leaks, in accordance with Part 1 of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A', dated September 10, 1996. If any fuel leak is found, prior to further flight, replace the refuel/defuel tube assembly with an improved assembly, in accordance with the alert service bulletin. Thereafter, repeat the inspection at intervals not to exceed 6 months.

(b) Within 12 months after the effective date of this AD, modify the refuel/defuel tube assembly located under the exhaust fingernail on the engine nacelle, as specified in Part 2 of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996, in accordance with the procedures specified in the alert service bulletin.

(c) Within 24 months after the effective date of this AD, modify the remaining refuel/defuel tube assemblies, as specified in Part 3 of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996, in accordance with the procedures specified in the alert service bulletin.

(d) Accomplishment of the modifications required by paragraphs (b) and (c) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(e) As of the effective date of this AD, no person shall install a refuel/defuel tube assembly having part number 82820107–007, 82821015–003, 82820108–005, 82820245–001, 82820246–001, 82820247–001, or 82821014–001, on any airplane.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–96–14, dated August 20, 1996.

(i) This amendment becomes effective on January 14, 1998.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32118 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–104–AD; Amendment 39–10237; AD 97–25–13]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes and Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes and all Model HS 748 series airplanes, that requires inspection of the main hydraulic accumulator for corrosion, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct such corrosion, which could result in loss of certain hydraulic system functions, including nose wheel steering, hydraulic lowering of the landing gear, and main wheel brakes, which are essential for safe operation of the airplane.

DATES: Effective January 14, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes and all Model HS 748 series airplanes was published in the **Federal Register** on August 20, 1997 (62 FR 44244). That action proposed to require inspection of the main hydraulic accumulator for corrosion, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 British Aerospace BAe Model ATP airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600, or $60 per airplane.

Currently, there are no British Aerospace Model HS 748 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 1 work hour per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD would be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–25–13 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10237. Docket 97–NM–104–AD.

Applicability: BAe Model ATP airplanes having constructor's numbers 2002 through 2063 inclusive; and all Model HS 748 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the cylinder tube of the main hydraulic accumulator, which could result in loss of certain hydraulic system functions that are essential for safe operation of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection of the main hydraulic accumulator for corrosion, in accordance with British Aerospace Service Bulletin ATP–29–15, or HS748–29–49, both dated February 25, 1997; as applicable. If any discrepancy is found, prior to further flight, accomplish the applicable corrective actions specified in the service bulletins.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with British Aerospace Service Bulletin ATP–29–15, dated February 25, 1997, and British Aerospace Service Bulletin HS748–29–49, dated February 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directives 004–02–97, dated February 25, 1997, and 005–02–97, dated February 7, 1997.

(e) This amendment becomes effective on January 14, 1998.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32121 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–40]

RIN 2120–AA66

Revision to Chicago Midway Airport Class C Airspace Area; Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of the Chicago Midway Airport Class C airspace area. Currently, the legal description uses the Runway 31L localizer course to define the southeast boundary of Chicago Midway's Class C airspace outer ring (that area between 5 and 10 nautical miles [NM]). Since the legal description was published, the Chicago Midway Airport added another runway to the outside of Runway 31L, making the old Runway 31L the new Runway 31C. To keep the Class C airspace area boundaries unchanged, a correction to the legal description must be made. This action will make the necessary correction by changing "Chicago Midway 31L localizer course" to read "Chicago Midway 31C localizer course."

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 by changing the legal description of the Chicago Midway Airport Class C airspace area. Currently, the legal description uses the Runway 31L localizer course to define the southeast boundary of the Chicago Midway Class C airspace outer ring (that area between 5 and 10 NM). Since the description was published, Chicago Midway Airport added another runway to the outside of Runway 31L, making the old Runway 31L the new Runway 31C. To keep the Class C airspace area boundaries unchanged, a correction to the legal description must be made. This action will make the necessary correction by changing "Chicago Midway 31L localizer course" to read "Chicago Midway 31C localizer course."

Since this action merely involves changes in the legal description of the Chicago Midway Class C airspace area and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * * *

AGL IL C Chicago Midway Airport, IL [Revised]

Chicago Midway Airport, IL
Chicago Midway Airport, IL
(lat. 41°47′10″N., long. 87°45′08″W.)
Chicago O'Hare VOR/DME
(lat. 41°59′16″N., long. 87°54′18″W.)

That airspace within a 5-mile radius of the Chicago Midway Airport extending upward from the surface to 3,600 feet MSL; and that airspace within a 10-mile radius of the airport beginning at a line 2 miles northeast of and parallel to the Chicago Midway Runway 31C localizer course clockwise to where the 10.5-mile arc of the Chicago O'Hare VOR/DME intersects the 10-mile radius of the airport, thence via the Chicago O'Hare VOR/DME 10.5-mile arc, extending upward from 1,900 feet MSL to 3,600 feet MSL. This Class C airspace area excludes any airspace contained in the Chicago, IL, Class B airspace area.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32353 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–41]

Modification of the Legal Description of Class E Airspace; Hancock, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the legal description of Class E airspace at Hancock, MI. The current legal description indicates less than continuous times of operation for the Class E airspace for Houghton County Memorial Airport. Actual times of operation for the airspace are continuous. The legal description must reflect the actual times of operation. This action will accurately reflect the actual times of operation for the Class E airspace at Hancock, MI.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the legal description of the Class E airspace at Hancock, MI (62 FR 47777). The proposal was to change the legal description to accurately reflect the existing continuous times of operation for the airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designated as a surface area are published in paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace at Hancock, MI, by removing the statement which indicates less than continuous times of operation for the airspace. The actual times of operation for the Class E airspace at Hancock, MI, are continuous.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective

September 16, 1997, is amended as follows:

Paragraph 6002 Class E Airspace Designated as a Surface Area

* * * * *

AGL MI E2 Hancock, MI [Revised]

Houghton County Memorial Airport, MI
(lat. 47°10'07"N, long. 88°29'20"W)

Within a 5.3-mile radius of Houghton County Memorial Airport.

* * * * *

Issued in Des Plaines, Illinois on November 17, 1997.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 97–32347 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–36]

Modification of Class E Airspace; Coshocton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Coshocton, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 22 has been developed for Richard Downing Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action adds a northeast extension to the existing controlled airspace for the airport.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the Class E airspace at Coshocton, OH (62 FR 47778). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Coshocton, OH, to accommodate aircraft executing the GPS Runway 22 SIAP at Richard Downing Airport by adding a northeast extension to the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not at "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing; the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth

* * * * *

AGL OH E5 Coshocton, OH [Revised]

Richard Downing Airport, OH
(lat. 40°18'33"N, long. 81°51'12"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Richard Downing Airport and within 4.9 miles either side of the 037° bearing from the airport extending from the 6.3-mile radius to 10.0 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on November 12, 1997.

David B. Johnson,

Assistant Manager, Air Traffic Division.

[FR Doc. 97–32348 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–38]

Modification of the Legal Description of Class E Airspace; Dickinson, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the legal description of Class E airspace at Dickinson, ND. The current legal description indicates less than continuous times of operation for the Class E airspace for Dickinson Municipal Airport. Actual times of operation for the airspace are continuous. The legal description must reflect the actual times of operation. This action will accurately reflect the actual times of operation for the Class E airspace at Dickinson, ND.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the legal description of the Class E airspace at Dickinson, ND (62 FR 47776). The proposal was to change the legal description to accurately reflect the existing continuous times of operation for the airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designated as a surface area are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace at Dickinson, ND, by removing the statement which indicates less than continuous times of operation for the airspace. The actual times of operation for the Class E airspace at Dickinson, ND, are continuous.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area

* * * * *

AGL ND E2 Dickinson, ND [Revised]

Dickinson Municipal Airport, ND
(lat. 46°47'51"N, long. 102°48'03"W)

Within a 4.4-mile radius of Dickinson Municipal Airport, and within 1.4 miles each side of the 150° bearing from the airport, extending from the 4.4-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on November 17, 1997.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 97–32351 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–39]

Modification of the Legal Description of Class E Airspace; Akron, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the legal description of Class E airspace at Akron, OH. The current legal description indicates less than continuous times of operation for the Class E airspace for Akron Fulton International Airport. Actual times of operation for the airspace are continuous. The legal description must reflect the actual times of operation. This action will accurately reflect the actual times of operation for the Class E airspace at Akron, OH.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the legal description of the Class E airspace at Akron, OH (62 FR 47779). The proposal was to change the legal description to accurately reflect the existing continuous times of operation for the airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designated as a surface area are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace at Akron, OH, by removing the statement which indicates less than continuous times of operation for the airspace. The actual times of operation for the Class E airspace at Akron, OH, are continuous.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area

* * * * *

AGL OH E2 Akron, OH [Revised]

Akron Fulton International Airport, OH
(lat. 41°02'15"N, long. 81°28'01"W)

Within a 4.1-mile radius of Akron Fulton International Airport, excluding that airspace within the Akron-Canton Regional Airport, OH, Class C airspace area.

* * * * *

Issued in Des Plaines, Illinois, on November 17, 1997.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 97–32352 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29080; Amdt. No. 406]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reasons, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on December 3, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC,

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 406 Effective Date, January 1, 1998]

From	To	MEA
§ 95.1001 DIRECT ROUTES—U.S.		
§ 95.115 AMBER FEDERAL AIRWAY 15 IS AMENDED TO DELETE		
PUT RIVER, AK NDB	OLIKTOK/DCMSND, AK NDB	2000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 406 Effective Date, January 1, 1998]

From	To	MEA
§ 95.6001 VOR FEDERAL AIRWAY 1 IS AMENDED TO READ IN PART		
INLET, SC FIX	PLANN, SC FIX	2400
§ 95.6007 VOR FEDERAL AIRWAY 7 IS AMENDED TO READ IN PART		
CROWD, FL FIX	LAKELAND, FL VORTAC	2200
§ 95.6016 VOR FEDERAL AIRWAY 16 IS AMENDED TO READ IN PART		
LOS ANGELES, CA VORTAC	PARADISE, CA VORTAC	4000
§ 95.6051 VOR FEDERAL AIRWAY 51 IS AMENDED TO READ IN PART		
PAHOKEE, FL VORTAC	*SHEDS, FL FIX	2000
*3000—MRA		
SHEDS, FL FIX	VERO BEACH, FL VORTAC	2000
§ 95.6070 VOR FEDERAL AIRWAY 70 IS AMENDED TO READ IN PART		
EUFAULA, AL VORTAC	VIENNA, GA VORTAC	2400
§ 95.6157 VOR FEDERAL AIRWAY 157 IS AMENDED TO READ IN PART		
LA BELLE, FL VORTAC	RINSE, FL FIX	*2000
*1400—MOCA		
RINSE, FL FIX	LAKELAND, FL VORTAC	2200
§ 95.6159 VOR FEDERAL AIRWAY 159 IS AMENDED TO READ IN PART		
VERO BEACH, FL VORTAC	*PRESK, FL FIX	2100
*2500—MRA		
PRESK, FL FIX	ORLANDO, FL VORTAC	2100
§ 95.6295 VOR FEDERAL AIRWAY 295 IS AMENDED TO READ IN PART		
VERO BEACH, FL VORTAC	BAIRN, FL FIX	2100
§ 95.6302 VOR FEDERAL AIRWAY 302 IS AMENDED TO READ IN PART		
AUGUSTA, ME VOR/DME	ANCOR, ME FIX	*6500
*1800—MOCA		
§ 95.6308 VOR FEDERAL AIRWAY 308 IS AMENDED TO READ IN PART		
BETHEL, AK VORTAC	FISHH, AK FIX.	
	E BND	*8000
	W BND	*2000
*1400—MOCA		
§ 95.6319 VOR FEDERAL AIRWAY 319 IS AMENDED TO READ IN PART		
YAKUTAT, AK VORTAC	MALAS, AK FIX.	
	W BND	*10000
	E BND	*2300
*2300—MOCA		
MALAS, AK FIX	KATAT, AK FIX	#*10000
*5500—MOCA		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		
CASEL, AK FIX	EYAKS, AK FIX	*5000
*2500—MOCA		
EYAKS, AK FIX	JOHNSTONE POINT, AK VORTAC	*5000
*4900—MOCA		
JOHNSTONE POINT, AK VORTAC	PEPPI, AK FIX.	
	W BND	*10000
	E BND	*5000
*4900—MOCA		
PEPPI, AK FIX	WILER, AK FIX.	
	W BND	*10000
	E BND	*8000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued
[Amendment 406 Effective Date, January 1, 1998]

From	To	MEA
*8000—MOCA		
YONEK, AK FIX	*TORTE, AK FIX.	
	W BND	**12000
	E BND	**6000
*8100—MCA TORTE FIX, W BND		
**5000—MOCA		
VEILL, AK FIX	SPARREVOHN, AK VOR/DME.	
	E BND	*12000
	W BND	*7000
*6000—MOCA		
VIDDA, AK FIX	WEEKE, AK FIX.	
	E BND	*8000
	W BND	*3000
*2200—MOCA		
WEEKE, AK FIX	BETHEL, AK VORTAC.	
	E BND	6000
	W BND	2000
BETHEL, AK VORTAC	ARSEN, AK FIX	2000
§ 95.6325 VOR FEDERAL AIRWAY 325 IS AMENDED TO READ IN PART		
ATHENS, GA VORTAC	WOMAC, GA FIX	3700
§ 95.6350 VOR FEDERAL AIRWAY 350 IS AMENDED TO READ IN PART		
BAFIN, AK FIX	BETHEL, AK VORTAC.	
	E BND	5000
	W BND	2000
BETHEL, AK VORTAC	DAHLS, AK FIX.	
	W BND	3600
	E BND	2000
§ 95.6437 VOR FEDERAL AIRWAY 437 IS AMENDED TO READ IN PART		
PAHOKEE, FL VORTAC	MELBOURNE, FL VOR/DME	2100
§ 95.6453 VOR FEDERAL AIRWAY 453 IS AMENDED TO READ IN PART		
EDUCE, AK FIX	BETHEL, AK VORTAC.	
	S BND	*7000
	N BND	*4000
*2500—MOCA		
§ 95.6480 VOR FEDERAL AIRWAY 480 IS AMENDED TO READ IN PART		
ALIEN, AK FIX	KIPNUK, AK VOR/DME.	
	W BND	*3000
	E BND	2000
BETHEL, AK VORTAC	CABOT, AK FIX.	
	W BND	*2000
	E BND	*4000
*1400—MOCA		
JOANY, AK FIX	MC GRATH, AK VORTAC.	
	W BND	*8000
	E BND	*6000
*5200—MOCA		
MC GRATH, AK VORTAC	MEFRA, AK FIX.	
	W BND	4000
	E BND	8000
§ 95.6495 VOR FEDERAL AIRWAY 495 IS AMENDED TO READ IN PART		
JAWBN, WA FIX	U.S. CANADIAN BORDER	#*5400
*4300—MOCA		

#MINIMUM TURNING ALTITUDE—ACFT PROCEEDING V495 SE—BND TURNING WEST AT JAWBN ON V4 MUST MAINTAIN AT OR ABOVE 8000 UNTIL ESTABLSIHED ON CENTERLINE OF V4 W—BND.

§ 95.6506 VOR FEDERAL AIRWAY 506 IS AMENDED TO READ IN PART		
KODIAK, AK VORTAC	BAILY, AK FIX.	
	W BND	*12000
	E BND	*6000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued
[Amendment 406 Effective Date, January 1, 1998]

From	To	MEA
*4900—MOCA		
BREMI, AK FIX	KING SALMON, AK VORTAC.	
	E BND	*12000
	W BND	*5000
*4400—MOCA		
CAYON, AK FIX	BETHEL, AK VORTAC.	
	E BND	8000
	W BND	4000
BETHEL, AK VORTAC	MARSI, AK FIX.	
	W BND	8000
	E BND	2000
DACIA, AK FIX	NOME, AK VORTAC.	
	N BND	*8000
	S BND	*4000
*3200—MOCA		
NOME, AK VORTAC	BAIME, AK FIX.	
	N BND	7000
	S BND	6000
SETUP, AK FIX	KOTZEBUE, AK VOR/DME.	
	S BND	7000
	N BND	2000
MEADE, AK FIX	BARROW, AK VORTAC.	
	S BND	*10000
	N BND	*2000
*1100—MOCA		
§ 95.6511 VOR FEDERAL AIRWAY 511 IS AMENDED TO READ IN PART		
LAKELAND, FL VORTAC	HALLR, FL FIX	*4000
*2200—MOCA		
§ 95.6521 VOR FEDERAL AIRWAY 521 IS AMENDED TO READ IN PART		
QUNCY, FL FIX	LAKELAND, FL VORTAC	2200
§ 95.6537 VOR FEDERAL AIRWAY 537 IS AMENDED TO READ IN PART		
VERO BEACH, FL VORTAC	*PRESK, FL FIX	2100
*2500—MRA		

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS V–23 IS AMENDED TO DELETE			
PAINE, WA VOR/DME	BELLINGHAM, WA VORTAC	14	PAINE
V–51 IS AMENDED TO READ IN PART			
NABB, IN VORTAC	SHELBYVILLE, IN VORTAC	20	NABB
V–480 IS AMENDED BY ADDING			
ST PAUL ISLAND, AK NDB/DME	KIPNUK, AK VOR/DME	197	ST PAUL ISLAND

[FR Doc. 97–32346 Filed 12–9–97; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

General Rules and Regulations, Securities Act of 1933

CFR Correction

In Title 17 of the Code of Federal Regulations, parts 200 to 239, revised as of April 1, 1997, page 445, Part 230, the authority citation for the part is corrected by removing "78t" and replacing it with "79t".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Lincomycin Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by I. D. Russell Co. Laboratories. The ANADA provides for use of lincomycin hydrochloride soluble powder to make medicated drinking water for swine for the treatment of dysentery (bloody scours) and broiler chickens for the control of necrotic enteritis.

EFFECTIVE DATE: December 10, 1997.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: I. D. Russell Co. Laboratories, 1301 Iowa Ave., Longmont, CO 80501, filed ANADA 200–189 that provides for use of lincomycin hydrochloride soluble powder to make medicated drinking water for swine for the treatment of dysentery (bloody scours) and broiler chickens for the control of necrotic enteritis caused by *Clostridium perfringens* susceptible to lincomycin.

Approval of I. D. Russell Co. Laboratories' ANADA 200–189 lincomycin hydrochloride soluble powder is as a generic copy of Pharmacia & Upjohn's NADA 111–636 Lincomix™ soluble powder. The ANADA is approved as of November 7, 1997, and the regulations are amended in 21 CFR 520.1263c(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(e)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1263c [Amended]

2. Section 520.1263c *Lincomycin hydrochloride soluble powder* is amended in paragraph (b) by removing "No. 000009" and adding in its place "Nos. 000009 and 017144".

Dated: December 1, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–32217 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 320

National Imagery and Mapping Agency (NIMA) Privacy Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The document is published to make administrative changes to the National Imagery and Mapping Agency (NIMA), formerly know as the Defense Mapping Agency, Privacy Program rule.

EFFECTIVE DATE: This rule is effective December 10, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. M. Flattery, 301–227–2268.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 320

Privacy program.

Accordingly, 32 CFR part 320 is amended as follows:

PART 320—NATIONAL IMAGERY AND MAPPING AGENCY (NIMA) PRIVACY PROGRAM

1. The authority citation for part 320 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 552a).

2. The part heading is revised as set forth above.

§ 320.1 [Amended]

3. In § 320.1, paragraph (e)(1)(i) is amended by revising "Defense Mapping Agency (DMA)" to read "National Imagery and Mapping Agency (NIMA)" and paragraph (a)(2) is amended by revising "DMS" to read "NIMA."

§ 320.2 [Amended]

4. In § 320.2, the definitions *Record* and *System or records* are amended by revising "DMA" to read "NIMA."

5. Section 320.3 is amended as follows:

a. Paragraph (a), paragraph (c)(2), and paragraph (d) by revising "DMA" to read "NIMA";

b. Paragraph (b) by revising "HQ DMA or at the principal office of DMA Component (Please refer to the DMA address list at paragraph (e) of this section" to read "NIMA General Counsel Office (refer to the NIMA address list at paragraph (e) of this section) or at the NIMA officer";

c. Paragraph (c) introductory text by revising "Director of the DMA Component or Staff Office" to read "Office of General Counsel," and after the word "section)" and "or NIMA office";

d. Paragraph (e) is revised to read as follows:

§ 320.3 Procedures for requests for information pertaining to individual records in a record system.

* * * * *

(e) NIMA General Counsel address list.

(1) NIMA Fairfax, Attn: GC, Mail Stop A–7 NIMA Fairfax, 8613 Lee Highway, Fairfax, VA 22031–2137.

(2) NIMA Bethesda, Attn: GCM, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003.

(3) NIMA St. Louis, Attn: GCM Mail Stop L–32, 3200 South Second Street, St. Louis, MO 63118–3399.

(4) NIMA Navy Yard, Attn: GCM Stop, N–24, Building 213, Washington, DC 20505–0001.

(5) NIMA Westfields, Attn: GCM, Room 13F20C, 14675 Lee Road, Chantilly, VA 20151–1715.

6. Section 320.4 is amended as follows:

a. Paragraph (a), paragraph (b) introductory text, paragraph (b)(3), paragraph (c)(2), and paragraph (d) by revising "DMA" to read "NIMA";

b. Paragraph (b)(1) is amended by revising "Headquarters Defense Mapping Agency or at the principal office of the DMA Component" to read "Office of General Counsel", and after the word "list)" and "or at the NIMA office"; and paragraph (b)(2) is amended by revising "Director Defense Mapping Agency, or at the Director of the DMA Component" to read "General Counsel (refer to § 320.3(e) for address list) or to the NIMA officer";

c. The heading of paragraph (c), paragraph (c)(1) introductory text, and paragraph (c)(1)(iv) are revised to read as follows:

§ 320.4 Disclosure of requester information to individuals.

* * * * *

(c) *NIMA determination of requests for access.* (1) Upon receipt of a request made in accordance with this section, the NIMA Office of the General Counsel or NIMA office having responsibility for maintenance of the record in question shall release the record, or refer it to an Initial Denial Authority, who shall:

* * * * *

(iv) Requests for access to personal records may be denied only by an agency official authorized to act as an Initial Denial Authority or Final Denial Authority, after coordination with the Office of General Counsel.

* * * * *

§ 320.5 [Amended]

7. In § 320.5, paragraph (b) is amended by revising "Staff Director of the DMA Headquarters or Component Staff Element" to read "NIMA Office of General Counsel or NIMA office".

8. Section 320.6 is amended by revising paragraph (a) and paragraph (b) to read as follows:

§ 320.6 Agency review of request for correction or amendment of record.

(a) Not later than 10 working days after receipt of a request to amend a record, in whole or in part, the NIMA Office of General Counsel, or NIMA office having responsibility for maintenance of the record in question shall make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction or process the request for refusal.

(b) Refusals of requests for amendment of a record will be made only by an agency official authorized to act as an Initial Denial Authority or Final Denial Authority, after coordination with the Office of General Counsel. The refusal letter will inform the individual by certified mail, return receipt requested, of refusal to amend the record setting forth the reasons therefor and notifying the individual of his right to appeal the decision to the Director, NIMA, in accordance with § 320.7.

* * * * *

§ 320.7 [Amended]

9. In § 320.7, paragraph (b) is amended by revising "Director, Defense Mapping Agency" to read "Director, NIMA" and "Headquarters, Defense Mapping, Building 56, U.S. Naval Observatory, Washington, DC 20305." to read "NIMA, Attn: Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003."; paragraph (c) introductory text is amended by revising "Defense Mapping Agency" to read "NIMA, or his designee"; and paragraphs (c)(1) and (d) are amended after the word "Director" by adding "or his designee".

§ 320.8 [Amended]

10. Section 320.8 is amended in paragraph (a) and paragraph (c)(5) by revising "DMA" to read "NIMA"; paragraph (c)(3) by revising "§ 295.2" to read "Appendix C to 32 CFR part 310"; paragraph (c)(7) by revising "Defense Mapping Agency" to read "NIMA".

§ 320.9 [Amended]

11. Section 320.9 paragraph (b)(2)(i) and paragraph (b)(3), are amended by revising "DMA" to read "NIMA".

§ 320.10 [Amended]

12. Section 320.10 is amended by revising "DMA" to read "NIMA".

§ 320.11 [Amended]

13. Section 320.11 is amended by revising "Defense Mapping Agency" to read "NIMA".

Dated: December 4, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–32224 Filed 12–9–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–062]

RIN 2115–AE46

Special Local Regulations; Puerto Rico PRO-TOUR Offshore Race, Fajardo, PR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special Local Regulations are being adopted for the Puerto Rico PRO-TOUR Offshore Race. The event will be held from 1 p.m. to 2:30 p.m. Atlantic Standard Time (AST) on December 14, 1997 in the waters of Rada Fajardo, due East of Villa Marine, Fajardo, Puerto Rico. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective from 11:30 a.m. to 3:30 p.m. AST, December 14, 1997.

FOR FURTHER INFORMATION CONTACT: LT. D. L. GARRISON at (787) 729–6800, ext. 227.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The event requiring these regulations is the Puerto Rico PRO-TOUR Offshore Race. These will be 20 high speed offshore power boats racing on a fixed course offshore Fajardo, Puerto Rico. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways. These regulations are required to provide for the safety of life on the navigable waters during the running of the PRO-TOUR Offshore Race.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. The permit application was received by the unit less than six weeks before the scheduled date for the event.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary.. Entry into this area is prohibited for only 4 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities as these regulation will only be in effect for approximately 4 hours in a limited area off Fajardo, Puerto Rico.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2 of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentaliy assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An Environmental Assessment and Finding of No Significant Impact have been prepared and are available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. A temporary section 100.35T–07–062 is added to read as follows:

§ 100.35T–07–062 Puerto Rico PRO-TOUR Offshore Race; Fajardo, Puerto Rico.

(a) Definitions:

(1) *Regulated Area.* A regulated area is established for the waters of Rada Fajardo, due East of Villa Marine, Fajardo, Puerto Rico, in an area bounded by 18–20.0N, 065–37.2W, then North to 18–22.4N, 065–37.2W, then Northeast to 18–23.2N, 065–36.1W, then Southeast to 18–22.0N, 065–34.8W, then South to 18–20.0N, 065–34.8W and back to origin. All coordinates referenced use Datum: NAD 1983.

(2) *Coast Guard Potrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Section, Greater Antilles.

(b) *Special Local Regulations.*

(1) Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor west of Isle Palominos. After termination of the Puerto Rico PRO–TOUR Offshore Race on December 14, 1997, all vessels may resume normal operation. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) Temporary buoys will be used to delineate the course.

(c) *Dates.* This section becomes effective from 11:30 a.m. to 3:30 p.m. AST, on December 14, 1997.

Dated: December 1, 1997.

R.C. Olsen, Jr.,

Captain U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 97–32259 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–96–028]

RIN 2115–AA97

Safety Zone Regulations; Bellingham Bay; Bellingham, WA

AGENCY: Coast Guard, DOT.

ACTION: Direct Final rule; confirmation of effective date.

SUMMARY: On September 11, 1996, the Coast Guard published a direct final rule (61 FR 47823, Docket Number CGD13–96–028). This direct final rule notified the public of the Coast Guard's intent to amend a safety zone regulation for the annual Fourth of July Blast Over Bellingham Fireworks Display in Bellingham Bay, Bellingham, Washington. Changes made to this regulation will revise the boundaries of the safety zone. These changes are intended to better inform the boating public and to improve the level of safety at this event. The Coast Guard has not received any adverse comments or any notice of an intent to submit adverse comments objecting to this rule as written. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joel Roberts, USCG Marine Safety Office Puget Sound, Telephone: (206) 217–6237.

Dated: November 20, 1997.

Myles S. Boothe,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 97–32280 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5832–1]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of California; San Luis Obispo County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA) and through the California Air Resources Board, San Luis Obispo County Air Pollution Control District (SLOCAPCD) requested approval to implement and enforce its "Rule 432: Perchloroethylene Dry Cleaning Operations" (Rule 432) in place of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP) for area sources under SLOCAPCD's jurisdiction. The Environmental Protection Agency (EPA) has reviewed this request and has found that it satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting SLOCAPCD the authority to implement and enforce Rule 432 in place of the dry cleaning NESHAP for area sources under SLOCAPCD's jurisdiction.

DATES: This action is effective on February 9, 1998 unless adverse or critical comments are received by January 9, 1998. If the effective date is

delayed, timely notice will be published in the **Federal Register**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 9, 1998.

ADDRESSES: Comments must be submitted to Andrew Steckel at the EPA Region IX office listed below. Copies of SLOCAPCD's request for approval are available for public inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901. Docket # A–96–25.

California Air Resources Board, Stationary Source Division, 2020 "L" Street, P.O. Box 2815, Sacramento, California 95812–2815.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

On September 22, 1993, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for perchloroethylene dry cleaning facilities (*see* 58 FR 49354), which was codified in 40 CFR part 63, subpart M, "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP). On May 21, 1996, EPA approved the California Air Resources Board's (CARB) request to implement and enforce section 93109 of Title 17 of the California Code of Regulations, "Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning Operations" (dry cleaning ATCM), in place of the dry cleaning NESHAP for area sources (*see* 61 FR 25397). This approval became effective on June 20, 1996.

Thus, under federal law, from September 22, 1993, to June 20, 1996, all California dry cleaning facilities using perchloroethylene were subject to the dry cleaning NESHAP. Since June 20, 1996, all California dry cleaning facilities using perchloroethylene that qualify as area sources are subject to the Federally-approved dry cleaning ATCM; major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the Clean Air Act (CAA) Title V operating permit program.

On April 25, 1997, EPA received, through CARB, San Luis Obispo County Air Pollution Control District's (SLOCAPCD) request for approval to implement and enforce its November 13, 1996, revision of "Rule 432: Perchloroethylene Dry Cleaning Operations" (Rule 432), in place of the Federally-approved dry cleaning ATCM for area sources under SLOCAPCD's jurisdiction. The scope of SLOCAPCD's request is limited to the authorities previously granted to CARB in its request, i.e., the request does not include major sources and does not include the authority to determine equivalent emission control technology for dry cleaning facilities in place of 40 CFR 63.325.

II. EPA Action

A. SLOCAPCD's Dry Cleaning Rule

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 58 FR 62262, dated November 26, 1993). Under these regulations, a local air pollution control agency has the option to request EPA's approval to substitute a local rule for the applicable Federal rule. Upon approval, the local agency is given the authority to implement and enforce its rule in place of the otherwise applicable Federal rule. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.93 must be met.

After reviewing the request for approval of SLOCAPCD's Rule 432, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93. Accordingly, with the exception of the dry cleaning NESHAP provisions discussed in sections II.A.1 and II.A.2 below, SLOCAPCD is granted the authority to implement and enforce Rule 432 in place of the Federally-approved dry cleaning ATCM. Although SLOCAPCD now has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. As of the effective date of this action, SLOCAPCD's Rule 432 is the Federally-enforceable standard for area sources under SLOCAPCD's jurisdiction. This rule will be enforceable by the EPA Administrator and citizens under the CAA.

1. Major Dry Cleaning Sources

Under the dry cleaning NESHAP, dry cleaning facilities are divided between major sources and area sources. SLOCAPCD's request for approval included only those provisions of the dry cleaning NESHAP that apply to area sources. Thus, dry cleaning facilities using perchloroethylene that qualify as major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the CAA Title V operating permit program.

2. Authority to Determine Equivalent Emission Control Technology for Dry Cleaning Facilities

Under the dry cleaning NESHAP, any person may petition the EPA Administrator for a determination that the use of certain equipment or procedures is equivalent to the standards contained in the dry cleaning NESHAP (*see* 40 CFR 63.325). In its request, SLOCAPCD did not seek approval for the provisions in Rule 432 that would allow for the use of alternative emission control technology without previous approval from EPA (i.e., Rule 432 sections B.17, G.3.a.5, G.3.b.2.iii, and I). A source seeking permission to use an alternative means of emission limitation under CAA section 112(h)(3) must receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

B. California's Authorities to Implement and Enforce CAA Section 112 Standards

1. Penalty Authorities

As part of its request for approval of the dry cleaning ATCM, CARB submitted a finding by California's Attorney General stating that "State law provides civil and criminal enforcement authority consistent with [40 CFR] 63.91(b)(1)(i), 63.91(b)(6)(i), and 70.11, including authority to recover penalties and fines in a maximum amount of not less than $10,000 per day *per violation* . . ." [emphasis added]. In accordance with this finding, EPA understands that the California Attorney General interprets section 39674 and the applicable sections of Division 26, Part 4, Chapter 4, Article 3 ("Penalties") of the California Health and Safety Code as allowing the collection of penalties for multiple violations per day. In addition, EPA also understands that the California Attorney General interprets section 42400(c)(2) of the California Health and Safety Code as allowing for, among other things, criminal penalties for knowingly rendering inaccurate any

monitoring *method* required by a toxic air contaminant rule, regulation, or permit.

As stated in section II.A above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112, including the authority to seek civil and criminal penalties up to the maximum amounts specified in CAA section 113.

2. Variances

Division 26, Part 4, Chapter 4, Articles 2 and 2.5 of the California Health and Safety Code provide for the granting of variances under certain circumstances. EPA regards these provisions as wholly external to SLOCAPCD's request for approval to implement and enforce a CAA section 112 program or rule and, consequently, is proposing to take no action on these provisions of state law. EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the CAA. EPA does not recognize the ability of a state or local agency who has received delegation of a CAA section 112 program or rule to grant relief from the duty to comply with such Federally-enforceable program or rule, except where such relief is granted in accordance with procedures allowed under CAA section 112. As stated above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

Similarly, section 39666(f) of the California Health and Safety Code allows local agencies to approve alternative methods from those required in the ATCMs, but only as long as such approvals are consistent with the CAA. As mentioned in section II.A.2 above, a source seeking permission to use an alternative means of emission limitation under CAA section 112 must also receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

III. Administrative Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals under 40 CFR 63.93 do not create any new requirements, but simply approve requirements that the state or local agency is already imposing. Therefore, because this approval does not impose any new requirements, it does not have a significant impact on affected small entities.

B. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

C. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" as defined by 5 U.S.C. 804(2).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

E. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. section 7412.

Dated: November 23, 1997.

Felicia Marcus,

Regional Administrator, Region IX.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 63.14 is amended by revising paragraph (d)(1) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(d) * * *

(1) *California Regulatory Requirements Applicable to the Air Toxics Program*, August 1, 1997, IBR approved for § 63.99(a)(5)(ii) of subpart E of this part.

* * * * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by revising paragraphs (a)(5)(i) introductory text, (a)(5)(ii)(A) introductory text, and by adding paragraph (a)(5)(ii)(B), to read as follows:

§ 63.99 Delegated federal authorities.

(a) * * *

(5) * * *

(ii) Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program*, August 1, 1997 (incorporated by reference as specified in § 63.14) as described below.

(A) The material incorporated in Chapter 1 of the *California Regulatory Requirements Applicable to the Air Toxics Program* California Code of Regulations Title 17, section 93109) pertains to the perchloroethylene dry cleaning source category in the State of California, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

* * * * *

(B) The material incorporated in Chapter 2 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (San Luis Obispo County Air Pollution Control District Rule 432) pertains to the perchloroethylene dry cleaning source category in the San Luis Obispo County Air Pollution Control District, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(*1*) Authorities not delegated.

(*i*) San Luis Obispo County Air Pollution Control District is not delegated the Administrator's authority to implement and enforce those provisions of subpart M which apply to major sources, as defined in § 63.320(g). Dry cleaning facilities which are major sources remain subject to subpart M.

(*ii*) San Luis Obispo County Air Pollution Control District is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections B.17, G.3.a.5, G.3.b.2.iii, and I of Rule 432, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

* * * * *

[FR Doc. 97–32329 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–002–BU; FRL–5832–6]

Clean Air Act Reclassification; California—Santa Barbara Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finding that the Santa Barbara nonattainment area has not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date in the Clean Air Act (CAA) for moderate ozone nonattainment areas, which is November 15, 1996. The finding is based on EPA's review of monitored air quality data from 1994 through 1996 for compliance with the 1-hour ozone NAAQS. As a result of the finding, the Santa Barbara ozone nonattainment area will be reclassified by operation of law as a serious ozone nonattainment area on the effective date of this action. The effect of the reclassification will be to continue progress toward attainment of the 1-hour ozone NAAQS through the development of a new State implementation plan (SIP), due 12 months from the effective date of this action, addressing attainment of that standard by November 15, 1999.

EFFECTIVE DATE: January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Office of Air Planning, AIR–2, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1288.

SUPPLEMENTARY INFORMATION:

I. Background

Under sections 107(d)(1)(C) and 181(a) of the Clean Air Act (CAA) as amended in 1990, Santa Barbara County was designated nonattainment for the 1-hour ozone NAAQS and classified as "moderate." See 56 FR 56694 (November 6, 1991). Moderate nonattainment areas were required to show attainment by November 15, 1996. CAA section 181(a)(1).

Pursuant to section 181(b)(2)(A) of the CAA, EPA has the responsibility for determining, within 6 months of an area's applicable attainment date, whether the area has attained the 1-hour ozone NAAQS.[1] Under section 181(b)(2)(A), if EPA finds that an area has not attained the 1-hour ozone NAAQS, it is reclassified by operation of law to the higher of the next higher classification or to the classification applicable to the area's design value at the time of the finding. CAA section 181(b)(2)(B) requires EPA to publish a document in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified by operation of law. A complete discussion of the statutory provisions and EPA policies governing findings of whether an area failed to attain the ozone NAAQS can be found in the proposal for this action at 62 FR 46234 (September 2, 1997).

II. Proposed Action

On September 2, 1997, EPA proposed to find that the Santa Barbara ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date. The proposed finding was based upon ambient air quality data from the years 1994–1996. The data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on average more than one day per year over this 3-year period. Attainment of the 1-hour NAAQS is demonstrated when an area averages one or less days per year over the standard during a 3-year period. 40 CFR 50.9 and Appendix H. EPA also proposed that the appropriate reclassification of the area was to serious, based on the area's 1994–1996 design value of 0.130 ppm. This design value is well below the range of 0.180 to 0.280 ppm for a severe classification. For a complete discussion of the Santa Barbara ozone data and the method of calculating both the average number of days over the ozone standard and the design value, see 62 FR 46235–6.[2]

Finally, EPA proposed to require submittal of the serious area SIP revisions no later than 12 months from the effective date of the area's reclassification.

On July 18, 1997 (62 FR 38856), EPA revised the ozone NAAQS to establish a 8-hour standard; however, in order to ensure an effective transition to the new 8-hour standard, EPA also retained the 1-hour NAAQS for an area until such time as it determines that the area meets the 1-hour standard. See revised 40 CFR 50.9 at 62 FR 38894. As a result of retaining the 1-hour standard, CAA part D, subpart 2, *Additional Provisions for Ozone Nonattainment Areas*, including the reclassification provisions of section 181(b), remain applicable to areas that are not attaining the 1-hour standard. Unless otherwise indicated, all references in this notice are to the 1-hour ozone NAAQS.

[2] EPA wishes to correct one number in the table in the proposal entitled "Average Number of Ozone Exceedance Days Per Year in the Santa Barbara Area" (62 FR 46236). SBCAPCD pointed out that the correct site design value for the El Capitan station for 1994–1996 is 0.118 ppm, rather than 0.119 ppm.

III. Response To Comments

In response to its September 2, 1997 proposal, EPA received comments from the Environmental Defense Center, Congressman Walter Capps, the Santa Barbara County Air Pollution Control District (SBCAPCD), the Chair of the SBCAPCD Board, the California Air Resources Control Board (CARB), the Santa Barbara Association of Realtors, and one private citizen. EPA is grateful for the comments, suggestions, and helpful information, and the Agency responds below.

A. Comments Related to Splitting the Nonattainment Area and Reclassifying Only the South Portion of the County

The entire Santa Barbara County has been designated nonattainment and classified moderate since November 15, 1990, the date of enactment of the 1990 amendments to the Clean Air Act. 56 FR 56694 and 56 FR 56729. In the proposal, EPA noted that SBCAPCD had asked the Agency to consider dividing the County along a specific boundary line (for the most part, along the ridge of the Santa Ynez Mountain Range), and then applying the reclassification to only the south portion of the County. EPA proposed to determine, pursuant to section 181(a)(2), that the existing nonattainment area did not meet the 1-hour ozone NAAQS. However, in response to SBCAPCD's request, the Agency sought comment on the technical rationale for applying the resulting reclassification to only the south portion, including information on the north portion's impact on air quality in the south, and information on current and expected air quality in the north portion in relation to the new 8-hour ozone standard. 62 FR 46236.

Although a number of commenters urged splitting the nonattainment area, EPA is not currently inclined to do so, based on the available information, as discussed further below. Moreover, the Agency believes that in order to accomplish such a result, it would have to initiate additional rulemaking in order to comply with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* However, because most of the comments in response to the proposed reclassification were directed to this issue, EPA is preliminarily addressing them here.

1. Comments on the impacts of reclassifying only the south portion: The late Congressman Walter Capps encouraged EPA to change the size of the affected nonattainment area and focus control efforts on those areas that are causing the pollution problems. SBCAPCD and CARB expressed a desire to minimize the impacts of the reclassification to serious, particularly within the north portion of the county, where no site has violated the 1-hour ozone NAAQS since the 1989–1991 period.

EDC, on the other hand, noted specific adverse impacts if the north portion of the County were not to be bumped up: (1) The potential loss of revenues to the County from several Federal funding sources, including Congestion Management and Air Quality (CMAQ) monies; (2) the dislocating impacts on the County's fee structures and rule implementation and enforcement efforts, and other logistical and financial ramifications; (3) the loss of increased agricultural productivity in the north portion if the air quality benefits associated with the bump-up of the entire County are foregone; (4) the need to undertake a wholesale revision to the SIP, and to require additional emissions reductions only from sources in the south portion; (5) the disruption of air quality planning, if the north county (where the margin of attainment is very slim) slips back into nonattainment for the 1-hour standard, triggering the need for additional reductions, but too late to avoid a 1999 nonattainment finding; and (6) the complication for air quality planning if the north portion continues to exceed the 8-hour ozone NAAQS and the State and District must therefore prepare separate plans for the north and south portions.

Response: EPA fully supports streamlining and targeting plan requirements, and will work with SBCAPCD and CARB to maximize flexibility and cost effectiveness in the preparation of the SIP revision. So long as the few minimum CAA mandates are met, SBCAPCD and CARB are entitled to impose new controls of different stringency in different portions of the County. This is true regardless of whether or not the reclassification is restricted only to the south portion. Whether the reclassification may be limited to only the southern portion depends on the technical basis. The technical basis is discussed below. In any event, EPA believes that EDC raises important, potentially unfavorable consequences of splitting the County and reclassifying only the south portion. EPA urges CARB and SBCAPCD to consider such possible detrimental aspects of significantly changing the focus of air pollution control efforts in the County.

2. Comments on the technical basis for reclassifying only the south portion: SBCAPCD provided technical information on the air quality and meteorological basis for limiting the bump-up to the south portion, including an assessment of the contribution the north portion of the County has on days when the south portion exceeded the 1-hour ozone NAAQS in the period 1994 through 1996. SBCAPCD concluded from this analysis that on most of the exceedance days contributions from the north portion do not appear to be significant, but that on other exceedance days contributions from the north portion of the County could not be ruled out with the available data. The District noted that one monitor in the north portion recorded violations of the new 8-hour NAAQS for the 1994–1996 period, but SBCAPCD expressed the belief that anticipated reductions in regional and local emissions should cause the site to be in compliance with the 8-hour standard by 2000.

CARB pointed to the absence of violations of the 1-hour ozone standard in the north portion since 1991, referenced a downward emissions trend, and stated that the north and south portions of the County are geographically distinct. CARB concluded that EPA should reconsider the proposal to reclassify the entire County.

EDC, on the other hand, strongly opposed bifurcating the nonattainment area and presented: (1) technical information relating to rapid development now occurring in, or planned for, the north portion of the County, making an increase in mobile source emissions highly probable; (2) air quality data showing that several monitoring locations in the north portion experience exceedances or near-exceedances of the new Federal 8-hour NAAQS and routinely exceed the State 1-hour ozone standard (0.09 ppm); (3) arguments that the existing monitoring network is inadequate to record peak concentrations and that high elevation stations should be located near urbanized north County areas; and (4) arguments that modeling shows that the entire southern California region shares at least portions of airsheds at times, and that the north portion is both a downwind/recipient region and an upwind/contributor region, and that therefore the failure to bump up the north portion of the County could impair the efforts of Ventura and the South Coast areas to attain.

Response: EPA agrees with SBCAPCD that, for the period 1994–1996, most exceedances appear to have been influenced by areas to the southeast, rather than from the north portion of the County. EPA is not convinced at this time that the available data and analyses (which do not include photochemical modeling information) provide conclusive evidence that sources in the north portion would not significantly impact air quality in the south portion under meteorological conditions that have occurred in the area, and may occur in the future. While the existing modeling domain does not cover the bulk of the north portion, it is possible that useful urban airshed modeling (UAM) for the entire County will be available from the Southern California Ozone Study (SCOS), a broad scale regional air quality assessment undertaken this year. EPA hopes that this information will allow for a more informed decision regarding the impacts of emissions in the north portion on ozone concentrations in the south portion, both with respect to the 1-hour and the 8-hour ozone standards.

EPA continues to review the submitted data and conclusions, and has requested additional information from SBCAPCD relating to the amount of manmade and biogenic emissions in the north portion compared to the south portion of the County. SBCAPCD has provided this data, which is part of the rulemaking docket. The SBCAPCD data on point source emissions indicate that south county sources emit approximately 26% of reactive organic gases (ROG) and 8.5% of nitrogen oxides (NOx), north county sources emit roughly 53% of ROG and 65% of NOx, and the remaining emissions occur in the Outer Continental Shelf (OCS). EPA has not yet received data on the north-south split of mobile source emissions, including VMT, but the high proportion of industrial emissions in the north portion by itself suggests the potential for significant impacts from these sources on ozone concentrations in the south portion.

Moreover, as discussed in response to the comment below on procedural issues, EPA does not believe that the Agency could revise, in this final action, the nonattainment boundaries or establish separate nonattainment areas with different classifications, since the public involvement requirements of the Administrative Procedure Act, including notice and comment, have not yet been satisfied for this issue. EPA offers to work closely with the SBCAPCD, CARB, and other interested parties if they wish to assemble and analyze all of the necessary information to determine whether reclassification or redesignation is appropriate.

3. Comments on procedural issues associated with reclassifying only the south portion or redesignating the north portion to attainment: SBCAPCD noted that while certain procedural requirements of section 107 of the CAA may still need to be addressed, EPA may at this time determine that available information indicates that the north portion should not be classified as a serious nonattainment area. SBCAPCD stated that EPA can use its authority under section 110(k)(6) of the Act to correct the boundaries of nonattainment areas where information reveals that the previous boundaries were in error.

EDC stated that EPA's notice of proposed rulemaking cannot serve as a vehicle for redesignation of the nonattainment boundaries, since the notice did not propose partial reclassification and lacked the specificity to alert interested parties to the relevant facts. EDC concluded that a final EPA action reclassifying only the south portion would fail to meet the requirements of the Administrative Procedures Act regarding full disclosure of the legal basis, supporting facts, and logical rationale for a partial reclassification action, and therefore would fail to provide a fair opportunity for the public to consider and review the action. EDC also referenced section 107(d)(3)(E) of the CAA, which requires a series of determinations and approvals before redesignation to attainment, if the north portion were not to retain a moderate nonattainment classification but be redesignated to attainment. EDC noted that prerequisite to redesignation must be full approval of applicable attainment and maintenance plans, findings of the permanence and enforceability of emission reductions, and other factual conclusions which are not appropriate for the north portion of the County at this time.

Response: EPA agrees with EDC that the proposal published on September 2, 1997, does not meet applicable procedural requirements for public notice and involvement on issues relating to a bump up of only the south portion. For this reason, EPA is not taking final action at this time to divide the County into two nonattainment areas.

Moreover, as discussed above, EPA does not believe that currently available information supports a determination that the county-wide boundary for Santa Barbara is in error.

Finally, if the State and SBAPCD intend the north portion of the County to be redesignated to attainment, the CAA specifies both procedural and substantive steps that the Governor and EPA must take before a redesignation or boundary change is proposed.[3] If the State wishes the north portion to be designated as a separate nonattainment area, EPA would also need to identify appropriate SIP requirements for the area. EPA will protect the public's rights to be involved in, and to provide constructive input to, any future decisionmaking on reclassification and redesignation.

B. Comments Related to Pollutant Transport

Comment: SBCAPCD and the late Congressman Capps urged EPA to recognize the contribution of transport of air pollution into Santa Barbara County from upwind areas, and asked EPA to help ensure that these areas meet their responsibilities in mitigating their transport. SBCAPCD also requested EPA assistance in quantifying these impacts.

Response: As noted above, the SCOS was undertaken this year. The domain of the SCOS extends from Santa Barbara to northern Mexico. This study was designed to provide, for the first time, scientific information on the extent to which ozone and ozone precursors travel within this area. EPA has provided funding for the SCOS, and expects to continue to provide technical support to the cooperative project. EPA hopes that the SCOS will lead to the development of new analytical tools, including updated and enhanced UAM

[3] In the 1990 amendments to the Clean Air Act, Congress established by operation of law boundaries for ozone and carbon monoxide nonattainment areas classified as serious, severe, or extreme. Congress set the default boundary for these areas as the metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA). CAA Section 107(d)(4)(iv). This expensive boundary was selected in order to ensure that nonattainment areas would not be reduced to a size that would frustrate regional planning or jeopardize long-term attainment prospects because of pollution transported into the nonattainment area from rapidly growing suburban areas.

In section 107(d)(4)(A)(v) of the Act, Congress identified some of the criteria to be used in determining whether any portion of an MSA or CMSA could be excluded from an ozone or carbon monoxide nonattainment area. "Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport."

The State of California formally concurred in the county-wide boundaries for the Santa Barbara ozone nonattainment area, which were confirmed by EPA in the initial promulgation of designations and classifications under the 1990 amendments to the CAA. See letter from James D. Boyd, CARB Executive Officer, to Daniel W. McGovern, Regional Administrator, USEPA Region 9, dated March 15, 1991; and 56 FR 56729, November 6, 1991 (codified at 40 CFR 81.305).

modeling, to predict with much greater precision the air quality impacts of locally generated emissions and pollution transported from upwind areas. Based on this information, the State and local air pollution control districts should be able to develop more effective air quality plans that can speed progress toward meeting the health-based NAAQS and achieving other environmental benefits. In the meantime, EPA has advised all Southern California air pollution control agencies that they must responsibly implement their air quality plans to ensure that air quality progress in downwind areas is not jeopardized.

C. Miscellaneous Comments

Comment: The Santa Barbara Association of Realtors (SBAR) noted that only 7 percent of the total emissions in the County can be regulated by the SBCAPCD, that the District has gone just about as far as they can go to reduce emissions, and that the imposition of harsher air quality standards on the local business community will revert the County into another recession. SBAR urged flexibility, and recommended that EPA grant a waiver of one to three years for the County to meet the 1996 ozone standard, rather than punish the area "for failure to meet a questionable standard in a minuscule manner in an exact time period. * * *"

Response: EPA agrees with SBAR that the SBCAPCD and local industry working in concert have an excellent record of environmental commitment and innovation in identifying and implementing available controls. This extraordinary cooperative local effort was honored last year when the SBCAPCD received both the Presidential Award for sustainable Development and the Governor's Environmental and Economic Leadership Award.

While EPA may desire more flexibility in this situation to reward Santa Barbara County for its demonstrated leadership, the Agency has not been granted that flexibility under the Clean Air Act. The CAA does not allow for reviewing an area's efforts to adopt controls or the comparative availability of new control opportunities within an area. Determining whether an area met its attainment deadline is based solely on available ambient air quality data.

The classification structure of the Act is a clear statement of Congress's belief that the later attainment deadlines afforded higher-classified and reclassified areas as due to the greater stringency of controls. The reclassification provisions of the Clean Air Act are not punitive, but rather are a reasonable mechanism to assure continued progress toward attainment of the health-based ambient air quality standards when areas miss their attainment deadlines.

Neither the provisions of 40 CFR 50.9, as revised (62 FR 38856 and 62 FR 38894), nor any other statutory or regulatory provisions, provide EPA with the authority to suspend enforcement of the 1-hour NAAQS in Santa Barbara. Moreover, the Santa Barbara area has not complied with some of the most significant serious area requirements (e.g., the 9 percent rate of progress requirement). Finally EPA believes that complying with those requirements will have a positive, not detrimental, effect on the ability of Santa Barbara to comply with the 8-hour standard.

Comment: SBAR commented that EPA should complete a "cost versus benefit" analysis and should attempt to mitigate economic burdens associated with reclassification through incentive and inducement rather than punitive measures with a "command and control" mentality.

Response: Congress established in the CAA certain SIP requirements for serious ozone areas. EPA does not mandate any specific controls or control approach beyond these statutory requirements, and encourages State and local agencies to pursue pollution prevention and other techniques for achieving the CAA public health goals while minimizing costs and dislocations. The Agency encourages SBAR to suggest specific ways in which the Federal government could provide incentives and inducements.

Comment: EDC noted that EPA and SBCAPCD had delayed in responding to 1996 violations. EDC stated that setting a one year period after the effective date of EPA's action would allow too long a period for SIP submittal. EDC suggested February 1998 as the SIP submittal deadline, unless SBCAPCD begins adopting and implementing additional control measures immediately to assure progress towards attainment by November 1999.

Response: EPA believes that the SIP schedule—submission of a SIP meeting all applicable CAA requirements for a serious ozone nonattainment area by one year from the effective date of this final action—is ambitious but grants sufficient time for completing necessary technical analyses, interactions with involved agencies and the public, and rule development activities. In addition, this schedule should allow for implementation of the plan during the full ozone season in 1999, the attainment year. EPA believes that it would be unrealistic to require plan submission at an earlier date or to mandate prior rule adoption by the SBCAPCD.

IV. Final Action

EPA is finding that the Santa Barbara ozone nonattainment area did not attain the ozone NAAQS by November 15, 1996, the CAA attainment date for moderate ozone nonattainment areas. As a result of this finding, the Santa Barbara ozone nonattainment area is reclassified by operation of law as a serious ozone nonattainment area on the effective date of today's action and the submittal of the serious area SIP revisions will be due no later than 12 months from this effective date. The requirements for this SIP submittal are established in CAA section 182(c) and applicable EPA guidance.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future action. Each finding of failure to attain, request for an extension of an attainment date, and establishment of a SIP submittal date shall be considered separately and shall be based on the factual situation of the area under consideration and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's action is a "significant regulatory action" within the meaning of the E.O., and therefore should be subject to OMB review, economic analysis, and the requirements of the E.O. *See* E.O. 12866, sec. 6(a)(3). The E.O. defines, in sec. 3(f), a "significant regulatory action" as a regulatory action that is likely to result in a rule that may meet at least 1 of 4 criteria identified in section 3(f), including,

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that neither the finding of failure to attain it is making today, nor the establishment of SIP submittal schedule would result in any of the effects identified in E.O. 12866 sec. 3(f). As discussed above, findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed above, a finding of failure to attain (and the consequent reclassification by operation of law of the nonattainment area) under section 181(b)(2) of the Act, and the establishment of a SIP submittal schedule for a reclassified area, do not, in-and-of-themselves, directly impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply makes a factual determination and establishes a schedule to require States to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA reaffirms its certification made in the proposal (62 FR 46233) that today's final action will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates "any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more" in any 1 year. A "Federal mandate" is defined, under section 101 of UMRA, as a provision that "would impose an enforceable duty" upon the private sector or State, local, or tribal governments", with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA "establish[es] any regulatory requirements that might significantly or uniquely affect small governments." Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's "regulatory proposals" that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates "any rule for which a written statement is required under [UMRA sec.] 202," EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Generally, EPA has determined that the provisions of sections 202 and 205 of UMRA do not apply to this decision. Under section 202, EPA is to prepare a written statement that is to contain assessments and estimates of the costs and benefits of a rule containing a Federal Mandate "unless otherwise prohibited by law." Congress clarified that "unless otherwise prohibited by law" referred to whether an agency was prohibited from considering the information in the rulemaking process, not to whether an agency was prohibited from collecting the information. The Conference Report on UMRA states, "This section [202] does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule." 141 Cong. Rec. H3063 (Daily ed. March 13, 1995). Because the Clean Air Act prohibits, when determining whether an area attained the ozone standard or met the criteria for an extension, from considering the types of estimates and assessments described in section 202, UMRA does not require EPA to prepare a written statement under section 202. Although the establishment of a SIP submission schedule may impose a Federal mandate, this mandate would not create costs of $100 million or more, and therefore, no analysis is required under section 202. The requirements in section 205 do not apply because those requirements for rules "for which a written statement is required under section 202. * * *"

With regard to the outreach described in UMRA section 204, EPA discussed its proposed action in advance of the proposal with State officials.

Finally, section 203 of UMRA does not apply to today's action because the regulatory requirements finalized today—the SIP submittal schedule—affect only the State of California, which is not a small government under UMRA.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, ozone.

Dated: November 26, 1997.

Felicia Marcus,

Regional Administrator.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.305 the table for California—Ozone, is amended by revising the entry for "Santa Barbara-Santa Maria-Lompoc Area Santa Barbara County" to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA-OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * *	*	*	*	*
Santa Barbara-Santa Maria-Lompoc Area Santa Barbara County	11/15/90	Nonattainment	1–9–96	Serious.
* * * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97–32332 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300588; FRL–5758–2]

RIN 2070–AB78

Cyromazine; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of cyromazine and its metabolite melamine in or on lima beans and blackeye peas. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lima beans and blackeye peas. This regulation establishes a maximum permissible level for residues of cyromazine in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1998.

DATES: This regulation is effective December 10, 1997. Objections and requests for hearings must be received by EPA on or before February 9, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300588], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300588], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM 2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300588]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the insecticide cyromazine and its metabolite melamine in or on lima beans at 5.0 part per million (ppm) and blackeye peas at 5.0 ppm. This tolerance will expire and is revoked on December 31, 998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Cyromazine on Lima Beans and Blackeye Peas and FFDCA Tolerances

Insect pressure from the leafminer has increased over the past several years due to the rapid increase in the insect's resistance to currently registered insecticides and the resulting increase in insect populations. With the end of the California drought, over wintering has occurred in leafminer populations and mild weather has added to the resistance population with outbreaks increasing in the summer and carrying through the end of the harvest season. The applicant states that in 1996 some outbreaks were so severe that several fields (both lima bean and blackeye pea) were abandoned rather than harvested.

Current alternatives for use on blackeye peas have proven ineffective and there are few registered alternatives for control of leafminer in lima beans. EPA has authorized under FIFRA section 18 the use of cyromazine on lima beans and blackeye peas for control of leafminer in California. After having reviewed these submissions, EPA concurs that emergency conditions exist for this state.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of cyromazine in or on lima beans and blackeye peas. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on lima beans and blackeye peas after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether cyromazine meets EPA's registration requirements for use on lima beans and blackeye peas or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of cyromazine by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than California to use this pesticide on these crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for cyromazine, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to ten times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to ten times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1–6 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of these actions, EPA has sufficient data to assess the hazards of cyromazine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for the combined residues of cyromazine and its metabolite melamine on lima beans at 5.0 ppm and blackeye peas at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk.

EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyromazine are discussed below.

1. *Acute toxicity.* An acute dietary risk endpoint was not identified and an acute dietary risk assessment is not required.

2. *Short—and intermediate—term toxicity.* For short-term

Margin of Exposure (MOE) calculations, the Agency used a systemic NOEL of 0.75 milligrams/kilogram/day (mg/kg/day) from a 6-month dog feeding study. At the lowest effect level (LEL) of 7.5 mg/kg/day, there were changes in hematological parameters.

3. *Chronic toxicity.* EPA has established the RfD for cyromazine at 0.0075 mg/kg/day. This RfD is based on a 6-month feeding study in the dog with a NOEL of 0.75 mg/kg/day and a LEL of 7.5 mg/kg/day based on pronounced effects on hematological parameters and an uncertainty factor of 100.

4. *Carcinogenicity.* Cyromazine has been classified as a Group E (evidence of non-carcinogenicity for humans) chemical by the Agency's Cancer Peer Review (CPR) Committee.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.414) for the combined residues of cyromazine, in or on a variety of raw agricultural commodities at levels ranging from 1.0 ppm in tomatoes to 10 ppm in leafy vegetables.

Currently there are tolerances for residues of cyromazine and its metabolite melamine on the meat fat and meat by-products of chickens from the use of cyromazine as a feed-through. Risk assessments were conducted by EPA to assess dietary exposures and risks from cyromazine as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary risk endpoint was not identified and an acute risk assessment is not required.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions including 100% of crop treated for lima bean and blackeyed pea and most other commodities having cyromazine tolerances. The Agency used percent crop treated on such crops as tomatoes, peppers and lettuce and assumed all crops will contain cyromazine residues and those residues would be at the level of the tolerance. This will result in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The existing cyromazine tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in an Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD:

Subgroup	Percent
U.S. population (48 States)	34
Nursing infants (<1 year old)	12
Non-nursing infants (<1 year old)	53
Children (1–6 years old)	54
Children (7–12 years old)	44

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* Based on information available to the Agency, cyromazine is persistent and relatively mobile. There are no established Maximum Contaminant Levels for residues of cyromazine in drinking water. No health advisory levels for cyromazine in drinking water have been established.

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause cyromazine to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with cyromazine in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Cyromazine is not registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether cyromazine has a common mechanism

of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyromazine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyromazine has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

Chronic risk. Using the conservative ARC exposure assumptions described in Unit IV.B.1.ii. of this preamble, and taking into account the completeness and reliability of the toxicity data, EPA has calculated that dietary exposure to cyromazine from food will utilize 34% of the RfD for the U.S. population. The Agency generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cyromazine in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Under current Agency guidelines, the registered non-dietary uses of cyromazine do not constitute a chronic exposure scenario. The Agency concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to cyromazine residues.

D. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program.

Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyromazine, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter-and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* From the rat developmental study, the maternal (systemic) NOEL was 100 mg/kg/day, based on increased incidence of clinical signs and decreased body weight at the lowest observed effect level (LOEL) of 300 mg/kg/day. The developmental (pup) NOEL was 300 mg/kg/day, based on increased incidence of skeletal variations at the LOEL of 600 mg/kg/day.

From the rabbit developmental study, the maternal (systemic) NOEL was 10 mg/kg/day, based on decreased weight gain and food consumption at the LOEL of 30 mg/kg/day. The developmental (pup) NOEL was 80 mg/kg/day, the highest dose tested (HDT).

iii. *Reproductive toxicity study.* From the rat reproduction study, the maternal (systemic) NOEL was 50 mg/kg/day, based on body weight loss at the LOEL of 150 mg/kg/day. The reproductive/developmental (pup) NOEL was 50 mg/kg/day, based on decreased pup growth, decreased number of pups per litter, and increased fetotoxicity at the LEL of 150 mg/kg/day.

iv. *Pre-and post-natal sensitivity.* The toxicological data base for evaluating pre-and post-natal toxicity for cyromazine is complete with respect to current data requirements. There are no pre-or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study.

v. *Conclusion.* The Agency concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

2. *Chronic risk.* Using the conservative exposure assumptions described in Unit IV.B.1.ii. of this preamble, EPA has concluded that the percentage of the RfD that will be utilized by dietary (food) exposure to residues of cyromazine ranges from 53% for non-nursing infants less than one year old, up to 54% for children 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cyromazine in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants and animals is adequately understood.

The residue of concern is parent cyromazine and the metabolite melamine as specified in 40 CFR 180.414.

B. Analytical Enforcement Methodology

Adequate enforcement methodology for crops (HPLC with UV detector) is available in PAM II to enforce the tolerance expression.

C. Magnitude of Residues

Residues of cyromazine and its metabolite melamine are not expected to exceed 5.0 ppm in/on either lima beans or blackeyed peas as a result of this section 18 use. Secondary residues in animal commodities are not expected to exceed existing tolerances as a result of this section 18 use.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican MRL's for cyromazine on lima beans or blackeyed peas.

E. Rotational Crop Restrictions

Crops with permitted uses on the federal label may be planted as rotational crops, additionally sweet corn and radishes may be planted as rotational crops 3 months after the last application to beans.

VI. Conclusion

Therefore, the tolerance is established for combined residues of cyromazine in lima beans at 5.0 ppm and blackeye peas at 5.0 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 9, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300588] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 25, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.414, in paragraph (b) by alphabetically adding the following commodities to the table to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Beans, lima	5.0	12/31/98
* * *	* * *	* *
Peas, blackeyed	5.0	12/31/98
* * *	* * *	* *

* * * * *

[FR Doc. 97–32039 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45, CC 97–21; FCC 97–400]

Universal Service Support Mechanisms

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission authorized the Administrator of the universal service support mechanisms to require payment of quarterly contributions to universal service in equal monthly installments. Allowing monthly payments will reduce the cash flow impact on contributors because their payments will be smaller. It also will better enable contributors to offset their contributions by payments from the support mechanisms. It will not jeopardize the sufficiency of the support mechanisms.

EFFECTIVE DATE: January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Law, (202) 418–7400.

SUPPLEMENTARY INFORMATION:

SECOND ORDER ON RECONSIDERATION in CC Docket No. 97–21

I. Background

1. In the *Universal Service Order*, the Commission created new federal universal service support mechanisms and concluded that all telecommunications carriers that provide interstate telecommunications services, other providers of interstate telecommunications, and payphone service providers will contribute to universal service. (*See* Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96–45, FCC 97–157, 62 FR 32862 (June 17, 1997)). In the *NECA Report and Order*, the Commission instructed the National Exchange Carrier Association (NECA) to create an independent subsidiary, the Universal Service Administrative Company (USAC or Administrator), to administer temporarily portions of the universal service support mechanisms. (*See* Changes to the Board of Directors of the National Exchange Carriers Association, Inc., Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Docket No. 97–21, CC Docket No. 96–45, FCC 97–253, 62 FR 41294 (August 1, 1997)). The Commission also instructed the Administrator to bill contributors and collect contributions to the federal universal service support mechanisms on a quarterly basis.

2. USAC requests that it be authorized to collect universal service contributions on a monthly, as opposed to a quarterly, basis. USAC states that collecting contributions on a quarterly basis may create significant cash flow problems for contributors. USAC explains that, because of the delay between funds collection and funds distribution, monthly billing will not increase the likelihood that the Administrator will be required to borrow money to fund early requests for discounts by eligible schools and libraries. In addition, USAC notes that collecting contributions on a monthly basis will generate some interest income, albeit less than would be collected on a quarterly basis, that can be applied to meet program demands. NECA supports USAC's request.

II. Discussion

3. Based on the Administrator's request, we reconsider, on our own motion, our requirement that the Administrator collect contributions on a quarterly basis. Allowing monthly payments would reduce the cash flow impact on contributors because their payments would be smaller. It also would better enable contributors to offset their contributions by payments from the support mechanisms. We conclude that permitting monthly as opposed to quarterly contributions will not jeopardize the sufficiency of the support mechanisms. The Commission reduced the estimated total contribution base by two percent when calculating the universal service contribution factors to take account of the possibility that contributions to the support mechanisms may fall short of estimated levels due to, for example, uncollectibles or higher-than-foreseen demand. In addition, since March 20, 1998 appears to be the earliest date on which the Administrator could be required to make distributions under the schools, libraries, and rural health care programs,[1] we anticipate that, under our revised billing schedule, the Administrator will have sufficient funds to meet initial demand for support for these and all other service programs. USAC has not requested that we revise the manner in which the amount of each contributor's obligation is determined and we see no reason to do so. Thus, as provided in § 54.709 of the Commission's current rules, the Administrator will apply the quarterly contribution factors to determine the amount that contributors must remit to the Administrator. We amend § 54.709 of our rules to authorize the Administrator to require payment of those quarterly contributions in equal monthly installments.

4. We understand that USAC intended to begin sending out bills in December, 1997, which would require contributors to begin making payments in January, 1998. We find that both USAC and contributors need a reasonable opportunity to respond to the modification from a quarterly to a monthly billing schedule. We therefore direct USAC not to require contributors to make payments pursuant to the new universal service mechanisms set forth in section 254 prior to February 1998. This will provide USAC additional time to issue bills that are consistent with the billing modification set forth herein. The additional time will not delay disbursement of funds pursuant to the new universal service mechanisms, because distribution of funds pursuant to the schools and libraries and rural health care universal service programs will not begin before March 20, 1998 and distributions for the new high cost and low income universal service programs will not begin until February 1998.

III. Supplemental Final Regulatory Flexibility Analysis

5. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Order Establishing Joint Board (NPRM). In addition, the Commission prepared an IRFA in connection with the Recommended Decision, seeking written public comment on the proposals in the NPRM and Recommended Decision. A Final Regulatory Flexibility Analysis (FRFA) was also included in the *Order*. The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order conforms to the RFA, as amended.

A. Need for and Objectives of This Report and Order and the Rules Adopted Herein

6. The Commission is required by section 254 of the Act, as amended by the 1996 Act, to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. Our reconsideration was prompted by *ex parte* letters filed by USAC and NECA suggesting that contributions to the universal service support mechanisms be collected on a monthly, rather than the quarterly basis currently specified in our rules. In addition, on our own motion, we adopt a rule in order to give contributors and USAC a reasonable opportunity to respond to the billing modification.

B. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA

7. Other than those described in the *Order*, no additional comments were filed in response to the IRFAs described above. Nor were any comments filed in response to the *ex parte* letters from the Administrator and NECA.

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order Will Apply

8. In the FRFA at paragraphs 890–922 of the *Order*, we described and estimated the number of small entities that would be affected by the new universal service rules. The rule adopted here will apply to the same telecommunications carriers and entities affected by the universal service rules. We therefore adopt the provisions of paragraphs 890–922 of the *Order*.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

9. In the FRFA to the *Order*, we described the projected reporting, recordkeeping, and other compliance requirements and significant alternatives and steps taken to minimize significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Administration section of the *Order*. Because the rule adopted herein will only marginally affect those requirements, we adopt the provisions of paragraphs 980–981 of the *Order*, which describe those requirements and provide the following analysis of the new requirements adopted herein. Under the rule adopted herein, telecommunications carriers and providers must submit their quarterly contributions on a monthly basis. Although monthly contributions may slightly increase the paperwork burdens imposed on small entities, this payment scheme may reduce their cash flow burdens and thus provides an offsetting benefit. We also adopt a rule herein to provide contributors, including small entities, a reasonable opportunity to respond to the billing change.

IV. Ordering Clauses

10. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1–4, 201–205, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, and 405, § 1.108 of the Commission's rules, 47 CFR 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, this Order is adopted, effective 30 days from publication of the text in the **Federal Register**.

11. *It is further ordered* that part 54 of the Commission's rules, 47 CFR 54.709, is amended, effective January 9, 1998.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

[1] We calculate that March 20, 1998 reflects the earliest date on which the Administrator will distribute funds under these programs, by starting with November 24, 1997 and adding to it a 75-day period and two 20-day periods, derived from the requirements described below. The Schools and Libraries and Rural Health Corporations must authorize USAC to disburse the appropriate payment amounts as quickly as possible, but no later than 20 days following receipt of the requisite forms. USAC must distribute payments as quickly as possible, but no later than 20 days following receipt of authorization to disburse funds. In addition, the Schools and Libraries and Rural Health Care Corporations established 75-day window filing periods in which all requests will be treated with equal priority. The window period will begin to run when the Schools and Libraries and Rural Health Care Corporations begin to receive applications for support. Funds will not be committed until the closing of the 75-day window filing period. Thus, even assuming the window period were to begin on November 24, 1997, support would not begin to be distributed before March 20, 1998.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

Part 54 of title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.709 is amended by revising paragraph (a)(4) and adding a new paragraph (a)(5) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) * * *

(4) For each quarter, the Administrator shall bill contributors monthly and require payment of contributions in equal monthly installments.

(5) The Administrator shall not require contributors to make payments pursuant to the universal service mechanisms set forth in 47 U.S.C. 254 prior to February 1998.

* * * * *

[FR Doc. 97–32178 Filed 12–9–97; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 237
Wednesday, December 10, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM–40–26]

Chromalloy Tallahassee; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated July 17, 1997, which was filed with the Commission by Chromalloy Tallahassee. The petition was docketed by the NRC on September 11, 1997, and has been assigned Docket No. PRM–40–26. The petitioner requests that the NRC amend its licensing exemptions to establish an exemption from licensing requirements to include the M1A1 Battle Tank Engine AGT 1500 which contains nickel-thorium.

DATES: Submit comments by February 23, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner, Chromalloy Tallahassee (Chromalloy) is a Federal Aviation Administration approved Overhaul & Repair facility located in Florida, which is an NRC Agreement State. Chromalloy overhauls and repairs jet engine combustors, one of which has a component, specifically the JT9D jet engine, that falls under the exemption from licensing found in 10 CFR 40.13(c)(8), as adopted by the State of Florida at Subsection 10D–91.302(3) of the Florida Administrative Code.

Background

The petitioner is interested in developing a repair for the M1A1 ABRAMS Main Battle Tank. The M1A1 ABRAMS Main Battle Tank is driven by the AGT 1500 Gas Turbine Engine. The hot section or combustor of the AGT 1500 is made up of 15 splash rings and 15 fuel nozzles all of which are nickel-thoria alloy. The thorium content of the nickel-thoria alloy in the splash rings and fuel nozzles contain less than 2% by weight and the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide). The petitioner stated that the splash rings and the fuel nozzles meet all the technical requirements of the current exemption, except that the exemption is limited to finished aircraft engine parts.

The NRC's current regulations state:

§ 40.13 Unimportant quantities of source material.

* * * * *

(c) Any person is exempt from the regulation in this part and from the requirements for a license set forth in section 62 of the Act to the extent that such person receives, possesses, uses, or transfers:

* * * * *

(8) Thorium contained in any finished aircraft engine part containing nickel-thoria alloy. *Provided*, That:

(i) The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(ii) The thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

* * * * *

The Petition

The petitioner requests that the NRC amend its regulations in § 40.13(c)(8) to establish an exemption from licensing requirements to include the M1A1 Battle Tank Engine AGT 1500 which contains nickel-thorium.

Because the petitioner is located in an NRC Agreement State, it requested that the Florida Department of Health grant an interpretation of the current exemption to include the M1A1 ABRAMS Main Battle Tank Engine. The petitioner stated that the Florida Department of Health would not grant its request and advised the petitioner that Florida Department of Health was under the impression that the NRC was reevaluating the NRC's position on the nickel-thorium exemption.

In support of its petition, Chromalloy has referenced a petition for rulemaking submitted to the NRC by E. I. du Pont de Nemours & Company (PRM–40–6) dated February 13, 1963, that requested the Commission's regulations be amended to establish an exemption from licensing requirements for persons receiving, possessing, using, transferring or importing into the United States any finished products or part fabricated of, or containing nickel-thorium alloys containing up to 4 percent thorium by weight. The petitioner pointed out that the NRC's response had been:

The Commission has found that the possession and use in the United States of thorium contained in thorium metal alloys in which the thorium does not exceed 4 percent by weight is not of significance to the common defense and security, and that such activities can be conducted without unreasonable hazard to life or property.

The proposed exemption was for "any finished product or part;" nowhere in PRM–40–6 do the words "aircraft engine parts" appear.

The petitioner stated that the final exemption was not published until November 18, 1967 (32 FR 15872) and that the expression "jet aircraft engines" is mentioned for the first time in that notice.

After consulting with the NRC, the petitioner believes that the material

used for the experimental test for the final exemption must have been from jet aircraft engines, which at this stage in the development and use of nickel-thoria components in engines was the only application. This is possibly the reason that the exemption specifies only jet aircraft engines. The M1A1 Battle Tank Engine AGT 1500 was not developed until after 1967. The M1A1 Battle Tank Engine AGT 1500 contains the same nickel-thoria alloy as is contained in the JT9D jet engine. The petitioner also has pointed out that the material in the M1A1 Battle Tank Engine AGT 1500 would produce the same results if put to the same experimental tests the Commission conducted in 1963–1967.

In support it its petition, Chromalloy asserts that the NRC considers that jet aircraft engine products are not intended for public use, and cites a **Federal Register** notice published by the Atomic Energy Commission on November 18, 1967 (32 FR 15872) as a basis for this assertion:

> The Commission considers that finished aircraft engine parts containing nickel-thoria alloy are not products intended for use by the general public within the purview of § 150.15(a)(6) of 10 CFR Part 150, "Exemptions and Continued Regulatory Authority in Agreement States Under Section 274." Accordingly, the transfer of possession or control of such finished aircraft engine parts in Agreement States by the manufacturer, processor, or producer would not be regulated by the Commission.

Finally, the petitioner asserts that if the Commission does not view the presence of nickel-thoria in jet aircraft engines to be unsafe to the public, then the presence of nickel-thoria in tank engines should be reviewed in the same light because the public's exposure to battle tank engines is far less than the public's exposure to aircraft engines. Therefore, the petitioner believes that the exemption must apply to both the JT9D aircraft and the M1A1 AGT 1500 battle tank gas turbine engine.

Dated at Rockville, Maryland, this 3rd day of December, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–32273 Filed 12–9–97; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

[Notice 1997–17]

11 CFR Part 114

Qualified Nonprofit Corporations

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: notice of availability.

SUMMARY: On November 17, 1997, the Commission received a Petition for Rulemaking from the James Madison Center for Free Speech urging the Commission to begin a rulemaking proceeding to conform portions of its regulations to a decision of the United States Court of Appeals for the Eighth Circuit. These regulations set forth the scope of the exemption from the prohibition on corporate independent expenditures for a narrow class of non-profit ideological corporations. The petition is available for inspection in the Commission's Public Records Office.

DATES: Statements in support of or in opposition to the petition must be filed on or before January 23, 1998.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to qncpetition@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On November 17, 1997, the Commission received a Petition for Rulemaking from the James Madison Center for Free Speech requesting that the Commission institute a rulemaking proceeding to conform its regulations at 11 CFR 114.10 to the decision of the United States Court of Appeals for the Eighth Circuit in *Minnesota Citizens Concerned for Life* v. *Federal Election Commission*, 113 F.3d 129 (8th Cir. 1997). These regulations describe a category of nonprofit corporations that are exempt from the prohibition on independent expenditures in 2 U.S.C. § 441b. *See also* 11 CFR 114.2.

Copies of the petition are available for public inspection in the Commission's Public Records Office, 999 E Street, N.W., Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Copies of the petition can also be obtained at any time of the day and week from the Commission's home page at www.fec.gov, or from the Commission's FAXline service. To obtain copies of the petition from FAXline, dial (202) 501–3413 and follow the FAXline service instructions. Request document #233 to receive the petition.

Members of the public are invited to comment on the petition. All statements in support of or in opposition to the petition should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to qncpetition@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. All comments, regardless of form, must be submitted by January 23, 1998.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: December 5, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97–32287 Filed 12–9–97; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–44]

Proposed Amendment to Class E Airspace; Ravenswood, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Ravenswood, WV. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Jackson-County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before January 9, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–44, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–44." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Ravenswood, WV. A GPS Runway (RWY) 22 SIAP, and a GPS RWY 4 SIAP have been developed for the Jackson County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5 Ravenswood, WV [Revised]

Jackson County Airport, Ravenswood, WV
(lat. 38°55'47"N., long. 81°49'10"W.)

That airspace extending upward from 700 feet above the surface within a 11-mile radius of Jackson County Airport, excluding that portion that coincides with the Point Pleasant, WV, and Gallipolis, OH, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on November 19, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–32349 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–51]

Proposed Establishment of Class E Airspace; Friendship (Adams), WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Friendship

(Adams), WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 33 has been developed for Adams County Legion Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) within a 9.4-mile radius of the airport is needed to contain aircraft executing the approach.

DATES: Comments must be received on or before January 12, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–51, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michell M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–51." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Friendship (Adams), WI, to accommodate aircraft executing the GPS Runway 33 SIAP for Adams County Legion Field Airport. Controlled airspace extending upward from 700 to 1200 feet AGL within a 9.4 mile radius is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet Or More Above the Surface of the Earth

* * * * *

AGL WI E5 Friendship (Adams), WI [New]

Adams County Legion Field Airport, WI
(lat. 43°57'40"N, long. 89°47'17"W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of the Adams County Legion Field Airport, excluding that portion within the Necedah, WI, and New Lisbon, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on November 12, 1997.

David B. Johnson,

Assistant Manager, Air Traffic Division.

[FR Doc. 97–32350 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 971110266–7266–01]

RIN 0691–AA31

Direct Investment Surveys: Raising Exemption Level for Two Surveys of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed rules to amend 15 CFR 806.15 by raising the exemption level for reporting in two surveys of foreign direct investment in the United States: raise the exemption level for Forms BE–605 and BE–605 Bank to $30 million from $20 million; and raise the exemption level for Forms BE–13 and BE–14 to $3 million from $1 million.

The purpose of these changes is to bring the surveys into conformity with the proposed design of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997. It is expected that the changes will effect a reduction in the number of reports filed by U.S. affiliates of foreign persons and thereby reduce reporting burden. BEA is proposing other changes to the surveys that do not require a change in the rule, and that may increase the reporting burden slightly for the BE–605 survey, thereby offsetting a portion of the reduction in burden that results from raising the exemption level.

DATES: Comments on the proposed rules will receive consideration if submitted in writing on or before January 26, 1998.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room M–100, 1441 L Street NW., Washington, DC 20005. Comments received will be available for public inspection in Room 7006, 1441 L Street NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone 202–606–9800.

SUPPLEMENTARY INFORMATION: The two surveys affected by these changes are part of the Bureau of Economic Analysis (BEA) data collection program for foreign direct investment in the United States. The surveys, the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent, together with the BE–605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent, and the BE–13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate, together with BE–14, Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters Into a Joint Venture with, a Foreign Person, are mandatory and are conducted pursuant to the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108, as amended).

The proposed changes will bring reporting by U.S. affiliates on the BE–605 quarterly survey, the first of the two surveys, into conformity with their reporting on the proposed BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997. The BE–12 is BEA's quinquennial census of foreign direct investment in the United States; it collects annual data and is intended to cover the universe of U.S. affiliates. (A U.S. affiliate is a U.S. business enterprise in which a foreign person owns or controls ten percent or more of the voting stock, or an equivalent interest in an unincorporated business enterprise.) The BE–605 is a sample survey covering only larger U.S. affiliates. The sample data reported in the BE–605 survey will be linked to data from the BE–12 benchmark survey in order to derive universe estimates by quarter for benchmark and nonbenchmark years. Under this proposed rule, the exemption level for the BE–605 survey will be raised from more than $20 million to more than $30 million of assets, sales, or net income. The proposed level of $30 million is the same as that proposed to be used in the BE–12 Benchmark Survey of Foreign Direct Investment in the United States—1997, to determine whether reporting companies are required to provide similar balance of payments data on the BE–12(SF) short form. Below the $30 million threshold, companies reporting on the BE–12 do not provide these data.

In addition to raising the exemption level, BEA is proposing one other change to the BE–605 survey form. Specifically, it is proposing that trade in services between U.S. affiliates and their foreign parents be reported once each year by type of service, similar to reporting on the proposed BE–12 benchmark survey. This change is necessary to bring the data collected on foreign direct investment in the United States into conformity with those collected on U.S. direct investment abroad data and also with current international guidelines for the compilation of balance of payments accounts. Currently BEA can only provide detail by type of service for unaffiliated, but not affiliated, transactions for foreign direct investment in the United States. However, this addition does not require a rule change and is indicated here only for information. The revised BE–605 and BE–605 Bank forms would be required to be filed beginning with the report for the first calendar quarter of 1998.

For the BE–605 survey, an increase in the reporting burden due to adding the requirement to provide information on services transactions by type of service has been kept to a minimum by requesting that the added information be reported only once each year. Many respondents do not have transactions in services and will not have to file the added information; those that do will only be required to provide it once each year, along with other data that are already required to be filed annually following the end of their fiscal year. In order to allow for respondents' review of the additional instructions and the provision of the information that will be required only on an annual basis, the average burden was increased by one-fourth of an hour (1 hour for one of the four quarters for which reports will be filed). The reporting changes will only affect the BE–605 and not the BE–605 Bank form and are the minimum necessary to maintain consistency with the benchmark survey. However, because of raising the reporting threshold to $30 million from $20 million, BEA estimates that 650 companies, or 14 percent of potential respondents, will drop out of the reporting sample, thus reducing the increased burden associated with reporting services transactions by type.

The second of the two surveys affected by these rules changes is the BE–13 new investment survey. In the proposed 1997 BE–12 benchmark survey, the reporting threshold is raised to over $3 million from over $1 million of assets, sales, or net income in the previous benchmark survey. Accordingly, BEA proposes to raise the threshold for reporting on the BE–13 new investment survey (measured by the acquired or established U.S. company's total assets) to $3 million to correspond to the initial reporting level on the BE–12. For both surveys, the BE–13 and BE–12, only an exemption claim must be filed for companies below the $3 million level, thereby reducing

respondent burden for small companies. A concomitant requirement on the BE–13 that a report be filed for all acquisitions of 200 or more acres of U.S. land will not be changed. The exemption level for the related form BE–14 also is raised to correspond to the new $3 million threshold for the BE–13.

To maintain consistency with the benchmark survey, BEA also proposes to base the industry coding system used on the BE–13 on the new North American Industry Classification System (NAICS) in place of the current system, which is based on the U.S. Standard Industrial Classification System. However, this modification does not require a rule change and therefore is not reflected in this proposed rule. The revised BE–13 and BE–14 report forms would be required to be filed for reports covering 1998 transactions.

The change in the basis for industry coding should not affect the average reporting burden for the BE–13 new investment survey. However, BEA estimates that 300 potential respondents to the survey will not be required to file in the survey because of raising the reporting threshold to $3 million from $1 million. This represents a 20 percent decrease in the estimated number of reporters that would otherwise be required to report in the survey.

A copy of the proposed survey forms may be obtained from: Chief, Direct Investment in the United States Branch, International Investment Division, BE–49, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–5577.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget Control Number.

Public reporting burden for the BE–605 collection of information is estimated to vary from ½ hour to 4 hours per response with an average 1¼ hours per response. The estimated average burden of 1¼ hours per form includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public reporting burden for the BE–13 collection of information is estimated to vary from 1 to 4 hours per response, with an average 1½ hours per response. The estimated average burden of 1½ hours includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0009 (BE–605/605 Bank) or Paperwork Reduction Project 0608–0035 (BE–13/14), Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and many that are will not be required to report because of these proposed changes. For the BE–605 quarterly survey, the proposed rule changes increase the exemption level at which reporting will be required, thereby eliminating the reporting requirement for a number of small companies. For the BE–13 new investment survey, the reporting threshold is being raised from $1 million to $3 million, thus eliminating an additional number of small companies that would have been required to file. These provisions are intended to reduce the reporting burden on smaller companies.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting and recordkeeping requirements.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

§ 806.15 [Amended]

2. Section 806.15(b)(1) is amended by deleting "$20,000,000" and inserting in its place "$30,000,000."

3. Section 806.15(h)(2) is amended by deleting "$20,000,000" and inserting in its place "$30,000,000."

4. Section 806.15(j)(3)(ii)(b) is amended by deleting "$1,000,000" and inserting in its place "$3,000,000."

5. Section 806.15(j)(3)(ii)(c) is amended by deleting "$1,000,000" and inserting in its place "$3,000,000."

6. Section 806.15(j)(4)(ii)(b) is amended by deleting "$1,000,000" and inserting in its place "$3,000,000."

[FR Doc. 97–32251 Filed 12–9–97; 8:45 am]
BILLING CODE 3510–06–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–217–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky submitted a letter requesting the removal of an amendment at 30 CFR 917.17(a) which required that it maintain a staffing level of 156 field inspectors and, in the same letter, provided justification for its request. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.S.T.], January 9, 1998. If requested, a public hearing on the proposed amendment will be held on January 5, 1998. Requests to speak at the hearing must be received by 4:00 p.m., [E.S.T.], on December 29, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2896.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated November 3, 1997 (Administrative Record No. KY–1418), Kentucky submitted a proposed amendment to its program requesting the removal of an amendment at 30 CFR 917.17(a) requiring that Kentucky maintain a staffing level of 156 field inspectors. In the same letter, Kentucky provided the following justification for its request:

1. Field inspector staffing levels are no longer based on 1984 inspection numbers and budgetary needs.

2. A study performed during the National Wildlife Federation Settlement Agreement determined that a cap of 24 inspectable units per field inspector should be established.

3. OSM has accepted the limits set by the study in determining inspection staff levels as indicated by the approval of Title V administrative and enforcement grants.

4. OSM's annual reports indicate that Kentucky's Title V regulatory program consistently meets high inspection frequency levels.

Kentucky also maintains that using a fixed number of field inspectors fails to provide the latitude necessary to adapt its inspection force to changing conditions in the coal industry. Further, the number of inspectors Kentucky maintains is based on the current and ever-changing number of inspectable units.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., [E.S.T.] on December 29, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under "**FOR FURTHER INFORMATION CONTACT.**"

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards

are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)),

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1997.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97-32222 Filed 12-9-97; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI74-01-7303; FRL-5929-8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this action is to propose approval of the State of Wisconsin's Prevention of Significant Deterioration (PSD) rules, Natural Resources (NR) 405.01 through NR 405.17, as a revision to the Wisconsin State Implementation Plan (SIP). The State developed rules as Wisconsin's plan to prevent significant deterioration of air quality in areas designated as unclassifiable or attainment of the National Ambient Air Quality Standards (NAAQS) and to satisfy the requirements of part C of the Clean Air Act (Act). EPA is approving these rules because they meet EPA's regulation governing State PSD programs. In addition to the PSD rules, Wisconsin has submitted rules as a revision to the SIP to establish breathable particulates (PM-10) as a basis for the determination of particle concentrations for permitting purposes under the PSD program and, therefore, tie the new source permit evaluations directly to human health standards. Finally, Wisconsin submitted as a revision to the SIP changes of a "clean-up" nature, intended to correct errors in content or style, to improve consistency, or clarify existing policy and procedures.

DATES: Comments on this revision and on the proposed EPA action must be received by January 9, 1998. Comments received in response to EPA's January 4, 1994 proposed disapproval of NR 405 will, if still applicable, be responded to at the time of EPA's final rulemaking on this rule and need not be resubmitted.

ADDRESSES: Comments should be submitted to Carlton Nash, EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604. Copies of the State's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the above Region 5 address. Please contact Constantine Blathras at (312) 886-0671 to arrange a time if inspection of these materials is desired.

Copies of the submittal are also located at the Bureau of Air Management, Wisconsin Department of Natural Resources, 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886-0671.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The 1977 Amendments to the Act added part C to Title I, which required implementation of a PSD program. On June 19, 1978, EPA promulgated a PSD program to meet the requirements of part C, 50 CFR 52.21, which contains the procedures and requirements which EPA follows when it carries out the mandates of part C itself. These Section 52.21 requirements were then promulgated into those State SIPs where a State did not have an approvable plan in place. Section 52.21 provides that its requirements and authorities, or part thereof, can be delegated to the State and local air programs if EPA determines they have the ability and authority to carry out its mandates.

On June 19, 1978, (43 FR 26410), EPA promulgated the Federal PSD program, 40 CFR 52.21 (b-v), into the Wisconsin SIP at 40 CFR 52.2581 because Wisconsin had not submitted an approvable PSD program. On August 19, 1980, EPA gave Wisconsin partial delegation to run the Federal PSD program and on November 13, 1987, gave Wisconsin full delegation of the program, except for sources within the exterior boundaries of a Tribal reservation.

Section 301(d) of the Act authorizes the Administrator to determine which Act authorities are appropriate for Tribes to administer within the exterior boundaries of its reservations and to promulgate rules as to how Tribes can assume these authorities. These rules were proposed, but have yet to be promulgated. EPA recognizes that a Tribe will upon promulgation generally have inherent sovereign authority over air resources within the exterior boundaries of its reservation, if requested and approved. Until such time, EPA will continue to implement these programs within the exterior boundaries of Indian reservations. Therefore, EPA did not delegate and is proposing to not approve Wisconsin's PSD or PM-10 rules for application with the exterior boundaries of Tribal reservations.

On March 16, 1987, the Wisconsin Department of Natural Resources (WDNR) requested the Regional Administrator to include Chapter NR 405 of the Wisconsin Administrative Code as part of the SIP to meet the requirements of part C of the Act and as a replacement for EPA's delegated program (40 CFR 52.2581). Rule NR 405 deals exclusively with PSD permitting requirements. On January 4, 1994 (59 FR 278), EPA proposed to disapprove Wisconsin's PSD SIP revision, NR 405.01 through NR 405.17. The deficiencies in the proposal were addressed by the WDNR in comments on March 8, 1994, and, to avoid having the SIP revision formally disapproved, the WDNR withdrew the original submittal.

On November 6, 1996, the WDNR submitted a request for approval of its PSD program, as revised. More specifically, this submittal addresses the deficiencies listed in the January 4, 1994, **Federal Register** document proposing to disapprove the State of Wisconsin's PSD rules as a revision to the Wisconsin SIP. On December 18, 1996, EPA sent a letter to the WDNR deeming the revised submittal complete and initiating the processing of the request. The following analysis addresses the review of the submittal with respect to the requirements found in EPA's regulation governing State PSD programs (40 CFR 51.166).

II. Approvability Analysis

Wisconsin NR 405 deals exclusively with PSD permitting requirements. EPA evaluated NR 405 by comparing each section of the rule to the appropriate paragraph of 40 CFR 51.166 (formerly 40 CFR 51.24). Listed below are the deficiencies formerly found and raised in the January 4, 1994, **Federal Register** document and how the WDNR addressed those concerns. All other portions of NR 405 were found previously to be approvable and remain so.

A. NSPS and NESHAP

1994 Deficiency: The Federal PSD definitions at 40 CFR 51.166 pertaining to (1) Best Available Control Technology" (BACT), (2) "Allowable emissions," (3) "Federally enforceable," and (4) the control technology review requirements make reference to applicable standards and standards of performance under 40 CFR part 60 (NSPS) and 40 CFR part 61 (NESHAPS), respectively. In the comparable provisions of the State rule, the State referred to other NR 400 series chapters, i.e., NR 400, 445 to 499, and 400 to 499 of the State code. Although the State may have intended that these chapters approximate the requirements of 40 CFR part 60 and 40 CFR part 61, Wisconsin's NSPS and NESHAP regulations are not federally enforceable and may, in certain circumstances, differ significantly from the parts 60 and 61 requirements in the Federal PSD requirements. Furthermore, the references to parts 60 and 61 requirements in the Federal PSD requirements for BACT and control technology review (sections 51.166 (b)(12) and 51.166 (j)(1), respectively) set minimum emissions requirements. Because under the State rules, the State could set less stringent NSPS and NESHAP emission limits than the Federal standards, or not set any limits at all, the State PSD provisions which were dependent upon the requirements of Chapter NR 400 and Chapters NR 445 to 499 were not approvable. Section 116 of the Act prohibits States from adopting standards and limitations that are less stringent than Federal standards and limitations.

WDNR Response: Wisconsin changed the definitions of "allowable emissions" (NR 405.02(2), Wis. Adm. Code), "BACT" (NR 405.02(7), and "federally enforceable" (NR 400.02(39M). Wisconsin also changed section NR 405.08, to reflect the requirement that limits set in a PSD permit can not be less stringent than an applicable requirement in 40 CFR parts 60, 61, or 63, in addition to the requirements contained in the States rules.

EPA Analysis: WDNR has adequately addressed the deficiency.

B. Stack Height

1994 Deficiency: The provisions in 40 CFR part 51, Subpart I—"Revision of New Sources and Modifications" set forth both general and specific requirements for permitting PSD sources, including definitions. In order for the State to implement the stack height provision in accordance with 40 CFR 51.164 and 51.166(h), it must have definitions of such terms as "stack," "dispersion technique," and "good engineering practice."

WDNR Response: On November 6, 1985, the State submitted a letter stating that permits issued for new or modified sources will conform with the requirements with the Stack Height Regulation, as set forth in the **Federal Register** on July 8, 1985, until such time that the State promulgates it own rule.

EPA Analysis: As submitted, this provision meets the stack height requirements of the PSD program, and EPA approved Wisconsin's commitment on August 4, 1989 (54 FR 32074), as a portion of Wisconsin's stack height plan. Wisconsin understands that the current commitment stated in the **Federal Register** document is still approvable. No additional corrections are needed.

C. Federally issued PSD permits

1994 Deficiency: The State's definition of "major modification," NR 405.02(21)(b)(c), exempted increases in hours of operation or production rates from review unless such increases were prohibited by permits issued after January 6, 1975, under NR 405. This rule was deficient for not requiring review of sources with such increases if the increases were prohibited by previously issued Federal permits or during the period when EPA issued the permits prior to the delegation of the program's authority. The State rule only exempted from the exclusion those permits with conditions "pursuant to this chapter," i.e., the Wisconsin rule. There was no requirement for review of modifications to federally issued permits with exemptions pursuant to 40 CFR 52.21.

WDNR Response: Wisconsin changed the definition of "major modification" (NR 405.02(21)(b)6., to include any language excluding from exemption actions prohibited by federally issued permits pursuant to 40 CFR 52.21.

EPA Analysis: WDNR has adequately addressed the deficiency.

D. Source specific allowable emissions

1994 Deficiency: NR 405.02(1) contains the term "source specific allowable emissions". The meaning of the term was unclear. The analogous Federal rule in 40 CFR part 52 depends upon the preamble language published in the **Federal Register** on August 7, 1980 (45 FR 154) to quantify the term to exclude cases where data on actual emissions are available. EPA recommended that the language in NR 405.02(1) be clarified so that the State term would have the same meaning as the Federal term.

WDNR Response: Wisconsin disagreed with EPA's assessment and consequently did not take action to clarify the phrase "source specific allowable emissions" contained in NR 405.02(1)(b).

Wisconsin noted that EPA implements the Federal PSD program under 40 CFR part 52 whereas part 51 contains SIP requirements. EPA has promulgated the requirements for SIP

approval of the PSD program in 40 CFR 51.166.

Section 40 CFR 51.166(b) states:

"All State plans shall use the following definitions for the purposes of this section. Deviations from the following wording will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions below."

Section NR 405.02(1)(b), which contains the phrase "source specific allowable emissions" uses this term in exactly the same manner as EPA uses it in 40 CFR 51.166(b)(21)(iii), the definition which 40 CFR 51.166(b) requires the State plan to use. Nowhere in 40 CFR 51.186 is there a requirement that "source specific allowable emissions" be defined even though it appears in the part 52 Federal regulation. Wisconsin asserted that if EPA wanted States to define this term in State rules, EPA could have and should have put such a requirement in 40 CFR 51.166(b).

WDNR also demonstrated that the requirements in the State rule meet the SIP requirements in 40 CFR part 51, and that the preamble in the **Federal Register** regarding 40 CFR part 52 does not apply to 40 CFR part 52 approvals.

EPA Analysis: The State definition meets the Federal definition found in 40 CFR 51.166(b)(21)(iii) and is approvable.

E. PSD Increments

1994 Deficiency: The State PSD increments for sulfur dioxide and particulate matter are found in Chapter NR 404.05. The increments were not included in Wisconsin's March 16, 1987 PSD submittal.

WDNR Response: Wisconsin included the increments in its November 24, 1992, submittal.

EPA Analysis: WDNR has adequately addressed the deficiency.

F. Modeling Guidelines

1994 Deficiency: The modeling guidelines referenced in NR 405.10 were outdated, although they were current at the time of the 1987 submittal. To make NR 405.10 approvable as a SIP revision, it would either have to reference the most recent guidelines (see 40 CFR 165(1)) or state that the applicant must use EPA's most current applicable guideline models.

WDNR Response: Wisconsin changed NR 405.10 to require the use of "air quality models, data bases, and other requirements specified in the Guideline on Air Quality Models (Revised) in Appendix W of 40 CFR part 51, incorporated by reference in NR 484.04. The rulemaking on this change to NR 405.10 was completed at the same time as the PM–10 increment rules. The PM–10 increment rules (AM–27–94) are being submitted for approval as well.

EPA Analysis: WDNR has adequately addressed the deficiency.

G. Nitrogen dioxide (NO_2) Increments

Original Deficiency: On October 17, 1988 (53 FR 40656), EPA promulgated PSD air quality increments for NO_2. The States were required to submit to EPA by July 17, 1990 plan revisions to protect the NO_2 increments.

WDNR Response: Wisconsin submitted such increments to EPA on November 24, 1992.

EPA Analysis: This submittal meets the NO_2 increment requirements and is approvable.

H. Particulate Matter (PM) significant level

1994 Deficiency: On July 1, 1987 (52 FR 24713), EPA promulgated the significant level for PM at 15 tons per year. Wisconsin submitted two PM SIP revisions on March 13, 1989 and May 10, 1990 to meet the Federal PM requirements. These submittals were proposed for approval on March 13, 1989, (NR 400.02, 404.02, 405.02, 406.04, 484.03) which contains the PM significant level, and May 10, 1990 (NR 404.04, 484.03). EPA then proposed to disapprove the package on December 23, 1992.

WDNR Response: After receiving comments from the State, EPA moved to approve the package. The final rulemaking approving the PM–10 SIP rules was published on June 28, 1993 (58 FR 34528).

EPA Analysis: All necessary actions regarding this deficiency are completed.

Because of the revisions made to NR 405 as a result of the deficiencies raised in previous analysis, and because the remainder of NR 405 remains approvable, NR 405 is being proposed for approval with respect to meeting the Act part C requirements.

Chapter NR 405 presumes to apply PSD regulation within the total area of the State of Wisconsin. As stated above, EPA is proposing to approve this rule for all portions of the State of Wisconsin except for those sources within the exterior boundaries of Indian reservations. EPA will issue PSD permits, as needed, to all such sources.

III. Final Action

The EPA is proposing to approve the November 6, 1996, request by the State of Wisconsin for approval as a revision to its SIP of its rules meeting the requirements of part C of the Act, the adoption of the Federal PM–10 increments, and clarification changes intended as a "clean-up" of existing air pollution control rules.

Copies of the State's submittal and other information relied upon for this proposal are contained in a rulemaking file maintained at the EPA Regional office. The file is an organized and complete record of all information submitted to, or otherwise considered by, EPA in the development of this proposed approval. The file is available for public inspection at the location listed under the **ADDRESSES** section of this document.

IV. Administrative Review

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604) Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action is exempt from OMB review.

V. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined that the approval action promulgated does not constitute a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Reporting, and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: November 14, 1997.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 97–31280 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5832–2]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of California; San Luis Obispo County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA) and through the California Air Resources Board, San Luis Obispo County Air Pollution Control District (SLOCAPCD) requested approval to implement and enforce its "Rule 432: Perchloroethylene Dry Cleaning Operations" (Rule 432) in place of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP) for area sources under SLOCAPCD's jurisdiction. In the Rules section of this **Federal Register**, EPA is granting SLOCAPCD the authority to implement and enforce Rule 432 in place of the dry cleaning NESHAP for area sources under SLOCAPCD's jurisdiction as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 9, 1998.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted request are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns SLOCAPCD Rule 432, Perchlorothylene Dry Cleaning Operations, adopted on November 13, 1996. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: November 23, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–32330 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute, as well as developing new OIG Special Fraud Alerts. The purpose of developing these documents is to clarify OIG enforcement policy with regard to program fraud and abuse.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 9, 1998.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–21–N, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–21–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. The OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Federal or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

The types of remuneration covered specifically include kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Federal or State health care programs.

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution. As a response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93,

specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, designed to specify various payment and business practices which, although potentially capable of inducing referrals of business under the Federal and State health care programs, would not be treated as criminal offenses under the anti-kickback statute (section 1128B(b) of the Act; 42 U.S.C. 1320a–7b(b)) and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act; 42 U.S.C. 1320a–7(b)(7). The OIG safe harbor provisions have been developed "to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements" (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or program exclusion authority.

To date, the OIG has developed and codified in 42 CFR 1001.952 a total of 13 final safe harbors that describe practices that are sheltered from liability, and is continuing to finalize 8 additional safe harbor provisions (see the OIG notice of proposed rulemaking at 58 FR 49008, September 21, 1993).

B. OIG Special Fraud Alerts

In addition, the OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG regards as unlawful. These Special Fraud Alerts serve to notify the health care industry that the OIG has become aware of certain abusive practices that the OIG plans to pursue and prosecute, or to bring civil and administrative action, as appropriate. The Special Fraud Alerts also serve as a tool to encourage industry compliance by giving providers an opportunity to examine their own practices. The OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs.

In developing these Special Fraud Alerts, the OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within the OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry. To date, eight individual Special Fraud Alerts have been issued by the OIG and subsequently reprinted in the **Federal Register** on December 19, 1994 (59 FR 65372), August 10, 1995 (60 FR 40847) and June 17, 1996 (61 FR 30623).

C. Section 205 of Public Law 104–191

In accordance with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191), the Department is now required to provide additional formal guidance regarding the application of the anti-kickback statute and the safe harbor provisions, as well as other OIG health care fraud and abuse sanctions. In addition to accepting and responding to requests for advisory opinions to outside parties regarding the interpretation and applicability of certain statutes relating to the Federal and State health care programs, section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for (1) modifying existing safe harbors, and (2) developing new safe harbors and OIG Special Fraud Alerts. After considering such proposals and recommendations, the Department, in consultation with the Department of Justice, will consider the issuance of new or modified safe harbor regulations, as appropriate. In addition, the OIG will consider the issuance of additional Special Fraud Alerts.

On December 31, 1996, the Department published the first of these annual **Federal Register** notice solicitations (61 FR 69060) addressing proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute, as well as developing new OIG Special Fraud Alerts. As a result, the OIG received a total of 32 timely-filed public comments from a cross-section of organizations, associations and other outside entities. In response to that solicitation, respondents raised a number of issues and comments on a variety of areas, including general comments concerning application of the existing safe harbor provisions, and specific concerns over the existing safe harbors presently codified in 42 CFR 1001.952 and those proposed in our September 1993 notice of proposed rulemaking. Respondents also recommended new safe harbors for, among other practices and arrangements: (1) physician ownership of hospitals; (2) provider sponsorship or support of continuing education programs for health care practitioners and facilities; (3) provision of cataract surgery-related prosthetic devices; (4) loans between parties in a position to refer or arrange for the referral of Medicare covered items; (5) *de minimis* gifts to beneficiaries for recommending new patients; (6) intercorporate transfers among entities delivering health care through integrated delivery systems; and (7) payments for purposes of physician retention.

Special Fraud Alerts were also suggested to address such areas as: (1) financial arrangements between hospitals and hospital-based physicians; (2) billing management consultants; (3) hospital discharges and transfers; (4) food vendor "value added" services; and (5) demands for discounts by Medigap insurers.

The array of proposals and recommendations received for new safe harbors and Special Fraud Alerts are summarized below, and are still under review within the OIG. When the OIG has fully assessed the merits of these recommendations, we will consider the promulgation of formal proposed regulations to create new safe harbors for those proposals deemed appropriate.

II. Summary of Previously Submitted Recommendations for New Safe Harbors and OIG Special Fraud Alerts

Set forth below is a summary of the major topics previously submitted for consideration in the OIG development of new safe harbors and Fraud Alerts. This listing serves to outline the major concepts and specific proposals received by this office as a result of the December 1996 solicitation notice. The OIG is currently taking these recommendations under advisement, and is *not seeking* additional public comment on *these* proposals at this time.

A. Proposed New Safe Harbors

Interface With the Stark Law

Commenters indicated that physician groups are closely regulated by both the anti-kickback statute and the physician self-referral laws, i.e., the Stark provisions. Since many existing safe harbors are similar but not identical to the statutory exceptions under the Stark law, commenters indicated that physician groups are forced to analyze much of what they do under two separate bodies of law, and are left with regulatory uncertainty. As a result, they recommended that the OIG conform safe harbors to the statutory and regulatory exceptions applicable under the Stark provisions, thus protecting any payment arrangement that meets an exception under the Stark provisions. We intend specifically to address this issue in the final regulations that are being developed in response to the September 1993 proposed rule.

Physician Ownership of Hospitals

Since physician investment in hospitals is expressly recognized under the Stark provisions, a recommendation was made for a companion safe harbor for physicians and group practices that hold ownership interests in hospitals to which they refer.

ASCs, CORFs and Similar Entities

Commenters recommended expanded safe harbors to cover ambulatory surgical centers (ASCs) owned by a group practice (evep if not all members of the group are surgeons), and for ASCs that are owned in part by physicians and in part by hospitals or other non-physician investors, as long as the physician's return on investment is based on the performance of the ASC as a whole. A commenter also requested protection for physician ownership in other facilities where they practice, such as comprehensive outpatient rehabilitation facilities. We expect to address these issues in the final regulations being developed in response to our earlier safe harbor proposed rule.

Services Provided by Federally-Funded Community Health Centers

A safe harbor was suggested to allow Federally-funded community health centers to take advantage of opportunities to improve their services to disadvantaged patients, for example, by arranging for discounted services where the arrangement will produce a substantial benefit to a medically underserved population.

Continuing Education

One commenter recommended a safe harbor delineating the circumstances under which manufacturers, commercial laboratories and other providers can sponsor or provide continuing education programs to health care facilities and practitioners. This commenter believed that many educational opportunities may be foregone by practitioners who, at the request of the provider, may have to notify other local practitioners about the presentation to avoid the appearance of impropriety. The commenter was concerned that the OIG may consider a presentation to a single hospital, for example, as an inducement for Medicare referrals.

Cataract Surgery-Related Prosthetic Devices

A recommendation was made for a safe harbor addressing the referral of patients for eyeglasses, contact lenses and intraocular lenses. A commenter stated that eyeglasses and contact lenses sold by optical stores, regardless of who owns the establishment, are consumer items that are subject to specific controls by the Federal Trade Commission, as well as by State regulation and free market competition. With respect to a safe harbor for the provision of intraocular lenses during cataract surgery, the commenter indicated that patients during an operation are not in a position to shop elsewhere for these items, and the selection of these lenses is based on operative techniques and often cannot be done prior to surgery.

New Managed Care Safe Harbors

A new safe harbor was suggested to apply broadly to all Medicare and Medicaid contracting managed care plans that are in compliance with the applicable requirements under Medicare, and plans that are participating in the Health Care Financing Administration (HCFA) managed care demonstrations. A recommendation was also made to establish comparable safe harbor protection for managed care plans that are licensed or regulated by HCFA or State regulatory bodies, involving non-contracting organizations and their activities involved in providing and arranging care for Medicare beneficiaries. Further, a recommendation for new safe harbors was also received that would protect other managed care financial relationships, such as (i) payment arrangements between managed care organizations and manufacturers that relate to usage of the manufacturer's products by the managed care organization's enrollees and (ii) protection for preferred provider organizations that charge administrative fees to providers.

Intercorporate Transfers

Commenters recommended that a new safe harbor be created for integrated delivery systems that would address payments between related entities, including, among others, parent companies and wholly-owned subsidiaries. This safe harbor would serve to clarify permissible transfers of "remuneration" between and among physicians, hospitals, health plans and others who are delivering health care through integrated delivery systems.

Offering Flat Rates for Outpatient Surgery by Hospitals

With regard to outpatient surgeries, a commenter stated that providers should be able to charge Medicare patients in the same fashion as other patients, without fear of sanctions. As a result, they recommended a new safe harbor for flat fees for outpatient surgeries. The commenter suggested that this would enhance access to health services to the extent that the beneficiary would have a greater comfort level knowing the coinsurance charge at the time a procedure is scheduled rather than dealing with uncertainty of not knowing the precise amount of the coinsurance obligation until after the procedure has been billed.

Physician Retention

A new safe harbor was recommended for all physician retention efforts by hospitals, regardless of a hospital's location. The safe harbor would protect payments or benefits offered by hospitals and other entities to retain physicians and other practitioners in the service area.

Investments by Ambulatory Surgical Center (ASC) Administrators and Family Members

A commenter suggested a safe harbor to protect investment interests by certain non-practitioners who are actively involved with the delivery of health care services at an ASC in an administrative or managerial capacity. Since many ASCs are owned, in part, by facility administrators who have a vested interest in the success of the ASC, it was believed that these individuals should be allowed to invest in ASCs and participate in any profits generated by the facility at which they work with the protection of a safe harbor, much like surgeons would be allowed to invest in the ASC even if passive investors. The commenter also believed that a safe harbor should allow investment interests in ASCs to be held by family members of those individuals whose investment interests are protected by the safe harbor so long as those family members are not able to make or influence referrals to the facility. We expect to address this issue in the OIG's final regulations being developed in response to our earlier safe harbors proposal.

ASCs Located in Underserved Rural Areas

To encourage efficient and less-costly medical care delivery, it was recommended that all investments in an ASC in an area where there was previously no ASC or hospital, regardless of their source, should receive protection as long as the investments meet specific criteria set forth in the proposed safe harbor for investments in entities in rural areas. (Proposed revisions to § 1001.952(a)(4) were set forth in the OIG proposed

rulemaking of September 21, 1993 (58 FR 49008).)

Loans

A commenter indicated that loans between a provider and practitioner are often the only available source of necessary capital in a community, and recommended protection for loans between parties who may be in a position to refer, recommend or arrange for the referral or recommendation of Medicare or Medicaid covered items or services.

Investments

Although there is a safe harbor under the anti-kickback statute for investment interests, a commenter believed that it expressly protects only payments in the form of "return paid to investors" on investments that comply with the safe harbor's requirement, but not expressly the investments themselves. They indicated that health care providers and practitioners often enter into legitimate business ventures in which the investors are potential recipients of referrals from the venture in which they are investing. As a result, the commenter recommended a new safe harbor to protect legitimate investments from the anti-kickback statute.

De Minimis Gifts

A commenter suggested a new safe harbor addressing *de minimis* gifts to beneficiaries for recommending a new customer to the provider. For purposes of this proposal, *de minimis* gifts would be small tokens of a provider's gratitude given to customers and community members who suggest the provider's services or products to other potential customers, consistent with the Internal Revenue Service's definition on limitation on all allowable business gifts. No safe harbor protection would be afforded where gifts, even if *de minimis*, were made to physicians and other practitioners in a position to influence patients.

Physician/Provider Sponsored Organizations

Commenters requested that a new safe harbor be created for physician/provider sponsored organizations (PSOs). The proposed safe harbor would protect payments to or by any provider, provider sponsor or provider service network for services to beneficiaries enrolled by an eligible organization under section 1876 of the Act in accordance with a full-risk or partial-risk contract. The commenter suggested that protection for PSOs would increase patient access to health care services and increase the health care options available to program beneficiaries.

B. Proposed New OIG Special Fraud Alerts

Limitation on use of Fraud Alerts

A recommendation was made to limit the use of Special Fraud Alerts to circumstances that raise concerns about serious and clear violations, rather than merely "questionable" practices.

Financial Arrangements Between Hospitals and Hospital-Based Physicians

A commenter stated that an increasing number of hospital-based physician agreements with hospitals compensate physicians for less than the fair market value of management and supervisory services they provide to hospitals, or require physicians to pay more than the fair market value for certain services provided by the hospital as a condition for entering into or renewing contracts. As a result, a Fraud Alert was recommended to discuss financial arrangements between hospitals and hospital-based physicians. A second commenter raised concern about the appropriate compensation for hospital-based physicians and physicians serving as medical directors. They recommended a new OIG Fraud Alert addressing services considered integral and not "incident to" physician services, and the proper use of nonphysician practitioners accompanied by the appropriate billing for their services.

Ambiguity in Billing Practices

A suggestion was made to provide clear direction regarding covered and non-covered services and appropriate billing practices and, in conjunction with section 231 of the HIPAA, define the term "pattern of billing for services" that the provider knew or should have known was not medically necessary. The commenter indicated that any Fraud Alert should specify that no sanctions would be taken for a pattern of billing for services considered to be medically unnecessary until the provider has been given written notice of the problem and an opportunity to desist from the billing practice.

Barring Demands by Medicare Supplemental Carriers for Discounts from Providers

Since Medigap carriers other than Medicare SELECT plans continue to seek discounts or waivers of copayment amounts from providers, it was recommended that the OIG clarify that is improper for Medigap insurers (other than Medicare SELECT in connection with Part A services covered by existing safe harbors) to seek discounts and waivers of Medicare coinsurance or deductible amounts.

Payment Arrangements Between Hospice Providers and Nursing Homes

Concern was voiced over certain compensation arrangements between hospices and nursing facilities, including skilled nursing facilities, that suggested suspect incentive arrangements that disguise referral fees as payments for services to such nursing facilities. A Fraud Alert was suggested to address the fact that when a hospice pays a nursing facility more than 95 percent of the Standard Medicaid Per Diem Reimbursement Rate, such arrangements may violate the anti-kickback statute.

Clinical Laboratory Personnel Within an ESRD Facility

A commenter recommended an amendment to the phlebotomy section of the OIG Special Fraud Alert—"Arrangements for the Provision of Clinical lab Services"—that was issued in October 1994. Under that section, a clinical laboratory's placement of a phlebotomist in a physician's office does not in and of itself serve as an inducement prohibited by the anti-kickback statute. However, the commenter indicated that certain tasks could implicate the statute if those functions that benefit the physician are performed by the phlebotomist. As a result, they proposed that the OIG highlight a similar practice of providing a clinical laboratory employee, or processor, to an ESRD facility on a full-time basis to relieve the facility of these duties.

Laboratory Contracting with Billing Management Consultants

It was suggested that a Fraud Alert be developed outlining the potential issues related to contracting with billing management consultants, the appropriate relationship between the facility and the consultants, and the liability of all parties involved in the contract.

Discounted Copayments and Deductibles

In light of new civil money penalty authority for Medicare providers who offer incentives to induce Medicare referrals, it was recommended that a Fraud Alert be developed addressing situations in which a copayment or deductible can be discounted.

Home Health Issues

With regard to the proper certification of Medicare beneficiaries for home health services, a recommendation was made to develop a Fraud Alert defining what is considered "home bound" and what actions should be taken to ensure that the beneficiary is appropriately certified and is eligible for home health services. The commenter also recommended that a Fraud Alert address home health agency procedures related to contacting patients upon discharge from the hospital, and claims for home health visits that occur prior to physician authorization for the visit.

Medicare as Secondary Payer

A commenter indicated that if primary coverage is not identified, Medicare may be billed inappropriately, thus leading to allegations of fraudulent billing. The commenter recommended a new Fraud Alert setting forth the appropriate process to determine primary coverage, and the level of diligence a facility must use to verify primary coverage.

Hospice Care

A new Fraud Alert was recommended outlining the appropriate method for determining life expectancy to meet hospice eligibility criteria, and the responsibility if a patient is subsequently found ineligible for hospice benefits due to an incorrect determination of life expectancy. It was also suggested that the Fraud Alert address billing issues associated with a hospice patient who is transferred to a hospital, and the instances when a hospital should bill the hospice instead of Medicare to avoid duplicate bills to Medicare for the same patient.

Hospital Issues

It was suggested that problems have occurred with PPS hospitals billing Medicare for discharging a patient when the patient was actually transferred to another PPS hospital or unit, and that the OIG develop a Fraud Alert outlining instances in which a hospital may bill Medicare for a patient discharge and when the hospital must file a claim as a transfer.

Value Added Services

A new Fraud Alert was recommended to address concerns about vendors in the food service industry offering "value added services" to their institutional customers. The commenter stated that many of these practices, intended to induce the initiation or maintenance of a business relationship between parties, raised concerns under the anti-kickback statute since food service sold to health care institutions is reimbursed in part by Medicare and the State health care programs.

Further public comments on the proposals summarized above are *not* being solicited at this time.

III. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, we are seeking additional recommendations from affected provider, practitioner, supplier and beneficiary representatives regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized above.

Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with the statute, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would effect an increase or decrease in—

- Access to health care services;
- The quality of care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their decisions of whether to (1) order a health care item or service, or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, those practices that would be identified in new Fraud Alerts may result in any of the consequences set forth above, and the volume and frequency of the conduct that would be identified in these Special Fraud Alerts.

A detailed explanation of justification or empirical data supporting the suggestion, and sent to the address indicated above, would prove helpful in our considering and drafting new or modified safe harbor regulations and Special Fraud Alerts.

Dated: December 1, 1997.

June Gibbs Brown,

Inspector General.

[FR Doc. 97–32150 Filed 12–9–97; 8:45 am]

BILLING CODE 4150–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 97–212; FCC 97–355]

Uniform System of Accounts for Interconnection

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we propose rules for the accounting treatment of transactions related to interconnection and shared infrastructure. Specifically, we propose new Part 32 accounts and subsidiary recordkeeping requirements to record the revenues and expenses related to providing and obtaining interconnection. We tentatively conclude that new accounts are not necessary to record the revenues and expenses associated with sharing infrastructure.

DATES: Interested parties may file comments on or before December 10, 1997, and reply comments on or before January 26, 1998. Written comments by the public on the proposed and/or modified information collections are due December 10, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 9, 1998.

ADDRESSES: Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554. Parties should also send a paper copy, and a copy on 3.5 inch diskette formatted in an IBM compatible form using, if possible, WordPerfect 5.1 for Windows software, to Matthew Vitale of the Common Carrier Bureau's Accounting and Audits Division, 2000 L Street, NW., Room 200F, Washington, DC 20554. Commenters should also provide one copy of any documents filed in this proceeding to the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036.

In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet at jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Matthew Vitale, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0866.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted October 2, 1997, and released October 7, 1997. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036.

Paperwork Reduction Analysis

This notice contains a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this notice; OMB notification of action is due 60 days from date of publication of this Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of information collection; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Amendments to Uniform Systems of Accounts for Interconnection, Notice of Proposed Rulemaking, CC Docket No. 97–212.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Businesses or other for profit.

Proposed Collections:

	# Respondents	Est. time per response (hours)	Total annual burden (hours)
a. New Accounts	68	40	2,720
b. Subsidiary Accounting Records	68	120	8,160
c. Cost Study	68	160	10,880

Total Annual Burden: 21,760.

Estimated Costs Per Respondent: $0.

Needs and Uses: In this Notice of Proposed rulemaking issued in CC Docket No. 97–212, the Commission initiates a proceeding with the goal of reviewing comprehensively our Part 32 procedures dealing with the accounting treatment of transactions related to interconnection and shared infrastructure to ensure that they meet the objectives of the 1996 Act. The Commission seeks comment on a proposal establishing new Part 32 accounts and subsidiary recordkeeping requirements to record the revenues and expenses related to providing and obtaining interconnection. The Commission also seeks comment on the conclusion that new accounts are not necessary to record the revenues and expenses associated with sharing infrastructure.

Regulatory Flexibility Analysis

This Notice proposes new revenue and expense accounts for ILECs to record the revenues they receive and the amounts they pay in the sale and purchase of interconnection, access to unbundled network elements, transport and termination of traffic, and resale of telecommunications services. Section 603 of the Regulatory Flexibility Act (RFA), as amended,[1] requires an initial Regulatory Flexibility Act Analysis in notice-and-comment rulemaking proceedings unless we certify that "the rule will not, if promulgated, have a significant economic impact on a significant number of small entities."[2]

The RFA defines the term *small entity* as having the same meaning as *small business concern* under the Small Business Act (SBA),[3] which defines *small business concern* as "one which is independently owned and operated and which is not dominant in its field of operation."[4] Section 121.201 of the SBA regulations defines small telecommunications entities in SIC Code 4813 (Telephone Communications; Except Radiotelephone) as any entity with fewer than 1,500 employees at the holding company level.[5] Some entities employing fewer than 1500 employees at the holding company level may be affected by the proposals made in this Notice. However, we do not consider such entities to be "small entities" under the RFA because they are either affiliates of large corporations or dominant in their field of operations. Therefore, we do not believe that the proposed rules will affect a substantial number of small entities.

Even if the small ILECs were "small entities" under the SBA, we would still certify that no regulatory flexibility analysis is necessary here because none of the proposals in this Notice, if adopted, would have a significant economic impact on the carriers which must comply with our accounting rules. Pursuant to long-standing rules, ILECs must record the revenues and expenses associated with their operations. This Notice merely proposes that new revenue and expense accounts be established so that the amounts pertaining to interconnection and infrastructure sharing will be uniformly reported. This procedure will be easy for ILECs to implement and will not require costly or burdensome analysis.

We therefore certify, pursuant to section 605(b) of the RFA that the rules proposed in this Notice will not have a significant economic impact on a substantial number of small entities.

Ordering Clause

Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4, 201–205, 215, 218, 220, 229, 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201–205, 215, 218, 220, 229, 254 and 410 that *notice is hereby given* of proposed amendments to Part 32 of the Commission's rules, 47 CFR part 32, as described in this *notice of proposed rulemaking.*

List of Subjects in 47 CFR Part 32

Uniform System of Accounts.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32223 Filed 12–9–97; 8:45 am]

BILLING CODE 6712–01–P

[1] 5 U.S.C. 603.

[2] *Id.* 605(b).

[3] *Id.* 601(6) adopting 15 U.S.C. § 632(a)(1).

[4] 15 U.S.C. 632(a)(1).

[5] 13 CFR 121.201.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 112897A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of experimental fishery proposal; request for comments.

SUMMARY: NMFS issues this notice to announce that the Regional Administrator, Northeast Region, NMFS is considering approval of an experimental fishing proposal that would allow vessels to conduct operations otherwise restricted by regulations governing the Fisheries of the Northeastern United States. The experimental fishery would involve fishing for, retention, and limited landing of Atlantic sea scallops with a modified sea scallop dredge in Southern New England and Mid-Atlantic Regulated Mesh Areas. Regulations under the Magnuson-Stevens Act provisions require publication of this notice to provide interested parties the opportunity to comment on the proposed experimental fishery.

DATES: Comments on this notice must be received by December 29, 1997.

ADDRESSES: Comments should be sent to Andrew A. Rosenberg, Ph. D., Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Experimental Fishery."

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Management Specialist, 978–281–9288.

SUPPLEMENTARY INFORMATION: The Virginia Institute of Marine Science submitted an application for an EFP on October 17, 1997, to investigate summer flounder bycatch by Atlantic sea scallop dredges. An experimental dredge would be modified with large mesh on the upper portion of the dredge to allow for summer flounder escapement. Fishing activity would target a limited amount of Atlantic sea scallops in the Southern New England and Mid-Atlantic Regulated Mesh Areas.

The Virginia Institute of Marine Science would conduct experimental fishing activities on chartered fishing vessels. EFPs are required to exempt vessels from possession limits, gear restrictions, and days-at-sea restrictions of the Atlantic Sea Scallop Fishery Management Plan.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 4, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32337 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 112897B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of experimental fishery proposal; request for comments.

SUMMARY: NMFS issues this notice to announce that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of an experimental fishing proposal that would permit vessels to conduct operations otherwise restricted by regulations governing the Fisheries of the Northeastern United States. The experimental fishery would involve the possession and retention of *Crangon* shrimp (brown shrimp), including the possible capture and release of regulated multispecies, in the Gulf of Maine/Georges Bank Regulated Mesh Area. Regulations under the Magnuson-Stevens Act provisions require publication of this notice to provide interested parties the opportunity to comment on the proposed experimental fishery.

DATES: Comments on this notice must be received on or before December 29, 1997.

ADDRESSES: Comments should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Experimental Fisheries."

FOR FURTHER INFORMATION CONTACT: Bonnie VanPelt, Fishery Management Specialist, (978) 281–9244.

SUPPLEMENTARY INFORMATION: The Maine Department of Marine Resources (MEDMR) has been approved for a Saltonstall/Kennedy (S/K) Grant to investigate the feasibility of developing a 3-month winter *Crangon septemspinosus* shrimp (brown shrimp) fishery between Frenchman's Bay and Casco Bay, Maine, in nearshore and estuarine waters. The two main objectives of the proposed project are the use of gear technology to address regulatory species bycatch and the development of a sustainable fishery that will ease financial hardship by absorbing displaced groundfishing effort. New gears and fishing methods will be employed based on technology of a similar *Crangon* shrimp fishery that exists in Europe, as well as on a modification of the gear technology currently used in the northern shrimp fishery.

The MEDMR submitted an application for an EFP to conduct the proposed project on October 14, 1997. The experimental trawl surveys are proposed for January through June 1998. The proposed experiment will allow approximately three commercial fishing vessels to conduct gear trials using a *Crangon* otter trawl, an otter trawl of European design, and two beam trawl nets with mesh sizes of 20 mm. One otter trawl will be assembled with a Nordmore grate (physical separator) and the other with a bycatch reduction device known as a false upper (behavioral separator), while the beam trawl nets will contain a finfish excluder device called a sieve. Bar spacing of the Nordmore grate will be 1/2 inch (1.27 cm), smaller than the 1 inch (2.54 cm) now being used in the northern shrimp fishery. All trawl gear is designed to enable finfish to escape through a hole in the lower panel of the net. Experimental gear performance will be tested with control otter trawl nets of 20 mm stretched mesh with 1/4 inch (0.635 cm) mesh liners and 20 mm beam trawl nets. Trawl effectiveness will be

compared using a random block design and analysis of variance techniques. Five survey tows at each of the six designated sample areas will be conducted once a month from January through March and extended until June, if necessary. Sample stations will be limited to depths of less than 35 fathoms (19.13 m) within the project sample area. Finfish bycatch during the proposed winter sampling period is expected to be low as determined by previous finfish sampling surveys. Smelt, winter flounder, and sticklebacks are the species most likely to concentrate in the nearshore areas. Finfish bycatch will be documented and then discarded after some commercial finfish species stomach samples are taken. Although the survey tows are expected to collect limited numbers of regulated species, some level of entrapment may help assess the effectiveness of bycatch reduction devices and gear modifications. The survey will also help to determine population densities of both juvenile and commercially harvested adult *Crangon*, percent distribution within samples areas, and seasonal distribution patterns. All catches of *Crangon* will be frozen and saved for processing trials. Commercial sized *Crangon* will be processed by facilities in Maine that will handle the peeling, packaging, cooking, and presentation of product samples to foreign buyers to compare with European *Crangon* market products.

EFPs would be issued to the participating vessels to exempt them from the mesh size, minimum fish size, and days-at-sea restrictions of the Northeast Multispecies Fishery Management Plan.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 4, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32338 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. ; I.D. 120497C]

RIN 0648–AK28

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Minimum Size Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement the provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would maintain the current minimum size limit for red snapper of 15 inches (38.1 cm), total length (TL). Under the present regulations, the minimum size limit would increase to 16 inches (40.6 cm), TL, on January 1, 1998. The intended effect of this proposed rule is to maximize the economic benefits from the red snapper resource within the constraints of the rebuilding program for this overfished resource.

DATES: Written comments must be received on or before December 29, 1997.

ADDRESSES: Comments on the proposed rule must be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the framework regulatory amendment, which includes an environmental assessment and a regulatory impact review (RIR) should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; Fax: 813-225–7015.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the Exclusive Economic Zone of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The Council has proposed an adjusted management measure (a regulatory amendment) for the Gulf red snapper fishery for NMFS' review, approval, and implementation. This measure was developed and submitted to NMFS under the terms of the FMP's framework procedure for annual adjustments in total allowable catch and related measures for the red snapper fishery (framework procedure). The proposed rule would implement the measure contained in the Council's regulatory amendment.

Red Snapper Minimum Size Limit

The red snapper resource in the Gulf of Mexico is overfished and is currently under a management program to restore the stock to a threshold level of 20–percent spawning potential (SPR) by the year 2019. Amendment 5 to the FMP established a gradual increase in the recreational and commercial minimum size limit for red snapper, from 13 inches (33.0 cm), TL, to 14 inches (35.6 cm), TL, in 1994, 15 inches (38.1 cm), TL, in 1996, and 16 inches (40.6 cm), TL, in 1998. Amendment 5 noted that this action would increase the yield-per-recruit obtained from the fishery provided that the potential gains were not negated from additional release mortality of undersized fish.

The 1997 red snapper stock assessment evaluated the impact of increases in the minimum size through a series of simulations. The assessment concluded that under the constant catch scenario, as presently implemented, an increase in minimum size limit from 15 inches (38.1 cm) to 16 inches (40.6 cm), TL, would have little, if any, effect on the SPR value in the year 2019 because of the associated discard mortality. Therefore, it would not contribute to rebuilding the resource. The assessment indicated that as minimum size increases, the portion of the stock that is available to contribute to the yield decreases. Consequently, in these simulations, fishermen would have to fish harder to produce the same yield. This simulated increase in effort in turn would result in more fish being released and, thus, subject to release mortality. The Reef Fish Stock Assessment Panel reviewed the 1997 assessment and concurred with the conclusion that increasing the minimum size from 15 inches (38.1 cm) to 16 inches (40.6 cm), TL, would not be expected to result in biological benefits.

Testimony, to date, from recreational and commercial fishermen has indicated serious concern about additional discard mortality if the minimum size limit is increased to 16 inches (40.6 cm), TL. Some fishermen have reported that the increase in minimum size would force them to fish further offshore, where discard mortality would be higher because of greater depth. In addition, fishing further offshore would increase fishing costs.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce, based on the Council's RIR that assesses the economic impacts of the management measures proposed in this rule on fishery participants, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed action to maintain the current size limit for red snapper in the Gulf of Mexico will not decrease commercial vessel and for-hire revenues. Without this action the size limit would increase on January 1, 1998, with possible decreases in commercial vessel and for-hire revenues. Since no additional permits or gear modifications are required, there will be no public burden to comply. Since all the impacted firms are small, there is no differential impact. Because the proposed action does not affect a major change in the commercial or the for-hire sector, no additional capital costs are required.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 5, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.37, paragraph (d)(3) is revised to read as follows:

§ 622.37 Minimum sizes.

* * * * * * *

(d) * * *

(3) Red snapper—15 inches (38.1 cm), TL.

* * * * * * *

[FR Doc. 97–32370 Filed 12–5–97; 4:18 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 237
Wednesday, December 10, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV97–357]

Information About Legislative Changes in Civil Penalties for a Misrepresentation or Misbranding Violation Under the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Debt Collection Improvement Act of 1996 (Public Law 104–134), this document gives notice to the public of a 10 percent increase in the civil penalties found in § 46.45 of the PACA regulations which outlines the procedures for administering the misrepresentation or misbranding provisions under section 2(5) of the PACA (7 U.S.C. 499b(5)).

DATE: December 10, 1997.

ADDITIONAL INFORMATION: Contact Charles W. Parrott, Assistant Chief, PACA Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2095-South, Washington, D.C. 20090–6456; telephone (202) 720–4180; fax (202) 690–4413.

SUPPLEMENTARY INFORMATION: Public Law 104–134, the Debt Collection Improvement Act of 1996, which amended the Federal Civil Penalties Inflation Act of 1990 (Public Law 101–410), requires that all civil monetary penalties be increased periodically to keep pace with inflation. The first adjustment to a penalty may not exceed 10 percent of the original penalty and applies only to those violations occurring after the effective date of the increase, September 2, 1997.

The PACA establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. The Department of Agriculture's Agricultural Marketing Service (AMS) enforces the PACA.

Under section 2(5) of the PACA, it is a violation a commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree, or maturity, or State, country, region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce. Provided the violations are not repeated or flagrant, the dealer, commission merchant, or broker who violated the misbranding provisions may admit to the violation, or violations, and pay a monetary penalty in lieu of a formal proceeding for the suspension or revocation of its license.

By regulation published in the **Federal Register** (62 FR 40924) on July 31, 1997, the maximum penalty was increased by 10 percent, from $2,000 to $2,200, effective September 2, 1997. In addition to the $2,200 maximum penalty, the PACA regulations (7 CFR 46.45(c)) set forth the sanction policy that includes informal warning letters and lesser monetary penalties that AMS may assess against a dealer, commission merchant or broker for a misbranding violation, depending on the seriousness of the violation and the number of previous violations committed by the violator company. The amended schedule for informal disposition of these violations is as follows:

VIOLATION:		DISPOSITION:
1st		Warning Letter
2nd		Warning Letter
	IF SERIOUS VIOLATION:	IF VERY SERIOUS VIOLATION:
3rd	$220	$275
4th	$385	$550
5th	$550	$1,100
6th	$1,100	$2,200
7th	$2,200	$2,200

The informal disposition of misrepresentation violations is not limited to seven occurrences and will be considered for further violations.

Dated: December 3, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–32244 Filed 12–9–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eagle Bird Project; Idaho Panhandle National Forests, Shoshone County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The St. Joe Ranger District of the Idaho Panhandle National Forest is considering vegetation, road and trail activities in the Eagle Bird Project. The project area is located approximately 13 miles east of the town of Avery on the St. Joe River.

The interdisciplinary team has reviewed the current conditions which indicated the project area could benefit from treatment. The purpose and need is summarized below.

1. Restore properly functioning hydrologic conditions. 2. At the project level, implement the Idaho Governor's Bull Trout Plan. 3. Move vegetation toward historical conditions. 4. Reduce the risk of mountain pine beetle in the lodgepole pine forest type. 5. Meet wildlife security needs. 6. Restore rare vegetation communities and habitat. 7. Provide a spectrum of recreation opportunities that are appropriate for the National Forest System lands within the area. 8. Provide quality dispersed camping, single-track trail, all terrain vehicle (ATV) route, hunting and fishing opportunities in a roaded natural setting. 9. Promote fire use and control strategies for safety, efficiency of suppression, resource values, and reduce risks. To create a trend toward allowing fires to play a role as a disturbance mechanism. Reduce the risk of stand replacing fires through vegetation management and promote beneficial fire effects. 10. Where feasible and cost effective, contribute to the timber supply by using timber harvest (one or more timber sales) to achieve this and other project objectives. Inasmuch as it is compatible with other objectives, harvest activities will maintain or improve the long term growth and production of commercially valuable wood products from the sites.

The project consists of three main parts. One part is vegetation management, including timber harvesting and associated road construction and prescribed burning. Another part is restoration of stream channel conditions and fish habitat. The third part is recreational trail development.

DATES: Comments should be postmarked on or before January 9, 1998. Please include your name and address and the name of the project you are commenting on.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on project mailing list to Brad Gilbert, District Ranger, St. Joe Ranger District, HC Box 1, Avery ID 83802. Brad Gilbert is the Responsible Official.

FOR FURTHER INFORMATION CONTACT: Cameo Flood, Project Team Leader, St. Joe Ranger District, (208) 245–4517.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality may be granted in only very limited circumstances, such as to project trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be submitted with or without name and address within 10 days.

SUPPLEMENTARY INFORMATION:

Vegetation Management

Vegetation management under this proposal is designed to meet several needs, including providing timber projects to local markets, protecting and enhancing wildlife forage and cover needs, providing for long term growth and yield as directed in the Idaho Panhandle National Forests Forest Plan, increasing fire resiliency, reducing fire hazards, and moving the vegetation to the conditions the area historically had in terms of tree species composition and density. Treatments include:

Approximately 4,900 acres of commercial timber harvesting including commercial thinning, shelterwood preparation and seed cuttings, group shelterwoods, irregular group shelterwoods, and clearcuts. The attached map shows proposed treatment areas by regeneration and intermediate harvest. Regeneration treatments (1850 acres total) would be clearcuts or some of the shelterwood cuts that would take most of the trees off the units, leaving room to regenerate the stands to other species. Intermediate harvests (3056 acres total) are the commercial thinning and irregular cuts that remove some of the undesirable trees and favor the size and types of trees needed to meet vegetation goals.

Approximately 691 acres of brush field burning for maintenance of large, open spaced douglas-fir, ponderosa pine reestablishment and wildlife habitat. Although these areas are not well stocked, commercial harvesting is proposed prior to burning where feasible.

Approximately 15 acres of broadcast burning for white bark pine.

Approximately 218 acres would be treated to create a hazard reduction zone. This treatment would include thinning out the canopy for a width of 150 to 300 feet along a ridge, and removing small trees from the understory.

Approximately 8.4 miles of road construction to access timber harvesting units.

Stream Channel and Fish Habitat Restoration

The St. Joe District is considering elimination of either the Eagle Creek or Bird Creek roads, or both, and active work instream to restore natural channel function. In the case of both of the roads being eliminated, an alternative road would be provided to allow recreational access to portions of both streams. If one road is eliminated, recreational and management access would be routed over the other remaining road.

Eagle Creek Road

This is the most likely road to eliminate, rehabilitate the riparian area and restore riparian function, because bull trout are currently using this stream and improvements in conditions made there would benefit the fish sooner. The road from the West Fork of Eagle Creek down stream to the St. Joe River would be eliminated and alternate access would be provided by improving a connecting road from the Bird Creek System. Vehicle and ATV access to this 3.5 mile section would be eliminated. Foot, horse, bicycle and most likely motorcycle access would be provided.

Bird Creek Road

This stream has been more affected by the riparian road system than Eagle Creek. No bull trout were found here in surveys done this summer, but cutthroat trout are abundant. The upper reaches of the stream would be good bull trout spawning habitat and the lower could be good rearing habitat if the road was removed and instream improvements implemented. If the 2.8 miles of streamside road from the upper bridge to the St. Joe were removed, alternate access would be provided by improving a connecting road from the Eagle Creek system. Vehicle and ATV access to this section would be eliminated. Foot, horse, bicycle and most likely motorcycle access would be provided.

Both Roads

If both riparian system roads were removed, alternate access into the area would be developed. This could be over the Turner road system (Road 1281) connected into the upper portion of the Bird Creek system and on into the Eagle Creek System, or some other appropriate access.

There are additional roads that have caused watershed problem that are not in riparian areas. These include specifically, Road 1261 (Turner Peak), Road 1286 (Bluebird) and Road 3638 (Mirror Creek). These roads will be reconstructed where necessary to reduce the hazard of future road failures that would adversely impact the stream.

Part of this portion of the project will be to eliminate or close other roads in the area. These roads are currently closed to public use. Most roads that will not be needed for timber management within ten years or more would have hazardous fills pulled back to the contour, drainage structures removed and be barricaded with a permanent structure. Many of them have been overgrown with brush and trees.

ATV Trail Development

The district would like to look at the possibility of designating or developing acceptable ATV routes to provide this recreation opportunity. The Eagle Bird area offers several miles of potential ATV opportunities along existing roads, if those roads were closed to general vehicle traffic and managed as ATV routes. When used in conjunction with open system roads, these routes could offer loop opportunities, as well as connections to the Coeur d'Alene River and Superior Ranger Districts to the north. The attached maps show potential ATV routes on both open and restricted system roads. Following management activities within the area, identified system roads would be closed to general vehicle traffic to provide ATV opportunities. Approximately one mile of single-track trail would also be widened to provide an additional ATV loop opportunity.

Single-Track Trail Management

The area would continue to provide single-track trails for mixed use by hikers, horseback riders, mountain bicyclists and motorcyclists. These routes are identified on the attached map.

Float Trailhead Development

A float trailhead would be developed on the St. Joe River Road to provide river access for Skookum Canyon, a popular destination for whitewater enthusiasts during high spring runoff. Located at an existing roadside parking area northeast of Tourist Creek, the trailhead would provide a pathway to the river and singing.

Preliminary Issues

We expect issues and concerns with this project to include the impacts on wild-life, fish, water quality, and recreation, as well as road construction, clearcutting and economic feasibility. Issues will be developed and analyzed based on public comment and the interdisciplinary team's analysis of effects on resources. Alternatives will be developed to modify or eliminate the impacts from proposed activities and still meet the purpose for this project.

Additionally, some of the vegetation treatment may result in openings of over 60 acres. While we would like comments that would affect alternatives early, comments on the size of openings and their effects will be accepted for 60 days after publication of this notice.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March 1998. The final environmental impact statement is expected to be completed in May 1998.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts and agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concern on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center ad (202) 720–2600 (voice and TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1–800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

Dated: December 1, 1997.

Bradley Burmark,

St. Joe Deputy District Ranger.

[FR Doc. 97–32313 Filed 12–9–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Idaho

The Statewide central filing system of Idaho has been previously certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Idaho Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for additional farm products produced in that State as follows:

herbs

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: December 3, 1997.

Tommy Morris,

Acting Deputy Administrator, Packers and Stockyards Programs.

[FR Doc. 97–32321 Filed 12–9–97; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m. on Thursday, January 8, 1997, at the Holiday Inn City Center, 100 West 8th Street, Sioux Falls, South Dakota 57104. The purpose of the meeting is to provide orientation for new SAC members and planning for a fair housing workshop.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1400 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 4, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–32253 Filed 12–9–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Cancellation of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission which was to have convened at 12:00 p.m. and adjourned at 4:00 p.m. on Wednesday, December 17, 1997, the Library of Virginia, 800 East Broad Street, Richmond, Virginia, has been canceled. The original notice for the meeting was announced in the **Federal Register** on December 2, 1997, FR Doc. 97–31476, 62 FR 63696, No. 231.

Persons desiring additional information should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116).

Dated at Washington, DC, December 4, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–32252 Filed 12–9–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate (BE–13); and Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters into a Joint Venture with, a Foreign Person (BE–14)

Form Number(s): BE–13, BE–14.

Agency Approval Number: 0608–0035.

Type Of Request: Revision of a currently approved collection.

Burden: 1,800.

Number of Respondents: 1,200.

Avg Hours Per Response: 1½ hours.

Needs And Uses: The survey obtains comprehensive initial data on new foreign direct investments in the United States. The data are needed to measure the economic significance of new foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy.

The data from this survey complement data from BEA's other ongoing surveys of foreign direct investment in the United States, which cover overall operations of U.S. affiliates and the transactions and positions between the U.S. affiliates and their foreign parents. However, compared to these other surveys, the data from the BE–13 survey provide a fuller understanding of the acquisition and establishment of new U.S. affiliates. The data are used by the Office of the U.S. Trade Representative, the International Trade Administration of the Commerce Department, and the Departments of Treasury and State, to carry out U.S. international investment policies. The data are needed by the Council of Economic Advisors, the Federal Reserve Board, and other U.S. Government agencies in the formulation of U.S. international economic policy.

Affected Public: Businesses or other for-profit institutions.

Frequency: One-time report when a transaction occurs.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 4, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization

[FR Doc. 97–32282 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Transactions of U.S. Affiliate, Except A U.S.Banking Affiliate, with Foreign Parent (BE–605); and Transactions of U.S. Banking Affiliate with Foreign Parent (BE–605 Bank).

Form Number(s): BE–605, BE–605 Bank.

Agency Approval Number: 0608–0009.

Type of Request: Revision of a currently approved collection.

Burden: 19,750 hours.

Number of Respondents: 3,950 respondents, 4 responses each per year.

Avg Hours Per Response: 1¼ hours.

Needs and Uses: The survey collects quarterly sample data on transactions and positions between foreign-owned U.S. business enterprises and their foreign parents. Universe estimates are developed from the reported sample data. The data are needed to compile the

U.S. international transactions and national income and product accounts, and the international investment position of the United States. The data are also needed to measure the economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its importance.

In addition, the data are needed by the Council of Economic Advisors, the Federal Reserve Board, and the Treasury Department in the conduct of U.S. international monetary policy. Such policy must be based upon an informed analysis of current information on cross border transactions, including transactions between U.S. affiliates and their foreign parents. The data are particularly valuable to these agencies because they are collected, analyzed, and published within 90 days after the end of each calendar quarter, allowing data users to see the consequences of changes in economic conditions almost immediately.

Affected Public: Businesses or other for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 4, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32283 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Provisional Applications.

Form Number(s): PTO/SB/16.

Agency Approval Number: 0651–0037.

Type of Request: Extension of a currently approved collection.

Burden: 200,000 hours.

Number of Respondents: 25,000.

Avg. Hours Per Response: The PTO estimates that it takes 8 hours for the public to gather, prepare, complete, and submit the provisional application to the PTO.

Needs and Uses: Certain provisions in the Paris Convention and the Uruguay Round Agreements give a 12-month filing date advantage to international applications. To prevent this from happening, Congress passed a law calling for a "provisional application" that establishes a filing date comparable to international ones. PTO collects information to review and process provisional applications submitted to them.

Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions, farms, Federal agencies or employees, and state, local, or tribal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein (202) 395–3785

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C., 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C., 20503.

Dated: December 3, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32284 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 935]

Grant of Authority for Subzone Status: Abbott Manufacturing, Inc. (Infant Formula, Adult Nutritional Products), Columbus, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Rickenbacker Port Authority, grantee of Foreign-Trade Zone 138, for authority to establish special-purpose subzone status for export activity at the infant formula and adult nutritional products manufacturing plant of Abbott Manufacturing, Inc., in Columbus, Ohio, was filed by the Board on April 9, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 28–96, 61 FR 17875, 4–23–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export manufacturing is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Abbott Manufacturing, Inc., plant in Columbus, Ohio (Subzone 138C), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign origin, tariff rate quota dairy products and sugar admitted to the subzone shall be reexported.

Signed at Washington, DC, this 3rd day of December 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–32355 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 937]

Grant of Authority for Subzone Status Fossil Partners, L.P.; (Watches, Sunglasses, Accessories) Richardson, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, for authority to establish special-purpose subzone status at the warehousing/distribution facility (watches, sunglasses and accessories) of Fossil Partners, L.P., in Richardson, Texas, was filed by the Board on March 12, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 15–97, 62 FR 13595, 3–2–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 39E) at the Fossil Partners, L.P. facility in Richardson, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 3rd day of December 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–32354 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–071]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Viscose Rayon Staple Fiber From Finland

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioners, the Department of Commerce is conducting an administrative review of the antidumping duty order on viscose rayon staple fiber from Finland. The review covers one manufacturer/exporter, Kemira Fibres Oy, during the review period, March 1, 1996, through February 28, 1997.

We invite interested parties to comment on these preliminary results of review. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: December 10, 1997.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Laurel LaCivita or Alexander Amdur at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4740 or (202) 482–5346, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

Background

On March 21, 1979, the Treasury Department published in the **Federal Register** (44 FR 17156) the antidumping duty finding on viscose rayon staple fiber from Finland. This finding was revoked on November 7, 1994 (59 FR 55441), effective as of April 1, 1993. The revocation was rescinded on February 22, 1997 (61 FR 6814). On March 28, 1997, the petitioners, Courtalds Fibers Inc. ("Courtalds") and Lenzing Fibers Corporation ("Lenzing"), requested that the Department of Commerce ("the Department") conduct an antidumping administrative review of Kemira Fibres Oy ("Kemira"), the only known producer of viscose rayon fiber in Finland, and any related, affiliated, or successor company or companies. On April 24, 1997, we published a notice of initiation of this administrative review covering the period March 1, 1996, through February 28, 1997, (62 FR 19988) for Kemira. We issued a questionnaire on May 20, 1997. We received section A, B and C questionnaire responses from Kemira on July 3, 1997. We issued a supplemental questionnaire on August 15, 1997. We received a supplemental response from Kemira on September 10, 1997. We issued a second supplemental questionnaire on September 22, 1997. Kemira responded to this letter on October 6, 1997. On October 27, 1997, Kemira submitted information concerning sales of VISIL fiber, which it maintains are outside of the scope of the finding.

On August 28, 1997, the Department solicited comments from all interested parties concerning the model match criteria and methodology to be used in this review. It received comments from the petitioners on September 11, 1997 and October 24, 1997, and from the respondent on September 16, 1997 and November 4, 1997.

We conducted a verification of home market and United States sales at Kemira's headquarters in Valkeakoski, Finland from November 3, 1997 to November 7, 1997.

The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The product covered by this review is viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments

and plexiform filaments). The term includes both commodity and speciality fiber. This product is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 5504.10.00 and 5504.90.00. The HTS numbers are provided for convenience and customs purposes. The written description of the scope of the finding remains dispositive.

Scope Issues

Kemira claims that short-cut (LK) fibers and semi-viscose fire-retardant (VISIL) fibers are excluded from the scope of the finding, while petitioners claim that they are included.[1]

Specifically, Kemira argues that LK fiber is excluded from the scope of the finding because it is cut in small sizes (specifically, ¼-inch to ½-inch sizes), has a unique production line, and is used by the paper industry, rather than the textile industry. Petitioners claim that the scope of the finding does not limit the definition of rayon staple fiber based on fiber length or end use and that, consequently, LK fiber should be included in the scope of the review.

Kemira claims that VISIL fiber is excluded from the scope of the finding because it is a hybrid fiber containing substantial non-viscose content; and is a patented product that is not produced by any other manufacturer. Kemira also notes that this fiber has been "finished/laminated with aluminum." However, Kemira notes that VISIL fiber is classified for Customs purposes under HTS 5504.10.00, the same tariff classification as viscose rayon staple fiber. The petitioners claim that VISIL fiber should be included within the scope of the finding. They argue that there is nothing in the scope of the finding that limits the applicability of the finding to "standard" fiber.

For the purposes of the preliminary results of review, we have included both LK and VISIL fibers within the scope of the finding, and have included sales of both LK and VISIL fibers in our margin analysis. However, because of the complexity of the issues relating to LK and VISIL fibers, the Department is commencing a scope inquiry to determine whether LK and VISIL fibers are covered by the scope of the finding.

Verification

We conducted verification of home market and U.S. sales information provided by Kemira using standard verification procedures, including on-site inspection of Kemira's sales and production facility, the examination of relevant sales and financial records, and original documentation containing relevant information.

Fair Value Comparisons

To determine whether sales of viscose rayon staple fiber to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the "Export Price", "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for normal value and compared these to individual U.S. transactions. We made corrections to the reported U.S. and home market sales data for clerical errors found at verification, as appropriate.

We excluded certain U.S. sales from our calculations. First, we excluded any zero-priced sample sales in accordance with *NSK LTD., et al* v. *United States*, 969 F. Supp. 34 (CIT 1997). Second, we excluded any sales that were shipped to the United States by a third country reseller if the respondent did not have any reason to know at the time of sale to the reseller that the merchandise was destined for the United States (for a detailed explanation, *see* Concurrence Memorandum, December 1, 1997). Third, we excluded any U.S. sales of entries that were liquidated prior to the period of review (POR), i.e., prior to suspension of liquidation. Such sales were only excluded if we were able to make a direct link to an entry prior to suspension of liquidation (see, e.g., Certain Stainless Steel Wire Rods From France: Final Results of Antidumping Duty Administrative Review, 61 FR 177 (September 11, 1996)).

We excluded a home market sale to an affiliated party because this sale failed to pass the Department's arm's-length test in accordance with 19 CFR 353.45(a) (see Concurrence Memorandum, December 1, 1997).

Facts Available

During the current POR, the Department requested that Kemira report all of its home market and U.S. sales of subject merchandise in accordance with the instructions in the questionnaire. Kemira did not report its home market and U.S. sales of second quality and sub-standard merchandise. Kemira stated in its narrative response that it sold second quality and sub-standard merchandise only to customers in Europe. On August 15, 1997, the Department issued a supplemental questionnaire to Kemira, requesting again that Kemira report all sales of viscose rayon fiber that are not specifically excluded from the scope of the finding. In its response to the supplemental questionnaire, Kemira again did not report its home market and U.S. sales of second quality and sub-standard merchandise. In both requests for information, the Department advised Kemira that failing to provide the requested information could result in the application of facts available (FA).

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department will use FA in reaching the applicable determination. Kemira failed to report all the information requested by the Department, so the Department will use FA in reaching the margin determination for Kemira's sales of second quality and sub-standard merchandise.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action (SAA) at 870. Kemira's failure to report the sales data requested by the Department, despite two requests for data from the Department, demonstrates that Kemira has failed to cooperate to the best of its ability in this review. Additionally, the Department explicitly told Kemira the possible consequences of not reporting the data. We find that, in selecting among the FA for Kemira, an adverse inference is warranted. Section 776(b) states that an adverse inference may include reliance on information derived from: (1) The petition; (2) the final determination in the LTFV investigation; (3) any previous review under section 751 of the Act or investigation under section 753 of the Act; or (4) any other information placed on the record. See also SAA at 829–831.

Therefore, for sales of second quality and sub-standard merchandise, we are applying as adverse FA, the higher of the margin calculated for Kemira in this review or 8.7 percent, the highest calculated rate for Kemira from any previous segment of the proceeding (*i.e.*, the margin calculated for Kemira in both the investigation and in the first period of review (44 FR 2219, January 10, 1979 and 46 FR 19844, April 1, 1981)).

[1] Kemira also claims that hydrophobic fibers are excluded from the scope of the order, but since Kemira did not sell these fibers in the U.S. during the period of review, we have not addressed this issue.

In the event that we apply as adverse FA the 8.7 percent rate, section 776(c) of the Act provides that when the Department relies on such secondary information in using FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). To determine probative value, we examine, to the extent practicable, the reliability and relevance of the information to be used. However, unlike other types of information such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations and reviews. However, if the Department relies on a calculated dumping margin from a prior segment of the proceeding as FA, it is not necessary to question the reliability of the margin. With respect to relevance, the Department will consider information reasonably at its disposal that would render a margin not relevant (see Anhydrous Sodium Metasilicate from France; Preliminary Results of Review, 61 FR 30853 (June 18, 1996)). We have no information indicating that the 8.7 percent rate is inappropriate as FA; therefore, we consider the corroboration requirements satisfied.

Export Price

The Department used the EP, as defined in section 772(a) of the Act, where the subject merchandise was sold by the manufacturer or exporter to unaffiliated purchasers in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of record. We calculated EP based on packed, delivered prices. We made deductions, where appropriate, for early payment discounts, foreign inland freight, ocean freight, Finnish and U.S. insurance expenses, and brokerage and handling fees in Finland and in the United States, in accordance with section 772(c)(2) of the Act.

Constructed Export Price

We calculated CEP, as defined in section 772(b) of the Act, based on packed, delivered prices to unaffiliated purchasers in the United States (the starting price). We found that CEP was warranted for certain sales in the United States that were made (before or after the date of importation) by or for the account of the producer or exporter (*see* Concurrence Memorandum, December 1, 1997). We calculated CEP based on the price to the first unaffiliated customer in the United States. We made deductions from the gross unit price (starting price) for early payment discounts, foreign inland freight, ocean freight, insurance expenses, brokerage and handling, U.S. duty, U.S. brokerage and U.S. inland freight, as appropriate, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Uruguay Round Agreements Act Statement of Administrative Action (SAA at 823–824), we made additional adjustments to the starting price by deducting selling expenses associated with economic activities in the United States, including commissions, warranty, and credit. We allocated the total reported commission for the POR for VISIL fiber sales over the total U.S. sales of VISIL fiber during the POR. We recalculated warranty expenses based on such expenses incurred during the current period (see Calculation Memorandum, December 1, 1997). Finally, we made an adjustment for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

Normal Value

A. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we found that the home market was viable. Therefore, we have based NV on home market sales.

B. Model Match

In accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the "Scope of Review" section above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. The petitioners recommended that we determine home market matches based on the criteria of linear density (denier/decitex), fiber length, luster and end-use. We found that the product model names used by Kemira incorporated all such information. Therefore, where possible, we matched each model sold in the United States with an identical home market model, based on Kemira's product codes, that was sold within the contemporaneous window which extends from three months prior to the U.S. sale until two months after the sale. We found contemporaneous home market sales of identical merchandise for all U.S. sales of non-VISIL. Therefore, we did not establish a model match hierarchy to determine the next most similar model in accordance with section 771(16) of the Act. With respect to U.S. sales of VISIL products for which there were no home market sales of identical merchandise during the contemporaneous window, we matched models based on most similar size and made an adjustment to NV for differences in physical characteristics (difmer). Because Kemira did not provide sufficient supporting documentation for its reported model-specific cost data, we could not determine the actual amount of any difmer. Therefore, as facts available, we made a difmer adjustment equal to twenty percent of the reported variable cost of manufacture (TCOM) of VISIL products sold in the United States. Interested parties are invited to comment on the appropriate difmer adjustment relevant to the sales at issue.

Furthermore, in conducting our margin calculations for Kemira, we discovered a number of VISIL sales for which there were no contemporaneous sales of identical or similar merchandise in the home market.

Since Kemira did not provide constructed value (CV) information, we are unable to calculate a margin for these sales. Therefore, we are compelled to use FA with regard to these sales for the purposes of the preliminary results. As FA we have selected the weighted-average margin calculated for those U.S. VISIL sales with contemporaneous home market matches.

C. Price-to-Price Comparisons

We based NV on the prices at which the foreign like products were first sold for consumption in the home market to an unaffiliated party in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the CEP or EP, in accordance with section 773(a)(1)(B)(i) of the Act. For purposes of this review, we determined that the same level of trade exists for Kemira in both markets (see Concurrence Memorandum, December 1, 1997). Accordingly, pursuant to section 777A(d)(2) of the Act, we compared the EP or CEP of the individual transactions to the monthly weighted-average price of sales of the foreign like product. In accordance with sections 773(a)(1)(B) of the Act, we

reduced home market price by deducting early payment discounts. We increased home market price by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and reduced it by home market packing costs in accordance with section 773(a)(6)(B) of the Act. In accordance with section 773(a)(6)(C) of the Act and 19 CFR 353.56(a), we made circumstance of sale (COS) adjustments for direct selling expenses, including credit and (recalculated) warranty expenses. In accordance with 19 CFR 353.56(b), we made an offset to NV for U.S. commissions. Since Kemira was not able to quantify the indirect selling expenses incurred for home market sales, the amount of this offset, pursuant to 19 CFR 353.56(b), was the lesser of (the recalculated) home market inventory carrying costs or U.S. commissions (see Concurrence Memorandum and Calculation Memorandum, December 1, 1997). No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period March 1, 1996, through February 28, 1997 to be as follows:

Manufacturer	Margin (percent)
Kemira Fibres Oy	13.63

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 3.9 percent, the "new shipper" rate established in the first review conducted by the Department, as explained below.

On March 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) and *Federal-Mogul Corporation* v. *United States*, 822 F.Supp. 782 (CIT 1993) decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement the above-mentioned decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

However, in proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews (see, e.g., Final Results of Antidumping Duty Administrative Review of Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64720, (December 9, 1993)).

Therefore, the "all others" rate applied is the rate of 3.9 percent from Viscose Rayon Staple Fiber From Finland, Final Results of Administrative Review of Antidumping Finding (46 FR 19844, April 1, 1981), the first review conducted by the Department in which a "new shipper" rate (or in this case, a rate for all shipments of the subject merchandise, including new shippers) was established.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of this administrative review.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we intend to calculate importer-specific assessment rates for viscose rayon staple fiber. For both EP and CEP sales, we will divide the total dumping margins (calculated as the difference between NV and EP (or CEP)) for each importer) by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise by the importer during the POR.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A hearing, if requested, will be held 44 days from the date of publication of this notice at the main Commerce Department building.

Interested parties are invited to comment on these preliminary results. In accordance with 19 CFR 353.38, case briefs from interested parties are due within 30 days of publication of this notice. Rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted no later than 37 days of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within ten days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) a list of issues to be discussed. In accordance with 19 CFR 353.38(b), issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22(c)(5).

Dated: December 1, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32356 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions: 1998 Trade Missions (February Through September) Application Opportunity

AGENCY: US Department of Commerce (DOC), International Trade Administration (ITA).

ACTION: Notice.

SUMMARY: This notice serves to inform the public of the opportunity to apply to participate in a number of trade missions to be held between December 1997 and September 1998.

DATES: Applications should be submitted to the Project Officer indicated for the specific mission of interest by the closing date specified in each mission statement. Applications received after the closing date will be considered only if space and scheduling constraints permit.

ADDRESSES AND REQUESTS FOR FURTHER INFORMATION: Requests for further information and for application forms should be addressed to the Project Officer for each trade mission indicated below. Information is also available via the International Trade Administration's (ITA) internet homepage at "http://www.ita.doc.gov/uscs/doctm." Numbers listed in this notice are not toll-free. An original and two copies of the required application materials should be sent to the Project Officer. Applications sent by facsimile must be immediately followed by submission of the original application.

SUPPLEMENTARY INFORMATION: The Department of Commerce invites U.S. companies to apply to participate in a number of trade missions to be held between February and September 1998. For a more complete description of the trade mission, obtain a copy of the mission statement from the Project Officer indicated below. The recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

TASBI Healthcare Technologies Matchmaker, United Kingdom, Italy, Spain and Greece, February 12–24, 1998. Recruitment Closes: December 19, 1997.
Contact information: Yvonne Jackson, Tel: (202) 482–2675/Fax: (202) 482–0178.

Health Industries Reverse Trade Mission from Russia to Los Angeles, CA, February 21–27 1998. Recruitment Closes: February 1, 1998.
Contact information: Jeffrey Gren, Tel: (202) 482–2587/Fax: (202)482–0975.

Saudi Businesswomen Reverse Trade Mission to New York City and Chicago, April 29–May 6, 1998. Recruitment Closes: March 22, 1998.
Contact information: Isabella Cascarano, ODO, Tel: (202)482–2488/ Fax:. (202)482–0687.

US Computer Industry Trade Mission to Beijing, Shanghai, Guangzhou, Shenzhen and HK, China, May 6–15, 1998. Recruitment Closes: March 7, 1998.
Contact information: Bryan Larson, Office of Computers and Business Equipment. Tel: (202)482–1987/Fax: (202)482–0943. E-mail: Bryan–Larson@ita.doc.gov.

Women in Trade Business Development Mission, Milan, Italy, Madrid, Spain, May 10–15, 1998. Recruitment Closes: April 1, 1998.
Contact information: Ms. Loretta Allison, Women In Trade Business Development Missions. Telephone: (202)482–5479/Facsimile: (202)482–1999.

E" Award Business Development Mission to Vietnam and Brunei, Hanoi, Ho Chi Minh City and Bandar Seri Begawan, April 6–13, 1998. Recruitment Closes: March 1, 1998.
Contact information: James Price, Tel: (202)482–5658/Fax: (202)482–1999.

Architecture, Contruction and Engineering Matchmaker Trade Delegation, April 20–24, 1998. Recruitment Closes: February 27, 1998.
Contact information: Sam Dhir, Tel: (202)482–4756/Fax: (202)482–0178.

Spring "98 High-Tech Dealmaker, Ottawa, Canada. June 2–4, 1998. Recruitment Closes: March 31, 1998.
Contact information: Deborah Anderson, Telephone: (202)482–2736/ Facsimile: (202)501–4585.

TASBI Franchising Matchmaker Trade Delegation, Italy, Spain, Portugal and Greece, June 15–26, 1998. Recruitment Closes: April 30, 1998.
Contact information: Sam Dhir, Tel: (202)482–4756/Fax: (202)482–0178.

Safety and Security Matchmaker Trade Delegation, Chile and Venezuela, June 22–26, 1998 (Optional Spin-off to Guayaquil, Ecuador). Recruitment Closes: May 8, 1998.
Contact information: Gordon Keller, Tel: (202)482–1793/Fax: (202)482–0178.

Healthcare Technologies Matchmaker Trade Delegation, Philippines, Indonesia, Malaysia, July 23–31, 1998. Recruitment Closes: June 12, 1998.
Contact information: Gordon Keller, Tel: (202)482–1793/Fax: (202)482–0178.

Plastics Industry Mission to Mexico City–Monterrey, Mexico, September 8–11, 1998.
Contact information: Kim Copperthite, Office of Metals, Materials, and Chemicals. Recruitment Closes: August 7, 1998. Tel: (202)482–5124/ Facsimile: (202)482–2565.

Authority: 15 U.S.C. 1512.

Dated: December 4, 1997.

Molly C. Costa,

Acting Director, US&FCS/Office of Public/Private Initiatives.

[FR Doc. 97–32235 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of an Opportunity to Join a Cooperative Research and Development Consortium for CD-Metrology Below 0.25 Microns

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology invites interested parties to attend a meeting on January 9, 1998, to discuss setting up a cooperative research consortium. The goal of the consortium is to achieve commercially available reference standards to support CD-metrology for feature linewidths below 0.25 microns. Parties participating in the consortium will be loaned (110) and (100) BESO1 chips and asked to perform a selection of CD measurements.

DATES: The Meeting will take place at 10 a.m. on January 9, 1998. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: The meeting will take place at and inquiries should be sent to Room B360, Building 225, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Michael W. Cresswell, Telephone: 301–975–2072; FAX: 301–948–4081.

SUPPLEMENTARY INFORMATION: The program will be within the scope and confines of the Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 371Oa), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilties—but no funds—to the cooperative research program.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel, data, and/or funds. This is not a grant program.

NIST and Sandia National Laboratories have successfully fabricated and tested prototypes of a new class of reference materials to support CD-metrology below 0.25 m. This work has the long-term goal of the commercial availability of certified physical standards traceable to NIST. As a result of the multiple requests for sample prototypes for evaluative purposes that it received, NIST formed an industry consortium to maximize the benefits of exchanging independent measurement results. That previous consortium ended in July 1997. The proposed consortium will last through July 1998.

Dated: December 4, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–32342 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–13–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection: Comment Request

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. § 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation for National and Community Service is soliciting comments concerning its proposed National Service Enrollment Form (NSEF), and its National Service Member Exit Form (NSMEF). Copies of the information collection requests can be obtained by contacting the office listed below in the address section of this notice.

The Corporation for National and Community Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the addresses section within 60 days of the date of this notice.

ADDRESSES: Send comments to Office of Evaluation, Lance Potter, Director, Corporation for National and Community Service, 1201 New York Ave., N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Lance Potter, (202) 606–5000, ext. 448.

SUPPLEMENTARY INFORMATION:

Part I. (National Service Enrollment Form (NSEF)

I. Background

The Corporation for National and Community Service proposes the revision of the Participant Enrollment Form (OMB3200–0018) which has been revised to incorporate elements from the National Service Trust Enrollment Form (OMB3045–0006) in an effort to reduce burden and facilitate data collection. The new form is called the Corporation for National Service Enrollment Form, and eliminates the need to distribute the National Service Trust Enrollment Form. This new form will be the direct source of information that the Corporation collects from its members. It will also function as a legal certification to the National Service Trust that a Member is enrolled.

II. Current Action

The Corporation for National and Community Service seeks three-year approval of the use of this new form. Emergency approval was granted in June 1997.

Type of Review: Revision.

Agency: Corporation for National and Community Service.

Title: National Service Enrollment Form (NSEF).

OMB Number: 3045–0006.

Agency Number: None.

Affected Public: Individuals and not-for-profit institutions.

Total Respondents: 31,000.

Frequency: Annually.

Average Time Per Response: 7 minutes.

Estimated Total Burden Hours: 3617 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Part II. (National Service Member Exit Form (NSMEF)

I. Background

The Corporation for National and Community Service has revised the Member Exit Form (OMB3045–0015) to incorporate elements from the National Service Trust End of Term Form (OMB3045–0009) in an effort to reduce the burden and facilitate data collection. The form is now called the Corporation for National Service End of Term/Exit Form and eliminates the need to distribute the National Service Trust End of Term Form. The End of Term/Exit Form is one of the only two direct sources of information that the Corporation collects from its Members. The purpose of the End of Term/Exit Form is to function as a legal certification that a Member has satisfied the requirements to qualify for an education award.

II. Current Action

The Corporation for National and Community Service seeks approval of the Corporation for National Service End of Term/Exit Form for which emergency approval was given in June 1997.

Type of Review: Revision.

Agency: Corporation for National and Community Service.

Title: National Service Exit Form (NSEF).

OMB Number: 3045–0015.

Agency Number: None.

Affected Public: Individuals and not-for-profit institutions.

Total Respondents: 31,000.

Frequency: Annually.

Average Time Per Response: 12 minutes.

Estimated Total Burden Hours: 6200 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 3, 1997.

Lance Potter,

Director, Office of Evaluation.

[FR Doc. 97–32286 Filed 12–9–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Notice of Availability of the Consolidation and Regionalization Plan, Finding of No Significant Impact (FONSI), and Associated Environmental Assessment (EA) for the Defense Information Systems Agency (DISA) Defense Megacenters (DMCs) and Related Facilities

AGENCY: Defense Information Systems Agency (DISA).

ACTION: Notice.

SUMMARY: The Defense Information Systems Agency (DISA) is announcing that it has prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact (FONSI) relating to the consolidation and regionalization of its 16 Defense Megacenters (DMCs) and related facilities in response to recommended action from the Quadrennial Defense Review (QDR). This action will result in reduced costs to the Department of Defense (DOD) and improved operational efficiencies without compromising service quality. This notice announces the availability of the final EA and FONSI to concerned agencies and the public.

ADDRESSES: Requests to receive a copy of the EA or FONSI should be mailed to Defense Information Systems Agency, Public Affairs Officer, 701 S. Courthouse Rd., Arlington, VA 22204–2199. The documents may also be picked up at the same address between the hours of 9 AM and 4 PM EST, Monday through Friday, except Federal holidays, by contacting Ms. Betsy Flood at (703) 607–6048/6900. Arrangements must be made in advance to pick up the documents, due to facility security requirements.

FOR FURTHER INFORMATION CONTACT: Ms. Betsy Flood, Public Affairs Officer, at (703) 607–6048/6900.

SUPPLEMENTARY INFORMATION:

Background

The Defense Information Systems Agency (DISA) is a Department of Defense (DOD) combat support agency under the direction, authority and control of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD[C31]). One of DISA's mission functions is to provide information processing support to the DOD, services, and agencies. In response to the QDR and continuing pressure to reduce federal spending, DISA has developed a proposal to consolidate and restructure operations and reduce operating costs. As input in the decision process of whether or not to implement this proposal, an EA has been prepared, as required by the National Environmental Policy Act (NEPA). The following provides a summary of the proposal, the results of the EA and conclusions.

Proposed Action

The Proposed Action consists of the following:

a. Consolidate mainframe processing from 16 existing Defense Megacenters (DMCs) into six facilities, five plus one Unisys legacy processing site,

b. Establish self-sustaining, regional support centers at each of the existing DMC sites with the exception of Sacramento, which is being closed as part of a Base Closure & Realignment (BRAC) 1995 action,

c. Establish self-sustaining, regional support centers at four of the remaining CONUS Storefront locations, closing others that are not transferred back to the Services through other initiatives, and

d. Reduce overhead staffing and allow for consolidation of overhead support functions.

These initiatives will hereafter be synonymous with the term Proposed Action.

Purpose and Need

With implementation of the Proposed action, DISA intends to:

a. Implement the Quadrennial Defense Review (QDR) recommendation,

b. Reduce costs to DOD by improving operational efficiency, while still providing equivalent or better service,

c. Consolidate mainframe processing into six standardized processing sites, located at existing DISA occupied facilities, through a transparent workload migration process,

d. Reorganize and reduce the management infrastructure needed to manage computer operations under the Defense Working Capital Fund, and

e. Realize savings from more efficient operations already reflected in FY98 and outyear budgets and most recent Program Objective Memorandum (POM) submission.

Result of Action

Under the proposed action, mainframe processing will be performed at the following six sites: DMC Columbus, OH; DMC Mechanicsburg, PA; DMC Ogden, UT; Oklahoma City, OK; DMC St. Louis, MO and DMC San Antonio, TX (Unisys legacy processing site).

The above sites and 13 additional sites would serve as regional sites, with the requirements that workload fully supports the costs to operate each site. The 13 additional sites are the following: Bremertgon, WA; Chambersburg, PA; Charleston, SC; Dayton, OH; Denver, CO; Huntsville, AL; Indianapolis, IN; Jacksonville, FL; Montgomery, AL; Norfork, VA; Rock Island, IL; San Diego, CA and Warner Robins, GA

Alternatives to the Proposed Action

Two alternatives to the proposed action were assessed in this study: The Outsourcing Alternative and the No-Action Alternative.

The outsourcing Alternative is based upon the Coopers & Lybrand study titled 'Strategy Options for Defense Information Services' (February 1996) which represents a potential industry response to outsourcing the mainframe processing workload of the 16 DMCs. This alternative assumes that all DMC technical support and computer operations functions would be contracted to a single commercial firm. Each of the 16 DMCs would be contracted out in order to allow the contractor to consolidate to six sites and achieve efficiencies. The ten remaining sites would be closed.

The No-Action Alternative is considered to be continuation of current

DISA management of all existing DMCs, storefronts and other associated facilities. This alternative includes the completion of optimization and BRAC initiatives that are currently underway as well as actions that are within the purview of DISA management, such as contract consolidation and software standardization.

Summary of Environmental Impacts

The Proposed Action is unlikely to have significant impacts on the environment, because DISA activities associated with each site generally occur indoors in computer, data processing or office surroundings. The operations have little, if any, interaction with the human or natural environment. Analyses of potential economic impacts demonstrated no meaningful change to the economic areas surrounding each of the sites from the increase or decrease in DISA employment.

Findings and Conclusions

The analyses conducted for this EA support the determination that there are no direct or indirect environmental impacts which should preclude DISA from implementing the Proposed Action. The potential for impacts resulting from DISA employment loss or gain is negligible in each of the economic areas associated with this action. Therefore, no mitigation is required or planned for the Proposed Action. Based on the EA, a Finding of No Significant Impact (FONSI) is issued. Preparation of an Environmental Impact Statement is not required for the Proposed Action. This FONSI and the supporting EA fulfill the requirements of NEPA, DOD directive 6050.1, and the Council on Environmental Quality regulation implementing NEPA.

Beverly Sampson,

Chief Protocol Officer.

[FR Doc. 97–32308 Filed 12–9–97; 8:45 am]

BILLING CODE 5000–04–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 17, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 11:00 a.m. at the same location and will include discussion of proposed amendments to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania and response document distribution and the 1998 Commission meeting schedule.

In addition to the subjects listed which are scheduled for public hearing at the business meeting, the Commission will also address the following: Minutes of the November 19, 1997 business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions; a resolution to adopt the current expense and capital budgets for Fiscal Year 1999; a resolution to adopt a Commission vision and mission statement entitled Charting the Future and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Mount Holly Water Company D–95–46 CP

An application for approval of a ground water withdrawal project to supply up to 88.7 million gallons (mg)/30 days of water to the applicant's Mansfield Water Supply Facility from new Well Nos. 1, 2, 3 and 4, and to limit the withdrawal from all Mansfield and Mount Holly water systems wells to 184 mg/30 days. The project is located in Mansfield Township, Burlington County, New Jersey.

2. New Jersey Turnpike Authority D–96–55 CP

An application for approval of a ground water withdrawal project to supply up to 3.6 mg/30 days of water to the applicant's Service Area 1N from new Well No. 1N–3, and to limit the existing withdrawal from all wells to 3.6 mg/30 days. The project is located in Oldmans Township, Salem County, New Jersey.

3. Perkasie Borough Authority D–97–12 CP

An application for approval of a ground water withdrawal project to supply up to 21.6 mg/30 days of water to the applicant's distribution system from new Well No. 12, and to retain the existing withdrawal limit from all wells of 34.2 mg/30 days. The project is located in East Rockhill Township and Perkasie Borough, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

4. Horsham Water Authority D–97–16 CP

An application for approval of a ground water withdrawal project to supply up to 14.4 mg/30 days of water to the applicant's distribution system from new Well No. 40, and to retain the existing withdrawal limit from all wells of 83.36 mg/30 days. The project is located in Horsham Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

5. Milford Township Water Authority D–97–24 CP

An application for approval of a ground water withdrawal project to supply up to 3.46 mg/30 days of water to the applicant's distribution system from new Well No. 2, and to increase the existing withdrawal limit from all wells from 5.58 mg/30 days to 9.04 mg/30 days. The project is located in Milford Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. Superior Water Company D–97–26 CP

An application to replace the withdrawal of ground water from Well No. 3 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 10 be limited to 3.88 mg/30 days, and that the total withdrawal from all wells remain limited to 15 mg/30 days. The project is located in Douglass and New Hanover Townships, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. Borough of Delaware Water Gap D–97–32 CP

An application for approval of a ground water withdrawal project to supply up to 9.15 mg/30 days of water to the applicant's distribution system from new Well Nos. 6 and 7, and to limit the withdrawal from all wells to 15 mg/30 days. The project is located in Delaware Water Gap Borough, Monroe County, Pennsylvania.

8. Borough of Quakertown D–97–36 CP

An application to replace the withdrawal of water from Well No. 15 in the applicant's water supply system which has become an unreliable source of supply, with new Well No. 15A. The applicant requests that the total withdrawal from all wells remain limited to 51.1 mg/30 days. The project is located in the Borough of Quakertown, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

9. Moyer Packing Company D–97–44

An application for approval of a ground water withdrawal project to supply up to 3.0 mg/30 days of water to the applicant's beef processing facility from new Well Nos. 7 and 8, and to increase the existing withdrawal limit from all wells from 6.4 mg/30 days to 11.5 mg/30 days. The project is located in Franconia Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: December 2, 1997.

Susan M. Weisman,

Secretary.

[FR Doc. 97–32319 Filed 12–9–97; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 9, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any angency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 4, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Field Test New Assessment Items for Third International Mathematics and Sciences Study Replication (TIMSS–R).
Frequency: Field test for new assessment items.
Affected Public: Individuals or households; Not-for-profit institutions.
Reporting Burden and Recordkeeping: Responses: 625. Burden Hours: 1,563.
Abstract: In order to provide international benchmarks against which to measure the mathematics performance of American students as part of the President's new voluntary test, and the measure progress toward the U.S. national goal of being first in the world in mathematics and science in the year 2000, the National Center for Education Statistics desires to repeat TIMSS in the U.S. in 1999.

Office of the Under Secretary

Type of Review: New.
Title: Institutional Survey of the Operation of the Federal Work-Study Program.
Frequency: One time.
Affected Public: Business or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden: Responses: 850 Burden Hours: 1,700.
Abstract: This study will describe the operation of the Federal Work-Study program at postsecondary education institutions nationwide. This survey will provide, for the first time, nationally-representative data on the workings of this program. Results will be used by Congress during the reauthorization of the Higher Education Act and for other oversight responsibilities.

[FR Doc. 97–32232 Filed 12–9–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–555]

Proposed Information Collection and Request for Comments

December 4, 1997.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before February 9, 1998.

ADDRESSES: Copies of the proposed records retention requirements can be obtained from and written comments may be submitted to the Federal Energy

Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fod.us.

SUPPLEMENTARY INFORMATION: The information retained under the requirements of FERC–555 "Records Retention Requirements" (OMB No. 1902–0098) is used by the Commission to implement the statutory provisions of Sections 301, 304, and 309 of the Federal Power Act (FPA) 16 U.S.C. 792.828c, Sections 8, 10 and 16 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w, and Section 20 of the Interstate Commerce Act (ICA), 49 U.S.C. 20.

The regulations for preservation of records establish retention periods, necessary guidelines and requirements to sustain retention of applicable records for the regulated public utilities, natural gas and oil pipeline companies subject to the jurisdiction of the FERC. These records will be used by the regulated companies as the basis for their required rate filings and reports for the Commission. In addition, the records will be used by the Commission's audit staffs during the scheduled periodic compliance reviews and special analyses performed as deemed necessary by the Commission. The records retained by the jurisdictional entities as directed by the Commission are the result of a mandatory requirement. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 125, 225 and 356.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public recordkeeping burden for this collection is estimated as:

No. of respondents annually—(1)	No. of responses per respondent—(2)	Average burden hours per response—(3)	Total annual burden hours—(1)x(2)x(3)
500	1	2,400 hours	1,200,000 hours.

Estimated cost burden to respondents: 1,200,000 hours/2,087 hours per year × $110,000 per year = $63,248,682. The cost per respondent is equal to $126,497.

The recordkeeping burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to maintaining records, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32234 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–81–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1997.

Take notice that on December 1, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective January 1, 1998:

First Revised Sheet No. 128A
First Revised Sheet No. 129

ANR submits that the purpose of this filing is to propose a modification to its General Terms and Conditions to modify the upper BTU limit contained in the Heat Content provision to provide for a maximum BTU for receipts upstream of gas processing of 1200 BTU's per cubic foot, or 1050 BTU's per cubic foot for gas receipts that either cannot or are not being processed. ANR further states that it will continue to accept gas outside its stated BTU tariff limits if, in its reasonable opinion, it will not affect its operations.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32240 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–3–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 4, 1997.

Take notice that, on December 1, 1997, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 11A reflecting an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.69% to 0.73% effective January 1, 1998.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32241 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–1–001]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1997.

Take notice that on November 12, 1997, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff, with an effective date of November 1, 1997:

Sixth Revised Sheet No. 131

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheet is to comply with Commission letter order dated November 8, 1997 in docket number MT98–1–000 (81 FERC, ¶62,124) in which the Commission instructed Mid Louisiana to re-file the referenced sheet with a corrected superseded sheet number.

Pursuant to section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any requirement of the Regulations in order to permit the tendered tariff sheet to become effective November 1, 1997, as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32236 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–80–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1997.

Take notice that on December 1, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 8, with a proposed effective date of January 1, 1998.

National states that the proposed tariff sheets reflect an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment provision set forth in section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 or 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32239 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–4–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 1997.

Take notice that on December 1, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth revised Volume No. 1, Fifth Revised Revised Sheet No. 9; with a proposed effective date of December 1, 1997.

National states that pursuant to Article II, Section 2, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 13.0 cents per dth.

National further states that, as required by Article II. Section 4, National is filing a revised tariff sheet within 30 days of the effective date for the revised IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with rules 211 or 214 of the Commission's Rules or Practice and Procedure (18 CFR Sections 385.211 or 385.214). All such motions or protests must be filed Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on filo with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32242 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–5–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 1997.

Take notice that on December 1, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sixth Revised Sheet No. 9 and First Revised Sheet No. 43 to its FERC Gas Tariff, Fourth Revised Volume No. 1, with a proposed effective date of January 1, 1998.

National states that pursuant to Article III, Section 1, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Firm Gathering (FG) rate annually to reflect: (a) the changes in the FG reservation determinants based on the FG throughput for the prior 12 months ended October 31; (b) an annual reduction of 2.5 percent in direct Operation and Maintenance Costs; (c) the costs resulting from operation of Section 2 and 3 of Article III of the settlement; and (d) changes in the IG revenues to be subtracted from the Gathering Cost-of Service based on the maximum IG rate in effect each month during the prior 12 months ended October 31 times the IG throughput for that same period. The recalculation produced and FG rate of $7.1506 per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 or 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32243 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–326–012 and RP95–242–011]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1997.

Take notice that on November 18, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Second Revised Volume No. 2, certain tariff sheets to be effective December 1, 1997.

Natural states that the purpose of the filing is to implement provisions of the Stipulation and Agreement (Settlement) filed by Natural in Docket Nos. RP95–326–010 and RP95–242–010 on May 31, 1996. The Settlement represents a comprehensive resolution of Natural's pending general rate case, which was approved by the Commission in a letter order issued on November 3, 1997 in said dockets.

Natural request any waivers which may be required to permit the tendered tariff sheets to become effective on December 1, 1997.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies, and all parties set out on the official service list in Docket Nos. RP95–326 and RP95–242.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 11, 1997. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32237 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–79–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

December 4, 1997.

Take notice that on December 1, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, the following revised sheets, with an effective date of January 1, 1998:

Fifth Revised Sheet No. 38
Fourth Revised Sheet No. 39
Fourth Revised Sheet No. 40
Fourth Revised Sheet No. 41
Fourth Revised Sheet No. 42
First Revised Sheet No. 43
First Revised Sheet No. 44
First Revised Sheet No. 45

Tennessee states that these tariff sheets set forth revisions to Tennessee's tariff provisions concerning collection of Tennessee's take-or-pay transition costs through fixed charges. Tennessee states that the amount filed to be collected under the foregoing tariff sheet is $2,530,367, which includes $439,462 of market area volumetric costs proposed to be collected through fixed charges.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 24026, in accordance with 18 CFR sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32238 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–11–000, et al.]

Magellan Utilities Development Corp., et al.; Electric Rate and Corporate Regulation Filings

December 3, 1997.

Take notice that the following filings have been made with the Commission:

1. Magellan Utilities Development Corporation

[Docket No. EG98–11–000]

Take notice that on November 26, 1997, Magellan Utilities Development Corporation (Magellan) of 4/F Ortigas Building, Ortigas Avenue, Pasig City, Philippines, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant asserts that it is a corporation organized under Philippine law which was formed to develop and own a 300 megawatt pulverized coal-fired power plant to be located south of Manila, the Philippines (the Facility), which will be an eligible facility as defined in the Public Utility Holding Company Act of 1935. All of the electric energy produced by the Facility will be sold at wholesale to Manila Electric Company, a Philippine utility, or to other utilities located in the Philippines.

Comment date: December 22, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. PECO Energy Company

[Docket No. ER98–641–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Strategic Energy Partners Ltd., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER98–642–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and Strategic Energy Partners Ltd. (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER98–643–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and MidCon Gas Services Corp., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER98–644–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity

Obligation Allocation Agreement between PECO and CNG Retail Services Corp., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997 at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER98–645–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and MidCon Gas Services Corp., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997 as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER98–646–000]

Take notice that on November 13, 1997, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with Williams Energy Services Co., under its CS–1 Coordination Sales Tariff.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. PP&L, Inc.

[Docket No. ER98–647–000]

Take Notice that on November 13, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 27, 1997, with Dayton Power and Light Company (DP&L) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds DP&L as an eligible customer under the Tariff.

PP&L requests an effective date of November 13, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to DP&L and to the Pennsylvania Public Utility Commission.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER98–648–000]

Take notice that on November 13, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and two service agreements for two new customers, PacificCorp Power Marketing, Inc., and American Electric Power System.

CILCO requested an effective date of November 7, 1997.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–649–000]

Take notice that on November 13, 1997, the PJM Interconnection, L.L.C., (PJM), filed on behalf of the Members of the LLC, membership applications of Bruin Energy, Inc., and PG&E Energy Services Corporation. PJM requests an effective date on the day after received by FERC.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER98–650–000]

Take notice that on November 13, 1997, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Firm and Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with NP Energy Inc.

A copy of this filing has been served on NP Energy Inc., and the Arizona Corporation Commission.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER98–651–000]

Take notice that on November 13, 1997, Carolina Power & Light Company (CP&L), tendered for filing a rate schedule enabling CP&L to make wholesale sales of capacity and energy at market-based rates. CP&L requests an effective date sixty days from the date of filing.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Energy, Inc.

[Docket No. ER98–652–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Aquila Power Corporation (Aquila), as Transmission Customer. A copy of the filing was served upon Aquila.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Energy, Inc.

[Docket No. ER98–653–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Cook Inlet Energy Supply, LP (CIES), as Transmission Customer. A copy of the filing was served upon CIES.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER98–654–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Cinergy Services, Inc. (Cinergy), as Transmission Customer. A copy of the filing was served upon Cinergy.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER98–655–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Delhi Energy Services, Inc. (Delhi), as Transmission Customer. A copy of the filing was served upon Delhi.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER98–656–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Vitol Gas & Electric LLC [VG&E), as Transmission Customer. A copy of the filing was served upon VG&E.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Energy, Inc.

[Docket No. ER98–657–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Western Resources, Inc. (Western), as Transmission Customer. A copy of the filing was served upon Western.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Puget Sound Energy, Inc.

[Docket No. ER98–658–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Williams Energy Services Company (Williams), as Transmission Customer. A copy of the filing was served upon Williams.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Puget Sound Energy, Inc.

[Docket No. ER98–659–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Edison Source (Edison), as Transmission Customer. A copy of the filing was served upon Edison.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Puget Sound Energy, Inc.

[Docket No. ER98–660–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Public Utility District No. 1 of Chelan County (Chelan), as Transmission Customer. A copy of the filing was served upon Chelan.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Energy, Inc.

[Docket No. ER98–661–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with TransAlta Energy Marketing Corporation (TransAlta), as Transmission Customer. A copy of the filing was served upon TransAlta.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32323 Filed 12–8–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–770; FRL–5749–3]

Notice of Filing of a Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–770, must be received on or before January 9, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information"

(CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Sheila A. Moats, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: 5th floor CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–1259; e-mail: moats.sheila@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–770] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–770] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of the Petition

Petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

J P BioRegulators Inc.

PP 7G4892

EPA has received a pesticide petition (7G4892) from J P BioRegulators Inc, 1611 Maple St., Middleton, Wisconsin 53562, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of phospholipid in or on grapes, tomatoes, apples, pear, peaches, nectarines, citrus, cranberries, and strawberries. Pursuant to section 408(d)(2)(A)(I) of the FFDCA, as amended, J P BioRegulators Inc., has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by J P BioRegulators Inc., and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that is reflected the conclusion of the petitioner and not necessarily EPA.

A. Proposed Use Practices

An experimental use permit and temporary tolerance for phospholipid is being proposed for the following sites: grapes, tomatoes, apples, pear, peaches, nectarines, citrus, cranberries and strawberries in Arizona, California, Florida, Massachusetts, Michigan, Ohio, Washington, West Virginia and Wisconsin on a total of 570 acres/year for a 3 year period.

Phospholipid is used to enhance the ripening and shelf life of fruits. Phospholipid enhances ethylene production thus stimulating and promoting ripening, but does not enhance respiration so that fruit stays firmer and has a longer shelf life.

Phospholipid is sprayed at the rate of 100-500 ppm Lyso PE (lysophosphatidylethanolamine, a specific type of phospholipid) mixed in water. Application rate will be 50-200 gallons per acre. Preharvest applications are made May through October and post harvest application is extended into December. Treatment is made either 2 weeks prior to harvest or within 1-4 weeks after harvest.

B. Product Identity/Chemistry

The active ingredient is phospholipid (Lyso PE). The mechanism by which phospholipid enhances ripening is as a growth regulator. It has been observed empirically that phospholipid stimulates ethylene production, but not respiration of plant tissues although the exact mechanism is not fully understood. Phospholipid is present in all cells in all organisms. It is part of cell membranes. About 50% of the cell membrane is composed of lipid of which the major constituent is phospholipid. Lyso-PE (a specific member of the phospholipid group) is present in high quantities in food products containing egg yolk and meat. In dried egg yolk Lyso-PE constitutes 2% of the lipids present. Lyso-PE is also found in egg solids, cows milk, corn grains, corn starch, oats and wheat which are exempted from regulation under section25(b)(2) of FIFRA.

C. Toxicological Profile

Waivers for toxicology studies have been requested for phospholipid. Phospholipid is a fat found in food consumed by humans, animals, and is non-toxic to humans and animals. Sufficient data exist to assess the hazards of phospholipid and to make a determination on aggregate exposure, consistent with section 408(c)(2), for the exemptions from the requirement of a tolerance. The exposures, including dietary exposure, and risks associated with establishing the requested exemption from the requirement of a tolerance follows.

Phospholipid is present in all cells in all organisms. It is part of the cell membranes. Lyso-PE (a specific phospholipid) is present in high quantities in food products containing egg yolk and meat. In dried egg yolk, the Lyso-PE constitutes 2% of the fat present. Egg solids are widely used in food products. In the USA, about 18 billion eggs are broken per year to produce egg white and egg solids. Because of this all acute toxicity, genotoxicity, and subchronic toxicity studies normally required for biochemical pesticides are waived.

D. Aggregate Exposure

Phospholipid is present in all cells in all organisms. It is a part of the cell membrane. Phospholipid is present in high quantities in food products containing egg yolk and meat.

1. *Dietary exposure—food.* It is anticipated that residues of phospholipid will be negligible in treated raw agricultural commodities. Due to the products lack of mammalian toxicity, any exposure if it occurred will not be harmful to humans. It is not anticipated that residues of phospholipid will occur in drinking water.

2. *Non-dietary exposure, non-occupational exposure.* Increased non-dietary exposure of phospholipid via lawn care, topical insect repellents, etc., is not applicable to this EUP application.

E. Cumulative Exposure

There is no anticipated potential for cumulative effects of phospholipid since it does not have a mode of toxicity.

F. Endocrine Disruptors

J P Bioregulators Inc., has no information to suggest that phospholipid will adversely affect the immune or endocrine systems.

G. Safety Considerations

The lack of toxicity of phospholipid is demonstrated by the above summary. Based on this information, the aggregate exposure to phospholipid over a lifetime should not pose appreciable risks to human health. There is a reasonable certainty that no harm will result from aggregate exposure to phospholipid residues. Exempting phospholipid from the requirement of a temporay tolerance should be considered safe and pose insignificant risk.

Egg solids are widely used in food products. In dried egg yolk, 2% of the lipids are Lyso-PE. Egg yolks are used in a variety of foods including baby food and infant formula. Lyso-PE is also present in human breast milk. There is a reasonable certainty that no harm will result to infants and children from aggregate exposure to phospholipid residues.

H. Analytical method

An analytical method for residues is not applicable as this proposes an exemption from the requirement of a tolerance.

I. Existing Tolerances

No tolerances or exemptions from the requirement of tolerance have been established or applied for domestically or internationally other than subject petition.

[FR Doc. 97–32183 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: Technical Mapping Advisory Council.

DATES OF MEETING: December 11 and 12, 1997.

PLACES: The meeting will be held at the Thunderbird Motel, 2201 E. 78th St., Bloomington, MN.

TIMES: 8 a.m. to 6. p.m. on Thursday and 8 a.m. to 4 p.m. on Friday.

PPROPOSED AGENDA: Discussion of 1997 Annual Report.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472; telephone (202) 646–2756 or by fax (202) 646–4596.

SUPPLEMENTARY INFORMATION: Publication of this notice does not give a 15 day advance notice of the meeting as required by General Services Administration regulations. This shorter notice period resulted from reassignment of Agency staff.

Dated: December 8, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–32444 Filed 12–9–97; 8:45 am]

BILLING CODE 6718–04–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 208.
Name: Albert M. Ruiz, d/b/a York International Co.
Address: 33 West 46th street, Room 902, New York, NY 10036
Date Revoked: August 21, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 3695.
Name: Cargo Services International, Inc.
Address: 5190 N.W. 167th Street, Miami, FL 33014
Date Revoked: October 7, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 1096.
Name: Foreign Forwarding, Inc.
Address: 10300 West Hampton Avenue, Milwaukee, WI 53225–4099
Date Revoked: September 8, 1997.
Reason: Surrendered license voluntarily.

License Number: 1468.
Name: Metro Worldwide Shipping Inc.
Address: 147–20 181st Street, Jamaica, NY 11413
Date Revoked: August 29, 1997.
Reason: Surrendered license voluntarily.

License Number: 3449.
Name: The Echlin Sales Company
Address: 100 Double Beach Road, Branford, CT 06405
Date Revoked: September 9, 1997.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakel,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 97–32228 Filed 12–9–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Notice.

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimates of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 9, 1998.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. Report title: Transfer Agent Registration and Amendment Form
Agency form number: FR TA-1
OMB control number: 7100-0099
Frequency: on occasion
Reporters: State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies who are, or wish to register as, transfer agents
Annual reporting hours: 28
Estimated average hours per response: 1.25 (registrations); 0.17 (amendments)
Number of respondents: 41
Small businesses are not affected.

General description of report: This information collection is mandatory (sections 17A(c), 17(a), and 23(a) of the Securities Exchange Act, as amended (15 USC §§78q-1(c)(1) and (2), 78q(a)(3), and 78w(a)(1)) and is not given confidential treatment.

Abstract: The Securities Exchange Act requires any person acting as a transfer agent to register and to amend registration information as it changes. State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies register with the Federal Reserve by submitting Form TA-1. The information collected includes the company name, all business addresses, and several questions about the registrant's proposed activities as a transfer agent. The Federal Reserve uses the information, which is available to the public upon request, to act upon registration applications and to aid in performing supervisory duties.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: 1998 Survey of Consumer Finance
Agency form number: FR 3059
OMB control number: 7100-0287
Frequency: One-time survey
Reporters: U.S. families
Annual reporting hours: 6,900
Estimated average hours per response: 1.5
Number of respondents: 4,600
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. §§ 225a, 1821, 1828(c), 1842, and 1843) and is given confidential treatment (5 U.S.C. 552(b)(6)).

Abstract: The 1998 Survey of Consumer Finances would be the sixth triennial Survey of Consumer Finance since 1983, the beginning of the current series. This survey is the only source of representative information on the structure of U.S. families' finances. The proposed survey, to be conducted between June and December 1998, would collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. families.

Board of Governors of the Federal Reserve System, December 4, 1997.
William W. Wiles,
Secretary of the Board.
[FR Doc. 97–32218 Filed 12–9–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 24, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Arthur L. Walters, Arlington, Virginia; to retain voting shares of Virginia Commerce Bank, Arlington, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Patricia Rhodes Trickey, Cape Girardeau, Missouri; Teresa Rosette Maurer, Cape Girardeau, Missouri; Carla Jeanne Millham, Jackson, Missouri; Mary Suzanne Vickery, Cape Girardeau, Missouri; Bonnie Rhodes Poythress, Jackson, Missouri; Gloria Elaine Beussink, Jackson, Missouri; and Frances Eugene Rhodes, Cape Girardeau, Missouri, all acting in concert; to acquire voting shares of Reliable Community Bancshares, Inc., Perryville, Missouri, and thereby acquire Bank of Missouri, Perryville, Missouri.

Board of Governors of the Federal Reserve System, December 4, 1997.
William W. Wiles,
Secretary of the Board.
[FR Doc. 97–32221 Filed 12–9–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Central Illinois Bancorp, Inc., Sidney, Illinois; to acquire 100 percent of the voting shares of CIB Bank (in organization), Indianapolis, Indiana.

Board of Governors of the Federal Reserve System, December 4, 1997.
William W. Wiles,
Secretary of the Board.
[FR Doc. 97–32219 Filed 12–9–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with Greenville Financial Corporation, Greenville, South Carolina, and thereby indirectly acquire Greenville National Bank, Greenville, South Carolina.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Paramount Bancorp, Inc., Bingham Farms, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Paramount Bank (in organization), Bingham Farms, Michigan.

Board of Governors of the Federal Reserve System, December 5, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–32341 Filed 12–9–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either

directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Montgomery, Alabama; to acquire PALFED, Inc., and thereby indirectly Palmetto Federal Savings Bank of South Carolina, both of Aiken, South Carolina, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y. Comments regarding this application must be received by January 2, 1998.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Stockmens Financial Corporation, Rushville, Nebraska; to acquire Electronic Commerce Management Group, LLC, Greenwood, Colorado (a joint venture), and thereby engage in leasing personal or real property, pursuant to § 225.28(b)(3) of the Board's Regulation Y; management consulting services, pursuant to § 225.28(b)(9) of the Board's Regulation Y; and data processing activities, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 4, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32220 Filed 12–9–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonabnking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 97-31467) published on page 63717 of the issue for Tuesday, December 2, 1997.

Under the Federal Reserve Bank of New York heading, the entry for Cedit Commerical De France, S.A., Paris, France, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Credit Commercial De France, S.A., Paris, France; to engage *de novo* through its subsidiary International Finance Corporation, New York, New York, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; activities related to extending credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and investment transactions as principal, pursuant to § 225.28(b)(8) of the Board's Regulation Y.

Comments on this application must be received by December 15, 1997.

Board of Governors of the Federal Reserve System, December 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32339 Filed 12–9–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to acquire Keystone Heritage Group, Inc. Lebanon, Pennsylvania, and thereby indrectly acquire Keystone Heritage Life Insurance Company, Lebanon, Pennsylvania, and thereby engage in insurance agency activities, pursuant to § 225.28(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32340 Filed 12–9–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SERVICE

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 12:00 noon, Monday, December 15, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1998 Federal Reserve Board officer salary structure and merit program.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 5, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32394 Filed 12–5–97; 4:27 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Health Care Policy And Research

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Agency for Health Care Policy and Research (AHCPR) announces the following technical review committee to meet during the month of December 1997:

Name: Technical Review Committee for the AHCPR User Liaison Program Dissemination Support Contracts.

Date and Time: December 17–18, 1997, 9:00 a.m.–5:00 p.m.

Place: Agency for Health Care Policy and Research, Executive Office Building, 6th Floor (East Wing) Conference Rooms, Room 2 on December 17; Room 1 on December 18, 2101 East Jefferson Street, Rockville, MD 20852.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf of the AHCPR Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals for the User Liaison Program (ULP) Dissemination Support contracts.

The purpose of these contracts is to provide for the timely and effective transmission of relevant health services research findings and related descriptive and programmatic information to a broad spectrum of selected public and private users of health services research to assist them in managing more effectively the problems and issues that confront them with respect to the design, delivery, quality, evaluation, and financing of health services. In performance of these contracts, the contractors shall plan, develop, and conduct workshops, seminars, and meetings and prepare research syntheses, background papers, or technical assistance documents on health policy issues for selected target audiences. The target audiences of users of health services research include state and local officials; health care consumers, purchasers, plans, practitioners, and policymakers (including Federal executive branch officials). In planning and conducting workshops, the contractors will be responsible for not only conducting comprehensive and objective assessments of relevant information, but also for effectively presenting such information in a manner which is tailored to the particular needs of the selected target audience(s).

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above referenced Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to protect the free and full exchange of views in the contract evaluation process and safeguard confidential proprietary information, and personal information concerning individuals associated with the proposals that may be discussed during the meeting. This action is taken in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, 5 U.S.C. 552b(c)(6), 41 CFR Section 101–6.1023 and Department procurement regulations, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Marcia Clark, User Liaison Program, Center for Health Information Dissemination, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 401, Rockville, Maryland 20852, 301/594–6668.

Dated: December 3, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–32281 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Science Board to the Food and Drug Administration; Formation of a Subcommittee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the formation of a subcommittee of the Science Board to the Food and Drug Administration (Science Board). The subcommittee entitled "Subcommittee for Center for Biologics Evaluation and Research Review" has been established to address scientific issues related to the research programs conducted by the Food and Drug Administration. The subcommittee's findings will be presented to the Science Board for full public discussion at future meetings. The subcommittee is established under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

FOR FURTHER INFORMATION CONTACT: Susan K. Meadows, Office of Science (HF–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340.

SUPPLEMENTARY INFORMATION: FDA is announcing the formation of a subcommittee of the Science Board. This subcommittee has been established to address issues related to the scientific quality, mission relevance, and scientific management and leadership of the research programs conducted by FDA's Center for Biologics Evaluation and Research. The subcommittee will hold its meeting(s) over the next 3 to 4 months to collect information on biologics research programs, to conduct an external peer review of biologics research for quality and relevance, and to assess an annual programmatic prioritization model. The subcommittee's findings will be presented to the Science Board for full public discussion at a future meeting that will be announced in the **Federal Register** prior to the meeting. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

Dated: December 4, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–32275 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Science Board to the Food and Drug Administration; Formation of a Subcommittee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the formation of a subcommittee of the Science Board to the Food and Drug Administration (Science Board). The subcommittee entitled "Board of Scientific Counselors" has been established to address scientific issues related to the research programs conducted by the Food and Drug Administration. The subcommittee's findings will be presented to the Science Board for full public discussion at future meetings.

FOR FURTHER INFORMATION CONTACT: Susan K. Meadows, Office of Science

(HF–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–827–3340.

SUPPLEMENTARY INFORMATION: FDA is announcing the formation of a subcommittee of the Science Board. The subcommittee has been established to address issues related to the scientific quality, mission relevance, and scientific management and leadership of research programs conducted by FDA. The subcommittee will meet several times over the next 2 years to collect and review information on FDA's scientific research programs and to discuss a validated process for a coordinated, external, scientific peer review of the agency's research programs. The subcommittee's findings will be presented to the Science Board for full public discussion at future meetings that will be announced in the **Federal Register** prior to the meetings. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app.2)).

Dated: December 4, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–32278 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0504]

The Goodyear Tire and Rubber Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Goodyear Tire and Rubber Co. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of butylated reaction product of *p*-cresol and dicyclopentadiene for use as an antioxidant in acrylonitrile/butadiene/styrene copolymers in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4561) has been filed by The Goodyear Tire and Rubber Co., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of butylated reaction product of *p*-cresol and dicyclopentadiene for use as an antioxidant in acrylonitrile/butadiene/styrene copolymers in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 2, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–32358 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0501]

Abbott Laboratories; Premarket Approval of IMx® PSA and AxSYM® PSA Assays

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Abbott Laboratories, Diagnostics Div., Abbott Park, IL, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the IMx® PSA and AxSYM® PSA assay. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 7, 1997, of the approval of the supplemental application.

DATES: Petitions for administrative review by January 9, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On November 2, 1994, Abbott Laboratories, Diagnostics Div., Abbott Park, IL 60064, submitted to CDRH a supplemental application for premarket approval of IMx® PSA and AxSYM® PSA assays. The devices are microparticle enzyme immunoassays (MEIA) for the quantitative measurement of Prostate Specific Antigen (PSA) in human serum as an aid in the detection of prostate cancer when used in conjunction with digital rectal exam (DRE) in men aged 50 years or older. Prostatic biopsy is required for diagnosis of cancer.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On August 7, 1997, CDRH approved the supplemental application by a letter to the applicant from the Deputy Director of Clinical and Review Policy, Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 9, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–32216 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–320]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Corrective Action Plan (Medicaid Eligibility Quality Control); *Form No.:* HCFA–320; *Use:* Medicaid eligibility quality control (MEQC) is a State-administered system designed to improve the management of the Medicaid program and reduce the level of misspent Medicaid funds. Each month, States select a sample of Medicaid cases from their inventory of eligible cases and conduct QC reviews to determine the accuracy of the eligibility determinations. This Corrective Action Plan allows HCFA to determine the types of corrective actions used by States. Sound and effective corrective actions used by one State to correct causes of errors and reduce erroneous Medicaid payments are shared with other States experiencing the same types of error-causing problems. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 20,400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 2, 1997

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–32320 Filed 12–9–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of the HRSA Competitive Grants Preview

Correction

In notice document 97–26645 appearing on page 52905 of the issue on Thursday, October 9, 1997, make the following correction:

On page 52905, in the second column under the heading "Centers of Excellence (COE)" in the sixth paragraph labeled as "Estimated Amount of This Competition," the amount should read "$1,500,000."

Dated: December 3, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–32277 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Review Criteria for Grants for the National Research Service Awards: Primary Care Research for Fiscal Year 1998

The Health Resources and Services Administration (HRSA) National Research Service Awards: Primary Care Research (NRSA) institutional training grants (T32) are provided to accredited public or private nonprofit schools of medicine, osteopathy, dentistry, or a public or private nonprofit hospital or other entity which is affiliated with an entity that has received grants or contracts under section 747, 748, or 749 of the PHS Act, agrees to use the funding for research in primary medical care, and is located in a State. The NRSA program is authorized by Title IV, Section 487(d)(3)(A) of the Public Health Service Act.

A notice was published in the **Federal Register** at 62 FR 49521 on September 22, 1997, for review criteria for the above-referenced program. No comments were received within the 30 day comment period. Therefore, the review criteria remain as proposed.

Final Review Criteria

The following criteria are for National Research Service Awards in primary care research:

1. Program Characteristics:

Objectives, design, and direction of the research training program—including the probability of achieving stated goals.

Substantive and methodological content of the proposed program and its relevance to the Program Objectives noted above, including relevant descriptions of courses and experiential opportunities offered and/or required.

The extent to which proposed approaches address areas in need of research given changes in the health care delivery system.

2. Program Support and Organizational Structure and Plans

The institutional training environment, including the level of institutional commitment, quality of the facilities, availability of appropriate courses, and availability of research support.

Caliber of preceptors as researchers, including successful research support;

Organizational structure of the proposed training program, including delineation of administrative responsibilities for planning, oversight, and evaluation.

Demonstration of cooperation by any proposed collaborating facilities, institutions, or departments in providing research experiences and/or sites for trainees, including (where applicable) documentation of mechanisms by which trainees will be integrated into the ongoing primary medical care research activities of other entities.

When appropriate, the concomitant research training of health-professional postdoctorates (e.g., individuals with the M.D., D.O., D.D.S./D.M.D., etc.) with basic science postdoctorates (e.g., individuals with a Ph.D., etc.) or linkages with basic science department.

Demonstration of extent to which and ways in which HRSA support will be (has been in the past) leveraged through the use of other Federal and private resources to maximize primary medical care research training within the institution.

Availability of other relevant support.

3. Trainee Recruitment & Retention Plans

Recruitment and selection plans for trainees and the availability of high-quality candidates, including minority trainees (see below for details).

When appropriate, record of the research training program in retaining health-professional postdoctoral trainees for at least 2 years in research training or other research activities.

4. Program Record and Evaluation Plans

Past research training record of both the program and the designated preceptors as determined by the success of former trainees in seeking further career development and in establishing productive scientific careers. Evidence of further career development can include receipt of fellowships, career awards, a prestigious training appointment, and similar accomplishments. Evidence of a productive scientific career can include a record of successful competition for individual research grants, receipt of special honors, a record of publications, receipt of patents, promotion to prestigious positions in academe, industry, or health policy and any other appropriate measure of success consistent with the nature and duration of the training received.

Record of the research training program in recruiting and retaining trainees, noting past annual success rates in filling committed slots.

Proposed methods for monitoring and evaluating performance of trainees and the overall program, record of trainees in obtaining individual research awards or fellowships following training, and in establishing careers in primary medical care research.

5. Budget

Reasonableness of the proposed budget, including number and levels of trainees, in relation to the research training.

For additional information, please contact: Enrique Fernandez, M.D., Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone : (301) 443–1467, FAX: (301) 443–8890.

Dated: December 3, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–32279 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Review Criterion for Grants for Primary Care Training Programs for Fiscal Year 1998

Grants for Primary Care Training programs are authorized under sections 747(a) and (b), 748, 750 and 751, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. These grant programs include:

Grants for Predoctoral Training in Family Medicine
Grants for Faculty Development in Family Medicine
Grants for Graduate Training in Family Medicine
Grants for Establishment of Departments of Family Medicine
Grants for Residency Training in General Internal Medicine and General Pediatrics
Grants for Faculty Development in General Internal Medicine and General Pediatrics
Grants for Physician Assistant Training
Grants for Podiatric Primary Care Residency Training

A notice was published in the **Federal Register** at 62 FR 46502 on September 3, 1997, for a review criterion for the above-referenced programs. No comments were received within the 30 day comment period. Therefore, the review criterion remains as proposed.

Final Review Criterion

The following criterion has been added to the existing review criteria established in 61 FR 52034 on October 4, 1996:

5. Project impact/influence in shaping the curriculum, program, department, institution and the community.

The review criterion is finalized in this combined notice, rather than individual program announcements, to provide consistent review of all primary care medical education grant applications.

If additional information is needed, please contact: Enrique Fernandez, M.D., Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–1467, FAX: (301) 443–8890.

Dated: December 4, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–32280 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on July 2, 1997, through September 29, 1997.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Brenda Scott-Sheppard, Boston, Massachusetts, Court of Federal Claims Number 97–0449 V
2. Joann O'Loughlin, Fremont, California, Court of Federal Claims Number 97–0458 V
3. Melody and John Harris on behalf of Christina Harris, San Mateo, California, Court of Federal Claims Number 97–0470 V
4. Anne M. Nagel, Little Falls, Minnesota, Court of Federal Claims Number 97–0479 V
5. Debra Graham Robert, Birmingham, Alabama, Court of Federal Claims Number 97–0501 V
6. Betty and Freeman Wingard on behalf of Lori Beth Wingard, LaGrange, Indiana, Court of Federal Claims Number 97–0502 V
7. Tatyana and Alex Vainshelboim on behalf of Jane Vainshelboim, Morganville, New Jersey, Court of Federal Claims Number 97–0516 V
8. Hans J. Herkert on behalf of John Henry Herkert, Cold Spring, New York, Court of Federal Claims Number 97–0518 V
9. Abhinav and Mija Le Trehan on behalf of Daniel Lee Trehan, Kansas City, Missouri, Court of Federal Claims Number 97–0528 V
10. Ellen and Charles Eiss on behalf of Gabrielle Eiss, Coral Springs, Florida, Court of Federal Claims Number 97–0529 V
11. Elham Rafla-Yuan, Tampa, Florida, Court of Federal Claims Number 97–0531 V
12. John R. Kline, Buffalo, New York, Court of Federal Claims Number 97–0535 V
13. Lino Delgado and Gricer Diaz on behalf of Coralys Gricer Delgado-Diaz, Rio Piedras, Puerto Rico, Court of Federal Claims Number 97–0538 V
14. Pauline Fadelalla, New York, New York, Court of Federal Claims Number 97–0573 V
15. Robin D. Blankenship, Ocala, Florida, Court of Federal Claims Number 97–0574 V
16. Madeline H. and William F. Warnock, Jr. on behalf of Benjamin Perry Warnock, Alexandria, Virginia, Court of Federal Claims Number 97–0585 V
17. Cynthia Peters on behalf of Kendall P. Lumsden, Cary, North Carolina, Court of Federal Claims Number 97–0588 V
18. Mary Alice Nanney, Brandon, Mississippi, Court of Federal Claims Number 97–0590 V
19. Shannon E. Casey, Vienna, Virginia, Court of Federal Claims Number 97–0612 V
20. Tracy Lynn Nichols on behalf of Shelby Nichols, Angier, North Carolina, Court of Federal Claims Number 97–0625 V
21. Nikki and David McColm on behalf of Nicholas Vernon McColm, Astoria,

Oregon, Court of Federal Claims Number 97–0631 V

22. Kim and Daniel Olexiewicz on behalf of Jason Olexiewicz, Deceased, Encino, California, Court of Federal Claims Number 97–0638 V
23. Frances and James DeRoche on behalf of John-Paul D. DeRoche, La Canada, California, Court of Federal Claims Number 97–0643 V
24. Dawn and Douglas Biron on behalf of Thomas J. Biron, Chisago, Minnesota, Court of Federal Claims Number 97–0651 V

Dated: December 4, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–32278 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 62 FR 53649, dated October 15, 1997) is amended to reflect the establishment of Vaccine-Preventable Disease Eradication Division (VPDED) and the abolishment of the Polio Eradication Activity within National Immunization Program (NIP), Centers for Disease Control and Prevention (CDC). The functional statement for the Office of the Director, NIP, is being revised to be consistent with the subject reorganization.

Section C–B, Organization and Functions, is hereby amended as follows:

Revise the functional statement for the *Office of the Director (CJ1), National Immunization Program (CJ),* as follows:

Delete item (11) and renumber the remaining items accordingly. Delete the function for item (12) and insert the following: Serves as the principal CDC focus for liaison and coordination with other Department of Health and Human Services operating divisions and staff offices, federal agencies, state, and local health authorities, and public and private organizations concerned with immunization activities.

Delete in their entirety the title and functional statement for the *Polio Eradication Activity (CJ12).*

After the functional statement for the *Communicty Outreach and Planning Branch (CJ45),* insert the following:

Voccine-Preventable Disease Eradication Division (CJ5). (1) Provides national leadership and coordination of the National Immunization Program (NIP) efforts to eradicate polio, measles, and other vaccine-preventable diseases (VPDs) which may be targeted for eradication in the future, in collaboration with the World Health Organization (WHO) and its regional officer, UNICEF, Rotary International, USAID, other international organizations and agencies, and CDC Centers/Institute/Offices (CIOs); (2) provides short- and long-term consultation and technical assistance to WHO, UNICEF, and foreign countries involved in the global eradication of polio and measles and participates in international advisory group meetings regarding polio and measles eradication; (3) administers grants to WHO, UNICEF, and other international partners as appropriate for the provision of technical, programmatic, and laboratory support, and vaccine procurement for initiatives to eradicate polio, measles, and other VPDs; (4) designs and participates in international research, monitoring, and evaluation projects to increase the effectiveness of polio, measles, and other eradication strategies as may be developed; (5) develops strategies to improve the technical skills and problem-solving abilities of program managers and health care workers in other countries; (6) refines strategies developed for the eradication of polio and measles in the Western Hemisphere for implementation in other parts of the world; (7) assists other countries in projects to improve surveillance for polio, measles, and other VPDs, including development of computerized systems for disease monitoring; (8) assists WHO, UNICEF, and other partner organizations in strengthening global epidemiologic and laboratory surveillance for polio, measles, and other VODs targeted for eradication; (9) prepares articles based on findings for publication in international professional journals and presentation at international conferences; (10) collaborates with other countries, WHO, UNICEF, and advocacy groups, to ensure the availability of sufficient funds to purchase an adequate supply of polio and measles vaccine, and funds for technical support, for use in polio and measles eradication efforts.

Office of the Director (CJ51). (1) Manages, directs, and coordinates the activities of the division; (2) provides leadership in policy formation, program planning and development, program management, and operations of the division; (3) identifies needs and resources for new initiatives and assigns responsibilities for their development; (4) oversees the division's activities and expenditures; (5) serves as the principal CDC focus for liaison and coordination on VPD eradication programs with CDC CIOs, other federal agencies, international organizations, foreign governments, and other organizations concerned with VPD eradication.

(Program Operations Branch (CJ52). (1) Plans, coordinates, and directs programmatic activities in NIP to eradicate polio, measles, and other VPDs; (2) provides short- and long-term programmatic assistance to WHO, UNICEF, and foreign countries involved in the global eradication of polio and measles and participates in international advisory group meetings regarding polio and measles eradication; (3) administers grants to UNICEF and WHO for provision of technical, programmatic, and laboratory support, and vaccine procurement; (4) provides administrative and programmatic support to all staff including staff assigned outside of the Atlanta area; (5) provides oversight of budget and accounting services for the division; (6) develops and implements disease eradication training courses for staff from CDC, WHO, UNICEF, Rotary International, and other immunization partners; (7) coordinates advocacy activities with Rotary International, USAID, WHO, UNICEF, and other global partners to ensure the availability of adequate resources for polio, measles, and other VPD eradication activities.

Technical Services Branch (CJ53). (1) Plans, coordinates, and directs technical activities related to NIP efforts to eradicate polio, measles, and other VPDs, in collaboration with the WHO and its regional offices, UNICEF, Rotary International, USAID, other international organizations and agencies, and other CDC CIOs; (2) provides short- and long-term consultation and technical assistance to WHO, UNICEF, and foreign countries involved in the global eradication of polio and measles and participates in international advisory group meetings regarding polio and measles eradication; (3) designs and participates in international research, monitoring, and evaluation projects to increase the effectiveness of polio and measles eradication strategies; (4) develops strategies to improve the technical skills and problem-solving abilities of program managers and health care workers in other countries; (5) refines strategies developed for the eradication of polio and measles in the Western Hemisphere for implementation in other countries; (6) assists other countries in projects to improve surveillance for polio, measles, and other VPDs, including development of computerized systems for disease monitoring; (7) assists WHO, UNICEF, and other partner organizations in strengthening global epidemiologic and laboratory surveillance for polio, measles, and other VPDs targeted for eradication; (8) prepares articles based on findings for publication in international professional journals and presentation at international conferences; (9) provides technical training as part of division-sponsored courses for staff of CDC, WHO, UNICEF, Rotary International, and other immunization partners.

Dated: November 24, 1997.

David Satcher,

Director.

[FR Doc. 97–32256 Filed 10–9–97; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4283–N–61]

Notice of Proposed Information Collection for Public Comment; Technical Assistance for Community Planning and Development, Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Proposed Information Collection for Public Comments.

SUMMARY: The proposed information collection requirement for technical assistance for Community Planning and Development (CPD) programs described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing and Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Lyn T. Whitcomb, Director, Technical Assistance Division, (202) 708–3176 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Technical Assistance for Community Planning and Development Programs.

OMB Control Number, if applicable:

Description of the need for the information and proposed use:

Application information is needed to determine competition winners, i.e. those technical assistance (TA) providers best able to offer local jurisdictions an ability to shape their CPD resources and other available resources into effective, coordinated, neighborhood and community development strategies to revitalize and physically, socially and economically strengthen their communities. The application for the competition requires the completion of Standard Form (SF) 424, "Application for Federal Assistance" and SF 424B, "Assurances—Non-Construction Programs" as well as supplementary information such as a transmittal letter, identification of field offices to be served and amounts of funds requested for each field office, a statement as to the use of pass-through funds and qualification as a primarily single-State provider, a Statement of Work, a narrative statement addressing the factors for award, a budget-by-task by field office and a summary budget for each program. After awards are made, providers are required to submit a work plan which includes a planned schedule for accomplishing each of the planned activities/tasks to be accomplished with TA funds, the amount of funds budgeted for each activity/task and the staff and other resources allocated to each activity/task. Narrative quarterly reports are required so that the provider's performance can be evaluated and measured against the work plan. Quarterly reports also require submission of the SF 269A, a financial status report. A narrative final report and final SF 269A are also required.

Previous information collection was authorized under OMB Control Number 2535–0084. Changes in administrative responsibilities for TA cooperative agreements within the Department necessitate a new request for approval. However, no substantive changes in information collection have occurred.

Agency form numbers, if applicable: SF 269A, SF 424 and SF 424B.

Members of affected public: Organizations or State and local governments equipped to provide technical assistance to recipients of CPD programs.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The previous Notice of Funding Availability (NOFA) for technical assistance providers for CPD programs elicited approximately 280 responses. It is anticipated that approximately the same number will respond to the upcoming NOFA. Awards were made to approximately 90 providers and it is expected that the same number will be awarded during this round of funding. The Department estimates that each applicant will require an average of forty hours to prepare an application. Winners of the competition will be required to develop a work plan, requiring approximately eight hours, submit quarterly reports needing approximately four hours each, (including a final report) and perform recordkeeping to include submission of vouchers for reimbursement, estimated at 12 hours annually. The specific numbers are as follows:

	Number of respondents	Number of responses per respondent frequency	Total annual responses	Hours per response	Total hours
Applications	280	1	280	40	11,200
Workplan Development	90	1	90	8	720
Quarterly Reports (including final report)	90	4	360	4	1,440
Recordkeeping	90	12	1080	1	1,080
Total					14,440

Status of the proposed information collection: Publication of the Notice of Funding Availability is anticipated in January 1998. Awards are expected to be made by September 1998.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 2, 1997.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 97–32248 Filed 12–9–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Species at Risk Program

AGENCY: Biological Resources Division, U.S. Geological Survey; Interior.

ACTION: Notice of availability.

SUMMARY: The Biological Resources Division (BRD) is announcing the availability of funds through the Species at Risk Program (SAR). The basic purpose of SAR is to fund short-term research and assessment projects to generate information that allows development of conservation agreements, action plans, and management alternatives that provide for the protection of flora and fauna and their habitats and thereby reduce the need for listing species as threatened or endangered.

DATES: Information packages describing requirements for participation in this program will be available upon request until December 31, 1997. Pre-proposals are due to the address below by January 2, 1998.

ADDRESSES: Parties interested in this program should request an information package from: Species at Risk Program, 12201 Sunrise Valley Drive, MS 300, Reston, VA 20192 ATTN: Dr. Nancy Milton.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Milton, Species at Risk Program, 12201 Sunrise Valley Drive, MS 300, Reston, VA 20192, nancy__m__milton@nbs.gov; or 703–648–4074.

SUPPLEMENTARY INFORMATION:

A. Purpose

Species at Risk (SAR) is a program that develops scientific information on the status of sensitive species or group of species, particularly with respect to the relationship of species abundance and distribution to habitat conditions and stresses. The basic purpose of SAR is to generate information that allows the development of conservation agreements, action plans, management alternatives, etc., that provide for the protection of species and their habitats and thereby preclude the need for listing species as threatened or endangered.

The initiative provides an opportunity for scientists to participate through survey and research activities. Projects are specifically intended to be of short duration and should seek to optimize partnerships with Federal agencies, states, universities, and the private sector. Successful SAR projects are often conducted by investigators who have identified key, small but critical gaps in our biological knowledge. Projects then fill these gaps and provide resource managers, regulators, and private landowners with usable information from which prudent resource management decisions can be made.

This initiative is designed to develop strategies that will assure long-term, population stability for targeted species and reduce the likelihood they will have to be dealt with through the regulatory processes. Projects should fit into one of two categories:

1. Projects should focus on species or groups of species for which their is concern but limited information on their abundance, distribution, and/or status. Projects should identify or develop new information that will reduce the need for a formal listing under the Endangered Species Act. Regional offices of the U.S. Fish and Wildlife Service have provided a list of species of particular concern. Projects should focus on these species. Principal investigators are encouraged to communicate directly with USFWS regional contacts before project submission.

or

2. Projects submitted should focus on providing critical habitat information and should demonstrate how study results will strongly support management and conservation applications. Projects that focus on multiple species of concern within the same critical habitat or ecosystem are especially encouraged. Multiple species might include both those having formal listed status with USFWS and those not formally listed. Research efforts should provide information needed by Federal agencies to meet requirements for recovery plan implementation, multi-species conservation plans, habitat reserve agreements, or other conservation-oriented plans.

In addition, projects funded in the FY 1998 cycle will be expected to focus in geographic areas of particular current importance to the DOI and its bureaus. Those areas of concern are: Arizona and New Mexico (in support of the Secretary's Southwestern Initiative); San Francisco Bay Delta (also a Secretarial initiative); southeastern aquatic habitats; California's Majave Desert and Central Valley; South Florida; Colorado plateau; and Hawaii.

This program is conducted in furtherance of the Secretary's obligations under the Fish and Wildlife Act of 1956 (16 USC 742a–742j, as amended) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e, as amended).

B. Background

The Biological Resources Division (BRD) of the U.S. Geological Survey gathers and analyzes biological information and services as an information clearinghouse, providing broad access to the widest possible range of factual data on the status and trends of the Nation's biota and the potential effects of land management choices. This information serves public and private landowners who are interested in sustaining biological resources. It also provides understanding to help avoid conflicts that can both impede development and degrade natural habitats.

The Species at Risk Program will develop scientific information and alternatives to assist Federal, State, and other land managers in their decisions regarding the protection of sensitive species and habitats.

C. Availability of Funds

Through this program, pre-proposals are invited for funding in Fiscal Year 1998. Total funding anticipated for the fiscal year is approximately $375,000. Monies will be provided to successful applicants on a competitive basis. There is no minimum project cost; the maximum project cost will be $80,000.

D. Eligibility Requirements

Under the terms specified in the information package, pre-proposals will be accepted from State agencies, private and industry groups, academic institutions, and Native American Tribes and Nations. Pre-proposals will be evaluated in light of their scientific merit, partnership opportunities, potential for providing useful information to resource managers, potential for conservation agreements, possibilities for cost sharing, and demonstration of successful completion within 18 months of date of initiation. Possible selectees will then be invited to submit a full proposal for consideration of funding.

E. Application Process

Parties interested in participating in this program should request an information package that will include detailed application forms, Federal Assistance Forms (Standard Form 424, etc), proposal format requirements, etc., from: Mail: Species at Risk Program, 12201 Sunrise Valley Drive, MS 300, Reston, VA 20192, ATTN: Dr. Nancy Milton, or E-Mail: nancy__m__milton@nbs.gov, or call: (703) 648–4074.

F. Dates

Notice of interest in this program must be received by December 31, 1997.

W. James Fleming,

Acting Chief Biologist, Biological Resources Division.

[FR Doc. 97–32314 Filed 12–9–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–1430–01; AZA 13411, AZA 13431]

Public Land Order No. 7300; Revocation of Two Secretarial Orders Dated November 18, 1904, and April 26, 1916; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes, in their entirety, two Secretarial orders as they affect 5,922.44 acres of public lands withdrawn for the Bureau of Reclamation's Little Colorado Project. The project has not been developed and there is no further need for the lands to be withdrawn. The lands are closed to surface entry and mining and will not be opened at this time. The lands have been and will continue to be open to mineral leasing.

EFFECTIVE DATE: December 10, 1997.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Ave., Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial orders dated November 18, 1904, and April 26, 1916, which withdrew public lands for the Bureau of Reclamation's Little Colorado River Project, are hereby revoked in their entirety.The lands involved aggregate 5,922.44 acres in Coconino and Navajo Counties.

2. The lands will not be opened until an analysis is completed to determine if any of the lands need special designation and to identify any land exchange potential.

Dated: November 26, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–32318 Filed 12–9–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–0777–63; GP7–0018; OR–19136]

Public Land Order No. 7301; Revocation of Secretarial Order Dated June 18, 1924; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a Secretarial order which withdrew 16,285 acres of National Forest System lands and 20 acres of public lands for the Bureau of Land Management's Powersite Classification No. 78. The lands are no longer needed for the purpose for which they were withdrawn. The lands will remain closed to surface entry and mining by other overlapping withdrawals, and a portion of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated June 18, 1924, which established Powersite Classification No. 78, is hereby revoked in its entirety:

Willamette Meridian

Public Lands

T. 5 S., R. 49 E.,
Protraction block no. 45 (formerly identified as sec. 30).

Wallowa and Whitman National Forests

T. 5 N., R. 47 E., (unsurveyed),
Sec. 1, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 4 N., R. 48 E.,
Sec. 2, lot 1;
Sec. 3, lots 3, 4, 5, and 6;
Sec. 11, lots 1, 2, 3, and 4;
Sec. 13, lot 1;
Sec. 14, lots 1, 2, 3, and 4.
T. 5 N., R. 48 E., (unsurveyed),
Secs. 6, 7, 18, 19, 20, 28, 29, 33, and 34, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 4 N., R. 49 E.,
Sec. 16, lots 1 to 5, inclusive, and SE¼SW¼;
Sec. 17, lots 1, 2, 3, and 4;
Sec. 18, lot 3 and that portion of Mineral Survey No. 469 formerly known as lots 1, 2, and 3;
Sec. 19, lots 1 and 2;
Sec. 27, lots 1, 2, and 3, and SE¼NW¼;
Sec. 35, lots 1, 2, 3, and 4, SE¼NW¼, and NW¼SE¼.
T. 1 N., R. 50 E., (unsurveyed),
Secs. 24, 25, 26, 35, and 36, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 2 N., R. 50 E.,
Sec. 1, lots 1 and 4;
Sec. 12, all lands lying within ¼ mile of the Snake River.
T. 3 N., R. 50 E.,
Sec. 4, lots 1, 2, 3, and 4;
Sec. 10, lot 2, SW¼NE¼, and NE¼SE¼;
Sec. 11, lots 1, 2, and 3, and S½SW¼;

Sec. 13, lot 1;
Sec. 14, lots 1, 2, and 3, SW¼NE¼, and SE¼SE¼;
Sec. 23, E½NE¼ and NE¼SE¼;
Sec. 24, lots 1, 2, 3, and 4;
Sec. 25, lots 1, 2, 3, and 4;
Sec. 26, E½E½.
T. 4 N., R. 50 E., (unsurveyed),
Secs. 31, 32, and 33, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 1 N., R. 51 E., (unsurveyed),
Secs. 4, 5, 8, 17, 18, and 19, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 2 N., R. 51 E.,
Secs. 7, 17, and 18, all unsurveyed lands lying within ¼ mile of the Snake River;
Sec. 20, lots 1, 2, 3, and 4, and NE¼SW¼;
Sec. 29, lot 3, and W½NW¼NE¼ (formerly known as lot 1);
Sec. 33, lots 1, 2, 3, and 4, and E½SW¼.
T. 2 S., R. 49 E., (unsurveyed),
Protraction block nos. 48, 49, and 52 (formerly identified as secs. 24, 25, and 35),
Secs. 26 and 36, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 3 S., R. 49 E., (unsurveyed),
Secs. 2, 3, 10, 11, 14, 15, 22, 23, 26, 27, 33, and 34, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 4 S., R. 49 E., (unsurveyed),
Protraction block nos. 37, 40, 41, 44, 45, and 48 (formerly identified as secs. 4, 9, 16, 21, 28, 29, and 32), all unsurveyed lands lying within ¼ mile of the Snake River.
T. 5 S., R. 49 E., (unsurveyed)
Protraction blocks nos. 37, 40 to 44, inclusive, (formerly identified as secs. 4, 8, 9, 17, 19, and 20), all unsurveyed lands lying within ¼ mile of the Snake River.
T. 1 S., R. 50 E., (unsurveyed),
Secs. 2, 3, 10, 11, 15, 21, 22, 28, and 33, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 2 S., R. 50 E., (unsurveyed),
Secs. 4, 5, 7, 8, 16, and 19, all unsurveyed lands lying within ¼ mile of the Snake River.

The areas described aggregate approximately 16,305 acres in Wallowa County.

2. The public lands in T. 5 S., R. 49 E., is included in the Hells Canyon National Recreation Area and Power Project No. 1971, and will not be restored to operation of the public land laws, including the mining and mineral leasing laws.

3. The lands described in paragraph 1, except as provided by paragraph 2, are included in the Hells Canyon National Recreation Area, the Middle Snake Wild and Scenic River, and Power Project No. 1971, and will remain clod to such forms of disposition as may by law be made of National Forest System lands, including the mining laws. The lands lying outside the national recreation area and wild and scenic river boundaries have been and will remain open to applications and offers under the mineral leasing laws.

Dated: November 26, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–32317 Filed 12–9–97; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of questionnaires to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–386, Macadamia Nuts: Economic and Competitive Conditions Affecting the U.S. Industry, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by Committee on Finance, U.S. Senate. The Commission expects to deliver the results of its investigation to the Committee on Finance by September 30, 1998.

PROPOSAL:

(1) Number of forms submitted: three
(2) Title of forms: Importer Questionnaire, Grower Questionnaire, and Grower/Processor Questionnaire
(3) Type of request: new
(4) Frequency of use: Importer, Grower, and Grower/Processor questionnaire, single data gathering, scheduled for February 1998
(5) Description of respondents: U.S. firms which produce, process, and or import macadamia nuts
(6) Estimated number of respondents:
100 (Grower questionnaire)
9 (Importer questionnaire)
6 (Grower/Processor questionnaire)
115 Total
(7) Estimated total number of hours to complete the forms: 4,510
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Stephen Burket (USITC, telephone no. (202) 205–3318). Comments about the proposals should be directed to the Office of Management and Budget, Office of information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: December 3, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–32334 Filed 12–9–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–325]

The Economic Effects of Significant U.S. Import Restraints: Second Biennial Update

AGENCY: United States International Trade Commission.

ACTION: Notice of hearing and opportunity to submit written comments for biennial update report.

EFFECTIVE DATE: December 3, 1997.

SUMMARY: The Commission has scheduled a hearing in connection with the second biennial report in this investigation for May 12, 1998, and has established deadlines for the submission of requests to appear at the hearing and for the filing of written submissions as set forth below.

FOR FURTHER INFORMATION CONTACT: Michael Gallaway at (202) 205–3247, Office of Economics, U.S. International Trade Commission. Hearing impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: In a letter dated May 15, 1992, the United States Trade Representative (USTR) requested that the United States International Trade Commission conduct an investigation assessing the quantitative economic effects of significant U.S. import restraint programs operating in the U.S. economy. The request also asked the Commission to prepare reports updating the analysis, with delivery of those reports to be made on 2-year intervals following the submission of the first report. The first report was delivered to the USTR in November 1993 and the first update was transmitted in December 1995. A letter from USTR sent March 10, 1997 requested that the second update be delayed to February 1999 to allow the analysis to incorporate important information due to be released very near the previously scheduled December 1997 due date.

In this second biennial update report, the Commission will, as was done in the first two reports, assess the economic effects of significant U.S. import restraints on U.S. consumers, on the activities of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. The investigation will not include import restraints resulting from final antidumping or countervailing duty investigations, section 337 or 406 investigations, or section 301 actions.

The initial notice of institution of this investigation was published in the **Federal Register** of June 17, 1992 (57 FR 27063).

PUBLIC HEARING: A public hearing in connection with this investigation will be held on May 12, 1998, beginning at 9:30 a.m. It will be held in the Commission's hearing room at 500 E Street, SW., Washington, D.C. 20436. All persons will have the right to appear by counsel or in person to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, D.C., not later than the close of business, 5:15 p.m., on May 5, 1998. Hearing statements should be filed not later than May 8, 1998. Any posthearing submissions must be filed not later than COB June 12, 1998. In the event that, as of the close of business on May 5, 1998, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after May 7, 1998, to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested persons. To be assured of consideration, written submissions must be filed by June 12, 1998.

Issued: December 4, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–32336 Filed 12–9–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–363]

Certain Hardware Logic Emulation Systems and Components Thereof; Notice of Issuance of a Permanent Limited Exclusion Order and a Permanent Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has issued a permanent limited exclusion order and a permanent cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116. General information concerning the Commission may also be obtained by accessing the Commission's Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.50, 19 CFR 210.50.

This investigation and temporary relief proceedings were instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc ("Quickturn"). The respondents are Mentor Graphics Corporation ("Mentor") of Wilsonville, Oregon and Meta Systems ("Meta") of Saclay, France (collectively "respondents"). Meta is a wholly owned subsidiary of Mentor. The products at issue are hardware logic emulation systems, subassemblies thereof, and components thereof, including hardware logic emulation software, that are used in the semiconductor manufacturing industry to design and test the electronic circuits of semiconductor devices.

After an 11-day evidentiary hearing in April–May 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") granting complainant Quickturn's motion for temporary relief. On August 5, 1996, the Commission determined not to modify or vacate the ID and issued a temporary limited exclusion order against Mentor and Meta and a temporary cease and desist order against Mentor, and determined that the amount of respondents' bond during the pendency of temporary relief should be forty-three (43) percent of the entered value of imported hardware logic emulation systems and components thereof.

After a 14-day evidentiary hearing and two days of closing arguments, the ALJ, on July 31, 1997, issued a final ID finding that respondents had violated section 337 by infringing claims of all five of Quickturn's asserted patents. On that same date, the ALJ issued a recommended determination ("RD") recommending the issuance of a permanent exclusion order and a cease and desist order. On October 2, 1997, the Commission issued its notice of the decision not to review the ALJ's final ID, thereby finding that respondents are in violation of section 337. The Commission also requested briefs on the issues of remedy, the public interest, and bonding. On October 16, 1997, Quickturn, respondents, and the Commission investigative attorneys submitted comments on those issues, and on October 23, 1997, all parties submitted reply comments.

The Commission, having determined that a violation of section 337 has occurred in the importation, sale for importation, or sale in the United States of the accused hardware logic emulation systems and components thereof, including software, considered the issues of the appropriate form of such relief, whether the public interest precludes issuance of such relief, and respondents' bond during the 60-day Presidential review period.

The Commission determined that a permanent limited exclusion order and a permanent cease and desist order directed to domestic respondent Mentor are the appropriate form of relief. The Commission further determined that the statutory public interest factors do not preclude the issuance of such relief, and that respondents' bond under the permanent limited exclusion order and the permanent cease and desist order shall be in the amount of 43 percent of the entered value of the imported articles if the entered value is based on transaction value as defined by the U.S. Customs Service, and 180 percent of the entered value of such articles if the entered value is based on other than transaction value.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 3, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–32335 Filed 12–9–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

President's Advisory Board on Race

ACTION: President's Advisory Board on Race; notice of meeting.

SUMMARY: The President's Advisory Board on Race will meet on December 17, 1997, in Fairfax County, Virginia at a site to be determined. The meeting will start at approximately 9:00 a.m. and end at approximately 3:30 p.m. The agenda will include a discussion of the experiences and challenges in primary and secondary education for students of different races and of programs that are addressing some of those challenges.

The meeting will be open to the public on a first-come, first-seated basis. Interested persons are encouraged to attend. Members of the public may submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, or facsimile, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any.

FOR FURTHER INFORMATION: Contact our main office number, (202) 395–1010, for the exact location of the meeting. Other comments or questions regarding this meeting may be directed to Randy Ayers, (202) 395–1010, or via facsimile, (202) 395–1020.

Dated: December 5, 1997.

Robert Weisler,

General Counsel.

[FR Doc. 97–32364 Filed 12–9–97; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 5, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR's) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunication device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern Time, Monday–Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before January 9, 1998.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Job Training Partnership Act (JTPA) Annual Service Delivery Area Report.

OMB Number: 1205–0341 (reinstatement without change).

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 59.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 59.

Total annualized capital/startup costs: 0.

Total annual costs: 0.

Description: The requested information will be used to assess JTPA local financial participant data. Participant and financial data will be used to respond to Congressional oversight, to prepare budget requests, and make annual reports to Congress per statute.

Agency: Occupational Safety and Health Administration.

Title: Asbestos in General Industry (29 Part 1910.1001).

OMB Number: 1218–0133 (extension).

Frequency: On occasion.

Affected Public: Business and other for-profit, Federal and State government, Local or Tribal governments.

Number of Respondents: 233.

Estimated Time Per Respondent: Time per response ranges from 5 minutes to maintain records to 1.5 hour for employees to receive a medical exam.

Total Burden Hours: 43,197.

Total annualized capital/startup costs: 0.

Total annual costs: $1,625,143.

Description: The purpose of the Asbestos in General Industry Standard and its information collection requirements are designed to provide protection from the adverse health effects associated with occupational exposure to asbestos. The standard requires employers to monitor employee exposure to asbestos, to monitor employee health and to provide employees with information about their exposures and health effects from exposure to asbestos.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data collection System.

OMB Number: 1218–0209 (extension).

Frequency: Annually.

Affected Public: Business and other for-profit, State government, Local or Tribal governments.

Number of Respondents: 80,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 35,000.

Total annualized capital/startup costs: 0.

Total annual costs: 0.

Description: The 1988 OSHA Data Collection will request 1997 injury and illness data from 80,000 establishments throughout the Nation. The data are needed by OSHA to carry out intervention and enforcement activities to guarantee workers a safe and healthful workplace. The data will also be used for measurement purposes in compliance with the Government Performance and Results Act of 1995 and multiple research purposes. The data collected are already maintained by employers as required by 29 CFR part 1904.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 97–32307 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 211(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 22, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 22, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of November, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 11/17/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,997	Century Mfg Co (Comp)	Pierre, SD	11/03/97	Battery Chargers.
33,998	American Standard Apparel (Wkrs)	Williamsport, PA	11/03/97	Sew Knit Tops & Sweatshirts.
33,999	American Tissue Mills (Wkrs)	Tomahawk, WI	10/31/97	Single & Double Ply Napkin, Toweling.
34,000	Flexsys America L.P. (Wkrs)	Nitro, WV	10/28/97	Rubber Chemicals.
34,001	Warren Petroleum (Comp)	Santana, KS	10/27/97	Natural Gas.
34,002	Maine Traditional Stitch (Wkrs)	Lewiston, ME	11/01/97	Shoe Stitching.
34,003	Umbro NA (Comp)	Fairbluff, NC	10/28/97	Nylon Soccer Shorts.
34,004	MAPA Pioneer (USWA)	Willard, OH	11/01/97	Latex Rubber Gloves.
34,005	Genesco, Inc, Tishomingo (Comp)	Luka, MS	10/28/97	Western Footwear.
34,006	Pacific Lumber & Shipping (UBC)	Seattle, WA	11/05/97	Soft Wood Dimension Lumber.
34,007	International Watchmakers (Comp)	Mission Viejo, CA	11/04/97	Watch Parts.
34,008	J & L Specialty Steel (USWA)	Detroit, MI	11/03/97	Flat Rolled Stainless Steel.
34,009	Morganton Dyeing (Wkrs)	Morganton, NC	10/31/97	Dye & Finish Ladies' Apparel Fabrics.
34,010	Parker Hannifin Co	Berea, Ky	10/20/97	O-Rings.
34,011	SRAM Corp (Wkrs)	Elk Grove Vill., IL	11/04/97	Shifters & Brakes for Mountain Bike's.
34,012	Carrier-Global (Wkrs)	Syracuse, NY	11/05/97	Engineering Drawings.
34,013	Alcatel Telecommunication (Wkrs)	Roanoke, VA	10/23/97	Fiber optics.
34,014	Dee's Mfg, Inc (Comp)	El Paso, TX	11/06/97	Ladies' Jeans.
34,015	Green Veneer, Inc (Wrks)	Mill City, Or	11/05/97	Green Veneer for Plywood.
34,016	Paradox Fabrics, Inc (Comp)	New York, NY	11/04/97	Fabrics for Ladies' Dresses.

[FR Doc. 97–32295 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,727]

CMS NOMECO Oil and Gas Company, Jackson, Michigan; Notice of Negative Determination Regarding Application for Reconsideration

On August 29, 1997, the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of CMS NOMECO Oil and Gas Company of Jackson, Michigan. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51152).

By letter of September 24, 1997, the petitioners requested administrative reconsideration regarding the Department's denial. New information provided by CMS NOMECO Oil and Gas

Company shows that company sales declined during the time period relevant to the investigation.

Workers at the subject firm are engaged in employment related to the exploration and production of crude oil and natural gas. The workers are not separately identifiable by product line.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that U.S. sales decreased as a result of imports during the relevant time period and, thus the company made a strategic business decision to relocate to Houston, Texas in order to pursue foreign production of oil and gas which resulted in workers being dislocated in Jackson, Michigan.

In order for the Department to issue a worker group certification, all of the group eligibility requirements of Section 222 of the Trade Act must be met. Review of the investigation findings show that criterion (3) was not met.

Revised data from the subject firm does indicate a minor decline in domestic sales. However, notwithstanding these minor declines in domestic sales, the separations resulted from a corporate decision to transfer corporate headquarters within the U.S.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 2nd day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32304 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,179, et al.]

Dallco Industries, Incorporated, Hustontown, Pennsylvania, Headquarters and Production Facility, York, Pennsylvania Production Facility, Adams County, Pennsylvania, Catz Division, New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 22, 1996, applicable to all workers of Dallco Industries, Incorporated, Houstontown, Pennsylvania, Headquarters and production Facility, York, Pennsylvania and Production Facility, Adams County, Pennsylvania. The notice was published in the **Federal Register** on June 6, 1996 (61 FR 28900).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of ladies' loungewear, sleepwear, sportswear and children's clothing. New information received by the company shows that worker separations occurred at the Catz Division, New York, New York location of Dallco Industries, Incorporated when it closed in August, 1997. The New York, New York location served as a showroom with designing and sales for the headquarters and production facilities located throughout Pennsylvania.

The intent of the Department's certification is to include all workers of Dallco Industries, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Dallco Industries, Incorporated, Catz Division, New York, New York.

The amended notice applicable to TA–W–32,179 is hereby issued as follows:

"All workers of Dallco Industries, Incorporated located at the production facility in Hustontown, Pennsylvania (TA–W–32,179), headquarters and production facility in York, Pennsylvania (TA–W–32,179A), production facility in Adams County, Pennsylvania (TA–W–32,179B), Catz Division, New York, New York (TA–W–32,179C) who became totally or partially separated from employment on or after March 12, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 28th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment.

[FR Doc. 97–32302 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,759]

Dyna-Craft Industries, Incorporated, Murrysville, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Dyna-Craft Industries, Incorporated, Murrysville, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–33,759; Dyna-Craft Industries, Incorporated
Murrysville, Pennsylvania (November 20, 1997)

Signed at Washington, D.C. this 21st day of November, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32296 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,759; Dyna-Craft Industries, Inc., Murrysville, PA
TA–W–33,810; Lenzing Fibers Corp., Lowland, TN
TA–W–33,807; Superior Farms, Inc., Ellensburg, WA
TA–W–33,823; Princeton Carpets, Adairsville, GA
TA–W–33,905; Loralie Originals, Inc., Redding, CA
TA–W–33,668; Maxus Energy Corp., Dallas, TX & Operating at The Following Locations; A; Midgard Energy Co., Amarillo, TX B; Midgard Energy Co., Canadian, TX, C; Midgard Energy Co (Dumas), Sunray, TX, D; Chemical Land Holding, Inc., Kearny, NJ, E; Midgard Energy Co, Pampa, TX, F; Midgard Energy Co., Perryton, TX, G; Midgard Energy Co., Roger Mill Plant, Leedy, OK, H; Midgard Energy Co., Spearman, TX, I; Midgard Energy Co., Sunray Gas Plant, Sunray, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,963; Lenworth-Aminco, Inc., A Division of Lenworth Metal Products Ltd., Meadville, PA
TA–W–33,805; Marsey Lace, Guttenburg, NJ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,860; Pride Manufacturing Co., Guilford, ME

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,787; Stanley Hardware, New Britian, CT

The predominant cause of worker separations at the subject firm was caused by a transfer of production to other domestic locations.

TA–W–33,773; Banner Pharmacaps, Elizabeth, NJ
TA–W–33,897; Beliot Corp., Beloit Pulpins Group, Dalton, MA
TA–W–33,775; CTS Corp., Baldwin, WI
TA–W–33,990; Extex, Inc., St. Elmo, IL

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–33,669; Kimberly-Clark Corp., Marinette, WI: July 4, 1996
TA–W–33,943; Carolyn of Virginia, Inc., Bristol, VA: September 15, 1996
TA–W–33,731; Trina, Inc., Fall River, MA: July 31, 1996
TA–W–33,607; Letarte Co., Inc., d/b/a L.C. Holdings, Inc., Smith Creek, MI: June 17, 1996
TA–W–33,930; Frolic Footwear, Walnut Ridge, AR: September 29, 1996
TA–W–33,752; Clark Metal Products Co., Marion, OH: August 8, 1996
TA–W–33,834; Jonbil, Inc., Chase City, VA: September 2, 1996
TA–W–33,891; MCD International, LLC, Anniston, AL: September 22, 1996
TA–W–33,927; Oneita Industries, Inc., Fayette Apparel Plant, Fayette, AL: October 7, 1996
TA–W–33,862; Great American Products, Inc., Broodview, IL: September 11, 1996
TA–W–33,859; This & That, Inc., Elizabethville, PA: September 8, 1996
TA–W–33,884; Manhattan Shirt Co., A Division of Salant Corp., Andalusia, AL 1996
TA–W–33,883; Fleetwood Metals Industries, Tecumseh, MI: September 25, 1996
TA–W–33,848; CPC International, Inc., Best Foods Div., Jersey City, NJ: July 29, 1996
TA–W–33,841; M. Fine & Sons Manufacturing Co., Bedford, IN, September 15, 1996
TA–W–33,861; Posey Manufacturing Co., Inc., Hoquiam, WA: September 2, 1996
TA–W–33,928; Grainger Knitwear Co., Rutledge, TN: October 8, 1996
TA–W–33,756; Gurney Industries, Inc., Apparel Div., Plattville, AL August 9, 1996
TA–W–33,853; Ponderosa Manufacturing Co., A Subsidiary of Franklin Peck Industries, Chattanoogà, TN: September 4, 1996
TA–W–33,761; CNG Transmission Corp., Clarksburg, WV & Operating in the Following States: A; NY, B; OH, C; PA, D; TX, E; VA, F; WV: September 26, 1997
TA–W–33,925; Apparel Brands, Inc., Wrightsville, GA: October 8, 1996
TA–W–33,920; Tarrytown Garment, Tarrytown, NY: October 8, 1996
TA–W–33,776 & A; Appalachian Finishing Works, Knoxville, TN and Southbound Connections, Inc., Maynardville, TN: August 18, 1996
TA–W–33,851 & A; Condere Corp. d/b/a Fidelity Tire Manufacturing Co., Natchez, MS and Condere Corp., Hamden, CT: September 17, 1996

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01878; Pennsylvania Technologies, Steeltown, PA
NAFTA–TAA–01751; Paul Miller, J.M. Harvesting, Belle Glade, FL
NAFTA–TAA–01960; Loralie Originals, Inc., Redding, CA
NAFTA–TAA–01886A; Southbound Connections, Inc., Maynardville, TN
NAFTA–TAA–01986; Bose Corp., Westboro, MA
NAFTA–TAA–01699; Pro-Line Cap Co., Bowie, TX
NAFTA–TAA–01931; The Stanley Works, Stanley Tools Division, York, PA
NAFTA–TAA–01999; Pacific Refining Co., Hercules, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01995; Lenworth-Aminco, Inc., A Div. of Lenworth Metal Products, Ltd., Meadville, PA
NAFTA–TAA–01941; F.W. Woolworth, Berwyn, IL

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01888; Appalachian Finishing Works, (Plants 1 & 2), Knoxville, TN: August 18, 1996.
NAFTA–TAA–01944; Fleetwood Metals Industries, Tecumseh, MI: September 30, 1996.
NAFTA–TAA–01769; Gargiulo Packing House, Immokalee, FL: May 7, 1996.
NAFTA–TAA–01954 & A; Taylor Togs, Inc., Micaville, NC and Green Mountain, NC: October 2, 1996.
NAFTA–TAA–01936 & A; Ace Metal Fabricators, Inc., Bronx, NY and Ace Sprayfinishing Corp., Bronx, NY: September 22, 1996.
NAFTA–TAA–01778; Letarte Co., Inc., d/b/a L.C. Holding, Inc., Smiths Creek, MI: June 20, 1996.
NAFTA–TAA–01943; Graham Chemical Co., Div. of IDE Interstate, Inc., Jamaica, NY: September 30, 1996.
NAFTA–TAA–01978; Bonita Packing Co., Bonita Springs, FL: October 15, 1996.
NAFTA–TAA–01951; Wolverine World Wide, HY-Test, Inc., Kirksville, MO: September 25, 1996.
NAFTA–TAA–01963; Apparel Brands, Inc., Wrightsville, GA: October 10, 1996.
NAFTA–TAA–01985; Cornelius Farms, Inc., Florida City, FL: August 28, 1996.
NAFTA–TAA–01887 A; Reeves Brothers, Inc., Chesnee, SC and Bishopville, SC: August 14, 1996.
NAFTA–TAA–01972; Fedco Automotive Components Co., Inc., Div. of Stant Corp., Buffalo, NY: October 9, 1996.
NAFTA–TAA–01984; Veratec, A Div. of International Paper Co., Lewisburg, PA: October 10, 1996.
NAFTA–TAA–01798; O & H Manufacturing Co., Inc., Allentown, PA: June 30, 1996.
NAFTA–TAA–01961; DQ Investment Corp d/b/a/ Accudat, Data Entry Operations, San Diego, CA: September 30, 1996.

I hereby certify that the aforementioned determinations were issued during the month of November, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 20, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32297 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,050 and 050H]

Ithaca Industries, Incorporated, Thomasville, Georgia, Ithaca Industries, Incorporated, Quitman, Georgia; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 14, 1997, applicable to all workers of Ithaca Industries, Inc., Thomasville, Georgia. The notice was published in the **Federal Register** on April 29, 1997 (62 23273).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations will occur at the subject firms' Quitman, Georgia facility when it closes in December, 1997. Workers at the Quitman, Georgia facility are engaged in the production of men's and boys' undergarments. Based on these new findings, the Department is amending the certification to cover workers at the Quitman, Georgia facility.

The intent of the Department's certification is to include all workers of Ithaca Industries, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–33,050 is hereby issued as follows:

"All workers of Ithaca Industries, Inc., Thomasville, Georgia (TA–W–33,050), and Quitman, Georgia (TA–W–33,050H) who became totally or partially separated from employment on or after December 4, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 1st day of December, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32306 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 936; TA–W–33, 936A]

Jennmar Corp. of Tennessee and Marjenn Trucking of Tennessee, Knoxville, Tennessee; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 27, 1997 in response to a worker petition which was filed on October 27, 1997 on behalf of workers at Jennmar Corp. of Tennessee and Marjenn Trucking of Tennessee, Knoxville, Tennessee.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 25th day of November, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32294 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of the Trade Adjustment Assistance, at the address show below, not later than December 22, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 22, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of November, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 11/24/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Products(s)
34,017	Marathon Electric (Wkrs)	York, PA	11/01/97	Generators.
34,018	Aluminum Conductor Prod. (USWA)	Vancouver, WA	11/10/97	Aluminum Conductor Cable.
34,019	Signal Apparel Co., Inc (Co.)	New Tazewell, TN	11/14/97	Ladies' & Men's T-Shirts, Pants.
34,020	San Antonio Garment (Co.)	San Antonio, TX	11/07/97	Finishers of Levi Docker for Men.
34,021	Bosch Braking Systems (UAW)	Johnson City, TN	11/07/97	Truck & Automobile Brake Drums & Rotors.
34,022	National Seating Co (Wkrs)	Horse Cave, KY	11/07/97	Cushion-Aire Truck Seats.
34,023	Spencer's Inc. (Wkrs)	Hillsville, VA	11/07/97	Infants and Children's Wear.
34,024	Columbia Footwear Corp (UFCW)	Hazleton, PA	11/05/97	Casual Shoes & Boots.
34,025	Carter Footwear, Inc. (UFCW)	Wilkes-Barre, PA	11/05/97	Canvas & Rubber Casual Footwear.
34,026	Lukens Steel, Inc (USWA)	Washington, PA	11/06/97	Stainless Steel Products.
34,027	Stanley Bostitch (Wkrs)	N. Kingstown, RI	11/10/97	Galvanized Nails.
34,028	Gentex LLC (Wkrs)	Rocky Mount, NC	11/11/97	Printing of Fabrics for Apparel.
34,029	Louisiana Pacific (Co.)	Hayder Lake, ID	11/11/97	Various Lumber Products.
34,030	Cone Mills (UNITE)	Haw River, NC	10/23/97	Chamois Shirting, Flannel Shirting.
34,031	MKE Quantum Components (Co.)	Shrewsbury, MA	11/14/97	Components for Disc Drives.

[FR Doc. 97–32300 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,767 and 767F]

Fruit of the Loom; Martin Mills, Inc. D/B/A St. Martinville Mills including former Employees of Jeanerette Mills St. Martinville, Louisiana and Jeanerette Mills Division of Martin Mills, Inc. Jeanerette, Louisiana; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 29, 1997, applicable to workers of Fruit of the Loom, Martin Mills, Inc., located in St. Martinville, Louisiana. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51152). The certification was amended on September 14, 1997, to specify that Martin Mills, Inc., is doing business in St. Martinville, Louisiana as St. Martinville Mills, and to include those workers of the subject firm whose wages were reported under the separate Unemployment Insurance tax account for Jeanerette Mills. The notice of amended certification was published in the **Federal Register** on September 30, 1997 (62 FR 51155).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations will occur at the Jeanerette Mills, Division of Martin Mills in Jeanerette, Louisiana. The workers are engaged in employment related to the production of T-shirts, briefs, and A-shirts.

The intent of the Department's certification is to include all workers of Fruit of the Loom adversely affected by increased imports of underwear.

The amended notice applicable to TA–W–33,767 is hereby issued as follows:

"All workers of Fruit of the Loom, Martin Mills, Inc., doing business at St. Martinville Mills, including former employees of Jeanerette Mills, St. Martinville, Louisiana (TA–W–33,767) and Jeanerette Mills, Division of Martin Mills, Inc., Jeanerette, Louisiana (TA–W–33,767F), who became totally or partially separated from employment on or after August 14, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, D.C. this 1st day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32298 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,797; SMS Textile Mills, Allentown, PA
TA–W–33,893; Simpson Industries, Jackson, MI
TA–W–33,815; Amity Dyeing & Finishing, Augusta, GA
TA–W–33,982; Gary Peterson Logging, Inc., Cascade, ID
TA–W–33,923; Timberline Lumber, Inc., Kalispell, MT

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,933; University Technical Service, Inc., San Diego, CA
TA–W–33,879; Cygne Design, Inc., New York, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,890; Wolverine World Wide Hy-Test, Inc., Kirksville, MO
TA–W–33,909; Redco Foods, Inc., Little Falls, NY
TA–W–33,840; Energizer Power Systems, Gainesville, FL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,675; J.G. Furniture Group, Inc., Quakertown, PA

The predominant cause of worker separations at the subject firm was caused by a transfer of production to other another existing domestic company facility.

TA–W–33,826; Chevron Fox Oil Team
TA–W–34,006; Packwood Lumber Co, A Subsidiary of Pacific Lumber and Shipping, Packwood, WA
TA–W–33,833; University Technical Service, Inc., San Diego, CA
TA–W–33,863; Batesville Casket Co., Campbellsville, KY
TA–W–33,573; The Bethlehem Corp., Easton, PA
TA–W–33,917; International Paper Co., Erie Mill, Erie, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,739; Tsumura International, A Subsidiary of Tsumura & Co., North Bergen, NJ

The subject company made a decision to sell a part of the business and to consolidate the functions of two leased facilities in New Jersey into an owned facility in Minnesota.

TA–W–33,952; Amesbury Group, Inc., Amesbury, MA

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sale or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–33,872; Franklin Furniture Corp., Greeneville, TN: September 22, 1996.
TA–W–33,899; Gandalf Systems Corp., Delran, NJ: September 26, 1996.
TA–W–33,657; O & H Manufacturing Co., Inc., Allentown, PA: June 30, 1996.
TA–W–33,956; Veratec, A Division of International Paper Co., Lewisburg, PA; October 10, 1996.
TA–W–33,960 & A; Wilhold, Sunbury, PA and Distribution Center, Milton, PA: October 20, 1996.
TA–W–33,915; DO Investment Corp., d/b/a Accudate Data Entry Operations, San Diego, CA: September 30, 1996.
TA–W–33,938 & TA–W–33,939; Lees Manufacturing Co., Cannon Falls, MN and KD Industries, Lees Manufacturing, Blountsville, AL: October 9, 1996.
TA–W–33,581; Pro Line Cap Co., Bowie, TX: May 9, 1996
TA–W–33,783; General Electric Co., Motors Div., General Electric Co Transformer Div., Fort Wayne, IN: July 19, 1997.
TA–W–33,898; Weyerhaeuser Wood Products, Plywood Division, Philadelphia, MS: October 3, 1996.
TA–W–33,868; About Sportswear, New York, NY: September 18, 1996.
TA–W–33,827; Standard Fittings (Jobs for St. Landry Parish, Inc), Opelousas, LA: September 11, 1996.
TA–W–33,931; The Stroh Brewery Co., St. Paul, MN: October 8, 1996.
TA–W–33,968; Pendleton Woolen Mills, Milwaukee, OR: October 23, 1996.
TA–W–33,966; Cason Manufacturing Co., Stephenville, TX: October 24, 1996.
TA–W–33,948; W.S.W. Company of Sharon, Inc., Bradford, TN: October 17, 1996.
TA–W–33,838; Elaine Benedict, Inc., Miami, FL: August 31, 1996.
TA–W–34,010; Parker Hannifin Co., Berea, KY: October 20, 1996.
TA–W–33,892; Port Clyde Canning Co., Rockland, ME: September 16, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01956; The Stroh Brewery Co., St. Paul, MN
NAFTA–TAA–02006; Gary Peterson Logging, Inc., Cascade, ID
NAFTA–TAA–01897; SMS Textile Mills, Allentown, PA
NAFTA–TAA–01758; Henry Franklin Green, Pahokee, FL
NAFTA–TAA–01962; Basler Electric, Corning Division, Corning, AR
NAFTA–TAA–02003; Packwood Lumber Co., a Subsidiary of Pacific Lumber and Shipping, Packwood, WA
NAFTA–TAA–01835; J.G. Furniture Group, Inc., Quakertown, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01793; Alpha Mills Corp., KXCF Division, Annville, PA

The investigation revealed that criteria (2) was not met. Sales or production, or both did not decline during the relevant period as required for certification.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01902; General Electric Co., Motors Division & Transformer Division, Frt Wayne, IN: November 19, 1997
NAFTA–TAA–01983; Sterling Stainless Tube Corp. (A Subsidiary of ITT Automotive), Englewood, CO: October 15, 1996
NAFTA–TAA–01990; Cason Manufacturing Co., Stephenville, TX: October 24, 1996
NAFTA–TAA–01948; Texas Instruments, Inc., Central Lake, MI: September 30, 1996
NAFTA–TAA–01952; JLG Industries, Inc., McConnellsburg, PA: October 6, 1996

I hereby certify that the aforementioned determinations were issued during the month of November, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, during normal business hours or will be mailed to persons who write to the above address.

Dated: December 2, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32299 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,870]

Solvay Animal Health, Incorporated, Mendota Heights, Minnesota; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 6, 1997 in response to a worker petition which was filed on behalf of workers at Solvay Animal Health, Incorporated, Mendota Heights, Minnesota.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 25th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32293 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,338]

The Standard Products Company, Lexington, Kentucky; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 25, 1997, the International Union, United Automobile, Aerospace & Agricultural Implements of America—UAW requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance, applicable to workers of the subject firm. The denial notice was signed on June 5, 1997 and was published in the **Federal Register** (62 FR 34711) on June 27, 1997.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that some of the equipment in the Lexington, Kentucky was being sent to Georgetown, Canada to produce parts that were produced at the subject firm and that some machinery was being sent to Goldsboro, North Carolina and would later be sent to the company's plant in Mexico.

In order for the Department to issue a worker group certification, all of the group eligibility requirements of Section 222 of the Trade Act must be met. Review of the investigation findings show that criterion (3) was not met. Layoffs at the subject firm were the result of the consolidation of extruded and molded rubber sealing system component production from the subject firm into two other company-owned plants located domestically in Gaylord,

Michigan and Goldsboro, North Carolina. The shift in production is attributed to domestic excess capacity and the company's need to cut costs to stay competitive in the market place. No production performed at the subject firm was shifted to any foreign location to serve the company's domestic market. The equipment at the plant was shipped to whichever plants of the company had a need for additional machinery that could be used in the company's extrusion process. Except for the shipment of certain machinery to Gaylord and Goldsboro for the express purpose of serving the enhanced production at those facilities, no machinery was shipped to any location to support the production of parts that had previously been made in Lexington. Some equipment was shipped to Georgetown, Canada, to support existing production at that plant, but no production moved from Lexington to Georgetown, Canada or is being imported back to the United States.

The company recently opened a plant in Mexico. At present the plant has received two contracts, one from a Japanese manufacturer, and one from an American manufacturer. Production under these contracts will not begin before 1999. The Company's Mexican production will supply those automakers in Mexican plants only.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 28th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97-32303 Filed 12-9-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,793]

Thomas & Betts, Augat Division, Sanford, Maine; Including Leased Workers of Manpower Temporary Services, Sanford, Maine; Kelly Services, Incorporated, Biddeford, Maine; Olsten Staffing Services, Portland, Maine; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 24, 1997, applicable to all workers of Thomas & Betts, Augat Division located in Sanford, Maine. The notice was published in the **Federal Register** on October 14, 1997 (62 FR 53348).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Thomas & Betts, Augat Division were leased from manpower Temporary Services, Kelly Services, Incorporated and Olsten Staffing Services to produce terminal blocks and plastic molds at the Sanford, Maine facility. Worker separations occurred at Manpower Temporary Services, Kelly Services, Incorporated and Olsten Staffing Services as a result of worker separation at Thomas & Betts, Augat Division, Sanford, Maine.

Based on these findings, the Department is amending the certification to include workers of Manpower Temporary Services, Sanford, Maine, Kelly Services, Incorporated, Biddeford, Maine and Olsten Staffing Services, Portland, Maine leased to Thomas & Betts, Augat Division, Sanford, Maine.

The intent of the Department's certification is to include all workers of Thomas & Betts, Augat Division adversely affected by imports.

The amended notice applicable to TA-W-33,793 is hereby issued as follows:

"All workers of Thomas & Betts, Augat Division, Sanford, Maine and leased workers of Manpower Temporary Services, Sanford, Maine, Kelly Services, Incorporated, Biddeford, Maine and Olsten Staffing Services, Portland, Maine engaged in employment related to the production of terminal blocks and plastic molds for Thomas & Betts, Augat Division, Sanford, Maine who became totally or partially separated from employment on or after August 7, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 28th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97-32305 Filed 12-9-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petition for NAFTA-Transitional Adjustment Assistance

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed renewal of the information collection of the Petition for Transitional Adjustment Assistance, ETA 9042.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before February 9, 1998. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or others forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Grant D. Beale, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C-4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-219-5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The North American Free Trade Agreement (NAFTA) Implementation Act amended Chapter 2 of Title II of the Trade Act of 1974 to add a Subchapter D—NAFTA Transitional Adjustment Assistance Program. This program provides needed adjustment assistance to workers adversely affected because of imports from Canada to Mexico or shifts to production from the United States to those countries.

Section 250 of the Act authorizes the Governor of each State to accept petitions for certification of eligibility to apply for NAFTA transitional adjustment assistance. A petition may be filed by a group of three workers (including workers in any agricultural firm or subdivision or an agricultural firm), their union or other duly authorized representative including community-based organizations, or a company official. Form ETA-9042, Petition for NAFTA Transitional Adjustment Assistance, establishes the format which has been used by the Governor to facilitate petition filings.

II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for renewal of a of collection of information previously approved and assigned OMB Control No. 1205-0342. There is a reduction of 70 burden hours as the result of a reestimate of the number of petitions filed.

Type of Review: Extension without change.

Agency: Employment and Training Administration, Labor.

Title: Petition for NAFTA Transitional Adjustment Assistance.

OMB Number: 1205-0342.

Agency Number: ETA-9042.

Affected Public: Individuals or households.

Total Respondents: Estimated 1,000.

Frequency: On Occasion.

Estimated Time Per Response:	
Respondents (minutes)	15
State Review (minutes)	5
Estimated Total Burden Hours:	
Respondents (hours)	250
State Review (hours)	80
Total (hours)	330
Estimated Respondent Cost:	
Respondents	$6,250
State Review	$1,406
Total	$7,656

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 4, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97-32290 Filed 12-9-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; NAFTA-Transitional Adjustment Assistance, Confidential Data Request

ACTION: Notice.

SUMMARY: The Department of labor, as a part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed renewal of the information collection of the NAFTA Transitional Adjustment Assistance Confidential Data Request, ETA 9043.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before February 10, 1998. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Grant D. Beale, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C-4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-219-5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The North American Free Trade Agreement (NAFTA) Implementation Act amended Chapter 2 of Title II of the Trace Act of 1974 to add a Subchapter D—NAFTA Transitional Adjustment Assistance Program. This program provides needed adjustment assistance to workers adversely affected because of imports from Canada or Mexico or shifts of production from the United States to those countries.

Section 250 of the Act authorizes the Governor of each State to accept petitions for certification of eligibility to apply for adjustment assistance. Once a petition for NAFTA adjustment assistance is filed with the Governor in the State where the firm is located, the law gives the Governor ten days to make a preliminary finding of whether the petition meets the group eligibility requirements under Subchapter D, and transmits the finding to the Secretary of Labor. The NAFTA Confidential Data Request Form ETA-9043 establishes the format which has been used by the Governor for making a preliminary finding.

II Current Actions

This is a request for OMB approval under (the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for renewal of a collection of information assigned OBM Control No. 1205–0339. This is a reduction of 1,500 burden hours as the result of a reestimate of the number of petitions filed.

Type of Review: Extension without change.

Agency: Employment and Training Administration, Labor.

Title: NAFTA-Confidential Data Request.

OMB Number: 1205–0339.

Agency Number: ETA–9043.

Affected Public: Businesses and State.

Total Respondents: Estimated 1,000.

Frequency: On occasion.

Average Time per Response: Respondents=3 hours; State Review=4.5 hours.

Estimated Total Burden Hours: Respondents=3,000; State review=4,500; Total=7,500.

Estimated Respondent Cost: Respondents=$53,610; State review=$79,110; Total=$132,720.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 4, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32291 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; NAFTA-Transitional Adjustment Assistance Customer Survey Form

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instructions are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed renewal of the information collection of the NAFTA Transitional Adjustment Assistance Customer Survey Form, ETA 9044.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before February 9, 1998. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Grant D. Beale, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The North American Free Trade Agreement (NAFTA) Implementation Act amended Chapter 2 of Title II of the Trade Act of 1974 to add a Subchapter D—NAFTA Transitional Adjustment Assistance Program. This program provides needed adjustment assistance to workers adversely affected because of imports from Canada or Mexico or shifts of production from the United States to those countries.

Section 250 of the Act authorizes the Governor of each State to accept petitions for certification of eligibility to apply for NAFTA transitional adjustment assistance. Once a preliminary finding is issued by the Governor, the Secretary must determine to what extent, if any, increased imports from Mexico or Canada have impacted the petitioning workers' firm selling market, and thus determine whether the statutory criteria for worker group eligibility are met. The customer survey form establishes the format which has been by the Secretary to determine the impact of imports.

II. Current Actions

This is a request for OMB approval under (the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for renewal of a collection of information previously approved and assigned OMB Control No. 1205–0337. There is an addition of 210 burden hours as the result of a reestimate of the number of responses and the number of hours required to complete the form.

Type of Review: Extension without change.

Agency: Employment and Training Administration, Labor.

Title: Petition For NAFTA Transitional Adjustment Assistance.

OMB Number: 1205–0337.

Agency Number: ETA–9044.

Affected Public: Businesses.

Total Respondents: Estimated 420.

Frequency: On occasion.

Estimated Time Per Response: 2 hours.

Estimated Total Respondent Cost: $32,130.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 4, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32292 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01807; NAFTA–01807X]

Levi Strauss and Company; Goodyear Cutting Facility and El Paso Field Headquarters El Paso, Texas and San Benito, Texas; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48889). The certification was subsequently amended to include the subject firm workers at the El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51161).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information received by the State shows that worker separations have occurred at the San Benito, Texas plant of Levi Strauss and Company. The workers in San Benito are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover the subject firms' workers at the San Benito, Texas plant.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports from Mexico of men's, women's and youth's denim jeans and jackets.

The amended notice applicable to NAFTA–01807 is hereby issued as follows:

All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (NAFTA–01807) and San Benito, Texas (NAFTA–01807X) who were engaged in employment related to the production of men's, women's and youth's denim jeans and jackets who became totally or partially separated from employment on or after July 9, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 10th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–32301 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCIES: United States Environmental Protection Agency (USEPA) and the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC)

ACTION: Notice of availability of final environmental assessment and finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the United States Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the United States Environmental Protection Agency and the United States Section hereby gives notice that the Final Environmental Assessment (EA) and Final Finding of No Significant Impact (FONSI) for the Mexicali Wastewater Collection and Treatment Project are available. Copies of the draft EA and draft FONSI were made available at the main Public Libraries in the cities of Calexico, El Centro, Holtville and Brawley located in Imperial County, California on September 29, 1997 for a 30-day review period before making the finding final. The information was also made available on the Internet (USIBWC homepage).

ADDRESSES: Carlos Peña Jr., Facilities Planning Border Coordinator; United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902. Telephone: 915/534-6605.

SUPPLEMENTARY INFORMATION: In accordance with National Environmental Policy Act (NEPA) requirements, the United States Environmental Protection Agency (EPA) and the United States Section of the International Boundary and Water Commission (USIBWC) completed an environmental review of the impacts of the Mexicali Wastewater Collection and Treatment Project proposed by the Comisión Estatal de Servicios Públicos de Mexicali (CESPM). The FONSI was based on the analyses presented in the Environmental Assessment for Mexicali Wastewater Collection and Treatment Project. The proposed action consists of several projects designed to improve the water quality discharge from the Mexicali treatment system and water quality in the New River. The NEPA review was required because of the issuance funds for the project.

In accordance with the guidelines for determining the significance of proposed federal actions (40 CFR 1508.27) and Border Environment Cooperation Commission (BECC) Criteria for initiating an environmental assessment, the EPA and USIBWC concluded that the proposed action will not result in a significant effect on the environment. The proposal will not significantly affect land use patterns or population, wetlands or floodplains, threatened or endangered species, farmlands, ecologically critical areas, cultural or historic resources, traffic, visual, geological resources, public health and safety, socioeconomic conditions, energy demand, air quality, water quality, noise levels, fish and wildlife resources, nor will it conflict with local or state land use plans or policies. The proposal conforms with all applicable federal statutes and executive orders.

The CESPM submitted to the BECC an Environmental Assessment (Manifestacion de Impacto Ambiental Modalidad General del Projecto Saneamiento del Rio Nuevo en la C.D. de Mexicali, Baja California) that disclosed the impacts in Mexico from this project. It was determined that there were no significant impacts.

The USEPA and USIBWC determined that the proposed action would not significantly impact the environment of the United States and that the preparation of an Environmental Impact Statement (EIS) is not required.

Availability

Copies of the Final Act and Final FONSI have been distributed to Federal, State, and local agencies, organizations and individuals that have commented on or have consulted and coordinated in the preparation of the EA. A limited number of copies are available to fill single copy requests at the above address.

Dated: December 3, 1997.

John Bernal,

Commissioner, IBWC U.S. Section.

[FR Doc. 97–32258 Filed 12–9–97; 8:45 am]

BILLING CODE 4710–03–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Meetings With Interested Vendors for Ordering Reproductions of Still Photographs, Aerial Film, Maps, and Drawings

AGENCY: National Archives and Records Administration, NARA

ACTION: Notice of meetings.

SUMMARY: NARA will hold meetings with interested vendors to discuss the terms of the fourth year of privatization of reproduction services for still pictures, aerial film, maps, and

drawings in NARA holdings in College Park, MD, and to distribute copies of the Memorandum of Agreement which must be completed for participation in the program. Under this privatization program, NARA has permitted vendors to set up work stations in its building located in College Park, MD, where the still photographs and cartographic and architectural records of three NARA archival units are housed and made available. The three NARA units refer customer requests for reproduction of these media to the vendors, who determine fees, collect payments, perform the copying work, and mail the reproductions to the customers. Based on a satisfactory review of the program's overall performance, NARA has decided to extend the program for another year, though with some modifications.

Effective March 6, 1998, the next anniversary date, NARA will open the program to interested vendors for a fourth year. All vendors interested in this program, including vendors already participating, are invited to attend a meeting on January 7, 1998, where copies of a Memorandum of Agreement specifying the terms of the program will be distributed. A follow-up meeting has been scheduled for February 4, 1998, to answer any remaining questions from vendors. Attendance at the meetings does not require reservations. Attendance is encouraged, but not required, to participate in the program.

DATES: The initial meeting will be held on Wednesday, January 7, 1998, at 10 a.m. Copies of the Memorandum of Agreement also will be available beginning January 7, 1998, by contacting William T. Murphy (see **FOR FURTHER INFORMATION CONTACT**).

The follow-up meeting will be held on Wednesday, February 4, 1998, at 10 a.m.

Signed copies of the Memorandum of Agreement must be received by NARA by February 28, 1998.

ADDRESSES: The meetings will be held at the National Archives at College Park, in lecture room A, located at 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: William T. Murphy, Nontextual Archives Division, 301–713–7083; fax 301–713–6904.

Dated: December 3, 1997.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 97–32227 Filed 12–9–97; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: State Agreements Program, as authorized by Section 274(b) of the Atomic Energy Act.
2. Current OMB approval number: 3150–0029.
3. How often the collection is required: One time or as needed.
4. Who is required or asked to report? Thirty Agreement States who have signed Section 274(b) agreements with NRC.
5. The number of annual respondents: 30.
6. The number of hours needed annually to complete the requirement or request: 570 (approximately six hours per response).
7. Abstract: Agreement States are surveyed on a one-time or as-needed basis, e.g., to respond to a specific incident, to gather information on licensing and inspection practices and other technical and statistical information. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by NRC in preparing responses to Congressional inquiries. Agreement State comments are also solicited in the areas of proposed procedure and policy development.

Submit, by February 9, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 4th day of December, 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–32272 Filed 12–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–8452]

Bear Creek Uranium Company; Notice of Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Application from Bear Creek Uranium Company to change two site-reclamation milestones in Condition 49 of Source Material License No. SUA–1310 for the Bear Creek, Wyoming Uranium Mill site.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 24, 1997, an application from Bear Creek Uranium Company (BCUC) to amend License Condition (LC) 49 of Source Material License No. SUA–1310 for the Bear Creek, Wyoming uranium mill site. By this amendment application, the licensee proposes to modify LC 49 to change the completion date for two site-reclamation milestones. The new dates proposed by BCUC would extend the completion of placement of the final radon barrier by one year and the completion of placement of the erosion protection cover by five months. BCUC is requesting these extensions because of delays caused by inclement weather conditions during this year's construction season.

FOR FURTHER INFORMATION CONTACT: Charlotte E. Abrams, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–5808.

SUPPLEMENTARY INFORMATION: The portion of LC 49 with the proposed changes would read as follows:

A. (3) Placement of the final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 $pCi/m^2/s$ above background:

For tailings pile surface areas not covered by evaporation ponds constructed as part of the groundwater corrective action program—December 31, 1998.

For the total tailings pile surface after evaporation pond removal—December 31, 1998.

B. Reclamation, to ensure required longevity of the covered tailings and groundwater protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40—December 31, 1998.

BCUC's application to amend LC 49 of Source Material License SUA–1310, which describes the proposed changes to the license condition and the reasons for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Bear Creek Uranium Company, P.O. Box 366, Casper, Wyoming 82602, Attention: Gary Chase; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 1st day of December 1997.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–32271 Filed 12–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–0299]

Umetco Minerals Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment of Source Material License SUA–648 to change six reclamation milestone dates.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Umetco Minerals Corporation's (Umetco's) Source Material License SUA–648 to change six reclamation milestone dates. This amendment was requested by Umetco in its letter dated October 6, 1997, and the receipt of the request by NRC was noticed in the **Federal Register** on October 16, 1997.

The license amendment modifies License Condition 59 to change completion dates for six site-reclamation milestones. The new dates approved by the NRC extend completion of placement of final radon barrier for the Inactive (enhanced barrier) and the A–9 impoundments by four years, and that for the Heap Leach impoundment by one year; and placement of erosion protection cover for the Inactive impoundment by five years, and for the A–9 and the Heap Leach impoundments by four years. Umetco attributes the delays to its efforts to enhance the previously approved designs of the Inactive and the A–9 impoundments, and in obtaining permits for a rock quarry that can produce sufficient volumes and quality of rock for erosion protection cover. Based on the review of Umetco's submittal, the NRC staff concludes that the delays are attributable to factors beyond Umetco's control, the proposed work is scheduled to be completed as expeditiously as practicable, and the added risk to the public health and safety is not significant, as it already meets the limit of radon emissions to an average flux of no more than 20 $pCi/m^2/s$ above background.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: Umetco's amended license, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 3d day of December, 1997.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–32270 Filed 12–9–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

Time and date: 1:00 p.m., December 10, 1997.

Place: OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

Status: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

Matters to be Considered: The National Partnership Council will complete its discussion of and adopt it strategic action plan and meeting schedule for calendar year 1998. The Council will also complete its review of the draft 1998 Report to the President on the Progress of Labor-Management Partnerships.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–2930.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–32285 Filed 12–9–97; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3321(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1998, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1998, 31.6 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.4 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 2, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–32315 Filed 12–9–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22924; File No. 812–10240]

Nationwide Life Insurance Company, et al.; Notice of Application

December 3, 1997.

AGENCY: U.S. Securities and Exchange Commission ("SEC or Commission").

ACTION: Notice of application for an order under (i) Sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") granting exemptive relief from Section 17(a) of the Act; and (ii) Section 12(d)(1)(J) of the Act granting exemptive relief from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to commence operations as a "fund of funds" whereby certain investment companies would invest in both investment companies that are part of the same "group of investment companies" and investment companies that are not part of the same "group of investment companies." Other investments of the "fund of funds" could include government securities, short-term fixed income securities, and a guaranteed investment contract.

APPLICANTS: Nationwide Life Insurance Company, Nationwide Advisory Services, Inc., Nationwide Asset Allocation Trust, Nationwide Investing Foundation, Nationwide Investing Foundation II, and Nationwide Account Trust.

FILING DATES: The application was filed on July 8, 1996, and amended and restated on February 18, 1997, July 25, 1997, and November 19, 1997, and amended on December 3, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C., 20549. Applicants, Nationwide Life Insurance Company, One Nationwide Plaza, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Senior Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Nationwide Life Insurance Company ("Nationwide") is organized as a stock life insurance company under Ohio state law. Nationwide is admitted to do business in all fifty states, as well as the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

2. Nationwide Asset Allocation Trust ("NAAT") is a Massachusetts business trust, initially consisting of five series (the "Asset Allocation Funds"), with the following investment objectives: Aggressive, Moderately Aggressive, Moderate, Moderately Conservative, and Conservative. Additional Asset Allocation Funds may be established in the future as (i) series of NAAT, (ii) series of any other Nationwide open-end investment company organized as a series trust, or (iii) as any other investment company of Nationwide that does not offer its securities in separate series. Each of the Asset Allocation Funds proposes to operate as a "fund of funds" that may invest in (i) shares of investment companies or their series, now existing or created in the future, that are part of the same "group of investment companies" (as defined in Section 12(d)(1)(G)(ii) as the Asset Allocation Funds ("Affiliated Underlying Funds") and (ii) shares of other investment companies that are not part of the same "group of investment companies" as the Asset Allocation Funds ("Unaffiliated Underlying Funds") (Affiliated and Unaffiliated Underlying Funds are collectively referred to as "Underlying Funds"). In addition to investing in the Underlying Funds, the Asset Allocation Funds also may invest in government securities, certain short-term fixed income securities, and a fixed rate investment contract issued by Nationwide (the "Fixed Contract").

3. Nationwide Investing Foundation ("NIF") is a Michigan business trust and Nationwide Investing Foundation II ("NIF II) and Nationwide Separate Account Trust ("NSAT") are Massachusetts business trusts registered under the Act as open-end management investment companies. Collectively, the portfolios of NIF, NIF II, and NSAT will initially act as the Affiliated Underlying Funds.

4. Nationwide Advisory Services, Inc. ("NAS") is a registered broker-dealer and investment adviser and is a member of the National Association of Securities Dealers, Inc. ("NASD"). NAS is a wholly owned subsidiary of Nationwide and serves as principal underwriter of variable annuity contracts and variable life insurance policies issued by Nationwide and Nationwide's wholly subsidiary Nationwide Life and Annuity Insurance Company. Additionally, NAS currently serves as the investment adviser to all of the portfolios in NIF, NIF II, and NSAT. NAS also will serve as the investment adviser for NAAT once NAAT begins operations.

5. Nationwide will issue variable annuity contracts ("Contracts") designed to be sold to retirement plans of governmental entities. The Contracts will offer participants in these retirement plans an opportunity for asset allocation through the selection of five Asset Allocation Fund options that have investment objectives ranging from conservative to aggressive.

6. The Asset Allocation Funds will invest primarily in Underlying Funds in accordance with a target allocation of investment categories (aggressive growth, growth, growth and income, balanced, guaranteed interest, bond/money market) reflecting the overall objective of each Asset Allocation Fund and matching the participant's risk tolerance and time horizon. The Asset Allocation Funds will invest in Underlying Funds, subject to certain conditions. Some of the Unaffiliated Underlying Funds may be organized as "feeder" funds in a "master-feeder" structure. The allocation for each Asset Allocation Fund will be ensured through periodic rebalancing.

7. The Asset Allocation Funds also may invest in the Fixed Contract. Each Asset Allocation Fund will be permitted to remove its assets from the Fixed Contract at any time without imposition of a sales charge or market value adjustment.

8. The Underlying Funds will pay advisory fees to their advisers. In addition, the Underlying Funds will pay fees to their service providers for all other services relating to their operations, including custody, administration, and fund accounting. Therefore, shareholders of the Asset Allocation Funds indirectly will pay their proportionate share of any Underlying Fund fees and expenses.

9. The Asset Allocation Funds also will pay a unified fee at the annual rate of .50% of daily net assets to NAS for both investment advisory services and for administrative expenses (the "Unified Fee"). The portion of the Unified Fee that covers the investment advisory services provided by NAS to the Asset Allocation Funds is for services in addition to, and not duplicative of, those provided by the investment advisers for the Underlying Funds. In Addition, the Asset Allocation Funds will pay for administrative, custody, legal, accounting, and other expenses out of the Unified Fee. The services at the Asset Allocation Fund level are different from the services provided to the Underlying Funds because each Asset Allocation Fund is a separate entity with its own administrative, compliance, recordkeeping, and custody needs.

10. The Asset Allocation Funds will pay no front-end sales loads or contingent deferred sales charges in connection with the purchase or redemption of Underlying Fund shares. In addition, any sales charges or service fees, as defined in Section 2830 of the NASD Conduct Rules, will be limited in the manner described in Condition 3 below. Nationwide, however, will be permitted to include with the Contract a contingent deferred sales load chargeable upon termination of the Contract, to the extent permitted by the Act, the regulations of the NASD, or any other applicable law or regulation.

11. The Contracts will impose an actuarial risk fee related to the Contract's mortality and expense risks and administrative expenses ("Actuarial Risk Fee"). The Actuarial Risk Fee will be paid to Nationwide, and will be equivalent to a maximum of .95% of average account value on an annual basis (.10% for mortality risk, 40% for expense risk, and .45% for administration). The administrative portion of the Actuarial Risk Fee is designed to reimburse Nationwide for maintaining Contract and participant level records and reporting including tax reporting, customer services (including executing and tracking transfers and exchanges for the Contracts) and compliance with applicable laws and regulations. Nationwide, or one of its affiliates, may receive an administrative fee from any of the Underlying Funds, or an adviser or administrator of an Underlying Fund, to compensate Nationwide for maintaining participant level records and providing customer servicing to participants. The receipt by Nationwide of such a fee will result in a corresponding reduction in the Actuarial Risk Fee. In addition, the Actuarial Risk Fee is subject to a sliding scale reduction based on the asset size of a Contract.

Applicants' Legal Analysis

Sections 12(d)(1) (A) and (B) of the Act

1. Section 12(d)(1)(A) of the Act provides that it shall be unlawful for any registered investment company (the "acquiring company") to purchase or otherwise acquire any security issued by any other investment company (the "acquired company") if the acquiring company and any other company or companies controlled by it immediately after such purchase or acquisition own in the aggregate (i) more than 3% of the total outstanding voting stock of the acquired company, (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the acquiring company, or (iii) securities issued by the acquired company and all other investment companies having an

aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(B) of the Act provides that it shall be unlawful for any registered open-end investment company (the "acquired company") knowingly to sell or otherwise dispose of any security issued by the acquired company to any other investment company (the "acquiring company") or any company or companies controlled by the acquiring company if immediately after such sale or disposition (i) more than 3% of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it, or (ii) more than 10% of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies controlled by them.

3. Section 12(d)(1)(G)(i) of the Act states that Section 12(d)(1) does not apply to securities of a registered open-end investment company (the "acquired company") purchased or otherwise acquired by a registered open-end investment company (the "acquiring company") if (i) the acquired company and the acquiring company are part of the same group of investment companies, (ii) the securities of the acquired company, securities of other registered open-end investment companies that are part of the same group of investment companies, government securities, and short-term paper are the only investments held by the acquiring company, (iii) with respect to securities of the acquiring company, any sales loads and other distribution-related fees charged, when aggregated with any sales load and distribution-related fees paid by the acquiring company with respect to securities of the acquired fund, are not excessive under rules adopted pursuant to Section 22(b) or Section 22(c) by a securities association registered under Section 15A of the Securities Exchange Act of 1934, or the Commission, and (iv) the acquired company has a policy that prohibits it from acquiring any securities of registered investment companies in reliance on Section 12(d)(1) (G) or (F).

4. Applicants state that the Asset Allocation Funds may not rely on the exemption provided by Section 12(d)(1)(G) because they propose to invest in shares of Unaffiliated Underlying Funds and the Fixed Contract as well as securities of funds that are part of the same "group of investment companies" as the Asset Allocation Funds, government securities, and short-term paper.

5. Section 12(d)(1)(F) of the Act provides that the provisions of Section 12(d)(1) shall not apply to securities purchased or otherwise acquired by a registered investment company if immediately after such purchase or acquisition, not more than 3% of the total outstanding stock of such issuer is owned by such registered investment company and all affiliated persons of such registered investment company; and such registered investment company has not offered or sold and is not proposing to offer or sell any security issued by it through a principal underwriter or otherwise at a public offering price that includes a sales load of more than 1½%. Further, no issuer of any security purchased under Section 12(d)(1)(F) shall be obligated to redeem such security in an amount exceeding 1% of such issuer's total outstanding securities during any period less than 30 days. Applicants state that investments by the Asset Allocation Funds in Unaffiliated Underlying Funds will be made in accordance with Section 12(d)(1)(F).

6. Section 12(d)(1)(J) of the Act provides that the Commission is authorized to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of Section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request an order under Section 12(d)(1)(J) exempting them from the limitations of Sections 12(d)(1) (A) and (B).

7. Applicants assert that the purpose of Section 12(d) of the Act was to prevent unregulated pyramiding of investment companies and the negative effects that are perceived to arise from such pyramiding. Such abuses include duplicative costs, the exercise of undue influence or control over the underlying funds, the threat of large-scale redemptions, and the complexity of such arrangements.

Duplication of Costs

8. Applicants argue that the proposed arrangement will include safeguards designed to address layering of fees. They assert that, before approving any advisory contract under Section 15 of the Act, the trustees of the Asset Allocation Funds, including a majority of the trustees who are not "interested persons," as defined in Section 2(a)(19) of the Act, would find that any advisory fees or charges under the contract are based on services that are in addition to, rather than merely duplicative of, services provided under the advisory contract for any Underlying Fund.

9. Applicants also submit that the structure of the Asset Allocation Funds will not implicate sales charge layering concerns because the Asset Allocation Funds will not purchase Underlying Funds that impose a sales load upon the Asset Allocation Funds. Furthermore, Applicants argue that as a condition for the requested relief, they will limit any sales charges or service fees as defined in Section 2830 of the NASD Conduct Rules by agreeing that such fees will only be charged at either the Asset Allocation Fund level or at the Underlying Fund level, but not both. Applicants believe that these limits place the Contracts and the Asset Allocation Funds in a position that is similar to that for other group variable annuity contracts and their underlying mutual fund options.

10. Administrative expenses will be charged at the Underlying Fund level and, as part of the Unified Fee, at the Asset Allocation Fund level. Applicants assert that similar, but distinct, administrative services need to be provided at both the Asset Allocation Fund level and the Underlying Fund level in order to provide the benefits of asset allocation. Applicants also state that they have limited the total expenses of the Asset Allocation Funds by adopting a Unified Fee.

11. Applicants state that the administration portion of the Actuarial Risk Fee is designed to reimburse Nationwide for maintaining Contract and participant level records and reporting, providing customer services, and compliance functions. Applicants argue that these services directly affect contract owners and their participants and, as such, are distinct from any administrative charges at the Asset Allocation Fund and Underlying Fund levels. In addition, Applicants note that if Nationwide receives any administrative or service fees from the Underlying Funds, or from the adviser or administrator of the Underlying Funds, to compensate Nationwide for providing these services, there will be a corresponding reduction in the Actuarial Risk Fee.

12. Furthermore, Applicants represent that fees and charges at all levels, in the aggregate, will be reasonable in relation to the services rendered, expenses expected to be incurred, and risks assumed by Nationwide.

Control

13. Applicants further assert that the Unaffiliated Underlying Funds cannot be controlled in any meaningful way by the Asset Allocation Funds since purchases will be made in accordance with the percentage limitations in Section 12(d)(1)(F).

14. Moreover, when purchasing Affiliated Underlying Funds the concern over this potential abuse is minimized, Applicants submit, because there is little risk that NAS will exercise inappropriate control over the Affiliated Underlying Funds, which are part of the "same group of investment companies." NAS, in serving as the investment adviser for both the Asset Allocation Funds and the Affiliated Underlying Funds, is under a fiduciary obligation to act in the best interests of the shareholders of both sets of funds. Therefore, it is argued, NAS will not operate the Asset Allocation Funds so as to penalize the Affiliated Underlying Funds.

Large Scale Redemptions

15. Applicants assert that there is little risk that the Asset Allocation Funds' adviser will exercise inappropriate control over the Affiliated Underlying Funds, which are part of the same "group of investment companies." In this connection, Applicants note that Section 12(d)(1)(G) of the Act does not impose any express limitations on statutory funds of funds with respect to redemption of shares of the underlying funds. With respect to investments by the Asset Allocation Funds in shares of Unaffiliated Underlying Funds, Applicants state that the Asset Allocation Funds, together with their affiliates, will comply with the restrictions of Section 12(d)(1)(F) on redeeming more than 1% of the outstanding securities of any of the Unaffiliated Underlying Funds during any period of less than 30 days.

Complexity

16. Finally, Applicants submit that, with respect to whether the proposed structure is complex, Congress, in Section 12(d)(1)(G)(i)(IV), required that the funds underlying a statutory fund of finds have a policy prohibiting such underlying funds from acquiring any securities in reliance on Sections 12(d)(1) (G) or (F). Applicants state that the Affiliated Underlying Funds have adopted such policies. In addition, Applicants state that no Underlying Fund will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act except to the extent that such Underlying Fund (a) receives securities of another investment company or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

Section 17(a) of the Act

17. Section 17(a) of the Act prohibits any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in Section 12(d)(3) (A) and (B)), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal, from knowingly selling any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely: (a) securities of which the buyer is the issuer; (b) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities; or (c) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof.

18. Section 6(c) of the Act provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

19. Section 17(b) of the Act provides that the Commission may, by order upon application, exempt a proposed transaction from one or more provisions of Section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed with the Omission; and the proposed transaction is consistent with the general purposes of the Act.

20. Applicants seek relief from the prohbiitions of Section 17(a) of the Act pursuant to Sections 6(c) and 17(b) of the Act to allow the Asset Allocation Funds to purchase the Affiliated Underlying Funds and the Nationwide Fixed Contract.

21. Applicants assert that since the Asset Allocation Funds and the Affiliated Underlying Funds are each advised by NAS, the Asset Allocation Funds and the Affiliated Underlying Funds could be deemed to be affiliated persons of one another by virtue of being under common control of their adviser. Moreover, Applicants state that the Asset Allocation Funds and the Affiliated Underlying Funds may also be deemed to be affiliated persons of one another to the extent that the Asset Allocation Funds own 5% or more of the shares of an Affiliated Underlying Fund. Therefore, purchases by Asset Allocation Funds and the sale by the Affiliated Underlying Funds of their shares to the Asset Allocation Funds could be deemed to be principal transactions between affiliated persons under Section 17(a).

22. Nationwide states that it will issue from its general account a Fixed Contract to NAAT on behalf of each of NAAT's funds. NAS is a wholly owned subsidiary of Nationwide and serves as principal underwriter of the Contracts funded by the Separate Account. Moreover, NAS serves as investment adviser to NAAT, which will purchase the Fixed Contract on behalf of each of NAAT's funds. Applicants submit that the Asset Allocation Funds may be deemed to be affiliated persons of Nationwide to the extent they are advised by NAS, Nationwide's wholly owned subsidiary. Applicants state that any purchases of the Fixed Contract by the Asset Allocation Funds could be deemed to be principal transactions between affiliated persons.

23. Applicants state that they believe that, with respect to the purchase of the Affiliated Underlying Funds and the Fixed Contract, the requested relief is appropriate because the proposed arrangements meet the standards of Section 17(b) of the Act. First, Applicants argue that the terms of the proposed transactions are fair and reasonable and do not involve overreaching. The consideration paid for the sale and redemption of shares of the Affiliated Underlying Funds will be based on the net asset values of the Affiliated Underlying Funds with no sales load. Any investment advisory fee paid to NAS by the Asset Allocation Funds will not be duplicative of the investment advisory fees paid by the Affiliated Underlying Funds. In addition, the Asset Allocation Funds will pay no sales load when purchasing the Fixed Contract and the guaranteed rate on the Fixed Contract will be at least as favorable as the guaranteed rate paid on other similar fixed contracts issued by Nationwide. Also, each Asset

Allocation Fund will be permitted to remove Fund assets from the fixed Contract at any time, without the imposition of a sales charge or market value adjustment. Second, Applicants submit that the proposed transactions will be consistent with the policies of each Asset Allocation Fund. Finally, Applicants argue that the proposed arrangements do not involve overreaching or self-dealing and are consistent with the general purposes of the Act.

Conditions For Relief

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Asset Allocation Fund and each Affiliated Underlying Fund will be part of the same "group of investment companies" as that term is defined in Section 12(d)(1)(G)(ii) of the Act.

2(a). In the case of an Underlying Fund that is not a feeder fund in a "masterfeeder" structure, no Underlying Fund will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

2(b). No Underlying Fund that is a feeder fund in a "master-feeder" structure will acquire securities of any other investment company except in conformity with Section 12(d)(1)(E) of the Act. No master fund in such a structure shall acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such master fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such master fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. No sales load will be charged at the Asset Allocation Fund level or at the Underlying Fund level, including any Unaffiliated Underlying Fund that is a feeder in a "master-feeder" structure or any master fund in such a structure. Sales charges or service fees as defined in Section 2830 of the Conduct Rules of the NASD, if any, will only be charged at either the Asset Allocation Fund level or at the Underlying Fund level, but not both. In a situation where an Asset Allocation Fund invests in a feeder fund, the Applicants agree to limit sales charges or service fees to only one level, at the feeder fund, the master fund, or the Asset Allocation Fund level.

4. Before approving any advisory contract pursuant to Section 15 of the Act, the Board of Trustees of an Asset Allocation Fund, including a majority of the Trustees who are not "interested persons" as defined in Section 2(a)(19) of the Act, will find that the advisor fees charged under such contract, if any, are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract of any Underlying Fund in which the Asset Allocation Funds may invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of such Asset Allocation Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-32311 Filed 12-9-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39392; File No. SR-Amex-97-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange's Warrant Listing Guidelines

December 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 22, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. proposes to amend its Company Guide to revise its warrant listing guidelines. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 105 of the Amex Company Guide provides that the Exchange will not list warrants unless the underlying common stock is listed on either the Amex or the New York Stock Exchange and further provides that the Exchange will evaluate the warrant issuer's listing eligibility using the same financial and distribution guidelines as are applied to the listing of common stock. The Exchange believes that those criteria are unnecessarily high when applied to the listing of warrants. Warrants do not represent a new type of direct claim upon a company's assets or otherwise expose a company to financial risk. Accordingly, the original listing financial guidelines for common stock are not relevant to the listing of warrants and the Exchange proposes instead to list a warrant issue so long as the Company is in good standing on either the Amex or the NYSE, *i.e.*, above the continued listing guidelines (a similar change was previously made to the Exchange's guidelines with respect to the listing of debt securities).

Similarly, the original listing distribution guidelines for common stocks (either 1,000,000 shares/warrant with at least 400 holders or 500,000 shares/warrants with at least 800 holders) are too high when applied to warrants since warrants are a derivative security and their price discovery is less dependent upon such a high level of liquidity. Nonetheless, the Exchange recognizes that a minimum level of liquidity is necessary in an auction market environment. The Exchange presently lists a preferred stock issued by an Amex or NYSE listed company provided that there are at least 100,000 shares outstanding and believes that this would also be an appropriate guideline for the listing of warrants. The Exchange also recognizes that for a specialist to continue to provide an auction market some minimal level of public float is necessary. Thus, the Amex is proposing that a warrant issue would become subject to delisting if its public float fell below 50,000. This too is the same guideline as is applied to preferred stock issues. These changes will provide the Exchange with greater flexibility in listing warrant issues and the Amex believes that the expanded opportunity for side-by-side trading of stocks and warrants will prove beneficial to the shareholders of exchange listed companies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[2] of the Act in general and furthers the objectives of Section 6(b)(5)[3] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by December 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-32231 Filed 12-9-97; 8:45 am]

BILLING CODE 8010-01-M

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39395; File No. SR-CSE-97-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Cincinnati Stock Exchange, Inc., Relating to Transaction Credits

December 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. § 78s(b)(1) ("Act"), notice is hereby given that on November 13, 1997, The Cincinnati Stock Exchange, Incorporated ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CSE.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of fees in order to provide a transaction credit for Tape B transactions.[2]

II. Self-Regulatory Organization's Statement of, the Purpose of and Statutory basis for, the Proposed Rule Change

In its filing with the Commission the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is implementing a credit for transactions in all Tape B securities in order to create an incentive for members to trade such securities on the Exchange. The Exchange believes the credit is a logical next step in its efforts to remain the low-cost provider of exchange services in the National Market System. Members will be credited on a pro rata basis, based upon the percentage of tape B transaction market share captured by the Exchange

[1] On November 19, 1997, the Exchange submitted Amendment No. 1 to the filing. *See* letter from Adam W. Gurwitz, Vice President and Secretary, CSE, to Marie Ito, Special Counsel, Division of Market Regulation, Commission, dated November 19, 1997.

[2] "CTA Network B" is commonly known as Tape B, and is defined in the Consolidated Tape Association Plan as "the [Consolidated Tape] System as utilized to make available 'CTA Network B information' (that is, last sale price information related to Network B Eligible Securities)." The Consolidated Tape Association Plan further defines "Network B Eligible Securities" to mean securities "admitted to dealings on the [American Stock Exchange], [Boston Stock Exchange], [Chicago Board Options Exchange], [Chicago Stock Exchange], CSE, [Pacific Exchange], [Philadelphia Stock Exchange] or on any other exchange, but not also admitted to dealings on [the New York Stock Exchange]." CTA Plan, at 1-3.

in a given quarter. The new credit is delineated in Exhibit A.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. It is also consistent with Section 6(b)(4) in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.[3]

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e)(2) of Rule 19b–4 thereunder because it constitutes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–97–12 and should be submitted by December 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Proposed Rule Change

The Cincinnati Stock Exchange, Incorporated

Additions are italicized

Rule 11.10 National Securities Trading System Fees

A. Trading Fees.

a.—(1) No Change.

(j) Tape "B" Transactions. The CSE will not impose a transaction fee on Consolidated Tape "B" securities. *In addition, Members will receive a pro rata transaction credit based on the following schedule:*

Average quarterly exchange Tape B transaction market share	Percentage of Tape B revenue credited
1–2.99%	10
3–4.99%	25
5–6.99%	30
7% and greater	40

(k)—(n) No Change.

B. Membership Fees.

No Change.

[FR Doc. 97–32310 Filed 12–9–97; 8:45 am]

BILLING CODE 8010–01–M

[3] The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b–10 and 11Ac1–3 under the Act, 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39391; File No. SR–MSRB–97–8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–38 on Consultants

December 3, 1997.

On November 13, 1997, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–97–8), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the board. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a notice of interpretation concerning Rule G–38 on consultants (hereafter referred to as "the proposed rule change"). The proposed rule change is as follows:

Rule G–38 Questions and Answers

Bank Affiliates and Definition of Payment

Q: A bank and its employees communicate with an issuer on behalf of an affiliated dealer to obtain municipal securities business for that dealer. In return, the bank and its employees receive certain "credits" from the dealer. These credits, which do not involve any direct or indirect cash payments from the dealer to the bank or its employees, are used for internal purposes to identify the source of business referrals. Are the credits considered a "payment" under rule G–38 thereby requiring the dealer to designate the bank or its employees as consultants and comply with the requirements of rule G–38?

A: Rule G–38 defines a consultant as any person used by a dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on behalf of the dealer where the communication is undertaken by the person in exchange for, or with the understanding of receiving, payment from the dealer or any other person.[2] The term payment, as used in rule G–38, means any gift, subscription, loan, advance, or deposit of money or anything of value. The absence of an immediate transfer of funds or anything of value to an affiliate or individual employed by the affiliate would not exclude the credits from the definition of payment if such credits eventually (e.g., at the end of the fiscal year) result in compensation to the affiliate or individual employed by the affiliate for referring municipal securities business to the dealer. In this regard, the compensation may be in the form of cash (e.g., a bonus) or non-cash. In either case, if the dealer or any other person[3] eventually gives anything of value (*i.e.*, make a "payment") to the affiliate or individual based, even in part, on the referral, then the affiliate or individual is a consultant for purposes of rule G–38 and the dealer must comply with the various requirements of the rule. For additional guidance in this area, you may wish to review Q&A number 6 and 7 (dated February 28, 1996) in the MSRB Manual following Rule G–38, as well as Q&A number 4 (dated December 7, 1994) in the MSRB Manual following Rule G–37.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] Municipal finance professionals and any person whose sole basis of compensation is the actual provision of legal, accounting or engineering advice services or assistance are expected from the definition of consultant.

[3] The Securities Exchange Act of 1934 (the "Act") defines the term "person" as a "natural person, company, government, or political subdivision, agency, or instrumentality of a government." Board rule D–1 provides that unless the contest otherwise specifically requires, the terms used in Board rules shall have the same meanings as set forth in the Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purposed of and basis for the propose rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 17, 1996, the Commission approved Board Rule G–38 on consultants.[4] The Board adopted the rule because it was concerned about dealers' increasing use of consultants to obtain or retain municipal securities business, notwithstanding the requirements of Rule G–37[5] on political contributions and prohibitions on municipal securities business, Rule G–20[6] on gifts and gratuities, and Rule G–17[7] on fair dealing. Rule G–38 requires dealers to disclose information about their consultant arrangements to issuers and the public. Recently, the Board has received inquiries from market participants concerning the definition of payment, as used in Rule G–38, and whether bank affiliates and their employees may, under certain circumstances, be deemed consultants for purposes of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with Rule G–38, the Board has determined to publish this third notice of interpretation which sets forth, in question-and-answer format, general guidance on Rule G–38.[8] The Board will continue to monitor the application of Rule G–38, and, from to time, will publish additional notices of interpretations, as necessary.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder, which renders the proposal effective upon receipt of this filing by the Commission.[10]

At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–8 and should be submitted by December 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32230 Filed 12–9–97; 8:45 am]

BILLING CODE 8010–01–M

[4] Securities Exchange Act Release No. 36727 (Jan. 17, 1996); 61 FR 1955 (Jan. 24, 1996). The rule became effective on March 18, 1996. *See also MSRB Manual*, General Rules, Rule G–36 (CCH) ¶ 3686.

[5] *MSRB Manual*, General Rules, Rule G–37 (CCH) ¶ 3681.

[6] *MSRB Manual*, General Rules, Rule G–20 (CCH) ¶ 3596.

[7] *MSRB Manual*, General Rules, Rule G–17 (CCH) ¶ 3581.

[8] *See* Securities Exchange Act Release No. 36950 (March 11, 1996); 61 FR 10628 (March 15, 1996) and Securities Exchange Act Release No. 37997 (Nov. 29, 1996); 61 FR 64761 (Dec. 6, 1996).

See also MSRB Reports Vol. 16, No. 2 (June 1996) at 3–5; and Vol. 17, No. 1 (Jan. 1997) at 15.

[9] Section 15B(b)(2)(C) states in pertinent part that the rules of the Board "shall be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."

[10] 17 CFR 240.19b–4(e)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39394; File No. SR-NYSE-97-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend Its Rule 500 Relating to Voluntary Delistings by Listed Companies

December 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the NYSE.[3] On December 3, 1997, the NYSE submitted Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to replace existing NYSE Rule 500 with a new Rule 500 to revise the procedures a NYSE-listed company must follow to delist its securities from the Exchange. The text of the proposed rule change, as amended, is available at the Office of the Secretary, the NYSE, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] With the consent of the NYSE, Commission staff has incorporated several technical changes to the Exchange's description of its proposal. Telephone conversation between Richard Bernard, Executive Vice President and General Counsel, NYSE, and Richard Strasser, Assistant Director, Division of Market Regulation, Commission, on November 26, 1997.

[4] See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated December 1, 1997 ("Amendment No. 1"). In Amendment No. 1, the NYSE amended the proposal to require an issuer proposing to delist its securities from the Exchange to: (1) provide the Exchange with written notice of the proposed delisting at the same time the issuer provides such notice to its shareholders; and (2) send the Exchange a copy of the delisting application the issuer submits to the Commission. Commission staff has incorporated the proposed changes set forth in Amendment No. 1 into the NYSE's description of its proposal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change, as amended, is to revise the procedures an NYSE-listed company must follow to delist its securities from the Exchange. Currently, Rule 500 requires supermajority shareholder approval before a listed company can delist its securities: holders of 66⅔ percent of the security must approve the delisting, and ten percent or more of the individual holders cannot object to the delisting.

The Exchange adopted existing Rule 500 in the 1930's as a corporate governance safeguard, when delisting from the NYSE generally resulted in the loss of a public market for a security. That is no longer the case. Recognizing the changed corporate law and market circumstances, the new Rule would substitute alternative delisting procedures depending on the nature of the security.

- For stock of a domestic issuer, the Rule would require the issuer to obtain the approval of (1) the company's audit committee and (2) a majority of the company's full board of directors before the issuer could apply for delisting. Requiring approval by the independent directors constituting the audit committee, as well as approval of a majority of the full board of directors (not just of a quorum of directors at a particular meeting), would provide shareholders with protections that the Exchange believes would help offset the loss of the current shareholder voting requirement for delisting.

After receiving approval of the audit committee and board, the issuer would be required to provide shareholders with at least 45 but no more than 60 days' written notice of the proposed delisting. The notice must include a statement that the issuer complied with the requirements discussed in the paragraph above. This notice and waiting period would give shareholders who object to the proposed delisting an opportunity to communicate their views to the issuer's management and directors before the delisting becomes effective. It also would assure a reasonable period of time for shareholders to liquidate their positions in a stock in an orderly manner should they decide that they did not want to continue to own the security after delisting from the Exchange. At the same time, the 60-day cut-off assures that the "lame-duck" status of the stock listing would not persist to the point of impairing the ability of the Exchange to maintain a fair and orderly market in the stock. The issuer must contemporaneously send to the Exchange a copy of the written notice sent to shareholders.

- For stock of a non-U.S. issuer, the Rule simply would require the issuer to obtain board approval before the issuer could apply to the Commission for delisting, leaving to home country law the determination of the requisite vote. The issuer also would need to provide holders with reasonable notice of its intention to delist the securities. The Supplementary Material to the Rule, discussed below, provides further details on the nature of this notice.
- For bonds of both domestic and non-U.S. issuers, an issuer could apply to delist bonds subject only to board approval. The Rule does not require that bond holders be notified of the proposed delisting. The absence of the more rigorous requirement that pertains to stock reflects the fact that the Exchange generally is not the primary market for bonds.

New Supplementary Material to the Rule explains how these procedures would operate.

- Supplementary Material .10 cross-references NYSE Rule 4, which defines the term "stock," and Rule 5, which defines the term "bond." Generally, the stock delisting procedures would supply to securities "classified for trading as stocks," including common stock, preferred stock and certain derivative instruments, such as equity-linked debt securities that trade pursuant to the stock trading rules. The bond delisting procedures would apply to fixed income products traded on the Bond Floor or through the Automated Bond System.
- Supplementary Material .20 provides guidance as to the manner in which non-U.S. issuer must provide notice to shareholders regarding the delisting of their stock. Non-U.S. issuers would be required to send written notice of the delisting to (i) shareholders that have a U.S. address or (ii) shareholders that own the stock in the form of American Depositary Receipts. For other holders, the issuer could follow home-country practice, which, for example, may allow for notice through publication or other means.
- Supplementary Material .30 cross-references NYSE Rule 465, which governs the transmission of reports and other materials by member organizations to beneficial owners who hold securities in "street" name. Supplementary Material .30 notes that, pursuant to Rule 465, both domestic and non-U.S. issuers must request that member organizations transmit the written notice of the proposed delisting as required by Rule 500 and Supplementary Material .20 to beneficial stockholders.

- Supplementary Material .40 discusses the interplay between Rule 500 and the issuer's application to the SEC to withdraw the security from listing. Pursuant to Commission Rule 12d2–2(d) under the Exchange Act, an issuer may apply to withdraw the security from listing after complying with the requirements of the Rule. With respect to the delisting of stock, the proposed date of delisting in the application to the Commission must be the same date specified in the notice to shareholders. The issuer must contemporaneously send to the Exchange a copy of the application submitted to the Commission.
- Supplementary Material .50 parallels a provision in Rule 499 (governing Exchange-initiated delistings), which provides that, when reviewing the listing status of one class of securities, the Exchange will review the appropriateness of the continued listing of other classes of the issuer's securities. Factors the Exchange will consider in such a review under Rule 500 include, but are not limited to, the pricing relationship between the securities being delisted and the other security, and the ability of the Exchange to make a market in the remaining securities. For example, it is unlikely the Exchange would delist the common stock of an issuer that delists bonds. On the other hand, it is likely that the Exchange would delist the warrants of an issuer that delists its common stock.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[5] which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties. However, in a process initiated at the beginning of May 1997, the Exchange did consult with a number of its Board and advisory committees, pension funds and other constituents in developing the Rule. The NYSE represents that these constituents overwhelmingly supported the revision of existing Rule 500, rather than its elimination.

According to the NYSE, the most controversial issue among the constituents was whether the requirement for a shareholder vote should be maintained, albeit with a simple majority vote. The great majority of those surveyed viewed delisting as a matter within the purview of the business judgment of a company's board of directors. These constituents believed that the Exchange could address the concerns underlying the desire for a shareholder vote by requiring (1) a higher-than-normal board vote, (2) the concurrence of independent directors, and (3) provision to shareholders of notice of a proposed delisting.

The Exchange believes that the text of the Rule reflects the reconciliation and incorporation of the comments and suggestions that the exchange received from these constituents.

[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. In addition to any other issues that the public may wish to address, the Commission specifically requests comments on the following questions:

Are the shareholder notification procedures required under the terms of the proposal necessary to the delisting process?

What are the costs involved with complying with the requisite shareholder notifications?

Will issuers' costs arising from the requisite shareholder notification create a disincentive to delist from the Exchange?

Is there an acceptable alternative means to providing shareholder notification, such as through media publication?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–31 and should be submitted by December 31, 1997.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–32229 Filed 12–9–97; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39393; File No. SR-Phlx-97-51]

Self-Regulation Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Allocation of Options Trades

December 3, 1997.

Pursuant to Sections 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to provide that the seller or largest participant to an option transaction is responsible for allocating an executed trade. Specifically, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange proposes to amend two Floor Procedure Advices ("Advices"): F–2, Allocation, Time Stamping, Matching and Access to Matched Trades; and F–12, Responsibility for Assigning Participation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Advice F–2

Currently, Advice F–2 states that it is the duty of the largest participant in an options transaction to both match and time stamp the order tickets involved. There is currently no specific provision for who allocates options trades among trade participants. The purpose of the proposed rule change to Advice F–2 is to assign the responsibility or properly allocating option trades to the largest participant (or seller)[3] involved in the trade. Violations of this new responsibility will be subject to the existing fine schedule accompanying Advice F–2. Paragraphs (b) concerning ticket preservation and (c) concerning member access to matched trades, of Advice F–2, remain unchanged.

Trade allocation includes the determination, based on existing rules, policies and practices, as to who is considered to be on a bid/offer, who participants in a trade and for what size. The Exchange believes that permitting the largest participant, which normally will be the Floor Broker who represents the original order in the trading crowd, to allocate trade participation should render the process more efficient and therefore accelerate execution reporting.

As previously stated, existing Exchange rules do not clearly address the process of, or parties responsible for, ensuring proper options trade allocation. The practice in most options crowds is that specialists announce trade splits by saying to the trading crowd, "You did 10, you did 5," etc. This practice may differ, especially where a specialist unit is not involved in a trade, or where a great deal of trading and quote activity renders specialist allocating trades impractical. In these situations, Floor Brokers have assisted in this function, consistent with their duty to match and time stamp the trade, as well as their duty to ensure the best execution of orders.[4]

In determining how to assign this responsibility, the current duty of the largest participant (or seller) to match and time stamp the trade was decisive in determining who allocates option trades. Extending this responsibility to the largest participant (or seller)[5] is a logical extension of the current requirements of Advice F–2. In adopting and amending this Advice, the intent has been to facilitate prompt and accurate trade reporting.[6]

b. Advice F–12.

The purpose of the proposed rule change to Advice F–12 is to extend its requirements regarding how trades are allocated to the equity/index options floor. Currently, Advice F–12 only applies to foreign currency options trading. In addition, Advice F–12 is proposed to be amended to only detain in the crowd actual trade participants and simplify ticket submission requirements.

Specifically, Advice F–12 requires that trade participants: (a) Must confirm and immediately inform the largest participant of their contra-side participation; (b) should not leave the crowd absent such confirmation; (c) should not submit tickets absent participation; and (d) must handle disputes properly. The Phlx believes that the extension of Advice F–12 to equity/index options trading should improve the certainty of trade allocation and maintain order during the allocation process. This is consistent with the original intent of Advice F–12 to facilitate the orderly operation of the option floor, especially for trades involving a number of market participants.[7]

The Phlx also believes that the proposed amendments to Advice F–12 will bolster its effectiveness in controlling the trade allocation process. Under the proposed amendments, no one who has participated in the trade would be allowed to leave the crowd until the level of his/her participation in the trade has been confirmed by the largest participant. Previously, this obligation also applied to those who *believed they may have* participated in a trade. This change is intended to require only those who actually participated in a trade to remain in the trading crowd to confirm their participation in the trade. The Phlx states that the language concerning belief was difficult to administer and did not capture violations necessary to improve the post-trade process.

Further, Advice F–12 currently provides that no person in the crowd shall submit a ticket for matching on a trade when that person has or should have grounds to believe that he is not due participation in the trade. The Phlx asserts that by deleting the reference to "belief," the proposal is designed to simplify trade ticket submission, and as a result, establish the practice that a person who did not participate in a trade should not submit a ticket. Thus, a violation of Advice F–12 may result from submitting a ticket where no participation is due, even though the participant believed he/she participated. As cited by the Commission in the original approval of Advice F–12, it is reasonable to require trade participants to notify other parties of their participation levels and to resolve those levels at such time.[8] The Exchange believes the proposed amendments are consistent with those goals, because they continue to facilitate the prompt determination of participation levels.

Advice F–12 currently contains a fine schedule, which is proposed to apply to the entire options floor. The proposal thus amends the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan"),[9] by amending the text of both Advices, as well as by extending the application of Advice F–12 to the equity/index options floor. The complete text of the proposed rule change may be examined at the places specified in Item IV below.

2. Basis

For these reasons, the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by facilitating prompt and accurate trade processing and reporting.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–51 and should be submitted by December 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32309 Filed 12–9–97; 8:45 am]

BILLING CODE 8010–01–M

[3] The seller has the responsibility only when there are two parties to a trade. When there are multiple participants, the largest participant is responsible for allocating the trade.

[4] *See* Phlx Rule 1063.

[5] *See note 3, supra.*

[6] *See e.g.*, Securities Exchange Act Release No. 33512 (January 24, 1994) 59 FR 4759 (February 1, 1994).

[7] Securities Exchange Act Release No. 29580 (August 16, 1991) 56 FR 41876 (August 23, 1991).

[8] *Id.*

[9] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices, such as Advice F–2, with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting. Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2660]

Bureau of Oceans and International Environmental and Scientific Affairs; United States Man and the Biosphere Program: Request for Proposals for the Tropical Ecosystems Directorate

The Tropical Ecosystems Directorate (TED) of the U.S. Man and the Biosphere Program (U.S. MAB) announces a call for proposals to support applied research on the management, harvesting, utilization and marketing of tropical forest resources, both timber and nontimber, in the tri-national Mayan forest of Mexico, Belize and Guatemala.

A small number of grants of $1000 to $3500 US each, will be awarded in 1998. Persons interested in applying for these grants are encouraged to first obtain a copy of the TED core project description from the U.S. MAB Secretariat (Roger E. Soles), OES/ETC/MAB, U.S. Department of State, Washington, D.C. 20522–4401. Tel. (202) 776–8318, Fax. (202) 776–8367.

Funding Objectives

U.S. MAB/TED funding should assist research teams to add a national researcher to their effort as well as to: better integrate conservation and sustainable development; add a particular discipline to an ongoing research project; or explore the application of ongoing site-specific research to an additional site in the Maya Tri-National region. U.S. MAB/TED funding will not be provided for planning purposes.

Focal Issues

The TED recognizes that strategies to sustainably conserve the Mayan forest must address the needs of the rural communities that live in the forest and use its wild resources. Lack of an adequate knowledge base on the ecology and management of these resource species, nondestructive harvesting methods, and appropriate marketing and commercialization of these products has negative impacts on the forest, on the resource base, and on local economies. For this reason we continue to invest in the development of new knowledge in these fields through small grants. In order to ensure that this new knowledge will be integrated into ongoing resource management and utilization activities, and to enhance local capacity to continue to produce new information as it is needed, our applied research program focuses on the integration of students or recent graduates (at the Bachelor or Master level), from the three countries into relevant projects led by respected researchers in these fields and linked with NGO's, and preferably local communities, in the region.

Content Requirements and Deadlines for Proposals

Persons interested should submit a one to two page proposal by February 27, 1998. Each proposal should have: a title page, a one page synopsis of the existing research project, up to five pages detailing the proposed use of U.S. MAB/TED funds that would be complementary to the TED core program, and a one-page budget with justification.

The U.S. MAB/TED will make final decisions by April 6, 1998.

No funds are available for institutional overhead. Only direct costs can be supported.

Funds will be committed to the managing institutions identified in the proposals during May 1998.

Evaluation and Review Process

Because of limited available funding, U.S. MAB/TED will give the greatest preference to those proposals that directly complement the objectives of the directorate's core program. Proposals will be evaluated for the intrinsic merit of the research or activity, its policy relevance, applicability to promoting sustainable use of tropical forest resources in the Maya Tri-National Region, and the quality and demonstrated productivity of the principals.

Principals will receive from the U.S. MAB Secretariat copies of all U.S. MAB/TED review evaluations of their proposal and a written notification of the directorate's decision on their project.

Submission of Proposals

Proposals may be submitted in Spanish or English to U.S. MAB Secretariat, OES/ETC/MAB, Room 107, SA–44C, U.S. Department of State, Washington, DC 20522–4401.

Individuals choosing to submit their proposals by Express Mail, Federal Express, UPS, etc. must use the following address: U.S. MAB Secretariat, Room 107, 2430 E Street NW, Washington, DC 20520.

Dated: November 28, 1997.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program, Office of Ecology and Terrestrial Conservation.

[FR Doc. 97–32226 Filed 12–9–97; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in 62 FR 43416, August 13, 1997.

DATES: Comments must be submitted on or before January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Sylvia Barney, (202) 366–6680 and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Federal Transit Administration (FTA)

Title: 49 U.S.C Section 5310-Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311-Nonurbanized Area Formula Program.

Type of Request: Reinstatement, without change, of a previous approved collection for which approval has expired.

OMB Control Number: 2132–0500.

Form(s): N/A.

Affected Public: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Abstract: The Capital Assistance Program for Elderly Persons and Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities. The program is administered by the States and may be used in all areas, urbanized, small urban, and rural. The Nonurbanized Area Formula Program provides financial assistance for the provision of public transportation services in nonurbanized areas and this program is also administered by the States. 49 U.S.C. Sections 5310 and 5311 authorize FTA to review applications for federal financial assistance to determine eligibility and compliance with statutory and administrative requirements. Information collected during the application stage includes the project budget, which identifies funds requested for project implementation; a program of projects, which identifies subrecipients to be funded, the amount of funding that each will receive, and a description of the projects to be funded; the project implementation plan; the State management plan; a list of annual certifications and assurances; and public hearings notice, certification and transcript. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the program requirements. Information collected during the project management stage includes an annual financial status report, an annual program status report, and pre-award and post-delivery audits. The annual financial report and program status report provide a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

Estimated Annual Burden Hours: 11,370.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FTA Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 3, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–32262 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and it's expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in 62 FR 41462, August 1, 1997.

DATES: Comments on this notice must be received on or before January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Office of Aviation and International Economics, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St. SW, Washington, DC 20590 at (202) 366–5420 or (202) 366–7638 (FAX).

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Information Collection of Data on Passenger Travel by Air.

OMB Control Number: 2105–0535.

Affected Public: All U.S. airlines providing scheduled passenger service and all computer reservations systems (CRSs) operating in the United States.

Abstract: The requested extension of the information collection contained in approved control number 2105–0535 covers the data necessary to complete the Study of Rural Air Fares that was required by the Federal Aviation Administration Reauthorization Act of 1996 (Pub. L. 104–264). This study, among other things, was to analyze air fares paid between small communities and large hub airports with fares between large hub airports.

Need: Currently, DOT collects air fare data from certain air carriers as part of the *Passenger Origin and Destination Survey* ("Survey"). This Survey is based on a ten percent sample of passenger tickets and is reported to the Department on a quarterly basis by the large certificated air carriers. In the course of analyzing these data with reference to the small communities, the Department has tentatively concluded that because of the small size of the sample and the absence of smaller carriers from the database, the current data are unrepresentative and inadequate for providing proper analysis. The Department is therefore developing an alternative database to meet its needs.

The Department is requiring airlines and CRSs to provide these data. In order to minimize the burden of providing these data, the Department has suggested the use of the Ticket Control Number (TCN) files or similar data sources. In the process of making reservations and ticketing airline passengers, airlines and CRSs electronically record most transactions in TCN files for various accounting, reconciliation and control purposes. Each TCN file contains approximately 150 individual data items including the data elements of carrier identification, passenger itinerary and fare needed by the Department. Under a current data interchange program, most airlines and CRSs routinely submit the TCN data to the Airline Tariff Publishing Company (ATPCO). The Department believes that these files, as submitted to ATPCO, provide an ideal source of the type of comprehensive data that it is seeking. To the extent that airlines do not use CRSs for reservations, the Department is taking whatever steps are necessary to provide as complete a database as possible.

Estimated Annual Burden Hours: 888.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 3, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–32263 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: DOT intends to establish a new system of records under the Privacy Act of 1974 and to exempt it from certain provisions of the Act.

DATES: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Crystal M. Bush at (202)366–9713 (Telephone), (202)366–7066 (Fax), crystal.bush@ost.dot.gov (Internet Address).

SUPPLEMENTARY INFORMATION: The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

SYSTEM NUMBER:

DOT/CG 588.

SYSTEM NAME:

Marine Safety Information System (MSIS).

SECURITY CLASSIFICATION:

MSIS is unclassified, sensitive.

SYSTEM LOCATION:

United States Coast Guard (USCG), Operations Systems Center, 175 Murrall Drive, Martinsburg, WV 25401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with established relationship(s)/association to vessels or facilities that are state-numbered and/or titled and U.S. Coast Guard-documented, and that are included in the Marine Safety Information System (MSIS). Specifically, owners or agents of such vessels, as well as lienholders.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Records containing vessel identification information and vessel characteristics on state-numbered and/or titled vessels or Coast Guard-documented vessels including: vessel name (if Coast Guard-documented), make of vessel or name of vessel builder, manufacturer year/year vessel built, vessel model year, title number, Coast Guard official number, certificate of number assigned by the state including expiration date, hull identification number, length of vessel, type of vessel, hull type, propulsion type, fuel type, primary use, endorsements (if Coast Guard documented), and hailing port name endorsements (if Coast Guard documented).

b. Records containing personal information including: name of each owner, address of principal place of residence of at least one owner, mailing address if different from the principal place of residence, and either an owner's social security number, date of birth and driver's license number, or other individual identifier. If a vessel owner is a business, the business address and taxpayer identification number will be included.

c. Records containing lienholder and insurance information including: name of lienholder, and city and state of principal place of residence or business of each lienholder.

d. Records containing law enforcement information including: law enforcement status code (stolen, recovered, lost, destroyed, or abandoned), law enforcement hold, reporting agency, originating case number, MSIS user identification, incident location, last sighted date/time/location, law enforcement contact and phone number, and hours of operations.

e. Records containing vessel registration information including: registration and, if applicable title number including effective and expiration date, issuing authority, and, for Coast Guard documented vessels, the official number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

33 U.S.C. 1228; 46 U.S.C. 2103, 6101, 6102, 6307(c), 6301, 7101, 7309, 3301, 3714, 3717.

PURPOSE(S):

The purpose of MSIS is to establish a system of records to build safety performance histories of vessels, marine facilities, involved parties, and hazardous cargoes. These histories can be used in analysis of safety degradation patterns and equipment failures, and to focus and redirect marine safety activities and resources. MSIS collects selected information on commercial and/or documented vessels operating in U.S. waters. MSIS assists in identification and recovery of stolen vessels, deter vessel theft and fraud, and other purposes relating to the ownership

of vessels. The data are used for the purposes described under the "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" heading in the enclosed copy of the system notice prepared for publication in the Federal Register.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Federal, state, local and international law enforcement officials for law enforcement purposes including the recovery and return of stolen property and to deter vessel theft, fraud, and pollution. International organizations include International Maritime Organization (IMO), foreign governments for Port State Control, foreign governments for marine casualties, and civil penalty respondents.

b. Federal and state numbering and titling officials for the purposes of tracking, registering and titling vessels.

c. Disclosure may be made to agency contractors who have been engaged to assist the agency in the performance of a contract service or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. See DOT Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of all records is in an automated database operated and maintained by the U.S. Coast Guard.

RETRIEVABILITY:

Records are retrieved by:

a. Vessel hull identification number (HIN).

b. State certificate of number.

c. U.S. Coast Guard official number.

d. USCG vessel name and hailing port.

e. Vessel owner or business name.

f. Interested parties social security number or alternate identifier (e.g., DOB, driver's license number, or taxpayer identification number).

g. Case number.

SAFEGUARDS:

The MSIS falls under the guidelines of the United States Coast Guard Operations System Center (OSC) in Martinsburg, WV. This computer facility has its own approved System Security Plan, which provides that:

a. The system is maintained in a secure computer room with access restricted to authorized personnel only.

b. Access to the building must be authorized and is limited.

c. MSIS supports different access levels for fields in the same record. These levels allow different classes of users access to specific information as governed by Federal privacy laws.

d. MSIS controls access by requiring that users provide a valid account name and password. MSIS contains a function that tracks system usage for other authorized users. MSIS requires users to change access control identifiers at six month intervals. The U.S. Coast Guard operates the MSIS in consonance with Federal security regulations, policy, procedures, standards and guidance for implementing the Automated Information Systems Security Program.

e. Only authorized DOT and authorized U.S. Government contractors conducting system maintenance may access MSIS records.

f. Access to records are password protected and the scope of access for each password is limited to the official need of each individual authorized access.

RETENTION AND DISPOSAL:

a. Records of active cases are retained until they become inactive; inactive cases are archived. Disposition of records is pending and will be determined at a later date. Records will be selected to be archived into an off-line file for any vessel that has been inactive for a period of 10 years. A vessel is inactive when the State number and/or Coast Guard Document have expired with the exception of the vessels that have a law enforcement hold and vessels with a law enforcement status of stolen.

b. Daily backups shall be performed automatically. The backups will be comprised of weekly full backups followed by daily incremental backups; a log of transactions is maintained daily for recovery purposes.

c. Copies of backups are stored at an off-site location.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, United States Coast Guard Headquarters, Information Resource Division, System Support Division (G-MRI-2), 2100 2nd Street, SW., Washington, DC 20593-0001.

NOTIFICATION PROCEDURE:

Submit a written request noting the information desired and for what purpose the information will be used. The request must be signed by the individual or his/her legal representative. Send the request to: USCG Headquarters, Commandant (G-SII), 2100 2nd Street, SW., Washington, DC 20593-0001.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

All information entered into the MSIS is gathered from the Coast Guard in the course of normal routine.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a (k)(2). However, in specific cases where maintenance of information results in the denial of a right, privileges or benefits to which the individual is entitled, the information will be released in accordance with section (k)(2). This provides in part that material compiled for law enforcement purposes may be withheld from disclosure to the extent the identity of the source of the information would be revealed by disclosing the investigatory record, and the source has received an express promise that his/her identity would be held in confidence. Additionally, material received prior to 27 September 1974 will be withheld, if the source received an implied promise that his/her identity would be held in confidence.

Dated: December 4, 1997.

Eugene K. Taylor, Jr.,

Office of the Chief Information Officer, U.S. Department of Transportation.

[FR Doc. 97-32267 Filed 12-9-97; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97-075]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to request renewal for one Information Collection Request (ICR). The ICR concerns vessels response plans, facility response plans, shipboard oil pollution emergency plans, and additional requirements for Prince William Sound, Alaska. Before submitting the ICR package to the Office of Management and Budget (OMB), the U.S. Coast Guard is asking for comments on the collection as described below.

DATES: Comments must be received on or before February 9, 1998.

ADDRESSES: You may mail comments to Commandant (G-SII-2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second St. SW, Washington, DC 20593-0001, or deliver them to the same address between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-2326. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267-2326.

SUPPLEMENTARY INFORMATION:

Request for Comments

The U.S. Coast Guard encourages interested persons to submit written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice and the specific ICR to which each comments applies, and give reasons for each comments. The U.S. Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½ by 11 inches suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

Interested persons can receive copies of the complete ICR by contacting Ms. Davis where indicated under **ADDRESSES.**

Information Collection Requests

1. Title: Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Requirements for Prince William Sound, Alaska.

OMB Control No. 2115-0595.

Summary: Three of the requirements found in this collection of information are from the passage of the Oil Pollution Act of 1990 (Pub. L. 101-380). The requirements meet the intent of the Oil Pollution Action of 1990 to reduce the impact of oil spills by requiring owners or operators of certain tank vessels and facilities to plan response actions, practice those actions, and ensure, through appropriate means, the necessary response resources for an oil spill. Additionally, Regulation 26 of Annex I of MARPOL 73/78, the Shipboard Oil Pollution Emergency Plan requirements were designed to improve response capabilities and minimize environmental impacts of oil spills.

Need: 33 U.S.C. 1321 requires the development of tank vessel and facility response plans. 33 U.S.C. 1901-1911 requires the implementation of MARPOL 73/78 in U.S. regulations. 33 U.S.C. 2735 requires the additional response measure in Prince William Sound, Alaska.

Respondents: Owners or operators of tank vessels that carry oil in bulk and operate in waters subject of U.S. jurisdiction; owners or operators of marine transportation-facilities; owners or operators of U.S. flag oil tankers of 150 gross tons and above and each U.S. ship of 400 gross tons and above; owners or operators of tank vessels that load cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act in Prince William Sound, Alaska.

Frequency: On occasion and annually.

Burden Estimate: The estimated burden is 188,629 hours annually.

Dated: December 4, 1997.

O.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 97-32261 Filed 12-9-97; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, Federal Aviation Administration (DOT/FAA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting an immediate emergency clearance in accordance with 5 CFR § 1320.13. The following information describes the nature of the information collection and its expected burden.

DATES: Submit any comments to OMB and FAA by February 9, 1998.

SUPPLEMENTARY INFORMATION:

Title: Office of Rulemaking Request for Evaluation of Customer Standards Survey.

Need: This information is being conducted to comply with the Executive Order 12862, Setting Customer Service Standards. The information will be used to evaluate agency performance in the area of response to exemptions. The completion of this form is voluntary and the information collection will be conducted anonymously.

Respondents: 325 individuals/business who have applied for exemptions.

Frequency: Annually.

Burden: 81 hours annually.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the request for clearance submitted to OMB, you may contact Ms. Judith Street at the: Federal Aviation Administration, Corporate Information Division, ABC-100, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may be submitted to the agency at the address above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, Attention FAA Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Issued in Washington, DC, on December 3, 1997.

Steve Hopkins,

Manager, Corporate Information Division, ABC-100.

[FR Doc. 97-32265 Filed 12-9-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery and Frederick Counties, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Montgomery and Frederick Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Sigel, Planning, Research, and Environmental Team Leader, Federal Highway Administration, The

Rotunda—Suite 220, 711 West 40th Street, Baltimore, Maryland 21211. Telephone (410) 962–4440.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Federal Transit Administration, the Environmental Protection Agency, the U.S. Army Corps of Engineers and the Maryland Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to provide multi-modal transportation measures within the I–270/U.S. 15 corridor in Montgomery and Frederick Counties, Maryland for a distance of approximately 35 miles.

The proposed strategies consist of a combination of improvements to the existing corridor such as highway widening, and transportation management strategies, as well as additional multi-modal facilities including a busway, or light rail transit. The purpose of the proposed transportation improvements is to address the effect of regional growth and traffic congestion on transportation trends and safety operations.

The I–270/U.S. 15 Corridor provides a connection between the Washington, D.C. metropolitan area and central and western Maryland, as well as to the midwest via I–70 and I–68. Current operating conditions within the I–270/U.S. 15 Corridor reflect severe traffic congestion at many locations within the project area. Congestion is expected to increase as continued growth in both population and employment occur over the next quarter century.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and Local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing is anticipated in the fall of 1998. Public notice will be given of the time and place of this hearing.

The draft EIS will be available for public and agency review and comment prior to the public hearing. Scoping meetings for the public, agencies, and for the Metropolitan Washington Council of Governments have been conducted throughout the course of the project. No formal scoping meeting for this project is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning And Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued On: December 3, 1997.

Renee Sigel,

Planning, Research and Environment Team Leader, Baltimore.

[FR Doc. 97–32316 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Rules Standards & Instructions Application (RS&I–AP)–No. 1102

Applicants

New Jersey Transit Rail Operations, Incorporated, Mr. Robert A. Randall, Vice President and General Manager—Rail, One Penn Plaza East, Newark, New Jersey 07105–2246.

Morristown and Erie Railway, Incorporated, Mr. Benjamin Friedland, President and General Manager, P. O. Box 2206, Morristown, New Jersey 07962–2206.

New Jersey Transit Rail Operations, Incorporated (NJTR) and the Morristown and Erie Railway, Incorporated (ME), jointly seek temporary relief from Section 236.566 of the Rules, Standards, and Instructions (49 CFR 236.566), to the extent that NJTR be permitted to operate two non-equipped ME locomotives in automatic cab signal territory, on the Morristown Line between Lower Hack, milepost 2.7 and Netcong, milepost 48.0; the Bergen County Line between Bergen Junction, milepost 3.1 and "BT," milepost 14.2; and the Boonton Line between Mountain View, milepost 21.3 and Denville, milepost 34.4, until such time as the locomotives can be equipped with automatic cab signal and automatic train control equipment, on or before June 30, 1998.

Applicant's justification for relief: NJTR is currently installing an automatic cab system on the associated trackage, and temporary relief is requested so that the other freight and passenger service can benefit at the earliest time, from the additional safety afforded by the cab signal and automatic train control systems.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 1, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–32312 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3190]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1997 Mercedes-Benz S500 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1997 Mercedes-Benz S500 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1997 Mercedes-Benz S500 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 9, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1994–1997 Mercedes-Benz S500 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are the 1994–1997 Mercedes-Benz S500 that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence. . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door lock buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters if these are not U.S.-model components. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button in each front designated seating position, with combination lap and shoulder restraints that release by means of a single push button in each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Petitioner states that a vehicle identification number plate will be affixed to non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars to comply with the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the

docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 1997.

Marilynne Jacobs, Director,
Office of Vehicle Safety Compliance.

[FR Doc. 97–32343 Filed 12–9–97; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3169]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1998 Mercedes-Benz S320 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1998 Mercedes-Benz S320 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1998 Mercedes-Benz S320 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 9, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne")(Registered Importer 90–009) has petitioned NHTSA to decide whether 1994–1998 Mercedes-Benz S320 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are the 1994–1998 Mercedes-Benz S320 that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door locking buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters if these are not U.S.-model components. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button in each front designated seating position, with combination lap and shoulder restraints that release by means of a single push button in each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Petitioner states that a vehicle identification number plate will be affixed to non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars to comply with the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 1997.

Marilynne Jacobs,
Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–32344 Filed 12–9–97; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3146]

Toyota Technical Center, U.S.A., Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Toyota Technical Center, U.S.A., Inc. (Toyota) of Washington, D.C. on behalf of the Toyota Motor Manufacturing, Kentucky, Inc. has determined that some 1998 model Toyota Sienna vehicles fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Vehicles Other Than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Toyota has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.3 of FMVSS No. 120 states that the recommended cold inflation pressure for the designated tire must appear either on the certification label or a tire information label.

Toyota produced 8,528 vehicles from May 12, 1997 through October 13, 1997 which do not meet the labeling requirements stated in the standard. The recommended 240KPa (35 PSI) cold inflation pressure for the designated tire (P205/70R15) is misstated on the certification label as 220 KPa (33 PSI). However, the correct tire inflation pressure appears on the voluntary-affixed tire information label and in the vehicle owners manual.

Toyota supports its application for inconsequential noncompliance with the following three statements:

1. On these vehicles, Toyota has applied a voluntary tire information label, on which the correct recommended pressure, "240 KPa/35 PSI" (at maximum loaded vehicle weight) appears, [located at] the door opening portion of the driver side B-pillar. Toyota believes that owners will refer to this tire information label rather than the certification label, making the possibility of confusion due to the different tire inflation pressures quite low.

2. The vehicle owner's manual also indicates the correct recommended inflation pressure.

3. The Maximum Loaded Vehicle Weight (MLVW)—the weight of the heaviest vehicle of the car line with full accessories, passengers in all designated seating positions, and maximum cargo and luggage load—of the Toyota Sienna is 2,365 kg. In such [a] fully-loaded condition, the rear axle is loaded more than the front [axle], resulting in a rear axle load of 1,204 kg or 602 kg on each rear tire. The load limit of the subject P205/70R15 tire inflated to 220 KPa (33 PSI) is 650 kg. Therefore, there still exists a 48 kg margin under the MLVW. Since the Sienna is a passenger vehicle—as opposed to a cargo vehicle—it is unlikely that the owner will overload it.

Interested persons are invited to submit written data, views, and arguments on the application of Toyota described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: January 9, 1998.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 4, 1997.

L. Robert Shelton,
Associate Administrator for Safety Performance Standards.

[FR Doc. 97–32266 Filed 12–9–97; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33510]

Kansas City Southern Lines, Inc.; Corporate Family Transaction Exemption; KCS Transportation Company and the Kansas City Southern Railway Company

Kansas City Southern Industries, Inc. (KCSI), Kansas City Southern Lines, Inc. (KCSL), the Kansas City Southern

Railway Company (KCSR), and KCS Transportation Company (KCST) have jointly filed a verified notice of exemption for KCSI's common control of KCSR and KCST's rail subsidiaries, Gateway Western Railway Company (GWWR), and Gateway Eastern Railway Company (GWER).[1]

The transaction was expected to be consummated on or about November 21, 1997, at which time KCST was to merge into KCSI with KCSI as the surviving corporation. As a result, KCSR and GWWR will be direct subsidiaries of KCSI and GWER will be its indirect subsidiary. After the transaction, KCSI will commonly control KCSR, GWWR, and GWER. KCSI will also own 49% of the outstanding stock of Mex Rail Corporation, the parent company of the Texas Mexican Railroad Company and 37% of the outstanding stock of Grupo TFM, which in turn owns 80% of the outstanding stock of Transportacion Ferroviaria Mexicana, a Mexican railroad company.

The parties state that the transaction will take place within the KCSI corporate family and will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside of the corporate family. Thus, it is the type of transaction specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Accordingly, the exemption is subject to the labor protective conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.* 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33510, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–001. In addition, a copy of each pleading must be served on Robert K. Dreiling, Kansas City Southern Industries, 114 West 11th Street, Kansas City, MO 64105 and William A. Mullins, Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, DC 20005–3314.

Decided: December 3, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32269 Filed 12–9–97; 8:45 am]

BILLING CODE 4915–00–P

[1] In addition to invoking the class exemption for this transaction, KCSI is asking the Board to grant retroactive authority for a previous transaction—the transfer of the stock of KCSR and KCST to KCSI—which the parties undertook but for which they sought no approval from the Board. If KCSI wants to seek Board approval of that transaction, it should file a separate petition for exemption (no class exemption provides for retroactive application). Such a request may not be "piggybacked" on this notice.

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Reinvestment Application.

DATES: Written comments should be received on or before February 9, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Reinvestment Application.

OMB Number: 1535–0096.

Form Number: PD F 1993.

Abstract: The information is requested to support a request that proceeds of matured Series H savings bonds be reinvested in Series HH bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 270,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 67,500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–32257 Filed 12–9–97; 8:45 am]

BILLING CODE 4810–39–P

federal register

Wednesday
December 10, 1997

Part II

Department of Agriculture

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Basic Provisions; and Various Crop Insurance Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB03

Common Crop Insurance Regulations; Basic Provisions; and Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations to delete the late and prevented planting provisions currently contained in many Crop Provisions, incorporate revised late and prevented planting provisions into the Common Crop Insurance Policy Basic Provisions, and add definitions and provisions that are common to most crops. The intended effect of this action is to provide policy changes that meet the needs of the insured, are easier to administer, and to delete repetitive provisions contained in various Crop Provisions.

EFFECTIVE DATE: This rule is effective December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant, and therefore, this rule has been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds that the rule makes several major changes in the implementation of prevented planting provisions. Specifically, the rule: (1) Eliminates substitute crop benefits, largely to reduce the likelihood of fraud; (2) increases prevented planting for cover crop or black dirt situations, providing better protection to producers who are truly unable to plant a crop for harvest; and (3) simplifies the payment method by making payments on an acre-by-acre basis in all cover crop and black dirt situations. These provisions are designed to improve the protection provided to producers in adverse prevented planting situations, and simplify program operation.

Since this rule is expected to be implemented in an actuarially sound manner, there are no associated excess losses that will be incurred by the Federal government in the aggregate. Two provisions—the increase in coverage in black dirt and cover crop situations provision and the "separate payment" provision—are expected to result in an increase in indemnities and an increase in rates. The elimination of substitute crop provisions will result in reduced indemnities, and a rate decrease in the aggregate. The net effect of these changes is likely to be small in terms of the rate impact, and will vary according to crop and geographical location. As a result of the small expected average rate impact, any changes in reimbursements to private companies for delivery or any underwriting gains are expected to be minimal. The amendments made to these regulations will simplify program operations, benefit producers, FCIC, and reinsured companies, and conform with the Federal Crop Insurance Act.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of insurance companies will not increase because the information to determine eligibility is already maintained in their office and the other required information is already being collected under the present policy. No additional actions are required as a result of this rule on the part of the producer or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance Under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Tuesday, August 12, 1997, FCIC published a proposed rule in the Federal Register at 62 FR 43236 to amend the Common Crop Insurance Regulations, Basic Provisions (Basic Provisions) (7 CFR part 457) and the Crop Provisions (7 CFR §§ 457.101–457.157) effective for the: (1) 1998 and succeeding crop years for wheat, barley and oats in counties with a December 31 contract change date; flax, cotton, ELS cotton, sunflowers, and sugar beets in counties with a November 30 contract change date; and corn, grain sorghum, soybeans, raisins, fresh market tomatoes (guaranteed production plan), rice and dry beans; (2) 1999 and succeeding crop years for wheat, barley and oats in counties with a June 30 contract change date; rye, Texas citrus tree, Florida citrus fruit, sugar beets in counties with an April 30 contract change date; and figs, pears, nursery, sugarcane, forage production, walnuts, almonds, safflowers, fresh market sweet corn, macadamia trees, cranberry, onion, grapes, fresh market tomatoes (dollar plan), fresh market peppers, forage seeding, peaches and plums; and (3) 2000 and succeeding crop years for Texas citrus fruit, Arizona-California citrus, and macadamia nuts. This rule deletes the late and prevented planting provisions, certain definitions and other provisions that are applicable to most crops and are currently contained in the Crop Provisions and incorporates these definitions and provisions into the Basic Provisions to better meet the needs of the insured.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. Comments were received from an insurance service organization, reinsured companies, farm organizations, a crop insurance agent, national commodity groups, state commodity groups, a regional commodity group, a congressional office, and legal counsel for reinsured companies. The comments and FCIC's responses are as follows:

Comment: Legal counsel for a reinsured company and an insurance service organization stated that thirty days was not sufficient time to review and comment on the proposed rule. One comment urged FCIC to leave the comment period open for another 90 days to allow additional time for analysis, testing, further comment, and the promulgation of needed procedures. However, a reinsured company urged implementation of these provisions for the 1998 crop year. The commenter stated that the revised language for prevented planting coverage is a major step in the right direction. Many hours have been spent in developing these provisions and the commenter strongly supports approval of the changes. The changes bring simplicity to what has been a very complicated coverage.

Farm organizations supported efforts to expedite these changes by using a 30-day comment period. There should be adequate time for agent training and producer education prior to policy sign-up for spring planted crops. One of the problems with prevented planting coverage in the past has been the lack of understanding by producers of their coverage.

Response: Based on the number of comments received, FCIC believes that for most crops 30 days provided an adequate comment period. However, due to the number of comments received regarding the prevented planting percent for cotton and ELS cotton, this rule will be made effective for these two crops for the 1998 crop year only. FCIC will solicit additional comments regarding prevented planting coverage levels for these crops for the 1999 and succeeding crop years in a future rule. The proposed changes are necessary for the simplification of the program and any extension of the comment period would result in a delay in the implementation of this rule until the 1999 crop year. To best meet the needs of producers the revised coverage should be implemented for spring planted crops in 1998.

Comment: An insurance service organization felt that the amount of time stated in the preamble under the Paperwork Reduction Act for the completion of an acreage report is underestimated since all farm data, including APH and unit arrangement, must be incorporated into the process.

Response: FCIC had to estimate the amount of time needed to complete each form. The average time needed to complete each form represents an average of producers with only one crop and one unit, larger operations with several crops and units, and producers who insure a crop but do not plant (which would generate a zero acreage report and only a yield descriptor on the APH form, etc.). The average time stated for all forms is as accurate as is possible.

Comment: Reinsured companies and an insurance service organization questioned the provisions in 7 CFR 457.2. They stated that sections 7 CFR 457.2(b) and (c) specify that FCIC may offer the catastrophic level of coverage directly to the insured through the local Farm Service Agency (FSA) offices. They suggested removing this language because, effective for the 1998 crop year, FSA offices will no longer deliver crop insurance.

Response: Although the catastrophic risk protection program is no longer delivered through local FSA offices, the authority for such delivery still exists. However, FCIC has modified the language to reflect the decision of the Secretary to only offer coverage through reinsured companies unless the Secretary determines that the availability of local agents is not adequate.

Comment: A reinsured company stated that it supported FCIC's decision to incorporate certain regulations into the Basic Provisions but cautioned that providing too much detail in the policy could make it difficult for the producer to understand and may drive producers away from the crop insurance program. The commenter stated that it is apparent that FCIC is attempting to provide producers with underwriting rules and procedures. The commenter believes that the insurance policy should simply state definitions for clarity and coverages for loss payments. They stated that insureds do not need to know how to underwrite a risk, they are the risk. They need to be aware of what the coverages are, when the premium is due, what constitutes a loss, when it will be paid, and what must be done in the event of questions. The commenter stated that section 457.2(b) is unnecessary because it is a statement of underwriting rules. A producer who has received the crop insurance policy has already chosen an insurance carrier and has made a decision regardless of whether FSA can still issue CAT coverage. The insurance agent should have discussed multiple contract procedures with the producer prior to completing a crop insurance application. The commenter further stated that section 457.2(d) determines eligibility for coverage and is also unnecessary. If the producer received the policy information, the producer's eligibility has already been determined. Otherwise the producer would not receive the policy.

Response: The policy must contain the information necessary for the producer to make informed decisions. Removing as much repetitious information as possible from each individual crop provision and placing it in the Basic Provisions will make each individual crop policy shorter and easier to understand. It will also eliminate any inadvertent discrepancies that may have existed between such information that was previously in each individual crop policy but is now stated only once in the Basic Provisions. The provisions are regulatory and eligibility and other requirements for participants must be published where compliance is mandatory. No change has been made.

Comment: Reinsured companies commented on and questioned the

language in 7 CFR 457.2(d), which states that if more than one contract exists, all contracts are void unless proven to be inadvertent. If found to be inadvertent, the contract with the earliest signature date will be valid and no indemnity or premium will attach to the canceled contract. The commenters posed these questions. What happens to crop acres reported on the canceled contract, and what impact do these crop acres have on the contract determined to be in force. Whether the crop acres on the canceled contract will be uninsured or will such acres be added to the contract found to be in force. If the latter, have all policy conditions regarding filing actual production history and an acreage report been met. If the contract in force has higher levels of coverage than the canceled contract, whether the insured owes the additional premium based on the contract in force. It has been permissible for a producer of hybrid seed corn who contracts with different seed corn companies to have more than one insurance contract for hybrid seed corn. Whether this will be permissible.

Response: The contract in effect will not be impacted by the canceled contract. When multiple contracts exist and are inadvertent and without the fault of the insured, all timely reporting done by the producer (e.g., actual production history reports and acreage reports) will be considered reported under the active contract. If the active contract has higher levels of coverage than the canceled contract, the insured will owe the additional premium based on the active contract. FCIC has revised the Basic Provisions to allow producers of hybrid seed corn with more than one contract with different seed companies to insure the acreage under each contract with a different reinsured company.

Comment: A reinsured company and an insurance service organization commented on the language in section 457.8(b). The reinsured company stated that the provision is not consistent with the Standard Reinsurance Agreement (SRA) because the SRA does not allow rejection of applications for insurance by a reinsured company. The commenter also stated that the phrase "authorized to sell" should be defined. The insurance service organization stated that the first sentence of these provisions has eliminated the company's prerogative to make determinations on excessive risk situations by eliminating the words "or the reinsured company's" determination that the insurance risk is excessive. This commenter questioned the effect of the proposed language since "direct written" federal policies are no longer applicable. The commenter also stated that the reinsured company must retain some prerogatives in the case of excessive risk. The FCIC should review possible options such as removing the cap on the Assigned Risk Fund or other "escape hatch" in the event of significant change in the risk of a large area.

Response: FCIC believes that the authority to sell the policies is clearly specified in other regulations and agreements, and those provisions should not be duplicated in this rule. Under sections 506(b)(8) and 508(c)(9) of the Act, only FCIC has the authority to limit insurance on any farm, county or area as a result of excessive risk. Information available in the **Federal Register** informs the public that applications may not be accepted if FCIC determines that excessive risk exists. If such a situation were found to exist, no insurance coverage will be provided. If the reinsured company believes that the risk is excessive under a policy, it can seek a determination from FCIC. Provisions regarding referral to agents selling FCIC policies are no longer applicable and they have been removed.

Comment: An insurance service organization suggested that a definition be added to include both "production guarantee" for APH crops and "amount of insurance" for dollar plan crops. This would shorten several long sentences that currently refer to these terms.

Response: Adding a term which combines both of the definitions of "production guarantee" and "amount of insurance" would make the provisions less clear because three terms would be in use rather than two. No change has been made.

Comment: An insurance service organization suggested that "actuarial documents" be defined instead of "actuarial table" because not all information is provided in table format. The commenter stated that the reference to "forms" in the definition suggests that the application and options are included. The commenter also questioned why "prices for computing indemnities" are specified since prices are used for premium calculation as well.

Response: FCIC has determined that "prices for computing indemnities" should not be included in this definition since those prices are now contained in the Special Provisions. Accordingly, the term "Actuarial Table" has been revised to "actuarial documents" and the definition of "actuarial documents" has been clarified.

Comment: An insurance service organization suggested that the definition of "application" be modified. The commenter stated that since suspension, debarment and violation of the controlled substance provisions would result in placement on the ineligibility list, it does not seem necessary to list these specific causes. The definition as written suggests that a break in coverage is always the result of some adverse action.

Response: FCIC has revised the definition to refer to both cancellation and termination to mitigate any connotation of adverse action.

Comment: An insurance service organization suggested deleting the phrase "made on our form" from the definition of "assignment of indemnity." The commenter stated that companies may accept and include a lienholder without completion of a form entitled assignment of indemnity. The lienholder's name can be entered on the application, acreage report, or loss form as "Loss payable to me and _____."

Response: Since the Standard Reinsurance Agreement requires that all forms used by the reinsured company be approved by FCIC, the phrase "our form" refers to any form that has been approved by FCIC. The reinsured company can effectuate an assignment of indemnity through any form approved for such purpose. Use of an unapproved form by the reinsured company is prohibited. No change has been made.

Comment: A reinsured company and an insurance service organization commented on the definition of "basic unit" which states" * * * No further unit division may be made after the acreage reporting date for any reason." The commenter stated that basic units may be corrected effective for the current crop year, which could result in more units than were reported. An insurance service organization suggested that a brief "unit" definition be provided in conjunction with a more detailed basic and optional unit section for easier reference, especially since the basic unit definition varies for some crops. The commenter stated that the phrase "Units will be determined when the acreage is reported * * *" leads to questions and difficulties about the actual deadline for determining optional units. Qualification for optional units for APH crops depends on filing production reports to match those units by the production reporting date, which is now earlier than the acreage reporting date for many crops. The commenter suggested rewriting the sentence to read "Units will be determined when the acreage is reported (subject to other

requirements)." The commenter also questioned if the last two sentences of the definition should be included in the definition or in the "optional unit" section.

Response: Adding the phrase "subject to other requirements" or a simplified definition of "unit" and a detailed section on basic and optional units would not make these provisions more clear. FCIC has moved the last two sentences of the definition to the "Unit Division" section.

Comment: A reinsured company suggested adding "for all units of the insured crop" at the end of the definition "claim for indemnity." Often a unit with damage may be harvested earlier than other units of the crop. It is customary to finalize all loss units at the same time, so the beginning of the 60-day period should commence after harvest is completed on all units.

Response: Because individual units may have different end of insurance period dates (e.g., differing harvest dates, different calendar dates for the end of the insurance period, prevented planting acreage, etc.), FCIC does not believe it is in the best interest of the insured to delay finalization of claims until all units are harvested. No change has been made.

Comment: An insurance service organization commented on the definition of "contract" which is (See "policy"). The commenter stated that the definition of "contract" is integral in the language of the SRA where it is defined. The [current draft] SRA, however, does not define "policy." The proposed Basic Provisions defines "policy" but not "contract." The commenter stated that the terms should be consistent between both documents.

Response: The definition of "policy" and "contract" are the same and are not inconsistent with the provisions in the SRA. The definition in the SRA is intended to accommodate differences among reinsured companies in the manner by which a policyholder's interests are identified. Some reinsured companies issue separate contract numbers for each county and crop; others include multiple crops and counties under the same contract number. Since the purpose of the definitions is not identical, the definitions cannot be identical. No change has been made.

Comment: An insurance service organization recommended changing the definition of "county" by replacing the word "the" at the beginning of the sentence with the word "any." This would recognize the possibility of multi-county applications. Multi-county applications, with adoption of appropriate management procedures, would permit a policyholder to insure a farm in another county, if it was acquired after the sales closing date.

Response: The provision has been clarified to recognize that more than one county may be shown on the application. However, an insured may not add acreage in another county after the sales closing date unless such addition results from the transfer of insurance from a previous insured.

Comment: An insurance service organization questioned why the word "deductible" is defined since it is not used in the Basic Provisions.

Response: The word "deductible" is used in some Crop Provisions. It is defined in the Basic Provisions so it will only have to be defined once. No change has been made.

Comment: Reinsured companies commented on the definition of "final planting date." The commenters stated that the final planting dates are too late for some crops and counties, especially with the 25 day late planting period. The commenters voiced their concern regarding the impact the late planting provisions will have in extending coverage beyond a time period that will allow for the normal maturity of the late planted crop. The commenters also questioned if an effort is being made to assure that all final planting dates are as accurate as possible, and if reinsured companies will be involved in that process.

Response: The Basic Provisions contain provisions that are generally applicable to most crops. If individual crops or areas require a late planting period shorter than 25 days, it will be specified in the Crop Provisions or the Special Provisions, which control the Basic Provisions. FCIC will continue to study and change final planting dates as necessary and always welcomes comments and recommendations from all interested parties, including reinsured companies and producers.

Comment: A reinsured company and an insurance service organization stated that the definitions of "FSA" and "FSA farm serial number" should be deleted because there is no need for reliance on FSA information in the crop insurance program.

Response: The FSA farm serial number is used to qualify for optional unit division in certain crop policies. Further, FSA information may be used in the crop insurance program. No change has been made.

Comment: A reinsured company, an insurance service organization, and legal counsel for a reinsured company made comments regarding the definition of "good farming practices." The definition does not recognize how fact sensitive and cost sensitive good farming practices are. If the practices "generally" used in the county and recognized by the Extension Service are the "ideal" practices or are the practices geared to the higher yield farms, beginning producers, highly leveraged producers, or producers of poorer soil will be discriminated against and, perhaps, ineligible for an indemnity. For example, three applications of a herbicide may be ideal and may be applied by producers with a high yield history. Two applications, however, may be all that a producer with a low yield history or insufficient funds may be able to afford. For that producer, two applications are a good farming practice. Whether a producer is a "good" producer or a "bad" producer may depend on what he or she can afford. The rule must be amended to accommodate the circumstances of the particular farm and producer. The reference to "Cooperative State Research, Education, and Extension Service," should be deleted from the definition of "good farming practices" or the definition must acknowledge that there may exist acceptable cultural practices that are not necessarily recognized by the CSREE. A producer using practices that differ from the norm for the county probably would not be eligible to insure. The practices used should be compared to those of the area in which the farm is located, not the county. Perhaps a producer is located in a microclimate within the county where practices legitimately differ from the county norm.

Response: FCIC recognizes that certain circumstances for particular farms and producers may differ (e.g. types, varieties, farming practices, soil types, etc.), and should be considered when determining if good farming practices were followed. However, the producer's inability to afford necessary inputs to produce the crop should not be a consideration in the determination of good farming practices. FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing a crop. If a producer is following practices not currently recognized as acceptable by the CSREES, there is no reason why such recognition cannot be sought by interested parties.

Comment: A reinsured company stated that the definition of "interplanted" is too restrictive for interplanted perennials such as almonds and walnuts which are maintained separately and harvested separately,

unless such will be acknowledged in the appropriate Crop Provisions.

Response: The definition of "interplanted" contained in the Basic Provisions does not adequately suit perennial crops. Perennial crop provisions will contain an appropriate definition. No change has been made.

Comment: A reinsured company suggested adding the word "initially" between the words "acreage" and "planted" in the definition of "late planted."

Response: FCIC agrees with the suggestion and has amended the definition accordingly.

Comment: A reinsured company, farm organization, a state commodity group, and an insurance service organization commented on the 25 day period in the definition of "late planting period." The commenters state that producers will have more incentive to plant the insured crop during the late planting period. The 25 day period is consistent with producer comments expressed during USDA public hearings held last summer. The commenters support a reduction of 1 percent per acre per day for the full 25 day late planting period, or a maximum reduction of 25 percent. The phrase "unless otherwise specified in the Special Provisions" should be deleted because it could lead to program complexity and checkerboard application.

Response: Although FCIC recognizes the need to mitigate program complexity, removal of the exception for Special Provisions would remove the flexibility needed to recognize those individual crops or areas that require a shorter late planting period. No change has been made.

Comment: A reinsured company questioned if the definition of "non-contiguous" is intended to permit two acreages of the same crop that are separated by a different crop to qualify for separate optional units. If so, this may generate a large number of additional optional units for crops for which "non-contiguous" is a criterion for optional unit division.

Response: The definition of "non-contiguous" is not intended to allow two tracts of the same crop that are only separated by a different crop to be considered two separate optional units. Units must be separated by land that the insured person does not own or have an interest in.

Comment: Legal counsel for a reinsured company stated that the definition of "planted acreage" sets forth requirements that are inherent in the concept of "good farming practice." This definition is redundant.

Response: FCIC agrees that some of the information is redundant but believes that the term should be defined since it is used in the provisions. No change has been made.

Comment: Reinsured companies, an insurance service organization, and legal counsel for a reinsured company expressed concern with the definition of "practical to replant." The commenters asked whether marketing windows should be a factor in determining whether a crop should be replanted. They state that the intent of the policy is to insure yield, not that the crop can be marketed during an optimum marketing window. They also state this change in the insurance policy represents a change in long standing public policy. They state that the Administrative Procedure Act requires FCIC to disclose in detail the thinking that animated this proposal. FCIC has not done this, therefore, this definition should be re-proposed for public comment. The commmenters also expressed concern that marketing windows are unrelated to losses from natural disaster and FCIC has long opposed insuring such windows simply because of the opportunity for fraud. The introduction of lost marketing windows as an insured cause of loss makes FCIC's policy a "business interruption" policy that will dramatically increase loss ratios and premiums. The commenters were also concerned moisture availability, marketing window, condition of the field, and time to crop maturity are all subjective determinations that add unnecessary complexity to the program. The policy should deem that it is practical to replant through the late planting period. Further, the commenters were concerned with the provision that states, "unavailability of seed or plants will not be considered a valid reason for failure to replant" will substantially add to producers' costs. Often it is possible to replant the insured crop only if a different, faster growing seed is used. There are often shortages of such seeds when there is a widespread disaster and those farmers who can least afford new seed, e.g., beginning producers, will wait until they are certain the original seed cannot germinate before investing again in seed. By that time, seed is sometimes unavailable. Clearly, if it is impossible to replant, it should not be practical to replant by law. They state that FCIC's rule will require all producers in general, and beginning producers in particular, to invest in seed that they may not need. While this may be a boom to seed companies, they are not the intended beneficiaries of the Act. In addition, the commenters state that a crop cannot be appraised and released for another use until it is no longer practical to replant. Making the determination that it is no longer practical to replant has been problematic since it may be practical to replant in some regions yet not in others within the late planting period. They state that policy language has been weak in this regard and there is no attempt in this rule to strengthen it. They requested that consideration be given to counting the "salvage value" against the insured crop if an insured chooses to plant an alternate or replacement crop when it is practical to replant the original. Two possible concerns are that the alternate crop is not an insured crop and, therefore, the value is difficult to determine, and the alternate crop is insured with a different company, causing administrative difficulties. Nevertheless, the approach could put the industry in the cooperative position of "staying with the insured" regardless of the insured's replanting choice, while limiting exposure to the guarantee that was originally established.

Response: The Federal Agriculture Improvement and Reform Act of 1996 mandated FCIC to consider marketing windows in determining whether it is feasible to require planting during a crop year. Therefore, the change implements statute and does not require detailed justification. Many factors other than the end of the late planting period enter into the decision of whether it is practical to replant. The definition of "practical to replant" is only applicable to planting acreage to the originally planted crop. If it is considered practical to replant, the Crop Provisions may authorize a replanting payment. If the crop is damaged by an insurable cause of loss, an appraisal will be completed to see if the crop qualifies for a replanting payment. However, this appraisal is used solely as a qualifier.

Planting a different crop following the failure of an originally planted crop is not replanting. If an alternative crop is planted when it is still practical to replant to the originally planted crop, the originally planted crop is not insured. No change has been made.

Comment: Several comments were received regarding the definition of "prevented planting." Farm organizations stated strong support for the new definition, which includes acreage prevented from planting by the final planting date or by the end of the late planting period due to any insured cause of loss. Reinsured companies questioned the phrase "majority of producers in the surrounding area."

There will be instances where land characteristics of a few producers or a single producer prevent planting of the insured crop. Possibly the phrase "with similar land characteristics" should be inserted after "majority of producers" to address this situation. The commenters also suggested that the sentence "You must have failed to plant * * *" be changed to "You must have been prevented from planting. * * *" Legal counsel for a reinsured company recommended clarifying the definition of "prevented planting" The definition should make clear that if a majority of producers did replant but had losses that exceeded what would have been their claims for prevented planting, then, indeed, a majority were prevented from planting. The comment also indicated that the term "surrounding area" is confusing. The commenter believes the term describes the entire area in which the insured cause occurs, even if it occurs across state lines. Also, the term "majority" was troublesome to the commenter. A reinsured company has no way of knowing whether a majority of uninsured producers or another reinsured company's policyholders were prevented from planting. Suppose an insured lives on a line, north of which all farmers, numbering 100, were not prevented from planting and south of which all farmers, numbering 101, were prevented from planting. The commenter asked whether the definition is satisfied.

Response: The phrase, "majority of producers" has been removed. The definition of "prevented planting" has been amended to include the phrase "You must have been prevented from planting" as suggested. FCIC has also clarified that a crop will be considered to have been prevented from being planted if most producers are also prevented from planting on acreage with similar characteristics in the surrounding area.

Comment: A reinsured company questioned the definition of "prevented planting, notice of." The commenter stated that notice can be given by telephone but must be confirmed in writing within 15 days. The commenter asked if it was the intent that multiple notices be given if the county had multiple final planting dates.

Response: Based on this and other comments, the definition has been deleted.

Comment: An insurance service organization suggested that the phrase "in the actuarial documents" replace the phrase "in the Special Provisions or an addendum thereto" in the definition of "price election." The commenter stated that the term creates confusion because it refers variously to the established (or preliminary) price, a market price, or to the value resulting from multiplying a percentage chosen by the insured by either of the first values cited. It would be helpful either to create a new term or to assure that this term is used consistently in policy and procedure. Dollar plan crops may have an amount of insurance instead of a "price percentage," but does "price election" apply any better?

Response: Since the price election is an integral part of the contract, the insured must receive notification of the price election each year. Insureds receive the Special Provisions each year. They do not receive the actuarial documents. No change has been made.

Comment: An insurance service organization stated that the words "replace" and "replacing" in the definition of "replanting" can be read to mean another crop is being substituted for the originally planted crop.

Response: The definition makes it clear that the land must be prepared to replace the damaged or destroyed crop. However, FCIC has clarified that the land must be prepared to replace the insured crop.

Comment: A reinsured company questioned what the phrase "in certain instances" means in the definition of "representative sample."

Response: The phrase is intended to provide the reinsured company with the discretion to allow the producer to harvest the crop and only leave samples of the residue. Certain circumstances may be when an area has widespread comparable losses. No change has been made.

Comment: A reinsured company suggested that the definition of "state" be modified to read, "The state where the crop is grown, as shown on your accepted application."

Response: There may be instances in which a crop insured by written agreement may be under the actuarial documents of a county in a state other than where it is grown. In this case, the state listed on the accepted application would be the state from which the actuarial documents originate. No change has been made.

Comment: A reinsured company suggested including language in the definition of "summary of coverage" that acknowledges that other names also apply to this document.

Response: The definition of "summary of coverage" defines the term as used in the policy. A form with a different name would be considered a summary of coverage so long as it meets the criteria contained in the definition. No change has been made.

Comment: Several comments were received with regard to section 2(b). A reinsured company and an insurance service organization questioned whether an incomplete application must be rejected, or whether reinsured companies can allow a short amount of time to obtain the missing information. The commenters asked about alternatives for the applicant and the reinsured company if the sales closing date has passed before the omission is discovered. An insurance service organization questioned whether companies have the authority to alter the named insured by deleting any part that is incomplete, as implied in the second sentence. The commenter asked whether this provision could be in procedure rather than the policy. Legal counsel for a reinsured company asked if the next to the last sentence in section 2(b) should indicate that coverage will be reduced *by* "that person's share" rather than *to* "that person's share?" Also, in the last sentence of the same section, the commenter asked whether the "person" refusing to supply a tax identification number is the same person or a different person than the "entity" to whom insurance will not be available.

Response: The intent of the section 2(b) is to advise the applicant that all required information must be provided and that the social security number or the employer identification number, as appropriate, for all persons having a substantial beneficial interest in the insured crop always must be included on the application. The application must be rejected if all necessary information is not provided by the sales closing date. It is the insured's and agent's responsibility to ensure that no information is omitted. Reinsured companies will delete those persons from the application who refuse to provide the necessary information. The next to last sentence in section 2(b) should indicate that coverage will be reduced by that person's share. The sentence has been amended accordingly. The last sentence has been revised to clarify that if a person refuses to provide identification information, insurance will not be available for that person and any entity in which that person has a substantial beneficial interest.

Comment: Several comments were received with regard to section 2(e). An insurance service organization stated that the second sentence is unclear as to its effect. The commenter stated that, as written, a person could not be eligible until all payments are made in accordance with an agreement to pay, a fact that would not be known until the

last payment is made. If eligibility is intended to be restored once a payment schedule is established, the phrase should be clarified. Legal counsel for reinsured companies stated that section 2(e) is illegal, unenforceable and in conflict with FCIC's own regulations and procedures. The commenter also stated that unpaid debts alone do not create ineligibility because the policyholder's name must be placed on an ineligible list after certain procedural requirements are satisfied and that list must be given to insurers before the action is effective. The commenter suggested that FCIC should conform this paragraph to section 23, 62 Fed. Reg. at 43248, which states that your insurance policy will be canceled if you are determined, by the appropriate Agency, to be ineligible by reason of debt. The commenter also expressed concern that the proposed language is unclear as to which termination date triggers delinquency, the one contained in the current year crop policy or the one applicable to next year's crop. The commentor also stated that the provision fails to state who determines ineligibility and the exact date ineligibility begins. The policy language should state whether ineligibility begins on the date the producer fails to pay the premium by the termination date, the date the reinsured company notifies the producer of the debt and a meaningful opportunity to contest the same, after the producer fails to respond to the written notice by the reinsured company, the date the FCIC verifies that the person has met the criteria for ineligibility, the date the FCIC mails notice to the producer's last known address, or the date that the producer receives notice from the FCIC of ineligibility. The commenter also stated that the proposed regulation should set forth the standards, if any, for reinstatement of producer eligibility and for removal of the producer's name from the ineligible tracking system. The provisions should clarify whether ineligibility as a result of failure to timely pay premiums will result in the FCIC voiding all the producer's policies or only the policy for which the producer is delinquent in paying premiums. The provisions should clearly state that the insured is solely responsible for any indemnities or payments made by the reinsured company on a policy voided by FCIC. The provisions should state that FCIC expressly pre-empts all claims arising by placement of the producer's name on the ineligible tracking system.

Response: This provision was intended to allow a producer to become eligible for insurance once the producer repays the debt, enters into an agreement for repayment and the payments are timely made, or files a petition in bankruptcy to discharge the debt. Therefore, the producer who executes an agreement for repayment is eligible while making payments. However, if the producer fails to timely make a payment, the producer is again ineligible and will not become eligible until the debt is paid in full or the producer files a petition to have the debt discharged in bankruptcy. The bankruptcy provisions have also been clarified. Unpaid debts do result in ineligibility in accordance with 7 CFR § 400.459. Section 2(e) relates to eligibility as described in § 400.459 and also describes when crop insurance policies are terminated when unpaid debts are overdue. Therefore, the provision is not illegal, unenforceable or in conflict with the regulations and procedures. Delinquency of any amount due arises on the termination date that the amount was due. This is the date that triggers ineligibility. An example has been added for clarification. Determinations of ineligibility are made in accordance with 7 CFR part 400, subpart U. Policies can only be reinstated if it is determined that the termination was in error. If the producer fails to repay any amount owed by the termination date, the policy is terminated, and the producer later becomes eligible, the producer must submit a new application for insurance. FCIC believes that the provisions clearly indicate that all policies will be terminated in the event a debt is delinquent for any crop. Each application requires the applicant to provide information on prior and existing insurance. The reinsured company has the capacity to verify eligibility, which would result from these questions. It is possible that under some circumstances a replant payment or early loss could be paid before the person is made ineligible and any existing policies voided. For example: The producer is indebted to company A but currently insured with company B. Company A is late certifying the producer as ineligible (after the termination date by 6 months). In the meantime, insurance attaches with company B and a loss is paid. The policy will be voided and the insured will be required to repay any amounts paid under the voided contract.

Comment: A reinsured company and an insurance service organization questioned if section 2(g) should be deleted. The commenter stated that it should be the company's discretion to terminate a policy if no premium is earned for 3 consecutive years. This provision is counter to the concept of enrolling all crops that the producer may grow, at least at the catastrophic risk protection level.

Response: FCIC has modified the language to state that reinsured companies may terminate policies that have not earned premium for 3 consecutive years.

Comment: Comments were received with regard to section 3(c). A reinsured company suggested that these provisions be modified to facilitate future streamlining of the APH process that has been discussed, specifically referencing the concept of optional yield updating. The commenter suggested that the sentences "If you do not provide the required production report, we will assign a yield for the previous crop year" and "The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year" be removed from these provisions and put in the Special Provisions. The commenter also suggested that the first sentence be modified to read, "Your production report must be provided to us by the earlier of the acreage reporting date or 45 days after the cancellation date." The sentence "Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date" should be modified to allow for added land and use of another person's records until the acreage reporting date, which is allowable under the Crop Insurance Handbook. An insurance service organization suggested clarifying the provisions to specify that production reports are required for some crops but not for all crops. Also, consider if the fifth sentence should read "* * * unless otherwise specified in the policy" instead of "* * * by FCIC."

Response: There is nothing in these provisions that preclude streamlining the APH process and since the APH regulations are separate from this policy, reference to optional yield updating will be more appropriately located in the APH regulations. Further, since the consequences of not providing a production report is universal to all crops requiring production reports and do not vary by county, these provisions are more appropriately located in the Basic Provisions. Requirement in the first sentence that the producer provide the previous year's production should not be removed because if removed, it could cause confusion. However, FCIC has amended the first sentence by adding the phrase "unless otherwise stated in the Special Provisions" to allow for any future changes. FCIC never intended to allow use of another producer's records in determining optional units and it is only permitted by the APH regulations and the Crop Insurance Handbook when such records are from another person who shares in the same acreage. Since the producer must also share in the acreage, nothing in the existing provisions preclude this practice. The Crop Provisions will specify when production reports are not required. Further, in the fifth sentence, since the requirement that the amount of production used to determine a claim for indemnity constitutes the production report is contained in the APH regulations, the requirement can only be modified by FCIC.

Comment: Commenters questioned if the fifteen days specified in section 3(e) allowed enough time between announcement of an additional price election or amount of insurance and the sales closing date. A reinsured company suggested a minimum of not less than 25 days. An insurance service organization stated that the proposed rule refers to "maximum" and "additional" price elections for what are referenced elsewhere as "preliminary" (or "established") and "projected market" price elections. It could cause confusion to be able to have a price higher than the "maximum" price election. The commenter suggested either replacing these terms, or adding them to the definitions (perhaps as sub-entries under the "price election" definition).

Response: Although reinsured companies and producers may not have much advance notice, an expected market price will be published by the contract change date. Since contract change dates are usually months before the sales closing date, this provision simply allows FCIC additional time to determine the most accurate expected market price to be used as the price election. Generally, the additional price election or amount of insurance will be on file long before the 15 day deadline. Therefore, the 15 day requirement has not been changed to 25 days as suggested. FCIC has clarified the provision to eliminate confusion between the maximum and additional price elections.

Comment: Several comments were received with respect to section 4. A reinsured company and an insurance service organization stated that section 4 indicates that policyholders will receive written notification of all changes, including the "additional price elections," at least 30 days before the cancellation date, although according to section 3(e) those prices may not be available for another 15 days. A reinsured company stated that it is impossible for the company to comply with the sentence which reads, "You will be notified, in writing, of these changes not later than 30 days prior to the cancellation date for the insured crop" because it includes all changes in policy provisions, price elections, amounts of insurance, premium rates, and program dates. The Special Provisions are provided to the insured but the actuarial documents are not. It is impossible to notify the insured of a rate change that will affect that person because this rate depends on the insured's APH, and the production reporting date occurs after the date of this notice. The commenter suggested that the section be modified to indicate that price elections (including price addendum bulletins), amounts of insurance, and premium rates are available at the agent's office. An insurance service organization stated that it would simplify the program if companies and agents could include all changes in one piece of correspondence rather than several. Legal counsel for a reinsured company recommended that section 4 of the policy should state that all contract changes are made pursuant to the FCIC's rulemaking authority and are subject to public comment.

Response: The section has been clarified to specify that insureds may review or receive copies of all the documents containing the rate, price elections, amounts of insurance, etc. The section has also been clarified to state that the insured will be notified in writing of any changes in the Basic Provisions, Crop Provisions, or the Special Provisions. Introductory language in the Basic Provisions clearly indicates that provisions of the policy are published in the **Federal Register**. However, not all contract changes are made by rulemaking. Changes in terms such as rates and price elections are not subject to public comment.

Comment: Legal counsel for a reinsured company stated that his client is compelled to include provisions in its policies regarding the liberalization provisions contained in section 5. The commenter stated that the liberalizations allowed by these provisions have increased the reinsured company's work and costs, and that inclusion of the clause does not constitute, imply, and should not be inferred by FCIC as a waiver or other relinquishment of the reinsured company's right under the Administrative Procedures Act or common law.

Response: Inclusion of section 5 in policies sold by a reinsured company does not waive any rights of the company it has not already otherwise waived. No change has been made.

Comment: Legal counsel for a reinsured company suggested that program dates be reviewed since the proposed language in section 6(a)(2) causes the acreage reporting dates for some crops to be very close to the premium billing date. For example, in some cases, the acreage reporting date for forage production policies will be June 15 and the current billing date is July 1.

Response: FCIC will review the program dates as necessary to determine whether adjustments are needed.

Comment: An insurance service organization commented on section 6(a)(3)(ii) and recommended deleting the phrase "the acreage reporting date contained in the Special Provisions since this is included in the date determined according to 6(a)(1) and (2). They questioned whether this refers to both of these sections, or if there are no fall crops with a late planting period. This would then be easier to follow as, "* * * the acreage reporting date will be the later of the date determined in accordance with sections 6(a)[(1)&] (2) or 5 days after the end of the late planting period for the insured crop."

Response: The date contained in the Special Provisions for section 6(a)(3) may be different than the date referred to in sections 6(a)(1) and (2). FCIC has clarified that the date may be determined in accordance with both sections 6(a)(1) and (2).

Comment: Comments were received with regard to section 6(f). An insurance service organization recommended consolidating the last two sentences as follows: "If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit." This avoids need to reference "the yield for actual production history" (which does not apply to all crops) and "7 CFR" (which is not provided with the policy provisions). Legal counsel for a reinsured company stated that section 6(f) should specifically set forth that the reinsured company's decision to determine the insurable crop, acreage, share, type, and practice, or to deny liability, is conclusive upon the producer and FCIC. Alternatively, the regulation and policy language should set forth the standards upon which acreage, share, type, and practice are to be determined by the reinsured company.

Response: FCIC has consolidated the two sentences as recommended. Provisions in section 20 indicate that disagreement on factual determinations will be resolved in accordance with the rules of the American Arbitration Association. Making the company's determinations conclusive would conflict with those provisions. Standards applicable to determination of insurance in these situations where the insured fails to file an acreage report for one or more units are currently contained in FCIC's approved procedure.

Comment: A reinsured company, legal counsel for reinsured companies, and an insurance service organization commented on the provisions in section 6(g). They asked whether the premium remains the same if the production guarantee or amount of insurance on the unit is reduced to an amount consistent with the correct information. The commenters expressed concern that the provisions do not address the current year, only subsequent years. More importantly, there must be sanctions in the current year. The commenters also asked how and when do the insurers adjust current year's coverage. They state that there should be a cross-reference to section 27 that requires the policyholder to reimburse the indemnity or be subject to voidance of the contract. The commenters also stated that language should be added to emphasize that it is essential for the producer to provide accurate acreage information and that the insurer is relying upon the producer's certification to [these] material facts to establish premium and liability. The commenters were also concerned that section 6(g)(2) does not relate what action the insurer may take upon discovering the incorrect information, which is particularly important if it is discovered while preparing a claim. For example, they ask what *bona fides*, if any, must an acreage measurement service possess, how can a company test such a service's credibility and impartiality, and what authority does the client company have to reject a service's measurements. The commenters also asked what acreage measurement service will be considered acceptable, whether reinsured companies be allowed to charge insureds for performing this service, what documentation is needed, and who makes the determination. The commenters also asked whether there is any tolerance for error and what "support your report" means. The commenters state that procedure is needed to ensure that if business is transferred and the receiving company discovers that the insured misreported acreage in any prior year, that the insured is required to provide the documentation specified in section 6(g)(2). In this regard, section 6(g)(2) may prompt transfers. The commenters ask what is the reinsured company's obligation and liability without pertinent procedures and state that section 6(g)(2) should state that the producer will be solely liable for any overstated liability resulting from the incorrect information or from fraud, misrepresentation, or concealment. The regulation should also make clear that the reinsured company is not liable to the FCIC for any overpayment of indemnity or other payments on a policy resulting from incorrect producer certified information or producer fraud, misrepresentation, or concealment. Any liability of a reinsured company for such acts should be governed by the criteria set forth in a previous Manager's Bulletin, which should be expanded to include the aforementioned situations. The proposed regulation states that reinsured companies must verify information pertaining to crop, share, entity, and acreage. The regulation should clearly set forth the sources that the reinsured companies may utilize to verify this information, especially in the absence of information at local FSA offices.

Response: If the correct information results in a lower premium, the lower premium will be charged to the producer and liability reduced commensurately. Sanctions are available if the insured misreports information. If the insured has intentionally misrepresented or concealed any material fact, the policy may be voided under section 27 and the insured may be disqualified under section 508(n) of the Act. If the error or omission is inadvertent, no sanctions are available. The insured simply receives only the coverage to which he is entitled. No cross reference is necessary since sections 27 and 6 are under the same policy. Further, there is sufficient language in the policy to put the producer on notice that information must be accurately reported. The crop insurance industry recommends that the burden of certifying acreage report information should be placed on the insured. FCIC assumes that a typical insured will provide accurate information. Therefore, documentation to support the report of acreage that includes, but is not limited to, an acreage measurement service at the producer's own expense, has been required only if the insured materially misreported acreage in a prior year. It is the reinsured company's responsibility to verify that the information used to settle a claim is correct. The insured selects the acreage measurement service. The reinsured company should use its business judgment to determine whether the acreage measurement service was reputable, competent, etc. Since it is the insured's responsibility to procure the acreage measuring service, they bear the cost. Documentation should include the report from the acreage measurement service stating the measured acres. FCIC has revised the provision to refer to "substantiate" the reported acres. The intent of this provision is to protect the integrity of the program by increasing the reliability of the information reported. The reinsured company can reject any information reported by the insured that is not accurate, including any information provided by the insured from an acreage reporting service. FCIC has revised the provisions to allow the reinsured company to require the insured to substantiate acreage if the insured misreports information in any crop year. Since the Federal crop insurance program is operated with public funds, FCIC cannot make payments that are not authorized by law. Therefore, if there is an overpayment of an indemnity for any reason, the reinsured company must reimburse FCIC for its share of the overpayment. If the reinsured company fails to follow approved procedures with respect to the verification of information, FCIC may take other actions in accordance with the SRA. FCIC, in cooperation with reinsured companies, will identify sources that may be used to verify acreage and other information. However, since these are procedural matters and the sources may change, the sources should not be included in the policy.

Comment: A reinsured company questioned if the provisions in section 7(a) were consistent with the notification requirements in the ineligibility (for debt) procedures, particularly when there is a short time between billing for one crop year and sales closing for the next. The commenter stated that some companies plan to send a billing earlier than the date specified in the Special Provisions to assure that insureds are aware of the amount due in time to meet the notification requirements associated with the ineligible for debt procedures.

Response: Section 7(a) is consistent with the provisions in section 2, which state that premium is considered delinquent when not paid by the termination date. This is the date that triggers ineligibility, not the billing date.

Reinsured companies will still be required to send the premium bills to the insured no earlier than the date stated in the Special Provisions. This is to ensure that all insureds are treated fairly and equitably. FCIC will review the premium billing dates and make any necessary adjustments. The provision has also been revised to clarify that the premium due will be considered delinquent if the premium is not paid by the termination date.

Comment: Comments were received regarding section 7(b). An insurance service organization suggested modifying the provisions to allow companies to make replanting payments to insureds who may need that money to cover the immediate costs of replanting the insured crop. Reinsured companies and an insurance service organization questioned the provision that reads "Any delinquent amount may be deducted from any amount owed to you by any United States Government agency or by us."

Response: The Department of Treasury has opined that part of the amount the producer owes a reinsured company for any crop insured under the authority of the Act that has been paid by the United States may be deducted from any amount owed to the producer by any United States Government agency. However, this provision has been deleted since it is redundant with sections 24(a) and 24(e). Since the replant payment is intended to provide funds to the insured to replant the crop, it will not be used to offset other amounts that are owed.

Comment: An insurance service organization questioned whether companies have the authority to "assign" a price election or an amount of insurance as specified in section 7(d). If not, the last phrase is not necessary, and the rest of this could be incorporated into 7(c).

Response: The reinsured company does not have the authority to "assign" a price election or amount of insurance when such information is omitted from the application. The producer must elect a price election or amount of insurance or the application will be rejected. However, if in future years the price election or amount of insurance changes and the producer does not elect another price election or amount of insurance, the reinsured company will assign the producer a new price election or amount of insurance as stated in section 7(d). No change has been made.

Comment: Comments were received regarding section 8(b). A reinsured company questioned whether the intent of section 8(b)(1) was to deny insurance on all units of a crop if a producer did not perform acceptable farming practices on one unit of the crop instead of charging an uninsured cause of loss on such unit as was done in the past. An insurance service organization stated that sections 8(b)(4) and (5) provide the possibility of insuring what is normally uninsurable if permitted by the Crop Provisions, Special Provisions, or written agreement. The commenter was concerned because sections 8(b)(1), (2), (3), and (6) make no mention of possible exceptions, yet written agreements are allowed to insure practices or types not listed in the actuarial documents. The commenter suggested that some reference is needed for subsections (1) and (2) as well, or these terms could be moved to the opening phrase (though requests would be denied for volunteer crops and crops left for wildlife). An insurance service organization questioned section 8(b)(6), which states that a crop "used for wildlife protection or management" is not insured. They stated that questions have been raised in the past about whether all acreage in a wildlife preserve is uninsurable or only the portion of the acreage that will not be harvested. The commenter asked, if the latter, whether the insured acreage should have a different coverage or rate since there is a higher risk of wildlife damage.

Response: Section 8(b) has been revised to clarify that any unit will be uninsurable if the conditions in paragraphs (1) through (6) exist, but that such uninsurability will not affect other acreage of the crop. FCIC agrees that a written agreement should be allowed for the circumstances contained in section 8(b)(1) and has amended that section accordingly. A farming practice may be acceptable, but a premium rate previously was not established due to lack of demand. The written agreement will alleviate this situation. If the crop is not adapted to the area, it should not be insurable and there will be no exceptions. Section 8(b)(6) is revised to clarify that a crop used solely for wildlife protection or management will not be insured. Some crop land leases require the lessee to leave a specified number of acres or a percent of the crop for wildlife. For leases that state a specific amount of acreage to be left unharvested, the stated acreage is not insurable. For leases that specify that a percentage of the crop must be left unharvested, the insured person's share will be reduced by that percentage.

Comment: An insurance service organization stated that section 9(a)(1) refers to "crop provisions" as an exception, section 9(a)(2) refers to "written agreement" as an exception, section 9(a)(4) refers to "crop provisions" as an exception, section 9(a)(5) refers to "crop provisions or Special Provisions" as an exception and section 9(a)(6) refers to "the policy provisions" or a "written agreement" as exceptions. The commenter stated that the exceptions in section 9(a) (and elsewhere in the policy) might be preferable as "policy provisions" rather than switching between "Crop Provisions," "Special Provisions," and "written agreement."

Response: The exceptions are only stated in the specifically referenced documents. There is no reason to require the insured to search all documents for exceptions that were previously identified. No change has been made.

Comment: Reinsured companies, a state commodity group, an insurance service organization, and a member of the Congress opposed the language in section 9(a)(1) that specifies that acreage will not be insurable if it has not been planted and harvested within one of the three previous calendar years. The commenters are concerned that this precludes acreage from being insurable when adverse weather conditions prevent planting or harvesting. They also stated that to bar coverage when a producer was unable to plant and harvest a crop or in instances when the producer lost the crop after planting defeats the purpose of having prevented planting coverage. They stated that this provision would be impossible to administer and that requiring that the crop be both planted and harvested within one calendar year excludes any crop planted in the fall and harvested the following year. This provision also excludes any perennial crop because such crops are not planted every year. Although the intent of this provision was to prevent the coverage of acres that are outside the definition of productive cropland, this provision will also prevent coverage for many acres that still carry the capacity to grow viable crops. The commenter suggested that a reference should be made to section 9(a)(1) in the prevented planting section to define acreage eligible for prevented planting.

Response: FCIC has revised section 9(a)(1) to specify that acreage not planted in the three prior crop years because they were prevented from planting or where a perennial crop was previously grown should be considered insurable acreage. Additionally, insurable acreage that had been planted in any of the three prior crop years and was not harvested due to an insured cause of loss should be considered insurable. Section 9(a)(1) has also been amended to delete the word "calendar"

to recognize crop acreage planted in the fall and harvested the next calendar year. Referencing section 9(a)(1) in section 17 of this rule is not necessary because, if the acreage is not insurable, no payment can be made on such acreage, including a prevented planting payment.

Comment: A reinsured company and an insurance service organization questioned the provisions in section 9(a)(2). The reinsured company stated that the section would be impossible to administer, although they did not disagree with the concept. The commenter questioned how the reinsured company would determine if crops produced for food or fiber had been harvested from the acreage for at least five consecutive crop years after acreage had been strip mined. An insurance service organization stated that food or fiber must be defined beyond the exclusion of cover and forage crops. Tobacco is not a food or a fiber, but the commenters question whether it would qualify the acreage. The commenters also state that if food refers to production for human consumption, then corn for silage does not qualify acreage. If the term includes feed for animals, the commenters ask why forage is excluded. The commenter also asks about tree crops. The commenter also recommended deleting the word "consecutive."

Response: Section 9(a)(2) has been revised to refer to agricultural commodities other than a cover, hay, or forage crop (except for corn silage) that have been harvested from the acreage for at least five crop years after the strip mined land was reclaimed. A definition of agricultural commodity has also been added.

Comment: A reinsured company suggested adding the sentence "In the event that it is common practice to plant a crop relying on water to be delivered by a third party at a later date, only those acres for which adequate water may reasonably be expected may be reported as irrigated," to section 9(b).

Response: Section 9(b) has been revised to clarify that if the insured has a reasonable expectation of having adequate water, the acreage will qualify for an irrigated practice. However, if the insured knew or had reason to know that the insured's water could be reduced, no reasonable expectation exists.

Comment: A reinsured company stated that the phrase "you may either report and insure the irrigated acreage as non-irrigated, or report the irrigated acreage as not insured" should be deleted from section 9(c). They stated that allowing the irrigated acreage to not be insured in cases where there is not an irrigated practice sets up a situation for no coverage to be in place if a disaster occurs, and raises questions about noninsured crop disaster assistance program (NAP) coverage. Irrigated acreage in areas without an irrigated practice should be required to be insured; the insured will benefit from a higher APH yield.

Response: It is not appropriate to require a producer to obtain coverage for a non-irrigated practice, with its higher premiums, when the acreage has an irrigated practice. However, since insurance on such acreage was available, the insured will not be eligible for NAP benefits on the irrigated acreage. No change has been made.

Comment: Comments were made regarding section 10(b). A reinsured company suggested that this provision be deleted because it creates problems with tracking and confusion over tax numbers, tax liabilities, etc. If this provision is retained, the commenter states that procedure must be established. An insurance service organization stated that the second sentence of section 10(b) suggests the company may not know that a landlord (or tenant) is insuring the other's share until the acreage report is submitted. The commenter stated that if this information affects the insured entity or who needs to be on the substantial beneficial interest (SBI) list, the reinsured company must determine whether this information is needed by the sales closing date. The commenter was concerned because no procedure has ever been developed for this possibility and it is difficult to determine what should be specified in the policy provisions until procedure is developed and distributed.

Response: FCIC understands that some reinsured companies are currently using these provisions with satisfactory results. FCIC has amended the provisions to clarify that insurance of another person's share must be indicated on the application before it is reported on the acreage report.

Comment: An insurance service organization questioned whether it will be necessary to store the date that the insurer accepts the producer's application since section 11(a)(1) has been changed from "the date you submit your application" to the "date we accept," a term that needs clarification. The commenter questioned what would happen if a loss is submitted before a timely signed and submitted application is "accepted" and processed by the company.

Response: The date the application is accepted must be stored by the reinsured company the same as the date of application was previously stored. The provision has been revised to clarify that the application is considered accepted on the date that the insured submits a properly executed application containing all the information required in section 2. This change was made to clarify when insurance begins when an incomplete application is received.

Comment: A reinsured company suggested adding the phrase "or facilities controlled by you," at the end of section 12(d) to clarify that failure or breakdown of facilities or equipment controlled by a third party, could be considered a covered loss.

Response: The intent of this provision is to cover failure of the irrigation water supply, not failure of equipment or facilities, regardless of who controls them. No change has been made.

Comment: A reinsured company questioned why the phrase "as determined on the final planting date" was included in section 13(a) because it is not uncommon for acreage planted during the late planting period to be damaged to the extent that replanting is necessary or practical.

Response: FCIC has revised this provision to allow this determination to be made within the late planting period.

Comment: Legal counsel for a reinsured company had questions regarding provisions in section 14(a)(2), which require a producer to notify the reinsured company within 72 hours of the initial discovery of damage (but not later than 15 days after the end of the insurance period). The commenter asked what the reinsured company's obligation is to the insured if the insured gives notice 60 hours after the initial discovery of damage. The commenter asked whether the reinsured company would reject the claim in this case or is it liable for liquidated damages to FCIC if it does not. The commenter also stated that supposing extenuating circumstances exist, e.g., a death in the insured's family, whether the reinsured company has discretion in light of the proposed SRA. The commenter recommended that the policy give the reinsured company some discretion to accept or reject a notice of loss based on the facts of each case and the ability of the company to appraise the loss in the context of those facts. That is the test a court would apply and the FCIC should not have a different standard. Also, the policy should specifically permit reinsured companies to delay an indemnity payment to any insured who is under investigation by the Inspector General or the Department of Justice involving wrongful claims for indemnities.

Response: These notice provisions are intended to protect the integrity of the program by ensuring that the reinsured company received notice in sufficient time to accurately adjust the loss. The provision is revised to provide the reinsured companies with the authority to accept a delayed notice of loss as long as their ability to adjust the loss has not been adversely affected. FCIC approved procedure allows acceptance of delayed notices provided the delay does not prevent the insurer from properly adjusting the claim. Therefore, the reinsured company does have the discretion to accept or reject a notice as requested in the comment and no policy change is necessary. There is no authority to delay the payment of a claim simply because the insured is under investigation.

Comment: A reinsured company stated that the word "settlement" in section 14(a)(4) should be defined.

Response: The word "settlement" is self-explanatory. No change has been made.

Comment: An insurance service organization commented on section 14(b)(4) that the last sentence should apply to sections 14(b)(1) through (4), as in the current Basic Provisions.

Response: The sentence applies to sections 14(b)(1)–(4) and FCIC has revised the sentence accordingly.

Comment: Comments were received regarding section 14(c). One reinsured company suggested adding the phrase "for all units of the insured crop" after "insurance period." Another reinsured company questioned if the intent was to require that the proof of loss be completed within 60 days after the end of the insurance period.

Response: Since insurance is provided on a unit basis, claim settlement should be administered on that same basis. Addition of the suggested language could result in delayed payments for units with early season losses. FCIC considers the claim for indemnity to be synonymous with the proof of loss and requires that it be submitted within 60 days after the end of the insurance period. No change has been made.

Comment: An insurance service organization commented on section 14(f) and stated that since the only other reference to notice within 72 hours is in section 14(a)(2), FCIC should consider combining the provisions by adding the phrase "notice may be made by telephone or in person to your crop insurance agent, but must be confirmed in writing within 15 days" at the end of section 14(a)(2). If (f) remains separate, the commenter questioned whether it should refer to "this paragraph" or "this section."

Response: Since the provisions in section 14(f) are applicable to the notices required in sections 14(a)(2) and 14(b), it has not been combined with section 14(a)(2). FCIC has revised section 14(f) to refer to the "section" rather than the "paragraph."

Comment: An insurance service organization questioned if section 14(d) of "Our Duties" should be modified since future procedures may be based on FCIC's standards rather than "established or approved" by FCIC.

Response: Under the 1998 SRA, reinsured companies must use FCIC's loss adjustment procedures. In the future, FCIC will always require that all procedures be approved by FCIC before used. No change has been made.

Comment: Some reinsured companies and an insurance service organization suggested deleting the reference to Form FCI–78 in section 15(c). A company also suggested deleting the reference to "a form approved by the Federal Crop Insurance Corporation" and adding a provision that states how appraisals will be made if hail and fire are excluded as insured causes of loss.

Response: FCIC determined the procedures to be used to conduct such appraisals and included them in Form FCI–78. If FCIC wants to make changes in the procedures, it can revise the form. No change has been made.

Comment: A reinsured company and an insurance service organization commented regarding the provisions in section 16(b). The reinsured company questioned if acreage is insurable when planted after the late planting period for any reason, except for an insurable cause of prevented planting. The insurance service organization stated that the last sentence which states, "Such acreage must have been prevented from being planted by an insurable cause occurring within the insurance period for prevented planting coverage" is confusing since the acreage was planted, but too late for timely or late-planted coverage. Perhaps this should say, "* * * prevented from being planted timely or during the late planting period * * *"

Response: Acreage planted after the final planting date or the late planting period, if applicable, is not insurable unless the acreage was prevented from being planted or it was practical to replant. FCIC has amended section 16(b) to clarify that planting on such acreage must have been prevented by the final planting date or during the late planting period by an insurable cause occurring within the insurance period for prevented planting coverage.

Comment: Comments were received regarding section 17(a)(2). An insurance agent opposed the 72 hour mandatory notice of loss requirement after the final planting date if the producer is prevented from planting by such date. The commenter stated that if the substitute crop option is eliminated, this provision is not necessary and it is a cumbersome rule that will necessitate a tremendous amount of effort on the part of the agent to make certain that a producer does not miss this deadline. The commenter also stated that in a year such as 1995 when adverse weather prevented many producers over a large area from planting, an agent must communicate with the producers, explaining the provisions to them, and encouraging them to continue planting, rather than assuring that all of the insureds give notice within 72 hours. The commenter claims that notice would only be beneficial in an area with few prevented planting claims because in an area with a large amount of prevented planting, inspections probably would not even be made. The commenter was also concerned because any time there is a specific date, it forces the agent and companies to have a tracking system to protect clients, which adds to the already burdensome amount of processing that is required. The commenter was concerned that having a prevented planting reporting date during a time span that may be feasible for planting sends a strong psychological signal to producers that they have reached a point that it is time to stop planting, regardless of what the conditions are in the field. The commenter also stated that reinsured companies would be over-loaded with loss notices that may or may not be necessary, possibly becoming expensive and burdensome for a company; and that this would be a new regulation for 1998 that is not necessary. Legal counsel for a reinsured company and the agent questioned what the ramifications would be if an insured notified the reinsured company more than 72 hours after the final planting date. A state commodity group stated that the 72 hour proposal will cause hardships on producers. Many producers plant 10 to 15 different crops, with varying final planting dates. During the planting season, producers who plant a variety of crops are simply too busy to contact their reinsured company. The commenter suggested changing the 72 hours to two weeks. A reinsured company stated that it trusted that such notice would not be considered the same as a "notice of loss," requiring a visit by an adjuster, especially if the

land was located in an area where known prevented planting conditions exist and, if the acreage report did not include prevented planting, the earlier notice would be void. Another reinsured company stated that the issue of the number of required notices should be addressed. An insurance service organization recommended changing the loss notice requirement to 72 hours after the latest final planting date on the policy.

Response: The 72 hour notice requirement could become burdensome and cause hardships on producers. Therefore, the provision has been deleted.

Comment: Comments were received regarding section 17(b). A reinsured company and an insurance service organization stated that, if circumstances were favorable, increased coverage on unplanted acreage could allow a profit because the only expenses may be the fixed cost of ownership or rent. Input expenses other than those would not be necessary. Therefore, with 65 or 70 percent prevented planting coverage, it may become more economical for the producer to leave land idle rather than incur the expense of attempting to plant. A reinsured company, national commodity group, and farm organizations supported the 10 percentage point increase in the level of prevented planting coverage. The commenters supported the concept that prevented planting levels should be crop specific and should closely reflect a percentage of the pre-plant production inputs to total costs for each crop. One of the farm organizations stated that differentiation by crop is important but that the program's overall complexity should also be considered. An insurance agent, national commodity group, reinsured company, farm organizations, and a state commodity group commended FCIC for making higher levels of coverage available for prevented planting if producers choose to elect them. The commenters stated that optional coverage levels allow producers to tailor their risk management programs to individual financial realities. The national commodity group stated that coverage at the 60 percent level with an option to increase the coverage to 65–70 percent should be adequate, provided prevented planting losses are indemnified for each acre that is not planted (once the threshold of 20 acres or 20 percent of the insurable crop acreage in the unit is met). The current adjustment procedure tended to penalize producers who planted a portion of a unit to the intended crop. A state commodity group urged an increase in the maximum available prevented planting coverage level to 75 percent, particularly if the substitute crop provision is eliminated. An insurance agent, national commodity group, state commodity group, and regional commodity group were apposed to the lower prevented planting coverage available for cotton. An insurance agent and national commodity group expressed a concern that, in certain market conditions, the producer may shift prevented planting from cotton to corn or soybeans due to the possibility of a higher payment for prevented planting and significantly lower premium for corn and soybeans. A national commodity group stated that the percent of variable cost borne by cotton producers in planting a crop is not unlike the percent of variable cost borne by corn producers to plant a crop in the same states especially when seed company technology fees and Boll Weevil Eradication Assessments are taken into account. The commenter further stated that FCIC relied only on USDA regional cost data, not county data. The commenter also stated that any justification for this discriminatory treatment that is based upon a "cost of production" rationale is out of place under this program because crop insurance coverage is based on actual production history and price election, not cost of production. On several occasions, the commenters have challenged FCIC's claim that cotton's cost of production is highest for post-planting activities. A national commodity group and state commodity group stated that cotton producers deserve equitable prevented planting coverage without any rate increase since the ratio of cotton's insurance indemnities to its fixed and variable costs are far below those of other crops. The commenters stated that this disparity is even more glaring when indemnities' net of premium as a percent of variable cost or as a percent of a fixed cost are considered. A state commodity group stated that a rolling average of a producer's normal crop rotation should be used to determine losses. The previous year's total crop indemnity divided by prevented planting acres at this year's prices could be used to determine an average. An insurance service organization stated that although offering different prevented planting coverage levels may be more actuarially sound, this will make processing more complex. The commenter was concerned that it could also result in questions from policyholders when the level of coverage they actually have may differ from what they thought they had.

Response: Numerous issues are raised by these comments. In light of the comments regarding the disparity of prevented planting coverage between cotton and most other crops, FCIC is making this rule effective for the Cotton Crop Provisions and the Extra Long Staple Cotton Crop Provisions for the 1998 crop year only. FCIC will solicit additional comments regarding the prevented planting coverage level percentage for these crops for the 1999 and succeeding crop years in a future rule.

Some commenters allege that the differences in coverage will encourage shifts among crops, notably from cotton since the coverage is lower. Based on the national average liability, the average payment rate for cotton at 45 percent of the guarantee is $125 per acre ($0.68 average price election) while the payment for corn is $103 per acre ($2.25 price election). Even if the price election for corn were increased to $2.50 per bushel the payment still would be less than cotton ($115 per acre). Some commenters state that the prevented planting returns net of crop insurance premiums should be considered. However, based on additional (buy-up) business for 1996, the difference in producer-paid premium between the two crops is about $9 per acre. Therefore, even on this basis, there is no marked disparity in bottom line dollars to the producer and there should be no impact upon cropping decisions.

Some commenters challenged the concept of basing the prevented planting indemnity upon costs of production, stating that the insurance plan is based on yield and market price. The intent of the prevented planting provisions is to permit producers to recoup some of their costs when it is impossible for the producer to generate income from the insured crop. These provisions were never intended to allow producers to make a profit. To permit profit is to introduce unmanageable and undesirable risks of fraud.

Some of the commenters dispute the use of regional data to establish costs of production, arguing instead that the costs should be developed county by county. Such an approach is impractical and unwieldy due to lack of credible data and is contrary to the law, which directs FCIC to seek administrative efficiencies in its programs to minimize burdens upon producers and reinsured companies.

Comment: Comments were received regarding the proposed removal of prevented planting coverage when a substitute crop is planted. A national commodity group recommended that, after the final planting date for a prevented planting crop has passed, producers be allowed to collect a prevented planting payment and then plant any crop but that such crop not be insurable. This would allow maximum returns from the land without providing any windfall benefits from the insurance program. The commenter stated that most producers are required to have a crop of some type on the land for conservation purposes and, since it will not carry any insurance coverage, production should be allowed. Another national commodity group and a state commodity group stated that they recognize the inherent problems with the substitute crop provisions and that they approve the elimination of the 25 percent coverage when a substitute crop is planted, provided there is adequate coverage when acreage is left unplanted. Farm organizations stated that it is difficult to argue against elimination of the substitute crop provisions; however, long term crop rotations, marketing decisions, delivery commitments, preplant application of inputs, and estimated economic returns from competing crops do enter into planting decisions. The farm organization and a reinsured company stated that weather induced planting changes often represent added costs to producers and, therefore, it may be appropriate to allow some level of coverage if the original crop cannot be seeded. These commenters stated that to reduce the potential for abuse, the provisions should specify a significant reduction in prevented planting benefits (40–60 percent) if an alternative crop is ultimately planted. Another farm organization and a reinsured company recommended that some level of coverage be allowed when a substitute crop is planted because weather induced planting changes may represent a real cost to the producer. Often times the producer has prepared the land for one crop, including the application of fertilizer and herbicides that will not be used by the new crop, and this expense cannot be recouped. A regional commodity group recommended that the provisions be amended so that a producer is able, at the very least, to forego crop insurance protection and plant a follow up crop for harvest after acreage is prevented from planting. The commenters stated that producers who miss the opportunity to plant their crop of first choice still need to retain the ability to create income from their land to cover any fixed costs they incur such as taxes, land payments, equipment payments and living expenses. They feel it is imperative that producers retain the right to keep their land productive.

Response: This "substitute crop" coverage has been provided for producers with coverage greater than catastrophic risk protection since the 1995 crop year. During the three crop years this provision has been effective, FCIC has received numerous complaints from agents, reinsured companies, commodity groups, and producers, including allegations of abuse, difficulty in establishing "intent" as required under those provisions, and other problems.

If a producer is prevented from planting the "intended" crop, it is the producer's choice to leave the acreage idle, plant a cover crop, or plant another crop for harvest. Prevented planting coverage should be provided only if the acreage is idle or planted to a cover crop not for harvest. Based on the numerous complaints received, the administrative problems and hazards associated with the substitute crop coverage, and the fact that only one crop is normally produced per acre, per crop year, prevented planting coverage should not be provided when the producer chooses to plant another crop on the acreage for harvest. No change has been made.

Comment: Comments were received regarding section 17(d). A national commodity group and a regional commodity group commended FCIC for including drought as an insurable risk for prevented planting. The national commodity group further recommended that such a determination be made on a field-by-field basis rather than on an area wide basis. This is consistent with the per acre unit change proposed for the prevented planting determination. Legal counsel for a reinsured company stated that proposed section 17(d)(1)'s requirement of inclusion of the Palmer Drought Severity Index (Index) as a condition precedent to the receipt of a prevented planting payment on non-irrigated acreage is arbitrary, impractical and exposes reinsured companies to potential litigation or arbitration. Though the Index surely measures a drought's severity, even those droughts that are not classified as severe or extreme may be sufficiently devastating to prevent planting. The commenter stated that when facing a drought, a producer's decision to invest the financial resources necessary to produce a viable crop is based on economics, not whether the Index classifies the drought as severe or extreme. In addition, a drought may, over time, become severe or extreme. The commenter asked what if, at the acreage reporting date a drought is not, according to the Index, severe or extreme, but is later classified as such by the Index. The commenter was concerned because the reinsured company already has denied the producer a prevented planting payment, and the drought's subsequent appearance on the Index is of little benefit to the producer. Forced reliance on the Index causes another problem if the Index is not available when the acreage is reported. The commenter questioned whether the reinsured company must delay its determinations until after it obtains the Index and what liability befalls the reinsured company if it is delayed.

Response: Current as well as the proposed prevented planting provisions specify that all prevented planting causes of loss must be general in the area. It is important to provide a reliable source such as the Index to provide consistency when verifying drought as an insured cause of loss in an area. FCIC does not believe that prevented planting payments should be allowed unless other producers in the area were also prevented from planting.

Most drought severe enough to prevent planting will be classified by the Index as severe or extreme by the final planting date. The Index is readily available to interested parties and is updated frequently. Therefore, the Index should be available to all reinsured companies prior to the acreage reporting date. FCIC expects few cases in which a drought that develops into a severe or extreme drought after normal planting times will actually prevent planting. To allow for exceptions would increase the complexity and subjectivity of these determinations, the administrative burdens on reinsured companies, and the litigative risks resulting from these subjective decisions.

Comment: A reinsured company stated that in section 17(e) the word "base" should be eliminated in all cases.

Response: The use of the word "base" in section 17 can be confused with the term "base acreage" used by FSA in the past. Therefore, FCIC deleted the word "base" as suggested.

Comment: Comments were received regarding section 17(e)(1). A crop insurance agent disagreed with the provisions in the proposed rule that exclude from eligibility any acreage prevented from being planted that was planted to a substitute crop. The producer should not be penalized a second time for not being able to plant a specific crop. A reinsured company questioned if the determination of eligible acres in the chart is done on a county basis. The commenter also questioned how a company is to obtain previous year's records of prevented planting acres when policies are gained by transfer. A reinsured company stated

that written agreements will only be allowed if the insured has not produced any crop for which insurance was available in any of the four most recent crop years. The commenters indicated that a written agreement may be the only way to provide coverage in many cases. An insurance service organization questioned whether section 17(e)(4), which notes that eligible acreage may be increased to account for added land, is considered a "written agreement." The commenters also stated that the provisions in the table would be clearer if reorganized. Since 17(e)(1)(I) is the only one of the three subsections in which (B) and (C) differ, this table may not be necessary. Combine 17(e)(2) with 17(e)(1)(I)(C) since this is the only situation allowing written agreements and combine 17(e)(4) and (5) with 17(e)(1)(i)(B) to avoid the impression that eligible acreage does not include added land. Add 17(e)(3) to the opening sentence in 17(e)(1). The commenter also stated that 17(e)(1)(i)(B) must be clarified because the heading makes (B) apply to producers who have produced "any" insurable crop in any of the last four years, but then limits eligible acres to the maximum acres certified or reported in those years for "the crop." The commenter stated that a producer may have produced corn in at least one of the last four crop years, but who planned to plant grain sorghum this year for the first time, would not have any eligible acres for grain sorghum and a written agreement could not be obtained. The commenter recommended changing the heading above section 17(e)(1)(i)(B) to read, "if you have produced the crop in any of the four most recent crop years" instead of "* * * any crop for which insurance was available * * *" The commenter also suggested that the heading above section 17(e)(1)(i)(C) be changed to reference "the crop" instead of "any crop for which insurance was available" to accommodate producers who decide to start producing a crop for the first time.

Response: Section 17(e)(1)(i)(B) of the proposed rule excludes acreage reported as prevented planting in a prior year but that was planted to a substitute crop so that the same acres do not qualify two crops in the same crop year. This provision is consistent with the removal of the prevented planting substitute crop coverage.

Eligible acres defined in section 17(e)(1) are determined on a county crop basis. When policies are gained by transfer, reinsured companies can obtain previous years' records of prevented planting acres from the insured, the ceding company, or the FCIC policyholder tracking system.

FCIC agrees that the table contained in section 17(e)(1) should be rearranged, duplicate provisions removed and combined with sections 17(e)(2) and (4), and has revised the table accordingly. FCIC has also revised section 17(e)(1) to incorporate section 17(e)(3) for clarity.

Proposed section 17(e)(1)(i)(C) (redesignated 17(e)(1)(i)(B)) has been amended to indicate that an intended acreage report must be submitted to the insurance provider to provide prevented planting eligible acreage only for a person who has not in any of the four most recent crop years produced any crop for which insurance was available. Intended acreage reports are not necessary for other producers. Any new insured who has produced any crop in any of the 4 most recent crop years for which insurance was available will qualify for prevented planting coverage for those crops and acres for which past acreage and production records are provided in accordance with APH procedures. A provision to increase acreage for new producers has been added that is consistent with the requirements for other insureds.

In most instances, the proposed provisions allow prevented planting coverage based on planting history. If a producer has planted only one crop in the past four crop years, for instance corn, and intended to plant and insure grain sorghum in the current crop year, the producer would be eligible for prevented planting coverage based on a corn production guarantee only. Once the producer plants grain sorghum, the producer will be eligible for prevented planting coverage based on a grain sorghum production guarantee.

Comment: A reinsured company questioned the impact and acceptability of intended acreage reports concerning eligible prevented planting acres. The commenter questioned the guidelines for approval of written agreements, and who has the authority to approve or disapprove such agreements.

Response: The provisions have been amended so that the use of a written agreement is no longer required to establish eligible acreage. Instead, intended acreage reports will be used. However, the reinsured company will be required to verify that the acreage reported does not exceed the number of acres of cropland in the producer's farming operation at the time the intended acreage report is submitted. The reinsured company will have the authority to accept or reject any intended report.

Comment: Comments were received regarding section 17(e)(2). An insurance service organization asked whether "requests for written agreement under this section must be submitted to us on or before the sales closing date" is intended to supersede section 18(e), which allows written agreements requested after the sales closing date only if an inspection determines no loss has occurred. The commenter asked if this provision prohibits consideration of a request made shortly after the sales closing date. Legal counsel for a reinsured company asked if section 17(e)(2) pertains to all crops or only to those with increased acreage. A crop insurance agent stated that any new producer who has a viable policy for a crop and who has the ability to produce that crop should be eligible for prevented planting on all cropland acres. The commenter also stated that the sales closing date is a completely unreasonable deadline for a new producer who is trying to start a farming operation. The insurance program should be as liberal as is prudent with new producers and allow them to add to their operation until acreage reporting time without penalty.

Response: As indicated in the response above, written agreements are no longer required. Since the producer is making all other insurance decisions by the sales closing date, it is not unreasonable to require the producer to specify the number of acres that the producer intends to plant by the sales closing date. New producers may be eligible for prevented planting acreage on all crop acreage if the requirements in section 17(e)(1)(i)(B) have been met.

Comment: An insurance service organization suggested that the provision contained in proposed section 17(e)(3) that states, "the total number of acres requested for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year" be revised to allow for double-cropping, as in section 17(f)(5).

Response: This provision, now located in section 17(e)(1) is revised to account for double cropped acreage.

Comment: Comments were received regarding section 17(e)(4). A reinsured company asked if all land added by the insured after the sales closing date was ineligible for prevented planting coverage. An insurance agent disagreed with requiring the producer to provide documentation on or before the sales closing date for newly added land because a March 15 deadline is not realistic and land changes hands into the planting season for many legitimate reasons including retirement, health, another career, financial considerations, etc. The commenter stated that the new producer should not be denied coverage just because the farming operation changed hands after March 15. The commenter was also concerned that it is difficult to obtain form 423 from FSA to determine eligible acres and whenever a farming operation is changed and the farm is reconstituted by FSA, there can be weeks of delay before the form is completed. The commenter stated that this rule again imposes an unnecessary burden on agents. It will force them to spend a great deal of time putting a process in place that attempts to make certain that none of their insureds miss an imposed deadline. The commenter was concerned that this is the time of year that agents need every available minute to be working with their clients concerning their coverage. Producers should be focused on sound decisions concerning their risk management, not focusing on what new deadline they have to meet. The commenter also stated that with the substitute crop provision eliminated, there is no need to have any other deadline in place other than acreage reporting. There is no date that is acceptable and crop insurance should not be in the business of trying to dictate to producers a date by which all changes in a farming operation must take place. The commenter stated that this rule directly conflicts with the farm program objectives of farming for the market. If the market dictates that a producer needs larger acreage to be effective, that should be allowed by our rules. The converse is also true. If a producer decides to reduce the size of the farm, it still is eligible for acres over and above the size of the farm, under the proposed rule. The commenter stated that eligible acres should be determined at planting time by the total cropland acres. The limitation to the number of acres previously planted to a crop is prudent; however, newly added land should be eligible for prevented planting up to the newly established cropland acres on any crop that the producer has insured. This is a common sense approach that would eliminate burdensome paperwork and eliminate a deadline that will cause problems. Legal counsel for a reinsured company stated that land rented or bought after the sales closing date might be ineligible for prevented planting coverage under the proposed provisions in section 17(e)(2) and (4). While the acreage reporting date may improperly permit insureds to state with the benefit of hindsight, what their intent was, the use of written agreements in the fashion proposed is not an adequate solution. The commenter suggested that the actual production history deadline date could be used.

Response: These provisions, now included in section 17(e)(1)(i), have been revised to allow an increase in eligible prevented planting acres provided the producer submits proof that additional acreage was purchased, leased, or released from any USDA program in time to plant it for the insured crop year. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program.

Comment: Comments were received regarding section 17(f)(1). A reinsured company suggested that the section be modified to read "* * * 20 contiguous acres..." The commenter suggested changing the phrase "whichever is less" to read "whichever is larger" and also suggested that the term "insurable crop acreage in the unit" be defined. Another reinsured company questioned if 20 acres or 20 percent was the correct acreage limitation for the unit. The commenter recommended a minimum figure be established for the entire farming operation based on cropland acres. Legal counsel for a reinsured company recommended that section 17 be amended to exclude prevented planting payments when the producer is prevented from planting a small number of acres. For example, if a producer is prevented from planting five acres on a 100 acre farm, the producer should not be entitled to a prevented planting payment for the five acres. The commenter stated that failure to incorporate such a change will increase indemnity payments and overall administrative costs of the program. Another legal counsel for a reinsured company indicated that the phrase "within a field" contained in section 17(f)(1) is not defined or used elsewhere in the section.

Response: Provisions are necessary to avoid prevented planting claims when only a small number of acres are prevented from being planted. FCIC has amended section 17(f)(1) to require that at least one contiguous block of land equal to 20 contiguous acres or a contiguous area constituting 20 percent of the insurable crop acreage in the unit, whichever is less, be prevented from being planted in order to qualify for a prevented planting payment. This change will reduce prevented planting payments for pot-holes and other small portions of fields that are wet in most years although planting occasionally may be possible. The phrase "whichever is less" is appropriate. There is no reason to define the phrase "insurable crop acreage in the unit" since units, insured crop, and insured acreage are defined elsewhere in the policy.

Once the minimum acreage threshold has been met, all acres should be indemnified. A minimum figure should not be established for the entire farming operation based on cropland acres because in very large farming operations, that could result in a substantial number of acres ineligible for prevented planting coverage.

FCIC has defined the term "field" for clarity. FCIC has also amended section 17(f)(1) to specify that all acreage in a field will be presumed to have been intended to be planted to the same crop that is planted on the field unless the prevented planting acreage constitutes at least 20 acres or 20 percent of the insurable acreage in the field and the producer can prove that both crops were previously planted in the same field in the same crop year.

Comment: A reinsured company questioned if the phrase "in which the insured crop was grown on the acreage" in section 17(f)(4) allows rotation of double-cropping so that the acreage need not be double-cropped each of the last four years to be eligible for prevented planting.

Response: The double-cropped acreage would qualify for prevented planting as long as the insured crop was double-cropped in each of the last four years that it was grown.

Comment: Legal counsel for a reinsured company stated that the terms of FCIC's proposed coverage for prevented planting are inherently inconsistent. On the one hand, FCIC is eliminating its substitute crop provisions, while on the other hand the FCIC would require written agreements to be submitted by sales closing dates on base eligible acres on which the insured has not produced any crop for which insurance was available in any of the four most recent crop years. This requirement effectively forecloses producers, particularly those in the northern plains states, from responding to market signals. Similarly, section 17(e)(3), which indicates the number of acres requested cannot exceed the amount of cropland, conflicts with section 17(f)(4), which appears to permit double cropping.

Response: The comment misinterprets the proposed provisions. Section 17(e)(1) requires only those producers who have not produced *any crop in any of the four most recent years for which insurance was available* to establish eligible acres in writing. In all other instances, either the number of contracted acres (for contracted crops) or the greatest number of acres of the insured crop planted or insured in any

of the four most recent years serves as the basis to determine eligible prevented planting acres. No provision contained in this rule restricts a producer from responding to market signals and planting, or attempting to plant, any amount of any crop he or she desires. However, in most instances, prevented planting compensation will be based on the number of acres of an insured crop that was planted in the past. As stated above, FCIC has revised the provisions of section 17(e)(3) (now in section 17(e)(1)) to account for double-cropped acreage.

Comment: Comments were received regarding section 17(f)(5). A reinsured company questioned how a company would know if any crop from which a benefit is derived under any program administered by the USDA is planted and fails. The commenter also suggested modifying the sentence from may be hayed or grazed "* * * after the final planting date for the insured crop * * *" to "* * * 60 days after the final planting date for the insured crop * * *" An insurance service organization stated that this section refers to "other than a cover crop which may be hayed or grazed after the final planting date for the insured crop." The commenter questioned whether acreage that has a cover crop that is ready to be hayed or grazed would ever qualify for prevented planting.

Response: Reinsured companies must question insureds to determine if any crop was planted for the crop year on the acreage being claimed for prevented planting. Producers should not be denied grazing or haying benefits for 60 days after being prevented from planting. In many instances, cover crops are grown until preparation for planting occurs in the spring. If the producer was unable to remove the cover crop and plant a crop, such a cover crop could be hayed or grazed soon after the final planting date and a prevented planting payment would still be owed.

Comment: A reinsured company questioned how the insurer will know if a cash lease payment is also received for use of the same acreage in the same crop year as specified in section 17(f)(6), particularly if it occurs after the prevented planting payment has already been received.

Response: Reinsured companies must question insureds to determine if a cash lease payment is, or will be, received for the acreage being claimed for prevented planting. Any insured who claims prevented planting on acreage they have cash leased would be misrepresenting a material fact and could be subject to civil and false claim penalties.

Comment: A reinsured company stated that they did not disagree with the concept of section 17(f)(7) but that it is inconsistent with freedom to farm and is unenforceable.

Response: The requirement that prevented planting coverage will not be provided for any acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes is necessary to protect the integrity of the program. FCIC is charged with establishing an actuarially sound insurance program, and relying upon "intentions," without evidence to support such intentions, is not an appropriate manner of achieving actuarial soundness. For example, if half the acreage in a farm has remained fallow every other year for the past ten years to maintain a summerfallow rotation, this is evidence that this is a normal practice. If such patterns exist, this provision is easier to administer than if the reinsured companies were forced to determine whether the producer actually intended to plant a crop. Since coverage for prevented planting now begins on the previous crop year's sales closing date for carry-over policies, producers could decide to claim an intent to plant acreage where the cause occurred months earlier in order to profit from the insurance program when they never planned to plant a crop. While the denial of prevented planting coverage may adversely affect some producers who genuinely intended to plant a crop, given the inability to prove intent to plant and in order to protect the integrity of the program, FCIC must retain the provision. No change has been made.

Comment: Comments were received regarding proposed section 17(f)(9) (redesignated 17(f)(10)). A reinsured company stated that they did not disagree with the concept of section 17(f)(9) but that it is an unenforceable provision. The commenter asked if capital on hand was considered proof that inputs were available. An insurance service organization stated that the burden of proof is placed on the producer to demonstrate "he or she had the inputs available to plant and produce a crop." The commenter asked what guidelines have been developed to determine that an insured has "inputs available to plant and produce a crop" and what evidence will be considered acceptable for the "proof." The commenter believes that instead of reducing the costs associated with prevented planting, FCIC has put forth an indefensible proposal that will only add to the administrative expense of the program.

Response: Since the prevented planting period could begin on the sales closing date for the previous crop year for many producers, many producers could know that they were prevented from planting prior to the sales closing date and planting period. These producers would be in a position to claim the intent to plant higher valued crops than they normally plant. FCIC has revised the provision to clarify that proof of inputs is only necessary where there is a deviation from normal planting practices. For example, the producer has rotated crops between corn and soybeans in alternate years and this was the year the rotational pattern showed that corn would normally be planted, if the producer seeks a prevented planting payment for corn, the reinsured company does not have to determine whether the insured had sufficient inputs. However, if the producer seeks a prevented planting payment for soybeans, the reinsured company would be required to determine whether the producer has sufficient inputs. Capital on hand would not be considered proof of inputs. If the producer could not produce receipts for seed, fertilizer, herbicides, etc., the lease of equipment or labor, or specific land preparation, it will be presumed that the crop usually planted by the producer was the crop that the producer intended to plant. While this provision may preclude a producer from receiving benefits for a crop that he genuinely intended to plant, the producer would still be eligible for a benefit on the crop usually planted and the need to protect program integrity outweighs its disadvantages. Since this situation should be rare, it should not impose an undue burden on the reinsured company.

Comment: A reinsured company stated that proposed section 17(f)(11) (redesignated 17(f)(12)) is contrary to the freedom to farm concept. The commenter also questioned how the insurer would know if the crop was planted in one of the last four years.

Response: Prevented planting coverage will not be provided for any acreage based on a price election, amount of insurance or production guarantee for a crop type the insured person did not plant in one of the four most recent years. As stated above, FCIC has a responsibility to protect the integrity of the program. Allowing producers to claim prevented planting payments for crops for which there is no evidence that they intended to plant would adversely affect program integrity. While this may result in some

producers not receiving benefits, it would be impossible to maintain actuarial soundness when such exposure to unnecessary risk exists. Since most crops have a production guarantee based on actual production history, records are an integral requirement. Use of such records would seem the proper way to verify previous crops produced. However, FCIC has created an exception for new producers that qualify for coverage under section 17(e)(1)(i)(B).

Comment: Comments were received regarding section 17(g). A reinsured company stated that this section may generate a moral as well as a morale hazard, since producers may claim prevented planting for marginal land never intended for planting. This is contrary to the intent of this policy, which is to provide disaster based insurance coverage, not acre by acre coverage. Legal counsel for a reinsured company stated that proposed provisions allowing a prevented planting payment on a per acre basis add incalculable costs to the loss adjustment process. The commenter stated that loss adjusters must find the acres that are prevented from being planted, measure them, verify inputs and calculate the loss. Also, under the proposal, insureds can "buy-up" their coverage which permits producers to be indemnified as much for prevented planting as for failed planting. Neither the Cost-Benefit Analysis or the narrative in the **Federal Register** provide the level of detail needed to permit meaningful comment on FCIC's conclusion that higher rates will not be needed. The commenter further stated that paying prevented planting claims on a per acre basis will result in software problems equal in magnitude to the so-called "year 2000" problem. Loss records are kept by unit and to pay claims by acre will require a complete revision of the reinsured company's and FCIC's loss adjustment programs. In this regard, those programs will need to deduct from final claims paid on a unit basis the amount paid for prevented planting on an acre basis. Accordingly, the commenter stated that FCIC has no basis in fact to conclude, as it did in its 1997 Cost-Benefit Analysis, that its proposal will simplify program operation. A national, two state and a regional commodity group stated that they commend FCIC's decision to pay prevented planting acres on a "per acre" basis. Another national commodity group stated that they strongly support the change from computing the prevented planting indemnification on a unit basis to a per acre basis after the deductible of the lesser of 20 acres or 20 percent of the eligible acreage in a unit is met. This change provides the producer the opportunity to more closely recover his actual losses associated with prevented planting on a limited number of acres within a unit without indirectly penalizing him for efforts to plant the balance of a unit in a timely, profit maximizing fashion. An insurance service organization stated that they received one comment recommending prevented planting coverage be provided on a unit basis rather than on an acre-by-acre basis. The commenter stated that prevented planting coverage on a unit basis will encourage the insured to plant the acres if at all possible. The commenter asked why separate units for planted and prevented planting acres should be established when units by planting dates are not otherwise allowed.

Response: The other requirements of section 17 must also be met before a prevented planting payment is made. If the producer cannot prove that inputs were available to plant any acreage, then no prevented planting payment will be made. If the producer has previously planted marginal acreage, any prevented planting payment will be based on the lower yield for such acreage. No change has been made.

As noted in both the Cost-Benefit Analysis and **Federal Register** narrative, recent prevented planting data indicate that the net costs are expected to be small because the cost and liability associated with substitute crops, which will be reduced when that provision is eliminated, offset the additional cost and liability associated with adding a per-acre basis for payment. Experience data for 1996 demonstrate that 77 percent of declared prevented planted acres occurred in circumstances in which no acreage of that same crop was planted within the unit. Similar results appear in 1995. The implication is that most producers who are prevented from planting have not been able to plant any acreage in the unit and, therefore, already have received the equivalent of acre-by-acre payments. Added outlays would be associated with prevented planted acres where some acreage in the unit is planted, but realized production exceeds the guarantee. In 1996, about 178,000 acres fell in this category, accounting for about $5.6 million in indemnities. Data for 1996 also indicate that some acreage that did not receive an indemnity under the prior regulation would receive a payment under this rule. The increased indemnity is estimated to be about $7–8 million. These data clearly indicate that the effect is small.

Even with the "buy-up" provisions, prevented planting compensation under this rule cannot equal compensation given in the event of a failed crop as stated in the comment from the legal counsel. The maximum coverage offered is 70 percent of the *guarantee* for timely planted acres. Therefore, the maximum compensation the producer could receive is 70 percent of the indemnity paid if all acreage of the crop had failed.

Maintaining loss records for prevented planting payments will be no more complex than maintaining records for any unit. It will not be necessary to deduct the amount of a prevented planting payment from the amount of a final claim. This calculation is not required by this rule. No change has been made.

Comment: An insurance agent recommended that the CAT level of coverage for prevented planting be limited to a payment based upon basic units, and that the buy up coverage should be eligible for acre by acre payments. Too much coverage at the CAT level encourages the producer to "take a chance" rather than make an informed decision based upon sound risk management principles. There is more incentive for the producer with many acres to elect CAT coverage, particularly if the payment is made on each acre, the major risk is prevented planting, and there is no premium impact. The producer who elects additional coverage should receive additional benefits to compensate for the fact that the producer no longer has substitute crop provisions.

Response: The argument presupposes that the chance of prevented planting is the dominate consideration regarding choice of coverage level. If this is the case, and producers can continue in business over the long term with the catastrophic level of coverage, the interests of a majority of producers in the county may be best served by this choice. No change has been made.

Comment: A reinsured company recommended that, in the prevented planting provisions, FCIC remove the crop specific nature of the proposal and consider only those acres that cannot be planted to any crop as eligible for a prevented planting payment. The commenter also suggested that FCIC establish a non-disappearing deductible as a percentage of cropland acreage that must be exceeded to qualify for a prevented planting payment. Additionally, the commenter suggested that FCIC determine a per-acre payment amount based on average production costs in the county.

Response: The recommended changes, which result in a totally

different concept for prevented planting coverage than in the proposed rule, could not be accomplished without the benefit of public comment. FCIC has reviewed the recommended coverage and determined this concept requires more study to determine if it is acceptable to all interested parties. No change has been made.

Comment: An insurance service organization commented that crop insurance industry representatives had developed a total cropland prevented planting proposal based on acres not planted after the planting windows for all crops had expired. Industry representatives believed this proposal was consistent with the intent of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) in that the coverage did not induce crop specific behavior. The proposal advanced by FCIC differs materially. Due to the short comment period and the complexity of the subject, there was inadequate time to develop a full response, including actuarial analysis and total cost of administration, to FCIC's proposal. FCIC must provide companies with the necessary support to defend against challenges to the enforcement of the "intent" and "proof of intent" clauses, from the additional loss adjusting expenses incurred by companies in implementing this program, and from compliance issues that arise out of confusion generated by this rule. Further, FCIC has consistently under-estimated the costs associated with its prevented planting provisions. FCIC has not addressed the matter of increased costs incurred by private companies or the potential for private companies to suffer excessive underwriting losses associated with this rule. Instead, it has only expressed in its analysis that because of the small expected average rate impact, any changes in reimbursements to private companies for delivery or any underwriting gains are also expected to be small. At a time when the administrative subsidy to private companies for delivery of the federal program has been reduced by FCIC, there is no room for and FCIC should not anticipate that private companies will bear the cost of this proposal.

Response: FCIC reviewed the insurance service organization's prevented planting proposal prior to publication of this rule, as well as other proposals. This rule incorporates many elements or concepts of those proposals. The total cropland concept is inherent to this rule in that eligible acres are defined by the producer's history. The provisions contained in this rule simplify program administration and will reduce administrative costs compared to current prevented planting provisions (e.g., removal of the substitute crop coverage, simplification of determining eligible acreage, reduction in the number of agreements in writing to determine eligible acreage, etc.). Therefore, reinsured companies should not need additional resources, nor should they incur additional costs to implement the overall prevented planting changes contained in this rule.

Comment: An insurance service organization stated that the proposed rule for prevented planting is built, in part, around the "intent" of the farmer to plant. Industry calls into question the defensibility of determining "intent" from a legal and managerial standpoint. The commenter provided data published by the National Agricultural Statistics Services (NASS) showing that the differences between intended and planted acreage (total cropland) at the state-level are relatively stable. However, the data demonstrate that crop-specific differences between intended and planted acres are magnified within a state. The commenter stated that the differences will be even greater at the farm level. This indicates the difficulty associated with monitoring the prevented planting proposal. It will require additional dollars to deliver this type of program in order to maintain the integrity of the program.

Response: Without examining the intent of a producer to plant a crop, producers could collect indemnities even when they did not intend to plant a crop or claim an intent to plant a higher valued crop in order to maximize their payments. Therefore, intent must be examined to protect the integrity of the program. The provisions have been revised to only require an examination of intent when the producer deviates from previous planting practices. Therefore, the additional costs associated with the program should be minimal. No change has been made.

Comment: An insurance service organization stated that the crop specific nature of the prevented planting provisions contained in this rule are inconsistent with Freedom to Farm.

Response: The comments presupposes that producers select the crop to plant based on available insurance coverage. This supposition is contrary to the intent of the 1996 Act, which is to allow producers to maximize their profits through the use of available markets and prices. It is possible that producers may be denied prevented planting coverage when they genuinely intended to plant the crop. However, to protect the integrity of the program, such provisions are necessary and reduce the administrative burdens on the reinsured companies, which would otherwise have to ascertain the intent of the producers. The rule authorizes payments for prevented planting in a sound insurance manner. No change has been made.

Comment: An insurance service organization stated that problems will be encountered with this rule because of the degree of the over-lap of the planting windows for the various crops by state. Absent from this rule is any discussion or analysis of the impact of final planting dates in relation to the prevented planting coverage. Final planting dates are crucial in determining eligibility for prevented planting benefits. If final planting dates are too early, then a producer may be able to claim prevented planting benefits even though the producer is still able to plant within standard practice for the crop and location. This will lead to higher than expected delivery expense compared to the industry proposal because more claims will be processed.

Response: FCIC will review final planting dates and revise them as necessary. However, to maximize coverage and a potential for revenue, most producers will elect to plant some other crop if land becomes plantable after the final planting date for one crop, and thereby establish 100 percent of a crop insurance guarantee. No change has been made.

Comment: An insurance service organization stated that, in certain situations, previous land use and pre-plant input decisions will narrow the set of crop choices and substitution among crops. Industry will be required to manage additional information and data in order to implement the proposed rule and maintain program integrity. Within the context of the Paperwork Reduction Act and program simplification, requiring companies to obtain, verify and retain additional paperwork and information from producers does not make sense.

Response: FCIC has revised the provisions to narrow the cases in which reinsured companies must examine evidence of inputs. Since the examination of inputs was required in previous prevented planting provisions, this change will reduce the burden on reinsured companies. No change has been made.

Comment: Reinsured companies and an insurance service organization commented on the provisions of section 18. They state that there are legitimate reasons for written agreements to be valid for more than one year, especially if no substantive changes occur from one year to the next. Limiting written agreements to one year only increases administrative cost, complexity and opportunity for misunderstanding and error, and flies in the face of efforts to simplify the program and reduce its administrative expense. The commenter also stated that written agreements should be effective for more than one year because there is already an exception since written agreements to establish units are continuous (unless the farming operation changes significantly). The commenters also question how often written agreements are incorporated into the actuarial documents within one year. Often, policyholders and reinsured companies must duplicate their efforts to request reissuance of written agreements because this does not happen. The commenters state that FCIC's legal counsel objects to the concept of written agreements, which purportedly allows exceptions for those "in the know," while others may not be aware the possibility exists. The commenters asked whether these provisions can be revised to simplify renewals. The commenters suggested that the policy should require the insured to pay the cost of inspections necessary to obtain a written agreement because there are many instances where there is no economic reason or incentive for a company to pursue such agreements. The commenters also suggested that sections (a) and (e) be combined since both deal with deadlines for written agreement requests. They stated that the response to this comment in prior final rules has been that the sales closing date is intended to be the deadline with only limited exceptions. However, 7 of the 13 written agreement types listed in the 1998 Crop Insurance Handbook allow requests at acreage reporting time and one allows the request after acreage reporting. Of the 6 types with a sales closing date deadline, 4 are specific cases of a practice or type not listed in the actuarial materials, which is curious since the general type of unrated practice, type or variety can be requested at acreage reporting time. So, the exceptions seem to outnumber the rule. Many of the situations calling for written agreements do not become apparent until the acreage report is received. Therefore, the commenter again suggests this provision might be less misleading if the acreage reporting date exception noted in (e) were incorporated into (a). The commenters stated that the provisions in section 18 that specify timing and content of the FCI–2 written agreement should not be part of the insurance policy. New insureds would not have this information until it is too late to request a written agreement. They state that this should have been reviewed by the insurance agent prior to acceptance of the application or issuance of the crop insurance policy. The commenters also stated that some of the written agreement provisions need to be carefully considered and compared to current procedures and comments to the Written Agreement proposed rule before the deadlines and annual status of written agreements are mandated in the Basic Provisions.

Response: Written agreements are intended to change policy terms or permit insurance in unusual situations. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to keep non-uniform exceptions to a minimum and to insure that the insured is well aware of the specific terms of the policy. There are no exceptions to the timing or duration of written agreements except as provided in section 18. The provisions have been amended to indicate that written agreements may be submitted after the sales closing date only if the producer demonstrates that he or she was physically unable to apply prior to the sales closing date or in accordance with any regulation which may be promulgated under 7 CFR part 400. FCIC will be more vigilant in incorporating changes to the policy made by written agreement into the actuarial documents.

FCIC does not believe that a producer should bear the cost associated with any inspection done for the purposes of a written agreement. Such costs are a part of servicing the policy and therefore, are already compensated by the expense reimbursement under the Standard Reinsurance Agreement.

Section 18 was added to the Basic Provisions so that this duplication of information could be eliminated from all Crop Provisions. This information is necessary to provide authority for policies to be altered where the policy specifically allows the use of a written agreement.

Comment: Legal counsel for a reinsured company stated that FCIC's authorization of reinsured companies to use written agreements to alter the terms of published regulations is illegal and unwise. The commenter stated that Congress conferred on the FCIC, not on dozens of insurance companies, the rule-making power to define the terms and conditions for insurance. Congress did not confer upon the FCIC the authority to delegate its exclusive rulemaking authority to private contractors. The commenter also stated that neither the FCIC nor its contractors may amend rules and regulations in the **Federal Register** by private written agreement. The comment also indicated belief that the provisions of this section are prohibited by the Office of Management and Budget "Policy Letter on Inherently Governmental Functions," 57 FR 45096, 45100, ¶5 (September 30, 1992). The commenter stated that this section will result in written agreements being used as marketing gambits for agents and policyholders by inviting them to compete with lenient agreements that will permit the sale of insurance by a variety of devices after the sales closing date. Finally, the commenter stated that section 18 is a trap for reinsured companies. On one hand, the salutary purposes of the freedom to farm legislation must be accommodated by allowing insureds to react to market signals. On the other hand, the timing of those signals may invite moral hazards. Faced with two mutually exclusive and equally unhappy alternatives, FCIC has decided to abdicate responsibility. The commenter states that section 18 gives each insurer the choice of rejecting a written agreement and declining coverage (thereby causing potential for uninsured losses of the policyholder) or accepting a written agreement and exposing itself to the hindsight of FCIC's Compliance Division.

Response: FCIC has not delegated its rulemaking authority to the reinsured companies. In many cases, reinsured companies must still get FCIC approval before providing insurance by written agreement such as in cases involving unrated land. Further, even if the reinsured company has the authority to approve written agreements, criteria published by FCIC still must be met. Therefore, reinsured companies do not have the authority to revise or modify the terms of the policy except as provided by FCIC. All reinsured companies are doing is applying such criteria to their insureds' situation. The use of written agreements should not provide any competitive advantage since they must specifically be authorized in the policy and are available to all producers of the crop. No change has been made.

Comment: Reinsured companies, an insurance service organization, and legal counsel for a reinsured company commented on section 20. The commenters questioned whether using the rules of the American Arbitration Association (AAA) for resolution of disagreements has been satisfactory and

whether utilization of the intermediate "two appraisers, umpire, etc." has been considered. The commenters also stated that the language "for FCIC policies" can be deleted because, effective with the 1998 crop year, FSA offices are no longer delivering crop insurance policies. Section 20(a) states that disagreements on any factual determination between the insured and the company will be resolved in accordance with the rules of the AAA. The commenters state that this must be clarified so that this only means the association's rules will be followed, not that its personnel will be involved in the arbitration since they are expensive and are not familiar with crop insurance. Section 20(b) reads "No award determined by arbitration can exceed the amount of liability established or which should have been established under the policy." The commenters stated that this should read "arbitration or appeal" since both are mentioned in 20(a). The commenters stated that section 20 and section 25 are at odds with each other. Under these two sections, arbitrators have jurisdiction over questions of fact and the courts have jurisdiction over questions of law. Moreover, under the policy, both can grant monetary relief. Bifurcated proceedings are costly and unnecessary. The commenters stated that the policy should provide for mandatory, binding arbitration. Such alternative dispute resolution is consistent with public policy. At most, legal action should be an alternative route, with insureds able to select one, but not both actions.

Response: In most instances, arbitration by the rules of the AAA has been a satisfactory and desirable solution to policy disputes. FCIC has not received any recommendations providing alternatives. The provisions are clear that only the rules of AAA will be used. Since the authority for FCIC to deliver policies directly to insureds still exists, provisions referencing FCIC policies will be retained in case they are needed in the future. FCIC has revised section 20(b) to reference "arbitration or appeal." The provisions clearly state that disagreement on any factual determination will be resolved by arbitration. However, if arbitration does not result in agreement, FCIC believes the insured producer should be able to seek resolution through legal action as authorized in section 25.

Comment: An insurance service organization questioned whether section 21(b)(3) should specify that "optional units" may be combined rather than just "units."

Response: Section 21(b)(3) should refer to optional units and has been amended accordingly.

Comment: An insurance service organization stated that, under section 23, the amount the reinsured company is allowed to retain should be increased from 20 percent to 40 percent due to the increased costs and paperwork.

Response: 7 CFR § 400.47 limits the amount to 20 percent of the premium. No change has been made.

Comment: A reinsured company and an insurance service organization had comments regarding section 24. They stated that the phrase "For FCIC Policies" should be deleted since all MPCI policies will be with reinsured companies beginning in 1998. They also stated that the phrase, "or any part thereof" after "per calendar month" in the first sentence of section 24(a) under "For Reinsured Policies," that presently is in the regulations should be retained. The commenters were concerned that the second sentence states "interest will start on the first day of the month following the premium billing date" but does not address subsequent months. The commenters also suggested that the following provisions should be incorporated "For Reinsured Policies:" "Any amount illegally or erroneously paid to you or that is owed to us but is delinquent will be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action. No insurance will be available until the debt is paid or a collection plan is implemented."

Response: The 1996 Act still authorizes FCIC to offer insurance directly to insureds under certain conditions. Therefore, these provisions must remain. FCIC agrees that reinsured companies should be able to collect interest for a portion of a month and has revised the provision. The phrase "interest will start on the first day of the month following the premium billing date" refers to the date interest begins to accrue. The provision has been clarified. In certain circumstances, part of a debt owed by an insured under a reinsured policy may be collected by offset from payments made by other United States government agencies. However, such recovery is limited to the amount of the debt that was paid by FCIC.

Comment: An insurance service organization stated that section 25(c) is entirely too vague and may not be given any effect by a court. It must be rewritten to read "You may not recover compensatory or punitive damages or attorney's fees under this contract. Your right to recover damages of any kind or attorneys' fees is limited or excluded by Federal regulations."

Response: Section 25(c) is only intended to notify the insured that Federal Regulations and other sections of the policy, such as section 26(a), may provide for limitations or exclusions on the recovery of damages, interest, fees or costs. The provision is clearly stated and has not been changed.

Comment: An insurance service organization stated that section 26(a) conflicts with section 25(c) unless rewritten as suggested above.

Response: These provisions are complementary, not in conflict.

Comment: Comments were received regarding section 27(a). A reinsured company questioned whether it is the intent of this provision that voidance would occur only after the legal system determined fraud. An insurance service organization stated that this provision should be rewritten to read "This policy and all other policies reinsured by the USDA shall be void in the event you have concealed the fact that you are ineligible to receive benefits under the Act, or if you are in fact ineligible (or action is pending which would make you ineligible), even if you are not aware of it at the time this policy is written. This policy may also be voidable, in our sole discretion, if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this or any other policy reinsured by USDA." The commenters state that the Standard Reinsurance Agreement voids any policy with ineligible persons from the time of ineligibility. Concealment makes no difference. It is unfair to hold the companies to liability under a policy when FCIC controls eligibility determinations and will not stand behind the companies. The commenters also state that the last sentence should read "voidable" and not "void," since, in most cases, a company cannot be placed at risk in determining whether someone should be banned from what remains an entitlement program. Furthermore, in many instances, it is better to let the company simply reduce the amount of the indemnity. Lastly, the commenter suggested that a sanction short of voiding the policy would be better than declaring someone ineligible. One example might be to require repayment of any overpayment to the reinsured company by the policy termination date with interest and, if not repaid, to allow the company to cancel the policy. Legal counsel for a reinsured company stated that FCIC must understand that no reinsured company may void a policy for fraud or misrepresentation as provided in section 27 since no reinsured company can provide the due process that is a requisite for such a finding. Further, no reinsured company is imbued with the constitutional or statutory authority to bar a participant from an entitlement program. The commenter also states that a reinsured company cannot be held responsible for collection of indemnities that should not have been paid in a prior year for policies that are retroactively voided, particularly if the current reinsured company was not the insurer in the year for which the policy was voided. The commenter stated that the proposed language creates no duty to the FCIC to engage in such an effort and, vis-a-vis the insured, does not supplant the government's role and responsibility.

Response: Reinsured companies cannot bar a participant from the crop insurance program. The section will be revised to specify that fraud or misrepresentation may subject the insured to sanctions authorized in 7 CFR part 400, subpart R. However, when violations such as concealment, misrepresentation or fraud are found after the appropriate due process, it is the reinsured company that must deny insurance or void a policy for an ineligible person because FCIC lacks privity with the insured. The reinsured company that insured the policy for the year an indemnity should not have been paid will be responsible for collecting the overpayment. Since whenever the insured receives an overpayment it must be repaid, to only require this in the cases of fraud would not protect the program from such conduct in the future. Further, cancellation of the policy would only have a prospective effect and allow insureds to benefit from their misconduct. FCIC must protect the integrity of the program.

Comment: An insurance service organization recommended that the provisions of section 27(b) be amended to allow the reinsured company to retain 40 percent of the premium. The commenter stated that reinsured companies should not have to incur costs if the insured commits fraud or misrepresents a material fact.

Response: Since the majority of the costs associated with determinations of ineligibility will be borne by FCIC, the percentage in this section should remain 20 percent. No change has been made.

Comment: An insurance service organization questioned whether the sentence "We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred" in section 28 is necessary, since it is stated in procedure. The commenter also questioned the process that will be used to determine that the transferee is eligible, as is required by the sentence that reads "The transferee must be eligible for crop insurance."

Response: These provisions must be included in the insurance contract since this is a limitation imposed on the insureds and the procedures are not provided to insureds. The same process used to determine eligibility of the person originally insured will be used to determine eligibility of any transferee. No change has been made.

Comment: An insurance service organization questioned the language in section 29 regarding an assignee's ability to file a claim 15 days after the 60 day period for filing a claim has expired and no action will lie against the reinsured company if it does not honor the terms of the assignment. They questioned whether the assignees will understand their right to file a claim, but even if it is filed within the 15 days specified, the company is not required to accept that claim. The commenter suggested that this language be included on the assignment form rather than in the policy provisions. The commenter suggested that the insured should file a claim within 15 days instead of 60. If 60 days are allowed, reinsured companies will be paying for losses that should have been discovered long before, instead of when they are updating the producer's APH for the next year.

Response: A form cannot change the terms of the policy. This provision is intended to protect an assignee in cases where insureds may not have timely notified them that a loss has occurred. This provision is clear that the assignee has the right to file a claim. The provision will be revised to clarify that reinsured companies cannot reject the claim unless it is impossible to accurately determine the amount of the claim. Since claims often are not completed within 15 days after the end of the insurance period (*e.g.*, 15 days after harvest, which ends the insurance period), it is not practical to require an insured to submit a claim within 15 days of that time.

Comment: Comments were received regarding section 34. A reinsured company stated that all references to FSA or FSA farm serial numbers should be removed. The commenter suggested using a minimum distance to provide for unit separation. The commenter stated that there is no reason to rely on FSA information because it is difficult and expensive to obtain, often is not current, and has an uncertain future. The commenter recommended that a crop enterprise unit be offered as an option to the insured (all acreage of a crop insured as one unit). This would be likely to improve the program's underwriting results and reduce the number and frequency of losses and, therefore, could be offered to producers at an attractive premium price. An insurance service organization stated that section 34(a) must include reference to the possibility of unit division by written agreement, such as is in the Coarse Grains Crop Provisions ("if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.").

Response: FSA farm serial numbers continue to be used as a basis of unit division in certain instances. Therefore, reference to FSA or FSA farm serial numbers should not be removed. Designated distances may be considered as a method of unit division in the future, but appropriate research must be done and procedures developed. Some programs of insurance currently offer enterprise units. As experience with such programs becomes available, FCIC may consider expansion of use of the enterprise unit structure. The reference to written agreements is included in section 34(b). It is not included in section 34(a) since a written agreement should not over-ride those provisions.

Comment: A reinsured company stated that the phrase "independently verified" in section 34(a)(3) should be defined or deleted.

Response: FCIC has clarified this provision by indicating that the records must be acceptable to the reinsured company.

Comment: Comments were received regarding § 457.9. An insurance service organization questioned why this section was removed from the policy. Legal counsel for a reinsured company recommended that this section be made a part of the policy.

Response: No changes to § 457.9 were proposed in this rule as it is not specifically a part of the policy. FCIC does not believe that it is necessary to include this contingency in the policy. In the event that Congress does not appropriate funds, producers will be notified of cancellation in accordance with the provisions of section 2 of the Basic Provisions.

Comment: A reinsured company questioned if production from acreage planted after the final planting date (winter wheat counties only), or after the late planting period in other counties, will be counted against the production guarantee if prevented planting is applicable.

Response: Acreage planted under these circumstances will be considered late planted under these provisions, and the production guarantee for it will be combined with the guarantees for acreage that is timely planted and planted within the late planting period. All production from the planted acres will then count against the combined guarantees.

Comment: A reinsured company questioned the definition of "planted acreage" in the Small Grains Crop Provisions and asked if the production from acreage on which seed was broadcasted but not incorporated will be counted against the production guarantee, especially if prevented planting eligibility exists and the seed is broadcasted after the late planting period.

Response: A provision has been incorporated into section 16(b) of the Basic Provisions to address this concern.

Comment: A reinsured company recommended providing optional units for durum wheat in counties with only a spring final planting date.

Response: The suggested change would be substantive and not subject to this rulemaking. FCIC will consider such a change in the future.

Comment: A reinsured company suggested adding the phrase "A replant payment may be made in accordance with section 9" to section 7(a)(1)(ii) of the Small Grains Crop Provisions.

Response: Section 7 of the Small Grains Crop Provisions contains provisions relative to insurability of acreage. This section is not intended to authorize a replant payment. Since section 9 of the Small Grains Crop Provisions specifies the conditions under which replanting payments are available, it is not necessary to duplicate the provisions of section 9 in section 7. No change has been made.

Comment: An insurance service organization recommended that the Small Grains Crop Provisions be amended to allow the tenant to receive 100 percent of the replanting costs as the Coarse Grains Crop Provisions do.

Response: FCIC has reevaluated this provision due to comments received on other regulations and determined that the provision is not equitable to all insureds. Specifically, if a landlord and tenant are insured with different companies, the provisions do not apply. Crop Provisions containing these terms will be amended to eliminate them. No change has been made.

Comment: A reinsured company questioned if cotton and ELS cotton coverage should continue to be extended while modules are left in the field. They suggested that this coverage could possibly be offered as an option for additional premium.

Response: Loss adjusters, in most situations, cannot distinguish damage that occurred in the field from that occurring in the module. In addition, the weight of lint cotton, its grade, and quality adjustment are not determined until the cotton is ginned. Producers might be encouraged to delay harvest to maintain coverage if cotton in modules is not covered. Cotton in a module is less susceptible to weather damage than cotton in the field. No change has been made.

Comment: A regional and a national commodity group stated that there are serious inequities in insurance coverage among crops, such as the lack of replanting coverage for cotton and the 25 percent deductible for cotton quality losses. Replanting provisions should be a basic component of every cotton crop insurance policy. The commenter stated that, from an agronomic perspective, cotton producers have replanting experiences that are comparable to those of other crops. Cottonseed now has better vigor, is pre-treated two or three ways, and is adapted for different growing regions and climatic conditions.

The national commodity group stated that they have been unable to find any documentation of the rationale and date of imposition of the 25 percent deductible. The inequity between a corn or wheat producer and a cotton producer exists for no apparent economic or policy reason.

Response: FCIC is reviewing replanting coverage for cotton and the quality provisions. Any proposed changes will be published in the **Federal Register** as changes to the Cotton Crop Provisions and will be made available for public comment. No change will be made at this time.

Comment: Comments were received regarding the premium rates for cotton. A national commodity group stated that the structure for cotton needs to be revised to account for adoption of new production technology such as Bt cotton seed, Boll Weevil Eradification, irrigation, and other advances. The commenter stated that the risks associated with growing cotton have decreased and so should premiums if new cotton customers are expected. A regional commodity group stated that they are aware that funding shortfalls do exist and they suggested that all possible alternatives be exhausted before a decision to increase premium levels is made. They state that increasing premiums would help alleviate the funding problem short-term. However, such an action would move FCIC away from what should be its ultimate goal of increasing the relative value of FCIC products and increasing producer participation in the program. For many cotton producers, crop insurance simply costs too much in relation to the level of insurance protection it provides.

Response: Premium rates on all crops are based in part on the loss history of the crop. Crop improvements and practices that result in reduced losses are also considered. All rates are reviewed prior to the actuarial filing dates and are changed as deemed appropriate.

Comment: A reinsured company questioned whether the wording in section 2 of the Sugar Beet Crop Provisions requires optional units to be established by processor contract. If so, the commenter is strongly opposed. The commenter stated that this issue has been addressed at an earlier date with regard to the Processing Tomato Crop Provisions, and the supporting reasons are similar for sugar beets.

Response: Section 2 of the Sugar Beet Crop Provisions does not require optional units by processor contract. Section 2 simply states that a producer is not eligible for optional units unless the producer has a processor contract that contracts for production from a specified number of acres. Once eligible, optional units for sugar beets may be established only by section, section equivalent or FSA farm serial number; or by irrigated and non-irrigated acreage.

Comment: An insurance service organization recommended changing the Sugar Beet Crop Provisions to read "a contract must be on file." The commenter also recommended a change to state that the acres stated in the contract do not limit the acres the producer can insure. It is a common practice to overplant acres and the sugar processors do accept all acres planted. The commenter suggested that the following sentence be added "We will not cover any loss from the inability of the sugar factory to accept production from overage acres." In this situation, contract acres would be used. The commenter also suggested eliminating contracts altogether.

Response: Provisions that would be impacted by the comment were not published in the proposed rule and made available for public comment. No changes can be made at this time. FCIC will consider this proposal when the crop provision is reviewed.

Comment: A reinsured company suggested adding the phrase "A replant payment may be made in accordance with section 9" to section 6 of the Coarse Grains Crop Provisions.

Response: Section 6 of the Coarse Grains Crop Provisions proposed rule contains provisions relative to insurability of acreage. This section is not intended to authorize a replant payment. Since section 9 of the Coarse Grains Crop Provisions specifies that replanting payments are available, it is not necessary to duplicate that provision in section 6. No change has been made.

Comment: A reinsured company questioned whether the language in section 9(a) of the Coarse Grains Crop Provisions provides a replanting payment to both a landlord and tenant having different coverage levels. If the replanting is required for one, both should be entitled to a replanting payment, providing they both incur replanting expense.

Response: There is nothing in section 9(a) of the Coarse Grains Crop Provisions that precludes a landlord and tenant having different coverage levels from being eligible for a replanting payment. The tenant and landlord may each be eligible as long as they both incur replanting expense; the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the respective production guarantees for the acreage; and it is practical to replant. If a tenant or landlord elects higher coverage, greater benefits are paid. However, it is possible under these provisions for one person sharing in the crop to be eligible for a replanting payment while the other person may be ineligible for such a payment. For example, assume the acreage had an APH yield of 80 bushels per acre. If the landlord had a 75 percent coverage level with a production guarantee of 60 bushels per acre (80 × .75), the landlord would be eligible for a replanting payment if the remaining stand was appraised at less than 54 bushels per acre (60 × .90). If the tenant had a 50 percent coverage level with a production guarantee of 40 bushels per acre (80 × .50), the tenant would be entitled to a replanting payment if the remaining stand was appraised at less than 36 bushels per acre (40 × .90). In this example, if the remaining stand appraised at 40 bushels per acre, the landlord would be eligible for a replant payment but not the tenant.

Comment: Some reinsured companies questioned the elimination of optional units from the Forage Production Crop Provisions and whether the year of implementation is 1999 or 1998.

Response: Optional units are currently not available for forage production. Since the optional unit provisions are being added to the Basic Provisions, those provisions must be made ineffective to maintain the current forage production unit structure. These provisions are not effective until the 1999 crop year since the contract change date for 1998 has passed.

Comment: A reinsured company questioned whether further changes would be made to the Raisin Crop Provisions for the 1998 crop year.

Response: FCIC does not plan further changes to the Raisin Crop Provisions for the 1998 crop year.

Comment: An insurance service organization suggested allowing units for storage and non-storage onions only, and not allow additional units by type. Additional units by type will expose insurers to unnecessary liability and increase premiums.

Response: Under the previous Onion Endorsement, units were allowed by type, *i.e.*, red, yellow, or white onions, in lieu of the traditional units by section or farm serial number. This unit division structure has worked well for onions and is consistent with onion production practices. No change has been made.

Comment: A reinsured company stated that both irrigated and non-irrigated grape vineyards exist in California, and that optional units by these practices should be available. This situation also exists for walnuts and possibly other perennial crops.

Response: Irrigated and non-irrigated practices do exist for several perennial crops in California. However, since both practices rarely exist on the same farm, little or no benefit would be derived by allowing separate optional units for these practices. No changes have been made.

Comment: A reinsured company suggested adding the phrase "an adequate rate of seed for the acreage to produce an acceptable stand" to the definition of planted acreage in the Forage Seeding Crop Provisions. Another reinsured company questioned if the implementation year should be 1998 instead of 1999.

Response: FCIC has revised the provisions to clarify that an adequate amount of seed must be planted. The provisions will not be made effective until the 1999 crop year.

Comment: A reinsured company questioned whether changes were necessary for the proposed rules for hybrid seed corn, green peas and sweet corn provisions that have not been finalized.

Response: Those Crop Provisions, such as table grapes, prunes, etc., that were finalized after publication of the proposed rule will be incorporated into this final rule. Since there were no substantive changes since the publication of those Crop Provisions, additional comments are not necessary.

In addition to the changes described above and minor editorial changes, FCIC has made the following changes to the Basic Provisions and the Crop Provisions.

1. Section 1—Amended the definition of "abandon" for clarification. Added a definition for "approved yield" so this definition can be deleted from the Crop Provisions. Clarified the definition of "application" to indicate that insurance will not be available to a producer who is ineligible under any Federal regulation. Amended the definition of "replanting" to indicate that seed must be replaced with the expectation of producing at least the yield used to determine the production guarantee. Also, added a definition for the term "substantial beneficial interest" for clarification.

2. Section 3(d)(2)—Clarified the provision to indicate that the production guarantee may be revised if the producer fails to accurately report acreage or other material information.

3. Sections 6(a)(1) and (2)—Deleted the references to "fall" and "spring." These terms are not necessary since actual dates are specified.

4. Section 6(g)(1)—Amended the provisions to specify that if the information reported by the insured results in a lower liability than the actual liability the insurance provider determines, the production guarantee or the amount of insurance on the unit will be reduced to an amount that is consistent with the reported information.

5. Section 6(g)(2)—Amended the provisions to specify that if the information reported by the insured results in a higher liability than the actual liability the insurance provider determines, the information contained in the acreage report will be revised to be consistent with the correct information.

6. Section 8(a)—Amended the provisions to specify that the insured crop may also be specified in the Special Provisions.

7. Section 9(c)—Clarified that these provisions are applicable regardless of the provisions in section 8(b)(1), which specify that no insurance will be provided unless a premium rate is provided for the specific practice.

8. Sections 10(c) and (d)—Reorganized and clarified the provisions so that share arrangements and cash arrangements are contained in separate sections.

9. Section 13(b)(2)—Clarified that a replanting payment will not be made for acreage planted prior to the earliest planting date established by the Special Provisions.

10. Section 14(a) (Our Duties)—Amended the provisions to indicate that the reinsured company will pay a loss within 30 days after completion of arbitration or appeal proceedings.

11. Section 17(a) was amended by replacing "crop provisions" with "policy provisions." This change allows both the crop provisions and the Special Provisions to limit prevented planting coverage.

12. Clarified section 17(b) to indicate that additional levels of prevented planting coverage are not available for Catastrophic Risk Protection coverage. Also revised this section to indicate that elected or assigned prevented planting coverage levels may not be increased if a cause of loss that will or could prevent planting is evident prior to the time the producer wishes to change the prevented planting coverage level.

13. Changed the title of section 21 to indicate that provisions regarding access to records are included in the section.

14. Amended the introductory text for the Cotton Crop Provisions and the Extra Long Staple Cotton Crop Provisions to make the provisions effective for the 1998 crop year only.

15. Added the definition of "sales closing date" in the Small Grains Crop Provisions and the Forage Seeding Crop Provisions for clarification.

16. Amended the definition of "planted acreage" in the Fresh Market Sweet Corn, Fresh Market Tomato (dollar plan), and the Fresh Market Pepper Crop Provisions to include a reference to separate planting periods.

17. Changed the effective dates of the Safflower Crop Provisions and the Onion Crop Provisions to the 1998 and succeeding crop years for counties with a December 31 contract change date.

18. Incorporated sections 457.133 (Prune Crop Insurance Provisions); § 457.137 (Green Pea Crop Insurance Provisions); § 457.149 (Table Grape Crop Insurance Provisions); § 457.155 (Processing Bean Crop Insurance Provisions); and § 457.160 (Processing Tomato Crop Insurance Provisions) since these Crop Provisions were finalized after this rule was proposed as follows:

(a) Deleted definitions that are added to the Basic Provisions by this rule. This allows FCIC to remove duplication of provisions from the Crop Provisions.

(b) Modified section 2 because the requirements for optional units have now been incorporated into section 34 of the Basic Provisions.

(c) Deleted, modified, or added late and prevented planting provisions since these provisions are now included in sections 16 and 17 of the Basic Provisions.

(d) Deleted the written agreement provisions because they are now incorporated into section 18 of the Basic Provisions.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule provides prevented planting coverage when applicable, for all crops under the Basic Provisions. This rule must be effective prior to the contract change dates of the crops for which these revised prevented planting provisions are effective. Therefore, public interest requires the agency to act immediately to make these provisions available for as many crops as possible for the 1998 crop year.

List of Subjects in 7 CFR Part 457

Almond; Arizona-California citrus; Coarse grains; Cotton; Cranberry; Dry bean; Extra long staple cotton; Fig; Florida citrus fruit; Forage production; Forage seeding; Fresh market pepper; Fresh market sweet corn; Fresh market tomato (Dollar plan); Fresh market tomato (Guaranteed production plan); Grape; Green pea; Macadamia Nut; Macadamia Tree; Nursery; Onion; Peach; Pear; Plum; Processing bean; Processing tomato; Prune; Raisin; Rice; Safflower; Small grains; Sugar beet; Sugarcane; Sunflower seed; Table grape; Texas citrus tree; Texas citrus fruit; and Walnut.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.2 is amended by removing paragraph (e), redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g) respectively and revising paragraphs (b), (c), and (d) to read as follows:

§ 457.2 Availability of federal crop insurance.

* * * * *

(b) The insurance is offered through companies reinsured by the Federal Crop Insurance Corporation (FCIC) that offer contracts containing the same terms and conditions as the contract set out in this part. These contracts are clearly identified as being reinsured by FCIC. FCIC may offer the contract for the catastrophic level of coverage contained in this part and part 402 directly to the insured through local offices of the Department of Agriculture only if the Secretary determines that the availability of local agents is not adequate. Those contracts are specifically identified as being offered by FCIC.

(c) Except as specified in the Crop Provisions, the Catastrophic Risk Protection Endorsement (part 402 of this chapter) and part 400, subpart T of this chapter, no person may have in force more than one contract on the same crop for the same crop year in the same county.

(d) Except as specified in paragraph (c) of this section, if a person has more than one contract under the Act that provides coverage for the same loss on the same crop for the same crop year in the same county, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the Corporation that the multiple contracts of insurance were inadvertent and without the fault of the person. If the multiple contracts of insurance are shown to be inadvertent and without the fault of the person, the contract with the earliest signature date on the application will be valid and all other contracts on that crop in the county for that crop year will be canceled. No liability for indemnity or premium will attach to the contracts so canceled.

* * * * *

3. Revise § 457.4 to read as follows:

§ 457.4 OMB control numbers.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB number 0563–0053.

4. Section 457.8 paragraph (b) is revised to read as follows:

§ 457.8 The application and policy.

(a) * * *

(b) FCIC or the reinsured company may reject or discontinue the acceptance of applications in any county or of any individual application upon FCIC's determination that the insurance risk is excessive.

* * * * *

5. Section 457.8 is amended by revising the policy to read as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

[OR POLICY ISSUING COMPANY NAME]

Common Crop Insurance Policy

(This is a continuous policy. Refer to section 2.)

FCIC policies

This is an insurance policy issued by the Federal Crop Insurance Corporation (FCIC), a United States government agency. The provisions of the policy are published in the Federal Register and in chapter IV of title 7 of the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.

Throughout this policy, "you" and "your" refer to the named insured shown on the accepted application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Reinsured Policies

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (Act). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy are published in the Federal Register and codified in chapter IV of title 7 of the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC or the company. In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by FCIC. No state guarantee fund will be liable for your loss.

Throughout this policy, "you" and "your" refer to the named insured shown on the accepted application and "we," "us," and "our" refer to the insurance company providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Agreement to insure. In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions (§ 457.8), with (1) controlling (2), etc.

TERMS AND CONDITIONS

Basic Provisions

1. Definitions

Abandon. Failure to continue to care for the crop, providing care so insignificant as to provide no benefit to the crop, or failure to harvest in a timely manner, unless an insured cause of loss prevents you from properly caring for or harvesting the crop or causes damage to it to the extent that most producers of the crop on acreage with similar characteristics in the area would not normally further care for or harvest it.

Acreage report. A report required by paragraph 6 of these Basic Provisions that contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the Special Provisions or as provided in section 6 by which you are required to submit your acreage report.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office, and which shows the amounts of insurance or production guarantees, coverage levels, premium rates, practices, insurable acreage, and other related information regarding crop insurance in the county.

Agricultural commodity. All insurable crops and other fruit, vegetable or nut crops produced for human or animal consumption.

Another use, notice of. The written notice required when you wish to put acreage to another use (see section 14).

Application. The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested. If cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed for the crop. Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

Approved yield. The yield determined in accordance with 7 CFR part 400, subpart (G).

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

Basic unit. All insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis. (Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.) Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in section 34 of these Basic Provisions and in the applicable Crop Provisions.

Cancellation date. The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us or terminated in accordance with the policy terms.

Claim for indemnity. A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the end of the insurance period (see section 14).

Consent. Approval in writing by us allowing you to take a specific action.

Contract. (See "policy").

Contract change date. The calendar date by which we make any policy changes available for inspection in the agent's office (see section 4).

County. Any county, parish, or other political subdivision of a state shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

Coverage. The insurance provided by this policy, against insured loss of production or value, by unit as shown on your summary of coverage.

Coverage begins, date. The calendar date insurance begins on the insured crop, as contained in the Crop Provisions, or the date planting begins on the unit (see section 11 of these Basic Provisions for specific provisions relating to prevented planting).

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period within which the insured crop is normally grown and designated by the calendar year in which the insured crop is normally harvested.

Damage. Injury, deterioration, or loss of production of the insured crop due to insured or uninsured causes.

Damage, notice of. A written notice required to be filed in your agent's office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 14).

Days. Calendar days.

Deductible. The amount determined by subtracting the coverage level percentage you choose from 100 percent. For example, if you elected a 65 percent coverage level, your deductible would be 35 percent (100% − 65% = 35%).

Delinquent account. Any account you have with us in which premiums and interest on those premiums is not paid by the termination date specified in the Crop Provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

Earliest planting date. The earliest date established for planting the insured crop (see Special Provisions and section 13).

End of insurance period, date of. The date upon which your crop insurance coverage ceases for the crop year (see Crop Provisions and section 11).

Field. All acreage of tillable land within a natural or artificial boundary (*e.g.*, roads, waterways, fences, etc.).

Final planting date. The date contained in the Special Provisions for the insured crop by

which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre.

FSA. The Farm Service Agency, an agency of the USDA, or a successor agency.

FSA farm serial number. The number assigned to the farm by the local FSA office.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Insured. The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

Insured crop. The crop for which coverage is available under these Basic Provisions and the applicable Crop Provisions as shown on the application accepted by us.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee or amount of insurance on the irrigated acreage planted to the insured crop.

Late planted. Acreage initially planted to the insured crop after the final planting date.

Late planting period. The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise specified in the Crop Provisions or Special Provisions.

Loss, notice of. The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period, whichever is earlier (see section 14).

Negligence. The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Palmer Drought Severity Index. A meteorological index calculated by the National Weather Service to indicate prolonged and abnormal moisture deficiency or excess.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. "Person" does not include the United States Government or any agency thereof.

Planted acreage. Land in which seed, plants, or trees have been placed, appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

Policy. The agreement between you and us consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured crop, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period, or the final planting date if no late planting period is applicable, unless replanting is generally occurring in the area. Unavailability of seed or plants will not be considered a valid reason for failure to replant.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

Prevented planting. Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

Price election. The amounts contained in the Special Provisions or an addendum thereto, to be used for computing the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy.

Production guarantee (per acre). The number of pounds, bushels, tons, cartons, or other applicable units of measure determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Production report. A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 3). The report contains yield information for previous years, including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop or by measurement of farm-stored production, or by other records of production approved by us on an individual case basis.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the insured acreage with the expectation of producing at least the yield used to determine the production guarantee.

Representative sample. Portions of the insured crop that must remain in the field for examination and review by our loss adjuster when making a crop appraisal, as specified in the Crop Provisions. In certain instances we may allow you to harvest the crop and require only that samples of the crop residue be left in the field.

Sales closing date. A date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

Section. (for the purposes of unit structure) A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

Share. Your percentage of interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

State. The state shown on your accepted application.

Substantial beneficial interest. An interest held by any person of at least 10 percent in the applicant or insured.

Summary of coverage. Our statement to you, based upon your acreage report, specifying the insured crop and the guarantee or amount of insurance coverage provided by unit.

Tenant. A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of "share" above).

Termination date. The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

USDA. United States Department of Agriculture.

Void. When the policy is considered not to have existed for a crop year as a result of concealment, fraud or misrepresentation (see section 27).

Written agreement. A document that alters designated terms of a policy as authorized under these Basic Provisions, the Crop Provisions, or the Special Provisions for the insured crop (see section 18).

2. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us.

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable, (except as stated herein) coverage

level, price election, crop, type, variety, or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number and that person is:

(1) Not on the non-standard classification system list, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop; or

(2) On the non-standard classification system list, the insurance will not be available to that person and any entity in which the person has a substantial beneficial interest.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(e) If any amount due, including premium, is not paid on or before the termination date for the crop on which an amount is due:

(1) For a policy with the unpaid premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

(2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;

(3) Ineligibility will be effective as of the date that the policy was terminated for the crop for which you failed to pay an amount owed and for all other insured crops with coincidental termination dates;

(4) All other policies that are issued by us under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;

(5) If you are ineligible, you may not obtain any crop insurance under the Act until payment is made, you execute an agreement to repay the debt and make the payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy;

(6) If you execute an agreement to repay the debt and fail to timely make any scheduled payment, you will be ineligible for crop insurance effective on the date the payment was due until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate;

(7) Once the policy is terminated, the policy cannot be reinstated for the current crop year unless the termination was in error;

(8) After you again become eligible for crop insurance, if you want to obtain coverage for your crops, you must reapply on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year); and

(9) If we deduct the amount due us from an indemnity, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

(10) For example, if crop A, with a termination date of October 31, 1997, and crop B, with a termination date of March 15, 1998, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 1997, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 1998. If you enter an agreement to repay the debt on April 25, 1998, you can apply for insurance for crop A by the October 31, 1998, sales closing date and crop B by the March 15, 1999, sales closing date. If you fail to make a scheduled payment on November 1, 1998, you will be ineligible for crop insurance effective on November 1, 1998, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

(f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(g) We may terminate your policy if no premium is earned for 3 consecutive years.

(h) The cancellation and termination dates are contained in the Crop Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) For each crop year, the production guarantee or amount of insurance, coverage level, and price at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the Special Provisions or in the actuarial documents.

(b) You may select only one coverage level from among those offered by us for each insured crop. You may change the coverage level, price election, or amount of insurance for the following crop year by giving written notice to us not later than the sales closing date for the insured crop. Since the price election or amount of insurance may change each year, if you do not select a new price election or amount of insurance on or before the sales closing date, we will assign a price election or amount of insurance which bears the same relationship to the price election schedule as the price election or amount of insurance that was in effect for the preceding year. (For example: If you selected 100 percent of the market price for the previous crop year and you do not select a new price election for the current crop year, we will assign 100 percent of the market price for the current crop year.)

(c) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date unless otherwise stated in the Special Provisions:

(1) If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your approved yield for the purpose of determining your coverage for the current crop year.

(2) If you have filed a claim for any crop year, the documents signed by you which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(d) We may revise your production guarantee for any unit, and revise any indemnity paid based on that production guarantee, if we find that your production report under paragraph (c) of this section:

(1) Is not supported by written verifiable records in accordance with the definition of production report; or

(2) Fails to accurately report actual production, acreage, or other material information.

(e) In addition to the price election or amount of insurance available on the contract change date, we may provide an additional price election or amount of insurance no later than 15 days prior to the sales closing date. You must select the additional price election or amount of insurance on or before the sales closing date for the insured crop. These additional price elections or amounts of insurance will not be less than those available on the contract change date. If you elect the additional price election or amount of insurance any claim settlement and amount of premium will be based on this amount.

4. Contract Changes

(a) We may change the terms of your coverage under this policy from year to year.

(b) Any changes in policy provisions, price elections, amounts of insurance, premium rates, and program dates will be provided by us to your crop insurance agent not later than the contract change date contained in the Crop Provisions, except that price elections may be offered after the contract change date in accordance with section 3. You may view the documents or request copies from your crop insurance agent.

(c) You will be notified, in writing, of changes to the Basic Provisions, Crop

Provisions, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

5. Liberalization

If we adopt any revision that broadens the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

6. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date contained in the Special Provisions, except as follows:

(1) If you insure multiple crops that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 6(a) (1) and (2):

(i) If the Special Provisions designate separate planting periods for a crop, you must submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) If planting of the insured crop continues after the final planting date or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections (a)(1) or (2); or

(C) Five (5) days after the end of the late planting period for the insured crop, if applicable.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report, on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) All acreage of the crop in the county (insurable and not insurable) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The date the insured crop was planted.

(d) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity that may be due, you may not revise this report after the acreage reporting date without our consent.

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed.

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit.

(g) If the information reported by you on the acreage report for share, acreage, practice, type or other material information is inconsistent with the information that is determined to actually exist for a unit and results in:

(1) A lower liability than the actual liability determined, the production guarantee or amount of insurance on the unit will be reduced to an amount that is consistent with the reported information. In the event that insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity; and

(2) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information. If we discover that you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years that substantiates your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense.

(h) Errors in reporting units may be corrected by us at the time of adjusting a loss to reduce our liability and to conform to applicable unit division guidelines.

7. Annual Premium

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the premium billing date specified in the Special Provisions. The premium due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date specified in the Crop Provisions.

(b) Any amount you owe us related to any crop insured with us under the authority of the Act will be deducted from any prevented planting payment or indemnity due you for any crop insured with us under the authority of the Act.

(c) The annual premium amount is determined, as applicable, by either:

(1) Multiplying the production guarantee per acre times the price election, times the premium rate, times the insured acreage, times your share at the time coverage begins, and times any premium adjustment percentages that may apply; or

(2) Multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time coverage begins, and times any premium adjustment percentages that may apply.

(d) The premium will be computed using the price election or amount of insurance you elect or that we assign in accordance with section 3(b).

8. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special Provisions and must be grown on insurable acreage.

(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates, production guarantees or amounts of insurance have been established, unless insurance is allowed by a written agreement;

(2) Of a type, class or variety established as not adapted to the area or excluded by the policy provisions;

(3) That is a volunteer crop;

(4) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions;

(5) That is planted for the development or production of hybrid seed or for experimental purposes, unless permitted by the Crop Provisions or by written agreement to insure such crop; or

(6) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

9. Insurable Acreage

(a) Acreage planted to the insured crop in which you have a share is insurable except acreage:

(1) That has not been planted and harvested within one of the 3 previous crop years, unless:

(i) Such acreage was not planted:

(A) To comply with any other USDA program;

(B) Because of crop rotation, (e.g., corn, soybean, alfalfa; and the alfalfa remained for 4 years before the acreage was planted to corn again);

(C) Due to an insurable cause of loss that prevented planting; or

(D) Because a perennial crop was grown on the acreage;

(ii) Such acreage was planted but was not harvested due to an insurable cause of loss; or

(iii) The Crop Provisions specifically allow insurance for such acreage;

(2) That has been strip-mined, unless otherwise approved by written agreement, or unless an agricultural commodity other than a cover, hay, or forage crop (except corn silage), has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) That is interplanted, unless allowed by the Crop Provisions;

(5) That is otherwise restricted by the Crop Provisions or Special Provisions; or

(6) That is planted in any manner other than as specified in the policy provisions for the crop unless a written agreement to such planting exists.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities and adequate water, or the reasonable expectation of receiving adequate water at the time coverage begins, to carry out a good irrigation practice. If you knew or had reason to know that your water may be reduced before coverage begins, no reasonable expectation exists.

(c) Notwithstanding the provisions in section 8(b)(1), if acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as "non-irrigated," or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage that we will insure to the amount allowed under any acreage limitation program established by the United States Department of Agriculture if we notify you of that restriction prior to the sales closing date.

10. Share Insured.

(a) Insurance will attach only to the share of the person completing the application and will not extend to any other person having a share in the crop unless the application clearly states that:

(1) The insurance is requested for an entity such as a partnership or a joint venture; or

(2) You as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. In this event, you must provide evidence of the other party's approval (lease, power of attorney, etc.). Such evidence will be retained by us. You also must clearly set forth the percentage shares of each person on the acreage report.

(b) We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be included in your share.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for both a minimum payment (such as a specified amount of cash, bushels, pounds, *etc.*,) and a crop share will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for either a minimum payment or a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater) will be considered a cash lease.

11. Insurance Period.

(a) Except for prevented planting coverage (see section 17), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 2);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

(b) Coverage ends at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on a unit;

(4) The calendar date contained in the Crop Provisions for the end of the insurance period;

(5) Abandonment of the crop on the unit; or

(6) As otherwise specified in the Crop Provisions.

12. Causes of Loss.

The insurance provided is against only unavoidable loss of production directly caused by specific causes of loss contained in the Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(b) Failure to follow recognized good farming practices for the insured crop;

(c) Water contained by any governmental, public, or private dam or reservoir project;

(d) Failure or breakdown of irrigation equipment or facilities; or

(e) Failure to carry out a good irrigation practice for the insured crop, if applicable.

13. Replanting Payment.

(a) If allowed by the Crop Provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable).

(b) No replanting payment will be made on acreage:

(1) On which our appraisal establishes that production will exceed the level set by the Crop Provisions;

(2) Initially planted prior to the earliest planting date established by the Special Provisions; or

(3) On which one replanting payment has already been allowed for the crop year.

(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the Crop Provisions.

(d) No replanting payment will be paid if we determine it is not practical to replant.

14. Duties in the Event of Damage or Loss.

Your Duties—

(a) In case of damage to any insured crop you must:

(1) Protect the crop from further damage by providing sufficient care;

(2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop (we may accept a notice of loss provided later than 72 hours after your initial discovery if we still have the ability to accurately adjust the loss);

(3) Leave representative samples intact for each field of the damaged unit as may be required by the Crop Provisions; and

(4) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(i) Show us the damaged crop;

(ii) Allow us to remove samples of the insured crop; and

(iii) Provide us with records and documents we request and permit us to make copies.

(b) You must obtain consent from us before, and notify us after you:

(1) Destroy any of the insured crop that is not harvested;

(2) Put the insured crop to an alternative use;

(3) Put the acreage to another use; or

(4) Abandon any portion of the insured crop. We will not give consent for any of the actions in sections 14(b) (1) through (4) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(c) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period. This claim must include all the information we require to settle the claim.

(d) Upon our request, you must:

(1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and

(2) Submit to examination under oath.

(e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

(f) All notices required in this section that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after:

(1) We reach agreement with you;

(2) Completion of arbitration or appeal proceedings; or

(3) The entry of a final judgment by a court of competent jurisdiction.

(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30-day period.

(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.

(d) We recognize and apply the loss adjustment procedures established or approved by the Federal Crop Insurance Corporation.

15. Production Included in Determining Indemnities.

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

(c) If you elect to exclude hail and fire as insured causes of loss and the insured crop

is damaged by hail or fire, appraisals will be made as described in the applicable Form FCI–78 "Request To Exclude Hail and Fire" or a form containing the same terms approved by the Federal Crop Insurance Corporation.

16. Late Planting.

Unless limited by the Crop Provisions, insurance will be provided for acreage planted to the insured crop after the final planting date in accordance with the following:

(a) The production guarantee or amount of insurance for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.

(b) Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:

(1) The production guarantee or amount of insurance for each acre planted as specified in this subsection will be determined by multiplying the production guarantee or amount of insurance that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) by an insurable cause occurring within the insurance period for prevented planting coverage;

(3) The production guarantee for any acreage on which an insured cause of loss prevents completion of planting, as specified in the definition of "planted acreage" (*e.g.*, seed is broadcast on the soil surface but cannot be incorporated), will be determined as indicated in this section; and

(4) All production from acreage as specified in this section will be included as production to count for the unit.

(c) The premium amount for insurable acreage specified in section 16 (a) or (b) will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid).

17. Prevented Planting

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You were prevented from planting the insured crop by an insured cause that occurs:

(i) On or after the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date. Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence; and

(2) You include any acreage of the insured crop that was prevented from being planted on your acreage report.

(b) The actuarial documents may contain additional levels of prevented planting coverage that you may purchase for the insured crop:

(1) Such purchase must be made on or before the sales closing date.

(2) If you do not purchase one of those additional levels by the sales closing date, you will receive the prevented planting coverage specified in the Crop Provisions.

(3) If you have a Catastrophic Risk Protection Endorsement for any crop, the additional levels of prevented planting coverage will not be available for that crop.

(4) You may not increase your elected or assigned prevented planting coverage level for any crop year if a cause of loss that will or could prevent planting is evident prior to the time you wish to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Drought or failure of the irrigation water supply will not be considered to be an insurable cause of loss for the purposes of prevented planting unless, on the final planting date:

(1) For non-irrigated acreage, the area that is prevented from being planted is classified by the Palmer Drought Severity Index as being in a severe or extreme drought; or

(2) For irrigated acreage, there is not a reasonable probability of having adequate water to carry out an irrigated practice.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 17(f) (4) or (5). The eligible acres for each insured crop will be determined in accordance with the following table.

Type of crop	Eligible acres if, in any of the 4 most recent crop years, you have produced any crop for which insurance was available	Eligible acres if, in any of the 4 most recent crop years, you have not produced any crop for which insurance was available
(i) The crop is not required to be contracted with a processor to be insured.	(A) The maximum number of acres certified for APH purposes or reported for insurance for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a substitute crop other than an approved cover crop). The number of acres determined above for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that you submit proof to us that for the current crop year you have purchased or leased additional land or that acreage will be released from any USDA program which prohibits harvest of a crop. Such acreage must have been purchased, leased, or released from the USDA program, in time to plant it for the current crop year using good farming practices. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program.	(B) The number of acres specified on your intended acreage report which is submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us. The total number of acres listed may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report. The number of acres determined above for a crop may only be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the number of acres listed on your intended acreage report, if you meet the conditions stated in section 17(e)(1)(i)(A).

Type of crop	Eligible acres if, in any of the 4 most recent crop years, you have produced any crop for which insurance was available	Eligible acres if, in any of the 4 most recent crop years, you have not produced any crop for which insurance was available
(ii) The crop must be contracted with a processor to be insured.	(A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. (For the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used.).	(B) The number of acres of the crop as determined in section 17(e)(1)(ii)(A).

(2) Any eligible acreage determined in accordance with the table contained in section 17(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 16(b).

(f) Regardless of the number of eligible acres determined in section 17(e), prevented planting coverage will not be provided for any acreage:

(1) If at least one contiguous block of prevented planting acreage does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. We will assume that any prevented planting acreage within a field that contains planted acreage would have been planted to the same crop that is planted in the field, unless the prevented planting acreage constitutes at least 20 acres or 20 percent of the insurable acreage in the field and you can prove that you have previously produced both crops in the same field in the same crop year;

(2) For which the actuarial documents do not designate a premium rate unless a written agreement designates such premium rate;

(3) Used for conservation purposes or intended to be left unplanted under any program administered by the USDA;

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year (excluding share arrangements), unless you have coverage greater than the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(5) On which the insured crop is prevented from being planted, if any crop from which any benefit is derived under any program administered by the USDA is planted and fails, or if any crop is harvested, hayed or grazed on the same acreage in the same crop year (other than a cover crop which may be hayed or grazed after the final planting date for the insured crop), unless you have coverage greater than that applicable to the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(6) Of a crop that is prevented from being planted if a cash lease payment is also received for use of the same acreage in the same crop year (not applicable if acreage is leased for haying or grazing only) (If you state that you will not be cash renting the acreage and claim a prevented planting payment on the acreage, you could be subject to civil and criminal sanctions if you cash rent the acreage and do not return the prevented planting payment for it);

(7) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(8) That exceeds the number of acres eligible for a prevented planting payment;

(9) That exceeds the number of eligible acres physically available for planting;

(10) For which you cannot provide proof that you had the inputs available to plant and produce a crop with the expectation of at least producing the yield used to determine the production guarantee or amount of insurance (Evidence that you have previously planted the crop on the unit will be considered adequate proof unless your planting practices or rotational requirements show that the acreage would have remained fallow or been planted to another crop);

(11) Based on an irrigated practice production guarantee or amount of insurance unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting; or

(12) Of a crop type that you did not plant in at least one of the four most recent years. Types for which separate price elections, amounts of insurance, or production guarantees are available must be included in your APH database in at least one of the most recent four years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 17(e)(1)(i)(B).

(g) The prevented planting payment for any eligible acreage within a unit will be determined by:

(1) Multiplying the liability per acre for timely planted acreage of the insured crop (the amount of insurance per acre or the production guarantee per acre multiplied by the price election for the crop, or type if applicable) by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 17(g)(1) by the number of eligible prevented planting acres in the unit; and

(3) Multiplying the result of section 17(g)(2) by your share.

18. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 18(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one crop year (If a written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if you demonstrate your physical inability to apply prior to the sales closing date, or it is submitted in accordance with any regulation which may be promulgated under 7 CFR part 400, and after inspection of the acreage by us, if required, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

19. Crops as Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

For FCIC policies

20. Appeals

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those

determinations in accordance with appeal provisions published at 7 CFR part 11.

For reinsured policies

20. Arbitration

(a) If you and we fail to agree on any factual determination, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) No award determined by arbitration or appeal can exceed the amount of liability established or which should have been established under the policy.

21. Access to Insured Crop and Records, and Record Retention

(a) We reserve the right to examine the insured crop as often as we reasonably require.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records used to establish the basis for the production report for each unit. You must also provide upon our request, separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records will, at our option, result in:

(1) Cancellation of the policy;

(2) Assignment of production to the units by us;

(3) Combination of the optional units; or

(4) A determination that no indemnity is due.

(c) Any person designated by us will, at any time during the record retention period, have access:

(1) To any records relating to this insurance at any location where such records may be found or maintained; and

(2) To the farm.

(d) By applying for insurance under the authority of the Act or by continuing insurance for which you previously applied, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist us in obtaining all records which we request from third parties.

22. Other Insurance

(a) *Other Like Insurance.* You must not obtain any other crop insurance issued under the authority of the Act on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

(b) *Other Insurance Against Fire.* If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, and you have not excluded coverage for fire from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

(c) For the purpose of subsection (b) of this section the amount of loss from fire will be the difference between the fair market value of the production of the insured crop on the unit involved before the fire and after the fire, as determined from appraisals made by us.

23. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provisions (title XVII) of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated under the Act by USDA. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

For FCIC policies

24. Amounts Due Us

(a) Any amount illegally or erroneously paid to you or that is owed to us but is delinquent may be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action.

(b) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium amount due us. With respect to any premiums owed, interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(c) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned:

(1) Interest will start on the date that notice is issued to you for the collection of the unearned amount;

(2) Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us;

(3) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us;

(4) Penalties and interest will be charged in accordance with 31 U.S.C. 3717 and 4 CFR part 102; and

(5) The penalty for accounts more than 90 days delinquent is an additional 6 percent per annum.

(d) Interest on any amount due us found to have been received by you because of fraud, misrepresentation or presentation by you of a false claim will start on the date you received the amount with the additional 6 percent penalty beginning on the 31st day after the notice of amount due is issued to you. This interest is in addition to any other amount found to be due under any other federal criminal or civil statute.

(e) If we determine that it is necessary to contract with a collection agency, refer the debt to government collection centers, the Department of Treasury Offset Program, or to employ an attorney to assist in collection, you agree to pay all the expenses of collection.

(f) All amounts paid will be applied first to expenses of collection if any, second to the reduction of any penalties which may have been assessed, then to reduction of accrued interest, and finally to reduction of the principal balance.

For reinsured policies

24. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see subsection (d) of this section) if any, second to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(e) A portion of the amount paid to you to which you were not entitled may be collected through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

25. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us, you must do so within 12 months of the date of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.

26. Payment and Interest Limitations

(a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

27. Concealment, Misrepresentation or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you may still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

28. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the end of the insurance period, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

30. Subrogation (Recovery of Loss From A Third Party)

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

31. Applicability of State and Local Statutes

If the provisions of this policy conflict with statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations in conflict with federal statutes, this policy, and the applicable regulations do not apply to this policy.

32. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

33. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your crop insurance agent. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

34. Unit Division

(a) Unless limited by the Crop Provisions or Special Provisions, a basic unit as defined in section 1 of the Basic Provisions may be divided into optional units if, for each optional unit, you meet the following:

(1) You must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit;

(2) All optional units you select for the crop year are identified on the acreage report for that crop year (Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason);

(3) You have records, that are acceptable to us, of planted acreage and the production from each optional unit for at least the last crop year used to determine your production guarantee;

(4) You have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each optional unit is kept separate until loss adjustment is completed by us; and

(b) Each optional unit must meet one or more of the following, unless otherwise specified in the Crop Provisions or allowed by written agreement:

(1) Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure such as Spanish grants, as the equivalents of sections for unit purposes. In areas which have not been surveyed using sections, section equivalents or in areas where boundaries are not readily discernible, each optional unit must be located in a separate FSA farm serial number; and

(2) In addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number, optional units may be based on irrigated and non-irrigated acreage. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used may be considered as irrigated acreage if the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit. In this case, production from both practices will be used to determine your approved yield.

(c) Optional units are not available for crops insured under a Catastrophic Risk Protection Endorsement.

(d) If you do not comply fully with the provisions in this section, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined by us to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

6. Amend § 457.101 as follows:

(a) Revise the introductory text to read as follows:

§ 457.101 Small grains crop insurance provisions.

The small grains crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of December 31, and for the 1999 and succeeding crop years in counties with a contract change date of June 30, are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the alphabetic paragraph designations in section 1 and the definitions of "days," "final planting date," "good farming practices," "interplanted," "irrigated practice," "late planted," "late planting period," "practical to replant," "production guarantee," "replanting," and "timely planted;" revise the definitions of "planted acreage" and "prevented planting," and add the definition of "sales closing date" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, except for flax, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Flax seed must initially be planted in rows to be considered planted, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Prevented planting—In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

Sales closing date—In lieu of the definition contained in the Basic Provisions, a date contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both winter and spring types of the insured crop and you plant any insurable acreage of the winter type, you may not change your crop insurance coverage after the sales closing date for the winter type.

* * * * *

(d) Remove the words "Common Crop Insurance Policy" and add in their place, the words "Basic Provisions" in the following places:

i. Section 3;
ii. Section 4;
iii. Sections 6 (b)(1) and (b)(2);
iv. Section 7, introductory text;
v. Section 8, introductory text;
vi. Sections 9(a)(1) and (c); and
vii. Section 10.

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 6 paragraphs (a) and (b)(2).

(f) Remove the word "provides" and add in its place, the word "provide" in section 6 paragraph (b)(2), the first sentence.

(g) Revise section 2 to read as follows:

* * * * *

2. Unit Division

In addition to the requirements of section 34(b) of the Basic Provisions, for wheat only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat or only initially planted spring wheat. Optional units may be established in this manner only in counties having both winter and spring type final planting dates as designated in the Special Provisions.

* * * * *

(h) Revise section 6(b)(1) to read as follows:

* * * * *

6. Insured Crop

(a) * * *
(b) * * *

(1) May report all planted acreage when you report your acreage for the crop year and specify any acreage to be destroyed as uninsurable acreage. (By doing so, no coverage will be considered to have attached on the specified acreage and no premium will be due for such acreage. If you do not destroy such acreage, you will be subject to the under-reporting provisions contained in section 6 of the Basic Provisions); or

* * * * *

(i) Revise sections 7 (a)(1)(i), (a)(1)(ii), and (a)(2)(i) to read as follows:

* * * * *

7. Insurance Period

* * * * *

(a) * * *
(1) * * *

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the insured crop except as allowed in section 12 of these Crop Provisions and section 16 of the Basic Provisions.

(ii) Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the surrounding area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

(2) * * *

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the type (winter or spring) except as allowed in section 12 of these Crop Provisions and section 16 of the Basic Provisions.

* * * * *

(j) Revise section 12 to read as follows:

* * * * *

12. Late Planting

A late planting period is not applicable to fall-planted wheat. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions also contain a final planting date for spring wheat will not be insured. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions contain only a fall final planting date will not be insured unless you were prevented from planting the winter wheat by the fall final planting date. Such acreage will be insurable, and the production guarantee and premium for the acreage will be determined in accordance with sections 16 (b) and (c) of the Basic Provisions.

(k) Add a section 13 to read as follows:

* * * * *

13. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, in counties for which the Special Provisions designate a spring final planting date, your prevented planting production guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

(b) Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

7. Amend § 457.104 as follows:

(a) Revise the introductory text to read as follows:

§ 457.104 Cotton crop insurance provisions.

The cotton crop insurance provisions for the 1998 crop year are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the alphabetic paragraph designations in section 1 and the definitions of "days," "final planting date," "good farming practices," "interplanted," "irrigated practice," "late planted," "late planting period," "practical to replant," "prevented planting," "replanting," "timely planted," and "written agreement" and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, cotton must be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring planted crop.

* * * * *

(d) Remove the words "Common Crop Insurance Policy" and add in their place, the words "Basic Provisions" in the following places:

i. Section 3;
ii. Section 4;
iii. Section 5, introductory text;
iv. Section 6, introductory text;
v. Section 7, introductory text;
vi. Sections 8 (a) and (b);
vii. Section 9, introductory text; and
viii. Section 10(a).

* * * * *

(e) Remove section 2.

(f) Remove section 13 and redesignate sections 3 through 12 as sections 2 through 11 respectively.

(g) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in redesignated section 5.

(h) Revise redesigned section 6(b) to read as follows:

* * * * *

6. Insurable Acreage

* * * * *

(a) * * *

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

* * * * *

(i) Revise redesignated section 7(a) to read as follows:

* * * * *

7. Insurance Period

(a) In-lieu of section 11(b)(2) of the Basic Provisions, insurance will end upon the removal of the cotton from the field.

* * * * *

(j) Amend redesignated section 10(c)(1)(i)(E) to change the section reference therein from "10" to "9".

* * * * *

(k) Amend redesignated section 10(c)(1)(iii) to change the section reference therein from "11.(d)" to "10(d)".

* * * * *

(l) Revise redesignated section 11 to read as follows:

* * * * *

11. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting production guarantee will be based on your approved yield without adjustment for skip-row planting patterns.

(b) Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

* * * * *

8. Amend § 457.105 as follows:

(a) Revise the introductory text to read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

The extra long staple cotton crop insurance provisions for the 1998 crop year are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations in section 1 and the definitions of "days," "final planting date," "good farming practices," "interplanted," "irrigated practice," "practical to replant," "prevented planting," "timely planted," and "written agreement" and revise the definition of "planted acreage" to read as follows:

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, cotton must be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring planted crop.

* * * * *

(d) Remove the words "Common Crop Insurance Policy" and add in their place, the words "Basic Provisions" in the following places:

i. Section 3;
ii. Section 4;
iii. Section 5;
iv. Section 6, introductory text;
v. Section 7, introductory text;
vi. Sections 8 (a) and (b);
vii. Section 9, introductory text; and
viii. Section 10(a).

(e) Remove section 2.

(f) Redesignate sections 3 through 13 as sections 2 through 12 respectively.

(g) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in redesignated section 5.

(h) Revise redesignated section 6(b) to read as follows:

* * * * *

6. Insurable Acreage

* * * * *

(a) * * *

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

* * * * *

(i) Revise redesignated section 7(a) to read as follows:

* * * * *

7. Insurance Period

(a) In lieu of section 11(b)(2) of the Basic Provisions, insurance will end upon the removal of the cotton from the field.

* * * * *

(j) Amend redesignated section 10(c)(1)(i)(E) to change the section reference therein from "10" to "9".

(k) Amend redesignated section 10(c)(1)(iii)(A) to change the section reference therein from "11.(d) and (e)" to "10(d) and (e)".

(l) Amend redesignated section 10(c)(1)(iii)(B) to change the section reference therein from "11.(f)" to "10(f)".

(m) Amend redesignated section 10(e) to change the section reference therein from "11.(d)" to "10(d)".

(n) Revise redesignated section 11 to read as follows:

* * * * *

11. Late Planting

A late planting period is not applicable to ELS cotton. Any ELS cotton that is planted after the final planting date will not be

insured unless you were prevented from planting it by the final planting date. Such acreage will be insurable, and the production guarantee and premium for the acreage will be determined in accordance with section 16 of the Basic Provisions.

* * * * *

(o) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting production guarantee will be based on your approved yield without adjustment for skip-row planting patterns.

(b) Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

9. Amend § 457.106 as follows:

(a) Revise the introductory text to read as follows:

§ 457.106 Texas citrus tree crop insurance provisions.

The Texas citrus tree crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "deductible," "FSA," "non-contiguous land," and "written agreement" in section 1.

(d) In sections 3(b) (1) and (2) remove the words "actuarial 1 table" and add in their place the words "actuarial documents" and remove the words "actuarial table" and add in their place, the words "actuarial documents and" in section 7(a).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Sections 34(a) (1), (3), and (4) of the Basic Provisions are not applicable.

(c) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(d) Instead of establishing optional units by section, section equivalent, or FSA farm serial number optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(f) Revise section 13 to read as follows:

* * * * *

13. Late and prevented planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

10. Amend § 457.107 as follows:

(a) Revise the introductory text to read as follows:

§ 457.107 Florida citrus fruit crop insurance provisions.

The Florida citrus fruit crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "non-contiguous land," and "written agreement" in section 1.

(d) Remove the words "Actuarial Table" and add in their place, the words "actuarial documents" in the following places:

i. Section 1, definition of "amount of insurance;" and

ii. Section 6(a).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(c) Instead of establishing optional units by section, section equivalent, or FSA farm serial number, optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(f) Revise section 6(d) to change the section reference therein from "6(f)" to "6."

(g) Revise section 11 to read as follows:

* * * * *

11. Late and prevented planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

11. Amend § 457.108 as follows:

(a) Revise the introductory text to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

The sunflower seed crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of "days," "final planting date," "good farming practices," "interplanted," "irrigated practice," "late planted," "late planting period," "practical to replant," "prevented planting," "production guarantee," "replanting," "timely planted," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, sunflower seed must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Remove section 2.

(e) Redesignate sections 3 through 13 as sections 2 through 12 respectively.

(f) Amend redesignated section 4 to change the section reference therein from "2.(f)" to "2".

(g) Remove the word "subsection" and add in its place the word "section" in redesignated section 4.

(h) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in redesignated section 5, introductory text.

(i) Revise section 6(b) to read as follows:

* * * * *

6. Insurable Acreage

* * * * *

(a) * * *

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

(j) Revise section 9(a) to read as follows:

* * * * *

9. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, a replanting payment for sunflower seed is allowed if the sunflowers are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

* * * * *

(k) Amend redesignated section 9(b) to change the section reference therein from "10.(c)" to "9(c)."

(l) Remove the word "subsection" and add in its place the word "section" in redesignated section 9(b).

(m) Amend redesignated section 11(c)(1)(iii) to change the section reference therein from "12.(d)" to "11(d)".

(n) Amend redesignated section 11(d)(4) to change the section reference therein from "12.(d)(2) and (3)" to "11(d) (2) and (3)".

(o) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

12. Amend § 457.109 as follows:

(a) Revise the introductory text to read as follows:

§ 457.109 Sugar beet crop insurance provisions.

The sugar beet crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of November 30, and for the 1999 and succeeding crop years in counties with a contract change date of April 30, are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practice," "late planted," "late planting period," "prevented planting," "replanting," "timely planted," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, sugar beets must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

In addition to the requirements of section 34 of the Basic Provisions, basic units may be divided into optional units only if you have a sugar beet processor contract that requires the processor to accept all production from a number of acres specified in the sugar beet processor contract. Acreage insured to fulfill a sugar beet processor contract which provides that the processor will accept a designated amount of production or a combination of acreage and production will not be eligible for optional units.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in redesignated section 7(a).

* * * * *

(f) Revise section 14 to read as follows:

* * * * *

14. Late Planting

The late planting provisions contained in section 16 of the Basic Provisions are not applicable in California counties with a July 15 cancellation date.

* * * * *

(g) Revise section 15 to read as follows:

* * * * *

15. Prevented Planting

(a) The prevented planting provisions contained in section 17 of the Basic Provisions are not applicable in California counties with a July 15 cancellation date.

(b) Except in those counties indicated in section 15(a), your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

13. Amend § 457.110 as follows:

(a) Revise the introductory text to read as follows:

§ 457.110 Fig crop insurance provisions.

The fig crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of "good farming practices," "irrigated practice," "non-contiguous land," and "production guarantee" in section 1.

(d) Remove the words "Common Crop Insurance Policy" and add in their place, the words "Basic Provisions" in the following places:

i. Section 3;

ii. Section 4 ;

iii. Section 8, introductory text; and

iv. Sections 9 (a) and (b).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each fig type designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(f) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 7, introductory text.

(g) Add a section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

14. Amend § 457.111 as follows:

(a) Revise the introductory text to read as follows:

§ 457.111 Pear crop insurance provisions.

The pear crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows:

(1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "good farming practices," "irrigated practice," "non-contiguous," "production guarantee (per acre)," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(b) Instead of establishing optional units by section, section equivalent, or FSA farm serial number optional units may be established if each optional unit is located on non-contiguous land.

(c) In addition to, or instead of, establishing optional units by section, section equivalent, FSA farm serial number, or on non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions. The requirements of section 34(a)(1) of the Basic Provisions are not applicable for this method of unit division.

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in the following places:

i. Section 6, introductory text; and

ii. Sections 13(a)(1) and (3).

(f) Remove the word "designates" and add in its place, the word "designate" in section 13(a)(1).

(g) Revise section 12 to read as follows:

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

* * * * *

15. Amend § 457.113 as follows:

(a) Revise the introductory text to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

The coarse grains crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of "days," "final planting date," "good farming practices," "interplanted," "irrigated practice," "late planted," "late planting period," "practical to replant," "prevented planting," "replanting," "timely planted," and "written agreement" in section 1 and revise the definitions of "planted acreage" and "production guarantee" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows (corn must be planted in rows far enough apart to permit mechanical cultivation), unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Production guarantee (per acre)—In lieu of the definition contained in the Basic Provisions, the number of bushels (tons for corn insured as silage) determined by multiplying the approved actual production history (APH) yield per acre, calculated in accordance with 7 CFR part 400, subpart G, by the coverage level percentage you elect.

* * * * *

(d) Remove the words "Common Crop Insurance Policy" and add in their place, the words "Basic Provisions" in the following places:

i. Section 3(a);

ii. Section 4;

iii. Section 5;

iv. Section 6(a);

v. Section 7;

vi. Section 8, introductory text;

vii. Section 9, introductory text;

viii. Section 10(a); and

ix. Sections 11(a), (b)(1) and (2).

* * * * *

(e) Remove section 2.

(f) Redesignate sections 3 through 13 as sections 2 through 12 respectively.

(g) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in redesignated sections 5(a) and (c).

(h) Remove the word "provides" and add in its place, the word "provide" in redesignated section 5(c).

(i) Amend redesignated section 4 to change the section reference therein from 2(f) to 2.

(j) Remove the word "subsection" and add in its place the word "section" in redesignated section 4.

(k) Amend redesignated section 5(a)(3)(i) to change the section reference therein from "6(b)(1)" to "5(b)(1)".

(l) Amend redesignated section 5(b) to change the section reference therein from "6(a)" to "5(a)".

(m) Amend redesignated section 5(b)(1) to change the section reference therein from "6(c)" to "5(c)".

(n) Amend redesignated sections 5(d) and (e) to change the section references therein from "6(a)" to "5(a)".

(o) Revise redesignated section 6 to read as follows:

* * * * *

6. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

(p) Revise redesignated section 9(a) to read as follows:

* * * * *

9. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, replanting payments for coarse grains are allowed if the coarse grains are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

* * * * *

(q) Amend redesignated section 9(b) to change the section references therein from "10(c)" to "9(c)".

(r) Amend redesignated sections 11(b)(2)(iv) and (11)(c) to change the section references therein from "12(d)" to "11(d)".

(s) Amend redesignated section 11(b)(2)(iv) to change the section reference therein from "section 3" to "section 2".

(t) Amend redesignated section 11(c)(1)(iii) to change the section reference therein from "12(e)" to "11(e)".

(u) Amend redesignated section 11(d)(2) to change the section reference therein from "12(c)(1)" to "11(c)(1)".

(v) Amend redesignated section 11(e) to change the section reference therein from "12(f)" to "11(f)".

(w) Amend redesignated section 11(e)(4) to change the section reference therein from "12(e)(2) and (3)" to "11(e)(2) and (3)".

(x) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

16. Amend § 457.114 as follows:

(a) Amend the introductory text to read as follows:

§ 457.114 Nursery crop insurance provisions.

The nursery crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definition of "written agreement" in section 1 and revise the definition of "irrigated practice" to read as follows:

1. Definitions

* * * * *

Irrigated practice—In lieu of the definition contained in the Basic Provisions, a method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to maintain the amount of insurance on the nursery plant inventory.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

In lieu of the definition of "basic unit" and section 34 of the Basic Provisions, a unit consists of all growing locations in the county within a five mile radius of the named insured locations designated on your nursery plant inventory summary. Any growing location more than five miles from any other growing location, but within the county, may be designated as a separate basic unit or be included in the closest unit listed on your nursery plant inventory summary.

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 8, introductory text.

(f) Add section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

17. Amend § 457.116 as follows:

(a) Revise the introductory text to read as follows:

§ 457.116 Sugarcane crop insurance provisions.

The sugarcane crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of "CFSA," "good farming practices," "interplanted," "irrigated practice," "production guarantee," and "written agreement" in section 1.

(d) Remove section 2.

(e) Redesignate sections 3 through 11 as sections 2 through 10 respectively.

(f) Amend redesignated section 4 to change the section reference therein from "2.(f)" to "2".

(g) Remove the word "subsection" and add in its place, the word "section" in redesignated section 4.

(h) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in redesignated section 5, introductory text.

(i) Amend redesignated section 7(a)(2) to change the section reference therein from "8(a)(3)" to "7(a)(3)".

(j) Amend redesignated section 10(c)(1)(v) to change the section reference therein from "10(a)(2)" to "9(a)(2)".

(k) Add a section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

18. Amend § 457.117 as follows:

(a) Revise the introductory text to read as follows:

§ 457.117 Forage production crop insurance provisions.

The forage production crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "good farming practices," "irrigated practice," "production guarantee (per acre)," and "written agreement" in section 1.

(d) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in the following places:

i. Section 1, definition of "forage;" and

ii. Section 7(a).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

The optional unit provisions in section 34 of the Basic Provisions are not applicable. Optional units are not allowed.

* * * * *

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

19. Amend § 457.119 as follows:

(a) Revise the introductory text to read as follows:

§ 457.119 Texas citrus fruit crop insurance provisions.

The Texas citrus fruit crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "good farming practices," "irrigated practice," "non-contiguous land" and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(c) Instead of establishing optional units by section, section equivalent, or FSA farm serial number, optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in the following places:

i. Section 7, introductory text; and

ii. Section 12(e).

(f) Remove the word "provides" and add in its place, the word "provide" in section 12(e).

(g) Revise section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

20. Amend § 457.121 as follows:

(a) Revise the introductory text to read as follows:

§ 457.121 Arizona-California citrus crop insurance provisions.

The Arizona-California citrus crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "good farming practices," "irrigated practice," "non-contiguous land," "production guarantee (per acre)," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

21. Amend § 457.122 as follows:

(a) Revise the introductory text to read as follows:

§ 457.122 Walnut crop insurance provisions.

The walnut crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "good farming practices," "irrigated practice," "non-contiguous land," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

22. Amend § 457.123 as follows:

(a) Revise the introductory text to read as follows:

§ 457.123 Almond crop insurance provisions.

The almond crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "good farming practices," "irrigated practice," "non-contiguous land," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

23. Amend § 457.124 as follows:

(a) Revise the introductory text to read as follows:

§ 457.124 Raisin crop insurance provisions.

The raisin crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "non-contiguous land," and "written agreement" in section 1.

(d) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in the following places:

i. Section 1, definitions of "raisins" and "reference maximum dollar amount;" and

ii. Section 8(a).

(e) Revise section 2 to read as follows:

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by grape variety.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(f) Revise section 14 to read as follows:

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

24. Amend § 457.125 as follows:

(a) Revise the introductory text to read as follows:

§ 457.125 Safflower crop insurance provisions.

The safflower crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of December 31, and for the 1999 and succeeding crop years in counties with a contract change date of August 31 are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practice," "practical to replant," "production guarantee (per acre)," "replanting," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, safflowers must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Remove section 2.

(e) Redesignate sections 3 through 13 (erroneously published as 3) as sections 2 through 12 respectively.

(f) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in Section 5, introductory text.

(g) Amend redesignated section 11(b)(2) to change the section reference therein from "12(b)(1)" to "11(b)(1)".

(h) Amend redesignated section 11(b)(3) to change the section reference therein from "12(b)(2)" to "11(b)(2)".

(i) Amend redesignated section 11(b)(4) to change the section reference therein from "12(c)" to "11(c)".

(j) Amend redesignated section 11(b)(5) to change the section reference therein from "12(b)(4)" to "11(b)(4)".

(k) Amend redesignated section 11(b)(6) to change the section references therein from "12(b)(5)" to "11(b)(5)" and "12(b)(3)" to "11(b)(3)".

(l) Amend redesignated section 11(b)(7) to change the section reference therein from "12(b)(6)" to "11(b)(6)".

(m) Amend redesignated section 11(c)(1)(iii) to change the section reference therein from "section 12(d)" to "section 11(d)".

(n) Amend redesignated section 11(d)(4) to change the section reference therein from "12(d)(2) and (3)" to "11(d)(2) and (3)".

(o) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

* * * * *

25. Amend § 457.128 as follows:

(a) Revise the paragraph preceding section 1 to read as follows:

§ 457.128 Guaranteed production plan of fresh market tomato crop insurance provisions.

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of "days," "FSA," "good farming practices," "irrigated practice," "production guarantee (per acre)," "replanting," and "written agreement" in section 1.

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by planting period, if separate planting periods are provided for in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(d) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 8, introductory text.

(e) Revise section 14 to read as follows:

* * * * *

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

* * * * *

26. Amend § 457.129 as follows:

(a) Revise the introductory text to read as follows:

§ 457.129 Fresh market sweet corn crop insurance provisions.

The fresh market sweet corn crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "good farming practices," "interplanted," "irrigated practice," "replanting," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, for each planting period, sweet corn seed must be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Remove the words "Actuarial Table" and add in their place, the words "actuarial documents" in the following places:

i. Section 1, definition of "planting period;"

ii. Section 3(a);

iii. Section 7;

iv. Section 8, introductory text and paragraph (b)(2); and

v. Section 16(a)(1).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(f) Revise section 15 to read as follows:

* * * * *

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

27. Amend § 457.130 as follows:

(a) Revise the introductory text to read as follows:

§ 457.130 Macadamia tree crop insurance provisions.

The macadamia tree crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "non-contiguous," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Sections 34(a) (1), (3) and (4) of the Basic Provisions are not applicable.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of insurable age macadamia trees; or

(2) Is located on non-contiguous land.

(c) You must have provided records, which can be independently verified, of acreage and age of trees for each unit for at least the last crop year.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents and" in the following places:

i. Section 3(a)(1); and

ii. Section 6, introductory text.

(f) Revise section 12 to read as follows:

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

28. Amend § 457.131 as follows:

(a) Revise the introductory text to read as follows:

§ 457.131 Macadamia nut crop insurance provisions.

The macadamia nut crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "good farming practices," "irrigated practice," "non-contiguous," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Section 34(a)(1) of the Basic Provisions is not applicable.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of bearing macadamia trees; or

(2) Is located on non-contiguous land.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

29. Amend § 457.132 as follows:

(a) Revise the introductory text to read as follows:

§ 457.132 Cranberry crop insurance provisions.

The cranberry crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "good farming practices," "irrigated practice," "non-contiguous land," "production guarantee (per acre)," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 6, introductory text and paragraph (d).

(f) Revise section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

30. Amend § 457.133 as follows:

(a) Revise the introductory text to read as follows:

§ 457.133 Prune crop insurance provisions.

The prune crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "good farming practices," "irrigated practice," "non-contiguous land," "production guarantee (per acre)," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable. Instead of establishing optional units by section, section equivalent, or FSA farm serial number optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words

"actuarial documents" in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

31. Amend § 457.135 as follows:

(a) Revise the introductory text to read as follows:

§ 457.135 Onion crop insurance provisions.

The onion crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of December 31, and for the 1999 and succeeding crop years in counties with a contract change date of June 30 are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2) etc.

* * * * *

(c) Remove the definitions of "crop year," "days," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practice," "late planted," "late planting period," "practical to replant," "prevented planting," "replanting," "timely planted," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, onions must be planted in rows.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number are not applicable.

(b) In addition to, or instead of, establishing optional units by irrigated acreage or non-irrigated acreage, optional units may be established by type, if the specific type is designated in the Special Provisions.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in the following places:

i. Section 6; and

ii. Section 7, introductory text.

(f) Revise section 14 to read as follows:

* * * * *

14. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(g) Remove section 15.

* * * * *

32. Amend § 457.137 as follows:

* * * * *

(a) Revise the paragraph preceding section 1 to read as follows:

§ 457.137 Green pea crop insurance provisions.

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of "approved yield," "days," "FSA," "final planting date," "interplanted," "irrigated practice," "replanting," "timely planted," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, peas must initially be placed in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) For any processor contract that stipulates the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may only be established based on shell type and pod type green peas if the shell type acreage does not continue into the pod type acreage in the same rows or planting pattern.

(b) For any processor contract that stipulates the number of acres to be planted, in addition to or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, optional units may be established based on shell type and pod type green peas if the shell type acreage does not continue into the pod type acreage in the same rows or planting pattern.

* * * * *

(d) Revise section 13 to read as follows:

* * * * *

13. Late Planting

A late planting period is not applicable to green peas unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

* * * * *

(e) Revise section 14 to read as follows:

* * * * *

14. Prevented Planting

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

* * * * *

33. Amend § 457.138 as follows:

(a) Revise the introductory text to read as follows:

§ 457.138 Grape crop insurance provisions.

The grape crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "good farming practices," "irrigated practice," "non-contiguous,"

"production guarantee (per acre)" "USDA," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) In California only, a basic unit, as defined in section 1 of the Basic Provisions will be divided into additional basic units by each variety that you insure.

(b) In California only, provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(c) In all states except California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions a separate optional unit may be established if each optional unit:

(1) Is located on non-contiguous land; or

(2) Consists of a separate varietal group when separate varietal groups are specified in the Special Provisions.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 7, introductory text.

(f) Revise section 13 to read as follows:

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

34. Amend § 457.139 as follows:

(a) Revise the introductory text to read as follows:

§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.

The fresh market tomato (dollar plan) crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "good farming practices," "interplanted," "irrigated practice," "replanting," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, for each planting period, tomato seed or transplants must initially be planted in rows, unless otherwise provided by Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Remove the words "Actuarial Table" and add in their place, the words "actuarial documents" in the following places:

i. Section 1, definition of "planting period;"

ii. Section 3(a);

iii. Section 7, introductory text;

iv. Section 8, introductory text and paragraph (b)(2); and

v. Section 16(a)(1).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(f) Revise section 15 to read as follows:

* * * * *

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

35. Amend § 457.141 as follows:

§ 457.141 Rice crop insurance provisions.

(a) Revise the paragraph preceding section 1 to read as follows:

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of "days," "FSA," "final planting date," "good farming practices," "irrigated practice," "late planted," "late planting period," "practical to replant," "prevented planting," "production guarantee (per acre)," "replanting," "timely planted," and "written agreement" in section 1.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(d) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 6, introductory text.

(e) Revise section 13 to read as follows:

* * * * *

13. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(f) Remove section 14.

36. Amend § 457.148 as follows:

(a) Revise the introductory text to read as follows:

§ 457.148 Fresh market pepper crop insurance provisions.

The fresh market pepper crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "good farming practices," "irrigated practice," "interplanted," "irrigated practice," "replanting," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, for each planting period, pepper seed or transplants must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

(d) Remove the words "Actuarial Table" and add in their place, the words "actuarial documents" in the following places:

i. Section 1, definition of "planting period;"

ii. Section 3(a);

iii. Section 7;

iv. Section 8, introductory text and paragraph (b)(2); and

v. Section 16(a)(1).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(f) Revise section 15 to read as follows:

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

37. Amend § 457.149 as follows:

(a) Revise the introductory text to read as follows:

§ 457.149 Table grape crop insurance provisions.

The table grape crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "good farming practices," "irrigated practice," "non-contiguous," "production guarantee (per acre)," and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each table grape variety designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 7(a).

(f) Revise section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

38. Amend § 457.150 as follows:

(a) Revise the introductory text to read as follows:

§ 457.150 Dry bean crop insurance provisions.

The dry bean crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practice," "late planted," "late planting period," "prevented planting," "production guarantee (per acre)," "replanting," and "timely planted," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, beans must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) In addition to the definition of basic unit in section 1 of the Basic Provisions, all acreage of contract seed beans qualifies as a separate basic unit. For production based seed bean processor contracts, the basic unit will consist of all the acreage needed to produce the amount of production under contract, based on the actual production history of the acreage. For acreage based seed bean processor contracts, the basic unit will consist of all acreage specified in the contract.

(b) In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established for each bean type shown in the Special Provisions.

(c) Contract seed beans may qualify for optional units only if the seed bean processor contract specifies the number of acres under contract. Contract seed beans produced under a seed bean processor contract that specifies only an amount of production or a combination of acreage and production, are not eligible for optional units.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 7(a).

(f) Revise section 7(c)(3) to read as follows:

* * * * *

7. Insured Crop

* * * * *

(c) * * *

(3) Both parties (you and us) enter into a written agreement allowing insurance on the type in accordance with section 18 of the Basic Provisions.

* * * * *

(g) Revise section 14 to read as follows:

* * * * *

14. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(h) Remove section 15.

39. Amend § 457.151 as follows:

(a) Revise the introductory text to read as follows:

§ 457.151 Forage seeding crop insurance provisions.

The forage seeding crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "final planting date," "interplanted," "irrigated practice," "practical to replant," and "written agreement" in section 1 and revise the definitions of "planted acreage" and "sales closing date" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the provisions in section 1 of the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted, unless otherwise provided by the Special Provisions, actuarial documents, or written agreement.

Sales closing date—In lieu of the definition contained in the Basic Provisions, a date

contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both fall seeded and spring seeded practices for the insured crop and you plant any insurable fall seeded acreage, you may not change your crop insurance coverage after the fall sales closing date for the fall seeded practice.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by spring planted and fall planted acreage.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in the following places:

i. Section 1, definition of "forage;"

ii. Section 3(a); and

iii. Section 6, introductory text.

(f) Revise section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

40. Amend § 457.153 as follows:

(a) Revise the introductory text to read as follows:

§ 457.153 Peach crop insurance provisions.

The peach crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "FSA," "good farming practices," "irrigated practice," "production guarantee (per acre)," and "written agreement" in section 1.

(d) Remove section 2.

(e) Designate sections 3 through 12 as sections 2 through 11 respectively.

(f) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in redesignated section 5, introductory text.

(g) Amend section 10(b)(2) to change the section reference therein from "11(b)(1)" to "10(b)(1)".

(h) Amend section 10(b)(3) to change the section reference therein from "11(b)(2)" to "10(b)(2)".

(i) Amend section 10(b)(4) to change the section reference therein from "11(c)" to "10(c)".

(j) Amend section 10(b)(5) to change the section reference therein from "11(b)(4)" to "10(b)(4)".

(k) Amend section 10(b)(6) to change the section references therein from "11(b)(5)" to "10(b)(5)" and "11(b)(3)" to "10(b)(3)".

(l) Amend section 10(b)(7) to change the section reference therein from "11(b)(6)" to "10(b)(6)".

(m) Amend section 10(c)(1)(i)(B) to change the section reference therein from "section 10" to "section 9".

(n) Amend section 10(c)(3)(i)(B) to change the section reference therein from "11(c)(3)(i)(A)" to "10(c)(3)(i)(A)".

(o) Amend section 10(c)(3)(ii)(B) to change the section reference therein from "11(c)(3)(ii)(A)" to "10(c)(3)(ii)(A)".

(p) Revise section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

* * * * *

41. Amend § 457.155 as follows:

* * * * *

(a) Revise the paragraph preceding section 1 to read as follows:

* * * * *

§ 457.155 Processing bean crop insurance provisions.

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of "approved yield," "days," "FSA," "final planting date," "interplanted," "irrigated practice," "production guarantee (per acre)," "replanting," "timely planted," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, beans must initially be placed in rows far enough apart to permit mechanical cultivation to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) For any processor contract that stipulates the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units will not be established.

(b) For any processor contract that stipulates the number of acres to be planted, in addition to or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, optional units may be established by type if acreage of one type does not continue into acreage of another type in the same rows or planting pattern.

* * * * *

(d) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 7(a).

(e) Revise section 13 to read as follows:

* * * * *

13. Late Planting

A late planting period is not applicable to processing beans unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

* * * * *

(f) Revise section 14 to read as follows:

* * * * *

14. Prevented Planting

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

42. Amend § 457.157 as follows:

(a) Revise the introductory text to read as follows:

§ 457.157 Plum crop insurance provisions.

The plum crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of "days," "good farming practices," "irrigated practice," "non-contiguous," "production guarantee (per acre)" and "written agreement" in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units must meet one or more of the following, as applicable, unless otherwise provided by the Special Provisions, actuarial documents, or written agreement:

(a) Optional units may be established if each optional unit is located on non-contiguous land.

(b) In addition to, or instead of, establishing optional units for non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions. The requirements of section 34(a)(1) of the Basic Provisions are not applicable for this method of unit division.

* * * * *

(e) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

* * * * *

43. Amend § 457.160 as follows:

§ 457.160 Processing tomato crop insurance provisions.

(a) Revise the paragraph preceding section 1 to read as follows:

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of "approved yield," "days," "FSA," "final planting date," "interplanted," "irrigated practice," "production guarantee (per acre)," "replanting," "timely planted," "USDA," and "written agreement" in section 1 and revise the definition of "planted acreage" to read as follows:

* * * * *

1. Definitions

* * * * *

Planted acreage—In addition to the definition contained in the Basic Provisions, tomatoes must initially be placed in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Notwithstanding the provisions of this section or any unit division provisions contained in the Basic Provisions, no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

(b) In California only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, optional units may be established if acreage planted to tomatoes is separated by a field that is not planted to tomatoes, or by a permanent boundary such as a permanent waterway, fence; public road or woodland. Such optional unit must consist of the minimum number of acres stated in the Special Provisions. Acreage planted to tomatoes that is less than the minimum number of acres required will attach to the closest unit within the section, section equivalent, or FSA farm serial number.

* * * * *

(d) Remove the words "actuarial table" and add in their place, the words "actuarial documents" in sections 7 and 8(a).

(e) Remove section 16.

Signed in Washington, D.C., on December 1, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–31860 Filed 12–4–97; 11:13 am]

BILLING CODE 3410–08–P

federal register

Wednesday
December 10, 1997

Part III

Department of Housing and Urban Development

24 CFR Parts 201, 202 and 203
Termination of an Approved Mortgagee's Origination Approval Agreement; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 201, 202 and 203

[Docket No. FR–4239–I–01]

RIN 2502–AG09

Termination of an Approved Mortgagee's Origination Approval Agreement

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule clarifies and makes minor changes to 24 CFR parts 202 and 203 to improve the provisions regarding termination of a single family mortgagee's origination approval agreement with FHA. The interim rule also corrects errors in 24 CFR parts 201 and 202.

DATES: Effective date: January 9, 1998.

Comment due date: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Phillip Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Room B–133–P3214, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–1515 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Part 202 of title 24 contains the Department's requirements for approval of lenders and mortgagees for FHA insurance programs. The Department reorganized and streamlined part 202 by a recent final rule without making any substantive changes (62 FR 20080, April 24, 1997). The Department also published an interim rule announcing the Lender Insurance program (62 FR 30222, June 2, 1997). This new interim rule includes minor substantive changes to part 202 and corrections to the streamlining and Lender Insurance rules.

Part 202 is amended to state more clearly the provisions regarding termination of an FHA-approved single family mortgagee's origination approval agreement (OAA). The following matters are clarified or changed in § 202.3(d):

- When a mortgagee has a default and claim rate sufficient to support termination of the OAA under the standards of part 202, termination is at the discretion of the Secretary even if the Department in a previous time period could have, but did not, place the mortgagee on credit watch. This is a clarification of the Department's current interpretation.
- A mortgagee will not be permitted to apply for a new OAA for 6 months after termination of an OAA. There is currently no delay required for an application for a new OAA.
- Claims and defaults will be measured for 24 months after a mortgage is insured, instead of the current 18 months for claims and 1 year for defaults. Two references to tracking a mortgagee's default and claims for originations "during a Federal fiscal year" are deleted as inconsistent with the uniform 24-month tracking period.

Corrections to the April 24, 1997 final rule include:

- Sections 201.20(a)(3) and 201.26(a)(1)(iii), which had been removed by an interim rule (61 FR 19797–8, May 2, 1996), were inadvertently restored in modified form by the final rule and are now removed again.
- The United States Code citation for the National Housing Act, which was inadvertently omitted, is added to the definition of "Act" in § 202.2.
- The definition of "mortgage" in § 202.2 is corrected to include mortgages insured under title XI of the National Housing Act to be consistent with the definition of "Title II program" which includes title XI.
- Two minor editorial corrections are made to § 202.5: a comma is inserted in the first sentence of § 202.5(i) and "that" is inserted in § 202.5(n)(1)(i) to improve clarity.
- "And" is changed to "an" in § 202.7(b)(4)(i)(A).

In addition, language is added to §§ 203.3 and 203.4 that clarifies HUD's current position that a mortgagee with a terminated OAA also has its approval under the Direct Endorsement and Lender Insurance programs terminated without further procedures.

Other Matters

Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. However, HUD is allowing for a full 60-day public comment period on the provisions of this interim rule, and HUD will consider the relevant issues raised by the commenters in its development of a final rule for the Lender Insurance program.

Many of the changes are corrections or clarifications that do not alter substantive policy currently in effect. Some of the changes are made for administrative efficiency without any likely substantive effect on mortgagees, such as the use of calendar years and uniform 24 month periods to measure default and claim rates. The new explicit prohibition against applying for a new OAA within 6 months of termination supplements the current requirement that HUD must determine that the underlying cause of the termination must have been satisfactorily remedied before a new origination approval agreement would be approved. Under current practice it is highly unlikely that HUD could ever make that determination within 6 months of a termination. The new provision is an administrative measure designed to avoid futile applications by the mortgagee that must be processed by HUD personnel even when denial is virtually certain.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely clarifies and makes minor changes and corrections to the existing regulations. The rule will have no adverse or disproportionate economic impact on small businesses. Small entities are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this interim rule.

Environmental Impact

This rulemaking is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1) which pertains to "the approval of policy documents that do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out to provide for standards for construction or construction materials, manufactured housing, or occupancy." This rulemaking simply amends an existing regulation regarding termination of a mortgagee's approval to originate insured mortgages and does not alter the environmental effect of the regulations being amended. The regulation being amended was also exempt under § 50.19(c)(1), as stated at 62 FR 20080, April 24, 1997.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this interim rule are 14.117 and 14.142.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, parts 201, 202 and 203 of title 24 of the Code of Federal Regulations are amended as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 is revised to read as follows:

Authority: 12 U.S.C. 1703 and 3535(d).

§ 201.20 [Amended]

2. Section 201.20 is amended by removing paragraph (a)(3).

3. Section 201.26 is amended by revising paragraph (a)(1) to read as follows:

§ 201.26 Conditions for loan disbursement.

(a) * * *

(1) The lender shall ensure that the following conditions are met:

(i) The borrower is eligible for a property improvement loan in accordance with § 201.20(a) (1) or (2); and

(ii) The interest of the borrower in the property is valid, through such title or other evidence as are generally acceptable to prudent lending institutions and leading attorneys in the community in which the property is situated.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

4. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

5. Section 202.2 is amended by revising the definitions of *"Act"*, *"Claim"*, *"Default"*, and *"Mortgage, Title II mortgage or insured mortgage"*, to read as follows:

§ 202.2 Definitions.

Act means the National Housing Act (12 U.S.C. 1702 *et seq.*)

Claim means a single family insured mortgage for which the Secretary pays an insurance claim within 24 months after the mortgage is insured.

Default means a single family insured mortgage in default for 90 or more days within 24 months after the mortgage is insured.

* * * * *

Mortgage, Title II mortgage or insured mortgage means a mortgage or loan insured under Title II or Title XI of the Act.

* * * * *

6. Section 202.3 is amended by revising paragraph (c)(2)(ii)(A), the first sentence of paragraph (c)(2)(iii), and paragraph (c)(2)(v)(C) to read as follows:

§ 202.3 Approval status for lenders and mortgagees.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) The Secretary may notify a mortgagee that its origination approval agreement will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 200 percent of the normal rate, and exceeded the national default and claim rate for insured mortgages. The notice may be given without action by the Mortgagee Review Board even if the Secretary previously had the right to issue a credit watch notice to the mortgagee under this section but did not do so.

* * * * *

(iii) Credit watch status. The Secretary may notify a mortgagee that it is on credit watch status if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 150 percent, but not 200 percent, of the normal rate. * * *

* * * * *

(v) * * *

(C) A mortgagee's right to apply for a new origination approval agreement if it continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6. 202.7. 202.8 or 202.10, and 202.12, if the mortgagee has had no origination approval agreement for at least 6 months, and if the Secretary determines that the underlying causes for termination have been satisfactorily remedied; or

* * * * *

7. Section 202.5 is amended by revising the first sentence of paragraph (i) and paragraph (n)(1)(i) to read as follows:

§ 202.5 General approval standards.

* * * * *

(i) * * * The lender or mortgagee, unless approved under § 202.10, shall pay an application fee and annual fees, including additional fees for each branch office authorized to originate Title I loans or submit applications for mortgage insurance, at such times and

in such amounts as the Secretary may require. * * *

* * * * *

(n) * * *

(1) * * *

(i) The aggregate original amount of insured mortgages that the mortgagee originated and that were insured during the fiscal year, or that the mortgagee purchased as a sponsor from its loan correspondent(s) during the fiscal year; and

* * * * *

8. Section 202.7 is amended by revising paragraph (b)(4)(i)(A) to read as follows:

§ 202.7 Nonsupervised lenders and mortgagees.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(A) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, an analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

4. The authority citation for 24 CFR part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

5. Section 203.3 is amended by adding a new paragraph (d)(2)(iv) to read as follows:

§ 203.3 Approval of mortgagees for Direct Endorsement.

* * * * *

(d) * * *

(2) * * *

(iv) Termination of an origination approval agreement under part 202 of this chapter for a mortgagee or one or more branch offices automatically terminates Direct Endorsement approval for the mortgagee or the branch office or offices without any further requirement to comply with this paragraph.

6. Section 203.4 is amended by adding a new sentence at the end of paragraph (d) to read as follows:

§ 203.4 Approval of mortgagees for Lender Insurance.

* * * * *

(d) * * * Termination of an origination approval agreement under part 202 of this chapter or termination of Direct Endorsement approval under § 203.3(d)(2) for a mortgagee or one or more branch offices automatically terminates Lender Insurance approval for the mortgagee or the branch office or offices without any further requirement to comply with this paragraph.

Dated: October 22, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–32250 Filed 12–9–97; 8:45 am]

BILLING CODE 4210–27–P

federal register

Wednesday
December 10, 1997

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 540
Correspondence: Restricted Special Mail Procedures; Final Rule
Correspondence: Pretrial Inmates; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1048–F]

RIN 1120–AA48

Correspondence: Restricted Special Mail Procedures

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on correspondence to provide for restricted special mail procedures in instances where the Warden has reason to believe that the special mail either has posed a threat or may pose a threat of physical harm to the intended recipient. Under these procedures, such special mail is subject to inspection, in the presence of the inmate, for contraband and, at the request of the intended recipient, may be read for the purpose of verifying that the special mail does not contain a threat of physical harm. These amendments are intended to provide for the continued efficient and secure operation of the institution and to protect the public.

EFFECTIVE DATE: January 9, 1998.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on correspondence (28 CFR part 540). A proposed rule on this subject was published in the **Federal Register** February 14, 1996 (61 FR 5846).

Provisions in § 540.18(c) previously stated that outgoing special mail may be sealed by the inmate and is not subject to inspection. The Bureau proposed a revised paragraph (c) to allow for restricted special mail procedures for special mail addressed to Federal court officials and members of Congress, and, if so requested, to other intended recipients. These restricted special mail procedures would apply in cases where the Warden (with the concurrence of the Regional Counsel) documents in writing that the inmate's special mail either has posed a threat or may pose a threat of physical harm to the intended recipient. Any inmate placed on restricted special mail status would be notified in writing by the Warden of the reason for being so placed. The Warden is required to review an inmate's restricted special mail status at least once every 180 days and to notify the inmate in writing of the results of that review. The inmate may be removed from restricted special mail status if the Warden (with the concurrence of the Regional Counsel) determines that the inmate's special mail does not threaten or pose a threat of physical harm to the intended recipient. Such determinations are based on a comprehensive review of pertinent factors, such as the inmate's institutional adjustment, institution security level, and a current assessment of the conditions which led to the inmate's placement into restricted special mail status.

The Bureau received 8 comments on its proposed rule. Comment generally focused on the purported need for the proposed restrictions, possible infringement on the confidentiality of the attorney-client privilege, possible delay in handling mail being sent to courts, consideration of other means of dealing with the threat posed by such special mail (including duplicative security measures in place for recipients), ulterior motivation for the restrictions, and the general futility of preventing abuse.

With respect to the need for the regulation, the Bureau disagrees with suggestions that the rule misrepresents its intent. The rule is not intended to restrict an inmate's legal access. Instead, it is intended to help ensure institution security, discipline, and good order, and to protect the public. The Bureau notes that instances have occurred where special mail has caused, or has threatened physical injury to the recipient. While these instances may not constitute a widespread problem, neither do the procedures for restricted special mail status pose any change to the special mail privilege for the vast majority of inmates. Even so, for the purpose of assuring its commitment to the integrity of special mail, the Bureau has modified the proposed procedures to protect the special mail privilege to the extent practicable and commensurate with the need for the security, discipline and good order of the institution.

As previously proposed, the procedures apply only to inmates who have been placed on restricted special mail status (that is to say, those inmates whose special mail has been documented by the Warden, with the concurrence of the Regional Counsel, either to have posed a threat or which may pose a threat to the recipient). An inmate in this status must present all materials and packaging intended to be sent as special mail to staff for inspection. Staff shall inspect the special mail material and packaging, in the presence of the inmate, for contraband. This last provision deletes the proposed phrase "or the threat of physical harm", as its intent is encompassed within the remaining provision of inspecting for contraband. This change addresses the concern of commenters that the proposed procedure infringes upon the confidentiality of the attorney-client privilege or access to the courts. As revised, the rule now states that staff reading of the correspondence is restricted to when the recipient of the special mail has so requested (the rule as proposed had assumed such permission with respect to Federal court officials and members of Congress). As revised, the procedure now more closely parallels the process for inspecting incoming special mail (see § 540.18).

Upon completion of the inspection, staff shall return the special mail material to the inmate if the material does not contain contraband or, when requested by the intended recipient, a reading determines that there is no threat of physical harm. The inmate must then seal the special mail material in the presence of staff. Special mail determined to pose a threat shall be forwarded to the appropriate law enforcement entity, and staff shall send a copy of the material, minus the contraband, to the intended recipient along with notification that the original of the material was forwarded to the appropriate law enforcement entity.

In response to comments, the Bureau does not expect this procedure to have much impact on the processing of special mail. The limited applicability of the rule and the general Bureau policy that mail be handled promptly should ensure that this mail is processed in a timely fashion.

In response to commenters who suggested that sufficient and less restrictive means were available to the intended recipients of special mail to address threats posed by the special mail, the Bureau believes its procedures are both prudent and unobstrusive. Visually observing the assembling of special mail serves to deter the actual transmission of dangerous materials and is compatible with the existing procedures for handling incoming special mail (see § 540.18). This protects both the intended recipient and other persons involved in the delivery or opening of the special mail. While the Bureau acknowledges, as one commenter noted, that this procedure may not be successful in preventing every possible instance of harm, the procedure is intended to operate in conjunction with other procedures, such as the ones alluded to by other commenters. Any resultant increase in security which may be obtained through these new procedures clearly is a benefit to the public.

Several commenters expressed concern that Bureau of Prisons staff may abuse their discretion under this provision. As shown, the scope of this rule is clearly limited in its application. Bureau of Prisons staff are professionals and will be familiar with the procedures for applying this rule. In the unlikely event of staff abuse, appropriate disciplinary action will be initiated and appropriate sanctions imposed.

Other commenters raised questions on the general provisions for screening, e.g., how it will be requested, criteria used for assessing threat. In response to such comments, the Bureau again notes that this rule will have limited applicability, with such application governed by § 540.18(c)(2). Placement requires legal review, and notification to the inmate of the reasons for placement. An inmate who disagrees with this decision may appeal the decision through the Administrative Remedy Program (28 CFR part 542).

A commenter questioned the statement in § 540.18(d) advising the recipient of special mail that if the writer raises a question over which the facility has jurisdiction, the recipient may wish to return the material for further information or clarification. The commenter believes that this provision is vague, and that it either should be deleted or specify the return is to the inmate. The Bureau disagrees with this suggestion. This statement is not new and is intended to offer the recipient the opportunity to contact the Bureau of Prisons if that recipient desires further information or clarification over a matter under the Bureau's jurisdiction. The choice on whether this is done is clearly with the recipient of the special mail, and is not violative of an inmate's legal rights.

As a final general comment, the Bureau notes that the provisions for restricted special mail are designed to protect the public and are not motivated by a desire to censor special mail. The procedures for visually observing the assembling of special mail are not dissimilar to procedures already in place for the delivery of special mail. Neither inspection represents any attempt to censor mail. In those instances where the intended recipient has authorized staff to read the special mail (see § 540.18(c)(2)(iii)), the special mail, or a copy of the special mail in cases where the mail has been determined to pose a threat of physical harm, is forwarded to the recipient.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date); 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 540.18, paragraphs (c) and (d) are revised to read as follows:

§ 540.18 Special mail.

* * * * *

(c)(1) Except as provided for in paragraph (c)(2) of this section, outgoing special mail may be sealed by the inmate and is not subject to inspection.

(2) Special mail shall be screened in accordance with the provisions of paragraph (c)(2)(iii) of this section when the special mail is being sent by an inmate who has been placed on restricted special mail status.

(i) An inmate may be placed on restricted special mail status if the Warden, with the concurrence of the Regional Counsel, documents in writing that the special mail either has posed a threat or may pose a threat of physical harm to the recipient (e.g., the inmate has previously used special mail to threaten physical harm to a recipient).

(ii) The Warden shall notify the inmate in writing of the reason the inmate is being placed on restricted special mail status.

(iii) An inmate on restricted special mail status must present all materials and packaging intended to be sent as special mail to staff for inspection. Staff shall inspect the special mail material and packaging, in the presence of the inmate, for contraband. If the intended recipient of the special mail has so requested, staff may read the special mail for the purpose of verifying that the special mail does not contain a threat of physical harm. Upon completion of the inspection, staff shall return the special mail material to the inmate if the material does not contain contraband, or contain a threat of physical harm to the intended recipient. The inmate must then seal the special mail material in the presence of staff and immediately give the sealed special mail material to the observing staff for delivery. Special mail determined to pose a threat to the intended recipient shall be forwarded to the appropriate law enforcement entity. Staff shall send a copy of the material, minus the contraband, to the intended recipient along with notification that the original of the material was forwarded to the appropriate law enforcement entity.

(iv) The Warden shall review an inmate's restricted special mail status at least once every 180 days. The inmate is to be notified of the results of this review. An inmate may be removed from restricted special mail status if the Warden determines, with the concurrence of the Regional Counsel, that the special mail does not threaten or pose a threat of physical harm to the intended recipient.

(v) An inmate on restricted mail status may seek review of the restriction through the Administrative Remedy Program.

(d) Except for special mail processed in accordance with paragraph (c)(2) of this section, staff shall stamp the following statement directly on the back side of the inmate's outgoing special mail: "The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to

another addressee, please return the enclosure to the above address."

[FR Doc. 97-32325 Filed 12-9-97; 8:45 am]
BILLING CODE 4410-05-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP-1054-F]

RIN 1120-AA52

Correspondence: Pretrial Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on correspondence to require that general mail from pretrial inmates may not be sealed and may be read and inspected by staff. This amendment is intended to provide for the continued efficient and secure operation of the institution and to protect the public.

EFFECTIVE DATE: January 9, 1998.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on correspondence (28 CFR part 540, subpart B). A proposed rule on this subject was published in the **Federal Register** December 9, 1996 (61 FR 64954).

Provisions on general correspondence in § 540.14(b) and (c) previously specified that outgoing general mail from pretrial inmates may be sealed by the inmate and are not subject to inspection by staff. On December 9, 1996, the Bureau proposed to require that general mail from pretrial inmates be sent out unsealed and subject to inspection. The proposed requirement matched the requirement for outgoing general mail from sentenced inmates in medium, high, and administrative facilities. Ordinarily, pretrial inmates are housed in administrative facilities. Because pretrial inmates are not classified as to levels of security (as sentenced inmates are), the proposed requirement would apply to pretrial inmates even if they happen to be housed in minimum or low facilities. Special mail, whether from pretrial inmates or sentenced inmates, was unaffected by the proposed amendment.

No public comment was received on the proposed rule, and the Bureau is therefore adopting the proposed rule as final without change.

Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 540.14, paragraphs (b) and (c) are revised to read as follows:

§ 540.14 General correspondence.

* * * * *

(b) Except for "special mail," outgoing mail from a pretrial inmate may not be sealed by the inmate and may be read and inspected by staff.

(c)(1) Outgoing mail from a sentenced inmate in a minimum or low security level institution may be sealed by the inmate and, except as provided for in paragraphs (c)(1)(i) through (iv) of this section, is sent out unopened and uninspected. Staff may open a sentenced inmate's outgoing general correspondence:

(i) If there is reason to believe it would interfere with the orderly running of the institution, that it would be threatening to the recipient, or that it would facilitate criminal activity;

(ii) If the inmate is on a restricted correspondence list;

(iii) If the correspondence is between inmates (see § 540.17); or

(iv) If the envelope has an incomplete return address.

(2) Except for "special mail," outgoing mail from a sentenced inmate in a medium or high security level institution, or an administrative institution may not be sealed by the inmate and may be read and inspected by staff.

* * * * *

[FR Doc. 97-32324 Filed 12-9-97; 8:45 am]
BILLING CODE 4410-05-P

federal register

Wednesday,
December 10, 1997

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171

Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Response To Petitions for Reconsideration; Editorial Revisions; and Rules Clarification; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–97–2133 (HM–225)]

RIN 2137–AC97

Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Response To Petitions for Reconsideration; Editorial Revisions; and Rules Clarification

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to petitions for reconsideration; editorial revisions; and rules clarification.

SUMMARY: On August 18, 1997, RSPA published a final rule adopting certain safety standards applicable to cargo tank motor vehicles in liquefied compressed gas service. In response to petitions for reconsideration filed by Farmland Industries, Inc. (Farmland), The Fertilizer Institute (TFI), and AmeriGas Propane, L.P. (AmeriGas), RSPA is revising a requirement concerning the daily pressure testing of transfer hoses on these cargo tank motor vehicles, and the agency is revising § 171.5(a) for consistency with § 178.337–11(a)(1)(i) by removing a hose rupture (*i.e.*, incomplete separation) as a condition that causes the internal self-closing stop valve to function. This action grants certain petitions for reconsideration of the final rule pertaining to effective and practical standards to assure the integrity of transfer hoses used in unloading operations. Also, in this final rule, RSPA is granting the request by Farmland and TFI to extend the expiration of the final rule requirements for four months, to July 1, 1999. RSPA is denying the request by AmeriGas for an immediate stay of the provisions of § 171.5(a)(1)(iii) and the AmeriGas request for reconsideration of: The provision in § 171.5(c) setting forth an expiration date for the final rule requirements; and RSPA's interpretation of the attendance requirements in § 177.834(i) that a qualified person must always maintain an unobstructed view of the cargo tank. Additionally, this action makes editorial revisions and clarifies certain provisions adopted in the final rule.

DATES: This final rule is effective December 10, 1997.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, Office of Hazardous Materials Technology, RSPA, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001, telephone (202) 366–4545, or Nancy Machado, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

On August 18, 1997, RSPA published a final rule under Docket No. RSPA–97–2133 (HM–225) [62 FR 44038]. The final rule revised and extended requirements published in an interim final rule (IFR) on February 19, 1997, concerning the operation of cargo tank motor vehicles (CTMVs) in certain liquefied compressed gas service. The final rule requires a specific marking on affected CTMVs and requires motor carriers to comply with additional operational controls intended to compensate for the failure of passive emergency discharge control systems to function as required by the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). The operational controls specified in the final rule provide an alternative to compliance with § 178.337–11(a)(1)(i) and are intended to ensure an acceptable level of safety while the industry and government continue to work to develop an emergency discharge control system that effectively stops the discharge of hazardous materials from a cargo tank if any attached hose or piping is separated.

Petitions for reconsideration of the August 18, 1997 final rule were filed by The National Propane Gas Association (NPGA), Farmland Industries, Inc. (Farmland), The Fertilizer Institute (TFI) and jointly by Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane, L.P. (AmeriGas), Agway Petroleum Corporation, Cornerstone Propane Partners, L.P., and National Propane, L.P. On September 26, 1997, Ferrellgas, L.P., Suburban Propane, L.P., Agway Petroleum Corporation, Cornerstone Propane Partners, L.P., and National Propane, L.P. withdrew their names from the jointly-filed petition for reconsideration. Petitioner AmeriGas, however, continues to seek relief through the September 17, 1997 petition for reconsideration. On October 2, 1997, NPGA withdrew its petition for reconsideration. On November 5, 1997, National Private Truck Council (NPTC) filed a petition for reconsideration. Although the petition was filed by NPTC after the close of the petition period, and RSPA has not accepted the petition, all NPTC's issues have been considered since NPTC raised issues identical to those raised by other petitioners.

Petitioners Farmland and TFI seek reconsideration of two provisions of the August 18, 1997 final rule. Specifically, they request reconsideration of the requirement in § 171.5(a)(1)(i) that a transfer hose be subjected to full transfer pressure before commencing the first transfer each day. They also ask RSPA to reconsider the expiration date of the August 18, 1997 final rule requirements; they request a four-month extension of the expiration date to July 1, 1999.

AmeriGas seeks: (1) Reconsideration and an immediate stay of the requirement in § 171.5(a)(1)(iii) that the qualified person unloading a CTMV promptly activate the internal self-closing stop valve and promptly shut down all motive and auxiliary power in the event of an unintentional release of lading to the environment during transfer; (2) immediate withdrawal of RSPA's interpretation of its long-standing attendance requirements in § 177.834(i) pending further rulemaking after notice and comment; (3) withdrawal of the expiration date in § 171.5(c); (4) deletion of the word "rupture" as it appears in § 171.5(a); and (5) withdrawal of the requirement in § 171.5(a)(1)(i) that the transfer hose be subjected to full transfer pressure before commencing the first transfer each day.

II. Petitions Granted

A. Daily Pressure Testing of Transfer Hoses

In § 171.5(a)(1)(i), RSPA required that a transfer hose be subject to full transfer pressure before the first unloading of product each day. This provision applied to all CTMVs operating under the terms of the temporary regulation specified in § 171.5.

Petitioners assert that, because most large CTMVs ("transports," typically used for bulk plant deliveries) do not have a separate back-to-tank product bypass line, energizing the pump when the receiving tank's liquid shutoff valve is closed may damage the pump vanes, result in failure of the shaft seals and other components, and place high torsional loads on the power take-off (PTO) drive shaft.

In addition, petitioners state that no additional safety measures are needed for small CTMVs ("bobtails," typically used for local deliveries) because they are generally equipped with a separate back-to-tank product bypass valve. Petitioners state that, in the process of preparing lines for product transfer from a small CTMV, the full length of transfer hose is charged to pump discharge pressure, thereby providing an opportunity to prove the integrity of the transfer system prior to each delivery.

Recognizing the merit of the petitioners' comments regarding the transfer hose pressure standard adopted in the final rule, RSPA published an advisory guidance that communicated the agency's agreement with the petitioners' claim that some cargo tank pumping systems are not capable of safely pumping against a closed product valve without being damaged (62 FR 49171; September 19, 1997). Therefore, § 171.5(a)(1)(i) is revised to allow an operator to determine the leakproofness of a discharge system (including hose) by requiring that the pressure in the discharge system reach at least equilibrium with the pressure inside the cargo tank prior to transfer. After the operator verifies leakproofness of the discharge system, delivery may commence.

RSPA is also amending § 171.5(a)(1)(i) by removing the wording "and equipment" from the third sentence to clarify that only the piping, hose and hose fittings must be tested daily. There is no requirement to test the entire cargo tank on a daily basis.

B. Hose Separation Versus Hose Rupture

Petitioner AmeriGas notes RSPA's use of the word "rupture[d]" in § 171.5(a) with respect to comparable requirements in § 178.337–11(a)(1)(i) concerning operation of the internal self-closing stop valve. The petitioner states that the word "rupture[d]" is more commonly used to denote a "leak or partial failure" rather than an actual separation, thus creating an undesirable potential for confusion. Therefore, AmeriGas requests that the word "rupture[d]" be stricken from the regulatory language.

RSPA agrees that the word "ruptured" could be construed as adding new meaning to requirements pertaining to the emergency operation of the internal self-closing stop valve that was not intended in the development of the final rule. Therefore, § 171.5(a) is amended by removing the wording "ruptured or" to make this provision consistent with requirements in § 178.337–11(a)(1)(i).

C. March 1, 1999 Expiration Date of the Temporary Final Rule

Petitioners TFI and Farmland request that RSPA reconsider the March 1, 1999 expiration date of the requirements in § 171.5. The petitioners request a four-month extension of the alternative requirements in § 171.5—until July 1, 1999—to avoid expiration of the requirements at the beginning of the fertilizer industry's peak delivery season.

RSPA is granting a request by TFI and Farmland to extend the expiration date until July 1, 1999. This decision is based on RSPA's understanding that industry will continue to make good faith efforts in developing an emergency discharge control system that offers an equal or higher level of safety as that in longstanding provisions in § 178.337–11(a)(1)(i).

III. Petitions Denied

A. Prompt Activation of the Internal Self-Closing Stop Valve

In its petition, AmeriGas contends that it is impossible to achieve immediate full compliance with the requirement in § 171.5(a)(1)(iii) that a qualified person unloading a small CTMV promptly activate the internal self-closing stop valve and promptly shut down all motive and auxiliary power equipment if there is an unintentional release of lading to the environment during transfer. AmeriGas claims this rule constitutes a new operator attendance requirement that can only be satisfied by using remote-controlled equipment that is not currently in service on more than an experimental basis and that such equipment cannot be put into service in less than a matter of months.

In the February 1997 emergency interim final rule (IFR), RSPA first adopted additional requirements for the person who attends the unloading of a CTMV to be within arm's reach of a means for closure (emergency shut-down device) of the internal self-closing stop valve or other device that will immediately stop the discharge of product from the cargo tank [62 FR 7643, February 19, 1997]. Use of an "electro-mechanical" device as a means of closure was discussed in that rule. Based on comments to the IFR, RSPA revised § 171.5(a)(1)(iii)(C), in the August final rule, to set forth three ways to achieve prompt stoppage of lading discharge from the cargo tank by: (1) complying with the requirements in § 178.337–11(a)(1)(i); (2) using a qualified person positioned within arm's reach of the mechanical means of closure of the internal self-closing stop valve throughout the unloading operation, except during the short period necessary to engage or disengage the motor vehicle PTO or other mechanical, electrical, or hydraulic means used to energize the pump and other components of a cargo tank's discharge system; or (3) using a remote-controlled system that is capable of stopping the transfer of lading by use of a transmitter carried by a qualified person unloading the cargo tank.

RSPA notes that the NPGA special task force, organized in part to develop plans to provide for continued safe operation of existing propane cargo tanks, concentrated much of its efforts on development of remote-controlled devices that may be activated by the person attending an unloading operation [comments of Mr. McHenry, NPGA, June 23, 1997 public meeting]. A representative of the NPGA special task force reported progress on the development of remote-controlled devices at a June 23, 1997 public meeting [comments of Mr. McHenry, NPGA]. Petitioner AmeriGas also provided a report on its progress in developing an effective, low-cost remote-controlled system using radio frequency technology [comments of Mr. McEnroe, AmeriGas, June 23, 1997 public meeting transcript, pages 5, 45, 56, and 57]. AmeriGas provided RSPA with an update on its progress in a November 13, 1997 meeting. The NPGA's July 24, 1997 petition for rulemaking (P–1346) calls for RSPA to adopt a new provision in § 178.337–11(a)(1)(iii) for a variety of systems that are capable of closing the internal liquid discharge valve by remote means.

The public record contains favorable accounts by several propane dealers who have installed remote-controlled systems on their fleets of CTMVs [comments of Mr. Schuler, REMTRON, June 23, 1997 public meeting transcript, pages 59 and 60; comments of Mr. Stillwaggon, H.R. Weaver Co.; and comments of Mr. McEnroe, AmeriGas, September 30, 1997 public meeting transcript, pages 42 and 61, respectively].

Industry representatives have stated that they have had good results with using radio-frequency, remote-controlled systems [comments of Mr. McEnroe, AmeriGas, public meeting transcript, June 23, 1997, page 46; Dr. Coady, Hick's Gas, June 23, 1997 public meeting transcript, pages 92 and 102]. A representative of Hicks Gas, one of the larger independent marketers of propane, stated that his company has been developing and refining remote-control shutdown systems on some of its trucks for the past three years [comments of Dr. Coady, Hick's Gas, June 23, 1997 public meeting transcript, page 92].

During two public meetings (June 23, 1997 and September 30, 1997) industry representatives presented information on radio frequency, remote-controlled systems, some with basic features and others with more sophisticated applications, that can be used on most

CTMVs. Additionally, they represented that the installation instructions for these systems are simple enough that a fleet mechanic who has a working knowledge of a vehicle's air and electrical systems generally has the experience and tools necessary to install and proof-test a system within a period of two or three hours.

The advantage of a remote-controlled device has been demonstrated during an incident involving a propane release on November 3, 1997 near Udina, Illinois. The driver, using a remote-controlled device, promptly activated closure of the internal self-closing stop valve without ignition of the propane.

RSPA does not agree that operators of CTMVs have no practical means of compliance. The public record contains information that some operators began installing remote-controlled systems shortly after issuance of the February 19, 1997 interim final rule. In addition, the Federal Highway Administration's (FHWA) compliance policy emphasizes increased awareness about the rule and its safety benefits, as opposed to immediate enforcement. If a company shows good faith efforts to comply with the provisions of § 171.5, FHWA's policy is to not pursue civil penalty enforcement actions.

Therefore, based on the above information, this part of the AmeriGas petition for reconsideration of the final rule is denied.

RSPA believes there is a need to clarify that while the first sentence of § 171.5(a)(1)(iii)(C) allows use of a remote-controlled system to promptly activate the internal self-closing stop valve in the event of an unintentional discharge, the second sentence provides limited relief from the attendance requirements in § 177.834(i)(3). Specifically, § 177.834(i)(3) requires a qualified person who is attending the unloading of a cargo tank to be awake, have an unobstructed view of the cargo tank, and be within 25 feet of the cargo tank at all times during unloading. Therefore, the second sentence in § 171.5(a)(1)(iii)(C) is revised to clarify that where a remote-controlled system is used, the attendance requirements in § 177.834(i)(3) are satisfied when the qualified person attending is awake, is carrying a transmitter that can activate the closure of the internal self-closing stop valve, remains within the operating range of the transmitter, and maintains an unobstructed view of the cargo tank when the internal self-closing stop valve is open.

Also, § 171.5(a)(1)(iii)(B) is revised to clarify that a qualified person must be positioned within arm's reach of a mechanical means of closure for the internal self-closing stop valve *only* when this valve is open, except for the short duration necessary to engage or disengage the motor vehicle PTO or other mechanical, electrical or hydraulic means used to energize the pump and other components of a cargo tank motor vehicle's discharge system. All of these functions occur at or immediately adjacent to the cargo tank in proximity to a means for closure of the internal self-closing stop valve.

B. RSPA Has Not Developed a "New Interpretation" of Its Long-Standing Attendance Requirement in § 177.834(i)

In its petition, AmeriGas states that, in the August 18, 1997 final rule, RSPA announced a new interpretation of the long-standing attendance requirements set forth at § 177.834(i). AmeriGas contends that this interpretation should be withdrawn because it: (1) is inconsistent with the regulatory language; (2) was announced without notice or opportunity to comment, in violation of the Administrative Procedure Act (APA) (*see* 5 U.S.C. 553); and (3) is inconsistent with normal industry practice that has been "accepted for decades without question."

AmeriGas's arguments are invalid because RSPA's position with regard to the meaning of § 177.834(i) is consistent with the regulatory history and plain language of that requirement. Furthermore, the public was given notice of the rulemaking that gave rise to the attendance requirements and an opportunity to comment. Indeed, comments to that rulemaking reflect that industry understood that restrictions on the person attending the unloading of hazardous materials from CTMV's were being proposed. Additional notice and an opportunity to comment are, therefore, not required under the APA. Finally, there is no validity to the assertion that, for decades, the Department has accepted widespread industry non-compliance with the attendance requirements. For these reasons, AmeriGas's petition for reconsideration of RSPA's position regarding the § 177.834(i) attendance requirements is denied.

1. RSPA's Position Is Consistent With the Regulatory History and Plain Language of the Attendance Requirements in § 177.834(i)

AmeriGas argues in favor of an industry interpretation that compliance with § 177.834(i) can be achieved by having a single operator remain in proximity to, and maintain an unobstructed view of, any part of the *delivery hose*.

The position that RSPA has taken with regard to the meaning of the attendance requirements in 49 CFR 177.834(i) is not only consistent with the plain language of the regulation but the regulatory history of the regulation as well. Section 177.834(i) states:

* * * * * *

(2) *Unloading.* A motor carrier who transports hazardous materials by a cargo tank must ensure that the cargo tank is attended by a qualified person at all times during unloading. . . .

(3) A person "attends" the loading or unloading of a *cargo tank* if, throughout the process, he is awake, has an unobstructed view of the *cargo tank*, and is within 7.62 meters (25 feet) of the cargo tank.

* * * * * *

(5) A delivery hose, when attached to the cargo tank, is considered a part of the *vehicle* (Emphasis added.)

RSPA's position consistently has been that the plain language of § 177.834(i) requires an attendant to maintain an unobstructed view of the *cargo tank* and be within 25 feet of the *cargo tank* during the unloading process.[1] Contrary to AmeriGas's assertion, the term "cargo tank" means the cargo tank itself and does not mean the hose or CTMV. The language of § 177.834(i)(5) plainly states that the hose is part of the vehicle not the cargo tank.

AmeriGas contends that there is support for industry's interpretation of the § 177.834(i)(3) requirements in the regulatory history of these requirements. Specifically, AmeriGas relies on language that appeared in a republication of 49 CFR Parts 71–90 by the Interstate Commerce Commission (ICC) on December 29, 1964 (29 FR 18652). (The ICC regulated hazardous materials transportation by highway and rail prior to 1967, the year the Department of Transportation (DOT) was established). The regulatory text AmeriGas relies on reads, "Under no circumstances shall a tank motor vehicle be left unattended during the loading or unloading process. For the purpose of this part, the delivery hose, when attached to the motor vehicle, shall be deemed a part thereof." (December 29, 1964; 29 FR 18801). RSPA believes this regulatory language makes it clear that a CTMV operator must attend the CTMV and any delivery hose attached to the motor vehicle during loading and unloading. The intent of this provision was to ensure that the operator took responsibility for the entire delivery system which, for purposes of Part 77, included not only the motor vehicle itself but also the delivery hose when attached to the motor vehicle. However, the 1964 language in § 77.834(i) was not specific as to what actions constituted "attendance."

[1] RSPA's position is supported by National Fire Protection Association publication "Standard for the Storage and Handling of Liquefied Compressed Gases" (NFPA 58), reported as adopted by 49 of 50 states. Section 4–2.3.3 requires, during unloading into storage containers, that "the shutoff valves on both the truck end the container are readily accessible."

Realizing that the word "attendance" was vague and that there was industry confusion regarding what was required under the attendance regulation, the Hazardous Materials Regulations Board (the Board), the predecessor to RSPA's Office of the Associate Administrator for Hazardous Materials Safety, initiated a rulemaking in Docket HM–110 to clarify the attendance requirement. Language in the notice of proposed rulemaking (NPRM) and the final rule in Docket HM–110 serves as the basis for RSPA's interpretation of the current attendance requirement. Specifically, in the preamble to the HM–110 NPRM, the Board stated:

> The Board has found that several dangerous incidents have occurred during the loading or unloading of tank motor vehicles which could have been avoided, if there had been someone *near the cargo tank* to take corrective action or precautionary action. The Board feels that there may be some confusion as to the intent of the term "attendance" as it is used in § 177.834(i). (Emphasis added).

38 FR 22901, August 27, 1973.

Based on this concern, the Board proposed to revise the regulation to include a requirement that an operator remain within 25 feet of the cargo tank motor vehicle. The Board also proposed to delete the limiting language "for the purpose of this part" from the hose provision of the attendance requirements, thereby making the delivery hose part of the tank motor vehicle not only for loading and unloading purposes, but for other regulatory purposes as well (*e.g.*, incident reporting). Specifically, the Board proposed to revise the attendance requirements in § 177.834(i) to state:

> (1) A tank motor vehicle is attended when the person in charge of the vehicle is awake and not in a sleeper berth, and is within 25 feet of the tank motor vehicle and has it within his unobstructed field of view. . . .
> (3) The delivery hose, when attached to the tank motor vehicle, is a part of the vehicle.

Id. at 22902.

In its January 11, 1973 comments to the Board's proposed revision to § 177.834(i), the National LP-Gas Association (NLPGA) (now NPGA) proposed to revise the language to reinsert the limiting language "for the purpose of this part" with regard to the hose provision of the attendance requirements. Specifically, the NLPGA proposed to revise § 177.834(i)(3) to read "For the purposes of this part the delivery hose, when attached to the tank motor vehicle, is a part of the vehicle." In explaining the proposed reinsertion of limiting words "for the purposes of this part," the NLPGA stated: "*We have no objection to a requirement that the motor vehicle operator or motor vehicle attendant be expected to attend the unloading hose as well as the vehicle* since in most cases he will provide the hose and will have connected it to the unloading equipment. We don't feel the delivery hose should be considered as a part of the motor vehicle." (Emphasis added). Industry's comments on the HM–110 NPRM indicate that industry fully understood that the Board proposed to require an attendant to remain within 25 feet of the cargo tank motor vehicle and hose, and maintain an unobstructed view of the cargo tank motor vehicle and hose. It is apparent from the NLPGA's comments to the proposed changes to § 177.834(i) that it understood the Board's concerns and its intent.

In the HM–110 final rule, the language that currently appears at § 177.834(i)(3), other than the addition of metric conversion of 25 feet, was adopted by the Board. Section 177.834(i)(3) currently reads, "A person 'attends' the loading or unloading of a cargo tank if, throughout the process, he is awake, has an unobstructed view of the cargo tank, and is within 7.62 meters (25 feet) of the cargo tank." Section 177.834(i)(5) currently reads, "A delivery hose, when attached to the cargo tank, is considered a part of the vehicle." In the final rule, the Board adopted the language in § 177.834(i)(3) that refers to the "*cargo tank*" and not the "tank motor vehicle," as proposed in the NPRM. The language in § 177.834(i)(5), however, continues to refer to the hose as part of the *vehicle*. The final rule requires a qualified person attending the loading or unloading of a cargo tank to remain within 25 feet of the cargo tank, maintain an unobstructed view of the cargo tank, and to attend the hose to the same extent that the qualified person attends to the cargo tank motor vehicle under the HMR.

AmeriGas also cites Shell Oil Company's October 26, 1973 comments to the Board's proposed revision of the attendance requirements in Docket HM–110 as support for its interpretation of the attendance requirements and evidence that the agency was aware of the industry's interpretation of the attendance requirements. Specifically, AmeriGas points to Shell Oil's comment that "Section 177.834(i)(1) requiring an attendant within 25 feet of the tank motor vehicle *or* its hose is over restrictive in cases where tight fill connections are used which are now in the majority." (Emphasis added.) AmeriGas places great weight on the fact that Shell used the word "or" rather than "and" to describe the proposed requirements. AmeriGas states that the word "or" put DOT on notice that the proposed language was being interpreted to allow an operator to comply with the attendance requirements by remaining within 25 feet of any part of the hose and maintaining an unobstructed view of any part of the hose.

AmeriGas, however, did not recognize or discuss the next sentence in Shell's comments which reads, "*This restriction* prohibits performance of other duties and would unnecessarily increase delivery costs." (Emphasis added). AmeriGas's interpretation of the attendance requirements would allow an operator to be within 25 feet of and have an unobstructed view of, any part of the CTMV including, any part of its hose. Under AmeriGas's interpretation, there is virtually no restriction on an operator's ability to perform other duties—an operator can be virtually anywhere between the cargo tank motor vehicle and the receiving tank—and a single operator can always satisfy the industry interpretation of the attendance requirements. The preceding regulatory history indicates that the Board intended to restrict the movement of the person unloading a cargo tank by requiring the operator to remain within 25 feet of the cargo tank and maintain an unobstructed view of the cargo tank, resulting in a limitation on the attendant's ability to perform other duties or activities. The type of precautionary action the Board contemplated when it initiated HM–110 cannot be taken if a cargo tank attendant is more than 25 feet away from the cargo tank, out of sight behind a building or other obstruction, or both. This sentence indicates that Shell understood that the Board was proposing new restrictions on unloading operations.

RSPA squarely rejected industry's interpretation of the attendance requirements during public meetings and workshops, in written correspondence,[2] and in the preamble to

[2] *See* October 3, 1997 letter to Barton Day, Esq., counsel for Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane L.P., Agway Petroleum Corporation, Cornerstone Propane Partners, L.P.,

Continued

the August 18, 1997 final rule.[3] Specifically, the preamble to the final rule states:

RSPA rejects the industry's interpretation of the long-standing operator attendance rules in § 177.834(i)(3) that a single operator satisfies requirements for an unobstructed view of the cargo tank, and is within 25 feet of the cargo tank, merely by being in proximity to, and having an unobstructed view of, any part of the delivery hose, which may be 100 feet or more away from the cargo tank motor vehicle, during the unloading (transfer) operation. The rule clearly requires an operator be in a position from which the earliest signs of problems that may occur during the unloading operation are readily detectable, thereby permitting an operator to promptly take corrective measures, including moving the cargo tank, actuating the remote means of automatic closure of the internal self-closing stop valve, or other action, as appropriate. RSPA contends the rule requires that an operator always be within 25 feet of the cargo tank. Simply being within 25 feet of any one of the cargo tank motor vehicle's appurtenances or auxiliary equipment does not constitute compliance.

62 FR at 44044.

Because RSPA's position is consistent with the regulatory history and plain language of 49 CFR 177.834(i), petitioner's request that RSPA withdraw its interpretation is denied.

2. Additional Notice and Comment Are Not Required Under the APA.

AmeriGas alleges that RSPA's "new interpretation" was announced without notice or opportunity to comment, in violation of the APA.

Section 553 of the APA requires that Federal agencies give the public an opportunity to participate in the rulemaking process by giving notice, in the **Federal Register**, of either the terms or substance of a proposed rule or a description of the subjects and issues involved, and an opportunity to submit written data, views, or arguments. As discussed above, the Board realized that the word "attendance" was vague, as used in the original ICC attendance regulations, and that there was industry confusion regarding what was required. Consequently the Board issued an NPRM, in docket HM–110, proposing to clarify the attendance requirements. In issuing the NPRM, the Board specifically noted that there had been several dangerous incidents during the loading or unloading of cargo tank motor vehicles that the Board felt could have been avoided had someone been near the cargo tank to take corrective or precautionary action.

The Board's clearly specified reasons for undertaking the HM–110 rulemaking, in conjunction with the proposed regulatory language, NLPGA's and Shell Oil's comments on that language, and the language of the final regulatory requirements all demonstrate that: (1) the public was given notice of the Board's intent to require an operator to be near the cargo tank during unloading, and an opportunity to comment; and (2) RSPA's position on the § 177.834(i) attendance requirement is long-standing and reflects industry understanding of the requirements at the time they were proposed and adopted. Therefore, RSPA's statements concerning the attendance requirements in § 177.834(i) do not in any way change the regulations or constitute rulemaking. Consequently, further notice and comment under the APA is not necessary.

3. DOT Was Not Aware of Widespread Non-Compliance.

AmeriGas claims that in the decades before—and 22 years since—the attendance requirements in § 177.834(i) were adopted, small CTMVs typically carried delivery hoses of 100 feet or more in length and were attended during at least a substantial portion of the unloading process from the position of the customer tank. AmeriGas states that these vehicles have operated openly and have been inspected by DOT officials on hundreds of occasions over the years without any suggestion that the routine operation of these vehicles under the industry's interpretation of § 177.834(i)(3) was improper. AmeriGas thus asserts that DOT has accepted for decades without question industry's long-standing practice of not remaining within 25 feet of the cargo tank and not maintaining an unobstructed view of it.

Although, FHWA inspectors occasionally inspect small CTMVs at roadside inspection facilities, they do not inspect the hose to determine its length as part of their routine inspection procedures. Neither the HMR nor the Federal Motor Carrier Safety Regulations, 49 U.S.C. Parts 350–399, restrict hose length. Additionally, neither FHWA nor RSPA inspectors routinely inspect small CTMV unloading operations. Thus, the Department was not aware that small CTMV deliveries of propane were being made in violation of the HMR. The fact that FHWA inspectors may have observed small CTMVs with hose lengths in excess of 100 feet does not support the argument that DOT knew that deliveries were being made in violation of the HMR.

The National Fire Protection Association (NFPA) publication "Standard for the Storage and Handling of Liquefied Compressed Gases" (NFPA 58) reported by NFPA as adopted by 49 of 50 states (with Texas preparing to adopt NFPA 58 next year), has unloading requirements that are consistent with and provide support to the HMR requirement that a qualified person maintain an unobstructed view of the cargo tank, and be in a position to promptly effect emergency procedures should there be a line separation or other problem requiring immediate attention. Specifically, at Section 4–2.1.1, NFPA 58 states:

Transfer operations shall be conducted by qualified personnel meeting the provisions of Section 1–5. *At least one qualified person* shall remain in attendance at the transfer operation from the time connections are made until the transfer is completed, shutoff valves are closed, and lines are disconnected. (Emphasis added).

In addition, Section 4–2.3.3 of NFPA–58 requires:

Cargo vehicles (see Section 8–3) unloading into storage containers shall be at least 10 feet (3.0 m) from the container and so positioned *that the shutoff valves on both the truck and the container are readily accessible.* (Emphasis added).

The fourth edition of the LP Gases Handbook, published by the NFPA interprets Section 4–2.3.3 as follows: "* * * The unloading cargo vehicle should be a distance from the container receiving the product so that if something happens at either point, the other will not be involved to the extent that it would be if it were in close proximity. Also, it is important to have the cargo vehicle so located that it is easy to get to the valves on both the truck and the container so that they can quickly be shut off if there is an emergency need to do so. * * * "[4] NFPA recognizes the importance of attending both the receiving tank and the cargo tank. RSPA believes that both warrant attention during unloading and that it is important to position these tanks so that this safety objective is achievable.

The importance of having a qualified person in a position to promptly effect closure of the internal valve and to shut down all motive and auxiliary power has been re-affirmed by two recent unloading incidents that resulted in the death of one operator and injury to another.[5] These incidents did not involve the separation of hose or piping, which emergency discharge control system requirements are meant to address, but were the result of equipment failures, which the attendance requirements in § 177.834(i) are meant to address. The CTMV was the suspected source of ignition in both of these incidents. Based on initial reports, had a qualified person been in attendance within 25 feet of the CTMV, he would have had a better chance of closing the internal self-closing stop valve prior to ignition.

Therefore, based on the above information, RSPA denies that part of AmeriGas's petition for reconsideration concerning the attendance requirements. The attendance requirement is intended to address a number of potentially serious threats to safety that may arise during the course of unloading, including failure of a parking brake to prevent movement of a motor vehicle; equipment failures (*e.g.*, pump leaks and leaks at a hose reel); and entry into the vicinity of the motor vehicle by persons who are carrying smoking materials. In all such instances, the qualified person attending the unloading operation must be aware of potential and actual threats to safety and be prepared to implement emergency procedures intended to minimize or eliminate those threats.

C. Need for Additional Operational Controls

AmeriGas states that RSPA's central basis for the interim requirements imposed under the August rule is that there is a need to address safety concerns that exist due to the inability of the emergency discharge control system currently in service on "bobtail vehicles" in compressed gas service to function in accordance with the HMR as specified under § 178.337–11(a)(1)(i). The petitioner then states that the record does not demonstrate the need for new requirements because the record does not include even a single documented incident involving the failure of the emergency discharge control system on a bobtail vehicle. Further, the petitioner states that the risk of such an event is extraordinarily remote and that there is no safety threat sufficient to warrant the imposition of burdensome interim operator attendance requirements for bobtails. Finally, the petitioner claims that RSPA's decision to impose burdensome interim operator attendance requirements for small CTMVs reflects a disregard of the evidence before it and arbitrarily fails to consider less burdensome regulatory alternatives.

In response, RSPA's underlying purpose of alternative operational controls adopted in the current requirements is to assure that persons who are dependent upon propane, anhydrous ammonia, and other liquefied compressed gases continue to receive those essential materials in a manner that does not impose unacceptable threats to public health and safety. The challenge was to develop rules for approximately 25,000 pump-equipped cargo tank motor vehicles (estimated to comprise the universe of specification MC–330, MC–331, and related non-specification cargo tanks) that industry determined may not conform to the long-standing requirements in § 178.337–11(a)(1)(i) for an emergency discharge control system (see emergency exemption applications filed by Mississippi Tank, National Tank Truck Carriers, NPGA and TFI; December 1996).

In developing the temporary alternative requirements, RSPA first determined there must be an effective means of providing for prompt closure of the internal self-closing stop valve under emergency conditions until industry could develop a system that provides a level of safety equal to that provided by § 178.337–11. The risks posed by an uncontrolled release of propane from a cargo tank motor vehicle are so great that, while RSPA sought to minimize the cost of compliance with the alternative requirements, safety was RSPA's primary concern. Additional training and hose testing requirements adopted in § 171.5 may reduce the risks of a release, but such measures do not provide a means of stopping the flow of propane once a release occurs.

The petitioner relies on a small number of incidents cited in the public docket to support its contention that the safety concern with regard to small CTMVs is minuscule. However, RSPA notes that: (1) industry is not required to report to DOT the occurrence of propane incidents or accidents that occur in intrastate commerce—which encompasses the vast majority of small CTMV deliveries; and (2) the small number of incidents in the record are not representative of the entire universe of incidents of which RSPA is aware. Federal hazardous materials transportation law at 49 U.S.C. 5103 directs the Secretary of Transportation to prescribe regulations for the safe transportation of a hazardous material when the Secretary determines that transporting a material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property. In developing safety regulations, RSPA must consider potential hazards posed by a material and may not base its regulatory decisions solely on the number of reported incidents.

For the reasons discussed above, RSPA denies this element of the petitioner's request for reconsideration of the final rule.

D. March 1, 1999 Expiration Date of the Temporary Final Rule Requirements

AmeriGas states that the legal effect of the expiration clause in the final rule is to require operators of small CTMVs to have in place passive emergency discharge control systems that will meet RSPA's requirements under § 178.337–11(a)(1)(i) by March 1, 1999. AmeriGas requests that the expiration date specified in § 171.5(c) be stricken pending completion of the rulemaking proceeding under Docket RSPA–97–2718 (HM–225A) that addresses long-term compliance issues.

On August 18, 1997, RSPA published an advance notice of proposed rulemaking (ANPRM) in Docket HM–225A (62 FR 44059) requesting comments regarding jurisdiction, emergency discharge controls, qualification and use of delivery hoses, and attendance requirements. The questions posed in the ANPRM are indicative of the range of options RSPA is considering, this includes various retrofit schedules for installation of new equipment. RSPA is mindful of industry's concerns and will take them into consideration in formulating a long-term compliance plan under HM–225A. Additionally, affected parties may choose to install systems that meet the

and National Propane, L.P. (item no. 188 in RSPA docket 97–2133).

[3] Because of industry's concerns about the attendance requirements, RSPA indicated in a June 9, 1997 notice [62 FR 31363] that it would initiate a new rulemaking to review and possibly revise the attendance and other regulatory requirements (*see* Docket No. RSPA–97–2718).

[4] Theodore C. Lemoff, ed., *LP–GASES Handbook*, 4th ed. (Quincy: National Fire Protection Association, 1995), p. 307.

[5] Initial reports from the Fire Marshall of Burke County, North Carolina indicate that on September 23, 1997, in Morganton, North Carolina, a Piedmont Natural Gas operator was at the receiving tank (approximately 80 feet from the cargo tank motor vehicle) when the hose nozzle became clogged with a foreign object believed to be part of the meter, thus preventing the operator from closing the nozzle when the customer tank became full. Consequently, the receiving tank overfilled and propane continued to flow from the hose at full pressure when the operator disconnected the hose from the receiving tank. The operator began to approach the cargo tank motor vehicle in order to manually shut the internal self-closing stop valve, but there was an explosion and fire before he could take emergency action. The operator received second-and third-degree burns over most of his body and died shortly thereafter.

On June 6, 1997, in Fayetteville, North Carolina, an AmeriGas operator stopped product transfer and was in the process of disconnecting the transfer hose from the receiving tank when he observed white fog escaping from under the truck. He immediately dropped the transfer hose and ran toward the truck (approximately 60 feet) to activate the engine kill switch and the emergency internal self-closing stop valve. When he was within 10 to 12 feet of the truck, the escaped gas vapors ignited, causing second degree burns to the operator's face and right thigh.

current requirements in § 178.337–11(a)(1)(i). For these reasons, RSPA denies AmeriGas's request for reconsideration of that part of the final rule concerning the expiration date of § 171.5.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). This rule revises a safety standard for verifying the integrity of transfer hoses on cargo tank motor vehicles in liquefied compressed gas service and makes other minor, non-substantive changes.

The final rule published on August 18, 1997, was a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule also was considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

RSPA did not prepare a regulatory evaluation for this final rule addressing the issue of revising the transfer hose pressure requirement. However, a final regulatory evaluation was prepared in support of the final rule published on August 18, 1997. The final regulatory evaluation is available for review in the public docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule addresses covered subject item (5) above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be March 10, 1996. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. The Act, however, applies only to rules for which an agency is required to publish a notice of proposed rulemaking pursuant to § 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. *See* 5 U.S.C. 603(a) and 604(a). Because of the emergency nature of the final rule published on August 18, 1997, RSPA was authorized under sections 553(b)(B) and 553(d)(3) of the APA to forego notice and comment and to issue the final rule with an immediate effective date. Nevertheless, RSPA was concerned about the effect the final rule would have on small businesses and, in preparing preliminary and final regulatory evaluations under Executive Order 12866, analyzed the impact of the interim final rule and final rule on all affected parties, including small businesses. Consequently, RSPA is not required under the Act to do a regulatory flexibility analysis for this final rule.

D. Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

This rule does not impose any new information collection burdens. The information collection and recordkeeping requirements contained in the final rule were submitted for renewal to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995. The requirement has been approved under OMB Control Number 2137–0595.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.5, paragraphs (a)(1)(i), (a)(1)(iii)(B) and (a)(1)(iii)(C)(*3*) are revised to read as follows:

§ 171.5 Temporary regulation; liquefied compressed gases in cargo tank motor vehicles.

(a) * * *

(1) * * *

(i) Before initiating each transfer from a cargo tank motor vehicle to a receiving system, the person performing the function shall determine that each component of the discharge system (including hose) is of sound quality and free of leaks and that connections are secure. This determination shall be made after the pressure in the discharge system has reached no less than equilibrium with the pressure in the cargo tank.

* * * * *

(iii) * * *

(B) A qualified person positioned within arm's reach of a mechanical means of closure of the internal self-closing stop valve at all times the internal self-closing stop valve is open; except, that person may be away from the mechanical means only for the short duration necessary to engage or disengage the motor vehicle power take-off or other mechanical, electrical, or hydraulic means used to energize the pump and other components of the cargo tank motor vehicle's discharge system; or

(C) * * *

(*3*) Is awake throughout the unloading process, and has an unobstructed view of the cargo tank at all times that the internal self-closing stop valve is open.

* * * * *

§ 171.5 [Amended]

3. In addition, in § 171.5 the following changes are made:

a. In paragraph (a) introductory text, in the first sentence, "ruptured or" is removed.

b. In paragraph (a)(1)(ii), in the third sentence, "and equipment" is removed.

c. In paragraph (c), the date "March 1, 1999" is revised to read "July 1, 1999".

Issued in Washington, DC on December 5, 1997, under authority delegated in 49 CFR part 1.

Kelley Coyner,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 97–32385 Filed 12–8–97; 9:40 am]

BILLING CODE 4910–60–P

Reader Aids

Federal Register

Vol. 62, No. 237

Wednesday, December 10, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
7056	64127
7057	64131
7058	65003
Administrative Orders:	
Presidential Determinations:	
No. 98–4 of November 14, 1997	63823
No. 98–5 of November 17, 1997	63619
No. 98–6 of December 2, 1997	65005

5 CFR

213	63627
315	63627
410	63630
591	63630

7 CFR

17	63606
247	64511
301	64133, 64263, 64677
319	65007
320	65007
330	65007
352	65007
401	63631
454	63631
457	63631, 63633, 65130
1412	63441
Proposed Rules:	
70	63471
610	64174
729	63678

8 CFR

213a	64048
299	64048

9 CFR

78	64134
91	64265
93	64265
Proposed Rules:	
381	64767
441	64767

10 CFR

30	63634
32	63634
50	63825
70	63825
73	63640
Proposed Rules:	
40	65039
50	63892, 63911
70	63911

11 CFR

Proposed Rules:	
114	65040

12 CFR

8	64135
226	63441
265	64996
516	64138
543	64138
545	64138
552	64138
556	64138
563	64138
614	63644
703	64146
704	64148
791	64266
1806	64440
Proposed Rules:	
225	64997
226	64769
404	64177
405	64177
708a	64185
708b	64187

14 CFR

39	63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011
71	64148, 64150, 64151, 64152, 64266, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015
95	65016
97	63447, 63449, 63451
255	63837
1260	63452
Proposed Rules:	
39	63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787
71	63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041

15 CFR

295	64682
Proposed Rules:	
806	65043

17 CFR

230	64968, 65043
239	64968
270	64968
274	64687, 64968

18 CFR

35	64688
37	64715
401	64154

20 CFR

255	64161

340 64273
404 64274
422 64274
Proposed Rules:
211 64188
422 63681

21 CFR
101 ..... 63647, 63653, 64634
179 ..... 64102, 64107
520 65020
Proposed Rules:
200 64048
1308 64526

22 CFR
Proposed Rules:
22 63478
51 63478
53 63478

23 CFR
1327 63655
Proposed Rules:
655 64324

24 CFR
201 65180
202 65180
203 65180
570 64634
888 64521

26 CFR
Proposed Rules:
1 64190

28 CFR
0 63453
540 ..... 65184, 65196

29 CFR
520 64956
521 64956
522 64956
523 64956
527 64956
1614 63847

30 CFR
Proposed Rules:
57 64789
75 64789
917 ..... 63684, 65044
926 ..... 63685, 64327

31 CFR
500 64720
Proposed Rules:
356 64528

32 CFR
320 65020
Proposed Rules:
199 64191
901 63485

33 CFR
100 65021
117 63847
165 65022

36 CFR
701 64279
Proposed Rules:
1 63488
14 63488
327 64192

37 CFR
202 63657
Proposed Rules:
253 63502
255 63506

38 CFR
17 64722
21 ..... 63847, 63848
36 63454
Proposed Rules:
20 64790

39 CFR
111 63850
262 64280
265 ..... C4280

40 CFR
52 ..... 63454, 63456, 63658, 64284, 64522, 64722, 64725
63 ..... 64736, 65022
64 63662
70 63662
71 63662
80 63853
81 ..... 64284, 64725, 65025
180 ..... 63662, 63858, 64048, 64287, 64294, 65030
185 ..... 64048, 64284, 64287
186 64048
261 63458
264 ..... 64636, 64795
265 64636
268 64504
270 64636
721 64738
Proposed Rules:
51 64532
52 ..... 63687, 64329, 64543, 647389, 65046
63 65049
80 63918
81 63687
112 63812
194 64327
721 64738

41 CFR
105-60 64740
301 63798

42 CFR
417 63669
Proposed Rules:
1001 ..... 63689, 65049

43 CFR
Proposed Rules:
4 64544

45 CFR
205 64301
232 64301
233 64301
235 64301
250 64301
251 64301
255 64301
256 64301
257 64301

46 CFR
114 64303
116 64303
117 64303
118 64303
121 64303
122 64303
175 64303
177 64303
178 64303
180 64303
185 64303
514 63463

47 CFR
20 63864
22 63864
25 64167
43 64741
52 64759
54 65036
63 64741
64 ..... 64741, 64759
73 63674
Proposed Rules:
32 65053
73 63690

48 CFR
Ch. 1 ..... 64912, 64952
1 ..... 64913, 64940
2 64914
4 ..... 64915, 64916
5 64914
6 64916
7 64914
8 ..... 64914, 64916
9 64914
12 ..... 64914, 64916
13 ..... 64914, 64916
18 ..... 64914, 64916
17 64914
19 ..... 64914, 64916, 64940
22 64914
25 64929
29 64930
31 ..... 64930, 64931, 64932
32 ..... 64914, 64916
33 ..... 64914, 64933
34 64914
37 64914
38 64914
39 64914
41 64916
42 ..... 64915, 64931, 64934, 64940
43 64916
45 64914
46 64914
47 64936
49 64916
51 64914
52 ..... 64914, 64915, 64916
53 ..... 64914, 64916, 64934, 64936, 64940
Proposed Rules:
1843 64545
1852 64545

49 CFR
171 65188
219 ..... 63464, 63675
225 63675
240 63464
Proposed Rules:
Ch. X 64193
572 64546

50 CFR
20 63606
17 64306
222 63467
622 63677
648 ..... 63872, 64765
660 63676
679 ..... 63877, 63878, 63880, 64760
Proposed Rules:
14 64335
17 ..... 64337, 64340, 64799, 64800
23 64347
600 65055
622 65056
648 65055
679 63690

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 10, 1997

DEFENSE DEPARTMENT
Privacy Act; implementation; published 12-10-97

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyromazine; published 12-10-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter Deutschland GmbH; published 11-5-97
Schweizer Aircraft Corp.; published 11-5-97

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous liquid transportation—
Liquefied compressed gasses in cargo tank motor vehicles; published 12-10-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hazelnuts grown in Oregon and Washington; comments due by 12-15-97; published 10-14-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classifications; comments due by 12-15-97; published 10-15-97
Plant-related quarantine, domestic:
Oriental fruit fly; comments due by 12-15-97; published 10-14-97
Plant-related quarantine, foreign:
Tomatoes from Morocco and Western Sahara, etc.; comments due by 12-15-97; published 10-16-97

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Carrageenam, locust bean gum and xanthan gum blend used as binder in cured pork products; comments due by 12-19-97; published 11-19-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut and red king crab; comments due by 12-18-97; published 12-3-97
Marine mammals:
Endangered fish or wildlife—
Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
Incidental taking—
Vandenberg AFB, CA; missile and rocket launches, aircraft flight test operations, and helicopter operations; comments due by 12-15-97; published 11-14-97

DEFENSE DEPARTMENT
Acquisition regulations:
Contract performance reporting outside the United States; comments due by 12-16-97; published 10-17-97
Government property; comments due by 12-16-97; published 10-17-97

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practice standards; comments due by 12-18-97; published 11-18-97

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida; comments due by 12-15-97; published 11-13-97
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 12-19-97; published 11-19-97

FARM CREDIT ADMINISTRATION
Farm credit system:
Leasing activities; comments due by 12-15-97; published 10-15-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arkansas; comments due by 12-15-97; published 10-31-97
Florida; comments due by 12-15-97; published 10-31-97
Illinois; comments due by 12-15-97; published 10-31-97
Michigan; comments due by 12-15-97; published 10-31-97
Oregon; comments due by 12-15-97; published 10-31-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Interest on deposits:
Payment of interest; exception to prohibition; comments due by 12-15-97; published 10-16-97

FEDERAL LABOR RELATIONS AUTHORITY
Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Real Estate Settlement Procedures Act:
Mortgage brokers; disclosure of fees; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT
Indian Affairs Bureau
Law and order on Indian reservations:
Courts of Indian Offenses and law and order code
Correction; comments due by 12-15-97; published 11-14-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
Mobile River Basin, AL; three aquatic snails as endangered and three aquatic snails as threatened; comments due by 12-16-97; published 10-17-97
Newcomb's snail; comments due by 12-15-97; published 11-12-97
St. Andrew Beach mouse; comments due by 12-16-97; published 10-17-97

INTERIOR DEPARTMENT
Conflict of interests:
Ethical conduct for Department of Interior employees; supplemental standards; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Louisiana; comments due by 12-19-97; published 11-19-97
Montana; comments due by 12-17-97; published 12-2-97
Ohio; comments due by 12-17-97; published 12-2-97
Surface coal mining and reclamation operations:
Ownership and control, permit application process, and improvidently issued permits; comments due by 12-15-97; published 10-29-97

INTERNATIONAL TRADE COMMISSION
Freedom of Information Act and Privacy Act; implementation; comments due by 12-17-97; published 11-17-97

JUSTICE DEPARTMENT
Drug Enforcement Administration
List I chemicals; manufacturers, distributors, importers and exporters; registration:
Pseudoephedrine and phenylpropanolamine products; temporary distribution registration exemption; comments due by 12-16-97; published 10-17-97

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Early release consideration; drug abuse treatment and intensive confinement center programs; comments due by 12-15-97; published 10-15-97
LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Tuberculosis, occupational exposure to; comments due by 12-16-97; published 10-17-97
NATIONAL RAILROAD PASSENGER CORPORATION
Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
North Carolina; comments due by 12-15-97; published 10-16-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 12-19-97; published 11-19-97
AlliedSignal Inc.; comments due by 12-16-97; published 10-17-97
Bombardier; comments due by 12-18-97; published 11-18-97
Dassault; comments due by 12-15-97; published 11-13-97
Dornier; comments due by 12-15-97; published 11-13-97
Robinson Helicopter Co.; comments due by 12-16-97; published 10-17-97
Short Brothers plc; comments due by 12-19-97; published 11-19-97
SOCATA-Groupe AEROSPATIALE; comments due by 12-15-97; published 11-7-97
Class E airspace; comments due by 12-15-97; published 10-31-97
TREASURY DEPARTMENT
Fiscal Service
Financial management services:
Federal payments; conversion (two phases) of checks to electronic fund transfer; comments due by 12-16-97; published 9-16-97
TREASURY DEPARTMENT
Internal Revenue Service
Employment taxes and collection of income taxes at source:
Form W-8; electronic filing; comments due by 12-15-97; published 10-14-97

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1493/P.L. 105–141

To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes. (Dec. 5, 1997; 111 Stat. 2647)

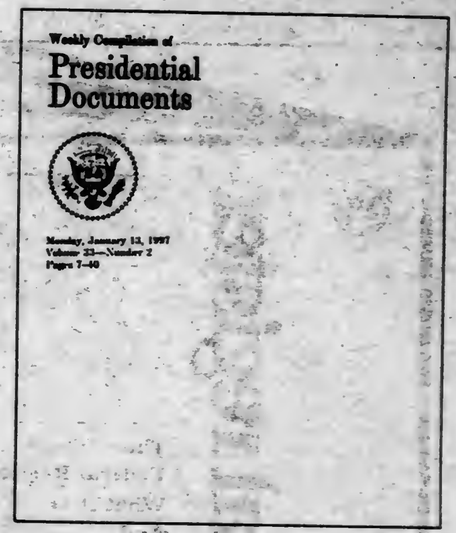
H.R. 2828/P.L. 105–142

To make clarifications to the Pilot Records Improvement Act of 1996, and for other purposes. (Dec. 5, 1997; 111 Stat. 2650)

Last List December 5, 1997

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5420

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, please enter ____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

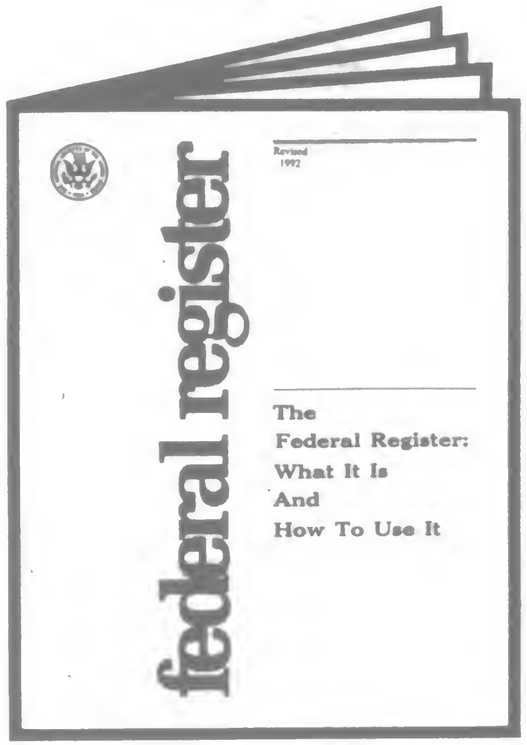
For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

Charge your order.
It's Easy!
To fax your orders (202)–512–2250

☐ **YES**, please send me the following:

_____ copies of **The Federal Register - What It Is and How To Use It**, at $7.00 per copy. Stock No. 069–000–00044–4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register



Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5421

Charge your order.
It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions for one year:

___ **LSA (List of CFR Sections Affected),** (LCS) for $27 per year.
___ **Federal Register Index** (FRSU) $25 per year.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before the shown date.

```
AFR  SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before the shown date.

```
AFRDO  SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. (Price includes regular domestic postage and handling, and is subject to change.) International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–11–97
Vol. 62 No. 238

federal register

Thursday
December 11, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–11–97
Vol. 62 No. 238
Pages 65197–65308

federal register

Thursday
December 11, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see the announcement on the inside cover of this issue.

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to: swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

Printed on recycled paper containing 100% post consumer waste

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 16, 1997 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 62, No. 238
Thursday, December 11, 1997

Agriculture Department
See Commodity Credit Corporation
See Forest Service

Army Department
NOTICES
Environmental statements; availability, etc.:
Non-stockpile chemical warfare materiel; treatment, 65253–65254

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65268–65271
Meetings:
Biomechanical stress control in drywall installation; NIOSH meeting, 65271

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65271–65272
Submission for OMB review; comment request, 65272–65273

Coast Guard
RULES
Ports and waterways safety:
Vessels bound for ports and places; international safety management code verification status, 65203–65207

Commerce Department
See International Trade Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 65246
Thailand, 65246–65248

Commodity Credit Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65241

Commodity Futures Trading Commission
RULES
Reporting requirements:
Large trader reports; reporting levels changes
Correction, 65203

Defense Department
See Army Department
NOTICES
Arms sales notification; transmittal letter, etc., 65248–65253
Civilian health and medical program of uniformed services (CHAMPUS):
DRG-based payment system (1998 FY)—
Revised weights, thresholds, and per diem rates; correction, 65253

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65254

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Environmental statements; availability, etc.:
Hanford Site, WA—
Solid (radioactive and hazardous) waste program, 65254–65255
Meetings:
Environmental Management Site-Specific Advisory Board—
Nevada Test Site, 65255

Energy Information Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65255–65256

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Connecticut; correction, 65224–65225
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 65225

Federal Aviation Administration
RULES
Air carrier certification and operations:
Digital flight data recorder upgrade requirements
Correction, 65202
Airspace:
Designations and reporting points; incorporation by reference, 65201–65202
Airworthiness directives:
Eurocopter Deutschland, 65198–65201
PROPOSED RULES
Airworthiness directives:
Airbus, 65227–65228
Boeing, 65233–65235
Dassault, 65230–65231
Dornier, 65228–65230
Saab, 65231–65233
Class E airspace; correction, 65308
NOTICES
Meetings:
Air Traffic Procedures Advisory Committee, 65305
Technical standard orders:
Traffic advisory system (TAS) airborne equipment, 65305–65306

Federal Communications Commission
NOTICES
Senior Executive Service:
Performance Review Board; membership, 65265
Telecommunications relay services; State certification; applications accepted, 65265

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Nebraska, 65265

Federal Energy Regulatory Commission
NOTICES
Environmental report preparation training courses; applicant preparation, 65262
Environmental statements; availability, etc.:
Great Lakes Gas Transmission Limited Partnership, 65262–65263
Hydroelectric applications, 65263–65264
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 65256–65257
Continental Natural Gas, Inc., 65257
East Tennessee Natural Gas Co., 65257
Gas Transport, Inc., 65257–65258
Hub Power Co. et al., 65258–65261
Koch Gateway Pipeline Co., 65261
NorAm Gas Transmission Co., 65261
Southern California Edison Co., 65261–65262

Federal Housing Finance Board
RULES
Federal home loan bank system:
Federal Home Loan Bank bylaws; approval authority, 65197–65198
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65265–65266

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Air-Sea International, Inc., 65266–65267
Marlins Freight Forwarders, Inc. et al., 65267

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 65267
Permissible nonbanking activities, 65267–65268
Meetings; Sunshine Act, 65268

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Gray Wolf, 65237–65240
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65280
Endangered and threatened species permit applications, 65281–65282
Marine mammals permit applications, 65282

Food and Drug Administration
PROPOSED RULES
Radiological health:
Diagnostic x-ray systems and major components; performance standard; comments and information request, 65235–65237
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65273–65276
Submission for OMB review; comment request, 65276–65278
Meetings:
Medical Devices Advisory Committee; correction, 65278

Forest Service
NOTICES
Environmental statements; notice of intent:
Willamette National Forest, OR, 65241–65243

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Meetings:
Consumer Protection and Quality in Health Care Industry Advisory Commission, 65268
State assistance expenditures; Federal financial participation; correction, 65308

Health Resources and Services Administration
NOTICES
Meetings:
Rural Health National Advisory Committee, 65278

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 65264

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
Fort Belknap Irrigation Project, MT, 65282
Fort Hall Irrigation Project, ID, 65282–65283

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Cased pencils from—
China; court decision, 65243
Export trade certificates of review, 65245–65246
Applications, hearings, determinations, etc.:
Barnard College, 65243–65244
University of—
California et al., 65244
California, Los Alamos, 65245
Illinois at Urbana-Champaign, 65245
Illinois at Urbana-Champaign et al., 65244–65245
Washington, 65245

International Trade Commission
NOTICES
Import investigations:
Digital satellite system (DSS) receivers and components, 65285

Justice Department
See Justice Programs Office

NOTICES
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Battery or extreme cruelty and need for specific benefits; standards and methods for determining whether a substantial connection exists; guidance, 65285–65287

Justice Programs Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65287

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Calista Corp., 65283
Public land orders:
Colorado, 65283–65284
Oregon, 65284
Survey plat filings:
Oregon and Washington, 65284–65285

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 65287–65288

National Credit Union Administration
RULES
Organization, functions, and authority delegations:
Executive Director and General Counsel, 65197

National Institutes of Health
NOTICES
Meetings:
National Human Genome Research Institute, 65278–65279
National Institute of Child Health and Human Development, 65279
National Institute of Mental Health, 65279
National Institute of Neurological Disorders and Stroke, 65279
National Instutute of Nursing Research, 65280

Northeast Dairy Compact Commission
PROPOSED RULES
Over-order price regulations:
Compact over-order price regulations—
Fluid milk distributions in six New England States during 1998-1999 contract year; exemption, 65226–65227

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65288
Applications, hearings, determinations, etc.:
General Atomics, 65288–65289

Occupational Safety and Health Administration
RULES
Safety and health standards, etc.:
Electrical power generation; transmission and distribution; electrical protective equipment, 65203

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 65289

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 65299–65300
Philadelphia Stock Exchange, Inc., 65300–65302
Applications, hearings, determinations, etc.:
Dreyfus Variable Investment Fund et al., 65289–65293
PBHG Insurance Series Fund, Inc. et al., 65293–65298
Public utility holding company filings, 65298–65299

Small Business Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 65302–65303

Social Security Administration
NOTICES
Social security supplemental agreements:
Canada and U.S.; entry into force, 65303
United Kingdom and U.S.; entry into force, 65303

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Southwest Ohio Regional Transit Authority et al., 65306–65307

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Surface Transportation Board
See Transportation Statistics Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65303–65305
International cargo rate flexibility level:
Standard foreign fare level—
Index adjustment factors, 65305

Transportation Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65307

Veterans Affairs Department
RULES
Disabilities rating schedule:
Cardiovascular system, 65207–65224

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
1301.....65226

12 CFR
790.....65197
934.....65197

14 CFR
39.....65198
71.....65201
121.....65202
Proposed Rules:
39 (5 documents).....65227, 65228, 65230, 65231, 65233
71.....65308

17 CFR
15.....65203

21 CFR
Proposed Rules:
1020.....65235

29 CFR
1910.....65203

33 CFR
160.....65203

38 CFR
4.....65207

40 CFR
52.....65224
300.....65225

50 CFR
Proposed Rules:
17.....65237

Rules and Regulations

Federal Register
Vol. 62, No. 238
Thursday, December 11, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

Description of NCUA; Requests for Agency Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board amends its rules to state that the Executive Director and the General Counsel report to the NCUA Board. The purpose of the rule is to enhance the organization and operations of NCUA.

DATES: Effective on December 11, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, Office of the General Counsel, at the above address or telephone (703)518–6540. E-mail questions may be sent to ogcmail@ncua.gov.

SUPPLEMENTARY INFORMATION: Part 790 of NCUA Rules and Regulations, 12 CFR Part 790, describes the organization of NCUA's central and regional offices, and sets forth the places and method of obtaining information from NCUA. Prior to this amendment, § 790.2(b)(7) and § 790.2(b)(8) did not state specifically to whom the Executive Director and the General Counsel report. Accordingly, the above sections are amended to provide that the Executive Director and the General Counsel report to the NCUA Board.

Immediate Effective Date

Because these amendments concern the organization of NCUA, prior notice and comment are not required by 5 U.S.C. 553. These amendments are effective upon publication in the **Federal Register**.

Regulatory Procedures

Regulatory Flexibility Act

NCUA certifies that part 790 will not have a significant impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required. The rule affects internal NCUA operations only. Thus, it will not result in any additional burden for regulated institutions. The purpose of the rule is to enhance the organization and operations of NCUA.

Paperwork Reduction Act

The amendments to the rule do not contain any collection of information requirements pursuant to the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Part 790 only applies to NCUA and the NCUA Board. Accordingly, NCUA has determined that the rule will not have a substantial impact on the states or state interests. Further, the rule will not preempt provisions of state law or regulations.

List of Subjects in 12 CFR Part 790

Organization and functions (Government agencies).

By the National Credit Union Administration Board on December 2, 1997.

Becky Baker,

Secretary to the Board.

Accordingly, NCUA amends 12 CFR part 790 as follows:

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

1. The authority citation for part 790 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

2. Section 790.2 is amended by adding a new sentence before the existing first sentence of paragraphs (b)(7) and (b)(8) to read as follows:

§ 790.2 Central and regional office organization.

* * * * *

(b) * * *

(7) *Office of the Executive Director.* The Executive Director reports to the entire NCUA Board. * * *

(8) *Office of the General Counsel.* The General Counsel reports to the entire NCUA Board. * * *

* * * * *

[FR Doc. 97–32326 Filed 12–10–97; 8:45 am]
BILLING CODE 7535–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 934

[No. 97–77]

RIN 3069–AA70

Authority To Approve Federal Home Loan Bank Bylaws

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adding a new provision to its regulation on Federal Home Loan Bank (FHLBank) operations to devolve responsibility for approving FHLBank bylaws or amendments thereto, subject to certain conditions, from the Finance Board to the boards of directors of the FHLBanks. The rule is part of the Finance Board's continuing effort to devolve management and governance responsibilities to the FHLBanks and is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

DATES: The interim final rule will become effective on January 12, 1998. The Finance Board will accept comments on the interim final rule in writing on or before January 12, 1998.

ADDRESSES: Mail comments to Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell, Compliance Assistance Division, Office of Policy, 202/408–2882, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Subject to the approval of the Finance Board, section 12(a) of the Federal Home Loan Bank Act (Bank Act) authorizes the board of directors of each FHLBank to "prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered." 12 U.S.C. 1432(a). Currently, no Finance Board regulation or policy addresses specifically the process by which the Finance Board evaluates and approves FHLBank bylaws or amendments thereto.

From the establishment of the Finance Board in 1989 until the present, Finance Board staff has reviewed proposed FHLBank bylaws and bylaws amendments to ensure that they are consistent with applicable statutes, regulations, and Finance Board policies. Pursuant to delegated authority, the Associate Director of the former District Banks Secretariat, and, after that position and office were eliminated, the Managing Director of the Finance Board, approved FHLBank bylaws or bylaws amendments upon the recommendation of staff. See Federal Home Loan Bank Board Resolution No. 21,526 (Apr. 4, 1968) (rescinded by Finance Board Resolution No. 97–76 (Dec. 1, 1997)); Finance Board Chairperson's Order No. 95–OR–6 (Oct. 10, 1995).

The Finance Board believes the FHLBanks should have broad discretion to manage their affairs, including the authority to approve bylaws and amendments thereto. Accordingly, as part of the Finance Board's continuing effort to devolve management and governance responsibilities to the FHLBanks, the interim final rule transfers the authority to approve FHLBank bylaws and bylaws amendments, subject to certain conditions, from the Finance Board to the boards of directors of the FHLBanks.

II. Analysis of the Interim Final Rule

The Finance Board is proposing to add a new section, designated as § 934.16, to its regulation on FHLBank operations. Section 934.16 devolves responsibility for approving FHLBank bylaws and amendments thereto, subject to certain conditions, from the Finance Board to the boards of directors of the FHLBanks. The rule authorizes the board of directors of each FHLBank to prescribe, amend, or repeal bylaws governing the manner in which the FHLBank administers its affairs without the prior approval of the Finance Board provided that the bylaws or bylaws amendments are consistent with applicable statutes, regulations, and Finance Board policies. The Finance Board will ensure that FHLBank bylaws are legally unobjectionable through the examination process.

III. Notice and Public Participation

The Finance Board finds that the notice and comment procedure required by the Administrative Procedure Act is unnecessary, impracticable, and contrary to the public interest in this instance because the change made by the interim final rule is technical in nature and applies only to the FHLBanks. See 5 U.S.C. 553(b)(3)(B). Nevertheless, because the Finance Board believes public comments aid in effective rulemaking, it will accept written comments on the interim final rule on or before January 12, 1998.

IV. Regulatory Flexibility Act

The Finance Board is adopting this amendment to part 934 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. See 5 U.S.C. 601(2), 603(a).

V. Paperwork Reduction Act

This interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 934

Federal home loan banks, Securities, Surety bonds.

Accordingly, the Federal Housing Finance Board hereby amends part 934, chapter IX, title 12 of the Code of Federal Regulations as follows:

PART 934—OPERATIONS OF THE BANKS

1. Revise the authority citation for part 934 to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431(g), 1432(a), and 1442.

2. Add § 934.16 to read as follows:

§ 934.16 Approval of Bank bylaws.

The board of directors of a Bank may prescribe, amend, or repeal bylaws governing the manner in which the Bank administers its affairs without the Board's prior approval provided that the bylaws or amendments are consistent with applicable statutes, regulations, and Board policies.

Dated: December 3, 1997.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 97–32207 Filed 12–10–97; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–46–AD; Amendment 39–10240; AD 97–20–13]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland Model EC135 P1 and T1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 97–20–13 which was sent previously to all known U.S. owners and operators of Eurocopter Deutschland Model EC135 P1 and T1 helicopters by individual letters. This amendment is prompted by the discovery of cracks on the stator blades of the fenestron tail rotor (tail rotor). The actions specified by this AD are intended to prevent failure of the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective December 29, 1997, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–20–13, issued on September 25, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 25, 1997, the FAA issued priority letter AD 97–20–13, applicable to Eurocopter Deutschland Model EC135 P1 and T1 helicopters, which requires immediate and daily repetitive inspections of the stator blades for cracks in the stator hub area. If this visual inspection reveals a crack, a dye-penetrant inspection is required. Also, within 400 hours time-in-service (TIS) after the effective date of this AD, and thereafter, at intervals not to exceed 400 hours TIS, a dye-penetrant inspection for cracks is required. If any of the inspections reveal cracked stator blades, each crack must be stop-drilled. If any of the inspections reveal cracks on a stator blade with a total crack length of 15mm or longer, or if cracks are found on more than 3 stator blades, the affected blades must be replaced with airworthy blades prior to further flight. That action was prompted by the discovery of cracks on the stator blades of the tail rotor. This condition, if not corrected, could result in failure of the tail rotor and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other Eurocopter Deutschland Model EC135 P1 and T1 helicopters of the same type design, the FAA issued priority letter AD 97–20–13 to prevent failure of the tail rotor and subsequent loss of control of the helicopter. The AD requires, before further flight, and thereafter, before the first flight of each day, visually inspecting the stator blades in the stator hub area. If this visual inspection reveals a crack, a dye-penetrant inspection is required. Also, within 400 hours TIS after the effective date of this AD, and thereafter, at intervals not to exceed 400 hours TIS, a dye-penetrant inspection for cracks is required. If any of the inspections reveal cracked stator blades, each crack must be stop-drilled. If any of the inspections reveal cracks on a stator blade with a total crack length of 15mm or longer, or if cracks are found on more than 3 stator blades, the affected stator blades must be replaced with airworthy stator blades prior to further flight.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 25, 1997 to all known U.S. owners and operators of Eurocopter Deutschland Model EC135 P1 and T1 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–46–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–20–13—Eurocopter Deutschland: Amendment 39–10240. Docket No. 97–SW–46–AD.

Applicability: Model EC135 P1 and T1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

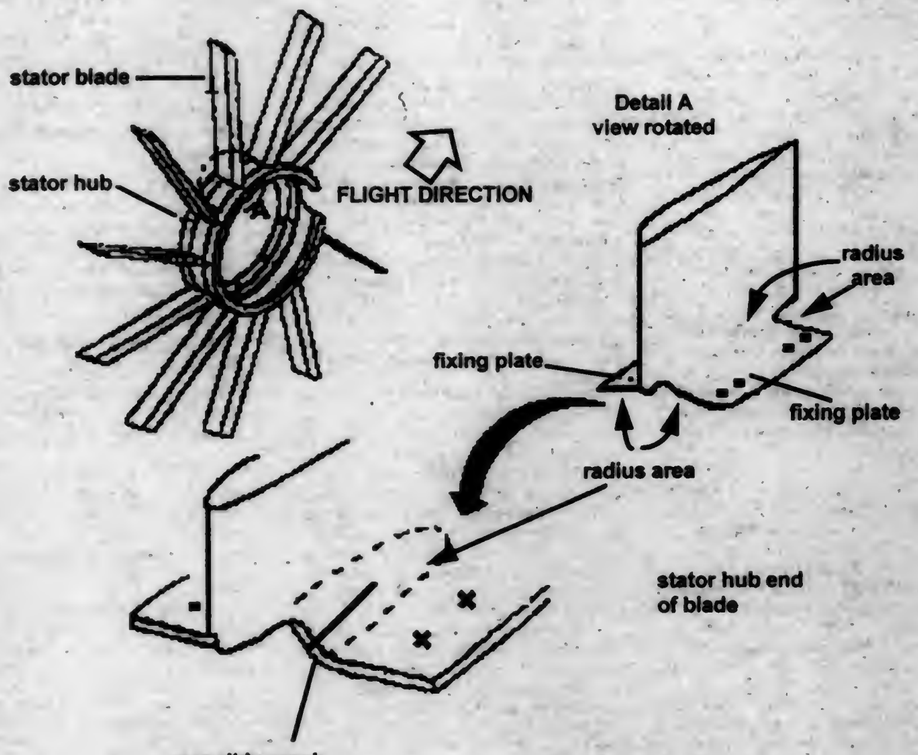
(a) Before further flight, and thereafter before the first flight of each day, visually inspect all stator blades in the stator hub area for cracks (see Figure 1). Inspect the stator blades in the areas where they are riveted to

the stator hub. Pay particular attention to the radius areas where the stator blade base attaches to the stator hub.

(1) If the inspection reveals a crack at the base of a stator blade, remove the paint from the area and perform a dye-penetrant inspection.

(2) If the inspection reveals 3 or less cracked stator blades and a total crack length per stator blade of less than 15mm, stop-drill each crack with a 2mm diameter drill.

BILLING CODE 4910-13-P



Criteria:

1. **Maximum 3 stator blades with cracks allowed.**
2. **The total length of all cracks on each blade must not exceed 15 mm.**

Inspection of the stator blades
Figure 1

(b) Within 400 hours time-in-service (TIS), and thereafter, at intervals not to exceed 400 hours TIS, remove the paint from all stator blades in the stator hub area and perform a dye-penetrant inspection for cracks.

(c) If the inspections reveal cracks on any stator blade with a total crack length of 15mm or longer, or if more than 3 stator blades are cracked, remove the affected stator blades and replace them with airworthy stator blades before further flight. The inspections required by this AD must continue to be performed on all stator blades including replacement stator blades.

Note 2: Eurocopter Deutschland Alert Service Bulletin No. EC 135–53A–001, Revision 01, dated August 8, 1997, pertains to this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits will not be issued.

(f) This amendment becomes effective on December 29, 1997, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 97–20–13, issued September 25, 1997, which contained the requirements of this amendment.

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (Germany) AD 97–249, effective September 25, 1997.

Issued in Fort Worth, Texas, on December 2, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–32255 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–31]

RIN 2120–AA66

Amendment of Legal Descriptions of Jet Routes and Federal Airways in the Vicinity of Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of three jet routes and thirteen Federal airways that include the Indianapolis Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) as part of their route structure. Currently, the Indianapolis VORTAC and the Indianapolis International Airport share the "Indianapolis" name even though they are not collocated. This situation has led to confusion among users. To eliminate this confusion, the Indianapolis VORTAC will be renamed "Brickyard VORTAC." The effective date of this name change will coincide with this rulemaking action. This action amends the legal descriptions of those jet routes and airways affected by the VORTAC's name change.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 by amending the legal descriptions of three jet routes and thirteen Federal airways that have "Indianapolis VORTAC" included as part of their route structure. Currently, the Indianapolis VORTAC and the Indianapolis International Airport share the "Indianapolis" name even though the VORTAC is approximately 7 nautical miles (NM) northwest of the airport. This situation has led to confusion among users because the VORTAC and the airport are not collocated. To eliminate this confusion, the Indianapolis VORTAC will be renamed "Brickyard VORTAC." The effective date changing the name of the VORTAC will coincide with this rulemaking action. As a result of the VORTAC's name change, this rule will amend all jet routes and airways with "Indianapolis VORTAC" included as part of their legal descriptions.

Since this action merely involves changes in the legal description of jet routes and Federal airways, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes and domestic VOR Federal airways are published in paragraph 2004 and paragraph 6010(a), respectively, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The jet routes and airways listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–24 [Revised]

From Myton, UT, to Hayden, CO. From Hugo, CO, Hays, KS; via Salina, KS; Kansas City, MO; St. Louis, MO; Brickyard, IN; Falmouth, KY; Charleston, WV; Montebello, VA; Flat Rock, VA; to Harcum, VA.

* * * * *

J–80 [Revised]

From Oakland, CA; via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Grand Junction, CO; Red Table, CO; Falcon, CO; Goodland, KS; Hill City, KS; Kansas City, MO; Capital, IL; Brickyard, IN; Bellaire, OH; INT Bellaire 090° and East

Texas, PA, 240° radials; East Texas; Sparta, NJ; Barnes, MA; to Bangor, ME.

* * * * *

J–110 [Revised]

From Oakland, CA, via Salinas, CA; Clovis, CA; Boulder City, NV; Farmington, NM; Alamosa, CO; Garden City, KS; Butler, MO; St. Louis, MO; Brickyard, IN; Bellaire, OH; to Coyle, NJ.

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–11 [Revised]

From Brookley, AL; Greene County, MS; Jackson, MS; Sidon, MS; Holly Springs, MS; Dyersburg, TN; Cunningham, KY; Pocket City, IN; Brickyard, IN; Marion, IN; Fort Wayne, IN; to INT Fort Wayne 038° and Carleton, MI, 262° radials.

* * * * *

V–14 [Revised]

From Chisum, NM, via Lubbock, TX; Childress, TX; Hobart, OK; Will Rogers, OK; INT Will Rogers 052° and Tulsa, OK, 246° radials; Tulsa; Neosho, MO; Springfield, MO; Vichy, MO; INT Vichy 067° and St. Louis, MO, 225° radials; Vandalia, IL; Terre Haute, IN; Brickyard, IN; Muncie, IN; Findlay, OH; Dryer, OH; Jefferson, OH; Erie, PA; Dunkirk, NY; Buffalo, NY; Geneseo, NY; Georgetown, NY; INT Georgetown 093° and Albany, NY, 270° radials; Albany; INT Albany 084° and Gardner, MA, 284° radials; Gardner; to Norwich, CT. The airspace within R–5207 is excluded.

* * * * *

V–24 [Revised]

From Aberdeen, SD, via Watertown, SD; Redwood Falls, MN; Rochester, MN; Lone Rock, WI; INT Lone Rock 147° and Janesville, WI, 281° radials; Janesville; INT Janesville 112° and Northbrook, IL, 290° radials; to Northbrook. From Peotone, IL; INT Peotone 152° and Brickyard, IN, 312° radials; to Brickyard.

* * * * *

V–50 [Revised]

From Hastings, NE, via Pawnee City, NE; St. Joseph, MO; Kirksville, MO; Quincy, IL; Capital, IL; Decatur, IL; Terre Haute, IN; Brickyard, IN; Dayton, OH.

* * * * *

V–53 [Revised]

From Charleston, SC, via Columbia, SC; Spartanburg, SC; Sugarloaf Mountain, NC; Holston Mountain, TN; Hazard, KY; Lexington, KY; Louisville, KY; INT Louisville 333° and Brickyard, IN, 170° radials; Brickyard. The airspace within R–3401B is excluded.

* * * * *

V–96 [Revised]

From Brickyard, IN; Kokomo, IN; Fort Wayne, IN; INT Fort Wayne 071° and Waterville, OH, 246° radials; Waterville.

* * * * *

V–128 [Revised]

From Janesville, WI; via Rockford, IL; INT Rockford 169° and Pontiac, IL, 343° radials; INT Pontiac 343° and Kankakee, IL, 274° radials; Kankakee; INT Kankakee 126° and Peotone, IL, 152° radials; INT Peotone 152° and Brickyard, IN, 312° radials; Brickyard; INT Brickyard 137° and Cincinnati, OH, 290° radials; Cincinnati; York, KY; Charleston, WV; to Casanova, VA.

* * * * *

V–192 [Revised]

From Champaign, IL; Terre Haute, IN, INT 079° and Brickyard, IN, 230° radials; Brickyard; Muncie, IN; to Dayton, OH.

* * * * *

V–210 [Revised]

From Los Angeles, CA, INT Los Angeles 083° and Pomona, CA, 240° radials; Pomona; INT Daggett, CA, 229° and Hector, CA, 263° radials; Hector; Goffs, CA; 13 miles, 23 miles 71 MSL, 85 MSL, Peach Springs, AZ; Grand Canyon, AZ; Tuba City, AZ; 10 miles 90 MSL, 91 miles 105 MSL, Farmington, NM; Alamosa, CO; INT Alamosa 074° and Lamar, CO, 250° radials; 40 miles, 51 miles, 65 MSL, Lamar; 13 miles, 79 miles, 55 MSL, Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; INT Will Rogers 113° and Okmulgee, OK, 238° radials; Okmulgee. From Brickyard, IN, Muncie, IN; Rosewood, OH; Tiverton, OH; Briggs, OH; INT Briggs 044° and Akron, OH, 088° radials; INT Akron 088° and Youngstown, OH, 116° radials; INT Youngstown 116° and Clarion, PA, 222° radials; Revloc, PA; INT Revloc 096° and Harrisburg, PA, 285° radials; Harrisburg; Lancaster, PA; INT Lancaster 095° and Yardley, PA, 255° radials; to Yardley.

* * * * *

V–285 [Revised]

From Brickyard, IN, via Kokomo, IN; Goshen, IN; INT of the Goshen 036° and the Kalamazoo, MI, 191° radials; Kalamazoo; INT Kalamazoo 014° and Grand Rapids, MI, 167° radials; Grand Rapids; White Cloud, MI; Manistee, MI; to Traverse City, MI.

* * * * *

V–305 [Revised]

From Belcher, LA, via INT Belcher 084° and El Dorado, AR, 233° radials; El Dorado; Little Rock, AR; Walnut Ridge, AR; Malden, MO; Cunningham, KY; Pocket City, IN; INT Pocket City 046° and Hoosier, IN, 205° radials; Hoosier; INT Hoosier 025° and Brickyard, IN, 185° radials; Brickyard; INT Brickyard 038° and Kokomo, IN, 182° radials; to Kokomo.

* * * * *

V–399 [Revised]

From Brickyard, IN, via INT Brickyard 312° and Boiler, IN, 159° radials; Boiler; INT Boiler 313° and Peotone, IL, 152° radials; to Peotone.

* * * * *

V–434 [Revised]

From Ottumwa, IA, Moline, IL; Peoria, IL; Champaign, IL; Brickyard, IN.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32453 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 28109; Amendment No. 121–266]

RIN 2120–AF76

Revisions to Digital Flight Data Recorder Rules; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration published in the **Federal Register** of July 17, 1997, a final rule requiring that certain airplanes be equipped to accommodate additional digital flight data recorder (DFDR) parameters. This document corrects an error in the section that describes the parameters for certain turbine-engine-powered airplanes with 10–19 seats.

DATES: Effective on December 11, 1997.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration published in the **Federal Register** of July 17, 1997, a document requiring that certain airplanes be equipped to accommodate additional digital flight data recorder (DFDR) parameters. Under § 121.344a, the range of parameters was incorrectly referenced. This correction corrects the ranges.

In rule FR Doc 97–18514, published on July 17, 1997, (62 FR 38362) make the following correction. On page 38381, in the first column, paragraph (a)(1), in the second line, remove "121.344(a)(11)" and add "121.344(a)(18)" in its place.

Issued in Washington, DC on December 8, 1997.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 97–32450 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

Changes in Reporting Levels for Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking; correction.

SUMMARY: The Commodity Futures Trading Commission is correcting an error in reports by large traders previously published in the **Federal Register** on November 17, 1997 (62 FR 61226).

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5310.

Correction

In the final rule, FR Doc. No. 97–29995, beginning on page 61226 in the **Federal Register** issue of November 17, 1997, make the following correction:

§ 15.03 [Corrected]

On page 61227, in the third column, in § 15.03, in the table, in the column entitled "Quantity," the fourth line reflecting the quantity 500,000 for the commodity of oats (bushels), should be deleted and replaced with the quantity 300,000.

Dated: December 8, 1997.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–32412 Filed 12–10–97; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. ICR–97–2]

Electrical Power Generation, Transmission and Distribution and Electrical Protective Equipment; Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration.

ACTION: Final rule; Annoucement of OMB approval number and expiration date.

SUMMARY: The Occupational Safety and Health Administration is announcing that the collections of information regarding § 1910.269, Electrical Power Generation, Transmission and Distribution and § 1910.137, Electrical Protective Equipment have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date. It also amends 29 CFR 1910.8.

DATES: Effective December 11, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Bielaski, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–8076, ext. 142.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 1997 (62 FR 10592), the Agency announced its intent to request renewal of its current OMB approval for 29 CFR 1910.269, Electrical Power Generation, Transmission and Distribution and 29 CFR 1910.137, Electrical Protective Equipment, and provided a 60-day period for the public to comment on OSHA's burden hour estimates. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has renewed its approval for the information collections and assigned OMB control number 1218–0190 for both collections. The approval expires on July 31, 2000. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 28th day of November 1997.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, OSHA amends 29 CFR part 1910 as set forth below.

PART 1910—[AMENDED]

1. The authority citation for Subpart A of part 1910 continues to read as follows:

Authority: Secs. 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR part 1911.

§ 1910.8 [Amended]

2. Sec. 1910.8 is amended by adding the entry "1910.137—1218–0190" (in numerical order) to the table in the section.

[FR Doc. 97–32408 Filed 12–10–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[CGD] 97–067

RIN 2115–AF54

Advance Notice of Arrival: Vessels Bound for Ports and Places in the United States

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard amends its rules to require certain vessels to notify us of their International Safety Management (ISM) Code certification status when they enter U.S. waters and ports. The rule requires these vessels to include their ISM Code status in notice of arrival messages that are routinely sent to the Coast Guard Captain of the Port. This rule will allow the Coast Guard to monitor vessel compliance with ISM Code certification requirements.

DATES: This interim rule is effective January 26, 1998. Comments must reach the Coast Guard on or before January 12, 1998. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 9, 1998.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 97–067), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street N.W., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for

inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), at (202) 267–1053, or fax (202) 267–4570.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 97–067) and the specific section of *this document to which each comment* applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard has not published a Notice of Proposed Rulemaking (NPRM) for this regulatory amendment. Under the Administrative Procedure Act (5 U.S.C. 553), an agency can publish a rule without notice and public procedure if it finds for good cause that notice would be impracticable, unnecessary, or contrary to the public interest. This rule involves international issues and safety and port management concerns. Compliance with the ISM Code is mandated by the Coast Guard Authorization Act of 1996 and by Chapter IX of the international Convention for the Safety of Life at Sea (SOLAS).

The initial implementation date of the ISM Code is July 1, 1998, for the following vessels engaged on a foreign voyage: A vessel transporting more than 12 passengers; or a tanker, a bulk freight vessel, and a high speed freight vessel of 500 gross tons or more. The second implementation date for the ISM Code is July 1, 2002, for other freight vessels and self-propelled mobile offshore drilling units (MODU) of 500 gross tons or more.

The majority of countries that are a party to the SOLAS convention have adopted the ISM Code and are committed to timely and strict enforcement of the Code internationally. In order for the U.S. to demonstrate its support for this international goal, it is crucial that we begin monitoring and documenting ISM Code compliance status of vessels that must comply with the ISM Code by July 1, 1998. Similarly, it will be critical to begin monitoring ISM Code compliance for the remaining classes of vessels covered by the ISM Code well in advance of July 1, 2002.

Once the ISM Code is in effect, vessels entering U.S. waters and bound for U.S. ports which do not have fully certificated or implemented safety management systems under the ISM Code may be detained or denied entry into U.S. ports. Gathering ISM Code certification information about vessels that must comply with the ISM Code by July 1, 1998, well in advance of that date, will permit the Coast Guard to determine resource allocations for the U.S. Port State Control Programs and carry out enforcement actions required by 46 U.S.C. 3204(c) and 3205(d). This will enhance the Coast Guard's ability to carry out the required enforcement of the ISM Code, and promote safe and smooth operations at U.S. ports. For these reasons, the Coast Guard finds good cause under 5 U.S.C. 553(b)(B) that a notice before the effective date of this rule is unnecessary.

Although this rule will not be preceded by a notice of proposed rulemaking, we have provided for a 30-day public comment period. This ensures that the public has an opportunity to comment prior to the effective date of the rule, but also allows us to begin collecting the necessary information as soon as possible prior to implementation of the ISM Code.

Background and Purpose

The Ports and Waterways Safety Act of 1972 [86 Stat. 424], as amended by the Port and Tanker Safety Act of 1978 [92 Stat. 1271], authorizes the Secretary of the Department in which the Coast Guard is operating to require the receipt of notice from any vessel destined for or departing from a port or place under the jurisdiction of the U.S. This does not include a vessel declaring force majeure or a vessel on innocent passage through U.S. waters. This notice may include any information necessary for the control of the vessel and for the safety of the port or marine environment. See 33 U.S.C. 1223; 33 CFR Part 160, Subpart C.

In October 1996, the Coast Guard Authorization Act of 1996 [110 Stat. 3901] amended title 46 of the U.S. Code by adding Chapter 32, "Management of Vessels." Under this new law, the Secretary of Transportation was directed to prescribe regulations and enforce compliance with the ISM Code for safety management systems on vessels engaged on a foreign voyage. This authority was delegated to the Commandant of the Coast Guard on April 24, 1997 (62 FR 19935), in 49 CFR, Part 1.46 (fff) and (ggg).

On May 1, 1997, the Coast Guard published a Notice of Proposed Rulemaking on implementation and certification of owners' and vessels' safety management systems consistent with the ISM Code (62 FR 23705). The NPRM's comment period closed on July 30, 1997.

Briefly, compliance with the ISM Code means that these vessels and the companies which own or operate these vessels must have in effect safety management systems that meet the requirements of the ISM Code, and they must hold valid Document of Compliance certificates and Safety Management Certificates.

This rule will require these vessels to provide their ISM certification status prior to entering U.S. ports. It should be noted that passenger vessels carrying 12 passengers or more involved in foreign voyages that are below 500 gross tons are not covered by this rule even though these passenger vessels under 500 gross tons will be required to be certificated to the ISM Code requirements.

There are very few foreign passenger vessels operating within the U.S. that meet these parameters. Those that do operate on liner runs to the same port daily with their schedules well known to the Coast Guard's Captain of the Port. An example of this would be small passenger ferries operating between the British Virgin Islands and U.S. Virgin Islands, which enter U.S. waters three or more times daily. Once the Captain of the Port's personnel verify that these vessels meet the ISM Code requirements during routine foreign vessel boardings, the need to report ISM Code status is unnecessary due to their limited, one U.S. port operation. For these reasons, we are excluding these vessels from the requirements of this rule.

The purpose of this rule is to permit the Coast Guard to enforce the requirements of 46 U.S.C. 3204(c), which prohibits a vessel from operating in U.S. waters without having on board a valid Document of Compliance certificate and Safety Management Certificate. Collecting a vessel's certification status before arrival in port is vital to determining appropriate enforcement actions by Coast Guard officials at U.S. ports. An effected vessel that does not have the ISM Code certificates on board will be denied entry into a U.S. port after the effective date of the ISM Code. A vessel that has the proper ISM Code certificates will be boarded annually under the existing standards of the U.S. Port State Control program. During these boardings, if the vessel is found to have valid certificates but has not properly implemented or maintained its safety management system, the vessel will be detained in port. The vessel's flag state or organization acting on behalf of its flag, will be requested by the Coast Guard to attend to the vessel to ensure corrections, or take actions to manage the corrections of non-conformities to the vessel's safety management system prior to the vessel departing the port.

Discussion of the Proposed Rule

Notification of a vessel's ISM Code certification status will be added to 33 CFR 160.207 as new paragraphs (d) and (e). Paragraph (d) requires an owner, agent, master, operator, or person in charge of a vessel of 500 gross tons or more and engaged on a foreign voyage to the United States to provide the ISM Code notice described in paragraph (e).

Vessels that are required to comply with the ISM Code by July 1, 1998 must comply with this rule on its effective date. These are listed in paragraph (d)(1) and include a passenger vessel carrying 12 or more passengers, a tank vessel, a bulk freight vessel, or a high-speed freight vessel.

Vessels that must comply with the ISM Code by July 1, 2002, must comply with this rule beginning January 1, 2000. These vessels are listed in paragraph (d)(2) and include a freight vessel not listed in paragraph (d)(1) or a self-propelled MODU. We are not collecting ISM Code compliance information from these other freight vessels and self-propelled MODU's until January 1, 2000, because they are not required to comply with the ISM Code until July 1, 2002. This delayed compliance date reduces the collection of information burden for these vessels, but will allow the Coast Guard to collect this information well in advance of the second ISM Code effective date.

Paragraph (e) describes the content and manner of the notice. These vessels will be required to include in their advance notice of arrival message the issuance dates of their Document of Compliance certificate and Safety Management Certificate, and the name of the Flag Administration or recognized organization(s) representing the vessel's flag which issued the certificates. The notice must be given to the appropriate Captain of the Port at least 24 hours prior to entry, and can be combined with the existing notification given under 33 CFR 160.207(a).

We recognize that this rule will take effect prior to the initial ISM Code implementation date of July 1, 1998, and will take effect for other freight vessels and self-propelled MODUs on July 1, 2002. Vessels that are not in compliance with the ISM Code will not be detained or denied entry into U.S. *ports prior to the implementation date* for that particular vessel. However, compiling ISM certification status prior to the ISM implementation dates will enable us to enforce the ISM Code compliance in a timely and efficient manner.

Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This rule will amend established reporting regimes which are now customary procedures. The information to be reported is readily available aboard the vessel by international convention. Modern electronic communication systems make it easier to report this information, and will only add seconds to the delivery of currently required reports.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, the Coast Guard has reviewed it for potential economic impact on small entities.

This rulemaking will affect U.S. oceangoing shipping companies and their vessels of specific categories of more than 500 gross tons, or passenger vessels of 500 gross tons or more carrying more than 12 passengers engaged on a foreign voyage. These companies and their vessels are not considered small businesses or small entities. Small passenger vessels are the only small entities required to comply with the ISM Code. A small passenger vessel is generally one carrying more than six passengers and is less than 100 gross tons (See 46 U.S.C. 2101 (35)). Since the new reporting requirements are for passenger vessels of 500 gross tons or over, there is no impact or reporting requirement for a small passenger vessel engaged on a foreign voyage.

Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Act of 1996 (Pub.L. 104–121), the Coast Guard wants to help small entities understand this proposed rule so they can better evaluate its effects on them and participate in the rulemaking process. If your small business is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Mr. Robert Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), at (202) 267–1053, or fax (202) 267–4570.

Collection of Information

This rule provides for a collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR 1320.3(c), "collection of information" includes reporting,

recordkeeping, monitoring, posting, labeling, and other, similar actions.

The Coast Guard submitted the requirements for the collection request to the Office of Management and Budget, requesting emergency processing of the collection. The title and description of the collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Advance Notice of Arrivals: Vessels bound for ports and places in the U.S.

Summary of the Collection of Information: This interim rule contains collection of information requirements in § 160.207, and the corresponding approval number is OMB Control Number 2115–0557.

Need for Information: 46 U.S.C. 3204(c) prohibits vessels from operating in U.S. waters without having on board a copy of their company's Document of Compliance certificate and the vessel's Safety Management Certificate. This advance notice of arrival report will ensure that the vessel and its company have been issued these certificates and are in compliance. This report will ensure uninterrupted trading of the vessel in the U.S. when meeting the requirements of the ISM Code. Once the ISM Code implementation dates come into effect, this will allow the Coast Guard Captain of the Port to deny vessels from entry into U.S. waters and ports if the vessel does not verify the issuance of the required certificates in the advance notice of arrival. This will enhance safety in U.S. ports and waterways, and prevent costs for the U.S. port to detain a non-complying vessel, if found in port.

Proposed Use of Information: This information will be used by the cognizant Captain of the Port to ensure compliance with the ISM Code and U.S. law to enhance waterway safety management.

Description of the Respondents: Respondents include the vessel's owner, master, operator, agent or person in charge of a passenger vessel carrying more than 12 passengers, tank vessels, bulk freight vessels, freight vessels, high-speed freight vessels or self-propelled mobile offshore drilling units of at least 500 gross tons or more, engaged on a foreign voyage to the U.S.

Number of Respondents: The ISM Code compliance reporting requirement will effect the above-described vessels of 500 gross tons or more on a foreign voyage to the U.S. There are approximately 9,507 vessels operating on a foreign voyage to the U.S. annually. During 1998 and 1999, 60 percent of the total population will need to meet this requirement (5,704 vessels). In the year 2000, 100 percent compliance will be expected.

Frequency of Response: It is expected that each vessel will be required to make this report eight times per year at every port call. This will require a total of 45,632 responses per year during 1998 and 1999, and a total of 76,056 responses during the year 2000. Each vessel responds to local Coast Guard Captain of the Port units.

Burden of Response: It is expected that the additional requirement will add one minute of time per report for recording the additional information needed to verify the vessel's ISM Code certification compliance.

Estimated Total Annual Burden: The estimated total additional burden in each year, for 1998 and 1999 will equal: 1 minute × 45,632 responses = 45,632 minutes or 761 hours per year. At $20.00 an hour for clerical time, the cost to the public is $15,220 per year ($20.00 × 761 hours = $15,220).

The estimated total annual burden for the year 2000 will equal: 1 minute × 76,056 responses = 76,056 minutes or 1,268 hours per year. At $20.00 an hour for clerical time, the cost to the public is $25,360 per year ($20.00 × 1,268 hours = $25,360).

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this rule to OMB for its review of the collection of information.

Even though the Coast Guard has received emergency authorization to collect this information, it solicits public comment on the collection of information to (1) evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information will have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES.**

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

The Coast Guard has analyzed this interim rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that, under paragraph 2.B.2e(34(d)) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 160 as follows:

1. Revise the authority citation for part 160 to read as follows:

PART 160—[AMENDED]

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46.

2. Revise § 160.207 by adding paragraphs (d) and (e) to read as follows:

§ 160.207 Notice of arrival: Vessels bound for ports or places in the United States.

* * * * *

(d) International Safety Management (ISM) Code (Chapter IX of SOLAS) Notice. If you are the owner, agent, master, operator, or person in charge of a vessel that is 500 gross tons or more and engaged on a foreign voyage to the United States, you must provide the ISM Code notice described in paragraph (e) as follows:

(1) Immediate ISM Code notice if your vessel is—a passenger vessel carrying 12 or more passengers, a tank vessel, a bulk freight vessel, or a high-speed freight vessel.

(2) ISM Code notice beginning January 1, 2000, if your vessel is—a freight vessel not listed in paragraph (d)(1) or a self-propelled mobile offshore drilling unit (MODU).

(e) *Content and Manner of ISM Code Notice.* (1) ISM Code notice includes the following:

(i) the date of issuance for the company's Document of Compliance certificate that covers the vessel,

(ii) the date of issuance for the vessel's Safety Management Certificate, and,

(iii) the name of the Flag Administration, or the recognized organization(s) representing the vessel flag administration, that issued those certificates.

(2) If you meet the criteria in paragraph (d) of this section, you must give the ISM Code notice to the Coast Guard Captain of the Port of the port or place of your destination in the U.S. at least 24 hours before you enter the port or place of destination. The ISM Code notice may be combined and provided with the report required by paragraph (a) of this section.

Dated: December 5, 1997.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–32447 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–14–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AE40

Schedule for Rating Disabilities; The Cardiovascular System

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities addressing the cardiovascular system. The effect of this action is to update the cardiovascular system portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

EFFECTIVE DATE: This amendment is effective January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (213A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: As part of a comprehensive review of the rating schedule, VA published, in the **Federal Register** of January 19, 1993 (58 FR 4954–60), a proposal to amend 38 CFR 4.100, 4.101, 4.102, and 4.104. Interested persons were invited to submit written comments, suggestions, or objections on or before March 22, 1993. We received comments from the Disabled American Veterans, the Veterans of Foreign Wars, the Paralyzed Veterans of America, the American Legion, and several VA employees.

One commenter, stating that the primary objective of the review is to update the medical terminology and criteria used to evaluate disabilities rather than to amend the percentage evaluations, contended, without being specific, that a substantial number of the proposed changes go beyond the stated purpose and expressed general opposition to any changes that are inconsistent with the stated objective. The commenter also stated that the proposed criteria retain, and in some cases expand upon, the vague, indefinite, and arbitrary elements previously found in the schedule and felt that substantial revision of the proposed rules is required.

The purpose of the review was to update the cardiovascular system portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. The proposed revisions published January 19, 1993, were intended to update the medical terminology; revise the criteria, including the length of convalescence evaluations, based on medical advances; and make criteria more objective, i.e., less ambiguous and, thereby, assure more consistent ratings. These proposed changes were consistent with the stated purposes of the revision. However, since establishing less ambiguous criteria to assure consistent evaluations is one of the purposes of this revision, and a number of commenters stated that the proposed criteria contained language that is too subjective to provide effective guidance in evaluating cardiovascular disabilities, we have further revised the proposed evaluation criteria to eliminate indefinite terminology and establish more objective and quantifiable criteria wherever possible. These changes will be discussed in detail under the individual codes affected.

One commenter suggested that the proposed criteria will discriminate against veterans of Desert Storm and future veterans because their conditions will be evaluated under criteria that he perceived as less generous than those in the prior rating schedule.

Significant medical advances, including new surgical and anesthetic techniques, new medications, and earlier diagnoses, have occurred, which we must take into account in revising the rating schedule. Doing so is, in fact, one of the primary reasons for conducting this review. Since recently discharged veterans clearly benefit from the application of these new techniques, in our judgment they are not discriminated against by having their disabilities evaluated under criteria which reflect the effects of these same medical advances.

One commenter objected that the rating schedule fails to take into consideration the disabling effects of the veteran's shortened life expectancy.

To consider a factor so far removed from "the average impairments of earning capacity" as the effect of various conditions on life expectancy would clearly exceed the parameters established by Congress in 38 U.S.C. 1155.

One commenter, citing a statistical economic validation study from the 1960s, implied that statistical studies may justify increased disability evaluations.

The statute (38 U.S.C. 1155) authorizing establishment of the rating schedule directs that "[t]he Secretary shall from time to time readjust the schedule of ratings *in accordance with experience*" (emphasis supplied). Rather than requiring statistical studies or any other specific type of data, the statute clearly leaves the nature of the experience which warrants an adjustment, and by extension the manner in which any review is conducted, to the discretion of the Secretary. Although during the 1970s VA considered adjusting the rating schedule based on the same statistical studies cited by the commenter, that approach proved to be unsatisfactory, and the proposed changes based on that study were not adopted.

One commenter agreed that ambiguous words such as "severe" should be deleted, but cautioned against making the evaluation criteria too objective.

Providing clear and objective criteria is the best way to assure that disabilities will be evaluated fairly and consistently. Judgment and flexibility cannot be eliminated from the evaluation process, however, because patients do not commonly present as textbook models of disease, and rating agencies have the task of assessing which evaluation level best represents the overall disability picture. (See § 4.7.)

The previous schedule provided convalescence evaluations for six

months for the following conditions: rheumatic heart disease (DC 7000); arteriosclerotic heart disease, following coronary occlusion (DC 7005); myocardial infarction (DC 7006); and soft tissue sarcoma (of vascular origin) (DC 7123). It provided convalescence evaluations for one year for the following conditions: Auriculoventricular block, with implantation of a pacemaker (DC 7015); heart valve replacement (DC 7016); coronary artery bypass (DC 7017); and aortic aneurysm, following surgical correction (DC 7110). We proposed to change the duration of convalescence evaluations for DC 7000, DC 7005, and DC 7006 to three months; for DC 7018 (pacemaker implantation, formerly DC 7015) to two months; and for DC 7017 to three months. We proposed an indefinite period of convalescence evaluation with an examination at six months for DC 7016, DC 7110, DC 7011 (now ventricular arrhythmias), DC 7111 (aneurysm of any large artery), and DC 7123. We also proposed an indefinite period of convalescence evaluation, but with an examination at one year, for cardiac transplantation (DC 7019).

One commenter stated that VA should justify the proposed changes in periods of convalescence evaluation by citing medical experts or texts.

A report from Jefferson Medical College that included a clinical review of the cardiovascular portion of the rating schedule and recommendations for changes was available to us when we undertook the revision of this body system. In addition, we received advice from the Veterans Health Administration and consulted standard medical texts such as "Cecil Textbook of Medicine" (James B. Wyngaarden, M.D. *et al.* eds., 19th ed. 1992), "Heart Disease" (Eugene Braunwald, M.D. ed., 4th ed. 1992), and "The Heart" (J. Willis Hurst, M.D. *et al.* eds., 7th ed. 1990). We published the proposed revision only after reviewing all of these sources of information. We have provided specific citations supporting many of the changes in the length of convalescence evaluations later in this document under the discussions of convalescence evaluation periods that have been changed.

One commenter stated that the proposed periods of convalescence evaluation do not represent the average impairment, but only the optimal recovery times. This commenter also stated that the changes in the duration of convalescence evaluations do not take into account advanced age, poor state of health, or the presence of etiologically related or concomitant disease.

The periods of convalescence evaluation we have established reflect, according to the sources noted above, the average periods of recovery needed by the average person following certain procedures and illnesses. These periods can be extended, when medically warranted, under the authority of 38 CFR 4.29 and 4.30.

One commenter said that the proposed changes in the length of convalescence evaluations appear to have been developed from a purely economic perspective.

As previously discussed, revisions to periods of convalescence evaluations were based on medical considerations rather than cost projections.

One of the commenters suggested that where the length of convalescence evaluations has been reduced to two, three, or six months, all claims should be referred to the Adjudication Officer for a possible extension of the convalescence rating under 38 CFR 4.30(b)(2).

The rating agency itself has the authority to extend the period of convalescence evaluations for up to three months under the provisions of § 4.30; the approval of the Adjudication Officer is required only when extending a convalescence evaluation for a longer period. Referring claims to the Adjudication Officer when the medical evidence does not warrant any extension, or when the rating agency can extend the evaluation for a sufficient period on its own authority, would cause needless delay, and we have made no change based on this suggestion.

Several commenters objected to indefinite periods of convalescence evaluation with a mandatory VA examination at a prescribed time. In our judgment, however, this method of determining the length of the total evaluation is both fairer and more accurate than assigning a total evaluation for a specified length of time, since the evaluation will be based on actual residual disability as documented by the examination, and the veteran will receive advance notice of any change and have the opportunity to submit additional evidence showing that the change is not warranted.

One set of comments reflected the view that applying § 3.105(e) to indefinite periods of convalescence evaluations will cause significant administrative problems and, in some instances, significantly lengthen the period for which a convalescence evaluation is assigned. These concerns appear to be based on the assumption that if medical information justifying a certain period of convalescence evaluation is not submitted until months or even years after the event, the condition must be evaluated as totally disabling from the date entitlement is established, through the entire intervening period, and until such time as an examination can be performed, advance notice be provided, and the effective date provisions of § 3.105(e) be observed.

Section 3.105(e) applies only to reductions in "compensation payments currently being made;" it does not apply in cases where a total evaluation is both assigned and reduced retroactively. We have established convalescence evaluations for indefinite periods under other portions of the rating schedule (See DC 7528, malignant neoplasms of the genitourinary system, in 38 CFR 4.115b and DC 7627, malignant neoplasms of gynecological system or breast, in 38 CFR 4.116), some having been in effect for over two years, and there is no evidence that they cause the type of administrative problems that the commenters foresee.

There were three introductory sections to the cardiovascular system in the previous rating schedule. Section 4.100, Necessity for complete diagnosis, named common types of heart disease and discussed the need for accurate diagnosis. Section 4.101, Rheumatic heart disease, discussed the course of rheumatic heart disease, the significance of a diagnosis of mitral insufficiency, possible etiologies for later developing aortic insufficiency, and the need for accurate diagnosis of a service-connected condition. Section 4.102, Varicose veins and phlebitis, discussed the need to determine impairment of deep circulation due to varicosities and included a requirement to assign a higher evaluation when there is phlebitis or deep impairment of circulation. We proposed to retitle the introductory sections: 4.100, as "Forms of heart disorder;" 4.101, as "Hypertension;" and 4.102, as "Varicose veins." We proposed to include in § 4.100 a list of common forms of heart abnormalities, a discussion of how to evaluate service-connected valvular heart disease or arrhythmia in the presence of nonservice-connected arteriosclerotic heart disease, and a statement that the identification of coronary artery disease (without occlusion or thrombosis) early in service is not a basis for service connection, but that any sudden development of coronary occlusion or thrombosis during service would be service-connected. However, as explained below, we have either deleted or relocated all of the material we had proposed to include in §§ 4.100, 4.101, and 4.102, and we have, therefore, removed those sections and reserved them for future use.

One commenter suggested that we remove all material in §§ 4.100, 4.101, and 4.102 that refer to the issue of service connection because it is inappropriate to place criteria for determining entitlement to service connection in the rating schedule. A second commenter suggested that the material about the identification of coronary artery disease early in service not being a basis for service connection should be removed because the provision violates the statutory presumption of soundness at induction as set forth in 38 U.S.C. 1111.

The rules governing determinations of service connection are found in the regulations beginning at 38 CFR 3.303, rather than in the rating schedule, which is a guide to evaluating disabilities. We agree that rules affecting determinations of service connection are inappropriate in the rating schedule, and we have removed that portion of the material in § 4.100 that addressed the issue of service connection for coronary artery disease for that reason. We have also removed other provisions of §§ 4.101 and 4.102 that addressed service connection for cardiovascular conditions, as discussed below.

We had proposed including in § 4.102, varicose veins, a provision from VA's Adjudication Procedures Manual, M21–1, Part VI, that if varicose veins developed during active service in one leg, varicose veins developing in the other leg within three years, in the absence of an intercurrent cause, will also be service-connected. However, in response to this comment, we have determined that since it addresses the issue of service connection, it is not appropriate in the rating schedule, and we have removed it.

Two commenters suggested that these introductory sections specify which cardiovascular diseases should be service-connected when they develop subsequent to certain amputations.

38 CFR 3.310(b) provides that "ischemic heart disease or other cardiovascular diseases" developing in veterans who have suffered a service-connected amputation of one lower extremity at or above the knee, or service-connected amputations of both lower extremities at or above the ankles, shall be held to be the result of the service-connected amputation or amputations. Since that issue is addressed elsewhere in VA's regulations, it is unnecessary to address it here. Furthermore, as previously discussed, it would be inappropriate to include material about the determination of service connection in the rating schedule.

One commenter recommended that we include more discussion of pertinent clinical and nonclinical factors to be considered in assigning evaluations within this portion of the rating schedule.

We have made a number of changes along these lines that will assist in the evaluation of cardiovascular conditions. Most significantly, we have adopted more objective evaluation criteria based on specific clinical (and, in some cases, laboratory) findings, e.g., by using the level of METs (metabolic equivalents, discussed in detail below) to assess the severity of heart disease. In addition, we have retained or added notes, as appropriate, containing clinical information, e.g., by adding a note defining characteristic attacks of Raynaud's syndrome.

One commenter suggested that § 4.100 discuss forms of heart disorder, § 4.101 discuss hypertension, and § 4.102 discuss varicose veins.

A regulation is an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy, or to describe the procedure or practice requirements of an agency (Executive Order 12866, Regulatory Planning and Review). Background material, such as general medical information that is available in standard textbooks, or other material that neither prescribes VA policy nor establishes procedures a rating activity must follow, falls outside of those parameters and is, therefore, not appropriate in a regulation. The material about the age of onset, course, etc., of rheumatic fever in former § 4.101 is general medical information which has no bearing on evaluating the condition, and we have deleted this material as not appropriate in a regulation. Upon further review, we have deleted the list of heart abnormalities from proposed § 4.100 because it too is general medical information that we do not intend to have the force and effect of law.

We proposed to retitle § 4.101 "Hypertension," and to revise the content to include a prohibition against separately evaluating hypertension that is secondary to thyroid or renal disease; and a requirement that, in a veteran with service-connected hypertension, arteriosclerotic manifestations are to be service-connected. One commenter suggested adding more information to § 4.101 about secondary hypertension, to include specifying when secondary hypertension can be evaluated separately from the condition causing it.

The rule regarding evaluation of hypertension secondary to renal disease is included in the part of the rating schedule addressing the genitourinary system at § 4.115; secondary hypertension associated with aortic insufficiency or thyroid disease, and isolated systolic hypertension, which may be secondary to arteriosclerosis, are addressed under DC 7101 (hypertensive vascular disease). Since the issue of service connection of secondary hypertension is addressed in more appropriate areas of the regulations, it should not be addressed here, and rather than expanding this material, we have deleted it from § 4.101.

The material in proposed § 4.101 about conditions that are complications of hypertension or other medical conditions is also general medical information available in standard texts. As discussed above, it is not appropriate in a regulation, and we have, therefore, removed it. The issue of service connection for conditions that are proximately due to or the result of a service-connected condition is addressed at 38 CFR 3.310(a). It is, therefore, unnecessary to address the issue in § 4.101, and we have removed that material also.

In the former schedule, § 4.102, which was titled "Varicose veins and phlebitis," discussed the necessity of testing for impairment of deep circulation in varicose veins. We proposed to retitle it "Varicose veins" but to retain the material about deep circulation. Under the revised evaluation criteria for varicose veins adopted in this rule, however, determining whether the deep circulation is impaired is unnecessary because the evaluation criteria focus on functional impairment rather than the location of the venous insufficiency. We have, therefore, deleted that material from § 4.102.

Another commenter requested that we address in § 4.101 the advances in medical science or objective foundation for requiring that adjudicators attempt to apportion cardiac signs and symptoms that are attributable to nonservice-connected arteriosclerotic heart disease that is superimposed on service-connected rheumatic heart disease.

While it is often possible through modern technology to determine the separate effects of coexisting heart diseases, such a determination requires a medical assessment on a case-by-case basis and cannot be determined by regulation. We have, therefore, revised the material to require that the rating agency request a medical opinion when it is necessary to determine whether

current signs and symptoms can be attributed to one of the coexisting conditions. Since the material is not relevant to the entire cardiovascular portion of the rating schedule, we have moved it to a note under DC 7005, arteriosclerotic heart disease.

One commenter suggested adding a section to explain which diagnostic codes should not be combined in the case of coexisting cardiovascular diseases.

As in the case of coexisting heart diseases, determining whether coexisting cardiovascular diseases have functional impairments that can be separately evaluated must be determined on a case-by-case basis, depending on the particular manifestations of each condition. We, therefore, make no change based on this suggestion.

One commenter recommended that we include cor pulmonale in the cardiovascular portion of the schedule.

Cor pulmonale is a combination of hypertrophy and dilatation of the right ventricle secondary to pulmonary hypertension, which is due to disease of the lung parenchyma or pulmonary vascular system (Braunwald, 1581). Since cor pulmonale is always secondary to a lung condition, and since it is included in the evaluation criteria for various conditions of the respiratory system, in our judgment it is not appropriate to include it in the cardiovascular portion of the rating schedule. For the sake of clarity, however, we have placed a note in § 4.104 before DC 7000 instructing rating agencies to evaluate cor pulmonale as part of the pulmonary condition that causes it.

The previous rating schedule provided a 100-percent evaluation for rheumatic heart disease (DC 7000) "as active disease and, with ascertainable cardiac manifestation, for a period of six months." We proposed to retitle DC 7000 "valvular heart disease," and to provide a 100-percent evaluation for "active infections with valvular heart damage for three months following cessation of therapy."

Three commenters objected to the proposed change in the length of the convalescence evaluation for DC 7000 (valvular heart disease).

Rheumatic fever is the condition most commonly associated with valvular heart damage, and its acute phase rarely lasts longer than three months (Braunwald, 1729). The level of activity following this period depends on the severity of residual disease (Cecil, 1637). While in the past patients with acute rheumatic fever were put to bed for several months, bed rest is no longer considered necessary unless there is significant carditis (Hurst, 1527). In addition, most rebounds of rheumatic fever (that is, reappearances of clinical or laboratory evidence of acute rheumatic fever following cessation of treatment) occur within two weeks after cessation of therapy, and do not occur more than five weeks after complete cessation of anti-rheumatic therapy (Braunwald, 1730). In our judgment, three months following cessation of therapy is a reasonable period to allow for stabilization of valvular damage due to infection, and we have retained the convalescence provision as proposed, except for minor editorial changes.

We proposed that valvular heart disease (DC 7000) be evaluated on the basis of the level of physical activity, i.e., "any,", "ordinary," or "strenuous," required to produce cardiac symptoms, such as "dyspnea," "fatigue," etc. We received three comments objecting to the proposed criteria.

One commenter suggested that although the proposed general rating formula for rheumatic heart disease (DC 7000), arteriosclerotic heart disease (DC 7005), and ventricular arrhythmia (DC 7011) is consistent with the classifications of the New York Heart Association, they are mostly for subjective complaints, and the commenter suggested that the current criteria be retained except for deleting words like "characteristic" and "definitely." Another commenter stated that the proposed criteria for valvular heart disease are highly subjective and urged that we adopt objectively confirmable criteria at every level.

We agree that more objective criteria would result in more consistent evaluations. In our judgment, however, simply removing such terms as "characteristic" and "definitely" from the criteria in the previous schedule would not have the intended effect. We have, therefore, revised the criteria to incorporate objective measurements of the level of physical activity, expressed in METs (metabolic equivalents), at which cardiac symptoms develop. This does not represent a substantive change in the method of evaluating cardiac disabilities that we proposed, i.e., basing evaluations on the level of physical activity that causes symptoms, but is an objective method for measuring the level of activity that causes symptoms.

The exercise capacity of skeletal muscle depends on the ability of the cardiovascular system to deliver oxygen to the muscle, and measuring exercise capacity can, therefore, also measure cardiovascular function. The most accurate measure of exercise capacity is the maximal oxygen uptake, which is the amount of oxygen, in liters per minute, transported from the lungs and used by skeletal muscle at peak effort (Braunwald, 1382). Because measurement of the maximal oxygen uptake is impractical, multiples of resting oxygen consumption (or METs) are used to calculate the energy cost of physical activity. One MET is the energy cost of standing quietly at rest and represents an oxygen uptake of 3.5 milliliters per kilogram of body weight per minute. The calculation of work activities in multiples of METs is a useful measurement for assessing disability and standardizing the reporting of exercise workloads when different exercise protocols are used (Braunwald, 162).

We have revised the evaluation criteria for the major types of heart disease based on: the level of physical activity, expressed in METs, that leads to cardiac symptoms; whether there is heart failure; the extent of any left ventricular dysfunction; the presence of cardiac hypertrophy or dilatation; and the need for continuous medication. We had proposed that valvular heart disease (DC 7000) be evaluated on the basis of the level of physical activity that produces symptoms—100 percent if "any," 60 percent if "ordinary," and 30 percent if "strenuous" activity produces symptoms. We have revised those criteria to assign a 100-percent evaluation if a workload of three METs or less produces dyspnea, fatigue, angina, dizziness, or syncope. A workload of three METs represents such activities as level walking, driving, and very light calisthenics. We have revised the criteria to assign a 60-percent evaluation if a workload of greater than three METs but not greater than five METs results in cardiac symptoms. Activities that fall into this range include walking two and a half miles per hour, social dancing, light carpentry, etc. We have revised the criteria to assign a 30-percent evaluation if a workload of greater than five METs but not greater than seven METs produces symptoms. Activities that fall into this range include slow stair climbing, gardening, shoveling light earth, skating, bicycling at a speed of nine to ten miles per hour, carpentry, and swimming (Fox, S. M. III, Naughton, J.P., Haskell, W.L.: Physical activity and the prevention of coronary heart disease. *Ann. Clin. Res.*, 3:404, 1971 and Goldman, L. *et al.*: Comparative reproducibility and validity of systems for assessing cardiovascular functional class: Advantages of a new specific activity scale. *Circulation 64:1227, 1981*). METs are measured by means of a treadmill exercise test, which is the most widely used test for diagnosing coronary artery disease and for assessing the ability of the coronary circulation to deliver oxygen according to the metabolic needs of the myocardium (Cecil, 175 and Harrison, 966).

Administering a treadmill exercise test may not be feasible in some instances, however, because of a medical contraindication, such as unstable angina with pain at rest, advanced atrioventricular block, or uncontrolled hypertension. We have, therefore, provided objective alternative evaluation criteria, such as cardiac hypertrophy or dilatation, decreased left ventricular ejection fraction, and congestive heart failure, for use in those cases. We have also indicated that when a treadmill test cannot be done for medical reasons, the examiner's estimation of the level of activity, expressed in METs and supported by examples of specific activities, such as slow stair climbing or shoveling snow that results in dyspnea, fatigue, angina, dizziness, or syncope, is acceptable.

The other objective criteria that we have added as alternatives to the METs-based criteria for valvular heart disease are a left ventricular ejection fraction of less than 30 percent or chronic congestive heart failure for a 100-percent evaluation; a left ventricular ejection fraction of 30 to 50 percent, or more than one episode of acute congestive heart failure in the past year for a 60-percent evaluation; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray for a 30-percent evaluation, and a requirement for continuous medication for a 10-percent evaluation.

Since neurologic, gastrointestinal, and other cardiovascular disorders may result in symptoms similar to those for valvular heart disease, we have also added a requirement that valvular heart disease be documented by findings on physical examination and by echocardiogram, Doppler echocardiogram, or cardiac catheterization.

Another commenter felt that the proposed criteria for the 100-percent level for valvular heart disease (DC 7000), arteriosclerotic heart disease (DC 7005), and ventricular arrhythmias (DC 7011)—that "any" physical activity results in specified cardiac symptoms—correlates not with total industrial impairment but with being housebound or helpless. Similarly, the commenter objected that the requirement for the 60-percent level—that "ordinary" physical activity results in symptoms—actually represents total impairment.

The proposed criteria for the 100-percent level of these conditions were meant to indicate a severe level of impairment, but the language was imprecise and perhaps suggested a degree of impairment beyond total impairment. Under the more objective criteria that we are adopting here, a 100-percent evaluation requires that a workload of three METs or less produces dyspnea, fatigue, angina, dizziness, or syncope. A workload of three METs includes such activities as level walking, driving, and very light calisthenics. While the development of cardiac symptoms at this level of activities indicates total impairment, it does not suggest that the patient is either housebound or helpless. Similarly, under the more objective criteria, a 60-percent evaluation requires that a workload of greater than three METs but not greater than five METs produces cardiac symptoms. Since activities that fall into this range include walking two and a half miles per hour, social dancing, and light carpentry, this range does not represent total impairment. In our judgment, by adopting more objective criteria, we have eliminated the problem that the commenter identified.

The prior schedule assigned a 10-percent evaluation under DC 7000 (rheumatic heart disease, now designated as valvular heart disease), when there was an identifiable valvular lesion, with little dyspnea and no cardiomegaly. We proposed to delete the 10-percent level and to evaluate the condition as zero percent disabling if it does not limit physical activity.

Two commenters objected to the proposed deletion of a 10-percent level of evaluation for valvular heart disease. One suggested a 10-percent evaluation when dietary adjustments and medication are necessary to control symptoms or prevent emboli; the other suggested a 10-percent evaluation for asymptomatic valvular heart disease or arrhythmias that require medication.

Upon further consideration, we have added a 10-percent evaluation, which will be assigned when symptoms develop at a workload of greater than 7 METs but not greater than 10 METs. Activities that fall into this range include jogging, playing basketball, digging ditches, and sawing hardwood. When symptoms develop only during such activities, there may be some impairment of earning capacity, but it is likely to be slight. We have also established an alternative criterion for a 10-percent evaluation—the need for continuous medication—consistent with the 10-percent evaluations assigned under other body systems, e.g., gynecological and endocrine conditions, when continuous medication is required. We have also deleted the zero-percent level of evaluation as unnecessary, since zero percent may be assigned under any diagnostic code when the criteria for a compensable evaluation are not met (38 CFR 4.31).

DC 7000 was titled "rheumatic heart disease" in the previous schedule. We proposed to retitle it "valvular heart disease," and to specify that it included rheumatic heart disease, syphilitic heart disease, and sequelae involving valvular heart damage from endocarditis, pericarditis, or trauma. Because each of the conditions listed under DC 7000 (except trauma) has its own diagnostic code and criteria, we have revised the title to "valvular heart disease (including rheumatic heart disease)" and deleted the list of conditions. The term "valvular heart disease" encompasses all types of valvular disease not otherwise specified, including those due to trauma.

We proposed to require that endocarditis (DC 7001), pericarditis (DC 7002), and pericardial adhesions (DC 7003) be rated as valvular heart disease. We have instead repeated the evaluation criteria under each diagnostic code to which they apply. We have also deleted the three-month period of convalescence evaluation that would have been available for pericardial adhesions if evaluated strictly under the criteria for valvular heart disease (DC 7000); pericardial adhesions are a chronic condition rather than an acute infection, and a convalescence evaluation is, therefore, inappropriate.

We proposed that syphilitic heart disease (DC 7004) be evaluated under the criteria for either valvular heart disease or aortic aneurysm (DC 7110). We have now provided criteria for DC 7004 that are based on the same objective measurements of the level of physical activity that causes symptoms. We placed a note following this diagnostic code directing that syphilitic aortic aneurysms be evaluated under DC 7110 (aortic aneurysm), since the criteria under DC 7110 apply to aortic aneurysm of any etiology. Since syphilitic heart disease has no phase of active infection, being the late result of a much earlier syphilitic infection, we have omitted the criteria based on active infection, as we did under DC 7003.

We proposed to revise the length of convalescence evaluation following a myocardial infarction (DC 7005 or 7006) from six months to three months. One commenter objected that three months represents the optimal, rather than the

average, recovery period following myocardial infarction.

The interval between an uncomplicated myocardial infarction and return to work is 70–90 days (Braunwald, 1390), and a return to work evaluation can be performed within five weeks after an uncomplicated myocardial infarction ("The Heart" 1115 (J. Willis Hurst, M.D. *et al.* eds., 7th ed. 1990)). Complete healing of the myocardium, i.e., replacement of the infarcted area by scar tissue, takes six to eight weeks, and most patients will be able to return to work by 12 weeks, many much earlier ("Harrison's Principles of Internal Medicine" 956–57 (Jean D. Wilson, M.D. *et al.* eds., 12th ed. 1991)). This information clearly establishes that most patients with myocardial infarction recover within three months, and, in our judgment, that is an adequate period for a convalescence evaluation.

Another individual said that three months is not an adequate length of convalescence evaluation following myocardial infarction because it takes six months, which according to the commenter is the normally accepted recovery time, for ancillary circulation patterns to develop.

The development of collateral circulation represents a long-range adaptation to ischemia due to coronary artery disease (Hurst, 944). It is, therefore, more relevant in predicting whether an infarction will occur or how severe it might be, than in determining the length of convalescence after infarction, and we have made no change based on this comment.

In response to requests for more objective criteria, we have adopted criteria for the 10-, 30-, 60-, and 100-percent levels for arteriosclerotic heart disease using the same METs-based criteria we have adopted for DC 7000 (valvular heart disease). We have also adopted similar alternative criteria based either on chronic or multiple episodes of congestive heart failure, left ventricular dysfunction with decreased ejection fraction percentages, or cardiac hypertrophy or dilatation.

The prior rating schedule assigned 30-percent evaluations under DCs 7005 (arteriosclerotic heart disease) and 7006 (myocardium, infarction of, due to thrombosis or embolism) "following typical coronary occlusion or thrombosis," or "with history of substantiated anginal attack, ordinary manual labor feasible," but provided neither a 10-percent level nor specific criteria for a zero-percent evaluation. We proposed to assign a 30-percent evaluation for those with cardiac symptoms appearing after strenuous physical activity, and to establish a zero-percent level for those with no limitation of physical activity.

Two commenters objected to the proposed changes. One suggested we provide a 20-percent level under DC 7005 for some limitation of activities and a 30-percent level for one or more symptoms. One felt that 30 percent should be the minimum under DC 7005 or DC 7006 because permanent disability results.

In keeping with the objective evaluation criteria we are adopting, it is feasible to establish additional levels of impairment based on an objective measurement of the workload at which symptoms develop. We have added a 10-percent evaluation under DC's 7005 and 7006 for those who have cardiac symptoms at a workload greater than 7 METs but not greater than 10 METs, which includes such activities as gardening and skating. The 10-percent evaluation may also be assigned when continuous medication is required, which is consistent with the evaluation of other heart conditions. As a result, if, for different conditions, the same workload elicits symptoms, the conditions will be assigned the same evaluation. A 30-percent minimum evaluation is not warranted. Arteriosclerotic heart disease may be mild enough that it imposes little or no functional impairment, and, in our judgment, the most equitable way to evaluate the condition is to do so objectively according to the physical workload that causes symptoms.

We proposed that arteriosclerotic heart disease (DC 7005) and myocardial infarction (DC 7006) be evaluated under the same criteria. That was reasonable under the subjective evaluation criteria that were proposed, but there are some condition-specific differences that the criteria must reflect. We have provided for a three-month convalescence evaluation following a myocardial infarction (DC 7006), a condition of sudden onset. Arteriosclerotic heart disease (DC 7005), on the other hand, is a chronic condition that does not warrant a convalescence evaluation. We have added a requirement to DC 7005 that the veteran have "documented" coronary artery disease. Similarly, we have headed DC 7006 with the statement "with history of myocardial infarction, documented by laboratory tests." This replaces the requirement that the myocardial infarction be "typical" in order to assign the convalescence evaluation. Since atypical myocardial infarctions may be just as disabling as typical ones, we have revised the criteria for a convalescence rating to require that an infarction be "documented" rather than "typical."

We have deleted the instruction proposed under DC 7005 that cardiomyopathies (DC 7020) and hypertensive heart disease (DC 7007) are to be rated as arteriosclerotic heart disease because we have provided each of these conditions with criteria under its own diagnostic code.

We proposed that hypertensive heart disease (DC 7007) be evaluated under the criteria for arteriosclerotic heart disease, i.e., percentage evaluations based on the level of activity that causes symptoms, and we have revised the criteria using the same objective evaluation criteria as for arteriosclerotic heart disease.

We have made minor editorial changes under DC 7008 (hyperthyroid heart disease).

We proposed that a 30-percent evaluation under DC 7010 (supraventricular arrhythmias) require paroxysmal atrial fibrillation or other supraventricular tachycardia, with severe frequent attacks despite therapy, and that the 10-percent evaluation require permanent atrial fibrillation or infrequent or mild attacks documented by electrocardiogram (ECG) or Holter monitor.

Two commenters pointed out that such phrases as "severe, frequent attacks" are indefinite, and one suggested that we replace these terms with more objective ones.

We agree and have revised the criteria to require more than four episodes a year of paroxysmal atrial fibrillation or other supraventricular tachycardia for the 30-percent level, and permanent atrial fibrillation or one to four episodes a year of paroxysmal atrial fibrillation or other supraventricular tachycardia for the 10-percent level. Both sets of criteria require documentation by ECG or Holter monitor.

We proposed to evaluate sustained ventricular arrhythmias (DC 7011) according to whether "ordinary" or "strenuous" activity results in palpitations or symptoms of arrhythmia. A commenter objected to the subjectivity of the proposed criteria for DC 7011.

Based on this comment, we have revised the criteria using the same objective measurements that we are using for arteriosclerotic heart disease. We have, however, retained specific provisions for a total evaluation while an Automatic Implantable Cardioverter-Defibrillator (AICD) is in place. The use of AICDs is associated with the potential for serious complications such as myocardial infarction, stroke, cardiogenic shock, and complications associated with the thoracotomy required for its insertion (Braunwald, 750). We have revised the language slightly to make it clear that a 100-percent evaluation will be assigned for as long as the AICD is in place. We have also made other nonsubstantive changes in the language at 100 percent for the sake of clarity.

The previous schedule provided a 100-percent evaluation for DC 7015, atrioventricular block, for one year following implantation of a pacemaker when required by a complete heart block with attacks of syncope, and a 60-percent evaluation for complete heart block with Stokes-Adams attacks several times a year despite medication or a pacemaker. We proposed to eliminate the 100-percent level while retaining essentially the same criteria for the other levels.

One commenter stated that a 100-percent evaluation is warranted under DC 7015 when there is a complete heart block with syncopal attacks despite therapy or a pacemaker. Another commenter suggested that we replace the requirement for "several" attacks a year for the 60-percent evaluation under DC 7015 with a definite number.

Upon further review, in response both to these comments and to the requests for more objective criteria, we have revised the criteria for DC 7015 by providing the same objective evaluation criteria we have used for ventricular arrhythmias (DC 7011) and many other heart conditions, since heart block may result in a variety of cardiac signs and symptoms and a wide range of disabilities. This change restores the 100-percent evaluation level. These criteria replace evaluation criteria based on the electrocardiographic designation of complete or incomplete block. Because both complete and incomplete heart blocks can differ in severity, basing evaluations on the degree of heart block could lead to different evaluations for similar symptoms. In our judgment, the revised criteria are a better measure of the disabling effects of atrioventricular block than whether the block is complete or incomplete.

The only difference in the criteria for atrioventricular block (DC 7015) and ventricular arrhythmias (DC 7011) is that a 10-percent evaluation for DC 7015 will be assigned when either a pacemaker, a common method of treatment for this condition, or continuous medication is required. We have deleted the proposed zero-percent evaluation, since under the provisions of 38 CFR 4.31a, a zero-percent evaluation may be assigned when the findings are less than those needed for a compensable level. We have also edited the note requiring that certain unusual cases of associated arrhythmias are to be submitted to the Director of the Compensation and Pension Service for evaluation, for the sake of clarity.

The previous schedule established a minimum 30-percent evaluation for heart valve replacement (DC 7016); we proposed a 30-percent evaluation when strenuous activity causes specific cardiac symptoms, and a zero-percent evaluation when the condition imposes no limitation of physical activity. One commenter suggested that we retain the 30-percent minimum evaluation, but gave no rationale for the suggestion.

The level of residual disability following valve replacement can also be objectively determined based on the level of activity that results in symptoms in the same manner as for valvular heart disease. We have, therefore, revised the criteria to assign a 30-percent evaluation when a workload of greater than 5 METs but not greater than 7 METs results in symptoms, or when there is evidence of cardiac hypertrophy or dilatation. For the sake of consistency with the evaluation criteria for other heart conditions evaluated based on the level of physical activity that causes symptoms, we have added a ten-percent evaluation when a workload of greater than 7 METs but not greater than 10 METs results in symptoms. In our judgment, specific symptoms warrant the same evaluation whether they occur before or after valve replacement, and we are not aware of any special circumstances following valve replacement that would justify a 30-percent minimum evaluation.

We have edited the language of the note regarding the assignment of 100 percent following admission for heart valve replacement to assure that the provisions of § 3.105(e) will be followed whether the reduction from the 100-percent evaluation is based upon the mandatory examination six months following discharge or following a subsequent examination.

The previous schedule called for a total evaluation for one year following heart valve replacement (DC 7016). We proposed a total evaluation for an indefinite period, with a mandatory VA examination six months after the surgery, with any change in evaluation based on that or any subsequent examination to be made under the provisions of 38 CFR 3.105(e).

One commenter objected to the proposed change, stating that heart valve replacement is a high risk surgical procedure, and many patients have post-operative congestive heart failure for a considerable time. Another commenter said that the proposed reduction in length of the convalescence evaluation is arbitrary, that it goes beyond the purpose of the review, and that no justification has been provided.

We recognize that it ordinarily takes patients longer to recover from valve replacement than from acute valvular infection, endocarditis, or pericarditis and, therefore, proposed an indefinite period of total evaluation. We believe that six months following discharge from the hospital is a reasonable time at which to examine a patient to determine whether the condition has stabilized and the extent of residual disability. If the results of that or any subsequent examination warrant a reduction in evaluation, the reduction will be implemented under the notice and effective date provisions of 38 CFR 3.105(e), which require a 60-day notice before VA reduces an evaluation and an additional 60-day notice before the reduced evaluation takes effect. By requiring an examination, the revised procedure will assure that all residuals are documented; it also ensures that the veteran receive timely notice of any proposed action and have an opportunity to present evidence showing that the proposed action should not be taken. In our judgment, this method will better ensure that actual residual disabilities and recuperation times are taken into account because they will be documented on examination.

We proposed to change the length of the total evaluation following coronary artery bypass surgery (DC 7017) from one year to three months. One commenter objected, stating that unspecified medical textbooks suggest resumption of sedentary activity over the two-to three-month period following surgery, with resumption of full activity after three months. Another expressed his belief that a reduction to three months is unreasonably restrictive and does not reflect the average impairment for those in poor health or those who have cardiomyopathies or pulmonary and systemic organ congestion.

An article in the Journal of the American College of Cardiology (1029 vol. 14, no. 4, Oct. 1989) entitled "Insurability and Employability of the Patient with Ischemic Heart Disease" states that return to work evaluations are appropriate seven weeks after bypass surgery. Neither this article nor the unidentified information cited by the commenter justifies the need for a convalescence evaluation longer than three months. For the individual who requires a longer than average period of convalescence, a total evaluation may be assigned for a longer period under the provisions of §§ 4.29 and 4.30 of the

rating schedule. We have, therefore, retained the provision assigning a total evaluation for three months following surgery as proposed.

We proposed that coronary artery bypass surgery be evaluated using the evaluation criteria for arteriosclerotic heart disease, which was not a change from the previous schedule. One commenter suggested that 30 percent be the minimum evaluation following bypass surgery, analogous to arteriosclerotic heart disease (DC 7005).

We have provided objective criteria for evaluation following coronary bypass surgery that are the same as the criteria we have provided for arteriosclerotic heart disease (DC 7005). The surgery itself does not necessarily produce a 30-percent level of impairment; in fact, it often alleviates the disability from arteriosclerotic heart disease. In our judgment, an evaluation based on the workload at which symptoms develop is a reasonable and consistent way to assess the extent of disability; a 30-percent evaluation will be assigned if symptoms develop at the same workload that warrants a 30-percent evaluation for other cardiac conditions.

One commenter suggested that we add a convalescence evaluation following balloon angioplasty for coronary artery disease.

Most patients who undergo balloon angioplasty are discharged from the hospital 24 hours or less after surgery, and many can return to work in a week or less after a successful and uncomplicated angioplasty (Hurst, 2145 and Braunwald, 1367). In our judgment, a total evaluation for a specified period to allow for convalescence is, therefore, not warranted.

We proposed changing the duration of the total evaluation following implantation of a cardiac pacemaker (currently Note (2) under DC 7015, proposed as DC 7018) from one year to two months. One commenter said that the total evaluation should continue for one year; another said that pacemakers require close monitoring postoperatively and that patients should not concern themselves with a return to activity sooner than medically advisable.

Pacemaker implantation is not major surgery, nor is it associated with debilitating or long-term residuals. Those who undergo a cardiac pacemaker implantation are usually discharged from the hospital the following day and are seen in follow-up two weeks after surgery to check the wound and to test the pacing system (Hurst, 2103–4). They are subsequently evaluated two months after implantation, and virtually all patients will have definitive pacemaker programming for long-term function at that time (Braunwald, 747). Thereafter, there is periodic monitoring, often conducted by telephone. In our judgment, a two-month convalescence evaluation is adequate for a normal recovery from pacemaker implantation.

One commenter suggested that we add a 100-percent evaluation under DC 7018, implantable cardiac pacemakers, for those patients who require frequent follow-up and adjustment after pacemaker implant.

DC 7018 allows evaluation of a patient's condition following implantation of a pacemaker under supraventricular arrhythmias (DC 7010), ventricular arrhythmias (DC 7011), or atrioventricular block (DC 7015), if appropriate. A 100-percent evaluation may, therefore, be assigned based either on symptoms or on the number of episodes of arrhythmia, depending on the diagnostic code used. These criteria are a better indicator of residual disability than the frequency of adjustments or follow-up, and we have made no change based on this suggestion.

Another commenter felt that 30 percent should be the minimum evaluation for DC 7018 after a pacemaker has been implanted.

A pacemaker requires regular checkups and monitoring, often by telephone, but the patient may, in fact, be asymptomatic. An evaluation of 10 percent rather than 30 percent is more appropriate for such cases, and we have added a minimum evaluation of 10 percent to the criteria under DC 7018. This is comparable to the assignment of 10 percent for other cardiac conditions when continuous medication is required.

One commenter suggested that we add a caveat under pacemaker implantation (DC 7018) that reimplantation or replacement of a pacemaker does not warrant a 100-percent evaluation.

The total evaluation for two months following implantation of a pacemaker is to provide a period of recuperation from the surgery and any possible side-effects, as well as to provide a period to adjust the device itself and test the response of the individual's heart. These considerations apply as well to the replacement of a pacemaker, and, in our judgment, limiting convalescence evaluations to the initial implantation only is not warranted.

We proposed to add a new diagnostic code (DC 7019) for cardiac transplantation allowing a total evaluation for an indefinite period following the transplant, with a mandatory VA examination to be conducted one year later. In the past, with no provision for cardiac transplantation in the rating schedule, a fixed period of convalescence evaluation for two years was assigned, analogous to what the rating schedule provided following renal transplant prior to the revisions to the genitourinary portion of the rating schedule published January 18, 1994.

One commenter stated that the total evaluation following cardiac transplantation (DC 7019) should continue for two years because the risk of rejection and survival data show that this is dangerous surgery.

Because more than 85 percent of one-year survivors of a cardiac transplant have been rehabilitated and return to work or to school by the end of one year after transplant (Hurst, 2253–54), in our judgment, one year following hospital discharge is a reasonable time to conduct an examination in order to assess residual disability. As with other indefinite periods of convalescence evaluation, any change in evaluation based on the results of the examination will be implemented under the notice and effective date provisions of § 3.105(e), which require VA to notify the claimant of any proposed reduction, once the examination has been carried out and reviewed, and allows 60 days for the claimant to provide additional evidence to show that a reduction should not be carried out.

We proposed to evaluate cardiac transplantation (DC 7019) under the same criteria as arteriosclerotic heart disease (DC 7005), i.e., according to the level of activity that causes symptoms; we have, therefore, revised the criteria using the same objective measurements that we have adopted for evaluating arteriosclerotic heart disease. We proposed a minimum 30-percent evaluation following cardiac transplantation as long as the veteran is on immunosuppressive medication. Because almost every patient will permanently require immunosuppressive therapy following cardiac transplantation, we have simply made 30 percent the minimum evaluation and deleted the requirement that the veteran be taking immunosuppressive medication. This is consistent with the minimum evaluation for kidney transplant (DC 7531), which was published in the **Federal Register** of January 18, 1994 (59 FR 2523).

We also proposed to evaluate cardiomyopathy (DC 7020) under the same criteria as arteriosclerotic heart disease (DC 7005), i.e., according to the level of activity that causes symptoms;

we have, therefore, revised the criteria using the same objective measurements that we have adopted for evaluating arteriosclerotic heart disease.

The previous schedule had a diagnostic code, DC 7100, for generalized arteriosclerosis, which we proposed to delete. One commenter objected, stating that this condition, which is often present in geriatric cases, produces total industrial incapacity with involutional changes such as cerebral ischemia with reduced mentation, bone and muscle atrophy, etc.

The effects of generalized arteriosclerosis are so widespread that, in our judgment, a single diagnostic code is neither appropriate nor necessary. Many diagnostic codes, such as DC 7005, arteriosclerotic heart disease, DC 7114, arteriosclerosis obliterans, and DC 9305, multi-infarct dementia associated with cerebral arteriosclerosis, represent potential effects of arteriosclerosis on end organs, and evaluating each disability resulting from generalized arteriosclerosis under an appropriate code will result in more accurate assessments of the actual disabilities caused by the condition. We have, therefore, made no change based on this comment.

Two commenters requested that we define the term hypertension (DC 7101).

In response to this comment, we have revised Note (1) under DC 7101 to state that, for purposes of this section, hypertension means that the diastolic blood pressure is predominantly 90mm. or greater, and that isolated systolic hypertension means that the systolic blood pressure is predominantly 160mm. or greater with a diastolic blood pressure of less than 90mm. (Cecil, 253, based on the 1988 report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure).

Since both essential hypertension and secondary types of hypertension, such as isolated systolic hypertension due to arteriosclerosis, may be evaluated under this diagnostic code, we have revised the title of DC 7101 from Hypertensive vascular disease (essential arterial hypertension) to Hypertensive vascular disease (hypertension and isolated systolic hypertension).

In the previous schedule, Note (1) under DC 7101 (hypertensive vascular disease) stated that the 40- and 60-percent evaluations required careful attention to diagnosis and repeated blood pressure readings. We proposed to revise the note to state that careful and repeated measurements of blood pressure readings are required prior to the assignment of any compensable evaluation.

Two commenters requested that we clarify the meaning of the note. Standard medical texts recommend multiple blood pressure readings for the diagnosis of hypertension, although the number of measurements recommended varies, with "at least three sets over at least a three-month interval" (Braunwald, 818) and "at least two measurements on two separate examinations" (Harrison, 1001) among the specific recommendations. We have revised the note to require that hypertension be confirmed by readings taken two or more times on each of at least three different days. This will assure that the existence of hypertension is not conceded based solely on readings taken on a single, perhaps unrepresentative, day.

In a note under DC 7101 (hypertensive vascular disease), the previous schedule established a minimum evaluation of ten percent when medication is necessary to control hypertension with a history of diastolic blood pressure predominantly 100 or more. We proposed to keep this note.

One commenter asked if 10 percent should be assigned whenever continuous medication is required for any disorder; another asked if the assignment of 10 percent for hypertension should depend on the amount of medication required.

In our judgment, it would not be appropriate to assign a ten-percent evaluation for every condition which requires continuous treatment by medication. Whether a ten-percent evaluation is warranted when continuous medication is required is based on a case-by-case assessment of each condition and the usual effects of treatment. As to the second comment, the evaluation for hypertension is based not on the amount of medication required to control it, but on the level of control that can be achieved. While there may be more side effects with higher levels of medication or with combined antihypertensive medications, the disabling side effects of medication may be separately evaluated under the provisions of 38 CFR 3.310(a).

Since the provision concerning the assignment of a minimum ten-percent evaluation when there is a history of diastolic pressure predominantly 100 or more and continuous medication is required represents part of the evaluation criteria, we have included it in the criteria for a ten-percent evaluation, rather than in a separate note, as proposed.

The previous schedule called for a 100-percent evaluation for aortic aneurysm (DC 7110) when there are markedly disabling symptoms and for one year following surgical correction. Because of a typographical error, omission of a semicolon, the proposed criteria as published implied that a total evaluation would be assigned following surgery only if the aneurysm had been 5 cm. or more in diameter. One commenter pointed out this error. We had intended to propose that veterans be evaluated as totally disabled under either of two circumstances: (1) If the aneurysm is 5 cm. or greater in diameter, or (2) for six months following resection of an aneurysm of any size. We have corrected the error in the final rule.

In addition, to assure internal consistency, we have revised the criteria to allow a 100-percent evaluation under DC 7110 in an additional situation: when an aortic aneurysm is symptomatic. Under DC 7111, aneurysm of any large artery is evaluated at 100 percent if it is symptomatic. Since the aorta is the largest artery in the body, it would be inconsistent and inequitable not to allow the same evaluation that the schedule provides for symptomatic aneurysms of other large arteries.

The previous schedule assigned a minimum 20-percent evaluation following surgical correction of aortic aneurysm (DC 7110). We proposed to evaluate residuals following surgical correction on actual residual disability, according to the organ system affected, in lieu of assigning a minimum evaluation. A commenter recommended that we retain the 20-percent minimum evaluation following surgery, contending that after such surgery individuals lead a tenuous and extremely sedentary existence, often requiring revision of the graft.

There is a wide range of possible complications and residual disability following surgical correction of an aortic aneurysm, depending on such factors as the location of the aneurysm, its type (dissecting or not), etc. Because some would warrant a higher, and some a lower, evaluation than 20 percent, in our judgment it is preferable to evaluate the actual residuals rather than provide a minimum evaluation, and we have made no change based on this comment.

We proposed to eliminate the fixed one-year period of convalescence evaluation following surgical correction of an aortic aneurysm (DC 7110) in favor of a 100-percent evaluation for an indefinite period from the date of admission for surgical correction, with a mandatory VA examination six months following discharge, and with any change in evaluation subject to the notice and effective date provisions of

§ 3.105(e). One commenter urged that we retain the one-year convalescence evaluation, but gave no specific reasons. We also proposed an indefinite total evaluation following repair of an aneurysm of a large artery (DC 7111) although the previous schedule had provided no post-surgical total evaluation. One commenter suggested that a one-year period of convalescence evaluation would be appropriate following repair of an aneurysm of a large artery because, as after aortic aneurysm repair, these patients lead a tenuous and sedentary existence after surgery.

The period of total evaluation following surgery under DCs 7110 and 7111 will continue indefinitely under the revised schedule, and an examination six months following the date of admission for surgical correction will determine whether a change in evaluation is warranted, based on actual residuals documented at that time. Since any change will be implemented under the notice and effective date provisions of § 3.105 (e), the veteran will have the opportunity to present medical evidence if he or she disagrees with the proposed change in evaluation. These provisions assure an evaluation that reflects the actual disability as documented by medical examination, and we have made no change based on these comments.

The previous schedule assigned a 10-percent evaluation for aneurysm of any small artery (DC 7112); we proposed that such an aneurysm be assigned a zero-percent evaluation. One commenter stated that the proposed change is based on empirical, as opposed to statistical, evidence and that evaluations that have stood the test of time should not be routinely reduced or discontinued.

Small artery aneurysms may produce symptoms such as headaches or visual abnormalities due to local pressure effects, and an aneurysm that ruptures may result in a wide variety of symptoms. However, small artery aneurysms that are asymptomatic are found in about five percent of the population (Cecil, 2165). Because of the wide range of possible disabling effects, it is appropriate to rate each one on the actual findings rather than provide a 10-percent evaluation in all cases. In our judgment, an asymptomatic aneurysm of a small artery has no disabling effects and does not warrant a compensable evaluation.

Another commenter asked where and how to rate cerebral aneurysms. Aneurysms of cerebral arteries are evaluated under DC 7112, as are all other aneurysms of small arteries. We have made no change in response to this comment.

The previous schedule specified a minimum evaluation of 60 percent for traumatic arteriovenous aneurysm (DC 7113) when there is cardiac involvement, and we proposed no change. One commenter, noting that designating a minimum evaluation implied that a higher one could be assigned, asked what findings would warrant an evaluation higher than 60 percent, since 60 percent was also the highest evaluation under DC 7113.

The most serious potential consequence of arteriovenous aneurysm is congestive heart failure due to high output, which would warrant a 100-percent evaluation. We have, therefore, added a 100-percent evaluation, to be assigned if there is high output heart failure.

In response to the request for more objective criteria, we have revised the criteria for a 60-percent evaluation under DC 7113 to require an enlarged heart, wide pulse pressure, and tachycardia rather than the ambiguous term "cardiac involvement" that we had proposed. We have revised the criteria for the 50-percent level for lower extremity involvement or the 40-percent level for upper extremity involvement, which were proposed as "without cardiac involvement with marked vascular symptoms," to require edema, stasis dermatitis, and either ulceration or cellulitis. We have revised the criteria for the 30-percent level for lower extremity involvement or the 20-percent level for upper extremity involvement, which were proposed as "with definite vascular symptoms," to require edema or stasis dermatitis. These are not substantive changes, but more specific designations of the cardiac and vascular signs that warrant these evaluations. We have also revised the title of DC 7113 from "arteriovenous aneurysm, traumatic" to "arteriovenous fistula, traumatic," the currently accepted term for the condition, which is a direct communication between an artery and a vein.

One commenter requested that we add a paragraph under arteriosclerosis obliterans (DC 7114) addressing the evaluation of aorto-femoral bypass grafts.

To assure consistent evaluations of the residuals of aortic and large arterial bypass surgery, we have added a note under DC 7114 stating that the residuals of aortic and large arterial bypass surgery or arterial grafts are to be rated under that code. Since the most common residuals of bypass surgery are signs and symptoms of arterial insufficiency, it is appropriate to evaluate them under the criteria for arteriosclerosis obliterans.

Two commenters suggested we provide a specific period of convalescence evaluation following bypass surgery for aortoiliac and femoral-popliteal artery disease.

The evaluation criteria for serious complications that might result from bypass surgery and, therefore, be service-connected under the provisions of 38 CFR 3.310(a), such as myocardial infarction, have their own periods of convalescence evaluation. For the milder complications, or the uncomplicated cases, the standard periods of convalescence evaluation authorized under § 4.30 of this part are adequate, and we have made no change based on these comments.

The criterion for the 40-percent evaluation for arteriosclerosis obliterans (DC 7114) in the previous schedule was "well-established cases with intermittent claudication or recurrent episodes of superficial phlebitis;" we proposed to revise this criterion to "well-established cases of intermittent claudication with associated physical findings (hair loss, skin changes)." We proposed for the 100-percent level: "severe, with marked physical signs producing total incapacity"; for the 60-percent level: "claudication on minimal walking (less than three miles per hour on a level grade) with persistent coldness of the extremity"; and for the 20-percent level: "minimal circulatory impairment, with paresthesias, temperature changes and occasional claudication." One commenter noted that the phrase "well-established cases" is one of the vague, indefinite, and arbitrary elements in the schedule.

In response to both that comment and the requests for more objective criteria, we have revised the criteria under this diagnostic code: To specify at each evaluation level the distance that can be covered before claudication occurs; and to base evaluations on objective physical findings, such as peripheral pulses, trophic changes, persistent coldness, and deep ischemic ulcers. We have also added an objective alternative criterion, the ankle/brachial index, at each level, and a note explaining that this index is obtained by dividing the systolic blood pressure at the ankle by the systolic blood pressure in the arm. The ratio is normally one or greater; but because arterial occlusive disease obstructs the blood flow in the legs, the ratio in patients with that condition is less than one. A ratio of less than 0.5 is consistent with severe ischemia (Harrison, 1019). The ankle/brachial index thus allows a noninvasive objective assessment of the severity of peripheral vascular disease.

We proposed to evaluate Raynaud's syndrome (DC 7117) as 100-percent, 60-percent, 40-percent, or 20-percent disabling, using measures such as "marked" circulatory changes, "multiple" ulcerated areas, "frequent" vasomotor disturbances, and "occasional" attacks of blanching or flushing. One commenter suggested that we replace subjective terms with more objective requirements.

Simply replacing the indefinite words would not result in truly objective criteria. We have, therefore, defined "characteristic attacks" of Raynaud's disease for VA purposes as consisting of sequential color changes of the digits lasting minutes to hours, sometimes with pain and paresthesias, and precipitated by exposure to cold or by emotional upsets. We have revised the evaluation criteria based on the frequency of characteristic attacks, the number of digital ulcers, and whether autoamputation in one or more digits has occurred. While we proposed no change in the former 20-percent level, which required "occasional attacks of blanching or flushing," under the more objective criteria we have provided both a 20- and a 10-percent level, with 20-percent requiring characteristic attacks four to six times a week, and 10-percent requiring characteristic attacks one to three times a week. This will ensure more consistent evaluations in milder cases of Raynaud's, where, in the former schedule, the assignment of zero percent or 20 percent depended on an individual rater's interpretation of "occasional."

One commenter suggested that we include neurologic symptoms associated with exposure to low or subfreezing temperatures under the evaluation criteria for DC 7117.

In response to this comment, we have included pain and paresthesias, which are neurologic symptoms, among the possible manifestations of the characteristic attacks of Raynaud's syndrome.

We proposed to assign 40-percent, 20-percent, and zero-percent evaluations for angioneurotic edema (DC 7118), based generally on the frequency, severity, and duration of attacks. One commenter recommended that we add a 10-percent evaluation; another recommended that we replace language such as "frequent" and "infrequent" with more definite terms.

Angioneurotic edema is a condition that is ordinarily self-limited, with attacks subsiding in one to seven days (Merck, 333), but at times palliative treatment is used. There are also unusual types that are more persistent and resistant to therapy. We have established more objective criteria based on the typical duration of attacks, their frequency, and on whether there is laryngeal involvement. We have added a 10-percent evaluation, to be assigned if attacks without laryngeal involvement occur two to four times a year. These criteria will foster more consistent evaluations for angioneurotic edema, since different raters will not be required to interpret subjective terms such as "mild," "moderate," "frequent," and "infrequent."

One commenter suggested that when angioneurotic edema affects the larynx even briefly, a 10-percent evaluation is warranted.

In our judgment, angioneurotic edema affecting the larynx does warrant separate consideration in the evaluation criteria because laryngeal edema commonly causes respiratory distress due to airway obstruction and requires emergency treatment. This situation is serious enough that if it occurs once or twice a year, it warrants a 20-percent evaluation; if it occurs more than twice a year, it warrants a 40-percent evaluation.

A second commenter objected that the proposed changes to DC 7118 were based on empirical, as opposed to statistical, information.

As noted under the response to comments about DC 7122, 38 U.S.C. 1155 gives the Secretary the authority to revise the rating schedule periodically in accordance with experience. The revisions of these criteria are based on the usual effects of the disease, which is consistent with the basis of revisions throughout the current comprehensive revision of the rating schedule. They are medically, rather than statistically, based, and no statistical studies were done in conjunction with the revision.

Under the previous schedule, there were a variety of methods used to evaluate vascular diseases affecting the extremities, particularly when more than one extremity was affected. For example, the criteria for thrombophlebitis (DC 7121) applied to a single extremity, and if other extremities were affected, they were separately evaluated. For varicose veins (DC 7120), the criteria for a 10-percent evaluation applied to either unilateral or bilateral involvement; but at other evaluation levels, different percentages were assigned for unilateral and bilateral involvement, with no direction for evaluation if one extremity were more severely affected than the other. The criteria for intermittent claudication (DC 7116) applied to a single extremity; determining the evaluation for multiple extremities required application of a complex set of rules (contained in a note following DC 7117) that sometimes produced an evaluation for involvement of multiple extremities no higher than that for involvement of a single extremity. We proposed no substantive change in either the methods of evaluating these conditions or in the percentage levels.

One commenter questioned why the percentage evaluations and the method of determining the evaluation when more than one extremity is affected differ for arterial and venous diseases. He suggested that we use 20-, 40,-and 60-percent levels for both peripheral arterial diseases (DCs 7114 through 7117), and venous diseases (DCs 7120 and 7121) instead of the variety of levels proposed, and that we adopt a uniform and simple method of determining evaluations when more than one extremity is involved, such as adding ten percent for each additional extremity involved.

We proposed evaluations levels of 20, 40, 60, and 100 percent for DCs 7114, 7115, and 7117, and we have kept those levels in this rule, with the addition of a 10-percent level for DC 7117. (We removed DC 7116, "intermittent claudication," which was in the previous schedule, because it was a symptom of disease rather than a disease.) In response to the comment, we have further revised DCs 7120 (varicose veins) and 7121 (post-phlebitic syndrome of any etiology) to provide percentage evaluation levels of 10, 20, 40, 60, and 100 percent. In addition, we have revised the method of evaluating DCs 7114 (arteriosclerosis obliterans), 7115 (thromboangiitis obliterans), and 7120 (varicose veins) so that the criteria apply to a single extremity, as the criteria for DC 7121 do. If the paired extremity is also affected, the evaluation for each extremity will be separately determined and combined using the combined ratings table (see 38 CFR 4.25) and the bilateral factor (see 38 CFR 4.26) when applicable. Section 4.26 also provides instructions on applying the bilateral factor when there is involvement of upper and lower extremities. While we have made the percentage levels similar, the signs, symptoms, and effects of venous and arterial diseases differ greatly and, therefore, require different evaluation criteria.

In order to adopt the more consistent method of separately evaluating each extremity affected by vascular disease and to assure that venous conditions with similar findings receive consistent evaluations, further revisions of the evaluation criteria for varicose veins

(DC 7120) and post-phlebitic syndrome of any etiology (DC 7121) were required.

Varicose veins are ordinarily asymptomatic or mildly symptomatic, but may produce prolonged venous insufficiency and progress to thrombophlebitis and postphlebitic syndrome. Signs of venous insufficiency, such as edema, stasis pigmentation, ulceration, eczema, and induration, and symptoms such as aching and fatigue, are the major disabling effects of varicose veins. The size, location, extent, etc., of varicose veins do not correlate with symptoms (Merck, 590), and we have removed those criteria as factors in evaluation. The presence or absence of impairment of the deep circulation is more an indicator of the feasibility of surgical repair than of functional impairment, and we have, therefore, removed references to the deep circulation from the evaluation criteria. We have replaced these criteria with criteria based on symptoms (such as aching and fatigue after prolonged standing or walking) or objective physical findings (such as edema, stasis pigmentation, eczema, or ulceration).

The effects of chronic venous insufficiency are the same, whether from varicosities, thrombophlebitis, or some other cause. The postphlebitic syndrome may itself lead to the development of varicosities because of chronic venous insufficiency (Cecil, 363–7). Therefore, the possible manifestations and disabling effects of varicose veins and postphlebitic syndrome are very similar, and we have used the same criteria to evaluate both conditions, with evaluation levels of 0, 10, 20, 40, 60, and 100 percent for involvement of a single extremity, and the same method of evaluation for multiple extremity involvement as that used in arterial vascular disease of the extremities.

We added under DC 7120: "With the following findings attributed to the effects of varicose veins," and under DC 7121: "With the following findings attributed to venous disease" in order to assure that the examiner has determined that the abnormal findings are attributed to venous disease.

One commenter suggested that we clarify how to assign bilateral evaluations for frozen feet (DC 7122) and varicose veins (DC 7120) when one extremity is more severely affected than the other.

The changes described above that we have made in the evaluation criteria, evaluation percentages, and method of determining an evaluation for multiple extremity involvement will allow accurate and consistent evaluations when more than one extremity is affected by varicose veins, but to different degrees. We have made similar changes in the method of evaluating cold injury, DC 7122, in order to assure accurate and consistent evaluations when there is multiple extremity involvement, and this is further discussed below.

We proposed no change in the previous evaluation criteria for frozen feet (DC 7122). One commenter suggested that we expand the criteria to include cold injuries to the hands, face, and ears; another suggested that higher ratings may be warranted for loss of use of multiple fingers or one or both hands.

We have revised the title of DC 7122 from "frozen feet, residuals of" to "cold injury, residuals of" to indicate that it may be used to evaluate any cold injury. Because cold injury produces similar tissue changes wherever it occurs, a single diagnostic code and set of evaluation criteria are adequate; we have, however, revised the criteria to more accurately reflect the range of effects that cold injury may produce, such as arthralgia, tissue loss, nail abnormalities, and color changes. We have also deleted the bilateral evaluations contained in the prior schedule in favor of evaluating each affected part separately and combining them for the overall evaluation for cold injury, a change which is similar to changes we have made in the method of evaluating peripheral arterial and venous diseases of the extremities. In the case of paired extremities, the evaluations will be combined, if appropriate, in accordance with §§ 4.25 and 4.26 (as described in Note (2), added following DC 7122).

The proposed note following DC 7122 directed that higher ratings could be assigned, if warranted, because of loss of toes, by reference to amputation ratings. We have edited this Note (1) for clarity and added a statement about the evaluation of complications such as peripheral neuropathy or squamous cell carcinoma of the skin at the site of a scar.

One commenter requested that we include neurologic symptoms associated with exposure to low or subfreezing temperatures in the evaluation criteria for DC 7122, cold injuries.

In response to this suggestion, we have added numbness or locally impaired sensation, which are neurologic symptoms, to the evaluation criteria.

One individual suggested that cold injuries of the hands are generally more disabling than those of the lower extremities.

The severity of cold injuries to various parts of the body depends on such factors as the extent and duration of exposure, more than on the particular part affected. We have provided evaluation criteria that, applied with the notes regarding amputations and complications, are flexible enough to cover a broad range of severity and allow evaluation of any extent of tissue damage from cold injury to any body part, so we have not adopted any changes based on this comment.

The current schedule provides six months of convalescence evaluation for soft tissue sarcoma of vascular origin (DC 7123). We proposed that a total evaluation be assigned indefinitely, with a mandatory VA examination to be conducted six months following the completion of therapy. One commenter recommended that we allow one year of convalescence evaluation.

We believe that an examination six months following the cessation of treatment affords sufficient time for convalescence and stabilization of residuals, particularly since the rule requires only an examination, not a reduction, at that time. In our judgment, this method of determining the length of the total evaluation is both fairer and more accurate than assigning a total evaluation for a specified length of time, since the evaluation will be based on actual residual disability as documented by the examination, and the veteran will receive advance notice of any change and have the opportunity to submit additional evidence showing that the change is not warranted.

Two commenters requested that VA provide a zero-percent evaluation for all diagnostic codes.

On October 6, 1993, VA revised its regulation addressing the issue zero-percent evaluations (38 CFR 4.31) to authorize assignment of a zero-percent evaluation for any disability in the rating schedule when minimum requirements for a compensable evaluation are not met. In general, that regulatory provision precludes the need for zero-percent evaluation criteria.

On further review, we have revised the title of DC 7121 from "phlebitis or thrombophlebitis" to "post-phlebitic syndrome of any etiology" because both superficial and deep acute thrombophlebitis are transient conditions, but it is the chronic form of thrombophlebitis with venous insufficiency, known as "postphlebitic leg," "postphlebitic sequelae of chronic venous insufficiency," "postphlebitic syndrome," or "stasis syndrome," that may follow thrombophlebitis. This is not a substantive change.

For the sake of clarity, we have made nonsubstantive changes in the notes under ventricular arrhythmias (DC 7011), heart valve replacement (DC 7016), cardiac transplantation (DC 7019), aortic aneurysm (DC 7110), aneurysm, any large artery (DC 7111), and soft tissue sarcoma (DC 7123).

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with the amendments noted above.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: August 7, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

§§ 4.100 through 4.102 [Removed and Reserved]

2. Sections 4.100, 4.101, 4.102 are removed and reserved.

3. Section 4.104 is revised to read as follows:

§ 4.104 Schedule of ratings—cardiovascular system.

Diseases of the Heart

Note (1): Evaluate cor pulmonale, which is a form of secondary heart disease, as part of the pulmonary condition that causes it.
Note (2): One MET (metabolic equivalent) is the energy cost of standing quietly at rest and represents an oxygen uptake of 3.5 milliliters per kilogram of body weight per minute. When the level of METs at which dyspnea, fatigue, angina, dizziness, or syncope develops is required for evaluation, and a laboratory determination of METs by exercise testing cannot be done for medical reasons, an estimation by a medical examiner of the level of activity (expressed in METs and supported by specific examples, such as slow stair climbing or shoveling snow) that results in dyspnea, fatigue, angina, dizziness, or syncope may be used.

	Rating
7000 Valvular heart disease (including rheumatic heart disease):	
During active infection with valvular heart damage and for three months following cessation of therapy for the active infection	100
Thereafter, with valvular heart disease (documented by findings on physical examination and either echocardiogram, Doppler echocardiogram, or cardiac catheterization) resulting in:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electro-cardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
7001 Endocarditis:	
For three months following cessation of therapy for active infection with cardiac involvement	100
Thereafter, with endocarditis (documented by findings on physical examination and either echocardiogram, Doppler echocardiogram, or cardiac catheterization) resulting in:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
7002 Pericarditis:	
For three months following cessation of therapy for active infection with cardiac involvement	100
Thereafter, with documented pericarditis resulting in:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent.	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electro-cardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10

	Rating
7003 Pericardial adhesions:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electro-cardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
7004 Syphilitic heart disease:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
Note: Evaluate syphilitic aortic aneurysms under DC 7110 (aortic aneurysm).	
7005 Arteriosclerotic heart disease (Coronary artery disease):	
With documented coronary artery disease resulting in:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
Note: If nonservice-connected arteriosclerotic heart disease is superimposed on service-connected valvular or other non-arteriosclerotic heart disease, request a medical opinion as to which condition is causing the current signs and symptoms.	
7006 Myocardial infarction:	
During and for three months following myocardial infarction, documented by laboratory tests	100
Thereafter:	
With history of documented myocardial infarction, resulting in:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
7007 Hypertensive heart disease:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
7008 Hyperthyroid heart disease:	
Include as part of the overall evaluation for hyperthyroidism under DC 7900. However, when atrial fibrillation is present, hyperthyroidism may be evaluated either under DC 7900 or under DC 7010 (supraventricular arrhythmia), whichever results in a higher evaluation.	
7010 Supraventricular arrhythmias:	
Paroxysmal atrial fibrillation or other supraventricular tachycardia, with more than four episodes per year documented by ECG or Holter monitor	30
Permanent atrial fibrillation (lone atrial fibrillation), or; one to four episodes per year of paroxysmal atrial fibrillation or other supraventricular tachycardia documented by ECG or Holter monitor	10
7011 Ventricular arrhythmias (sustained):	
For indefinite period from date of hospital admission for initial evaluation and medical therapy for a sustained ventricular arrhythmia, or; for indefinite period from date of hospital admission for ventricular aneurysmectomy, or; with an automatic implantable Cardioverter-Defibrillator (AICD) in place	100
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100

	Rating
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
Note: A rating of 100 percent shall be assigned from the date of hospital admission for initial evaluation and medical therapy for a sustained ventricular arrhythmia or for ventricular aneurysmectomy. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.	
7015 Atrioventricular block:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication or a pacemaker required	10
Note: Unusual cases of arrhythmia such as atrioventricular block associated with a supraventricular arrhythmia or pathological bradycardia should be submitted to the Director, Compensation and Pension Service. Simple delayed P–R conduction time, in the absence of other evidence of cardiac disease, is not a disability.	
7016 Heart valve replacement (prosthesis):	
For indefinite period following date of hospital admission for valve replacement	100
Thereafter:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
Note: A rating of 100 percent shall be assigned as of the date of hospital admission for valve replacement. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.	
7017 Coronary bypass surgery:	
For three months following hospital admission for surgery	100
Thereafter:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
7018 Implantable cardiac pacemakers:	
For two months following hospital admission for implantation or reimplantation	100
Thereafter:	
Evaluate as supraventricular arrhythmias (DC 7010), ventricular arrhythmias (DC 7011), or atrioventricular block (DC 7015). Minimum	10
Note: Evaluate Implantable Cardioverter-Defibrillators (AICD's) under DC 7011.	
7019 Cardiac transplantation:	
For an indefinite period from date of hospital admission for cardiac transplantation	100
Thereafter;	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Minimum	30
Note: A rating of 100 percent shall be assigned as of the date of hospital admission for cardiac transplantation. One year following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of §3.105(e) of this chapter.	
7020 Cardiomyopathy:	

	Rating
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10
Diseases of the Arteries and Veins	
7101 Hypertensive vascular disease (hypertension and isolated systolic hypertension):	
Diastolic pressure predominantly 130 or more	60
Diastolic pressure predominantly 120 or more	40
Diastolic pressure predominantly 110 or more, or; systolic pressure predominantly 200 or more	20
Diastolic pressure predominantly 100 or more, or; systolic pressure predominantly 160 or more, or; minimum evaluation for an individual with a history of diastolic pressure predominantly 100 or more who requires continuous medication for control	10
Note (1): Hypertension or isolated systolic hypertension must be confirmed by readings taken two or more times on at least three different days. For purposes of this section, the term hypertension means that the diastolic blood pressure is predominantly 90mm. or greater, and isolated systolic hypertension means that the systolic blood pressure is predominantly 160mm. or greater with a diastolic blood pressure of less than 90mm.	
Note (2): Evaluate hypertension due to aortic insufficiency or hyperthyroidism, which is usually the isolated systolic type, as part of the condition causing it rather than by a separate evaluation.	
7110 Aortic aneurysm:	
If five centimeters or larger in diameter, or; if symptomatic, or; for indefinite period from date of hospital admission for surgical correction (including any type of graft insertion)	100
Precluding exertion	60
Evaluate residuals of surgical correction according to organ systems affected.	
Note: A rating of 100 percent shall be assigned as of the date of admission for surgical correction. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.	
7111 Aneurysm, any large artery:	
If symptomatic, or; for indefinite period from date of hospital admission for surgical correction	100
Following surgery:	
Ischemic limb pain at rest, and; either deep ischemic ulcers or ankle/brachial index of 0.4 or less	100
Claudication on walking less than 25 yards on a level grade at 2 miles per hour, and; persistent coldness of the extremity, one or more deep ischemic ulcers, or ankle/brachial index of 0.5 or less	60
Claudication on walking between 25 and 100 yards on a level grade at 2 miles per hour, and; trophic changes (thin skin, absence of hair, dystrophic nails) or ankle/brachial index of 0.7 or less	40
Claudication on walking more than 100 yards, and; diminished peripheral pulses or ankle/brachial index of 0.9 or less	20
Note (1): The ankle/brachial index is the ratio of the systolic blood pressure at the ankle (determined by Doppler study) divided by the simultaneous brachial artery systolic blood pressure. The normal index is 1.0 or greater.	
Note (2): These evaluations are for involvement of a single extremity. If more than one extremity is affected, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor, if applicable.	
Note (3): A rating of 100 percent shall be assigned as of the date of hospital admission for surgical correction. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.	
7112 Aneurysm, any small artery:	
Asymptomatic	0
Note: If symptomatic, evaluate according to body system affected. Following surgery, evaluate residuals under the body system affected.	
7113 Arteriovenous fistula, traumatic:	
With high output heart failure	100
Without heart failure but with enlarged heart, wide pulse pressure, and tachycardia	60
Without cardiac involvement but with edema, stasis dermatitis, and either ulceration or cellulitis:	
Lower extremity	50
Upper extremity	40
With edema or stasis dermatitis:	
Lower extremity	30
Upper extremity	20
7114 Arteriosclerosis obliterans:	
Ischemic limb pain at rest, and; either deep ischemic ulcers or ankle/brachial index of 0.4 or less	100
Claudication on walking less than 25 yards on a level grade at 2 miles per hour, and; either persistent coldness of the extremity or ankle/brachial index of 0.5 or less	60
Claudication on walking between 25 and 100 yards on a level grade at 2 miles per hour, and; trophic changes (thin skin, absence of hair, dystrophic nails) or ankle/brachial index of 0.7 or less	40
Claudication on walking more than 100 yards, and; diminished peripheral pulses or ankle/brachial index of 0.9 or less	20
Note (1): The ankle/brachial index is the ratio of the systolic blood pressure at the ankle (determined by Doppler study) divided by the simultaneous brachial artery systolic blood pressure. The normal index is 1.0 or greater.	
Note (2): Evaluate residuals of aortic and large arterial bypass surgery or arterial graft as arteriosclerosis obliterans.	
Note (3): These evaluations are for involvement of a single extremity. If more than one extremity is affected, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor (§ 4.26), if applicable.	

	Rating
7115 Thrombo-angiitis obliterans (Buerger's Disease):	
Ischemic limb pain at rest, and; either deep ischemic ulcers or ankle/brachial index of 0.4 or less	100
Claudication on walking less than 25 yards on a level grade at 2 miles per hour, and; either persistent coldness of the extremity or ankle/brachial index of 0.5 or less	60
Claudication on walking between 25 and 100 yards on a level grade at 2 miles per hour, and; trophic changes (thin skin, absence of hair, dystrophic nails) or ankle/brachial index of 0.7 or less	40
Claudication on walking more than 100 yards, and; diminished peripheral pulses or ankle/brachial index of 0.9 or less	20
Note (1): The ankle/brachial index is the ratio of the systolic blood pressure at the ankle (determined by Doppler study) divided by the simultaneous brachial artery systolic blood pressure. The normal index is 1.0 or greater.	
Note (2): These evaluations are for involvement of a single extremity. If more than one extremity is affected, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor (§ 4.26), if applicable.	
7117 Raynaud's syndrome:	
With two or more digital ulcers plus autoamputation of one or more digits and history of characteristic attacks	100
With two or more digital ulcers and history of characteristic attacks	60
Characteristic attacks occurring at least daily	40
Characteristic attacks occurring four to six times a week	20
Characteristic attacks occurring one to three times a week	10
Note: For purposes of this section, characteristic attacks consist of sequential color changes of the digits of one or more extremities lasting minutes to hours, sometimes with pain and paresthesias, and precipitated by exposure to cold or by emotional upsets. These evaluations are for the disease as a whole, regardless of the number of extremities involved or whether the nose and ears are involved.	
7118 Angioneurotic edema:	
Attacks without laryngeal involvement lasting one to seven days or longer and occurring more than eight times a year, or; attacks with laryngeal involvement of any duration occurring more than twice a year	40
Attacks without laryngeal involvement lasting one to seven days and occurring five to eight times a year, or; attacks with laryngeal involvement of any duration occurring once or twice a year	20
Attacks without laryngeal involvement lasting one to seven days and occurring two to four times a year	10
7119 Erythromelalgia:	
Characteristic attacks that occur more than once a day, last an average of more than two hours each, respond poorly to treatment, and that restrict most routine daily activities	100
Characteristic attacks that occur more than once a day, last an average of more than two hours each, and respond poorly to treatment, but that do not restrict most routine daily activities	60
Characteristic attacks that occur daily or more often but that respond to treatment	30
Characteristic attacks that occur less than daily but at least three times a week and that respond to treatment	10
Note: For purposes of this section, a characteristic attack of erythromelalgia consists of burning pain in the hands, feet, or both, usually bilateral and symmetrical, with increased skin temperature and redness, occurring at warm ambient temperatures. These evaluations are for the disease as a whole, regardless of the number of extremities involved.	
7120 Varicose veins:	
With the following findings attributed to the effects of varicose veins: Massive board-like edema with constant pain at rest	100
Persistent edema or subcutaneous induration, stasis pigmentation or eczema, and persistent ulceration	60
Persistent edema and stasis pigmentation or eczema, with or without intermittent ulceration	40
Persistent edema, incompletely relieved by elevation of extremity, with or without beginning stasis pigmentation or eczema	20
Intermittent edema of extremity or aching and fatigue in leg after prolonged standing or walking, with symptoms relieved by elevation of extremity or compression hosiery	10
Asymptomatic palpable or visible varicose veins	0
Note: These evaluations are for involvement of a single extremity. If more than one extremity is involved, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor (§ 4.26), if applicable.	
7121 Post-phlebitic syndrome of any etiology:	
With the following findings attributed to venous disease:	
Massive board-like edema with constant pain at rest	100
Persistent edema or subcutaneous induration, stasis pigmentation or eczema, and persistent ulceration	60
Persistent edema and stasis pigmentation or eczema, with or without intermittent ulceration	40
Persistent edema, incompletely relieved by elevation of extremity, with or without beginning stasis pigmentation or eczema	20
Intermittent edema of extremity or aching and fatigue in leg after prolonged standing or walking, with symptoms relieved by elevation of extremity or compression hosiery	10
Asymptomatic palpable or visible varicose veins	0
Note: These evaluations are for involvement of a single extremity. If more than one extremity is involved, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor (§ 4.26), if applicable.	
7122 Cold injury residuals:	
With pain, numbness, cold sensitivity, or arthralgia plus two or more of the following: tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, X-ray abnormalities (osteoporosis, subarticular punched out lesions, or osteoarthritis) of affected parts	30
With pain, numbness, cold sensitivity, or arthralgia plus tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, or X-ray abnormalities (osteoporosis, subarticular punched out lesions, or osteoarthritis) of affected parts	20
With pain, numbness, cold sensitivity, or arthralgia	10
Note (1): Amputations of fingers or toes, and complications such as squamous cell carcinoma at the site of a cold injury scar or peripheral neuropathy should be separately evaluated under other diagnostic codes.	
Note (2): Evaluate each affected part (hand, foot, ear, nose) separately and combine the ratings, if appropriate, in accordance with §§ 4.25 and 4.26.	

	Rating
7123 Soft tissue sarcoma (of vascular origin)	100
Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	

(Authority: 38 U.S.C. 1155)

[FR Doc. 97–32413 Filed 12–10–97; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5931–8]

Technical Amendments to Air Quality Implementation Plan for Connecticut; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of Monday, October 6, 1997, a direct final rule concerning the approval of regulations which define reasonably available control technology for sources of nitrogen oxides in Connecticut.

Inadvertently, the wrong city address was attributed to two facilities affected by the regulations. Also in that document, the table of EPA approved regulations was mislabelled.

DATES: Effective on December 11, 1997.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp at (617) 565–2773, or E-mail at Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: The EPA published a direct final rule in the October 6, 1997 **Federal Register** (62 FR 52016) adding § 52.370(c)(72) and § 52.385 but inadvertently included the wrong city address for two facilities listed under § 52.370(c)(72)(i) and mislabelled the table of EPA approved regulations under § 52.385. This correction changes the address for the two entries as well as the label of the table.

In FR Doc. 97–26434 published on October 6, 1997, (62 FR 52016) make the following corrections:

§ 52.370 [Corrected]

1. On page 52020, in the third column in § 52.370(c)(72)(i)(B), in the fourth line, "New Haven * * *" should read "Bridgeport * * *",

2. On page 52021, in the third column in § 52.370(c)(72)(i)(K), in the sixth line, "New Haven" should read "Bridgeport",

§ 52.385 [Corrected]

3. On pages 52022 through 52029, the heading for the table "Table 52.384—EPA-Approved Regulations" should read "Table 52.385—EPA-Approved Regulations", and

4. On page 52027, the table in § 52.385, under Connecticut state citation 22a-174–22, Control of nitrogen oxide emissions, the subentries that begin with the dates "5/18/95" and "2/14/96" are corrected to read as follows:

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State Citation	Title/subject	Dates		Federal Register Citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
* * *	* * *	5/18/95	10/6/97	* * *	(c) 72	Case-specific trading order for United Illuminating's Station #3, in Bridgeport.
* * *	* * *	2/14/96	10/6/97	* * *	(c) 72	Case-specific trading order for United Illuminating's Station #4, in Bridgeport.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: November 25, 1997.

Susan Studlien,

Deputy Director, Office of Ecosystem Protection, Region I.

[FR Doc. 97–32331 Filed 12–10–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5933–2]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Para-Chem Southern, Inc. Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the partial deletion of the Para-Chem Superfund site in Simpsonville, South Carolina from the National Priorities List (NPL). The portion to be deleted (Source Control Portion of the Site) is described below. The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of South Carolina have determined that all appropriate Fund-financed responses under CERCLA have been implemented on the portions of the property targeted for this partial deletion and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of South Carolina Department of Health and Environmental Control have determined that remedial actions conducted on these portions of the property at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Terry L. Tanner, Remedial Project Manager, U.S. EPA, Region 4, 61 Forsyth Street, Atlanta, GA 30303, 404/562–8797.

SUPPLEMENTARY INFORMATION: The site portion to be deleted from the NPL is a portion (Source Control Portion) of the Para-Chem Southern, Inc. Superfund Site, Simpsonville, South Carolina. The Source Control Portion of soils within one waste disposal area of the Site consisted of the excavation of 686 tons of drums, waste, and contaminated soils. These materials were classified as a hazardous waste by characteristic, and shipped to the GSX landfill. This partial deletion does not include all site soil actions nor the groundwater remedial action which will remain on the NPL. A Notice of Intent to Delete for this site was published in the **Federal Register** on June 30, 1997 (62 FR 35115). The closing date for comments on the Notice of Intent to Delete was July 30, 1997. EPA received no comments during this period.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover cost associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous waste, Intergovernmental relations, Superfund.

Dated: September 16, 1997.

Phyllis P. Hall,

Acting Regional Administrator, Region 4.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., 351; E.O. 12580; 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by revising the entry for "Para-Chem Southern, Inc., Simpsonville, South Carolina" to read as follows:

Appendix B to Part 300—National Priorities List

Table 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes[a]
* * *	* * *	* * *	*
SC	Para-Chem Southern, Inc	Simpsonville	P
* * *	* * *	* * *	*

[a] P=Sites with partial deletion(s).

[FR Doc. 97–32186 Filed 12–10–97; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 62, No. 238
Thursday, December 11, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1301

Notice of Proposed Rulemaking; Over-Order Price Regulations

AGENCY: Northeast Dairy Compact Commission.

SUMMARY: The Northeast Dairy Compact Commission proposes to amend the current Compact Over-order Price Regulation, to exempt from the regulation fluid milk distributed by handlers during the 1998–1999 contract year under open competitive bid contracts with School Food Authorities in New England for Child Nutrition Programs qualified for reimbursement under the National School Lunch Act of 1946 and the Child Nutrition Act. Representatives of New England School Food Authorities and Food Services Programs have indicated to the Commission that the Regulation has had an adverse financial impact on their programs that will ultimately be born by school children. The proposal to exempt milk distributed to School Lunch Programs will avoid any increase in price to children due to the regulation for milk provided by School Food Service Programs.

DATES: Written comments and exhibits may be submitted until 5:00 PM, January 12, 1998. A public hearing to take testimony and receive documentary evidence relevant to amending § 1301.13 will be held on December 29, 1997 at 10:00 AM.

ADDRESSES: Send comments to the Northeast Dairy Compact Commission, 43 State Street. P.O. Box 1058, Montpelier, VT 05601.

The hearing will be held at the Ramada Rolling Green Hotel and Conference Center, 311 Lowell St., Andover, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941 or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission (the "Commission") was established under authority of the Northeast Interstate Dairy Compact (the "Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Public Law 93–320; Maine—Public Law 89–437, as amended, Public Law 93–274; Massachusetts—Public Law 93–370; New Hampshire—Public Law 93–336; Rhode Island—Public Law 93–106; Vermont—Public Law 89–95, as amended 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Public Law 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7156. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized the implementation of the Compact.

Pursuant to its authority under Article V, Section 11 of the Compact, the Commission conducted an informal rulemaking proceeding to adopt a Compact Over-order Price Regulation. See 62 FR 29626 (May 30, 1997). The Commission amended and extended the Compact Over-order Price Regulation on October 23, 1997. See 62 FR 62810 (November 25, 1997).

Pursuant to Article V, Section 11, the Commission is proposing to amend the current Compact Over-order Price Regulation to exempt from the regulation fluid milk distributed by handlers under open and competitive bid contracts for the 1998–1999 contract year with School Food Authorities in New England for Child Nutrition Programs qualified for reimbursement under the National School Lunch Act of 1946 and the Child Nutrition Act of 1966. The current Compact Over-order Price Regulation is codified at 7 CFR 1300 through 1308.1. The Commission submits as its proposed rule for purposes of public review and comment a new paragraph (e) to be added to 7 CFR 1301.13 *Exempt milk.*

II. Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing at 10:00 AM on December 29, 1997 at the Ramada Rolling Green Hotel and Conference Center, 311 Lowell Street, Andover, Massachusetts.

III. Request for Written Comments

Pursuant to Article VI (D) of the Commission's Bylaws, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments and exhibits to the Commission. Comments and exhibits may be submitted at any time until 5:00 PM, January 12, 1998. Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 PM, January 12, 1998 deadline but the original copies must then be sent by ordinary mail.

Comments and exhibits should be sent to: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, VT 05601, (802) 229–2028 (fax).

For more information, contact a New England state department of agriculture or the Compact Commission offices—(802) 229–1941.

Dated December 8, 1997.

List of Subjects in 7 CFR Part 1301

Milk.

By authority of the Commission.
For the Commission.

Daniel Smith,
Executive Director.

For the reasons set forth in the preamble, the Commission proposes to amend 7 CFR part 1301 as follows:

PART 1301—[AMENDED]

1. The authority for part 1301 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1301.13 is amended by adding paragraph (e) to read as follows:

§ 1301.13 Exempt milk.

* * * * *

(e) Effective April 1, 1998, all fluid milk distributed by handlers in eight ounce containers under open and competitive bid contracts for the 1998–1999 contract year with School Food Authorities in New England, as defined by 7 CFR 210.2, for Child Nutrition Programs qualified for reimbursement under the National School Lunch Act of 1946, as amended, 42 U.S.C. 1751 *et. seq.*, and the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1773 *et. seq.*

* * * * *

[FR Doc. 97–32400 Filed 12–10–97; 8:45 am]
BILLING CODE 1650–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes. This proposal would require activation of a spoiler function that allows partial ground spoiler activation with only one main landing gear compressed. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent possible delays in deceleration when landing with strong cross winds and/or on a contaminated runway, which could increase the potential for landing overrun.

DATES: Comments must be received by January 12, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–150–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that possible delay in activation of automatic deceleration means when landing with strong cross winds and/or on a contaminated runway can occur on certain Airbus Model A320 and A321 series airplanes. This condition, if not corrected, could increase the potential for landing overrun.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–27–1088, Revision 3, dated December 11, 1996, which describes procedures for activation of a partial lift dumping function ("phased lift dumping") that allows partial ground spoiler activation with only one main landing gear compressed. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–169–081(B), dated August 28, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 132 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 17 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $134,640, or $1,020 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 97–NM–150–AD.

Applicability: Model A320 and A321 series airplanes on which Airbus Modification No. 24745 (Airbus Service Bulletin A320–27–1088, Revision 3, dated December 11, 1996) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent possible delays in deceleration when landing with strong cross winds and/or on a contaminated runway, which could increase the potential for landing overrun, accomplish the following:

(a) Within 12 months after the effective date of this AD, activate the spoiler "phased lift dumping" function by modifying the aircraft wiring at the level of the three spoiler elevator computer (SEC) connectors, in accordance with Airbus Service Bulletin A320–27–1088, Revision 3, dated December 11, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–169–061(B), dated August 28, 1996.

Issued in Renton, Washington, on December 5, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32426 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require replacement of electrical relays 15KF and 16KF, which control the auxiliary propeller control feathering system, with relays having increased load capacity. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the auxiliary propeller control feathering system, which, in the event of an engine failure combined with failure of the primary propeller pitch control, could result in the inability to feather the propeller, and consequent reduced controllability of the airplane.

DATES: Comments must be received by January 12, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–103–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that, because of the limited load capacity of electrical relays 15KF and 16KF, performing the standard test procedure on the propeller control feathering system could result in an overload of these electrical relays. Such overload could cause a failure of the auxiliary propeller control feathering system. This system is a back-up to the primary propeller pitch control system, and would be used to feather the propeller in the event of an engine failure combined with failure of the primary propeller pitch control. This chain of failure events could result in the inability to feather the propeller, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–61–136, dated November 13, 1995, which describes procedures for replacement of electrical relays 15KF and 16KF with relays having increased load capacity. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 96–002, dated January 8, 1996, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,280, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier: Docket 97–NM–103–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the auxiliary propeller control feathering system, which, in the event of an engine failure combined with failure of the primary propeller pitch control, could result in the inability to

feather the propeller, and consequent reduced controllability of the airplane; accomplish the following:

(a) Within 90 days after the effective date of this AD, replace electrical relays 15KF and 16KF having part number (P/N) DON405M520U5NL with relays having P/N 2504MY1, in accordance with Dornier Service Bulletin SB–328–61–136, dated November 13, 1995.

(b) As of the effective date of this AD, no person shall install relays 15KF and 16KF having P/N DON405M520U5NL on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–002, dated January 8, 1996.

Issued in Renton, Washington, on December 5, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32425 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–190–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dassault Model Mystere-Falcon 50 series airplanes. This proposal would require a one-time inspection of the clearances around the wiring harnesses of the right-hand electrical cabinet, and readjustment of the clearances, if necessary. This proposal would also require installation of protective strips on the wiring harnesses and equipment supports. This proposal is prompted by issuance of mandatory continued airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent interference between the wiring harnesses and adjacent equipment, support brackets, and structural elements, which could cause an electrical short circuit resulting in fire, and consequent loss of electrical power to essential flight systems.

DATES: Comments must be received by January 12, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–190–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–190–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–190–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Dassault Model Mystere-Falcon 50 series airplanes. The DGAC advises that it received a report of an in-flight incident, in which interference between a wiring harness cable and an equipment support bracket resulted in an electrical short. This condition, if not corrected, could result in fire and loss of electrical power to essential flight systems.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F50–256 (F50–20–5), Revision 1, dated December 22, 1996, which describes procedures for a one-time inspection (measurement) of the clearances between the wiring harnesses and the equipment, support brackets, and structural elements between fuselage frames 9 and 11, on the right-hand electrical cabinet; and adjustment of these clearances, if necessary. Additionally, the service bulletin describes procedures for installation of Teflon protective strips on the wiring harnesses and rubber protective strips on the rear edges of the equipment supports. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–094–017(B)R1, dated December 18, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 155 Dassault Model Mystere-Falcon 50 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $355 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $110,825, or $715 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 97–NM–190–AD.

Applicability: All Model Mystere-Falcon 50 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent interference between the wiring harnesses and adjacent equipment, support brackets, and structural elements, which could cause an electrical short circuit resulting in fire, and consequent loss of electrical power to essential flight systems; accomplish the following:

(a) Within 6 months or 300 flight hours after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with Dassault Service Bulletin F50–256 (F50–20–5), Revision 1, dated December 22, 1996.

(1) Perform a one-time inspection of the clearances between the wiring harnesses and the adjacent equipment, support brackets, and structural elements. If any clearance is outside the limits specified in the service bulletin, prior to further flight, readjust the clearances in accordance with the service bulletin.

(2) Install Teflon protective strips on the wiring harnesses in the vicinity of the equipment supports.

(3) Install rubber protective strips to the rear edges of the equipment supports.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–094–017(B)R1, dated December 18, 1996.

Issued in Renton, Washington, on December 5, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32423 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require repetitive visual inspections to detect discrepancies of the bushing installation

of the aileron actuation fitting, and eventual installation of staked bushings in the fitting. Accomplishment of such installation terminates the repetitive inspections. This proposal also provides for an optional temporary preventive action, which, if accomplished, would allow the repetitive inspection intervals to be extended until the terminating action is accomplished. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the fitting lugs due to vibration caused by loose bushings in the fittings, and consequent reduced controllability of the airplane.

DATES: Comments must be received by January 12, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–145–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–145–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–145–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that, during vibration damping tests, it has been discovered that the bushings in the aileron actuation fittings can become loose and cause vibration. Such vibration, if not corrected, could lead to failure of the fitting lugs, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin SAAB 2000–57–014, Revision 02, dated February 11, 1997, which describes procedures for repetitive visual inspections to detect discrepancies of the bushing installations. In addition, the service bulletin describes procedures for eventual installation of new staked bushings in the aileron actuation fitting, which, when accomplished, eliminates the need for the repetitive inspections. The service bulletin also describes procedures for an optional temporary preventive action, which entails various corrective actions and installation of washers on the bushings of the aileron actuation fittings. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) No. 1–102R1, dated November 8, 1996, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of a certain repair condition, this proposal would require the repair of that condition to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on the single U.S. operator is estimated to be $60 per airplane, per inspection cycle.

The FAA estimates that it would take approximately 4 work hours to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed installation on the single U.S. operator is estimated to be $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional temporary preventive action that would be provided by this AD action, it would take approximately 1 work hour to accomplish it, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the optional temporary preventive action would be $60 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 97–NM–145–AD.

Applicability: Model SAAB 2000 series airplanes having serial numbers –002 through -023 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration; or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fitting lugs, due to vibration caused by loose bushings in the aileron actuation fittings, which could result in reduced controllability of the airplane; accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, inspect the bushing installations of the left-hand and right-hand aileron actuation fittings to detect any discrepancies, in accordance with Saab Service Bulletin 2000–57–014, Revision 02, dated February 11, 1997.

(1) If no discrepancy is found, repeat the inspection thereafter at intervals not to exceed 300 flight hours until the requirements of paragraph (b) of this AD have been accomplished. Accomplishment of the temporary preventive action specified in paragraph 2.E. of the Accomplishment Instructions of the service bulletin allows the repetitive inspections to be accomplished at intervals of 600 flight hours until the requirements of paragraph (b) of this AD have been accomplished.

(2) If any discrepancy is found, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD in accordance with the service bulletin.

(i) Except as specified in paragraph (c), accomplish the installation required by paragraph (b) of this AD. Accomplishment of this installation constitutes terminating action for the requirements of this AD. Or

(ii) Accomplish the temporary preventive action specified in paragraph 2.E. of the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 600 flight hours until the requirements of paragraph (b) of this AD have been accomplished.

(b) Except as specified in paragraph (c) of this AD, within 3,000 flight hours after the effective date of this AD, install the new staked bushings in the aileron actuation fitting in accordance with Saab Service Bulletin 2000–57–014, Revision 02, dated February 11, 1997. Accomplishment of this installation terminates the requirements of this AD.

(c) If, during the accomplishment of the installation required by paragraph (a)(2)(i) or paragraph (b) of this AD, the diameter of the small hole of the fitting lug is found to be outside the limits specified in Saab Service Bulletin 2000–57–014, Revision 02, dated February 11, 1997, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(d) As of the effective date of this AD, no person shall install on any airplane an aileron having part number, 7357995–843 (left-hand) or 7357995–844 (right-hand), unless it has been modified in accordance with paragraph (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive (SAD) 1–102R1, dated November 8, 1996.

Issued in Renton, Washington, on December 5, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32424 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–47–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that

currently requires repetitive high frequency eddy current (HFEC) inspections to detect cracking on all surfaces of the upper recesses in certain latch support fittings of the cargo doorway, and replacement of cracked fittings with new fittings. That AD also provides for optional terminating action for the repetitive inspections. This proposal would require accomplishment of the previously optional terminating action. This proposal is prompted by reports indicating that the repetitive inspections required by the existing AD may not detect cracked fittings in a timely manner. The actions specified by the proposed AD are intended to prevent the cargo door from opening while the airplane is in flight, which could result in rapid decompression of the airplane.

DATES: Comments must be received by January 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 12, 1993, the FAA issued AD 93–02–16, amendment 39–8500 (58 FR 11190, February 24, 1993), applicable to certain Boeing Model 747 series airplanes, to require repetitive high frequency eddy current (HFEC) inspections to detect cracking on all surfaces of the upper recess in each 7079–T6 aluminum latch support fitting of the cargo doorway, and replacement of cracked fittings with new fittings. That action was prompted by reports of cracked fittings on two Model 747 series airplanes. The requirements of that AD are intended to prevent the cargo door from opening while the airplane is in flight, which could result in rapid decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 93–02–16, the FAA has received reports indicating that the inspections required by that AD may not adequately detect stress corrosion cracking in 7079–T6 aluminum latch support fittings. Three operators reported that, during HFEC inspections, five cracked latch support fittings were detected on four airplanes that had accumulated between 11,555 and 18,252 flight cycles. That AD requires that an operator conduct repetitive HFEC inspections of latch support fittings at intervals not to exceed 18 months. One operator reported that it performed an HFEC inspection on the same airplane twice during a 6-month period and that during the first inspection, no cracks were detected. However, during the second inspection that was conducted 6 months later, an 8-inch crack was detected in one of the latch support fittings for the aft door.

Findings indicate that cracks in these fittings may occur at such an unpredictable rate that repetitive HFEC inspections are not sufficient to detect cracking in a timely manner.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–53A2377, Revision 2, dated October 6, 1994, which describes procedures for repetitive HFEC inspections to detect stress corrosion cracking on the surfaces of the upper recess in each 7079–T6 aluminum latch support fitting, and replacement of cracked fittings with new 7075–T73 fittings that are not susceptible to stress corrosion cracking. Such replacement would eliminate the need for repetitive HFEC inspections and prevent the development and propagation of stress corrosion cracking.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–02–16 to continue to require HFEC inspections of all 7079–T6 latch support fittings of the cargo doorway, and replacement of cracked fittings with new fittings. In addition, this proposed AD would require the eventual replacement of all 7079–T6 latch support fittings with new 7075–T73 fittings, which would constitute terminating action for the repetitive inspection requirements.

These actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 200 airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 93–02–16, and retained in this proposed AD, take approximately 31 work hours per airplane, per inspection cycle, to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of currently required inspections on U.S. operators is estimated to be $213,900, per inspection cycle, or $1,860 per airplane, per inspection cycle.

The replacement, as proposed in this new AD action, would take approximately 1,019 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $20,917 per airplane ($12,888 for all aft door fittings; $8,029 for all forward door fittings). Based on these figures, the cost impact of the proposed replacement of this AD on U.S. operators is estimated to be $9,436,555, or $82,057 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8500 (58 FR 11190, February 24, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 97–NM–47–AD. Supersedes AD 93–02–16, Amendment 39–8500.

Applicability: Model 747 airplanes, line numbers 1 through 200 inclusive; having 7079–T6 aluminum latch support fittings; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the cargo door from opening while the airplane is in flight, which could result in rapid decompression of the airplane, accomplish the following:

Restatement of the Requirements of AD 93–02–16

(a) Within 60 days after March 11, 1993 (the effective date of AD 93–02–16, amendment 39–8500), perform a high frequency eddy current (HFEC) inspection to detect cracking on all surfaces of the upper recess in each 7079–T6 aluminum latch support fitting of the cargo doorway, in accordance with Boeing Service Bulletin 747–53A2377, Revision 1, dated January 28, 1993, or Revision 2, dated October 6, 1994. After the effective date of this AD, only Revision 2 of the service bulletin shall be used.

Note 2: Boeing Service Bulletin 747–53A2377, Revision 2, dated October 6, 1994, references Boeing Service Bulletin 747–53–2200, Revision 1, dated November 16, 1979, as an additional source of service information for the replacement of these fittings.

(1) If any cracking is found on any fitting, prior to further flight, replace the cracked fitting with a new 7075–T73 aluminum latch support fitting in accordance with Boeing Service Bulletin 747–53A2377, Revision 1, dated January 28, 1993, or Revision 2, dated October 6, 1994. After the effective date of this AD, only Revision 2 of the service bulletin shall be used.

(2) If no cracking is found on any fitting, repeat the HFEC inspection thereafter at intervals not to exceed 18 months until the requirements of paragraph (b) of this AD are accomplished.

New Requirements of This AD

(b) Within 18 months after the effective date of this AD, replace all 7079–T6 aluminum latch support fittings with new 7075–T73 fittings in accordance with Boeing Service Bulletin 747–53A2377, Revision 2, dated October 6, 1994. Replacement of all latch support fittings constitutes terminating action for the inspection requirements of this AD.

(c) As of the effective date of this AD, no operator shall install any 7079–T6 aluminum latch support fitting of the cargo door on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 5, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32427 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 97N–0427]

RIN 0910–ZA06

Diagnostic X-Ray Equipment Performance Standard; Request for Comments and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to propose amendments to the performance standard for diagnostic x-ray systems and their major components. The agency is taking this action to address changes in the technology and use of radiographic and fluoroscopic systems. The agency is issuing this advance notice of proposed rulemaking (ANPRM) in accordance with its policy of early public disclosure of rulemaking activities. The FDA is

soliciting comments and information from interested persons concerning the subject matter of the proposed amendments.

DATES: Submit written comments on the proposed amendments by March 11, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. See the SUPPLEMENTARY INFORMATION section for electronic access to the summary of concepts for amendments and a summary of the April 8 through 9, 1997, meeting of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC). Submit written requests for single copies of the Diagnostic X-Ray Equipment Performance Standard to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request or fax your request to 301–443–8818.

FOR FURTHER INFORMATION CONTACT: Thomas B. Shope, Center for Devices and Radiological Health (HFZ–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3314, ext. 32.

SUPPLEMENTARY INFORMATION:

I. Background

FDA, under authority conferred by the Public Health Service Act as amended by the Radiation Control for Health and Safety Act (RCHSA) of 1968 (Pub. L. 90–602 (21 U.S.C. 360hh–360ss)), administers an electronic product radiation control program to protect the public health and safety. This authority provides for the development and administration of radiation safety performance standards for electronic products.

In order for mandatory performance standards to achieve intended public health protection, attention must be given to keeping the requirements of standards updated and appropriate. A number of technological developments have been or will be implemented for radiographic and fluoroscopic x-ray systems that are not addressed by the performance standard or that present problems in the application of the requirements of the current standard. FDA is developing proposed amendments to the performance standard for radiographic and fluoroscopic systems that take into account new technology, clarify certain provisions, and address additional requirements that may be determined to be necessary to provide for adequate radiation safety of these systems.

On October 16 and 17, 1992, the American College of Radiology and FDA sponsored a workshop on fluoroscopy to develop strategies for improvement in performance, safety and control of fluoroscopic equipment. Physicians, physicists, State and Federal government regulators, and fluoroscopic equipment manufacturers attended the workshop. They discussed and made recommendations for different ways to approach fluoroscopic radiation safety issues and concerns, including regulatory solutions.

In the **Federal Register** of May 19, 1994 (59 FR 26402), FDA published a final rule effective May 19, 1995, amending performance requirements for fluoroscopic systems to address the immediate concern of preventing unlimited exposure rates during the high-level control mode of fluoroscopic system operation. The TEPRSSC discussed the status of standards for fluoroscopic systems and new clinical uses during a meeting held on April 9 through 10, 1996. TEPRSSC is a permanent statutory advisory committee established by statute that FDA must consult prior to issuing standards under the RCHSA.

At a meeting of the TEPRSSC held on April 8 through 9, 1997, FDA presented general concepts for amendments to the performance standard for radiographic and fluoroscopic systems.

The committee recommended that FDA pursue development of the amendments in the areas discussed in section II of this notice.

A transcript of the TEPRSSC April 8 through 9, 1997, meeting may be ordered from Miller Reporting Co., Inc., 507 C St. NE., Washington, DC 20002, 202–546–6666 or FAX 202–546–1502.

Individuals or organizations wishing to receive copies of draft amendments or related documents distributed for review during the development of these amendments may have their names placed on the mailing list by writing to: Office of Science and Technology (HFZ–140), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, FAX 301–443–9101, e-mail: TBS@CDRH.FDA.GOV.

II. Concepts for Amendments to the Standard

FDA has identified the following nine areas as candidates for amendments to accommodate changes in technology and clinical use of radiographic and fluoroscopic systems. The discussion below each concept is not intended to indicate the specific content of the proposed amendment to be developed, but is meant only to describe the need and FDA's proposed approach. The specific regulatory changes or proposed standards will be included in a future proposed rule. Comments received in response to this notice will be used to develop the proposed amendments. FDA requests comments on the following conceptual changes:

1. Conversion to the International System of Units (SI) quantities and units for the entire standard. This proposal is to amend all sections of the performance standard for diagnostic x-ray systems to use the radiation quantity "air kerma" in place of the quantity "exposure" and to change the units to the SI.

2. Clarification of applicability of requirements to technological developments, such as digital imaging, digital recording and solid-state x-ray imagers. The current organization and structure of the standard assumes the presence of an x-ray image intensifier as the basis for many of the requirements for fluoroscopic systems. This assumption may be inappropriate for digital fluoroscopy systems that may use new types of digital image receptors. Such systems may not have an image intensifier tube. The structure of the radiographic section of the standard is based on radiographic film as the image receptor and revisions are needed to incorporate technological developments in that area. It would be desirable to the extent possible to use terminology consistent with usage adopted by the International Electrotechnical Commission (IEC).

3. Amendment to incorporate draft Compliance Policy Guide on Information to be Provided to Users (21 CFR 1020.30(h)). This proposal would amend the requirements on the content of information that must be provided to users to include specific information on the air kerma rate for certain fluoroscopic modes of operation. This amendment would incorporate into the standard a draft Compliance Policy Guide that has been developed, but not yet issued, and is intended to interpret § 1020.30(h) for certain "unique" modes of fluoroscopic system operation.

4. Amendment to add requirements for minimum half-value layer (HVL) for systems designed for interventional radiology (§ 1020.30(m)). This proposal would increase the minimum half-value layer requirements for fluoroscopic systems designed for interventional radiology. Such a requirement will require definition of a "fluoroscopic system designed for interventional fluoroscopy." As a concept for discussion, fluoroscopic systems designed for interventional radiology might be defined as systems that permit the beam axis to be positioned at an angle relative to the normal to the table top. Systems in which the x-ray beam direction is fixed with respect to the plane of the tabletop, such as conventional radiographic/ fluoroscopic systems, would not be included in this definition.

5. Amendment to require improved x-ray field limitation (21 CFR 1020.32(b)(2)(v)). This proposal would require improved limitation of the x-ray field for fluoroscopic equipment to match the actual area of the image receptor being used for image capture, thereby reducing the amount of non-useful beam striking the patient.

6. Amendment to clarify the requirements for the minimum source-skin distance for small, mobile, or portable mini C-arm systems (§ 1020.32(g)). This amendment would address numerous requested and granted variances for fluoroscopic systems that have limited source-image receptor distances. The amendment would specify the conditions under which a shorter-than-standard source-skin distance is permitted and would obviate the need for continued variances from the standard.

7. Amendment to require indication of cumulative exposure time on fluoroscopic systems (§ 1020.32(h)). The proposed amendment would require the means to indicate the cumulative time of fluoroscopic irradiation of a patient during an examination or procedure.

8. Amendment to require provision of "last-image-hold" feature on fluoroscopic systems (§ 1020.32(j)). This amendment would require that all fluoroscopic x-ray systems be provided with a means to continuously display the last image acquired following termination of any exposure period.

9. Amendment to require indication of air kerma rate and cumulative air kerma on fluoroscopic systems (§ 1020.32(k)). The proposed amendment would require the means to display to the fluoroscopist at the fluoroscopist's working position the cumulative air kerma and the air kerma rate (air kerma per unit time) at which air kerma accrues during irradiation of a patient in an examination or procedure.

III. Electronic Access

The summary of concepts for amendments entitled "Concepts for Proposed Amendments to the Performance Standard for Diagnostic X-ray Systems, August 1, 1997," may be accessed at the CDRH Home Page on the World Wide Web. It is available on the Topic Index page at: http://www.fda.gov/cdrh/topindx under "Fluoroscopy". A text-only version of the CDRH site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there, follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA Home Page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there, select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

The document may also be obtained by fax by calling the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number 591 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

A summary of the TEPRSSC April 8 through 9, 1997, meeting is available on the CDRH Home Page at the same address given above for the concepts for amendments document.

IV. Comments

Interested persons may, on or before March 11, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposed amendment. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons also are invited to participate in the development of proposed amendments by submitting written data, views, or arguments concerning the subject matter of the amendments, or related topics suggested for inclusion in the amendments. In addition to general comments and recommendations, respondents are encouraged to include suggested text for provisions of the proposed amendments that reflect their recommended performance requirements. A statement of rationale should accompany any such proposed text. When a determination is made on the content of the proposed amendments, they will be published as notices of proposed rulemaking with opportunity given for public comment. Information and comments are specifically invited on the following topics:

1. For concepts 4 through 9 in section II of this document, recommendation for whether the amendments should be limited only to equipment designed for interventional procedures or for all fluoroscopic systems. If only for interventional systems, how should "interventional fluoroscopic systems" be defined?

2. The desirability and technical feasibility of amendments of the type described in section II of this document.

3. Recommended performance requirements to be included in the proposed amendments, including attendant methods and conditions of measurement.

4. Suggestions and supporting data for other amendments to the performance standard for radiographic or fluoroscopic equipment, including moving towards more outcome-based performance standards, which may be needed to provide for adequate radiation safety.

5. The possible environmental impact of this action, including factors such as radiation exposure reduction or prevention and economic consequences in relation to expected benefits (cost-benefit relationship), and the anticipated costs of providing such features or meeting the requirements.

6. Any additional terms or definitions that are needed to better specify the intent or meaning of the regulations as they apply to the equipment.

This ANPRM is issued under 21 U.S.C. 321 and under the authority of the Commissioner of Food and Drugs.

Dated: October 29, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32462 Filed 12–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE45

Endangered and Threatened Wildlife and Plants; Proposed Revision of Special Regulations for the Gray Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On November 22, 1994, the U.S. Fish and Wildlife Service published special rules to establish nonessential experimental populations of gray wolves (*Canis lupus*) in Yellowstone National Park and central Idaho. The nonessential experimental population areas include all of Wyoming, most of Idaho, and much of central and southern Montana. A close reading of the special regulations indicates that, unintentionally, the language reads as though wolf control measures apply only outside of the experimental population area. This proposed revision is intended to amend language in the special regulations so that it clearly applies within the Yellowstone nonessential experimental population area and the central Idaho nonessential experimental population area. This proposed change will not affect any of the assumptions and earlier analysis made in the environmental impact statement or other portions of the special rules.

DATES: Comments must be received by January 12, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Gray Wolf Recovery Program, U.S. Fish and Wildlife Service, 100 North Park, Suite 320, Helena, Montana 59601. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Bangs, Wolf Recovery Coordinator, at the above address, or telephone (406) 449–5202, extension 204.

SUPPLEMENTARY INFORMATION:

Background

1. *Legal:* The Endangered Species Act Amendments of 1982, Public Law 97–304, made significant changes to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), including the creation of section 10(j) which provides for the designation of populations as "experimental." It was under this provision of the Act that on November 22, 1994, the Service by special rule established two areas for nonessential experimental populations of gray wolves (59 FR 60252 and 60266; 50 CFR 17.84(i)). One area was the Yellowstone National Park experimental population area which included all of Wyoming, and parts of Montana, and Idaho. The other area, called the central Idaho experimental population area, included much of Idaho and parts of southwestern Montana. These rules allowed the Service and other cooperating agencies to manage wolf recovery so that conflicts with people were minimized. Under certain circumstances the rules allowed for wolves to be captured, relocated, held in captivity, or killed. Subparts A, B, and C 50 CFR 17.84 (i)(7)(iii) addressed the management of reintroduced wolves that traveled outside the experimental areas or wolves of unknown status outside the experimental population. Subpart D in 50 CFR 17.84 (i)(7)(iii) D, addressed the management of wolves and wolf-like canids of unknown but questionable status. Examples given under 50 CFR 17.84 (I)(7)(iii) D include wolves or wolf-like canids that exhibited behavioral or physical evidence of hybridization with other canids, or wolf-like canids that may have been raised or held in captivity other than as part of a Service approved wolf recovery program. The rule in 50 CFR 17.84 (i)(7)(iii) is currently worded as follows:

All wolves found in the wild within the boundaries of this paragraph (50 CFR 17.84 (i)(7)) after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in 50 CFR 17.84 (i)(7) of this section) would be considered as endangered (or threatened if in Minnesota) unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined to be an experimental wolf, it will be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service-approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not likely to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it will be returned to captivity or killed.

The rule in 50 CFR 17.84(i)(7)(iii) was intended to allow the Service, or agencies designated by the Service, management flexibility should experimental wolves travel outside the experimental population areas, and the ability to (1) manage wolves of unknown origin, (2) manage wolves that exhibit abnormal behavior or physical characteristics (indicative of hybridization with other canids), and (3) manage canids suspected of being raised in captivity and released to the wild independently of the Service wolf recovery program. Furthermore, subpart D was intended to allow for management of those rare instances where an individual wild wolf may exhibit abnormal behavior that is not conducive to the recovery and conservation of wild gray wolf populations in the northern Rocky Mountains of Montana, Idaho, and Wyoming. The section was intended to enhance the survival and reproductive potential of wild wolves and to remove canids that could have a negative impact on the survival and reproductive potential of wild wolves.

Through an unintentional oversight in the wording in 50 CFR 17.84 (i)(7)(iii) subpart D appears to apply only to activities conducted outside the experimental population area. This revision is being proposed to correct that oversight and clarify that management of wild wolves and wolf-like canids that exhibit abnormal behavior, wolf hybrids, or wolves that may have been raised in captivity, also applies within each experimental area.

2. *Biological:* This proposed revision of the special regulations is intended to clarify that the management flexibility addressed by 50 CFR 17.84 (i)(7)(iii) subpart D applies to wolves of questionable status or wolf-like canids within the nonessential experimental population areas. As currently written the special regulations could be interpreted to imply that wolf hybrids or captive wolves that were not part of a Service-approved recovery program but that escaped or were released to the wild within the experimental area, would be managed in a manner identical to wild wolves within the experimental population area. Wolves or wolf-like canids that are raised in captivity and released in the wild do not behave like wild wolves. They often associate with people or domestic livestock, raising concerns about human safety and depredations on domestic animals. These types of canids also often cause problems by attacking domestic animals because they usually are not able to survive entirely in the wild. While they have some of the predatory instincts of wild canids, they are most comfortable around people. They are likely to be dependent on humans for food and this increases the probability that they may attack domestic animals since domestic animals are the most common types of animals near people. The tolerance of captive raised and released canids for people also contributes to the perception that human safety may be in danger from wild wolves. There are numerous documented instances of domesticated wolves and wolf hybrids attacking and killing people. Although unlikely, captive wolves or wolf hybrids associating with wild wolves could teach young wolves or any hybrid offspring these undesirable traits. For these reasons wolves exhibiting the characteristics described above do not contribute to the recovery of wild gray wolf populations in the northern Rocky Mountains.

When local residents believe wild wolves behave like captive wolves or wolf hybrids, public tolerance for wild wolves is likely reduced. This can lead to illegal killing of wolves. It was not the intent of the wolf recovery program to protect or manage captive wolves or wolf hybrids that were not part of a Service approved recovery program. Those types of canids will not contribute to the conservation and recovery of wild gray wolves. The Service intends to manage such canids when necessary, to resolve potential conflicts with humans and to minimize the likelihood that undesirable genetic or behavioral characteristics could be passed on by such animals to wild wolves within the experimental population areas.

Captive wolves that have not been specifically raised for release into the wild, or wolf hybrids, can also carry diseases or parasites that are common in domestic dogs. If released into the wild, such animals can transmit those diseases or parasites to wild gray wolves as well as other wildlife species. Current DNA and other types of testing can not reliably distinguish wild wolves from wolves raised in captivity or from wolf hybrids. Because captive wolves and wolf hybrids may look identical to wild wolves, they can often only be reliably distinguished from wild wolves by their behavior in the wild. Their presence can often confuse the public about what behavior to expect from wild wolves, reduce local human tolerance of wild wolves and lead to an increase in human related wolf mortality. Local tolerance of wolves is important for wolf recovery and conservation since a majority of wolf mortality in Montana is caused by humans.

The presence and management of wolves or wolf-like canids that are not part of an approved recovery program may result in substantial expense and thereby compete for limited gray wolf recovery program resources, particularly if their management requires the same level of effort as that afforded to wild wolves. Because wolf hybrids and captive wolves released into the wild can demand considerable management time and attention at the expense of wild wolf conservation, prompt control of these animals is essential. The selective removal from the wild of captive raised and released wolves, wolf hybrids, and/or wolf-like canids exhibiting behavior considered abnormal for wild gray wolves furthers the conservation and recovery of the gray wolf by minimizing the probability of unresolved conflicts with humans.

Wild wolves were taken from the wild in remote areas of Canada and reintroduced in January of 1995 and 1996 to the Yellowstone and central Idaho experimental population areas and have adapted much better than predicted. As expected, they continue to behave like wild wolves. If current trends continue, it is unlikely that further reintroductions in the experimental population areas will be required. All the wolves that were reintroduced were radio-collared and monitored by means of radio-telemetry, and a number these wolves have successfully reproduced in the wild. Current plans do not call for all of the pups to be individually captured and radio-collared. As the population grows, there will be an increasing number of wolves that have not been marked and it will not be possible to determine where most of these wolves originated. It is also estimated that there may be up to 300,000 captive wolves and wolf/dog hybrids (which in many cases are physically and genetically indistinguishable from wild wolves) in North America. Therefore, the special regulations for establishment of nonessential experimental populations of gray wolves need to clearly address the manner in which wolves, whose origin is unknown or wolves that exhibit abnormal behavior will be managed in the wild when conflicts develop.

In several areas of the northern Rocky Mountains, wolf-like canids have been identified through their behavior or physical characteristics as released or escaped wolves that were not part of Service approved programs or wolf hybrids of captive origin. Such animals usually do not survive in the wild long enough to successfully reproduce and raise young. In several instances these animals have been removed from the wild because they have become a nuisance or potential human or domestic animal safety concerns arose.

All wolves, including wild ones, are individuals, and some wild wolves may exhibit abnormal or other behavior that is inconsistent with the continued survival, reproduction, and recovery of wild gray wolf populations. For example, some individual wolves may attack livestock or domestic pets. The Service recognizes that such individuals must be managed (through removal to another location or placement in captivity, or lethal means) to minimize chronic conflicts with domestic animals if local people are expected to continue to tolerate the presence of a resident wolf population. The Service has determined that removal of such individuals furthers the conservation and recovery of the wild gray wolf population. In a similar although extremely rare situation, individual wolves may on occasion exhibit behaviors that are uncharacteristic of those normally observed in wild wolves. Although highly unlikely, it is possible that a wild wolf may demonstrate physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes. It also is possible that an individual wolf may become a nuisance, or pose a potential risk to people or livestock because of habituation to food sources, human and domestic animal companionship, or other factors. The Service intended that 50 CFR 17.84(i)(7)(iii) subpart D allow for the management and/or removal of all such individuals within the nonessential experimental population areas for the benefit and conservation of the wild gray wolf populations.

Location of the Experimental Population

The Yellowstone experimental population area includes the State of Wyoming, that portion of Idaho east of Interstate Highway 15, and the State of Montana east of Interstate Highway 15 and south of the Missouri River east of Great Falls, Montana, to the Montana/North Dakota border.

The central Idaho experimental population area includes that portion of Idaho west of Interstate 15 and south of Interstate 90, and that portion of Montana south of Interstate 90, Highway 93 and 12 near Missoula, Montana, and west of Interstate 15.

Management

Management of wild wolves would not change from that established by the special rules, except in those rare instances when a wild wolf exhibits

abnormal behavior. This proposed revision would apply 50 CFR 17.84(i)(7)(iii) subpart D within the experimental population areas, which would further the conservation and recovery of wild gray wolves in the northern Rocky Mountains of the United States. The rule in 50 CFR 17.8e(i)(7)(iii) would apply to all wolves and wolf-like canids found within and adjacent to the experimental population areas in Montana, Idaho, and Wyoming.

National Environmental Policy Act

This proposed revision does not significantly change the special regulations or the effect of the special regulations on the human environment. An environmental action statement has been prepared that determined the proposed revision is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. No further NEPA documentation will therefore be made.

Required Determinations

This is not a significant rule subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed revision is purely technical in nature and intended to correct a technical oversight in the rule originally adopted in 1994; it will not increase or alter the effects brought by the original rule. The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The Department has determined that this proposed regulation meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive order 12988.

Author: The principle author of this rule is Edward E. Bangs (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law No. 99–625, 100 Statute 3500; unless otherwise noted.

2. Revise § 17.84(i)(7)(iii) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(i) * * *

(7) * * *

(iii) All wolves found in the wild within the boundaries of this paragraph (i)(7) after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would be considered as endangered (or threatened if in Minnesota) unless it is marked or otherwise known to be an experimental animal. Wolves in the wild may be selectively captured, removed, or killed for examination and genetic testing by the Service or Service designated agency. Disposition of such wolves outside the experimental areas and in the case of subpart D, those both outside of and within the experimental population areas, may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be a wild experimental wolf, it will be returned to the reintroduction area.

(B) If the animal is determined likely to be a wild experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity or killed.

(C) If the animal is determined not likely to be a wild experimental wolf, it will be managed according to any Service-approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not likely to be a wild gray wolf or if the Service or agencies designated by the Service determine that any wild wolf exhibits abnormal behavior or that any wolf or wolf-like canid shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity other than as part of a Service-approved wolf recovery program, it will be killed, or placed in captivity.

* * * * *

Dated: November 13, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–32440 Filed 12–8–97; 3:42 pm]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 238
Thursday, December 11, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Reinstatement and Extension of a Previously Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) to request a reinstatement, without change, of a previously approved information collection for which approval has expired in support of the nonrefundable marketing assessment due CCC on sugar processed from domestically grown sugar beets and sugarcane.

DATES: Comments on this notice must be received on or before February 9, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Walter Porzel, Systems Accountant, Financial Procedures and Systems Branch, Financial Management Division, Farm Service Agency, STOP 0581, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0581, telephone (703) 305–1303; e-mail address wporzel@wdc.fsa.usda.gov; or facsimile (703) 305–1144.

SUPPLEMENTARY INFORMATION: This notice announces the intention of the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) to request a reinstatement, without change, of a previously approved information collection for which approval has expired in support of the nonrefundable marketing assessment due CCC on sugar processed from domestically grown sugar beets and sugarcane. The regulations concerning this activity are published under the authority of the Agricultural Act of 1949, as amended and the Federal Agriculture Improvement and Reform (FAIR) Act of 1996.

Title: Sugar Processor's Report of Monthly Marketing to Determine Assessment Due Commodity Credit Corporation (CCC).

OMB Control Number: 0560–0134.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0134, as indicated above, is needed to determine nonrefundable marketing assessments due CCC from the first processors' marketing of domestically grown sugar beets and sugarcane. The Sugar Processor's Report of Monthly Marketing To Determine Assessment Due the Commodity Credit Corporation (Form CCC–80) is submitted to the FSA, Kansas City Management Office. The information collected is used to classify cash received by CCC, determine who the remitter is, record assessment collected, and determine program compliance. Respondents record the total pounds of raw cane sugar and total beet sugar marketed during the month. These amounts are multiplied by the assessment rate (7 CFR 1435.201) to compute the total assessment due CCC. Interest and penalty amounts due CCC (7 CFR 1435.203) are also included on Form CCC–80. If any fees for dishonored checks are due CCC, the remitter enters this amount also. The total of all the amounts is entered, the responsible official signs Form CCC–80 and submits the report with a check, or uses electronic remittance.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 90 minutes, per response.

Respondents: First processors of domestically grown sugarcane or sugar beets.

Estimated Number of Respondents: 63.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 1,134 hours.

Proposed topics for comments include: (A) Whether the continued collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Walter Porzel at the contact address listed above. Copies of the information collection may be obtained from Walter Porzel at the contact listed above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, D.C., on December 3, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–32392 Filed 12–10–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Moose Subwatershed Timber Sales, Willamette National Forest, Linn County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposal to harvest and regenerate timber, and to construct and reconstruct roads in the Moose

Subwatershed. The legal description of the planning area is: T.13 S., R.3 E., Sections 11–15, 22–27; T.13 S., R.4 E., Sections 7, 17–19. The Forest Service proposal will be in compliance with the 1990 Willamette National Forest Land and Resource Management Plan as amended by the 1994 Northwest Forest Plan, which provides the overall guidance for management of this area. This proposal is tentatively planned for fiscal years 1998–2000.

The Willamette National Forest invites written comments and suggestions on the scope of the analysis in addition to those comments already received as a result of local public participation activities. The agency will also give notice of the full environmental analysis and decision-making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by January 15, 1998.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Darrel Kenops, Forest Supervisor, Willamette National Forest, P.O. Box 10607 Eugene, Oregon 97386.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Donna Short, Integrated Resource Management Assistant or Suzanne Schindler, Project Coordinator, Sweet Home Ranger District, phone 541–367–5168.

SUPPLEMENTARY INFORMATION: The Moose Subwatershed is completely within the Central Cascades Adaptive Management Area (CCAMA) designated in the Northwest Forest Plan (ROD, C21–22). The purpose of AMAs is to encourage the development and testing of technical and social approaches to achieving desired ecological, economic, and other social objectives. AMAs are expected to produce timber as part of their program of activities consistent with their specific direction.

Management objectives for the Moose Lake Block in the CCAMA are described in the ROD, the South Santiam Watershed Analysis (SSWA), and the CCAMA Strategic Guide.

The purpose of this project is to harvest timber in a manner that implements the management objectives, specifically:

- Utilize landscape design processes to understand long term, historic patterns of landscape change created by natural disturbance processes, land management practices and vegetation succession (CCAMA Strategic Guide p. 39).
- Develop approaches for integrating forest and stream management objectives and the implications of natural disturbance regimes. (CCAMA Strategic Guide p. 35, ROD D12–13).
- Manage young and mature stands to accelerate development of late successional conditions (Strategic Guide p. 35, ROD D12–13).

The Forest Service has a need to provide alternative timber harvest to the Mr. Rogers Timber Sale on the Siuslaw National Forest pursuant to Section 2001(k)(3) of the Rescission Act (Pub. L. 104–19) and the September 17, 1996 settlement agreement in *Northwest Resources Council* v. *Glickman and Babbit*. Under the Act and the agreement, such alternative timber volume must be "an equal volume of timber, of like kind and value, which shall be subject to the terms of the original contract" (or as otherwise acceptable to the purchaser). Designation of alternative timber volume must also be done in consultation and agreement with the purchaser.

The proposal includes harvesting timber by thinning and regeneration methods and constructing road under the Moose Subwatershed Timber Sale. This analysis will evaluate a range of alternatives addressing the Forest Service proposal to harvest approximately 13.0 million board feet of timber from approximately 600 to 1600 acres and anticipate 0.5 miles of road construction.

The Moose Subwatershed is comprised of 13,562 acres, including 4,630 acres of private land. Of the 8,932 acres of Forest Service ownership 1,252 has regenerated. For the most part the remaining 7,680 acres is in second growth and late-successional/old-growth type of vegetative structure. Management areas that provide for timber harvest are Scenic (11a) and General Forest. No harvest allocations in this subwatershed are the Cougar Rock Special Interest Area, 100 acre Late-Successional Reserves, Bald Eagle Management Area, and the Moose Lake Dispersed Recreation Area.

The project area includes a portion of the Moose Lake RARE I area, which was considered but not selected for wilderness designation and is the reason for initiating this EIS.

Preliminary issues identified are roadless area quality, and water quality and anadramous fish habitat.

Initial scoping began in May, 1997. Preliminary analysis is currently being conducted. The Forest Service will be seeking additional information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested or affected by the proposed project. Additional input will be used to help identify key issues and develop alternatives. This input will be used in preparation of the draft EIS. The scoping process includes:

- Identification of potential issues;
- Identification of issues to be analyzed in depth;
- Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
- Exploration of additional alternatives based on the issues identified during the scoping process; and
- Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1998. The comment period on the draft EIS will be January 26, 1998.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435, U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final EIS is scheduled to be completed in April 1998. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Darrel L. Kenops, Forest Supervisor, is the responsible official and as responsible official, he will document the Moose Subwatershed Timber Sales decision and rationale in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: December 2, 1997.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 97–32398 Filed 12–10–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Notice of Court Decision: Certain Cased Pencils From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of court decision.

SUMMARY: On November 13, 1997, the United States Court of International Trade (CIT) affirmed the determination made by the Department of Commerce (the Department) pursuant to a voluntary remand of the final determination of sales at less-than-fair value (LTFV) in the investigation of certain cased pencils from the People's Republic of China (PRC). *Writing Instrument Manufacturers Association, Pencil Section, et al.* v. *United States*, Slip Op. 97–151 (CIT November 13, 1997) (*Writing Instrument Manufacturers*). In the remand determination, the Department selected a new source for the surrogate values of the logs and slats used in producing certain cased pencils and changed its methodology for valuing these logs and slats.

EFFECTIVE DATE: November 23, 1997.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230; telephone: (202) 482–5414.

SUPPLEMENTARY INFORMATION: In its Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China, 59 FR 55625 (November 8, 1994) (Final Determination), in order to value Chinese lindenwood, the Department used prices charged by U.S. producers of basswood, the wood most similar to the lindenwood used by the Chinese to produce cased pencils. In this remand determination, the Department used publicly-available published information reflecting basswood log prices from 12 U.S. mills to value the lindenwood logs used by two of the Chinese producers, Anhui Stationery Co. (Anhui) and Three Star Stationery Co. (Three Star).

China First Pencil Co. Ltd. (China First), an exporter and producer of the subject merchandise, purchased slats for the production of its pencils. To value this input, the Department relied on the two main publicly-available published sources for sawn basswood prices, the Hardwoood Market Report and the Hardwood Weekly Review.

For its valuation methodology for lindenwood logs, the Department selected the grades of basswood logs most comparable to the lindenwood used by the Chinese producers, including the quality and diameter of the logs. For basswood sawn lumber, the Department selected the lumber most comparable to that used to produce the Chinese slats in terms of grade, thickness, and wood loss.

As a result of the remand determination, the final dumping margins and the PRC country-wide ("all others") rate are as follows:

Exporter	Margin percent
China First Co. Ltd.	8.60
Shanghai Lansheng Corp.	19.36
Shanghai Foreign Trade Corp.	11.15
Guangdong Stationery/Three Star Stationery	0.00
Guangdong Stationery/all other producers	53.65
PRC country-wide rate	53.65

On November 13, 1997, the CIT affirmed the Department's remand determination.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. section 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Writing Instrument Manufacturers* on November 13, 1997, constitutes a decision not in harmony with the Department's final affirmative determination. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal, or, if appealed, until a "conclusive" court decision. In addition, pursuant to the affirmed remand results, China First is no longer excluded from the antidumping duty order issued in this case (Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China, 59 FR 66909 (December 28, 1994)). Therefore, liquidation shall be suspended on entries, or withdrawals from warehouse, for consumption of the subject merchandise from China First effective ten days from the date of the decision in *Writing Instrument Manufacturers*. Absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final LTFV determination and the antidumping duty order on certain cased pencils from the PRC to reflect the Department's remand results.

Dated: December 4, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–32467 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Barnard College; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–084. *Applicant:* Barnard College, New York, NY 10027–6598. *Instrument:* Electron Microscope, Model EM208S. *Manufacturer:* Philips,

The Netherlands. *Intended Use:* See notice at 62 FR 52685, October 9, 1997. *Order Date:* July 4, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–32466 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 97–076. *Applicant:* University of California, Davis, CA 95616. *Instrument:* Electron Spin Resonance Spectrometer, Model JES–TE100. *Manufacturer:* JEOL, Ltd., Japan. Intended Use: See notice at 62 FR 48811, September 17, 1997. *Reasons:* The foreign instrument provides a weak pitch signal to noise ratio of 400 to 1 and a cavity q-value of 18 000.

Docket Number: 97–078. *Applicant:* University of Missouri at Kansas City, Kansas City, MO 64110. *Instrument:* Free-Flow Electrophoresis Device. *Manufacturer:* Dr. Weber GmbH, Germany. *Intended Use:* See notice at 62 FR 52685, October 9, 1997. *Reasons:* The foreign instrument provides continuous flow electrophoresis for separation of whole cells from blood or other tissue fluids and separation and purification of subcellular organelles.

Docket Number: 97–082. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Stopped-Flow Reaction Analyzer, Model SX.18MV. *Manufacturer:* Applied Photophysics, Ltd, United Kingdom. *Intended Use:* See notice at 62 FR 52685, October 9, 1997. *Reasons:* The foreign instrument provides completely anaerobic operation with a sub-millisecond dead time.

Docket Number: 97–083. *Applicant:* Indiana University-Purdue University at Indianapolis, Indianapolis, IN 46202. *Instrument:* Stopped-Flow Spectrometer, Model SX.61DX2. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 62 FR 52685, October 9, 1997. *Reasons:* The foreign instrument provides double mixing stopped flow with compatibility for use by students.

Docket Number: 97–085. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Electron Paramagnetic Resonance Spectrometer, Model E500. *Manufacturer:* Bruker, Germany. *Intended Use:* See notice at 62 FR 52685, October 9, 1997. *Reasons:* The foreign instrument provides measurement of electron spin resonance for characterization of paramagnetic centers in various materials, identification of photo- and redox-active sites and elucidation of reaction mechanisms.

The National Institutes of Health advises in its memoranda dated November 5, 1997 that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–32445 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Illinois at Urbana-Champaign, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 97–064. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Reflection High Energy Electron Gun. *Manufacturer:* Focus GmbH, Germany. *Intended Use:* See notice at 62 FR 43710, August 15, 1997. *Reasons:* The foreign instrument provides: (1) Selectable beam diameter, (2) magnetic and electrostatic focusing to reduce size of beam and (3) double octopole defection system for better steering. *Advice received from:* National Institute of Standards and Technology, November 7, 1997.

Docket Number: 97–065. *Applicant:* Princeton University, Princeton, NJ 08544–0033. *Instrument:* (50) Seismometers. *Manufacturer:* Guralp Systems Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 43710, August 15, 1997. *Reasons:* The foreign instrument provides a frequency response from 0.03 to 10 Hz with simplified operational design for use by high school science students. *Advice received from:* The U.S. Geological Survey, November 6, 1997.

The National Institute of Standards and Technology and the U.S. Geological Survey advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–32446 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Illinois at Urbana-Champaign; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, DC.

Docket Number: 97–063. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* (2) Gas Composition Analyzers, Model Epison III. *Manufacturer:* Thomas Swan & Co., Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 42237, August 6, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (April 2, 1997). *Reasons:* The foreign instrument provides non-invasive testing of thin film surfaces in feedback control mode.

The National Science Foundation, Center for Interfacial Engineering advised on October 4, 1996 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time of order.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–32463 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Los Alamos; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–055. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Single Axis Measuring Machine, Model SIP–550M. *Manufacturer:* Societe Genevoise d'Instruments de Physique, Switzerland. *Intended Use:* See notice at 62 FR 41361, August 1, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides resolution to 0.01 μm with a measuring uncertainty of (0.2+0.4L) μm, where L = length. The National Institute of Standards and Technology advised on November 4, 1997 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–32464 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Washington; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–077. *Applicant:* University of Washington, Seattle, WA 98195–7940. *Instrument:* Isotope Ratio Mass Spectrometer, Model DELTA^{plus}. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 62 FR 52685, October 9, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a magnetic sector mass analyzer coupled to a gas chromatograph with in-line combustion of the gas effluent for measurement with samples down to the sub-nanomole level. This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–32465 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce

ACTION: Notice of revocation of Export Trade Certificate of Review No. 92–00005.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to World International Investments Corp. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to World International Investments Corp.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the

Regulations") are found at 15 CFR part 325 (1997). Pursuant to this authority, a certificate of review was issued on June 5, 1992 to World International Investments Corp.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On May 23, 1997, the Department of Commerce sent to World International Investments Corp. a letter containing annual report questions with a reminder that its annual report was due on July 20, 1997. Additional reminders were sent on August 7, 1997 and on September 12, 1997. The Department has received no written response from World International Investments Corp. to any of these letters.

On November 3, 1997, and in accordance with Section 325.10 (c) (1) of the Regulations, (15 CFR 325.10 (c) (1)), the Department of Commerce sent a letter by certified mail to notify World International Investments Corp. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing World International Investments Corp. thirty days to respond was published in the **Federal Register** on November 7, 1997 at 62 FR 60232. Pursuant to 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of World International Investments Corp. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to World International Investments Corp. for its failure to file an annual report. The Department has sent a letter, dated December 8, 1997, to notify World International Investments Corp. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11).

Dated: December 8, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–32429 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

December 5, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 11, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347/348/647/648 is being increased for swing, reducing the limit for Categories 339/639.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 61 FR 65375, published on December 12, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on December 11, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
339/639	748,811 dozen.
347/348/647/648	2,305,935 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32410 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

December 5, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212, For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Thailand and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of Understanding (MOU) dated October 28, 1997 between the Governments of the United States and Thailand.

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Thailand of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC); and a Memorandum of Understanding dated October 28, 1997, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following limits:

Category	Twelve-month restraint limit
239pt. [1]	1,820,473 kilograms.
Levels in Group I	
200	1,188,153 kilograms.
218	19,052,219 square meters.
219	6,336,820 square meters.
300	4,752,615 kilograms.
301–P [2]	4,752,615 kilograms.
301–O [3]	950,524 kilograms.
313	22,178,868 square meters.
314	50,694,554 square meters.
315	31,684,096 square meters.
317/326	13,301,290 square meters.
363	20,594,662 numbers.
369–D [4]	226,542 kilograms.
369–S [5]	316,841 kilograms.
603	2,233,000 kilograms.
604	741,300 kilograms of which not more than 475,261 kilograms shall be in Category 604–A [6].
607	3,168,408 kilograms.
611	12,984,460 square meters.
613/614/615	47,884,640 square meters of which not more than 27,882,005 square meters shall be in Categories 613/615 and not more than 27,882,005 square meters shall be in Category 614.
617	17,291,675 square meters.
619	7,128,921 square meters.
620	7,128,921 square meters.
625/626/627/628/629	13,966,353 square meters of which not more than 11,089,433 square meters shall be in Category 625.
669–P [7]	6,682,434 kilograms.
Group II	
237, 331–348, 350–352, 359–H [8], 359pt. [9], 431, 433–438, 440, 442–448, 459pt. [10], 631, 633–652, 659–H [11], 659pt. [12], 831, 833–838, 840–858 and 859pt. [13], as a group.	290,686,162 square meters equivalent.
Sublevels in Group II	
331/631	1,729,340 dozen pairs.
334/634	617,840 dozen.
335/635/835	491,103 dozen.
336/636	316,841 dozen.
338/339	1,909,005 dozen.
340	285,157 dozen.
341/641	673,287 dozen.
342/642	586,156 dozen.
345	300,999 dozen.
347/348/847	827,746 dozen.
351/651	237,630 dozen.
359–H/659–H	1,390,006 kilograms.
433	9,642 dozen.
434	11,902 dozen.
435	54,085 dozen.
438	17,853 dozen.
442	20,732 dozen.
638/639	2,249,899 dozen.
640	522,787 dozen.
645/646	316,841 dozen.
647/648	1,127,954 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 604–A: only HTS number 5509.32.0000.

[7] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[8] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[9] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[12] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[13] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directives dated November 4, 1996 and November 3, 1997) to the extent of any unfilled balances. In the event the limits

established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Thailand of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

The conversion factors for merged Categories 359–H/659–H and 638/639 are 11.5 and 12.96, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32411 Filed 12–10–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–13]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–13, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated: December 5, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

9 NOV 1997

In reply refer to:
I-55944/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-13, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Portugal for defense articles and services estimated to cost $185 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-13

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Portugal

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 185 million
TOTAL	$ 185 million

(iii) Description of Articles or Services Offered:
Twenty Mid-Life Update (MLU) modification kits for Portuguese Air Force F-16A/B aircraft, installation, support equipment, training and training devices, technical assistance, technical orders, system drawings, U.S. Government and contractor engineering, spare parts, and other logistics elements necessary for full program support.

The MLU is an avionics retrofit program for F-16 aircraft consisting of a Central Core Computer, Block 50 cockpit design, Digital Terrain System, Global Positioning System, APG-66(V2) radar upgrade, Integrated Data Modem, microwave landing system and night capabilities provisions, and an Advanced Identification Friend or Foe (AIFF).

(iv) Military Department: Air Force (NMP)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 9 NOV 1997

* as defined Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Portugal - F-16A/B Mid-Life Update Modification Kits

The Government of Portugal has requested a possible sale of 20 Mid-Life Update (MLU) modification kits for Portuguese Air Force F-16A/B aircraft, installation, support equipment, training and training devices, technical assistance, technical orders, system drawings, U.S. Government and contractor engineering, spare parts, and other logistics elements necessary for full program support. The estimated cost is $185 million.

The MLU production phase is the continuation of the development program notified to the Congress in August 1990. This multi-national effort has included the governments of the United States, Belgium, Denmark, The Netherlands, and Norway who have participated with the United States Air Force in the full scale MLU engineering development and integration effort. The MLU is an avionics retrofit program for F-16 aircraft consisting of a Central Core Computer, Block 50 cockpit design, Digital Terrain System, Global Positioning System, APG-66(V2) radar upgrade, Integrated Data Modem, microwave landing system and night capabilities provisions, and an Advanced Identification Friend or Foe (AIFF).

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Portugal while enhancing weapon system standardization and interoperability with the U.S. forces in the region.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Tactical Aircraft systems, Fort Worth, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of U.S. Government personnel and contractor representatives to Portugal to provide technical and logistics services prior to delivery of the last MLU kit. The number of personnel and types of skills necessary to support the program will be determined jointly between U.S. and Portuguese representatives upon program implementation.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-13

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The F-16A weapon system is unclassified except as mentioned below. The aircraft does contain state-of-the-art technology. Sensitive elements of the F-16A include the F100-PW-200/220 turbofan engine, the FMS version of the AN/ALR-69 radar warning receiver (RWR), the FMS version of the AN/ALQ-131 electronic countermeasures pod, the FMS version of the AN/APG-66 radar, the AIM-7 radar missile capability, the AIM-9 missile capability, the AIM-120 (AMRAAM) missile capability, the ATLIS II laser designator pod capability, and the fly by wire flight control system. The system design notes on software architecture are also critical elements.

2. Classified elements of the F-16A include the F100 engine infrared signature, radar software documentation, the Operational Flight Program (OFP) and the Emitter Identification Data (EID) for the ALR-69, the OFP and EID for the ALQ-131, the OFP for the Fire Control Computer, AIM-9 hardware, AIM-7 hardware, AIM-120 hardware, and 15 operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to support operation and repair at the organizational and intermediate levels. Classified elements of the MLU kit in addition to the above items include: the Advanced IFF (AIFF). The hardware, software, and data identified are classified to protect vulnerabilities, design, and performance parameters, munitions related data, and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of these specific hardware and software elements, they might be able to develop countermeasures or countertactics which could reduce weapon system effectiveness. Of additional concern, but requiring a much longer exploitation period, is the possibility such information could be used in the development of systems with similar advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97-32359 Filed 12-10-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); FY 98 DRG Updates

AGENCY: Department of Defense.

ACTION: Correction.

SUMMARY: This notice makes corrections to the FY 98 DRG Updates published in the **Federal Register** on October 30, 1997 (62 FR 587110). Change "discharges" to read "admissions" in the following areas:

Page 58712

First column, second paragraph, section C.

First column, third paragraph, section D.

Second column, first paragraph, section H.

Dated: December 5, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-32360 Filed 12-10-97; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of Scope of Statement for Programmatic Environmental Impact Statement: Treatment of Non-Stockpile Chemical Warfare Materiel

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Scope of Statement (SoS) for the Programmatic Environmental Impact Statement (PEIS) on the treatment of non-stockpile chemical warfare material (CWM) is available. The SoS is an important component of the PEIS process providing direction for the PEIS preparers.

ADDRESSES: To obtain copies of the SoS, contact Ms. Louise Dyson, Public Outreach and Information Officer, Office of the Project Manager for Non-Stockpile Chemical Material, Aberdeen Proving Ground, Maryland 21010-5401 or by phone at 410-671-3445 or fax at 410-612-8737.

FOR FURTHER INFORMATION CONTACT: Ms. Louise Dyson at the above address and phone number.

SUPPLEMENTARY INFORMATION: The Notice of Intent (NOI) to prepare the PEIS was published in the **Federal Register** on October 18, 1996 (FR 61 54421-54424), with a correction to that notice being published on November 13, 1996 (FR 61 58281). In the NOI, the Army invited interested agencies and the public to assist in determining the scope of the PEIS by providing comments by February 28, 1997, on the alternative strategies and important issues affecting the environment that should be addressed. The SoS describes the scoping process and the determinations reached by the Army's Non-Stockpile Chemical Material Program (NSCMP) as a result of the scoping process. The following items are included on the SoS:

1. Description and discussion of the proposed action and alternative strategies to be evaluated in the Draft PEIS;

2. Description and discussion of the major socioeconomic and environmental issues to be addressed in the Draft PEIS;

3. Preliminary schedule for the PEIS, including the approximate time frame in which the Draft PEIS and Final PEIS are expected to be made available to the public;

4. Discussion of the roles and responsibilities of different organizations involved in preparing, reviewing and approving the Draft PEIS;

5. Preliminary outline of the Draft PEIS that will be used in guiding its preparation;

6. Description of the actions undertaken by the NSCMP to involve interested organizations and the public in the PEIS scoping process; and

7. A summary of the comments received during the public scoping process and the NSCMP's consideration of those comments.

Changes to the proposed action and prelimary alternative strategies identified in the NOI have been made as a result of the public scoping process and these changes are reflected in the SoS.

The PEIS proposed action that will be evaluated is to select one or more strategies for the treatment of non-stockpile CWM utilizing transportable chemical treatment systems. The decision to be made by the Army, and for which the PEIS analysis will address environmentally, is whether transportable chemical treatment systems should be further developed and made available for deployment.

The preliminary alternative strategies identified in the NOI were as follows:

1. On-site chemical treatment of CWM with off-set destruction of the resultant wastes either by thermal destruction or another disposal method;

2. On-site chemical treatment and on-site destruction/disposal of chemical treatment wastes;

3. On-site thermal destruction;

4. Off-site chemical treatment and/or thermal destruction or another disposal method; and

5. No action, which was defined as a continuation of the current methods for handling these types of CWM, including safely packing, shipping and storing CWM at permitted locations.

The alternative strategies that will be analyzed in the PEIS include the following:

1. On-site Strategy—further develop transportable chemical treatment systems and make the systems available for the treatment of non-stockpile CWM at the site where the CWM may be located;

2. Off-site Stragegy—further develop transportable chemical treatment systems, transport non-stockpile CWM from where it is located to an off-site location, and make the systems available for the treatment of CWM at the off-site location; and

3. No Action Strategy—discontinue development of the prototype transportable chemical treatment systems and continue to store non-stockpile CWM until other systems can be made available for treatment of non-stockpile CWM. Storage of non-stockpile CWM will occur on site unless precluded by human health, safety, and environmental regulatory requirements.

The PEIS evaluation will be directed at determining those environmental and socioeconomic conditions under which each of the strategies could be implemented. The revised alternative strategies are those that are applicable to any site with non-stockpile CWM. The application of these strategies will be further considered in subsequent site-specific analyses should the Army decide to proceed with the transportable chemical treatment systems.

The PEIS will be prepared using an approach in which the affected environment will be described in terms of a range of environmental and socioeconomic conditions that could occur at any site or location where non-stockpile CWM may be present or where transportable chemical treatment systems could be utilized. Based on these ranges, the PEIS will evaluate whether or not adverse environmental and socioeconomic impacts could occur. Where such impacts could occur, the PEIS will identify mitigation measures to eliminate, reduce, or compensate any adverse impact.

For the off-site strategy, emphasis will be placed on evaluating the impacts and identifying mitigation measures associated with the potential transport of non-stockpile CWM, as the impacts and mitigation measures for the treatment of non-stockpile CWM would be the same as those to be identified under the on-site strategy. The off-site strategy will indicate that, under current law, non-stockpile CWM can only be transported in state or to the nearest chemical munitions stockpile storage facility that has the necessary permits for receiving and storing them. For the no action strategy, the potential adverse impacts and mitigation measures to be emphasized will be those associated with storage of non-stockpile CWM.

The Draft PEIS will be made available for public review and comment. Its availability will be announced, written comments on the Draft will be solicited, and information about a possible public meeting to comment on the Draft will be published at a later date. The Army expects to release the Draft PEIS in late 1998 and the Final PEIS by early 2000.

Dated: December 4, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 97–32439 Filed 12–10–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 12, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 6 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 5, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Study of School Violence Prevention.

Frequency: Two one-time reportings.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 56,400.

Burden Hours: 35,850.

Abstract: The purpose of this study is to increase understanding of school violence and violence prevention efforts, especially efforts funded by the Safe and Drug-Free Schools and Community Act programs, as required by § 4117 of Title IV of the Elementary and Secondary Education Act.

[FR Doc. 97–32391 Filed 12–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement Richland, Washington; Public Scoping Period Extension

AGENCY: Department of Energy.

ACTION: Extension of public scoping period.

SUMMARY: The U.S. Department of Energy (DOE) is extending the public scoping period on the Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement to January 30, 1998.

DATES: Written comments on the scope of the Environmental Impact Statement must be submitted by January 30, 1998, to ensure consideration. Comments submitted after that date will be considered to the extent practicable.

ADDRESSES: Comments or requests for copies of the Notice of Intent should be addressed to: Allison Wright, Document Manager, Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, U.S. Department of Energy, Richland Operations Office (MSIN S7–55), Post Office Box 550, Richland, WA 99352, Telephone: (509) 372–2346, FAX: (509) 372–1926, EMAIL: solid_waste_eis-doe@rl.gov

FOR FURTHER INFORMATION CONTACT: For further information on the Environmental Impact Statement, contact Allison Wright at the above address. For general information on DOE's National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy (EH–42), 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: On October 27, 1997, DOE published a notice in the **Federal Register** (62 FR 55615) announcing its intent to prepare an Environmental Impact Statement for the Solid Waste Program at the Hanford Site in Richland, Washington and to conduct a 45-day public scoping process pursuant to National Environmental Policy Act. DOE subsequently conducted three public scoping meetings—two on November 12, 1997, in Richland, Washington and the other on November 13, 1997, in Pendleton, Oregon. DOE received a request to extend the public scoping period, which was originally scheduled to end on December 11, 1997. In response to that request and to ensure that all interested parties have adequate time to comment, DOE is extending the public scoping period to January 30, 1998.

Written comments should be addressed to Ms. Wright at the above address by January 30, 1998, to ensure consideration. DOE will consider comments received after January 30, 1998, to the extent practicable.

Issued at Washington, D.C., this 5th day of December, 1997.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 97–32435 Filed 12–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EMSSAB), Nevada Test Site.

DATE AND TIME: Wednesday, January 7, 1998: 5:30 p.m.–9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, Telephone: 702–295–0197. Please contact Kevin Rohrer to confirm the meeting location. It may be subject to change.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

January Agenda

5:30 p.m.—Call to Order
5:40 p.m.—Presentations
7:00 p.m.—Public Comment/Questions
7:30 p.m.—Break
7:45 p.m.—Review Action Items
8:00 p.m.—Approve Meeting Minutes
8:10 p.m.—Committee Reports
8:45 p.m.—Public Comment
9:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on December 5, 1997.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–32436 Filed 12–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy

ACTION: Submission for OMB review; comment request

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response × proposed frequency of response per year × estimated number of likely respondents.)

DATES: Comments must be filed on or before January 12, 1998. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Forms EIA–411, 826, 861, 867, 900, and NN–417R (to be renumbered EIA–417R), "Electric Power Surveys"

2. Energy Information Administration and Office of Nonproliferation and National Security; OMB No. 1905–0129 (Form EIA–411 was previously approved with OMB No. 1905–0195 and Form NN–417R was previously approved with OMB No. 1901–0288; both forms will be incorporated into the approval for 1905–0129); Revision; Mandatory

3. The Electric Power Surveys collect information on electric power capacity, generation, fuel consumption, fuel receipts, fuel stocks, prices, electric rates, construction costs, and operating

income and revenue. Form EIA–417R collects data on electric power disturbances. Respondents include electric utilities, nonutility electric power producers, electric reliability council members, and independent electric power system operators. Electric power data collected are used by the Department of Energy for analysis and forecasting. Data are also published in various EIA reports.

Based upon presurvey comments received and further study of the industry, the EIA has revised the changes and modifications originally proposed in the **Federal Register** notice of July 29, 1997. Many of the proposed changes, (principally to the Form EIA–861), have not been included in the package submitted to OMB. Included in the changes submitted to OMB is the deletion of the proposed Form EIA–417A. Four of the questions that were included on the Form EIA–417A regarding outages have been incorporated into the Form EIA–861. Additionally, a question pertaining to alternative fueled vehicles has been added to both the Form EIA–861 (electric utility) and the Form EIA–867 (nonutility). Other modifications are described in the supporting statement that has been submitted to OMB and is available upon request.

With respect to the confidentiality of electric power data collected by EIA, the EIA is proposing no changes in its current confidentiality provisions for its electric power surveys and is requesting approval for these surveys for only one year, rather than the normal three-year approval request. During 1998, the EIA will prepare and publish a **Federal Register** notice seeking input and guidance from both electric power data providers and users on the question of confidentiality of electric power data currently collected and published by the EIA. The EIA will formulate a new policy on confidentiality of its electric power data considering input from all interested parties as well as the deregulation of the industry.

4. Business or other for-profit; Federal government; State, local, or tribal governments

5. 90,697 hours (3.73 average hours per response x 2.7 average responses per year × 8,994 respondents)

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, D.C., December 3, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 97–32437 Filed 12–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–100–000]

Algonquin, Gas Transmission Company; Notice of Application

December 5, 1997.

Take notice that on November 24, 1997, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77251–1642, filed an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity to construct, own, operate, and maintain a pipeline lateral in Norfolk County, Massachusetts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Algonquin proposes to construct, own operate, and maintain 5,848 feet of 14-inch pipeline lateral extending from an interconnection with its 24-inch and 30-inch mainline system to ANP Bellingham Energy Company's (ANP-Bellingham) proposed electric generating plan in Bellingham, Massachusetts. Algonquin will also construct a metering station at the Bellingham plant and other appurtenant facilities. The estimated cost of the proposed lateral is $4.6 million. The proposed in-service date is October 1, 1999. Algonquin states that it has entered into a Precedent Agreement with ANP-Bellingham to transport up to 110,000 Dth per day, on a firm basis, for a primary term of 20 years. Algonquin states that the transportation service will be performed under Algonquin's existing Part 284 Rate Schedule AFT–CL and that ANP-Bellingham will be assessed an initial incremental demand rate of $0.8399 per Dth.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before December 29, 1997, file with the Federal Energy Regulatory Commission, 888 1st Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 of 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believe that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32379 Filed 12–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Dockets Nos. CP98–107–000 and CP98–109–000]

Continental Natural Gas, Inc.; Notice of Application

December 5, 1997.

Take notice that on December 1, 1997, Continental Natural Gas, Inc. (CNG) filed under Section 7(c) of the Natural Gas Act (NGA) for a Section 7 certificate and also for a blanket certificate under Part 157, Subpart F authorizing conversion and continued operation of an 11 mile pipeline segment under Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG owns natural gas gathering and processing facilities in Beaver County, Oklahoma. CNG gathers and processes gas using its two natural gas plants, the Beaver Plant and the Mocane Plant along with inlet and outlet facilities. In *Plant Owners* v. *Continental Natural Gas*, 80 FERC ¶ 61,285, the Commission determined that the 11-mile, 10-inch diameter pipeline connecting the Beaver Plant with ANR Pipeline Company (ANR) is a jurisdictional transmission line. As a result, CNG now seeks a Section 7 certificate and blanket certificate authorization. CNG states that it has no intention of changing the manner in which it operates the 11-mile line and that the line will remain dedicated to moving CNG's gas from its Beaver Plant to ANR.

Any person desiring to be heard or to make any protest with reference to this application should, on or before December 29, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and § 385.802 of the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32380 Filed 12–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–108–000]

East Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

December 5, 1997.

Take notice that on December 1, 1997, East Tennessee Natural Gas Company (ETNG), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP98–108–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations (18 CFR 157.205, 157.216) under the Natural Gas Act (NGA) for authorization to abandon the Hawkins County Lateral, located in Hawkins County, Tennessee, as a delivery point under ETNG's blanket certificate issued in Docket No. CP82–412–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ETNG proposes to abandon the Hawkins County Lateral by sale to the Hawkins County Utility District (HCUD). It is stated that the lateral consists of 5.18 miles of 6-inch pipeline and appurtenant facilities. It is explained that the lateral was installed in 1961 in order to make deliveries to HCUD, formerly the Natural Gas Utility District of Hawkins County, a municipality engaged in the local distribution of natural gas to the public. It is asserted that ETNG and HCUD have negotiated a Purchase and Sales Agreement to transfer ownership of the lateral from HCUD to ETNG and that no facilities would be removed or abandoned in place. It is further asserted that HCUD is the only customer served by the facilities and that HCUD has consented to the abandonment by sale.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32381 Filed 12–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–82–000]

Gas Transport, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 5, 1997.

Take notice that on December 1, 1997, Gas Transport, Inc. (GTI) tendered for filing revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of January 1, 1998.

GTI states that the purpose of this filing is to conform GTI's tariff to the requirements set forth in Subpart C of Part 154 of the Commission's Regulations and Order No. 582.

Specifically, GTI is: (1) Submitting a title page; (2) revising the Table of Contents to include a brief description of each service; (3) updating the preliminary statement; (4) adding a new General Terms and Conditions ("GT&C") Section 25 entitled "Order of Discounts"; (5) adding a new GT&C Section 26 entitled "Policy With Respect to Fees and Construction of New Facilities"; (6) eliminating the index of customers; and (7) removing the "Qualification for Service" section from the EFT, FT, and IT Rate Schedules and placing it in the GT&C as Section 24 thereof.

GTI states that copies of this filing were served upon its firm customers and interested state commissions. Copies were also served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-32384 Filed 12-10-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98-46-000, et al.]

The Hub Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 4, 1997.

Take notice that the following filings have been made with the Commission:

1. The Hub Power Company

[Docket No. EG98-46-000]

Take notice that on December 2,1997, pursuant to Section 365.7 of the Commission's Regulations, 18 CFR 365.7, The Hub Power Company filed notification that it surrenders its status as an exempt wholesale generator under Section 32(a) (1) of the Public Utility Holding Company Act of 1935, as amended.

2. Millennium Power Partners, L.P.

[Docket No. EG98-12-000]

On November 26, 1997, Millennium Power Partners, L.P. (Millennium), a Delaware limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Millennium proposes to construct a 360 MW natural gas-fired combined cycle power plant in the Town of Charlton, Massachusetts. The proposed power plant is expected to commence commercial operation in the year 2000. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Nevada Power Company

[Docket No. ER96-447-002]

Take notice that on November 12, 1997, Nevada Power Company (Nevada Power), tendered for filing, in Docket No. OA96-188-000, revised tariff sheets which specify the on-peak and off-peak hours of non-firm point-to-point transmission service in compliance with the Commission's order dated October 17, 1997. Nevada Power requests a waiver of the 60 day notice requirement and requests that the revised tariff sheets be effective as of the date of the filing.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER98-662-000]

Take notice that on November 13, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Hoosier Energy Rural Electric Coop Inc., under Rate GSS.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER98-663-000]

Take notice that on November 13, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Market Responsive Energy Inc., under Rate GSS.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER98-664-000]

Take notice that on November 13, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER98-665-000]

Take notice that on November 13, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and CMS Marketing, Services and Trading under Rate GSS.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Washington Water Power

[Docket No. ER98-666-000]

Take notice that on November 13, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, TransCanada Power, a division of TransCanada Energy Ltd., formerly doing business as TransCanada Power Corporation. WWP previously filed an unsigned TransCanada Power Corporation Service Agreement dated 12/15/96 with the Commission, noticed under Docket No. ER97-1252-000. The TransCanada Power, a division of TransCanada Energy Ltd., Service Agreement, dated November 1, 1997, therefore replaces the unsigned TransCanada Power Corporation Service Agreement.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Houston Lighting & Power Company

[Docket No. ER98-667-000]

Take notice that on November 13, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Avista Energy, Inc., (Avista) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of November 13, 1997.

Copies of the filing were served on Avista and the Public Utility Commission of Texas.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket No. ER98-669-000]

Take notice that on November 13, 1997, South Carolina Electric & Gas Company, tendered for filing a report that summarizes transactions that occurred July 1, 1997, through September 30, 1997, pursuant to the Market-Based Tariff accepted by the Commission in Docket Nos. ER96-1085-000 and ER96-3073-000.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service Company

[Docket No. ER98-670-000]

Take notice that on November 14, 1997, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted an executed umbrella service agreement under Southwestern's market-based sales tariff with Western Resources, Inc., (Western). This umbrella service agreement provides for Southwestern's sale and Western's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER98-671-000]

Take notice that on November 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service with CNG Power Services Corporation, Sonat Power Marketing L.P., PP&L, Inc., and Progress Power Marketing, Inc., under the Open Access Transmission Tariff to Eligible Purchasers filed July 14, 1997. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon CNG Power Services Corporation, Sonat Power Marketing L.P., PP&L, Inc., Progress Power Marketing, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER98-672-000]

Take notice that on November 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Bruin Energy, Inc., under the FERC Electric Tariff (Original Volume No. 4), which was accepted by order of the Commission dated September 11, 1997, in Docket No. ER97-3561-000 (80 FERC ¶ 61,275 (1997)). Under the tendered Service Agreement, Virginia Power will provide services to Bruin Energy, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of October 21, 1997, for the Service Agreement.

Copies of the filing were served upon Bruin Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER98-673-000]

Take notice that on November 14, 1997, Carolina Power & Light Company (Carolina), tendered for filing an executed Service Agreement between Carolina and the following Eligible Entity: Columbia Power Marketing Corporation. Service to the Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1; for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Carolina Power & Light Company

[Docket No. ER98-674-000]

Take notice that on November 14, 1997, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: AIG Trading Corporation; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with AIG Trading Corporation. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER98-675-000]

Take notice that on November 14, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and American Electric Power Service Corporation (AEP), dated November 13, 1997. This Service Agreement specifies that AEP has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95-276-000 and allows GPU Energy and AEP to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 13, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Northwest Power Marketing Company, L.L.C.

[Docket No. ER98–676–000]

Take notice that on November 14, 1997, Northwest Power Marketing Company, L.L.C. (Northwest), tendered for filing a Notice of Rate Schedule Cancellation for Northwest's FERC Electric Rate Schedule No. 1, to be effective immediately.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER98–677–000]

Take notice that on November 14, 1997, Western Resources, Inc., acting on behalf of itself and Kansas Gas and Electric Company (collectively, Western Resources), tendered for filing an application for an order accepting its proposed market-based power sales tariff. Western Resources intends to sell electric capacity and energy at market rates mutually agreed to by Western Resources and the customer in arms-length negotiations.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Electric Company

[Docket No. ER98–678–000]

Take notice that on November 14, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Constellation Power Source, Inc., (Constellation). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Constellation under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northeast Utilities Service

[Docket No. ER98–679–000]

Take notice that on November 14, 1997, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light & Power Company, tendered for filing pursuant to § 205 of the Federal Power Act and 35.13 of the Commission's Regulations, an Agreement for Alternate Arrangements (Agreement).

The proposed Agreement proposes to supersede all obligations of the parties to the Agreement with respect to the construction of a new substation set forth in the System Power Sales Agreement, Rate Schedule FERC No. 547, and a Memorandum of Understanding, Supplement No. 2, to Rate Schedule FERC No. 547, each dated November 30, 1994.

NUSCO states that a copy of this filing has been mailed to the parties to the Agreement and the affected state utility commissions.

NUSCO requests that the Agreement become effective November 14, 1997.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Westar Electric Marketing, Inc.

[Docket No. ER98–680–000]

Take notice that on November 14, 1997, Westar Electric Marketing, Inc. (Westar), tendered for filing a rate schedule notice of cancellation of Westar's FERC Electric Rate Schedule No. 1, to be effective immediately.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Duquesne Light Company

[Docket No. ER98–681–000]

Take notice that on November 17, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with Southern Energy Retail Trading & Marketing, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Southern Energy Retail Trading & Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Duquesne Light Company

[Docket No. ER98–682–000]

Take notice that on November 17, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement for Transmission Service dated November 11, 1997, with the Borough of Pitcairn under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds the Borough of Pitcairn as a customer under the Tariff. DLC requests an effective date of December 3, 1997, for the Service Agreement.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Duquesne Light Company

[Docket No. ER98–683–000]

Take notice that on November 17, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with mc2 Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds mc2 Inc., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Duquesne Light Company

[Docket No. ER98–684–000]

Take notice that on November 17, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with West Penn Power Co., d/b/a Allegheny Power under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds West Penn Power Co., d/b/a Allegheny Power as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER98–685–000]

Take notice that on November 17, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated November 11, 1997, with DPL Energy, Inc., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds DPL Energy, Inc., as a customer under the Tariff. DLC requests an effective date of November 11, 1997, for the Service Agreement.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32414 Filed 12–10–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–000]

Koch Gateway Pipeline Company; Notice of Informal Settlement Conference

December 5, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on December 18, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Sandra J. Delude at (202) 208–0583.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32383 Filed 12–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–50–000]

NorAm Gas Transmission Company; Notice of Application

December 5, 1997.

Take notice that on October 28, 1997, as supplemented on December 4, 1997, NorAm Gas Transmission Company (NGT), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP98–50–000 a request pursuant to Section 7(c) of the Natural Gas Act for approval to construct and operate certain facilities in Arkansas to deliver natural gas to Nucor-Yamato Steel Company (Nucor), an existing customer of NGT's in Blytheville, Arkansas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT states that it specifically proposes to construct a two-inch delivery tap and six-inch meter and regulating station in Mississippi County, Arkansas. NGT further states that the proposed tap would increase the deliveries of natural gas to Nucor by 2,304 MMBtu per day and 840,960 MMBtu on an annual basis. NGT asserts that the transportation of natural gas to Nucor will occur under NGT's rate schedule FT. NGT indicates that the total cost of construction is estimated to be $38,642, which would be completely reimbursed by Nucor.

Any person desiring to be heard or to make protest with reference to said application should on or before December 12, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is requested, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NorAm to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32377 Filed 12–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–14–000]

Southern California Edison Company Notice of Filing

December 5, 1997.

Take notice that on December 3, 1997, Southern California Edison Company (SoCal Edison), filed an amendment to its application in the above-referenced proceeding. The amendment identifies the purchasers of SoCal Edison's generating stations at which reliability must-run units are located. The purchasers are:

Purchaser	Generating station
AES Corporation	Alamitos, Huntington Beach, and Redondo.
Houston Industries, Inc.	Etiwanda and Mandalay.
A consortium consisting of: NRG Energy, Inc. and Destec Energy, Inc.	El Segundo.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 15, 1997. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make

the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32375 Filed 12–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Environmental Compliance and Applicant Environmental Report Preparation Training Courses

December 5, 1997.

The Office of Pipeline Regulation (OPR) staff will conduct the first of three planned sessions of its Environmental Compliance Training Course and the Environmental Report Preparation Course on January 27–29, 1998.

These courses are a result of the positive response to our outreach training courses held since 1992 and as recently as October of this year. We encourage interested organizations and the public to take advantage of the courses to gain an understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations. We also encourage feedback, either at the courses or in reply to this notice, on how we can improve the courses.

Environmental Report Preparation Course

The Environmental Report Preparation Course presentation and its manual focus primarily on Section 7 filings. However, the course manual will address the following topics:

A. The types of projects that require environmental filings.
   1. Natural Gas Act section 7
   2. Natural Gas Policy Act filings
   3. Section 2.55 replacements
B. The filings required for each type of project.
C. Information to include in each filing.
D. Potential time saving procedures.
   1. Applicant-prepared DEA
   2. Third-party EA or EIS

The staff intends the manual to be a sourcebook for preparing environmental filings under section 7 of the Natural Gas Act.

If you have specific questions related to the subject matter of this course, or if you would like the course to address a particular item, please call Mr. John Leiss at (202) 208–1106.

This one-day Environmental Report Preparation Course will be held on the date and at the location shown below. Attendees must call the number listed for the hotel by the reservation deadline and identify themselves as Federal Energy Regulatory Commission seminar attendees to receive the discounted group rate.

Session: January 27, 1998
Location: Fairmont Hotel, 123 Baronne Street, New Orleans, Louisiana, 70112, 1–800–527–4727, (504) 527–7111
Reservations by: January 5, 1998.

We also intend to have sessions in Chicago and Las Vegas in March and May, respectively. Information on those sessions (and registration forms) should be available by the middle of January through the telephone number given below under Pre-registration.

Environmental Compliance Training Course

The two-day Environmental Compliance Training Course and its manual will include the following topics:

A. Post-certificate clearance filings.
B. Environmental inspection as it relates to:
   1. Right-of-way preparation;
   2. Temporary erosion control;
   3. Cultural resources;
   4. Waterbody crossings;
   5. Wetland construction;
   6. Residential area construction;
   7. Right-of-way restoration; and
   8. Techniques for environmental compliance.

The Environmental Compliance Training Course will be held on the dates and at the location shown below. Attendees must call the numbers listed for the hotels by the reservation deadline and identify themselves as FERC seminar attendees to receive the discounted group rate.

Session: January 28–29, 1998
Location: Fairmont Hotel, 123 Baronne Street, New Orleans, Louisiana, 70112
Information: 1–800–527–4727, (504) 527–7111
Reservations by: January 5, 1998

We also intend to have sessions in Chicago and Las Vegas in March and May, respectively. Information on those sessions (and registration forms) should be available by the middle of January through the telephone number given below under Pre-registration.

Pre-Registration

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor for natural gas projects, will conduct the training. There is no fee for the courses, but you must pre-register because space is limited.

If you would like to attend either of these courses, please call the telephone number listed below to obtain a pre-registration form.[1] NOTE: IF YOU PLAN TO ATTEND BOTH THE ENVIRONMENTAL REPORT PREPARATION COURSE AND THE SUBSEQUENT ENVIRONMENTAL COMPLIANCE TRAINING COURSE, YOU MUST PRE-REGISTER SEPARATELY FOR EACH (ONLY ONE FORM IS NEEDED). Attendance will be limited to the first 150 people to pre-register in each course. Call or FAX requests for pre-registration forms to: Ms. Donna Connor, c/o Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone or FAX (Menu driven): (508) 384–1424.

You will receive confirmation of pre-registration and additional information before the training course(s).

Additional training will be offered in the future. Please indicate whether you would like these courses to be offered again, or if you are interested in any other courses with different topics or audiences. Please indicate your preferences for location and time of year. Suggestions on format are welcome.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32376 Filed 12–10–97; 8:45 am]

BILLING CODE 6712–01–M

[1] The pre-registration forms referenced in this notice are not being printed in the **Federal Register**. Copies of the forms were sent to those receiving this notice in the mail.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–97–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Intent To Prepare an Environmental Assessment for the Proposed Carlton Delivery Looping Project and Request for Comments on Environmental Issues

December 5, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of about 3.9 miles of 36-inch-diameter pipeline loop and appurtenant facilities proposed in the Carlton Delivery Looping Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Great Lakes Transmission Limited Partnership (Great Lakes) proposes to expand the capacity of its facilities in Minnesota and Wisconsin to transport an additional 6,500 dekatherms per day of natural gas to the City of Duluth, Minnesota and Northwest Natural Gas Company. Great Lakes seeks authority to construct and operate:

- About 2.1 miles of 36-inch-diameter pipeline loop from mileposts (MP) 22.7 to 24.8 on Great Lake's existing mainline facilities in Kittson County, Minnesota (Loop 1);
- About 1.8 miles of 36-inch-diameter pipeline loop from MPs 226.4 to 228.2 on Great Lake's existing mainline facilities in Itasca County, Minnesota (Loop 2);
- Three downstream crossover assemblies to tie-in the new loop facilities to Great Lake's existing loop and mainline facilities at MP*s* 24.8, 226.4, and 228.2.
- One new side tap to be located at an existing mainline valve site in Douglas County, Wisconsin at MP 299.28. This sidetap would include two aboveground tees and two aboveground valves, together with piping and supports.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require about 57.3 acres of land. Operation of the proposed project facilities would permanently affect 12.3 acres of land associated with the new permanent pipeline right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Public safety.
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Great Lakes. This preliminary list of issues may be changed based on your comments and our analysis.

- A total of 7.7 acres of wetlands would be affected during construction of the proposed project.
- A total of 7.0 acres of forest land would be cleared for the proposed project.

No known nonjurisdictional facilities have been identified for this project.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including alternative routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP98–97–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 5, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32378 Filed 12–10–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Great Lakes Gas Transmission Limited Partnership's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File An Application For A Subsequent License

December 5, 1997.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. Type of Application: Notice of Intent to File An Application For a Subsequent License.

b. *Project No.:* 6059.

c. *Date filed:* November 24, 1997.

d. *Submitted By:* Hydro Development Group, Inc., current licensee.

e. *Name of Project:* Fowler #17 Hydroelectric Project.

f. *Location:* On the Oswegatchie River in St. Lawrence County, New York.

g. *Filed Pursuant to:* 18 CFR 16.19 of the Commission's regulations.

h. *Effective date of current license:* April 1, 1962.

i. Expiration date of current license September 30, 2002.

j. The project consists of: (1) Three concrete dam sections spanning the river and connecting two small islands, comprising; (a) a 75-foot-long, 25-foot-high dam equipped with 10-inch-high flashboards; (b) a 192-foot-long, 2-foot-high dam equipped with 22-inch-high flashboards; (c) a 154-foot-long, 15-foot-high dam equipped with 17-inch-high flashboards; (2) a 3-acre reservoir with a normal water surface elevation of 542.0 feet msl; (3) a 55-foot-long, 24-foot-wide, 20-foot-deep flume; (4) a powerhouse containing three generating units with a total installed capacity of 900 kW; (5) 450-foot-long transmission line; and (6) Appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information the project is Available at: Hydro Development Group, Inc., c/o CHI Energy Inc., P.O. Box 58, Route 12F, Airport Road, Dexter, NY 13634, (315) 639–6700.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR 16.9 and 16.20 each application for a new or subsequent license and any competing license applications must be filed with the Commission on least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2000.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32382 Filed 12–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of September 15 Through September 19, 1997

During the week of September 15 through September 19, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: December 2, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

[Decision List No. 51]

Week of September 15 through September 19, 1997

Appeal

William H. Payne, 9/19/97, VFA–0326

The Department of Energy (DOE) issued a Decision and Order (D&O) granting in part a Freedom of Information Act (FOIA) Appeal that was filed by William H. Payne. In his Appeal, Mr. Payne contested a determination made by the DOE's Albuquerque Operations Office that portions of two legal invoices should be withheld pursuant to the attorney work-product privilege component of Exemption 5, and Exemption 4. In the Decision, the OHA found that Albuquerque properly withheld portions of the documents under Exemption 5, but that Albuquerque had failed to adequately explain its reasons for withholding portions of the invoices under Exemptions 4. The OHA therefore remanded the matter to Albuquerque for the issuance of a new determination concerning the information withheld under Exemption 4.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Moore Planting Co., Inc. Parker Transfer	RF272–57035 RF272–98742	9/16/97
Newmann Medical Center Catholic Health Initiatives	RK272–0841 RK272–04577	9/19/97
Pepsi-Cola Bottling Co.	RK272–4581	9/17/97
Roger Zetocha et al	RK272–3097	9/16/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Central Valley Cooperative	VEE–0031
Givaudan-Roure Corp.	RR272–00245
Personnel Security Hearing	VSO–0162
Robert Bruce, Inc.	RF272–57073
Robin Villarreal-Neidner	VFA–0334
Schultz Bottled Gas	VEE–0022

[FR Doc. 97–32434 Filed 12–10–97; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Performance Review Board

As required by the Civil Service Reform Act of 1978 (Pub. L. 95–454), Chairman William E. Kennard appointed the following executives to the Performance Review Board: Ruth Milkman, Michelle Oppenheimer, Mary Beth Richards, Gerald Vaughan, Douglas Webbink.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32448 Filed 12–10–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA–97–2567 CC Docket No. 90–571]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted

Released: December 8, 1997.

Notice is hereby given that the state listed below has applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225. These rules are codified at 47 CFR 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments on or before January 12, 1997. Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

A number of state TRS programs currently holding FCC certification have failed to apply for recertification. Applications received after October 1, 1997, for which no extension has been requested before October 1, 1997, must be accompanied by a petition explaining the circumstances of the late-filing and requesting acceptance of the late-filed application.

File No: TRS–97–52.

Applicant: Arkansas Deaf and Hearing Impaired Telecommunications Services Corporation State of Arkansas.

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32449 Filed 12–10–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1190–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–1190-DR), dated November 1, 1997, and related determinations.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska dated November 1, 1997, is hereby amended to include Category F under the Public Assistance program for the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 1, 1997.

The counties of Cass, Clay, Douglas, Fillmore, Kimball, Lancaster, Nuckolls, Otoe, Saline, Sarpy, Saunders, Seward, Thayer, and Washington for Category F, Utilities, under the Public Assistance program (already designated for Categories A and B).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–32433 Filed 12–10–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 97–N–9]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled "Monthly Survey of Rates and Terms on Conventional, 1-Family, Nonfarm Loans," usually referred to as the "Monthly Interest Rate Survey" or "MIRS."

DATES: Interested persons may submit comments on or before February 9, 1998.

ADDRESSES: Address written comments and requests for copies of the information collection to Elaine L. Baker, Secretary to the Board, 202/408–2837, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Timothy D. Forsberg, Financial Analyst, 202/408–2968, Financial Research Division, Office of Policy, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION

A. Need For and Use of Information Collection

The Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), first provided survey data on mortgage interest rates in 1963. No statutory or regulatory provision explicitly required the FHLBB to conduct the MIRS although references to the MIRS did appear in several Federal and State statutes. Responsibility for conducting the MIRS was transferred to the Finance Board upon dissolution of the FHLBB in 1989. See Financial Institutions Reform, Recovery, and Enforcement Act of 1989

(FIRREA), Pub. L. 101–73, Title IV, sec. 402(e)(3)–(4), 103 Stat. 183, codified at 12 U.S.C. 1437 note, and Title VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433 (Aug. 9, 1989). In 1993, the Finance Board promulgated a final rule describing the method by which it conducts the MIRS. See 58 FR 19195 (Apr. 13, 1993), codified at 12 CFR 902.3. Since its inception, the MIRS has provided the only consistent source of information on mortgage interest rates and terms and house prices for areas smaller than the entire country.

Statutory references to the MIRS include the following:

- Pursuant to their respective organic statutes, the Federal National Mortgage Association (also known as Fannie Mae) and the Federal Home Loan Mortgage Corporation (also known as Freddie Mac) use the MIRS results as the basis for allowable annual adjustments to the maximum dollar limits for their purchase of conventional mortgages. See 12 U.S.C. 1454(a)(2), 1717(b)(2). The Fannie Mae and Freddie Mac limits were first tied to the MIRS by the Housing and Community Development Act of 1980. See Public Law 96–399, Title III, section 313(a)–(b), 94 Stat. 1644–1645 (Oct. 8, 1980). At that time, the nearly identical statutes required Fannie Mae and Freddie Mac to base the dollar limit adjustments on "the national average one-family house price in the monthly survey of all major lenders conducted by the [FHLBB]." See 12 U.S.C. 1454(a)(2), 1717(b)(2) (1989). When Congress abolished the FHLBB in 1989, it replaced the reference to the FHLBB in the Fannie Mae and Freddie Mac statutes with a reference to the Finance Board. See FIRREA, Title VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433.
- Also in 1989, Congress required the Chairperson of the Finance Board to take necessary actions to ensure that indices used to calculate the interest rate on adjustable rate mortgages (ARMs) remain available. See *id.* Title IV, section 402(e)(3)–(4), 103 Stat. 183, codified at 12 U.S.C. 1437 note. At least one ARM index, known as the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders, is derived from the MIRS data. The statute permits the Finance Board to substitute a substantially similar ARM index after notice and comment only if the new ARM index is based upon data substantially similar to that of the original ARM index and substitution of the new ARM index will result in an interest rate substantially similar to the rate in effect at the time the new ARM index replaces the existing ARM index. See 12 U.S.C. 1437 note.
- Congress indirectly connected the high cost area limits for mortgages insured by the Federal Housing Administration (FHA) of the Department of Housing and Urban Development to the MIRS in 1994 when it statutorily linked these FHA insurance limits to the purchase price limitations for Fannie Mae. See Public Law 103–327, 108 Stat. 2314 (Sept. 28, 1994), codified at 12 U.S.C. 1709(b)(2)(A)(ii).
- The Internal Revenue Service uses the MIRS data in establishing "safe-harbor" limitations for mortgages purchased with the proceeds of mortgage revenue bond issues. See 26 CFR 6a.103A–2(f)(5).
- Statutes in several states and U.S. territories, including California, Indiana, Michigan, Minnesota, New Jersey, Wisconsin, and the Virgin Islands, refer to, or rely upon, the MIRS. See, *e.g.*, Cal. Rev. & Tax 439.2 (Deering 1996) (value of owner-occupied single family dwellings for tax purposes); Cal. Civ. 1916.7, 1916.8 (mortgage rates); Ind. Code Ann. 28–1–21.5–1 (Burns 1996) (mortgage instruments); Iowa Code 534.205 (1995) (real estate loan practices); Mich. Stat. Ann. 23.1125(21) (1996) (enforcement of mortgages); Minn. Stat. 92.06 (1996) (payments for state land sales); N.J. Rev. Stat. 31:1–1 (1996) (interest rates); Wis. Stat. 138.056 (1996) (variable loan rates); V.I. Code Ann. tit. 11, section 951 (1996) (legal rate of interest).

The Finance Board uses the information collection to produce the MIRS and for general statistical purposes and program evaluation. Economic policy makers use the MIRS data to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs, and initial fees and charges on mortgage loans. Other federal banking agencies use the MIRS results for research purposes. Information concerning the MIRS is regularly published in the popular trade press, in Finance Board releases and on its web-site, and in publications of other federal agencies.

The likely respondents include a sample of 390 savings associations, mortgage companies, commercial banks, and savings banks. The information collection requires each respondent to complete FHFB Form 10–91 or an equivalent electronic submission on a monthly basis.

The OMB number for the information collection is 3069–0001. The OMB clearance for the information collection expires on April 30, 1998.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 390, with twelve annual responses per respondent. The estimate for the average hours per response is 1.0 hours. The estimate for the total annual hour burden is 4,680 hours (390 respondents x 12 responses/respondent x approximately 1.0 hour).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: December 3, 1997.

By the Federal Housing Finance Board.

William W Ginsberg,

Managing Director.

[FR Doc. 97–32395 Filed 12–10–97; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3791.
Name: Air-Sea International, Inc.
Address: 218 Marsh Island Drive, Chesapeake, VA 23320–9246.
Date Revoked: November 17, 1997.
Reason: Surrendered license voluntarily.

License Number: 3159.
Name: Artpak Transport, Ltd.
Address: c/o Judson, 50 West 57th Street, New York, NY 10019.
Date Revoked: November 25, 1997.
Reason: Surrendered license voluntarily.

License Number: 3593.
Name: Caliber Customs Brokers and Freight Forwarders, Inc.
Address: 1731 Adrian Road, Unit 1, Burlingame, CA 94010.
Date Revoked: October 14, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 3404.
Name: Choice Transportation Services, Inc.
Address: 752 Birginal Drive, Bensenville, IL 60106.
Date Revoked: October 17, 1997.
Reason: Surrendered license voluntarily.

License Number: 3786.
Name: Da-Ma's Forwarding, Inc.
Address: 2011 N.W. 89th Place, Miami, FL 33172.
Date Revoked: October 29, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 782.
Name: J.R. Michels, Inc.
Address: 260 Townsend Street, San Francisco, CA 94107.
Date Revoked: October 29, 1997.
Reason: Surrendered license voluntarily.

License Number: 4198.
Name: NG Enterprises, Inc. d/b/a Randy International and NG Enterprises of New York.
Address: 326 Smith Street, Keasbey, NJ 08832.
Date Revoked: October 15, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 3975.
Name: Southern World International, Inc.
Address: 7975 N.W. 154th Street, Suite 300, Miami Lakes, FL 33016.
Date Revoked: October 2, 1997.
Reason: Surrendered license voluntarily.

License Number: 4057.
Name: Tampa Bay Ocean Services, Inc.
Address: 6001 Jet Port Industrial Blvd., Tampa, FL 33634.
Date Revoked: November 20, 1997.
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 97–32406 Filed 12–10–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Marlins Freight Forwarders, Inc., 16548 SW 97th Street, Miami, FL 33196, Officers: Maria T. Leon, President, Idania Pena, Vice President.

Lloyd International, Inc., 931 Main Street, Norwell, MA 02061, Officer: Lloyd A. Gillis, President.

Provex Inc., 6581 NW 82 Avenue, Miami, FL 33166, Officer: Jose E. Arteaga, President.

Cargo Transport, Inc., 18000 International Blvd., Suite 400, Seattle, WA 98188, Officers: Sonny Joe Sanders, President, Larry K. Stauffer, Vice President.

Dated: December 5, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32405 Filed 12–10–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 26, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Suburban Bank & Trust Company, Elmhurst, Illinois, as Trustee for The Damen Financial Corporation Employee Stock Ownership Program; to retain voting shares of Damen Financial Corporation, Schaumburg, Illinois, and thereby indirectly retain shares of Damen National Bank, Chicago, Illinois.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Lester L. Ward, Jr. as Trustee of the Mahlon T. White CRT No. 1, Denver, Colorado; to acquire voting shares of Monte Vista Bank Corp., Monte Vista, Colorado, and thereby indirectly acquire Bank of Monte Vista, Monte Vista, Colorado.

Board of Governors of the Federal Reserve System, December 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32443 Filed 12–10–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Amcore Financial, Inc., Rockford, Illinois; to acquire Midwest Federal Financial Corp., Baraboo, Wisconsin, and thereby indirectly acquire Baraboo Federal Bank, FSB, Baraboo, Wisconsin, and B.T. Financial Services, Inc., Baraboo, Wisconsin, and thereby engage in operating a savings association;

securities brokerage activities; trust company functions, and the sale of credit life insurance, pursuant to §§ 225.28(b)(4), (b)(7), (b)(5), and (b)(11) of the Board's Regulation Y, respectively.

2. National Australia Bank Limited, Melbourne, Australia; to acquire Homeside, Inc., Jacksonville, Florida, and thereby indirectly acquire Homeside Lending, Inc., Jacksonville, Florida, and thereby engage in extending credit and servicing loans and activities related to extending credit, pursuant §§ 225.28(b)(1) and 225.28(b)(2) of the Board's Regulation Y. Comments on this application must be received by December 26, 1997.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation Inc., St. Louis, Missouri; to acquire HomeCorp, Inc., Rockford, Illinois, and thereby indirectly acquire HomeBanc FSB, Rockford, Illinois, and thereby engage in the operation of a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32442 Filed 12–10–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System*.

TIME AND DATE: 2:30 p.m., Tuesday, December 16, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Office of Employee Benefits employees.
3. Any items carried forward from a previously announced meeting.

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement of this meeting. (The Web site also includes procedural and other information about the meeting.)

Dated: December 9, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32585 Filed 12–9–97; 2:13 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Commission on Consumer Protection and Quality in the Health Care Industry; Notice of Public Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of the meeting of the Advisory Commission on Consumer Protection and Quality in the Health Care Industry. This two-day meeting will be open to the public, limited only by the space available.

Place of meeting: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008. Exact locations of the sessions will be available at the registration area and on the Commission's web site, "http://www.hcqualitycommission.gov".

Times and Dates: The public meeting will span two days. On Tuesday, December 16, 1997, the subcommittee break-out sessions will take place from 8:30 a.m. until 4:30 p.m. On Wednesday, December 17, 1997, the general plenary session will begin at 8:00 a.m. and it will continue until 4:00 p.m.

Purpose/Agenda: To hear testimony and continue formal proceedings of the Commission and the three (3) remaining subcommittees (Subcommittee on Consumer Rights has completed its work). Agenda items are subject to change as priorities dictate.

Contact Person: For more information, including substantive program information and summaries of the meeting, please contact: Edward (Chip) Malin, Hubert Humphrey Building, Room 118F, 200 Independence Avenue, S.W., Washington, DC 20201; (202/205–3333).

Dated: December 3, 1997.

Janet Corrigan,

Executive Director, Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

[FR Doc. 97–32361 Filed 12–10–97; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–06]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Hospital Ambulatory Medical Care Survey—(0920–0278)—Extension—The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992 by the Division of Health Care Statistics, National Center for Health Statistics, CDC. The NHAMCS is the principal source of data on the approximately 158 million visits to hospital emergency and outpatient departments and is the only source of nationally representative estimates on the demographic characteristics of outpatients, diagnoses, diagnostic services, medication therapy, and the patterns of use of care in hospitals which differ in size, location, and ownership. Additionally, the NHAMCS is the only source of national estimates on non-fatal causes of injury in the emergency department.

These data complement the data on visits to non-Federal physicians in office-based practices collected through the NHAMCS (0920–0234), together providing data on approximately 90 percent of the ambulatory care provided in the U.S. Data collected through the NHAMCS are essential for the planning of health services, for improving medical education, determining health care work force needs and assessing the health status of the population. Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies such as NIH., various private associations such as the American Heart Association, as well as universities and state health departments. The total cost to respondents is estimated to be $292,223.

Noninstitutional general and short-stay hospital outpatient and emergency departments	Number of respondents (departments)	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Induction forms	440	6	1	2,640
Patient record forms:				
Emergency departments	425	50	0.06666	1,417
Outpatient departments	275	200	0.066666	3,667
Total				7,724

2. Children's Longitudinal Development Study—New—Since 1991, surveillance of children aged three to ten years who have one or more select developmental disabilities (cerebral palsy, mental retardation, hearing impairment, and vision impairment) has been conducted in the five-county Atlanta metropolitan area through the Metropolitan Atlanta Developmental Disabilities Surveillance Program (MADDSP). Children have been identified primarily through the special education programs of the public schools in those five counties. Recently, surveillance has been expanded to identify children with cerebral palsy at younger ages through a broader array of medical facilities where diagnostic evaluations are performed, and to include autism as one of the developmental disabilities routinely under surveillance. An ongoing case-control study is proposed to yearly (1) contact parents of all children with any of the five developmental disabilities who are newly identified in the surveillance data base and who were born in the metro Atlanta area (approximately 675 children per year) and contact parents of 250 children used as controls in order to request access to both maternal prenatal and labor and delivery hospital records and infant hospital records prior to newborn discharge (all accessed medical records will be reviewed to obtain detailed information on pre- and perinatal risk factors for developmental disabilities; this type of information typically is lacking or incomplete in school records or childhood medical records) and (2) conduct telephone interviews with mothers of approximately 250 children with cerebral palsy or severe mental retardation selected from the larger pool of approximately 675 children, plus interview mothers of the 250 control children. The interviews will supply additional risk factor information relating to the mothers' medical and reproductive histories, prenatal behaviors and exposures, and family histories of developmental problems. Initially, to be cases, children in the interview sample would be under seven years of age at the time they were diagnosed as having cerebral palsy or severe mental retardation. A sample of Atlanta-born children of similar age and birth weight to the interview case children would be randomly identified from vital records and used as controls. Additionally, photographs and head circumference measurements of case and control mothers and children included in the interview sample will be taken either in the home or at a centralized location. The total cost to respondents is $0.

Respondents	Number of respondents	Number of responses/respondents	Average burden/response (in hrs.)	Total burden (in hrs.)
Mothers:				
Contact calls	1,000	1	.33	330
Scheduling call	500	1	.33	165
Telephone interview	500	1	1.50	750
Photography/anthropometry	500	1	.75	375
Total				1,620

3. Cognitive Function and Symptom Patterns in Gulf War Veterans—New—This study will use functional magnetic resonance imaging (fMRI) on previously studied cohorts of Gulf War veterans and Germany-deployed Gulf War-era controls to determine if there are differences in patterns of brain activation between both Gulf War veterans reporting a high level of physical symptoms and Gulf War veterans with fewer symptoms and between those veterans deployed to the Persian Gulf and those deployed to Germany. In addition, an assessment of the relationship between brain activation patterns and levels of cognitive functioning will be completed. Patterns of activation on fMRI will be measured while the subject is presented with a number of challenge paradigms including a finger tapping task and a test of visual working memory. Conventional magnetic resonance imaging scans will also be acquired on all subjects prior to the fMRI in order to rule out subjects with brain pathology

(e.g., stroke, cancer) and also to examine whether there are volumetric differences between the groups within specific neuroanatomical areas. The total cost to respondents is $0.00.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
High-symptom Gulf-deployed veterans	40	1	1.5	60
Low symptom Gulf-deployed veterans	40	1	1.5	60
Normal controls (non-Gulf-deployed veterans)	40	1	1.5	60
Total				180

4. X-ray Examination Program—(0920–0020)—Extension—The X-ray Examination Program is a federally mandated program under the Federal Mine Safety and Health Act of 1977, PL–95–164. The Act provides the regulatory guidance for the administration of the National Coal Workers' X-ray Surveillance Program, a surveillance program to protect the health and safety of underground coal miners. This program requires the gathering of information from coal mine operators, participating miners, participating x-ray facilities and participating physicians. The Appalachian Laboratory for Occupational Safety and Health (ALOSH), National Institute for Occupational Safety and Health (NIOSH) is charged with administration of this program. The total cost to respondents is $47,910.00.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Physicians/interpretation	20,000	1	0.05	1,000
Physician/certification	350	1	0.166	58
Miners	10,000	1	0.3333	3,333
Mine operators	500	1	0.5	250
Facilities	300	1	0.5	150
Total				4,791

5. National Ambulatory Medical Care Survey—(0920–0234)—Extension—The National Ambulatory Medical Care Survey (NAMCS) was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. It is directed by the Division of Health Care Statistics, National Center for Health Statistics, CDC. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The NAMCS target population consists of all office visits within the United States made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care. The complement portion of data collection consists of the remaining physicians in the AMA and AOA files; that is, physicians who AMA and AOA classify as being federally employed, or in the three specialties excluded from the traditional NAMCS, or as not spending the majority of their professional time in office based practice. Since more than 80 percent of all direct ambulatory medical care visits occur in physicians' offices, the NAMCS provides data on the majority of ambulatory medical care services. To complement these data, in 1992 NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) to provide data concerning patient visits to hospital outpatient and emergency departments. The NAMCS, together with the NHAMCS constitute the ambulatory component of the National Health Care Survey (NHCS), and will provide coverage of more than 90 percent of ambulatory medical care.

The NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics and medical problems, and the physicians' diagnostic services, therapeutic prescriptions and disposition decisions. These data, together with trend data, may be used to monitor the effects of change in the health care system, provide new insights into ambulatory medical care, and stimulate further research on the use, organization, and delivery of ambulatory care.

Users of NAMCS data include congressional and other federal government agencies (e.g. NIMH, NIAAA, NCI, HRSA), state and local governments, medical schools, schools of public health, colleges and universities, private businesses, nonprofit foundations and corporations, professional associations, as well as individual practitioners, researchers, administrators and health planners. Users vary from the inclusion of a few selected statistics in a large research effort, to an in-depth analysis of the entire NAMCS data set covering several years. The total cost to respondents is estimated to be $153,250.

Respondents	Number of respondents (physicians)	Number of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Office-based physicians	2,500	1	0.25	625
Induction form	2,500	30	0.03333	2,500
Patient record form				

Respondents	Number of respondents (physicians)	Number of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Complement physicians	500	1	0.25	125
Induction form	100	30	0.0333	100
Patient record form				
Total				3,350

6. Information Collection to Establish Community Assistance Panels (CAPs)—(0923–0007)—Extension—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure of hazardous substances into the environment. To facilitate this effort, ATSDR seeks the cooperation of the community being evaluated through direct communication and interaction. Direct community involvement is required to conduct a comprehensive scientific study and to effectively disseminate specific health information in a timely manner. Also, this direct interaction fosters a clear understanding of health issues that the community considers to be of importance and establishes credibility for the agency. The Community Assistance Panel nomination forms are completed by individuals in the community to nominate themselves or others for participation on these panels. Other than the possible cost of a postage stamp, there is no cost to respondents. This request is for a 3-year extension of the current OMB approval of the Community Assistance Panel nominations form.

Respondents	Number of respondents	Number of responses/ respondents	Avg. burden/response (in hrs.)	Total burden (in hrs.)
General Public	300	1	.1666	50
Total				50

Dated: December 5, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–32399 Filed 12–10–97; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Biomechanical Stress Control in Drywall Installation.

Time and Date: 9 a.m.—12 noon, January 15, 1998.

Location: Suncrest Facility, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding the technical and scientific aspects of the study protocol, "Biomechanical Stress Control in Drywall Installation," being conducted at NIOSH. Participants on the peer review panel will review the study protocol and provide individual advice on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other governmental agencies, and the public are invited.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Christopher S. Pan, Ph.D., NIOSH, CDC, M/S P119 , 3030 University Avenue, Morgantown, West Virginia 26505, telephone 304/285–5978.

Dated: December 5, 1997.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–32401 Filed 12–10–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: OCSE–34 Child Support Enforcement Program Quarterly Report of Collections.

OMB No.: 0970–0013.

Description: Used by States to facilitate the reporting of collections under Title IV–D for the purposes of enforcing support obligations owed by absent parents to their children, locating absent parents, establishing paternity and obtaining child and spousal support.

Respondents: State, Local or Tribal Govt.

Annual burden estimates instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–34	54	4	8	1,728

Estimated Total Annual Burden Hours: 1,728.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 4, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–32373 Filed 12–10–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project(s):

Title: April 1998 Current Population Survey Supplement on Child Support.

OMB No.: New Collection.

Description: Collection of these data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.

Respondents: Individuals or Households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Supplement	47,000	1	.0241	1,136

Estimatd Total Annual Burden Hours: 1,136.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: Act Reports Clearance Officer. All requests should be identified by the title for the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the of the proposed collection of information; (c) the qualify, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 4, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–32374 Filed 12–10–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Revised Form OCSE–100, State Plan for Child Support Collection and Establishment of Paternity under Title IV–D of the Social Security Act.

OMB No.: 0970–0017.

Description: The State plan preprint and amendments serve as a contract with OCSE in outlining the activities the States will perform as required by law in order for States to receive federal funds to meet the costs of these activities. Due to enactment of HR2105, technical amendments for PRWORA, we are updating our State plan by revising 7 preprint pages. We are requesting approval of the revised State plan preprint pages for Section 2.1, Establishing Paternity and Securing Support, Section 2.4, Collection and Distribution of Support Payments, Section 2.5, Services to Individuals Not Receiving Title IV–A and IV–E Foster Care Assistance, Section 2.8, Medical Support Enforcement Activities, Section 2.12–16 State Law Authorizing Suspension of Licenses, Section 2.12–20, Adoption of Uniform State Laws, and Section 3.16, Cooperation by Applicants for and Recipients of Part A Assistance. The information collected on the State plan pages is necessary to enable OCSE to monitor compliance with the requirements in Title IV–D of the Social Security Act and implementing regulations.

Respondents: State governments.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan	54	2.32	.717	90

Estimated Total Annual Burden Hours: 90.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer, Robert Driscoll.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–32372 Filed 12–10–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0488]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on continuation of national surveys of prescription drug information provided to patients.

DATES: Submit written comments on the collection of information by February 9, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Years 1998 and 2000 Continuation of National Surveys of Prescription Drug Information Provided to Patients—(OMB Control Number 0910–0278—Extension)

FDA implements the provisions of the Federal Food, Drug, and Cosmetic Act (the act), designed to assure the adequate labeling of prescription (Rx) drugs. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug product is misbranded if its labeling is false or misleading in any particular, and under section 201(n) of the act (21 U.S.C. 321(n)), a drug's labeling is misleading if its labeling or advertising fails to reveal material facts. FDA also has the authority to collect this information under Title VI of Pub. L. 104–180 (Related Agencies and Food and Drug Administration) section 601 (Effective Medication Guides), which directs the development of "a mechanism to assess periodically * * * the frequency with which the [oral and written prescription] information is provided to consumers."

To assure that Rx drugs are not misbranded, FDA has historically asserted that adequate labeling requires certain information be provided to

patients. In 1982, when FDA revoked a planned initiative to require mandatory patient package inserts for all Rx drugs in favor of private sector initiatives in this area, the agency indicated that it will periodically conduct surveys to evaluate the availability of adequate patient information on a nationwide basis. Surveys of consumers about their receipt of Rx drug information were carried out in 1982, 1984, 1992, 1994, and 1996. This notice is in regard to continuing the survey in years 1998 and 2000.

The survey is conducted by telephone on a national random sample of adults age 18 and over who received a new prescription for themselves or a household member within the past 4 weeks. The interview assesses the extent to which oral and written information was received from the doctor, the pharmacist, and other sources. Survey respondents are also asked attitudinal questions, and demographic and other background characteristics are also obtained. The survey enables FDA to determine the frequency with which such information is provided to consumers. Without this information, the agency would be unable to assure that adequate Rx labeling and information is provided.

Respondents to this collection of information are adults (18 years or older) in the continental United States who have obtained one or more new (nonrefill) prescriptions at a pharmacy for themselves or a member of their household in the last 4 weeks.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Year	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1998	11,044	1	11,044	.03	331
1999	0	0	0	0	0
2000	11,044	1	11,044	.03	331
Annual average	7,363		7,363		221

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Year	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1998	1,000	1	1,000	.323	20
1999	0	0	0	0	0
2000	1,000	1	1,000	.32	320
Annual average	667		667		213

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate of 434 total annual burden hours is based on the 1996 survey administration, in which 11,044 potential respondents were contacted to obtain 1,000 interviews.

Dated: December 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32460 Filed 12–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0486]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements governing the registration of producers of drugs and listing of drugs in commercial distribution.

DATES: Submit written comments on the collection of information by February 9, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.39(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution (21 CFR Part 207)—(OMB Control Number 0910–0045—Extension)

Under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360), FDA is authorized to establish a system for registration of producers of drugs and for listing of drugs in commercial distribution. To implement section 510 of the act, FDA issued part 207 (21 CFR part 207). The regulations require an initial listing of products and a twice-yearly update. In addition, all registered drug firms are required to re-register annually between January and July. The penalties for failure to register or drug list are potential seizure and injunctions, as well as criminal enforcement actions.

The following are the specific reporting requirements under part 207: (1) Section 207.20 requires that owners and operators of all drug establishments that engage in the manufacture, preparation, propagation, or processing of drugs must register and use Form FDA 2656 (Registration of Drug Establishment) and Form FDA 2658 (Registered Establishments' Report of Private Label Distributors) to submit drug listing information or to request a Labeler Code, or both. (2) Section 207.21 requires that owners and operators must register an establishment within 5 days of beginning operations and shall complete Form FDA 2656e (Annual Registration of Drug Establishment) each year between January and July. Annual registration forms are mailed by the FDA in each calendar year according to a schedule based on the establishment parent company's name and must be completed within 30 days of the receipt. (3) Section 207.22(a) requires that Form FDA 2656 must be submitted when an establishment registers the first time. An establishment whose drug registration is validated under § 207.35(a) is required to make subsequent annual registrations as described in § 207.21(a). (4) Section 207.22(b) requires that Form FDA 2657 must be submitted for the first listing of drugs and subsequent June and December updates. (5) Section 207.25 specifies the information required in the establishment registration and drug listing. (6) Section 207.25(c) specifies the information about the drug that is required to be submitted (name, active ingredients, dosage strength, NDC number, manufacturer or distributor, size, shape, color, code imprint). (7) Section 207.26 specifies the information required in the amendments to the establishment registration. (8) Section 207.30 specifies the information required for updating the drug listing. (9) Section 207.31 specifies additional drug listing information that may be needed beyond that required in §§ 207.25 and 207.30.

The information obtained from the establishment registration forms FDA 2656 and FDA 2656(e) is used by FDA and other government agencies to keep an accurate and current list of all human and animal drug manufacturers, repackers, relabelers and other drug processors located in this country. This list is used by FDA for inspectional purposes as required by the act. In addition, the data is used by the public and private sector as a listing of the names and locations of drug firms. The information obtained from the listing forms FDA–2657 and FDA–2658 is used, through assignment of the National Drug Code numbers, for third party reimbursement payment in Medicare and Medicaid as well as other health care insurance firms.

Respondents to this collection of information are all owners and operators that engage in the manufacture, preparation, propagation, compounding, or processing of drugs and that are not exempt under section 510(g) of the act or subpart D of 21 CFR 207.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Form FDA–2656 Registration of Drug Establishment	207.20 207.22 207.25 207.26	2,500	1	2,500	.5	1,250
Form FDA–2656(e) Annual Registration of Drug Establishments	207.21 207.25 207.26	9,000	1	9,000	.5	4,500
Form FDA–2657 Drug Product Listing Form	207.22 207.30 207.31	45,000	1	45,000	.5	22,500
Form FDA–2658 Registered Establishment's Report of Private Label Distribution	207.20 207.21 207.25 207.26	6,200	1	6,200	.5	3,100
Total	207.25(c)	1,500	12.04	18,066	.5	9,033 40,383

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's Center for Drug Evaluation and Research, Product Information Management Branch, and its data and information on drug listing and establishment registration of manufacturers, repackers, relabelers, and other drug processors.

Dated: December 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32461 Filed 12–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0311]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the following proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on this collection of information by January 12, 1998.

ADDRESSES: Submit written comments on this collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

CGMP and Related Regulations for Blood and Blood Components—(21 CFR Parts 606 and 640)—(OMB Control Number 0910–0116)—Reinstatement

Under the statutory requirements contained in the Public Health Service Act (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, its manufacturer, and expiration date.

The CGMP and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enable FDA to perform meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Section 606.100(b) requires that written standard operating procedures (SOP's) be maintained for the collection, processing, compatibility testing, storage and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release of the lot or unit. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.151(e) requires that records of expedited transfusions in life-threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, § 606.160 requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. Section 606.165 requires that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(b) requires that fatal complications of blood collections and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days. In addition to the CGMP's in part 606, there are regulations in part 640 that require additional standards for blood and blood components: §§ 640.3(a) and (f), 640.4(a), 640.25(b)(4) and (c)(1), 640.27(b), 640.31(b), 640.33(b), 640.51(b), 640.53(c), 640.56(b) and (d), 640.61, 640.63(b)(3), (e)(1) and (e)(3), 640.65(b)(2), 640.66, 640.71(b)(1), 640.72, 640.73, and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described below.

The recordkeeping requirements for §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOP's, are included in the estimate for § 606.100(b); the recordkeeping requirements for § 640.27(b), which addresses the maintenance of donor health records for plateletpheresis, is included in the estimate for § 606.110(a); and the recordkeeping requirements for §§ 640.3(a)(2), 640.3(f), 640.4(a)(2), 640.25(b)(4) and (c)(1), 640.31(b), 640.33(b), 640.51(b), 640.53(c), 640.56(b) and (d), 640.61, 640.63(b)(3), (e)(1), and (e)(3), 640.65(b)(2), 640.71(b)(1), 640.72, and 640.76(a) and (b), which address the maintenance of various records, are included in the estimate for § 606.160. The reporting requirement in § 640.73, which addresses the reporting of fetal donor reactions, is included in the estimate for § 606.170(b).

Respondents to this collection of information are registered blood establishments. There are an estimated 3,021 FDA registered blood collection facilities in the United States that annually collect an estimated 23,500,000 units of whole blood and source plasma. Of the 3,021 registered establishments, 1,799 establishments perform pheresis collections and 278 establishments perform transfusions.

There are also an estimated 4,500 Health Care Financing Administration registered transfusion services. The recordkeeping chart reflects the estimate that 95 percent of the recordkeepers which collect 98 percent of the blood supply had developed SOP's as part of their normal business practice. Establishments may minimize burdens associated with the CGMP and related regulations by using model SOP's developed by blood organizations. These blood organizations represent almost all of the registered establishments.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.170(b)	42	1	42	8	336

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
606.100(b)	151	1	151	24	3,624
606.100(c)	151	3.6	550	3.6	550
606.110(a)	90	5	450	2.5	225
606.151(e)	239	12	2,868	1	239
606.160	151	3,112	470,000	1,556	234,956
606.165	151	3,112	470,000	258	38,958
606.170(a)	376	12	4,512	12	4,512

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32458 Filed 12–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0453]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by January 12, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Human Tissue Intended for Transplantation (OMB Control Number 0910–0302)—Reinstatement

FDA issued final regulations in the **Federal Register** of July 29, 1997 (62 FR 40429) to prevent the transmission of human immunodeficiency virus (HIV), hepatitis B, and hepatitis C through the use of human tissue for transplantation. The final regulations closely parallel those contained in the interim rule on human tissue intended for transplantation. Both the interim and final rule provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet standards intended to ensure appropriate screening and testing of human tissue donors and ensure that records are kept documenting that the appropriate screening and testing have been completed.

There are approximately 60 tissue establishments with 300 employees that are members of the American Association of Tissue Banks. There are an additional 600 individual members of which 50 percent are performing a tissue banking activity. The Eye Bank Association of America's membership consists of 120 eye banks of which 110 are in the continental United States.

With the rare exceptions noted in the preamble of the rule, FDA believes that all respondents perform donor testing and screening for HIV and hepatitis and these regulations add no additional requirements. 21 CFR 1270.31(c) and (d) require written procedures for the designation and identification of quarantined tissue and to prevent the contamination or cross-contamination of tissue during processing. 21 CFR 1270.35(c) requires documentation of the distribution and receipt of human tissue, completing the accounting of tissue between determination of suitability, and the destruction or disposition of the tissue.

When the interim rule was issued in the **Federal Register** of December 14, 1993 (58 FR 65514), accredited members of the American Association of Tissue Banks and the Eye Bank Association of America were already in compliance with the regulations by adhering to the standards established by these organizations. The requirements in the

final rule do not impose an additional burden since the members will be complying with the current organizations' standards which are comparable to the requirements in the final rule. To account for persons or establishments that may not be a member of an industry organization and, for whom therefore, the extent of compliance with the requirements of the final rule is unknown, FDA will be using 1 percent as an estimation of the information collection burden on the tissue industry.

Industry estimates that in 1994 there were 350,000 bone transplants, 42,000 corneal transplants, 5,000 patellar tendon transplants, and the transplantation of 5,000 square feet of skin. There are approximately 300 persons and 170 tissue banks currently operating in the Untied States affected by the regulations.

The total annual estimated burden imposed by this collection of information is 32,260 hours annually.

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1270.31 (b)–(d)	11	4	44	28	308
1270.35 (a)–(b)	11	420	4,620	290	3,190
1270.35 (c)	11	2,893	31,823	4,782	52,602
1270.35 (d)	11	17	187	17	187
Total	.....	.....	.....	.....	56,287

There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32459 Filed 12–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that published in the **Federal Register** of November 25, 1997 (62 FR 62777). The notice announced a meeting of the Orthopaedics and Rehabilitation Devices Panel of the Medical Devices Advisory Committee that is scheduled for December 11 and 12, 1997. The notice published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 25, 1997 (62 FR 62777), in FR Doc. 97–30914, FDA announced that a meeting of the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee would be held on December 11 and 12, 1997. The notice published with an error in the first sentence in the *Agenda* portion of the meeting.

Beginning on page 62777, in the 2d column, under the *Agenda* portion of the meeting, the first sentence should be corrected to read "On December 11, 1997, the committee will discuss, make recommendations, and vote on one premarket approval application (PMA) for a spinal intervertebral fusion device and a second PMA for a spinal intervertebral fusion system."

Dated: December 9, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–32584 Filed 12–9–97; 3:03 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1998:

Name: National Advisory Committee on Rural Health.

Dates and Time: February 1–4, 1998.

Place: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004, Phone: (202) 393–2000, FAX: (202) 626–6915.

The meeting is open to the public.

Agenda: The plenary session on Monday morning, February 2, will include a national legislative update, discussion of quality issues, universal service provisions of the Telecommunications Act, definition of rural, and telemedicine payment issues.

Presentations on graduate medical education, the rural minority health project, and long-term care; assisted living housing will be the bases of discussion for the Committee of the Whole on Tuesday.

The final plenary session will be convened on Wednesday, February 4, at 8:00 a.m. During this session there will be an update of the Office of Rural Health Policy activities, a report of the Committee of the Whole regarding the discussions that took place on Tuesday, and information regarding the next agenda and future meeting dates and places will be discussed. The meeting will be adjourned at approximately 11:30 a.m.

Anyone requiring information regarding the subject Committee should contact Dena S. Puskin, Sc.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Arlene A. Granderson or Lilly Smetana, Office of Rural Health Policy, (301) 443–0835.

Agenda items change as priorities dictate.

Dated: December 4, 1997.

Jane M. Harrison,

Committee Management Office, HRSA.

[FR Doc. 97–32409 Filed 12–10–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Human Genome Research Institute, Special Emphasis Panel ZHG1 (W2).

Date: December 18, 1997.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: December 18, 8:30 am to recess.

Agenda/purpose: To discuss a concept review of a component of NHGRI's five-year plan.

Note: Advanced Registration Required for Open session on December 18.

Closed: December 19, 8:30 am to adjournment.

Contact Person: Jane L. Peterson, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 614, Bethesda, Maryland 20892, (301) 496–7531.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The applications and/or contract proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet extramural process requirements.

Individuals who plan to attend these meetings and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Jane Peterson, (301) 496–7531, two weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: December 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32389 Filed 12–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SE) meeting:

Name of SEP: The Effects of Yoga on Peak Rates in Pregnant Asthmatics. (TELECONFERENCE).

Date: December 16, 1997.

Time: 3:30 p.m.–adjournment.

Place:

Contact Person: Norman Chang, Ph. D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institute of Health, HHS)

Dated: December 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32386 Filed 12–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Teleconference).

Date: December 16, 1997.

Time: 10:00 a.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

Contact Person: Dr. Katherine Woodbury, Scientific Review Administrator, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate a grant application.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding office.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: December, 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32387 Filed 12–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 10, 1997.

Time: 12 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32390 Filed 12–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting of the National Advisory Council for Nursing Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Institute of Nursing Research, National Institutes of Health on January 21–22, 1998, National Institutes of Health, William H. Natcher Building, 45 Center Drive, Conference Room F1 and F2, Bethesda, Maryland 20892.

The Council meeting will be open to the public on January 21 from 1:00 to 5:00 p.m. and January 22 from 9:00 to 10:00 a.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92–463, the Council meeting will be closed to the public from 10:00 a.m. to adjournment on January 22. These meetings are closed for the review, discussion, and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting, roster of committee members, and other information may be obtained from the Executive Secretary, Dr. Lynn Amende, NINR, NIH, Building 45, Room 3AN–12, Bethesda, Maryland, 20892, 301/594–5968. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93–361, Nursing Research, National Institutes of Health)

Dated: December 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32388 Filed 12–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

SUMMARY: The collection of information described below will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance officer at the address and/or phone numbers listed below.

DATES: Comments must be submitted on or before February 9, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Grannemann, Chief, Branch of Visitor Services, Division of Refuges, 703/358–2029; or Phadrea Ponds, Wildlife Biologist, U.S. Geological Survey, Fort Collins, CO, 970/226–9445.

SUPPLEMENTARY INFORMATION: The Service proposes to submit the following information collection clearance requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Congress authorized a recreation fee demonstration program in Pub. L. 104–134. The U.S. Fish and Wildlife Service was one of the four agencies mandated to implement the program and evaluate its impact on the visiting public. This study is designed to scientifically evaluate visitor reactions and impact of the fees on visitation to the national wildlife refuges (NWR). It will be conducted by the U.S. Geological Survey Biological Resources Divisions Social Economic and Institutional Analysis Section in Fort Collins, Colorado under a cooperative agreement with the U.S. Fish and Wildlife Service.

To represent the various types of fee changes, as well as fee demonstration refuges, six distinct fee programs and ten refuges were selected for inclusion in the study. These include (1) new entrance fees (Sacramento NWR, CA and Arkansas NWR, TX); (2) increased entrance fees (Dungeness NWR, WA); (3) new annual passes (Chincoteaque NWR, VA and Crab Orchard NWR, IL); (4) new hunt fees (St. Catherine's Creek NWR, MS and Balcones NWR, TX); (5) non-hunt use permits (Buenos Aires NWR, AZ and Fort Niobrara NWR, NE) and (6) non-fee adjustments (Piedmont NWR, GA). Random samples of individuals using these refuges will be surveyed. The Service plans to use as part of the evaluation process a survey questionnaire to assess the different fee programs. An on-site questionnaire will be distributed during the peak season to a random sample of the visiting public. A minimum of 400 completed surveys will be obtained for each fee type. An additional 200 surveys will be obtained from Sacramento NWR to allow for examination of credit card entrances as well as new entrance fees in general. Overall, this will result in a total sample of 2,600 respondents. The margin of error for each fee type is ±5% at the 95% confidence level. The information gained from this survey will provide a scientific basis for evaluating the viability of the fee program among the visiting public. The lead project officer is Dr. Jonathan G. Taylor, Research Social Scientist, phone 970–226–9438, 4512 McMurry Avenue, Fort Collins, CO 80525–3400.

Title: Evaluation of visitor responses to recreation fee demonstration programs.

Bureau form number: None.

Frequency of collection: One time.

Description of respondents: Individuals and households.

Number of respondents: 2,600.

Estimated completion time: 10 minutes.

Burden estimate: 433 hours.

Dated: December 4, 1997.

Jeffrey M. Danskin,

Acting Assistant Director, Refuges and Wildlife.

[FR Doc. 97–32422 Filed 12–10–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–836697

Applicant: Bernice Constantin, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services, Gainesville, Florida

The applicant requests authorization to take (harass or translocate specimens to alleviate depredation of agricultural commodities and reduce hazards to human health or safety) the bald eagle, *Haliaeetus leucocephalus*, wood stork, *Mycteria americana*, peregrine falcon, *Falco peregrinus*, whooping crane, *Grus americana*, Puerto Rican plain pigeon, *Columba inornata wetmorei*, and roseate tern, *Sterna dougallii dougallii*, throughout the species ranges in Florida, Puerto Rico, and the Virgin Islands, for the purpose of enhancement of survival of the species.

PRT–837136

Applicant: Paul J. Marangelo, West Sand Lake, New York

The applicant requests authorization to take (salvage dead shells, and harass during surveys) the dwarf wedge mussel, *Alasmidonta heterodon*, throughout the species range in North Carolina, for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by January 12, 1998.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: November 26, 1997.

Bill A. Grabill,

Acting Regional Director.

[FR Doc. 97–32371 Filed 12–10–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: James Meehan, Edgewater, MD, PRT–837140.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Linda Winkler, University of Pittsburgh, Titusville, PA, PRT–835441.

The applicant requests a permit to import mantled howler monkey (*Alouatta palliata*) blood and feces samples collected at LaSuerte, Costa Rica, for the purpose of scientific research.

Applicant: Carla Cicero, University of California, Berkeley, CA, PRT–836805.

The applicant requests a permit to export hair samples collected from museum specimens of cheetah (*Acononyx jubatus*), Southern sea otter (*Enhydra lutris nereis*), clouded leopard (*Neofelis nebulosa*), and leopard cat (*Felis (Prionailursus) bengalensis bengalensis*), to Yeong-Tyi Day, National Pingtung Polytechnic Institute, Taiwan, for the purpose of scientific research.

Applicant: Randy Miller, Acton, CA, PRT–835825.

The applicant requests a permit to export and reimport two captive born leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three year period.

Applicant: Gentle Jungle, Lebec, CA, PRT–837241.

The applicant requests a permit to export and reimport one captive born tiger (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three year period.

Applicant: White River Bison Farm, Anderson, IN, PRT–836462.

The applicant requests a permit to import one male and one female captive born yearling wood bison (*Bison bison athabascae*) for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director on or before January 12, 1998.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Monterey Bay Aquarium, Monterey, CA, PRT–837131.

Permit Type: Take for enhancing the survival or recovery of the species [Sec 104(c)(4)(A) of the Marine Mammal Protection Act].

Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*). Opportunistic recovery of beached/stranded animals.

Summary of Activity to be Authorized: The applicant proposes to take (rescue, rehabilitate, and display) southern sea otters. Public display of these sea otters will be limited to specially constructed facilities which the applicant proposes allows the public to view normal rehabilitation procedures, while shielding otters undergoing rehabilitation from the sight and sounds of the viewing public. The applicants purpose for this exhibit is enhancement of the species through rehabilitation of stranded specimens and public education.

Source of Marine Mammals: Natural range of southern sea otters in California waters.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is

forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: George Kalb, Las Vegas, NV, PRT–837107.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Dwight Davis, Houston, TX, PRT–837238.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted prior to April 30, 1994 from the Davis Strait polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received on or before January 12, 1998. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: December 5, 1997.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–32403 Filed 12–10–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On September 17, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 180, Page 48880, that an application had been filed with the Fish and Wildlife Service by Daniel Currier, Fargo, ND for a permit (PRT–834123) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel population, Northwest Territories, Canada for personal use.

Notice is hereby given that on November 13, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: December 5, 1997.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–32404 Filed 12–10–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: Fort Belknap Irrigation Project, Montana

ACTION: Notice of proposed irrigation Operation and Maintenance (O&M) rate adjustment.

SUMMARY: On October 2, 1997, a notice was published in the **Federal Register**, Volume 62, Number 191, Page 51680 (62 FR 51680), by the Bureau of Indian Affairs proposing to change the assessment rates for operating and maintaining the Fort Belknap Irrigation Project for 1998, 1999, 2000, 2001, 2002 and subsequent years. See 62 FR 51680 for additional information concerning the proposed rate change. The notice of proposed rate adjustment provided a 30-day period for public comment. At the written request of the Fort Belknap Indian Community, Community Council, a second public comment period is being provided.

DATES: Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before January 12, 1998.

ADDRESSES: All comments concerning the proposed rate change must be in writing and addressed to: Director, Office of Trust Responsibilities, Attn.: Irrigation and Power, MS–4513–MIB, Code 210, 1849 "C" Street, NW, Washington, D.C. 20240, Telephone (202) 208–5480.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to Part 209 Departmental Manual, Chapter 8.1A, and memorandum dated January 25, 1994, from the Chief of Staff, Department of the Interior, to the Assistant Secretaries and heads of bureaus and offices.

Dated: December 3, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–32396 Filed 12–10–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: Fort Hall Irrigation Project; Idaho

ACTION: Notice of Operation and Maintenance (O&M) rate adjustment.

SUMMARY: The Bureau of Indian Affairs is adjusting the assessment rates for operating and maintaining the Fort Hall Irrigation Project, Michaud Unit, for 1998, 1999, and subsequent years. The following table illustrates the impact of the rate adjustment.

Fort Hall Irrigation Project

Michaud Unit Irrigation Rate Per Assessable Acre

Rate category	Present rate	1998 rate	1999 rate
Basic rate	$25.50	$26.50	$27.50
Pressure rate	37.50	38.50	39.50

COMMENTS: On August 25, 1997, a notice was published in the **Federal Register**, Volume 62, Number 164, Page 44992, by the Bureau of Indian Affairs proposing to adjust the assessment rates for operating and maintaining the Fort Hall Irrigation Project, Michaud Unit, for 1998, 1999 and subsequent years. A 30-day public comment period was provided for the proposed irrigation rate adjustment. No comments were received.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702.

DATES: The new irrigation assessment rates will become effective upon publication of this notice.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 15, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with § 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the fixing and announcing the rates for annual operation and maintenance assessments and related information for BIA operated and owned irrigation projects.

The purpose of this notice is to announce an adjustment in the Michaud Unit, Fort Hall Irrigation Project, assessment rates proportionate with actual operation and maintenance costs. The change in the assessment rate is based on the electrical energy cost increase imposed by the Bureau of Reclamation (BOR). In September 1996 the BOR notified us they are increasing the electrical energy charge for its users. The rate was set at 12.70 mills per kilowatt hour, an increase of 19.5%. The increased electrical energy cost was absorbed by the project during the 1997 irrigation season.

The assessment rates are based on an estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his/her management control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(d) Capitalization expenses;

(e) Acquisition expenses, and

(f) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

Payments

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures. Beginning 30-days after the due date interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts over 90-days old and will accrue from the date the debt became delinquent. After 180-days, a delinquent debt will be forwarded to the United States Treasury for further action in accordance with the Debt Collection Improvement Act of 1996 (Public Law 104–134).

Dated: December 3, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–32397 Filed 12–10–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska

[AK–962–1410–00–P; AA–8314]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 12.9 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 4 S., R. 97 W.,
Sec. 6.
T. 4 S., R. 98 W.,
Sec. 1.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 12, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–32402 Filed 12–10–97; 8:45 am]

BILLING CODE 4310–68–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–12610]

Public Land Order No. 7302; Withdrawal of Public Lands for Addition to the Arapaho National Wildlife Refuge; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws from surface entry and mining 1,720 acres of public lands and transfers administrative jurisdiction to the Fish and Wildlife Service for a 50-year period. This action will allow the Fish and Wildlife Service to administer the lands as a part of the Arapaho National Wildlife Refuge. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: December 11, 1997.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)),

but not from leasing under the mineral leasing laws, and administrative jurisdiction transferred to the Fish and Wildlife Service as an addition to the Arapaho National Wildlife Refuge:

Sixth Principal Meridian

T. 7 N., R. 79 W.,
sec. 19, SE¼NE¼.
T. 7 N., R. 80 W.,
sec. 10, NE¼NE¼;
sec. 11, N½NW¼;
sec. 13, SW¼SW¼ and W½SE¼;
sec. 14, NW¼NW¼;
sec. 15, NE¼NE¼.
T. 8 N., R. 79 W.,
sec. 8, S½;
sec. 9, S½;
sec. 17.
T. 8 N., R. 80 W.,
sec. 12, S½NE¼.

The areas described aggregate 1,720 acres in Jackson County.

2. This withdrawal and transfer of administrative jurisdiction places these lands under the management of the Fish and Wildlife Service pursuant to 43 U.S.C. 668dd (1994).

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: November 28, 1997.
Bob Armstrong,
Assistant Secretary of the Interior.
[FR Doc. 97–32421 Filed 12–10–97; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP7–0192; OR–19100, OR–19117]

Public Land Order No. 7303; Revocation of Executive Orders Dated April 30, 1917, and November 26, 1917; Oregon

AGENCY: Bureau of Land Management, Interior.
ACTION: Public land order.

SUMMARY: This order revokes in their entirety, two Executive orders which withdrew 120 acres of public lands for the Bureau of Land Management's Powersite Reserve Nos. 625 and 663. The lands are no longer needed for the purposes for which they were withdrawn. This action will open 120 acres to surface entry, except to the agricultural land laws due to an overlapping withdrawal. All of the lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: March 12, 1998.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated April 30, 1917, which established Powersite Reserve No. 625, is hereby revoked in its entirety:

Willamette Meridian

T. 34 S., R. 1 E.,
sec. 2, SW¼SW¼.
T. 35 S., R. 1 E.,
sec. 18, NW¼SE¼.

The areas described aggregate 80 acres in Jackson County.

2. The Executive Order dated November 26, 1917, which established Powersite Reserve No. 663, is hereby revoked in its entirety:

Willamette Meridian

T. 2 S., R. 7 E.,
sec. 33, SW¼NE¼.

The area described contains 40 acres in Clackamas County.

3. The lands described in paragraphs 1 and 2 are included in a Bureau of Land Management withdrawal made by Public Land Order No. 5490, as modified by Public Land Order Nos. 5542 and 7043 for multiple use, and will remain closed to the agricultural land laws.

4. At 8:30 a.m., on March 12, 1998, the lands described in paragraphs 1 and 2, will be opened to the operation of the public land laws generally, except to the agricultural land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on March 12, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. The State of Oregon has a preference right, as to the lands described in paragraphs 1 and 2, for public highway right-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

Dated: November 28, 1997.
Bob Armstrong,
Assistant Secretary of the Interior.
[FR Doc. 97–32419 Filed 12–10–97; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: G8–0048]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 15 S., R. 1 W., accepted September 18, 1997
T. 20 S., R. 1 W., accepted October 16, 1997
T. 14 S., R. 2 W., accepted November 18, 1997
T. 14 S., R. 7 W., accepted November 12, 1997
T. 23 S., R. 9 W., accepted September 22, 1997
T. 27 S., R. 11 W., accepted October 10, 1997
T. 39 S., R. 13 W., accepted October 20, 1997

Washington

T. 36 N., R. 39 E., accepted November 7, 1997

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: December 1, 1997.
Robert D. DeViney, Jr.,
Chief, Branch of Realty and Records Services.
[FR Doc. 97–32420 Filed 12–10–97; 8:45 am]
BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–392]

In the Matter of Certain Digital Satellite System (DSS) Receivers and Components Thereof; Notice of Final Commission Determination of No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.
ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has made a final determination of no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3107.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.45).

The Commission instituted this patent-based section 337 investigation on December 11, 1996, based on a complaint filed by Personalized Media Communications ("PMC") of New York, New York.[1] PMC's complaint named seven respondents: DIRECTV, Inc., United States Satellite Broadcasting Company ("USSB"); Hughes Network Systems ("HNS"); Hitachi Home Electronics (America) Inc. ("Hitachi"); Thomson Consumer Electronics, Inc. ("Thomson"); Toshiba America Consumer Productions, Inc. ("Toshiba"); and Matsushita Electric Corporation of America ("Matsushita"). DIRECTV, USSB, HNS, and Hitachi will be collectively referred to as the "broadcaster respondents" or "broadcasters," while Thomson, Toshiba, and Matsushita will be collectively referred to as the "manufacturing respondents."

At issue are PMC's allegations that the broadcaster and manufacturing respondents violated section 337 by importing into the United States, selling for importation, and/or selling within the United States after importation certain digital satellite system ("DSS") receivers and components thereof that infringe claims 6, 7, and/or 44 of U.S. Letters Patent 5,335,277 ("the '277 patent"), owned by PMC. Other claims originally asserted by PMC were either withdrawn (claims 3, 12, and 15) or were found to be invalid as anticipated under 35 U.S.C. 102, on respondents' motion for summary judgment (claim 35).

The presiding administrative law judge (ALJ) held an evidentiary hearing from June 30, 1997, to July 12, 1997. On October 20, 1997, the ALJ issued his final initial determination ("ID"), in which he concluded that there was no violation of section 337, based on his findings that: (a) each of claims 6, 7, and 44 is invalid as indefinite under 35 U.S.C. 112, ¶ 2; (b) each of claims 6, 7, and 44 is invalid as non-enabled under 35 U.S.C. 112, ¶ 1; (c) claim 7 is invalid as anticipated under 35 U.S.C. 102; and (d) PMC failed to show that the accused receivers and components infringed any of claims 6, 7, or 44, either directly or through contributory or induced infringement. The ALJ rejected other invalidity and unenforceability defenses raised by respondents and found that PMC satisfied the domestic industry requirement.

On October 31, 1997, PMC filed a petition for review of the ID, arguing that the ALJ erred in finding that each of claims 6, 7, and 44 is invalid as indefinite and non-enabled, and further erred in finding that the accused receivers and components do not infringe any of the claims at issue. The manufacturing and broadcaster respondents filed separate contingent petitions for review, asserting that the Commission should also review the ALJ's findings rejecting certain invalidity and inequitable conduct arguments, provided the Commission grants PMC's petition for review. The broadcaster respondents also requested that the Commission reverse the ALJ's refusal to allow the testimony of their expert witness David Stewart and his rejection of their offer of proof. The Commission investigative attorney did not file a petition for review and, in his response to the petitions for review, generally supported the major findings in the ID.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review, and thereby adopted, the ALJ's construction of each of the claims at issue, and his findings that: (1) Each of claims 6, 7, and 44 is invalid as indefinite under 35 U.S.C. 112, ¶ 2; (2) the accused receivers and components do not infringe any of the three claims at issue, either directly or through contributory or induced infringement; and (3) there is consequently no violation of section 337. The Commission took no position on the remaining issues addressed in the ID. Finally, the Commission affirmed the decision of the ALJ to refuse to allow the Stewart testimony and to reject the broadcaster respondents' offer of proof.

Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–2000. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

Issued: December 4, 1997.
By order of the Commission.
Donna R. Koehnke,
Secretary.
[FR Doc. 97–32333 Filed 12–10–97; 8:45 am]
BILLING CODE 7020–02–P

[1] *Notice of Investigation*, 61 F.R. 66,695–96 (Dec. 18, 1996).

DEPARTMENT OF JUSTICE

[AG Order No. 2131–97]

Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits

AGENCY: Department of Justice.
ACTION: Notice of guidance; rescission of prior order.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States are

"qualified aliens" eligible for certain federal, state, and local public benefits. To be qualified under this provision, an alien must demonstrate, among other things, that there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought. As initially enacted, the PRWORA vested in the Attorney General the authority to determine whether a substantial connection exists between the battery or extreme cruelty suffered by the alien or alien's child and the specific benefits sought by the alien. The Attorney General exercised that authority in Attorney General Order No. 2097–97. Subsequent to the issuance of that Order, Congress passed the Balanced Budget Act of 1997, which amended the PRWOR to vest the authority for making substantial connection determinations in benefit providers, rather than the Attorney General. The Balanced Budget Act also requires the Attorney General to issue guidance to benefit providers on the standards and methods to be used in making substantial connection determinations. Pursuant to the Balanced Budget Act, this Notice rescinds Attorney General Order No. 2097–97 and provides guidance to benefit providers regarding substantial connection determinations.

DATES: This Notice is effective November 23, 1997.

FOR FURTHER INFORMATION CONTACT: Diane Rosenfeld, Senior Counsel, The Violence Against Women Office, United States Department of Justice, 950 Pennsylvania Ave., Washington, D.C. 20530, (202) 616–8894.

SUPPLEMENTARY INFORMATION: Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Law 104–193, as added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, and amended by sections 5571–72 and 5581 of the Balanced Budget Act of 1997, Pub. L. 105–33, provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States are "qualified aliens" eligible for certain federal, state, and local public benefits. To be a qualified alien under this provision, an alien must demonstrate that: (1) The Immigration and Naturalization Service or the Executive Office for Immigration Review has granted a petition or application field by or on behalf of the alien, the alien's child, or the alien child's parent under one of several subsections of the Immigration and Nationality Act (INA), or has found that a pending petition or application sets forth a prima facie case for relief under the applicable provision of the INA; (2) the alien, the alien's child, or the alien child's parent has been battered or subjected to extreme cruelty in the United States: (a) In the case of an abused alien, by the alien's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consents to or acquiesces in such battery or cruelty; (b) in the case of an alien whose child is abused, by the alien's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consents to or acquiesces in such battery or cruelty and the alien did not actively participate in the battery or cruelty; (c) in the case of an alien child whose parent is abused, by the parent's spouse or a member of the spouse's family residing in the same household as the parent and the spouse consents to or acquiesces in such battery or cruelty; (3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought and (4) the battered alien, child, or parent no longer resides in the same household as the abuser.

As originally enacted, section 431(c) of the PRWORA vested in the Attorney General the responsibility for determining whether an alien applicant for benefits had demonstrated a substantial connection between the battery or extreme cruelty and the applicant's need for particular benefits. The Attorney General exercised that authority in Attorney General Order No. 2097–97, Determination of Situations that Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Benefits, 62 FR 39874 (July 24, 1997). In drafting this Determination, the Attorney General consulted with federal benefit-granting agencies that are implementing section 431(c) of PRWORA and with other interested parties.

Subsequently, Congress enacted the Balanced Budget Act of 1997, which amended section 431(c) of the PRWORA to require that benefit providers, rather than the Attorney General, determine whether an applicant for benefits under this section has demonstrated a substantial connection between battery or extreme cruelty and the need for the particular benefit sought. Although section 5571 of the Balanced Budget Act transfers the authority to make substantial connection determinations from the Attorney General to the benefit provider, it directs the Attorney General to issue guidance to benefit providers on the standards and methods for making such determinations.[1] That guidance is set forth below.

This Notice of guidance is an "interpretive rule" and therefore is not subject to the notice and comment or delay in effective date requirements of 5 U.S.C. 553. This Determination is not a "significant regulatory action" under Executive Order 12866 and is not a "major rule" under 5 U.S.C. 804.

Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits

By virtue of the authority vested in me as Attorney General by law, including section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, I hereby issue the following guidance to federal, state, and local public benefit providers concerning the standards and methods to be used in determining whether an alien applicant for benefits demonstrates that there is a substantial connection between the battery or extreme cruelty suffered by the alien, the alien's child, or (in the case of an alien child) the alien's parent and the need for the public benefit(s) sought. The following list sets forth the circumstances under which I would find the existence of a substantial connection. Although this guidance is not binding upon benefit providers, it is intended to assist benefit providers in developing standards by which to make substantial connection determinations.

(1) Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to become self-sufficient following separation from the abuser;

(2) Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent from the abuser;

(3) Where the benefits are needed due to a loss of financial support resulting from the applicant's, his or her child's, and/or (in the case of an alien child) his or her parent's separation from the abuser;

[1] Section 5571 also requires the Attorney General to issue guidance on the meaning of the terms "battery" and "extreme cruelty" as employed in the PRWORA, as amended. That information can be found in Exhibit B to Attachment 5 of the Interim Verification Guidance.

(4) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support or child custody disputes) cause the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to lose his or her job or require the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to leave his or her job for safety reasons;

(5) Where the benefits are needed because the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

(6) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the applicant's and/or (in the case of an alien child) the applicant's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser);

(7) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

(8) Where the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the applicant, the applicant's child, an/or (in the case of an alien child) the applicant's parent and/or to care for any resulting children; or

(9) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant, the applicant's child, and/or (in the case of an alien child) the alien's parent had when living with the abuser.

Dated: November 23, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–32438 Filed 12–10–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities; Existing Collection; Comment Request

ACTION: Revision to existing collection: Summary of sentenced population movement—Annual data collection.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed collection was previously published in the **Federal Register** on September 16, 1997, allowing for a 60-day public comment period. One comment was received by the Bureau of Justice Statistics. Changes were performed where appropriate.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 12, 1998. All comments and/or questions pertaining to this pending request for approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention Ms. Victoria Wassmer, Department of Justice Desk Officer, Washington, DC 20530. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic mechanical, or other technology collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this Information Collection

(1) *Type of information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Summary of Sentenced Population Movement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* NPS–1. Bureau of Justice Statistics.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Federal, State, and Local or Tribal Government. The National Prisoner Statistics—1 is the only national source of information on the number of persons under jurisdiction or in custody at midyear and yearend; the number and type of admissions and releases; the number of inmate deaths by cause; counts by sex, race and Hispanic origin; number of inmates with HIV/AIDS, and prison capacity and jail backups due to crowding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.* Fifty-two respondents at 6.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Three hundred thirty-eight annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 5, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–32407 Filed 12–10–97; 8:45 am]

BILLING CODE 4410–18–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Performance Reviews of the President and Inspector General

TIME AND DATE: The Board of Directors Committee on Performance Reviews of the President and Inspector General will meet on December 18, 1997. The meeting will commence at 9 a.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street N.E.—10th Floor, Washington, DC 20002.

STATUS OF MEETING: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will

be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act (5 U.S.C. 552b(c)(2) & (6)) and the corresponding provisions of the Legal Services Corporation's implementing regulation (45 CFR 1622.5(a) & (e)). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

Closed Session

2. Conduct a performance appraisal of the President of the Corporation.
3. Conduct a performance appraisal of the Inspector General of the Corporation.

Open Session

4. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Jean Edwards at (202) 336–8811.

Dated: December 8, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–32547 Filed 12–9–97; 12:23 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Forms 540, 540A, 541, 541A, 542, and 542A, Uniform Low-Level Radioactive Waste Manifest forms.

2. *Current OMB approval number:* NRC Forms 540, 540A: 3150–0164; NRC Forms 541, 541A: 3150–0166; NRC Forms 542, 542A: 3150–0165.

3. How often the collection is required: Forms are used by shippers whenever radioactive waste is shipped. Quarterly reporting or less frequent is made to NRC depending on specific license conditions.

4. *Who is required or asked to report:* All NRC licensed low-level waste facilities. All generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility must complete the appropriate forms.

5. *The number of annual respondents:* NRC Form 540: 8,000; NRC Form 541: 8,000; NRC Form 542: 600.

6. *The number of hours needed annually to complete the requirement or request:* NRC Form 540: 9,380 hours (1.17 hours per response); NRC Form 541: 43,463 hours (5.43 hours per response); NRC Form 542: 260 hours (0.43 hours per response).

7. *Abstract:* NRC Forms 540, 541, and 542, together with their continuation pages, designated by the "A" suffix, provide a set of standardized forms to meet Department of Transportation (DOT), NRC, and State requirements. The forms were developed by NRC at the request of low-level waste industry groups. The forms provide uniformity and efficiency in the collection of information contained in manifests which are required to control transfers of low-level radioactive waste intended for disposal at a land disposal facility. NRC Form 540 contains information needed to satisfy DOT shipping paper requirements in 49 CFR part 172 and the waste tracking requirements of NRC in 10 CFR part 20. NRC Form 541 contains information needed by disposal site facilities to safely dispose of low-level waste and information to meet NRC and State requirements regulating these activities. NRC Form 542, completed by waste collectors or processors, contains information which facilitates tracking the identity of the waste generator. That tracking becomes more complicated when the waste forms, dimensions, or packagings are changed by the waste processor. Each container of waste shipped from a waste processor may contain waste from several different generators. The information provided on NRC Form 542 permits the States and Compacts to know the original generators of low-level waste, as authorized by the Low-Level Radioactive Waste Policy Amendments Act of 1985, so they can ensure that waste is disposed of in the appropriate Compact.

Submit, by February 9, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 5th day of December, 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–32416 Filed 12–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–89] and [Docket No. 50–163]

Notice of Application for Decommissioning Amendment General Atomics; Triga Mark I Research Reactor and Triga Mark F Research Reactor

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from General Atomics dated April 18, 1997, for a license amendment approving the decommissioning plan for the TRIGA Mark I (Facility License No. R–38) and TRIGA Mark F (Facility License No. R–163) research reactors located at General Atomics' site in San Diego, California.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 4th day of December 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32415 Filed 12–10–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on December 17, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion open to the public:

(1) Request to Post a GS–12 District Manager Position for the Little Rock, Arkansas District Office

(2) Federal Ban on Smoking on Federal Property

(3) Proposed Flexitime/Variable Workweek Changes

(4) Strategic IRM Plan—1977–2002

(5) Regulations:

A. Part 209.12, Railroad Employers' Reports and Responsibilities

B. Part 295, Payments Pursuant to Court Decree or Court-Approved Property Settlement

(6) Year 2000 Issues

(7) Labor Member Truth in Budgeting Status Report

Portion closed to the public:

(A) SES Performance Appraisals for FY-1997—Memo from Chairman, PRB.

(B) SES Recertification for 1997.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: December 8, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–32521 Filed 12–9–97; 10:41 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22925; File No. 812–10606]

Dreyfus Variable Investment Fund, et al.

December 4, 1997.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an amended order to permit shares of the Dreyfus Variable Investment Fund and the Dreyfus Life and Annuity Index Funds, Inc. (d\b\a Dreyfus Stock Index Fund) to be sold to and held by qualified pension and retirement plans outside the separate account context.

APPLICANTS: Dreyfus Variable Investment Fund ("DVIF"), Dreyfus Life and Annuity Index Fund, Inc. (d\b\a Dreyfus Stock Index Fund) ("DSIF") (together, the "Funds") and The Dreyfus Corporation ("Dreyfus").

FILING DATE: The application was filed on April 4, 1997, and amended and restated on October 10, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on December 29, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. DVIF is a Massachusetts business trust registered under the 1940 Act as an open-end diversified management investment company. It presently consists of eleven classes of stock and may in the future add one or more additional classes of stock.

2. DSIF is a Maryland corporation registered under the 1940 Act as an open-end non-diversified management investment company. DSIF is a single portfolio mutual fund that offers only one class of stock for investment.

3. Dreyfus, an investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser for each Fund. Fayez Sarofim & Co. is the subinvestment adviser for DVIF's Capital Appreciation Portfolio. Mellon Equity Associates is DSIF's index fund manager.

4. On December 23, 1987, an order was issued granting exemptive relief to permit shares of DVIF to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (Release No. IC–16188, File No. 812–6698) (the "DVIF Order"). Similarly, on August 23, 1989, an order was issued to DSIF granting identical exemptive relief (Release No. IC–17118, File No. 812–7253) (the "DESIF Order") (together, the DVIF Order and the DSIF Order, the "Original Orders").

5. The Original Orders allow DVIF and DSIF to offer their shares to insurance companies as the investment vehicle for their separate accounts supporting variable annuity contracts, schedule premium variable life insurance contracts and flexible premium variable life insurance contracts (collectively, "Variable Contracts"). Separate accounts owning shares of a Fund and their insurance company depositors are referred to herein as "Participating Separate Accounts" and "Participating Insurance Companies," respectively.

6. The Original orders do not expressly address the sale of shares of the Funds to qualified pension and retirement plans outside of the separate account context ("Qualified Plan"). Applicants propose that the Funds be permitted to offer and sell shares of the Funds to Qualified Plans.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an amended order

pursuant to Section 6(c) of the 1940 Act, exempting scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such an account) and the Applicants from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and rules 6e–2(b)(15) and 6e–3(T)(b)(15) (and any comparable rule) thereunder, respectively, to the extent necessary to permit shares of the Funds to be sold to and held by qualified Plans.

2. Section 6(c) of the 1940 Act provides in part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available, however, only where the management investment company underlying the separate account ("underlying fund") offers its shares "to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding/" Therefore, Rule 6e–2 does not permit either mixed funding or shared funding because the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. Rule 6e–2(b)(15) also does not permit the sale of shares of the underlying fund to Qualified Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registerpd under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) also provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where the separate account's underlying fund offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Therefore, Rule 6e–3(T) permits mixed funding but does not permit shared funding and also does not permit the sale of shares of the underlying fund to Qualified Plans. As noted above, the Original Orders granted the Funds exemptive relief to permit mixed and shared funding, but did not expressly address the sale of shares of the Funds to Qualified Plans.

5. Applicants note that if the Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans.

6. Applicants state that changes in the federal tax law have created the opportunity for each Fund to increase its asset base through the sale of shares of each Fund Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the assets underlying Variable Contracts. Treasury Regulations provide that, to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Treasury Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment of Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

7. Applicants state that the promulgation Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Section 9(a) provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying portfolio investment company.

9. Applicants state that the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals involved in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts.

10. Applicants previously requested and received relief from Section 9(a) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding. Applicants maintain that the relief previously granted from Section 9(a) will in no way be affected by the proposed sale of shares of the Funds to Qualified Plans. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which Qualified Plans use such Funds. Applicants maintain that the requirements of Section 9(a) because of investment by Qualified Plans would not serve any regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of either Fund by virtue of its shareholders.

11. Applicants state that Rules 6e–2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contractowners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard contractowner's voting instructions if the contractowners initiate any change in such company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

12. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass through the voting rights to plan participants. Applicable law expressly reserves voting rights to certain specified persons. Under Section 403(a) of the Employment Retirement Income Security Act ("ERISA"), shares of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions. (1) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (2) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two above exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the share held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, the Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Qualified Plan investors with respect to voting of the respective Fund's shares. Accordingly, Applicants state that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass through voting privileges.

13. Even if a Qualified Plan were to hold a controlling interest in a Fund, the Applicants argue that such control would not disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, the Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

14. Applicants state that some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, the Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. The purchase of shares of the Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that they do not believe that the sale of the shares of the Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners.

16. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

17. Treasury Department Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, Treasury Regulations specifically permit "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations or revenue rulings thereunder, present any inherent conflicts of interest.

18. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to made the distributions, the Separate Account and Qualified Plan will redeem shares of the Funds at their respective net asset value in conformity with Rule 22c-1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Qualified Plan will make distributions in accordance with the terms of the Qualified Plan.

19. Applicants state that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans. In connection with any meeting of shareholders, the Funds will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary

for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e-2 and 6e-3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to share of the Funds would be no different from the voting rights that are provided to Qualified Plans with respect to share of funds sold to the general public.

20. Applicants have concluded that even if there should arise issues with respect to a state insurance commissioner's veto powers over investment objectives where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds. Applicants note that state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

21. Applicants also state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exist between variable annuity contractowners and variable life insurance contractowners.

22. Applicants state that the sale of shares of the Funds to Qualified Plans in addition to separate accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by the Funds. This may benefit variable contractowners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

23. Applicants assert that, regardless of the type of shareholders in each Fund, Dreyfus is or would be contractually and otherwise obligated to manage each Fund solely and exclusively in accordance with that Fund's investment objectives, policies and restrictions as well as any guidelines established by the Board of Directors of such Fund (the "Board"). Dreyfus works with a pool of money and does not take into account the identify of the shareholders. Thus, each Fund will be managed in the same manner as any other mutual fund. Applicants therefore see no significant legal impediment to permitting the sale of shares of the Funds to Qualified Plans.

Conditions for Relief

Applicants consent to the following condition:

1. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (a "Participant") shall report any potential or existing conflicts to the applicable Board. A Participant will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. If pass-through voting is applicable, this includes, but is not limited to, an obligation by each Participant to inform the Board whenever it has determined to disregard the voting instructions of its participants. The responsibility to report such conflicts and information, and to assist the Board will be the contractual obligations of the Participant under its agreement governing participation in the Fund and such agreement shall provide that such responsibilities will be carried out with a view only to the interests of participants in such Qualified Plan.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the contractowners of all the separate accounts investing in the Fund and participants in Qualified Plans investing in the Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable life insurance contract-owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. If it is determined by a majority of a Board of a Fund, or by a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Qualified Plans shall, at their expense and to the extent reasonably practicable (as determined by a majority of a the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the Qualified Plans from the Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of a Fund; and (b) establishing a new registered management investment company or managed separate account.

4. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard its participants' voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan many be required, at the election of the Funds, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action, will be a contractual obligation of all Participants under their agreements governing participation in the Fund, and these responsibilities, will be carried out with a view only to the interests of participants in such Qualified Plans. For purposes of this condition, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund, or Dreyfus be required to establish a new funding medium for any Variable Contract. Further, no Qualified Plan shall be required by this condition to establish a new funding medium for any Qualified Plan if: (a) A majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer or (b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes such decision without a vote of its participants.

5. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to all Qualified Plans.

6. Each Qualified Plan will vote as required by applicable law governing Qualified Plan documents.

7. All reports of potential or existing conflicts received by a Board and all Board actions with regard or determining the existence of a conflict of interest, notifying Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will disclose in its prospectus that: (a) Shares of the Fund may be offered to insurance company separate accounts on a mixed and shared basis and to Qualified Plans; (b) materials irreconcilable conflicts may arise between the interests of various contractowners participating in the Fund and the interests of Qualified Plans investing in the Fund; and (c) the Board of such Fund will monitor events in order to identify the existence of any material conflict and determine what action, if any, should be taken in response to such material irreconcilable conflict.

9. No less than annually, the Participants shall submit to each Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, material and data shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

10. Neither Fund will accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of such Fund unless such Qualified Plan executes a fund participation agreement with the relevant Fund including the conditions set forth herein to the extent applicable. A Qualified plan will execute a shareholder application containing an acknowledge of this condition at the time of its initial purchase of shares of such Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors of the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32366 Filed 12–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22926; File No. 812–10782]

PBHG Insurance Series Fund, Inc., et al.; Notice of Application

December 4, 1997.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 6(c) of the 1940 Act for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit shares of any current or future series of the Fund and shares of any other investment company that is designed to fund variable insurance products and for which the Adviser, or any of its affiliates, may serve now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (the Fund and such other investment companies referred to collectively as the "Insurance Products Funds") to be offered and sold to, and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") and qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans").

APPLICANTS: PBHG Insurance Series Fund, Inc. (the "Fund") and Pilgrim Baxter & Associates, Ltd. (the "Adviser").

FILING DATE: The application was filed on September 15, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 29, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1255 Drummers Lane, Suite 300, Wayne, PA 19087–1590.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, or Mark Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser for the Fund.

2. The Fund, an open-end management investment company, is a Maryland corporation. The Fund currently consists of six separate series and may in the future issue shares of additional series.

3. Shares of the Fund are currently offered to separate accounts of Participating Insurance Companies to serve as investment vehicles for variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium contracts) (collectively, "Variable Contracts"). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration.

4. The Participating Insurance Companies will establish their own

separate accounts and design their own Variable Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. The role of the Insurance Products Funds will be limited to that of offering their shares to separate accounts of Participating Insurance Companies and to Qualified Plans and fulfilling the conditions set forth in the application and described later in this notice. Each Participating Insurance Company will enter into a fund participation agreement with the Insurance Products Fund in which the Participating Insurance Company invests.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) thereof and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Insurance Products Funds to be offered and sold to, and held by (1) variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company ("mixed funding"); (2) separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) ("shared funding"); and (3) qualified pension and retirement plans outside the separate account context.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e-2(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6e-2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers it shares to a variable annuity separate account of the same insurance company or an affiliated insurance company. The relief granted by Rule 6e-2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated insurance company or to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The relief granted by Rule 6e-2(b)(15) also is not available if the shares of the Insurance Products Funds also are sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e-3(T)(b)(15) provides partial exemptions from Sections 9(A), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, the exemptions provided by Rule 6e-3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding or if the fund sells its shares to Qualified Plans.

4. Applicants state that the current tax permits the Insurance Products Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of Variable Contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a qualified or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817.–5(f)(3)(iii)).

5. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same underlying fund to separate accounts and to Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants request relief for a class or classes of persons and transactions consisting of Participating Insurance Companies and their scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such separate accounts) investing in any of the Insurance Products Funds.

7. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to or principal underwriter of any registered opened investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

9. Applicants state that the relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals who do not directly participate in the administration or management of the Insurance Products Funds, who are employed by the various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Products Funds as the funding medium for Variable Contracts. Applicants do not expect the Participating Insurance Companies to play any role in the management or administration of the Insurance Products Funds. Applicants assert, therefore, that applying the restrictions of Section 9(a) to individuals employed by Participating Insurance Companies serves no regulatory purpose.

10. Applicants state that the relief requested should not be affected by the proposed sale of Insurance Products Funds to Qualified Plans because the Plans are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings.

Pass-Through Voting

11. Applicants submit that Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a "pass-through voting" requirement with respect to management investment company shares held by a separate account. Applicants state that Rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirements in limited situations, assuming the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying investment company if such instructions would require such shares to be voted to cause an underlying investment company to make, or refrain from making, certain investments which would result in changes in the subclassification or investment objectives of such company, or to approve or disapprove any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that an insurance company may disregard contract owners' voting instructions with regard to changes initiated by the contract owners in the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is based on specific good faith determinations.

12. Shares of the Insurance Products Funds sold to Qualified Plans will be held by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (6) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Qualified Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Where a Qualified Plan does not provide Qualified Plan participants with the right to give voting instructions, Applicants state that they do not see any potential for irreconcilable material conflicts of interest between or among Variable Contract holders and Plan participants with respect to voting of the respective Insurance Products Fund's shares. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since the Plans are not entitled to pass-through voting privileges. Even if a Qualified Plan were to hold a controlling interest in an Insurance Products Fund, the Applicants do not believe that such control would disadvantage other investors in such Insurance Products Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, the Applicants submit that investment in an Insurance Products Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding.

13. Applicants state that some of the Qualified Plans may provide for the trustee(s), an investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from Qualified Plan participants. Applicants state that, in such cases, the purchase of shares by such Qualified Plans does not present any complications not otherwise occasioned by mixed or shared funding.

Conflicts of Interest

14. Applicants state that no increased conflict of interest would be presented by the granting of the requested relief. Applicants that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants note that when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domicile could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. The possibility, however, is not different or greater than exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

15. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth in the application and later in this notice (which are adapted from the conditions included in Rule 63–3(T)(b)(15)) are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Products Funds.

16. Applicant's also assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. The potential for disagreement is limited by the requirements that disregarding voting instructions be reasonable and based on

specified good faith determinations. However, if the Participating Insurance Company's decision to disregard Variable Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund and no charge or penalty will be imposed upon the Variable Contract owners as a result of such withdrawal.

17. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what those policies would or should be if such Insurance Products Fund or series thereof funded only variable annuity or variable life insurance contracts. In this regard, Applicants note that a fund's adviser is legally obligated to manage the fund in accordance with the fund's investment objectives, policies and restrictions as well as any guidelines established by the fund's Board. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Insurance Products Funds. In addition, permitting mixed and shared funding also will facilitate the establishment of additional series of Insurance Products Funds serving diverse goals.

18. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the code, nor the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if the Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

19. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account of the Participating Insurance Company or Qualified Plan cannot net purchase payments to make the distributions, the separate account or Qualified Plan will redeem shares of the Insurance Products Funds at their respective net asset values. The Qualified Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

20. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan. As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or Variable Contract owners under their Variable Contracts, the Qualified Plans and the separate accounts of Participating Insurance Companies have rights only with respect to their respective shares of the Insurance Products Funds. They can redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

21. Applicants assert that there are no conflicts between the Variable Contract owners and the Plan participants with respect to state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. While time-consuming, complex transactions must be undertaken to accomplish redemptions and transfers by separate accounts, trustees of Qualified Plans can quickly redeem shares from Insurance Products Funds and reinvest in other funding vehicles without the same regulatory impediments or, as in the case with most qualified plans, even hold cash or other liquid assets pending suitable alternative investment. Applicants maintain that even if there should arise issues where the interests of Variable Contract owners and the interests of participants in Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Insurance Products Funds.

22. Applicants submit that mixed and shared funding should provide benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser and the Subadvisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Insurance Products Funds, thereby promoting economies of scale, by permitting increased safety through greater diversification and by making the addition of new series more feasible. Therefore, making the Insurance Products Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts, and this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges.

23. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Qualified Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each, a "Board") shall consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Board member, then the operation of this condition shall be suspended: (a) For a period of 45 days, if the vacancy or

vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Insurance Products Fund's Board will monitor the fund for the existence of any material irreconcilable conflict between and among the interests of the Variable Contract owners of all separate accounts and of Plan participants and Qualified Plans investing in the Insurance Products Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. The Adviser (or any other investment adviser of an Insurance Products Fund), any Participating Insurance Company and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% of more of the assets of an Insurance Products Fund (collectively, "Participants") will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be obligated to assist the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Qualified Plans investing in the Insurance Products Funds under their respective agreements governing participation in the Insurance Products Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Variable Contract owners and, if applicable, Plan participants.

4. If a majority of an Insurance Products Fund's Board members, or a majority of the disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Board members), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Insurance Products Fund or any of its series and reinvesting such assets in a different investment medium, which may include another series of the Insurance Products Fund or another Insurance Products Fund; (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Variable Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and this decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw its separate account's investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund, to withdraw its investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Products Funds and these responsibilities shall be carried out with a view only to the interests of the Variable Contract owners and, as applicable, Plan participants.

For purposes of Condition 4, a majority of the disinterested members of the applicable Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will an Insurance Products Fund or the Adviser (or any other investment adviser of the Insurance Products Funds) be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if a majority of Variable Contract owners materially affected by the material irreconcilable conflict vote to decline such offer. No Qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. Participants will be informed promptly in writing of a Board's determination of the existence of an irreconcilable material conflict and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the Insurance Products Fund held in their separate accounts in a manner consistent with voting instructions timely received from Variable Contract owners. In addition, each Participating Insurance Company will vote shares of the Insurance

Products Fund held in its separate accounts for which it has not received timely voting instructions from contract owners, as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Products Fund's shares and calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Plan will vote as required by applicable law and governing Plan documents.

7. All reports of potential or existing conflicts received by a Board, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participants of a conflict, and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. Each Insurance Products Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund shall disclose in its prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) differences in tax treatment or other considerations may cause the interests of various Variable Contract owners participating in the Insurance Products Fund and the interests of Qualified Plans investing in the Insurance Products Fund to conflict; and (c) the Board will monitor the Insurance Products Fund for any material conflicts and determine what action, if any, should be taken.

9. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Insurance Products Funds). In particular, each such Insurance Products Fund either will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although more of the Insurance Products Funds shall be one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the 1940 Act is amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Insurance Products Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, or proposed Rule 6e–3 as adopted, to the extent such Rules are applicable.

11. The Participants, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonable request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of all Participants under the agreements governing their participation in the Insurance Products Funds.

12. If a Qualified Plan or Plan participant shareholder should become an owner of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a participation agreement with such fund which includes the conditions set forth herein to the extent applicable. A Qualified Plan or Plan participant will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the share of any Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32365 Filed 12–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26790]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 4, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 29, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Co., et al. (70–8981)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, its wholly-owned nonutility subsidiary company, CNG Energy Services Corporation ("Energy Services"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746, and CNG Power Company ("Power"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746, a nonutility subsidiary company of Energy Services, have filed an application-declaration under sections 6(a), 7, 12(b), 13 and 32 of the Act and rules 45, 53, 54, 83, 87, 90 and 91 under the Act.

CNG proposes that Power become the vehicle for CNG investments in exempt wholesale generators ("EWGs") in the U.S. Investments in EWGs would be made with internally generated funds. CNG proposes that intermediate companies be formed to make EWG investments ("Intermediate Companies"). The Intermediate Companies will be special-purpose subsidiaries that may acquire interests in other corporations, joint ventures, partnerships, and other investment entities created to invest in EWGs.

CNG, Energy Services, Power and its subsidiary companies, including the Intermediate Companies, seek Commission authorization to enter into guarantee arrangements, to obtain letters of credit, and otherwise to provide credit support through December 31, 2002 with respect to EWG investments. The maximum aggregate limit on all such credit support would be $150 million.

Energy Services and its affiliates propose to perform services or construction for, or sell goods to, EWGs in which Power has acquired an interest. Services, construction and goods may be market-priced if the EWGs provide no services, construction or goods to CNG utility companies in the U.S.

Energy Services and its affiliates also propose to contract with CNG companies to provide those services, construction and goods to EWGs. Services, construction and goods obtained from U.S. CNG utility companies would be cost-priced but services, construction and goods from CNG non-utility subsidiary companies would be cost-priced or market-priced—provided that services, construction and goods from CNG non-utility subsidiary companies "substantially" involved in the provision of services, construction or goods to U.S. CNG utility companies would be cost-priced.

Energy Services has authorized capital of 4,000 shares of common stock, $1.00 per value per share ("Common Stock"). CNG proposes to change the par value of each share of Common Stock from $1.00 to $10,000 and increase the authorized shares to 50,000 shares. CNG states that the issuance of addition Common Stock for $10,000 per share will allow Energy Services to consummate additional equity financing for the proposed transitions and for other authorized or exempt transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32368 Filed 12–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39389; File No. SR–CBOE–97–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Transaction Fees for Options on the Standard & Poor's 100 Stock Index

December 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify the Exchange transaction fees applicable to transactions in options on the Standard & Poor's 100 Stock Index ("OEX").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently filed with the Commission a proposed rule change[3] in which the Exchange informed the Commission that Standard & Poor's ("S&P") intended to reduce the value of its S&P 100 Stock Index ("Index") to one-half of its present value by doubling the divisor used in calculating the Index.[4] In connection with the "split" of the OEX, the Exchange has evaluated the appropriateness of the current fee schedule and has determined to reduce the transaction fees applicable to transactions in OEX. The current and proposed transaction fees absent any reduction or rebate[5] are: (1) For customer trades for options with a premium less than $1—current: $0.20 per contract side; proposed: $0.15 per contract side; (2) for customer trades of options with a premium equal to or greater than $1—current: $0.40 per contract side; proposed: $0.30 per contract side; (3) for member firm proprietary trades—current: $0.10 per contract side: proposal: $0.06 per contract side; and (4) for market-maker trades—current: $.06 per contract side; proposed: $.05 per contract side. The foregoing fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22. The Exchange will distribute a circular to its members to notify them of these fee changes.

The Exchange is adopting this fee reduction for transactions in OEX options in order to promote trading in these options after the split in OEX. The Exchange believes that the reduction in the fees may encourage more participation in the trading of these options.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved the proposed rule change on November 19, 1997. See Securities Exchange Act Release No. 39338, 62 FR 63209 (November 26,1997) (order approving File No. SR–CBOE–97–48).

[4] According to the Exchange, the value of the Index was reduced by one-half effective November 24, 1997. Telephone conversation between Timothy Thompson, Senior Attorney, CBOE, and Deborah Flynn, Division of Market Regulation, Commission, on December 2, 1997.

[5] The fees may actually be less than these amounts pursuant to the Exchange's Prospective Fee Reduction Schedule, the Customer Large Trade Discount Program, and rebate programs that have been filed with the Commission as part of the Exchange's fee schedule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (e) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the proposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the CBOE. All submissions should refer to File No. SR–CBOE–97–60 and should be submitted by January 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32367 Filed 12–10–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78(b)(4).
[8] 15 U.S.C. 78s(b)(3)(A).
[9] 17 CFR 19b–4(e).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39401; File No. SR–Phlx 97–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Extension and Amendment of the Pilot Program for Equity and Index Option Specialist Enhanced Parity Splits

December 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 5, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 14 1997, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until December 31, 1998, the Exchange's enhanced parity split pilot program for equity and index option specialists ("Pilot Program"). The Pilot Program is currently scheduled to expire on December 31, 1997. The Exchange also seeks to modify the application of the Pilot Program so that: (i) the enhanced parity split would not apply to all index options, in addition to applying to 50% of each specialist's equity options and all new options allocated to the specialist during the year; and (ii) specialists would be permitted to revise the list of eligible equity options on a quarterly basis, rather than annually. The proposed rule change will revise Exchange Rule 1014(g) "Equity Option and Index Option Priority and Parity," and its corollary Option Floor Procedure Advice B–6.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of an Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

1. Purpose

On August 26, 1994, the Commission approved the Exchange's Pilot Program to provide enhanced specialist participation in parity equity option trades.[3] Initially, the Pilot Program was approved for a one year period ending August 26, 1995. On November 30, 1994, the Commission approved the Exchange's request to include index option specialists in the Pilot Program.[4] The Pilot Program was later revised on March 1, 1995, with respect to situations where less than three controlled accounts are on parity with the specialist.[5] The Pilot Program has subsequently been renewed on three occasions,[6] most recently until December 31, 1997.

The Pilot Program works as follows: when an equity or index option specialist is on parity with one controlled account[7] and the order is for more than five contracts, the specialist will receive 60% of the contracts and the controlled account will receive 40%. When the specialist is on parity with two controlled accounts and the order is for more than five contracts, the specialist will receive 40% of the contracts and each controlled account will receive 30%. When the specialist is on parity with three or more controlled accounts and the order is for more than five contracts, the specialist will be counted as two crowd participants when dividing up the contracts. In any of these situations, if a customer is on parity, he will not be disadvantaged by receiving a lesser allotment than any other crowd participant, including the specialist.

It should be noted that the application of this enhanced parity split is mandatory. Therefore, with respect to any equity or index options transaction that implicates that enhanced parity split, the specialist is required to accept the preferential allocation and may not decline the enhancement.[8]

Presently, the enhanced parity split is not made available to all equity and index options traded on the Exchange. Rather, the enhanced parity split applies to only 50% of each specialist unit's issues listed as of the renewal date of the pilot each year, and to all option classes listed after that date.[9] The Exchange seeks to continue to study these rules under the auspices of the Pilot Program. However, the Exchange proposes to modify the application of the Pilot Program in the following respects: (i) While equity options would continue to be included in the pool of options from which each specialist chooses 50%, all index options would receive the enhanced parity split; and (ii) specialists would be allowed to revise the list of eligible equity options on a quarterly basis, instead of on an annual basis. It also should be noted that all new option classes listed after the renewal date of the Pilot Program each year will continue to receive the enhanced parity split. The Exchange has represented that these changes were made to better match the enhancement with the options in which specialists are expending the most money, time and effort in making competitive, liquid markets. Accordingly, the Exchange requests that the Pilot Program, as amended, be extended until December 31, 1998.

In connection with the most recent extension of the Pilot Program,[10] it was noted that prior to granting another extension or permanent approval of the Pilot Program, the Commission would require the Exchange to submit a report ("Report") discussing: (i) Whether the Pilot Program has generated any evidence of any adverse effect on competition or investors, in particular, or the market for equity or index options, in general; (ii) whether the Exchange has received any complaints, either written or otherwise, concerning the operation of the Pilot Program; and (iii) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning the operation of the Pilot Program, as well as the outcome of any such matter. The Report, which the Exchange filed on November 14, 1997, as Amendment No. 1, is summarized below.

With respect to the issue of competition, the Exchange found that the enhanced parity split as originally proposed was overly burdensome when only one or two controlled accounts were on parity with the specialist. Consequently, the Pilot Program was amended on March 1, 1995, in order to make the enhanced parity split more equitable in those situations.[11] Later that year, the Exchange established a subcommittee composed of four specialists, four Registered Options Traders ("ROTs"), and one floor broker. The composition of the subcommittee was intended to represent all of the different interests on the trading floor and in the market. The subcommittee has met on numerous occasions to analyze the Pilot Program and its effect on competition, investors, and the market in general. The subcommittee members have discussed the operation of the Pilot Program and have concluded there is not evidence of any adverse effects on competition or investors or the market for equity or index options.

As to the second issue concerning complaints about the Pilot Program, the provision requiring the specialist to assure that the customer is not disadvantaged has been strictly enforced without incident and the Exchange has not received any complaints either orally or in writing from investors or Exchange members regarding inequitable splits or the Pilot Program in general.

Finally, as to the third pilot relating to disciplinary actions, investigations, examinations or inquiries; no violations were either investigated or commenced this year. However, two years ago the Exchange did bring one disciplinary case against an equity option specialist for making an inequitable split among himself and the ROTs in the crowd.[12] In that instance, the specialist was censured and suspended for one week as part of a settlement.[13]

The Exchange further notes that its Options Committee is continuing to review the effectiveness of the Pilot Program and the effectiveness of the existing review criteria and system of selecting subject options. The Exchange expects the Options Committee to complete its review during the upcoming year.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[14] in general, and with Section 6(b)(5),[15] in particular, in that it is designed to promote just and equitable principles of trade; to prevent fraudulent and manipulative acts and

[10] 17 CFR 200.30–3(e)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] Amendment No. 1 is a report which discusses the impact of the Exchange's Pilot Program for Equity and Index Option Specialist Enhanced Parity Splits. See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Exchange, to Michael Walinskas, Esquire, Division of Market Regulation, Commission, dated November 7, 1997.
[3] Securities Exchange Act Release No. 34606 (Aug. 26, 1994), 59 FR 45741 (Sept. 2, 1994).
[4] Securities Exchange Act Release No. 35028 (Nov. 30, 1994), 59 FR 63151 (Dec. 7, 1994).
[5] Securities Exchange Act Release No. 35429 (Mar. 1, 1995), 60 FR 12802 (Mar. 8, 1995).
[6] Securities Exchange Act Release Nos. 36122 (Aug. 18, 1995), 60 FR 44530 (Aug. 28, 1995); 37524 (Aug. 5, 1996), 61 FR 42080 (Aug. 13, 1996); and 38924 (Aug. 11, 1997), 62 FR 44160 (Aug. 19, 1997).
[7] A controlled account is defined as "any account controlled by or under common control with a member broker-dealer." Customer accounts, which include discretionary accounts, are defined as all accounts other than controlled accounts and specialists accounts. See Exchange Rule 1014(g).
[8] The proposed rule change would not alter the mandatory application of the enhanced parity split. Telephone conversation between Michele R. Weisbaum, Vice President and Associate General Counsel, Exchange, and Michael L. Loftus, Attorney, Division of Market Regulation, Commission (November 26, 1997).
[9] The Exchange also has a different enhanced parity split program in place for "new" option specialist units trading newly listed options classes where the specialist is on parity with two or more registered options traders. See Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994). That program was approved on a permanent basis and, therefore, is not included in the subject of this filing.
[10] Securities Exchange Act Release No. 38924 (Aug. 11, 1997), 62 FR 44160 (Aug. 19, 1997).
[11] Securities Exchange Act Release No. 35499 (Mar. 1, 1995), 60 FR 12802 (Mar. 8, 1995).
[12] Enforcement No. 95–12, Business Conduct Committee, Exchange.
[13] The Commission again notes that in connection with any future request by the Exchange for the Commission to either further extend or permanently approve the Pilot Program, the Exchange will be required to submit a Report discussing: (i) Whether the Pilot Program has generated any evidence of any adverse effect or competition or investors, in particular, or the market for equity or index options, in general; (ii) whether the Exchange has received any complaints, either written or otherwise, concerning the operation of the Pilot Program; and (iii) whether the Exchange has taken any disciplinary action against or commenced any investigation, examinations, or inquiries concerning the operation of the Pilot Program, as well as the outcome of any such matter.
[14] 15 U.S.C. 78f.
[15] 15 U.S.C. 78f(b)(5).

practices; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and to protect investors and the public interest. Specifically, the Exchange believes that the proposal balances the competing interests of specialists and market makers while assisting specialists in making tight and liquid markets in assigned issues. The proposal also protects the public interest by requiring quarterly reviews and assuring that a customer's participation is never disadvantaged by the enhanced parity split.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from November 14, 1997, the date on which it was filed,[16] and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(e) (6)[18] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[16] The proposed rule change filing is deemed filed as of the date Amendment No. 1 was received by the Commission.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(e)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–48 and should be submitted by January 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

[FR Doc. 97–32389 Filed 12–10–97; 8:45 am]

BILLING CODE 8010–01–M

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Senior Executive Service; Performance Review Board Members

ACTION: Standing Roster of Members of this Agency's Senior Executive Service.

SUMMARY: Section 4314(c)(4) of Title 5, requires Federal agencies publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB). The following is a standing roster:

1. Paul Weech, Chief of Staff;
2. Chris Sale, Chief Operating Officer;
3. John Whitmore, Deputy to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development;
4. Mary K. Swedin, Assistant Administrator for Congressional and Legislative Affairs;
5. John Gray, Associate Deputy Administrator for Economic Development;
6. Carolyn J. Smith, Assistant Administrator for Human Resources;
7. Herbert Mitchell, Deputy Associate Administrator for Disaster Assistance;
8. Mark Stephens, Deputy General Counsel;
9. John Smith, District Director (Chicago);
10. Erline Patrick, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance;
11. Darryl Dennis, Counselor to the Administrator;
12. Charles Anderson, District Director (Miami);
13. Monika Harrison, Associate Administrator for Business Initiatives;;
14. Judith Roussel, Associate Administrator for Government Contracting;
15. Mark Quinn, District Director (San Francisco);
16. Larry Wilson, Chief Financial Officer;
17. Jeanne Saddler, Counselor to the Administrator;
18. John T. Spotila, General Counsel;
19. David Kohler, Associate General Counsel for General Law;
20. Eric Benderson, Associate General Counsel for Litigation;
21. Elizabeth Myers; Senior Advisor to the Administrator;
22. Jadine Neilsen, Senior Advisor to the Administrator;
23. Mona Mitnick, Assistant Administrator for Hearings and Appeals;
24. Edward Eugene Carlson, Associate Administrator for Communications and Public Liaison;
25. Gregory Walter, Deputy Chief Financial Officer;
26. Bernard Kulik, Associate Administrator for Disaster Assistance;
27. Jane Butler, Deputy Associate Administrator for Financial Assistance;
28. Arnold Rosenthal, Assistant Administrator for Borrower and Lender Servicing;
29. Don Christensen, Associate Administrator for Investment;
30. Robert Moffitt, Associate Administrator for Surety Guarantees;
31. Johnnie Albertson, Associate Administrator for Small Business Development Centers;
32. Jeanne Scalter, Acting Deputy to the Associate Deputy Administrator for Economic Development;;
33. James Van Wert, Senior Advisor for Policy and Planning;
34. Lawrence Barrett, Acting Associate Deputy Administrator for Management and Administration;
35. Robert Lineberry, Deputy Chief Information Officer;
36. Thomas Dumaresq, Assistant Administrator for Administration;
37. Calving Jenkins, Acting Associate Deputy Administrator for Government Contracting and Minority Enterprise Development;
38. Aubrey Rogers; District Director (New York);
39. Francisco Marrero, District Director (Newark);
40. Gary Cook, District Director (Charlotte); and
41. Alberto Alvarado, District Director (Los Angeles).

Dated: December 5, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–32393 Filed 12–10–97; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Supplementary Agreement on Social Security Between the United States and Canada; Entry Into Force

The Commissioner of Social Security gives notice that a supplementary agreement entered into force on October 1, 1997, which amends the Social Security agreement between the United States (U.S.) and Canada that has been in effect since August 1, 1984. The supplementary agreement, which was signed on May 28, 1996, was concluded pursuant to section 233 of the Social Security Act.

The supplementary agreement amends the original agreement to update and clarify several provisions. Its primary purpose, however, is to provide Canada with explicit legal authorization to enter into a mutual assistance arrangement on Social Security with the United States. A mutual assistance arrangement will allow the Social Security Administration and the Canadian Social Security agency to assist each other in projects that will enhance the integrity of each country's payments to its beneficiaries in the other country.

Individuals who wish to obtain copies of the supplementary agreement or want general information about its provisions may write to the Social Security Administration, Office of International Policy, Post Office Box 17741, Baltimore, Maryland 21235. Anyone who wants information about the Canadian social security system should write to: International Operations Directorate, Income Security Programs Branch, Department of Human Resources Development, Ottawa, Ontario, Canada K1A OL4.

Dated: November 7, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 97–32418 Filed 12–10–97; 8:45 am]

BILLING CODE 4190–29–U

SOCIAL SECURITY ADMINISTRATION

Supplementary Agreement on Social Security Between the United States and the United Kingdom; Entry Into Force

The Commissioner of Social Security gives notice that on September 1, 1997, a supplementary agreement entered into force which amends the Social Security agreement between the United States (U.S.) and the United Kingdom (U.K.) that has been in effect since January 1, 1985. The supplementary agreement, which was signed on June 6, 1996, was concluded pursuant to section 233 of the Social Security Act.

The supplementary agreement amends the original agreement to update and clarify several of its provisions. Its primary purpose, however, is to remove certain restrictions in the original agreement on the payment of U.K. disability benefits to residents of the United States.

Individuals who wish to obtain copies of the supplementary agreement or want general information about its provisions may write to the Social Security Administration, Office of International Policy, Post Office Box 17741, Baltimore, Maryland 21235. Anyone who wants information about U.K. benefits should write to: Pensions and Overseas Benefits Directorate, Tyneview Park, Whitley Road, Benton, Newcastle upon Tyne, NE98 1BA, England.

Dated: November 7, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 97–32417 Filed 12–10–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Reports, Form and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extensions of two currently approved information collections. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on both "Special Notice for Repairs" OMB Control Number 2130–0504 and "Designation of Qualified Persons" OMB Control Number 2130–0511 was published in 62 FR 4745–44746, August 22, 1997.

DATES: Comments must be submitted on or before January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Trigonoplos, RAD–20, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 632–3221). (This telephone number is not toll-free.)

SUPPLEMENTARY INFORMATION:

Federal Railroad Administration

Title: Special Notice for Repairs (49 CFR 216).

OMB Number: 2130–0504.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F6180.8 and 8a.

Abstract: FRA and State inspectors have the authority to immediately order the cessation of use of unsafe equipment, reduce the authorized operating speed on a section of track, or recommend that track be removed from service when they are found to be immediately unsafe for service. The railroad may, within 5 days after receiving such notice, appeal to FRA.

Burden Estimate: The estimated burden is 25 hours annually.

Title: Designation of Qualified Persons (49 CFR 215).

OMB Control Number: 2130–0511.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: Under the Federal Railroad Safety Act of 1970, the Federal Railroad Administration promulgated the Freight Car Safety Standards—49 CFR part 215. These standards require each railroad to conduct regular inspections and take necessary remedial action relative to repairs or movement for repairs of defective railroad freight cars.

Under part 215.11, railroads are required to designate persons qualified to inspect freight cars for compliance with part 215 and persons who shall determine restrictions on movements of defective cars. Inspectors are designated as qualified to inspect freight cars to ensure that the cars receive a full and accurate inspection for compliance with part 215. Under "Movement of Defective Cars for Repair" designated inspectors

are necessary to determine what repairs are necessary for defective freight cars. Repairs to railroad freight cars are divided into two categories. "Running" or light repairs are confined to defects to freight cars requiring movement of equipment and repair personnel to the freight car's location. The freight car's defect or damage repairs can be performed at that location.

The second category is specialized or heavy repairs. The freight car must be moved to a location where specialized equipment is located. This type of movement for repairs involves freight cars that may not be safely moved without precaution. The movement must be authorized by an employee knowledgeable about equipment limitations which might include speed, track structure, curvature or other conditions that normally would not be of concern.

Estimated Total Annual Burden Hours: 50 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, ATTN: FRA Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions or the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on December 5, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–32456 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on collection number 2132–0544 was published in 62 FR 45286, August 26, 1997, and collection number 2132–0555 was published in 62 FR 46548, September 3, 1997.

DATES: Comments must be submitted on or before January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Sylvia Barney, (202) 366–6680 and refer to the OMB Control Number(s).

SUPPLEMENTARY INFORMATION:

Federal Transit Administration (FTA)

Title: Pre-Award, Post-Delivery Review Requirements under Buy America.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2132–0544.

Form(s): N/A.

Affected Public: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Abstract: Under the Federal Transit Laws, at 49 U.S.C. 5323(l), grantees must certify that pre-award and post-delivery reviews will be conducted when using FTA funds to purchase revenue service vehicles. FTA regulations 49 CFR Part 663 implements this law by specifying the actual certificates that must be submitted by each bidder to assure compliance with the Buy American, contract specification, and vehicle safety requirements for rolling stock. The information collected on the certification forms is necessary for FTA grantees to meet the requirements of 49 U.S.C. 5323(l).

Estimated Annual Burden Hours: 3,024.

Title: American with Disabilities Act.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2132–0555.

Form Number: N/A.

Affected Public: State and local government, business or other-for-profit institutions, non-profit institutions, and small business organizations.

Abstract: On July 26, 1990, the President signed into law civil rights legislation entitled, "The Americans with Disabilities Act of 1990" (ADA) (Pub.L. 101–336). It contains sweeping changes for individuals with disabilities in every major area of American life. One key area of the legislation addresses transportation services provided by public and private entities. Some of the requirements under the ADA are: (1) No transportation entity shall discriminate against an individual with a disability in connection with the provision of transportation service; (2) All new vehicles purchased by public and private entities after August 25, 1990, must be readily accessible to and usable by persons with disabilities, including individuals who use wheelchairs; (3) Public entities that provide fixed route transit must provide complementary paratransit service for persons with disabilities, who are unable to use the fixed route system, that is comparable to the level of service provided to individuals without disabilities; and (4) Transit authorities who are able to substantiate that compliance with all service criteria of the paratransit provisions would cause undue financial burden, may request a temporary time extension in implementing ADA complementary paratransit service. On September 6, 1991, DOT issued a final rule implementing the transportation provisions of ADA (Title 49 CFR parts 27, 37 and 38), which includes the requirements for complementary paratransit service by public entities operating a fixed route system and the provision of nondiscriminatory accessible transportation service. The regulation sets forth the changes needed to fulfill the Congressional mandate to substantially improve access to mass transit service for persons with disabilities. Effective January 26, 1997, paratransit plans are no longer required. However, if FTA reasonably believes that an entity may not be complying with all service criteria, FTA may require an annual update to the entity's plan. In addition, all other ADA compliance requirements must still be satisfied. The information collected provides FTA with a basis for monitoring compliance. The public entities, including recipients of FTA funds, are required to provide information during triennial reviews, complaint investigations, resolutions of complaints, and compliance reviews.

Estimated Annual Burden Hours: 75,000.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FTA Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 5, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–32457 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 97–9–32 established the currently effective two-month SFFL applicable through November 30, 1997.

In establishing the SFFL for the two-month period beginning December 1, 1997, we have projected non-fuel costs based on the year ended September 30, 1997 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 97–12–12 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.3697
Latin America	1.4426
Pacific	1.5339

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation:

Dated: December 8, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–32454 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from January 12–15, 1998, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Island Club Catering and Conference Center, Naval Air Station North Island, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Mr. Benny Lee McGlamery, Executive Director, ATPAC, Strategic Operations/Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held January 12 through January 15, 1998, at the Island Club catering and Conference Center, Naval Air Station North Island, San Diego, California.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 9, 1998. The next quarterly meeting of the FAA ATPAC is planned to be held from April 27–30, 1998, in Washington; DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 5, 1997.

Benny Lee McGlamery,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 97–32452 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Traffic Advisory System (TAS) Airborne Equipment

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) pertaining to traffic advisory system (TAS) airborne equipment. The proposed TSO prescribes the minimum operational performance standards that traffic advisory system (TAS) airborne equipment must meet to be identified with the marking "TSO–C147."

DATES: Comment must identify the TSO file number and be received on or before February 20, 1998.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Comment must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, FAX No. (202) 267–5340.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire

to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This TSO is proposed for a new system of airborne equipment designated TAS. TAS is an airborne traffic advisory system that interrogates ATC transponders in nearby aircraft and uses computer processing to identify and advise the crew of potential and predicted collision threats. The system is designed to protect a volume of airspace around the TAS equipped aircraft by assisting pilots in the visual acquisition of intruder traffic. TAS is similar to TCAS I with changes in the power output and display requirements that make it more encomical, and therefore more appealing, to the General Aviation community. There are two classes of TAS equipment:

Class A. Traffic Display and Aural Alerting

Class A systems provide a flight deck traffic display that indicates the relative position and altitude of ATC transponder-equipped aircraft. Class A systems will provide appropriate aural and visual advisories to assist the flightcrew in visually acquiring the threat aircraft when TAS predicts a penetration of the protected airspace. TAS assist the flightcrew in visually acquiring the intruding aircraft. Traffic advisories indicate the relative positions of intruding aircraft that meet certain range and altitude criteria and are approximately 30 seconds from the closest point of approach. Traffic advisories can be generated for aircraft with operative Mode S, Mode C or Mode A (non-altitude reporting) transponders. The aural alert message "Traffic-Traffic," spoken once, shall be used to inform the crew of a Traffic Advisory (TA). The TAS equipment is viewed as a supplement to the pilot who, with the aid of the ATC system, has the primary responsibility for avoiding mid-air collisions. The TAS system provides no indication of aircraft without operative transponders.

Class B. Aural Alerting and Annunciation Only

Class B systems do not include a cockpit traffic display. Class B systems will provide appropriate aural advisories and visual annunciations to assist the flightcrew in visually acquiring the threat aircraft when TAS predicts a penetration of the protected airspace. Traffic advisories indicate the relative positions of intruding aircraft that meet certain range and altitude criteria and are approximately 30 seconds from the closest point of approach. They assist the flightcrew in visually acquiring the intruding aircraft. The aural alert message "Traffic-Traffic," spoken once, shall be used to inform the crew of a Traffic Advisory (TA). This aural alert message will be accompanied by a discrete visual annunciation indicating that a TA is currently active. This annunciation will remain as long as the TA is active and will extinguish when no TAs are active. TAs will, upon crew command, generate an aural message defining the relative position of ATC transponder-equipped aircraft. Traffic advisories can be generated for aircraft with operative Mode S, Mode C, or Mode A (non-altitude reporting) transponders. The TAS equipment is viewed as a supplement to the pilot who, with the aid of the ATC system, has the primary responsibility for avoiding mid-air collisions. The TAS system provides no indication of aircraft without operative transponders. RTCA Document No. DO–160C sets forth the environmental standards for the Traffic Advisory System. RTCA Document DO–178B sets forth the minimum performance requirements for software for the Traffic Advisory System and requires that each article be marked with the appropriate software level. Because the proposed TSO calls for 2 classes of equipment, the TSO also requires that each article be marked as equipment Class A or Class B, as applicable.

The minimum performance standards for this Traffic Advisory System TSO differ slightly from those standards in RTCA DO–197 (TCAS 1). This TSO was developed specifically, but not exclusively for the general aviation market. The Traffic Advisory System has a lower radiated power output than TCAS 1 and gives an alert as to the presence of intruder aircraft. However, TCAS 1 has resolution alert that gives the pilot directional commands when intruder aircraft are present. These differences make the Traffic Advisory System more economical for the general aviation community. The exceptions to RTCA DO–197A are detailed in the Appendix 1 of this TSO. In order to comply with TSA–C147, the applicant must also meet the performance standards set forth in RTCA Document No. DO–197A, with the stated exceptions in Appendix 1.

How To Obtain Copies

A copy of the proposed TSO–C147 may be obtained via Internet (http://www.faa.gov/avr/air/100home.htm) or on request from the office listed under "For Further Information Contact." Copies of RTCA, Inc. Document No. DO–197A, "Minimum Operational Performance Standards for An Active Traffic Alert and Collision Avoidance System I (ACTIVE TCAS 1)," dated September 12, 1994. RTCA Document No. 160D, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 29, 1997; and RTCA Document No. DO–178B, "Software Considerations in Airborne Systems and Equipment Certification," dated 1, 1992, may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Issued in Washington, DC, on December 5, 1997.

Henri P. Branting,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–32451 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33524]

Southwest Ohio Regional Transit Authority—Acquisition Exemption—Certain Assets of the Indiana & Ohio Railway Company

Southwest Ohio Regional Transit Authority (SORTA), a noncarrier, has filed a verified notice of exemption under 49 CFR part 1150, subpart D—*Exempt Transactions* to acquire an approximately 9.84-mile line of railroad known as the Blue Ash Line from the Indiana & Ohio Railway Company (I&O). The Blue Ash Line is located northeast of Cincinnati, between milepost 49.6, north of McCullough Yard, and milepost 39.76, near Fields-Ertel Road, in Hamilton County, OH. SORTA will not acquire the right to operate any rail freight service on the Blue Ash Line; I&O will retain the exclusive right and obligation to provide rail freight service on the Blue Ash Line.[1] SORTA will acquire certain physical assets to allow construction and operation of a passenger rail transit system. The notice states that the transaction would be consummated no sooner than the December 1, 1997 effective date of the exemption. The accompanying motion to dismiss indicates that the transaction is expected to be consummated by December 31, 1997.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to Finance Docket No. 33524, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W. Suite 400, Washington, DC 20036–6105.

Decided: December 3, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32268 Filed 12–10–97; 8:45 am]

BILLING CODE 4915–00–P

[1] SORTA simultaneously filed a motion to dismiss the notice of exemption. The entire Board will address the jurisdictional issue raised by the motion to dismiss in a subsequent decision.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Passengers Denied Confirmed Space, BTS Form 251

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of DOT requiring U.S. and foreign air carriers that operate scheduled passenger service with over 60-seat aircraft to submit reports on their oversales practices. Such carriers must submit the quarterly Form 251 "Report of Passengers Denied Confirmed Space." However, carriers do not report data from inbound U.S. international flights because the protection of Part 250 "Oversales" do not apply to these flights. The Department uses Form 251 data to monitor the compliance by U.S and foreign air carriers to the oversales provisions of Part 250.

DATES: Written comments should be submitted by February 9, 1998.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

COMMENTS: Comments should identify the OMB # 2138–0018 and a duplicate copy should be submitted to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0018. The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION: OMB Approval No. 2138–0018.

Title: Report of Passengers Denied Confirmed Space Part 250.

Form No.: 251.

Type of Review: Extension of a currently approved requirement.

Respondents: Large U.S. and foreign passenger air carriers.

Number of Respondents: 140.

Total Annual Burden: 2,438 hours.

Needs and Uses: BTS Form 251 is a one-page report on the number of passengers denied boarding voluntarily or involuntarily, whether the bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. The involuntary denied-boarding rate has decreased over the years from 4.38 per 10,000 passengers in 1980 to 1.16 per 10,000 passengers for the nine months ended September 1997. These statistics demonstrate the effectiveness of the "volunteer" provision, which has reduced the need for more intrusive regulation.

The rate of denied boarding can be examined as an air carrier continuing fitness factor. This rate provides an insight into a carrier's policy on treating overbooked passengers and its compliance disposition. A rapid sustained increase in the rate of denied boarding often is an indicator of operational difficulty.

Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with low bumping incidents when booking a trip. This information is made available to the public through the Air Travel Consumer Report, which the Department publishes. The report is sent to newspapers, magazines, and trade journals.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 97–32455 Filed 12–10–97; 8:45 am]

BILLING CODE 4910–FE–P

Corrections

Federal Register
Vol. 62, No. 238
Thursday, December 11, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Temporary Assistance to Needy Families, Medicaid, Aid to Needy Aged, Blind, or Disabled Persons and for the New Children's Health Insurance Programs for October 1, 1998 Through September 30, 1999

Correction

In notice document 97–30832, beginning on page 62613, in the issue of Monday, November 24, 1997 make the following correction:

On pages 62614 and 62615, in the table heading "September 30, 1996" should read "September 30, 1999".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ANM-13]

Proposed Establishment of Class E Airspace; Hayden, CO

Correction

In proposed rule document 97–30354, beginning on page 61708, in the issue of Wednesday, November 19, 1997, make the following correction:

On page 61708, in the second column, the subject line is corrected to read as set forth above.

BILLING CODE 1505-01-D

Reader Aids

Federal Register
Vol. 62, No. 238
Thursday, December 11, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10
65197–65308	11

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
Administrative Orders:
Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 98–6 of December 2, 1997 65005

5 CFR

213 63627
315 63627
410 63630
591 63630

7 CFR

17 63606
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 63631
454 63631
457 ..... 63631, 63633, 65130
1412 63441
Proposed Rules:
70 63471
810 64174
729 63678
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

78 64134
91 64265
93 64265
Proposed Rules:
381 64767
441 64767

10 CFR

30 63634
32 63634
50 63825
70 63825
73 63640
Proposed Rules:
40 65039
50 ..... 63892, 63911
70 63911

11 CFR

Proposed Rules:
114 65040

12 CFR

8 64135
226 63441
265 64996
516 64138
543 64138
545 64138
552 64138
556 64138
563 64138
614 63644
703 64146
704 64148
790 65197
791 64266
934 65197
1806 64440
Proposed Rules:
225 64997
226 64769
404 64177
405 64177
708a 64185
708b 64187

14 CFR

39 ..... 63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198
71 ..... 64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201
95 65016
97 ..... 63447, 63449, 63451
121 65202
255 63837
1260 63452
Proposed Rules:
39 ..... 63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233
71 ..... 63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308

15 CFR

295 64682
Proposed Rules:
806 65043

17 CFR

15 65203

230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

18 CFR

35.....64688
37.....64715
401.....64154

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:

211.....64188
422.....63681

21 CFR

101.....63647, 63653, 64634
179.....64102, 64107
520.....65020

Proposed Rules:

200.....64048
1020.....65235
1308.....64526

22 CFR

Proposed Rules:

22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:

655.....64324

24 CFR

201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

26 CFR

Proposed Rules:

1.....64190

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203

30 CFR

Proposed Rules:

57.....64789
75.....64789
917.....63684, 65044
926.....63685, 64327

31 CFR

500.....64720

Proposed Rules:

356.....64528

32 CFR

320.....65020

Proposed Rules:

199.....64191
901.....63485

33 CFR

100.....65021
117.....63847
160.....65203
165.....65022

36 CFR

701.....64279

Proposed Rules:

1.....63488
14.....63488
327.....64192

37 CFR

202.....63657

Proposed Rules:

253.....63502
255.....63506

38 CFR

4.....65207
17.....64722
21.....63847, 63848
36.....63454

Proposed Rules:

20.....64790

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

52.....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224
63.....64736, 65022
64.....63662
70.....63662
71.....63662
80.....63853
81.....64284, 64725, 65025
180.....63662, 63858, 64048, 64287, 64294, 65030
185.....64048, 64284, 64287
186.....64048
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738

Proposed Rules:

51.....64532
52.....63687, 64329, 64543, 647389, 65046
63.....65049
80.....63918
81.....63687
112.....63812
194.....64327
721.....64738

41 CFR

105–60.....64740
301.....63798

42 CFR

417.....63669

Proposed Rules:

1001.....63689, 65049

43 CFR

Proposed Rules:

4.....64544

45 CFR

205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301

46 CFR

114.....64303
118.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036
63.....64741
64.....64741, 64759
73.....63674

Proposed Rules:

32.....65053
73.....63690

48 CFR

Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19.....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31.....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42.....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52.....64914, 64915, 64916
53.....64914, 64916, 64934, 64936, 64940

Proposed Rules:

1843.....64545
1852.....64545

49 CFR

171.....65188
219.....63464, 63675
225.....63675
240.....63464

Proposed Rules:

Ch. X.....64193
572.....64546

50 CFR

17.....64306
20.....63608
222.....63467
622.....63677
648.....63872, 64765
660.....63876
679.....63877, 63878, 63880, 64760

Proposed Rules:

14.....64335
17.....64337, 64340, 64799, 64800, 65237
23.....64347
600.....65055
622.....65056
648.....65055
679.....63690

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 11, 1997

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Connecticut; correction; published 12-11-97

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards, etc.:
Electrical power generation; transmission and distribution; electrical protective equipment; published 12-11-97

NATIONAL CREDIT UNION ADMINISTRATION
Organization, functions, and authority delegations:
Executive Director and General Counsel; published 12-11-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Digital flight data recorder upgrade requirements
Correction; published 12-11-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hazelnuts grown in Oregon and Washington; comments due by 12-15-97; published 10-14-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classifications; comments due by 12-15-97; published 10-15-97
Plant-related quarantine, domestic:
Oriental fruit fly; comments due by 12-15-97; published 10-14-97
Plant-related quarantine, foreign:
Tomatoes from Morocco and Western Sahara, etc.; comments due by 12-15-97; published 10-16-97

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Carrageenam, locust bean gum and xanthan gum blend used as binder in cured pork products; comments due by 12-19-97; published 11-19-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut and red king crab; comments due by 12-18-97; published 12-3-97
Marine mammals:
Endangered fish or wildlife—
Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
Incidental taking—
Vandenberg AFB, CA; missile and rocket launches, aircraft flight test operations, and helicopter operations; comments due by 12-15-97; published 11-14-97

DEFENSE DEPARTMENT
Acquisition regulations:
Contract performance reporting outside the United States; comments due by 12-16-97; published 10-17-97
Government property; comments due by 12-16-97; published 10-17-97

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practice standards; comments due by 12-18-97; published 11-18-97

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida; comments due by 12-15-97; published 11-13-97
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 12-19-97; published 11-19-97

FARM CREDIT ADMINISTRATION
Farm credit system:
Leasing activities; comments due by 12-15-97; published 10-15-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arkansas; comments due by 12-15-97; published 10-31-97
Florida; comments due by 12-15-97; published 10-31-97
Illinois; comments due by 12-15-97; published 10-31-97
Michigan; comments due by 12-15-97; published 10-31-97
Oregon; comments due by 12-15-97; published 10-31-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Interest on deposits:
Payment of interest; exception to prohibition; comments due by 12-15-97; published 10-16-97

FEDERAL LABOR RELATIONS AUTHORITY
Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Real Estate Settlement Procedures Act:
Mortgage brokers; disclosure of fees; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT
Indian Affairs Bureau
Law and order on Indian reservations:
Courts of Indian Offenses and law and order code
Correction; comments due by 12-15-97; published 11-14-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
Mobile River Basin, AL; three aquatic snails as endangered and three aquatic snails as threatened; comments due by 12-16-97; published 10-17-97
Newcomb's snail; comments due by 12-15-97; published 11-12-97
St. Andrew Beach mouse; comments due by 12-16-97; published 10-17-97

INTERIOR DEPARTMENT
Conflict of interests:
Ethical conduct for Department of Interior employees; supplemental standards; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Louisiana; comments due by 12-19-97; published 11-19-97.
Montana; comments due by 12-17-97; published 12-2-97
Ohio; comments due by 12-17-97; published 12-2-97
Surface coal mining and reclamation operations:
Ownership and control, permit application process, and improvidently issued permits; comments due by 12-15-97; published 10-29-97

INTERNATIONAL TRADE COMMISSION
Freedom of Information Act and Privacy Act; implementation; comments due by 12-17-97; published 11-17-97

JUSTICE DEPARTMENT
Drug Enforcement Administration
List I chemicals; manufacturers, distributors, importers and exporters; registration:

Pseudoephedrine and phenylpropanolamine products; temporary distribution registration exemption; comments due by 12-16-97; published 10-17-97

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Early release consideration; drug abuse treatment and intensive confinement center programs; comments due by 12-15-97; published 10-15-97

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Tuberculosis, occupational exposure to; comments due by 12-16-97; published 10-17-97

NATIONAL RAILROAD PASSENGER CORPORATION
Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
North Carolina; comments due by 12-15-97; published 10-16-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 12-19-97; published 11-19-97
AlliedSignal Inc.; comments due by 12-16-97; published 10-17-97
Bombardier; comments due by 12-18-97; published 11-18-97
Dassault; comments due by 12-15-97; published 11-13-97
Dornier; comments due by 12-15-97; published 11-13-97
Robinson Helicopter Co.; comments due by 12-16-97; published 10-17-97
Short Brothers plc; comments due by 12-19-97; published 11-19-97
SOCATA-Groupe AEROSPATIALE; comments due by 12-15-97; published 11-7-97
Class E airspace; comments due by 12-15-97; published 10-31-97

TREASURY DEPARTMENT
Fiscal Service
Financial management services:
Federal payments; conversion (two phases) of checks to electronic fund transfer; comments due by 12-16-97; published 9-16-97

TREASURY DEPARTMENT
Internal Revenue Service
Employment taxes and collection of income taxes at source:
Form W-8; electronic filing; comments due by 12-15-97; published 10-14-97

Now Available Online
through
GPO Access
A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

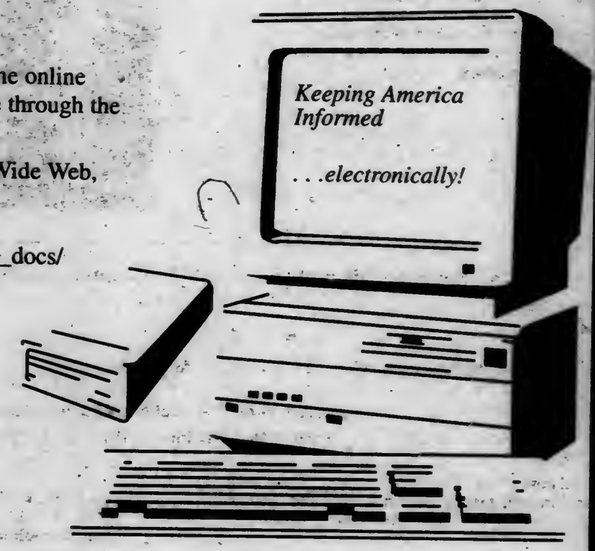
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.access.gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents Subscription Order Form

Order Processing Code
* 5421

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions for one year:

___ **LSA (List of CFR Sections Affected),** (LCS) for $27 per year.
___ **Federal Register Index** (FRSU) $25 per year.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

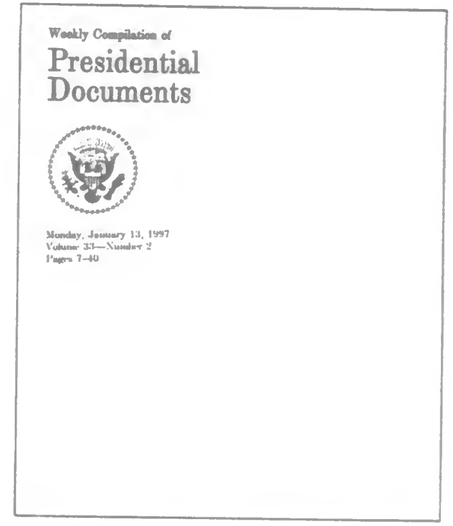
(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5420

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter _____ one-year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

❑ $137.00 First Class Mail ❑ $80.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

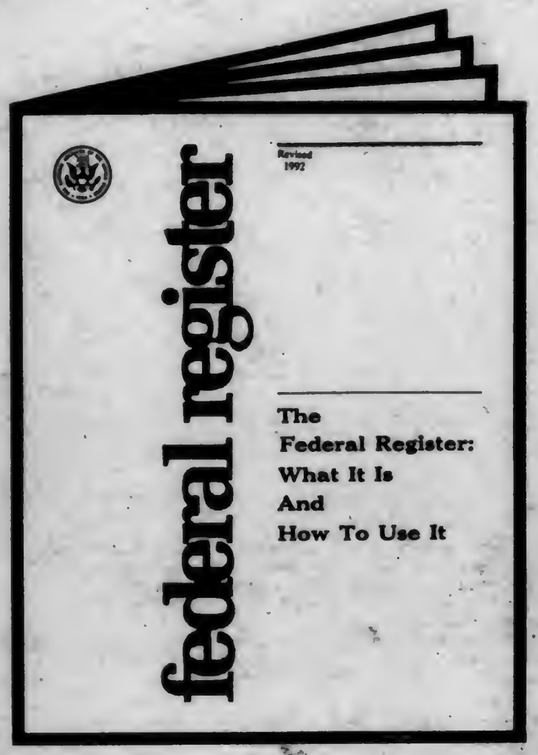
For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register — Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

Charge your order. It's Easy!

To fax your orders (202)-512-2250

☐ **YES**, please send me the following:

_____ copies of **The Federal Register - What It Is and How To Use It**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

_____
(Company or Personal Name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

_____
(Daytime phone including area code)

_____
(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

_____
(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954



Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–12–97
Vol. 62 No. 239

federal register

Friday
December 12, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–12–97
Vol. 62 No. 239
Pages 65309–65592

federal register

Friday
December 12, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see the announcement on the inside cover of this issue.

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 16, 1997 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 239
Friday, December 12, 1997

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Hy-Gene, Inc.; non-separable starch-oil compositions, 65406

Agriculture Department
See Agricultural Research Service
See Commodity Credit Corporation
See Cooperative State Research, Education, and Extension Service
See Federal Crop Insurance Corporation
See Food Safety and Inspection Service
See Forest Service
See Natural Resources Conservation Service

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65416–65417

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65430

Commerce Department
See Census Bureau
See National Oceanic and Atmospheric Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Intership program for postsecondary students, 65412–65416

Commission of Fine Arts
NOTICES
Meetings, 65419

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65410–65411
Procurement list; additions and deletions, 65411–65412

Commodity Credit Corporation
NOTICES
Bylaws of the Commodity Credit Corporation, 65406–65408

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 65419

Cooperative State Research, Education, and Extension Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65588–65589

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
AmeriCorps programs—
National, Indian tribes, and U.S. Territories programs; correction, 65419

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Jacob K. Javits Fellowship Program, 65419–65420
Strengthening Institutions Program, 65592

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 65445–65446

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorothalonil, 65369–65376
Imidacloprid, 65365–65367
Myclobutanil, 65367–65369
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 65426–65427
Weekly receipts, 65426

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 65352–65357
IFR altitudes, 65361–65365
Jet routes, 65357–65358
Restricted areas, 65359–65361
VOR Federal airways, 65358–65359
PROPOSED RULES
Colored Federal airways, 65383–65384
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Design dive speed, 65470
Airport noise compatibility program:
Noise exposure map—
Memphis International Airport, TN, 65470
Rulemaking petitions; summary and disposition, 65471

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Commercial broadcast and instructional television fixed service licenses; competitive bidding procedures; comment request, 65392–65401
Telecommunications Act of 1996; implementation—
Local exchange carriers, non-rural; Federal-State Board on Universal Serviceand forward-looking mechanisms for high cost support, 65389–65392
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 65427

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Hybrid corn seed, 65344–65352
Hybrid sorghum seed, 65313–65321
Potatoes, 65321–65338
Sweet corn, 65338–65344

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 65427

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Encogen Hawaii L.P. et al., 65422–65425
Environmental statements; availability, etc.:
City of Thief River Falls, 65425
Hydroelectric applications, 65425–65426
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 65420
Equitrans, L.P., 65420–65421
Magnolia Pipeline Corp., 65421
Texas Eastern Transmission Corp., 65421
U-T Offshore System, 65422
Wyoming Interstate Co. Ltd., 65422

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
Wapello and Mahaska Counties, IA, 65471

Federal Maritime Commission
NOTICES
Agreements filed, etc., 65427–65428

Federal Railroad Administration
PROPOSED RULES
Railroad safety:
Florida overland express high speed rail system; safety standards, 65478–65572
Track safety standards:
Miscellaneous amendments
Comment request, 65401–65402

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 65428
Change in bank control; correction, 65428
Formations, acquisitions, and mergers, 65428–65429
Permissible nonbanking activities, 65429

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
San Diego County CA; 85 sensitive plant and animal species; extension of comment period, 65436–65437
Environmental statements; notice of intent:
Incidental take permits—
Idaho, Montana, and Washington; Plum Creek Timber Co., L.P.; bull trout, etc., 65437–65439

Food and Drug Administration
PROPOSED RULES
Medical devices:
State product liability claims preemption by Federal law, 65384–65388
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65431–65432
Submission for OMB review; comment request, 65432
Reports and guidance documents; availability, etc.:
Iron-containing supplements and drugs; label warning statements and unit-dose packaging requirements; small entity compliance guidance; availability, 65432–65433

Food Safety and Inspection Service
NOTICES
Meetings:
Meat and Poultry Inspection National Advisory Committee, 65408–65409

Forest Service
NOTICES
Meetings:
Oregon Coast Provincial Advisory Committee, 65409

Geological Survey
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65439–65440

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65430

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65433–65434
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 65434–65436
Public and Indian housing—
Fair Housing Services Center, East Texas, 65574–65585

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See National Park Service

Justice Department
See Parole Commission
NOTICES
Pollution control; consent judgments:
Boise Cascade Corp. et al., 65443
Kirkwood Gas and Electric Co., 65443–65444
Pennsylvania, Commonwealth of, et al., 65444
United Winner Metals, Inc. et al., 65444

Labor Department
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
RULES
Minerals management:
Multiple use mining; mining claims under general mining laws, 65376–65378
NOTICES
Committees; establishment, renewal, termination, etc.:
Upper Snake River District, Resource Advisory Council; nominations request, 65440
Environmental statements; availability, etc.:
National Petroleum Reserve-Alaska; integrated activity plan, 65440–65441
Phelps Dodge Little Rock Mine Project; Grant County, NM, 65441–65442
Meetings:
Resource advisory councils—
Upper Snake River Districts, 65442
Opening of public lands:
Arizona, 65442

National Institutes of Health
NOTICES
Meetings:
National Institute of Allergy and Infectious special emphasis panel, 65433
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Pangene Corporation of Menlo Park, CA; homologous recombination DNA pairing by RecA and RecA peptides, 65433

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Gulf of Alaska groundfish, 65379–65382
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish and Gulf of Alaska grounfish, 65402–65405
International fisheries regulations:
Land Remote Sensing Policy Act of 1992—
Private land remote-sensing space systems; licensing provisions, 65384
Marine mammals:
Commercial fishing authorizations—
Take reduction plan and emergency regulations; hearings, 65402
NOTICES
Fishery conservation and management:
Magnuson Act provisions—
Vessel registration and fisheries information system; implementation plan development, 65417–65419

National Park Service
NOTICES
Native American human remains and associated funerary objects:
California State University-Bakersfield, CA, 65442–65443

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
St. Tammany Parish, LA; Fritchie Marsh Hydrologic Restoration Project, 65409–65410
Whitewater River Watershed; Olmsted, Wabasha, and Winona Counties, MN, 65410

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65447–65448
Submission for OMB review; comment request, 65448
Applications, hearings, determinations, etc.:
Boston Edison Co., 65448–65449
Consolidated Edison Company of New York, Inc., 65449–65450
Southern Nuclear Operating Co., Inc. et al., 65450–65451

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards:
Tuberculosis, occupational exposure to
Extension of comment period, 65388–65389
NOTICES
Nationally recognized testing laboratories, etc.:
TUV Rheinland of North America Inc., 65446–65447

Parole Commission
NOTICES
Meetings; Sunshine Act, 65444–65445

Personnel Management Office
RULES
Pay under General Schedule:
Locality-based comparability payments—
Metropolitan areas; removed, 65311–65313
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65451–65452

Presidential Documents
PROCLAMATIONS
Special observances:
Human Rights Day, Bill of Rights Day, and Human Rights Week (Proc. 7059), 65309–65310

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65452–65453

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 65458
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 65459–65465
Chicago Stock Exchange, Inc., 65465–65466

MBS Clearing Corp., 65466
Philadelphia Depository Trust Co., 65466–65467
Philadelphia Stock Exchange, Inc., 65467–65469
Applications, hearings, determinations, etc.:
Diamonds Trust et al., 65453–65457
Partner Wealth Fund I, L.P., 65457–65458

State Department
NOTICES
Meetings:
International Telecommunications Advisory Committee, 65469

Surface Transportation Board
RULES
Acquisition regulations:
Variable cost of privately-owned rail cars; verification procedure, 65378
NOTICES
Railroad operation, acquisition, construction, etc.:
CMC Railroad, Inc., 65471–65472
Norfolk Southern Railway Co., 65472
Railroad services abandonment:
Wisconsin Central Ltd., 65472–65473

Thrift Supervision Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65474–65475

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Surface Transportation Board

Treasury Department
See Thrift Supervision Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65473
Privacy Act:
Systems of records, 65473–65474

Separate Parts In This Issue

Part II
Department of Transportation, Federal Railroad Administration, 65478–65572

Part III
Department of Housing and Urban Development, 65574–65585

Part IV
Department of Agriculture, Cooperative State Research, Education, and Extension Service, 65588–65589

Part V
Department of Education, 65592

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7059 65309

5 CFR
531 65311

7 CFR
401 65313
422 65321
437 65338
443 65344
457 (4 documents) 65313, 65321, 65338, 65344

14 CFR
39 (2 documents) 65352, 65355
71 (2 documents) 65357, 65358
73 (2 documents) 65359, 65360
95 (2 documents) 65361, 65363
Proposed Rules:
71 65383

15 CFR
Proposed Rules:
960 65384

21 CFR
Proposed Rules:
808 65384

29 CFR
Proposed Rules:
1910 65388

40 CFR
180 (3 documents) 65365, 65367, 65369

43 CFR
3740 65376
3810 65376
3820 55376

47 CFR
Proposed Rules:
54 65389
73 65392
74 65392

49 CFR
1241 65378
Proposed Rules:
213 65401
243 65480

50 CFR
679 65379
Proposed Rules:
229 65402
679 65402

Federal Register
Vol. 62, No. 239
Friday, December 12, 1997

Presidential Documents

Title 3—

The President

Proclamation 7059 of December 9, 1997

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1997

By the President of the United States of America

A Proclamation

Human rights are the cornerstone of American democracy. The founders of our democracy, in their wisdom, recognized the inherent dignity of every human being and enshrined in the Bill of Rights our profound commitment to freedom of speech, religion, and assembly and the right to due process and a fair trial. Through more than two centuries of challenge and change, these guiding principles have sustained us. They form the common ground on which our racial, religious, and ethnic diversity can flourish.

It is a measure of our greatness as a Nation that each new generation of Americans has sought to advance and extend the rights set forth by Thomas Jefferson in the Declaration of Independence and by the framers of our Constitution. Promoting human rights and democracy around the world is a central pillar of our foreign policy. We seek to protect and advance human rights for all, not only because a world that respects such rights will be freer, safer, and more prosperous, but also so that we may keep faith with the vision of our founders, who knew that these rights are the deepest reflection of America's fundamental values.

This week marks the beginning of the world's celebration of the 50th anniversary year of the Universal Declaration of Human Rights. The adoption of this set of principles by the United Nations on December 10, 1948, was a landmark event in the course of modern human history. The Declaration represented a collective condemnation by nearly 50 U.N. member states of the widespread and devastating human rights abuses committed prior to and during World War II, and it reflected a consensus on what the postwar world should seek to become. Among the Declaration's 30 articles are affirmations of the right to life, liberty, and personal security; the right to freedom of thought, religion, and expression; and the right to freedom from slavery, torture, and arbitrary arrest and detention.

It was fitting that a great American, Eleanor Roosevelt, played a pivotal role in the development of the Universal Declaration of Human Rights, which so closely reflected the tenets of our own Bill of Rights. As Chair of the U.N. Commission on Human Rights, she led the efforts of its 18 members to define basic rights and freedoms and to draft the international affirmation of rights that was ultimately adopted by the General Assembly. Today, thanks to those efforts, scores of countries across the globe have incorporated these fundamental principles into their laws and practices, and millions of people are leading freer, happier, and more fulfilling lives.

Now our challenge is to reaffirm the universality of these precepts and to ensure that all the world's peoples share in their protections. While we have made great progress in this endeavor, we must recognize that intolerance, discrimination, and persecution continue to darken our vision of a better future. Each of us has a part to play in upholding human rights for men and women of all political, ethnic, religious, and racial backgrounds. The words of Eleanor Roosevelt are both an inspiration and a challenge, not only to Americans, but also to citizens throughout the

international community: "The destiny of human rights is in the hands of all of our citizens and all of our communities."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1997, as Human Rights Day; December 15, 1997, as Bill of Rights Day; and the week beginning December 10, 1997, as Human Rights Week. I call upon the people of the United States to celebrate these observances with appropriate programs, ceremonies, and activities that demonstrate our national commitment to the Bill of Rights, the Universal Declaration of Human Rights, and the promotion of human rights for all people.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–32685
Filed 12–11–97; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 62, No. 239
Friday, December 12, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AH65

Pay Under the General Schedule; Locality Pay Areas for 1998

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to remove two metropolitan areas from the "Rest of U.S." locality pay area and establish two new locality pay areas in January 1998 corresponding to these metropolitan areas. The two metropolitan areas affected by this regulation are Hartford, CT, and Orlando, FL. The President's Pay Agent made the final determination on the boundaries of the new locality pay areas after considering the recommendations of the Federal Salary Council and public comments.

EFFECTIVE DATE: The regulations are effective on January 1, 1998, and are applicable on the first day of the first pay period beginning on or after January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jeanne D. Jacobson, (202) 606-2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On October 25, 1996, the Office of Personnel Management (OPM) published proposed regulations to remove two metropolitan areas from the "Rest of U.S." locality pay area and establish two new locality pay areas in January 1998 corresponding to these metropolitan areas based on the recommendations of the Federal Salary Council. (See 61 FR 55227.) OPM received no public comments on the proposed regulations. Therefore, after considering the views of the Federal Salary Council, the President's Pay Agent (consisting of the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of OPM) decided to adopt the Federal Salary Council's recommendations on the two new locality pay areas. This determination was reflected in the Pay Agent's November 27, 1996, report to the President. These final regulations list the locality pay areas for 1998, including the two new locality pay areas corresponding to the following Metropolitan Statistical Areas (MSA's) as defined by OMB—Hartford, CT, including that portion of New London County, CT, outside the Hartford, CT MSA, and Orlando, FL.

The definitions of the MSA's and Consolidated Metropolitan Statistical Areas (CMSA's) that comprise the locality pay areas are found in OMB Bulletin No. 96–08, June 28, 1996. Based on these definitions, the two new locality pay areas for 1998 will be composed of the following geographic areas:

Hartford, CT, Locality Pay Area

Hartford County (part):
Avon town
Berlin town
Bloomfield town
Bristol city
Burlington town
Canton town
East Granby town
East Hartford town
East Windsor town
Enfield town
Farmington town
Glastonbury town
Granby town
Hartford city
Manchester town
Marlborough town
New Britain city
Newington town
Plainville town
Rocky Hill town
Simsbury town
Southington town
South Windsor town
Suffield town
West Hartford town
Wethersfield town
Windsor town
Windsor Locks town

Litchfield County (part):
Barkhamsted town
Harwinton town
New Hartford town
Plymouth town
Winchester town

Middlesex County (part):
Cromwell town
Durham town
East Haddam town
East Hampton town
Haddam town
Middlefield town
Middletown city
Portland town

New London County (all)

Tolland County (part):
Andover town
Bolton town
Columbia town
Coventry town
Ellington town
Hebron town
Mansfield town
Somers town
Stafford town
Tolland town
Vernon town
Willington town

Windham County (part):
Ashford town
Chaplin town
Windham town

Orlando, FL, Locality Pay Area

Lake County
Orange County
Osceola County
Seminole County

Hartford, CT, Locality Pay Area

In its November, 27, 1996, report to the President, the President's Pay Agent accepted the Federal Salary Council's recommendation that Hartford, CT, be established as a separate locality pay area for General Schedule (GS) workers in 1998, including the Hartford, CT MSA, plus that portion of New London County, CT, outside the Hartford, CT MSA. The Pay Agent also adopted the following criteria recommended by the Federal Salary Council for consideration of partial counties as "areas of application" in New England. These criteria are needed because OMB uses cities and townships, instead of full counties, to define metropolitan areas in New England.

Criteria for partial-county areas of application in New England:

1. The partial-county area must be contiguous to the pay locality (exclusive

of any other areas of application) and must currently be included in the "Rest of U.S." locality pay area.

2. The partial-county area must contain at least 2,000 GS employees.

3. The entire county must have a population density of more than 200 per square mile or at least 90 percent of the population in urbanized areas.

4. The entire county must demonstrate some economic linkage with the pay locality, defined as commuting at a level of 5 percent or more into or from the areas in question. (The areas in question are the entire county under consideration and the central core of the MSA as defined by the Census Bureau for use in establishing metropolitan areas.)

Because New London County, CT, met all of the above-stated criteria, the Pay Agent accepted the Federal Salary Council's recommendation that that portion of New London County, CT, outside the Hartford, CT MSA be included in the Hartford, CT, locality pay area as an "area of application" for 1998.

After the Pay Agent issued its November 1996 report to the President reflecting its determination to establish Hartford, CT, as a new locality pay area for 1998, OPM received a letter from a Member of Congress expressing interest in including the city of Springfield, MA, in the Hartford, CT, locality pay area. The Federal Salary Council determined that Hampden County, MA, which includes the city of Springfield, does not meet the Federal Salary Council's criteria for consideration as an "area of application."

Prior to the implementation of locality pay in 1994, the President's Pay Agent adopted the Federal Salary Council's recommendation that the boundaries of locality pay areas follow the boundaries of MSA's and CMSA's as defined by OMB. The Federal Salary Council also recommended that certain areas outside the boundaries of an MSA or CMSA (i.e., "areas of application") be included in the locality pay area if they meet certain criteria.

In order for the Federal Salary Council to recommend an area as a county-wide area of application, the affected county must—

1. Be contiguous to a pay locality;

2. Contain at least 2,000 GS–GM employees;

3. Have a significant level of urbanization, based on 1990 Census data. A "significant level of urbanization" is defined as a population density of more than 200 per square mile or at least 90 percent of the population in urbanized areas; and

4. Demonstration some economic linkage with the pay locality, defined as commuting at a level of 5 percent or more into or from the areas in question. (The areas in question are the contiguous county under consideration and the central counties (or in the case of New England, the central cores) identified by the Census Bureau for the process of defining the CMSA's and MSA's involved.)

The Federal Salary Council considered Hampden County, MA, under these criteria as a potential area of application before making its October 1996 recommendation to the Pay Agent regarding the new Hartford, CT, locality pay area. However, because Hampden County did not pass the Federal Salary Council's criterion for GS employment (having only 908 GS employees as of March 1996), the Federal Salary Council did not recommend it as an "area of application" to the Hartford, CT, locality pay area.

Orlando, FL, Locality Pay Area

The President's Pay Agent accepted the Federal Salary Council's recommendation that Orlando, FL, be established as a separate locality pay area. Although Bureau of Labor Statistics (BLS) surveys showed the pay disparity in Orlando was slightly below the pay disparity for the "Rest of U.S." locality pay area, the Federal Salary Council's established policy provides that any surveyed area with a pay disparity of less than 2/10ths of a percentage point below the "Rest of U.S." pay disparity may qualify to be established or continued as a locality pay area.

The Pay Agent also accepted the Federal Salary Council's recommendation that the Orlando, FL, locality pay percentage be set equal to the "Rest of U.S." locality pay percentage in 1998 and that the Orlando, FL, pay gap be averaged with the "Rest of U.S." pay gap to determine the combined pay gap for the two areas. This is consistent with past practices for dealing with locality pay areas in which the pay disparity is below the "Rest of U.S." pay disparity. BLS will continue to conduct surveys in Orlando, and the Pay Agent and the Federal Salary Council will reconsider these issues in the future.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make these regulations effective in less than 30 days. The regulations are being made effective on January 1, 1998, in order for the locality payments for each locality pay area authorized for 1998 to be applicable on the first day of the first pay period beginning on or after January 1, 1998.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 531 of title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1358;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

2. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for the purpose of this subpart:

(1) Atlanta, GA—consisting of the Atlanta, GA MSA;

(2) Boston-Worcester-Lawrence, MA–NH–ME–CT—consisting of the Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA;

(3) Chicago-Gary-Kenosha, IL–IN–WI—consisting of the Chicago-Gary-Kenosha, IL–IN–WI CMSA;

(4) Cincinnati-Hamilton, OH–KY–IN—consisting of the Cincinnati-Hamilton, OH–KY–IN CMSA;

(5) Cleveland-Akron, OH—consisting of the Cleveland-Akron, OH CMSA;

(6) Columbus, OH—consisting of the Columbus, OH MSA;

(7) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CMSA;

(8) Dayton-Springfield, OH—consisting of the Dayton-Springfield, OH MSA;

(9) Denver-Boulder-Greeley, CO—consisting of the Denver-Boulder-Greeley, CO CMSA;

(10) Detroit-Ann Arbor-Flint, MI—consisting of the Detroit-Ann Arbor-Flint, MI CMSA;

(11) Hartford, CT—consisting of the Hartford, CT MSA, plus that portion of New London County, CT, not located within the Hartford, CT MSA;

(12) Houston-Galveston-Brazoria, TX—consisting of the Houston-Galveston-Brazoria, TX CMSA;

(13) Huntsville, AL—consisting of the Huntsville, AL MSA;

(14) Indianapolis, IN—consisting of the Indianapolis, IN MSA;

(15) Kansas City, MO–KS—consisting of the Kansas City, MO–KS MSA;

(16) Los Angeles-Riverside-Orange County, CA—consisting of the Los Angeles-Riverside-Orange County, CA CMSA, plus Santa Barbara County, CA, and that portion of Edwards Air Force Base, CA, not located within the Los Angeles-Riverside-Orange County, CA CMSA;

(17) Miami-Fort Lauderdale, FL—consisting of the Miami-Fort Lauderdale, FL CMSA;

(18) Milwaukee-Racine, WI—consisting of the Milwaukee-Racine, WI CMSA;

(19) Minneapolis-St. Paul, MN–WI—consisting of the Minneapolis-St. Paul, MN–WI MSA;

(20) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA—consisting of the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA;

(21) Orlando, FL—consisting of the Orlando, FL MSA;

(22) Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD—consisting of the Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA;

(23) Pittsburgh, PA—consisting of the Pittsburgh, PA MSA;

(24) Portland-Salem, OR–WA—consisting of the Portland-Salem, OR–WA CMSA;

(25) Richmond-Petersburg, VA—consisting of the Richmond-Petersburg, VA MSA;

(26) Sacramento-Yolo, CA—consisting of the Sacramento-Yolo, CA CMSA;

(27) St. Louis, MO–IL—consisting of the St. Louis, MO–IL MSA;

(28) San Diego, CA—consisting of the San Diego, CA MSA;

(29) San Francisco-Oakland-San Jose, CA—consisting of the San Francisco-Oakland-San Jose, CA CMSA;

(30) Seattle-Tacoma-Bremerton, WA—consisting of the Seattle-Tacoma-Bremerton, WA CMSA;

(31) Washington-Baltimore, DC–MD–VA–WV—consisting of the Washington-Baltimore, DC–MD–VA–WV CMSA, plus St. Mary's County, MD; and

(32) Rest of U.S.—consisting of those portions of the 48 contiguous States not located in another locality pay area.

[FR Doc. 97–32580 Filed 12–11–97; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

RIN 0563–AB03

General Crop Insurance Regulations; Hybrid Sorghum Seed Endorsement and Common Crop Insurance Regulations; Hybrid Sorghum Seed Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of hybrid sorghum seed. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current hybrid sorghum seed endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current hybrid sorghum seed endorsement to the 1997 and prior crop years.

DATES: Effective December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The effect of this regulation on small entities will be no greater than on larger entities. Under the current regulations, a producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Monday, December 30, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 68674 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.112 (Hybrid Sorghum Seed Crop Insurance Provisions). These provisions will replace and supersede the current provisions for insuring hybrid sorghum seed found at 7 CFR section 401.109 and will be effective for the 1998 and succeeding crop years. This rule also amends section 401.109 to restrict its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments. A total of 36 comments were received from reinsured companies and an insurance service organization. The comments received, and FCIC's responses, follow:

Comment: A reinsured company and an insurance service organization believed that the calculation sequence in the definition of "amount of insurance per acre" formula should be revised to match the order shown in the Special Provisions. The commenter stated that in the Special Provisions, multiplication by the price election is not in the proper sequence. Amount of insurance per acre is the county yield, multiplied by the factor for the coverage level selected, multiplied by the price election selected by the producer less any minimum guaranteed payment.

Response: FCIC has revised and clarified the definition to show the proper calculation. Since the calculation is in the Crop Provisions, it will be removed from the Special Provisions.

Comment: An insurance service organization suggested that the definition of "female parent plant" may have to be changed because some companies have started experimenting with female sterile plants from which the stamen may not have to be removed.

Response: FCIC has revised the definition to accommodate those instances where the parent plants are rendered male sterile by means other than stamen removal.

Comment: A reinsured company and an insurance service organization suggested that the definition of "interplanting" be revised to match its use in the Special Provisions. Interplanting is listed as a separate type with a different county yield than standard planting.

Response: The Special Provisions uses the term "interplanting" and the Crop Provisions uses the term "interplanted," and the terms have different meanings. To avoid any confusion between these terms, FCIC will change the reference from "interplanting" to "non-standard planting" in the Special Provisions.

Comment: A reinsured company suggested that in the definition of "irrigated practice," the words "and quality" be added after the words "* * * providing the quantity."

Response: Water quality is important. However, there are no clear criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. The provisions regarding good farming practices can be applied in situations in which the insured failed to exercise due care and diligence in the application of irrigation water. No change has been made.

Comment: An insurance service organization suggested adding, in the definition of "non-seed amount," the phrase "rejected for seed purposes" or something similar after the first reference to "non-seed production" for clarification.

Response: FCIC has revised the definition and section 12 to clarify that non-seed production is production that does not qualify as seed production because of inadequate germination.

Comment: A reinsured company and an insurance service organization suggested that the definition of "planted acreage" be amended to require that the male and female parent plants be planted in accordance with the production management practices of the seed company.

Response: The definition of "planted acreage" is broad enough to permit planting in accordance with practices of the seed company. The requirement that parent plants be planted in accordance with the production management practices of the seed company is more appropriate in sections 7 and 10 regarding insured crop and causes of loss, and those provisions have been revised accordingly.

Comment: A reinsured company and an insurance service organization suggested that a conflict exists between the definition of "sample" and "inadequate germination" because the germination rate is determined by using a certified seed test on clean seed, not field run seed.

Response: There is no conflict between the terms. The sample must be at least 3 pounds of field run seed. The germination rate is based on the amount of clean seed obtained from that sample. No change has been made.

Comment: An insurance service organization asked why a seed company must now be a corporation (previously defined as a "business enterprise"), and if there are any legitimate seed companies that are not corporations.

Response: A seed company need only be a corporation if the seed company is also the producer. To cover all other situations, FCIC has changed "a corporation" to "a business enterprise" in the definition of seed company.

Comment: An insurance service organization suggested that section 2(a) be changed to read ". . . a basic unit, as defined in section 1 of the Basic Provisions, may be divided . . ." instead of "(basic unit)" at the end of the earlier phrase.

Response: All definitions and most provisions common to most crops with respect to units have been deleted and moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization stated that the provisions contained in section 2(e)(1), which require the insured to keep records by optional unit for optional units to apply, conflict with section 3(b) which correctly indicates that production reporting requirements do not apply to this crop. In most instances the sorghum seed is harvested and hauled directly to the seed companies' processing facilities. The seed company maintains records of planted acreage and harvested production and provides all of the yield records used by the FCIC Regional Service Office (RSO) to establish the approved yields. All references to the insured maintaining records by optional unit should not be a requirement since this is maintained at the seed company level. The historical yield of the producer's sorghum seed is not used to establish the amount of insurance as stated in section 2(e)(1). The amount of insurance is based on the county yield, coverage level and price elected and any minimum guaranteed payment.

Response: The insured must have verifiable records of planted acreage and production for each optional unit for at least the ". . . last crop year used to determine the amount of insurance." This requirement should not be removed simply because the seed company maintains those records. In order to protect the integrity of the program, FCIC must be able to verify the accuracy of the guarantee for each unit. If the producer cannot provide the records for each optional unit, they will be combined in basic units. The insured can obtain the necessary records from the seed company. These provisions have been moved to the Basic Provisions and deleted from these Crop Provisions.

Comment: An insurance service organization suggested that the opening phrase of section 2(e)(4) "Each optional unit must meet one or more of the following criteria, as applicable:" Is not necessary, and may actually cause confusion, since this crop has only one method for optional unit division (by section or other legal description). Perhaps section (e)(4) should start with "Each optional unit is located in a separate legally identified section. . . ."

Response: All relevant changes have been made to the Basic Provisions and those provisions deleted in these Crop Provisions.

Comment: A reinsured company was concerned about the requirement that the producer must meet all the requirements in section 6. They stated that these requirements should not be mandatory for every acreage report.

Response: The information required in the acreage report is necessary to establish liability, premium, and insurability of the acreage. No change has been made.

Comment: A reinsured company and an insurance service organization mentioned that in section 6(a), each individual producer is the named insured under this program and may not know the type or variety of hybrid. The seed companies provide the seed and the producer grows it. Seed companies do not want this information going any further than necessary while still meeting the requirements of the MPCI program. This information is needed only in the event of a claim and can be obtained from the seed company as needed at that time. The commenter believes collection of this information should be an option since the insurance provider may want to capture it in certain instances but not for all insureds. Therefore, this should be an option, not mandatory as it would be with the word "must" in the proposed language.

Response: The reporting requirement by type or variety must be maintained for rating purposes and to determine liability and premium for the unit. Such information cannot be obtained only at the time of loss. It is the responsibility of the producer to provide the information, which should be contained in the hybrid sorghum seed processor contract. No change has been made.

Comment: A reinsured company and an insurance service organization mentioned that section 6(b) requires that acreage occupied by the male parent plants be reported. They realize it is common for other crops to obtain all insurable and uninsurable acreage of the crop. However, this stipulation to capture the total acreage occupied by the male parent plants is an unnecessary and burdensome requirement for hybrid sorghum seed. The commenter suggested that this should only be determined in the event of a claim. A number of seed companies require that the male acres be destroyed after pollination.

Response: The requirement to report any acreage occupied by male parent plants is necessary to determine the correct amount of insurance for a unit since acres with male plants are not insurable. The amount of insurance is determined on the Summary of Coverage so the insurance provider cannot wait until the loss to determine insurable acreage. The burden of determining the amount of acreage occupied by the male plant can be minimized by mathematical calculation based on the planting pattern of the crop. No change has been made.

Comment: A reinsured company and an insurance service organization questioned section 6(c), which requires the insured to certify that there is a hybrid sorghum seed processor contract and the amount of any minimum guaranteed payment. The commenter questioned what constitutes certification. It is their feeling that if the insured goes through the FCIC RSO to obtain an approved yield, and upon receiving copies of this information, this would be adequate certification that the insured has a contract. The presumption is that the FCIC RSO would not go through this process between the producer and the seed company if there was not some type of contractual agreement in place. If they obtain some of this information directly from the seed company it would also constitute certification as the seed company would not provide this information if a contract was not in place. If this does not constitute certification for the purposes of having a contract then they have some concerns as to what additional requirements must be met.

Response: The certification requirement is satisfied by a written statement on the acreage report, signed by the producer, that such a contract exists. In many cases, the RSO provides an approved yield for a variety, not specifically for individual producers. Since the processor contract is a condition of insurance, the insurance provider must have some assurance that a contract exists. Receipt of an approved yield from the RSO is not evidence of a contract between the processor and the producer. No change has been made.

Comment: An insurance service organization asked if all the exceptions in section 7(a)(4)(I)–(iv) should be required by written agreement. For example, the commenter questioned why acreage with female and male parent plants in the same row would ever be insurable. Perhaps the phrase "unless allowed" should be removed from item (4) and inserted at the specific items where it is actually possible.

Response: Current planting practices do not allow male and female plants in the same row. However, acceptable planting practices may change and the provision must allow a certain amount of flexibility to cover such changes. No change has been made.

Comment: Reinsured companies and an insurance service organization questioned why section 7(c) requires the seed company to be a corporation. The commenters also questioned whether there could be other acceptable legal entities that could conduct business as a seed company, and if the requirement in section 7(c)(1) is necessary, since "seed company" is a defined term.

Response: In most cases, a seed company need not be a corporation and FCIC has changed the requirement for a

seed company from a "corporation" to a "business enterprise" in the definition. However, to protect the integrity of the program, the seed company must be a corporation if the seed company is also the producer. FCIC has added a provision in the definition to require seed companies that are also the insured to be a corporation.

Comment: A reinsured company and an insurance service organization noted that section 7(c)(3) states that if sales records are not available from a seed company who is also the insured, the crop could be insured under the coarse grains policy, not the hybrid sorghum seed policy. Yield potential for sorghum seed is lower than that for commercial sorghum, so this would be a questionable move.

Response: FCIC agrees that hybrid sorghum seed is best suited for insurance under the hybrid sorghum seed policy, but records must be provided to assure that the person seeking insurance is a bona-fide producer of hybrid sorghum seed. If the crop is insured under the Coarse Grains Crop Provisions, the approved yield would be derived from grain sorghum production records of the processor for the particular type or variety. The last sentence of section 7(c)(3) has been revised to allow such insurance by written agreement.

Comment: An insurance service organization asked if it is necessary that the phrase "Of the insured crop" be specified in section 8(c) but not for sections 8(a) or 8(b).

Response: FCIC has clarified the provision. Further, since damage to the male plant could also necessitate replanting, FCIC has modified section 8(c) to include both male and female parent plants.

Comment: An insurance service organization stated that the phrase "insurance attaches after" in section 9(a) creates an ambiguity with respect to when insurance attaches. The commenter suggested that the term "after" could be changed to "once" (or "upon completion of planting:") and then delete "is completely planted" from items (1) and (2).

Response: Section 9(a) has been clarified.

Comment: A reinsured company and an insurance service organization stated that the provisions in section 11(a) stipulate that any representative samples must consist of one complete planting pattern the entire length of the field if the acreage will not be harvested. The commenters prefer that each representative sample be one complete pattern which is long enough to provide a 1/100 acre sample, and that these be at various representative areas of the field rather than the entire length of the field. This would be consistent with the appraisal methods specified in the loss adjustment procedures.

Response: More than one representative sample may be required by the insurance provider, and such samples may be in different parts of the field. However, by having a strip the entire length of the field, the loss adjuster can choose the areas to be sampled and is not restricted to the crop the insured chose to leave for this purpose. This permits a more accurate appraisal. Further, it would be difficult for the person harvesting the crop to know what constitutes 1/100 of an acre. No change has been made.

Comment: An insurance service organization suggested that since the Basic Provisions state that the term "representative sample" will be further defined in the Crop Provisions, it should be included in section 1 with the other definitions (as in the 1988–CHIAA 797) so the term would be more easily located.

Response: The requirement for representative samples is substantive and, therefore, should not be in the definition section. The Basic Provisions are revised to amend the definition to state "as specified in the Crop Provisions."

Comment: A reinsured company and an insurance service organization suggested the requirement in section 11(b)(2) that the insured provide a completed copy of the seed processor contract in the event of a loss should be optional, not mandatory. If an insurance company insures all of a seed company's producers, the company knows each producer has a seed contract, and should not have to obtain a copy from each one. The insurance company will have a copy of the base contract for each seed company and nothing is gained by having to obtain the exact contract in effect for each producer. If some producers insured with an insurance company grow hybrid sorghum seed for various seed companies (not all of their producers are insured with them) there may be some benefit in obtaining a copy of their contract.

Response: Since not all producers may receive the same contract terms, the insurance company must verify contract terms, unless it has been determined that the contract provided by the seed company is used for all its producers without any waivers or amendments. Section 11(b)(2) has been revised accordingly.

Comment: An insurance service organization suggested that the provisions in section 12(e)(1)(v) (redesignated section 12(d)(1)(v)) should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short "shelf life."

Response: A later appraisal will only be necessary if the insurance provider and the insured do not agree on the appraisal or the insurance provider believes the crop needs to be carried further. The producer must continue to care for the crop. If the producer does not care for the crop, the original appraisal will be used. No change will be made.

Comment: An insurance service organization stated that section 12(e)(2) (redesignated 12(d)(2)), counts harvested production *delivered to* the seed company, whereas section 6(c)(1)(a) of the 1998–CHIAA 797 counts harvested production delivered to and *accepted by* the seed company. The commenter questioned whether this is a change, or should this provision be interpreted to mean that production is not considered delivered until it is accepted.

Response: This is a change. Section 12(d)(2) provides that seed production to be counted includes mature harvested production that is delivered as commercial hybrid sorghum seed to the seed company stated in the hybrid sorghum seed processor contract, regardless of quality, unless the production has inadequate germination.

Comment: A reinsured company and an insurance service organization stated that section 12(g)(2) (redesignated section 12(f)(2)) requires a company to work the claim in the same manner as the records of the seed company provided for establishing the approved yield. Since the approved yield is calculated by the RSO, the insurance provider must be notified when a seed company has its own method for converting the production.

Response: In order to ensure the accuracy of any claim, the same moisture and weight per bushel must be used to calculate the amount of insurance and the production to count. The FCIC procedure will specify that the seed company will provide its conversion chart with the production records. FCIC will provide the conversion chart to the insurance provider when the moisture or weight used to determine a bushel differs from the definition stated in the policy.

Comment: A reinsured company and an insurance service organization suggested that the substitute crop provisions under Prevented Planting

coverage should be eliminated, as indicated in other comments being submitted and as being discussed separately.

Response: The prevented planting provisions have been moved to the Basic Provisions and FCIC has revised these provisions to remove the substitute crop provisions.

Comment: A reinsured company understands that FCIC plans to revise prevented planting for 1998 and assumes that these new provisions will be incorporated into this policy.

Response: The prevented planting provisions have been moved to the Basic Provisions and will be applicable to this policy.

Comment: An insurance service organization suggested that section 13(d)(2) may be confusing because a sentence that states "The unit consists of 185 acres * * *" is followed immediately by a sentence that states "The unit consists of 150 acres * * *". The example would be clearer if it stated "The unit consists of 150 acres of female parent plants of the same type and variety (an additional 35 acres are occupied by the male parent plants, which are not insurable). Of the 150 acres, 50 acres were planted * * *" or some similar statement. At the least, the latter should read "The unit consists of 150 insurable acres * * *".

Response: The late and prevented planting provisions common to most crops have been moved to the Basic Provisions.

Comment: An insurance service organization suggested that instead of specifying years in section 13(d)(4)(ii), it could be written with references to "this year" and "the following year" so it wouldn't look outdated in subsequent years. Also, consider changing "for the purpose of the preceding sentence" to "for this purpose".

Response: The late and prevented planting provisions common to most crops are deleted and moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization suggested that section 13(d)(5)(ii) should be changed since hybrid sorghum seed is a crop grown under contract with a seed company, which dictates the number of acres to be planted. The maximum eligible acreage for prevented planting coverage should be contracted acres, regardless of how many acres may have been planted in previous years.

Response: FCIC has clarified the provisions in the Basic Provisions.

Comment: An insurance service organization suggested that in section 13(d)(5)(iv)(E), the sentence should begin with "On which * * *" (Or at least the first word should be capitalized to match the other items).

Response: FCIC has revised the provision appropriately in the Basic Provisions.

Comment: An insurance service organization questioned whether is it necessary to keep repeating "guarantee, or amount of insurance" as alternatives to a "prevented planting indemnity" in section 13(d)(5)(iv)(F).

Response: The prevented planting guarantee; amount of insurance; and indemnity refer to different amounts, and all terms are necessary. No change has been made in the Basic Provisions.

Comment: Reinsured companies and an insurance service organization recommended deleting section 14(d). Written agreements should not be limited to one year. Rather, such agreements should be valid for the period stated in the agreement. In most cases, written agreements should be continuous, as is the case with the policy.

Response: Written agreements are, by design, temporary and intended to address unusual circumstances. If the conditions that require a written agreement exists for multiple crop years, the policy or Special Provisions should be amended to accommodate the conditions. The written agreement provisions have been deleted and moved to the Basic Provisions.

Comment: An insurance service organization suggested that the provisions contained in section 14(e) be combined with the provisions in section 14(a).

Response: Section 14(e) is intended to be a limited exception, not the rule, affecting only those cases in which conditions discovered after the sales closing date make a written agreement necessary. Therefore, these provisions should be kept separate. No change has been made in the Basic Provisions.

Comment: A reinsured company was concerned about many of the mandatory requirements added to these provisions. In its view, most of these requirements are unnecessary. The issues of reduced expense reimbursement and simplification should be considered prior to finalizing these provisions. This policy proposes to increase the expense of writing hybrid sorghum seed along with the added complexity involved from the additional collection requirements.

Response: FCIC understands the concerns of this commenter. These Crop Provisions were revised to reduce program vulnerabilities and make the insuring language more precise. FCIC has attempted to minimize the additional requirements imposed upon the policyholder, the reinsured company, and the seed company. All mandatory information is required to fairly and properly administer the policy.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following provisions:

1. The paragraph preceding section 1 has been revised to refer to the Catastrophic Risk Protection Endorsement for the purpose of clarification.

2. The definitions of "days," "FSA," "final planting date," "interplanted," "irrigated practice," "late planted," "late planting period," and "timely planted" have been deleted and moved to the Basic Provisions. Also, deleted the definition of "seed amount."

3. The definitions of "adjusted yield," "approved yield," "county yield," "dollar value of insurance," "hybrid sorghum seed processor contract," and "insurable interest" have been revised for clarification.

4. A definition of "coverage level factor" has been added for clarification.

5. The definitions of "good farming practices," "planted acreage," and "prevented planting" have been revised to delete the provisions moved to the Basic Provisions.

6. The definition of "practical to replant" has been revised to clarify that it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid sorghum seed processor contract, or the seed company agrees to accept such production.

7. Section 2 has been revised to delete those provisions that have been moved to the Basic Provisions, and to clarify the unit structure for hybrid sorghum seed when the hybrid sorghum seed processor contract specifies an amount of production to be delivered. Also, for processor contracts that stipulate a number of acres to be planted, the provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

8. Section 7(d) has been added to allow the insured crop that is under contract with different seed companies to be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured.

9. Section 8(c) has been revised for clarification.

10. In section 10(b)(4), the requirement that the crop be inspected and the loss appraised before harvest is

completed has been deleted to be consistent with section 11(b)(1).

11. Section 12(c) has been revised for clarification. Also, an example of an indemnity calculation has been added for illustration. Section 12(d) is deleted since it was redundant with section 12(e) and the following section redesignated accordingly.

12. In section 12(e)(1)(I), as redesignated, adjusted yield has been changed to amount of insurance per acre.

13. In section 12(f)(2), as redesignated, the last sentence has been revised to clarify that records of the seed company will only be used to determine the amount of production to count if the production is calculated on the same basis as that used to determine the approved yield.

14. Add provision specifying the prevented planting coverage available.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the hybrid sorghum seed insurance coverage and brings it under the Common Crop Insurance Policy, Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is December 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 401 and 457

Hybrid sorghum seed endorsement, Crop insurance, Hybrid sorghum seed.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The introductory text of § 401.109 is revised to read as follows:

§ 401.109 Hybrid sorghum seed endorsement.

The provisions of the Hybrid Sorghum Seed Endorsement for the 1988 through the 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

4. Section 457.112 is added to read as follows:

§ 457.112 Hybrid sorghum seed crop insurance provisions

The Hybrid Sorghum Seed Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Hybrid Sorghum Seed Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, (§ 457.8) with (1) controlling (2), etc.

1. Definitions.

Adjusted yield. An amount determined by multiplying the county yield by the coverage level factor.

Amount of insurance per acre. A dollar amount determined by multiplying the adjusted yield by the price election you select and subtracting any minimum guaranteed payment, not to exceed the total compensation specified in the hybrid sorghum seed processor contract. If your hybrid sorghum seed processor contract contains a minimum guaranteed payment that is stated in bushels, we will convert that value to dollars by multiplying it by the price election you selected.

Approved yield. In lieu of the definition contained in the Basic Provisions, an amount FCIC determines to be representative of the yield that the female parent plants are expected to produce when grown under a specific production practice. FCIC will establish the approved yield based upon records provided by the seed company and other information it deems appropriate.

Bushel. Fifty-six pounds avoirdupois of the insured crop.

Certified seed test. A warm germination test performed on clean seed according to specifications of the "Rules for Testing Seeds" of the Association of Official Seed Analysts.

Commercial hybrid sorghum seed. The offspring produced by crossing a male and female parent plant, each having a different genetic character. This offspring is the product intended for use by an agricultural producer to produce a commercial field sorghum crop for grain or forage.

County yield. An amount contained in the actuarial documents that is established by FCIC to represent the yield that a producer of hybrid sorghum seed would be expected to produce if the acreage had been planted to commercial field sorghum.

Coverage level factor. A factor contained in the Special Provisions to adjust the county yield for commercial field sorghum to reflect the higher value of hybrid sorghum seed.

Dollar value per bushel. An amount that determines the value of any seed production to count. It is determined by dividing the amount of insurance per acre by the result of multiplying the approved yield by the coverage level percentage, expressed as a decimal.

Female parent plants. Sorghum plants that are grown for the purpose of producing commercial hybrid sorghum seed and are male sterile.

Field run. Commercial hybrid sorghum seed production before it has been processed or screened.

Good farming practices. In addition to the definition contained in the Basic Provisions, good farming practices include those practices required by the hybrid sorghum seed processor contract.

Harvest. Combining, threshing or picking of the female parent plants to obtain commercial hybrid sorghum seed.

Hybrid sorghum seed processor contract. An agreement executed in writing between the hybrid sorghum seed crop producer and a seed company containing, at a minimum:

(a) The producer's promise to plant and grow male and female parent plants, and to deliver all commercial hybrid sorghum seed produced from such plants to the seed company;

(b) The seed company's promise to purchase the commercial hybrid sorghum seed produced by the producer; and

(c) Either a fixed price per unit of measure (bushels, hundredweight, etc.) of the commercial hybrid sorghum seed or a formula to determine the value of such seed. Any formula for establishing the value must be based on data provided by a public third party that establishes or provides pricing information to the general public, based on prices paid in the open market (*e.g.*, commodity futures exchanges), to be acceptable for the purpose of this policy.

Inadequate germination. Germination of less than 80 percent of the commercial hybrid sorghum seed as determined by using a certified seed test.

Insurable interest. Your share of the financial loss that occurs in the event seed production is damaged by a cause of loss specified in section 10.

Local market price. The cash price offered by buyers for any production from the female parent plants that is not considered commercial hybrid sorghum seed under the terms of this policy.

Male parent plants. Sorghum plants grown for the purpose of pollinating female parent plants.

Minimum guaranteed payment. A minimum amount (usually stated in dollars or bushels) specified in your hybrid sorghum seed processor contract that will be paid or credited to you by the seed company regardless of the quantity of seed produced.

Non-seed production. Production that does not qualify as seed production because of inadequate germination.

Planted acreage. In addition to the definition contained in the Basic Provisions, the insured crop must be planted in rows wide enough to permit mechanical cultivation, unless provided by the Special Provisions or by written agreement.

Planting pattern. The arrangement of the rows of the male and female parent plants in a field. An example of a planting pattern is four consecutive rows of female parent plants followed by two consecutive rows of male parent plants.

Practical to replant. In addition to the definition contained in the Basic Provisions, practical to replant applies to either the female or male parent plant. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid sorghum seed processor contract, or the seed company agrees that it will accept the production from the replanted acreage.

Prevented planting. In addition to the definition contained in the Basic Provisions, prevented planting applies to the female and male parent plants. The male parent plants must be planted in accordance with the requirements of the hybrid sorghum seed processor contract to be considered planted.

Sample. For the purpose of the certified seed test, at least 3 pounds of randomly selected field run sorghum seed for each type or variety of commercial hybrid sorghum seed grown on the unit.

Seed company. A business enterprise that possesses all licenses for marketing commercial hybrid sorghum seed required by the state in which it is domiciled or operates, and which possesses facilities with enough storage and drying capacity to accept and process the insured crop within a reasonable amount of time after harvest. If the seed company is the insured, it must also be a corporation.

Seed production. All seed produced by female parent plants with a germination rate of at least 80 percent as determined by a certified seed test.

Type. Grain sorghum, forage sorghum, or sorghum sudan parent plants.

Variety. The name, number or code assigned to a specific genetic cross by the seed company or the Special Provisions for the insured crop in the county.

2. Unit Division.

(a) For any processor contract that stipulates the amount of production to be delivered:

(1) In lieu of the definition of "basic unit" contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill a hybrid sorghum seed processor contract;

(2) There will be no more than one basic unit for all production contracted with each processor contract;

(3) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(4) Optional units will not be established.

(b) For any processor contract that stipulates a number of acres to be planted, the provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the hybrid sorghum seed in the county insured under this policy unless the Special Provisions provide different price elections by type or variety, in which case you may elect one price election for each hybrid sorghum seed type or variety designated in the Special Provisions. The price election you choose for each type or variety must have the same percentage relationship to the maximum price offered by us for each type or variety. For example, if you choose 100 percent of the maximum price election for one specific type or variety, you must also choose 100 percent of the maximum price election for all other types or varieties.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable to this contract.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must:

(a) Report by type and variety, the location and insurable acreage of the insured crop;

(b) Report any acreage that is uninsured, including that portion of the total acreage occupied by male parent plants; and

(c) Certify that you have a hybrid sorghum seed processor contract and report the amount, if any, of any minimum guaranteed payment.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the female parent plants in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under a hybrid sorghum seed processor contract executed before the acreage reporting date;

(3) That are planted for harvest as commercial hybrid sorghum seed in accordance with the requirements of the hybrid sorghum seed processor contract and the production management practices of the seed company; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Planted with a mixture of female and male parent seed in the same row;

(ii) Planted for any purpose other than for commercial hybrid sorghum seed;

(iii) Interplanted with another crop; or

(iv) Planted into an established grass or legume.

(b) An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and that provides for delivery of the crop under substantially the same terms as a hybrid sorghum seed processor contract will be treated as a contract under which you have an insurable interest in the crop.

(c) A commercial hybrid sorghum seed producer who is also a commercial hybrid sorghum seed company may be able to insure the hybrid sorghum seed crop if the following requirements are met:

(1) The seed company has an insurable interest in the hybrid sorghum seed crop;

(2) Prior to the sales closing date, the Board of Directors of the seed company has executed and adopted a corporate resolution containing the same terms as an acceptable hybrid sorghum seed processor contract. This corporate resolution will be considered a contract under the terms of this policy;

(3) Sales records for at least the previous years' seed production must be provided to confirm that the seed company has produced and sold seed. If such records are not available, the crop may be insured under the Coarse Grains Crop Provisions with a written agreement; and

(4) Our inspection reveals that the storage and drying facilities satisfy the definition of a seed company.

(d) Any of the insured crop that is under contract with different seed companies may be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured. If you elect to insure the insured crop with different insurance providers, you agree to pay separate administrative fees for each insurance policy.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage of the insured crop:

(a) Planted and occupied exclusively by male parent plants;

(b) Not in compliance with the rotation requirements contained in the Special Provisions or, if applicable, required by the hybrid sorghum seed processor contract; or

(c) If either the female or male parent plants are damaged before the final planting date and we determine that insured crop is practical to replant but it is not replanted.

9. Insurance Period.

(a) In addition to the provisions of section 11 of the Basic Provisions, insurance attaches upon completion of planting of:

(1) The female parent plant seed on or before the final planting date designated in the Special Provisions, except as allowed in section 16 of the Basic Provisions; and

(2) The male parent plant seed.

(b) In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the November 30 immediately following planting.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects, but not damage due to insufficient or improper application of pest control measures;
(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a) (1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female parent plant seed;

(2) Frost or freeze after the date set by the Special Provisions;

(3) Failure to follow the requirements stated in the hybrid sorghum seed processor contract and production management practices of the seed company;

(4) Inadequate germination, even if resulting from an insured cause of loss, unless you have provided adequate notice as required by section 11(b)(1); or

(5) Failure to plant the male parent plant seed at a time or in a manner sufficient to assure adequate pollination of the female parent plants, unless you are prevented from planting the male parent plant seed by an insured cause of loss.

11. Duties In The Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples of at least one complete planting pattern of the male and female parent plant rows that extend the entire length of each field in the unit. If you are going to destroy any acreage of the insured crop that will not be harvested, the samples must not be destroyed until after our inspection.

(b) In addition to the requirements of section 14 of the Basic Provisions:

(1) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate inadequate germination on any unit; and

(2) You must provide a completed copy of your hybrid sorghum seed processor contract unless we have determined it has already been provided by the seed company, and the seed company certifies that such contract is used for all its producers without any waivers or amendments.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) You will not receive an indemnity payment on a unit if the seed company refuses to provide us with records we require to determine the dollar value per bushel of production for each variety.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective amount of insurance per acre, by type and variety if applicable;

(2) Totaling the results of section 12(c)(1) if there are more than one type or variety;

(3) Multiplying the total seed production to count (see section 12(d)) for each type and variety of commercial hybrid sorghum seed by the applicable dollar value per bushel for that type or variety;

(4) Multiplying the total non-seed production to count (see section 12(e)) for each type and variety by the applicable local market price determined on the earlier of the date the non-seed production is sold or the date of final inspection;

(5) Totaling the results of sections 12(c)(3) and 12(c)(4) by type and variety;

(6) Subtracting the result of section 12(c)(5) from the result of section 12(c)(1) if there is only one type or variety, or subtracting the result of 12(c)(5) from the result of section 12(c)(2) if there are more than one type or variety; and

(7) Multiplying the result of section 12(c)(6) by your share.

For example:

You have a 100 percent share in 50 acres insured for the development of type "A" hybrid sorghum seed in the unit, with an amount of insurance per acre guarantee of $361 (county yield of 170 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). Your seed production was 1,400 bushels and the dollar value per bushel was $3.47. Your non-seed production was 100 bushels with a local market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres×$361=$18,050 amount of insurance guarantee;

(3) 1,400 bushels×$3.47=$4,858 value of seed production for type "A" and 1,200 bushels×$4.63=$5,556 value of seed production for type "B";

(4) 100 bushels of non-seed×$2.00=$200 of non-seed production for type "A" and 200 bushels of non-seed×$2.00=$400 of non-seed production for type "B"

(5) $4,858+$200+$5,556+$400=$11,014 value of production to count;

(6) $35,050−$11,014=$24,036; and

(7) $24,036×100 percent share=$24,036 indemnity payment.

(d) Production to be counted as seed production will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per acre for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Mature unharvested production with a germination rate of at least 80 percent of the commercial hybrid sorghum seed as determined by a certified seed test. Any such production may be adjusted in accordance with section 12(f);

(iv) Immature appraised production;

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) Harvested production that you deliver as commercial hybrid sorghum seed to the seed company stated in your hybrid sorghum seed processor contract, regardless of quality, unless the production has inadequate germination.

(e) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(d). Any such production may be adjusted in accordance with section 12(f).

(f) For the purpose of determining the quantity of mature production:

(1) Commercial hybrid sorghum seed production will be:

(i) Increased 0.12 percent for each 0.1 percentage point of moisture below 13.0 percent; or

(ii) Decreased 0.12 percent for each 0.1 percentage point of moisture in excess of 13.0 percent.

(2) When records of commercial hybrid sorghum seed production provided by the seed company have been adjusted to a basis of 13.0 percent moisture and 56 pound avoirdupois bushels, section 12(f)(1) above will not apply to harvested production. In such cases, records of the seed company will be used to determine the amount of production to count, provided that the moisture and weight of such production are calculated on the same basis as that used to determine the approved yield.

13. Prevented Planting.

Your prevented planting coverage will be 60 percent of your amount of insurance for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C, on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32497 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 422 and 457

Potato Crop Insurance Regulations; and Common Crop Insurance Regulations, Northern Potato Crop Insurance Provisions, Central and Southern Potato Crop Insurance Provisions, Northern Potato Quality Endorsement Crop Insurance Provisions, Northern Processing Potato Quality Endorsement Crop Insurance Provisions, Certified Seed Potato Endorsement Crop Insurance Provisions, and Northern Potato Storage Endorsement Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes crop provisions for the insurance of potatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current potato crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current potato crop insurance regulations to the 1997 and prior crop years in counties in which the Northern Potato Crop Provisions will be used and to the 1998 and prior crop years in all other states.

EFFECTIVE DATE: December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Rob Coultis, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of the large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Wednesday April 23, 1997, FCIC published a proposed rule in the Federal Register at 62 FR 19691–19701 to add to the Common Crop Insurance Regulations (7 CFR part 457), new sections: 7 CFR 457.142, Northern Potato Crop Insurance Provisions; 7 CFR 457.143, Northern Potato Quality Endorsement Crop Insurance Provisions; 7 CFR 457.144, Northern Processing Potato Quality Endorsement Crop Insurance Provisions; 7 CFR 457.145, Certified Seed Potato Endorsement Crop Insurance Provisions; 7 CFR 457.146, Northern Potato Storage Endorsement Crop Insurance Provisions; and 7 CFR 457.147, Central and Southern Potato Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years in counties in which the Northern Potato Crop Provisions will be used and for the 1999 crop year in all other counties. These provisions will replace and supersede the current provisions for insuring potatoes found at 7 CFR part 422 (Potato Crop Insurance Regulations). FCIC also has amended 7 CFR part 422 to limit its effect to the 1997 and prior crop years in counties in which the Northern Potato Crop Provisions will be used and to the 1998 crop year in all other counties.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 71 comments were received from producer groups, reinsured companies and an insurance service organization. The comments received, and FCIC's responses, are as follows:

Comment: An insurance service organization indicated it had heard the revised Potato Crop Provisions would not be effective in all states for the 1998 crop year, presumably because the Final Rule would not be published by the June 30 contract change date for counties in south Florida. The commentor questioned if it is the intent to defer the Central and Southern Potato Crop Policy in all states, or just those counties with a contract change date before the final rule is published. The commentor also stated it had received comments (for crops in general) that a contract change date of 60 or 90 days before the sales closing/cancellation date does not provide enough time to identify changes, prepare training materials, provide training to staff and agents, notify policyholders and solicit new sales.

Response: FCIC will not implement the Central and Southern Potato Crop Provisions until the 1999 crop year in all applicable counties. The Northern Potato Crop Provisions and applicable endorsements will be implemented in all applicable counties for the 1998 crop year. The 60 to 90 days before sales closing allows FCIC the opportunity to balance the need of the reinsured company to train and inform the insured, and the needs of FCIC and insured, to have the most recent data to enable FCIC to set rates, price, and other terms of the contract. Therefore, no change will be made.

Comment: A reinsured company recommended delivery of the 1998 loss adjustment manual 90 days prior to the close of sales in order to adequately and correctly advise agents and insureds regarding purchase decisions.

Response: FCIC will make all reasonable efforts to deliver supporting procedural manuals as soon as practicable after the contract change date. However, the loss adjustment manual cannot be finalized until the terms of the policy have been finalized.

Comment: A reinsured company recommended changing either the definition of "certified seed" or section 7 (Insured Crop) to allow insurance to attach to acreage planted with seed that does not meet state certification requirements. The comment cited Idaho Seed Potato Regulations which state that "Idaho growers will only be allowed to plant uncertified potatoes grown by them provided that they are no more than one generation from their own certified parent seed potatoes." Under the definition by the State of Idaho it appears that one generation past the initial certified seed is considered proper. The comment further stated that as long as State rules are followed, it should not matter if the seed is certified by the state or by a private organization.

Response: Redesignated section 6 of the Northern Potato Crop Provision and section 7 of the Central and Southern Potato Crop Provisions allows insurance for acreage that is not planted with certified seed if authorized by the Special Provisions. FCIC's Regional Service Offices (RSO) will fully analyze individual areas to determine whether or not this practice should be allowed and, then, include the authority in the Special Provisions. Although certain private organizations may be able to duplicate State procedures, FCIC believes the most logical way to maintain consistent requirements among producers is to rely on authorized State agencies for the certification process. Therefore, no changes have been made in the provisions.

Comment: A reinsured company and an insurance service organization indicated that cultural practices may exist that are not recognized (or possibly known) by the Cooperative State Research, Education and Extension Service. The comments indicated that the definition of "Good farming practices" is too restrictive since it limits acceptable farming practices to those recognized by the Cooperative State Research, Education, and Extension Service. The comments also suggested changing the last word of the definition from "county" to "area."

Response: FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing potatoes. If a producer is following practices currently not recognized as acceptable by the CSREES, there is no reason why such recognition from CSREES cannot be sought by interested parties. The term "area" is more ambiguous than the term "county" and would allow more subjective determination, and less consistent application of the provision. No substantial change has been made in the definition. However, the definition has been moved to the Basic Provisions since it is applicable to most crops.

Comment: An insurance service organization suggested the definition of "harvest" in the Northern and Central and Southern Crop Provisions be clarified to indicate if it means removing potatoes from the field or lifting them to the soil surface.

Response: The definition has been clarified to indicate that acreage will be considered to be harvested when potatoes are lifted to the soil surface.

Comment: A reinsured company suggested adding the words "and quality" after the words "providing the quantity" in the definition of "Irrigated practice" in the Northern and Central and Southern Potato Crop Insurance Provisions.

Response: FCIC agrees that water quality is an important issue. However, since no standards or procedures have been developed to measure water quality for insurance purposes, quality cannot be included in the definition. No substantial change has been made in the definition. However, the definition has been moved to the Basic Provisions since it is applicable to most crops.

Comment: An insurance service organization recommended the term "late blight" be defined.

Response: Late blight is a term commonly used in the potato industry and referenced in the U.S. Standards for Grades of Potatoes which are incorporated herein by reference. Therefore, it is not necessary to define the term in the Crop Provisions.

Comment: An insurance service organization indicated that the definition of "marketable lot" contained in the Central and Southern Crop Provisions describes a "lot" and recommended the definition be changed to distinguish it as a "marketable lot." For the definition to be useful, it should specify that the production is saleable or grades U.S. No. 2 or better so the grade standard would be understood in all the references to "marketable lots" in section 12(e).

Response: The requirements of marketability are clearly stated in section 12(e) of the Central and Southern Crop Provisions. However, FCIC agrees that the definition contained in the proposed rule describes a "lot" rather than a "marketable lot" and has revised the section to define the term "lot."

Comment: An insurance service organization suggested clarifying the definition of "Practical to replant" in the Northern and Central and Southern Crop Insurance Provisions by changing the punctuation.

Response: FCIC has clarified the definition by changing some of the punctuation. The definition has also been moved to the Basic Provisions since it is applicable to most crops.

Comment: A reinsured company suggested revising the definition of "replanting" in the Northern and Central and Southern Crop Provisions by replacing the wording ". . . replace the potato seed and then replacing the potato seed . . ." with ". . . planting the potato seed and then replanting the potato seed . . ."

Response: The first reference to "replace the potato seed" refers to preparation of the land, not planting. No substantial change has been made in the definition. However, the definition has been moved to the Basic Provisions since it is applicable to most crops.

Comment: An insurance service organization recommended clarifying the definition of "replanting" by specifying the crop name as follows: ". . . with the expectation of growing a successful potato crop."

Response: FCIC has revised the definition of "replanting" to clarify a "successful crop" to mean at least the approved yield for the unit. The definition also has been moved to the Basic Provisions since it is applicable to most crops.

Comment: A reinsured company and a producer organization opposed the provisions in sections 3 (b) and (c) of the Northern and Central and Southern Crop Provisions that reduce the price election for unharvested acreage. In addition, an insurance service organization had two comments from its members favoring, and two opposing, these provisions. The opposing comments indicated that the unharvested reduction provision was removed from the peanut policy and is being considered for removal from the tobacco policy. Adding it to potatoes would appear to discriminate against potato producers who are unable to harvest due to insured causes. The opposing comments also indicated that the reduced coverage would: (1) Be hard to "sell" and explain to insureds; (2) make settlement of claims more difficult; (3) be inappropriate when damage occurs just prior to harvest because the insured has incurred most normal input costs; (4) encourage insureds to harvest damaged potatoes that have no value just to collect 100 percent of the price election; and (5) be unfair to producers with multi-unit policies because, when freeze damage occurs near the end of the harvest season, several fields have already been harvested and the costs have already been incurred for the entire crop. Producers with multi-unit policies pay a 10 percent surcharge for the added protection. Therefore, 100 percent coverage is only fair. Because of the objections received from its members, the insurance service organization recommended further study or a more detailed explanation be provided.

Response: Prior to this rule, FCIC's price elections have not included harvesting costs. This means that producers have paid less premium than otherwise would have been owed. However, any loss from harvested acres has been indemnified at that lower expected market price. The Federal Crop Insurance Act authorizes FCIC to reduce the payment to producers for acreage that is not harvested or for other costs that are not incurred if the crop is lost prior to harvest. FCIC has exercised its authority to build harvesting costs into the price election but only reduce the price for those producers who do not incur harvesting costs. The price election reduction is limited to those costs associated with harvest. If the producer has already begun harvest before the cause of loss occurred that caused the discontinuance of harvest, and the producer can prove that harvesting costs have already been incurred, no reduction will occur. The change means that producers who harvest their potatoes will receive a higher price election. However, this higher price election will result in higher premiums than in the past. Section 3 has been redesignated as section 2 in the Northern Potato Crop Provisions.

Comment: A reinsured company requested that section 3(c) of the Northern and Central and Southern Crop Provisions be clarified.

Response: FCIC has clarified the provisions in redesignated section 2(c) of the Northern Potato Crop Provisions and section 3(c) of the Central and Southern Crop Provisions.

Comment: A reinsured company asked two questions regarding the following provision contained in section 3(c) of the Northern and Central and Southern Crop Provisions.

(a) If the potatoes freeze before the end of the insurance period, is the claim settled by: (1) Using an appraisal at the 80 percent price election or (2) allowing the frozen potatoes to be taken to harvest, use the production to count, and then apply the 80 percent price election?

(b) If the potatoes have 12 percent wet breakdown, a 100 percent loss would be paid if production is discarded within seven days of harvest. Will the indemnity be based on the 80 percent unharvested price if the neighbors would have destroyed similar production but did not do so because they didn't have that problem?

The comment also recommended that the 80 percent price apply only when none of the acreage in a unit could be harvested because, once harvest on a unit has begun, the producer will have incurred costs regardless of the amount of acreage harvested.

Response: This provision is intended to recognize reduced input costs when potatoes are not harvested. Therefore, in the event that freeze damage is severe, and a majority of producers would not further care for the crop, the insurance provider should determine the amount of production to count in accordance with applicable procedures, and settle the claim using 80 percent of the elected price. If similarly situated producers in the area would continue to care for the crop, and the producer elects to continue to care for and harvests the crop, the insurance provider should determine the amount of production to count and settle the claim using 100 percent of the elected price. FCIC will only allow the 100 percent price to be used if the producer has adequate proof that he has already incurred and paid the harvesting costs. A provision has been added to allow the apportionment of acreage within a unit as harvested and unharvested and only unharvested acreage will have the price election reduced. Section 3 has been

redesignated as section 2 in the Northern Potato Crop Provisions.

Comment: A reinsured company suggested clarifying section 8(b) of the Northern and Southern and Central Potato Crop Provisions.

Response: FCIC has clarified the provision in redesignated section 7(b) of the Northern Potato Crop Provisions and section 8(b) of the Central and Southern Crop Provisions.

Comment: A producer group recommended changing the date after which frost/freeze would no longer be covered in Minnesota and North Dakota from September 30 to October 15. This is referenced in section 10(b)(2) of the Northern Potato Crop Provisions, but the actual date is contained in the Special Provisions.

Response: The Crop Provisions have been written to permit these dates to vary based on weather patterns and growing conditions. Data collected thus far by FCIC supports the current date of September 30. However, FCIC will review any additional information that can be provided. No changes can be made until such data are received and analyzed. Section 10 has been redesignated as section 9 in the Northern Potato Crop Provisions.

Comment: An insurance service organization indicated that the calculation sequence in section 12(b)(1)–(7) of the Northern Potato and Central and Southern Potato Crop Provisions is difficult to follow because it is so wordy. It seems unnecessary to refer to the previous item by number as if it were on another page.

Response: Since some of the calculations involved are not performed in sequential order, it is necessary to refer to specific section numbers. Removal of the section references would make the provisions less clear. However, an example has been added for clarity to redesignated section 11 of the Northern Potato Crop Provisions.

Comment: A reinsured company stated that new quality adjustment provisions contained in section 12 of the Northern Potato Crop Provisions would increase the amount of work required of insurance providers and greatly increase loss adjustment expense. The comment indicated that the policy is complex, contrary to simplification efforts, and that previous regulations and procedures did not require grading or adjustment to the amount of production to count when less than 5 percent of the insured production had soft rot, wet breakdown or freeze damage.

Response: The previous potato policy (without the Frost/Freeze Option) and related procedures also provided for reductions in the amount of production to count when production had any amount of soft rot, wet breakdown, or freeze damage. Previous provisions and procedures also required grading of the production to determine appropriate reductions in the amount of production to count. The only changes in these provisions are in the adjustment factors which do not change the requirement to grade damaged production or to adjust to the amount of production to count. Therefore, FCIC does not agree that additional work or expense will be incurred as a result of the changes, and no change will be made. Section 12 has been redesignated as section 11 in the Northern Potato Crop Provisions.

Comment: An insurance service organization recommended clarification of "marketable lot" as used in section 12(e) of the Central and Southern Potato Crop Provisions. As written, it seems somewhat unclear whether all marketable lots must grade U.S. No. 2 or better, or only in certain cases, such as unsold harvested or appraised production in 12(e)(1)(iv).

Response: FCIC agrees that the provisions can be clarified and has revised section 12(e) to clearly indicate that any lot of potatoes that is stored, sold for seed, sold for human consumption, etc. will be considered to be a marketable lot.

Comment: An insurance service organization received one comment asking why, if quality adjustment has been incorporated in section 12(e) through (g) of the Northern Potato Crop Provisions, the options remain separate at the end of the proposed rule. As written, there is a lot of unnecessary duplication. The commenter would prefer to see the quality adjustment information included in the Crop Provisions and eliminate the need for endorsements and the resulting complications.

Response: Quality adjustment for tuber rot and freeze damage has been incorporated into the base coverage in redesignated section 11 of the Northern Crop Provisions. However, coverage for other types of quality losses (e.g. internal and external defects) are not included in the Crop Provisions because many producers do not wish to pay the premium amounts associated with these types of quality losses. Although some redundancy and complication results, FCIC believes that the endorsements are the best way to provide coverage for certain quality deficiencies. Without the endorsements, coverage of internal and external defects would not be available, or, if made a part of the base coverage, would require substantial premium increases for all insureds. Therefore, no change will be made.

Comment: An insurance service organization recommended using the defined term "discarded" instead of "disposed of" in section 12(d)(1)(i)(D) of the Northern Potato and Central and Southern Potato Crop Provisions.

Response: "Discarded" is defined in the policy as disposing of production by the insured, or a person acting for the insured, without received any value for it. The term "disposed of" in redesignated section 11(d)(1)(i)(D) of the Northern Potato Crop Provisions and section 12(d)(1)(i)(D) of the Central and Southern Crop Provisions refers to any disposition, including selling the production and a definition for it has been added. Therefore, the term "discarded" cannot be used as recommended.

Comment: A reinsured company and an insurance service organization commented that subsection 12(d)(1)(iii) of the Northern and Central and Southern Crop Provisions, which requires an increase in the amount of production to count when harvest takes place prior to full maturity, will be difficult to administer. Insurance providers would be required to track harvested acreage on a daily basis in order to apply proper percentages. This would increase in complexity if multiple units, with multiple planting dates, were being harvested simultaneously. This adjustment is extremely subjective, which opens the insurance provider's decisions to questioning and does serious harm to the policy. Also, new tracking requirements will increase loss adjustment expense. Another reinsured company concurred with the additional production to count for potatoes harvested prior to full maturity, but recommended that a date for full maturity be established by area and variety. Fifty days prior to the calendar date for the end of the insurance period was recommended for most areas. The insurance service organization asked how and when will the "normal number of days to full maturity" be determined, and by whom and whether this will vary each year depending on favorable or adverse weather conditions. The comment indicated that, if the date is not allowed to vary from year to year, the adjustment could apply even though all the production in a given area matures earlier than normal.

Response: This provision, redesignated section 11(d)(1)(iii) of the Northern Potato Crop provisions and section 12(d)(1)(iii) of the Central and Southern Crop Provisions, is intended to take into account reduced production

that is a result of harvest for the "new" or "B" potato market, for which small potatoes are required. FCIC agrees that this provision adds some complexity to the loss adjustment process. However, previous provisions did not provide any consistent method of adjustment when potatoes were harvested prior to full maturity. To lessen the administrative complications associated with this adjustment, FCIC has changed the provision to specify that full maturity will be presumed to have been reached 45 days prior to the calendar date for the end of the insurance period unless specified otherwise in the Special Provisions.

Comment: An insurance service organization is concerned that section 12(d)(1)(v) of the Northern Potato and Central and Southern Potato Crop Provisions allows insureds to defer the settlement of a claim. The policy should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short "shelf life."

Response: This provision allows deferment of a claim only if the insurance provider agrees that representative samples can be left or if the insured elects to continue to care for the entire crop. In either case, if the insured does not provide sufficient care for the remaining crop samples, the original appraisal will be used. Therefore, no changes have been made. Section 12 has been redesignated as section 11 in the Northern Potato Crop Provisions.

Comment: An insurance service organization stated section 12(d)(1)(v)(A) of the Northern and Central and Southern Potato Crop Provisions should not refer to "stage guarantee" since there are no stages in this policy, only a price reduction for unharvested acreage.

Response: FCIC agrees and has corrected the provisions in redesignated section 11(d)(1)(v)(A) of the Northern Potato Crop Provisions and section 12(d)(1)(v)(A) of the Central and Southern Crop Provisions.

Comment: An insurance service organization asked if premium will be increased to compensate for the additional risk of adding quality adjustment for freeze damage to the Northern Crop Provisions.

Response: All changes in coverage, including the addition of new freeze damage adjustment provisions, will be considered when premium rates are established.

Comment: An insurance service organization recommended combining sections 12(e)(1) and (2) since they are so similar. Combining the provisions will avoid having to list the types of covered damage twice and reduce the chance of misinterpretation.

Response: FCIC agrees with the comment and has combined the provisions in redesignated section 11(e) of the Northern Potato Crop Provisions and section 12(e) of the Central and Southern Crop Provisions.

Comment: A reinsured company, an insurance service organization, and a producer group indicated that, in many situations, it will not be possible to determine percentages of damage or to complete grade inspections by the end of the insurance period as section 12(e)(3) of the Northern Potato Crop Provisions and the definition of "grade inspection" in the Northern and Central and Southern Potato Crop Provisions require. Producers may harvest potatoes near the end of the insurance period and, depending on the amount of potatoes in an area that require grading, it may be two to three weeks before grading of samples can be completed.

Response: FCIC agrees that the actual percentage of damage may not be obtainable prior to the end of the insurance period in all situations. Therefore, the definition of "grade inspection" in the Northern and Central and Southern Crop Provisions has been changed to require that samples of production be obtained prior to the sale, storage, or disposal of the potatoes, and to allow the actual grading of the samples to take place at a later time. Redesignated section 11(c) of the Northern Potato Crop Provisions and section 12(c) of the Central and Southern Potato Crop Provisions has also been changed to indicate that the extent of any loss, including quality adjustments, must be determined based on samples obtained no later than the time the potatoes are placed in storage, if the production is stored prior to sale, or the date it is delivered to a buyer, wholesaler, packer, broker, or other handler if it is not stored. Section 12(e)(3) of the Northern Potato Crop Provisions has been deleted.

Comment: An insurance service organization suggested changing the language in section 12(f), 12(g)(1) and 12(g)(2)(ii)(B)(1) of Northern Crop provisions from "will be adjusted 0.1 percent for each 0.1 percent of damage through 5 percent" to "will be adjusted by the same percentage" so the reader doesn't have to puzzle through the calculation to figure out that 4.5 percent damage means a 4.5 percent adjustment. Also, the existing frost/freeze potato option reduces production to count in 5 percent increments for damage from 6 percent to 20 percent. Changing this to increments of a tenth of a percent for each tenth of a percent damage is more complicated, and indicates an unrealistic degree of precision.

Response: The use of the language "0.1 percent for each 0.1 percent of damage" is necessary to avoid any ambiguity. Further, the use of 0.1 percent increments is intended to make these determinations more accurate and should not substantially complicate the calculations. Therefore, no changes have been made.

Comment: An insurance service organization indicated that the language in section 12(g)(2) (i), (ii) & (iii) of the Northern Potato Crop Provisions is very complicated and difficult to follow and suggested that a chart might be developed to assist in understanding.

Response: Section 12(g)(2)(i) (redesignated 11(g)(2)(i)) indicates that the price received for damaged production is divided by a price election to obtain an adjustment factor. Including this information in a chart will not improve clarity. Redesignated sections 11(g)(2) (ii) and (iii) indicate that 0.1 percent damage results in a 0.1 percent reduction in the amount of production to count, that 0.2 percent damage results in a 0.2 percent reduction, etc. A chart indicating all damage amounts in 0.1 percent increments would be extremely repetitive, result in additional policy pages, and not improve understanding. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company are concerned with moral hazards, because in section 12(g)(2) of the Northern Crop Provisions, there is a different method of adjustment for production that is sold or discarded within 7 days and production that remains in storage 8 days or more. The comments indicated that a producer's production could have 11 percent damage which would result in zero production to count if it is kept more than 7 days, but, if it is sold immediately, a salvage value would count against the guarantee. The commenters also asked whether there is a way to recover some salvage value instead of showing zero production to count if production with more than 11 percent damage is sold and processed and whether the loss adjustment procedure provides a way to restrict any indemnity to the damaged acreage for a unit which includes four separate fields, and only one was damaged enough to result in significant damage for the whole unit.

Response: FCIC agrees that a salvage value should be counted when an insured elects to keep and use the damaged crop for feed, starch, etc. and

has changed redesignated section 11(g)(2)(ii)(B) so that a minimum of 15 percent of the production will be production to count in such instances. This amount is consistent with the value that is normally received for potatoes that are sold for cattle feed, starch, or other salvage uses. When only one field of a unit is damaged, the production from that field will be adjusted in accordance with the policy provisions, just as it would be for other insured crops. If that amount of damage reduces the production to count below the guarantee for the unit, an indemnity will be paid.

Comment: A reinsured company recommended retaining current procedures that allow a 60 day period to determine the disposition of potatoes with 5 percent or more tuber rot. If the producer can sell the potatoes within 60 days of harvest, the salvage value should be used to determine the loss. Also, physiological disorders such as hollow heart, leaf roll, etc., should be covered in the same manner as pathological diseases (tuber rot, soft rot, late blight, etc.)

Response: FCIC agrees that 60 days is an appropriate time period to allow for disposition of potatoes with tuber rot. However, many producers do not wish to pay the additional premium associated with the storage endorsement 60 day period. Also, many producers have indicated that they do not want to pay the additional premium associated with coverage for hollow heart and other defects. FCIC has elected to provide coverage for both of these circumstances via optional endorsements. Therefore, no changes have been made.

Comment: A reinsured company stated that section 12(g) of the Northern Crop Provisions does not indicate how to determine the amount of production to count when production has a combination of freeze and soft rot. The comment suggested determining freeze damage and tuber rot separately and using the one that yields the least production to count.

Response: FCIC agrees that a provision is needed to specify how a combination of freeze and tuber rot damage will be adjusted. However, considering only the type of damage that results in the least amount of production to count could result in the insurance provider ignoring what may be a significant amount of either freeze or tuber rot damage. Redesignated section 11(h) has been added to specify how production with more than one type of damage will be adjusted.

Comment: A reinsured company suggested that the language in section 12(g)(2)(i) of the Northern Potato Crop Provisions, 4(a)(1) of the Northern Potato Quality Endorsement, 6(a)(1)(i) of the Northern Potato Processing Quality Endorsement and 6(a) of the Northern Potato Storage Endorsement be strengthened to further define "sold" as the "date of sale" without regard to subsequent delivery or storage.

Response: Since only referring to the amount of sold production; subsequent delivery or storage is not relevant. The provisions have been clarified accordingly.

Comment: A reinsured company indicated that the 7 day time period provided in section 12(g)(2)(i) of the Northern Potato Crop Provisions, section 4(a)(1) of the Northern Potato Quality Endorsement, and section 6(a)(1)(i) of the Northern Potato Processing Quality Endorsement to sell damaged production is not long enough. The grading process often takes two or three weeks to complete and the percent damage cannot be determined until the production is graded.

Response: FCIC agrees that a longer time period is necessary and has changed the relevant provisions to reflect a time period of 21 days.

Comment: A reinsured company recommended changing section 12(g)(2)(i) of the Northern Potato Crop Provisions, and section 4(a)(1) of the Northern Potato Quality Endorsement, so that the value of damaged production is compared to the producer's price election rather than the highest price election available.

Response: This provision is intended to compare the relative value of the damaged production to the value of undamaged production. If the elected prices were used, insureds with different price election percentages could have different amounts of production to count even though they had the same amount of production and crop value. Therefore, no change has been made.

Comment: A reinsured company recommended that the salvage value provision (section 12(g)(2)(i)) applicable to production with soft rot, wet breakdown or other tuber rot condition also be applicable to product damaged by freeze.

Response: It would not be appropriate to allow potatoes with low levels of freeze damage (e.g., 5.1 percent) to be adjusted based on value, especially in years when the market value is low. Freeze damaged production, if handled correctly, can often be stored for long periods of time, sorted, and sold at full market value. In contrast, production with soft rot levels above 5 percent is much more difficult to store, sort and sell and often must be sold soon after harvest at a much reduced price. Therefore, the suggested change has not been made. However, FCIC has determined that some salvage value should be counted when an insured elects to keep damaged production and has changed redesignated section 11(g)(1) so that a minimum of 15 percent of production is counted in such instances.

Comment: A reinsured company suggested the word "with" be inserted between "accordance" and "section" in section 12(g)(2)(iii) of the Northern Potato Crop Insurance Provisions.

Response: The provision in redesignated section 11(g)(2)(iii) has been revised accordingly.

Comment: A reinsured company suggested that "human consumption" be spelled out in the Northern Potato Crop Provisions. The commenter stated human consumption defines that potatoes are grown for consumption by human beings and any potato crop not qualifying for human consumption is a total loss; and there should be no production to count if such potatoes are harvested. Counting production may encourage a producer to leave potatoes in the soil and this is simply a poor farming practice.

Response: Potato production may be adjusted for quality deficiencies regardless of whether or not it is harvested. Production will be considered as production to count if it could have been fit for human consumption, not only if it was used or sold for human consumption. Therefore, no changes have been made.

Comment: A reinsured company asked whether the Late Planting Agreement Option is no longer available and why late and prevented planting provisions were not included as they have been in other crops.

Response: Late and prevented planting provisions will be included in the Basic Provisions and will apply to potatoes. Section 12 of the Northern Potato Crop Provisions and section 13 of the Central and Southern Crop Provisions indicate the available prevented planting coverage level percentages.

Comment: An insurance service organization and a reinsured company suggested changing section 13(d) of the Northern and Central and Southern Crop Provisions to allow written agreements to be valid for more than one year. Some written unit agreements are continuous unless there are significant changes in the farming operation and some other written agreements should also be continuous.

Response: Written agreements are intended to permit insurance coverage to be available in unusual or previously unknown situations. If the situation exists from year to year, it should be incorporated into the crop provisions or Special Provisions. It is important to minimize exceptions to the policy to ensure that the insured is well aware of the specific terms of the policy. The written agreement provisions have been moved to the Basic Provisions since they apply to most crops.

Comment: An insurance service organization asked, with respect to the proposed endorsements to the Northern Crop Provisions, whether the provisions will be printed continuously so that the endorsements are after the written agreement provisions, or whether separate pages will be printed to be inserted with the Crop Provisions when chosen. The latter is preferable to ensure policy holders don't think the endorsements automatically apply. The commenter also asked whether FCIC would authorize the insurance service organization to add a statement before the endorsements clarifying they only apply if elected by the insured.

Response: Each endorsement is a separate document and should be included in an insured's policy package only when elected. Provisions in each endorsement clearly state that additional premium is necessary and that the additional coverage must be elected on or before the sales closing date. An additional clarifying statement is not necessary. Therefore, no change will be made.

Comment: An insurance service organization asked if the Northern Potato Quality Endorsement rates would be impacted since frost/freeze coverage is now a part of the basic potato policy.

Response: Freeze damage was previously covered under the Quality Option. Removal of this coverage will be considered when establishing premium rates for the new Northern Quality Endorsement.

Comment: Two reinsured companies, an insurance service organization, and a producer group disagreed with the removal of provisions in the Northern Quality Endorsement that allow adjustment based on U.S. No. 1 quality standards and that allow insureds to base their own proven historical percentage of U.S. No. 1's or 2's. The commenter stated that a producer who can prove better quality percentages than the county average should be able to do so. The commenter further indicated that adjustment based on U.S. No. 1 standards should be provided by the policy, not just if allowed by the actuarial documents or Special Provisions, and that if adjustment based on U.S. No. 1 standards is not allowed, or if there is no quality endorsement for seed producers, the new proposal may be abused.

Response: Quality adjustment based U.S. No. 1 standards will remain available, as will the ability of producers to certify historical quality percentages. Provisions previously used to indicate that this method of establishing a percentage factor have been added (see section 9 of the Northern Quality Endorsement). FCIC does not agree that potatoes grown for seed should be eligible for coverage under the Quality Endorsement. Seed producers often utilize production practices designed to produce small tubers. Therefore, in many instances, U.S. size standards are intentionally not achieved. FCIC also does not agree that quality adjustment based on the U.S. No. 1 grade should be available in all instances. Such coverage should not be made available universally without first determining that adequate rating information is available for all counties in which potato insurance is offered.

Comment: A reinsured company asked with respect to coverage under the Northern Quality Endorsement, whether there will be only one "default" percentage factor per county; whether a producer with good history will be able to "prove up" an average quality factor; and whether a quality data base will be maintained and, if so, will there be cups and caps.

Response: More than one percentage factor will apply in counties where coverage based on either U.S. No. 1 or 2 is available, or where separate percentage factors are specified by potato type. Producers will be able to certify, subject to verification, past records of percentages of potatoes meeting applicable standards to establish the factor.

Comment: Comments were received regarding section 4(a) of the Northern Potato Crop Insurance Quality Endorsement. A reinsured company indicated that the section requires insurance providers to decide whether or not potatoes with internal defects can be separated from undamaged production using methods normally used by potato packers or processors. As new separation methods are developed, determination of "methods normally used" becomes more and more subjective. A producer group disagreed with the provisions because equipment used to sort internal defects is not normally available to potato producers during harvest and such defects should be graded according to the United States Standards for Grades of Potatoes (either U.S. 1 or 2 as applicable).

Response: Although producers generally do not have the equipment needed to sort internal defects, it is quite common for packers and processors to have the equipment needed to sort such defects. It would be inappropriate for the insurance provider to pay a total or near total loss for production that is later sorted and sold at full value. Therefore, no changes have been made. FCIC agrees that the use of new technology varies among packers and processors, and that it would be difficult to administer a provision that requires the reinsured company to be familiar with all methods. The provision has been changed to indicate that the potatoes with internal defects must not be separable from undamaged production by methods used by the potato packers or processors to which the insured person normally delivers production.

Comment: A reinsured company asked for clarification regarding language in section 4(a) of the Northern Potato Crop Insurance Quality Endorsement that indicates internal defects must exceed the tolerance allowed for a certain U.S. grade. The U.S. grade standards contain a 6 percent tolerance. However, in another section ("Application of Tolerances"), the standards indicate that individual samples cannot have more than double the specified tolerance amount.

Response: The individual samples referred to in the Application of Tolerances are individual samples of a lot that has been prepared for shipping (bagged, boxed, etc.). The average of all samples from the lot cannot exceed the overall limits, but any of the samples may contain defects exceeding the limit. Section 4(a) specifies that tolerances are on a lot basis, not an individual sample basis.

Comment: An insurance service organization suggested editorial changes in section 4 of the Northern Quality Endorsement and section 6 of the Northern Processing Quality Endorsement. The comment indicated that, as proposed, the phase ". . . and contains potatoes that grade less than U.S. No. 2 due to" and subsequent items (a)-(b)(3) could be read as applying only to item (3) "that is marketed after a grade inspection," and not to items (1) or (2). If this is not the intent, it would help to insert a semicolon before this phrase and change "and" to "that" to separate it from (3).

Response: FCIC agrees and has made the recommended changes.

Comment: An insurance service organization suggested defining "lot" in

section 4(a) of the Northern Potato Quality Endorsement since reference is made to "lot basis" and it is not defined in the Northern Potato Crop Provisions.

Response: FCIC has revised the defined term "marketable lot" to "lot."

Comment: An insurance service organization asked for clarification regarding language in section 4(b)(1)-(3) and (6)(b)(1)-(3) of the Northern Quality and Processing Quality Endorsements respectively. The comment suggested the following language for clarity:

(1) "Remove production damaged by freeze or a cause that results in soft rot or wet breakdown from representative samples;

(2) "Divide the remaining weight of potatoes that grade U.S. No. 2 or better by the total remaining weight;

(3) "Divide the resulting percentage by the applicable percentage factor contained in the Special Provisions."

The comment also indicated that sections (2) and (3) could be combined unless the preference is to keep separate for each step.

Response: After further study, FCIC has determined that the method of determining the percentage of damage contained in the proposed rule was inaccurate. That method removed production damaged by freeze or tuber rot before determining applicable percentages, thus reducing the sample size. The percentage of potatoes that grade U.S. No. 2 should be based on the total sample weight, and, since freeze damage and tuber rot are adjusted under the Northern Crop Provisions, potatoes with such damage should be considered sound (No. 1 or 2, as applicable) production for the purposes of the Northern Quality and Processing Quality Endorsements. Section 4(b) of the Northern Quality Endorsement and Section 6(b) of the Northern Processing Quality Endorsement have been revised accordingly.

Comment: A reinsured company asked if section 4(b)(1) of the Northern Quality Endorsement and section 6(b)(1) of the Northern Processing Quality Endorsement (Production damaged by freeze or a cause that results in soft rot or wet breakdown will be removed from representative samples of the production) would require the graders to grade the sample twice, once for freeze and tuber rot and once for all other quality considerations after they have removed the frost and tuber rot potatoes from the sample. If so, more time for grading will be required and the process will be more complex.

Response: FCIC has revised these provisions so that two separate grading procedures will not be required.

Comment: A reinsured company recommended discontinuing coverage under the Northern Quality Endorsement based on the U.S. No. 2 grade and redefining U.S. No. 1 standards to coincide with the new potato commodities future market.

Response: The potato industry still utilizes No. 2 grade standards in many circumstances and this level of quality protection provides adequate insurance coverage for many insureds. Therefore, no changes have been made.

Comment: A reinsured company commented that the Northern Processing Quality Endorsement needs to be expanded to all counties in Idaho that produce potatoes for processing.

Response: FCIC agrees that expansion of the coverage provided by the Northern Processing Quality Endorsement should be studied. Several Regional Service Offices, including the office that would recommend new counties in Idaho, are now considering such expansion. If analysis proves that adequate information is available, and the coverage can be offered in an actuarially sound manner, the coverage provided by the endorsement will be expanded to additional counties.

Comment: A reinsured company recommended that, if the potato producer does not sign a potato contract by the acreage reporting date as mandated by the Northern Potato Crop Insurance Processing Quality Endorsement, acreage automatically be covered under the Northern Potato Crop Insurance Quality Endorsement based on the U.S. No. 1 grade. This method would automatically protect the producer against quality losses even though a contract was not signed.

Response: FCIC agrees that a producer who wants insurance against quality deficiencies should have such coverage when a processor contract is not completed. The Northern Quality Endorsement was designed so that the coverage under it is automatically applicable when a processor contract is not completed by the acreage reporting date. However, the grade upon which coverage is based will be that selected by the insured (U.S. No. 1 (if available in the county) or U.S. No. 2).

Comment: An insurance service organization suggested replacing the reference to "specific gravity" in section 6(a) of the Northern Processing Quality Endorsement with "percent solids." The term "specific gravity" may not appear on settlement sheets.

Response: Most settlement sheets still refer to "specific gravity." For those that do not, a conversion chart commonly used in the potato industry will be referenced in procedural handbooks.

Comment: An insurance provider recommended that production covered under the Northern Processing Quality Endorsement be eligible for adjustment if the specific gravity is less than 1.074. Most processor contracts require a specific gravity of 1.074 or higher.

Response: FCIC agrees and has modified section 6(a)(1) (redesignated 6(a)) to indicate that production will be eligible for adjustment if it has a specific gravity that is less than the lower of 1.074 or the minimum acceptable value under the terms of the processor contract.

Comment: An insurance service organization suggested a change in the formatting of sections 6 (a) & (b) of the Northern Processing Quality Endorsement. Currently, there is no (a)(2) following (a)(1).

Response: Section 6(a)(1) has been redesignated as 6(a) and the following sections have been redesignated accordingly.

Comment: A reinsured company indicated that the Northern Quality Endorsement no longer provided quality protection for production grown for seed. This leaves the seed producer without adequate protection against losses in quality. The comment suggested developing a new certified seed endorsement based on the U.S. Certified Seed Standards in order to provide adequate protection for the seed grower.

Response: FCIC agrees that seed producers may need protection in addition to that currently provided and will work with any party interested in developing such coverage.

Comment: A producer group recommended revising the language in section 4 of the Certified Seed Endorsement from "The certified seed acreage you insure in the current crop year cannot be greater than 125 percent of the average number of acres grown for seed in the three previous years unless we agree otherwise in writing" to "The certified seed acreage you insure in the current crop year cannot be greater than 125 percent of the average number of acres entered into and passing certification in the potato certified seed program for the state in which the seed was grown in the three previous years unless we agree otherwise in writing." The group further suggested that the language in section 4(a) be changed from "Multiply the average number of acres grown for certified seed the three previous years by 1.25 and divide this result by the number of acres grown for certified seed in the current crop year; and * * *" to "Multiply the average number of acres entered into and passing certification in the potato certified seed program for the state in which the seed was grown the three previous years by 1.25 and divide this result by the number of acres grown for certified seed in the current crop year; and * * *" This change should adequately address previous program abuse and limit indemnified acreage to only that which is actually being produced for seed. A reinsured company and an insurance service organization also recommended clarifying whether "3 previous years" means "calendar" or "data base" years.

Response: FCIC has made the recommended changes and clarified the provisions to indicate the three previous calendar years.

Comment: An insurance service organization indicated section 4 of the Potato Crop Insurance Certified Seed Endorsement which limits the increase to 125 percent in certified seed acreage compared to the average of the previous three years is a good idea. The comment indicated that the overall reduction in guarantee if excess acreage is reported may be the simplest way to handle this possibility, but asked if consideration was given to allowing the insured to designate which acres within the limit would be insured as certified seed.

Response: Consideration was given to allowing insureds to designate insurable and uninsurable acreage. However, it was not considered the best alternative since identification of the source of production would be difficult, especially if insured and uninsured acreage were in the same field. Therefore, no change will be made.

Comment: A reinsured company indicated that coverage for Certified Seed should be made available in areas from which the coverage was withdrawn. The endorsement was put on hold for review and has been under review for several years. The endorsement should be consistent with certification requirements used by the states of Montana and Idaho.

Response: Coverage for certified seed was withdrawn in certain locations at the request of grower groups and potato industry representatives. FCIC will not reinstate this coverage until these groups and representatives agree that it should again be made available. FCIC believes that the endorsement is consistent with certification requirements used in Montana and Idaho. Provisions in the endorsement specify that potatoes must be produced and managed in accordance with standards, practices, and procedures required for certification by the state's certifying agency and applicable regulations. The endorsement cannot contain the specific requirements of the certifying agencies in Montana and Idaho because the endorsement is also used in other states. No changes have been made.

Comment: An insurance service organization questioned the language in section 7 of the Potato Crop Insurance Certified Seed Endorsement. The comment stated the existing Certified Seed Potato Option Amendment specifies a payment of one dollar per hundredweight (multiplied by the guarantee and share) while the proposed language refers to "the dollar amount per hundredweight shown in the Special Provisions." The commenter asks whether this dollar amount varies by state or country, and if so, by how much. The commenter also asks whether the rates reflect any increase or decrease.

Response: Depending upon available price information for certified seed, the dollar amount of coverage per hundredweight could vary by state or county. The amount of variation would depend upon actual and expected prices for see. Premium rate percentages should not be impacted by variation in this dollar amount since the risk of not receiving certification due to an insured cause should remain constant regardless of the dollar amount of coverage per hundredweight. However, the amount of premium may increase if the price is higher.

Comment: An insurance provider recommended that the Northern Storage Endorsement give producers time to make decisions based on a grade that was determined from sampling prior to storage and if the grading showed internal defects, then the producer should be allowed the same choices available under the Northern Quality Endorsement (section 4(a)). The comment further stated that the Northern Storage Endorsement covers quality problems that are communicable (the problem will spread throughout the storage facility, such as late blight or a tuber rot condition). Internal defects are not communicable and will not spread to other potatoes. In all cases, marketability and salvage will control the losses. Regardless of the type of problem in storage, salvage should always apply unless the crop is destroyed.

Response: FCIC agrees that when the producer elects the Northern Quality Endorsement, the coverage provided will be extended to provide the same coverage under the Northern Storage Endorsement if the requirements of such Endorsement are met. Salvage provisions have been added.

Comment: A producer group stated that the Northern Storage Coverage Endorsement attaches to the basic policy, but should also extend the coverage provided under the Northern Potato Quality Endorsement if that endorsement is elected by the producer.

Response: FCIC agrees that coverage under the Northern Quality Endorsement should be extended when the producer also elects a Northern Storage Coverage Endorsement and has modified the Northern Storage Endorsement accordingly.

Comment: An insurance service organization asked for clarification regarding language in section 3 of the Northern Potato Storage Coverage Endorsement that indicates "all other potato production insured under the Northern Potato Crop Provisions must be insured under this endorsement unless the Special Provisions allow you to exclude certain potato varieties, types or groups from insurance under this endorsement, and you elect to exercise this option." The commenter understands this to mean that all potatoes insured under the Northern Potato Crop Provisions have to be insured under the Northern Storage Endorsement, unless a processor contract requires delivery within three days of harvest or if the producer elects to exclude other production when specifically allowed by the Special Provisions. The comment recommended starting the sentence with "If you elect this endorsement" for clarity.

Response: The provision has been clarified.

Comment: An insurance service organization questioned why coverage exclusions are required to be identified annually as stated in section 3 of the Northern Potato Storage Coverage Endorsement. It would be more consistent for such exclusions to remain in effect until otherwise notified in writing by either the insured producer or the insurance provider.

Response: Since the acreage to which exclusions apply is not likely to be identical from year to year, FCIC believes excluded varieties, types, or groups should be identified on the annual acreage report. Therefore, no change will be made.

Comment: An insurance service organization indicated that the word "prorata" in section 4 of the Northern Storage Endorsement should be two words. The comment also recommended changing the language in the example to account for the missing amount. Recommended changing to: "the production to count is 1,000 hundredweight because 500 hundredweight went bad."

Response: The editorial correction has been made. However, the

recommendation regarding the "missing amount of production" has not been incorporated. The provision is clearly stated without the recommended change.

Comment: An insurance service organization questioned how the insurance provider will be able to verify if notification was within 72 hours of discovery of damage as indicated in section 5(b) of the Northern Storage Endorsement.

Response: As with any insured loss, it is important that the insurance provider receive timely notification of damage. FCIC agrees that in many instances it is difficult to determine the exact time the insured person becomes aware of damage and therefore, some flexibility is required when administering this provision. However, if it can be clearly shown that an insured did not give timely notice, any claim could be denied.

Comment: An insurance service organization suggested that section 5(a) and 5(c) be combined in the Northern Potato Storage Coverage Endorsement since both refer to damage by an insured cause other than freeze.

Response: FCIC agrees and has combined the provisions in 5(c) with section 5(a).

Comment: An insurance service organization recommended that the insured be required to have the Quality Endorsement in order to take the Northern Potato Storage Coverage Endorsement.

Response: Since damage that may later cause tuber rot is covered under the Northern Crop Provisions, the Northern Storage Endorsement should be available to producers who elect coverage under the Northern Crop Provisions only. Therefore, no changes have been made.

In addition to the changes indicated above, FCIC has made the following changes:

1. The term "tuber rot" is defined in the Northern Crop Provisions to avoid duplicating provisions in the Northern Crop Provisions, Quality Endorsement, Processing Quality Endorsement, and Storage Endorsement. Added a definition for "disposed" to the Northern and Central and Southern Crop Provisions for clarification. Added definitions for the terms "buyer" and "reduction percentage" to the Northern Crop Provisions for clarification. Also removed definitions for "days" "FSA", "final planting date," "interplanted," "irrigated practice," "planted acreage," and "production guarantee (per acre)," since definitions for these terms are now contained in the Basic Provisions.

2. Section 2 of the Northern Crop Provisions is removed and section 2 of the Southern Crop Provisions is modified because provisions previously contained in section 2 regarding unit division requirements and unit structure by section, section equivalent, FSA farm serial number, and irrigated and non-irrigated practices, have been moved to the Basic Provisions.

3. Revised redesignated section 11(b)(2) of the Northern Crop Provisions and section 12(b)(2) of the Central and Southern Crop Provisions to clearly indicate that the price use to determine the amount of an indemnity may be limited.

4. The initial paragraph of the Central and Southern Crop Provisions has been revised to add Arizona and Georgia as states in which these provisions apply. These states are also added in section 5 (Cancellation and Termination Dates) and section 9 (Insurance Period) of the Central and Southern Crop Provisions.

5. Sections 4 and 5 of the Central and Southern Crop Provisions have been revised to change the contract change and cancellation/termination dates for Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all counties lying south thereof to June 30 and September 30 respectively. These dates were previously effective only in Manatee, Hardee, Highlands, Okeechobee, and St. Lucie Counties, and all counties lying south thereof.

6. Section 4(a)(1) of the Northern Quality Endorsement and section 6(a)(1) of the Northern Processing Quality Endorsement are revised to clarify that a "price comparison" method of adjustment will not be applicable if it has already been performed under the terms of redesignated section 11(g)(2)(i) of the Northern Potato Crop Insurance Provisions.

7. Removed provisions regarding written agreements that are now contained in the Basic Provisions.

8. Section 5 of the Northern Processing Quality Endorsement is clarified to indicate that the number of acres insured under the endorsement will not exceed the actual number of acres planted to the potato types under contract.

9. Section 6(a)(1) of the Northern Processing Quality Endorsement is revised by changing the price against which the value of damaged production is compared from the "base contract price" to the "highest available price election." This change was made because of variation in methods used to establish base contract prices. Base prices tend to be set low when substantial incentives for good quality are contained in the contract, and tend to be set high when substantial discounts for low quality are included. Use of the price election will provide a consistent means of quality adjustment for all insureds.

10. Section 8 of the Northern Quality Endorsement and section 9 of the Northern Processing Quality Endorsement are revised to indicate that an insured may elect quality adjustment based on U.S. No. 1 or 2 by type or group, if both U.S. No. 1 and 2 are provided in the actuarial documents and if separate types or groups are specified in the Special Provisions.

11. Section 4 of the Northern Storage Endorsement is revised to clarify that pro rata allocation of stored production to units will be allowed only if verifiable records of production placed in storage are available by unit.

12. Section 6 of the Northern Storage Endorsement is removed. The proposed provisions duplicated those contained in redesignated section 11 of the Northern Crop Provisions.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the potato insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is December 31, 1997. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insured may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 422 and 457

Crop insurance, Potato crop insurance regulations, Potatoes.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 422 and 457 as follows:

PART 422—POTATO CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 422 is amended to read as follows:

Authority. 7 U.S.C. 1506(1), 1506(p).

2. The heading preceding § 422.1 is revised to read as follows: Subpart—Regulations for the 1986 (1987 in certain California counties and Florida) through 1997 Crop Years (1998 in Alabama; Arizona; certain California counties; Delaware; Florida; Maryland; Missouri; New Jersey; New Mexico; North Carolina; Oklahoma; Texas; and Virginia).

3. Section 422.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 422.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop year is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Potato Crop Insurance Policy for the 1986 (1987 in certain California counties and Florida) through 1997 Crop Years (1998 in Alabama; Arizona; certain California counties; Delaware; Florida; Maryland; Missouri; New Jersey; New Mexico; North Carolina; Oklahoma; Texas; and Virginia) are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

5. Section 457.142 is added to read as follows:

§ 457.142 Northern Potato Crop Insurance Provisions.

The Northern Potato Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Northern Potato Crop Provisions

These provisions will be applicable in: Alaska; Humboldt, Modoc, and Siskiyou Counties, California; Colorado; Connecticut; Idaho; Indiana; Iowa; Maine; Massachusetts; Michigan; Minnesota; Montana; Nebraska; Nevada; New York; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Dakota; Utah; Washington; Wisconsin; and Wyoming.

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions.

Buyer. A business entity in the business of buying or processing potatoes, that possesses all the licenses and permits required by the state in which it operates, and has the facilities to accept the potatoes purchased.

Certified seed. Potatoes for planting a potato crop in a subsequent crop year that have been found to meet the standards of the public agency that is responsible for the seed certification process within the state in which they were grown.

Discard. Disposal of production by you, or a person acting for you, without receiving any value for it.

Disposed. Any disposition of the crop including but not limited to sale or discard.

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage, or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes.

Harvest. Lifting potatoes from within the soil to the soil surface.

Hundredweight. One hundred (100) pounds avoirdupois.

Local market. The area in which the insured potatoes are normally sold.

Lot. A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow potatoes, and to deliver the potato production to the processor;

(b) The processor's commitment to purchase the production stated in the contract; and

(c) A price that will be paid to the producer for the production stated in the contract.

Reduction percentage. A factor determined based on the weight of only freeze damaged production in a sample of potatoes in relationship to the total weight of the sample, and the provisions in section 11(g)(1) of these crop provisions; and that is used to determine a quantity of potatoes that will not be included as production to count.

Tuber rot. Any soft, mushy, or leaky condition of potato tissue (soft rot or wet breakdown as defined in the United States Standards for Grades of Potatoes), including, but not limited to, breakdown caused by Southern Bacterial Wilt, Ring Rot, or Late Blight.

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the potatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. If the Special Provisions provide for different price elections by type, you may select one price election for each potato type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 80 percent of your price election.

(c) Any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally further care for the potatoes will be deemed to have been destroyed even though you may continue to care for the potatoes. The price election for unharvested acreage will apply to such acreage.

3. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

5. Annual Premium.

In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount (y) is computed by multiplying (a) the production guarantee by (b) the price election for harvested acreage, by (c) the premium rate, by (d) the insured acreage, by (e) your share at the time of planting, and by (f) any applicable premium adjustment factors contained in the actuarial documents ($a \times b \times c \times d \times e \times f = y$).

6. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all the potatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) Planted with certified seed (unless otherwise permitted by the Special Provisions);

(c) Planted for harvest as certified seed stock, or for human consumption, (unless specified otherwise in the Special Provisions);

(d) That are not (unless allowed by the Special Provision or by written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

7. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that:

(a) Does not meet the rotation requirements contained in the Special Provisions for the crop; or

(b) Is damaged before the final planting date to the extent that similarly situated producers in the area would normally not further care for the crop, unless it is replanted or we agree that it is not practical to replant.

8. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows (exceptions, if any, for specific counties, varieties or types are contained in the Special Provisions):

(a) October 1, in Alaska;

(b) October 10 in Nebraska and Wyoming;

(c) October 15 in Colorado; Indiana; Iowa; Michigan; Minnesota; Montana; Nevada;

North Dakota; South Dakota; Utah; and Wisconsin;

(d) October 20 in Maine; and

(e) October 31 in Humboldt, Modoc, and Siskiyou Counties, California; Connecticut; Idaho; Massachusetts; New York; Ohio; Oregon; Pennsylvania; Rhode Island; and Washington.

9. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but only if sufficient and proper pest control measures are used;

(4) Plant disease, but only if sufficient and proper disease control measures are used;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period (see section 9(a)(1) through (7)).

(b) In addition to the causes of loss not insured against as contained in section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs or becomes evident in storage; or

(2) Causes, such as freeze after certain dates, as limited by the Special Provisions.

10. Duties in the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples at least 10 feet wide and extending the entire length of each field in the unit if you are going to destroy any acreage of the insured crop that will not be harvested.

(b) We must be given the opportunity to perform a grade inspection on the production from any unit for which you have given notice of damage.

11. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which acceptable production records were not provided; and

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee (If there is unharvested acreage in the unit, the harvested and unharvested acreage will be determined separately);

(2) Multiplying each result in section 11(b)(1) by the respective price election (The price election may be limited as specified in section 3.);

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable (see section 11(d)), by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the results of section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(7) $20,000.00 × 100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.20 per hundredweight. The price election for unharvested acreage is 80.0 percent of your elected price election ($4.00 × 0.80 = $3.20.) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the unharvested acreage, and 15,000 hundredweight guarantee × $3.20 price election = $48,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $48,000.00 = $108,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and 3500 hundredweight × $3.20 = $11,200.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $11,200.00 = $51,200.00 total value of production to count;

(6) $108,000.00 − $51,200.00 = $56,800.00 loss; and

(7) $56,800.00 loss × 100 percent = $56,800.00 indemnity payment.

(c) The extent of any quality loss must be determined based on samples obtained no later than the time the potatoes are placed in storage, if the production is stored prior to sale, or the date they are delivered to a buyer, wholesaler, packer, broker, or other handler if production is not stored.

(d) The total production to count (in hundredweight) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) From which any production is disposed of without a grade inspection; or

(E) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Production lost due to harvest prior to full maturity. Production to count from such acreage will be determined by increasing the amount of harvested production by 2 percent per day for each day the potatoes were harvested prior to the date the potatoes would have reached full maturity. The date the potatoes would have reached full maturity will be considered to be 45 days prior to the calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions. This adjustment will not be made if the potatoes are damaged by an insurable cause of loss, and leaving the crop in the field would either reduce production or decrease quality;

(iv) Unharvested production (the value of unharvested production will be calculated using the reduced price election determined in section 2(b) and unharvested production may be adjusted in accordance with sections 11(e), (f), (g), and (h)); and

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The price used to determine the amount of any indemnity will be limited as specified in section 2 even if the representative samples are harvested. The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage (the amount of production prior to the sorting or discarding of any production).

(e) Potato production is eligible for quality adjustment if:

(1) The potatoes have freeze damage or tuber rot that is evident at, or prior to, the end of the insurance period; and

(2) A grade inspection is performed.

(f) Potato production that is eligible for quality adjustment, as specified in section 11(e), with 5 percent damage or less (by weight) will be adjusted 0.1 percent for each 0.1 percent of damage through 5.0 percent.

(g) Potato production that is eligible for quality adjustment, as specified in section 11(e), with 5.1 percent damage or more (by weight) will be adjusted as follows:

(1) For potatoes damaged by freeze, production will be reduced 0.1 percent for each 0.1 percent of damage through 5.0 percent, 0.5 percent for each 0.1 percent of damage from 5.1 through 15.0 percent, and by 1.0 percent for each 0.1 percent of damage from 15.1 through 19.5 percent. However, if you do not discard any harvested production within 21 days of the end of the insurance period that has freeze damage in excess of 17.9 percent, we will include 15 percent of such production when determining the amount of production to count.

(2) For potatoes that have tuber rot due to an insurable cause other than freeze, production to count will be determined as follows:

(i) For potatoes for which a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) if the end of the insurance period, or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, by dividing the price received or that will be received per hundredweight by the highest price election designated in the Special Provisions for the insured potato type, and multiplying the result (not to exceed 1.0) by the number of hundredweight of sold production. If production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market;

(ii) For harvested potatoes discarded within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and appraised unharvested production that could:

(A) Not have been sold, the production to count will be zero; or

(B) Have been sold, the production will be reduced as follows (all percentage points of damage will be rounded to the nearest 0.1 percent):

(*1*) 0.1 percent for each 0.1 percent of damage through 5.0 percent;

(*2*) 05. percent for each 0.1 percent of damage from 5.1 percent through 6.0 percent;

(*3*) 1.0 percent for each 0.1 percent of damage from 6.1 through 8.0 percent;

(*4*) 2.0 percent for each 0.1 percent of damage from 8.1 through 9.0 percent; and

(*5*) 2.5 percent for each 0.1 percent of damage from 9.1 through 10.4 percent.

(iii) For potatoes for which a price is not agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and that remain in storage 22 or more days (61 or more days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) after the end of the insurance period, adjustment will be made in accordance with section 11(g)(2)(ii)(B).

(h) When a combination of freeze damage or a tuber rot condition is 5.1 percent (by weight) or greater, the amount of production to count for production affected by tuber rot will first be determined in accordance with section 11(g)(2). If production is not sold within the time frame specified in section 11(g)(2), this amount will be further adjusted as follows:

(1) The percentage of potatoes with freeze damage will be determined by dividing the weight of potatoes with only freeze damage in representatives samples of the production by the total weight of the samples;

(2) The reduction percentage will be determined based on the result of section 11(h)(1) and section 11(g)(1); and

(3) The reduction percentage determined in section 11(h)(2) will be multiplied by the amount of production determined in accordance with section 11(g)(2).

12. Prevented Planting.

Your prevented planting coverage will be 25 percent of your production guarantee for timely planted acreage. If you have limited or additional coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

6. Section 457.147 is added to read as follows:

§ 457.147 Central and Southern Potato Crop Insurance Provisions.

The Central and Southern Potato Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Central and Southern Potato Crop Provisions

These provisions will be applicable in: Alabama; Arizona; all California counties except Humboldt, Modoc and Siskiyou; Delaware; Florida; Georgia; Maryland; Missouri; New Jersey; New Mexico; North Carolina; Oklahoma; Texas; and Virginia.

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions.

Certified seed. Potatoes for planting a potato crop in a subsequent crop year that have been found to meet the standards of the public agency that is responsible for the seed certification process within the state in which they were grown.

Discard. Disposal of production by you, or a person acting for you, without receiving any value for it.

Disposed. Any disposition of the crop including but not limited to sale or discard.

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes.

Harvest. Lifting potatoes from within the soil to the soil surface.

Hundredweight. One hundred (100) pounds avoirdupois.

Lot. A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

Planting period. The period of time between the calendar dates designated in the Special Provisions for the planting of spring-planted, summer-planted, fall-planted, or winter-planted potatoes.

Practical to replant. In lieu of the definition of "Practical to replant" contained in section one of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to, moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period, or the end of the planting period in which initial planting took place in counties for which the Special Provisions designates separate planting periods, unless replanting is generally occurring in the area.

2. Unit Division.

A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by planting period.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements of section 2 of the Basic Provisions, you may select only one price election for all the potatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. If the Special Provisions provide for different price elections by type, you may select one price election for each potato type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 80 percent of your price election.

(c) Any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally further care for the potatoes will be deemed to have been destroyed even though you may continue to

care for the potatoes. The price election for unharvested acreage will apply to such acreage.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is:

(a) June 30 preceding the cancellation date for counties with a September 30 cancellation date;

(b) September 30 preceding the cancellation date for counties with a November 30 or December 31 cancellation date; and

(c) November 30 preceding the cancellation date for counties with a February 28 or March 15 cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Dates
Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all Florida counties lying south thereof	Sep. 30.
Arizona; all California counties; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Haskell, Knox, Lamb, Parmer, Swisher, and Yoakum.	Nov. 30.
Alabama; Delaware; Georgia; Maryland; Missouri; New Jersey; North Carolina; Virginia; and all Florida counties except Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all Florida counties to the south thereof.	Dec. 31.
Oklahoma; and Haskell and Knox Counties, Texas	Feb. 28.
Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum Counties, Texas; and New Mexico.	Mar. 15.

6. Annual Premium.

In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount (y) is computed by multiplying (a) the production guarantee by (b) the price election for harvested acreage, by (c) the premium rate, by (d) the insured acreage, by (e) your share at the time of planting, and by (f) any applicable premium adjustment factors contained in the actuarial documents (a x b x c x d x e x f = y).

7. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all the potatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) Planted with certified seed (unless otherwise permitted by the Special Provisions);

(c) Planted for harvest as certified seed stock, or for human consumption, (unless specified otherwise in the Special Provisions);

(d) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that:

(a) Does not meet the rotation requirements contained in the Special Provisions for the crop; or

(b) Is damaged before the final planting date or before the end of the applicable planting period in counties for which the Special Provisions designate separate planting periods, to the extent that similarly situated producers in the area would normally not further care for the crop, unless it is replanted or we agree that it is not practical to replant.

9. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows (exceptions, if any, for specific counties, varieties or types are contained in the Special Provisions):

(a) July 15 in Missouri; North Carolina; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Haskell, Hartley, Knox, Lamb, Parmer, Swisher, and Yoakum.

(b) July 25 in Arizona; and Virginia.

(c) August 15 in Oklahoma; and Haskell and Knox Counties, Texas.

(d) In Alabama; California; Florida; and Georgia; the dates established by the Special Provisions for each planting period; and

(e) October 15 in Bailey, Castro, Dallam, Deaf Smith, Floyd, Gains, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum Counties, Texas; Delaware; Maryland; New Jersey; and New Mexico.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but only if sufficient and proper pest control measures are used;

(4) Plant disease, but only if sufficient and proper disease control measures are used;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period (see section 10(a)(1) through (7)).

(b) In addition to the causes of loss not insured against as contained in section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs after potatoes have been placed in storage; or

(2) Causes, such as freeze after certain dates, as limited by the Special Provisions.

11. Duties in the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples at least 10 feet wide and extending the entire length of each field in the unit if you are going to destroy any acreage of the insured crop that will not be harvested.

(b) We must be given the opportunity to perform a grade inspection on the production from any unit for which you have given notice of damage.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which acceptable production records were not provided; and

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee (if there is unharvested acreage in the unit, the harvested and unharvested acreage will be determined separately);

(2) Multiplying each result in section 12(b)(1) by the respective price election (the price election may be limited as specified in section 3.);

(3) Totaling the results of section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(d)) by the respective price election;

(5) Totaling the results of section 12(b)(4);

(6) Subtracting the results of section 12(b)(5) from the result in section 12(b)(3); and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight=15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election=$60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election=$40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00=$20,000.00 loss; and

(7) $20,000.00×100 percent=$20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.20 per hundredweight. (The price election for unharvested acreage is 80.0 percent of your elected price election ($4.00×0.80=$3.20.) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3,500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and

100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the harvested acreage, and

15,000 hundredweight guarantee × $3.20 price election = $48,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $48,000.00 = $108,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and

3500 hundredweight × $3.20 = $11,200.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $11,200.00 = $51,200.00 total value of production to count;

(6) $108,000.00 − $51,200 = $56,800.00 loss; and

(7) $56,800.00 loss × 100 percent = $56,800.00 indemnity payment.

(c) The extent of any quality loss must be determined based on samples obtained no later than the time potatoes are placed in storage, if the production is stored prior to sale, or the date they are delivered to a buyer, wholesaler, packer, broker, or other handler if production is not stored.

(d) The total production to count (in hundredweight) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) From which any production is disposed of without a grade inspection; or

(E) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Production lost due to harvest prior to full maturity. Production to count from such acreage will be determined by increasing the amount of harvested production by 2 percent per day for each day the potatoes were harvested prior to the date the potatoes would have reached full maturity. The date the potatoes would have reached full maturity will be considered to be 45 days prior to the calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions. This adjustment will not be made if the potatoes are damaged by an insurable cause of loss, and leaving the crop in the field would either reduce production or decrease quality.

(iv) Unharvested production (the value of unharvested production will be calculated using the reduced price election determined in section 3(b) and unharvested production may be adjusted in accordance with section 12(e)); and

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The price used to determine the amount of any indemnity will be limited as specified in section 3 even if the representative samples are harvested. The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage determined in accordance with section 12(e).

(e) With the exception of production with external defects, only marketable lots of mature potatoes will be production to count for loss adjustment purposes. Production not meeting the standards for grading U.S. No. 2 due to external defects will be determined on an individual potato basis for all unharvested potatoes and for any harvested potatoes if we determine it is practical to separate the damaged production. All determinations must be based upon a grade inspection.

(1) Marketable lots of potatoes will include any lot of potatoes that is:

(i) Stored;

(ii) Sold as seed;

(iii) Sold for human consumption; or

(iv) Harvested and not sold or that is appraised if such lot meets the standards for grading U.S. No. 2 or better on a sample basis.

(2) Marketable lots will also include any potatoes that we determine:

(i) Could have been sold for seed or human consumption in the general marketing area;

(ii) Were not sold as a result of uninsured causes including, but not limited to, failure to meet chipper or processor standards for fry color or specific gravity; or

(iii) Were disposed of without our prior written consent and such disposition prevented our determination of marketability.

(3) Unless included in section 12(e) (1) or (2), a potato lot will not be considered marketable if, due to insurable causes of damage, it:

(i) Is partially damaged, and is salvageable only for starch, alcohol, or livestock feed;

(ii) Is left unharvested and does not meet the standards for grading U.S. No. 2 or better due to internal defects; or

(iii) does not meet the standards for grading U.S. No. 2 or better due to external defects, is harvested, and it is not practical to separate the damaged production.

13. Prevented Planting.

Your prevented planting coverage will be 25 percent of your production guarantee for timely planted acreage. If you have limited or additional coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

7. Section 457.143 is added to read as follows:

§ 457.143 Northern Potato Crop Insurance—Quality Endorsement.

The Northern Potato Crop Insurance Quality Endorsement provisions for the 1998 and succeeding years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Northern Potato Crop Insurance Quality Endorsement

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions and this endorsement, this endorsement will control.

2. You must elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement. This endorsement will continue in effect until canceled. It may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

3. All acreage of potatoes insured under the Northern Potato Crop Provisions will be insured under this endorsement except:

(a) Any acreage specifically excluded by the actuarial documents; and

(b) Any acreage grown for seed.

4. We will adjust production to count (determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions) from (1) unharvested acreage; (2) harvested acreage that is stored after a grade inspection; or (3) that is marketed after a grade inspection; and that contains potatoes that grade less than U.S. No. 2 due to:

(a) Internal defects (the number of potatoes with such defects must be in excess of the tolerance allowed for U.S. No. 2 grade potatoes on a lot basis and must not be separable from undamaged production using

methods used by the potato packers or processors to whom you normally deliver your potato production), will be adjusted as follows:

(1) For potatoes for which a price is agreed upon in writing between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, by multiplying the production to count by the factor (not to exceed 1.0) that results from dividing the price received or that will be received per hundredweight of the damaged production by the highest available price election. This method of adjustment will not be performed if it has already been performed under the terms of section 11(g)(2)(i) of the Northern Potato Crop Insurance Provisions. If production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market.

(2) For harvested potatoes discarded within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and appraised unharvested production that could:

(i) Not have been sold, the production to count will be zero; or

(ii) Have been sold, the production to count will be determined in accordance with section 4(a)(1). The price used for the damaged production will be the price you could have received in the local market.

(3) For potatoes for which a price is not agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and that remain in storage 22 or more days (61 or more days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) after the end of the insurance period, production to count will be determined in accordance with section 4(b).

(b) Factors other than those specified in section 4(a), by multiplying by a factor (not to exceed 1.0) that is determined as follows:

(1) The combined weight of sampled potatoes that grade U.S. No. 2 or better and that are damaged by freeze or tuber rot will be divided by the total sample weight; and

(2) The percentage determined in section 4(b)(1) above will be divided by the applicable percentage factor determined in accordance with section 9.

5. Potatoes harvested or appraised prior to full maturity that do not grade U.S. No. 2 due solely to size will be considered to have met U.S. No. 2 standards unless the potatoes are damaged by an insurable cause of loss and leaving the crop in the field would either reduce production or decrease quality.

6. Production to count for potatoes destroyed, stored or marketed without a grade inspection will be 100 percent of the gross weight of such potatoes.

7. All determinations must be based upon a grade inspection.

8. The actuarial documents may provide "U.S. No. 1" in place of "U.S. No. 2" as used in this endorsement. If both U.S. No. 1 and 2 are available in the actuarial documents, you may elect U.S. No. 1 or 2 by potato type or group, if separate types or groups are specified in the Special Provisions.

9. *Percentage factor* means the historical average percentage of potatoes grading U.S. No. 2 or better, by type, determined from your records. If at least 4 continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be determined based on a combination of your records and the percentage factor contained in the Special Provisions.

8. Section 457.144 is added to read as follows:

§ 457.144 Northern Potato Crop Insurance—Processing Quality Endorsement

The Northern Potato Crop Insurance Processing Quality Endorsement provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Northern Potato Crop Insurance Processing Quality Endorsement

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions and Quality Endorsement subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions or Quality Endorsement and this endorsement, this endorsement will control.

2. You must have a Northern Potato Quality Endorsement in place and elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement. This endorsement may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

3. All terms of the Northern Potato Quality Endorsement not modified by this endorsement will be applicable to acreage covered under this endorsement.

4. A processor contract must be executed with a potato processor for the potato types insured under this endorsement and a copy submitted to us on or before the acreage reporting date for potatoes. If you elect this endorsement, all insurable acreage of production under contract with the processor must be insured under this endorsement.

5. When the processor contract requires the processor to purchase a stated amount of production, rather than all of the production from a stated number of acres, the insurable acreage will be determined by dividing the stated amount of production by the approved yield for the acreage. The number of acres insured under this endorsement will not exceed the actual number of acres planted to the potato types and which are needed to fulfill the contract.

6. In lieu of the provisions contained in section 4 of the Northern Potato Quality Endorsement, production that is rejected by the processor will be adjusted as follows: Production to count (determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions) from (1) unharvested acreage; (2) harvested acreage that is stored after a grade inspection; or (3) that is marketed after a grade inspection; and that contains potatoes that:

(a) Grade less than U.S. No. 2 due to internal defects, a specific gravity lower than the lesser of 1.074 or the minimum acceptable amount specified in the processor contract, or a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent (the number of potatoes with such defects must be in excess of the tolerance allowed for U.S. No. 2 grade potatoes on a lot basis and must not be separable from undamaged production using methods used by the processors to which you normally deliver your potato production), will be adjusted as follows:

(1) For potatoes for which a price is agreed upon in writing between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, by multiplying the production to count by the factor (not to exceed 1.0) that results from dividing the price received or that will be received per hundredweight of the damaged production by the highest available price election. This method of adjustment will not be performed if it has already been performed under the terms of section 11(g)(2)(i) of the Northern Potato Crop Insurance Provisions. If production is sold for a price lower than the value appropriate and representative of the local market, we will determine the value of the production based on the price you could have received in the local market.

(2) For harvested potatoes discarded within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and appraised unharvested production that could:

(i) Not have been sold, the production to count will be zero; or

(ii) Have been sold, the production to count will be determined in accordance with section 6(a)(1). The price used for the damaged production will be the price you could have received in the local market.

(3) For potatoes for which a price is not agreed upon in writing between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and that remain in storage

22 or more days (61 or more days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) after the end of the insurance period, production to count will be determined in accordance with section 6(b).

(b) Grade less than U.S. No. 2 due to factors other than those specified in section 6(a) will be multiplied by a factor (not to exceed 1.0) that is determined as follows:

(1) The combined weight of sampled potatoes that grade U.S. No. 2 or better and that are damaged by freeze or tuber rot will be divided by the total sample weight; and

(2) The percentage determined in section 6(b)(1) above will be divided by the applicable percentage factor determined in accordance with section 10.

7. All grade determinations for the purposes of this endorsement will be made using the United States Standards for Grades of Potatoes for Processing or Chipping.

8. All determinations must be based upon a grade inspection.

9. The actuarial documents may provide "U.S. No. 1" in place of "U.S. No. 2" as used in this endorsement. If both U.S. No. 1 and 2 are available in the actuarial documents, you may elect U.S. No. 1 or 2 by potato type or group, if separate types or groups are specified in the Special Provisions.

10. *Percentage factor* means the historical average percentage of potatoes grading U.S. No. 2 or better, by type, determined from your records. If at least 4 continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be determined based on a combination of your records and the percentage factor contained in the Special Provisions.

9. Section 457.145 is added to read as follows:

§ 457.145 Potato Crop Insurance—Certified Seed Endorsement.

The Potato Crop Insurance Certified Seed Endorsement provisions for the 1998 and succeeding years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Potato Crop Insurance Certified Seed Endorsement

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Provisions and this endorsement, this endorsement will control.

2. For the purpose of this endorsement, the term "potato certified seed program" means the state program administered by the public agency responsible for the seed certification process within the state in which the seed is produced.

3. You must elect this endorsement on or before the sales closing date for the initial crop year you wish to insure your potatoes under this endorsement. This endorsement will continue in effect until canceled. It may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

4. All potatoes grown on insurable acreage and that are entered into the potato seed certification program administered by the state in which the seed is grown must be insured unless limited by section 5 below.

5. The certified seed acreage you insure in the current crop year cannot be greater than 125 percent of your average number of acres entered into and passing certification in the potato certified seed program in the three previous calendar years unless a written agreement provides otherwise. If you enter more than this number of acres into the certification program, your certified seed production guarantee for the current crop year will be reduced as follows:

(a) Multiply the average number of your acres entered into and passing certification in the potato certified seed program the 3 previous calendar years by 1.25 and divide this result by the number of acres grown by you for certified seed in the current crop year; and

(b) Multiply the result of section 5(a) (not to exceed 1.0) by the production guarantee for certified seed for the current crop year.

6. You must provide acceptable records of your certified seed potato acreage and production for the previous three years. These records must clearly indicate the number of your acres entered into the potato seed certification program administered by the state in which the seed is grown.

7. All potatoes insured for certified seed production must be produced and managed in accordance with standards, practices, and procedures required for certification by the state's certifying agency and applicable regulations.

8. If, due to insurable causes occurring within the insurance period, potato production does not qualify as certified seed on any insured certified seed potato acreage within a unit, we will pay you the dollar amount per hundredweight contained in the Special Provisions for that purpose, multiplied by your production guarantee for such acreage, multiplied by your share. Any production that does not qualify as certified seed because of varietal mixing or your failure to follow the standard practices and procedures required for certification will be considered as lost due to uninsured causes.

9. You must notify us of any loss under this endorsement not later than 14 days after you receive notice from the state certification agency that any acreage has failed certification.

10. Section 457.146 is added to read as follows:

§ 457.146 Northern Potato Crop Insurance—Storage Coverage Endorsement.

The Northern Potato Crop Insurance Storage Coverage Endorsement provisions for the 1998 and succeeding years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Northern Potato Crop Insurance Storage Coverage Endorsement

1. In return for payment of the required additional premium as contained in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions and this endorsement, this endorsement will control.

2. You must elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement. This endorsement will continue in effect until canceled. It may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

3. Potato production grown under a contract that requires the production to be delivered to a buyer within three days of harvest will not be insured under this endorsement. When such contract requires delivery of a stated amount of production, rather than all of the production from a stated amount of acres, the number of acres not insured under this endorsement will be determined by dividing the stated amount of production by the approved yield for the acreage. All other potato production insured under the Northern Potato Crop Provisions must be insured under this endorsement unless the Special Provisions allow you to exclude certain potato varieties, types, or groups from this endorsement, and you elect to exercise this option. If you elect this endorsement, such exclusions must be shown annually on your acreage report and will be applicable to all acreage of the excluded varieties, types, or groups for the crop year.

4. When production from separate insurance units, basic or optional, is commingled in storage, the production to count for each unit will be allocated pro rata based on the production placed in storage from each unit. Such allocation will be allowed only if verifiable records of production placed in storage are available by unit. If you do not have verifiable records, all units without verifiable records will be combined in accordance with section 11 of the Northern Potato Crop Provisions. For example, if 500 hundredweight from one unit are commingled with 1,500 hundredweight from another unit and the production to count from the stored production is 1,000 hundredweight, 250 hundredweight of

production to count will be allocated to the unit contributing 500 hundredweight and 750 hundredweight to the unit contributing 1500 hundredweight to the stored production. This provision does not eliminate or change any other requirement contained in this policy to provide or maintain separate records of acreage or production by unit.

5. The extended coverage provided by this endorsement will be applicable only if:

(a) Insured potatoes are damaged within the insurance period by an insured cause other than freeze that later results in:

(1) Tuber rot as defined in the Northern Potato Crop Provisions, to the extent that 5.1 percent (by weight) or more of the insured production is affected;

(2) Internal defects to the extent that such defects are in excess of the amount allowed for the U.S. grade standard you elected for purposes of coverage under the Northern Potato Crop Insurance Quality Endorsement. Such defects must not be separable from undamaged production using methods used by the packers or processors to which you normally deliver your potato production. This coverage is applicable only to production covered under the Northern Potato Crop Insurance Quality Endorsement; or

(3) A specific gravity lower than the lesser of 1.074 or the minimum acceptable amount specified in the processor contract, or a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent. This coverage is applicable only to production covered under the Northern Potato Crop Insurance Processing Quality Endorsement.

(b) You notify us within 72 hours of your initial discovery of any damage that has or that may later result in the quality deficiencies specified in section 5(a);

(c) The percentage of production that has any of the quality deficiencies specified in section 5(a) is determined no later than 60 days after the end of the insurance period; and

(d) The potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. Samples of damaged production must be obtained by us or party approved by us prior to the sale or disposal of any lot of potatoes. Or, if production is not sold or disposed of within 60 days of the end of the insurance period, samples must be obtained within 60 days of the end of the insurance period.

Signed in Washington, D.C., on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32491 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 437 and 457

Sweet Corn Insurance Regulations; and Common Crop Insurance Regulations, Processing Sweet Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of processing sweet corn. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current sweet corn crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current sweet corn crop insurance regulations to the 1997 and prior crop years.

DATES: Effective December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No.12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of the large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, May 1, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 23690–23695 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.154, Processing Sweet Corn Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring sweet corn found at 7 CFR part 437 (Sweet Corn Crop Insurance Regulations). FCIC also amends 7 CFR part 437 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 30 comments were received from an insurance service organization, a reinsured company, and a crop insurance agent. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization recommended that several definitions common to most crops be put into the Basic Provisions.

Response: The Basic Provisions include definitions of commonly used terms, and we have revised this rule to remove the definitions of "approved yield," "days," "FSA," "final planting date," "interplanted," "irrigated practice," "production guarantee (per acre)," "replanting," "timely planted," and "written agreement." The definition of "planted acreage" is amended to remove language that is contained in the Basic Provisions.

Comment: An insurance service organization recommended that the sentence in the definition of "bypassed acreage" that states "Bypassed acreage on which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes" be deleted since it is addressed elsewhere and does not belong in the definition.

Response: FCIC has deleted, as unnecessary, the second sentence of the definition of bypassed acreage. A provision addressing when acreage will be considered to have a zero yield for APH purposes is included in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities).

Comment: An insurance service organization and a reinsured company expressed concern with the definition of "good farming practices" which makes reference to "cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenters questioned whether cultural practices that are not explicitly recognized (or possibly known) by the Cooperative State Research, Education, and Extension Service might exist. The commenters indicated that the term "county" in the definition of "good farming practice" should be changed to "area." The insurance service organization also recommended adding the word "generally" before "recognized by the Cooperative State Research, Education, and Extension Service * * *"

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing sweet corn. If a producer is following practices currently not recognized as acceptable by CSREES, such recognition can be sought by interested parties. Use of the term "generally" will only create an ambiguity and make the definition more difficult to administer. Although the cultural practices recognized by CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. Therefore, no change has been made.

Comment: An insurance service organization recommended that the definition of "replanting" be clarified by inserting "sweet corn" between the last two words ("successful" and "crop") of the sentence.

Response: This definition is contained in the Basic Provisions, and is, therefore, removed from these crop provisions.

Comment: An insurance service organization recommended that section 2(b) of the proposed rule clarify whether optional units are available if the processor contract stipulates the number of contracted acres, or only if the contract does not specify an amount of production.

Response: FCIC agrees and has amended section 2 to specify that for processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor, and optional units will not be established for production based processor contracts. The language in section 2 has also been revised and reformatted to clearly state the requirements for both the acreage-based and production-based processor contracts. In addition, language in this section that is common with other crop provisions has been removed since it is contained in the Basic Provisions.

Comment: An insurance service organization questioned whether verification of production from an optional unit using "measurement of stored production," as specified in section 2(e)(3) of the proposed rule applies to processing sweet corn.

Response: Sweet corn is not put into storage before processing. Therefore, FCIC has removed this provision.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(e)(4)(ii) of the proposed rule that states "In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, * * *" since section 2(e)(4) of the proposed rule specifies that "Each optional unit must meet one or more of the following criteria, * * *"

Response: The unit division provisions for any processor contract that stipulates the number of acres to be planted have been removed from these provisions, since the provisions are contained in the Basic Provisions.

Comment: An insurance service organization stated that the language in section 3(a), which provides guidelines for selection of price elections, should be moved to the Basic Provisions.

Response: The requirement that the price election (for each type, varietal group, etc.) have the same percentage relationship to the maximum price does not apply to all crop policies. Therefore, section 3 should not be part of the Basic Provisions.

Comment: An insurance service organization questioned whether the sentence "Any other measured production will be converted to an unhusked ear weight equivalent" is needed in section 3(b) since it is stated in section 12(c)(2).

Response: Section 3(b) addresses the insurance guarantee while section

12(c)(2) addresses production to count. The provisions clarify that both are expressed as unhusked ear weight, and any other measured production will be converted to unhusked ear weight. Therefore, no change has been made.

Comment: An insurance service organization stated that requiring the producer to provide a copy of the processor contract no later than the acreage reporting date could provide a loophole by allowing producers to wait until acreage reporting time to decide if they want coverage.

Response: There is no evidence that allowing the producer to provide a copy of the processor contract as late as the acreage reporting date has resulted in producers waiting to decide until the acreage reporting date if they want coverage. Sweet corn producers usually have a processor contract in-force by the final planting date. The requirement to provide a copy of the processor contract with the acreage report is convenient for the producer. Therefore, no change has been made.

Comment: An insurance service organization questioned whether any processor contract would allow interplanted sweet corn or sweet corn planted into an established grass or legume. The commenter further indicated that consideration should be given to inserting the language in section 7(a)(4) of the proposed rule into the Basic Provisions.

Response: FCIC agrees that processing sweet corn has seldom, if ever, been interplanted with another crop or planted into an established grass or legume. However, production practices are constantly evolving. FCIC chooses to retain the provisions of section 7(a)(3) of the final rule to accommodate such developments if they should occur. In addition, the interplanted language is not consistent among the crop policies and, therefore, will be retained in the crop provisions.

Comment: An insurance service organization indicated that language in section 7(b) that states "You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the acreage on which the sweet corn is grown * * *" suggests that only a landlord would have a share in the insured crop. The commenter questioned whether the provision in section 7(b) is already covered in sections 7(a)(1) and (3) of the proposed rule.

Response: The language in section 7(b) was intended to cover producers who have a crop share agreement, rent, or own acreage. The word "possession" has been changed to "control" for clarification. Section 7(a) specifies requirements for insurance coverage on the crop, while section 7(b) specifies requirements for an insurable share in the crop. Therefore, both provisions are necessary.

Comment: An insurance service organization and a reinsured company questioned whether the provision in section 9(b), which states that the insurance period ceases on the date sufficient production is harvested to fulfill the producer's processor contract, conflicts with the provision in section 12(a) that states "We will determine your loss on a unit basis." The commenters questioned whether production to count from an appraisal prior to harvest would be included when determining fulfillment of the processor contract. The insurance service organization questioned whether the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production exceeding the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is the only acceptable record. The insurance service organization suggested that the provisions in section 9(b) state "* * * the insurance period ends when the production delivered to the processor equals the amount of production stated in the sweet corn contract." However, the commenter also questioned whether "delivered to" is the same as "accepted by" the processor.

Response: Section 9(b) does not conflict with section 12(a). For processor contracts based on a stated amount of production, FCIC is only insuring the contract amount, and the producer can only obtain a basic unit by processor contract. Therefore, once the contract is fulfilled, insurance ceases on the unit and there is no payable loss. If the contract is not fulfilled and there is still unharvested production, any insurable cause of loss is covered. With respect to the issue of production from appraised acreage, such production will not count toward fulfillment of the processor contract, although it will be used to determine production to count for the unit or the producer's approved yield if the acreage is not bypassed due to an insurable cause of loss that renders such production unacceptable to the processor. With respect to whether the producer will know when the processor contract is fulfilled, records are kept as production is delivered to the processor. Therefore, the producer can determine when the contract is fulfilled. All production from the unit, including any excess of the amount stated in the contract, will be considered as production to count when determining the producer's approved yield. For the purposes of loss adjustment, the amount shown on the settlement sheet, plus any appraised production that was not bypassed due to an insurable cause that rendered the production unacceptable to the processor, will be included as production to count. FCIC has revised section 9(b) to clarify that insurance ceases when the contract is fulfilled if the processor contract stipulates a specific amount of production.

Comment: An insurance service organization questioned the provision in section 10(a)(4), which states that insurance is provided against "Plant disease on acreage not planted to sweet corn the previous crop year * * *." The commenter assumed this would apply even if a rotation requirement was not specified in the Special Provisions.

Response: FCIC agrees that if a rotation requirement is not specified in the Special Provisions, insurance coverage should be provided against plant disease if sweet corn was planted the previous crop year. Section 10(a)(4) has been revised accordingly.

Comment: An insurance service organization suggested changing the wording in section 10(a)(8) to eliminate the reference to 10(a)(1) through (7) and state "Failure of the irrigation water supply, if due to an insured cause of loss."

Response: Referencing 10(a)(1) through (7) makes it clear that failure of the irrigation water supply must be due to these specific causes of loss. Therefore, no change has been made.

Comment: An insurance service organization questioned how the provision in section 10(b)(1)(ii), which states that insurance coverage is not provided if acreage is bypassed based on the availability of a crop insurance payment, is to be enforced.

Response: The adjuster should be able to make this determination based on various factors such as if a harvest pattern exists that clearly indicates the processor is bypassing producers with crop insurance coverage in favor of producers without crop insurance even though the quality of the crop is similar. Language has been added to state that an indemnity will be denied or have to be repaid if it is determined that bypassed acreage was due to the availability of a crop insurance payment.

Comment: An insurance service organization questioned a discrepancy between section 9(b) of the proposed rule, which states that insurance ceases on "The date you harvest sufficient production to fulfill your processor contract," and section 10(b)(5) of the proposed rule, which states that loss of production will not be insured if "Due to damage that occurs to unharvested production after you deliver the production required by the processor contract." The commenter indicated that this provision is not necessary since any damage occurring after delivery would be outside the insurance period as indicated in section 9(b).

Response: FCIC agrees and has deleted section 10(b)(5).

Comment: An insurance service organization stated that the language in section 11(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

Response: FCIC agrees and has revised section 11(c) to clarify that an immediate notice of loss is required if damage is discovered within 15 days prior to harvest or during harvest.

Comment: An insurance service organization stated that section 12(b), which explains how a claim is settled, is too wordy and difficult to follow.

Response: This section has been revised to clarify the settlement of claims calculation, including the addition of an example.

Comment: An insurance service organization indicated that payments by the processor for bypassed acreage should be considered to have value to count as is done with salvaged grains.

Response: There is nothing in this policy which precludes a producer from obtaining any other form of insurance against losses as long as such insurance is not under the Federal Crop Insurance Act. Since the producer contributes to the unharvested acreage pool, such payment will not be considered when determining production to count.

Comment: An insurance service organization stated that section 12(c)(1)(iii) of the proposed rule should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short "shelf life."

Response: A later appraisal will only be necessary if the company and the insured do not agree on the appraisal or if the company believes that the crop needs to be carried further. The producer must continue to care for the crop in accordance with recognized good farming practices for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

Comment: An insurance service organization commented on section 12(c)(2) of the proposed rule which includes the statement "* * * production will be determined by dividing the dollar amount as required by the contract for the quality and quantity of sweet corn delivered to the processor by the base contract price per ton." The commenter did not oppose this method but requested to know why it was used to determine production to count.

Response: FCIC has revised section 12(c)(2) to specify that production to count of harvested sweet corn should be determined from the usable tons specified on the processor settlement sheet. In addition, FCIC has amended the language in section 12(c) to clarify that, in the absence of a processor settlement sheet, production to count is determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quantity of sweet corn delivered to the processor by the base contract price per ton. Since premiums or discounts for quality are not normally included in processor contracts for sweet corn, the term "quality" was removed from this provision.

Comment: A crop insurance agent stated that late planting provisions should be available for processing sweet corn since some sweet corn is planted late in most years. The insurance agent stated that late planting provisions will not affect the processor's ability to timely harvest and process the sweet corn. A reinsured company asked if provisions will be available for late and prevented planting. An insurance service organization expressed support for eliminating the late planting option and asked if prevented planting would be available.

Response: FCIC agrees that a late planting period for processing sweet corn may be appropriate for some growing areas. Therefore, section 13 is revised to provide a late planting period if allowed by the Special Provisions and if the producer provides written approval from the processor by the acreage reporting date that it will accept the production from the late planted acreage. Section 14 provides a prevented planting coverage of 40 percent of the producers production guarantee for timely planted acreage. If the producer has limited or additional coverage and pays an additional premium, the prevented planting coverage may be increased to the levels specified in the actuarial documents.

Comment: An insurance service organization and a reinsured company recommended removal of the requirement that written agreements be renewed each year if there are no significant changes to the farming operation. The insurance service organization stated that section 14(d) should perhaps refer to the date specified in the agreement instead of limiting the agreement for one year. An insurance service organization recommended that section 14 be put into the Basic Provisions.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made to the requirement that written agreements be renewed each year. The written agreement provisions are contained in the Basic Provisions and, therefore, have been removed from these crop provisions.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following Processing Sweet Corn Provisions:

1. Amended and clarified the paragraph preceding section 1 to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Amended the definitions of "base contract price," "bypassed acreage," and "processor" for clarity. The definition of "practical to replant" is amended to clarify that it will not be considered practical to replant unless the acreage can produce at least 75 percent of the approved yield and the processor agrees in writing that it will accept the production from the replanted acreage. The definition of *processor contract* is amended to clarify that multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract. This provision guards against the situation where a loss is claimed under one contract, but a surplus is grown under the other contract for the same crop. The definition of "usable tons" is amended to clarify that the amount includes the quantity of sweet corn for which the producer is compensated or should have been compensated by the processor.

3. Section 3(b)—Clarified that the insurance guarantee per acre is expressed as tons of unhusked ear weight.

4. Section 3(c)—Added a provision to clarify that appraised production on bypassed acreage that is not bypassed due to an insurable cause of loss will be

considered when determining the producer's approved yield.

5. Section 7—Removed section 7(a)(2) in the proposed rule. This provision is not necessary since section 7(a)(3) of the proposed rule stated that the sweet corn must be grown under, and in accordance with, the requirements of a processor contract. If grown under a processor contract, the sweet corn will be canned or frozen. Section 7(c) is amended for clarity.

6. Section 10—Amended section 10(a) for clarity. Section 10(b) is reformatted and amended for clarity. Also, removed section 10(b)(3) of the proposed rule. Assuming the acreage is not intentionally bypassed, FCIC believes that processors make sound harvesting decisions based on the condition and economic value of the crop as a whole. Therefore, FCIC believes that section 10(b)(3) is unnecessary and adds no value to these provisions.

7. Section 11(b)—Clarified that the insured must give a notice of loss within 3 days after the date harvest should have started if the acreage will not be harvested unless the acreage was previously released. The insured must also provide documentation stating why the acreage was bypassed.

8. Section 12—Deleted section 12(c)(1)(i)(E) of the proposed rule, and inserted amended language as a new section 12(c)(1)(iii) of the final rule to clarify when appraised production will include production on bypassed acreage. A new section 12(c)(3) of the final rule is added to clarify that appraised production will include all harvested production from any other insurable units that have been used to fill the processor contract for a unit. Section 12(d) of the proposed rule is deleted because of duplication with section 12(c)(2).

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the processing sweet corn insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The contract change date for the 1998 crop year is December 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement the new provisions. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 437 and 457

Crop insurance, Processing sweet corn, Sweet corn crop insurance regulations.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 437 and 457, as follows:

PART 437—SWEET CORN CROP INSURANCE REGULATIONS FOR THE 1985 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 437 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading "Subpart-Regulations for the 1985 and Succeeding Crop Years" is removed.

4. Section 437.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 437.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Sweet Corn Insurance Policy for the 1985 through 1997 crop years are as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

6. Section 457.154 is added to read as follows:

§ 457.154 Processing sweet corn crop insurance provisions.

The Processing Sweet Corn Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Processing Sweet Corn Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions.

Base contract price. The price stipulated on the processor contract without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the sweet corn processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The removal of the ears from the stalks for the purpose of delivery to the processor.

Planted acreage. In addition to the definition contained in the Basic Provisions, sweet corn must initially be placed in rows far enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In lieu of the definition of Practical to replant contained in section 1 of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to, moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in canning or freezing processing sweet corn for human consumption, that possesses all licenses and permits for processing sweet corn required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted processing sweet corn within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow sweet corn, and to deliver the sweet corn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract.

Ton. Two thousand (2,000) pounds avoirdupois.

Unhusked ear weight. Weight of the seed-bearing spike of sweet corn including the membranous or green outer envelope.

Usable tons. The quantity of sweet corn for which the producer is compensated or should have been compensated by the processor.

2. Unit Division.

(a) For processor contracts that stipulate the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable.

(b) For any processor contract that stipulates the number of acres to be planted, the provisions contained in section 34 of the Basic Provisions will apply.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the processing sweet corn in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price elections you choose for one type will be applicable to all other types insured under this policy.

(b) The insurance guarantee per acre is expressed as tons of unhusked ear weight. Any other measured production will be converted to an unhusked ear weight equivalent.

(c) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(d) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the processing sweet corn in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and not excluded from the processor contract at any time during the crop year; and

(3) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the sweet corn is grown, you are at risk of loss, and the processor contract provides for delivery of sweet corn under specified conditions and at a stipulated base contract price.

(c) A commercial sweet corn producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period.

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the sweet corn:

(1) Was destroyed;

(2) Should have been harvested but was not harvested;

(3) Was abandoned; or

(4) Was harvested;

(b) The date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(c) Final adjustment of a loss; or

(d) Unless otherwise agreed to in writing, the calendar date for the end of the insurance period in which the sweet corn would normally be harvested as follows:

(1) September 30 in Malheur County, Oregon, all Idaho counties, and all Iowa counties;

(2) October 20 in all other Oregon counties, and in all Washington counties; or

(3) September 20 in all other states.

10. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures or as otherwise limited by the Special Provisions;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss listed in section 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure any loss of production due to:

(1) Bypassed acreage because of:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment; or

(2) Your failure to follow the requirements contained in the processor contract.

11. Duties In The Event of Damage or Loss.

In addition to the requirements of section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the sweet corn on the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains.

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4) if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of type A processing sweet corn in the unit, with a guarantee of 3.0 tons per acre and a price election of $50.00 per ton. You are only able to harvest 200 tons. Your indemnity would be calculated as follows:

(1) 100 acres×3.0 tons=300 tons guarantee;
(2) 300 tons×$50.00 price election=$15,000.00 value of guarantee;
(4) 200 tons×$50.00 price election=$10,000.00 value of production to count;
(6) $15,000.00 − $10,000.00=$5,000.00 loss;
(7) $5,000.00×100 percent=$5,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of type B processing sweet corn in the same unit, with a guarantee of 4.0 tons per acre and a price election of $45.00 per ton. You are only able to harvest 350 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 100 acres×3.0 tons=300 tons guarantee for type A, and
100 acres×4.0 tons=400 tons guarantee for type B;
(2) 300 tons×$50.00 price election=$15,000.00 value of guarantee for type A, and
400 tons×$45.00 price election=$18,000.00 value of guarantee for type B;
(3) $15,000.00 + $18,000.00=$33,000.00 total value of guarantee;
(4) 200 tons×$50.00 price election=$10,000.00 value of production to count for type A, and
350 tons×$45.00 price election=$15,750.00 value of production to count for type B;
(5) $10,000.00+$15,750.00=$25,750.00 total value of production to count;
(6) $33,000.00 − $25,750.00=$7,250.00 loss;
(7) $7,250.00 loss×100 percent=$7,250.00 indemnity payment.

(c) The total production to count, specified in tons of unhusked ear weight, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes.

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract.

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested processing sweet corn production from the insurable acreage. The amount of such production will be:

(i) The usable tons of processing sweet corn shown on the processor settlement sheet, if available; or

(ii) Determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quantity of the sweet corn delivered to the processor by the base contract price per ton; and

(3) All harvested processing sweet corn production from any other insurable units that have been used to fulfill your processor contract for this unit.

The total production to count will be expressed as an unhusked ear weight. Any other measure of production will be converted to an unhusked ear weight equivalent.

13. Late Planting.

A late planting period is not applicable to processing sweet corn unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

14. Prevented Planting.

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

Signed in Washington, D.C., on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32493 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 443 and 457

RIN 0563–AA78

Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Hybrid Seed Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of hybrid seed corn. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current hybrid seed crop insurance regulations under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current hybrid seed crop insurance regulations to the 1997 and prior crop years.

DATES: Effective December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The effect of this regulation on small entities will be no greater than on larger entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, January 2, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 48 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.152 (Hybrid Seed Corn Crop Insurance Provisions). These provisions will replace and supersede the current provisions for insuring hybrid seed corn found at 7 CFR part 443 and will be effective for the 1998 and succeeding crop years. This rule also amends 7 CFR part 443 to restrict its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments. A total of 37 comments were received from reinsured companies and an insurance service organization. The comments received, and FCIC's responses, follow:

Comment: A reinsured company and an insurance service organization stated that the current hybrid seed policy limits the amount of other insurance which can be carried on hybrid seed corn to one and a half times the maximum amount of insurance available. Since no such restriction appears in this 1998 proposal, the commenter assumes that this is no longer applicable and supports not having this restriction in the policy.

Response: The policy provision that limited the amount of other insurance to one and a half times the highest price election has been deleted. This deletion will be identified in the Summary of Changes when the new policy is issued.

Comment: A reinsured company and an insurance service organization suggested that the name of the Crop Provisions be changed to "hybrid seed corn" rather than "hybrid corn seed". Everyone in the seed corn industry refers to it as hybrid seed corn.

Response: FCIC has made the change accordingly.

Comment: A reinsured company and an insurance service organization suggested that the definition of "Amount of insurance per acre" be revised to match how this coverage is shown and defined in the Special Provisions, although the commenter stated that the Special Provisions definition should be multiplied by the price election before subtracting the minimum guaranteed payment. The county yield is multiplied by the factor for the coverage level selected, which is multiplied by the price election selected by the producer less any minimum guaranteed payment.

Response: FCIC has revised and clarified the definition to show the proper calculation. Since the calculation is in the Crop Provisions, it will be removed from the Special Provisions.

Comment: A reinsured company and an insurance service organization were concerned about the definition of "bushel" and the provisions in section 12(g)(3) (redesignated section 12(f)(3))

that requires the insurance provider to work the claim in the same manner as the records provided by the seed company to establish the approved yield. Since the yields from the seed company are submitted to the FCIC Regional Service Office (RSO) for determination of the approved yield, the FCIC RSO needs to inform the insurance providers when a seed company is using its own conversion charts and what this chart is so that, at claim time, the production to count can be converted in the same manner as the approved yield was determined.

Response: In order to ensure the accuracy of any claim, the same moisture and weight per bushel must be used to calculate the amount of insurance and the production to count. The FCIC procedure will specify that the seed company will provide its conversion chart with the production records. FCIC will provide the conversion chart to the insurance provider when the moisture or weight used to determine a bushel differs from the definition stated in the policy.

Comment: A reinsured company and an insurance service organization were concerned with the definition of "female parent plants," where there is reference to the stamens (tassles) being removed. The commenters indicated that some seed companies are experimenting with male sterile plants from which the stamens may not have to be removed.

Response: FCIC has revised the definition to accommodate those instances wherein parent plants are rendered male sterile by means other than detassling.

Comment: A reinsured company and an insurance service organization suggested that the definition of "interplanting" be revised to match its use in the Special Provisions. Interplanting is listed as a separate type with a different county yield than standard planting. The male parent plants are planted between every female parent plant row rather than in a planting pattern as defined in the Crop Provisions.

Response: The Special Provisions uses the term "Interplanting" and the Crop Provisions uses the term "interplanted", and both terms have different meanings. To avoid any confusion between these terms, FCIC will change the reference to "interplanting" to "non-standard planting" in the Special Provisions.

Comment: A reinsured company suggested that in the definition of "irrigated practice," the words "and quality" be added after the words "* * * providing the quantity."

Response: FCIC agrees that water quality is important. However, there are no clear criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. The provisions regarding good farming practices can be applied in situations in which the insured failed to exercise due care and diligence in the application of irrigation water. Therefore, no change has been made.

Comment: An insurance service organization suggested adding, in the definition of "non-seed amount," the phrase "(rejected for seed purposes)" or something similar after the first reference to "non-seed production" for clarification.

Response: FCIC has revised the definitions and section 12 to clarify that non-seed production is production that does not qualify as seed production because of inadequate germination.

Comment: A reinsured company and an insurance service organization suggested that the definition of "planted acreage" be amended to require that the male and female parent plants be planted in accordance with the production management practices of the seed company.

Response: The definition of "planted acreage" is broad enough to permit planting in accordance with practices of the seed company. The requirement that parent plants be planted in accordance with the production management practices of the seed company is more appropriate in sections 7 and 10 regarding insured crop and causes of loss and those provisions have been revised accordingly.

Comment: An insurance service organization suggested that a conflict exists between the definition of "sample" and "inadequate germination" because the germination rate is determined by using a certified seed test on clean seed, not field run seed.

Response: There is no conflict between the terms. The sample must be at least 3 pounds of field run seed. The germination rate is based on the amount of clean seed obtained from that sample. No change has been made.

Comment: An insurance service organization asked why a "seed company" must now be a corporation (previously defined as a "business enterprise"), and if there are any legitimate seed companies that are not corporations.

Response: A seed company need only be a corporation if the seed company is also the producer. To cover all other situations, FCIC has changed "a corporation" to "a business enterprise" in the definition of "seed company."

Comment: An insurance service organization suggested that section 2(a) be rearranged as follows: "* * * a basic unit, as defined in section 1 of the Basic Provisions, may be divided * * *" (instead of "(basic unit))" at the end of the earlier phrase.

Response: All definitions and those provisions common to most crops with respect to units have been deleted and moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization stated that the provisions contained in section 2(e)(1), which require the insured to keep records by optional unit for optional units to apply, conflict with section 3(b) which correctly indicates that production reporting requirements do not apply to this crop. In most instances the seed corn is harvested and hauled directly to the seed companies' processing facilities. The seed company maintains records of planted acreage and harvested production and provides all of the yield records used by the FCIC RSO to establish the approved yields. All references to the insured maintaining records by optional unit should not be a requirement since this is maintained at the seed company level. The historical yield of the producer's seed corn is not used to establish the amount of insurance as stated in this item as this is based on the county yield, coverage level and price elected and any minimum guaranteed payment. Seed corn producers will often plant different varieties from year to year with different expected yields. Therefore, the actual yield produced from the previous year has little or no value for the producer in subsequent years.

Response: The insured must have verifiable records of planted acreage and production for each optional unit for at least the "* * * last crop year used to determine the amount of insurance". This requirement should not be removed simply because the seed company maintains those records. In order to protect the integrity of the program, FCIC must be able to verify the accuracy of the guarantee for each unit. If the producer cannot produce the records from each optional unit, they will be combined into basic units. The insured can obtain the necessary records from the seed company. These provisions have been deleted and moved to the Basic Provisions.

Comment: A reinsured company was concerned about the requirement that the producer must meet all the requirements in section 6. They stated that these requirements should not be mandatory for every acreage report.

Response: The information required by the acreage report is necessary to establish liability, premium, and insurability of the acreage. No change has been made.

Comment: A reinsured company and an insurance service organization mentioned that in section 6(a), each individual producer is the named insured under this program and may not know the type or variety of hybrid. The seed companies provide the seed and the producer grows it. Seed companies do not want this information going any further than necessary while still meeting the requirements of the MPCI program. This information is needed only in the event of a claim and can be obtained from the seed company as needed at that time. The commenter believes collection of this information should be an option since the insurance provider may want to capture it in certain instances but not for all insureds. Therefore, this should be an option, not mandatory as it would be with the word "must" in the proposed language.

Response: The reporting requirement by type or variety must be maintained for rating purposes and to determine liability and premium for the unit. Such information cannot be obtained only at the time of loss. It is the responsibility of the producer to provide the information which should be contained in the hybrid seed corn processor contract. No change has been made.

Comment: A reinsured company and an insurance service organization mentioned that section 6(b) requires that acreage occupied by the male parent plants be reported. They realize it is common for other crops to obtain all insurable and uninsurable acreage of the crop. However, this stipulation to capture the total acreage occupied by the male parent plants is an unnecessary and burdensome requirement for hybrid seed corn. The commenter suggested that this should be determined in the event of a claim. A number of seed companies require that the male acres be destroyed after pollination.

Response: The requirement to report any acreage occupied by male parent plants is necessary to determine the correct amount of insurance for a unit since acres with male plants are not insurable. The amount of insurance is determined on the Summary of Coverage so the insurance provider cannot wait until a loss to determine insurable acreage. The burden of determining the amount of acreage occupied by the male plant can be minimized by mathematical calculation based on the planting pattern of the crop. No change has been made.

Comment: A reinsured company and an insurance service organization questioned section 6(c), which requires the insured to certify that there is a hybrid seed corn processor contract and the amount of any minimum guaranteed payment. The commenter questions what constitutes certification. It is their feeling that if the insured goes through the FCIC RSO to obtain an approved yield, and upon receiving copies of this information, this would be adequate certification as to the insured having a contract. The presumption is that the FCIC RSO would not go through this process between the producer and the seed company if there was not some type of contractual agreement in place. If they obtain some of this information directly from the seed company it would also constitute certification as the seed company would not provide this information if a contract was not in place. If this does not constitute certification for the purposes of having a contract then they have some concerns as to what additional requirements must be met.

Response: The certification requirement is satisfied by a written statement on the acreage report, signed by the producer, that such a contract exists. In many cases, the RSO provides an approved yield for a variety, not specifically for individual producers. Since a contract is a condition of insurance, the insurance provider must have some assurance that a contract exists. Receipt of an approved yield from the RSO is not evidence of a contract between the processor and the producer. No change has been made.

Comment: A reinsured company and an insurance service organization were concerned with section 6(c) references to the minimum guaranteed payment which, according to the Crop Insurance Handbook, must be obtained from each insured. If an insurance company happens to insure all producers of a seed company, there is generally only one base contract which is used for all the individual seed corn producers. If the base contract does not provide a minimum guarantee, each insured is still required to certify to this effect even though this information can be determined from the base contract.

Response: Section 6(c) only requires the producer to report a minimum guaranteed payment if the hybrid seed corn processor contract contains such a payment. No change has been made.

Comment: An insurance service organization asked if all the exceptions in section 7(a)(4)(I)–(iv) should be required by written agreement. For example, the commenter questions why acreage with female and male parent plants in the same row would ever be insurable. Perhaps the phrase "unless allowed" should be removed from item (4) and inserted at the specific items where it is actually possible.

Response: Current planting practices do not allow male and female plants to be planted in the same row. However, acceptable planting practices may change and the provision must allow a certain amount of flexibility to cover such changes. No change has been made.

Comment: A reinsured company questioned section 7(c) pertaining to a producer who is also the seed company. If a seed corn producer is insured as an individual, and also owns the seed corn company under a corporate name and the company contracts with other producers, the commenter questions whether this situation would fall into the procedure outlined.

Response: If the other conditions in section 7(c) are met, the seed company could be eligible for insurance. Section 7(c) has been amended for clarification.

Comment: An insurance service organization asked that since "seed company," by definition, is required to be a corporation, whether it is necessary to repeat the requirement again in section 7(c)(1).

Response: A seed company is no longer required to be a corporation except when the seed company is also the producer. FCIC has revised the definition of "seed company" to specify business enterprise and added a provision requiring a seed company that is also an insured to be a corporation.

Comment: A reinsured company and an insurance service organization were concerned with section 7(c)(3) which states that if acceptable sales records are not available, the crop may only be insured under the Coarse Grains Crop Provisions. Since the yield potential for seed corn is considerably less than for commercial field corn, a normal seed corn crop could be harvested and still potentially have a payable loss under the Coarse Grains Crop Provisions. Language similar to "* * * may only be insured by written agreement * * *" is recommended.

Response: FCIC agrees that hybrid seed corn is best suited for insurance under the Hybrid Seed Corn Crop Provision, but records must be provided to assure that the person seeking insurance is a bona-fide producer of hybrid seed corn. If the crop is insured under the Coarse Grains Crop Provisions, the approved yield would be derived from hybrid seed corn production records of the processor for

the particular variety. The last sentence of section 7(c)(3) has been revised to read "If such records are not available, the crop may be insured under the Coarse Grains Crop Provisions with a written agreement; and * * *."

Comment: An insurance service organization asked if it is necessary that the phrase "Of the insured crop" be specified in section 8(c) but not for items (a) or (b).

Response: FCIC has clarified the provisions. Further, since damage to the male plant could also necessitate replanting, FCIC has modified section 8(c) to include both male and female parent plants.

Comment: An insurance service organization stated that the phrase "insurance attaches after" in section 9(a) creates an ambiguity with respect to when insurance attaches. The commenter suggested that the term "after" could be changed to "once" (or "upon completion of planting:") and then delete "is completely planted" from items (1) and (2).

Response: Section 9(a) has been clarified.

Comment: A reinsured company and an insurance service organization stated that the provisions in section 11(a) stipulate that any representative samples must consist of one complete planting pattern the entire length of the field if the acreage will not be harvested. The commenters prefer that each representative sample be one complete pattern which is long enough to provide a 1/100 acre sample, and that these be at various representative areas of the field rather than the entire length of the field. This would be consistent with the appraisal methods specified in the loss adjustment procedures.

Response: More than one representative sample may be required by the insurance provider, and such samples may be in different parts of the field. However, by having a strip the entire length of the field, the loss adjuster can choose the areas to be sampled and is not restricted to the crop the insured chose to leave for this purpose. This permits a more accurate appraisal. Further, it would be difficult for the person harvesting the crop to know what constitutes 1/100 of an acre. No change has been made.

Comment: An insurance service organization suggested that since the Basic Provisions state that the term "representative sample" will be further defined in the Crop Provisions, it should be included in section 1 with the other definitions (as in the 1986–CHIAA 738) so the term would be more easily located.

Response: The requirements for representative samples are substantive and, therefore, should not be in the definition section. The Basic Provisions are revised to amend the definition to state "as specified in the Crop Provisions".

Comment: A reinsured company and an insurance service organization disagreed that section 11(b)(2) should be a mandatory requirement for all producers having a loss. If all seed corn producers for a seed company are insured with the same insurance company, the company knows that all of their producers have a seed corn contract. The company will already have a copy of the base contract for the seed company and are not gaining anything by having to obtain the exact contract in effect for each producer. If some producers insured with an insurance company grow seed corn for various seed companies (not all of their producers are insured with them) there may be some benefit in obtaining a copy of the contract. The commenter does not believe this should be a mandatory requirement for all losses.

Response: Since not all producers may receive the same contract terms, the insurance company must verify contract terms, unless it has been determined that the contract provided by the seed company is used for all its producers without any waivers or amendments. Section 11(b)(2) has been revised accordingly.

Comment: An insurance service organization suggested that section 12(e)(1)(v) (redesignated section 12(d)(1)(v)) of the policy should not allow the insured to defer settlement and wait for a later, generally lower appraisal, especially on crops that have a short "shelf life."

Response: A later appraisal will only be necessary if the insurance provider and the insured do not agree on the appraisal or the insurance provider believes the crop needs to be carried further. The producer must continue to care for the crop. If the producer does not care for the crop, the original appraisal will be used. No change has been made.

Comment: An insurance service organization stated that section 12(e)(2) (redesignated section 12(d)(2)) counts harvested production *delivered* to the seed company, whereas section 4d(1)(I) of the 1986–CHIAA 738 counts harvested production delivered to *and accepted* by the seed company. The commenter questioned whether this is change, or should this provision be interpreted to mean that production is not considered delivered until it is accepted.

Response: This is a change. Section 12(d)(2) provides that seed production to be counted includes mature harvested production that is delivered as commercial hybrid seed corn to the seed company stated in the hybrid seed corn processor contract, regardless of quality, unless the production has inadequate germination.

Comment: A reinsured company and an insurance service organization asked that since there has been a change in amounts for moisture content (to 15 percent moisture content instead of 15.5 percent, and increased for ear corn by 1.5 pounds, instead of 2.0 pounds, for each percentage point of moisture in excess of 14.0 percent) in sections 12(f)(1) and (2), whether FCIC plans any adjustments to previous yields that were adjusted using the previous amounts.

Response: Previous yield information will not be affected. These changes will be effective for 1998 and subsequent crop years. Approved yields after these provisions are effective will be determined on the revised basis.

Comment: An insurance service organization suggested that section 13(d)(2) may be confusing because a sentence that states "The unit consists of 185 acres * * *" is followed immediately by a sentence that states "The unit consists of 150 acres * * *." The example would be clearer if it stated "The unit consists of 150 acres of female parent plants of the same type and variety (an additional 35 acres are occupied by the male parent plants, which are not insurable). Of the 150 acres, 50 acres were planted * * *" or some similar statement. At the least, the latter should read "The unit consists of 150 insurable acres * * *."

Response: The late and prevented planting provisions, common to most crops, are deleted and moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization favored the elimination of the substitute crop provisions under prevented planting coverage.

Response: The late and prevented planting provisions, common to most crops, are deleted and moved to the Basic Provisions. FCIC has revised those provisions to remove the substitute crop provisions.

Comment: A reinsured company and an insurance service organization stated that section 13(d)(5), which defines the maximum eligible acreage for prevented planting, conflicts with the current provisions, which correctly states that the maximum eligible acres for seed corn is the number of acres the producer contracted for the crop year.

Response: FCIC has clarified the provision in the Basic Provisions.

Comment: A reinsured company stated that it understands that FCIC is revising prevented planting for 1998 and assumes these new provisions would be incorporated into the crop provisions for hybrid seed corn.

Response: The late and prevented planting provisions have been moved to the Basic Provisions and will be applicable to this policy.

Comment: A reinsured company and an insurance service organization recommended deleting section 14(d). Written agreements should not be limited to one year. Rather, such agreements should be valid for the period stated in the agreement. In most cases, written agreements should be continuous, as is the case with the policy. Limiting written agreements to one year only increases administrative cost, complexity and opportunity for misunderstanding and error.

Response: Written agreements are, by design, temporary and intended to address unusual circumstances. If the conditions that require a written agreement exists for multiple crop years, the policy or Special Provisions should be amended to accommodate the conditions. The written agreement provisions have been deleted and moved to the Basic Provisions.

Comment: An insurance service organization suggested that section 14(e) be combined with the provisions in section 14(a).

Response: Section 14(e) is intended to be a limited exception, not the rule, affecting only those cases in which conditions discovered after the sales closing date make a written agreement necessary. Therefore, these provisions should be kept separate. No change has been made in the Basic Provisions.

Comment: A reinsured company expressed a general concern about many of the mandatory requirements added to these provisions. In its view, most of these requirements are unnecessary. Failure to collect this information in prior years has not caused problems. The issues of reduced expense reimbursement and simplification should be considered prior to finalizing these provisions. This policy proposes to increase the expense of writing hybrid seed corn along with the added complexity involved from the additional collection requirements.

Response: FCIC understands the concerns of this commenter. These Crop Provisions were revised to reduce program vulnerabilities and make the insuring language more precise. FCIC has attempted to minimize any additional requirements imposed upon the policyholder, the reinsured company, and the seed company. All mandatory information is required to fairly and properly administer the policy.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following provisions:

1. The paragraph preceding section 1 has been revised to refer to the Catastrophic Risk Protection Endorsement for the purpose of clarification.

2. The definition of "adjusted yield," "amount of insurance per acre," "approved yield," "county yield," "dollar value per bushel," "field run," "hybrid seed corn processor contract," and "insurable interest" have been revised for clarification.

3. A definition of "coverage level factor" has been added for clarification.

4. The definitions of "days," "FSA," "final planting date," "interplanted," "irrigated practice," "late planted," "late planting period," and "timely planted" have been deleted and moved to the Basic Provisions.

5. The definition of "good farming practices," "planted acreage," and "prevented planting" have been revised to delete the provisions moved to the Basic Provisions.

6. The definition of "practical to replant" has been revised to clarify that it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid seed corn processor contract, or the seed company agrees to accept such production.

7. Section 2 has been revised to delete those provisions that have been moved to the Basic Provisions, and to clarify the unit structure for hybrid seed corn when the hybrid seed corn processor contract specifies an amount of production to be delivered.

8. Section 7(d) has been added to allow the insured crop that is under contract with different seed companies to be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured.

9. Section 8(c) has been revised for clarification.

10. In section 10(b)(4), the requirement that the crop be inspected and the loss appraised before harvest is completed has been deleted to be consistent with section 11(b)(1).

11. Section 12(c) has been revised for clarification. Also, an example of an indemnity calculation has been added for illustration. Section 12(d) is deleted since it was redundant with section 12(e) and the following section redesignated accordingly.

12. In section 12(e)(1)(I), as redesignated, adjusted yield has been changed to amount of insurance per acre.

13. In section 12(f)(3), as redesignated, the last sentence has been corrected to clarify that records of the seed company will only be used to determine the amount of production to count if the production is calculated on the same basis as that used to determine the approved yield.

14. Add provision specifying the prevented planting coverage available.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the hybrid seed corn insurance coverage and brings it under the Common Crop Insurance Policy, Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is December 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 443 and 457

Crop insurance, Hybrid seed crop insurance regulations, Hybrid seed corn.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 443 and 457 as follows:

PART 443—HYBRID SEED CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 443 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The part heading is revised to read as set forth above.

3. Subpart Heading "Subpart—Regulations for the 1986 and Succeeding Crop Years" is removed.

4. Section 443.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) The application for the 1986 through 1997 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37 and 400.38). The provisions of the Hybrid Seed Crop Insurance

Regulations for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

6. Section 457.152 is added to read as follows:

§ 457.152 Hybrid seed corn crop insurance provisions.

The Hybrid Seed Corn Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Hybrid Seed Corn Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, (§ 457.8) with (1) controlling (2), etc.

1. Definitions.

Adjusted yield. An amount determined by multiplying the county yield by the coverage level factor.

Amount of insurance per acre. A dollar amount determined by multiplying the adjusted yield by the price election you select and subtracting any minimum guaranteed payment, not to exceed the total compensation specified in the hybrid seed corn processor contract. If your hybrid seed corn processor contract contains a minimum guaranteed payment that is stated in bushels, we will convert that value to dollars by multiplying it by the price election you selected.

Approved yield. In lieu of the definition contained in the Basic Provisions, an amount FCIC determines to be representative of the yield that the female parent plants are expected to produce when grown under a specific production practice. FCIC will establish the approved yield based upon records provided by the seed company and other information it deems appropriate.

Bushel. Fifty-six pounds avoirdupois of shelled corn, 70 pound avoirdupois of ear corn, or the number of pounds determined under the seed company's normal conversion chart when that chart is used to determine the approved yield and the claim for indemnity.

Certified seed test. A warm germination test performed on clean seed according to specifications of the "Rules for Testing Seeds" of the Association of Official Seed Analysts.

Commercial hybrid seed corn. The offspring produced by crossing a male and female parent plant, each having a different genetic character. This offspring is the product intended for use by an agricultural producer to produce a commercial field corn crop for grain.

County yield. An amount contained in the actuarial documents that is established by FCIC to represent the yield that a producer of hybrid seed corn would be expected to produce if the acreage had been planted to commercial field corn.

Coverage level factor. A factor contained in the Special Provisions to adjust the county yield for commercial field corn to reflect the higher value of hybrid seed corn.

Dollar value per bushel. An amount that determines the value of any seed production to count. It is determined by dividing the amount of insurance per acre by the result of multiplying the approved yield by the coverage level percentage, expressed as a decimal.

Female parent plants. Corn plants that are grown for the purpose of producing commercial hybrid seed corn and have had the stamens removed or are otherwise male sterile.

Field run. Commercial hybrid seed corn production before it has been dried, screened, or processed.

Good farming practices. In addition to the definition contained in the Basic Provisions, good farming practices include those practices required by the hybrid seed corn processor contract.

Harvest. Combining, threshing or picking ears from the female parent plants to obtain commercial hybrid seed corn.

Hybrid seed corn processor contract. An agreement executed between the hybrid seed corn crop producer and a seed company containing, at a minimum:

(a) The producer's promise to plant and grow male and female parent plants, and to deliver all commercial hybrid seed corn produced from such plants to the seed company;

(b) The seed company's promise to purchase the commercial hybrid seed corn produced by the producer; and

(c) Either a fixed price per unit of measure (bushels, hundredweight, etc.) of the commercial hybrid seed corn or a formula to determine the value of such seed. Any formula for establishing the value must be based on data provided by a public third party that establishes or provides pricing information to the general public, based on prices paid in the open market (*e.g.*, commodity futures exchanges), to be acceptable for the purpose of this policy.

Inadequate germination. Germination of less than 80 percent of the commercial hybrid seed corn as determined by using a certified seed test.

Insurable interest. Your share of the financial loss that occurs in the event seed production is damaged by a cause of loss specified in section 10.

Local market price. The cash price offered by buyers for any production from the female parent plants that is not considered commercial hybrid seed corn under the terms of this policy.

Male parent plants. Corn plants grown for the purpose of pollinating female parent plants.

Minimum guaranteed payment. A minimum amount (usually stated in dollars or bushels) specified in your hybrid seed corn processor contract that will be paid or credited to you by the seed company regardless of the quantity of seed produced.

Non-seed production. Production that does not qualify as seed production because of inadequate germination.

Planted acreage. In addition to the definition contained in the Basic Provisions, the insured crop must be planted in rows wide enough to permit mechanical cultivation, unless otherwise provided by the Special Provisions or by written agreement.

Planting pattern. The arrangement of the rows of the male and female parent plants in a field. An example of a planting pattern is four consecutive rows of female parent plants followed by two consecutive rows of male parent plants.

Practical to replant. In addition to the definition contained in the Basic Provisions, practical to replant applies to either the female or male parent plant. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid seed corn processor contract, or the seed company agrees that it will accept the production from the replanted acreage.

Prevented planting. In addition to the definition contained in the Basic Provisions, prevented planting applies to the female and male parent plants. The male parent plants must be planted in accordance with the requirements of the hybrid seed corn processor contract to be considered planted.

Sample. For the purpose of the certified seed test, at least 3 pounds of randomly selected field run shelled corn for each variety of commercial hybrid seed corn grown on the unit.

Seed company. A business enterprise that possesses all licenses for marketing commercial hybrid seed corn required by the state in which it is domiciled or operates, and which possesses facilities with enough storage and drying capacity to accept and process the insured crop within a reasonable amount of time after harvest. If the seed company is the insured, it must also be a corporation.

Seed production. All seed produced by female parent plants with a germination rate of at least 80 percent as determined by a certified seed test.

Shelled corn. Kernels that have been removed from the cob.

Variety. The name, number or code assigned to a specific genetic cross by the seed company or the Special Provisions for the insured crop in the county.

2. Unit Division.

For any processor contract that stipulates the amount of production to be delivered:

(a) In lieu of the definition of "basic unit" contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill a hybrid seed corn processor contract;

(b) There will be no more than one basic unit for all production contracted with each processor contract;

(c) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(d) Optional units will not be established.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the hybrid seed corn in the county insured under this policy unless the Special Provisions provide different price elections by variety, in which case you may select one price election for each hybrid seed corn variety designated in the Special Provisions. The price election you choose for each variety must have the same percentage relationship to the maximum price offered by us for each variety. For example, if you choose 100 percent of the maximum price election for one specific variety, you must also choose 100 percent of the maximum price election for all other varieties.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable to this contract.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must:

(a) Report by type and variety, the location and insurable acreage of the insured crop;

(b) Report any acreage that is uninsured, including that portion of the total acreage occupied by male parent plants; and

(c) Certify that you have a hybrid seed corn processor contract and report the amount, if any, of any minimum guaranteed payment.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the female parent plants in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under a hybrid seed corn processor contract executed before the acreage reporting date;

(3) That are planted for harvest as commercial hybrid seed corn in accordance with the requirements of the hybrid seed corn processor contract and the production management practices of the seed company; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Planted with a mixture of female and male parent seed in the same row;

(ii) Planted for any purpose other than for commercial hybrid seed corn;

(iii) Interplanted with another crop; or

(iv) Planted into an established grass or legume.

(b) An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and that provides for delivery of the crop under substantially the same terms as a hybrid seed corn processor contract will be treated as a contract under which you have an insurable interest in the crop.

(c) A commercial hybrid seed corn producer who is also a seed company may be able to insure the hybrid seed corn crop if the following requirements are met:

(1) The seed company has an insurable interest in the hybrid seed corn crop;

(2) Prior to the sales closing date, the Board of Directors of the seed company has executed and adopted a corporate resolution that contains the same terms as a hybrid seed corn processor contract. This corporate resolution will be considered a contract under this policy;

(3) Sales records for at least the previous years' seed production must be provided to confirm that the seed company has produced and sold seed. If such records are not available, the crop may be insured under the Coarse Grains Crop Provisions with a written agreement; and

(4) Our inspection reveals that the storage and drying facilities satisfy the definition of a seed company.

(d) Any of the insured crop that is under contract with different seed companies may be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured. If you elect to insure the insured crop with different insurance providers, you agree to pay separate administrative fees for each insurance policy.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage of the insured crop:

(a) Planted and occupied exclusively by male parent plants;

(b) Not in compliance with the rotation requirements contained in the Special Provisions or, if applicable, required by the hybrid seed corn processor contract; or

(c) If either the female or male parent plants are damaged before the final planting date and we determine that the insured crop is practical to replant but it is not replanted.

9. Insurance Period.

(a) In addition to the provisions of section 11 of the Basic Provisions, insurance attaches upon completion of planting of:

(1) The female parent plant seed on or before the final planting date designated in the Special Provisions, except as allowed in section 16 of the Basic Provisions; and

(2) The male parent plant seed.

(b) In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the October 31 immediately following planting.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a) (1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female parent plant seed;

(2) Frost or freeze after the date established by the Special Provisions;

(3) Failure to follow the requirements stated in the hybrid seed corn processor contract and production management practices of the seed company;

(4) Inadequate germination, even if resulting from an insured cause of loss, unless you have provided adequate notice as required by section 11(b)(1); or

(5) Failure to plant the male parent plant seed at a time or in a manner sufficient to assure adequate pollination of the female parent plants, unless you are prevented from planting the male parent plant seed by an insured cause of loss.

11. Duties In The Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples of at least one complete planting pattern of the female and male parent plant rows and extend the entire length of each field in the unit. If you are going to destroy any acreage of the insured crop that will not be harvested, the samples must not be destroyed until after our inspection.

(b) In addition to the requirements of section 14 of the Basic Provisions:

(1) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate inadequate germination on any unit; and

(2) You must provide a completed copy of your hybrid seed corn processor contract unless we have determined it has already been provided by the seed company, and the seed company certifies that such contract is used for all its growers without any waivers or amendments.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) You will not receive an indemnity payment on a unit if the seed company refuses to provide us with records we require to determine the dollar value per bushel of production for each variety.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective amount of insurance per acre, by type and variety if applicable;

(2) Totaling the results of section 12(c)(1) if there are more than one type or variety;

(3) Multiplying the total seed production to count (see section 12(d)) for each type and variety of commercial hybrid seed corn by the applicable dollar value per bushel for that type or variety;

(4) Multiplying the total non-seed production to count (see section 12(e)) for each type and variety by the applicable local market price determined on the earlier of the date the non-seed production is sold or the date of final inspection;

(5) Totaling the results of sections 12(c)(3) and 12(c)(4) by type and variety;

(6) Subtracting the result of section 12(c)(5) from the result of section 12(c)(1) if there is only one type or variety, or subtracting the result of 1or variety; and

(7) Multiplying the result of section 12(c)(6) by your share. For example:

You have a 100 percent share in 50 acres insured for the development of variety "A" hybrid seed corn in the unit, with an amount of insurance per acre guarantee of $340 (county yield of 160 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). Your seed production was 1,400 bushels and the dollar value per bushel was $9.80. Your non-seed production was 100 bushels with a local market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres×$340=$17,000 amount of insurance guarantee;

(3) 1,400 bushels×$9.80=$13,720 value of seed production;

(4) 100 bushel of non-seed×$2.00=$200 of non-seed production;

(5) $13,720+$200=$13,920;

(6) $17,000−$13,920=$3,080; and

(7) $3,080×100 percent share=$3,080 indemnity payment.

You also have a 100 percent share in 50 acres insured for the development of variety "B" hybrid seed corn in the unit, with an amount of insurance per acre guarantee of $297 (county yield of 140 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). You harvested 1,200 bushels and the dollar value per bushel for the harvested amount was $8.56. You also harvested 200 bushels of non-seed with a market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres×$340=$17,000 amount of insurance guarantee for type "A" and 50 acres×$297=$14,850 amount of insurance guarantee for type "B";

(2) $17,000+$14,850=$31,850 amount of insurance guarantee;

(3) 1,400 bushels×$9.80=$13,720 value of seed production for type "A" and 1,200 bushels×$8.56=$10,272 value of seed production for type "B";

(4) 100 bushels of non-seed×$2.00=$200 of non-seed production for type "A" and 200 bushels of non-seed×$2.00=$400 of non-seed production for type "B";

(5) $13,720+$200+$10,272+$400=$24,592 value of production to count;

(6) $31,850−$24,592=$7,258; and

(7) $7,258×100 percent share=$7,258 indemnity payment.

(d) Production to be counted as seed production will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per acre for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Mature unharvested production with a germination rate of at least 80 percent of the commercial hybrid seed corn as determined by a certified seed test. Any such production may be adjusted in accordance with section 12(f);

(iv) Immature appraised production;

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) Harvested production that you deliver as commercial hybrid seed corn to the seed company stated in your hybrid seed corn processor contract, regardless of quality, unless the production has inadequate germination.

(e) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(d). Any such production may be adjusted in accordance with section 12(f).

(f) For the purpose of determining the quantity of mature production:

(1) Shelled commercial hybrid seed corn will be:

(i) Increased 0.12 percent for each 0.1 percentage point of moisture below 15 percent; or

(ii) Decreased 0.12 percent for each 0.1 percentage point of moisture in excess of 15 percent.

(2) The weight of ear corn required to equal one bushel of shelled seed corn will be increased 1.5 pounds for each full percentage point of moisture in excess of 14 percent, and any portion of a percentage point will be disregarded. The moisture content of ear corn will be determined from a shelled sample of the ear corn.

(3) When records of commercial hybrid seed corn production provided by the seed company have been adjusted to a shelled corn basis of 15.0 percent moisture and 56 pound avoirdupois bushels, sections 12(f)(1) and (2) above will not apply to harvested production. In such cases, records of the seed company will be used to determine the amount of production to count, provided that the moisture and weight of such production are calculated on the same basis as that used to determine the approved yield.

13. Prevented Planting.

Your prevented planting coverage will be 50 percent of your amount of insurance for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C., on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32498 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–295–AD; Amendment 39–10250; AD 97–26–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires a one-time inspection to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, that AD also requires an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. This amendment requires repetitive inspections in lieu of the one-time inspection. This amendment also expands the applicability of the existing AD. This amendment is prompted by reports of chafing of the sleeving. The actions specified in this AD are intended to detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and the aluminum conduit and consequent fire or explosion of the fuel tank.

DATES: Effective December 29, 1997.

The incorporation by reference of Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of December 29, 1997.

The incorporation by reference of Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 21, 1997 (62 FR 304, January 3, 1997).

Comments for inclusion in the Rules Docket must be received on or before February 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97-NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On December 23, 1996, the FAA issued AD 96–26–06, amendment 39–9870 (62 FR 304, January 3, 1997), applicable to certain Boeing Model 747 series airplanes, to require a one-time inspection to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, that AD also requires an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. That action was prompted by an FAA determination that an environment conducive to vibration exists in the conduit and wire bundles of the boost pumps and of the auxiliary tank jettison pumps, which can cause abrasion of the Teflon sleeving and consequent abrasion of the wires in the bundles. The actions required by that AD are intended to detect and correct such abrasion, which could result in electrical arcing between the wires and the aluminum conduit and consequent fire or explosion of the fuel tank.

Actions Since Issuance of Previous Rule

Since the issuance of AD 96–26–06, the FAA has received numerous reports of chafing through the outer Teflon sleeve of the wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks. Several of the sleeves had large holes. No cases of wire chafing through the insulation to the conductor were reported. Investigation revealed that two of the affected operators had varying levels of chafing with damage on 48 percent of their airplanes. Both of these operators had replaced the aluminum conduits with stainless steel conduits. Other affected operators' airplanes (with flight hour totals similar to those of the airplanes discussed previously) that were equipped with aluminum conduits had a much lower incidence of reported damage.

At the time of issuance of AD 96–26–06, the FAA considered the aluminum conduit to be more susceptible to chafing and burning as a result of electrical arcing between the wires and the aluminum conduit than the stainless steel conduit. Therefore, the FAA limited the inspection required by AD 96–26–06 to Boeing Model 747 series airplanes equipped with aluminum conduits (line numbers 001 through 432 inclusive).

In light of these new findings, the FAA has determined that Boeing Model 747 series airplanes equipped with stainless steel conduits are subject to the same unsafe condition addressed in AD 96–26–06. In addition, the FAA finds that, regardless of the conduit material, repetitive inspections are necessary to determine if the sleeving of the wire bundles continues to provide a protective barrier after extended time in service.

Explanation of Relevant Service Information

Additionally, since the issuance of AD 96–26–06, the FAA has reviewed and approved Revision 1 of Boeing Service Bulletin 747–28A2204, dated October 30, 1997. Revision 1 of the service bulletin revises the effectivity listing of the original version of the service bulletin (which was referenced in AD 96–26–06 as the appropriate source of service information) by adding Boeing Model 747 series airplanes having line numbers 433 through 1120 inclusive. The inspection and corrective procedures described in Revision 1 are essentially identical to those described in the original version of the alert service bulletin.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 96–26–06 to require repetitive inspections, in lieu of the previously required one-time inspection, to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, this AD also continues to require an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. This AD also expands the applicability of the existing AD to include additional airplanes. This AD requires that operators submit a report to the FAA of any damage found as a result of the initial inspection.

Differences Between the AD and the Relevant Service Information

Operators should note that the applicability of the AD differs from the effectivity listing of Revision 1 of the referenced service bulletin. The FAA has determined that all Boeing Model 747 series airplanes are subject to the addressed unsafe condition.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–295–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9870 (62 FR 304, January 3, 1997), and by adding a new airworthiness directive (AD), amendment 39–10250, to read as follows:

97–26–07 Boeing: Amendment 39–10250. Docket 97–NM–295–AD. Supersedes AD 96–26–06, Amendment 39–9870.

Applicability: All Model 747 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and the aluminum conduit and consequent fire or explosion of the fuel tank, accomplish the following:

(a) Perform an initial inspection to detect damage of the sleeving and wire bundles of the forward and aft boost pumps of the numbers 1 and 4 main fuel tanks, and of the wire bundles of the auxiliary tank jettison pumps (if installed), in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes having line numbers 001 through 432 inclusive: Inspect within 120 days after January 21, 1997 (the effective date of AD 96–26–06, amendment 39–9870).

(2) For airplanes having line numbers 433 and subsequent: Inspect at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 20,000 flight cycles or 60,000 flight hours, whichever occurs first; or

(ii) Within 120 days after the effective date of this AD.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 20,000 flight cycles or 60,000 flight hours since the last inspection, whichever occurs first.

(c) If any damaged sleeving is found, prior to further flight, replace the sleeving with new sleeving in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997.

(d) If any damaged wire is found, prior to further flight, repair or replace the wire with a new wire in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997.

(e) If any burned wire is found, prior to further flight, perform an inspection to detect damage of the conduit, in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997. If any damage is found, prior to further flight, replace the conduit with a serviceable conduit in accordance with either of the service bulletins. After the effective date of this AD, only Revision 1 of this service bulletin shall be used.

(f) For airplanes having line numbers 433 and subsequent: Within 14 days after accomplishing the initial inspection required by paragraph (a) of this AD, submit a report of any damaged sleeving (i.e., holes, breaks, cuts, splits), damaged wire (i.e., worn or cracked insulation, exposed conductor, indication of arcing/burning), or damaged conduit to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056; fax (425) 227–1181. The report shall include the information specified in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) The airplane serial number.

(2) The total hours time-in-service accumulated on the airplane.

(3) The total number of flight cycles accumulated on the airplane.

(4) A description of any damage found.

(5) The location of where the damaged part was installed.

(g) For airplanes having line numbers 433 and subsequent: Within 14 days after accomplishing the initial inspection required by paragraph (a) of this AD, submit any damaged part to the Manager, Seattle ACO. The damaged part shall be tagged to include the information specified in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5) of this AD. Additionally, operators shall align the inner sleeving, outer sleeving, and wire as installed in the airplane, and secure the sleeving and wiring in place by taping or other means when submitting the damaged part to the Manager, Seattle ACO. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997.

(1) The incorporation by reference of Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, was approved previously by the Director of the Federal Register as of January 21, 1997 (62 FR 304, January 3, 1997).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on December 29, 1997.

Issued in Renton, Washington, on December 9, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32611 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–282–AD; Amendment 39–10239; AD 97–25–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This action requires repetitive inspections to detect cracking of the rear spar web or fuel leakage of the wing center section, and repair, if necessary. This amendment also provides for an optional modification of the rear spar web that constitutes terminating action for the repetitive inspections. This amendment is prompted by several reports of fuel leakage due to cracking of the rear spar web of the wing center section. The actions specified in this AD are intended to detect and correct such cracking of the rear spar web, which could permit fuel leakage into the airflow multiplier, and could result in an electrical short that could cause a fire.

DATES: Effective December 29, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 29, 1997.

Comments for inclusion in the Rules Docket must be received on or before February 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–282–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that fuel leakage of the wing center section has occurred on several Boeing Model 727 series airplanes due to cracking of the rear spar web of the wing center section. The cracking initiates on the forward side of the spar and propagates through the web at the upper machined land radius between Left Body Buttock Line (BBL) 40 and Right BBL 40. In two instances, cracking was reported on airplanes that had accumulated less than 25,000 total flight cycles. In another case, fuel leakage resulted in fuel odors being emitted into the cabin area. Investigation revealed that fuel was leaking into the airflow multiplier. Fuel leakage into the airflow multiplier due to cracking of the rear spar web of the wing center section, if not detected and corrected, could result in an electrical short that could cause a fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997. This alert service bulletin describes procedures for removing the access panels of the wing center section to perform repetitive visual inspections using a borescope, or ultrasonic with high frequency eddy current inspections, to detect cracking of the rear spar web or fuel leakage of the wing center section, and repair, if necessary.

In addition, the alert service bulletin describes procedures for modification of the rear spar web of the wing center section to prevent cracking of the rear spar web, which eliminates the need for the repetitive inspections the modification involves stop drilling any

cracking, and repairing the rear spar web.

The alert service bulletin references Boeing Drawing 65C37620 as an additional source of service information for accomplishment of the repair and modification.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 727 series airplanes of the same type design, this AD is being issued to detect and correct cracking of the rear spar web, which could permit fuel leakage into the airflow multiplier and resultant electrical shorting and fire. This AD requires repetitive inspections [either visual inspections using a borescope or a mirror, or ultrasonic and high frequency eddy current (HFEC) inspections] to detect cracking of the rear spar web or fuel leakage of the wing center section, and repair, if necessary. This AD also provides for an optional modification of the rear spar web of the wing center section, which constitutes terminating action for the repetitive inspection requirements of this AD. The inspections, certain repairs, and the modification are required to be accomplished in accordance with the alert service bulletin described previously. Certain repairs are required to be accomplished in accordance with a method approved by the FAA.

Operators should note the following differences between this AD and the Boeing alert service bulletin:

- Although the alert service bulletin recommends an initial inspection threshold of within 500 flight cycles for airplanes that have accumulated between 15,000 and 25,000 total flight cycles, and an initial inspection threshold of within 300 flight cycles for airplanes that have accumulated 25,000 or more total flight cycles, this AD specifies an initial compliance time of "prior to the accumulation of 15,000 *total flight cycles, or within 300 flight* cycles after the effective date of this AD, whichever occurs later." The FAA finds that, in view of the reports of cracking of the rear spar web on two airplanes that had accumulated less than 25,000 total flight cycles, the initial compliance time specified in this AD is appropriate. Further, the FAA finds that adequate justification for permitting an inspection threshold of 500 flight cycles for airplanes that have accumulated over 15,000 total flight cycles, but under 25,000 total flight cycles, has not been presented. Therefore, an initial inspection is required to be accomplished on all airplanes within 300 flight cycles after the effective date of this AD.
- This AD requires that, for any cracking or fuel leakage detected that is outside the areas specified in the alert service bulletin, repair must be accomplished in accordance with a method approved by the FAA.
- This AD requires that the access panel only be opened in order to perform the inspections, rather than removed, as described in the Boeing alert service bulletin. The manufacturer has advised the FAA that procedures to remove the access panels were inadvertently included in the alert service bulletin and will be removed at the next revision of the alert service bulletin.
- Although the alert service bulletin describes procedures for performing the visual inspection using a borescope, the manufacturer has advised the FAA that the option of performing the visual inspection using a mirror was inadvertently omitted from the alert service bulletin. Moreover, Figure 1 of the Accomplishment Instructions of the alert service bulletin specifies that the subject area can be examined with a borescope or mirror. Therefore, the FAA has included the option of using a mirror as an acceptable method of compliance with the visual inspection requirements of this AD.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring the modification of the rear spar web of the wing center section, which will constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for the installation of the modification is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–282–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this *regulation is an emergency regulation* that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–25–15 Boeing: Amendment 39–10239. Docket 97–NM–282–AD.

Applicability: Model 727 series airplanes having line numbers 858 through 864 inclusive, 867 through 869 inclusive, 872 through 883 inclusive, and 885 through 1832 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the rear spar web, which could permit fuel leakage into the airflow multiplier, and could result in an electrical short that could cause a fire, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight cycles, or within 300 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the inspections specified in either paragraph (a)(1) or (a)(2) of this AD, in accordance with Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997. For purposes of this AD, the access panels specified in the alert service bulletin need not be removed; the access panels need only be opened.

Note 2: The fuel tank of the wing center section may be filled with fuel to assist in detecting cracking or fuel leakage during the accomplishment of the visual inspections required by this AD.

(1) Perform a visual inspection using a borescope or mirror to detect cracking of the rear spar web and/or fuel leakage of the wing center section between Right Body Buttock Line (BBL) 40 and Left BBL 40, in accordance with Part I of the Accomplishment Instructions of the alert service bulletin. Thereafter, repeat this inspection at intervals not to exceed 300 flight cycles. Or

(2) Perform an ultrasonic and high frequency eddy current (HFEC) inspection to detect cracking of the rear spar web of the wing center section between Right BBL 40 and Left BBL 40, in accordance with Part II of the Accomplishment Instructions of the alert service bulletin. Thereafter, repeat this inspection at intervals not to exceed 3,000 flight cycles.

(b) If any cracking of the rear spar web and/or fuel leakage of the wing center section is detected between Right BBL 40 and Left BBL 40 near the upper machined land radius, prior to further flight, repair in accordance with Part III of the Accomplishment Instructions in Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997. Accomplishment of this repair constitutes terminating action for the repetitive inspection requirements of this AD.

(c) If any cracking of the rear spar web and/or fuel leakage of the wing center section is detected that is outside the area specified in paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) Accomplishment of paragraphs (d)(1) and either (d)(2) or (d)(3) of this AD, as applicable, constitute terminating action for the repetitive inspection requirements of this AD.

(1) Accomplish an ultrasonic and HFEC inspection in accordance with the requirements of paragraph (a)(2) of this AD. And,

(2) If no cracking is detected, prior to further flight, modify the rear spar web of the center section of the fuel tank between Right BBL 40 and Left BBL 40, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997.

(3) If any cracking is detected, prior to further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert *Service Bulletin 727–57A0182*, dated September 18, 1997.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided the limitations specified in paragraphs (f)(1) through (f)(6) of this AD are included in the special flight permit:

"(1) Required trip and reserve fuel must be carried in the No. 1 and No. 3 outer wing tanks.

(2) Wing center tank No. 2 must be empty of fuel.

(3) The fuel system must be checked for normal operation prior to flight by verifying that all boost pumps are operational; configuring the fuel system by turning on all boost pumps in the No. 1 and 3 outer wing tanks and by opening all crossfeed valve selectors; and by confirming that fuel is not bypassing tank No. 2 check valves by observing that there is no leakage into tank No. 2.

(4) Maintain a minimum of 5,300 pounds of fuel in tanks No. 1 and No. 3 to prevent uncovering the fuel bypass valve.

(5) The fuel quantity indication system must be operational in all three tanks.

(6) The effects of loading fuel only in the wing tanks on the airplane weight and balance must be considered and accounted for."

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 29, 1997.

Issued in Renton, Washington, on December 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32233 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–21]

RIN 2120–AA66

Modification of Jet Route J–46

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule extends Jet Route J–46 from Volunteer, TN, to Alma, GA.

This action will assist aircraft navigating between Tennessee and Georgia, reduce controller workload, and improve air traffic procedures.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On August 26, 1996, the FAA proposed to amend 14 CFR part 71 to extend J–46 from Volunteer, TN, to Alma, GA (61 FR 43694). Interested parties were invited by the FAA to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. Except for editorial changes, this amendment is the same as proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 extends J–46 from Volunteer, TN, to Alma, GA. Extending this jet route will assist aircraft navigating between Tennessee and Georgia, reduce controller workload, and improve air traffic procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–46 [Revised]

From Tulsa , OK, via Walnut Ridge, AR; Nashville, TN; to Volunteer, TN; Athens, GA; to Alma, GA.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32573 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–9]

RIN 2120–AA66

Modifications of the Legal Descriptions of Federal Airways in the Vicinity of Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the legal descriptions of Federal Airways V–19, V–81, v-83, and V–106 by replacing the words "Colorado Springs" with the words "Black Forest" wherever they appear. The name of the Colorado Springs, CO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility will be changed to the Black Forest, CO, VORTAC concurrently with the effective date of this rule. This action ensures that the legal descriptions of the affected airways will reflect the name change of the VORTAC.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 (part 71) by changing the legal descriptions of four Federal airways that have "Colorado Springs VORTAC" included as part of their route structure. Currently, the Colorado Springs VORTAC and the Colorado Springs Municipal Airport have the same name. FAA Order 7400.2D states that a navigational aid with the same name as the airport should be located on the airport. This action reflects the name change, where necessary, of the Colorado Springs VORTAC, which is not located on the airport. The fact that the VORTAC is approximately 9 NM north of the airport has caused confusion among users because the VORTAC and the airport are not collocated. To eliminate the confusion, the Colorado Springs VORTAC will be renamed the "Black Forest VORTAC," and all the airways with "Colorado Springs VORTAC" included in their legal descriptions will be amended to reflect the name change. The effective date changing the name of the VORTAC will coincide with this rulemaking action.

Since this action merely involves a change in the legal descriptions of four Federal airways, and does not involve a change in the dimensions or operating requirements of the airways, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–19 [Revised]

From Newman, TX, via INT Newman 286° and Truth or Consequences, NM, 159° radials; Truth or Consequences; INT Truth or Consequences 028° and Socorro, NM, 189° radials; Socorro; Albuquerque, NM; INT Albuquerque 036° and Santa Fe, NM, 245° radials; Santa Fe; Las Vegas, NM; Cimarron, NM; Pueblo, CO; Black Forest, CO; INT Black Forest 036°T(023°M) and Gill, CO, 149° radials; Gill; Cheyenne, WY; Muddy Mountain, WY; 5 miles, 45 miles 71 MSL, Crazy Woman, WY; Sheridan, WY; Billings, MT; 38 miles 72 MSL, INT Billings 347° and Lewistown, MT, 104° radials; Lewistown; INT Lewistown 322° and Havre, MT, 226° radials; to Havre.

* * * * *

V–81 [Revised]

From Chihuahua, Mexico, via Marfa, TX; Fort Stockton, TX; Midland, TX; Lubbock, TX; Plainview, TX; Amarillo, TX; Dalhart, TX; Tobe, CO; Pueblo, CO; Black Forest, CO; Jeffco, CO; Cheyenne, WY; Scottsbluff, NE; to Chadron, NE. The airspace outside the United States is excluded.

* * * * *

V–83 [Revised]

From Carlsbad, NM, via Chisum, NM; 40 miles 85 MSL Corona, NM; Otto, NM; Santa Fe, NM; Taos, NM; Alamosa, CO; INT Alamosa 074° and Pueblo, CO, 191° radials; Pueblo; INT Pueblo 002° and Black Forest, CO, 153°T(140°M) radials; to Black Forest.

* * * * *

V–106 [Revised]

From Santa Rosa, CA, via Scaggs Island, CA; INT Scaggs Island 131° and Concord, CA, 276° radials; 7 miles wide (4 miles N. and 3 miles S. of centerline), Concord; Linden, CA. From Meeker, CO; via Red Table, CO; Black Forest, CO; 74 miles, 65 MSL, Goodland, KS; Hill City, KS.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32572 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 97–AEA–38]

RIN 2120–AA66

Name Change for Restricted Area 4007A (R–4007A); Patuxent River, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of Restricted Area R–4007A, Patuxent River, MD, to R–4007, by deleting the "A" suffix. This action is necessary because the former "B" area subdivision no longer exists and there is no requirement for further subdivision of the restricted area. This action simplifies the name of the restricted area to eliminate confusion.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9361.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1978, the FAA redesignated Restricted Area R–4007 as R–4007A, and temporarily established a new restricted area, R–4007B, directly above it which extended up to 17,000 feet mean sea level (MSL) (43 FR 28813). The purpose of R–4007B was to provide additional airspace to accommodate F–18 development testing. The R–4007B designation expired on January 1, 1983. However, R–4007A was not renumbered at that time due to the possibility of future rulemaking action to re-establish the "B" area to contain other flight test projects.

Based on forecast requirements at the Patuxent River test facility, the U.S. Navy determined that there is no future need for R–4007B. Consequently, the U.S. Navy requested that R–4007A be redesignated R–4007.

The Rule

This amendment to 14 CFR part 73 (part 73) changes the designation of Restricted Area R–4007A, Patuxent River, MD, to R–4007, Patuxent River, MD. There are no changes to the boundaries, altitudes, time of designation, or activities conducted within the restricted area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this action simply changes the name of restricted area

R–4007A, and does not involve a change in the dimensions or operating requirements of that airspace, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Environmental Review

This action is a minor administrative change amending the name of an existing restricted area. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts,"

and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.40 [Amended]

2. Section 73.40 is amended as follows:

* * * * *

R–4007A Patuxent River, MD [Removed]

R–4007 Patuxent River, MD [New]

Boundaries. Beginning at lat. 38°21'00" N., long. 76°13'59" W.; to lat. 38°11'10" N., long. 76°25'09" W.; to lat. 38°05'10" N., long. 76°34'04" W.; to lat. 38°15'00" N., long. 76°36'34" W.; to lat. 38°17'25"N., long. 76°32'59" W.; to lat. 38°25'40" N., long. 76°23'34" W.; to the point of beginning.

Designated Altitudes: Surface to but not including 5,000 feet MSL.

Time of designation: 0700–2300 local time, daily; other times as specified by NOTAM.

Controlling agency: FAA, Washington ARTCC. Using agency. Commanding Officer, NAS Patuxent River, MD.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32574 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 97–ASO–24]

RIN 2120–AA66

Change Controlling Agency for Restricted Area R–5301, Albemarle Sound, NC; and Restricted Areas R–5302A, R–5302B, and R–5302C, Harvey Point, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the designated controlling agency for Restricted Areas R–5301, R–5302A, R–5302B, and R–5302C from "Norfolk Airport Traffic Control Tower (ATCT)" to "Washington Air Route Traffic Control Center (ARTCC)." This action is being taken due to the improved radar coverage at Washington ARTCC in the vicinity of these restricted areas.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Due to the addition of the Oceana long-range system, Washington ARTCC now has improved radar coverage in the vicinity of Restricted Areas R–5301, R–5302A, R–5302B, and R–5302C. Consequently, Washington ARTCC has better capabilities for performing the function of controlling agency for those areas.

The Rule

This amendment to 14 CFR part 73 changes the designated controlling agency for R–5301, Albemarle Sound, NC, and R–5302A, R–5302B, and R–5302C, Harvey Point, NC, from "FAA, Norfolk ATCT, Norfolk, VA," to "FAA, Washington ARTCC." There are no changes to the boundaries, altitudes, time of designation, or activities conducted within the restricted areas.

Since this action simply changes the controlling agency for the existing restricted areas, and does not involve a change in the dimensions or operating requirements of the restricted areas, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.53 of part 73 was republished in FAA Order 7400.8E, dated November 7, 1997.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is a minor administrative change amending the published designation of the controlling agency for existing Restricted Areas R–5301, R–5302A, R–5302B, and R–5302C. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.53 [Amended]

2. § 73.53 is amended as follows:

R–5301 Albemarle Sound, NC [Amended]

By removing the words "Controlling agency. FAA, Norfolk ATCT, Norfolk, VA," and substituting the words "Controlling agency. FAA, Washington ARTCC."

R–5302A Harvey Point, NC [Amended]

By removing the words "Controlling agency. FAA, Norfolk ATCT, Norfolk, VA," and substituting the words "Controlling agency. FAA, Washington ARTCC."

R–5302B Harvey Point, NC [Amended]

By removing the words "Controlling agency. FAA, Norfolk ATCT, Norfolk, VA," and substituting the words "Controlling agency. FAA, Washington ARTCC."

R–5302C Harvey Point, NC [Amended]

By removing the words "Controlling agency. FAA, Norfolk ATCT, Norfolk, VA," and substituting the words "Controlling agency. FAA, Washington ARTCC."

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32570 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29079; Amdt. No. 405]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on October 10, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, November 6, 1997.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 405 Effective Date, November 6, 1997]

From	To	MEA
§ 95.1001 Direct Routes-U.S.		
§ 95.6009 VOR Federal Airway 9 is Amended to Read in Part		
Sidon, MS VORTAC	Marvell, AR VOR/DME	2100
Marvell, AR VOR/DME	Gilmore, AR VOR/DME	1900
§ 95.6016 VOR Federal Airway 16 is Amended to Read in Part		
Pine Bluff, AR VOR/DME	Marvell, AR VOR/DME	1900
Marvell, AR VOR/DME	Holly Springs, MS VORTAC	2200
§ 95.6054 VOR Federal Airway 54 is Amended to Read in Part		
Little Rock, AR VORTAC	Marvell, AR VOR/DME	1900
Marvell, AR VOR/DME	Holly Springs, MS VORTAC	2200
§ 95.6116 VOR Federal Airway 116 is Amended to Read in Part		
Macon, MO VOR/DME	Quincy, IL VORTAC	*2700

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 405 Effective Date, November 6, 1997]

From	To	MEA
*2100–MOCA		
§ 95.6148 VOR Federal Airway 148 Is Amended to Read in Part		
Mayer, MN FIX *2400–MOCA	Gopher, MN VORTAC	*3000
§ 95.6397 VOR Federal Airway 397 Is Amended to Read in Part		
Greenville, MS VOR/DME	Marvell, AR VOR/DME	1900
Is Amended to Delete		
Kocha, MS FIX *1800–MOCA	Walet, MS FIX	*5000
Walet, MS FIX *2000–MOCA	Holly Springs, MS VORTAC	*2500
§ 95.6436 VOR Federal Airway 436 Is Amended to Read in Part		
Barns, OK FIX *2400–MOCA	Sappa, OK FIX	*4000
§ 95.6453 VOR Federal Airway 453 Is Amended to Read in Part		
King Salmon, AK VORTAC	Dillingham, AK VOR/DME	2100
§ 95.6509 VOR Federal Airway 509 Is Amended to Read in Part		
St. Petersburg, FL VORTAC *5000–MRA **2600–MOCA	*Crowd, FL FIX	**5000

From	To	MEA	MAA
§ 95.7010 Jet Route No. 10 Is Amended to Read in Part			
Twentynine Palms, CA VORTAC Hippi, AZ FIX	Hippi, AZ FIX Drake, AZ VORTAC	20000 18000	45000 45000
§ 95.7074 Jet Route No. 74 Is Amended to Read in Part			
Parker, CA VORTAC Nabob, AZ FIX	Nabob, AZ FIX St. Johns, AZ VORTAC	21000 18000	45000 45000
§ 95.7086 Jet Route No. 86 Is Amended to Read in Part			
Winslow, AZ VORTAC	El Paso, TX VORTAC	*27000	45000
*MEA is established with a gap in navigation signal coverage.			
§ 95.7231 Jet Route No. 231 Is Amended by Adding			
Twentynine Palms, CA VORTAC Hippi, AZ FIX Drake, AZ VORTAC	Hippi, AZ FIX Drake, AZ VORTAC St. Johns, AZ VORTAC	20000 18000 18000	45000 45000 45000

From	To	Changeover points	
		Distance	From
§ 95.8003 VOR Federal Airways Changeover Points V–16 Is Amended to Delete			
Pine Bluff, AR VOR/DME	Holly Springs, MS VORTAC	35	Pine Bluff.
V–186 Is Amended to Read in Part			
Van Nuys, CA VOR/DME	Paradise, CA VORTAC	39	Van Nuys.

[FR Doc. 97–32576 Filed 12–11–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29078; Amdt. No. 404]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IRF altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on August 14, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, September 11, 1997.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 404 Effective Date, September 11, 1997]

From	TO	MEA
§ 95.1001 Direct Routes—U.S. Bahama Routes—58V—Is Amended to Read in Part		
*Melon, BF FIX *8000—MRA **1200—MOCA	Hankx, BF FIX	**2000
Hankx, BF FIX *1200—MOCA	Barts, BF FIX	*4000
§ 95.6001 VOR Federal Airway 1 Is Amended to Read in Part		
Norfolk, VA VORTAC *1800—MOCA	Cape Charles, VA VORTAC	*2500
§ 95.6002 VOR Federal Airway 2 Is Amended to Read in Part		
Madison, WI VORTAC *4000—MRA	*Waits, WI FIX	2800
Waits, WI FIX	Badger, WI VORTAC	2800
§ 95.6012 VOR Federal Airway 12 Is Amended to Read in Part		
Gage, OK VORTAC	Caron, OK FIX	**5000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued
[Amendment 404 Effective Date, September 11, 1997]

From	TO	MEA
*5000—MRA **3700—MOCA		
§ 95.6020 VOR Federal Airway 20 is Amended to Read in Part		
South Boston, VA VORTAC *9000—MRA **2000—MOCA	*Nutts, VA FIX	**3000
Nutts, VA FIX *2400—MOCA	Melis, VA FIX	*3000
§ 95.6023 VOR Federal Airway 23 is Amended to Read in Part		
Paine, WA VOR/DME	Egret, WA FIX	4500
Egret, WA FIX	Acord, WA FIX	3500
Acord, WA FIX *2200—MOCA	Bellingham, WA VORTAC	*3000
§ 95.6056 VOR Federal Airway 56 is Amended to Read in Part		
Columbia, GA VORTAC	Talbo, GA FIX	2500
§ 95.6130 VOR Federal Airway 130 is Amended to Read in Part		
Albany, NY VORTAC *3800—MOCA	Stela, MA FIX	*6000
Stela, MA FIX	Bradley, CT VORTAC	3800
§ 95.6139 VOR Federal Airway 139 is Amended to Read in Part		
Sunns, NC FIX *1600—MOCA	Norfolk, VA VORTAC	*2000
Norfolk, VA VORTAC *1800—MOCA	Cape Charles, VA VORTAC	*2500
§ 95.6190 VOR Federal Airway 190 is Amended to Read in Part		
Gage, OK VORTAC *5000—MRA **3700—MOCA	*Caron, OK FIX	**5000
§ 95.6205 VOR Federal Airway 205 is Amended to Read in Part		
Weets, NY FIX	Stuby, CT FIX	8500
Stuby, CT FIX	Bradley, CT VORTAC	3500
Bradley, CT VORTAC *2200—MOCA	Darth, CT FIX	*3000
§ 95.6341 VOR Federal Airway 341 is Amended to Read in Part		
Dubuque, IA VORTAC *4000—MRA	*Baulk, WI FIX	3600
Baulk, WI FIX	Madison, WI VORTAC	3600
§ 95.6405 VOR Federal Airway 405 is Amended to Read in Part		
Veers, CT FIX	Bradley, CT VORTAC	3500
Bradley, CT VORTAC *2200—MOCA	Providence, RI VORTAC	*3000
§ 95.6413 VOR Federal Airway 413 is Amended to Read in Part		
Ironwood, MI VORTAC	Russh, WI FIX	8000
Russh, WI FIX *2900—MOCA	Eau Claire, WI VORTAC	*6000
Eau Claire, WI VORTAC *2300—MOCA	Bitir, WI FIX	*3500
§ 95.6419 VOR Federal Airway 419 is Amended to Read in Part		
Bradley, CT VORTAC	Boston, MA VORTAC	*3000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued
[Amendment 404 Effective Date, September 11, 1997]

From	TO	MEA
*2500—MOCA		
§ 95.6505 VOR Federal Airway 505 is Amended to Read in Part		
Gopher, MN VORTAC	Siren, WI VOR/DME	3000
§ 95.6547 VOR Federal Airway 547 is Amended to Read in Part		
Cheyenne, WY VORTAC	Douglas, WY VOR/DME	9000

From	To	Changeover Points: Distance	From
95.8003 VOR Federal Airways Changeover Points Airway Segment V–23 is Amended To Delete			
Paine, WA VOR/DME	Bellingham, WA VORTAC	14	Paine.
V–186 is Amended to Read in Part			
Van Nuys, CA VOR/DME	Paradise, CA VORTAC	13	Van Nuys.

[FR Doc. 97–32575 Filed 12–11–97; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300594; FRL–5760–9]
RIN 2070–AB78

Imidacloprid; Tolerance Extension for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide imidacloprid and its metabolites in or on beet and turnip roots at 0.3 part per million (ppm) beet and turnip tops at 3.5 ppm for an additional 1-year period, to November 29, 1998. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on table beets and turnip greens. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

EFFECTIVE DATE: This regulation becomes effective December 12, 1997. Objections and requests for hearings must be received by EPA, on or before February 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300447], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300594], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of November 29, 1996 (61 FR 60622) (FRL–5575–1), which announced that on its own initiative and under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of imidacloprid and its metabolites in or on beet and turnip roots at 0.3 ppm and beet and turnip tops at 3.5 ppm, with an expiration date of November 29, 1997. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of imidacloprid on table beets and turnip greens for this year growing season due to the lack of acceptable control with currently registered products and the loss of the insecticide Phosdrin. Under moderate to severe infestation conditions, the aphids are expected to cause serious reductions

due to contamination problems at harvest, primarily due to the large number of aphids remaining on the crop. The overall threshold that the market will allow is two aphids or less per plant. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under section 18 of FIFRA the use of imidacloprid on table beets and turnip greens for control of aphids in California.

EPA assessed the potential risks presented by residues of imidacloprid in or on beet and turnip roots and beet and turnip tops. In doing so, EPA considered the new safety standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under FFDCA section 408(l)(6) of the FFDCA would be consistent with the new safety standard and with section 18 of FIFRA. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of November 29, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on November 29, 1998, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on beet and turnip roots and beet and turnip tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) of the FFDCA as was provided in the old section 408 and in section 409 of the FFDCA. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 10, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300594]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance under section 408(l)(6) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under section 408(l)(6) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.472 [Amended]

2. In § 180.472, by amending paragraph (a) in the table, for the commodities "beet roots," "beet tops," "turnip roots," and "turnip tops" by removing "November 29, 1997" and adding in its place "November 29, 1998".

[FR Doc. 97–32550 Filed 12–11–97; 6:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300591; FRL–5780–4]
RIN 2070–AB78

Myclobutanil; Tolerance Extension for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide myclobutanil and its metabolites in or on cucurbits at 0.3 parts per million (ppm) for an additional 1-year period, to November 30, 1998. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cucurbit vegetables. Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

EFFECTIVE DATE: This regulation becomes effective December 12, 1997. Objections and requests for hearings must be received by EPA, on or before February 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300447], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300591], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9358; e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of January 9, 1997 (62 FR 1284) (FRL–5579–7), which announced that on its own initiative and under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of myclobutanil and its metabolites in or on cucurbit vegetables at 0.3 ppm, with an expiration date of November 30, 1997. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA established the initial tolerance in response to a section 18 authorization granted to the state of California for use of myclobutanil on cucurbit vegetables in July 1996. EPA granted this use to California consistent with provisions of section 18 of FIFRA, after finding that there was an emergency condition in the state requiring use of this product. When EPA established the time-limited tolerance it did so consistent with a review of available information as required under section 408(l)(6) of the FFDCA. EPA is taking action now to extend this tolerance because the Agency authorized, as allowed under section 18, this use to occur in the states of Arizona and Hawaii to control powdery mildew on cucurbit vegetables (Arizona) and limited to watermelons (Hawaii). This authorization occurred on May 8, 1997, and allowed use of the product for one year.

EPA assessed the potential risks presented by residues of myclobutanil in or on cucurbit vegetables. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under FFDCA section 408(l)(6) of the FFDCA would be consistent with the new safety standard and with section 18 of FIFRA. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of January 9, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet

the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on November 30, 1998, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cucurbit vegetables after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) of the FFDCA as was provided in the old section 408 and in section 409 of the FFDCA. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 10, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300591]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 (d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 25, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.443 [Amended]

2. In § 180.443, by amending paragraph (b) in the table, for the commodity "cucurbit vegetables" by removing "November 30, 1997"and adding in its place "November 30, 1998".

[FR Doc. 97–32549 Filed 12–11–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300590; FRL–5759–5]

RIN 2070–AB78

Chlorothalonil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of chlorothalonil in or on ginseng. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on ginseng. This regulation establishes a maximum permissible level for residues of chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile, expressed as chlorothalonil, in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1998.

DATES: This regulation is effective December 12, 1997. Objections and requests for hearings must be received by EPA on or before February 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300590], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300590], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300590]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Olga Odiott, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9363, e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide chlorothalonil and its 4-hydroxy-2,5,6-trichloroisophthalonitrile metabolite, expressed as chlorothalonil, in or on ginseng at 0.10 parts per million (ppm). This tolerance will expire and is revoked on December 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Chlorothalonil on Ginseng and FFDCA Tolerances

The state of Wisconsin availed itself of the authority to declare a crisis exemption to use chlorothalonil to control the ginseng leaf and stem blight caused by *Alternaria panax*. *A. panax* may cause substantial losses of ginseng yield if not controlled. Specific emergency exemptions have been granted for the use of mancozeb for several years based on loss of efficacy of iprodione due to development of resistance in the pathogen to the latter fungicide. The state argues that while mancozeb affords good protection during typical years, during years of very heavy precipitation, as in 1996 and 1997, mancozeb is inadequate because it is easily washed off plants by rain. In this respect, the state claims, chlorothalonil provides superior control during very rainy summers. EPA has authorized under FIFRA section 18 the use of chlorothalonil on ginseng for control of leaf and stem blight in Wisconsin.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of chlorothalonil in or on ginseng. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on ginseng after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether chlorothalonil meets EPA's registration requirements for use on ginseng or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of chlorothalonil by a state for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any state other than Wisconsin to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for chlorothalonil, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g., frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1 to 6 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of chlorothalonil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile, expressed as chlorothalonil, in or on ginseng at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by chlorothalonil are discussed below. The nature of the toxic effects caused by hexachlorobenzene (HCB), a contaminant of chlorothalonil, are also discussed.

1. *Acute toxicity.* The lowest observed effect level (LOEL) of 175 milligrams/kilogram/day (mg/kg/day) (only dose tested) from a 3-month rat study was used for evaluating acute dietary risk from chlorothalonil to all subgroups. The LOEL was based on renal and gastric lesions observed within 4 days of testing. An uncertainty factor of 300 was recommended since a LOEL instead of a NOEL was used for the assessment.

No acute dietary endpoints have been identified for HCB.

2. *Short - and intermediate - term toxicity.* The NOEL of 600 mg/kg/day highest dose tested (HDT) from a 21-day dermal toxicity study in male Fischer 344 rats was recommended to assess risks from short and intermediate-term exposures to residues of chlorothalonil.

There is no toxicological endpoint identified for short and intermediate-term exposure to HCB.

3. *Chronic toxicity.* EPA has established the RfD for chlorothalonil at 0.018 mg/kg/day. This RfD is based on a 2-year dog feeding study with a NOEL of 1.8 mg/kg/day and an uncertainty factor of 100 (based on increased urinary bilirubin levels and kidney vacuolated epithelium at 3.5 mg/kg/day).

The EPA has established the RfD for HCB at 0.0008 mg/kg/day. This RfD is based on the NOEL of 0.08 mg/kg/day from a 130-week feeding study in rats. At the LEL of 0.29 mg/kg/day, there was hepatic centrilobular basophilic chromogenesis. An uncertainty factor of 100 was used to account for inter-species extrapolation and intra-species variability.

4. *Carcinogenicity.* The OPP Cancer Peer Review Committee (CPRC) classified chlorothalonil as a Group B2 (probable human carcinogen) chemical with a $Q_1^* = 7.66 \times 10^{-3}$ (mg/kg/day)$^{-1}$. The classification was based on

forestomach tumors in mice and renal tumors in rats. The Q_1* was based upon female rat renal (adenoma and/or carcinoma) tumor rates. A 3/4 scaling factor was used to determine the Q_1* from the rat data. HCB, an impurity in chlorothalonil, is also classified as a Group B2 chemical (probable human carcinogen) with a Q_1* = 1.02 (mg/kg/day)$^{-1}$. The classification was based on positive results in hamsters and rats.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.275) for residues of chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile, expressed as chlorothalonil, in or on a variety of raw agricultural commodities at levels ranging from 0.05 ppm in cocoa beans and bananas, edible pulp to 15 ppm in celery and papayas. There are no established tolerances on meat, milk, poultry and eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from chlorothalonil as presented below. Ginseng is not presently represented in the Dietary Risk Evaluation System (DRES) data files because of very low consumption in the U.S. Thus, the dietary exposure analysis does not include a contribution for ginseng. The consumption of ginseng is not expected to significantly alter exposure.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The acute dietary (food only) risk assessment used tolerance level residues (published and pending tolerances included). The resulting high-end exposure estimate of 0.2 mg/kg/day results in a dietary (food only) MOE of 1,500 for infants < 1 year old and children 1-6 years old. This should be viewed as a conservative risk estimate.

ii. *Chronic exposure and risk.* For the chronic dietary risk assessment, the Agency used anticipated residue data. The anticipated residues based on existing chlorothalonil tolerances (published and pending) result in an anticipated residue contribution (ARC) that is equivalent to percentages of the RfD that range from 19.8% for non-nursing infants to 85.8% for children 1 to 6 years old.

Estimates for HCB result in an ARC that is equivalent to percentages of the RfD that range from 0.01% for non-nursing infants to 0.05% for children 1 to 6 years old. Residues of HCB were estimated to be present at a level not exceeding 0.05% (the maximum, allowed in chlorothalonil formulations) of the residues of chlorothalonil.

2. *From drinking water.* Based on available data used in EPA's assessment of environmental risk, chlorothalonil is not persistent and is moderately mobile. Health advisory levels for chlorothalonil in drinking water have been established as follows: for a 10 kg child, the one day finalized level and the long term level is 0.2 mg/L; for a 70 kg adult, the long term is 0.5 kg/L. No lifetime health advisory level has been established for chlorothalonil, but the Office of Drinking Water estimates that a long term average chlorothalonil concentration of 150 µg/L would correspond to an additional lifetime carcinogenic risk of 10-4. Consequently, a concentration of 1.5 µg/L would correspond to a lifetime carcinogenic risk of 10^{-6}. Chlorothalonil is not currently regulated under the Safe Drinking Water Act (SDWA), therefore water supply systems are not required to sample and analyze for it. The intermediate soil/water partitioning of chlorothalonil should make the primary treatment processes employed by most surface water source supply systems at least partially effective in removing it.

Ground water. Degradates (metabolites) of chlorothalonil, not chlorothalonil itself, have been found in ground water in the states of New York, Massachusetts, Florida, Maine, and California (U.S. HED, 1993). The reported metabolites (SDS-46851, SDS-47525, SDS-3701, and SDS-19221) were measured at the highest combined concentration of approximately 16 ppb in New York's Suffolk County (Long Island) in 1981. It is not clear how the use of chlorothalonil in New York compares to use in other areas, but it is expected that the levels of chlorothalonil metabolites detected in the ground water in New York are unrepresentatively high compared to the country as a whole. A small-scale ground water monitoring study is underway, and will give the Agency a more quantitative measure of the ground water contamination potential.

Surface water. Chlorothalonil can contaminate surface water at application via spray drift. The intermediate soil/water partitioning of chlorothalonil indicates that its concentration in suspended and bottom sediment will be substantially greater than its concentration in water.

The following surface water label advisory is required for chlorothalonil:

Chlorothalonil can contaminate surface water through spray drift. Under some conditions, chlorothalonil may also have a high potential for runoff into surface water (via both dissolution in runoff water and adsorption to eroding soil), for several weeks to months post-application. These include poorly draining or wet soils with readily visible slopes toward adjacent surface waters, frequently flooded areas, areas over-laying extremely shallow ground water, areas with in-field canals or ditches that drain to surface water, areas not separated from adjacent surface waters with vegetated filter strips, and highly erodible soils.

The South Florida Water Management District (SFWMD; Miles and Pfeuffer 1994) summarized chlorothalonil detections in samples collected every 2 to 3 months from 27 surface water sites within the SFWMD from November 1988 through November 1993. Approximately 810 samples were collected. Chlorothalonil was detected in 25 samples at concentrations ranging from 0.003 to 0.035 µg/L (0.003 ppb to 0.035 ppb).

Exposures and risks. The Agency does not have sufficient data to complete a comprehensive drinking water risk assessment for the potential of chlorothalonil and its degradates to contaminate ground water. For this drinking water risk assessment the Agency assumed that the metabolites of chlorothalonil have the same toxicity as the parent chlorothalonil and used the highest measured concentration levels to calculate acute and chronic risks from drinking water exposures to residues of chlorothalonil. The Agency also assumed that adults weighing 70 kg consume 2 liters of drinking water per day while children weighing 10 kg drink 1 liter. The acute drinking water risk was calculated by dividing the LOEL identified for acute dietary risk assessment by the exposure from drinking water sources. The chronic risk for drinking water was calculated by comparing exposure from drinking water sources to the appropriate RfD.

The following risk assessments should be considered as worst case scenarios. As the necessary data are received, the risk assessments will be reviewed and evaluated based on the new data.

i. *Acute exposure and risk— Ground water.* In order to calculate acute drinking water risk, the highest concentration detected in ground water (16 ppb) was compared to the acute dietary exposure LOEL of 175 mg/kg/day. Acute exposures were estimated to be 0.0016 mg/kg/day for children and 0.00046 mg/kg/day for adults. The corresponding MOEs were estimated as 109,375 for children and 380,435 for adults.

Surface water. The available surface water monitoring information was used to perform an exposure assessment of surface water as a drinking water source. The highest measured concentration (0.035 µg/L) and the acute dietary LOEL were used to estimate exposures and risks. Exposures were estimated to be 0.000035 mg/kg/day for children and 0.00001 mg/kg/day for adults. The corresponding MOEs were estimated as 5,000,000 for children and 17,500,000 for adults.

The large MOEs provide a reasonable certainty of no harm from the potential exposures associated with chlorothalonil in water.

Acute drinking water risk to HCB was not calculated since no acute dietary endpoint has been identified for HCB.

ii. *Chronic exposure and risk— Ground water.* The highest concentration detected in ground water (16 ppb) and the RfD for chlorothalonil were used to estimate exposures and risks. The Agency estimated that chronic dietary risks from drinking water will utilize 8% of the RfD for children and 2% of the RfD for adults.

Surface water. The highest measured concentration (0.035 µg/L) from the available surface water monitoring data and the RfD for chlorothalonil were used to estimate exposures and risks. The Agency estimated that chronic dietary risks from surface water exposures to residues of chlorothalonil will utilize < 1% of the RfD for both children and adults.

To estimate the chronic dietary risk from exposures to HCB, concentrations for chlorothalonil were assumed to be contaminated with 0.05% HCB. The resulting concentration was compared to the RfD for HCB (0.0008 mg/kg/day). The Agency estimated that chronic dietary risks from surface water exposures to residues of HCB will utilize < 1% of the RfD for both children and adults.

3. *From non-dietary exposure.* Chlorothalonil is currently registered for use on the following residential non-food sites: turf, lawn, trees, grasses, bulbs, plants, and shrubs. Indoor uses include: paints, coatings, adhesives, wood treatments, and resin emulsions.

The Agency currently lacks residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including chlorothalonil.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Chlorothalonil (tetrachloroisophthalonitrile) is a member of the substituted aromatics class of pesticides (George W. Ware, *The Pesticide Book*, 4th edition, page 144, Thomson Publications, 1994). Other members of this class include pentachloronitrobenzene (PCNB) and 2,6-dichloro-4-nitroaniline (dicloran, DCNA).

EPA does not have, at this time, available data to determine whether chlorothalonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that chlorothalonil has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the overall U.S. population the calculated MOE value (food) is 2,000 for chlorothalonil. For acute drinking water risk, the calculated MOE for adults, based on ground water monitoring data, is 380,435. The acute aggregate risk for general U.S. population is 1,163 (175 mg/kg/day ÷ 0.15046 mg/kg/day). The acute aggregate risk for chlorothalonil for all population subgroups is below HED's level of concern.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to chlorothalonil from food and water will utilize ≈46.5% (44.5% from food + ≈ 2% from water) of the RfD for the U.S. population. The aggregate exposure to HCB from food and water will utilize ≈1.03% (0.03% from food + ≈1% from water) of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1 to 6 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to chlorothalonil and HCB residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Based on the registered uses of chlorothalonil short and intermediate-term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for chlorothalonil.

D. Aggregate Cancer Risk for U.S. Population

The cancer risk from food uses of chlorothalonil (a B2 carcinogen with a Q_1* of 7.66×10^{-3} (mg/kg/day)$^{-1}$) for the general U.S. population was estimated as 1.1×10^{-6} (upper bound). The calculation was based on ARC estimates. EPA used all the published, pending and new uses for chlorothalonil

and substracted the risk figures from consumption of meat and milk products. Residues of chlorothalonil per se are not expected to transfer from feed items to meat and milk, but residues of the 4-hydroxy metabolite (which is not of carcinogenic concern) could occur in these commodities. Thus, there is no carcinogenic risk attributable to chlorothalonil from its use on livestock feed items.

The dietary (food) cancer risk from HCB (a B2 carcinogen with a Q_1^* of 1.02 $(mg/kg/day)^{-1}$) for the general U.S. population was estimated as 3.6×10^{-7} (upper bound). The concentrations for chlorothalonil were assumed to be *contaminated with 0.05% HCB. The* calculation was based on ARC estimates and all the published, pending and new uses for chlorothalonil.

The drinking water cancer risk from exposure to chlorothalonil residues was estimated as 2×10^{-7} for children and 7×10^{-8} for adults. These estimates are based on the highest measured concentration from the available surface water monitoring data. Only metabolites of chlorothalonil have been found in ground water. These metabolites are not of carcinogenic concern, therefore an assessment of the cancer risks associated with dietary exposures to chlorothalonil from ground water sources was not conducted. The drinking water cancer risk from exposure to HCB residues was estimated as 1×10^{-7} for children and 5×10^{-9} for adults. The concentrations for chlorothalonil were assumed to be contaminated with 0.05% HCB.

For the drinking water risk assessment the Agency assumed that water comes from the same source containing the same contaminant level and is consumed throughout a 36-year period. This is extremely conservative, since it is likely that frequency and amounts of chlorothalonil used vary widely over this time, and most of the U.S. population moves at some time and does not live in the same area, drinking from the same water source for a 36-year period. Therefore, the risk to both adults and children from drinking water is likely an over-estimate.

The Agency concludes that the aggregate (food + water) cancer risks from exposures to chlorothalonil and HCB do not exceed the levels of concern.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of chlorothalonil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the *completeness of the data base unless* EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (for combined inter- and intra-species variability) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies— Rats.* The maternal (systemic) NOEL was 100 mg/kg/day, based on increased mortality and reduced weight gain at the LOEL of 400 mg/kg/day. The developmental (fetal) NOEL was 100 mg/kg/day, based on increase in total resorptions and resorptions per dam with related increase in postimplantation loss at the LOEL of 400 mg/kg/day.

Rabbits. The maternal (systemic) NOEL was 10 mg/kg/day, based on reductions in weight gain and food consumption during dosing at the LOEL of 20 mg/kg/day. The developmental (fetal) NOEL was 20 mg/kg/day (HDT).

iii. *Reproductive toxicity study— Rats.* in the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was less than 38 mg/kg/day lowest dose tested (LDT), based on hyperplasia of renal and forestomach tissues at the LOEL of 38 mg/kg/day. The reproductive/developmental (pup) NOEL was 115 mg/kg/day, based on decreased pup weight on day 21 of lactation and a suggestive increase in the incidence of neonatal renal pelvis dilation in the F_{1a} generation at the LOEL of 234 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for chlorothalonil is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study. In these studies, the fetal or pup NOELs occur at or above the maternal NOELs indicating that there is no extra-sensitivity for infants and children.

v. *Conclusion.* Based on the above, HED concludes that reliable data support use of the standard uncertainty factor of 100 and that an additional safety factor is not needed to protect infants and children.

2. *Acute risk.* The acute dietary MOE (food) was calculated to be 1,500 for infants (<1 year), 1,500 for children (1-6 years), and 3,000 for females 13+ years (accounts for both maternal and fetal exposure). The acute aggregate MOE (food and water) for the most highly exposed subpopulation (children 1 - 6 years old) was calculated to be 868. These MOE calculations were based on the systemic LOEL in rats of 175 mg/kg/day. This risk assessment assumed 100% crop-treated with tolerance level residues on all treated crops consumed, resulting in a significant over-estimate of dietary exposure. The large acute dietary MOE calculated for females 13+ years provides assurance that there is a reasonable certainty of no harm for both females 13+ years and the pre and post-natal development of infants.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate dietary (food + water) exposure to chlorothalonil will utilize percentages of the RfD that range from 27.8% (19.8% for food + 8% for water) for nursing infants, up to 93.8% (85.8% for food + 8% for water) for children 1-6 years old.

The percentage of the RfD that will be utilized by aggregate exposure food + water to residues of HCB ranges from ≈1.01% for nursing infants, up to ≈1.05% for children 1-6 years old.

EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to chlorothalonil residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants and animals is adequately understood. The residues of concern are chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile is an impurity in chlorothalonil products.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography-electron capture detection) is available in PAM II (Method I) to enforce the tolerance expression.

C. Magnitude of Residues

Residues of chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile are not expected to exceed 0.10 ppm in/on ginseng as a result of this section 18 use. Secondary residues are not expected in animal commodities as no feed items are associated with this section 18 use.

D. International Residue Limits

There are no Codex proposals, Canadian limits, or Mexican limits for chlorothalonil on ginseng.

E. Rotational Crop Restrictions

EPA has determined that rotational crop studies will not be required for uses of pesticides on ginseng.

VI. Conclusion

Therefore, the tolerance is established for chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile (expresed as chlorothalonil) in ginseng at 0.10 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 10, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300590] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(l)(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for

the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 1, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.275, by adding a heading to paragraph (a); by redesignating paragraph (b) as paragraph (c) and adding a heading; by adding new paragraph (b); and by adding and reserving paragraph (d) with a heading to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

(a) *General.* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile (expresed as chlorothalonil) in connection with use of the pesticide under the section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Ginseng	0.10	12/31/98

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–32548 Filed 12–11–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3740, 3810, and 3820

[WO–340–1220–00–24 1A]

RIN 1004–AD05

Multiple Use, Mining; Mining Claims Under the General Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is removing several obsolete or unnecessary regulations, and revising regulations concerning mining on Papago Indian Reservation lands. The regulations BLM is removing concern certain programs under the Multiple Minerals Development Act; claimant's rights; opening of Helium reserves to mining location and mineral leasing; and regulations under the statute entitled "Mining Rights in Prescott National Forest" concerning mining in the watershed of the city of Prescott, Arizona. Each of the regulations being removed is unnecessary or obsolete, either because it describes programs which no longer exist or because it contains requirements already achieved by statutes or other applicable regulations. Removing these items will have no impact on BLM customers or the public at large.

EFFECTIVE DATE: January 12, 1998.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Roger Haskins, Bureau of Land Management, Solid Minerals Group, 1849 C Street, N.W., Washington, DC 20240; Telephone: 202–452–0355.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Final Rule as Adopted
II. Responses to Comments
III. Procedural Matters

I. Background and Discussion of Final Rule as Adopted

The regulations that are being removed are obsolete and unnecessary, and therefore can be eliminated without negative consequences.

Subpart 3744 concerns the rights of leasable minerals mining claimants. These rights are derived from the Multiple Mineral Development Act, 30 U.S.C. 521 *et seq.* (the Leasing Act). However, rather than implementing or interpreting the Act, subpart 3744 merely quotes Sections 7(d) and 8 of the Act, 30 U.S.C. 527(d), 528. The regulation consists entirely of duplicated statutory language and adds nothing to the protections of mining claimants' rights already contained in the statute. Because those rights are preserved by the statute and not the regulation, this regulation serves no substantive purpose, and can be deleted without any impact on the regulated community or the United States.

Subpart 3745, concerning the conditions for opening Helium Reserves to mining location and mineral leasing, also consists of unnecessary recitation of the Leasing Act. 43 CFR 3745.1(a) is merely a direct quote of section 9 of the Act, 30 U.S.C. 529. In addition, 43 CFR 3745.1(b) contains language not derived from the Act, asserting that applications filed prior to published notice to open the helium reserves will confer no rights. However, this provision is completely obsolete and without any substantive importance. Merely filing an application cannot confer any rights until the application is approved. Furthermore, Helium Reserves Numbers 1 and 2 were opened in 1955, have since been withdrawn, and BLM has determined that no pre-existing applications under this subpart currently exist. Therefore, because this regulation contains only duplicated statutory language and obsolete provisions, it can be deleted without affecting the rights of the public at large or altering existing law.

Section 3811.2–7 is also obsolete and will be removed. This section indicates that claims to mine fissionable source material may be located on coal lands under certain circumstances and regulations. This provision is merely informational and is wholly unnecessary. Claims to mine fissionable and other source material on lands valuable for coal are governed by 30 U.S.C. 541i, which withdrew coal-bearing public lands from these types of claims on August 11, 1975. All mining claims on the subject lands became void as of that date, except where a claimant had previously filed a mineral patent application. Therefore, no further claims can be located under the provisions of 43 CFR 3811.2–7, making this regulation obsolete as well as redundant.

Subpart 3824, concerning mining in the Prescott (AZ) city watershed, will also be removed because it consists entirely of restatements from the underlying statute at 16 U.S.C. 482a, internal procedures, and non-binding policy statements. Section 3824.1(a) and the first sentence of 3824.1(c) unnecessarily restate statutory language. Section 3824.1(b), which directs the authorized officer to note certain application terms on the application itself, depicts internal procedures better suited to the BLM Manual. The remainder of 3824.1(c) elaborates on the statutory provision that valid, pre-existing mining claims in this location may be perfected as the claimant desires. This subsection adds nothing to the statutory law by pointing out that "as the claimant desires" means claimants can subject themselves to the statutory provisions or not; therefore this section is also redundant and unnecessary.

Subpart 3825, concerning mining on Papago Indian Reservation lands, is partially obsolete. Papago lands were closed to mineral entries in 1955; therefore, the provisions of this subpart pertaining to locating claims are obsolete. However, BLM has determined that there are 11 unpatented claims remaining within the lands owned by the Papago Indians (now known as Tohono O'Odham). These claims are still subject to the restrictions and rental payments described in the existing subpart 3825. Therefore, BLM will revise the regulations in this subpart to incorporate the Tohono O'Odham tribe's name change. Subpart 3825 will be revised in a separate rulemaking, to remove obsolete provisions and rewrite the regulations in plain English.

The final rule published today is a stage of a rulemaking process that will conclude with the removal of 43 CFR subparts 3744, 3745, 3824, and section 3811.2–7, and the revision of subpart 3825. This rule was preceded by a proposed rule which introduced this action and BLM's purpose and need. The proposed rule was published in the **Federal Register** on October 5, 1996 (61 FR 51667). This proposed rule was intended to give anyone who would be adversely affected by this action an opportunity to call their concerns to our attention. The BLM invited public comments for 30 days, and received only one comment, which came from a Federal agency.

II. Responses to Comments

The only comment came from BLM's Arizona state office, which pointed out that there were 11 active, unpatented claims and at least one active mine presently operating on Tohono O'Odham lands, and therefore they recommended we not remove subpart 3825 in its entirety. As a result of this information, BLM proposes instead to only revise 43 CFR subpart 3825 by incorporating the Tohono O'Odham tribe's name change.

III. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the final rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record. BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**).

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* (RFA), as amended, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis unless an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Because this rule is limited to removing regulations which have become obsolete or which duplicate statutory language, BLM believes that this final rule will not impact any small entities. Therefore, BLM certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Revising 43 CFR subpart 3825 and removing 43 CFR subparts 3744, 3745 and 3824 and 43 CFR 3811.2–7 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author. The principal author of this rule is Roger Haskins, Solids Group, Bureau of Land Management, 1849 C Street, N.W., Room 401–LS, Washington, DC 20240; Telephone: 202–452–0355.

List of Subjects

43 CFR Part 3740

Administrative practice and procedure, Mines, Public lands-mineral resources.

43 CFR 3810

Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR 3820

Mines, Monuments and memorials, National forests, National parks, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Dated: December 1, 1997.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, parts 3740 of Group 3700 and parts 3810 and 3820 of Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below:

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

PART 3740—[AMENDED]

1. Part 3740 is amended by removing subpart 3744 in its entirety.

2. Part 3740 is amended by removing subpart 3745 in its entirety.

PART 3810—[AMENDED]

3. The authority citation for part 3810 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

4. Part 3810 is amended by removing Section 3811.2–7 in its entirety.

PART 3820—[AMENDED]

5. The authority citation for part 3820 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

6. Part 3820 is amended by removing subpart 3824 in its entirety.

7. Part 3820 is amended by revising the heading for subpart 3825 to read as follows:

Subpart 3825—Tohono O'Odham (Formerly Papago) Indian Reservation, Arizona

8. Part 3820 is amended by revising all references to the name "Papago" in subpart 3825 to read "Tohono O'Odham".

[FR Doc. 97–32508 Filed 12–11–97; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1241

[Ex Parte No. 431 (Sub–No. 2)]

Review of the General Purpose Costing System

AGENCY: Surface Transportation Board.

ACTION: Policy Statement; Request for Comments.

SUMMARY: The Surface Transportation Board (Board) is modifying the procedures used for determining the variable cost of using privately-owned rail cars, and requesting comments on certain modifications to the recently adopted procedures used to determine the variable costs associated with rail movements of intermodal traffic.

DATES: The policy statement modifying the costing of privately-owned cars is effective December 12, 1997. The policy statement revising the procedures for costing intermodal traffic is scheduled to be effective February 10, 1998; if this effective date is delayed, timely notice will be published in the **Federal Register**.

Comments are due January 12, 1998.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 431 (Sub-No. 2) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423–001.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 565–1567. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: To provide consistent and comparable information on railroad costs, the Board maintains a general purpose costing system known as the Uniform Railroad Costing System (URCS). This rulemaking was instituted to review the procedures used by the URCS to develop the variable costs of providing rail service. As a result of the comments received, the Board is adopting modifications to the procedures for determining the variable cost of using privately-owned rail cars. In addition, as discussed below, the Board is modifying certain procedures used to develop the costs associated with movements of intermodal traffic, absent objections within 30 days. The Board's decision may be reviewed at the agency's offices in Washington, D.C. during normal business hours. The decision is also available from our Internet site at www.stb.dot.gov or for a charge by calling DC NEWS & DATA INC. at (202) 289–4357.

Intermodal Costing

In response to the reconsideration request of the Association of American Railroads, the Board is proposing to modify several intermodal costing procedures adopted previously in this proceeding. These modifications recognize changes that have taken place in the railroad industry since evidence was last submitted in this proceeding. Unless adverse comments are received, the Board will adopt for the purposes of waybill and URCS movement costing (1) an intertrain and intratrain switching factor for intermodal cars of 4,163 miles, (2) an intermodal car spotted-to-pulled ratio equal to the intermodal car empty-to-loaded ratio, (3) a RoadRailer tare weight of 13.9 tons, and (4) use of our standard default costing procedure to assign locomotive cost to RoadRailer shipments. Absent receipt of comments voicing opposition to this modification within 30 days of this decision, it will become a permanent change effective February 10, 1998. If the effective date of this modification is delayed, timely notice will be published in the **Federal Register**.

The Board certifies that the new procedures will not have a significant economic effect on a substantial number of small entities. The impact on small entities, if any, will be to provide them with better cost estimates.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: December 5, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32565 Filed 12–11–97; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970806191–7279–02; I.D. 072297A]

RIN 0648–AJ71

Fisheries of the Exclusive Economic Zone Off Alaska; Improved Retention/Improved Utilization

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 49 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This final rule requires all vessels fishing for groundfish in the Gulf of Alaska (GOA) to retain all pollock and Pacific cod beginning January 1, 1998, and all shallow water flatfish beginning January 1, 2003. This final rule also establishes a 15-percent minimum utilization standard for all at-sea processors beginning January 1, 1998, for pollock and Pacific cod and, beginning January 1, 2003, for shallow-water flatfish. This action is necessary to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

DATES: Effective January 12, 1998.

ADDRESSES: Copies of Amendment 49 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

At its June 1997 meeting, the Council adopted Amendment 49 to the FMP and recommended that NMFS initiate a rulemaking to implement the amendment. A notice of availability of Amendment 49 was published in the **Federal Register** on July 29, 1997 (62 FR 40497), and invited comment on the amendment through September 29, 1997. No comments were received by the end of the comment period on Amendment 49. A proposed rule to implement Amendment 49 was published in the **Federal Register** on August 18, 1997 (62 FR 43977). Comments on the proposed rule were invited through October 2, 1997. No comments were received by the end of the comment period on the proposed rule.

In September 1996, the Council adopted an Improved Retention/Improved Utilization (IR/IU) program for the Bering Sea and Aleutian Islands Management Area (BSAI) as Amendment 49 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. A final rule to implement Amendment 49 in the BSAI was published on December 3, 1997 (62 FR 63880). During development of the IR/IU program for the BSAI, the Council began to consider a parallel IR/IU program for the GOA, also designated as Amendment 49. Amendments 49 and 49 are the result of over 3 years of analysis and debate by the Council of alternative solutions to the problem of discards occurring in the groundfish fisheries off Alaska. The management background and need for the IR/IU program in the GOA are described in the proposed rule for the IR/IU program in the GOA (62 FR 43977).

Elements of the Final Rule

This final rule to implement Amendment 49 in the GOA expands the geographical scope of the final rule published to implement Amendment 49 in the BSAI (62 FR 63880, December 3, 1997). Two changes are made to the IR/IU program set out at § 679.27 to extend the program to the GOA. First, paragraph (a) *Applicability*, is amended to extend the IR/IU program to the GOA, and second, paragraph (b) *IR/IU species*, which lists species covered by the program, is revised to add the shallow-water flatfish species complex for the GOA.

To assist the vessel owners and operators in compliance with IR/IU requirements in the GOA, key elements of the IR/IU program are summarized below.

Affected Vessels and Processors

The IR/IU program applies to all vessels fishing for groundfish in the GOA and all at-sea processors processing groundfish harvested in the GOA, regardless of vessel size, gear type, or target fishery. Because the Magnuson-Stevens Act does not authorize NMFS to regulate on-shore processing of fish, the requirements of this final rule do not extend to shore-based processors.

The State of Alaska (State) is developing a parallel IR/IU program for shore-based processors. The State anticipates that parallel IR/IU regulations requiring retention and utilization of pollock by shoreside processors will be in place by January 1, 1998, while parallel regulations requiring retention and utilization of Pacific cod by shoreside processors will be in place by mid-1998.

IR/IU Species

The IR/IU program for the GOA defines pollock, Pacific cod, and the shallow-water flatfish species group as IR/IU species. In the FMP and in the annual harvest specifications, the shallow-water flatfish species group is defined as all flatfish species, other than deep-water flatfish (Dover sole and Greenland turbot), flathead sole, rex sole, and arrowtooth flounder. Retention and utilization requirements apply to pollock and Pacific cod beginning January 1, 1998, and to shallow-water flatfish beginning January 1, 2003. The purpose of the 5-year delay for shallow-water flatfish is to provide industry with sufficient time to develop more selective fishing techniques and/or markets for these fish.

Minimum Retention Requirements

The IR/IU program establishes minimum retention requirements by vessel type (catcher vessel, catcher/processor, and mothership) and by the directed fishing status of the IR/IU species (open to directed fishing, closed to directed fishing, and retention prohibited). In general, vessel operators are required to retain 100 percent of their catch of an IR/IU species unless a closure to directed fishing limits retention of that species. When a closure to directed fishing limits retention of an IR/IU species, the vessel operator is required to retain all catch of that species up to the maximum retainable bycatch (MRB) amount in effect for that species, and to discard catch in excess of the MRB amount. The specific retention requirements by vessel type

and directed fishing status are set out at § 679.27(c) and are repeated below:

If you own or operate a * * *	and * * *	you must retain on board until lawful transfer * * *
(i) catcher vessel	(A) directed fishing for an IR/IU species is open	all fish of that species brought on board the vessel.
	(B) directed fishing for an IR/IU species is prohibited	all fish of that species brought on board the vessel up to the MRB amount for that species.
	(C) retention of an IR/IU species is prohibited	no fish of that species.
(ii) catcher/processor.	(A) directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel.
	(B) directed fishing for an IR/IU species is prohibited	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) retention of an IR/IU species is prohibited	no fish or product of that species.
(iii) mothership	(A) directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel.
	(B) directed fishing for an IR/IU species is prohibited	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) retention of an IR/IU species is prohibited	no fish or product of that species.

Additional Retention Requirements

Bleeding Codends and Shaking Longline Gear

The minimum retention requirements set out at § 679.27(c) apply to all fish of each IR/IU species that are brought on board a vessel. Any activity intended to cause the discarding of IR/IU species prior to their being brought on board a vessel, such as bleeding codends or shaking fish off longlines, is prohibited. NMFS recognizes that some escapement of fish from fishing gear does occur in the course of fishing operations. Therefore, incidental escapement of IR/IU species, such as fish squeezing through mesh or dropping off longlines, will not be considered a violation unless the escapement is intentionally caused by action of the vessel operator or crew.

At-Sea Discard of Products

Any product from an IR/IU species may not be discarded at sea, unless such discarding is necessary to meet other requirements of 50 CFR part 679.

Discard of Fish or Product Transferred From Other Vessels

The retention requirements of this final rule apply to all IR/IU species brought on board a vessel, whether caught by that vessel or transferred from another vessel. Discard of IR/IU species or products that were transferred from another vessel is prohibited.

IR/IU Species Used as Bait

IR/IU species may be used as bait provided the bait is physically attached to authorized fishing gear when deployed. Dumping IR/IU species as loose bait (i.e., chumming) is prohibited.

Minimum Utilization Requirements

Beginning January 1, 1998, all catcher/processors and motherships are required to maintain a 15-percent utilization rate for each IR/IU species. Calculation of a vessel's utilization rate depends on the directed fishing status of the IR/IU species in question. The minimum utilization requirements are set out at § 679.27(i) and in the following table:

If * * *	your total weight of retained or lawfully transferred products produced from your catch or receipt of that IR/IU species during a fishing trip must * * *
(1) directed fishing for an IR/IU species is open.	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip.
(2) directed fishing for an IR/IU species is prohibited.	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip or 15 percent of the MRB amount for that species, whichever is lower.
(3) retention of an IR/IU species is prohibited.	equal zero.

Recordkeeping Requirements

The IR/IU program for the BSAI contained changes to existing recordkeeping requirements to aid the monitoring and enforcement of the IR/IU program. Because NMFS uses the same logbooks for both the BSAI and GOA, the recordkeeping requirements for the GOA were included in the collection-of-information request approved by the Office of Management and Budget (OMB) for the BSAI IR/IU program (OMB control number 0648–0213). The IR/IU-related recordkeeping requirements are as follows: Beginning January 1, 1998, all catcher vessels and catcher/processors that are currently required to maintain NMFS logbooks are required to log the round weight catch of pollock and Pacific cod in the NMFS catcher vessel daily fishing logbook or daily catcher/processor logbook (DCPL) on a haul-by-haul or set-by-set basis. Motherships are required to log the receipt of round weight of pollock and Pacific cod in the mothership DCPL on a delivery-by-delivery basis. Beginning January 1, 2003, this requirement extends to rock sole and yellowfin sole in the BSAI and the shallow-water flatfish complex in the GOA. These changes are necessary to provide vessel operators and enforcement agents with round weight information for each IR/IU species in order to monitor compliance with the IR/IU program.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 49 is necessary for the conservation and management of the groundfish fishery of the GOA and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

An RIR was prepared for this final rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities.

An FRFA was prepared that describes the impact this action will have on small entities. In 1996, of the 444 vessels that participated in the GOA trawl fishery, 404 were determined to be small entities. The analysis concluded that the economic effects on longline, pot, and jig gear vessels would not be significant. The economic effects on trawl vessels participating in the pollock, sablefish, deep-water flatfish, shallow-water flatfish, rockfish, and Atka mackerel fisheries also would not be significant. The analysis concluded that the economic effects on some trawl vessels participating in the Pacific cod, arrowtooth flounder, and rex sole fisheries could be significant. Finally, the analysis concluded that the overall economic effects on vessels participating in the flathead sole fishery would be significant. This action will have a significant economic impact on an estimated 96 trawl vessels (24 percent of the GOA trawl fleet determined to be small entities).

The analysis also concluded that for fish for which markets are limited or undeveloped (e.g., small Pacific cod, and some flatfish species) 100-percent retention requirements will impose direct operational costs that probably cannot be offset (in whole or in part) by expected revenues generated by the sale of the additional catch. No quantitative estimate can be made of these costs at present. In general, the impacts on any operation will vary inversely with the size and configuration of the vessel, hold capacity, processing capability, markets, and market access, as well as the specific composition and share of the total catch of pollock, Pacific cod, and shallow-water flatfish. The burden will tend to fall most heavily upon the smallest, least diversified operations, especially smaller catcher/processors. The ability of smaller catcher/processors to adapt to the proposed IR/IU program will be further limited due to such programs such as the vessel moratorium, license limitation, and Coast Guard load-line requirements that place severe limits on reconstruction to increase vessel size and/or processing capacity.

The economic impacts imposed by this rule would not be alleviated by modifying reporting requirements for small entities. Where relevant, this final rule employs performance standards rather than design standards and allows maximum flexibility in meeting its requirements. The Council considered and rejected the following alternatives that might have mitigated impacts on small entities: (1) An alternative that would have allowed exemptions or modified phase-in periods based on vessel size was rejected because it would have diluted the reductions in bycatch and discards and would have provided an unfair advantage to a certain sector of the industry; (2) a "harvest priority program" that would have rewarded vessels demonstrating low bycatch was rejected because it would not reduce discard rates expeditiously enough; and (3) a voluntary bycatch and discard reduction program was rejected because it would not have met statutory requirements of the Magnuson-Stevens Act. In selecting its preferred alternative for Amendment 49, the Council minimized the economic impact of the IR/IU program on small entities in a variety of ways. First, the Council adopted a 5-year delay in the effective date for rock sole and yellowfin sole to provide industry with sufficient time to develop more selective fishing techniques and/or markets for fish that are currently being discarded. Second, the Council rejected utilization alternatives that would have limited product forms or placed limits on fishmeal production, in order to allow industry more flexibility in complying with the utilization requirements of the IR/IU program. Finally, the Council rejected monitoring alternatives that would have imposed substantial costs in the form of increased observer coverage requirements or required a full time compliance monitor aboard all vessels. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This rule contains a collection-of-information requirement subject of the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0213.

Under this revision to the collection-of-information requirement, vessel operators would be required to log the round weight of each IR/IU species on a haul-by-haul basis for catcher vessels and catcher/processors and on a delivery-by-delivery basis for motherships. The estimated current and new public reporting burdens for these collections of information are as follows: For catcher vessels using fixed gear, the estimated burden would increase from 20 minutes to 23 minutes; for catcher vessels using trawl gear, the estimated burden would increase from 17 minutes to 22 minutes; for catcher/processors using fixed gear, the estimated burden would increase from 32 minutes to 35 minutes; for catcher/processors using trawl gear, the estimated burden would increase from 29 minutes to 34 minutes; for motherships, the estimated burden would increase from 28 to 33 minutes.

Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or on any other aspect of the collection of information, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB number.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 8, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. Section 679.27 is amended by revising paragraphs (a) and (b) to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

(a) *Applicability.* The owner or operator of a vessel that is required to

obtain a Federal fisheries or processor permit under § 679.4 must comply with the IR/IU program set out in this section while fishing for groundfish in the GOA or BSAI, fishing for groundfish in waters of the State of Alaska that are shoreward of the GOA or BSAI, or when processing groundfish harvested in the GOA or BSAI.

(b) *IR/IU species.* The following species are defined as "IR/IU species" for the purposes of this section:

(1) Pollock.

(2) Pacific cod.

(3) Rock sole in the BSAI (beginning January 1, 2003).

(4) Yellowfin sole in the BSAI (beginning January 1, 2003).

(5) Shallow-water flatfish species complex in the GOA as defined in the annual harvest specifications for the GOA (beginning January 1, 2003).

* * * * *

[FR Doc. 97–32492 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 62, No. 239

Friday, December 12, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–10]

Proposed Realignment of Colored Federal Airway A–1; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify a Colored Federal Airway, Amber-1 (A–1), between Campbell Lake Nondirectional Radar Beacon (NDB) and Takotna River NDB, AK, due to the decommissioning of the Puntilla Lake and Farewell Lake NDB's and their subsequent removal from the National Airspace System (NAS).

DATES: Comments must be received on or before January 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 97–AAL–10, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916G, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AAL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to realign A–1 by providing a direct route between Campbell Lake, AK, NDB and Takotna River, AK, NDB due to the decommissioning of the Puntilla Lake and Farewell Lake NDBs and their subsequent removal from the NAS. Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6009(c)—Amber Federal Airways

A–1 [Revised]

From Sandspit, BC, Canada, NDB 96 miles 12 AGL, 102 miles 35 MSL, 57 miles 12 AGL, via Sitka, AK, NDB; 31 miles 12 AGL, 50 miles 47 MSL, 88 miles 20 MSL, 40 miles 12 AGL, Ocean Cape, AK, NDB; INT Ocean Cape NDB 283° and Hinchinbrook, AK, NDB 106° bearings; Hinchinbrook NDB; INT Hinchinbrook NDB 286° and Campbell Lake, AK, NDB 123° bearings; Campbell Lake NDB; Takotna River, AK, NDB; 24 miles 12 AGL, 53 miles 55 MSL; 51 miles 40 MSL, 25 miles 12 AGL, North River, AK, NDB; 17 miles 12 AGL, 89 miles 25 MSL, 17 miles 12 AGL, to Fort Davis, AK, NDB. That airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32569 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No. 951031259–7103–02]

Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; extension of public comment period.

SUMMARY: Pursuant to public request, the National Oceanic and Atmospheric Administration (NOAA) is extending by 90 days its public comment period for the Notice of Proposed Rulemaking concerning the licensing of private land remote-sensing space systems, published on November 3, 1997, 62 FR 59317.

DATES: Comments must be received by April 2, 1998.

ADDRESSES: Comments should be sent to, Charles Wooldridge, NOAA, National Environmental Satellite, Data, and Information Service, 1315 East-West Highway Room 3620 Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Charles Wooldridge at (301) 713–2024 ext. 107 or Kira Alvarez, NOAA, Office of General Counsel at (301) 713–1217.

SUPPLEMENTARY INFORMATION: On November 3, 1997, NOAA published a Notice of Proposed Rulemaking (62 FR 59317) proposing regulations revising its regime for the licensing of private Earth remote-sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.* (1992 Act). These proposed regulations implement the licensing provisions of the 1992 Act and the Presidential Policy announced March 10, 1994. In response to numerous written comments, NOAA is extending the original 60 day public comment period by 90 days. As a result, comments on the notice of proposed rulemaking must now be received by April 2, 1998.

Dated: December 5, 1997.

Gregory W. Withee,

Deputy Assistant Administrator for Satellite and Information Services.

[FR Doc. 97–32472 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 97N–0222]

Medical Devices; Preemption of State Product Liability Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations regarding preemption of State and local requirements applicable to medical devices. This action is being taken to clarify and codify the agency's longstanding position that available legal remedies, including State common law tort claims, generally are not preempted under the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Written comments by February 10, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 521 of the act (21 U.S.C. 360k) contains an express preemption provision applicable to medical devices regulated by FDA. The Supreme Court recently addressed whether section 521 of the act preempts State common law tort claims arising from allegedly defective medical devices. (See *Medtronic, Inc.* v. *Lohr (Lohr)*, 116 S. Ct. 2240 (1996).) The Court concluded that section 521 of the act did not supplant the State law duties at issue in that case. In reaching that conclusion, the Court noted that FDA has provided interpretive guidance with respect to section 521 of the act's preemptive effect. (See *id.* at 2255–2256 (citing 21 CFR 808.1(d)(2) and 808.5(b)(1)(i) (1995)).) The Court gave "substantial weight to the agency's view of the statute" (*Id.* at 2256). (See also *id.* at 2257; *id.* at 2260–2261 (Breyer, J., concurring in part and concurring in the judgment).)

The Court's decision in *Lohr* construed section 521 of the act in the context of a medical device that FDA had cleared for distribution under section 510(k) of the act (21 U.S.C. 360k), which requires premarket notification for certain types of medical devices. The Court did not definitively decide whether section 521 of the act may preempt State law claims in other circumstances. Since *Lohr* was decided, the lower courts have interpreted section 521 of the act inconsistently and have reached conflicting conclusions with respect to whether section 521 of the act preempts State law claims for injuries allegedly resulting from medical devices that have received premarket approval under section 515 of the act (21 U.S.C. 360e), or have received an investigational device exemption (IDE) under section 520(g) of the act (21 U.S.C. 360j(g)).

In light of the confusion among the lower courts in interpreting section 521 of the act since *Lohr*, and in accordance with the Supreme Court's recognition that FDA's interpretation of the preemptive effect of section 521 is entitled to substantial weight, the agency is issuing this proposed interpretive rule, which addresses the circumstances in which section 521 of the act preempts State common tort claims based on injury from allegedly defective medical devices.

II. Background

Congress enacted the Medical Device Amendments of 1976 (the amendments) (21 U.S.C. 360c *et seq.*), "to provide for the safety and effectiveness of medical devices intended for human use." It enacted the amendments largely in response to public concerns over injuries caused by medical products, such as the Dalkon Shield intrauterine device. (See S. Rept. No. 33, 94th Cong., 1st sess. 1 (1975); H. R. Rept. No. 853, 94th Cong., 2d sess. 8 (1976); 122 Congressional Record 13,779 (1976)). Congress sought "to assure that the public is protected from unsafe and ineffective medical devices, that health professionals have more confidence in the devices they use or prescribe, and that innovations in medical device technology are not stifled by unnecessary restrictions" (H. R. Rept. No. 853, *supra*, at 12).

Section 521 of the act was included as part of the amendments, and generally states that except as provided in section 521(b) of the act no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement which is different from, or in addition to, any Federal requirement applicable to the device, and which relates to the safety or effectiveness of the device or to any other matter included in a Federal requirement applicable to the device.

Section 521(b) sets forth the requirements if a political subdivision thereof applies for an exemption from a Federal requirement. The Secretary may issue a regulation to exempt from section 521(a) of the act, under conditions prescribed in the regulation, if the requirement is more stringent than the Federal requirement which would be applicable to the device if an exemption were not in effect or the requirement is required by compelling local conditions, and compliance with the requirement would not cause the device to be in violation of any applicable Federal requirement under this chapter.

FDA has interpreted the preemptive scope of section 521 of the act in light of its specific language and Congress's expressed objectives. Section 521(a) forbids a State from subjecting a medical device to any "requirement" that is "different from, or in addition to," any Federal requirement imposed under the act; and relates to "the safety or effectiveness of the device" or to "any other matter" included in the Federal requirement. FDA has indicated, through regulations that have been in place since 1978, that section 521 of the act's preemptive effect is limited in light of the section's precise terminology and Congress's declared intention to promote the safety and effectiveness of medical devices. (See 21 CFR 808.1.)

When FDA issued its 1978 regulations, the regulated community was primarily interested in the effect of section 521 of the act on State or local requirements that were expressed through positive enactments, such as statutes or regulations. FDA's regulations addressed the question of preemption in that general context. Section 808.1(d), which has remained substantially unchanged for nearly 20 years, states that State or local requirements are preempted only when FDA has established specific counterpart regulations or there are other specific requirements applicable to a particular device under the act, thereby making any existing divergent State or local requirements applicable to the device different from, or in addition to, the specific FDA requirements. There are other State or local requirements that affect devices that are not preempted by section 521(a) of the act because they are not "requirements applicable to a device" within the meaning of section 521(a) of the act.

FDA's regulations (§ 808.1) provide nine examples of State or local provisions that are not preempted, including:

(1) Generally applicable requirements not limited to medical devices (e.g., general electrical codes and the Uniform Commercial Code (warranty of fitness));

(2) Requirements that are equal to or substantially identical to requirements imposed by or under the act;

(3) Occupational licensing requirements;

(4) Specifications in government contracts for the procurement of devices;

(5) Criteria for payment of State or local obligations under Medicaid and similar Federal, State or local health care programs;

(6) General enforcement requirements, including State inspection and registration requirements, or a State or local prohibition against the manufacturer of adulterated or misbranded devices (except where the prohibition, as interpreted and enforced, has the effect of establishing a substantive requirement for a specific device);

(7) Provisions respecting delegations of authority and related administrative matters respecting devices;

(8) Fee and other revenue raising requirements; and

(9) State or local requirements issued under the authority of other Federal statutes.

In 1992, the Supreme Court decided *Cippolone* v. *Liggett Group, Inc.* (505 U.S. 504 (1992)). Among other things, the Court ruled in that case that section 5(b) of the Public Health Cigarette Smoking Act of 1969 (15 U.S.C. 1334(b)) could preempt State common law suits alleging that the manufacturers breached their duty to warn about hazards associated with smoking. Section 5(b) states that no requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter.

A majority of the Supreme Court concluded that the phrase "[n]o requirement or prohibition," as used in that statute, describes both positive enactments and common law duties. (See 505 U.S. at 521 (opinion of Stevens, J.); *id.* at 548–549 (Scalia, J., concurring in the judgment in part and dissenting in part).)

After the Supreme Court's decision in *Cippolone*, a number of lower courts interpreted section 521 of the act to preempt tort actions respecting allegedly defective medical devices in which the plaintiff sought to hold the manufacturer liable based on State common law. Those courts found preemption in a variety of contexts, including situations in which FDA had allowed marketing of the device after "premarket notification" under section 510(k) of the act (21 U.S.C. 360(k)), (e.g., *Mendes* v. *Medtronic, Inc.*, 18 F.3d 13 (1st Cir. 1994)); in which FDA had granted premarket approval of the device under section 515 of the act (21 U.S.C. 360e), (e.g., *King* v. *Collagen Corp.*, 983 F.2d 1130 (1st Cir.) *cert. denied*, 510 U.S. 824 (1993)); and in which FDA had granted an IDE under section 520(g) of the act (21 U.S.C. 360j(g)), (e.g., *Slater* v. *Optical Radiation Corp.*, 961 F.2d 1330 (7th Cir.), *cert. denied*, 506 U.S. 917 (1992)).

The Supreme Court addressed the scope of section 521 of the act's preemptive effect in *Medtronic, Inc.* v. *Lohr*, 116 S. Ct. 2240 (1996). That case arose out of Medtronic's marketing of a cardiac pacemaker that FDA found was "substantially equivalent" to a medical device already on the market and that was therefore subject to the premarket notification requirements of section 510(k) of the act (21 U.S.C. 360(k)). The plaintiffs alleged that they were injured by the device and sought damages under Florida common law. They asserted that Medtronic breached its common law duty "to use reasonable care in the design, manufacture, assembly, and sale of the subject pacemaker" and that Medtronic was strictly liable because the device "was in a defective condition and unreasonably dangerous to foreseeable users at the time of its sale" (116 S. Ct. at 2248).

The Court concluded that section 521 of the act did not preempt the plaintiffs' negligent design claim. It specifically rejected Medtronic's contention that the company's compliance with its statutory obligation to demonstrate through the premarket notification process that the pacemaker was "substantially equivalent" to a preexisting device preempted those claims (116 S. Ct. at 2254–2255). The Court noted that, when FDA reviews a device under the premarket notification provisions, it does so with "a concern for the safety and effectiveness of the device" (*id.* at 2254), but that FDA "did not 'require' Medtronics' pacemaker to take any particular form for any particular reason" (*ibid*). Rather, FDA simply allowed Medtronic to market the pacemaker based on the article's equivalence to the preexisting device (*Id.* at 2254–2255). The Supreme Court was unanimous on this point, since Justice O'Connor's separate opinion for four Justices agreed that the section 510(k) premarket notification process "places no 'requirement' on a device" and therefore does not preempt a defective design claim (*Id.* at 2264).

The Court also concluded that section 521 of the act did not preempt the plaintiffs' State law claims that Medtronic had violated FDA requirements (116 S. Ct. at 2255–2256). The Court reasoned that State common law claims premised on Medtronic's failure to comply with FDA requirements do not subject the manufacturer to requirements that are "different from, or in addition to," the Federal requirements (*Id.* at 2255). The Court noted that FDA's interpretive regulations "expressly support the conclusion that [section 521] 'does not preempt State or local requirements that are equal to, or substantially identical to, requirements imposed by or under the act.'" (*Id.* at 2256 (quoting 21 CFR 808.1(d)(2) (1995))). It also observed that FDA's views on the scope of section 521 of the act's preemptive effect are entitled to "substantial weight." (*Ibid*).

The Court additionally concluded that section 521 of the act did not preempt the plaintiffs' State law claims based on negligent manufacturing and labeling (116 S. Ct. at 2256–2258). The Court recognized that FDA had developed regulations that set out general "requirements" for manufacturing and labeling medical devices (*Id.* at 2256). It concluded, however, that section 521 generally does not mandate preemption of a standard of care under State common law unless, as FDA had suggested in its interpretive regulations, FDA has issued "specific counterpart regulations or * * * other specific requirements applicable to a particular device" (*Id.* at 2257 (quoting 21 CFR 808.1(d) (1995))). The Court concluded that the "entirely generic" Federal requirements did not provide a basis for preemption of the nonspecific State common law duties at issue in that case (*Id.* at 2258). Justice Breyer, agreeing with Justice O'Connor's opinion (see *id.* at 2262–2263), concluded that, insofar as the act preempts a State requirement embodied in a statute or regulation, it also preempts a similar State requirement that takes the form of a standard of care imposed by State tort law (*id.* at 2259–2260), but he concurred in the Court's holding that manufacturing and labeling requirements issued by FDA were not sufficiently specific to trigger preemption (*id.* at 2260–2261).

Since the Supreme Court's decision in *Lohr*, the lower courts have continued to reach contradictory determinations respecting section 521 of the act's preemptive effect, particularly as it relates to medical devices that have received premarket approval or an investigatory device exemption. Compare, e.g., *Fry* v. *Allergan Medical Optics*, 695 A.2d 511 (R.I. 1997) (finding preemption), *cert. denied*, No. 97–513 (U.S. Sup. Ct., Nov. 3, 1997) with *Kemats* v. *Smiths Indus. Med. Sys., Inc.*, 669 N.E. 2d 1300 (Ill. App. Ct.) (finding no preemption), *appeal denied*, 675 N.E.2d (Ill. 1996), *petition for cert. pending*, No. 96–1405 (U.S. Sup. Ct., filed Mar. 4. 1997).

III. The Proposed Rule

FDA interprets section 521 of the act's preemptive effect on the basis of congressional intent. As the Supreme Court stated in *Lohr*, congressional purpose "is the ultimate touchstone" in every preemption case, and "a fair understanding of congressional purpose" may be discerned not only from the text of the statute, but also through a "reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law" (116 S. Ct. at 2250–2251 (emphasis deleted)). In addition, the statutory text must be read in light of established presumptions respecting preemption. As the Supreme Court stated in *Lohr*, the States are presumed to retain their historic police powers unless Congress expresses a "clear and manifest purpose" to supersede those powers (*Id.* at 2250).

Section 521 of the act does not, as a general matter, prevent a party who is injured by a defective medical device from seeking redress under a State's common law. Rather, section 521(a) of the act provides that a State may not "establish or continue in effect with respect to a device" a "requirement" that is "different from, or in addition to," a "requirement applicable under this chapter to the device" that "relates to the safety or effectiveness of the device" or to "any other matter included in" the Federal requirement (21 U.S.C. 360k(a)). By its plain terms, section 521 of the act does not prevent a State from imposing common law duties on manufacturers of medical devices unless those duties are "requirements" of the kind described in the statute.

When FDA articulated its understanding of section 521 of the act in its 1976 regulations, it stated the general rule to be that "State or local requirements are preempted only when the agency has established specific counterpart regulations or there are other specific requirements applicable to a particular device under the act, thereby making any existing divergent State or local requirements applicable to the device different from, or in addition to, the specific Food and Drug Administration requirements" (§ 808.1(d)). The Supreme Court explicitly endorsed FDA's position in the *Lohr* decision. (See 116 S. Ct. at 2257; *id.* at 2260–2261 (Breyer, J., concurring in part and concurring in the judgment)). Similarly, the 1978 regulations provide that section 521 of the act does not preempt a State or local requirement prohibiting the manufacture of adulterated or misbranded devices, but that where such a prohibition, as "interpreted and enforced by the State and local government," "has the effect of establishing a substantive requirement for a specific device, e.g., a specific labeling requirement," it will be preempted if it is different from, or in addition to, a specific requirement established by FDA for the device (§ 808.1(d)(6)(ii)).

In 1978, FDA stated its understanding of section 521 of the act in the general context of State requirements that are imposed through positive law, such as statutes or regulations. The same principles should govern, however, in the case of State requirements that are imposed through the common law. FDA has consistently concluded that the same principles govern when it has addressed the question of preemption through its regulations, advisory opinions, and its judicial filings as amicus curiae. The Supreme Court implicitly endorsed that conclusion in the *Lohr* decision by applying the principles that FDA has announced in its 1978 regulations to the Lohrs' common law suit. (See 116 S. Ct. at 2255–2256, 2257–2258; *id.* at 2260–2261 (Breyer, J., concurring in part and concurring in the judgment in part)).

In accordance with the principles that FDA articulated in its 1978 regulations, to which the Supreme Court in *Lohr* held that deference is owed, FDA believes that, as a general matter, an FDA-imposed requirement will preempt a State common law duty only when: (1) FDA has expressly imposed, by regulation or order, a specific substantive requirement applicable to a particular medical device; and (2) the State common law, as interpreted and applied, imposes a substantive requirement applicable to the same particular medical device that is different from, or in addition to, FDA's counterpart requirement. Under this approach, FDA requirements that are applicable to devices in general, or that are established by means other than through regulation or order, should generally not result in preemption of State tort claims.

FDA bases its interpretation primarily on the language of section 521 of the act and the agency's past regulatory interpretation set out in § 808.1. In addition, a plurality of the Court noted in *Lohr* that there is no indication in the legislative history of the amendments that Congress intended to make a "dramatic change" in the availability of State common law remedies (*Id.* at 2253 n.13 (opinion of Stevens, J.)). The legislative history indicates that Congress was aware of ongoing product liability suits involving medical devices, but it contains no indication that Congress intended that the amendments would preempt those suits. See, e.g., S. Rept. No. 33, supra, at 1; H. R. Rept. No. 853, *supra*, at 8; 121 Congressional Record 10,688 (1975) (Sen. Kennedy); *id.* at 10,689 (Sen. Nelson); 122 Congressional Record 5850 (1976) (Rep. Abzug)).

FDA's interpretation is also founded in its experience and understanding gained through implementing the amendments. FDA believes that its general regulatory review and approval processes provide a significant measure of protection against the marketing of dangerous or defective medical devices. FDA does not believe, however, that those processes can guarantee the safety of such devices. Accordingly, compliance with general FDA requirements should not broadly preempt State common law remedies, which provide an important (and frequently the only) mechanism for persons to seek redress for injuries resulting from defective medical devices. FDA notes below several situations in which the agency's regulatory activities will typically not preempt State law remedies.

First, FDA's general clearance and approval processes, such as the clearance for marketing under section 510(k) of the act; the grant premarket approval under section 515 of the act; or the grant of an IDE under section 520(g) of the act, do not, by themselves, preempt State common law claims. Section 521 of the act provides for preemption of a State common law duty only if it imposes a requirement that is different from, or in addition to, a specific substantive requirement pertaining to the particular device that has been imposed by or under the act. FDA's ection in clearing a product for marketing or granting an application for a PMA or an IDE signifies that the manufacturer's proposal for marketing or use of the device in question satisfies the relevant statutory and regulatory criteria for the clearance, approval, or exemption. It does not signify, however, that Congress or FDA has established a specific Federal requirement (e.g., with respect to the design of the device) that supplants a State common law duty.

Second, FDA's notification of deficiencies in, or proposal of modifications to, an application for a PMA or an IDE does not, as a general matter, create specific Federal requirements that have preemptive effect. Under FDA's approval and exemption programs, the applicant bears responsibility for preparing an acceptable application. FDA may notify the applicant of deficiencies and propose modifications to ensure that the applicant has satisfied the minimum standards for FDA approval or exemption, but those actions do not relieve the applicant of its ultimate responsibility for proposing the design, manufacturing, and labeling of the device. For purposes of preemption analysis, the applicant who modifies an application in response to an agency notification of deficiency or proposal for modification has simply achieved the same status as an applicant who had submitted a satisfactory application at the outset.

Third, as the Supreme Court concluded in *Lohr*, FDA's general requirements respecting labeling (21 CFR 801.1 through 801.16), and good manufacturing practices, (21 CFR 820.1 through 820.198), do not preempt State requirements, because the general Federal requirements do not pertain to specific devices. (See *Lohr*, 116 S. Ct. at 2256–2258). The same controlling principle applies whether the device subject to those requirements is a "grandfathered" device that was marketed before the enactment of the amendments, received FDA clearance for marketing under section 510(k) of the act, received a PMA under section 515 of the act, or received an IDE under section 520(g) of the act.

Fourth, even if FDA has imposed specific Federal requirements respecting a particular medical device, those requirements do not preempt all State common law claims respecting the device. Section 521 of the act provides for preemption only if the State common law duties are "different from, or in addition to," the specific Federal requirements. In many cases, preemption will depend on the plaintiff's precise legal claims and theories of recovery. For example, as the Supreme Court noted in *Lohr*, if the state common law required the manufacturer to comply with the Federal requirements, section 521 of the act would not preempt that duty (116 S. Ct. at 2255–2256). Furthermore, the courts may be able to reconcile an apparent conflict between Federal and State requirements by, for example, carefully formulating jury instructions to limit the bases for liability to substantive standards of care that are consistent with any specific requirement that FDA has made applicable to the device.

In every case, section 521 of the act's preemptive effect should be evaluated in light of the statute's precise terms. As the Supreme Court noted in *Lohr*, section 521 of the act and FDA's regulations "require a careful comparison between the allegedly — preempting Federal requirement and the allegedly preempted State requirement to determine whether they fall within the intended preemptive scope of the statute and regulations" (116 S. Ct. at 2257–2258). The outcome of particular cases will frequently depend on the character and circumstances of the particular state law claim. FDA will continue to monitor the development of the law in this area and provide additional guidance as the need arises.

This proposed rule would make no change in the agency's prior or current construction of the scope of section 521 of the act. Rather, the rule would simply clarify and codify the agency's longstanding interpretation of the scope of section 521 of the act as generally not preempting available legal remedies, including State common law tort claims.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule only interprets the statute and does not establish any requirements, the agency certifies that this proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Request for Comments

Interested persons may, on or before (*insert date 60 days after date of publication in the* **Federal Register**), submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 808

Intergovernmental relations, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 808 be amended as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR part 808 continues to read as follows:

Authority: 21 U.S.C. 360j, 360k, 371.

2. Section 808.1 is amended by adding new paragraphs (d)(11) and (d)(12) to read as follows:

§ 808.1 Scope.

* * * * *

(d) * * *

(11) * * *

(i) An FDA imposed requirement will preempt a State common law duty only when:

(A) FDA has expressly imposed, by regulation or order, a specific substantive requirement applicable to a particular device; and

(B) The State common law, as interpreted and applied, imposes a substantive requirement applicable to the same particular device that is different from, or in addition to, FDA's counterpart requirement.

(ii) FDA requirements that are applicable to devices in general, or that are established by means other than through regulation or order, should not result in preemption of State tort claims.

(12) The clearance or approval of a particular device for marketing under section 510(k), 515, or 520(g) of the act does not in itself constitute the imposition of a specific substantive requirement with respect to that particular device that preempts a State or local requirement, including a standard of care imposed under State common law, with respect to the same device.

* * * * *

Dated: December 8, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–32551 Filed 12–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor

ACTION: Proposed rule; extension of comment period; rescheduling of the informal public hearings in Washington D.C.; announcement of additional hearings sites.

SUMMARY: On October 17, 1997, the Occupational Safety and Health Administration (OSHA) published in the **Federal Register** its proposed standard for occupational exposure to tuberculosis (62 FR 54160). An informal public hearing was scheduled for Washington, D.C., and deadlines were set for submission of public comments, Notices of Intention to Appear at the hearing, and documentary evidence from parties requesting more than 10 minutes for their hearing presentations. With this notice, OSHA is extending those deadlines, rescheduling the Washington, D.C., hearings to begin April 7, 1998, and adding three hearing sites.

DATES: Written comments on the proposed standard and Notices of Intention to Appear at the hearings must be postmarked on or before February 13, 1998.

Testimony and documentary evidence from parties requesting more than 10 minutes for their presentations at the hearings must be submitted no later than February 27, 1998.

The hearings will begin April 7, 1998, in Washington, D.C., starting at 10:00 a.m. on the first day and at 9:00 a.m. on succeeding days. Public hearings will also be held in Los Angeles, CA, and Chicago, IL, and New York City, NY. The dates and locations of these additional hearings will be published in the **Federal Register** at a later date.

ADDRESSES: Comments on the proposed standard, Notices of Intention to Appear at the hearings, testimony, and documentary evidence are to be submitted in quadruplicate to the Docket Officer, Docket No. H–371, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 219–7894. Comments of 10 pages or fewer may be transmitted by fax to (202) 219–5046, provided the original and three copies are sent to the Docket Officer thereafter.

All material related to the development of this proposed standard will be available for inspection and copying in the Docket Office Monday through Friday from 10:00 a.m. until 4:00 p.m.

The hearing location for Washington, D.C., is the Frances Perkins Building Auditorium, U.S. Department of Labor, 200 Constitution Avenue, NW. The hearing locations and dates for Los Angeles, CA, and Chicago, IL and New York City, NY will be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, Telephone (202) 219–8148, FAX (202) 219–5986.

SUPPLEMENTARY INFORMATION: OSHA proposed a new standard for occupational exposure to tuberculosis on October 17, 1997 (62 FR 54160). The deadline for submitting written comments was December 16, 1997. On November 5, 1997, five organizations representing more than 4 million individuals and 5,300 facilities potentially affected by the proposed standard, collectively requested that OSHA consider extending the public comment period by a minimum of 30 days. Citing the complexity and the far-reaching implications of the proposed standard, these organizations stated that they believed that the current deadline of December 16, 1997, provided insufficient time for a thorough examination and consideration of the important issues. A similar request was made by the American Medical Association, which urged OSHA to extend the deadline to allow sufficient time for a complete and thoughtful analysis of the proposed TB standard.

OSHA considers the testimony to be offered by these organizations to be important and necessary for the development of the final rule. In addition, OSHA recognizes that other parties that will be affected by the rulemaking may need more time to prepare their comments and testimony. In order to accommodate these organizations and others, OSHA has extended the comment period and has rescheduled the informal public hearings in Washington, D.C.

The deadline for written comments and Notices of Intention to Appear at the informal public hearings is being extended from December 16, 1997, to February 13, 1998. The deadline for submission of testimony for parties requesting more than 10 minutes at the public hearings or submitting documentary evidence is being extended from December 31, 1997, to February 27, 1998. The hearing presently scheduled to begin on February 3, 1998 in Washington, D.C., is being rescheduled to begin on April 7, 1998.

In addition to the informal public hearings in Washington D.C., three sites are being added: Chicago, IL, and Los Angeles, CA, and New York City, NY.

Because the proposed standard will impact employees and employers across the nation, the Agency believes that is appropriate to hold public hearings at additional sites in order to give parties who may not be able to attend the hearings in Washington, D.C., an opportunity to participate in the public hearing process. OSHA has found that the hearings provide an important forum for interested parties to submit their comments and concerns on OSHA's proposed rulemakings and that the hearings provide the Agency with valuable information in developing its final standards.

Public Participation

Persons desiring to participate at the hearings must submit four copies of a Notice of Intention to Appear containing the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The hearing site that the party is requesting to attend;

(3) The capacity in which the person will appear;

(4) The approximate amount of time requested for the presentation;

(5) The specific issues that will be addressed;

(6) A detailed statement of the position that will be taken with respect to each issue addressed;

(7) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence; and

(8) Whether the party wishes to testify on the days set aside to focus on homeless shelters.

A tentative schedule of appearances at the hearings will be prepared and distributed to parties who have submitted Notices of Intention to Appear so parties will know when issues that concern them are likely to be raised at the hearing.

Filing of Testimony and Evidence Before Hearings

Any party requesting more than 10 minutes for a presentation at the hearing, or who will present documentary evidence, must submit four copies of the complete text of the testimony, including any documentary evidence to be presented at the hearing to the Docket Officer at the above address.

Each submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a Notice of Intention to Appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed Notices of Intention to Appear will be entitled to ask questions and otherwise participate fully in the proceeding.

Authority

This document has been prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

It is issued under section 6(b) of the Occupational Safety Health Act (29 U.S.C. 655), Secretary of Labor's Order 6–96, (62 FR 111) and 29 CFR Part 1911.

Signed at Washington, D.C. on this 9th day of December, 1997.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 97–32546 Filed 12–9–97; 3:59 pm]

BILLING CODE 4510–26–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45 and 97–160; DA 97–2372]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; guidance for design and submission of proposed models.

SUMMARY: The Common Carrier Bureau (Bureau) provided guidance to proponents of forward-looking cost models in the universal service proceeding on issues related to customer location and outside plant design. The Bureau provided this guidance to improve the models that the Commission will consider to select a mechanism for determining non-rural carriers' forward-looking cost to provide the supported services. This guidance is intended to encourage model proponents to alter their models to conform them to the guidance provided in this Public Notice. Models conforming to the guidance provided in this Public Notice are more likely to be considered favorably in this proceeding.

DATES: Proponents of a model should file their submission on or before December 12, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20052. See **SUPPLEMENTARY INFORMATION** for further instructions.

FOR FURTHER INFORMATION CONTACT: Chuck Keller, Common Carrier Bureau, Accounting and Audits Division, Universal Service Branch, (202) 418–7400, or via E-mail to "ckeller@fcc.gov".

SUPPLEMENTARY INFORMATION:

Released: November 13, 1997.

In the Universal Service Order released May 8, 1997, the Commission, acting on the recommendation of the Federal-State Joint Board, concluded that non-rural carriers providing supported services to rural, insular, and high cost areas (collectively referred to as high cost areas) should receive universal service support based on the forward-looking cost of providing the supported services. (*See* Federal-State Joint Board on Universal Service (Joint Board), CC Docket No. 96–45, *Report and Order*, FCC 97–157 (62 FR 32862, June 1997) (*Order*)). The Commission determined that it could not select a mechanism for computing forward-looking costs because none of the mechanisms that had been submitted for consideration was sufficiently developed at that time. The Commission stated that it would continue to review two cost models, the Hatfield Model and the Benchmark Cost Proxy Model (the BCPM). The Commission stated that it would select a forward-looking economic cost mechanism with platform design features and input values by August 1998.

In a Further Notice of Proposed Rulemaking in this proceeding (*FNPRM*), the Commission established a multi-step approach to refining and selecting a mechanism for determining a non-rural carrier's forward-looking economic cost of providing supported services to high cost areas. (*See* Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECLs, CC Docket Nos. 96–45 and 97–160, Further Notice of Proposed Rulemaking, FCC 97–256 (62 FR 42457, August 1997)(*FNPRM*)). The Commission specified that the Common Carrier Bureau (Bureau) would "issue orders and public notices on a regular basis explaining its analysis of the model submissions and industry comments and to select particular design features." The Commission further stated its expectation that "such guidance from the Bureau will provide the proponents with necessary direction to refine their models."

In meetings with proponents of the BCPM and the Hatfield model and other interested parties, the Bureau staff has encouraged the continued evolution and refinement of the models. This Public Notice offers guidance to proponents of models regarding the customer location and outside plant platform design issues raised in the FNPRM. In the *Order*, the Commission stated its "anticipat[ion] that by the end of the year [it] will choose a specific model" as the platform for a federal mechanism. In order to choose a "specific model," however, the Commission must evaluate and compare completed versions of the models. The Bureau therefore requests that parties seeking consideration of their model as the platform for a federal mechanism submit their models within four weeks after the release of this Public Notice. Models that conform to the guidance in this Public Notice are likely to be considered more favorably in this proceeding.

The Commission stated in the *FNPRM* that it may select a model submitted to the Commission by a proponent, or it may select a hybrid model incorporating the best features of proposed models and design components developed by the Commission staff or other parties. On October 31, 1997, staff members of the Common Carrier Bureau proposed an alternate approach to customer location and outside plant design issues in the form of a Hybrid Cost Proxy Model (HCPM). The HCPM is in many respects a hybrid of the BCPM and the Hatfield model, although it also contains features that differ from both the BCPM and the Hatfield model. The Bureau anticipates that the Commission will consider the HCPM as an alternative to the customer location and outside plant design modules in the BCPM and the Hatfield model. The Bureau observes, however, that the *FNPRM* leaves open the possibility that the Commission may consider other models or other components of models in selecting the best mechanism for determining non-rural carriers' forward looking cost for providing the supported services.

I. Customer Location

A. Geocode Data

The *FNPRM* requested comment on the use of data that associate the location of each customer with latitudinal and longitudinal coordinates (geocode data) in a forward-looking economic cost mechanism. Many commenters agree that geocode data, which provide the actual geographic location of customers, are preferable to algorithms intended to estimate customer locations based on Census data or other information regarding the number of customers in a given geographic area. Because assumptions about the location of customers have a large impact on loop length calculations, the use of more accurate customer location data is consistent with the criterion specified in the *Order* that "a model's average loop length should reflect the incumbent carrier's actual average loop length." Some commenters, however, question the feasibility of using geocode data in the federal mechanism because of the lack of reliable data in rural areas and the burden of developing such data. The Bureau recommends that models be capable of accepting and using geocode data to the extent that such data are available and reliable.

B. Wire Center Boundaries

In their evaluation of previous versions of cost models submitted to the Commission, State members of the Joint Board have noted that inaccurately mapping customers to a wire center may result in inaccurate line counts and impede the determination of the most efficient engineering practices for serving that wire center. Through the model development process, the BCPM and the Hatfield model have been refined so that both models determine wire center boundaries based, at least in part, on a database provided by Business Location Research (BLR). The BCPM has improved the accuracy of the BLR data it uses by using wire center boundary data based on Census Blocks (CBs), rather than the larger Census Block Groups (CBGs). The Hatfield model also uses BLR data at the Census Block-level, although its proponents have stated that they intend to use the Census Block Group data in isolated instances where those data appear to be more accurate. This refinement decreases the discrepancies between the two industry-proposed models. Consistent with the criterion specified in the *Order* that "[w]ire center line counts should equal actual ILEC wire center line counts" however, the Bureau recommends that models be capable of accepting wire center boundary data in standard Geographic Information System (GIS) format from any source that the Commission finds may estimate those boundaries more accurately.

II. Outside Plant Design

A. Documentation of Assumptions

The *Order* requires that cost models employ the "least-cost, most-efficient and reasonable technology for providing the supported services that is currently being deployed," and that all engineering assumptions be reasonable. Furthermore, the *Order* also requires the models' algorithms, data, and assumptions to be open and verifiable. These criteria suggest that outside plant design should be considered both from an engineering perspective, to ensure that the network provides the type and quality of service specified in the *Order*, and from an economic perspective, to ensure that the network design minimizes cost and maximizes efficiency. Moreover, the requirement that assumptions be open and verifiable ensures that the Commission can confirm that the other criteria have been met. To the extent that models' algorithms do not explicitly explore different loop architectures in varying situations and select the least-cost alternative for that particular situation, the Bureau recommends that model proponents provide detailed documentation that explains and justifies any assumptions and engineering rules of thumb that their models employ. This documentation should demonstrate how these assumptions and rules of thumb meet the *Order's* requirement that a model employ the least-cost, most-efficient, and reasonable technology.

One assumption for which model proponents should provide documentation is a model's algorithm for deploying digital loop carrier (DLC) devices. For example, the basic outside plant design structures presently employed in the BCPM and the Hatfield model involve running optical fiber feeder cables from the central office to a point within designated serving areas and serving the customers within each serving area with copper distribution cables from a DLC device within the serving area. Because DLC devices are expensive, costs per customer can be minimized by connecting larger numbers of customers to each device, subject to the DLC's capacity limitations and the limits on the length of the copper cable between the DLC and the customer premises. The BCPM and the Hatfield model currently determine which customers are located in a given serving area using either grids (BCPM) or clusters (Hatfield). Both approaches must account for the fact that, particularly in rural areas, some customers are located relatively far from other customers, and therefore are difficult to associate with any single serving area. Presently, the Hatfield model serves geographically isolated customers with the nearest DLC, while the BCPM will place a separate DLC in grids with only a small number of customers. The Bureau recommends that proponents of a model demonstrate how their approaches to deploying DLC devices employ the least-cost, most-efficient, and reasonable technology, as required by the Commission's *Order*.

Another algorithm that is relevant to whether a model has employed the least-cost, most-efficient, and reasonable technology is a model's algorithm for feeder routes. Earlier versions of the BCPM and the Hatfield model extended four fiber feeder cables, at 90 degree angles from each other, from each central office in all cases. More recent iterations of these models have eliminated feeder cables to quadrants with no population and adjusted feeder route angles directing feeder cables to areas of population concentration. Although these approaches seem to represent improvements in the designs of these industry-proposed models, the Bureau recommends that each proponent of a model demonstrate how their feeder routing algorithms meet the criterion of being the least-cost, most-efficient, and reasonable technology currently being deployed.

In addition to the examples of DLC placement and feeder routing, the Bureau recommends that model proponents demonstrate how every aspect of their outside plant design approach is consistent with the least-cost criterion, while maintaining the network standards established in the *Order*.

B. Advanced Services

The Commission specified in the *Order* that the loop design in a forward-looking mechanism "should not impede the provision of advanced services." For example, the Commission determined that loading coils may impede advanced services such as high-speed data transmission and therefore disallowed their use in a model. The Bureau recommends that model proponents explain their assumptions about network configurations and capacity, and explain why such assumptions are reasonable and consistent with common configurations and capabilities of networks of non-rural carriers. For example, model proponents should demonstrate how their models permit standard customer premises equipment (CPE) available to consumers today, such as 28.8 kbps or 56 kbps modems, to perform at speeds at least as fast as the same CPE can perform on the typical existing network of a non-rural carrier.

The Commission also concluded that the definition of supported services should "advance with technology" and will be re-examined in light of "changes in technology, network capacity, consumer demand, and service deployment." The Bureau therefore recommends that models incorporate sufficient flexibility in their loop design algorithms so that the platform of the selected model does not have to be rebuilt in the event that the Commission revises the definition of universal service.

C. Wireless Threshold

In the *FNPRM*, the Commission sought comment on whether a model should assume that, if the loop investment for a single customer exceeds a certain threshold, an efficient carrier would substitute wireless service for wireline service. The Commission's directive that a cost model use the "least-cost, most-efficient, and reasonable technology" suggests that a model should be able to use information about the costs of wireless service if the Commission concludes that such data are available and reliable. Because the Commission also determined that support calculations should be based on a geographic area that is the size of a wire center or smaller, and the geographic area for estimating costs may not be larger than the support area, the Bureau recommends that models be capable of accommodating as inputs wireless cost thresholds at the level of the wire center or a smaller geographic unit.

D. Fiber-Copper Cross-Over Point

The fiber-copper cross-over point determines where the network will employ optical fiber cable rather than copper cable in its feeder plant. The Commission specified in the *Order* that a model "must include the capability to examine and modify the critical assumptions and engineering principles * * * includ[ing] * * * fiber-copper cross-over points." While the BCPM assumes that the maximum copper loop length may be 12,000 feet and the Hatfield model assumes that the maximum copper loop length may be 18,000 feet, the Commission noted in the *FNPRM* that neither proponent has documented that its assumption is the least-cost alternative. In order for the Commission to better understand the cost differences associated with each of these assumptions, the Bureau recommends that proponents of models provide comparative outputs for each of the following five states, using both the

12,000 foot standard and the 18,000 foot standard: Florida, Georgia, Maryland, Missouri, and Montana.

E. Proprietary or Confidential Information

In light of the Commission's requirement in the *Order* that "all underlying data, formulae, computations, and software associated with the model must be available to interested parties for review and comment," the Bureau recommends that each model proponent submit detailed descriptions of all information or software alleged to be confidential, proprietary, or otherwise unavailable to the public that is used either in the model or in a preprocessing module. The descriptions should include estimates of the costs and procedures that may be associated with making the information or software available to the Commission and to the administrator of the universal service support mechanisms.

III. Follow-Up Requirements

The Commission established criteria for its forward-looking economic cost mechanism in the *Order*. The Bureau recommends that model proponents ensure that their modules for determining the location of customers and estimating outside plant investment comply with all of the criteria set out in the *Order*, in addition to the recommendations in this Public Notice.

The Bureau recognizes that proponents of models may need to make certain changes to their models to bring them into conformity with the guidance provided in this public notice. Within four weeks from the release date of this public notice, any proponents of models should submit their models for consideration by the Commission. To facilitate that process and the Commission's review, models should be accompanied by a cover letter providing: (1) A list of the items discussed above with which their model already is in conformity and a description of how their model is in conformity with those items, and; (2) a listing of the items with which their model is not yet in conformity. The Bureau anticipates that the models submitted at that time will be evaluated by the Commission in selecting the platform for the federal mechanism.

IV. Procedural Matters

Within four weeks of the release date of this Public Notice, proponents of a model should file an original and three (3) copies of their submission, referencing CC Dockets Nos. 96–45 and 97–160, with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. Proponents should also provide four (4) copies of their submission to Chuck Keller of the Universal Service Branch, 2100 M Street, N.W., Room 8918, Washington, D.C. 20554.

Federal Communications Commission.

Timothy A. Peterson,

Deputy Division Chief, Common Carrier Bureau.

[FR Doc. 97–31117 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 97–234; GC Docket No. 92–52; GEN Docket No. 90–264, FCC 97–397]

Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses; Comparative Broadcast Hearings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC) seeks comment on proposed competitive bidding procedures that will apply to mutually exclusive applications for licenses to provide commercial AM radio, FM radio, analog television, low power television, and FM or TV translator service. The proposed auction procedures implement the Balanced Budget Act of 1997, which expanded the FCC's auction authority to require that it use auctions to award virtually all licenses. The FCC also proposes to use auctions to resolve certain pending commercial broadcast applications filed before July 1, 1997, which under the statute may be resolved by either auction or comparative hearings. Auctions allow the FCC to award licenses more efficiently than comparative hearings, and using auctions to decide the pre-July 1, 1997 applications for new commercial radio or television broadcast stations allows the FCC to end the stay in effect since 1994 on comparative broadcast initial licensing cases. But the FCC seeks comment on whether there are special equitable considerations that warrant using comparative hearings to decide some of the pre-July 1 applications. Comment is also sought on whether the FCC must or should use auctions to award licenses in the Instructional Television Fixed Service, and on how to resolve pending comparative renewal cases, which are beyond the FCC's auction authority.

DATES: Comments are due January 26, 1998; Reply Comments are due February 17, 1998. Written comments by the public on the proposed and/or modified information collections are due January 26, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 10, 1998.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Copies of these pleadings should also be sent to the Mass Media Bureau, Video Services Division (Room 702) and Audio Services Division (Room 302), 1919 M St., N.W., Washington, D.C. 20554, and the Office of General Counsel, Room 610, 1919 M St., N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: John Riffer and S. Lee Martin, Office of General Counsel, (202) 418–1720, Jerianne Timmerman, Video Services Division, Mass Media Bureau, (202) 418–1643, and Lisa Scanlan, Audio Services Division, Mass Media Bureau, (202) 418–2720. For additional information concerning the information collections contained in this Notice contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, in MM Docket No. 97–234, GC Docket No. 92–52, and GEN Docket No. 90–264, adopted November 25, 1997 and released November 26, 1997. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th Street, N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This Notice contains either a proposed or modified information collection, subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due February 10, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: New.

Title: Notice of Proposed Rulemaking, Implementation of Section 309(j) of the Communications Act of 1934 (Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses) (MM Docket No. 97–234).

Form No.: FCC Form 175, FCC Form 301, FCC Form 346, FCC Form 349.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 7,289.

Estimated Time Per Response: Ranges from 45 minutes to 95 hours depending on the type of application filed.

Total Annual Burden: 20,051 hours.

Needs and Uses: The information contained on FCC Form 175, as well as any supplemental engineering information from FCC Forms 301, 346, or 349 required for various non-Table services (including new AM stations), will be used to determine mutual exclusivity for purposes of using competitive bidding procedures to award commercial broadcast licenses. And, in the event the Commission adopts bidding preferences or other measures to foster participation by small businesses, rural telephone companies, businesses owned by minority group members or women, and non-group owners, the proposed annual certification of continuing eligibility for such special measures will be used to prevent unjust enrichment resulting from the use of competitive bidding to award licenses.

Synopsis of Notice of Proposed Rulemaking

Background

1. The Commission has traditionally used comparative hearings to resolve mutually exclusive applications for new commercial full service broadcast stations. In 1992, the Commission initiated a rulemaking to reexamine the comparative criteria for resolving such applications, and two further notices of proposed rulemaking were adopted after the court in *Bechtel* v. *FCC*, 10 F.3d 875 (D.C. Cir. 1993) (*Bechtel II*), invalidated the central criterion used to decide such cases.

2. As part of the Balanced Budget Act of 1997, Congress: (1) amended section 309(j) of the Communications Act (Act) to require that the Commission award virtually all spectrum licenses, including commercial broadcast licenses, by competitive bidding proceedings if mutually exclusive applications are accepted; (2) amended section 309(i) of the Act to terminate Commission's authority to award commercial broadcast licenses by random selection after July 1, 1997; and (3) adopted new section 309(l) which authorizes (but does not require) the Commission to use auctions to resolve pending comparative licensing cases involving applications for new commercial radio or television stations filed before July 1, 1997.

Proposals to Resolve Comparative Initial Licensing Cases

3. Citing the advantages of using auctions to award spectrum licenses in terms of expediting service to the public, the Commission tentatively found that using auctions to resolve the narrow group of pending cases in which auctions are not statutorily required would better serve the public interest than comparative hearings. It asked commenters advocating continued use of comparative hearings for these cases to explain how their proposed criteria would be implemented in an administratively workable and judicially sustainable manner and how the proposed criteria would predict good or better service or serve some independent public interest goal. The Commission also sought comment on whether, even if auctions are used to resolve mutual exclusivity among most pre-July 1, 1997 applications, equitable concerns warrant comparative hearings in the few cases that had progressed to either a decision by an Administrative Law Judge, the former Review Board or the Commission before the court in *Bechtel II* found that the integration criterion was unlawful. Commenters should describe the equitable considerations that they believe would support the use of comparative hearings and the specific criteria they believe should be used, and explain how these criteria would further the equitable interests they have identified.

4. The Commission proposes to refund, upon request, hearing fees actually paid by applicants for applications that are ultimately decided by competitive bidding; and, as a matter of fairness, it proposes to refund, upon request, filing fees paid by applicants that do not participate in the auction.

Auction Procedures for Pending Applications Subject to Section 309(l)

5. Section 309(l) provides that, if the Commission decides to use auctions to resolve competing applications for commercial radio or television stations filed before July 1, 1997, it shall treat such persons as the only eligible bidders qualified to participate in the auction. The Commission tentatively found that this provision applies only if two or more mutually exclusive applications were filed before July 1, 1997. Thus, auctions are mandated by section 309(j) if all pending applications were filed after June 30, 1997, or if only one of a group of mutually exclusive applications was filed before July 1, 1997. Where two or more competing applications are filed before July 1, 1997, however, the Commission tentatively interpreted the provision to prohibit the opening of an additional filing window for new mutually exclusive applications or including, as eligible bidders, applicants who filed mutually exclusive applications after June 30, 1997. Recognizing that this could lead to a harsh result, particularly if it requires the dismissal of timely filed applications, the Commission asked for comment on whether there is any other legally permissible interpretation of the statute.

6. The Commission also concluded that only pre-July 1, 1997 applicants could take advantage of the provision requiring waiver of certain regulations for settlements filed within 180 days after enactment of the statute (i.e., by February 1, 1998). It indicated that it was also inclined to waive certain settlement policies, such as the prohibition against third party settlements set forth in *Rebecca Radio of Marco*, 5 FCC Rcd 937 (1990).

7. Following the expiration of the settlement period on February 1, 1998 and once the auction rules are effective, the Commission tentatively proposed to

announce those competing pre-July 1 applications eligible for resolution by competitive bidding procedures under section 309(l). It tentatively proposed to terminate the hearing proceeding if there are unresolved basic qualifying issues against any applicant. It further proposed to allow pending applicants to participate in the auction despite any unresolved qualifying issues, and to do so by filing a short-form application. But it asked whether it would be more efficient to decide basic qualifying issues before the auction for the small number of hearing cases. Also, the Commission would accept amendments to the long-form applications after the auction and then only if filed by the winning bidders. It proposed to accept petitions raising new issues only after a Public Notice announced any amendments to the winning bidder's application. It tentatively proposed to afford the winning bidder 30 days to file any amendments to its long-form application and 15 days to respond to any new petitions raising new issues.

8. After submission of the required down payment by the winning bidder in accordance with the general auction procedures and any special rules adopted for broadcast auctions in this proceeding, the ALJ or the Commission (in cases pending before the Commission) would resolve any unresolved issues in hearing cases, and if appropriate, grant the application and dismiss the long-form applications filed by the unsuccessful bidders. Where the hearing proceeding has terminated (because there are no outstanding hearing issues against any pending applicant), the Mass Media Bureau would rule on any new issues raised in petitions filed after termination of the hearing proceeding and either grant the application or designate it for hearing.

9. In non-hearing cases, the Commission proposed that all questions as to a pending applicant's basic qualifications, including questions involving the acceptability and tenderability of the application, would be resolved after the auction and only with respect to the winning bidder. If pending applicants fail to file short-form applications, the Commission proposed to dismiss their previously filed long-form applications. It proposed to accept petitions to deny or amendments to the long-form application after the auction, and asked for comment on affording the winning bidder 30 days to file any amendment to its long-form application. After the amendment period, it proposed to place the winning bidders' long-form applications on public notice, which would trigger the filing window for petitions to deny and to dismiss the previously filed long-form applications of the unsuccessful competing bidders following the grant of the winning bidder's construction permit. And, for these non-hearing comparative initial licensing proceedings it proposed to follow all other post-auction rules and procedures set forth in part 1 of the Commission's Rules and any service-specific rules adopted in this proceeding.

Auction Procedures for Other Pending Applications

10. Based upon the broad language of section 309(j) requiring the use of competitive bidding procedures to award initial licenses whenever mutually exclusive applications are accepted, the Commission tentatively found that section 309(l) is limited to mutually exclusive applications for new commercial full service radio or television stations filed before July 1, 1997. Thus, it tentatively concluded that auctions were required under section 309(j) for pending mutually exclusive applications for various secondary commercial broadcast services, even if filed before July 1, 1997, and for mutually exclusive applications for full service commercial radio and television stations filed after June 30, 1997.

11. Under this tentative interpretation, none of these pending applicants may take advantage of the provision requiring waiver of regulations for settlements filed before February 1, 1998. The Commission noted that these pending applicants could enter into settlements that comply with the statute and all applicable Commission rules, but it tentatively concluded that such agreements must predate the filing of any short-form applications because of the anti-collusion rules (which restrict communications among auction participants). The Commission asked for comment on whether it should further restrict settlement agreements, given that Congress, through the Balanced Budget Act, may have established auctions as the preferred method of awarding licenses where mutually exclusive applications are filed.

12. The Commission tentatively concluded that it was not required to restrict the class of bidders qualified to participate in auctions involving these other pending commercial broadcast applicants that are not subject to section 309(l). It asked for comment on how it should exercise its discretion under the statute, i.e., whether it should open a new filing window for additional applications that could be mutually exclusive with pending applications or whether it should keep the window closed.

13. The Commission proposed to conduct auctions in accordance with its general auction procedures and any service-specific procedures adopted in this proceeding. It proposed to announce by Public Notice the groups of pending mutually exclusive (long-form) broadcast applications eligible for resolution by competitive bidding, and the date by which those applicants must file short-form applications in order to participate in the auction. It proposed to dismiss the previously-filed, long-form application of any pending applicant who fails to file a short-form application. In the interest of efficiency, it tentatively proposed to conduct a single auction of all pending mutually exclusive broadcast applications that are not subject to the special provisions of new section 309(l) (and any application for any of these services filed in response to the Public Notice that is mutually exclusive with previously filed long-form applications). It asked for comment on this proposal, and on whether any changes are warranted in the proposed post-auction procedures for these applicants.

General Auction Procedures

14. The Commission did not propose to modify its existing licensing procedures, under which it grants a construction permit and the permittee subsequently applies for a license after constructing the broadcast facility. It cautioned that a permittee, who obtains a construction permit through an auction, must still satisfy the requirements for a license. Prospective bidders for various secondary broadcast services (i.e., low power television stations, television translators, FM translators) were also warned that a licensee does not have increased rights vis-a-vis any full service broadcaster because it received its authorization through an auction.

15. It asked for comments on whether to treat applications for modifications of existing broadcast facilities as "initial" applications that are subject to auction if mutually exclusive applications are filed, and on whether there are any legal, equitable or other considerations that would militate against using competitive bidding procedures for certain types of modification applications. Comment is also sought on whether to adopt any special procedures, such as bidding credits, for applicants proposing significant service to unserved or underserved areas, to accommodate section 307(b), 47 U.S.C. 307(b), of the Communications Act.

16. The Commission tentatively proposed to conduct broadcast auctions in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, subject to any changes that it ultimately makes in those rules in the ongoing part 1 rulemaking (or this proceeding), and substantially consistent with the bidding procedures used in previous Commission auctions. It proposed that such general competitive bidding rules should govern all future auctions. *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (Notice of Proposed Rulemaking)*, 62 FR 13570, 13570–71, March 21, 1997, 12 FCC Rcd 5686, 5698 ¶ 18 (1997). Commenters should review the proposed rules changes, as well as the issues raised there, and propose alternatives to any rules or proposed rules they believe to be inappropriate in the context of broadcast auctions. Comment is specifically sought on the advisability in the broadcast context of applying the Commission's anti-collusion rule, which strictly limits communications between competing bidders once a short-form application is filed, *see* 47 CFR 1.2105(c), and the bid withdrawal/default payment rules, which penalize the post-auction withdrawal of a high bid and the failure to submit a long form application or to pay a winning bid. *See* 47 CFR 1.2104(g); 1.2109.

17. The Commission tentatively proposed to use the simultaneous multiple-round competitive bidding design for broadcast auctions successfully used in previous auctions. But it seeks comment on alternate bidding designs that might be appropriate in the broadcast context, such as (1) sequential multiple-round auctions, using either oral ascending, remote or on-site electronic bidding; and (2) sequential or simultaneous single round auctions, using either remote and/or on site electronic bidding, or sealed bids. *See generally* 47 CFR 1.2103, as amended by *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (Order)*, 62 FR 13540, March 21, 1997, 12 FCC Rcd 5686, 5691 ¶ 6 & nn.9–12 (1997). It also noted the possibility of using combinatorial bidding, which permits bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round. Comment is also sought on whether different bidding methodologies are warranted for auctions that, pursuant to section 309(l), must be restricted to pre-July 1 applications, than for auctions that may be open to all qualified bidders, and whether the type of auction should vary depending on the type of service involved, the number of licenses at stake, how many bidders are likely to participate, and the degree to which interdependence may be important to qualified bidders. The Commission does not propose on-site bidding, and it seeks comment on whether to require bidders to bid electronically via computer, on whether this would be a hardship for certain bidders, and on whether bidders should have the option of bidding by telephone.

18. The Commission proposed that the Mass Media Bureau work in conjunction with the Wireless Telecommunications Bureau in setting the upfront payment, which will be announced by Public Notice before the time for filing short-form applications. It proposed to adhere to the part 1 rules on upfront payments, but sought comment on the appropriate amount, and method for determining the appropriate amount, of the upfront payment for bidders in broadcast auctions. It also proposed that the Mass Media Bureau work in conjunction with the Wireless Telecommunications Bureau to consider the use of reserve prices or minimum opening bids to be announced prior to the time for filing short-form applications for auctionable commercial broadcast services, unless it is determined, based on comments filed in this proceeding, that reserve prices or minimum opening bids would not serve the public interest. The Commission also sought comment on the appropriate methodology for establishing each of these mechanisms, and on alternative methods for estimating the value of the license, such as (1) using data on station transactions that are comparable in terms of station class and market characteristics, and (2) utilizing a financial model derived from data on the performance of operating stations (a) in the market that an applicant hopes to serve or (b) from a relevant comparable market.

19. The Commission also seeks comment on how it should deal with any "daisy chains" presented in auctions of AM radio, LPTV, or television or FM translator applications. Daisy chains occur when an application is mutually exclusive (*i.e.*, would cause interference) with a second application, which is mutually exclusive with a third application in the same or adjacent community, and so on, even though the first application may not be directly mutually exclusive with any application except the second. Depending on which applicant is the winning bidder among a mutually exclusive group, another application (in addition to the auction winner) may become grantable, or another smaller mutually exclusive group may still exist and need to be resolved. Comment is requested on the appropriate methods, such as combinatorial bidding, to resolve any daisy chains in the auction context.

20. To promote the orderly filing of applications for different services and to facilitate the determination of mutually exclusive groups for auction purposes, the Commission tentatively proposes to establish a specific time period or auction window during which applicants for AM, FM, television, LPTV, and television or FM translators must file applications in order to participate in an upcoming auction. Comment is sought on this more uniform window filing approach, which would replace the current disparate filing procedures for applications in all of these services.

21. Under the proposed auction procedures, prior to the auction applicants would file short-form applications (FCC Form 175), supplemented by any engineering data necessary to determine mutual exclusivity in non-table services, and only winning bidders would file long-form applications. To relieve prospective applicants of the time and expense associated with filing long-form applications (which would be reviewed only if an applicant were the high bidder), the Commission announced a temporary freeze, effective November 26, 1997, on the filing of all commercial broadcast and secondary broadcast applications pursuant to our existing procedures. Applications timely filed in response to an outstanding AM (or FM translator) cut-off list or an open FM window are exempt from the freeze. During the freeze, the Commission would continue to accept and process petitions for rulemaking requesting the allotment of new FM channels to the FM Table of Allotments, and applicants could apply for any such allotments during subsequently announced FM auction filing windows. Minor modification applications, and all applications for the reserved portion of the FM broadcasting band (Channels 200–220) are not subject to the freeze.

22. The Commission tentatively proposes to announce the auction and the window for filing short-form applications in a Public Notice. It also proposes to announce the window at least 30 days in advance, and to keep it open for at least five business days. Comment is sought on this proposal and on whether to have a combined filing window or separate filing windows for each type of broadcast or secondary

broadcast service. Except for the FM service, where applicants may only file for vacant FM channels reflected in the Commission's Table of Allotments, the Commission does not propose to limit filing windows on a geographic basis. It proposes to open filing windows for applications for commercial broadcast and secondary broadcast services as often as its resources allow, and may include certain auctions of construction permits for commercial broadcast facilities in the Commission's proposed quarterly auctions process. *See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (Order)*, 62 FR 13540, March 21, 1997, 12 FCC Rcd 5686, 5691–92 ¶ 7 (1997). But it did not make a commitment to include auctionable broadcast licenses in every quarterly auction.

23. Under the proposed window filing approach, applicants would file short-form applications (FCC Form 175), along with any engineering data necessary to determine mutual exclusivity in a particular service, only during an announced filing window. This procedure would apply to all applications for AM, FM, television, low power television, and FM or television translator stations, except for minor change applications. Thus, prospective applicants could no longer tender new FM applications on a "first come/first serve" basis, as they may do under current procedures. Minor modification applicants in these services would not be subject to the window filing requirement even if the Commission ultimately decides to use auctions to resolve mutually exclusivity among major change applications. But two or more FM, AM, television or LPTV minor modification applications can be mutually exclusive under current rules. The Commission seeks comment on how to resolve such applications.

24. The Commission proposes that FM applicants would apply by submitting during the announced filing window an FCC Form 175 application for any vacant allotment specified in the public notice announcing the opening of the window. Applications specifying the same vacant FM allotment(s) would be mutually exclusive, and no supplemental engineering data would be necessary to make this determination. Applicants for new AM stations, LPTV stations, and television and FM translators would file short-form applications specifying a frequency or channel upon which the applicant could operate in accordance with the Commission's existing interference standards for these services, *see* 47 CFR 73.37, 73.182 and 73.187 (AM interference rules); 47 CFR 74.703, 74.705, 74.707 and 74.709 (LPTV and television translator interference rules); and 47 CFR 74.1203 and 74.1204 (FM translator interference rules). The Commission does not propose to change these interference standards. To determine which AM, LPTV, and television and FM translator applications are mutually exclusive for auction purposes, the Commission expects to require applicants for these services to file, in addition to their short-form applications, the engineering data contained in the pertinent FCC Form (*i.e.*, FCC Form 301, FCC Form 346 or FCC Form 349). And, if the Commission ultimately decides to auction mutually exclusive applications for major modifications of existing facilities, analog television licensees filing such applications would be required to file both an FCC Form 175 and the engineering data contained in an FCC Form 301.

25. The Commission proposes to require that all FCC Form 175 applications for broadcast auctions be filed electronically, and asks for comment on whether this would be burdensome for applicants for the secondary broadcast services. It also seeks comment on its proposal to require, as necessary to determine mutual exclusivity in non-table services, the filing of the engineering data contained in the FCC Form 301, FCC Form 346 or FCC Form 349, at the same time that the short-form is filed.

26. *Pre-Auction Processing:* The Commission seeks comment on whether to limit its pre-acceptance review of any engineering data submitted with the FCC Form 175 to only what is necessary to determine which applications are mutually exclusive with each other, or whether to engage in more extensive pre-auction processing, whereby it would return as unacceptable applications with technical problems that cannot be resolved by amendment. It noted that the first approach would save considerable Commission resources, but had a significant downside in that it may result in technically unacceptable applicants participating and perhaps prevailing in the auction. This, in turn, could require that the Commission reauction the license and afford new parties an opportunity to file applications. It noted that a more extensive pre-auction review could slow the auction, but that the auction could proceed with the understanding that the rights of any winning bidders would be subject to the outcome of any petitions for reconsideration of the return of unacceptable applications.

27. Once it determines mutual exclusivity among the short-form applications filed in response to a window, the Commission would identify by public notice(s) the applicants in each group of mutually exclusive applications who are eligible to bid on construction permits for the allotments or channels identified in their short-form applications. Such public notices would provide more detail on the time, place and method of competitive bidding to be used, as well as applicable bid submission and payment procedures, the deadline for submitting the upfront payments, the amounts of the upfront payments and any minimum opening bid or reserve price, all pursuant to the auction rules then in place. A Public Notice would also identify any applications submitted in response to an announced window not subject to auction (because such applications were not mutually exclusive with any other application in the same service), and the date by which such applicants must file their long-form applications (FCC Form 301, FCC Form 346 or FCC Form 349). The Commission tentatively proposes to afford such applicants 30 days to file their complete long-form applications, and seeks comment on that proposal.

28. *Post-Auction Procedures:* The Commission proposes to follow as closely as possible its general post-auction procedures and payment requirements set forth in part 1 of the rules, and seeks comment on their applicability to auctions of mutually exclusive broadcast applications. Specifically, it would announce the high bidder by Public Notice and afford it 10 business days to make the required down payment and 30 days to file a complete FCC Form 301, FCC Form 346 or FCC Form 349 long-form application for each construction permit for which it was the high bidder. Comment is sought on these proposals and on whether it should follow 47 CFR 1.1207, which requires that the down payment (plus the upfront payment) must be at least 20% of the winning bid. The Commission also seeks comment on whether it would be appropriate to establish a period, such as 5 days, for the filing of petitions to deny against the winning bidder's long-form application, as is permitted by section 3008 of the Balanced Budget Act of 1997. It also proposes to require full payment of the balance of the winning bid within 10 business days of the Public Notice announcing the grant of the construction permit. It seeks comment on this proposal and on whether to modify any existing service-specific rules relating to the processing and reviewing of FCC Form 301, FCC Form 346 and FCC Form 349 applications.

29. To facilitate the auction process, the Commission proposes to relax certain rules limiting the number and the timing of filing of curative amendments to long-form applications, *see* 47 CFR 73.3522, 73.3564, but it does not propose to change the definition of "major amendment" in the various services. *See* 47 CFR 73.3571 (AM radio), 47 CFR 73.3572 (television, LPTV, television translators), 47 CFR 73.3573 (FM radio), or propose that deficiencies in long-form applications would be curable by major amendment. Thus, it proposes that winning bidders must file major amendments to long-form applications within an announced filing window.

30. To avoid new instances of mutually exclusivity, which may arise if a long-form FM application proposes a site other than one protected pursuant to the Table of Allotments, the Commission proposes that applicants not be allowed to file FM long-form applications in conflict with any previously filed commercial or non-commercial application. It proposes further that long-form FM applications would have "cut-off" protection as of the date they are filed with the Commission, and that commercial FM modification applications must protect any previously or simultaneously filed application in the reserved band, in order to eliminate the possibility of creating a cross-band mutually exclusive situation. In addition, the Commission seeks comment on how the auction process for FM translators would work in relation to the specific provisions of 47 CFR 74.1203(a) & (b) and 74.1232(h), and other rules providing for the cancellation of a construction permit under certain circumstances and affording FM broadcasters the right to object to proposed FM translators likely to interfere with the reception of a regularly received existing service, even if there is no prohibited contour overlap.

31. The Commission requests comment on whether any existing requirements contained in the FCC Form 301, FCC Form 346 and FCC Form 349 applications may be eliminated. It proposes to delete the "reasonable assurance" of site certification from the FCC Forms 301, 346 and 349, and to rely on strict enforcement of the existing construction requirements to ensure that winning bidders in future broadcast auctions construct their facilities in a timely manner, *see* 47 CFR 73.3598 (establishing two-year construction period for television stations and 18-month construction period for AM, FM and LPTV stations, as well as television and FM translators).

Designated Entities

32. *Small Businesses/Rural Telephone Companies.* To fulfill its statutory responsibilities under section 309(j)(4)(D), the Commission seeks comments on whether it should adopt bidding credits or other tools to ensure the participation of small businesses and rural telephone companies in the provision of these services, and on how we should define small business for any special provisions we may adopt. It specifically seeks comment on which of the small business size standards based on gross revenue ceilings of $3 million, $15 million, or $40 million used in other services is most applicable to auctions of commercial broadcast licenses, or whether an alternative size standard would be more appropriate.

33. *Minority Ownership.* The Commission is concerned about the underepresentation of minorities as owners of broadcast stations and the implications for program diversity, and tentatively concludes that, to the extent that it complies with applicable constitutional standards, it should take steps to further the longstanding goal of increasing minority ownership of broadcast stations, as well as implementing the designated entity provisions of section 309(j)(4) of the Act. *See Metro Broadcasting, Inc.* v. *FCC*, 497 U.S. 547 (1990), finding that broadcast diversity is an important governmental objective and upholding our treatment of minority ownership in comparative proceedings under an intermediate scrutiny standard. It asks for comment on how to do this, consistent with the standards set forth in *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200 (1995), a subsequent Supreme Court decision establishing that policies that take race into account are reviewed under a strict (as opposed to intermediate) scrutiny standard.

34. In the event special provisions are adopted for businesses owned by minorities, the Commission must develop eligibility standards to ensure that the scope of its program is appropriate. It thus seeks comment on appropriate eligibility standards to further its goal specifically. The alternatives include (1) requiring that minorities have *de facto* and *de jure* control of the applicant, own more than 50 percent of the equity on a fully diluted basis, and meet the eligibility standards set forth in 47 CFR 1.2110(b)(2); and (2) a standard similar to what was adopted but never implemented for the broadband PCS auctions (i.e., minorities must have the right to receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock and the right to receive dividends, profits and other distributions from the business in proportion to their equity interests). The Commission also seeks comment on whether, to determine eligibility, it should attribute fully (a) options or conversion rights held by non-minorities unless the decision to exercise the option or conversion rights is beyond the control of the ostensibly passive non-minority owner; (b) the interests of any individual or entity that played a significant role as a promoter in forming the applicant; and (c) any non-voting stockholder unless the corporate documents unequivocally require insulation of the non-voting stockholder from participation in the licensee's affairs to the same extent that a limited partner must be insulated.

35. *Female Ownership:* The Commission also asks for comments on whether special policies are warranted for female-owned applicants, and whether there is sufficient evidence to justify special provisions for women-owned businesses under applicable constitutional standards. *See United States* v. *Virginia Military Institute*, 116 S.Ct 2264, 2274–76 (1996) requiring an "exceedingly persuasive justification" to support a state program that made distinctions based upon gender.

36. *Diversification of Ownership.* Diversification of ownership is one of the two primary objectives of the Commission's current licensing system and remains a viable public interest consideration. Given the significant advantage that group owners are likely to have over newcomers in auctions, the Commission seeks comment on whether to adopt some measure in the competitive bidding process that is specifically designed to promote diversification of ownership.

37. To the extent bidding credits are adopted for small businesses, minorities, women, non-group owners or others, the Commission asks for comment on what those credits should be and whether, and to what extent, any such bidding credits should be tiered, as it has done in other auction contexts.

38. To fulfill its statutory obligation to prescribe rules to "prevent unjust enrichment as a result of the methods employed to issue licenses and permits," 47 U.S.C. 309(j)(4)(E), the Commission tentatively proposes to require that, for a period of five years following Program Test Authority, broadcast licensees granted a new license through any designated entity or

diversification bidding credits or other special provision must certify annually their continuing eligibility for such credit or provision, under the rules in effect at the time the license was awarded, and report within 30 days any change affecting such eligibility. It seeks comment on this proposal.
Alternatively, the Commission seeks comment on granting a one-time bidding credit, requiring the licensee to hold the station for five years but allowing licensees to bid for additional licenses during the five-year period.

39. And, as a condition for Commission approval for the transfer or assignment of the license to an entity ineligible for the bidding credit or other special provision obtained by the licensee, or for other ownership changes rendering the licensee ineligible for a previously awarded bidding credit or other provision during that five-year period, the Commission tentatively proposes to require a monetary reimbursement to the Treasury for the previously awarded bidding credit. It seeks comment on how to calculate the unjust enrichment payment, on whether there are any mitigating circumstances that would justify excusing altogether or reducing the unjust enrichment payment, and on whether measures other than monetary penalties and reporting requirements are necessary.

Auction Authority for Instructional Television Fixed Service

40. The Instructional Television Fixed Service (ITFS) is a point-to-point microwave service whose licensees have certain characteristics in common with the noncommercial educational and public broadcast stations which are specifically exempted from our section 309(j) auction authority. There is, however, no express exemption for ITFS licenses from the requirement that the Commission must use competitive bidding procedures to award licenses if mutually exclusive applications are filed, and the Commission seeks comment on whether it must, and if not, whether it should, apply competitive bidding to mutually exclusive ITFS applications. If it concludes that it must, or should, auction mutually exclusive ITFS applications, the Commission tentatively proposes to apply the general auction rules adopted in this proceeding for broadcast applications to ITFS applications as well. Comment is sought on this proposal.

Proposals for Pending Broadcast Comparative Renewal Proceedings

41. The Commission does not believe that auctions are a legally available option in pending comparative renewal proceedings, and it seeks comment on how to resolve pending comparative renewal cases. It tentatively proposes that, if it decides to use auctions to resolve the pending comparative initial licensing cases and if the few remaining comparative licensing cases do not settle, it will adopt the two-step renewal procedure previously developed for comparative cellular renewal proceedings. Commenters should address whether this approach, which would be analogous to the procedures for new renewal cases set forth in section 309(k), which eliminates comparative renewal proceedings for renewal applications filed after May 1995, is judicially sustainable. The Commission also asks for comment on whether, as an alternative to the two-step procedure, or in conjunction with the two-step hearing that reaches the second stage, it should consider any comparative factors raised by the applicants on a case-by-case basis.

Procedural Matters

42. This is a permit-but-disclose notice and comment rulemaking. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed, as specified in the Commission's rules.

43. Authority for this rulemaking is contained in 47 U.S.C. 154(i), 154(j), 303(r), 309(g), 309(i), 309(j), 309(l), 403.

Initial Regulatory Flexibility Analysis

44. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and procedures proposed in this Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Secretary shall send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

I. Need for and Objectives of the Proposed Rules

45. This rulemaking is initiated to implement the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 251 (1997), which amended section 309(j) and adopted new section 309(l) of the Communications Act. Comments are sought on: (1) proposed auction procedures to award initial licenses in the broadcast services and secondary broadcast services; (2) whether the Commission should use auctions or comparative hearings to resolve pending comparative initial licensing proceedings involving competing applications for commercial radio and television stations filed before July 1, 1997, as authorized by new section 309(l); (3) whether amended section 309(j) requires the use of auctions to award initial licenses for Instructional Television Fixed Services; and (4) how to resolve pending comparative renewal proceedings, which cannot be resolved by auction pursuant to amended section 309(j).

II. Legal Basis

46. This Notice is authorized under the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 251, Title III, Section 3002, and Sections 4(i), 4(j), 303 (r), 309(g), 309(i), 309(j), 309(l), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 309(g), 309(i), 309(j) 309(l), and 403.

III. Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

47. Under the RFA, small entities include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."[2]

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA).

[2] We tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not particularly suitable for our purposes, and we specifically seek comment on how we should define small business for this purpose. However, for purposes of this Notice we are utilizing the SBA's definition in determining the number of small businesses to which any auction procedures or revised comparative criteria would apply. In this regard, we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations. *See Fifth Report and Order* in MM Docket No. 87–268 (*Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*), FCC 97–116 at 62 (April 27, 1997), 62 FR 26996, May 16, 1997 ; *Report and Order* in MM Docket No. 93–48 (*Children's Educational and Informational Programming*), 61 FR 43961, 43992 (August 27, 1996), citing 5 U.S.C. 601 (3). *See also Order and Notice of Proposed Rulemaking* in MM Docket No. 96–16 (*Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*), 61 FR 9964, March 12, 1996, 11 FCC Rcd 5154 (1996), requesting comment as to whether relief should be afforded to the stations: (1) based on staff size and what size should be considered sufficient for relief (e.g., 10 or fewer full-time employees); (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

48. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[3] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[4] Included in this industry are commercial, religious, educational, and other radio stations.[5] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[6] The 1992 Census indicates that 96 percent of radio station establishments (5,861 of 6,127) produced less than $5 million in revenue in 1992.[7] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[8] As of September 30, 1997, official Commission records indicate that 12,227 radio stations and 2836 FM translator/booster stations were licensed.[9]

49. Additionally, the Small Business Administration defines a television broadcasting station that is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts as a small business.[10] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[11] Included in this industry are commercial, religious, educational, and other television stations.[12] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[13] There were 1,509 television stations operating in the nation in 1992.[14] That number has remained fairly constant, as indicated by the approximately 1,563 full power television stations, 2027 low power television stations, and 4994 television translator stations licensed as of September 30, 1997.[15] In 1992,[16] there were 1,155 television station establishments that produced less than $10.0 million in revenue.[17]

50. In addition, there are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity. ITFS is a non-pay, non-commercial educational microwave service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we tentatively conclude that up to 1932 of these licensees are small entities. We seek comment on this conclusion.

51. In the event the Commission decides, for equitable considerations or other reasons, to hold comparative hearings to resolve certain mutually exclusive pending applications for new commercial radio and television stations filed before July 1, 1997 or for a subset of such pending cases, any new comparative criteria developed in this proceeding will apply to these pending pre-July 1, 1997 applications. We estimate that there are approximately 1475 pending applicants for a new commercial radio or full power television station filed before July 1, 1997 that might be decided by comparative hearing rather than by auctions.

52. Any auction procedures developed in this proceeding for all licenses to provide commercial broadcast service or secondary broadcast service that are presently subject to auction will affect: (1) any entity with a pending application for a construction permit for a new commercial radio or full power television broadcast station, if all mutually exclusive applications were filed after June 30, 1997; (2) any entity with a pending application for a construction permit for a new commercial radio or full power television station filed before July 1, 1997, if mutually exclusive applications were filed and none of the competing applications is a renewal application and if the Commission decides that such initial license applications should be subject to auction; (3) any entity that files an application in the future for a new commercial radio or full power analog television station if mutually exclusive applications are accepted; (4) any entity having a pending application on file, or filing an application in the future, for a new low power television station, or a television or FM translator station, if mutually exclusive applications are accepted; (5) any entity that has a pending or future application to make a major change in an existing facility in any commercial broadcast or secondary broadcast service, if mutually exclusive applications are accepted and if the Commission decides to auction such major change applications; and (6) any entity that has a pending or future ITFS application, if mutually exclusive applications are accepted and if the Commission decides that it must, or should, auction mutually exclusive ITFS applications.

53. If auction procedures are adopted in this proceeding, all entities that file applications for construction permits to provide commercial broadcast service before the effective date of any such auction procedures must submit a completed short-form application (FCC Form 175) and any engineering information necessary to determine mutual exclusivity, if resolution of their applications is subject to competitive

[3] 13 CFR 121.201, Standard Industrial Code (SIC) 4832 (1996).

[4] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A–9.

[5] *Id.*

[6] *Id.*

[7] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[8] FCC News Release No. 31327, Jan. 13, 1993.

[9] FCC News Release No. 80286, Nov. 6, 1997.

[10] 13 CFR 121.201, SIC 4833.

[11] Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[12] *Id.*

[13] *Id.*

[14] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, *supra* note , Appendix A–9.

[15] FCC News Release 80286, Nov. 6, 1997.

[16] Census for communications establishments are performed every five years, during years that end with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9, III (1995).

[17] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

bidding procedures. This requirement would also apply to entities that file applications for construction permits to make major changes in existing commercial broadcast stations during this period if the Commission ultimately decides to resolve mutual exclusivity among competing major change applications by competitive bidding. In the event that an applicant is the winning bidder, it must submit a long-form application that would then be reviewed by the agency. We estimate that, as of October 31, 1997 there are approximately 1475 pending applicants for a new commercial radio or full power television station filed before July 1, 1997; approximately 315 pending applications for new radio and full power television stations filed after June 30, 1997 that are mutually exclusive with permit applications filed after that date; approximately 100 pending applications for new low power television stations/television translator stations; and approximately 24 pending applications for translator stations. All of these pending mutually exclusive applications will be subject to any auction procedures for analog broadcast service adopted in this proceeding.

54. Applicants for construction permits are required to demonstrate sufficient financing to construct and initially operate the proposed station. However, we do not require the filing of financial information concerning the entity seeking a construction permit. Thus, except for those applicants already owning a broadcast station that seek a permit to construct additional stations, we have no data on file as to whether entities with pending permit applications, which are subject to the new auction rules for analog broadcast service, meet the Small Business Administration's definition of small business concern. We assume for the purposes of this IRFA that most of the entities formed for the purpose of applying for a permit to construct a new radio broadcast station or a television station are small entities, as defined by the SBA rules.

55. In addition to the pending applicants that may be affected by the proposed auction procedures for analog broadcast service, any entity that applies for a construction permit for a new radio or television station in the future will be subject to the proposed auction procedures if mutually exclusive applications are filed. The number of entities that in the future may seek a construction permit for a new analog broadcast station is unknown. We anticipate, however, that due to the passage of the Telecommunications Act of 1996 and corresponding changes in our multiple ownership and attribution rules, the characteristics of future broadcast applicants may be somewhat different from those of pending applicants. We invite comment as to the number and characteristics of future applicants for new commercial analog broadcast stations, and for commercial facilities in the various secondary broadcast services.

56. The new auction procedures would not apply to entities that filed applications for construction permits after June 30, 1997 for new commercial radio and full power television stations that are mutually exclusive with two or more pending initial license applications filed before July 1, 1997. We estimate that as of October 31, 1997, there were approximately 7 such applications (5 radio and 2 TV) that will be ineligible to participate in an auction to choose among mutually exclusive pre-July 1 applications for new commercial broadcast stations.

57. In addition, any competitive bidding procedures developed for analog broadcast service will not apply to the few pending comparative renewal cases. Resolution of these cases will depend on any comparative criteria, two-step renewal process or other basis adopted in this proceeding for deciding these comparative renewal cases. This will affect broadcast station licensees that filed their applications for renewal of license on or before May 1, 1995 and any pending initial license applications that are mutually exclusive with such renewal applications. We estimate that there are approximately 9 initial license applications that are mutually exclusive with 8 pending renewal applications. This includes approximately 15 television applicants and 2 radio applicants.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

58. Comment is sought on what filing and compliance requirements should be associated with any competitive bidding procedures consistent with the Commission's statutory obligations to require such transfer disclosures and other measures necessary to prevent unjust enrichment and the court's concerns in *Bechtel* regarding reliance on purely ephemeral licensing considerations. The Notice tentatively proposes that, if bidding credits or other special provisions are adopted for any designated entities and/or non-group owners, licensees benefitting from such special provisions must annually certify for five years their continuing eligibility for such bidding credit or special provision under the rules in effect at the time the license was awarded, and report any changes in such eligibility within 30 days. In addition, applications for construction permits, short-form auction applications, and other submissions will be required of those falling within any proposed competitive bidding procedures, as described in Section III of this analysis.

V. Significant Alternatives To Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

59. This Notice contains no significant alternatives because amended section 309(j) requires that the Commission use competitive bidding procedures to award virtually all licenses, including construction permits for new commercial broadcast facilities, and this requirement applies to most pending broadcast applications, except for comparative licensing cases that involve applications for new full service radio and television stations filed before July 1, 1997. *See* ¶¶39–82. As to that narrow category of applications, *see* ¶¶23–28, in which the Commission has the authority to resolve mutually exclusivity by comparative hearings rather than by competitive bidding procedures, the Commission's discretion is nevertheless constrained by the court's decision in *Bechtel* v. *FCC*, 10 F.3d 875 (D.C. Cir. 1993), and the potential difficulty of devising judicially sustainable comparative criteria. Although the Notice tentatively concludes that, from a public interest standpoint competitive bidding procedures are preferable in these cases, *see* ¶¶13–20, it asks for comment on whether there are equitable reasons to decide these cases, or a subset of these cases, by comparative hearings. Moreover, we believe that the proposed competitive bidding procedures for all future, and, potentially, all pending, applications for construction permits to provide commercial broadcast service that are presently auctionable under the statute will have a minimal impact on small entities who apply for and obtain broadcast licenses. Also, to minimize any possible impact on small businesses, the Notice asks for comment on whether bidding credits or other special provisions are warranted for small businesses, including those owned by members of a minority group or women and for rural telephone companies. The Notice further concludes that, to the extent that it is permissible under applicable constitutional standards, the Commission should take steps to further its longstanding goal of increasing minority ownership of broadcast stations and implementing the designated entity provisions of section 309(j)(4) of the Act.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

60. None.

Ordering Clauses

61. *Accordingly, It is Ordered, That Notice is Hereby Given of the proposed regulatory changes described above, and that Comment is Sought* on these proposals.

62. It Is Further Ordered, That pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, comments *Shall Be Filed* on or before January 26, 1998 and reply comments *Shall Be filed* on or before February 17, 1998. To file formally in this proceeding, commenters must file an original and four copies of all comments, reply comments, and supporting documents filed in this proceeding. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. In addition, commenters should file copies of any such pleadings with the Mass Media Bureau, Video Services Division, Room 702, and Audio Services Division, Room 302, 1919 M St., N.W., Washington, D.C. 20554, and with the Office of General Counsel, Room 610, 1919 M St., N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M St., N.W., Washington, D.C. 20554.

63. It Is Further Ordered, That written comments by the public on the proposed and/or modified information collections are due January 26, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 10, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

64. It is Further Ordered, That, effective upon the close of business on the date of release of this Notice of Proposed Rulemaking, the Commission *Will Not Accept* applications for construction permits for new stations or for major changes to existing facilities in any commercial broadcast or secondary broadcast service. However, the Commission *Will Accept* applications timely filed in response to an outstanding cut-off list or an open filing window.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32520 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 7]

RIN 2130–AA75

Track Safety Standards; Miscellaneous Proposed Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking, request for additional comments.

SUMMARY: This notice contains information about a document entitled, "Evaluation of Proposed High Speed Track Surface Geometry Specification" which addresses proposed track safety standards for high speed rail and was submitted to FRA by the Volpe National Transportation Systems Center (VNTSC). The document was submitted after the close of the comment period for the Notice of Proposed Rulemaking to revise the Federal track safety standards, published July 3, 1997 at 62 FR 36138. Because the contents of the submission may affect the outcome of the final rule in this proceeding, this notice solicits comments on the document.

DATES: The deadline for submission of comments to the VNTSC document is December 22, 1997.

ADDRESSES: To view the VNTSC document: The VNTSC document for which FRA is soliciting comments may be reviewed in Room 7051 of FRA headquarters at 1120 Vermont Avenue, N.W., Washington, D.C.

Written comments: Written comments should identify the docket number and the notice number and should be submitted in triplicate to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should include with their comments a stamped, self-addressed postcard. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination during regular business hours in Room 7051 of FRA headquarters at 1120 Vermont Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David W. Jamieson, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 (telephone: 202–632–3341), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–632–3174).

SUPPLEMENTARY INFORMATION: This notice summarizes a working paper issued recently by the VNTSC entitled, "Evaluation of Proposed High Speed Track Surface Geometry Specification," dated December 1, 1997. The working paper has been placed in the docket for this proceeding. The working paper evaluates the response of different high speed locomotive designs to track profile geometry variations. It focuses on a comparative analysis of high speed locomotive designs with carbody-mounted traction motors and locomotive designs with truck-mounted traction motors. The minimum amplitudes of track profile variations required to cause excessive vertical accelerations in the operator's cab and to cause suspension bottoming are compared with the maximum amplitudes prescribed in the proposed high speed track safety standards published in a Notice of Proposed Rulemaking on July 3, 1997. The analysis shows that a locomotive designed with truck-mounted traction motors requires an approximately 33 percent smaller track profile variation amplitude to cause excessive vertical accelerations than a locomotive designed with carbody-mounted traction motors.

The analysis contained in the VNTSC working paper may affect the outome of the final rule for this proceeding. Therefore, FRA invites comments relevant to the information included in the working paper.

Issued in Washington, D.C. on December 5, 1997.

Edward R. English,

Director, Office of Safety Enforcement, Federal Railroad Administration.

[FR Doc. 97–32510 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[I.D. 042597B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Gulf of Maine Harbor Porpoise Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reopening of public comment period.

SUMMARY: On August 13, 1997, NMFS published proposed regulations to implement a plan to reduce the bycatch and mortality of harbor porpoises that occur incidental to sink gillnet fishing in the Gulf of Maine. The public comment period for the proposed regulations ended on October 14, 1997. NMFS is hereby reopening the public comment period for an additional 30 days. The comment period will reopen on December 16, 1997, and extend until January 14, 1998.

DATES: Written comments must be received on or before January 14, 1998.

ADDRESSES: Send comments on the proposed regulations to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, or by calling (301) 713-2322. Copies of the draft Harbor Porpoise Take Reduction Plan (HPTRP) and Environmental Assessment are available upon request from Douglas Beach, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, or from Donna Wieting, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, NMFS, 508–495–2291 or Donna Wieting, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION: On August 13, 1997 (62 FR 43302), NMFS published a proposed regulation to implement a plan to reduce the bycatch and mortality of harbor porpoises that occur incidental to sink gillnet fishing in the Gulf of Maine. These regulations were based on a draft HPTRP submitted by the Gulf of Maine Harbor Porpoise Take Reduction Team (HPTRT) pursuant to the Marine Mammal Protection Act. The notice indicated that comments must be received by October 14, 1997.

NMFS has decided to reconvene the HPTRT on December 16 and 17, 1997. NMFS has, therefore, decided to reopen the public comment period on the proposed regulations for an additional 30 days from the first date of the HPTRT meeting.

Dated: December 8, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–32474 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971124274–7274–01; I.D. 110597A]

RIN 0648–AH67

Fisheries of the Exclusive Economic Zone Off Alaska; Forage Fish Species Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 36 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 39 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This action would define a forage fish species category in both FMPs and implement associated management measures. The intended effect of this action is to prevent the development of a commercial directed fishery for forage fish, which are a critical food source for many marine mammal, seabird, and fish species. This action is necessary to conserve and manage the forage fish resource off Alaska and to further the goals and objectives of the FMPs.

DATES: Comments on the proposed rule must be received at the following address by January 26, 1998.

ADDRESSES: Comments must be sent to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th. Street, Juneau, AK. Copies of the proposed FMP amendments and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendments 36 and 39 are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and of the Gulf of Alaska (GOA) are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI and GOA appear at 50 CFR parts 600 and 679.

The Council has submitted Amendments 36 and 39 for Secretarial review and a Notice of Availability (NOA) of the FMP amendments was published on November 12, 1997 (62 FR 60682), with comments on the FMP amendments invited through January 12, 1997. Written comments may address the FMP amendments, the proposed rule, or both, but must be received by January 12, 1997, to be considered in the approval/disapproval decision on the FMP amendments.

Management Background and Need for Action

Forage fish are abundant fishes that are preyed upon by marine mammals, seabirds, and commercially important groundfish species. Forage fish perform a critical role in the complex ecosystem functions of the BSAI and the GOA by providing the transfer of energy from the primary or secondary producers to higher trophic levels.

Significant declines in marine mammals and seabirds in the BSAI and GOA have raised concerns that decreases in the forage fish biomass may contribute to the further decline of marine mammal, seabird, and commercially important fish populations. Forage fish are the principal diet of more than two thirds of Alaskan seabirds. In addition, many seabirds can subsist on a variety of invertebrates and fish during nonbreeding months but can only raise their nestlings on forage fish. Small forage fish such as capelin, herring, sandlance, and eulachon have also been recognized as important prey items for a variety of marine mammal species including Northern fur seal, Steller sea lion, harbor seal, spotted seal, bearded seal, humpback whale, and fin whale. Additional information on forage fish and their role in the ecosystem is available in the EA/RIR prepared for Amendments 36 and 39 (see **ADDRESSES**).

Members of the fishing industry and public have expressed concern that the current FMP structure may allow unrestricted commercial harvest to occur on forage fish species because these species are currently grouped into the "other species" and non-allocated categories of the FMPs. In addition, the International Council for the Exploration at Sea (ICES) has recently recommended that fishery managers develop measures to avoid the commercial targeting of food resources that are important to marine mammals and seabirds. Establishing forage fish as a separate category in the FMPs would provide the mechanism to better manage these species.

Forage Fish Species Category

Amendments 36 and 39 would establish a new species category for forage fish. The forage fish species category would include all species of the following families:

Osmeridae (eulachon, capelin, and other smelts),

Myctophidae (lanternfishes),

Bathylagidae (deep-sea smelts),

Ammodytidae (Pacific sand lance),

Trichodontidae (Pacific sand fish),

Pholidae (gunnels),

Stichaeidae (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),

Gonostomatidae (bristlemouths, lightfishes, and anglemouths), and the Order *Euphausiacea* (krill).

These species have been grouped together because they are considered to be primary food resources for other marine animals and they have the potential to be the targets of a commercial fishery.

Management Measures Proposed for Forage Fish

Affected Vessels and Processors

The following management measures would apply to all vessels fishing for groundfish in the Federal waters of the BSAI or GOA or processing groundfish harvested in the Federal waters of the BSAI or GOA. These management measures do not limit traditional or subsistence harvests of forage fish species from within State waters.

Prohibition on Directed Fishing

Under Amendments 36 and 39, directed fishing for forage fish would be prohibited at all times in the Federal waters of the BSAI and GOA. A maximum retainable bycatch (MRB) percentage of 2 percent would be established for forage fish, meaning that vessels fishing for groundfish could retain a quantity of forage fish equal to no more than 2 percent of the round weight or round-weight equivalent of groundfish species open to directed fishing that are retained on board the vessel during a fishing trip. NMFS data indicate that the aggregate percentage of forage fish incidentally caught in current groundfish fisheries rarely exceeds 2 percent, and many vessels rarely or never encounter catch of forage fish species. Consequently, bycatch of forage fish species is not considered a problem in the groundfish fisheries off Alaska, and the 2-percent MRB is unlikely to result in increased discards of forage fish species.

Harvest Quotas

Insufficient information exists upon which to specify a total allowable catch amount (TAC) for forage fish species. Therefore, Amendments 36 and 39 do not establish procedures for establishing an annual TAC for forage fish species. However, by establishing a new species category for forage fish, NMFS will be able to collect additional data on forage fish from vessel logbooks, weekly production reports, and observer reports. This information may be used to evaluate the need for and appropriateness of other management measures for forage fish species.

Limits on Sale, Barter, Trade or Processing

The sale, barter, trade, or processing of forage fish species would be prohibited for vessels fishing for groundfish in the Federal waters of the BSAI or GOA, or processing groundfish harvested in the BSAI or GOA, except that retained catch of forage fish species not exceeding the 2-percent MRB may be processed into fishmeal and sold. The Council chose to allow processing of forage fish into fishmeal within the 2-percent MRB amount to avoid placing an undue burden on operations that process unsorted processing waste into fishmeal. Industry representatives indicated that separating small quantities of forage fish from the volumes of fish and fish waste entering a fishmeal plant would be nearly impossible. The small volumes of fishmeal production that would be allowed under this rule are not expected to provide an incentive for vessels to target on forage fish through "topping off" activity.

These restrictions would not apply to onshore processors due to limitations of the Secretary's authority under the Magnuson-Stevens Act. At the June 1997 Council meeting, the State of Alaska indicated that it intends to proceed with parallel forage fish regulations to restrict the harvest of forage fish within State waters and the processing of forage fish by onshore processors.

Classification

At this time, NMFS has not determined that the amendments that this rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made the following certification to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This action would affect a substantial number of small entities because the proposed management measures would apply to all vessels fishing for or processing groundfish in the Federal waters off Alaska. However, the impacts of the proposed action would not be "significant" the purpose of the Regulatory Flexibility Act (RFA). Compliance costs would not be significant because vessels fishing for groundfish rarely, if ever, incidentally harvest forage fish in quantities that would exceed the proposed 2-percent MRB. While vessel operators would be required to monitor catch and discards of forage fish as part of their normal recordkeeping and reporting requirements, these compliance costs would not reduce annual gross revenues by more than 5 percent, increase total costs of production by more than 5 percent, or result in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. The proposed action would affect fishermen who wish to target forage fish. Several vessel operators have expressed interest in pursuing the capelin fishery and have done so in the past. Alaska Department of Fish and Game records indicate that between 1984 and 1994, six vessels harvested a combined total of 1,493 mt of capelin from the Togiak region of Bristol Bay. These six vessels do not represent a substantial number of small entities for purposes of the RFA. Although NMFS does not have data on how great a

percentage of these six vessels' annual incomes derives from the directed capelin fishery, it is unlikely that any of these vessels would experience a greater than 5 percent reduction in gross annual income as a result of this rule given the small amount of capelin taken in the directed fishery. No commercial harvests of other forage fish species have been reported in Alaska.

An informal consultation under the Endangered Species Act was concluded for Amendments 36 and 39 on July 11, 1997. As a result of the informal consultation, the Regional Administrator determined that fishing activities under this rule are not likely to affect adversely endangered or threatened species.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 5, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of "forage fish" is added in alphabetical order as follows:

§ 679.2 Definitions.

* * * * *

Forage fish means all species of the following families:

(1) *Osmeridae* (eulachon, capelin and other smelts),
(2) *Myctophidae* (lanternfishes),
(3) *Bathylagidae* (deep-sea smelts),
(4) *Ammodytidae* (Pacific sand lance),
(5) *Trichodontidae* (Pacific sandfish),
(6) *Pholidae* (gunnels),
(7) *Stichaeidae* (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),
(8) *Gonostomatidae* (bristlemouths, lightfishes, and anglemouths), and the Order
(9) *Euphausiacea* (krill).

3. In § 679.20, a new paragraph (i) is added as follows:

§ 679.20 General limitations.

* * * * *

(i) *Forage fish*—(1) *Definition.* See § 679.2.

(2) *Applicability.* The provisions of § 679.20(i) apply to all vessels fishing for groundfish in the BSAI or GOA and to all vessels processing groundfish harvested in the BSAI and GOA.

(3) *Closure to directed fishing.* Directed fishing for forage fish is prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing.* The sale, barter, trade, or processing of forage fish is prohibited, except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production.* Retained catch of forage fish not exceeding the maximum retainable bycatch amount may be processed into fishmeal for sale, barter, or trade.

* * * * *

4. In § 679.22, paragraph (c) is revised to read as follows:

§ 679.22 Closures.

* * * * *

(c) *Directed fishing closures.* See § 679.20(d) and § 679.20(i).

* * * * *

5. Table 2 to 50 CFR part 679 is amended by adding species codes 207 Gunnels, 208 Pricklebacks, 210 Pacific sandfish, 772 Lanternfishes, 209 Bristlemouths, lightfishes, and anglemouths (Gonostomatidae), 773 Deep-sea smelt (Bathylagidae), 774 Pacific sand lance, 800 Krill, in numerical order under as follows:

Table 2 to Part 679.—Species Codes

Code	Species
* * * * *	
GROUP CODES	
* * * * *	
207	Gunnels
208	Pricklebacks, warbonnets, eelblennys, cockscombs and shannys (family *Stichaeids*)
209	Bristlemouths, lightfishes, and anglemouths (family *Gonostomatids*)
210	Pacific sandfish
* * * * *	
772	Lanternfishes
773	Deep-sea smelts (family *Bathylagids*)
774	Pacific sand lance
800	Krill (family *Euphausiids*)

* * * * *

6. Tables 10 and 11 to 50 CFR part 679 are amended by adding a column for aggregate forage fish as follows:

In Table 10 to 50 CFR part 679, a column for "Aggregate Forage Fish" will be added between columns "Atka mackerel" and "Other species," and footnote 5 is added to read "Forage fish are defined at § 679.20(i)(1)."

In Table 11 to 50 CFR part 679, a column for "Aggregate Forage Fish" will be added between columns "Squid" and "Other species," and footnote 3 will be redesignated as footnote 4, and a new footnote 3 is added to read "Forage fish are defined at § 679.20(i)(1)."

The tables, as amended, read as follows:

TABLE 10.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES

	Bycatch Species[1]												
Basis Species	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish[2]	DSR SEEO[4]	Atka mackerel	Aggregate Forage fish[5]	Other species
Basis Species[1]													
Pollock	[3]na	20	20	20	20	20	35	1	5	10	20	2	20
Pacific cod	20	[3]na	20	20	20	20	35	1	5	10	20	2	20
Deep flatfish	20	20	[3]na	20	20	20	35	7	15	1	20	2	20
Rex sole	20	20	20	[3]na	20	20	35	7	15	1	20	2	20
Flathead sole	20	20	20	20	[3]na	20	35	7	15	1	20	2	20
Shallow flatfish	20	20	20	20	20	[3]na	35	1	5	10	20	2	20
Arrowtooth	5	5	0	0	0	0	[3]na	0	0	0	0	2	20
Sablefish	20	20	20	20	20	20	35	[3]na	15	1	20	2	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
DSR-SEEO	20	20	20	20	20	20	35	7	15	[3]na	20	2	20

TABLE 10.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES—Continued

	Bycatch Species[1]												
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish[2]	DSR SEEO[4]	Atka mackerel	Aggregate Forage fish[5]	Other species
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	[3]na	2	20
Other species	20	20	20	20	20	20	35	1	5	10	20	2	[3]na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	2	20

[1] For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.
[2] Aggregated rockfish means rockfish of the genera *Sebastes* and *Sebastolobus* except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.
[3] na = not applicable.
[4] SEEO = Southeast Outside District.
[5] Forage fish are defined at § 679.20(i)(1).

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Bycatch species[1]													
Basis Species[1]	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rock sole	Flathead sole	Greenland turbot	Sablefish	Aggregated rockfish[2]	Aggregate Forage fish[3]	Squid	Other species
Pollock	[4]na	20	20	35	20	20	20	20	1	1	5	20	2	20
Pacific cod	20	na	20	35	20	20	20	20	1	1	5	20	2	20
Atka mackerel	20	20	na	35	20	20	20	20	1	1	5	20	2	20
Arrowtooth	0	0	0	na	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na	35	35	35	1	1	5	20	2	20
Other flatfish	20	20	20	35	35	na	35	35	1	1	5	20	2	20
Rock sole	20	20	20	35	35	35	na	35	1	1	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na	1	1	5	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na	35	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	35	na	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Sharpchin/ Northern-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Shortraker/ Rougheye-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	5	[3]na	2	20
Other species	20	20	20	35	20	20	20	20	1	1	5	20	2	[3]na
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	5	20	2	20

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera *Sebastes* and *Sebastolobus*.
[3] Forage fish are defined at § 679.20(i)(1).
[4] na = not applicable.

[FR Doc. 97–32473 Filed 12–11–97; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 62, No. 239
Friday, December 12, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Hy-Gene, Inc., of Ventura, California, an exclusive license for certain uses in the field of medical devices to U.S. Patent Application Serial No. 08/233,173, filed April 26, 1994, and U.S. Patent No. 5,676,994, issued October 14, 1997, both entitled "Non-Separable Starch-Oil Compositions." Notice of Availability for U.S. Patent Application Serial No. 08/233,173 was published in the **Federal Register** on October 24, 1994; Patent No. 5,676,994 is a continuation of Serial No. 08/233,173.

DATES: Comments must be received on or before February 10, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of the Director, National Center for Agricultural Utilization Research, Room 2042, 1815 N. University Street, Peoria, Illinois 61604.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the National Center for Agricultural Utilization Research at the Peoria address given above; telephone: 309–681–6545.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as Hy-Gene, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 97–32543 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Bylaws Of Corporation

The Bylaws of the Commodity Credit Corporation, amended November 3, 1997, are as follows:

Offices

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia, and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

Seal

2. There is impressed below the official seal which is hereby adopted for the Corporation. The seal may be used by causing it or its facsimile to be impressed, affixed, or reproduced.

Meetings Of The Board

3. Meetings of the Board of Directors (Board) shall be held, whenever necessary, at the U.S. Department of Agriculture in the City of Washington, D.C. All meetings of the Board shall be held in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b). Meetings of the Board may be called at any time by the Chairman, the Vice Chairman, or the President. The Executive Vice President may call a meeting at the written request of any five Members. Notice of meetings shall be given either orally or in writing. Any Member may waive in writing any notice of a meeting, whether before or after the time of the meeting, and the presence of a Member at any meeting shall constitute a waiver of notice of such meeting. Any and all business may be transacted at any meeting unless otherwise indicated in the notice thereof.

4. The Secretary of Agriculture shall serve as Chairman of the Board. The Deputy Secretary of Agriculture shall serve as Vice Chairman of the Board and, in the absence or unavailability of the Chairman, shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the Vice Chairman, the President of the Corporation shall preside at meetings of the Board. In the absence or unavailability of the Chairman, the Vice Chairman, and the President, the Members present at the meeting shall designate a Presiding Officer.

5. At any meeting of the Board a quorum shall consist of five Members. The act of a majority of the Members present at any meeting at which there is a quorum shall be the act of the Board.

6. The General Counsel of the Department of Agriculture, whose office shall perform all legal work of the Corporation, and the Associate General Counsel for International Affairs, Commodity Programs and Food Assistance Programs, shall serve as General Counsel and Associate General Counsel of the Corporation, respectively.

Compensation of Board Members

7. The compensation of each Member shall be prescribed by the Secretary of Agriculture. Any Member who holds another office or position within the Federal Government shall receive compensation at the rate provided for such other office or position in lieu of compensation as a Member.

Officers

8. The officers of the Corporation shall be: a President; an Executive Vice President; Vice Presidents; Deputy Vice Presidents; a Secretary; a Deputy Secretary; an Assistant Secretary; a Controller; a Treasurer; a Chief Accountant; and such additional officers as the Secretary of Agriculture may appoint.

9. The Under Secretary of Agriculture for Farm and Foreign Agricultural Services shall be the ex officio President of the Corporation.

10. The following officials of the Farm Service Agency (FSA), the Foreign Agricultural Service (FAS), the Food and Consumer Service (FCS), the Natural Resources Conservation Service (NRCS), and the Agricultural Marketing Service (AMS) shall be ex officio officers of the Corporation:

Administrator, FSA ..	Executive Vice President.
Administrator, AMS	Vice President.
Administrator, FAS ..	Vice President.
Administrator, FCS ..	Vice President.
Chief, NRCS	Vice President.
General Sales Manager, FAS.	Vice President.
Associate Administrator, FSA.	Vice President.
Deputy Administrator, Commodity Operations, FSA.	Deputy Vice President.
Deputy Administrator, Management, FSA.	Deputy Vice President.
Deputy Administrator, Farm Programs, FSA.	Deputy Vice President.
Director, Economic and Policy Analysis Staff, FSA.	Deputy Vice Pesident.
Associate Chief, NRCS.	Deputy Vice President.
Deputy Chief, Natural Resources Conservation Programs, NRCS.	Deputy Vice President.
Deputy Chief, Management and Strategic Planning, NRCS.	Deputy Vice President.
Executive Assistant to the Administrator, FSA.	Secretary.
Office of the Administrator, FSA.	Deputy Secretary.
Office of the Administrator, FSA.	Assistant Secretary.
Director, Financial Management Division, FSA.	Controller.
Deputy Director, Financial Management Division,FSA.	Treasurer.
Chief, Financial Accounting and Reporting Branch, Financial Management Division, FSA.	Chief Accountant.

The person occupying, in an acting capacity, any position listed in this paragraph shall, during occupancy of such position, act as the corresponding officer of the Corporation.

11. Officers who do not hold office ex officio shall be appointed by the Secretary of Agriculture and shall hold office until their respective appointments shall have been terminated.

The President

12. The President shall have general supervision and direction of the Corporation, its officers and employees.

The Vice Presidents

13. (a) The Executive Vice President shall be the chief executive officer of the Corporation. Except as provided in paragraphs (b), (c), (d), (e), and (f) below, the Executive Vice President shall have general supervision and direction of: the preparation of policies and programs for submission to the Board; the administration of the policies and programs approved by the Board; and the day-to-day conduct of the business of the Corporation and its officers and employees.

(b) The Vice President who is the Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. This Vice President shall have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FAS, and shall perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The Vice President who is the Administrator, AMS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of AMS.

This Vice President shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(d) The Vice President who is the General Sales Manager, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. This Vice President shall also have responsibility for the administration of those operations of the Corporation, under the policies and programs approved by the Board, which are carried out through facilities and personnel of FAS, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(e) The Vice President who is the Administrator, FCS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FCS. This Vice President shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(f) The Vice President who is the Chief, NRCS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of NRCS. This Vice President shall have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of NRCS, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

14. The Vice President who is the Associate Administrator, FSA, and the Deputy Vice Presidents shall assist the Executive Vice President to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

The Secretary

15. The Secretary shall: attend and keep the minutes of all meetings of the Board; serve all required notices of meetings of the Board; sign all papers and instruments that require the Secretary's signature; attest the authenticity of and affix the seal of the Corporation upon any instrument requiring such action; and perform such other duties and exercise such other powers as are commonly incidental to the Office of Secretary as well as such other duties as may be prescribed, from time-to-time, by the President or the Executive Vice President.

The Controller

18. The Controller shall: have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements and claims activities, and perform such other duties as may be prescribed, from time-to-time, by the President or the Executive Vice President.

The Treasurer

17. (a) The Treasurer shall: assist the Controller in the administration of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements and claims activities, and perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time-to-time, by the Controller, the President, or the Executive Vice President.

(b) The Treasurer, under the general supervision and direction of the Controller, shall: supervise the receipt and disbursement of all funds of the Corporation; designate qualified persons to authorize disbursement of corporate funds; be responsible for documents relating to the general financing operations of the Corporation; and supervise the claims activities of the Corporation.

The Chief Accountant

18. The Chief Accountant, under the general supervision and direction of the Controller, shall: have charge of the general accounting books and accounts of the Corporation and the preparation of financial statements and reports; be responsible for the issuance of policies and practices related to accounting matters and procedures, including those dealing with official inventories and records; and perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time-to-time, by the Controller.

Other Officials

19. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and personnel of FSA, FAS, FCS, AMS, and NRCS in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within the respective agency or office, by the Administrator of FSA, FAS, FCS, or AMS, the Chief NRCS, or the General Sales Manager, FAS.

20. The Directors of the divisions of FSA and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA shall be Contracting Officers of the Corporation and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices in accordance with these Bylaws and applicable programs, policies, and procedures.

Contracts of the Corporation

21. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Deputy Vice Presidents, the Controller, the Treasurer, and the Directors of the divisions of FSA and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

22. The Executive Vice President and, subject to the written approval by the Executive Vice President of each appointment, the Vice Presidents, the Deputy Vice Presidents, the Controller, and the Directors of the divisions of FSA and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA may appoint, by written instrument, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary of the Corporation.

23. Appointments of Contracting Officers may be revoked by written instruction or instrument by the Executive Vice President or the official who made the appointment. A copy of each instrument shall be filed with the Secretary of the Corporation.

24. Employees of FSA, FAS, FCS, AMS and NRCS may execute contracts on behalf of the Corporation as delegated to them in accordance with applicable dockets of the Corporation, program regulations, or delegations approved by the President or Vice Presidents of the Corporation.

Annual report

25. The Executive Vice President shall be responsible for the preparation of an annual report of the activities of the Corporation, which shall be filed with the Secretary of Agriculture and with the Board.

Amendments

26. These Bylaws may be altered, amended, or repealed by the Secretary of Agriculture or the Board.

Approval Of Board Action

27. The actions of the Board shall be subject to the approval of the Secretary of Agriculture.

I, Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the Bylaws of Commodity Credit Corporation, as amended November 3, 1997.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be fixed this third day of November, 1997.

Juanita B. Daniels,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 97–32544 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–071N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection will meet on January 13 and 14, 1998, to continue its consideration of three policy issues that it began discussing at its September 9, 10, and 11, 1997, meeting: (1) Interstate shipment of State-inspected product; (2) Hazard Analysis and Critical Control Point (HACCP) inspection models; and (3) inspection resource management in a HACCP environment. The Committee will consider two new issues at the January meeting: (1) Roles of Federal, State, and local governments in farm-to-table food safety; and (2) policy on pathogen testing and product disposition. All interested persons are welcome to attend the meeting and to submit written comments and suggestions concerning issues the Committee plans to consider.

DATES: The meeting will be held on January 13 and 14, 1998, from 8:00 a.m. until 6:00 p.m.

COMMENTS: Please send written comments on topics the Committee will consider at the January meeting to the FSIS Docket Clerk: Docket 97–071N, Room 102 Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. Comments may also be sent by facsimile to (202) 205–0381. The comments and the official transcript of the meeting, when it becomes available, may be viewed in the Docket Clerk's office.

ADDRESSES: The meeting will take place in the Capitol Room of the Hyatt Regency On Capitol Hill Hotel, 400 New Jersey Avenue, NW, Washington, DC 20001 at (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Michael N. Micchelli at (202) 720–6269 or FAX to (202) 690–1030. Attendees will be required to register at the meeting.

SUPPLEMENTARY INFORMATION:

On February 12, 1997, the Secretary of Agriculture renewed the charter for the Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary of Agriculture regarding Federal and State meat and poultry inspection programs.

Membership of the Committee is drawn from representatives of consumer groups, producers, processors, and marketers from the meat and poultry industry, and State government officials. The current members of the National Advisory Committee on Meat and Poultry Inspection are:

Dr. Deloran M. Allen, Excel Corporation
Dr. William L. Brown, ABC Research Corporation
Terry Burkhardt, Wisconsin Bureau of Meat Safety and Inspection
Caroline Smith-DeWaal, Center for Science in the Public Interest
Nancy Donley, Safe Tables Our Priority
Carol Tucker Foreman, Safe Food Coalition
Michael J. Gregory, Hudson Foods Inc.
Dr. Cheryl Hall, Foster Farms, Inc.
Dr. Margaret Hardin, National Pork Producers
Alan Janzen, Circle Five Feedyards, Inc.
Dr. Daniel E. LaFontaine, South Carolina Meat-Poultry Inspection Department
Dr. Dale Morse, New York Office of Public Health
Rosemary Mucklow, National Meat Association
William Rosser, Texas Department of Public Health
J. Myron Stoltzfus, Stoltzfus Meats
Dr. David M. Theno, Jr., Foodmaker Inc.

At the public meeting, the Committee will organize into subcommittees to study the issues. The Committee has three standing subcommittees to deliberate on specific issues and make recommendations to the whole Committee.

The five principal topics that the Committee will consider at the meeting are: (1) Interstate shipment of State-inspected product; (2) HACCP inspection models; (3) inspection resource management in a HACCP environment; (4) roles of Federal, State, and local governments in farm-to-table food safety; and (5) policy on pathogen testing and product disposition.

The meeting is open to the public on a space-available basis. Interested persons will have an opportunity to discuss issues relating to the activities of the Committee and may file comments with the Committee in the manner described above in **COMMENTS**.

Done in Washington, DC, on: December 4, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–32489 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on January 8, 1998, in Florence, Oregon, at the Florence Events Center, 715 Quince Street, Florence, OR. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Reports from PAC Subcommittees (Adapative Management Area, Water Quality/Fish, Media, and Timber); (2) FY 1997 PAC Accomplishments/FY 1998 Outlook; and (3) Water Quality Report (Clean Water Act and Water Quality Mgmt. Plans)/303d Designations. All Oregon Coast Provincial Advisory Committee meetings are open to the public. Two 15-minute open public forums are scheduled for 10:00 a.m. and 2:45 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Trish Hogervorst, Public Affairs Officer, Bureau of Land Management, at (503) 375–5657, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: December 4, 1997.

James R. Furnish,

Forest Supervisor.

[FR Doc. 97–32537 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Fritchie Marsh Hydrologic Restoration Project (PO–6), St. Tammany Parish, LA

AGENCY: Natural Resources Conservation Service

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the U.S. Department of Agriculture Natural Resources Conservation Service, gives notice that an environmental impact statement is not being prepared for the Fritchie Marsh Hydrologic Restoration Project, St. Tammany Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This plan proposes to reduce wetland loss an approximately 5.024 acres of intermediate marsh in St. Tammany Parish, Louisiana. Project measures include 5,700 linear feet of channel enlargement, installation of a steel sheetpile weir with boat bay and installation of a reinforced concrete conduit.

The Notice of a Finding of No Significant Impact (FONSI) as been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: December 4, 1997.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 97–32494 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Whitewater River Watershed, Olmsted, Wabasha and Winona Counties, MN

AGENCY: USDA Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Whitewater River Watershed, Olmsted, Wabasha and Winona Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: William Hunt, State Conservationist, NRCS, 375 Jackson Street Suite 600, St. Paul, MN 55101.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, William Hunt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are watershed protection and water quality. The planned works of improvement include conservation land treatment measures, accelerated technical assistance and project administration for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William Stokes Jr. at (612) 602–7886.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: December 2, 1997.

William Hunt,

State Conservationist.

[FR Doc. 97–32482 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Submission for OMB Review; Comment Request for Nonprofit Agency Surveys in the Benefit/Cost Analysis of the Javits-Wagner-O'Day Program

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee) is inviting public comment on surveys submitted for review by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Committee is seeking public comment on surveys being conducted as part of a comprehensive Benefit/Cost Analysis of the JWOD Program. This request is for two new collections of information with a survey of nonprofit agencies (NPAs) participating in the JWOD Program and a survey of nonprofit agencies affiliated with National Industries for the Blind (NIB) or NISH that are not participating in the JWOD Program. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 1997 (62 FR 42743).

DATES: Submit comments to OMB on or before January 12, 1998.

ADDRESSES: Written comments should be addressed to: Daniel Werfel, Desk Officer for the Committee for Purchase, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the OMB submission and the proposed information collections should be submitted to Sheryl Kennerly, Committee for Purchase from People Who Are Blind or Severely Disabled, 1215 Jefferson Davis Highway, Suite 310, Arlington, VA 22202–4302.

FOR FURTHER INFORMATION CONTACT: Sheryl Kennerly, Committee for Purchase from People Who Are Blind or Severely Disabled, 1215 Jefferson Davis Highway, Suite 310, Arlington, VA 22202–4302, telephone: 703–603–7747, fax: 703–603–0655, email: skennerl@jwod.gov.

SUPPLEMENTARY INFORMATION: The enabling regulations for the JWOD Act prescribe that the Committee: "Conduct a continuing study and evaluation of its activities under the JWOD Act for the purpose of assuring the effective and efficient administration of the JWOD Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to: (1) The employment of the blind or individuals with other severe disabilities * * *." (41 CFR Ch. 51–2.2(g))

As part of the effort to evaluate its activities and study the employment of individuals who are blind or severely disabled, the Committee has initiated a comprehensive analysis of benefits and costs of the JWOD Program. The following survey instruments included in the submission for OMB approval are required to collect data for determining the benefits and costs of the JWOD Program on nonprofit agencies that participate in the JWOD Program, commercial contractors, and society or taxpayers in general. The data from the following surveys will be used in conjunction with external environmental data to conduct analysis of before and after JWOD participation and to make comparisons between JWOD participating and nonparticipating nonprofit agencies. Comments should reference the title of the collection of information to which they apply.

Title: Survey of JWOD Participating Agencies.

Type of Review: New collection.

Frequency: One-time.

Affected Public: State, local and private nonprofit agencies that were participating in the JWOD Program at the end of Fiscal Year 1996.

Burden Estimate:

Responses: 562.

Total Burden Hours: 1,124 hours.

Average Burden per respondent: 2 hours.

Abstract: The burden estimate above is based on an estimated number of responses to a survey of all 624 NPAs participating in the JWOD Program at the end of Fiscal Year 1996. The average burden per respondent was determined from a pretest with a small number of NPAs chosen to represent a variety of respondents in terms of JWOD sales and length of time participating in the program. The mail survey will collect data to measure direct and indirect financial impacts in terms of increased or reduced non-JWOD sales, induced or suppressed charitable donations, and shortfall or excess of JWOD revenues. Other potential impacts to be measured include effects on non-JWOD production capacity, effects on workplace conditions, and effects on the agencies' abilities to fulfill their overall missions. Data is being collected for the two years prior to participation in JWOD and for the five most recent years of participation.

Title: Survey of Organizations Associated with NIB or NISH.

Type of Review: New Collection.

Frequency: One-time.

Affected Public: A sample of State, local and private nonprofit agencies that are affiliated with NIB or with NISH that are not participating in the JWOD Program.

Burden Estimate:

Responses: 275.

Total Burden Hours: 275 hours.

Average Burden per respondent: 1 hour.

Abstract: The burden estimate above is based on an estimated number of responses to a survey of 300 NPAs affiliated with NISH and 5 NPAs affiliated with NIB that are not participating in the JWOD Program. The average burden per respondent was determined from a pretest with a small number of NPAs chosen to represent a variety of respondents in terms of size. The mail survey collects data from NPAs not participating in the JWOD Program in order to make comparisons with participating NPAs in the "after" time periods and to assess any differences due to JWOD participation, while accounting for geographic and macro-economic factors using environmental data obtained from external sources. This survey also collects financial and non-financial information comparable to the information in the above survey.

Dated: December 9, 1997.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–32558 Filed 12–11–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 12, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Commodities

Gloves, Chemical & Oil Protective

8415–01–012–9294
8415–01–013–7382
8415–01–013–7384
8415–01–147–6362
8415–01–147–9540
NPA: Bestwork Industries for the Blind, Inc., Westmont, New Jersey.

Services

Janitorial/Custodial

U.S. Army Reserve Center, 443 Route 119 N, Indiana, Pennsylvania.
NPA: ICW Vocational Services, Inc., Indiana, Pennsylvania.

Janitorial/Custodial

Johnstown Aviation Support Facility, Airport Road #2, Johnstown, Pennsylvania.
NPA: Goodwill Industries of the Connemaugh Valley, Johnstown, Pennsylvania.

Mailroom Operation

U.S. Army Corps of Engineers, Humphreys Engineer Center Support Activity, Kingman Building, Telegraph and Leaf Road, Fort Belvoir, Virginia.
NPA: Sheltered Occupational Center of Northern Virginia, Arlington, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–32559 Filed 12–11–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 12, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 27 and October 24, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 34686 and 55390) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pad, Floor Polishing

7910–01–383–6975

Box, Shipping

8115–00–050–5237
8115–01–015–1314
8115–01–015–1313

Services

Janitorial/Custodial

Federal Building, 1301 Clay Street, Oakland, California

Janitorial/Custodial

Libby USARC, New Haven, Connecticut

Janitorial/Custodial

Paul J. Sutcovoy USARC, Waterbury, Connecticut

Mailroom Operation

Department of the Interior, 1849 C Street, NW, Washington, DC

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–32560 Filed 12–11–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[Docket No. 970827207–7207–01]

Financial Assistance for Internship Program for Postsecondary Students

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (DoC) is establishing a postsecondary internship program to aid and promote experiential training activities which foster future employment in DoC or the Federal Government in general. U.S. citizens enrolled as students in two-and four-year accredited educational institutions will participate in on-site work experiences in DoC bureaus and offices in order to integrate academic theory and workplace requirements; gain relevant skills and knowledge; explore Federal career options; develop professional networks; and develop a greater awareness of the role of Federal agencies. The program will be administered through a partnership between the DoC and non-profit and/or educational institution(s) and funded by cooperative agreement(s). This notice solicits proposals from eligible institutions that desire to collaborate with the DoC on this initiative.

Student opportunities will be primarily in the Washington, D.C. metropolitan area, but will include field locations outside the area. Summer internship sessions will be for a ten-week period. Academic semester or quarter internship sessions will be structured to coincide with the academic calendar of the students' institutions. Institutions that are selected as training partners will develop and administer a comprehensive internship program. The DoC will serve as hosts for the student interns and provide program support through the financial assistance award; however, students may be assigned to work in Federal agencies other than DoC. When interns are assigned to other Federal agencies, those agencies will reimburse DoC for costs associated with the interns. There will be no employer-employee relationship between the DoC and its hosted interns. Interns will receive stipends. Round-trip air or ground transportation between the metropolitan D.C. area (or field job location) and the students' residence or school site will also be provided to interns as needed. The number of available internships will vary depending upon the financial position of the potential host offices and bureaus, but for the purposes of this notice, the following will be used for projections: twenty-five student interns for the summer session, and five students for each academic year session.

Selected institution(s) will perform the following functions: Outreach and recruitment; application processing and referral; selection notification and follow up; logistics, including temporary housing and accommodations; orientation and communication; enrichment activities program; intern personnel and pay administration; intern monitoring; intern evaluation; program evaluation; and evaluation reporting.

DATES: Applications must be received no later than 5:00 p.m., Eastern Standard Time, February 10, 1998.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application, including all information required by the application kit. Applications must be mailed to: U.S. Department of Commerce, Office of Executive Assistance Management, Attn.: Carol A. Hayashida, Room H6020, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Hayashida, (202) 482–3288.

SUPPLEMENTARY INFORMATION:

Authority

5 U.S.C. 7201 requires that each Executive agency conduct a continuing program for the recruitment of members of minorities to address underrepresentation of minorities in various categories of Federal employment. The DoC uses this authority as a recruitment mechanism in order to increase the applicant pool of candidates for its jobs. However, applications will be accepted from any eligible institution, and applications for internships shall be accepted from all students meeting program eligibility criteria and will not be limited only to minority students. Application, referral and selection processes shall be conducted without any consideration of race, ethnicity, gender, or other personal factors. Executive Order 12876 provides for Executive departments to enter into, among other things, cooperative agreements with Historically Black Colleges and Universities (HBCUs) to further the goals of the Executive Order, principally that of strengthening the capacity of HBCUs to provide quality education, and to increase opportunities to participate in and benefit from Federal programs. Executive Order 12900 calls for Executive departments to develop plans to increase opportunities for Hispanic Americans to participate in and benefit from Federal education programs.

Program Description

A number of potent forces have come together recently to significantly curtail Federal hiring of college students. Downsizing initiatives have influenced the budgets of virtually all agencies and the possibility of reductions in force loom for many. Additionally, and related to downsizing, changes in the manner in which students are included in organizations' employee ceiling counts have drastically reduced the number of work-study opportunities they offer. One approach to ensuring that the Government can maintain some level of visibility and attractiveness to the "best and brightest" college students is to develop partnerships between Federal departments and nonprofit or educational institutions; the DoC has experimented successfully with these types of collaborations over the last several years. The DoC is now prepared to launch a three-year program that will serve to improve opportunities for college students to prepare for their transition to the workplace and foster human resource diversity in DoC. Depending upon the responsiveness of the institutions which submit applications, more than one institution may be selected to participate in this program.

There will be two components to the program: A ten-week summer session and an academic year program that consists of two sessions. The length of each academic year session will be structured to coincide with the academic calendar of the students' institutions, e.g., semester or quarter hour system; applicants who wish to administer an academic year program must indicate the proposed duration of the academic year sessions. The first session under this program will begin summer 1998. The first academic session will begin in fall 1998, followed by a session in the spring of 1999. This cycle is expected to be repeated until three years after the initial grant is awarded. It is anticipated that intern opportunities will be greater during the summer sessions than the academic year sessions.

In addition to including the mandatory activities described below, an organization should propose an intern program design that represents a comprehensive approach to a work-study experience and its own philosophy about workforce preparedness. For the purposes of the proposal, plans and budgets should be presented separately for the summer and academic year sessions. An organization may wish to collaborate with DoC on a summer program only, on an academic year program only, or on both a summer program and an academic year program; it is not required that both components be included in an application in order to be selected as a recipient.

The recipient(s) selected to administer the intern program must conduct the following activities:

Outreach and recruitment. Design, prepare, duplicate and distribute application materials to students. Collect information about potential internship openings from host offices to assist in identifying student applicants who are the best matches for the offices' needs. Prepare publicity to inform academic institutions and students about upcoming program opportunities and to solicit applications from a broad range of students who meet defined program criteria such as GPA and academic standing. Process applications, including evaluating candidates' eligibility and qualifications, and referring candidates to host Federal officials for consideration and selection. Outreach and publicity must be conducted so that women and minorities that are underrepresented in the DoC are included in the target groups. Participation in the program must be open to all eligible students without regard to race, ethnicity, or gender. In cases of jobs requiring technical skills or for other related reasons, Federal mangers, liaisons, or other program officials may elect to participate in the evaluation of applicant packages.

Selection notification and follow up. Receive selection decisions from host offices, convey internship offers to selectees, explain logistical and administrative processes to selectees. Distribute written information to students that will help them adequately prepare for their professional and personal needs during their internship; material must be sent to students before their departure for their internship sites. Communicate with DoC program representatives or liaisons on the status of offers of selection, acceptances and declinations.

Logistical arrangements. Locate suitable housing for students, make all prior arrangements to allow students to move into housing upon their arrival at the internship site. Make round trip airline reservations for students between home/school city and host office location; arrange for students to receive their tickets. Arrange for ground transportation to pick up arriving students at airport and take to housing site. At the end of the internship period, arrange for transportation between the housing site and the airport. Explain housing, air transportation, ground transportation, and other logistical arrangements to students so that there is a clear expectation of what costs, if any, are involved and what the responsibilities of both the student and the recipient institution/organization are. Housing must be convenient to public transportation and affordable. The DoC must be consulted in the process to select student housing facilities, but the final decision and negotiations with the housing provider will be left wholly to the recipient institution.

Orientation and communication. Design and provide orientation program to familiarize students with local area in which they will live and work, services, safety and security, public transportation systems, and educational and administrative program requirements.

Enrichment activities. Design and implement a comprehensive enrichment program; ideally the program should require a minimum of time away from the work site during duty hours. The activities should focus on students' personal and professional growth, and provide insights into ways to reach their academic and personal goals. They may also be designed to teach students how the different branches of the Federal Government operate, to improve interns' communication skills, or to foster an understanding of cultural or ethnic issues.

Personnel administration. Maintain interns' personnel records; pay stipends; deduct applicable payroll taxes; provide worker compensation insurance, unemployment insurance, and short-

term accident insurance; provide state, Federal and local tax information and report of earnings forms to students.

Intern monitoring. Communicate on a regular basis, both by telephone and in person , with the students, their supervisors, and DoC and bureau coordinators to assure that the experience is progressing as intended and that problems or questions are resolved.

Intern performance evaluation. Selected recipients must develop and design an effective evaluation program that will assess the interns' performance and progress. Ideally all aspects of intern performance and the overall work experience from the perspective of both the intern and his or her supervisor will be included in the assessment. Student performance should be evaluated at the mid-point and at the end of each session. Evaluations will be submitted to the DoC Federal Program manager within one month of the assessment date.

Program Performance. In accordance with OMB Circular A–110, selected recipients must manage and monitor functions and activities supported by the financial award and should have a plan to do so. Performance reports are required at mid-term and at the end of each session. The reports should focus on program accomplishments against the goals and objectives of the program, and include other pertinent information. Of interest would be overall demographic information about program participants such as name of educational institutions and or regional area represented, academic majors represented, academic standing, average GPA . Additionally, lessons learned about the design and implementation of the program and identification of areas requiring improvement are particularly useful.

Funding Availability

Applicants must submit project plans and budgets for three years. Project(s) will be funded for no more than one year at a time. Funding for each subsequent year will be at the sole discretion of the DoC and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project(s). Funds available under this program are expected to be awarded in November of each year. Funds for the first year are expected to be awarded in February 1998. Projections based upon previous experience indicate availability of between $150,000-$730,000 to support from 25 up to about 100 interns. However the exact level of funding available is not yet known. Proposals should be based upon the cost of administering a summer program for 25 student interns and also include a per capita cost for additional students; proposals for a semester or quarter session should be projected on the basis of 5 students.

Matching Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the internship program; however, cost-sharing is encouraged. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant will be bound by the percentage of the cost-share reflected in the cooperative agreement award. The non-Federal share may include the value of in-kind contributions by the applicant or third parties or funds received from private sources or from state or local governments. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. Third party in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project and use of real or personal property owned by others (for which consideration is not required) in carrying out the projects. The total cost of a project begins on the effective award date of an authorized cooperative agreement between the applicant and the DoC Grants Officer and ends on the date specified in the award. Accordingly, time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

Type of Funding Instrument

Financial assistance awards in the form of cooperative agreements will be used to fund this program. The DoC and its participating bureaus will have substantive involvement in the following program activities: provide liaisons to institutions who will assist in coordinating program activities; provide description of available intern assignments and required academic backgrounds and job skills; participate in review and rating panels; and interview and make final selections from lists of eligible students that are provided by the institutions.

Eligibility Criteria

Accredited universities and colleges (2-year and 4-year) and non-profit organizations are eligible to apply. Eligible institutions may form joint ventures to submit a joint application to share costs and administration roles and responsibilities. In such cases, one of the institutions must be designated as the lead organization for purposes of receipt and overall accountability for any financial assistance award received under this program.

Award Period

The award period for the internship project will be three years. Funding will be provided annually at the discretion of the DoC and will depend upon satisfactory performance by the recipient and availability of funds for the DoC to continue funding the project. Normally each project budget period may be no more than 12 months in duration. DoC policy limits the total duration of a project to three years. Project proposals accepted for funding for a project period over 1 year that include multiple project components and severable tasks to be funded during each budget period will not compete for funding in subsequent budget periods within the approved project period. Publication of this notice does not obligate DoC to award any specific cooperative agreement or to obligate all or any parts of the available funds.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit

An application kit containing all required application forms and certifications is available by calling Lisa Duckett at (202) 482–4115.

Evaluation Criteria

Quality of Program Plan (30%). Includes but is not limited to strategy for outreach and publicity, procedures for collecting and evaluating applications, comprehensiveness of program design, and practicality of approach.

Proposed Costs (30%). The proposed budget must be comprehensive and should include all costs for program personnel, fringe benefits, travel, equipment, supplies, and other associated items. The stipend level proposed for students should be stated in the budget.

Key Personnel Qualifications (20%). Includes an assessment of the number, qualifications and proposed roles of staff who will administer the internship program. Resumes of proposed personnel will facilitate the evaluation of the competency and experience of the proposed staff.

Capabilities of the Applicant Organization (20%). Considers, among other things, previous experience and success administering similar programs, and staff and resources to assure adequate development, supervision and execution of the proposed program. Additionally, an organization's commitment to educate/advance the education of women, minorities, and people with disabilities will be a consideration in evaluating this factor.

Selection Procedures

Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The Independent Review Panel, consisting of at least three individuals, will review all applications based on the criteria stated above. The Independent Review Panel will evaluate and rank the proposals. The final decision on awards will be based upon the numerical review panel ranking, availability of funding, and the Selecting Official's (DoC Federal Program Officer) determination of which proposals best meet the objectives of the program. The amount of funds awarded to each recipient will be determined in preaward negotiations between the applicant, the Grants Officer, and the DoC Program Officer.

Federal Policies and Procedures

Recipients and subrecipients are subject to all Federal laws and Federal and DoC policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC to cover preaward costs.

No Obligation for Future Funding

If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

The delinquent account is paid in full, negotiated repayment schedule is established and at least one payment is received, or Other arrangements satisfactory to DoC are made.

Name Check Review

All nonprofit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

Drug-Free Workplace

Recipients (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent.

Fly America Act

The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.

Classification

This document involves collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. This document has been determined to be "not significant" for purposes of Executive Order 12866.

Sonya G. Stewart,

Director for Executive Budgeting and Assistance Management.

[FR Doc. 97–32540 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–FA–U

DEPARTMENT OF COMMERCE

Bureau of the Census

1998 American Community Survey—Group Quarters Screening Operation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 10, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Paletta, Bureau of the Census, Room 3715–3, Washington, DC 20230, (301) 457–4269.

SUPPLEMENTARY INFORMATION:

I. Abstract

The 1998 American Community Survey (ACS) is currently underway. ACS data are being collected under OMB approval number 0607–0610. Data from the ACS will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade. The Census Bureau must provide a sample of persons residing in Group Quarters (GQs) the opportunity to be interviewed for the ACS. GQs include places such as student dorms, correctional facilities, hospitals, nursing homes, shelters, and military quarters. Obtaining information from the GQ will ensure that we include the necessary people residing at the GQ in the 1998 ACS.

A GQ screening operation was conducted in conjunction with 1997 ACS activities. This request revises the existing GQ clearance for use in the 1998 ACS. Major changes include the following. In 1997 we screened a sample of the GQs in only one ACS test site. In 1998 we will screen a sample of the GQs in eight of the ACS test sites. In 1997 we tested three versions of the questionnaire, Form ACS–2 (GQ), 1997 ACS GQ Facility Questionnaire, and allocated them among the sample GQs according to whether the GQ was to be enumerated by personal visit only, a combination of personal visit and mail, or by mail only. In 1998 we will use only one version of the questionnaire, Form ACS–2 (GQ), 1998 ACS GQ Screening.

We will telephone a sample of GQs in the 1998 ACS test sites. We will verify/update information such as GQ name, address, phone number, and type. We will screen to determine if the residents stay for less than 30 days and have another place to live. If so, the GQ will be classified as out-of-scope for ACS interviewing. If the GQ is in-scope, we will screen to determine if we can complete ACS interviews of the GQ residents by mail, thus saving the expense of personal visits. We will obtain a list of rooms and/or residents from which we can select a sample. All ACS interviewing will be conducted under OMB clearance number 0607–0810.

II. Method of Collection

Telephone interviews will be conducted from Census Bureau's processing center in Jeffersonville, Indiana.

III. Data

OMB Number: 0607–0836.
Form Number: ACS–2 (GQ).
Type of Review: Regular submission.
Affected Public: Individuals, Businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.
Estimated Number of Respondents: 500 GQs in the 1998 ACS test sites.
Estimated Time Per Response: 10 minutes (.167 hours).
Estimated Total Annual Burden Hours: 84 hours.
Estimated Total Annual Cost: The group quarters screening is part of the 1998 American Community Survey, the cost of which is estimated to be 16.6 million dollars. There is no cost to respondents, other than that of their time.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, U.S. Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32532 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Income and Program Participation Wave 8 of the 1996 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 10, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, Bureau of the Census, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Survey of Income and Program Participation (SIPP) which is a household-based survey designed as a continuous series of national panels, each lasting four years. Respondents are interviewed once every four months, in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits, and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information about the terms of child support agreements and whether they are being fulfilled by the absent parent, examining the program participation status of persons with specific health and disability statuses, and obtaining detailed information needed to understand the current status of the employment-based health care system and changes that have occurred. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 1996 Panel Wave 8 collect information about: (1) Adult Well-being; and (2) Welfare Expenses. Wave 8 interviews will be conducted from August 1998 through November 1998.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every 4 years, with each panel having a duration of 4 years in the survey. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals, making the SIPP a longitudinal survey. Interviewers personally visit all households at least once a year and conduct the other 2 interviews by phone if the respondent agrees. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP Primary Sampling Unit will be followed and interviewed at their new address.

Persons 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

The survey is administered using Computer-Assisted Personal Interviewing (CAPI) methodologies. Census Bureau field representatives collect the data from respondents using laptop computers, and the data are transmitted to Census Bureau headquarters via high-speed modems.

III. Data

OMB Number: 0607–0813.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 77,700 (We will obtain interviews from approximately 37,000 households, yielding about 77,700 person-interviews (2.1 persons 15 years old or over per household). The household interviews will be conducted at 4-month intervals.
Estimated Time Per Response: 30 minutes per person.
Estimated Total Annual Burden Hours: 117,800.
Estimated Total Annual Cost: The only costs to respondents is that of their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32533 Filed 12–11–97; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112897C]

Vessel Registration and Fisheries Information System

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: The Sustainable Fisheries Act, passed in October 1996, added various amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). As a result, Section 401 of the Magnuson-Stevens Act requires the Secretary of Commerce (Secretary) to deliver an implementation plan for a national fishing vessel registration and fisheries information system (System) in a Report to Congress. This notice outlines the approach taken by NMFS and its Federal, regional, state, and industry partners on behalf of the Secretary to develop the implementation plan required in the Report to Congress.

DATES: Notice of Availability (NOA) of the draft version of the Report to Congress will be published in the

Federal Register on or about March 2, 1998. A sixty (60) day public comment period will commence immediately thereafter. The final Report to Congress will be delivered in July 1998.

ADDRESSES: Address all comments concerning this notice to: Section 401, National Marine Fisheries Service, 1315 East West Highway F/ST1, Room 12245, Silver Spring, MD 20910; (301) 713–2328; fax (301) 713–4137. See SUPPLEMENTARY INFORMATION for electronic access instructions.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, (301) 713–2328.

SUPPLEMENTARY INFORMATION: Because it is one of the major legislative Acts that directs the activities of the National Marine Fisheries Service (NMFS), the Magnusoh-Stevens Act specifies various programs and initiatives for the conservation and stewardship of the nation's marine fisheries. Section 401 of the Magnuson-Stevens Act, amended in 1996, directs the Secretary to deliver a Report to Congress on the implementation of a national vessel registration and fisheries information system.

NMFS, the U.S. Coast Guard, coastal states, the three regional commissions (Pacific States Marine Fisheries Commission, Gulf States Marine Fisheries Commission, and Atlantic States Marine Fisheries Commission), and the eight regional Fishery Management Councils (New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean, Pacific, North Pacific, Western Pacific) play various roles in commercial fishing vessel registration and marine fisheries data collection. Consistent with the Assistant Administrator's previous directions, NMFS has been engaged in a highly collaborative process to develop joint data collection and planning activities with these organizations and the regional fisheries information networks (Atlantic Coast Cooperative Statistics Program (ACCSP), Alaska Fisheries Information Network (AKFIN), Pacific Fisheries Information Network (PACFIN), Southeast Fisheries Information Network FIN(SE) and Western Pacific Fisheries Information Network (WESTPACFIN).

Most, if not all, of these governmental bodies maintain or contribute information to various state, regional, and national information systems. Section 401 of the Magnuson-Stevens Act directs the Secretary, in cooperation with the various constituents and stakeholders, to streamline and integrate these vessel registration and fisheries information systems into a national system.

Section 401 of the Magnuson-Stevens Act sets a number of benchmarks for a national vessel registration and fisheries information system. It also defines several overarching principles that should guide the system's development and result in an integrated vessel registration and fisheries information system. Perhaps the most visible and easily measured requirement is the reduction of information reporting burdens on industry and the use of existing data collection and information management systems to the furthest extent possible.

To better organize the project planning activity, NMFS divided the task into two primary components: the Vessel Registration System (VRS) and the Fisheries Information System (FIS). Within these components, NMFS is addressing information management architecture, integration and harmonization of data collection programs, and the institutional arrangements and accountability. The project team is evaluating these components simultaneously both to determine the optimal system requirements and configuration based on data needs and to leverage current data collection and planning efforts.

Vessel Registration System: Vessel registration, licensing, and permitting systems among the coastal states, territories, tribal entities and the U.S. Coast Guard are currently under project team review. The Magnuson-Stevens Act requests a plan for a national system that contains the following information for each fishing vessel: (1) The name and official number or other identification, together with the address of the owner or operator or both; (2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation, and other such pertinent information with respect to vessel characteristics as the Secretary may require; and (3) identification of the fisheries in which the fishing vessel participates. Currently, no vessel registration system at any level fully satisfies these criteria.

The NMFS is aware of the Coast Guard's Vessel Identification System (VIS). Designed as a national boating information network, it will comprise the Coast Guard's vessel documentation system and, on a voluntary basis, the states/territories vessel information. NMFS has been in consultation with the VIS programmatic personnel to ascertain how and whether the VIS could be utilized to fulfill the requirements of the Magnuson-Stevens Act. Originally scheduled to be tested in the fall of 1997, the VIS program will not begin pilot testing until January 1998. As a consequence of the delay, NMFS is not yet in the position to evaluate the operational capabilities of VIS and how and whether it can be utilized in the VRS.

Fisheries Information System: The project team is studying fisheries data collection programs and information management systems at the regional levels (Pacific, Gulf, Atlantic) as specified in the Magnuson-Stevens Act. State and Federal data collection programs and information management systems have developed independently over time and reflect varying degrees of integration and management efficiency. Through participation in ACCSP, AKFIN, FIN(SE), PACFIN, and WESTPACFIN, NMFS has spent considerable time and money supporting these partners in joint statistics planning and integration efforts. These efforts have definite timeframes and outcomes planned, and NMFS has relied on these processes to support the Section 401 of the Magnuson-Stevens Act activity to avoid duplication of effort and maximize partner participation. During the consultation process, NMFS determined that compliance with the schedule set by section 401 of the Magnuson-Stevens Act will conflict with (and may even be detrimental to) critical path planning stages currently in progress. The fishery information networks are still in the formative stages. For example, ACCSP planning for its coastwide information management system will not produce required inputs for FIS design until February 1998. NMFS is working closely with these groups to develop plans for integration and implementation into a fisheries information system.

Process: NMFS strategy has been to seek the highest level of detail possible in the draft report to produce specific and justifiable estimates of implementation resource requirements. It could be argued that the report NMFS is developing provides more detail than called for in the Magnuson-Stevens Act. However, the stakeholders (particularly the Commissions) have supported this level of analysis and have worked with us to develop this detail so that they fully understand the regional implications of a national umbrella program. Due to the complex nature of this task, NMFS received requests from the Commissions for additional consultation on integration. NMFS agrees that to cut off the consultative process at this time could jeopardize the collaborative process, and result in a report that is short on substance and lacking support from our constituents.

To integrate additional information, NMFS decided that a 6 month delay was appropriate to accomplish the task. The benefit of the delay will be a report that will contain well-described courses of action that will actually improve statistics for NMFS and our partners stewardship responsibilities. In particular, NMFS wants to reach a consensus among stakeholders on a VRS and FIS program which will allow determination of a realistic budget consistent with requirements set forth in section 401(a)(5) of the Magnuson-Stevens Act so that Congress can consider the recommendations during the fiscal year, FY 99, appropriations process. The proposed target date will coincide with Congressional timeframes and allow all constituents an opportunity to seek a common goal. Given the current stage of state and commission planning, delivering a report by the original due date would result in little or no consensus on level and documentation of an FY 99 funding request.

The goal for the next 6 months is to craft an acceptable implementation plan that includes unified VRS/FIS system guidelines, proposed rules and legislation, and budgets. NMFS intends to hold additional meetings in January and February with the Commissions and Councils to resolve integration/implementation requirements. Additionally, the pilot testing of the Coast Guard's VIS will allow NMFS the opportunity to develop the necessary integration requirements. This comprehensive plan will be available for public comment upon publication of the NOA of the draft Report to Congress in March 1998.

Stakeholders: Stakeholders (or constituents) in the implementation of the vessel registration and fisheries information system include the (1) three regional marine fisheries commissions, (2) the eight fishery management councils, (3) 24 coastal states, (4) U.S. territories, (5) U.S. Coast Guard, (6) tribal entities, (7) industry and trade groups, and (8) other interested parties. In addition to directly consulting with the project's stakeholders over the next 6 months, all parties will have the opportunity for input on the proposed implementation plan through the public comment period commencing in March 1998, when the draft report is available.

Comments on this notice may be submitted to the NMFS Division of Fisheries Statistics and Economics by sending electronic mail to: sec401@remora.ssp.nmfs.gov.

Authority: Pub. L. 104–297.

Dated: December 8, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32475 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' meeting scheduled for 18 December 1997 has been cancelled. The next meeting is scheduled for 22 January 1998 at 10:00 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001, to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200.

Dated In Washington, D.C., December 3, 1997.

Charles H. Atherton,

Secretary.

[FR Doc. 97–32536 Filed 12–11–97; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [Insert FR citation].

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., December 16, 1997.

CHANGES IN MEETING: The meeting concerning options for bunk beds has been deferred. The meeting will be rescheduled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: December 9, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–32665 Filed 12–10–97; 1:49 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps: National, Indian Tribes, and U.S. Territories Programs; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability; correction.

SUMMARY: On November 28, 1997, the Corporation published a notice of availability of funds and 1998 application guidelines for the AmeriCorps National and Indian Tribes and U.S. Territories program grants. This document corrects the dates of the technical assistance conferences.

SUPPLEMENTARY INFORMATION: In notice document 97–31265 beginning on page 63318 in the issue of Friday, November 28, 1997, make the following correction:

On page 63318 in the third column, the dates for the technical assistance conferences for potential applicants seeking AmeriCorps Indian Tribes and U.S. Territories program funds have been changed to: January 8–9, 1998 in Las Vegas and February 5–6, 1998, in Memphis.

For additional information, or to register, please call Pattie Howell, at (202) 606–5000, ext. 188. The Corporation's T.D.D. number is (202) 565–2799.

Dated: December 9, 1997.

Stewart A. Davis,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–32517 Filed 12–11–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.170]

Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: To award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement and exceptional promise, to undertake graduate study leading to a doctoral degree or the Master of Fine Arts (MFA) degree at accredited institutions of higher education in selected fields of the arts, humanities, or social sciences.

Eligible Applicants: Eligibility is limited to students who at the time of application have not yet completed their first year of graduate study or will be entering graduate school in academic year 1998–1999. Eligibility is limited to

students pursuing a doctoral degree or MFA degree in fields selected by the Jacob K. Javits Fellowship Board at accredited institutions of higher education in the U.S. Students must be U.S. citizens, permanent residents of the U.S., certain persons in the process of becoming U.S. citizens or permanent residents, or permanent residents of the Northern Mariana Islands.

Deadline For Transmittal Of Applications: February 17, 1998.

Applications Available: December 15, 1997.

Estimated Available Funds: $1,875,000.

Estimated Range Of Awards: The Secretary has determined that the fellowship stipend for academic year 1998–1999 is $15,000, which is equal to the level of support that the National Science Foundation is providing for its graduate fellowships, or the fellow's financial need, as determined by Part F of Title IV of the Higher Education Act, whichever is less. The institutional payment for academic year 1997–1998 was $10,051. The Secretary will adjust the institutional payment prior to the issuance of grant awards based on the Department of Labor's projection in December 1997 of the Consumer Price Index for 1998.

Estimated Average Size Of The Awards: $25,000.

Estimated Number Of Awards: 75 individual fellowships.

Supplementary Information: Sixty percent of new awards will be available for fellowships to eligible applicants who have earned no credit hours applicable to a graduate degree. The remaining 40 percent of new awards will be available for fellowships to all otherwise eligible applicants. In each of these two categories, 60 percent of these new fellowships will be awarded to applicants in the humanities, 20 percent to applicants in the social sciences, and 20 percent to applicants in the arts.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 650.

For Applications Or Information Contact: Richard Scarfo, Jacob K. Javits Fellowship Program, U.S. Department of Education, 600 Independence Avenue, SW., Portals 600, Washington, DC 20024–5329. Telephone: (202) 260–3574. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1134, 1134h–k–1.

Dated: December 5, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–32545 Filed 12–11–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–2–48–001]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 8, 1997.

Take notice that on December 4, 1997, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, following revised tariff sheets proposed to become effective January 1, 1998:

Seventh Revised Sheet No. 19
Fourth Revised Sheet No. 68H

ANR states that the above-referenced tariff sheets are being filed to implement revised levels of Transporter's Use (%) as reflected on the fuel matrix in its tariff, as well as the percentages applicable to gathering. ANR will implement these interim fuel matrix percentages effective on the later of January 1, 1998, or the first day of the month following the date that the Commission accepts this filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32507 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–000]

Equitrans, L.P.; Notice of Informal Settlement Conference

December 8, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on December 12, 1997 at 9:30 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602 or Donald Williams at (202) 208–0743.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32504 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–2–000]

Magnolia Pipeline Corporation; Notice of Petition for Rate Approval

December 8, 1997.

Take notice that on November 21, 1997, Magnolia Pipeline Corporation (Magnolia), filed a petition for rate approval, pursuant to Section 311 of the Natural Gas Act, Section 284.123(b)(2) of the Commission's Regulations, and the Commission's March 31, 1995 letter order in Docket No. PR95–1–000, requesting that the Commission approve the continued use of Magnolia's current maximum rate of $0.1621 per Dth, plus reimbursement of actual fuel use up to three percent for Section 311 transportation services performed on Magnolia's system.

Magnolia states that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA and it owns and operates pipeline facilities within the State of Alabama. Magnolia states that its current maximum transportation unit rate is based on a levelized cost of service. Magnolia states that even if it were able to collect its current maximum rate, Magnolia would not recover its total cost of service. Thus Magnolia only seeks approval to continue to be able to charge up to its existing approved maximum rates. Magnolia proposes an effective date on and after November 22, 1997.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 23, 1997. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32502 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–83–000]

Texas Eastern Transmission Corporation; Notice of Petition for Declaratory Order

December 8, 1997.

Take notice that on December 3, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) requesting that the Commission determine whether Public Service Electric and Gas Company (Public Service) is permitted to employ the Commission's capacity release regulations to abrogate its long-term contractual obligations to Texas Eastern by assigning those contracts to a wholly-owned, shell subsidiary where the assignment is for the express purpose of avoiding Public Service's contractual obligations.

Texas Eastern states that Public Service recently filed a plan with the New Jersey Board of Public Utilities under which Public Service proposes to set up a new shell subsidiary with no assets and then to permanently assign all of its contracts with Texas Eastern to that subsidiary. Public Service will continue to control all of the activities of its new subsidiary and Public Service employees will perform all of the activities of its subsidiary. Texas Eastern quotes Public Service as having stated that the purpose of the new subsidiary is to "reduce the potential fixed cost responsibility" of Public Service under the contracts. Texas Eastern submits that Public Service has no contractual right to terminate its obligations to Texas Eastern by assigning them to a shell subsidiary.

Texas Eastern states that Public Service's plan is based entirely upon Public Service's interpretation of the Commission's capacity release regulations, which Public Service alleges limit its obligations to three months worth of demand charges.

Texas Eastern contends that the capacity release by Public Service is a sham transaction to abrogate its Texas Eastern contracts, which still have a total aggregate revenue stream in excess of $750 million during their remaining primary term. Texas Eastern argues that Public Service's plan will have serious consequences, both of Texas and for the interstate pipeline industry. Texas Eastern alleges that, if Public Service is allowed to avoid its existing obligations, other shippers who find a contract burdensome will assign that contract to an under-capitalized subsidiary and allow the subsidiary to default on the contract.

Texas Eastern states that it is not attempting to preclude Public Service form assigning its contracts to the new subsidiary. Texas Eastern says that it is only seeking to assure that Public Service will not be released from liability as a consequence of such an assignment.

Texas Eastern states that this Commission has jurisdiction to grant this relief first because of the Commission's jurisdiction over capacity release as it applies to Texas Eastern and its tariff and second, because the Commission has direct jurisdiction over Public Service's capacity release activities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motion or protests must be filed on or before January 5, 1998. All protests filed with the Commission will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding, must file a motion to intervene. Copies of this filing are on file and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32506 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–146–007]

U–T Offshore System; Notice of Compliance Filing

December 8, 1997.

Take notice that on December 3, 1997, U–T Offshore System (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective November 1, 1997:

2nd Sub Second Revised Sheet No. 73A

U–TOS asserts that the purpose of this filing is to comply with the Commission's November 25, 1997, letter order in the captioned proceeding regarding the effective version for all Electronic Delivery Mechanism standards (4.X.X). The above mentioned letter order indicated that Sheet No. 73A as filed on November 3, 1997 incorrectly reflected Version 1.1 as the effective version for Standard 4.3.1. The correct version is Version 1.0 as listed on the above mentioned revised tariff sheet.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32503 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–004]

Wyoming Interstate Company, Ltd.; Notice of Filing of Tariff Sheets

December 8, 1997.

Take notice that, on December 4, 1997, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

Substitute Third Revised Sheet No. 5A

According to WIC, this filing corrects a pagination error in its November 26, 1997 "Motion to Place Suspended Rates into Effect", in Docket No. RP97–375–003.

WIC states that a full copy of its filing is being served on each jurisdictional customer, interested state commission, and each party that has requested service as well as upon each party appearing on the Commission's official service list for Docket No. RP97–375.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspections in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32505 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–14–000, et al.]

Electric Rate and Corporate Regulation Filings; Encogen Hawaii, L.P., et al.

December 5, 1997.

Take notice that the following filings have been made with the Commission:

1. Encogen Hawaii, L.P.

[Docket No. EG98–14–000]

Take notice that on December 1, 1997, Encogen Hawaii, L.P. (Encogen), a Delaware limited partnership with its principal office located at 1817 Wood Street, Suite #550—West, Dallas, TX 75201, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations. Encogen states that it is a Delaware limited partnership. Encogen is engaged directly and exclusively in owning an approximately 62 MW (net) naphtha and fuel oil-fired power plant (the Facility) located in Haina, Hawaii and selling energy at wholesale from the Facility to a Hawaiian electric public utility. In addition, thermal energy produced by the Facility as part of the cogeneration process will be sold to a macadamia nut processing factory and an aquaculture facility.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Duquesne Light Company

[Docket No. ER98–686–000]

Take notice that on November 17, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with DTE CoEnergy, L.L.C., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds DTE CoEnergy, L.L.C., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PP&L, Inc.

[Docket No. ER98–687–000]

Take Notice that on November 17, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated November 12, 1997, with South Carolina Electric & Gas (SCE&G) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds SCE&G as an eligible customer under the Tariff.

PP&L requests an effective date of November 17, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to SCE&G and to the Pennsylvania Public Utility Commission.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER98–688–000]

Take notice that on November 17, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and EnerZ Corporation (EnerZ).

Cinergy and EnerZ are requesting an effective date of October 31, 1997.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Zapco Power Marketers, Inc.

[Docket No. ER98–689–000]

Take notice that on November 17, 1997, Zapco Power Marketers, Inc. (Zapco), petitioned the Commission for acceptance of Zapco Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Zapco intends to engage in wholesale electric power and energy purchases and sales as a marketer. Zapco is not in the business of generating or transmitting electric power. Zapco is a wholly-owned subsidiary of Zahren Alternative Power Corporation which, through its affiliates, is engaged in generation and sale of electricity and other energy derived from landfill gas and other fuels.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket No. ER98–690–000]

Take notice that on November 17, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison Transmission Operations and the following Customers:

Customer	Type of serv. agreement	Date of serv. agreement	Date of first transaction
New York State Elec. & Gas Co	Firm	September 17, 1997	None to Date.
New York State Elec. & Gas Co	Non-Firm	September 17, 1997	None to Date.
Pennsylvania Power & Light Co	Non-Firm	September 17, 1997	None to Date.
Public Service Elec. & Gas Co	Non-Firm	September 17, 1997	None to Date.

Detroit Edison requests that the TSAs be made effective as rate schedules as of the dates set forth above.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Energy Corporation

[Docket No. ER98–691–000]

Take notice that on November 17, 1997, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing Transmission Service Agreements between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and the following customers:

Customer	Type of serv. agreement	Date of serv. agreement	Requested effective date
Tennessee Valley Authority	Firm	October 7, 1997	October 17, 1997
Avista Energy, Inc	Non-Firm	November 6, 1997	November 6, 1997

Duke requests that the TSAs be made effective as rate schedules as of the dates set forth above.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER98–692–000]

Take notice that on November 17, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER98–693–000]

Take notice that on November 17, 1997, Northern Indiana Public Service Company, tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Pure Power, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Pure Power, Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to Pure Power, pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of December 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–694–000]

Take notice that on November 17,1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and EnerZ Corporation (EnerZ).

Cinergy and EnerZ are requesting an effective date of October 31, 1997.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Atlantic City Electric Company

[Docket No. ER98–695–000]

Take notice that on November 17, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which Atlantic Electric will sell capacity and energy to SCANA Energy Marketing, Inc. (SCANA), and South Carolina Electric & Gas Company (SCE&G) under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreements be accepted to become effective on November 18, 1997.

Atlantic Electric states that a copy of the filing has been served on SCANA and SCE&G.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER98–696–000]

Take notice that on November 17, 1997, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Electric Clearinghouse, Inc., (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of October 23, 1997, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. American Electric Power Service Corporation

[Docket No. ER98–697–000]

Take notice that on November 17, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after November 1, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER98–698–000]

Take notice that on November 17, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively and each doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and Phibro, Inc. (Phibro), dated August 23, 1995.

GPU Energy requests that this cancellation become effective January 16, 1998.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Tucson Electric Power Company

[Docket No. ER98–699–000]

Take notice that on November 17, 1997, Tucson Electric Power Company (TEP), tendered for filing the following service agreements for firm point-to-point transmission service, and the following umbrella agreement for short-term firm transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under the agreements, and to permit the umbrella agreements to become effective as of the date of this filing. The details of the service agreement are as follows:

1. *Service Agreement for Firm Point-to-Point Transmission Service with Electric Clearinghouse, Inc., dated October 31, 1997. Service under this agreement commenced on November 1, 1997.*

2. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated October 31, 1997. Service under this agreement commenced on November 1, 1997.

3. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated November 4, 1997. Service under this agreement commenced on November 4, 1997.

The details of the umbrella agreement are as follows:

1. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with Salt River Project dated November 6, 1997. No service has yet occurred under this agreement.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Tucson Electric Power Company

[Docket No. ER98–700–000]

Take notice that on November 17, 1997, Tucson Electric Power Company (TEP), tendered for filing a service agreement and letter agreement for the sale of firm power under Service Schedule C of TEP's Coordination Tariff, Volume No. 1, Docket No. ER94–1437–000.

The details of the agreements are as follows:

1. Service Agreement for Firm Power Sales to Farmington Electric Utility System dated May 16, 1997. Service under this agreement commenced on November 1, 1997.

2. Letter Agreement for Firm Power Sales to Farmington Electric Utility System dated May 16, 1997.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. California Polar Power Brokers LLC

[Docket No. ER98–701–000]

Take notice that on November 17, 1997, California Polar Power Brokers LLC (Calpol), petitioned the Commission for acceptance of Calpol's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Calpol intends to engage in wholesale electric power and energy purchases and sales as a marketer. Calpol is not in the business of generating or transmitting electric power. Calpol is owned by private investors and is in the business of marketing and brokering electricity.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–702–000]

Take notice that on November 17, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as GPU Energy) filed an Application for Authorization To Sell Energy and Capacity at Market-based Rates and Market-based Sales Tariff.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–703–000]

Take notice that on November 17, 1997, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of Scana Energy Marketing, Inc., and South Jersey Energy Company. PJM requests an effective on the day after received by FERC.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Central Maine Power Company

[Docket No. ER98–704–000]

Take notice that on November 17, 1997, Central Maine Power Company, filed an amendment to its Wholesale Market Tariff, FERC Electric Tariff, Original Volume No. 4. The amendment replaces Sheet No. 4, with First Revised Sheet No. 4.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Pennsylvania Power Company

[Docket No. ER98–705–000]

Take notice that on November 17, 1997, Pennsylvania Power Company (Penn Power), submitted a revised rate schedule for the Borough of Zelienople, Pennsylvania. The revised rate schedule incorporates the energy imbalance deviation band provided for in the Stipulation and Agreement between Ohio Edison Company, Pennsylvania Power Company and the Boroughs of Ellwood City, Grove City and Zelienople which had been submitted for filing to the Federal Energy Regulatory Commission on June 30, 1997, in Docket Nos. OA96–197–000 and ER97–1719–000 and approved by the Commission by letter of October 17, 1997. The proposed effective date for the revised rate schedule is November 17, 1997. Zelienople is the only customer affected by this filing.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission and The Public Utilities Commission of Ohio.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32531 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11546–000 Minnesota]

City of Thief River Falls; Notice of Availability of Draft Environmental Assessment

December 8, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original minor license for the proposed Thief River Falls, Municipal Power Dam Hydroelectric Project located on the Red Lake River in the City of Thief River Falls, Pennington County, Minnesota, and has prepared A Draft Environmental Assessment (DEA) for the proposed project. In the DEA, the Commission's staff has the proposed project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Comments should filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 11546–000 to all comments. For further information, please contact Monte J. TerHaar at (202) 219–2768.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32501 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 8, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 287–006.

c. *Date filed:* December 2, 1997.

d. *Applicants:* Hydro-Op One Associates and Midwest Hydro, Inc.

e. *Name of project:* Dayton.

f. *Location:* On the Fox River in LaSalle County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contacts:* Mr. Robert L. Winship, Hydro-Op One Associates, c/o National Hydro, 745 Atlantic Avenue, 10th Floor, Boston, MA 02111–2735, (617) 357–9029; Mr. David B. Ward, Ward & Anderson, P.C., 1000 Thomas Jefferson Street, N.W., Suite 503, Washington, DC 20007–3805, (202) 298–6910.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Comment Date:* January 6, 1998.

k. *Description of Transfer:* Transfer of the license for this project is being sought in connection with the sale of the project from Hydro-Op One Associates to Midwest Hydro, Inc.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32500 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5487–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed December 01, 1997 Through December 05, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970464, Draft EIS, COE, AZ, Rio Salado Environmental Restoration of two Sites along the Salt River: (1) Phoenix Reach and (2) Tempe Reach, Feasibility Report, in the Cities of Phoenix and Tempe, Maricopa County, AZ, Due: January 26, 1998, Contact: Alex Watt (213) 452–4204.

EIS No. 970465, Revised Draft EIS, AFS, CA, Rock Creek Recreational Trails Management Plan, Implementation, Additional Information, Eldorado National Forest, Georgetown Ranger Director, Eldorado County, CA, Due: January 26, 1998, Contact: Linda Earley (916) 333–4312.

EIS No. 970466, Final EIS, AFS, AK, Helicopter Landings within Wilderness, Implementation, Tongass National Forest, Chatham, Stikine and Ketchikan Area, AK, Due: January 12, 1998, Contact: Larry Roberts (907) 772–3841.

EIS No. 970467, Draft EIS, NPS, OR, Crater Lake National Park, Implementation of New Concession Contract for Visitor Services Plan, OR, Due: January 26, 1998, Contact: Al Kendricks (541) 594–2211.

EIS No. 970468, Draft Supplement, APH, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Additional Updated Information, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States, Due: February 10, 1998, Contact: Jack Edmundson (301) 734–8565.

EIS No. 970469, Draft EIS, USN, CA, US Pacific Fleet F/A 18 E/F Aircraft for Development of Facilities to Support Basing on the West Coast of the United States, Possible Site Installations are (1) Lemoore Naval Air Station and (2) El Centro Naval Air Facility, Fresno, King and Imperial Counties, CA, Due: January 26, 1998, Contact: Surinder Sikand (415) 244–3020.

Dated: December 9, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–32567 Filed 12–11–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5487–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 24, 1997 Through November 28, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–COE–K36122–CA Rating EC2, Upper Guadalupe River Feasibility Study, Flood Control Protection, Construction, National Economic Development Plan (NED), Santa Clara Valley Water District, City of San Jose, Santa Clara County, CA.

Summary: EPA expressed environmental concerns regarding the lack of a discussion as to whether a combination of structural and non-structural features may be a reasonable alternative, whether the project would comply with applicable Water Quality Standards, and the potential impacts and mitigation measures associated with using herbicides to control vegetation under the Channel Bypass Plan. EPA recommended that the FEIS incorporate pollution prevention features in the project's design, construction and operation.

ERP No. DS–COE–G39002–00 Rating LO, Red River Chloride Control Project, Construction and Operation Methods, Updated and Additional Information, several counties TX and OK.

Summary: EPA had no objection; however, EPA recommended that the description of the no action alternative be expanded to include the economic consequences of not developing additional water supply sources to users in the Red River Basin.

ERP No. D1–COE–K35012–CA Rating EC2, Sacramento River Bank Protection Project, Implemention of Streambank Protection for the Lower American River between RM–0 and 13.7, Updated Information, City of Sacramento, Sacramento County, CA.

Summary: EPA commended the Corps for the collaborative process with Federal, State and local agencies that lead to the project's design and environmental documentation. However, EPA expressed concerns regarding potential impacts to aquatic resources. The lack of a discussions of mitigation measures to compensate for the unavoidable loss of aquatic resources. EPA asked that the FSEIS clearly indicate whether adverse impacts to aquatic resources would be avoided and minimized to the greatest extent practicable while still executing the project's purpose and need. EPA also asked that the FSEIS discuss whether the project would comply with Water Quality Standards and protect beneficial uses.

Final EISs

ERP No. F–AFS–L61214–OR, Kalmiopsis Wilderness, Approval for Motorized Vehicular Access to the Private Property within the Chetco River Drainage, Special-Use-Permit Issuance, Illinois Valley Ranger District, Siskiyou National Forest, Curry County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65278–ID, Middle Fork Analysis Area Management Plan, Implementation, Nez Perce National Forest, Selway Ranger District, Idaho County, ID.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K67045–NV, Florida Canyon Mine Expansion Project and Comprehensive Reclamation Plan, Construction and Operation of New Facilities and Expansion of Existing Gold Mining Operations in Imlay Mining District, Plan-of-Operation Approval and Right-of-Way Permit Issuance, Pershing County, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–L91001–ID, Nez Perce Tribal Hatchery Program, Implementation, Restore Chenook Salmon to the Clearwater River Subbasin, Snake River, Idaho.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–IBR–K31018–AZ, Programmatic EIS—Pima-Maricopa Irrigation Project, Construction and Operation, Maricopa and Pinal Counties, AZ.

Summary: EPA expressed environmental concern over the large scope of the proposed action and potential adverse environmental impacts. EPA recommended prioritization of project components for implementation with primary emphasis on rehabilitation of existing irrigation systems and agricultural areas. EPA also strongly advocated monitoring and adaptive management and urged full integration of the Community's comprehensive water management plan. EPA urged implementation of the demonstration Riparian Habitat Area as soon as feasible.

Dated: December 9, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–32568 Filed 12–11–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATION COMMISSION

[Report No. 2241]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 8, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchase form the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed December 29, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees (WT Docket No. 97–82).

Number of Petitions Filed: 37.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32518 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2242]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 8, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed December 29, 1997. See. § 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Administration of the North American Numbering Plan Carrier Identification Codes (CICS) (CC Docket No. 92–237).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Sales,

Secretary.

[FR Doc. 97–32519 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:58 a.m. on Tuesday, December 9, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) reports from the Office of Inspector General, and (2) matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: December 9, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–32647 Filed 12–10–97; 12:15 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following

agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010776–106.

Title: Asia North America Rate Agreement ("ANERA").

Parties:

American President Lines, Ltd.
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification revises Article 8.6 to provide that Neptune Orient Lines, Ltd. and American President Lines, Ltd., as affiliated companies, will have a single vote on Agreement matters. The parties have requested a shortened review period.

Agreement No.: 224–201042.

Title: Terminal Agreement between the Philadelphia Regional Port Authority and Tioga Fruit Terminal Inc.

Parties:

Philadelphia Regional Port Authority ("Port")
Tioga Fruit Terminal, Inc. ("Tioga").

Synopsis: The proposed lease agreement authorizes the Port to grant Tioga exclusive use of the Tioga III Building, approximately 40,000 square feet of refrigerated space in the Tioga II Building, certain yard space west of the Tioga III Building, and berthing and other rights through May 31, 1998.

Dated: December 8, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32471 Filed 12–11–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 29, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Gerald E. Smith, Marshall, Texas; Geraldine Smith Mauthe, Uncertain, Texas; Frances Smith Hurley, Marshall, Texas; Betty Smith Henigsmith, Marshall, Texas; William Louis Mauthe, Uncertain, Texas; Martheil Mauthe Clanton, Waco, Texas; Coleta Daves Smith, Marshall, Texas; John E. Hurley, Jr., Marshall, Texas; Caddo Industries, Inc., Marshall, Texas; Thomas D. Howell, Marshall, Texas; and Steven H. Howell, Marshall, Texas, all acting in concert; to acquire additional voting shares of First Marshall Corporation, Marshall, Texas, and thereby indirectly acquire East Texas National Bank, Marshall, Texas.

Board of Governors of the Federal Reserve System, December 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32555 Filed 12–91–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-31838) published on page 64382 of the issue for Friday, December 5, 1997.

Under the Federal Reserve Bank of Atlanta heading, the entry for Harold Gary Morse, Oxford, Florida, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Harold Gary Morse, Oxford, Florida, Mark Morse Irrevocable Trust, Lady Lake, Florida, Jennifer Boone Irrevocable Trust, Lady Lake, Florida, Tracy Mathews Irrevocable Trust, Lady Lake, Florida, Donald W. and Tracy L. Mathews, Lady Lake, Florida, Tracy L. Mathews, Lady Lake, Florida, Mark G. Morse, Lady Lake, Florida, Jennifer Boone Parr, Lady Lake, Florida, and Jennifer Boone Parr Self Directed IRA; to acquire additional voting shares of Villages Bancorporation, Inc., Lady Lake, Florida, and thereby indirectly acquire First Bank of the Villages, Lady Lake, Florida.

Comments on this application must be received by December 19, 1997.

Board of Governors of the Federal Reserve System, December 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32558 Filed 12–11–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Lenox Financial Services Corp., Lenox, Massachusetts; to become a bank holding company by acquiring 100 percent of the coring shares of Lenox Savings Bank, Lenox, Massachusetts.

In connection with this application, Applicant also has applied to acquire Trust Company of the Berkshires, N.A., Pittsfield, Massachusetts, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. National City Corporation, Cleveland, Ohio; to merge with First of America Bank Corporation, Kalamazoo, Michigan, and thereby indirectly acquire First of America Bank - Michigan, N.A., Kalamazoo, Michigan, and First of America Bank - Illinois, N.A., Bannockburn, Illinois.

In connection with this application, Applicant has also applied to acquire First of America Community Development Corporation, Kalamazoo, Michigan, and thereby indirectly acquire: (1) SunAmerica Affordable Housing Partners, Carson City, Nevada, and thereby engage in community development financing and investment activities, pursuant to § 225.28 (b)(12) of the Board's Regulation Y; (2) First of America Insurance Company, Kalamazoo, Michigan, and thereby engage in credit life and disability insurance activities, pursuant to § 225.28 (b)(11) of the Board's Regulation Y; (3) First of America Securities, Inc., Kalamzoo, Michigan, and thereby engage in discount and full service brokerage activities through agency transactional services for consumer investments, pursuant to § 225.28 (b)(7) of the Board's Regulation Y; investment transactions as principal, pursuant to § 225.28(b)(8) of the Board's Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; and in underwriting and dealing to a limited extent, in all types of debt and equity securities, (see *Citicorp, et al.*, 73 Fed. Res. Bull. 473 (1987) (1987 Section 20 Order) as modified, and First of America Bank Corporation, 80 Fed. Res. Bull. 1120 (1994); and (4) First of America Trust Company, Peoria, Illinois, and thereby indirectly acquire New England Trust Company, Providence, Rhode Island, and thereby engage in trust activities and financial and investment advisory activities, pursuant to §§ 225.28 (b)(5) and (b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32557 Filed 12–11–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Fleet Financial Group, Inc., Boston, Massachusetts (Notificant); to acquire through its wholly owned subsidiary, Fleet Securities, Inc., New York, New York (Section 20 Subsidiary), all the shares of The Quick & Reilly Group, Inc., Palm Beach, Florida (Q&R Group), and all the shares of the subsidiaries of Q&R Group, including JJC Specialist Corp., New York, New York, Nash, Weiss & Co., Jersey City, New Jersey, and Sure Trade Corp., New York, New York, and thereby engage in certain nonbanking activities. Notificant proposes to engage in the following: (1) extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; (2) providing services related to extending credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y; (3) providing financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; (4) providing securities brokerage, riskless principal, private placement, and other agency transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; (5) underwriting and dealing in government obligations and money market instruments ("bank-eligible securities") and buying and selling bullion and related activities, pursuant to § 225.28(b)(8) of the Board's Regulation Y; (6) providing data processing services, pursuant to § 225.28(b)(14) of the Board's Regulation Y, and activities incidental thereto; and (7) providing administrative services to open-end investment companies, *see Commerzbank AG*, 83 Fed. Res. Bull. 678 (1997) and *Bankers Trust New York Corp.*, 83 Fed. Res. Bull. 780 (1997). Notificant also proposes to provide certain swaps-related back-office and middle-office services in connection with the provision of agency transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y.

In addition, Notificant proposes to engage in underwriting and dealing to a limited extent in all types of equity and debt securities that a state member bank may not underwrite and deal in ("bank-ineligible securities"), except ownership interests in open-end investment companies, *see J.P. Morgan & Co., Inc.*, 75 Fed. Res. Bull. 192 (1989) and *Citicorp*. 73 Fed. Res. Bull. 473 (1987). In connection with these activities, Notificant proposes to act as a specialist for certain issues listed on the New York Sock Exchange (NYSE).

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Middle Georgia Corporation, Ellaville, Georgia; to acquire Fairbanco Holding Company, Inc., Fairburn, Georgia, and thereby indirectly acquire Fairburn Banking Company, Fairburn, Georgia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y. This activity will be conducted throughout the State of Georgia. Comments regarding this application must be received by January 8, 1998.

Board of Governors of the Federal Reserve System, December 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32554 Filed 12–11–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. *Uniform Relocation and Real Property Acquisition Under Federal and Federally-assisted Programs (45 CFR part 15 and 49 CFR part 24)—0990–0150—Extension*—HHS has adopted standard government-wide regulations on acquisition of real property and relocation of persons thereby displaced. Federal agencies and State and local governments must maintain records of their displacement activities sufficient to demonstrate compliance with those regulations. Agencies may be required to file reports every three years (or more often with good cause) to permit Federal verification of compliance.

Respondents: State or local governments; *Annual Number of Respondents:* one; *Frequency of Response:* once; *Burden per Response:* one hour; *Total Annual Burden:* one hour.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: November 28, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–32499 Filed 12–11–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request.

Title: Developmental Disabilities Annual Protection and Advocacy Program Performance Report.

OMB No.: 0970–0159.

Description: HHS cannot fulfill its obligation to effectively serve the nation's Adoption and Foster Care populations, nor report meaningful and reliable information to Congress (Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act, or CAPTA reporting requirements) about the extent of the problems facing these children or the effectiveness of various methodologies designed to provide assistance to this population, without access to timely and accurate information. Forty-six States and the District of Columbia have developed or have committed to develop a SACWIS system with enhanced (75 percent) Federal financial participation (FFP). The purpose of these reviews is to ensure that all aspects of the project, as described in the approved Advance Planning Document (APD), have been adequately completed, and conform with applicable regulations and policies.

States will submit the completed SACWIS Assessment Review Questionnaire and other documentation. The additional documents should all be readily available to the State as a result good project management.

The information collected in the Assessment Review Guide will allow State and Federal officials to determine if the State's SACWIS system meets the requirements for enhanced title IV–E Federal financial participation defined at 45 CFR 1355.50. Additionally, other States will be able to use the documentation provided as part of this review process, in their own system development efforts.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Review	10	1	60	600

Estimated Total Annual Burden Hours: 600

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: December 9, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–32538 Filed 12–11–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0487]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the patent and exclusivity notification requirements under the new drug application (NDA) and abbreviated new drug application (ANDA) regulations.

DATES: Submit written comments on the collection of information by February 10, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions; 21 CFR 314.50(i), 314.50(j), 314.52, 314.53, 314.54(a)(1)(vii), 314.70(f), 314.94(a)(12), 314.95, 314.107(c)(4), (e)(2)(iv), (f)(2), and (f)(3)—(OMB Control No. 0910–0305)—Extension

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) requires patent owners to submit to FDA information about patents that cover approved drugs. Generic copies of these drugs may be approved when the patents expire or if a generic company certifies that the patent is invalid or will not be infringed. In such cases, the generic company must notify the patent owner about the certification, and approval of the drug may not be made effective until after the court decides the patent infringement suit or a period of 36 months, whichever occurs first. In addition, section 505 of the act, provides several periods of marketing exclusivity ranging from 3 to 10 years (depending primarily on the nature of the innovation). If a drug product receives marketing exclusivity, FDA will not approve (or, in limited cases not receive) an ANDA for the drug product.

Under the authority found in sections 505 and 701 of the act (21 U.S.C. 371), FDA issued regulations governing patent and exclusivity provisions in part 314 (21 CFR part 314). The regulations provide instructions for NDA applicants (including section 505(b)(2) applicants) and ANDA applicants on how to file patent information and request marketing exclusivity; require patent certification information for section 505(b)(2) applications and ANDA's; require information for requests for marketing exclusivity for NDA's (including section 505(b)(2) applications and certain NDA supplements); and require patent information for NDA's.

The specific reporting requirements that are the subject of this information collection are as follows: (1) § 314.50(l) requires patent certification as part of a section 505(b)(2) application; (2) § 314.50(j) requires an NDA applicant to submit information if seeking marketing exclusivity; (3) § 314.52 requires section 505(b)(2) applicants to provide notice of certification of noninfringement of patent or invalidity to patent holders and NDA holders; (4) § 314.53 requires submission of patent information as part of an NDA or supplement; (5) § 314.54(a)(1)(vii) requires applicants to submit a statement if a section 505(b)(2) applicant is seeking marketing exclusivity for changes to a listed drug; (6) § 314.70(f) requires a statement if an applicant is seeking marketing exclusivity for a supplement; (7) § 314.94(a)(12) requires an applicant to submit patent information as part of an ANDA; (8) § 314.95 requires ANDA applicants to provide notice of certification of noninfringement of patent or invalidity to patent holders and NDA holders; and (9) §§ 314.107(c)(4), (e)(2)(iv), (f)(2), and (f)(3) require notice to FDA by ANDA or section 505(b)(2) application holders of any legal action concerning patent infringement.

Applicants must provide information on patents to FDA to enable the agency to determine whether a product is covered by a patent or whether approval of a proposed drug product would result in patent infringement. The agency lists the patent information as a reference for potential applicants. If an applicant believes a patent is invalid or would not be infringed, federal law also requires it to notify the patent holder. FDA approval, in such cases, is affected should there be any patent litigation. Failure to provide this information would result in an incomplete application and constitute grounds for refusing to approve the application.

Applicants submitting NDA's are required under the act to provide information on certain patents that cover their drug products. The agency lists this patent information in its publication titled "List of Approved Drug Products With Therapeutic Equivalence Evaluations." To promote product innovation, the act also gives NDA applicants several periods of "market exclusivity" ranging from 3 to 10 years (depending primarily on the nature of the innovation). If a drug

product receives marketing exclusivity, FDA will not approve (or, in limited cases, even receive) an ANDA for the drug product during that time period.

Respondents to this collection of information are new drug and abbreviated new drug applicants.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.50(i)	8	1	8	2	16
314.50(j)	50	1	50	2	100
314.52	8	1	8	8	64
314.53	200	1	200	1	200
314.54(a)(1)(vii)	8	1	8	1	8
314.70(f)	43	1	43	1	43
314.94(a)(12)	395	1	395	2	790
314.95	30	1	30	16	480
314.107(c)(4), (e)(2)(iv), (f)(2), (f)(3)	30	1	30	1	30
Total					1,731

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on FDA's experience over the last 3 years in receiving this information, and the familiarity by FDA reviewers with the amount of time it takes to prepare and submit the information to FDA.

Dated: December 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32553 Filed 12–11–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0320]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Filing Objections and Requests for a Hearing on a Regulation or Order" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 6, 1997 (62 FR 42257 to 42258), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0184. The approval expires on September 30, 2000.

Dated: December 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32583 Filed 12–11–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0443]

Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide entitled "Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide" (compliance guide). This compliance guide is intended to help small entities comply with the final rule requiring label warnings and unit-dose packaging for iron-containing supplements and drug products. This action is being taken under the Small Business Regulatory Enforcement Fairness Act of 1996 (the SBREFA).

DATES: Written comments on the compliance guide may be submitted at any time.

ADDRESSES: An electronic version of the compliance guide entitled "Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide" is available on the Internet at "http://vm.cfsan.fda.gov/~dms/secqiron.html". Printed copies may be obtained from the Iron Labeling and Packaging, Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Submit written comments on the compliance guide to the contact person below.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3101.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 1997 (62 FR 2218), FDA issued a final rule requiring: (1) Label warning statements on products taken in solid oral dosage form to supplement the dietary intake of iron or to provide iron for therapeutic purposes and (2) unit-dose packaging for iron-containing products that contain 30 milligrams or more of iron per dosage unit. This final rule became effective July 15, 1997.

FDA is announcing the availability of a compliance guide entitled "Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide" under the SBREFA (Pub. L. 104–121). This compliance guide is intended to help small businesses comply with the requirements of the new rule, and it restates in plain language the legal requirements set forth in the current regulation for labeling and packaging of iron-containing supplements and drug products. Any statement in this compliance guide that goes beyond merely restating the applicable legal requirements represents the agency's current thinking on this subject. The regulation is binding and has the force and effect of law; however, this compliance guide does not, itself, create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

Dated: November 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32552 Filed 12–11–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Acute Infection and Early Disease Research Network (AIEDRN).

Date: January 9, 1998.

Time: 8:00 a.m. to Adjournment.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815, (301) 656–1500.

Contact Person: Dr. Allen C. Stoolmiller, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C05, Bethesda, MD 20892, (301) 496–7966.

Purpose/Agenda: To evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: December 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32470 Filed 12–11–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Promotion of Homologous Recombination DNA Pairing by RecA And RecA Peptides

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice is accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patents No. 5,460,941, entitled, "Method of Targeting DNA" and 5,510,473, entitled, "Cloning of the RecA Gene From Thermus Aquaticus YT–1", U.S. Patent Applications Serial Numbers 08/446,413, entitled, "Cloning of the RecA Gene From Thermus Aquaticus YT–1", 08/483,115 entitled, "Promotion of Homologous Recombination DNA Pairing By Rec-A-Derived Peptides", 60/001,384 and 08/682,305, "Rec A Assisted Cloning of DNA", and corresponding U.S. and foreign patent applications to the Pangene Corporation of Menlo Park, California. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or applications for a license which are received by NIH on or before February 10, 1998 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 247; Facsimile: (301) 402–0220. A signed Confidentially Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: This technology covers methodology for inducing sequence-specific homologous recombination between an exogenous DNA sequence and the corresponding genomic DNA sequence by use of the *E. coli* RecA protein. The RecA protein brings together an exogenous DNA sequence and a corresponding genomic DNA sequences for homologous recombination. A peptide of RecA can be substituted for the entire *E. Coli* RecA protein to target a double-strand of DNA or to inhibit transcription of a given gene. The ability of a RecA peptide to induce homologous recombination gives this technology broad commercial applicability. The peptide can be used in site-specific targeting of DNA sequences for purposes of cleavage, protection or enrichment as a research reagent, a diagnostic tool or for use in gene therapy.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use of this exclusive license may be limited to human therapeutics.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Comments and objections submitted to this notice will not be available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 1, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–32469 Filed 12–11–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–62]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: January 12, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 8, 1997.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Report on Occupancy for Public Housing.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0028.

Description of the Need for the Information and its Proposed Use: The information collected will be used to measure and evaluate the utilization of Public and Indian Housing units by low-income families as well as assure that all persons have an equal opportunity to participate in and receive the benefits of the housing assistance offered. Occupancy and tenant characteristic information is needed for monitoring and compliance activities. An annual report is provided to Congress.

Form Number: HUD–51234.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–51234	3,400		1		1		3,400

Total Estimated Burden Hours: 3,400.
Status: Extension, without changes.
Contact: Brenda Earle, HUD, (202) 708–0744x4022; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 8, 1997.

[FR Doc. 97–32509 Filed 12–11–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–33]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265.

(This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available for suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be make available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area—MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; INTERIOR: Ms. Lola Knight, Department of the Interior, 1849 C Street, NW., Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; VA: Mr. George Szwarcman, Director, Land Management Service, 184A, Department of Veterans Affairs, 811 Avenue, NW., Room 414, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Street, NW., Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: December 4, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/12/97

Suitable/Available Properties

Buildings (by State)

California

Bldgs. 65–74, 86, 87
Naval Postgraduate School
La Mesa
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740067
Status: Excess
Comment: 4,482 sq. ft., family housing, presence of asbestos/lead paint, need rehab

Hawaii

Bldg. 618, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740069
Status: Underutilized
Comment: intermittent use, 315 sq. ft., most recent use—storage

Bldg. 619, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740070
Status: Underutilized
Comment: intermittent use, 1460 sq. ft., most recent use—storage

Bldg. 594, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740071
Status: Excess
Comment: 1300 sq. ft., most recent use—parking shed, needs rehab

Bldg. 566, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740072
Status: Excess
Comment: 52 sq. ft., most recent use—sentry post

Structure 5378, Ford Island
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740073
Status: Underutilized
Comment: intermittent use, berthing pier

Virginia

Bldg. 94
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740075
Status: Unutilized
Comment: 361 sq. ft.

Bldg. 206
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740076
Status: Unutilized
Comment: 204 sq. ft., most recent use—storage

Bldg. 211
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740077
Status: Unutilized
Comment: 165 sq. ft., most recent use—storage

Bldg. 274
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740078
Status: Unutilized
Comment: 81 sq. ft., most recent use—storage

Bldg. 124
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740079
Status: Unutilized
Comment: 4900 sq. ft., most recent use—office

Bldg. 193
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740080
Status: Unutilized
Comment: 1932 sq. ft., most recent use—office

Bldg. P82
Naval Station Norfolk
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779740081
Status: Excess
Comment: 1324 sq. ft., most recent use—retail store

Land (by State)

Hawaii

1.49 acres, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740068
Status: Underutilized
Comment: intermittent use, most recent use—parking

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 52–651
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189740004
Status: Unutilized
Reason: Secured Area Extensive deterioration

California

Bldg. 01310
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740005
Status: Unutilized
Reason: Secured Area

Bldg. 08412
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740006
Status: Unutilized
Reason: Secured Area

Bldg. 11153
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740007
Status: Unutilized
Reason: Secured Area

Bldg. 11154
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740008
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 15001
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740009
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 16158
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740010
Status: Unutilized
Reason: Secured Area Extensive deterioration

Florida

Bldg. 10686
Elgin AFB
Elgin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189740001
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 10563
Elgin AFB
Elgin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189740002
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 10352
Elgin AFB
Elgin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189740003
Status: Unutilized
Reason: Secured Area Extensive deterioration

Maryland

Bldg. 510, Indian Head Div.
Naval Surface Warfare Center
Indian Heal Co: Charles MD 20640–
Landholding Agency: Navy
Property Number: 779740083
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Minnesota

Federal Building
200 East 4th Street
Redwood Falls Co: Redwood MN 56283–
Landholding Agency: GSA
Property Number: 549740017
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–G–MN–563

Montana

Bldg. 3070
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189740011
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

New Mexico

Bldg. 1257
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189740012
Status: Unutilized
Reason: Secured Area

Bldg. 332
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189740013
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 205
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189740014
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

New York

Galloo Island Light
Lake Ontario
Hounsbfield Co: Jefferson NY
Landholding Agency: GSA
Property Number: 549740016
Status: Excess
Reason: Other
Comment: inaccessible
GSA Number: 1–U–NY–735C

Washington

Bldg. 4446
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 779740082
Status: Unutilized
Reason: Secured Area Extensive deterioration

West Virginia

Jarrell House
New River Gorg National River
Meadow Creek Co: Summers WV 25977–
Landholding Agency: Interior
Property Number: 619740005
Status: Excess
Reason: Extensive deterioration

Blackburn Houses
New River Gorg National River
Meadow Creek Co: Summers WV 25977–
Landholding Agency: Interior
Property Number: 619740006
Status: Excess
Reason: Extensive deterioration

Adkins House
New River Gorg National River
Claypool Hollow Co: Summers WV 25977–
Landholding Agency: Interior
Property Number: 619740007
Status: Excess
Reason: Extensive deterioration

Land (by State)

Maryland

Govt. Railroad
Naval Surface Warfare Center
Indian Head Div.
Indian Head Co: Charles MD 20640–
Landholding Agency: Navy
Property Number: 779740084
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway

Minnesota

3.85 acres (Area #2)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 979740004
Status: Unutilized
Reason: Other
Comment: landlocked

7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 979740005
Status: Underutilized
Reason: Secured Area

North Carolina

0.85 parcel of land
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740074
Status: Unutilized
Reason: Secured Area

[FR Doc. 97–32249 Filed 12–11–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Comment Period on an Application for an Incidental Take Permit from the County of San Diego, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the comment period on the application from the County of San Diego, California, for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). Because of an administrative error, the original public comment period that closes December 15, 1997 (62 FR 61140) is extended to allow adequate time for review and response by the public. This notice is provided pursuant to section 10(c) of the Act. All comments received will become part of the public record and may be released.

DATES: Written comments should be received on or before January 12, 1998.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to telephone (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Barrett, Assistant Field Supervisor, at the above address; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

The application includes the County of San Diego Subarea Plan and an Implementing Agreement, both of which were prepared in accordance with the regional Multiple Species Conservation Program. Persons wishing to obtain copies of the documents or additional background material should contact the County of San Diego, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, Mail Station 0650, San Diego, California 92123; telephone (619) 260–8316. Documents will be available for public inspection, by appointment, during normal business hours (8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.), Monday through Friday, at the above County office and at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Dated: December 8, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–32513 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement to Allow Incidental Take of Species on Lands Administered by Plum Creek Timber Company, L.P., in the States of Idaho, Montana, and Washington

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notce of intent.

SUMMARY: This notice advises the public that the Fish and Wildlife Service and National Marine Fisheries Service (collectively, the "Services") intend to gather information necessary to prepare an Environmental Impact Statement and to conduct public scoping meetings. Plum Creek Timber Company, L.P. (Plum Creek) has informed the Services that it is preparing an application for a permit and approval of a Conservation Plan (Plan) covering bull trout (*Salvelinus confluentus*) and possibly other native salmonids, including steelhead trout (*Onchorynchus mykiss* ssp.), pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (Act). The proposed Plan would be designed to address the effects of Plum Creek activities that may have an impact on bull trout and possibly other aquatic species not currently listed under the Act. As a part of its application, Plum Creek may be seeking a permit that would authorize incidental take of steelhead trout, an aquatic species presently listed under the Act. Plum Creek would also be seeking future incidental take authority, subject to certain conditions, for other species adequately covered by the Plan should those species subsequently be listed under the Act during the term of the Plan. The Plan would be in the form of a Candidate Conservation Agreement or a Habitat Conservation Plan, depending upon whether it includes species currently listed under the Act.

In compliance with their responsibilities under the National Environmental Policy Act of 1969, as amended, and its implementing regulations (40 CFR 1500, *et. seq.*) the Services jointly announce their intent to prepare an Environmental Impact Statement for the proposed action of approving the proposed Plan and issuing the permit. This notice is furnished to solicit suggestions and information from tribes, other agencies, and the public to determine the scope of issues and alternatives to be considered in preparation of the Environmental Impact Statement. The Services jointly announce their intent to hold scoping meetings, the date, time, and place of which are provided in this notice, below. This notice is provided pursuant to section 10(c) of the Endangered Species Act and the National Environmental Policy Act implementing regulations (40 CFR 1506.6.

DATES: Scoping will commence as of the date of publication of this notice in the **Federal Register.** Written comments on the scope of the proposed action, the approval of the Plan and issuance of the permit should be received on or before February 27, 1998. A total of six scoping meetings will be held in each of the three states, on January 14, 15, 21, 22, 28, and 29, 1998. Each meeting will run from 3:30 p.m. until 7:30 p.m. The Services will use an open house format for the meetings, allowing interested members of the public to drop by at any point during the meeting to gather information and/or provide comments.

ADDRESSES: Meeting locations are scheduled as follows: January 14—Venture Motor Inn, 443 Highway 2 West, Libby, Montana; January 15—Outlaw Inn, 1701 U.S. 93 South, Kalispell, Montana; January 21—Shilo Inn, 702 West Appleway, Coeur d'Alene, Idaho; January 22—Holiday Inn Parkside, 200 South Pattee, Missoula, Montana; January 28, Doubletree Inn, 510 Kelso Drive, Kelso, Washington; and January 29, Cavanaugh's Gateway, 9 North 9th Street, Yakima, Washington, Written comments regarding the proposed action and the proposed Environmental Impact Statement should be addressed to Robert G. Ruesink, Supervisor, Snake River Basin Fish and Wildlife Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Ted Koch, at the address above, (208) 378–5293; Bill Vogel, Western Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, Washington, 98503–1273 (360) 753–4367; or Bob Ries, National Marine Fisheries Service, 1387 S. Vinnell Way, Room 377, Boise, Idaho, 83709 (208) 378–5647.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, "taking" of a threatened or endangered species, is prohibited. However, under certain circumstances the Services may issue permits to take these wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities.

Regulations governing permits for taking of threatened or endangered species are found at 50 CFR 17.22, 50 CFR 17.32, 50 CFR 222.22, 50 CFR 222.23, and 50 CFR 227.21. According to the Services' draft policy and proposed rule for Candidate Conservation Agreements, the Services may also issue permits, under certain circumstances, in connection with a Candidate Conservation Agreement (see 62 FR 32183–32188, June 12, 1997).

Plum Creek proposes to develop the Plan employing the technical assistance of the Services. Plum Creek has identified the goals of their Plan as:

1. To the maximum extent practicable, minimize and mitigate the impacts of Plum Creek's activities on all species covered by the Plan.

2. Provide habitat conditions that are necessary and advisable to conserve and enhance species populations, and allow for the long-term survival of species covered by the Plan.

To the extent that unlisted species are covered by the Plan, Plum Creek's objective is to address the listing factors under its control such that the listing of such species would be unnecessary, assuming the measures in the Plan were implemented by similarly situated landowners through a species' range.

3. Provide Plum Creek will predictability and flexibility to manage its timberlands economically. Plum Creek's objective is that the Plan would meet or exceed the standards set forth in the Services' "No Surprises" Policy proposed rule such that Plum Creek would be entitled to the assurances provided thereunder (see FR 29091, May 29, 1997).

The terms of any permit that the Services may issue in connection with Plum Creek's Plan, will be governed by the Services' final policy and rules for Candidate Conservation Agreements, or the final "No Surprises" rule, depending upon which is applicable.

The Scope of the Agreement

As currently envisioned, the Plan would involve a multi-year agreement covering approximately 1.7 million acres of Plum Creek ownership in the Pacific Northwest, including 1,462,000 acres in Montana, 132,000 acres in Idaho, and 85,000 acres in Washington. These acres include all Plum Creek ownership in Idaho and Montana, and those acres in Washington which are tributary to the Columbia River and not included in Plum Creek's approved Cascades Habitat Conservation Plan. In addition, the Plan might include 71,000 acres of Plum Creek ownership in the Puget Sound Basin that are presently not addressed in the company's Cascades Habitat Conservation Plan. Plum Creek is currently considering an agreement term of 30 years for the Plan. The Services specifically request comment on the term of the agreement.

Plum Creek has indicated that the Plan will adopt a multi-species, aquatic-ecosystem approach spanning all watersheds in the planning area in order to protect bull trout specifically, as well as other aquatic species. Bull trout are currently proposed for listing under the Act.

The intent of employing an aquatic-ecosystem approach would be to address biological concerns of fish species present in the area and remove threats to the species and/or their habitat. Other species besides bull trout which could be included in the plan include westslope cutthroat trout (*Onchorynchus clarki lewisi*), redband trout (*Onchorynchus mykiss* ssp.), and steelhead trout. Other aquatic species may also be included. Except for steelhead trout, which is listed as threatened under the Act, all of these species are currently unlisted. The Service specifically requests comment on the aquatic ecosystem approach to Plan development, and the possibility of inclusion of these and other species in the Plan and permit.

A key assumption for species protection in the Plan may be that actions taken to address the biological needs of bull trout would be beneficial to other fish species in the area. For planning purposes, the Plan and environmental analysis may rely, in part, on a classification of watershed units based on bull trout biology. In addition, the conservation needs of other fish species to be included in the Plan would be fully and independently identified and analyzed, and any additional actions necessary for their conservation would be included in the Plan.

The Plan may use a two-tier bull trout habitat classification system. Tier 1 watersheds would include Plum Creek lands within catchment areas (drainages) tributary to 1st, 2nd, 3rd, and 4th order watercourses known or suspected to support spawning and juvenile rearing of bull trout. Tier 2 watersheds would include Plum Creek lands within catchment areas tributary to all other watercourses within the Columbia River basin, within the project area. Some of these areas are known or are suspected to provide migratory, foraging, and over-wintering habitat for adult and sub-adult bull trout. Tier 2 watersheds may also provide the majority of available habitat (on Plum Creek lands), for other native salmonids such as westslope cutthroat trout, redband trout, and steelhead trout.

Fish habitat management, mitigation and restoration activities in Tier 1 watersheds would focus on protection of habitat for spawning and rearing of bull trout and other fish species included in the plan. Conservation measures in Tier 2 watersheds would be designed to protect migration, foraging, and overwintering habitat for bull trout and other fish species, and possibly spawning and rearing habitat for other fish species. The Services will evaluate the conservation needs of bull trout and other fish species throughout their ranges to ensure that conservation measures in the Plan are adequate to allow for long-term survival of each species.

As a component of this planning process, the Services seek to identify fish habitat conditions and land management actions on lands adjacent to those owned and managed by Plum Creek. In many cases, these lands may be managed by the U.S. Department of Agriculture, Forest Service. In such cases the Services will seek to work with the Forest Service under existing authorities to develop and implement management actions that are complementary to those developed for Plum Creek lands. This approach to habitat conservation planning will help ensure that adequate conservation of bull trout habitat, and habitat for other fish species, is achieved in the planning area.

Plum Creek management activities that might impact fish species covered under the Plan include commercial forestry and associated activities (such as logging road construction, logging road maintenance, gravel quarrying primarily for the purposes of logging road construction, and silvicultural activities including tree planting, site preparation, pesticide application, fertilization, and prescribed burning). Other activities which could also be addressed include forest fire suppression, open range cattle grazing, miscellaneous forest and land product sales (such as gravel and landscape stones). Non-forestry related activities also addressed would include special forest use permits for commercial outfitting, special recreation permits (such as club activities on Plum Creek land), electronic facility sites, manufacturing of forest products, and other activities common to commercial forestry and the forest products business.

Proposed Conservation Measures

For the proposed Plan, Plum Creek would develop specific conservation measures to be implemented under the umbrella of the company's "environmental principles." The measures would be developed under the following general categories:

1. Riparian Management Areas. Conservation measures would be developed to regulate activities in riparian areas. Such measures would address habitat needs by providing adequate wood for habitat complexity, adequate canopy cover for temperature management, and adequate filtration for the prevention of sediment delivery to streams.

2. Forest Road Management. Sediment from forest roads is recognized as having the potential to significantly impact fish habitat. Conservation measures would be developed to minimize the delivery of sediment from forest roads to streams.

3. Grazing. Livestock grazing (primarily cattle) occurs on over 40% of Plum Creek ownership in the planning area. Intensive grazing on many of these acres has occurred annually for decades, and for over a century in some locations. Conservation measures would be developed to manage riparian impacts resulting from grazing.

4. Land-Use Planning. Plum Creek owns property in the planning area that may ultimately have long-term uses other than forestry. Plum Creek also buys and sells land in the planning area. Land Use Planning measures would be developed to mitigate the impacts of future development or land ownership adjustments.

5. Legacy Management and Other Restoration Opportunities. On Plum Creek ownership, the legacy impacts of a variety of past management activities may have a greater bearing on fish habitat health than current practices under well-informed land-management policies and regulations. Restoration and legacy-management projects designed to remove threats to fish habitat may be identified as a part of this Plan.

6. Administration and Implementation. Plum Creek would initiate a program to monitor significant elements of the Plan and develop a program to inform and educate contractors and employees on standards and practices to be implemented.

Monitoring and Adaptive Management

As currently envisioned, the Plan would incorporate active adaptive management features, including watershed analysis. Research and monitoring would help determine the effectiveness of the Plan, validate models used to develop the Plan, and provide the basic information used to implement "mid-course corrections" if necessary.

Dated: December 8, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–32512 Filed 12–11–07; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Lime.

Current OMB approval number: 1032–0038.

Abstract: Respondents supply the U.S. Geological Survey with domestic production, values, end-use data, and capacity information on the domestic lime industry. This information will be published as an Annual Report for use by Government agencies, industry, and the general public.

Bureau form number: 6–1221–A.

Frequency: Annual.

Description of respondents: Commercial and captive producers of quicklime, hydrated lime, and dead-burned dolomite.

Annual Responses: 110.

Annual burden hours: 165.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Acting Chief Scientist, Minerals Information Team.

[FR Doc. 97–32514 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Portland and Masonry Cement.

OMB approval number: 1028–0058.

Abstract: Respondents supply the U.S. Geological Survey with data on cement shipments to final customers. This information will be published as monthly reports for use by Government agencies, industry, and the general public.

Bureau form number: 9–3079.

Frequency: Monthly.

Description of respondents: Manufacturers and importers of portland and masonry cement.

Annual responses: 600.

Annual burden hours: 300.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 97–32515 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–01]

Call for Nominations for Upper Snake River District, Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council Call for Nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for the Bureau of Land Management (BLM) Upper Snake River District (USRD), Resource Advisory Council that have two vacant positions, which expire August 1998. This Council provides advice and recommendations to the BLM USRD on land use planning and management of the public lands within central and eastern Idaho. Public nominations will be considered for 30 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council members appointed to the council must be balanced and representative of the various interests concerned with the management of the public lands. The two vacant categories are in Category 1 and Category 2. Category 1 includes holders of federal grazing permits, representatives of energy and mining development, timber industry, off-road vehicle use and developed recreation; Category 2 includes representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups.

Individuals may nominate themselves or others. Nominees must be residents of the State of Idaho in which the council has jurisdiction. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM Upper Snake River District will issue press releases providing additional information for submitting nominations and with specifics about the positions available for this council. Nominations for Upper Snake River District Resource Advisory Council should be sent to Debra Kovar, BLM Shoshone Resource Area Office, 400 West F Street, P O Box 2-B, Shoshone, Idaho 83352–1522.

Dated: December 5, 1997.

Tom Dyer,

Area Manager.

[FR Doc. 97–32535 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–00–NPRA]

Northeast National Petroleum Reserve-Alaska Draft Integrated Activity Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management.

ACTION: Notice of availability and announcement of public subsistence-related hearing schedule

SUMMARY: The Bureau of Land Management announces the availability of Northeast National Petroleum Reserve-Alaska Draft Integrated Activity Plan/Environmental Impact Statement (IAP/EIS). The planning area is roughly bounded by the Colville River to the east and south, the Ikpikpuk River to the west and the Beaufort Sea to the north. The IAP/EIS contains five alternatives for a land management plan for the 4.6 million-acre planning area and assessments of each plan's impacts on the surface resources present there. These alternatives provide varying answers to two primary questions. First, will BLM conduct oil and gas lease sales in the planning area and, if so, what lands will be made available for leasing? Second, what protections and enhancements will be implemented for natural and cultural resources and the activities that are based on these resources?

Alternative A calls for no action, or no change from the status quo, and under it no leasing would occur. Alternatives B through E make progressively more land, and more environmentally sensitive land, available to possible leasing. Alternative B makes 43 percent available, Alternative C makes 74 percent available, Alternative D makes 89 percent available and Alternative E makes the entire planning area available. Restrictive stipulations would provide protections for natural and cultural resources under all alternatives, but their number and scope would vary between alternatives.

Alternative A contains the fewest stipulations because it authorizes the fewest activities and entirely precludes leasing. As alternatives B through E make progressively more sensitive lands available for leasing, they also include increasing numbers of protective stipulations. Thus, while Alternative E opens the entire planning area to leasing it also has many specific stipulations whose intent is to ensure that sensitive natural resources are protected.

Some alternatives contain proposals for specially designated areas that would enhance recognition of their values. The Secretary of the Interior is authorized to identify specific lands in the NPR–A as "Special Areas", and there are two previously designated Special Areas within the planning area. Some alternatives recommend that the Pik Dunes, an unusual geologic feature in the planning area with importance for caribou, be added to the existing Teshekpuk Lake Special Area. Some alternatives also contain recommendations that lands along the Ikpikpuk River be designated as a Special Area for their paleontological values.

Under various alternatives, BLM would recommend that Congress designate the Colville River a wild, scenic, or recreation river under the Wild and Scenic Rivers Act. BLM is also proposing that it work with nearby Colville River land owners, including the State and Arctic Slope Regional Corporation, to create a Bird Conservation Area under the Partners in Flight Program. Finally, in some alternatives BLM is proposing a plan, or plans, to guide future studies of caribou and waterfowl populations in the Teshekpuk Lake area.

Section 810 of the Alaska National Lands Conservation Act requires BLM to evaluate the effects of the alternative plans presented in this IAP/EIS on subsistence activities in the planning area, and to hold public hearings if it finds that any alternative might significantly restrict subsistence activities. Appendix D of the document indicates that alternatives D and E may significantly restrict subsistence activities, therefore, BLM is holding the public hearings whose dates are given below.

DATES: Written comments on the draft IAP/EIS must be submitted or postmarked no later than February 10, 1998. Oral and/or written comments may also be presented at seven public hearings to be held:

January 12, 1998, 7:30 pm, Atqasuk Community Hall, Atqasuk, Alaska

January 13, 1998, 7:30 pm, North Slope Assembly Chambers, Barrow, Alaska

January 14, 1998, 7:30 pm, Kisik Community Center, Nuiqsit, Alaska

January 15, 1998, 7:30 pm, Anaktuvuk Pass Community Hall, Anaktuvuk Pass, Alaska

January 21, 1998, 2:00 pm and 6:00 pm, Marston Theater, Loussac Library, Anchorage, Alaska

January 22, 1998, 2:00 pm and 6:00 pm, Carlson Center, Conference Room, Fairbanks, Alaska

January 26, 1998, 7:00 pm and 9:00 pm, Washington Capital Hilton, Federal Room, 16th and K Street NW, Washington, DC

Any changes to the hearing schedule will be accompanied by appropriate public notice.

ADDRESSES: Written comments on the document should be addressed to: NPR-A Planning Team, Bureau of Land Management, Alaska State Office (930), 222 West 7th Avenue, Anchorage, Alaska 99513–7599. Comments can also be sent to the NPR-A home page (http://aurora.ak.blm.gov/npra/).

FOR FURTHER INFORMATION CONTACT: Gene Terland (907–271–3344; gterland@ak.blm.gov) or Jim Ducker (907–271–3369; jducker@ak.blm.gov). They can be reached by mail at the Bureau of Land Management (930), Alaska State Office, 222 West 7th Avenue, Anchorage Alaska 99513–7599.

SUPPLEMENTARY INFORMATION: Authority for developing this document is derived from the Federal Land Policy and Management Act, the Naval Petroleum Reserves Production Act of 1976 and the National Environmental Policy Act (NEPA).

The BLM leased tracts in the NPR-A in 1982 and 1983 (all now expired), but halted a lease sale in 1984 when no acceptable bids were made. Recently, interest in a lease sale has increased as oil and gas infrastructure moved west. Soon a development at the Alpine Field, in the Colville River delta, will bring a pipeline to within 10 miles of the eastern boundary of the planning area. None of the federal lands in the planning area are currently available to oil and gas leasing because existing NEPA documentation is dated and inadequate to meet current standards. Should BLM undertake a leasing program, this IAP/EIS will form the basic NEPA documentation to authorize leasing, and it will determine those lands that are available and those that are unavailable for leasing.

Public participation has occurred throughout the period since the Notice of Intent to Prepare an Environmental Impact Statement was published on February 13, 1997. In addition to holding scoping meetings in Nuiqsit, Atqasuk, Barrow, Fairbanks and Anchorage several publicly attended workshops have addressed important issues within the planning area. The planning area provides particularly important habitat for caribou, waterfowl and other species and many of the local residents of the area rely on harvesting these resources for subsistence purposes. Ensuring adequate protection of these resources has been one of the driving forces behind workshops to seek input from a variety of public sources with expertise in related fields. Additional information from these workshops has also been helpful in developing this draft document.

The BLM has worked very closely with the North Slope Borough and the State of Alaska in developing this draft IAP/EIS. Representatives of both organizations have directly participated in meetings that led to the development of the alternatives presented here, although BLM is solely responsible for the form the alternatives took. The Mineral Management Service of the Department of the Interior has also assisted BLM in developing the document.

Copies of the draft IAP/EIS will be available for pubic review at the following locations: Tuzzy Public Library, Barrow, AK; City of Nuiqsut, Nuiqsut, AK; City of Atqasuk, Atqasuk, AK; City of Anaktuvuk, Pass, Anaktuvuk Pass, AK; and City of Wainwright, Wainwright, AK.

Tom Allen,

State Director.

[FR Doc. 97–31771 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1990–00]

Record of Decision, Phelps Dodge Little Rock Mine Project, Environmental Impact Statement, Grant County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability.

SUMMARY: The BLM Las Cruces District Office has prepared a Record of Decision (ROD) for the Phelps Dodge Little Rock Mine Project Environmental Impact Statement (EIS). The ROD was signed by the District Manager approving the proposed mine project and incorporating environmental protection measures in the EIS.

The EIS analyzed the impacts of the re-establishment of the Little Rock Mine. The Little Rock Mine is an open-pit copper mine located approximately 7 miles south of Silver City, New Mexico. The Proposed Action includes the construction, operation, and reclamation of the proposed mine pit, including the diversion of stream water in California Gulch, and the creation of a pit lake after mining operations have ceased. Approximately 100 million tons of leachable ore could be removed from the proposed pit. Up to 160,000 tons of ore per day would be mined and processed over a 2- to 4-year period.

The proposed project will also require the construction of a haul road that will allow transportation of ore from the mine site to the processing facilities located at the Tyrone Mine facility. Overburden or other inert, nonmineralized materials will be stockpiled for potential use in reclamation. Project construction will employ the existing workforce at Tyrone.

ADDRESSES: Linda S. C. Rundell, District Manager, BLM, Las Cruces District

Office, 1800 Marquess, Las Cruces, New Mexico, 88005.

FOR FURTHER INFORMATION CONTACT: Juan S. Padilla, Team Coordinator at (505) 525–4376.

SUPPLEMENTARY INFORMATION: Parties adversely affected by the ROD have 30 days from the date of publication of this notice to file a Notice of Appeal (43 CFR part 4) in the office which issued this decision. The Notice of Appeal should be addressed to the BLM Las Cruces District Manager (see **ADDRESSES** section above). A petition for a stay of the decision must be filed in accordance with the above cited regulations.

Copies of the ROD can be obtained from the Las Cruces District Office at 1800 Marquess, Las Cruces, New Mexico 88005, and the BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, or by calling (505) 525–4376 , and requesting a copy of the document. Additionally, a copy of the ROD will be mailed to individuals, agencies, or companies on the mailing list. Reading copies are available at public and university libraries in Las Cruces, Silver City, Deming, Lordsburg, Socorro, and Santa Fe, New Mexico.

Dated: December 4, 1997.

Linda S.C. Rundell,

District Manager.

[FR Doc. 97–32254 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–01]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda includes a discussion on implementation of the healthy rangeland standard and guidelines, briefing on the Draft Dairy Syncline EIS and to prepare comments for the Upper Columbia Basin—EIS. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P. O. Box 2–B, Shoshone, ID, 83352, (208) 886–7201.

DATE AND TIME: Date is January 22, 1998, starts at 8:30 a.m. at the Pocatello Resource Area Office at 1111 N 8th Avenue, Pocatello, Idaho. Public comments will be received from 1:00 p.m. to 1:30 p.m.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION: Contact Debra Kovar, Shoshone Resource Area Office, P. O. Box 2-B, Shoshone, ID 83352, (208) 886–7201.

Dated: December 5, 1997.

Tom Dyer,

Area Manager.

[FR Doc. 97–32534 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ070–1990–00–241A; AZA 23217–A]

Arizona: Reconveyed Mineral Estate Opened to Entry (Mohave County)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The mineral estate in the following-described land was reconveyed to the U.S. in an exchange under the provisions of sec. 206 of the Federal Land Policy and Management Act of 1976, on October 10, 1988. This order will open the lands to entry under the mining laws and the mineral leasing laws.

Gila and Salt River Meridian, Arizona

T. 14 N., R. 19 W.,
Sec. 7, lots 1 to 4 inclusive, E½, E½W½.
Containing 636.52 acres.

SUPPLEMENTARY INFORMATION: At 9 a.m. on January 12, 1998 the land will be opened to entry under the mining laws and the mineral leasing laws, subject to valid existing rights and requirements of applicable laws. Opening this land to mineral entry is in conformance with the Yuma District Resource Management Plan, as amended and approved February 1987. Appropriation of the above-described land under the mining laws or mineral leasing laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. All applications and offers received prior to 9 a.m. on January 12, 1998 will be considered as simultaneously filed as of that time and date. Those applications and offers received thereafter shall be considered in the order of filing. A drawing will be held in accordance with 43 CFR 1821.2–3 if necessary.

The above-described land will remain closed to all other forms of appropriation.

FOR FURTHER INFORMATION CONTACT: Dave Taylor, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406–9071, (520) 505–1200.

Dated: December 2, 1997.

Mary Jo Yoas,

Supervisor, Lands and Minerals Operations.

[FR Doc. 97–32495 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Kern County, CA in the Possession of California State University-Bakersfield, Bakersfield, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of California State University-Bakersfield, Bakersfield, CA.

A detailed assessment of the human remains was made by California State University-Bakersfield professional staff in consultation with representatives of the Tule River Indian Tribe of the Tule River Reservation (Yokuts).

In 1978, human remains representing five individuals were collected from site CA-KER–2421, Kern County, CA by an unknown individual. In 1989, this individual donated these human remains to the California State University-Bakersfield. No known individuals were identified. No associated funerary objects are present.

In 1992, human remains representing one individual were collected from site CA-KER–2720 during routine screening of soil excavated from a test unit prior to a work project. In 1994, these human remains were found in the collections of California State University-Bakersfield during laboratory procession of the screen soils. No known individual was identified. No associated funerary objects are present.

Based on the skeletal morphology and apparent age of these remains, these individuals have been determined to be Native American. Archeological evidence, including continuities of material culture, occupation sites, and manner of interment indicate that Yokuts people have occupied this area for several thousand years. These human remains are believed not to predate Yokuts occupation of this area.

Based on the above mentioned information, officials of the California State University-Bakersfield have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the California State University-Bakersfield have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Tule River Indian Tribe of the Tule River Reservation.

This notice has been sent to officials of the Tule River Indian Tribe of the Tule River Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Mark Q. Sutton, Department of Sociology and Anthropology, California State University-Bakersfield, Bakersfield, CA 93311–1099; telephone: (805) 664–33153, before January 12, 1998. Repatriation of the human remains to the Tule River Indian Tribe of the Tule River Reservation may begin after that date if no additional claimants come forward.

Dated: December 9, 1997.

Daniel Haas,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 97–32566 Filed 12-11-97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 20, 1997, a proposed Consent Decree in *United States* v. *Boise Cascade Corp., et al.*, Civil Action No. 97CV1704 (N.D.N.Y.), was lodged with the United States District Court for the Northern District of New York.

In this action the United States sought cost recovery and injunctive relief pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, against defendant Boise Cascade Corporation, Labelon Corporation, Miller Brewing Company, Niagara Mohawk Power Company, and The Stroh Brewery Company related to the Sealand Restoration Superfund Site in Lisbon, New York. In the proposed consent decree, the settling parties agree to pay to the United States $750,000 in reimbursement of costs expended by the United States in connection with the Site and to perform the remedial action for the Site selected by the Environmental Protection Agency in the Record of Decision dated September 29, 1995.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *Boise Casade Corp., et al.*, DOJ #90–11–3–1144.

The consent decree may be examined at the Office of the United States Attorney, 231 James T. Foley Courthouse, 445 Broadway, Albany, New York, at U.S. EPA Region 2, 290 Broadway, New York, New York, and at the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail for the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–32480 Filed 12–11–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Kirkwood Gas and Electric Company*, (E.O. Cal.) was lodged with the United States District Court for the Eastern District of California on November 18, 1997 (CIV–S–97–2164, DFL PAN). The proposed Consent Decree resolves the United States' claims against Kirkwood Gas and Electric Company (KG&E) pursuant to Section 113(b) of the Clean Air Act for KG&E's failure to obtain a Prevention of Significant Deterioration permit before construction of its facility. The alleged violation occurred at the diesel generator facility at Kirkwood Ski and Summer Resort in Alpine County, California. Under the Consent Decree, KG&E agrees to install a selective catalytic reduction control system and a continuous emission monitor to monitor emissions of oxides of nitrogen, to conduct source testing and to practice good air pollution control practices. KG&E also agrees to raise the height of its powerhouse exhaust stacks. KG&E also agrees to pay a penalty of $13,671.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States* v. *Kirkwood Gas and Electric Company*, DOJ Ref. # 90–5–2–1–2123.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Eastern District of California, 650 Capitol Mall, Sacramento, California 95814 and at the office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the

Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–32478 Filed 12–11–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given that a proposed Stipulation in *United States* v. *Commonwealth of Pennsylvania and Pennsylvania Department of Corrections*, Civil Action No. 4:CV–96–0563, was lodged on November 26, 1997 with the United States District Court for the Middle District of Pennsylvania. The proposed Stipulation is intended to settle an action that the United States brought on behalf of the United States Environmental Protection Agency under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), against the Commonwealth of Pennsylvania and the Pennsylvania Department of Corrections ("defendants") seeking civil penalties and injunctive relief to redress defendants' alleged violations of emissions limits promulgated by Pennsylvania and incorporated into the Pennsylvania State Implementation Plan (SIP) under Section 110(a) of the Clean Air Act, 42 U.S.C. 7410(a). The alleged violations concern particulate matter emitted in connection with the operation of three coal-fired boilers at the State Correctional Institute at Camp Hill, Pennsylvania. Under the terms of the proposed Stipulation, the defendants will be required to (1) pay a civil penalty of $192,500, (2) install new pollution control equipment for their coal-fired boilers by January 31, 1998, (3) demonstrate compliance with the applicable particulate matter emission limits by March 15, 1998, using the new control equipment, and (4) continue to operate in compliance with those emission limits in the interim using temporary fuel-oil boilers that were installed at the facility in July 1997.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Commonwealth of Pennsylvania and Pennsylvania Department of Corrections*, DOJ Ref. No. 90–5–2–1–2058.

The proposed Stipulation may be examined at the office of the United States Attorney for the Middle District of Pennsylvania, Federal Building, 228 Walnut Street, Room 217, Harrisburg, PA 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–32477 Filed 12–11–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to Clean Water Act and Rivers and Harbors Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *United Winner Metals, Inc., et al.*, Civ. No. 2:97CV1117 (E.D. Va.), was lodged with the United States District Court for the Eastern District of Virginia on November 25, 1997. This case arises, and the proposed Consent Decree secures relief, under the Clean Water Act, 33 U.S.C. §§ 1251–1387, and the Rivers & Harbors Act, 33 U.S.C. §§ 401–467n.

The proposed Consent Decree would provide for (1) prohibitions of future spillage at the United Winner Metal ("UWM") scrap metal handling facility and certain restrictions on handling operations there; (2) the cleanup of scrap metal from large areas of river bottom at both of the relevant sites; (3) bulkhead construction actions at the UWM scrap metal handling facility; (4) wetland creation, preservation and enhancement actions on other portions of that facility; and (5) a $300,000 penalty under the Clean Water Act.

The Department of Justice will receive, until thirty (30) days from the date of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the United States Department of Justice, Assistant Attorney General, Environment and Natural Resources Division, 601 D Street, N.W., Suite 8000, Washington, D.C. 20004, to the attention of Lewis M. Barr, Senior Trial Counsel, Environmental Defense Section, and should refer to *United States* v. *United Winner Metals, Inc., et al.*, Civ. No. 2:97CV1117 (E.D. Va.), and to DJ Reference No. 90–5–1–1–4310.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Virginia, Walter E. Hoffman United States Courthouse, 600 Grandby Street, Room 193, Norfolk, VA 23510, during regular business hours, or a copy may be requested from Lewis M. Barr at (202) 514–4206.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 97–32479 Filed 12–11–97; 8:45 am]

BILLING CODE 4410–15–M

PAROLE COMMISSION

Sunshine Act Meeting; Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Tuesday, December 16, 1997.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting: Appeal to the Commission involving approximately three cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: TOM KOWALSKI, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: December 9, 1997.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–32697 Filed 12–10–97; 3:25 pm]

BILLING CODE 4410–01–M

PAROLE COMMISSION

Sunshine Act Meeting; Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 11:00 a.m., Tuesday, December 16, 1997.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Approval of an informational pamphlet for District of Columbia Prisoners concerning the August 5, 1998 transition.
4. Approval of Proposed Procedural Guidelines for District of Columbia cases.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: December 9, 1997.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–32698 Filed 12–10–97; 3:25 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
- MA970001 (Feb. 14, 1997)
- MA970002 (Feb. 14, 1997)
- MA970003 (Feb. 14, 1997)
- MA970006 (Feb. 14, 1997)
- MA970007 (Feb. 14, 1997)
- MA970009 (Feb. 14, 1997)
- MA970012 (Feb. 14, 1997)
- MA970013 (Feb. 14, 1997)
- MA970017 (Feb. 14, 1997)
- MA970018 (Feb. 14, 1997)
- MA970019 (Feb. 14, 1997)
- MA970020 (Feb. 14, 1997)
- MA970021 (Feb. 14, 1997)

New Hampshire
- NH970001 (Feb. 14, 1997)
- NH970005 (Feb. 14, 1997)
- NH970007 (Feb. 14, 1997)
- NH970008 (Feb. 14, 1997)

New Jersey
- NJ970003 (Feb. 14, 1997)
- NJ970004 (Feb. 14, 1997)

New York
- NY970002 (Feb. 14, 1997)
- NY970007 (Feb. 14, 1997)
- NY970042 (Feb. 14, 1997)
- NY970049 (Feb. 14, 1997)
- NY970061 (Feb. 14, 1997)

Volume II

Maryland
- MD970059 (Feb. 14, 1997)

Pennsylvania
- PA970005 (Feb. 14, 1997)

Virginia
- VA970003 (Feb. 14, 1997)
- VA970005 (Feb. 14, 1997)
- VA970014 (Feb. 14, 1997)

VA970018 (Feb. 14, 1997)
VA970022 (Feb. 14, 1997)
VA970023 (Feb. 14, 1997)
VA970031 (Feb. 14, 1997)
VA970033 (Feb. 14, 1997)
VA970034 (Feb. 14, 1997)
VA970039 (Feb. 14, 1997)
VA970046 (Feb. 14, 1997)
VA970050 (Feb. 14, 1997)
VA970055 (Feb. 14, 1997)
VA970064 (Feb. 14, 1997)
VA970069 (Feb. 14, 1997)
VA970084 (Feb. 14, 1997)
VA970087 (Feb. 14, 1997)
VA970088 (Feb. 14, 1997)
VA970107 (Feb. 14, 1997)

Volume III

Alabama
AL970007 (Feb. 14, 1997)
AL970008 (Feb. 14, 1997)
AL970017 (Feb. 14, 1997)
AL970042 (Feb. 14, 1997)
AL970052 (Feb. 14, 1997)
Florida
FL970001 (Feb. 14, 1997)
FL970002 (Feb. 14, 1997)
FL970009 (Feb. 14, 1997)
FL970014 (Feb. 14, 1997)
FL970015 (Feb. 14, 1997)
FL970017 (Feb. 14, 1997)
FL970032 (Feb. 14, 1997)

Volume IV

Illinois
IL970001 (Feb. 14, 1997)
IL970002 (Feb. 14, 1997)
IL970003 (Feb. 14, 1997)
IL970006 (Feb. 14, 1997)
IL970007 (Feb. 14, 1997)
IL970008 (Feb. 14, 1997)
IL970009 (Feb. 14, 1997)
IL970013 (Feb. 14, 1997)
IL970014 (Feb. 14, 1997)
IL970015 (Feb. 14, 1997)
IL970019 (Feb. 14, 1997)
IL970023 (Feb. 14, 1997)
IL970026 (Feb. 14, 1997)
IL970030 (Feb. 14, 1997)
IL970040 (Feb. 14, 1997)
IL970041 (Feb. 14, 1997)
IL970049 (Feb. 14, 1997)
IL970057 (Feb. 14, 1997)
IL970061 (Feb. 14, 1997)
Indiana
IN970001 (Feb. 14, 1997)
IN970002 (Feb. 14, 1997)
IN970003 (Feb. 14, 1997)
IN970004 (Feb. 14, 1997)
IN970005 (Feb. 14, 1997)
IN970006 (Feb. 14, 1997)
IN970060 (Feb. 14, 1997)

Volume V

Arkansas
AR970001 (Feb. 14, 1997)
AR970008 (Feb. 14, 1997)
Iowa
IA970001 (Feb. 14, 1997)
IA970005 (Feb. 14, 1997)
Kansas
KS970009 (Feb. 14, 1997)
KS970025 (Feb. 14, 1997)
KS970063 (Feb. 14, 1997)
Missouri
MO970001 (Feb. 14, 1997)
MO970002 (Feb. 14, 1997)
MO970007 (Feb. 14, 1997)
MO970009 (Feb. 14, 1997)
MO970011 (Feb. 14, 1997)
MO970013 (Feb. 14, 1997)
MO970016 (Feb. 14, 1997)
MO970017 (Feb. 14, 1997)
MO970019 (Feb. 14, 1997)
MO970041 (Feb. 14, 1997)
MO970042 (Feb. 14, 1997)
MO970043 (Feb. 14, 1997)
MO970051 (Feb. 14, 1997)
MO970054 (Feb. 14, 1997)
MO970055 (Feb. 14, 1997)
MO970057 (Feb. 14, 1997)
MO970058 (Feb. 14, 1997)
MO970059 (Feb. 14, 1997)
MO970063 (Feb. 14, 1997)
MO970064 (Feb. 14, 1997)
MO970067 (Feb. 14, 1997)
MO970070 (Feb. 14, 1997)
New Mexico
NM970001 (Feb. 14, 1997)
Texas
TX970001 (Feb. 14, 1997)
TX970002 (Feb. 14, 1997)
TX970007 (Feb. 14, 1997)
TX970008 (Feb. 14, 1997)
TX970009 (Feb. 14, 1997)
TX970019 (Feb. 14, 1997)
TX970034 (Feb. 14, 1997)
TX970037 (Feb. 14, 1997)
TX970053 (Feb. 14, 1997)
TX970060 (Feb. 14, 1997)
TX970064 (Feb. 14, 1997)
TX970069 (Feb. 14, 1997)
TX970081 (Feb. 14, 1997)

Volume VI

Colorado
CO970001 (Feb. 14, 1997)
CO970005 (Feb. 14, 1997)
CO970006 (Feb. 14, 1997)
CO970007 (Feb. 14, 1997)
CO970008 (Feb. 14, 1997)
CO970009 (Feb. 14, 1997)
CO970016 (Feb. 14, 1997)
CO970021 (Feb. 14, 1997)
CO970022 (Feb. 14, 1997)
CO970023 (Feb. 14, 1997)
CO970024 (Feb. 14, 1997)
CO970025 (Feb. 14, 1997)
Oregon
OR970001 (Feb. 14, 1997)
Washington
WA970002 (Feb. 14, 1997)
WA970006 (Feb. 14, 1997)
WA970010 (Feb. 14, 1997)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 5th day of December 1997.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–32288 Filed 12–11–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–92]

TUV Rheinland of North America, Inc., Request for Expansion of Recognition

(Authority: 29 CFR 1910.7)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of request for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL), and preliminary finding.

SUMMARY: This notice announces the application of TUV Rheinland of North America, Inc., for expansion of its recognition as a NRTL under 29 CFR 1910.7, for test standards, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is February 10, 1998.

ADDRESSES: Send comments concerning this notice to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653 Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program at the above address, or phone (202) 219-7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that TUV Rheinland of North America, Inc., (TUV), has made application pursuant to 29 CFR 1910.7, for expansion of its recognition as a Nationally Recognized Testing Laboratory for the equipment or materials listed below. TUV previously made application pursuant to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (58 FR 61101, 11/19/93), and was so recognized (60 FR 42594, 8/16/95).

The address of the TUV laboratory covered by this application is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newton, Connecticut 06470.

Background

This **Federal Register** notice announces TUV's application for expansion of recognition as a Nationally Recognized Testing Laboratory for additional test standards, dated May 12, 1997 (see Exhibit 13A). TUV's application for expansion also included a request for recognition of an additional site. However, in a letter to OSHA dated September 15, 1997 (see Exhibit 13B), TUV requested that the expansion for the standards be processed first since the recognition of the additional site required additional processing time on OSHA's part.

TUV requests recognition for the following standards when applicable to equipment or materials that will be used in environments under OSHA's jurisdiction. TUV desires recognition for testing and certification of products tested for compliance with these test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

The NRTL staff performed an on-site survey (review) of TUV's Newton, CT facility on June 23–24, 1997. In the cover memo for the on-site review report, dated October 10, 1997 (see Exhibit 14), the NRTL staff recommended that TUV's recognition be expanded to include these additional test standards. Recognition for these standards will be granted on condition that TUV perform the testing and certification activities associated with these standards at its Newton, CT facility only. This condition will be eliminated upon OSHA's grant of recognition to TUV to permit use of other programs and procedures described in the March 9, 1995 **Federal Register** notice. (60 FR 12980 entitled, "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures")

Preliminary Finding

Based upon a review of the complete application, the on-site review report, and the recommendations of the staff, the Assistant Secretary has made a preliminary finding that TUV Rheinland of North America, Inc., can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of its recognition to include the four (4) test standards previously listed, subject to the condition noted above.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than February 10, 1998, and must be addressed to the NRTL Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210. Copies of the TUV application letter, the on-site survey (review) report, and all submitted comments, as received, are available for inspection and duplication (under Docket No. NRTL–3–92) at the Docket Office, Room N2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (TUV Rheinland of North America, Inc.) satisfies the requirements for expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider to be appropriate in accordance with Appendix A to Section 1910.7.

Signed at Washington, D.C. this 1st day of December, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–32541 Filed 12–11–97; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Policy Statement on "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement," Maintenance of Existing Agreement State Programs, Requests for Information Through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP.

2. Current OMB approval number: 3150–0183.

3. How often the collection is required: Four activities occur under this collection: Annual requirements for Agreement States to maintain their programs; IMPEP reviews conducted no less frequently than every four years; participation by Agreement States in the IMPEP reviews; and, as needed, for States interested in becoming Agreement States.

4. Who is required or asked to report: Any State receiving Agreement State status by signing Section 274b. agreements with NRC. Presently there are 30 Agreement States. Any State interested in becoming an Agreement State.

5. The number of annual respondents: 30 existing Agreement States: Approximately eight of these States are asked to respond annually. For States interested in becoming an Agreement State, one every three years.

6. The number of hours needed annually to complete the requirement or request: For maintenance of existing Agreement State programs and the IMPEP questionnaire: 219,600 hours (an average of 7,320 hours per State). For 8 IMPEP team reviews: 288 hours (an average of 36 hours per review). For a State interested in becoming an Agreement State, approximately 3,600 hours. The total number of hours annually is 223,848 hours.

7. Abstract: States wishing to become an Agreement State are requested to provide certain information to the NRC as specified by the Commission's Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement." Agreement States need to ensure that the Radiation Control Program under the Agreement remains adequate and compatible with the requirements of Section 274 of the Atomic Energy Act and must maintain certain information. NRC conducts periodic evaluations through IMPEP to ensure that these programs are compatible with the NRC's, meet the applicable parts of Section 274 of the Atomic Energy Act, and are adequate to protect public health and safety.

Submit, by February 10, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, D.C. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, D.C. 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 5th day of December, 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–32526 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* 10 CFR Part 95, Security Facility Approval and Safeguarding of National Security Information and Restricted Data.
3. *The form number if applicable:* None.
4. *How often the collection is required:* On occasion.
5. *Who will be required or asked to report:* NRC regulated facilities and other organizations requiring access to NRC classified information.
6. *An estimate of the number of responses:* 202.
7. *The estimated number of annual respondents:* 33.
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 550.5 hours (374.8 hours for reporting and 175.7 hours recordkeeping, or an average of 2.7 hours per response.
9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.
10. *Abstract:* NRC regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature data of this notice.

Comments and questions should be directed to the OMB reviewer by January 12, 1998. Norma Gonzales, Office of Information and Regulatory Affairs (3150–0047), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 5th day of December 1997.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–32522 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; Pilgrim Nuclear Power Station

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding the proposed corporate restructuring of Boston Edison Company, the licensee for the Pilgrim Nuclear Power Station (PNPS). By application dated June 9, 1997, Boston Edison Company informed the Commission that it is proposing to become a wholly owned subsidiary of a newly created holding company, BEC Energy. Boston Edison Company will remain the holder of its license to own and operate the PNPS. No direct transfer of the license will occur. Under the restructuring, the holders of Boston Edison Company common stock will become the holders of common stock of the holding company. After the restructuring, Boston Edison Company will continue to be a public utility providing the same utility services as it did immediately prior to the restructuring, and will continue to be an "electric utility" under Commission regulations. According to the application, there will be no effect on the management, or sources of funds for operation, maintenance, or decommissioning, of the PNPS as a result of the corporate restructuring.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the licensee's application dated June 9, 1997. This document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC, and at the local public document room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts.

Dated at Rockville, Maryland this 8th day of December 1997.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32525 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003 and 50–247]

Consolidated Edison Company of New York, Inc.; (Indian Point Nuclear Generating Unit Nos. 1 and 2)

I

Consolidated Edison Company of New York, Inc. (Con Edison), is sole owner of Indian Point Nuclear Generating Units Nos. 1 and 2. Con Edison holds Facility Operating License Nos. DPR–5 and DPR–26 issued by the U.S. Atomic Energy Commission pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50) on March 26, 1962, and September 28, 1973, respectively. Under these licenses, Con Edison has the authority to possess, but not operate, Indian Point Nuclear Generating Unit No. 1 (IP1), and to operate Indian Point Nuclear Generating Unit No. 2 (IP2). Indian Point Nuclear Generating Units Nos. 1 and 2 are located in Westchester County, New York.

II

By letter dated December 24, 1996, Con Edison informed the Commission that it was in the process of implementing a corporate restructuring that will result in the creation of a holding company under the temporary name of HoldCo., of which Con Edison would become a wholly owned subsidiary. Under the restructuring, the holders of Con Edison common stock will exchange their shares for common stock of the parent company on a share-for-share basis. By letter dated February 19, 1997, the staff deemed Con Edison's letter as an application for comment, under 10 CFR 50.80, to the indirect transfer of the licenses that would result from the corporate restructuring. Notice of this application for consent was published in the **Federal Register** on July 14, 1997 (62 FR 37627), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 6, 1997 (62 FR 52159).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application dated December 24, 1996, the NRC staff has determined that the restructuring of Con Edison will not affect the qualifications of Con Edison as holder of the licenses, and that the transfer of control of the licenses for IP1 and IP2, to the extent effected by the restructuring of Con Edison, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated December 4, 1997.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o) and 2234, and 10 CFR 50.80, *it is hereby ordered* that the Commission approves the application regarding the restructuring of Con Edison subject to the following: (1) Con Edison shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Con Edison to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of Con Edison's consolidated net utility plant, as recorded on Con Edison's books of account, and (2) should the restructuring of Con Edison not be completed by December 31, 1998, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

IV

By December 31, 1997, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an Order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays, by the above date. Copies should be also sent to the Office of the General Counsel, and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Brent L. Brandenburg, Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, NY 10003, Assistant General Counsel for Con Edison.

For further details with respect to this Order, see the application for approval regarding the corporate restructuring dated December 24, 1996, and the Safety Evaluation dated December 4, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 4th day of December 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32524 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

In the Matter of Southern Nuclear Operating Company, Inc., et al. Edwin I. Hatch Nuclear Plant, Units 1 and 2; Exemption

I

Southern Nuclear Operating Company, Inc., et al. (the licensee) is the holder of Facility Operating License Nos. DPR–57 and NPF–5 for the Edwin I. Hatch Nuclear Plant, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission in effect now and hereafter.

The facility consists of two 4-loop boiling water reactors located in Appling County, Georgia.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

Section 73.55(d), "Access Requirements," paragraph (1), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." Section 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Section 73.55(d)(5) also states that an individual not employed by the licensee, e.g., contractor, but who requires frequent and extended access to protected and vital areas may be authorized access to such areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *."

The licensee has proposed to implement an alternative unescorted access control system that would eliminate the need to issue, store, and retrieve badges from a central location onsite and would allow all individuals with unescorted access to keep their badges when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated July 2, 1997, the licensee requested an exemption from the requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, unescorted access into the protected areas at the Hatch site is controlled through the use of a photograph on a badge/keycard (hereafter, referred to as "badge"). The security officers use the photograph on the badge to visually identify the individual requesting access. The licensee's employees and contractor personnel who have been granted unescorted access are issued badges upon entrance to the protected area and the badges are returned upon exit. In accordance with 10 CFR 73.55(d)(5), contractors are not allowed to take these badges offsite.

Under the proposed biometric system, individuals who are authorized unescorted entry into protected areas would have the physical characteristics of their hand (i.e., hand geometry) registered, along with their badge number, in the access control system. When registered users enter their badge into the card reader and place their hand onto the measuring surface, the system detects that the hand is properly positioned, and records the image. The unique characteristics of the hand image are then compared with the previously stored template in the access control computer system corresponding to the badge to verify authorization for entry.

Individuals, including Hatch plant employees and contractors, would be allowed to keep their badges when they depart the site and, thus, eliminate the need to issue, retrieve, and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number. All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access, e.g., visitors.

On the basis of the Sandia report, "A Performance Evaluation of Biometrics Identification Devices," SAND91–0276/UC–906, Unlimited Release, June 1991, that concluded hand geometry equipment possesses strong performance and high detection characteristics, and on its own experience with the current photo-identification system, the licensee determined that the proposed hand geometry system would provide the same high level of assurance as the current system that access is only granted to authorized individuals. The biometrics system has been in use for a number of years at several sensitive Department of Energy facilities and, recently, at some nuclear power plants.

The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. When the changes are implemented, the respective Physical Security Plan will be revised to include implementation and testing of the hand geometry access control system and to allow Hatch plant employees and contractors to take their badges offsite.

When implemented, the licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and a hand geometry verification system. The numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected areas.

Since both the badge and hand geometry would be necessary for access into the protected areas, the proposed system would provide a positive verification process. The potential loss of a badge by an individual as a result of taking the badge offsite would not enable an unauthorized entry into protected areas.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law and will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption from the requirements of 10 CFR 73.55(d)(5) to allow individuals not employed by the licensee (i.e., contractors) to take their photo-identification badges offsite, provided that the proposed hand geometry biometrics system is in effect to control access into protected areas at the Hatch nuclear plant.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (62 FR 49539).

For further details with respect to this action, see the request for exemption dated July 2, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

This exemption is effective when modifications, procedures, and training to implement the hand geometry biometrics system have been completed and the corresponding revisions to the Physical Security Plan for the Hatch plant have been submitted to the NRC staff.

Dated at Rockville, Maryland, this 8th day of December 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32523 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Nonforeign Area Cost-of-Living Allowances Price and Background Surveys; Proposed Collection; Comment Request

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) seeks comments on its intention to request a reinstatement, with change, of two previously approved information collections for which approval has expired. OPM uses the two collections—a price survey and a background survey—to gather data to be used in determining cost-of-living allowances for certain Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The price survey is conducted generally on an annual basis. The background survey is conducted approximately once every 5 years, but the survey is also conducted on a limited basis in preparation for each of the price surveys.

DATES: Submit comments on or before February 10, 1998.

ADDRESSES: *Comments:* Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, or FAX comments to (202) 606–4264, or email comments over the Internet to cola@opm.gov. *Copies:* For copies of this proposal, contact Jim Farron at (202) 418–3208 or by email at jmfarron@opm.gov.

FOR FURTHER INFORMATION CONTACT: Kurt M. Springmann, (202) 606–2838.

SUPPLEMENTARY INFORMATION: OPM is soliciting comments on the reinstatement of its Nonforeign Area Cost-of-Living Allowances Price and Background Surveys for an additional 3 years. As set out in Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(1), comments are requested to—

- Evaluate whether the surveys are necessary and have practical utility;
- Evaluate the accuracy of the burden estimate, including the assumptions and methodological validity used in determining the burden estimate;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden on respondents.

OMB approval of this information collection was originally scheduled to expire on June 30, 1997. Because of delays in conducting the price survey during the first quarter of 1997 as planned, OPM requested an emergency extension of the clearance. OMB granted an extension until September 30, 1997.

Title: Nonforeign Area Cost-of-Living Allowances Price Survey and Background Survey.

OMB Control Number: 3206–0199.

Summary: The Nonforeign Area Cost-of-Living Allowances Price Survey is used by OPM to collect price data in the allowance areas under four cost components: consumption goods and services, transportation, housing, and miscellaneous expenses. The price survey is conducted on approximately an annual basis.

The Nonforeign Area Cost-of-Living Allowances Background Survey is used by OPM to collect information to identify the services, items, quantities, outlets, and locations that will be surveyed in the annual price surveys. It is also used to collect information on local trade practices, consumer buying patterns, taxes and fees, and other economic characteristics related to living costs. The background survey is conducted approximately once every 5 years but is also used on a limited basis in preparation for each of the price surveys.

Need/Use for Surveys: The price survey is necessary for collecting living-cost data used to determine cost-of-living allowances (COLA's) paid to General Schedule, U.S. Postal Service, and certain other Federal employees in the nonforeign allowance areas. The information is used to compare costs in the allowance areas with costs in the Washington, DC, area, and to derive a COLA rate when the local cost of living significantly exceeds that in the DC area. The background survey is necessary to determine the continued appropriateness of items, services, and businesses selected for the annual price surveys. OPM uses the information collected under this survey to define the sources and parameters for the price surveys and to improve the COLA methodology.

Respondents: OPM will survey selected retail, service, realty, and other businesses and local governments in the nonforeign allowance areas and in the Washington, DC, area. Approximately 5,600 establishments will be contacted in the price survey and approximately 300 establishments will be contacted in the background survey.

Reporting and Recordkeeping Burden: OPM estimates that the average price survey interview will take approximately 7 minutes, for a total burden of 650 hours. The average background survey interview will take approximately 10 minutes, for a total burden of 50 hours.

Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 97–32581 Filed 12–11–97; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection, Comment Request Optional Form 306

AGENCY: Office of Personnel Management.
ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and 5 CFR 1320.5 (a) (l) (iv), this notice announces that OPM intends to submit to the Office of Management and Budget (OMB) a request for reclearance of an information collection. Optional Form 306 (Declaration for Federal Employment) is used by OPM and other agencies to collect information to determine an individual's acceptability for Federal employment and enrollment status in the Government's Life Insurance program.

"Comments are particularly invited on: whether this collection of information is necessary for the proper performance of function of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of collection of information on those who respond, through the use of appropriate technological collection techniques or other forms of information technology."

It is estimated that 474,000 individuals will respond annually for a total burden of 118,500 hours. To obtain copies of this proposal please contact James M. Farron at (202) 414–3208 or by E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before February 10, 1998. Submit comments on this proposal to Richard A. Ferris, Office of Personnel Management, Room 5416, 1900 E. Street N. W., Washington, D.C. 20415.

Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 97–32582 Filed 12–11–97; 8:45 am]
BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application and Claim for Sickness Insurance Benefits; OMB 3220–0039.

Under Section 2 of the Railroad Unemployment Insurance Act (RUIA), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage or childbirth. Under Section 1(k) of the RUIA, a statement of sickness with respect to days of sickness of an employee is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The RRB's authority for requesting supplemental medical information is Section 12(l) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits is prescribed in 20 CFR part 335.

The forms used by the RRB to obtain information needed to determine eligibility for and the amount of sickness benefits due a claimant follows: Form SI–1a, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3, Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; Form ID–7h, Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits; and Form ID–11a, Requesting Reason for Late Filing of Sickness Benefit. Completion is required to obtain or retain benefits. One response is requested of each respondent.

The RRB proposes to revise Form SI–1a to add new items that obtain information from a sickness claimant who is filing a delayed claim for benefits and also to reformat and clarify an existing item that requests wage information. Form SI–3 is being revised to clarify an existing item that requests wage information and also to modify the certification statement. Form SI–8 is being revised primarily to emphasize that a response is needed only if the information provided is erroneous. Minor editorial changes which include the addition of language required by the Paperwork Reduction Act of 1995 are also proposed to Forms SI–1b, SI–7, SI–8 and ID–11A.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (minutes)	Burden (hours)
SI–1a/1b(ee)	27,700	10	4,617
SI–1a/1b(Dr.)	27,000	8	3,693
SI–3	181,000	5	15,083
SI–7	33,600	8	4,480
SI–8	50	5	4
ID–7H	50	5	4
ID–11A	800	3	40
Total	270,900		27,921

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 97–32490 Filed 12–11–97; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22927; 812–10704]

Diamonds Trust, DJIA Trust Receipts Series, PDR Services Corporation and ALPS Mutual Funds, Inc.; Notice of Application

December 5, 1997.
AGENCY: Securities and Exchange Commission ("SEC").
ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 4(2), 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c–1; under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a) (1) and (2) of the Act; and under rule 17d–1 to permit certain joint transactions.

APPLICANTS: Diamonds Trust, DJIA Trust Receipts Series (the "Trust"), PDR Services Corporation (together with its "successors in interest" [1] and with any person directly or indirectly controlling, controlled by, or under common control with, PDR Service Corporation, the "Sponsor") and ALPS Mutual Funds, Inc. (the "Distributor").

SUMMARY OF APPLICATION: Applicants request an order that would (i) permit the Trust, a unit investment trust whose portfolio will consist of the component stocks of the Dow Jones Industrial Average ("DJIA"), to issue non-redeemable securities ("DJIA Trust Receipts"); (ii) permit secondary market transactions in DJIA Trust Receipts at negotiated prices; (iii) permit dealers to sell DJIA Trust Receipts to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"); (iv) permit certain expenses associated with the creation and maintenance of the Trust to be borne by the Trust rather than the Sponsor; (v) exempt the Sponsor from the Act's requirement that it purchase, or place with others, $100,000 worth of DJIA Trust Receipts; (vi) permit affiliated persons of the Trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of DJIA Trust Receipts; and (vii) permit the Trust to reimburse the Sponsor and/or the American Stock Exchange, Inc. ("AMEX") for payment of an annual licensing fee to Dow Jones & Company, Inc. ("Dow Jones").

FILING DATES: The application was filed on June 17, 1997, and an amendment to the application was filed on December 3, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o James F. Duffy, Executive Vice President and General Counsel, American Stock Exchange, Inc., 86 Trinity Place, New York, NY 10006.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust is a unit investment trust ("UIT") organized under the laws of the state of New York. The Sponsor is a wholly-owned subsidiary of AMEX. State Street Bank and Trust Company will act as trustee of the Trust ("Trustee"). The Distributor, a registered broker-dealer, will serve as underwriter of the DJIA Trust Receipts on an agency basis.

2. The Trust will hold a portfolio of securities consisting of all of the component common stocks of the DJIA. The DJIA is a price-weighted index of thirty stocks. Issuers of the component stocks are all leaders in their respective industries, and the component stocks represent approximately one-fifth of the market value of all U.S. stocks. Applicants represent that the DJIA is the oldest continuous barometer of the U.S. stock market, and the most widely quoted indicator of U.S. stock market activity. DJIA Trust Receipts, units of beneficial interest in the Trust, are designed to provide investors with an instrument that closely tracks the DJIA, that trades like a share of common stock, and pays periodic dividends proportionate to those paid by the portfolio of stocks held by the Trust.[2] Applicants believe that DJIA Trust Receipts will afford significant benefits in the public interest. Applicants expect the Trust to be able to track the DJIA more closely than certain other index products and, unlike open-end index funds, trade at negotiated prices throughout the business day. Applicants also state that DJIA Trust Receipts will compete with comparable products available on foreign exchanges and attract capital to the U.S. equity market.

3. The composition of the Trust's portfolio will be adjusted periodically to conform to changes in the DJIA resulting from corporate actions such as stock

[1] "Successors in interest" is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization, *e.g.*, a partnership or a corporation.

[2] The Trust will make monthly distributions of an amount representing the dividends accumulated on portfolio securities during each month, net of fees and expenses.

splits or changes in the identity of the DJIA component stocks.[3] All adjustments to the Trust's portfolio will be made by the Trustee as set forth in the trust agreement and will be nondiscretionary.

4. The Trustee will be paid a "Trustee's Fee" ranging between 11/100 of 1% to 15/100 of 1% of the Trust's net asset value ("NAV") on an annualized basis. The Trustee's Fee will be adjusted to reflect the costs that the Trustee incurs in connection with the issuance and redemption of DJIA Trust Receipts (as discussed below). The Sponsor and the AMEX are paying the Trust's organizational expenses. The Trust will reimbuse the Sponsor and the AMEX for these expenses ratably over a five-year period. Should the Trust terminate prior to its fifth anniversary, the remaining unamortized organizational expenses will continue to be borne by the Sponsor and the AMEX, and will not be charged against the Trust. The Trust also will reimburse the Sponsor and/or the AMEX up to a maximum of 20 basis points of the Trust's NAV on an annualized basis, for the following expenses: (i) annual licensing fees for the use of the "DJIA" trademark; (ii) federal and state annual registration fees for the issuance of DJIA Trust Receipts; and (iii) expenses of the Sponsor relating to the marketing of DJIA Trust Receipts and the Trust (including, but not limited to, related legal, consulting, and advertising expenses). The Sponsor will pay the Distributor a flat annual fee. The Sponsor will not seek reimbursement for payment of this annual fee from the Trust without obtaining prior exemptive relief from the Commission.

5. DJIA Trust Receipts will be issued in aggregations of 50,000 ("Creation Units"). The price of each Creation Unit will be approximately $4,007,000 (based on the value of the DJIA on November 28, 1997). To be eligible to purchase a Creation Unit, an investor must either be a participant in the Continuous Net Settlement ("CNS") System of the National Securities Clearing Corporation ("NSCC"), or a Depository Trust Company ("DTC") participant, but is not required to be an AMEX member. An investor wishing to purchase a Creation Unit from the Trust will have to transfer to the Trust a "Portfolio Deposit" consisting of: (i) a portfolio of securities that is substantially similar in composition and weighting to the DJIA component securities ("Index Securities"); (ii) a cash payment equal to the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, net of expenses and liabilities; and (iii) a cash payment or credit to equalize any differences between the Portfolio Deposit Amount and the NAV per Creation Unit (which may be required, for example, if a portion of the Trust's assets is held in cash).[4] An investor making a Portfolio Deposit will be charged a service fee ("Transaction Fee"), paid to the Trustee, to defray the Trustee's costs in processing securities deposited into the Trust.[5]

6. Orders to purchase Creation Units will be placed with the Distributor, who will be responsible for transmitting the orders to the Trustee.[6] The Distributor will maintain records of these orders, issue confirmations of acceptance, and issue delivery instructions to the Trustee to implement the delivery of DJIA Trust Receipts. The Distributor will be responsible for delivering prospectuses to purchasers of the Creation Units and may provide certain other administrative services, such as those related to state securities law compliance.

7. Person purchasing DJIA Trust Receipts from the Trust in Creation Unit aggregations may hold those Receipts or sell some or all of them in the secondary market. DJIA Trust Receipts will be listed on the AMEX and traded in the secondary market as individual units (*i.e.*, in less than Creation Unit size aggregations) in the same manner as other equity securities. An AMEX specialist will be assigned to make a market in DJIA Trust Receipts. The price of DJIA Trust Receipts on the AMEX will be based on a current bid/offer market and will be in the range of $80 per Receipt (based on the value of the DJIA on November 28, 1997). Transactions involving the sale of DJIA Trust Receipts will be subject to customary brokerage commissions and charges. Applicants expect that the price at which DJIA Trust Receipts trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Unit-size aggregations at NAV, which should ensure that DJIA Trust Receipts will not trade at a material discount or premium in relation to NAV.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specialist, in providing for a fair and orderly secondary market for DJIA Trust Receipts, also may purchase Receipts for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of DJIA Trust Receipts will include both institutional and retail investors.[7]

9. Applicants will make available a standard DJIA Trust Receipt product description ("Product Description") to AMEX members and member organizations for distribution to investors purchasing DJIA Trust Receipts in accordance with AMEX Rule 1000. The purpose of the Product Description is to provide a brief and readily understandable description of the salient aspects of DJIA Trust Receipts. The Product Description will advise investors that a prospectus for DJIA Trust Receipts is available without charge upon request from the investor's account executive. Applicants expect that customer purchases of DJIA Trust Receipts through a non-member broker-dealer in a transaction away from the AMEX floor will be rare.

10. DJIA Trust Receipts will not be individually redeemable, except upon termination of the Trust. DJIA Trust Receipts will only be redeemable in Creation Unit-size aggregations through the Trust. To redeem, an investor will have to accumulate enough DJIA Trust Receipts to constitute a Creation Unit. An investor redeeming a Creation Unit amount of DJIA Trust Receipts will receive a portfolio of securities identical in weighting and composition to the securities portion of a Portfolio Deposit as of the date the redemption request was made. An investor may receive the cash equivalent of a portfolio security (i) when the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity, (ii) upon the request of the redeeming investor, or (iii) upon notice of the termination of the Trust. A redeeming investor will also receive an amount of cash equal to the dividends accrued on the portfolio securities since the last dividend payment by the Trust, net of expenses and liabilities, and may also receive an amount of cash to equalize any differences between the Portfolio Deposit Amount and the NAV per Creation Unit. A redeeming investor will pay a Transition Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.[8] The Trustee will transfer the cash and securities to the redeeming investor on the third business day after the redemption request date.

11. Because a redeeming Creation Unit holder will ordinarily receive a Portfolio Deposit in exchange for its Unit, the Trustee will not have to maintain large cash reserves for redemptions. This will allow the Trust's assets to be committed as fully as possible to tracking the DJIA, enabling the Trust to track the index more closely than certain other investment products that must allocate a greater portion of their assets for cash redemptions.

12. The Trust will terminate on the earlier of (i) January 30, 2122, or (ii) the date 20 years after the death of the last survivor of eleven persons named in the trust agreement. The Trust also will terminate: (i) if DJIA Trust Receipts are de-listed from the AMEX; (ii) by agreement of the holders of 66⅔% of outstanding DJIA Trust Receipts; (iii) if the DTC is unable or unwilling to continue to perform its functions and a comparable replacement is unavailable; and (iv) if NSCC no longer provides clearance services with respect to DJIA Trust Receipts, or if the Trustee is no longer a participants in NSCC. In addition, the Sponsor will have the discretionary right to terminate the Trust if (i) at any time after six months following and prior to three years following the initial receipt of Portfolio Deposits by the Trust the NAV of the Trust falls below $150,000,000, and (ii) after three years the NAV is less than $350,000,000. The Sponsor also may direct the Trustee to terminate the Trust if within 90 days from the initial receipt of Portfolio Deposits the NAV of the Trust is less than $100,000.

13. Within a reasonable period after the Trust's termination, the Trustee will use its best efforts to sell all portfolio securities not previously distributed to investors redeeming Creation Units. DJIA Trust Receipts not redeemed prior to termination will be redeemed in cash at NAV based on the proceeds from the sale of portfolio securities.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 4(2), 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c-1; under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act; and under rule 17d-1 to permit certain joint transactions.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 4(2) of the Act

1. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Because DJIA Trust Receipts will not be individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT. Applicants state that investors may purchase DJIA Trust Receipts in Creation Units from the Trust and redeem Creation Units. Applicants further state that, because the market price of DJIA Trust Receipts will be disciplined by arbitrage opportunities, investors should be able to sell DJIA Trust Receipts in the secondary market at approximately their NAV.

Section 14(a) of the Act

1. Section 14(a) provides, in pertinent part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of at least $100,000, or provision is made in connection with the registration of its securities that (i) firm agreements to purchase $100,000 worth of its securities will have been made by not more than 25 persons, and (ii) all proceeds, including sales loads, will be refunded to investors if the investment company's net worth is less than $100,000 within 90 days after the effective date of the registration statement. Applicants state that section 14(a) was designed to address the formation of undercapitalized investment companies.

2. Rule 14a-3 under the Act exempts from section 14(a) UIT's that invest only in "eligible trust securities," which do not include equity securities, subject to certain safeguards, including the refund of any sales load collected from investors. Applicants will comply in all respects with rule 14a-3, except that the Trust will not restrict its investments to eligible trust securities and the Trustee will not refund the Transaction Fee. Applicants contend that the Trust's investment in equity securities does not negate the effectiveness of the rule's safeguards nor subject investors to any greater risk of loss due to investment in an undercapitalized investment company. With respect to the Transaction Fee, applicants assert that it is not a sales load, and therefore is not covered by the rule's refund provision. Applicants not that the Transaction Fee will be paid note by retail investors, but by institutional and other sophisticated, well-capitalized investors who can afford the approximately $4,007,000 purchase price of a Creation Unit and who do not require the protections of section 14(a).

Section 22(d) of the Act

1. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in DJIA Trust Receipts will take place at negotiated prices, not a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of DJIA Trust

[3] Changes in the composition of the DJIA are made entirely by the editors of the *Wall Street Journal*.

[4] At the close of the market on each business day, the Trustee will calculate the NAV of the Trust and then divide the NAV by the number of outstanding DJIA Trust Receipts in Creation Unit size aggregations, resulting in an NAV per Creation Unit. The Trustee will then calculate the required number of shares of the Index Securities, and the amount of cash, comprising a Portfolio Deposit for the following business day. The Sponsor will make available a list of the names of each of the Index Securities in the current Portfolio Deposit and the required number of shares. The cash equivalent of an Index Security may be included in the cash component of a Portfolio Deposit in lieu of the Security if (i) the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit (for example, when the security is subject to a trading halt or stop order, or the subject of a tender offer), or (ii) a particular investor is restricted from investing or engaging in transactions in the Index Security (for example, when the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board of directors one of its principals serves, or when the investor is a broker-dealer and the security is on its "restricted list"). In the latter situation, the Trustee will use the cash equivalent payment to purchase the appropriate number of shares of the Index Security that the investor was unable to purchase.

[5] The Transaction Fee will be $1,000 per day regardless of the number of Creation Units purchased on that day by the investor. An additional amount not to exceed three times the Transaction Fee will be charged to investors who purchase Creation Units via DTC rather than via the NSCC, to cover increased expense associated with settlement outside the CNS system. To the extent the Transaction Fee exceeds the Trustee's actual settlement costs, and subject to certain limitations, the excess will be subtracted from the Trustee's Fee. The Trustee's Fee also will be reduced by the amounts earned by the Trustee in respect of cash held for the benefit of the Trust and not otherwise expended on behalf of the Trust. The amount of the Transaction Fee (including any variation in the amount) will be disclosed in the prospectus for the Trust.

[6] The procedures for processing a purchase order will depend upon whether the transaction is settled through NSCC or DTC.

[7] DJIA Trust Receipts will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding DJIA Trust Receipts. Records reflecting the beneficial owners of DJIA Trust Receipts will be maintained by DTC or its participants.

[8] *See* note 5, *supra*.

Receipts in the secondary market will not comply with section 22(d) and rule 22c-1. Applicants request an exemption from these provisions.

2. Applicants assert that the concerns sought to be addressed by section 22(d) and rule 22c-1 with respect to pricing are equally satisfied by the proposed method of pricing DJIA Trust Receipts. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (iii) assure an orderly distribution investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

3. Applicants believe that none of these purposes will be thwarted by permitting DJIA Trust Receipts to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in DJIA Trust Receipts does not involve the Trust as a party and cannot result in dilution of an investment in DJIA Trust Receipts; and (ii) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminary manipulation. Therefore, applicants assert that secondary market transactions in DJIA Trust Receipts will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of DJIA Trust Receipts and their NAV remains narrow.

Section 24(d) of the Act

1. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. Applicants request an exemption from section 24(d) to permit dealers in DJIA Trust Receipts to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[9] Applicants state that the imposition of prospectus delivery requirements on dealers in the secondary market will materially impede the success of DJIA Trust Receipts.

2. Applicants state that the secondary market for DJIA Trust Receipts is significantly different from the typical secondary market for UIT securities, which is usually maintained by the sponsor. DJIA Trust Receipts will be listed on a national securities exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

3. Applicants contend that DJIA Trust Receipts, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because DJIA Trust Receipts will be exchange-listed, prospective investors will have access to several types of market information about the product. Applicants state that quotations, last sale price and volume information will be continually available on a real time basis through the consolidated tape and will be available throughout the day on brokers' computer screens and other electronic services, such as Quotron. The previous day's price and volume information also will be published daily in the financial section of newspapers. The Sponsor also will publish daily, on a per DJIA Trust Receipt basis, the amount of accumulated dividends, net of accrued expenses.

4. Investors also will receive the Product Description. Applicants state that, while not intended as a substitute for a prospectus, the Product Description will contain pertinent information about DJIA Trust Receipts. Applicants also note that DJIA Trust Receipts will be readily understandable to retail investors as a product that tracks the DJIA, which is well known to most investors and widely recognized.

Section 26(a)(2)(C) of the Act

1. Section 26(a)(2)(C) requires, among other things, that a UIT's trust indenture prohibit payments to the trust's depositor (in the case of the Trust, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services. Applicants request an exemption from section 26(a)(2)(C) to permit the Trust to reimburse the Sponsor and/or the AMEX for certain licensing, registration, marketing, and organizational expenses.

2. Applicants state that, ordinarily, a sponsor of a UIT has several sources of income in connection with the creation of the trust. Applicants assert, however, that under the proposed structure of the Trust, the usual sources of income are not available because the Sponsor will not impose a sales load, maintain a secondary market, or deposit Index Securities into the Trust. Although the Sponsor's parent company, the AMEX, will earn some income on the trading fees imposed on transactions occurring on the AMEX, applicants expect that the fees will generate substantially less revenue than what would have been generated by a normal sales charge on secondary market trades of DJIA Trust Receipts. Applicants contend that the abuse sought to be remedied by section 26(a)(2)(C)—"double dipping" by UIT sponsors collecting money from their captive trusts as well as the profits already generated by sales charges and other sources—will not be present if the requested exemption is granted.

3. Applicants contend that permitting the Trust to reimburse the Sponsor for the Trust's expenses (discussed above) would be no more disadvantageous to the holders of DJIA Trust Receipts than allowing the expenses to be imposed indirectly as offsets to sales loads and other charges, as is done by typical UITs. Applicants also state that the Trust will pay the Sponsor only its actual out-of-pocket expenses and no component of profit will be included. Finally, applicants state that the payment is capped at 20 basis points of the Trust's NAV on an annualized basis, with any expenses in excess of that amount absorbed by the Sponsor.

[9] Applicants state that persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing a creation order with the Distributor, breaks them down to the constituents DJIA Trust Receipts, and sells DJIA Trust Receipts directly to its customers; or if it chooses to couple the creation of a supply of new DJIA Trust Receipts with an active selling effort involving solicitation of secondary market demand for DJIA Trust Receipts. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with DJIA Trust Receipts that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to make advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units will be "in-kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of the Trust from purchasing or redeeming Creation Units. Because the definition of "affiliated person" of another person in section 2(a)(3) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Trust so long as fewer than twenty Creation Units are extant. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit affiliated persons of the Trust to purchase and redeem Creation Units.

2. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of the Trust from purchasing or redeeming Creation Units. The composition of a Portfolio Deposit made by a purchaser or given to a redeeming unitholder will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Trust's portfolio securities. Therefore, applicants state that "in kind" purchases and redemptions will afford no opportunity for an affiliated person of the Trust to effect a transaction detrimental to the other holders of DJIA Trust Receipts. Applicants also believe that "in kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Trust.

Rule 17d–1

1. Applicants request an order under rule 17d–1 that would permit the Trust to reimburse the Sponsor and/or the AMEX for the payment by either party to Dow Jones of the annual fee required under a license agreement. The license agreement allows applicants to use the DJIA as a basis for DJIA Trust Receipts and to use certain of Dow Jones' trademark rights. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor and/or the AMEX (each an affiliated person of the Trust) might be deemed a joint enterprise or joint arrangement in which the Trust is a participant, in contravention of section 17(d) of the Act and rule 17d–1.

2. Applicants assert that the terms and provisions of the license agreement were negotiated at arm's length and that the annual license fee is for fair value, bargained for in good faith, and, to the best of their knowledge, is an amount comparable to that charged for similar arrangements. Applicants submit that the proposed transaction will result in an arrangement in which the participants deal with each other in a manner similar to, and no less advantageous than, others who might be similarly situated.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a new series of the Trust, whether identical or similar to the DJIA Trust Receipts Series, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such new series, either exemptive relief from the Commission or a no-action position from the Division of Investment Management of the Commission.

2. The Trust's prospectus and the Product Description will clearly disclose that, for purposes of the Act, DJIA Trust Receipts are issued by the Trust and that the acquisition of DJIA Trust Receipts by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32487 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22928; 811–5280]

Partner Wealth Fund I, L.P.; Notice of Application

December 5, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under section 8(f) of the Investment Company Act of 1940 (the "Act") declaring that applicant has ceased to be an investment company.

SUMMARY OF APPLICATION: Applicant, Partner Wealth Fund I, L.P., is an employees' securities company under section 2(a)(13) of the Act. Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on November 19, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 Clay Street, Suite 2300, Houston, TX 77002.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: This is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware limited partnership and an employees' securities company under section 2(a)(13) of the Act. On July 21, 1987, applicant received an order from the SEC exempting applicant from various provisions of the Act.[1] On August 13, 1987, applicant filed a notification of registration on Form N–8A.

2. Under applicant's limited partners have received distributions at least

[1] Investment Company Act Release Nos. 15824 (notice) (June 24, 1987) and (July 21, 1987) (order).

equal to each partner's respective investment in applicant. On October 2, 1996, the board of directors of Touche Holdings, Inc., applicant's general partner (the "General Partner"), met and approved the sale of substantially all of applicant's assets.[2] On November 4, 1996, applicant's liabilities exceeded its assets and applicant sold substantially all of its assets in exchange for cash and a promissory note which applicant then transferred together with its other assets to Deloitte & Touche USA LLP ("D&T"), the parent of applicant's General Partner, in partial satisfaction of a promissory note previously issued by applicant to D&T. D&T forgave a portion of the note not satisfied by the assets received from applicant.

3. D&T is assuming all administrative and legal expenses in connection with the liquidation of applicant. Such expenses are estimated at $15,000.

4. As of the date of the application, applicant had no outstanding security-holders to whom any distributions were due. Applicant also had no liabilities, or assets, and was not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32488 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 15, 1997.

An open meeting will be held on Wednesday, December 17, 1997, at 10:00 a.m. A closed meeting will be held on Wednesday, December 17, 1997, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, December 17, 1997, at 10:00 a.m., will be:

(1) Consideration of whether to propose rules 3a12–12, 3a12–13, 3b–12, 3b–13, 3b–14, 3b–15, 3b–16, 15b9–2, 15c1–9, 15c3–4, and 17a–5A under the Securities Exchange Act of 1934 ("Exchange Act") and amendments to Exchange Act rules 8c–1, 15b1–1, 15c2–1, 15c3–1, 15c3–3, 17a–3, 17a–4, 17a–11, and Form X–17A–5 (FOCUS report). The proposed rules and rule amendments would tailor capital, margin, and other broker-dealer regulatory requirements to a class of registered dealers, called OTC derivatives dealers, active in OTC derivatives markets. Registration as an OTC derivatives dealer would be an alternative to registration as a fully regulated broker-dealer, and would be available only to entities acting primarily as counterparties in privately negotiated OTC derivatives transactions. For further information, please contact Catherine McGuire, Chief Counsel and Associate Director, Division of Market Regulation, at (202) 942–0061, or Michael Macchiaroli, Associate Director, Division of Market Regulation, at (202) 942–0132.

(2) Consideration of whether to issue a concept release seeking comment on alternatives to the current method of calculating net capital requirements pursuant to Rule 15c3–1 under the Exchange Act for broker-dealers, including whether statistical models should be used to calculate net capital requirements. As part of its study, the Commission is considering the extent to which statistical models should be used in setting the capital requirements for a broker-dealer. Accordingly, the Commission is posing a number of questions on this subject as well as soliciting views on other possible alternatives for establishing net capital requirements. For further information, please contact Michael A. Macchiaroli, Associate Director, Division of Market Regulation, at (202) 942–0132.

(3) Consideration of whether to propose amendments to rule 15c3–1 under the Exchange Act regarding net capital requirements for broker-dealers. When calculating the value of their assets for net capital purposes, broker-dealer must reduce the market value of the securities they own by certain percentages, or haircuts. The rule amendments would alter the haircuts taken by broker-dealers for certain interest rate instruments, including: government securities; investment grade nonconvertible debt securities; certain mortgage-backed securities; money market instruments; and debt-related derivative instruments. For further information, please contact Michael A. Macchiaroli, Associate Director, Division of Market Regulation, at (202) 942–0132.

(4) Consideration of whether to propose amendments to amend Rule 15c3–1 to define the term "nationally recognized statistical rating organization" ("NRSRO"). The proposed definition sets forth a list of attributes to be considered by the Commission in designating rating organizations as NRSROs and the process for applying for NRSRO designation. For further information, please contact Michael A. Macchiaroli, Associate Director, Division of Market Regulation, at (202) 942–0132.

The subject matter of the closed meeting scheduled for Wednesday, December 17, 1997, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 10, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32655 Filed 12–10–97; 12:30 pm]

BILLING CODE 8010–01–M

[2] Under applicant's limited partnership agreement the General Partner has sole discretion to affect the liquidation and need not obtain the consent of the limited partners.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39402; File No. SR–Amex–97–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Incorporated Relating to the Listing of Commodity Indexed Preferred or Debt Securities

December 4, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act"),[1] notice is hereby given that on November 25, 1997, the American Stock Exchange, Incorporated ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b–4 under the Act[2] which renders the proposal effective upon receipt of this filing by the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stock, bonds and debentures and warrants. The Amex proposes to list and trade commodity index preferred or debt securities ("ComPS") on futures contracts for: corn; soybeans; wheat; a corn, soybean and wheat index ("Agricultural Index"); the "total return" variation of the J.P. Morgan Commodity Index ("JPMCI"); the "excess return" variation of the JPMCI ("JPMCI:X"); and the total return and excess return versions of the Energy ("JPMCI:E"), Base Metal ("JPMCI:B") and Precious Metal ("JPMCI:P") subindices of the JPMCI.[4] An excess return represents the cumulative returns of investing in unleveraged positions in nearby commodity futures contracts and constantly rolling the position forward to the next designated contract as the contract nears expiration. A total return consists of the excess return plus the return on the three-month Treasury Bills. In 1996, the Commission approved ComPS overlying various financial instruments for listing on both the Amex and the New York Stock Exchange, Incorporated ("NYSE").[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As previously stated, the Amex proposes to list for trading ComPS overlying futures contracts for: corn; soybeans; wheat; the Agricultural Index; the JPMCI; the JPMCI:X; the JPMCI:E; the JPMCI:B; and the JPMCI:P. The ComPS and the issuer of the ComPS will conform to the Amex's listing guidelines under Section 107A of the *Company Guide*.[6] Accordingly, all issuances of ComPS must have: a public distribution of one million trading units; 400 holders; and a market value of not less than $4 million. The Exchange also will require that the issuer have a minimum tangible net worth of $150 million.

Holders of ComPS may receive a dividend or interest payment as applicable on the face value of their securities. The frequency and rate of the dividend or interest payment varies from issue to issue based upon prevailing interest rates and other factors. In addition, investors will receive at maturity a payment linked to the value of an index based upon a single commodity in accordance with the following formula: Face Amount × (Ending Index Value/Beginning Index Value) − Factor.

The "Beginning Index Value" is announced at the time of the offering. The "Ending Index Value" is based upon a 10 day average of the daily index value computed during the determination period prior to the redemption date. The "Factor" represents the costs of issuing and hedging the securities and also may include the future value of the stated dividend or interest payment (if any).

Commodity prices for the purpose of determining the payment to holders at maturity will be determined by reference to prices for a linked commodity over at least a ten business day period. The securities will have a term of from two to ten years. Holders of the securities have no claim to any of the underlying physical linked commodities.[7]

(a) *Design of the Underlying Instruments.* The Amex asserts that the futures contracts are all actively traded for: Corn, soybeans, and wheat on the Board of Trade of the City of Chicago ("CBOT"); the base metal components of the JPMCI and JPMCI:X on the London Mercantile Exchange ("LME"); the energy components of the JPMCI and JPMCI:X on the New York Mercantile Exchange ("NYMEX"); and the precious metal components of the JPMCI and JPMCI:X of the Comex division of the NYMEX ("COMEX"). The Amex asserts that prices for all of the above commodities are widely reported by vendors of financial information and the press. Information

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4(e)(6).

[3] The Exchange has represented that this proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act.

[4] Telephone call between Bill Floyd-Jones, Assistant General Counsel, Amex and Marianne H. Duffy, Special Counsel, Division of Market Regulation, SEC on December 1, 1997 ("Amex Call").

[5] Securities Exchange Act Release No. 36885 (February 26, 1996) 61 FR 8315 (March 4, 1996) (order approving the listing and trading of ComPS on the Amex linked to one of eleven physical commodities that comprise the JPMCI and JPMCI:X ("Amex Individual ComPS Order")) and Securities Exchange Act Release No. 37188 (May 9, 1996) 61 FR 24846 (May 16, 1996) (order approving the listing and trading of commodity futures index preferred securities ("CFIPs") on the NYSE linked to one of eleven physical commodities that comprise the JPMCI and JPMCI:X ("NYSE Individual CFIPs Order")).

[6] The proposed underwriter of the ComPS has advised the Exchange that the securities will comply with the "hybrid exemption" of the Commodity Futures Trading Commission ("CFTC") under 17 CFR Part 34. The underwriter has further advised the Exchange that it presented a description of the structure and sample term sheet of ComPS to the staff of the CFTC when the underwriter first proposed the structure for ComPS overlying individual commodities in 1995. The CFTC raised no objection to the structure. *See* Amex Individual ComPS Order, *id*.

[7] Amex Call, *supra* note 4.

regarding the proposed underlying contracts follows:[8]

Underlying futures	1996 average open interest (billions)	1996 ADT volume (millions)	Contract month	Description
Corn	$6.6	$1.4	Mar, May, Jul, Dec	No. 2 yellow corn & substitutes as specified by CBOT rules.
Soybeans	$7.0	$2.1	Jan, Mar, May, Jul, & Nov.	No. 2 yellow soybeans & substitutes as specified by CBOT rules.
Wheat	$2.0	$516	Mar, Jul, Dec	Hard winter wheat & substitute grades as specified by CBOT rules.

The following commodities comprise the JPMCI and JPMCI:X:

Name/units	Market	Units per contract	Contracts in index
Aluminum $/Metric Tons	LME (MT)	25 tons	3rd Wed of Mar, Jun, Sep and Dec.
Copper $/MT	LME	25 tons	3rd Wed of Mar, Jun, Sep and Dec.
Nickel $/MT	LME	6 tons	3rd Wed of Mar, Jun, Sep and Dec.
Zinc $/MT	LME	25 tons	3rd Wed of Mar, Jun, Sep and Dec.
Heat Oil $/gal	NYMEX	42,000 gal	Every month.
Nat Gas $/MM BTU	NYMEX	10,000 MM BTU	Every month.
Unleaded Gas $/gal	NYMEX	42,000 gal	Every month.
WTI Lt Swt Crude Oil $/BBL	NYMEX	1,000 bbl	Every month.
Platinum $/troy ounce	NYMEX	50 troy oz	Jan, Apr, Jul, Oct.
Gold $/troy ounce	COMEX	100 troy oz	Feb, Apr, Jun, Aug, and Dec.
Silver $/troy ounce	COMEX	5,000 troy oz	Mar, May, Jul, Sep and Dec.

The relative weighting of the various commodities in the JPMCI:E, JPMCI:B, JPMCI:P and Agricultural Index are as follows:

Component	Subindex	Weight in subindex (percent)
Aluminum	Base metal	40.91
Copper	Base metals	36.36
Nickel	Base metals	9.09
Zinc	Base metals	13.64
Crude Oil	Energy	60.00
Heating Oil	Energy	18.18
Unleaded Gas	Energy	9.09
Natural Gas	Energy	12.73
Gold	Precious metals	65.22
Silver	Precious metals	21.74
Platinum	Precious metals	13.04
Corn	Agricultural	33.33
Soybeans	Agricultural	33.33
Wheat	Agricultural	33.33

Based on the foregoing information and for the following reason, the Exchange believes that the JPMCI and the JPMCI:X are diversified indices of industrial commodities. The JPMCI is a weighted arithmetic average of total returns afforded by an investment in liquid exchange traded futures on eleven industrial commodities. In addition, the Exchange notes that the Commission has previously reviewed and approved the listing of a security which was linked to the performance of the JPMCI or the JPMCI:X.[9]

b. *Maintenance of Underlying Instruments.* It is anticipated that the contract or contracts underlying a particular issue of ComPS will remain unchanged during the term of the instrument. Certain developments, however, may necessitate changes with respect to the underlying contract or contracts.[10] Decisions regarding such changes will be made by J.P. Morgan upon the advice of the JPMCI Policy Committee, a neutral business committee. This committee consists of senior employees in the commodities and research areas of J.P. Morgan as well as independent and academic experts. Personnel from J.P. Morgan's Commodities group serve only in an advisory, non-voting role on the committee. J.P. Morgan will immediately notify the Exchange and vendors of financial information if there is a change in the design, composition or calculation of the securities.

If it becomes necessary to choose a replacement price source for the securities, the new price source will meet the following criteria: (i) it will be priced in U.S. dollars, or if priced in a foreign currency, the exchange on which the contract is traded must publish an official exchange rate for conversion of the price into U.S. dollars and such currency must be freely convertible in U.S. currency, (ii) it will be traded on a regulated futures exchange in the U.S., Canada, U.K, Japan, Singapore or an O.E.C.D. country,[11] and (iii) it will have a minimum annual volume of 300,000 contracts of $500 million. The underwriter will immediately notify the Exchange and vendors of financial information in the event that there is a change in the futures contract underlying a particular series of ComPS.

In the event that a determination is made to change a contract related to an issue of ComPS and an appropriate benchmark replacement contract is identified, the substitution of the new contract for the old only will be done where: (1) the Exchange has established a comprehensive information sharing agreement with the market or self-regulator for the replacement contract, or (2) the SEC has established suitable alternative agreements with an appropriate regulator of the market for the replacement contract.

When there is no suitable benchmark replacement contract or, there is suitable benchmark contract but the Exchange's or the Commission's information sharing arrangement do not meet the above criteria, in the case of ComPS on a single commodity, the affected ComPS either will be called by the issuer or the payment to be made to holders at maturity will be fixed as of such time using prices derived from the old underlying contract, and thereafter the principal amount will not fluctuate throughout the term of the instrument as a result of the price of a linked commodity. In the case of ComPS related to a basket of commodities, the affected contract within the index basket will be removed from the basket. Unlike ComPS on individual commodities, the index value of ComPS related to baskets will not be fixed and determined early. Rather, the index will continue to be calculated using the above described index calculation methodology by excluding the removed commodity, and using the new weights determined by J.P. Morgan under the advice of the JPMCI Policy Committee. The new weights will adjust only for the removed commodity, taking its old arithmetic percentage weight in the index and dividing it up among one or more of its same sector index group members (i.e., energy, precious metal, base metal or agricultural). Thus, for example, the removal of an energy related commodity will not change the energy related weighting in the JPMCI basket, but it will change the individual weightings of some or all of the remaining energy components within the energy subindex. For example, if natural gas were removed from the JPMCI, its 7% weight in the basket would be divided among the three remaining energy commodities as determined by J.P. Morgan with the advice of the JPMCI Policy Committee and the energy subindex would remain at 55% of the basket. The removal of a commodity will not change the value of the index; it only will change the weights of the contracts in the index which, going forward, will be used to determine future changes in the value of the index.

Members of the JPMCI Policy Committee will be prohibited from trading ComPS and from communicating any knowledge concerning changes in the underlying commodities.

c. *Surveillance.* The Amex is able to obtain market surveillance information, including customer identify information, with respect to transactions occurring on the LME pursuant to its information sharing arrangements with the Securities and Futures Authority ("SFA") through the Intermarket Surveillance Group ("ISG"). The Exchange also is able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on NYMEX or COMEX pursuant to its information sharing agreement with NYMEX. In addition, the Exchange is able to obtain market surveillance information, including customer identity information, regarding transactions on the CBOT through the ISG.[12]

d. *Calculation of Value of Underlying Instruments.* The JPMCI:E, JPMCI:B, JPMCI:P and agricultural index (collectively the "sector indices") are calculated using the same methodology as the JPMCI or JPMCI:X which the Commission previously approved.[13] The sector indexes are dollar weighted, arithmetic averages measuring the return from an investment in the applicable futures contracts. The value of each sector index is defined by a trading strategy that holds a futures position in each of the commodities for a one month period and then rebalances the value of the commodities held for the following month based on a constant dollar weighting scheme. The rebalancing generally occurs at the end of the trading on the 4th business day of every month on which the relevant exchanges are open. The new contract used to rebalance is the nearest designated futures contract which has termination of trading or first notice day at least 10 business days into the following month. In addition, due to the periodic expiration of the futures contracts used to compute the index value, it also is necessary to "roll" out of expiring contracts and into the new nearby contracts. To minimize possible pricing volatility arising from conducting the roll on a single business day, the substitution of the new contract for the old is accomplished over a five business day period in increments of 20%.

The futures contract to be used for monthly rebalancing and rolling of each commodity will be the nearest designated futures contract to be used in the index, with a termination of trading date or first notice day not earlier than ten business days into the following month. The futures contract used for rebalancing will be called the "new contracts" and the futures contract that the index refers to up to the rebalancing date will be called the "old contract." For energy futures the new and old contracts will be different. For precious metals, base metals and agricultural commodities, the new and old contracts may be the same contract because of the absence of a designated contract for every month. Where the new and old contracts are the same, rebalancing and rolling only involve and adjustment of the amount held of the old contract.

Rebalancing is calculated according to the following formulae on the rebalancing date: number of new units needed = current index value * weight of the commodity in the index/current price of the new contract per unit; and number of contracts needed = number of new units needed/number of units per contract.

After rebalancing has occurred, the roll is executed. This is the process by which the old contracts are sold and the

[8] For liquidity purposes, JPMCI and JPMCI:X indices skip May and September wheat, September corn and August and September soybeans in the designated contract definitions.

[9] Securities Exchange Act Release No. 35581 (March 21, 1995) 60 FR 15804 (March 27, 1997) (order approving the listing and trading of commodity linked intermediate term notes ("COINs") overlying the JPMCI and the JPMC:X on the Amex).

[10] Such developments could include, among other things, changing liquidity conditions or the discontinuation of existing contracts, the emergence of new "benchmark" contracts for the particular linked commodity or the imposition of a tax or other charge on transactions.

[11] The O.E.C.D. (Organization of Economic Cooperation and Development) consists of the following countries: the U.S., Japan, Germany, France, Italy, U.K., Canada, Australia, Austria, Belgium, Denmark, Finland, Greece, Iceland, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland and Turkey.

[12] The Exchange currently has information sharing arrangements that qualify as comprehensive information sharing agreements with the following futures markets and self-regulators: CBOT; Chicago Mercantile Exchange, London International Financial Futures and Options Exchange; Montreal Exchange; New York Futures Exchange; NYMEX; the SFA; and the Sydney Futures Exchange.

[13] *See* Amex Individual ComPS Order and NYSE Individual CFIPs Order, *supra* note 4.

new contracts are purchased. Twenty per cent of the roll volume is transacted on each of the five subsequent business days after the rebalance date.

The rebalancing and rolling process determines the new contract and the number of new contracts to be used in the daily index calculation for the coming month. (During the five day roll period, the theoretical portfolio may consist of a blend of the new and old contracts for each commodity.) The daily index value is calculated as the sum of the previous day's closing index value plus the gain, or minus the loss, of the theoretical portfolio on that day. For each component commodity, the gain for the day is calculated by multiplying the difference between the current day's price and the previous day's price times the number of these contracts held in the theoretical portfolio times the number of units of the commodity per contract.[14] The daily gain or loss on the theoretical portfolio then is simply the sum total of the gains and losses of the individual positions in the theoretical portfolio. The index value calculated in this manner for today then serves as the base to which tomorrow's gain or loss on the theoretical portfolio is added to determine the next day's index level. The foregoing describes an "excess return" methodology for calculating the index such as used in the JPMCI:X. If a total return index is used, a return based upon the U.S. Treasury Bill rate is incorporated into the index. The index calculation may be described as follows: Index (today) = Index (yesterday) + P&L on theoretical portfolio + Daily collateral interest where; Daily collateral interest = Index (yesterday) × Treasury Bill yield; and P&L on theoretical portfolio = Sum of individual P&L calculations for all commodities in theoretical portfolio. The P&L calculations are in the form of: P&L = [number of contracts × change in price of designated contracts].

e. *Dissemination of Value of Underlying Instruments.* During U.S. market hours, index values with respect to ComPS based upon corn, wheat and soybeans will be calculated every 60 seconds and distributed by Reuters and Bloomberg. Index values with respect to the JPMCI, JPMCI:X and the four sector indices also will be calculated every 60 seconds and distributed by an independent calculation agent. The last disseminated price from the applicable exchange will be incorporated into the index calculations. The Ending Index Value for ComPS prior to the redemption date will be calculated by J.P. Morgan or an affiliate.

f. *Suitability.* Returns to investors in ComPS are unleveraged with neither a cap nor a floor. The Amex asserts that since commodity returns historically have been negatively correlated with financial assets, the ownership of ComPS (although their return is uncertain) will help to diversify a portfolio of financial instruments. There is an element of derivative pricing, however with respect to the calculation of the final payment. The Exchange, accordingly, will require members, member organizations and employees thereof to make a determination with respect to customers whose accounts have not previously been approved to trade futures or options that a transaction in the proposed securities is suitable for such customer. In addition, members, member organizations or employees thereof recommending a transaction in ComPS would be required: (1) to determine that the transaction recommended is suitable for the customer and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the recommended transaction. This is more than the duty to know and approve customers, but entails an obligation to make a determination that the transaction is suitable for the customer. The Exchange will distribute a circular to its membership prior to trading such securities providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in ComPS and highlighting the special risks and characteristics thereof. The Exchange will provide the Commission staff with a copy of the circular prior to distribution.

ComPS will be subject to the quality margin and trading rules of the Exchange, except when ComPS are issued as debt in denominations with a face value of $1,000 or more, they will be traded subject to the Exchange's debt trading rules (although they will still remain subject to the Exchange's equity margin rules).[15]

2. Statutory Basis

The Exchange asserts that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove the impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has been filed by the Exchange as a "noncontroversial" rule change pursuant to paragraph (e)(6) of Rule 19b–4. Consequently, the rule change shall become operative 30 days after the date of filing, or such shorter time as the Commission may designate, if the change (1) does not significantly affect the protection of investors or the public interest and (2) does not impose any significant burden on competition, pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and subparagraph (e)(6) of Rule 19b–4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from November 25, 1997, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

[14] This last step is a result of the convention that contract prices are quoted on a per unit basis rather than a per contract basis.

[15] Amex Call, *supra* note 6.

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–46 and should be submitted by January 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32486 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39407; File No. SR–AMEX–97–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to Listing and Trading Options on the Pauzé Tombstone Common Stock Index SM

December 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 14, 1997 the Exchange submitted an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade options on the Pauzé Tombstone Common Stock Index SM (the "Index"), a new index developed by Pauzé Swanson Capital Management Co.™ comprising death care industry stocks. In addition, the Amex proposes to amend Rule 902C to include the Pauzé Tombstone Common Stock Index SM in the disclaimer provisions of the rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to trade standardized options on the Index. The Index is composed of the stocks of ten companies involved in providing death care services or products consisting of funeral services, cemetery services, and funeral and cemetery support goods and services. Options on the Index will provide investors with a low-cost means to participate in the performance of the death care industry and to hedge against the risk of investing in the industry. The Index also currently serves as the basis for an index mutual fund being offered by Pauzé Swanson Capital Management Co.™, which has been registered with the Commission as an investment advisor since 1993. Pauzé Swanson's president, Philip C. Pauzé, has specialized in providing investment management for the assets of pre-need funeral accounts and cemetery endowment care funds since 1985, and is financial consultant to several state- and nation-wide funeral trusts and funeral directors associations' retirement plans.

The value to the public offered by options trading on the Index is underscored by the expected long-term growth of the death care industry, which offers essential, basic services required by the public regardless of economic conditions. Studies conducted by the Bureau of the Census of the United States Department of Commerce indicate that the aging of the population, as the "Baby Boom" generation begins to reach the age of mortality, as well as the population increase of approximately 28% from the years 1995 to 2025 will lead to a significant rise in the annual aggregate number of deaths. Consolidator companies, which purchase private funeral homes and consolidate their operations, currently constitute only about 15% of the total United States funeral service market, although the trend is toward consolidation. Consequently, these companies have a very large potential for future growth through acquisitions.

Eligibility Standards for Index Components. Pauzé Swanson Capital Management Co.™, as developer of the Index, is responsible for selecting and maintaining the list of companies to be included in the Index. Only stocks of companies which derive at least fifteen percent of their revenues from the provision of goods and/or services to the death care sector of the economy are eligible to be included. The Index conforms with the criteria of Exchange Rule 901C for including stocks in an index on which standardized options trade. In addition, all of the component securities currently meet the following standards: (1) Each component has a market capitalization of at least $100 million; (2) the total market capitalization of the Index is greater than $17 billion; (3) more than 95% of the weight of the Index is accounted for by securities each having an average monthly trading volume of greater than 1,000,000 shares over the six months preceding the date of this filing; (3) foreign country securities or American Depositary Receipts thereon are not currently represented in the Index; (4)

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire McGrath, Vice President and Special Counsel, Amex to Michael Walinskas, Senior Special Counsel, Commission dated November 13, 1997 ("Amendment No. 1"). In Amendment No. 1, the Exchange added Rock of Ages Corp. to the Index. The Exchange also amended Exchange Rule 904C to set the position limit for the Index at 6,000 contracts on the same side of the market. In addition, the Exchange represents that component securities that in the aggregate account for no more than 10% of the weight of the Index will have an average monthly trading volume of at least 100,000 shares. The Exchange represents that it will maintain the Index so that at least 90% of the Index's numerical value and at least 70% of the total number of component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 915. Finally, Amendment No. 1 makes a non-substantive change to clarify the proposal.

all component stocks are either listed on the New York Stock Exchange ("NYSE"), Amex, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("Nasdaq") and are reported National Market System securities; and (5) over 95% of the numerical value of the Index is accounted for by securities that meet the current criteria for standardized options trading set forth in Exchange Rule 915.

While the shares of Service Corp. International constitute 55.63% of the overall Index value, the Exchange believes that the price of Service Corp. Stock is not readily susceptible to manipulation because the company enjoys a sizable market capitalization of more than 8.04 billion dollars, has over 251 million shares outstanding, and has experienced an average monthly trading volume of over 13 million shares in the six months preceding the date of this filing. Furthermore, its contribution to the value of the Index will diminish as the stocks of more companies are added. The Exchange anticipates that several more companies will qualify for addition to the Index within the next few months. No other component security in the Index currently accounts for more than 15.59% of its value.

The Exchange believes the potential for manipulation of the Index is minimized and, in particular, the lesser-traded component stocks should properly be included in the Index for the following reasons: (1) The representation of these stocks in relation to the overall Index value (an aggregate of 4.76% of the weight of the Index) is small; and (2) over 95% of the value of the Index is accounted for by stocks which comply with the listing criteria for standardized options trading set forth in Rule 915 and have an average market capitalization of 3.12 billion dollars, an average of 91 million shares outstanding, and a six-month average monthly trading volume of 5.14 million shares.

Index Maintenance. The Index will be maintained by the Amex. If necessary in order to maintain continuity of the Index, its divisor may be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, stock distributions, stock splits, reverse stock splits, spin-offs, certain rights issuance, recapitalizations, reorganizations, and mergers and acquisitions.

The Exchange will maintain the Index so that: (1) The Index is comprised of no less than 9 component securities; (2) each of the component securities constituting the top 90% of the Index by weight, will have a minimum market capitalization of $75 million and each of the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of $50 million; (3) 90% of the Index's numerical index value and at least 70% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Amex Rule 915; (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component securities will either be listed on Amex, the New York Stock Exchange, or Nasdaq/NMS listed; and (6) 90% of the component securities shall have a monthly trading volume of at least 500,000 shares and the component securities constituting the bottom 10% of the Index, by weight, shall have a minimum average monthly trading volume of at least 100,000 shares.

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

Index Calculation. The Index will be calculated by the Amex using a modified market capitalization methodology. The value of the Index is determined by multiplying the price of each stock times the number of its shares outstanding times the percentage of the company's revenues derived from the death care industry, adding those products and dividing by a divisor. Currently, in the case of Hillenbrand Industries and American Annuity Group, only 40% and 15%, respectively, of their total market capitalization are valued in the Index since those proportions of the companies' revenues are derived from business in the death care industry. The divisor was initially determined to yield a benchmark Index value of 100 at the close of trading on its base date of December 31, 1985.[4]

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement. The proposed options on the Index will be European style (i.e., exercises permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:02 p.m. New York Time) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list option series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer term option series having up to thirty-six months to expiration may be traded. Instead of such long-term options on a full value Index level, the Exchange may list long-term, reduced value put and call options based on the one-tenth (1/10th) of the Index's full value. The interval between expirations months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options would be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have European style exercise.

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the NASDAQ system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

Exchange Rules Applicable to Stock Index Options. Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These Rules cover issues such as surveillance, exercise prices and position limits. The Index is deemed to be a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (i.e., within ten points above or below the current Index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange has set a position limit of 6,000 contracts on the same side of the market with respect to options on this Index.[5] Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading options on the Index.

[4] The Index's value at the close of trading on August 19, 1997 was 523.04.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–97–33 and should be submitted by January 22, 1998.

[5] See Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. § 78f(b).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32527 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39403; File No. SR–CHX–97–20]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Defining the Scope and Application of the Guarantee Available Under the Exchange's Guaranteed Execution System

December 4, 1997.

I. Introduction

On September 12, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify the scope and application of the guarantee available under the Exchange's Guaranteed Execution System ("BEST System").

The proposed rule change was published for comment in Securities Exchange Act Release No. 39249 (Oct. 16, 1997), 62 FR 55443 (Oct. 24, 1997). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The provision currently governing the BEST System, Exchange Rule 37(a) of Article XX, states that, subject to certain exceptions, specialists must accept and guarantee execution of all agency orders[3] and fill such orders on the basis of the Intermarket Trading System ("ITS") Best Bid or Best Offer ("BBO")[4] for Dual Trading System issues and the NBBO[5] for Nasdaq/NM issues. The proposed rule change would amend Exchange Rule 37(a) to eliminate any ambiguity concerning the scope and application of the guarantee available under the BEST System and would make it clear that the guarantee is limited to both the size and price associated with the ITS BBO or NBBO.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6(b).[6] In particular, the commission believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Each bid and offer, including the ITS BBO and NBBO, contains two components—price and size. Because the Exchange's BEST Rule requires a specialist to accept and guarantee the execution of an agency market order on the basis of the ITS BBO or NBBO, the Exchange has consistently interpreted this guarantee as applying to both the size and price associated with that best bid or offer. However, the current text of the BEST Rule does not explicitly state that the guarantee is qualified in such a manner. To eliminate any uncertainty concerning the breadth of the guarantee, the proposed rule change adds the words "size and price associated with" to the BEST Rule to clarify that the guarantee available under the BEST System is limited to both the size and price associated with the ITS BBO or NBBO.

The proposed rule change is consistent with the automatic execution parameters employed by the Exchange's Midwest Automated Execution System ("MAX").[7] Automatic execution of a

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of Exchange Rule 37, "agency order" means an order for the account of a customer but does not include professional orders.

[4] The ITS BBO is the best bid/offer quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, and Philadelphia Stock Exchanges or the Intermarket Trading System/Computer Assisted Execution System, as appropriate.

[5] The NBBO is the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1.

[6] 15 U.S.C. § 78f(b).

[7] The MAX System provides an automated delivery and execution facility for orders that are

Continued

market order through the MAX System is qualified by Exchange Rule 37(b)(11), Article XX, which states that "notwithstanding anything in this Rule to the contrary, no market order or limit order that is marketable when entered into the MAX System will be automatically executed if the size associated with the ITS BBO or NBBO, as the case may be, is of a size less than such market order or limit order."

The Commission believes that the proposed rule change will bring about certainty in the application of the Exchange's BEST System guarantee. Although the Exchange currently interprets the scope of the BEST System guarantee as being restricted by the price and size parameters, the absence of such criteria in the text of the BEST Rule may cause confusion among those entitled to use the BEST System.[6]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–97–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32483 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39405; File No. SR–MBSCC–97–5]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Regarding Participant Liability for Transactions Submitted on Behalf of Nonparticipants

December 5, 1997.

On August 1, 1997, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MBSCC–97–5) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on September 26, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Pursuant to MBSCC's current rules, participants that process any contracts or other transactions through MBSCC for other participants are liable as principal for such contracts or transactions. The proposed rule change clarifies that participants also are liable as principal for any contracts or other transactions submitted to MBSCC on behalf of entities that are not participants ("nonparticipants") and that nonparticipants are not deemed to possess any rights or benefits of participants.

As a result, MBSCC will treat all of a participant's accounts[3] and obligations as belonging to such participant regardless of the identity of the underlying party. Thus, a participant's participant fund[4] deposits will be available for all of the participant's transactions regardless of the source.

II Discussion

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change adds certainty as to the treatment of the positions submitted on behalf of nonparticipants upon default of a participant. Thus, the proposal should enhance MBSCC's ability to protect itself and its participants against loss. Therefore, the Commission believes that MBSCC's proposal is consistent with its obligations to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–97–5) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32485 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39406; File No. SR–Philadep–97–05]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Unclaimed Dividends and Distributions

December 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 25, 1997, Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by Philadep. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, Philadep will amend its rules governing unclaimed dividends and distributions.[2] The amendments reflect undertakings recently agreed to by Philadep in connection with settling an administrative proceeding with the Commission.[3]

---

eligible for execution under the Exchange's BEST Rule and certain other orders. *see* Exchange Rule 37(b).

[6] Exchange Rule 37(a) states that the BEST System is available to exchange member firms and members of participating exchanges.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39103 (September 22, 1997), 62 FR 50646.

[3] According to MBSCC's rules, the term "account" generally means any account maintained by MBSCC on behalf of a participant for the comparison, margining, and clearing trades.

[4] According to MBSCC's rules, the term "participant fund" means the fund for which provision is made in Article IV to which participants are required to make basic deposits, minimum market margin differential deposits, and market margin differential deposits.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the proposed amendments was submitted with Philadep's rule filing and is available for inspection and copying at the Commission's Public Reference Room and through the principal office of Philadep.

[3] Securities Exchange Act Release No. 38918 (August 11, 1997) (order instituting proceedings pursuant to Section 19(h) and 21C of the Act, making findings, and imposing remedial sanctions) [Administrative Proceeding File No. 3–9360] ("Order").

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In accordance with the Order, Philadep will amend Philadep Rule 29, entitled "Unclaimed Dividends and Other Distributions," and Philadep Rule 2, Section 1(e), which governs the retention of any unclaimed dividend or other distribution. The Order provides that within forty-five (45) days of the entry of the Order, Philadep shall file with the Commission:

> A proposed rule change amending Rule 2, Section 1(e), Rule 29, Section 3 and the procedures thereunder, to provide that Philadep shall diligently research each unclaimed dividend or other distribution received after the Closing Date with a value greater than $500. Any such unclaimed dividend or other distribution with a value of $500 or less shall continue to be treated in accordance with Rule 29 (*i.e.*, Philadep can take it into income after five (5) years). All unclaimed dividends and other distributions subject to Rule 29 shall be held and invested in accordance with Philadep's Participants' Fund Rule 4. No unclaimed dividends or distributions received after the Closing Date in excess of $500 shall be taken into income.

In their current form, both Philadep Rule 2, Section 1(e), and Philadep Rule 29, Section 3, provide that (i) any dividends or distributions outstanding and unclaimed after five years from the date of such dividend or distribution shall be taken into income by Philadep and (ii) the participant shall waive any claim to any such dividend or distribution except as Philadep otherwise may provide in accordance with its by-laws and rules. Rule 2 and Rule 29 will be amended to provide that Philadep may not retain any unclaimed dividends or distributions in excess of $500 that are paid and received after the closing date.[5] Also under the proposed rule change, Philadep will amend Rule 29, Section 1, to provide that Philadep shall diligently research any unclaimed dividend or distribution with a value greater than $500 that is received after the effective date of the amendments. No changes to Philadep's rules will be made with respect to unclaimed dividends or distributions received prior to the closing.

Finally, Philadep is amending Rule 29 by adding a new Section 3 that will require that all unclaimed dividends and distributions that are subject to Rule 29, but as yet not taken into income by Philadep in accordance with Rule 29, be held and invested pursuant to the same procedures as set forth in Philadep Participants' Fund Rule 4.

Philadep believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[6] and the rules and regulations thereunder because the amendments contemplated by the proposed rule change will better assure the safeguarding of securities and funds in the custody or control of Philadep or for which Philadep is responsible. Furthermore, Philadep believes the amendments are consistent with the undertakings set forth in the Order.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with this obligation because it will increase the likelihood that unclaimed dividends and distributions will be returned to their owners.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow Philadep to implement the undertakings set forth in the Order immediately which should benefit the owners of unclaimed dividends and distributions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–Philadep–97–05 and should be submitted by January 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32528 Filed 12–11–95; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39404; File No. SR–Phlx–97–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Responsibility to Represent Orders to the Trading Crowd

December 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1034 ("Act"),[1] notice is hereby given that on August 25, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

---

[4] The Commission has modified the text of the summaries prepared by Philadep.

[5] The closing date tentatively has been scheduled for December 15, 1997, but may be rescheduled by mutual consent of the parties. The actual closing date will be inserted into the amended rules.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act,[2] proposes to amend Floor Procedure Advice ("Advice") C–7, Responsibility to Represent Orders to the Trading Crowd, to adopt a new paragraph (b) in order to specify a Floor Broker's responsibility to be loud and audible and positioned to be heard by a majority of the trading crowd.

Currently, Advice C–7 states that once an option order has been received on the floor, it must be represented to the trading crowd before it may be represented away from the crowd. This paragraph would be designated as paragraph (a). Proposed paragraph (b) would state that a Floor Broker must be loud and audible when requesting a market and/or representing an order in the trading crowd. Further, a Floor Broker must make reasonable efforts to position himself in the trading crowd to be heard by the majority of the trading crowd.

A fine schedule, pursuant to the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan"),[3] is proposed to be levied for minor violations of proposed paragraph (b). Specifically, violations will be subject to the following fine schedule, which will be implemented on a one-year running calendar basis: 1st Occurrence—$100; 2nd Occurrence—$250; 3rd Occurrence and Thereafter—Sanction is discretionary with Business Conduct Committee ("BCC"). This fine schedule is proposed to be adopted into, and thus amend, the Exchange's minor rule plan. Instances not deemed minor, as with all floor procedure advices subject to the minor rule plan, would be forwarded to the BCC. Violations of paragraph (a) would continue to be referred to the BCC, as no fine schedule applies. However, language indicating that such matters are subject to review by the BCC is proposed to be added. The proposal would take effect upon notice to the membership. The complete text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements maybe examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the amendment is to codify the long-standing practice of requiring, in order to promote just and equitable principles of trade, that Floor Brokers be heard by the trading crowd. Advice C–7 was adopted in 1987,[4] and was designed to ensure that brokered orders receive the maximum interaction with orders competing for the other side of the trade, before they may be represented away from the crowd. This, in turn, improves the functioning of the auction market and the quality of customers executions. Similarly, the proposed loud and audible and crowd positioning requirements are intended to promote maximum interaction with other interest in the crowd, by improving the likelihood that Floor Brokers are heard and facilitating price discovery.

Currently, the loud and audible requirement is rooted in Rule 110, which requires bids and offers to be made in an audible tone of voice, as well as Rule 707, Just and Equitable Principles of Trade, which prohibits members and member organizations from engaging in conduct inconsistent with just and equitable principles of trade. Floor Brokers are also required to utilize due diligence in representing orders, pursuant to Rules 155 and 1063. Specifically, Floor Brokers are responsible for using due diligence to execute an order at the best price available, which implies complete crowd interaction. Proposed paragraph (a) would apply to Floor Brokers requesting a market (quoting) as well as representing a market, including bidding, offering, canceling, executing and inquiring as to the status of orders or bids/offers.

Similarly, the requirement that Floor Brokers position themselves so as to be heard by a majority of the trading crowd is also rooted in Rules 707, 155 and 1063, and is also intended to maximize order interaction. Crowd location, in busy situations, is especially important in fulfilling due diligence and best execution obligations. The Exchange notes that the proposal's intent is similar to that of Rule 1063(a) and Advice C–1, which require that a Floor Broker, prior to executing an order, ascertain that at least one Registered Options Principal ("ROT") is present in the trading crowd.[5] ROT presence is intended to confirm pricing, prevent errors, and witness specialist-Floor Broker activity. The proposal should also promote an orderly environment, where Floor Brokers choose their crowd positioning centrally to comply with the requirement, and prevent unnecessary roughness and disorderly behavior by crowd participants attempting to hear a Floor Broker.

The proposed rule change is designed to preserve and enhance auction market principles and the process of representing orders by open outcry, which is integral to exchange options trading.

As stated previously, the proposal should ensure that Floor Brokers are heard. This, in turn, should help prevent errors by allowing verification of market quotes and orders by other crowd participants. As with paragraph (a), proposed paragraph (b) should prevent fraudulent and manipulative activity. The Exchange believes that expressly codifying these requirements into an Advice should help deter such activity, due to the potential imposition of fines for minor infractions, and should help encourage crowd vigilance for proper vocalization and wrongful activity.

The Exchange believes that the proposal is appropriately codified into Advice C–7, which deals with Floor Broker responsibilities, and, more specifically, with representing orders in the trading crowd. Furthermore, the Exchange believes that the new requirement is appropriate for the minor rule plan, because it involves actions that are objective and easily verifiable. The reference in the fine schedule to infractions of paragraph (a) being referred to the BCC is intended to bolster the distinction between provisions subject to fines and those referred directly to BCC; it does not imply that violations of paragraph (a) cannot result in fines or disciplinary action.

For these reasons, the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by maximizing order interaction and thus improving the functioning of the auction market, including price discovery and liquidity, and the quality of customer executions. The proposal is also consistent with Sections 6(b)(1) and (6), which require, respectively, that the Exchange have the capacity to enforce compliance with its rules and that members be appropriately disciplined.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–42 and should be submitted within January 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32484 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 240.19b–4.

[3] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advice, such as Advice C–7, with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[4] Securities Exchange Act Release No. 24309 (April 7, 1987), 52 FR 11894 (April 13, 1987) (SR–Phlx–86–49).

[5] Prior to the adoption of a minor rule plan, this requirement appeared in Phlx Rule 1014.06. Securities Exchange Act Release No. 23296 (June 4, 1986), 51 FR 21430 (June 12, 1987)(SR–Phlx–86–11).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector (ITAC–R) Joint Task Group 4–9–11 Meeting Notice

The Department of State announces the formation of U.S. Joint Task Group 4–9–11 (JTG 4–9–11), under the Radiocommunication Sector of the U.S. International Telecommunication Advisory Committee. This Joint Task Group is the focal point within the United States to prepare for meetings of the corresponding international JTG 4–9–11 which was recently formed at the ITU–R Chairman/Vice Chairman meeting November 25 and 28, 1997. The JTG is to conduct studies and prepare a report for the next Conference Preparatory Meeting (CPM–99). The report will be based on the results of studies, in accordance with Resolutions COM5–18, COM5–19 and COM5–23 of the 1997 World Radiocommunication Conference, that are associated with items 1.13.1 and 1.13.2 of the agenda for WRC–99. These agenda items are:

1.13.1—review and, if appropriate, revise the power limits appearing in [1] Articles S21 and S22 in relation to the sharing conditions among non-GSO, GSO FSS, GSO BSS, space sciences and terrestrial services, to ensure the feasibility of these power limits and that these limits do not impose undue constraints on the development of these systems and services; and

1.13.2—consider the inclusion of limits similar to those in Article S21 and S22 in other frequency bands, or other regulatory approaches to be applied in relation to sharing situations.

Chairman of the U.S. Joint Task Group 4–9–11 is Mr. Harry Ng of the Federal Communications Commission. Mr. Hg may be reached at telephone 202–418–0752.

The initial organizational meeting of U.S. JTG 4–9–11 will be held on December 18, 1997 at 9:30 a.m. at the Department of State in Room 1912. Members of the General Public may attend this meeting and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled.

Persons intending to attend the meeting should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the 'C' Street Main Lobby.

Subsequent meetings will be held at the FCC, 2000 M Street, NW, Washington, D.C., in Room 110 on January 7, 1998 at 9:30 a.m. and on February 4, 1998 at a time and location to be determined.

Dated: December 9, 1997.

John T. Gilsenan,

Acting Chairman, U.S. ITAC for Radiocommunications Section.

[FR Doc. 97–32597 Filed 12–10–97; 9:05 am]

BILLING CODE 4710–45–M

[1] Articles S21 and S22 of the International Radio Regulations, as agreed by the 1997 World Radiocommunication Conference.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.335–1, Design Dive Speed

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.335–1, Design Dive Speed. This AC sets forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of part 25 of the Federal Aviation Regulations (FAR) related to the minimum speed margin between design cruise speed and design dive speed for transport category airplanes. Like all ACs, it is not regulatory but is to provide guidance for applicants in demonstrating compliance with the objective safety standards set forth in the rule.

DATE: Advisory Circular 25.335–1 was issued by the Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100, on October 20, 1997.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or faxing your request to the warehouse at 301–386–5394.

Issued in Renton, Washington, on November 28, 1997.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–32579 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Memphis International Airport, Memphis, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Memphis-Shelby County Airport Authority for Memphis International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301, 901–544–3495.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Memphis International Airport are in compliance with applicable requirements of Part 150, effective December 4, 1997.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Memphis-Shelby County Airport Authority. The specific maps under consideration are Memphis International Airport Existing (1997) Noise Exposure Map and Future (2002) Noise Exposure Maps submission. The FAA has determined that these maps for Memphis International Airport are in compliance with applicable requirements. This determination is effective on December 4, 1997. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under, section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591.

Federal Aviation Administration, Airports District Office, 3851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

Mr. Larry D. Cox, President, Memphis-Shelby County Airport Authority, Memphis International Airport, P.O. Box 30168, Memphis, Tennessee 38130–0168.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis Airports District Office, December 4, 1997.

LaVerne F. Reid,

Manager.

[FR Doc. 97–32578 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–61]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 5, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 29012, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267–9681 or Tawana Matthews (202) 267–9783, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 8, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29012.

Petitioner: Contential Airlines, Inc.

Sections of the FAR Affected: 14 CFR 212.434(c)(1)(ii).

Description of Relief Sought: To permit Continental to substitute a qualified and authorized check airman for a Federal Aviation Administration inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and landing when completing initial or upgrade training as specified in 14 CFR 121.424.

[FR Doc. 97–32577 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Wapello and Mahaska Counties, Iowa

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Wapello and Mahaska Counties, Iowa.

FOR FURTHER INFORMATION CONTACT: Dean Majzoub, Transportation Engineer, Federal Highway Administration, 105 6th Street, Ames, Iowa 50010, Telephone: (515) 233–7300.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Highway 63 (formerly Iowa 137) in Wapello and Mahaska Counties. The proposed improvement would involve the construction of a four-lane bypass of the town of Eddyville.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives to be considered include (1) taking no action; (2) a near east bypass; (3) a far east bypass; and (4) a westerly bypass.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public information meeting will be held in Eddyville on December 17, 1997. In addition, a public hearing will be held after the draft EIS is made available. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 2, 1997.

Robert L. Lee,

Division Administrator, Ames, Iowa.

[FR Doc. 97–32481 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33513]

CMC Railroad, Inc.—Operation Exemption—GWI Switching Services, L.P.

CMC Railroad, Inc. (CMC RR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a railcar storage yard (the Yard) that has been operated by GWI Switching Services, L.P. (GWISS).[1]

[1] The real estate on which the Yard is located is owned by CMC Railroad I Ltd. (CMC I), which leases all improvements thereto from NCC Charlie Company, an unrelated noncarrier.

GWISS has been operating the Yard and has been operating over incidental trackage rights pursuant to the class exemption at 49 CFR 1150.31. *See GWI Switching Services, L.P.—Operation Exemption—Rail Lines of Southern Pacific Transportation Company*, Finance Docket No. 32481 (ICC served May 3, 1994). The continuance in control of GWISS by Genesee and Wyoming Industries, Inc., is also exempt under the class exemption. *See Genesee and Wyoming Industries, Inc.—Continuance in Control Exemption—GWI Switching Services, L.P.*, Finance Docket No. 32482 (ICC served May 3, 1997). The Brotherhood of Locomotive Engineers and the United Transportation Union filed petitions to revoke these exemptions, which are pending before the Board. The publication of this notice of exemption does not reflect any assessment of the merits of the petitions to revoke. Should the Board

Continued

GWISS is assigning to CMC RR the operating agreement that would permit CMC RR to operate the Yard. CMC RR will access the Yard at connections with the Baytown Branch of Union Pacific Railroad Company (which the verified notice describes as a former Southern Pacific Transportation Company (SP) line) in the vicinity of Dayton, TX, at SP mileposts 2.0 and 3.3. Under the assignment by GWISS, CMC RR will also operate 10 miles of incidental trackage rights (a) from Baytown Branch SP milepost 5.0 to SP milepost 0.0 (also known as Lafayette Main Line SP milepost 327.8), a distance of 5.0 miles; and (b) from Lafayette Main Line SP milepost 325.0 to SP milepost 330.0, a distance of 5.0 miles.

The transaction was expected to be consummated after November 27, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33513, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: December 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32564 Filed 12–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33521]

Norfolk Southern Railway Company—Trackage Rights Exemption—Pickens Railway Company

Pickens Railway Company (Pickens) has agreed to grant local access trackage rights to Norfolk Southern Railway Company (NSR) over approximately 1.2 miles of Pickens' tracks between former NSR milepost Z–9.0 and former NSR milepost Z–10.2, the division of ownership between Pickens and NSR at Murray Street, in Anderson, SC.

The transaction is scheduled to be consummated after the closing date of the transaction in *Pickens Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company*, STB Finance Docket No. 33423 (STB served July 17, 1997), which is anticipated to be on or after December 11, 1997.

The purpose of the trackage rights is to permit NSR to provide service on a joint basis with Pickens to present and future rail patrons and to park occupied circus train cars in Anderson.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33521, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James R. Paschall, Esq., Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–9241.

Decided: December 4, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32563 Filed 12–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–303 (Sub-No. 18X)]

Wisconsin Central Ltd.—Abandonment Exemption—In Polk County, WI

On November 24, 1997, Wisconsin Central Ltd. (WCL), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its line of railroad known as the Dresser-Amery Line, extending between milepost 47.83 in Dresser and milepost 63.08 (the end of the line) in Amery, a distance of 15.25 miles, in Polk County, WI. The line traverses U.S. Postal Service Zip Codes 54001 and 54009, and includes the stations of Wanderoos at milepost 56.3 and Amery at milepost 62.9.

The line does not contain federally granted rights-of-way. Any documentation in WCL's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 13, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 2, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–303 (Sub-No. 18X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Michael J. Barron, Jr., General Attorney, Wisconsin Central Ltd., 6250 N. River Road, Suite 9000, Rosemont, IL 60018.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: December 4, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32562 Filed 12–11–97; 8:45 am]

BILLING CODE 4915–00–P

decide to revoke GWISS's exemption to operate the Yard and trackage rights, this exemption of the assignment of GWISS's operating agreement to CMC RR may also be revoked.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 4, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/Office of International Financial Analysis/ Treasury International Capital Reporting System

OMB Number: 1505–0023.

Form Number: International Capital Form CM.

Type of Review: Extension.

Title: Dollar Deposit and Certificate of Deposit Claims on Banks Abroad.

Description: This report is required by law and is designed to gather timely and accurate information on international capital movements by collecting data on deposit and certificate of deposit claims held on banks abroad by nonbanking enterprises in the United States.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 175.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 1,050 hours.

OMB Number: 1505–0088.

Form Number: International Capital Form BL–3.

Type of Review: Extension.

Title: Intermediary's Notification of Foreign Borrowing Denominated in Dollars.

Description: This form is designed for use by a bank, other depository institution, or broker to notify a domestic nonbanking customer of its potential obligation to report on TIC Form CQ–1 borrowings from foreigners that will not be reported by the bank or other intermediary as a custody liability on TIC Form BL–2.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 150 hours.

Clearance Officer: Lois K. Holland (202) 622–1563. Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–32529 Filed 12–11–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

December 2, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0951.

Form Number: IRS Forms 5434 and 5434–A.

Type of Review: Extension.

Title: Application for Enrollment (5434); and Application for Renewal of Enrollment (5434–A).

Description: The information relates to the granting of enrollment status to actuaries admitted (licensed by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employment Retirement Income Security Act of 1974.)

Respondents: Individual or households.

Estimated Number of Respondents/ Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form 5434, 1 hr., 0 min.

Form 5434—A, 18 min.

Recordkeeping, 9 min.

Frequency of Response: Other (once every 3 years).

Estimated Total Reporting/ Recordkeeping Burden: 3,800 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–32530 Filed 12–11–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974 as Amended: System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Alteration of a system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the Department of the Treasury is issuing notice of our intent to alter the system of records entitled the Treasury Integrated Management Information System (TIMIS), Treasury/DO .002, to include a new routine use. We invite public comment on this publication.

DATES: The proposed alteration will become effective without further notice on January 12, 1998, unless comments dictate otherwise.

ADDRESSES: Interested individuals may comment on this publication by writing to Director, Treasury Integrated Management Information System (System Manager for TIMIS), 740 15th Street NW, Suite 400, Washington, DC, 20005. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Director, Treasury Integrated

Management Information System (System Manager for TIMIS), 740 15th Street NW, Suite 400, Washington, DC, 20005.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Department of the Treasury will disclose data from its Treasury Integrated Management Information System (TIMIS)—Treasury/DO .002 to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System.

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support.

On October 1, 1997, the FPLS will be enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. The FPLS will be expanded on October 1, 1998, to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by the Department of the Treasury to the FPLS include: name, social security number and address of the employee and the name, address and Federal Employer Identification Number (FEIN) of the Department of the Treasury.

In addition, names and social security numbers submitted by the Department of the Treasury to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by the Department of the Treasury to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

We are proposing this routine use in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a "compatible" use is a use which is necessary and proper. See OMB Guidelines, 51 Fed. Reg. 18982, 18985 (1986). Since the proposed uses of the data are required by Pub. L. 104–193, they are clearly necessary and proper uses, and therefore "compatible" uses which meet Privacy Act requirements. We will disclose information under the proposed routine use only as required by Public Law 104–193.

The Treasury Integrated Management Information System (TIMIS), Treasury/DO .002 system notice most recently published in its entirety on November 9, 1995, at 60 FR 56651. The specific change to the record system being altered is set forth below:

Treasury/DO .002

SYSTEM NAME:

Treasury Integrated Management Information System (TIMIS).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * *

(16) disclose to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees, for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement activities as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L.104–193).

* * * * *

Dated: December 3, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration)

[FR Doc. 97–32496 Filed 12–11–97; 8:45 am]

BILLING CODE 4810–25–F

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

December 6, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

Dates: Written comments should be received on or before January 12, 1998 to be assured of consideration.

OMB Number: 1550–0023.

Form Number: OTS Form 1313 and OTS Form 1566.

Type of Review: Revision of a previously approved collection.

Title: Thrift Financial Report.

Description: OTS collects financial data from OTS-related savings associations and their subsidiaries in order to assure their safety and soundness as depositories of the personal monies of the general public. The OTS monitors the association's financial position an interest-rate risk so that adverse conditions can be remedied promptly.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1239.

Estimated Burden Hours Per Respondent: 33 average hours.

Frequency of Response: 12 per year.

Estimated Total Reporting Burden: 183,343 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–32468 Filed 12–11–97; 8:45 am]

BILLING CODE 6720–01–P

federal register

Friday
December 12, 1997

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 243
FOX High Speed Rail Safety Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 243

[FRA Docket No. HST–1]

RIN 2130–AB14

FOX High Speed Rail Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking for rule of particular applicability (NPRM).

SUMMARY: FRA is proposing a rule of particular applicability that establishes safety standards for the Florida Overland eXpress (FOX) high speed rail system. The proposed standards are not intended for general application in the railroad industry, but would apply only to the FOX system that is planned for development in the State of Florida. The FOX system will operate from Miami to Tampa, via Orlando on dedicated track, with no grade crossings, at a maximum speed of 200 mph. The FOX equipment and track are patterned after the French TGV high speed rail system, and will be used exclusively for passenger service.

The proposed rule of particular applicability takes a systems approach, and so includes standards that address all aspects of the FOX high speed system, including system description, system safety, signal, track, rolling stock, operating practices, system qualification tests, personnel qualifications, and power distribution. In addition, the proposed rule adopts and incorporates by reference many existing standards that apply to all railroads, which are appropriate for application to FOX, such as alcohol and drug standards, hours of service requirements, and locomotive engineer qualifications.

DATES: (1) *Written comments:* Written comments must be received on or before February 10, 1998. Comments received after that date will be considered only to the extent possible without incurring substantial expense or delay.

(2) *Public hearing:* A public hearing will be held if one is requested by January 2, 1998. Anyone requesting a hearing must notify FRA's Docket Clerk, Renee Bridgers, in writing and provide her with the requesting party's name, telephone number, and address. If a hearing is requested, FRA will notify the public of the date, time, and location of the hearing, and provide instructions for those who wish to make an oral statement at the hearing.

ADDRESSES: Written comments must identify the docket number and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Stop 10, 400 Seventh Street, S.W., Washington, D.C. 20590. Persons desiring to be notified that their comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours on the seventh floor of 1120 Vermont Avenue, NW, in Washington, D.C.

FOR FURTHER INFORMATION, CONTACT: Bill Goodman or Mark Jones, Signal Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh St., S.W., Stop 25, Washington, D.C. 20590, (telephone: 202–632–3353); Bill O'Sullivan or Dave Jamieson, Track Division, at the same address, (telephone: 202–632–3341); Ed Pritchard, Motive Power and Equipment Division, at the same address, (telephone: 202–632–3348); Doug Taylor or Laura Mizner, Operating Practices Division, at the same address, (telephone: 202–632–3346); Bob Dorer, Volpe National Transportation Systems Center, Kendall Square, Cambridge, MA 02142, (telephone: 617–494–3481); or Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh St., S.W., Stop 10, Washington, D.C. 20590 (telephone: 202–632–3177).

SUPPLEMENTARY INFORMATION:

Background and Regulatory Structure

The State of Florida plans to develop a high speed rail system that will run from Miami to Tampa, via Orlando. The system's trains will travel on dedicated rail, with no public grade crossings, in exclusive passenger service, at speeds not to exceed 200 mph. These operational characteristics and the equipment that the State plans to use mark a dramatic step forward for the development of regional high speed passenger rail service in the United States. FRA announces in this notice proposed safety standards for the system that will be developed in Florida.

Through a public bid process, Florida has selected the Florida Overland eXpress (FOX) to build and operate the high speed rail system. FOX is a consortium of engineering and rail design and construction entities. The system FOX proposes to build in Florida utilizes the high speed technology and equipment currently in use in France, Holland, Spain, and Belgium, which was developed in France and is known as the French TGV (train a grande vitesse, or very high speed train). The French TGV has been in service in Europe since 1981 and has safely carried 450 million passengers. This is a traditional rail system, in the sense that steel wheels operate over steel rails, powered by electrical power that is carried and transferred to the equipment through an overhead catenary system. However, the TGV equipment is generally lighter than conventional rail vehicles, and utilizes advanced computer and aerodynamic technology that facilitates travel at very high speeds with minimal track and equipment degradation. (The trainsets travel at maximum speeds of 186 mph in France.) In addition, the TGV high speed trainsets are articulated into one long unit that resists buckling or rolling in the event of an accident, which greatly reduces the likelihood of serious injury for passengers. The lightweight design of the equipment permits high speed travel, but also lends itself to grave damage if involved in a train-to-train collision, particularly where heavy freight vehicles are present. To counter this aspect of the design, the TGV is operated with a focus on collision-avoidance, in addition to collision-mitigation, a systems approach to safety that has proven to be quite successful. (It is also important to note here that the Florida system will not include any freight traffic.) Newer generations of the TGV system include in-cab signal systems and passenger stations that are customized to service high speed trainsets only. The French TGV system has an exceedingly safe record, which is discussed in greater detail below.

The federal railroad statutes apply to all railroads, as defined in 49 U.S.C. 20102, including the FOX system proposed to be built in Florida. The only railroads excluded from FRA's jurisdiction are urban rapid transit railroads that are not connected to the general railroad system. The contemplated FOX system will clearly be intercity passenger rail, not urban rapid transit. Accordingly, the Florida system will be subject to FRA jurisdiction whether or not it is connected to the general railroad system. Moreover, FRA would consider a stand-alone intercity railroad line to be part of the general system, even though not physically connected to other railroads (as FRA has previously stated with respect to the Alaska Railroad; see 49 CFR part 209, Appendix A).

FRA has a regulatory program in place, pursuant to its statutory authority, to address equipment, track, operating practices, and human factors in the existing, conventional railroad environment. However, significant operational and equipment differences exist between the system proposed for Florida and existing passenger operations in the United States. In many of the railroad safety disciplines, FRA's existing standards of general applicability do not address the safety concerns and operational peculiarities of the proposed FOX system. Therefore, in order to assure the public that this new system will operate safely, minimum federal standards must be in place when FOX commences operations.

FOX and FDOT discussed their plans for the system in a series of meetings with FRA held throughout 1996. The purpose of the discussions was to explain to FRA the system that they plan to build in Florida, and for FOX and FDOT to understand more fully the applicable regulatory framework that would govern their operations. On February 18, 1997, FOX filed a petition for rulemaking (Petition) with FRA, which proposes standards that would apply to their system safety program, track, rolling stock, signal, operating practices, personnel qualifications, and power distribution. Since February, FOX has supplemented the Petition with additional information that is pertinent to the existing French operation or the one planned for Florida. (A copy of the Petition and supplemental submissions are available for public review in the docket of this matter, which is docket number HST–1, previously identified as docket number RM Pet. 97–1.) The FOX Petition attempts to incorporate the French practice in each safety discipline listed in the Petition, but also contains proposed standards that differ from practices in France. FRA understands these differences to reflect operational and environmental deviations between the system proposed for Florida and the TGV lines in operation in France.

FRA analyzed the Petition and supporting documentation, gathered background data that describe the French system, and now publishes this Notice of Proposed Rulemaking (NPRM), based on consideration of the available information and the expertise of the Agency's safety specialists. This NPRM constitutes FRA's initial response to the Petition and includes standards that are similar, but not identical, to those in the FOX Petition.

It is important to note at this juncture that any new standards which FRA adopts to address safety on the FOX high speed rail system would apply only to that system, and therefore will be issued in the form of a rule of particular applicability, rather than one of general applicability. Such a rule of particular applicability would not displace existing safety standards that apply to all other entities in the railroad industry, and would be enforced only against the FOX system. Also, it should be noted that FRA plans at this time to publish any final standards that pertain to the FOX system in the Code of Federal Regulations (CFR). For that reason, these proposed standards have been assigned Part number 243, and are organized into Subparts for each safety discipline.

Safety Characteristics of the French TGV System

As part of the process for determining appropriate rules for those aspects of the FOX system that will duplicate the French TGV system, it is logical to consider the safety record of the French high speed rail system.

In preparation for filing the Petition, FOX and the Florida Department of Transportation (FDOT) commissioned DLSF Systems, Inc. to complete a risk assessment to evaluate the relative safety of the FOX system vis-a-vis the French TGV system, and that predicted for the Amtrak 150-mph trainsets in the northeast corridor (NEC). (A copy of the Florida Overland eXpress Risk Assessment is available for public review in the docket of this matter, docket number HST–1.) The analysis set forth in the risk assessment provides a fairly extensive discussion of the safety of TGV high speed rail in France, and the numbers indicate an admirable safety record.

The risk assessment divides the analysis of the TGV system into two categories: those that are exclusive high speed lines, which include in-cab signaling, and passenger stations designed to service only high speed trains; and those that consist of a mixed high speed/conventional system in which high speed trains service conventional passenger stations, and use conventional trackside signaling. For the most part, the risk assessment deals with incidents that occurred between January 1, 1990 and June 30, 1996. The numbers are limited to post-1989 data because the Societe Nationale des Chemins de Fer Francais (SNCF), the quasi-governmental agency in France that oversees and operates TGV, does not have computerized records concerning events prior to 1990.

It is important to note that the accident figures discussed below occurred in a system that maintains high traffic density and passenger service: train-miles for this period totaled 204 million for all TGV service and 111 million for the exclusive high speed lines; passenger-miles on the high speed lines totaled 43,316,000; and the number of passengers served on TGV trains totaled 249,696. The TGV system operates at a maximum speed of 186 mph and runs approximately 184 trains per day.

On the exclusive high speed lines, only thirteen incidents have been recorded from January 1, 1990 through June 30, 1996. There have been no fatalities and no collisions between trains during this period. Of the thirteen recorded incidents, only three resulted in passenger injury. The first incident that caused injury did not involve casualties on board a TGV trainset. This incident, which caused 27 of the 30 total injuries, occurred when passengers waiting on a loading platform were sprayed with ballast that was kicked up by a derailed truck. The truck in this incident derailed due to a wheel slide failure that resulted in a flat wheel. The second incident that resulted in casualty involved two passengers who were slightly injured when a trainset derailed. The derailment occurred while traveling at 150 mph, due to track subsidence that was caused by heavy rains and a previously unknown World War I trench. The third event, in which one passenger was injured, was caused by human error. Fasteners were incorrectly tightened after a maintenance procedure, which caused a fairing to fall and break a window in a passenger coach.

The remaining ten incidents on the exclusive high speed lines did not involve passenger injuries. Five of the incidents recorded involved trainsets that struck an animal in the right-of-way. Two of the incidents consisted of fire on moving equipment: In one event the fire was located in the baggage compartment, cause unknown; and in the other it was located in the rear locomotive, due to rolling stock failure. Two of the thirteen incidents involved the operation of the passenger compartment doors. In one of these events, a trainset door opened and was pulled away by the force of the wind while the conductor was checking an air leak, and in the second event a passenger compartment door opened while the train was moving, due to rolling stock failure. Finally, in the last incident a trainset hit concrete covers of electrical cable conduits, which was attributed to vandalism.

In the second category, which includes all mixed high speed/

conventional lines, eight incidents have been recorded from January 1, 1990 to June 30, 1996. In this group of accidents, two fatalities occurred. The first involved a passenger who boarded the trainset, and then subsequently disembarked after departure was underway, and fell under the train. The second fatality occurred when a conductor attempted to board after train departure and fell between the train and platform. In another incident reported in this group, ten injuries occurred when a high speed trainset passed an absolute stop signal during a switching movement and hit a local train. The injuries occurred on the local, conventional train. In the final incident which involved injuries, a passenger standing on a platform was injured when a shock absorber between two passenger cars broke and kicked up ballast.

The remaining four incidents on the mixed lines occurred due to human error. In two instances, the locomotive engineer forgot to apply an immobilization brake after a switching movement, and in each case the trainset slowly hit another rail car. In one case, an engineer was distracted by another individual in the cab and released the brakes. The trainset slowly hit a bumper. In the last incident, a trainset rolled from a rolling stock repair facility unattended and hit a loading ramp.

Prior to 1990, one significant accident involving TGV equipment is noted, in which two fatalities and forty-four injuries occurred. A highway vehicle at a public grade crossing entered the railroad right-of-way and was struck by a TGV trainset. The TGV engineer and a passenger were killed and forty-four people were injured. (It is important to note here that the FOX high speed rail system will not contain any public grade crossings.) A second event is noted in the risk assessment concerning a terrorist attack in 1983 in which fatalities occurred, but no description of the incident is provided.

In summary, four fatalities have occurred on the TGV system from 1981 through June 1996, and none of these occurred on the exclusive high speed lines. FRA and, undoubtedly, the SNCF believe that any loss of life is one too many. However, given the traffic density, speed of travel, and passenger load that the TGV system supports, these figures are exceptional. The risk assessment calculates a TGV passenger risk of less than 0.99 per billion passenger-miles traveled.

It is difficult to make many meaningful comparisons between the French TGV system and existing passenger service in the United States because the operating environment, technology, data collection, and equipment differ in a variety of ways. However, the risk assessment computes fatality rates based on available information for the TGV system in France and the NEC, and those rates provide some context to the accident data. According to the risk assessment, the normalized passenger risk calculated in per billion passenger-miles for the TGV system in France is 5.9% of that for the 1994 NEC.

FRA understands that differences of opinion may exist concerning methodology or conclusions reached in the FOX/FDOT risk assessment. Moreover, as explained below, FRA's safety determinations about the FOX system are based on its own careful analysis of the proposed system and the existing French system. However, the Agency believes the document presents useful data concerning the general safety of the French TGV system.

FRA, in conjunction with the Volpe National Transportation Systems Center (Volpe), has studied the French TGV system extensively. FRA and Volpe technical staff visited France and Belgium in order to examine the TGV system in operation, to review the signal system testing as it is conducted, and to pose questions to representatives of the SNCF concerning details of the system.

FRA and Volpe staff visited a manufacturing plant in eastern France where the equipment is constructed, and met with the plant's staff to discuss equipment design, crashworthiness, operating characteristics, and construction. FRA and Volpe staff visited a central train dispatching center, and studied the practices and required procedures that train dispatchers follow to prevent train collisions. FRA and Volpe staff spent several days at the signal system test track in Belgium to review the test procedures and test results with SNCF personnel. In addition, FRA has maintained communications with personnel at the test site to follow the progress of the signal testing as it proceeds.

FRA and Volpe staff visited a TGV repair facility in order to analyze the existing facility design, and employee practices at repair facilities generally. At the repair site, Agency staff received training from SNCF personnel on the operation of the major components of the TGV rolling stock, and the inspection and maintenance frequencies that have been established over time by the SNCF.

Agency and Volpe staff met with representatives of the French government and the SNCF in a series of meetings, and discussed a variety of questions concerning governmental oversight of the TGV operation, annual safety reviews, the process by which the SNCF revises the TGV system safety plan, personnel qualifications, operating rules, track maintenance and repair, and the development of new equipment.

Personnel from Volpe have studied and prepared reports on the French TGV, which not only provide a broad overview of the system, but also examine individual components and operating practices of the system. This, in combination with Volpe's broad expertise in the area of high speed rail systems generally, aided the FRA team to make effective and rapid comparisons and assessments of the relative safety of all aspects of the French TGV as the comprehensive review proceeded. Based on its own review of all of the information received, FRA possesses a high level of confidence in the safety of many of the major elements of the French system that will be duplicated in Florida.

Safety Characteristics of the FOX System

The FOX system planned for development in Florida contains safety features that do not exist on the TGV system in France, and so presumably, FOX has the potential to surpass the level of safety that exists on the TGV high speed lines. The primary improvements include lower traffic density, no opportunity for mixed traffic, an expanded intrusion protection system, fewer underpasses and overpasses, an advanced technology signal system, and the addition of protective station platform doors. In addition, the FOX system includes several attributes that do not exist on passenger lines in the U.S., which are discussed below, that should also enhance the overall safety of the program.

The traffic density will be lower in Florida than that of the TGV system in France. FOX anticipates operating a maximum of eighteen trains per day in the first two years of operation, at a rate of approximately one train every thirty minutes. FOX plans to increase the number to twenty-six per day afterward. In France, approximately 184 TGV trains run per day. Traffic density has generally been associated with train accidents and incidents, and can impact the likelihood and severity of train accidents. The expanded train departure intervals on FOX are expected to reduce the risk of one train overtaking another or train-to-train collisions.

FOX will operate over a dedicated right-of-way that will not include freight traffic or other types of passenger equipment. The high speed track in France is connected directly to conventional lines and so the risk of freight penetrating the high speed tracks exists. In Florida, the track will not be connected to rail lines that carry freight traffic. The only freight equipment that will be permitted on the FOX system is that involved in FOX maintenance or rescue operations. This is a significant factor that will eliminate or reduce a variety of risks. First, the likelihood of a freight-to-passenger trainset collision, and the high casualty rates that would accompany such a collision, will be nearly eliminated. Second, the absence of freight traffic will minimize track degradation that occurs with the transport of heavy loads, which in turn will reduce the risk of track defects that cause train derailments. Finally, train dispatchers will not manage districts that carry mixed passenger and freight loads, and so the stress and confusion that may result from freight and passenger route scheduling will be eliminated.

There will no public at-grade crossings on the FOX system, and so the risk of a highway-rail grade crossing accident will be eliminated. There are no public at-grade crossings on the TGV high speed lines in France, but highway-rail grade crossings are prevalent on the U.S. rail system, and account for many human injuries and fatalities. This aspect of the FOX system greatly reduces the risk of casualties to railroad employees, passengers, and road travelers along the FOX right-of-way.

FOX will install fencing that runs the length of the right-of-way to restrict unauthorized entry, which should minimize the risk of accidents involving trespassers and animals. In addition, the FOX system will include detection systems for intrusion, high wind, flood conditions, and rolling stock that contains dragging equipment. These detection systems will be connected to the signal system, and will notify the main dispatching center when hazardous events occur. Some of these features do not exist on the French TGV, and most do not currently exist on American railroads. It is expected that they will enhance safety for the FOX system.

The French TGV operates over a system that includes 490 overpasses and 676 underpasses. Current plans for FOX indicate that there will be approximately 100 overpasses and 60 underpasses. In addition, there will be no moveable bridges on the Florida system, structures that, like overpasses and underpasses, tend to increase the need for maintenance and the risk of incident.

FOX will utilize a new signal and train control system that is not currently in revenue service anywhere in the world. Trainsets in Belgium are testing the system, which is a form of Positive Train Control (PTC), and it is anticipated that before FOX commences revenue operations, the system will be certified and in use in Europe. Although FRA and others familiar with the system generally believe that this new variety of signaling will increase railroad safety, there may be some risk associated with the introduction of this new component to an operative railroad system. The risk assessment prepared for FOX and FDOT does not address this factor. However, FRA believes that this item deserves significant attention, given the ramifications of a signal system failure on high speed passenger lines. This issue deserves particular concern in Florida because of the significant risk that exists there of extreme weather conditions, *i.e.*, lightning strikes, hurricanes, and flooding which could require relatively frequent exercise of the safety-critical features of this signal system. As the risk assessment notes, these are conditions that do not exist in France. FRA must be very cautious in establishing standards for a system that has not been used in revenue service, and that will be expected to function without fail in a location where catastrophic weather conditions are not rare. Therefore, FRA proposes as a requirement in this NPRM, a process in which an independent entity with proven technical expertise will conduct a review of the safety of the safety-critical hardware and software microprocessor-based elements of the signal system, which will be submitted to FRA. The proposed standards include a brief acceptance procedure that would follow this submission and precede implementation of the signal system as finally configured. FRA anticipates that this sort of process will accompany certification of the system in Europe, which will likely predate FOX operations. Given the risks presented by a signaling failure on a passenger line traveling at speeds of 200 mph, the Agency believes it is necessary to implement standards that formalize such a peer review process for FOX in this country. This is very similar to procedures that FRA has required other entities to follow concerning signal systems. However, FRA invites comment on this and all other proposals set forth in the NPRM from interested and expert parties, particularly as to the criteria that should be addressed in the peer review, or other avenues of achieving the same end.

Although FRA does not currently enforce safety standards concerning passenger stations, it is important to note that the FOX system will include protective doors on the station platforms to prevent the risk of injury from loose equipment or flying debris. As the TGV safety record discussed above points out, passengers waiting to board face the risk of injury unless shielded by the sort of protection that will be included in the FOX system.

There are certain advantages to building this new railroad system, particularly relating to roadbed and infrastructure, that accrue simply because construction will be designed to suit all components of the system. For instance, the right-of-way may be selected to suit the needs of the track and signaling system. Track curves will be minimized during track layout and designed to accommodate speeds in excess of the maximum revenue service speed of 200 mph. However, it is important to acknowledge, as the risk assessment does, that unique system aspects such as sink holes are an ever-present, potential problem in Florida, and decrease the safety of the FOX system unless mitigated. FOX plans to use geotechnical analysis to look for indicators of sinkhole activity prior to installing the track infrastructure. FRA's proposal includes a proviso that any abnormalities which arise in the construction phase of development must be recorded, and that all actions taken in response to the abnormality must be documented. Also, this hazard must be accounted for in the FOX system safety plan, which will be developed prior to commencing construction. FRA seeks comment from interested parties and experts on this subject to determine other methods for managing this risk effectively.

There are two other potential areas of risk that warrant particular attention. Neither is fully addressed in the FOX/FDOT risk assessment. The first involves the increase in TGV speed from a maximum of 186 mph, which is currently used in French operations, to 200 mph, which is proposed for Florida operations. The risk assessment states that French TGV plans to increase the operating speed to 200 mph, and a safety record will have developed in France prior to FOX operations in Florida. Unfortunately, FRA finds itself in the position of writing safety standards for the system at this juncture, when the appropriate safety record concerning these enhanced speeds is unformed. As is also noted in the risk assessment, higher train speed tends to

increase the severity of accidents. The FOX system safety plan must address this issue, but we also seek comment from interested parties and experts as to the enhanced risk involved, if any, and other viable methods of addressing it.

Second, FRA believes that there is a risk, however intangible, that arises from moving this European system to a new culture where the pertinent institutional knowledge is not abundant and the role of the government in supporting operations is quite different. For instance, rolling stock maintenance personnel on FOX will be expected to inspect and maintain equipment using unfamiliar tools, in dramatically different repair facilities, on equipment that utilizes computers to achieve what is traditionally done in the U.S. by visual and manual means. No amount of training can achieve the level of professional insight that fifteen years of experience on the equipment would produce. The risk assessment alludes to this factor in passing, and seems to indicate that so long as the TGV equipment, inspection frequencies, and procedures are implemented on FOX, nothing is lost and no risk ensues.

FRA agrees that it is very difficult to quantify the value of institutional knowledge in a system as large as the French TGV or FOX. However, this is not a factor that the Agency can or desires to overlook. In discussions with FRA, FOX and FDOT have indicated that they plan to bring TGV professionals into the training, maintenance, and operation of the system. However, it is impossible to know at this point whether or to what extent that participation will occur, as revenue operations are not planned to commence until 2004. A variety of events may occur between now and then to make those plans difficult or impossible to achieve.

Also factored into this issue of risk, is the knowledge that the TGV has a different cost accounting structure, in which the daily safety of the operation is not compromised by short-term operating costs and long-term capitol costs. The SNCF may be able to make purchases and decisions that a private entity would be unable to accomplish. FRA is certain that all reputable transportation companies have as their first priority the safety of passengers and employees. However, the need to be profitable in a privately financial context undeniably plays a role in decision making that on occasion impacts safety. FRA believes that there may be a connection between the TGV's superb safety record and the degree to which the system is financially supported that will not exist on the FOX system. There is no way of knowing with certainty whether TGV safety is due in some measure to its financial structure. Similarly, there is no way of ascertaining at this point whether the loss of comprehensive institutional knowledge that is bound to occur in Florida will impact the safety of the operation. However, FRA believes that the potential for these safety risks is sufficient to make preventative measures sensible.

In this proposal, FRA seeks to address these concerns with standards that provide a very high level of safety in areas where FRA believes French TGV safety cannot or will not be met in Florida. FRA anticipates that the petitioner may object to the imposition of certain of the proposed standards that require more than is currently the practice in Franco. However, given the risk factors outlined above, the grave potential for human loss in the event of an accident, and the flexibility that is incorporated into the proposal, FRA believes at this time that any perceived burdens are justified.

System Safety

System safety is the cornerstone of the French TGV, and as proposed in these standards, the heart of the FOX high speed rail system. The systems approach to safety is used pervasively in a variety of industries to reduce the likelihood and occurrence of accidents and injuries. FRA has discussed the need for this approach to safety in two recent rulemakings, Passenger Train Emergency Standards, 62 FR 8330 (February 24, 1996), and Passenger Equipment Safety Standards, 62 FR 49728 (September 23, 1997). This concept requires an organization to identify, evaluate, and reduce or eliminate safety hazards that exist in any portion of the organization's "system," or may be caused by interrelationships between various components of that system, and create a system safety plan to reflect those evaluations. Where possible, the development of a system safety plan precedes the design, construction, and operation of the system, so that potential risks are eliminated at the earliest possible opportunity. Once in place, system safety plans are viewed as living documents, which should be updated as circumstances change, new information becomes available, or goals shift. Therefore, incremental changes may be made on a daily basis, if appropriate, to reflect the safety needs of the organization. Typically, system safety plans should be formally updated on an annual basis, in order to maintain their utility in advancing safety with the best information available.

The French TGV utilizes a system safety approach whose primary goal or philosophy is to avoid collisions. This varies from an accident-mitigation philosophy, which seeks to maximize protection for employees and others at risk in the event of an accident. The FOX system, as planned, will operate under the theory of collision-avoidance. Examples of this philosophy at work in the design of the system are: the grade separated right-of-way that excludes public at-grade crossings; double track that will facilitate train movements side-by-side rather than end-to-end; and the PTC-style signal system that will prevent trains from being routed on collision courses, whether meeting or overtaking.

Subpart B of the NPRM requires FOX to prepare a system safety plan. For the most part, these proposed standards parallel the FOX Petition, and address every phase and component of the FOX system. However, FRA's proposal also includes the proviso that FOX submit the system safety plan to FRA for approval one year after the effective date of the final rule in this matter, and that the plan be updated at least annually. Based on the philosophy of systems planning, FRA believes that initiating this process prior to design and construction is critical to the development of a complete system safety plan and a safe high speed rail system. FRA understands, however, that this rulemaking proceeding predates much of the work involved in the Florida project, and so filing a complete system safety plan within one year of the final rule may be difficult. FRA seeks comment on this proposal, including suggestions for other methods of addressing this issue. For instance, perhaps the standard should impose a tiered completion date for portions of the system safety plan. On the other hand, a tiered system may undermine the purpose and philosophy of the system safety approach. FRA would find it helpful to know exactly when FDOT and FOX plan to initiate the final design, based on the specific right-of-way chosen, and the construction of the system. This information would likely inform the Agency's decision on the appropriate timing for submission of the system safety plan. It is important to note, however, that while FRA has not predetermined the specific outcome of this issue, the Agency believes in general terms that a fairly comprehensive system safety plan should precede the design and construction phases of the FOX system.

FRA's Proposal

FRA has made every attempt in this NPRM to facilitate the transfer of the excellence of the French equipment and operation, by proposing standards that would permit the TGV equipment and procedures to operate in the U.S. in the same fashion as is done in France. However, in several areas, FRA has gone beyond or varied from the French standards and practices where the Agency believed it necessary to do so in order to ensure the highest level of safety. FRA's proposal includes requirements, organized in chapters by subject matter, to address general legal principles, system safety, signaling, track, rolling stock, operating practices, system qualification testing, personnel qualifications, and power distribution. In addition, the proposal adopts and incorporates by reference several existing regulations that apply generally to all railroads operating in the U.S. These are listed specifically in Subpart A of the NPRM, and constitute areas in which FOX needs no special treatment. In other words, for these safety disciplines, FOX is so similar to the general railroad industry that no new standards are necessary. For instance, FRA's alcohol and drug regulations impose no burdens that are inherently impossible for FOX to meet or that are inconsistent with the FOX operation, and so these standards and any future amendments to them would apply to FOX.

FRA's proposal is similar in many ways to the Petition FOX filed. The FOX consortium includes entities that have been involved with the design, construction, and operation of the TGV equipment, and so FRA has made every effort to study their submission and replicate it in proposed standards where appropriate. Their assistance in this rulemaking proceeding is, and will continue to be, quite informative and helpful. However, it is important to note that railroads in the U.S. operate under a different legal framework than exists in France, and the differences are relevant in understanding why FRA changed some standards in the NPRM that were not in the Petition.

The French government has issued laws which broadly call for a safe railroad system, but which delegate that responsibility, in large measure, to the SNCF. Therefore, the SNCF, or TGV operator, establishes its own safety parameters and implements them. Each year, the SNCF files a report with the government that outlines the safety record of the previous year, emerging trends, and proposed changes to the operation. However, there are no government-issued regulations that mandate TGV activities or authorize enforcement of rules. There is no relationship equivalent to this in the U.S. regulatory or transportation system. There are political, legal, cultural, and financial differences at work here, and the result is that the FOX Petition omitted some internal SNCF guidelines that FRA believes would or should be regulations in the U.S. system. For instance, some of the FOX supplemental materials include a list of rolling stock components that are inspected at specified intervals in France. These intervals and items developed internally at SNCF over years of operational experience. Although FOX has expressed the intention to follow the SNCF internal guidelines in Florida, FRA believes that these guidelines should be part of the minimum Federal standards for the FOX system. Similarly, FRA has included a proviso in the Operating Practices Subpart that requires FRA approval of the FOX safety-critical operating rules prior to commencing operations. This was not part of the Petition, but FRA proposes it in the interest of ensuring that the internal, and at this time, undisclosed, SNCF–TGV operating rules will be followed on FOX. FRA values the internal guidelines that have developed in France over many areas, believes that they may be equivalent to U.S. Federal safety standards, and desires to incorporate them into the minimum Federal standards.

In addition to the reasons discussed above, the NPRM takes a different approach on some issues from that found in the Petition, based on the regulatory program that exists in this country, which has governed railroad operations for decades. FRA has a mandate to devise standards that protect the public, have a rational basis, and do not impose needless cost. FRA's existing regulatory program achieves these goals, and therefore, it would be unwise to vary from it greatly unless the subject matter requires a substantially different treatment given the nature of the FOX system. If FRA were to stray significantly from the existing U.S. safety standards in this proceeding, despite the fact that it will only apply to FOX, serious questions might be raised concerning the appropriateness of this proposal.

It is important to note that this proposal and many individual standards in it would be inappropriate for any other U.S. passenger or freight operation. The safety features of the FOX system, taken as a whole, do not exist in combination on any other railroad in this country. This uniqueness is the basis on which the proposal is made, and the treatment of any specific issue here should not be viewed as a regulatory trend for passenger operations generally. In this proposal, FRA has relied to a great extent on the operating environment in which FOX will exist, and unless that environment is duplicated in identical fashion elsewhere, these standards would not be suitable.

FRA believes that this proposal includes a reasonable and effective blend of proven practices and procedures from both the French TGV system and American railroading. However, with publication of this NPRM, FRA invites comment from all interested parties on each standard proposed. FRA requests comments on whether less or more permissive standards should be adopted, with supporting rationale; whether inspection frequencies should be increased or decreased, or are sufficient as written, with supporting rationale; whether FRA should widen or narrow the scope of subject matters covered by standards for the FOX system, and the reasons for such a change; whether FRA has assessed accurately the safety of French TGV and the risks that may arise on the FOX system in Florida; and any other areas that commenters deem necessary in order to produce final safety standards that are effective.

* * * * *

Section-by-Section Analysis

Subpart A—General Requirements

Section 243.1 Purpose and Scope

Paragraph (a) states that the purpose of this proposal is to prevent accidents, injuries, and property damage that could result from operation of FOX, or "Railroad," as the system is called throughout the rule text. Also, this section explains that the scope of the Part is to provide minimum Federal safety standards for the Railroad. The Railroad may adopt more stringent requirements so long as they are not inconsistent with this rule.

Section 243.3 Applicability

Paragraph (a) of this section explains that this Part would apply only to the FOX system in Florida, and not to any other railroad operating in the U.S. Also, this paragraph restricts the FOX operation to the specific boundaries that are described in the system description, § 243.13 of the rule, unless FOX obtains prior approval from FRA. Therefore, if FOX desires to build a new line in the future, the Railroad would have to receive FRA approval prior to commencing operations on that line.

(The term "approval" is used loosely here. Conceivably, FOX could file a Petition for Rulemaking amending the system description to include the new line, and FRA's issuance of the new section would achieve the desired result.) FRA believes that such approval would be necessary to ensure that the new line meets all of the appropriate standards that exist in this Part. For instance, there could be no grade crossings or mixed traffic on the line. The TGV equipment is structurally different than passenger equipment currently in use in this country, and would not respond to a collision with a freight train in the same manner. The standards in this proposal permit 200 mph travel with this equipment because of the other operating conditions that exist on FOX, and FRA must ensure that those conditions also exist on any new lines that develop. Paragraph (a) reflects the fact that the standards in this proposed rule of particular applicability are appropriate for the FOX system only when all of the system elements are present; the systems approach demands this result. If an integral portion of the system disappears, all of the standards would have to be reevaluated.

Paragraph (b) of this section states that Part 243, rather than the general safety standards currently found in Title 49 of the Code of Federal Regulations (CFR), would govern the FOX system. However, in recognition of the fact that the FOX system is similar or identical to conventional railroad operations in certain areas, this paragraph also states that some of the general standards, which are adopted and incorporated in paragraph (c), shall apply to FOX. Paragraphs (b) and (c) work in conjunction with one another, so that the two taken as a whole constitute all of the railroad safety regulations that would apply to FOX at this time. Therefore, any regulations found in Title 49 of the CFR that have not been adopted and incorporated in paragraph (c) do not apply to FOX.

Paragraph (c) of this section lists the general railroad safety standards found in Title 49 of the CFR that apply to the FOX system. The subject areas are: Part 209, Safety Enforcement Procedures; Part 210, Railroad Noise Emission Compliance Regulations; Part 211, Rules of Practice; Part 212, State Safety Participation Regulations; Part 214, Railroad Workplace Safety; Part 216, Special Notice and Emergency Order Procedures; Part 218, Railroad Operating Practices; Part 219, Control of Alcohol and Drug Use; Part 220, Radio Standards and Procedures; Part 225, Railroad Accidents/Incidents: Reports, Classification, and Investigations; Part 228, Hours of Service of Railroad Employees; § 135 of Part 229, Event Recorders; Part 235, except § 235.7, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236; Part 240, except §§ 240.227 and 240.229, Qualification and Certification of Locomotive Engineers; Part 215, Railroad Freight Car Standards, Part 229, Railroad Locomotive Safety Standards, Part 232, Locomotive Inspection, Part 231, Railroad Safety Appliance Standards, and Part 232, Railroad Power Brakes and Drawbars shall all apply to the FOX conventional equipment; and FRA's proposed Passenger Train Emergency Standards, which will be codified when finalized in 49 CFR Part 239. Because these standards are suitable to apply to the FOX system as they are currently written, FRA is adopting and incorporating them to avoid massive reprinting. As has been stated earlier in this proposal, each of these standards address safety issues in a manner that is consistent with the FOX operation.

While the relevance to FOX of most of the incorporated rules is clear, the relevance of some CFR parts and the reasons that some sections are specifically not adopted requires some discussion. First, 49 CFR 235.7 of the signal modification standards permits a railroad to forego filing an application for approval concerning certain signal modifications. FRA believes that the more prudent approach would be to require FOX to apply for any modifications of its signal system for several reasons. The system FOX plans to utilize does not possess a long revenue service safety history for which future events are predictable. As planned, the system will carry thousands of passengers each year, and the cost in human lives for a signal failure could be catastrophic. FRA believes that these factors point to the need for Federal oversight concerning any modification of the FOX signal system. Accordingly, 49 CFR 235.7 will not apply to FOX. Instead, any modification of the Railroad's signal system must be accounted for in the system safety plan and be done cautiously in order to enhance the integrity of the system safety approach.

Second, the Petition did not include Part 240 in the list of regulations to be incorporated by reference in this rule. As FRA understands it, FOX plans to identify the personnel who will operate the power cars on the system as "enginemen" and so they object to Part 240 and its pervasive use of the term "locomotive engineer." FRA chose this term in Part 240 for a variety of reasons, none of which relate to the gender, union status, or other extraneous background details of the in-cab personnel who direct locomotive movements. The term is a functional distinction that applies to the performance of a locomotive engineer, power car driver, or engineman. Therefore, FRA finds no merit in reissuing Part 240 in this proceeding in order to change the title of a cadre of employees. FRA has no interest in mandating the use of any occupational title on any railroad. However, the Agency does have an interest in and obligation to use language that is gender-neutral and consistent with existing terminology, to the fullest extent possible.

It is also important to note that FRA's proposal does not incorporate 49 CFR 240.227 and 49 CFR 240.229 for application to FOX. These sections relate to joint operations with Canadian railroads, and with other railroads in the U.S. Neither of these scenarios can occur on the FOX system for reasons of geography and more importantly, safety, and therefore, it is important to exclude these sections explicitly from application to FOX.

Third, FRA's proposal includes the adoption of several existing standards that govern the maintenance, inspection, and operation of conventional freight equipment (Parts 215, 229, 230, 231, and 232). FRA believes that these requirements must be included here in order to protect employees and the public in instances where conventional equipment must be used on the FOX operation. As FRA understands it, FOX will likely have in its fleet conventional railroad equipment to facilitate maintenance and rescue operations in yards and along the right-of-way. FRA believes that where these limited operations arise, the existing safety standards should apply. There is nothing in the Petition or background information concerning FOX that would make application of these standards inappropriate or deleterious to safety. Moreover, the employees involved with the movement of conventional equipment must possess all of the protections that accompany conventional operations on other properties.

Fourth, FRA has adopted safety standards relating to emergency preparedness for application on the FOX network. FRA does not understand FOX to object to imposition of these standards, but because they were in proposed, rather than final, form at the time of Petition filing, FOX did not list them among the standards incorporated.

In this proposal, FRA adopts the emergency preparedness standards as proposed at this time, and ultimately as they appear in final form. FRA anticipates that these standards will be finalized in the very near future and codified at 49 CFR part 239.

Finally, FOX expressed the desire to adopt and incorporate by reference the existing general safety standards without also adopting future amendments to these standards. FRA does not agree with this approach to the general safety standards. By their very nature, these standards address subject matters that present no need for special treatment on FOX. Following this logic to its natural conclusion, FRA presumes that amendments to these same subject matters will not present the need for special proceedings or considerations for FOX. If proposed amendments give rise to safety concerns on the FOX system, FOX will have every opportunity, as a vital and responsible member of the U.S. railroad system, to provide comments in the normal course of regulatory process in those areas.

Paragraph (d) states that FOX is a railroad, pursuant to the definition set forth by statute, which includes, in pertinent part "high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads * * *" Therefore, all of the railroad safety statutes (including those pertaining to hours of service) apply to FOX, except portions of the former Safety Appliance Acts, from which FRA proposes that FOX be exempted due to the advanced technology in use that makes those requirements unnecessary. (The issue of new technology and safety appliances is discussed in detail in the analysis of § 243.15 below.)

Paragraph (e) states that the measurement values provided in the rule are in metric form, which is due to the fact that the TGV equipment was designed abroad according to metric standards. The NPRM includes the U.S. equivalent to provide an adequate frame of reference for interested parties. FRA has some concern that the American workforce, which maintains and inspects conventional railroad equipment using tools and measurements in U.S. standard values, may experience a period of adjustment in converting to the metric system. The FOX personnel qualification program, set forth in Subpart H, must address this potential safety factor.

Section 243.5 Definitions

As a general rule of regulatory construction, definitions provide clarity and understanding to the reader. Definitions should not include legal requirements, and should not somehow hide the true meaning of a standard. FRA's proposal makes changes to many definitions that were provided in the Petition where those definitions were unclear, contained legal requirements, or limited the scope of a standard's application. In addition, FRA has added to the list of definitions included in the Petition where necessary, and deleted those that involved terms not used in the proposed standards.

Most of the definitions included in this section have been published in other rulemaking proceedings, or have straightforward meaning, and so additional discussion on them is unnecessary. However, a few terms should be explained.

FRA would like to emphasize that the term "employee" used throughout the proposed rule includes Railroad employees, as well as the employees of contractors engaged by the Railroad. Therefore, contractors must comply with the requirements of the rule, and FOX may not avoid the Railroad's compliance with the standards through the use of contracting entities.

The terms "in passenger service" and "in revenue service" have identical meaning, and include all trains, trainsets, and passenger equipment that are carrying or are available to carry passengers. The determination as to whether a fare has been paid is not relevant to establishing the status of the equipment. The term "in service" includes equipment that is in revenue or passenger service, as well as other passenger equipment, unless the equipment falls into one of three categories: it is being handled as defective under § 243.15 of the proposal; or it is in a repair shop or repair track; or it is on a storage track without passengers. Generally, the Railroad will be subject to civil penalty for any equipment that is "in service" in noncomplying condition.

The term "power car" refers to a type of locomotive used on the TGV system that is typically positioned at the beginning and end of a passenger trainset. Power cars contain a cab in which the locomotive engineer controls the train's movement. As proposed for FOX, every passenger trainset will contain a power car at each end with eight trailer cars between them. FOX proposed a definition that would have set power cars apart from locomotives, but FRA finds no reason to define the term in that way. Also, it is important to note that the power cars and trailer cars are articulated and connected in such a way as to resist buckling in the event of a derailment. The term "semi-permanent connectors" describes the connections that exist among and between the trailer and power cars of a TGV trainset. These connections are significantly different from couplers that exist on conventional equipment. These connections are designed so that they may be disconnected only by use of special tools, and only in repair facilities. Because of this design, employees will not be involved in coupling or uncoupling at locations where they would face the risk of injury that arises from working between rail equipment. Conventional couplers will only be present on the leading or trailing ends of each trainset, and will be used primarily for attachment during rescue operations. Section 243.431 of the proposal sets forth the requirements that govern the use of conventional couplers and semi-permanent connectors.

FRA has revised the speed definitions that the Petition contained. Many of the definitions appeared to be circular in their use of terminology and so would not provide sufficient clarity and notice to the public. As FRA understands it, some of the speed definitions would be pertinent to a matrix that will be developed for use in the system safety plan, concerning train speed and braking capacity. Until such chart exists, the definitions serve no purpose and may ultimately be erroneous or inconsistent with the signal system. Therefore, FRA proposes a simplified approach. "Maximum authorized speed" is defined as the maximum speed at which trains may operate safely, taking into account all right-of-way, rolling stock, weather, and other operating conditions. "Maximum revenue service speed" is 200 mph, which cannot be exceeded under any circumstance. "Maximum safe operating speed" is the maximum speed at which braking can occur without damage to the discs or wheels. "Slow speed" is any speed less than 20 mph, and "restricted speed" is a speed that is less than 20 mph that will facilitate stopping within half the range of vision of the locomotive engineer.

FRA requests comments on these changes to the FOX proposed definitions, as well as all definitions proposed in this NPRM. FRA also requests comment on whether additional definitions should be provided in the rule text that FRA may have overlooked in preparing this proposal.

Section 243.7 Responsibility for Compliance

This section sets forth the compliance and liability requirements that will govern FOX operations. Paragraph (a) proposes that the Railroad will be strictly liable for all violations of the standards set forth in this rule, except where equipment is not "in use" or with respect to violations of the track standards. To establish a violation of the equipment standards, FRA must demonstrate that the equipment was in use, but need not demonstrate any level of knowledge on the part of the Railroad or other violator. To establish a violation of the track standards, FRA must show a failure to exercise reasonable care.

Paragraph (b) states that passenger equipment will be considered "in use" before a train has departed, but after the equipment has received or should have received the appropriate inspection. This proposal mirrors the approach taken in FRA's proposed rule on Passenger Equipment Safety Standards. 62 FR 49728, 49756. The result of this language is that FRA need not wait for a train to depart a terminal before issuing a citation for a defective condition. FRA believes that this authority is consistent with the purpose of our safety program—to reduce railroad accidents and injuries, and is prudent in its application to FOX.

Paragraph (c) states that this rule is applicable to the Railroad and to any person performing functions required by the rule. Although the proposal expresses the duties imposed by the rule in terms of the Railroad, FRA wishes to make clear that any person who performs on behalf of the Railroad an action that is covered by the proposed rule is required to perform that action in the same manner as required of the Railroad.

Paragraph (d) relates to track and states that the Railroad operator is responsible for compliance with all track safety provisions set forth in Subpart D of the proposal. FRA proposes this language to avoid any questions of track ownership, which are particularly important here because FRA does not know at this juncture which entity will purchase and own the right-of-way to be used for the FOX system. This language is different from the approach taken in 49 CFR part 213, FRA's existing track standards, which permit an owner to assign responsibility for operation of the track system to another entity. FRA obviates the need for the assignment process set forth in 49 CFR 213.5 by proposing that the Railroad operator, rather than the right-of-way owner, shall be responsible for track safety requirements.

When the Railroad operator has knowledge, or a reasonable person exercising reasonable care would have knowledge, that the track does not comply with the regulations, the Railroad operator has four options: it may bring the track into compliance; it may halt operations over the track; it may continue operations over the noncomplying track at 10 mph, for 30 days, under the authority of qualified personnel; or it may operate under the operational limits established for track classes 1–5, as set forth in 49 CFR part 213.

The Petition did not provide this level of flexibility for operations when track noncompliance occurs, and on occasion was silent or unclear concerning ameliorative action. For instance, the Petition called for "immediate remedial action" for some defects, but failed to specify the required actions. Also, the Petition established time periods for certain defects, in which conditions could go uncorrected. FRA believes that the options established in this section greatly enhance safety, provide clarity, and increase flexibility for the Railroad. There must be some provision in the standards for moving equipment that carries passengers to their final destination when a noncomplying event occurs on the Railroad track. FRA prefers to include these options rather than dictate one response, in order to allow the Railroad to choose the best alternative, given the existing operating conditions. This proposed section grants the Railroad broader and more comprehensive alternatives than were included in the Petition. FOX has stated that the French TGV track rarely reaches the condition that would warrant any of the measures discussed here. FRA is hopeful that will also be the case in Florida, but the Agency must provide a rational and safe response in the event of noncomplying track conditions.

Section 243.9 Enforcement

This section describes the civil penalties that FRA may impose on any person, including the Railroad or an independent contractor providing goods or services to the Railroad, that violates any requirement of this rule. These penalty provisions parallel the civil penalty provisions in numerous other railroad safety regulations, and are authorized by 49 U.S.C. 21301, 21302, 21303, and 21304. Any person who violates a requirement of this rule may be subject to a penalty of $500 to $10,000 per violation. Individuals may be subject to penalties for willful violations only. Where a pattern of repeated violations, or a grossly negligent violation creates an imminent hazard of death or injury, or causes death or injury, penalties of up to $20,000 may be assessed. In addition, each day a violation continues constitutes a separate offense. Finally, a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying reports required by these regulations. FRA believes that inclusion of the penalty provisions is important in ensuring that compliance is achieved.

The final rule will include a schedule of civil penalties as Appendix A. Penalty schedules are considered statements of agency policy, and so notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invites comment on proposed penalty amounts.

Section 243.11 Preemptive Effect

This section informs the public as to FRA's views regarding what will be the preemptive effect of the final rule in this proceeding. The presence or absence of this does not, in itself, affect the preemptive effect of a final rule, but it does inform the public concerning the statutory provision which governs the preemptive effect of a rule. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 will preempt any State regulatory agency rule covering the same subject matter as the regulations proposed today when issued as final rules.

Section 243.13 System Description

This section describes the FOX system components. In addition, and more importantly, this provision requires FOX to include all of the elements and practices listed in this section when revenue operations begin. FRA has determined that the items discussed in this section are so integral to the overall safety of the FOX program, that all standards contained in this NPRM would have to be reevaluated if FOX failed to include, construct, or meet any of these system elements.

FRA's existing regulatory program does not include this sort of requirement in any other safety discipline or context. However, due to the nature of the system safety, accident-avoidance philosophy that FOX has adopted in the design of the system, which FRA reflects in the proposed standards, FRA believes that it is necessary to include these requirements. It is important to note here that many of the standards proposed for FOX, if adopted separately, might lead to unsafe conditions in other operating environments. In fact, many of these standards would be wholly inappropriate on other railroads in this country where the full panoply of accident-avoidant measures are not also present. Therefore, FRA must ensure that the key system elements of this operating environment, on which all of the standards are ultimately based, remain in the system as finally configured. FRA's enforcement authority extends to this section as it does to all others in the rule, and the Railroad's failure to meet any condition specified in this section will be subject to civil penalty or other appropriate remedy. The FOX Petition contained a system description section, and it included most of the components enumerated here in FRA's proposal. However, FRA has deleted some unnecessary detail, and added a few proposals that were not contemplated by the Petition.

Paragraph (a) sets forth the general parameters of the FOX system. Paragraph (a)(1) establishes the geographic limits of the system, which are Miami to Tampa via Orlando. Operations beyond these limits are prohibited without prior FRA approval. FRA believes that it is extremely important to restrict the high speed operations to the right-of-way that is known at this time. For instance, if the Railroad chooses to expand its operation to cover track that includes freight traffic or grade crossings, many of the safety standards in this proposal would not adequately protect passengers. If FOX decides to increase the boundaries of the system, that should be accomplished through a thoughtful, methodical process that includes FRA oversight and public comment. FOX may accomplish this by filing a petition for rulemaking to develop new standards, or a petition to amend this section of the rule, if adopted in this form in the final standard in this proceeding.

Paragraph (a)(2) states that trains may not under any circumstance exceed a speed of 200 mph, and that the Railroad must operate at all times in accordance with the requirements of the rule. This language is meant to cover those situations in which conditions warrant certain speeds that may not be at or near 200 mph. For instance, if severe weather causes flooding or high wind, the FOX operating rules would require significant speed restrictions. This language makes clear that FOX must adhere to the speed restrictions, regardless of the maximum system capability of 200 mph.

Paragraph (a)(3) prohibits the transport of any hazardous material on the FOX high speed rail system. Although the Petition did not contain this restriction, FRA believes that safety demands it. An accident involving passengers at high speed would be catastrophic alone; adding hazardous materials to the mix would greatly reduce safety for the passengers, the surrounding environment, and local residents.

Paragraph (a)(4) prohibits smoking on trains while they are used in passenger service. FRA believes that fire safety is a key component for any passenger operation, and by prohibiting smoking, the potential for fire in passenger compartments is greatly reduced. In other sections of this proposal, FRA requires passenger equipment to include flame-retardant materials and fire detection systems, and FRA believes that all requirements are necessary to protect the public from fire hazards on passenger trains. Flame-retardent materials and detection systems greatly minimize the risk of injury due to fire and smoke inhalation. A ban on smoking further increases the level of passenger safety by eliminating a prime causal factor from the equipment altogether. The U.S. airline industry has adopted this approach with little or no passenger complaint, and FRA believes that nonsmoking high speed rail service will experience a similar outcome. Nonsmokers and employees would be protected from the hazards and discomfort of second-hand smoke, and smokers would have a relatively short trip—approximately 150 minutes from Miami to Tampa, without the opportunity to smoke. This item was not included in the Petition, but FRA believes that its safety interest in protecting employees and the traveling public makes this proposal a valid and important one.

Paragraph (b) describes the proposed requirements for the FOX right-of-way. This section requires FOX to operate over dedicated track, and prohibits any joint operations with freight or other passenger service. The Railroad would be permitted to operate conventional vehicles of its own to facilitate maintenance and rescue operations, but no other mixed freight or passenger service could occur. Paragraph (b)(2) prohibits public at-grade crossings throughout the right-of-way, and states that animal and equipment crossings not controlled by the Railroad must be accomplished by an underpass or overpass. As previously discussed, this characteristic of the FOX system greatly enhances railroad safety, and must be a part of the system as finally configured, if all other safety standards are to remain in place. The right-of-way may include private grade crossings that are for the exclusive use of the Railroad. FRA believes that this is necessary for the Railroad to complete repairs, inspections, construction, rescue movements, or other normal internal operations.

Paragraphs (b)(3), (4), and (5) require a permanent fence along the entire right-of-way; require intrusion, flood, high wind, hot box, and dragging equipment detectors along the right-of-way where deemed necessary by the system safety plan and Chapter 3 of this proposal; and limit access for Railroad employees to certain intervals along the right-of-way. FRA expects that these aspects of the FOX plan will enhance safety by reducing or eliminating the incidence of animals, trespassers, highway vehicles, and undesirable or unexpected events that could interrupt or impact safe train operation. However, FRA requests additional information from FOX as to the type of fencing that will be utilized along the right-of-way. Certain fences are designed to eliminate entirely the risk of unathorized entry and would enhance railroad safety greatly. However, these fences may be unnecessary along portions of the right-of-way where the system safety plan determines that the risk of entry from individuals, vehicles, or animals is negligible. Fences used along highways are generally designed to prevent cars from leaving the highway right-of way, rather than to restrict intrusion from individuals or animals. Therefore, typical highway fencing may not be effective in populated areas along the FOX right-of-way. In short, there are a variety of factors that must be considered in determining the appropriate design and strength for fencing along the FOX right-of-way. As FRA understands the situation, FOX has not yet finalized the location of the right-of-way, and so it may be premature to dictate strict guidelines concerning fencing. However, FRA will consider the risk factors presented and whether establishing specific fencing requirements would be appropriate in this proceeding. FRA requests a description from FOX as to what is planned in the way of fencing, and

invites comment from interested parties on appropriate fencing standards.

Paragraph (b)(6) provides that the Railroad will build walkways along the right-of-way, which will be used primarily for inspection activities or rescue operations. In order to ensure the safety of workers and rescue personnel, the walkways must be built at a safe distance from the track, which the proposed standard sets at a minimum of 7.87 feet from the outside rail. This means that the Railroad's walkways must be built at least 7.87 feet from the field side of the rail, or in other words, the rail that is farthest from the Railroad's double track. Due to the track centerlines that have been proposed in paragraph (d) of this section and the requirement that any walkway be at least 7.87 feet from the outside rail, the Railroad cannot build walkways between the double track. Such a scenario could lead to hazardous conditions for employees or rescue personnel forced to work between the Railroad's two tracks, in close proximity to moving, high speed equipment.

Paragraph (b)(7) requires the Railroad to design the right-of-way so that it will accommodate high speed travel, meaning curves should be avoided or large, so that the risk of derailment and excessive braking is reduced.

Paragraphs (b)(8) and (9) require the Railroad to record all difficulties or abnormalities discovered during the construction phase of this project, and make available to FRA the track layout drawings that must include specified information. FRA believes that this section is critical to the safety of the FOX infrastructure and high speed operations. As discussed earlier, sink holes and other potentially dangerous sub-grade formations and conditions are prevalent in Florida, and create serious risks for FOX unless mitigated. One of the most serious high speed accidents in France occurred because an unknown, underground World War I trench collapsed under the weight of a TGV trainset. FRA proposes in this section to eliminate the risk that such an accident could occur in Florida. This section was also included in the FOX Petition.

Paragraph (b)(10) proposes that all highway bridges that cross the right-of-way be constructed so that drivers of motor vehicles will have a clear view of the right-of-way, and so that the potential for vehicles falling into the right-of-way are minimized to the fullest extent possible. It is also important to note that this proposal is bolstered by the fall intrusion detection systems that are required by Subpart C. The detection systems will alert the Railroad to any vehicles that enter the right-of-way, but this section requires an additional level of safety by mandating highway overpass design that will minimize the risk of a vehicle entering the right-of-way in the first place. Similarly, paragraph (b)(11) requires the Railroad to protect railroad bridges, if they are necessary, from impact. Railroad operations are vulnerable to accident when railroad bridges are struck by road or water transport. The track or signal systems on the bridge may be disturbed to such an extent that a derailment or signal malfunction occurs. This proposal seeks to avoid that by requiring FOX to erect a barrier or other device that will protect the bridge structure from a sudden strike or movement. If tunnels become necessary on the FOX right-of-way, paragraph (b)(12) requires the Railroad to design and construct them to minimize the safety hazards connected with excessive air pressure in the tunnel created by the operation of trains.

Paragraph(b)(13) restricts track crossings in areas where operating speeds reach 100 mph to locations where designated track crossing devices are installed. The track crossing devices must be installed where frequent crossing by employees is anticipated, such as turnouts and substations. Paragraph (b)(14) requires the Railroad to install emergency traffic stop or slow devices at certain intervals along the right-of-way, and at special locations such as turnouts, substations, block section limits, or autotransformers. These devices will be connected to the signaling system and create a communication link with the Railroad's central traffic control. All of the proposals in paragraph (b) were included in the Petition. However, FRA omitted one of the Petition's paragraphs which related to roadway worker protection. FRA has adopted and incorporated the existing roadway worker protection standards, 49 CFR part 214, and so additional language concerning this topic is unnecessary and potentially conflicting. The FOX Petition also adopted 49 CFR part 214 for incorporation on the FOX system.

In considering the appropriate standards for FOX to adhere to vis-a-vis the system description and the Railroad's right-of-way, it is important to determine whether the FOX high speed trainsets will travel on lines that are parallel to freight or conventional passenger operations, and if so, how close those lines will be to the FOX track. The presence of heavy, conventional rail equipment on parallel track, in close proximity to the FOX trainsets, would introduce risk factors that greatly detract from the system's overall safety, and might require a reevaluation of some of the standards in this proposal. A derailment on the conventional line could result in an accident between FOX trainsets and conventional equipment, which could bring about the sort of grave damage that the system, as planned, is designed to prevent. Therefore, FRA requests additional information from FOX concerning the clearance distances that are required to maintain the accident-avoidant systems approach that FOX has adopted, if the Railroad ultimately utilizes a right-of-way that runs parallel to conventional operations. FRA does not intend in this inquiry to preclude altogether a FOX right-of-way that runs parrallel to traditional rail operations. However, such a scenario may undermine the safety of the system, as it has been described to FRA and as is reflected in this proposal, and so, additional safety measures might be warranted. Similarly, the proximity of a highway right-of-way and traffic to the FOX lines is a matter that deserves attention. There is a "startle" factor associated with the sudden appearance of high speed trains next to highway traffic that should be minimized, to the extent possible, in the design and location of the FOX right-of-way. The Agency invites comment on all of the issues raised by this topic from interested parties. Also, FRA asks FOX to provide additional information that describes the proximity of conventional rail lines and highway traffic to the FOX track, and any additional measures needed to ensure the safety of the FOX right-of-way. Based on this information, FRA will consider whether further appropriate measures are necessary in order to ensure the integrity of the dedicated track system that FOX has planned for Florida.

Paragraph (c) contains proposed requirements for all of the Railroad's system components: system safety program; inspection, testing and maintenance procedures and criteria; operating practices; emergency preparedness plan; personnel qualification requirements; and system qualification tests. These items are proposed in the system description section of the proposal in order to underscore their importance in the overall FOX system. Although the primary requirements of these substantive areas are set forth in later Subparts of the proposal, their presence in the FOX system is mandated by the requirements of paragraph (c) of this section.

Paragraph (d) of this section sets forth the required primary elements of the Railroad's track and infrastructure. This paragraph works in conjunction with Subpart D of the proposal, which contains the specific performance standards and inspection procedures that the Railroad must adhere to concerning track and infrastructure. This paragraph requires the Railroad to install and operate over standard gage track (56.5 in.). Paragraph (d)(3) requires the Railroad to install and operate over double track throughout its entire right-of-way. FOX plans to use each track for a single direction, except during certain maintenance operations, which will dramatically reduce the risk of head-on collisions between trains. As planned, trains will depart in 30-minute intervals, and so the risk of one train overtaking another is also minimized. Crossover connections are to be installed at each station, to facilitate change of direction for trains or the removal of disabled trains. In addition, crossovers will be located throughout the right-of-way in order to provide flexibility and emergency rescue.

Paragraphs (d)(4) and (5) require the Railroad to install continuous, shop-welded rail, and concrete ties. These items enhance the stability of the track and add to the system's safety. Paragraph (d)(6) requires the Railroad to use ballast that will support the track structure, but that will not degrade in combination with concrete ties. Some forms of ballast in use in the railroad industry are known to deteriorate when used with concrete ties. FOX may not use any of these forms of ballast. Paragraphs (d)(7)–(10) set forth standards for the substructure layer. Paragraph (d)(11) states that FOX must utilize moveable frog turnouts that are identical to those used along the TGV lines in France. FRA proposes this to ensure that alternate devices, which may decrease safety, are not substituted in Florida. Paragraph (d)(12) proposes that the Railroad may reduce the thickness of ballast in yards and maintenance facility operations, where speeds are generally low. The proposed requirements of paragraph (d) were included in the FOX Petition.

Paragraph (e) sets forth requirements for the integral portions of the Railroad's signal system. This paragraph works in conjunction with Chapter 3 of the rule, which sets standards for the specific performance of the signal system components and procedures. Paragraph (e)(1) explains that the Railroad's signal system shall include automatic train control (ATC), interlocking equipment, wayside detectors, and central traffic control. Paragraphs (e)(2)–(6) describe the basic function and design that must exist with respect to the ATC system. The system must interface with the interlocking system and train braking systems. The on-board equipment must include multiple processors, software for braking distance-to-go determinations, and decoders that receive messages from track beacons and short cable loops that provide notification of upcoming curves, gradients, speed restrictions, and track occupancy. The on-board equipment will also calculate braking curves, continuously monitor speed, and initiate braking in the event the locomotive engineer exceeds maximum authorized speed. The on-board computers are constructed on a two-out-of-three voting architecture, which fails safe in the event of an equipment failure. Paragraph (e)(7) requires the Railroad's braking profiles to comply with speed restrictions and maximum authorized speed. Paragraph (e)(9) sets basic requirements for the track circuits: those on main line must provide jointless audio frequency, which reduces the chance of intermittent of broken connections; those in crossovers may be combined with sequential release logic in the interlocking controllers to ensure protection against poor wheel-rail contact on the seldom-used rail; those in yards and maintenance facilities may be jointed high-voltage impulse.

Paragraph (e)(10) describes the function and design of the Railroad's interlocking system. The interlocking must: Interface with the wayside signal equipment, track circuits, switch machines, and wayside signals; monitor all track circuits; interface with the ATC; exchange supervisory control and status information with central traffic control; provide back-up control at each interlocking; and control switch machines and monitoring devices used to verify switch positions. Paragraphs (e)(11) and (12) require that the interlocking's vital logic processor shall utilize two processors that operate simultaneously in a redundant fashion, and that all wayside detectors interface with the train control system. Finally, paragraph (e)(13) requires that the Railroad's central traffic control shall monitor and regulate all train routes and movements. As FRA understands the current, proposed configuration for the FOX central traffic control system, there is no built-in redundancy for the CTC processors. The wayside processors are built with a two-out-of-three architecture, but it is presumed that the signal system will shut down and trains will come to a safe stop if the CTC processors fail. FRA requests clarification from FOX as to whether this is an accurate assessment of the system's operation. If this is not the case, FRA may consider further appropriate standards to ensure the safety of the system in the event that the central traffic control system fails.

Paragraph (f) describes the key communication systems and components for the Railroad. The Railroad must install a dedicated, fiber-optic system along the right-of-way to transmit data, and telephone and radio communications. In addition, the system must have back-up systems in place in the event of failures. For train operations, the system must include a dedicated telephone system with fixed telephones and field sockets along the track, yards, and platforms; a portable radio system; and a train radio to facilitate communication among trainsets and central traffic control.

Paragraph (g) addresses the primary elements of the Railroad's power distribution system. This paragraph works in conjunction with Chapter 9 of the rule, which sets forth minimum standards for the operation of the power distribution system. The system will include a 25 kV overhead catenary electrification system, which the Railroad must protect from the potentially unsafe consequences of lightning strikes. FRA anticipates that the Railroad's system safety plan will address this potentially serious risk to the overall safety of the system, and that the Railroad will devise protective measures in the design, construction, and equipment used for the catenary system and power distribution center. All power stations along the right-of-way will include remote control operating features that facilitate operation from a central control center. In addition, supervisory control equipment at remote locations and power substations must have battery-powered back-up capability in the event of a power system failure.

Paragraph (h) describes the primary elements of the Railroad's rolling stock. This section works in conjunction with Subpart E of the proposal, which sets forth equipment design, operation, and maintenance standards. Much of this paragraph is self-explanatory, but it is important to note that the FOX trainsets will mimic the basic elements of French TGV design, and so will consist of articulated, fixed-consist trains. This formation resists buckling and twisting, and tends to stay in an upright position in the event of a derailment, which greatly enhances passenger safety. The FOX trainsets will be capable of traveling in either direction because a power car will be positioned at either end of each trainset. The passenger cars and power cars will be connected with

semi-permanent connections that can be disconnected only with special tools and procedures. These semi-permanent connectors between each trailer car, and between the power cars and trailer cars, are not couplers. Therefore, the FOX trainsets will not and cannot be coupled or uncoupled in yards or along the right-of-way, a process which presents many safety risks for employees who work with conventional equipment. As an additional safety feature, couplers will be present and are required at the leading and trailing end of each trainset, in case a rescue operation requires attaching disabled high speed trainsets to operative equipment.

Paragraph (h)(3) requires each truck of the trainset to be continuously monitored by the on-board computer system, which will alert the locomotive engineer to any malfunction, including hunting oscillations, brake defects and wheelslide. This feature will greatly enhance the engineer's ability to prevent an accident or incident by bringing the train into proper operating condition, if possible, or slowing the train, as soon as possible. This may also restrict potential brake system degradation, because the corrective action can occur before the equipment deteriorates altogether. However, FRA is uncertain about the redundant capabilities of the on-board computer monitoring system. The system description section of the Petition states that the main cab microprocessor is "backed up by a separate standby unit." It is unclear from the language provided as to whether this unit is designed to work redundantly and will fail safe in operation. Therefore, FRA requests additional information from FOX that describes in detail how the power car microprocessor, which continuously monitors the equipment, is supported by the other "standby unit." For instance, FRA would like to know whether all circuits are redundant, if two-out-of-three voting architecture is employed, and all other pertinent information concerning the computer's resistance to failure in operation. Section 243.425 of Subpart E, Rolling Stock describes the requirements of the automated monitoring system further. However, because FRA is unsure as to whether this monitoring is redundant and will fail safe, FRA proposes in § 243.425 that the Railroad address a complete failure of the automated monitoring system in the system safety plan, and through appropriate operating rules. Based on the information that FRA receives from FOX concerning this issue, FRA may determine that an alternative method of addressing this risk would be preferable, or that the risk is adequately covered by the design of the equipment.

Paragraph (h)(4) requires each trainset to possess operative wheelslide control, independent trucks, and fault-tolerant braking. These devices enhance the overall system safety by permitting trainsets to stop within shorter distances, to slow or stop with certainty, and to continue operating safely with defective conditions. The wheelslide control system is designed to adjust the braking force on each wheel to prevent sliding during braking, and prevents flat wheel conditions to arise, which can occur when wheels lock during braking.

This proposal deals with fire safety in a variety of ways. Paragraph (h)(5) requires all FOX trainsets to possess operative smoke and fire detection systems, which will increase the likelihood that passengers will know of the existence of fire and smoke in sufficient time to exit the equipment. As stated earlier, FRA also proposes to prohibit smoking on FOX trainsets, which further enhances passenger safety. In addition, FRA proposes to adopt FRA's emergency preparedness regulations, which address fire safety and fire protection for railroad passengers. Finally, the system safety plan that FOX develops must address the likelihood of fire, the risks presented, and effective methods of eliminating or reducing those risks.

Paragraph (h)(6) permits FOX to operate vehicles other than the high speed equipment on the right-of-way. However, these vehicles are limited to maintenance and rescue equipment, such as a grinding train, a tamping machine, a track stabilizing machine, track inspection vehicles (Mauzin car and Melusine car), an ultrasonic test car to measure the integrity of the rails, a ballast-plowing railway car, and electric and diesel locomotives for shunting and rescue purposes. All other rail vehicles are prohibited by the rule. If FOX believes that other vehicles are necessary for the safe operation of the system, those should be listed, with rationale, in any comments that FOX may have to this proposal. FRA seeks to minimize the number and type of vehicles that operate over the right-of-way, for a variety of reasons that have been discussed previously. Unless required to advance safety or move passengers to their final destination, FRA believes that the operating environment would not support additional or mixed equipment on the FOX lines.

Paragraph (h)(7) requires the Railroad to equip fully each repair facility and employee with the appropriate tools needed to maintain the equipment. Paragraph (h)(8) requires the power cars to incorporate crash energy management that will protect the locomotive engineer to the maximum extent possible. The TGV equipment that FOX will use embodies this requirement. Additional, more specific structural standards are set forth in Subpart E of the proposal.

Paragraph (h)(10) requires the locomotive engineer cab to facilitate ease of movement, vision and access to all sensors, controls, and indicators, and to control climate and noise. FRA believes that these issues have an impact on employee performance and railroad safety, and so proposes that the cab be designed to maximize employee performance. The TGV equipment that FOX plans to use incorporates this principle.

Paragraph (h)(11) describes the critical components of the passenger equipment brake system. Each trainset must be equipped with an electro-pneumatic brake system that maintains the independence of each truck's response to a brake demand. The locomotive engineer's automatic brake valve in the leading cab controls the brake pipe pressure. Each of the following devices must be capable of initiating an emergency brake application: the ATC, the deadman control, two emergency brake valves located in the cab, and emergency brake valves located in two trailer cars of each trainset. Each powered truck shall be independently controlled by the brake pipe, and will have electric braking that is battery-operated in the case of a main power failure. The brake system will be arranged so that the electric brake has priority over others. During emergency braking, relays will check the level of electric braking, and will apply the friction brake if a failure is detected. The locomotive engineer will have control of the powered truck electric brake through the traction-braking master controller to slow the trainset or maintain low speed. The braking functions on each powered truck will be controlled by separate microprocessors. Also, microprocessors will continuously monitor all of the power brake systems. The microprocessors will store all brake failures and notify the locomotive engineer of failures in any of the following areas: reception of cab and train control signals, truck hunting, electric brake, friction brake, fire detection system, head end power system, alerter, horn, and wheel slide. The braking system must be designed and operated in a failsafe manner, and include fault tolerant redundancy and notification of failures as they occur.

Also, paragraph (h)(11) requires the Railroad to prepare, in conjunction with its system safety plan, a matrix of authorized train speed and braking reductions that correspond to potential brake failures that may occur en route. This matrix is required by Subparts B and E, and this section, and is an extremely important safety feature of the FOX system. This document, and the planning it reflects, will guide the movement of equipment in passenger service when brake failures occur en route, after the daily inspection. Without this plan in place, the Railroad may be forced to return to the more draconian and less effective option of moving the defective equipment to the next repair facility. (See full discussion below in § 243.15 concerning the movement of defective equipment for additional information on this topic.) The French TGV operates under a braking matrix plan that is devised specially for each route taken throughout their system. FOX plans to replicate this process in Florida. FRA requires development of and adherence to the matrix in this NPRM, but believes that it would be unwise to dictate the specific speed reductions and corresponding brake failures in this proposal. The right-of-way has not yet been chosen and many subtle operating conditions are unknown at this time. FRA believes that the most appropriate course is to require FOX to prepare and test the braking matrix as part of the overall system safety planning and development called for by the proposal. However, FRA seeks comment from FOX and other interested parties on whether these safety standards should require the Railroad to automate the enforcement of the braking matrix. Given the technological capacity of the equipment and the importance of the correct train speed in the event of brake failure, FRA is considering imposing such a requirement.

Finally, paragraph (h)(12) states that the Railroad must install and maintain hot box detectors throughout the right-of-way, which sense journal bearing temperature and alert central traffic control of any potentially defective equipment.

All of these provisions relating to the braking system were included in the FOX Petition, and reflect the state of modern braking systems for passenger equipment.

Section 243.15 Movement of Defective Equipment

This section requires the Railroad to meet certain conditions prior to moving defective equipment or continuing with it in revenue service. Paragraph (a) provides that any equipment containing a condition that does not comply with § 243.433(f)(1) of the proposal may be moved only after the Railroad has completed a series of actions to ensure the safety of the movement. In order for the movement to proceed, a qualified person must determine that the equipment can be moved safely; the qualified person must inform the locomotive engineer and crew of the non-complying condition, the maximum authorized speed and other appropriate restrictions; and the qualified person must affix a tag to the control cab of the trainset that contains specified information concerning the defect. Section 243.433(f)(1) is a daily inspection requirement contained in the rolling stock chapter of this proposal, which includes a list of several items that must be operating as intended when the inspection is done in order for the equipment to depart. Therefore, paragraph (a) covers any defect that occurs after the daily inspection has been completed, and the trainset was determined to be in compliance and released for revenue service.

Paragraph (b) provides that a trainset which develops a non-complying condition en route, or in other words, after the daily inspection required by § 243.433(f)(1), may continue in revenue service until the next inspection required by the rule, only if the Railroad has accomplished the tasks required by paragraph (a). Paragraph (b) also states that, if brake defects arise en route, the requirements of § 243.409 of the proposal apply. The pertinent portions of § 243.409 state that the Railroad must develop and adhere to speed restrictions that correspond to varying levels of brake defects or failure, and that the locomotive engineer must notify the central traffic control of any brake failure that occurs within one trip.

Paragraph (c) permits the movement of defective equipment in a yard, so long as there are no passengers in the equipment, the movement does not exceed a speed of 10 mph, and the movement is made solely for the purpose of moving to a repair facility.

The movement of defective equipment is a topic that deserves considerable discussion as it relates to power brakes and other safety appliances, given the safety risks involved and the statutory background implicated. FRA's proposed Passenger Equipment Safety Standards, published on September 23, 1997 (62 FR 49728) provide a thorough explanation of the factors and conclusions involved, which is summarized here.

FRA's existing regulations do not contain requirements pertaining to the movement of equipment with defective power brakes. The movement of equipment with these defects is currently controlled by a statutory provision (originally enacted in 1910 as part of the laws formerly known as the Safety Appliance Acts), which states:

> (a) GENERAL—A vehicle that is equipped in compliance with this chapter whose equipment becomes defective or insecure nevertheless may be moved when necessary to make repairs, without a penalty being imposed under section 21302 of this title, from the place at which the defect or insecurity was first discovered to the *nearest available place at which the repairs can be made*—
>
> (1) on the railroad line on which the defect or insecurity was discovered; or
>
> (2) at the option of a connecting railroad carrier, on the railroad line of the connecting carrier, if not further than the place of repair described in clause (1) of this subsection.

49 U.S.C. 20303(a) (emphasis added).

Although there is no limit contained in 49 U.S.C. 20303 as to the number of cars with defective equipment that may be hauled in a train, FRA has a longstanding interpretation which requires that, at a minimum, 85 percent of the cars in a train have operative brakes. FRA bases this interpretation on another statutory requirement that permits a railroad to use a train only if "at least 50 percent of the vehicles in the train are equipped with power or train brakes and the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in a train." 49 U.S.C. 20302(a)(5)(B). As originally enacted in 1903, section 20302 also granted the Interstate Commerce Commission (ICC) the authority to increase this percentage, and in 1910 the ICC issued an order increasing the minimum percentage to 85 percent. See 49 CFR 232.1, which codified the ICC order.

As virtually all freight cars are presently equipped with power brakes and are operated on an associated trainline, the statutory requirement is in essence a requirement that 100 percent of the cars in a train have operative power brakes, unless being hauled for repairs pursuant to 49 U.S.C. 20303. Consequently, FRA currently requires that equipment with defective or inoperative air brakes constitute no more than 15 percent of the train and that, if it is necessary to move the equipment from where the railroad first discovered it to be defective, the defective equipment be moved no further than the nearest place on the

railroad's line where the necessary repairs can be made.

The requirements regarding the movement of equipment with defective or insecure brakes noted above can create safety hazards and operational difficulties in passenger operations. As the provisions regarding the movement of defective brake equipment were written almost a century ago, they do not address contemporary realities of these operations. Strict application of the requirements has the potential of causing major disruptions of service, which could create serious safety and security problems. For example, requiring repairs to be made at the nearest location where the necessary repairs can be made could result in discharging passengers between stations where adequate facilities for their safety are not available, or onto overcrowded station platforms. In addition, strict application of the statutory requirements could result in trains with defective brake equipment moving against the current of traffic during high traffic hours. Irregular movements of this type increase the risk of collisions. Furthermore, like many passenger operations, FOX may operate trains that include eight or fewer cars. Consequently, the necessity to cut out the brakes on one or more cars can easily result in noncompliance with the 85-percent requirement for hauling the car for repairs, thus prohibiting train movement and resulting in the same sort of safety problems noted above.

FRA has attempted to recognize the nature of passenger operations, and the importance of passenger safety, and to avoid disrupting service when applying the requirements regarding the movement of equipment with defective brakes. FRA believes that speed restrictions can readily be used to compensate for the loss of brakes on a minority of cars. FRA believes that affirmatively recognizing appropriate movement restrictions would actually enhance safety, because compliance with the existing restrictions is potentially unsafe.

FRA recognizes that some of the proposed standards in § 243.15 are not in accord with the requirement contained in 49 U.S.C. 20303(a) that cars with defective or insecure brakes be moved to the "nearest" location where the necessary repairs can be made. However, FRA does have authority under 49 U.S.C. 20306, entitled "Exemption for technological improvements," to establish the restrictions proposed in § 243.15. Section 20306 provides:

> [T]he Secretary of Transportation may exempt from the requirements of this chapter railroad equipment or equipment that will be operated on rails, when those requirements preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.

This provision was originally enacted as a part of the Rock Island Railroad Transition and Employee Assistance Act to authorize the use of certain trailers as freight cars. See Public Law 96–254 (May 30, 1980). FRA believes that the use of the provision as contemplated in this proposal is consistent with the authority granted the Secretary of Transportation in 49 U.S.C. 20306. As noted previously, the statutory requirements regarding the movement of equipment with defective brakes were written nearly a century ago, were focused largely on the operation of freight equipment, and did not contemplate passenger train operations currently prevalent throughout the nation and that will exist on FOX. Since the original enactment in 1910 of the provisions now codified at 49 U.S.C. 20303(a), there have been substantial changes in the nature of the operations of passenger trains, and the technology used in those operations.

Contemporary passenger equipment incorporates many types of advanced braking systems; in some cases these include electrical activation of brakes on each car (with pneumatic application through the train line available as a backup). Dynamic brakes are also typically employed to limit thermal stresses on friction surfaces and to limit the wear and tear on the brake equipment. Furthermore, the brake valves and brake components used today are far more reliable than was the case several decades ago. In addition to these technological advances, the brake equipment used in passenger train operations incorporates advanced technologies not found with any regularity in freight operations. These include:

- The use of brake cylinder pressure indicators which provide a reliable indication of the application and release of the brakes;
- The use of disc brakes which provide shorter stopping distances and decrease the risk of thermal damage to wheels;
- The ability to effectuate a graduated release of the brakes due to a design feature of the brake equipment which permits more flexibility and more forgiving train control;
- The ability to cut out brakes on a per-axle or per-truck basis rather than a per car basis, thus permitting greater use of those brakes that are operable;
- The use of a pressure-maintaining feature on each car which continuously maintains the air pressure in the brake system, thereby compensating for any leakage in the trainline and preventing a total loss of air in the brake system;
- The use of a separate trainline from the locomotive main reservoir to continuously charge supply reservoirs independent of the brake pipe train line; and
- Brake ratios that are 2½ times greater than the brake ratios of loaded freight cars.

Although some of the technologies noted above have existed for several decades, most of the technologies did not become prevalent until 1980. Furthermore, most of the noted technological advances have been integrated into one efficient and reliable braking system only within the last decade. Consequently, the technology incorporated into the brake equipment used in contemporary passenger train operations, including FOX equipment, increases the reliability of the braking system and permits the safe operation of the equipment for extended distances, even where a portion of the braking system may be inoperative or defective.

In the face of these technological advances, FRA believes it is appropriate to utilize the authority granted by 49 U.S.C. 20306 and exempt certain passenger train operations from the specific restriction contained in 49 U.S.C. 20303(a) requiring the movement of equipment with defective or insecure brakes to the nearest location where necessary repairs can be made. FRA proposes restrictions on the movement of this type of equipment that are more conducive to safe operations. Under this proposal, the Railroad could move such cars only at reduced speeds and only until the next required inspection of the equipment.

In utilizing the authority granted pursuant to 49 U.S.C. 20306, the Secretary is required to make "findings based on evidence developed at a hearing," unless there is "an agreement between national railroad labor representatives and the developer of the new equipment or technology." FRA is confident that, after notice and opportunity for oral and written public comment, the record will support a finding that the proposed provisions are "in the public interest and consistent with railroad safety," the test required in order to waive safety requirements issued under other, general provisions of the code. See 49 U.S.C. 20103(d). It should be noted that the exemption granted to the movement of equipment on FOX with defective brakes would not include an exemption from 49 U.S.C. 20303(c), which contains the liability provisions attendant with the movement of equipment with defective or insecure safety appliances, including power brakes. Consequently, the liability provisions contained in 49 U.S.C. 20303(c) will be applicable to the Railroad when hauling equipment with defective or insecure power brakes pursuant to the requirements proposed by FRA in this notice.

FRA also proposes to exempt FOX passenger train operations from its longstanding interpretation, based on 49 U.S.C. 20302(a)(5)(B) and 49 CFR 232.1 noted above, prohibiting the movement of a train if more than 15 percent of the cars in the train have defective, insecure, or inoperative brakes. As discussed above, such a limitation is overly burdensome and has the potential of creating safety hazards, due to the short length of the trains commonly operated in FOX passenger service.

Based on the preceding discussion, FRA proposes in this NPRM to permit FOX trainsets to move under speed restrictions if brake defects occur en route. This proposal incorporates procedures used in France on the TGV that will guide the establishment of those speed restrictions. As is discussed above, the Railroad shall devise a matrix, in which speed levels are established to correspond to certain brake defects that will facilitate the safe movement of the equipment. The development of this matrix must be accomplished in conjunction with the development of the Railroad's system safety plan, which requires FRA approval. FRA believes that this approach will ensure a high level of safety by taking into account advanced technology, the proven TGV procedure, and the system safety concept of planning to minimize or eliminate hazards.

Subpart B—System Safety Program and Plan

Section 243.101 General System Safety Requirements

This Subpart proposes system safety program requirements that FOX must develop and follow. System safety is the concept that forms the foundation for the proposed rule, as it does for TGV operation in France. As discussed earlier in this document, system safety means the application of design, operating, technical, and management techniques and principles throughout the life cycle of a system to reduce hazards and unsafe conditions to the lowest level possible, through the most effective use of available resources. In this process, FRA proposes that the Railroad implement a system safety program to identify and manage safety risks, and generate data for use in making safety decisions.

The proposed requirements for the Fox system safety program are very similar to the requirements proposed for high speed (Tier II) passenger equipment, which were published on September 23, 1997 in the **Federal Register** (62 FR 40728). However, the Tier II system safety standards were developed to cover only the trainset, and not the remaining railroad system elements. The system safety program proposed for FOX covers the design, development, testing and operation of the entire railroad system, which includes track, signal, rolling stock, operating practices, power distribution, personnel qualification requirements, and system qualification tests.

Paragraph (a) of § 243.101 requires the Railroad to adopt a system safety program using MIL–STD–882(C) as a guide. MIL–STD–882(C) is a standard issued by the Department of Defense that describes system safety planning and system safety programs used by the U.S. military for procuring and operating weapon systems. This standard is often used as a form or reference for system safety planning. FRA does not intend in this proposal to dictate how the Railroad should apply this guidance, but FRA believes that the Railroad should tailor application of the guidance to FOX's unique safety needs and operating scenarios. FRA envisions that the system safety plan will be a living document that evolves as new information and knowledge become available. Therefore, this section requires FOX to update the system accordingly in the course of operations, and to change practices that prove to be unsafe.

Due to the critical role that the system safety plan plays in this rule, FRA proposes that FOX submit the initial plan for FRA approval, and brief FRA annually on any changes made to it. The Petition contained language that provided for FRA "audits" of the system safety plan, rather than a clear approval process. However, given the fact that so many safety features in the FOX system are controlled by development of the system safety plan, FRA believes that anything short of approval would be an abdication of the Agency's responsibility to promulgate clear, enforceable, and effective safety standards. For instance, one of the safety features relied upon in the FOX risk assessment and Petition involve a series of wayside detection systems, which will greatly enhance the safety of the system and have led to standards in this proposal that permit 200 mph speeds and lighter equipment. However, these detection systems, as proposed, will not be placed at regular intervals throughout the right-of-way; rather, they will be placed, for the most part, where the system safety plan indicates safety risks exist. If FRA has no approval authority over the placement of the detection systems and the thought process that determined the placement, the detection system could conceivably be used ineffectively, and ultimately have no impact on improving safety. A similar analysis can be made concerning the braking system matrix that will define operating procedures for passenger equipment with defective brakes. Clearly, the Railroad braking system is key to the safety of the high speed trainsets, and a matrix that establishes rational speed restrictions is mandatory, for safety and statutory reasons. FRA believes that the Agency must have an approval mechanism in place to ensure that such a matrix is in place. FRA understands that FOX has the desire and capacity to operate the system safely, and FRA does not intend to interfere unnecessarily in the system safety process that will be undertaken in Florida. However, FRA believes that the basis of this rulemaking would be undermined if Federal oversight of the FOX system safety plan does not take place.

This paragraph also requires FOX to submit the initial system safety plan to FRA for approval no later than one year after the rule takes effect. The Petition contained a less certain time frame, related to the design and construction phases of the project. However, FRA believes that the system safety plan must be used as a guide in the earliest conceptual stages of the project. Thus, it should be available earlier in the program than initially proposed by FOX. As discussed previously in this document, FRA seeks comment from FOX and other interested parties concerning alternatives to this proposal. Commenters are asked to consider the relative merits of a tiered system safety plan submission schedule, that would permit FOX to produce the system safety plan in stages, rather than as one complete package. However, commenters should also address the risk that such a tiered schedule would lead to a system safety plan that is incomplete or inaccurate because it does not address all potential hazards at the earliest possible opportunity.

FRA also requires FOX to brief the FRA annually on the status of the

system safety program and on any proposed changes to the system safety plan. FRA believes this process will permit FRA to assess how effectively the system safety plan works, and how FOX identifies and resolves safety risks.

Paragraph (b) of § 243.101 makes clear that the system safety plan must address the design, construction, maintenance, operation, and overhaul of the system as a unit. The plan must address how individual components of the system operate, as well as how those components operate once integrated into the system. For instance, a particular appurtenance may perform well in tests or other operations, but that same component may not perform suitably when integrated into the FOX system. The plan must evaluate components in this light in order to ensure the ultimate safety of the system. Also, this paragraph requires FOX to consider safety at least as important as cost and performance in assessing design, construction, operation, maintenance, and overhaul of the Railroad system.

Paragraph (c) describes the various elements that must be included in the plan. FRA proposes, at a minimum, that the system safety plan specifically address fire protection; software safety; inspection, testing, and maintenance; training and qualifications; emergency preparedness; pre-revenue service qualification testing; hazard identification and reduction; operating procedures for defective equipment in passenger service; identification of safety-critical subsystems; and relationships between safety-critical subsystems. FRA places emphasis on these elements of the Fox system because they tend to be overlooked when a less formal, non-systems approach to safety analysis is taken. Each of these elements of the system safety program is discussed in greater detail below.

Paragraph (d) sets forth the approach and process FOX must take in order to develop the system safety program. FRA intends the program to be a formal step-by-step process that includes: identification of all safety requirements that govern the operation of the system; evaluation of the total system to identify known or potential safety hazards that may arise over the life cycle of the Railroad; identification of all safety issues during the design phase of the process; elimination or reduction of the risk posed by the hazards identified; resolution of safety issues presented; development of a process to track progress; and development of a program of testing and analysis to demonstrate that safety requirements are met.

Paragraph (e) requires the Railroad to document how the system design meets safety requirements, and to monitor how safety issues are raised and resolved. This is very important in system safety philosophy; if risks are not identified, eliminated or mitigated, the system is inherently unsafe.

Paragraph (f) requires the system safety plan to describe how operational limitations would be imposed if the FOX system design cannot meet certain safety requirements. FRA anticipates that this section would include an initial determination from FOX that operational limits can effectively address the hazard, and if not, a design change will be put in place to accommodate the risk. Operational limits are considered the least desirable option in system safety planning, and thus, the last means utilized to reduce a safety risk.

Paragraph (g) requires the Railroad to facilitate FRA inspection of the system safety plan and documentation required by paragraph (e). FRA must have access to this information in order to determine the Railroad's compliance with the requirements of this Chapter.

Section 243.103 Fire Protection Program

As part of the system safety program, paragraph (a) requires the Railroad to address fire safety considerations in the design stage of the project, and to reduce the risk of harm caused by fire on the equipment to a level established in MIL–STD–882(C) as acceptable. Paragraph (b) requires the Railroad to make a written analysis of the fire protection problem, and lists a series of factors that the Railroad must complete and consider concerning fire protection. These paragraphs require the Railroad to ensure that good fire protection practice is used during the design and operation of the equipment. FRA's primary concern is to protect passengers from the risk of fire and smoke inhalation, and to ensure that they can evacuate quickly and safely if a fire erupts.

Elements of this analysis correspond to required action under § 243.413 of the rolling stock provisions in the rule: Overheat detectors; a fire or smoke detection system; a fixed, automatic, fire-suppression system where the Railroad's written analysis determines they are required; and compliance with the Railroad's written procedures for the inspection, testing, and maintenance of fire safety systems and equipment that the procedures designate as mandatory. [See § 243.413(c)–(f)].

Paragraph (c) requires the Railroad to exercise reasonable care to assure that the design criteria are followed and that the tests required by this program are performed. To fulfill this obligation in part, the Railroad must include fire safety requirements in all contracts for new equipment purchases.

Section 243.105 Software Safety Program

This section proposes requirements for the software portion of the system safety program. Paragraph (a) requires the Railroad to develop and implement a software safety program to guide the design, development, testing, integration and verification of FOX system software. Software plays a key role in the overall performance of the FOX system, and safety demands that the Railroad place a strong emphasis on the system's software safety.

Paragraph (b) sets out the proposed required elements of the software safety program. The program must treat software that controls or monitors safety functions as safety-critical, unless a completely redundant, failsafe, non-software means to provide the same function is provided as part of the design. Paragraph (b) also specifies the steps required to develop a comprehensive software safety program, which must culminate in a demonstration of overall software safety as part of the pre-revenue service system qualification tests of the FOX system.

Paragraph (b) also requires the Railroad to include a hazard analysis in its software design and implementation that will, to the fullest extent possible, prevent unauthorized penetration on all computerized systems in use. As the railroad industry embraces new technology and increases reliance on electronic information systems, there must also be development and adherence to effective methods of preventing intrusion from unauthorized railroad personnel and other individuals or entities. The FOX system relies on many computerized systems and sub-systems, the largest being the Railroad's signal system. Clearly, any opportunity for infiltration of the signal system by outsiders would expose the passengers, employees, and those along the right-of-way to grave risk. Therefore, FOX must develop and implement in its system safety program a method to prevent cyber threats and alleviate these risks.

Paragraph (c) requires the Railroad to adhere to the requirements of the software safety program. To fulfill this obligation the Railroad must include software safety requirements in procurement contracts that involve design or purchase of software components.

Paragraph (d) requires the Railroad to follow the process and procedures of the software safety program.

Section 243.107 Inspection, Testing, and Maintenance Program

This section contains the requirements for the Railroad's program for inspecting, testing, and maintaining the FOX system. FRA's goal is a set of standards that will ensure that the Fox system remains safe as it wears and ages, and will protect workers who perform the inspection, testing, and maintenance tasks. These proposed requirements are based on FRA's knowledge of inspection, testing and maintenance programs generally, and the French TGV practices.

Paragraph (a) requires the Railroad to provide to FRA particulars concerning the inspection, testing, and maintenance program for the system, including: Safety inspection procedures, intervals and criteria; testing procedures and intervals; scheduled preventive maintenance intervals; maintenance procedures; and employee training.

In this proposal, FRA does not dictate specific program contents, and so the Railroad retains much flexibility to tailor the program to its needs and experience. However, FRA believes this provision is an important element of the overall Railroad system, and should be designed to maximize safe operations and protect safety-related components of the system from deterioration over time.

Paragraph (b) defines broadly the conditions that can endanger the safety of the crew, passengers, or equipment, which the inspection, testing, and maintenance program should prevent, or detect and correct. Paragraph (c) establishes a link between scheduled maintenance intervals and the system safety program. Scheduled maintenance intervals should be set so that worn parts are replaced before they fail. Initial intervals should be based on manufacturer's recommendations or operating experience. As more operating experience is gained, FRA believes that accumulated reliability data should be used as the basis for changing preventive maintenance intervals on safety-critical components. This standard should encourage the Railroad to keep reliability records on safety-critical components, which will provide confidence that any safety or economic trade-offs have a firm basis.

Paragraph (d) requires the Railroad to adopt standard operating procedures, in writing, that explain how all safety-critical inspection, testing, and maintenance tasks will be performed. This provision is intended to provide protection to the workers who perform maintenance and inspection duties, many of which are inherently dangerous. FRA does not intend to prescribe how these tasks should be performed. Rather, this proposal requires the Railroad to devise a program that will ensure employee safety in each individual setting that may arise in the maintenance of all of the Railroad's equipment. FRA believes that standard operating procedures are often a key component in a successful program to train employees to perform their employment duties safely.

Section 243.109 Training, Qualification, and Designation Program

This section requires the Railroad to develop and implement a training, qualification, and designation program for workers who perform inspection, testing, and maintenance tasks. FRA believes that employee training, qualification, and designation are central to maintain safe railroad equipment and a safe workforce. Paragraph (a) requires the Railroad to establish and comply with a training, qualification, and designation program for employees and contractors who perform safety-related inspection, testing, or maintenance tasks in this rule.

Paragraph (b) lists the steps that must be followed in developing the Railroad's training, qualification, and designation program. This paragraph lists the general requirements that the Railroad's training, qualification, and designation program must do to ensure that employees know how to keep the system operating safely. The SNCF has a training program in place for operation of TGV equipment in France that is similar to these proposed requirements. The list of actions that FRA proposes also compel the Railroad to evaluate its operation and focus its training resources where the need is greatest.

The proposed rule grants the Railroad flexibility to focus and provide training that is needed in order to complete a specific job category. For instance, the proposal does not require "checkers" to receive the same intensive training needed for "maintainers." FRA anticipates that this proposal will not require extensive changes to the manner in which TGV employees in France are trained. However, the proposal will prevent the Railroad from using minimally trained and unqualified people to perform crucial safety tasks.

FRA believes that many benefits will be gained from the Railroad's investment in a comprehensive training program. The quality of inspections will improve, which will result in fewer instances of defective equipment in revenue service and increased operational safety. Equipment conditions that require maintenance attention are more likely to be discovered while the equipment is in a maintenance or yard site, where repairs can be completed safely and efficiently. Trouble-shooting will take less time, and maintenance will be completed correctly the first time, resulting in increased safety and decreased costs.

Section 243.111 Emergency Preparedness Program

This section requires the Railroad to develop and adopt an emergency preparedness program that meets the requirements set forth in FRA's proposed Passenger Train Emergency Standards, 62 FR 8330, (February 24, 1996) which will be codified at 49 CFR part 239 after consideration of all comments received and adopted as final. FRA believes that the FOX system should meet the same emergency preparedness requirements imposed on every other passenger railroad operating in the U.S.

Section 243.113 Pre-revenue Service System Qualification Plan

This section sets forth general requirements for pre-revenue service testing of the FOX system, and works in conjunction with the specific provisions set forth in Chapter 7 of this rule. Pre-revenue qualification tests are extremely important because they represent the culmination of all safety analysis and component tests conducted as part of the system safety program, and will serve as a basis for all passenger operations. The pre-revenue service system qualification tests are intended to demonstrate the effectiveness of the system safety program and to prove that the FOX system can operate safely in its intended environment. FRA believes that these procedures and the documentation required by the pre-revenue system qualification test plan are necessary to ensure that all safety risks have been reduced to a level that will facilitate safe operation in revenue service.

Section 243.115 Hazard Identification and Reduction

This section requires the Railroad to identify all hazards that may arise in the course of operations and analyze methods available to reduce or eliminate the hazards. The Railroad may consider remedies that are based in design, construction, equipment, or operations. However, operation-based solutions are not favored, and should be used only when no other alternative

exists. Design and construction are the preferred methods to eliminate risk in system safety philosophy, because they completely remove the opportunity for simple human mistakes or errors in judgment that can occur in the normal course of operations. This section is important because operational hazards cannot be minimized or prevented until they are first recognized as risks. This thought process is basic to system safety, and so this proposal is an integral component to the Railroad's system safety plan.

Section 243.117 Operating Procedures in the Event of Component Failure

This section requires the Railroad to consider and develop operating rules that will protect passengers, employees, and the public when portions of the system become defective. This section works in conjunction with Subpart F of the rule, which requires the Railroad to develop a comprehensive set of operating rules that must be approved by FRA. It is extremely important to the overall safety of the system that the Railroad deliberate over appropriate procedures that will compensate for the loss of safety that malfunctioning equipment causes. Aside from developing general operating rules, pursuant to the requirements of Subpart F, this section obligates the Railroad to engage in a slightly different thought process—to focus on defective equipment and to mitigate the dangers that arise when equipment malfunctions. FRA believes that this section is necessary to ensure passenger and system safety, particularly as it relates to power brake defects. Also, this section requires the Railroad to analyze and describe the fault tolerant limits of each system that possesses fault tolerant components, and develop a process by which the Railroad and the engineer operating a trainset will be made aware that the system is approaching its fault tolerant limits. This proposal requires the Railroad to acknowledge the pre-determined limits of the system equipment, and to prepare appropriately for instances when those limits are exceeded, which is consistent with and critical to comprehensive system safety planning.

Section 243.119 Safety-Critical Subsystems

This proposed section requires the Railroad to identify the safety-critical subsystems that exist in the FOX system, and to prepare an explanation of the relationship they have with one another throughout the life cycle of the system. FRA anticipates that this requirement reflects the thought that would occur in the normal course of system safety analysis, and believes it is important enough, in terms of the ultimate safety of the system, to incorporate in this Subpart.

Section 243.121 Approval Procedure

This section sets forth the system safety plan approval procedures that the Railroad and FRA must follow. Paragraph (b) requires the Railroad to file a petition for approval with FRA, and the petition must include the Railroad's system safety plan, pertinent supporting documentation, and the primary person to contact if questions arise. This section also requires the Railroad to prepare a petition for approval for safety-critical changes to the Railroad's existing safety plan. FRA believes that such changes have the potential to alter the overall safety of the FOX network, and therefore, Federal oversight should be present. Also, pursuant to principles of administrative law, FRA would notify the public of such changes. Paragraph (c) requires the Railroad to submit the petition for approval with FRA's Associate Administrator for Safety, and paragraph (d) describes the actions FRA must take upon receipt of the petition.

FRA must review the petition, detemine if it complies with all procedural requirements, and evaluate the substantive validity of the petition or proposed changes to the petition. Under this proposal, FRA may approve, approve with special conditions, or disapprove the petition within ninety days. If FRA is unable to arrive at a determination within ninety days, the petition remains pending until FRA acts. Once a petition has been approved, FRA may reopen consideration of the petition for good cause, which might include the discovery of new information or new safety evaluations. FRA must provide the Railroad with written notice of the disposition of the petition. If FRA determines that changes to safety-critical standards, criteria, or inspection frequencies are appropriate in the interest of safety, FRA will publish a notice in the **Federal Register** announcing those changes. Sixty days after the notice is published, the changes become effective.

The FOX system safety program is the most important portion of the Florida high speed rail project. Every safety discipline will be governed by the design, construction, and equipment determinations made in the process of developing the Railroad's system safety program. FRA has no desire to meddle unnecessarily in the internal, nonsafety matters of the Railroad's operation. However, due to the role that the system safety plan plays in the FOX system, and the potential for human casualty that exists on the system, FRA believes that the agency must have approval authority over the final system safety plan that is adopted by the Railroad, in order to ensure the safety of the public. As stated earlier, FRA invites comment on alternatives to the timing proposed for submission of the Railroad's system safety plan. In addition, FRA invites commentary on the approval process that is proposed in this NPRM, and any alternatives that may be more effective.

Subpart C—Signal System

Subpart C sets forth the safety standards for the Railroad's signal system. This Subpart is similar to FRA's existing signal safety standards, 49 CFR part 236, that apply generally to railroad operations in this country. However, changes have been made to account for the differences in the signal system that will be utilized in Florida and the high speed train operations associated with the FOX system.

Section 243.201 Plans, Where Kept

This section requires the Railroad to keep plans that are necessary for the proper maintenance and testing of the signal and train control system at each interlocking and intermediate track circuit case. Plans must be legible and accurate, in order to protect against errors in circuitry connections. This is consistent with the Petition and current U.S. practices.

Section 243.202 Grounds

This proposed section requires the Railroad to keep each circuit that affects the safety of train operations, free from any ground or combination of grounds that will permit a flow of current equal to or in excess of 75 percent of the release value of any relay or other electromagnetic device in the circuit. However, the following circuits are not included in this requirement: circuits that include any track rail; the common return wires of single-wire, single-break, signal control circuits using a grounded common; and alternating current power distribution circuits that are grounded in the interest of safety. This is consistent with the Petition and current U.S. practice.

Section 243.203 Locking of Signal Apparatus Housings

This section requires the Railroad to protect signal apparatus housings from unauthorized entry. The proposal requires the Railroad to lock, seal, or secure all external housings of signal and track-side automatic train control system apparatus. The purpose of this

section is to prevent vital components of the signal system from being vandalized or tampered with, which could cause the system to malfunction. The proposed rule is consistent with the Petition and current U.S. practice.

Section 243.204 Design of Control Circuits on Failsafe Principle

This section requires that the failure of a safety-critical control circuit will not cause a condition more permissive than intended. Safety-critical circuits shall be designed on a failsafe principle. This section includes all vital circuits and track circuits through which signal control circuits are selected, including any failure of the data link radio transmission system. Circuits should be designed so that failure of any part or component of the circuit will cause the most restrictive aspects to be displayed. The proposed rule is intended to address the design of the FOX signal system, including electronic and processor-based equipment.

Section 243.205 Power-operated Switch Use

This section requires all switch movements to be completed by power-operated electric switch machines. Hand-operated switches are prohibited in territory controlled by ATC. Each power-operated switch will be controlled from the Railroad's central traffic control center. This is consistent with the FOX petition and current U.S. practice.

Section 243.206 Yard Operations

This section requires the Railroad to control yard operations through the traffic control center for the yard, and to complete all movements in the yard at restricted speed. This section also states that relevant portions of 49 CFR 236.1 through 236.109 apply to signals that are used in FOX yard operations. There are some requirements presently in other sections of this proposed rule that would apply to yard operations. However, since signals and switches used in yard limits will be similar or identical to conventional signal systems currently in use in the U.S., FRA believes that the applicable portions of 49 CFR 236.1 through 236.109 would be more appropriate. These address such items as design of control circuits, operating characteristics, location of roadway signals, and shunting sensitivity.

Section 243.207 Timetable Instructions

The section requires the Railroad to designate all interlockings, automatic train control territory, and yard limits in timetable instructions. The designation may be published in timetable instructions in any manner that the Railroad chooses. This is consistent with the Petition and U.S. practice.

Wayside and Cab Signals

Section 243.208 Location of Wayside Signals

This section requires FOX to position and align each wayside signal so that its aspects can be visually associated with the track it governs. The proposal grants the Railroad discretion to determine where the wayside signals will be positioned. FRA's safety experts will determine whether the location and alignment of each signal complies with the intent of this section and that the signal aspect is associated with the track governed. This section is consistent with the Petition and current U.S. practice.

Section 243.209 Aspects and Indications

Paragraph (a) of this section requires that aspects of wayside signals must be shown by the color of lights, position of lights, flashing of lights, or any combination thereof. They may be qualified by marker plate, number plate, letter plate, marker light, or any combination thereof. Paragraph (b) states that the fundamental indications of wayside signal aspects must conform to the following: a red light or a series of horizontal lights will indicate stop; a yellow light or a lunar light will indicate that speed is to be restricted and stop may be required; and a green light or a series of vertical lights will indicate proceed at maximum authorized speed. Paragraph (c) requires that the names, indications, and aspects of wayside and cab signals must be defined in the Railroad's operating rules or special instructions, and all modifications must be filed with the FRA within thirty days after the modifications take effect. Paragraph (d) states that absence of a qualifying appurtenance or the failure of a lamp in a light signal may not cause the display of a less restrictive aspect than intended.

Paragraph (e) of this section relates to cab display and requires all cab displays to include the maximum authorized speed, shown by a bar graph or a needle in the periphery of the dial used for the indication of train speed; the target speed, shown by numbers; and the target distance corresponding to the indicated target speed, shown by a continuously refreshed bar graph and numbers in case of overflow of the bar graph. Paragraph (f) states that all bar graphs and numbers must be illuminated so that they can be read easily in all lighting conditions in which the equipment will be used. This proposed section is consistent with the Petition and current U.S. practice.

Section 243.210 Markers

This section requires the Railroad to equip all high speed lines with block section markers and route origin markers, and requires all block section limits to be indicated by marker plates installed along the right-of-way. These markers must be located at adjoining block sections and must be illuminated during night operations and when visibility along the line is limited. Paragraph (c) requires that route origin markers must be positioned at the beginning of each route and must be equipped with a proceed light. Paragraph (d) requires the Railroad to provide special shunting markers at locations that are not equipped with route origin markers and where turn-back operations may be required. This marker must be equipped with a shunting light.

This section, as proposed by FRA, is very similar to portions of the Petition, except that FRA requires the block section limits to be illuminated and FOX proposed that the block section limits would be indicated by retroreflective marker plates. FRA believes that, given the speed trains will travel and the frequent storms that occur in Florida, lighted markers enhance the safety of the system, and impose little financial burden. This addition should ensure that locomotive engineers recognize block sections, which is particularly important for occasions when an engineer must rely on the block sections during any interruption of the ATC system.

Section 243.211 Spacing of Beacons

This proposed section requires the Railroad to design the ATC system and beacon spacing so that the locomotive engineer can comply with any imposed speed restriction by initiating a service brake application, and if the locomotive engineer fails to react, an automatic brake application will occur. In ATC territory, the braking distances must be designed in order to compensate for delay time, which will ensure the trainset complies with the target speed and distance through the brake application initiated by the system. An aspect that mandates a stop at the next signal requires sufficient spacing so that a stop can be achieved before reaching the next signal, without an emergency brake application. These proposed sections apply to all systems, including

the Railroad's high wind, flood, intrusion, and dragging equipment protective devices. The section is consistent with the FOX petition and U.S. practice.

Track Circuits

Section 243.212 Track Circuit Requirements

This proposed section sets forth a variety of track circuit requirements. Generally, track relay controlling home signals or beacons must be in the de-energized position, or a device that functions as a track relay controlling home signals or beacons must be in its most restrictive state. In addition, the track circuit must be de-energized when a rail is broken or a rail or switch-frog is removed or when a trainset occupies any part of the track circuit. It will not be a violation if a track circuit is energized because a break occurs between the end of rail and track circuit connector; within the limits of rail-joint bond, appliance or other protective device, which provides a bypath for the electric current; or, as a result of leakage current or foreign current in the rear of a point where a break occurs.

This proposed section is consistent with the Petition and U.S. practice.

Section 243.213 Track Circuit Shunting Sensitivity

This proposed section requires the Railroad to maintain each track circuit controlling a home signal so that the track relay is in a de-energized position, or a device that functions as a track relay will be in its most restrictive state if, when the track circuit is dry, a shunt is connected across the track rails of the circuit, including fouling sections of turnouts. The electric resistance of the shunt must be: 0.15 Ohm on open track and 0.25 Ohm in interlocking areas. These values are given for use with a ballast of 8 Ohm per kilometer (0.62 mi) resistance and is consistent with the FOX petition.

The proposed signal system will utilize jointless audio frequency track circuits on the main line. Typical track circuits on the FOX main line will be center fed, using one transmitter at the center and a receiver at each end of the circuit. In crossover areas, circuits will be combined with sequential release logic in the interlocking controllers to ensure protection against poor wheel-rail contact on seldom-used rail. Jointed high-voltage impulse track circuits must be used in the yards and maintenance facilities.

Section 243.214 Insulated Rail Joints

This section requires the Railroad to maintain insulated rail joints so that the failure of any track circuit, caused by track circuit current that flows between insulated rails, will be prevented. This is consistent with the Petition and U.S. practice.

Section 243.215 Fouling Wires

This section requires that fouling wires consist of at least two discrete conductors, and that each be of sufficient conductivity and maintained in such condition that the track relay will be in de-energized position, or the device that functions as a track relay will be in its most restrictive state, when the circuit is shunted. This is consistent with the Petition and U.S. practice.

Section 243.216 Turnout, Fouling Section

This section requires rail joints within the fouling section to be bonded, and the fouling section to extend at least to a point where sufficient track centers and allowance for maximum car overhang will prevent interference with trainset movement on the adjacent track. It is important that all rail joints are bonded to ensure continuity of track circuits. The proposed rule is consistent with the FOX petition and U.S. practice.

Wires and Cables

Section 243.217 Protection of Insulated Wire; Splice in Underground Wire; Aerial Cable

This section requires insulated wire to be protected from mechanical injury, any splice in underground wire to have insulation resistance at least equal to the wire spliced, and all aerial cable to be supported by messenger. This is consistent with the Petition and U.S. practice. Insulated wire must be positioned in such a manner that it cannot be damaged by the operation of apparatus, vehicles, tools, workers, or by closing doors. Temporary installation of cable or wires on top of the ground is prohibited by this section.

Section 243.218 Tagging of Wires and Interference of Wires or Tags With Signal Apparatus

This section requires the Railroad to tag or otherwise mark each wire so that it can be identified at each terminal. Tags and other identifiers must be made of insulating material, arranged so that they do not interfere with the moving parts of equipment, and correspond with the circuit plans. The proposed rule is consistent with the FOX petition and U.S. practice.

Standards

Section 243.219 Control Circuits; Requirements

This section of the proposal requires the Railroad to install each signal or beacon that governs train movements into a block section so that it will convey its most restrictive state as long as any of the following conditions exist within the block: a trainset occupies the block, points of a switch are not closed in proper position; a track relay is in de-energized position or a device which functions as a track relay is in its most restrictive state; or, when a signal control circuit is de-energized. This section reflects the unique characteristics of the FOX beacon and loop transmission signal system (TBL) and is consistent with the Petition.

Section 243.220 Control Circuits for Signals, Selection Through Point Detector Operated by Switch Movement

This section requires that control circuit(s) for each signal aspect or beacon, which conveys an indication more favorable than "proceed at restricted speed" for signal governing movements over switches, be selected through a point detector operated directly by switch points for each switch, movable-point frog, and derail in the routes governed by such signal or beacon. Circuits must be arranged so that the signal or beacon can convey an indication more favorable than "proceed at restricted speed" only when each switch, movable-point frog, and derail in the route is in proper position. This section reflects the FOX TBL system and is consistent with the Petition.

Section 243.221 Time Locking; Where Required

This section of the proposal requires the Railroad to provide time locking in conjunction with signal aspects or beacons that convey indications more favorable than "proceed at restricted speed." FRA will expect that any signal that displays an aspect more favorable than "proceed at restricted speed" will have time locking. This requirement would apply regardless of any speed restrictions that may be placed on a stretch of track at any given time. The time locking must be effective for the maximum authorized speed that is permitted on each route. Also, this section requires the Railroad to provide locking for all interlocking signals where route or direction of traffic can be changed. FRA's proposal differs from the Petition by using the term "interlocking signals" rather than 'controlled signals' because the FOX system will consist of interlockings.

Section 243.222 Indication Locking

This proposed section requires the Railroad to provide indication locking for switches, movable-point frogs, and derails. Indication locking should prevent the clearing of signals governing movements over switches, movable-point frogs, and derails until each operative unit has completed its required movement. This is consistent with the Petition and U.S. practice.

Section 243.223 Electric Locking Circuits

This proposed section requires the Railroad to provide vital design methods to prevent the system from displaying aspects that will result in conflicting or unsafe movements. The operation of controlling devices, logic, or apparatus are required to succeed each other in proper sequence before a proceed aspect can be displayed. Vital design methods in interlocking circuitry shall prevent "proceed" aspects from being displayed for conflicting movements.

Section 243.224 Loss of Shunt Protection; Where Required

This section requires that loss of shunt protection not permit the release of the route locking circuit of each power-operated switch. The loss of shunt protection must be based on a sequential release logic. Sequential release logic requires that when any track circuit becomes occupied in logical sequence from a previous track circuit, in combination with an established train route, its status will not be allowed to return to unoccupied, even though the detected shunt may be lost, until a specified safe time interval after the next track circuit in the route becomes occupied. This section is consistent with the Petition and U.S. practice.

Section 243.225 Signal Control Circuits, Selection Through Track Relays or Devices Functioning as Track Relays

This section requires control circuits for signal aspects or beacons, which convey indications more favorable than "proceed at restricted speed," to be selected through track relays, or through devices that function as track relays, for all track circuits in the route governed. This section would not apply to control circuits of signals displaying aspects with indications of "proceed at restricted speed." This is consistent with the Petition and U.S. practice.

Section 243.226 Switch, Movable-Point Frog or Split-point Derail

This section requires the Railroad to equip switches, movable-point frogs, or split-point derails with clamp locks on each switch or movable point frog and to maintain it so that it cannot be locked when the point is open 6 mm (.25 in) or more. Each high speed turnout on the main line must be equipped with a pair of switch machines (one for the points and one for the movable frog), clamp locks, and position detectors.

Section 243.227 Point Detector

This proposed section requires the Railroad to maintain point detectors so that when switch mechanisms are locked in normal or reverse position, contacts cannot be opened by manually applying force at the closed switch point. Point detector circuit controllers must be maintained so that the contacts will not assume the position corresponding to switch point closure if the switch point is prevented by an obstruction, from closing to within 6 mm (0.25 in). This is consistent with the Petition.

Section 243.228 Signals Controlled by Track Circuits

This section requires control circuits for aspects with indications more favorable than "proceed at restricted speed" to be controlled by track circuits extending through an entire block section. A block section would extend from signal to signal, or from signal to its defined limits at end of the system. This section is consistent with the Petition and U.S. practice.

Section 243.229 Circuits at Interlocking

This proposed section prevents circuits at interlockings from displaying aspects that would permit conflicting movements. FRA's proposal uses the term "interlocking" rather than the FOX term, "control point," because the proposed system will actually consist of interlockings.

Section 243.230 Signals at Adjacent Interlockings

This proposed section requires signals at adjacent interlockings to be arranged so that movements at greater than restricted speed cannot be displayed simultaneously for conflicting movements. The intent of this section is to ensure that the maximum authorized speed between adjacent interlockings where signals can simultaneously display aspects indicating "proceed at restricted speed" may not exceed 20 mph, regardless of more favorable aspects displayed. This is consistent with U.S. practice.

Section 243.231 Track Signaled for Movements in Both Directions, Change of Direction of Traffic

This section requires that where track is signaled for train movement in both directions, occupancy of the track between opposing signals at adjacent interlockings must prevent changing the direction of traffic from that which was obtained at the time the track became occupied. After a train, locomotive, or power car has passed a signal displaying an aspect permitting it to proceed into and through an interlocking, the opposing signals at the adjacent interlocking will not be permitted to display any aspect with an indication other than "stop," so long as the section of track between interlockings is occupied. The only exception to this applies in instances when a train is left on the main track while its locomotive, power car and/or cars move into an adjacent siding or yard for switching purposes and must, in returning to its train, reverse its direction for a short distance. It would be permissible in such instances to permit such movements to be made with a signal aspect indicating "proceed not to exceed restricted speed" into the occupied block.

Section 243.232 Route Locking

The section requires the Railroad to provide route locking at all interlockings where power-operated switches are located. When a train, locomotive, or power car passes a signal displaying any type of proceed aspect, including "proceed at restricted speed," over power operated switches, track circuits and route locking would be required.

Section 243.233 Wayside Detectors

This section addresses all of the wayside detection systems that will be located in the FOX right-of-way and connected to the Railroad's central traffic control system. The Railroad must establish guidelines for the events that trigger the detection systems in such a way that all potentially hazardous occurrences are conveyed to the signal system or central traffic control.

Paragraph (c) of this section requires the Railroad to install fall intrusion detectors at all highway, animal, and non-Railroad equipment overpasses and underpasses. Fall intrusion detectors must be activated when the network of protective wiring located at each overpass and underpass experiences a partial or complete break, and this

information must be transmitted to central traffic control continuously. The Railroad's system safety plan must list the location of all fall intrusion detectors, and dictate the actions that will be taken when intrusions occur.

Paragraph (d) requires the Railroad to install an intrusion detection system in the protective fencing along the Railroad right-of-way that must restrict, to the fullest extent possible, unauthorized entry by trespassers, personnel, equipment, and animals. This system shall be installed at each location that is identified in the system safety plan as an area where intrusion is likely to occur. This system must be connected to the Railroad's signal system and to the central traffic control system, and must alert the Railroad to any intrusion. Also, the Railroad must explain in detail where intrusion is likely to occur and why, and set forth specific actions that will be taken when intrusion occurs.

Paragraph (e) requires the Railroad to install dragging equipment detectors at all locations where underframe repair or maintenance work is performed, and at other locations determined necessary by the system safety plan. This system must transmit data continuously to the central traffic control so that Railroad personnel can make appropriate adjustments in operations. The Railroad must explain, in detail, in the system safety plan where dragging equipment is likely to occur and why, and prescribe specific actions that will be taken when dragging equipment is located. The Petition proposed to locate these detectors only where underframe repair and maintenance work is completed, but FRA believes that dragging equipment may actually occur more often at other locations throughout the system. FRA believes that when a rail unit leaves a repair facility it is less likely to be in defective condition than when it travels other portions of the system. Also, equipment that is entering or leaving repair facilities will not be carrying passengers, and so the risk of injury at these locations is minimal. Therefore, FRA proposes in this section that the Railroad, in the process of the system safety analysis, determine where the risk of dragged equipment exists, and place detectors at those locations.

Paragraph (f) requires the Railroad to install flood detectors where determined necessary by the system safety plan. This determination must include consideration of drainage, culverts, bridges, overpasses, underpasses, and flood plain status along the right-of-way. The flood detection system must alert the signal system and central traffic control of any location where an accumulation of water exists in the right-of-way that may present a risk to a right-of-way structure or in-service railroad equipment. The Railroad's system safety plan must include specific actions that will be taken when high water is detected.

Paragraph (g) requires the Railroad to install wind detectors along the right-of-way, where it is determined to be necessary pursuant to area wind and weather patterns, topography, and proximity to large bodies of water. Wind speed data must be conveyed to the central traffic control continuously so that Railroad personnel may make operational changes when necessary. The Railroad's system safety plan must explain where and why wind detectors are located along the right-of-way, list the speeds and conditions at which operational safety is compromised; and set forth the specific actions that will be taken when those wind speeds occur.

Paragraph (h) requires the Railroad to install and maintain hot box detectors along the length of the right-of-way to detect the journal bearing temperature of all moving rail equipment. The wayside detectors must be arranged so that the journal bearing temperature on both sides of each train, and on each track, is monitored. The detectors must be located at least once every twenty-five miles, and must be linked to the signal system to alert the locomotive engineer or the central traffic control system, or both, depending on the level of the overheating, so that Railroad personnel can take appropriate action. This system shall include a hierarchy of alarms, which will alert the Railroad to the level of overheating that is occurring and bring about corresponding actions. For instance, when journal bearing temperature could cause safety-critical components to fail in operation, the detection system will cause the defective train to stop at a designated block marker, and cause all passing trains to slow to a speed of 50 mph or less. When the detectors reveal defective equipment that is less serious, but may result in unsafe operations, the system will require the equipment to move to the next siding, where it will be inspected before movement. Finally, the system will include inspection threshold alarms that will alert the Railroad to journal bearing temperature in a trainset that is significantly higher than the average temperature taken on the other journal bearings. This alarm will be transmitted to the central maintenance facility so that the appropriate inspection and repair can be completed.

The Petition contained several sections on wayside detection systems. FRA has consolidated the concept by placing them together in subpart C, and we require the Railroad to develop the detectors in conjunction with the system safety analysis required by subpart B of this NRPM. The Petition did not contain sufficient clarity concerning the detection systems, which conditions would trigger a Railroad response, and what the Railroad response would be, and so FRA invites comment from FOX and other interested parties on the language we propose in this section. It is difficult to predetermine what events may occur in Florida and how the Railroad should respond to varying levels of high wind or water, for instance. FRA believes that the system safety approach is the most effective way of dealing with all of the factors and conditions that may arise in Florida, and so we have added that connection to the proposed rule text. However, FRA is also concerned that this section may not yet be clear enough, in terms of providing notice to the Railroad and interested parties on the appropriate activity that must accompany potentially unsafe events, and what degree of safety is compromised before the activity is required. Therefore, FRA requests comments from the public on suggested language or concepts that may more fully address the risk factors presented.

Section 243.234 Protection of Maintenance-of-Way Personnel

This section requires that the signaling system include circuitry to lock-out particular block sections and restrict the speed of passing trains on these block sections or adjacent trackage for the protection of maintenance of way personnel, and that corresponding procedures be covered in the Operating Rules. This is consistent with the Petition and current U.S. requirements. FOX proposes that after receiving authorization from the CTC center, roadway workers would be able to ensure their safety by use of a local switch that will protect them from unsafe or inconsistent train movements.

Section 243.235 ATC Device Installation

This section requires that each power vehicle capable of being the lead vehicle be equipped with an automatic train control or ATC device that will operate when the trainset travels at a speed of more than 32 km/h (20 mph). This is consistent with the Petition and U.S. practice. It is important to note that FOX is designing the system to operate so that, if the ATC system does not operate correctly when the speed is greater than 32 km/h (20 mph), external backup speed control equipment will limit the speed to 32 km/h (20 mph).

Section 243.236 Forestalling Device and Speed Control

Paragraph (a) of this section establishes the requirements of the ATC system arrangement. Paragraph (b) establishes required features of the ATC system, such as braking supervision and maximum speed supervision. This section is consistent with the Petition and U.S. practice, although the system is more advanced than systems in use in this country at the present time. FOX is designing the ATC system to incorporate the following: (1) Multiple processor architecture and on-board equipment; (2) Trackside encoders sending messages through the track beacons and short cable loops, providing notifications of upcoming curves and gradients in the next portion of the line, distances to point, and speed restrictions; (3) On-board equipment that calculates the braking curve requirements with respect to the data received.

Section 243.237 Cab Signal Indication in Accordance With Maximum Speed Limit

This section requires that while providing maximum speed supervision, the Railroad's ATC system will provide a cab signal indication of the maximum authorized speed. This will provide the locomotive engineer with valuable speed authorization information. The proposal is consistent with the petition and U.S. standards.

Section 243.238 Automatic Brake Application; Initiation When the Maximum Speed Limit Is Exceeded

This section requires that the Railroad's ATC system operate to initiate an automatic brake application when the speed of the train exceeds the maximum speed intervention curve. The Automatic brake application can be interrupted by the locomotive engineer only when the speed of the train is lower than the maximum authorized speed. This is consistent with the Petition and U.S. practice. The FOX design includes supervision for a local maximum authorized speed which will consist of: (1) Providing a cab indication of the maximum allowed speed; (2) issuing an audible and/or visual warning if the trainset speed exceeds the maximum allowed speed by a predefined margin and; (3) automatically applying the brake if the trainset speed exceeds the maximum authorized speed by a predefined margin.

Section 243.239 Advance Cab Signal Indication.

This section requires that the ATC system provide a cab signal indication of the target speed and distance before commencing the braking supervision, thus allowing the locomotive engineer to respond by a manual brake application. The section is consistent with the petition and U.S. standards. The opportunity for information enabling a manual brake application by the locomotive engineer is obviously more desirable than resorting to ATC system braking intervention.

Section 243.240 Automatic Brake Application Initiated by the ATC

This section requires that the ATC system initiate an automatic brake application to ensure compliance with target speed and target distance, in the absence of an appropriate response to a cab display indication on the part of the locomotive engineer. This is consistent with the Petition and U.S. practice. The FOX system will be designed so that prior to intervention, the ATC system will provide an audible and/or visual warning so that intervention will be avoided if the engineer reacts within a pre-defined delay.

Section 243.241 Cab Signal Indication After Authorization to Enter a Block Section Where Conditions Defined in § 243.219 Exist

Paragraph (a) of this section requires that if a trainset is authorized to enter a block section in which any condition listed in § 423.219 of this Part exists, the ATC system must display an indication to "Proceed at Restricted Speed." Paragraph (b) requires if the restricted speed is exceeded, the ATC must initiate an automatic brake application. This is consistent with the Petition and U.S. practice. This section will ensure that if another trainset is occupying the block, a switch point is not closed in the proper position or something such as a broken rail is causing a track relay to be deenergized, the trainset authorized to enter such block will be protected from a collision or derailment.

Section 243.242 Audible Indicator

This section requires that the audible cab indicator have two distinctive sounds and be clearly audible throughout the cab under all operating conditions. When the cab display changes, the audible indicator will sound briefly (for approximately 0.5 seconds) to draw the locomotive engineer's attention to the change. This sound will be used to draw the engineer's attention when there is some change in the speed authorization, whether permissive or restrictive. There will be no acknowledgment necessary for this sound. A different audible warning will sound before an automatic brake application is initiated. The warning will be given in sufficient time to allow the locomotive engineer and the train brake equipment to respond to the change. This indicator will sound continuously until the warning condition disappears. The section is consistent with the Petition and U.S. practice. Methods to silence or muffle the audible indicator, such as tampering with the audible device, would be prohibited.

Section 243.243 Delay Time

This section requires that the delay time of the ATC train-borne equipment ensure that the trainset complies with the target speed and distance through the brake application initiated by the system. This section is consistent with the Petition. The principle of the ATC system does not factor in a preset delay time of 8 seconds, as is required by 49 C.F.R. 236.563. Instead, the system permanently checks the level of braking available on the train and takes into account these data to compute the warning and braking curves.

Section 243.244 Automatic Brake Application; Full Service

This section requires that an automatic brake application initiated by the ATC system will cause a full service application of the brakes. This is consistent with the Petition and U.S. practice. FRA will consider a full service brake application to be an application of the brakes, other than emergency, which develops the maximum brake cylinder pressure, as determined by the design of the brake equipment for the speed at which the train is operating.

Section 243.245 Interference With Application of Brakes by Means of Brake Valve

This section will ensure that the ATC apparatus is arranged so the automatic application of the brakes cannot be interfered with by means of the brake valve and the efficiency of the braking system will not be impaired, thus assuring safe train movements. This is consistent with the Petition and with U.S. practice.

Section 243.246 Control From Lead Vehicle

This section requires that each trainset be controlled and operated from the lead vehicle. Each lead vehicle will be equipped with an ATC device. This device will have a fail safe and fault

tolerant architecture, such as a two out of three voting architecture. This is consistent with the Petition and constitutes a desirable method of ensuring safety of train operation and system reliability.

As defined in this proposal, "fault tolerant architecture" means the built-in capability of a system to provide continued (full or limited) operation in the presence of a limited number of faults or failures of the system, such as a defect in a hardware device, component or an incorrect step, process or data definition in a computer program.

"Two out of three voting architecture" means three independent processors operating on dissimilar software operating in such a manner so as to compare the software output from each processor to ensure safety critical results match. If one processor produces an answer inconsistent with the other two processors the conflicting processor is taken off-line and the two remaining processors continue to compare with each other and drive safety critical commands, only as long as they both agree. If the remaining two processors fail to agree, the system will cease to issue safety critical commands and will be shut down and assume a safe state.

Section 243.247 Proper Operative Relation Between Parts Along Roadway and Parts on Power Car

This section requires that ATC track-side and power car components be designed and operate in compatibility under all conditions of speed, weather, wear, oscillation, and shock. This section is consistent with the Petition and U.S. practice, and will ensure ATC system reliability under various outside influences.

Section 243.248 Visibility of Cab Signals

This section requires that cab signals be plainly visible to the locomotive or power car crew from their stations in the cab. The proposal is consistent with the Petition and U.S. practice. Cab signals will be required to be installed so that the crew member or members can plainly see aspects displayed from their normal position in the cab. The cab signal will be required to be properly illuminated, without cracked or broken roundels and its view not obstructed by other equipment installed in the cab.

Section 243.249 Power Supply

This section requires that the ATC system operate from a separate or isolated power supply. The proposal is consistent with the Petition and U.S. practice. Power supplies for ATC systems should be separate and distinct to eliminate interference from other electrical control circuits, thus ensuring reliable power to the ATC system.

Section 243.250 Seal, Where Required

This section requires that a seal be maintained on any device other than the brake-pipe cut-out cock (double-heading cock), where the operation of the pneumatic portion of the automatic train-control apparatus can be cut out. This is consistent with the Petition and U.S. practice. The seal is required to be applied in such a manner that the device cannot be operated to cut out the apparatus without breaking the seal. This provides a means to prevent tampering with the ATC system.

Section 243.251 Rate of Pressure Reduction; Equalizing Reservoir or Brake Pipe

This section will ensure that equalizing-reservoir pressure or brake-pipe pressure reduction during an automatic brake application will be at least equal to a manual service brake application. This is consistent with the Petition and U.S. practice, and will prevent an automatic brake application from being less effective than an application by the locomotive engineer.

Section 243.252 Restrictions Imposed When Device Fails and/or is Cut Out En Route

Paragraph (a) of this section provides instructions for train operation in the event of ATC system failure or when the ATC system is cut-out en route. It is important to note that, for purposes of Subpart C, the ATC system will be considered to be in failure when two or more of the on-board processors are not operating as intended. If one on-board processor malfunctions, the remaining two are designed to capably operate the train safety, and so this event will not be considered to be an ATC failure. It is also important to note that, for purposes of this Subpart, ATC failures are not limited to malfunctioning on-board processors. A variety of conditions may occur to result in ATC failure, and all of them are contemplated by the language in this Subpart.

Paragraph (b) requires that where an ATC system fails or is cut out en route, the Railroad must test the ATC, record the results in accordance with § 243.276 (departure test) and § 243.278 (results of tests), and determine that the ATC is fully operative before the trainset leaves its next initial terminal. This section is consistent with the Petition and U.S. practice.

Section 243.253 The Trackage

This section requires that the trackage over which the Railroad operates trains in revenue service be completely equipped with wayside equipment designed to interface with and provide safety control commands to the lead vehicle of trainsets which operate over that trackage. Signaling beacons and antennas will be installed and maintained in accordance with manufacturer's specificaticns. This is consistent with the Petition and U.S. practice. The ATC system wayside equipment proposed by FOX will consist of active beacons and cable loops which will be used to transmit intermittent and semi-continuous data from the track to the train. The appropriate quantity of beacons and loops will be calculated in order to meet performance targets and will be adapted to the local conditions. Wayside encoders will be used to store permanent data for the topology of the line, and the data sent to the train through beacons and loops will interface with the interlocking system.

Section 243.254 Cut Out of the ATC System

This section requires that any cut out of the ATC system or activation of the acknowledging device be registered in the on-board event recorder. This is consistent with the Petition and an improvement over current U.S. practice, which currently involves keeping a record of system cut-out. This section will ensure accurate data depicting any ATC system intervention.

Reporting Requirements

Section 243.255 Accidents Resulting from Signal Failure

This section requires that the occurrence of an accident/incident arising from the failure of an appliance, device, method or system to function or indicate as required by this NPRM that results in a more favorable aspect than intended or other conditions hazardous to the movement of a train, shall be reported within 24 hours to the FRA by toll free telephone number, 800–424–0201. This is consistent with the Petition and U.S. practice.

Section 243.256 Signal Failure Reports

This section establishes a time period of five days in which the Railroad must report each failure of an appliance, device, method, or system to function or indicate as required by these standards that results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Form FRA F6180–14, "Signal Failure Report," must be used for this purpose and completed in accordance with instructions printed on the form. This section is consistent with the Petition and will constitute a recordkeeping requirement. Current U.S. requirements dictate a time period of fifteen days. However, since this is a controlled environment and proper ATC system operation will be vital to the safety of the passenger trains operating at high speeds, there is a need for faster notification by the Railroad and an FRA investigation concerning any unsafe signal failure.

Section 243.257 Annual Signal Systems Report

This section requires that the railroad file an annual signal systems report, which will detail current signal system information, on a form provided by FRA in accordance with instructions and definitions on the reverse side of the form. This section was not in the Petition, but is consistent with current U.S. practice.

Inspection, Testing and Maintenance

Section 243.258 General

This section requires that the Railroad's inspection, testing and maintenance program be designed to ensure that the safety of the Railroad's signaling system does not deteriorate over time, in accordance with § 243.107 of this proposal.

Section 243.259 Interference with Normal Functioning of Device

This section requires that inspection, testing and maintenance will not interfere with or alter the normal functioning of any signal device, except after measures are in place to provide for the safety of train operations that depend on normal functioning of such device. This is consistent with the petition and U.S. practice. Interference would be any condition that circumvents, hinders, impedes, or diminishes whatsoever the intended protection of a device, and may be done by testing, installing, repairing, replacing, operating, or manipulating a component indicating or affecting the indication of safe passage for trains. There will be no difference between accidental or intentional interference with respect to the enforcement of this rule.

Section 243.260 Operating Characteristics of Electromagnetic, Electronic, or Electrical Apparatus

This section requires that signal apparatus which affects the safety of train operations, be maintained in accordance with the design limits of the device. This is consistent with the Petition and U.S. practice. The railroad must have specifications setting forth the pick-up values, release values, working values, and condemning limits of these values for all applicable signal apparatus in use on its property. Manufacturer specifications or Railroad standards compatible with manufacturer specifications will be used to determine such values.

Section 243.261 Adjustment, Repair, or Replacement of Component

This section requires that when any component of a signal system that is essential to the safety of train operation fails to perform its intended signaling function or does not correspond with known operating conditions, the cause shall be determined and the faulty component adjusted, repaired or replaced as soon as possible. This is consistent with the Petition and U.S. practice. The Railroad would be required to determine the cause of each "stop" or "stop and proceed" aspect resulting from an unknown condition. If that condition is the result of the failure of a signaling component and is a hazard to safe operations, corrective action is required before the next train movement.

Section 243.262 Purpose of Inspection and Tests; Removal From Service of a Relay or Device Failing to Meet Test Requirements

This section requires all inspections and tests to be made in accordance with the specifications of the Railroad and approved by FRA as part of the system safety plan. Tests should be made to determine if the equipment is maintained in the appropriate condition so that it will consistently perform its intended function. Any electronic device, relay, or other electromagnetic device that fails to meet the requirements of the specified tests will be removed from service, and not returned to service until its operating characteristics are consistent with the design limits. This is consistent with the Petition and U.S. practice. This section would apply to all devices that effect the safety of train operations. It is understood and accepted throughout the railroad industry that all signal devices must be designed so that the limits of their operating characteristics provide adequate safety margins.

Section 243.263 Point Detector Test

This section requires the Railroad to test point detectors operated by power-operated switch movement at least once every three months. This test ensures that a safe tolerance of switch point closure is maintained. This section is consistent with the Petition and U.S. practice.

Section 243.264 Relays; Microprocessor Testing

Paragraph (a) of this section requires that each safety-critical, train-borne ATC relay be tested at least once each year to ensure the correct parameters of the relays. Paragraph (b) requires that each safety-critical, wayside relay be tested at least once every four years to ensure the correct parameters of the relays. Paragraph (c) requires the Railroad to test each safety-critical, train-borne electronic subsystem which is not verified internally on a continuous basis at least once each year. Paragraph (d) provides that each safety-critical, train-borne electronic subsystem, in which proper operation is verified internally in a closed loop fashion, will not require periodic tests. Subsystems that contain continuous verification will not need to be tested because of their fail safe design. Paragraph (e) requires the Railroad to test each safety-critical wayside electronic subsystem, which is not verified internally on a continuous basis, at least once every two years. Paragraph (f) provides that each safety-critical wayside electronic subsystem, in which proper operation is verified internally in a closed loop fashion, will not require periodic tests.

The paragraphs in this section are consistent with the Petition and U.S. practice. Although the relay testing requirements of this rule are based on 49 CFR part 236, new language has been added to this proposal in order to address microprocessors.

Section 243.265 Ground Tests

Paragraph (a) requires the Railroad to test for grounds on each safety-critical energy bus furnishing power to circuits at least once every three months. Paragraphs (b) and (c) provide exceptions to this requirement. Periodic ground tests would not be required if ground detection devices are properly functioning, or if the design of circuits is such that a grounded energy bus could not impact the safety of train operation. An inspection of the ground detection device to ensure proper operation of the device will be required at least once every three months. This section is consistent with the Petition, except for the inspection of ground detection devices, and with U.S. practice, except that ground tests are not required when automatic detection devices are used. If ground detection devices are used, such devices should

be verified for proper operation on a periodic basis.

Section 243.266 Insulation Resistance Tests; Wires in Trunking and Cables

Paragraph (a) of this section requires that an insulation resistance test of signal system wires and cables be made at least once every 10 years to ensure that circuit conductors are in proper working order for the safe operation of the signal system. Paragraph (b) provides that a circuit may not be permitted to function on a conductor that has an insulation resistance to ground or between conductors of less than 200,000 ohms. When a test reveals this condition, the conductor must be removed from service immediately to avoid the risk of an unsafe failure in the Railroad's signal system. This section is consistent with the FOX petition and U.S. practice.

Section 243.267 Time Releases, Timing Relays and Timing Devices

This section requires the Railroad to test time releases, timing relays, and timing devices at least once each year. The timing must be maintained at no less than 90 percent of the predetermined time interval, to ensure adequate predetermined parameters, such as train braking distance calculations. The predetermined time will be shown on the plans or marked on the time release, timing relay, or timing device. Where time releases are an integral part of a safety-critical, processor-based controller, and are specified in the applications program, such intervals must be tested only at the time of installation and whenever a change is made in the applications program. This section is consistent with the Petition and with U.S. practice.

Section 243.268 Time Locking

This section requires that where time locking is an integral part of a safety-critical, processor-based controller, and is specified in the applications program, the locking will be tested at the time of installation and whenever a change is made in the applications program. This is consistent with the Petition. The time locking test will determine that no route can be changed until a predetermined amount of time has expired, ensuring the safe movement of the train whose route has been established. There will be no periodic testing required under this rule, such as once every two years, which is required in 49 CFR part 236, because the vital logic processor of the interlocking controller will employ two processors that operate simultaneously in a redundant, checking-system architecture. All safety-critical operations will be continuously performed by both processors. The solid state controller will be based on closed loop principles, software diversity, and the use of vital hardware design techniques.

Section 243.269 Route Locking

This section similarly requires the Railroad to test route locking at the time of installation, whenever a change is made in the applications program, and when route locking has been disarranged. This is consistent with the Petition, except that FRA has included the test requirement "when route locking has been disarranged." In this context, the term "disarranged" could apply to several circumstances. Route locking will be considered to be disarranged when: a vital relay, if used, in the route locking circuit is replaced with another; when two or more conductors are severed; when a cable or conductor in a locking circuit is replaced with another; or when wires are removed at the same time from more than one terminal of a relay or terminal board. The route locking test will determine that a train's route cannot be changed once the train has passed a signal indicating proceed until the train has cleared the track section of the route governed. No periodic testing is required by this proposal for the reasons previously stated in § 243.268.

Section 243.270 Indication Locking

This section similarly requires that indication locking be tested at the time of installation, whenever a change is made in the applications program and when the indication locking has been disarranged. This is consistent with the Petition and U.S. practice, except that no periodic testing is required for the reasons stated previously. The indication locking test will ensure that no conflicting route can be established, and no power-operated switch can be moved with a route already established for a train.

Section 243.271 Traffic Locking

This proposed section requires the Railroad to test traffic locking at the time of installation and whenever a change is made in the applications program. This is consistent with the Petition and U.S. practice, except that there will be no periodic testing required by this rule for the reasons stated previously. The traffic locking test will determine that the direction of train traffic cannot be changed, for instance, an opposing proceed signal displayed, where a route is already established for a train in one direction.

Section 243.272 Switch Obstruction Test

This section requires the Railroad to conduct a switch obstruction test of each switch when the lock rod is installed, and at least once every 3 months. This section is consistent with the Petition. This deviates from the monthly switch obstruction test currently required of existing railroads because of the differences in the FOX operating environment. FRA believes that switches will experience little or no variation from their original adjustments.

Section 243.273 Locomotive or Powercar Power Supply Voltage Requirement

This section requires that the output voltage of the power supply for FOX locomotive ATC will be maintained within 10 percent of rated voltage. This will ensure adequate and steady energy to operate the ATC system. This section is consistent with the Petition and U.S. practice.

Section 243.274 Power-Car or Locomotive Insulation Resistance; Requirement

This section requires that when the periodic test prescribed in § 243.266 is performed, insulation resistance between wiring and ground of the automatic train control system may not be less than one megohm. This deviates from the Petition by stating a value for minimum insulation resistance. This requirement is based on current practice for existing operations in this country. The standard referred to in the FOX Petition for insulation resistance (EN–50155) does not state a minimum value, and hence, provides no notice as to what the standard is and would be unenforceable.

Section 243.275 Antennas and Beacons

This section requires the Railroad to inspect and maintain signaling beacons and antennas in accordance with manufacturer's specifications. Also, antennas and beacons that have been repaired or rewound must adhere to the same operating characteristics which they possessed originally or as specified for new equipment. This proposal would ensure that the beacons or antennas are in condition sufficient to transmit reliable data to the on-board ATC equipment. This section is consistent with the Petition and U.S. standards.

Section 243.276 Departure Test

Paragraph (a) of this section requires the Railroad to test the train-borne ATC equipment by operation over track elements, by operation over a test circuit, or by an on-board test device in order to ensure a reliable means of testing the apparatus. Paragraph (b) requires the Railroad to determine the extent of the departure test in accordance with the system safety analysis described in Subpart B, and include, at a minimum, ground-to-train transmission, the cab display indications, and the interface with the train brakes.

Paragraph (c) requires the Railroad to perform a departure test, and put on-board ATC equipment in service before the trainset operates over equipped territory. If the ATC is cut out, the Railroad must perform another departure test before the ATC equipment can be considered operative. Paragraph (d) provides only one departure test is required in each 24-hour period, except as provided in § 243.252(b) concerning failures or cut-outs en route. This is consistent with current U.S. practice and has provided a high level of safety.

Paragraph (e) requires the Railroad to record each test run and its outcome in the train-borne event recorder, downloaded and retained for at least one year. This will provide a database in the event that a determination of proper testing is needed.

This section is consistent with the Petition and U.S. practice, except for the train-borne event recorder requirement, which is a desirable feature of this ATC system that will enhance safety. "On-board equipment" will consist of the on-board unit, vehicle antenna, cab display, and systems that will interface with the train, including a speed measurement system, an event recorder, and an on-board microprocessor system network. The on-board unit consists of processing logic and receiving/transmitting equipment. The vehicle antenna will be mounted under the power-car frame and will receive line description data. The cab display will include the actual speed of train, target speed, target distance, and maximum authorized speed information.

Section 243.277 Periodic Test

This section requires the Railroad to perform a periodic test of the train-borne ATC equipment at least once every two months and on multiple-unit cars as specified by the Railroad, subject to approval by FRA. The Petition recommended a periodic test at least once each year. Current U.S. practice requires a periodic test at least once every 92 days. However, existing standards require a "daily or after trip test," unless a periodic test is done at intervals of not more than two months. It is FRA's belief that, unless the Railroad intends to perform daily or after-trip tests, the ATC equipment should be tested on the same periodic basis as required by current U.S. industry standards. FRA sees nothing in the FOX system to make this requirement unnecessary, and believes that the test enhances safety with minimal cost.

Section 243.278 Results of Tests

This section requires the Railroad to record the results of tests made in compliance with §§ 243.252(b), 243.262 through 243.272 inclusive, 243.276, and 243.277. This section sets forth the required information for recording tests either via pre-printed or computerized forms, or by electronic means. This section is consistent with the Petition and U.S. practice.

Section 243.279 Independent Verification and Validation

This section describes the process by which an independent entity with known technical expertise will conduct an audit of all safety-critical, processor-based equipment in the Railroad's signal system. The audit must be done on the system as it is finally configured, and before revenue operations commence. Paragraph (b) lists the items that the audit must review, and paragraph (c) requires preparation of a report by the independent audit firm. Paragraph (d) describes the procedure by which the report and the Railroad's signal system will be accepted.

FRA believes that this process is necessary in order to ensure the integrity of the FOX signal system. As discussed earlier, the system is not currently in revenue service anywhere in the world, and although safety experts agree that it will likely improve railroad safety, there is no safety record available on which FRA can assess the system's reliability and endurance during operations. Of particular concern is the likelihood of severe weather in Florida, which could disrupt or obliterate the operation of the signal system. FRA believes that an independent audit of the system's software and processors will reveal any system weakness and assist the Railroad in mitigating hazards. FRA does not have the expertise at this time to conduct such an audit, and so seeks appropriate input from recognized, independent experts in the field before the system is approved for revenue service. FRA has required other companies to undergo similar independent validation and verification inspections, and believes that such an inspection is equally wise in the case of FOX. FRA understands that the FOX signal system is being tested presently in Belgium, and will likely be used in revenue service in Europe prior to the commencement of FOX operations. FRA anticipates that the European testing will reveal and correct potential problems, which will benefit FOX and help to focus the review done on the system in the U.S. However, FRA expects that the right-of-way chosen for Florida and the extreme weather conditions that exist, present new factors that will not be considered during the testing in Europe. For all of these reasons, FRA believes that an independent audit would greatly enhance the safety of the system, and will ultimately work to the Railroad's advantage. This proposal was not included in the Petition. FRA seeks comment from the public concerning the value of the audit and any other information that the Agency should evaluate concerning the FOX signal system.

FRA suggests as a guide a verification and validation study commissioned by the Volpe Transportation Systems Center, and completed by Battelle in 1995, entitled Safety of High Speed Ground Transportation Systems, Analytical Methodology for Safety Validation of Computer Controlled Subsystems, Volume 1: State-of-the-Art and Assessment of Safety Verification/Validation Methodologies (Battelle Volume 1 Report), and Volume 2: Development of a Safety Validation Methodology (Battelle Volume 2 Report).

Subpart D—Track Safety Standards

Subpart D of the NPRM sets forth minimum track safety standards for the FOX system. These proposed standards are based on the Petition, the Agency's proposed high speed track standards for general application in the U.S. railroad industry (62 FR 36138, July 3, 1997) known as "Track Subpart G," and other pertinent standards used internationally. A brief discussion of each of these is warranted, in order to understand the standards proposed in this NPRM for application on FOX.

FRA's Railroad Safety Advisory Committee (RSAC) convened a working group to revise, where appropriate, the existing track standards that govern track safety in the general railroad system (49 CFR part 213). The working group included representatives from rail labor, railroads, trade associations, state government groups, track equipment manufacturers, and FRA. The working group established a special task group, which consisted of individuals with

high speed track expertise, to focus specifically on new high speed track standards.

The high speed task group recognized that high speed track safety standards should be based on sound engineering research, and foreign and domestic practice, and, be understandable, cost beneficial, and enforceable. With these principles in mind, the task group concluded early on that it could not consider high speed track or high speed vehicles in isolation but must consider them as an integral system. This approach led to the development of vehicle/track interaction performance limits—the cornerstone of the group's recommended standards.

The task group asked FRA's Office of Research and Development to organize an effort to provide recommendations on vehicle/track interaction and track geometry. An informal group of experts, including members of the FOX consortium, contributed to this effort. Engineering studies conducted by the experts included evaluation of the use of measuring track geometry with offsets from several chord lengths, computer simulations of vehicle response to track surface and alignment variations, application of the proposed specifications to previously measured track geometry, and comparison of specifications to foreign practice.

The work began with general acceptance of established parameters for vehicle/track interaction (VTI). Then, through analysis of modelling, test data, and foreign practice, the group of experts selected a small number of descriptors adequate to assure freedom from derailment and other hazardous vehicle/track interactions. For the most part, these proposals were considered appropriate for both dedicated track and mixed-traffic environments. The recommendations of the experts on the topics of VTI and track geometry were considered by the high speed task group and incorporated into its recommendation to the RSAC track working group for Track subpart G. The RSAC track working group also accepted the recommendations of the high speed task group, and they became part of Track subpart G, as it was published by FRA for comment on July 3, 1997.

After the track working group forwarded its recommendations to RSAC, members of the high speed task group and its supporting panel of experts met with a separate group who were working on FRA's proposed passenger equipment standards for high speed rail (Tier II). The purpose of this meeting was to ensure that the proposed track standards and the proposed equipment standards would not conflict. The conclusions reached during this meeting are pertinent to this NPRM and are discussed in detail below.

Members of the FOX consortium and FRA staff participated in the development of Track subpart G, and did so with the knowledge that those standards would apply generally to high speed operations across the country. However, it was understood that portions of the FOX Petition and FRA's proposed track standards for FOX might vary from Track subpart G, in this rule of particular applicability, in order to accommodate and assess accurately the specific safety needs in Florida. Therefore, it is not surprising that FOX incorporated many of the Track subpart G proposals in the Petition, that FRA proposes many of those recommendations here, and that both FRA and FOX believe portions of Track subpart G may not adequately address safety standards for the system planned for Florida.

In its Petition, FOX altered some of the proposals that are contained in Track subpart G, based on the operating characteristics that will exist in Florida, such as the absence of freight equipment, and the French TGV practice. The Petition, however, is not identical to the French TGV practice either. As FRA understands it, FOX believes that the lower train density, detection systems, and other operating conditions that will exist in Florida that are not also present in France, merit some reconsideration of the French general practice on high speed lines.

FRA believes that the majority of Track subpart G is applicable to all high speed environments, including the environment proposed in the Petition. FRA is in agreement with FOX that certain specific standards, particularly those pertaining to inspection methods and frequencies, are largely dependent on the loads associated with the types and amount of traffic on the high speed line. The dynamic loads associated with different types of traffic affect the rate of track degradation, which is an important factor to consider when selecting an inspection strategy. Any comprehensive inspection strategy must include automated and visual inspections, which together ensure that the track maintains a high quality, so that it will not induce adverse vehicle response and will withstand the dynamic loads imparted to the track.

In this NPRM, FRA alters some of the inspection frequencies that were set forth in Track subpart G, due to the fact that the FOX system will not include freight traffic, and because of the other operating features that are unique to FOX. Also, FRA reviewed practices utilized on the French TGV and on Japan's high speed rail system, and weighed the appropriateness of those standards to the Florida system. Finally, as discussed previously in this document, FRA recognizes that there are unknown factors, which may present risks or benefits to passengers and employees, that arise because the French system works in a very different financial and legal framework; the US workforce does not possess great institutional knowledge of the system; the Florida topography and weather differ greatly from France; and the FOX system will include features that do not exist now, and have no reliable safety record on which to predict safety. FRA proposes a track safety program that reflects all of the available relevant information, and consideration of the unknown elements outlined above.

Subpart D of this proposal represents FRA's best judgment on appropriate track safety standards that will effectively protect passengers and employees in Florida. FRA anticipates that FOX will object to some of the inspection intervals set forth in this NPRM. FRA believes that the minimal costs associated with the increased inspection frequencies are outweighed by the safety benefit that will accrue to the system, and take into account some of the unknown risks that result from moving this system from France to North America that were discussed previously in this document.

Section 243.301 Restoration or Renewal of Track Under Traffic Conditions

This section, except for minor editing, mirrors the Petition. There are two elements of concern addressed in this section: the track structure stability must not significantly degrade, and roadway worker safety may not be compromised. Only track maintenance involving replacement of worn, broken, or missing components or fastenings, which does not affect safe train movement is permitted. Paragraph (b) prohibits specific activities during train operations, which would compromise track stability and railroad safety.

Section 243.303 Measuring Track not Under Load

This section is identical to the Petition and is consistent with the present track safety standards, which require that any rail movement occurring while the track is loaded must be added to the measurement of the unloaded track.

Section 243.305 Drainage

This section is identical to the Petition and current U.S. practice. The Railroad must design and maintain the right-of-way so that water drains without obstruction, and to such an extent that safe train operations are not jeopardized.

Section 243.307 Vegetation

This section corresponds to the Petition and current U.S. practice. The Railroad must restrict the growth of vegetation along the right-of-way so that it will not interfere with safe train operations.

Section 243.309 Track Geometry; General and Section 243.311 Track Gage

FRA's proposal for §§ 243.309 and 243.311 concerning track geometry and track gage differs from the Petition. FRA's proposal essentially incorporates and expands upon the geometry table found in the Petition, which follows the French TGV's geometry inspection techniques. However, FRA includes a second intervention table to address multiple defects, the requirement to make an additional chordal measurement, additional requirements for the geometry measurement system, and other changes that FRA believes are necessary for safety.

FOX asserts that the values used in the Petition are identical to those used by the French TGV, which permit wider and narrower gage than would be acceptable for railroad operations in this country. Gage limits are extremely important to railroad safety because high wheel forces and wheel climb can occur in tight gage conditions, and high wheel forces and sudden wide gage can occur in wide gage conditions. These conditions can cause train derailments and incidents.

FOX proposes to use the European combination of rail and wheelset profiles, including the wheelset flange back-to-back dimensions, which are slightly different than standard US designs. The significance of these dimensional variations is that the distance between the flange points on a nominal FOX-style wheelset will be very close to the distance between flange points on a standard US wheelset. There is an increase in the tread cone angle of the FOX wheel profile from a 1-in-40 slope to a 1-in-6.67 slope for the last 20 mm of the tread, which would tend to increase any gage widening forces if the wheel experiences very wide gage. The flange back-to-back dimension is larger than permitted under current US practice and should be considered when designing guard rails and flange ways.

FRA is concerned that the Petition would allow tight gage up to 170 km/h (105 mph). The use of 1420 mm gage with wheelsets in nominal condition would cause more than ½" wheel climb on both wheels. Based on these dimensional analyses, FRA recommends that the minimum gage be modified to 12 mm less than nominal for speeds below 105 mph.

FRA has concluded that several modifications to the Petition are necessary to address additional key safety concerns in this regard. The Petition does not include a provision for multiple or repeating defects, but FRA believes that such provisions are essential to a comprehensive set of minimum track safety standards. The basis of this concept is that safe railroad operations are jeopardized by a series of track defects that in isolation may not be troublesome, but in combination may result in train incidents or accidents. The panel of experts who advised the high speed track task group considered the case of multiple alignment defects and their ability to excite harmonic motion in the carbody. Multiple deviations were considered to occur when three or more non-overlapping deviations from uniformity in track alignment occurred within a distance equal to five times the specified chord length.

FOX states that the Mauzin car, (or track geometry measurement system, as it is called in the proposed rule text), which is a geometry car used in French TGV track inspection, will be used to measure track geometry in Florida. This car does not detect multiple defects. Therefore, FRA proposes provisions in this document to compensate for this deficiency, based on French practice and Track Subpart G, so that a level of safety equivalent to the proposals of Track Subpart G is maintained. In § 243.309, FRA modifies the geometry table FOX proposed in the Petition.

FRA's modifications are consistent with FRA's understanding of French TGV practice, which includes several levels of track geometry defects that require varying levels of remedial action over different periods of time, as determined by the magnitude of the measurements from the Mauzin car. FRA's proposal makes these French maintenance practices the minimum safety requirements for track geometry measurement. FRA believes that it is important to include these practices in the two-table approach proposed by FRA, because the two intervention tables, in combination will prevent multiple defects from occurring. Multiple defects are addressed in a different manner in Track Subpart G, where specific thresholds are established when more than one defect occurs in rapid succession.

The use of these multiple intervention levels identify deteriorating track conditions before they become critical track defects. This practice makes the occurrence of critical multiple defects less likely to occur than would otherwise be expected with a single, safety-level strategy. To capture the desired level of safety, the high speed task group recommended adopting a multiple defect table. Another approach would be a bi-level intervention table, in which the first level would require remedial action within a reasonable period of time to correct defects, and the second level would require immediate action to correct critical defects. FRA's proposal incorporates these concepts.

Aside from the differences outlined above between the Petition and FRA's proposal, FRA adds a chordal measurement that would not be required under the Petition. The FOX petition proposes two chordal measurements to identify critical alignment defects. Careful dynamic analyses indicate that track anomalies with wavelengths at approximately 20 meters can cause unacceptable vehicle responses and may not be detected by the thresholds proposed in the Petition for the 10-meter and 31-meter chordal measurements. FOX engineers have informed FRA that French TGV maintenance practice and use of the Mauzin car, particularly the use of 20-meter chordal measurements by the equipment, precludes the existence of these critical track defects. However, such maintenance practice is not covered by the Petition, and so does not provide the level of assurance desired in this important area. FRA proposes here that the measurements obtained through use of the Mauzin car be processed in a manner similar to the process used to create the 31 meter chord offsets to create a 20-meter chordal measurement. FRA proposes appropriate thresholds for this chord in the tables provided in § 243.309.

For the reasons explained above concerning multiple defects, warp, and related geometry considerations, FRA has concluded that the approach to track geometry that is proposed in the Petition would be acceptable only if the measurements are performed with a measurement vehicle that is similar to the Mauzin car, or the track geometry measurement system. Therefore, as set forth in § 243.331, the standards proposed in this document apply if FOX uses a Mauzin-type vehicle. If FOX does not use a Mauzin car or the track geometry measurement system, the

requirements of Track Subpart G would apply.

Section 243.313 Curves, elevation and speed limitations

This section of the NPRM is unchanged from Track Subpart G and the Petition. The section provides for a procedure in which the Railroad may seek approval to operate equipment at higher curving speeds, based on engineering data. FRA utilizes these procedures when processing waivers for higher cant deficiencies. In order to operate with higher cant deficiencies, the Railroad must submit specified engineering data and analysis to FRA that determines safe operations at the new level of cant deficiency. This information would also be part of the Railroad's determinations concerning safe curving speeds.

Section 243.315 Track Strength

This section is identical to Track Subpart G and the Petition. FRA concurs that the track must be of very high quality to withstand the vertical and lateral loads associated with high speed trains. During the high speed task group discussions, the subject of track modulus was discussed at great length. Track modulus is a physical measurement of the strength of the track. However, it is difficult to measure track modulus with present technology. Track Subpart G and FRA's proposal do not include a specific numeric value for the vertical and lateral strength of the track. Rather, FRA relies on the track's safety performance, as determined by the monitoring of vehicle/track interaction and track geometry measurements required in §§ 243.309, 243.311, and 243.333.

Section 243.317 Crossties

The Petition would require concrete ties for all tracks that carry passenger service trains and FRA includes this proposal in this NPRM. FRA has made a small change from the Petition concerning all other track, by increasing the number of non-concrete ties from 14 ties in each 39 foot segment of track, to 18 ties in each segment. The remainder of this section mirrors the tie requirements contained in Track Subpart G for higher track classes, and the existing track safety standards for the lower classes. This section also lists characteristics of defective concrete or non-concrete ties, which must be replaced by the Railroad. In all cases, the ties must be capable of holding gage, maintaining surface, and maintaining alignment within the geometry limits specified in § 243.309.

Section 243.319 Continuous Welded Rail (CWR)

This section is consistent with Track Subpart G and the Petition and lists requirements for effectively installing, adjusting, and maintaining CWR. The Railroad must submit a plan to address CWR installation, adjustment, maintenance and inspection, and a training program for the application of those procedures. The procedures must follow the detailed guidelines set forth in this section of the NPRM, which represent current industry practice to protect against track buckling.

Section 243.321 Rail End Mismatch

This section of FRA's proposal is identical to Petition. The values listed in this section for rail end mismatch represent pervasive industry practice in the U.S. and abroad. Controlling mismatched rail is essential for the safety of a high speed operation. If a wheel flange would encounter a mismatch of the rail on the gage corner, an accident or incident would be likely. The limits included for this condition follow FRA's present track safety standards for Class 6 track.

Section 243.323 Rail Joints and Torch Cut Rails

FRA's proposal concerning rail joints and torch cut rails differs from the Petition. FOX stated in its petition that the requirements pertaining to rail joints found in Track Subpart G were not included in the Petition because they would not be utilized at all on the Railroad in Florida. As FRA understands it, the French TGV practice does not permit rail joints and so FOX would also not permit them on the system in Florida. However, FRA believes that it is essential to include minimum Federal standards for the condition of joint bars, because joint bar failures or disturbances can quickly lead to train accidents or incidents. If the operating and maintenance practices employed by FOX do not permit unsafe joint bar conditions to develop, the Railroad will have no difficulty in maintaining compliance with this proposal.

In addition, the Petition would permit torch cutting, even in routine welding tasks on the Railroad's track. Based on its own expertise and consistent with the high speed task group's recommendations in Track Subpart G, FRA permits torch cutting rails only in emergency situations. Current U.S. practice utilizes torch cutting only where needed for emergency repairs. It is generally believed in this country that technology has advanced to the point that cutting rail with the available variety of rail saws is more efficient than torch cutting.

Torch cuts present safety hazards in the railroad environment. In 1983, following its investigation of an Amtrak derailment in Texas where torch cut rails became an issue, the National Transportation Safety Board (NTSB) recommended that railroads remove all torch cut rail and that trains travel at 10 mph over any new torch cuts that were made in emergency situations, or as a preparatory step in field welding. It should be noted, however, that the rail involved in the Texas accident had a high alloy content, which tends to increase the rail's resistance to wear, but decreases the rail's resistance to fracture. Torch cutting is no longer used in the U.S. industry because analysis reveals that torch cut rails have a greater tendency to develop fractures, and FRA believes that FOX should not utilize torch cutting on its system. FRA's proposal lists emergency or temporary conditions in which torch cutting may be used, but otherwise prohibits the practice.

Section 243.325 Turnouts and Crossovers, Generally

FRA's proposal is identical to the Petition and Track Subpart G. The members of the high speed task group discussed many types of turnout designs and fastenings, which may be in use today or developed in the future. The group believed, and FRA adopts in this proposal, that the best way to address turnouts would be to require each railroad to prepare a detailed, comprehensive Guidebook on the inspection and maintenance for all turnouts and crossovers. The book would contain, at a minimum, inspection frequency, inspection methodology, limiting measurement values for all components subject to wear or requiring adjustment, and maintenance techniques. The Guidebook must be submitted to the FRA and FRA will monitor the Railroad's compliance with the identified procedures. FRA believes that most major railroads currently provide their employees with instructions for the maintenance of turnouts, and this requirement in the NPRM creates minimal additional paperwork for the Railroad.

Section 243.329 Derails

This section is identical to Track Subpart G and the Petition. It is absolutely critical to safe railroad operations to prevent equipment standing on side tracks from fouling the main track. Each derail must be operable, clearly visible, and linked to the Railroad's signal system.

Section 243.331 Track Geometry Measurement Systems

This section of FRA's proposal varies from the Petition. As discussed in the section-by-section analysis for § 243.309, FRA developed geometry tables for this proposal that differ from the tables set forth in Subpart G and the FOX submission. This is due to the fact that the Mauzin car, used by the French and probably by FOX, measures track characteristics in different ways than track geometry measurement systems in this country. Therefore, the table set forth in § 243.309, which lists parameters for alignment, surface, gage, gage variation, cant, and warp, is acceptable, so long as the Railroad measures these parameters with a Mauzin, or Track Geometry Measurement System, car. Use of FRA's T–10 geometry car, which measures geometry in a different manner than the Mauzin car used on the French TGV, would not correspond accurately to the geometry table set forth in § 243.309. Therefore, FRA's specific requirements for the Railroad's Track Geometry Measurement System included in this section describe a Mauzin car. FRA believes that the table in § 243.309 and use of the Mauzin car will provide a level of safety equivalent to that of Subpart G. If FOX ultimately elects to substitute another geometry vehicle with different properties than those identified in the Mauzin car, the Railroad must comport with the equivalent requirements set forth in Track Subpart G.

Track Subpart G contains a requirement for a geometry inspection once per month, with at least 15 days between inspections. The Petition proposed geometry vehicle inspections at least twice within 200 calendar days, with at least 30 days between inspections, or nearly once every three months. In this NPRM, FRA proposes to make this requirement twice within 180 days, with at least 30 days between inspections, so that the requirement is clearly done once every three months. In its determination of the recommended frequency of geometry car inspections, the RSAC high speed task group considered the possibility of mixed passenger-freight service, which would likely accelerate the rate of track degradation. FRA concludes that, in view of the light loads and dedicated traffic on the proposed FOX line, an inspection with a geometry car once every three months sufficiently provides for the necessary monitoring of geometry parameters. If the Railroad discovers exceptions to the geometry limits, the Railroad must field verify the exceptions and institute remedial action within two days.

This section also requires the Railroad to maintain continuous plots of all measured track geometry parameters and exception reports that contain a systematic listing of all track geometry conditions that constitute an exception to the speed limits over the track segments surveyed, for at least one year.

Section 243.333 Track/Vehicle Performance Measurement Systems.

This section proposes requirements for the periodic measurement of carbody and truck accelerations using a Track Acceleration Measurement System (TAMS), which differs from the FOX Petition. The Petition and Track Subpart G differ in a variety of ways concerning track/vehicle measurement systems. FOX did not incorporate many of the Track Subpart G proposals with respect to condemning safety limits and corresponding remedial actions. FOX did not include a requirement for the measurement of wheel/rail forces, beyond the qualification phase of the project. Track Subpart G, on the other hand, proposes an annual requirement for the measurement of wheel/rail forces to verify that the track/vehicle system remains within safe performance limits throughout the life of the system. Also, Track Subpart G requires immediate action when minimum performance limits are exceeded, regardless of speed, while FOX proposed to set different safety limits for various speed ranges. In the Petition, FOX states that "Each exception must lead to an immediate slow order on the corresponding portion of track" but later states that "within two days after the inspection, field verify and institute remedial action for all recorded exceptions." Track Subpart G also includes filtering characteristics that are not apparent in the Petition's discussion of the TAMS car and proposed safety thresholds. Finally, the Petition uses "zero-to-peak" thresholds and the Track Subpart G uses "peak-to-peak." Under most circumstances, an interpretation of an accelerometer trace using a "zero-to-peak" measurement results in approximately one-half of the magnitude of a "peak-to-peak" threshold. In the development of the proposed high speed standards contained in Track Subpart G, the high speed experts recommended using the peak-to-peak criterion.

FRA believes that an immediate speed reduction must be imposed when vehicle/track performance limits are exceeded. The intent of track and carbody acceleration limits is to limit vehicle response, regardless of track condition and vehicle speed. FRA proposes to adopt the approach contained in Track Subpart G for vehicle/track interaction safety limits. The measurement of wheel/rail forces and accelerations is required. Many experts advise that derailments may be imminent if these limits are exceeded. An immediate speed reduction must be imposed until the Railroad determines the cause of the adverse vehicle/track interaction and corrects the condition.

The Petition suggests, and FRA proposes, using the term "TAMS" to describe a vehicle with capabilities such as the "Melusine" car in France to measure accelerations. Although this term is not used in Track Subpart G, the frequency of inspection recommended in Track Subpart G is approximately the same as the Petition. For speeds over 125 mph, Track Subpart G requires the measurement of accelerations at a frequency of at least twice within sixty days, with not less than fifteen days between inspections. FOX proposed an inspection frequency of at least twice within 45 calendar days, with not less than seven days between inspections. FRA has adopted the frequency set forth in the Petition.

To summarize, FRA's proposal differs from the Petition in several significant ways. The Petition would require the measurement of wheel/rail forces once during system qualification, and would not require periodic re-measurement of wheel/rail forces. FRA believes renewed, periodic measurements are necessary to ensure safety. The Petition does incorporate a requirement for the periodic measurement of accelerations, but uses threshold descriptors, thresholds, and remedial actions that differ from FRA's view and proposal. These measurement systems and remedial measures are important to demonstrate continued vehicle/track safety performance—the cornerstone of high speed track standards.

Section 243.335 Wheel/rail Force Measurement System.

In this section, FRA proposes that FOX conduct bi-annual wheel/rail force measurements and that FOX equipment not exceed limits established in the vehicle/track interaction chart in this section. The Petition did not contain a similar section or requirement.

The FOX petition and Track Subpart G would require a qualification procedure for vehicles on the high speed track, using instrumented wheelsets. The high speed task group concluded that the interaction of the high speed vehicle on the track must not exceed wheel/rail force, truck side

accelerometer, and carbody accelerometer performance thresholds during the qualification phase and during the life of the railroad. The Petition includes a requirement for the use of instrumented wheelsets to measure wheel/rail forces during the system qualification phase, but does not include a requirement for a periodic re-measurement of wheel/rail forces during the life of the system because "forces are proportional to accelerations," which are monitored every two weeks. FRA believes that wheel/rail force measurements, and carbody and truckside accelerometer measurements relate to different safety concerns and so, the measurements are not appropriate substitutes for one another.

Vehicle/track interaction has critical consequences in railroad safety, and so establishing safe parameters and developing a measurement system to adhere to those parameters is highly important for any track safety program. The high speed task group considered several hazardous and unacceptable vehicle/track interaction events that are well-known in railroad engineering, and for the most part, occur on existing high speed operations. These unsafe events include wheel climb, rail rollover, vehicle overturning, gage widening, and track panel shift. Truck hunting is a dynamic phenomenon that results from unstable motion of railroad wheelsets, and may result in wheel climb or other unsafe events.

FRA's proposed vehicle/track interaction chart includes provisions for truck hunting and carbody accelerometers. Truck hunting is typically measured by truck-mounted lateral accelerometers. Carbody accelerations measurements address different concerns. Large carbody accelerations can be hazardous to standing or walking passengers; large vertical accelerations may cause passengers to fall. The primary and secondary suspension characteristics of a particular car and truck spacing influence the natural frequency of vertical motion and, therefore, the wavelength of profile variations become of interest. Carbody vertical acceleration is also an indicator of variation in vertical force applied to the rails.

FRA believes that an annual or biannual inspection using instrumented wheelsets must be considered as part of a high speed inspection strategy that includes visual inspections, pilot (sweeper) train, geometry car inspections, periodic carbody and truck-mounted accelerometer measurements, and other inspections deemed necessary. All of these requirements are largely dependent on track and vehicle degradation. Paragraph (a) of this section requires FOX to complete a wheel/rail force measurement system inspection biannually, with at least 240 days between each inspection, to ascertain whether the vehicles respond to the existing track within the limit defined. FRA agrees with FOX that its axle loads, minimization of unsprung mass, high quality track, and low cant deficiency would probably not lead to the sort of track or vehicle degradation that would become hazardous within one year after the Railroad's trainsets meet the pre-revenue qualification phase of the system. However, the track or vehicle degradation rate is an unknown and FRA, therefore, believes that an inspection frequency of once every two years, as required by paragraph (b) in this section, is a prudent requirement.

This section requires the Railroad to maintain for one year after a qualifying track acceleration measurement is done, a copy of the plot and exception printout for the track segment involved, the date the inspection was made, the track segment involved, and the remedial action taken, for all listed exceptions. The Railroad must maintain a list of locations where the limits are exceeded.

Section 243.337 Daily Inspection Trainset

In this section, FRA proposes a daily inspection trainset that must be operated each morning over the Railroad's entire system, prior to revenue service. FRA also proposes that the inspection train be equipped with on-board truck side and carbody accelerometers to measure track conditions, and that the Railroad develop procedures to notify track personnel when track conditions warrant attention. In its petition, FOX described the French TGV practice of operating a daily sweep train to visually inspect the track and ensure that the right-of-way is free from obstacles, and included such a requirement for Florida. FRA agrees that this is a valuable safety measure. However, FRA added the requirements for minimal instrumentation on the daily inspection train in order to more closely reflect the expertise of the high speed task group and the Tier II passenger equipment group.

Track Subpart G requires accelerometers in at "least two cars in every train." At the latter stages of the development of Track Subpart G, the high speed task group met with a group of experts working on the Tier II equipment standards. This group consisted of members from labor, the rail industry, and private associations. Many members from both groups concluded that requirements for carbody accelerometers on every train would generate voluminous data that would not be necessary for safety. Members of both groups noted that a requirement for lateral truck-mounted accelerometers already existed in the Tier II passenger equipment standards.

Instead, many members of both groups felt that accelerometer measurements could better be addressed with a requirement for lateral and vertical carbody accelerometers and lateral truckside accelerometers on at least one train each day. Truck and carbody accelerometers on one train per day would detect settlement or other geometry conditions, such as culvert settlement or an anomaly inadvertently introduced by a maintenance crew, before they became serious. Several of the members believed that safety would be enhanced if track personnel were dispatched to investigate the track whenever the accelerometers indicated possible track concerns. These members felt that these conditions could be identified and corrected before the next regularly scheduled periodic ride quality inspection with an instrumented car, and concluded that the threshold to trigger notification and the procedures for the notification of the track personnel should be left up to the high speed railroad.

The requirement here for the daily monitoring of accelerations was included in order to provide an instrumented "rough track report." It is normal practice in this country for train engineers or crews who sense an irregularity in the track, to communicate their concerns to track personnel who then perform a follow-up inspection. The accelerometers on the daily inspection train would remove the subjectivity from this process, and would more accurately identify areas that should be investigated by track personnel. However, because of time limitations, the high speed task group was ultimately unable to change the requirement from accelerometers on every train to accelerometers on one train per day.

FOX believes that a requirement for daily carbody accelerometer measurements is unnecessary because the TGV equipment comes equipped with truck-side accelerometers on each power and trailer truck, and the truck-side accelerometers would identify the defect as being track related. However, carbody accelerometers perform an entirely different function than truck-side accelerometers. FOX recognizes this distinction by recommending an inspection with carbody and truckside inspections once every two weeks.

FRA believes that a requirement for accelerometers on the daily inspection train would enhance safety at minimal cost and so, includes the requirement in the NPRM. However, FRA invites comment on this section, as on all others in the NPRM.

Section 243.339 Inspection of Rail in Service

This section proposes that the Railroad develop and implement written inspection procedures for internal defects, joint bars, and defective rails. The section includes a chart of specific defects with corresponding remedial measures, and requires the Railroad to adhere to appropriate remedial actions.

In this NPRM, FRA replaced the section in the FOX petition entitled "Defective Rails" with this section, with substantial change. The Petition stated that the frequency of inspection for rail defects should be once per year in view of French TGV practice and the fact that the track will be newly constructed in Florida. Track Subpart G proposes an inspection frequency of twice per year for high speed rail in the general system, which is higher than the annual inspection required in the current track standards for lower speed operations.

In view of the load characteristics proposed for the FOX project, the occurrence of rail flaws are not expected to be high. In addition, since rail flaw growth is largely dependent on accumulated tonnage, the growth of flaws is expected to be minimal. However, there are concerns relating to new rail due to possible weld defects that may occur in the factory or field, and the potential for damage to the rail during installation. In addition to the requirements for the initial inspection of new rail at the mill and an inspection of welds required by proposed § 243.341 discussed below, FRA's proposal includes a requirement in § 243.339 for the Railroad to conduct a continuous inspection of all rail within ninety days after the initiation of revenue service. This inspection will verify that the mill inspection and plant weld inspections accurately located any rail flaws present in the new rail and will confirm that the rail was not damaged during installation. FRA concurs with the language of the Petition, in which it is determined that a rail inspection frequency of once each year is appropriate, considering the absence of freight traffic and the presence of relatively light axle loads on the proposed FOX lines.

FOX proposed a remedial action table for rail flaws based on French TGV practice and somewhat vague standards that "take into account the quality of the track to be restored once the defect is fixed." The defect table in the Petition largely does not categorize all defects in terms of the size of the defect, and so does not include corresponding remedial actions that are based on the size or severity of the defect. For example, the FOX proposal does not specify different remedial actions for transverse defects of varying sizes.

FRA believes it would be unwise to deviate from the rail flaw procedures that developed in this country to control rail-caused accidents. They are included in Track Subpart G and are identical for high and low speed track. These requirements are the result of railroad experience in this country, rail flaw research, and recommendations from the NTSB.

FRA does not anticipate that adoption of this rail flaw table and with accompanying remedial actions will negatively impact FOX maintenance policies. Given the axle loads associated with the FOX system, the rail flaws of the size specified in the table may never occur in Florida, and so FOX would have no difficulty in complying with this section. However, if these serious rail flaws do arise, this section will secure the safety of passengers and employees.

Section 243.341 Initial Inspection of New Rail and Welds

This section sets forth minimum standards for the Railroad's in-service rail and weld inspections, mill inspections, welding plant inspections, and field weld inspections. FRA has made a minor change in this section from what was set forth in the Petition, by correcting an error in the rule text that would have permitted an in-service inspection, conducted ninety days after the rail is installed, for a mill or welding plant inspection. FRA believes that FOX intends to conduct a mill and welding plant inspection prior to installation, which is common practice on US railroads. Rail defects discovered in the course of these inspections must be handled in accordance with the actions set forth in § 243.339 of the proposal.

Section 243.343 Visual Inspections

This section requires the Railroad to conduct a visual track inspection once each seven days by riding in a vehicle at a speed that facilitates visual inspection of the track structure. This section is not consistent with the Petition, which proposed a visual inspection once each six weeks.

FOX proposed a six-week visual inspection based on French TGV practice. However, the practice in this country historically has been to conduct a visual inspection at least twice each week on all passenger lines. For example, Amtrak performs walking visual inspections on the Northeast Corridor at a frequency of at least two times per week. Amtrak also conducts automated inspections in a manner similar to the French TGV practice, which includes geometry car and acceleration measurements.

In the lower speed classes of track in the US, present track safety standards require two visual inspections per week on passenger tracks, but do not mandate the use of automated inspections to supplement the visual inspections. Freight railroads also typically inspect main tracks at least twice each week. Many railroad maintenance officials believe that this inspection frequency facilitates early identification of conditions that require maintenance. However, it is also important to note that, while many major railroads use geometry cars, the use of the automated inspection techniques proposed by FOX are generally not used on freight railroads.

Track Subpart G requires two inspections per week for track speeds between 110 mph and 160 mph, and three times per week for speeds between 160 mph and 200 mph. These frequency levels developed through consideration of all available automated and visual inspection methods. Some members of the high speed task group emphasized that state-of-the-art automated inspections techniques enhance, but cannot replace visual inspections. Walking or hi-rail inspections identify certain conditions, such as loose or missing fastenings and blocked culverts, that are not discovered by geometry, acceleration, rail flaw, or other automated equipment. Visual and automated inspections compliment one another, and should both be part of a high speed track safety system.

In support of its position of performing visual inspections at a frequency of once every six weeks, FOX discusses its concern for the hazards inspectors might face along the high speed line. In addition, FOX argues that more frequent visual inspections are unnecessary in view of its total inspection program, which is based on French TGV practices. FOX also asserts the daily "sweeper" train conducts a visual inspection of the track and ensures that the right-of-way is clear.

FRA acknowledges the hazards associated with inspecting high speed track and urges FOX to take every

precaution to ensure the safety of its inspectors. (This NPRM adopts and incorporates safety standards for roadway workers in 49 CFR part 214, which should address these safety concerns if followed properly.) Also, FOX may wish to conduct inspection activities during low traffic periods, and perhaps at night as is done in France. Amtrak routinely accomplished track work during evening hours, and has policies in place to protect inspection crews.

FRA has considered the factors discussed above and believes that a prudent, initial standard would include one weekly visual inspection of the track and turnouts. This is consistent with the visual inspections conducted in Japan on high speed, dedicated lines. However, FRA invites comment on this inspection frequency from safety experts and members of the public. FRA considered, but did not succeed in devising, an objective performance standard for adjusting inspection frequency. Commenters are invited to suggest such a performance standard.

Section 243.345 Special Inspections

This section requires the Railroad to make special track inspections where emergency or extreme events occur that could cause damage to the track structure. This section is consistent with Petition.

Section 243.347 Inspection Records

This section sets forth minimum requirements for treatment of the Railroad's track inspection records. The section is consistent with the Petition and Track Subpart G. However, this proposal contains a noteworthy change from the present track safety standards for records inspections. Paragraph (d) of this section requires the Railroad to record any location where a proper rail inspection cannot be performed because of rail surface conditions. The new language in this section requires a recordkeeping of those instances.

Paragraph (f) of this section also proposes a provision for maintaining and retrieving electronic records of track inspections. The provision permits Railroad to design its own electronic system, so long as the system meets specified criteria to safeguard the integrity and authenticity of each record. The provision also requires that railroads make available paper copies of electronic records when needed by FRA or by railroad track inspectors.

Subpart E—Rolling Stock

Subpart E sets forth minimum safety standards for the design, performance, and maintenance of the FOX rolling stock. For the most part, the Railroad's compliance with the design and performance requirements of this Subpart will be demonstrated by the pre-revenue qualification tests required in Subparts B and G of this proposal. However, FRA will closely monitor the operation of the FOX equipment throughout the life of the system in order to ensure compliance with the equipment inspection, test, and maintenance requirements.

The rolling stock safety standards set forth in the NPRM are very similar to the Petition, and are based on 15 years of safe operating experience in France. As discussed previously in this document, the French design, operation, and maintenance practices have resulted in an exceedingly safe passenger system. FRA proposes standards in this Subpart that will facilitate development of an equally safe system in Florida. It is extremely important to note, as we do throughout this NPRM, that these standards would not be appropriate for any other operation in this country. The standards set forth in this Subpart relate to a specific system with unique safety characteristics. This proposal reflects the combination of many operating features, and if any one feature disappears, all of the standards would have to be reevaluated.

Section 243.401 Clearance Requirements

This subsection requires the rolling stock to be designed to meet all applicable clearance requirements of the Railroad, including the static clearance diagram, the dynamic clearance diagram and the obstacle clearance diagram. Rolling stock clearance of all natural or infrastructure obstacles is a basic safety requirement. Adequate clearance of all obstacles will be demonstrated during the pre-revenue service system qualification tests. At a minimum, the Railroad must make the following diagrams available to FRA upon request: rolling stock static clearance diagram, rolling stock dynamic clearance diagram, and obstacle clearance diagram.

Section 243.403 Structural Strength of Trainset

This section sets forth the structural design or performance requirements for the FOX passenger equipment. This section is patterned after FRA's proposed Tier II Passenger Equipment Safety Standards, which were published on September 23, 1997 (62 FR 49728). The Tier II passenger proposals are based equipment that would travel at high speed (125 to 150 mph) in existing North American rail corridors, which may include grade crossings used by heavy highway vehicles, and mixed rail traffic that includes heavy freight or commuter trains.

FRA recognizes that existing North American corridors which contain grade crossings or mixed freight-commuter rail operations may be less conducive to safe operation of passenger trains at speeds greater than 150 mph. Due to the high degree of kinetic energy that must be dissipated in the event of a collision or derailment, structural mitigation of the effects of the accident are very difficult to achieve in high speed passenger equipment. Therefore, combining very high speed operations with slow, heavy rail traffic, or heavy highway vehicles at grade crossings, produces a relatively high risk of collision and passenger injury. As discussed previously, to counter these risks, the French TGV system operates on an accident-avoidance, rather than accident-mitigation philosophy. FOX plans to utilize this philosophy in Florida, and the standards that FRA proposes concerning rolling stock reflect this approach to safety.

FRA proposes structural standards for the FOX passenger trainsets that are based on International Union of Railways (UIC) standards for the design of passenger equipment in Europe, and on SNCF specifications that adapt UIC standards to the TGV trainset configuration. The European structural standards result in a lighter trainset, which facilitates travel at high speeds with minimal track forces and lower track degradation.

Paragraph (a) proposes two very important general structural requirements. First, the passenger cars in each trainset must be semi-permanently coupled with articulated trucks between the trailer cars. These trainsets may be uncoupled only in repair facilities, in accordance with the operating procedures set forth in § 243.433. When a derailment occurs at high speed, trains containing individually coupled passenger cars tend to buckle, accordion style, which exposes individual cars to side impacts or rollover. The articulated connection between trailer cars has been shown to be extremely effective in keeping the trainset in-line and upright during derailments, even at high speed. The articulated connection also provides significant anti-climbing resistance between each passenger car.

The second proposed general requirement is essentially an operating requirement with strong structural implications. FRA requires the Railroad to operate every trainset with a power car at each end of the train. FOX proposed to operate in this manner, and FRA believes that these high speed trainsets should not be operated in a push-pull mode. The presence of a power car in the lead maximizes the protection provided for the cab crew and passengers, in the event of a head-on or rear end collision.

Paragraph (b) proposes the structural requirements for power cars. Paragraph (b)(1) lists the basic carbody structural strengths of the power car, which represent European design practice and the UIC standards. Equipment built to these standards provides structural protection for the operator and passengers during low speed train-to-train collisions that might occur in station or yard operations. Also, equipment built to these standards provides structural protection for the operator and passengers during collisions at moderate speeds with highway vehicles. The proposal establishes the magnitude of the force that the power car structure must resist, and how that force must be applied during the testing and analysis that will be done to ensure that the design complies with each safety standard.

Paragraph (b)(2) proposes that each power car be equipped with an anti-penetration wall ahead of the operator's cab. This anti-penetration wall serves the function of a collision post in North American design practice, or of a forward end structure, as proposed in the Tier II passenger equipment NPRM. This anti-penetration wall in the power car cab plays a vital role in protecting personnel and the equipment in a collision with another object. This structure must resist override, prevent the entry of fluids into occupied spaces of the cab, and allow the crash energy management system to function. FRA proposes the following specific design parameters for the anti-penetration wall: resist a longitudinal compressive load of 3000 kN (675,000 lb) at the top of the underframe, without exceeding the ultimate strength of the joint; and resist a longitudinal compressive load of 1500 kN (337,000 lb) applied at a height of 760 mm (30 in) above the top of the underframe, and reacted at the rear of the cab structure, without exceeding the ultimate strength of the structure. FRA also requires that the Railroad verify compliance with these requirements by either linear static analysis or equivalent means.

Paragraph (b)(3) sets forth the crash energy management requirements for the power car. Crash energy management is an equipment design technique used to provide controlled deformation and collapse of designated sections of the unoccupied volumes of a passenger train, to absorb energy that occurs in a collision. This permits collision energy to dissipate before any structural damage occurs to the occupied volumes of the train, and reduces the decelerations experienced by passengers and crew members in a collision. Reduced decelerations mitigate the force of any secondary collision between passengers and objects in the train's interior, such as seats. The French equipment incorporates a crash energy management design that has been demonstrated to be safe and commercially feasible. This is the sort of design that will likely develop on the Amtrak lines in the Northeast Corridor.

FRA proposes that in unoccupied areas, each power car shall be designed to absorb a minimum 4.2 megajoules through controlled structural deformation. This requirement can be met using existing technology and provides an adequate level of safety.

Paragraph (b)(4) proposes a basic longitudinal compressive strength for the power car cab. Specifically, FRA proposes that in occupied areas, each power car must be designed to resist, without permanent deformation of the sidesill, contrail, and side post structural members, a longitudinal compressive load of 3560 kN (800,000 lb) when applied uniformly at the front of the cab between the underframe and waist level, and reacted at the cross section of the carbody at the back of the cab. This proposed requirement provides a degree of crash refuge or structural shelter to the operator equivalent to that typical of North American design practice.

Paragraph (b)(5) requires each power car to be designed to withstand a uniformly distributed vertical load of 1.3 times its static laden weight, when supported at the truck centers, without permanent deformation. This requirement essentially sets the vertical stiffness of the car body as it is supported between the two trucks.

Paragraph (b)(6) proposes the rollover strength for the FOX power cars. Specifically, power cars must be designed to rest on their sides, uniformly supported at the top (cantrail) and the bottom (sidesill) chords of the side frame with the allowable stress in the main structural members for occupied volumes for this condition limited to one-half yield stress. In addition, power cars must be designed to rest on their roofs, with damage limited to roof sheathing and framing. Deformation of the roof sheathing and framing, to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames, are permitted. The permissible stress in the main structural members for occupied volumes for this condition are one-half yield. These rollover strength requirements are equivalent to the requirements proposed in the Tier II NPRM for passenger cars. Presently, there are no North American standards for rollover strength of locomotives.

Paragraph (c) proposes the structural requirements for trailer cars. Paragraph (c)(1) lists the basic carbody structural strengths of the trailer car. These parameters represent European design practice as reflected in UIC standards. Equipment built to these standards provides structural protection for the passengers during low speed, train-to-train collisions typical of station or yard operations. Equipment built to these standards also provide structural protection for the passengers during collisions at moderate speeds with most highway vehicles. The proposed requirements specify the magnitude of the force that the trailer car structure must resist and how that force is to be applied during the test and analysis done to prove that the design complies with each requirement.

Paragraph (c)(2) requires each trailer car to be designed to withstand a uniformly distributed vertical load of 1.3 times its static laden weight, when supported at the truck centers, without permanent deformation. This requirement essentially sets the vertical stiffness of the car body as it is supported between the two trucks.

Paragraph (c)(3) proposes that the occupied volumes of trailer cars be designed to resist, without permanent deformation of the sidesill, cantrail, and side post structural members, a longitudinal compressive load of 3560 kN (800,000 lb.) when applied as distributed over the carbody cross section at the seated passenger compartment. This requirement is equivalent to North American practice for passenger coach design.

Paragraph (c)(4) proposes that trailer cars possess the same rollover strength as power cars. This rollover strength requirement is equivalent to the requirements set forth in the Tier II standards of FRA's Passenger Equipment Safety Standards NPRM for passenger coaches.

Section 243.405 Trailer Car Interior

This section contains proposed requirements for interior fittings and surfaces in passenger trailer cars. Research indicates that passengers striking interior objects in trains, principally during collisions and

derailments, account for 57% of the serious injuries and 7% of the fatalities on passenger trains.[1] Once survivable space is ensured by basic vehicle structural strength and crash energy management, the design of the interior becomes an important factor in preventing or mitigating serious injury. To reduce the injury and fatality numbers, FRA proposes that passenger seats and other interior fittings be securely attached to the car body; interior fittings be recessed or flush-mounted; overhead storage racks provide restraint for stowed articles; and sharp edges be padded or otherwise avoided.

FRA and NTSB investigations of passenger train accidents have revealed that luggage, seats, and other interior objects that break or loosen during an accident often cause passenger and crew injuries. During a collision, the greatest decelerations, and thus the likeliest forces to cause potential failure of interior fitting attachment points, occur in the longitudinal direction, *i.e.*, in the direction parallel to the normal direction of train travel. Current North American design practice consists of seats and other interior fittings that withstand the forces due to accelerations of 6g in the longitudinal direction, 3g in the vertical direction, and 3g in the lateral direction. Due to injuries caused by broken seats and other loose fixtures, FRA believes that the current design practice is inadequate. Accordingly, FRA's NPRM for Passenger Equipment Safety Standards proposed that each seat in a passenger car remain firmly attached to the car body when subjected to individually applied accelerations of 4g in the vertical direction and 4g in the lateral direction acting on the deadweight of the seat or seats, if a tandem unit. In addition, the attachment must resist a longitudinal inertial force of 8g acting on the mass of the seat, plus the impact force of the mass of a 95th-percentile male occupant(s) being decelerated from a relative speed of 25 mph and striking the seat from behind. By resisting the force of an occupant striking the seat from behind, a potential domino effect of seats breaking away from their attachments is avoided.

In addition, the NPRM for Passenger Equipment Safety Standards proposes that overhead storage racks provide longitudinal and lateral restraint for stowed articles to minimize the potential for these objects to come loose and injure train occupants. Further, to prevent overhead storage racks from breaking away from their attachment points to the carbody, the racks must have an ultimate strength capable of resisting individually applied accelerations of 8g longitudinally, 4g vertically, and 4g laterally acting on the mass of the luggage stowed.

Paragraph (a)(1) proposes that Fox trainset seat backs be designed to withstand, with deflection and permanent deformation allowed, but without total failure, the load due to a 95th-percentile male seat occupant accelerated with the following pulse: 0 to 6g in 0.05 s; 6g for 0.125 s; and 6 to 0g in 0.05 s.

Paragraph (a)(2) proposes that the ultimate strength of a seat attachment to the trailer carbody be sufficient to withstand the following individually-applied accelerations acting on the mass of the seat, plus the mass of a seat occupant who is a 95th-percentile male: 6 g, longitudinal; 2 g, lateral; and 2 g, vertical.

Paragraph (b)(1) proposes that other interior fittings be attached to the trailer carbody with sufficient strength to withstand the following individually-applied accelerations acting on the mass of the fitting: 3 g, longitudinal; 2 g, lateral; and 2 g, vertical.

Paragraph (b)(2) requires, to the extent possible, that interior fittings be recessed or flush-mounted, and corners and sharp edges avoided altogether or padded to mitigate the consequences of impact with such surfaces.

Paragraph (c) proposes that luggage stowage compartments include a means to restrain luggage, and have sufficient strength to resist loads due to the following individually-applied accelerations acting on the mass of the luggage that the compartment is designed to accommodate: 3 g, longitudinal; 2 g, lateral; and 2 g, vertical.

These seat attachment, interior fitting attachment, and luggage compartment strengths that FRA proposes for the FOX system are lower than those set forth in FRA's Passenger Equipment Safety Standards for Tier II equipment. Also, FRA is not proposing for FOX enclosed overhead luggage racks, as are proposed for the generic Tier II equipment. FRA believes that the standards we propose here for FOX provide an equivalent level of safety for passengers and employees on the FOX equipment for several reasons.

First, the Railroad's operation is based on principles of accident-avoidance. As discussed previously, this safety philosophy will be implemented on FOX through a variety of operating features, including the dedicated right-of-way, the absence of grade crossings, low train density, and an advanced signaling system. In combination, these characteristics of the system provide a very high level of safety performance and a very low risk of an accident.

Second, FOX could not find any record of passenger injury caused by loose seats, loose interior fixtures or fallen luggage on TGV trainsets, including the high speed derailments. Given the high number of passenger-miles covered by the TGV in France since 1981, this fact tends to indicate that such injuries are unlikely.

Third, the trainset provides several alternate stowage areas so that all luggage need not be stored on the overhead racks. The TGV trainsets will have two locations, at the first and last passenger units, where heavy or large pieces of baggage may be checked into a dedicated compartment for stowage. Also, two of the passenger units will include stowage racks for large carry-on luggage. Finally, stowage will also be available throughout the trainset between back-to-back seats. The overhead racks would typically be used for smaller and lighter luggage, which is less likely to cause injury in an accident.

Fourth, the TGV trainsets inherently provide excellent ride quality at high speed due to the articulated design, the quality and geometry of the track, the suspension characteristics, and the large curve radii. The articulated design eliminates in-train forces due to slack; the quality and geometry of the track provide smooth high speed operation; and the large curve radii facilitates high speed travel through curves at low cant deficiency. These combined factors result in very low longitudinal, lateral, and vertical forces on trainsets throughout the speed range.

Finally, the estimated increase in weight, per trailer car, of nearly 456 kg (1,000 lb.) that would be required to meet the more stringent, generic standards would be detrimental to the operational design limits for this high speed transportation system.

Section 243.407 Glazing

Paragraph (a) proposes the glazing impact and ballistic requirements for the trainset, which are based on French TGV standards. The end facing (engineer's front windshield) must resist an energy of 30 kJ at 20° C (72° F) and 25 kJ at 0° C (32° F). As a comparison, the proposed Tier II equipment standards would require the end facing glazing to resist 12.2 kJ of energy for operation at 240 kph (150 mph) and 21.7 kJ for 322 kph (200 mph) operation. These glazing standards are more stringent than those proposed for Tier II equipment, and have proven effective in service in France.

Paragraph (b) requires interior glazing to meet the minimum requirements of AS1 type laminated glass, as defined in American National Standard "Safety Code for Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," ASA Standard Z26.1–1966. This requirement alleviates the need for interior glazing to meet the stringent impact resistance requirements placed on exterior glazing, but ensures that the glazing will shatter in a safe manner in the event of an accident, much like automotive glazing.

Paragraph (c) proposes that the glazing frame will hold glazing in place against all forces that are generated in the tests required by this proposal.

Section 243.409 Brake System

Paragraph (a) requires the FOX brake system to be capable of stopping trainsets with a service application of the brakes from its maximum authorized operating speed, within the signal spacing that exists on the track. This proposed requirement is the fundamental performance standard for any train brake system. This section merely codifies a requirement which is current industry practice, and is the basis for safe train operations in the U.S. Paragraph (a) also defines the test conditions for braking under low adhesion levels as defined in UIC leaflet 541.05. This standard requires a specific quantity of detergent to be sprayed on the rails during the braking test. In addition, paragraph (a) requires the flow rate, defined by UIC 541.05, to be doubled at speeds in excess of 180 km/h (112 mph). This meets the French TGV requirement to minimize the attainable adhesion level during a high speed test, in order to ensure a high margin of safety for high speed braking.

Paragraph (b) proposes that the braking on each truck shall be independently controlled by the brake pipe. Unlike conventional North American brake systems which have a brake manifold on each car, the FOX trainset braking system has a separate manifold for each truck. The brakes are applied through a brake pipe pressure reduction, controlled by the engineer's brake valve. A uniform distribution of the pressure reduction throughout the train is enhanced by an electro-pneumatic control. An electric trainline signal is used to activate an electro-pneumatic valve on the brake manifold for each truck, which provides a quick and uniform control of the brake pipe pressure. This arrangement also minimizes the operational effects of a failure of a brake manifold, in that only one truck in the consist is inoperative if a brake manifold has failed or has cut out.

Paragraph (c) proposes to require that the electric brake be completely independent on each powered truck and shall operate with the loss of the overhead power supply. The kinetic energy of a train, and hence the energy that must be dissipated in stopping a train, is proportional to its mass and the square of its speed. Therefore, there is a radical increase in energy to be dissipated for a very high speed train, compared to that required for a typical North American train. As an example, the energy that must be dissipated to stop the Railroad's trainset (1–8–1; or one power car, eight trailer cars, and one power car) from 322 km/h (200 mph), is about 1.7×10^8 kJ (1.3 billion ft-lb). To put this in perspective, this is approximately 3 times the energy required to stop a 1–8–1 Amfleet consist from 161 km/h (100 mph). Unlike conventional North American equipment, very high speed trainsets rely to a great extent on the electric brake. Therefore, paragraph (c) requires the electric brake to be independent on each powered truck and be able to operate if power from the catenary is lost. To achieve this, separate batteries and battery chargers are used for field excitation of the traction motors on each truck. There are two power cars on each FOX trainset, each with two powered trucks; each trainset will have four completely independent electric brakes, which provides for a high level of redundancy and safety.

In addition, paragraph (d) proposes that any failure of the electric brake on any powered truck must be displayed to the train operator. This important safety feature will alert the operator so that s/he can take compensating action to prevent accident or incident.

Paragraph (e) requires the brake system to be designed to prevent thermal damage to wheels or discs. The purpose of this requirement is to ensure that the brake system is designed and operated to prevent dangerous cracks in wheels. Passenger equipment wheels are normally heat treated so that the wheel rim is in compression. This condition forces small cracks that form in the rim to be closed. Heavy tread braking can heat wheels to the point that a stress reversal occurs and the wheel rim is in tension to a certain depth. Rim tension is a dangerous condition because it promotes surface crack growth. In 1994, FRA published an NPRM on power brakes, which proposed a wheel surface temperature limit to prevent this condition. (See 59 FR 47729). Several brake manufacturers and railroads objected to this approach, claiming that the temperature limit was too conservative and did not facilitate the development of new materials that can withstand higher temperatures. Based on these comments and concerns, FRA is proposing a more flexible performance requirement here, rather than a wheel tread surface temperature limit. This is an extremely important safety requirement because a cracked wheel that fails at high speed can have catastrophic consequences. In addition, the proposed requirement will lead to longer wheel life, and so should provide maintenance savings to the Railroad.

Paragraph (f) proposes to require the Railroad to demonstrate, through analysis and test, the maximum safe operating speed of the trainset where no thermal damage occurs to wheels or discs, for various combinations of electric and friction brake failure. The railroad must also demonstrate that no thermal damage results to the wheels or discs under conditions resulting in maximum friction braking effort being exerted. Unlike conventional North American passenger trains which may vary in weight, length and braking capability, FOX will use fixed consists. This significantly simplifies the task of determining the braking characteristics for various modes of degraded braking. Demonstrating that the requirements of paragraph (e) have been met will be an important objective of the pre-revenue service system qualification tests.

Paragraph (f) also requires the Railroad to develop a matrix that lists a variety and combination of brake failures and corresponding safe speeds that must be followed in the event of brake failures. This matrix must be completed in conjunction with the Railroad's system safety plan analysis, and must be displayed prominently in each power car. This process is employed by the French TGV to assess accurately appropriate braking distances and train speed for each route on the TGV line. This paragraph requires FOX to complete this analysis for the entire right-of-way in Florida, and to adhere to the train speeds that are determined to be safe for all potential brake failures.

Paragraph (g) requires that when a failure of the electric or friction portion of the brake occurs en route, the trainset must proceed at the speed determined appropriate by the matrix prepared in accordance with paragraph (f), and confirmed by the pre-revenue service system qualification tests required by § 243.21 and Subpart G of this proposed rule. Also, the engineer must notify central traffic control of any combination of brake failure that

[1] "Rail Safety/Equipment Crashworthiness." M. J. Reiley, R. H. Jines, & A. E. Tanner. (FRA/ORD–77/73, Vol. I, July 1978)."

requires a speed restriction. On the FOX system, these speed limitations will be automatically enforced by the signal system.

In paragraph (h), FRA proposes that the trainset be equipped with an emergency application feature that produces an irretrievable stop, using a brake rate consistent with prevailing adhesion, passenger safety, and brake system thermal capacity. In addition, an emergency application shall be available at any time, and a means to apply the emergency brake must be provided at two locations in each trainset that are accessible to the train crew. This paragraph merely codifies current industry practice and ensures that passenger equipment will continue to be designed with an emergency brake application feature. In FRA's 1994 NPRM on power brakes, FRA proposed a requirement that all trains be equipped with an emergency application feature capable of increasing the train's deceleration rate a minimum of 15 percent. See 59 FR 47729. Comments received indicated that passenger brake equipment should provide a deceleration rate with a full service application that is close to the emergency brake rate, and that the proposed requirement would require lowering full service brake rates, which would compromise safety and reduce train speeds. Based on these comments, FRA proposes the current requirement, which is in accordance with suggestions made by several U.S. passenger railroads.

Paragraph (i) proposes that FOX trainsets be designed so that an inspector would not be on, under, or between components of the equipment in order to observe brake actuation or release. The proposal grants the Railroad flexibility to use a reliable indicator in place of direct observation of the brake application or piston travel. The current design of many passenger car brake systems make direct and safe observation extremely difficult. FRA wishes to avoid this and the employee injuries that may result. Brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years. Although indicators do not provide 100 percent certainty that train brakes are effective, FRA believes that they provide a high degree of assurance and are preferable to placing an inspector in a dangerous position.

Paragraph (j) requires the trainset brake design to permit a disabled train's pneumatic brakes to be controlled by a rescue locomotive through brake pipe control alone. This feature will facilitate easy and safe removal of disabled trainsets to an appropriate repair shop.

Paragraph (k) proposes that the Fox trainset be equipped with a hand or parking brake that can be set and released manually and can hold the equipment on the maximum grade anticipated by the operating railroad. A hand or parking brake is an important safety feature, which prevents parked equipment from rolling or runaway. In the 1994 NPRM on power brakes, FRA proposed requiring a hand brake on cars and locomotives. See 59 FR 47729. FRA received several comments suggesting that the term "parking brake" be added to the requirement, because that is the term used in many passenger operations. Based on those suggestions, FRA has added the term in this proposal. This requirement differs from typical North American practice, which calls for a hand brake on each car. FOX trainsets are a fixed consist that can not be uncoupled in the field, and so this proposal treats the trainset as a single vehicle.

Paragraph (l) proposes an independent failure detection system to compare brake commands with brake system output to determine if a failure has occurred. The failure detection system shall report brake system failures to the automated train monitoring system. This requirement ties the brake system to the automatic monitoring system, as required by § 243.425(a) discussed below. Also, this important safety feature will alert the operator to potential brake system problems so that timely compensating action.

Paragraph (m) requires that each truck of the trainset be equipped with a wheelslide system designed to automatically adjust the braking force on each wheel to prevent axle-locking during braking. In the event of failure of a truck's wheelslide system, control will be automatically provided by the wheelslide system of an adjacent truck. This redundancy is necessary, because at very high speeds, the available adhesion between the wheel and the rail is lower than exists at slower, conventional speeds. This factor increases the possibility of wheelslide during braking at high speeds. The FOX trainset has a separate and independent microprocessor to control wheelslide on each truck. If a microprocessor fails, an adjacent microprocessor takes over wheelslide control for the truck with the inoperative microprocessor. The trainset is also equipped with a system that detects non-rotating axles and removes pressure from the brake cylinders until rotation resumes. Paragraph (m) also proposes that a visual and/or audible alarm be provided in the cab of the controlling power car if a blocked axle is detected.

Section 243.411 Truck and Suspension System

This section contains the proposed requirements for trucks and suspension systems. Truck and suspension system performance are crucial to the safe operation of high speed passenger equipment. The suspension system requirements proposed in this section were also used for the successful demonstrations of the X–2000 and the ICE trainsets on the Northeast Corridor at speeds up to 135 mph. These proposed requirements are also likely to be part of the suspension system performance Amtrak's passenger future equipment.

Paragraph (a)(1) requires the truck-to-car-body attachment on the FOX trainset to resist, without failure, a force of 250,000 pounds acting in any horizontal direction. The requirement for the attachment to resist a horizontal force is intended to allow the truck to act as an anti-climbing device during a collision. With the truck attached to the car body, the truck of an overriding rail vehicle is likely to be caught by the underframe of the overridden rail vehicle, thus arresting the override. The parameter selected represents the current North American design practice, which has proven effective in preventing horizontal shear of trucks from car bodies.

Paragraph (a)(2) requires each component of the truck must to remain attached to the truck when a force equivalent to 2g acting on the mass of the component is exerted in any direction on that component. Paragraph (a)(1) is intended to keep the truck attached to the car body, and paragraph (a)(2) is intended to keep truck components attached to the truck.

To ensure safe, stable performance and ride quality, paragraph (b) requires suspension systems to be designed to prevent wheel climb, wheel lift, rail rollover, rail shift, and to prevent vehicles from overturning. These requirements must be met in all operating environments, and under all track and loading conditions as determined by the operating railroad. In addition, these requirements must be met under all track speeds and conditions, consistent with the requirements of Subpart D, up to the maximum operating speed and maximum cant deficiency of the equipment. These broad suspension system performance requirements address the operation of equipment at both high speed over well maintained track and at low speed over lower

classes of track. Suspension system performance requirements are needed at both high and low speeds, in order to prevent derailments while negotiating curves. Compliance with paragraph (b) must be demonstrated during the Railroad's pre-revenue service system qualification testing of the equipment as described in Subpart G.

Paragraph (c) requires the steady-state lateral acceleration of passenger cars to be less than 0.1g, as measured parallel to the car floor inside the passenger compartment, under all operating conditions. Passenger cars must not operate when the steady-state lateral acceleration is 0.1g or greater. FRA originally considered limiting the cant deficiency to effect this requirement, but members of the RSAC track working group concluded that this steady-state lateral acceleration requirement would ensure safe operation.

Paragraph (d) requires each truck to be equipped with a permanently installed lateral accelerometer mounted on the truck frame. If hunting oscillations are detected, the train monitoring system shall provide an alarm to the locomotive engineer and the train shall be slowed by the locomotive engineer to a speed of 8 km/h (5 mph) less than the speed at which hunting oscillations stopped. Also, this requirement must be included in the Railroad's operating rules.

Paragraph (e) provides ride vibration, or quality, limits for vertical accelerations, lateral accelerations, and the combination of lateral and vertical accelerations. These limits must be met while the equipment is traveling at the maximum operating speed over its intended route during the qualification phase of the system. The limiting parameters and the means to measure them are a result of the consensus recommendations from the RSAC high speed track task group and the passenger equipment working group. These standards have proven effective during the demonstrations of the X–2000 and ICE trainsets here in the U.S. Compliance with ride quality requirements contained in this paragraph must be demonstrated during the pre-revenue service qualification tests required by § 243.113 and Subpart G of this proposal. One of the most important objectives of pre-revenue service system qualification testing is to demonstrate that suspension system performance requirements have been met.

Paragraph (f) requires bearing overheat sensors to be provided on-board the equipment, or at reasonable wayside intervals. FRA prefers sensors on-board the equipment, in order to eliminate the risk of a hotbox that develops between wayside locations. However, FRA recognizes that on-board sensors have a history of falsely detecting overheat conditions, which have caused operating difficulties for some passenger railroads.

Section 243.413 Fire Safety

This section contains the fire safety requirements proposed for the FOX system. In 1984, FRA published guidelines recommending testing methods and performance criteria for the flammability, smoke emission, and fire endurance characteristics for categories and functions of materials to be used in the construction of new or rebuilt rail passenger equipment. 49 FR 33076 (Aug. 20, 1984); 49 FR 44582 (Nov. 7, 1984). The guidelines mirrored fire safety guidelines developed by the Federal Transit Administration (formerly known as the Urban Mass Transit Administration).

The intent of the guidelines is to prevent fire ignition and to maximize the time available for passenger evacuation where fire does occur. FRA subsequently reissued the guidelines in 1989 in order to update the recommended testing methods. 54 FR 1837 (Jan. 17, 1989). Testing methods cited in the current FRA guidelines include those of the American Society of Testing and Materials (ASTM) and the Federal Aviation Administration (FAA). In particular, the ASTM and FAA testing methods provide a useful screening device to identify materials that are especially hazardous.

FRA sought comments in the Advance Notice of Proposed Rulemaking (ANPRM) for Passenger Equipment Safety Standards on the need for more thorough fire safety guidelines. 61 FR 30672 (June 17, 1996). FRA noted that fire resistance, detection, and suppression technologies have all advanced since the guidelines were first published. In addition, FRA explained that a trend toward a systems approach to fire safety is evident in most countries with modern rail systems. In response, the National Fire Protection Association (NFPA) commented that perhaps more thorough guidelines are needed, or at least should be evaluated.

Paragraph (a) addresses fire safety by proposing to make FRA's fire safety guidelines mandatory in the construction of FOX trainsets. In addition, the proposed rule would also require that fire safety be furthered through a fire protection plan and program carried out by the railroad. Paragraph (b) proposes that the Railroad require certification from the equipment supplier that combustible materials used in the construction of trainset interiors have been tested by a recognized independent testing laboratory, and that the results comply with the requirements of paragraph (a) of this section.

Paragraphs (c)–(e) link the fire safety analysis portion of the system safety program required by Subpart B to the trainset design requirements. These paragraphs require the Railroad to ensure that good fire protection practice is used during the design and operation of the equipment. These paragraphs require the Railroad to install various detection and suppression equipment where the Railroad's written analysis determines they are required.

Paragraph (f) requires the Railroad to comply with all elements of its written procedures designated as mandatory under Subpart B for the inspection, testing, and maintenance of all fire safety systems and equipment.

Section 243.415 Doors

This section contains the requirements for exterior side doors on FOX trailer cars. These doors are the primary means of egress from the train. During an NTSB investigation of the February 16, 1996, collision between the MARC and Amtrak trains in Silver Spring, Maryland, that agency identified unsafe conditions on MARC's rail cars that had been manufactured by Sumitomo. Concerned that the unsafe conditions identified on these rail cars may exist on other commuter lines subject to FRA oversight, on March 12, 1996, the NTSB recommended that FRA:

> Inspect all commuter rail equipment to determine whether it has: (1) Easily accessible interior emergency quick-release mechanisms adjacent to exterior passageway doors; (2) removable windows or kick panels in interior and exterior passageway doors; and (3) prominently displayed retro-reflective signage marking all interior and exterior emergency exits. If any commuter equipment lacks one or more or these features, take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards. (Class I, Urgent Action) (R–96–7).

The requirements proposed in this section respond to this NTSB recommendation.

Paragraph (a) proposes requirements for powered, exterior side doors. In paragraph (a)(1) FRA proposes that each trailer car have a minimum of four exterior side doors, or the functional equivalent of four side doors, that each permit at least one 95th-percentile male to pass through at a single time. FRA believes that such a requirement is

necessary, at least as an interim measure, so that each passenger car have a sufficient number of exits to allow passengers to quickly exit in an emergency. This requirement would be met by providing two sets of double-wide doors that permit two 95th-percentile males to pass through at the same time. However, FRA invites comment concerning the extent to which the design of the FOX trainsets cannot comply with this proposed section. FRA may modify this proposal based on information provided by FOX or other interested parties. As a long term approach, FRA is investigating an emergency evacuation performance requirement similar to that used in commercial aviation where a sufficient number of emergency exits must be provided to evacuate the maximum passenger load in a specified time for various types of emergency situations.

Paragraph (a)(2) proposes that the status of each powered, exterior door shall be displayed to the crew in the operating power car and if door interlocks are used, the sensors used to detect train motion shall be nominally set to operate at 5 km/h (3 mph). Such a proposal would enable a crew member in the operating cab to determine whether train doors are closed before departure. This capability is well within current technology and complies with the emergency exit requirements proposed in the NPRM for Tier II Passenger Equipment Safety Standards.

In paragraph (a)(3) FRA proposes that powered, exterior doors be powered by the compressed air system or by electricity. If powered by electricity, the doors shall be connected to an emergency back-up power system. The back-up power system should facilitate rapid evacuation through the doors in the event of primary power failure.

Paragraph (a)(4) requires that each powered, exterior door be equipped with a manual override that is: Located adjacent to the door that it controls; capable of opening the door without power from inside and outside the car; and designed and maintained so that a person may access the override device from inside and outside the car, without the use of any tool or other implement. FRA believes this requirement is necessary to ensure that passengers are able to quickly evacuate the train.

Paragraph (a)(5) requires that instructions for manual override be clearly posted in the car interior at door locations. As a result of the MARC/Amtrak accident in Silver Spring, Maryland, the NTSB stated that several train passengers were unaware of the locations of emergency exits, and none knew how to operate them. The NTSB found that the interior emergency window decals were not prominently displayed and that one car had no interior emergency window decals.

Paragraph (a)(6) addresses this concern by requiring a means for emergency responders to access the manual override from outside the car be provided. In addition, instructions for access and use of the handle must be clearly posted outside the car at all door locations. As a result of the Silver Spring accident, the NTSB had found that the exterior emergency decals were often faded or obliterated, and the information on them, when legible, directed emergency responders to another sign at the end of the car for instructions on how to open emergency exits.

Paragraph (a)(7) requires that manual door releases be activated easily. To ensure that most passengers are capable of opening the doors using the manual releases, FRA proposes that they be easily operable by a 5th-percentile female, without the use of any tool to accomplish the manual override, in the event of head-end power loss.

To ensure that manual override devices are easily accessible by passengers, FRA is proposing requirements in paragraph (a)(8) to address covers and screens used to protect such devices from casual or inadvertent use. FRA desires to balance the concern that passengers may unnecessarily exit cars when no emergency is present with the need for passengers to easily access a door-release mechanism in a life-threatening situation. Thus, the Railroad may protect a manual override device used to open a powered, exterior door with a cover or a screen capable of removal by a 5th-percentile female without requiring the use of a tool or other implement. If the method of removing the protective cover or screen entails breaking or shattering it, the cover or screen must be scored, perforated, or otherwise weakened so that a 5th-percentile female can penetrate the cover or screen with a single blow of her fist without injury to her hand.

In paragraph (b), FRA proposes that passenger compartment end doors be equipped with a kick-out panel, pop-out window or other equivalent means of egress in the event the door will not open. The NTSB noted that none of the car doors on the MARC train involved in the Silver Spring, Maryland, accident had removable windows or pop-out emergency escape panels ("kick panels") for use in an emergency.

FRA shares the NTSB's concern about passenger egress in an emergency; however, FRA believes that the NTSB's suggestion to install kick panels is best limited to interior doors to ensure passage through a train in an emergency—and not applied to exterior doors. To the best of FRA's knowledge, the concept of kick panels has not been utilized in North American rail equipment. Installing kick panels below the window levels in exterior doors was evaluated by FRA—with concurrence from the Passenger Equipment Safety Standards Working Groups—as unacceptable for safety reasons. Because passenger railroads have encountered recurring situations in which passengers have inappropriately exited moving trains, leading to death or serious injury, introducing kick panels in exterior doors would create an unacceptable risk of inadvertent use, particularly by children.

Use of kick panels to open passageways through a train has merit. If panels can be made sufficiently large without decreasing the functionality of doors in normal operation, such a feature may facilitate evacuation through the length of the train if exterior side doors are jammed. Evacuation throughout the length of the train is often the safest route of egress in situations such as fires, derailments in multiple track territory, and incidents in third-rail powered commuter service. Accordingly, FRA proposed in the NPRM for Passenger Equipment Safety Standards that Tier II passenger car end doors be equipped with a kick-out panel, pop-out window or other similar means of egress in the event the doors will not open.

Section 243.417 Emergency Equipment

Paragraph (a) proposes that the emergency system requirements given in this section apply to each FOX trailer car. Experience gained during rescues conducted after recent passenger train accidents indicates that emergency lighting systems either did not work or failed after a short time, greatly hindering rescue operations. Paragraph (b) requires FOX trailer cars to be equipped with emergency lighting providing a minimum average illumination level of 55 lux (5.1 ft-candles) at floor level for all potential evacuation routes, and a back-up power feature capable of operation for a minimum of two hours after loss of normal power.

The two-hour time duration for availability of back-up power is based on experience gained during rescue operations for passenger train accidents in remote locations. In such accidents, fully-equipped emergency response forces can take an hour or more to arrive at the site, and additional time is required to deploy and reach people trapped or injured in the train. In addition, the back-up power system must be able to operate in all orientations and after experiencing a shock due to a longitudinal acceleration of 3g and vertical and lateral accelerations of 2g. The shock requirement will ensure that the back-up power system has a reasonable chance of operating after the initial shock caused by a collision or derailment.

Paragraph (c) requires an emergency communication system within the train with back-up power. This safety feature will allow the train crew to provide evacuation and other instructions to passengers. Such a system can help prevent panic that often occurs during emergency situations. FRA is proposing that transmission locations be located throughout the trainset and that the locations be marked with clear instructions for the use of the emergency communication system.

Paragraph (d) proposes that locations of emergency equipment and exits be clearly marked with luminescent material that makes the identity and location of the emergency exit recognizable from a distance equal to the width of the car. This requirement is intended to allow passengers and crew to easily locate emergency equipment and exits, even under poor visibility conditions. The requirement will aid an orderly evacuation of the train in the event of an emergency.

Paragraph (e) contains the proposed requirements for FOX emergency exits. Paragraph (e)(2) requires clear and understandable instructions for the use of emergency exits to be posted at each emergency exit and be visible from a distance of 30 inches. This provision should aid passengers unfamiliar with the operation of emergency exits to operate them and evacuate train quickly.

Paragraph (e)(3) proposes that each trailer car have a minimum of four emergency window exits, arranged in a staggered configuration, or with one located at each end of each side of the trailer car. Each FOX trailer car will be equipped with 4 emergency windows, 2 at each end and one on each side, to comply with this requirement. An emergency window is also located in each FOX trailer car side entrance door to provide emergency access in the event of a blocked door. This configuration complies with the emergency exit requirements proposed in the NPRM for Passenger Equipment Safety Standards.

Paragraph (e)(4) proposes that each trailer car window emergency exit shall have a minimum free opening of 1.6 m (63 in) wide by 0.6 m (24 in) high. This configuration complies with the emergency window exit requirements proposed in the NPRM for Passenger Equipment Safety Standards and is the minimum size that will allow a fully equipped emergency responder to enter the car through the window. The FOX trainsets will have emergency windows much larger than this minimum size.

Paragraph (e)(5) requires that emergency window exits be capable of activating easily. The FOX system trainsets will employ breakable emergency windows, rather than the conventional North American removable type. This will facilitate use of a window-to-carbody seal that will withstand the large pressure variation between passing trainsets, and use of a flush-mounted window seal that will minimize air drag for high speed operations. A small pointed hammer will be located at each end of the passenger compartment, beside each window and door, to break the emergency window. FRA proposes that each emergency window exit shall be easily operable by a 5th-percentile female using this hammer. No other tool or implement may be required for this purpose.

Paragraph (e)(6) proposes that each power car have an emergency roof hatch with a minimum opening of 0.45 m (18 in) by 0.6 m (24 in) and an emergency escape exit in the cab sidewall. Such features should aid in removing passengers and crew members from a vehicle that is either on its side or upright in water. This proposed requirement exceeds the requirements for Tier II equipment proposed in the NPRM on Passenger Equipment Safety Standards.

In paragraph (f) FRA requires the Railroad to have in place a redundant means for the train crew to communicate with the pertinent railroad operations center to summon aid in the event of an emergency situation. These redundant methods may include operating portable radios or cellular telephones. This requirement will ensure that emergency response forces can be quickly summoned in the event of an emergency.

Section 243.419 Operator's Controls and Power Car Layout

FRA believes that power car cab interior features play an important role in safety, because they affect employee response and performance. Given the speed that FOX trainsets will travel, FRA believes it would be appropriate to establish minimum standards for the cab layout, in order to maximize employee cab performance. The proposed requirements set forth in this section attempt to capture sound ergonomic design practice for cab layout in order to minimize the risk of human error, attention loss, and operator fatigue. These standards are self-explanatory, and consistent with the FOX high speed equipment.

Section 243.421 Exterior Lights

Paragraph (a) proposes that each power car be equipped with two or more headlights, each capable of producing 12,000 or more candela. Paragraph (b) proposes the following taillight requirements: each trailing power car shall be equipped with two or more red taillights; each taillight shall be located at least 1.2 m (3.9 ft) above rail; each taillight shall produce 15 or more candela; and taillights of the trailing power car must be on when the trainset is on a section of the system that is in revenue service.

The intensity of the headlights and taillights proposed here for the FOX trainsets are lower than exist on standard North American equipment. Due to all of the unique operating characteristics that are part of the FOX system, (no grade crossings, a fenced right-of-way with intrusion detection systems, no mixed traffic, advanced signal system), the high speed equipment can be (and often is in France) operated at full speed without the locomotive engineer having sight of the right-of-way. The intensity of the TGV lights have provided safe operation for fifteen years of revenue service in France, and FRA believes this will be sufficient for the system in Florida.

Section 243.423 Electrical System Design

This section contains the proposed requirements for the FOX electrical system design. These requirements reflect common electrical safety practice and are widely recognized as good electrical design practice. They include provisions for circuit protection against surges, overload and ground faults; electrical conductor sizes and properties to provide a margin of safety for the intended application; battery system design to prevent the risk of overcharging or accumulation of dangerous gases that can cause an explosion; and design of resistor grids that dissipate energy produced by dynamic braking with sufficient electrical isolation and ventilation to minimize the risk of fires. These proposed electrical system design requirements are consistent with the FRA's NPRM for Tier II Passenger Equipment Safety Standards.

Section 243.425 Automated Monitoring

This section contains proposed requirements for automated monitoring of the status or performance of the Railroad's safety-related equipment systems and subsystems. investigations of past passenger train accidents reveal that many accidents were caused, in some measure, by human error. FOX's high operating speeds will reduce the time train operators will have to react to nonconforming conditions, and evaluate potentially dangerous situations. Therefore, the potential for accidents increases. Automated monitoring systems can reduce the risk of accidents by alerting the operator to abnormal conditions and advising the operator of necessary or recommended corrective action as soon as the abnormalities appear. These systems can even be designed to make automatic corrective action in certain situations. FRA proposes that the FOX trainsets be equipped with an automated system to monitor various train systems and components. The requirements that FRA proposes are consistent with the requirements for FRA's NPRM for Tier II Passenger Equipment Safety Standards.

Paragraph (a) requires the train to be equipped to monitor the performance of a minimum set of safety-related systems and components that includes the following: Reception of cab signals and train control signals; truck hunting; electric brake status; friction brake status; fire detection systems; head end power status; alerter; horn; and wheel slide. This monitoring system will also provide information to the Railroad for use in trouble-shooting, maintenance, and to accumulate reliability data that will form the basis for establishing required periodic maintenance intervals.

Paragraph (b) requires that the locomotive engineer be alerted when any of the monitored parameters are out of predetermined limits. The Railroad's operating rules, developed pursuant to § 243.117 and Subpart F of the rule, will govern the engineer's activities if the equipment malfunctions. If the engineer does not act in accordance with the Railroad operating rules for this situation, the Railroad's central traffic control must initiate corrective action.

Paragraph (c) requires the Railroad to develop, in the course of its system safety plan analysis, appropriate operating rules that will address engineer and train performance if a trainset's automated monitoring system becomes defective en route, or is defective when the daily inspection required by § 243.433 is completed. The automated monitoring system greatly enhances safe operations. Although trains may operate safety without this system, FRA believes that specific practices must be developed and followed by the Railroad to address such items as train speed, braking distances, and communications when the system becomes defective. As stated earlier in this document, FRA is unclear whether this monitoring system is designed to function in redundant fashion. If that is the case, it may be very unlikely that the monitoring system will ever fail. Nonetheless, FRA believes that the added precaution of standards to cover that event is necessary to ensure safety.

Paragraph (d) proposes that each lead power car be equipped with an event recorder that monitors and records safety data as required by § 243.425(a) of this proposal and 49 CFR 229.135, Event Recorders.

Paragraph (e) requires that each of the systems monitored, and listed in paragraph (a), must be inspected during the daily inspection that is required by § 243.433 of this Subpart. This works in conjunction with § 243.433(f)(1), which requires the Railroad to inspect these monitored systems in the daily inspection of each trainset. If for some reason, conditions cannot be determined through the automated monitoring system, the Railroad must perform a visual inspection before the trainset can be placed in revenue service.

Section 243.427 Trainset System Software and Hardware Integration

This section contains the proposed requirements for the Railroad's rolling stock hardware and software. This section reflects the growing role of automated systems to control passenger train safety functions. Paragraph (a) proposes that the trainset system hardware and software integration conform with CF–001, On-Board Electronic Equipment and Computer Hardware. In addition, paragraph (b) proposes that the trainset system hardware and software integration conform with Pr CF–67–004, Methodology for the Development of On-Board Micro-Computer Equipment.

These requirements represent accepted practice, and will not limit the flexibility of the Railroad's equipment designers. However, these standards reflect good design, that has led to reliable, safe computer hardware and software control systems in the European railroad industry. Computer hardware and software systems designed to meet these standards may require an initial investment, but it has shown that such an investment is quickly recovered by the reduction in hardware and software integration problems, minimizing trouble-shooting, debugging of equipment.

Section 243.429 Control System Design Requirements

This section requires that the rolling stock computer be designed and function pursuant to the software safety program developed as part of the Railroad's system safety plan in Subpart B of this proposal, discussed previously.

Section 243.431 Safety Appliance

This section contains proposed requirements for safety appliances on FOX trainsets. The proposal is consistent in concept with existing requirements, but is tailored specifically for application to this new and somewhat unconventional equipment. These requirements are also consistent with those proposed for Tier II equipment in the FRA's Passenger Equipment Safety Standards.

Paragraph (a) of this section contains the proposed requirements for couplers that are positioned at either end of the trainset, which will be used to connect to other locomotives for hauling or rescue purposes. Paragraph (a) requires automatic couplers at the leading and trailing ends of the trainset to couple on impact, and uncouple by use of uncoupling lever or other means that does not require a person to go on, under, or between equipment units. This requirement prevents employee exposure to the safety hazards that arise from working on or between rail equipment. The leading and trailing automatic couplers of the trainset must be compatible with the Railroad's rescue locomotive couplers, without the use of special adapters. This would facilitate rapid movement of disabled trains and protects employees from the hazards of going between the locomotive units. Paragraph (a) also proposes that all couplers be equipped with an anti-climbing mechanism capable of resisting an upward or downward vertical force of 250 kN (56,200 lb) without permanent deformation. This is common European design and is appropriate in an operating environment such as the FOX system, where the risk of a collision has been greatly reduced through strict collision-avoidance measures, and the articulated train formation that resists climbing in the event of an accident.

Paragraph (b) of this section sets forth minimum requirements for safety appliance mechanical strength and fasteners. Handrails and sill steps must be made of steel pipe that is 1 inch in diameter, and fasteners must have a mechanical strength of at least a M10-diameter SAE steel bolt. These standards are consistent with European and U.S. practice, and provide a high degree of safety for employees who must utilize the safety appliances in the course of their duties.

Paragraph (c) sets forth the minimum standards for handrails and handholds. All handrails and handholds must be made of stainless steel, which provides optimum strength and durability for equipment exposed to all sorts of environmental elements. This paragraph also establishes minimum clearance requirements that will facilitate safe employee usage. Handrails and handholds are not required on units of a trainset that are semi-permanently connected, as the FOX trainsets are. The reason for this exclusion is that these units can be disconnected only in repair facilities with the use of special tools, and employees have no reason to position themselves between units and so, have no need for the handholds and handrails for that process. Similarly, handrails and handholds are not required on the leading and trailing units, which are equipped with automatic couplers that are coupled or uncoupled with the use of tools that do not require employees to work between the units. However, handrails and handholds are required at both sides of the doors used to board and depart the trainset. This will provide passengers and employees additional stability and safety as they enter or leave the equipment.

Paragraph (d) of this section sets forth the minimum requirements for sill steps on the FOX passenger equipment. Sill steps must be present below each side door on all power and trailer cars, and must be made of expanded metal or equivalent anti-skid material, in order to protect employees and passengers from slipping from the step. Sill steps must conform to the clearance requirements set forth in order to accommodate safety the average foot, and must be securely fastened to prevent collapse when under load. Sill steps are not required on cars that are semi-permanently connected, or on the leading and trailing units, which are equipped with automatic couplers. FOX may utilize these devices, but is not required to do so, so long as the equipment remains semi-permanently connected, and possesses automatic couplers at each end of each trainset.

Finally, paragraph (e) of this section describes the manner in which the FOX trailer and power cars are connected to one another. The system does not use traditional couplers that are common in U.S. railroading. Cars are connected through articulated semi-permanent connections that can be disengaged only in repair facilities, with the use of special tools. These connectors between trainset vehicles are an integral design characteristic of the French TGV equipment, and one which will be duplicated on the FOX system. Employees are not placed in danger from the hazards that arise from unexpected rail car movements, and these connectors tend to resist buckling and rolling in the event of a derailment. They greatly enhance employee and passenger safety, and this proposal requires their use.

Section 243.433 Trainset Inspection, Testing and Maintenance Requirements

This section sets forth the minimum standards for the FOX inspection, testing, and maintenance program. FRA proposes general guidelines for the Railroad to follow in order to develop a comprehensive inspection, testing, and maintenance program that will assure the safety of the system's rolling stock. However, FRA proposes to exercise final approval of the inspection, testing, and maintenance program developed by the Railroad and to enforce the safety-critical inspection, testing, and maintenance procedures, criteria, and maintenance intervals that result from the approval process.

FRA sets forth this proposed cycle of preventive maintenance for the FOX trainsets, which is based on the operational experience acquired in France throughout the last fifteen years. The French inspection and maintenance program utilizes accumulated mileage and degradation rates as indicators for inspection needs, and FRA adopts those criteria in this proposal.

Paragraph (a) requires the Railroad to obtain FRA approval of the written inspection program for the rolling stock prior to implementation of that program and prior to commencing operations. At a minimum, this program must include the complete inspection, testing, and maintenance program for the TGV trainsets as it is performed in France, including all inspections set forth in § 243.433(d) of this rule. This information shall include a detailed description of: safety inspection procedures, intervals and criteria; test procedures and intervals; scheduled preventive maintenance intervals; maintenance procedures; special test equipment or measuring devices required to perform safety inspections and tests; and training and qualification of employees and contractors to perform safety inspections, tests and maintenance.

Paragraph (b) requires the Railroad to designate which inspection and maintenance criteria are safety-critical, and deems all emergency equipment safety-critical. "Safety-critical" requirements are those that, if not fulfilled, increase the risk of damage to equipment or personal injury to a passenger, crew member, or other person. The Railroad must identify the items in the inspection, testing, and maintenance program that are safety-critical, and must submit the program to FRA.

Paragraph (c) requires the Railroad to obtain FRA approval for any changes to the safety-critical portion of the program required in this section. Paragraph (d) requires the Railroad to adopt and implement the inspection, testing, and maintenance program that FRA approved and paragraph (e) mandates that the Railroad's program must ensure that all systems and components are free from hazardous conditions.

Paragraph (f) sets forth specific inspections and maintenance programs that FOX must complete throughout the life of the system. These are identical to the French practice, which have produced a high level of safety on the TGV system. Paragraph (f)(1) sets forth the daily inspection that each trainset must undergo before it can begin revenue operations. This paragraph lists a series of conditions that, if not corrected, would prevent the trainset from commencing passenger service. These conditions are: Malfunction of the driving assistance system (SIAC); malfunction of the fire detection system; indication of an unbalanced tripod; indication of a broken tripod; indication of blocked axle; a single phase pantograph or its circuit breaker out of order; power car failure or cut-out; isolated roof disconnecting switch H(HT); transformer cooling or ventilation out of order; two or more motor blocks isolated; mechanical brake on one or more trucks isolated; total failure of the anti-slide device on one truck; failure of locomotive engineer's vigilance system (VACMA); speedometer failure; failure of on-board signaling system; failure of the speed measuring system (the warning flag of the speedometer does not disappear when the driving cab is activated); locomotive engineer's console out of order; locomotive engineer's brake valve not operating; leak in the main reservoir line; leak in the main brake pipe; failure indication during the required brake test; any battery charger out of order; and total failure of the trainset interior lighting.

The daily inspection is required prior to placing a trainset in service for the

first time during a calendar day. As FRA understands it, this inspection will utilize the automated, electronic test features that are part of the FOX equipment, rather than rely on visual or manual inspections. As rail technology improves, reliance on electronic sensors will naturally increase, and benefits flow from this progression. Electronic devices can often detect imperfections or potential problems that are invisible to the human eye. Also, some of the equipment that the automated testing devices inspect are difficult or impossible to view on the TGV trainsets. Therefore, this electronic capability reduces the risk of injury to employees who might otherwise crawl on, under, or between equipment subject to movement, and dramatically reduces the risk that defective equipment could be released for service.

Paragraph (f)(1) also requires that if any of the conditions listed above cannot be detected through the equipment's on-board automated monitoring system, the Railroad must conduct a visual inspection to verify that the condition does not exist and the equipment is safe for use. As FRA understands the FOX equipment, the automated monitoring system should have the capability to detect all of the potentially unsafe conditions that are listed in the daily inspection requirement. However, this in unclear from the FOX submission. Also, if the on-board monitoring system malfunctions, all of the conditions listed in this paragraph could not be detected from the cab and a visual inspection would be the only method of ensuring that the conditions do not exist. As discussed previously, the Railroad must develop appropriate operating rules, pursuant to § 243.117 and § 243.425 of this proposal, to address the safety risks that may arise if an on-board monitoring system fails en route or during this daily inspection. FRA believes that, in the interest of safety, the Railroad must conduct a visual inspection to detect the items listed in this paragraph if the on-board monitoring system is not capable of detecting them.

FRA is considering making all or some of these items part of a trip inspection, rather than a daily inspection, which would be completed before each trainset begins a new trip. FRA is concerned that some of the items listed in the daily inspection are so critical to the safety of the system, that a train should not be in service for any period of time when those items are not functioning properly. A recent passenger train collision in England, in which six fatalities occurred, may have been prevented if the railroad had conducted a trip inspection and then prevented the train's departure when the defective condition was discovered. Because the items inspected here in the daily inspection are inspected electronically, as FRA understands it, requiring the inspection to occur at the beginning of each trip would impose few, if any, financial or operational burdens on the Railroad. However, FRA seeks comment on the merit of this proposal and any changes to it. Also, FRA requests commenters to discuss which, if any, items should be required to be inspected on a trip basis.

Paragraph (f)(2) describes the examination in service which is a walking visual inspection conducted by qualified personnel every 4000 km (2,485 mi), at a location where there is a repair pit and access to the top of the trainset. The purpose of the examination in service is to detect anomalies that have occurred and correct them so that the trainset can be returned to service without any safety risk. This examination focuses on the systems keenly involved in trainset trackworthiness, including running gear, trucks, and components under the carbody. As FRA understands it, this may become a daily visual inspection if the ridership studies commissioned by FOX become a reality, and the system operates so that each trainset will complete four round-trip journeys each day.

At a minimum, the items listed below must be inspected during an examination in service. All conditions found that do not comply with the safety inspection criteria required by § 243.433(a)(1) of this rule must be corrected before the trainset is put into revenue service: Condition of the pantographs and roof insulators; condition of sanding nozzles; fixation and condition of dampers; condition of suspension springs; fixation and condition of grounding straps; condition of side skirts and underbody panels; condition of trucks; oil levels; traction motor-to-carbody securement; presence of brake pads; condition of brake shoes; condition of wheel tread; and condition of drive train.

Paragraph (f)(3) proposes the running gear inspection which must be done by qualified personnel once every 18 days. The purpose of the running gear inspection is to guarantee running safety by monitoring wear conditions on wheels, bearings, brakes and suspension systems. The inspection is to be conducted once every 18 days on each trainset, independent of distance traveled.

At a minimum, the items listed below must be inspected during a running gear inspection. All conditions found that do not comply with the safety inspection criteria required by § 243.433(a)(1) of this proposal must be corrected before the trainset is put into revenue service: A visual inspection of trucks; an inspection of the operation of flange-lubricating devices; an inspection of the condition and attachment of dampers, roof mounted elements, and suspension components; an inspection of the brake rigging, journal bearings, and tripod transmission; a visual inspection of the condition and attachment of brake pads; an inspection of the oil levels on drive train; an inspection of the securement of drive train and wheel slide sensors; an inspection of the condition of the pantographs and roof insulators; and check for audible leaks on pneumatic system.

Paragraph (f)(4) sets requirements proposed for the wheel inspection (also called Systematic Work). Each trainset wheel and wheel profile must be inspected by qualified personnel at an interval not to exceed 50,000 km of travel. Equipment not in compliance with the inspection criteria established in paragraph (a) must be corrected or replaced before trainset returns to revenue service. The purpose of the wheel inspection is to ensure safety and ride comfort at high speeds.

Paragraph (f)(5) describes the Minor Inspection which must be done by qualified personnel at an interval not to exceed 150,000 km of travel or 7 months of time, whichever comes first. The Minor Inspection must be equivalent to the Minor (Limited) Inspection performed on TGV trainsets in France and performed in accordance with the tests procedures and inspection criteria established in paragraph (a). All conditions found that do not comply with the safety inspection criteria required by paragraph (a) must be corrected before the trainset is put into revenue service. The Minor Inspection must complete the following for electrical parts: Inspect current return devices, antennas, transponders; examine batteries; check operation of lighting; check operation of speedometer unit and of cab signal receptor; check sensors and sensor protectors; check roof switches and contacts; check circuit breakers; and check traction motors and main transformers. For mechanical parts, the Railroad must: Inspect axles, axle boxes and trucks; check tightening torque of shock absorber and support mounting bolts; check buffing gear; inspect pantographs; check attachment of anti-roll bars; examine condition of guard-irons; check setting of sanders; verify proper operation of flange-lubricating devices; check level and condition of oil on motor and reducing gears; check attachment of geared motors; check for grease projections from the motive force transmission components, and carrying and fixed rings of the articulation joint; check attachment of motive force transmission components and tripod transmission; check condition of motorized axle torque reaction rods; check condition of brake-units and brake shoes; check condition of disk brake pads and of the brake rigging cylinder assembly; check condition of bellows; check for attachment defects and/or distortions on carbody components such as underside panels, skirts, windows, fairings, etc.; verify proper operation of doors including locking devices; check for defects on front windows; inspect extinguishers, tooling and safety equipment; and inspect tachometer and odometer sensors. For pneumatic parts, the Railroad must check main compressor; check the oil level and check for leaks on main compressor; check condition of pneumatic suspension components; and check brake equipment and brake indicator lamps.

Paragraph (f)(6) describes the general inspection which must be conducted at an interval not to exceed 300,000 km of travel or 13 months of time, whichever comes first. The Railroad must perform a General Inspection (equivalent to the General Inspection performed on TGV trainsets in France) in accordance with the tests procedures and inspection criteria established in paragraph (a). All conditions found that do not comply with the safety inspection criteria required by paragraph (a) must be corrected before the trainset is put into revenue service. The General Inspection must consist of the following steps for electrical parts: Inspect circuit breaker; examine insulators; inspect main transformers; inspect braids and connecting shunts, sensors and sensor protectors; examine electro-pneumatic and electromagnetic contacts; inspect freon enclosures; check for anomalies on resistors; check operation of various signaling lights; visual inspection of diodes and antennas; check condition of electronic plug-in units; check condition of switches, controls, joints; check condition of master controller; check operation of clock, indicator of imposed speed; check operation of ground-to-train radio link and speed supervision by transponder; check operation of passenger alarms; inspect antenna; verify that headlights (full and dimmed), tail lights, other indicators, lighting, desks operate properly; verify power supply to electrical outlets available to passengers and service personnel; check operation of lights and telltale indicators in electrical cabinets; inspect various motors (traction, main, auxiliary compressors, ventilation); check operation of refrigeration system and circuit breakers. For mechanical parts, the Railroad must: Check operation of pantographs; check for defects on trucks (cracks, distortions); check for defects and check play on fixed and carrying rings of articulation joint; check for defects on intercar passageways; check for defects on doors, locks and joints; check interbody and anti-tilt dampers; check tread brake units; check underbody rotation stops. For pneumatic parts, the Railroad must: Check pressure gauge; check operation of braking gear; check operation of the anti-wheelslide device; check operation of the emergency brake valve; clean driver's brake valve and check its operation; inspect various flexible and half-couplings; check operation of valves which control alarms, windshield washers, windshield wipers, and of differential valves; check brake indicator lights.

Paragraph (f)(7) proposes the Major Inspection which must be conducted at an interval not to exceed 600,000 km of travel or 25 months of time, whichever comes first. The Railroad must perform a Major Inspection (equivalent to the Major Inspection performed on TGV trainsets in France) in accordance with the tests procedures and inspection criteria established in paragraph (a) of this section. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) shall be corrected before the trainset is put into revenue service. The Major Inspection must include the following steps for electrical parts: Inspect roof cable and lightning arresters; check operation of the roof switch; inspect battery switches; inspect battery charger and battery voltmeter; inspect inverters; examine coils; clean electronic gear; inspect couplers and connecting cables; check driver's console switch box; test driver's vigilance system; pre-departure checks (pantograph uplift, air conditioning, etc.); check operation of cab signal; clean switchgear cabinets; lubricate traction motors; check ammeters, key switch panel; check 30 KVA inverter; check spare light bulb supply.

For mechanical parts, the Railroad must: Check calibration of pantographs; check for defects on motorized axle reaction rods; check the constituents of fixed and carrying rings of articulation joint; check that headlight covers are tightly secured; check for defects on carbody exterior paint. For pneumatic parts, the Railroad must inspect air and oil filters; inspect main compressor couplings; check operation of the main air dryer; check operation of pressure gauges; inspect pneumatic suspension reservoirs; check operation of power car and trailer car brakes; check operation of pneumatic pressure regulators; inspect truck-to-carbody coupling and pneumatic suspension connections; and check operation of the spring-applied parking brake.

Paragraph (g) proposes that the Railroad designate brake system repair point(s) in the inspection criteria established in paragraph (a) of this section. FRA proposes that no trainset depart a brake system repair point unless that trainset has a 100% operational brake system.

Paragraph (h) proposes that the Railroad's program established pursuant to paragraph (a) must include the Railroad's scheduled maintenance intervals for equipment based on TGV operations in Europe, and on an analysis required the system safety program set forth in Subpart B of this rule. FRA proposes to allow the maintenance intervals for safety-critical components to be changed only when justified by accumulated acceptable operating data. Changes in maintenance cycles of safety-critical components must be based on verifiable data made available to all interested parties and shall be reviewed by FRA. This proposal is another attempt to balance the needs of the operating railroad to run efficiently and the concern of rail labor organizations that railroads have the ability to unilaterally make safety decisions.

Paragraph (i) requires the Railroad to establish a training and qualification program as defined in Subpart H of this proposal to qualify individuals to perform inspections, testing, and maintenance on the rolling stock. Only qualified individuals may perform inspections, testing, and maintenance of the rolling stock. An employee or contractor employee shall have knowledge of standard procedures described in paragraph (h) of this section in order to qualify to perform a task. FRA does not prescribe a detailed training program or qualification and designation process.

Paragraph (j) proposes that the Railroad's program required by this section include the Railroad's written standard procedures for performing all safety-critical equipment inspection, testing, maintenance, or repair tasks. This paragraph proposes various broad requirements relating to the content and enforceability of the standard operating procedures. FRA has drawn on the

experiences of other heavy industries and in the military, where inherently dangerous tasks are common, which have proven that standard operating procedures are an effective tool in reducing work-related injuries. Further, standard operating procedures can form the basis for periodic safety refresher training. FRA does not propose to prescribe the detailed procedures to be used. The proposed rule is designed to have the detailed procedures developed by those with most knowledge of how to safely perform the tasks—the operators and employees.

These standard procedures must: Describe in detail each step required to safely perform the task; describe the knowledge necessary to safely perform the task; describe any precautions that must be taken to safely perform the task; describe the use of any safety equipment necessary to perform the task; be approved by the railroad's chief mechanical officer; be approved by the railroad's official responsible for safety; be enforced by supervisors with responsibility for accomplishing the tasks; and be reviewed annually by the railroad.

Paragraph (k) requires the Railroad to establish an inspection, testing, and maintenance quality control program, which will be enforced by the Railroad, to reasonably ensure that inspections, tests, and maintenance are performed in accordance with Federal safety standards and the procedures established by the Railroad. In essence, this creates the need for the Railroad to perform spot checks of the work performed by its employees and contractors to ensure that the work is performed in accordance with established procedures and Federal requirements. FRA believes that this is a very important management function that, if neglected will surely lead to safety problems.

Paragraph (l) of this section requires the Railroad to make and maintain a written or electronic record of each of the inspections required in this Subpart. The record must be maintained for at least one year. Inspection records are extremely helpful to railroads and FRA in determining the natural life of equipment and components, and appropriate safety limits that should be imposed because of those natural restrictions. These records will assist the Railroad and FRA to determine whether all inspection and replacement intervals are understood and followed by the system employees and supervisory staff. Also, these records are often helpful, in the event of an accident, to determine probable causation factors.

Subpart F—Operating Practices

Operating rules and practices play a vital role in assuring railroad safety. This Subpart proposes requirements for the Railroad's operating rules and practices, which for the most part, mirror the Petition and general U.S. practice. However, FRA makes some important changes to our treatment of the FOX operating rules, based on the peculiarities of this operation.

Section 243.501 Purpose

First, this proposal grants FRA authority to approve the FOX operating rules prior to revenue operations. FRA believes that approval authority is necessary to ensure that FOX follows, to the maximum extent possible, the safety-critical operating rules used in France on the TGV, which have helped to create the TGV's admirable safety record. FRA has not had the opportunity to review these rules, though they exist, and believes that Federal approval of the FOX operating rules should not occur until a comparison between the TGV rules and the FOX operating rules can take place. Therefore, this section proposes that FRA must approve FOX operating rules before revenue operations commence.

Section 243.503 Operating Rules; Filing and Recordkeeping

Section 243.503 of the proposal sets forth the filing and recordkeeping requirements for the Railroad. Paragraph (a) requires FOX to file its operating rules with FRA six months prior to commencing internal operations, and one year prior to revenue operations. The reason for this distinction is that FRA would like to review the Railroad's operating rules when the equipment first travels across the system, when the potential for employee injury exists. This requirement would ensure that the Railroad has in place appropriate operating rules at that time to protect employees from moving equipment and operating systems, and the potential for injury that may arise as a result of initial disorganization, inconsistent movements, or faulty equipment. FRA requests comment from FOX and other interested parties as to whether the operating rules prepared for internal operations will vary greatly from the rules for revenue operations. If the rules are strikingly different, modifications may need to be made to this proposed requirement.

Paragraph (a) also requires the Railroad to designate which of its operating rules are safety-critical, and states that FRA will adopt and incorporate the safety-critical rules as Appendix C to this Part. Paragraph (b) of the proposal requires the Railroad to file any amendment to its operating rules with FRA within 30 days of the day it takes effect. Section 243.509 of this Subpart, discussed below, permits the amendment to remain in effect until or unless FRA disapproves the amendment. Therefore, this Subpart grants FRA the authority to approve the Railroad's operating rules, as well as all changes that are made to the rules after initial approval.

Paragraph (c) requires the Railroad to keep one copy of the operating rules at headquarters and make the records available to FRA for inspection or duplication. Paragraph (d) authorizes FRA to issue civil penalties or take other enforcement action against any person who violates a safety-critical operating rule, which has been adopted and incorporated by reference in Appendix C to this rule under paragraph (a) discussed above. This proposal marks an important change from the way in which FRA currently addresses operating rules for existing railroads. This authority will underscore the importance of Railroad, employee, and contractor adherence to safety-critical rules that have been developed thoughtfully and in connection with development of a system safety plan. FRA has no desire to meddle unnecessarily into non-safety issues on railroad property, and the authority proposed in this paragraph will not facilitate such Federal action. FRA may only initiate enforcement actions under this section where clear safety hazards arise due to the violation of a safety-critical rule. This authority will enhance the system's performance for passengers, employees, and the Railroad.

Section 243.505 Program of Operational Tests and Inspections; Recordkeeping

Section 243.505 requires the Railroad to conduct periodic tests and inspections to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions in accordance with the program filed with and approved by the FRA. This section is consistent with the Petition and current U.S. practice, and will ensure that FRA will be informed of the Railroad's internal validation that employees are complying with the operating rules.

The testing and inspections refer to operational field tests and inspections, not qualifying tests or examinations of employees in operating rule classes. Also, the terms "inspection" and "test" are not functional equivalents. The term "inspection" is broader in scope and

may include varying numbers and types of specific "tests." Each terminal, division, or other organizational category would be inspected periodically for compliance with operating rules. The number and variety of specific "tests" comprising each periodic inspection may vary according to the size and nature of the component, local operating conditions, and safety problems uncovered in past inspections or that have developed since the previous inspections. The documents listed in paragraphs (a-d) must be kept at system headquarters, for specified time periods, and must be available to FRA for inspection and copying during normal business hours.

Paragraph (d) requires the Railroad, before March 1, to maintain an annual summary covering the previous year's activities. This must include the number, type and result of each operational test and inspection that was conducted in accordance with paragraphs (a) and (b) of this section.

Paragraph (e) facilitates retaining the required information in an electronic format. This format may be utilized only where certain procedures are in place. There must be restricted access to the electronic database, and identification of those personnel granted access to the information. Also, a terminal with a central processing unit attached to either a fax or printer, that can retrieve and produce information in a usable format for immediate review by FRA representatives must be present. The Railroad must designate a person who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of such electronic records.

Section 243.507 Program of Instruction on Operating Rules; Recordkeeping; Electronic Recordkeeping

Section 243.507 contains the requirements for the Railroad to develop and implement a program of instruction on its code of operating rules. The Railroad must ensure that its employees understand and comply with its code of operating rules. Many railroad accidents are attributable to a lack of compliance with railroad operating rules or a misinterpretation of their intended application. If the Railroad's employees have a better understanding of the operating rules, the chances for non-compliance or misinterpretation should be reduced.

Paragraph (a) requires that a written instructional program, kept at system headquarters and at the division headquarters, will be the basis of instruction on the Railroad's operating rules for those employees governed by such rules. FRA does not intend to prescribe every detail of what the program must contain. However, the program should be based on the specific safety needs and operating environment of the high speed rail system being developed.

Paragraph (b) covers the gradual implementation schedule of its program of periodic instruction. Each amendment to the original program will be retained at the system headquarters and at the division headquarters. The program must be available to representatives of the FRA for inspection and copying during normal business hours. The program must include a description of the means and procedures for instruction of different classes of affected employees. The frequency of instruction and the rationale on which it is based, must also be explained. A schedule for completing initial instructions for employees who are already employed and for those hired at a later date also must be included in the program.

Paragraph (c) states that the Railroad is authorized to retain, via electronic recordkeeping, its program for periodic instruction of its employees on operating rules provided that the conditions and requirements set forth in § 243.505 of this proposal are met.

Section 243.509 Operating Rules Approval

Section 243.509 proposes the approval process for the Railroad's operating rules. Within ninety days of receipt, FRA must notify the Railroad, in writing, of the operating rules' approval or disapproval. If FRA disapproves the entire package or individual operating rules, FRA must explain in its written response the reasons for the disapproval, and the actions needed to obtain FRA approval. Paragraph (b) of this section requires the Railroad to submit any operating rule amendment to FRA for review, within thirty days after it was issued by the Railroad. The amendment will remain in effect, unless FRA notifies the Railroad, in writing, that the amendment has been disapproved. This section also states that the Railroad must submit supporting documentation to FRA that FRA believes is necessary to make an enlightened determination of the Railroad's proposed operating rules. FRA anticipates that the TGV operating rules, for instance, would be one document necessary to determine whether the FOX operating rules are comprehensive and likely to provide a high level of safety on the Railroad.

Subpart G—System Qualification Tests

This Subpart sets forth pre-revenue qualification testing requirements that the Railroad must complete for a period of four months prior to commencing passenger service. This testing program developed pursuant to this Subpart is required by Subpart B of the proposal, and will be approved as part of the system safety plan approved by FRA. The testing program will provide the Railroad assurance that the system is safe, as designed and constructed, so that passengers are not put at risk when operations begin. For the most part, this Subpart is self-explanatory.

Section 243.601 Responsibility for Verification Demonstrations and Tests

Section 243.601 requires the Railroad to comply with the pre-revenue service testing plan, which must meet the specific requirements of this Subpart and the determinations made during the system safety plan analysis required by Subpart B of this proposal.

Section 243.603 Preparation of Test Plan

Section 243.603 requires FOX to develop a test plan that covers every aspect of the system. The plan must include a clear set of objectives, and the Railroad's primary objective should be to demonstrate that the system, as constructed and operated, meets all design and performance standards required by this proposal. The test plan must set a schedule for the testing, describe all property and facilities that will be used, detail how the tests will be conducted, describe how the data obtained will be analyzed, create quality control procedures to ensure that the testing is done correctly, and demonstrate the inspection criteria developed for revenue service. Paragraph (d) requires that the test program include steps to verify the results of the installation and performance tests performed by contractors and manufacturers, conduct pre-operational testing of individual components and subsystems, and to conduct the full system tests.

Section 243.605 Pre-operational Qualification Tests

Section 243.605 details the pre-operational qualification tests that the Railroad must complete on all safety-critical components of the system. The components must be shown to meet performance specifications and verify specified operational functions. This section is consistent with the Petition.

Section 243.607 Integrated Operational Testing of Systems.

This section outlines the testing that FOX must complete with respect to the integrated systems. These tests include vehicle clearances to structures along the right-of-way; mechanical performance of the overhead catenary system; and the integrated performance of the track, signal, power supply, vehicle, software, and communications. Also, this section requires the Railroad to demonstrate safe system performance during normal and degraded operating conditions. These tests must verify power supply protection; catenary and pantograph interaction; incremental increases in train speed; braking rates; and wheel suspension characteristics.

Paragraph (b)(10) of this section requires the Railroad to verify the track and civil structure under dynamic load. FOX must conduct qualification testing to ensure that the equipment will not exceed the wheel/rail force safety limits specified in the table in Subpart D and the limits for ride vibration specified in Subpart E at any speed less than 10 mph above the maximum authorized speed. During the qualification of the vehicle/track system, the ride vibration levels in § 243.411 will be used rather than the accelerometer levels contained in § 243.335. During a joint meeting of RSAC's High Speed Task Group and a group working on the Tier II Passenger Equipment standards, many members of both groups concluded that the lower ride vibration quality levels should apply when a railroad wishes to initially qualify a system, but that the accelerometer levels in the table as represented in § 243.335 should apply during daily operation of the system. Equipment and track tolerances are expected to loosen slightly during operation, but the vehicle/track system must be monitored during the life of the system to ensure that the wheel/rail force measurement and accelerations specified in § 243.335 are not exceeded. These concepts are discussed in greater detail in the analysis of Subpart D.

The Railroad must establish a testing speed at least 10 mph above the maximum operating speed, as well as target test and operating conditions, and conduct a test program sufficient to evaluate the operating limits of the track and equipment. The test program must demonstrate safe vehicle dynamic response as speeds are incrementally increased from 100 mph to the target maximum speed. The test must be suspended where any of the vehicle/track performance limits in this section are exceeded.

At the conclusion of the test, when the maximum safe operating speed is known, along with permissible levels of cant deficiency, a test run will be made over the entire route at the speeds the Railroad will request FRA to approve for such service, and a second run again at 10 mph above this speed. A report of the test procedures and results must be submitted to FRA upon completion of the tests. The test report must also show the design flange angle of the equipment, because this flange angle is used to calculate the safety limit for the ratio of the lateral force to the vertical force exerted by the same wheel on the rail. FRA believes that this testing, in combination with all of the other tests, will reveal any weaknesses in the system or construction of the components, and will greatly enhance the overall safety of high speed passenger line.

Section 243.609 Pre-revenue Service Testing

Section 243.609 requires the Railroad to conduct the pre-revenue service tests for four months prior to operations. The testing will expose problems before passengers are at risk, and will also give operational experience to the Railroad and its employees. This section is consistent with the Petition.

Section 243.611 Verification of Compliance

Section 243.11 requires the Railroad to prepare a report that details the results of all pre-operational tests, and outlines the remedial measures necessary to correct any deficiencies discovered during the testing. This section also requires the Railroad to implement the improvement measures discussed in the report, and to submit the report to FRA sixty days prior to commencing railroad operations.

This Subpart, as proposed, is very similar in concept to the Petition. FRA has made some subtle changes, primarily to streamline the requirements and avoid duplication with Subpart B of the proposal. The requirement proposed in paragraph (c) of § 243.611, which mandates report filing with FRA sixty days prior to revenue operations, was not included in the Petition. FRA invites comment on the timing set forth in paragraph (c), and may consider alternatives to this proposal. FRA believes that Federal review of the verification report is necessary to ensure that all problems encountered during testing are corrected, and additional time may be warranted in order to conduct that review adequately and thoughtfully. FRA has no desire to prevent timely commencement of revenue operations, and would take that into consideration in determining a different time period.

Subpart H—Personnel Qualification Requirements

Section 243.701 General Requirements

This Subpart sets forth specific requirements for the Railroad's personnel qualification program. This Subpart works in conjunction with Subpart B of the proposal, which requires that the Railroad's system safety plan consider the sort of training and qualifications that will be necessary to maintain the appropriate level of safety in the Railroad's revenue operations. This program takes on particular importance with respect to FOX because the American workforce generally does not have thorough knowledge of the FOX equipment and practices. Also, if FOX follows through with plans to bring representatives from the French TGV to Florida to train American workers, there will be language differences that must be overcome during the training process. In addition, the American workforce may not be accustomed to heavy reliance on metric measurements, which are prevalent in Europe and used throughout the FOX system. All of these factors make the Railroad's employee training and testing program critical to the safety of the high speed system. Also, it is important to repeat that all contractor employees must be trained and qualified by the Railroad for the tasks that they are required to complete.

This section sets forth specific parameters for the Railroad's employee qualification program. The Railroad must develop and implement a program that prepares employees to complete their safety-related tasks effectively, and requires supervisory personnel to understand fully the Railroad system and exercise prudent judgment to ensure that the system runs safely. The program must provide "hands-on" testing and refresher training of all employees. The Railroad must designate, in writing, that each employee possesses the knowledge to assume his or her assigned duties, and maintain these records for the duration of each employee's employment. Paragraph (c) states that the Railroad's personnel qualification program must explain the process by which the Railroad will confirm that employees are fully capable of handling assigned tasks, and must explain how the Railroad will measure employee skills. Paragraph (e) requires the Railroad's training program for locomotive engineers to follow existing regulations, 49 CFR part 240, as discussed previously. Paragraph (f) prohibits the Railroad from using unqualified or untrained personnel from completing tasks on the Railroad's system.

Section 243.703–Section 243.709 Personnel Qualifications for Track Maintenance and Inspection Personnel

Section 243.703 of Subpart H describes the qualifications that Railroad track personnel must possess in order to maintain and inspect track. Work on or about track structure supporting qualified high speed passenger trains demands the highest awareness about the need to perform work properly. Section 243.703 sets forth requirements for the Railroad to designate qualified individuals responsible for the maintenance and inspection of track in compliance with the safety requirements for Subpart D. The Railroad must maintain records of each designation in effect, the basis for the designation (including training and test results), and the records of the track inspections made by the qualified individuals.

Three categories of qualifications are set forth: § 423.705 establishes the qualifications for the individuals who supervise restorations and renewals; § 423.707 establishes the qualifications for those individuals who inspect track for defects; and § 243.709 sets forth qualifications for persons who inspect and restore continuous welded rail.

A person may be qualified to perform restorations and renewals under § 243.705 in three ways. First, the person may combine five or more years of supervisory experience in track maintenance for track Class 4 or higher and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on-the-job training. Second, a person may be qualified by a combination of at least one year of supervisory experience in track maintenance of Class 4 or higher, 80 hours of specialized training or in a college level program, supplemented with on-the-job training. Third, an employee with at least two years of experience in maintenance of high speed track can achieve qualification status by completing 120 hours of specialized training in maintenance of high speed track, provided by the employer or by a college level engineering program, supplemented by special on-the-job training. The third option is intended to provide a means for the railroad to promote and qualify an outstanding employee who has the prerequisite experience in maintenance of high speed track.

Pursuant to § 243.707, a person may be qualified to perform track inspections by attaining five or more years of experience in inspection in track Class 4 or higher and by completing a course taught by the employer or by a college level engineering program, supplemented by special on-the-job training. Or, the person may be qualified by attaining a combination of at least one year of experience in track inspection in Class 4 and higher and by successfully completing 80 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented with on-the-job training. Finally, a person may be qualified by attaining two years of experience in track maintenance in Class 4 and above and by successfully completing 120 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented by special on-the-job training provided by the employer with emphasis on the inspection of high speed track. The third option is intended to provide a way for employees with two years of experience in the maintenance of high speed track to gain the necessary training to be qualified to inspect track.

For both categories of qualifications, the person must have experience in Class 4 track or above. To properly maintain and inspect Class 4 track or higher requires a level of knowledge of track geometry and track conditions that are not as readily obtained at lower classes. Persons who are qualified for high speed track must know how to work, maintain, and measure high quality track. Experience in Class 4 track is established as a lower limit to provide a pool of candidates, who may be drawn from freight railroads, who would provide the necessary experience on well-maintained track. Each person must demonstrate annually to the Railroad that he or she understands the requirements of Subpart D, can detect deviations, and can prescribe appropriate remedial action to correct or safely compensate for those deviations. A recorded examination on Subpart D is required.

Section 243.709 proposes specific requirements for qualifications of persons charged with maintaining and inspecting continuous welded rail (CWR). Training of employees in CWR procedures is essential for high speed operations. Each person inspecting and maintaining CWR must understand how CWR behaves and how to prevent track buckles and other adverse track reactions to thermal and dynamic loading. As part of the qualification, each employee who restores and inspects CWR must have an examination on the procedures for the handling of CWR required by § 243.329.

Section 243.711—§ 243.717 Personnel Qualifications for Signal Maintenance and Inspection Personnel

These sections describe the minimum qualifications for the Railroad's signal personnel. The Railroad must designate that signal employees have been qualified to perform their assigned tasks, and the designated employees must meet the specified standards in these sections.

FRA is reluctant to dictate specific education or experience levels that would be required for various employment categories. FRA believes it more appropriate to set broad minimum standards that provide FOX flexibility to choose the best work force available. However, each employee designated as qualified must demonstrate annually, and preferably in writing, that she or he understands the signal safety standards set forth in Subpart C, that he or she can detect deviations from the standards, and that he or she can prescribe appropriate remedial measures. Signal supervisors must successfully complete the program that the employees complete, and must possess the ability to exercise judgment and make rational decisions concerning the Railroad's signal system.

Section 243.719–§ 243.723 Personnel Qualifications for Rolling Stock Maintenance and Inspection Personnel

These sections establish minimum standards for the Railroad's rolling stock personnel. Again, FRA is reluctant to dictate specific education or experience levels, and so sets broad categories that provide FOX flexibility and ensure that qualified individuals are secured to work on the system's rolling stock. The Railroad must give rolling stock personnel written procedures to follow, hands-on training on the equipment, and periodic refresher training.

FRA invites comment from interested parties on these proposed qualification standards. The proposal varies slightly from discipline to discipline, and reflects, to some extent, the existing qualification programs in this country. Because we are dealing with a new system, however, where specialized training will be very important, FRA seeks suggestions from the safety community on alternate methods to guarantee an informed and prepared workforce.

Subpart I—Power Distribution

This Subpart of the proposal sets minimum requirements for the Railroad's power distribution system. As is explained in the system description of this proposal, the Railroad will operate on electric power generated and transferred to the equipment from an overhead catenary system. The catenary will maintain high voltage power throughout the length of the right-of-way, which can create an extremely hazardous work environment if not handled properly. The proposed standards in this Subpart follow generally accepted principles found in the National Electric Safety Code and the U.S. Occupational Safety and Health Administration's (OSHA) existing employee protection requirements, and also are generally consistent with the Petition. FRA wishes to make very clear that nothing in this proposal displaces OSHA's authority over employees working on, around, or with the Railroad's electrical generation, distribution, or transmission systems or subsystems. Furthermore, it is important to note that this proposal does not displace OSHA's authority over any working condition that the Railroad's employees face that have not been specifically addressed in the final standards that follow this proposal.

Section 243.801 Warning Signs

This section of the proposal requires the Railroad to post warning signs throughout the right-of-way, at underpasses and overpasses, and at each catenary mast to provide notice to employees, trespassers, and other individuals that high voltage lines are present. FRA believes that plentiful warnings will go a long way to prevent injuries to unauthorized individuals, and will also serve as a necessary reminder to employees working along the right-of-way.

Section 243.803 Clearance Requirements

This section requires all electrical clearances to meet the European standard, UIC 606–2 OR, which references formulas and values that are consistent with the system configuration that will develop in Florida, and that has safely guided the operation of the TGV in France. This standard includes references to other European standards, such as UIC 505–6, which must also be followed by FOX. The consideration of appropriate clearances in not a trivial matter, and many factors influence the development of safe, adequate clearances. Because the catenary system is dynamic, the task becomes that much more complicated. Therefore, FRA proposes that FOX adhere to the pertinent European standards, which we know safely accommodate the equipment that will be utilized in Florida and the employees who work along the right-of-way.

Section 243.805 Catenary Connections

This section requires the Railroad to ground the catenary masts to the ground or rail. Grounding of the catenary masts to the rail should be coordinated with the signaling system installation to insure that they function properly together, and FOX should design and construct this portion of the system in conjunction with the system safety plan. This is consistent with the Petition, which states that FOX will ground each catenary pole to the earthling wire, which will run the length of the right-of-way, and will be grounded to earth approximately every 10 km or 6.2 miles. This is consistent with common safe practice. This section also states that the electrical impedance of the connection must meet the step and touch requirements set forth in international standards to prevent electrical shock. At a system level, the lower the impedance of the grounding system, the quicker the fault energy is diverted to ground, and the sooner the protection equipment, or circuit breakers, will isolate the faulty section of catenary/power distribution system. At an individual level, current takes the path of least resistance, and therefore, if someone was in contact with an object that had current running through it, we would want the grounding system to divert as much energy away from objects that potentially could come in contact with members of the public and railroad employees.

Section 243.807 Access to Stations

Section 243.807 of Subpart I requires the Railroad to prevent unauthorized personnel from entering power supply stations, substations, and autotransformer stations. This provision aims at protecting employees and members of the public from exposing themselves to high voltage hazards, and also ensuring that the power system will not be harmed or disrupted by intruders. FOX states in the Petition that they intend to follow the National Electrical Safety Code with respect to station access and FRA believes that would provide an adequate measure of safety.

Section 243.809 Actuators

This section of the proposal requires the Railroad to protect the operator from electrical shock, direct or induced, that may occur in the actuators of high voltage switches. The operation of the high voltage switch may induce current or voltage surges that may cause voltage surges between the switch control and ground. The person operating the switch much be protected against these surges.

Section 243.811 Power Feeding

Section 243.811 requires the Railroad to protect the power distribution system from short circuits and over voltage that may occur as a result of lightning or utility surges. FRA is reluctant to dictate the specific method that FOX uses to accomplish this task, but believes that the system must be protected from interruptions or breakdowns that can occur on any electrical system, and may surely occur in Florida where electrical storms are commonplace.

Section 243.813 Emergency Devices

Section 243.813 provides for communication and power disconnection abilities in the event of an emergency along the right-of-way. This section requires the Railroad to place emergency devices that are capable of disconnecting and isolating power, or grounding the catenary to the rail, or both, at every underpass, overpass, emergency entrance, supply station, substation, and autotransformer station along the right-of-way. Also, the Railroad must install telephones at each of these locations, and they must be connected to the Railroad's central power dispatching center.

Section 243.815 Overpass Protection

Section 243.815 requires the Railroad to install fencing or other suitable device at each overpass that is adjacent to, above, or beneath the catenary. This section should protect the public, employees, and the electrical system by preventing accidental, hazardous contact with the catenary.

Section 243.817 Safety Work Rules

Section 243.817 states FRA's expectation that FOX will provide for the safety of all employees by following all work practices covered by pertinent regulations issued by OSHA concerning the generation, distribution, and transmission of electrical power. The Petition states that FOX intends to follow the National Electrical Safety Code (NECS) in this regard. FRA believes that FOX should and will be able to comply with both sets of standards. FOX must comply with pertinent OSHA regulations, as they constitute the enforceable standard for working conditions that other federal agencies have not regulated. FRA has not exercised jurisdiction over the working conditions that arise in the course of maintaining or inspecting power distribution systems, and therefore the pertinent OSHA standards apply to these employee working conditions. The NESC is a professional reference standard, commonly followed by all entities that operate, maintain, and inspect power distribution systems. As FRA understands it, the OSHA regulations and the NESC are not identical in scope and content, but complement one another. FRA invites comment as to whether compliance with each standard would be difficult to accomplish on the FOX system, and the reasoning for it. FRA anticipates that the Railroad's system safety plan analysis will devote attention to the development of appropriate employee work rules and protections vis-a-vis power distribution that are consistent with the OSHA and NESC safety standards.

Section 243.819 Inspection, Testing, and Maintenance of Power Distribution System

Section 243.819 requires the Railroad to develop an inspection, testing, and maintenance program for the power distribution system. This section works in conjunction with Subparts B and H of the proposal, which also require the Railroad to establish and adhere to a comprehensive program that facilitates proper operation of the equipment and system, and which guarantees that employees receive adequate training to perform their duties safety. This section also includes specific inspection items and intervals, which comport with general industry practice and the Petition.

Appendix A—Schedule of Civil Penalties

This appendix is being reserved until promulgation of the final rule of particular applicability. At that time, FRA will include a schedule of civil penalties to be used in connection with enforcement of the standards in the rule of particular applicability. Because such schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA prepared a cost/benefit analysis of the NPRM for the FOX high speed rail system, and determined that the NPRM imposes no new costs on FOX. The analysis hinges on the establishment of what constitutes a baseline level of regulatory cost. The assumptions were:

- FOX will operate as it proposed in the Petition.
- There is no cost or benefit if FOX intended or intends to follow the proposal under its current practices. Where it was not clear what FOX intends to do as a business practice, the FRA assumed that FOX would follow procedures established by TGV operations in France.
- There is no cost or benefit where FOX would have to follow the requirements of the proposal under current or proposed regulations applying to all railroad operations. (For example, FOX will be required to file accident reports.)
- There is no cost or benefit where FOX has proposed, and FRA has accepted, provisions which are less strict than current or proposed regulations, but for which FOX has proposed limitations on its operations or other practices which directly affect the safety issue in question. (For example, because FOX will limit the weight of its trains and exclude freight operations, the dynamic load on the track will be less than on other track Class 4 and higher, so FRA will permit FOX to make one visual inspection a week, where other high-speed lines would be subject to visual inspection two or three times a week.)
- There is no cost or benefit where FOX would have to follow restrictions FRA now places on other railroads under waivers to accomplish the same end. (For example, FRA is requiring that railroads participating in the ITCS demonstration program validate their software.)
- The proposed rules FRA considered as part of the base case include track standards for high-speed operations, emergency preparedness and passenger equipment safety standards for Tier II equipment.

The proposed rule will not impose any costs on FOX beyond those above, so the FRA does not anticipate that the proposed rule will create any benefits. If the first assumption, that FOX will operate as it represented in the Petition, is not true, then the public safety would be ensured by this proposal, and it would create benefits.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires an assessment of the impacts of proposed rules on small entities. FRA has determined that this proceeding will not have a significant impact on a substantial number of small entities. The NPRM and any final standards that evolve in this proceeding relate only to the FOX high speed rail system, and FOX is not a small entity.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C 3501–3520, and its implementing regulations, 5 CFR part 1320, when information collection requirements pertain to nine or fewer entities, Office of Management and Budget (OMB) approval of the collection requirements is not required. This regulation pertains to one railroad, and therefore, OMB approval of the paperwork collection requirements in this proposed rule is not required.

Environmental impact

FRA has evaluated these proposed standards in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), and related laws and regulations. FRA has determined that this NPRM does not in and of itself have a direct impact on the environment. These proposed standards establish an improved framework for safety oversight of the system proposed by FOX, but FOX could build or operate a similar high speed rail network in the State of Florida under existing Federal railroad safety regulations of general applicability. It is expected that there will be other Federal approvals. The FRA has entered into a Memorandum of Understanding with the Federal Highway Administration (FHWA) and the Florida Department of Transportation (FDOT) through which the parties have established a process for considering the environmental impact of the implementation of the FOX high speed rail system in Florida to the extent that Federal approvals are required. The FHWA and FRA have agreed to serve as joint lead agencies for the purpose of complying with the statutory requirements of NEPA and related statutes, and such compliance will be completed prior to the proposed rule having practical effect. FDOT has agreed to coordinate the development of environmental studies at the state level. Appropriate notices, including a notice of the intent to prepare an

environmental analysis, will be provided to the public by the FRA and FHWA in accordance with FRA and FHWA procedures implementing NEPA.

Federalism Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It should be noted that the U.S. Supreme Court in *CSX* v. *Easterwood*, 507 U.S. 658 (1993), upheld Federal preemption of any state or local attempts to regulate train speed. Nothing in this notice proposes to change that relationship.

List of Subjects in 49 CFR Part 243

French TGV, High Speed Rail, Railroad safety, System safety

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend Title 49 of the Code of Federal Regulations by adding Part 243, as follows:

PART 243—FLORIDA OVERLAND EXPRESS HIGH SPEED RAIL SAFETY STANDARDS

Subpart A—General Requirements

Sec.
243.1 Purpose and scope.
243.3 Applicability.
243.5 Definitions.
243.7 Responsibility for compliance.
243.9 Enforcement.
243.11 Preemptive effect.
243.13 System description.
243.15 Movement of defective equipment.

Subpart B—System Safety Program and Plan

243.101 General system safety requirements.
243.103 Fire protection program.
243.105 Software safety program.
243.107 Inspection, testing, and maintenance program.
243.109 Training, qualification, and designation program.
243.111 Emergency preparedness program.
243.113 Pre-revenue service system qualification testing plan.
243.115 Hazard identification and reduction.
243.117 Operating procedures in the event of component failures.
243.119 Safety-critical subsystems.
243.121 Approval procedure.

Subpart C—Signal System

243.201 Plans, where kept.
243.202 Grounds.
243.203 Locking of signal apparatus housings.
243.204 Design of control circuits on the failsafe principle.
243.205 Power-operated switch use.
243.206 Yard operations.
243.207 Timetable instructions.

Wayside and cab signals

243.208 Location of wayside signals.
243.209 Aspects and indications.
243.210 Markers.
243.211 Spacing of beacons.

Track circuits

243.212 Track circuit requirements.
243.213 Track circuit shunting sensitivity.
243.214 Insulated rail joints.
243.215 Fouling wires.
243.216 Turnout, fouling section.

Wires and cables

243.217 Protection of insulated wire; splice in underground wire; aerial cable.
243.218 Tagging of wires and interference of wires or tags with signal apparatus.

Standards

243.219 Control circuits; requirements.
243.220 Control circuits for signals, selection through point detector operated by switch movement.
243.221 Time locking; where required.
243.222 Indication locking.
243.223 Electric locking circuits.
243.224 Loss of shunt protection; where required.
243.225 Signal control circuits, selection through track relays or devices functioning as track relays.
243.226 Switch, movable-point frog or split-point derail.
243.227 Point detector.
243.228 Signals controlled by track circuits.
243.229 Circuits at interlocking.
243.230 Signals at adjacent interlockings.
243.231 Track signaled for movements in both directions, change of direction of traffic.
243.232 Route locking.
243.233 Wayside detectors.
243.234 Protection of maintenance-of-way personnel.
243.235 ATC device installation.
243.236 Forestalling device and speed control.
243.237 Cab signal indication in accordance with maximum speed limit.
243.238 Automatic brake application; initiation when the maximum speed limit is exceeded.
243.239 Advance cab signal indication.
243.240 Automatic brake application initiated by the ATC.
243.241 Cab signal indication after authorization to enter a block section where conditions defined in § 243.219 exist.
243.242 Audible indicator.
243.243 Delay time.
243.244 Automatic brake application; full service.
243.245 Interference with application of brakes by means of brake valve.
243.246 Control from lead vehicle.
243.247 Proper operative relation between parts along roadway and parts on power car.
243.248 Visibility of cab signals.
243.249 Power supply.
243.250 Seal, where required.
243.251 Rate of pressure reduction; equalizing reservoir or brake pipe.
243.252 Restrictions imposed when device fails and/or is cut out en route.
243.253 Trackage.
243.254 Cut out of the ATC system.

Reporting Requirements.

243.255 Accidents resulting from signal failure.
243.256 Signal failure reports.
243.257 Annual signal systems report.

Inspection, Testing, and Maintenance

243.258 General.
243.259 Interference with normal functioning of device.
243.260 Operating characteristics of electromagnetic, electronic, or electrical apparatus.
243.261 Adjustment, repair, or replacement of component.
243.262 Purpose of inspection and tests; removal from service of a relay or device failing to meet test requirements.
243.263 Point detector test.
243.264 Relays; microprocessor testing.
243.265 Ground tests.
243.266 Insulation resistance tests; wires in trunking and cables.
243.267 Time releases, timing relays and timing devices.
243.268 Time locking.
243.269 Route locking.
243.270 Indication locking.
243.271 Traffic locking.
243.272 Switch obstruction test.
243.273 Locomotive or power car power supply voltage requirement.
243.274 Power car or locomotive insulation resistance; requirement.
243.275 Antennas and beacons.
243.276 Departure test.
243.277 Periodic test.
243.278 Results of tests.
243.279 Independent verification and validation.

Subpart D—Track Safety Standards

243.301 Restoration or renewal of track under traffic conditions.
243.303 Measuring track not under load.
243.305 Drainage.
243.307 Vegetation.

Geometry

243.309 Track geometry; general.
243.311 Track gage.
243.313 Curves, elevation and speed limitations.

Track Structure

243.315 Track strength.
243.317 Crossties.
243.319 Continuous welded rail.
243.321 Rail end mismatch.
243.323 Rail joints and torch cut rails.
243.325 Turnouts and crossovers, generally.
243.327 Frog guard rails and guard faces; gage.
243.329 Derails

Inspection

243.331 Track geometry measurement systems.
243.333 Track/vehicle performance measurement system.
243.335 Wheel/rail force measurement system.
243.337 Daily inspection trainset.
243.339 Inspection of rail in service.
243.341 Initial inspection of new rail and welds.
243.343 Visual inspections.
243.345 Special inspections.
243.347 Inspection records.

Subpart E—Rolling Stock

243.401 Clearance requirements.
243.403 Structural strength of trainset.
243.405 Trailer car interior.
243.407 Glazing.
243.409 Brake system.
243.411 Truck and suspension system.
243.413 Fire safety.
243.415 Doors.
243.417 Emergency equipment.
243.419 Operator's controls and power car layout.
243.421 Exterior lights.
243.423 Electrical system design.
243.425 Automated monitoring.
243.427 Trainset system software and hardware integration.
243.429 Control system design requirements.
243.431 Safety appliance.

Inspection

243.433 Trainset inspection, testing & maintenance.

Subpart F—Operating Rules

243.501 Purpose.
243.503 Operating rule; filing and recordkeeping.
243.505 Program of operational tests and inspections; recordkeeping.
243.507 Program of instruction on operating rules; recordkeeping; electronic recordkeeping.
243.509 Operating rules approval.

Subpart G—System Qualification Tests

243.601 Responsibility for verification demonstrations and tests.
243.603 Preparation of test plan.
243.605 Pre-operational qualification tests.
243.607 Integrated operational testing of systems.
243.609 Pre-revenue service testing.
243.611 Verification of compliance.

Subpart H—Personnel Qualification Requirements

243.701 General requirements.

Track Personnel

243.703 Personnel qualifications for track maintenance and inspection personnel.
243.705 Personnel qualified to supervise track restoration and renewal.
243.707 Personnel qualified to inspect track.
243.709 Personnel qualified to inspect and restore continuous welded rail.

Signal Personnel

243.711 Personnel qualifications for signal maintenance and inspection personnel.
243.713 Personnel qualified as signal inspector.
243.715 Personnel qualified as signal maintainer.
243.717 Personnel qualified to supervise signal inspectors and maintainers.

Rolling Stock Personnel

243.719 Personnel qualifications for rolling stock personnel.
243.721 Personnel qualified to inspect and maintain rolling stock.
243.723 Personnel qualified to supervise the inspection and maintenance of rolling stock.

Subpart I—Power Distribution

243.801 Warning signs.
243.803 Clearance requirements.
243.805 Catenary connections.
243.807 Access to stations.
243.809 Actuators.
243.811 Power feeding.
243.813 Emergency devices.
243.815 Overpass protection.
243.817 Safety work rules.
243.819 Inspection, testing, and maintenance of power distribution system.

Appendix A—Schedule of Civil Penalties [Reserved]
Appendix B—Test Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Constructing or Refurbishing Locomotive Cab and Passenger Car Interiors
Appendix C—Railroad Safety-Critical Operating Rules [Reserved]

Authority: Subtitle V of Title 49 of the United States Code; 49 CFR 1.49(m).

Subpart A—General Requirements

§ 243.1 Purpose and scope.

This Part prescribes minimum Federal safety standards for the high speed transportation system described in detail in § 243.13 of this rule, known as the Florida Overland Express and hereinafter referred to as the "Railroad." The purpose of this rule is to prevent accidents, casualties, and property damage which could result from operation of this system.

§ 243.3 Applicability.

(a) This Part applies only to the Railroad operating between Miami, Orlando and Tampa in the State of Florida, as described § 243.13. The Railroad shall operate only within the system defined in § 243.13. Any operations outside the system as defined in § 243.13 are prohibited without prior approval by the FRA.

(b) Except as stated in paragraph (c) below, this rule, rather than the generally applicable Federal railroad safety regulations, shall apply to the Railroad.

(c) Effective on the date the Railroad begins revenue operations, the following generally applicable Federal railroad safety regulations, all of which are found in Title 49 of the Code of Federal Regulations, and in the case of paragraph (c)(14), which will be codified in the near future, and any amendments thereto, are hereby made applicable to the Railroad, regardless of any statements of limited application that they may contain:

(1) Part 209, Railroad Safety Enforcement Procedures;

(2) Part 210, Railroad Noise Emission Compliance Regulations;

(3) Part 211, Rules of Practice;

(4) Part 212, State Safety Participation Regulations;

(5) Part 214, Railroad Workplace Safety;

(6) Part 216, Special Notice and Emergency Order Procedures;

(7) Part 218, Railroad Operating Practices;

(8) Part 219, Control of Alcohol and Drug Use;

(9) Part 220, Radio Standards and Procedures;

(10) Part 225, Railroad Accidents/Incidents: Reports, Classification, and Investigations;

(11) Part 228, Hours of Service of Railroad Employees;

(12) Part 229, Section 135, Event Recorders;

(13) Part 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236, except § 235.7; Any reference in Part 235 to Part 236 shall be read to be a reference to Subpart C, Signal Standards, of this rule;

(14) The emergency preparedness requirements set forth in FRA's proposed Passenger Train Emergency Standards, 62 FR 8330 (February 24, 1996), which shall be codified as modified after consideration of all comments received at 49 CFR part 239;

(15) Part 240, Qualification and Certification of Locomotive Engineers, except sections 240.227 and 240.229; and

(16) Part 215, Railroad Freight Car Safety Standards; Part 229, Railroad Locomotive Safety Standards; Part 230, Locomotive Inspection; Part 231, Railroad Safety Appliance Standards; and Part 232 Railroad Power Brakes and Drawbars shall apply to the Railroad's conventional locomotive and freight fleet as it is used in work trains, rescue operations, yard movements, and other non-passenger functions.

(d) The Federal railroad safety statutes apply to all railroads, as defined in 49 U.S.C. 20102. The Railroad covered by this Part is a railroad under that definition. Therefore, the Federal railroad safety statutes, Subtitle V of Title 49 of the United States Code, apply directly to the Railroad. However, pursuant to authority granted under 49

U.S.C. 20306 (formerly the Rock Island Railroad Transition and Employee Assistance Act), FRA has exempted the Railroad from certain requirements of 49 U.S.C. 20301, *et seq.* (formerly the Safety Appliance Acts).

(e) The Système International, or metric measurement system, is the measuring system used throughout this rule. For clarification, United States' standard values typically follow the metric values in parentheses, and a soft conversion has been used.

§ 243.5 Definitions.

As used in this Part:

Adjusting/destressing, track means the procedure by which a rail's temperature is readjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

Administrator means the Administrator of FRA, the Deputy Administrator of FRA, or the delegate of either.

Alerter means a device or system installed in the locomotive engineer cab to promote continuous, active locomotive engineer attentiveness by monitoring select locomotive engineer control activities, providing alarms, and stopping the train, if necessary. If fluctuation of a monitored locomotive engineer control is not detected within a predetermined time, a sequence of audible and visual alarms is activated to progressively prompt a response by the locomotive engineer. Failure by the locomotive engineer to institute a change of state in a monitored control, or acknowledge the alerter alarm activity through a manual reset provision, results in a penalty brake application, bringing the power car, locomotive, consist or trainset to a stop.

Anti-climbing mechanism means parts of the ends of adjoining trainset units that are designed to engage, when the units are subjected to large buff loads, to prevent override of one unit by another.

Associate Administrator means the Associate Administrator for Safety, FRA, or a Deputy Associate Administrator for Safety, FRA.

Automatic train control (ATC) means equipment installed on the power car or locomotive working in conjunction with a track-side system, so arranged that its operation will automatically result in the application of the brakes to stop a train or control its speed at designated speed or location restrictions, should the locomotive engineer not respond.

Block means a length of track of defined limits, the use of which trains, trainsets, or any other on-track, self-propelled equipment are governed by block signals, or cab signals, or both.

Block signal means a manual signal at the entrance of a block to govern trains, trainsets, or any other on-track, self-propelled equipment entering and operating in that block.

Block, absolute means a block in which no train is permitted to enter while it is occupied by another train, trainset, or any other on-track, self-propelled equipment.

Brake, air means a combination of devices operated by compressed air, arranged in a system and controlled manually, electrically, or pneumatically, by means of which the motion of a power car, trailer car, or trainset is retarded or arrested.

Brake, disc means a retardation system used on some rail vehicles, primarily passenger equipment, that utilizes flat metal discs as the braking surface, instead of the wheel tread.

Brake, dynamic or electric means a train or trainset braking system in which the kinetic energy of a moving train or trainset is used to generate electric current at the power car or locomotive traction motors, which is then dissipated through banks of resistor grids.

Brake, emergency application means a brake application that results in the maximum designed retarding force for the train brake system.

Brake, full service application means an application of the brakes resulting from a continuous or a split reduction in brake pipe pressure at a service rate until maximum brake cylinder pressure is developed. As applied to an automatic or electro-pneumatic brake with speed governor control, an application other than emergency which develops the maximum brake cylinder pressure, as determined by the design of the brake equipment for the speed at which the train is operating.

Brake, tread means a braking system that uses a brake shoe that acts on the tread of the wheel to retard the vehicle.

Brake control system means the components, including software, that either automatically or under the control of the engineer cause changes in the retarding force applied to the trainset by the brake system.

Brake pipe means the system of piping, including branch pipes, angle cocks, cutout cocks, dirt collectors, hose, and hose couplings, that connects power cars and all trailer cars and permits the passage of air to control the power car and trailer car brakes.

Brake system failure means the brake system not applying or releasing in response to commands, or other significant departure from intended operation.

Braking supervision means a function of the ATC system whereby the speed and position of the trainset are monitored in relation to its effective braking performance to ensure compliance with the target speed and target distance.

Broken base means any break in the base of the rail.

Broken rail means a complete break of the rail.

Buckling incident/buckling rail mean the formation of a lateral mis-alignment sufficient in magnitude to constitute a deviation of 125 mm (4.9 in.) measured within a 20 m (65.6 ft.) chord. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

Cab means the compartment of the power car or locomotive designed to be occupied by the crew, and from which the propelling power and power brakes of the trainset are manually controlled.

Cab signal means a signal located in the locomotive engineer's compartment or cab, indicating a condition affecting the movement of a trainset, power car or locomotive and used in conjunction with interlocking signals, and in conjunction with or in lieu of block signals.

Calendar day means any period beginning at 12:01 a.m. and ending at midnight on a given date.

Cant means the vertical distance of the outer rail above the inner rail in a curve.

Cant deficiency means the additional height, which if added to the outer rail in a curve, at the designated vehicle speed, would provide a single resultant force, due to the combined effects of weight and centrifugal force on the vehicle, having a direction perpendicular to the plane of the track.

Cant, rail means a rail's inward inclination.

Cantrail means the longitudinal structural member at the intersection of the side wall and the roof of a rail vehicle.

Central traffic control means the system of railroad operation in which the movement of trains over routes and through blocks on a designated section of track or tracks is directed by signals controlled from a designated point.

Compound fissure means a progressive fracture originating in a horizontal split rail head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.

Continuous welded rail (CWR) means rail that has been welded together into lengths exceeding 120 m (394 ft).

Crack, rolling stock means a fracture without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be cracked.

Crash energy management means an approach to the design of passenger rail equipment which controls the dissipation of energy during a collision to protect the occupied volumes from crushing, and to limit the decelerations on passengers and crew in those volumes. This may be accomplished by designing energy-absorbing structures of low strength in the unoccupied volumes of a rail vehicle or passenger train to collapse in a controlled fashion, while providing higher structural strength in the occupied volumes. Energy deflection can also be part of a crash energy management approach. Crash energy management can be used to help provide anticlimbing resistance and to reduce the risk of train buckling during a collision.

Crew means the complement of crew members assigned to operate a train.

Crew member means a Railroad employee called to perform service covered by 49 U.S.C. 21103 and subject to the Railroad's operating rules and program of operational tests and inspections required in this rule.

Critical buckling stress, means the minimum stress necessary to initiate buckling of a structural member.

Critical software means software whose failure could have an impact on safety, or could cause large social or financial loss.

Damaged rail means any rail broken or injured by accidents, wrecks, broken wheels, flat wheels, unbalanced wheels, slipping or similar causes.

Desired rail installation temperature range means the rail temperature range in a specific geographical area, at which forces in CWR installed in that temperature range should not cause a track buckle in extreme heat, or a pull-apart during extreme cold weather.

Detail fracture means a progressive fracture originating at or near the surface of the rail head. These fractures do not include transverse fissures, compound fissures, or other defects which have origins internal to the rail. Detail fractures may arise from shelling, head checks, or flaking of the rail.

Disturbed track means track having reduced resistance to lateral or longitudinal movement, or both, as a result of the disturbance of the roadbed or ballast by track maintenance or any other event.

Emergency application means a brake application which results from an emergency reduction.

Emergency reduction means a depletion of brake pipe pressure at a rate sufficiently rapid to move the operating valve to emergency position.

Employee or Railroad employee means any employee of, contractor of, or employee of a contractor of, the Railroad.

End structure means the main support projecting upward from the floor or underframe of a power car, locomotive, trailer car or other rail vehicle. The end structure is securely attached to the underframe at each end of a rail vehicle.

Engine burn fracture means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward, such fractures frequently resemble the compound or transverse fissures, with which they should not be confused or classified.

Event recorder means a device, designed to resist tampering, that monitors and records data on train speed, direction of motion, time, distance, throttle position, brake applications and operations (including train brake, independent brake, and, if so equipped, electric brake applications and operations) and, where the locomotive, including a power car, is so equipped, cab signal aspect(s), over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

Failsafe means a characteristic of a system or its elements that, upon any failure or malfunction affecting safety, will cause the system to revert to a state that is known to be safe.

Fault tolerant architecture means the built-in capability of a system to provide continued full or continued limited operation in the presence of a limited number of faults or failures of the system, such as a defect in a hardware device or component, or an incorrect step, process or data definition in a computer program.

Flattened head or flattened rail means a short length of rail, not a joint, which has flattened out across the width of the rail head to a depth of 10 mm (0.4 in) or more below the rest of the rail. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

Full service application means a brake application which results from one or more brake pipe reductions sufficient in amount to cause a full service reduction.

Full service reduction means a service reduction sufficient in amount to cause equalization of pressure in brake cylinder with pressure in the reservoir from which compressed air is supplied to brake cylinder.

Glazing, end-facing means a glazing panel located where a line perpendicular to the exterior surface of the panel makes a vertical or horizontal angle of 50 degrees or less with the longitudinal center line of the rail vehicle in which the panel is installed. A glazing panel that curves so as to meet the definition for both side-facing and end-facing glazing is end-facing glazing.

Glazing, exterior means a glazing panel that is an integral part of the exterior skin of a rail vehicle with a surface exposed to the outside environment.

Glazing frame means the arrangement used to install the glazing into the structure of a rail vehicle.

Glazing, interior means a glazing panel with no surface exposed to the outside environment and which is protected from projectiles by the structure of a rail vehicle.

Glazing, side-facing means a glazing panel located where a line perpendicular to the exterior surface of the panel makes an angle of more than 50 degrees with the longitudinal center line of the rail vehicle in which the panel is installed.

Grade Crossing means a location where a public highway, road, or street or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

Handrails means safety appliances installed on either side of a rail vehicle's exterior doors to assist passengers and crew to safely board and depart the vehicle.

Head end power means electrical power provided on board the locomotive of a passenger train to serve the train.

High voltage means an electrical potential of more than 150 volts.

Home signal means a roadway signal at the entrance to a route or block to govern trains entering and using that route or block.

Horizontal split head means a horizontal progressive defect originating inside of the rail head, usually 8 mm (0.25 in) or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as

a crack lengthwise of the rail when it reaches the side of the rail head.

Hunting oscillations means a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4g root mean square, mean-removed, for 2 seconds.

In passenger service/in revenue service means a train or passenger equipment that is carrying, or available to carry, passengers. Passengers need not have paid a fare in order for the equipment to constitute in passenger or revenue service.

In service means equipment subject to this that is in passenger or revenue service, unless the equipment:

(1) Is being handled in accordance with § 243.15, as applicable;

(2) Is in a repair shop or on a repair track; or

(3) Is on a storage track and is not carrying passengers.

Indication locking means electric locking which directly prevents the operation of a switch or other operative unit, in case another unit which should operate first fails to make the required movement.

Interior fittings means any component in the passenger compartment which is mounted to the ceiling, sidewalls or end walls and which projects into the passenger compartment more than 25 mm (1 in.) from the surface or surfaces to which it is mounted. Interior fittings do not include seats, windows, side wall, end wall, floor, door pockets and ceiling lining materials.

Interlocking means an arrangement of signals and signal appliances so interconnected that their movements must succeed each other in proper sequence and which may be operated manually or automatically.

Interlocking block limits means the tracks between the opposing home signals of an interlocking.

Knowingly means having actual knowledge of the facts that give rise to a violation, or knowledge that a reasonable person acting in the circumstances and exercising reasonable care would have.

Linear static analysis means an analysis of the stresses in a structure under load, for which the loads are constant and the loads do not cause permanent deformation to the structure.

Locomotive means a piece of on-track equipment other than hi-rail, specialized maintenance or other similar equipment that may consist of one or more units operated from a single control stand—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to transport freight, passenger traffic or both; or

(3) Without propelling motors but with one or more controls. This term does not include locomotives propelled by steam power.

Locomotive, controlling means the locomotive from which the locomotive engineer exercises control over the train.

Longitudinal means in a direction parallel to the normal direction of travel of a rail vehicle.

Luminescent material means a material that absorbs light energy when ambient levels of light are high and emits this stored energy when ambient levels of light are low, making the material appear to glow in the dark.

L/V ratio means the ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail.

MIL–STD–882C means a military standard issued by the United States Department of Defense to provide uniform requirements for developing and implementing a system safety program to identify and then eliminate the hazards of a system or reduce the associated risk to an acceptable level.

Main track means a principal track, other than an auxiliary track, designated by timetable or special instructions, and upon which trains are authorized to operate by one or more of the following explicit methods of control: timetable/train order, signal indication, yard limits, or some form of direct train control.

Marker, block section means a marker located at the boundary between adjoining block sections.

Marker, route origin means a marker that is equipped with a proceed light signal, located at the beginning of a route.

Marker, shunting means a special marker, which is equipped with a shunting light, that is used for turn back operations where no route origin marker exists.

Marker, signaling means a marker used in open track, located at the boundaries between each block, to indicate spacing information.

Mechanical stabilization means a procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

Occupied volume means the spaces of a vehicle where passengers or crew are normally located during service operation, such as the operating cab and passenger seating and sleeping areas. Vestibules are typically not considered occupied, except when in use as a control cab.

Override means to climb over the normal coupling or side buffers and linking mechanism and impact the end of the adjoining vehicle or unit above the underframe.

Permanent deformation means a permanent change in the shape of a structural member.

Person means all categories of entities covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Piped rail means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

Power car means a type of locomotive at the leading or trailing end, or both, of a trainset which has a locomotive engineer cab and propelling motors that move the trainset; when at the leading end of the trainset, the unit from which the locomotive engineer controls the trainset.

Qualified person means a person determined by the Railroad to have the knowledge and skills necessary to perform one or more functions required by this rule. The Railroad determines the qualifications and competencies for employees designated to perform various functions in the manner set forth in this rule.

Rail anchors means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

Rail temperature means the temperature of the rail, measured with a rail thermometer.

Railroad equipment means all trains, trainsets, rail cars, locomotives, and maintenance vehicles owned or used by the Railroad.

Railroad operation means any movement of a train, trainset, locomotive, on-track equipment, or track motor car, singly or in combination with other equipment, on the track owned or operated by the Railroad.

Railroad, the means the company, also known as the Florida Overland eXpress (FOX), which owns and operates the high speed rail transportation system connecting Orlando, Miami, and Tampa and which is responsible for compliance with all aspects of this rule.

Redundancy means the existence in a system of more than one means of accomplishing a given function, with those means so arranged that if one means of accomplishing a function fails then another performs the function.

Redundancy, active means that all redundant items are operating simultaneously rather than being activated when needed.

Redundant system means a piece of equipment or a system that duplicates the essential function of another piece of equipment or system to the extent that either may perform the required function regardless of the state of operation or failure of the other.

Refresher training means periodic retraining required and imposed by the Railroad for employees or contractors to remain certified to perform specific equipment inspection, testing, or maintenance functions.

Repair point means a location designated by the Railroad where repairs of the type necessary occur on a regular basis, and that contains all facilities, tools, and qualified employees required to make necessary repairs.

Rollover strength means strength needed to protect the structural integrity of a rail vehicle in the event the vehicle leaves the track and impacts the ground on its side or roof.

Roof rail means the longitudinal structural member at the intersection of the side wall and the roof sheathing.

Route locking means electric locking, effective when a train passes a signal displaying an aspect for it to proceed, which prevents the movement of any switch, movable-point frog, or derail in advance of the train within the route entered. It may be so arranged that as a train clears a track section of the route, the locking affecting that section is released.

Safety appliance means an appliance, required under 49 U.S.C. chapter 203, excluding power brakes. The term includes automatic couplers, handbrakes, sill steps, handholds, handrails, or ladder treads which are made of steel or a material of equal or greater mechanical strength used by the traveling public and Railroad employees that provides a means for safe coupling, uncoupling, or ascending or descending Railroad equipment.

Safety-critical means a component, system or task that, if not available, not performed, or not performed correctly, increases the risk of damage to equipment or injury to a passenger, crew member, or other person.

Safety measurement criterion means a measurement limit or observation threshold used to trigger the duty to take corrective action to prevent a serious safety problem from developing. Measurements may be taken manually or by reliable sensors.

Semi-permanently coupled means coupled by means of a drawbar or other coupling mechanism that requires tools to perform the uncoupling operation. Coupling and uncoupling of each unit in a train can be performed safely only while at a maintenance or shop location where personnel can safely get under a unit or between units.

Service application means a brake application which results from one or more service reductions.

Service reduction means a decrease in brake-pipe pressure, usually of from 5 to 25 pounds, at a rate sufficiently rapid to move the operating valve to service position, but at a rate not rapid enough to operate the valve to emergency position. Quick service is that feature of the operating valve which provides for local reduction of brake-pipe pressure.

Shear strength means the ability of a structural member to resist forces or components of forces acting perpendicular to compression or tension forces, or both, in the member.

Shock absorbent material means material designed to prevent or mitigate injuries due to impact by yielding and absorbing much of the energy of impact.

Side posts means main vertical structural elements in the sides of a rail vehicle.

Side sills means that portion of the underframe or side at the bottom of the rail vehicle side wall.

Soft conversion means a dimension taken, typically from a product or component of a product, already designed and manufactured to English system dimensions, and expressing that dimension to nearly equivalent English or metric dimensions.

Spall, glazing means small pieces of glazing that fly off the back surface of glazing when an object strikes the front surface.

Speed, maximum authorized means the speed at which trains are permitted to travel safely, as determined by all operating conditions and signal aspects.

Speed, maximum revenue service means a speed of 200 mph.

Speed, maximum safe operating means the highest speed at which train braking may occur without thermal damage to the discs or wheels.

Speed, restricted means a speed that will permit stopping within one-half the range of vision, but not exceeding 20 mph.

Speed, slow means a speed not exceeding 20 mph.

Split web means a lengthwise crack along the side of the web of a rail and extending into or through it.

Superelevation means the actual elevation of the outside rail above the inside rail.

System headquarters means the location designated by the Railroad as the primary office for the Railroad system.

System safety plan means a document produced by the Railroad that states in detail the techniques, procedures, and tests to follow to reduce hazards and unsafe conditions to the lowest level possible through the most effective use of available resources. The system safety plan is used as part of the design process to ensure that the equipment and system meets all Federal safety standards and the Railroad's safety design requirements.

System safety program means the activities described in the system safety plan to be performed to ensure that the Railroad's equipment and operations meet all Federal safety standards and the Railroad's safety design requirements.

Target distance means the distance from the front of the train to the target.

Target speed means the maximum speed limit which takes effect at the target.

Terminal means the starting point or ending point of a single scheduled trip for a train. Normally, this location is where the trainset would reverse its direction.

TGV means a high speed rail system currently in use in France, on which some of the equipment and operations to be utilized by the Railroad subject to the requirements of this rule are based.

Thrust tube means the structural members in the trailer car end underframe that transmit longitudinal loads from the cross member located at the end of the trailer to the Car body side sills.

Tight/kinky rail means continuous welded rail that exhibits minute alignment irregularities, which indicate that the rail is undergoing a level of compression at which it may deform unacceptably.

Time locking means electric locking, which after a signal has been caused to display an aspect to proceed, prevents, until after the expiration of a predetermined time interval after such signal has been caused to display its most restrictive aspect, the operation of

any switch, movable-point frog, or derail in the route governed by that signal, and which prevents an aspect to proceed from being displayed for any conflicting route.

Track acceleration measurement system means an on-track vehicle used to measure lateral truck accelerations, lateral carbody accelerations, and vertical carbody accelerations. A Melusine car, used on the French TGV, is a type of track acceleration measurement system.

Track geometry measurement system means an on-track vehicle used to measure track surface, warp, alignment, and gage. The vehicle typically has eight axles spaced symmetrically from the centerline of the vehicle and conducts measurements by means of mechanical contact. A Mauzin car, used on the French TGV, is a type of track geometry measurement system.

Track lateral resistance means the resistance provided by the rail/crosstie structure against lateral displacement.

Track longitudinal resistance means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

Traffic locking means electric locking which prevents changing the direction of traffic on a section of track while that section is occupied or while a signal displays an aspect for a movement to proceed into that section.

Trailer car means a unit of a trainset designed to provide transportation for passengers, baggage, or mail.

Train means a combination of a single power car or locomotive with any other power car, locomotive, trailer car, or maintenance car. This term includes a trainset.

Train-induced forces means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential of track.

Trainset means a passenger train including the locomotive(s) and power car(s) and passenger cars that are semi-permanently coupled to operate as a single unit. The individual components are uncoupled only for emergencies or maintenance conducted in repair facilities.

Transmission beacon to locomotive (TBL) means the system which provides interface between the interlocking signal system and the automatic train control system used by the Railroad, resulting in the proper speed and location of all train movements.

Transverse fissure means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

Trip means the length of any single-direction, scheduled journey taken by a trainset. Once a trainset completes a turnaround at a station or predetermined location along the right-of-way, a new trip begins.

Two-out-of-three voting architecture means three independent processors operating on dissimilar software in such a manner so as to compare the software output from each processor to ensure that safety-critical results are identical. If one processor produces an answer inconsistent with the other two processors, the conflicting processor is taken off-line and the two remaining processors continue to compare with each other, and drive safety-critical commands, only so long as they both agree. If the remaining two processors fail to agree, the system ceases to issue safety-critical commands, shuts down, and assumes a safe state.

Uncoupling mechanism means the arrangement for operating the coupler by any means.

Underframe means the lower horizontal structure of a car body.

Unit means car, trailer car, power car or locomotive of any type. For articulated equipment a unit means a piece of equipment located between two trucks.

Unoccupied volume means the sections of the passenger vehicle or power vehicle which do not contain seating and are not normally occupied by passengers or crew.

Validation means the process of evaluating a system or component during or at the end of the development process to determine whether it satisfies specified requirements.

Vehicle, rail means a car, trailer car, locomotive, power car, or similar vehicle.

Verification means the process of evaluating a system or component to determine whether the products of a given development phase satisfy the conditions imposed at the start of that phase.

Vertical split head means a vertical split through or near the middle of the head of a rail, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

Vestibule means an area of a trailer or passenger car that normally does not contain seating, that leads from the seating area to the side exit doors.

Vital design method means a method of designing any device, circuit or software module used to implement a function essential to the safe operation of trains, such that the probability of its failing to return to the prescribed safe state is so low as to be considered practically nonexistent.

Vital logic processor means a processor designed and operated according to vital design method.

Warp means a measure of the change in track cant over a short distance.

Window, emergency means that segment of a side facing glazing location which has been designed to permit rapid and easy removal during a crisis situation.

Windshield means the combination of individual units of glazing material of the power car or locomotive that are positioned in an end facing glazing location.

Yard means a system of tracks within defined limits provided for the making up of trains, storing of cars and other purposes.

Yield strength means the stress under which a material will exhibit permanent deformation.

§ 243.7 Responsibility for compliance.

(a) The Railroad shall not—

(1) Use, haul, permit to be used or hauled on its line(s) any train or passenger equipment, that

(i) has one or more defects not in compliance with this Part; or

(ii) has not been inspected and tested as required by a provision of this Part; or

(2) Operate over any track, except as provided in paragraph (d) of this section, that has one or more conditions not in compliance with a provision of this Part, if the Railroad has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; or

(3) Violate any other provision of this Part.

(b) For purposes of this rule, passenger equipment shall be considered in use prior to the train's departure as soon as it has received, or should have received, the inspection required under this Part for movement and is ready for service.

(c) Although many of the requirements of this Part are stated in terms of the duties of the Railroad, when any person (including, but not limited to, a contractor performing

safety-related tasks under contract to the Railroad subject to this part) performs any function required by this Part, that person (whether or not the Railroad) is required to perform that function in accordance with this Part.

(d) For purposes of this Part, the Railroad operator shall be responsible for compliance with all track safety provisions set forth in Subpart D. When the Railroad operator has actual knowledge of the facts giving rise to a violation, or a reasonable person acting in the circumstances and exercising reasonable care would have knowledge that the track does not comply with the requirements of this Part, it shall—

(1) Bring the track into compliance;

(2) Halt operations over that track;

(3) Continue operations over the segment of noncomplying track at a speed of 10 mph for a period not to exceed 30 days, under the authority of a person qualified under section 243.705 of this Part to supervise restorations and renewal of track under traffic conditions; or

(4) Operate in accordance with the appropriate operational limits established for track classes 1 through 5 as set forth in 49 CFR part 213.

§ 243.9 Enforcement.

(a) *Civil penalties.* Any person who violates any requirement of this Part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury or has caused death or injury, a penalty of up to $20,000 per violation may be assessed. Penalties may be assessed against individuals only for willful violations. Each day a violation continues shall constitute a separate offense. See 49 CFR part 209, Appendix A for a detailed statement of agency civil penalty policy.

(b) *Criminal penalties.* Any person who knowingly and willfully falsifies a record or report required to be made under this Part, or knowingly and willfully fails to make, prepare, or preserve such a record or report may be liable for criminal penalties of a fine up to $5,000, imprisonment up to two years, or both, under the authority of 49 U.S.C. 21311.

(c) *Other remedies.* FRA has other enforcement remedies available to it, including the authority to seek injunctive relief and to issue compliance orders, special notices for repair, orders disqualifying individuals from safety-sensitive service, and emergency orders. FRA may use these other remedies, in addition to or instead of civil or criminal penalties, to ensure the system's compliance with the Federal railroad safety regulations and statutes, and to otherwise address safety concerns with respect to the system.

§ 243.11 Preemptive effect.

Under 49 U.S.C. 20106, issuance of this Part preempts any State law, rule, regulation, order, or standard covering the same subject matter, except for a provision directed at an essentially local safety hazard if that provision is consistent with this part and does not impose an undue burden on interstate commerce.

§ 243.13 System description.

(a) *General.* This section describes the components, operations, equipment, systems, and geographic limits of the Railroad's high speed rail system. Conditions that exceed or differ from the description set forth in this section are prohibited. In addition, the Railroad shall adhere to the following general requirements:

(1) The Railroad shall operate between Miami, Orlando, and Tampa, Florida only. Operation beyond these locations is prohibited without prior approval by FRA.

(2) The Railroad shall not under any circumstance exceed 200 mph, and at all times shall operate at speeds consistent with all requirements of this Part.

(3) The Railroad shall not transport or permit to be transported any product that has been established to be a hazardous material pursuant to 49 CFR part 172, as amended.

(4) The Railroad shall not permit smoking on any trainset while that trainset is in passenger service.

(b) *Right-of-Way.* (1) The Railroad shall operate on a completely dedicated right-of-way. The Railroad shall not operate or conduct joint operations with rail freight or other rail passenger traffic. Other than its passenger trainsets and power cars, only the equipment listed in paragraph (h)(6) of this section may be operated on the Railroad's tracks.

(2) There shall be no public at-grade crossings. Animal and non-Railroad equipment crossings shall be accomplished by means of an underpass or overpass. Private at-grade crossings shall be for the exclusive use of the Railroad's internal operations.

(3) The entire perimeter of the system's right-of-way shall be permanently fenced.

(4) The Railroad shall install fall intrusion, intrusion, flood, wind, hot box and dragging equipment detectors in accordance with the requirements set forth in Subpart C.

(5) Access to the right-of-way for roadway worker staff or emergency personnel shall be provided at intervals not to exceed 3.2 km (2 mi). This access shall be protected against entry by unauthorized persons.

(6) Throughout the length of the right-of-way, the Railroad shall install walkways, located at a safe distance from the tracks, at a minimum distance of 2.4 m (7.87 ft) from the outside rail for a design speed of 350 km/h (217 mph). The walkways shall be used primarily for track and right-of-way inspection, and when required by emergency crews.

(7) The right-of-way shall be designed for the high operating speeds planned which necessitate large curve radii in both the horizontal and vertical planes.

(8) The Railroad shall record all difficulties and special situations regarding geology, hydrology, settlement, landslide, concrete and quality criteria that arise during construction of the right-of-way. After construction, the Railroad shall monitor the stability and quality standards of structures such as bridges, viaducts and earth structures.

(9) The Railroad shall make available for review by the FRA the track layout drawings which show, at a minimum, the following information:

(i) Length of straight sections, spirals and curves, curve radius, superelevation, superelevation variations, gradients, vertical curve radii;

(ii) Turnouts and crossover location, technology and geometry;

(iii) Maximum operating speed and allowable cant deficiencies;

(iv) Signal boxes, block sectioning, wayside signal and communication devices;

(v) Power feeding equipment and cut-out devices;

(vi) Location of accesses to the right-of-way;

(vii) Designated track crossing locations for Railroad personnel; and

(viii) The Railroad shall also submit the specifications for the track layout, permissible track forces, components such as rail, ballast, ties, rail fasteners, switches.

(10) *Highway bridges.* In order to guarantee a clear view for drivers of motor vehicles, highway bridges shall be constructed in a straight line and sharp bumps shall be avoided. Protection devices shall be installed to restrict to the maximum extent possible motor vehicles from falling onto the right-of-way.

(11) *Rail bridges.* There shall be no movable bridges in the Railroad's system. Stationary rail bridges located over highways shall have their foundations protected against the impact of road vehicles.

(12) *Tunnels.* There shall be no tunnels in the Railroad's system.

(13) *Track Crossing Device for Roadway Workers.* Crossing of the tracks where operations occur above 160 km/h (100 mph) is not permitted except where designated track crossing devices are installed. Such track crossing devices shall be installed at all locations where the need for track crossing by workers is expected to occur on a regular basis, such as turnout areas and substations.

(14) *Emergency Traffic Stops.* Emergency traffic stopping or slowing devices, or both, shall be installed at regular intervals on both sides of the tracks, at intervals not to exceed 3.2 km (2 mi), and at all special locations including block section limits, turnouts, substations or autotransformers. These devices shall act directly on the signaling system and establish voice connection to the central traffic control system.

(c) *Railroad system components.* (1) *System safety program.* The Railroad shall develop, implement, and use a comprehensive system safety program, as described in detail in Subpart B of this Part, to ensure the identification, analysis, resolution, and documentation of all safety-critical processes and hazards.

(2) *Inspection, testing, and maintenance procedures and criteria.* The Railroad shall develop, implement and use a system of inspection, testing, maintenance procedures and criteria, which meet the standards set forth in this Part, to ensure the integrity and safe operation of the Railroad's equipment, infrastructure, signal system, and power distribution.

(3) *Operating practices.* The Railroad shall develop, implement, and use operating rules, which meet the standards set forth in Subpart F of this Part, which are based on the practices and procedures used on the French TGV system, to ensure the integrity and safe operation of the Railroad's system.

(4) *Emergency preparedness plan.* The Railroad shall develop, implement, and use an emergency preparedness plan, which meets the standards to be set forth in 49 CFR part 239, to reduce the risk of injury to passengers and employees in the event of an emergency. This emergency plan shall incorporate proven safety procedures used on the French TGV system.

(5) *Personnel qualification requirements.* The Railroad shall develop, implement, and use a training and testing program, which meets the standards set forth in Subpart H of this Part, to ensure that all personnel, including Railroad employees and employees of Railroad contractors, possess the skills and knowledge necessary to effectively perform their duties.

(6) *System qualification tests.* The Railroad shall develop, implement, and use a series of operational and design tests, which meet the standards set forth in Subpart G of this Part, to demonstrate the safe operation of system components, and the system as a whole.

(d) *Track and infrastructure.* (1) The Railroad shall construct its track and infrastructure to meet all material and operational design criteria, within normal acceptable construction tolerances, and to meet the requirements set forth in Subpart D of this Part.

(2) The Railroad shall operate on nominal standard gage, 1.435 m (56.5 in.), track.

(3) The Railroad shall install and operate on double track throughout its entire length, with a minimum nominal distance between track centerlines of 4.5 m (14.75 ft). Generally, each track will be used for a single direction of traffic, and trains will not overtake each other. The Railroad shall install crossover connections between the double track at each station, and at regular intervals along the line to permit flexibility in train operations, maintenance, and emergency rescue.

(4) The Railroad's track shall consist of continuous welded rail that is shop-welded in continuous welded strings of approximately 396 m (1,300 ft.). Once installed, the rail will be field-welded to form one continuous track segment. The rail shall be nominal 130-pound rail, or equivalent.

(5) The Railroad shall install concrete ties, nominally speced at .6 m (23.6 in.) center-to-center.

(6) The Railroad shall use ballast to support the track structure, as required by Subpart D of this Part. The Railroad shall use ballast that does not excessively degrade when used in combination with concrete ties. The ballast shall be of 20–60 mm (.8 to 2.4 in.) specification and layered to a nominal depth of .35 m (14 in.) under the ties.

(7) The substructure layer shall consist of compacted sandy granular material, 20% maximum fines, layered to a depth selected on the basis of the prepared subgrade and ballast compatibility. The nominal depth of this layer will be .20 m (8 in.).

(8) The formation layer shall consist of compacted granular sandy material, 15% maximum fines, layered to a depth selected on the basis of embankment and ballast compatibility. The nominal depth of this layer shall be .70 m (27.6 in.).

(9) The embankment shall consist of compacted granular sandy material, 15% maximum fines, layered to a depth selected on the basis of embankment and ballast compatibility. The nominal depth of this layer will be .80 m (31.5 in.).

(10) Excavated decomposed organic materials shall be replaced with compacted granular sandy materials, 20% maximum fines.

(11) Mainline high speed movable frog turnouts shall be the same as those developed for and used on the TGV lines in France.

(12) In yards and maintenance facilities, where operations will be at lower speeds, the Railroad shall install 50 kg/m (100 lb/yd) rail, a reduced ballast thickness of 25 cm (10 in.), and concrete or timber ties at turnouts with 50 kg/m (100 lb/yd) rail or equivalent.

(e) *Signal system.* (1) The Railroad's signal system shall include an automatic train control system (ATC), interlocking equipment, wayside detectors, and centralized traffic control (CTC).

(2) The Railroad's ATC shall be a transmission beacon-to-locomotive system, and shall interface with the interlocking system. The interlocking system shall generate movement authorizations, and the transmission beacon system will notify the power car and locomotive engineer of movement information.

(3) The Railroad's ATC shall incorporate speed and distance-to-go principles; safety-based multiple processor architecture and on-board equipment; wayside encoders that send messages through the track beacons and short cable loops, and provide notifications of upcoming curves and gradients, distances to point, and speed restrictions; and on-board equipment that calculates the braking curve requirements with respect to the data received.

(4) The Railroad's ATC shall provide continuous speed monitoring and interface with the train braking systems. The ATC shall initiate braking to control speed in the event the locomotive engineer exceeds the maximum authorized speed.

(5) The on-board ATC computers shall be based on a two-out-of-three voting architecture. Operations shall be accomplished by the use of three processors that shall operate simultaneously.

(6) The Railroad's ATC shall receive information from interlockings, that shall be transmitted to on-board equipment through track beacons and short cable loops. Track beacons shall transmit speed limit and line data for each block section. Cable loops shall be used for specific local information and, at the end of each block section, for permission to proceed.

(7) Braking profiles shall be calculated in the on-board controller to comply with necessary speed limits and target points determined by the track profile and wayside equipment data.

(8) Each block section will be denoted by a block section marker. On open line, block sections shall be equipped with one train detection system each. In areas managed by interlockings, the length of the section will vary according to the configuration of the line.

(9) Track circuits shall be of two types:

(i) Jointless audio frequency track circuits shall be used on the main line; in crossover areas, these circuits will be combined with sequential release logic in the interlocking controllers to ensure protection against poor wheel-rail contact on little-used rail; and

(ii) Jointed high-voltage impulse track circuits shall be used in the yards and maintenance facilities.

(10) The interlocking equipment shall:

(i) interface with the wayside signal equipment, track circuits, switch machines, and wayside signals;

(ii) Monitor all track circuits;

(iii) Interface with the automatic train control system;

(iv) Exchange supervisory control and status information with central control;

(v) Provide local back-up control at each interlocking location; and

(vi) Control switch machines and monitor devices used to verify switch position.

(11) The vital logic processor module of the interlocking controller shall employ two processors that operate simultaneously in a redundant checking system architecture.

(12) All wayside detectors shall interface with the train control system and be monitored from the central traffic control facility through the interlocking equipment.

(13) The Railroad's central traffic control shall regulate, from a single point, all train routes and movements.

(f) *Communications.* (1) The Railroad shall install a dedicated, fiber-optic communication system along the right-of-way to transmit data, telephone, and radio communications. To ensure transmission reliability, the system shall include back-up transmission routes.

(2) For train operation and maintenance, the Railroad shall install:

(i) A dedicated telephone system with fixed telephones and field sockets along the tracks, yards, and platforms;

(ii) A portable radio system for maintenance and service use; and

(iii) A train radio, which shall facilitate communication between each trainset and central control at any time.

(g) *Power distribution.* (1) The Railroad shall install a 25 kV (60 alternating current) overhead catenary electrification system.

(2) The Railroad shall protect against local lightning conditions in the design and operation of the power distribution system.

(3) All power substations located along the right-of-way shall be provided with remote control operating features that permit operation from a centrally-located control center.

(4) Supervisory control equipment at remote locations and power substations shall have battery-powered back-up capability in the event of total utility service failure.

(h) *Rolling stock.* (1) The Railroad's rolling stock shall be designed, operated, and maintained in accordance with the requirements set forth in Subpart E of this Part.

(2) The Railroad's trainsets shall be bi-directional, articulated, fixed-consist trains with a power car at each end and eight passenger or trailer cars between the power cars. The power cars and trailer cars shall not be coupled together, but shall be semi-permanently connected into one unit that is capable of being disconnected only in a repair facility. The trailing and leading ends of each trainset shall be equipped with automatic couplers. The trailer cars shall be arranged so that adjacent car body ends are supported by a common truck. The end trailers shall be supported by a separate truck at the carbody end adjacent to the power car.

(3) Each truck of a trainset shall be continuously monitored by on-board computer while in operation to ensure proper function. The on-board computer screen shall alert the locomotive engineer if malfunction occurs.

(4) Each trainset shall be equipped with wheelslide control, independent trucks, and fault-tolerant braking.

(5) All trainsets shall include operating smoke and fire detection systems.

(6) The Railroad shall operate other rail vehicles for maintenance and rescue purposes, including a grinding train, a tamping lining machine, a track stabilizing machine, a track geometry measurement car or Mauzin car, a track acceleration measurement car or Melusine car, an ultrasonic test car to measure the integrity of the rails, a ballast-plowing railway car, and electric and diesel locomotives for shunting and rescue purposes.

(7) Each maintenance center and maintenance employee shall be fully equipped with tools, autonomous motorized railway motorized cars, and road vehicles needed for performance of duties required by this Part.

(8) Each power car and trailer car shall incorporate crash energy management, and each power car shall contain a structural anti-penetration wall ahead of the locomotive engineer cab, and energy absorbing structures at the front and rear of the car body.

(9) The power cars shall be equipped with an alternating current propulsion system. Two self-commutated, synchronous traction motors on each truck of each power car shall provide maximum power at the wheel rims.

(10) The locomotive engineer cab shall be arranged to enhance safety of operation, range of vision, visibility and readability of controls and indicators, accessibility of controls, climate control, noise control, engineer comfort and vigilance, and efficiency. The engineer's control stand shall be centrally located.

(11) The Railroad's passenger equipment brake system shall meet the following standards:

(i) Each trainset shall be equipped with a two-pipe, electro-pneumatic brake system, which shall ensure that each truck respond independently to a brake demand from a reduction.

(ii) The pressure in each brake pipe shall be controlled by the locomotive engineer's automatic brake valve in the leading cab. In the event of a failure of this device, a purely pneumatic control shall be available for use by the locomotive engineer.

(iii) The maximum brake cylinder pressure shall vary depending on the speed range. At speeds above 200 km/h (125 mph), the maximum brake cylinder pressure will be reduced to avoid excessive demand of the adhesion.

(iv) Independent of the automatic brake valve, the ATC, deadman control, two emergency brake valves located in each cab, and emergency brake valves located in two trailer cars, shall each be capable of producing a rapid and complete evacuation of the brake pipe and initiate an emergency application.

(v) Each powered truck shall be independently controlled by the brake pipe, and shall have electric braking that is battery operated as a back-up in case of main power failure. The brake system shall perform so that the electric brake shall have priority action. The electric brake control shall be performed by the same electronic equipment that

controls the traction equipment on each truck. During emergency braking, electro-mechanical relays, independent of electronic control, shall check the level of electric braking and in case of failure, the friction brake shall be automatically applied at its maximum value. If the electronic equipment controlling the powered truck is out of service, friction braking shall be available in an emergency through a pneumatic application.

(vi) The control of the powered truck electric brake shall be available to the locomotive engineer through the traction-braking master controller to slow the trainset or maintain speed down a gradient. This brake application shall be provided with an electric signal without any reduction in the brake pipe pressure.

(vii) A separate microprocessor shall control the traction and the braking functions on each powered truck. Each microprocessor for the traction motor units shall be programmed so that the retarding force is distributed effectively between motors and air brake equipment. Each microprocessor shall also monitor the power dissipation in the rheostats.

(viii) Each power car and trailer car shall be equipped with wheelslide protection.

An anti-skid device for each truck shall be included in the traction system controls. The anti-skid function shall be controlled by a separate microprocessor for each power car truck. The anti-skid function for each truck shall be backed up a system that detects and notifies the engineer of nonrotating axles.

(ix) Each trainset shall be equipped with an operative on-board detection system. During operation, all power equipment shall be continuously monitored by microprocessor. The detection system shall store all failures detected. Failures of the nature described in § 243.425 of Subpart E of this Part shall appear on the display screen in the locomotive or power car cab.

(x) The Railroad's system safety plan shall establish a maximum authorized speed and brake reduction matrix to address brake failures that occur in service or in passenger service. In the event of any brake failure on a trainset, the locomotive engineer shall reduce train speed to the maximum authorized speed for that failure, as established in the Railroad's safety system plan.

(xi) The brake system on each trainset shall be designed and operated fail-safe. System redundancy and notification procedures shall ensure continuous monitoring and back-up in the event of failure.

(12) *Hot box detectors.* The Railroad shall install and maintain hot box detectors along the length of the right-of-way that detect the journal bearing temperature of all moving rail equipment. The detectors shall be interconnected to the central traffic control and shall alert the Railroad and the locomotive engineer of defective equipment.

§ 243.15 Movement of defective equipment.

(a) Except as provided in paragraphs (b) and (c) of this section and after departure in compliance with the daily inspection required by section 243.433(f)(1), a trainset with one or more conditions not in compliance with the list in section 243.433(f)(1) of this Part may be moved in revenue service only after the Railroad has complied with all of the following:

(1) A qualified person determines that it is safe to move the trainset, consistent with the Railroad's operating rules developed and approved in accordance with the requirements of Subpart F of this Part;

(2) The qualified person making the non-compliance determination notifies the locomotive engineer in charge of movement of the trainset and crew, in writing, that the trainset is non-complying, but safe to move, and of the maximum authorized speed, and any other restrictions that may apply; and

(3) A tag bearing the words "non-complying trainset" and containing the following information, are securely attached to the control stand on each control cab of the trainset:

(i) The trainset number;

(ii) The name and signature of the qualified person making the non-compliance determination;

(iii) The location and date of the inspection that led to the non-compliance determination;

(iv) A description of each defect;

(v) Movement restrictions, if any; and

(vi) The authorized destination of the trainset.

A copy of this tag may be used to provide the notification required by paragraph (a)(2) above.

(b) A trainset that develops a non-complying condition en route may continue in revenue service, so long as the requirements of paragraph (a) are otherwise fully met, until the next daily inspection, examination in service, running gear inspection, wheel inspection, minor inspection, general inspection, or major inspection, whichever is required by this Part to occur first. Where en route defects or failures of the brake system occur, trainset movement shall be governed by section 243.409 of this Part.

(c) A non-complying trainset, power car, or locomotive may be moved without passengers within a yard, at speeds not in excess of 16 km/h (10 mph), without meeting the requirements of paragraph (a) of this section where the movement is solely for the purpose of repair. The Railroad shall insure that the movement is made safely.

Subpart B—System Safety Program and Plan

§ 243.101 General system safety requirements.

(a) One year after the date that this Part takes effect, the Railroad shall adopt a written system safety plan that describes the railroad's system safety program, using MIL–STD–882(C) as a guide. The Railroad shall submit the system safety plan to FRA for approval. The Railroad shall update the system safety plan as new information and knowledge concerning systems and equipment arise in the course of operations. The Railroad shall brief FRA's Associate Administrator for Safety annually on the status of the system safety program, including any changes proposed for the system safety plan.

(b) The system safety plan shall describe the system safety program to be conducted as part of the Railroad's system design and construction process to ensure that the Railroad identifies, addresses, and documents all safety issues and Federal safety requirements. The system safety plan shall also describe the system safety program to be conducted as part of the operation, maintenance, and overhaul of all system components. The system safety plan shall take into account the operation of system components as they operate in isolation, as well as how they operate within the system. The system safety program shall ensure that safety issues are considered as important as cost and performance issues in the design, construction, operation, maintenance, and overhaul of the Railroad's system.

(c) The system safety plan shall be the Railroad's principal safety document. It shall be used as guidance or, as applicable, as a requirement for the development and operation of the Railroad's system and subsystems. At a minimum, the system safety plan shall address:

(1) Fire protection;

(2) Software safety;

(3) Inspection, testing, and maintenance;

(4) Training and qualifications;

(5) Emergency preparedness;

(6) Pre-revenue service system qualification testing;

(7) Hazard identification and reduction;

(8) Operating procedures in the event of equipment that becomes defective while in passenger service;

(9) Identification of safety-critical subsystems;

(10) Relationships between safety-critical subsystems; and

(11) Adequate staffing.

(d) The system safety plan shall describe the approaches and processes to be used to:

(1) Identify all safety requirements, including Federal requirements governing the design of passenger equipment and its supporting systems;

(2) Evaluate the total system, including hardware, software, testing, and support activities, to identify known or potential safety hazards over the life cycle of the Railroad's system;

(3) Identify safety issues during design reviews;

(4) Eliminate or reduce the risk posed by the hazards identified;

(5) Monitor the progress made toward resolving safety issues, reducing hazards, and meeting safety requirements; and

(6) Develop a program of testing or analysis, or both, to demonstrate that safety requirements have been met.

(e) As part of the system safety program, adequate documentation shall be maintained to audit how the design and operation of the Railroad's system meets safety requirements, and to monitor how safety issues are raised and resolved.

(f) The system safety plan shall address how operational limits may be imposed on the use of the Railroad's system if the system design cannot meet certain safety requirements.

(g) The Railroads shall make the system safety plan and documentation required by paragraph (e) of this section available for inspection and copying by FRA.

§ 243.103 Fire protection program.

(a) As part of the system safety program, the Railroad shall include fire safety considerations and features in the design of the Railroad's system that reduce the risk of personal injury and equipment damage caused by fires on-board to a level established as acceptable in MIL–STD–882(C).

(b) As part of the system safety program, the Railroad shall complete a detailed, written analysis of the fire protection problem. In conducting this analysis, the Railroad shall:

(1) Ensure that good fire protection practice is used as part of the equipment design process;

(2) Take effective steps to design equipment to be sufficiently fire resistant so that fire detection devices permit evacuation of the equipment before fire, smoke, or toxic fumes cause injury to a passenger or crew member;

(3) Identify, analyze, and prioritize the fire hazards inherent in the design of equipment;

(4) Document and explain how safety issues are resolved in relation to cost and performance in the design of equipment so that the risk of fire hazard is minimized;

(5) Describe the analysis and tests necessary to demonstrate how the fire protection approach taken in the design of equipment will enable a train to meet the fire protection standards of this Subpart and of the Railroad's system safety plan;

(6) Describe the analysis and tests necessary in order to select materials that will provide sufficient fire resistance to ensure adequate time for fire detection and safe evacuation;

(7) Reasonably ensure that a ventilation system does not contribute to the lethality of a fire;

(8) Identify in writing the trainset components that are a risk of initiating fire and which require overheat protection. As prescribed in § 243.413(c), overheat detectors shall be installed in all components where the analysis determines that such equipment is necessary. If overheat protection is not provided for a component at risk of being a source of fire, the written rationale and justification for the decision shall be included as part of the system safety program documentation;

(9) Identify in writing all unoccupied train compartments that contain equipment or material that pose a fire hazard, and analyze the benefit provided by including a fire or smoke detection system in each compartment identified. As prescribed in § 243.413(d), fire or smoke detectors shall be installed in unoccupied compartments where the analysis determines that such equipment is necessary to ensure sufficient time for the safe evacuation of a train. The written analysis shall explain why a fire or smoke detector is not necessary, if the decision is made not to install one in any of the unoccupied compartments identified as a potential source of fire;

(10) Perform an analysis of the occupied and unoccupied spaces which require portable fire extinguishers. The analysis shall include the proper type and size of fire extinguisher for each location;

(11) Identify in writing all unoccupied train compartments that contain equipment or material that poses a fire hazard. On a case-by-case basis, analyze the benefit provided by including a fixed, automatic fire-suppression system in each compartment identified. The type and size of the automatic fire-suppression system for each necessary application shall be determined. As prescribed in § 243.413(e) a fixed, automatic fire suppression system shall be installed in unoccupied compartments where the analysis determines it is necessary and practical to ensure sufficient time for the safe evacuation of the train. The analysis shall provide the reasoning why a fixed, automatic fire-suppression system is not necessary or practical if the decision is made not to install one in any of the unoccupied compartments identified in the plan; and

(12) Develop and adopt written procedures for the inspection, testing, and maintenance of all fire safety systems and equipment. As prescribed in § 243.413(f), the Railroad shall comply with those procedures that it designates as mandatory.

(c) The Railroad shall reasonably ensure that the design criteria is followed and that the tests required by the fire protection portion of the Railroad's system safety plan and program are performed.

§ 243.105 Software safety program.

(a) The Railroad shall develop and maintain a software safety program to guide the design, development, testing, integration, and verification of computer programs used to control or monitor the Railroad's equipment, operations and systems.

(b) The software safety program shall:

(1) Treat system software that controls or monitors safety functions as safety-critical, unless a completely redundant, failsafe, non-software means to perform the same function is provided; and

(2) Describe the following items, objectives or tasks to ensure that safe, reliable, and impenetrable system software is used to monitor or perform safety functions:

(i) The software design process to be used;

(ii) The software design documentation to be produced;

(iii) The software hazard analysis that will be performed, including a detailed explanation of the measures needed and taken by the Railroad to prevent the risk of penetration by unauthorized individuals or entities;

(iv) The software safety reviews that will be performed;

(v) The software hazard monitoring and tracking that will occur;

(vi) The hardware and software integration safety tests that will be conducted; and

(vii) The demonstration of overall software safety as part of the pre-revenue service tests of the Railroad's system.

(c) The Railroad shall adhere to the design criteria, and perform the tests required by the software safety portion of the system safety program. To fulfill this obligation in part, the Railroad shall include software safety requirements in each of its contracts for the purchase of new equipment or new components of existing equipment that contain safety-critical software.

(d) The Railroad shall use a formal safety methodology to develop electrical and electronic control systems that control safety functions. The safety methodology shall include a Failure Modes, Effects, Criticality Analysis (FMECA) and verification tests for all components of the control system and its interfaces, including computer software.

(e) Safety-related control systems driven by computer software shall include hardware and software design features that result in a control system that fails safe.

(f) The Railroad shall develop and comply with a comprehensive hardware and software integration program for safety-critical systems to ensure that the software functions as intended when installed in a hardware system identical to that to be used in service.

(g) The Railroad shall follow the software safety procedures required by the software safety portion of the system safety program.

§ 243.107 Inspection, testing, and maintenance program.

(a) *General.* The Railroad shall provide to FRA detailed information, consistent with the requirements of this rule and including those set forth in § 243.433(a), §§ 243.331 through 243.347, and §§ 243.258 through 243.279 of this Part, on the inspection, testing, and maintenance procedures necessary for the Railroad to safely operate its system. This information shall include a detailed description of:

(1) Safety inspection procedures, intervals, and criteria;

(2) Test procedures and intervals;

(3) Scheduled preventive maintenance intervals;

(4) Maintenance procedures; and

(5) Special testing equipment or measuring devices required to perform safety inspections and tests.

(b) *General inspection, testing, and maintenance procedures.* The inspection, testing, and maintenance program shall contain procedures that reasonably ensure that the Railroad's system is free from general conditions that endanger the safety of the crew, passengers, or equipment. This program shall include procedures to ensure that the system, all subsystems, and components are free from the following conditions that may endanger the safety of the crew, passengers, or equipment:

(1) A continuous accumulation of oil or grease on the rolling stock;

(2) Improper functioning of any component in the track, signal, rolling stock, or communication systems;

(3) A crack, break, excessive wear, structural defect, or weakness of a component in the track, signal, or rolling stock systems;

(4) A leak in any portion of the rolling stock;

(5) Use of a component or system under a condition that exceeds the design capabilities of that component or system; and

(6) Insecure attachment of a component of the track, signal or rolling stock systems.

(c) *Maintenance intervals.* Initial scheduled maintenance intervals should be based on analysis completed as part of the system safety program. The intervals should be changed only when justified by accumulated, verifiable operating data, and approved in conjunction with the system safety plan approval.

(d) *Standard procedures for safely performing inspection, testing, and maintenance, or repairs.* The Railroad shall establish written standard procedures for performing all safety-critical or potentially hazardous inspection, testing, maintenance, and repair tasks. These standard procedures shall be available to FRA upon request and shall:

(1) Describe in detail each step required to safely perform the task;

(2) Describe the knowledge necessary to safely perform the task;

(3) Describe any precautions that shall be taken to safely perform the task;

(4) Describe the use of any safety equipment necessary to perform the task;

(5) Be approved by the Railroad's official responsible for safety;

(6) Be enforced by the Railroad's supervisors responsible for accomplishing the tasks; and

(7) Be reviewed annually by the Railroad.

§ 243.109 Training, qualification, and designation program.

The Railroad shall adopt and comply with a training, qualification, and designation program for employees and contractors that perform emergency preparedness tasks or safety-related inspections, tests, or maintenance duties on the Railroad's system. This program shall meet the minimum requirements set forth in Subpart H of this Part, and it shall be submitted to FRA for approval as part of the Railroad's system safety plan.

§ 243.111 Emergency Preparedness Program.

The Railroad shall develop, adopt, and implement an emergency preparedness plan that complies with the requirements of FRA's proposed Passenger Train Emergency Standards as ultimately codified in 49 CFR part 239, as amended.

§ 243.113 Pre-revenue service system qualification testing plan.

The Railroad shall submit a pre-revenue service qualification testing plan, as part of the system safety plan, prior to testing the system. The pre-revenue service qualification testing plan shall cover all systems, including the signal, communication, infrastructure and track, rolling stock, software, and operating practices systems. The testing plan shall include all of the elements required by Subpart G of this Part and shall be approved in conjunction with the Railroad's system safety plan, prior to commencement of testing.

§ 243.115 Hazard identification and reduction.

(a) The Railroad shall include in its system safety program, an identification of all hazards that may arise in the system, which shall be reduced to writing and available for review and copying by FRA.

(b) The Railroad shall include in its system safety program, a written analysis of how the identified safety hazards may be reduced or eliminated through design, construction, equipment, or operations. Through system safety analysis, the Railroad shall choose the reduction or elimination method most appropriate for the safety of the system. A solution based in operations shall be discouraged. The Railroad's written analysis shall be available for review and copying by FRA.

§ 243.117 Operating procedures in the event of component failures.

(a) The Railroad shall include in its system safety program consideration of appropriate operating procedures in the event that rolling stock or any other system component becomes defective while in passenger service. The Railroad's system safety program shall include, at a minimum, appropriate operating procedures for all major component failures under all potential

operating conditions; a description of the limits of the fault tolerance for each fault-tolerant system; and the development of a process by which the Railroad and any locomotive engineer operating a trainset will become aware that a system is approaching the limits of its fault tolerance before those limits are reached or surpassed.

(b) As part of the system safety program, the Railroad shall complete a written explanation of the considerations completed under paragraph (a). The Railroad's written explanation shall be available for review and copying by FRA.

§ 243.119 Safety-critical subsystems.

The Railroad shall include in its system safety program an identification of all safety-critical subsystems. The Railroad shall also prepare an explanation of the relationship between all safety-critical subsystems. The Railroad's written identification and explanation shall be available for review and copying by FRA.

§ 243.121 Approval procedure.

(a) *General.* The following procedures govern consideration and action upon requests for approval of the Railroad's system safety plan and safety-critical changes to the Railroad's existing system safety plan.

(b) *Petitions for approval.* The Railroad's petition for approval of the system safety plan, or petition for approval of safety-critical changes to the system safety plan shall contain—

(1) The name, title, address, and telephone number of the Railroad's primary person to be contacted with regard to review of the petition;

(2) The system safety plan proposed, in detail, which addresses the Railroad's entire system as described in this Part; and

(3) In the case of the Railroad's initial petition for approval, appropriate data or analysis, or both, establishing that the system safety plan will provide a high level of safety; and in the case of petitions for approval of safety-critical changes to the system safety plan, data or analysis, or both, which establishes that the requested change(s) provides an equivalent or greater level of safety than provided in the Railroad's previous system safety plan.

(c) *Service.* The Railroad's petition for approval under paragraph (b) of this section shall be submitted in triplicate to the Associate Administrator for Safety, FRA, 400 7th Street, S.W., Stop 25, Washington, D.C. 20590.

(d) *Disposition of petition.* (1) If FRA finds that the petition complies with the requirements of this section and that the proposed plan is acceptable or proposed changes are justified, the petition shall be granted, normally within 90 days of its receipt. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of the petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause stated.

(2) If FRA finds that the petition does not comply with the requirements of this section and that the proposed plan is not acceptable or that the proposed changes are not justified, the petition shall be denied, normally within 90 days of its receipt.

(3) When FRA grants or denies a petition, or reopens consideration of the petition, written notice shall be sent to the petitioner.

(e) *Publication of Changes.* If FRA determines that changes to safety-critical standards, procedures, or inspection frequencies set forth in this rule are justified, the Administrator shall publish in the **Federal Register** a notice which explains those changes. The changes to the Railroad's system safety plan shall take effect 60 days after publication of such notice.

Subpart C—Signal System

General

§ 243.201 Plans, where kept.

As required for maintenance, plans shall be kept at all interlockings and intermediate track circuit cases. Plans shall be legible and correct.

§ 243.202 Grounds.

Each circuit, the functioning of which affects the safety of train operations, shall be kept free of any ground or combination of grounds which will permit a flow of current equal to or in excess of 75 percent of the release value of any relay or other electromagnetic device in the circuit, except circuits which include any track rail and except the common return wires of single-wire, single-break, signal control circuits using a grounded common, and alternating current power distribution circuits which are grounded in the interest of safety.

§ 243.203 Locking of signal apparatus housings.

Signal apparatus housings shall be secured against unauthorized entry.

§ 243.204 Design of control circuits on the failsafe principle.

The failure of a safety-critical control circuit shall not cause a condition more permissive than intended. Safety-critical circuits shall be designed on the failsafe principle.

§ 243.205 Power-operated switch use.

All switch movements shall be operated by power-operated electric switch machines. Hand-operated switches are prohibited in territory controlled by ATC.

§ 243.206 Yard operations.

Yard operations shall be controlled through the traffic control center for the yard, and movements in the yard shall be made at restricted speed. Relevant provisions of 49 CFR 236.1 through 236.109 shall apply to signals that are used in yard operations.

§ 243.207 Timetable instructions.

Interlockings, automatic train control territory, and yard limits shall be designated in timetable instructions.

Wayside and Cab Signals

§ 243.208 Location of wayside signals.

Each wayside signal shall be positioned and aligned so that its aspects can be visually associated with the track it governs.

§ 243.209 Aspects and indications.

(a) Aspects of wayside signals shall be shown by the color of lights, position of lights, flashing of lights, or any combination thereof. They may be qualified by marker plate, number plate, letter plate, marker light, or any combination thereof.

(b) The fundamental indications of wayside signal aspects shall conform to the following:

(1) A red light or a series of horizontal lights shall be used to indicate stop; and

(2) A yellow light or a lunar light shall be used to indicate that speed is to be restricted and stop may be required.

(3) A green light or a series of vertical lights shall be used to indicate proceed at authorized speed.

(c) The names, indications, and aspects of wayside and cab signals shall be defined in the Railroad's Operating Rule Book or Special Instructions. Modifications shall be filed with the FRA within thirty days after such modifications become effective.

(d) The absence of a qualifying appurtenance or the failure of a lamp in a light signal shall not cause the display of a less restrictive aspect than intended.

(e) Cab display:

(1) The aspects of the cab display shall include:

(i) the maximum authorized speed, shown by a bar-graph or a needle in periphery of the dial used for the indication of train speed;

(ii) the target speed, shown by numbers; and

(iii) the target distance corresponding to the indicated target speed, shown by a continuously refreshed bar-graph and numbers in case of overflow of the bar-graph.

(2) [Reserved]

(f) All bar-graphs and numbers shall be illuminated well enough to read clearly in all lighting conditions in which the equipment will be used.

§ 243.210 Markers.

(a) Block section markers and route origin markers shall be provided on high speed lines.

(b) Block section limits shall be indicated by marker plates installed along the right-of-way. The markers shall be located at adjoining block sections. Marker plates shall be illuminated for train operations that occur between one hour before sunset and one hour after sunrise, and during all other hours when weather conditions restrict visibility.

(c) Where route origin markers are used, the markers shall be located at the beginning of each route and each shall be equipped with a proceed light.

(d) Special shunting markers shall be provided at locations not equipped with route origin markers where turn-back operations may be required. Each such marker shall be equipped with a shunting light.

§ 243.211 Spacing of beacons.

The ATC system and beacon spacing shall be designed and operate such that:

(a) The locomotive engineer can comply with any imposed speed restriction through the use of a service brake application;

(b) if the locomotive engineer fails to react appropriately in response to speed restrictions or other safety-critical information conveyed, the safety of the trainset shall be ensured by an automatic brake application.

Track Circuits

§ 243.212 Track circuit requirements.

(a) The track relay controlling home signals or beacons shall be in de-energized position, or a device that functions as a track relay controlling home signals or beacons shall be in its most restrictive state, and the track circuit shall be de-energized where any of the following conditions exist:

(1) When a rail is broken or a rail or switch-frog is removed. It shall not be a violation of this requirement if a track circuit is energized:

(i) When a break occurs between the end of rail and track circuit connector; within the limits of rail-joint bond, appliance or other protective device, which provides a bypath for the electric current, or;

(ii) As a result of leakage current or foreign current in the rear of a point where a break occurs.

(2) When any portion of a trainset occupies any part of a track circuit.

(b) [Reserved]

§ 243.213 Track circuit shunting sensitivity.

Each track circuit controlling a home signal shall be maintained so that the track relay is in a de-energized position, or a device that functions as a track relay shall be in its most restrictive state if, when the track circuit is dry, a shunt is connected across the track rails of the circuit, including fouling sections of turnouts. The electric resistance of the shunt shall be:

(a) 0.15 Ohm on open track, for use with a ballast of 8 Ohm per kilometer (0.62 mi) resistance.

(b) 0.25 Ohm in interlocking areas, for use with a ballast of 8 Ohm per kilometer (0.62 mi) resistance.

§ 243.214 Insulated rail joints.

Insulated rail joints shall be maintained in a condition to prevent the failure of any track circuit due to track circuit current that flows between insulated rails.

§ 243.215 Fouling Wires.

Fouling wires shall consist of at least two discrete conductors, and each shall be of sufficient conductivity and maintained in such condition that the track relay will be in de-energized position, or device that functions as a track relay will be in its most restrictive state, when the circuit is shunted.

§ 243.216 Turnout, fouling section.

Rail joints within the fouling section shall be bonded, and fouling section shall extend at least to a point where sufficient track centers and allowance for maximum car overhang and width will prevent interference with trainset movement on an adjacent track.

Wires and Cables

§ 243.217 Protection of insulated wire; splice in underground wire; aerial cable.

Insulated wire shall be protected from mechanical injury. The insulation shall not be punctured for test purposes. A splice in underground wire shall have insulation resistance at least equal to the wire spliced. Aerial cable shall be supported by messenger.

§ 243.218 Tagging of wires and interference of wires or tags with signal apparatus.

Each wire shall be tagged or otherwise so marked that it can be identified at each terminal. Tags and other marks of identification shall be made of insulating material and so arranged that tags and wires do not interfere with moving parts of apparatus.

Standards

§ 243.219 Control circuits; requirements.

The circuits shall be so installed that each signal or beacon which governs train movements into a block section will convey its most restrictive state as long as any of the following conditions exist within the block:

(a) Occupancy by any portion of a trainset;

(b) When points of a switch are not closed in proper position; or

(c) When a track relay is in de-energized position or a device which functions as a track relay is in its most restrictive state; or when signal control circuit is de-energized.

§ 243.220 Control circuits for signals, selection through point detector operated by switch movement.

The control circuit for each signal aspect or beacon, which conveys an indication more favorable than "proceed at restricted speed" for a signal governing movement(s) over switches, shall be selected through a point detector operated directly by switch points for each switch, movable-point frog, and derail in the routes governed by such signal or beacon. Circuits shall be arranged so that such a signal or beacon can convey an indication more favorable than "proceed at restricted speed" only when each switch, movable-point frog, and derail in the route is in proper position.

§ 243.221 Time locking; where required.

Time locking shall be provided in conjunction with signal aspects or beacons which convey indications more favorable than "proceed at restricted speed". Time locking shall be provided for all interlocking signals where route or direction of traffic can be changed.

§ 243.222 Indication locking.

Indication locking shall be provided for switches, movable-point frogs and derails.

§ 243.223 Electric locking circuits.

Vital design methods in interlocking circuitry shall prevent "proceed" aspects from being displayed for conflicting movements.

§ 243.224 Loss of shunt protection; where required.

A loss of shunt protection shall not permit the release of the route locking circuit of each power-operated switch. The loss of shunt protection shall be based on a sequential release logic. Sequential release logic requires that when any track circuit becomes occupied in logical sequence from a previous track circuit; in combination with an established train route, its status will not be allowed to return to unoccupied, even though the detected shunt may be lost, until a specified safe time interval after the next track circuit in the route becomes occupied.

§ 243.225 Signal control circuits, selection through track relays or devices functioning as track relays.

The control circuits for signal aspects or beacons which convey indications more favorable than "proceed at restricted speed" shall be selected through track relays, or through devices that function as track relays, for all track circuits in the route governed.

§ 243.226 Switch, movable-point frog or split-point derail.

A switch, movable-point frog, or split-point derail shall be equipped with clamp locks and shall be maintained so that it cannot be locked when the point is open 6 mm (.25 in) or more.

§ 243.227 Point detector.

Point detectors shall be maintained so that when switch mechanisms are locked in normal or reverse position, contacts cannot be opened by manually applying force at the closed switch point. Point detector circuit controllers shall be maintained so that the contacts will not assume the position corresponding to switch point closure if the switch point is prevented by an obstruction from closing to within 6 mm (0.25 in).

§ 243.228 Signals controlled by track circuits.

The control circuits for aspects with indications more favorable than "proceed at restricted speed" shall be controlled by track circuits extending through the entire block.

§ 243.229 Circuits at interlocking.

Circuits at an interlocking shall be so interconnected that aspects to proceed cannot be displayed simultaneously for conflicting movements.

§ 243.230 Signals at adjacent interlockings.

Signals at adjacent interlockings shall be so interconnected that aspects to proceed on tracks signaled for movements at greater than restricted speed cannot be displayed simultaneously for conflicting movements.

§ 243.231 Track signaled for movements in both directions, change of direction of traffic.

On track signaled for movements in both directions, occupancy of the track between opposing signals at adjacent interlockings shall prevent changing the direction of traffic from that which was obtained at the time the track became occupied.

§ 243.232 Route locking.

Route locking shall be provided at all interlockings where power-operated switches are located.

§ 243.233 Wayside detectors.

(a) All wayside detectors, including flood, wind, hot box, fall intrusion, intrusion, and dragging equipment detection systems, shall be linked to the central traffic control system or to the signaling system, or both.

(b) The Railroad shall design and implement the wayside detection systems so that any detection of a potentially unsafe condition will be immediately conveyed to the central traffic control system or to the signaling system, or both.

(c) *Fall intrusion detectors.* The Railroad shall install fall intrusion detectors at all highway, animal, and non-Railroad equipment overpasses and underpasses. Fall intrusion detectors shall be activated when the network of protective wiring located at each overpass and underpass experiences a partial or complete break. The fall intrusion detectors' data output shall be transmitted to the central traffic control facility such that sensor information is continuously available to Railroad operations personnel. The Railroad's system safety plan shall list all locations where fall intrusion detectors are installed, and shall set forth the actions to be taken when specific conditions are detected.

(d) *Intrusion detectors.* The Railroad shall install a wayside intrusion detection system in the protective fencing along the Railroad right-of-way that shall restrict, to the maximum extent possible, all non-Railroad intrusion. The wayside intrusion detection system shall be installed at each location identified by the system safety plan as an area where intrusion is likely to occur. This system shall be connected to the Railroad's signal system and to the central traffic control system, and shall alert the Railroad when an intrusion occurs. The Railroad's system safety plan shall explain in detail where intrusion is likely to occur and why, and set forth specific actions to be taken by the Railroad when intrusion occurs.

(e) *Dragging equipment detectors.* The Railroad shall install dragging equipment detectors at all locations where underframe repair or maintenance work is performed, including locations where maintenance facility track joins the main line, and at other locations determined necessary by the system safety plan. The dragging equipment detector data output shall be transmitted to the central traffic control facility such that sensor information is continuously available to railroad operations personnel. The Railroad's system safety plan shall explain in detail where dragging equipment is likely to occur and why, and shall set forth specific actions to be taken by the Railroad when such dragging equipment is detected.

(f) *Flood detectors.* The Railroad shall install flood detectors along the right-of-way where determined necessary by the system safety plan, taking into account factors of drainage, culverts, bridges, overpasses, underpasses, and flood plain status. The flood detection system shall notify the signal system and central traffic control of any location where an accumulation of water exists in the right-of-way that may present a risk to a right-of-way structure, in service equipment, or passenger service equipment. The Railroad's system safety plan shall include specific actions to be taken when such water is detected.

(g) *Wind detectors.* The Railroad shall install wind detectors along the right-of-way where determined necessary by the system safety plan, taking into account area wind and weather patterns, topography, and proximity to large bodies of water. This wind speed data output shall be transmitted to the central traffic control facility such that sensor information is continuously available to Railroad operations personnel. The Railroad's system safety plan shall explain in detail the locations chosen for wind detectors and why; list the speeds and conditions at which operational safety is compromised; and set forth specific actions to be taken when those wind speeds are detected.

(h) *Hot box detectors.* The Railroad shall install and maintain hot box detectors along the length of the right-of-way that detect the journal bearing temperature of all moving rail equipment. Wayside detectors shall be arranged so as to check the journal bearing temperature on both sides of the trains, on each track. Detectors shall be located at intervals not to exceed 40 km

(25 mi). Hot box detectors shall be linked to the signal system to alert the locomotive engine or the central traffic control system, or both, depending on the level of the overheating, so that proper action will be taken by the Railroad. The hot box detector system shall include a tiered alarm system, as set forth below, to ensure that appropriate action accompanies journal box overheating.

(1) Danger alarms shall alert the Railroad when any journal box or journal box component fails in operation, which shall cause the defective train to stop at a designated block marker, and shall cause all passing trains to slow to a speed not in excess of 80 km/hr or 50 mph;

(2) Simple alarms shall alert the Railroad when journal box overheating that is likely to compromise safety occurs, which shall cause the defective trainset to reach the next siding where it shall be parked and inspected prior to resuming operations; and

(3) Inspection threshold alarms shall alert the Railroad when the temperature of the journal bearing is significantly higher than the average temperature taken on the other journal bearings. This alarm shall be transmitted to the central maintenance facility and the appropriate inspection and repair shall be completed.

The Railroad shall develop the hot box detection system in conjunction with the system safety plan, and shall explain in detail the location of the detectors and the temperatures that trigger corresponding remedial measures.

§ 243.234 Protection of maintenance-of-way personnel.

To protect maintenance-of-way personnel, the signaling system shall include circuitry to lock-out particular block sections and restrict the speed of passing trains on these block sections or adjacent trackage. The Railroad shall develop signal Operating Rules, as required in section 6 of this rule, in accordance with this requirement.

§ 243.235 ATC device installation.

Each power vehicle capable of being the lead vehicle in a trainset shall be equipped with an automatic train control (ATC) device which shall be operative at all times the trainset operates at a speed of more than 32 km/h (20 mph).

§ 243.236 Forestalling device and speed control.

(a) The ATC system shall be so arranged that if the authorization to proceed is not received from the wayside equipment and the train has reached the limit of its authorized progression, the trainset will be brought to a complete stop. The system shall not allow movement except upon the operation of an acknowledging device, and then only at slow speed until an authorization to proceed is received by the onboard train control device.

(b) The ATC system shall include the following features:

(1) Braking supervision, requiring the train to proceed at a speed ensuring compliance with the target speed at the target distance.

(2) Maximum speed supervision, effecting an automatic brake application whenever the maximum speed limit is exceeded.

§ 243.237 Cab signal indication in accordance with maximum speed limit.

While providing maximum speed supervision, the ATC system shall provide a cab signal indication of the maximum authorized speed.

§ 243.238 Automatic brake application; initiation when the maximum speed limit is exceeded.

The ATC system shall operate to initiate an automatic brake application when the speed of the train exceeds the maximum speed intervention curve. The automatic brake application can be interrupted by the locomotive engineer only when the speed of the train is lower than the maximum authorized speed. Absent intervention by the engineer, an automatic brake application shall bring the train to a speed of less than maximum authorized speed. Mere acknowledgment by the engineer does not constitute intervention.

§ 243.239 Advance cab signal indication.

The ATC system shall provide a cab signal indication of the target speed and distance before commencing the braking supervision, thus allowing the locomotive engineer to respond by a manual brake application.

§ 243.240 Automatic brake application initiated by the ATC.

In the absence of an appropriate response to a cab display indication on the part of the locomotive engineer, the ATC system shall initiate an automatic brake application to ensure compliance with target speed and target distance. The automatic brake application can be interrupted by the engineer only when the speed of the train is lower than the maximum authorized speed. Absent intervention by the engineer, an automatic brake application shall bring the train to a speed of less than maximum authorized speed. Mere acknowledgment by the engineer does not constitute intervention.

§ 243.241 Cab signal indication after authorization to enter a block section where conditions defined in § 243.219 exist.

(a) If a trainset is authorized to enter a block section in which any condition listed in § 243.219 of this Part exists, the ATC system shall display an indication to "Proceed at Restricted Speed'.

(b) If the restricted speed is exceeded, the ATC shall initiate an automatic brake application. Absent intervention by the engineer, an automatic brake application shall bring the train to a speed of less than maximum authorized speed. Mere acknowledgment by the engineer does not constitute intervention.

§ 243.242 Audible indicator.

The audible cab indicator shall have two distinctive sounds as noted in (a) and (b) below, and be clearly audible throughout the cab under all operating conditions.

(a) When the cab display changes, the audible indicator shall sound briefly (for approximately 0.5 seconds) to draw the engineer's attention to the change.

(b) An audible warning shall sound before an automatic brake application is initiated. The warning shall be given in sufficient time to allow the engineer and the train brake equipment to respond to the change. The indicator shall sound continuously until the warning condition disappears.

§ 243.243 Delay time.

The delay time of the ATC train-borne equipment shall be such as to ensure that the trainset shall comply with the target speed and distance through the brake application initiated by the system.

§ 243.244 Automatic brake application; full service.

An automatic brake application initiated by the ATC system shall cause a full service application of the brakes.

§ 243.245 Interference with application of brakes by means of brake valve.

The ATC apparatus shall be so arranged as not to interfere with the application of the brakes by means of the brake valve and not to impair the efficiency of the brake system.

§ 243.246 Control from lead vehicle.

Each trainset shall be controlled and operated from the lead vehicle. Each lead vehicle shall be equipped with an ATC device. This device shall have a fail-safe and fault tolerant architecture, such as a two-out-of-three voting architecture.

§ 243.247 Proper operative relation between parts along roadway and parts on power car.

ATC track-side and power car components shall be designed and shall operate in compatibility under all conditions of speed, weather, wear, oscillation, and shock.

§ 243.248 Visibility of cab signals.

The cab signals shall be plainly visible to the locomotive crew or power car crew from their stations in the cab.

§ 243.249 Power supply.

The ATC system shall operate from a separate or isolated power supply.

§ 243.250 Seal, where required.

A seal shall be maintained on any device other than the brake-pipe cut-out cock (double-heading cock), by means of which the operation of the pneumatic portion of the automatic train-control apparatus can be cut out.

§ 243.251 Rate of pressure reduction; equalizing reservoir or brake pipe.

The equalizing-reservoir pressure or brake-pipe pressure reduction during an automatic brake application shall be at a rate not less than that which results from a manual service application.

§ 243.252 Restrictions imposed when device fails and/or is cut out en route.

(a) When the ATC system fails or is cut out en route, the train may proceed at restricted speed to the next available point of communication or siding, where a report must be made to a designated officer. An ATC system failure may result from a variety of conditions; for purposes of this Subpart, the failure of two or more of the on-board processors will be considered an ATC failure. Where an absolute block is established in advance of the train on which the device is inoperative, the train may proceed at a speed not to exceed 127 km/h (79 mph).

(b) Where an ATC system fails or is cut out en route, the Railroad shall test the ATC and record the results in accordance with §§ 243.276 and 243.278, and determine that the ATC is fully operative before the trainset leaves its next initial terminal.

§ 243.253 The trackage.

The trackage over which the Railroad operates trains in revenue service shall be completely equipped with wayside equipment designed to interface with and provide safety control commands to the lead vehicle of trainsets which operate over that trackage. Signaling beacons and antennas shall be installed and maintained in accordance with manufacturer's specifications.

§ 243.254 Cut out of the ATC system.

Any cut out of the ATC system or activation of the acknowledging device shall be registered in the on-board event recorder.

Reporting Requirements

§ 243.255 Accidents resulting from signal failure.

The occurrence of an accident/incident arising from the failure of an appliance, device, method or system to function or indicate as required by this rule that results in a more favorable aspect than intended or other conditions hazardous to the movement of a train, shall be reported within 24 hours to the FRA by toll free telephone number, 800–424–0201.

§ 243.256 Signal failure reports.

Each failure of an appliance, device, method, or system to function or indicate as required by this rule that results in a more favorable aspect than intended or other condition hazardous to the movement of a train shall be reported to the FRA within five days from the date of occurrence. Form FRA F6180–14, "Signal Failure Report," shall be used for this purpose and completed in accordance with instructions printed on the form.

§ 243.257 Annual signal systems report.

The Railroad shall file an annual report with FRA which details the signal system configuration and operation, on a form provided by FRA in accordance with instructions and definitions on the reverse side of the form. The report shall be filed annually on or before April 1 of each year.

Inspection, Testing, and Maintenance

§ 243.258 General.

The Inspection, Testing and Maintenance program shall be designed to ensure that the safety of the railroad's signaling system does not deteriorate over time, in accordance with § 243.107 of this Part.

§ 243.259 Interference with normal functioning of device.

Inspection, testing and maintenance shall not interfere with or alter the normal functioning of any signal device except after measures are in place to provide for the safety of train operations that depend on normal functioning of such device. Where interference or alteration has occurred, the device must be functioning normally before train operations dependent on such functioning resume.

§ 243.260 Operating characteristics of electromagnetic, electronic, or electrical apparatus.

Signal apparatus, the functioning of which affects the safety of train operations, shall be maintained in accordance with the limits within which the device is designed to operate.

§ 243.261 Adjustment, repair, or replacement of component.

When any component of a signal system, the proper functioning of which is essential to the safety of train operation, fails to perform its intended signaling function or is not in correspondence with known operating conditions, the cause shall be determined and the faulty component adjusted, repaired or replaced without undue delay.

§ 243.262 Purpose of inspection and tests; removal from service of a relay or device failing to meet test requirements.

Inspections and tests shall be made in accordance with specifications of the Railroad, subject to approval by FRA in conjunction with the System Safety Plan set forth in Subpart B, to determine if the equipment is maintained in the proper condition to perform its intended function. Any electronic device, relay, or other electromagnetic device which fails to meet the requirements of specified tests shall be removed from service, and shall not be restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

§ 243.263 Point detector test.

Point detectors operated by power-operated switch movement shall be tested at least once every three months.

§ 243.264 Relays; microprocessor testing.

(a) Each safety-critical, train-borne ATC relay shall be tested at least once each year.

(b) Each safety-critical, wayside relay shall be tested at least once every four years.

(c) Each safety-critical, train-borne electronic subsystem which is not verified internally on a continuous basis shall be tested at least once each year.

(d) Each safety-critical, train-borne electronic subsystem in which proper operation is verified internally in a closed loop fashion shall not require periodic tests.

(e) Each safety-critical wayside electronic subsystem which is not verified internally on a continuous basis shall be tested at least once every two years.

(f) Each safety-critical wayside electronic subsystem, in which proper

operation is verified internally in a closed loop fashion, shall not require periodic tests.

§ 243.265 Ground tests.

(a) Except as provided in paragraphs (b) and (c) below, a test for grounds on each safety-critical energy bus furnishing power to circuits shall be made at least once every three months.

(b) The provisions of this section 315 shall not apply to track circuit wires, common return wires of grounded common single-break circuits, or alternating current power distribution circuits grounded in the interest of safety.

(c) Periodic ground tests are not required if ground detection devices are properly functioning, or if the design of circuits is such that a grounded energy bus could not impact the safety of train operation. An inspection of each ground detection device to ensure proper operation of such device shall be made at least once every three months.

§ 243.266 Insulation resistance tests; wires in trunking and cables.

(a) Insulation resistance of wires and cables, except conductors connected directly to track rails, shall be tested when wires, cables, and insulation are dry. Insulation resistance tests shall be made between all conductors and ground, and between conductors in each multiple conductor cable, and between conductors in trunking, when wires or cables are installed and at least once every 10 years.

(b) In no case shall a circuit be permitted to function on a conductor having an insulation resistance to ground or between conductors of less than 200,000 ohms.

§ 243.267 Time releases, timing relays, and timing devices.

Time releases, timing relays, and timing devices shall be tested at least once each year. The timing shall be maintained at not less than 90 percent of the predetermined time interval, which shall be shown on the plans or marked on the time release, timing relay, or timing device. Where time releases are an integral part of a safety-crit cal, processor-based controller and are specified in the applications program, such intervals shall be tested only at the time of installation and whenever a change is made in the applications program.

§ 243.268 Time locking.

Where time locking is an integral part of a safety-critical, processor-based controller and is specified in the applications program, such locking shall be tested at the time of installation and whenever a change is made in the applications program.

§ 243.269 Route locking.

Where route locking is an integral part of a safety-critical, processor based controller and is specified in the applications program, such locking shall be tested at the time of installation, whenever a change is made in the applications program, and when route locking has been disarranged.

§ 243.270 Indication locking.

Where indication locking is an integral part of a safety-critical, processor based controller and is specified in the applications program, such locking shall be tested at the time of installation, whenever a change is made in the applications program, and when the indication locking has been disarranged.

§ 243.271 Traffic locking.

Where traffic locking is an integral part of a safety-critical, processor based controller and is specified in the applications program, such locking shall be tested at the time of installation and whenever a change is made in the applications program.

§ 243.272 Switch obstruction test.

A switch obstruction test of each switch shall be made when a lock rod is installed and at least once every 3 months.

§ 243.273 Locomotive or power car power supply voltage requirement.

The output voltage of power supply for power car or locomotive ATC shall be maintained within 10 percent of rated voltage.

§ 243.274 Power car or locomotive insulation resistance; requirement.

When the periodic test prescribed in § 243.266 is performed, insulation resistance between wiring and ground of the automatic train control system shall be not less than one megohm.

§ 243.275 Antennas and beacons.

(a) Signaling beacons and antennas shall be inspected and maintained in accordance with the manufacturer's specifications.

(b) Antennas and beacons which have been repaired or rewound shall have the same operating characteristics which they possessed originally or as specified for new equipment.

§ 243.276 Departure test.

(a) The train-borne ATC equipment shall be tested using one of the following methods:

(1) Operation over track elements;

(2) Operation over a test circuit; or

(3) Onboard test device.

(b) The extent of the departure test shall be defined by the Railroad in accordance with the system safety plan required by Subpart B of this Part, but shall include at least the following:

(1) Ground-to-train transmission;

(2) The cab display indications; and

(3) The interface with the train brakes.

(c) The Railroad shall perform a departure test, and onboard ATC equipment shall be put in service, before the trainset operates over equipped territory. If the ATC is cut out, the Railroad shall perform another departure test before the ATC equipment is considered operative.

(d) If a locomotive or power car makes more than one trip in a 24-hour period, only one departure test is required in such a 24-hour period, except as provided in section 3.119(b) concerning failures or cut-outs en route.

(e) Each test run and its outcome shall be recorded in the train-borne event recorder. These records shall be downloaded and retained for at least one year.

§ 243.277 Periodic test.

A periodic test of the train borne ATC equipment shall be performed at least once every two months and on multiple-unit cars as specified by the Railroad, subject to approval by the FRA.

§ 243.278 Results of tests.

(a) Results of tests made in compliance with § 243.252(b), §§ 243.262 through 243.272, § 243.276, and § 243.277, shall be recorded on pre-printed or computerized forms provided by the Railroad or by electronic means. Such forms shall show the name of the Railroad, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left. Each record shall be signed by the employee making the test and shall be filed in the office of a supervisory official having jurisdiction. Results of tests shall be retained until the next record is filed, but in no case less than one year.

(b) For purposes of compliance with the requirements of this section, the Railroad may maintain and transfer records through electronic transmission, storage, and retrieval provided that:

(1) The electronic system be designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(3) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(4) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data; and

(5) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this Subpart, shall be made available for inspection and copying by the FRA.

§ 243.279 Independent verification and validation.

(a) *General.* The Railroad shall undergo a third-party safety audit of all safety-critical processor-based equipment and system elements as finally configured, prior to commencing operations. In order to complete this requirement, the Railroad shall contract with an independent reviewer, deemed "Reviewer" for purposes of this section, that is experienced in conducting verification and validation audits of safety-critical processor-based equipment and systems. The Reviewer shall use as a comparable standard for appropriate methodology and performance, all of the following standards:

(1) *Railway Applications: The specifications and demonstration of dependability, reliability, availability, maintainability and safety.* prEN 50126, European Committee for Electrotechnical Standardization (November 1995).

(2) *Railway Applications: Software for Railway Control and Protection Systems.* prEN 50128, European Committee for Electrotechnical Standardization (August 1996).

(3) *Railway Applications: Safety Related Electronic Systems for Signaling, version 0.9.* prEN 50129, European Committee for Electrotechnical Standardization (March 1996).

(4) *On-board Electronic Equipment and Computer Hardware.* CF 67–001, Societe Nationale des Chemins de Fers Francais (June 1990).

(5) *Methodology for the Development of On-board Micro-computer Equipment.* prCF 67–004, and NF F71–004, Societe Nationale des Chemins de Fers Francais (February 1989).

(6) *Railway Applications: Electronic Equipment used on Rolling Stock.* EN 50155, European Committee for Electrotechnical Standardization (November 1995).

(b) *Items included in audit.* (1) The Reviewer shall assess and comment on the adequacy of the processes which the Railroad applied to the design and development of the signal system. The Reviewer shall identify and document any safety vulnerabilities that are not adequately mitigated by the Railroad's processes.

(2) The Reviewer shall evaluate the adequacy of the Railroad's system safety plan concerning the signal system.

(3) The Reviewer shall analyze the Railroad's hazard analysis for comprehensiveness and adherence to the system safety plan.

(4) The Reviewer shall analyze the Railroad's fault tree analysis for completeness, accuracy, and adherence to the system safety plan.

(5) The Reviewer shall randomly select various safety-critical modules for audit to verify whether the Railroad's system safety plan were followed. The number of modules selected should be determined jointly by the Railroad and the Reviewer to ensure that a representative number sufficient to provide confidence that all unaudited modules were developed in adherence to the Railroad's system safety plan.

(6) The Reviewer shall evaluate and comment on the Railroad's plan for installation and test procedures for revenue service.

(c) *Reviewer's report.* (1) The Reviewer shall prepare a report of the audit and provide copies to the Railroad and FRA.

(2) The Reviewer's report shall be submitted to the Railroad and FRA prior to the commencement of installation testing and contain, at a minimum, the following:

(i) The Reviewer's evaluation of the adequacy of the Railroad's system safety program concerning the signal system, including any vulnerabilities that were not adequately mitigated;

(ii) The method by which the Railroad would assure system safety in the event of hardware or software failures, including an explanation of how the Railroad will assure that all potentially hazardous operating circumstances are identified;

(iii) The method by which the Railroad addresses the comprehensiveness of the system design for the requirements of the railroad operations it will govern, including an explanation of how the Railroad will assure that all potentially hazardous operating circumstances are identified, how the Railroad records deficiencies identified in the design process, and how the Railroad tracks the correction of these deficiencies;

(iv) The identification of any documentation that was denied, incomplete, or inadequate;

(v) The identification of each system procedure or process that was not properly followed;

(vi) The identification of each deficiency or criticism not adequately mitigated in which the positions of the Reviewer and Railroad are clearly stated;

(vii) The identification of the Railroad's software verification and validation procedures for its safety-critical applications, and adequacy of these procedures;

(viii) The methods used by the Railroad to develop safety-critical software, such as the use of structured language, code checks, modularity, or other similar techniques; and

(ix) A brief outline of what would be required to determine a mean time between unsafe failure value for the Railroad's hardware, a mean time between unsafe execution of the Railroad's software, and a mean time between hazardous events of the Railroad's system.

(d) *FRA acceptance.*

(1) FRA shall analyze the Reviewer's report upon receipt. Based on its analysis of the report, FRA shall notify the Railroad in writing that the signal system as finally configured is accepted or not accepted.

(2) In the event that FRA does not accept the signal system as finally configured, FRA shall provide a written explanation of the reasons for the non-acceptance.

(3) In the event that FRA does not accept the signal system as finally configured, the Railroad shall have an opportunity to respond to the Reviewer's report and to FRA's non-acceptance.

(4) The Railroad shall conform the signal system to the Reviewer's recommendations and FRA acceptance prior to revenue operations.

Subpart D—Track Safety Standards

§ 243.301 Restoration or renewal of track under traffic conditions.

(a) Restoration or renewal of track under traffic conditions is limited to the replacement of worn, broken, or missing components or fastenings that do not affect the safe passage of trains.

(b) The following activities are expressly prohibited under traffic conditions:

(1) Any work that interrupts rail continuity, e.g., as in joint bar replacement or rail replacement;

(2) Any work that adversely affects the lateral or vertical stability of the track with the exception of spot tamping an isolated condition where not more than 5 m (16.4 lineal ft) of track are involved at any one time and the ambient air temperature is not above 35 C (95 F); and

(3) Removal and replacement of the rail fastenings on more than one tie at a time within 5 m (16.4 ft).

§ 243.303 Measuring track not under load.

When unloaded track is measured to determine compliance with requirements of this Part, evidence of rail movement, if any, that occurs while the track is loaded shall be added to the measurements of the unloaded track.

§ 243.305 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed shall be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned.

§ 243.307 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not:

(a) Become a fire hazard to track-carrying structures;

(b) Obstruct visibility of railroad signs and signals;

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Geometry

§ 243.309 Track Geometry; General.

If any value listed in the following Safety Level One Geometry Table are exceeded, the Railroad shall initiate remedial action within two calendar days. If the values listed in the following Safety Level Two table are exceeded, the Railroad shall initiate immediate remedial action. For either the Level One or Level Two tables, a reduction in operating speed so that the condition complies with the limits listed for a lower speed shall constitute bringing the track into compliance.

SAFETY LEVEL ONE GEOMETRY TABLE

	Max. speed km/h (mph)	322 (200)	230 (143)	170 (105)	100 (62)	80 (50)	60 (37)	40 (25)
Alignment (mm)	10	9	10	13	16	17	21	24
	20	9	10	13	16	17	21	24
	31	15	18	18	NA	NA	NA	NA
Surface (mm)	[5] 12.2	11	13	16	18	19	21	52
	31	18	22	22	NA	NA	NA	NA

SAFETY LEVEL ONE GEOMETRY TABLE

	Max. speed km/h (mph)	322 (200)	230 (143)	170 (105)	100 (62)	80 (50)	60 (37)	40 (25)
Gage (mm) [1]	minimum	−7	−9	−12	−12	−12	−12	−12
	min. mean value [2]	−4	−7	−7	−7	NA	NA	NA
Gage Variation [4]	maximum [3] mm on 10 m base	+27 15	+27 15	+35 15	+35 15	+35 NA	+35 NA	+37 NA
Cant (mm)	maximum Chord (m)	180	180	180	180	180	180	180
Alignment (mm)	10	12	14	17	21	23	28	32
	20	12	14	17	21	23	28	32
	31	20	24	24	NA	NA	NA	NA
Surface (mm)	[5] 12.2	15	18	22	24	26	28	70
	31	24	30	30	NA	NA	NA	NA
Warp (mm)	[6] 10	15	15	18	18	18	24	24

[1] With respect to the nominal track gage, 1435 mm (56.5 in).
[2] Mean value on a 100 m (328 ft) length of track.
[3] Local defect value > +20 mm (0.79 in) has to be corrected.
[4] Gage variation is defined as the difference between the minimum and maximum gage measurements within 10 meters.
[5] The maximum values indicated on this line are not mid-chord offsets but are the difference between the average level at eight locations spaced symmetrically from the center at 0.675 m, 2.075 m, 3.64 m, and 6.11 m and a location at 0.675 m from the center. Surface$_{12.2}$=1/6($Z_{-6.11}$+$Z_{-3.64}$+$Z_{-2.075}$+$Z_{-0.675}$+$Z_{0.675}$+$Z_{2.075}$+$Z_{3.64}$+$Z_{6.11}$)−$Z_{0.675}$
[6] Difference between the cross level value at any location and the mean value of the crosslevel over a distance of +/−5.0 m (16.4 ft).

§ 243.311 Track gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane 15 mm (0.6 in) below the top of the rail head.

(b) The minimum gage, maximum gage, minimum mean value, and gage variation shall comply with the requirements defined in the Safety Level Two Geometry table given in Section 4.11.

§ 243.313 Curves, elevation and speed limitations.

(a) The maximum operating speed for each curve shall be determined by the following formula:

$$V_{max} = 3.6 * \sqrt{g * R * \frac{E_a + E_u}{D}}$$

where:

V_{max} = Maximum allowable operating speed (km/h).
E_a = Actual elevation of the outside rail above the inside rail (mm) 1.
R = Curve radius (m) 2.
E_u = Maximum allowable unbalanced elevation (mm).
D = Distance between wheel contact circles (mm).
g = acceleration due to gravity (m/s2).

In U.S. Engineering Units this formula becomes:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007 * D}}$$

where:

V_{max} = Maximum allowable operating speed (mph).
E_a = Actual elevation of the outside rail above the inside rail (in).[1]
D = Degree of curvature (degrees).[2]
E_u = Unbalanced elevation.

(b) Equipment meeting the standards of this section may be operated at curving speeds determined by the formula in paragraph (a) of this section, provided:

(1) It is demonstrated that when positioned on a track with uniform superelevation, Ea, reflecting the intended target cant deficiency, Eu, no wheel of the equipment unloads to a value of 60 percent or less of its static value on perfectly level track and the roll angle between the floor of the vehicle and the horizontal does not exceed 5.7 degrees;

(2) It is demonstrated that when positioned on a track with a uniform 180 mm (7 in) superelevation, no wheel unloads to a value less than 60% of its static value on perfectly level track and the angle, measured about the roll axis, between the floor of the vehicle and the horizontal does not exceed 8.6 degrees;

(3) The Railroad provides a complete description of the class of equipment involved, including schematic diagrams of the suspension system and the location of the center of gravity above top of rail;

(4) The Railroad provides a complete description of the test procedure and instrumentation used to qualify the equipment and the maximum values for wheel unloading and roll angles which were observed during testing; the test procedure may be conducted in a test facility, where all wheels on one side (right or left) of the equipment are raised or lowered by the intended cant deficiency, the vertical wheel loads under each wheel are measured, and a level is used to record the angle through which the floor of the vehicle has been rotated;

(5) The Railroad describes the procedures or standards in effect which detail the maintenance of the suspension system for the particular class of equipment; and

(6) The Railroad identifies the line segment on which the higher curving speeds are proposed to be implemented.

(c) Upon receipt of the information contained in paragraph (b), FRA shall approve use of the equipment and curving speeds established pursuant to paragraph (a). The Railroad shall notify the FRA Associate Administrator for Safety, in writing, no less than thirty calendar days prior to any proposed implementation of curving speeds higher than Vmax when the "Eu" term (above) will exceed 100 mm (4 in).

Track Structure

§ 243.315 Track strength.

(a) Track shall have a sufficient vertical strength to withstand the maximum vehicle loads generated at maximum permissible train speeds, cant deficiencies and surface limitations. For purposes of this section, vertical track strength is defined as the track capacity to constrain vertical deformations so that the track shall return, following maximum load, to a configuration in compliance with the track performance and geometry requirements of this Part.

(b) Track shall have sufficient lateral strength to withstand the maximum thermal and vehicle loads generated at maximum permissible train speeds, cant deficiencies and lateral alignment limitations. For purposes of this section lateral track strength is defined as the track capacity to constrain lateral deformations so that track shall return, following maximum load, to a configuration in compliance with the track performance and geometry requirements of this Part.

§ 243.317 Crossties.

(a) Crossties shall be made of a material to which rail can be securely fastened. They shall be of concrete construction for all tracks over which trains run in revenue service.

(b) Each 12 m (39 ft) segment of track shall have:

(1) A sufficient number of crossties which, in combination, provide effective support that will:

(i) Hold gage within the limits prescribed in § 243.311;

(ii) Maintain surface within the limits prescribed in Safety Level Two Geometry Table prescribed in § 243.309; and

(iii) Maintain alignment within the limits prescribed in Safety Level Two Geometry Table prescribed in § 243.309.

(2) The minimum number and type of crossties specified in paragraph (c) or (d) of this section effectively distributed to support the entire segment; and

(3) Crossties of the type specified in paragraph (c) or (d) of this section that are located at a joint location as specified in paragraph (f) of this section.

(c) For non-concrete tie construction, each 12 m (39 ft) segment of track shall have 18 crossties which are not:

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties would allow the ballast to work through, or would not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail could move laterally 10 mm (0.4 in) relative to the crossties;

(4) Cut by the tie plate through more than 40 percent of the thickness of the tie; or

(5) Configured with less than 2 rail holding spikes or fasteners per tie plate.

(6) So unable, due to insufficient fastener toe load, to maintain longitudinal restraint and maintain rail hold down and gage.

(d) For concrete-tie construction, each 12 m (39 ft) segment of track shall have 16 crossties which are not:

(1) So deteriorated that the pre-stress strands are ineffective or withdrawn into the tie at one end and the tie exhibits structural cracks in the rail seat or in the gage of track;

(2) Configured with less than 2 fasteners on the same rail;

(3) So deteriorated in the vicinity of the rail fastener that the fastener assembly may pull out or move laterally more than 10 mm (0.4 in) relative to the crosstie;

(4) So deteriorated that the fastener base plate or base of rail could move laterally more than 10 mm (0.4 in) relative to the crossties;

(5) So deteriorated that rail seat abrasion is sufficiently deep to cause loss of rail fastener toeload;

(6) Completely broken through; or

(7) So unable, due to insufficient fastener toe load, to maintain longitudinal restraint and maintain rail hold down and gage.

(e) The following speed limitation shall apply in case the number of

[1] 1 Actual elevation for each 50 m (164 ft) track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 5 m (16.4 ft) spacing. If the curve length is less than 50 m (164 ft), the points through the full length of the body of the curve shall be averaged. If Eu exceeds 100 mm (4 in), the Vmax formula applies to the spirals on both ends of the curve.

[2] Curve radius (Degree of curvature) is determined by averaging the degree of curvature over the same track segment as the elevation.

nondefective ties on each 12 m (39 ft) segment defined in paragraph (c) and (d) of this section is not achieved:

Max. speed	Number of non defective ties
170 km/h (110 mph)	14
145 km/h (90 mph)	12
95 km/h (60 mph)	8
25 km/h (15 mph)	5

(f) Service track, including sidings, yards, sheds, and workshops, shall have at least one non-defective crosstie, the centerline of which is within 0.5 m (1.6 ft) of the rail joint location, or two crossties, the center lines of which are within 0.65 m (2.1 ft) either side of the rail joint location. All other tracks shall have two non-defective ties within 0.65 m (2.1 ft) each side of the rail joint.

(g) For track constructed without crossties, such as slab track and track connected directly to bridge structural components, the track structure shall meet the requirements of paragraphs (b)(1)(i), (ii) and (iii).

(h) On all tracks where the operating speeds exceed 170 km/hr (105 mph), there shall be at least three non-defective ties each side of a defective tie.

(i) Where wooden crossties are used there must be tie plates under the running rails on at least nine of ten consecutive ties.

(j) No metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate.

§ 243.319 Continuous welded rail (CWR).

The Railroad shall have in effect written procedures which address the installation, adjustment, maintenance and inspection of CWR, and a training program for the application of those procedures, in accordance with § 243.107 of this Part. These procedures shall be submitted to the FRA Associate Administrator for Safety as part of the Railroad's system safety plan, and shall include:

(a) Procedures for the installation and adjustment of CWR which include:

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) Destressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and that specifically address CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement—associated with normally expected train-induced forces—is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration the existing rail temperature so that:

(1) When rail is replaced, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alignment toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when:

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track.

(2) In formulating the procedures under this paragraph, the track owner shall:

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect conditions prone to buckling in CWR track. At a minimum, these procedures shall address inspecting track to identify:

(1) Locations where tight or kinky rail conditions are likely to occur; and

(2) Locations where track work of the nature described in paragraph (e)(1) of this section has recently been performed.

(3) In formulating the procedures under this paragraph, the Railroad shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when conditions prone to buckling are found.

(g) The Railroad shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic retraining for those individuals designated as qualified in accordance with Subpart H to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The Railroad shall prescribe recordkeeping requirements in order to maintain a history of track constructed with CWR. At a minimum, these records shall include:

(1) Rail laying temperature, location and date of CWR installations. This record shall be retained for the life of the rail; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record must include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

§ 243.321 Rail end mismatch.

Any mismatch of rails at joints may not be more than that prescribed by the following table:

Any mismatch of rails at joints may not be more than the following—	
On the tread of the rail ends	On the gage side of the rail ends
3 mm (.13 in).	3 mm (.13 in).

§ 243.323 Rail joints and torch cut rails.

(a) Each rail joint, insulated joint, and compromise joint shall be of a structurally sound design and appropriate dimensions for the rail on which it is applied.

(b) If a joint bar is cracked, broken, or permits excessive vertical movement of either rail when all bolts are tight, it shall be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.

(d) Each rail shall be bolted with at least two bolts at each joint.

(e) Each joint bar shall be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and contraction due to temperature variations.

(f) No rail shall have a bolt hole which is torch cut or burned.

(g) No joint bar shall be reconfigured by torch cutting.

(h) No rail having a torch cut or flame cut end may be used, except as a temporary repair during emergency situations. When a rail end is torch cut in emergency situations, speed over that rail end must not exceed 25 km (40 mph) until removed.

§ 243.325 Turnouts and crossovers, generally.

(a) In turnouts and track crossings, the fastenings shall be intact and maintained to keep the components securely in place. Also, each switch, frog, and guard rail shall be kept free of obstructions that may interfere with the passage of wheels.

(b) The track through and on each side of track crossings and turnouts shall be equipped with rail anchoring to restrain rail movement affecting the position of switch points and frogs. Elastic fasteners designed to restrict longitudinal rail movement are considered rail anchoring.

(c) Each flangeway at turnouts shall be at least 38 mm (1.5 in) wide.

(d) For all turnouts and crossovers, the Railroad shall prepare an inspection and maintenance Guidebook for use by Railroad employees which shall be submitted to the FRA Associate Administrator for Safety. The Guidebook shall contain at a minimum:

(1) Inspection frequency and methodology, including limiting measurement values for all components subject to wear or requiring adjustment; and

(2) Maintenance procedures and techniques.

§ 243.327 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table, applicable for a nominal track gage of 1435 mm (56.5 in).

Guard check gage	*Guard face gage*
The distance between the gage line of a frog to the guard line[1] of its guard rail or guarding face, measured across the track at right angles to the gage line,[2] may not be less than— 1435 – 45 = 1390 mm	The distance between guard lines,[1] measured across the track at right angles to the gage line,[2] may not be more than— 1435 – 80 = 1355 mm

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

[2] A line 10 mm (0.4 in) below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

§ 243.329 Derails.

(a) All sidetracks connecting with main tracks shall be equipped with protection switches or functioning derails of the correct size and type, unless Railroad equipment on the track cannot move to foul the main track because of grade characteristics.

(b) Each derail shall be clearly visible to Railroad personnel operating rail equipment on the affected track and to Railroad personnel working adjacent to the affected track. When in a locked position, a derail shall be free of any lost motion that would allow it to be operated without removal of the lock.

(c) If a track protected by a derail is occupied by standing railroad rolling stock, the derail shall be in derailing position.

(d) Each derail shall be interlocked with the signal system so as to produce a maximally restrictive signal aspect if the device is not deployed in a completely functional position.

Inspection

§ 243.331 Track Geometry Measurement Systems.

(a) A Track Geometry Measurement System (TGMS) vehicle shall be operated at least twice within each 180 calendar days with not less than 30 days between inspections to demonstrate compliance with the geometry requirements in § 243.309.

(b) The TGMS Car shall have the following capabilities:

(1) It shall be equipped with three bogies and have a rigid body which acts as the datum plane for all measurements.

(2) The body shall rest on two end bogies which are spaced at 9.700 m (31.82 ft) between center lines.

(3) The four-axle middle bogie shall move laterally when the vehicle travels through a curve.

(4) The TGMS car shall have eight axles spaced symmetrically from the centerline of the vehicle at 0.675 m, 2.075 m, 3.64 m, and 6.11. Each axle shall have a 9 tonne (20 kips) axle load.

(5) Information shall be gathered at rail level by means of mechanical contact:

(i) vertically, through the 16 high carbon steel wheels with a cylindrical profile; and

(ii) laterally, through double sensors, each with a roller which follows the rail head's internal profile at an angle of 70 degrees placed between the outer bogies, 5 meters from the centerline of the vehicle.

(6) Measurements shall be recorded by two means on the vehicle:

(i) A continuous plot, on a constant distance basis, of the geometry parameters identified in the tables in § 243.309; and

(ii) Electronic records of elementary signals from transducers measuring displacements of different cables from the measuring points. In addition, the electronic record shall include all the computed track geometry parameters developed to determine compliance with the geometry tables in § 243.309. Calculations of the extended base measurements are performed through real-time analog or digital processing of the alignment and level signals and are electronically recorded and displayed on charts.

(7) The following parameters shall be measured vertically:

(i) Surface: The surface or longitudinal level must be developed over two rail bases; the fundamental base of 12.2 m (40 ft) and the extended base of 31 m (102 ft) base. The fundamental surface measurement is the difference between the average level at eight locations spaced symmetrically from the center of the vehicle at 0.675 m, 2.075 m, 3.64 m, and 6.11 m and the level at 0.675 m. $Surface_{12.2} = \frac{1}{8}(Z_{-6.11} + Z_{-3.64} + Z_{-2.075} + Z_{-0.675} + Z_{0.675} + Z_{2.075} + Z_{3.64} + Z_{6.11}) - Z_{0.675}$. The extended base measurement is calculated using the same transducers as used in the fundamental measurement. The displacement must be combined and appropriately filtered to produce a signal equivalent to the offset from the middle of a 31 meter chord.

(ii) Warp: The cant variation shall be obtained by calculating the difference between the cant of an axle on the middle bogie and the average cant of the 4 axles of the end bogies.

(8) The following parameters shall be measured laterally:

(i) Alignment: The alignment for each rail must be developed based on three chords; the fundamental chord of 10 m

(32.8 ft), a middle distance chord of 20 m (65.6 ft) and an extended chord of 31 m (102 ft) base. The fundamental chord is measured through three double sensors: one at the center of the vehicle and the others symmetrically spaced 5 meters from the center. The long chords are developed through combinations and appropriate filtering of the fundamental measurements.

(ii) Gage: The gage is measured by a pair of central double sensors.

(9) The extended base graph shall be obtained by analog or digital computation of the level and alignment signals, and shall be printed out in real time on-board the vehicle.

(10) Long wavelength values of level and alignment are calculated by low-pass filtering of the actual measurements with a transfer function specific to the signals for level (12.20 m (40 ft) base) and alignment (versine of 10 m (32.8 ft) chord) recorded by the TGMS vehicle.

(11) The low-pass filtering shall be accomplished in the spatial frequency range, due to the monitoring of the cut-off frequency of the low-pass filters as a function of the running speed.

(c) The TGMS shall, at a minimum, meet design requirements which specify that—

(1) Track geometry measurements shall be taken no more than 1 m (3.3 ft) away from the contact point of wheels carrying a vertical load of no less than 4500 kg (10,000 lb) per wheel;

(2) Track geometry measurements shall be taken and recorded on a distance-based sampling interval which shall not exceed 0.6 m (2 ft);

(3) Calibration procedures and parameters assigned to the system assure that measured and recorded values accurately represent track conditions; and

(4) Track geometry measurements recorded by the system shall not differ by more than 3 mm (0.13 in) on repeated runs at the same site at the same speed.

(d) A qualifying TGMS shall measure and process the necessary track geometry parameters that enable the system to determine compliance with:

(1) Track gage; mean gage within 100 m (328 ft.); and gage variation within 10 m (32.8 feet);

(2) Alignment; 10 m (32.8 ft.), 20 m (65.6 ft.), and 31 m (102 ft.) Mid Chord Offsets;

(3) Curvature, Cant and V_{max};

(4) Surface; 12.2 m (40 ft.) averaged chord; 31 m (102 ft.) Mid Chord Offset; and

(5) Warp.

(e) A qualifying TGMS shall be capable of producing, within 24 hours of the inspection, output reports that:

(1) Provide a continuous plot, on a constant-distance axis, of all measured track geometry parameters required in paragraph (d) of this Section; and

(2) Provide an exception report containing a systematic listing of all track geometry conditions which constitute an exception to the speed limits over the segment surveyed.

(f) The output reports required under paragraph (e) of this Section shall contain sufficient location identification information so that maintenance workers may easily locate indicated exceptions.

(g) Following a track inspection performed by a qualifying TGMS, the Railroad shall, within two days after the inspection, field verify and institute remedial action for all exceptions.

(h) The Railroad shall maintain a record for a period of one year following an inspection performed by a qualifying TGMS that includes a copy of the plot, the track segment involved, a copy of the exception printout, the date of the inspection, and the location, date, and type of remedial action taken for all listed exceptions.

(i) If the Railroad elects to substitute a geometry vehicle with different properties than those identified in paragraphs (b) and (c) of this section for the TGMS car, the Railroad shall use a geometry vehicle consistent with the requirements of Subpart G, Train Operations at Track Classes 6 and Higher of FRA's proposed Track Safety Standards, 62 FR 36138 (July 3, 1997), and as ultimately codified in 49 CFR part 213.

§ 243.333 Track/vehicle performance Measurement Systems.

(a) A Track Acceleration Measurement System (TAMS) vehicle shall be operated at least twice within each 45 calendar days, with not less than 7 days between inspections, to determine whether a representative vehicle responds to the existing track conditions within the limits defined in the Vehicle/Track Interaction Performance Limits table for accelerations.

(b) A TAMS vehicle must operate within 5% of the maximum authorized speed over any section of track in order to qualify as a valid survey.

(c) A qualifying TAMS shall be capable of measuring and processing the necessary acceleration parameters, at an interval which shall not exceed 0.6 m (2 ft), which enables the system to determine compliance with:

(1) Lateral truck acceleration;

(2) Lateral carbody acceleration; and

(3) Vertical carbody acceleration.

(d) A qualifying TAMS shall be capable of producing, within 24 hours of the inspection, output reports that:

(1) Provide a continuous plot, on a constant-distance axis, of all measured acceleration parameters required in paragraph (c) of this section; and

(2) Provide an exception report containing a systematic listing of all acceleration conditions which constitute an exception to the speed limits over the segment surveyed, as indicated in the table of Vehicle/Track Interaction Performance Limits contained in § 243.335.

(e) If the carbody lateral, carbody vertical, or truck frame lateral accelerations exceed the safety limits as stated in the table, the Railroad must immediately initiate remedial action, which shall include reducing the maximum authorized speed for that section of track to a speed at least 8 km/h (5 mph) below the speed at which the acceleration limits were reached.

(f) The Railroad shall maintain a record for a period of one year following an inspection performed by a qualifying TAMS that includes, a copy of the plot, a description of the track segment involved, the exception printout for the track segment involved, the date of the inspection, and the location, date, and remedial action taken for all listed exceptions to the class.

§ 243.335 Wheel/Rail Force Measurement System.

(a) A Wheel/Rail Force Measurement System (WRFMS) shall be operated over the track bi-annually with not less than 240 days between inspections to determine whether a representative vehicle responds to the existing track conditions within the limits defined in the Vehicle/Track Interaction Performance Limits table for wheel rail forces.

(b) A WRFMS vehicle must operate at the revenue speed profile speed for a section of track to qualify as a valid survey.

(c) A qualifying WRFMS shall be equipped with instrumented wheelsets to measure wheel/rail forces and shall be capable of measuring and processing the necessary wheel rail force parameters, at an interval which shall not exceed 0.6 m (2 ft), which enables the system to determine compliance with:

(1) Minimum vertical wheel load;

(2) Wheel L/V ratio, the ratio of the lateral wheel load to the vertical wheel load;

(3) Net axle lateral load; and

(4) Truck side L/V ratio.

(d) A qualifying WRFMS shall be capable of producing, within 24 hours of the inspection, output reports that:

(1) Provide a continuous plot, on a constant-distance axis, of all measured wheel force and force ratio parameters required in paragraph (c) of this section;

(2) Provide an exception report containing a systematic listing of all wheel force and force ratio conditions which constitute an exception to the speed limits over the segment surveyed, as indicated in the following table of Vehicle/Track Interaction Performance Limits.

(e) If the wheel forces or force ratios exceed the safety limits as stated in the table, the Railroad must immediately initiate remedial action, which may include reducing the maximum authorized speed for that section of track, until these wheel forces and force ratios are within the safety limits.

(f) The Railroad shall maintain a record for a period of two years following an inspection performed by a qualifying WRFMS that includes, a description of the track segment involved, the exception printout for the track segment involved, the date of the inspection, and the location, date, and remedial action taken for all listed exceptions to the class, and at a copy of the plot specified in paragraph (d) of this section for a distance along the track of at least 10 feet, centered on each exception.

VEHICLE/TRACK INTERACTION LIMITS

Parameter	Safety limit	Filter/window	Requirements
Wheel/Rail Forces:[1]			
Single Wheel Vertical Load Ratio	≤0.1	5 ft	No wheel of the equipment shall be permitted to unload to less than 10% of the static vertical wheel load. The static vertical wheel load is defined as the load that the wheel would carry when stationary on level track. The vertical wheel load limit shall be increased by the amount of measurement error.
Single Wheel L/V Ratio	≤ (tan − .5)/ (1 + .5 tan).	5 ft	The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail shall be less than the safety limit calculated for the wheel's flange angle ().
Net Axle L/V Ratio	≤0.5	5 ft	The net lateral force exerted by any axle on the track shall not exceed 50% of the static vertical load that the axle exerts on the track.
Truck Side L/V Ratio	≤0.6	5 ft	The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail shall be less than 0.6.
Accelerations:[2]			
Carbody Lateral	≤0.5 g peak-to-peak.	10 Hz 1 sec window.	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in a one second time period, shall not exceed 0.5 g.
Carbody Vertical	≤0.6 g peak-to-peak.	10 Hz 1 sec window.	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in a one-second time period, shall not exceed 0.6 g.
Truck Lateral[3]	≤0.4 g RMS mean-removed.	10 Hz 2 sec window.	Truck hunting[4] shall not develop below the maximum authorized speed.

[1] The lateral and vertical wheel forces shall be measured with instrumented wheelsets with the measurements processed through a low pass filter with a minimum cut-off frequency of 25 Hz. The sample rate for wheel force data shall be at least 250 samples/sec.

[2] Carbody lateral and vertical accelerations shall be measured near the car ends at the floor level.

[3] Truck accelerations in the lateral direction shall be measured at a position directly above the axle. The measurements shall be processed through a filter having a pass band of 0.5 to 10 Hz.

[4] Truck hunting is defined as a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4 g root mean square, mean-removed, for 2 seconds.

§ 243.337 Daily inspection trainset.

(a) An inspection trainset shall be operated each morning over the Railroad's system prior to commencing revenue service. The inspection trainset shall operate at a speed no greater than 170 km/h (105 mph) to conduct a visual inspection of the track and ensure that the right of way is clear of obstacles within the clearance envelope and to identify conditions that could cause accidents.

(b) The inspection trainset shall be equipped with on-board truck side and carbody accelerometers. The Railroad shall have in effect written procedures for the notification of track maintenance personnel when the acceleration measurements indicate a possible track-related condition.

§ 243.339 Inspection of rail in service.

(a) Prior to revenue service and as part of the system safety plan, the Railroad shall submit to the FRA Associate Administrator for Safety written procedures for the inspection of rails.

(b) A continuous search for internal defects shall be made of all rail within 90 days after initiation of revenue service and, thereafter, at least annually, with not less than 240 days between inspections.

(c) Inspection equipment shall be capable of detecting defects between joint bars and within the area enclosed by joint bars.

(d) Each defective rail shall be marked with a highly visible marking on both sides of the rail.

(e) If the person assigned to operate the rail defect detection equipment being used determines that, due to rail surface conditions, a valid search for internal defects could not be made over a particular length of track, the test on that particular length of track cannot be considered as a search for internal defects under this section.

(f) When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 243.705 or § 243.707

shall determine whether or not the track may continue in use. If he determines that the track may continue in use, operation over the defective rail is not permitted until—

(1) The rail is replaced; or

(2) The remedial action prescribed in the table is initiated—

REMEDIAL ACTION

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse fissure			70	5	B.
			100	70	A2.
				100	A.
Compound fissure			70	5	B.
			100	70	A2.
				100	A.
Detail fracture			25	5	C.
Engine burn fracture			80	25	D.
Defective weld			100	80	A2 or E and H.
				100	A or E and H.
Horizontal split head	1	2			H and F.
Vertical split head		4			I and G.
Split web	2				B.
Piped rail	4	(1)	(1)		A.
Head web separation	(1)				
Bolt hole crack	½	1			H and F.
	1	1½			H and G.
	1½				B.
	(1)	(1)	(1)		A.
Broken base	1	6			D.
	6				A or E and I.
Ordinary break					A or E.
Damaged rail					D.
Flattened rail					H.

[1] Break out in rail head.
[2] Depth ≥ ¾ and Length ≥ 8.

Notes

A. Assign person designated under § 243.705 or § 243.707 to visually supervise each operation over defective rail.

A2. Assign person designated under § 243.705 or § 243.707 to make visual inspection. That person may authorize operation to continue without visual supervision at a maximum of 10 mph for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under § 243.705. The operating speed may not exceed 30 mph.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. Limit operating speed over defective rail to 30 mph until angle bars are applied; thereafter, limit speed to 50 mph. When a search for internal rail defects is conducted under this section and defects are discovered which require remedial action C, the operating speed shall be limited to 50 mph, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 mph until joint bars are applied; thereafter, limit speed to 50 mph.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. Limit operating speed over the defective rail to 30 mph or less as authorized by a person designated under § 243.705 until angle bars are applied; thereafter, limit speed to 50 mph.

E. Apply joint bars to defect and bolt in accordance with § 243.323.

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 mph.

I. Limit operating speed over defective rail to 30 mph.

§ 243.341 Initial inspection of new rail and welds.

(a) The Railroad shall provide for the initial inspection of newly manufactured rail, and for initial inspection of new welds made in either new or used rail. The Railroad may demonstrate compliance with this section by providing for:

(1) *Mill inspection.* A continuous inspection at the rail manufacturer's mill shall constitute compliance with the requirement for initial inspection of new rail, provided that the inspection equipment meets the applicable requirements specified in § 243.339 of this Part. The Railroad shall obtain a copy of the manufacturer's report of inspection and retain it as a record until the rail receives its first scheduled inspection under § 243.339 of this Part;

(2) *Welding plant inspection.* A continuous inspection at a welding plant, if conducted in accordance with the provisions of paragraph (a)(1) of this section, and accompanied by a plant operator's report of inspection which is retained as a record by the Railroad, shall constitute compliance with the requirements for initial inspection of new rail and plant welds, or of new plant welds made in used rail; and

(3) *Inspection of field welds.* Initial inspection of new field welds, either those joining the ends of CWR strings or those made for isolated repairs, shall be conducted not less than one day and not more than 30 days after the welds have been made. The initial inspection may be conducted by means of portable test equipment. The Railroad shall retain a record of such inspections until the welds receive their first scheduled inspection under § 243.339 of this Part.

(b) Each defective rail found during inspections conducted under paragraph (a)(3) of this section shall be marked with highly visible markings on both sides of the rail and the appropriate remedial action as set forth in § 243.339 of this Part will apply.

§ 243.343 Visual inspections.

(a) All track shall be visually inspected in accordance with the schedule prescribed in paragraph (c) of this section by person qualified under § 243.705 or § 243.707.

(b) With the exception of paragraph (e) below, each inspection shall be made by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this rule. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 8 km/h (5 mph) when operating over track crossings or turnouts.

(c) Each inspection shall be made at a minimum frequency of once every seven days with at least three days between inspections.

(d) If a deviation from the requirements of this rule is found during the visual inspection, remedial action shall be initiated immediately.

(e) Each turnout and crossover shall be inspected on foot at least once each week. The inspection shall be in accordance with the guidebook prepared as required under § 243.325 of this Part.

§ 243.345 Special inspections.

In the event of fire, flood, severe storm, temperature extremes or other occurrence which might have damaged track structure, a special inspection shall be made of the track and ROW involved as soon as possible after the occurrence.

§ 243.347 Inspection records.

(a) The Railroad shall keep a record of each inspection required to be performed on that track under this Subpart.

(b) Except as provided in paragraph (f) of this section, each record of an inspection under § 243.343 shall be prepared on the day the inspection is made and signed by the person making the inspection.

(c) Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection.

(d) Rail inspection records shall specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested pursuant to § 243.339 of this Part. The Railroad shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken.

(e) The Railroad required to keep inspection records under this section shall make those records available for inspection and copying by the FRA.

(f) For purposes of compliance with the requirements of this section, the Railroad may maintain and transfer records through electronic transmission, storage, and retrieval provided that:

(1) The electronic system be designed so that the integrity of each record may be maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(5) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data; and

(6) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part, shall be made available for inspection and copying by the FRA and qualified State track inspectors. Such paper copies shall be made available to the track inspectors and at the locations specified in paragraph (c) of this section.

(g) Track inspection records shall be kept available to persons who performed the inspection and to persons performing subsequent inspections.

(h) Each Track/Vehicle Performance record required under § 243.333 and § 243.335 of this Part shall be made available for inspection and copying by the FRA at the locations specified in paragraph (c) of this section.

Subpart E—Rolling Stock

§ 243.401 Clearance requirements.

The rolling stock shall be designed to meet all applicable clearance requirements of the Railroad. At a minimum, the Railroad shall make the following diagrams available to FRA upon request:

(a) Rolling stock static clearance diagram;

(b) Rolling stock dynamic clearance diagram; and

(c) Obstacle clearance diagram.

§ 243.413 Structural strength of trainset.

(a) *General.* (1) The trainset shall be permanently coupled with articulated trucks between the trailer cars. Trainsets shall be uncoupled only in repair facilities, in accordance with the operating procedures set forth in § 243.433.

(2) The trainset shall be operated with a power car at each end.

(b) *Power Car.* (1) Each power car shall resist, without permanent deformation, the following loads:

(i) A compressive load of 2000 kN (450,008 lb.) applied at the underframe level;

(ii) A compressive load of 700 kN (157,500 lb.) uniformly distributed and applied on a 100 mm (4 in.) high band to the cab end of the carbody at any height between the underframe and the structure below the front window, reacted at the buffer location at the opposite end of the car;

(iii) A compressive load of 300 kN (67,500 lb.), applied on the rear end of the power car shell, at the carbody waist level, reacted at the coupler position at the cab end;

(iv) A uniformly distributed compressive load of 300 kN (67,500 lb.), applied on the cab end of the power car shell, at cantrail level, reacted at the buffer location at the rear of the power car;

(v) A compressive load of 300 kN (67,500 lb.), applied at the middle of the obstacle deflector over a width of 500 mm (20 in.) at a height of 500 mm (20 in.) above top of rail, reacted at buffer location at the rear of the power car;

(vi) A compressive load of 250 kN (56,200 lb.) applied at the side edges of the obstacle deflector over a width of 500 mm (20 in.) at a height of 500 mm (20 in.) above top of rail, reacted at the buffer location at the rear of the power car;

(vii) A tensile load of 1000 kN (225,000 lb.) applied on the front and rear coupling devices.

(2) Each power car shall be equipped with an anti-penetration wall ahead of the cab which is capable of resisting:

(i) A longitudinal compressive load of 3000 kN (675,000 lb) at the top of the underframe, without exceeding the ultimate strength of the joint; and

(ii) A longitudinal compressive load of 1500 kN (337,000 lb) applied at a height of 760 mm (30 in) above the top of the underframe, and reacted at the rear of the cab structure, without exceeding the ultimate strength of the structure. Compliance shall be verified by either linear static analysis or equivalent means.

(3) In unoccupied areas, each power car shall be designed to absorb a minimum 4.2 MJ through controlled structural deformation.

(4) In occupied areas, each power car shall be designed to resist without permanent deformation of the sidesill, cantrail, and side post structural members, a longitudinal compressive load of 3560 kN (800,000 lb) when applied uniformly at the front of the cab between the underframe and waist level, and reacted at the cross section of the carbody at the back of the cab.

(5) Each power car shall be designed to withstand a uniformly distributed vertical load of 1.3 times its static laden weight, when supported at the truck centers, without permanent deformation. Compliance shall be verified by either linear static analysis or equivalent means.

(6) Rollover strength of power cars shall be designed to permit those cars to:

(i) Rest on their sides, uniformly supported at the top (cantrail) and the bottom (sidesill) chords of the side frame. The allowable stress in the main structural members for occupied volumes for this condition shall be one-half yield; and

(ii) Rest on their roofs with damage limited to roof sheathing and framing. Deformation of the roof sheathing and framing to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames shall be allowed. The allowable stress in the main structural members for occupied volumes for this condition shall be one-half yield.

Compliance with this requirement shall be verified by either linear static analysis or equivalent means.

(c) *Trailer Car.* (1) Each trailer car of the trainset shall resist, without permanent deformation, the following loads:

(i) A compressive load of 2000 kN (450,000 lb) applied at the level of the thrust tubes;

(ii) A uniformly distributed compressive load of 300 kN (67,500 lb), applied to the end of the trailer carshell, at cantrail level; and

(iii) A tensile load of 1000 kN (225,000 lb) applied at the level of the thrust tube. and

(2) Each trailer car shall be designed to withstand a uniformly distributed vertical load of 1.3 times its static laden weight, when supported at the truck centers, without permanent deformation.

(3) The occupied volumes of trailer cars shall be designed to resist without permanent deformation of the sidesill, cantrail, and side post structural members, a longitudinal compressive load of 3560 kN (800,000 lb.) when applied as distributed over the carbody cross section at the seated passenger compartment. Compliance with this requirement shall be verified by either linear static analysis or equivalent means.

(4) Rollover Strength of trailer cars shall be designed to permit those cars to:

(i) Rest on their sides, uniformly supported at the top (cantrail) and the bottom (sidesill) chords of the side frame. The allowable stress in the main structural members for occupied volumes for this condition shall be one-half yield; and

(ii) Rest on their roofs with damage limited to roof sheathing and framing. Deformation of the roof sheathing and framing to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames shall be allowed. The allowable stress in the main structural members for occupied volumes for this condition shall be one-half yield.

Compliance with this requirement shall be verified by either linear static analysis or equivalent means.

§ 243.405 Trailer car interior.

(a) *Seat and seat attachment strength.* (1) Seat backs shall be designed to withstand, with deflection and permanent deformation allowed, but without total failure, the load due to a 95th-percentile male (85 kg or 187 lb.) seat occupant accelerated with the following pulse:

(i) 0 to 6g in 0.05 s;

(ii) 6g for 0.125 s; and

(iii) 6 to 0g in 0.05 s.

(2) The ultimate strength of a seat attachment to the trailer carbody shall be sufficient to withstand the following individually-applied accelerations acting on the mass of the seat plus the mass of a seat occupant who is a 95th-percentile male (85kg or 187 lb.):

(i) Longitudinal: 6 g;

(ii) Lateral: 2 g; and

(iii) Vertical: 2 g.

(b) *Interior Fittings.* (1) Interior fittings shall be attached to the trailer carbody with sufficient strength to withstand the following individually-applied accelerations acting on the mass of the fitting:

(i) Longitudinal: 3 g;

(ii) Lateral: 2 g; and

(iii) Vertical: 2 g.

(2) To the extent possible, interior fittings shall be recessed or flush-mounted, and corners and sharp edges shall be either avoided or padded to mitigate the consequences of impact with such surfaces.

(c) *Luggage Stowage Compartments.* Luggage stowage compartments shall include a means to restrain luggage, and have sufficient strength to resist loads due to the following individually-applied accelerations acting on the mass of the luggage that the compartment is designed to accommodate:

(1) Longitudinal: 3 g;

(2) Lateral: 2 g; and

(3) Vertical: 2 g.

(g = 1 gravity; s = seconds)

§ 243.407 Glazing.

(a) *Exterior Impact Performance.* (1) End-facing exterior glazing shall resist the impact of a 10 kg (22 lb) solid aluminum sphere with an impact energy of 30 kJ at 22°C (72°F) and 25 kJ at 0°C (32°F).

(2) Driver's cab side-facing exterior glazing shall resist the horizontal impact of a 600g (1.3 lb) steel sphere with an energy of 15 kJ.

(3) Trailer car side-facing exterior glazing shall resist, without spall or penetration, the impact of a 2.46g (38 grains) bullet at an impact speed of 442 m/s (1,450 ft/s).

(4) Glazing and frame shall resist the forces due to air pressure differences under all operations caused by trains passing with the minimum separation for two adjacent tracks while traveling in opposite directions, each traveling at maximum operating speed.

(b) *Interior Performance.* Interior equipment glazing shall meet the minimum requirements of AS1 type laminated glass as defined in American National Standard "Safety Code for Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," ASA Standard Z26.1–1990.

(c) *Frame.* The glazing frame shall hold glazing in place against all forces generated in the tests specified in this section.

§ 243.409 Brake system.

(a) The brake system shall be capable of stopping the trainset within the prevailing signal spacing from its maximum authorized speed, under test conditions of adhesion as defined in UIC leaflet 541.05, with flow of detergent. The flow rate of detergent shall be doubled for speeds in excess of 180 km/h (112 mph).

(b) The braking on each truck shall be independently controlled by the brake pipe.

(c) The electric brake on each powered truck shall be completely independent and shall operate with the loss of the overhead power supply.

(d) Any failure of the electric portion of the brake system on any power truck shall be displayed for the locomotive engineer in the control cab.

(e) The brake system shall be designed to prevent thermal damage to wheels or discs. The Railroad shall demonstrate, through analysis and test that is confirmed by the system safety plan and pre-revenue service tests, that no thermal damage results to the wheels or discs under conditions resulting in maximum friction braking effort being exerted.

(f) The Railroad shall demonstrate, through analysis and test that is confirmed by the system safety plan and pre-revenue service tests, the maximum authorized speed of the trainset at which no thermal damage to wheels or discs occurs, for various combinations of electric and friction brake failures. The Railroad shall develop a matrix that clearly lists potential brake failures or combinations of failures, to which each speed corresponds, that shall be displayed in each power car.

(g) In the event of an en route failure of the electric or friction portion of the brake, or both, a train may proceed at a speed no greater than the maximum authorized speed as set forth in the matrix required by paragraph (f) of this section. The locomotive engineer shall notify central traffic control of any brake failure that requires a speed restriction in a trip.

(h) The trainset shall be equipped with an emergency application feature that produces an irretrievable stop, using a brake rate consistent with prevailing adhesion, passenger safety, and brake system thermal capacity. An emergency application shall be available at any time. A means to apply the emergency brake shall be provided at two locations accessible to the train crew in each trailer car.

(i) The brake system shall be designed so that an inspector may determine whether the brake system is functioning properly without being placed in a dangerous position on, under or between the equipment. This determination may be made through automated inspection equipment that utilizes sensors to verify that the brakes have been applied and released.

(j) The brake system design shall allow a disabled train's pneumatic brakes to be controlled by a rescue locomotive through brake pipe control alone.

(k) The train shall be equipped with a spring-applied, air-released parking brake that is capable of holding the train on any part of the Railroad system and, at a minimum, on a 0.5% grade.

(l) An independent failure detection system shall compare brake commands with brake system output to determine if a failure has occurred. The failure detection system shall report immediately brake system failures to the automated train monitoring system.

(m) Each truck of the trainset shall be equipped with a wheelslide system designed to automatically adjust the braking force on each wheel to prevent axle-locking during braking. In the event of failure of a truck's wheelslide system, control shall be automatically provided by the wheelslide system of an adjacent truck. A visual or audible alarm, or both, shall be provided in the cab of the controlling power car if a blocked axle is detected.

§ 243.411 Truck and suspension system.

(a) *Truck-to-car-body attachment.* (1) For all power cars and trailer cars, the strength of the truck-to-car-body attachment shall be sufficient to resist without permanent deformation a longitudinal force equivalent to 2.5g acting on the mass of the truck.

(2) Components of the truck, which include axles, wheels, bearings, truck mounted brake system, suspension system components, and any other components integral to the design of the truck, shall remain attached to the truck when a force equivalent to 2g acting on a mass of any component is exerted in any direction on that component.

(b) *Wheel climb.* Suspension systems shall prevent wheel climb, wheel lift, rail roll-over, track shift, and vehicle over-turning and provide safe, stable performance and ride quality. Suspension systems shall meet these design requirements in all safety-critical operating environments, track conditions, and loading conditions. Compliance with these requirements shall be demonstrated as part of the System Qualification Tests set forth in Subpart G of this Rule.

(c) *Lateral accelerations.* The trainsets shall not operate under conditions that correspond to a steady-state lateral acceleration to the outside of the curve of 0.1g or greater, as measured parallel to the car floor.

(d) *Hunting oscillations.* Each truck shall be equipped with a permanently installed lateral accelerometer mounted on the truck frame. The accelerometer output signals shall be calibrated and filtered, and shall pass through signal conditioning circuitry designed to determine if hunting oscillations of the truck are occurring. If hunting oscillations are detected, the train monitoring system shall provide an alarm to the locomotive engineer and the train shall be slowed by the locomotive engineer to a speed 8 km/h (5 mph) less than speed at which hunting oscillations stopped. This requirement shall be included in the Railroad's Operating Rules.

(e) *Ride vibration.* Compliance with ride quality requirements contained in this paragraph shall be demonstrated during equipment pre-revenue service qualification tests in accordance with § 243.113 and Subpart G of this Part. The Federal Railroad Administration shall verify ride quality performance of trainset equipment through the use of instrumentation. While traveling at the maximum revenue service speed over the intended route, the train suspension system shall:

(1) Limit the vertical acceleration as measured by a vertical accelerometer mounted on the car floor to no greater than 0.55g single event, peak-to-peak.

(2) Limit the lateral acceleration as measured by a lateral accelerometer mounted on the car floor to no greater than 0.3g single event, peak-to-peak.

(3) Limit the combination of lateral acceleration (L) and vertical acceleration (V) occurring within any time period of 2 consecutive seconds as expressed by the square root of (V^2+L^2) to no greater than 0.604g, where L may not exceed 0.3g and V may not exceed 0.55g.

(f) *Bearing overheat sensors.* Bearing overheat sensors shall be provided on board each trainset or at wayside intervals, as determined by the system safety plan.

§ 243.413 Fire safety.

(a) All materials used in constructing the interior of both a trailer car and a power car shall meet the flammability and smoke emission characteristics testing standards contained in Appendix B to this rule, or alternative standards issued or recognized by an expert consensus organization after approval by FRA in conjunction with approval of the Railroad's system safety plan required by Subpart B of this Part. For purposes of this section, the interior of a trailer car and a power car includes walls, floors, ceilings, seats, doors, windows, electrical conduits, air ducts, and any other internal equipment.

(b) The railroad shall require certification that combustible materials to be used in the construction of trainset interiors have been tested by a recognized independent testing laboratory, and that the results comply with the requirements of paragraph (a) of this section.

(c) Overheat detectors shall be installed in all components of the trainset where the written analysis required by Subpart B determines that such equipment is necessary.

(d) Fire or smoke detectors shall be installed in unoccupied compartments of a train if the analysis required by Subpart B determines that such equipment is necessary to ensure sufficient time for the safe evacuation of the train.

(e) A fixed, automatic fire suppression system shall be installed in unoccupied compartments of a train if the analysis required by Subpart B determines that such a system is necessary and practical to ensure sufficient time for the safe evacuation of the train.

(f) The railroad shall comply with those elements of its written procedures, under Subpart B, for the inspection, testing, and maintenance of all fire safety systems and equipment that it has designated as mandatory.

(g) The Railroad shall prohibit smoking on all trainsets in passenger service.

§ 243.415 Doors.

(a) *Powered, exterior side doors.* (1) Each trailer car shall have a minimum of four exterior side doors, or the functional equivalent of four side doors, that each permit at least one 95th-percentile male to pass through at a single time.

(2) The status of each powered, exterior door shall be displayed to the crew in the operating power car. If door interlocks are used, the sensors used to detect train motion shall be nominally set to operate at 5 km/h (3 mph).

(3) Powered, exterior doors shall be powered by the compressed air system or by electricity. If powered by electricity, the doors shall be connected to an emergency back-up power system.

(4) Each powered, exterior door shall be equipped with a manual override that is:

(i) Located adjacent to the door that it controls;

(ii) Capable of opening the door without power from both inside and outside the car; and

(iii) Designed and maintained so that a person may access the override device from both inside and outside the car without the use of any tool or other implement.

(5) Instructions for manual override shall be clearly posted in the car interior at door locations.

(6) A means for emergency responders to access the manual override from outside the car shall be provided. Instructions for access and use of the handle shall be clearly posted outside the car at all door locations.

(7) Manual door releases shall be easily operable by a 5th-percentile female without requiring the use of any tools to accomplish the manual override in the event of head-end power loss.

(8) *The Railroad may protect a manual* override device used to open a powered, exterior door with a cover or a screen capable of removal by a 5th-percentile female without requiring the use of a tool or other implement. If the method of removing the protective cover or screen entails breaking or shattering it, the cover or screen shall be scored, perforated, or otherwise weakened so that a 5th-percentile female can penetrate the cover or screen with a single blow of her fist without injury to her hand.

(b) Passenger compartment end doors shall be equipped with a kick-out panel, pop-out window or other equivalent means of egress in the event the door will not open.

§ 243.417 Emergency equipment.

(a) Emergency system requirements set forth in this Subpart shall apply to each trailer car.

(b) Emergency lighting shall be provided and shall include the following:

(1) An illumination level of a minimum of 55 lux (5.1 ft-candles) at floor level for all normal passenger and crew evacuation routes from the equipment;

(2) A back-up power system capable of operating all emergency lighting for a period of at least two hours;

(3) A back-up power system capable of operating in all equipment orientations; and

(4) A back-up power system capable of operating after the initial shock of a collision or derailment due to individually applied shock loads at 3g/2g/2g, longitudinal/vertical/lateral respectively.

(c) A means of emergency communication throughout the trainset shall be provided and shall include the following:

(1) Transmission locations that are clearly marked with luminescent material at each end of each unit adjacent to the unit or car end doors;

(2) Back-up power for a minimum time period of two hours; and

(3) Clear and understandable operating instructions at or near each transmission location.

(d) Locations of emergency equipment shall be clearly marked with luminescent material that makes the identity and location of the equipment recognizable from a distance equal to the width of the car.

(e) *Emergency exits.* (1) Locations of all emergency exits shall be clearly marked with luminescent material that makes the identity and location of the emergency exit recognizable from a distance equal to the width of the car.

(2) Clear and understandable instructions for use of the emergency exits shall be posted at each emergency exit and they must be visible from a distance of 30 inches.

(3) Each trailer car shall have a minimum of four emergency window exits, arranged in a staggered configuration or with one located at each end of each side of the trailer car.

(4) Each trailer car sealed window emergency exit shall have a minimum free opening of 1.6 m (63 in) wide by 0.6 m (24 in) high.

(5) Each emergency window exit shall be easily operable by a 5th percentile female without requiring the use of a tool or implement other than a hammer designed to break the glazing that shall be located adjacent to each emergency window.

(6) Each power car shall have an emergency roof hatch with a minimum opening of 0.45 m (18 in) by 0.6 m (24 in) and an emergency escape exit in the cab sidewall.

(f) The Railroad shall have in place a redundant means for the train crew to communicate with the pertinent railroad operations center to summon aid in the event of an emergency situation. These may include operating portable radios or cellular telephones.

§ 243.419 Operator's controls and power car layout.

(a) Operator controls in the power vehicle or control cab shall be arranged to be comfortably within view and easy reach when the locomotive engineer is seated in the normal train control position.

(b) The control panels shall be laid out to minimize the risk of human error.

(c) An alerter (Vigilance Device System) shall be provided. This system shall be operative at all speeds above 8 km/h (5 mph). If not acknowledged, the alerter shall cause a brake application to stop the train.

(d) Cab information displays shall be designed with the following characteristics:

(1) Simplicity and standardization shall be the driving criteria for design of formats for the display of information in the cab;

(2) Essential, safety-critical information shall be displayed as a default condition at the most visible place for the locomotive engineer.

(3) Operator selection shall be required to display other than default information.

(4) Cab or train control signals shall be displayed for the locomotive engineer.

(5) Displays shall be readable from the locomotive engineer's normal position under all lighting conditions.

(e) The power car shall be equipped with an obstacle deflector which extends across both rails of the track. The height of the obstacle deflector shall be more than 150 mm (5.9 in) and less than 300 mm (11.8 in) off the rails.

(f) The cab layout shall be arranged to meet the following requirements:

(1) The crew has an effective field of view in the forward direction, and the right and left of the direction of travel; and

(2) Field-of-view obstructions due to required structural members shall be minimized.

(g) Each seat provided for a crew member shall:

(1) Be secured to the carbody with an attachment having an ultimate strength capable of withstanding the loads due to individually applied accelerations of 3g/2g/2g acting longitudinally/ laterally/ vertically respectively on the mass of the seat and the crew member occupying it; and

(2) Be designed according to *Layout of Drivers' Cabs in Locomotives, Railcars, Multiple Unit Trains and Driving Trailers*, UIC 651, International Union of Railways Standard (First Edition, 1986), which requires that:

(i) All adjustments have the range necessary to accommodate a 5th-percentile to a 95th-percentile male;

(ii) The seat is equipped with a force-assisted 200 mm longitudinal adjustment, operated from the seated position; and

(iii) The seat has a 20 degrees manually reclining seat back, adjustable from the seated position.

(h) The ultimate strength of power car control cab interior fitting and equipment attachments shall be sufficient to resist without failure loads due to individually applied accelerations of 3g/2g/2g longitudinally/ laterally/vertically respectively acting on the mass of the fitting or equipment.

(i) Sharp edges and corners on interior surfaces of the cab likely to be impacted by the crew during a collision or derailment shall be eliminated, where possible, and if not, padded.

(j) Each power car used in revenue service shall be equipped with operating heat and air conditioning systems.

§ 243.421 Exterior lights.

(a) *Headlights.* Each power car shall be equipped with two or more headlights. Each headlight shall produce 12,000 or more candela.

(b) *Taillights.* (1) Each trailing power car shall be equipped with two or more red taillights;

(2) Each taillight shall be located at least 1.2 m (3.9 ft) above rail;

(3) Each taillight shall produce 15 or more candela; and

(4) Taillights of the trailing power car must be on when the trainset is on a section of the system that is in revenue service.

§ 243.423 Electrical system design.

(a) *Circuit protection.* (1) The main propulsion power line shall be protected with a lightning arrestor, automatic circuit breaker, and overload relay. The lightning arrestor shall be run by the most direct path possible to ground with a connection to ground of not less than No. 6 AWG. These overload protection devices shall be housed in an enclosure designed specifically for that purpose with arc chute vented directly to outside air.

(2) Head end power, including trainline power distribution, shall be provided with both overload and ground fault protection.

(3) Circuits used for purposes other than propelling the equipment shall be connected to their power source through circuit breakers or equivalent current-limiting devices.

(4) Each auxiliary circuit shall be provided with a circuit breaker located as near as practical to the point of connection to the source of power for that circuit. Such protection may be omitted from circuits controlling safety-critical devices.

(b) *Main battery system.* (1) The main batteries shall be isolated from the cab and passenger seating areas by a non-combustible barrier.

(2) Battery chargers shall be designed to protect against overcharging.

(3) Battery circuits shall include an emergency battery cut-off switch to completely disconnect the energy stored in the batteries from the load.

(4) If batteries are of the type to potentially vent explosive gases, the batteries shall be adequately ventilated to prevent accumulation of explosive concentrations of these gases.

(c) *Power dissipation resistors.* (1) Power dissipation resistors shall be adequately ventilated to prevent overheating under worst-case operating conditions.

(2) Power dissipation grids shall be designed and installed with sufficient isolation to prevent combustion between resistor elements and combustible material.

(3) Power dissipation resistor circuits shall incorporate warning or protective devices for low ventilation air flow, over-temperature and short circuit failures.

(4) Resistor elements shall be electrically insulated from resistor frames, and the frames shall be electrically insulated from the supports that hold them.

§ 243.425 Automated monitoring.

(a) Each trainset shall be equipped to monitor the performance of the following systems or components:

(1) Reception of cab and train control signals;

(2) Truck hunting;

(3) Electric brake status;

(4) Friction brake status;

(5) Fire detection systems;

(6) Head end power status;

(7) Alerter;

(8) Horn; and

(9) Wheelslide.

(b) The monitoring system shall alert the locomotive engineer immediately when any of the monitored parameters are out of predetermined limits. The Railroad's operating rules, developed pursuant to § 243.117 and Subpart F of this Part, shall control train movement when the monitored parameters are out of predetermined limits. If the locomotive engineer fails to act in accordance with these procedures, the Railroad's central traffic control shall initiate corrective action.

(c) The Railroad shall develop, in the course of the system safety analysis and pursuant to § 243.117 of this Part, appropriate operating rules to address locomotive engineer and equipment performance in the event that the automatic monitoring system becomes defective en route, or is defective when the daily inspection required by § 243.433 is completed.

(d) Each lead power car shall be equipped with an operative event recorder that monitors and records all safety data required by § 243.425(a) of this Part and 49 CFR 229.135, Event Recorders.

(e) All monitored systems set forth in paragraph (a) of this section shall be tested during each daily inspection required by § 243.433(f).

§ 243.427 Trainset system software and hardware integration.

(a) The trainset system hardware and software integration shall conform with *On-Board Electronic Equipment and*

Computer Hardware, CF 67–001, Bureau of Railroad Standards, (June 1990).

(b) The trainset system hardware and software integration shall conform with *Methodology for the Development of On-Board Micro-Computer Equipment*, Pr CF 67–004 and NF F71–004, Bureau of Railroad Standards, (February 1989).

§ 243.429 Control system design requirements.

The Railroad's trainset computer hardware and software shall meet the requirements set forth in § 243.105 of this Part.

§ 243.431 Safety appliance.

(a) *Couplers.* (1) The leading and trailing ends of each semi-permanently connected trainset shall be equipped with an automatic coupler that couples on impact and uncouples by either activation of a traditional uncoupling lever, or some other type of uncoupling mechanism that does not require a person to go between equipment units.

(2) The leading and trailing end couplers and uncoupling devices may be stored within a removable shrouded housing.

(3) Leading and trailing automatic couplers of trains shall be compatible with the Railroad's rescue locomotives without the use of special adapters.

(4) All couplers shall be equipped with an anti-climbing mechanism capable of resisting an upward or downward vertical force of 250 kN (56,200 lb) without permanent deformation.

(b) *Safety appliance mechanical strength and fasteners.* (1) All handrails and sill steps shall be made of approximately 25 mm (1 in.) diameter steel pipe.

(2) All safety appliances shall be securely fastened to the carbody structure with mechanical fasteners that have mechanical strength greater than or equal to that of a M10 diameter SAE steel bolt mechanical fastener.

(c) *Handrails and handholds.* (1) Handrails and handholds shall be made of stainless steel.

(2) Vertical handrails shall conform to the following:

(i) The maximum distance above top of rail to the bottom of the handrail shall be 1250 mm (49.2 in) and the minimum distance shall be 500 mm (19.7 in);

(ii) Minimum hand clearance distance between the handrail and the vehicle body shall be 50 mm (1.97 in) for the entire length; and

(iii) Vertical handrails shall be securely fastened to the vehicle body.

(3) Handholds and handrails are not required on units of the trainset which are semi-permanently connected, which can be disconnected only in a repair facility.

(4) Handholds and handrails are not required at the leading and trailing ends of the trainset equipped with automatic couplers, as these couplers are to be used only for rescue operations, and coupling can be achieved without requiring personnel to go between units.

(5) Passenger handrails or handholds shall be provided at both side access doors used to board or depart the train.

(6) Power vehicle side exits shall be equipped with handholds and handrails.

(d) *Sill steps.* (1) Each power vehicle or control cab shall be equipped with sill steps below each side door;

(2) Power vehicle or control cab sill steps shall be made of expanded metal or equivalent anti-skid material;

(3) Sill steps shall be designed and installed so that:

(4) The minimum tread length of the sill step shall be 250 mm (9.8 in);

(5) The minimum clear depth shall be 150 mm (5.9 in);

(6) Sill steps shall not have a vertical rise between treads exceeding 450 mm (17.7 in). The lowest sill step tread shall be not more than 500 mm (19.7 in) above the top of the rail;

(7) All sill steps shall be securely fastened;

(8) Sill steps are not required on units of the trainset that are semi-permanently connected, which can be disconnected only in a repair facility;

(9) Sill steps are not required at the leading and trailing ends of the trainset equipped with automatic couplers as these couplers are to be used only for rescue operations, and coupling can be achieved without requiring personnel to go between units.

(10) Power vehicle side exits shall be equipped with sill steps.

(e) *Semi-permanent connectors between trainset vehicles.* Each trailer car and power car in a trainset shall be connected to the adjacent trailer car or power car by use of a semi-permanent connector. Semi-permanent connectors may be disconnected only in repair facilities, with the use of special tools, and in such a manner that do not require employees to go on, under, or between equipment. Semi-permanent connectors are not couplers.

§ 243.433 Trainset inspection, testing and maintenance requirements.

(a) The Railroad shall develop a written inspection program for the rolling stock, in accordance with and approved under the requirements of Subpart B, prior to implementation of that program and prior to commencing operations. At a minimum, this program shall include the complete inspection, testing, and maintenance program for the TGV trainset as it is performed in France, including all inspections set forth in paragraph (f) below. This information shall include a detailed description of:

(1) Safety inspection procedures, intervals and criteria;

(2) Test procedures and intervals;

(3) Scheduled preventive maintenance intervals;

(4) Maintenance procedures;

(5) Special test equipment or measuring devices required to perform safety inspections and tests;

(6) Training and qualification of employees and contractors to perform safety inspections, tests and maintenance; and

(7) Methods of ensuring accurate records of required inspections.

(b) *Identification of safety-critical items.* In the program required by paragraph (a), the Railroad shall identify all inspection and testing procedures and criteria, and maintenance intervals that the Railroad deems to be safety-critical. Operation of emergency equipment, emergency back-up systems, and trainset exits shall be deemed safety-critical.

(c) *Program changes.* The Railroad must obtain FRA approval for any changes to the safety-critical portion of the trainset inspection, testing, and maintenance program required by paragraph (a).

(d) *Compliance.* After the Railroad's inspection, testing, and maintenance program is approved by FRA pursuant to the requirements and procedures set forth in Subpart B, the Railroad shall adopt the program and shall perform:

(1) All inspections and tests described in the program in accordance with the procedures and criteria that the Railroad identified as safety-critical; and

(2) All maintenance tasks and procedures described in the program in accordance with the procedures and intervals that the railroad identified as safety-critical.

(e) The inspection, testing, and maintenance program shall ensure that all systems and components of the equipment are free of conditions that endanger the safety of the crew, passengers, or equipment. These conditions include, but are not limited to:

(1) A continuous accumulation of oil or grease;

(2) Improper functioning of a component;

(3) A crack, break, excessive wear, structural defect or weakness of a component;

(4) A leak;

(5) Use of a component or system under conditions that exceed those for which the component or system is designed to operate; and

(6) Insecure attachment of a component.

(f) *Specific safety inspections.* The program under paragraph (a) of this section shall specify that all passenger equipment shall receive thorough safety inspections by qualified personnel at regular intervals. At a minimum, each trainset shall have:

(1) *Daily inspection.* Each trainset in use shall be inspected at least once each calendar day by qualified personnel. The inspection shall verify the correct operation of all on-board safety systems. If any of the conditions listed below are found during this inspection, the trainset shall not be put into revenue service until that condition is rectified. If the existence of any condition listed below cannot be determined by use of the on-board automated monitoring system, the Railroad shall perform a visual inspection to determine if the condition exists.

(i) Malfunction of the driving assistance system (SIAC);

(ii) Malfunction of the fire detection system;

(iii) Indication of an unbalanced tripod;

(iv) Indication of a broken tripod;

(v) Indication of blocked axle;

(vi) A single phase pantograph or its circuit breaker out of order;

(vii) Power car failure or cut-out;

(viii) Isolated roof disconnecting switch H(HT);

(ix) Transformer cooling or ventilation out of order;

(x) Two or more motor blocks isolated;

(xi) Mechanical brake on one or more trucks isolated;

(xii) Total failure of the anti-slide device on one truck;

(xiii) Failure of locomotive engineer's vigilance system (VACMA);

(xiv) Speedometer failure;

(xv) Failure of on-board signaling system;

(xvi) Failure of the speed measuring system (the warning flag of the speedometer does not disappear when the driving cab is activated);

(xvii) Locomotive engineer's console out of order;

(xviii) Locomotive engineer's brake valve not operating;

(xix) Leak in the main reservoir line;

(xx) Leak in the main brake pipe;

(xxi) Failure indication during the required brake test;

(xxii) Trailer car battery charger out of order; and

(xxiii) Total failure of the trainset interior lighting.

(2) *Examination in service.* A visual inspection conducted by qualified personnel every 4000 km (2,485 mi), at a location where there is a repair pit and access to the top of the trainset. At a minimum, the items listed below shall be inspected. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) of this section shall be corrected before the trainset is put into revenue service.

(i) Condition of the pantographs and roof insulators;

(ii) Condition of sanding nozzles;

(iii) Fixation and condition of dampers;

(iv) Condition of suspension springs;

(v) Fixation and condition of grounding straps;

(vi) Condition of side skirts and underbody panels;

(vii) Condition of trucks;

(viii) Oil levels;

(ix) Traction motor-to-carbody securement;

(x) Presence of brake pads;

(xi) Condition of brake shoes;

(xii) Condition of wheel tread;

(xiii) Condition of drive train.

(3) *Running gear inspection.* The running gear shall be inspected by qualified personnel once every 18 days. At a minimum, the items listed below shall be inspected. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) of this section shall be corrected before the trainset is put into revenue service.

(i) A visual inspection of trucks;

(ii) An inspection of the operation of flange-lubricating devices;

(iii) An inspection of the condition and attachment of dampers, roof mounted elements, and suspension components;

(iv) An inspection of the brake rigging, journal bearings, and tripod transmission

(v) A visual inspection of the condition and attachment of brake pads;

(vi) An inspection of the oil levels on drive train;

(vii) An inspection of the securement of drive train and wheel slide sensors;

(viii) An inspection of the condition of the pantographs and roof insulators; and

(ix) Check for audible leaks on pneumatic system.

(4) *Wheel inspection.* Each trainset wheel and reprofile shall be inspected by qualified personnel at an interval not to exceed 50,000 km of travel. Equipment not in compliance with the inspection criteria established in paragraph (a) of this section shall be replaced before the wheel or reprofile returns to revenue service.

(5) *Minor inspection.* At an interval not to exceed 150,000 km of travel or 7 months of time, whichever comes first, the Railroad shall perform a Minor Inspection on all trainsets in accordance with the test procedures and inspection criteria established in paragraph (a) of this section. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) shall be corrected before the trainset is put into revenue service. The Minor Inspection shall include:

(i) Electrical Parts:

(A) Inspect current return devices, antennas, and transponders;

(B) Examine batteries;

(C) Check operation of lighting;

(D) Check operation of speedometer unit and of cab signal receptor;

(E) Check sensors and sensor protectors;

(F) Check roof switches and contacts;

(G) Check circuit breakers; and

(H) Check traction motors and main transformers.

(ii) Mechanical Parts:

(A) Inspect axles, axle boxes and trucks;

(B) Check tightening torque of shock absorber and support mounting bolts;

(C) Check buffing gear;

(D) Inspect pantographs;

(E) Check attachment of anti-roll bars;

(F) Examine condition of guard-irons;

(G) Check setting of sanders;

(H) Verify proper operation of flange-lubricating devices;

(I) Check level and condition of oil on motor and reducing gears;

(J) Check attachment of geared motors;

(K) Check for grease projections from the motive force transmission components, and carrying and fixed rings of the articulation joint;

(L) Check attachment of motive force transmission components and tripod transmission;

(M) Check condition of motorized axle torque reaction rods;

(N) Check condition of brake-units and brake shoes;

(O) Check condition of disk brake pads and of the brake rigging cylinder assembly;

(P) Check condition of bellows;

(Q) Check for attachment defects and distortions on car body components, including underside panels, skirts, windows, and fairings;

(R) Verify proper operation of all doors, including locking devices;

(S) Check for defects on front power car windows;

(T) Inspect fire extinguishers, emergency safety equipment and tools, including the tink hammer; and

(U) Inspect tachometer and odometer sensors.

(iii) Pneumatic Parts:
(A) Inspect main compressor for proper operation;
(B) Check oil level and leaks in the compressor;
(C) Inspect condition of pneumatic suspension components; and
(D) Inspect brake equipment and brake indicator lamps.

(6) *General inspection.* At an interval not to exceed 300,000 km of travel or 13 months of time, whichever comes first, the Railroad shall perform a General Inspection of all trainsets in accordance with the tests procedures and inspection criteria established in paragraph (a) of this section. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) shall be corrected before the trainset is put into revenue service. The General Inspection shall include all items required in the Minor Inspection and:
(i) Electrical Parts:
(A) Inspect circuit breakers;
(B) Examine insulators;
(C) Inspect main transformers;
(D) Inspect braids and connecting shunts, sensors and sensor protectors;
(E) Examine electro-pneumatic and electromagnetic contacts;
(F) Inspect freon enclosures;
(G) Check for anomalies on resistors;
(H) Check operation of signaling lights;
(I) Visual inspection of diodes and antennas;
(J) Check condition of electronic plug-in units;
(K) Check condition of switches, controls, and joints;
(L) Check condition of master controller;
(M) Check operation of clock and indicator of imposed speed;
(N) Check operation of ground-to-train radio link and speed supervision by transponder;
(O) Check operation of passenger alarms;
(P) Inspect antenna;
(Q) Verify that headlights, tail lights, indicators, lighting, desks operate properly in full and dimmed status;
(R) Verify power supply to electrical outlets that are accessible to passengers and service personnel;
(S) Check operation of lights and indicators in electrical cabinets;
(T) Inspect traction, main, auxiliary compressor, and ventilation motors; and
(U) Check operation of refrigeration system and circuit breakers.
(ii) Mechanical Parts:
(A) Check operation of pantographs;
(B) Check for defects, including cracks and distortions, on trucks;
(C) Check for defects and check play on fixed and carrying rings of articulation joint;
(D) Check for defects on intercar passageways;
(E) Check for defects on doors, locks, and joints;
(F) Check interbody and anti-tilt dampers;
(G) Check tread brake units; and
(H) Check underbody rotation stops.
(iii) Pneumatic Parts:
(A) Check pressure gauge;
(B) Check operation of braking gear;
(C) Check operation of the anti-wheelslide device;
(D) Check operation of the emergency brake valve;
(E) Clean driver's brake valve and check its operation;
(F) Inspect flexible and half-couplings;
(G) Check operation of valves which control alarms, windshield washers, windshield wipers, and of differential valves; and
(H) Check brake indicator lights.

(7) *Major inspection.* At an interval not to exceed 600,000 km of travel or 25 months of time, whichever comes first, the Railroad shall perform a Major Inspection on all trainsets in accordance with the tests procedures and inspection criteria established in paragraph (a) of this section. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) shall be corrected before the trainset is put into revenue service. The Major Inspection shall include all items required in the General Inspection and:
(i) Electrical Parts:
(A) Inspect roof cable and lightning arresters;
(B) Inspect operation of the roof switch;
(C) Inspect battery switches;
(D) Inspect battery charger and battery voltmeter;
(E) Inspect inverters;
(F) Examine coils;
(G) Clean electronic gear;
(H) Inspect couplers and connecting cables;
(I) Inspect driver's console switch box;
(J) Test driver's vigilance system;
(K) Pre-departure sensors;
(L) Inspect operation of cab signal;
(M) Clean switchgear cabinets;
(N) Lubricate traction motors;
(O) Inspect ammeters and key switch panel;
(P) Inspect 30 KVA inverter; and
(R) Inspect spare light bulb supply.
(ii) Mechanical Parts:
(A) Inspect calibration of pantographs;
(B) Inspect for defects on motorized axle reaction rods;
(C) Inspect the constituents of fixed and carrying rings of articulation joint;
(D) Inspect that headlight covers are tightly secured; and
(E) Inspect for defects on car body exterior paint.
(iii) Pneumatic Parts:
(A) Inspect air and oil filters;
(B) Inspect main compressor couplings;
(C) Inspect operation of the main air dryer;
(D) Inspect operation of pressure gauges;
(E) Inspect pneumatic suspension reservoirs;
(F) Inspect operation of power car and trailer car brakes;
(G) Inspect operation of pneumatic pressure regulators;
(H) Inspect truck-to-car body coupling and pneumatic suspension connections; and
(I) Inspect operation of the spring-applied parking brake.

(g) *Brake system repair points.* The Railroad shall designate brake system repair point(s) in the inspection criteria established in paragraph (a) of this section. No trainset shall depart a brake system repair point unless that trainset has a 100 percent operational brake system.

(h) *Maintenance intervals.* The Railroad's program established pursuant to paragraph (a) of this section shall include the Railroad's scheduled maintenance intervals for equipment based on TGV operations in Europe, and on an analysis required the system safety program set forth in Subpart B of this Part. The maintenance interval of a safety-critical components shall be changed only when justified by accumulated, verifiable operating data, and approved by FRA as part of a system safety plan amendment.

(i) *Training and qualification program.* The Railroad shall establish a training and qualification program as defined in Subpart H of this Part to qualify individuals to perform inspections, testing, and maintenance on the equipment. Only qualified individuals shall perform inspections, testing, and maintenance of the equipment. An employee or contractor employee shall have knowledge of standard procedures described in paragraph (h) of this section in order to qualify to perform a task.

(j) *Standard procedures for safely performing inspection, testing, maintenance, or repairs.* The Railroad's program required by paragraph (a) of this section shall include the Railroad's written standard procedures for performing all safety-critical equipment inspection, testing, maintenance, or repair tasks. These standard procedures shall:

(1) Describe in detail each step required to safely perform the task;
(2) Describe the knowledge necessary to safely perform the task;
(3) Describe any precautions that must be taken to safely perform the task;
(4) Describe the use of any safety equipment necessary to perform the task;
(5) Be approved by the railroad's chief mechanical officer;
(6) Be approved by the railroad's official responsible for safety;
(7) Be enforced by supervisors with responsibility for accomplishing the tasks; and
(8) Be reviewed annually by the Railroad.

(k) *Quality control program.* The Railroad shall establish an inspection, testing, and maintenance quality control program enforced by the Railroad or its contractor(s) to reasonably ensure that inspections, tests, and maintenance are performed in accordance with Federal safety standards and the procedures established by the railroad.

(l) *Recordkeeping.* The Railroad shall make and maintain a written or electronic record of each required inspection under this section. Each record shall be maintained for at least one year from the date of the inspection.

Subpart F—Operating Rules

§ 243.501 Purpose.

Through the requirements of this Subpart, FRA learns the condition of the operating and emergency preparedness rules and practices in use by the Railroad. The Railroad's operating rules, and any amendments thereto, are subject to FRA approval in accordance with the procedures set forth in § 243.509 of this Subpart. The rules and practices covered by this Subpart include the procedures for instruction and testing of all employees involved with the movement of rail vehicles, including locomotive engineers, on-board attendants, central control staff, and all maintenance staff, which are necessary to ensure that they possess the requisite skill and knowledge of the rules and operating practices to maintain the safety of the system.

§ 243.503 Operating rules; filing and recordkeeping.

(a) The Railroad shall file with FRA one copy of its code of operating rules, timetables, timetable special instructions six months prior to commencing internal operations, and one year prior to commencing any revenue passenger transportation operations. The Railroad shall designate those rules, practices, and procedures that it deems safety-critical. Upon FRA approval of the operating rules pursuant to the procedures set forth in § 243.509, FRA will adopt and incorporate the safety-critical operating rules as Appendix C to this Part. The Railroad's Emergency Preparedness Plan shall be filed in accordance with the requirements of FRA's Passenger Train Emergency Standards as ultimately codified in 49 CFR part 239, as amended.

(b) The Railroad shall file each amendment to its code of operating rules, each new timetable, and each new timetable special instruction within 30 days after it is issued.

(c) The Railroad shall keep one copy of its current code of operating rules, timetables, timetable special instruction, at its system headquarters, and shall make such records available to representatives of the FRA for inspection and copying during normal business hours. These records shall be retained at the Railroad's system headquarters for one year after the end of the calendar year to which they relate.

(d) Any person who fails to comply with a safety-critical operating rule or practice, including timetables, timetable special instructions, or operational directives, issued pursuant to this Subpart and adopted and incorporated by reference in Appendix C to this rule, is subject to a civil penalty or other enforcement action for violation of those safety-critical rules and practices, in accordance with § 243.9 of this Part.

§ 243.505 Program of operational tests and inspections; recordkeeping.

(a) *Requirement to conduct operational tests and inspections.* The Railroad shall periodically conduct operational tests and inspections to determine the extent of compliance with its code of operating rules, timetables, timetable special instructions, and inspection, testing, and maintenance program in accordance with a written program retained at its system headquarters.

(b) *Written program of operational tests and inspections.* Three months prior to commencing operations, and six months prior to commencing any revenue passenger service operations, the Railroad shall file and retain one copy of its current program for periodic performance of the operational tests and inspections required by paragraph (a) of this section, and shall file and retain one copy of each subsequent amendment to such program as amendments are made. These records shall be retained at the system headquarters of the Railroad for three calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of the FRA for inspection and copying during normal business hours. The program shall:
(1) Provide for operational testing and inspection under the various operating conditions on the Railroad;
(2) Describe each type of operational test and inspection adopted, including the means and procedures used to carry it out;
(3) State the purpose of each type of operational test and inspection;
(4) State, according to operating divisions where applicable, the frequency with which each type of operational test and inspection is conducted;
(5) Begin within 30 days after the date of commencing operations; and
(6) Include a schedule for making the program fully operative within 210 days after it begins.

(c) *Records of individual tests and inspections.* The Railroad shall keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record shall specify the officer administering the test and inspection and each employee tested. These records shall be retained at the system headquarters of the Railroad for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

(d) *Annual summary on operational tests and inspections.* Before March 1 of each calendar year, the Railroad shall retain, at its system headquarters, one copy of a written summary of the following with respect to its previous year's activities: The number, type, and result of each operational test and inspection that was conducted as required by paragraphs (a) and (b) of this section. These records shall be retained for three calendar years after the end of the calendar year to which they relate and shall be made available to representatives of FRA for inspection and copying during normal business hours.

(e) *Electronic recordkeeping.* The Railroad is authorized to retain by electronic recordkeeping the information prescribed in paragraphs (b) through (d) of this section, provided that all of the following conditions are met:
(1) The Railroad adequately limits and controls accessibility to such information retained in its electronic

database system and identifies those individuals who have such access;

(2) The Railroad has a terminal at the system headquarters and at each division headquarters;

(3) Each such terminal has a desk-top computer (i.e., monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The Railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(5) The Railroad provides representatives of the Federal Railroad Administration with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

§ 243.507 Program of instruction on operating rules; recordkeeping; electronic recordkeeping.

(a) To ensure that each Railroad employee whose activities are governed by the Railroad's operating rules understands those rules, the Railroad shall periodically instruct each such employee on the meaning and application of its operating rules in accordance with a written program retained at its system headquarters and at the division headquarters.

(b) Three months before commencing operations, and six months before commencing any revenue passenger service operations, the Railroad shall file and retain one copy of its current program for the periodic instruction of its employees as required by paragraph (a) of this section and shall file and retain one copy of any amendment to that program as amendments are made. These records shall be retained at the Railroad's system headquarters for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of the FRA for inspection and copying during normal business hours. This program shall:

(1) Describe the means and procedures used for instruction of the various classes of affected employees;

(2) State the frequency of instruction and the basis for determining that frequency;

(3) Include a schedule for completing the initial instruction of employees who are already employed when the program begins;

(4) Begin on the date of commencing operations; and

(5) Provide for initial instruction of each employee hired after the program begins.

(c) The Railroad to which this Subpart applies is authorized to retain by electronic recordkeeping its program for periodic instruction of its employees on operating rules, provided that the requirements stated in § 243.505(e)(1)–(5) of this Subpart are satisfied.

§ 243.509 Operating rules approval.

(a) The Railroad shall submit its operating rules to FRA's Associate Administrator for Safety for review, within the time intervals required by this Subpart. FRA shall notify the Railroad, in writing, within 90 days of receipt of the Railroad's submission, that the rules are approved, disapproved, or disapproved in part. If disapproved or disapproved in part, FRA shall explain the reason on which the disapproval is based, and the measures needed to obtain approval.

(b) The Railroad shall submit any amendment to its operating rules to FRA's Associate Administrator for Safety for review, within 30 days after it is issued. The Railroad's amendment shall go into effect until such time that FRA notifies the Railroad, in writing, that such amendment is disapproved or disapproved in part. If disapproved, FRA shall explain the reason on which the disapproval is based, and the measures needed to obtain approval.

(c) In the course of the approval process set forth in this section, the Railroad shall provide to FRA supporting documentation that FRA deems necessary to assess accurately the level of safety provided for in the Railroad's operating rules.

Subpart G—System Qualification Tests

§ 243.601 Responsibility for verification demonstrations and tests.

The Railroad shall comply with the pre-revenue qualification tests and verification requirements set forth in this Subpart and in Subpart B to demonstrate the overall safety of the system, prior to revenue operations.

§ 243.603 Preparation of test plan.

(a) Prior to commencing revenue service operations and in accordance with Subpart B of this Part, the Railroad shall develop a system-wide test plan, that includes testing procedures, to demonstrate the operability of all system elements, including track and infrastructure, signal, communications, rolling stock, software, and operating practices, and the system as a whole. After receiving FRA approval of the pre-revenue service test plan as part of the system safety plan approval, and prior to commencing revenue service, the Railroad shall adopt and comply with the approved plan, including completion of all tests required by the plan.

(b) The plan shall be made available to FRA for inspection and copying upon request.

(c) The plan shall include all of the following elements:

(1) A clear statement of the test objectives. One of the principal test objectives shall be to demonstrate that the Railroad's system meets the safety design and performance requirements specified in this Part when operated in the environment in which it will be used;

(2) A schedule for conducting the tests;

(3) A description of the Railroad property or facilities to be used to conduct the tests;

(4) A detailed description of how the tests are to be conducted. This description shall include:

(i) An identification of the systems and equipment to be tested;

(ii) The method by which the systems and equipment shall be tested;

(iii) The criteria to be used to evaluate the system's and equipment's performance; and

(iv) The means by which the test results will be reported to FRA.

(5) A description of any special instrumentation to be used during the tests;

(6) A description of the information or data to be obtained;

(7) A description of how the information or data obtained is to be analyzed or used;

(8) A clear description of any criteria to be used as safety limits during the testing;

(9) A description of the criteria to be used to measure or determine the success or failure of the tests. If system qualification is to be based on extrapolation of less than full-level testing results, the analysis done to justify the validity of the extrapolation shall be described.

(10) A description of any special safety precautions to be observed during the testing;

(11) A written set of standard operating procedures to be used to ensure that the testing is done safely;

(12) Quality control procedures to ensure that the inspection, testing, and maintenance procedures are followed; and

(13) A demonstration of the inspection criteria to be used for the revenue service operation of the Railroad's system.

(d) The test plan shall include steps to:

(1) Verify results of installation tests performed by contractors and manufacturers;

(2) Conduct pre-operational testing of individual safety-related equipment, facilities, and subsystems; and

(3) Conduct operational testing of the system safety.

(e) The test plan shall include detailed, written procedures for the testing and start-up of all safety-critical equipment, facilities, and subsystems installed on the line, in passenger stations, in maintenance shops, and on the trainsets.

§ 243.605 Pre-operational qualification tests.

(a) The Railroad shall conduct pre-operational qualification tests, prior to commencing revenue operations, to verify that all safety-critical components meet all functional and all performance specifications.

(b) The pre-operational qualification tests of equipment, facilities, and subsystems shall include, at a minimum:

(1) Verification of the correct utility supply circuits, procedures for energization and de-energization, and formal permit-to-work procedures;

(2) Verification of the installation of radio communication equipment that is compatible with existing systems and suitable for integration into the planned network; and

(3) Verification of the operation of the dedicated telephone systems in facilities and along the right-of-way;

(4) Verification of the operation of all safety-related equipment in the maintenance shop;

(5) Verification of local control of substation equipment;

(6) Energization of substations and verification of formal permit-to-work procedures;

(7) Continuity testing of the overhead catenary system and rail return circuits;

(8) High-potential testing of traction power supply feeders and the overhead catenary system;

(9) Energization of each section of the overhead catenary system and verification of formal permit-to-work procedures;

(10) Verification of yard and shop overhead catenary system sectionalizing for power isolation during vehicle maintenance;

(11) Verification of compliance with civil works and track standards;

(12) Verification that all civil works, support structures, and installations are correctly positioned with respect to mechanical and electrical clearance envelopes, and with the Railroad's structure and clearance diagrams;

(13) Verification that the dimensions of the vehicles are in compliance with the Railroad's structure and clearance diagrams;

(14) Verification of correct operation of all wayside detectors;

(15) Verification of safe operation of signal system and central traffic control functions;

(16) Verification of local operation of track switching and signal system equipment;

(17) Verification of all on-board trainset safety-critical components;

(18) Verification of all emergency preparedness procedures; and

(19) Verification that the system's software operates as intended, is reliable and crash-resistant, is impenetrable to unauthorized entry, and interacts redundantly as designed.

§ 243.607 Integrated operational testing of systems.

(a) Prior to commencing revenue operations, the Railroad shall conduct high speed tests of the trainsets throughout the system to:

(1) Apply dynamic loads to track and bridge structures;

(2) Verify vehicle clearances to structures and platforms;

(3) Verify mechanical positioning of the overhead catenary system; and

(4) Verify performance of the vehicle, track, power supply, signal and communication systems.

(b) The Railroad shall demonstrate safe operation of the system during normal and degraded-mode operating conditions. At a minimum, the following operation tests shall be performed:

(1) Short-circuit tests to check power supply protection circuits and signal system immunization;

(2) Slow-speed operation of a trainset;

(3) Verification of correct overhead catenary and pantograph interaction;

(4) Verification of vehicle clearance at structures and passenger platforms;

(5) Incremental increase of train speed;

(6) Performance tests on vehicles to verify braking rates;

(7) Verification that vehicle noise and vibration are in compliance with codes and regulations;

(8) Verification of correct vehicle suspension characteristics;

(9) Verification of ride quality at operating speeds established in test plan;

(10) Verification of track and civil structure performance under dynamic load, which shall meet the following requirements:

(i) Each rolling stock type shall be qualified for its intended speed in order to demonstrate that the vehicle dynamic response to track alignment and geometry variations are within acceptable limits to assure safe operation;

(ii) The qualification testing shall insure that the equipment will not exceed the wheel/rail force safety limits specified in the table in section 4.37 and the limits for ride vibration specified in section 5.13(e) at any speed less than 16 km/h (10 mph) above the proposed maximum operating speed;

(iii) The Railroad shall establish a target maximum testing speed that is at least 16 km/h (10 mph) above the proposed maximum revenue service speed, appropriate target test and operating conditions, and conduct a test program sufficient to evaluate the operating limits of the track and equipment in order to gather the test data required to support the analysis required above. The test program shall demonstrate vehicle dynamic response as speeds are incrementally increased from 160 km/h (100 mph) to the target maximum test speeds. The test shall be suspended at that speed where any of the vehicle/track performance limits in this section are exceeded;

(iv) At the conclusion of the testing phase, the Railroad shall complete test runs with the subject equipment over the entire route proposed for revenue service, when maximum safe operating speed has been determined taking into account permissible levels of cant deficiency. These concluding tests shall be conducted:

(A) At the speeds the Railroad will request FRA to approve for service; and

(B) At 16 km/h (10 mph) above such speed; and

(v) The Railroad shall submit a report of the test procedures and results to FRA upon completion of the tests. The test report shall include the design flange angle of the equipment that applied to the criteria for the ratio of lateral forces that any wheel exerts on an individual rail to the vertical force exerted on the rail. This flange angle shall be used in the determination of the lateral to vertical wheel load safety limit for the track/vehicle performance measurements required by Subpart D.

(11) Load tests with vehicles to verify relay settings and signal and communication system immunization;

(12) Monitoring of utility supply circuits and telephone circuits to ensure the adequacy of power supplies, and to verify that transit-related disturbances are within acceptable limits;

(13) Verification of vehicle detection due to shunting of signal system circuits;

(14) Verification of correct signal status indications;

(15) Verification of safe operation of automatic train control (ATC) system;

(16) Tests of vehicle radio reception during system-wide vehicle operation; and

(17) Verification that the system's software operates as intended, is reliable and crash-resistant, is impenetrable to unauthorized entry, and interacts redundantly as designed.

§ 243.609 Pre-revenue service testing.

For a period of four or more months prior to revenue operations, the Railroad shall conduct pre-revenue service tests that include simulation of full revenue service operation to verify overall system performance, and provide operating and maintenance experience. The frequency and duration of the tests shall be determined in conjunction with preparation of the Railroad's system safety plan and approved by FRA, as set forth in Subpart B of this Part.

§ 243.611 Verification of compliance.

(a) The Railroad shall prepare a report detailing the results of all pre-operational and pre-revenue service qualification tests. The report shall identify any problems encountered during testing, and alternative actions necessary to correct defects in workmanship, materials, equipment, design, or operating parameters.

(b) The Railroad shall implement all alternative actions necessary to correct defects, as identified by the report.

(c) The Railroad shall submit the report to FRA 60 days prior to commencing revenue operations.

Subpart H—Personnel Qualification Requirements

§ 243.701 General requirements.

(a) The Railroad shall develop and implement a personnel qualification training program to meet the requirements set forth in § 243.109 of this Part, to provide all employees who perform safety-related duties the knowledge and skills necessary to effectively complete safety-related duties.

(b) As part of this program, the Railroad shall, at a minimum:

(1) Identify the safety-related tasks that must be performed on the Railroad's system, including all emergency preparedness tasks required by this Part;

(2) Develop written procedures for the performance of the tasks identified;

(3) Identify the skills and knowledge necessary to perform each task;

(4) Develop a training course that includes classroom and "hands-on" instruction designed to impart the skills and knowledge identified as necessary to perform each task;

(5) Require all employees to successfully complete the training course that covers the system, equipment, and tasks for which they are responsible;

(6) Require all employees to pass a written examination covering the system, equipment, and tasks for which they are responsible;

(7) Require all employees to demonstrate "hands-on" capability to perform their assigned tasks;

(8) Require supervisors to complete the program that covers the employees that they supervise;

(9) Require supervisors to exercise oversight to ensure that all the identified tasks are performed in accordance with the Railroad's written procedures;

(10) Complete required training of the work force prior to the start of revenue service;

(11) Designate in writing that each employee has the knowledge and skills necessary to perform the safety-related tasks for which she or he is responsible;

(12) Require periodic refresher training at an interval not to exceed three years that includes classroom instruction, "hands-on" training, and testing;

(13) Add new systems and equipment to the qualification and designation program prior to introduction into revenue service; and

(14) Maintain records for the duration of the employee's employment which demonstrate that each employee performing safety-related tasks on the Railroad's system is currently qualified to do so. These records shall distinguish the qualifications of the employee as a qualified person.

(c) The personnel qualification training program shall define the process by which the Railroad will ensure that all employees who perform safety-related duties are qualified to complete those duties. The program shall define the method by which the Railroad measures the knowledge and skills of all employees who perform safety-related duties.

(d) With regard to the types of employees for whom specific qualification requirements are set forth in this Subpart, the Railroad's training program shall be designed and implemented to ensure that those employees meet those requirements.

(e) The Railroad's personnel qualification training program for locomotive engineers shall follow the requirements set forth in 49 CFR part 240.

(f) The Railroad may not permit any individual, whether an employee of the Railroad or of a contractor, to perform the functions described in this Subpart unless that individual meets the qualification standards of this Subpart and has been trained in a program that is designed to ensure that the individual meets those requirements.

(g) All records required by this Subpart shall be maintained by the Railroad and available for FRA review for the duration of an employee's employment.

Track Personnel

§ 243.703 Personnel qualifications for track maintenance and inspection personnel.

(a) *General.* The Railroad shall designate qualified individuals responsible for the maintenance and inspection of track in compliance with the safety requirements prescribed in Subpart D of this Part. Each designated individual, including contractors and their employees, must meet the minimum qualifications set forth in this Subpart.

(b) *Recordkeeping.* With respect to the designation of individuals under this section, the Railroad shall maintain written records of:

(1) Each designation in effect;

(2) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof;

(ii) The manner in which the Railroad has determined a successful completion of that training course, including test scores or other qualifying results;

§ 243.705 Personnel qualified to supervise track restoration and renewal.

(a) Each individual designated to supervise restorations and renewals of track shall have:

(1) At least five years of responsible supervisory experience in railroad track maintenance of FRA track Class 4 or higher, and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on-the-job training that emphasizes the techniques to be employed in the supervision, restoration, and renewal of high speed track;

(2) A combination of at least one year of responsible supervisory experience in track maintenance in FRA Track Class 4 or higher and the successful completion of a minimum of 80 hours of specialized training in the maintenance of high speed track provided by the employer or by a college level engineering program, supplemented by special on-the-job training provided by the employer with emphasis on the maintenance of high speed track; or

(3) A combination of at least two years of experience in track maintenance in FRA Track Class 4 or higher and the successful completion of a minimum of 120 hours of specialized training in the maintenance of high speed track provided by the employer or by a college level engineering program supplemented by special on the job training provided by the employer with emphasis on the maintenance of high speed track.

(b) Each individual designated to supervise restorations and renewals of track shall demonstrate annually to the Railroad that the individual:

(1) Knows and understands the requirements of Subpart D of this Part;

(2) Can detect deviations from those requirements; and

(3) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

(c) Each individual designated to supervise restorations and renewals of track shall have written authorization from the Railroad to prescribe remedial actions to correct or safely compensate for deviations from the requirements of Subpart D of this Part and shall have successfully completed a recorded examination on Subpart D as part of the qualification process.

§ 243.707 Personnel qualified to inspect track.

(a) Each individual designated to inspect track for defects, shall have:

(1) At least five years of responsible experience inspecting track in FRA Track Class 4 or above, and the successful completion of a course offered by the Railroad or by a college level engineering program, supplemented by special on-the-job training that emphasizes the techniques to be employed in the inspection of high speed track; or

(2) A combination of at least one year of responsible experience in track inspection in FRA Class 4 or above and the successful completion of a minimum of 80 hours of specialized training in the inspection of high speed track provided by the Railroad or by a college level engineering program, supplemented by special on-the-job training provided by the Railroad with emphasis on the inspection of high speed track; or

(3) A combination of at least two years of experience in track maintenance in FRA Class 4 or above and the successful completion of a minimum of 120 hours of specialized training in the inspection of high speed track provided by the Railroad or from a college level engineering program, supplemented by special on-the-job training provided by the Railroad with emphasis on the inspection of high speed track.

(b) Each individual designated to inspect track for defects shall demonstrate annually to the Railroad that the individual:

(1) Knows and understands the requirements of Subpart D of this Part;

(2) Can detect deviations from those requirements; and

(3) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

(c) Each individual designated to inspect track for defects shall have written authorization from the Railroad to prescribe remedial actions to correct or safely compensate for deviations from the requirements in Subpart D of this Part and shall have successfully completed a recorded examination on Subpart D as part of the qualification process.

§ 243.709 Personnel qualified to inspect and restore continuous welded rail.

(a) Individuals designated under §§ 243.705 and 243.707 may inspect continuous welded rail track (CWR) or supervise the installation, adjustment, and maintenance of CWR in accordance with the written procedures established by the Railroad, provided they have:

(1) Current qualifications under either § 243.705 or § 243.707;

(2) Successfully completed a training course of at least eight hours duration developed specifically for the application of written CWR procedures issued by the Railroad; and

(3) Demonstrated to the Railroad that the individual:

(i) Knows and understands the requirements of those written CWR procedures;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

(b) Individuals designated to inspect CWR or supervise the installation, adjustment, and maintenance of CWR shall have written authorization from the Railroad to prescribe remedial actions to correct or safely compensate for deviations from the requirements in those procedures and must have successfully completed a recorded examination on those procedures as part of the qualification process. The recorded examination may be written, or in the form of a computer file with the results of an interactive training course.

Signal Personnel

§ 243.711 Personnel qualifications for signal maintenance and inspection personnel.

(a) *General.* The Railroad shall designate qualified individuals responsible for the maintenance and inspection of the signal system in compliance with the safety requirements prescribed in Subpart C of this Part. Each designated individual, including contractors and their employees, shall meet the minimum qualifications set forth in this Subpart.

(b) *Recordkeeping.* With respect to the designation of individuals under this section, the Railroad shall maintain written records of:

(1) Each designation in effect;

(2) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof;

(ii) The manner in which the Railroad has determined a successful completion of that training course, including test scores or other qualifying results;

(3) Signal inspections made by each individual as required by Subpart C. These records must be made available for inspection and copying by the Federal Railroad Administrator during regular business hours.

§ 243.713 Personnel qualified signal inspector.

(a) Each individual designated to inspect the Railroad's signal system shall have:

(1) Six or more years of signal maintenance experience that includes specialized training in each three-year period provided by the Railroad; or

(2) Four or more years of signal maintenance experience, and an associate degree in electrical engineering or related technical specialization, that includes training in each three-year period provided by the Railroad; or

(3) Two or more years of signal maintenance experience and a bachelor's degree in electrical engineering or related technical specialization, that includes training in each three-year period provided by the Railroad.

(b) Each individual designated to inspect the signal system for defects shall demonstrate annually to the Railroad that the individual:

(1) Knows and understands the requirements of subpart C;

(2) Can detect deviations from those requirements; and

(3) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

§ 243.715 Personnel qualified as signal maintainer.

(a) Each individual designated as a signal maintainer by the Railroad shall complete a training program during the first two years of employment by the Railroad. Upon successful completion of the training program, the signal maintainer shall be authorized to work in the proximity of high voltage lines and on signal equipment.

(b) When required to maintain the signal system for defects, each individual designated must demonstrate annually to the Railroad that the individual:

(1) Knows and understands the requirements of subpart C;

(2) Can detect deviations from those requirements; and

(3) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

§ 243.717 Personnel qualified to supervise signal inspectors and maintainers.

When required to supervise the inspection and maintenance of signal systems, each designated supervisor must:

(a) Successfully complete the program that covers the employees they supervise; and

(b) Exercise oversight to ensure that all of the identified tasks are performed in accordance with the Railroad's qualification program.

Rolling Stock Personnel

§ 243.719 Personnel qualifications for rolling stock personnel.

(a) *General.* The Railroad shall designate qualified individuals responsible for the inspection and maintenance of the Railroad's rolling stock. Each designated individual, including contractors and their employees, shall meet the minimum qualifications set forth in this section.

(b) *Recordkeeping.* With respect to the designation of individuals under this section, the Railroad shall maintain written records of:

(1) Each designation in effect;

(2) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof;

(ii) The manner in which the Railroad has determined a successful completion of that training course, including test scores or other qualifying results;

(c) The Railroad's qualification program for rolling stock personnel shall, at a minimum:

(1) Identify the safety-related tasks that shall be performed on each type of equipment that the Railroad operates;

(2) Include written procedures for the performance of the tasks identified;

(3) Identify the skills and knowledge necessary to perform each task;

(4) Include classroom and "hands-on" lessons designed to impart the skills and knowledge identified as necessary to safely perform each task;

(5) Require periodic refresher training at an interval not to exceed three years that includes classroom and "hands-on" training, as well as testing; and

(6) Include new equipment in the qualification and designation program prior to its introduction to revenue service.

§ 243.721 Personnel qualified to inspect and maintain rolling stock.

Each designated individual required to inspect and maintain rolling stock shall, at a minimum:

(a) Successfully complete the training course that covers the equipment and tasks for which they are responsible;

(b) Pass a written examination covering the equipment and tasks for which they are responsible; and

(c) Successfully demonstrate "hands-on" capability to perform the assigned tasks on the type of equipment to which they are assigned.

§ 243.723 Personnel qualified to supervise the inspection and maintenance of rolling stock.

Each individual designated to supervise the inspection and maintenance of rolling stock personnel shall, at a minimum:

(a) Successfully complete the program that covers the employees that they supervise;

(b) Exercise oversight to ensure that all the identified tasks are performed in accordance with the Railroad's qualification program.

Subpart I—Power Distribution

§ 243.801 Warning signs.

(a) The Railroad shall post warning signs concerning the danger of high voltage lines along the right-of-way, at regular intervals not to exceed 183 m (600 ft).

(b) The Railroad shall post warning signs concerning the danger of high voltage lines at all underpasses and overpasses.

(c) The Railroad shall attach warning signs concerning the danger of high voltage lines to each catenary mast, at a height of 1.2 to 1.5 m (4 to 5 ft).

(d) The Railroad shall post warning signs concerning the danger of high voltage lines on catenary masts that are adjacent to all overpasses. These warning signs shall be positioned so that they are clearly visible from the overpass.

§ 243.803 Clearance requirements.

Electrical clearance between the catenary system and fixed equipment in the right-of-way shall meet all pertinent international standards, including UIC 606–2 OR, in order to avoid fault currents.

§ 243.805 Catenary connections.

All catenary masts shall be connected to the ground or the rail, as determined by the Railroad's system safety plan. The electrical impedance of the connection shall meet the step and touch potential requirements given in international standards to protect against an electrical shock hazard.

§ 243.807 Access to stations.

Access to supply stations, substations and autotransformer stations shall be restricted to authorized personnel only.

§ 243.809 Actuators.

The actuators of high voltage switches shall be designed to protect the operator against electrical shock, either direct or induced.

§ 243.811 Power feeding.

(a) The parallel power feeder shall be protected against short circuits along the catenary.

(b) The parallel power feeder shall be protected from over-voltage power surges due to lightning and from surges caused by the utility system.

§ 243.813 Emergency devices.

(a) The Railroad shall install at each underpass, overpass, emergency entrance to the right-of-way, supply station, substation, and autotransformer station devices capable of disconnecting and isolating power and/or grounding the catenary to the rail that may be used in the event of an emergency.

(b) The Railroad shall install telephones along the right-of-way that are connected directly to the central power dispatching center. One telephone shall be located at each device provided in accordance with paragraph (a) of this section.

§ 243.815 Overpass protection.

The Railroad shall install at each overpass fencing, or other suitable protective device or equipment that shall prevent any accidental contact with the catenary.

§ 243.817 Safety work rules.

All pertinent safety standards issued by the U.S. Occupational Safety and Health Administration, concerning personal protective equipment, practices, and work rules for employees involved with the electric power generation, distribution, and transmission system, shall apply to the Railroad. FRA has not exercised jurisdiction over those working conditions.

§ 243.819 Inspection, testing, and maintenance of the power distribution system.

(a) The Railroad shall establish a training and qualification program as requires by Subparts B and H to qualify individuals to perform inspections, tests and maintenance of the power distribution system. Only qualified individuals shall perform inspections, tests and maintenance of the equipment.

(b) Qualified personnel shall perform a visual inspection of performance of the current collection through the pantograph-catenary interface.

(c) Qualified personnel shall perform a walking inspection of each suspension and anchoring or supporting structure of the catenary system, all switching devices, and all telephones located along the right-of-way at least once every four months.

(d) Qualified personnel shall inspect all emergency shutdown devices and all manual switches annually.

(e) The Railroad shall provide to FRA for review detailed information on the inspection, test, and maintenance procedures necessary for safe operation of the power distribution equipment. This information shall include a detailed description of:

(1) Safety inspection procedures, requirements, intervals and criteria;

(2) Test procedures and intervals;

(3) Scheduled preventive maintenance intervals;

(4) Maintenance procedures;

(5) Special testing equipment and measuring devices required to perform safety inspections and tests; and

(6) Training and certification of employees and contractors qualified to perform safety inspections, testing and maintenance.

Appendix A to Part 243—Schedule of Civil Penalties—[Reserved]

Appendix B to Part 243—Test Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Constructing or Refurbishing Locomotive Cab and Passenger Car Interiors

This appendix provides the performance standards for testing the flammability and smoke emission characteristics of materials used in constructing or refurbishing locomotive cab and passenger car interiors, in accordance with the requirements of § 243.413.

(a) *Definitions.*

Critical radiant flux (CRF) means, as defined in ASTM E–648, a measure of the behavior of horizontally-mounted floor covering systems exposed to a flaming ignition source in a graded radiant heat energy environment in a test chamber.

Flame spread index (I_s) means, as defined in ASTM E–162, a factor derived from the rate of progress of the flame front (F_s) and the rate of heat liberation by the material under test (Q), such that $(I_s) = (F_s) \times Q$.

Flaming dripping means periodic dripping of flaming material from the site of material burning or material installation.

Flaming running means continuous flaming material leaving the site of material burning or material installation.

Specific optical density (D_s) means, as defined in ASTM E–662, the optical density measured over unit path length within a chamber of unit volume, produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm² for a specified period of time.

Surface flammability means the rate at which flames will travel along surfaces.

(b) *Required test procedures and performance criteria.*

The materials used in locomotive cabs and passenger cars shall be tested according to the procedures and performance criteria set forth in the following table. In all instances, the most recent version of the test procedures or the revision in effect at the time a vehicle is ordered should be employed in the evaluation of the materials specified.

Category	Function of material	Test procedure	Performance criteria
Passenger seats, Sleeping and dining car components.	Cushions, Mattresses [1,2,5,9*]	ASTM D–3675	$I_s \leq 25$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤175
	Seat and/or Mattress Frame [1,5,8]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Seat and Toilet Shroud, Food Trays [1,5].	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Seat Upholstery, Mattress Ticking and Covers, Curtains [1,2,3,5].	FAR 25.853 (Vertical)	Flame Time≤10 sec; Burn length≤6 inch
		ASTM E–662	D_s (4.0)≤250 coated; D_s (4.0)≤100 uncoated
Panels	Wall [1,5,10]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Ceiling [1,5,10]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Partition, Tables and Shelves [1,5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Windscreen [2,5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	HVAC Ducting [1,5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100
	Window [4,5]	ASTM E–162	$I_s \leq 100$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Light Diffuser [5]	ASTM E–162	$I_s \leq 100$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
Flooring	Structural [6]	ASTM E–119	Pass
	Covering [7,10]	ASTM E–648	CRF≥0.5 w/cm²
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
Insulation	Thermal [1,2,5]	ASTM E–162	$I_s \leq 25$
		ASTM E–662	D_s (1.5)≤100
	Acoustic [1,2,5]	ASTM E–162	$I_s \leq 25$
		ASTM E–662	D_s (1.5)≤100
Elastomers	Window Gaskets, Door Nosing, Diaphragms, Roof Mat [1].	ASTM C–542	Pass
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200

Category	Function of material	Test procedure	Performance criteria
Exterior Plastic Components	End Cap, Roof Housings [1,5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
Component Box Covers	Interior, Exterior Boxes [1,3,5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200

[1] Materials tested for surface flammability must not exhibit any flaming running or flaming dripping.
[2] The surface flammability and smoke emission characteristics must be demonstrated to be permanent by washing, if appropriate, according to FED–STD–191A Textile Test Method 5830.
[3] The surface flammability and smoke emission characteristics must be demonstrated to be permanent by dry-cleaning, if appropriate, according to ASTM–D–2724. Materials that cannot be washed or dry cleaned must be so labeled and meet the applicable performance criteria after being cleaned as recommended by the manufacturer.
[4] For double window glazing, only the interior glazing must meet the materials requirements specified herein; the exterior need not meet those requirements.
[5] ASTM E–662 maximum test limits for smoke emission (specified optical density) must be measured in either the flaming or non-flaming mode, depending on which mode generates the most smoke.
[6] Structural flooring assemblies must meet the performance criteria during a nominal test period determined by the railroad property. The nominal test period must be twice the maximum expected period of time, under normal circumstances, for a vehicle to come to a complete, safe stop from maximum speed, plus the time necessary to evacuate all passengers from a vehicle to a safe area. The nominal test period must not be less than 15 minutes. Only one specimen need be tested. A proportional reduction may be made in the dimensions of the specimen provided that it represents a true test of its ability to perform as a barrier against under-car fires. Penetrations (ducts, etc.) must be designed against acting as passageways for fire and smoke.
[7] Flooring covering must be tested in accordance with ASTM E–648 with its padding, if the padding is used in actual installation.
[8] Arm rests, if foamed plastic, are tested as cushions and, if hard material, are tested as a seat back shroud.
[9] Testing is performed without upholstery.
[10] Carpeting on walls and ceilings is to be considered wall and ceiling panel materials, respectively.

(c) *The sources of test procedures specified in the table are as follows:*

(1) Leaching Resistance of Cloth, FED–STD–191A–Textile Test Method 5830. (Available from: General Services Administration Specifications Division, Building 197 Washington Navy Yard, Washington, D.C. 20407.)

(2) Federal Aviation Administration Vertical Burn Test, FAR–25.853.

(3) American Society for Testing Materials (ASTM):

(i) Specification for Gaskets, ASTM C–542.

(ii) Surface Flammability of Flexible Cellular Materials Using a Radiant Heat Energy Source, ASTM D–3675.

(iii) Fire Tests of Building Construction and Materials, ASTM E–119.

(iv) Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E–162.

(v) Bonded and Laminated Apparel Fabrics, ASTM D–2724.

(vi) Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source, ASTM E–648.

(vii) Specific Optical Density of Smoke Generated by Solid Materials, ASTM E–662.

(Available from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.)

Appendix C to Part 243—Railroad Safety—Critical Operating Rules [Reserved]

Issued in Washington, D.C. this 24th day of November, 1997.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 97–31457 Filed 12–11–97; 8:45 am]
BILLING CODE 4910–06–P

federal register

Friday
December 12, 1997

Part III

Department of Housing and Urban Development

Notice of Funding Availability for the Fair Housing Services Center in East Texas; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4127–N–03]

Notice of Fund Availability for the Fair Housing Services Center in East Texas

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA) for the Fair Housing Services Center (FHSC) in East Texas.

SUMMARY: This NOFA announces the availability of funds and HUD's request for proposals (RFP) to establish a Fair Housing Services Center in East Texas to be administered by a non-profit organization (NPO). HUD will award to and enter into a contract with an NPO to administer the FHSC as required by the Final Judgment and Decree (Final Judgment) in *Lucille Young* v. *Cuomo*, CA No. P–80–8–CA, (E.D. Tex.; dated March 30, 1995). HUD has been ordered to provide $500,000 per year for a period of at least five years to fund the FHSC to be located in Beaumont, Texas, with branch offices within the 36 county area that constitutes East Texas, and one mobile office unit to provide services to remote locations throughout East Texas. Appendix A to this Notice is a copy of the Request for Proposals (RFP) and Program Guidelines.

DATES: The deadline for proposals for the Fair Housing Services Center NOFA is February 10, 1998, 3:00 p.m., Washington, DC time.

The above-stated deadline for proposals is firm as to date and hour. In the interest of fairness to all competing NPOs, HUD will treat as ineligible for consideration any proposal that is not received before the deadline for proposals. NPOs submitting proposals should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, proposal materials sent via facsimile (FAX) transmission.

Preproposal Conference: A preproposal conference will be held by HUD on Friday, December 19, 1997, at 9:00 AM, for all NPOs interested in submitting a proposal in response to this NOFA. The preproposal conference will be held at Lamar University (1200 Martin Luther King Parkway), Education Building, Room 207, Georgia at Calahan Street, Beaumont, Texas. NPOs interested in submitting an application should contact Mr. Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, Washington, D.C. at telephone number (202) 708–0477 (this is not a toll-free number) regarding the date, time and room number for the preproposal conference. For hearing-and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

Proposal Packet: A proposal packet containing a copy of this NOFA, the Court Order in *Lucille Young* v. *Cuomo*, and the format for three of the four certifications required of NPOs submitting proposals is available by contacting the address/telephone number indicated in the following two paragraphs entitled **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The original and five complete copies of the proposal should be submitted by the deadline to Mr. Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, S.W., Washington, D.C., 20410.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division Office of Rental Assistance, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, S.W., Washington, D.C., 20410, telephone number (202) 708–0477 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Request for Applications

All information related to the RFP is available in Appendix A to this Notice. Appendix A is the only document potential bidders should use to determine the requirements of the RFP.

The plaintiffs, African-American residents of public housing in East Texas, filed suit in 1980 alleging that HUD had knowingly maintained a system of segregated housing in a 36-county area of East Texas, in violation of the U.S. Constitution and various civil rights laws. The plaintiffs contended that there was segregation in HUD-supported low income public housing, Section 8 Existing Housing and other HUD-assisted multifamily housing programs.

In 1982, the U.S. District Court for the Eastern District of Texas certified a class consisting of all African-American applicants for and residents of HUD-funded public housing, Section 8 housing and other assisted housing programs in the 36-county area. In 1985, the court issued a liability decision finding that HUD had knowingly and continually maintained a system of segregated housing in the 36-county area.

In 1987, while an appeal was pending, HUD and the plaintiffs reached an agreement to limit the scope of the case and the class of plaintiffs. In 1988, the court appointed a special master and issued an interim injunction which compelled HUD to require each of the 70 housing agencies to implement race-conscious Tenant Selection and Assignment Plans and to provide all class members a series of notices of desegregative opportunities in all HUD-assisted housing in East Texas. On March 30, 1995, U.S. District Judge William Wayne Justice issued the Final Judgment that approved the desegregation plans and the plan amendments and required HUD to fund the FHSC.

The following is an outline of the activities of the FHSC (NPOs submitting proposals should refer to the attached RFP for details of the activities and responsibilities of the FHSC):

1. Familiarity with all relevant HUD regulations;
2. Outreach to landlords and assistance with exception rents;
3. Eligibility review services;
4. Counseling services and other social services support;
5. Responsibilities to Class members who receive a desegregative voucher/certificate;
6. FHSC encouragement and assistance to class members to make desegregative moves;
7. Information provided to Class members;
8. Quarterly and Annual Performance Reports; and
9. HUD's Right to Request Information.

NPOs submitting proposals must respond to the requirements of the RFP attached to this NOFA and HUD encourages applicants to refer to the RFP for all appropriate information concerning the Fair Housing Services Center.

Other Matters

Environmental Impact

This NOFA provides assistance in promoting and enforcing fair housing and nondiscrimination. Accordingly, under 24 CFR 50.19(C)(3), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This notice will not pose an environmental health risk or safety risk to children.

Section 102 of the HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each proposal submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 calendar days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act), codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of proposals and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

NPOs submitting proposals or employees who have ethics-related questions should contact the HUD Ethics Law Division (202) 708–3815 (TDD/Voice) (this is not a toll-free number). Any HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact the appropriate Field Office Counsel or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Dated: December 8, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix A

Request for Proposals (RFP) and Program Guidelines for Establishing a Fair Housing Services Center (FHSC) in East Texas

This is a request for proposals to establish an FHSC in East Texas to be administered by a nonprofit organization ("NPO") as required by the Final Judgment and Decree ("Final Judgment") in *Lucille Young* v. *Cuomo*, CA No. P–80–8–CA (E.D. Tex.; dated March 30, 1995). HUD has been ordered to provide $500,000 per year for a period of at least five years to fund an FHSC for East Texas to be located in Beaumont, Texas, with several branch offices within the 36-county area that constitutes East Texas, and one mobile office unit to provide services to remote locations throughout East Texas. The funding will provide for a variety of services designed to facilitate desegregative moves of class member applicants for and residents of public housing throughout the seventy (70) Public Housing Authorities ("PHAs") located in the 36-county jurisdiction of the *Young* Final Judgment. The specific responsibilities of the FHSC are enumerated in the Scope of Work below, in the Final Judgment (copy attached), and the original desegregation plans and the plan amendments approved by the Court. The Final Judgment is the document that controls the activities of the FHSC. The FHSC is bound by the terms of the Final Judgment and final desegregation plans (as determined by the Court).

The U.S. Department of Housing and Urban Development ("HUD") will award to and enter into a contract with an NPO. HUD's local Field Office will monitor the NPO's performance consistent with the requirements of 24 CFR Section 84.51. The specific monitoring requirements applicable to the NPO will be addressed in the contract to be entered into between HUD and the NPO. The term of the contract shall be for one year, renewable in one year increments, for a cumulative total of no less than five (5) one year terms. The renewal of the proposal is contingent upon the FHSC's ability in meeting the conditions set forth in Section I, "Scope of Work" below, and in complying with the Final Judgment. HUD will provide $500,000 for the activities of the FHSC for each year of

operation, and a total of 1,000 Section 8 rental vouchers and/or certificates (excluding incremental and turnovers) to be used toward HUD's obligation to provide 5,134 desegregative housing opportunities to *Young* class members.

The housing opportunity counseling funds will be provided to the FHSC through HUD's contract administrator. HUD is required to award 1,000 desegregation vouchers/certificates to PHAs that have jurisdiction in the areas where the *Young* class members move. The PHAs that are awarded these vouchers/certificates are herein called "receiving PHA(s)".

Sections of the RFP

I. Scope of Work
A. Background and Objectives
B. Activities of the FHSC
C. Administrative Requirements
D. Monitoring
II. Contents of Proposal
A. Eligible Applicant
B. Description of Activities and Costs
C. Deficient Applications for FHSC
III. Factors for Award
A. Evaluating Rating Factors
B. Certifications
C. Cost Factor
D. Contract Award
E. Approval by HUD and Court Review

I. Scope of Work

A. Background and Objectives

The plaintiffs in *Young*, African-American residents of public housing in East Texas, filed this action in 1980, alleging that HUD had knowingly maintained a system of segregated housing in a 36-county area of East Texas, in violation of the U.S. Constitution and various civil rights laws. The plaintiffs contended that there was segregation in HUD-supported low income Public Housing, Section 8 Existing Housing Program, and other HUD-assisted multifamily programs (including HUD-insured housing). While there are presently 70 individual public housing authorities ("PHAs") in the 36-county area, none of the PHAs are included in the lawsuit as parties.

In 1982, the U.S. District Court for the Eastern District of Texas ("Court") certified a class consisting of all African-American applicants for and residents of HUD-funded public housing, Section 8 housing and other assisted housing programs in the 36-county area.

In 1985, the court issued a liability decision, finding that HUD had knowingly and continually maintained a system of segregated housing in the 36-county area. In 1987, while an appeal was pending, HUD and the plaintiffs reached an agreement to limit the scope of the case and class of plaintiffs to public housing in the 36-county area. The *Young* class thus consists of all African-American residents of, or applicants for, public housing in the 36-county area.

In 1988, the court appointed a special master and issued an interim injunction, which, among other things, compelled HUD to require each of the 70 PHAs to implement race-conscious Tenant Selection and Assignment Plans and to provide all class members a series of notices of desegregative opportunities in all HUD-assisted housing in East Texas.

After settlement discussions between HUD and the plaintiffs proved unsuccessful in 1990, the court issued an Order for Further Relief, dated September 9, 1990, which required, among other things, that HUD develop desegregation plans or assertions of unitary status for each of the 70 PHAs. The court ordered HUD, in developing each plan, to provide for the equalization of conditions between predominantly African-American projects and the conditions in the projects and neighborhoods where the majority of white HUD-assisted housing recipients resided.

By June 1991, HUD had submitted desegregation plans or unitary status assertions for all 70 PHAs to the court for approval. Although the court did not rule as to the adequacy of the plans and unitary status assertions at that point, HUD began to implement the desegregation plans. In October 1993, after further analysis, HUD withdrew its submission of the plans and assertions after having determined that they did not fully or adequately address the requirements of the September 1990 Order.

HUD filed revised plans on February 8, 1994, along with the East Texas Comprehensive Desegregation Plan (Comprehensive Plan). The Comprehensive Plan reinstituted the original plans filed in 1990–91, but amended them to provide for further actions, and replaced all unitary status assertions with new desegregation plans (asserting that none of the 70 PHAs had, as of yet, attained unitary status).

The Comprehensive Plan filed in February 1994 called for the creation of 1,000 desegregative housing opportunities for class members over a five-year period. In May 1994, after further analysis, HUD agreed to provide for the creation of 5,134 desegregative opportunities within seven years. On March 30, 1995, U. S. District Judge William Wayne Justice issued the Final Judgment, that approved the original desegregation plans and the plan amendments and required HUD to fund the FHSC.

B. Activities of the FHSC

1. The FHSC Must Become Familiar With All Relevant HUD Regulations (e.g., Those Governing Section 8 Assistance, Public Housing, Assisted Housing, and Fair Housing), the Final Judgment and Applicable Individual Desegregation Plans

The FHSC shall order and/or approve all issuances by the receiving PHA of Section 8 rental vouchers or certificates to class members or others pursuant to the Final Judgment Decree, § II.

2. Outreach to Landlords and Assistance With Exception Rents

The FHSC shall encourage and assist in the development of desegregative housing opportunities, including outreach to private landlords in non-minority areas for the purpose of encouraging them to participate in the Section 8 existing housing program, as well as counseling and referral services to Section 8 existing housing tenants and applicants who wish to utilize their Section 8 rental vouchers or certificates in a manner furthering desegregation pursuant to ¶ IV.5.d. of the Final Judgment.

The FHSC, along with the PHAs, shall monitor rents in desegregative housing opportunity areas every six months to determine whether such rents are adversely affecting housing opportunities. If so, the FHSC shall take such steps as are necessary to overcome this adverse affect, including requesting that HUD consider granting exception rents for certificates or payment standards for vouchers, pursuant to the Court's 1990 Order for Further Relief, if such exception rents or payment standards would increase the availability of desegregative housing opportunities for class members.

Landlord Outreach Activities include, but are not limited to:

a. Identify potential landlords and market the program to them; make special efforts to obtain the participation of owners and managers who control a large number of units, and especially, of owners and managers of units with three or more bedrooms;

b. Maintain a data base of available housing in desegregative areas;

c. Carry on outreach using a variety of methods including recruitment in person, by telephone, in writing, at meetings of landlord associations, by special brochures, and by other economically feasible means;

d. Seek out landlords with a prior reputation for community involvement and civic commitment, especially those on the boards of civil rights or fair housing organizations;

e. Join property management associations and attend seminars on property management issues (especially where information about Section 8 opportunities for owners is discussed); solicit opportunities to make presentations at property owner and manager meetings about the needs of Section 8 families and the opportunities presented by the program; and

f. Network through personal contacts with established owners and real estate organizations in the multifamily sector, to uncover potential vacancies and to update listings of units in new or existing developments.

3. Eligibility Review Services

The FHSC shall review all clients of the FHSC who have not already undergone a determination of eligibility by the receiving PHA, to document each client's ability and willingness to comply with an acceptable lease and HUD program requirements pursuant to ¶ IV.5.a. of the Final Judgment.

The FHSC shall determine the eligibility of families consistent with HUD's regulatory requirements pertaining to income, family composition, citizenship and eligible immigration status. Families who have members who have engaged in certain activities that are grounds for denying Section 8 assistance under the regulations, including drug-related and violent criminal activity, will not be offered a Section 8 rental voucher or certificate.

4. Counseling Services and Other Social Services Support

Pursuant to ¶ IV.5.b. of the Final Judgment, the FHSC shall provide counseling services designed to provide information and counseling with respect to class members including the following:

a. Initial Stage of Counseling. The FHSC will provide an initial counseling session to groups of class members. At the initial session, the FHSC will provide essential general information, for example:

(1) Explain the terminology of the Section 8 programs;

(2) Explain the program requirements pertinent to Section 8 rental vouchers and certificates;

(3) Inform families of the counseling services that will be available.

(4) Meet with families to help them assess their needs and solve problems in areas such as credit and housekeeping; and

(5) Provide training to families to enhance their housing search skills and ability to present themselves to landlords.

b. Second-stage Counseling (Motivational Support). From the first contact with the family, the FHSC will need to help families maintain a consistent and high level of enthusiasm and commitment to the program. For many families, the possibility of living in a new environment will be sufficient to energize their activities and strengthen their resolve. However, other families may be more timid about learning new skills (like finding available units and dealing with prospective landlords) or looking for units in unfamiliar locations. Keys to maintaining a family's motivation to succeed include:

(1) Provide detailed information to individual families about housing options in desegregative areas;

(2) Conduct individual sessions with each family about communities of interest to the family, including educational opportunities, housing, employment information, and transportation information;

(3) Refer each family to at least *three* vacancies in desegregative areas in neighborhoods selected by the family;

(4) Assist families in their housing search, as needed, including providing escorts and transportation to unfamiliar neighborhoods, and arranging day care for children;

(5) Assist in lease negotiation and assist the prospective landlord in obtaining lease approval from the local housing agency;

(6) Provide referrals to organizations that may provide assistance with security deposits, moving costs, and the like;

(7) Provide assistance in passing landlord screening requirements. The FHSC may also assist families by providing credit and tenant screening reports to landlords;

(8) Address fears directly and discuss them thoroughly; and

(9) Assure the family that it has the continuing and active support not only of the FHSC, but also of an array of service providers available to solve particular problems.

c. Post-placement services. The FHSC will:

(1) Contact the family at move-in, again 30 days thereafter, and again three months after that, to assist in transition and inform the family about the availability of post-placement services.

(2) Inform the family about the Section 8 self-sufficiency program.

(3) Mediate disputes between the family and the landlords and between the family and the neighborhood, if and when they arise, and counsel families in resolving such disputes themselves.

(4) Facilitate support networks among families moving to nearby areas, to the extent families express a desire for such networks.

(5) Provide information about educational and employment opportunities; parenting skills classes, general equivalency diploma (GED) classes, and other such services.

5. Class Members Who Receive a Desegregative Voucher/Certificate

Under the Final Judgment and Decree, HUD will provide to class members 5,134 desegregative housing opportunities, over a seven-year period. The actual placement of a total of 40 class members in Alba (1), Corrigan (2), Fruitvale (2), Kirbyville (8), Mount Pleasant (22), Talco (2), and Trinidad (3) is also required under the Final Judgment. Two hundred (200) desegregative vouchers/certificates will be provided in the first year of the FHSC's operation, and 200 per year thereafter for the following four years. The class members who receive one of the desegregative vouchers/certificates will be required to use their vouchers/certificates in rental housing that constitutes a desegregative opportunity as defined in the Final Judgment. The FHSC will provide to the class members who receive a desegregative voucher/certificate counseling services and other forms of assistance, as necessary, to aid them in locating desegregative housing.

Pursuant to ¶ IV.5.g. of the Final Judgment and Decree, FHSC will give each class member written notice, every six months, in a form and distribution method to be approved by HUD, of all HUD-assisted and/or HUD-subsidized low-income housing developments in the housing markets where the class member resides that offer the class members a desegregative housing opportunity, provide notice of the full address, telephone number, and name of the person responsible for accepting applications for the development, a short description of the type of housing offered by the development, and the general eligibility requirements for the development. The FHSC will include in the Notice to class members, information about the mobility program, and the opportunities available through it.

a. PHA Responsibilities. The receiving PHAs will be awarded 1,000 desegregation certificates and vouchers to be used toward HUD's obligation to provide 5,134 desegregative housing opportunities to *Young* class members; conduct the intake and initial eligibility determination of applicants; and conduct any required Housing Quality Standards ("HQS") inspections of units.

The 1,000 desegregative vouchers/certificates are for the exclusive use of class members. Certificates or vouchers obtained by receiving PHAs from other East Texas Section 8 programs through turnover, recapture, or otherwise, may be provided to non-class members when required by HUD under subparagraph c below.

b. Award and Turn-in of Desegregative Certificates. Class members who initially receive a desegregative voucher/certificate will have 120 days within which to enter into a lease for a unit of desegregative housing as defined, or, if the FHSC has failed to offer a unit within that time, until a desegregative offer is in fact received. At the expiration of 120 days, if an offer and if a lease has not been entered, the applicant has the option of continuing to search for housing with no restrictions as to locations for an additional sixty days. At the end of the sixty day period, the voucher/certificate would revert to the receiving PHA (unless it grants an extension). (HUD Headquarters will grant the necessary waivers to allow the receiving PHA to grant an extension beyond the 120 day maximum currently allowed under HUD's regulations.) Should the class member locate in a minority neighborhood, this will not count toward HUD'S obligation to create 5,134 desegregative housing opportunities.

c. Special Procedures for Affirmative Action Waiting List Initiatives. HUD shall provide to the FHSC the name and address of every class member applicant who is to be offered a certificate and counseling as an alternative to public housing when a PHA uses an affirmative action waiting list procedure that has been approved by the Court to offer the unit that would otherwise have been offered to the class member, to a white applicant whose name is listed lower on the waiting list. Paragraph III of the Final Judgment is to be followed when implementing the Affirmative Action Waiting List initiatives. When a class member is offered a certificate or voucher under these circumstances:

(1) The class member is to be made an offer of alternative housing within 60 days of the date on which the public housing unit that is to be offered to a white applicant is available for assignment.

(2) The class member must be provided the Section 8 rental voucher or certificate and an offer of a unit must be made within 120 days from issuance of the certificate to the class member that meets the requirements of § II.7 of the Final Judgment and must notify HUD within one day if the applicant accepts the offer;

(3) If the class member rejects the offer of alternative housing, the FHSC must notify HUD within one day of the rejection, state the reason(s) for the rejection, and provide information as to the location of the rejected unit and evidence of its availability.

(4) If, after 120 days, an alternative housing opportunity has not been found for the class member, the class member may opt to hold the certificate for up to sixty additional days and to search for housing on her or his own without restriction as to location. (HUD Headquarters will grant the necessary waivers to allow the receiving PHA to grant an extension beyond the 120-day maximum currently allowed under HUD's regulations.)

HUD will provide the FHSC with the name and address of every non-class member who is to receive a Section 8 rental voucher or certificate as a result of the implementation of the Affirmative Action Waiting List. The FHSC must instruct the receiving PHA to issue a Section 8 rental voucher or certificate to the non-class member applicant who held the highest position on the waiting list and who would otherwise have been offered an available public housing unit but for the advancement of a class member to the head of the waiting list for that unit under the Affirmative Action Waiting List.

d. *Priority of Offers.* The FHSC will offer the desegregative certificates to class members according to the following priority:

(1) To class members residing in predominantly African American low-rent public housing projects;

(2) To class members who are on a waiting list for low-rent public housing as of March 30, 1995;

(3) To class members who apply for low-rent public housing subsequent to the date of March 30, 1995.

6. The FHSC Shall Encourage and Assist Class Members To Make Desegregative Moves Within the Low Income Housing Program and to Privately Owned Assisted Housing Programs Pursuant to ¶ IV.5.e. of the Final Judgment

The FHSC shall develop and implement a plan to refer class members, with or without the use of Section 8 rental vouchers or certificates, to privately owned, HUD-assisted, or FmHA housing located in areas which provide a desegregative housing opportunity. FHSC shall conduct outreach to the landlords and/or owners of all such HUD-assisted, or FmHA private housing providers located in areas which provide a desegregative opportunity and other Section 8 existing agencies, to encourage participation in the FHSC-developed referral plan. FHSC shall monitor the performance of other Section 8 existing agencies in the 36-county area in this regard, and shall also develop a system to record all offers of and/or placements of class-members in desegregative housing by other Section 8 agencies in East Texas.

7. Information

The FHSC shall designate specific personnel to respond to requests for information and requests for assistance from class members desiring to obtain a desegregative housing opportunity as defined in the Final Judgment. The assistance to be provided shall include referrals of interested class members to public housing developments, and to programs other than low income public housing, that offer desegregative housing opportunities in East Texas.

8. Quarterly Status and Annual Performance Report

The FHSC shall provide quarterly status reports on significant activities taken under the requirements of the Final Judgment and Decree. HUD will file each report with the court and serve it on plaintiffs' counsel within thirty days of the end of the quarter covered in the report.

The FHSC shall submit an annual report on their performance of their obligations under the Final Judgment and Decree to the plaintiffs, with a copy to go to the Court by April 30th of each year.

9. HUD's Right To Request Information

The FHSC will collect and maintain the data necessary to monitor the program toward providing desegregative opportunities. This would include: (a) the number of class members seeking desegregated housing opportunities; (b) evidence of each family (class member) having been referred to at least three vacancies in desegregative areas in neighborhoods selected by the family; (c) the number of class members actually leasing units in non-impacted neighborhoods; (d) the number and name of housing providers recruited into the program; and (e) the number of class members assisted and number of hours staff members devoted to assisting families, and similar data as HUD may require. The FHSC will comply with any informational requests from HUD that HUD, in its discretion, makes from time to time during the course of the program.

C. Administrative Requirements

The FHSC shall be required to adhere to the following three administrative requirements in performing work under this award:

1. Submission of quarterly progress reports detailing progress made in fulfilling the tasks and sub-tasks in the approved Project Management Plan;

2. Distribution of an Evaluation Questionnaire to all persons, organizations, agencies, or other entities receiving services, participating, or otherwise involved in this project and submission of a "Customer Satisfaction Report" semi-annually; and

3. Preparation of a final report in a format suitable for information transfer, exchange and dissemination to other PHA's communities, or other entities interested in providing such services. The final report should detail the case study of East Texas Desegregation Counseling Project and provide insights and recommendations for others who may wish to develop similar programs.

D. Monitoring

The FHSC shall monitor the compliance of the providers of low-income housing in the class action area (low-income public housing and assisted housing) with the fair housing laws and the requirements placed upon the providers under the comprehensive plan and the individual desegregation plans pursuant to ¶ IV.5.c. of the Final Judgment. The FHSC shall coordinate all monitoring activities with HUD.

II. Contents of Application

A. Eligible Applicant

1. The application must be submitted by an NPO and must include all information requested in this section. Any application submitted after the due date or that does not contain the required information may be rejected. The NPO must submit documentation as a part of the application that verifies the 501(c)(3) and/or 501(c)(4) (IRS Code) status of the NPO and its legal authority to operate throughout the East Texas area.

2. *Corporate documents.* The NPO shall provide a copy of its Articles of Incorporation.

B. Description of Activities and Costs

It is to an NPO's advantage if it describes its experiences, if any, as requested in this section. In the case of an NPO that intends to use one or more subcontractors, the NPO must also submit the qualifications of the subcontractors and a description of the work to be performed by the subcontractors. In the case of a newly formed NPO, the NPO may substitute a description of experience and knowledge of its principal officers and employees where a description of its own experience is requested below.

1. Description of Experience

The NPO must submit a narrative description of its experience in assisting lower-income families and/or African-Americans or other minorities in the search for housing. The NPO should describe its working knowledge of HUD's Section 8 programs, as well as its public housing and assisted housing programs. The NPO should include a list of its projects over the last two years that are relevant to this procurement action. HUD reserves the right to request information from any source so named.

2. Knowledge of Fair Housing and Mobility Experience

The NPO must submit a narrative description of its knowledge of, and experience in assisting African-Americans with fair housing as well as monitoring providers for violations of the fair housing laws. The narrative should specifically address the NPO's knowledge of the rental market in racially non-impacted areas and the barriers that limit access to that housing by lower-income minority persons. The NPO shall also describe its experience with mobility activities.

3. Description of Organizational Capacity

The NPO must submit a narrative description of its capability and capacity to handle a project of this scope. The narrative is to include a list of current federally funded activities. The NPO should provide an organizational chart of key personnel to be involved in each activity under the agreement, and the percentage of time that they will devote to each activity. The NPO should include resumes, references, or other documents that show that key personnel have experience in the tasks described in the "Scope of Work", the Final Judgment and Decree, and applicable individual desegregation plans. If the NPO plans to utilize subcontractors, consultants or other agents, it should provide the same information with respect to them.

4. Management Plan (Includes Proposed Costs)

A management plan as described below, particularly as the plan pertains to the evaluation rating factors set out in Section III. A. of this RFP, shall be submitted as part of each NPO's proposal. A detailed narrative of a management plan to carry out the programs as outlined in the Final Judgment and Decree and this RFP will be delivered to the HUD's local Field Office within 15 days after the contract is awarded. The Plan will include:

1. Detailed and sequential list of tasks (and sub-tasks, if appropriate), by quarter, necessary to accomplish the work specified in the NOFA;

2. The methodology to be used in accomplishing each task and sub-task;

3. A list of the staff or subcontractors, consultants or other agents who will perform each task/subtask, including their hourly rates and the number of hours per individual to be charged to each task/subtask;

4. Other direct costs (e.g., travel, etc.) for each task/subtask;

5. Indirect costs (e.g., projected site and rental cost of office space and mobile unit, if applicable, telephone, postage, printing, etc.) for each task/subtask;

6. Any other costs (general and administrative overhead) to be charged and the method for allocating such costs;

7. Internal financial management and oversight procedures and policies;

8. When each task/sub-task and establishment of financial oversight procedures will be accomplished;

9. Staff and organization (including an organizational flow-chart); and (10) the support that is expected to be required from HUD and its contract administrator.

The costs may be more detailed than is specified above, but may not be less detailed. In reviewing the proposals, HUD shall consider the breakdown of the work, the list of tasks, and the level of effort and qualifications of staff and subcontractors and other resources as demonstrations of the NPO's understanding of the work described by the NOFA. Only costs that are detailed in the proposal will be eligible for billing and reimbursement. The final management plan will be submitted by HUD to the Court for approval.

C. Deficient Proposals for FHSC

A proposal will be deemed technically ineligible if:

1. It does not fully adhere to the guidelines established herein, including budgetary requirements;

2. The complete proposal is not received by the deadline;

3. A comprehensive line item budget is not included;

4. The project budget for costs charged against funds exceeds $500,000; or

5. Unsigned proposal or certification forms are submitted.

6. The proposal does not include letters of commitment from the subcontractors.

III. Factors for Award

A. Evaluating Rating Factors

HUD will use the following criteria to evaluate proposals received in response to this RFP. In all cases, the number of points stated represents the maximum. In the actual scoring, any given proposal may receive less than the maximum for each category, based on an evaluation of competing proposals.

1. Familiarity with housing mobility counseling and HUD housing programs (30 points).

a. Demonstrated work experience with fair housing mobility counseling of lower income and minority families. (10)

b. Demonstrated work experience with HUD's Section 8, public housing or privately owned assisted housing programs. (10)

c. Demonstrated work experience in coordinating resources and activities provided by a variety of government, private sector agencies, and organizations for providing housing and/or fair housing law enforcement support. (10)

2. Knowledge of fair housing laws and mobility experience. (25 points)

a. Demonstrated record of participation in fair housing activities, particularly with respect to low income families and racial or ethnic minorities and monitoring providers of low-income housing for violations of the fair housing laws. (10)

b. Demonstrated knowledge of and experience in mobility services for African-American tenants. (10)

c. Experience in rental markets in racially non-impacted areas. (5)

3. Organizational capacity. (20 points)

a. Demonstrated capability and capacity of the non-profit organization to effectively manage a grant of this scope. (10)

b. Demonstrated capability of the non-profit's key personnel, including officers, employees, partners, subcontractors, consultants and other agents to accomplish the work responsibilities of the FHSC. (10)

4. Quality of Proposal. (25 points)

a. Extent to which the proposal demonstrates an understanding of the Final Judgment and Decree, the applicable individual desegregation plans, and this RFP, and the extent to which the proposal proposes a realistic approach to all the work requirements that meet the conditions of the Final Judgment and Decree. In rating this factor, HUD will consider such activities as the proposed number of desegregated housing opportunities to be created with tenant-based assistance, the degree of coordination with public housing agencies to expand desegregated housing opportunities in each community, the types and level of effort to provide tenant counseling and outreach to owners, and the expected number of families to be counseled and placed in a unit that is not located in an area of minority concentration. (15)

b. Completeness and acceptability of the overall proposal and specific methods, procedures and steps as outlined in the Management Plan. In rating this factor, HUD will consider such factors as the adequacy of the staffing and other resources devoted to completing the tasks outlined in this NOFA, direct and indirect costs for the various subtasks, and methods for completing the tasks outlined in the NOFA. (10)

B. Certifications

Each proposal must contain an original and five copies of the certifications identified below. Each certification must be signed by the Chief Executive Officer of the applicant organization unless otherwise noted. The Proposal packet referenced at the beginning of the NOFA contains the certification formats for the Certification Regarding Drug-Free Workplace Requirements, Certification Regarding Lobbying, and the Equal Opportunity Certification.

1. *Drug-free Workplace Certification.* The non-profit organization must certify that it will provide a drug-free workplace and comply with the drug-free workplace requirements at 24 CFR part 24, subpart F.

2. Certification regarding Lobbying pursuant to Section 319 of the Department of the Interior Appropriation Act of 1989, generally prohibiting use of appropriated funds for lobbying.

3. Certification of no outstanding violations of: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601–19); Executive Order 11063, as amended by Executive Order 12892 and HUD regulations (24 CFR part 107); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR part 8); Title II of the Americans with Disabilities Act of 1990 (and applicable regulations at 28 CFR Part 36); the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and regulations issued pursuant thereto (24 CFR part 146); Executive Order 11246 and all regulations issued pursuant thereto (41 CFR Chapter 60–1); Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701U) and regulations pursuant thereto (24 CFR part 135).

4. *Conflicts of Interest.* The non-profit organization shall provide a statement which describes all relevant facts concerning any past, present or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed which could present a possible conflict of interest with respect to: (a) Being able to render impartial, technically sound, and objective assistance or advice; or (b) being given an unfair competitive advantage. The non-profit organization shall describe its current and past relationship with HUD as it relates to a possible conflict of interest in carrying out the counseling program.

Such conflict could arise when any employee, officer or agent of the PHA, HUD or plaintiffs' counsel; any member of his or her immediate family, his or her partner, or organization which employs or is about to employ any of the above has a financial or other interest in the NPO that is selected.

C. Cost Factor

Cost will become relevant in the case of a tie score in the technical part of the evaluation, as stated under "Contract Award" below. It is the goal of the Final Judgment to provide high quality services that will contribute substantially to the desegregation of all federally assisted housing in East Texas. It is expected that the costs of each task and sub-task will be addressed in the proposal, including the costs for sub-contractors, etc. HUD reserves the right to reject any proposal that does not adequately reflect costs.

D. Contract Award

In the event that the proposals are not sufficiently complete to award the contract, HUD may request additional information from the highest scoring applicants in order to make a final decision. The additional information will be considered by HUD in establishing the final score for each NPO. Award will be made to the NPO whose proposal has the highest score. In the event two or more offerors have tied scores, cost efficiency—i.e., the extent to which the NPO has a plan that will accomplish the most desegregative placements of all kinds within the established financial parameters—will be the determining factor.

E. Approval by HUD and Court Review

Notwithstanding the foregoing, a contract shall not be entered into for the FHSC without the express written approval by HUD of the entity and

application selected, and of the contract with such entity. The initial and any subsequent HUD decisions to enter into a contract with an NPO and the initial and any subsequent HUD approvals of the proposal selected and of the contract with the NPO are subject to judicial review by motion of the plaintiffs under] IV.6. of the Final Judgment and Decree.

In the United States District Court for the Eastern District of Texas Paris Division Lucille Young, et al., Plaintiffs, v. Henry G. Cisneros, et al., Defendants. [P–80–8-CA, Final Judgment]

Final Judgment and Decree

In 1985, defendants in the above-entitled and numbered civil action were found liable for knowingly and continually maintaining a system of segregated housing in a thirty-six county area of East Texas in violation of the constitutional and civil rights of a class of African-Americans. Young v. Pierce, 628 F. Supp. 1037 (E.D. Tex. 1985). An interim injunction issued in this action in 1988. Young v. Pierce, 685 F. Supp. 986 (E.D. Tex. 1985). Such interim injunction was amended by order of this court in 1990. Order for Further Relief, September 10, 1990. After extensive briefing by the parties and a hearing on the plaintiffs' motion for final remedy, it is Ordered, Adjudged, and Decreed that the Honorable Henry G. Cisneros, as Secretary of the Department of Housing and Urban Development ("HUD"), his officers, agents, servants, employees, successors, and all persons in active concert or participation with them shall be, and are hereby, Permanently Enjoined, either directly, or through contractual or other arrangements, to take the actions necessary to effectuate the relief decreed by the provisions of this Final Judgment and Decree, as follows:

1. The individual desegregation plans and the individual desegregation plan amendments for each Public Housing Authority ("PHA") submitted by the Department of Housing and Urban Development ("HUD") are hereby approved, subject to the modifications contained in this judgment and decree. As used herein, "individual desegregation plan" or "desegregation plan" includes both the original, individual desegregation plan filed by HUD for a particular PHA and the individual plan amendment filed by HUD for that PHA. Within ninety days from the issuance of this judgment and decree HUD shall re-file the individual desegregation plans, which shall fully incorporate the amendments to such plans, in order that a fully integrated plan for each PHA will be on file.

2. The desegregation plans shall be implemented and interpreted in a manner consistent with the applicable provisions of HUD's East Texas Comprehensive Desegregation Plan ("Comprehensive Plan") and with the provisions of this judgment and decree. HUD shall discharge all duties imposed upon HUD by the terms of the Comprehensive Plan and by the provisions of this judgment and decree. In the event of any inconsistency or conflict between the provisions of this judgment and decree and the provisions of either the Comprehensive Plan or the desegregation plans, the provisions of this judgment and decree shall be controlling.

3. All orders, including the interim injunction previously issued in this action, shall be in full force until HUD attains unitary status, as defined in this judgment and decree, and judicial supervision ends in accordance with this judgment and decree. All previous orders entered in this action shall be interpreted in a manner consistent with this judgment and decree. In the event of any inconsistency or conflict between the provisions of this judgment and decree and the provisions of any earlier order, the provisions of this judgment and decree shall be controlling.

4. All provisions of this judgment and decree shall require, or be construed as requiring, compliance with federal statutes as they now exist, or as they may be amended or enacted.

I. Physical Improvement to Projects and Neighborhoods

1. Financial assistance for physical improvements specified in the desegregation plans shall be provided by HUD or, in the case of neighborhood improvements receiving financial assistance under the Community Development Block Grant Small Cities Program ("CDBG Small Cities Program"), by the State of Texas, within seven years of the date of this judgment and decree. The review and approval process for applications for financial assistance shall be conducted in accordance with all applicable laws and regulations, including the rules governing competitive programs, where appropriate.

2. Each such physical improvement shall be completed as soon as is feasible and practicable after approval and funding and, in no event, shall the time period for the completion of any such physical improvement exceed a period of three years from the date upon which the application is approved and funded. With respect to neighborhood improvements being carried out by a municipal government with financial assistance under the Community Development Block Grant Program ("CDBG program"), it shall be the responsibility of HUD to take all appropriate actions within HUD's control to obtain completion of those neighborhood improvements within the time periods specified herein.

3. If any municipal government fails to take an action necessary to complete the neighborhood improvements specified in the PHA's desegregation plan, HUD shall take appropriate action in accordance with the regulations governing the CDBG program. These actions may include (i) enforcement mechanisms available to HUD under its obligation affirmatively to further fair housing and (ii) causing the PHA to institute against the municipal government enforcement based on the municipality's violation of the cooperation agreement between the PHA and the municipality.

4. If any PHA fails to take an action necessary to complete the physical improvements specified in the PHA's desegregation plan, HUD shall take appropriate enforcement action against the PHA. These actions may include one or more of the actions described in the Comprehensive Plan at p. 20 for dealing with the failure of a PHA to follow its desegregation plan.

5. Where HUD has required improvement of neighborhood conditions as part of the desegregation remedy for a PHA, HUD shall cause that PHA and the responsible municipality to enter into a memorandum of understanding under which the municipality agrees to carry out the required neighborhood improvements. Each such memorandum of understanding shall identify the neighborhood conditions to be corrected or upgraded and describe the work to be done in carrying out such correction or upgrading. If such work requires funding under the CDBG Program, the memorandum of understanding shall also contain a preliminary cost estimate for the required work. All such memoranda of understanding shall be entered into by the PHAs and their respective municipalities no later than July 1, 1995. All such memoranda of understanding shall be submitted for the approval of the court. Upon approval by the court, the memorandum of understanding between a PHA and a municipality shall define the full extent of the obligation to correct or upgrade neighborhood conditions in that PHA and in that municipality.

6. In approving applications for the funding of physical improvements, or the provision of amenities, to low-rent public housing projects in the class

action area, HUD shall, to the extent consistent with applicable statutory and regulatory requirements, give priority to the funding of applications for making such improvements, or providing such improvements, to racially identifiable African-American projects, i.e., low-rent public housing projects in which seventy-five percent (75%) or more of the residents are African-Americans.

7. The amended individual desegregation plans require, and the comprehensive plan contemplates, certain physical improvements which include, inter alia, the provision of air conditioning equipment, laundry facilities, community centers, and playgrounds. Plaintiffs additionally seek the provision of carpeting, dishwashers, a utility allowance to account for the reasonable use of air conditioning, and garbage disposals in predominately and historically African-American projects. Moreover, plaintiffs identify other conditions present at predominately and historically African-American projects that are not present at the historically and predominantly white projects, including inadequate security and maintenance.

HUD shall satisfy the obligations of the individual desegregation plans as they pertain to amenities and services. In addition to those amenities and services required by the individual desegregation plans, HUD shall provide the amenities and services available in any of the historically and predominantly white projects at the historically and predominately African-American projects of like or similar kind within the PHA. The amenities and services required at the non-elderly family units at historically and predominately African-American projects in a given PHA are to be determined by evaluating the historically and predominately white non-elderly family units within the same PHA. For example, HUD must ensure that the historically and predominately African-American non-elderly family units include carpeting if a historically and predominately white non-elderly family unit includes carpeting. Moreover, both projects shall be staffed with maintenance personnel in equal numbers or such numbers as necessary to maintain the premises in substantially similar condition.

II. Creation of Desegregated Housing Opportunities

1. Within seven years from the date of this judgment and decree, HUD shall create a total of 5,134 desegregated housing opportunities for elderly and non-elderly class members in non-minority census blocks in the class action area. Desegregated housing opportunities shall be offered, first, to class members residing in predominately African-American low-rent public housing projects, second, to class members who are on a waiting list for low-rent public housing as of the date of this judgment and decree, and, third, to class members who apply for low-rent public housing subsequent to the date of this judgment and decree.

2.a. The term "non-minority census block" is defined in accordance with the "¼ mile radius" methodology described in the report of the East Texas Demographic and Mapping Analysis conducted by George Galster of the Urban Institute under a contract with HUD (Defendants' Exhibit 116). A given census block shall be regarded as a non-minority census block, if the area consisting of the given census block, plus all census blocks within the PHA jurisdiction whose centroids lie within a ¼ mile radius of the centroid of the given census block (i) has a percentage of white population of more than eighty percent (80%), or (ii) has a percentage of white population greater than 100%, minus the PHA jurisdiction's overall percentage of African-American population. b. Notwithstanding subsection II.2.a., a census block will not be regarded as a non-minority census block, if (i) more than fifty percent (50%) of the African-Americans living in the area described by the ¼ mile radius methodology are concentrated in individual census blocks with more than eighty percent (80%) African-American population, or (ii) the population of the area described by the ¼ mile methodology is more than forty percent (40%) African-American or (iii) geographic, demographic, or social factors, including proximity to racially impacted areas or isolation from population centers or community services, indicate that the census block should be regarded to be in a racially impacted area.

3. To the maximum extent feasible and practicable, HUD shall, through the use of tenant-based housing assistance, create within each PHA jurisdiction, the number and type (elderly and non-elderly) of desegregated housing opportunities which HUD has determined to be needed within each particular PHA jurisdiction, as indicated in Defendants' Hearing Exhibit No. 119, Table 1.

4. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of tenant-based housing assistance, that PHA's unmet need shall be satisfied by offering class members residing within that particular PHA a desegregative housing opportunity located in an adjacent jurisdiction. Such adjacent jurisdiction can be no more than thirty-five miles from the PHA and must be accessible from the PHA by adequate and feasible highway links and public transportation.

5. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of tenant-based housing assistance, either within the PHA jurisdiction or an adjacent jurisdiction, the HUD shall, to the maximum extent feasible and practicable, and consistent with all statutory and regulatory requirements, satisfy that PHAs unmet need for desegregated housing opportunities through the use of project-based Section 8 existing housing certificates and vouchers.

6. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of either tenant-based or project-based Section 8 housing assistance, then that PHA's unmet need shall be satisfied through the creation of desegregative housing opportunities anywhere within the class action area.

7. HUD shall be given credit for the creation of a desegregated housing opportunity if:

a. A class member has been provided by HUD with a desegregative housing voucher or housing certificate. A desegregative housing voucher or housing certificate is a Section 8 existing housing certificate or housing voucher, limited for the first 120 days to use in non-minority census blocks.

b. The class member is offered mobility counseling to assist the class member to locate an appropriate housing unit.

c. The class member has been referred by the mobility counseling service to a landlord who is willing to accept the class member's certificate or voucher for the rental of a housing unit.

d. The housing unit offered by the willing landlord is located in a non-minority census block.

e. The unit offered by the willing landlord meets the applicable Section 8 existing housing quality standards in 24 CFR Sec. 882.109, and contains an appropriate number of bedrooms for the particular applicant's family size and composition.

f. The unit offered by the willing landlord is located outside an area where a reasonable African-American would perceive significant racial hostility.

g. There must be no legitimate basis for the class member to refuse the offered unit. Legitimate reasons to refuse an offer are limited to remoteness to jobs or day care and lack of adequate and feasible transportation. The burden is on the applicant to demonstrate that the proffered reason is legitimate. The special master, or some designated representative of the special master, shall make the initial determination as to whether the applicant has carried his or her burden in this regard.

8. HUD shall also receive credit for the creation of a desegregated housing opportunity, whenever a class member who has been provided with a desegregative housing certificate or housing voucher accepts an offer of a housing unit located in any non-minority census block in the class action area, or in any other non-minority area, but the unit was not obtained through a referral from the housing mobility service.

9. HUD shall receive credit for the creation of a desegregated housing opportunity, if a class member is referred by the mobility counseling service to a landlord willing to rent the class member, with or without the use of a Section 8 housing certificate or voucher, a suitable housing unit in a privately owned, HUD-assisted and/or HUD-subsidized housing development, or in a housing development assisted or subsidized by the Farmers Home Administration, provided that the offered housing unit meets the location requirements set forth in Paragraph II.7.d., above, and provided that the African-American occupancy of the project in which the unit is located does not exceed fifty percent (50%).

10. HUD shall also receive credit for the creation of a desegregated housing opportunity whenever a class member, with or without the use of Section 8 housing certificate or voucher, accepts an offer of a housing unit in a privately owned, HUD-assisted and/or HUD-subsidized housing development, or in a housing development assisted or subsidized by the Farmers Home Administration, where (i) the housing unit is located in any non-minority census block in the class action area, or in any other non-minority area, (ii) the African-American occupancy of the project in which the unit is located does not exceed fifty percent (50%) and (iii) the unit was not obtained through a referral from the housing mobility service.

11. The mobility services referred to above shall be provided by the Fair Housing Services Center, a private, non-profit organization to be established and funded by HUD for a five-year period, as set forth below.

12. The Fair Housing Services Center shall administer the desegregative Section 8 housing vouchers and certificates under contract with one or more PHAs.

III. Elimination or Reduction of Racially Identifiable Low-Rent Public Housing Projects

1. If the individual desegregation plan for a particular PHA does not require the use of any of the Waiting List Initiatives, that specific PHA shall continue to use a race-conscious tenant selection assignment plan in conformity with the requirements of Paragraph 2 of the Interim Injunction entered in this action on March 3, 1988.

2. Any particular Waiting List Initiative specified in an individual desegregation plan shall be fully implemented by the PHA within six months of the date of this judgment and decree. Any PHA that is required to implement a Waiting List Initiative shall also continue to use a race-conscious tenant selection assignment plan in conformity with the requirements of Paragraph 2 of the Interim Injunction entered in this action on March 3, 1988. HUD shall provide any and all assistance to the PHA necessary to implement the Waiting List Initiative, such as the drafting of detailed instructions to guide the PHA in the implementation of the Waiting List Initiative, and the preparation of interagency agreements required for the Cross-Listing Initiative, the Merged Waiting List Initiative, the Area-Wide Waiting List Initiative and the Housing Opportunities Waiting List Initiative.

3. If any Waiting List Initiative, such as the Affirmative Action Waiting List Initiative, employs race-conscious practices for the selection of tenants for assignment to a low-rent public housing project, an offer of alternative housing shall be made to any class member who would otherwise have been offered a unit in the project but for the need to achieve a desired racial balance in the project within sixty days of the date on which the public housing unit in question became available for assignment.

a. Such an offer of alternative housing shall be made to a class member if (i) the class member has applied for low-rent public housing with the PHA operating the project; (ii) the class member meets all applicable eligibility and screening requirements for admission to public housing operated by the PHA; and (iii) and the class member would otherwise have been offered an available unit in the project but for the advancement of a non-class member applicant to the head of the waiting list for that unit under the terms of the Waiting List Initiative, i.e., the class member held the highest position on the waiting list above the non-class member applicant whose position on the waiting list was advanced under the terms of the Waiting List Initiative. A non-class member applicant may not be advanced on a waiting list, unless it has been verified that the non-class member applicant meets all eligibility requirements and tenant selection criteria applicable to the low-rent public housing project.

b. In order to satisfy the requirements for an offer of alternative housing (i) the class member must be provided with a desegregative Section 8 housing voucher or housing certificate and (ii) all other requirements for the creation of a desegregated housing opportunity specified in Paragraph II.7., above, must be satisfied.

c. The public housing unit that otherwise would have been offered to the class member shall remain vacant pending receipt by the class member of an offer of alternative housing.

d. If the class member who would otherwise have been offered the public housing unit rejects an offer of alternative housing HUD shall, within seven days of such rejection, provide plaintiffs with a written notice stating the name of the applicant and stating the basis for HUD's determination that the applicant rejected the offer of a dwelling unit meeting the requirements for an offer of alternative housing.

e. The plaintiffs shall have seven days from the date of notice under the preceding subparagraph to submit to HUD, in writing, any objections plaintiffs may have to HUD's determination. If timely objections are submitted by the plaintiffs, the public housing unit shall remain vacant pending a decision by the special master. Except as provided in Paragraph III.3.b. (referring to Paragraph II.7.g.), above, in any such proceeding, HUD shall bear the burden of proving that the applicant has rejected an offer of alternative housing. If no objection is made, or, upon objection, the special master determines that an offer of alternative housing was received by the class member who would otherwise have been offered the public housing unit, the class member shall be placed on the waiting list in the position occupied by the non-class member advanced in accordance with the Waiting List Initiative, and the non-class member applicant advanced under the Waiting List Initiative shall be assigned to the public housing unit. Either party dissatisfied with the decision of the special master may seek review of that decision by this court within seven days of the special master's decision.

f. If a class member rejects an offer of alternative housing after previously receiving an offer of alternative housing and rejecting such offer, the special master shall determine whether the applicant will again be placed on the waiting list in the position occupied by the advanced non-class member applicant or will receive different consideration in light of the unusual circumstances. Either party dissatisfied with the decision of the special master may seek review of that decision by this court, within seven days of the special master's decision.

g. If no offer of alternative housing is made within sixty days, HUD shall notify the special master, within seven days, of the circumstances preventing an offer of alternative housing. The special master shall investigate the conditions already causing HUD's failure to make an offer of alternative housing. If the special master determines that HUD is acting in good faith, the class member shall be provided a desegregative housing certificate or voucher which may be used without the geographic restriction described in Paragraph II.7.a., above, within the time period described in 24 CFR Sec. 882.209(d). A finding that HUD acted in bad faith shall be evidence to be considered in relation to any motion to hold HUD in contempt.

4. HUD shall provide a section 8 existing housing voucher to the non-class member applicant who would otherwise have been offered an available public housing unit but for the advancement of a class member to the head of the waiting list for that unit under the terms of a Waiting List Initiative, i.e., the non-class member applicant who held the highest position on the waiting list above the class member applicant whose position on the waiting list was advanced under the terms of the Waiting List Initiative.

5. In determining whether to require a PHA to use the Affirmative Action Waiting List Initiative, or any other race conscious tenant selection and assignment plan, for a particular low-rent public housing project, HUD shall not consider the impact of the integration of the project on the racial composition of the neighborhood surrounding that project.

IV. Fair Housing Services Center

1. HUD shall establish a Fair Housing Services Center ("FHSC"), the functions of which must include providing assistance to class members in locating and obtaining affordable desegregated housing in areas where they choose and, additionally, providing class members with fair housing counseling services.

2. The FHSC shall be operated by a private, non-profit organization. HUD shall provide funding to the FHSC in an amount no less than $500,000 per year for a period of five years.

3. Within sixty days of the date of the entry of this judgment and decree, HUD shall serve upon the plaintiffs, and submit for approval of the court, a proposed Request for Proposals ("RFP"), inviting private, non-profit organizations to apply for a contract with HUD to operate the FHSC. The plaintiffs shall have ten days from the date of service within which to file objections to the proposed RFP. If such objections are filed, the court shall conduct such proceedings as are required to resolve the objections.

4. Upon approval of the RFP by the court, HUD shall publish the RFP in the Commerce Business Daily. Within 120 days of the date of publication of the RFP, HUD shall make its selection of the organization to operate the FHSC.

5. The FHSC shall provide the following services:

a. Pre-screen all clients of the FHSC who have not already been screened by a PHA, to document each client's ability and willingness to comply with an acceptable lease and HUD program requirements;

b. Provide information and counseling with respect to housing opportunities to class members;

c. Monitor the compliance of the providers of low-income housing in the class action area (low-income public housing and assisted housing) with the fair housing laws and the requirements placed upon the providers under the Comprehensive Plan and the individual desegregation plans;

d. Encourage and assist in the development of desegregative housing opportunities, including outreach to private landlords in non-minority areas, as well as counseling and referral services to Section 8 existing housing tenants and applicants who wish to utilize their Section 8 certificates or housing vouchers in a manner furthering desegregation;

e. Encourage and assist class members to make desegregative moves within the low-income housing program and to privately owned assisted housing programs;

f. Administer the desegregative housing certificates and vouchers to be provided by HUD under contract with one or more PHAs;

g. Give each class member written notice, every six months, in a form and distribution method to be approved by HUD, of all HUD-assisted and/or HUD-subsidized low-income housing developments in the housing markets where the class members a desegregative housing opportunity, provide notice of the full address, telephone number, and name of the person responsible for accepting applications for the development, a short description of the type of housing offered by the development, and the general eligibility requirements for the development.

6. The plaintiffs may seek review, in this court, of HUD's final selection of the organization to operate the FHSC. Such review shall be in accordance with the standards and procedures for judicial review set forth in the Administrative Procedure Act, 5 U.S.C. Secs. 701, *et seq.*

V. Racially Hostile Sites

1. HUD shall utilize its statutory and regulatory authority to proceed against any resident who acts to deprive any other resident of his or her civil rights under the United States Constitution or applicable civil rights statutes.

2. HUD shall assist municipal leaders, including, but not limited to, the city's mayor and its city counsel, in undertaking actions to address hostility including, but not limited to, supplying trained security officers to protect the physical safety of African-American residents when necessary.

3. Within sixty days of issuance of this judgment and decree, HUD shall determine in which localities class participation is limited because of racial hostility such that it is unlikely class members will actually use the existing public housing.

4. HUD shall develop a supplemental desegregation plan for each site deemed by HUD to be racially hostile. The supplemental plan shall examine all avenues available to HUD effectively to counterbalance racial hostility, thereby facilitating class participation and the implementation of the individual desegregation plans and this judgment and decree. Such supplemental plan shall be submitted to the special master for his approval within six months of the designation of a site as racially hostile.

VI. Unitary Status

1. When HUD and each PHA have satisfied the requirements as provided for in this judgment and decree and no racially identifiable low-rent public housing projects exist within the class action counties, HUD may apply to the court for a declaration of unitary status because of the elimination of all vestiges of discrimination attributable to HUD. See *Hills* v. *Gautreaux*, 425 U.S. 284, 297 (1976). A project shall be regarded as non-racially identifiable if less than

seventy-five percent (75%) of the occupants of the project are members of the same race.

2. Upon issuance by the court of a declaration of unitary status, judicial supervision pursuant to this judgment and decree, or any other order entered in this case, of HUD's activities shall terminate.

3. Ten years after the date of this judgment and decree, if the court's jurisdiction has not been sooner terminated, the court shall determine whether its jurisdiction over HUD's actions should be continued or terminated. The court shall extend its jurisdiction over HUD if it determines that any of the specific obligations to be performed under this judgment and decree have not been accomplished within that time period. If the court extends its jurisdiction for this reason, its jurisdiction shall end upon fulfillment of those specific obligations.

[FR Doc. 97–32516 Filed 12–11–97; 8:45 am]
BILLING CODE 4210–33–P

federal register

Friday
December 12, 1997

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service; Notice of Intent To Extend a Currently Approved Information Collection; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service; Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. chapter 35, and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request an extension for three years for a currently approved information collection in support of programs administered by CSREES's Small Business Innovation Research (SBIR) Grants Programs.

DATES: Comments on this notice must be received by February 17, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Sarah J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Title: Grant Application Forms for the Small Business Innovation Research Grants Program.

OMB Number: 0524–0025.

Expiration Date of Current Approval: May 31, 1998.

Type of Request: Intent to extend a currently approved information collection for three years.

Abstract: In 1982, the SBIR Program was authorized by Pub. L. 97–219, and in 1992 reauthorized through October 1, 2000, by Pub. L. 102–564. This legislation requires each Federal agency with a research and research and development budget in excess of $100 million to establish an SBIR program. The objectives of the SBIR Program are to stimulate technological innovation in the private sector, strengthen the role of small businesses in meeting Federal research and development needs, increase private sector commercialization of innovations derived from USDA-supported research and development efforts, and foster and encourage participation by women-owned and socially and economically disadvantaged small business firms in technological innovation. The Program is carried out in three separate phases. The purpose of Phase I is to determine the scientific or technical feasibility of ideas; Phase II is the principal research or research and development effort; and Phase III is to stimulate technological innovation and the national return on investment from research through the pursuit of commercial objectives resulting from work carried out in Phases I and II.

USDA conducts its SBIR program through the use of grants awards and these grants are administered by the Grants Management Branch, Office of Extramural Programs, Competitive Research Grants and Awards Management, CSREES. Each year, USDA issues an SBIR program solicitation requesting Phase I proposals. These proposals are evaluated by peer review panels and awarded on a competitive basis. The SBIR Program Solicitation follows the format outlined in the Small Business Administration (SBA) Policy Directive for solicitation and proposal requirements. This simplified and standardized proposal format is used by all of the Federal agencies participating in the SBIR Program in order to reduce the application burden of the small business firms that wish to apply to more than one agency.

Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research or teaching efforts, literature reviews, curricula vitae of principal investigators, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment.

This program uses forms that were approved in OMB-approved collection of information packages (OMB No. 0524–0022 and 0524–0033).

Forms CSREES–667, "Phase I and Phase II Proposal Cover Sheet;" and CSREES–668, "Phase I and Phase II Project Summary" are used to obtain USDA recordkeeping data, required certifications, and information used to respond to inquiries from Congress, other Government agencies, and the grantee community concerning grant projects supported by the USDA SBIR Program.

The following information has been collected and will continue to be collected:

Form CSREES–667—*Identification:* designates the research topic area under which a proposal is submitted for consideration; *USDA recordkeeping data:* provides names and addresses of principal investigators and authorized agents of small business firms; and *Certifications:* Provides required certifications; for example, the applicant qualifies as a small business for purposes of the SBIR Program; the applicant qualifies as a socially and economically disadvantaged and/or women-owned small business.

Form CSREES–668—*Project Summary:* Provides a Technical Abstract used when releasing information about grant projects supported and keywords to identify the technology/research thrust/commercial application of the projects.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Businesses or other for-profits.

Estimated Number of Responses per Form: 480 for Form CSREES–667 and 480 for Form CSREES–668.

Estimated Total Annual Burden on Respondents: 1,920 hours, broken down by: 960 hours for Form CSREES–667 (two hours per 480 respondents) and 960 hours for Form CSREES–668 (two hours per 480 respondents).

Frequency of Responses: Annually.

Copies of this information collection can be obtained from Suzanne Plimpton, Policy and Program Liaison Staff, CSREES, (202) 401–1302. E-mail: OEP@reeusda.gov.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Sarah J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov. Comments also may

be submitted directly to OMB and should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, D.C., this 8th day of December, 1997.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–32542 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–22–P

federal register

Friday
December 12, 1997

Part V

Department of Education

Notice of Extension Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1998 for the Strengthening Institutions Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice of Extension Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1998 for the Strengthening Institutions Program

PURPOSE: On November 13, 1997, the Department of Education published in the **Federal Register** (62 FR 60988) a closing date notice for applications from institutions that wish to be designated as an eligible institution under the Strengthening Institutions Program authorized under Title III, Part A of the Higher Education Act of 1965, as amended (HEA) for Fiscal Year 1998. The purpose of this notice is to extend the closing dates for transmittal of applications. This action is needed due to unforeseen administrative delays.

An institution that wishes to be designated as an eligible institution under the Strengthening Institutions Program for any purpose must submit its application to the Department by February 10, 1998.

If an institution submits its application by January 16, 1998, the Department will notify the applicant of its eligibility status by February 10, 1998. If an applicant believes it failed to be designated as an eligible institution because of errors in its application or insufficient information in its waiver request, it may submit an amended application to the Department no later than March 27, 1998.

If an applicant submits its initial application after January 16, 1998, but on or before February 10, 1998, the Department does not guarantee that it will be able to review the application and notify the applicant in time for the applicant to submit an amended application by March 27, 1998, the deadline date for amended applications.

An applicant will not be designated as an eligible institution if the applicant misses the February 10, 1998 deadline for initial applications or the March 27, 1998 deadline for amended applications. The Department strongly recommends that applicants apply by January 16, 1998 to take advantage of the opportunity to amend unapproved applications.

Deadline for Transmittal of Applications

January 16, 1998 for early applications, February 10, 1998 for all initial applications, and March 27, 1998 for amended applications. These deadlines apply to institutions of higher education that anticipate competing for new awards, under the Strengthening Institutions Program, and for institutions that plan to obtain a waiver of certain non-Federal share requirements under the Federal Supplemental Education Opportunity Grant and Federal Work Study Programs.

Applications Available: December 12, 1997.

For Applications or Information Contact: Blanca Westgate or Jane Wrenn, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, SW. (Portals CY–80) Washington, DC 20202–5335. Telephone (202) 708–8866, 708–9926 and 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–9339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg/htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S., Government Printing Office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: December 5, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–32649 Filed 12–11–97; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 62, No. 239

Friday, December 12, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations
General Information, indexes and other finding aids — 202–523–5227
E-mail — info@fedreg.nara.gov

Laws
For additional information — 523–5227

Presidential Documents
Executive orders and proclamations — 523–5227
The United States Government Manual — 523–5227

Other Services
Electronic and on-line services (voice) — 523–4534
Privacy Act Compilation — 523–3187
TDD for the hearing impaired — 523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626 1
63627–63824 2
63825–64130 3
64131–64262 4
64263–64510 5
64511–64676 8
64677–65004 9
65005–65196 10
65197–65308 11
65309–65592 12

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
Administrative Orders:
Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005

5 CFR
213 63627
315 63627
410 63630
531 65311
591 63630

7 CFR
17 63606
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344
1412 63441
Proposed Rules:
70 63471
610 64174
729 63678
1301 65226

8 CFR
213a 64048
299 64048

9 CFR
78 64134
91 64265
93 64265
Proposed Rules:
381 64767
441 64767

10 CFR
30 63634
32 63634
50 63825
70 63825
73 63640
Proposed Rules:
40 65039
50 ..... 63892, 63911
70 63911

11 CFR
Proposed Rules:
114 65040

12 CFR
8 64135
226 63441
265 64996
516 64138
543 64138
545 64138
552 64138
556 64138
563 64138
614 63644
703 64146
704 64148
790 65197
791 64266
934 65197
1806 64440
Proposed Rules:
225 64997
226 64769
404 64177
405 64177
708a 64185
708b 64187

14 CFR
39 ..... 63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355
71 ..... 64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358
73 ..... 65359, 65360
95 ..... 65016, 65361, 65363
97 ..... 63447, 63449, 63451
121 65202
255 63837
1260 63452
Proposed Rules:
39 ..... 63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233
71 ..... 63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383

15 CFR
295 64682

Proposed Rules:
806.....65043
960.....65384

17 CFR
15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

18 CFR
35.....64688
37.....64715
401.....64154

20 CFR
255.....64161
340.....64273
404.....64274
422.....64274
Proposed Rules:
211.....64188
422.....63681

21 CFR
101.....63647, 63653, 64634
179.....64102, 64107
520.....65020
Proposed Rules:
200.....64048
808.....65384
1020.....65235
1308.....64526

22 CFR
Proposed Rules:
22.....63478
51.....63478
53.....63478

23 CFR
1327.....63655
Proposed Rules:
655.....64324

24 CFR
201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

26 CFR
Proposed Rules:
1.....64190

28 CFR
0.....63453
540.....65184, 65196

29 CFR
520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203
Proposed Rules:
1910.....65388

30 CFR
Proposed Rules:
57.....64789
75.....64789
917.....63684, 65044
926.....63685, 64327

31 CFR
500.....64720
Proposed Rules:
356.....64528

32 CFR
320.....65020
Proposed Rules:
199.....64191
901.....63485

33 CFR
100.....65021
117.....63847
160.....65203
165.....65022

36 CFR
701.....64279
Proposed Rules:
1.....63488
14.....63488
327.....64192

37 CFR
202.....63657
Proposed Rules:
253.....63502
255.....63506

38 CFR
4.....65207
17.....64722
21.....63847, 63848
36.....63454
Proposed Rules:
20.....64790

39 CFR
111.....63850
262.....64280
265.....64280

40 CFR
52.....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224
63.....64736, 65022
64.....63662
70.....63662
71.....63662
80.....63853
81.....64284, 64725, 65025
180.....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369
185.....64048, 64284, 64287
186.....64048
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738
Proposed Rules:
51.....64532
52.....63687, 64329, 64543, 647389, 65046
63.....65049
80.....63918
81.....63687
112.....63812
194.....64327
721.....64738

41 CFR
105–60.....64740
301.....63798

42 CFR
417.....63669
Proposed Rules:
1001.....63689, 65049

43 CFR
3740.....65376
3810.....65376
3820.....65376
Proposed Rules:
4.....64544

45 CFR
205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301

46 CFR
114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR
20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
73.....63674, 65392
74.....65392
Proposed Rules:
32.....65053
73.....63690

48 CFR
Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19.....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31.....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42.....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52.....64914, 64915, 64916
53.....64914, 64916, 64934, 64936, 64940
Proposed Rules:
1843.....64545
1852.....64545

49 CFR
171.....65188
219.....63464, 63675
225.....63675
240.....63464
1241.....65378
Proposed Rules:
Ch. X.....64193
213.....65401
243.....65479
572.....64546

50 CFR
17.....64306
20.....63608
222.....63467
622.....63677
648.....63872, 64765
660.....63876
679.....63877, 63878, 63880, 64760, 65379
Proposed Rules:
14.....64335
17.....64337, 64340, 64799, 64800, 65237
23.....64347
229.....65402
600.....65055
622.....65056
648.....65055
679.....63690, 65402

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 12, 1997

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
- Hybrid corn seed; published 12-12-97
- Hybrid sorghum seed; published 12-12-97
- Potatoes; published 12-12-97
- Sweet corn; published 12-12-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Ice and slime standard allowances for unwashed Pacific halibut and sablefish; published 11-12-97

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Chlorothalonil; published 12-12-97
- Imidacloprid; published 12-12-97
- Myclobutanil; published 12-12-97

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Acquisition regulations:
- Variable cost of privately-owned rail cars; verification procedure; published 12-12-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hazelnuts grown in Oregon and Washington; comments due by 12-15-97; published 10-14-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle and bison—
  - State and area classifications; comments due by 12-15-97; published 10-15-97

Plant-related quarantine, domestic:
- Oriental fruit fly; comments due by 12-15-97; published 10-14-97

Plant-related quarantine, foreign:
- Tomatoes from Morocco and Western Sahara, etc.; comments due by 12-15-97; published 10-16-97

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
- Carrageenam, locust bean gum and xanthan gum blend used as binder in cured pork products; comments due by 12-19-97; published 11-19-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific halibut and red king crab; comments due by 12-18-97; published 12-3-97

Marine mammals:
- Endangered fish or wildlife—
  - Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
- Incidental taking—
  - Vandenberg AFB, CA; missile and rocket launches, aircraft flight test operations, and helicopter operations; comments due by 12-15-97; published 11-14-97

DEFENSE DEPARTMENT
Acquisition regulations:
- Contract performance reporting outside the United States; comments due by 12-16-97; published 10-17-97
- Government property; comments due by 12-16-97; published 10-17-97

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
- Interstate natural gas pipelines—
  - Business practice standards; comments due by 12-18-97; published 11-18-97

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Florida; comments due by 12-15-97; published 11-13-97

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 12-19-97; published 11-19-97

FARM CREDIT ADMINISTRATION
Farm credit system:
- Leasing activities; comments due by 12-15-97; published 10-15-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
- Arkansas; comments due by 12-15-97; published 10-31-97
- Florida; comments due by 12-15-97; published 10-31-97
- Illinois; comments due by 12-15-97; published 10-31-97
- Michigan; comments due by 12-15-97; published 10-31-97
- Oregon; comments due by 12-15-97; published 10-31-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Interest on deposits:
- Payment of interest; exception to prohibition; comments due by 12-15-97; published 10-16-97

FEDERAL LABOR RELATIONS AUTHORITY
Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Real Estate Settlement Procedures Act:
- Mortgage brokers; disclosure of fees; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT
Indian Affairs Bureau
Law and order on Indian reservations:
- Courts of Indian Offenses and law and order code Correction; comments due by 12-15-97; published 11-14-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
- Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
- Mobile River Basin, AL; three aquatic snails as endangered and three aquatic snails as threatened; comments due by 12-16-97; published 10-17-97
- Newcomb's snail; comments due by 12-15-97; published 11-12-97
- St. Andrew Beach mouse; comments due by 12-16-97; published 10-17-97

INTERIOR DEPARTMENT
Conflict of interests:
- Ethical conduct for Department of Interior employees; supplemental standards; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
- Louisiana; comments due by 12-19-97; published 11-19-97
- Montana; comments due by 12-17-97; published 12-2-97
- Ohio; comments due by 12-17-97; published 12-2-97

Surface coal mining and reclamation operations:
- Ownership and control, permit application process, and improvidently issued permits; comments due by 12-15-97; published 10-29-97

INTERNATIONAL TRADE COMMISSION
Freedom of Information Act and Privacy Act;

implementation; comments due by 12-17-97; published 11-17-97

JUSTICE DEPARTMENT
Drug Enforcement Administration
List I chemicals; manufacturers, distributors, importers and exporters; registration:
Pseudoephedrine and phenylpropanolamine products; temporary distribution registration exemption; comments due by 12-16-97; published 10-17-97

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Early release consideration; drug abuse treatment and intensive confinement center programs; comments due by 12-15-97; published 10-15-97

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Tuberculosis, occupational exposure to; comments due by 12-16-97; published 10-17-97

NATIONAL RAILROAD PASSENGER CORPORATION
Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
North Carolina; comments due by 12-15-97; published 10-16-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 12-19-97; published 11-19-97
AlliedSignal Inc.; comments due by 12-16-97; published 10-17-97
Bombardier; comments due by 12-18-97; published 11-18-97
Dassault; comments due by 12-15-97; published 11-13-97
Dornier; comments due by 12-15-97; published 11-13-97
Robinson Helicopter Co.; comments due by 12-16-97; published 10-17-97
Short Brothers plc; comments due by 12-19-97; published 11-19-97
SOCATA-Groupe AEROSPATIALE; comments due by 12-15-97; published 11-7-97
Class E airspace; comments due by 12-15-97; published 10-31-97

TREASURY DEPARTMENT
Fiscal Service
Financial management services:
Federal payments; conversion (two phases) of checks to electronic fund transfer; comments due by 12-16-97; published 9-16-97

TREASURY DEPARTMENT
Internal Revenue Service
Employment taxes and collection of income taxes at source:
Form W-8; electronic filing; comments due by 12-15-97; published 10-14-97



Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–15–97
Vol. 62 No. 240

federal register

Monday
December 15, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–15–97
Vol. 62 No. 240
Pages 65593–65740

federal register

Monday
December 15, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803

FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 240
Monday, December 15, 1997

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agency for Toxic Substances and Disease Registry
NOTICES
Senior Executive Service:
Performance Review Board; membership, 65707–65708

Agriculture Department
See Animal and Plant Health Inspection Service
RULES
Organization, functions, and authority delegations:
General officers and agency administrators; authorities modification, extension, and additions, 65593–65596

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classifications, 65596
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
Pseudorabies; official tests, 65630–65631
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65652–65654

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Thick composite failure prediction software code, 65683

Centers for Disease Control and Prevention
NOTICES
Senior Executive Service:
Performance Review Board; membership, 65707–65708

Coast Guard
RULES
Vessels; small passenger vessel inspection and certification; correction
Correction, 65739

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Technical Information Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65654

Defense Department
See Army Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Arenol Chemical Corp., 65716

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65685–65686
Submission for OMB review; comment request, 65686
Meetings:
National Educational Research Policy and Priorities Board, 65686–65687

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Plasma Physics Junior Faculty Development Program, 65687

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Grand Forks et al, MN; flood control, 65684
St. Louis County, MO; Monarch-Chesterfield feasability study, 65684–65685

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
North Dakota, 65616–65619
Air quality implementation plans; approval and promulgation; various States:
California, 65611–65613
Montana, 65613–65616
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
North Dakota, 65635
Air quality implementation plans; approval and promulgation; various States:
Montana, 65634–65635
NOTICES
Meetings:
Shrimp virus workshop, 65693

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 65694

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 65604–65606
Airbus, 65601–65603
Boeing, 65597–65601

British Aerospace, 65603–65604
Class E airspace, 65606–65607
Class E airspace; correction, 65606
PROPOSED RULES
VOR Federal airways, 65631–65632
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Airplane flight manual, 65729
Passenger facility charges; applications, etc.:
Easterwood Airport, TX, 65729–65730
Phoenix, City of, AZ et al., 65730–65731

Federal Communications Commission
RULES
Common carrier services:
Access charges—
Local exchange carriers; price cap performance review, etc., 65619–65622

Federal Election Commission
NOTICES
Privacy Act:
Systems of records, 65694–65704
Special elections; filing dates:
Pennsylvania, 65704–65705

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
California Department of Water Resources, 65688
Environmental statements; notice of intent:
Northern Natural Gas Co.; E-Line Stitch Project, KS, 65689–65690
Meetings; Sunshine Act, 65690–65692
Applications, hearings, determinations, etc.:
Empire District Electric Co.; correction, 65739
Northern Natural Gas Co., 65687–65688

Federal Highway Administration
NOTICES
Meetings:
Intelligent Transportation Society of America, 65731–65732

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 65705

Federal Maritime Commission
NOTICES
Agreements filed, etc., 65705

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 65705–65706

Federal Trade Commission
NOTICES
Prohibited trade practices:
Baxter International, Inc., 65706
Ciba-Geigy Limited et al., 65706–65707
Jeanette L. Douglas Co., 65707
Phillips Petroleum Co., 65707

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Pennsylvania Manufacturers' Association Insurance Co., 65733

Fish and Wildlife Service
NOTICES
Meetings:
Service Regulations Committee; 1998-99 migratory bird hunting regulations; identification and discussion of preliminary issues, 65710

Food and Drug Administration
NOTICES
Meetings:
Biologics Evaluation and Research Center, 65708–65709
Center for Biologics Evaluation and Research, 65709
Medical Devices Advisory Committee; Orthopaedic and Rehabilitation Devices Panel, 65709–65710

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Missouri, 65654–65655
New Jersey, 65655
Texas
B & F System, Inc.; consumer products/knife assembly, 65655
Texas:
California Microwave-Microwave Network Systems, Inc.; telecommunications products, 65656

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 65692–65693

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65733–65735

International Trade Administration
NOTICES
Antidumping:
Canned pineapple fruit from-
Thailand, 65656
Ferrovanadium and nitrided vanadium from—
Russia, 65656–65665
Fresh and chilled Atlantic salmon from—
Norway, 65666
Industrial nitrocellulose from—
Brazil, 65666–65667
China, 65667–65673
Pasta from—
Italy, 65673–65674

Italy; initiation of anti-circumvention inquiry, 65673
Sebacic acid from—
China, 65674–65679
Applications, hearings, determinations, etc.:
Stanford University, 65679

Joint Board for Enrollment of Actuaries
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 65652

Justice Department
See Drug Enforcement Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65715–65716

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
California, 65710–65711
New Mexico, 65711–65712

National Archives and Records Administration
NOTICES
Meetings:
Electronic Records Work Group, 65737–65738

National Institute of Standards and Technology
NOTICES
Grants and cooperative agreements; availability, etc.:
Advanced technology program, 65679–65681

National Institutes of Health
NOTICES
Meetings:
National Institute of Child Health and Human Development, 65710
National Institute of General Medical Sciences, 65710

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 65626–65629
Gulf of Alaska groundfish, 65622–65626
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 65638–65644
Gulf of Alaska groundfish, 65644–65651
Pacific halibut, 65635–65638
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65681–65682
Meetings:
Highly Migratory Species Fisheries Advisory Panel et al., 65683

National Park Service
NOTICES
Director's orders; availability, etc.:
Park planning activities; policies and procedural guidance, 65712–65713
National Register of Historic Places:
Pending nominations, 65713

National Technical Information Service
NOTICES
Meetings:
Advisory Board, 65683

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Boston Edison Co., 65716–65717
Fansteel, Inc., 65717–65718

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing benefits, 65609–65610
Valuation of benefits and assets; expected retirement age, 65610–65611
Benefits payable in terminated plans; disclosure to participants, 65607–65608
NOTICES
Multiemployer plans:
Variable-rate premiums and benefits following mass withdrawal; interest rates and assumptions, 65718–65719

Public Debt Bureau
See Fiscal Service

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Leak detection industry standard; incorporation by reference
Correction, 65635

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 65727–65728
National Securities Clearing Corp., 65728–65729
Applications, hearings, determinations, etc.:
Interactive Data Corp., 65719–65721
MLX Corp., 65721–65725
Thomson Technical Data Corp., 65725–65727

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Oklahoma, 65632–65634
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65713–65714
Submission for OMB review; comment request, 65714–65715

Surface Transportation Board
NOTICES
Railroad services abandonment:
Dallas Rapid Transit, 65732–65733

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service
See Internal Revenue Service

United States Enrichment Corporation
NOTICES
Meetings; Sunshine Act, 65735

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
English teaching fellow program, 65735–65737

Veterans Affairs Department
NOTICES
Meetings:
Minority Veterans Advisory Committee, 65737

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
2.....65593

9 CFR
78.....65596
Proposed Rules:
85.....65630

14 CFR
39 (5 documents).....65597, 65600, 65601, 65603, 65604
71 (2 documents).....65606
Proposed Rules:
71.....65631

29 CFR
4011.....65607
4022.....65607
4044 (2 documents).....65609, 65610

30 CFR
Proposed Rules:
936.....65632

40 CFR
52 (2 documents).....65611, 65613
62.....65616
Proposed Rules:
52.....65634
62.....65635

46 CFR
175.....65739

47 CFR
69.....65619

49 CFR
Proposed Rules:
195.....65635

50 CFR
679 (2 documents).....65622, 65626
Proposed Rules:
679 (3 documents).....65635, 65638, 65644

Rules and Regulations

Federal Register
Vol. 62, No. 240
Monday, December 15, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department due to passage of the Federal Agriculture Improvement and Reform Act.

EFFECTIVE DATE: Effective December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Patrick J. Casula, Legislative Affairs Officer, Cooperative State Research, Education, and Extension Service, USDA, Room 355–A, Jamie L. Whitten Federal Bldg., Washington, D.C. 20250–2200, telephone 202–720–4465.

SUPPLEMENTARY INFORMATION: On April 4, 1996, the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, was signed into law. With the enactment of this new law many existing authorities were either modified or extended and some new ones added. It is necessary for these authorities to be reflected as delegations to General Officers and Agency Administrators. This document lays out these delegations of authority as they have been modified and expanded. This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12866 and 12988. Finally, this action is not a rule as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.*, and, thus, is exempt from their provisions.

List of Subjects in 7 CFR Part 2

Authority Delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as set forth below.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority for Part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. In subpart C, § 2.21 is amended by removing and reserving paragraphs (a)(1)(xvii), (a)(1)(xxi), (a)(1)(xxii), (a)(1)(xxxviii), (a)(1)(liv), (a)(1)(lxxx), (a)(1)(lxxxi), (a)(1)(lxxxii), (a)(1)(lxxxvii), (a)(1)(lxxxix), (a)(1)(xcii), and (a)(7)(iv), by revising paragraphs (a)(1)(x), (a)(1)(xxxi), (a)(1)(xxxix), (a)(1)(xliv), (a)(1)(xlviii), (a)(1)(l), (a)(1)(li), (a)(1)(lii), (a)(1)(lviii), (a)(1)(lxxxvi), (a)(1)(cxiv), (a)(1)(cxxvi), (a)(1)(cxxxiv), (a)(4), (a)(8)(iv), and (a)(8)(x)(E), and by adding new paragraphs (a)(1)(cxxxvii), (a)(1)(cxxxviii), (a)(1)(cxxxix), (a)(1)(cxl), (a)(1)(cxli), (a)(1)(cxlii), (a)(1)(cxliii), (a)(1)(cxliv), (a)(1)(cxlv), (a)(1)(cxlvi), (a)(1)(cxlvii), (a)(1)(cxlviii), and (a)(1)(cxlix), as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(1) * * *

(x) Evaluate, assess, and report to congressional agriculture committees on the merits of proposals for agricultural research facilities in the States. Establish a task force on a 10-year strategic plan for agricultural research facilities (7 U.S.C. 390 et seq.).

* * * * *

(xxxi) Provide for the dissemination of appropriate rural health and safety information resources possessed by the Rural Information Center, in cooperation with State educational program efforts. Promote coordinated and integrated rural community initiatives that advance and empower capacity building (7 U.S.C. 2662).

* * * * *

(xxxix) Establish and oversee the National Agricultural Research, Extension, Education, and Economics Advisory Board (7 U.S.C. 3123).

* * * * *

(xliv) Formulate and administer programs to strengthen secondary education and two-year post secondary teaching programs; promote linkages between secondary, two-year postsecondary, and higher education programs in the food and agricultural sciences; administer grants to secondary education and two-year post secondary teaching programs, and to colleges and universities (7 U.S.C. 3152).

* * * * *

(xlviii) Administer a National Food and Human Nutrition Research and Extension Program. Establish and administer a Human Nutrition Intervention and Health Promotion Research Program (7 U.S.C. 3171–3175).

* * * * *

(l) Support continuing agricultural and forestry extension and research, at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, 3222c).

(li) Administer grants to 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance research facilities and equipment including agricultural libraries (7 U.S.C. 3223).

(lii) Establish and administer competitive grants (or grants without regard to any requirement for competition) to Hispanic-serving Institutions for the purpose of promoting and strengthening the ability of Hispanic-serving Institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3241).

* * * * *

(lviii) Conduct research and development and implement a program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

* * * * *

(lxxxvi) Make competitive grants to support research to eradicate and

control Brown Citrus Aphid and Citrus Tristeza Virus (7 U.S.C. 5925).

* * * * *

(cxiv) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life, and order disbursements from the Treasury, in accordance with the Act of March 4, 1927 (20 U.S.C. 191 *et seq.*).

* * * * *

(cxxvi) Formulate, write, or prescribe bibliographic and technically related standards for the library and information services of USDA (7 U.S.C. 3125a *et seq.*).

* * * * *

(cxxxiv) Represent the Department on the National Science and Technology Council.

* * * * *

(cxxxvii) Establish and administer a 1994 Institutions Endowment Fund and to enter into agreements necessary to do this (Section 533(b) and (c) of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(cxxxviii) Make grants in equal amounts to 1994 Land-Grant Institutions to be used in the same manner as is prescribed for colleges under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*), and subject to the requirements of such Act (Section 534(a) of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(cxxxix) Make competitive Institutional Capacity Building Grants to assist 1994 Land-Grant Institutions with constructing, acquiring, and remodeling buildings, laboratories, and other capital facilities (including fixtures and equipment) necessary to conduct instructional activities more effectively in agriculture and sciences (Section 535 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(cxl) Implement and administer the Community Food Projects Program pursuant to the provisions of section 25 of the Food Stamp Act of 1977 (7 U.S.C. 2034).

(cxli) Receive, accept, and administer funds for the purpose of awarding research, extension, and education competitive grants pursuant to the Fund for Rural America (7 U.S.C. 2204f).

(cxlii) Coordinate the Department of Agriculture summer intern program pursuant to section 922 of the Federal Agriculture Improvement and Reform Act (7 U.S.C. 2279c).

(cxliii) Develop and carry out a system to monitor and evaluate agricultural research and extension activities conducted or supported by the Department that will enable the Secretary to measure the impact and effectiveness of research, extension, and education programs according to priorities, goals, and mandates established by law. Conduct a comprehensive review of state-of-the-art information technology systems for use in developing the system (7 U.S.C. 3129).

(cxliv) Make grants, competitive grants, and special research grants to, and enter into cooperative agreements and other contracting instruments with, policy research centers (7 U.S.C. 3155).

(cxlv) Conduct a pilot research program to link major cancer and heart and other circulatory disease research efforts with agricultural research efforts to identify compounds in vegetables and fruits that prevent these diseases (7 U.S.C. 3174a).

(cxlvi) Administer grants to 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance and upgrade agricultural and food science facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222b).

(cxlvii) Administer the Stuttgart National Aquaculture Research Center (16 U.S.C. 778 *et seq.*; Pub. L. 104–127, sec. 889).

(cxlviii) Provide technical and educational assistance to conserve and enhance private grazing land resources (16 U.S.C. 2005b).

(cxlix) Provide technical assistance to farmers and ranchers under the Environmental Quality Incentives Program (16 U.S.C. 3830 *et seq.*).

* * * * *

(4) Related to rural development activities. Provide guidance and direction for the accomplishment of activities authorized under Section V of the Rural Development Act of 1972, as amended (7 U.S.C. 2661 *et seq.*), for programs under the control of the Under Secretary for Research, Education, and Economics, coordinating the policy-aspects thereof with the Under Secretary for Rural Development.

* * * * *

(8) * * *

(iv) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board covering official state and national estimates (7 U.S.C. 476, 951, and 2204).

* * * * *

(x) * * *

(E) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Foreign Agricultural Service, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Secretary of Agriculture (7 U.S.C. 3291(a)).

* * * * *

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

3. In subpart K, section 2.65 is amended by adding new paragraphs (a)(93) through (a)(98), by removing and reserving paragraphs (a)(10), (a)(19), (a)(28), (a)(40), (a)(44), (a)(45), (a)(54), (a)(67), (a)(70), and (a)(71), and by revising paragraphs (a)(51), (a)(64), and (a)(90), as follows:

§ 2.65 Administrator, Agricultural Research Service.

(a) * * *

(51) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life, and order disbursements from the Treasury, in accordance with the Act of March 4, 1927 (20 U.S.C. 191 *et seq.*).

* * * * *

(64) Administer a National Food and Human Nutrition Research Program and a Human Nutrition Intervention and Health Promotion Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(iii) Research on the factors affecting food preference and habits. (7 U.S.C. 3171–3175, 3177).

* * * * *

(90) Formulate, write, or prescribe bibliographic and technically related standards for the library and information services of USDA (7 U.S.C. 3125a *et seq.*).

* * * * *

(93) Review cooperative research and development agreements entered into pursuant to 15 U.S.C. 3710a–3710c, with authority to disapprove or require the modification of any such agreement.

(94) Administer the Stuttgart National Aquaculture Research Center (16 U.S.C. 778 *et seq.*; Pub. L. 104–127, sec. 889).

(95) Provide technical and educational assistance to conserve and enhance private grazing land resources (16 U.S.C. 2005b).

(96) Provide technical assistance to farmers and ranchers under the Environmental Quality Incentives Program (16 U.S.C. 3830 *et seq.*).

(97) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(98) Coordinate USDA activities delegated under 15 U.S.C. 3710a–3710c.

4. In subpart K, section 2.66 is amended by removing and reserving (a)(21), (a)(40), (a)(44), (a)(45), and (a)(48), by revising paragraphs (a)(10), (a)(13), (a)(16), (a)(18), (a)(19), (a)(25), (a)(26), (a)(66), and (a)(74), and by adding new paragraphs (a)(98) through (a)(118), as follows:

§ 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) * * *

(10) Administer, in cooperation with the States, a cooperative rural development and small farm research and extension program under the Rural Development Act of 1972, as amended. Promote coordinated and integrated rural community initiatives that advance and empower capacity building (7 U.S.C. 2661–2667).

* * * * *

(13) Formulate and administer programs to strengthen secondary education and two-year post secondary teaching programs; promote linkages between secondary, two-year postsecondary, and higher education programs in the food and agricultural sciences; administer grants to secondary education and two-year post secondary teaching programs, and to colleges and universities (7 U.S.C. 3152).

* * * * *

(16) Make grants, competitive grants, and special research grants to, and enter into agreements and other contracting instruments with policy research centers (7 U.S.C. 3155).

* * * * *

(18) Support continuing agricultural and forestry extension and research, at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, 3222c).

(19) Administer grants to 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance and upgrade agricultural and food science facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222b).

* * * * *

(25) Conduct research and develop and implement a program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(26) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate aquaculture development plans for the production and marketing of aquacultural species and products; conducting a program of research, extension and demonstration at aquacultural demonstration centers; and making grants to aquaculture research facilities to do research on intensive water recirculating systems (7 U.S.C. 3321–3323).

* * * * *

(66) Administer a grants program for rural health and safety education and promote coordinated and integrated rural community initiatives that advance and empower capacity building (7 U.S.C. 2662).

* * * * *

(74) Administer a National Food and Human Nutrition Research and Extension Program (7 U.S.C. 3171–3173, 3175).

* * * * *

(98) Establish and administer a 1994 Institutions Endowment Fund and to enter into agreements necessary to do this (Section 533(b)(c) of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(99) Make grants in equal amounts to 1994 Land-Grant Institutions to be used in the same manner as is prescribed for colleges under the Act of August 30, 1890 (26 Stat. 417, chapter 841; 7 U.S.C. 321 *et seq.*) (commonly known as the Second Morrill Act), and subject to the requirements of such Act (Sections 533 and 534 of the Equity in Educational Land-Grant Act of 1994, 7 U.S.C. 301 note).

(100) Make competitive Institutional Capacity Building Grants to assist 1994 Institutions with constructing, acquiring, and remodeling buildings, laborstories, and other capital facilities (including fixtures and equipment) necessary to conduct instructional activities more effectively in agriculture and sciences (Section 535 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(101) Implement and administer the Community Food Projects Program pursuant to the provisions of section 25 of the Food Stamp Act of 1977 (7 U.S.C. 2034).

(102) Receive, accept, and administer funds for the purpose of awarding research, extension, and education competitive grants pursuant to the Fund for Rural America (7 U.S.C. 2204f).

(103) Develop and carry out a system to monitor and evaluate agricultural research and extension activities conducted or supported by the Department of Agriculture that will enable the Secretary to measure the impact and effectiveness of research, extension, and education programs according to priorities, goals, and mandates established by law. Conduct a comprehensive review of state-of-the-art information technology systems for use in developing the system (7 U.S.C. 3129).

(104) Conduct a pilot research program to link major cancer and heart and other circulatory disease research efforts with agricultural research efforts to identify compounds in vegetables and fruits that prevent these diseases (7 U.S.C. 3174a).

(105) Administer grants to 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance research facilities and equipment including agricultural libraries (7 U.S.C. 3223).

(106) Establish and administer competitive grants (or grants without regard to any requirement for competition) to Hispanic-serving Institutions for the purpose of promoting and strengthening the ability of Hispanic-serving Institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3241).

(107) Make competitive grants to support research to eradicate and control Brown Citrus Aphid and Citrus Tristeza Virus (7 U.S.C. 5925).

(108) Award a grant, on a competitive basis, to establish a red meat safety research center at an eligible research facility (7 U.S.C. 5929).

(109) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to agricultural research conducted or funded by the Department involving biotechnology, including the development and implementation of guidelines for oversight of research activities, acting as liaison on all matters and functions pertaining to agricultural research in biotechnology between agencies within the Department and

between the Department and other governmental, educational, or private organizations and carrying out any other activities authorized by (7 U.S.C. 3121).

(110) Provide staff support to the Under Secretary for Research, Education, and Economics related to the National Agricultural Research, Extension, Education, and Economics Advisory Board (7 U.S.C. 3123).

(111) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(112) Provide technical and educational assistance to conserve and enhance private grazing land resources (16 U.S.C. 2005b).

(113) Provide technical assistance to farmers and ranchers under the Environmental Quality Incentives Program (16 U.S.C. 3830 *et seq.*).

(114) Coordinate USDA policy and conduct programs relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*) and coordinate the Department's integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y).

(115) Conduct programs of research, technology development, and education related to global climate change (7 U.S.C. 6701–6710).

(116) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

(117) Conduct a program of nutrition education research.

5. In subpart K, section 2.67 is amended by adding a new paragraph (a)(14) as follows:

§ 2.67 Administrator, Economic Research Service.

(a) * * *

(14) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

* * * * *

6. In subpart K, section 2.68 is amended by adding a new paragraph (a)(8) and by revising paragraph (a)(1) as follows:

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) * * *

(1) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 476, 951, and 2204).

* * * * *

(8) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

* * * * *

For Subpart C:

Dated: November 28, 1997.

Dan Glickman,

Secretary of Agriculture.

For Subpart K:

Dated: November 28, 1997.

I. Miley Gonzalez,

Under Secretary for Research, Education, and Economics.

[FR Doc. 97–32615 Filed 12–12–97; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–077–2]

Brucellosis in Cattle; State and Area Classifications; Kentucky

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Kentucky from Class A to Class Free. We have determined that Kentucky meets the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Kentucky.

EFFECTIVE DATE: The interim rule was effective on September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on September 16, 1997 (62 FR 48475–48477, Docket No. 97–077–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Kentucky from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before November 17, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 62 FR 48475–48477 on September 16, 1997.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 9th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32659 Filed 12–12–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–147–AD; Amendment 39–10244; AD 97–26–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that requires repetitive inspections to detect galling on the input shaft and bearing of the standby rudder power control unit (PCU), and replacement of the standby rudder actuator with a serviceable actuator, if necessary. This amendment also requires eventual replacement of the input bearing of the standby PCU with an improved bearing, which constitutes terminating action for the inspections to detect galling. This amendment is prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by this AD are intended to prevent galling on the input shaft and bearing of the standby PCU, which could result in uncommanded movement of the rudder or increased pedal forces. These conditions, if not corrected, could result in reduced controllability of the airplane.

DATES: Effective January 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Dowty Aerospace Los Angeles, 1700 Business Center Drive, Duarte, California 91010–2859. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes was published in the **Federal Register** on August 28, 1996 (61 FR 44234). That action proposed to require operational tests of the standby rudder power control unit (PCU) to ensure correct operation of the rudder, and correction of any discrepancy found; and repetitive inspections to detect galling on the input shaft and bearing of the standby PCU, and replacement of the standby rudder actuator with a serviceable actuator, if necessary. That action also proposed to require eventual replacement of the input bearing of the standby PCU with an improved bearing, which would constitute terminating action for the inspections to detect galling.

Actions Since the Issuance of the Proposal

Since the issuance of the proposal, the FAA has reviewed and approved Dowty Aerospace Los Angeles Service Bulletin 1150–27–04, dated December 5, 1996, which describes procedures to replace the input shaft assembly and related hardware with a new, improved input shaft. The new input shaft uses radial bearings, which will prevent galling on the input shaft and bearing. Paragraph (b) of this final rule has been revised to reference the Dowty Aerospace service bulletin as an appropriate source of service information for accomplishment of the replacement.

In addition, since the issuance of the proposal, the manufacturer has advised the FAA that the replacement of the input bearing of the standby PCU with an improved bearing has been incorporated on airplanes having line numbers 2815 and subsequent. Therefore, the FAA has revised the applicability of this final rule to include only airplanes having line numbers 1 through 2814 inclusive.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Statement of Findings of Critical Design Review Team

One commenter requests the second paragraph of the Discussion section that appeared in the preamble to the proposed rule be revised to accurately reflect the findings of the Critical Design Review (CDR) team. The commenter asks that the FAA delete the one sentence in that paragraph that reads: "The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as correction of certain design deficiencies." The commenter suggests that the following sentences should be added: "The team did not find any design issues that could lead to a definite cause of the accidents that gave rise to this effort. The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as incorporation of certain design improvements in order to enhance its already acceptable level of safety."

The FAA does not find that a revision to this final rule in the manner suggested by the commenter is necessary, since the Discussion section of a proposed rule does not reappear in a final rule. The FAA acknowledges that the CDR team did not find any design issue that could lead to a definite cause of the accidents that gave rise to this effort. However, as a result of having conducted the CDR of the flight control systems on Boeing Model 737 series airplanes, the team indicated that there are a number of recommendations that should be addressed by the FAA for each of the various models of the Model 737. In reviewing these recommendations, the FAA has concluded that they address unsafe conditions that must be corrected through the issuance of AD's. Therefore, the FAA does not concur that these design changes merely "enhance [the Model 737's] already acceptable level of safety."

Request To Delete Operational Test Requirement

Several commenters request that the requirement to perform the operational tests to cycle hydraulic fluid through the standby rudder PCU and to ensure correct operation of the rudder when the standby hydraulic system is powered) be deleted from the proposal. These commenters point out that the Boeing Service Letter referenced in paragraph (a) of the proposal does not provide a description of procedures to perform the operational tests and does not include instructions to correct any discrepancies found. Another commenter requests that paragraph (a) be deleted from the proposal because it is not a technically sound approach to eliminating galling. This commenter states that the only way to prevent galling is to upgrade the input bearing of the standby hydraulic system.

The FAA concurs that replacement of the input bearing of the standby hydraulic system with a new, improved (upgraded) input bearing is a technically sound approach to eliminate galling. The requirement to replace the input bearing with a new, improved input bearing within 3 years, as specified in the proposed AD, supports that approach. Accordingly, this final rule has been revised to delete the proposed requirement for operational tests. The FAA finds that, until the replacement of the input bearing is required, repetitive inspections to detect galling of the input shaft and bearing, and replacement with a serviceable standby rudder actuator, if necessary (as specified in the proposed AD), will positively address the unsafe condition.

Request To Extend the Compliance Time for Operational Tests

Several commenters request that the compliance time be extended for the operational tests discussed previously. The commenters request that the compliance time for the repetitive operational tests be extended from the proposed "at intervals not to exceed 250 hours time-in-service" to "at intervals not to exceed 800 hours time-in-service." The commenters state that the recent FAA MSG–3 analysis on the hydraulic fluid compound revealed that the appropriate interval for the operational test is every 800 hours time-in-service.

As explained previously, the FAA has removed the requirement for operational tests from the final rule; however, this final rule is considered to be interim action. The FAA may consider further rulemaking to require operational tests of the standby system and correction of any discrepancies. The FAA will consider the results of the previously discussed MSG–3 analysis in determining an appropriate compliance time for future proposed operational tests.

Request To Extend the Compliance Times for Inspections for Galling

Several commenters request that the compliance time for the initial and repetitive inspections for galling be extended from 3,000 hours time-in-service to "16 months or 4,500 hours time-in-service" for the proposed inspections to detect galling on the input shaft and bearing of the standby rudder PCU. The commenters state that 18 months or 4,500 hours time-in-service closely corresponds to a "C" check, which allows operators to schedule maintenance at a heavy maintenance base without impacting safety. One commenter suggests that the initial inspection and repetitive interval inspections should be extended to 46,000 flight hours. (The FAA infers that the "46,000" flight hours is a typographical error and that the commenter actually requests an extension to 4,600 flight hours.)

The FAA concurs with the commenters' request to revise the compliance time to 18 months or 4,500 hours time-in-service (whichever occurs later) since the last inspection. The FAA finds that this extension of the compliance time will not adversely affect safety, and will more closely correspond to the operators' scheduled "C" checks. The FAA has revised paragraph (a) of this final rule accordingly.

Requests To Revise the Compliance Time for Replacement of the Input Bearing

One commenter (the airplane manufacturer) requests that the proposed compliance time for replacement of the input bearing be changed from 3 to 4 years after the effective date of the AD. The commenter states that the inspection should be accomplished at least once in 4 years, and the inspection should detect any units that are galled. Another commenter requests that the replacement be required by August 1, 1997. This commenter states that the National Transportation Safety Board (NTSB) suggests that date in a recommendation to the FAA.

The FAA does not concur that the compliance time should be revised. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required replacement within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the compliance period. However, under the provisions of this final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such adjustments would provide an acceptable level of safety.

Request To Delete (or Make Optional) the Replacement Requirement

Several commenters request that the proposed replacement requirement be deleted to provide more time to review the retrofit program. One commenter suggests that the requirement should be optional, as long as the inspection to detect galling on the PCU input shaft is carried out repetitively every 46,000 flight hours. The commenter does not provide a justification for the recommended 46,000 flight hours. (The FAA infers that the "46,000" flight hours is a typographical error and that the commenter actually requests a compliance time of 4,600 flight hours.)

The FAA does not concur with the commenters' requests. Although the repetitive inspections required by this final rule may detect galled units before the galling progresses to a level that would affect the flight control system, the inspections do not ensure that galling will not occur. The replacement of the input bearing with a new, improved bearing, as described in the Dowty Aerospace service bulletin discussed previously, will positively address the subject unsafe condition and provide an acceptable level of safety.

The FAA has determined that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The replacement requirement is in consonance with these considerations.

Request To Revise the Cost Estimate

One commenter, the airplane manufacturer, requests that the cost estimate for the proposed inspections be revised from $60 to $120 per airplane, per inspection cycle. The FAA acknowledges that the correct cost estimate is $120 per airplane, per inspection cycle, and has revised the cost impact information, below, accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,830 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,037 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it will take approximately 2 work hours per airplane to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspections on U.S. operators is estimated to be $124,440, or $120 per airplane, per inspection cycle.

The FAA estimates that it will take approximately 2 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. The cost of the replacement parts is estimated to be $793 per airplane. Based on these figures, the cost impact of the required replacement is estimated to be $946,781, or $913 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–26–01 Boeing: Amendment 39–10244. Docket 97–NM–147–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes, having line numbers 1 through 2814 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the rudder or increased rudder pedal forces, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months or 4,500 hours time-in-service after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 18 months or 4,500 hours time-in-service, whichever occurs later: Perform an inspection to detect galling on the input shaft and bearing of the standby rudder PCU by accomplishing paragraphs (a)(1) through (a)(10) of this AD.

(1) Shut off all hydraulic power.

(2) Gain access to the standby rudder actuator.

(3) Disconnect the input rod from the standby actuator.

(4) Using a push/pull spring scale (minimum +/−10% accuracy at 1.0 pound; preferably one having a peak load memory function), push on the standby rudder actuator input lever with sufficient force to move the lever from the neutral position up to, but not touching, the aft stop. The scale must be contacting the input lever at approximately the clevis bolt centerline. While applying the load required to move the lever, the scale must be maintained at an angle perpendicular to the lever arm (not to exceed 20 degrees from perpendicular). The force required to move the input lever throughout this range of motion must not exceed one pound.

(5) Repeat the test specified in paragraph (a)(4) of this AD, moving the lever arm from the aft stop position up to the forward stop, but not touching. The force required to move the input lever throughout this range of motion must not exceed one pound.

(6) Repeat the test specified in paragraph (a)(4) of this AD, moving the lever arm from the forward stop position back to the neutral position. The force required to move the input lever throughout this range of motion must not exceed one pound.

(7) If the actuator force encountered during any of the procedures required by paragraph (a)(4), (a)(5), or (a)(6) of this AD exceeds one pound, prior to further flight, replace the standby rudder actuator with a serviceable actuator, and test the standby rudder actuator in accordance with the procedure specified in paragraph (a)(9) of this AD.

(8) If the actuator force encountered during any of the procedures required by paragraph (a)(4), (a)(5), or (a)(6) of this AD is one pound or less, prior to further flight, reconnect the input rod to the standby rudder actuator, and test the standby rudder actuator in accordance with the procedure specified in paragraph (a)(9) of this AD.

(9) Perform a functional test of the standby rudder actuator in accordance with Maintenance Manual 737–100/–200, Chapter 27–21–141, removal/installation (for Model 737–100 and –200 series airplanes); or maintenance Manual 737–300/–400/–500, Chapter 27–21–24, removal/installation (for Model 737–300, –400, and –500 series airplanes).

(10) Restore the airplane to its normal condition.

(b) Within 3 years after the effective date of this AD, replace the input bearing of the standby rudder PCU with an improved bearing in accordance with Dowty Aerospace Los Angeles Service Bulletin 1150–27–04, dated December 5, 1996; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Replacement of the input bearing with an improved bearing in accordance with the service bulletin constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle, ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Except as provided by paragraph (b) of this AD, the replacement shall be done in accordance with Dowty Aerospace Los Angeles Service Bulletin 1150–27–04, dated December 5, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dowty Aerospace Los Angeles, 1700 Business Center Drive, Duarte, California 91010–2859. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 20, 1998.

Issued in Renton, Washington, on December 8, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32590 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–259–AD; Amendment 39–10247; AD 97–26–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This amendment requires a one-time inspection to determine if certain ailerons are installed on the airplane. This amendment also requires removing any defective aileron, scrapping it, and replacing it with a new or serviceable aileron. This amendment is prompted by reports of failure of the aileron due to an inappropriate repair procedure. The actions specified in this AD are intended to detect and correct defective ailerons, which could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane.

DATES: Effective December 30, 1997.

Comments for inclusion in the Rules Docket must be received on or before February 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–259–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Schneider or Nenita Odesa, Aerospace Engineers, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028 or (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received two reports of failure of the aileron on Boeing Model 737 series airplanes. In one incident, a two-foot section of an aileron separated from the airplane during descent, which resulted in vibration of the flight controls. In the second incident, 30 percent of an aileron separated from the airplane during climb. The flightcrew had to input a significant amount of trim to straighten the wings to a level position prior to landing. This airplane had accumulated 34 flight cycles since its ailerons were rebuilt by Tramco Inc. (doing business as BFGoodrich (BFG) Aerospace, Repair Station HN6R593N).

Investigation revealed that the cause of these failures has been attributed to an inappropriate repair procedure accomplished by BFG Aerospace. During the process of rebuilding ailerons, part number 65–46454–XX, for Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, BFG Aerospace did not use proper procedures in the preparation of the aileron surface prior to the lay-up of the skin panel. As a result, the contact surface between the skin and core did not provide adequate adhesion properties for the bonded skin panel.

BFG Aerospace has not located all of the defective ailerons and has not provided documentation which verifies removal of the defective ailerons from service.

Defective ailerons that are installed on an airplane, if not detected and corrected, could result in in-flight separation of an aileron from the airplane, which could result in reduced controllability of the airplane.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–100, –200, –300, –400, and –500 series airplanes of the same type design, this AD is being issued to detect defective ailerons installed on an airplane, which could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane. This AD requires a one-time visual inspection to determine if certain ailerons are installed on the airplane. This AD also requires removing any defective aileron, scrapping it, replacing it with a new or serviceable aileron, and submitting an inspection report to the FAA, if necessary.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–259–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–26–04 Boeing: Amendment 39–10247. Docket 97–NM–259–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect defective ailerons installed on an airplane, which could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection to determine if an aileron repaired by Tramco Inc. (doing business as BFGoodrich Aerospace, Repair Station HN6R593N) having any of the following serial numbers is installed on the airplane:

Affected Serial Numbers

BN23
BN49
BN58
BN59
BN167
BN180
BN206
BN236
162
237

(b) If any aileron is found with an affected serial number identified in paragraph (a) of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to further flight, remove the defective aileron, and replace it with a new or serviceable aileron. And

(2) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of any findings of ailerons specified in paragraph (a) of this AD to the Manager, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) As of the effective date of this AD, no person shall install on any airplane an aileron having any serial number identified in paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on December 30, 1997.

Issued in Renton, Washington, on December 9, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32609 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–183–AD; Amendment 39–10242; AD 97–25–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 and A321 series airplanes, that requires a revision to the Airplane Flight Manual (AFM) to include procedures for the flightcrew to follow in the event of radio altimeter height malfunction. This amendment also requires replacement of certain radio altimeter antennas with improved antennas, at which time the AFM revision will no longer be required. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent output of erroneous radio altimeter height information to the flightcrew and autopilot, which could result in reduced ability of the flightcrew to cope with adverse operating conditions.

DATES: Effective January 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained

from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes was published in the **Federal Register** on October 1, 1997 (62 FR 51383). That action proposed to require a revision to the Airplane Flight Manual (AFM) to include procedures for the flightcrew to follow in the event of radio altimeter height malfunction. That action also proposed to require replacement of certain radio altimeter antennas with improved antennas, at which time the AFM revision would no longer be required.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Service Information Date

One commenter, Airbus, points out that Airbus A319/320/321 Flight Manual Temporary Revision (TR) 2.05.00/13 was approved by the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, on October 18, 1996. (Paragraph (a) of the proposal indicates that the TR is undated.) The FAA has revised paragraph (a) of this final rule to specify the date provided by Airbus.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, and 1 work hour per airplane to accomplish the antenna replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,000, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–25–17 Airbus Industrie: Amendment 39–10242. Docket 97–NM–183–AD.

Applicability: Model A320 and A321 series airplanes equipped with Collins radio altimeter antennas having part number (P/N) 622–8701–002 and a serial number below 2014, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent output of erroneous radio altimeter height information to the flightcrew and autopilot, due to inadequate antenna solder connections, which could result in reduced ability of the flightcrew to cope with adverse operating conditions, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by incorporating Airbus A319/320/321 Flight Manual Temporary Revision (TR) 2.05.00/13, dated October 18, 1996, into the AFM to provide procedures for the flightcrew to follow in the event of radio altimeter malfunction.

(b) Within 6 months after the effective date of this AD, replace any COLLINS radio altimeter antenna having P/N 622–8701–002, a serial number below 2014, and white paint on the inner side of the C-sink hole with a new antenna having the same P/N that is fitted with metallic C-sink inserts in its attaching holes; in accordance with Airbus All Operators Telex (AOT) 34–03, dated February 20, 1996. Accomplishment of the actions specified in this paragraph constitutes terminating action for the AFM revision required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person shall install a COLLINS radio altimeter antenna having P/N 622–8701–002 and a serial number below 2014, unless the antenna is fitted with metallic C-sink inserts in its attaching holes.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Airbus A319/320/321 Flight Manual Temporary Revision (TR) 2.05.00/13, dated October 18, 1996; and Airbus All Operators Telex (AOT) 34–03, dated February 20, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 96–172–084(B), dated August 28, 1996.

(g) This amendment becomes effective on January 20, 1998.

Issued in Renton, Washington, on December 5, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32430 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–148–AD; Amendment 39–10241; AD 97–25–16]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires a one-time inspection of the tailplane (horizontal stabilizer) leading edges and surrounding area for discrepancies, and corrective action, if necessary. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent separation of the horizontal stabilizer from the fin, which could lead to reduced controllability of the airplane.

DATES: Effective January 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on October 1, 1997 (62 FR 51386). That action proposed to require a one-time inspection of the tailplane (horizontal stabilizer) leading edges and surrounding area for discrepancies, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,420, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-25-18 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Amendment 39-10241. Docket 97-NM-146-AD.

Applicability: Jetstream Model 4101 airplanes, constructors numbers 41005 through 41069 inclusive, and 41071 through 41078 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the tailplane (horizontal stabilizer) from the fin, which could lead to reduced controllability of the airplane, accomplish the following:

(a) Within 3,000 hours time-in-service or 11 months after the effective date of this AD, whichever occurs first, perform a one-time inspection of the attachment bolts and surrounding area of the horizontal stabilizer leading edges for discrepancies, in accordance with Jetstream Service Bulletin J41-55-002, Revision 1, dated July 25, 1996. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Jetstream Service Bulletin J41-55-002, Revision 1, dated July 25, 1996, which contains the specified effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3	1	July 25, 1996.
2, 4-9	Original	June 28, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc.; 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed British airworthiness directive 004-06-96.

(e) This amendment becomes effective on January 20, 1998.

Issued in Renton, Washington, on December 5, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-32431 Filed 12-12-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-161-AD; Amendment 39-10243; AD 97-25-18]

RIN 2120-AA64

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 series airplanes, that requires removal of certain landing gear attachment pins, and replacement of the pins with serviceable pins. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent wear of the attachment pins, which could result in collapse of the main landing gear.

DATES: Effective January 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 series airplanes was published in the **Federal Register** on August 25, 1997 (62 FR 44915). That action proposed to require removal of certain landing gear attachment pins, and replacement of the pins with serviceable pins.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 88 Model ATR42 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 45 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $237,600, or $2,700 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-25-18 Aerospatiale: Amendment 39-10243. Docket 97-NM-161-AD.

Applicability: Model ATR42 series airplanes as identified in Aerospatiale Service Bulletin No. ATR42-32-0081, dated July 16, 1996, and Aerospatiale Service Bulletin No. ATR42-32-0082, dated July 16, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wear of the landing gear attachment pins, which could result in collapse of the main landing gear (MLG), accomplish the following:

(a) Within 12 months after the effective date of this AD, remove the MLG leg hinge pins and side brace assembly center pins having the part numbers (P/N) specified in paragraph C.(2) of Aerospatiale Service Bulletin No. ATR42-32-0081, dated July 16, 1996; and replace the pins with serviceable pins, in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631-32-127, Revision 1, dated October 22, 1996.

(b) Prior to the accumulation of 15,000 landings since the last overhaul of the MLG, or within 8 years time-in-service since the last overhaul of the MLG, whichever occurs first, remove the MLG swinging lever/barrel pins and shock absorber universal joint hinge pins having the P/N's specified in paragraph C.(2) of Aerospatiale Service Bulletin No. ATR42-32-0082, dated July 16, 1996; and replace the pins with serviceable pins, in accordance with the Aerospatiale service bulletin and Messier-Dowty Service Bulletin No. 631-32-128, Revision 1, dated November 15, 1996.

Note 2: Serviceable pins include those that have been removed, inspected and marked with green paint in accordance with Messier-Dowty Service Bulletin No. 631-32-127, Revision 1, dated October 22, 1996; or Messier-Dowty Service Bulletin No. 631-32-128, Revision 1, dated November 15, 1996; as applicable.

(c) As of the effective date of this AD, no person shall install any MLG pin having a part number identified in Aerospatiale Service Bulletin No. ATR42-32-0081, dated July 16, 1996, or Aerospatiale Service Bulletin No. ATR42-32-0082, dated July 16, 1996, on any airplane unless that pin is considered to be serviceable in accordance with the applicable service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with the following Aerospatiale and Messier Dowty service bulletins, which contain the following spcified list of effective pages:

Service bulletin revision and date	Page No.	Revision level shown on page	Date shown on page
Aerospatiale ATR42-32-0081, July 16, 1996	1-7	Original	July 16, 1996.
Aerospatiale, ATR42-32-0082, July 16, 1996	1-6	Original	July 16, 1996.
Messier Dowty, 631-32-127, Revision 1, October 22, 1996	1-15, 19-31	1	Oct. 22, 1996.
	16-18	Original	July 18, 1996.
Messier Dowty, 631-32-128, Revision 1, November 15, 1996	1-11, 13-22	1	Nov. 15, 1996
	12	Original	July 18, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed issued French airworthiness directive 96-131-064(B), dated July 3, 1996.

(g) This amendment becomes effective on January 20, 1998.

Issued in Renton, Washington, on December 5, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32432 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–27]

Modification of Class E Airspace; Mason, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an incomplete name in a final rule that was published in the **Federal Register** on October 29, 1997, Airspace Docket Number 97–AGL–27. The Final Rule modified Class E airspace at Mason, MI.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 97–28605, Airspace Docket Number 97–AGL–27, published on October 29, 1997 (62 FR 56067), modified the description of the Class E airspace area at Mason, MI. An incomplete name was discovered in the legal description for this airspace. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Class E airspace area at Mason, MI, incorporated by reference in 14 CFR 71.1 (FR Document 97–28605), is corrected as follows:

§ 71.1 [Corrected]

On page 56067, column 3, line 25, in the Class E airspace designation for Mason, MI, correct "Eaton, MI" to read "Eaton Rapids, MI."

Issued in Des Plaines, Illinois on November 12, 1997.

David B. Johnson,

Assistant Manager, Air Traffic Division.

[FR Doc. 97–32669 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–25]

Revision of Class E Airspace; Gallup, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comment.

SUMMARY: This amendment modifies the Class E airspace at Gallup, NM. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to runway (RWY) 6 at Gallup Municipal Airport, Gallup, NM has made this rule necessary. This action is intended to provide adequate controlled airspace extending from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Gallup Municipal Airport, Gallup, NM.

DATES: Effective 0901 UTC, April 23, 1998. Comments must be received on or before January 29, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 97–ASW–25, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Gallup, NM. The development of a GPS SIAP to RWY 6 at Gallup Municipal Airport, Gallup, NM has made this action necessary. The intended effect of this action is to provide adequate controlled airspace extending from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Gallup Municipal Airport, Gallup, NM.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of this comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ASW–25." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS [AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Gallup, NM [Revised]

Gallup Municipal Airport, NM
(Lat. 35°30′40″ N., long 108°47′22″ W.)
Gallup VORTAC
(Lat. 35°28′34″ N., long. 108°52′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Gallup Municipal Airport and within 3.8 miles each side of the 250° bearing from the Gallup Municipal Airport extending from the 6.7-mile radius to 12.6 miles southwest of the airport and within 2 miles each side of the 074° bearing from the airport extending from the 6.7-mile radius to 9.1 miles east of the airport and that airspace extending upward from 1200 feet above the surface within an area bounded by a line beginning at lat. 35°47′30″ N., long. 108°34′02″ W.; to lat. 35°26′50″ N., long. 108°34′02″ W.; to lat. 35°13′15″ N., long 109°06′02″ W.; to lat. 35°20′25″ N., long. 109°10′42″ W.; to lat. 35°52′00″ N., long. 108°47′02″ W.; to point of beginning excluding that airspace within the New Mexico, NM, Class E airspace area.

* * * * *

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–32667 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4022

Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the appendix to the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 1998. This rule also amends Appendix B to the PBGC's regulation on Disclosure to Participants by adding information on 1998 maximum guaranteed benefit amounts. The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 1998.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]". This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). The appendix to Part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of,

the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to the appendix to Part 4022 to add the guarantee limit for the coming year. (The PBGC's general practice has been to issue the amendments on or about December 15 of each year, at the same time it issues interest updates for other regulations. However, the information needed for the guarantee limit amendments is typically available earlier than the information for the interest updates. The PBGC intends in the future to publish its annual guarantee limit amendments earlier than December 15.)

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $50,700 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 1998. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: $750 multiplied by $50,700/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 1998 is $2,880.68 per month in the form of a life annuity beginning at age 65. This amendment updates the appendix to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 1998. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $2,880.68 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 1998 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 1998 maximum guaranteeable benefit amounts for the information of the public, general notice of proposed rulemaking is not required. Moreover, because the 1998 maximum guaranteeable benefit is effective, under the statute, at the time that the Social Security contribution and benefit base is effective, i.e., January 1, 1998, and is not dependent on the issuance of this rule, the PBGC finds that good cause exists for making these amendments effective less than 30 days after publication (5 U.S.C. 553).

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 4011

Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR parts 4011 and 4022 are amended as follows:

PART 4011—DISCLOSURE TO PARTICIPANTS

1. The authority citation for Part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

2. Appendix B to part 4011 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

APPENDIX B TO PART 4011.—TABLE OF MAXIMUM GUARANTEED BENEFITS

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
•	•	•	•	•	•	•	•	•
1998	$2,880.68	$34,568.16	$2,275.74	$27,308.88	$1,872.44	$22,469.28	$1,296.31	$15,555.72

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for Part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. The appendix to part 4022 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix to Part 4022.—Maximum Guaranteeable Monthly Benefit

[The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year]

Year	Maximum guaranteeable monthly benefit
• • • • •	
1998	2,880.68

Issued at Washington, D.C., this 10th day of December, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–32732 Filed 12–12–97; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in January 1998.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during January 1998.

For annuity benefits, the interest assumptions will be 5.60 percent for the first 25 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions represent (in comparison with those in effect for December 1997) no change for the first 25 years following the valuation date and an increase of 0.25 percent for all years thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions represent (in comparison with those in effect for December 1997) a decrease of .25 percent for the period during which a benefit is in pay status and no change for the period preceding the benefit's placement in pay status.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during January 1998, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 51 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

APPENDIX B TO PART 4044—INTEREST RATES USED TO VALUE ANNUITIES AND LUMP SUMS

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
• • •	•	•	•	•	•	•
January 1998	.0560	1–25	.0525	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
51	01–1–98	02–1–98	4.25	4.00	4.00	4.00	7	8

Issued in Washington, D.C., on this 10th day of December 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–32731 Filed 12–12–97; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting new Table I–98 in place of existing Table I–97 in appendix D. Table I–98 applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 1998, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), plans wishing to terminate in a distress termination must value guaranteed benefits and benefit liabilities under the plan in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b), early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

(The PBGC's general practice has been to issue annual update amendments on or about December 15 of each year, at the same time it issues interest updates for other regulations. However, the information needed to update the expected retirement age table is typically available earlier than the information for the interest updates. The PBGC intends in the future to publish annual updates of the expected retirement age table earlier than December 15.)

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–97 with Table I–98 in order to provide an updated correlation, appropriate for calendar year 1998, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–98 will be used to value benefits in plans with valuation dates during calendar year 1998.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1998, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1998. Moreover, because of the need to provide immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 4044 is amended by removing Table I–97 and adding in its place Table I–98 to read as follows:

APPENDIX D TO PART 4044—TABLES USED TO DETERMINE EXPECTED RETIREMENT AGE

TABLE I–98.—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 1997, and before January 1, 1999]

Participant reaches URA in year—	Participant's retirement Rate category is—			
	Low[1] if monthly benefit at URA is less than—	Medium[2] if monthly benefit at URA is		High[3] if monthly benefit at URA is greater than—
		From	To	
1999	419	419	1,766	1,766
2000	431	431	1,814	1,814
2001	442	442	1,863	1,863
2002	454	454	1,913	1,913
2003	466	466	1,965	1,965
2004	479	479	2,018	2,018
2005	492	492	2,072	2,072
2006	505	505	2,128	2,128
2007	519	519	2,186	2,186
2008 or later	533	533	2,245	2,245

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued at Washington, D.C., this 10th day of December, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–32734 Filed 12–12–97; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0061; FRL–5929–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on April 17, 1997. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules concern the control of NO_X emissions from boilers, steam generators, process heaters, stationary internal combustion engines, stationary gas turbines, and glass melting furnaces in the San Francisco Bay area. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA actions on SIP submittals, and SIPs for national primary and secondary ambient air quality standards. The rules are being approved into the SIP in accordance with the area's ozone maintenance plan for redesignation to attainment.

DATES: This action is effective on January 14, 1998.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Bay Area Air Quality Management District, Rule Development Section, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

I. Applicability

The BAAQMD rules being approved into the California SIP include: Regulation 9, Rule 7, Nitrogen Oxides and Carbon Monoxide from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters;

Regulation 9, Rule 8, Nitrogen Oxides and Carbon Monoxide Emissions from Stationary Internal Combustion Engines; Regulation 9, Rule 9, Nitrogen Oxides from Stationary Gas Turbines; and Regulation 9, Rule 12, Nitrogen Oxides from Glass Melting Furnaces.

These BAAQMD rules were adopted on September 15, 1993, January 20, 1993, September 21, 1994 and January 19, 1994, respectively. They were submitted by the State of California on July 23, 1996. The rules were found to be complete on January 17, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, [1] appendix V[1]. EPA is taking final action to approve all four rules into the SIP.

II. Background

On April 17, 1997 in 62 FR 18730, EPA proposed to approve the following rules into the California SIP: Regulation 9, Rule 7, Nitrogen Oxides and Carbon Monoxide from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; Regulation 9, Rule 8, Nitrogen Oxides and Carbon Monoxide Emissions from Stationary Internal Combustion Engines; Regulation 9, Rule 9, Nitrogen Oxides from Stationary Gas Turbines; and Regulation 9, Rule 12, Nitrogen Oxides from Glass Melting Furnaces. While the BAAQMD was no longer required to submit NO_X RACT rules pursuant to section 182(b)(2), the BAAQMD incorporated several of the previously submitted NO_X rules as contingency measures in its ozone maintenance plan as a requirement for redesignation to attainment. Since being redesignated to attainment of the ozone standard, the Bay Area has recorded violations of the Federal ozone standard, therefore triggering the contingency measures of the maintenance plan. In accordance with the redesignation maintenance plan, and at the request of the BAAQMD, EPA is incorporating the NO_X measures into the SIP. The BAAQMD submitted the contingency measures being acted on in this document on July 23, 1996. This action encompasses part of the measures identified in the plan as contingency measures. A detailed discussion of the background for each of the above rules is provided in the proposed rule cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rule cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the proposed rule and in the technical support document (TSD), dated January 24, 1997, which is available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 18730. The four rules in the present action, along with one additional rule (BAAQMD Regulation 9, Rule 11) were the subject of a prior direct final action. See 62 FR 18710 (April 17, 1997). EPA received adverse comments on Regulation 9, Rule 11 only. Consequently the previous direct final action was withdrawn. See 62 FR 32687 (June 17,1997). EPA will address the comments received in a subsequent final action concerning Regulation 9, Rule 11 only in the near future.

IV. EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO_X in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register.** This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitionsfor judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 13, 1997.

Harry Seraydarian,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(E) Bay Area Air Quality Management District.

(*1*) Rule 9–7 adopted on September 15, 1993, Rule 9–8 adopted on January 20, 1993, Rule 9–9 adopted on September 21, 1994, and Rule 9–12 adopted on January 19, 1994.

* * * * *

[FR Doc. 97–32561 Filed 12-12-97; 8:45 am]

BILLING CODE 6560–50–F

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0002a, MT–001–0003a; FRL–5934–5]

Approval and Promulgation of Air Quality Implementation Plans; Montana; 1990 Base Year Emission Inventories for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the 1990 base year carbon monoxide (CO) emission inventories for Missoula, Billings, and Great Falls that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990.

DATES: This final rule is effective February 13, 1998 unless adverse or critical comments are received by January 14, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: Richard R. Long, Director, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2466, ph. (303) 312–6479.

SUPPLEMENTARY INFORMATION:

I. Background to the Action

As required by the CAA, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment.

Those States containing moderate and serious carbon monoxide nonattainment areas were required under Section 187(a)(1) of the CAA to submit by November 15, 1992, a comprehensive, accurate, and current inventory of actual CO season emissions from all sources for each nonattainment area (see 57 FR 13530, April 16, 1992). This requirement applies to Missoula. "Not Classified" CO nonattainment areas, like Billings and Great Falls, were required to submit their inventories by November 15, 1993 (see 57 FR 13535, April 16, 1992). Stationary point sources, stationary area sources, on-road mobile, and non-road mobile sources of carbon monoxide (CO) were to be included in each inventory. This inventory, for calendar year 1990, was denoted as the base year inventory.

The 1990 base year inventory is the primary inventory from which any periodic and/or modeling inventory is derived. Further information on these inventories and their purpose can be found in the document "Emission Inventory Requirements for Carbon Monoxide State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, dated March, 1991.

The 1990 base year inventory was to address actual CO emissions for the area during the peak CO season. The peak CO season should reflect the months when peak CO concentrations occur. For areas where winter is the peak CO season, as is the case for Missoula, Billings, and Great Falls, the 1990 base year inventory was to include the period November 1989 through January 1990.

The air quality planning requirements for base year inventories for CO nonattainment areas are set out in sections 172(c) and 187(a)(1) of Title I of the CAA. EPA issued a General Preamble describing EPA's interpretation as to how EPA intended to review SIP revisions submitted under Title I of the CAA which included requirements for the preparation of the 1990 base year inventory (57 FR 13529, April 16, 1992, and 57 FR 18070, April 28, 1992). Because EPA is describing its interpretations in this action only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and its supporting rationale. Available EPA guidance documents, for preparing emission inventories, were referenced in the General Preamble (57 FR 13498, April 16, 1992).

II. Analysis of the State's Submittal

Section 110(k) of the Act sets out provisions governing EPA's action on plan submissions of the 1990 base year CO emission inventory based on whether or not the inventory satisfies the requirements of Section 187(a)(1) and Section 172(c) (see 57 FR 13565–13566, April 16, 1992). Based on EPA's review, EPA is approving the Montana CO 1990 base year emission inventories as submitted to EPA on July 18, 1995, (Missoula and Billings) and on April 23, 1997 (Great Falls).

The following describes the review procedures associated with determining the acceptability of a 1990 base year emission inventory and discusses the level of acceptance that can result from the findings of the review process.

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision (including emission inventories) be adopted after going through a reasonable notice and public hearing process prior to being submitted by a State to EPA.[1]

The State of Montana held a public hearing for the Missoula and Billings CO inventories on July 10, 1995, before the Montana Department of Environmental Quality (MDEQ). The Governor submitted these two 1990 base year inventories to EPA with a letter dated July 18, 1995. The State held a public hearing for the Great Falls CO inventory on December 9, 1996, before the MDEQ. This inventory was submitted by the Governor with a letter dated April 23, 1997.

B. Review of Montana's 1990 Base Year SIP CO Inventories

EPA's Level I, II, and III review process checklists are used to determine if all components of a CO base year inventory are present and approvable. EPA's detailed Level I and II review procedures can be found in the following document: "Quality Review Guidelines for 1990 Base Year Emission Inventories," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. The Level III final review procedures are specified in a memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Regions I–X, "Final Emission Inventory Level III Acceptance Criteria," October 7, 1992 and revised in a memorandum from John Seitz to the Regional Air Directors, dated June 24, 1993.[2] EPA's review also evaluates the level of supporting documentation provided by the State and assesses whether the emission calculations were developed, and data quality assured, according to current EPA guidance.

The Level III review process is outlined below and consists of nine requirements that a CO base year inventory must include. For a base year CO emission inventory to be acceptable, it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) must be provided and the Quality Assurance (QA) program contained in the IPP must be performed and its implementation documented.

Analysis: Montana's IPP was approved by EPA on October 23, 1991. The IPP's QA program requirements were addressed in section 4.3 and Appendix F of the Missoula inventory, in section 4.3 and Appendix F of the Billings inventory, and in section 4.3 and Appendix H of the Great Falls inventory.

2. Adequate documentation must be provided that enables the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.

Analysis: This requirement was addressed in sections 4.0 through 4.2.8., 5.0, 6.0, and appendices A through E of the Missoula inventory; sections 4.0 through 4.2.8., 5.0, 6.0, and appendices A through E and G of the Billings inventory; and sections 4.0 through 4.2.8., 5.0, 6.0, and appendices A through G and I of the Great Falls inventory.

3. The point source inventory must be complete.

Analysis: This requirement was addressed in sections 4.1.1., 4.2.7., 5.0, 6.0, and appendices A and B of the Missoula inventory; sections 4.1.1., 4.2.6., 5.0, 6.0, and appendices A and B of the Billings inventory; and sections 4.1.1., 4.2.7., 5.0, 6.0, and appendices A and B of the Great Falls inventory.

4. Point source emissions must be calculated according to current EPA guidance.

Analysis: This requirement was addressed in sections 4.1.1., 4.2.7., 5.0, 6.0, and appendices A and B of the Missoula inventory; sections 4.1.1., 4.2.6., 5.0, 6.0, and appendices A and B of the Billings inventory; and sections 4.1.1., 4.2.7., 5.0, 6.0, and appendices A and B of the Great Falls inventory.

5. The area source inventory must be complete.

Analysis: This requirement was addressed in sections 4.1.2., 4.2.1., 4.2.2., 4.2.8., 5.0, 6.0, and appendix D of the Missoula inventory; sections 4.1.2., 4.2.1., 4.2.2., 4.2.7., 4.2.8., 5.0, 6.0, and appendix D of the Billings inventory; and sections 4.1.2., 4.2.1., 4.2.2., 4.2.8., 5.0, 6.0 and appendices D, E, and F of the Great Falls inventory.

6. The area source emissions must be prepared or calculated according to current EPA guidance.

Analysis: This requirement was addressed in sections 4.1.2., 4.2.1., 4.2.2., 4.2.8., 5.0, 6.0, and appendix D of the Missoula inventory; sections 4.1.2., 4.2.1., 4.2.2., 4.2.7., 4.2.8., 5.0, 6.0, and appendix D of the Billings inventory; and sections 4.1.2., 4.2.1., 4.2.2., 4.2.8., 5.0, 6.0 and appendices D, E, and F of the Great Falls inventory.

7. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, as detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods must be adequately described and documented in the inventory report.

Analysis: This requirement was addressed in sections 4.2.5., 5.0, 6.0, and Appendix C in each of the three inventories.

8. The MOBILE model must be correctly used to produce emission factors for each of the vehicle classes.

Analysis: This requirement was addressed in sections 4.2.5., 5.0, 6.0, and Appendix C in each of the three inventories.

9. Non-road mobile emissions estimates must be prepared according to current EPA guidance for all of the source categories.

Analysis: This requirement was addressed in sections 4.2.3., 4.2.4., 4.2.6., 5.0, and 6.0 of the Missoula inventory; sections 4.2.3., 4.2.4., 4.2.8., 5.0, 6.0, and Appendix G of the Billings inventory; and sections 4.2.3., 4.2.4., 4.2.6., 5.0, 6.0, and Appendix I of the Great Falls inventory.

The 1990 base year CO emissions from point sources, area sources, on-road mobile sources, and non-road mobile sources for Missoula, Billings, and Great Falls are summarized in the following table:

CARBON MONOXIDE SEASONAL EMISSIONS IN TONS PER DAY

Non-attainment area	Point source emissions	Area source emissions	On-road mobile emissions	Non-road mobile emissions	Total emissions
Missoula	12.84	32.98	70.44	0.78	117.04
Billings	2.41	13.74	57.46	1.42	75.03
Great Falls	0.19	7.95	46.34	5.63	60.11

III. Final Action

EPA is approving the carbon monoxide 1990 base year emission inventories for Missoula, Billings, and Great Falls.

All supporting calculations and documentation for these three 1990 carbon monoxide base year inventories are contained in the State's Technical Support Document (TSD).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this issue of the **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 13, 1998 unless, by January 14, 1998, adverse or critical comments are received.

If EPA receives adverse or critical comments, this action will be withdrawn before the effective date by the publication of a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no adverse or critical comments are received, the public is advised that this action will be effective February 13, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rules that include a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the CAA).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

[1] See, Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I–X, "Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas," September 29, 1992.

[2] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, "Emission Inventory Issues," June 24, 1993.

Dated: October 3, 1997.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

2. Section 52.1391 is added to read as follows:

§ 52.1391 Emission inventories.

The Governor of the State of Montana submitted the 1990 carbon monoxide base year emission inventories for Missoula and Billings on July 18, 1995, as a revision to the State Implementation Plan (SIP). The Governor submitted the 1990 carbon monoxide base year emission inventory for Great Falls on April 23, 1997, as a revision to the SIP. The inventories address emissions from point, area, on-road mobile, and non-road sources. These 1990 base year carbon monoxide inventories satisfy the nonattainment area requirements of the Clean Air Act of section 187(a)(1) for Missoula and section 172(c)(3) for Billings and Great Falls.

[FR Doc. 97–32644 Filed 12–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[ND–001–0003a; FRL–5933–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the North Dakota plan for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which was required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan was submitted to EPA on September 11, 1997 in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. It establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. EPA finds that North Dakota's plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans.

DATES: This action is effective on February 13, 1998 unless adverse or critical comments are received in writing by January 14, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2–A, at the EPA Region VIII Office listed. Copies of the documents relative to this action are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, room 304, Box 5520, Bismarck, North Dakota 58506–5520.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Act, EPA has established procedures whereby States submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes emissions guidelines in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the emission guideline for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published Emission Guidelines for existing MSW landfills (EG) at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (See 61 FR 9905–9929.) The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG, or by December 12, 1996. If there were no designated facilities in the State, then the State was required to submit a negative declaration by December 12, 1996.

On September 11, 1997, the State of North Dakota submitted its "Section 111(d) Plan for MSW Landfills" for implementing EPA's MSW landfill EG. The following provides a brief discussion of the requirements for an approvable State plan for existing MSW landfills and EPA's review of North Dakota's submittal in regard to those requirements. More detailed information on the requirements for an approvable plan and North Dakota's submittal can be found in the Technical Support Document (TSD) accompanying this notice, which is available upon request.

II. Review of North Dakota's MSW Landfill Plan

EPA has reviewed North Dakota's section 111(d) plan for existing MSW landfills against the requirements of 40 CFR part 60, subpart B and subpart Cc, as follows:

A. Identification of enforceable State Mechanism for Implementing the EG

40 CFR 60.24(a) requires that the section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as "a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions." North Dakota has adopted State regulations as the cornerstone of its State plan to control air emissions from certain existing landfills. Those regulations are in the State's Air Pollution Control Rules, chapter 33–15–12, section 02, of the North Dakota Administrative Code (NDAC). These regulations were adopted by the State in accordance with the State's and EPA's administrative procedures and became effective on September 1, 1997. Thus, the State has met the requirement of 40 CFR 60.24(a) to have legally enforceable emission standards.

B. Demonstration of the State's Legal Authority to Carry out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires the section 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. North Dakota provided an opinion from the State's Assistant Attorney General and included a copy of the North Dakota Air Pollution Control Law, North Dakota Century Code (NDCC) Chapter 23–25, to demonstrate its authority for adopting, implementing, and enforcing its section 111(d) plan. EPA has reviewed the Assistant Attorney General's opinion and the State laws and has determined that the State has adequate legal authority to adopt and implement the section 111(d) plan in accordance with 40 CFR 60.26.

The State did not submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this State Plan as it relates to those sources.

C. Inventory of Existing MSW Landfills in the State Affected by the State Plan

40 CFR 60.25(a) requires the section 111(d) plan to include a complete source inventory of all existing MSW landfills (i.e., those MSW landfills that constructed, reconstructed, or modified prior to May 30, 1991) in the State that are subject to the plan. This includes all existing landfills that have accepted waste since November 8, 1987 or that have additional capacity for future waste deposition. North Dakota addressed this requirement in Section IV. of its section 111(d) plan by including a list of all MSW landfills in the State, regardless of design capacity, that have accepted waste since November 8, 1987. There are a total of 13 MSW landfills in North Dakota. The State believes that three of these MSW landfills appear to be subject to 40 CFR part 60, subpart WWW due to expansions that have occurred since the date the State plan was first proposed and, thus, are not subject to the State plan. The State of North Dakota estimates that there is one "existing" landfill, the City of Grand Forks Municipal Landfill, that is subject to the requirements to report solid waste capacity, calculate NMOC emissions, and potentially install a gas collection and control system. The State estimated in its section 111(d) plan that there are 9 additional landfills that have solid waste capacities less than 2.5 million Mg or 2.5 million m^3 that have accepted waste since November 8, 1987. Since the State's adoption of its section 111(d) plan, the State received the design capacity reports from these nine landfills and confirmed that none are over the 2.5 million Mg or 2.5 million m^3 design capacity threshold. Thus, these nine MSW landfills are not subject to any additional requirements of the State's section 111(d) plan.

D. Inventory of Emissions From Existing MSW Landfills in the State

40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG, which, in the case of MSW landfills, is NMOC. North Dakota included in Section IV. of its section 111(d) plan an estimation of NMOC emissions for all of the thirteen landfills in the State using the Landfill Air Emissions Estimation Model and AP–42 default emission factors.

E. Emission Limitations for MSW Landfills

40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met). 40 CFR 60.33c contains the emissions standards applicable to existing MSW landfills. The State of North Dakota incorporated the EG by reference at NDAC 33–15–12–02, including the emission limitations of 40 CFR 60.33c. Thus, the State plan meets the emission limitation requirements by requiring emission limitations that are no less stringent than the EG.

F. A Process for State Review and Approval of Site-Specific gas Collection and Control System Design Plans

40 CFR 60.33c(b) in the EG requires State plans to include a process for State review and approval of site-specific design plans for required gas collection and control systems. In NDAC 33–15–12–02, the State has incorporated by reference the EG, including the requirements of 40 CFR 60.33c(b) for the submittal of site-specific design plans meeting the conditions of 40 CFR 60.752(b)(2)(ii). In addition, Section VII. of the State's section 111(d) plan discusses the State's process for review and approval of the design plans. Thus, North Dakota's section 111(d) plan adequately addresses this requirement.

G. Compliance Schedules

The State's section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. 40 CFR 60.36c provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a State emission standard for MSW landfills (i.e., the effective date of EPA approval of the State plan). 40 CFR 60.24(e)(1) provides that any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/installation of emission control equipment, and final compliance.

North Dakota has adopted enforceable compliance schedules in NDAC 33–15–12–02. The State's rules require that the landfills which are required to install a collection and control system be in final compliance with the requirements of the State plan no later than twenty-nine months from the effective date of EPA approval of this plan or, for those MSW landfills which are not currently subject to the collection and control system requirements, within twenty-nine months of first becoming subject to such requirements (i.e., within 30 months of reporting a NMOC emission rate of 50 Mg/yr or greater). Thus, the State's rule satisfies the requirement of 40 CFR 60.36c. In addition, the State has included increments of progress

deadlines for the submittal of a final collection and control system design plan, awarding contracts for installation of the collection and control system, initiation of on-site installation of the collection and control system, and final compliance. Thus, the State's rule satisfies the requirements of 40 CFR 60.24(e). The State's regulations also include a requirement for the initial performance test to be conducted within 180 days of the installation of the collection and control equipment.

H. Testing, Monitoring, Recordkeeping and Reporting Requirements

40 CFR 60.34c specifies the testing and monitoring provisions that State plans must include, and 40 CFR 60.35c specifies the reporting and recordkeeping requirements. In NDAC 33–15–12–02, the State has incorporated by reference the EG, including the test methods and procedures of 40 CFR 60.34c and the reporting and recordkeeping provisions of 40 CFR 60.35c.

However, the State did adopt one exception to the quarterly monitoring requirements for surface methane concentrations in 40 CFR 60.756(f): the State rule only requires surface methane concentration monitoring during the second, third, and fourth quarters of the calendar year. In a June 27, 1997 letter to EPA, the State submitted extensive climatological data and explained why it believes this data shows that exceedingly cold temperatures and snow cover during the winter quarter (January through March) would make monitoring of surface methane concentrations nearly impossible. In examining this data for the one MSW landfill that currently appears to be subject to the collection and control system requirements of the State plan, the City of Grand Forks Municipal Landfill, the State found the following information:

a. The mean temperature in Grand Forks is approximately 5 degrees Fahrenheit in January, 9 degrees in February, and 23 degrees in March;

b. Using the average wind speed for the months of January through March in Fargo, which is 78 miles south of Grand Forks, the average wind chill factors would range from –22 degrees Fahrenheit in January to 2 degrees Fahrenheit in March. Average wind speed in those same months ranges from 13 to 13.6 mph;

c. The Grand Forks area receives approximately 38 inches of snow during the winter season, and there is normally at least one inch of snow depth in Grand Forks from December 1 through the end of March; and

d. The Grand Forks area has approximately 50 days with snow depths of 6 inches or more and approximately 115 days with snow depth of one inch or more, which generally fall within the December through March time frame.

Thus, North Dakota contends that, with mean temperatures during the winter quarter below freezing and with snow covering the landfill at depths up to three feet, surface monitoring for methane during the winter quarter is not practical and, at best, extremely difficult.

EPA believes that the State has provided substantial documentation showing that the extremely cold temperatures and wind chill factors, as well as the snow cover, in the Grand Forks area justify the exemption from first quarter monitoring for surface methane concentrations. If any other existing MSW landfills become subject to the State's section 111(d) plan in the future, EPA will need to re-evaluate the State's exemption from first quarter monitoring based on the location and meteorological data for that location.

Consequently, EPA finds that the State's section 111(d) plan for MSW landfills adequately addresses the testing, monitoring, reporting, and recordkeeping requirements of the EG.

I. A Record of Public Hearings on the State Plan

40 CFR 60.23 contains the requirements for public hearings that must be met by the State in adopting a section 111(d) plan. North Dakota included documents in its plan submittal demonstrating that these procedures, as well as the State's administrative procedures, were complied with in adopting the State's plan. Therefore, EPA finds that North Dakota has adequately met this requirement.

J. Submittal of Annual State Progress Reports to EPA

40 CFR 60.25(e) and (f) require States to submit to EPA annual reports on the progress of plan enforcement. North Dakota committed in Section IX. of its section 111(d) plan to submit annual progress reports to EPA on compliance status, enforcement actions, increments of progress, identification of sources that have started operation, emission inventory information for sources that have started operation, updated emission inventory and compliance information, and technical reports on all performance testing and monitoring for landfills subject to the EG. The first progress report will be submitted by the State one year after EPA approval of the State plan.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving North Dakota—s September 11, 1997 submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills, except those located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to North Dakota's section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse or critical comments be filed. This action will be effective February 13, 1998 unless, by January 14, 1998, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 13, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Plan. Each request for revision to a State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning State Plans on such grounds. *Union Electric Co.T1 v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: October 24, 1997.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Subpart JJ is added to read as follows:

Subpart JJ—North Dakota

LANDFILL GAS EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS

Sec.

62.8600 Identification of plan.
62.8601 Identification of sources.
62.8602 Effective date.

Subpart JJ—North Dakota

LANDFILL GAS EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS

§ 62.8600 Identification of plan.

"Section 111(d) Plan for Municipal Solid Waste Landfills" and the associated State regulation in section 33–15–12–02 of the North Dakota Administrative Code, submitted by the State on September 11, 1997.

§ 62.8601 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.8602 Effective date.

The effective date of the plan for municipal solid waste landfills is February 13, 1998.

[FR Doc. 97–32840 Filed 12–12–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96–262 and 91–213; FCC 97–401]

Access Charge Reform; Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Third Report and Order, FCC 97–401, adopted and released November 26, 1997 (*Third Report and Order*), in its Access Charge Reform and Transport Rate Structure Pricing proceedings, the Commission amends its cost allocation rules to increase the allocation of certain general purpose computer and other general support facilities (GSF) costs by price cap local exchange carriers (LECs) to their nonregulated billing and collection categories and the *Third Report and Order* also requires affected price cap LECs to reduce their price cap indices (PCIs) and related basket indices to ensure that their regulated access and interexchange services do not continue to recover GSF costs attributable their nonregulated billing and collection services. These rule amendments and related exogenous adjustments are intended to reduce the subsidization of

nonregulated services by regulated services, foster competition in the provision of these services, and move access charges to more economically efficient levels.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Allen A. Barna or Richard Lerner, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* adopted and released November 26, 1997. The full text is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M St., N.W., Washington, D.C. The complete text also may be obtained through the World Wide Web at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1997/fcc97401.wp, or may be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036. On May 16, 1997, the Commission adopted a First Report and Order in the Access Charge Reform proceeding, FCC 97–158, 62 FR 31868 (June 11, 1997) and 62 FR 48485 (September 16, 1997), that included a *Further Notice* of Proposed Rulemmaking (*Further Notice*), 62 FR 31040 (June 6, 1997). The *Further Notice* sought comment on several specific proposals regarding the allocation of costs attributable to general purpose computers and other general support facilities (GSF) used by incumbent LECs to provide nonregulated billing and collection services to interexchange carriers. On May 7, 1997, the Commission adopted a Second Report and Order in CC Docket No. 96–262, FCC 97–159, 62 FR 31939 (June 11, 1997), that addressed separate matters in this proceeding. The rule amendments adopted in the *Third Report and Order* were made in response to the *Further Notice* and the comments received in the response to the *Further Notice* or otherwise in the course of these proceedings. This *Third Report and Order* was submitted to OMB for review under the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501–3520. The Commission received emergency approval of this collection from OMB on December 9, 1997.

Final Regulatory Flexibility Act Analysis and Certification

1. In the *Further Notice*, the Commission stated that it intended to limit the scope of its proposals regarding the allocation of general purpose computer and general support facilities (GSF) costs to incumbent price cap LECs. That *Further Notice* tentatively concluded that, because all such LECs have more than 1500 employees, they would not qualify as small entities. Because the Commission intended to limit the scope of its proposals to such incumbent price cap LECs, it stated that these options, if adopted, would not affect small entities. Currently, 14 incumbent LECs are subject to price cap regulation. The Commission sought comment on these proposals and tentative conclusions. No comments were received specifically concerning the conclusion that price cap carriers were not small entities or the limitation of the proposed rules to such carriers. As noted in the *Third Report and Order*, however, one comment was received concerning the impact on smaller carriers of the first of the two options presented, the special study option. That option was not adopted in the *Third Report and Order*. Given that comment and for the reasons described in the *Further Notice* and this *Third Report and Order*, the Commission certified that the Regulatory Flexibility Act (RFA), 5 U.S.C. § 601 *et seq.*, did not apply to this rulemaking proceeding because none of the rule amendments adopted in the *Third Report and Order* would have a significant economic impact on a substantial number of small entities. This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The RFA, 5 U.S.C. §§ 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). We hereby affirm this analysis.

2. The Commission is sending a copy of this final certification, along with this *Third Report and Order*, in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. § 605(b).

Paperwork Reduction Act

3. The Federal Communications Commission (Commission) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

OMB Approval Number: 3060–0760.

Title: Access Charge Reform *Third Report and Order.*

Expiration Date: May 31, 1998.

Frequency of Response: One-time requirement.

Respondents: Business and other for profit.

Number of Respondents: Approximately 14 respondents.

Description: A one-time burden of 4 hours per respondent for all 14 respondents to calculate their exogenous price cap index (PCI) adjustments plus an additional one-time average burden of 318 hours per respondent for 4 of these respondents to make the necessary additional tariff filings.

Estimated Annual Burden: A one-time burden of 54 hours for all respondents to calculate the exogenous adjustments and an additional one-time burden of 1272 hours for four of these respondents for a total one-time burden of 1328 hours for this group of respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $600 per respondent.

Description: In the *Third Report and Order*, the Commission adopts, consistent with principles of cost causation and economic efficiency, that, where price cap LECs use general purpose computers and other general support facilities (GSF) to provide nonregulated billing and collection services to interexchange carriers, such GSF costs should not be allocated to these LECs' regulated access and interexchange categories but, instead, should be allocated to their nonregulated billing and collection categories. The related collection of information follows:

a. In the *Third Report and Order*, the Commission requires affected price cap LECs to make certain exogenous adjustments to their respective price cap indices (PCIs) and related basket indices. LECs affected by this *Third Report and Order* are those price cap LECs that use regulated assets to provide nonregulated billing and collection services to interexchange carriers. For the purposes of estimating the information collection burdens, we assume all price cap LECs are affected by the *Third Report and Order*. Such LECs must determine the amount of GSF costs that they allocated to their respective access and interexchange categories during 1996 and then calculate the amount of such costs that would have been allocated to those categories during that year if the rule changes adopted in this *Third Report and Order* had been in effect at that time. Once that difference is determined, each affected price cap LEC is required to make an exogenous adjustment to its PCIs and related basket indices to prevent the earlier misallocation of these costs from continuing to inflate the rates charges for regulated services. Separate from the possible tariff filing burden described below, we estimate that it would take each of these price cap LECs four (4) hours to complete the steps necessary to determine the amount of the exogenous price cap index (PCI) and related basket adjustments required by the *Third Report and Order*. Because we assume this particular burden applies to all 14 price cap LECs, we estimate the total burden to be 56 hours as indicated above.

b. Under the *Third Report and Order*, affected price cap LECs are required to make tariff revision filings on or before December 17, 1997, to implement these exogenous price cap adjustments. The Commission scheduled these filings to coincide with other access reform tariff filings to be made by price cap LECs on or before December 17, 1997, under other orders in the Access Charge Reform proceeding. Because most of these 14 price cap LECs have not yet made such filings, there should be little or no additional tariff filing burdens associated with these LECs' compliance with this *Third Report and Order*. For the four price cap LECs that have already made access reform tariff filings under other orders, we estimate that there will be an additional tariff filing burden of 1272 hours for these LECs as a group. Because this estimated additional burden of 1272 hours reflects an average burden of 318 hours for each of these four LECs, we have used the latter figure above to facilitate calculation of the overall hour burdens.

4. The public reporting burden for this collection of information is noted above. Comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, may be mailed to Performance Evaluation and Records Management, Federal Communications Commission, Washington, D.C. 20554.

Synopsis of the Third Report and Order

5.–6. Where LECs use general purpose computer and other general support facilities (GSF) to provide nonregulated billing and collection services to interexchange carriers, the *Further Notice* sought comment on the existence of significant problems with regard to the existing part 69 allocation of these GSF costs to the LECs' regulated access and interexchange categories and, if such problems exist, whether the Commission should amend Part 69 to increase the allocation of these costs to the nonregulated billing and collection categories. Specifically, the Commission sought comment on two options to amend part 69 to address such misallocation of GSF costs by LECs.

7. Under the first option, each affected price cap LEC would conduct a special study of the uses made of the assets recorded in its general purpose computer account (Account 2124) to determine the percentage of interstate investment in this account that is actually used to provide nonregulated billing and collection services. That percentage would be used to allocate an appropriate portion of that LEC's Account 2124 investment to its nonregulated billing and collection category. Also, under existing Commission rules, this allocation of general purpose computer account investment would result in similar allocation of the LEC's general purpose computer account expenses (Account 6124).

8. Under the second option, the Commission would require use of a general expense allocator to apportion the interstate share of summary Account 2110 (Land and support assets) between the billing and collection category and all other elements and categories. Any investment in Account 2110 not allocated to the billing and collection category would then be apportioned among the access elements and the interexchange category using the current investment allocator. Regarding GSF expenses, the interstate portion of these expenses in Account 6120 would be apportioned among all elements and categories, including billing and collection, based upon the overall apportionment of GSF investment in Account 2110. The Commission also sought comment on its proposals to limit the application of these rule changes to price cap LECs and to require exogenous adjustments by these LECs to prevent the past misallocation of these costs from inflating future access rates.

9. In the *Third Report and Order*, the Commission acts on the proposals made in the *Further Notice*. In particular, the Commission found that significant problems continue to exist with regard to the allocation of general purpose computer and other GSF costs to the regulated categories. To address those problems, the Commission adopted a variation on the second option proposed in the *Further Notice*. Rather than apply the general expense allocator to the entire interstate portion of Account 2110, as proposed in the second option, and rather than apply that allocator narrowly to only the general purpose computer account (Account 2124) as recommended by some commenters, the Commission, instead, applied that allocator to four of the accounts that comprise Account 2110, as recommended by other commenters. Under the four account approach adopted by the Commission, not only the general purpose computer account (Account 2124) but also three additional accounts, in which LECs also record investment attributable to their nonregulated billing and collection activities, will also be subject to the general expense allocator. Accordingly, appropriate portions of these accounts as well as the general purpose computer account (Account 2124) will be allocated the nonregulated billing and collection category. No change was needed in the rules applicable to the allocation of GSF expense accounts because, in general, such expense accounts are allocated in the same manner as their counterpart investment accounts. Accordingly, the Commission amended its part 69 cost allocation rules to provide for the increased allocation of these GSF costs to the nonregulated billing and collection categories and their reduced allocation to the regulated categories.

10. In addition, pending decisions in a related proceeding involving the allocation of such GSF costs by other LECs, the Commission determined that this new allocation rule would apply only to price cap LECs. Also, as explained above, the Commission required affected price cap LECs to reduce their price cap indices (PCIs) and related basket indices to ensure that regulated access and interexchange categories do not continue to recover GSF costs attributable to these nonregulated billing and collection services.

Ordering Clauses

11. Accordingly, *it is ordered*, pursuant to sections 1–4, 201–205, 218, 220, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154, 201–205, and 303(r) that the *Third Report and Order is adopted.*

12. *It is further ordered* that the provisions in this Order will be effective December 17, 1997. Although this date is less than thirty days after publication of the rule in the **Federal Register**, we find good cause under 5 U.S.C. § 553(d)(3) to make the rule effective less than thirty days after publication, because local exchange carriers subject to price cap regulation must file access reform tariffs no later than December 17, 1997, in order for them to be effective

by January 1, 1998. In addition, to ensure that the local exchange carriers subject to price cap regulation have actual notice of this rule immediately following its release, we are serving those entities by overnight mail. The collections of information contained are contingent upon approval by the Office of Management and Budget.

13. *It is further ordered* that, for local exchange carriers subject to price cap regulation making tariff revisions pursuant to this Order, prior to December 17, 1997, to become effective January 1, 1998, §§ 61.58 and 61.59 of the Commission's rules, 47 CFR 61.58 and 61.59, *are hereby waived.* For these purposes, affected local exchange carriers shall cite the "FCC 97–401" as the authority for making such filings.

14. *It is further ordered,* that 47 C.F.R., Part 69, *is amended* as set forth in the rule changes.

15. *It is further ordered,* that the Commission's Office of Managing Director *shall send* a copy of this *Third Report and Order,* including the Final Regulatory Flexibility Act Analysis and Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 69

Communications Common Carriers, Tariffs.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 69 of title 47 of the Code of Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. §§ 154 (i) and (j), 201, 202, 203, 205, 218, 254, and 403.

§ 69.30 [Amended]

2. Section 69.307 is amended by revising paragraph (c) and adding new paragraph (d) to read as follows:

* * * * *

(c) For all local exchange carriers not subject to price cap regulation and for other carriers that acquire all of the billing and collection services that they provide to interexchange carriers from unregulated affiliates through affiliate transactions, from unaffiliated third parties, or from both of these sources, all other General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Local Switching, Information, Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities, combined.

(d) For local exchange carriers subject to price cap regulation and not covered by Section 69.307(c), a portion of General purpose computer investment (Account 2124), investment in Land (Account 2111), Buildings (Account 2121), and Office equipment (Account 2123) shall be apportioned to the billing and collection category on the basis of the Big Three Expense Factors allocator, defined in Section 69.2 of this Part, modified to exclude expenses that are apportioned on the basis of allocators that include General Support Facilities investment. The remaining portion of investment in these four accounts together with all other General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Local Switching, Information, Transport, and Special Access Elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities, combined.

[FR Doc. 97–32695 Filed 12–11–97; 9:59 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208295–7295–01; I.D. 111897A]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Interim 1998 Harvest Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim 1998 harvest specifications for groundfish and associated management measures.

SUMMARY: NMFS issues interim 1998 total allowable catch (TAC) amounts for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Gulf of Alaska (GOA). The intended effect is to conserve and manage the groundfish resources in the GOA.

EFFECTIVE DATE: 0001 hrs, Alaska local time (A.l.t.), January 1, 1998, until the effective date of the final 1998 harvest specifications for GOA groundfish, which will be published in the **Federal Register.**

ADDRESSES: The preliminary 1998 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1997, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, telephone 907–586–7237.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the GOA are governed by Federal regulations at 50 CFR part 679 that implement the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP is implemented by regulations at 50 CFR part 679. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 600.

The Council met September 22–29, 1997, to review scientific information concerning groundfish stocks. The Council adopted for public review the preliminary SAFE Report for the 1998 GOA groundfish fisheries. The preliminary SAFE Report, dated September 1997, provides an update on the status of stocks. Copies of the preliminary SAFE Report are available from the Council (see **ADDRESSES**). The Council recommended a preliminary total TAC of 309,715 metric tons (mt) and a preliminary total acceptable biological catch (ABC) of 532,020 mt for the 1998 fishing year.

Under § 679.20(c)(1)(ii), NMFS is publishing in the Proposed Rules section of this issue of the **Federal Register** for review and comment proposed harvest specifications for groundfish and associated management measures in the GOA for the 1998 fishing year. That document contains a detailed discussion of the 1998 specification process and of the proposed 1998 ABCs and overfishing levels, proposed establishment of the 1998 annual TAC and initial TAC amounts and apportionments thereof and reserves for each target species and the "other species" category, apportionments of pollock and Pacific cod TAC, apportionments of the sablefish TAC to vessels using hook-and-line and trawl gear, and halibut prohibited species catch (PSC) limits.

This action establishes interim harvest specifications and apportionments thereof for the 1998 fishing year effective on January 1, 1998, that will remain in effect until superseded by the final 1998 harvest specifications. Background information concerning the 1998 harvest specification process upon which this interim action is based is provided in the above-mentioned proposed harvest specifications document appearing in the Proposed Rules section of this **Federal Register** issue.

1. Establishment of Interim TACs

Section 679.20(c)(2) requires that interim specifications—one-fourth of the proposed specifications, not including the reserves and the first seasonal allowance of pollock, one-fourth of the inshore and offshore allocations of Pacific cod in each regulatory area, the proposed first seasonal allowance of pollock, and one-fourth of the halibut PSC amounts—be established effective 0001 hours, A.l.t., January 1, that will remain in effect until superseded by final harvest specifications, which will be published in the **Federal Register.**

The reserves for the GOA are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish species, and the "other species" category. Given that the GOA groundfish TAC amounts have been utilized fully since 1987, and NMFS expects the same to occur in 1998, NMFS proposes reapportioning all the reserves to TAC, except for Pacific cod. The interim TAC amounts contained in Table 1 reflect the reapportionment of reserves back to the TAC.

2. Interim 1998 GOA Groundfish Harvest Specifications and Apportionments Thereof

Table 1 sets forth interim TAC amounts, interim TAC allocations of Pacific cod to the inshore and offshore components, the first seasonal allowance of pollock in the combined Western and Central regulatory areas, and interim sablefish TAC apportionments to hook-and-line and trawl gear. These interim TAC amounts and apportionments thereof become effective at 0001 hours, A.l.t., January 1, 1998.

TABLE 1.—INTERIM 1998 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)[1 2]. THE FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE COMBINED W/C REGULATORY AREAS. INTERIM SABLEFISH TAC APPORTIONMENTS TO HOOK-AND-LINE (H/L) AND TRAWL (TRW) GEAR

Species	Area	Interim TAC (mt)
Pollock[3 4]		
	W (610)	6,050
	C (620)	10,165
	C (630)	7,985
Subtotal	W/C	24,200
	E	2,200
Total		26,400
Pacific cod[5]		
Inshore	W	4,361
Offshore	W	484
Inshore	C	7,864
Offshore	C	874
Inshore	E	216
Offshore	E	24
Total		13,823
Flatfish, Deep-water[6]		
	W	85
	C	923
	E	785
Total		1,793
Rex sole		
	W	297
	C	1,373
	E	618
Total		2,288
Flathead sole		
	W	500
	C	1,250
	E	510
Total		2,260
Flatfish, Shallow-water[7]		
	W	1,125

TABLE 1.—INTERIM 1998 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)[1][2]. THE FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE COMBINED W/C REGULATORY AREAS. INTERIM SABLEFISH TAC APPORTIONMENTS TO HOOK-AND-LINE (H/L) AND TRAWL (TRW) GEAR—Continued

Species	Area	Interim TAC (mt)
	C	3,238
	E	295
Total		4,658
Arrowtooth flounder		
	W	1,250
	C	6,250
	E	1,250
Total		8,750
Sablefish[8][9][10]		
H/L	W	N/A (372)
TRW	W	93
H/L	C	N/A (1,282)
TRW	C	321
H/L	Wyak	N/A (573)
TRW	WYak	30
H/L	SEO	N/A (912)
TRW	SEO	48
Total		3,631
Pacific ocean perch[11]		
	W	368
	C	1,338
	E	592
Total		2,298
Shortraker/rougheye[12]		
	W	40
	C	242
	E	115
Total		397
Rockfish, northern[13]		
	W	210
	C	1,037
	E	3
Total		1,250
Rockfish, other[14][15]		
	W	5
	C	162
	E	375
Total		542
Rockfish, pelagic shelf[16]		
	W combined	142
	C offshore	830
	C nearshore	65
	E combined	248
Total		1,285
Rockfish, demersal shelf SEO[17]	SEO	237
Thornyhead rockfish	GW	425
Atka mackerel	GW	250

TABLE 1.—INTERIM 1998 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)[1][2]. THE FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE COMBINED W/C REGULATORY AREAS. INTERIM SABLEFISH TAC APPORTIONMENTS TO HOOK-AND-LINE (H/L) AND TRAWL (TRW) GEAR—Continued

Species	Area	Interim TAC (mt)
Other species[18]		3,687
GOA Total Interim TAC		73,974

(Interim TAC amounts have been rounded.)

[1] Reserves have been reapportioned back to each species TAC and are reflected in the interim TAC amounts except for Pacific cod. (See § 679.20(a)(2))

[2] See § 679.2 for definitions of regulatory area and statistical area. See Figure 3b to part 679 for a description of regulatory district.

[3] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area, and is further divided into three allowances of 25 percent, 25 percent, and 50 percent. The first allowances are in effect on an interim basis as of January 1, 1998. In the Eastern Regulatory Area, pollock is not divided into less than annual allowances, and one-fourth of the TAC is available on an interim basis.

[4] The TAC apportionment for pollock in all regulatory areas and all seasonal allowances is divided into inshore and offshore components. The inshore component is apportioned 100 percent of the pollock TAC in each regulatory area after subtraction of amounts that are determined by the Regional Administrator, NMFS, to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown and will be determined during the fishing year. (See § 679.20(a)(6)(ii).)

[5] The TAC apportionment of Pacific cod in all regulatory areas is divided into inshore and offshore components. The inshore and offshore component allocations are 90 percent and 10 percent, respectively, of the Pacific cod TAC in each regulatory area. (See § 679.20(a)(6)(iii).)

[6] "Deep-water flatfish" means Dover sole and Greenland turbot.

[7] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[8] Sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear. Five percent is allocated to trawl gear and may only be used as bycatch to support directed fisheries for other target species. (See § 679.20(a)(4).)

[9] The sablefish hook-and-line (H/L) gear fishery is managed under the Individual Fishing Quota (IFQ) program and is subject to regulations contained in subpart D of 50 CFR part 679. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Under § 679.7(f)(3), retention of sablefish caught with H/L gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 1998, IFQ permits and IFQ cards will not be valid prior to the effective date of the 1998 final specifications. Thus, fishing for sablefish with H/L gear will not be authorized under these interim specifications. Nonetheless, interim amounts are shown in parentheses to reflect assignments of one-fourth of the proposed TAC amounts among gear categories and regulatory areas in accordance with § 679.20(c)(2)(i). See § 679.40 for guidance on the annual allocation of IFQ.

[10] Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained.

[11] "Pacific ocean perch" means *Sebastes alutus*.

[12] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[13] "Northern rockfish" means *Sebastes polyspinis*.

[14] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.

[15] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatei* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. babcocki* (redbanded), and *S. reedi* (yellowmouth).

[16] "Pelagic shelf rockfish" includes *Sebastes melanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail). "Offshore Pelagic shelf rockfish" includes *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus*. "Nearshore Pelagic shelf rockfish" includes *S. melanops* (black) and *S. mystinus* (blue).

[17] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[18] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for "other species" equals 5 percent of the TAC amounts of target species.

3. Interim Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. The Council proposed to reestablish the 1997 halibut mortality limits for 1998 because no new information was available. As in 1997, the Council proposes to exempt pot gear, jig gear, and the sablefish hook-and-line fishery from halibut PSC limits for 1998. The interim PSC limits are effective on January 1, 1998, and remain in effect until superseded by the final 1998 harvest specifications, which will be published in the **Federal Register**. The interim halibut PSC limits are as follows: (1) 500 mt to trawl gear, (2) 75 mt to hook-and-line gear for fisheries other than demersal shelf rockfish, and (3) 2.5 mt to hook-and-line gear for demersal shelf rockfish fishery in the Southeast Outside District.

Section 679.21(d)(3)(iii) authorizes apportionments of the trawl halibut PSC limit allowance as bycatch allowances to a deep-water species complex, comprised of rex sole, sablefish, rockfish, deep-water flatfish, and arrowtooth flounder, and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and other species. The interim 1998 apportionment for the shallow-water species complex is 417 mt and for the deep-water species complex is 83 mt.

Prior to the beginning of the 1998 fishing year, NMFS will implement fishery closures based on the interim amounts of groundfish specified in Table 1 and on determinations of the amount of each TAC needed to support anticipated groundfish fisheries prior to the time that the final specifications are effective for the 1998 GOA groundfish fishery.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries finds for good cause under 5

U.S.C. 553(b)(B) that the need to establish interim harvest specifications for the fisheries in the GOA, effective on January 1, 1998, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Section 679.20(c)(2) requires NMFS to specify interim harvest specifications that are effective on January 1 and that will remain in effect until superseded by final specifications established by notice and comment rulemaking in order for the GOA groundfish fishing season to begin on January 1 (see § 679.23). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on January 1, which would result in unnecessary closures and disruption within the fishing industry. Because the stock assessment reports and other information concerning the fisheries in the GOA became available only recently, NMFS is not able to provide an opportunity for comment on the interim specifications. It is anticipated that the interim specifications will be in effect for only a short period of time before they are superseded by the final specifications. Proposed specifications are published as a proposed rule in this issue of the **Federal Register** and provide the opportunity for public comment.

These interim specifications are exempt from the requirements of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because they are not required to be issued with prior notice and opportunity for public comment.

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

Dated: December 9, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32680 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971206296–7296–01; I.D. 111997A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 1998 Harvest Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim 1998 harvest specifications for groundfish; associated management measures.

SUMMARY: NMFS issues interim 1998 total allowable catch (TAC) amounts for each category of groundfish, pollock Community Development Quota (CDQ) amounts, and prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). The intended effect is to conserve and manage the groundfish resources in the BSAI.

DATES: 0001 hours, Alaska local time (A.l.t.), January 1, 1998, until the effective date of the final 1998 harvest specifications for BSAI groundfish, which will be published in the **Federal Register**.

ADDRESSES: The preliminary 1998 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1997, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act. The FMP is implemented by regulations at 50 CFR part 679. General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met September 22–29, 1997, to review scientific information concerning groundfish stocks. The Council adopted for public review the preliminary SAFE Report for the 1998 BSAI groundfish fisheries. The preliminary SAFE Report, dated September 1997, provides an update on the status of stocks. Copies of the SAFE Report are available from the Council (see **ADDRESSEES**). The preliminary TAC amounts for each species are based on the best available biological and socioeconomic information. The Council recommended a preliminary total TAC of 2,000,000 metric tons (mt) and a preliminary total acceptable biological catch (ABC) of 2,440,430 mt for the 1998 fishing year.

Under § 679.20(c)(1), NMFS is publishing in the Proposed Rules section of this issue of the **Federal Register** for review and comment proposed harvest specifications for groundfish and associated management measures in the BSAI for the 1998 fishing year. That document contains a detailed discussion of the proposed 1998 annual TACs, initial TACs (ITACs) and related apportionments, ABC amounts and overfishing levels, prohibited species bycatch allowances, and associated management measures for the BSAI groundfish fishery.

This action establishes interim harvest specifications and apportionments thereof for the 1998 fishing year effective January 1, 1998, that will remain in effect until superseded by the final 1998 harvest specifications. Background information concerning the 1998 groundfish harvest specification process upon which this interim action is based is provided in the above mentioned proposed initial specification document appearing in the above mentioned 1998 proposed harvest specifications document appearing in this **Federal Register** issue.

Establishment of Interim TACs

Except for the hook-and-line and pot gear allocation of sablefish, each species' TAC initially is reduced by 15 percent to establish the ITAC for each species (§ 679.20(b)(1)(i)). The sum of the 15-percent amounts is the reserve. One half of the pollock TACs placed in the reserve are designated as a CDQ reserve for use by CDQ participants (§ 679.31(a)(1)). The remainder of the reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing of a target species or the "other species" category. The ITAC amount for each species, except for the hook-and-line and pot gear allocation for sablefish, is the remainder of the TAC amount after subtraction of the reserve.

Section 679.20(c)(2)(ii) requires that one-fourth of each proposed ITAC amount and apportionment thereof (not including the first seasonal allowance of pollock), one-fourth of each prohibited species catch (PSC) allowance established under § 679.21, and the first seasonal allowance of pollock TAC be established effective 0001 hours, A.l.t., January 1, that will remain in effect until superseded by the final harvest specifications.

Interim 1998 BSAI Groundfish Harvest Specifications

Table 1 sets forth interim TAC amounts and apportionments thereof, interim TAC allocations of pollock to the inshore and offshore components, first seasonal allowances of pollock TAC and pollock CDQ, an interim sablefish apportionment to trawl gear, and Pacific cod TAC apportionments to gear types.

Section 679.20(c)(2)(ii) do not provide for an interim specification either for sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota management plan. As a result, fishing for CDQ sablefish and sablefish harvested with fixed gear is prohibited until the effective date of the final 1998 groundfish specifications.

TABLE 1. INTERIM 1998 TAC AMOUNTS[1] FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[2]

Species and component (if applicable)	Area and Gear (if applicable)	Interim TAC and CDQ
Pollock:[3 4 5]		
Inshore	BS	151,279
Offshore	BS	280,946
Inshore	AI	8,330
Offshore	AI	15,470
Inshore	BogDist	298
Offshore	BogDist	553
CDQ	BS	38,137
CDQ	AI	2,100
CDQ	BogDist	75
Total Pollock		497,187
Pacific Cod[6]	Jig	1,148
	H/L & Pot	29,261
	TRW catcher	13,483
	TRW C/Ps	13,483
Total P cod		57,375
Sablefish[7 8]	BS-TRW	117
	BS-H/L & Pot	N/A
	AI-TRW	63
	AI-H/L & Pot	N/A
Total Sablefish		180
Atka mackerel	Western AI	6,842
	Central AI	4,143
	Eastern AI/BS	3,187
Total Atka mackerel		14,172
Yellowfin sole	BSAI	48,875
Rock sole	BSAI	20,651
Greenland turbot	BS	1,281
	AI	631
Total Greenland turbot		1,912
Arrowtooth flounder	BSAI	4,411
Flathead sole	BSAI	9,243
Other flatfish[9]	BSAI	10,784
Pacific ocean perch	BS	595
	Western AI	1,357
	Central AI	673
	Eastern AI	688
Total Pacific ocean perch		3,313
Other Rockfish[11]	BS	79
	AI	151
Total Other Rockfish		230
Other red rockfish[10]	BS	223
Sharpchin/Northern	AI	926
Shortraker/Rougheye	AI	199
Squid	BSAI	418
Other Species[12]	BSAI	5,482

TABLE 1. INTERIM 1998 TAC AMOUNTS[1] FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[2]—Continued

Species and component (if applicable)	Area and Gear (if applicable)	Interim TAC and CDQ
Total interim TAC		675,581

[1] Interim TAC amounts are in metric tons and have been rounded downwards to the nearest whole ton.
[2] Amounts apply to the entire Bering Sea and Aleutian Islands management area (BSAI), Bering Sea (BS), or Aleutian Islands (AI), as indicated. With the exception of pollock, and for purposes of these specifications, the BS includes the Bogoslof District (BogDist).
[3] After subtraction of reserves, the ITAC amounts of pollock for each subarea or district are divided into roe and non-roe seasonal allowances. (See § 679.20(a)(5)(i).) For the BS subarea, the roe and non-roe seasonal allowances are 45 and 55 percent of the pollock ITAC amounts, respectively. The AI subarea and the Bogoslof District receive 100 percent of their respective ITAC seasonal allowances during the roe-season with the remainder of the respective ITAC seasonal allowance during the non-roe season.
[4] Inshore and offshore component allocations are 35 and 65 percent of the ITAC amounts, respectively. (See § 679.20(a)(6)(i).) The first seasonal allowance of the inshore/offshore component allocations are in effect on January 1 as an interim TAC.
[5] One-half of the pollock TAC (7.5 percent of each TAC) placed in the reserve for each subarea or district will be assigned to the Community Development Quota (CDQ) program. (See § 679.31(a)(1).) For the BS subarea, the roe seasonal allowance is 45 percent of the CDQ pollock reserve. The AI subarea and the Bogoslof District receive 100 percent of their respective CDQ reserve allocations during the roe season with the remainder of the respective reserve becoming available after the end of the roe season. The first seasonal allowance of the CDQ reserve is available on January 1 as an interim TAC.
[6] After subtraction of the reserves, the ITAC amount for Pacific cod, is allocated 2 percent to vessels using jig gear, 51 percent to H/L gear, and 47 percent to TRW. The Pacific cod allocation to trawl gear is split evenly between catcher vessels and catcher/processor vessels (See § 679.20(a)(7)(i)). Pacific cod ITAC seasonal apportionments to vessels using H/L or pot gear are not reflected in the interim TAC amounts. One-fourth of the ITAC gear apportionments are in effect on January 1 as an interim TAC.
[7] Sablefish gear allocations are as follows: In the BS subarea, TRW gear is allocated 50 percent and H/L and pot gear is allocated 50 percent of the TAC. In the AI subarea, TRW gear is allocated 25 percent and H/L and pot gear is allocated 75 percent of the TAC (See § 679.20(a)(4)(iii) and (iv)). Fifteen percent of the sablefish TRW gear allocation is placed in the nonspecific reserve. One-fourth of the ITAC amount for TRW gear is in effect January 1 as an interim TAC amount.
[8] The sablefish H/L gear fishery is managed under the Individual Fishing Quota (IFQ) program and subject to regulations contained in subpart D of 50 CFR part 679. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Twenty percent of the sablefish H/L and pot gear final TAC amount will be reserved for use by CDQ participants. (See § 679.31(c).) Existing regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the CDQ sablefish reserve or an interim specification for sablefish managed under the IFQ program. In addition, in accordance with § 679.7(f)(3), retention of sablefish caught with fixed gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 1998, IFQ permits and IFQ cards will not be valid prior to the effective date of the 1998 final specifications. Thus, fishing for sablefish with fixed gear is not authorized under these interim specifications. See subpart D of 50 CFR part 679 and § 679.23(g) for guidance on the annual allocation of IFQ and the sablefish fishing season.
[9] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, arrowtooth flounder and yellowfin sole.
[10] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.
[11] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.
[12] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

Interim Allocation of PSC Limits for Crab, Halibut, and Herring

Under § 679.21(e), annual PSC limits are specified for red king crab and *Chionoecetes bairdi* Tanner crab in applicable Bycatch Limitation Zones (see § 679.2) of the BS subarea, and for Pacific halibut and Pacific herring throughout the BSAI.

Section 679.21(e) authorizes the apportionment of each PSC limit into PSC allowances for specified fishery categories. NMFS has approved Amendment 40 to the FMP that establishes a *C. opilio* PSC limit. NMFS anticipates that regulations implementing the *C. opilio* PSC limit will not be published in the **Federal Register** and effective before mid-December 1997. Thus, regulatory authority does not exist to establish an interim 1998 PSC limit for this species. NMFS anticipates that the final 1998 specifications will include a *C. opilio* PSC limit apportioned among specific trawl fisheries.

Section 679.20(c)(2)(ii) requires that one-fourth of each proposed PSC allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final harvest specifications. The interim PSC allowances are specified in Table 2 and are in effect at 0001 hours, A.l.t., January 1, 1998.

TABLE 2.—INTERIM 1998 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES.

Trawl fisheries	Prohibited species and zone			*C. bairdi* (animals)	
	Halibut (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1[1]	Zone 1[1]	Zone 2[1]
Yellowfin sole	233	67	2,500	69,079	267,750
Rock sole/oth.flat/flat sole[2]	199	.....	18,750	74,013	89,250
Turbot/arrow./sable[3]	0	.....	.....	.....	0
Rockfish	0	2	.....	.....	1,750
Pacific cod	400	5	1,875	33,306	48,750
Midwater pollock	.....	286	.....	.....	.....
Pollock/Atka/other[4]	88	36	1,875	11,102	117,500

TABLE 2.—INTERIM 1998 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES.—Continued

Trawl fisheries	Prohibited species and zone			*C. bairdi* (animals)	
	Halibut (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1[1]	Zone 1[1]	Zone 2[1]
Total Trawl	919	395	25,000	187,500	525,000
Non Trawl Fisheries					
Pacific Cod	210	.....	.....	.....	.....
Other Non-Trawl	15	.....	.....	.....	.....
Groundfish pot & jig	(5)	.....	.....	.....	.....
Sablefish hook & line	(5)	.....	.....	.....	.....
Total non-Trawl	225	.....	.....	.....	.....

[1] Refer to § 679.2 for definitions of areas.
[2] Rock sole, flathead sole, and other flatfish fishery category.
[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[4] Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.

Prior to the beginning of the 1998 fishing year, NMFS will issue fishery closures based on these interim specifications if the Administrator, Alaska Region, NMFS determines that interim TAC amounts are required as incidental catch to support other anticipated groundfish fisheries or if the PSC allowance for a fishery has been reached.

After consideration of public comments on the proposed 1998 specifications for BSAI groundfish and additional scientific information presented at its December 1997 meeting, the Council may recommend other closures to directed fishing. NMFS may implement other closures at the time the final 1998 harvest specifications are implemented or during the 1998 fishing year, as necessary for effective management.

Classification

This action is authorized under 50 CFR part 679 and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries finds for good cause under 5 U.S.C. 553(b)(B) that the need to establish interim harvest specifications for the fisheries in the BSAI, effective January 1, 1998, makes it impractical and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Section 679.20(c)(2) requires NMFS to specify interim harvest specifications that are effective on January 1 and that will remain in effect until superseded by final specifications established by notice and comment rulemaking in order for the BSAI groundfish fishing season to begin on January 1 (see § 679.23). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on January 1, which would result in unnecessary closures and disruption within the fishing industry. Because stock assessment reports and other information concerning the fisheries in the BSAI became available only recently, NMFS is not able to provide an opportunity for comment on the interim specifications. It is anticipated that the interim specifications will be in effect for only a short period of time before they are superseded by the final specifications. Proposed specifications are published as a proposed rule in this issue of the **Federal Register** and provide the opportunity for public comment.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: December 9, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32683 Filed 12–12–97; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 240
Monday, December 15, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 96–013–1]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the pseudorabies regulations by adding the glycoprotein I Particle Concentration Fluorescence Immunoassay test to the list of official pseudorabies tests and allow its use as an approved differential test. We are proposing to take this action based on a finding that the sensitivity and specificity of the glycoprotein I Particle Concentration Fluorescence Immunoassay test are equivalent to those of official tests for the diagnosis of pseudorabies. This proposed change would allow the glycoprotein I Particle Concentration Fluorescence Immunoassay test to be used as an official pseudorabies test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations other than slaughter or a quarantined herd or quarantined feedlot. Adding the glycoprotein I Particle Concentration Fluorescence Immunoassay test to the list of official pseudorabies tests would also allow its use for the testing of nonvaccinated swine.

DATES: Consideration will be given only to comments received on or before February 13, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–013–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–013–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold C. Taft, Senior Staff Veterinarian, Swine Health Staff, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–4916; or e-mail: ataft@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus. The Animal and Plant Health Inspection Service's (APHIS') regulations in 9 CFR part 85 (referred to below as the regulations) govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

For the purposes of interstate movement, the regulations separate swine into four basic categories: (1) Swine infected with or exposed to pseudorabies; (2) pseudorabies vaccinated swine (except swine from qualified negative gene-altered vaccinated herds) not known to be infected with or exposed to pseudorabies; (3) swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies; and (4) swine from qualified negative gene-altered vaccinated herds. Provisions governing the interstate movement of swine from each category are found in §§ 85.5, 85.6, 85.7, and 85.8, respectively.

Paragraphs (a) and (b) of § 85.6 provide that pseudorabies vaccinate swine, except swine from qualified negative gene-altered vaccinated herds, that are not known to be infected with or exposed to pseudorabies may be moved interstate directly to slaughter or to a quarantined herd or quarantined feedlot under certain specified conditions. Paragraph (c) of § 85.6 further provides that such pseudorabies vaccinate swine may be moved interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot if the swine have been vaccinated for pseudorabies with a glycoprotein I (gpI) deleted gene-altered pseudorabies vaccine and they are accompanied by a certificate that is delivered to the consignee. The regulations in § 85.6(c) also require that the certificate contain certain additional information, specifically: (1) The identification of each swine; (2) a statement that each swine was vaccinated with a gpI deleted gene-altered pseudorabies vaccine; (3) a statement that each swine has been subjected to an approved differential pseudorabies test no more than 30 days prior to the interstate movement and has been found negative; (4) the date of the approved differential pseudorabies tests; and (5) the name of the laboratory that conducted the approved differential pseudorabies test. Currently, the regulations provide only for the use of the gpI enzyme-linked immunosorbent assay (ELISA) as an approved differential pseudorabies test to qualify swine for interstate movement under § 85.6(c).

The Committee on Diagnostics and Interpretive Serology of the American Association of Veterinary Laboratory Diagnosticians (AAVLD) has recognized that the sensitivity and specificity of the gpI Particle Concentration Fluorescence Immunoassay (PCFIA) test are equivalent to those of official tests for the diagnosis of pseudorabies. Based on that finding, we are proposing to add the gpI PCFIA test to the list of official pseudorabies tests in § 85.1 and allow its use as an approved differential pseudorabies test to qualify swine for interstate movement under § 85.6(c).

Adding the gpI PCFIA test as an official pseudorabies test would also mean that the gpI PCFIA test would be available for testing nonvaccinated swine to determine their pseudorabies status. As noted above, the AAVLD has recognized that the sensitivity and specificity of the gpI PCFIA test are equivalent to those of official tests for the diagnosis for pseudorabies. The gpI PCFIA test is specific for antibodies to the glycoprotein I present in the pseudorabies virus; nonvaccinated swine, as well as swine vaccinated with a gpI-deleted vaccine, would not produce positive results to the gpI PCFIA test unless the swine were infected with pseudorabies. Designating the gpI PCFIA test as an official pseudorabies test would enable swine producers to use a single test on both gpI vaccinates and nonvaccinated swine.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would amend the pseudorabies regulations by adding the gpI PCFIA test to the list of official pseudorabies tests. This proposed change would allow the gpI PCFIA test to be used as an official pseudorabies test to qualify certain pseudorabies vaccinated swine for interstate movement to destinations other than slaughter or a quarantined herd or quarantined feedlot. Adding the gpI PCFIA test to the list of official pseudorabies tests would also allow its use for the testing on nonvaccinated swine.

The total U.S. inventory of hogs and pigs was approximately 56 million, valued at $5.283 billion, in 1996. The gross income of the inventory is approximately $11 billion. More than 99 percent of swine producers are considered to be small entities. According to the standard set by the Small Business Administration for agricultural producers, a producer with less than $0.5 million annually in sales qualifies as a small entity.

Nearly 95 percent of the swine inventory within the United States has not yet achieved pseudorabies-free status. The addition of this new test would provide an extra choice of official pseudorabies test for those who raise swine, when a test is required for interstate movement. Testing costs would be incurred only when an owner chose to move gpI vaccinates interstate to destinations other than slaughter or a quarantined herd or quarantined feedlot, since pseudorabies vaccinated swine do not require a test prior to interstate movement for slaughter or to a quarantined herd or quarantined feedlot. The cost of the gpI PCFIA test is within the range of the currently available tests. The test is highly automated and those laboratories that have the test kit would be expected to accomplish the testing on large numbers of samples with greater speed. The test results have been found to produce fewer false negatives, reducing the need for tracebacks. The positive effect of having accurate results in a short time would be beneficial in all stages of pseudorabies eradication.

The provisions of this proposed rule that would allow the use of the gpI PCFIA test to determine the pseudorabies status of nonvaccinated swine are not expected to have a significant economic impact on the owners of nonvaccinated swine, as it only introduces an additional pseudorabies testing tool to ensure the health of the U.S. swine population. It is likely, though, that since the new gpI PCFIA test may be slightly higher in cost than other testing tools that are on the market, most owners of nonvaccinated swine would continue using less expensive official pseudorabies test until the cost of the gpI PCFIA test became comparable to that of other official tests.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 85 would be amended as follows:

PART 85—PSEUDORABIES

1. The authority citation for part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, in the definition of *official pseudorabies test*, in the second sentence, item 6 would be amended by adding the words ", including the gpI PCFIA test" immediately after the word "Test".

§ 85.6 [Amended]

3. Section 85.6 would be amended as follows:

a. In paragraph (c)(2)(iii), the words "or a gpI Particle Concentration Fluorescence Immunoassay (PCFIA)" would be added immediately after the word "(ELISA)".

b. In paragraph (c)(2)(iv), the words "or the gpI PCFIA" would be added immediately after the word "ELISA".

c. In paragraph (c)(2)(v), the words "or the gpI PCFIA" would be added immediately after the word "ELISA".

Done in Washington, DC, this 9th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32658 Filed 12–12–97; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–15]

RIN 2120–AA66

Proposed Modification of VOR Federal Airway V–465

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Federal Airway 465 (V–465) by lowering the floor of a portion of the airway from 12,400 feet mean sea level (MSL) to 1,200 feet above the surface. This action also proposes to establish a new segment of V–465 between Billings, Montana, and Miles City, Montana. The FAA is proposing this action to support an instrument approach procedure that is being developed for the Jackson Hole Airport, Wyoming, and to enhance aircraft operations management in the Jackson Hole, Wyoming, area.

DATES: Comments must be received on or before January 28, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 96–ANM–15, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056. The

official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916G, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ANM–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing to amend 14 CFR part 71 by lowering the floor of a portion of V–465 from 12,400 feet MSL to 1,200 feet above the surface. This action also proposes to establish a new segment of V–465 between Billings, Montana, and Miles City, Montana. When V–465 was established, the FAA intended that the airway include the segment between Billings, MT, and Miles City, MT; however, the airway segment was omitted due to a typographical error. This new segment does not result in any additional controlled airspace because the segment will be co-located with a segment of V–2. The FAA is proposing this action to support an instrument approach procedure that is being developed for the Jackson Hole Airport, Wyoming, and to enhance aircraft operations management in the Jackson Hole, Wyoming, area. The FAA is proposing this action to improve traffic flow and reduce controller workload at the Salt Lake City Air Route Traffic Control Center, thereby providing maximum service to all airspace users.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–465 [Revised]

From Bullion, NV; Wells, NV, 12 miles, 30 miles, 115 MSL, 20 miles, 90 MSL, 36 miles, 115 MSL, 24 miles, 95 MSL, Malad City, ID; Jackson, WY; Dunoir, WY; 14 miles, 45 miles, 137 MSL, Billings, MT; Miles City, MT; to Williston, ND.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32666 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–023–FOR]

Oklahoma Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma Abandoned Mine Land Reclamation Plan (hereinafter referred to as the "Oklahoma plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment pertains to a formal request by the Oklahoma Conservation Commission (OCC) to assume responsibility of the abandoned mine land reclamation (AMLR) emergency program in Oklahoma. The proposed amendment is intended to provide information to verify that Oklahoma has the authority under its existing plan to conduct the AMLR emergency program on behalf of OSM.

This notice sets forth the times and locations that the Oklahoma plan and the proposed amendment to that plan will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., January 14, 1998. If requested, a public hearing on the proposed amendment will be held on January 9, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on December 30, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

Copies of the Oklahoma plan, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430

Oklahoma Conservation Commission, 2800 N. Lincoln Blvd., Suite 160, Oklahoma City, Oklahoma 73105–4210, Telephone: (405) 521–2384

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Plan

On January 21, 1982, the Secretary of the Interior approved the Oklahoma plan. Background information on the Oklahoma plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 21, 1982, **Federal Register** (47 FR 2989). Subsequent actions concerning program amendments can be found at 30 CFR 936.25.

II. Description of the Proposed Amendment

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), OSM invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on behalf of OSM. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

By letter dated November 3, 1997 (Administrative Record No. OAML–77), Oklahoma submitted a proposed amendment to its plan pursuant to SMCRA. Oklahoma submitted the proposed amendment at its own initiative. This amendment is intended to demonstrate Oklahoma's capability to effectively perform the AMLR emergency program on behalf of OSM. A brief discussion of the proposed amendment is presented below.

A. The proposed amendment would allow Oklahoma to assume the administration of the AMLR emergency program in Oklahoma on behalf of OSM. In its formal submittal, Oklahoma stated that in 1982, as part of its approved State Abandoned Mine Land Program, the OCC incorporated the necessary language to assume responsibility of the AMLR emergency program at a later date. The following information, taken from the approved Oklahoma plan, was included in Oklahoma's formal submission to OSM to verify that the authority already exists for the OCC to assume AMLR emergency program responsibilities:

1. A letter from the Governor that designates the OCC as the agency responsible for the Abandoned Mine Land Reclamation Program in Oklahoma.

2. A legal opinion from the Attorney General that the OCC has the power to administer the Abandoned Mine Land Reclamation Program in Oklahoma.

3. A copy of the Oklahoma Abandoned Mine Reclamation Act (45 O.S., sections 740.1 through 940.7).

Section 740.7(A) authorizes OCC to spend monies from the State Abandoned Mine Reclamation Fund for emergency restoration, reclamation, abatement, control or prevention of adverse effects of coal mining practices on eligible land if it finds that an emergency exists constituting a danger to the public health, safety or general welfare and no other person or agency will act expeditiously to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices. Section 740.7(B) authorizes the OCC to enter on any land where an emergency exists and any other necessary access land to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices and do all things necessary or expedient to protect the public health, safety or general welfare.

4. A copy of the Oklahoma Abandoned Mine Land Reclamation Program (Oklahoma Administrative Code (OAC) 155:15–1–1 through 155:15–1–16).

Oklahoma's regulation at OAC 155:15–1–8(e) provide procedures for emergency studies or reclamation.

5. A copy of section 884.13(c)(6) of the Oklahoma plan concerning entry for emergency study and reclamation.

6. A copy of section 884.13(e) of the Oklahoma plan concerning public participation in Oklahoma's AMLR program.

B. After assuming the emergency program, Oklahoma would conduct investigations of potential emergency sites, and following OSM concurrence that emergency situations exist, perform remedial reclamation.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Oklahoma plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time

indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on December 30, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 936

Abandoned mine land reclamation, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 5, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–32599 Filed 12–12–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0002b, MT–001–0003b; FRL–5934–4]

Approval and Promulgation of Air Quality Implementation Plans; Montana; 1990 Base Year Carbon Monoxide Emission Inventories for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the 1990 base year carbon monoxide (CO) emission inventories for Missoula, Billings, and Great Falls that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990. In the Final Rules Section of this **Federal Register**, EPA is approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 14, 1998.

ADDRESSES: Written comments should be addressed to: Richard R. Long, Director, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, ph. (303) 312–6479.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register.**

Dated: October 3, 1997.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 97–32645 Filed 12–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[ND–001–0003b; FRL–5933–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the North Dakota plan for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which was required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan, which was submitted to EPA on September 11, 1997, establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards.

In the final rules section of this **Federal Register**, the EPA is approving the State's submittal in a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 14, 1998.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2-A, at the EPA Region VIII Office listed. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, room 304, Box 5520, Bismarck, North Dakota 58506–5520.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this **Federal Register.**

Dated: October 24, 1997.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 97–32639 Filed 12–12–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2362; Notice 1]

RIN 2137—AD06

Pipeline Safety: Incorporation by Reference of Industry Standard on Leak Detection

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Correction to RIN number.

SUMMARY: This document corrects the RIN number of the Notice of Proposed Rulemaking (Docket RSPA–97–2362; Notice 1), published in the **Federal Register** on October 29, 1997 (62 FR 56141). In the document heading on page 56141, the RIN number "RIN 2137–AD05" is changed to read "RIN 2137–AD06." The notice proposes to adopt as a referenced document an industry publication for pipeline leak detection, API 1130, "Computational Pipeline Monitoring."

FOR FURTHER INFORMATION CONTACT: Lloyd Ulrich, (202) 366–4556.

Issued in Washington, DC on December 9, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–32624 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971201282–7282–01; I.D. 102897B]

RIN 0648-AK38

Halibut Fisheries in U.S. Convention Waters Off Alaska; Fisheries of the Exclusive Economic Zone Off Alaska; Management Measures to Reduce Seabird Bycatch in the Hook-and-Line Halibut and Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would require operators of vessels fishing for Pacific halibut in U.S. Convention waters off Alaska to conduct fishing operations in a specified manner and to employ specified measures intended to reduce seabird bycatch and incidental seabird mortality. This rule would also amend the regulations requiring seabird bycatch avoidance measures in the hook-and-line groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA) to clarify one of the measures. The proposed halibut fisheries measures are intended to mitigate interactions with the short-tailed albatross (*Diomedea albatrus*), an endangered species protected under the Endangered Species Act (ESA), and with other seabird species in fisheries in and off Alaska.

DATES: Comments must be received by January 14, 1998.

ADDRESSES: Comments should be sent to Chief, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668,

Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to Room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the regulatory amendment may be obtained from NMFS at the above address, or by calling the Alaska Region, NMFS at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone are managed by NMFS under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 773 *et seq.*, 1801 *et seq.*; Magnuson-Stevens Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773 *et seq.*, authorizes the Council to develop and NMFS to implement regulations concerning halibut that are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC). Furthermore, the Magnuson-Stevens Act and the Halibut Act authorize the Council and NMFS to make regulatory changes that are consistent with the FMPs and that are necessary to conserve and manage the fixed gear Pacific halibut fisheries.

Background

The issue of seabird bycatch and incidental mortality in commercial fishing operations has been heightened in recent years. Further information on this issue was provided in the preambles to the proposed and final rules implementing seabird avoidance measures in the GOA and BSAI hook-and-line groundfish fisheries (62 FR 10016, March 5, 1997; 62 FR 23176, April 29, 1997), and the EA/RIR/FRFA prepared for that action. In addition, the United States is working with the United Nations' Food and Agriculture Organization to conduct a technical consultation on implementing mitigation measures to reduce seabird bycatch in longline fisheries around the world (62 FR 42766, August 8, 1997).

NMFS and the U.S. Fish & Wildlife Service (USFWS) are the U.S. co-leaders in this effort.

Recent takes of the endangered short-tailed albatross (two in 1995 and one in 1996) in hook-and-line groundfish fisheries in the BSAI and the GOA highlight a seabird bycatch problem. At its December 1996 meeting, the Council voted unanimously to recommend that all hook-and-line vessels fishing for groundfish in the GOA and BSAI be required to use certain seabird bycatch avoidance measures intended to reduce the incidental mortality of the short-tailed albatross and other seabird species. Furthermore, the Council recommended that these or similar measures be implemented in the Pacific halibut fishery in U.S. Convention waters off Alaska. Addressing a potential seabird bycatch problem in the Pacific halibut fishery is warranted given the similarities between the Pacific halibut fishery and the hook-and-line groundfish fisheries. At its annual meeting in January 1997, the IPHC reviewed and concurred with the development of seabird avoidance measures for the Pacific halibut fishery in U.S. Convention waters off Alaska.

A proposed rule that would implement seabird avoidance measures in the Alaska groundfish hook-and-line fisheries was published in the **Federal Register** on March 5, 1997 (62 FR 10016) and public comments were accepted through March 20, 1997. Final regulations were published April 29, 1997 (62 FR 23176). At its June 1997 meeting, the Council recommended extending the seabird avoidance requirements in the Alaska groundfish hook-and-line fisheries to the Pacific halibut fishery in U.S. Convention waters off Alaska. The Council also recommended that vessels less than 26 ft (7.9 m) length overall (LOA) in the Pacific halibut fishery and in the GOA and BSAI groundfish hook-and-line fisheries be exempt from some of the specified seabird avoidance measures.

Proposed Seabird Bycatch Avoidance Gear and Methods in the Pacific Halibut Fishery

The following proposed measures would apply to vessels fishing for Pacific halibut with hook-and-line gear in U.S. Convention waters off Alaska and are not intended to differ from measures implemented for the GOA and BSAI groundfish fisheries.

1. All applicable hook-and-line fishing operations:

a. Must use hooks that, when baited, sink as soon as they are put in the water. This could be accomplished by the use of weighted groundlines and/or thawed bait;

b. If offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must either be aft of the hauling station or on the opposite side of the vessel from the hauling station; and

c. Must make every reasonable effort to ensure that birds brought aboard alive are released alive and that, wherever possible, hooks are removed without jeopardizing the life of the bird.

2. All vessels greater than or equal to 26 ft (7.9 m) LOA and using hook-and-line gear must employ one or more of the following seabird avoidance measures:

a. Set gear between hours of nautical twilight (as specified in paragraph (e)(2)(iv)(D) of this section) using only the minimum vessel's lights necessary for safety;

b. Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

c. Tow a buoy, board, stick or other device during deployment of gear at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed; or

d. Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear.

This proposed rule would also remove a regulation at 50 CFR 679.24(e)(1)(ii) that effectively exempts halibut fishermen from having to use seabird avoidance gear and methods. When the seabird avoidance measures were promulgated for the Alaska groundfish fisheries, halibut fishermen were exempt until the Council and the IPHC could address this issue in the Pacific halibut fishery. This exemption would no longer be appropriate if NMFS approves this proposed rule.

Exemption for Operators of Small Vessels in the Pacific Halibut Fishery and the Alaska Groundfish Hook-and-Line Fisheries

Vessels less than 26 ft (7.9 m) LOA using hook-and-line gear in the Pacific halibut fishery and vessels less than 26 ft (7.9 m) LOA using hook-and-line gear in the groundfish fisheries in the BSAI or GOA would be required to comply with the above measures 1a through 1c, but would not be required to comply with measure 2.

Relatively little scientific information is available regarding the relationship of vessel size to seabird bycatch. One study of an experimental hake longline fishery off South Africa noted that

variations in the numbers of observed seabird catches appeared to be related, at least in part, to the extent to which birds congregate around vessels. This, in turn, appeared to be a function of the length of time during which offal is discarded. Smaller vessels may not attract scavenging seabirds to as great an extent as do large vessels, which provide a continuous supply of food. For example, smaller vessels fishing off the southwest cape in South Africa do not attract large numbers of scavenging birds because hauling and setting periods are much shorter and irregular, and the offal is available to birds only for short periods and in small quantities.

Public testimony at the Council meeting in June 1997 supported exempting small vessels from some of the avoidance measures. Representatives of fishing vessel associations testified that fishing practices of vessels less than 26 ft (7.9 m) LOA did not warrant the more extensive measures that are required under the current groundfish regulations, primarily because such vessels typically (1) use baited hooks that sink as soon as they enter the water; (2) use anchored groundlines; (3) deploy snap-on gear which adds weight to the groundline; (4) deploy gear at slow speeds, allowing the gear to sink immediately; (5) have minimal freeboard at the stern, reducing the exposure of baited hooks to seabirds; (6) use offal discharge in smaller quantities and more sporadically relative to larger vessels, thus providing less of an attraction to seabirds; and (7) fish in nearshore areas where the likelihood of encountering the short-tailed albatross and other pelagic seabirds is minimal. Small vessels using snap-on gear are less likely to have a seabird bycatch problem because of the weight of the snaps and the slow speed at which gear is deployed, both factors that contribute to the baited hooks sinking immediately upon gear deployment. Using snap-on gear requires attachment of gangions manually to the groundline as it is being deployed, so the vessel must deploy gear at slower speeds than when using conventional gear. The vessel length criterion of 26 ft (7.9 m) LOA was chosen because vessels of this size represent the typical skiff fleet. In 1996, of the 2,124 vessels that made landings in the halibut and sablefish fisheries, 328 were less than 26 ft (7.9 m) LOA (15 percent of the total number of vessels making halibut and sablefish landings). In 1996, of the 1,847 vessels issued Federal fisheries permits for the BSAI and GOA groundfish fisheries, 47 were less than 26 ft (7.9 m) LOA (2.5 percent of the total number of vessels issued Federal fisheries permits in 1996).

Proposed Amendment to Clarify Offal Discharge Requirement in the Alaska Groundfish Hook-and-Line Fisheries

The final rule promulgating seabird avoidance regulations for the Alaska groundfish hook-and-line fisheries (62 FR 23176; April 29, 1997) requires that any discharge of offal from a vessel must occur in a manner that distracts seabirds, to the extent practicable, from baited hooks while gear is being set or hauled. Public comment received after the final rule was published indicated that some persons interpreted the regulation to require offal discharge during the setting or hauling of gear. This was not NMFS' intent. This proposed rule would amend § 679.24(e)(2)(ii) to state more clearly NMFS' intent that if offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an IRFA as part of the RIR that describes the impact this proposed rule would have on small entities, if adopted. A copy of this analysis is available from NMFS (see **ADDRESSES**). Based on the analysis, it was determined that this proposed rule could have a significant negative economic impact on a substantial number of small entities. In 1996, 2,124 vessels landed halibut from U.S. Convention waters off Alaska. Of these vessels, 1,935 were less than 60 ft (18.3 m) LOA. NMFS does not have data indicating how many of these vessels are small entities, but it is reasonable to assume that most are small entities, and that all vessels under 60 ft are small entities.

The Regulatory Flexibility Act requires that the IRFA describe significant alternatives to the proposed rule that accomplish the stated objectives of the applicable statutes and that minimize any significant negative impact on small entities. Consistent with the stated statutory objectives, the IRFA must discuss significant alternatives to the proposed rule, such as (1) establishing different reporting requirements for small entities that take into account the resources available to small entities; (2) consolidating or simplifying reporting requirements; (3) using performance rather than design standards; and (4) allowing regulatory exemptions for small entities. Alternatives that addressed modifying reporting requirements for small entities were not considered by the Council or in this analysis. Such alternatives are irrelevant to this proposed action and would not mitigate the impacts on small entities. The proposed seabird avoidance measures are based on performance standards rather than on design standards, therefore alleviating a potential economic burden to small entities. The exemption for vessels less than 26 ft (7.9 m) LOA (all small entities) in the proposed rule would also alleviate a potential economic burden to small entities. In 1996, of the 2,124 vessels that made landings in the halibut and sablefish fisheries, 328 were less than 26 ft (7.9 m) LOA (15 percent of total number of vessels making halibut and sablefish landings). In 1996, of the 1,847 vessels that were issued Federal fisheries permits for the BSAI and GOA groundfish fisheries, 47 were less than 26 ft (7.9 m) LOA (2.5 percent of 1996 Federal fisheries permittees).

A variety of alternatives that would achieve this action's goal while minimizing economic impacts were considered. To provide maximum flexibility to participants in the fishery these alternatives are included in the proposed rule as options from which a vessel operator may chose in deciding how to comply with this proposed rule. Consequently, there are no additional alternatives that would mitigate the economic impact while achieving this action's purpose that can be discussed in this section. The economic impacts of this proposed rule would vary depending on which seabird avoidance measures a fisherman employs. The cost of buoys and bird streamer lines as seabird bycatch avoidance devices range from $50 to $250 per vessel. A lining tube is a technology used in fisheries of other nations to deploy baited hooks underwater to avoid birds and is offered as a possible option. NMFS anticipates that the operators of smaller vessels (less than 60 ft (18.3 m)) would choose an avoidance measure other than a lining tube, which could cost as much as $35,000 per vessel. There were 189 hook-and-line vessels equal to or greater than 60 ft (18.3 m) that made halibut landings in 1996.

Although this action could result in economic impacts on small entities, the status quo alternative could result in even more severe economic impacts. Failure to establish seabird avoidance measures proposed under this action could increase the likelihood of exceeding the incidental take limit to be specified for the short-tailed albatross. In that event, additional measures to

minimize the take of short-tailed albatross could be implemented, ranging from those proposed in this rule to additionally more stringent measures, including closures. The economic impacts to small entities resulting from such measures would depend on a variety of factors, although very significant negative impacts could be expected if the halibut fishery were closed due to the take of short-tailed albatross in excess of the incidental take authorized under the section 7 consultation with the USFWS.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 9, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.24, paragraph (e)(1)(ii) is removed, paragraphs (e)(1)(i), (e)(2)(iv) introductory text, and (e)(2)(iv)(A) through (e)(2)(iv)(D) are redesignated as paragraphs (e)(1), (e)(3) introductory text, and (e)(3)(i) through (e)(3)(iv), respectively, and redesignated paragraphs (e)(1) and (e)(3) introductory text and paragraph (e)(2)(ii) are revised to read as follows:

§ 679.24 Gear limitations.

* * * * *

(e) *Seabird avoidance gear and methods for hook-and-line vessels fishing for groundfish*—(1) *Applicability.* The operator of a vessel that is required to obtain a Federal fisheries permit under § 679.4(b)(1) must comply with the seabird avoidance measures in paragraphs (e)(2) and (e)(3) of this section while fishing for groundfish with hook-and-line gear in the BSAI, in the GOA, or in waters of the State of Alaska that are shoreward of the BSAI and the GOA.

(2) * * *

(ii) If offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station.

* * * * *

(3) For a vessel greater than or equal to 26 ft (7.9 m) LOA, the operator of that vessel described in paragraph (e)(1) of this section must employ one or more of the following seabird avoidance measures:

* * * * *

3. In § 679.42, paragraph (b) is revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) *Gear.* (1) *IFQ Fisheries* Halibut IFQ must be used only to harvest halibut with fishing gear authorized in § 679.2. Sablefish fixed gear IFQ must not be used to harvest sablefish with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area of the GOA.

(2) *Seabird avoidance gear and methods.* The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

* * * * *

[FR Doc. 97–32682 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–7298–01; I.D. 112097B]

Groundfish Fishery of the Bering Sea and Aleutian Islands; Fisheries of the Exclusive Economic Zone; Proposed 1998 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1998 harvest specifications for groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes 1998 harvest specifications, prohibited species bycatch allowances, and associated management measures for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish for the 1998 fishing year. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI and to provide an opportunity for public participation in the annual groundfish specification process.

DATES: Comments must be received by January 12, 1998.

ADDRESSES: Comments must be sent to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

The preliminary 1998 Stock Assessment and Fishery Evaluation (SAFE) report, dated September 1997, is available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Island Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total annual catch (TAC) for each target species and the "other species" category, the sum of which must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 679.20(a)(1)(i)). Regulations under § 679.20(c)(1) further require NMFS to publish annually and solicit public comment on proposed annual TACs, prohibited species catch (PSC) allowances, seasonal allowances of the pollock TAC, and amounts for the pollock and sablefish Community Development Quota (CDQ) reserve. The proposed specifications set forth in tables 1–6 of this proposed rule satisfy these requirements. For 1998, the sum of proposed TAC amounts is 2,000,000 mt. Under § 679.20(c)(3), NMFS will publish the final annual specifications for 1998 after considering (1) comments received within the comment period (see **DATES**) and (2) consultations with the Council at its December 1997 meeting.

Section 679.20(c)(2)(ii) require that interim specifications—one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each proposed PSC allowance established under § 679.21, and the first seasonal allowances of pollock—be established effective 0001 hours Alaska local time (A.l.t.), January 1, that will remain in effect until the effective date of the 1998 final harvest specifications, which will be published in the **Federal Register**. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification either for sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota management plan. Interim TAC specifications and apportionments thereof for the 1998 fishing year are being published in the Rules and Regulations section of this **Federal Register** volume.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC for each species are based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological information about the condition of groundfish stocks in the BSAI at its September 1997 meeting. This information was compiled by the Council's BSAI Groundfish Plan Team and is presented in the preliminary 1998 SAFE report for the BSAI groundfish fisheries, dated September 1997. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The preliminary 1998 SAFE report will be updated to include information collected during the 1997 resource assessment surveys. Revised stock assessments will be made available by the Plan Team in November 1997 and be included in the final 1998 SAFE report.

The proposed ABC amounts adopted by the Council for the 1998 fishing year are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The proposed ABCs also are based on new definitions of ABC and overfishing that were adopted by the Council as Amendment 44 to the FMP. A final rule implementing Amendment 44 was published in the **Federal Register** January 17, 1997 (62 FR 2656). In general, the new definitions involve sophisticated statistical analyses of fish populations and are based on a successive series of six levels, or tiers, of reliable information available to fishery scientists. In 1997, the application of the revised definitions resulted in lower exploitation rates and ABCs for most species, although biomass estimates generally are unchanged. Details of the Plan Team's recommendations for preliminary 1998 overfishing and ABC amounts for each species are provided in the preliminary 1998 SAFE report. This report is available from the Council (see **ADDRESSES**). At its September 1997 meeting, the Council's SSC reviewed the Plan Team's preliminary recommendations for 1998 ABC amounts. The SSC concurred in the Plan Team's recommendations, except for pollock in the Bogoslof district. For this stock, the Plan Team had recommended an ABC of 60,319 mt. However, the SSC recommended that this ABC be adjusted downwards by the ratio of current estimated biomass (280,000 mt) to target biomass (2,000,000 mt), which resulted in an SSC-recommended ABC of 8,400 mt. The Council adopted the proposed overfishing and ABC amounts recommended by the SSC (Table 1).

Specification and Apportionment of TAC Amounts

The Council adopted the AP's proposals for the 1998 BSAI TAC amounts. For each species, this amount equals the lesser of either the 1997 TAC or the SSC's recommended 1998 ABC. NMFS finds that the recommended proposed TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 1.4 million to 2.0 million mt.

Except for the hook-and-line and pot gear allocation of sablefish, each species' TAC initially is reduced by 15 percent to establish the ITAC for each species (§ 679.20(b)(1)(i)). The sum of the 15-percent amounts is the reserve. One half of the pollock TACs placed in reserve is designated as a CDQ reserve for use by CDQ participants (§ 679.31(a)(1)). The remainder of the reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

NMFS anticipates that the final 1998 groundfish specifications will include a 7.5 percent CDQ reserve for each groundfish species TAC and PSC limit as are authorized under Amendment 39 to the FMP. A proposed rule to implement Amendment 39 was published in the **Federal Register** on August 15, 1997 (62 FR 43866). Amendment 39 was approved by NMFS on September 12, 1997.

On November 13, 1997, NMFS approved Amendment 34 to the FMP. This amendment requires that up to 2 percent of the TAC for Atka Mackerel in the Eastern Aleutian Islands District and the Bering Sea subarea be allocated to the jig gear fleet. The amount of this allocation will be determined annually by the Council based on the anticipated harvest capacity of the jig gear fleet. At its June 1997 meeting, the Council noted its intent to allocate 1 percent of Atka Mackerel TAC in the Eastern Aleutian Islands District/Bering Sea subarea to the jig gear fleet for the 1998 fishing year. A proposed rule to implement Amendment 34 was published in the **Federal Register** on September 22, 1997 (62 FR 49464). NMFS anticipates that a final rule will be effective prior to the 1998 trawl season (January 20). NMFS further anticipates that the final 1998 specifications will allocate 1 percent of the Eastern Aleutian Islands District/Bering Sea subarea Atka mackerel TAC to jig gear. Based on a proposed TAC of 15,000 mt, the jig gear allocation would be 150 mt.

Table 1 lists the proposed 1998 ABC, TAC, and ITAC amounts, overfishing levels, and initial apportionments of groundfish in the BSAI. The apportionment of TAC amounts among fisheries and seasons is discussed below. These proposed specifications are subject to change as a result of public comment, analysis of the current biological condition of the groundfish stocks, and new information regarding the fishery, and consultation with the Council at its December meeting.

TABLE 1.—PROPOSED 1998 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	Area	ABC	TAC	ITAC [2 3]	Overfishing level
Pollock	Bering Sea (BS)	1,130,000	1,130,000	960,500	1,980,000
	Aleutian Islands (AI)	28,000	28,000	23,800	38,000
	Bogoslof District	8,400	1,000	850	22,800
Pacific cod	BSAI	306,000	270,000	229,500	418,000
Sablefish [4]	BS	1,308	1,100	468	2,750
	AI	1,367	1,200	255	2,860
Atka mackerel	Total	66,700	66,700	56,695	81,600
	Western AI	32,200	32,200	27,370	
	Central AI	19,500	19,500	16,575	
	Eastern AI/BS	15,000	15,000	12,750	
Yellowfin sole	BSAI	233,000	230,000	195,500	339,000
Rock sole	BSAI	296,000	97,185	82,607	427,000
Greenland turbot	Total	12,350	9,000	7,650	25,100
	BS		6,030	5,126	
	AI		2,970	2,525	
Arrowtooth flounder	BSAI	108,000	20,760	17,646	167,000
Flathead sole	BSAI	101,000	43,500	36,975	145,000
Other flatfish [5]	BSAI	97,500	50,750	43,138	150,000
Pacific ocean perch	BS	2,800	2,800	2,380	5,400
	AI Total	12,800	12,800	10,880	25,300
	Western AI	6,390	6,390	5,432	
	Central AI	3,170	3,170	2,695	
	Eastern AI	3,240	3,240	2,754	
Other red rockfish [6]	BS	1,050	1,050	893	1,400
Sharpchin/Northern	AI	4,360	4,360	3,706	5,810
Shortraker/rougheye	AI	938	938	797	1,250
Other rockfish [7]	BS	373	373	317	497
	AI	714	714	607	952
Squid	BSAI	1,970	1,970	1,675	2,620
Other species [8]	BSAI	25,800	25,800	21,930	138,000
Total		2,440,430	2,000,000	1,698,768	3,980,339

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the BS includes the Bogoslof District.

[2] Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves. One half of the amount of the pollock TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see § 679.31(a)(1)).

[3] Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (see § 679.31(c)). Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in table 1 is for trawl gear only.

[4] Regulations at § 879.20(a)(4) require sablefish TACs for BSAI subareas be divided between trawl and hook-and-line/pot gear in the following proportions: BS subarea— trawl gear 50 percent, hook-and-line/pot gear 50 percent; AI subarea—trawl gear 25 percent, hook-and-line/pot gear 75 percent.

[5] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[6] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

[7] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.

[8] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

Seasonal Allowances of Pollock TACs

Under § 679.20(a)(5)(i)(A), the pollock ITAC for each subarea or district of the BSAI is divided into two seasonal allowances. The first allowance is made available for directed fishing from January 1 to April 15 (roe season), and the second allowance is made available from September 1 until November 1 (non-roe season). The Council proposed that the seasonal allowances for the Bering Sea pollock roe and non-roe seasons be specified at 45 percent and 55 percent of the ITAC amounts, respectively (Table 2). As in past years, the pollock TAC amounts specified for the Aleutian Islands subarea and the Bogoslof District would not be seasonally apportioned and the entire ITAC would be made available January 1.

When specifying seasonal allowances of the pollock TAC, the Council and NMFS considered the factors specified in section 14.4.10 of the FMP. A discussion of these factors relative to the roe and non-roe seasonal allowances was presented in the proposed 1995 specifications for BSAI groundfish (59 FR 64383, December 14, 1994). At this time, the Council's findings are unchanged from those set forth for 1995, given that the relative seasonal allowances are the same.

Apportionment of the Pollock TAC to the Inshore and Offshore Components

Section 679.20(a)(6)(i) requires that the proposed pollock ITAC amounts specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. Definitions of these components are found at § 679.2. The proposed 1998 ITAC specifications are consistent with these requirements (Table 2).

TABLE 2.—PROPOSED SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS [1]

Subarea and Component	TAC	ITAC	Roe season [2]	Non-roe season [3]
Bering Sea	1,130,000	960,500	432,225	528,275
Inshore		336,175	151,279	184,896
Offshore		624,325	280,946	343,379
Aleutian Islands	28,000	23,800	23,800	[4]
Inshore		8,330	8,330	[4]
Offshore		15,470	15,470	[4]
Bogoslof District	1,000	850	850	[4]
Inshore		298	298	[4]
Offshore		553	553	[4]

[1] Based on an offshore component allocation of 0.65 (ITAC) and on an inshore component allocation of 0.35 (ITAC).
[2] January 1 through April 15—based on a 45/55 split (roe=45 percent).
[3] September 1 until November 1—based on a 45/55 split (non-roe equals 55 percent).
[4] Remainder.

Apportionment of the Pollock TAC to the Western Alaska Community Development Quota

Section 679.31(a)(1) requires that one-half of the pollock TAC placed in the reserve for each subarea or district, or 7.5 percent of each TAC, be assigned to a CDQ reserve for each subarea or district. The proposed 1998 CDQ reserve amounts for each subarea are as follows:

BSAI subarea	Pollock CDQ (MT)
Bering Sea	84,750
Aleutian Islands	2,100
Bogoslof	75
Total	86,925

Under regulations governing the CDQ program at § 679.30, NMFS may allocate the 1998 pollock CDQ reserves to eligible Western Alaska communities or groups of communities that have an approved community development plan (CDP). NMFS has approved six CDPs and associated percentages of the CDQ reserve for each CDP recipient for 1996–98 (60 FR 66516, December 22, 1995). As with the pollock ITAC, the Council recommended that the CDQ pollock reserve be seasonally apportioned so that no more than 45 percent of a CDP's 1998 Bering Sea pollock allocation may be harvested during the pollock roe season, January 1 through April 15. Up to 100 percent of a CDP's 1998 Aleutian Islands or Bogoslof District pollock allocation could be harvested during this time period.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. The portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher processor vessels (§ 679.20(a)(7)(i)(B)). The Council proposes to continue the 1997 seasonal allowances of the portion of the Pacific cod TAC allocated to the hook-and-line and pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and Pacific halibut bycatch rates are low. The Council's recommendations for seasonal apportionments are based on (1) seasonal distribution of Pacific cod relative to prohibited species distributions, (2) variations in prohibited species bycatch rates in the Pacific cod fisheries throughout the year, and (3) economic effects of seasonal allowances of Pacific cod on the hook-and-line and pot gear fisheries. Table 3 lists the proposed 1998 allocations and seasonal apportionments of the Pacific cod ITAC. Consistent with § 679.20(a)(iv)(C), the Council has proposed that any portion of the first seasonal allowance that is not harvested by the end of the first season would become available on September 1, the beginning of the third season.

TABLE 3.—1998 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD INITIAL ITAC

Gear	Percent TAC	Share ITAC (mt)	Seasonal apportionment [1]		
			Date	Percent	Amount
Jig	2	4,590	Jan 1-Dec 31	100	4,590
Hook-&-line/pot gear	51	117,045	Jan 1-Apr 30	73	85,443
			May 1-Aug 31	23	26,920
				4	4,682
Trawl gear	47	107,865	Jan 1-Dec 31	100	107,865
Catcher vessel (50%)		53,933			
Catcher/processor (50%)		53,933			
Total	100	229,500			

[1] Any unused portion of the first seasonal Pacific cod allowance specified for the Pacific cod hook-and-line or pot gear fishery would be reapportioned to the third seasonal allowance.

Sablefish Gear Allocation and CDQ Allocations for Sablefish

Section 679.20(a)(4) requires that the sablefish TACs for the BSAI subareas be divided between trawl and hook-and-line/pot gear types. Gear allocations of TACs are established in the following proportions: Bering Sea subarea—trawl gear 50 percent, hook-and-line/pot gear 50 percent; and Aleutian Islands subarea—trawl gear 25 percent, hook-and-line/pot gear 75 percent. In addition, regulations under § 679.31(c) require NMFS to withhold 20 percent of the hook-and-line and pot gear sablefish allocation as sablefish CDQ reserve. Gear allocations of the proposed sablefish TAC and CDQ reserve amounts are specified in Table 4 as follows:

TABLE 4.—1998 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea and gear	Percent of TAC	Share of TAC (mt)	Initial TAC (mt) [1]	CDQ reserve
Bering Sea:				
Trawl	50	550	468	N/A
Hook-and-line/pot gear [2]	50	550	N/A	110
Total	.....	1,100	468	110
Aleutian Islands:				
Trawl	25	300	255	N/A
Hook-and-line/pot gear [2]	75	900	N/A	180
Total	.....	1,200	255	180

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.
[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Section 679.20(b)(1) does not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Under regulations governing the sablefish CDQ program at subpart C of part 679, NMFS may allocate the 1998 sablefish CDQ reserve to eligible Western Alaska communities or groups of communities that have an approved CDP. However, CDPs have not been approved for 1998. The State of Alaska consulted with the Council at its September meeting and recommended CDPs and the associated allocations of sablefish CDQ reserve. If NMFS approves the recommended CDPs, a notice of the decision will be published in the **Federal Register**, prior to the publication of the final specifications.

Allocation of Prohibited Species Catch (PSC) Limits for Crab, Halibut, and Herring

PSC limits for halibut are set forth at § 679.21 (e)(1)(iii). For the BSAI trawl fisheries, the limit is 3,775 mt mortality of Pacific halibut (§ 679.21(e)(1)(iii)) and for non-trawl fisheries, the limit is 900 mt mortality (§ 679.21(e)(2)). PSC limits for crab and herring are annually specified based on abundance and spawning biomass.

For 1998, the PSC limit of red king crab in Zone 1 for trawl vessels is 100,000 crab based on the criteria set out at § 679.21(e)(1)(i). The number of mature female red king crab is estimated to be above the threshold of 8.4 million animals, and the effective spawning biomass is estimated to be greater than 14.5 million lbs (6,577 mt) but less than 55 million lbs (24,948 mt) (§ 679.21(e)(1)(i)(B)).

The 1998 *C. bairdi* PSC limit is 750,000 animals in Zone 1 and 2.1 million animals in Zone 2. These numbers are based on the criteria set out at § 679.21(e)(1)(ii). In Zone 1, *C. bairdi* abundance is estimated at over 150 million to 270 million animals (§ 679.21(e)(1)(ii)(A)(*2*)). In Zone 2, *C. bairdi* abundance is estimated at over 175 million to 290 million animals (§ 679.21(e)(1)(ii)(B)(*2*)).

NMFS approved Amendment 40 to the FMP on October 15, 1997. This amendment establishes a PSC limit for *C. opilio* crab based on annual abundance of crab as indicated by trawl surveys. NMFS anticipates that regulations implementing Amendment 40 will be published and effective by mid-December 1997. Based on the proposed rule (62 FR 43307, August 13, 1997), the 1998 *C. opilio* PSC limit would be established at 0.1133 percent of the 1997 Bering Sea *C. opilio* crab abundance, or 4,654,000 crab.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass(§ 679.21(e)(1)(iv)). NMFS's best estimate of 1998 herring biomass is 157,900 mt. This amount was derived using 1996 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 1998 is 1,579 mt. This value is subject to change, pending an updated forecast analysis of 1997 herring survey data that will be presented to the Council by the ADF&G during the Council's December 1997 meeting.

Section 679.21(e)(3) authorizes the apportionment of each trawl PSC limit into PSC allowances for seven specified trawl-fishery categories. Section 679.21(e)(4)(ii) further authorizes the apportionment of the non-trawl halibut PSC limit among five non-trawl fishery categories. The fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 5.

The fishery bycatch allowances listed in table 5 reflect the recommendations made to the Council by its AP. These recommendations are unchanged from those specified for 1997. The justification for these allowances is discussed in the publication of the final 1997 specifications (62 FR 7168, February 18, 1997). Because NMFS action on Amendment 40 and its implementing rule had not been finalized at the time of the September 1997 Council meeting, the Council did not propose to apportion the proposed *C. opilio* PSC limit among trawl fishery categories. The Council is expected to do so at its December 1997 meeting.

Section 679.21(e)(4)(ii) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, the Council proposes to exempt the 1998 pot gear, jig gear, and sablefish hook-and-line gear fishery categories from halibut bycatch restrictions.

The Council proposed that the pot and jig gear fisheries be exempt from halibut-bycatch restrictions because these fisheries use selective gear types that experience low halibut bycatch mortality. Between January 1997 and September 1997, the groundfish pot gear fishery was responsible for an estimated halibut bycatch mortality of about 12 mt. The jig gear fleet comprises of vessels less than 60 ft (18.3 m) length overall that are exempt from observer coverage requirements. As a result, no observer data are available on halibut bycatch in the BSAI jig gear fishery. Nonetheless, the selective nature of this gear type and the relatively small amount of groundfish harvested with jig gear likely results in a negligible amount of halibut bycatch mortality.

As in past years, the Council recommended that the sablefish Individual Fishing Quota (IFQ) fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for the 1996 or 1997 fishery has not been calculated.

Section 679.21(e)(5) authorizes NMFS, after consultation with the Council, to establish seasonal apportionments of prohibited species bycatch allowances. At its September 1997 meeting, the Council adopted the AP's recommendation to propose seasonal apportionments of the trawl bycatch allowances only for halibut bycatch specified for the rockfish trawl fishery. The intent of this proposal was to reduce halibut bycatch during the first quarter when it is the highest. NMFS anticipates the Council will consider additional seasonal apportionments during its December 1997 meeting.

TABLE 5.—PROPOSED 1998 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fishers	Prohibited species and zone			C. bairdi (animals)	
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1 [1]	Zone 1 [1]	Zone 2 [1]
Yellowfin sole	930	267	10,000	276,316	1,071,000
Rock sole/oth.flat/flat sole [1]	795	.....	75,000	296,052	357,000
Turbot/sablefish/arrowtooth [2]	0	.....	.....	.....	0
Rockfish	100	7	.....	.....	7,000
Jan. 1–Mar. 31	0				
Apr. 1–Dec. 31	100				
Pacific cod	1,600	20	7,500	133,224	195,000
Midwater pollock	.....	1,142			
Pollock/Atka/other [3]	350	143	7,500	44,408	470,000
TOTAL TRAWL	3,775	1,579	100,000	750,000	2,100,000
Non-trawl fisheries:					
Pacific cod	840				
Other non-trawl	60				
Groundfish pot & jig	(4)				
Sablefish hook & line	(4)				
Total non-Trawl	900				

[1] Rock sole, flathead sole, and other flatfish fishery category.
[2] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[3] Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.
[4] Exempt.

To monitor halibut bycatch mortality allowances and apportionments, the Administrator, Alaska Region, NMFS (Regional Administrator), will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The Regional Administrator monitors the fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the annual SAFE report.

The Council proposed that the assumed halibut mortality rates developed by staff of the International Pacific Halibut Commission (IPHC) for the 1997 BSAI groundfish fisheries be rolled over for purposes of monitoring halibut bycatch allowances established for 1998. The justification for these mortality rates is discussed in the February 18, 1997, publication of the 1997 final specifications (62 FR 7168). NMFS notes that the assumed halibut mortality rate for the hook-and-line gear fishery for Pacific cod was adjusted in mid-1997 from 11.5 percent to 12 percent as a result of updated analyses provided by the IPHC. NMFS proposes to use the 12-percent rate in 1998. The proposed mortality rates listed in Table 6 are subject to change pending the results of an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff is scheduled to present to the Council at the Council's December 1997 meeting.

TABLE 6.—PROPOSED ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1998

Fishery	Assumed mortality (percent)
Hook-and-line gear fisheries:	
Rockfish	15
Pacific cod	12
Greenland turbot	11
Sablefish	29
Trawl gear fisheries:	
Midwater pollock	79
Non-pelagic pollock	76
Yellowfin sole	79
Rock sole	73
Flathead sole	65
Other flatfish	65

TABLE 6.—PROPOSED ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1998—Continued

Fishery	Assumed mortality (percent)
Rockfish	72
Pacific cod	68
Atka mackerel	73
Arrowtooth flounder	66
Greenland turbot	66
Sablefish	23
Other species	68
Pot gear fisheries Pacific cod	10

Classification

This action is authorized under 50 CFR 679 and is exempt from review under E.O. 12866.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1998 SAFE Report will be available for public review at the December 1997 Council meeting. After the December meeting, a final EA will be prepared on the final TAC amounts recommended by the Council.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made the following certification to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that these proposed specifications, if adopted, would not have a significant impact on a substantial number of small entities as follows:

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $3,000,000 as small businesses. Additionally, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a populations of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant economic impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, or resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. NMFS typically assumes that all catcher vessels participating in the Alaska groundfish fisheries are "small entities" for purposes of the Regulatory Flexibility Act (RFA).

Based on the number of vessels that caught groundfish in 1996, the number of fixed gear and trawl catcher vessels expected to be operating as small entities in the 1998 Bering Sea and Aleutian Islands groundfish fishery is 410. All participants in the BSAI groundfish fisheries, including small entities, could be affected by the harvest limits established in the 1998 specifications. Thus, a substantial number of small entities would likely be affected by these proposed specifications.

No changes in the 1998 TACs are proposed relative to the 1997 TACs. Further, no significant changes in the socioeconomic condition of the BSAI groundfish fishery have occurred or are anticipated that could affect the economic impact on small entities of the 1998 specifications. Any changes in final TAC amounts for specific species that may be recommended by the Council at its December 1997 meeting likely would not have a significant economic impact given that the Alaska groundfish fishing fleet is accustomed to shifting effort among alternative species and management areas in response to changes in TAC between years and inseason closures.

Based on 1996 data presented in the preliminary 1998 SAFE report dated September 1997 (See **ADDRESSES**), the total exvessel value of the BSAI groundfish fishery is estimated at $413.1 million. These revenues are shared among small and large sector entities. Based on the proposed specifications, the value of the BSAI fishery is expected to remain at approximately this level with no significant allocation shifts between sectors. Thus, based on the SAFE report and the existence of no significant intervening changes, it is unlikely that the proposed specifications would have a significant economic impact on small entities. For the reasons presented above, these revenues are not expected to change significantly within either sector. This assessment will be reviewed again subsequent to the Council's final recommendations for 1998 TAC amounts. These final recommendations will be based on new information on the status of BSAI groundfish stocks that currently is not available. If the Council recommends significant changes to the proposed specifications, the potential economic impacts on small entities will be reevaluated.

Therefore, an initial regulatory flexibility analysis was not prepared.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: December 9, 1997.

Gary C. Matlock,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32681 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971206297–7297–01; I.D. 112097A]

Groundfish Fishery of the Gulf of Alaska; Fisheries of the Exclusive Economic Zone; Proposed 1998 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1998 harvest specifications for groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes 1998 harvest specifications for groundfish, reserves and apportionment thereof, Pacific halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish the 1998 fishing year. The intended effect of this action is to conserve and manage the groundfish resources in the GOA and to provide an opportunity for public participation in the annual groundfish specification process.

DATES: Comments must be received by January 14, 1998.

ADDRESSES: Comments must be sent to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

The preliminary 1998 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1997, is available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the GOA are governed by Federal regulations at 50 CFR part 679 that implement the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the "other species" category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20 (a)(1)(ii)). Section 679.20(c)(1) further requires NMFS to annually solicit public comment on proposed annual TACs and publish halibut PSC amounts, seasonal allowances of pollock, and inshore/offshore Pacific cod. The proposed specifications set forth in Tables 1–6 of this action satisfy these requirements. For 1998, the sum of the proposed TAC amounts is 309,715 mt. Under § 679.20(c)(3), NMFS will publish the final specifications for 1998 after considering (1) comments received within the comment period (see **DATES**), and (2) consultations with the Council at its December 1997 meeting.

Section 679.20(c)(2)(i) requires that interim specifications—one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowance of pollock), one-fourth of the proposed halibut PSC amounts, and the proposed first seasonal allowance of pollock—be established effective 0001 hours, Alaska local time (A.l.t.) January 1, that will remain in effect until the effective date of by the final 1998 harvest specifications, which will be published in the **Federal Register**.

NMFS is publishing, in the Rules and Regulations section of this **Federal Register** volume, interim TAC specifications and apportionments thereof for the 1998 fishing year that will become effective 0001 hours, A.l.t. January 1, 1998, and remain in effect until superseded by the final 1998 harvest specifications. Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC for each species are based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SCC) reviewed current biological information about the condition of groundfish stocks in the GOA at their September 1997 meeting. This information was compiled by the Council's GOA Plan Team and is presented in the preliminary 1998 SAFE report for the GOA groundfish fisheries, dated September 1997. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The preliminary 1998 SAFE report will be updated to include new information collected during 1997. Revised stock assessments will be made available by the Plan Team in November 1997 and be included in the final 1998 SAFE report.

The proposed ABC amounts adopted by the Council for the 1998 fishing year are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The proposed ABCs also are based on new definitions of ABC and overfishing that were approved by NMFS under Amendment 44 to the FMP (62 FR 2652, January 17, 1997). In general, the new definitions involve sophisticated statistical analyses of fish populations and are based on a successive series of six levels or tiers of reliable information available to fishery scientists. The revised definitions result in lower exploitation rates and ABCs for most species, although biomass estimates are generally unchanged.

Details of the Plan Team's recommendations for preliminary 1998 overfishing and ABC amounts for each species are provided in the preliminary 1998 SAFE report. This report is available from the Council (see **ADDRESSES**). At its September 1997 meeting, the Council's SSC reviewed the Plan Team's preliminary recommendations for 1998 ABC amounts. The SSC concurred in the Plan Team's recommendations except for the ABCs for deep-water flatfish in the Western and Central areas of the GOA and for nearshore pelagic shelf rockfish in the Central area of the GOA. For these stocks the Plan Team had based its ABC recommendations on a tier six calculation of average catch of these species for the period 1991 though 1997, rather than for the period 1987 though 1995 as specified in Amendment 44 to the FMP. The SSC's corrected ABC recommendations were unchanged from 1997 and equaled 3,690 mt for deep-water flatfish in the Western area, 3,140 mt for deep-water flatfish in the Central area, and 260 mt for nearshore pelagic shelf rockfish in the Central area of the GOA. The Council adopted the proposed overfishing and ABC amounts recommended by the SSC (Table 1).

At its June 1997 meeting, the Council adopted Amendment 46 to the FMP. This amendment would remove the nearshore component of pelagic shelf rockfish (consisting of black rockfish and blue rockfish) from the FMP. The intent of this action was to provide the State of Alaska with full management authority for these stocks. The Council believes that regional management of these stocks by the Alaska Department of Fish and Game will more fully address fishery and management concerns. A proposed rule to implement Amendment 46 was published in the **Federal Register** on December 2, 1997 (62 FR 63690). Pending the timely approval of Amendment 46 by NMFS, the final 1998 specifications would not include specifications for the nearshore component of pelagic shelf rockfish as proposed in Table 1.

Specification and Apportionment of TAC Amounts and Reserves

The Council adopted the AP's proposals for the 1998 GOA TAC amounts. For each species these amounts equal the 1997 TAC amounts except for pollock, which equals the 1998 ABC recommended by the Plan Team, SSC, and AP. NMFS finds that the recommended proposed TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000–800,000 mt.

The reserves for the GOA (under § 679.20(b)(2)) are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish target species categories, and "other species." The GOA groundfish TAC amounts have been fully utilized by the respective domestic target species categories since 1987, and NMFS expects the same to occur in 1998. NMFS proposes apportionment of all the reserves to the respective target species categories except for Pacific cod. The Pacific cod fishery in the GOA has become increasingly difficult to manage. The increased number of participants, unexpected increases in harvest rates, and unexpected shifts to other management areas and targets in the GOA have resulted in overharvests of Pacific cod in some areas. Therefore, NMFS proposes to initially reserve 20 percent of the Pacific cod TACs in the GOA as a management buffer to prevent exceeding the Pacific cod TAC.

Table 1 sets forth the proposed 1998 ABC, TAC, initial TAC amounts (for Pacific cod only), overfishing levels, and initial apportionments of groundfish in the GOA. The section following Table 1 discusses the apportionment of TAC amounts among fisheries. These

proposed specifications are subject to change as a result of public comment, analysis of the current biological condition of the groundfish stocks, new information regarding the fishery, and consultation with the Council at its December 1997 meeting.

TABLE 1.—PROPOSED 1998 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

Species	Area[1]	ABC	TAC	Initial TAC	Overfishing
		(mt)			
Pollock[2]					
Shumagin	(610)	24,200	24,200		
Chirikof	(620)	40,660	40,660		
Kodiak	(630)	31,940	31,940		
Subtotal	W/C	96,800	96,800		137,900
	E	8,800	8,800		12,600
Total		105,600	105,600		150,500
Pacific cod[3]					
	W	28,500	24,225	19,380	
	C	51,400	43,690	34,952	
	E	1,600	1,200	960	
Total		81,500	69,115	55,292	180,000
Flatfish (deep-water)[4]	W	340	340		
	C	3,690	3,690		
	E	3,140	3,140		
Total		7,170	7,170		9,420
Rex sole[4]	W	1,190	1,190		
	C	5,490	5,490		
	E	2,470	2,470		
Total		9,150	9,150		11,920
Flathead sole	W	8,440	2,000		
	C	15,630	5,000		
	E	2,040	2,040		
Total		26,110	9,040		34,010
Flatfish (shallow-water)[5]	W	22,570	4,500		
	C	19,260	12,950		
	E	1,320	1,180		
Total		43,150	18,630		59,540
Arrowtooth flounder	W	33,010	5,000		
	C	149,640	25,000		
	E	25,690	5,000		
Total		208,340	35,000		295,970
Sablefish[6]	W	1,860	1,860		
	C	6,410	6,410		
	WYK	2,410	2,410		
	SEO	3,840	3,840		
Total		14,520	14,520		30,360
Pacific ocean perch[7]	W	2,230	1,472		3,190
	C	8,160	5,352		11,630
	E	5,450	2,366		7,770
Total		15,840	9,190		22,590
Short raker/rougheye[8]	W	160	160		
	C	970	970		
	E	460	460		

TABLE 1.—PROPOSED 1998 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

Species	Area[1]	ABC	TAC	Initial TAC	Overfishing
Total		1,590	1,590		2,740
Other rockfish[9 10 11]	W	20	20		
	C	650	650		
	E	4,590	1,500		
Total		5,260	2,170		7,560
Northern Rockfish[12]	W	840	840		
	C	4,150	4,150		
	E	10	10		
Total		5,000	5,000		9,420
Pelagic shelf rockfish[13]	W combined	570	570		
	C nearshore	260	260		350
	C offshore	3,320	3,320		
	E combined	990	990		
Total excl.	C nearshore	4,880	4,880		
Total incl.	C nearshore	5,140	5,140		8,190
Demersal shelf rockfish[11]	SEO	950	950		1,450
Thornyhead rockfish	GW	1,700	1,700		2,440
Atka mackerel	GW	1,000	1,000		6,200
Other species[14]	GW	N/A[15]	14,750		
Total[16]		531,020	309,715		832,540

[1] Regulatory areas and districts are defined at § 679.2.
[2] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into three seasonal allowances. In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.
[3] Pacific cod is allocated 90 percent for processing by the inshore, and 10 percent for processing by the offshore component. Component allocations are shown in Table 4.
[4] "Deep-water flatfish" means Dover sole and Greenland turbot.
[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.
[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).
[7] "Pacific ocean perch" means *Sebastes alutus*.
[8] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and S. *aleutianus* (rougheye).
[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means Slope rockfish.
[10] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), S. *proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth).
[11] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[12] "Northern rockfish" means *Sebastes polyspinis*.
[13] "Pelagic shelf rockfish" means *Sebastes melanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail). "Pelagic shelf rockfish nearshore" means *Sebastes melanops* (black) and *S. mystinus* (blue). "Pelagic shelf rockfish offshore" means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
[14] "Other species" means sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of target species.
[15] N/A means not applicable.
[16] The total ABC is the sum of the ABCs for target species.

Proposed Apportionment of the Sablefish TAC Amounts to Users of Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC amounts is allocated to vessels using hook-and-line gear and 20 percent is allocated to vessels using trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to vessels using hook-and-line gear and 5 percent is assigned to vessels using trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other trawl target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl must be treated as prohibited species and may not be retained. Table 2 sets forth the assignments of the proposed 1998 sablefish TAC amounts between vessels using hook-and-line and trawl gears.

TABLE 2.—PROPOSED 1998 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

Area/District	TAC	Hook-and-line share	Trawl share
	(mt)		
Western	1,860	1,488	372
Central	6,410	5,128	1,282
Eastern:			
West Yakutat	2,410	2,290	120
Southeast Outside	3,840	3,648	192
Total	14,520	12,554	1,966

Proposed Apportionments of Pollock and Pacific Cod TAC Amounts

In the GOA, pollock is apportioned by area and season. Section 679.20(a)(5)(ii)(A) requires that the TAC for pollock in the combined Western/Central (W/C) Regulatory Areas be apportioned among statistical areas Shumagin (610), Chirikof (620), and Kodiak (630) in proportion to known distribution of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Under § 679.20(a)(5)(ii)(B), the pollock TAC for the W/C Regulatory Areas is apportioned into three seasonal allowances of 25, 25 and 50 percent, respectively. As established under § 679.23(d)(2), the first, second, and third seasonal allowances of the W/C Regulatory Area pollock TAC amounts are available on January 1, June 1, and September 1, respectively. Within any fishing year, any unharvested amount of any seasonal allowance of pollock TAC is added in equal proportions to all subsequent seasonal allowances, resulting in a sum for each allowance not to exceed 150 percent of the initial seasonal allowance. Similarly, harvests in excess of a seasonal allowance of TAC are deducted in equal proportions from the remaining seasonal allowances of that fishing year. The Eastern Regulatory Area proposed TAC of 8,800 mt is not allocated among smaller areas, or seasonally.

Section 679.20(a)(6)(ii) requires the allocation of the pollock apportionment in all regulatory areas and for all seasonal allowances to the inshore and offshore components as defined at § 679.2. Similarly, § 679.20(a)(6)(iii) requires allocation of the Pacific cod apportionment in all regulatory areas to the inshore and offshore components. The inshore component would be allocated as 100 percent of the pollock TAC in each regulatory area after subtraction of amounts that are determined by the Administrator, Alaska Region, NMFS (Regional Administrator), to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown and will be determined during the fishing year. The proposed distribution of pollock within the combined W/C Regulatory Areas is shown in Table 3, except that the allocation to the inshore and offshore components are not shown.

The inshore component for Pacific cod would be allocated as 90 percent of the TAC in each regulatory area. Inshore and offshore component allocations of the proposed 55,292 mt initial TAC for each regulatory area are set forth in Table 4.

TABLE 3.—PROPOSED DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL

Statistical area	Biomass percent	1998 ABC = TAC	Seasonal Allowances		
			First	Second	Third
		(mt)			
Shumagin (610)	25	24,200	6,050	6,050	12,100
Chirikof (620)	42	40,660	10,165	10,165	20,330
Kodiak (630)	33	31,940	7,985	7,985	15,970
Total	100	96,800	24,200	24,200	48,400

NOTE: Allowances. ABC for the W/C GOA is proposed to be 96,800 metric tons (mt). Biomass distribution is based on 1996 survey data. TAC amounts are equal to ABC. Inshore and offshore allocations of pollock are not shown.

TABLE 4.—PROPOSED 1998 ALLOCATION OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS.

Regulatory area	Initial TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
	(mt)		
Western	19,380	17,442	1,938
Central	34,952	31,457	3,495

TABLE 4.—PROPOSED 1998 ALLOCATION OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS.—Continued

Regulatory area	Initial TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
Eastern	960	864	96
Total:	55,292	49,763	5,529

"Other Species" TAC

The FMP specifies that amounts for the "other species" category are calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide "other species" TAC is calculated as 14,750 mt, which is 5 percent of the sum of combined TAC amounts for the target species.

Proposed Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. At its September meeting, the Council recommended that NMFS reestablish the PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the demersal shelf rockfish (DSR) fishery in the SEO District and the remainder to the remaining hook-and-line fisheries. The Council did not propose seasonal apportionments of these PSC limits but may recommend such apportionments at its December 1997 meeting. Section 679.21(d)(4) authorizes the exemption of specified nontrawl fisheries from the halibut PSC limit. As in 1996 and 1997, the Council proposes to exempt pot gear and the hook-and-line sablefish fishery from the nontrawl halibut limit for 1998. The Council proposed these exemptions because the halibut bycatch mortality experienced in the pot gear fisheries was low (17 mt in 1996, and 13 mt in 1997) and because the sablefish and halibut Individual Fishing Quota (IFQ) program, implemented in 1995, allows retention of legal-sized halibut in the sablefish fishery by persons holding IFQ permits for halibut.

NMFS preliminarily concurs in the Council's 1998 recommendations for halibut bycatch limits.

Section 679.21(d)(3)(iii) authorizes the apportionment of the trawl halibut PSC limit to a deep-water species fishery (consisting of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder) and a shallow-water species fishery (consisting of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species"). The proposed apportionment for these two fishery complexes is presented in Table 5 and is unchanged from 1997.

TABLE 5.—PROPOSED 1998 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

Season	Shallow-water	Deep-water	Total
	(mt)		
Jan. 20–Sep. 30	800	800	1,600
Oct. 1–Dec. 31			400
Total			2,000

There is no apportionment between shallow-water and deep-water fishery categories between October 1 and December 31.

Some changes may be made by the Council or NMFS in the seasonal, gear type and fishing-complex apportionments of halibut PSC limits for the final 1998 harvest specifications. NMFS considers the following types of information in setting halibut PSC limits as presented by, and summarized from, the preliminary 1998 SAFE Report, or from public comment and testimony.

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is available from data collected during 1997 by observers. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through October 18, 1997, is 1,748 mt, 210 mt, and 13 mt, respectively, for a total halibut mortality of 1,971 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the first, second, and third quarters of the 1997 fishing year and are anticipated to constrain trawl gear fisheries during the fourth quarter. Trawling for the deep-water fishery complex was closed during the first quarter on March 15 (62 FR 13352, March 20, 1997), for the second quarter on April 14 (62 FR 18725, April 17, 1997), and for the third quarter on July 20 (62 FR 39782, July 24, 1997). The shallow-water fishery complex was closed in the second quarter on May 6 (62 FR 25138, May 8, 1996) and in the third quarter on August 8 (62 FR 43485, August 14, 1996). The amount of groundfish that might have been harvested if halibut had not been seasonally limiting in 1997 is unknown. However, lacking market incentives, some amounts of groundfish will not be harvested, regardless of halibut PSC bycatch availability.

Expected Changes in Groundfish Stocks

At its September 1997 meeting, the Council recommended 1998 ABC amounts higher than 1997 ABC amounts for pollock, arrowtooth, and Pacific ocean perch (POP). The proposed 1998 ABC amounts for the remaining species or species groups are unchanged from 1997 amounts. More information on these proposed changes is included in the preliminary SAFE Report, dated September 1997, and in the AP, SSC, and Council minutes from the September 1997 meeting.

Expected Changes in Groundfish Catch

The total of the proposed 1998 TAC amounts for the GOA is 309,715 mt, which represents 110 percent of the sum of TAC amounts for 1997 (282,815 mt). Increases in TAC are proposed for pollock, arrowtooth, and POP. The proposed increases in TAC should not directly affect halibut bycatch.

Current Estimates of Halibut Biomass and Stock Condition

The most recent information on halibut biomass and stock condition may be found in the 1997 final SAFE report, dated December 1997. New information will be incorporated in the final 1998 SAFE report.

The International Pacific Halibut Commission (IPHC) has been developing substantially different methods of estimating halibut biomass and stock conditions. These methods have resulted in new estimates of biomass and recruitment. The IPHC estimates of biomass and recruitment of halibut are higher than previously indicted. The increase in estimated biomass under the new method can be attributed to three factors.

1. Halibut size at age information is better represented in the population model. Growth has declined and the new method more appropriately accounts for the availability of young halibut to capture by hook and line gear; the estimated abundance of young halibut has increased accordingly.

2. Bycatch mortality of legal-sized halibut (32 inches or greater) is now included in the assessment along with other removals such as commercial and sport; this inclusion of bycatch mortality causes the estimated biomass to increase to account for the increase in removals.

3. Catch rates from IPHC hook and line surveys are included in the analysis; these data support trends observed in the commercial fishery that the halibut population has increased.

The 1987 year class of halibut is large, although individual fish are small. The strength of this year class has increased current estimates of abundance and suggests that halibut biomass is likely to stay high for the next several years.

Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S, Halibut Fisheries

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 1998 groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational catch, waste, and bycatch mortality, and then providing the remainder to the directed fishery. Groundfish fishing is not expected to affect the halibut stocks.

Methods Available for, and Costs of, Reducing Halibut Bycatches in Groundfish Fisheries

Methods available for reducing halibut bycatch include (1) Reducing halibut bycatch rates through the Vessel Incentive Program (2) modifications to gear (3) changes in groundfish fishing seasons (4) individual transferable quota programs and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with the observer coverage requirements (50 CFR 679.50) are subject to the Vessel Incentive Program. The program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations (§ 679.24(b)(1)(ii)) require groundfish pots to have halibut exclusion devices to reduce halibut bycatch. Resulting low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see Authorized gear) and performance of the trawl gear in terms of crab bycatch (§ 679.7(b)(3)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(b)(2)). These measures are intended to reduce handling mortality, increase the amount of groundfish harvested under the available halibut mortality bycatch limits, and possibly lower overall halibut bycatch mortality in groundfish fisheries.

The sablefish/halibut IFQ program (implemented in 1995) was intended, in part, to reduce the halibut discard mortality in the sablefish fishery.

Methods available for reducing halibut bycatch listed above will be reviewed by NMFS and the Council to determine their effectiveness. Changes will be initiated, as necessary, in response to this review or to public testimony and comment.

Consistent with the goals and objectives of the FMP to reduce halibut bycatches while providing an opportunity to harvest the groundfish OY, NMFS proposes the assignments of 2,000 mt and 300 mt of halibut PSC mortality limits to trawl and hook-and-line gear, respectively. While these limits would reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they would not result in unfair allocation to any particular user group. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but the Vessel Incentive Program, required modifications to gear, and implementation of the halibut IFQ program are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery.

Halibut Discard Mortality Rates

The Council recommended that revised assumed halibut mortality rates developed by staff of the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1998 GOA groundfish fisheries. NMFS concurs in the Council's recommendation. Most of the IPHC's assumed mortality rates were based on an average of mortality rates determined from NMFS-observer data collected during 1995 and 1996. For fisheries where a steady trend from 1993 to 1996 towards increasing or decreasing mortality rates was observed, the IPHC recommended using the most recent year's rate. Rates for 1995 and 1996 were lacking for some fisheries, so rates from the most recent years were used. Most of the assumed mortality rates recommended for 1998 differ slightly from those used in 1997. The recommended rates are the same as 1997 for all longline targeted fisheries, except rockfish, for which the rate is higher. The recommended rates for longline targeted fisheries range from 9 to 24 percent. The recommended rates are higher for all trawl targeted fisheries and range from 57 to 73 percent. The recommended rates are lower for all pot-targeted fisheries at 14 percent. The halibut mortality rates are listed in Table 6.

The proposed mortality rates listed in Table 6 are subject to change after the Council considers an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff are scheduled to present to the Council at the Council's December 1997 meeting.

TABLE 6.—PROPOSED 1998 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA. TABLE VALUES ARE PERCENT OF HALIBUT BYCATCH ASSUMED TO BE DEAD

Gear and target	Percent
Hook-and-line:	
Sablefish	24
Pacific cod	12
Rockfish	9
Other species	12
Trawl:	
Midwater pollock	66
Rockfish	68
Shallow-water flatfish	71
Pacific cod	67
Deep-water flatfish	64
Bottom pollock	73
Atka mackerel	57
Flathead sole	67
Rex sole	69
Sablefish	67
Other species	67
Pot:	
Pacific cod	14
Pollock	14
Other species	14

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1998 SAFE Report will be available for public review at the December 1997 Council meeting. After the December meeting, a final EA will be prepared on the final TAC amounts recommended by the Council.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce the following certification to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that these proposed specifications, if adopted, would not have a significant impact on a substantial number of small entities as follows:

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $3,000,000 as small businesses. Additionally, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a populations of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be greater than or equal to 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant economic impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, or resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. NMFS typically assumes that all catcher vessels participating in the Alaska groundfish fisheries generally are "small entities" for purposes of the Regulatory Flexibility Act (RFA). Based on the number of vessels that caught groundfish in 1996, the number of fixed gear and trawl catcher vessels expected to be operating as small entities in the 1998 GOA groundfish fishery is 1,492. Of these, about 200 vessels used trawl gear to harvest GOA groundfish. All participants in the GOA groundfish fisheries, including small entities, could be affected by the harvest limits established in the 1998 specifications. Thus a substantial number of small entities would likely be affected by the proposed specifications.

The only change in the proposed 1998 TAC amounts relative to 1997 is a 25,620 mt increase in the pollock TAC. No significant changes in the socioeconomic condition of the GOA groundfish fishery have occurred or are anticipated that could affect the economic impact on small entities of the 1998 specifications. Any changes in final TAC amounts for specific species that may be recommended by the Council at its December 1997 meeting likely would not have a significant economic impact on a substantial number of small entities given that the Alaska groundfish fishing fleet is accustomed to shifting effort among alternative species and management areas in response to changes in TAC between years and inseason closures. The proposed TAC increase for GOA pollock would positively benefit trawl catcher vessels that harvest this species. Based on an exvessel price for GOA pollock of $ 0.102 per lb as reported in the preliminary 1998 Stock Assessment Fishery Evaluation (SAFE) report dated September 1997 (See ADDRESSES), the potential increased revenue to trawl catcher vessels is $5.8 million, assuming all of the fish is harvested and landed.

Based on 1996 data presented in the preliminary 1998 SAFE report, the total exvessel value of the GOA groundfish fishery is estimated at $125.3 million. These revenues are shared among small and large sector entities. Based on the proposed specifications, the value of the GOA fishery is expected to remain at approximately this level with no significant allocation shifts between sectors, and for the reasons presented above, these revenues are not expected to be reduced significantly within either sector. Thus, based on the SAFE report, and the existence of no significant intervening changes, it is unlikely that the proposed specifications would have a significant economic impact on small entities. In fact, a positive impact on small entities would occur to the extent that TAC amounts for pollock are increased. This assessment will be reviewed again subsequent to the Council's final recommendations for 1998 TAC amounts. The final recommendations will be based on new information on the status of GOA groundfish stocks that currently is not available. If the Council recommends significant changes to the proposed specifications, the potential economic impacts on small entities will be re-evaluated.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: December 9, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32684 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 62, No. 240
Monday, December 15, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

Joint Board for the Enrollment of Actuaries

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Room 118 of the Aerospace Building, L'Enfant Plaza, 901 D Street, SW, Washington, DC, on Thursday and Friday, January 8 and 9, 1998, from 8:30 a.m. to 5 p.m. each day.

The purpose of this meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the November 1997 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score. In addition, a number of issues will be discussed relative to the future Joint Board examinations including, but not limited to, the structure of the exams, the possibility of open book exams, the elimination of commutation functions, and varying point values of questions.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on future Joint Board examinations and review of the November 1997 Joint Board examination fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the structure of future exams, open book exams, commutation functions, and varying point values of questions will commence at 1:30 p.m. on January 8 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Persons planning to attend the public session must also notify the Committee Management Officer in writing to obtain building entry. Notifications should be faxed to (202) 401–6657 no later than December 30, 1997, Attention: Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Department of Treasury, Internal Revenue Service (C:AP:P), 1111 Constitution Avenue, NW, Washington, DC 20224.

Dated: December 8, 1997.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 97–32672 Filed 12–12–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–111–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Foreign Animal Disease Surveillance Program.

DATES: Comments on this notice must be received by February 13, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–111–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–111–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Foreign Animal Disease Program, contact Dr. Mark Teachman, Senior Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231, (301) 734–8908. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Field Epidemiology Data System.

OMB Number: 0579–0071.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing foreign diseases of livestock or poultry from entering the United States, for conducting a surveillance program for the early detection of such foreign animal diseases, and for eradicating such foreign animal diseases if they are detected.

Through our Foreign Animal Disease Surveillance Program, the Emergency Programs division of Veterinary Services, Animal and Plant Health Inspection Service (APHIS), USDA, compiles essential epidemiologic and diagnostic data that are used to define foreign animal diseases and their risk factors. When a potential foreign animal disease incident is reported, APHIS dispatches a foreign animal disease veterinary diagnostician to the site to conduct an investigation.

The diagnostician obtains vital epidemiologic data by conducting field investigations and by interviewing the owner or manager of the premises being investigated.

These important data include such items as the number of sick or dead animals on the premises, the results of necropsy examinations, vaccination information on the animals in the flock or herd, the level of biosecurity practiced at the site, whether any animals were recently moved out of the herd or flock, whether any new animals were recently introduced into the herd or flock, and detailed geographic data concerning premises location.

The diagnostician records this information on VS Form 12–27. Information from this form is then entered into our Field Epidemiology Data System (FEDS).

VS Form 12–27 is used for both task force emergency disease investigations and all suspect foreign animal disease investigations. After laboratory confirmation of a specific foreign animal disease, the information collected on the form ensures prompt attention and follow-up by a disease eradication specialist.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Owners and operators of livestock and poultry producing operations, State personnel who assist with information collection.

Estimated number of respondents: 260.

Estimated annual number of responses per respondent: 1.615.

Estimated annual number of responses: 420.

Estimated total annual burden on respondents: 210 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32660 Filed 12–12–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–112–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Swine Health Protection Program.

DATES: Comments on this notice must be received by February 13, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–112–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–112–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Swine Health Protection Program, contact Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–4916. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Swine Health Protection.

OMB Number: 0579–0065.

Expiration Date of Approval: July 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the spread of contagious, infectious, or communicable diseases of livestock or poultry from one State to another, and for eradicating such diseases from the United States when feasible.

The Swine Health Protection Act prohibits the feeding of garbage to swine unless the garbage has been treated to kill disease organisms. Untreated garbage is one of the primary media through which numerous infections and communicable diseases are transmitted to swine. The garbage must be treated at a facility holding a valid permit to treat the garbage. The garbage must be treated in accordance with regulations promulgated by the Animal and Plant Health Inspection Service (APHIS). APHIS requires certain information in order to license (issue a permit to) a facility to operate and in order to monitor the facility for compliance with the regulations.

Information collection activities include the submission of an application for a license to operate a garbage treatment facility, the recording of the destination and date of removal of all food waste or garbage from the treatment facility, and the submission of food waste reports.

With this information we are able to carefully monitor garbage treatment facilities to ensure that they are adhering to our requirements.

The information provided by these information gathering activities is

critical to our ability to prevent the interstate spread of various swine diseases, and, therefore, plays a vital role in our Swine Health Protection Program.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .890 hours per response.

Respondents: Operators of garbage treatment facilities.

Estimated number of respondents: 264.

Estimated annual number of responses per respondent: 2.48.

Estimated annual number of responses: 656.

Estimated total annual burden on respondents: 584 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32661 Filed 12–12–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1998 Annual Demographic Survey—Supplement to the Current Population Survey.

Form Number(s): CPS–580, -589(SP), -676, 676(SP).

Agency Approval Number: 0607–0354.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 20,410 hours.

Number of Respondents: 50,500.

Avg Hours Per Response: 24 and one half minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Demographic Survey (ADS) every year in March as a supplement to the Current Population Survey (CPS). The Bureau of the Census, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement. In the ADS, we collect information on work experience, migration, personal income and noncash benefits, household noncash benefits, and race.

The work experience items in the ADS provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. The income data from the ADS are used by social planners, economists, Government officials, and market researchers to gauge the economic well-being of the Nation as a whole, and selected population groups of interest. Researchers evaluate March income data not only to determine poverty levels, but also to determine whether Government programs are reaching eligible households.

We have made question changes, additions, and deletions to the 1998 supplement to address changes caused by the recent welfare reform and changes recommended by interviewers, data users, and others.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182 and Title 29 U.S.C., Sections 1–9.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32686 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 934]

Expansion of Foreign-Trade Zone 15: Kansas City, Missouri, Area (Carthage, Missouri, Site)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 15, Kansas City, Missouri, area, for authority to expand FTZ 15 to include an additional site in Carthage, Missouri, was filed by the Board on February 11, 1997 (FTZ Docket 7–97, 62 FR 8422, 2/25/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 15 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 8th day of December 1997.

Richard W. Moreland,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–32692 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 81–97]

Proposed Foreign-Trade Zone: Lakewood, New Jersey; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Township of Lakewood, New Jersey, to establish a general-purpose foreign-trade zone in Lakewood, New Jersey, adjacent to the Philadelphia Consolidated Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 8, 1997. The applicant is authorized to make the proposal under New Jersey Statutes Annotated 12:13–1.

The proposed zone would be the third general-purpose zone in the New Jersey portion of the Philadelphia Consolidated Customs port of entry area. The existing zones are: FTZ 142 at sites in Salem/Millville, New Jersey (Grantee: South Jersey Port Corporation, Board Order 358, 52 F.R. 33855, 9/8/87); and FTZ 200 in Mercer County, New Jersey (Grantee: County of Mercer, New Jersey, Board Order 683, 59 F.R. 13698, 3/23/94).

The proposed new zone would consist of 2 sites (2,248 acres) in the Township of Lakewood: *Site 1* (3 contiguous parcels, 1,996 acres)—*Parcel A* (1,540 acres)—Lakewood Industrial Park (includes the Lakewood Airport), State Highway Route 70, Lakewood; *Parcel B* (47 acres)—Pine Street South Industrial District, Pine Street, Lakewood; *Parcel C* (409 acres)—Lakewood Industrial Campus West, Cedar Bridge Avenue, Lakewood; and *Site 2* (252 acres)—Prospect Street Industrial Park, Prospect and James Streets, Lakewood. Parcel A in Site 1 and Site 2 are located within a State Urban Enterprise Zone, and Parcels B and C are expected to be included in a proposed expansion of the Urban Enterprise Zone. The applicant or the Lakewood Industrial Commission owns a substantial portion of the land, with the remaining property being privately owned.

The application contains evidence of the need for foreign-trade zone services in the Lakewood area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on January 15, 1998, 1:00 p.m., Conference Room C, Township of Lakewood Municipal Building, 231 Third Street, Lakewood, New Jersey 08701.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 13, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 2, 1998.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Municipal Clerk, Township of Lakewood Municipal Building, 2nd Floor—Room 8, 231 Third Street, Lakewood, NJ 08701

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: December 9, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–32691 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 939]

Grant of Authority for Subzone Status: The B&F System, Inc. (Consumer Products/Knife Assembly), Dallas, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Dallas/Fort Worth Maquila Trade Development Corporation, grantee of Foreign-Trade Zone 168, for authority to establish special-purpose subzone status at the warehousing/distribution and processing facility of The B&F System, Inc., in Dallas, Texas, was filed by the Board on November 6, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 81–96, 61 FR 58860, 11–19–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 168A) at the The B&F System, Inc., facility in Dallas, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the condition that foreign origin merchandise related to the assembly activity shall be admitted to the subzone in privileged foreign status.

Signed at Washington, DC, this 8th day of December 1997.

Richard W. Moreland,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–32693 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 933]

Expansion/Relocation of Foreign-Trade Subzone 84L, California Microwave—Microwave Network Systems, Inc. (Telecommunications Products), Houston, Texas Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, Houston, Texas, area, requesting authority on behalf of California Microwave—Microwave Network Systems, Inc., to relocate subzone status (Subzone 84L) to a larger facility located in Stafford, Texas, was filed by the Board on January 22, 1997 (FTZ Docket 4–97, 62 FR 7751, 2/20/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand/relocate FTZ 84L is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the condition that the company elect privileged foreign status on foreign merchandise admitted to the subzone.

Signed at Washington, DC, this 3rd day of December 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–32628 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Extension of Time Limit of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 15, 1998.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the first administrative review on canned pineapple fruit from Thailand. The Department has determined that it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1442 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION: On August 7, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit from Thailand. *See Canned Pineapple Fruit from Thailand; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review* (62 FR 42487). The review covers shipments of this merchandise to the United States during the period of review January 11, 1995, through June 30, 1996, and three manufacturers/exporters of the subject merchandise: Siam Food Products Public Company Ltd., The Thai Pineapple Public Company, Ltd., and Thai Pineapple Canning Industry Corp., Ltd.

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) directs the Department to issue its final results of review within 120 days after the date on which the preliminary results are published, unless it is not practicable to complete the review in that period, in which case the Department may extend the period to 180 days. Because it is not practicable to complete this review within a 120-day period, the Department is extending the time limit for completion of the final results until 180 days from the date of publication of our preliminary results of review. The deadline for issuance of our final results of review is thus February 3, 1998.

Dated: December 5, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–32627 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–807]

Ferrovanadium and Nitrided Vanadium From the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 7, 1997, the Department of Commerce published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on ferrovanadium and nitrided vanadium from the Russian Federation (62 FR 42492). This review covers the period January 4, 1995, through June 30, 1996. Based on our analysis of the comments received from interested parties, we have made certain changes to our preliminary results, including corrections of errors. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled "Final Results of Review."

We have determined that sales have been made below normal value during the period of review. Accordingly, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between export price and normal value.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Mary Jenkins, AD/CVD Enforcement Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4136 or (202) 482–1756, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997).

Background

The Department of Commerce (the Department) published an antidumping duty order on ferrovanadium and nitrided vanadium from the Russian Federation (Russia) on July 10, 1995 (60 FR 35550).

The Department published a notice of "Opportunity To Request an Administrative Review" of the antidumping duty order for this review period on July 8, 1996 (61 FR 35712). We received a timely request for review and on August 15, 1996, we published a notice of initiation of the review (61 FR 42416).

This review covers one exporter of the subject merchandise, Galt Alloys, Inc. (Galt).

On August 7, 1997, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia, as well as a recission of the review for a second exporter, Odermet Ltd., which had no shipments during the period of review (POR) (62 FR 42492). Galt and the petitioner, Shieldalloy Metallurgical Co., Inc., submitted case and rebuttal briefs in September 1997. In response to the Department's October 15, 1997, letter, the petitioner submitted additional surrogate value data on October 27, 1997, and Galt submitted comments related to this submission on November 3, 1997. As the Department placed additional surrogate value information on the record on November 6, 1997, we allowed comments on this information from the petitioner, submitted on November 14 and 18, 1997, and rebuttal comments from Galt submitted on November 20, 1997, in accordance with section 782(g) of the Act.

The Department has now completed this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this administrative review are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.*, more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen. Excluded from the scope of this order are vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to this order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Review

The period of review (POR) is January 4, 1995, through June 30, 1996. The review covers one exporter, Galt.

Facts Available

In accordance with section 776(a) of the Act, we have determined that the use of adverse facts available (FA) is appropriate for sales of merchandise produced by Chusovoy, as discussed in the *Preliminary Results of Antidumping Duty Administrative Review of Ferrovanadium and Nitrided Vanadium from the Russian Federation* (62 FR 42494, August 7, 1997) and below at Comment 1.

Analysis of Comments Received

Comment 1: Application of Facts Available to Chusovoy-produced Merchandise.

Galt contends that the use of an adverse facts available rate of 88.63 percent for Galt's sales of merchandise produced by Chusovoy, a non-cooperative party to the proceeding, is contrary to the statutory requirements and Department precedent, and punishes the wrong party for non-cooperation. Galt cites section 776(b) of the Act which provides that adverse FA may be applied when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Accordingly, while Chusovoy may be uncooperative, Galt notes that it has cooperated to the best of its ability, and thus adverse FA cannot be applied in calculating its margin. In a recent case with a similar fact pattern, *Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 62 FR 6173 (February 11, 1997) (*PRC TRBs*), Galt states that the Department did not apply adverse FA from the less than fair value (LTFV) investigation petition for the merchandise from the uncooperating producers sold by the cooperating exporter, as was applied in these preliminary results, but rather used the facts available from other producers in that proceeding to calculate normal value (NV) for those sales. Galt thus argues that the margin for these sales should be calculated using Galt's actual sales prices for export price (EP) and the information obtained from the other producer in this proceeding, Tulachermet, or, alternatively, Chusovoy's data from the LTFV investigation, to calculate NV.

The petitioner argues that the Department properly considered Chusovoy an uncooperative respondent in the preliminary results and correctly applied adverse FA to sales of Chusovoy's merchandise. Given the absence of the required data from Chusovoy, the petitioner contends that the petition rate properly constitutes the "facts otherwise available" in accordance with section 776(b) of the Act. This approach, the petitioner continues, is consonant with the Department's established, and judicially approved, pre-URAA two-tiered "best information available" (BIA) methodology, and the Department's practice regarding facts available under the URAA. With regard to Galt's proposed alternatives to the LTFV petition rate, the petitioner claims that Chusovoy's data from the LTFV segment of the proceeding cannot be considered in this segment because Galt improperly submitted the information on this record without Chusovoy's consent or knowledge. The petitioner also notes that the facts in this case are different from those in *PRC TRBs*, where, the petitioner contends, the amount of usable information was much greater than in this instance.

DOC Position: We find no basis to change our finding in the preliminary results that the use of adverse FA is warranted for Chusovoy's factors of production. As we stated in the preliminary results, we find that, pursuant to section 782(e) of the Act, the limited information that Chusovoy

submitted is so incomplete that it cannot serve as a reliable basis for reaching a determination in this review. Further, by failing to respond, Chusovoy is an interested party which has not cooperated to the best of its ability under section 776(b) of the Act. Therefore, we have continued to use an adverse inference in selecting from the facts available to determine the margins for Galt's sales of Chusovoy-produced merchandise and applied the 88.63 percent margin used in the preliminary results for these sales.

With regard to Galt's reference to a different approach applied in *PRC TRBs*, we note that the facts in *PRC TRBs* are distinguishable from the instant situation in a number of ways. Premier purchased the subject merchandise from eight suppliers, two of which did not cooperate; here, Galt purchased only from two suppliers, of which one did not cooperate. Premier's six cooperating suppliers reported little variation in factor-utilization rates; thus, using their data to calculate the unreported factor data for the same model may have been appropriate for that case. Here, we only have one cooperating producer's fully reported factors of production to consider and thus an insufficient basis to conduct a similar evaluation of variation in consumption rates. Under these circumstances, it is inappropriate to allow Chusovoy (or any producer) to benefit for not cooperating in a proceeding.

With regard to petitioner's comment concerning Galt's submission of Chusovoy data from the LTFV investigation, we do not agree that the information was improperly submitted. The information in question was originally obtained by Galt and submitted to the Department by counsel common to Galt and Chusovoy. Galt did not obtain the information through a violation of the administrative protective order, but rather had direct access to the information and thus was in a position to submit it for this record.

Comment 2: Valuation of Chusovoy's Vanadium Slag for Facts Available Rate.

The petitioner contends that the Department cannot use Tulachermet's purchase price of South African vanadium slag to value Chusovoy's consumption of vanadium slag. According to the petitioner, Department precedent and policy establish the Department's intent to apply the price paid by an NME producer for a market economy input only to that producer's own consumption of the input. The petitioner also claims that, in applying the facts available rate as NV for Galt's sales of Chusovoy merchandise, the Department improperly concluded that Chusovoy procured all of its slag requirements from Russian suppliers and thus improperly applied a quality adjustment in valuing vanadium slag. As facts otherwise available, the petitioner holds that the Department should adversely assume that this uncooperative respondent did not purchase any of its vanadium slag requirements from Russian suppliers of low grade vanadium slag, but rather consumed high grade vanadium slag such as South African slag, containing 23 percent vanadium pentoxide, and thus apply, without adjustment, the LTFV margin of 108 percent to all of Galt's sales of subject merchandise produced by Chusovoy.

Galt objects to the use of the unadjusted petition value for vanadium slag (*i.e.*, the price paid by Shieldalloy for South African slag exported to the United States) because it relates to sales to a different market and is thus less accurate than a price to the Russian market. According to Galt, the price paid by Tulachermet for South African vanadium slag imported into Russia is the best available information to value Chusovoy's slag.

DOC Position: We have not valued Chusovoy's consumption of vanadium slag based on Tulachermet's South African purchase, but rather we applied the LTFV investigation margin rate, adjusted to reflect the quality of Russian-sourced vanadium slag as we did for the preliminary results of this administrative review, for all of Galt's sales of Chusovoy-produced merchandise. We disagree with the petitioner that the Department must make an adverse assumption of the facts available that Chusovoy obtained higher quality South African slag for all of its vanadium slag consumption. The facts available in this segment include all of the relevant information obtained and verified during the LTFV segment of the proceeding, and placed specifically on the record prior to the preliminary results, as well as information in the public record. In the LTFV investigation, Chusovoy reported, and the Department verified, that none of its slag was obtained from market economy sources. The LTFV investigation established that Chusovoy obtained slag from two sources: as a by-product of its production of other goods, and from a steel manufacturer in Nizhni-Tagil in Russia. There is no basis to assume, adversely or otherwise, that Chusovoy has completely changed its supply pattern and relies exclusively on foreign-sourced vanadium inputs.

Comment 3: Application of Facts Available to Galt and Tulachermet Data.

The petitioner claims that Galt's and Tulachermet's data as well as Chusovoy's should be disregarded for the final results because of numerous deficiencies and failure to provide requested data. Moreover, the petitioner argues that these parties are also uncooperative and adverse FA must be applied for the final results. The petitioner cites the following areas as the basis for its claim:

(a) Failure to meet certification requirements—The petitioner contends that the respondents failed to comply with the Department's certification requirements of 19 CFR 353.31(i) by omitting certifications from Chusovoy or its counsel, or by submitting certifications that were merely copies of faxes used in previous submissions and have never replaced them with original signed certifications.

(b) Galt failed to report all of its POR sales—The petitioner contends that Galt failed to report all of its sales during the POR because it did not report data for merchandise sold from a shipment that allegedly entered the United States prior to suspension of liquidation. The petitioner claims that in order to exclude these sales, Galt must meet the stringent requirements outlined in *Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Wire Rod from France*, 62 FR 7206 (February 19, 1997) (*SSWR*), namely that such sales may be excluded only if the Department determines that these sales (1) entered the United States prior to suspension of liquidation, and (2) that there is sufficient linkage between the entry and the POR sales. The petitioner argues that Galt had provided insufficient documentation to establish the date of entry as being prior to the suspension of liquidation, and that Galt has not adequately demonstrated linkage between this entry and corresponding sales.

(c) Galt failed to provide all required audited financial statements—The petitioner states that Galt never provided the audited financial statement for Galt International for the fiscal year ending September 30, 1996, as requested by the Department. The internal financial documents Galt submitted, the petitioner contends, were untimely and inadequate.

(d) Tulachermet failed to provide critical information—The petitioner contends that Tulachermet did not adequately respond to the Department's questionnaire because it did not provide full translations of production worksheets, revealed late in this proceeding that it produced an intermediate product, limestone, in making the subject merchandise, failed to provide complete packing materials and labor factor data for the POR, and omitted other information specifically requested by the Department.

Galt counters that it has fully cooperated with the Department. Galt's responses to the petitioner's comments are as follows:

(a) Failure to meet certification requirements—Galt contends that all submissions included the necessary certifications for factual information and that no submission has been rejected by the Department because of the absence of a proper certification. Galt adds that the petitioner is incorrect in its understanding of the certification regulation in that it does not specify the particular form of certification that the petitioner is demanding. Accordingly, there is no reason to reject Galt's and Tulachermet's submission on this basis.

(b) Galt failed to report all of its POR sales—Galt replies that it has adequately demonstrated that the sales in question were properly excluded from its reporting because the merchandise entered the United States prior to suspension of liquidation. Galt states that, although the petitioner insists that Galt has supplied insufficient documentation, the petitioner fails to identify what piece of documentation, other than the actual entry documents, Galt should have submitted. Galt asserts that the entry summary provided to U.S. Customs sufficiently establishes the date of entry for this merchandise. Further, Galt argues that it has already established during the LTFV investigation verification that it keeps records in the ordinary course of business that enables it to link entered merchandise and sales.

(c) Galt failed to provide all required audited financial statements—Galt responds that there is no audited financial statement for its affiliate Galt International for the fiscal year ending September 30, 1996; thus, Galt cannot be said to be uncooperative in this regard.

(d) Tulachermet failed to provide critical information—Galt states that Tulachermet reported all inputs to the Department. The production summary worksheet translations are adequate, Galt states, because each monthly summary has year-to-date cumulative calculations, so that by providing translations for December 1995 and June 1996, Tulachermet has provided translations for the entire POR. With regard to Tulachermet's own production of lime from limestone, Galt states that the necessary information was immediately submitted to the Department after the Department raised the issue, and that the labor and energy consumed in the production of lime already had been included in the reporting of vanadium pentoxide production. Galt states that Tulachermet's packing input reporting is complete in that a comparison of the response for the POR to the verified response in the LTFV investigation shows that the petitioner's claim that all of its packing materials were not reported is baseless, and that the petitioner has failed to identify even one material that is missing.

DOC Position: We continue to hold, as we stated in our preliminary results, that Galt and Tulachermet have fully cooperated with the Department and that the information submitted by Galt and Tulachermet meets the requirements of section 782(e) of the Act in that:

(1) the information is timely;
(2) the information is verifiable;
(3) the information is not so incomplete that it cannot serve as a reliable basis for our determination;
(4) these parties have acted to the best of their abilities in providing the requested information; and
(5) the information can be used without undue difficulties.

Accordingly, we have relied upon the information submitted by Galt and Tulachermet for the final results. We address the specific areas raised by the petitioner as follows:

(a) In our review of Galt's submissions, we found that all submissions that required certifications were accompanied by a certification that meets the regulatory requirement. Most of these certifications were of the faxed, copied type. While this type may not be ideal, there is no regulatory or statutory basis for rejecting such certification.

(b) The Department is satisfied that the "unreported sales" claimed by the petitioner are for pre-antidumping duty order entries. We disagree with the petitioner that Galt failed to meet the two-prong test as articulated in *SSWR* from France. The first prong of the test is established by showing that the merchandise entered the United States before the suspension of liquidation. Galt met this part of the test by submitting entry documents for the sales in question which established that the merchandise entered the United States prior to suspension of liquidation. In addition, the second part of the test was met because a comparison of the lot number for the entry to the lot numbers supplied in the sales listing confirms that Galt has been able to link specific sales to entries. We verified in the LTFV investigation that Galt is able to link specific sales to specific entries of the subject merchandise and we have no reason to believe that circumstances have changed with regard to Galt's ability to link these entries and sales.

(c) We find no basis to conclude that Galt has withheld any financial statements. Galt has stated that there is no financial statement for its affiliate and we have no reason to dispute this assertion.

(d) With respect to Tulachermet's provision of information, the information provided is timely, verifiable, complete to the extent that it serves as a reliable basis for our determination, and can be used without undue difficulty. Galt provided Tulachermet's production worksheets in full compliance with the Department's instructions, and provided adequate translations for them. The information on lime production, which constitutes only a small portion of NV, by value, was provided in a timely manner for this segment of the proceeding. The information provided for the relatively minor packing factors is sufficient to serve as a reliable basis for our final results.

Comment 4: "Combination Rates" for Galt.

Galt contends that, if the Department applies adverse FA to sales of Chusovoy merchandise, it should do so in a way that punishes Chusovoy for its non-cooperation, but not Galt. Accordingly, Galt advocates establishing separate deposit rates for each producer/exporter combination ("combination rates")—*i.e.*, a deposit rate for Chusovoy (producer) and Galt (exporter) based on adverse FA, and a deposit rate for Tulachermet (producer) and Galt (exporter) based on the Department's margin calculations using the submitted data. Galt also advocates a different basis for assessment purposes using the actual sales information from Galt.

The petitioner argues that the issuance of a single dumping margin for Galt is proper and consistent with the Department's practice. Indeed, it would be inappropriate and improper for the Department to issue separate combination rates, according to the petitioner. The petitioner cites a number of past determinations where the Department has refused to establish producer/exporter combination rates, except where a producer/exporter margin is found to be zero or de minimis and thus excluded from an antidumping duty order. The petitioner further contends that the issuance of a single dumping margin for Galt facilitates administration of the antidumping duty order. Finally, the petitioner notes that establishing assessment and deposit rates on

different bases would have the effect of rewarding Chusovoy for its failure to cooperate since, under Galt's proposal, little or no antidumping duties would be assessed on the sales already made, while there would be no impact for future sales since Chusovoy has shown no further interest in exports to the United States.

DOC Position: We have followed our long-established practice and calculated a single rate applicable to the exporter, Galt, consistent with our approach in similar cases (*see, e.g., Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine*, 60 FR 16433, March 30, 1995). As the rate calculated merely reflects the margins determined on all of Galt's U.S. sales, we are not persuaded that there is a compelling reason to deviate from our normal practice.

Comment 5: Whether Verification Should Have Been Conducted in this Proceeding.

The petitioner claims that it established a compelling and apparent need for verification of the sales and factors of production responses in this proceeding, based on, inter alia, the changes in Galt's distribution system since the LTFV investigation, alleged deficiencies in Galt's and Tulachermet's responses, and Tulachermet's failed verification in the LTFV investigation. The petitioner further contends that the respondents have "ducked" verification by claiming that verification would be a needless expense and that all required information could be provided without verification. Instead, the petitioner argues, the respondents have provided an incomplete and contradictory record; they should not benefit from their objection to verification.

The respondents counter that they have not "ducked" verification, but rather contend that it would be an unnecessary expense for the Department and for the respondents to conduct on-site verifications again in this review when the Department could achieve the same ends through written submissions. The respondents also contend that the petitioner failed to meet the deadline for requesting verification in this review and therefore has no standing to object to the Department's decision not to conduct a verification in this instance.

DOC Position: As stated in section 782(i)(3) of the Act, the Department shall verify information relied on for the final results of an administrative review if (A) there is a timely request for verification, and (B) no verification was made during the two immediately preceding reviews and investigations, unless good cause for verification is shown. Under the applicable regulation, 19 CFR 353.36(a)(v)(A), the petitioner's request was not timely, as it was made more than 120 days after the initiation of this administrative review. However, 19 CFR 353.36(a)(iv) also provides for verification if the Department determines that good cause for verification exists. In response to the petitioner's assertions, we do not find that good cause exists for verification in the instant segment of the proceeding.

Both Galt and Tulachermet were verified in the LTFV investigation, which immediately preceded this review. While Tulachermet failed verification of its sales response in the LTFV investigation, its reported factors of production were successfully verified and used to calculate foreign market value for an unaffiliated exporter. Although Galt has made changes in its distribution system since our last verification, it has fully responded to our requests for information and provided sufficient data in this review for the Department's analysis and reliance upon for the final results. We do not consider a change in a respondent's distribution system, in and by itself, sufficient cause to require a verification. In sum, we are satisfied that the data provided by Galt and Tulachermet is sufficiently reliable under section 782(e) of the Act so as to form the basis of our final results without conducting verification.

Comment 6: Surrogate Value for Vanadium Slag.

In the preliminary results, the Department valued Tulachermet's Russian-sourced vanadium slag based on the price Tulachermet paid for a purchase of South African slag immediately prior to the POR, adjusted for the quality difference between the South African and Russian material using the methodology applied in the LTFV final determination. The petitioner contends that the use of a single, pre-POR purchase of vanadium slag, which is of an insignificant quantity in comparison to Tulachermet's consumption of Russian slag, is an inadequate basis for the surrogate value. The petitioner claims that the Department rejected its valuation proposal—the weighted-average of the petitioner's own South African vanadium slag purchases during the POR—because of the Department's faulty mathematical analysis of the petitioner's purchases. Because its South African vanadium slag purchases are of the material to be valued, and cover the entire POR, the petitioner argues that these prices are the appropriate basis for the surrogate value. With regard to vanadium price data obtained from the South African Minerals Bureau subsequent to the preliminary results (*see* fax dated November 6, 1997), which includes the domestic average price for vanadium slag, the petitioner objects to this source because the petitioner believes that the South African values stated are likely to be distorted by intracompany transfers not conducted at arm's length, and thus do not represent market value.

Galt claims that the use of Tulachermet's purchase price as the basis for the vanadium slag surrogate value is consistent with the Department's policy and practice, as embodied in section 351.408(c)(1) of the Department's new regulations, which states that the Department will base surrogate value on a market economy purchase when an input is sourced from both market economy and NME suppliers. Galt asserts that Tulachermet made bonafide, substantial purchases for Tulachermet's production, and not a *de minimis* purchase meant to distort a dumping margin; thus, this purchase is a reasonable basis for valuing Russian sourced slag in accordance with the Department's policy. The use of the petitioner's prices for vanadium slag, Galt further contends, would be unfair and unpredictable because this business proprietary information is unavailable when the respondents make sales. Thus, argues Galt, how could Tulachermet know if Shieldalloy purchased slag at the beginning, at the end, or anytime at all during the POR, and in what quantities? And, how could Galt even attempt to price fairly if it must guess at the value of an important input rather than use a figure that is readily accessible? Galt also notes that relying on the petitioner's purchase prices would involve the use of prices to the United States rather than to an appropriate surrogate country, contrary to section 773(c)(4) of the Act. Finally, with regard to petitioner's contentions regarding the use of the vanadium slag price data from the South African Minerals Bureau, Galt claims that its analysis shows that any price distortion that exists in this value would be to respondents' detriment and the value should be adjusted accordingly if it were to be used.

DOC Position: Vanadium slag is the single most important input for production of ferrovanadium. Tulachermet obtained nearly all of its vanadium slag consumed during the POR from a Russian source, which provided the material at a grade of approximately 15–16 percent contained vanadium pentoxide. Tulachermet purchased a relatively small amount of vanadium slag from South Africa immediately prior to the POR for POR

consumption. This market economy purchase was of 22–24 percent contained vanadium pentoxide. As in the preliminary results, we valued the quantity purchased from South Africa at the purchase price for this material. Because this material is different from the Russian-sourced material, on the basis of the vanadium pentoxide content, we did not apply this price to the remainder of the vanadium slag consumed by Tulachermet, nor did we assign this price as the basis for the vanadium slag surrogate value (prior to adjustment), as we did in the preliminary results. As explained further below and in the Final Results Valuation Memorandum dated December 4, 1997 (FRVM), we have applied a different surrogate value and adjustment methodology (*see* Comment 7) for the final results.

The Department's stated practice in determining which surrogate value to use for valuing each factor of production is to select, where possible, publicly available information which is: (1) an average non-export value; (2) representative of a range of prices within the POR if submitted by an interested party, or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive (*see, e.g., Final Results of Antidumping Duty Administrative Review: Sebacic Acid From the People's Republic of China*, 62 FR 10530, 10534, March 7, 1997 (*Sebacic Acid*), and *Preliminary Results of Antidumping Administrative Review: Manganese Metal From the People's Republic of China*, 62 FR 60226, 60227, November 7, 1997). The Department has also articulated a preference for a surrogate country's domestic prices over import values (*see, e.g., Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160, 9163, February 28, 1997).

As we have noted throughout this proceeding (*see, e.g.*, Preliminary Results Valuation Memorandum (PRVM) at page 3), we have not been able to identify a market economy surrogate value for vanadium slag with 16 percent contained vanadium pentoxide from any source. Indeed, our research indicates that vanadium slag of this quality is not produced outside of Russia and, perhaps, the People's Republic of China. Accordingly, the Department must identify the most comparable surrogate match.

Based on the available choices, we have rejected both the values offered by the petitioner based on its own purchases of South African vanadium slag, and the value based on Tulachermet's December 1994 South African purchase. These values are not product-specific (*i.e.*, are for vanadium slag of a different quality than that obtained by Tulachermet from its Russian supplier), and are export prices. We are also concerned that the use of the petitioner's proprietary purchase prices, unavailable to Galt and its suppliers, as the surrogate value for a major input would effectively allow the petitioner to directly influence our calculation of NV and hinder the exporter from adjusting its prices to eliminate dumping. As for Tulachermet's price, we agree with the petitioner that the use of a single price quote from December 1994 does not adequately represent the price levels of vanadium products experienced during the POR.

In this proceeding, we obtained data from the South African Minerals Bureau on the vanadium industry and price levels for a variety of products. Some of this information was in published form (*see* PRVM), while other data was obtained directly from the Bureau (*see* fax dated November 6, 1997). In addition, the South African Minerals Bureau, the petitioner, and Galt have provided information from the industry publication *Metal Bulletin* on vanadium pentoxide and ferrovanadium prices in the world market. We have relied on these public, independent sources as the bases for valuing vanadium slag and other vanadium products.

For vanadium slag, we have used as the base value the POR-average South African FOB value for 24 percent vanadium pentoxide content slag, as reported by the South African Minerals Bureau in the November 6 fax. This value is a domestic South African price for a material that is most comparable to the product among the publicly available values. The value calculated is an average of 1995 and 1996 values and is thus representative of the range of prices during the POR. Moreover, it is derived from the only source of public data for vanadium slag (of any grade) we have obtained in the course of this proceeding.

In our view, the inferences, speculations, and assumptions the petitioner and Galt applied in their respective analyses of the South African domestic prices fail to establish that these South African slag values are not market values. A comparison of the annual averages of the South African slag prices to the annual averages of CIF Europe spot prices for vanadium pentoxide shown in the November 6 fax, which are market-based prices, shows a consistent relationship of about 20 to 25 percent (*i.e.*, the slag price is about 20–25 percent of the European market price for vanadium pentoxide). Given the absence of any other public source for slag prices, based on the available information, we have no basis to conclude that, to the extent a market exists for vanadium slag, these prices are not the South African market prices for vanadium slag.

Comment 7: Quality Adjustment to Vanadium Slag Surrogate Value.

The petitioner disagrees with the Department's adjustments for what it considers alleged quality differences between the South African and Russian inputs. The petitioner contends that the record evidence does not support the Department's position in its preliminary results that Russian-sourced vanadium slag, of approximately 15–16 percent vanadium pentoxide content must be valued lower than South African slag of approximately 22–24 percent vanadium pentoxide, on a contained-vanadium basis [1]. The petitioner objects to the use of a quality adjustment methodology based on a ratio derived from the prices of Russian (*i.e.* NME) goods. Such a use of NME prices, the petitioner contends, is contrary to the Department's established policy and practice. Finally, if the Department were to make a quality adjustment to the South African input value, the petitioner states that the adjustment must be based on POR data and proposes an adjustment factor of .96, derived from *Metal Bulletin* news articles during the POR, rather than the .7292 factor derived from 1993–94 *Metal Bulletin* price comparisons. Alternatively, the petitioner suggests that, if the Department believes it has insufficient information from market economy countries to value the vanadium slag consumed by Tulachermet, the Department should base NV on the sales of South African ferrovanadium to other countries.

Galt agrees with the Department's approach to adjusting the surrogate value for quality differences between the South African material and the Russian-sourced material. Galt states that, contrary to the petitioner's assertion, the statute does not prohibit the use of NME-based value information to adjust a market-based surrogate value. Galt notes that this case differs from the *Final Determination of Sales at Less than Fair Value: Refined Antimony Trioxide from the People's Republic of China*, 57 FR 6801 (February 26, 1992),

[1] "Contained vanadium basis" refers to adjusting the price or value of the material based solely on the amount of vanadium contained, regardless of the content of other materials. Thus, products with varying percentages of contained vanadium or vanadium pentoxide can be compared on an equal basis.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

cited by the petitioner in that (1) the non-market prices in question are being used to determine an adjustment factor, not to determine the base price to be used, and (2) there are no market economy prices available. Thus, Galt contends, under these conditions the Department has no choice but to use the available information in order to make the adjustment to the vanadium slag surrogate value that the record overwhelmingly shows is necessary. Galt also objects to the petitioner's proposed alternative methodology using POR price quotes, claiming that the information is anecdotal and does not adequately identify the Russian merchandise to allow for proper calculation of the quality adjustment ratio.

DOC Position: As we stated in the PRVM, the record throughout this proceeding overwhelmingly demonstrates that vanadium slag with a vanadium pentoxide content below 24 percent is lower quality than the 24 percent product, and its value to consumers cannot be quantified in terms of a straight-line adjustment based on relative percentages of vanadium pentoxide, as argued by the petitioner. Principally, the Russian-sourced vanadium slag contains a higher level of impurities than the 24 percent vanadium pentoxide content slag, which, in turn, results in higher processing and waste disposal costs. We concluded in the LTFV investigation that the South African slag value should be adjusted in order to properly value the Russian-sourced vanadium slag to account for the latter's lower quality. Our finding and methodology was upheld in *Shieldalloy Metallurgical Corp.* v. *United States*, 975 F.Supp. 361 (Ct. Int'l Trade 1997) and *Shieldalloy Metallurgical Corp.* v. *United States*, 947 F.Supp. 525)Ct. Int'l Trade 1996). In this review, we continue to believe that Russian-sourced slag must be valued lower than the 24 percent vanadium pentoxide slag, on a contained vanadium basis.

The petitioner has never convincingly refuted the fact that the Russian-sourced slag is of an inferior quality to the South African slag upon which surrogate values have been based. The petitioner's claims and speculations that the inferior Russian vanadium slag should be valued the same as the higher quality South African material, on a contained vanadium basis, do not stand up against the weight of information to the contrary developed throughout this proceeding. Given that no market economy value exists to our knowledge for vanadium slag of a comparable quality to the Russian-sourced material, a quality adjustment must be made to the South African vanadium slag value in order to arrive at a surrogate value that fairly represents the material to be valued.

The petitioner has argued that the Department's quality adjustment methodology used in the LTFV final determination and the preliminary results of this review is flawed because it is based on NME prices, and is based on noncontemporaneous price data. We acknowledged in the preliminary results that, subsequent to the LTFV investigation and CIT litigation, we learned that the 90% vanadium pentoxide prices published in *Metal Bulletin* and used to calculate our adjustment ratio were based on Russian prices. However, since we have been unable to identify any other information suitable for making this adjustment, we must continue to use the ratio between vanadium pentoxide prices, including the prices of Russian vanadium pentoxide of lower quality, as a facts available basis for the quality adjustment methodology. We emphasize that we are not using any NME prices to arrive at the surrogate value, but rather the relationship between prices for internationally-traded goods in market economies, where some of these goods were produced in a NME country, and applying the resulting ratio to a South African value. Although this methodology may not be ideal because it involves the use of NME price data, it is, nevertheless, the best available information. To fail to apply a quality adjustment to the surrogate value would be, in our view, a far greater distortion to the valuation of Russian-sourced vanadium slag.

Its other objections aside, the petitioner proposes using POR vanadium pentoxide price information to recalculate the quality adjustment. We agree with the petitioner that this approach is preferable. However, we agree with Galt's concerns about the Russian vanadium pentoxide prices the petitioner selected from *Metal Bulletin*. These quotes are anecdotal citations chosen by the petitioner that include no information about the quality of the product allegedly sold. In contrast, the LTFV methodology relied on market research data by an independent source for vanadium pentoxide of a known purity (*see* Attachment 9 to PRVM). While the data is not contemporaneous, it is otherwise more reliable than the information proffered by the petitioner.

For the final results, we have revised our methodology from the preliminary results to incorporate more recent data from *Metal Bulletin*, as submitted by Galt on December 13, 1996. This submission includes 98 percent and 90 percent vanadium pentoxide price data for the last quarter of 1994—the last period that *Metal Bulletin* published 90 percent vanadium pentoxide prices and the quarter immediately prior to the POR. Thus, for the final results, we have applied the ratio between 98 percent vanadium pentoxide and 90 percent vanadium pentoxide prices reported for the fourth quarter of 1994, .9437, as the quality adjustment for the vanadium slag value. Our calculation is shown in the FRVM.

Comment 8: Contemporaneity of Vanadium Slag Surrogate Value.

The petitioner contends that a surrogate value based on a single purchase of vanadium slag immediately prior to the POR is inappropriate in this proceeding due to the price fluctuations of vanadium products during the POR. In support of its position, the petitioner provided information showing the rise and fall of world vanadium pentoxide and ferrovanadium prices during the POR, and that the Tulachermet purchase price is unrepresentative of prices during the POR. The petitioner asserts that the Department must make appropriate adjustments to ensure that the values of vanadium inputs accurately represent POR prices, otherwise the dumping calculation will be distorted. Accordingly, the petitioner claims that the surrogate value should be based on a weighted-average of prices during the POR, such as the weighted-average of the petitioner's vanadium slag purchases, or, if the Department continues to rely on Tulachermet's slag purchase price, an adjustment to that price must be made to reflect the difference between prices at the time of the purchase and the average prices during the POR.

Galt asserts that Tulachermet's purchase of the South African slag, although immediately prior to the POR, was for inputs consumed during the POR and thus is an appropriate value for the POR. Galt claims that to adjust the slag value for the vanadium price increases over the POR without ensuring that appropriate costs, prices, and production factors are matched will create distortions. In this case, Galt continues, the Department does not have the data on the record to link Tulachermet's actual production to its shipments to Galt, as such information was never requested by the Department. Therefore, Galt states that the only alternative is to find that there is no basis on the record to find this type of price inflation for the sales at issue and thus no time period adjustment need be made to Tulachermet's purchase price for vanadium slag.

DOC Position: We agree with the petitioner that, in this instance, it is inappropriate to base the surrogate value for vanadium slag on Tulachermet's single purchase price and have not done so for these final results (*see* Comment 6).

Comment 9: Sulfuric Acid Valuation.

The petitioner argues that Tulachermet's consumption of sulfuric acid should be adjusted to correct the Department's treatment of this input in diluted form. In fact, the petitioner contends that Tulachermet reported that it consumed sulfuric acid at 100 percent concentration. Thus, the petitioner states that, for the final results, Tulachermet's consumption of sulfuric acid should be valued based on the ratio of Tulachermet's 100 percent concentration consumption to the "standard concentration of commerce" of 93–98 percent, as identified by the Department. In addition, the petitioner states that the price used in the preliminary results was not the intended value identified by the Department as provided by a South African vanadium producer, and instead was a different value that was outside the POR. For the final results, the petitioner states that this error should be corrected.

DOC Position: We agree with the petitioner that Tulachermet has reported its consumption of sulfuric acid in undiluted form and that we erred in adjusting the consumption factor by the amount of dilution, which Tulachermet performs in the course of its production process. We also agree that the Department erred in its preliminary results in identifying the value source selected as a South African vanadium producer, while actually using the value obtained from the South African Chemical and Allied Industries Association. For the final results, we have continued to use the value for 98% sulfuric acid from the Association, which is a POR average provided to the Department in response to our specific request to the Association (*see* FRVM). The values obtained from both the Association and the vanadium producer were equally contemporaneous domestic tax-exclusive prices for the same material, but we selected the Association value as it is from a more publicly available source than a price quote from a company whose name cannot be revealed in our public documents.

Finally, we have adjusted Tulachermet's consumption factor to match the 98% concentration of the sulfuric acid surrogate value, as suggested by the petitioner.

Comment 10: Valuation of Small-Quantity Inputs.

In the preliminary results, the Department was unable to obtain surrogate values for boron anhydride and ammonium sulphite, and also did not include boron acid in its NV calculation. The petitioner claims that these chemicals are important, individually and in the aggregate, to the production of the subject merchandise, and thus their omission understates Galt's dumping margin. Accordingly, the petitioner contends that the Department should value these inputs based on U.S. price data it submitted, or on the highest surrogate value for any input. In addition, the petitioner asserts that the Department must also continue to assign the farthest distance reported by Tulachermet for any supplier to calculate the freight value cost for all inputs for which Tulachermet failed to provide the distance from its supplier.

Galt argues that disregarding these inputs is justified under section 777A(a)(2) of the Act, under which "the administering authority may decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise." In addition, Galt opposes the application of the U.S. values for these inputs presented by the petitioner because these values are not from the primary surrogate country, South Africa, or from any other appropriate surrogate country identified by the Department.

DOC Position: Although the inputs in question are consumed in small quantities, we have accepted the petitioner's position in calculating NV for the final results. Department practice is to attempt to value all inputs in an NME NV for which there is available information. The U.S. price data is the only surrogate value information on the record for these inputs and thus may be used as facts available to value these materials. While the values identified by the petitioner for boric acid and ammonium sulfide acid are not the same as the boron (or boric) anhydride and ammonium sulphite consumed by Tulachermet (*see* "Telcon with ITC Chemical Industry Analyst Re: Tulachermet Chemical Inputs," Memorandum to the File dated October 22, 1997), as facts available, we have accepted the petitioner's contention in its October 27, 1997, letter that these values are for materials similar enough for surrogate valuation purposes, and that the values are, if anything, conservative measures of surrogate value.

Comment 11: Valuation of Factors Unreported by Tulachermet.

The petitioner claims that Tulachermet did not accurately report all of its inputs and omitted several of these inputs from its factors of production response, based on the petitioner's analysis of Tulachermet's production summary worksheets. As AFA, the petitioner contends that the Department should apply the highest consumption factor reported for any input, and apply the highest surrogate value for any input. The petitioner also argues that Tulachermet did not report its consumption of "technological electricity"; therefore, the Department should use adverse facts available to increase Tulachermet's reported consumption of electricity.

Galt argues that Tulachermet has accounted for all materials consumed and that the inputs cited by the petitioner either are already reported and accounted for, or are recycled materials.

DOC Position: We agree with Galt that certain inputs consumed and listed on the production worksheets—"metal skull," "metal riddlings," limestone, steam, compressed air, water, and "technical water"—are already accounted for in the factors of production worksheet. Tulachermet reported its consumption of vanadium and metal-based inputs on a gross, rather than net, basis. The production worksheets show that metal and vanadium waste was generated in the course of production and then re-used. Tulachermet's consumption of limestone has been reported separately in accounting for its lime production (*see* submission of March 7, 1997). Tulachermet's energy reporting accounts for the energy consumed to generate steam and compressed air. Water inputs are normally considered a factory overhead item and the Department usually does not value water separately (*see, e.g., Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China From PRC*, 59 FR 58818, November 15, 1994).

The production worksheets indicate consumption of certain other inputs—silicovanadium, vanadium aluminum alloy,[2] and "technological electricity"—which we agree should have been included in the factors of production worksheet. We have calculated consumption factors for these inputs, based on the data in the production worksheets submitted on February 7,

[2] Galt claims that it has reported vanadium aluminum alloy as "pre-alloyed material." However, our analysis of the questionnaire response reveals that "pre-alloyed material" in the factors of production worksheet corresponds to "iron-vanadium" alloy in the production worksheets.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

1997, and included them in the calculation of NV. We valued silicovanadium and vanadium aluminum alloy, on a contained vanadium basis, based on the POR average South African price for vanadium products, as reported by the South African Minerals Bureau. Because Tulachermet did not report the distance from the suppliers of these items to its factory, we have applied the distance from the farthest supplier, as facts available, to calculate the freight expense incurred in transporting these inputs.

Finally, we note that Tulachermet also consumed a very small amount of "pollacrid" during the POR, as indicated by the petitioner. However, there is no surrogate value for this material on the record. Therefore, we have not included a value for this material in our calculation of NV, although we have included a freight amount for this item, calculated in the same manner as discussed above.

Comment 12: Freight and Insurance costs for Surrogate Values derived from the Customs Union of Southern Africa (SACU) Import Statistics.

The petitioner contends that, in the preliminary results, the Department used surrogate values derived from SACU for factors whose input value did not include the cost of insurance and freight. The petitioner argues that the Department has thus understated the values for those inputs.

Galt responds that the Department already has made freight and insurance adjustments in its input freight value that is shown in its margin calculation. Galt states that to make additional adjustments to freight or insurance would be double counting.

DOC Position: We agree with *Galt.* In *Sigma Corp.* v. *United States*, No. 95–1509, 96–1036, 95–1510, 06–1037, 1997 U.S. App. LEXIS 16506 (Fed. Cir. July 7, 1997) (*Sigma*), the United States Court of Appeals for the Federal Circuit (CAFC) held that the calculated freight costs for PRC-made materials may not exceed the calculated freight costs of shipping the material from respondents' importing seaports in the PRC to their factories. The CAFC's decision in *Sigma* requires that we revise our calculation of source-to-factory-surrogate freight for those material inputs that are based in CIF import values in the surrogate country. Accordingly, we have added to CIF surrogate values from South Africa a surrogate freight cost using the shorter of the reported distances from either the closest reported port to the factory (*i.e.*, Ventspils, Latvia), or the domestic supplier to the factory.

Comment 13: Factory Overhead, Selling, General and Administrative Expenses.

The petitioner argues that, in calculating the surrogate value for factory overhead based on the 1995 Annual Report of Highveld Steel and Vanadium Corporation Limited (Highveld), the Department erred in excluding the figure for "net provision for renewal and replacement of fixed assets" from overhead expenses. Consistent with the Department's approach in *Final Determination of Sales at Less Than Fair Value: Sulfur Vat Dyes from the People's Republic of China*, 58 FR 7557, (February 8, 1993), the Department should include in the overhead ratio depreciation and all other elements of overhead that are identified in the Highveld's 1995 Annual Report. The petitioner further contends that because the Department verified separate cost centers for Tulachermet in the LTFV investigation, the surrogate overhead ratio should be applied to each cost center (*i.e.* vanadium pentoxide and ferrovanadium production centers). With regard to selling, general and administrative (SG&A) expenses, the petitioner states that the Department should include the amount spent on research and development, which was not included in the preliminary results calculation.

Galt states that the factory overhead figure calculated from the annual report is from the consolidated financial statement and represents the total overhead of all Highveld operations. To apply this percentage to each of Tulachermet's cost centers would result in double-counting overhead, according to Galt. To insure an "apples to apples" comparison, Galt contends that the Department should continue to apply the consolidated percentage to the consolidated factor.

DOC Position: We agree with the petitioner with respect to the omitted expenses in our factory overhead and SG&A calculations, and have made the corrections. These corrections result in revised surrogate percentages for factory overhead, SG&A expenses and profit (*see* FRVM).

We agree with Galt with respect to the application of factory overhead to the total of materials, labor, and energy values, rather than at each stage of production. Because our surrogate percentage is calculated on the basis of the total overhead of Highveld's production, the factory overhead percentage must be applied in the same manner to avoid double-counting (*see Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From PRC*, 61 FR 14057,14056, March 29, 1996).

Comment 14: Surrogate Profit Calculation.

The petitioner argues that the Department should calculate profit based on "net income before taxation," as reported in Highveld's 1995 Annual Report. The petitioner also contends that the Department erred in using "net sales turnover," rather than "cost of production," as the denominator for the surrogate profit calculation and should correct it for the final results.

Galt argues that the Department should calculate the surrogate profit percentage on the same basis it used to calculate the cost of production from Highveld's 1995 Annual Report. Galt contends that calculating the profit percentage on a different basis than the cost of production would violate the statutory requirement by exceeding the amount of profit normally realized by market economy exporters or producers.

DOC Position: We agree with the petitioner with regard to our surrogate profit calculation. We calculated profit based on the net sales turnover in the report, less cost of production, and applied the resulting ratio to the cost of production. Because of the changes to factory overhead and SG&A, noted above, the resulting profit figure, calculated as the difference between net sales and net costs per the Highveld 1995 Annual Report, differs from that cited by the petitioner (*see* FRVM).

Comment 15: Galt's SG&A and CEP Profit Calculations.

The petitioner contends that Galt has ignored the Department's explicit instructions and followed its own method of reporting and adjusting SG&A and profit used to calculate CEP expenses. The petitioner argues that Galt did not disclose the methodology for its numerous "revisions" or provide computations, beginning with the financial statement. Moreover, according to the petitioner, Galt did not provide any indication that its SG&A and profit calculations took proper account of the required antidumping duty.

Galt states that it responded to the petitioner's arguments regarding its SG&A expenses in its letter to the Department of May 21, 1997. Galt states that it explained how the figures are traced into the financial statements and provided additional background information on the figures. Galt objects to the petitioner's implication that the Department should examine backup documentation for financial statements that have already been certified as audited. In addition, Galt claims that it has thoroughly explained to the Department its methodology regarding management fees and the petitioner has provided no meaningful criticism of Galt's approach.

DOC Position: We agree with Galt with respect to its presentation of the information. Based on our analysis, we have accepted Galt's SG&A calculations for adjustments to CEP sales, as described in Galt's May 21, 1997, submission. We have, however, made corrections to these calculations for mathematical errors (*see* Memorandum to the File dated December 3, 1997.) As in the preliminary results, we revised the SG&A calculation to reflect a value-based, rather than unit-based, amount.

In addition, we have revised the calculation of CEP profit to meet the requirements of section 772(d)(3) and 772(f) of the Act. Accordingly, we calculated the profit allocable to selling and distribution activities in the United States based on the data in Galt's audited financial statements for the two fiscal years that included the POR (*see* Memorandum to the File dated December 3, 1997). Pursuant to section 772(f)(C)(iii) of the Act, this information is the data on the record for calculating CEP profit that comprises the narrowest category of merchandise sold in all countries which includes the subject merchandise.

Comment 16: Valuation of Railway Freight and Insurance.

In lieu of the 1993 South African rail rate information from the LTFV investigation used in the preliminary results, the petitioner contends that the Department should apply the railway rate and insurance data from the POR that the petitioner obtained in a fax from a South African railway source.

Galt states the petitioner's fax is an unreliable basis for this information as it does not contain published rail rates and is largely a handwritten note from someone, apparently in South Africa, which appears to be cut and pasted. Accordingly, Galt contends that the Department should continue to use the rail rates from the LTFV investigation in the absence of any other reliable information.

DOC Position: In this instance, we are asked to choose between the only two available surrogate values for freight—a figure derived from publicly available published data of rail rates for a representative list of destinations, but non-contemporaneous to the POR; or a rail rate quote contemporaneous with the POR obtained by an interested party for a specific route. While the latter choice has the advantage of being contemporaneous with the POR, the rate proffered by the petitioner is based on transport of 144 kilometers, while the rate calculated by the Department for the LTFV investigation is based on transport of 468 to 1,342 kilometers (*see* PRVM at page 10). Most transport to be valued covers distances of hundreds to thousands of kilometers. Therefore, we find that the rate from the LTFV investigation, although non-contemporaneous, is a more representative surrogate value for Tulachermet's movement expenses and we have continued to apply it in the final results.

Comment 17: Valuation of "Vanadium Pre-alloyed Material".

The petitioner agrees with the Department's selection of ferrovanadium prices to determine the surrogate value for "vanadium pre-alloyed material." However, the petitioner argues that the Department erred by applying the exchange rate conversion from South African rand to U.S. dollars for this value as the value was already expressed in U.S. dollars.

DOC Position: We agree with the petitioner that we made an error in applying an exchange rate to this value reported in U.S. dollars. However, for the final results, we have selected a different source for the ferrovanadium price. We have used the 1995–96 average South African FOB value for ferrovanadium reported by the South African Minerals Bureau in its November 6, 1997, fax. In applying this value, we have adjusted the consumption factor to reflect the maximum vanadium content of the input, as reported by Tulachermet in the February 7, 1997 response.

Final Results of Review: As a result of the comments received, we have changed the results from those presented in our preliminary results of review. Therefore, we determined that the following margin exists as a result of our review:

Exporter	Period	Margin (percent)
Galt Alloys, Inc.	1/4/95–7/31/96	34.66

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs.

Further, the following deposit requirements will be effective upon publication of these final results for all shipments of ferrovanadium and nitrided vanadium from Russia entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Galt will be the rate established in the final results of this administrative review; (2), for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation and have a separate rate, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) for Russian manufacturers or exporters not covered in the LTFV investigation, the cash deposit rate will continue to be the Russia-wide rate of 108.00 percent; and (4) the cash deposit rate for non-Russian exporters of subject merchandise from Russia who were not covered in the LTFV investigation or in this administrative review, will be the rate applicable to the Russian supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and published in accordance with section 777(i).

Dated: December 5, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–32631 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–P

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway: Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce has received a request from Nornir Group A/S to conduct a new shipper administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway, which has an October semi-annual anniversary date. In accordance with the Department of Commerce's regulations, we are initiating this administrative review.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (Department) has received a request pursuant to section 751(a)(2)(B) of the Act, and 19 CFR 351.214(b) of the regulations, for a new shipper review of this antidumping duty order, which has an April anniversary date.

Initiation of Review

In its request of October 31, 1997, Nornir Group A/S (Nornir) certified that it did not export the subject merchandise to the United States during the period of investigation (POI) (September 1, 1989, through February 28, 1990) and that it is not affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI. Accompanying its request, Nornir provided certifications which indicate the date the merchandise was first entered for consumption in the United States, that it is not affiliated with any other company, and that it did not under its current or a former name export the subject merchandise to the United States during the POI.

In accordance with section 751(a)(2)(B) and 19 CFR351.214(d), we are initiating a new shipper review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. We intend to issue the final results of these reviews not later than 270 days from the publication of this notice.

Antidumping duty proceeding	Period to be reviewed
Norway: Fresh and Chiled Atlantic Salmon, A–403–801: Nornir Group A/S	4/01/97–9/30/97

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department regulations are to the regulations as codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above in accordance with 19 CFR 351.214(e)(1997).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a) and 19 CFR 351.214.

Dated: December 5, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II Import Administration.

[FR Doc. 97–32689 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–804]

Industrial Nitrocellulose From Brazil; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On August 28, 1997, the Department of Commerce ("the Department") published in the **Federal Register** (62 FR 45621) a notice announcing the initiation of an administrative review of the antidumping duty order on industrial nitrocellulose from Brazil. This review covered the period July 1, 1996 through June 30, 1997. This review has now been rescinded at the request of the petitioner.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Alain Letort or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4243 or (202) 482–0649, respectively, or fax (202) 482–1388.

SUPPLEMENTARY INFORMATION: On July 30, 1997, the petitioner, Hercules Incorporated ("Hercules"), requested an administrative review of Companhia Nitro Química Brasileira ("Nitro Química"), a Brazilian producer and exporter of industrial nitrocellulose, with respect to the antidumping duty order published in the **Federal Register** on July 10, 1990 (55 FR 28266). We initiated this review on August 28, 1997 (62 FR 45621).

On November 26, 1997, Hercules withdrew its request for review, claiming that an industrial accident at Nitro Química's production facilities in Brazil had resulted in the shutdown of those facilities. Hercules stated that Nitro Química "will not be in a position for some time to dump industrial nitrocellulose in the United States and thereby contribute to the ongoing material injury of petitioner."

Section 351.213(d)(1) of the Department's regulations provides that "[t]he Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR § 351.213(d)(1) (1997). Because the only party which requested a review has withdrawn its request within the regulatory time limit, we are now rescinding this review. The cash deposit rate for this firm will continue to be the rate established in the most recently completed segment of this proceeding.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (1995)), and section 353.213(d)(4) of the Department's regulations (19 CFR § 353.213(d)(4) (1997)).

Dated: December 5, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III, Import Administration.

[FR Doc. 97–32630 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–802

Industrial Nitrocellulose From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the People's Republic of China (PRC). This review covers one producer/exporter, China North Industries Guangzhou Corporation (CNIGC), and entries of the subject merchandise into the United States during the period July 1, 1995 through June 30, 1996.

We gave interested parties an opportunity to comment on our preliminary results. On September 8, 1997, we received case briefs from respondent and petitioner. On September 15, 1997, we received rebuttal comments from both parties. We rejected respondent's September 8, 1997 case brief because it contained new information. Respondent resubmitted its case brief on November 14, 1997. On November 21, 1997, we placed on the record new data concerning the price of steel drums in Indonesia. On November 25, 1997, respondents submitted comments on this data. Based on our analysis of the comments received, we have changed the margin from that presented in our preliminary results of review.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0666 and (202) 482–3020, respectively.

Applicable Statutes and Regulations: Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 353 (April 1, 1996).

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1997, the Department published in the **Federal Register** (62 FR 42747) the preliminary results of the administrative review of the antidumping duty order on INC from the PRC (55 FR 28267, July 10, 1990). The preliminary results indicated the existence of a dumping margin. As we explained in the preliminary results, we did not grant CNIGC a separate rate. However, because U.S. import statistics indicate that CNIGC was the only exporter of the subject merchandise to the United States during the review period, we based the PRC-wide rate on the information submitted by CNIGC for this review. See, *Memorandum to the File* from Rebecca Trainor, dated July 23, 1997, on file in room B–099 of the Commerce Department. We received comments and rebuttal comments from the petitioner and the respondent. The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of industrial nitrocellulose (INC) from the PRC. INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

The period of review (POR) is July 1, 1995 through June 30, 1996.

Changes From the Preliminary Results

1. In the preliminary results we valued steel packing drums using the *Monthly Statistics of the Foreign Trade of India: Imports, Volume II* (Indian import statistics) for the period of April 1995 through March 1996, and April through June 1996. For the final results, we have valued steel drums using Indonesian prices contained in a facsimile from the American embassy in Jakarta, placed on the record for the investigation of furfuryl alcohol from the PRC. See Comment 4, and *Final Determination of Sales at Less than Fair Value; Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (*Furfuryl Alcohol*).

2. In the preliminary results, we incorrectly converted the water usage rate reported by respondent from tons to kilograms. We also assigned a separate surrogate value to water. For the final results, we have corrected the conversion error, and have not assigned a separate surrogate value to water, as it is included in the factory overhead value we have used. See Comment 6.

3. For the distance between packing materials suppliers and the INC factory in the preliminary results, we used the average distance between the supplier and factory for all other materials. For the final results, we have used the actual distances between packing materials suppliers and the respondent's factory, which we requested from respondent on November 5, 1997. See Comment 5.

4. In the preliminary results, we applied an Indonesian factory overhead rate which we obtained from the record for *Furfuryl Alcohol*. For selling, general and administrative (SG&A) expenses and profit rates, we used Indonesian data which we obtained from the record for *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 21058 (May 18, 1992)(*Pipe Fittings*). For the final results, we have used data obtained from the financial statements of six Indian chemical-producing companies. See Comment 7.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case briefs and rebuttal briefs from petitioner and respondent.

Comment 1: Surrogate country selection: Respondent argues that the Department should use India instead of Indonesia as the primary surrogate country in this review because: (1) The volume of Indonesian exports of the subject merchandise were very small, unlike the volume of India's exports; (2)

like India, and unlike Indonesia, China does not import cotton linters and; (3) the lack of Indonesian surrogate value information for several factors sent the Department back to India anyway, as the "secondary" surrogate country. Respondent states that the Department should use either data from the secondary surrogate country, India, for factory overhead, SG&A and profit values, or use India as the primary surrogate country and resort to Indonesian values only for cotton linters, since there is no Indian data on cotton linters.

Department's Position: We agree with respondent in part. We have continued to use Indonesia as the surrogate country for the purposes of valuing all of the raw material inputs. We have also used Indonesian data as surrogate values for packing materials. However, as we discuss in Comment 7, we have determined that Indian data is the best information we have with which to value factory overhead, SG&A and profit.

In choosing the surrogate country, we first determined that both India and Indonesia were at a level of economic development comparable to the PRC, and that both are significant producers of the subject merchandise. *See* Memorandum to Maureen Flannery from David Mueller, dated January 29, 1997, and Memorandum to the File dated March 24, 1997, on file in Room B–099 of the Commerce Department. Although India is a larger exporter of INC, we chose Indonesia as the surrogate country because we could obtain price data from Indonesian sources for all of the factors of production except for steel drums. This was not true of India, from where no data was available for cotton linters, one of the primary raw materials.

Thus, contrary to respondent's assertion, the only surrogate value for which we preliminarily resorted to Indian data was for steel drums. We note that for the final results, we valued steel drums using an Indonesian source. (*See* Comment 4.) Our preference is to value all factors of production in a single surrogate country, when possible. *See* section 351.408(c)(2) of the *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997) (*Final Rule*) ("Except for labor, as provided in paragraph (d)(3) of this section, the Secretary normally will value all factors in a single surrogate country.")[1] However, we were unable to obtain the most reliable data from just one country for this review, and have relied upon Indian data for factory overhead, SG&A and profit. We have continued to use Indonesia as the primary surrogate country, however, because we can value all other inputs in this country. This not true for India.

Furthermore, that China does not import cotton linters is irrelevant to our surrogate country selection. In using surrogate values, our goal is to substitute market-economy prices for non-market-economy (NME) prices. We use import data for no other reason than that they are a reliable source of market prices, not because the inputs may have been imported in the respondent country. In this case, we were unable to value all factors in a single country; however, our use of Indonesia as the primary surrogate country is consistent with this principle.

Comment 2: Surrogate Value for Cotton Linters: Petitioner argues that the Indonesian import statistics that the Department used to value cotton linters are flawed in several respects, and advocates that the Department use U.S. export data to either China, India or Indonesia (see Comment 3). However, petitioner asserts that, if the Department must use unit values related to a surrogate country, the Department should use certain surrogate unit values petitioner has identified from Indonesia or India. First, petitioner contends, the Indonesian import statistics are not reliable, because the amount of cotton linter imports they report are almost 15 times less than the amount that the U.S. Census reports were exported to Indonesia by the United States alone in 1995. Furthermore, the 1996 Indonesian statistics show no imports from any country at all, in contradiction with U.S. export figures that show that the United States exported 92,006 kg. to Indonesia in the second half of the POR (January through June 1996).

Secondly, petitioner claims that the unit value for cotton linters derived from the Indonesian import statistics is aberrationally low, compared to the unit value derived from U.S. export figures. Petitioner asserts that it is the Department's normal practice to disregard prices for factors of production inputs which are aberrational, and cites *Final Results of Antidumping Duty Administrative Review; Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China (Hand Tools)*, 60 FR 49251, 49252 (September 22, 1995).

Third, petitioner claims the 1995 Indonesian import statistics show imports of cotton linters into Indonesia for only one month in the review period (August). Moreover, petitioner argues, Indonesian import statistics show no imports of cotton linters for 1996. Therefore, petitioner argues it is inappropriate for the Department to use figures based on one month of the POR and only one month of a 24-month period because the Indonesian import statistics do not provide an accurate portrayal of the import price for cotton linters over the entire review period. Petitioner also notes that the Department routinely seeks to use surrogate values "from a time period that is contemporaneous to the period of investigation or the period of review." *Hand Tools*, 60 FR at 49253.

Fourth, petitioner asserts that the Indonesian import statistics reflect imports from Batam, which it claims is a separate customs zone of Indonesia. Because Batam is not a separate country from Indonesia, petitioner reasons, the data recorded in the Indonesian import statistics regarding cotton linter imports do not reflect true imports, and thus are not eligible for use as a basis for determining a market-economy price for cotton linters.

Finally, petitioner states that, because the unit values reflected in the import statistics are low, they may represent internal transfer prices. Moreover, they may represent a single transaction at a single port from a single supplier. Petitioner points out that the Department disregarded respondents' data for similar reasons in *Final Determination of Sales at Less Than Fair Value; Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160 (February 28, 1997) (*Brake Drums and Rotors*).

Respondent claims that the Indonesian import statistics do not underreport the volume of imports of cotton linters. Respondent points out that the import data record imports entered for consumption in Indonesia, while the U.S. export data include all exports sent into free trade zones in Indonesia including those which are re-exported without ever entering the Indonesian domestic market. Moreover, just because U.S. export data show shipments of U.S. cotton linters to China, India and Indonesia at a wide range of prices, this does not mean that those prices were actually paid in those countries, which is what the statute requires. Thus, respondent concludes, there can be no meaningful comparison of the two sets of data.

Respondent further argues that import data are inherently more reliable than export data. While there is little incentive for accuracy on the part of the providers of export data according to respondent, import data is compiled by customs officials who use the value of the imported merchandise to determine the customs duties to be paid on the merchandise. Moreover, understating import values would subject an importer to civil or criminal fines and penalties. Respondent notes that there are no similar consequences from inaccurately or negligently reporting U.S. export data. Therefore, it is the U.S. export data that should be called into question.

Assuming the accuracy of the U.S. export data, respondent states that the fact that the United States exports cotton linters at a wide range of prices that are different from the Indonesian import values does not discredit the latter.

Respondent argues that it is irrelevant that import data used by the Department were based on imports into Indonesia during only one month of the review period, because the data nonetheless constitute a surrogate value that was paid during the review period. Moreover, respondent argues, it does not detract from their accuracy.

Contrary to petitioner's assertion, respondent argues that the Indonesian import values are true import values, as Batam is a free trade zone. As such, the majority of products sent to Batam from outside Indonesia are not entered into the Indonesian market for consumption, but are re-exported. Those that do enter for consumption are recorded as imports and are assessed customs duties. Therefore, the imports into Indonesia through the Batam free trade zone fairly represent the value of cotton linters in Indonesia.

Respondent states that there is no evidence that the Indonesian import values represent internal transfer prices or that they represent a single transaction. Furthermore, the total imported quantity of 42 tons is not so small that the Department should assume that it constitutes a single transaction.

Department's Position: We find no evidence that the Indonesian import data for cotton linters are aberrational or unreliable, or that they represent a single transaction. The data cover imports into Indonesia from January to November 1995, and report 42 tons of cotton linters, not an insignificant amount. When appropriate, we compare surrogate value data to other available market-economy data to test the reliability of the data we intend to use in the factor analysis. *See, e.g. Hand Tools*. In this case, as petitioner and respondent have acknowledged, there is no other available data from countries with comparable economies with which to compare the Indonesian prices. Thus, we have no basis on which to conclude that the Indonesian import data is aberrational. Other than Indonesian import statistics or U.S. export data (see Comment 3), the only price data that we have been able to locate for cotton linters are import statistics from the United States and Canada. Such comparisons are not meaningful here, however, because all that they tell us is that cotton linters imported into Indonesia are priced lower than those imported into two countries with very different economies. Absent evidence that the Indonesian values are aberrational, to reject the Indonesian price simply because it is "too low" could be an overly subjective assumption. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833 (September 20, 1993) ("We agree that rejecting certain Indian import values simply because those are 'too high' is potentially overly subjective, but would add that so is rejecting certain values simply because they are 'too low.'")

With respect to petitioner's assertion that the Indonesian import data are unreliable because they do not comport with United States export data, it stands to reason that all of the merchandise entering Batam would not appear as imports in the Indonesian import statistics, because Batam is a free trade zone and a bonded area. As such, it is entirely reasonable to assume that a large proportion of imported goods are re-exported from Batam, without ever entering the Indonesian customs area.

Moreover, if the Batam prices were not "true" imports, as petitioner suggests, then they must represent domestic prices in Indonesia, which are also suitable to use as a surrogate value.

Comment 3: Use of U.S. Export Data: Petitioner contends that instead of Indonesian import data, the Department should value cotton linters based on U.S. export statistics for merchandise exported to the PRC during the review period. Petitioner argues that unit values derived from U.S. export values: (1) Provide the most realistic figure for cotton linters; (2) are based on publicly available information; (3) come from a reliable source; (4) represent a large volume of U.S. exports to China; and (5) is on the record of this proceeding. Petitioner emphasizes that these export values are the most accurate prices available because they are based on actual prices paid by Chinese importers for cotton linters during the POR.

Petitioner claims that it is the Department's longstanding practice to use actual market-economy purchase prices instead of surrogate values if such market-economy prices exist for material inputs. Therefore, the Department should not have looked to any surrogate value for cotton linters at all. Petitioner maintains that there is ample evidence that the Department routinely uses actual prices paid by PRC importers to U.S. suppliers. Petitioner argues that in a non-market economy such as the PRC, the Department's practice calls for using a combination of surrogate values and actual market-economy prices when the latter are available. Petitioner cites the following determinations as evidence of the Department's practice of using actual prices: *Final Determination of Sales at Less Than Fair Value; Bicycles from the People's Republic of China (Bicycles)*, 61 FR 19026, 19029 (April 30, 1996) and *Final Determination of Sales at Less Than Fair Value; Coumarin from the People's Republic of China (Coumarin)*, 59 FR 66895, 66897 (December 28, 1994). Petitioner also cites *Lasko Metal Products, Inc.* v. *United States*, 43 F.3d 1442 (Fed. Cir. 1994), to support its contention that using actual prices paid to U.S. suppliers by Chinese importers conforms with the antidumping statute's intent to determine margins as accurately as possible and to use the "best information available" to it.

The petitioner contends that, if the Department determines that it must use unit values relating to a surrogate country, the Department should use a price derived from U.S. export data for cotton linters exported to either India or Indonesia during the review period, which petitioner claims are more reliable than the Indonesian import data the Department used for the preliminary results. Petitioner notes that both countries were determined to be surrogate market-economy countries and both countries produced INC. Petitioner also notes the Department's reluctance to use export figures is based on existence of subsidies and other distorting schemes. However, petitioner argues U.S. export statistics are the most reliable official indicators of market-economy prices. Moreover, petitioner cites to *Saccharin from the People's Republic of China*, 59 FR 58818 (November 15, 1995), and *Coumarin from the People's Republic of China*, 59 FR 66895 (December 28, 1994) as examples where the Department used export statistics as a reliable indicator of price and to test the reliability of import figures. Finally, petitioner notes that when prices in both countries used for comparison (Indonesia and India) were found aberrational, the Department used

[1] Although this administrative review is not being conducted under these new regulations, these regulations serve as a restatement of the Department's interpretation of the Act. *Id.* at 27378.

the median export price to arrive at a surrogate value.

Respondent argues that it would be illegal to use U.S. export values to China as a surrogate value for cotton linters, and petitioner's interpretation of the court's decision in *Lasko* and the Department's decisions in *Bicycles* and *Coumarin* are inapposite. Respondent points out that the Department declines to use surrogate values for inputs only when the manufacturer under investigation has purchased those inputs from a market-economy country. Respondent also notes that it does not use imported cotton linters to make the subject merchandise; therefore, there are no actual costs paid to market-economy countries in this case. Respondent argues that petitioner's suggested methodology is neither the intent of the law, nor of *Lasko*, which affirmed the Department's use of actual market-economy prices paid by an NME producer. Respondent further objects that petitioner's proposal to add its own freight rates to U.S. export values would further distort surrogate values.

Respondent further contends that the use of U.S. export prices would contravene section 773(c)(4) of the Act requiring the Department to value NME producers' factors of production using the prices of the factors in one or more market-economy countries that are (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise, as the United States is much more economically developed than Indonesia.

Respondent contends that, for all of the reasons noted above, the Department should not use U.S. export data for exports to India or Indonesia, as petitioner suggests, but should use Indian import statistics. However, if the Department chooses to use export values, the Department should calculate a value that relates most closely to the market of Indonesia, the Department's chosen surrogate country.

Department's Position: As discussed in Comment 2, we have continued to use the Indonesian import price to value cotton linters. We do not consider the use of U.S. export data to be an appropriate option in this case, when we have an import price for a surrogate country that is both a significant producer and at a level of economic development comparable to the PRC. Furthermore, the Indonesian import prices are derived from a range of countries, and thus are a better indicator of domestic market prices than would be prices from a single country, the United States. That the imports reflected in the Indonesian import statistics may come from Batam, a free trade zone, does not contradict this, because merchandise re-exported from Batam into Indonesia would have originated from a number of different countries.

Petitioner misinterprets *Lasko* and the Department's practice, articulated in *Bicycles* and *Coumarin*, with respect to using market-economy prices instead of surrogate values in certain instances. In these cases and many others, we have established the practice of using actual prices instead of surrogate values when respondents have purchased certain inputs from market-economy suppliers and paid for them in a market-economy currency. In *Lasko* at 1446, the CIT affirmed this practice, which we recently codified in Section 351.408(c)(1) of the *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27413 (May 19, 1997) (" However, where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier.") In the present case, the respondent specifically stated in its questionnaire response that it purchases cotton linters only from PRC suppliers. Thus, there is no basis in this case for deviating from the surrogate value methodology used in the preliminary determination to value cotton linters.

Comment 4: Surrogate Value for Steel Drums: Respondent contends that the Department's calculated surrogate value for steel drums is an unreliable measure of iron drum costs. Respondent argues that the HTS category that the Department used in the preliminary results is a basket category, containing a variety of different products besides the galvanized iron sheet drums it used during the review period, as evidenced by the fact that unit values varied from country to country by up to 2843%. Respondent claims that the Department's valuation results in a per-drum dollar amount of $141.25, a figure that is excessive and aberrational.

Respondent adds that the Department generally rejects HTS-derived values that are aberrational compared to other available data, and cites *Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 58514, 58517–518 (November 15, 1996) (*Lug Nuts*), in which the Department rejected steel values from a basket HTS category as aberrational compared to other available data. Respondent also cites the April 22, 1996 Factors Valuation Memorandum from the Bicycles Team to the File, *Bicycles*, at 22, in which the Department used an export value for one of the chemical inputs because the import value had been deemed aberrational in another case.

Instead of the weighted average value of all steel drum imports into India, which the Department used in the preliminary results, respondent suggests that the Department use only the collected data on imports of steel drums into India from Indonesia. Respondent claims that this value would be appropriate, because it is based on two surrogate country values, and would be more reasonable than the $141.25 per drum figure used in the preliminary results.

Petitioner contends that the Department was correct in calculating the average unit value for steel drums, in keeping with its preference for using average non-export values. Petitioner cites *Lug Nuts* and *Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from the People's Republic of China*, 61 FR 14057 (March 29, 1996). Petitioner points out that respondent suggested both the source and the HTS number that the Department ultimately used in the preliminary results, but now is suggesting that the Department distort the statistics by valuing steel drums based on imports from just one country—Indonesia. Petitioner claims that to value steel drums based on imports from only one of the several countries listed in the Indian import statistics would undermine the Department's purpose in calculating a surrogate unit value—namely to determine a price that would be paid by an average Indian importer of steel drums—and result in a skewed unit value. Petitioner also objects to respondent's suggested methodology because it would cover only one month of the review period, even though statistics for the full POR were available from the same source respondent used. Petitioner also alleges that respondent distorted relevant information by creating a table showing imports of steel drums into India from only Indonesia and Singapore, and excluding imports from the United States, which accounted for 90% of all steel drums imported into India. Thus, petitioner advocates that the Department adhere to its preliminary weighted-average unit value, based on all Indian imports, and covering the entire review period.

Petitioner states that there is ample precedent for the Department's use of basket categories without finding that they lead to aberrational results. Moreover, the Department has used various steel drum subheadings, including the one used in the preliminary results, in recent investigations.

Department's Position: As noted above, for the final results we have used an Indonesian steel drum price used in the less than fair value (LTFV) investigation of furfuryl alcohol from the PRC, adjusted for inflation. These data are superior to the Indian import statistics that we used in the preliminary results, because they are from the primary surrogate country and are for drums of approximately the same size as those used by respondent to pack a chemical product. These new data are better than the basket category provided in the Indian import statistics because they better approximate the cost of the input used by respondent.

We placed these data on the record of this review after the preliminary results. *See* Memorandum to the File from R. Trainor dated November 21, 1997, on file in room B–099 of the Commerce Department. We received comments from respondent supporting the use of the Indonesian data as more reasonably reflecting the market price of steel drums in a country that the Department has determined to be an accurate surrogate country in this review. We received no comments on the new data from petitioner.

Comment 5: Packing Distances: Petitioner argues that since respondent did not report shipping distances between packing materials suppliers and the factory, the Department should use as facts available the highest freight rate and the longest of all reported distances, instead of the simple average of all reported distances, which the Department used in the preliminary results.

Department's Position: As we stated above, for the final results we have used the actual distances between CNIGC's packing suppliers and its factory. On November 5, 1997, we requested that the respondent provide this information for the final results because we had not requested it in our questionnaires. Petitioners were provided an opportunity to submit comments regarding this data but did not comment.

Comment 6: Water Valuation: Respondent states that the Department miscalculated water usage in the preliminary results, because of a misunderstanding of the questionnaire response. Respondent contends that the Department understood the response to report water usage on the basis of tons used to produce one kilogram of subject merchandise, when in fact, it reported water usage in tons of water needed to produce a ton of subject merchandise. Thus, no conversion from tons to kilograms was necessary.

Respondent also argues that, in past cases, the Department has recognized that water used in the production process is included as part of factory overhead, and is not separately valued as a raw material input. Respondent notes that water itself is not a component of the final product, and cites *Final Determination of Sales at Less Than Fair Value; Saccharin From the People's Republic of China*, 59 FR 58818, 58824 (November 15, 1994) (*Saccharin*). Thus, the Department should not assign a separate factor value to water for the final results.

Department's Position: We agree with respondent that we incorrectly converted the water usage rate to kilograms in the preliminary results, and have corrected this error for the final results.

We have not assigned a separate surrogate value to water for the final results, because the overhead value we have used, derived from the financial statements of six Indian chemical-producing companies, includes water in factory overhead, along with power and fuel. See Comment 7.

Comment 7: Factory Overhead, SG&A and Profit: Respondent objects to the Indonesian data the Department used in the preliminary results for factory overhead, SG&A, and profit as being outdated, unreliable, and non-industry specific. Instead, respondent contends, the Department should rely on data from the April 1995 *Reserve Bank of India Bulletin* (RBIB), which the Department has used numerous times in the past, and which represent Indian metal and chemical industries.

Respondent argues that the Department should not rely on the data submitted by the petitioner, because these data, which consist of excerpts from the financial statements of several Indian companies, (1) do not represent an appropriate industry sector for comparison to the nitrocellulose industry; (2) were selectively hand-picked by petitioner to result in high ratios; and (3) do not allow any judgment as to whether the companies they represent are normally operative companies, or if their overhead, SG&A, and profit were abnormally high, because petitioner did not submit the complete financial statement for each company. Respondent points out that, although petitioner states that there are three plants producing nitrocellulose in India, it did not submit financial statements from any of them.

Finally, respondent claims that, in petitioner's SG&A, overhead and profit calculations, stores and spares consumed should be included in the category of "Raw Materials, Labor, and Energy" instead of in factory overhead.

Petitioner denies that it was selective in choosing the Indian financial data to place on the record. Petitioner states that it chose these companies because it was unable to obtain the financial statements of the three Indian INC producers. Furthermore, the six companies were identified in the Disclosure, Inc. database as the Indian publicly-traded companies manufacturing products within the SIC category that includes subject merchandise, and for which FY 1996 annual reports were available.

Petitioner contends that, although none of the six companies for which petitioner submitted annual reports manufacture the subject merchandise, they represent a narrower category of merchandise than do the RBIB data submitted by respondent, which cover the processing and manufacture of "metals, chemicals, and products thereof." Furthermore, petitioner argues, respondent provides no support for its assertion that the RBIB industrial group is representative of the INC industry in India, or that the Indian companies upon which the data are based include Indian INC manufacturers. Petitioner argues that the data it submitted are more contemporaneous as well as being more industry-specific than the RBIB data submitted by respondent.

In response to CNIGC's claim that stores and spares consumed should be included in the category of "Raw Materials, Labor, and Energy," petitioner argues that it is the Department's practice to include stores and spares consumed as an overhead element, and cites the February 28, 1997 final analysis memorandum for the 1994–95 administrative review of *Sebacic Acid From the People's Republic of China*, 62 FR 10530 (March 7, 1997).

Department's Position: We agree that the surrogate SG&A, overhead and profit information we used in the preliminary results was not current and not specific to the nitrocellulose industry. We requested more appropriate data from the U.S. embassy in Jakarta, Indonesia, but were unable to obtain complete data in time for these final results. Therefore, we have used the information provided by petitioner, obtained from the financial statements of six Indian chemical-producing companies. Although we have used the RBIB data in other cases, as respondent points out, we have determined that the data submitted by petitioner is preferable in this case, because it represents the overhead, SG&A and profit ratios of

several companies that manufacture products of the same SIC classification as the subject merchandise. The RBIB ratios, on the other hand, are derived from companies involved in the more general category of "chemicals and metals" industries.

Regardless of whether petitioner "selectively hand-picked" the information it provided on the record, this information is nonetheless more representative of the experience of Indian producers of comparable merchandise than is the RBIB data. Petitioner provided available data from Indian companies identified with an SIC code of 2821, which includes cellulose nitrate resins. Furthermore, rather than being uniformly high, the data reflect a wide range of overhead, SG&A and profit figures. Petitioners submitted the relevant pages of the financial statements, and there is no evidence on the record that these companies' overhead, SG&A and profit are abnormally high.

Finally, we agree with petitioner that stores and spares consumed should be included in overhead, as we have done in past cases. See, *Memorandum to the File; Certain Helical Spring Lockwashers from the People's Republic of China: Factor Values Used for the Preliminary Results*, dated July 3, 1997.

Comment 8: Separate rate for CNIGC: CNIGC argues that the Department should grant it a separate rate. CNIGC argues that the Department's decision in the preliminary results was based on analysis done for a separate antidumping investigation with an entirely different record. GNIGC alleges that information from the *Brake Drums and Rotors* investigation (63 FR 42748) was inserted into this record without notice to counsel on March 26, 1997. Notwithstanding, CNIGC argues that verification reports from *Brake Drums and Rotors* inserted into this record nevertheless satisfies the Department's requirements of *de jure* and *de facto* independence from government control to warrant a separate rate. CGIGC states that the focus of the separate rates analysis is not on whether there might be a general "relationship" between the company and the government, but rather on whether there is operational independence with regard to export sales.

Respondent argues that, in *Brake Drums and Rotors*, the Department based its decision that there is a *de facto* relationship between the company and government on two pieces of evidence. The first was an outdated company brochure from 1992 when CNIGC was still a branch of China North Industries Corporation (NORINCO). Respondent claims that it does not know why the brochure was given to the Department, but speculates that company personnel provided it in an effort to be helpful during verification. As further proof that the brochure was outdated, respondent notes that it was printed before the company's name was changed from China North Industries Guangzhou Branch to China North Industries Guangzhou Corporation, as supported by the company's pre-1993 and post-1993 business licences. Respondent also provides a chronology of the company's telephone numbers to show that the brochure predates the review period. CNIGC asserts that the agreement separating it from NORINCO makes it clear that the two entities are completely separate, with only the somewhat similar name suggesting their common past. CNIGC alleges that the Department's verification in *Brake Drums and Rotors* found no evidence contrary to their assertion that there can be no relationship between itself and NORINCO with respect to any of the relevant factors examined by the Department.

The second piece of evidence used in the brake drums and rotors case to deny separate rates was the fact that national NORINCO maintains an office in the same building as CNIGC. Respondent claims that many other companies, including a major bank, have offices in that same building. The fact that NORINCO maintains an office there does not translate into control over pricing, contractual powers, management selection, or disposition of profits.

Department's Position: In *Brake Drums and Rotors*, we found that this same respondent, CNIGC, had satisfied the Department's criteria for establishing freedom from *de jure* government control. However, we found that other evidence supported the conclusion that, *de facto*, CNIGC had not completely severed its ties with NORINCO, its former parent company which, the evidence showed, was controlled by the PRC government. We have placed this information on the record of this review. See, *Memorandum to the File; Industrial Nitrocellulose from the People's Republic of China: Information for the Separate Rates Determination*, dated March 26, 1997.

The fact that respondent would weight the evidence differently does not alter the fact that there is substantial evidence to support the Department's determination. Respondent has not provided any further evidence which indicates that the factual circumstances have changed and we do not find any basis on the record of this review on which to overturn our decision. We have, therefore, not granted CNIGC a separate rate in this review.

Final Results of Review

As a result of our review, we have determined that the following margin exists for the period July 1, 1995 through June 30, 1996.

Manufacturer/exporter	Margin (percent)
PRC-wide rate	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of INC from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: for all PRC exporters, the cash deposit rate will be the PRC-wide rate established in these final results of administrative review; and (2) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: December 8, 1997.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-32690 Filed 12-12-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818]

Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order on Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of anti-circumvention inquiry.

SUMMARY: On the basis of an application filed with the Department of Commerce, we are initiating an anti-circumvention inquiry to determine whether an Italian producer of pasta is circumventing the antidumping duty order on certain pasta from Italy issued July 24, 1996.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Easton or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-1777 or (202) 482-5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1997, the Department of Commerce ("the Department") received an application filed by the petitioners in the above-referenced case, requesting that the Department conduct an anti-circumvention investigation, pursuant to section 781(a) of the Tariff Act of 1930, as amended ("the Act"), with respect to the antidumping duty order on certain pasta from Italy ("the order") issued July 24, 1996 (61 FR 38547). The petitioners allege that Barilla S.r.L. ("Barilla") is circumventing the order by importing pasta into the United States in bulk, defined as packages of greater than five pounds (2.27 kilograms), and repackaging the pasta into packages of five pounds or less for resale in the United States. Inasmuch as the scope of the order covers only pasta in packages of five pounds or less, the petitioners claim that Barilla's repackaging operations in the United States have allowed it to import pasta into the United States free of any antidumping duties. The petitioners assert that all the elements necessary for an affirmative determination under Section 781(a) of the Act are present.

On November 19, 1997, Barilla filed comments replying to the petitioners' circumvention allegations. On December 2, 1997, petitioners filed comments in response to Barilla's November 19, 1997 submission. Barilla rebutted the petitioners' December 2, 1997 comments in a submission filed December 3, 1997.

Initiation of Anti-Circumvention Proceeding

In accordance with section 781(a) of the Act, the Department may include merchandise completed or assembled in the United States within the scope of an existing order when the following four conditions are met: (A) The merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject to the antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise sold in the United States.

In determining whether to include parts or components in the order, the Act states at section 781(a)(3) that the Department must take into account: (1) the pattern of trade, including sourcing patterns; (2) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States; and (3) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

Based upon our review of the foregoing allegations and supporting information submitted in the application and in Barilla's submission, and with respect to the preceding criteria, we find that the application contains all of the elements that warrant an anti-circumvention inquiry (see, December 8, 1997 Memorandum from Richard Moreland to Robert S. LaRussa). Therefore, we are initiating an anti-circumvention inquiry concerning the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225 of the Department's regulations.

We intend to notify the International Trade Commission ("ITC") in the event of an affirmative preliminary determination of circumvention, in accordance with 19 CFR 351.225(f)(7).

The Department will not order the suspension of liquidation at this time. However, in accordance with 19 CFR 351.225(l)(2), the Department will instruct the U.S. Customs Service to suspend liquidation in the event of an affirmative preliminary determination of circumvention.

This notice is issued pursuant to section 781 of the Act (19 U.S.C. 1677j) and 19 CFR 351.225.

Dated: December 8, 1997.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-32629 Filed 12-12-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818]

Certain Pasta From Italy; Notice of Court Decision

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On October 2, 1997, in the case of *De Cecco et al.* v. *United States et al.*, Slip Op. 97-143 ("*De Cecco*"), the United States Court of International Trade (the CIT) granted plaintiffs' and plaintiff-intervenors' motions for judgment with respect to the extension by the United States Department of Commerce ("Department") of provisional antidumping measures for the period May 19, 1996 through July 24, 1996. On October 23, 1997, the CIT ordered the Department to issue appropriate instructions to the U.S. Customs Service to implement its October 2, 1997, decision to grant judgment to plaintiffs and plaintiff-intervenors.

EFFECTIVE DATE: November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Easton or John Brinkmann, at

(202) 482–1777 or (202) 482–5288, respectively, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1996, the Department published its final determination of sales at less than fair value in the antidumping duty investigation of certain pasta from Italy. On July 24, 1996, the Department published an amended final determination. Subsequently, De Cecco, *et al.*, filed lawsuits with the Court challenging the extension of provisional measures described above. On October 2, 1997, the CIT issued its opinion granting plaintiffs' and plaintiff-intervenors' motions. In its opinion, the CIT found that the Department had improperly extended the provisional measures period, as there had not been a proper request from exporters to extend this period. On October 23, 1997, the CIT directed the Department to issue instructions to implement its decision.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The decision of the CIT in *De Cecco* constitutes a decision not in harmony with the Department's final determination. This notice fulfills the publication requirements of *Timken*.

Absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's judgment, the Department will direct the U.S. Customs Service to: (1) Lift the suspension of liquidation, release any bonds or other security posted, and refund any and all cash deposits paid as estimated antidumping duties on any and all entries of the subject merchandise which were produced by the following producers:

F.lli Ce Cecco di Filippo San Martino S.p.A.
Rummo S.p.A. Molina e Pastificio
La Molisana Industrie Alimentari S.p.A.
Pastificio Fratelli Pagani S.p.A.
Industria Alimentari Colavita S.p.A.

or imported by the following importers:

Agrusa, Inc.
Bel Canto Fancy Foods, Ltd.
Cento Fine Foods, Inc. (Alanric Food Distributors)
George De Lallo Co., Inc.
Domil, Inc.
Ferrara Food Co., Inc.
Gourmet Award Foods
I.T. & M, Inc.
Italfoods, Inc.
La Pace Imports, Ltd.
Med-USA Corporation
Musco Food Corp.
The Pastene Companies, Ltd.
Rienzi & Sons
Ron-Son Mushroom Products, Inc.
Santini Foods, Inc.
Sinco, Inc.
World Finer Foods, Inc

and were entered, or withdrawn from warehouse for consumption, after May 18, 1996, and before July 24, 1996; and (2) liquidate those entries without regard to any antidumping duty; and (3) pay any such refunds of cash deposits in accordance with law, including interest, from the date of entry at the rate(s) as announced from time to time by the Customs Service pursuant to Title 19, United States Code, Section 1505(c). Liquidation of such entries is suspended pending final and conclusive disposition.

Dated: December 5, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–32694 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of sebacic acid from the People's Republic of China.

SUMMARY: On August 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) (62 FR 42755). This review covers shipments of this merchandise to the United States during the period of July 1, 1995, through June 30, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in the preliminary results of the review. In accordance with the decision in *Sigma Corp.* v. *the United States*, 117 F.3d 1401 (Fed. Cir. 1997), we revised our calculations of source-to-factory surrogate freight for those material inputs that are based in CIF import values in the surrogate country. We have added to CIF surrogate values from India, a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China*, 62 FR 51415, 51410 (October 1, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China* 62 FR 61964, 61977 (November 20, 1997).

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Doreen Chen or Stephen Jacques, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0413 or (202) 482–1391, respectively.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are in reference to the regulations, codified at 19 CFR 353 (April 1, 1996).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on sebacic acid from the PRC on July 14, 1995 (59 FR 35909). On August 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sebacic acid from the PRC (62 FR 42755 August 8, 1997) for the period July 1, 1995 through June 30, 1996. We received written comments from Tianjin Chemicals Import and Export Corporation (Tianjin), Guangdong Chemicals Import and Export Corporation (Guangdong), and Sinochem International Chemicals

Company, Ltd. (SICC) (collectively, respondents); and from the petitioner, Union Camp Corporation. On November 24, 1997, the Department informed parties that certain information in respondents' September 15, 1997 rebuttal brief and petitioner's September 8, 1997 case brief contained untimely new information that should be stricken from the record of this review. The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)8(COOH)2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

This review covers the period July 1, 1995, through June 30, 1996, and four exporters of Chinese sebacic acid.

Analysis of Comments Received

Comment 1: surrogate country: Petitioner asserts that India should not be used as the surrogate country for the PRC because they claim there is no sebacic acid production in India. Petitioner contends that it would be inconsistent with the statute to use India as a surrogate because: (1) India is not a producer of sebacic acid; and (2) oxalic acid is not commercially or chemically comparable to sebacic acid. *See* 19 U.S.C. § 1677b(c)(1). Petitioner argues that while it is true that both oxalic and sebacic acid are dicarboxylic acids, oxalic acid has two carbon atoms $(C_2H_2O_4)$ and sebacic acid has ten carbon atoms $(C_{10}H_{18}O_4)$, giving the two acids completely different properties and uses. Petitioner contends that the production process inputs for the two acids are very different. Additionally, petitioner argues that the commercial value of sebacic acid is nearly 5 times greater than the U.S. value for oxalic acid.

Petitioner suggests that the Department should value the factors of production based on either U.S. or Japanese values, the only two market economies where sebacic acid is produced using the caustic fusion process. Petitioner contends that there is no known sebacic acid production in India. Petitioner maintains that they did not find any Indian chemicals companies which produced sebacic acid during the period of review and that the absence of the price for sebacic acid in the Indian *Chemical Weekly* publication suggests further evidence of the lack of sebacic acid production in India. Because sebacic acid is not produced in India, petitioner argues that pursuant to 19 CFR 353.52(c), the United States is the appropriate surrogate country for this administrative review.

Respondents maintain that there is now evidence on the record of this review that sebacic acid is produced in India. Respondents note that on January 6, 1997, they submitted a letter dated September 25, 1996 from an Indian chemical company, Siris Limited, stating that sebacic acid is now produced in India. Consequently, respondents urge the Department to reject petitioner's argument for using Japan or the United States as the surrogate country and instead, continue to use India as the surrogate country.

Respondents argue that 19 U.S.C. § 1677b(c)(4) provides that "[t]he administering authority, in valuing factors of production under paragraph (1), shall utilize, *to the extent possible*, the prices or cost of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." (Respondent Rebuttal Brief at p. 2) (emphasis in original). Respondents argue that the words "to the extent possible" give the Commerce Department the option to choose, as a surrogate country, a country that does not produce the same merchandise or even comparable merchandise, if no country meets both criteria set forth in the statute. Respondents argue that petitioner's asserted definition of "comparable" merchandise requires that products have identical characteristics, including identical chemical formula and uses. Respondents also note that under petitioner's definition of "comparable" merchandise, there is no country that would meet both aspects of the statute. Respondents maintain that such a narrow definition defeats the Congressional purpose in giving the Department the discretion to determine what constitutes a comparable product. Respondents also note that the statute suggests that it was Congress' intent to give to the Department substantial discretion in determining what are comparable products and choosing surrogate countries.

In addition, respondents contend that the values of oxalic and sebacic acid are different should have no bearing on the choice of a surrogate country since in this review, the Department is not using the value of oxalic acid to value sebacic acid. Respondents also maintain that there is substantial evidence on the record of this investigation that India is a substantial producer of castor oil, the primary input for sebacic acid. Furthermore, respondents point out that the Department verified that Tianjin Zhonghe, the Chinese sebacic acid producer, used imported castor oil from India to produce sebacic acid.

Respondents disagree with petitioner that the absence of a price for sebacic acid from Indian *Chemical Weekly* and *Chemical Business* suggests that the chemical is not produced in India. Respondents note that the Department has in the past been forced to rely on Indian import statistics because neither the *Chemical Weekly* nor the *Chemical Business* report a certain price for a chemical.

Department's Position: In valuing factors of production, the Department used surrogate values from India. In accordance with 19 U.S.C. § 1677b(c)(4), the Department chose India as its surrogate because it was most comparable to the PRC in terms of overall economic development based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP, and because it was a significant producer of comparable merchandise (oxalic acid).

The statute and the regulations instruct the Department to value factors of production in an appropriate surrogate country. The Department rarely departs from use of a surrogate value from a country comparable to the NME in terms of overall economic development. *See Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys from the Republic of Kazakstan*, 62 FR 2648 (January 17, 1997).

Surrogate values from countries at a similar level of development are considered to be the most appropriate and comparable for valuation of the factors of production used in the similarly situated nonmarket economy country. While the Department may use values from the United States or other countries not at a comparable level of development for individual factors, its practice is to do so only if it cannot find those values in a comparable economy that produce comparable merchandise. Use of the United States, Japan or another country not on the list of recommended surrogate countries proposed by the Department's Office of Policy is less desirable specifically because surrogate values from countries not at a level of economic development comparable to that of the nonmarket economy are not considered to be as representative of the nonmarket economy country's costs and prices. *See* Memorandum from Director, Office of Policy to Office Director, AD/CVD Group II/OIX, Sebacic Acid from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection, June 24, 1997.

The fact that sebacic acid is produced in the United States or Japan does not make either country an appropriate surrogate. Neither the United States nor Japan are at a level of economic development comparable to the that of the PRC. Moreover, the Department has concluded that using values from India is appropriate because India is at a comparable level of development and, based on U.S. import statistics for the POR, is a significant producer of comparable merchandise—oxalic acid. *See* Analysis Memorandum for the Preliminary Results of the 1995/1996 Review. (Preliminary Analysis Memorandum).

We disagree with petitioner that oxalic acid is not comparable to sebacic acid. The statute does not define "comparable merchandise" and the relevant legislative history evidences Congress' intent to allow the agency to select from a wide category of merchandise in identifying comparable merchandise. *See* H.R. Conf. Rep. No. 100–576 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547. Thus, to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute. Therefore, in the final determination for the 1994–1995 review, we determined that oxalic acid and sebacic acid were comparable products. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 10530, 10533 (March 7, 1997). In that review, the Department found that although the chemicals may have different production processes, oxalic acid and sebacic acid are comparable products since both are dicarboxylic acids and have similar end uses as they are both used in the rubber industry. *Id.*

Finally, we determine that the documents submitted by interested parties on January 3, 1997 and January 6, 1997 do not conclusively demonstrate that sebacic acid was produced in India during the period of review (POR). Therefore, we have not relied on these documents as a basis for our decision to use India as the surrogate country for this review.

Comment 2: Petitioner argues that the Department should value capryl alcohol consistent with the CIT's decision in *Union Camp Corp.* v. *United States*, 941 F. Supp. 108 (Ct. Int'l Trade, 1996). Specifically, petitioner asserts that the CIT ordered the Department to value capryl alcohol (octanol-2) based on an appropriate cost of crude octanol-2 rather than the Indian selling price for refined octanol-1 listed in *Chemical Weekly*. *Id.* at 119.

Petitioner questions the letter from the editor of *Chemical Weekly* submitted by respondents and relied upon by the Department for the preliminary results, which states that "the octanol price referred by you corresponds to the more common 2-octanol (2 ethylhexanol)." *See Preliminary Results of Antidumping Duty Administrative Review; Sebacic Acid from the PRC* 62 FR 42,758 (August 8, 1997); (Preliminary Analysis Memorandum at 6); Letter from Williams Mulien Christian & Dobbins, Jan. 3, 1997, at Attachment 4. Petitioner contends that because respondents failed to provide the original letter to the editor of *Chemical Weekly*, there is no evidence to indicate whether the octanol price referred to in the original letter to the editor corresponds to the octanol price in the *Chemical Weekly*. In addition, petitioner argues that there is no evidence on the record to indicate that the *Chemical Weekly* editor is sufficiently familiar with the chemical composition of the octanol product published in the *Chemical Weekly* to declare that it is octanol-2 (2-ethylhexanol). Petitioner argues because octanol-1 is not comparable to octanol-2, the Department should not use the *Chemical Weekly* price for octanol-1 to value crude octanol-2.

Petitioner contends that Union Camp and respondents Tianjin Zhong He and Hengshui Dongfeng Chemical Factory all treat capryl alcohol as a by-product. Therefore, petitioner argues that Department should treat capryl alcohol as a by-product and not a co-product. Petitioner claims that because the Department used the high Indian value of octanol-1 to value octanol-2, the Department incorrectly determined octanol-2 to be a co-product rather than a by-product of the sebacic acid process.

Petitioner argues that because octanol-2 is only produced during the sebacic acid production process and because there is no sebacic acid production in India; octanol-2 is not sold in India. Petitioner points out that there is a large value difference between the U.S. octanol-1 price and the U.S. capryl alcohol price. Moreover, petitioner rejects respondents' surrogate price for capryl alcohol, $0.68/lb., from the *Chemical Marketing Reporter*, because it is the same as Union Camp's offering price for *refined* capryl alcohol. According to petitioner, crude capryl alcohol, the subsidiary product of the sebacic acid process, must be further processed to achieve a 98 percent pure refined product. The *Chemical Marketing Reporter* reported the market value of octanol-1 at $0.925/lb during the POR. Petitioner argues that the U.S. value of octanol-1 during the POR was 36 percent higher than the U.S. value of *refined* capryl alcohol and that the value difference between octanol-1 and crude capryl alcohol is even larger. Therefore, petitioner concludes that because octanol-1 is not comparable to octanol-2 either chemically or commercially, the Department should not use octanol-1 as a surrogate value for octanol-2.

Petitioner offers its own by-product credit value for crude capryl alcohol, $0.15/lb., as the best available surrogate price for the subsidiary product. However, petitioner states that if the Department chooses to use the $0.68/lb price, it should make adjustments for input costs in converting crude capryl alcohol to *refined* capryl alcohol. Petitioner supplies such a calculation where the resulting value is $0.1544/lb.

Respondents argue that the Department should continue to use a surrogate value for octanol from India. Respondents maintain that the evidence on the record supports that the octanol price in *Chemical Weekly* is equivalent to the Indian price for octanol-2, not the octanol-1 as argued by the petitioner. Respondents submitted a letter from the Indian *Chemical Weekly*, which states that the "octanol" price in the Indian *Chemical Weekly* "corresponds to the more common octanol-2 (ethylhexanol-2)." *See* Submission, January 6, 1997. Respondents argue that according to Hawley's *Condensed Chemical Dictionary*, ethylhexanol-2 is another

form of octanol. *Id.* Respondents also submitted additional information from the U.S. chemical company, Ivanhoe Industries, which stated that "octanol" is a generic term which can include octanol-1, octanol-2, octanol-3, ethyl hexanol-2 and other products. In addition, respondents argue that all octyl alcohols can be used interchangeably to produce plastercizers for vinyl resins and as esters for lube oils and therefore are comparable products.

Respondents disagree with petitioner's claims that the octanol price in the Indian *Chemical Weekly* significantly overstates the price of capryl alcohol. Respondents claim they provided prices from the U.S. *Chemical Marketing Reporter* in their January 6, 1997 PAPI submission, which they argue, demonstrates that ethyl hexanol-2 is less expensive than octanol-2. Moreover, respondents maintain that the Indian *Chemical Weekly* price of octanol of $1520 per metric ton is within a reasonable range of the $1450 price quote respondents obtained for capryl alcohol from SIRIS, a chemical company in India. Respondents argue that Union Camp's internal price for octanol-2 at 15 cents a pound is a less reasonable price to value Chinese capryl alcohol in comparison to the Indian prices for octanol quoted by SIRIS and reported by *Chemical Weekly*.

In addition, respondents maintain that Tianjin Zhonghe cannot break out the additional costs for refining capryl alcohol, which respondents claim, merely amount to additional electricity to distill the product. Therefore, respondents argue for valuing capryl alcohol, the Department should not use Union Camp's unverified internal costs for production of capryl alcohol, since Union Camp uses an entirely different production process from the Chinese production process.

If, in the alternative, the Department decides to use a U.S. surrogate value for octanol-2, respondents urge that we use a surrogate value from the U.S. *Chemical Marketing Reporter* for the price of capryl alcohol in the United States because it is publicly available information rather than Union Camp's internal price.

Department's Position: The petitioner's argument that to be consistent with the CIT's decision *Union Camp Corp.* v. *United States*, 941 F. Supp. 108, 112 (Ct. Int'l Trade, 1996), the Department should value capryl alcohol based on the cost of octanol-2 is unpersuasive. First, the Department is not bound by the decision in *Union Camp* because the CIT's decision was rendered moot by the issuance of the results of the first administrative review. *See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 10530 (March 7, 1997).

Second, use of the value of octanol-1 as a surrogate value is consistent with the statute and Department practice. In valuing factors of production, the Department's practice is to rely, to the extent possible, on publicly available information. The Department prefers to use publicly available information because: (1) It alleviates difficulties in obtaining, and concerns about the quality of, cable data from embassies and consulates (previously often used as sources for surrogate values); (2) it allows interested parties an opportunity to actively submit and comment on surrogate value data; (3) the establishment of a clear surrogate values hierarchy, with a preference for surrogate values from a single country based on publicly available information, increases the certainty and predictability of the outcome of the Department's factor valuations; (4) the methodological framework helps to focus comments made by petitioner and respondent in the case and rebuttal briefs and reduces miscellaneous submissions throughout the course of proceedings regarding the appropriateness of various surrogate values; and (5) it alleviates the administrative burden on U.S. embassies and consulates caused by requests for large amounts of data. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 21058, 21062 (May 18, 1992). In determining which surrogate value to use for valuing each factor of production, therefore, the Department selects, where possible, publicly available information which is: (1) An average non-export value; (2) representative of a range of prices within the period of review, if submitted by an interested party, or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive.

In this review, the Department was unable to locate an Indian value for octanol-2. In addition, the Department specifically asked interested parties to submit any publicly available, published values for octanol-2. Neither the petitioner, Union Camp, nor the respondents were able to locate a specific Indian value for octanol-2. As a result, the Department used an Indian price for octanol-1 as a surrogate value for octanol-2 as the best available information. The Department concluded that, for purposes of factor valuation, octanol-1 was comparable to octanol-2. We find that octanol-1 and capryl alcohol (octanol-2) share very similar molecular formula though they are not identical products. Since product-specific price information is not available from our preferred surrogate countries, we have relied on the price of the most physically similar product for which we could obtain value information.

We disagree with petitioner's argument that we should not use the octanol price from the Indian *Chemical Weekly* because octanol-1 and octanol-2 are not commercially comparable. In support of their argument, petitioner relies on the publication *Chemical Marketing Reporter* which, petitioner claims, indicates that there is a significant difference in value between capryl alcohol and octanol-1. However, prices from *Chemicol Marketing Reporter* are prices from the United States, which is not the surrogate country in this case. On the other hand, respondents have provided sufficient evidence from India, which is the surrogate country in this case, to support the conclusion that octanol-1 and octanol-2 are commercially comparable. Respondents provided evidence demonstrating that the octanol price reported in the Indian *Chemical Weekly* is comparable to the octanol-2 price obtained from SIRIS, a chemical company in India. Since India is the surrogate country in this case and the price for octanol reported in *Chemical Weekly* is commercially comparable to the Indian price for octanol-2 from another source, we used the octanol price for *Chemical Weekly* in our surrogate value analysis.

Moreover, Union Camp's statements that octanol-1 is derived from a process entirely unrelated to the sebacic acid process and that octanol-1 is a high-priced petrochemical are not dispositive on the issue of the comparability of octanol-1 and octanol-2 for purposes of factor valuation. In a nonmarket economy case, the Department may need to value anywhere from a few to hundreds of factors of production; in this case we needed to value approximately 25. Although we strive to locate exact surrogate matches in our preferred surrogate country, we often are unable to do so. In those instances, the Department's practice is to use the most comparable surrogate match that meets our publicly available information criteria in an appropriate surrogate country.

There is no basis in the statute or legislative history to suggest that the Department is required to research or

consider the production process or use for each factor so as to locate a surrogate match with an identical or even similar production process or use. In valuing factors of production, the Department is attempting to assign a market-economy value, *i.e.*, a price or a cost, to some non-market economy factor, *e.g.*, 50 kilograms of chemical "x", 12 nuts and bolts, 3 plastic bags, 7 hours of labor. The Department does not delve into intricacies of the production and use of every potential surrogate factors of production precisely because production and use are not necessarily relevant to valuation of these factors. The Department is foremost concerned about assigning an appropriate surrogate value to a specific factor of production. As a result, the Department will consider rejecting a potential surrogate where it has evidence that a possible surrogate value does not reasonably reflect the "value" of the factor. For example, if the Department had evidence that a surrogate price was significantly higher than other potential surrogate prices for a particular factor, the Department might find that it was not reasonable to use that particular price as a surrogate value.

Similarly, the Department is not required to consider interchangeability in determining whether to use a particular surrogate to value a factor of production and we disagree with the Court's suggestion to the contrary in *Union Camp*. If interchangeability were a prerequisite, the Department would have extreme difficulty in valuing factors of production. The Department would be required to locate precise matches between surrogates and factors—an impracticable if not virtually impossible task given the amount of data the Department would have to collect and analyze for each factor. The very nature of chemicals, in particular, is such that a small difference in grade or a change in molecular structure would preclude ever finding two different chemicals comparable for purposes of factor valuation. In this case, for example, the Department recognizes that octanol-1 and octanol-2 are two different products, and, hence not interchangeable. Nevertheless, octanol-1 and octanol-2 are sufficiently similar, physically and commercially, for octanol-1 to serve as a reasonable surrogate for octanol-2.

The statute and the regulations instruct the Department to value factors of production, to the extent practicable, in an appropriate surrogate country. Using an internal price from the United States for an input, as suggested by petitioner, would be inappropriate. First, the evidence on the record of this review establishes that respondents' octanol-1 value, which is from a publicly available publication, is a reasonable substitute for octanol-2 in our calculations, given the limited public and published data from India available to the Department. In contrast, the petitioner's cost is neither a value from one of the selected surrogate countries nor is it a public or published figure. As explained above, the Department's practice is to use publically available figures because, among other reasons, it increases the certainty and predictability of the outcome of the Department's factor valuations in NME cases, and it affords all interested parties an opportunity to submit and comment on surrogate value data. Thus, based on the facts of this case, use of an unpublished, internal cost from a country not on the list of preferred surrogates is contrary to the Department's established practice. *See Magnesium Corp. of America* v. *United States*, 938 F. Supp. 885 (Ct. Intl' Trade, 1996) ("It is Commerce's standard practice to disregard petitioner's costs because they are not 'an appropriate benchmark by which to test the accuracy of surrogate country values.'") Furthermore, because preference is for values from the selected surrogate country, we did not use the U.S. price for octanol-2 from *Chemical Marketing Reporter* submitted by respondents. Therefore, we have used the 76 rupees/kg value from the Indian *Chemical Weekly* as a surrogate value for capryl alcohol as the best information available to the Department.

We also disagree with petitioner's argument that capryl alcohol should be treated as a by-product rather than a co-product. Consistent with the methodology employed in the final determination in the less-than-fair-value investigation, we have determined that capryl alcohol is a co-product. Therefore, we have allocated the factor inputs, based on the relative quantity of output of this product and sebacic acid. Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the products. This treatment of co-products is consistent with generally accepted accounting principles. (*See Cost Accounting: A Managerial Emphasis* (1991) at pages 528–533). *See* Final Results Analysis Memorandum, at Attachment I and II.

Comment 3: Petitioner argues that the Department was incorrect in making tax adjustments to prices from the *Economic Times* used to value inputs castor oil, castor seed and castor seed cake. Petitioner argues that there is no evidence on the record to support the assumption that price information from the *Economic Times* is tax inclusive. Petitioner notes that there is evidence on the record that at least one price for castor seed oil is tax exclusive, that is the price for Madras which indicates "tax extra." Analysis Memorandum, at Attachment XII. Petitioner notes that it is the Department's policy to rely first on tax-exclusive prices in the surrogate market. *Preliminary Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the PRC*, 62 FR 31,972, 31,977 (June 11, 1997).

Respondents had no comment on this issue.

Department's Position: We agree with petitioner. We have not adjusted prices derived from the *Economic Times* for taxes because there is not substantial evidence on the record to indicate that the prices from the *Economic Times* were tax inclusive.

Comment 4: Petitioner maintains that the Department should correct certain ministerial errors discussed in the Department's August 13, 1997 Memorandum to the File from Lyn A. Baranowski, namely: (1) Include a freight expense for SICC's transportation of coal; (2) include a freight expense for Tianjin's transportation of castor seed; (3) adjust sodium chloride, coal, plastic bags, middle bags, woven bags, and castor seed in Tianjin's freight calculation worksheet; and (4) include a freight expense for Tianjin's purchased castor oil and adjust the expense for coal.

Respondents had no comment on these errors.

Department's Position: We agree with petitioner. We revised calculations accordingly to correct the aforementioned ministerial errors raised by the Department in the August 13, 1997 Memorandum.

Comment 5: Respondents contend that the Department used the incorrect weights for plastic bags in the preliminary results. Respondents maintains that the Department should use the weights stated in verification report. In addition, respondents argue that the Department should not use a surrogate value for plastic bags which are abberrational.

Petitioner had no comment on this issue.

Department's Position: We agree with respondents. We have used the correct weights for the bags as reported at verification. In addition, we have continued to use Import Statistics from India to value bags as the price information from Import Statistics is a publicly available publication and has been used to value plastic bags in past determinations. *See Notice of the Preliminary Determination of the Sales of Less than Fair Value: Bicycles from the PRC* 60 FR 56567, 56573 (November 9, 1995).

Final Results of Review

For Jiangsu, which failed to respond to the questionnaire, we have not granted a separate rate and the country-wide rate will apply to all of its sales. For Guangdong, which reported that it had no sales during the POR, its company-specific rate from the previous administrative review remains unchanged.

As a result of our review of the comments received, we have changed the results from those presented in our preliminary results of the review. Therefore, we determine that the following margins exists as a result of our review:

Manufacturer/exporter	Time period	Margin (percent)
Tianjin Chemicals I/E Corp.	7/01/95–6/30/96	0.00
Sinochem International Chemicals Corp	7/01/95–6/30/96	1.78
Guangdong Chemicals I/E Corp	7/01/95–6/30/96	13.54
Country-Wide Rate	7/01/95–6/30/96	243.40

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the reviewed companies named above which have separate rates (SICC and Tianjin), the cash deposit rates will be the rates for those firms indicated above; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rates will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise from the PRC, the cash deposit rates will be the PRC country-wide rate indicated above; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: December 8, 1997.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–32632 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. The application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–095. *Applicant:* Stanford University, Stanford Medical Center, 300 Pasteur Drive, Room 5302, Palo Alto, CA 94304. *Instrument:* Ultrasound Bone Densitometer. *Manufacturer:* McCue Plc, United Kingdom. *Intended Use:* The instrument will be used to assess the bone density (strength) of the bone in healthy children and those with chronic diseases in studies to help determine the risk of osteoporosis. Application accepted by Commissioner of Customs: November 7, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–32626 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 970822200–7283–03]

RIN 0693–AB44

Announcement of Availability of Funding for Competitions—Advanced Technology Program (ATP)

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Technology Administration's National Institute of Standards and Technology (NIST) announces the availability of funding for the following competitions to be held in fiscal year 1998 under the Advanced Technology Program (ATP): (1) A General Competition 98–01, open to all areas of technology meeting the ATP selection criteria and (2) Focused Program Competitions (approximately seven to nine) on specific technology or technology application areas. This notice provides general information for the competitions planned for fiscal year 1998.

DATES: The proposal due dates, Focused Program Competition topics, and other competition-specific instructions will be published in the *Commerce Business Daily (CBD)* at the time each competition is announced. Dates, times, and locations of Proposers' Conferences held for interested parties considering applying for funding will also be announced in the *CBD*.

ADDRESSES: Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, Administration Building (Bldg. 101), Room A407, Quince Orchard & Clopper Roads, Gaithersburg, MD 20899–0001.

Additionally, information on the ATP is available on the Internet through the World Wide Web (WWW) at http://www.atp.nist.gov.

FOR FURTHER INFORMATION CONTACT: Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free "hotline" number at 1–800–ATP–FUND or 1–800–287–3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If our representatives are all busy when you call, leave a message after the tone. To ensure that the information is entered correctly, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address;

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to atp@nist.gov. Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION:

Background

The statutory authority for the ATP is Section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n), as modified by Pub. L. 102–245. The ATP implementing regulations are published at 15 CFR Part 295, as amended (62 FR, pages 64682–64687, December 9, 1997). The Catalog of Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP).

The Advanced Technology Program (ATP) is a rigorously competitive cost-sharing program designed for the Federal government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation. Such a unique government-industry research partnership fosters the acceleration not only of dramatic gains in existing industries, but also acceleration of the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets and work to spawn industries of the 21st century. The ATP provides multi-year funding to single companies and to industry-led joint ventures. The ATP accelerates technologies that, because they are risky, are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership between industry and the Federal government. The ATP challenges industry to take on higher risk (but commensurately higher potential payoff to the nation) projects than they would otherwise. Proposers must provide credible arguments as to the project feasibility.

The funding instrument used in ATP awards is a "cooperative agreement." Through the use of the cooperative agreement, the ATP is designed to foster a government-industry partnership to accomplish a public purpose of support or stimulation. NIST plays a substantial role in providing technical assistance and monitoring the technical work and business progress.

Funding Availability

A total estimate $82 million in first year funding will be available for new awards for the fiscal year 1998 ATP competitions to be announced in the *CBD*. The actual number of proposals funded under each competition will depend on the quality of the proposals received and the amount of funding requested in the highest ranked proposals. Outyear funding beyond the first year is contingent on the approval of future Congressional appropriations and satisfactory project performance.

Eligibility Requirements, Selection Criteria, and Proposal Review Process

The eligibility requirements, selection criteria, and the proposal review process are discussed in detail in the ATP implementing regulations published at 15 CFR Part 295, amended (62 FR, pages 64682–64687, December 9, 1997), and the ATP Proposal Preparation Kit.

Funding Amounts, Award Period and Cost Sharing (Matching) Requirements

(a) Single company recipients can receive ATP funds for R&D activities for up to 3 years, with ATP funding not to exceed $2 million for direct costs. ATP funds may only be used to pay for direct costs for single company recipients. Single company recipients are responsible for funding all of their overhead/indirect costs. Small and medium size companies applying as a single company proposers are not required to provide cost-sharing of direct costs. Large companies applying as single company proposers, however, must cost-share at least 60 percent of the total project costs (direct plus indirect costs) for each quarter in each year of the award. A large company is defined as any business, including any parent company plus related subsidiaries, having annual revenues in excess of $2.578 billion. (Note that this number will likely change for future competitions and, if so, will be noted in future annual announcements of availability of funds and ATP Proposal Preparation Kits.)

(b) Joint ventures can receive ATP funds for R&D activities for up to 5 years, with ATP funding a minority share of the total project costs. Joint ventures must cost-share (matching funds) more than 50 percent of the total project costs (direct plus indirect costs) for each quarter that the ATP funds the project. Matching funds are defined in 15 CFR Part 295.2(1).

(c) Funds derived from Federal sources may not be used to meet the cost sharing requirement. Additionally, subcontractors may not contribute toward the matching-fund requirement.

Application Forms and Proposal Preparation Kit

A new December 1997 version of the ATP Proposal Preparation Kit is available upon request from the ATP at the address and phone numbers noted in this notice. The Kit is also available on the Internet through the World Wide Web under the heading Publications on the ATP home page http://www.atp.nist. gov. Note that the ATP will be mailing the Kit to all those individuals whose names are currently on the ATP mailing list. Those individuals need not contact the ATP to request the new Kit. The Kit contains proposal cover sheets, other required forms, background material, and instructions for submission of proposals. All proposals must be prepared in accordance with the instructions in the Kit.

Submission of Revised Proposals

A proposer may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right to score and rank, or where appropriate, to reject, such proposals based on reviews of the previously submitted proposal.

Other Requirements

(a) Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards as identified in the cooperative agreement award.

(b) Past Performance. Unsatisfactory performance under prior Federal awards may result in a proposal not being considered for funding.

(c) Pre-award Activities. If proposers incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Only written authorization from the NIST Grants Officer will obligate NIST to cover pre-award costs.

(d) No Obligation for Future Funding. If a proposal is selected for funding, NIST has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

(e) Delinquent Federal Debts. No award of Federal funds shall be made to a proposer or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to NIST are made.

(f) Name Check Review. All for-profit and non-profit proposers are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the proposer have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the proposer's management, honesty, or financial integrity.

(g) Primary Applicant Certification. All primary proposers (including all joint venture participants) must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanation is hereby provided:

(1) Nonprocurement Debarment and Suspension. Prospective participants, as defined at 15 CFR part 26, section 105 are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) Drug-Free Workplace. Grantees (as defined at 15 CFR part 605) are subject to 15 CFR 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) Anti-Lobbying Disclosures. Any proposer that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

(h) Lower Tier Certification. Recipients shall require proposers/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and Form SF–LLL, "Disclosure of Lobbying Activities." Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

(i) False Statements. A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(j) Intergovernmental Review. The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, "Intergovernmental Review of Federal Programs" is not applicable to this program.

(k) American-Made Equipment and Products. Proposers are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(l) Paperwork Reduction Act. This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget [OMB Control Nos. 0693–0009 and 0348–0046]. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control No.

(m) If a proposer's proposal is judged to be of high enough quality to be invited in for an oral review, ATP reserves the right to submit a list of questions to the proposer that must be addressed at the oral review.

(n) There are certain types of projects that ATP will not fund because they are inconsistent with the ATP mission. These include:

(1) Straightforward improvements of existing products of product development.

(2) Projects that are predominately basic research.

(3) Pre-commercial scale demonstration projects where the emphasis is on demonstration that some technology works on a large scale rather than on R&D.

(4) Projects involving military weapons R&D or R&D that is of interest only to some mission agency rather than to the commercial marketplace.

(5) Projects that ATP believes would likely be completed with or without ATP funds in the same time frame or nearly the same time frame.

(o) Certain costs that may be allowed in Federal financial assistance programs are not eligible for funding under ATP awards. Section E of the Proposal Preparation Kit lists these costs.

Dated: December 9, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–32623 Filed 12–10–97; 12:27 pm]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Small-craft Facility Questionnaire

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lynn Preston, N/CS26, Station 7350, 1315 East-West Highway, Silver Spring, MD 20910–3282 (301–713–2735, ext. 123).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's National Ocean Service produces nautical charts to ensure safe navigation. Small-craft charts are designed for recreational boaters and include information on local marina facilities and the services they provide (fuel, repairs, etc.). NOAA must collect information to update the charts.

II. Method of Collection

When a specific chart is to be updated all currently listed marinas are sent a form to submit additions or corrections. Forms are also made available at boat shows for new marinas, which can also request a form from NOAA directly.

III. Data

OMB Number: 0648–0021.
Form Number: NOAA Form 77–1.
Type of Review: Regular Submission.
Affected Public: Businesses and other for-profit organizations (small-craft facilities).
Estimated Number of Respondents: 1,600.
Estimated Time Per Response: 8 minutes.
Estimated Total Annual Burden Hours: 213.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32687 Filed 12–12–97; 8:45 a.m.]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Northeast Region Federal Fisheries Permit Family of Forms

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Paul H. Jones, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under Amendment 5 and Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP) and by Amendment 4 Sea Scallop FMP, VMS (Vessel Monitoring System) monitoring is considered to be one of the major tools for the monitoring and enforcement of the days-at-sea (DAS) management system. Certain categories of limited access scallop and multispecies vessels must use a VMS unit while fishing under the DAS program when VMS vendors are certified by the National Marine Fisheries Service (NMFS) for the purposes of monitoring DAS under the multispecies and scallop regulations. This submission discusses VMS use on scallop and multispecies vessels to meet OMB's requirement for a cost study prior to actually making the VMS requirement mandatory.

II. Method of Collection

Full-time and part-time scallop limited access and multispecies individual DAS limited access permit holders will be required to submit to NMFS proof of installation of VMS unit by a NMFS certified VMS vendor on the vessel.

III. Data

OMB Number: 0648–0202.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Individuals, businesses or other for-profit (fishermen).
Estimated Number of Respondents: 442.
Estimated Time Per Response: 0.03.
Estimated Total Annual Burden Hours: 14.73.
Estimated Total Annual Cost to Public: $221.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32686 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112597B]

Highly Migratory Species Advisory Panel and Atlantic Billfish Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Advisory Panels (AP) for Highly Migratory Species and for Atlantic Billfish will hold their meetings on January 11, 12, and 13, 1998, in Baltimore, MD, to discuss future management options for highly migratory species and for Atlantic billfish.

DATES: The Highly Migratory Species AP meeting will be held on January 11, 1998, from 1:00 p.m. to 5:30 p.m., and on January 12, 1998, from 9:00 a.m. to 5:00 p.m. There will be a technical workshop on billfish issues on the evening of January 12, 1998, from 6:00 p.m. to 9:00 p.m. The Atlantic Billfish AP meeting will be held on January 13, 1998, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The AP meetings will be held at the Sheraton Inner Harbor Hotel, 300 South Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Liz Lauck or Jill Stevenson, 1315 East-West Highway, Silver Spring, MD 20910, telephone: (301) 713–2347, Fax (301) 713–1917.

SUPPLEMENTARY INFORMATION: The AP for Highly Migratory Species and the AP for Atlantic Billfish were established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* These APs will assist the Secretary of Commerce in collecting information related to the amendment of the Billfish Fishery Management Plan and to the future fishery management plan for highly migratory species. Both AP meetings are open to the public and will be attended by members of the AP, including appointed members, representatives of the five fishery management councils that work with highly migratory species (HMS), the Atlantic and Gulf states that work with HMS, the Atlantic and Gulf states marine fisheries commissions, and the Chair of the U.S. Advisory Committee to the International Commission for the Conservation of Atlantic Tunas.

Potential agenda items for the Highly Migratory Species AP meeting include—
(1) Bluefin tuna quotas and
(2) Bluefin tuna effort controls.

Potential agenda items for the Atlantic Billfish meeting include—
(1) Rebuilding schedules;
(2) Overfishing definitions; and
(3) Review of billfish comments collected at scoping meetings.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jill Stevenson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting date.

Dated: December 8, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32679 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Tuesday, January 6, 1998, from 9:00 a.m. to 1:00 p.m. The session will be closed to the public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review the draft strategic plan and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will be devoted to a discussion of NTIS' long range plans. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on January 6, 1998, at 9:00 a.m. and adjourn at 1:00 p.m.

ADDRESS: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 Telephone: (703) 605–6400; Fax (703) 487–4093.

Dated: December 9, 1997.

Donald R. Johnson,

Director.

[FR Doc. 97–32614 Filed 12–12–97; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of A Thick Composite Failure Prediction Software Code for Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: U.S. Army Research Laboratory.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a thick composite failure prediction software code as described in U.S. Patent #5,419,200; issued 30 May 1995; entitled "Method For Assessing the Effects of Loading Forces on a Composite Material Structure". Visit http://www.fedlabs.org/ma/pl for technical and licensing information. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–32617 Filed 12–12–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS), Grand Forks, ND—East Grand Forks, MN, Flood Control

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Under the authority of the Flood Control Acts of June 30, 1948, May 17, 1950, and December 31, 1970, a General Reevaluation Report for Flood Control at East Grand Forks, Minnesota, is being prepared. In order to provide effective flood control, the city of Grand Forks, North Dakota, has been included in the investigation.

The cities of Grand Forks, North Dakota, and East Grand Forks, Minnesota, were extensively damaged by flooding of the Red River of the North and the Red Lake River in the spring of 1997. The cities form one urban area separated by the river. Because of the flat topography of the Red River of the North, any proposed flood protection must include both communities to be effective. Emergency flood protection and recovery efforts required significant expenditures. Long-term protection would require the construction of flood control measures sized to accommodate a flood equal to, or greater than, the flood of 1997.

FOR FURTHER INFORMATION CONTACT: Questions concerning the DEIS can be directed to: Colonel J. M. Wonsik, District Engineer, St. Paul District, Corps of Engineers, ATTN: Mr. Robert Whiting, 190 Fifth Street East, St. Paul, Minnesota 55101–1638.

SUPPLEMENTARY INFORMATION: The DEIS will assess impacts, identify areas of potential impact, identify mitigation features, discuss monitoring activities, and identify future activities associated with flood control at the cities of Grand Forks, North Dakota, and East Grand Forks, Minnesota. Structural measures being considered include levees or a combination of levees and a diversion.

Significant issues and resources to be identified in the DEIS will be determined through coordination with responsible Federal, State, and local agencies; the general public; interested private organizations and parties; and affected Native Americans. Anyone who has an interest in participating in development of the DEIS is invited to contact the St. Paul District, Corps of Engineers.

Significant issues identified to date for discussion in the DEIS are as follows:

1. Natural resources including: fishery, wildlife, vegetation, wetlands, and riparian areas;
2. Cultural resources;
3. Water quality, groundwater, erosion, and sedimentation; and
4. Social and economic resources.

Additional issues of significance may be identified through public and agency meetings. A notice of those meetings will be provided to interested parties and to the local news media.

The construction of flood control features in the two cities would be considered major in scope and could result in significant impacts. Our environmental review will be conducted according to the requirements of the National Environmental Policy Act of 1969, National Historic Preservation Act of 1966, Council on Environmental Quality Regulations, Endangered Species Act of 1973, Section 404 of the Clean Water Act, and applicable laws and regulations.

We anticipate that the DEIS will be available to the public in the summer of 1998.

Dated: November 12, 1997.

William J. Breyfogle,

Lieutenant Colonel, EN Acting District Engineer.

[FR Doc. 97–32616 Filed 12–12–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environment Impact Statement (EIS) for the Monarch-Chesterfield Feasibility Study, St. Louis County, MO

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement (EIS) for the Monarch-Chesterfield Feasibility Study, St. Louis County, Missouri. A description of the proposed project, location and environmental issues to be addressed in the draft EIS are provided below (Supplementary Information). This notice is published in accordance with the National Environmental Policy Act regulations found in 40 CFR 1501.7. The purpose of this notice is to solicit suggestions and information from other agencies and the public on the scope of the feasibility study and issues to be addressed in the draft EIS. Comments and participation in this process are encouraged.

The proposed action is to provide flood protection by raising the Monarch-Chesterfield levee system which is located along the right bank of the Missouri River between river miles 46.0 and 38.5. The length of the levee system is 11.5 miles and protects approximately 4,240 acres.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft EIS can be answered by: Mr. Dennis Woodruff, (314) 331–8485, or Dr. Ronald Yarbrough, (314) 331–8460, Planning Division, U.S. Army Corps of Engineers, St. Louis District, 1222 Spruce Street, St. Louis, Missouri 63103–2833.

SUPPLEMENTARY INFORMATION:

1. The study was authorized by the study resolution of the Committee on Public Works and Transportation of the United States House of Representatives: Chesterfield, Missouri—Docket 2421. "Resolved by the Committee on Public Works and Transportation of the United States House of Representatives, That, the Secretary of the Army, acting through the Chief of Engineers on the Mississippi River between Coon Rapids Dam, Minnesota, and the mouth of the Ohio River, published as House Document 669, Seventy-sixth Congress, Third Session, and other pertinent reports, to determine whether modifications of the recommendations contained therein are advisable at the present time, in the interest of flood control and related purposes along the Mississippi River and its Tributaries with particular reference to communities located along or affected by the Mississippi River and its Tributaries in the area of St. Louis, Missouri, including the Counties of St. Louis, Jefferson, and Ste. Genevieve."

The objective of the Monarch-Chesterfield Feasibility Study, St. Louis County, Missouri, is to reduce flood damages and flood related costs. The study investigates the engineering, economic, and environmental feasibility of increasing the levee's present level of flood protection sufficient to protect against a 500-year recurrence interval flood.

2. Reasonable alternatives will be considered in the Monarch-Chesterfield Feasibility Study. These include no action, increasing the reliability of the existing levee system, or raising the existing levee to provide a level of protection between 200-year and 500-year recurrence interval. Other levee alignments were evaluated in the reconnaissance study phase but were eliminated from consideration based upon economic justification. Non-structural plans were also investigated but were not considered practical because of the current level of protection and the vast amount of commercial development within the protected area.

3. Significant issues identified by reviewers during the Recon phase of the study include riparian and aquatic habitats, aquatic wildlife, fisheries, water quality, endangered species, cultural resources, socioeconomic conditions, commercial and industrial development in the floodplain and increased flood heights upstream of the project for higher water levels than the 100-year recurrence interval flood.

4. Public meetings on this study were held 12 September 1994 and 7 November 1995. A third public meeting is scheduled for February 1999.

5. The Draft EIS will be made available to the public in January 1999.

Emmett L. Wood,

Major, U.S. Army Deputy Commander.

[FR Doc. 97–32618 Filed 12–12–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 13, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 9, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement.
Title: Application for Vocational Education Direct Grants.
Frequency: Annually.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 200
Burden Hours: 18,000

Abstract: This form will be used by applicants to apply for funding under the Carl D. Perkins Vocational and Applied Technology Education Act administered by the Office of Vocational and Adult Education. The information will be used to make grants and cooperative agreements.

Office of Postsecondary Education

Type of Review: Extension.
Title: Performance Report for the Training Program for Federal TRIO Programs.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 16
Burden Hours: 60

Abstract: Data assures that grantees have conducted the project for which funded, signals problems of implementation, and indicates extent and quality of performance. The Department uses reports in evaluating project for continuation, assessing technical assistance needs, determining future funding levels and in assigning scores to projects in competition for new grants.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Dwight D. Eisenhower Professional Development Program Triennial Report.
Frequency: Annually.
Affected Public: State, Local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 52
Burden Hours: 208

Abstract: The triennial performance report form will request information related to a State's efforts to develop or modify current professional development programs to support sustained and intensive, high-quality professional development tied to challenging State standards. States are required to submit triennial reports to the Department on their progress toward achieving performance indicators for professional development.

Office of Educational Research and Improvement

Type of Review: New.
Title: The Blue Ribbon Schools Program.
Frequency: One-time.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping:
Responses: 532

Burden Hours: 26,600

Abstract: The Blue Ribbon Schools award is a national school improvement strategy with a threefold purpose: (1) to identify and give public recognition to outstanding public and private schools across the nation; (2) to make available a comprehensive framework of key criteria for school effectiveness that can serve as a basis for participatory self-assessment and planning in schools; and (3) to facilitate communication and sharing of best practices within and among schools based on a common understanding of criteria related to success. The information collected will be used to determine by peer review which schools receive the award and information on their exemplary practices and policies will be made available to other schools.

[FR Doc. 97–32604 Filed 12–12–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 14, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 9, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 1998 Field Test for Schools and Staffing Survey (SASS): LEA, Administrator, School, Teacher and Finance.

Frequency: One Time.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 2,270

Burden Hours: 2,354

Abstract: The National Center for Education Statistics (NCES) will use the field test to assess data collection procedures and new questions that are planned for the next full-scale SASS in 1999–2000. Policy makers, researchers, and practitioners at the national, state, and local levels use SASS data. Respondents include public and private school principals, teachers, and school and LEA staff persons.

[FR Doc. 97–32605 Filed 12–12–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the public of their opportunity to attend the meeting.

DATE: January 15 and 16, 1998.

TIME: January 15, 8:30 a.m. to 5 p.m.; January 16, 8:30 a.m. to 3:30 p.m.

LOCATION: Room 100, 80 F St., N.W., Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma_Leenhouts@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The January meeting will be the Board's quarterly meeting, consisting of three sessions led by committee chairs, followed by a business session. On Thursday, January 15, the Board will hear reports from the Peer Review and Standards Committee and from the Program Committee. On Friday, January 16, the Board will hear a report from the Research, Development, and Dissemination Committee. The business meeting will begin at 1:30 p.m. A final agenda will be available from the Board's office on January 7. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, D.C. 20208–7564.

Dated: December 9, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–32598 Filed 12–12–97; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Research; Energy Research Financial Assistance Program Notice 98–06; Plasma Physics Junior Faculty Development Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Energy Research (OER), U.S. Department of Energy hereby announces its interest in receiving grant applications for support under its Plasma Physics Junior Faculty Development Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical plasma physics research and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the individual research programs of exceptionally talented scientists and engineers early in their careers.

DATES: To permit timely consideration for awards in FY 1998, formal applications in response to this notice should be received on or before March 4, 1998.

ADDRESSES: Completed formal applications referencing Program Notice 98–06 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 98–06. The above address must also be used when submitting applications by U.S. Postal Service Express, and commercial mail delivery service or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald McKnight, U.S. Department of Energy, Office of Fusion Energy Sciences, Science Division, ER–55, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–4597. E-mail: ron.mcknight@oer.doe.gov

SUPPLEMENTARY INFORMATION: The Plasma Physics Junior Faculty Development Program was started in FY 1997. A principal goal of this program is to identify exceptionally talented plasma faculty members early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is, therefore, restricted to tenure-track regular academic faculty investigators who are conducting experimental or theoretical plasma physics research. Emphasis is to be placed on basic plasma science research. For applications to be considered for funding, certification of the status of the applicant as a tenure-track regular academic faculty member by the head of the applicant's academic department or other university/college certifying official will be required before the grant is awarded. Awards made under this program will help to maintain the vitality of university plasma physics research and assure continued excellence in the teaching of plasma physics and related disciplines. Applications from Junior Faculty involved in any areas of plasma physics research, not only magnetic fusion, are welcomed and encouraged.

It is anticipated that annual funding levels up to $150,000 per award may be made available for grants under this notice during FY 1998, contingent upon the availability of appropriated funds. Funding for equipment above this level will be considered on a case-by-case basis. DOE may make up to four awards during FY 1998, depending on the number of meritorious applications and the availability of appropriated funds. Multiple year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. These grants will not normally be renewed after the project period is completed; grantees may, however, submit new grant applications to continue their research using the usual Departmental grant application process. Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605 which is available on the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html

(The Catalog Of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605)

Issued in Washington, DC on December 1, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97–32642 Filed 12–12–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–106–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

December 9, 1997.

Take notice that on December 1, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–106–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a small volume measurement station (farm tap) located in Dodge County, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it is in the process of replacing its Dodge Center Branchline. Northern states that it has negotiated with the two landowners along the route of the original pipeline regarding service lines to reconnect farm tap facilities. One of the farm tap users elected to reconnect their service line to Northern and will continue to receive service from their local distribution company (LDC). The other farm tap user (City of Dodge Center) elected to disconnect from Northern and has connected their service line directly to the LDC. As a result, Northern is requesting authority to abandon the City of Dodge Center farm tap facility.

Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32595 Filed 12–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–110–000]

Northern Natural Gas Company; Notice of Application for Abandonment by Sale

December 9, 1997.

Take notice that on December 2, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–110–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Sections 157.7 and 157.18 of the Commission's Regulations requesting permission and approval to abandon by sale to Samedan Oil Corporation (Samedan), certain non-contiguous pipeline facilities, with appurtenances, which are known as the Grand Isle 83 and the Grand Isle 83 Compressor (GI 83 facilities) and located in the Grand Isle Area, Offshore Louisiana. Northern also requests approval to abandon certain services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that its role in the marketplace has changed from a merchant of natural gas to a transporter of natural gas and that the GI 83 facilities are non-contiguous to its traditional transmission pipeline system and are no longer needed by Northern. Northern further states that the GI 83 facilities, which are owned by Northern and operated by Trunkline Gas Company (Trunkline), were declared non-jurisdictional gathering facilities pursuant to an order issued February 13, 1995 in Trunkline's Docket No. CP92–498–005. Northern proposes to transfer the GI 83 facilities to Samedan who will assume all current and future service obligations, and operational and economic responsibilities for these facilities.

Northern states that it entered into a Transportation and Sales Agreement dated October 30, 1980, as amended, (X–99 Agreement), with Panhandle Eastern Pipeline Company (Panhandle) and Trunkline, which provides for the transportation of Northern's Grand Isle Block 83 gas and, as partial consideration of such transport service, Panhandle had the option to purchase up to 20 percent of such gas. The Commission granted a certificate to Northern authorizing the sale of natural gas to Panhandle in a July 31, 1981 order in Docket No. CP81–256. Northern states that it filed the X–99 Agreement as Rate Schedule X–99 in its FERC Gas Tariff, Original Volume No. 2. Northern seeks abandonment, in this instant proceeding, for the X–99 Agreement which was authorized in Docket No. CP81–256. Northern states that it has entered into an Assignment and Bill of Sale Agreement (Agreement) with Samedan dated October 23, 1997 covering the sale of the GI 83 facilities, which will be transferred to Samedan pursuant to the Agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filled, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear to be represented at the hearing.

Lois D. Cashell,

Secretary

[FR Doc. 97–32596 Filed 12–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–067]

California Department of Water Resources; Notice of Availability of Final Environmental Assessment

December 9, 1997.

A final environmental assessment (FEA) is available for public review. The FEA was prepared for California Department of Water Resources' (licensee) application to expand the Feather River Fish Hatchery.

In summary, the FEA examines the environmental impacts of three alternatives for expanding the hatchery: (1) licensee's proposed action: 600 feet of new raceways with hatching and incubation facilities; (2) proposed alternative: 1,600 feet of raceways; and (3) no-action. These alternatives are described in detail on pages two and three of the FEA.

The FEA recommends the licensee construct 600 feet of new raceways at the Feather River Fish Hatchery in accordance with licensee's proposed action alternative. The FEA concludes that implementation of this alternative would not constitute a major federal action significantly affecting the quality of the human environment.

This FEA was written by staff in the Office of Hydropower Licensing (OHL). Copies of the FEA can be obtained by contacting the Commission's Public Reference Room at (202) 208–1371.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32594 Filed 12–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–755–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed E-Line Stitch Project and Request for Comments on Environmental Issues

December 9, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of about 25 miles of 36-inch-diameter pipeline loop and abandonment of eleven 1,600 horsepower (HP) compressor units proposed in the E-Line Stitch Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Northern Natural Gas Company (Northern) proposes to replace the capacity of the 11 compressor units to be abandoned by installing the two segments of loop. There would be no increase in the capacity of Northern's system as a result of this proposal. Northern seeks authority to construct and operate:

- About 11 miles of 36-inch-diameter loop between the Mullinville and Macksville Compressor Stations in Edwards and Pawnee Counties, Kansas;
- About 14 miles of 36-inch-diameter loop between the Macksville and Bushton Compressor Stations in Barton and Rice Counties, Kansas; and
- Abandonment of eleven 1,600 HP compressor units at the Bushton Compressor Station in Rice County, Kansas.

No nonjurisdictional facilities would be constructed as a result of this proposal.

The location of the project facilities is shown in appendix 1.[2]

[1] Northern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Construction of the proposed facilities would require about 347.6 acres of land, including a 100-foot-wide construction right-of-way, additional temporary work spaces, and a staging area. Following construction, only about 1.5 acres would become new permanent right-of-way where the loops deviate from the existing rights-of-way to cross two streams. All of the right-of-way would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Land use.
- Cultural resources.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern. This preliminary list of issues may be changed based on your comments and our analysis.

- Crossing of 5 perennial waterbodies.
- Impact on cultivated croplands.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send *two* copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label *one* copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP97–755–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 8, 1998.

If you are interested in obtaining procedural information please write to the Secretary of the Commission.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32625 Filed 12–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act Meeting

December 10, 1997.

The following notice of meeting is published pursuant to Section 3(A) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: December 17, 1997, 10 a.m.

Place: Room 2C, 888 First Street NE., Washington, DC 20426.

Status: Open.

Matters To Be Considered: Agenda.

* **Note**—Items listed on the agenda may be deleted without further notice.

Contact Person for more information: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro

687th Meeting—December 17, 1997

Regular Meeting: 10 a.m.

CAH–1.
DOCKET# P–11547, 001, SUMMIT HYDROPOWER, INC.
OTHER#S P–11501, 001, PUTNAM HYDROPOWER, INC.

CAH–2.
DOCKET# P–2459, 044, WEST PENN POWER COMPANY
OTHER#S P–2459, 055, WEST PENN POWER COMPANY

CAH–3.
DOCKET# P–2114, 060, PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON

CAH–4.
DOCKET# P–2145, 030, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON

CAH–5.
DOCKET# P–1651, 013, SWIFT CREEK POWER COMPANY, INC.

CAH–6.
DOCKET# P–2494, 002, PUGET SOUND ENERGY, INC.

Consent Agenda—Electric

CAE–1.
DOCKET# ER–98–380, 000, HORIZON ENERGY COMPANY

CAE–2.
DOCKET# ER–98–486, 000, PUGET SOUND ENERGY, INC.

CAE–3.
DOCKET# EC96–19, 006, PACIFIC GAS & ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
OTHER# EC96–19, 008, PACIFIC GAS & ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
EC96–19, 011, PACIFIC GAS & ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 007, PACIFIC GAS & ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 009, PACIFIC GAS & ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 011, PACIFIC GAS & ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER96–1663, 012, PACIFIC GAS & ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY

CAE–4.
DOCKET# ER98–511, 000, OKLAHOMA GAS AND ELECTRIC COMPANY

CAE–5.
DOCKET# ER98–411, 000, WOLVERINE POWER SUPPLY COOPERATIVE, INC.
OTHER#S ER98–413, 000, WOLVERINE POWER SUPPLY COOPERATIVE, INC.
ER98–493, 000, WOLVERINE POWER SUPPLY COOPERATIVE, INC.
ER98–494, 000, WOLVERINE POWER SUPPLY COOPERATIVE, INC.
ER98–539, 000, WOLVERINE POWER SUPPLY COOPERATIVE, INC.
OA98–4, 000, WOLVERINE POWER SUPPLY COOPERATIVE, INC.

CAE–6.
OMITTED

CAE–7.
DOCKET# ER98–445, 000, NORTHERN/AES ENERGY LLC

CAE–8.
DOCKET# ER98–459, 000, BANGOR ENERGY RESALE, INC.

CAE–9.
DOCKET# ER98–522, 000, BOSTON EDISON COMPANY

CAE–10.
OMITTED

CAE–11.
DOCKET# ER98–449, 000, COM/ENERGY MARKETING, INC.

CAE–12.
DOCKET# ER98–463, 000, BANGOR HYDRO-ELECTRIC COMPANY

CAE–13.
DOCKET# ER98–466, 000, NEW ENGLAND POWER COMPANY

CAE–14.
DOCKET# ER98–500, 000, GPU ADVANCED RESOURCES, INC.

CAE–15.
DOCKET# ER98–523, 000, CINERGY SERVICES, INC.

CAE–16.
DOCKET# ER98–211, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER98–210, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–462, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER98–556, 000, PACIFIC GAS & ELECTRIC COMPANY
ER98–557, 000, PACIFIC GAS & ELECTRIC COMPANY

CAE–17.
DOCKET# EC96–19, 007, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
OTHER# ER96–1663, 008, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY
ER98–441, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER98–495, 000, PACIFIC GAS AND ELECTRIC COMPANY
ER98–496, 000, SAN DIEGO GAS & ELECTRIC COMPANY

CAE–18.
DOCKET# ER98–12, 000, SIERRA PACIFIC POWER COMPANY

CAE–19.
DOCKET# ER98–270, 000, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

CAE–20.
DOCKET# ER98–393, 000, WASHINGTON WATER POWER COMPANY

CAE–21.
DOCKET# ER97–2800, 000, MONTAUP ELECTRIC COMPANY
OTHER# ER97–2338, 000, MONTAUP ELECTRIC COMPANY
ER97–3127, 000, MONTAUP ELECTRIC COMPANY

CAE–22.
DOCKET# ER97–2358, 000, PACIFIC GAS AND ELECTRIC COMPANY
OTHER# ER97–2355, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER97–2364, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER97–4235, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER98–497, 000, SAN DIEGO GAS & ELECTRIC COMPANY

CAE–23.

DOCKET# ER97–3435, 000, CENTRAL VERMONT PUBLIC SERVICE CORPORATION

CAE–24.
OMITTED

CAE–25.
DOCKET# ER97–14, 000, SOUTH CAROLINA ELECTRIC & GAS COMPANY
OTHER# ER97–140, 001, SOUTH CAROLINA ELECTRIC & GAS COMPANY

CAE–26.
DOCKET# ER96–334, 000, MONTANA POWER COMPANY
OTHER# ER96–334, 001, MONTANA POWER COMPANY
OA96–199, 000, MONTANA POWER COMPANY

CAE–27.
DOCKET# TX97–7, 000, MISSOURI BASIN MUNICIPAL POWER AGENCY V. WESTERN AREA POWER ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF ENERGY

CAE–28.
DOCKET# EC97–53, 000, PORTLAND GENERAL ELECTRIC COMPANY

CAE–29.
DOCKET# ER97–2379, 001, MINNESOTA POWER AND LIGHT COMPANY

CAE–30.
DOCKET# ER95–181, 005, FLORIDA POWER & LIGHT COMPANY

CAE–31.
OMITTED

CAE–32.
DOCKET# ER96–2817, 002, MONTAUP ELECTRIC COMPANY

CAE–33.
DOCKET# ER97–3200, 002, MONTAUP ELECTRIC COMPANY

CAE–34.
DOCKET# ER97–964, 001, CONSUMERS ENERGY COMPANY

CAE–35.
DOCKET# ER97–3576, 001, SOUTHWESTERN PUBLIC SERVICE COMPANY

CAE–36.
OMITTED

CAE–37.
DOCKET # NJ97–13, 000, ORLANDO UTILITIES COMMISSION

CAE–38.
OMITTED

CAE–39.
DOCKET# EL97–60, 000, DELMARVA POWER & LIGHT COMPANY

CAE–40.
DOCKET# NJ97–14, 000, EAST KENTUCKY POWER COOPERATIVE, INC.

CAE–41.
DOCKET# OA97–126, 000, ILLINOIS POWER COMPANY
OTHER#S OA97–218, 000, WISCONSIN ELECTRIC POWER COMPANY
OA97–278, 000, NEW YORK STATE ELECTRIC & GAS CORPORATION
OA–97, 00284, 000, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–313, 000, MIDAMERICAN ENERGY COMPANY
OA97–411, 000, PACIFICORP
OA97–442, 000, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–630, 000, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.

CAE–42.
DOCKET# OA97–117, 000, ALLEGHENY POWER SERVICE CORPORATION, MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OTHERS#S OA97–125, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION
0A97–158, 000, NIAGARA MOHAWK POWER CORPORATION
OA97–430, 000, EL PASO ELECTRIC COMPANY
OA97–434, 000, CONSUMERS ENERGY COMPANY
OA97–445, 000, SOUTHERN CALIFORNIA EDISON COMPANY
OA97–449, 000, PUGET SOUND ENERGY, INC.

CAE–43.
DOCKET# OA97–408, 000, AMERICAN ELECTRIC POWER SERVICE CORPORATION APPALACHIAN POWER COMPANY AND COLUMBUS SOUTHERN POWER COMPANY, ET AL.
OTHER#S OA97–279, 000, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA97–431, 000, BOSTON EDISON COMPANY
OA97–459, 000, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP97–346, 011, EQUITRANS, L.P.

CAG–2.
DOCKET# RP98–41, 000, KOCH GATEWAY PIPELINE COMPANY
OTHER#S RP98–41, 001, KOCH GATEWAY PIPELINE COMPANY

CAG–3.
DOCKET# RP98–58, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

CAG–4.
DOCKET# GT98–6, 000, NORTHWEST PIPELINE CORPORATION

CAG–5.
DOCKET# RP95–242, 011, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER#S RP95–326, 012, NATURAL GAS PIPELINE COMPANY OF AMERICA

CAG–6.
DOCKET# RP97–20, 011, EL PASO NATURAL GAS COMPANY

CAG–7.
DOCKET# RP97–275, 009, NORTHERN NATURAL GAS COMPANY
OTHER#S RP97–275, 010, NORTHERN NATURAL GAS COMPANY

CAG–8.
DOCKET# RP98–48, 000, NORTHWEST ALASKAN PIPELINE COMPANY

CAG–9.
DOCKET# RP98–55, 000, TRANSWESTERN PIPELINE COMPANY

CAG–10.
OMITTED

CAG–11.
DOCKET# PR96–11, 000, LEE 8 STORAGE PARTNERSHIP
OTHER#S PR96–11, 001, LEE 8 STORAGE PARTNERSHIP

CAG–12.
DOCKET# PR97–5, 000, HUMBLE GAS PIPELINE COMPANY
OTHER#S PR97–5, 001, HUMBLE GAS PIPELINE COMPANY

CAG–13.
DOCKET# PR97–12, 000, LOMAK OPERATING COMPANY
OTHER#S PR97–12, 001, LOMAK OPERATING COMPANY

CAG–14.
DOCKET# RP96–275, 003, TENNESSEE GAS PIPELINE COMPANY

CAG–15.
DOCKET# RP97–344, 002, TEXAS GAS TRANSMISSION CORPORATION
OTHER#S RP97–344, 003, TEXAS GAS TRANSMISSION CORPORATION

CAG–16.
DOCKET# RP97–406, 000, CNG TRANSMISSION CORPORATION

CAG–17.
DOCKET# RP97–420, 000, SOUTHERN NATURAL GAS COMPANY

CAG–18.
DOCKET# RP96–329, 002, NORAM GAS TRANSMISSION COMPANY

CAG–19.
DOCKET# RP95–191, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY

CAG–20.
DOCKET# RP97–469, 002, NATURAL GAS PIPELINE COMPANY OF AMERICA

CAG–21.
DOCKET# TM97–3–25, 001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER#S RP97–233, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
TM97–3–25, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
TM97–3–25, 002, MISSISSIPPI RIVER TRANSMISSION CORPORATION

CAG–22.
DOCKET# RP97–1, 013, NATIONAL FUEL GAS SUPPLY CORPORATION

CAG–23.
DOCKET# PR97–6, 000, LOUISIANA INTRASTATE GAS COMPANY, L.L.C.
OTHER#S PR97–6, 001, LOUISIANA INTRASTATE GAS COMPANY, L.L.C.

CAG–24.
DOCKET# RP97–373, 004, KOCH GATEWAY PIPELINE COMPANY

CAG–25.
DOCKET# RP97–331, 004, DECATUR UTILITIES AND CITY OF DECATUR, ALABAMA, ET AL. V. MIDCOAST INTERSTATE TRANSMISSION, INC.
OTHER#S RP97–514, 001, HUNTSVILLE UTILITIES, CITY OF HUNTSVILLE, ALABAMA V. MIDCOAST INTERSTATE TRANSMISSION, INC.

CAG–26.

DOCKET# RP97–346, 007, EQUITRANS, L.P.
OTHER#S RP93–187, 014, EQUITRANS, L.P.
RP97–346, 006, EQUITRANS, L.P.
RP97–346, 010, EQUITRANS, L.P.
TM97–3–24, 002, EQUITRANS, L.P.
TM97–3–24, 003, EQUITRANS, L.P.
CAG–27.
DOCKET# OR96–2, 001, TEXACO REFINING AND MARKETING, INC. V. SFPP, L.P.
OTHER#S OR96–10, 001, ARCO PRODUCTS COMPANY V. SFPP, L.P.
OR96–17, 001, ULTRAMAR, INC. V. SFPP, L.P.
CAG–28. OMITTED
CAG–29.
DOCKET# RP96–147, 002, EQUITRANS, L.P.
CAG–30.
DOCKET# RP97–437, 000, WILLIAMS NATURAL GAS COMPANY AND MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY
OTHER#S RP95–303, 005, WILLIAMS NATURAL GAS COMPANY
RP97–532, 000, MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY V. WILLIAMS NATURAL GAS COMPANY
CAG–31.
DOCKET# MG96–13, 005, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–32.
DOCKET# MG96–14, 002, K N WATTENBURG TRANSMISSION, L.L.C.
OTHER#S MT98–3, 000, K N WATTENBERG TRANSMISSION, L.L.C.
CAG–33.
DOCKET# CP96–164, 001, TENNESSEE GAS PIPELINE COMPANY
OTHER#S CP96–254, 001, DISTRIGAS OF MASSACHUSETTS CORPORATION
CAG–34.
DOCKET# CP96–551, 001, MIDAMERICAN ENERGY COMPANY
CAG–35.
OMITTED
CAG–36.
DOCKET# CP97–561, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–37.
DOCKET# CP97–623, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–38.
DOCKET# CP97–264, 000, NORTHERN BORDER PIPELINE COMPANY
CAG–39.
DOCKET# CP97–708, 000, NORTHERN NATURAL GAS COMPANY
CAG–40.
OMITTED
CAG–41.
DOCKET# CP97–174, 000, DUKE ENERGY FIELD SERVICES, INC.
OTHER#S CP97–173, 000, TRUNKLINE GAS COMPANY
CAG–42.
DOCKET# CP96–583, 001, MIDCON TEXAS PIPELINE OPERATOR, INC.
CAG–43.
DOCKET# CP97–667, 000, EL PASO NATURAL GAS COMPANY
CAG–44.
DOCKET# CP97–256, 001, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I. PIPELINE RATE MATTERS
PR–1A.
OMITTED
PR–1B.
OMITTED
PR–2.
DOCKET# OR89–2, 007, TRANS ALASKA PIPELINE SYSTEM
OTHER#S IS89–7, 010 AMERADA HESS PIPELINE CORPORATION
IS89–7, 011, AMERADA HESS PIPELINE CORPORATION
IS89–8, 010, ARCO PIPELINE COMPANY
IS89–8, 011, ARCO PIPELINE COMPANY
IS89–9, 010, BP PIPELINE (ALASKA), INC.
IS89–9, 011, BP PIPELINE (ALASKA), INC.
IS89–10, 010, EXXON, PIPELINE COMPANY
IS89–10, 011, EXXON PIPELINE COMPANY
IS89–11, 010, MOBIL ALASKA PIPELINE COMPANY
IS89–11, 011, MOBIL ALASKA PIPELINE COMPANY
IS89–12, 010, PHILLIPS ALASKA PIPELINE CORPORATION
IS89–12, 011, PHILLIPS ALASKA PIPELINE CORPORATION
IS89–13, 010, UNOCAL PIPELINE COMPANY
IS89–13, 011, UNOCAL PIPELINE COMPANY.
OR89–2, 010, TRANS ALASKA PIPELINE SYSTEM ORDER ON SETTLEMENT.
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–32768 Filed 12–11–97; 11:20 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders; Office of Hearings and Appeals; Week of September 22 Through September 26, 1997

During the week of September 22 through September 26, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: December 4, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 52; Week of September 22 through September 26, 1997

Appeal

William H. Payne, 9/26/97, VFA–0329

William H. Payne filed a Freedom of Information Act (FOIA) Appeal requesting that the Office of Hearings and Appeals of the Department of Energy (DOE) grant a fee waiver for his August 14, 1997 FOIA request. In considering the Appeal, the DOE determined that Mr. Payne's fee waiver Appeal was not ripe for review. Thus, the DOE dismissed Mr. Payne's Appeal.

Personnel Security Hearing

Personnel Security Hearing, 9/22/97, VSO–0154

A Hearing Officer of the Office of Hearings and Appeals issued an opinion concerning the continued eligibility of an individual for access authorization under 10 CFR Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." After considering the record in view of the standards set forth in Part 710, the Hearing Officer found that the derogatory information presented by the DOE/AL under 10 CFR § 710.8(j) established that the individual suffers from the disorder of alcohol abuse. The Hearing Officer also found that this derogatory information had not been mitigated by sufficient evidence of rehabilitation and reformation. Accordingly, the Hearing Officer concluded that, in his opinion, the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Heart L Ranch et al	RK272–2006	9/24/97
Mabel Eikleberry et al	RK272–01828	9/26/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Nebraska Asphalt Paving Company	RR272–293

[FR Doc. 97–32643 Filed 12–12–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5935–1]

Shrimp Virus Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: This document announces a workshop sponsored by the U.S. Environmental Protection Agency (EPA), in cooperation with the Joint Subcommittee on Aquaculture (JSA; Office of Science and Technology Policy). The JSA includes representatives from Federal organizations including the National Marine Fisheries Service, U.S. Department of Agriculture, U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency. The purpose of the workshop is to develop a qualitative ecological risk assessment of the potential impacts of shrimp viruses on cultured shrimp and on wild shrimp populations in the Gulf of Mexico and southeastern U.S. Atlantic coastal waters. The workshop will also develop recommendations for conducting a future, more comprehensive risk assessment.

DATES: The workshop will begin on Wednesday, January 7, 1998, at 8:30 a.m. and end on Thursday, January 8, 1998, at 5 p.m. Members of the public may attend as observers.

ADDRESSES: The workshop will be held at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA. To make hotel reservations, please call the hotel directly at 703–920–3230 by December 29, 1997. Reference the EPA shrimp virus workshop to receive the group rate. Eastern Research Group, Inc. (ERG), an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, register by calling the ERG conference registration line at (781) 674–7374 by December 31, 1997, and reference the shrimp virus workshop. There is no charge for attending the workshop; however, seating is limited.

Background information provided to workshop panelists includes a document containing a report on the shrimp virus problem and the minutes of several public meetings at which the report was reviewed. Printed copies will available on or about January 31, 1998. To obtain a single copy of this document, interested parties should contact the Center for Environmental Research Information, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562, FAX: (513) 569–7566. Please provide your name and mailing address, and request the document by the EPA number (EPA/600/R–97/136) and title, Minutes of the Stakeholder Meetings on the Report of the JSA Shrimp Virus Work Group. In addition, portions of this report are available on the internet, at http://www.epa.gov/ncea/svra.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Thomas McIlwain, Chairperson of the JSA Shrimp Virus Work Group, National Marine Fisheries Service, 3209 Frederick Street, Pascagoula, MS 39567, (601) 762–4591. For workshop information, contact Dr. Bill van der Schalie, U.S. Environmental Protection Agency (8623), 401 M Street, SW, Washington, DC 20460, Telephone (202) 260–4191; FAX: 202–260–6370; e-mail: vanderschalie.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Evidence suggests that exotic shrimp viruses may be inadvertently introduced into U.S. coastal regions. If established, these introduced viruses have the potential to infect both wild shrimp stocks and shrimp in aquaculture. To address this problem the JSA has been developing an ecological risk assessment. In support of information exchange and education, and to determine any necessary course of action to avert the introduction of pathogenic viruses, the JSA tasked a Federal interagency work group (Shrimp Virus Work Group; SVWG) with preparing a report that summarizes readily-available risk-relevant information on shrimp viruses (see 62 FR 31790–31791 (June 11, 1997)). This SVWG report was approved by the JSA and was reviewed at several stakeholder meetings in July 1997. The minutes of these meetings, the SVWG report, and additional stakeholder comments received in conjunction with the release of the report and the stakeholder meetings are the starting points for a peer-review workshop being conducted under contract to the EPA's National Center for Environmental Assessment, in cooperation with the JSA. The goals of this workshop are to develop a qualitative ecological risk assessment of the potential impacts of shrimp viruses on cultured shrimp and on wild shrimp populations in the Gulf of Mexico and southeastern U.S. Atlantic coastal waters and to develop recommendations for conducting a future, more comprehensive risk assessment. Workshop results will provide one source of information for a proposed JSA-sponsored risk management workshop on the shrimp virus problem and may be useful in supporting environmental decisionmaking.

Dated: December 9, 1997.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 97–32646 Filed 12–12–97; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the January 8, 1998 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9:00 a.m. on Tuesday, January 27, 1998. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: December 11, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–32790 Filed 12–11–97; 12:49 pm]

BILLING CODE 6705–01–M

FEDERAL ELECTION COMMISSION

[Notice 1997–19]

Privacy Act; Republication and Notice of New Routine Uses for Disclosure

AGENCY: Federal Election Commission.

ACTION: Republication and Amendment of System of Records to include new routine uses for disclosure and other administrative changes.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the Federal Election Commission is issuing notice of our intent to amend the Systems of Records entitled Personnel Records (FEC 5) and Payroll Records (FEC 8) to include additional routine uses. In addition, other systems have been revised as a result of a reevaluation of the manner in which records are maintained by the Commission. We invite public comment on this publication.

DATES: The Commission will announce an effective date once the comment period expires.

ADDRESSES: Interested individuals may comment on this publication by writing to: Ms. Tina VanBrakle, Privacy Act Officer, 999 E Street, N.W., Washington, D.C. 20463, by close of business on January 5, 1998. All comments received will be available for public inspection at that address.

SUPPLEMENTARY INFORMATION: The primary purpose for this republication is to add new routine uses to two Systems of Records maintained by the FEC. Other minor administrative changes have also been made.

I. DISCUSSION OF PROPOSED ADDITIONS TO ROUTINE USE.

Pursuant to Pub. L. 104–193, the Personnel Responsibility and Work Opportunity Reconciliation Act of 1996, the Federal Election Commission will disclose data from its Personnel Records (FEC 5) and Payroll (FEC 8) Systems of Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. Information on this system was last published at 61 FR 38754, July 25, 1996.

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support.

Effective October 1, 1997, the FPLS was enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective October 1, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by the Federal Election Commission to the FPLS include: employee name, social security number, address, employer name, employer address and federal employer identification number.

In addition, names and social security numbers submitted by the Federal Election Commission to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by the Federal Election Commission to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

II. COMPATIBILITY OF PROPOSED ROUTINE USES.

Use of the data collected is consistent with the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 which mandates the establishment of new resources at the federal level to assist state child support enforcement agencies in establishing paternity; establishing, setting the amount of, or modifying child support obligations; and enforcing child support obligations.

We are proposing these routine uses in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a "compatible" use is a use which is necessary and proper. See OMB Guidelines, 51 FR 18982, 18985 (1986). Since the proposed uses of the data are required by Pub. L. 104–193, they are clearly necessary and proper uses, and therefore "compatible" uses which meet Privacy Act requirements.

III. EFFECT OF THE PROPOSED CHANGES ON INDIVIDUALS.

We will disclose information under these proposed routine uses only as required by Pub. L. 104–193 and as permitted by the Privacy Act.

Accordingly, the Proposed Notice of New and/or Revised Systems of Records, dated October 27, 1994, has been revised and reprinted in its entirety as follows:

Dated: December 9, 1997.

John Warren McGarry,

Chairman.

Table of Contents

FEC 1 Requests for Advisory Opinions.
FEC 2 Audits and Investigations.
FEC 3 Compliance Actions.
FEC 4 Mailings Lists.
FEC 5 Personnel Records.
FEC 6 Candidate Reports and Designations.
FEC 7 Certification for Primary Matching Funds and General Elections Campaign Funds.
FEC 8 Payroll Records.
FEC 9 Litigation Actions.
FEC 10 Letter File. Public Communications.
FEC 11 Contributor Name Index System.
FEC 12 Inspector General Investigative Files.

FEC 1

SYSTEMS NAME:

Requests for advisory opinions.

SYSTEMS LOCATION:

Federal Election Commission. Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted a letter to the FEC that qualifies as an advisory opinion request under FEC regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters requesting advisory opinions and responses thereto from the FEC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437d(a)(7) and 437f.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Documents maintained for historical purposes and for use as precedent in subsequent requests for advisory opinions. Commissioners and staff use this system to respond to requests for opinions. These documents are available to the public for information and so that interested parties may submit comments to the Commission.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or microfilm, on-line disk storage, and electronic data processing system.

RETRIEVABILITY:

Indexed and retrievable by name of requester, date of opinion, request number, and, as applicable, by microfilm roll and frame number.

SAFEGUARDS:

Originals are kept in locked filing cabinets in limited access areas under personal surveillance during working hours and in locked rooms at other times. Copies are freely available.

RETENTION AND DISPOSAL:

Retained for at least four years from date of receipt and subject to disposal thereafter. Current disposal process generally results in retention of records until seven years after receipt.

SYSTEM MANAGER AND ADDRESS:

The General Counsel, Federal Election Commission, Washington, D.C. 20463, (202/219–3690).

NOTIFICAITON PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual requester, persons submitting comments and the Federal Election Commission.

FEC 2

SYSTEM NAME:

Audits and investigations.

SYSTEM LOCATION:

Federal Election Commission. Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates required to file statements and reports under the Federal Election Campaign Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Audit and investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437d(a)(10), 437g(a)(2), (5) and 438(a)(8), (9); 26 U.S.C. 9007, 9038.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The General Counsel, Assistant Staff Directors, Commissioners, and their staffs may use audit and investigation data for informal hearings, administrative compliance, civil litigation, voluntary compliance or to refer matters to appropriate law enforcement authorities.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in

the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Locked safes in limited access locations. Access is limited to FEC staff on a restricted basis and to appropriate law enforcement agencies as directed by the Commission.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEMS MANAGER AND ADDRESS:

Assistant Staff Director for Audit, Federal Election Commission, Washington, D.C. 20463 (202/219–3440).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

With respect to open audits, the foregoing system is exempt pursuant to the provisions of 5 U.S.C. 552a(k)(2). See 11 CFR 1.14.

FEC 3

SYSTEM NAME:

Compliance actions.

SYSTEM LOCATION:

Federal Election Commission, Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints (complainants) and persons complained about (respondents), candidates filing late reports, or no reports, and cases internally generated through review and audit of reports and statements filed by candidates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, referrals, and responses thereto; internal investigations of reports on file at the Commission, depositions, interrogatories and responses thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437g(a) (1), (2), (4) and (5); 438(a)(7) and 438(b); 26 U.S.C. 9006 and 9038.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

While any case is active, these documents are maintained as the agency's working or investigative file. Based upon information contained in the file, recommendations are made to the Commission as to the disposition of a case, and the Commission acts upon those recommendation. Compliance actions are assigned by the Associate General Counsel to an attorney and/or to appropriate staff for investigation. Administrative action and civil litigation are handled by the General Counsel's office. Evidence of knowing and willful violations of the law may be referred to the Attorney General.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employees of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records. Closed compliance cases are duplicated, stored on microfilm and are available to the public, minus information deemed to be exempted under the Freedom of Information Act.

RETRIEVABILITY:

This system is indexed and retrievable by name of complainant or respondent by compliance action number or by mocrofilm roll and frame number, as appropriate.

SAFEGUARDS:

This system is kept in locked filing cabinets in limited access areas under personal surveillance during working hours, and in locked filing cabinets in locked rooms at other times.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER AND ADDRESS:

The General Counsel, Federal Election Commission, Washington, D.C. 20463, (202/219–3690).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Complainants, respondents, third parties who have been requested or subpoenaed, to produce relevant information, and the Federal Election Commission.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to open investigations, the system is exempt pursuant to 5 U.S.C. 552a(k)(2). See 11 CFR Part 1.14.

FEC 4

SYSTEM NAME:

Mailing Lists.

SYSTEM LOCATION:

Federal Election Commission, Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals and institutions who have requested a subscription to the *Record*.

(b) Individuals who have requested FEC publications.

(c) State and local election officials interested in keeping informed of developments.

(d) Reporters who request releases; media added by the Press Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Lists of names, addresses, principal areas of interest.

(b) List of names, addresses, and subjects of interest to the requester.

(c) List of names, addresses, duties and jurisdictions.

(d) Computer listings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2. U.S.C. 438(a) for all categories.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(a) Distribution of monthly newsletter, the Record, to subscribers.

(b) To forward new publications and other informational materials to persons who have expressed an interest in the subject matter.

(c) To distribute publications and other materials of interest to those who administer the election law of the states.

(d) To mail press releases.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized for all categories.

RETRIEVABILITY:

(a) Name or identification numbers.

(b) Name.

(c) Name, title, jurisdiction or region of the country.

(d) Name of individual or name of media.

SAFEGUARDS:

Access code with password for all categories.

RETENTION AND DISPOSAL:

(a) Purged every two years or upon request of subscriber.

(b) Purged every two years.

(c) Indefinite.

(d) Indefinite.

SYSTEM MANAGER AND ADDRESS:

The Assistant Staff Director for Information, Federal Election Commission, Washington, D.C. 20463, (202/219–3440).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

(a) Individuals and organizations who request a subscription to the *Record*.

(b) Individuals to whom the Information Division has mailed publications.

(c) Officials requiring up-to-date information on elections administration.

(d) Oral and written requests to be placed on list; media directories.

FEC 5

SYSTEM NAME:

Personnel records.

SYSTEM LOCATION:

Federal Election Commission, Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment, current employees (including unpaid interns), and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) SF–171's/resumes.

(b) SF–7 Record Cards (current and former employees).

(c) Official Personnel Folder (OPF).

(d) Employee Performance Folders (EPF).

(e) Individual Employee Master Files.

(f) Discipline/Adverse Action Files.

(g) Outside Employment Files.
(h) Employee Medical File.
(i) Grievance Files.
(j) Appeal Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437c and 5 CFR 293.

ROUTINE USES OF RECORDS IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) SF–171's/OF–16's/Resumes—used by the Personnel staff and all levels of management to evaluate qualifications and make personnel selections.

(b) SF–7 Record Cards—used by Personnel staff to verify salary, grade and service of current and former employees for use by prospective employers, credit bureaus, etc.

(c) OPF—used by Personnel staff to process and record personnel actions, and by Personnel staff and line managers to evaluate skills, ability and qualifications for selection, promotion, and other personnel actions.

(d) EPF—used by Personnel staff to record performance-related information such as performance appraisals, and by line managers as basis for personnel actions.

(e) Individual Employee Master File—computer-stored record of all personnel actions and other pertinent employee data; used by Personnel staff to process and record personnel actions and by the authorized Data Systems staff and Payroll and Accounting staff to update and revise files, programs and produce required statistical reports.

(f) Discipline and Adverse Actions—used by Personnel staff and line managers in considering decisions on such actions, and for appeals, grievances and hearings.

(g) Outside Employment Files—used by Personnel and legal staff to consider requests for outside employment and to verify approval/disapproval.

(h) Employee Medical Files—used by Personnel staff and line managers to record employee medical information pertinent to their performance/attendance/conduct, and in reviewing the impact of medical conditions on their employment.

(i) Grievance Files—used by Personnel staff to record the disposition of employee grievances.

(j) Appeals Files—used by Personnel staff to record the disposition of employee appeals.

In addition to the above, in the event that a system of records maintained by this agency to carry out its functions indicated a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from the system of records may be disclosed as "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or, other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized complaints examiner, equal employment opportunity investigator, administrative law judge, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee. A record from this system of records may be disclosed to the U.S. Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

A record from this system of records may be disclosed to officers and employees of a Federal agency for purposes of audit.

A record from this system of records may also be disclosed to the: (1) Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action; (2) Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement; and (3) Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

(a) Hard copy record kept in Personnel Office.
(b) Hard copy record kept in Personnel Office.
(c) Hard copy record kept in Personnel Office.
(d) Hard copy record kept in Personnel Office.
(e) Computer disk packs within central processing unit.
(f) Hard copy record kept in Personnel Office.
(g) Hard copy record kept in Personnel Office.
(h) Hard copy record kept in Personnel Office.
(i) Hard copy record kept in Personnel Office.
(j) Hard copy record kept in Personnel Office.

RETRIEVABILITY:

(a) Retrieval by hand of alphabetical files.
(b) Retrieval by hand of alphabetical files.
(c) Retrieval by hand of alphabetical files.
(d) Retrieval by hand of alphabetical files.
(e) On line access using SSN.
(f) Retrieval by hand of alphabetical files.
(g) Retrieval by hand of alphabetical files.
(h) Retrieval by hand of alphabetical files.
(i) Retrieval by hand of alphabetical files.
(j) Retrieval by hand of alphabetical files.

SAFEGUARDS:

(a) Locked file cabinet in locked office.
(b) Locked Office.
(c) Locked file cabinet in locked office.
(d) Locked file cabinet in locked office.
(e) Overall password for group number, individual password for each program; knowledge of password limited to appropriate personnel.
(f) Locked file cabinet in locked office.
(g) Locked file cabinet in locked office.
(h) Locked file cabinet in locked office.
(i) Locked file cabinet in locked office.
(j) Locked file cabinet in locked office.

RETENTION AND DISPOSAL:

(a) 1 year; shredded.
(b) Indefinite.
(c) Indefinite; transferred with employee to succeeding agency or retired to Federal Records Center upon retirement or termination/resignation from Federal service or death.
(d) Indefinite; shredded within 30 days of employee departure unless part of ongoing adjudicatory action.
(e) Indefinite.
(f) Indefinite.
(g) 2 years; shredded.
(h) Indefinite; transferred with employee to succeeding agency or retired to Federal Records Center upon retirement or termination/resignation from Federal service or death.
(i) Indefinite.
(j) Indefinite.

SYSTEM MANAGER AND ADDRESS:

The Director of Personnel, Federal Election Commission, Washington, D.C. 20463, (202/219–3440).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Personnel applications, resumes, employment forms, records of personnel action.

FEC 6

SYSTEM NAME:

Candidate reports and designations.

SYSTEM LOCATION:

Federal Election Commission, Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates for Federal office required to file reports of contributions and expenditures and designations of campaign depositories and authorized committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports and Statements of candidates; reports by delegates and other persons making contributions or independent expenditures and designations on behalf of a Federal candidate but not through a political committee, candidate, or authorized committee or agent of a candidate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 432(e), 434, and 437b(a)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system may be used by any person for information purposes. However, any information copied from such reports shall not be sold or utilized by any person for the purposes of soliciting contributions or for any commercial purpose.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or microfilm and on-line disk storage electronic data processing system.

RETRIEVABILITY:

Retrievable by candidate's name, or by State in which candidate seeks election; candidate identification number or last name for computer storage.

SAFEGUARDS:

Locked filing cabinets.

RETENTION AND DISPOSAL:

Reports are preserved for a 10-year period except that reports relating solely *to candidates for the House of* Representatives are preserved for 5 years from the date of receipt. Microfilm is preserved indefinitely.

SYSTEM MANAGER AND ADDRESS:

The Assistant Staff Director for Disclosure, Federal Election Commission, Washington, D.C. 20463, (202/219–3440).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Reports filed with the FEC.

FEC 7

SYSTEM NAME:

Certification for primary matching funds and general election campaign funds.

SYSTEMS LOCATION:

Federal Election Commission, Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates for nomination or election to the Office of President of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Certification forms and supporting data requesting matching funds or election funds.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 9003, 9006; 26 U.S.C. 9033, 9036, 9037.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Certification of eligibility for funds by presidential candidates. These files are available for public inspection.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Indexed by name of candidate.

SAFEGUARDS:

Locked filing cabinets.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEMS MANAGER AND ADDRESS:

Assistant Staff Director for Audit, Federal Election Commission, Washington, D.C. 20463 (202/219–3440).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORDS ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Certification reports filed with the Commission.

FEC 8

STSTEM NAME:

Payroll records.

SYSTEM LOCATION:

Federal Election Commission, Washington, DC 20463.

CATEGORIES OF RECORDS IN THE SYSTEM:

Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefit records; requests for deductions; tax forms; W–2 forms; overtime requests; leave data; and retirement records. Records are used by Commission employees to maintain adequate payroll information for Commission employees, and otherwise by Commission employees who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C., generally. Also, 2 U.S.C. 437c(f).

ROUTINE USES FOR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a system of records maintained by this agency to carry out its functions indicated a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcement or implementation of the statute or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

A record from this system of records may be disclosed to officers and employees of a Federal agency for purposes of audit.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance processes as set forth in that circular.

Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of Treasury form W–2, wage and tax statement, also is disclosed to the State and city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Assistant Director for Administration; Federal Election Commission, Washington, D.C. 20463. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to a written request from an appropriate city official to the Assistant Staff Director for Administration.

In the absence of a withholding agreement, the Social Security number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security number, in accordance with Section 7 of the Privacy Act.

Records are also disclosed to the: (1) Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action; (2) Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement; and (3) Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disk packs within central processing unit.

RETRIEVABILITY:

On line access program utilizing employee social security number.

SAFEGUARDS:

Overall password for group number; individual password for each program; knowledge of password limited to appropriate personnel.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

The Assistant Staff Director for Administration, Federal Election Commission, Washington, D.C. 20463, (202/219–3440).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The subject individual; the Federal Election Commission.

FEC 9

SYSTEM NAME:

Litigation Actions.

SYSTEM LOCATION:

Federal Election Commission, Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have brought judicial action against the Commission and individuals against whom the Commission has brought judicial action pursuant to 2 U.S.C. 437g or 437h, 26 U.S.C. 9011 or 9041, 5 U.S.C. 552 or any other statute.

CATEGORIES OF RECORDS IN THE SYSTEM:

All papers incident to a law suit, including discovery materials, motions, briefs and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 437g(a)(6), 437g(a)(8), 437g(a)(11), and 437h.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Maintained for historical purposes and for consultation as precedent in subsequent judicial or administrative actions. Civil litigation is handled by the General Counsel's office. Access is limited to FEC staff on a restricted basis.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof, or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and microfilm.

RETRIEVABILITY:

System indexed by name of party litigant and, as applicable, by microfilm roll and frame number.

SAFEGUARDS:

This system is kept in locked filing cabinets or in limited access areas under personal surveillance during working hours, and in locked rooms at other times.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER AND ADDRESS:

The General Counsel, Federal Election Commission, Washington, D.C. 20463, (202/219–3690).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et.seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual party litigants and counsel, court personnel and the Federal Election Commission.

FEC 10

SYSTEM NAME:

Letter file, Public Communications.

SYSTEM LOCATION:

Federal Election Commission, Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have written to the FEC requesting answers to specific questions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries by individuals concerning the Federal Election Campaign Act of 1971, as amended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 438(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Response to inquiries.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her individual capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Name of individual.

RETENTION AND DISPOSAL:

Retained in-house for one year; shipped afterward to general storage.

SYSTEM MANAGER AND ADDRESS:

The Assistant Staff Director for Information, Federal Election Commission, Washington, D.C. 20463, (202/219–3440).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals who request information in writing.

FED 11

SYSTEM NAME:

Contributor Name Index System.

SYSTEM LOCATION:

Federal Election Commission, Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been listed on campaign finance reports as having given an aggregate amount in excess of $200 or more in a calendar year to a Federal candidate or their supporting political committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

On-line disk storage electronic data processing index of names.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 U.S.C. 441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Commission staff and the public may use this system to ascertain whether and to what extent named individuals have made contributions to Federal candidates and political committees.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Federal Election Commission to be relevant and necessary to the litigation provided, however, that in each case the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE OF AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the Federal Election Commission determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the agency determines that disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On-line disk storage electronic data.

RETRIEVABILITY:

Indexed by last name of contributor.

SAFEGUARDS:

Access to data is firewall protected. Retrieval data is copy of official data base retained on secure Commission system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER AND ADDRESS:

The Assistant Staff Director for Data Systems Development Division, Federal Election Commission, Washington, D.C. 20463, (202/219–3440).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual contributors.

FEC 12

SYSTEM NAME:

Inspector General Investigative Files.

SYSTEM LOCATION:

Federal Election Commission, Washington, D.C. 20463.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, referrals from other agencies, investigative notes, interviews, reports, interrogatories and responses thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act Amendments of 1988, Pub. L. 100–504, amending the Inspector General Act of 1978, Pub. L. 95–402, 5 U.S.C. app.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Material is maintained in the Office of Inspector General's (OIG) investigative files. Access to files is restricted to OIG Staff and then on a need to know basis. Criminal violations are referred to the Justice Department.

ROUTINE USE FOR DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR USE IN LITIGATION:

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such reports by the Department of Justice is deemed by the Inspector General to be relevant and necessary to the litigation provided, however, that in each case the Inspector General determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

ROUTINE USE FOR AGENCY DISCLOSURE IN LITIGATION:

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency, or any of its components, is a party to litigation or has an interest in such litigation, and the Inspector General determines that, on a case-by-case basis, use of such records is relevant and necessary to the litigation, provided, however, that the Inspector General determines that disclosure of the records is compatible with the purpose for which the records were collected.

SYSTEMS EXEMPTED:

System exempt under 5 U.S.C. 552a(j)(2) and 5 U.S.C. 552a(k)(2). See 11 CFR Part 1.14.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer records.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

The paper records and computer disks are kept in locked cabinets in limited access areas under personal surveillance during working hours and in locked cabinets in locked room at all other times.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER AND ADDRESS:

The Inspector General, Federal Election Commission, Washington, D.C. 20463, (202/219–4267).

NOTIFICATION PROCEDURES:

Refer to Commission access regulations at 11 CFR 1.1 et seq., 41 FR 43064 (1976).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Complaints, subjects, third parties who have been requested to produce relevant information, referring agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to investigations, the system is exempt pursuant to 5 U.S.C. 552a(k)(2).

[FR Doc. 97–32592 Filed 12–12–97; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

[Notice 1997–18]

Filing Dates for the Pennsylvania Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Pennsylvania has scheduled a special election on May 19, 1998, to fill the U.S. House seat in the First Congressional District vacated by Ambassador Thomas Foglietta.

Committees required to file reports in connection with the Special General Election on May 19 should file a Year-End Report on January 31, 1998; an April Quarterly Report on April 15, 1998; a Pre-General Election Report on May 7, 1998; and a Post-General Election Report on June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463, *Telephone:* (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Pennsylvania Special General Election and all other political committees not filing monthly which support candidates in the Special Election shall file a Year-End Report on January 31, 1998, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through December 31, 1997; an April Quarterly Report on April 15, 1998, with coverage dates from January 1 through March 31, 1998; a Pre-General Report on May 7, 1998, with coverage dates from April 1 through April 29, 1998; and a Post-General Report on June 18, 1998, with coverage dates from April 30 through June 8, 1998.

CALENDAR OF REPORTING DATES FOR PENNSYLVANIA SPECIAL ELECTION FOR COMMITTEES INVOLVED IN THE SPECIAL GENERAL (5/19/98)

Report	Close of books[1]	Reg./cert. mailing date[2]	Filing date
Year-end	12/31/97	01/31/98	01/31/98
April quarterly	03/31/98	04/15/98	04/15/98
Pre-general	04/29/98	05/04/98	05/07/98
Post-general	06/08/98	06/18/98	06/18/98

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: December 9, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97–32591 Filed 12–12–97; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. Wednesday, December 17, 1997.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Affordable Housing Program Applications Approval.
- Final Rule Amending Definition of "State" in Membership Regulation to Include American Samoa and the Northern Mariana Islands.
- Office of Finance Debt Authorization.
- Resolution Clarifying Intention Regarding Member Subsidy Limit Provision of AHP Regulation.
- Technical Amendment to the Financial Management Policy to Permit FHLBanks to Place Insured Deposits With All Members.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 97–32723 Filed 12–10–97; 4:35 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011599.

Title: Compagnie Generale Maritime/TNX Agreement.

Parties:

Compagnie Generale Maritime of Paris ("CGM")

Transroll Navieras Express, Inc. ("TNX")

TNX Transportes, Ltda. ("Transportes")

Synopsis: Under the proposed Agreement, CGM would initially slot charter vessel space from TNX and/or Transportes. Upon introduction of vessels by CGM, the Agreement would then authorize the parties to charter space to one another, coordinate their vessel services, and with voluntary adherence, agree upon rates and charges in the trade between United States Atlantic Coast ports, ports in Puerto Rico, and the U.S. Virgin Islands, and inland points via such ports, and ports and points in Brazil, Uruguay, Paraguay, and Argentina.

Agreement No.: 217–011600.

Title: Caribbean Generale Maritime/TNX Agreement.

Parties:

Caribbean General Maritime Ltd. ("CAGEMA")

Transroll Navieras Express, Inc. ("TNX")

TNX Transportes, Ltda. ("Transportes")

Synopsis: The proposed Agreement would permit TNX and Transportes to charter space from CAGEMA in the trade between Miami, Florida, and Houston, Texas, and inland U.S. points via those ports, and Freeport, the Bahamas.

Agreement No.: 203–011601.

Title: SUNMAR Container Line/FESCO Intermodal Cooperative Working Agreement.

Parties:

SUNMAR Container Lines, Inc.

FESCO Intermodal, Inc.

Synopsis: The proposed Agreement permits the parties to charter space on each other's vessels, coordinate vessel schedules, agree upon the number, size and type of vessel to be provided and, on a voluntary basis, discuss and agree upon rates and rate related matters in the trade between ports on the Pacific Coast of the United States, and all interior and coastal points via such ports, and all ports and points on the Pacific Coast of Russia, including ports on the Sea of Japan and the Sea of Okhotsu.

By Order of the Federal Maritime Commission.

Dated: December 9, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32593 Filed 12–12–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Thursday, December 18, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. (a) Proposed amendments to Regulations G (Securities Credit by Persons Other than Banks, Brokers, or Dealers), T (Credit by Brokers and Dealers),U (Credit by Banks for the Purpose of Purchasing or Carrying Margin Stock), and X (Borrowers of Securities Credit) to reduce regulatory distinctions between broker-dealers, banks, and other lenders and to implement changes in the Board's margin authority contained in the National Securities Markets Improvement Act of 1996 (proposed earlier for public comment; Docket Nos. R–0905, R–0923, and R–0944); and (b) publication for comment of an advance notice of proposed rulemaking to amend Regulations T, U, and X.

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32729 Filed 12–11–97; 10:36 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11 a.m., Thursday, December 18, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32730 Filed 12–11–97; 10:36 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[Dkt. C–3726]

Baxter International Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, Baxter International ("Baxter"), an Illinois-based corporation, to divest its Autoplex product to a Commission-approved buyer, and to license Immuno International AG's ("Immuno") product in development to a Commission-approved licensee within four months of the date Baxter signs the consent. This would resolve antitrust concerns raised by the $463 million acquisition of Immuno by Baxter, which both manufacture a wide variety of biologic products derived from human blood plasma.

DATES: Complaint and Order issued March 24, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Pamela Taylor, FTC/S–2308, Washington, D.C. 20580. (202) 326–2237.

SUPPLEMENTARY INFORMATION: On Friday, January 3, 1997, there was published in the **Federal Register**, 62 FR 408, a proposed consent agreement with analysis In the Matter of Baxter International Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46, Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–32636 Filed 12–12–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3725]

Ciba-Geigy Limited, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, the licensing of specified gene therapy technology and patent rights to Rhone-Poulene Rorer, Inc., to put Rhone-Poulene in a position to compete against the combined firm. The consent order also requires divestiture of the Sandoz U.S. and Canadian corn herbicide assets to BASF and its flea control business to Central Garden & Pet Company or another Commission-approved buyer.

DATES: Complaint and Order issued March 24, 1997.[1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

/1/ Copies of the Complaint, the Decision and Order, and the Commissioners' statements are available from the Commission's Public Reference Branch, H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Howard Morse or William Baer, FTC/H–394, Washington, D.C. 20580. (202) 326–2949 or 326–2932.

SUPPLEMENTARY INFORMATION: On Friday, January 3, 1997, there was published in the **Federal Register**, 62 FR 409, a proposed consent agreement with analysis In the Matter of Ciba-Geigy Limited, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, indisposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 .S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–32635 Filed 12–12–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3727]

Jeanette L. Douglas Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, Jeanette L. Douglas, an officer of Computer Business Services, Inc. ("CBSI"), from misrepresenting the earnings or success rate of CBSI investors; the existence of a market for CBSI's products or services; the amount of time it takes investors to recoup their investments; and from making any representation regarding the performance, benefits, efficacy or success rate of any product or service unless she possesses reliable evidence to substantiate the claims. The consent order also prohibits the use of misleading testimonials or endorsements and requires certain disclosures to investors.

DATES: Complaint and Order issued March 24, 1997.[1]

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Catherine Fuller, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL 60603. (312) 353–8156 or (312) 353–5576.

SUPPLEMENTARY INFORMATION: On Friday, January 17, 1997, there was published in the **Federal Register**, 62 FR 2671, a proposed consent agreement with analysis In the Matter of Jeanette L. Douglas Co., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–32637 Filed 12–12–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3728]

Phillips Petroleum Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, the Oklahoma-based corporation to divest approximately 160 miles of pipeline belonging to ANR Pipeline Company and Phillips in the Anadarko Basin area, and to maintain the assets in their current condition and to provide customers under the contract with ANR with gathering services at existing terms and conditions pending divestiture. The consent order also requires Phillips, for ten years, to notify the Commission before acquiring during any 18-month period more than five miles of gas gathering pipelines in the specified areas of the Oklahoma counties.

DATES: Complaint and Order issued March 28, 1997.[1]

FOR FURTHER INFORMATION CONTACT: George Cary, FTC/H–374, Washington, DC 20580. (202) 326–3741.

SUPPLEMENTARY INFORMATION: On Friday, January 10, 1997, there was published in the **Federal Register**, 62 FR 1459, a proposed consent agreement with analysis In the Matter of Phillips Petroleum Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–32638 Filed 12–12–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry; Senior Executive Service; Performance Review Board Members

AGENCY: Centers for Disease Control and Prevention (CDC), and Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Title 5, U.S. Code, Section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95–454, requires that appointment of Performance Review Board members be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Connie Clayton, Human Resources Management Office, Office of Program Support, Centers for Disease Control and Prevention, 4770 Buford Highway,

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

Mailstop K–07, Atlanta, Georgia 30341–3724, telephone 770–488–1874.

SUPPLEMENTARY INFORMATION: The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services in the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry:

Claire V. Broome, M.D., Chairperson
Helene D. Gayle, M.D., M.P.H.
James M. Hughes, M.D.
Arthur C. Jackson
Richard J. Jackson, M.D., M.P.H.
Wanda K. Jones, Dr.P.H.
James S. Marks, M.D., M.P.H.
Peter J. McCumiskey
Linda Rosenstock, M.D., M.P.H.

Dated: December 8, 1997.

Claire Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC) and Deputy Administrator, Agency for Toxic Substances and Disease Registry (ATSDR).

[FR Doc. 97–32589 Filed 12–12–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Oversight Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the 1998 meetings of its clinical hold oversight committee, which reviews the clinical hold orders that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. For each meeting, FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The next meetings will be held on February 10, 1998; May 12, 1998; August 11, 1998; and November 10, 1998. Biological product companies may submit review requests for the February meeting by January 12, 1998; for the May meeting by March 31, 1998; for the August meeting by June 30, 1998; and for the November meeting by September 29, 1998.

ADDRESSES: Submit clinical hold review requests to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–4), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: FDA regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. Section 312.42 describes the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic, and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting an oversight committee to review clinical holds (see 61 FR 1031 at 1033, January 11, 1996). CBER held its first clinical hold oversight committee meeting on May 17, 1995, and plans to conduct further quality assurance oversight of the IND process. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered "anonymously." The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the oversight committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

For each meeting, FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review. Submissions should be made by January 12, 1998, for the February meeting; by March 31, 1998, for the May meeting; by June 30, 1998, for the August meeting; and by September 29, 1998, for the November meeting to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman (address above).

Dated: December 9, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32878 Filed 12–12–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Product, Establishment, and Biologics License Applications, Refusal to File; Meeting of Oversight Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the 1998 meetings of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's), establishment license applications (ELA's), and biologics license applications (BLA's). CBER's RTF oversight committee examines all RTF decisions that occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The next meetings will be held on January 13, 1998; April 14, 1998; July 14, 1998; and October 13, 1998.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–4), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee continues CBER's effort to promote the timely, efficient, and consistent review of PLA's, ELA's, and BLA's.

FDA regulations on filing PLA's, ELA's, and BLA's are found in 21 CFR 601.2 and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from the FDA's Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman. Meetings will ordinarily be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions. If there are no RTF decisions to review, however, the meeting may be cancelled. FDA intends to post any meeting cancellation on the CBER home page at "http://www.fda.gov/cber/confmeet.htm". Publication of any meeting cancellation will be made only as time permits.

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all such confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division within CBER will notify the sponsor.

Dated: December 9, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32677 Filed 12–12–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on January 12, 1998, 11 a.m. to 6 p.m., and January 13, 1998, 7:30 a.m. to 5:30 p.m.

Location: Parklawn Bldg., conference rooms G and H, 5600 Fishers Lane, Rockville, MD.

Contact Person: Jodi H. Nashman, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12521. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 12, 1998, the committee will discuss and make recommendations for reclassification petitions for non- and semi-constrained shoulders and uni- and total patellofemorotibial knees. On January 13, 1998, the committee will discuss and make recommendations for the reclassification petitions for patellofemoral knees and constrained elbows, and for the classification of calcium sulfate pre-formed pellets (plaster of paris pellets).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 5, 1998. Oral presentations from the public regarding the reclassification petitions for non- and semi-constrained shoulders and uni- and total patellofemorotibial knees will be scheduled between approximately 11 a.m. and 12 m. on January 12, 1998. Oral presentations

from the public regarding the reclassification petitions for patellofemoral knees and constrained elbows, as well as for the classification of calcium sulfate pre-formed pellets (plaster of paris pellets) will be scheduled between approximately 7:30 a.m. and 8:30 a.m. on January 13, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 5, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 9, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–32676 Filed 12–12–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Prevention of Osteoporosis.
Date: December 18–19, 1997.
Time:
December 18—6:00 p.m.–10:00 p.m.
December 19—8:00 a.m.–adjournment
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Contact Person: Anne Krey, Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.
Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: December 8, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32612 Filed 12–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Trauma and Burn (P50).
Date: December 16–17, 1997.
Time:
December 16—8:00 p.m.–10:00 p.m.
December 17—8:00 a.m.–adjournment
Place: Copley Plaza Hotel, 138 St. James Avenue, Boston, Massachusetts 02116.
Contact Person: Dr. Bruce Wetzel, Scientific Review Administrator, NIGMS, Natcher Building—Room 1AS–19K, Bethesda, Maryland 20852–6200, Telephone: 301–594–3907.
Purpose/Agenda: To evaluate and review a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: December 8, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32613 Filed 12–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Service Regulations Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on January 29, 1998, to identify and discuss preliminary issues concerning the 1998–99 migratory bird hunting regulations.

DATES: January 29, 1998.

ADDRESSES: The Service Regulations Committee will meet at the U.S. Fish and Wildlife Service, Arlington Square Building, Room 200 A/B, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on January 29, 1998, at 9:00 a.m. to identify preliminary issues concerning the 1998–99 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

Dated: December 4, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–32588 Filed 12–12–97; 8:45 am]

BILLING CODE 4310–55–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–018–1430–01; CACA 38618]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 3,368.85 acres of public lands in El Dorado County to protect the South Fork of the American River. This notice closes the lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing and the Materials Act of 1947. Up to 352.38 acres of non-federally owned lands would be subject to this withdrawal if they are acquired by the United States in the future by exchange, donation, or purchase.

DATES: Comments and requests for a public meeting must be received by March 16, 1998.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM California State Office (CA–931), 2135 Butano Drive, Sacramento, California 95825–0451.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 916–978–4675 or John Beck, BLM Folsom Field Office, 916–985–4474.

SUPPLEMENTARY INFORMATION: On December 3, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian, California

T. 11 N., R. 9 E.,
- Sec. 3, that portion of the SE¼SW¼ and the SW¼SE¼ lying Southerly of the South Boundary of State Highway 49
- Sec. 10, all, excepting that portion lying Northerly of the North boundary of California State Highway 49
- Sec. 11, the West half of the Northwest quarter and the North half of the Northwest quarter of the Southwest quarter lying Southerly of the South boundary of State Highway 49 as conveyed to the State of California by deed recorded January 8, 1962 in Book 577 of Official Records, page 89, and Westerly and Northerly of the centerline of the South Fork of the American River; the East half of the Northwest quarter lying Westerly and Northerly of the centerline of the South Fork of the American River, lying Southerly of the South boundary of State Highway 49 as conveyed to the State of California by Deed recorded January 8, 1962 in Book 577 of Official Records, page 89, also lying Westerly of the following described line: Beginning at the Northwest corner of Parcel 1 as shown on that certain Parcel map filed in Book 45 of Parcel Maps at Page 34 being located on the said South boundary of State Highway 49; thence along the West boundary of said Parcel 1 South, 550.09 feet to a 1¼" capped iron pipe stamped L.S. 2403; thence leaving said West boundary along the East boundary of that certain Parcel of land encumbered by agreement to complete Boundary Line Adjustment and Easement Agreement recorded in Book 4380 of Official Records at page 59 South 12° 54' 45" East, 280.34 feet; thence South 26° 20' 07" East, 187.26 feet to the said centerline of the South Fork of the American River and the terminus of said described line.
- Sec. 12, lots 1 to 9 inclusive, NW¼SE¼NW¼, and NW¼NE¼SE¼.
- Sec. 20, NE¼SW¼, N½SE¼, SE¼SE¼.
- Sec. 21, that portion of the West half lying Westerly of the centerline of the South Fork of the American River;
- Sec. 28, that portion of the N½ NW¼ lying Westerly and Northerly of the centerline of the South Fork of the American River, SW¼NW¼ excluding Mineral Survey 5163, W½SW¼, and SE¼SW¼.
- Sec. 29, tracts 1 and 2, as shown on the map, filed October 2, 1991 in book 18, of survey maps at page 129, El Dorado County Records, California, and that portion of the S½SW¼ lying Westerly and Northerly of the centerline of the South Fork of the American River.
- Sec. 30, lots 1 to 4 inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, and SE¼.
- Sec. 32, N½NE¼, SW¼NE¼, W½, and S½SE¼.

T. 11 N., R. 10 E.,
- Sec. 18, lots 5, 6, and 7, and NW¼NE¼NW¼.
- Sec. 22, NW¼SE¼, SW¼, and that portion of the E½NW¼ excluding lots 1, 4, and 5.
- Sec. 26, SW¼.
- Sec. 27, NE¼, N½NW¼, SE¼NW¼, E½SW¼, and SE¼.

The areas described aggregate 3,368.85 acres, more or less, in El Dorado County.

In addition, if any of the non-federally owned lands within the area described below are acquired by the United States in the future by exchange, donation, or purchase, those lands will be subject to this withdrawal:

Mount Diablo Meridian, California

T. 11 N., R. 9 E.
- Sec. 29, NW¼, NW¼SW¼, NE¼SW¼, and portions of the East half more particularly described as follows: Parcels 2, 3, and 4, as shown on the Parcel Map, filed August 17, 1979 in Book 24 of PARCEL MAPS at page 15, El Dorado County Records, California, and as amended by Certificate of Correction recorded August 31, 1989 in Book 3196 of Official Records, page 76, and tract 3 as shown on the map, filed October 2, 1991 in book 18 of survey maps at page 129, El Dorado County Records, California.
- Sec. 31, SE¼NE¼.

The areas described aggregate 352.38 acres, more or less, in El Dorado County.

The purpose of the proposed withdrawal is to assure long term protection and preservation of the riparian areas, wildlife habitat, scenic quality, and high recreation values of the public lands, newly acquired lands, and lands proposed to be acquired in the corridor of the South Fork of the American River.

Until March 16, 1998 all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director by March 16, 1998. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the lands, as determined by BLM.

Dated: December 4, 1997.

Duane Marti,

Acting Chief, Branch of Lands.

[FR Doc. 97–32608 Filed 12–12–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–038–1430–00–257A; NMNM 95118 and NMNM 0554544]

Notice of Proposed Withdrawal and Partial Termination of Recreation and Public Purpose (R&PP) Classification, NMNM 0554544; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The BLM proposes to withdraw 680 acres of land to protect the scenic and recreational values and facilities at the Datil Well Campground in Catron County, New Mexico. This notice closes the public land for up to

2 years from location and entry under the United States mining laws. The public land will remain open to mineral leasing. This notice terminates R&PP Classification NMNM 0554544 in part.

DATES: Comments and requests for meeting should be received on or before March 16, 1998.

ADDRESSES: Comments and meeting requests should be sent to the Socorro Resource Area Manager, 198 Neel Avenue NW, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM, Socorro Resource Area Office, 198 Neel Ave, NW, Socorro, New Mexico 87801, or telephone (505) 835–0412.

SUPPLEMENTARY INFORMATION: Pursuant to the R&PP Act of June 14, 1925, as amended, (43 U.S.C. 869 *et seq.*), and the regulations contained in 43 CFR 2461.5 (c) (2), R&PP Classification NMNM 0554544 is hereby terminated in part for the land described below. This classification segregated the subject land among others, as not suitable for disposal except for recreation purposes. Termination of the classification from the subject land will insure the land and existing facilities remain in public ownership. Further, on November 26, 1997, a petition was approved allowing the BLM to file an application to withdraw the following described land from settlement, sale, location, or entry under the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 2 S., R. 10 W.,
Sec. 10, all.
Sec. 11, NW¼SW¼.

The area aggregates 680 acres in Catron County.

The purpose of the proposed withdrawal is to protect the land for management of recreational and scenic values. Until an application is filed, no further action will be taken on this proposal. The R&PP classification no longer serves a need on the land described above and is hereby terminated.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Socorro Resource Area Manager.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Socorro Resource Area Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the public land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, leases, rights-of-way and other discretionary actions of a temporary nature.

Dated: December 9, 1997.

Linda S. C. Rundell,

District Manager, Las Cruces.

[FR Doc. 97–32607 Filed 12–12–97; 8:45 am]
BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Director's Order Concerning Park Planning Activities

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is converting and updating its current system of internal instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public review and comment. Director's Order #2 establishes new policies and procedural guidance concerning planning activities for units of the National Park System.

DATES: Written comments will be accepted until January 14, 1998.

ADDRESSES: Send requests for copies to Warren Brown, National Park Service, Division of Park Planning and Special Studies, 1849 C Street NW, Room 3230, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Gail Slemmer at (303) 969–2886.

SUPPLEMENTARY INFORMATION: The NPS is revising the policies and procedures that guide its park planning activities. To accomplish this, the planning policies included in National Park Service Management Policies (1988) are being revised and the Park Planning Process Guideline (NPS–2, 1982) is being rescinded. The new process for park planning will be issued as Director's Order #2, in conformance with the NPS's new system of internal guidance documents. Director's Order #2 will contain new policy statements to replace those now contained in NPS Management Policies, and new planning procedures and standards that will be adhered to, with the following exception: The sections of the earlier policies and guidelines addressing new area studies (studies of potential additions to the National Park System, wild and scenic rivers system, and national trails system) will remain in effect until the are updated later in 1998.

The draft Director's Order establishes a general framework for park planning to promote coordination, streamline, and better document decision making processes. The order describes four closely related planning processes: General Management planning, park strategic planning, implementation planning and annual performance planning and reporting. The order is designed to help minimize duplication and potential inconsistency in park planning by explaining how various types of plans and planning processes relate to each other.

A notice that the NPS park planning guidelines were being updated was published in the June 8, 1996, **Federal Register**, with an invitation for interested parties to provide information that should be considered by the NPS. A draft Director's Order was released June 15, 1997, for review by the public and interested agencies, with comments due by August 15, 1997. During the 60-day public review period, the draft Director's Order was posted on the Internet and printed copies were mailed to national organizations known to have a major interest in NPS park planning.

Comments were received from 45 groups or individuals, including park managers and other reviewers within the NPS. National organizations that commented included the National Parks and Conservation Association, the National Conference of State Historic Preservation Officers, and the National Park Hospitality Association. Comments were also received from the Office of the Governor in the State of Alaska.

Those commenting generally agreed with the overall approach to park planning outlined in the draft Director's Order. Several of their suggestions have been incorporated into the revised draft, including strengthening the explanation of need for public involvement in the planning process, and the need for valid and reliable data as a basis for decision-making. Also, a description of planning as a tool for determining the appropriate relationship between resource preservation and public enjoyment has been added, with some general principles to highlight the role that planning plays in accomplishing the NPS mission. The document has been re-organized to clarify the relationship between required elements of various planning processes and standards for those elements. These revisions have involved clarifying and strengthening the discussions, with no major changes in policy direction.

The Director's Order will be considered for adoption by the NPS within the next 60 days. Anyone wishing to provide further comments may obtain a copy at the address and telephone number mentioned above, or by accessing a copy on the Internet at http://www.nps.gov/planning.

Dated: December 8, 1997.

Warren Brown,

Program Manager Park Planning and Special Studies.

[FR Doc. 97–32606 Filed 12–12–97; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 6, 1997. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 30, 1997.

Carol D. Shull,

Keeper of the Notional Register.

ARIZONA

Coconino County

Williams Residential Historic District, Roughly bounded by Grant, and Fairview Aves., and Taber, and Sixth Sts., Williams, 97001603

Maricopa County

Pierce, N. Clyde, House, 4505 E. Osborn Rd., Phoenix, 97001602

CALIFORNIA

Monterey County

Sunset Center, San Carlos St., between 8th and 10th Sts., Carmel-by-the-Sea, 97001604

IDAHO

Ada County

Capitol Auto Courts, 1121 S. Capitol Blvd., Boise, 97001609

Payette County

Jacobsen, N.A., House, 1115 First Ave. N, Payette, 97001610

IOWA

Clinton County

Castle Terrace Historic District, (Clinton, Iowa MPS), Roughly along jct. of Terrace Dr. and Caroline Ave., Clinton, 97001607

Keokuk County

Singmaster, C.F. and Mary, House, 32263 190th St., Keota vicinity, 97001608

Wapello County

Court Hill Historic District, (Ottumwa MPS), 111 E. Court and 407–1004 N. Court Sts., Ottumwa, 97001605

Fifth Street Bluff Historic District, (Ottumwa MPS), Roughly bounded by Jefferson, E. Sixth, Washington, and Fourth Sts., Ottumwa, 97001606

MISSOURI

Warren County

Starke—Meinershagen—Boeke Rural Historic District, MO 94, 5 mi. W of Marthasville, Marthasville vicinity, 97001611

NEW YORK

Broome County

Maine Central School, Church St., Maine, 97001619

Columbia County

Claverak Free Library, (Claverack MPS), 629 NY 23B, Claverack, 97001624

First Columbia County Courthouse, (Claverack MPS), 549 NY 23B, Claverack, 97001623

Storm, Stephen, House, (Claverack MPS), 51 NY 217, Claverack, 97001616

Van Rensselaer Lower Manor House, (Claverack MPS), 103 NY 23B, Claverack, 97001615

Greene County

Van Gelder, David, Octagon House, 47 Division St., Catskill, 97001620

Orange County

First Presbyterian Church of Chester, 106–108 Main St., Chester, 97001622

Hopewell Presbyterian Church, NY 302, at jct. of NY 17, Crawford, 97001621

Otsego County

Twentieth Century Steam Riding Gallery No. 409, Race St., Schenevus, 97001618

Washington County

St. James Episcopal Church, 112 Broadway, Fort Edward, 97001617

NORTH CAROLINA

Stanly County

Pee Dee Avenue Historic District, Along Pee Dee Ave., roughly from Arey Ave. to Miller St., Albemarle, 97001612

TEXAS

Aransas County

Hoopes–Smith House (Boundary Increase), North Broadway, Rockport, 97001628

Harris County

Bethel Baptist Church, 801 Andrews, Houston, 97001626

Travis County

1918 State Office Building and 1933 State Highway Building, 1019 Brazos and 125 E. 11th Sts., Austin, 97001625

UTAH

Sanpete County

Anderson, Lewis and Clara, House, 542 S. Main, Manti, 97001629

Washington County

Flanigan Ditch, (Zion National Park MPS), Zion National Park, Springdale vicinity, 97001630

WISCONSIN

Jefferson County

Main Street Commercial Historic District, Roughly bounded by Dodge St., Center Ave., Mechanic St., and Rock R., Jefferson, 97001627

The 15 day Comment period has been waved for the following property:

Dutchess County

Top Cottage, 4 Potters Bend Rd., Hyde Park, 97001614

[FR Doc. 97–32656 Filed 12–12–97; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: in compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information on the Abandoned Mine Land Problem Area Description Form, OSM 76.

DATES: Comments on the proposed information collection must be received by February 13, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collection that OSM will be submitting to OMB for extension. These collections are contained on the OSM 76 form.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Abandoned Mine Land Problem Area Description Form, OSM 76.

OMB Control Number: 1029–0087.

Summary: This form will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

Bureau Form Number: OSM 76.

Frequency of Collection: On occasion.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1,800.

Total Annual Burden Hours: 4,000.

Dated: December 9, 1997.

Kathryn S. O'Toole,

Acting Chief, Division of Regulatory Support.

[FR Doc. 97–32602 Filed 12–12–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before January 14, 1998, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically at jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information for the permanent program performance standards—surface mining activities at 30 CFR Part 816. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 816, which is 1029–0047.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on August 28, 1997 (62 FR 45684). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Permanent Program Performance Standards—Surface Mining Activities, 30 CFR Part 816.

OMB Control Number: 1029–0047.

Summary: Section 525 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting surface coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau Form Number: None.

Frequency of Collection: On occasion, quarterly and annually.

Description of Respondents: Surface coal mining operators.

Total Annual Responses: 146,224.

Total Annual Burden Hours: 412,076.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 210–SIB, Washington, DC 20240, or electronically to jtrelease@osmre.gov.

Dated: December 9, 1997.

Kathryn S. O'Toole,

Acting Chief, Division of Regulatory Support.

[FR Doc. 97–32600 Filed 12–12–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before January 14, 1998, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information for noncoal reclamation, found at 30 CFR Part 840. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 840, which is 1029–0051.

As required under 5 CFR 1320.8(d), **Federal Register** notice soliciting comments on these collections of information was published on September 26, 1997 (62 FR 50624). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Permanent Program Inspection and Enforcement Procedures, 30 CFR Part 840.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures the public that the State is meeting the requirements for the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency of Collection: Once, on occasion, and annually.

Description of Respondents: State Regulatory Authorities.

Total Annual Responses: 138,384.

Total Annual Burden Hours: 507,952.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210–SIB, Washington, DC 20240.

Dated: December 9, 1997.

Kathryn S. O'Toole,

Acting Chief, Division of Regulatory Support.

[FR Doc. 97–32601 Filed 12–12–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Justice Management Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Reinstatement, without change, of a previously approved collection of which approval has expired. Certification of Identity.

Office of Management and Budget approval is being sought for the information collection listed below. This collection was previously published in the **Federal Register** on October 8, 1997, allowing for a 60-day public comment period. No comments were received by the Facilities and Administrative Service Staff, Justice Management Division.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 14, 1998. This process is conducted in accordance with 5 CFR 3120.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the Agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Certification of Identity.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form DOJ–361. Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. The information collection will be used by

the Department to identify individuals requesting certain records under the Privacy Act. Without this form an individual cannot obtain the information requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,390 respondents at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 34,390 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 10, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–32622 Filed 12–12–97; 8:45 am]

BILLING CODE 4410–26–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 20, 1997, and published in the **Federal Register** on September 3, 1997, (62 FR 46512), Arenol Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I.
Difenoxin (9168)	I.
Amphetamine (1100)	II.
Methamphetamine (1105)	II.

The firm plans to manufacture the listed controlled substances to produce pharmaceutical products for its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Arenol Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 25, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–32586 Filed 12–12–97; 8:45 am]

BILLING CODE 4410–09–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; Pilgrim Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80, by issuance of an Order, of the transfer of control of Facility Operating License No. DPR–35, for the Pilgrim Nuclear Power Station, located in Plymouth County, Massachusetts, to the extent such transfer would be effected by the proposed corporate restructuring of Boston Edison Company (BECo, the licensee), holder of the license.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the license, to the extent effected by the restructuring of BECo by establishment of a newly created holding company, BEC Energy. BECo would become a wholly owned subsidiary of the holding company and would continue to be the licensee for Pilgrim Nuclear Power Station. No direct transfer of the license would occur. The proposed action is in accordance with BECo's application dated June 9, 1997.

The Need for the Proposed Action

The proposed action is needed to the extent the proposed restructuring of BECo will effect a transfer of control of the license to permit the restructuring to occur. BECo has submitted that the proposed restructuring will enable it to better prepare to implement changes resulting from electric utility industry restructuring, and will enhance the insulation of BECo's utility business from business risks associated with non-utility enterprises.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to the Pilgrim Nuclear Power Station. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate or maintain the facility, as BECo will continue to be responsible for the operation, maintenance and possession of the Pilgrim Nuclear Power Station.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the proposed action, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Pilgrim Nuclear Power Station, dated May 1972.

Agencies and Persons Contacted

In accordance with its stated policy, on December 9, 1997, the staff consulted with the Massachusetts State Official, James Muckerheide, of the Massachusetts Emergency Management Agency regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated June 9, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts.

Dated at Rockville, Maryland, this 9th day of December 1997.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32620 Filed 12–12–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Consideration of License Amendment Request for the Fansteel, Inc., Facility in Muskogee, Oklahoma

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Finding of No Significant Impact for the Fansteel, Inc., Facility in Muskogee, Oklahoma.

The U.S. Nuclear Regulatory Commission is considering the amendment of Source Material License SMB–911 to authorize processing of waste treatment pond residues at the Fansteel, Inc., facility located in Muskogee, Oklahoma.

Summary of the Environmental Assessment

Identification of the Proposed Action

Fansteel, Inc. is currently authorized to process residues designated as "work-in-progress" (WIP) materials to extract tantalum, niobium, and scandium for commercial use. The WIP residues contain natural uranium, thorium, and daughter decay products in quantities sufficient to be classified as source material by the NRC. Fansteel has proposed to modify this currently authorized operation to concurrently process wastewater treatment residues, which contain mostly calcium fluoride (CaF_2) and are located in ponds 6, 7, 8, and 9 at the site. This modification will result in production of three additional products: sodium fluoroaluminate, sodium sulfate, and calcium sulfate. The proposed action is to amend Fansteel License SMB–911 to authorize this modified process.

The Need for the Proposed Action

Fansteel has proposed the modified process, which includes processing of the wastewater treatment residues, in order to chemically improve the input stream for the operation, produce additional products for sale, and reduce the volume of solid waste requiring off-site disposal.

Environmental Impacts of the Proposed Action

Normal Operations

The NRC staff evaluated impacts from operations at the Fansteel site for both normal and accident conditions. During normal operations, small quantities of radiological and non-radiological effluents will be released to the environment. Radionuclides which may be released to the atmosphere include uranium-238, uranium-235, thorium-232, and their decay daughters, such as radon-222. Sources of the releases are the off-gas treatment system, fugitive dust, and radon emanation from the WIP ponds (ponds 2, 3, and 5) and the wastewater treatment ponds (ponds 6, 7, 8, and 9). The majority of the releases are expected to be in the form of insoluble oxide chemicals.

The staff performed a dose assessment to estimate the impact from radiological releases to the air. Atmospheric release exposure pathways included inhalation, ingestion of contaminated crops and resuspended dirt, and external exposure to the airborne plume and contaminated groundwater. For the combined sources (pond residue processing, fugitive dust, and pond residue radon), the largest tissue dose was estimated to be 1.9×10^{-5} Sv/yr (1.9 mrem/yr) to the lungs primarily from inhalation of radon-222. For the maximally exposed individual, the committed effective dose equivalent (CEDE) for combined releases from processing pond residues and fugitive dust was estimated as 3.2×10^{-7} Sv/yr (0.03 mrem/yr), while the CEDE for radon release was estimated as 5.4×10^{-7} Sv/yr (0.054 mrem/yr). External doses are a factor of 10,000 times less than internal doses.

For radionuclides released to the atmosphere other than radon, NRC regulations specified in 10 CFR 20.1101(d) require that the annual effective dose equivalent not exceed 1.0×10^{-4} Sv (10 mrem). The total effective dose equivalent (TEDE) from releases to the atmosphere was estimated at 8.6×10^{-7} Sv/yr (0.086 mrem/yr). This is a small fraction of the NRC limit.

Liquid effluents containing radiological contaminants will be released after treatment to the Arkansas River and will ultimately flow into the Mississippi River. Although downstream residents do not use the Arkansas River as a drinking water source, the NRC analysis conservatively assumes that an individual along the river and the surrounding population out to a distance of 80 kilometers (50 miles) uses this potentially contaminated water. Liquid release exposure pathways included ingestion of drinking water, fish, and irrigated crops and external exposure during recreational activities.

The largest tissue dose due to contaminated surface water was conservatively estimated to be 2.7×10^{-5} Sv/yr (2.7 mrem/yr) to the bone surface, and external doses are a factor of 1000 times smaller than internal doses. The CEDE for the maximally exposed individual was estimated as 3.0×10^{-6} Sv/yr (0.3 mrem/yr). For both the maximally exposed individual and other members of the population, doses are a small fraction of that from background sources.

NRC regulations specified in 10 CFR 20.1301 require that the TEDE from all pathways for members of the public not exceed 1.0×10^{-3} Sv (100 mrem) per year. For the maximally exposed individual, the annual TEDE from all releases from the proposed operation was estimated as 3.0×10^{-6} Sv (0.3 mrem). The largest annual tissue dose was estimated to be 2.7×10^{-5} Sv (2.7 mrem) to the bone surface. Estimated doses are small fractions of applicable limits and of the background dose, which is on the order of 1×10^{-3} to 4×10^{-3} Sv/yr (100 to 400 mrem/yr).

The NRC staff also assessed impacts from releases of non-radiological contaminants to air, surface water, and groundwater. The most significant non-radiological gaseous effluent from processing is expected to be hydrogen fluoride (HF). However, normal operation of the only stack at the facility is not expected to have a significant effect on off-site nonradiological air quality. Assuming the stack operates 24 hours a day, seven days a week, with an average fluoride emission rate of 0.008 gram per second (1.5 pounds per day), the average fluoride concentration at the nearest site boundary was estimated to be 0.7 $\mu g/m^3$. There is no Oklahoma air standard for HF, but this concentration

is less than the 24-hour atmospheric HF limit of 5 μg/m³ applicable in some states.

Surface water quality is protected by enforcing release limits and monitoring programs as required under the National Pollutant Discharge and Elimination System (NPDES) permit. Annual average concentrations of parameters regulated by the NPDES permit have been below discharge limits established for the liquid effluent outfall to the Arkansas River and are expected to remain below the discharge limits. Discharges are not expected to have significant impact on the surface water quality in the Arkansas River because of the dilution volume in the river.

Previous operation of the plant has resulted in localized chemical and radiological contamination of groundwater of the shallow aquifer in several locations. By license amendment dated March 25, 1997, Fansteel committed to operation of a groundwater collection and treatment system which will reduce the concentration of chemical constituents to levels that can be discharged via the outfall.

No impacts are expected on land use, biotic resources, or cultural resources. A small positive socioeconomic impact is expected through the employment of 30 people at the site.

Accident Conditions

The handling, processing, and storage of material containing radioactive constituents at the Fansteel facility could result in an uncontrolled release of radioactive material to the environment if there was an accident. However, the relatively small quantities and low concentrations of the radioactive constituents are factors which constrain the impacts of potential accidents. The NRC staff selected the following representative accidents scenarios for evaluation: (1) A spill of contaminated soil, (2) a large-scale leak of untreated contaminated groundwater, and (3) a failure of the pond residue processing off-gas equipment.

The NRC staff evaluated radiological impacts for each accident scenario by determining the CEDE to the maximally exposed individual. The estimated CEDE was 1.0×10^{-6} Sv (0.1 mrem) for the spill of contaminated soil, 2.1×10^{-10} Sv (2.1×10^{-5} mrem) for the spill of groundwater, and 3.8×10^{-6} Sv (0.38 mrem) for the failure of the off-gas treatment equipment. Therefore, the potential consequences for each accident scenario pose an insignificant risk to the public.

Agencies and Persons Consulted

Several people from the Oklahoma Department of Environmental Quality (OKDEQ) were consulted concerning this proposed amendment, including Earlon Shirley, Waste Management Division, Radiation Management Section; Mark Thomason, Water Quality Division; and David Dimick, Air Quality Division.

Conclusion

The NRC has determined that the issuance of the amendment to allow Fansteel to process the calcium fluoride wastewater treatment residues concurrently with the WIP residues will not result in significant impact to human health or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment (EA) related to the amendment of Source Material License SNM–911. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

For further details with respect to this action, the EA, the licensee's renewed license dated September 30, 1997, the amendment application dated July 30, 1997, and related documents are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC. Questions should be referred to NRC's Project Manager for the Fansteel, Inc., facility, Susan D. Chotoo, at (301) 415–8102 or sdc@nrc.gov.

Dated at Rockville, Maryland, this 9th day of December 1997.

For the Nuclear Regulatory Commission.

Walter S. Schwink,

Acting Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 97–32621 Filed 12–12–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in December 1997. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to provide that the applicable percentage is 85 percent for plan years beginning on or after July 1, 1997, through (at least) plan years beginning before January 1, 2000.

However, under section 774(c) of the RPA, the application of the amendment is deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans will therefore remain 80 percent for plan years beginning before January 1, 1998. (The rules governing the applicable percentages for "partial" RPU plans are described in § 4006.5(g) of the premium rates regulation.)

For plans for which the applicable percentage is 85 percent, the assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 1997 is 5.19 percent (*i.e.*, 85 percent of the 6.11 percent yield figure for November 1997).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between January 1997 and December 1997. The rates for July through December 1997 in the table reflect an applicable percentage of 85 percent and thus apply only to non-RPU plans. However, the rates for months before July 1997, which reflect an applicable percentage of 80 percent, apply to RPU (and "partial" RPU) plans as well as to non-RPU plans.

For premium payment years beginning in	The assumed interest rate is
January 1997	5.24
February 1997	5.46
March 1997	5.35
April 1997	5.54
May 1997	5.67
June 1997	5.55
July 1997	5.75
August 1997	5.53
September 1997	5.59
October 1997	5.53
November 1997	5.38
December 1997	5.19

For premium payment years beginning in December 1997, the assumed interest rate to be used in determining variable-rate premiums for RPU plans (determined using an applicable percentage of 80 percent) is 4.89 percent. For "partial" RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 1998 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of December 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–32733 Filed 12–12–97; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1685/803–112]

Interactive Data Corporation; Notice of Application

December 9, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Advisers Act of 1940 ("Advisers Act").

APPLICANT: Interactive Data Corporation ("Interactive Data").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 203A(c) from section 203A(a).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to register with the SEC as an investment adviser.

Filing Dates: The application was filed on May 20, 1997, and amended on September 22, 1997 and October 7, 1997.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 5, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Interactive Data Corporation, 22 Crosby Drive, Bedford, Massachusetts 01730.

FOR FURTHER INFORMATION CONTACT: Lori Price, Senior Counsel, at (202) 942–0531, or Jennifer S. Choi, Special Counsel, at (202) 942–0716 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation and a wholly-owned subsidiary of Pearson Longman Inc., a Delaware corporation, the sole shareholder of which is Pearson Inc., a Delaware corporation. The shareholders of Pearson Inc. are Pearson Overseas Holdings Limited, a United Kingdom company, and Pearson Capital Company LLC, a Delaware limited liability company. The ultimate parent of Pearson Overseas Holding Limited and Pearson Capital Company LLC is Pearson plc, a publicly-traded United Kingdom company.

2. Applicant maintains its principal office and place of business in Massachusetts where applicant's corporate headquarters and its president and financial and legal officers are located. Applicant, however, only conducts its domestic securities pricing business in New York. Applicant is currently registered as an investment adviser in New York. Applicant was registered with the SEC as an investment adviser until July 8, 1997.

3. Applicant provides global securities pricing and related financial data in computer-readable form. Applicant's data covers over 3.1 million individual issues of debt and equity securities and includes (i) daily closing prices (including end-of-day quotes and evaluations), market data, money market and foreign exchange rates, index values and related data, available after the markets close around the world; (ii) most recent descriptive data and terms and conditions data; (iii) most recent announcements (including capitalization changes, dividends, reorganization information, and called bonds); and (iv) historical price, announcement, descriptive, fundamental, earnings estimates, and economic and related data.

4. With regard to certain fixed income issues for which no continuous trading market exists, applicant creates prices using sophisticated proprietary models and methodologies, descriptive terms and conditions databases, broker quotes and quality control programs to generate evaluations that are independent ("Fixed Income Pricing Service"). These prices are provided in computer-

readable form to applicant's clients throughout the country.

5. The clients for applicant's Fixed Income Pricing Service include over 3,300 separate organizations, located throughout the country and abroad, including major banks, mutual funds, fund custodians, unit investment trusts, brokerage firms and investment management firms. In North America, applicant's clients include forty-seven of the largest fifty banks, forty-three of the largest fifty brokerage firms, forty of the largest fifty mutual fund sponsors, thirty-four of the largest fifty insurance companies and forty-nine of the largest fifty money management firms. Applicant has a small number of natural person clients who receive its prices. Applicant believes these clients account for less than 10% of applicant's total number of clients receiving the Fixed Income Pricing Service, and only .0559% of applicant's revenue for the Fixed Income Pricing Service is attributable to fees paid by clients who are natural persons.

6. Applicant submits that it provides security-level data to institutional clients who service customers on a national level. Applicant states that its clients use the data for purposes as varied as brokerage and trust accounting, trust operations, net asset value calculations, portfolio management and accounting, regulatory requirements, and investment analysis and research.

7. Applicant has approximately 470 employees, all of whom are involved in collecting, reviewing, evaluating, and overseeing delivery of the financial data that applicant delivers to its clients.

Applicant's Legal Analysis

1. On October 11, 1996, the National Securities Markets Improvement Act of 1996 was enacted. Title III of the Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), added new section 203A to the Advisers Act. Under section 203A(a)(1),[1] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the SEC unless the investment adviser (i) has assets under management of not less than $25 million or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940 ("Investment Company Act"). Section 203A(a)(2) defines the phrase "assets under management" as the "securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services."[2]

2. Applicant submits that Congress determined that the states should be responsible for regulating investment advisers "whose activities are likely to be concentrated in their home state," and "[l]arger advisers, with national businesses" should be regulated by the SEC and "be subject to national rules."[3] Applicant notes that Congress chose an assets under management requirement as a rough proxy that would divide responsibilities between the SEC and the states on the theory that investment advisers managing $25 million or more in assets are likely to be national investment advisers that should be subject to the national rules of the SEC, while investment advisers managing less than $25 million in assets are likely to be smaller investment advisers that should be subject to the local rules of the various states.[4]

3. Section 203A(c) of the Advisers Act authorizes the SEC to permit an investment adviser to register with the SEC if prohibiting registration would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A]."[5]

4. Applicant states that Congress recognized that the assets under management requirement does not precisely differentiate national investment advisers from local investment advisers, and that some national investment advisers may not qualify for registration with the SEC under the test formulated by Congress. Applicant states that Congress noted that "the definition of 'assets under management' . . . may, in some cases, exclude firms with a national or multistate practice from being able to register with the SEC."[6]

5. Applicant states that Congress directed the SEC to use its exemptive authority to remedy any unfairness, burdens or inconsistencies caused by the assets under management requirement and to address situations where investment advisers with a "national or multistate practice" are otherwise prohibited from registering with the SEC.[7]

6. Applicant states that it does not have $25 million or more in assets under management. Applicant submits that it does not actively manage any client securities portfolios, either on a discretionary or non-discretionary basis, or provide "continuous and regular supervisory or management services" with respect to client accounts. Applicants also states that it does not act as an investment adviser to an investment company registered as such under the Investment Company Act. Applicant further states that it does not qualify for exemption from the prohibition on SEC registration as provided in rule 203A–2 under the Advisers Act.

7. Applicant submits that, for the reasons discussed below, it engages in a large, national investment advisory business of the type contemplated by Congress when it directed the SEC to use its exemptive authority under section 203A(c). Applicant asserts that, because of the wide variety of overwhelmingly institutional clients to which applicant provides its Fixed Income Pricing Service, applicant believes its services are the type of activities Congress contemplated in enacting section 203A. Applicant argues that it would be inconsistent with the purposes of section 203A to prohibit applicant from registering with the SEC because more than 90% of applicant's clients are institutions whose securities transactions affect the national securities markets.

8. Applicant states that, like the investment advisers to registered investment companies, the nationally recognized statistical rating organizations ("NRSROs"), and the pension consultants exempted from the prohibition on SEC registration, applicant performs services that significantly affect the national securities markets and billions of dollars in assets under management. Applicant states that its providing of the Fixed Income Pricing Service has a direct effect on billions of dollars of assets under management at the nation's investment companies, investment advises, broker-dealers, insurance companies, banks, trust companies, and other institutional investors. For example, open end investment companies use applicant's fixed income securities prices to compute net asset value on a daily basis, broker-dealers use applicant's prices to value securities pledged in margin accounts, and private money managers use prices supplied by applicant for portfolio valuation statements.

9. Applicant states that Congress exempted investment advisers to investment companies (regardless of assets under management) from the prohibition on SEC registration because Congress recognized these entities had significant effects on the national securities markets.

10. Applicant submits that the SEC also has exempted NRSROs because the SEC determined that their activities have a significant effect on the national securities markets and the operations of the federal securities laws.[8] Applicant also notes that certain pension consultants are exempt from the prohibition on SEC registration because the SEC determined that their activities have a direct effect on the management of billions of dollars of pension plan assets and thereby substantially affect national securities markets.[9] Applicant states that the SEC determined to exempt these advisers because of its belief that it would be inconsistent with the purposes of the Coordination Act for these advisers to be regulated by the states rather than by the SEC.

11. Applicant believes that New York should have little or no interest in regulating applicant because the majority of its clients for the Fixed Income Pricing Service are institutional clients. Applicant asserts that its client base for the Fixed Income Pricing Service is overwhelmingly institutional; less than 10% of applicant's total number of clients for the Fixed Income Pricing Service are natural persons. Applicant states that it would be inconsistent with the purposes of section 203A for a state to regulate investment advisers whose activities involve little or no traditional state interest. Applicant submit that there is no strong state interest in regulating investment advises with a predominately national, institutional client base.

12. Applicant states that, although the Coordination Act generally preempted state law with respect to SEC-registered advisers, Congress preserved state law with respect to certain of their supervised persons referred to as "investment adviser representatives." Applicant notes that under the SEC definition, only investment adviser representatives who work principally with natural person clients rather than institutional clients are subject to state regulation. Applicant states that this definition recognizes that, consistent with the Coordination Act, the primary interest of the states is not in institutional clients but in maintaining oversight of representatives with a retail clientele.

13. Applicant states that if it were to be regulated by New York, rather than by the SEC, it would mean that a single state would be charged with protecting the interests of applicants's clients and of the clients' customers located in all fifty states. Applicant further maintains that regulation by New York could result in regulation with an eye primarily to the interests of the state rather than the interests of applicant's clients and such clients' customers throughout the country. Applicant asserts that the nature of its activities in valuing securities lends itself to supervision and examination by one regulatory body whose focus is national rather than local.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32652 Filed 12–12–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 80b–3a(a)(1).

[2] 15 U.S.C. 80b–3a(a)(2).

[3] S. Rep. No. 293, 104th Cong. 2d Sess. 4 (1996) [hereinafter Senate Report].

[4] *Id.*

[5] 15 U.S.C. 80b–3a(c).

[6] Senate Report, *supra* note 3, at 5.

[7] *Id.*

[8] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1601 (Dec. 20, 1996), 61 FR 68480 at Section II.D.1 (release proposing rules to implement amendments to the Advisers Act).

[9] The exempted pension consultants are those that provide investment advice to employee benefit plans with respect to assets having an aggregate value of at least $50 million during the pension consultant's last fiscal year. *See id.* at Section II.D.2.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22930/812–10836]

MLX Corporation; Notice of Application

December 9, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant requests an order under sections 6(c) and 6(e) of the Act that would exempt it from all of the provisions of the Act except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f) (modified as discussed in the application), and 36 through 53 and the rules and regulations under the Act until the earlier of the date of the pending merger of applicant with Morton Metalcraft Holding Co., or June 30, 1998.

FILING DATE: The application was filed on October 27, 1997 and amended on December 3, 1997. Applicant has agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on December 29, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. MLX Corporation, 1000 Center Place, Norcross, Georgia 30093.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representation

1. MLX Corporation ("MLX") was formed in 1984 as part of the reorganization of McLouth Steel Company ("McLouth"), a maker of steel products that filed for bankruptcy in 1982. Under the terms of the organization, McLouth was renamed "MLX Corporation" and McLouth shares were exchanged for new MLX shares. As part of the reorganization, McLouth's operating business was sold to a separate entity. MLX's sole remaining asset is the net operating losses generated by McLouth's unprofitable operations. These net operating losses are still available to offset future taxable income from operations and are one of MLX's most important assets. MLX has approximately 8,500 shareholders.

2. In 1985, MLX acquired S.K. Wellman Limited, Inc. ("Wellman"), a company engaged in the design and manufacture of high energy friction materials used primarily in aircraft brakes and heavy equipment brakes, transmissions, and clutches (the "Wellman Business"). From 1985 through 1987, MLX consummated various other acquisitions that complemented the Wellman Business (the "Wellman Acquisitions"). In addition to the Wellman Acquisitions, in 1986, 1987, and 1988, MLX acquired

the companies and assets comprising Pameco Corporation ("Pameco"), a distributor of heating and air conditioning units. In 1992, MLX sold Pameco, which enabled MLX to focus its efforts exclusively on the Wellman Business.

3. In August 1994, a foreign competitor approached MLX management with an unsolicited expression of interest in a business combination with Wellman. This led to negotiations for the sale of all the capital stock of its wholly-owned subsidiary, Wellman (the "Wellman Transaction"). The Wellman Transaction, which closed June 30, 1995, left MLX with approximately $38 million in cash and cash equivalents, no debt, and federal net operating loss carryforwards ("NOLs") of approximately $300 million available to offset future taxable income from operations.

4. Since the Wellman Transaction, MLX has been engaged in the process of identifying and evaluating potential acquisition candidates for the purpose of acquiring a suitable operating business as soon as reasonably possible. MLX's president and chief executive officer, the only officer and one of only two employees, spends substantially all of his time seeking acquisition candidates for MLX. In addition, MLX's other employee spends substantially all of her time supporting the activities of MLX's president and attending to the ministerial functions of operating the company. MLX has developed financial and operational criteria as a basis for evaluating prospective target businesses and for narrowing the focus of its search. MLX's executive officers and board of directors have been in constant communications with professional groups, including investment bankers, lenders, attorneys and accountants (collectively "Financial Intermediaries") for the purposes of discussing MLX's acquisition criteria and exploring acquisition opportunities. MLX has discussed its acquisition criteria directly with over fifty Financial Intermediaries. Three Cities Research, Inc. ("Three Cities"), a New York investment banking firm that owns approximately 39% of MLX's outstanding common stock, has assisted MLX in identifying, evaluating and negotiating potential acquisitions. In addition, MLX has engaged, on a non-exclusive basis, the investment banking firm of Smith Barney to canvas the market of businesses for sale and analyze these against MLX's acquisition criteria.

5. On May 19, 1997, MLX was granted an order (the "Existing Order") exempting it from most of the provisions of the Act during the period from the date of the Existing Order to December 31, 1997.[1] However, in spite of its efforts, MLX has been unable to complete the acquisition of an operating business. MLX has recently signed a definitive merger agreement (the "Pending Merger") with Morton Metalcraft Holding Co. ("Morton"), a leading contract manufacturer and supplier of high quality fabricated sheet metal components and sub-assemblies for construction, agricultural, and industrial equipment manufacturers. Preliminary proxy materials seeking shareholder approval for the Pending Merger were filed with the SEC on October 21, 1997.

6. MLX currently has NOLs of approximately $275 million available to offset future taxable income from operations. In order for MLX to retain its NOLs after the Pending Merger, section 382 of the Internal Revenue Code of 1986, as amended ("Section 382") requires existing MLX shareholders to own 50% or more of the equity in MLX after the Pending Merger. However, William D. Morton ("Mr. Morton"), President and Chief Executive Officer of Morton, stated that he would only consider a transaction which he would obtain voting control of the entity resulting from the Pending Merger. In order to give Mr. Morton effective voting control of MLX after the Pending Merger (i) MLX is proposing that its shareholders approve a recapitalization that will be structured to avoid an ownership change within the meaning of Section 382 (the "Recapitalization") and (ii) the transactions associated with the Pending Merger, which includes a shareholders agreement and a voting agreement, must be consummated (the "Related Transactions").

7. Under the Recapitalization, all existing common stock of MLX will be re-classified as MLX Class A Common Stock ("Class A Common Stock") and a new class of 200,000 Shares of MLX Class B Common Stock ("Class B Common Stock") will be created. Certain affiliates of Three Cities ("TCR Affiliates") will own 100,000 shares of Class B Common Stock. Class A Common Stock and Class B Common Stock will have equal rights with respect to dividends and liquidation participation.[2] Shareholders of Class A Common Stock and Class B Common Stock will vote as a single class on all matters with each share of Class A Common Stock entitled to one vote and each share of Class B Common Stock entitled to one vote per share and increasing votes per share as the shareholder disposes of certain shares[3] of Class A Common Stock.

8. Following the Pending Merger, Mr. Morton will own 1,218,990 shares of Class A Common Stock and 100,000 shares of Class B Common Stock. TCR Affiliates will own 888,178 shares of Class A Common Stock and 100,000 shares of Class B Common Stock. As Mr. Morton and TCR Affiliates sell their shares of Class A Common Stock, the special voting rights of the Class B Common Stock will ensure that Mr. Morton's voting rights and the TCR Affiliates' voting rights will not be reduced below 24%. Thus, after the Recapitalization and Pending Merger, Mr. Morton and the TCR Affiliates together will have 56.5% of the voting rights of MLX common shares.

9. In connection with the Pending Merger, Mr. Morton and TCR Affiliates entered into a shareholders agreement (the "Shareholders Agreement") whereby the benefits of the potential voting rights of Class B Common Stock enure entirely to Mr. Morton. Under the terms of the Shareholders Agreement, TCR Affiliates will grant Mr. Morton a proxy to vote all of the Class A Common Stock and the Class B Common Stock owned by TCR Affiliates. The proxy will cover all matters to be voted upon by MLX's shareholders after the Pending Merger except for the liquidation of MLX, and sale of MLX's assets, and certain mergers.[4]

10. In connection with the Pending Merger, TCR Affiliates and Morton have also entered into a voting agreement (the "Voting Agreement") under which TCR Affiliates have agreed that at any meeting of the MLX shareholders, TCR Affiliates will vote all the shares of MLX common stock owned by them in favor of (i) the Recapitalization, (ii) the Pending Merger, and (iii) a new employee stock option plan and each of the other actions contemplated by or required in furtherance of such transactions.

11. Until the Pending Merger, a substantial majority of the potential acquisitions were rejected by MLX because of valuation issues. In other instances, MLX was outbid for the target. As of September 30, 1997, MLX had evaluated 225 transactions and made thirty-one offers or valuation proposals. If for any reason, the Pending Merger is not consummated, MLX plans to continue to be engaged in the process of identifying and evaluating potential acquisition candidates for the purpose of acquiring a suitable operating business as soon as reasonably possible.

12. MLX states that there is no assurance that the Pending Merger will be completed, if at all, by December 31, 1997. Accordingly, it is necessary for MLX to seek a new order extending the time period of the Existing Order. MLX requests an order under sections 6(c) and 6(e) of the Act exempting it from all the provisions of the Act except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f) (modified as discussed in the application), and 36 through 53 and the rules and regulations under the Act until the earlier of the date of the Pending Merger or June 30, 1998. MLX also requests a limited and specific exemption for the same time period (i) under section 6(c) for an exemption from section 17(f) to permit MLX to continue its present custodial arrangement, (ii) under rule 17d–1 to grant an exemption from section 17(d) to permit MLX to maintain, operate and comply with its stock option plans and agreements, and (iii) under section 17(b) and rule 17d–1 for an exemption from section 17(a) and section 17(d), respectively, to permit MLX and TCR Affiliates to consummate the Pending Merger and Related Transactions.

13. MLX's NOLs represent substantial value that may only be maximized by acquiring a profitable operating company at a fair price. The NOLs expire as follows: $144.3 million in 1997; $1.2 million in 1998; $73.8 million in 1999; $2.7 million in 2000; $2.2 million in 2002; $5.0 million in 2005; $2.0 million in 2006 and $47.3 million in 2007. The existence of the NOLs, together with their expiration schedule, provide MLX with a strong incentive to close the acquisition of a profitable operating business as soon as possible. Though currently in transition, MLX expects to have acquired an operating business by no later than June 30, 1998 or sooner if the Pending Merger is completed. In the event that MLX is unable to acquire an operating business by June 30, 1998, MLX's board of directors will consider the alternatives available, including registration as an investment company or dissolution. These alternatives would be considered in advance of June 30, 1998 in order to allow sufficient time for the implementation of any board decision.

14. Since the Wellman Transaction, MLX's revenues have been derived from the investment of substantially all of its assets in overnight repurchase agreements collateralized by United States Treasury and agency securities. MLX's overnight repurchase agreement investment program (the "Program") is administered by five large national banks approved by MLX's board of directors. The Program is designed to: (a) Maximize safety of capital, (b) assure availability of funds for the purpose of consummating an acquisition, and (c) relieve MLX management of the time-consuming management of those funds.

15. Access to MLX's funds is severely restricted. MLX has one operating account for the purpose of executing routine operating disbursements and business expenses, including salaries, rent and taxes. The maximum amount of funds deposited in the account is limited to no more than the anticipated expense level for the upcoming two months, based on MLX's budget as approved by the board of directors. Any disbursements from the operating account must be approved by the chief executive officer and the account is reconciled on a monthly basis. In addition, MLX's board of directors receives a monthly summary report of expenses.

16. Five national banks invest the remainder of MLX's funds as part of the Program, each of which is responsible for approximately equal portions of $7 million. MLX's board of directors has designated First Union National Bank as the primary bank. The non-primary banks are Wachovia Bank of Georgia, National Bank, SunTrust Bank, and National Bank of Detroit. All five banks are United States regulated banks and meet the qualifications prescribed in section 26(a)(1) of the Act. The non-primary banks have been instructed in writing to wire money only to MLX's account at First Union National Bank and not to any other person or entity. In addition, MLX's agreements with all of the banks ("Bank Agreements") contain provisions requiring the banks to segregate and identify all securities owned by MLX as subject to the respective Bank Agreement.

17. Transfers from any non-primary bank investment account in any amount must be approved by an MLX executive officer and the Funds Management Committee of the board of directors, and primary account transfers (including check disbursements) in amounts above $5,000 must be approved by an MLX executive officer and a member of the Committee. In addition, the bank must verify the authenticity of the wire transfer request by voice verification with a second, non-initiating MLX officer in a phone call initiated by the bank. MLX also has secured an executive protection policy from the Chubb Group of Insurance Companies insuring MLX for, among other things, losses of money, securities and other property caused by theft or forgery by any employee or agent of MLX or by any other person in an amount not to exceed $5 million.

18. MLX has two stock option plans. Under the MLX Corporation Stock Option Plan, adopted in 1985 (the "1985 Plan"), MLX granted stock options to certain officers, directors and key employees at prices not less than the market value on the date the options were granted. No new options may be granted under the 1985 Plan, although some options are still outstanding. Under the MLX Corporation Stock Option and Incentive Award Plan, adopted in 1995 (the "1995 Plan"), stock-based awards may be issued to key employees (including directors who are also employees) and certain others. The awards may include incentive stock options, non-qualified stock options, restricted stock, and outright stock awards. A total of 125,000 shares of MLX common stock are reserved under the 1995 Plan. In addition, on February 11, 1991, MLX issued options to Brian R. Esher, its then Chief Executive Officer and currently a director of MLX, to acquire 190,400 shares of MLX common stock at a price of $5.00 per share, exercisable (subject to vesting schedules which have been satisfied) at any time prior to February 10, 1998. Mr. Esher's options were converted to stock appreciation rights and exercised as of February 28, 1997. On October 3, 1993, December 29, 1994 and July 26, 1995, MLX issued options to Thomas Waggoner, its then Chief Financial Officer and current Chief Executive Officer, to acquire 50,000 shares of MLX common stock at prices ranging from $2.20 to $9.25 per share, exercisable at any time prior to July 25, 2000. It is also possible for Mr. Waggoner's options to be converted to stock appreciation rights.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines an investment company as an issuer who is engaged or proposes to engage in the business of investing, reinvesting,

[1] Investment Company Act Release Nos. 22626 (Apr. 21, 1997) (notice) and 22667 (May 19, 1997) (order).

[2] Each share of Class B Common Stock will be convertible, at the option of its holder, into one share of Class A Common Stock. Each share of Class B Common Stock will automatically convert into one share of Class A Common Stock (i) upon its sale or transfer to a party unaffiliated with Mr. Morton or the TCR Affiliates and (ii) on the tenth anniversary of the effective date of the Pending Merger.

[3] Mr. Morton's voting power will also be increased by 338,990 shares of Class A Common Stock that are not taken into account in calculating the voting power of his Class B Common Stock.

[4] In another Related Transaction, MLX has entered into a securities purchase agreement with certain holders of Morton common stock, options, and warrants whereby MLX will purchase shares of Morton common stock, options, and warrants. The Morton securities purchased by MLX will be cancelled by the Pending Merger.

owning, holding, or trading in securities and owns investment securities having a value in excess of 40% of the issuer's total assets (excluding Government securities and cash). MLX believes it may be an investment company under section 3(a)(1)(C). However, MLX contends that, if the Pending Merger is consummated, MLX would not be deemed to be an investment company under section 3(a)(1)(C) of the Act.

2. Rule 3a–2 under the Act generally provides that, for purposes of section 3(a)(3), an issuer will not be deemed to be engaged in the business of investing, reinvesting, owning, holding, or trading in securities for a period not exceeding one year if the issuer has a *bona fide* intent to be engaged in a noninvestment company business. For the period from July 1, 1995 through June 30, 1996, MLX operated under the exemption provided by rule 3a–2.

3. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security or transaction, or any class thereof, from any provision of the Act, or of any rule or regulation, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Section 6(e) permits the SEC to require companies exempted from the registration requirements of the Act to comply with certain specified provisions thereof as though the company were a registered investment company.

4. MLX asserts that registration under the Act would involve unnecessary burden and expense for MLX and its shareholders where there is no likelihood of abuse. MLX believes that registration would require costly changes in its financial reporting requirements, because the requirements are significantly different for investment companies. MLX contends that making these changes during this interim period, until it consummates the acquisition of an operating business, is likely to result in considerable and unwarranted confusion of its shareholders and the investing public. MLX states that many shareholders, as a result of this confusion, might sell their positions in MLX, an event which might have an adverse effect on the market price of MLX's securities and consequently on MLX's remaining shareholders. MLX asserts that those shareholders also would be deprived of the benefits of a potential acquisition.

5. MLX contends that certain provisions of the Act also might impair its ability to carry out its stated intention to acquire an operating business. For example, MLX believes that (a) the shareholder approval requirement of section 13(a)(4) of the Act would be a significant obstacle to effecting any acquisition requiring rapid action, (b) the cross-ownership prohibition of section 20(c) of the Act would limit MLX's ability to attempt a takeover which was not favored by the target sought to be acquired, and (c) the debt limitations of section 18 of the Act might preclude bridge financing of an acquisition. Also, MLX asserts that, if MLX is unable to obtain shareholder approval for the Pending Merger and complete it prior to December 31, 1997, failure to obtain the requested order may prevent MLX from completing the Pending Merger after December 31, 1997.

6. MLX states that it is a reporting company under the Securities Exchange Act of 1934 and is subject to extensive reporting and other requirements for the protection of its shareholders. Further, MLX asserts that its shareholders and the investing public have been informed on numerous occasions of its intention to acquire an operating business and the framework for its acquisition efforts. MLX also asserts that it has pursued and remains committed to the acquisition of a suitable operating business consistent with the best interests of its shareholders.

7. MLX notes that, in determining whether to grant an exemption for a transient investment company, the SEC considers these factors: (1) Whether the failure of the company to become primarily engaged in a non-investment company business within one year was due to factors beyond its control; (2) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment company business; and (3) whether the company invested in securities solely to preserve the value of its assets.

8. MLX states that, while it is using its best efforts, in good faith, to acquire an operating business with the proceeds of the Wellman Transaction, it has been unable, notwithstanding the Pending Merger, to negotiate and complete a favorable transaction. MLX asserts that this is attributable solely to factors beyond its control, including the unavailability of suitable acquisition candidates and the unwillingness of certain candidates to accept what MLX believed to be reasonable offers. Moreover, MLX states that the purchase of a suitable operating business of the size being pursued often requires a long period of time. MLX contends that its ability to acquire an operating business will depend upon the availability of suitable acquisition candidates, the willingness of those candidates to accept MLX's offers and the time needed to negotiate the terms of the acquisition and other factors outside of its control.

9. MLX submits that management's efforts to invest its assets in a non-investment company business are evident from the efforts of Three Cities and the other Financial Intermediaries to provide assistance in identifying acquisition candidates, which includes the Pending Merger, and the fact that MLX's management spends substantially all of its time on MLX's acquisition search and MLX's investments in overnight repurchases agreements are made solely to maximize the safety of its assets. MLX contends that its investments in overnight repurchase agreements, motivated primarily by a desire to consummate an acquisition and to preserve the value of capital pending consummation of the acquisition, should not be subject to registration and regulation under the Act.

10. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such company or to purchase from such company any security or other property. Section 17(b) of the Act authorizes the SEC to issue an order of exemption from one or more of the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. MLX believes that, because TCR Affiliates are affiliates of Three Cities that own 39% of existing MLX shares, TCR Affiliates may be deemed to be affiliated persons of MLX under section 2(a)(3) of the Act. Thus, MLX requests an exemption from the provisions of section 17(a) to the extent necessary to permit the Pending Merger.

11. MLX states that TCR Affiliates, unlike other existing MLX shareholders, will be receiving Class B Common Stock that permits TCR Affiliates to retain a significant voting interest in MLX. However, MLX contends that, despite the greater voting rights inherent in the Class B Common Stock, TCR Affiliates have agreed under the Shareholders Agreement to be subject to substantial detriment compared with all other MLX shareholders. MLX asserts that the Pending Merger and Related Transactions were designed to satisfy Mr. Morton's conditions regarding control of MLX and to permit MLX to retain its major assets, the NOLs. MLX also states that the Pending Merger and Related Transactions were approved by MLX's board of directors, including MLX's disinterested directors, and will not be effective unless approved by a vote of MLX's shareholders. Further, MLX contends that TCR Affiliates are receiving no additional equity or any fee as a result of the Pending Merger. Finally, MLX asserts that the Pending Merger will permit MLX to acquire a suitable operating business that will result in MLX no longer being subject to the Act. Thus, MLX contends that the terms of the Pending Merger are reasonable and fair and do not involve overreaching.

12. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person unless the transaction has been approved by order of the SEC. MLX requests an exemption pursuant to section 17(d) and rule 17d–1 to the extent necessary to permit MLX (i) to operate and comply with its stock option plans and agreements and (ii) to consummate the Pending Merger and Related Transactions.

13. MLX believes that compliance with section 17(d) of the Act and the rules under the Act would prohibit operation of and compliance with the 1985 Plan, the 1995 Plan, and Mr. Waggoner's Option Agreement. MLX states that these options were granted as compensation to various executive officers and key employees at different times prior to the Wellman Transaction. MLX asserts that inability to realize the value of those options would be unfair to the officers without the result being necessary or appropriate in the public interest.

14. MLX believes that the participation of TCR Affiliates in the Pending Merger and Related Transactions will be on a basis less advantageous than that of other MLX shareholders. MLX contends that TCR Affiliates will be giving up certain benefits retained by other MLX shareholders in order to induce Morton to agree to the Pending Merger and Related Transactions. MLX states that under the Shareholder Agreement, TCR Affiliates will be transferring their voting rights to Mr. Morton in order to give Mr. Morton voting control of MLX. In addition, MLX asserts that the Shareholders Agreement contains severe restrictions on TCR Affiliates' ability to transfer their shares. Further, MLX asserts that under the Voting Agreement, TCR Affiliates have agreed to vote their shares in MLX in favor of the Recaptalization and Pending Merger. MLX states that for the reasons stated above under section 17(a), MLX meets the standards of rule 17d–1. Thus, MLX contends that no regulatory purpose would be served by prohibiting MLX from consummating the Pending Merger and Related Transactions.

15. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. MLX states that all assets invested under the Program are in the custody of qualified banks and the ability of the banks to transfer money in and out is subject to numerous restrictions and checks and balances. Furthermore, MLX states that those assets are insured up to $5 million, an amount substantially in excess of what would be required under a fidelity bond obtained under section 17(g) of the Act. MLX also states that its custodial arrangements are consistent with the substantive requirements of rule 17f–2 under the Act, except for paragraph (f) thereof regarding the requirement for MLX's independent accountants to conduct three actual examinations. MLX also submits that its financial statements are audited annually by its independent accountants.

Applicant's Conditions

Applicant agrees that any order will be subject to the following conditions:

1. During the period of time MLX is exempted from registration under the Act, MLX will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by MLX's board of directors, except that MLX may make equity investments in issuers that are not investment companies, as defined in section 3(a) of the Act (unless an issuer is covered by a specific exclusion from the definition of investment company under section 3(c) other than sections 3(c)(1) and 3(c)(7)), in the following circumstances: (a) in connection with the consideration of the possible acquisition of an operating business as evidenced by a resolution approved by MLX's board of directors, and (b) in connection with the acquisition of majority-owned subsidiaries.

2. MLX will allocate and utilize its accumulated cash and short-term securities for the purpose of funding cash requirements for its existing businesses or far acquiring one or more new businesses.

3. While any order is in effect, MLX's 10–K, 10–Q, and annual reports to shareholders will state that an exemptive order has been granted under sections 6(c) and 6(e) of the Act and that MLX and other persons, in their transactions and relations with MLX, are subject to sections 9, 17(a) (except as discussed in the application), 17(d) (except as discussed in the application), 17(e), 17(f) (except as discussed in the application), and 36 through 53 of the Act as if MLX were a registered investment company.

4. MLX will obtain an amended order from the SEC prior to any material modification of MLX's custodial arrangement in a manner not described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32651 Filed 12–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1684/803–124]

Thomson Technical Data Corporation; Notice of Application

December 9, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940. ("Advisers Act").

APPLICANT: Thomson Technical Data Corporation ("Technical Data").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 203A(c) from section 203A(a).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to register with the SEC as an investment adviser.

Filing Dates: The application was filed on September 25, 1997 and amended on October 8, 1997.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 5, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Thomson Technical Data Corporation, 22 Pittsburgh Street, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: Robert J. Leonard, Attorney, at (202) 942–0646, or Jennifer S. Choi, Special Counsel, at (202) 942–0716 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation and an indirect, wholly-owned subsidiary of Thomson Corporation. Applicant publishes various market analyses through the Dow Jones Markets communication network and affords clients the opportunity to contact its analysts by telephone to discuss the published information.

2. Applicant's publications include: comprehensive technical, fundamental and statistical analysis of the world's major government bond and international money and deposit markets; real-time commentary, trading recommendations and yield curve analysis to global participants in the U.S. Treasury market; comprehensive coverage of the mortgage-backed and asset-backed securities markets; and technical and fundamental analysis and trading recommendations for Canadian government bonds, money markets and the Canadian Dollar.

3. Applicant also provides real-time analysis and commentary on financial, political and social events that affect the capital markets of Latin America, Eastern and Central Europe Asia and Japan.[1]

4. Applicant's services are provided to clients on a subscription basis, with rates dependent on the nature and quantity of specific services subscribed to by the client. Applicant has approximately 15,000 subscribers, located in over sixty countries. Almost all of applicant's subscribers are connected with major financial institutions or regulatory bodies, such as Federal Reserve Banks. The largest portion of applicant's client base in the institutional trading desks and sales staff of national and international broker-dealers. The second largest segment of applicant's client base consists of commercial banks. Applicant's other clients include money managers, other brokerage houses and regulators. Less than one-tenth of one percent of applicant's clients are individual investors.

5. Applicant maintains its principal office and place of business in Massachusetts. Applicant is registered as an investment adviser in Massachusetts and New York. Applicant was registered as an investment adviser with the SEC until July 8, 1997.

Applicant's Legal Analysis

1. On October 11, 1996, the National Securities Markets Improvement Act of 1996 was enacted. Title III of the Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), added new section 203A to the Advisers Act. Under section 203A(a)(1),[2] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the SEC unless the investment adviser (i) has assets under management of not less than $25 million or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940 ("Investment Company Act") Section 203A(a)(2) defines the phrase "assets under management" as the "securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services."[3]

2. Applicant states that the Coordination Act was designed to optimize the distribution of regulatory resources and ease the burden of duplicative or inconsistent regulation by dividing advisers into two broad categories: those whose activities are deemed to be national in scope, who are to be regulated primarily by the SEC, and those whose activities are of a more local nature, who are to be regulated primarily by the states.

3. Section 203A(c) of the Advisers Act authorizes the SEC to permit an investment adviser to register with the SEC if prohibiting registration would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A)."[4]

4. Applicant states that it does not qualify for SEC registration. Applicant states that it has no assets under management, does not act as an investment adviser to a registered investment company, and does not qualify for any exemption under rule 203A–2. Applicant also maintains its principal office and place of business in Massachusetts, which regulates its investment adviser activities.

5. Applicant states that it would be inconsistent with the purposes of the Coordination Act to prohibit applicant from registering with the SEC because it provides services to institutional clients whose activities affect billions of dollars in assets and have a significant effect on national securities markets. Applicant believes that it exerts an influence on the national markets similar to that exerted by both nationally recognized statistical rating organizations ("NRSROs") and pension consultants.

6. Applicant states that almost all of its clients are institutional traders, sales people, bankers and money managers who collectively move billions of dollars of assets through the fixed-income, foreign exchange and capital markets. Applicant states that institutional trading desks of national and international broker-dealers and money managers that subscribe to applicant's real-time analyses, commentary and trading recommendation publications use this information to assist them in evaluating instruments and market conditions when making purchase and sale decisions and determining trading strategies. Applicant believes that purchases, sales, and implementations of trading strategies result in billions of dollars of fixed-income and foreign exchange transactions moving through the national markets. Applicant also asserts that its clients, such as the Federal Reserve Banks and other federal and state regulatory bodies, exert their own special influence on the national markets.

7. Applicant states that the SEC exempted from the prohibition on federal registration NRSROs recognizing that, although NRSROs only provide impersonal advisory services and do not manage any assets, these advisers' activities have a significant effect on the national securities markets, thereby making them appropriate candidates for federal registration under the conceptual framework established by the Coordination Act.[5]

8. Applicant states that the SEC also exempted from the prohibition on Federal registration pension consultants who provide investment advice to plans with assets having an aggregate value of at least $50 million. Applicant states that, like NRSROs, pension consultants do not exercise direct investment discretion over client portfolios, but their advice affects the management of billions of dollars of assets.[6] Applicant states that the SEC concluded that it would be inconsistent with the purposes of the Coordination Act for pension consultants to be regulated by the states rather than the federal government because of their effect on national markets.

9. Applicant also asserts that the states should have little or no interest in regulating applicant, which has a majority of institutional clients. Less than one-tenth of one percent of applicant's clients are individual investors. Applicant submits that the primary interest of the states is not in the protection of institutional clients.

10. Applicant states that, although the Coordination Act generally preempts state law with respect to SEC-registered advisers and their supervised persons, it does permit states to license, register or otherwise qualify any "investment adviser representative" who has a place of business within the state. Applicant asserts that the Commission, in defining investment adviser representative, determined that states should not regulate either those supervised persons who service a predominantly institutional clientele or those who render only impersonal services. Applicant believes that, by expanding the class of advisers who qualify for federal registration and restricting the class of supervised persons subject to state control, the SEC effectuated Congress' intent to limit state regulation to activities that have a primarily localized effect and that institutional advisory activities be regulated by the federal government.

[1] Applicant states that, because certain of its publications relate to the futures markets, applicant is registered with the Commodity Futures Trading Commission as a commodity trading adviser.

[2] 15 U.S.C. 80b–3a(a)(1).

[3] 15 U.S.C. 80b–3a(a)(2).

[4] 15 U.S.C. 80b–3a(c).

[5] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1601 (Dec. 20, 1996), 62 FR 68480 at Section II.D.1 (release proposing rules to implement amendments to the Advisers Act).

[6] *Id.* at Section II.D.2.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32653 Filed 12–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39411; File No. SR–Amex–97–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Proposed Revisions to the Exchange's Policy Regarding the Use of Wireless Data Communications Devices

December 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its policy regarding the use of wireless data communications devices on the trading floor. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has undertaken to build an infrastructure ("Infrastructure") to support wireless data communications on the Trading Floor by members and Exchange staff. On September 26, 1996, the Commission approved various rule changes and a policy regarding the use of wireless data communications devices on the Trading Floor (the "Wireless Communications Policy").

The Exchange developed the Wireless Communications Policy based upon a design for the Infrastructure that called for all wireless data transmissions to pass through a gateway ("Gateway"). This would have permitted the Exchange to make a record of all wireless communications and to unilaterally "throttle" all, or selected, member communications in the event that such transmissions used a disproportionate amount of the available radio frequency or threatened to exceed available radio frequency capacity.

In late 1996, the Exchange reviewed the design of the Infrastructure. During this review, the Exchange determined that there was no immediate need for throttling and that it was unclear when it might become necessary. The Exchange concluded that since there was no need for throttling, there was no need for a Gateway and that, if and when necessary, throttling could be accomplished by the member firms without a Gateway. As a result of this review, the Exchange determined that since the Gateway was unnecessary, costly for both the Exchange and its members, and difficult to develop and implement, the Exchange would build the Infrastructure without a Gateway. The Exchange, accordingly, is now proposing to modify the Wireless Communications Policy to reflect the redesign of the Infrastructure to eliminate the Gateway.

As noted above, the Gateway would have permitted the Exchange to record all wireless communications. This would have created a data base at the Exchange that would have largely duplicated records already maintained by member firms pursuant to SEC and Exchange rules. The elimination of the Gateway will eliminate this duplicative data base. The revised Wireless Communications Policy, accordingly, will state that members that have developed wireless technology will be responsible for maintaining such records as may be required by Exchange

rules and policies and federal securities laws as in effect from time to time. The elimination of the record keeping capabilities of the Gateway will not cause any diminution of the Exchange's surveillance capabilities as the Exchange will retain the same access to member books and records that it currently possesses.

With respect to "throttling," the Revised Wireless Communications Policy states that the Exchange's staff may request members to reduce radio traffic if and when required because a particular user is using more than its fair share of radio frequency capacity or overall usage in reaching its maximum. Members will be obligated to comply immediately with any such request and their ability to send wireless communications may be immediately terminated if they fail to comply with such a directive. The Exchange also proposes some further changes to the Wireless Communications Policy to enhance it in light of the Exchange's experience with wireless technology since the Policy was first adopted. These proposed changes include a requirement that members using wireless technology maintain a record of orders and quotes initiated on the Floor and transmitted to other markets, a statement that members do not acquire a property interest in their assigned band width, a requirement that affiliates be treated as a single entity for purposes of band width assignment and a reduction in the number of hand held terminals that the system is able to support in view of anticipated demand for this capacity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [1] in general and furthers the objectives of Section 6(b)(5) [2] in particular in that it is designed to prevent fraudulent acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] 15 U.S.C. 78f(b).
[2] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–40 and should be submitted by January 5, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32650 Filed 12–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39416; File No. SR–NSCC–97–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Establishing a New Category of Fund Member for Investment Advisers in Mutual Fund Services

December 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 25, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule will establish a new category of fund member in NSCC's mutual fund services ("MFS") for registered investment advisers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's MFS is designed to enable NSCC members to process and to settle on an automated basis mutual fund purchase and redemption orders and to transmit registration instructions. Currently, NSCC's rules and procedures permit two categories of fund member in MFS: (1) principal underwriters which are registered broker-dealers under the Act and (2) investment companies which are registered under the Investment Company Act of 1940.[3]

Although mutual funds which have no broker-dealer distributor may join MFS as individual fund members, it can be a cumbersome and inefficient process. For example, families of these self-distributed no load funds currently may only join MFS through each of their separate investment companies. To take full advantage of the benefits of a single membership, such as net settlement, reduced costs, operational efficiencies, and oversight by a single board of directors, these funds prefer to join MFS through an investment adviser.

The proposed rule change will expand the fund member category to include registered investment advisers as defined in Section 202(a)(11) of the Investment Advisers Act of 1940. To be eligible for membership in MFS, a nonguaranteed service of NSCC, investment advisers will need to be registered with the Commission and to have a minimum of $25 million in assets under management and $100,000 in total net worth.

In addition, the proposed rule change will make a technical amendment to conform NSCC's procedures with its rules. Specifically, Procedure Addendum I(B)(2) sets forth the standards of financial responsibility and operational capability for the investment company fund member applicant. Because the list of eligible fund members contained in Rule 51 inadvertently omits investment companies, Rule 51 Section 1 will be amended to include this existing category of fund member.[4]

NSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations promulgated thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions and will protect investors and the public interest.[5]

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

[1] 15 U.S.C. 78a(b)(1).
[2] The Commission has modified parts of these statements.

[3] See NSCC Rule 51, Section 1 ("Fund Member") and Procedure Addendum I(B)(2) ("Standards of Financial Responsibility and Operational Capability for Fund Members").
[4] Investment companies were permitted to join MFS as fund member pursuant to a rule change filing approved by the Commission. Securities Exchange Act Release No. 33525 (January 26, 1994), 59 FR 4759.
[5] 15 U.S.C. 78q–1.

(C) Self—Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which NSCC consents, the Commission will:

(A) by order approve such rule filing

(B) institute proceedings to determine whether the rule filing should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–97–10 and should be submitted by January 5, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32654 Filed 12–12–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 25.1581–1, Airplane Flight Manual

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.1581–1, Airplane Flight Manual. The primary purpose of the FAA-approved AFM is to provide an authoritative source of information considered necessary for safely operating the airplane. The AC identifies the information that must be provided in the AFM under the airworthiness regulations and provides guidance as to the form and content of the approved portion of an AFM.

DATES: Advisory Circular 25.1581–1 was issued on July 14, 1997, by the Acting Manager of the Transport Airplane Directorate, Aircraft Certification Service, in Renton, Washington.

How To Obtain Copies: A copy of AC 25.1581–1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.

Issued in Renton, Washington, on November 19, 1997.

Stewart R. Miller,

Manager, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–32668 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Easterwood Airport, College Station, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Easterwood Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990)

(Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 14, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Director of Aviation at Easterwood Airport at the following address: Harry E. Raisor, Director of Aviation, Easterwood Airport, McKenzie Terminal Drive #7, College Station, Texas 77845.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Easterwood Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Recondiciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulation (14 CFR Part 158).

On November 24, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Texas A&M University was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 24, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1998.

Proposed charge expiration date: June 1, 2000.

Total estimated PFC revenue: $429,159.00.

PFC application number: 98–02–C–00–CLL.

Brief description of proposed projects:

Projects To Impose and Use PFC's

Airfield Safety Improvements, Airfield Rescue & Firefighting (ARFF) Facility and ARFF Vehicle, Pavement Management System, and PFC Administrative Cost.

Proposed class or classes of air carriers to be exempted from collecting PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Easterwood Airport.

Issued in Forth Worth, Texas on December 2, 1997.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 97–32670 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In November 1997, there were four applications approved. Additionally, two approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of section 158.29.

PFC Applications Approved

Public Agency: City of Phoenix, Arizona.

Application Number: 97–04–U–00–PHX.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used In This Decision: $1,875,000.

Charge Effective Date: April 1, 1996.

Estimated Charge Expiration Date: October 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved For Use: Extend north runway west end.

Decision Date: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western Pacific Region Airports Division, (310) 725–3621.

Public Agency: Tucson Airport Authority, Tucson, Arizona.

Application Number: 97–01–C–00–TUS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $26,717,799.

Earliest Charge Effective Date: February 1, 1998.

Estimated Charge Expiration Date: December 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: Unscheduled Part 135 air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanement et Tucson International Airport.

Brief Description of Projects Approved For Collection and Use: Terminal entrance improvements, Remodel baggage claim area, Land acquisition expansion, Land acquisition for noise, Land acquisition (Sections 27 and 33).

Decision Date: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western Pacific Region Airports Division, (301) 725–3621.

Public Agency: Dade County Aviation Department, Miami, Florida.

Application Number: 97–03–C–00–MIA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $296,167,000.

Earliest Charge Effective Date: May 1, 1998.

Estimated Charge Expiration Date: July 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxis.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Miami International Airport.

Brief Description of Projects Approved for Collection and Use: Midfield area development taxiways—phase III, Concourse F improvements—Gates F4, F6, and F8, Aircraft apron for inboard gates at Concourse H, H–J utility and pavement project, Central Boulevard corridor improvements, Perimeter road modifications, Extend upper vehicle drive—south side, Central chiller plants east and west expansion.

Brief Description of Project Approved in Part for Collection and Use: Midfield aircraft rescue and firefighting facility.

Determination: Partially approved. The explosives magazine is not eligible under paragraph 563 of FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook, and, thus, is not AIP or PFC eligible.

Brief Description of Project Withdrawn: Terminal expansion north phase III.

Determination: This project was withdrawn by the public agency by letter dated November 25, 1997. Therefore, the FAA did not rule on this project in this decision.

Decision Date: November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Bart Vernace, Orlando Airports District Office, (407) 812–6331.

Public Agency: Los Angeles World Airports, Los Angeles, California.

Application Number: 97–04–C–00–LAX.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $150,000,000.

Earliest Charge Effective Date: February 1, 1998.

Estimated Charge Expiration Date: May 1, 2000.

Class of Air Carriers not Required to Collect PFC's: Air taxi operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Los Angeles International Airport.

Brief Description of Project Approved for Collection and Use: Noise mitigation.

Decision Date: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: John Milligan, Western Pacific Region Airports Division, (310) 725–3621.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
96–04–C–03–MCO, Orlando, FL	10/22/97	$93,592,000	$101,154,000	03/01/98	06/01/98
95–02–C–01–STL, St. Louis, MO.	11/05/97	80,186,867	86,214,867	12/01/97	02/01/98

Issued in Washington, DC. on December 8, 1997.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 97–32671 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, January 15, 1998. The meeting begins at 1 p.m. and will have an Administrative Business session at 4 p.m. (Voting Board Members and key staff Only). The letter designations that follow each item mean the following: (I) is an "information item;" (A) is an action item; (D) is a discussion item. This meeting includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements; (2) Review and Approval of Previous Meeting's Minutes (A); (3) US DOT ITS Initiatives (I/D); (4) President's Commission on Critical Infrastructure (I/D); (5) Intelligent Vehicle Initiative (IVI) Report (A); (6) Report of the Executive Committee (I/D); (7) Coordinating Council Report (A); (8) State Chapters Council Report (I); (9) ITS America Association Report (I); (10) ITS Awareness Program Update (I); (11) Futures Group Report (I); (12) Report of the ITS World Congress and Other International ITS Activities (I/D); (13) 1998 ITS America Annual Meeting (A); (14) 1998 Board Meeting Schedule (A); (15) Other Program Business. *Business Session* (Begins at 4 p.m.) (16) President's Report (I); (16) Report of the Membership Committee (I); (17) Report of the Membership Committee (I); (18) Report of the Administrative Policy and Finance Committee (I/D); (19) Nominating Committee Report (A); (20) Other Business; (21) Adjournment until March 19, 1998, Board of Directors Meeting in Chicago, IL.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, January 15, 1998, from 1:00 p.m.—5:00 p.m.

ADDRESSES: Sheraton Washington Hotel at 2550 Woodley Road, N.W., Washington, D.C. 20008. Phone: (202) 328–2000 and Fax: (202) 234–0015.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130 or by FAX at (202) 484–3483. The DOT contact is Mary C. Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued: December 10, 1997.

Jeffrey F. Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 97–32633 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Tuesday, January 13, 1998. The following designations are made for each item: (A) is an "action" item; (I) is an "information item;" and (D) is a "discussion" item. The agenda includes the following: (1) Call to Order and Introductions (I); (2) Statements of Anti-Trust Compliance and Conflict of Interest (A); (3) Approval of Last Meeting's Minutes (A); (4) Federal Report (I&D); (5) President's Report; (6) Report of the Planning Committee: Strategic Plan Update/National Research Agenda (A); (7) ITS America's IVI Report (A); (8) International Border Crossing Activities Report (I/D); (9) Professional Capacity Building Update (I); (10) FCC Frequency Petition Update (I); (11) Report of the ITS World Congresses and Other International ITS Activities (I/D); (12) ITS America 8th Annual Meeting Update (I/D); (13) Roundtable Discussion of Committee and Task Force Activities—Committee and Task Force Chairs (I/D); (14) Other Business. *Additional Information:* DSRC Status Report, Standards Needs Timeline and Coordinating Council Meeting Dates.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Tuesday, January 13, 1998, from 8:00 a.m. to 12:00 noon (Eastern Standard time).

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008. Phone: (202) 234–0700. Fax: (202) 234–5333.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130, or by FAX at (202) 484–3483.

The DOT contact is Mary Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued: December 10, 1997.

Jeffrey F. Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 97–32634 Filed 12–12–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–439 (Sub–No. 3X)]

Dallas Rapid Transit—Abandonment Exemption—in Dallas, TX

Dallas Rapid Transit (DART) a political subdivision of the State of Texas, has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 6.99-mile line of railroad between milepost D–762.26 in the vicinity of Mockingbird Lane and milepost D–755.27 in the vicinity of the Kansas City Southern Railway Company bridge overpass, in Dallas County, TX.[1] The line traverses United States Postal Service Zip Codes 75205, 75214, 75231 and 75238.

DART has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 14, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 29, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 5, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

DART has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 19, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), DART shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by DART's filing of a notice of consummation by December 15, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: December 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32648 Filed 12–12–97; 8:45 am]

BILLING CODE 4915–00–P

[1] DART acquired this line of railroad from the Missouri Pacific Railroad Company (MP) in 1990 with MP retaining trackage rights. *See Dallas Area Rapid Transit-Acquisition and Operation Exemption—Rail Line of Missouri Pacific Railroad Company and Missouri Pacific Railroad Company*, Finance Docket No. 31690 (ICC served July 17, 1990).

MP discontinued its trackage rights over the line as part of a joint relocation project. *See Missouri Pacific Railroad Company* and *The Atchison, Topeka and Santa Fe Railway Company—Joint Relocation Project Exemption*, Finance Docket No. 32060 (ICC served Apr. 27, 1992).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds Termination of Authority: Pennsylvania Manufacturers' Association Insurance Company

SUMMARY: Dept. Circ. 570, 1997—Rev., Supp. No. 5.)

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch (202) 874–7116.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to Pennsylvania Manufacturers' Association Insurance Company, of Philadelphia, Pennsylvania, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds was terminated effective November 13, 1997.

The Company was last listed as an acceptable surety on Federal bonds at 62 FR 35571, July 1, 1997.

With respect to any bonds currently in force with Pennsylvania Manufacturers' Association Insurance Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted. In addition, bonds that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.html) or through our computerized public bulletin board system at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00509–8.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: December 4, 1997.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–32664 Filed 12–12–97; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–100–78]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–100–78 (TD 7918), Creditability of Foreign Taxes (§§ 1.901–2 and 1.901–2A).

DATES: Written comments should be received on or before February 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Creditability of Foreign Taxes.

OMB Number: 1545–0746.

Regulation Project Number: LR–100–78.

Abstract: Section 1.901–2A of the regulation contains special rules that apply to taxpayers engaging in business transactions with a foreign government that is also taxing them. In general, such taxpayers must establish what portion of a payment made pursuant to a foreign levy is actually tax and not compensation for an economic benefit received from the foreign government. One way a taxpayer can do this is by electing to apply the safe harbor formula of section 1.901–2A by filing a statement with the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 110.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 37.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 9, 1997.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 97–32673 Filed 12–12–97; 8:45 am]
BILLING CODE 4810–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Announcement 97–122

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Announcement 97–122, Interim Guidance for Roth Individual Retirement Accounts.

DATES: Written comments should be received on or before February 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Interim Guidance for Roth Individual Retirement Accounts.

OMB Number: 1545–1568.

Announcement Number: Announcement 97–122.

Abstract: Announcement 97–122 provides interim guidance concerning the establishment of Roth Individual Retirement Accounts (described in section 408A of the Internal Revenue Code as added by section 302 of the Taxpayer Relief Act of 1997). The guidance is directed mainly at banks, etc., that will market prototype Roth IRAs to the public.

Current Actions: There are no changes being made to the announcement at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 8,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 9, 1997.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 97–32674 Filed 12–12–97; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–178–78]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–178–78 (TD 7898), Employers' Qualified Educational Assistance Programs (§ 1.127–2).

DATES: Written comments should be received on or before February 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employers' Qualified Educational Assistance Programs.

OMB Number: 1545–0768.

Regulation Project Number: EE–178–78.

Abstract: Internal Revenue Code section 127(a) provides that the gross income of an employee does not include amounts paid or expenses incurred by an employer if furnished to the employee pursuant to a qualified educational assistance program. This regulation requires that a qualified educational assistance program must be a separate written plan of the employer and that employees must be notified of the availability and terms of the program. Also, substantiation may be required to verify that employees are entitled to exclude from their gross income amounts paid or expenses incurred by the employer.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 5,200.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 615.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 9, 1997.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 97–32675 Filed 12–12–97; 8:45 am]
BILLING CODE 4830–01–U

ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation, Board of Directors.

TIME AND DATE: 8:00 a.m., Wednesday, December 17, 1997.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The Board meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, operational and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Joseph Tomkowicz 301–564–3345.

Dated: December 10, 1997.
Robert J. Moore,
Corporate Secretary.
[FR Doc. 97–32726 Filed 12–11–97; 9:32 am]
BILLING CODE 8720–01–M

UNITED STATES INFORMATION AGENCY

English Teaching Fellow Program

ACTION: Request for proposals.

SUMMARY: the English Teaching Program Division of the Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to manage and administer the English Teaching Fellow Program, which is designed to provide universities, binational centers teacher-training colleges and other language institutions worldwide with professionally trained American expertise in English as a foreign language (EFL), and to give recent M.A. graduates in TEFL/TESL additional teaching experience overseas. The Program increases the American academic presence in foreign institutions, enhances the American cultural component, and improves academic standards. An introduction to American English, methodology and materials opens the door for advanced study in the U.S., and establishes an ongoing relationship that will bear fruit in trade and commerce as well.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries. . . ; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hayes Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AL–98–01.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, January 30, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, English Language Programs Division, E/AL, Room 304, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202–619–5869; fax: 202–401–1250, e-mail address: cjwillia@usia.gov to request a Solicitation Package containing more details. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Catherine Williamson on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Information Agency, Ref.: E/AL–98–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity"

should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extend deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The United States Information Agency (USIA) is soliciting proposals from U.S. non-profit educational institutions/organizations to manage and administer the English Teaching Fellow Exchange Program. The program provides to English language teaching professionals with recent M.A. degrees in TEFL/TESL the opportunity to teach abroad at universities, teacher-training colleges, binational centers, or other host country institutions. Fellows must be U.S. citizens. Fellows will serve as full-time teachers of English as a Foreign Language in selected countries to be determined at a later date by USIA. In addition, they may be asked to work in materials/test development or teacher-training activities. The program is for twelve months beginning with academic year 1998–99. The program occasionally grants an extension up to one additional year. In the past three years, the English Teaching Fellow program has placed over 125 U.S. teachers worldwide, promoting English teaching as a response to the dramatic increase in the demand for English caused by political or economic changes.

Guidelines

The grantee organization is responsible for the management and administrative aspects of the program which include the following:

—Recruitment and placement of approximately 35 English teachers;
—Arrangement of a 4–5 day pre-departure orientation program which will provide the English Teaching Fellows with tools and skills through a cross-cultural training segment designed to facilitate adaptation to the participant's host country environment and their host institutional context; provide techniques and approaches to special areas in the EFL field such as teacher training and curriculum and materials development; acquaint the participants with the parameters, expectations and administrative workings of the English Teaching Fellow program; and make known the professional resources available to the participants through USIA and other NGOs in the English teaching field.
—Fiscal management and logistics;
—Travel management (itinerary schedules, airline ticket purchases; drafts of telegrams to USIS overseas posts with flight information, etc.);
—Enrollment of medical insurance;
—Development of promotional materials in support of the program;
—Extensive monitoring, review, follow up and evaluation of English Teaching Fellows reports. Fellows are required to submit a mid-year and final year-end report.

The period of the program is from March 1, 1998 through September 30, 1999. Recruitment and selection process will begin at the 1998 TESOL Convention in Seattle, Washington, March 17–21, 1998; pre-departure orientation, first or second week of August, 1998; and Fellows' travel to overseas assignment first and second week of September, 1998. The grantee organization is to provide a proposed time line for the activities. The Fellows will receive a basic stipend, round trip ticket, living and housing allowance, book allowance, miscellaneous expense, and $50,000 health insurance coverage.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) Fellow remuneration—$17,000 per Fellow
(2) Round trip international travel—3,500 per Fellow
(3) Pre-departure (per diem)—800 per Fellow
(4) Pre-departure allowance—500 per Fellow
(5) Educational materials—100 per Fellow
(6) Excess Baggage/Shipping Allowance—400 per Fellow

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of African Affairs, Office of East Asian and Pacific Affairs, Office of Inter-American Affairs, Office of East European and NIS Affairs, Office of West European and Canadian Affairs, Office of North African, Near Eastern, and South Asian Affairs, and USIS overseas posts, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposed budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 8, 1997.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–32587 Filed 12–12–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held from Monday, January 12 through Wednesday, January 14, 1998, in Washington, DC. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene in room 230, VA Central Office (VACO) Building, 810 Vermont Avenue, NW, Washington, DC, from 8:30 A.M. to 5:00 P.M. on Monday, January 12, the Committee will receive an orientation on its duties and responsibilities. On Tuesday, January 13, the Committee will review the implementation plan for the 63 recommendations contained in its third Annual Report. The Committee will also finalize plans for each subcommittee and set the agenda for the coming year. On Wednesday, January 14, the Subcommittees will examine issues germane to their assigned areas of responsibility. These sessions will be open to the public. It will be necessary for those wishing to attend to contact Mrs. Crystal Lawrence-Greenwell, Department of Veterans Affairs (phone (202) 273–6708) prior to January 5, 1998. No time will be allocated for the purpose of receiving oral presentations from the public. However, the Committee will accept appropriate written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 5, 1997.

By direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–32603 Filed 12–12–97; 8:45 am]

BILLING CODE 8320–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Work Group; Notice of Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA will hold the initial meeting of the Electronic Records Work Group on December 19, 1997, to discuss issues related to the operation of the Work Group. The public is invited to observe the meeting; however, seating is limited. The Electronic Records Work Group will focus on identifying workable alternatives to the disposition practices currently authorized under NARA's General Records Schedule 20 for Electronic Records. Members of the Work Group are experts drawn from NARA and other Federal agencies. The Work Group will solicit technical assistance on specific issues from experts with practical experience in the private sector and the archives of other governments. Additional information about the Electronic Records Work Group is available on NARA's GRS 20 Internet Web page at <http://www.nara.gov/records/grs20/>.

DATES: The meeting is scheduled for December 19, 1997, from 11 a.m–12:30 p.m.

ADDRESSES: The meeting will be held in Lecture Room A, National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Jean Cooke at 301–713–7110, extension 228.

Dated: December 12, 1997.

John W. Carlin,

Archivist of the United States.

[FR Doc. 97–32903 Filed 12-12-97; 12:17 pm]

BILLING CODE 7515-01-P

Corrections

Federal Register

Vol. 62, No. 240

Monday, December 15, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96-206-002]

The Empire District Electric Company; Notice of Filing

Correction

In notice document 97–32128 appearing on page 64818, in the issue of Tuesday, December 9, 1997, the Docket Number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 175

[CGD 85–080]

RIN 2115–AC 22

Small Passenger Vessel Inspection and Certification; Correction

Correction

In rule document 97–31895, beginning on page 64303, in the issue of Friday, December 5, 1997, make the following correction:

§ 175.400 [Corrected]

On page 64306, in the second column, in § 175.400, in the definition of *Wood vessel*, in the sixth line, "area" should read "are".

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 62, No. 240

Monday, December 15, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10
65197–65308	11
65309–65592	12
65593–65740	15

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309

Administrative Orders:

Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005

5 CFR

213 63627
315 63627
410 63630
531 65311
591 63630

7 CFR

2 65593
17 63606
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344
1412 63441

Proposed Rules:
70 63471
610 64174
729 63678
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

78 ..... 64134, 65596
91 64265
93 64265

Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 63825
70 63825
73 63640

Proposed Rules:
40 65039
50 ..... 63892, 63911
70 63911

11 CFR

Proposed Rules:
114 65040

12 CFR

8 64135
226 63441
265 64996
516 64138
543 64138
545 64138
552 64138
556 64138
563 64138
614 63644
703 64146
704 64148
790 65197
791 64266
934 65197
1806 64440

Proposed Rules:
225 64997
226 64769
404 64177
405 64177
708a 64185
708b 64187

14 CFR

39 ..... 63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604
71 ..... 64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606
73 ..... 65359, 65360
95 ..... 65016, 65361, 65363
97 ..... 63447, 63449, 63451
121 65202
255 63837
1260 63452

Proposed Rules:
39 ..... 63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233
71 ..... 63916, 63917, 64321, 64321, 64322, 64323, 64525,

65040, 65041, 65308, 65383, 65631

15 CFR

295.....64682

Proposed Rules:

806.....65043
960.....65384

17 CFR

15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

18 CFR

35.....64688
37.....64715
401.....64154

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:

211.....64188
422.....63681

21 CFR

101.....63647, 63653, 64634
179.....64102, 64107
520.....65020

Proposed Rules:

200.....64048
808.....65384
1020.....65235
1308.....64526

22 CFR

Proposed Rules:

22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:

655.....64324

24 CFR

201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

26 CFR

Proposed Rules:

1.....64190

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203
4011.....65607
4022.....65607
4044.....65609, 65610

Proposed Rules:

1910.....65388

30 CFR

Proposed Rules:

57.....64789
75.....64789
917.....63684, 65044
926.....63685, 64327
936.....65632

31 CFR

500.....64720

Proposed Rules:

356.....64526

32 CFR

320.....65020

Proposed Rules:

199.....64191
901.....63485

33 CFR

100.....65021
117.....63847
160.....65203
165.....65022

36 CFR

701.....64279

Proposed Rules:

1.....63488
14.....63488
327.....64192

37 CFR

202.....63657

Proposed Rules:

253.....63502
255.....63506

38 CFR

4.....65207
17.....64722
21.....63847, 63848
36.....63454

Proposed Rules:

20.....64790

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

52.....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613
62.....65616
63.....64736, 65022
64.....63662
70.....63662
71.....63662
80.....63853
81.....64284, 64725, 65025
180.....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369
185.....64048, 64284, 64287
186.....64048
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738

Proposed Rules:

51.....64532
52.....63687, 64329, 64543, 647389, 65046, 65634
62.....65635
63.....65049
80.....63918
81.....63687
112.....63812
194.....64327
721.....64738

41 CFR

105–60.....64740
301.....63798

42 CFR

417.....63669

Proposed Rules:

1001.....63689, 65049

43 CFR

3740.....65376
3810.....65376
3820.....65376

Proposed Rules:

4.....64544

45 CFR

205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301

46 CFR

114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303, 65739
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
69.....65619
73.....63674, 65392
74.....65392

Proposed Rules:

32.....65053
73.....63690

48 CFR

Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19.....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31.....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42.....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52.....64914, 64915, 64916
53.....64914, 64916, 64934, 64936, 64940

Proposed Rules:

1843.....64545
1852.....64545

49 CFR

171.....65188
219.....63464, 63675
225.....63675
240.....63464
1241.....65378

Proposed Rules:

195.....65635
213.....65401
243.....65479
572.....64546
Ch. X.....64193

50 CFR

17.....64306
20.....63608
222.....63467
622.....63677
648.....63872, 64765
660.....63876
679.....63877, 63878, 63880, 64760, 65379, 65622, 65626

Proposed Rules:

14.....64335
17.....64337, 64340, 64799, 64800, 65237
23.....64347
229.....65402
600.....65055
622.....65056
648.....65055
679.....63690, 65402, 65635, 65638, 65644

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 15, 1997

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Perishable Agricultural Commodities Act; implementation:
Electronic transmissions as ordinary and usual billing or invoice statements; published 11-14-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Sliced and pre-packaged dry-cured pork products; published 11-14-97
Plant-related quarantine, domestic:
Asian longhorned beetle; published 11-13-97

AGRICULTURE DEPARTMENT
Organization, functions, and authority delegations:
General officers and agency administrators; authorities modification, extension, and additions; published 12-15-97

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Hydroelectric projects; applications for licenses and exemptions; alternative administrative process; published 11-5-97

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 10-15-97
Maryland; published 10-15-97
Clean Air Act:
Special exemptions—
Virgin Islands; published 11-14-97

FEDERAL COMMUNICATIONS COMMISSION
Television broadcasting:
Cable television systems—
Inside wiring; published 11-14-97

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes, etc.:
Treaty-based return positions; published 10-14-97

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
State home facilities; construction or acquisition grants; published 11-13-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hazelnuts grown in Oregon and Washington; comments due by 12-15-97; published 10-14-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classifications; comments due by 12-15-97; published 10-15-97
Plant-related quarantine, domestic:
Oriental fruit fly; comments due by 12-15-97; published 10-14-97
Plant-related quarantine, foreign:
Tomatoes from Morocco and Western Sahara, etc.; comments due by 12-15-97; published 10-16-97

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Carrageenam, locust bean gum and xanthan gum blend used as binder in cured pork products; comments due by 12-19-97; published 11-19-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut and red king crab; comments due by 12-18-97; published 12-3-97
Marine mammals:
Endangered fish or wildlife—
Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
Incidental taking—
Vandenberg AFB, CA; missile and rocket launches, aircraft flight test operations, and helicopter operations; comments due by 12-15-97; published 11-14-97

DEFENSE DEPARTMENT
Acquisition regulations:
Contract performance reporting outside the United States; comments due by 12-16-97; published 10-17-97
Government property; comments due by 12-16-97; published 10-17-97

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practice standards; comments due by 12-18-97; published 11-18-97

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida; comments due by 12-15-97; published 11-13-97
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 12-19-97; published 11-19-97

FARM CREDIT ADMINISTRATION
Farm credit system:
Leasing activities; comments due by 12-15-97; published 10-15-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arkansas; comments due by 12-15-97; published 10-31-97
Florida; comments due by 12-15-97; published 10-31-97
Illinois; comments due by 12-15-97; published 10-31-97
Michigan; comments due by 12-15-97; published 10-31-97
Oregon; comments due by 12-15-97; published 10-31-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Interest on deposits:
Payment of interest; exception to prohibition; comments due by 12-15-97; published 10-16-97

FEDERAL LABOR RELATIONS AUTHORITY
Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Real Estate Settlement Procedures Act:
Mortgage brokers; disclosure of fees; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT
Indian Affairs Bureau
Law and order on Indian reservations:
Courts of Indian Offenses and law and order code
Correction; comments due by 12-15-97; published 11-14-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
Mobile River Basin, AL; three aquatic snails as endangered and three aquatic snails as threatened; comments due by 12-16-97; published 10-17-97
Newcomb's snail; comments due by 12-15-97; published 11-12-97
St. Andrew Beach mouse; comments due by 12-16-97; published 10-17-97

INTERIOR DEPARTMENT
Conflict of interests:
Ethical conduct for Department of Interior employees; supplemental standards; comments due by 12-15-97; published 10-16-97
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Louisiana; comments due by 12-19-97; published 11-19-97
Montana; comments due by 12-17-97; published 12-2-97
Ohio; comments due by 12-17-97; published 12-2-97
Surface coal mining and reclamation operations:
Ownership and control, permit application process, and improvidently issued permits; comments due by 12-15-97; published 10-29-97
INTERNATIONAL TRADE COMMISSION
Freedom of Information Act and Privacy Act; implementation; comments due by 12-17-97; published 11-17-97
JUSTICE DEPARTMENT
Drug Enforcement Administration
List 1 chemicals; manufacturers, distributors, importers and exporters; registration:
Pseudoephedrine and phenylpropanolamine products; temporary distribution registration exemption; comments due by 12-16-97; published 10-17-97
JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Early release consideration; drug abuse treatment and intensive confinement center programs; comments due by 12-15-97; published 10-15-97
LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards:
Tuberculosis, occupational exposure to; comments due by 12-16-97; published 10-17-97
NATIONAL RAILROAD PASSENGER CORPORATION
Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
North Carolina; comments due by 12-15-97; published 10-16-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 12-19-97; published 11-19-97
AlliedSignal Inc.; comments due by 12-16-97; published 10-17-97
Bombardier; comments due by 12-18-97; published 11-18-97
Dassault; comments due by 12-15-97; published 11-13-97
Dornier; comments due by 12-15-97; published 11-13-97
Robinson Helicopter Co.; comments due by 12-16-97; published 10-17-97
Short Brothers plc; comments due by 12-19-97; published 11-19-97
SOCATA-Groupe AEROSPATIALE; comments due by 12-15-97; published 11-7-97
Class E airspace; comments due by 12-15-97; published 10-31-97
TREASURY DEPARTMENT
Fiscal Service
Financial management services:
Federal payments; conversion (two phases) of checks to electronic fund transfer; comments due by 12-16-97; published 9-16-97
TREASURY DEPARTMENT
Internal Revenue Service
Employment taxes and collection of income taxes at source:
Form W-8; electronic filing; comments due by 12-15-97; published 10-14-97

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A "●" precedes each entry that is now available on-line through the Government Printing Office's *GPO Access* service at http://www.access.gpo.gov/nara/cfr. For information about *GPO Access* call 1-888-293-6498 (toll free).

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512-1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2250.

Title	Stock Number	Price	Revision Date
●1, 2 (2 Reserved)	(869-032-00001-8)	$5.00	Feb. 1, 1997
●3 (1996 Compilation and Parts 100 and 101)	(869-032-00002-6)	20.00	[1] Jan. 1, 1997
●4	(869-032-00003-4)	7.00	Jan. 1, 1997
5 Parts:			
●1-699	(869-032-00004-2)	34.00	Jan. 1, 1997
●700-1199	(869-032-00005-1)	26.00	Jan. 1, 1997
●1200-End, 6 (6 Reserved)	(869-032-00006-9)	33.00	Jan. 1, 1997
7 Parts:			
●0-26	(869-032-00007-7)	26.00	Jan. 1, 1997
●27-52	(869-032-00008-5)	30.00	Jan. 1, 1997
●53-209	(869-032-00009-3)	22.00	Jan. 1, 1997
●210-299	(869-032-00010-7)	44.00	Jan. 1, 1997
●300-399	(869-032-00011-5)	22.00	Jan. 1, 1997
●400-699	(869-032-00012-3)	28.00	Jan. 1, 1997
●700-899	(869-032-00013-1)	31.00	Jan. 1, 1997
●900-999	(869-032-00014-0)	40.00	Jan. 1, 1997
●1000-1199	(869-032-00015-8)	45.00	Jan. 1, 1997
●1200-1499	(869-032-00016-6)	33.00	Jan. 1, 1997
●1500-1899	(869-032-00017-4)	53.00	Jan. 1, 1997
●1900-1939	(869-032-00018-2)	19.00	Jan. 1, 1997
●1940-1949	(869-032-00019-1)	40.00	Jan. 1, 1997
●1950-1999	(869-032-00020-4)	42.00	Jan. 1, 1997
●2000-End	(869-032-00021-2)	20.00	Jan. 1, 1997
●8	(869-032-00022-1)	30.00	Jan. 1, 1997
9 Parts:			
●1-199	(869-032-00023-9)	39.00	Jan. 1, 1997
●200-End	(869-032-00024-7)	33.00	Jan. 1, 1997
10 Parts:			
●0-50	(869-032-00025-5)	39.00	Jan. 1, 1997
●51-199	(869-032-00026-3)	31.00	Jan. 1, 1997
●200-499	(869-032-00027-1)	30.00	Jan. 1, 1997
●500-End	(869-032-00028-0)	42.00	Jan. 1, 1997
●11	(869-032-00029-8)	20.00	Jan. 1, 1997
12 Parts:			
●1-199	(869-032-00030-1)	16.00	Jan. 1, 1997
●200-219	(869-032-00031-0)	20.00	Jan. 1, 1997
●220-299	(869-032-00032-8)	34.00	Jan. 1, 1997
●300-499	(869-032-00033-6)	27.00	Jan. 1, 1997
●500-599	(869-032-00034-4)	24.00	Jan. 1, 1997
●600-End	(869-032-00035-2)	40.00	Jan. 1, 1997
●13	(869-032-00036-1)	23.00	Jan. 1, 1997
14 Parts:			
●1-59	(869-032-00037-9)	44.00	Jan. 1, 1997
●60-139	(869-032-00038-7)	38.00	Jan. 1, 1997
●140-199	(869-032-00039-5)	16.00	Jan. 1, 1997
●200-1199	(869-032-00040-9)	30.00	Jan. 1, 1997
●1200-End	(869-032-00041-7)	21.00	Jan. 1, 1997
15 Parts:			
●0-299	(869-032-00042-5)	21.00	Jan. 1, 1997
●300-799	(869-032-00043-3)	32.00	Jan. 1, 1997
●800-End	(869-032-00044-1)	22.00	Jan. 1, 1997
16 Parts:			
●0-999	(869-032-00045-0)	30.00	Jan. 1, 1997
●1000-End	(869-032-00046-8)	34.00	Jan. 1, 1997
17 Parts:			
●1-199	(869-032-00048-4)	21.00	Apr. 1, 1997
●200-239	(869-032-00049-2)	32.00	Apr. 1, 1997
●240-End	(869-032-00050-6)	40.00	Apr. 1, 1997
18 Parts:			
●1-399	(869-032-00051-4)	46.00	Apr. 1, 1997
●400-End	(869-032-00052-2)	14.00	Apr. 1, 1997
19 Parts:			
●1-140	(869-032-00053-1)	33.00	Apr. 1, 1997
●141-199	(869-032-00054-9)	30.00	Apr. 1, 1997
●200-End	(869-032-00055-7)	16.00	Apr. 1, 1997
20 Parts:			
●1-399	(869-032-00056-5)	26.00	Apr. 1, 1997
●400-499	(869-032-00057-3)	46.00	Apr. 1, 1997
●500-End	(869-032-00058-1)	42.00	Apr. 1, 1997
21 Parts:			
●1-99	(869-032-00059-0)	21.00	Apr. 1, 1997
●100-169	(869-032-00060-3)	27.00	Apr. 1, 1997
●170-199	(869-032-00061-1)	28.00	Apr. 1, 1997
●200-299	(869-032-00062-0)	9.00	Apr. 1, 1997
●300-499	(869-032-00063-8)	50.00	Apr. 1, 1997
●500-599	(869-032-00064-6)	28.00	Apr. 1, 1997
●600-799	(869-032-00065-4)	9.00	Apr. 1, 1997
●800-1299	(869-032-00066-2)	31.00	Apr. 1, 1997
●1300-End	(869-032-00067-1)	13.00	Apr. 1, 1997
22 Parts:			
●1-299	(869-032-00068-9)	42.00	Apr. 1, 1997
●300-End	(869-032-00069-7)	31.00	Apr. 1, 1997
●23	(869-032-00070-1)	26.00	Apr. 1, 1997
24 Parts:			
●0-199	(869-032-00071-9)	32.00	Apr. 1, 1997
●200-499	(869-032-00072-7)	29.00	Apr. 1, 1997
●500-699	(869-032-00073-5)	18.00	Apr. 1, 1997
●700-1699	(869-032-00074-3)	42.00	Apr. 1, 1997
●1700-End	(869-032-00075-1)	18.00	Apr. 1, 1997
●25	(869-032-00076-0)	42.00	Apr. 1, 1997
26 Parts:			
●§§ 1.0-1-1.60	(869-032-00077-8)	21.00	Apr. 1, 1997
●§§ 1.61-1.169	(869-032-00078-6)	44.00	Apr. 1, 1997
●§§ 1.170-1.300	(869-032-00079-4)	31.00	Apr. 1, 1997
●§§ 1.301-1.400	(869-032-00080-8)	22.00	Apr. 1, 1997
●§§ 1.401-1.440	(869-032-00081-6)	39.00	Apr. 1, 1997
●§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
●§§ 1.501-1.640	(869-032-00083-2)	28.00	Apr. 1, 1997
●§§ 1.641-1.850	(869-032-00084-1)	33.00	Apr. 1, 1997
●§§ 1.851-1.907	(869-032-00085-9)	34.00	Apr. 1, 1997
●§§ 1.908-1.1000	(869-032-00086-7)	34.00	Apr. 1, 1997
●§§ 1.1001-1.1400	(869-032-00087-5)	35.00	Apr. 1, 1997
●§§ 1.1401-End	(869-032-00088-3)	45.00	Apr. 1, 1997
●2-29	(869-032-00089-1)	36.00	Apr. 1, 1997
30-39	(869-032-00090-5)	25.00	Apr. 1, 1997
●40-49	(869-032-00091-3)	17.00	Apr. 1, 1997
●50-299	(869-032-00092-1)	18.00	Apr. 1, 1997
●300-499	(869-032-00093-0)	33.00	Apr. 1, 1997
500-599	(869-032-00094-8)	6.00	[4] Apr. 1, 1990
●600-End	(869-032-00095-3)	9.50	Apr. 1, 1997
27 Parts:			
●1-199	(869-032-00096-4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
●200-End	(869-032-00097-2)	17.00	Apr. 1, 1997
28 Parts:			
●1-42	(869-032-00098-1)	36.00	July 1, 1997
●43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
●0-99	(869-032-00100-5)	27.00	July 1, 1997
●100-499	(869-032-00101-4)	12.00	July 1, 1997
●500-899	(869-032-00102-2)	41.00	July 1, 1997
●900-1899	(869-032-00103-1)	21.00	July 1, 1997
●1900-1910 (§§ 1900 to 1910.999)	(869-032-00104-9)	43.00	July 1, 1997
1910 (§§ 1910.1000 to end)	(869-032-00105-7)	29.00	July 1, 1997
●1911-1925	(869-032-00106-5)	19.00	July 1, 1997
●1926	(869-032-00107-3)	31.00	July 1, 1997
●1927-End	(869-032-00108-1)	40.00	July 1, 1997
30 Parts:			
●1-199	(869-032-00109-0)	33.00	July 1, 1997
●200-699	(869-032-00110-3)	28.00	July 1, 1997
●700-End	(869-032-00111-1)	32.00	July 1, 1997
31 Parts:			
●0-199	(869-032-00112-0)	20.00	July 1, 1997
●200-End	(869-032-00113-8)	42.00	July 1, 1997
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[3] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-032-00114-6)	42.00	July 1, 1997
●191-399	(869-032-00115-4)	51.00	July 1, 1997
●400-629	(869-032-00116-2)	33.00	July 1, 1997
●630-699	(869-032-00117-1)	22.00	July 1, 1997
●700-799	(869-032-00118-9)	28.00	July 1, 1997
●800-End	(869-032-00119-7)	27.00	July 1, 1997
33 Parts:			
1-124	(869-032-00120-1)	27.00	July 1, 1997
125-199	(869-032-00121-9)	36.00	July 1, 1997
●200-End	(869-032-00122-7)	31.00	July 1, 1997
34 Parts:			
●1-299	(869-032-00123-5)	28.00	July 1, 1997
●300-399	(869-032-00124-3)	27.00	July 1, 1997
●400-End	(869-032-00125-1)	44.00	July 1, 1997
●35	(869-032-00126-0)	15.00	July 1, 1997
36 Parts			
●1-199	(869-032-00127-8)	20.00	July 1, 1997
200-299	(869-032-00128-6)	21.00	July 1, 1997
300-End	(869-032-00129-4)	34.00	July 1, 1997
●37	(869-032-00130-8)	27.00	July 1, 1997
38 Parts:			
0-17	(869-032-00131-6)	34.00	July 1, 1997
●18-End	(869-032-00132-4)	38.00	July 1, 1997
●39	(869-032-00133-2)	23.00	July 1, 1997
40 Parts:			
●1-49	(869-032-00134-1)	31.00	July 1, 1997
●50-51	(869-032-00135-9)	23.00	July 1, 1997
52 (52.01-52.1018)	(869-032-00136-7)	27.00	July 1, 1997
52 (52.1019-End)	(869-032-00137-5)	32.00	July 1, 1997
●53-59	(869-032-00138-3)	14.00	July 1, 1997
60	(869-032-00139-1)	52.00	July 1, 1997
●61-62	(869-032-00140-5)	19.00	July 1, 1997
●63-71	(869-032-00141-3)	57.00	July 1, 1997
●72-80	(869-032-00142-1)	35.00	July 1, 1997
●81-85	(869-032-00143-0)	32.00	July 1, 1997
86	(869-032-00144-8)	50.00	July 1, 1997
●87-135	(869-032-00145-6)	40.00	July 1, 1997
●136-149	(869-032-00146-4)	35.00	July 1, 1997
●150-189	(869-032-00147-2)	32.00	July 1, 1997
●190-259	(869-032-00148-1)	22.00	July 1, 1997
●260-265	(869-032-00149-9)	29.00	July 1, 1997
●266-299	(869-032-00150-2)	24.00	July 1, 1997
●300-399	(869-032-00151-1)	27.00	July 1, 1997
●400-424	(869-032-00152-9)	33.00	[6] July 1, 1996
●425-699	(869-032-00153-7)	40.00	July 1, 1997
●700-789	(869-032-00154-5)	38.00	July 1, 1997
●790-End	(869-032-00155-3)	19.00	July 1, 1997
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
●1-100	(869-032-00156-1)	14.00	July 1, 1997
101	(869-032-00157-0)	36.00	July 1, 1997
●102-200	(869-032-00158-8)	17.00	July 1, 1997
201-End	(869-032-00159-6)	15.00	July 1, 1997
42 Parts:			
●1-399	(869-028-00163-7)	32.00	Oct. 1, 1996
●400-429	(869-028-00164-5)	34.00	Oct. 1, 1996
●430-End	(869-028-00165-3)	44.00	Oct. 1, 1996
43 Parts:			
●1-999	(869-028-00166-1)	30.00	Oct. 1, 1996
●1000-end	(869-028-00167-0)	45.00	Oct. 1, 1996
●44	(869-028-00168-8)	31.00	Oct. 1, 1996
45 Parts:			
●1-199	(869-028-00169-6)	28.00	Oct. 1, 1996
●200-499	(869-028-00170-0)	14.00	[5] Oct. 1, 1995
●500-1199	(869-032-00168-5)	29.00	Oct. 1, 1997
●1200-End	(869-028-00172-6)	36.00	Oct. 1, 1996
46 Parts:			
●1-40	(869-028-00173-4)	26.00	Oct. 1, 1996
●41-69	(869-028-00174-2)	21.00	Oct. 1, 1996
*●70-89	(869-032-00172-3)	11.00	Oct. 1, 1997
●90-139	(869-028-00176-9)	26.00	Oct. 1, 1996
●140-155	(869-028-00177-7)	15.00	Oct. 1, 1996
●156-165	(869-028-00178-5)	20.00	Oct. 1, 1996
●166-199	(869-028-00179-3)	22.00	Oct. 1, 1996
●200-499	(869-032-00177-4)	21.00	Oct. 1, 1997
●500-End	(869-032-00178-2)	17.00	Oct. 1, 1997
47 Parts:			
●0-19	(869-028-00182-3)	35.00	Oct. 1, 1996
●20-39	(869-028-00183-1)	26.00	Oct. 1, 1996
●40-69	(869-028-00184-0)	18.00	Oct. 1, 1996
●70-79	(869-028-00185-8)	33.00	Oct. 1, 1996
●80-End	(869-028-00186-6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1-51)	(869-028-00187-4)	45.00	Oct. 1, 1996
●1 (Parts 52-99)	(869-028-00188-2)	29.00	Oct. 1, 1996
●2 (Parts 201-251)	(869-028-00189-1)	22.00	Oct. 1, 1996
●2 (Parts 252-299)	(869-028-00190-4)	16.00	Oct. 1, 1996
●3-6	(869-028-00191-2)	30.00	Oct. 1, 1996
●7-14	(869-028-00192-1)	29.00	Oct. 1, 1996
●15-28	(869-028-00193-9)	38.00	Oct. 1, 1996
●29-End	(869-028-00194-7)	25.00	Oct. 1, 1996
49 Parts:			
*●1-99	(869-032-00191-0)	31.00	Oct. 1, 1997
●100-185	(869-028-00196-3)	50.00	Oct. 1, 1996
186-199	(869-032-00193-6)	11.00	Oct. 1, 1997
●200-399	(869-028-00198-0)	39.00	Oct. 1, 1996
●400-999	(869-028-00199-8)	49.00	Oct. 1, 1996
●1000-1199	(869-028-00200-5)	23.00	Oct. 1, 1996
●1200-End	(869-028-00201-3)	15.00	Oct. 1, 1996
50 Parts:			
●1-199	(869-028-00202-1)	34.00	Oct. 1, 1996
●200-599	(869-028-00203-0)	22.00	Oct. 1, 1996
●600-End	(869-028-00204-8)	26.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-032-00047-6)	45.00	Jan. 1, 1997
Complete 1997 CFR set		951.00	1997
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
Complete set (one-time mailing)		264.00	1996
Complete set (one-time mailing)		264.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice.* You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFR  SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO  SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. (Price includes regular domestic postage and handling, and is subject to change.) International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

105th Congress, 2nd Session, 1998

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 105th Congress, 2nd Session, 1998.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code: * 6216

S3

Charge your order. It's Easy!

☐ **YES,** enter my subscription(s) as follows:

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 105th Congress, 2nd Session, 1998 for $190 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) 12/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5419

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions in 24x microfiche format:

___ **Federal Register** (MFFR) ❑ One year at $220 each ❑ Six months at $110

___ **Code of Federal Regulations** (CFRM7) ❑ One year at $247 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

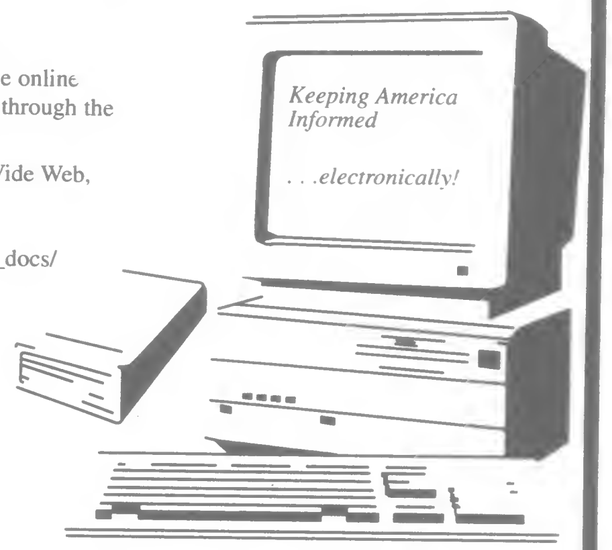
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.access.gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



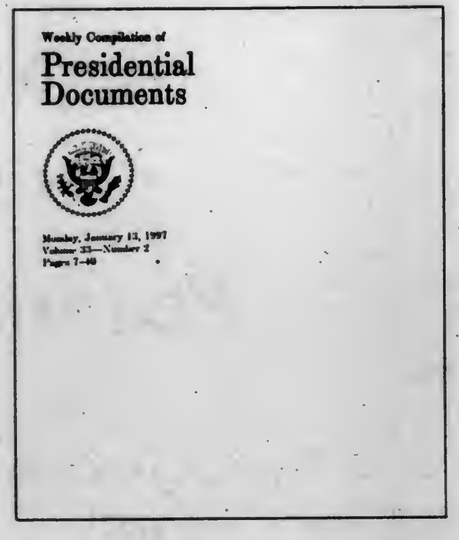
You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev 4/23)

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5420

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, Zip code)

_____
(Daytime phone including area code)

_____
(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–16–97
Vol. 62 No. 241

federal register

Tuesday
December 16, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106
133

12–16–97
Vol. 62 No. 241
Pages 65741–65990

federal register

Tuesday
December 16, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20406, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 241
Tuesday, December 16, 1997

Agricultural Marketing Service
PROPOSED RULES
Federal Seed Act:
National organic program; establishment, 65850–65967

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
NOTICES
Committees; establishment, renewal, termination, etc.:
Scientists Committee, 65795

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Bovine spongiform encephalopathy; disease status change—
Netherlands, 65747–65748

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65795–65796

Children and Families Administration
PROPOSED RULES
Head Start Program:
Indian tribal grantees replacement; agency identification; procedural change, 65778–65780

Commerce Department
See Census Bureau
See International Trade Administration
See National Institute of Standards and Technology
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65795

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
India, 65798

Copyright Office, Library of Congress
PROPOSED RULES
Copyright arbitration royalty panel rules of procedure:
Noncommercial educational broadcasting complusory license
Correction, 65777–65778
Copyright office and procedures:
Mechanical and digital phonorecord delivery rate adjustment proceeding
Correction, 65778

Defense Department
PROPOSED RULES
Acquisition regulations:
Uniform procurement instrument identification, 65782–65783

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Emergency immigrant education program; FY 1998, 65798–65799
Meetings:
National Assessment Governing Board, 65799–65800

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
PM10 Beta Attenuation Ambient Particle Monitors, models BAM 1020 and GBAM 1020, 65809

Equal Employment Opportunity Commission
NOTICES
Privacy Act:
Systems of records, 65809–65810

Executive Office of the President
See See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Eurocopter Deutschland GmbH, 65749–65752
PROPOSED RULES
Airworthiness directives:
SOCATA-Groupe AEROSPATIALE, 65768–65770
NOTICES
Airport privatization pilot program; application procedures
Stewart International Airport, NY, 65845
Exemption petitions; summary and disposition, 65845–65846

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arkansas, 65764–65765
California, 65766
Colorado, 65766–65767
Iowa, 65766
Kansas, 65764
Minnesota, 65765–65766
PROPOSED RULES
Radio stations; table of assignments:
California, 65782
Texas, 65781–65782
Wisconsin, 65781
Television broadcasting:
Two-way transmissions; multipoint distribution service and instructional television fixed service licensees participation, 65780–65781
NOTICES
Meetings; Sunshine Act, 65810–65811

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Peas, 65741–65747

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Iowa, 65811
Nebraska, 65811

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Ogden Energy China (Beta) Ltd., et al., 65803–65808
Hydroelectric applications, 65808–65809
Meetings:
Thermal impacts associated with Madison Development part of Missouri-Madison Hydroelectric Project; technical modeling workshop, 65809
Applications, hearings, determinations, etc.:
Energy 2000 Inc., 65800
Enron Energy Services Power, Inc., 65800
High Island Marketing, Inc., 65800–65801
Midcoast Interstate Transmission, Inc., 65801
Natural Gas Pipeline Co. of America, 65801–65802
NorAm Gas Transmission Co., 65802
SEMCO Energy Services, Inc., 65802–65803
Tennessee Gas Pipeline Co., 65803

Federal Highway Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65846–65847
Motor carrier safety standards:
Motor Carrier Regulatory Relief and Safety Demonstration Project, 65847–65848

Federal Railroad Administration
NOTICES
Orders:
Automatic train control and advanced civil speed enforcement system; requirements for Northeast Corridor railroads; correction, 65848

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 65811–65812
Formations, acquisitions, and mergers; correction, 65812

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Catesbaea melanocarpa, 65783–65787
Flatwoods salamander, 65787–65794
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Charlotte County, FL; Florida scrub-jay, 65816–65817

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Doramectin, 65752–65753
PROPOSED RULES
Medical devices:
Gastroenterology-urology devices—
Penile rigidity implants; reclassification, 65770–65775
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65812–65813
Reporting and recordkeeping requirements, 65813

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65812

Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations, 65813–65814

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Small cities development block grant program—
Small cities in New York; development grants and guaranteed loans, 65970–65984

Indian Affairs Bureau
NOTICES
Indian Self-Determination and Education Assistance Act; implementation:
Contracting; procedures manual; comment request, 65817

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Indian Gaming Commission
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Professional electric cutting tools from—
Japan, 65796
Meetings:
West-East conference of ministers of economy, industry, and trade (fifth session); secretarial delegation, 65796–65798

Labor Department
See Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 65820

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 65818

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
RULES
Royalty management:
Federal and indian leases; gas valuation regulations; costs and related amendments; transportation allowances, 65753–65764
NOTICES
Agency information collection activities:
Proposed collection; comment request, 65818–65819

Mine Safety and Health Administration
PROPOSED RULES
Metal and nonmetal mine safety and health:
Occupational noise exposure; report availability, 65777

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 65820–65821

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 65821

National Indian Gaming Commission
PROPOSED RULES
Indian Gaming Regulatory Act:
Indian gaming operations; annual fees, 65775–65777

National Institute of Standards and Technology
NOTICES
Meetings:
Weights and Measures National Conference, 65798

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 65814
National Institute of Allergy and Infectious Diseases, 65815
National Institute of Environmental Health Sciences, 65814–65815

National Park Service
NOTICES
Environmental statements; availability, etc.:
Crater Lake National Park, OR; visitor services plan, 65819
Environmental statements; notice of intent:
Lower Sheenjek River, AK, 65819
Meetings:
San Francisco Maritime National Historical Park Advisory Commission, 65819–65820

Nuclear Regulatory Commission
NOTICES
Certificates of compliance:
United States Enrichment Corp.—
Paducah Gaseous Diffusion Plant, KY, 65821–65824
Meetings:
Reactor Safeguards Advisory Committee, 65824
Meetings; Sunshine Act, 65824–65825
Reports and guidance documents; availability, etc.:
Standard review plan for transportation packages for radioactive material, 65825

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
PROCLAMATIONS
National Union for the Total Independence of Angola (UNITA); suspension of entry as immigrants and nonimmigrants (Proc. 7060), 65987–65988
EXECUTIVE ORDERS
National Union for the Total Independence of Angola (UNITA); prohibiting certa in transactions (EO 13069), 65989–65990

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 65836–65838
National Association of Securities Dealers, Inc., 65838–65839
Pacific Exchange, Inc., 65840–65841
Participants Trust Co., 65841–65842
Applications, hearings, determinations, etc.:
Emerald Funds, et al., 65825–65827
Financial Institutions Series Trust, et al., 65827–65829
Heartland Technology Inc., 65829–65832
Mentor Funds, et al., 65832–65834
Public utility holding company filings, 65834
Toronto Dominion Holdings, Inc., 65834–65836

Small Business Administration
NOTICES
Disaster loan areas:
Mississippi, 65842
Washington, 65843

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Trimax Holdings, Inc., 65848

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Dispute settlement panel establishment requests—
Korea; U.S. antidumping order on color television receivers, 65843–65844

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 65844

Separate Parts In This Issue

Part II
Department of Agriculture, Agricultural Marketing Service, 65850–65967

Part III
Department of Housing and Urban Development, 65970–65984

Part IV
The President, 65987–65990

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7060.....65987
Executive Orders:
13069.....65989

7 CFR
457.....65741
Proposed Rules:
205.....65850

9 CFR
94.....65747

14 CFR
39 (2 documents).....65749, 65750
Proposed Rules:
39.....65768

21 CFR
524.....65752
Proposed Rules:
876.....65770

25 CFR
Proposed Rules:
514.....65775

30 CFR
206.....65753
Proposed Rules:
56.....65777
57.....65777
62.....65777
70.....65777
71.....65777

37 CFR
Proposed Rules:
253.....65777
255.....65778

45 CFR
Proposed Rules:
1302.....65778

47 CFR
73 (7 documents).....65764, 65765, 65766
Proposed Rules:
1.....65780
21.....65780
73 (3 documents).....65781, 65782
74.....65780

48 CFR
Proposed Rules:
204.....65782

50 CFR
Proposed Rules:
17 (2 documents).....65783, 65787

Rules and Regulations

Federal Register
Vol. 62, No. 241
Tuesday, December 16, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Pea Crop Insurance Regulations; and Common Crop Insurance Regulations, Dry Pea Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of dry peas. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, separate dry peas and green peas into separate crop insurance provisions, include the current pea crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current pea crop insurance regulations to the 1997 and prior crop years.

EFFECTIVE DATE: December 16, 1997.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than on large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12998

This final rule has been reviewed in accordance with Executive Order No. 12998 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, May 15, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 26750 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.140, Dry Pea Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede

the current provisions for insuring dry peas found at 7 CFR part 416 (Pea Crop Insurance Regulations).

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 42 comments were received from an insurance service organization and reinsured companies. The comments received, and FCIC's responses, are as follows:

Comment: An insurance service organization recommended that FCIC consider combining contract seed peas and contract seed beans into one crop provision.

Response: FCIC will consider combining insurance provisions for these two crop types in the future.

Comment: An insurance service organization was concerned about late and prevented planting coverage for dry peas if revisions to the Basic Provisions are not finalized in time to be effective for the 1998 crop year.

Response: The late and prevented planting provisions in the Basic Provisions, will be applicable to this policy.

Comment: An insurance service organization questioned if the plant population is determined per unit or per acre within the unit in the definition of "adequate stand."

Response: FCIC has clarified the definition of "adequate stand" to specify that the plant population is determined on a per acre basis.

Comment: An insurance service organization questioned if the term "contract seed peas" had replaced "wrinkled varieties of dry peas" in the 1986–CHIAA 713 policy.

Response: The term "contract seed peas" has replaced "wrinkled varieties of dry peas" in those crop provisions.

Comment: An insurance service organization questioned if item (1) in the definition of "dry peas" includes peas grown for seed that do not qualify as contract seed for the purpose of the policy, and if this allows such peas to be included in the same unit as the dry edible types.

Response: Peas grown for seed that do not qualify as contract seed peas under the policy terms are treated the same as dry edible peas for purposes of the policy. Therefore, the peas grown for seed could be included in the same unit.

Comment: A reinsured company and an insurance service organization indicated that cultural practices may exist that are not recognized (or possibly known) by the Cooperative State Research, Education and Extension Service (CSREES). The comments indicated that the definition of "Good farming practices" is too restrictive since it limits acceptable farming practices to those recognized by the CSREES. The comments also suggested changing the last word of the definition from "county" to "area."

Response: CSREES recognizes farming practices that are considered acceptable for producing dry peas. If a producer is following practices currently not recognized as acceptable by CSREES, such recognition can be sought by interested parties. The actuarial documents are on a county basis. No changes have been made.

Comment: A reinsured company recommended adding the words "and quality" after the word "quantity" in the definition of "Irrigated practice."

Response: Water quality is an important issue. However, since no standards or procedures have been developed to measure water quality for insurance purposes, quality cannot be included in the definition. No change has been made.

Comment: An insurance service organization questioned the definition of "local market price" which refers to grades and prices for "dry peas or lentils." The definition of "dry peas" includes lentils as one dry pea type. It seems unnecessary to specify "or lentils" if the language in the definition of "local market price" is intended to exclude contract seed peas. The commenter recommended changing the words "dry peas or lentils" to "dry edible peas or lentils," but if there is no change, "lentils" should be defined separately from the "dry peas."

Response: Under the definition of "dry peas," peas grown for seed may be insured as dry edible peas. FCIC has amended the definition of local market price by deleting the words "and lentils."

Comment: A reinsured company questioned whether the reference to "late planting period" in the definition of "practical to replant" is still appropriate since there is not a section in these provisions for late and prevented planting. The commenter also asked if late planting period will be defined in the late and prevented planting provisions of the proposed Basic Provisions.

Response: Since the late planting period is no longer defined in these Crop Provisions, the words "late planting period" have been changed to "25 days." The Basic Provisions contain a definition for "late planting period" as well as sections with provisions for late and prevented planting.

Comment: An insurance service organization stated that a nurse crop is not always intended to be harvested separately, but may be removed with a herbicide or other means. The commenter recommended deleting the phrase "that is intended to be harvested separately," in the definition of "nurse crop."

Response: The primary reason that a nurse crop is planted is to improve the growing conditions of the crop with which it is grown. The definition has been revised to specify that the nurse crop is not intended to be harvested with the insured crop.

Comment: An insurance service organization questioned if the phrase "marketing window" in the definition of "practical to replant" applies to dry peas.

Response: The Federal Agriculture Improvement and Reform Act of 1996 requires FCIC to consider marketing window when determining whether it is practical to replant. No change has been made.

Comment: A reinsured company and an insurance service organization are concerned with the definition of "replanting." The reinsured company indicated that the phrase replace the pea seed and then replacing the pea seed is awkward and cumbersome. The insurance service organization recommended clarifying the definition of "replanting" by specifying the crop name as follows: "with the expectation of growing a successful pea crop."

Response: The definition of "replanting" clearly describes the steps required to replant the crop. The producer must first perform the cultural practices needed to replant the seed before replanting the seed. FCIC has revised the definition to specify that the crop be replanted with or expectation of producing at least the guarantee. No change has been made.

Comment: An insurance service organization stated that the definition of "salvage value" appears to be unnecessary as the term is not used elsewhere in these provisions.

Response: FCIC has deleted the phrase "salvage value" from these Crop Provisions.

Comment: An insurance service organization questioned whether the defined dry pea types are the same as the varietal groups of dry peas that qualify for basic units in the current 1986–CHIAA 713 provisions.

Response: The dry pea types defined in these Crop Provisions are the same as the varietal groups of dry peas that qualify for basic units in the current 1986–CHIAA 713 provisions, except that Austrian Winter Peas are added under these Crop Provisions. A basic unit may be divided into optional units by type.

Comment: An insurance service organization stated that section 2 allows basic units to be divided into optional units by type (varietal group). The proposed change would require an insured to keep separate production records to qualify for optional units by type and the insured would no longer qualify for the basic unit discount. The commenter asked whether there would be any corresponding rate adjustment?

Response: Insureds have the option of selecting optional units by type. It is not required. To qualify for optional units, the insured must maintain separate production records by type. The premium rate charged will depend on the unit structure selected by the insured.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(e)(4)(iii) of the proposed rule that states "In addition to, or instead of, establishing optional units by section, section equivalent or FSA Farm Serial Number since section 2(e)(4) of the proposed rule specifies that "Each optional unit must meet one or more of the following criteria.

Response: FCIC has revised this provision in the Basic Provisions.

Comment: An insurance service organization questioned if the various types of peas listed in the "dry pea" definition have similar growing seasons and harvest dates.

Response: With the exception of Austrian Winter Peas, the various types of peas listed in the "dry pea" definition have similar growing seasons and harvest dates. Austrian Winter Peas have a different growing season since they are normally planted in the fall. This difference should be no more complex than is the case for winter and spring wheats that also are grown in the Pacific Northwest.

Comment: A reinsured company and an insurance service organization questioned why the provisions in section 3 allow different price election percentages by dry pea type. This is not consistent with most other Crop Provisions unless each type is treated as a separate crop. They stated that this inconsistency may lead to confusion on the part of the insureds and agents.

Response: Producer groups have requested the flexibility to select a different percentage of the maximum price election for each type. The economic significance of different types of dry peas can vary considerably to a producer. Insurance providers have already programmed computer systems to allow variation in price election percentages for dry beans. There should be no significant costs if the same system is used for dry peas. No changes have been made.

Comment: An insurance service organization questioned why peas would be excluded from the seed contract "during" the crop year.

Response: The processor may modify the terms of the contract to exclude acreage or production because of over-production. If, for any reason, peas are excluded, they may not be covered under these Crop Provisions.

Comment: An insurance service organization questioned whether, under section 7(a)(3), interplanting would be limited to certain acres and whether this practice would require a growing season inspection.

Response: If the Special Provisions allow for interplanted dry peas, insurance coverage for this practice would apply to all acreage in a county. If a written agreement provides coverage for interplanted dry peas, the agreement itself would specify any limitations. In neither case, would a growing season inspection be required.

Comment: An insurance service organization stated that the term "lease" in section 7(b) is confusing. It questioned if this section should be moved to the definition of "seed company."

Response: FCIC agrees that the provisions are confusing and has revised section 7(b) to specify that the insured must retain control of the leased acreage.

Comment: An insurance service organization questioned the provisions in section 7(c) that reference an adequate stand as one capable of producing "at least the production guarantee" which conflicts with the definition of "adequate stand."

Response: Section 7(c) has been revised to refer to adequate stand.

Comment: An insurance service organization questioned the provisions of section 7(c), which permit insurance for Austrian Winter Peas, if provided for on the Special Provisions, the insured requests insurance on or before the sales closing date, and if the insurance provider agrees in writing that there is an adequate stand in the spring to produce the yield used to establish the production guarantee. The commenter asked if a growing season inspection would be required.

Response: A preliminary inspection will be required to determine if there is an adequate stand for insurance coverage. Once it is determined that there is an adequate stand, and insurance has attached, it will be up to the insurance provider to determine if a growing season inspection should be performed.

Comment: An insurance service organization recommended clarifying the provisions of section 7(d) to specify that coverage for replanted acreage will be based on the originally planted type, and to move this provision to section 8(b).

Response: To be consistent with other Crop Provisions, FCIC has added a provision to specify that the guarantee and premium for acreage replanted to a different insurable type will be based on the replanted type. Since this provision describes the insured crop, it will remain in section 7.

Comment: A reinsured company and an insurance service organization recommended deleting the phrase in section 8(b) to the extent that the majority of producers in the area would normally not further care for the crop as this phrase is subjective and meaningless, and causes problems if acreage of the crop is damaged after the final planting date, but other producers in the area are still replanting.

Response: FCIC has revised this provision to require replanting when most producers of the crop on acreage with similar characteristics are replanting.

Comment: A reinsured company questioned whether the phrase at the beginning of section 9 should be "In addition to" instead of "In accordance with."

Response: FCIC has amended the beginning of section 9 accordingly.

Comment: A reinsured company and an insurance service organization questioned if the provisions of section 9(b) applied only to Austrian Winter Peas or to all dry pea types.

Response: Section 9(b) has been clarified to indicate that the provisions apply to all dry pea types unless otherwise specified in the Special Provisions.

Comment: An insurance service organization indicated that the calculation sequence in section 12(b)(1)–(13) is difficult to follow because it is so wordy. They stated that it seems unnecessary to refer to the previous item by number as if it were on another page.

Response: Since some of the calculations involved are not performed in sequential order, it is necessary to refer to specific section numbers. Removal of the references would make the provisions less clear. FCIC will add an example for clarity.

Comment: An insurance service organization questioned if the reference to "each contract seed pea type," in section 12(b)(4), meant the same as each type that qualifies for a separate optional unit according to section

2(e)(4)(i), or if the optional unit division is applicable to only the "types" listed in the definition or "dry peas." If this is the case, the commenter recommended that another term should be used in this section as well as section 12(c).

Response: The provisions in sections 12(b)(4) and 12(c) should have referred to contract seed pea varieties. This section has been clarified accordingly.

Comment: A reinsured company questioned if the terms "value" and "actual value" in section 12(c) should be defined. The commenter also wanted to know how cull value is incorporated into the calculations to determine the value of production to count.

Response: FCIC has revised section 12(c) to refer to the "highest local market price" instead of "actual value" in order to set an objective standard for determining the value of damaged production. The provisions clearly indicate that the value of production to count is based on the new term local market price. The local market price of any "cull" production will be included when determining the amount of any indemnity.

Comment: An insurance service organization questioned how the "actual value" is determined for mature production that does not meet the minimum quality requirements contained in the seed pea contract. The commenter asked if the value of production that does not meet the minimum quality requirements contained in the seed pea contract would be considered to be the "salvage value."

Response: The "local market price" for contract seed pea production not meeting the minimum quality requirements contained in the seed pea contract will be the highest price obtainable for the production regardless of its ultimate disposition. If a salvage use proves to provide the highest value obtainable, then that "salvage value" will be used to determine the value of the production to count.

Comment: An insurance service organization received one comment stating that the policy should not allow the insured to defer settlement and wait for a later, generally lower appraisal.

Response: A later appraisal will only be necessary if the insurance provider and the insured do not agree on the appraisal or if the insurance provider believes that the crop needs to be carried farther to make a more accurate appraisal. If the insured does not provide sufficient care for the remaining crop, the insurance provider may use the original appraisal or assess an appraisal for an uninsured cause of loss. Therefore, no change has been made.

Comment: A reinsured company questioned if the term "condition" should be defined as this term is used in section 12(e)(3)(i)(C).

Response: FCIC has defined "conditioning" in section 1 of these Crop Provisions.

Comment: The crop insurance industry recommended that the requirement for a written agreement to be renewed each year be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are intended to change policy terms or permit insurance in unusual situations where such changes will not increase risk. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize exceptions to assure that the insured is well aware of the specific terms of the policy. The written agreement provisions are deleted and moved to the Basic Provisions.

In addition to the changes described above, FCIC has made the following editorial changes to the Dry Pea Crop Insurance Provisions:

1. Amended the paragraph preceding section 1 (Definitions) to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Amended the definition of "combining," "contract seed peas," "local market price," "practical to replant," and "seed company contract" for clarification. Deleted the definition of "contract price" since this term is not used in these provisions. Deleted the definition of "days," "FSA," "final planting date," "good farming practices," "interplanted," "irrigated practice," "production guarantee (per acre)," "replanting," "USDA," "timely planting," and "written agreement" because these definitions were moved to the Basic Provisions. Revised the definition of "planted acreage" and "practical to replant" to delete those provisions moved to the Basic Provisions.

3. Section 2—Deleted those provisions moved to the Basic Provisions.

4. Section 3—Removed the provision in section 3 regarding administrative fees because it is duplicative of provisions contained in 7 CFR part 400, subpart T.

5. Section 6—Deleted the requirements of "spring-planted" and "grown under contract with a seed company" since they are included in the definition of "contract seed peas."

6. Section 7(c)—Clarified that Austrian Winter Peas will be insured if authorized by the Special Provisions, if the insured requests insurance in writing for such dry peas, and if the insurance provider agrees in writing to provide coverage.

7. Section 12(d)(1)(iv)(B)—Clarified language to indicate that if the producer continues to care for the crop, the amount of production to count will be the harvested production or the reappraised amount if the crop is not harvested.

In general, FCIC has clarified some language to make these provisions easier to read.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the dry pea insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is December 31, 1997. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance, Dry pea, Pea crop insurance regulations.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation, hereby amends 7 CFR part 457, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.140 is added to read as follows:

§ 457.140 Dry pea crop insurance provisions.

The Dry Pea Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Dry Pea Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions.

Adequate stand. A population of live plants per acre that will produce at least the yield used to establish your production guarantee.

Base price. The price per pound stipulated in the processor contract without regard to discounts or incentives that may apply, and that will be paid to the producer for at least 50 percent of the total production under contract with the seed company.

Combining. A mechanical process that separates the peas from the pods and other vegetative matter and place the peas into a temporary storage receptacle.

Conditioning. A process that improves the quality of production by screening or any other operation commonly used in the dry pea industry to remove dry peas that are deficient in quality.

Contract seed peas. Dry peas produced for seed to be planted at a future date and that:

(a) Are grown on acreage enrolled in the seed certification program administered by the state in which the peas are produced;

(b) Are grown on acreage planted in the spring; and

(c) Are under a seed company contract.

Dry peas. Peas of the following types:

(a) All spring-planted smooth green and yellow varieties of commercial dry edible peas, and peas grown to produce seed to be planted at a future date that do not meet the requirements contained in the seed company contract;

(b) All fall-planted varieties of Austrian Winter Peas only if provided for in the Special Provisions;

(c) All spring-planted varieties of lentils; and

(d) All varieties of contract seed peas.

Harvest. Combining of dry peas.

Local market price. The cash price per pound for the U.S. No. 2 grade of dry peas as determined by us. Such price will be the prevailing dollar amount these buyers are willing to pay for dry peas containing the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade. Factors not associated with grading under the United States Standards for Whole Dry Peas, Split Peas and Lentils will not be considered.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to improve the growing conditions for the crop with which it is grown and that is not intended to be harvested with the insured crop.

Planted acreage. In addition to the definition contained in the Basic Provisions, dry peas must initially be planted in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant dry peas, except for seed peas, more than 25 days after the final planting date unless replanting is generally occurring in the area. For seed peas, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the seed pea processor contract or the seed company agrees in writing to accept such production.

Price election. In addition to the provisions of the definition contained in the Basic Provisions, the price election for contract seed peas will be a percentage (not to exceed 100 percent) of the base price that you elect.

Seed company. Any business enterprise regularly engaged in the processing of contract seed peas, that possesses all licenses and permits for marketing contract seed peas required by the state in which it operates, and that owns, or has contracted, sufficient drying, screening, and bagging or packaging equipment to accept and process the contract seed peas within a reasonable amount of time after harvest.

Seed company contract. A written agreement between the producer and the seed company, executed by the acreage reporting date, containing at a minimum:

(a) The producer's promise to plant and grow one or more specific varieties of contract seed peas, and deliver the production from those varieties to the seed company;

(b) The seed company's promise to purchase all the production stated in the contract; and

(c) A fixed price, or a method to determine such price based on published information compiled by a third party, that will be paid to the producer for at least 50 percent of the production stated in the contract.

2. Unit Division.

(a) In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established for each pea type listed in section 1 of these Crop Provisions.

(b) Contract seed peas may qualify for optional units only if the seed company contract specifies the number of acres under contract. Contract seed peas produced under a seed company contract that specifies only an amount of production or a combination of acreage and production, are not eligible for optional units.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the dry peas, including contract seed peas, in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each dry pea type so designated in the Special Provisions. The price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you may choose 80 percent of the maximum price election for another type. However, if you elect the Catastrophic Risk Protection level of insurance for any dry pea type, the same level of coverage will be applicable to all insured acreage in the county.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the provisions of section 6 of the Basic Provisions, you must submit a copy of the seed company contract to us on or before the acreage reporting date if you are insuring contract seed peas.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the dry pea types in the county (including Austrian Winter Peas if you request insurance for such peas in accordance with section 7(c)) for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvest as dry peas and which, if grown under a seed company contract, are not excluded from such contract during the crop year;

(3) That are grown in accordance with the requirements of the seed company contract, if applicable;

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the contract seed peas are grown, you are at risk of loss, and the processor contract is in effect.

(c) Austrian Winter Peas are only insurable if you request insurance in writing for such dry peas, and we agree in writing to provide coverage. Your request to insure Austrian Winter Peas must be submitted to us not later than the sales closing date. We will not agree to insure Austrian Winter Peas unless an adequate stand exists in the spring.

(d) Any acreage of dry peas that is destroyed and replanted to a different insurable type of dry peas will be considered insured acreage. The guarantee and premium for acreage replanted to a different insurable type will be based on the replanted type and will be calculated in accordance with sections 3 and 7 of the Basic Provisions and section 3 of these Crop Provisions.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions:

(a) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions; or

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that most producers of the crop or acreage with similar characteristics in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant. We will not require you to replant if it is not practical to replant the type of dry peas originally planted.

9. Insurance Period.

In addition to the provisions of section 11 of the Basic Provisions:

(a) Coverage for Austrian Winter Peas, will begin on the earlier of March 16 or the date we agree to accept the acreage for insurance, but not before March 1; and

(b) The calendar date for the end of the insurance period for all insurable types of dry peas in the county is September 30 of the crop year in which the crop normally is harvested unless otherwise specified in the Special Provisions.

10. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a) through (g) that occurs during the insurance period.

11. Duties In The Event of Damage or Loss.

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. If you intend to destroy the crop prior to harvest, the samples must not be destroyed until after our inspection.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage to your pea crop covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage of each dry pea type, if applicable, excluding contract seed peas, by its respective production guarantee;

(2) Multiplying each result of section 12(b)(1) by the respective price election;

(3) Totaling the results of section 12(b)(2);

(4) Multiplying the insured acreage of each contract seed pea variety by its respective production guarantee;

(5) Multiplying each result of section 12(b)(4) by the applicable base price;

(6) Multiplying each result of section 12(b)(5) by your selected price election percentage;

(7) Totaling the results of section 12(b)(6);

(8) Totaling the results of section 12(b)(3) and section 12(b)(7);

(9) Multiplying the total production to be counted of each dry pea type, excluding contract seed peas, if applicable (see section 12(d)), by the respective price elections;

(10) Totaling the value of all contract seed pea production (see section 12(c));

(11) Totaling the results of section 12(b)(9) and section 12(b)(10);

(12) Subtracting the result of section 12(b)(11) from the result in section 12(b)(8); and

(13) Multiplying the result of section 12(b)12 by your share.

For example:

You have a 100 percent share in 100 acres of spring-planted smooth green dry edible peas in the unit, with a guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee;

(2) 400,000 pounds × $0.09 price election = $36,000.00 value of guarantee;

(9) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count; $36,000.00 value of guarantee − $18,000.00 value of production to count = $18,000.00 loss; and

(13) $18,000.00 × 100 percent = $18,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of contract seed peas in the same unit, with a guarantee of 5,000 pounds per acre and a base price of $0.40 per pound. Your selected price election percentage is 75 percent. You are only able to harvest 450,000 pounds. Your total indemnity for both spring-planted smooth green dry edible peas and contract seed peas would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee for the spring-planted smooth green dry edible pea type, and

(4) 100 acres × 5,000 pounds = 500,000 pounds guarantee for the contract seed pea type;

(2) 400,000 pounds guarantee × $0.09 price election = $36,000.00 value of guarantee for the spring-planted smooth green dry edible pea type, and

(5) 500,000 pounds guarantee × $0.40 base price = $200,000.00 gross value of guarantee for the contract seed pea type;

(6) $200,000 × .75 price election percentage = $150,000 net value of guarantee for the contract seed pea type;

(8) $36,000.00+$150,000.00 = $186,000.00 total value of guarantee;

(9) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count for the spring-planted smooth green dry edible pea type, and

(10) 450,000 pounds × $0.30 = $135,000.00 value of production to count for the contract seed pea type;

(11) $18,000.00+$135,000.00 = $153,000.00 total value of production to count;

(12) $186,000.00 − $153,000.00 = $33,000.00 loss; and

(13) $33,000.00 loss × 100 percent = $33,000.00 indemnity payment.

(c) The value of contract seed pea production to count for each variety in the unit will be determined as follows:

(1) For production meeting the minimum quality requirements contained in the seed company contract, and for production that does not meet such requirements due to uninsured causes:

(i) Multiplying the local market price or base price per pound, whichever is greater, by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(2) For mature production not meeting the minimum quality requirements contained in the seed pea processor contract due to insurable causes, and immature production that is appraised:

(i) Multiplying the highest local market price available for such dry peas by the price election percentage you selected; and

(ii) Multiplying the result by the number of pounds of such production.

(d) The total pea production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of dry peas, excluding Austrian Winter Peas, may be adjusted for quality deficiencies in accordance with section 12 (c) or (e), if applicable); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(e) Mature production of smooth green and yellow peas, lentils, and seed peas that do not qualify as contract seed peas under the policy terms, and that are not deliverable under the contract or are sold under the contract for less than the contract price, may be adjusted for quality deficiencies. No adjustment for quality deficiencies will be allowed for Austrian Winter Peas.

(1) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the United States Standards for Whole Dry Peas, Split Peas, and Lentils, result in production grading U.S. No. 2 or worse because of defects, color, skinned production (lentils only), odor, material weathering, or distinctly low quality; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(2) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these Crop Provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade dry peas under the authority of the United States Agricultural Marketing Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(3) Dry Pea production that is eligible for quality adjustment, as specified in sections 12(e) (1) and (2), will be reduced as follows:

(i) The highest local market price for the qualifying damaged production will be determined on the earlier of the date such damaged production is sold or the date of final inspection for the unit. The highest local market price for the qualifying damaged production will be determined in the local area to the extent feasible. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the dry peas to those buyers. Discounts used to establish the net value of the damaged production will be limited to those that are usual, customary, and reasonable.

The value will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the dry peas; except, if the value of the damaged production can be increased by conditioning, we may reduce the value of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning;

(ii) The value per pound of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor;

(iii) The number of pounds of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the production count to be included in section 12(d); and

(iv) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C., on December 9, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32619 Filed 12–15–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–034–3]

Change in Disease Status of The Netherlands Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that added The Netherlands to the list of countries where bovine spongiform encephalopathy (BSE) exists. We took this action because BSE was detected in a cow in The Netherlands. The effect of the interim rule was to prohibit or restrict the importation of live ruminants and certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in The Netherlands. The interim rule was necessary to reduce the risk that BSE could be introduced into the United States.

EFFECTIVE DATE: The interim rule was effective on March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 10, 1997, and published in the **Federal Register** on April 15, 1997 (62 FR 18263–18264, Docket No. 97–034–1), we amended our regulations by adding The Netherlands to the list of countries where BSE exists. We took this action because BSE was detected in a cow born in The Netherlands. We also published another interim rule in the **Federal Register** on May 7, 1997 (62 FR 24802, Docket No. 97–034–2), that changed the effective date of the April 1997 interim rule from April 10, 1997, to March 21, 1997. The change in effective date was necessary to ensure that the prohibitions and restrictions established by the April 1997 interim rule applied to animal products and byproducts that were shipped to the United States from The Netherlands between March 21, 1997, when BSE was detected in The Netherlands, and April 10, 1997, when the first interim rule was signed.

Comments on the interim rule were required to be received on or before June 16, 1997. We received two comments by that date. They were from a company that imports cattle semen and an importer of meat and meat byproducts. They are discussed below.

The commenters did not oppose adding The Netherlands to the list of countries where BSE exists. However, one comment expressed concerns about Animal and Plant Health Inspection Service regulations that restrict the importation of veal from countries where BSE is known to exist. The other comment concerned the trade protocols of the United States and other countries for importing cattle semen from countries where BSE exists. Both comments are outside the scope of the interim rule. However, we continually review and update our regulations to make them consistent with current scientific data. We will consider these comments as we review our regulations. If we decide to make any changes to our regulations in response to these comments, we will publish a proposed rule in the **Federal Register.**

Therefore, based on the rationale set forth in the April 1997 interim rule, we are affirming the provisions of the interim rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866 and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended our regulations by adding The Netherlands to the list of countries where BSE exists. We took this action because BSE was detected in a cow in that country. The effect of the interim rule was to prohibit or restrict the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in The Netherlands. The interim rule was necessary to reduce the risk that BSE could be introduced into the United States.

BSE is a slowly progressing fatal degenerative disease that affects the central nervous system of cattle. The disease was first diagnosed in 1986 in Great Britain, where it is sometimes called "mad cow disease." Infected animals may display changes in temperament, abnormal posture, incoordination and difficulty in rising, decreased milk production, and loss of body condition despite continued appetite. The causative agent of BSE is not completely characterized, and there is no treatment for the disease. At the current time, the disease is not known to exist in the United States. There is no vaccine to prevent BSE nor is there a test to detect the disease in live animals. Given those factors, the import restrictions imposed by the interim rule are the most effective means available for ensuring that BSE does not enter the United States from The Netherlands.

Preventing the introduction of BSE into the United States is critical. In addition to the potential threat to public health, BSE also has the potential to cause severe economic hardship for the U.S. livestock industry. Great Britain's experience with the disease provides an insight into how damaging BSE can be to livestock. Between November 1986 (when BSE was first diagnosed in Great Britain) and May 1996, an estimated 160,540 head of cattle in approximately 33,455 herds were diagnosed with BSE in Great Britain. The epidemic peaked there in January 1993, with almost 1,000 new cases per week. All of the animals in Great Britain showing signs of BSE, most of which were dairy cows between 3 and 5 years of age, were destroyed.

If BSE were introduced into the United States, livestock losses would likely be much greater than in Great Britain, because the United States raises more cattle. However, assuming the same number of cattle losses in the United States as in Great Britain (160,540), the introduction of BSE into the United States would cost U.S. livestock producers $177 million, based on the current price of $1,100 per head for dairy cows. The $177 million figure does not include higher production costs that would likely be incurred by U.S. producers, due to the presence of the disease.

U.S. export and consumer markets would also be affected. The United States currently restricts the importation of live ruminants and ruminant products from all countries where BSE is known to exist. Presumably, if BSE were introduced into the United States, other countries would adopt similar restrictions on the exportation of live ruminants and ruminant products from the United States. Such restrictions by other countries would be devastating economically. In 1993, for example, the dollar value of U.S. exports of both bovine animals and bovine animal meat totaled $2.1 billion. Those export sales could be lost in their entirety. Consumers would incur higher costs due to higher prices for ruminant products and increased prices for competitive products, such as poultry.

We expect that restricting the importation of live ruminants and ruminant products from The Netherlands will have little or no impact on U.S. consumers. This is because The Netherlands does not export live ruminants to the United States. Also, U.S. imports of ruminant products from The Netherlands are minimal when compared against total U.S. imports or overall U.S. supply (imported and domestically produced) of those commodities. In 1996, the volume of ruminant products imported from The Netherlands, categorized into seven broad product groups, was as follows: 149,906 kilograms (kg) of fresh or frozen beef with bone; 2,060 kg of prepared or preserved beef; 307,259 kg of variety meats; 458 cattle embryos; 3,016,847 kg of miscellaneous animal products; and 1,587,244 kg of animal feed. These seven product groups represent 40 subcategories of products imported from The Netherlands. For most subcategories, The Netherlands' share of the total U.S. imports of that product was 1 percent or less. The Netherlands' share exceeded 10 percent of the total U.S. imports in only 5 subcategories. However, even for those 5 product subcategories, The Netherlands' share of overall U.S. supply was not significant. Because The Netherlands is not a significant supply source for the U.S. market, restrictions on imports from The Netherlands should not have a significant effect on consumer prices in the United States.

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small entities. We expect the interim rule will have little or no impact on small entities in the United States because imports of ruminants and ruminant products from The Netherlands affected by this interim rule have been minimal in the past. Small brokers, agents, and others in the United States who are directly involved in the importation and sale of ruminant products from The Netherlands should be able to obtain substitutes from alternative sources. We were unable to determine the number of small entities engaged in these activities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 62 FR 18263–18264 on April 15, 1997.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 10th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32779 Filed 12–15–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–44–AD; Amendment 39–10245; AD 97–26–02]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) Model BO–105A, BO–105C, BO–105S, BO–105LS A–1, and BO–105LS A–3 Helicopters and Eurocopter Canada Ltd. Model BO–105LS A–3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter Deutschland GmbH (ECD) (Eurocopter Deutschland) Model BO–105A, BO–105C, BO–105S, BO–105LS A–1, and BO–105LS A–3 helicopters; and Eurocopter Canada Ltd. Model BO–105LS A–3 helicopters. This action requires visual inspections for cracks in the ribbed area of the main rotor mast flange (flange). This amendment is prompted by a report of an operator discovering a crack in the flange after experiencing in-flight vibrations. The actions specified in this AD are intended to detect cracks in the flange, which, if not detected, could result in failure of the flange and subsequent loss of control of the helicopter.

DATES: Effective December 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 1997.

Comments for inclusion in the Rules Docket must be received on or before February 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–44–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany recently notified the FAA that an unsafe condition may exist on Eurocopter Deutschland Model BO–105A, BO–105C, BO–105S, BO–105LS A–1, and BO–105LS A–3 helicopters. The Federal Republic of Germany advises that a main rotor mast was found to have cracks of critical magnitude in the area of the flange. Additionally, Transport Canada, the airworthiness authority for Canada, recently notified the FAA that the same unsafe condition may exist on Eurocopter Canada Ltd. Model BO–105LS A–3 helicopters. The cause of the cracks is under investigation. Until the cause of the crack has been determined, the flange must be subjected to an immediate inspection and repetitive visual crack inspection at intervals not to exceed 100 hours time-in-service until further notice.

Eurocopter Deutschland has issued Eurocopter Deutschland GmbH Alert Service Bulletin No. ASB–BO 105–10–110, dated August 27, 1997, which specifies visually inspecting the area of the holes on the underside of the flange for cracks, especially in the ribbed area between the holes. The LBA classified this service bulletin as mandatory and issued AD 97–275, dated September 25, 1997, in order to assure the continued airworthiness of these helicopters in the Federal Republic of Germany. Eurocopter Canada Ltd. has issued Eurocopter Canada Ltd. Alert Service Bulletin No. ASB–BO 105 LS–10–9, dated September 11, 1997, for similar inspection. Transport Canada has classified this service bulletin mandatory and issued AD CF–97–18, dated September 30, 1997, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in the Federal Republic of Germany and Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA and Transport Canada have kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA and Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Deutschland Model BO–105A, BO–105C, BO–105S, BO–105LS A–1, and BO–105LS A–3 helicopters and Eurocopter Canada Ltd. BO–105LS A–3 helicopters of the same type designs registered in the United States, this AD is being issued to detect cracks in the flange, which, if not detected, could result in failure of the flange and subsequent loss of control of the helicopter. The flange is a part of the main rotor mast assembly and therefore a critical component of the flight control system. Due to the criticality of the flange to the continued safe flight of the affected helicopters, and the required inspection before further flight, this rule must be issued immediately to correct an unsafe condition in the affected helicopters. This AD requires, before further flight, a visual inspection of the ribbed area of the flange for cracks using a 5-power or higher magnifying glass, and thereafter, repeated visual inspections at intervals not to exceed 100 hours time-in-service. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether

additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–44–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–26–02 Eurocopter Deutschland GmbH (ECD) and Eurocopter Canada LTD.: Amendment 39–10245. Docket No. 97–SW–44–AD.

Applicability: Eurocopter Deutschland GmbH Model BO–105A, BO–105C, BO–105S, BO–105LS A–1, and BO–105LS A–3 helicopters and Eurocopter Canada Ltd. BO–105LS A–3 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks in the main rotor mast flange (flange), which, if not detected, could result in failure of the flange and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and thereafter at intervals not to exceed 100 hours time-in-service, visually inspect the flange in the ribbed area for cracks using a 5-power or higher magnifying glass in accordance with paragraphs 2.A.1. and 2.A.2. of the Accomplishment Instructions of Eurocopter Deutschland GmbH Alert Service Bulletin No. ASB–BO 105–10–110, dated August 27, 1997, or Eurocopter Canada Alert Service Bulletin No. ASB–BO 105 LS–10–9, dated September 11, 1997, as applicable.

(b) If a crack is found, remove the cracked main rotor mast and replace it with an airworthy main rotor mast.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits will not be issued.

(e) The inspection shall be done in accordance with Eurocopter Deutschland GmbH Alert Service Bulletin No. ASB–BO 105–10–110, dated August 27, 1997, or Eurocopter Canada Alert Service Bulletin No. ASB–BO 105 LS–10–9, dated September 11, 1997, as applicable. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 31, 1997.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (Germany) AD 97–275, dated September 25, 1997, and in Transport Canada AD CF–97–18, dated September 30, 1997.

Issued in Fort Worth, Texas, on December 5, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–32720 Filed 12–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–45–AD; Amendment 39–10246; AD 97–26–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) (Eurocopter Deutschland) Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter Deutschland Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters. This action requires visual inspections for cracks in the ribbed area of the main rotor mast flange (flange). This amendment is prompted by one report of cracks in a flange. The actions specified in this AD are intended to detect cracks in the flange, which, if not detected, could result in failure of the flange and subsequent loss of control of the helicopter.

DATES: Effective December 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 1997.

Comments for inclusion in the Rules Docket must be received on or before February 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–45–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany recently notified the FAA that an unsafe condition may exist on Eurocopter Deutschland Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters. The LBA advises that a main rotor mast was found to have cracks of critical magnitude in the area of the flange. The cause of the cracks is under investigation. Until the cause of the cracks has been determined, the flange must be subjected to immediate and repetitive visual crack inspections until further notice.

Eurocopter Deutschland has issued Eurocopter Deutschland GmbH Alert Service Bulletin MBB–BK 117 No. ASB–MBB–BK 117–10–114, dated August 27, 1997, which specifies visually inspecting the area of the holes on the underside of the flange for cracks, especially in the ribbed area between the holes, and if cracks are found, contacting Eurocopter Deutschland before further flight for advice on how to proceed. The LBA classified this service bulletin as mandatory and issued LBA AD 97–276, effective September 25, 1997, in order to assure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Deutschland Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters of the same type design registered in the United States, this AD is being issued to detect cracks in the flange, which, if not detected could result in failure of the flange and subsequent loss of control of the helicopter. This AD requires, before further flight, a visual inspection of the ribbed area of the flange for cracks using a 5-power or higher magnifying glass, and thereafter, repeated visual inspections at intervals not to exceed 100 hours time-in-service. The actions are required to be accomplished in accordance with the service bulletin described previously. This flange is a part of the main rotor mast assembly and therefore a critical component of the flight control system. Due to the criticality of the flange to the continued safe flight of the affected helicopters, and the required inspection before further flight, this rule must be issued immediately to correct an unsafe condition in the affected helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–45–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–26–03 Eurocopter Deutschland: Amendment 39–10246. Docket No. 97–SW–45–AD.

Applicability: Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detects cracks in the main rotor mast flange (flange), which, if not detected, could result in failure of the flange and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter at intervals not to exceed 100 hours time-in-service, visually inspect the flange in the ribbed area for cracks using a 5-power or higher magnifying glass in accordance with paragraphs 2.A.1. and 2.A.2. of the Accomplishment Instructions in Eurocopter Deutschland GmbH Alert Service Bulletin MBB–BK 117 No. ASB–MBB–BK 117–10–114, dated August 27, 1997.

(b) If a crack is found as a result of the inspections specified in paragraph (a) of this AD, remove the cracked main rotor mast and replace it with an airworthy main rotor mast.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits will not be issued.

(e) The inspection shall be done in accordance with Eurocopter Deutschland GmbH Alert Service Bulletin MBB–BK 117 No. ASB–MBB–BK 117–10–114, dated August 27, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 31, 1997.

Note 3: The subject of this AD is addressed in Luftahrt-Bundesamt (Germany) AD 97–276, effective September 25, 1997.

Issued in Fort Worth, Texas, on December 5, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–32721 Filed 12–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Doramectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for topical use of doramectin for treatment and control of certain worm, grub, lice, and mite infections of cattle.

EFFECTIVE DATE: December 16, 1997.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, is sponsor of NADA 141–095 that provides for the use of Dectomax® (doramectin) 0.5 percent pour-on solution for beef cattle and female dairy cattle less than 20 months of age for treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, biting and sucking lice, and mange mites, to control infections and protect from reinfection with *Cooperia oncophora* and *Dictyocaulus viviparus* for 21 days, and *Ostertagia ostertagia, C. punctata,* and *Oesophagostomum radiatum* for 28 days after treatment. The NADA is approved as of September 16, 1997, and the regulations are amended by adding new § 524.770 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning September 16, 1997, because the NADA contains substantial evidence of the effectiveness of the drug involved, studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC OR TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.770 is added to read as follows:

§ 524.770 Doramectin.

(a) *Specifications.* Each milliliter of solution contains 5 milligrams of doramectin.

(b) *Sponsor.* See 000069 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.225 of this chapter.

(d) *Conditions of use—Cattle*—(1) *Amount.* 5 milligrams per 10 kilograms (5 milligrams per 22 pounds).

(2) *Indications for use.* For treatment and control of infections of gastrointestinal roundworms, lungworms, eyeworms, grubs, biting and sucking lice, and mange mites, and to control infections and to protect from reinfection with *Cooperia oncophora* and *Dictyocaulus viviparus* for 21 days, and *Ostertagia ostertagia, C. punctata,* and *Oesophagostomum radiatum* for 28 days after treatment.

(3) *Limitations.* Administer as a single dose. Do not slaughter cattle within 45 days of latest treatment. Not for use in female dairy cattle 20 months of age or older. Do not use in calves to be processed for veal. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: October 22, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–32807 Filed 12–15–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC06

Amendments to Transportation Allowance Regulations for Federal and Indian Leases to Specify Allowable Costs and Related Amendments To Gas Valuation Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Final rulemaking.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing valuation for royalty purposes of gas produced from Federal and Indian leases. The rule primarily addresses allowances for transportation of gas. The amendments clarify the methods by which gas royalties and deductions for gas transportation are calculated.

DATE: Effective February 1, 1998.

ADDRESSES: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier delivery to Building 85, Denver Federal Center, Denver, Colorado 80225, telephone (303) 231–3432, FAX (303) 231–3385, e-Mail David_Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, phone (303) 231–3432, FAX (303) 231–3385, e-Mail David_Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Theresa Walsh Bayani and Susan Lupinski, from Royalty Valuation Division, MMS, Lakewood, Colorado.

I. Background

MMS published a set of rules in 30 CFR part 206 governing gas valuation and gas transportation calculation methods to clarify and codify the departmental policy of granting deductions for the reasonable actual costs of transporting gas from a Federal or Indian lease when the gas is sold at a market away from the lease (53 FR 1272, January 15, 1988).

Since the 1988 rulemaking, Federal Energy Regulatory Commission (FERC) regulatory actions have significantly affected the gas transportation industry. Before these changes, gas pipeline companies served as the primary merchants in the natural gas industry. During that environment, pipelines:

- Bought gas at the wellhead,
- Transported the gas, and
- Sold the gas at the city gate to local distribution companies (LDC).

In the mid-1980's, FERC began establishing a competitive gas market, allowing shippers access to the pipeline transportation grid. These actions ensured that willing buyers and sellers could negotiate their own sales transactions.

Specifically, starting with the implementation of FERC Order 436, FERC began regulating pipelines as open access transporters and requiring nondiscriminatory transportation. This permitted downstream gas users (such as LDCs and industrial users) to buy gas directly from gas merchants in the production area and to ship that gas through interstate pipelines.

FERC Order 436 and amendments, plus the elimination of price controls, created a vigorous spot market. Producers and marketers, in competition for the sale of gas to end users, are now transporting substantial volumes of gas that they own through interstate pipelines.

In the early 1990's, FERC recognized that pipelines still held an advantage over competing sellers of gas. Pipelines held substantial market power and sold gas bundled with a transportation service. FERC remedied the inequities in the gas market by issuing FERC Order 636, effective May 18, 1992. Under the provisions of this order, FERC:

- Required the separation (unbundling) of sales and gas transportation services;
- Enabled the implementation of a capacity release program; and
- Allowed pipelines to assess shippers surcharges for services such as transition costs and FERC's annual charges (57 FR 13267, April 16, 1992).

The unbundled costs—previously embedded in a lump-sum charge—include:

- Transmission;
- Storage;
- Production; and
- Gathering costs.

Necessity for This Rulemaking

We reviewed our current gas transportation regulations (30 CFR 206.156 and 206.157 (for Federal leases), and 206.176 and 206.177 (for Indian leases) (1996)) and determined that they provide general authority to calculate transportation deductions for cost components resulting from implementing FERC Order 636 and previous FERC orders. However, we have determined that lessees and royalty payors need specific guidance and certainty on which components are deductible as transportation costs from royalty. This guidance is necessary because components previously aggregated and unidentifiable may now be separately identified in transportation contracts, and new costs unique to the FERC Order 636 environment are emerging.

Further, some of the components reflect non-deductible costs of marketing rather than transportation. We believe that without the clarification provided in this rule, lessees and payors

may claim improper deductions on their royalty reports and payments.

We issued a proposed rulemaking to clarify for the oil and gas industry which cost components or other charges are deductible (related to transportation) and which costs are not deductible (related to marketing) for Federal and Indian leases (61 FR 39931, July 31, 1996). The purpose of this rulemaking is also to clarify our existing policies. We received comments from 18 separate entities: Six responses from companies, six responses from industry trade associations, two responses from State representatives, one response from a State/Indian association, two responses from Indian tribes, and one response from an Indian tribal association.

This final rulemaking relates primarily to the effects of FERC Order 636 on interstate gas pipelines that FERC regulates. To the extent these same types of changes and issues are relevant for intrastate pipelines, our rule applies equally.

In conjunction with the changes to the transportation allowance regulations, we are also making certain changes to the gas valuation regulations. When FERC approves tariffs, they generally allow pipelines to include provisions ensuring that pipelines can maintain operational and financial control of their systems. These provisions may include requirements that shippers maintain pipeline receipts and deliveries within certain daily or monthly tolerances and that shippers cash-out accumulated imbalances. If a shipper over-delivers production to a pipeline, the pipeline may purchase the excess gas quantities from the shipper. If the gas quantity exceeds certain prescribed tolerances, the shipper may incur a penalty in the form of a substantially reduced price for that gas. We will not accept that penalty price as the value of production, and this rulemaking provides a method for valuing production sold under such circumstances.

Certain additions to revenues from the sale of natural gas may occur in the gas transportation environment. These issues are gas valuation issues beyond the scope of this rulemaking. However, these additions to revenues may be royalty bearing under existing regulations.

We also recognize that certain lessee gas transportation arrangements result in financial transactions not directly associated with the gas value. Such transactions may not have royalty consequences. If you are unsure whether your transactions result in additional royalty obligations, you may request valuation guidance from us.

The amendments discussed below apply to both arm's-length and non-arm's-length situations for valuing gas production and calculating transportation allowances.

II. Comments on Proposed Rule

We published a proposed rule at 61 FR 39931, 7/31/96. The proposed rulemaking provided for a 60-day public comment period which ended September 30, 1996, and was extended to October 30, 1996 (61 FR 48872, 9/17/96).

General Comments

The tribes believe that allowable deductions should be scrupulously examined and limited to the minimum amount for the economic best interest of the lessor tribe. They state that FERC-approved tariffs are not the actual, reasonable cost of transportation paid by the producer and should not be accepted. A few commenters stated that careful examination of tariffs is needed to assure revenue protection and accountability. These respondents claim that lessees believe tariffs are beyond our scrutiny once we permitted their use. They urge us to clearly state in this rulemaking that review of costs included in a tariff is not beyond audit review and that transportation allowances may be recalculated when the tariff does not reasonably reflect a lessee's actual costs.

One State commented that under no circumstances should the lessee be allowed to deduct transportation costs, including tariffs, in excess of the actual, reasonable costs incurred or paid, regardless of whether the transportation is arm's-length or non-arm's-length. One tribe and one Indian tribal association suggested that the preamble language should specify that allowances are limited to reasonable actual costs of transportation and are limited to no more than 50 percent of the value of the production. One tribe believes that this regulation changes the annual rent or royalty rate without the written consent of the tribe.

Several States and Indian commenters claim that clarifying the allowable charges under FERC Order 636 is important and pressing and urged us not to consider this rule an end to transportation allowance issues. They believe each cost must be evaluated against the lessees' duty to market production and that marketing costs are not a deductible expense. They also state that on each debatable cost, our proposal clearly benefits the lessees. Although they oppose several provisions of the rule, these commenters recognize that the FERC Order 636 environment raises difficult issues for royalty valuation, and they commend MMS for attempting a compromise proposal. In addition, one State commenter added that with modifications, they generally supported our efforts to amend the transportation allowance regulations.

In addition to the general comments, one tribe offered the following comments regarding the economic analysis of the rule. They believe that the Department has not complied with Department Manual, Chapter 2, Part 512 and that the economic analysis shows a deficiency of acting in the best economic interests of the tribe. They also believe that we have not taken seriously our obligation to ensure maximum revenue to the tribe. In the tribe's view, the statement that this proposal meets MMS's goal of certainty, clarity, and consistency is not an adequate basis to reduce Tribal royalties. The tribe asserts that MMS's statement in the July 31, 1996, proposed rulemaking that the rule will have a neutral or beneficial impact on Indian royalties is devoid of any real economic demonstration. Finally, the tribe stated that they are skeptical that the rule will have a neutral or beneficial impact or that it will enhance MMS's ability to fulfill its trust responsibility.

Six industry trade associations and three companies also offered general comments. Every respondent believes that this rulemaking is cumbersome and does not meet the goal of regulatory simplification or streamlining. They believe the proposal:

- Represents an extreme departure from current practice;
- Exceeds MMS's statutory authority;
- Is not supported by case law; and
- Illegally extends the lessee's obligations.

Several industry trade associations commented that the proposal will create heavy administrative expenses for producers to track gas molecules to the burnertip. In today's complex marketplace, these commenters believe the required tracking is impossible. One respondent stated that pipelines are not consistent in billing and frequently do not segregate costs, adding to the difficulty in compliance and likelihood of being second guessed by us in later audits. One industry trade association strongly urged us to withdraw this rule. If necessary, it believes that changes can be addressed in a negotiated rulemaking where all parties come to an equitable agreement. One industry trade association stated that this proposal:

- Fails to recognize the producer's lack of control over fees; and

- Penalizes and requires the producer to absorb all costs and risks of marketing downstream.

One industry trade association believes that the burdens and disincentives created by the rule dictate that we should allow producers to make royalty payments in kind.

Response. One of the main purposes of this rulemaking is to clarify the specific allowable and nonallowable costs of transportation. This rule is a continuation of our commitment to assure that lessees deduct only the actual, reasonable costs of transportation. We have carefully considered each cost component and are not allowing any costs of marketing as a deduction in the final rule.

Although one tribe believes that MMS did not comply with the economic analysis required by the Departmental Manual, Chapter 2, Part 512, we believe that the changes under FERC Order 636 will enable us to identify nonallowable costs of marketing. Prior to FERC Order 636, lessees deducted some bundled marketing costs. Under the FERC Order 636 environment, these costs are now separately identified. Consequently, this rulemaking limits the transportation allowance to the actual, reasonable costs of transportation. Our rulemaking will have a neutral or beneficial impact to the tribes, States, and Federal Treasury because lessees will not be able to deduct these previously bundled marketing costs.

We disagree with industry's statement that the Department does not have the authority to promulgate this rule. MMS is mandated by law to ensure that royalties are properly collected and distributed. See 30 U.S.C. 1701 *et. seq.* This responsibility includes providing clear guidance to the oil and gas industry regarding which costs are allowable transportation deductions and what are nonallowable marketing costs. The comment that pipelines are not consistent in billing and frequently do not segregate costs is contrary to FERC's requirement that every pipeline make rate filings publicly available. Under FERC's procedure, the pipeline must identify and justify the cost components. Any shipper can analyze these filings and protest any inequitable costs. Based on these reasons, MMS is publishing this rule as final.

MMS amends its regulations and deletes the existing sections 206.157(f) and 206.177(f) of 30 CFR part 206. (We retain the substance of these paragraphs in later revised paragraphs.) Further, we redesignate paragraph (g) of these sections as paragraph (h) and add two new paragraphs. New paragraph (f) describes the types of costs we will allow as part of a transportation allowance. A new paragraph (g) lists those costs that we expressly disallow. Because some of the nonallowable costs affect valuation, we also amend sections 206.152, 206.153, 206.172 and 206.173. These amendments address valuation of certain cash-out volumes and expressly reaffirm that marketing costs are not allowable deductions from royalty value.

Specific Comments

Comments on §§ 206.152, 206.172, 206.153, and 206.173 (relating to paragraph (b)(1)(iv)) How to value over-delivered volumes under a cash-out program.

We received comments from one State on the cash-out program. This State agrees with our amendments to the valuation regulations for cash-out programs.

Two industry trade associations and three companies commented on the cash-out program. All industry commenters disagree with our cash-out valuation proposal. They believe that we should accept the price specified in the FERC-approved tariff for valuation purposes. Many industry respondents stated that lessees cannot market production downstream of the lease without being subject to cash-out provisions under transportation contracts. These respondents also believe that:

- Our proposal ignores that imbalances are inevitable; and
- A cash-out provision is the best means to sell gas.

They also state that MMS is arbitrary and capricious if we do not first determine that the lessee acted imprudently before disallowing use of the cash-out provision outside the tolerance or using the benchmarks to value gas. One company disagrees with our assertion that volumes outside the tolerance (for over-delivery specified in the transportation contract) are a violation of the duty to market for the benefit of the lessee and lessor. This commenter believes that we should only disallow the FERC-approved cash-out value when we determine that the lessee is negligent.

Response. Pipelines developed tolerances in recognition of the fact that nominations never match actuals, and receipts never match deliveries. Because pipelines no longer own system supply gas to cover imbalances, they must maintain strict controls over shippers to assure system integrity. Pipelines developed the cash-out programs to penalize those shippers outside the tolerances while allowing for minor imbalances within tolerance. MMS also believes lessees must act diligently in scheduling shipments on pipelines. In the final rule, we retain the provision accepting the cash-out value within tolerance and not accepting the value outside the tolerance. We also retain the provision to value production under the benchmarks when the cash-out provision results in an unreasonable value for royalty purposes. This is consistent with the current valuation regulations requiring arm's-length contracts to meet total consideration and reasonable value criteria.

We amend paragraph (b)(1) of 30 CFR 206.152 and 206.172 (for unprocessed gas), and 30 CFR 206.153 and 206.173 (for processed gas) by adding another exception to the general rule that the gross proceeds under an arm's-length contract are acceptable as the royalty value. This exception adds new paragraph (iv) to these sections and provides that over-delivered volumes outside the pipeline tolerances are valued at the same price the pipeline purchases over-delivered volumes within the tolerances. We will not accept the penalty cash-out price as royalty value.

The rule also provides that if we determine that the cash-out price is unreasonably low, lessees must use the benchmarks to value the gas instead of the cash-out price. Lessees should also note that for production from Indian leases, other valuation provisions in the regulations still apply; *i.e.*, major portion and dual accounting.

Comments on §§ 206.152(i), 206.172(i) (for unprocessed gas); and 206.153(i), and 206.173(i) (for processed gas).

One Indian tribe responded that all marketing costs must be borne by the lessee and that the lessee must make every reasonable and prudent effort to market production for the benefit of the lessor. All other State and Indian respondents support this position but offered no specific comments.

Five industry trade association groups and four companies submitted responses regarding costs of placing production in marketable condition and marketing costs. The following paragraphs summarize industry specific responses.

General Comments. One industry trade association recommends deleting the language "and to market the gas for the mutual benefit of the lessee and the lessor" that we proposed adding to the existing regulations. Several industry commenters stated that this marketing language is beyond MMS's statutory authority and is bad public policy. One industry commenter also stated the marketing language was a thinly disguised attempt to increase revenue to

the government at the expense of lessees. Several industry commenters believe that the marketing language will impose royalty on marketing services long after production is saved, removed, or sold from the lease and that the point of royalty valuation is moved from the lease to the burnertip. These industry commenters also believe that even though the producer sold marketable gas under an arm's-length contract at the lease, lessees must trace gas all the way to the burnertip and pay royalty on the value at a "new" marketplace. A few industry commenters stated that we do not rely on a "principled basis" to determine what will or will not be a marketing cost, and it will be impossible for lessees to anticipate what downstream costs we will disallow. Commenters assert that this will create a loss of certainty for lessees. One company believes that the marketing language changes value determination from the current policy of accepting arm's-length gross proceeds to the highest-obtainable price anywhere from the lease to the resale at the burnertip.

Duty to market/implied obligation to market. Almost every industry trade association and company commenter stated that no obligation exists to market production away from the lease. They asserted that lessees are only obligated to market production at or near the lease. In addition, they claim that even if this obligation to market production is not new, the obligation to market production away from the lease is new. All industry commenters believe that the rule creates an unprecedented duty to market and imposes an elaborate new marketing standard. These commenters also believe that the creation of this new duty to market violates applicable statutes and lease terms. These industry commenters also state that the implied obligation to market for the mutual benefit of the lessee and the lessor never embodied the obligation to market *at no cost* to the lessor. Several commenters stated that this obligation is not implied simply because the agency says so and the rule leaps from the realities of past precedent by merely stating that the obligation to market production is implied. Several commenters claim that the implied obligation to market is not supported by *Walter Oil and Gas*, 111 IBLA 265 (1989) as cited by MMS.

Production in marketable condition. Several industry commenters claimed that we erroneously link the obligation to place production in marketable condition with the obligation to market that production. One industry trade association stated that in *Beartooth Oil and Gas Co.* v. *Lujan*, CV 92–99–BLG–RWA (D. Mont. Sept. 22, 1993, vacated and remanded) (*Beartooth*), the court determined that the marketable condition rule does not require the lessee to condition the gas so that it is suitable for secondary or retail markets. They further state that a series of markets exists between the lease and the burnertip but the lessee's obligation to place production in marketable condition refers only to the first market. Several industry commenters believe that the preamble to the March 1, 1988, regulations clearly shows that our intent was not to encompass any and all marketing costs but only those to place production in marketable condition. Most commenters state that the market for which production is conditioned is the market at or near the lease. They further claim that the definition of marketable condition in the March 1, 1988, rule focuses on gas that is sufficiently free from impurities and not on marketing that gas.

Share in marketing costs. Three companies and two industry trade associations claim that MMS is not entitled to a "free ride" on marketing costs. They believe that if we benefit from marketing activities then we should share in those costs. Two companies and one industry trade association state that the proposal shows that we are unwilling to share in costs to market but want to share in any higher price gained when the lessee performs marketing. This is not for mutual benefit of the lessee and lessor.

Breach of duty. Several industry trade associations and company commenters offered the following comments on the lessees' duty to market production. Because marketing costs are disallowed under the rule, if lessees don't incur marketing costs, these commenters are concerned that we will consider the lessee as breaching its duty to market production. They are also concerned that MMS will question all marketing decisions made by the lessee and make arbitrary determinations that producers failed to obtain the highest price.

Response. We recognize that the obligation to place production in marketable condition is legally distinct from the issue of marketing the gas. However, the implied covenant of the lease dictates that lessees must market production at no cost to the lessor. Both principles are expressly stated in the March 1, 1988, gas regulations; the definition for marketable condition at 30 CFR 206.151 discusses the physical treatment of gas for placing gas in marketable condition and 30 CFR 202.151 states that no allowance will be made for other expenses incidental to marketing. Based on these principles, MMS has consistently applied the concept that the lessee must market gas at no cost to the lessor and denied marketing costs as an allowable deduction. See *Arco Oil and Gas Co.*, 112 IBLA 8, 11 (1989); *Walter Oil and Gas Corp.*, 111 IBLA 260, 265 (1989). We have not changed the principle of accepting gross proceeds under arm's-length contracts and would not trace value beyond a true arm's-length transaction to the burner tip, as commented. The rule simply clarifies which cost components or other charges are deductible (transportation), and which costs are not deductible (marketing). This is consistent with the ruling in the *Beartooth* decision that addressed whether downstream compression was the cost of placing production in marketable condition or a transportation cost.

The final rule clarifies the principle that lessees cannot deduct from royalty value the costs of marketing production from Federal and Indian leases. The final rule adds specific language to paragraph (i) of 30 CFR 206.152, 206.153, 206.172, and 206.173 to expressly state lessees' obligation to incur all marketing costs. In all sections, we amend paragraph (i) to add the words "and to market the gas for the mutual benefit of the lessee and the lessor" after the words "place gas in marketable condition" and before the words "at no cost to the Federal Government (or Indian lessor, as applicable)." We also add the words "or to market the gas" at the end of the last sentence of that paragraph to accomplish this objective. We believe that the added language contains the concept embodied in the implied covenant to market for the mutual benefit of Federal and Indian oil and gas lessees and lessors. We further believe this imposes no additional marketing burden on the lessee than existing requirements.

Comments on §§ 206.157(f)(1) and 206.177(f)(1) Firm demand charges paid to pipelines.

One Indian tribal association, one State/Indian association, two tribes, and two States offered comments on firm demand charges. One tribe stated that if we allow firm demand charges, we must timely review and audit the actual amount claimed. The tribe believes that situations exist where lessees claim FERC-allowed costs, but lessees do not actually pay these costs for transportation. The State commenter agrees with our proposal allowing firm demand charges—limited to the applicable rate per MMBtu multiplied by the actual volumes transported. The State believes that it should not be liable for the additional costs for two reasons.

First, the lessee has ways to mitigate costs for unused capacity. Second, the lessor should not be liable for marketing mistakes caused by overbuying capacity. One State/Indian association, one tribe, and one State debated whether these charges are transportation charges or marketing costs. However, these commenters agreed that MMS's position is a reasonable compromise with the following two caveats. First, we should review and adjust firm demand charges if they include otherwise nondeductible costs or do not represent a lessee's reasonable actual costs. Second, the lessee should reduce the claimed allowance if a purchaser reimburses, directly or indirectly (through reservation charges or fees) all or some of the producer's demand charges.

Three trade associations and four companies offered the following comments on firm demand charges. All industry commenters believe that we should allow the entire demand charge actually paid by the lessee. One industry trade association and four companies believe that the demand charge is a legitimate cost that often enables the gas to be sold at a higher price. They believe the lessor should share in the entire demand charge even if only a portion is used because the royalty share benefits. Several industry commenters stated that the firm demand charge is not allocated between used and unused capacity. They stated that firm demand charges are consideration for transportation irrespective of capacity used. Many of the industry commenters stated that allowances should be reduced only when the lessee releases capacity and receives a credit. Many commenters stated that factors beyond the lessees' control can prevent them from using all reserved capacity. By denying part of the firm demand, we imply lessees acted imprudently and failed to market gas for the mutual benefit of the lessee and the lessor. One company stated that we should allow the demand/reservation charge because the charge is a transportation cost that is indistinguishable from any other transportation service.

Response. Our valuation regulations require that we allow the reasonable, actual costs of transportation. However, only the firm demand rate per MMBtu is an actual cost of transportation. We do not consider the amount paid for unused capacity as a transportation cost. Therefore, in §§ 206.157(f)(1) and 206.177(f)(1), we are allowing firm demand charges—limited to the applicable rate per MMBtu multiplied by the actual volumes transported—as allowable costs in computing the transportation allowance.

Capacity release program. We also received comments on the capacity release program. One Indian tribal association responded that they agree with permitting allowances for those portions of both demand and commodity charges that reflect the costs paid for gas actually shipped, but not permitting allowances for the potential business costs associated with purchases of surplus or unused capacity.

One company commenter would support including capacity release gains and losses if all firm demand charges were allowed. Several companies stated that there are no gains under the capacity release program. One industry trade association and two companies recommend rewriting the third sentence under firm demand charges to clearly state that any gains or losses from the sale of unused firm charges are not royalty bearing. These commenters also recommended clarifying the fourth sentence which includes the term "other reasons." These respondents suggest using the term "other refunds" and clarifying the sentence to state that any refunds received are not considered gross proceeds if no firm demand charge was claimed on Form MMS–2014, Report of Sales and Royalty Remittance (Form MMS–2014).

Response. We do not consider the gains and losses associated with release of firm transportation as part of the actual cost of transporting gas. In §§ 206.157(f)(1) and 206.177(f)(1), lessees with firm transportation may only claim the firm demand charge per MMBtu multiplied by actual volumes transported, regardless of whether they release part or all of their reserved capacity. If a lessee/shipper acquires released capacity on a pipeline, we allow the cost of buying that capacity to the extent that capacity is used. The final rule provides that we will not participate in gains or losses associated with released capacity.

We agree that the third sentence under firm demand charges should be clarified and have replaced this sentence in the final rule with the following sentence: "The lessee also may not include any gains associated with releasing firm capacity."

Pipeline rate adjustments. The last issue under firm demand is pipeline rate adjustments. We also requested comments on how to simplify reporting for these adjustments. One Indian tribal association agrees that any allowances taken that are later rebated are royalty bearing. However, monitoring will be complicated if the refund or rebate is credited against future charges.

Four industry trade associations and five companies responded to pipeline rate adjustments. Several companies and industry trade associations believe that the proposal is unfair because it disallows deductions for penalties paid by the shipper but requires lessees to pay their share of penalty monies refunded to other pipeline customers. However, one company agreed that penalty refunds and rate case payments should be subject to royalty. Individual companies responded that rate case refunds don't segregate individual components into the allowable/nonallowable items as defined by MMS. Therefore, differentiating disallowed components will be unduly burdensome to the lessee. Another company stated that the rule implies that penalty refunds are refunded to the party who paid the penalty which may not be the case.

Most companies agree that monthly adjustments would be unduly burdensome and that MMS should establish a distinct transaction code and/or adjustment reason code for pipeline rate adjustments. Several companies do not believe that a simplified reporting method for Indian leases is possible because of major portion requirements. One company suggested that lessees be allowed to assess a "Royalty Administration Fee" to offset the costs associated with tracking all the exceptions spelled out in this rule.

Response. Pipelines charge a specific rate for transportation services. When FERC later requires pipelines to adjust these charges through a pipeline rate refund, these adjustments reduce the transportation allowance already taken by the lessee on the Form MMS–2014. We considered several options for simplifying reporting, but concluded that any form of rolled-up reporting would prohibit us from determining royalty properly for both Federal onshore and offshore and Indian lands. We use data reported on Form MMS–2014 from both Federal and Indian leases to calculate major portion prices for Indian leases. Rolling up transportation allowances will skew these major portion calculations. We also use Form MMS–2014 data to monitor valuation reporting and for settlement negotiation purposes. Therefore, in the final rule, we have not modified reporting requirements for pipeline rate adjustments. To reflect the FERC-modified transportation charge, the lessee must adjust the allowance to account for the refund they receive by reducing the allowance originally taken.

Comments on §§ 206.157(f)(2) and 206.177(f)(2) Gas supply realignment (GSR) costs.

One State/Indian association, two States and one trjbe oppose MMS's position that gas supply realignment (GSR) costs are transportation costs. These respondents state that GSR costs are transitory and are not related to a pipeline's transportation costs. Instead, these costs relate only to money paid by pipelines to reform or terminate contracts. They believe there is inherent inequity in industry's position that industry is not required to pay royalties on contract reformation payments but are entitled to deduct GSR costs when embedded in a tariff.

One Indian tribal association questioned why we allow only that portion of firm demand charges actually used, but allow recovery of GSR costs paid through demand charges. They believe this negates the initial objective of limiting firm demand to charges for actual volumes transported. They also believe that the GSR cost "carries" the royalty owner along on a myriad of business decisions by pipelines and producers that have nothing to do with actual transportation of gas.

One State/Indian association, one State, and one tribe claim that our position is inconsistent because contract reformation payments are both royalty bearing and deductible. These commenters are opposed to allowing GSR costs but as a compromise, suggest the following options:

- If lessees receive contract settlement money and agree to pay royalties on it, we could allow those lessees to deduct GSR costs;
- If lessees do not receive contract settlement money, we could allow those lessees to deduct GSR costs; and
- If all lessees are required to pay royalties on contract settlement money, we could allow GSR costs across the board.

One State commenter believes that allowing GSR costs violates the gross proceeds rule.

All industry respondents agree that GSR costs should be deductible and should not be tied to royalty consequences of gas contract settlements or the outcome of any pending litigation. Several commenters state that GSR costs are costs of transporting gas charged to all pipeline customers.

Response. GSR costs stemmed specifically from FERC's regulatory actions under FERC Order 636. FERC is mandated to recognize prudently incurred costs in establishing just and reasonable rates for transportation. We consider these costs as an actual cost of transportation under the existing regulations and will allow GSR costs as a transportation deduction in §§ 206.157(f)(2) and 206.177(f)(2).

Comments on §§ 206.157(f)(3) and 206.177(f)(3) Commodity charges.

One Indian tribal association responded to this issue, stating that they do not share MMS's assumption that demand and commodity charges permit pipelines to recover only their fixed and variable costs. The association claims that profit margins are built into both these components as return on equity.

We received no comments from industry on this issue.

Response. The actual volumes transported on a firm transportation contract are charged a firm transportation commodity charge in addition to the reservation fee. All interruptible transportation rates are billed at commodity charges only. These commodity charges represent the pipeline's transportation-related variable costs. These are actual costs incurred by lessees for transporting gas, and we will specifically allow the commodity charge as a deduction in the final rule. We recognize that valuation implications result from a lessee's choice of securing firm versus interruptible services. If the gas sales transaction is not arm's-length, the lessee would apply the comparability criteria in §§ 206.152, 206.153, 206.172, and 206.173 and compare values of gas transported under the same transportation arrangement—firm to firm and interruptible to interruptible. In §§ 206.157(f)(3) and 206.177(f)(3), we allow the commodity charges paid to pipelines as allowable costs in computing the transportation allowance.

Comments on §§ 206.157(f)(4) and 206.177(f)(4) Wheeling costs.

One Indian tribal association stated that wheeling is an incidental cost associated with shunting gas to a siding then back into the transportation system. This respondent believes that these costs should be treated like banking/parking fees and be disallowed. However, they stated that if we allow wheeling, those costs should be limited to actual reasonable costs.

We received no comments from industry on this issue.

Response. Wheeling is a physical transfer of gas from one pipeline through the hub to either the same or another pipeline. This service is directly related to transportation. We allow the costs of wheeling as a transportation deduction in §§ 206.157(f)(4) and 206.177(f)(4) of the final rule.

Comments on §§ 206.157(f)(5) and (6) and 206.177(f)(5) and (6) Gas Research Institute (GRI) fees and Annual Charge Adjustment (ACA) fees.

Two tribes, one Indian tribal association, and two State/Indian associations oppose allowing Gas Research Institute (GRI)/Annual Charge Adjustment (ACA) fees. All respondents believe that these fees are not transportation-related costs.

We received no specific comments from industry.

Response. FERC requires member pipelines of GRI to charge customers a fee for funding GRI programs. The GRI conducts research, development and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers. FERC allows pipelines to charge customers an ACA fee. This fee allows a pipeline to recover its allocated share of FERC's operating expenses. Because such fees are required transportation charges, we will allow GRI and ACA fees under §§ 206.157(f)(5) and (6), and 206.177(f)(5) and (6) of the final rule. However, MMS is aware that GRI funding may become completely voluntary. Therefore, we will allow GRI fees only as long as they are mandatory fees in FERC-approved tariffs.

Comments on §§ 206.157(f)(7) and 206.177(f)(7) Payments (either volumetric or in value) for actual or theoretical losses.

One Indian tribal association, one State/Indian association, one State, and one tribe believe that actual or theoretical losses are nondeductible costs and should not be allowed even if they appear in a tariff.

Four companies and three industry trade associations agree that actual or theoretical losses should be allowed as a deduction in arm's-length contracts and non-arm's-length transportation contracts if a FERC or State regulatory agency-approved tariff includes these costs. However, they believe that MMS's position on non-arm's-length situations where no tariff exists is a discriminatory treatment of non-arm's-length transportation situations. These respondents believe that actual and theoretical losses should be allowed in all cases.

In addition to comments on actual or theoretical losses, five industry respondents commented that MMS should clarify that gas supply to the transporter for fuel (whether provided in kind or cash reimbursement) will be an allowable transportation cost.

Response. We allow the cost of fuel as a deduction when it is used for gas transportation. This policy has not changed under this rule. We will continue to allow payments (either volumetric or in value) for actual or theoretical losses for arm's-length transportation arrangements and for non-arm's-length transportation arrangements if based on a FERC or State-regulatory approved tariff. However, we clarified the wording in the new §§ 206.157(f)(7) and 206.177(f)(7). There is no substantive change from the existing rules.

Comments on §§ 206.157(f)(8) and 206.177(f)(8) Temporary storage services.

One Indian tribal association agreed that MMS should not allow storage fees as a deduction. They believe that MMS should treat temporary or short-term storage fees (commonly known as banking and parking fees) as well as wheeling costs as nonallowable costs that are incidental to marketing. The Indian tribal association believes that MMS makes an exception to the gross proceeds rule regarding long-term storage. This Indian tribal association also believes that if a lessee stores gas for later sale, the lessee should pay an estimated royalty and pay additional royalties due when production is actually sold.

Three industry trade associations and four companies disagree with MMS's position that banking and parking are storage fees and not deductible. They state that these fees are part of the transportation process similar to wheeling, and we should allow these fees as a deduction. Most respondents state that banking and parking are necessary services to ensure balancing at market centers and hubs. These commenters state that we have no justification to disallow these fees, especially if the lessee is charged these fees in the same month as a sale.

Response. After reviewing the comments, we agree that temporary storage costs are different than long-term storage. Banking and parking are short-term storage services that give pipelines and shippers flexibility to avoid penalties related to imbalances. We agree with industry, and we will change the final rule by adding new sections 206.157(f)(8) and 206.177(f)(8) titled "Temporary storage services." These sections will allow short-term storage services as a transportation deduction but will retain the sections 206.157(g)(1) and 206.177(g)(1) disallowing long-term storage. We define short-term storage as temporary storage occurring at a hub or market center for a duration of 30 days or less.

Comments on §§ 206.157(f)(9) and 206.177(f)(9) Supplemental costs for compression, dehydration, and treatment of gas.

One Indian tribal association, one State/Indian association, one tribe, and one State believe these costs are part of the lessee's duty to place production in marketable condition at no cost to the lessor. They assert that they are not allowable no matter where they occur in the transportation process. They further maintain that this provision invites dispute and litigation over what is "typical" or "unusual." One Indian/State association commented that the economic rationale for permitting transportation allowances is that economic value is added by transporting production away from the lease. That transportation cost is then deducted from the enhanced value to determine value at the lease. There is no indication that value is added by "supplemental services." Therefore, these costs should not be allowed.

Most of the industry commenters oppose the use of the word "supplemental" and recommend that it be replaced with the word "other." These commenters stated that these services are an integral part of the transportation process and not an activity to put gas in marketable condition. They believe that once gas is in marketable condition, all subsequent services should be deductible. Several commenters state that compression, dehydration, and treatment of gas are not supplemental to transportation, they are an integral part of the transportation process.

A few industry trade associations and companies maintain that gas entering mainline pipelines is already in marketable condition, and we should allow deduction of all these costs. One company suggested that we look at the intent of the services; are these costs to place gas in marketable condition or for transportation? This company stated that gas may be acceptable to the transporter without compression, however, compression is necessary to offset line pressure in order to maintain deliverability and effectively manage reservoirs. They assert that this indicates that costs are due to transportation, not marketing restraints.

Response. The supplemental services indicated in the rule are not costs for placing gas in marketable condition. It is clear that Federal and Indian lessees must put production in marketable condition at no cost to the lessor. The costs addressed in the rule are costs that may occur in unusual circumstances where the pipeline performs additional compression, dehydration, or other treatment of gas for transportation purposes. These costs exceed the services necessary to place production in marketable condition. We allow charges for these supplemental services as a deduction in the final rule by renumbering sections 206.157(f)(9) and 206.177(f)(9).

Comments on §§ 206.157(g)(1) and 206.177(g)(1) Fees or costs incurred for storage.

See comments under §§ 206.157(f)(8) and 206.177(f)(8) above for detailed discussion on short duration storage fees.

Response. The regulation at 30 CFR § 202.150 (1996), the language of the various mineral leasing statutes, and terms of Federal leases require that royalty be a percentage of the amount or value of the production *removed or sold* from the lease. We consider gas removed from a Federal or Indian lease and stored at a location off the lease for future sale subject to royalty at the time of removal from the lease. The final rule is consistent by not allowing any costs incurred for storing production in a storage facility, whether on or off the lease, for a duration of greater than 30 days.

Comments on §§ 206.157(g)(2) and 206.177(g)(2) Aggregator/marketer fees.

The State and Indian commenters support MMS's position of not allowing aggregator/marketer fees as a transportation deduction. They believe that aggregator/marketer fees are not transportation costs and should be disallowed.

Four industry trade associations and three company respondents objected to disallowing aggregator/marketer fees from the transportation deduction. These respondents believe that lessees have no duty to market production downstream of the lease and no obligation to do so free of charge after production is placed in marketable condition. Industry believes that aggregating production results in enhanced value. Because MMS benefits from this enhanced value, industry believes that we should also share in these costs.

One industry trade association stated that denying aggregator/marketer fees will adversely affect independents because they do not have the ability to aggregate large volumes of production and, therefore, receive an enhanced value for gas.

Response. Aggregator/marketer fees are fees a producer pays to another person or company including its affiliates to market its gas. As previously discussed, the implied covenant to market the production is the lessee's obligation and the lessor does not share in marketing costs. The final rule in sections 206.157(g)(2) and 206.177(g)(2) reflects this principle by not allowing aggregator/marketer fees as a transportation deduction.

Comments on §§ 206.157(g)(3)(i)–(iv) and 206.177(g)(3)(i)–(iv) Penalties the lessee incurs as shipper.

One Indian tribal association and one State agree that penalties for cash-out, scheduling, imbalance, and curtailment or operational flow orders should be borne by the lessee. They believe that these penalties are not associated with reasonable actual costs of transportation. The State commenter believes that the lessee should bear any unrecouped losses incurred by their own marketing mistakes.

Two industry trade associations and three companies responded to the penalty provision. They agree that, within reasonable tolerances, costs due to negligence or mismanagement by the lessee should not be borne by the lessor. However, MMS should not disallow costs based on an assumption of breach of duty to market. Instead, MMS should review penalties on a case-by-case basis to determine if they were unavoidable. These respondents believe that if penalties are unavoidable, they should be deductible.

One company believes that MMS should share in all imbalance cash-out penalties regardless of whether a portion of the imbalance exceeds the pipeline tolerance level. This company believes that this proposal is contrary to MMS's acceptance of arm's-length contract sales as the basis for royalty value. They claim that imbalances are inevitable.

Response. We recognize that some imbalances occur. In cash-out situations, we will allow lessees within tolerance to determine value using that pipeline's specified rate. However, cash-out imbalances outside the tolerance and scheduling, imbalance, and operational penalties are costs incurred as a result of the lessee breaching its duty to market the production to the mutual benefit of the lessee and the lessor. These costs are marketing expenses the lessee must bear because there are a variety of mitigating devices available to help the lessee balance production and nominations. These devices include:

- Swapping or transferring imbalances;
- Establishing debit/credit accounts;
- Using electronic bulletin boards to adjust for variations between deliveries and nominations;
- Using swing supply and flexible receipt point authority;
- Entering into predetermined allocation agreements; or
- Insisting upstream operators enter into operational balancing agreements with downstream transporters.

In the final rule, we disallow as a transportation deduction:

- Over-delivery cash-out penalties (§§ 206.157(g)(3)(i) and 206.177(g)(3)(i));
- Scheduling penalties (§§ 206.157(g)(3)(ii) and 206.177(g)(3)(ii));
- Imbalance penalties (§§ 206.157(g)(3)(iii) and 206.177(g)(3)(iii)); and
- Operational penalties (§§ 206.157(g)(3)(iv) and 206.177(g)(3)(iv)).

Comments on §§ 206.157(g)(4) and 206.177(g)(4) Intra-hub transfer fees.

We received no comments from any Indian tribes or associations or States regarding intra-hub transfer fees.

Four industry trade associations and three companies offered the following responses. Several industry respondents stated that these fees track the ownership of the gas through the pipeline and MMS should consider these fees as part of the transportation cost. One industry trade association stated that if these fees are not deductible because it is the duty of the lessee to perform these services at no cost to the lessor, then MMS is implying that the small producer that doesn't provide this service is breaching its duty. Most industry commenters believe MMS should allow these fees because they are essential to efficient management of transportation and are necessary to transport gas through a hub. These commenters state that disallowing intra-hub transfer fees unjustly punishes aggressive marketers seeking to get the highest price.

Response. Intra-hub transfer fees are administrative costs and not actual costs of gas transportation. We disallow these fees as part of the transportation allowance in §§ 206.157(g)(4) and 206.177(g)(4).

Comments on §§ 206.157(g)(5) and 206.177(g)(5) Other nonallowable costs.

One Indian tribal association emphatically agrees that marketing costs are solely the province and duty of the producer. They stated that no deductions against royalties should be permitted for marketing costs. One State/Indian association, one tribe, and one State particularly support MMS's proposal on other nonallowable costs.

Two industry trade associations and four companies responded to this issue. All respondents believe that these costs, previously bundled prior to FERC Order 636, should be allowed. Several respondents claim that all these charges were allowable transportation costs for decades and, while it may now be easier for us to examine pipeline tariffs, we always had the ability to do so. These respondents believe that disallowing such costs creates a new obligation. Several industry commenters claim that MMS's concern about lessees relabelling or restructuring nondeductible costs as transportation costs is unfounded and unfair. Most commenters believe that this section will make it difficult for the lessee to determine which costs are allowable and nonallowable and prevents a fair examination of a particular fee's acceptance as a transportation expense.

Response. MMS has never allowed marketing costs as deductions from royalty value and maintains this position in the final rule. The fact that these costs were embedded in a bundled charge does not mean that we allow such charges. In the FERC Order 636 environment, component costs previously aggregated are now separately identified in transportation contracts. Some of these component costs are clearly costs of marketing and we continue to consider these as nonallowable costs under §§ 206.157(g)(5) and 206.177(g)(5) as we have always done.

III. Other Matters

Retroactive Effective Date

Six companies and six industry trade associations strongly disagree with the retroactive effective date of May 16, 1992. Industry believes that the rule is not merely a clarification but rather a substantive rule that creates a whole new duty to market. They state that without this rule we have no clear authority to collect royalties on several of the issues under this rule and that it is a radical departure from MMS's past practice and standards.

Industry maintains that we cannot legally apply the rule retroactively for the following reasons:

- We have not been delegated authority to retroactively apply rules;
- Retroactivity is against the Administrative Procedures Act,
- It is unlawful;
- Retroactivity is against MMS's policy of prospective rulemaking only; and
- We are barred from action without specific Congressional authority.

Finally, industry believes that they should not be penalized for MMS's 4-year lack of instruction and that retroactivity will be an excessive administrative burden. In addition, industry claims that data may not exist for prior periods or cannot be recreated and that retroactivity will require lessees to go to the burnertip to chase charges such as intra-hub title transfer fees and aggregator/marketer fees.

Response. Based on advice provided by the Department of the Interior's Office of the Solicitor, we have determined that MMS does not have express statutory authority to implement a retroactive effective date for this rule. However, we disagree that this is a substantive rule that changes or increases our existing authority and policies. This rule merely clarifies and codifies long standing MMS policies in terms of the revised FERC vernacular. Therefore, MMS is making this final rule effective February 1, 1998.

Indian Leases

One tribe and one Indian tribal association strongly recommend that separate transportation regulations should be adopted for Indian leases. Because Federal and Indian lease terms differ, these commenters believe that while excessive transportation deductions may be allowed for Federal leases, such deductions should not be allowed for Indian leases. They stated that this proposal does not recognize the narrower permissibility of deductions under Indian lease terms and that we should recognize the propriety of treating tribal leases different from Federal leases. In addition, one Indian tribal association stated that the Secretary's trust responsibility and duty to maximize revenues to Indian mineral owners compel us to protect Indian royalties from being subjected to transportation allowances that are not contemplated in the lease.

We received no specific comments from industry respondents on the subject of separate regulations for Indian gas.

Response. Although we recently separated existing valuation and transportation regulations into individual sections for Federal and Indian leases, the principles used to determine both value and transportation were not changed. This rule is written to insert pertinent individual paragraphs into the separate sections for Federal and Indian leases. We will not publish a separate rule for Indian leases. If we finalize new regulations for gas valuation on Indian leases, this rulemaking may be superseded for Indian lands.

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Approximately 2,600 entities pay royalties to MMS on production from Federal and Indian lands and the majority of these entities are small businesses because they employ 500 or less employees. However, this rule will not significantly impact these small businesses because this rule does not add any reporting or valuation requirements. Likewise, this regulation will not significantly or uniquely affect small governments because the rule will not change the valuation principles embodied in existing regulations. The sole purpose of this rule is to clarify which costs are allowable transportation deductions or nonallowable marketing costs.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, there is no need to prepare a Takings Implication Assessment under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights."

Executive Order 12866

This rule has been reviewed under Executive Order 12866 and is not a significant regulatory action. MMS estimates that this rule may result in a maximum of $3.37 million in additional royalties collected annually. However, this maximum revenue impact is based on the assumption that all tariffs for all Federal and Indian leases contained a nonallowable deduction of $0.01/MMBtu for a fee such as a intra-hub transfer fee.

Executive Order 12988

The Department has certified to OMB that this regulation meets the applicable standards provided in Section 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, State governments, or the private sector. A mandate is a legal, statutory, or regulatory provision that imposes an enforceable duty. A mandate does not include duties arising from participation in a voluntary Federal program. MMS funds audits performed by State and Indian auditors under voluntary cooperative agreements. Since participation in these cooperative agreements is voluntary and this rule will not require additional monies to perform audits of FERC-approved tariffs, no Federal mandates will be imposed on State, local, or tribal governments.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no new reporting or information collection requirements.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal Action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR 206

Coal, Continental Shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: December 3, 1997.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, MMS amends 30 CFR part 206 as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart D—Federal Gas

2. Section 206.152 is amended by revising the first sentence of paragraph (b)(1)(i) and adding a new paragraph (b)(1)(iv) to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

* * * * *

(b)(1)(i) The value of gas sold under an arm's-length contract is the gross proceeds accruing to the lessee except as provided in paragraphs (b)(1)(ii), (iii), and (iv) of this section. * * *

* * * * *

(iv) *How to value over-delivered volumes under a cash-out program.* This paragraph applies to situations where a pipeline purchases gas from a lessee according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay

for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (c)(3) of this section.

* * * * *

5. Section 206.153, paragraph (i), is revised to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

* * * * *

(i) The lessee must place gas in marketable condition and market the gas for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. Where the value established under this section is determined by a lessee's gross proceeds, that value will be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition or to market the gas.

* * * * *

4. Section 206.153 is amended by revising the first sentence of paragraph (b)(1)(i) and adding a new paragraph (b)(1)(iv) to read as follows:

§ 206.153 Valuation standards—processed gas.

* * * * *

(b)(1)(i) The value of residue gas or any gas plant product sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii), (iii), and (iv) of this section. * * *

* * * * *

(iv) *How to value over-delivered volumes under a cash-out program.* This paragraph applies to situations where a pipeline purchases gas from a lessee according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (c)(3) of this section.

* * * * *

5. Section 206.153, paragraph (i), is revised to read as follows:

§ 206.153 Valuation standards—processed gas.

* * * * *

(i) The lessee must place residue gas and gas plant products in marketable condition and market the residue gas and gas plant products for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. Where the value established under this section is determined by a lessee's gross proceeds, that value will be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition or to market the residue gas and gas plant products.

* * * * *

6. In § 206.157, paragraph (f) is removed; paragraph (g) is redesignated as paragraph (h) and revised; and new paragraphs (f) and (g) are added to read as follows:

§ 206.157 Determination of transportation allowances.

* * * * *

(f) *Allowable costs in determining transportation allowances.* Lessees may include, but are not limited to, the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Firm demand charges paid to pipelines.* You must limit the allowable costs for the firm demand charges to the applicable rate per MMBtu multiplied by the actual volumes transported. You may not include any losses incurred for previously purchased but unused firm capacity. You also may not include any gains associated with releasing firm capacity. If you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period;

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to implement the restructuring requirements of FERC Orders in 18 CFR part 284;

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service;

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines;

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable provided such fees are mandatory in FERC-approved tariffs;

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses;

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* This paragraph does not apply to non-arm's-length transportation arrangements unless the transportation allowance is based on a FERC or State regulatory-approved tariff;

(8) *Temporary storage services.* This includes short duration storage services offered by market centers or hubs (commonly referred to as "parking" or "banking"), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or less; and

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* MMS allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under §§ 206.152(i) and 206.153(i) of this part.

(g) *Nonallowable costs in determining transportation allowances.* Lessees may not include the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off the lease, for more than 30 days;

(2) *Aggregator/marketer fees.* This includes fees you pay to another person (including your affiliates) to market your gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production;

(3) *Penalties you incur as shipper.* These penalties include, but are not limited to:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price the pipeline pays you for over-delivered volumes outside the tolerances and the price you receive for over-delivered volumes within the tolerances;

(ii) *Scheduling penalties.* This includes penalties you incur for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point;

(iii) *Imbalance penalties.* This includes penalties you incur (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point; and

(iv) *Operational penalties.* This includes fees you incur for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline;

(4) *Intra-hub transfer fees.* These are fees you pay to hub operators for administrative services (e.g., title transfer tracking) necessary to account for the sale of gas within a hub; and

(5) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

(h) *Other transportation cost determinations.* Use this section when calculating transportation costs to establish value using a netback procedure or any other procedure that requires deduction of transportation costs.

Subpart E—Indian Gas

7. Section 206.172 is amended by revising the first sentence of paragraph (b)(1)(i) and adding a new paragraph (b)(1)(iv) to read as follows:

§ 206.172 Valuation standards—unprocessed gas.

* * * * *

(b)(1)(i) The value of gas sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii), (iii), and (iv) of this section. * * *

* * * * *

(iv) *How to value over-delivered volumes under a cash-out program.* This paragraph applies to situations where a pipeline purchases gas from a lessee according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (c)(3) of this section.

* * * * *

8. Section 206.172, paragraph (i), is revised to read as follows:

§ 206.172 Valuation standards—unprocessed gas.

* * * * *

(i) The lessee must place gas in marketable condition and market the gas for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor. Where the value established under this section is determined by a lessee's gross proceeds, that value will be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition or to market the gas.

* * * * *

9. Section 206.173 is amended by revising the first sentence of paragraph (b)(1)(i) and adding a new paragraph (b)(1)(iv) to read as follows:

§ 206.173 Valuation standards-processed gas.

* * * * *

(b)(1)(i) The value of residue gas or any gas plant product sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii), (iii), and (iv) of this section.

* * * * *

(iv) *How to value over-delivered volumes under a cash-out program.* This paragraph applies to situations where a pipeline purchases gas from a lessee according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (c)(3) of this section.

* * * * *

10. Section 206.173, paragraph (i), is revised to read as follows:

§ 206.173 Valuation standards—processed gas.

* * * * *

(i) The lessee must place residue gas and gas plant products in marketable condition and market the residue gas and gas plant products for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor. Where the value established under this section is determined by a lessee's gross proceeds, that value will be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition or to market the residue gas and gas plant products.

* * * * *

11. In § 206.177, paragraph (f) is removed; paragraph (g) is redesignated as paragraph (h) and revised; and new paragraphs (f) and (g) are added to read as follows:

§ 206.177 Determination of transportation allowances.

* * * * *

(f) *Allowable costs in determining transportation allowances.* Lessees may include, but are not limited to, the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Firm demand charges paid to pipelines.* You must limit the allowable costs for the firm demand charges to the applicable rate per MMBtu multiplied by the actual volumes transported. You may not include any losses incurred for previously purchased but unused firm capacity. You also may not include any gains associated with releasing firm capacity. If you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period;

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to

implement the restructuring requirements of FERC Orders in 18 CFR part 284;

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service;

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines;

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable provided such fees are mandatory in FERC-approved tariffs;

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses;

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* This paragraph does not apply to non-arm's-length transportation arrangements unless the transportation allowance is based on a FERC or State regulatory-approved tariff;

(8) *Temporary storage services.* This includes short duration storage services offered by market centers or hubs (commonly referred to as "parking" or "banking"), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or less; and

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* MMS allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under §§ 206.172(i) and 206.173(i) of this part.

(g) *Nonallowable costs in determining transportation allowances.* Lessees may not include the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off the lease, for more than 30 days;

(2) *Aggregator/marketer fees.* This includes fees you pay to another person (including your affiliates) to market your gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production;

(3) *Penalties you incur as shipper.* These penalties include, but are not limited to:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price the pipeline pays you for over-delivered volumes outside the tolerances and the price you receive for over-delivered volumes within the tolerances;

(ii) *Scheduling penalties.* This includes penalties you incur for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point;

(iii) *Imbalance penalties.* This includes penalties you incur (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point; and

(iv) *Operational penalties.* This includes fees you incur for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline;

(4) *Intra-hub transfer fees.* These are fees you pay to hub operators for administrative services (e.g., title transfer tracking) necessary to account for the sale of gas within a hub; and

(5) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

(h) *Other transportation cost determinations.* Use this section when calculating transportation costs to establish value using a netback procedure or any other procedure that requires deduction of transportation costs.

[FR Doc. 97–32802 Filed 12–15–97; 8:45 am]

BILLING CODE 4310–MR–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–162; RM–9112]

Radio Broadcasting Services; Hutchinson, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gary L. Violet, allots Channel 240A at Hutchinson, Kansas. *See* 62 FR 41016, July 31,1997. Channel 240A can be allotted to Hutchinson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 240A at Hutchinson are 38–04–54 NL and 97–55–42 WL. With this action, this proceeding is terminated.

DATES: Effective January 20, 1998. A filing window for Channel 240A at Hutchinson, Kansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–162, adopted November 5, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Channel 240A at Hutchinson.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32702 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–32; RM–8931; RM–9065]

Radio Broadcasting Services; Calico Rock and Leslie, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 246A to Calico Rock, Arkansas, as that community's first local aural transmission service in response to a petition filed on behalf of Sugarloaf Broadcasting. *See* 62 FR 04227, January 29, 1997. Coordinates used for Channel 246A at Calico Rock are 36–05–01 and 92–09–26. A counterproposal filed on behalf of Leslie Broadcasters, seeking the allotment of Channel 246C2 to Leslie, Arkansas, as that community's first local aural transmission service is denied (RM–9065).

Our determination was reached after comparatively evaluating each proposal. That analysis revealed that each community receives at least five full-time aural reception services. Therefore, Calico Rock was preferred as it is the larger community. With this action, the proceeding is terminated.

DATES: Effective January 20, 1998. A filing window for Channel 246A at Calico Rock, Arkansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–32, adopted November 5, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Calico Rock, Channel 246A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32706 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–34; RM–8938]

Radio Broadcasting Services; Saint Paul, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287A to Saint Paul, Arkansas, as that community's first local aural transmission service in response to a petition filed on behalf of Saint Paul Broadcasting. *See* 62 FR 4225, January 29, 1997. Coordinates used for Channel 287A at Saint Paul, Arkansas, are 35–48–14 and 93–37–00. With this action, the proceeding is terminated.

DATES: Effective January 20, 1998. A filing window for Channel 287A at Saint Paul, Arkansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–34, adopted November 5, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Saint Paul, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32707 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–114; RM–9059]

Radio Broadcasting Services; Dassel and Hutchinson, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 295C3 for Channel 296A at Hutchinson, Minnesota, reallots Channel 295C3 to Dassel, Minnesota, and modifies the license for Station KKJR to specify operation on Channel 295C3 at Dassel in response to a petition filed by North American Broadcasting Co., Inc. *See* 62 FR 18558, April 16, 1997. The coordinates for Channel 295C3 at Dassel are 45–08–30 and 94–26–00. With this action, this proceeding is terminated.

DATES: Effective January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–114, adopted November 19, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2131 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 296A and Hutchinson and adding Dassel and Channel 295C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32705 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–124; RM–9073]

Radio Broadcasting Services; Blue Lake, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 292A to Blue Lake, California, as that community's first local aural transmission service, in response to a petition for rule making filed by Vixon Valley Broadcasting. *See* 62 FR 23427, April 30, 1997. Coordinates used for Channel 292A at Blue Lake, California, are 40–52–54 and 123–59–12. With this action, the proceeding is terminated.

DATES: Effective January 20, 1998. A filing window for Channel 292A at Blue Lake, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–124, adopted October 8, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Blue Lake, Channel 292A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32704 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–215; RM–8898, RM–8924]

Radio Broadcasting Services; Anamosa and Asbury, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Susan I. Coloff, allots Channel 239A at Anamosa as the community's first local aural transmission service. *See* 61 FR 57360, November 6, 1996. In response to a counterproposal (RM–8924) filed by Sports America Radio Network the Commission also allots Channel 238A at Asbury, Iowa. Channel 239A and Channel 238A can be allotted to Anamosa and Asbury, respectively, in compliance with the Commission's minimum distance separation requirements with site restrictions of 6 kilometers west for Channel 239A at Anamosa and 6 kilometers east for Channel 238A at Asbury. The coordinates for Channel 239A at Anamosa are 42–05–40 NL and 91–21–18 WL. The coordinates for Channel 238A at Asbury are 42–30–18 NL and 90–40–46 WL. With this action, this proceeding is terminated.

DATES: Effective January 20, 1998. The filing window for Channel 239A at Anamosa and Channel 238A at Asbury will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–215, adopted November 26, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Anamosa, Channel 239A and by adding Channel 238A at Asbury.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32703 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–109; RM–9016]

Radio Broadcasting Services; Eckley, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 237C1 to Eckley, Colorado, as that community's first local aural transmission service, in response to a petition for rule making filed by KRDZ Broadcasters, Inc.. *See* 62 FR 17773, April 11, 1997. Coordinates used for Channel 237C1 at Eckley, Colorado, are 40–06–48 and 102–29–18. With this action, the proceeding is terminated.

DATES: Effective January 20, 1998. A filing window for Channel 237C1 at Eckley, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–109, adopted November 5, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Eckley, Channel 237C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32700 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 62, No. 241
Tuesday, December 16, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–71–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA-Groupe AEROSPATIALE Models TB10 and TB200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA-Groupe AEROSPATIALE (Socata) Models TB10 and TB200 airplanes. The proposed AD would require inspecting the wing rear attachment fittings for cracks, replacing any cracked fitting, and incorporating wing rear attachment fitting reinforcement kits. The proposed AD is the result of mandatory continued airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent structural failure of the wing rear attachment fittings caused by cracks in this area, which could result in a wing separating from the airplane with consequent loss of control of the airplane.

DATES: Comments must be received on or before January 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–71–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted. Service information that applies to the proposed AD may be obtained from the Socata-Groupe Aerospatiale, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone 62.41.74.26; facsimile 62.41.74.32; or the Product Support Manager, Socata-Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile (954) 964–1668. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–71–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–71–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Socata Models TB10 and TB200 airplanes. The DGAC reports three incidents of cracks on the wing rear attachment fittings and one incident of rear wing attachment fitting deformation. These conditions, if not detected and corrected, could result in a wing separating from the airplane with consequent loss of control of the airplane.

Relevant Service Information

Socata has issued Service Bulletin No. SB 10–082, Amdt. 1, dated April 1996, which specifies procedures for inspecting the wing rear attachment fittings for cracks. Also included in this service bulletin is reference to wing rear attachment fitting reinforcement kits that should be incorporated on the Socata Models TB10 and TB200 airplanes. The procedures for incorporating these reinforcement kits are in the technical instructions included with each kit.

The DGAC classified this service bulletin as mandatory and issued French AD 94–249(A)R1, dated June 19, 1996, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Socata Models TB10 and TB200 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the wing rear attachment fittings for cracks, replacing any cracked fitting, and incorporating wing rear attachment fitting reinforcement kits. Accomplishment of the proposed inspections would be in accordance with Socata Service Bulletin No. SB 10–082, Amdt. 1, dated April 1996. Accomplishment of the proposed reinforcement kits would be in accordance with the technical instructions included with each kit.

Differences Between the French AD, the Service Bulletin, and This Proposed AD

French AD 94–249(A)R1, dated June 19, 1996, and Socata Service Bulletin No. SB 10–082, Amdt. 1, dated April 1996, both give the owners/operators of certain Models TB10 and TB200 airplanes the option of accomplishing one of the following if no cracks are found during the inspections:

—Incorporating the wing rear attachment fitting reinforcement kit No. OPT10 920300; or

—Reinspecting at certain intervals until cracks are found at which time the incorporation of a wing rear attachment fitting reinforcement kit would be mandatory.

The FAA's policy is to provide corrective action that will eliminate the need for repetitive inspections. The FAA has determined that long-term operational safety will be better assured by design changes that remove the source of the problem, rather than by repetitive inspections or other special procedures.

Because the incorporation of wing rear attachment fitting reinforcement kit No. OPT10 920300 on the affected airplanes eliminates the need for repetitive inspections, the proposed AD differs from the service bulletin and French AD in that it would mandate incorporation of two of these kits on each wing.

Cost Impact

The FAA estimates that 71 airplanes in the U.S. registry would be affected by the proposed AD.

Accomplishing the actions of the proposed AD (both the inspection and incorporation of the reinforcement kits) would take approximately 11 workhours per airplane (3 workhours for the inspection of all four wing rear attachment fitting areas, and 2 workhours to incorporate the reinforcement kit at each of the four wing rear attachment fitting areas), at an average labor rate of approximately $60 an hour. Parts to accomplish the proposed AD cost approximately $200 per airplane ($50 per kit × 4 kits). Based on these figures, the total cost impact of the proposed initial inspection on U.S. operators is estimated to be $61,060 or $860 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Socata-Groupe Aerospatiale: Docket No. 95–CE–71–AD.

Applicability: Models TB10 and TB200 airplanes, serial numbers 804; 807; 808; 816 through 819; 823 through 1701; 1707 through 1733; and 1737 through 1761, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural failure of the rear wing attachment fittings caused by cracks in this area, which could result in a wing separating from the airplane with consequent loss of control of the airplane, accomplish the following:

Note 2: The compliance times of this AD are presented in landings instead of hours time-in-service (TIS). If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 0.67.

Note 3: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Upon accumulating 3,000 landings on each wing rear attachment fitting (total of four; two per wing) or within the next 75 landings after the effective date of this AD, whichever occurs later, inspect the wing rear attachment fittings for cracks in accordance with the accomplishment instructions section of Socata Service Bulletin (SB) No. SB 10–082, mdt. 1, dated April 1996.

(1) If any fitting is found cracked on the wing side, prior to further flight, replace the cracked fitting and incorporate wing rear attachment fitting reinforcement kit No. OPT10 920300 in accordance with the Technical Instruction of Modification, OPT10 9203-57, Wing Rear Attachment Bracket, dated April 1996.

(2) If any fitting is found cracked on the fuselage side, prior to further flight, accomplish the following:

(i) Incorporate wing rear attachment fitting reinforcement kit No. OPT10 920500 in accordance with the Technical Instruction of

Modification, OPT10 9205–57, Wing Rear Attachment Bracket, dated April 1996; and

(ii) Incorporate wing rear attachment fitting reinforcement kit No. OPT10 920300 in accordance with the Technical Instruction of Modification, OPT109203–57, Wing Rear Attachment Bracket, dated April 1996.

(3) If any fitting is not found cracked, prior to further flight, incorporate wing rear attachment fitting reinforcement kit No. OPT10 920300 in accordance with the Technical Instruction of Modification, OPT109203–57, Wing Rear Attachment Bracket, dated April 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Socata—Groupe Aerospatiale, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. These documents may also be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 5: The subject of this AD is addressed in French AD 94–249(A)R1, dated June 19, 1996.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32727 Filed 12–15–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 97N–0481]

Gastroenterology-Urology Devices: Reclassification of the Penile Rigidity Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the penile rigidity implant, a medical device intended to provide penile rigidity in men diagnosed as having erectile dysfunction, from class III to class II. The special controls identified in this proposed rule are the physician and patient labeling, biocompatibility testing, mechanical reliability performance testing, clinical testing, and sterilization requirements described in FDA's guidance document entitled "Guidance for the Content of Premarket Notifications for Penile Rigidity Implants." This reclassification is being proposed on the agency's own initiative based on new information. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) and the Safe Medical Devices Act of 1990 (the SMDA).

DATES: Written comments by March 16, 1998. FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The act, as amended by the 1976 amendments (Pub. L. 94–295) and the SMDA (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as post amendment devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval. Section 515(b) of the act describes a two step regulatory process. A notice of proposed rulemaking in the Federal Register, which includes the proposed regulation, proposed findings of risks and benefits of the device, an opportunity for the submission of comments and an opportunity to request reclassification, is followed by the final rule which issues the regulation.

In 1990, the SMDA added section 515(i) to the act. This section requires FDA to issue an order to manufacturers of preamendment class III devices for which no final regulation requiring the submission of PMA's has been issued to submit to the agency a summary of, and a citation to any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information which has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 519 of the act requires manufacturers, importers, distributors and device user facilities to submit adverse event reports of certain device-related events. Section 515(i) of the act also directs FDA to either revise the classification of the device into class I or class II or require the device to remain in class III and establish a schedule for the issuance of a rule requiring the submission of PMA's for those devices remaining in class III.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced its strategy and made available a document setting forth its strategy for implementing the provisions of the SMDA that require FDA to review the classification of preamendment class III devices. In accordance to this plan, the agency divided preamendment class III devices into the following three groups: Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness, but are no longer used or are in very limited use. Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA also announced its intent to call for submission of PMA's for the 15 highest priority devices in Group 3, and for all Group 1 devices. The agency also announced its intent to issue an order under section 515(i) of the act for the remaining Group 3 devices and for all of the Group 2 devices.

In the **Federal Register** of August 14, 1995 (60 FR 41984), FDA published two orders for Certain Class III Devices; requiring the submission of safety and effectiveness information in accordance with the Preamendments Class III Strategy for implementing section 515(i) of the act. Each of the orders described in detail the format for submitting the type of information required by section 515(i) of the act so that the information submitted would clearly support reclassification or indicate that a device should be retained in class III. The orders also scheduled the required submissions in groups of nine devices at 6-month intervals beginning with August 14, 1996. The device proposed in this regulation for reclassification was included in the August 14, 1995, order on Group 2 devices (Docket No. 94N–0417).

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon "new information." The reclassification can be initiated by FDA or by the petition of an interested person. The term "new information," as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) However, regardless of whether data before the agency are past or new data, the "new information" on which any reclassification is based is required to consist of "valid scientific evidence" as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of PMA's. (See section 520(c) of the act (21 U.S.C. 360j(c)).)

II. Regulatory History of the Device

In the **Federal Register** of November 23, 1983 (48 FR 53012 at 53023), FDA issued a final rule classifying the penile rigidity implant into class III (21 CFR 876.3630). The preamble to the proposal to classify the device (46 FR 7578, January 23, 1981) included the recommendations of the Gastroenterology and Urology Devices Advisory Panel and the General and Plastic Surgery Devices Advisory Panel (the Panels), FDA advisory committees, which met regarding the classification of the device. The Panels both recommended that the device be classified in class II, listing poor tissue compatibility, tissue trauma, and device structural problems as potential risks of the device and citing that general controls and performance standards would provide reasonable assurance of the safety and effectiveness of the device.

FDA disagreed with the Panels' recommendations and proposed that the penile rigidity implant be classified into class III. The proposal stated that the agency believed that insufficient information existed to determine that general controls would provide reasonable assurance of safety and effectiveness of the device, or to establish a performance standard to provide this assurance. The proposal stated that premarket approval is necessary for this device because it presents a potential unreasonable risk of injury due to: (1) Adverse tissue reaction if the materials used in the construction of the device are not biocompatible; (2) infection resulting from defects in the design, construction, packaging, or processing of the device; (3) urinary retention if the prosthesis compresses the urethra; and (4) erosion or malfunction if the implant is improperly sized or mechanically breaks. In support of its proposal to strengthen regulatory surveillance of the device, FDA cited references supporting the proposed classification.

In the **Federal Register** of April 7, 1981 (46 FR 20687), FDA reopened the comment period for the proposed regulation classifying this device for an additional 60 days. This addition 60-day comment period was established because the proposed classification regulation for the penile rigidity implant stated incorrectly that the Gastroenterology and Urology Devices Advisory Panel recommended that the device be classified into class III, rather than class II. In the April 7, 1981 notice, FDA announced that on April 13, 1981, a meeting of the Panel would be held. During this meeting, the Panel reviewed all comments, and again recommended that the penile rigidity implant be classified into class II. No other comments were received during the remainder of the comment period. Again, FDA disagreed with the Panel's recommendation and proposed that the penile rigidity implant be classified into class III. FDA searched the published literature and further documented the potential risks to health resulting from silicone implants, such as silicone particle migration and allergic or adverse tissue reaction.

The preamble to the November 23, 1983 (48 FR 53012), final rule classifying the device into class III advised that the earliest date by which PMA's for the device could be required was June 30, 1986, or 90 days after issuance of a rule requiring premarket approval for the device, whichever occurs later.

In the **Federal Register** of May 6, 1994, FDA categorized the penile rigidity implant as a Group 2 device, which FDA believes has a high potential for being reclassified into class II. The agency also announced its intent to issue an order under section 515(i) of the act for Group 2 devices.

In the **Federal Register** of August 14, 1995 (60 FR 41984 at 41986), FDA published an order requiring manufacturers of penile rigidity implants to submit safety and effectiveness information in accordance with the Preamendments Class III Strategy for implementing section 515(i) of the act. On August 14, 1996, two

summaries of safety and effectiveness information were submitted to the agency (Refs. 39 and 40). These summaries recommended that the penile rigidity implant be reclassified into class II and provide information to assist FDA in reclassifying this device.

In accordance with sections 513(e) of the act and 21 CFR 860.130, based on new information with respect to the device, FDA, on its own initiative, is proposing to reclassify this device from class III to class II when intended to provide penile rigidity in men diagnosed as having erectile dysfunction.

Consistent with the act and the regulation, FDA did not refer, because of the reasons stated herein, the proposed reclassification to the Panel for its recommendation on the requested change in classification.

III. Device Description

A penile rigidity implant is a device that consists of a pair of semi-rigid rods implanted in the corpora cavernosa of the penis to provide rigidity. It is intended to be used in men diagnosed as having erectile dysfunction.

The proposed rule to reclassify the penile rigidity implant applies to legally marketed penile rigidity implants identified above that were commercially distributed before May 28, 1976, and to devices introduced into commercial distribution since that date that have been found to be substantially equivalent to such penile rigidity implants.

IV. Proposed Reclassification

FDA is proposing that the penile rigidity implant be reclassified from class III to class II. FDA believes that class II with special controls (specifically, the physician and patient labeling, biocompatibility testing, mechanical reliability performance testing, clinical testing, and sterilization requirements described in FDA's guidance document entitled "Guidance for the Content of Premarket Notifications for Penile Rigidity Implants") would provide a reasonable assurance of safety and effectiveness.

V. Risks to Health

After considering the information discussed by the Panels during the classification proceedings, as well as the published literature, Medical Device Reports, and 515(i) submissions of safety and effectiveness information, FDA has evaluated the risks associated with the penile rigidity implant. FDA now believes that the following are risks associated with the use of the penile rigidity implant:

A. Infection

Infection is a risk common to all surgical procedures and implants. For penile rigidity implants, infection is typically reported to occur in 1 to 8 percent of cases (average of 3 percent) (Refs. 3, 5, 7, 9, 13, 23, and 26). In most cases, these infections result from seeding at the time of surgery and are reported as early post-operative complications (Refs. 5 and 23). However, late occurring prosthetic infections have been noted, and they are believed to be hematogenous in nature as the result of dental or other surgical procedures (Refs. 5, 6, 13, 17, and 23).

The best defense against infections is prophylaxis, particularly the selection of patients who are free of infection, the administration of an intraoperative shave and scrub, the use of perioperative antibiotics, and adherence to strict surgical technique (Refs. 5, 6, 18, 23, 26, and 32). However, even with these preventive measures, certain patients, such as those with a history of urinary tract infection, are still at risk for penile prosthesis infection (Refs. 5, 23, and 32).

The treatment of an infected penile prosthesis is removal of the device combined with appropriate antibiotic medications (Refs. 21, 23, and 26). A new device can either be placed at the time of removal, or 3 to 12 months later (Refs. 5, 7, 23, and 26). Sequela to penile prosthesis infections include scarring/fibrosis at the site of the prior implant, which could make reimplantation of a penile rigidity implant difficult (Refs. 21 and 30). Serious sequela are rare (Ref. 11).

B. Erosion, Migration, and Extrusion

Erosion refers to the breakdown of tissue adjacent to the device. Migration refers to the movement of the implant within the body. In some cases, erosion may result in the external migration of the device, which is called extrusion. Erosion, migration, and extrusion of a penile rigidity implant are uncommon (<3 percent) complications (Ref. 28). Erosion and/or extrusion usually occur distally through either the urethra or the glans penis (Ref. 26). Proximal migration of the device without erosion or extrusion can result in inadequate support of the glans penis (often called "floppy glans" or "SST deformity") (Refs. 28 and 31).

Factors contributing to erosion, migration, or extrusion include implantation of a device that is too large, iatrogenic injury to the surrounding tissues (i.e., urethra, corpora, etc.), and infection (Refs. 26, 27, and 28). Additionally, it is possible that malfunction of the implant could lead to erosion, migration, or extrusion if rough or sharp edges are created or front/rear tips extenders become detached. Other risk factors include previous pelvic surgery, pelvic radiation, and spinal cord injury (Refs. 28 and 35).

Treatment of an eroded, migrated, or extruded device consists of removal of the device, antibiotic treatment, and supportive care (Refs. 21, 26, and 28). If the condition is not treated in a timely manner, the condition may worsen, leading to infection and loss of tissue (Ref. 21).

C. Mechanical Malfunction

As with other prosthetic devices intended to restore a physiologic function, penile rigidity implants may malfunction mechanically. Rates for mechanical malfunction vary with the type and model of penile rigidity implant, and are believed to be significantly lower now than they were with previous models due to improvements in design (Refs. 14, 17, and 27). Mechanical malfunction may be caused by improper device handling or surgical technique, or problems with the device's design or manufacturing process (Ref. 27).

Mechanical malfunctions may affect device effectiveness in terms of decreases in device positionability, implant rigidity or column strength, or length of the prosthesis (Refs. 1, 14, 19, 24, 25, and 36). Surgical intervention to remove and replace the device is required if the patient desires a working prosthesis (Refs. 1, 33, and 36).

D. Patient Dissatisfaction

If patients are not provided information and counseled about the risks and benefits of the penile rigidity implant prior to implantation, they may not have realistic expectations of the physical, psychological, and functional outcomes of the implant (Refs. 15, 26, and 30). Uninformed patients may be dissatisfied with the outcome in terms of size, shape, and rigidity of the prosthetic erection; concealability of the penis; penile scarring; penile sensation; the chance that any latent erectile capability will be lost following surgery; or other performance characteristics (Refs. 17, 21, 26, and 34). Some dissatisfied patients have requested removal of a device that was functioning according to the manufacturer's specifications because the implant did not meet their expectations (Refs. 9 and 22). With proper counseling, however, patient satisfaction with penile rigidity implants is typically in the range of 85 to 91 percent (Refs. 8, 12, 14, 16, 17, and 37).

E. Adverse Tissue Reaction

If the materials used in the construction of the device are not biocompatible, the patient may have an adverse tissue reaction. This risk is not unique to penile rigidity implants, as patients may have an adverse tissue or sensitivity reaction to any implanted device. Since the time that the penile rigidity implant was originally classified, few reports of adverse tissue reaction have been reported (Ref. 19). Surgical removal of the implant is generally indicated in patients experiencing prolonged discomfort or pain due to biocompatibility issues associated with device materials.

F. Prolonged or Intractable Pain

As would be expected for any implant, surgical placement of a penile rigidity implant results in temporary pain at the operative sites during the recovery period. Infrequently, however, cases of prolonged or intractable post-operative pain associated with device implantation have also been reported (Ref. 22). Persistent or worsening pain beyond the 4 to 6-week-post-operative healing period is symptomatic of possible infection (Refs. 23 and 29). However, studies have noted cases with persistent pain and subsequent device removal for which culture results were negative (Ref. 14). It is possible that pain can also be symptomatic of adverse tissue reaction, mechanical malfunction, or incorrect sizing of the device. Prolonged or intractable pain may lead to surgical intervention with device removal.

G. Urinary Obstruction

If the prosthesis compresses the urethra, urine flow could be impeded (Ref. 8). However, since the time that the penile rigidity implant was originally classified, reports of urinary obstruction secondary to implantation of a penile rigidity implant have been rare (Ref. 19). This complication may occur if the implant is improperly sized or malpositioned by the implanting physician. Surgical intervention may be indicated in patients experiencing urinary obstruction associated with the presence of the device.

H. Silicone Particle Migration

The patient-contacting surfaces of penile rigidity implants consist primarily of silicone elastomers. Neither silicone gel nor liquid are used in the construction of these devices. The migration of silicone particles from the solid elastomer exterior of various penile prostheses has been described by Barrett et al. (Ref. 2). Although particles of silicone were found in the tissues adjacent to the device and in draining lymph nodes in some patients, no deleterious effects have been associated with this finding to date. In a related study by Fishman et al., patients with pre-existing penile implants underwent pelvic lymph node dissection for reasons unrelated to the implant (Ref. 10). Microscopic examination of the lymph nodes showed no evidence of silicone elastomer migration.

Since the time that the reasons for placing penile rigidity implants into class III were first summarized, no adverse reactions related to silicone particle migration have been documented. Therefore, it appears that this theoretical risk may not be an actual risk of penile rigidity implants.

I. Other Complications

Other infrequently reported complications of the penile rigidity implant include post-operative bleeding, hematoma, penile edema, and penile necrosis/gangrene (Refs. 3, 19, 20, 26, and 36). Intraoperative complications have also been noted, which include perforation of the corpora or the urethra, inability to adequately dilate the corpora, incorrect sizing of the implant, and tearing or ripping the device during implantation (Refs. 5, 19, 26, 30, and 36). All of these complications can be reduced by good patient selection and careful surgical technique.

VI. Summary of Reasons for Reclassification

FDA believes the penile rigidity implant should be classified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Reclassification is Based

In addition to the potential risks of the penile rigidity implant described in section V of this document, there is reasonable knowledge of the benefits of the device. Specifically, placement of the penile rigidity implant in men with erectile dysfunction typically provides sufficient penile rigidity for vaginal intercourse. Furthermore, satisfaction rates in excess of 90 percent have been reported among penile rigidity implant recipients (Refs. 8, 12, 14, 16, 17, and 37).

Based on the available information, FDA believes that the special controls discussed in section VIII of this document are capable of providing reasonable assurance of the safety and effectiveness of the penile rigidity implant with regard to the identified risks to health of this device.

VIII. Special Controls

In addition to general controls, FDA believes that the guidance document entitled, "Guidance for the Content of Premarket Notifications for Penile Rigidity Implants" (Ref. 38) is an adequate special control to address the risks to health described in section V of this document.

This guidance document addresses the following: (1) Physician labeling, (2) patient labeling, (3) biocompatibility testing, (4) mechanical testing, (5) clinical data requirements, and (6) sterilization procedures and labeling.

A. Physician labeling

The physician labeling section of the guidance document can help control the risks of infection, erosion, migration, extrusion, mechanical malfunction, patient dissatisfaction, prolonged or intractable pain, urinary obstruction, silicone particle migration, and other miscellaneous clinical complications by having the manufacturer provide information on: (1) The proper handling of the device prior to implantation, (2) selection and preparation of the patient, (3) surgical and sterile technique, (4) implant sizing, (5) care of the implant site during and after the recovery period, (6) post-operative use of the device, (7) how to recognize and minimize these potential complications, (8) the normal healing process, and (9) the realistic outcomes of the penile rigidity implant.

B. Patient labeling

The patient labeling section of the guidance document can help control the risks of infection, erosion, migration, extrusion, mechanical malfunction, patient dissatisfaction, prolonged or intractable pain, urinary obstruction, silicone particle migration, and other miscellaneous clinical complications by having the manufacturer provide prospective patients information on: (1) Care of the implant site during and after the recovery period, (2) post-operative use of the device, (3) how to recognize and minimize these potential complications, (4) the normal healing process, and (5) the realistic outcomes of the penile rigidity implant.

C. Biocompatibility testing

Adherence to the biocompatibility testing section of the guidance document can control the risk of

adverse tissue reaction by having the manufacturer demonstrate that the patient contacting materials of the penile rigidity implant are safe for long-term implantation.

D. Mechanical testing

Adherence to the mechanical testing section of the guidance document can help control the risks of erosion, migration, extrusion, and mechanical malfunction by demonstrating the reliability of the device.

E. Clinical data requirements

For penile rigidity implants that are significantly different from devices already on the market, the clinical data requirements section of the guidance document can help control the risks of infection, erosion, migration, extrusion, mechanical malfunction, and prolonged or intractable pain by determining whether these risks are within the limits established by existing devices.

F. Sterilization procedures and labeling

Adherence to the sterilization procedures and labeling section of the guidance document can help control the risk of infection by guarding against the implantation of an unsterile device.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 am. and 4 pm., Monday through Friday.

1. Agatstein, E. H., J. H. Farrer, and S. Raz, "Fracture of Semirigid Penile Prosthesis: A Rare Complication," *The Journal of Urology*, 135:376–377, 1986.
2. Barrett, D. M., D. C. O'Sullivan, A. A. Malizia, H. M. Reiman, and P. C. Abeil-Aleff, "Particle Shedding and Migration from Silicone Genitourinary Prosthetic Devices," *The Journal of Urology*, 146:319–322, 1991.
3. Benjany, D. E., P. E. Perito, M. Lustgarten, and R. K. Rhamy, "Gangrene of the Penis after Implantation of Penile Prosthesis: Case Reports, Treatment Recommendations and Review of the Literature," *The Journal of Urology*, 150:190–192, 1993.
4. Blue book memorandum #G95–1, "Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing.'" FDA.
5. Blum, M. D., "Infections of Genitourinary Prostheses," *Infectious Disease Clinics of North America*, 3(2):259–274, 1989.
6. Carson, C. C., "Infections in Genitourinary Prostheses," *Urologic Clinics of North America*, 16(1):139–147, 1989.
7. Choi, H. K., I. R. Cho, and Z. C. Xin, "Ten Years of Experience with Various Penile Prosthesis in Korean," *Ynsei Medical Journal*, 35(2):209–217, 1994.
8. Dorflinger, T., and R. Bruskewitz, "AMS Malleable Penile Prosthesis," *Urology*, 28(6):480–485, 1986.
9. Earle, C. M., G. R. Watters, A. G. S. Tulloch, Z. S. Wisniewski, D. J. Lord, and E. J. Keogh, "Complications Associated with Penile Implants Used to Treat Impotence," *Australian and New Zealand Journal of Surgery*, 59:959–962, 1989.
10. Fishman, I. J., and F. N. Flores, "Retrospective Review of Pelvic Lymph Nodes in Patients with Previously Implanted Silicone Penile Prosthesis," *The Journal of Urology*, 149:355A, 1993.
11. Goldman, J. M., and M. F. Wheeler, "Primary Renal Candidiasis Associated with a Penile Prosthesis in a Diabetic Man," *The Journal of Diabetic Complications*, 3:179–180, 1989.
12. Hrebrinko, R, R. R. Bahnson, F. N. Schwentker, and W. F. O'Donnell, "Early Experience with the Duraphase Penile Prosthesis," *The Journal of Urology*, 143:60–61, 1990.
13. Kabalin, J. N., and R. Kessler, "Infectious Complications of Penile Prosthesis Surgery," *The Journal of Urology*, 139:953–955, 1988.
14. Kearse, W. S., Jr., A. L. Sago, S. J. Peretsman, J. O. Bolton, R. G. Holcomb, P. K. Reddy, P. H. Bernhard, S. M. Eppel, J. H. Lewis, M. Gladshteyn, and A. A. Melman, "Report of a Multicenter Clinical Evaluation of the Dura-II Penile Prosthesis," *The Journal of Urology*, 155:1–4, 1996.
15. Kramarsky—Binkhorst, S., "Female Partner Perception of Small—Carrion Implant," *Urology*, 12(5):545–548, 1978.
16. Krauss, D. J., L. J. Lantinga, M. P. Carey, A. W. Meisler, and C. M. Kelly, "Use of the Malleable Penile Prosthesis in the Treatment of Erectile Dysfunction," 142:988–991, 1989.
17. Lewis, R. W., "Long-Term Results of Penile Prosthetic Implants," *Urologic Clinics of North America*, 22(4):847–856, 1995.
18. Lynch, M. J., G. M. Scott, J. A. Inglis, and J. P. Pryor, "Reducing the Loss of Implants Following Penile Prosthetic Surgery," *British Journal of Urology*, 73:423–427, 1994.
19. Medical Device Reporting (MDR) and Product Problem Reporting (PPR), Device Experience Network (DEN), FDA.
20. Melman, A., "Experience with Implantation of the Small—Carrion Penile Implant for Organic Impotence," *The Journal of Urology*, 116:49–50, 1976.
21. Montague, D. K., "Penile Prostheses. An Overview.," *Urologic Clinics of North America*, 16(1):7–12, 1989.
22. Moul, J. W., and D. G. McLeod, "Experience with the AMS 600 Malleable Penile Prosthesis," *The Journal of Urology*, 135:929–931, 1986.
23. Mulcahy, J. J., M. D. Brant, and J. K. Ludlow, "Management of Infected Penile Implants," *Techniques in Urology*, 1(3):115–119, 1995.
24. Mulcahy, J. J., R. J. Krane, L. K. Lloyd, M. Edson, and M. B. Siroky, "Duraphase Penile Prosthesis—Results of Clinical Trials in 63 Patients," *The Journal of Urology*, 143:518–519, 1990.
25. Mulcahy, J. J., "Mechanical Penile Prostheses," *Problems in Urology*, 7(3):311–318, 1993.
26. Mulcahy, J. J., "The Management of Complications of Penile Implants," *Problems in Urology*, 5(4)608–627, 1991.
27. Nielsen, K. T., and R. C. Bruskewitz, "Semirigid and Malleable Rod Penile Prostheses," *Urologic Clinics of North America*, 16(1):13–23, 1989.
28. Oesterling, J. E., "A Simple Technique for Removal of Eroded Penile Prostheses," *The Journal of Urology*, 142:1538–1539, 1989.
29. Parsons, C. L., P. C. Stein, M. K. Dobke, C. P. Virden, and D. H. Frank, "Diagnosis and Therapy of Subclinically Infected Prostheses," *Surgery, Gynecology & Obstetrics*, 177:504–506, 1993.
30. Petrou, S. P., and D. M. Barrett, "The Use of Penile Prostheses in Erectile Dysfunction," *Seminars in Urology*, 8(2):138–152, 1990.
31. Quinn, A. D., and S. Das, "Proximal Extrusion of Semirigid Penile Prosthesis," *Scandinavian Journal of Urology and Nephrology*, 23:239–240, 1989.
32. Radomski, S. B., and S. Herschorn, "Risk Factors Associated with Penile Prosthesis Infection," *The Journal of Urology*, 147:383–385, 1992.
33. Reisner, G. S., "Experience with Penile Prostheses in 107 Patients," *British Journal of Urology* (Abstract), 65:87, 1990.
34. Steege, J. F., A. L. Stout, and C. C. Carson, "Patient Satisfaction in Scott and Small—Carrion Penile Implant Recipients: A Study of 52 Patients," *Archives of Sexual Behavior*, 15(5):393–399, 1986.
35. Steidle, C. P., and J. J. Mulcahy, "Erosion of Penile Prostheses: A Complication of Urethral Catheterization," *The Journal of Urology*, 142:736–739, 1989.
36. Tawil, E. A., and J. G. Gregory, "Failure of the Jonas Prosthesis," *The Journal of Urology*, 135:702–703, 1985.
37. Thompson, I. M., F. R. Rodriguez, and E. J. Zeidman, "Experience with Duraphase Penile Prosthesis: Its Use as Replacement Device," *Urology*, 36(6):505–507, 1990.
38. "Guidance on the Content of Premarket Notifications for Penile Rigidity Implants," revised December 9, 1996, FDA.
39. Health Industry Manufacturers Association, 515(i) Submission of Safety and Effectiveness, Docket No. 94N–0417, August 14, 1996.
40. Mentor Corp., 515(i) Submission of Safety and Effectiveness, Docket No. 94N–0417, August 14, 1996.

X. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this proposed classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages distributive impacts and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

XII. Comments

Interested persons may, on or before March 16, 1998 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 876 be amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.3630 is revised to read as follows:

§ 876.3630 Penile rigidity implant.

(a) *Identification.* A penile rigidity implant is a device that consists of a pair of semi-rigid rods implanted in the corpora cavernosa of the penis to provide rigidity. It is intended to be used in men diagnosed as having erectile dysfunction. (b) *Classification.* Class II (special controls) (premarket notification guidance).

Dated: November 11, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–32809 Filed 12–15–97; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 514

Annual Fees Payable By Indian Gaming Operations

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission is proposing to amend its fee regulations to add class III gaming revenues to the assessable gross revenue base, increase the total amount of fees that can be imposed, and provide for an exemption for self-regulated tribes such as the Mississippi Band of Choctaw. This action is being taken pursuant to recent amendments to the Indian Gaming Regulatory Act. The primary effect of this action is to increase the funding for the National Indian Gaming Commission.

DATES: Comments must be submitted on or before January 15, 1998.

ADDRESSES: Comments may be mailed to: Fee Regulation Comments, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, DC 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9 a.m. and noon, and between 2 p.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission is charged with, among other things, regulating gaming on Indian lands. Pursuant to recent amendments to the IGRA, these fee regulations are being amended to:

(1) Add class III gaming revenues to the assessable gross revenue base,

(2) Increase the total amount of fees that can be imposed, and

(3) Provide an exemption for self-regulated tribes such as the Mississippi Band of Choctaw.

As a result, gaming operations offering only class III games must begin reporting and paying fees, and gaming operations offering both class II and III games must begin reporting and paying fees on their class III revenues.

The Commission has adopted a 30 day comment period for this proposed rule because (1) the basic rule has been in effect for six (6) years, (2) comments were received and considered before the basic rule was adopted, and (3) it is important that the increased funding for the Commission as enacted by Congress be implemented as soon as possible.

The purpose of these regulations is to implement those portions of IGRA that provide for the payment of fees by gaming operations and for the collection and use of such fees by the Commission. Gaming operations are the economic entities that are licensed by a tribe, operate the games, receive the revenues, issue the prizes, and pay the expenses. Gaming operations may be operated by a tribe directly, by a management contractor, or in the case of certain grandfathered class II gaming operations, by an individual owner/operator.

These regulations provide for a system of fee assessment and payment that is self-administered by the gaming operations. Briefly, the Commission adopts and communicates the assessment rates; the gaming operations apply those rates to their revenues, compute the fees to be paid, and report and remit the fees to the Commission on a quarterly basis.

Annual fees are payable quarterly each calendar year based on the previous calendar year's class II and III assessable gross revenues from the gaming operations.

The Commission will adopt preliminary annual fee rate(s) during the first quarter of each calendar year and final annual fee rate(s) for that year during the fourth quarter. Separate rates may be established for assessable gross revenue amounts under $1,500,000 (1st tier) and amounts over $1,500,000 (2nd tier). The rates when adopted will be published in the **Federal Register**.

Under the proposed rule, self-regulated tribes such as the Mississippi Band of Choctaw will be exempt from the payment of fees pursuant to the fiscal year 1998 Interior Appropriations Act. The definitions of self-regulation and self-regulated and the requirements for obtaining a certificate of self-regulation and designation as self-regulated will be developed and added to the regulations in later rulemakings.

Gaming operations are to apply the rates adopted to their assessable gross revenues from the preceding calendar year to determine to amount of fees to be paid. The gaming operations are to report the amounts of assessable gross revenues, the fees to be paid, and their calculations to the Commission when they remit their quarterly payments. Remittances and reports are due no later than March 31, June 30, September 30, and December 31, of each calendar year.

Examples of computations are included in the regulations.

By passing the fees on the previous year's assessable gross revenues, sufficient time is provided to the gaming operations to finalize and submit adjusted numbers before the end of the third quarter of the calendar year. Furthermore, by providing for the adoption of preliminary and final rates by the Commission, it is intended that sufficient time be provided the Commission to ascertain the assessable gross revenue base before finalizing the rates for each calendar year.

These regulations are applicable to all gaming operations under the jurisdiction of the Commission. New gaming operations (with no gaming revenues generated in the previous calendar year) must file reports quarterly even though no fees will be due.

Penalties and interest may be assessed for failures to file quarterly statements and to pay fees when due, and required approvals may be withheld, denied or revoked for failures to pay fees, penalties and interest.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The additional entities becoming subject to these regulations as a result of the changes now being made are generally larger than those entities presently covered. Furthermore, the fees that will be paid by the entities presently covered will be less than the fees they are presently paying.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Tadd M. Johnson,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 514

Gambling, Indians-lands, Reporting and recordkeeping requirements.

Accordingly, 25 CFR Part 514 is proposed to be amended as follows:

PART 514—FEES

1. The authority for Part 514 continues to read as follows:

Authority: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

2. Section 514.1 is amended by revising paragraphs (a) introductory text, (a)(4), (b) introductory text, (b)(4), (c) introductory text, (c)(1), (c)(2), (c)(5) introductory text, (c)(8), (d) introductory text, and (g) and by adding paragraph (a)(6), to read as follows:

§ 514.1 Annual Fees.

(a) Each gaming operation under the jurisdiction of the Commission shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

* * * * *

(4) The rates of fees imposed shall be—

(i) No more than 2.5 percent of the first $1,500,000 (1st tier), and

(ii) No more than 5 percent of amounts in excess of the first $1,500,000 (2nd tier) of the assessable gross revenues from each gaming operation regulated by the Commission.

* * * * *

(6) If a tribe is determined to be self-regulated pursuant to the provisions of 25 U.S.C. 2717(a)(2)(C), no fees shall be imposed.

(b) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amount of money wagered on class II and III games, admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures.

* * * * *

(4) All class II and III revenues from gaming operations are to be included.

(c) Each gaming operation regulated by the Commission shall file with the Commission quarterly a statement showing its assessable gross revenues for the previous calendar year.

(1) These quarterly statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures;

(2) These quarterly statements shall be filed no later than March 31, June 30, September 30, and December 31, of each calendar year the gaming operation is subject to the jurisdiction of the Commission, beginning in September 1991. Any changes or adjustments to the previous year's assessable gross revenue amounts from one quarter to the next shall be explained.

* * * * *

(5) Each gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using—

* * * * *

(8) Quarterly statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

* * * * *

(d) The total amount of all fees imposed during any fiscal year shall not exceed $8,000,000. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

* * * * *

(g) The information collection requirements contained in paragraph (c) of this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 3200–0011. The information is being collected to determine the assessable gross revenues of each gaming operation and the aggregate assessable gross revenues of all gaming operations. The information will be used to set and adjust fee rates and to verify the computations of fees paid by each gaming operation. Response is mandatory.

[FR Doc. 97–32662 Filed 12–15–97; 8:45 am]

BILLING CODE 7565–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71

RIN–AA53

Health Standards for Occupational Noise Exposure in Coal, Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; Availability of report.

SUMMARY: This notice announces the availability of a report from the National Institute for Occupational Safety and Health (NIOSH) entitled "Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners." The report, which MSHA received on October 15, 1997, is cumulative evidence concerning the risk to metal and nonmetal miners of noise induced hearing loss (NIHL). The report is relevant to the magnitude of the risk of NIHL among miners. The Agency, therefore, will supplement the rulemaking record with this report and make it available to interested parties upon request.

ADDRESSES: Copies of the report are available from the Office of Standards, Regulations, and Variances, 703–235–1910.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, MSHA, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION: On December 17, 1996, MSHA published a proposed rule in the **Federal Register** (61 FR 66348) revising its health standards for occupational noise exposure in coal and metal and nonmetal mines. In this proposal, MSHA stated that current scientific evidence demonstrates that NIHL constitutes a serious hazard, that evidence exists of continuing harm to miners, and that MSHA standards no longer reflect experience and expert advice. The Agency concluded that regulatory action was necessary to address the continued excess risk of NIHL resulting from mining employment.

MSHA evaluated evidence related to the risk to miners from exposure to harmful levels of noise, and evidence on the level of that risk. MSHA determined that with respect to mine safety and health, any definition of material impairment of hearing should relate to a permanent, measurable loss of hearing which, unchecked, will limit the ability to understand speech, as it is spoken in everyday social (noisy) conditions. This is because speech comprehension is essential for mine safety.

The Agency reviewed the major studies on the level of risk at different noise exposures. The studies consistently indicated that the risk of developing a material impairment became significant over a working lifetime when workplace exposure exceeded average sound levels of 85 dBA. The data further indicated that while lowering exposure from an eight-hour time-weighted average (TWA_8) of 90 dBA to one of 85 dBA did not eliminate the risk, it did reduce the risk by approximately half. MSHA also reviewed a large body of data on the effects of varying industrial sound levels on worker hearing. These studies were supportive of the same conclusion. The Agency also focused on the harm that can occur at lower sound levels by reviewing studies of workers in other countries.

To confirm the magnitude of the risks of NIHL among miners, MSHA examined evidence of reported hearing loss among miners from a variety of sources audiometric data bases tracking hearing acuity among coal miners, individual commenter data, hearing loss data reported to MSHA; and workers' compensation data. MSHA also asked NIOSH to examine a body of audiometric data which tracked hearing acuity among coal miners and one which tracked hearing acuity among metal and nonmetal miners. NIOSH completed its analysis of the audiometric data on coal miners and issued a report to MSHA entitled "Analysis of Audiograms for a Large Cohort of Noise-Exposed Miners," (Franks, 1996) which is a part of the existing rulemaking record.

NIOSH has now issued its report to MSHA which analyzes audiometric data on metal and nonmetal miners. This report is entitled "Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners." The NIOSH analysis supports the conclusion from earlier scientific studies that miners are losing their hearing sensitivity faster than the general population. It indicates that 49% of the male population of metal and nonmetal miners have a hearing impairment by age 50 as compared with only 9% of the general population.

The report is available to interested members of the public and may be obtained upon request by electronic mail, fax, phone, or mail as follows: (1) Electronic mail: psilvey@msha.gov, (2) Fax: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551, (3) Phone: Patricia W. Silvey, 703–235–1910, and (4) Mail: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984.

Dated: December 9, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–32709 Filed 12–15–97; 8:45 am]

BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 96–6 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document clarifies the dates for filing comments and Notices of Intent to Participate published in the **Federal Register** notice of December 1, 1997, announcing the proposed rulemaking for adjusting the royalty rates for the noncommercial educational broadcasting compulsory license.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking concerning the adjustment of royalty rates for compulsory license governing the use of certain copyrighted works in connection with noncommercial broadcasting contains two dates for filing comments and Notices of Intent to Participate. The correct date, December 29, 1997, is announced in the date caption. The second date, December 31, 1997, stated in the section entitled, Comments and Notices of Intent to Participate, page 63504, second column, first paragraph,

first sentence, is incorrect and should also read December 29, 1997.

The notice also contains an error in the regulatory text which requires correction.

List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television.

Accordingly, 37 CFR part 253 is corrected by making the following correcting amendments:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 253.7 Recording rights, rates and terms.

2. In § 253.7, paragraph (b)(4), correct the parenthetical "(per half" to read "(per half hour)".

Dated: December 11, 1997.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 97–32792 Filed 12–15–97; 8:45 am]

BILLING CODE 1410–33–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96–4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document clarifies the dates for filing comments and Notices of Intent to Participate published in the **Federal Register** notice of December 1, 1997, announcing a proposed rulemaking concerning the adjustment of the physical phonorecord and digital phonorecord delivery royalty rates.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking concerning the adjustment of royalty rates for the making and distribution of a physical phonorecord and a digital phonorecord delivery contains two dates for filing comments and Notices of Intent to Participate. The correct date, December 29, 1997, is announced in the date caption. The second date, December 31, 1997, stated in the section entitled, Comments and Notices of Intent to Participate, page 63507, third column, is incorrect and should also read December 29, 1997.

Dated: December 11, 1997.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 97–32791 Filed 12–15–97; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970–AB52

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration on Children, Youth and Families is issuing this notice of proposed rulemaking to amend its procedures regarding replacement of Indian tribal grantees. The proposed change would add provisions to implement a new statutory provision that allows Indian tribes which are Head Start grantees to identify an agency, and request that the agency be designated by the Department as an alternative grantee, when the grantee is terminated or denied refunding.

DATES: In order to be considered, comments on this proposed rule must be received on or before February 17, 1998.

ADDRESSES: Please address comments to the Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013. Beginning 14 days after close of the comment period, comments will be available for public inspection in Room 2217, 330 C Street, S.W., Washington, D.C. 20201, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013; (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. In addition, Section 645A of the Head Start Act provides authority to fund programs for families with infants and toddlers, known as Early Head Start programs. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Additionally, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1996, Head Start served 752,000 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, the Head Start Act and implementing regulations permit up to 10 percent (and more for Indian tribes under certain circumstances) of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Summary of the Proposed Regulation

The authority for this Notice of Proposed Rulemaking (NPRM) is section 646 of the Head Start Act (42 U.S.C. 9841), as amended by Public Law 103–252, Title I of the Human Service Amendments of 1994. Section 646(e) directs the Secretary to specify a process by which an Indian tribe may identify an agency, and request that the agency identified be designated as the Head Start agency providing services to the tribe, if (a) financial assistance to the tribal grantee is terminated, and (b) the tribe would otherwise be precluded from providing Head Start services to its members because of the termination. The Act specifies that the regulation must prohibit the designation as Head Start grantee of an agency that includes an employee who served on the administrative or program staff of the terminated agency when that employee was responsible for a deficiency that was the basis for the termination.

The proposed rule:

- Adds a new definition for Indian tribe;
- Provides that an Indian tribe may identify an agency to serve as the alternative grantee at the time that it receives a notice of termination or a notice of denial of refunding;
- Allows the tribe to participate in the selection of the replacement grantee;
- Allows the tribe a second opportunity to identify an alternative agency if the Department finds the first agency identified by the tribe is not an eligible agency capable of operating a Head Start program. If the second agency identified by the tribe is not selected as a Head Start grantee, a replacement grantee will be designated under 45 CFR Part 1302.

III. Section by Section Discussion of the NPRM

Section 1302.2 Definitions

We propose to add to this section a definition for the phrase "Indian tribe," which is the same definition that appears in Section 637(10) (42 U.S.C. § 9832(10)) of the Head Start Act.

Section 1302.30 Procedure for Identification of Alternative Agency

Section 1302.30 outlines the procedures by which an Indian tribe may identify an agency to the Department as an alternative grantee and request that the agency be designated as a grantee in the event that the tribe has been terminated or denied refunding as Head Start grantee. While section 646(e)(1)(A) of the Head Start Act refers only to the "termination" of financial assistance, we have interpreted "termination" in this section to mean either termination of a grant or denial of refunding of the grantee, as there is no substantive difference between these two actions in terms of their impact on a grantee's Head Start program.

Section 1302.30(a) states that a grantee may take advantage of this procedure only if it was the sole agency that was receiving funding to provide Head Start services to the tribe, and if the members of the tribe would otherwise be precluded from receiving Head Start services because of the termination or denial of refunding. These basic qualifying criteria are found in Section 646(e)(1) of the Head Start Act.

Under section 1302.30(b) of the proposed procedures the Department, if it moves to terminate or deny refunding to a tribal grantee, must notify the grantee that it may propose an alternative agency to the Department, in writing, within the time limits established for appealing the Department's decision to deny refunding or terminate the grant at 45 CFR § 1303.14(c) and 45 CFR § 1303.15(b)(2).

If the Department finds that the alternative agency identified by the tribe is not an agency that is both eligible and capable of operating a Head Start program, the Department will, under section 1302.30(b)(3), so notify the tribe, and the tribe will have another opportunity to identify an alternative agency and request the designation of that agency as the alternative agency. This must be done within 15 days of the Department's sending notification to the grantee that the agency identified is unsuitable. Section 1302.30(b)(4) specifies that if the Department finds this second agency also not capable of operating a Head Start program, a replacement grantee will be selected by the Department according to the regulations under 45 CFR part 1302. Funding of the grantee will continue during any appeal, as provided under section 1302.30(c). The steps outlined in this proposed regulation for designation of an alternative agency identified by the tribe will be carried out during the appeal process.

Section 1302.30(d) provides that if the tribe does not identify an agency and request that it be appointed as alternative agency, the Department will seek a permanent replacement grantee under 45 CFR part 1302.

Section 1302.31 Requirements of Alternative Agency

The purpose of this section is to make clear that any agency designated by the Secretary to replace the grantee serving the Indian tribe must meet the minimum requirements for Head Start agencies as established by the Head Start Act. These are minimum requirements, which no agency designated a Head Start agency may fail to meet. However, merely satisfying these requirements does not qualify an agency to be a Head Start grantee. The Department will analyze the capabilities and experience of the agency identified by the tribe to determine whether that agency is capable of operating a Head Start program. This analysis will be guided by the criteria for agency designation found in section 641(d) of the Head Start Act and sections 1302.10 (b)(1) to (5) and 1302.11 (a) to (c) of this Part.

Section 1302.32 Alternative Agency—Prohibition

This section states that the tribe may not designate as an alternative agency an agency which includes an employee who served on the administrative or program staff of the Indian tribal grantee, and who was responsible for a deficiency that was the basis of the termination or denial of refunding described in section 1302.30. It also specifies that the Department, not the tribe, reserves the right to determine whether an employee was responsible for a deficiency within the meaning and context of this section.

IV. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking sets forth a process whereby an Indian tribe that is being terminated as a Head Start grantee may identify an alternative agency and request that the alternative agency be designated as the Head Start agency providing services to the tribe. The costs of implementing this rule are not significant.

Regulatory Flexibility Act of 1980

The Regulatory Act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. For this reason, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit collections of information contained in proposed rules published for public comment in the

Federal Register to the Office of Management and Budget for review and approval. This NPRM does not contain collection of information as defined in the Paperwork Reduction Act and implementing regulations.

List of Subjects in 45 CFR Part 1302

Education of disadvantaged, Grant programs—social programs, Selection of grantees.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: November 24, 1997.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For the reasons set forth in the Preamble, 45 CFR Part 1302 is proposed to be amended as follows:

1. The Authority citation for Part 1302 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

2. Section 1302.2 is amended by adding a definition for "Indian Tribe" to read as follows:

§ 1302.2 Definitions.

* * * * *

Indian tribe means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

3. A new Subpart D, containing new sections 1302.30, 1302.31, and 1302.32, is added to read as follows:

Subpart D—Replacement of Indian Tribal Grantees

§ 1302.30 Procedure for identification of alternative agency.

(a) An Indian tribe whose Head Start grant has been terminated, or which has been denied refunding as a Head Start grantee, may identify an agency and request the responsible HHS official to designate such agency as an alternative agency to provide Head Start services to the tribe if:

(1) The tribe was the only agency that was receiving federal financial assistance to provide Head Start services to members of the tribe; and

(2) The tribe would be otherwise precluded from providing such services to its members because of the termination or denial of refunding.

(b)(1) The responsible HHS official, when notifying a tribal grantee of the intent to terminate financial assistance or deny its application for refunding, must notify the grantee that it may identify an agency and request that the agency serve as the alternative agency in the event that the grant is terminated or refunding denied.

(2) The tribe must identify the alternate agency to the responsible HHS official, in writing, within the time for filing an appeal under 45 CFR Part 1303.

(3) The responsible HHS official will notify the tribe, in writing, whether the alternative agency proposed by the tribe is found to be eligible for Head Start funding and capable of operating a Head Start program. If the alternative agency identified by the tribe is not an eligible agency capable of operating a Head Start program, the tribe will have 15 days from the date of the sending of the notification to that effect from the responsible HHS official to identify another agency and request that the agency be designated. The responsible HHS official will notify the tribe in writing whether the second proposed alternate agency is found to be an eligible agency capable of operating the Head Start program.

(4) If the tribe does not identify a suitable alternative agency, a replacement grantee will be designated under these regulations.

(c) If the tribe appeals a termination of financial assistance or a denial of refunding, it will, consistent with the terms of 45 CFR Part 1303, continue to be funded pending resolution of the appeal. However, the responsible HHS official and the grantee will proceed with the steps outlined in this regulation during the appeal process.

(d) If the tribe does not identify an agency and request that the agency be appointed as the alternative agency, the responsible HHS official will seek a permanent replacement grantee under these regulations.

§ 1302.31 Requirements of alternative agency.

The agency identified by the Indian tribe must establish that it meets all requirements established by the Head Start Act and these requirements for designation as a Head Start grantee and that it is capable of conducting a Head Start program. The responsible HHS official, in deciding whether to designate the proposed agency, will analyze the capacity and experience of the agency according to the criteria found in section 641(d) of the Head Start Act and §§ 1302.10(b) (1) through (b)(5) and 1302.11 of this part.

§ 1302.32 Alternative agency—prohibition.

(a) No agency will be designated as the alternative agency pursuant to this Subpart if the agency includes an employee who:

(1) Served on the administrative or program staff of the Indian tribal grantee, and

(2) Was responsible for a deficiency that:

(i) Relates to the performance standards or financial management standards described in the Head Start Act; and

(ii) Was the basis for the termination or denial of refunding described in § 1302.30 of this part.

(b) The responsible HHS official shall determine whether an employee was responsible for a deficiency within the meaning and context of this section.

[FR Doc. 97–32748 Filed 12–15–97; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21 and 74

[MM Docket No. 97–217; DA 97–2547]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this Order Extending Time for Filing Comments and Reply Comments ("*Order*"), comment is sought on additional proposals for amendment of the Commission's rules to enable Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to engage in fixed two-way transmissions. In addition, the comment period in this docket is extended in order to allow for proper consideration of the proposals.

DATES: Comments must be filed on or before January 8, 1998, and reply comments on or before February 9, 1998. Written comments by the public on the Initial Regulatory Flexibility Analysis are due January 8, 1998.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael J. Jacobs, (202) 418–7066 or Dave Roberts, (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order Extending Time for Filing Comments and Reply Comments*, MM Docket No. 97–217, adopted and released December 5, 1997. The full text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of Order Extending Time for Filing Comments and Reply Comments

1. This *Order* was issued in response to a request filed by the Catholic Television Network ("CTN") for a supplemental period to comment on the Commission's Notice of Proposed Rulemaking in this docket. *MDS and ITFS Two-Way Transmissions*, 62 FR 60025 (Nov. 6, 1997), *as corrected*, 62 FR 60750 (Nov. 12, 1997). Expressing concern that the proposed rules would create a potential for "brute force overload" interference from response stations to nearby non-co- nor adjacent channel ITFS receive sites, CTN argued that a two-way system should be implemented only if sufficient frequency separation is provided between "downstream" and "upstream" transmissions. CTN proposed to "reform" the E, F, G and H channel groups to create a band of contiguous ITFS spectrum at 2500–2620 MHz and a band of contiguous spectrum for response transmissions at 2644–2690 MHz, making available up to 24 MHz for downstream MDS operations as a guard band. ITFS G channel licensees would be allowed to (i) consent to their channels being used as response channels, so long as they satisfy ITFS programming requirements on other system channels; (ii) request relocation of some or all of their channels to vacant or vacated ITFS frequencies, or to MDS Channels E1–2 and F1–2; or (iii) enter into a shared-time agreement with another ITFS licensee, under which both licensees could use the G channels as response channels and the partner's channels for ITFS programming requirements. CTN added that the 125 KHz channels should be reallocated to ITFS and used only as response channels. CTN suggested that its proposal would reduce harmful interference potential, encourage efficient spectrum usage, and preserve the spectrum reservation for ITFS.

2. The parties who commenced this proceeding ("Petitioners") filed a response countering that other solutions to brute force interference may be more efficient, such as rendering the response hub licensee responsible to either cure any brute force interference to protected ITFS receive sites or to cease operating the offending transceiver. Regarding CTN's proposal, Petitioners disagreed with its limits on the location of response channels, and further disagreed that refarming only should occur where the ITFS G channels licensee voluntarily agrees.

3. Given the recent submission of CTN's proposal and its potential importance to this proceeding, and the complexity of CTN's proposal and of the other issues involved in this proceeding, interested parties are afforded an additional 30 days in which to file comments and reply comments.

4. *Authority.* This *Order* is issued pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 USC §§ 154(i) and 303(r), and §§ 0.204(b), 0.283, and 1.45 of the Commission's rules, 47 CFR 0.204(b), 0.283, and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 97–32800 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–180; RM–9104]

Radio Broadcasting Services; Hawthorne, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document denies the petition filed by Burce F. Elving proposing the allotment of Channel 293A to Hawthorne, Wisconsin, as that community's first local service. *See* 62 FR 44434, August 21, 1997. Petitioner failed to provide sufficient information showing that Hawthorne meets the Commission's requirements with respect to community status for allotment purposes. The Commission also dismissed a counterproposal filed by WTRW, Incorporated seeking the allotment of Channel 293A at Superior, Wisconsin, as being technically deficient. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–180, adopted November 19, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800; facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32708 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–235, RM–9187]

Radio Broadcasting Services; Pecos and Wink, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ronald W. Latimer requesting the reallotment of Channel 247C1 from Pecos to Wink, Texas, and the modification of Station KKLY(FM)'s construction permit to specify Wink as its community of license. Channel 247C1 can be allotted to Wink in compliance with the Commission's minimum distance separation requirements with a site restriction of 36.7 kilometers (22.8 miles) southeast. The coordinates for Channel 247C1 at Wink are 31–28–16 NL and 102–57–28 WL. Since Wink is located within 230 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested. In accordance with the provision of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 247C1 at Wink.

DATES: Comments must be filed on or before January 26, 1998, and reply comments on or before February 10, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry A. Friedman, Thompson, Hine & Flory LLP, 1920 North Street, NW, Suite 800, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–235, adopted November 19, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32701 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–236, RM–9186]

Radio Broadcasting Services; Point Arena, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Point Broadcasting, one of two mutually exclusive applicants for Channel 272B1 at Point Arena, California, proposing the allotment of Channel 296B1 to Point Arena to resolve the mutual exclusivity while providing a second local FM service to that community. If the channel is allotted with cut-off protection, petitioner also seeks to amend its pending application for Channel 272B1 at Point Arena to reflect operation on Channel 296B1. Coordinates used for Channel 296B1 at Point Arena are 39–01–22 and 123–31–17.

DATES: Comments must be filed on or before January 26, 1998, and reply comments on or before February 10, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–236, adopted November 19, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32771 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 204

[DFARS Case 97–D033]

Defense Federal Acquisition Regulation Supplement; Uniform Procurement Instrument Identification

AGENCY: Department of Defense (DoD).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Comments are solicited from Government and industry personnel on the contemplated revision of Defense Federal Acquisition Regulation Supplement (DFARS) guidance pertaining to uniform procurement instrument identification numbers. DoD has a need to address modifications to its system for numbering contracts, modifications, and orders.

DATES: Comments should be submitted in writing to the address shown below on or before February 17, 1998.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, DAR Council, IMD 3D139, PDUSD(A&T)DP/DAR, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 97–D033 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D033 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION: The Defense Acquisition Regulations (DAR) Council has opened DFARS Case 97–D033 to revise DFARS Subpart 204.70, Uniform Procurement Instrument Identification Numbers, to address various issues associated with the use of Procurement Instrument Identification Numbers (PIINs) and Supplemental Procurement Instrument Identification Numbers (SPIINs).

a. Among the revisions under consideration is one to increase the length of SPIINs used to identify call or order numbers under contracts awarded by another activity from 4 characters to 13, or possibly 15, characters. This revision is similar to a revision included in an earlier proposed rule, DFARS Case 92–D044, that was published in the **Federal Register** on August 18, 1994 (59 FR 42566), and that was withdrawn on December 28, 1994 (59 FR 66884), in response to public comments addressing the significant cost impact it would have on existing automated systems. The notice withdrawing the proposed rule stated that ". . . both industry and Government should ensure that these proposed revisions can be accommodated in any future automated systems." The DAR Council is interested in hearing from industry and Government activities with respect to their ability to accommodate such a change at this time. The Council asks that respondents specifically address whether assignment of a unique 13 (or possibly 15) character SPIIN for every order (i.e., every call or order would have a completely unique SPIIN, and, therefore, could be tracked by reference to its SPIIN only) would improve the potential benefits of the contemplated revision.

b. Other issues under consideration include:

1. To ensure compatibility with automated systems that use contract numbers, should there be a uniform contract numbering system, or an agreed upon maximum number of characters, for basic contract numbers assigned to all contracts subject to the Federal Acquisition Regulation or, at least, to any such contracts that may have calls or orders issued under them by other agencies?

2. Is there a need to use more than two digits to designate the fiscal year within PIINs, and possibly SPIINs, to avoid potential Year 2000 problems in automated systems?

Michele P. Peterson,

Executive Edtior, Defense Acquisition Regulations Council.

[FR Doc. 97–32757 Filed 12–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE48

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Catesbaea Melanocarpa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Catesbaea melanocarpa* (no common name) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). *Catesbaea melanocarpa* is known from Puerto Rico, St. Croix in the U.S. Virgin Islands, Barbuda, Antigua, and Guadeloupe. In Puerto Rico, it is currently known from only one location in Cabo Rojo, and in the U.S. Virgin Islands, it is known from one location near Christiansted, St. Croix. Both populations are located on privately owned land subject to intense pressure for development for residential, tourism and industrial purposes. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *C. melanocarpa*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 17, 1998. Public hearing requests must be received by January 30, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander, Botanist, at the Boquerón Field Office (see **ADDRESSES** section) (787/851–7297, facsimile 787/851–7440).

SUPPLEMENTARY INFORMATION:

Background

Catesbaea melanocarpa (no common name) was first discovered in the mid-nineteenth century on the British island of Antigua by the German collector Hienrich Rudolph Wullschlaegel. It was found in St. Croix, U.S. Virgin Islands, in about 1881 by the Danish collector Baron H. F. A. von Eggers and in Guánica, Puerto Rico, by the German collector Paul Sintenis in 1886. Although duplicate specimens are maintained at other herbariums, the original collections were in the herbarium at Berlin-Dahlem and were destroyed by the bombing during World War II.

The species has also been reported from Barbuda and Guadeloupe, islands of the Lesser Antilles (Howard 1989, Proctor 1991). While little is known about the plant's status on these islands, the Center for Plant Conservation (1992) describes it as rare on Antigua. It was not rediscovered in St. Croix until 1988 and to date, it has not been relocated in the Guánica, Puerto Rico, area. The St. Croix population, located near Christiansted, consists of about 24 individual plants (Breckon and Kolterman 1993). In 1995, a small population, consisting of one individual, was located in Cabo Rojo, Puerto Rico (Puerto Rico Planning Board 1995). One specimen, collected in 1974, located in the herbarium in San Juan apparently originated from the Susúa Commonwealth Forest. However, this specimen is sterile and in depauperate condition; therefore, its identification cannot be confirmed.

Catesbaea melanocarpa, of the family Rubiaceae, belongs to a genus which consists of ten or more species of spiny shrubs. Most are confined to the Antilles but some may extend into the Bahamas and the Florida Keys. In Puerto Rico, two species are known—*C. melanocarpa* and *C. parviflora*. These two species are differentiated by the size and color of the fruits, black and larger, 5 to 6 millimeters (mm) (.19 to .23 inches (in)) in diameter, in the former and white and smaller 2 to 4 mm (.07 to .15 in) in diameter, in the latter (Breckon and Kolterman 1993, Britton and Wilson 1925). Some authors note that *C. melanocarpa* may be a synonym or variant of *C. parviflora* (Howard 1989, Proctor 1991) and recommend further review. However, Breckon and Kolterman (1993) and the Center for Plant Conservation (1992) recommend its protection due to the extremely small number of individuals currently known, the intense pressure for development in these areas, and the potential for an appreciable loss of the species' genetic diversity.

Catesbaea melanocarpa is a branching shrub which may reach approximately 3 meters (9.8 feet) in height. Spines are borne at every internode and are from 1 to 2 centimeters (.39 to .78 in) long. Leaves are small, from 5 to 25 mm (.19 to 1.0 in) long and 2 to 15 mm (.07 to .58 in) wide, often fascicled (clustered), and the small stipules are deciduous. The

flowers are white, solitary or paired, and almost sessile in the axils. The corolla is funnelform and from 8 to 10 mm (.31 to .39 in) long. The fruit is globose, 5 to 6 mm (.19 to .23 in) in diameter, and black with a crustaceous pericarp. The two-celled fruit contains five to seven seeds in each cell (Proctor 1991).

Previous Federal Action

Catesbaea melanocarpa was identified as a category 2 candidate species in Notices of Review published in the **Federal Register** on February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). Prior to 1996, a category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Plants, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. Designation of category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7956). *Catesbaea melanocarpa* was approved as a candidate by the Service on September 6, 1995, and identified as a candidate in the 1996 Notice of Review. A candidate species is a species for which the Service has sufficient information to propose it for protection under the Act. This small shrub is considered a "critical" plant species by the Natural Heritage Program of the Puerto Rico Department of Natural and Environmental Resources. The Center for Plant Conservation (1992) has assigned the species a Priority Status of A (a species which could possibly go extinct in the wild in the next 5 years).

Because of budgetary constraints and the lasting effects of a congressionally imposed listing moratorium, the Service is processing listing actions according to the listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process listing actions during fiscal year (FY) 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the status of outstanding proposed listings. Third priority (Tier 3) is given to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. The processing of this proposed rule falls under Tier 3. At this time, the Southeast Region has no pending Tier 1 actions and is near completion of its pending Tier 2 actions. Additionally, the guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities included in Tiers 1, 2, and 3" (61 FR 64480). The Service announced an extension on October 23, 1997, (62 FR 55268) of the guidance for FY 1997. The guidance will remain in effect until the FY 1998 appropriations bill for the Department of the Interior becomes law and new final guidance is published in the **Federal Register**.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Catesbaea melanocarpa* (Krug and Urban) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Catesbaea melanocarpa* is known only from Puerto Rico, St. Croix, Barbuda, Antigua, and Guadeloupe. Available information indicates that it is rare on Antigua (Center for Plant Conservation 1992). In Puerto Rico, it is known from a single individual on privately owned land. In St. Croix it is known from only one population consisting of about 24 individuals, also on privately owned land. The known individual from Cabo Rojo, Puerto Rico, is located on land currently proposed for a residential/tourism development consisting of a hotel, condo-hotel, residential villas and lots, a golf course, and other associated facilities. In St. Croix, the population is located near Christiansted on land also subject to pressure for development.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The use of the species for such purposes has not been documented as a factor in its decline.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Catesbaea melanocarpa* is not yet on the Commonwealth list. Federal listing would provide immediate protection under the Act and, by virtue of an existing section 6 agreement with the Commonwealth, listing will also assure the addition of this species to the Commonwealth list and enhance possibilities for funding needed research. The Territory of the U.S. Virgin Islands has amended an existing regulation to provide for protection of endangered and threatened wildlife and plants. *Catesbaea melanocarpa* is considered by the U.S. Virgin Islands to be endangered (see "Available Conservation Measures" for discussion of prohibitions). As with the Commonwealth, the existence of a section 6 Cooperative Agreement with the Service will increase possibilities for funding needed research with this plant.

E. *Other natural or manmade factors affecting its continued existence.* One of the most important factors affecting the continued survival of this species is its limited distribution. Because so few individuals are known to occur, the risk of extinction is extremely high. Catastrophic natural events, such as hurricanes, may dramatically affect forest species composition and structure by felling large trees and creating numerous canopy gaps. Breckon and Kolterman (1993) documented the loss of individuals in St. Croix following the passing of hurricane Hugo in 1989.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Catesbaea melanocarpa* as endangered. Within the United States, the species is known from only one locality in Puerto Rico and one in St. Croix, U.S. Virgin Islands. Deforestation for residential and tourism development are imminent threats to the survival of the species. Therefore, endangered rather than threatened status more accurately describes the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall propose critical habitat at the time the species is proposed to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat for *Catesbaea melanocarpa* is not prudent because such designation would not be beneficial to the species.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Neither of the two known populations of *Catesbaea melanocarpa* occur on Federal land. However, Federal involvement with this species may occur through the use of Federal funding for rural housing and development on non-Federal lands. The use of such funding for projects affecting occupied habitat for this species would be subject to review under section 7(a)(2), whether or not critical habitat was designated. The precarious status of *C. melanocarpa* is such that any adverse modification or destruction of its occupied habitat would also jeopardize its continued existence. This would also hold true as the species recovers and its numbers increase. In addition, the Service believes that notification of Federal agencies of the areas where these plants occur can be accomplished without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. For these reasons, the Service believes that designation of currently occupied habitat of this species as critical habitat would not result in any additional benefit to the species and that such designation is not prudent.

Potential introduction sites within unoccupied lands occur on lands under Federal management (Cabo Rojo, Laguna Cartagena and Sandy Point National Wildlife Refuges) and Commonwealth management (Guánica Commonwealth Forest). As managers of these subtropical dry forest lands, the Service and the Puerto Rico Department of Natural and Environmental Resources are actively involved in conservation activities. Both agencies are committed to the protection of these forested areas and would minimize or avoid any impacts to such habitat. Any introduction would be closely coordinated with the area's managers. Introduction of this species onto unoccupied private lands likely would not be pursued because suitable habitat under private ownership occurs only in very small patches which are interspersed among developed areas and are too small for introduction. For these reasons, the Service believes that designation of currently unoccupied habitat of this species as critical habitat would not result in any additional benefit to the species and, therefore, such designation is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, Territory and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the Commonwealth and/or Territory and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for this species, as discussed above. Federal involvement may include Federal funding for rural housing and development (for example, funding by agencies such as the Rural Development or Housing and Urban Development).

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth or Territorial law or regulation, including Commonwealth or Territorial criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth and Territorial conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation and survival of the species. It is anticipated that few trade permits for this species will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The only known populations of *Catesbaea melanocarpa* are located on privately owned land. Since there is no Federal ownership, and the species is not currently in trade, the only potential

section 9 involvement would relate to removing or damaging the plant in knowing violation of Commonwealth or Territorial law, or in knowing violation of Commonwealth or Territorial criminal trespass law. Section 15.01(b) of the Commonwealth "Regulation to Govern the Management of Threatened and Endangered Species in the Commonwealth of Puerto Rico" states: "It is illegal to take, cut, mutilate, uproot, burn or excavate any endangered plant species or part thereof within the jurisdiction of the Commonwealth of Puerto Rico." The U.S. Virgin Island regulation states that "no person may harass, injure or kill, or attempt to do the same, or sell or offer for sale any specimen, or parts or produce of such specimen, of an endangered or threatened species." The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Caribbean Field Office (see ADDRESSES section). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Atlanta, Georgia 30345–3301 (404/679–7313).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Catesbaea melanocarpa*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject areas and their possible impacts on this species.

Final promulgation of the regulation on *Catesbaea melanocarpa* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Supervisor, Boquerón Field Office (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

Breckon, G. and D. Kolterman. 1993. *Catesbaea melanocarpa* Krug & Urban [Rubiaceae]. Final Report under Cooperative Agreement No. 14–16–0004–92–970 between the U.S. Fish and Wildlife Service and the University of Puerto Rico, Mayaguez Campus.

Britton, N.L. and P. Wilson. 1925. Scientific survey of Porto Rico and the Virgin Islands. Volume VI—Part 2. Botany of Porto Rico and the Virgin Islands. Descriptive flora—Spermatophyta (continued). New York Academy of Sciences, New York. 158 pp.

Center for Plant Conservation. 1992. Report on the Rare Plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.

Howard, R.A. 1989. Flora of the Lesser Antilles. Leeward and Windward Islands. Volume 6. Dicotyledoneae—Part 3. Arnold Arboretum, Harvard University, Jamaica Plain, Massachusetts. 658 pp.

Liogier, H.L. and L.F. Martorell. 1982. Flora of Puerto Rico and Adjacent Islands: a systematic synopsis. Editorial de la Universidad de Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Proctor, G. R. 1991. Puerto Rican plant species of special concern. Status and recommendations. Publicacion Cientifica Miscelanea No. 2. Departamento de Recursos Naturales de Puerto Rico. San Juan, Puerto Rico. 192 pp.

Puerto Rico Planning Board. 1995. Draft Environmental Impact Statement for Monte Carlo Resort and Boqueron Bay Site. San Juan, Puerto Rico. 88 pp.

Author. The primary author of this proposed rule is Ms. Susan Silander, Boquerón Field Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Catesbaea melanocarpa.	None	U.S.A. (PR, VI) Antigua, Barbuda, Guadeloupe.	Rubiaceae	E		NA	NA

Dated: November 25, 1997.

Director, Fish and Wildlife Service,

Jamie Rappaport Clark,

[FR Doc. 97–32738 Filed 12–15–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE38

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Flatwoods Salamander as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the flatwoods salamander (*Ambystoma cingulatum*) as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This salamander occurs in isolated populations scattered across the lower southeastern Coastal Plain in Florida, Georgia, and South Carolina. Habitat loss and degradation from agriculture, urbanization, and silvicultural practices have resulted in the loss of over 80 percent of its pine flatwoods habitat. Surviving populations are currently threatened by the continued destruction and degradation of their habitat. This proposed rule, if made final, would extend the Act's protection to this species.

DATES: Comments from all interested parties must be received by February 17, 1998. Public hearing requests must be received by January 30, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Linda LaClaire at the above address, or telephone 601/965–4900, Ext. 26; facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

The earliest reference to the flatwoods salamander, *Ambystoma cingulatum*, was by Cope in 1867 from specimens he collected in Jasper County, South Carolina (referenced in Martof 1968). This salamander is a member of the family Ambystomatidae, the mole salamanders, which contains 15 North American species. A phylogenetic analysis of ambystomatid salamanders was used to determine that the flatwoods salamander is most closely related to the ringed salamander (*A. annulatum*), which occurs in portions of Arkansas, Missouri, and Oklahoma (Shaffer *et al.* 1991).

The flatwoods salamander is a slender, small-headed mole salamander that rarely exceeds 13 centimeters (cm) (approximately 5 inches (in)) in length when fully mature (Means 1986, Conant and Collins 1991, Ashton 1992). Adult dorsal color ranges from black to chocolate-black with highly variable fine, light gray lines forming a netlike or cross-banded pattern across the back (Palis 1996). Undersurfaces are plain gray to black with a few creamy or pearl-gray blotches or spots. Sexual dimorphism is only apparent in breeding males (swollen cloacal region) or in gravid females. Adults most closely resemble Mabee's salamander, *A. mobeei*, with which it shares part of its range in South Carolina (Martof 1968). Mabee's salamanders are often more brownish; have light flecking concentrated on their sides rather than the overall pattern of the flatwoods salamander; and have a single row of jaw teeth as opposed to multiple rows in the flatwoods salamander (Conant and Collins 1991).

Flatwoods salamander larvae are long and slender, broad-headed and bushy-gilled, with white bellies and striped sides (Means 1986, Ashton 1992, Palis 1995d). They have distinctive color patterns, typically a tan mid-dorsal stripe followed by a grayish black dorsolateral stripe, a pale cream mid-lateral stripe, a blue-black lower lateral stripe and a pale yellow ventrolateral stripe (Palis 1995d). The head has a dark brown stripe passing through the eye from the nostril to the gills (Means 1986).

Optimum habitat for the flatwoods salamander is an open, mesic woodland of longleaf/slash pine (*Pinus palustris/P. elliottii*) flatwoods maintained by frequent fires. Pine flatwoods are typically flat, low-lying open woodlands that lie between the drier sandhill community upslope and wetlands down slope (Wolfe *et al.* 1988). An organic hardpan, 0.3 to 0.7 meters (m)(1 to 2 feet) into the soil profile, inhibits subsurface water penetration and results in moist soils with water often at or near the surface (Wolfe *et al.* 1988). Historically, longleaf pine generally dominated the flatwoods with slash pine restricted to the wetter areas (Wolfe *et al.* 1988). Wiregrasses (*Aristida* sp.), especially *A. beyrichiana*, are often the dominant grasses in the herbaceous ground cover (Wolfe *et al.* 1988). The ground cover supports a rich herbivorous invertebrate community which serves as a food source for the flatwoods salamander.

Adult and subadult flatwoods salamanders are fossorial (adapted for living underground) (Mount 1975). They enlarge crayfish burrows (Ashton 1992) or build their own. Captive flatwoods salamanders have been observed digging burrows and resting at night with just the tip of their heads exposed (Goin 1950). Preliminary data indicate that flatwoods salamander males first breed at 1 year of age and females at 2 years of age (Palis 1996). There are no data on survivorship by age class for the species. The longevity record for their close relative, *A. annulatum*, is 4 years, 11 months; however, many Ambystomatidae live 10 years or longer (Snider and Bowler 1992).

Adult flatwoods salamanders move to their wetland breeding sites during rainy weather, in association with cold fronts, from October to December (Palis 1997). Breeding sites are isolated (not connected to any other water body) pond cypress (*Taxodium ascendens*), blackgum (*Nyssa sylvatica* var. *biflora*), or slash pine dominated depressions which dry completely on a cyclic basis. They are generally shallow and relatively small. Breeding sites in Florida have a mean size of 1.49 hectares (ha) (3.68 acres (ac)) and a mean depth of less than 39.2 cm (15.4 in) (Palis, in press). These wetlands have a marsh-like appearance with sedges often growing throughout and wiregrasses (*Aristida* sp.), panic grasses (*Panicum* spp.), and other herbaceous species concentrated in the shallow water edges. Trees and shrubs grow both in and around the ponds. A relatively open canopy is necessary to maintain the herbaceous component which serves as cover for flatwoods salamander larvae and their aquatic invertebrate prey. Flatwoods salamander larvae were not captured in sample plots with a high proportion of detritus or open water in a study on the Apalachicola National Forest in Florida (Sekerak *et al.*, in press). Ponds typically have a burrowing crayfish fauna (genus *Procambarus*) and a diverse macroinvertebrate fauna, but lack large predatory fish (e.g., *Lepomis* (sunfish), *Macropterus* (bass), *Amia calva* (bowfin)).

Before the breeding sites become flooded, the males and females court and the females lay their eggs (singly or in clumps) beneath leaf litter, under logs

and sphagnum moss mats, or at bases of bushes, small trees, or clumps of grass (Anderson and Williamson 1976, Means 1986). Egg masses have also been found at the entrances of and within crayfish burrows (Anderson and Williamson 1976). Embryos begin development immediately, but the egg must be inundated before it will hatch. Depending on when eggs are inundated, the larvae usually metamorphose in March or April; the length of the larval period varies from 11 to 18 weeks (Palis 1995d).

The timing and frequency of rainfall is critical to the successful reproduction and recruitment of flatwoods salamanders. Fall rains are required to facilitate movements to the pond and winter rains are needed to ensure that ponds are filled sufficiently to allow hatching, development, and metamorphosis of larvae. In contrast, too much rainfall in the summer will keep pond levels from dropping below the grassy pond edge, as needed to provide dry substrate for egg deposition. This reliance on specific weather conditions results in unpredictable breeding events and reduces the likelihood that recruitment will occur every year.

Adult flatwoods salamanders leave the pond site after breeding. Studies have suggested a homing ability, based on data that salamanders exit the breeding pond near the point of their arrival (Palis 1997). Movements greater than 1,700 m (1,859 yards (yd)) from the breeding pond have been recorded (Ashton 1992). Preliminary studies indicate that the activity range of some individuals (encompassing both terrestrial habitat, breeding sites, and the areas through which they migrate) exceeds 1,500 square m (1,640 square yd) (Ashton 1992). Refugia are needed within this activity range as individuals travel from their breeding sites to the subterranean habitats where they spend the majority of their lives. Thus, a flatwoods salamander population has been defined as those salamanders using breeding sites within 3.2 kilometers (km) (2 miles (mi)) of each other, barring an impassable barrier such as a perennial stream (Palis, in press).

High quality habitat for the flatwoods salamander includes a number of isolated wetland breeding sites within a landscape of longleaf pine/slash pine flatwoods with an abundant herbaceous ground cover (Sekerak 1994). A mosaic of ponds with varying hydrologies is needed to provide appropriate breeding conditions under different climatic regimes.

The historical range of the flatwoods salamander included parts of the States of Alabama, Florida, Georgia, and South Carolina located in the lower Coastal Plain of the southeastern United States. A museum record from Mississippi previously thought to be a flatwoods salamander has been discounted by knowledgeable researchers (Moler, pers. comm., 1988). However, it is possible that flatwoods salamanders once occurred in extreme southeastern Mississippi due to similarities in habitat to historical sites in adjacent Alabama. Recent surveys (Kuss 1988; L. LaClaire, U.S. Fish and Wildlife Service, pers. obs., 1995) have not documented the occurrence of flatwoods salamanders in Mississippi.

Historical records for the flatwoods salamander are limited. Longleaf pine/slash pine flatwoods historically occurred in a broad band across the lower southeastern Coastal Plain. The flatwoods salamander likely occurred in appropriate habitat throughout this area (Means, pers. comm., 1995). The present distribution of the flatwoods salamander consists of isolated populations scattered across the remaining longleaf pine/slash pine flatwoods. The Service has compiled 110 historical records for the flatwoods salamander. Historical records are defined as those localities found prior to 1990. Localities consist of collections made either by sampling breeding sites or collections made of individuals crossing highways on their way to or from breeding sites. During surveys of these localities over the last 7 years, the exact site was located for 52 records (47 percent) and the general area (within several miles) was determined for 45 others (41 percent). Thirteen sites could not be located due to limited information in the record. Of the 97 historical records that were visited, flatwoods salamanders were relocated at only 12 localities (12 percent).

Range-wide surveys of available habitat in Alabama, Florida, Georgia, and South Carolina have been ongoing since 1990 in an effort to locate new populations. A total of at least 1,189 wetlands, which had a minimum of marginal suitability for the flatwoods salamander, were sampled, most of them multiple times. Of these, flatwoods salamanders were found at 102 sites (9 percent success rate). Most surveys were presence/absence searches for larvae, thus no estimates of population size or viability can be inferred from these data.

Information on the current status of the flatwoods salamander by State can be briefly summarized as follows:

In Alabama, there are five historical localities for the flatwoods salamander, all in the extreme southern portion of the State. Surveys conducted from 1992 to 1995 at the historical breeding ponds and other potential breeding sites were not successful at locating any flatwoods salamander populations (Godwin 1994, pers. comm., 1997). The salamander was last observed in Alabama in 1981 (Jones *et al.* 1982).

A total of 33 historical records in 19 counties have been reported for Georgia (Goin 1950, Seyle 1994, Williamson and Moulis 1994); however, flatwoods salamanders have not been relocated at any of these sites in recent years. Surveys over the last 7 years of at least 451 wetlands with potential habitat for the flatwoods salamander have resulted in the location of 27 new breeding sites (6 percent success rate). These 27 breeding sites comprise 10 populations (sites within a 3.2 km (2 mi) radius of one another are considered the same population) (Seyle 1994; Jensen 1995; Moulis 1995a, 1995b; K. Lutz, The Nature Conservancy of Georgia, pers. comm., 1994; D. Stevenson, The Nature Conservancy of Georgia, pers. comm., 1996; L. LaClaire, pers. obs., 1995, 1997). Most extant breeding sites occur on Fort Stewart Military Installation.

In South Carolina, there are 29 historical records for the flatwoods salamander. Despite annual surveys since 1990, flatwoods salamanders have been found at only three of these sites (all sites represent a different population). One site is located on the Francis Marion National Forest and the other two are on private land. No new flatwoods salamander populations have been found, although surveys have been conducted at 57 additional wetlands considered to be potential habitat for this species.

In Florida, 39 of the 43 historical sites were relocated (or the general area thought to be the location). Nine (23 percent) contained flatwoods salamanders. Additional survey work over the past 7 years of at least 500 potential sites over a 22 county area resulted in the location of 75 new breeding sites (15 percent of total sites surveyed). The total number of extant flatwoods salamander populations known to occur in Florida is 34 with most occurring on the Apalachicola National Forest and Eglin Air Force Base (Palis 1993, 1994, 1995a, 1995b, 1995c; Printiss and Means 1996).

The combined State data from all survey work completed since 1990 indicate that 47 populations of flatwoods salamanders are known from across the historical range. Most of these occur in Florida (34 populations or 72 percent). Ten populations have been found in Georgia, three in South Carolina, and none have been found in Alabama. Some of these populations are inferred from the capture of a single individual. Approximately half of the known populations for the flatwoods salamander occur on public land (25 of 47, or 53 percent). Federal landholdings that harbor flatwoods salamanders include the Apalachicola National Forest, Osceola National Forest, St. Marks National Wildlife Refuge, and Eglin Air Force Base in Florida; Fort Stewart Military Installation and Townsend Bombing Range in Georgia; and Francis Marion National Forest in South Carolina. An additional population is located on property managed by the State of Florida in the Pine Log State Forest. The remaining sites are on private land.

Previous Federal Action

The flatwoods salamander was identified as a Category 2 species in the Service's notices of review for animals published in the **Federal Register** on December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Prior to 1996, a Category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not currently available to support a proposed rule. Designation of Category 2 species was discontinued in the February 28, 1996, notice of review (61 FR 7956).

On May 18, 1992, the Service received a petition dated May 8, 1992, from the Biodiversity Legal Foundation, Boulder, Colorado, and Elizabeth Carlton, Gainesville, Florida, to list the flatwoods salamander as an endangered or threatened species throughout its historic range and to designate critical habitat. The petition stated that available evidence indicated that the flatwoods salamander had declined precipitously, that it was on the threshold of extirpation in many locations, and that it had been extirpated from a large portion of its historic range.

A 90-day finding that the petition did not present substantial information that the requested action may be warranted was announced in the **Federal Register** on May 12, 1993 (58 FR 27986). On August 23, 1993, attorneys representing the Biodiversity Legal Foundation, Jasper Carlton, the Director of the Biodiversity Legal Foundation, and Elizabeth Carlton notified the Service of their intent to sue the Service for violation of the Act. The petitioners felt a determination of "may be warranted" had, in effect, already been made by the Service through the inclusion of the flatwoods salamander as a Category 2 species on the comprehensive notices of review for animals published prior to 1993. On April 25, 1994, the suit was filed. In response to the agreed settlement, and based upon the Service's 1994 draft guidance relating to petitions for listing former Category 2 species, the 90-day finding announced on May 12, 1993, was rescinded, and replaced by a finding that the petitioned action may be warranted. This finding was announced in the **Federal Register** on September 21, 1994 (59 FR 48406), and included a request for comments and biological data on the status of the flatwoods salamander.

Section 4(b)(3)(B) of the Act and implementing regulations at 50 CFR 424.14, require the Secretary of the Interior, to the extent practicable, within 12 months of receipt of a petition, to make a finding as to whether the action requested in the petition is (a) not warranted, (b) warranted, or (c) warranted but precluded. Because of budgetary constraints and the lasting effects of a congressionally imposed listing moratorium, the Service is processing petitions and other listing actions according to the listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond fiscal year 1997 until such time as the fiscal year 1998 appropriations bill for the Department of the Interior becomes law and new final guidance is published. The fiscal year 1997 guidance clarifies the order in which the Service will process rulemakings following two related events: (1) the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act passed on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the status of outstanding proposed listings. Third priority (Tier 3) is given to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. The processing of this petition and proposed rule falls under Tier 3. At this time, the Southeast Region has no pending Tier 1 actions and no overdue Tier 2 actions. Additionally, the guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). This proposed rule constitutes the Service's 12-month finding on the petitioned action.

Summary of Factors Affecting the Species

Section 4(a) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the flatwoods salamander (*Ambystoma cingulatum* Cope) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The major threat to the flatwoods salamander is loss of both its longleaf pine/slash pine flatwoods terrestrial habitat and its isolated, seasonally ponded breeding habitat. The combined pine flatwoods (longleaf pine-wiregrass flatwoods and slash pine flatwoods) historical acreage was approximately 12.8 million ha (32 million ac) (Wolfe *et al.* 1988, Outcalt 1997). Today, the combined flatwoods acreage has been reduced to 2.3 million ha (5.6 million ac) or approximately 18 percent of its original extent. These remaining pine flatwoods (non-plantation forests) areas are typically fragmented, degraded, second-growth forests.

Large acreages of pine flatwoods have been eliminated through land use conversions, primarily urban development and conversion to agriculture and pine plantations (Schultz 1983, Stout and Marion 1993, Outcalt and Sheffield 1996, Outcalt 1997). Surveys of historical flatwoods salamander localities documented the destruction of nine sites from urban development or agriculture and loss of three additional sites due to their conversion to pine plantations. State forest inventories completed between 1989 and 1995 indicate that flatwoods losses through land use conversion are still occurring (Outcalt 1997). In Florida and Georgia, the States where flatwoods habitat is concentrated and where most flatwoods salamander populations occur, 52,600 ha (130,000 ac) were lost to urban and agricultural use during the survey cycle of 8 years (Outcalt 1997).

Conversion of existing pine flatwoods second-growth forests to managed plantations is also continuing. In Georgia and Florida, there was a yearly loss of this habitat to pine plantations of nearly 20,200 ha (50,000 ac) in each State with a loss of 24 percent and 20 percent respectively during the 8 year survey interval (Outcalt 1997). Most of the remaining second-growth pine flatwoods (56 percent) occur on private non-industrial lands which are continuing to be converted to pine plantations after harvest (Outcalt 1997). Urban development is expanding into forested areas, especially in rapidly developing areas of Florida and Georgia. If present rates of loss continue, in 25 years nearly all natural pine flatwoods stands could be destroyed in these two States (Outcalt 1997).

Flatwoods salamander wetland breeding sites have also been degraded and destroyed. The number and diversity of these small wetlands have been reduced by alterations in hydrology, agricultural and urban development, silvicultural practices (described in more detail below), dumping in or filling of ponds, conversion of wetlands to fish ponds, domestic animal grazing, and soil disturbance (Vickers *et al.* 1985, Ashton 1992). Hydrological alterations represent the primary threat to flatwoods salamander breeding sites. Size and suitability of wetlands as breeding sites depend on subsoil moisture, the permeability of the hardpan, the pond's drainage area, and other factors. Alterations to any of these factors can affect the pond's ability to hold water and function as a breeding site.

Forest management strategies commonly used on pine plantations contribute to degradation of flatwoods salamander forested and wetland habitat. These include soil-disturbing site preparation techniques, lowered fire frequencies and reductions in average area burned per fire event (see Factor E), high seedling stocking rates, and herbicide use which reduces plant diversity in the understory. The result of these strategies is a forest that approaches even-age structure, has a dense understory, and low herbaceous cover. Forestry practices that directly affect wetland breeding sites include ditching ponds or low areas to drain water from a site, converting second-growth pine forests to bedded pine plantations, harvesting cypress from the ponds, disposing of slash in wetlands during timber operations, using ponds as part of ditched fire breaks, using fertilizers near wetlands which can result in eutrophication, and disturbing the soil at a wetland (Vickers *et al.* 1985; Ashton 1992; Means *et al.* 1996; Palis, in press).

Clear-cut harvesting of forested sites appears to be an additional threat. Studies on this type of harvest have demonstrated negative short-term impacts on local amphibian populations, especially salamanders (deMaynadier and Hunter 1995). Raymond and Hardy (1991) monitored the mole salamander (A. talpodieum) at a breeding site adjacent to a recent clear-cut. They found that salamanders were displaced from the cut side of the pond and that there was lowered survivorship in individuals of the breeding population that immigrated to the breeding pond from the clear-cut. Flatwoods salamanders may be vulnerable to the microhabitat drying from clear-cuts due to their moist permeable skin which acts as a respiratory organ and must remain moist to function properly (Duellman and Trueb 1986).

Silvicultural practices affecting both upland and breeding habitats have been implicated in the decline of a flatwoods salamander population located in the panhandle of western Florida and monitored for over 20 years (Means *et al.* 1996). The observed decline at this site was attributed to habitat modifications resulting from clear-cutting, conversion of the site to a pine plantation, and fire suppression. Habitat modifications included soil disturbance, hydrologic changes, canopy closure, and loss of herbaceous ground cover.

Habitat quality data were collected during recent surveys of historical sites where flatwoods salamanders were not relocated. Habitat quality at these sites was characterized as none (site destroyed), low (flatwoods salamanders unlikely), moderate (salamanders possible but habitat degraded), or high (habitat appears suitable for flatwoods salamanders). Three historical flatwoods salamander localities (assigned a quality of none) were altered so greatly by their conversion to slash pine plantations that they were no longer even marginally suitable for the flatwoods salamander. Forty-one historical sites (41 of 97, or 42 percent) were of low or moderate habitat quality. Most of these sites had been converted to slash pine plantations and had a subsequent loss of habitat suitability (L. LaClaire, pers. obs., 1997).

The habitat quality surrounding historical flatwoods salamander breeding ponds in Florida, where flatwoods salamanders have been found in recent surveys, was characterized by Palis (in press). Each site was assigned a score based on pine species dominance and disturbance (second-growth flatwoods versus plantation sites) and the relative abundance of wiregrass (*Aristida* sp.) ground cover. Wiregrass was chosen as a factor of habitat quality because its loss has been used as an indicator of site degradation from fire suppression and/or soil disturbance (Clewell 1989). In Palis' study, approximately 70 percent of the active breeding sites were surrounded by second-growth longleaf or slash pine flatwoods with nearly undisturbed wiregrass ground cover. In general, Palis found that the extant populations of the flatwoods salamander principally occurred on forest lands managed for long rotation, saw-timber production, rather than on short rotation pine plantations managed for pulp production.

Road construction plays a part in habitat degradation and destruction. At least one historical flatwoods breeding site was filled in association with the construction of a road (Palis 1993). Roads increase the accessibility of breeding ponds to off-road vehicle enthusiasts that use pond basins for "mud bogging" which disturbs the soil and vegetation and degrades the quality of a site for flatwoods salamander breeding. Roads may also alter the quality of isolated wetlands by draining, damming, or redirecting the water in a basin and contributing hydrocarbons and other chemical pollution via runoff and sedimentation.

A number of habitat degradation factors are implicated in the decline of one South Carolina flatwoods salamander population monitored for over 20 years (Moulis 1987, Bennett pers. comm. 1997). This site is bisected by a road that flatwoods salamanders have to cross to reach their breeding site. Much of the upland area, in which the salamanders dwell as adults, has undergone urban development (Bennett pers. comm. 1997). In addition, fire suppression has resulted in the loss of the open, grassy edge associated with quality breeding sites. Habitat quality at this site has degraded to the point where successful reproduction and recruitment are infrequent and the population is at risk.

Extensive surveys have been conducted over the past 7 years in Alabama, Georgia, Florida, South Carolina and Mississippi to search for flatwoods salamanders at historical localities and at other potential sites. The low level of success of these surveys is believed to be a reflection of both the loss of upland and isolated wetland breeding habitat and the reduction in the quality of these habitats.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overcollecting for scientific purposes may have contributed to the decline of a South Carolina population which was also impacted by habitat degradation. Between 1970 and 1976, a minimum of 84 adults and 870 larvae were collected in this area. Only two flatwoods salamanders have been captured at this locality since 1990, in spite of annual monitoring.

Overcollecting does not presently appear to be a significant threat to populations; however, it may become a problem if the specific locations become available to the general public. The rarity, uniqueness, and attractiveness of the species make the flatwoods salamander a candidate for the pet trade, should it become easy to obtain.

At some sites, larval flatwoods salamanders have been killed in association with bait harvesting for crayfish (Palis 1996). However, while this practice has caused the loss of some individuals, it is not currently thought to be a significant threat to the species as a whole.

C. *Disease or predation.* Disease is currently unknown in the flatwoods salamander.

Exposure to increased predation from fish is a potential threat to the flatwoods salamander when isolated, seasonally ponded breeding sites are changed to more permanent wetlands and become inhabited by fish. Ponds may be modified specifically to serve as fish ponds or sites may be altered due to the construction of drainage ditches or firebreaks which provide avenues for fish to enter the wetlands. Studies of other ambystomatid species have demonstrated a decline in larval survival in the presence of predatory fish (Semlitsch 1987, 1988).

D. *The inadequacy of existing regulatory mechanisms.* Regulatory mechanisms currently in effect do not provide adequate protection for the flatwoods salamander and its habitat. There are no existing regulatory mechanisms for the protection of the upland habitats where flatwoods salamanders spend most of their lives. Section 404 of the Clean Water Act is the primary Federal law that has the potential to provide some protection for the wetland breeding sites of the flatwoods salamander. Under section 404, nationwide permit 26 allows these wetlands to be filled with no review process if wetlands are less than 0.13 ha (⅓ ac) and with only minimal review if they are between 0.13 ha and 1.2 ha (3 ac) in size. Nationwide permit 26 cannot be used if there is a potential negative effect on a listed species.

Some populations on Federal lands have benefitted where prescribed burning has been used as a regular management tool. However, multiple use priorities on public lands, such as timber production, and military and recreational use, make protection of the flatwoods salamander secondary. The National Environmental Policy Act (NEPA) requires an intensive environmental review of projects that may adversely affect a federally listed species, but project proponents are not required to avoid impacts to non-listed species.

At the State and local levels, regulatory mechanisms are also limited. The flatwoods salamander is listed as a rare protected species in the State of Georgia (Seyle 1994). This designation protects the species by prohibiting actions that cause direct mortality or the destruction of its habitat on lands owned by the State of Georgia and by preventing its sale, purchase, or possession (Jensen, pers. comm., 1997). At present, there are no known flatwoods salamander populations on lands owned by the State of Georgia. In South Carolina, the flatwoods salamander is listed as endangered (Bennett 1995). Prohibitions extend only to the direct take of the flatwoods salamander (Bennett, pers. comm., 1997). These regulations offer no protection against the most significant threat to the flatwoods salamander, which is loss of its habitat. The flatwoods salamander is considered rare in Florida by the Florida Committee on Rare and Endangered Plants and Animals (Ashton 1992); however, there are no protective regulations for this species or its habitat in the State (Moler 1990).

E. *Other natural or manmade factors affecting its continued existence.* Fire is needed to maintain the natural pine flatwoods community. Fire suppression has been considered the primary reason for the degradation of remaining longleaf pine forest acreage (Means 1996b). Wolfe *et al.* (1988) reported that pine flatwoods naturally burn every 3 to 4 years, probably most commonly in the summer months. Sampling of longleaf pine flatwoods sites in Florida indicated that less than 30 percent of sites on private lands were being prescribed burned to mimic the effects of natural fire (Outcalt 1997). The disruption of the natural fire cycle has resulted in an increase in slash pine on sites formerly dominated by longleaf pine, an increase in hardwood understory, and a decrease in herbaceous ground cover (Wolfe *et al.* 1988; Means, pers. comm., 1995). Ponds surrounded by pine plantations and protected from the natural fire regime become unsuitable flatwoods salamander breeding sites due to canopy closure and the resultant reduction in emergent herbaceous vegetation needed for egg deposition and larval development sites (Palis 1993). Of the 13 historical flatwoods salamander localities altered to the point where the habitat was no longer suitable, fire suppression was a contributing factor in at least 5 (38 percent). Current forest management is moving away from burning as a management tool due to liability considerations and concerns that fire will damage the quality of the timber. When burning is used as a management tool, winter fires are commonly employed. Winter fires may not be optimal for the flatwoods salamander.

Habitat fragmentation of the longleaf pine ecosystem, resulting from habitat conversion, threatens the survival of the remaining flatwoods salamander populations. Forty-seven populations occur across four States. Fifty-three percent (25 of 47) of these populations are widely separated from each other by unsuitable habitat. Research conducted in Florida documented that 25 percent of remaining longleaf pine flatwoods sites were isolated fragments imbedded in agricultural and urban-dominated landscapes (Outcalt 1997). Studies have shown that the loss of fragmented populations is common, and recolonization is critical for their regional survival (Fahrig and Merriam 1994, Burkey 1995). As patches of available habitat become separated beyond the dispersal range of a species, populations are more sensitive to genetic, demographic, and environmental variability and may be unable to recover (Gilpin 1987, Sjogren 1991). Amphibian populations may be unable to recolonize areas after local extinctions due to their physiological constraints, relatively low mobility, and site fidelity (Blaustein *et al.* 1994).

Roads contribute to habitat fragmentation by isolating blocks of remaining contiguous habitat. Migration routes and dispersal of individuals to and from breeding sites may be disrupted. In addition, flatwoods salamanders may be killed by vehicles when attempting to cross roads (Means 1996a).

Pesticides and herbicides may pose a threat to amphibians such as the flatwoods salamander, because their permeable eggs and skin readily absorb substances from the surrounding aquatic or terrestrial environment (Duellman and Trueb 1986). They may be exposed to pesticides and herbicides accumulated in their invertebrate prey or their prey may be reduced through

the use of pesticides. In frogs, use of agricultural pesticides has resulted in lower survival rates, deformities, and lethal effects on tadpoles (Sanders 1970, FROGLOG 1993). Other negative effects of commonly used pesticides and herbicides on amphibians include delayed metamorphosis, paralysis, reduced growth rates, and mortality (Bishop 1992). Herbicides also alter the density and species composition of vegetation surrounding a breeding site and may reduce the number of potential sites for egg deposition, larval development, or shelter for migrating salamanders.

Long-lasting droughts or frequent floods may affect local flatwoods salamander populations. Although these are natural processes, other threats such as habitat fragmentation and habitat degradation may stress a population to the point that it cannot recover or recolonize other sites.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the flatwoods salamander as threatened. The range and habitat of this species has been significantly reduced by activities associated with conversion of forests to agriculture and urban development, silvicultural practices, and the disruption of natural fire cycles. Remaining populations are vulnerable as suitable habitat continues to be lost or degraded by these activities. While not in immediate danger of extinction, the flatwoods salamander is likely to become an endangered species in the foreseeable future if the present trend continues.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for the flatwoods salamander.

Critical habitat designation, by definition, directly affects only Federal agency actions. Activities that might affect the flatwoods salamander on Federal lands include forestry management, military activities, and Federal actions that would impact the hydrology of the wetlands used by the flatwoods salamander for reproduction. Such activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. Federal permit issuance on private lands would also be subject to review; however, the primary activities affecting habitat for the flatwoods salamander on private lands are silvicultural, and are not subject to the Federal review process under section 7.

Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. Common to definitions of the "jeopardy" and "adverse modification" standards is an appreciable detrimental effect on both survival and recovery of the species. The Service currently believes that any significant adverse modification or destruction of flatwoods salamander habitat to the extent that survival and recovery is appreciably diminished would likely jeopardize this species' continued existence. Therefore, habitat protection from Federal actions can be accomplished for the flatwoods salamander through the section 7 jeopardy standard. The Service is currently working with the appropriate Federal land managing agencies to identify, protect, and manage flatwoods salamander habitat.

On private lands, industrial timber landowners are cooperating with the Service to conduct surveys for the flatwoods salamander and to develop management strategies to protect its habitat. Should this rule become final, the Service will continue to coordinate with State and Federal agencies, as well as private property owners and other affected parties through the recovery process to manage habitat for the flatwoods salamander.

The Service believes that any potential benefits to critical habitat designation are outweighed by additional threats to the species that would result from such designation. Collecting for scientific and recreational purposes is a potential threat to the survival of the flatwoods salamander (see Factor B). Flatwoods salamanders are a rare and attractive species, and these characteristics make them potentially valuable in the pet trade. The collection of amphibians and reptiles for the pet trade has increased in recent years. For example, all box turtles have been placed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora due to the increased commercialization of these species. Collection of amphibians and reptiles for personal use and the pet trade is common in the vicinity of the most viable flatwoods salamander populations (K. Enge, Florida Game and Fresh Water Fish Commission, pers. comm., 1997). Permits are required for commercial collecting; however, collection regulations are difficult to monitor and enforce. Flatwoods salamanders concentrate for breeding and reproduction around breeding ponds, where they are most vulnerable to collecting. Publication of specific localities of breeding ponds would be required in the critical habitat designation process in order to obtain the notification benefit provided by such designation. The publication of breeding pond sites would increase the flatwoods salamander's level of vulnerability to illegal collecting.

Based on the above analysis, the Service has concluded that critical habitat designation would provide little additional benefit for the flatwoods salamander beyond that which would result from listing under the Act. The Service also concludes that any potential benefit from such a designation would be offset by an increased level of vulnerability to collecting.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local

agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The flatwoods salamander occurs on Federal lands administered by the Department of Defense, Fish and Wildlife Service, and U.S. Forest Service. These land management agencies would be required to evaluate the potential adverse impacts to the flatwoods salamander from their activities. Federal activities that could impact the flatwoods salamander through destruction or modification of suitable habitat include, but are not limited to, forest management, military operations, and road construction. Other Federal agencies that may be involved in authorizing, funding, or permitting activities that may affect the flatwoods salamander include the Army Corps of Engineers, due to their review of dredge and fill of isolated wetlands under section 404 of the Clean Water Act, nationwide permit 26; the Federal Energy Regulatory Commission, due to their oversight of gas pipeline and power line rights-of-way; and the Federal Highway Administration when Federal funds are involved in road construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31 for threatened wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32 for threatened species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. However, since this species is not currently in trade, such permit requests are not expected.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act if the species is listed. The intent of this policy is to increase public awareness of the effects of the proposed listing on future and ongoing activities within a species' range. Activities which the Service believes are unlikely to result in a violation of section 9 for the flatwoods salamander are:

(1) Possession of legally acquired flatwoods salamanders;

(2) Lawful hunting activities;

(3) Lawful burning of habitat where the flatwoods salamander is known to occur, when used as a forest or wildlife management technique, including winter burning;

(4) Federally approved projects that involve activities such as discharge of fill material, draining, ditching, tiling, bedding, diversion or alteration of surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.), when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act;

(5) Conversion of pine flatwoods habitat where the flatwoods salamander does not occur;

(6) Timber harvesting (including clear-cutting) in pine flatwoods habitat where the flatwoods salamander does not occur; and

(7) Crayfish bait collecting operations that do not harm flatwoods salamanders.

Activities that the Service believes would be likely to result in a violation of section 9, if the species is listed, include, but are not limited to:

(1) Unauthorized collecting or handling of individual flatwoods salamanders;

(2) Possessing, selling, transporting, or shipping illegally taken flatwoods salamanders;

(3) Unauthorized destruction or alteration of wetlands used as breeding sites by flatwoods salamanders. These actions would include discharge of fill material, draining, ditching, tiling, bedding, diversion or alteration of surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.), and operation of any vehicles within the wetland;

(4) Discharge or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil, and gasoline) into isolated wetlands or upland habitats supporting the species; and

(5) Unlawful destruction or alteration of suitable pine flatwoods habitat within a 1.6-km (1-mi) radius surrounding a known flatwoods salamander breeding pond. These actions would include, but are not limited to, destruction of the herbaceous ground cover or alteration of a site's existing hydrology, such as might result from conversion of habitat to agricultural or urban use, conversion of habitat to intensively managed pine plantations, or ditching and draining a site.

Other activities not identified above will be reviewed on a case-by-case basis to determine whether a violation of section 9 of the Act may be likely to result from such activities should the flatwoods salamander become listed. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Questions regarding whether specific activities may constitute a future violation of section 9, should this species be listed, should be directed to

the Field Supervisor of the Service's Jackson Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, 1875 Century Blvd., Suite 200, Atlanta, Georgia 30345, or telephone 404/679–7319; facsimile 404/679–7081.

Section 10(a)(1)(B) authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities such as agriculture, forestry, and urban development. Take permits authorized under section 10 must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement to conserve the species. A key element of the Service's review of a HCP is a determination of the plan's effect upon the long-term conservation of the species. The Service would approve a HCP, and issue a section 10(a)(1)(B) permit if the plan would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or relevant data concerning any threat (or lack thereof) to the flatwoods salamander;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impact on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on the proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor, Jackson Field Office (see ADDRESSES section).

Author: The primary author of this proposed rule is Linda V. LaClaire, Jackson Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
AMPHIBIANS							
•	•	•	•	•	•		•
Salamander, flatwoods.	*Ambystoma cingulatum.*	U.S.A. (AL, FL, GA, SC).	Entire	T	NA	NA	
•	•	•	•	•	•		•

Dated: November 24, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–32739 Filed 12–15–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 241

Tuesday, December 16, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Committee on Scientists; Appointment of Committee Members

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture has appointed 13 persons to serve on the Committee of Scientists, which is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements to the Forest Service land management planning process.

FOR FURTHER INFORMATION CONTACT: Jonathan Stephens, Ecosystem Management Coordination Staff, Forest Service, telephone: (202) 205–0948.

SUPPLEMENTARY INFORMATION: Notice of establishment of the Committee of Scientists, along with a request for nominations, was published August 15, 1997 (62 FR 43691). The following individuals have been appointed to serve on the Committee:

1. Committee Chair: Dr. Norman Johnson, Professor, Department of Forest Resources, Oregon State University, Corvallis, OR.

2. Dr. James Agee, Professor, Forest Ecology, University of Washington, Seattle, WA.

3. Dr. Virginia Dale, Senior Scientist, Environmental Sciences Division, Oak Ridge National Laboratory, Oak Ridge, TN.

4. Dr. Roger Sedjo, Senior Fellow, Resources for the Future, Washington, D.C.

5. Dr. Bob Beschta, Professor, Forest Hydrology, Oregon State University, Corvallis, OR.

6. Dr. Larry Nielsen, Professor and Director, School of Forest Resources, The Pennsylvania State University, University Park, PA.

7. Dr. Barry Noon, Associate Professor, Department of Fish and Wildlife, Colorado State University, Fort Collins, CO.

8. Dr. Ron Trosper, Professor and Director, Native American Forestry Program, Northern Arizona University, Flagstaff, AZ.

9. Dr. Julia Wondolleck, Assistant Professor, School of Natural Resources and Environment, University of Michigan, Ann Arbor, MI.

10. Dr. Linda Hardesty, Associate Professor, Forest and Range Management, Washington State University, Pullman, WA.

11. Charles Wilkinson, Professor of Law, University of Colorado, Boulder, CO.

12. Dr. James Long, Professor, Department of Forest Resources, Utah State University, Logan, UT.

13. Dr. Margaret Shannon, Associate Professor, Department of Public Administration and Center for Environmental Policy and Administration, Syracuse, New York.

The first meeting of the Committee of Scientists is scheduled for December 19, 1997, at the Holiday Inn O'Hare International, 5440 North River Road, Rosemont, Illinois (62 FR 64195, December 4, 1997).

Dated: December 12, 1997.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 97–32949 Filed 12–15–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Atlantic Bluefin Tuna Mandatory Catch Reporting.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New collection—Emergency Review.

Burden: 117 hours.

Number of Respondents: 700.

Avg. Hours Per Response: 10 minutes.

Needs and Uses: The National Marine and Fisheries Service in cooperation with the North Carolina Division of Marine Fisheries will implement a pilot mandatory reporting program to conduct a census of the Recreational Winter Bluefin Tuna Harvest in North Carolina. Information on catch levels will be reported to the International Commission for the Conservation of Atlantic Tunas and will be used for stock assessment and in developing international catch sharing agreements. Anglers that currently report through an automated phone system will be exempted from this requirement during this pilot program.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Officer building, 725 17th Street, N.W., Washington, D.C. 20503. A clearance has been requested by December 19, 1997.

Dated: December 10, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32783 Filed 12–15–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Current Population Survey (CPS) Fertility and Birth Expectation Supplement; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general

public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Submit written comments on or before February 17, 1998.

ADDRESSES: Direct all written comments to: Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tim Marshall, Bureau of the Census, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting clearance for the collection of data concerning the Fertility and Birth Expectations Supplement to be conducted in conjunction with the June 1998 CPS. The Census Bureau sponsors the supplement questions, which were previously collected in June 1995, and have been asked periodically since 1971.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policy makers in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates, family structures, premarital births, and the timing of the first birth. Potential needs for government assistance such as aid to families with dependent children, child care, and maternal health care for single parent households can be estimated using CPS characteristics matched with fertility data. The birth expectations data also assist researchers and analysts who explore issues such as postponement of childbirth because of education or employment responsibilities.

II. Method of Collection

The fertility and birth expectations information will be collected by both personal visit and telephone interviews in conjunction with the regular June CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0610.
Form Number: There are no forms. We conduct all interviewing on computers.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 30,000.
Estimated Time Per Response: 1 minute.
Estimated Total Annual Burden Hours: 500.
Estimated Total Annual Cost: There are no costs to the respondents other than their time to answer the CPS questions.
Respondents' Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182; and Title 29, U.S.C., Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 11, 1997.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32784 Filed 12–15–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan; Extension of Time Limits for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for antidumping duty administrative review of professional electric cutting tools from Japan.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits for the final results of the antidumping duty administrative review of the antidumping order on professional electric cutting tools from Japan. This review covers one manufacturer and exporter of the subject merchandise: Makita Corporation. The period of review is July 1, 1995 through June 30, 1996.

EFFECTIVE DATE: December 16, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques, AD/CVD Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202) 482–1391.

SUPPLEMENTARY INFORMATION: The Department initiated this administrative review on August 15, 1996 (61 FR 42416). Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for the preliminary results of the aforementioned review to January 7, 1998. *See* memorandum from Joseph A. Spetrini to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters.

This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: December 8, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–32799 Filed 12–15–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Secretarial Delegation to the Fifth Session of the West-East Conference of Ministers of Economy, Industry, and Trade, Prague, Czech Republic, January 15–16, 1998.

Conference Description

Secretary Daley will visit Prague, Czech Rep. to lead a combined U.S. Government and business delegation to the Fifth Session of the West-East Conference of Ministers of Economy, Industry and Trade. The U.S. Department of Commerce is recruiting 4–7 U.S. firms active in Central and Eastern Europe, Russia and the Newly Independent States (NIS) for the business delegation to the Conference. The Secretary and his combined delegation will represent the United States at this forum which brings together government ministers and business leaders from the industrialized Western and reforming Eastern countries of Central and Eastern Europe, Russia, and the NIS in a joint effort to promote improved conditions for private sector development in the Eastern countries and expansion of East-West investment and trade.

The Conference creates a unique government-business dialogue which centers on a private sector led Business Forum. The Forum produces a set of concrete business recommendations for consideration and adoption by the government ministers. The Conference also extends in a practical way U.S. commercial and assistance programs in the region. The theme of this year's session is "Partners for Prosperity." In Prague the Secretary also will conduct bilateral meetings with many of the participating ministers to advance U.S. commercial interests in the region.

The Muenster Process is intended to improve the governmental rules, laws, and policies affecting exports, imports, and investment between the Western industrial countries and the Eastern reforming countries and focuses on the practical, micro-economic factors affecting trade and investment. It first met in Muenster, Germany, May 7–9, 1992. Subsequent Muenster Conferences were held in Tokyo, Japan; Warsaw, Poland; and Baltimore, Maryland.

Muenster IV in Baltimore (March 3–5, 1996) was attended by 15 Ministers and over 80 private sector representatives from 18 countries. It placed heightened emphasis on business participation and stressed private sector views on the practical issues affecting business in Central and Eastern Europe, Russia, and the NIS. Those private sector views were reflected in the recommendations of the Conference's Baltimore Business Report, which was endorsed by the Muenster ministers.

Current member countries in the Muenster Process are France, Italy, Germany, Canada, Japan, United Kingdom, United States, Poland, Hungary, Czech Republic, Slovakia, Romania, Bulgaria, Slovenia, Estonia, Latvia, Lithuania, Russia, Belarus, Ukraine, and Kazakstan. Croatia and Moldova will be included in the Muenster Process at the Fifth Session in Prague. Representatives of the European Union (EU), European Bank for Reconstruction and Development (EBRD) and the Organization for Economic Cooperation and Development (OECD) also participate.

Conference Goals

1. To encourage and support the Business Forum to produce a comprehensive, substantive report that reflects business views on the most important economic and commercial issues in trade and investment development between West and East and that will serve as a guidepost for government actions in between Muenster sessions;

2. To utilize Business Forum results to obtain commitments from the reforming country governments to create competitive trade and investment climates, including greater transparency in procurement and government decision-making, accelerated privatization to encourage investment activity, measures to prohibit with bribery and corruption in international business transactions, harmonization of standards and testing, and increased protection of intellectual property rights;

3. To strengthen the Muenster Process as the preeminent business-government forum for Western and Eastern business leaders and government officials to meet face-to-face and talk candidly about the practical actions to accelerate substantially trade and investment activity in the region;

4. To extend in a practical way U.S. support for market democratic development of the reforming countries and their integration into the world economy.

5. To use the Secretary's bilateral meetings with other Muenster ministers, as well as informal contacts, to advance specific U.S. policy/business objectives and to advocate for U.S. firms on specific projects; and

6. To advance U.S.-Czech relations through Secretarial meetings with leading Czech officials and business representatives.

Conference Itinerary/Scenario

The Fifth Session will be held over a two-day period (Jan 15–16, 1997). The first day will be devoted to the Business Forum comprised of the business delegations from each Muenster member country (approximately 4–7 per country). The Business Forum will meet in three sub-groups: manufacturing, infrastructure, and services. The report of the Business Forum will reflect the consensus of the business delegations on the most important economic and commercial issues that need to be brought before the ministers.

On the morning of the second day, the business representatives of the Business Forum meet with the Muenster ministers in a joint session to present and discuss their report and its recommendations. In the afternoon, the Muenster ministers meet in a government-only session to discuss the Business Forum report, to set future directions for the Muenster Process, and to review the Conference's concluding document—the Summary of Conclusions. There will also be Conference networking events which will afford the Secretary and his delegation the opportunity to meet informally with other ministers and private sector representatives.

Criteria for Participant Selection

Company participation will be determined on the basis of:

1. Past and present business activity in Central and Eastern Europe, Russia, and the Newly Independent States;

2. Relevance of a company's business, through either trade or investment, to one or more of the conference's three broad sectoral working groups: infrastructure, manufacturing, and services;

3. Participation by a senior corporate representative able to further the commercial policy of the mission as described herein and to develop recommendations to advise the Fifth West-East Conference of Ministers of Economy, Industry and Trade on steps that should to be taken to accelerate the growth of trade and investment between the Western economies and the Reforming economies. Participants should be senior level representatives of U.S. companies who have the ability to relate company experiences in the reforming markets of Central and Eastern Europe, Russia, and the Newly Independent States and develop action recommendations based on these experiences;

4. Diversity of company size, type, location, demographics, and traditional under-representation in business; and

5. Certification that the company meets Departmental guidelines for participation.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process. The recruitment and

selection of private sector participants in the delegation will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997 and reflected herein.

Time Frame for Application

Applications may be submitted after December 15th to Cheryl Bruner, Director of the Office of Business *Liaison or Eric Schwerrin, Room 5062,* U.S. Department of Commerce, Washington, DC 20230. Phone (202) 482–1360, Fax (202) 482–4054. All applications must be received by December 29, 1997. Applications received after December 29th will be considered on a space available basis.

Dated: December 11, 1997.

Susanne L. Lotarski,

Director, Office of Eastern Europe, Russia and the Newly Independent States.

[FR Doc. 97–32869 Filed 12–15–97; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Interim Meeting of the National Conference on Weights and Measures will be held January 11 through 15, 1998, at the St. Anthony Hotel, San Antonio, TX. The meeting is open to the public. The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, as well as the annual meeting to be held next July (a notice will be published in the **Federal Register** prior to such meeting), brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to (15 U.S.C. 272B), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATES: The meeting will be held January 11–15, 1998.

LOCATION OF MEETING: St Anthony Hotel, San Antonio, TX.

FOR FURTHER INFORMATION CONTACT: Dr. Gilbert Ugiansky, Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone: (301) 975–4004, or E-mail: owm@nist.gov.

Dated: December 5, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–32699 Filed 12–15–97; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

December 10, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68143, published on December 27, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on December 12, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month level [1]
334/634	153,057 dozen.
342/642	1,189,071 dozen.
369–S [2]	549,831 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32894 Filed 12–12–97; 2:35 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.162A]

Emergency Immigrant Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: This program provides grants to State educational agencies (SEAs) to assist local educational agencies (LEAs) that experience unexpectedly large increases in their student population due to immigration. These grants are to be used to provide high-quality instruction to immigrant children and youth and to help those children and youth make the transition into American society and meet the same challenging State performance standards expected of all children and youth.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: March 16, 1998.

Deadline for Intergovernmental Review: May 15, 1998.

Applications Available: January 5, 1998.

Available Funds: $150 million.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 17 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 76, 77, 79, 80, 81, 82, and 85; and (b) 34 CFR part 299, General Provisions, Elementary and Secondary Education Act, published on May 22, 1997 in the **Federal Register** (62 FR 28247).

Programmatic Information: An SEA is eligible for a grant if it meets the eligibility requirements specified in sections 7304 and 7305 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the Improving America's School's Act of 1994 (Pub. L. 103–382, enacted October 20, 1994). (20 U.S.C. 7544 and 7545). In order to receive an award under this program, an SEA must provide a count, taken during February 1998, of the number of immigrant children and youth enrolled in public and nonpublic schools in eligible LEAs in accordance with the requirements specified in section 7304 of the Act. An eligible LEA is one in which the number of immigrant children and youth enrolled in the public and nonpublic elementary and secondary schools within the district is at least either 500 or 3 percent of the total number of students enrolled in those public and nonpublic schools. (20 U.S.C. 7544(b)(2)). Under section 7501(7) of the Act, the term "immigrant children and youth" means individuals who are aged 3 through 21, were not born in any State, and have not been attending one or more schools in any one or more States for more than 3 full academic years. (20 U.S.C. 7601(7)).

FOR APPLICATIONS OR INFORMATION CONTACT: Ms. Harpreet Sandhu, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5086, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 7541–7549.

Dated: December 11, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Language Affairs.

[FR Doc. 97–32801 Filed 12–15–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Joint Subject Area Committees 1 and 2 of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: December 18, 1997.

TIME: 1:00 p.m.

LOCATION: National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, D.C. 20002–4233, Telephone: (202) 357–6938.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C. 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Pub. L. 105–78, the National Assessment Governing Board is granted exclusive authority over developing Voluntary National Tests pursuant to contract number RJ97153001 and is required to review within 90 days (i.e., by February 11, 1998) and modify the contract to the extent the Board determines necessary, if the contract cannot be modified to the extent the Board determines necessary, the contract shall be terminated, and a new contract negotiated.

On December 18 between the hours of 1:00 p.m. the Joint Subject Area Committees #1 and #2 of the National Assessment Governing Board will hold a teleconference meeting to provide an update on progress for review of Voluntary National Tests specifications in reading and math, and to finalize plans for technical analysis and peer reviewers of this information. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capital Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: December 11, 1997.

Roy Truby,

Executive Director, Notional Assessment Governing Board.

[FR Doc. 97–32726 Filed 12–15–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–171–000]

Energy 2000 Incorporated, Notice of Issuance of Order

December 11, 1997.

Energy 2000 Incorporated (Energy 2000) submitted for filing a rate schedule under which Energy 2000 will engage in wholesale electric power and energy transactions as a marketer. Energy 2000 also request waiver of various Commission regulations. In particular, Energy 2000 requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Energy 2000.

On November 25, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Energy 2000 should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Energy 2000 is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Energy 2000's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32764 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–13–000]

Enron Energy Services Power, Inc.; Notice of Issuance of Order

December 11, 1997.

Enron Energy Services Power, Inc. (Enron Energy), is a power marketing affiliate of Enron Corporation and Portland General Electric Company. It also is an affiliate of Enron Power Marketing, Inc., another power-marketer with market-based rate authorization. Enron Energy filed an application for authorization to sell electric energy and capacity at market-based rates, and for certain waivers and authorizations. In particular, Enron Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Enron Energy. On November 26, 1997, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's November 26, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Enron Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Enron Energy is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Enron Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Enron Energy's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32765 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4787–000]

High Island Marketing, Inc.; Notice of Issuance of Order

December 11, 1997.

High Island Marketing, Inc. (High Island) submitted for filing a rate schedule under which High Island will engage in wholesale electric power and energy transactions as a marketer. High Island also requested waiver of various Commission regulations. In particular, High Island requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by High Island.

On November 25, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by High Island should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, High Island is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of High Island's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32766 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–5–000]

Midcoast Interstate Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 10, 1997.

Take notice that on December 5, 1997, Midcoast Interstate Transmission, Inc. (MIT) tendered for filing in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective January 1, 1998:

Fourth Revised Sheet No. 148
Third Revised Sheet No. 149
Third Revised Sheet No. 150

MIT states that the purpose of the filing of the Revised Tariff Sheets is to update its tariff to reflect certain recent changes related to the offices and personnel of its marketing affiliate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32712 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–27–002]

Natural Gas Pipeline Company of America; Notice of Application to Amend Certificate

December 10, 1997.

Take notice that on November 12, 1997, as supplemented on December 5, 1997, Natural Gas Pipeline Company of America (Natural), located at 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–27–002 an Application to Amend Certificate (Amendment) pursuant to Section 7 of the Natural Gas Act (NGA).[1] The certificate authority in this docket was issued pursuant to the Preliminary Determination issued on August 1, 1996 (76 FERC 61,142) and the Order Issuing Certificate issued on August 1, 1997 (80 FERC 61,147). The details of Natural's proposal are more fully set forth in its Amendment which is on file with the Commission and open for public inspection.

The above referenced Commission Orders authorized the expansion of Natural's Amarillo Mainline by 345 MMcf/d to help serve 525 MMcf/d of new load expected to come on-line at Harper, Iowa, as of November 1, 1998. The Commission's Orders recognized that the difference between the expected new load and the amount of new capacity to be constructed would be provided by capacity to be turned back by MidCon Gas Services Corporation (MidCon Gas). Now, Natural has gotten an additional 120 MMcf/d of turned back capacity and expects to get 110 MMcf/d more before the 520 MMcf/d of new load comes on-line.

The Amendment notes, first, that the new load has been reduced to 520 MMcf/d because one of the shippers has been unable to obtain upstream capacity. However, the primary purpose of the Amendment is to reduce the amount of new capacity to be built to help serve the 520 MMcf/d of new load. Natural requests that two specific expansion levels be authorized, in lieu of the 345 MMcf/d level. They are 220 MMcf/d (estimated to cost $55.1 million) and 110 MMcf/d (estimated to cost $23.7 million).

The 9,000 horsepower of additional compression at Station 110 in Henry County, Illinois and the Mississippi River crossing, already approved in the previous orders, will still be used. The Amendment will reduce the number of miles of new 36-inch loop line that will be constructed. As originally certificated, the project required 85.7 miles of new pipeline looping in various segments. The 220 case will reduce that to 34.8 miles. The 110 case will reduce it to 4.1 miles. In both cases, the new loop line will be constructed in right-of-way that was approved in the previous orders. The only changes will be the locations of the necessary crossover points, where the new loop line and, in the 110 case, the Mississippi River crossing will be interconnected with existing facilities of the Amarillo Mainline.

Natural states that it will actually construct the facilities for only one of the two new expansion levels, depending on the total amount of existing capacity that is actually available to help serve the new load. The Amendment states that no significant environmental issues are presented, because the lower expansion levels will result from a shortening of the loop line mileage previously authorized in this docket. A continuation of rolled-in rate treatment is said to be warranted, because each of the two new expansion levels will have only a minimal impact on Natural's existing rates.

Any person desiring to be heard or making any protest with reference to said Amendment should on or before December 31, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide

[1] Natural's Amendment was incomplete until the supplement was filed on December 5, 1997.

copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons who previously filed motions to intervene on Docket No. CP96–27–000 and 001 need not file again.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32711 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–85–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 10, 1997.

Take notice that on December 5, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to be effective April 1, 1998:

Third Revised Sheet No. 190
First Revised Sheet No. 192A
Third Revised Sheet No. 196
First Revised Sheet No. 201A
First Revised Sheet No. 204A
Third Revised Sheet No. 276
Second Revised Sheet No. 278
First Revised Sheet No. 279A
First Revised Sheet No. 279B
First Revised Sheet No. 279C
Third Revised Sheet No. 280
Third Revised Sheet No. 286
Second Revised Sheet No. 290
Second Revised Sheet No. 305
First Revised Sheet No. 305A
Third Revised Sheet No. 307
First Revised Sheet No. 307A

NGT states that the filing revises the tariff to eliminate paper nominations and paper capacity release transactions, and provides that such activities will be accomplished electronically except during times of emergency.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32710 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4352–000]

SEMCO Energy Services, Inc.; Notice of Issuance of Order

December 11, 1997.

SEMCO Energy Services, Inc. (SEMCO) submitted for filing a rate schedule under which SEMCO will engage in wholesale electric power and energy transactions as a marketer. SEMCO also requested waiver of various Commission regulations. In particular, SEMCO requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability of SEMCO.

On November 28, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by SEMCO should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, SEMCO is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance of assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of SEMCO's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 29, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32767 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–84–000]

Tennessee Gas Pipeline Company; Notice of Filing

December 10, 1997.

Take notice that on December 5, 1997, Tennessee Gas Pipeline Company (Tennessee), pursuant to Section 4 of the Natural Gas Act and Part 154 of the Regulations of the Federal Energy Regulatory Commission (Commission) filed original and revised tariff sheets setting forth Tennessee's policy regarding the construction and financing of new facilities on its system for the receipt, delivery or measurement of natural gas supplies (Receipt and Delivery Facilities).

Tennessee states that its existing lateral line policy is set forth in Article XVII of the General Terms & Conditions of Tennessee's FERC Tariff, Volume No. 1 to satisfy the requirements of Section 154.109(b) of the Commission's Regulations which requires that the General Terms & Conditions of a pipeline's tariff set forth the pipeline's policy regarding the construction and financing of delivery laterals, including when the pipeline will pay for or contribute to the construction cost. Tennessee's existing policy provides that Tennessee will not build or contribute to the cost of building any service lateral. However, Tennessee has the right to seek a waiver of that policy during any proceeding before the Commission instituted under Section 7 of the Natural Gas Act.

Tennessee states that this policy is too inflexible in the competitive marketplace which exists today. Thus, Tennessee is proposing to eliminate the current provisions of Article XVII.

Tennessee states that the proposed tariff sheets establish and define two categories of Receipt and Delivery Facilities—Tap Facilities and Connecting Facilities. The proposed tariff sheets also establish two categories of cost reimbursement—prior to the construction of the facilities and over time with interest. Additionally, the proposed tariff sheets eliminate the current provisions of Article XVII and permit Tennessee to contribute to the cost of constructing service laterals as Connecting Facilities without obtaining a waiver from the Commission. Tennessee states that these proposed changes to its tariff will enable Tennessee to compete on a level playing field with other pipelines.

Although Tennessee states that it is not obligated to construct Tap Facilities or Tap and Connecting Facilities for any requesting party, the proposed tariff sheets provide that, subject to certain conditions specified in the tariff sheets, Tennessee will construct Tap Facilities or Tap and Connecting Facilities for any requesting party who agrees to pay for the cost of constructing such facilities. With respect to the financing of Tap Facilities constructed by Tennessee, the proposed tariff sheets provide that the requesting party will generally pay Tennessee for the cost of such facilities prior to the construction of the Connecting Facilities but always prior to the commencement of service at the Tap Facilities. With respect to the financing of Connecting Facilities, the proposed tariff sheets provide that the requesting party shall pay Tennessee for the cost of such facilities either prior to the construction of the Tap Facilities but always prior to the commencement of service at the Connecting Facilities, over time with interest or through some combination thereof.

Further, the tendered tariff sheets enable Tennessee to pay all or a portion of the costs of constructing Connecting Facilities which are economically or operationally beneficial to Tennessee. The proposed tariff sheets set forth the criteria that Tennessee will evaluate in determining whether the construction of Connecting Facilities is economically or operationally beneficial to Tennessee.

The proposed tariff provisions also permit Tennessee to condition its construction of Connecting Facilities on the reimbursement by the requesting party of related costs such as operating and maintenance expenses, administrative and general expenses, gross-up for state and federal income taxes, taxes other than income taxes, depreciation costs and the time value of money. These provisions recognize that, in certain circumstances, it may be appropriate to recover costs of this nature from the requesting party rather than the system as a whole. Tennessee's decision not to seek recovery of these costs from a requesting party would not preclude Tennessee from seeking to recover such costs in its general system rates in a Section 4 rate filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32715 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–13–000, et al.]

Ogden Energy China, (Beta) Ltd., et al. Electric Rate and Corporate Regulation Filings

December 9, 1997.

Take notice that the following filings have been made with the Commission:

1. Ogden Energy China (Beta) Ltd.

[Docket No. EG98–13–000]

On December 1, 1997, Ogden Energy China (Beta) Ltd., (OECB) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

OECB will own a sixty percent equity interest in a 24 MW eligible facility located in Zibo, Shandong Province, Peoples Republic of China. OECB states that it will be engaged directly and exclusively in the business of owning and/or operating all or part of one of more eligible facilities (as defined in Section 32(a)(1) of the Public Utility Holding Company Act) and selling electricity at wholesale to the Huantian Power Bureau and at retail to consumers none of which will be located within the United States.

Comment date: December 29, 1997, in accordance with Standard Paragraph E

at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Boston Edison Company

[Docket No. ER86–645–010]

Take notice that on November 13, 1997, Boston Edison Company filed a refund report in compliance with the Commission's Order on Remand Directing Refunds in this proceeding on September 29, 1997. Refunds were made to thirteen municipal customers of Boston Edison Company's Pilgrim Nuclear Plant.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER97–2006–001]

Take notice that on November 24, 1997, Niagara Mohawk Power Corporation tendered for filing its refund report in the above-referenced docket.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER97–3659–001]

Take notice that on November 14, 1997, Virginia Electric and Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER97–4461–001]

Take notice that on November 21, 1997, Florida Power Corporation (Florida Power) tendered for filing an amended Form of Service Agreement for Network Integration Transmission Service providing for network transmission service to itself in connection with requirements service to its wholesale power customers pursuant to Part III of Florida Power's Open Access Tariff.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER98–533–000]

Take notice that on November 14, 1997, Northeast Utilities Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. PJM Interconnection, L.L.C.

[Docket No. ER98–536–000]

Take notice that on November 20, 1997, PJM Interconnection, L.L.C., tendered for filing an amendment in the above-referenced docket.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Northwest Generating Cooperative

[Docket No. ER98–706–000]

Take notice that on November 17, 1997, Pacific Northwest Generating Cooperative (PNGC), tendered for filing a Notice of Cancellation of the cost-based rate schedules established in the above-referenced docket. Instead of using these rate schedules, PNGC and its members desire that PNGC provide wholesale service to the members under the market-based rate schedule approved in Docket No. ER97–505 and OA97–32. PNGC requests an effective date of November 17, 1997, for the Notice of Cancellation.

Copies of the filing were served upon purchasers affected by the proposed cancellation.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER98–707–000]

Take notice that on November 18, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing notices of cancellation of certain firm point-to-point transmission service agreements.

The CSW Operating Companies state that the filing has been served on the affected customers and on the Public Utility Commission of Texas.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Interstate Power Company

[Docket No. ER98–708–000]

Take notice that on November 18, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Continental Energy Services, LLC (Continental). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Continental.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Public Service Company

[Docket No. ER98–709–000]

Take notice that on November 18, 1997, Central Illinois Public Service Company (CIPS), submitted a Service Agreement, dated November 3, 1997, establishing USGen Power Services, L.P. as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of November 3, 1997, for the service agreement and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon USGen Power Services, L.P., and the Illinois Commerce Commission.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER98–710–000]

Take notice that on November 18, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Continental Energy Services, L.L.C.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER98–711–000]

Take notice that on November 18, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service under the Pennsylvania Retail Pilot with Allegheny Energy Solutions, Inc., New Energy Ventures, L.L.C., DTE-CoEnergy, L.L.C., and Strategic Energy Partners, Ltd., pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–712–000]

Take notice that on November 18, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with WPS Energy Services, Inc., DTE-CoEnergy, L.L.C., New Energy Ventures, L.L.C., and Allegheny Energy Solutions, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to § 205 of the Federal Power Act.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER98–713–000]

Take notice that on November 18, 1997, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy) filed executed Retail Transmission Service Agency Agreements between GPU Energy and (1) UGI Power Supply, Inc., dated November 10, 1997; and (2) American Energy Solutions, Inc., dated November 11, 1997.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997, for the Retail Transmission Service Agency Agreements.

GPU Energy will be serving a copy of the filing on the Pennsylvania Public Utility Commission.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Ohio Power Company

[Docket No. ER98–714–000]

Take notice that on November 18, 1997, Ohio Power Company (OPC), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement dated October 6, 1997, between OPC, Buckeye Power, Inc. (Buckeye), and Licking Rural Electrification, Inc., (LRE). LRE is an Ohio electricity cooperative and a member of Buckeye Power, Inc.

LRE has requested OPC provide a new delivery point pursuant to provisions of the Power Delivery Agreement between OPC, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Columbus Southern Power Company and Toledo Edison Company, dated January 1, 1968. OPC requests an effective date of May 1, 1998, for the tendered agreements.

OPC states that copies of its filing were served upon Licking Rural Electrification, Inc, Buckeye Power, Inc. and the Public Utilities Commission of Ohio.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER98–715–000]

Take notice that on November 18, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Continental Energy Services for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. UtiliCorp United Inc.

[Docket No. ER98–716–000]

Take notice that on November 18, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Continental Energy Services for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER98–717–000]

Take notice that on November 18, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Virginia Electric and Power Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER98–718–000]

Take notice that on November 18, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Williams Energy Services Company.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER98–719–000]

Take notice that on November 18, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Continental Energy Services, L.L.C.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power Corporation

[Docket No. ER98–720–000]

Take notice that on November 18, 1997, Florida Power Corporation (FPC), tendered for filing two service agreements between FPC and Morgan Stanley Capital Group, Inc., and FPC and Carolina Power & Light Co., for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume Number 8. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement with Carolina Power & Light Co., is proposed to be effective November 10, 1997, and the service agreement with Morgan Stanley Capital Group, Inc., is proposed to be effective November 13, 1997.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Kansas City Power & Light Company

[Docket No. ER98–721–000]

Take notice that on November 19, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated November 17, 1997, between KCPL and Morgan Stanley Capital Group Inc. KCPL proposes an effective date of November 17, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–722–000]

Take notice that on November 19, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with DTE Energy Trading, Inc., under Ohio Edison's Power Sales Tariff, This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

Docket No. ER98–723–000

Take notice that on November 19, 1997, New England Power Company filed a Service Agreement and Certificate of Concurrence with Constellation Power Source, Inc., under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Wisconsin Public Service Corporation

[Docket No. ER98–724–000]

Take notice that on November 19, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Western Area Power Administration, provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11, and Revised Attachments E and I, indices of customers with agreements under WPSC's Open Access Transmission Tariff, FERC Volume No. 11.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Maine Public Service Company

[Docket No. ER98–726–000]

Take notice that on November 19, 1997, Maine Public Service Company (Maine Public), filed an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with Cinergy Services, Inc., as agent on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. CNG Power Services Corporation

[Docket No. ER98–727–000]

Take notice that on November 19, 1997, CNG Power Services Corporation (CNGPS), tendered for filing and amended and restated Rate Schedule FERC No. 1 (Amended Rate Schedule). The Amended Rate Schedule would permit sales by CNGPS to affiliates that are FERC-authorized power marketers. CNGPS requests waiver of the Commission's regulations to permit the Amended Rate Schedule to become effective on November 20, 1997.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Florida Power Corporation

[Docket No. ER98–728–000]

Take notice that on November 19, 1997, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and Morgan Stanley Capital Group, Inc. The contract provides for service under Schedule J, Negotiated Interchange Service, Schedule OS, Opportunity Sales, and Schedule S, Morgan Stanley Capital Group, Inc. FERC Electric Schedule No. 1. FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on November 20, 1997.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Pacific Gas and Electric Company

[Docket No. ER98–729–000]

Take notice that on November 20, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing two Service Agreements between PG&E and: 1) Electric Clearinghouse, Inc. (ECI); 2) Wheelabrator Martell, Inc. (Wheelabrator); each entitled, "Service Agreement for Non-Firm Point-to-Point Transmission Service" (Service Agreements); and 3) Notices of Termination for these Service Agreements.

PG&E proposes that the Service Agreements become effective on October 22, 1997 for ECI, and November 3, 1997, for Wheelabrator. PG&E is requesting any necessary waivers. The effective date of the termination is either the requested date shown below or such other date the Commission deems appropriate for termination.

Service agreement date	Requested effective date for termination
ECI-Service Agreement No. _____ under FERC Electric Tariff, Original Volume No. _____	December 31, 1997.
Wheelabrator-Service Agreement No. _____ under FERC Electric Tariff, Original Volume No. _____	December 31, 1997.

Copies of this filing have been served upon the California Public Utilities Commission, ECI and Wheelabrator.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Louisville Gas and Electric Company

[Docket No. ER98–730–000]

Take notice that on November 20, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Market Responsive Energy under Rate GSS.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Louisville Gas and Electric Company

[Docket No. ER98–731–000]

Take notice that on November 20, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Florida Power & Light Company

[Docket No. ER98–732–000]

Take notice that on November 20, 1997, Florida Power & Light Company (FPL), tendered for filing a Sanford Plant Interconnection Agreement between FPL and Florida Power Corporation. FPL proposes to make the Interconnection Agreement effective December 1, 1997.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Niagara Mohawk Power Corporation

[Docket No. ER98–733–000]

Take notice that on November 20, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 228 and any supplements thereto, with Heartland Energy Services, Inc.

NMPC requests that this cancellation become effective December 14, 1997.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER98–734–000]

Take notice that on November 20, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and Willmar Municipal Utilities Commission (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff, effective July 1, 1997.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. PacifiCorp

[Docket No. ER98–735–000]

Take notice that on November 20, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Service Agreements with Public Utility District No. 1 of Clark County (Clark) under PacifiCorp's FERC Electric Tariff, Original Volume No. 12.

Copies of this filing were supplied to Clark, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. The Dayton Power and Light Company

[Docket No. ER98–736–000]

Take notice that on November 20, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing ENERZ Corp., Public Service Electric and Gas Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon ENERZ Corp., Public Service Electric and Gas Company and the Public Utilities Commission of Ohio.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. The Dayton Power and Light Company

[Docket No. ER98–737–000]

Take notice that on November 20, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing ConAgra Energy Services, Inc. as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon establishing ConAgra Energy Services, Inc., and the Public Utilities Commission of Ohio.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. The Dayton Power and Light Company

[Docket No. ER98–738–000]

Take notice that on November 20, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing Williams Energy Service Company as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon establishing Williams Energy Service Company and the Public Utilities Commission of Ohio.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Illinois Power Company

[Docket No. ER98–739–000]

Take notice that on November 20, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which DTE Energy Trading, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 5, 1997.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Illinois Power Company

[Docket No. ER98–740–000]

Take notice that on November 20, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Columbia Power Marketing Corporation will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 28, 1997.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Deseret Generation & Transmission Co-operative

[Docket No. ER98–757–000]

Take notice that Deseret Generation & Transmission Co-operative on November 21, 1997, tendered for filing an executed umbrella non-firm point-to-point service agreement with Utah Municipal Power Authority under its open access transmission tariff. Deseret requests a waiver of the Commission's notice requirements for an effective date of November 21, 1997. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Utah Municipal Power Authority has been provided a copy of this filing.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Energy 2000, Inc.

[Docket No. ER98–687–000]

Take notice that on November 28, 1997, Energy 2000, Inc. tendered for filing a Notice of Cancellation of the application filed on October 15, 1997 in Docket No. ER98–171–000.

Comment date: December 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. Pacific Gas and Electric Company, San Diego Gas and Electric Co.; Southern California Edison Company

[Docket No. ER98–899–000]

Take notice that on December 2, 1997, the California Independent System Operator (ISO) tendered for filing three executed Utility Distribution Company Operating Agreements (Agreement or UDC agreements) with Pacific Gas & Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company (UDCs). ISO requests that this filing be made effective no later than January 1, 1998, to enable the California Independent System Operator to coordinate facilities, procedures, and practices with the utility distribution companies that will be connected to the ISO and which plan to participate in the market for energy and ancillary services through the ISO.

These Agreements govern the facilities at the interface between the ISO and the UDCs and establish maintenance coordination standards, load shedding, emergency electrical planning, and information sharing and gathering procedures between the ISO and the UDCs. The Agreement also includes Schedules outlining for each utility the facilities that comprise the interface as well as the specific responsibilities that will be delegated by the ISO to each UDC.

Copies of this filing have been served upon all parties in these proceedings. However, because the Schedules for each agreement are so voluminous, copies of the Schedules are being filed only with the Commission. Parties wishing to see the Schedules may do so at the ISO Office, 151 Blue Ravine Road, Folsom, CA or at the office of Cameron McKenna LLP, 2000 Pennsylvania Avenue, Washington, DC, or may request copies of the Schedules.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Nevada Power Company

[Docket No. OA96–188–004]

Take notice that on November 12, 1997, Nevada Power Company (Nevada Power) tendered for filing, in Docket OA96–188–000, revised tariff sheets which specify the on-peak and off-peak hours of non-firm point-to-point transmission service compliance with the Commission's order dated October 17, 1997. Nevada Power requests a waiver of the 60 day notice requirement and requests that the revised tariff sheets be effective as of the date of the filing.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

46. Commonwealth Edison Company; Commonwealth Edison Company of Indiana, Inc.

[Docket No. OA97–459–000]

Take notice that on November 21, 1997, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively ComEd), tendered for filing with the Commission proposed revisions to ComEd's written procedures implementing the Standards of Conduct set forth at 18 CFR 37.4.

A copy of this filing has been served on the persons on the official service list in this docket.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

47. Public Service Company of Colorado

[Docket No. TX98–2–000]

On November 21, 1997, Public Service Company of Colorado (PS Colorado), 1225 17th Street, Denver, Colorado 80202, filed with the Federal Energy Regulatory Commission an application requesting that the Commission order the Missouri Basin Power Project, including its Project Manager, Basin Electric Power Cooperative, Tri-State Generation & Transmission Association, Western Area Power Administration—Rocky Mountain Region, and the Rocky Mountain Generation Cooperative to provide transmission services pursuant to Section 211 of the Federal Power Act.

PS Colorado requests 140 MW of firm point-to-point transmission capacity in 1999, 360 MW in 2000, 330 MW in 2001, and 305 MW in 2002, increased to account for transmission losses. PS Colorado requests service from points in Wyoming, Nebraska, New Mexico, Utah and western Colorado to points in eastern Colorado.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32769 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters

December 10, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project Name:* Catawba-Wateree Project.

c. *Project No.:* FERC Project No. 2232–353.

d. *Date Filed:* October 17, 1997.

e. *Applicant:* Duke Energy Corporation.

f. *Location:* Catawba County, North Carolina, Greenwood Subdivision, Lake Norman in Mountain Creek Township.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Brian Romanek, (202) 219–3076.

j. *Comment Date:* January 21, 1998.

k. *Description of the filing:* Duke Energy Corporation (Duke) proposes to grant an easement of 0.79 acre of project land to Mr. W.C. Edwards for a private residential marina to serve a proposed residential development to be known as Greenwood subdivision. The marina would consist of one access ramp and 24 floating boat slips. All slips would be constructed of treated wood with encapsulated styrofoam used for floatation. The wood decking would be supported by stationary wood pilings.

Also, as a part of this proposal, Duke requests reclassification of shoreline needed to build the above-mentioned marina. The subject shoreline is presently classified in the Commission approved Shoreline Management Plan as "Project Operations." The shoreline and adjoining property are no longer used by Duke as a lake maintenance facility. Duke requests that we reclassify the shoreline to "Future Commercial/Residential".

l. This notice also consists of the following standard paragraphs: B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32714 Filed 12–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–030]

Montana Power Company; Notice of Intent To Hold Technical Modeling Workshop at Oak Ridge National Laboratory in Oak Ridge, Tennessee to Discuss the Modeling of Thermal Impacts Associated With the Madison Development Part of the Missouri-Madison Hydroelectric Project Proposed for Relicensing

December 10, 1997.

On January 22 and 23, 1998, a technical modeling workshop at Oak Ridge National Laboratory (ORNL) in Oak Ridge, Tennessee will be conducted to discuss the modeling of thermal impacts associated with the Madison Development. The model was used to evaluate alternatives considered in Draft Environmental Impact Statement (DEIS) considering issuance of a new license for the Missouri Madison Project. The Notice of Availability of the DEIS appeared in the **Federal Register** on October 3, 1997 (62 FR 51855).

The workshop is scheduled as follows:

8:30 am–4:30 pm, January 22, Bldg. 1503, ORNL

8:30 am–12:00 pm, January 23, Bldg. 1503, ORNL

Workshop attendees should contact: Mark Bevelhimer ((423) 576–0266 or mbs@ornl.gov) to confirm attendance and obtain lodging options and local directions to the workshop.

Anyone wishing to submit questions or comments regarding the model of thermal impacts to discuss at the workshop should address them to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Written correspondence should clearly show the following caption on the first page: Missouri-Madison Hydroelectric Project No. 2188–030.

For further information, please contact Mr. R. Feller at (202) 219–2796.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32713 Filed 12–15–97; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5935–5]

Office of Research and Development; Met One Instruments, Inc.: Application for Equivalent Method; Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice of receipt of application.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that Met One Instruments, Inc. has submitted an application for equivalent method determinations on their PM10 Beta Attenuation Ambient Particle Monitors, Models BAM 1020 and GBAM 1020.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

SUPPLEMENTARY INFORMATION: Notification is given that an application has been received to determine if a new PM10 monitoring method should be designated by the Administrator of the EPA as an equivalent method under 40 CFR part 53. The application was received on September 12, 1997 from Met One Instruments, Inc., 1600 Washington Blvd., Grants Pass, Oregon 97526 proposing that their PM10 Beta Attenuation Ambient Particle Monitors, Models BAM 1020, BAM 1020–1, GBAM 1020, and GBAM 1020–1 be designated as an equivalent method. If, after appropriate technical study, the Administrator determines that this method should be so designated, a document thereof will be published in a subsequent issue of the **Federal Register**.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–32787 Filed 12–15–97; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Privacy Act of 1974; Publication of Proposed New Routine Uses

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Amendment of system of records to include new routine uses.

SUMMARY: In accordance with the Privacy Act, 5 U.S.C. 552a(e)(11), the

Equal Employment Opportunity Commission is issuing notice of our intent to amend the system of records entitled EEOC–7 Employee Pay and Leave Records to include new routine uses.

DATES: The changes will become effective on January 15, 1998 unless comments dictate otherwise.

ADDRESSES: Written comments may be sent to the Office of the Executive Secretariat, Equal Employment Opportunity Commission, room 10402, 1801 L Street, N.W., Washington, D.C. 20507. Copies of this notice are available in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Publications Center by calling 1–800–699–3362.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney (202) 663–4669 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Use

Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, EEOC will disclose data from its system of records, EEOC–7, Employee Pay and Leave Records, to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset system. Information on this system was last published at 61 FR 38754, July 25, 1996.

FPLS is a computerized network through which states may request location information from federal and state agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support. Effective October 1, 1997, the FPLS was enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective on October 1, 1998, FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a state child support case, that state will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by EEOC to the Office of Child Support Enforcement for use in the FPLS include employees' names, addresses, social security numbers and wages paid quarterly. In addition, names and social security numbers submitted by EEOC for use in the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by EEOC to the Office of Child Support Enforcement will also be disclosed by that office to the Secretary of the Treasury for use in verifying claims for the advance payment of earned income tax credit or to verify a claim of employment on a tax return.

II. Compatibility of Proposed Routine Uses

We are proposing these routine uses in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a "compatible" use is a use that is necessary and proper. *See* OMB Guidelines, 51 FR 18982, 18985 (1986). Since the proposed uses of the data are required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104–193, they are clearly necessary and proper uses, and therefore, "compatible" uses that meet Privacy Act requirements.

III. Effect of the Proposed Changes on Individuals

We will disclose information under the proposed routine uses only as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and as permitted by the Privacy Act.

Accordingly, EEOC–7, Employee Pay and Leave Records, most recently published at 46 FR 11056, 11061 (March 9, 1994), is amended as set forth below.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * * *

c. To disclose information to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

d. To disclose information to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

e. To disclose information to the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

Dated: November 19, 1997.

For the Commission.

Gilbert F. Casellas,

Chairman.

[FR Doc. 97–32717 Filed 12–15–97; 8:45 am]

BILLING CODE 6570–06–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting Thursday, December 18, 1997

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 18, 1997, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Wireless Telecommunications—Title: Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding (WT Docket No. 97–82); Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use -- 4660–4685 MHz (ET Docket No. 94–32). Summary: The Commission will consider action concerning substantive amendment and modifications to the Commission's general competitive bidding rules for all auctionable services that are intended to simplify the Commission's regulations, eliminate unnecessary rules wherever possible and increase the efficiency of the competitive bidding process.

2—Mass Media—Title: Fees for Ancillary or Supplementary Use of Digital Television Spectrum. Summary: The Commission will consider action concerning implementing the transition to digital television (DTV) for existing television broadcasters in accordance with the provisions of the Telecommunications Act of 1996 regarding fees for ancillary or supplementary use of DTV spectrum.

3—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Petition for Rulemaking of Ameritech New Media, Inc., Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage (RM–9097). Summary: The Commission will consider a petition for rulemaking concerning enforcement and other matters relating to the Commission's program access rules.

After consideration of these items, the Commission will hold an en banc presentation on the status of competition in the marketplace for multichannel video services.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993-3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated December 11, 1997.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32888 Filed 12-12-97; 11:19 am]

BILLING CODE 6712-01-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1191–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1191–DR), dated November 20, 1997, and related determinations.

EFFECTIVE DATE: December 3, 1997

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 20, 1997:

The counties of Cass and Poweshiek for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–32782 Filed 12–15–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1190–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–1190–DR), dated November 1 1997, and related determinations.

EFFECTIVE DATE: December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 1, 1997:

Dodge County for Category F under the Public Assistance program (already designated for Categories A and B under the Public Assistance program).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–32781 Filed 12–15–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than January 9, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with First United Bancorporation, Anderson, South Carolina, and thereby indirectly acquire Anderson National Bank, Anderson, South Carolina, and Spartanburg National Bank, Spartanburg, South Carolina.

In connection with this application, Applicant also has applied to acquire Quick Credit Corporation, Anderson, South Carolina, and thereby engage in consumer finance activities and credit insurance activities, pursuant to §§ 225.28(b)(1) and (b)(11)(ii) of the Board's Regulation Y.

2. Regions Financial Corporation, Birmingham, Alabama; to merge with St. Mary Holding Corporation, Franklin, Louisiana, and thereby indirectly acquire The St. Mary Bank and Trust Company, Franklin, Louisiana.

Board of Governors of the Federal Reserve System, December 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32803 Filed 12–15–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-32055) published on pages 64589 and 64590 of the issue for Monday, December 8, 1997.

Under the Federal Reserve Bank of New York heading, the entry for First Empire State Corporation and Olympia Financial Corp., both of Buffalo, New York; is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. First Empire State Corporation, and Olympia Financial Corp., both of Buffalo, New York; to acquire 100 percent of the voting shares of OnBancorp, Inc., Syracuse, New York, and thereby indirectly acquire OnBank & Trust Co., Syracuse, New York. Olympia Financial Corp., also has applied to become a bank holding company and to acquire Manufactures and Traders Trust Company, Buffalo, New York.

In connection with these applications, Applicants also have applied to acquire Franklyn First Savings Bank, Wilkes-Barre, Pennsylvania, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Comments on this application must be received by January 2, 1998.

Board of Governors of the Federal Reserve System, December 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32804 Filed 12–15–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

Annual Report for OPA Title X Family Planning Program Grantees—0915–0193—Extension—The Office of Family Planning (OPA) collects annual data from Title X Grantees to ensure compliance with legislative mandates, report to Congress, and identify areas where grantees may require assistance. *Respondents:* Title X Family Planning Program Grantees; *Annual Number of Respondents:* 90; *Burden per Response:* 16 hours; *Total Annual Burden:* 1,440 hours. OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received on or before January 15, 1998.

Dated: December 9, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–32746 Filed 12–15–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0489]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for parties filing a petition for administrative reconsideration of an action.

DATES: Submit written comments on the collection of information by February 17, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502 (3) and 5 CFR 1320.3 (c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section

3506 (c)(2)(A) of the PRA (44 U.S.C. 3506 (c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Petition For Administrative Reconsideration of Action—21 CFR Part 10.33—(OMB Control Number 0910–0192)—Reinstatement

Section 10.33 (21 CFR 10.33), issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may petition the Commissioner of Food and Drugs (the Commissioner) for reconsideration of an agency's action. A petition for reconsideration must contain a full statement in a well-organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. Each petition must be submitted no later than 30 days after the decision involved. The Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, state or local governments, not-for-profit institutions, and businesses or other for-profit institutions.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.33(b)	7	1	7	100	700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on agency records and experience over the past 3 years. Agency personnel handling the petitions for administrative reconsideration of an action estimate approximately seven requests being received by the agency annually, each requiring an average of 100 hours preparation time.

Dated: December 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32805 Filed 12–15–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0182]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Transmittal of Labels and Circulars, Form FDA 2567" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 19, 1997 (62 FR 49244), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0039. The approval expires on November 30, 2000.

Dated: December 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32808 Filed 12–15–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F, of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), (49 Federal Register 34247, dated September 6, 1984) is amended to include the following delegation of authority from the Secretary to the Administrator for Title XXI of the Social Security Act.

The specific amendments to Part F are described below:

I. Section F.30., Delegations of Authority is amended by adding the following paragraph: SS. The authority vested in the Secretary under Title XXI of the Security Act (42 U.S.C. 1397aa *et seq.*).

Limitation: No State plan or amendment shall be finally disapproved without consultation and discussion by the Administrator with the Secretary.

II. Section F.30., Delegations of Authority, paragraph RR is revised to include title XXI, the revised paragraph reads as follows:

RR. The authority vested in the Secretary or that may become vested in the Secretary, and not otherwise delegated, limited, or reserved, to conduct studies and demonstration projects, as directed by Congress, that relate to the programs established by Title XI of the Social Security Act (Act), insofar as they relate to the mission of the Health Care Financing Administration (HCFA), and Titles XVIII, XIX, and XXI. This delegation encompasses the authority to approve related program activities required by the studies and demonstration projects if such authority is or becomes vested in the Secretary and is not otherwise delegated, limited, or reserved. These activities include, but are not limited to, direct performance, entering into contracts or cooperative agreements, making grants, approving payments for contracts, cooperative agreements, and grants and approving authorized waivers of compliance with certain requirements of titles XI, XVIII, and XIX and XXI of the Act when such actions are for the purpose of conducting studies and demonstration projects.

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I hereby ratify and affirm any actions taken by the Administrator or other HCFA officials which, in effect, involved the exercise of this authority prior to the effective date of this delegation. This delegation is effective immediately.

Dated: December 2, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–32747 Filed 12–15–97; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Cancer Education Program, Telephone Conference Call.

Date: December 18, 1997.

Time: 3:30 p.m. to Adjournment.

Place: National Cancer Institute, Executive Plaza North, Room 611A, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611A, 6130 Executive Boulevard, Bethesda, MD 20892, Telephone: 301/496–7978.

Purpose/Agenda: To review, discuss and evaluate grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Grant applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control.)

Dated: December 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32745 Filed 12–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

National Institutes of Health

Electric and Magnetic Fields Research and Public Information; Dissemination (EMFRAPID) Program; Environmental Toxicology Program, Office of Special Programs; National Institute of Environmental Health Sciences, National Institutes of Health

NOTICE: Second EMF Science Review Symposium—EMFRAPID Program.

Background

The National Institute of Environmental Health Sciences (NIEHS) and the Department of Energy (DOE) are coordinating the implementation of the Electric and Magnetic Fields (EMF) Research and Public Information Dissemination (RAPID) Program. EMFRAPID was established by the 1992 Energy Policy Act (Section 2118 for Public Law 102–486) which was signed in October 1992. This five-year effort is designed to determine the potential effect from exposure to 60 Hz electric and magnetic fields on biological systems, especially those produced by the generation, transmission and use of electric energy. DOE is responsible for characterizing field exposures and for mitigating exposures which may be hazardous. The NIEHS is responsible for the development and implementation of a research program on the possible human health effects of electric and magnetic fields (EMF). The RAPID Program requires the NIEHS to report on the extent to which exposure to electric and magnetic fields adversely affects human health.

The NIEHS has three groups that assist in managing and directing the science portion of RAPID and who will provide guidance on reporting on the health effects of electric and magnetic fields. The first, known as the Interagency Agency Committee on Electric and Magnetic Fields (IAC) is composed of representatives from 10 federal agencies with responsibilities related to electric and magnetic fields (DOE, NIEHS, the Environmental Protection Agency (EPA), the Department of Defense (DOD), the Occupational Safety and Health Administration (OSHA), the National Institute of Standards and Technology (NIST), the Department of Transportation (DOT), the Rural Electrification Administration (REA), the Department of the Interior (DOI), and the Federal Energy Regulatory Commission (FERC)). The IAC, established by the President of the United States, must also prepare a final report for Congress.

The second is the National Electric and Magnetic Field Advisory Committee (NEMFAC). NEMFAC consists of representatives from public interest groups, organized labor, state governments, academia, and industry. This groups advises DOE and NIEHS on the design and implementation of the program. NEMFAC also provides recommendations to the IAC.

Finally, the NIEHSA has an internal EMF Steering Committee (SC) consisting of senior scientists with broad programmatic responsibilities and a broad scientific perspective. The SC manages all aspects of the EMFRAPID Research Program at the NIEHS.

NIEHS Report on Human Health Effects of EMF

The report development process combines a critical evaluation of the scientific literature with an assessment of the strength of the evidence for human health effects resulting from EMF exposures. To accomplish the initial part of this process, the NIEHS is convening a series of open, public symposia on science related to EMF exposures and their biological effects for these study areas: theoretical/*in vitro research findings*, epidemiological results, and *in vivo*/clinical laboratory findings. The symposia (March 1997, January 1998, and April 1998) provide a forum for the discussion and evaluation of the research findings in the selected area. At each symposia the participants consider the quality and reproducibility of the research findings for evaluating the degree to which scientific evidence can support a causal linkage between EMF and biological/health effects. Written reports summarizing the deliberations of breakout group discussion sessions are publicly available for the first symposium (send name and address to f:919–541–0144 or from EMFRAPID Progrm/LCBRA, NIEHS, PO Box 12233, MD EC–16, Research Triangle Park, NC 27709). The participants for each symposium include scientists studying EMF effects in the science area being reviewed, experts on measuring and producing EMF exposures, riak assessment experts, and recognized scientists in the area being evaluated who may have little EMF experience but can contribute to a broader understanding of the research findings.

Following the symposia a working group meeting is planned for June 1998. The working group will use information from the symposia's discussions as well as perform on overall critical evaluation of the literature and produce a report. This document will draw conclusions on the strength and robustness of the data and its implications for human health effects and disease etiology.

Per the request from Congress, the NIEHS will use the final report of the working group, information obtained from the science review symposia and other relevant information to prepare a report to Congress on the potential for human health effects from exposure to EMF that result from the production and distribution of electricity. This report will be made publicly available at the time it is sent to Congress. Detailed information about the EMFRAPID Program is available at the time it is sent to Congress. Detailed information about the EMFRAPID Program is available on the world wide web at www.niehs.nih.gov/emfrapid/home.htm.

Science Review Symposium on Epidemiology: Open to the Public

In its series of science review symposia, the second EMF Science Review Symposium is scheduled for January 12–14, 1998 at the Camberley Gunter Hotel, San Antonio, Texas. This meeting includes plenary overview talks on exposure assessment, methodological issues and problems in epidemiological studies as well as substantive talks on disease endpoints. Breakout group sessions are planned for in-depth discussions of the research findings from epidemiological studies as well as methodological and exposure assessment issues. This meeting is open to the public and the registration fee is $85; for registration information contact t:919–541–7534 or f:919–541–0144.

Science Review Symposium on Clinical and In vivo Research Studies

Planning is underway for the third EMF Science Review Symposium, April 6–9, 1998 at the Hyatt Regency at Civic Plaza, Phoenix, Arizona. To receive additional information about this meeting, send your name and address to f:919–541–0144 or EMFRAPID Program/LCBRA, NIEHS, PO Box 12233, MD EC–16, Research Triange Park, NC 27709.

Dated: December 2, 1997.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 97–32742 Filed 12–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on January 28, 1998 in Conference Room 1A1 in the Solar Building located at 6003 Executive Blvd, Rockville, Maryland.

The entire meeting will be open to the public from 8:30 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress. Attendance by the public will be limited to space available.

Ms. Rona L. Siskind, Executive Secretary , AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2A21, telephone 301–435–3732, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Siskind in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: December 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32743 Filed 12–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Amended Unsolicited R01 (Telephone Conference Call).

Date: January 6, 1998.

Time: 1:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Blvd., Solar Building, Room 4C01, Bethesda, MD 20892, (301) 496–2500.

Contact Person: Dr. Dianne E. Tingley, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C07, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate a grant application.

The meeting will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Application and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: December 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32744 Filed 12–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Proposed Residential Development Called Heron's Cove, Charlotte County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Heron's Cove, L.C. (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). The ITP would authorize for a period of 15 years the incidental take of a threatened species, the Florida scrub-jay, *Aphelocoma coerulescens*. The proposed residential development is called Heron's Cove and will consist of 16 homes located on about 173 acres in section 7, Township 40 south, Range 23 East, Charlotte County, Florida (Project). Approximately 40 acres of the Project site are considered habitat for the Florida scrub-jay. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP), the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an EA and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP.

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before January 15, 1998.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or U.S. Fish and Wildlife Service, 1360 U.S. Highway 1, Suite 5, Vero Beach, Florida 32961–2676. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number PRT–837313 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Ecosystem Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay (FSJ) is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The FSJ is found exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that FSJ numbers have been reduced by at least half in the last 100 years. In Charlotte County alone, it is estimated that as of 1992, only 1,793 acres of scrub habitat remained. Many of the remaining FSJ now occupy small, isolated patches of habitat and are vulnerable to extirpation because of habitat fragmentation, fire suppression, increased predation, natural stochastic events, and other anthropogenic impacts. Most of the scrub habitat on the Project site is also overgrown or was previously altered due to land clearing. The Service, through consultation with other experts, believes that FSJ will decline, over time, in these type of situations without active management of remaining habitat patches.

Based on existing soils data, much of the FSJ habitat that was once widespread along coastal and riverine portions of Lee, Charlotte, and Sarasota Counties has been lost or degraded, including xeric habitat within the Project area and adjoining lands. Even with the large loss of habitat, FSJ using the Project are still considered to be part of a larger complex of demographically connected FSJ that occupy xeric uplands of southwest Florida. This complex of FSJ families is considered one of five remaining areas where relatively large numbers of birds remain demographically linked. The continued survival of FSJ in southwest Florida may be dependent on the maintenance of suitable habitat and the restoration of unsuitable habitat in northern Charlotte County, including the Project site and adjoining lands.

FSJ use of the Project site and adjacent lands has been assessed on two occasions. In 1994, banding studies revealed that five scrub-jay families containing at least 20 individuals used parts of the Project site. However, no single territory was exclusively encompassed within the Project site nor were any nests documented within the Project site. Nesting surveys conducted in 1997 located five nests on vacant lots in the subdivision adjacent to the Project site. The principal value of the Project site to FSJ is for foraging and cover.

Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, FSJ incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential development will reduce the availability of feeding and sheltering habitat.

The Applicant's HCP and the Service's EA describe the following minimization and mitigation strategy to be employed by the Applicant to offset the impacts of the Project to the FSJ:

- Micro sighting of access roads, driveways, home foundations to avoid or minimize impacts to xeric vegetation.
- To compensate for the destruction of 18 acres of FSJ habitat by preserving, restoring, and managing about 37 acres of xeric uplands. Seventeen acres of the proposed mitigation will be implemented within the boundaries of the Project.
- The Applicant will conserve an additional 20 acres of FSJ habitat, via a perpetual management agreement, within Serene Estates (section 20, Township 40 East, Range 24 South, Charlotte County), a 200 acre parcel of land controlled by the Applicant.
- Within the larger 200 acre parcel owned by the Applicant, the Applicant has also agreed to preserve and manage an additional 80 acres of xeric uplands. Although not intended for the mitigation needs of the Project, the Applicant has requested that the 80 acres of habitat be available for use as a future private mitigation bank.
- Funding and perpetual management of the on-site conserved area encompassing 17 acres and the 20 acre off-site mitigation area will be provided via terms and conditions of the ITP and an Implementation Agreement (IA), respectively. The IA will be executed between the Service and the Applicant, and will outline specific funding and management commitments for the on-site and off-site mitigation areas for a 99 year period. A copy of the final IA will be provided to interested parties upon request.
- Clearing of vegetation and/or construction would not be allowed within 150 feet of any active FSJ nest during the nesting season, approximately March 1 to June 30 to comply with State law.

The EA considers the environmental consequences of four alternatives. Two alternatives involve a project design of a lesser construction footprint (e.g., lesser number of homesites and associated infrastructure). The no action alternative may result in loss of habitat for FSJ and exposure of the Applicant under Section 9 of the Act. The proposed action alternative is issuance of the ITP according to the HCP as submitted and described above. Under the proposed alternative, the effect of the minimization and mitigation strategy will be that the majority of the FSJ habitat on site will be conserved for FSJ use, even after the Project is completed. Further, the restoration/conservation of the 20 acres of off site FSJ habitat, along with the Applicant's commitment to manage an additional 80 acres of FSJ habitat, will result in a protected and managed area capable of supporting about five families of FSJ under optimal habitat. Though the proposed mitigation bank will be used to off-set future impacts to FSJ in portions of southwest Florida, the Service believes that the protection of an 80 acre block of xeric habitat along with the 20 acres needed for mitigating Project impacts will enhance FSJ survival in this part of the state.

Suitable or restorable FSJ habitat also exists on property surrounding the Serene Estates mitigation site. Future land acquisition by the County, State, or for other mitigation needs may result in additional protected lands adjoining the off-site mitigation area. Increases in the size of protected and managed FSJ habitat in this area will increase the probability of FSJ persistence in northern Charlotte County.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

- Issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of the affected species in the wild.
- The HCP contains provisions which sufficiently minimize and/or mitigate the impacts of issuing the ITP.
- Issuance of the ITP would not have significant effects on the human environment in the project area.
- The proposed take is incidental to an otherwise lawful activity.
- Adequate funding will be provided to implement the measures proposed in the submitted HCP and authorizing ITP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: December 4, 1997.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 97–32719 Filed 12–15–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Department of the Interior and Department of Health and Human Services Internal Agency Procedures Manual for Contracting Under Title I of the Indian Self-Determination and Education Assistance Act

AGENCY: Bureau of Indian Affairs and Indian Health Service, Interior.

ACTION: Notice.

SUMMARY: The congress has declared that each provision of the Indian Self-Determination and Education Assistance Act (Act) and each provision of contracts entered into thereunder shall be liberally construed for the benefit of the Indian tribes or tribal organizations (T/TO). To carry out this policy, the Department of the Interior and Department of Health and Human Services Internal Agency Procedures Manual for Contracting Under Title I of the Indian Self-Determination and Education Assistance Act (Manual) was drafted to facilitate and enhance contracting with T/TOs under Title I of the Act, as amended, 25 U.S.C. 450 *et seq.*, and the regulations promulgated thereunder, 25 CFR part 900 (published in the **Federal Register** on June 24, 1996, and effective on August 23, 1996). The public is invited to review and comment on the draft Manual.

DATES: All written comments on the Manual should be submitted by January 15, 1998.

ADDRESSES: Written comments must be addressed to: Merry L. Elrod, Office of Tribal Programs, Indian Health Service, 5600 Fishers Lane, Room 6A–05, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: For additional information and/or to receive copies of the manual and letter dated October 30, 1997, to tribal leaders and other interested parties inviting comments on the draft Manual, the public may contact either: James Thomas, Division of Self-Determination Services, Bureau of Indian Affairs, 1949 C Street, NW., MS 4603–MIB, Washington, D.C., 20240, telephone 202/208–5727, or Merry Elrod, Office of Tribal Programs, Indian Health Service, 5600 Fishers Lane, Parklawn Building, Room 6A–05, Rockville, MD, 20857, telephone 301/443–1044.

Dated: December 9, 1997.

Hilda A. Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 97–32696 Filed 12–15–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-1430-00; N-59678]

Notice of Realty Action: Change of Use for Recreation and Public Purposes Lease/Conveyance N-41279

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose change of use.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been leased for public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Nevada Children's Center proposes to use the land for a children's after school day treatment program facility.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 16: NE¼NE¼SW¼
Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for the North 40 feet, the West 30 feet and the East 40 feet in favor of Clark County for roads, public utilities and flood control purposes.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada. Contact Cheryl Ruffridge by calling (702) 647-5064. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the lease/conveyance of the lands to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a children's after school day treatment program facility. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the change of use for the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: December 1, 1997.

Mark R. Chatterton,

Assistant District Manager, Non-Renewable Resources, Las Vegas, NV.

[FR Doc. 97-32716 Filed 12-15-97; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Stripper Royalty Rate Reduction Notification (OMB Control Number 1010-0090, Form MMS-4377), which expires on May 31, 1998.

FORM: MMS-4377, Stripper Royalty Rate Reduction Notification

DATES: Written comments should be received on or before February 17, 1998.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225-0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e-mail address is David___Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231-3046, FAX (303) 231-3385, e-mail Dennis___C___Jones@mms.gov.

SUPPLEMENTARY INFORMATION: To encourage continued production, provide an incentive for enhanced oil recovery projects, discourage abandonment of properties producing less than 15 barrels of oil per well-day, and reduce the operator's expenses, the Bureau of Land Management (BLM) will grant royalty rate reductions to operators of low-producing, stripper oil properties. BLM amended 43 CFR 3103.4-1 to establish the conditions under which an operator or owner of a stripper oil property can obtain a reduction in the royalty rate for a property producing less than 15 barrels of oil per well-day. The amended regulations provided instructions for calculation of royalty rates based on the property's annual production rate.

Operators of stripper oil properties use a formula developed by BLM [royalty rate (%) = 0.5 + (0.8 x average daily production)] and included under 43 CFR 3103.4-1(d)(3)(ii) to determine the reduced royalty rate. Operators are then required to notify MMS of the reduced royalty rate. The reduced rate will become effective for all oil production from qualifying properties the first day of the month after MMS receives notification of the rate change. Failure to inform MMS of the new royalty rate would result in the generation of exceptions by MMS computer systems processing financial and production data. The operator would then be held liable for royalty at the old rate and be subject to interest charges as well.

MMS has developed Form MMS-4377, Stripper Royalty Rate Reduction Notification, to be used to notify MMS of the reduced royalty rate. The form requires identification of the operator, name of the contact person, lease and agreement numbers, calculated royalty rate, current royalty rate and period covered. Since implementation of the final rule on September 10, 1992, MMS has received over 7,000 of these notifications. MMS uses the information provided on the form to update the database with accepted reduced royalty rates.

There are approximately 4,500 stripper leases or agreements on Federal lands and a total of 900 operators. Royalty rate calculations were made for the initial qualifying period, August 1, 1990, through July 31, 1991, and are now submitted for each 12-month period. We estimate that an operator may require 30 minutes per property to research production for one 12-month period, determine average annual well production, and calculate and report a new royalty rate or an annual burden of 2,250 hours (1/2 hour x 4,500 properties). We estimate that an operator may require 15 minutes annually to perform the necessary recordkeeping responsibilities associated with this information collection or an annual burden of 225 hours (1/4 hour x 900 operators).

Dated: December 10, 1997.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 97-32718 Filed 12-15-97; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

Visitor Services Plan/Environmental Impact Statement, Crater Lake National Park, Oregon

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91-190 as amended), the National Park Service (NPS), Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed Visitor Services Plan for Crater Lake National Park, Oregon. Once approved, the plan will guide the management and use of the developed areas of the park.

The alternatives presented in the DEIS define appropriate levels and kinds of visitor services and set the basis for a new concession contract. Alternative A (the proposed action) is a mix of proposals that are intended to protect park resources and enhance the visitor experience. Educational and interpretive opportunities would be enhanced to promote better visitor understanding, appreciation, and preservation of Crater Lake. NPS interpretive services would be emphasized, commercial services would be modified to better serve visitors, and some historic structures would be used more as they were initially intended. Alternative B (no action) would continue the existing conditions at the park and would allow for the completion of any facilities currently under construction. Alternative C would offer a more self-directed visitor experience that would be less facility-dependent and less structured than at present. Alternative D would enhance interpretation and provide a wider variety of commercial and NPS visitor services. Alternative E is primarily based on the planning direction presented in the Record of Decision for the 1995 Development Concept Plan/Environmental Impact Statement, and would concentrate visitor facilities at Rim Village.

The environmental consequences of the proposed action and the alternatives are fully documented, and mitigation provided as appropriate to minimize impacts.

SUPPLEMENTARY INFORMATION: Copies of the DEIS will be available for public inspection at the park. Requests for copies of the DEIS should be directed to the Superintendent, Crater Lake National Park, P.O. Box 7, Crater Lake, Oregon 97064 or by telephone at (541) 594-2211. Written comments on the draft plan should also be directed to the Superintendent at the above address and must be received by January 26, 1998. All review comments received will become part of the public record and copies of comments, including names, addresses and telephone numbers provided by respondents, may be released for public inspection.

Dated: December 3, 1997.

Cynthia R. Young,

Chief, Resource Planning, Denver Service Center, National Park Service.

[FR Doc. 97-32798 Filed 12-15-97; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Wild and Scenic River Study and Environmental Impact Statement for the Lower Sheenjek River in Alaska

AGENCIES: National Park Service, Interior.

ACTION: Notice of intent to prepare a Wild and Scenic River Study and revised draft legislative environmental impact statement for the lower Sheenjek River in Alaska.

SUMMARY: The National Park Service (NPS) is preparing an update to the 1984 draft Wild and Scenic River Study and Legislative Environmental Impact Statement (LEIS) for the Lower Sheenjek River in Alaska as required by Section 5(a) of the Wild and Scenic Rivers Act. The purpose of the study and LEIS is to study the Lower Sheenjek River for potential addition to the National Wild and Scenic River System. The U.S. Fish and Wildlife Service (USFWS) is a cooperating agency on this EIS.

The Sheenjek River is a 277 mile-long free flowing, unpolluted tributary of the Porcupine River. The study area is the lower part of the river within the Yukon Flats National Wildlife Refuge, and is 99 miles in length. A 1984 draft study recommended the study area as eligible and suitable as a wild river for inclusion in the National Wild and Scenic Rivers System. The upper river outside the study area (within the Arctic National Wildlife Refuge) was designated in 1980 by The Alaska National Interest Lands Conservation Act as part of the National Wild and Scenic Rivers System.

The Revised Draft Legislative EIS will consider a proposed action and a no-action alternative. The proposed action would recommend for designation the 99-mile segment of the Sheenjek River as a National Wild River. Designation would ensure long-term protection of the entire river's outstanding values through mandatory development of a river management plan for the lower river. Under the no-action alternative the lower Sheenjek River would not be recommended for designation. No additional protection would be provided to the lower river.

The Revised Draft Legislative EIS will be prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*) and its implementing regulations at 40 CFR part 1500. The NPS will prepare the EIS in conjunction with preparation of the Wild and Scenic River Study. In May/June of 1997 the NPS and USFWS held meetings in Fairbanks and Fort Yukon, Alaska to discuss the lower Sheenjek River wild and scenic study with the public. The Revised Draft Study/EIS is scheduled for public review in early 1988. Public meetings will be held in Fairbanks and Fort Yukon, Alaska. The locations and times of the public meetings will be announced in the **Federal Register**, local newspapers, and radio.

FOR FURTHER INFORMATION CONTACT: Jack Mosby, National Park Service 2525 Gambell Street, Anchorage, Alaska 99503-2892 Phone: (907) 257-2650.

Dated: December 8, 1997.

Paul R. Anderson,

Regional Director, Alaska.

[FR Doc. 97-32797 Filed 12-15-97; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Agenda for the January 14, 1998 Public Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park

Public Meeting

Fort Mason, Building F, 10:00 am-12:45 pm

10:00 AM
Welcome—Neil Chaitin, Chairman

Opening Remarks—Neil Chaitin, Chairman; William G. Thomas, Superintendent
10:15 AM
Update—General Management Plan, Phase II Implementation, William G. Thomas
10:30 AM
Update—Haslett Warehouse, William G. Thomas, Superintendent
10:45 AM
Update—SAFR Space needs for Haslett Warehouse, Building E, Tom Mulhern, Museum Services Manager
11:00 AM
Status—Fiscal Year 98 Budget/ Projects, Jeanne Haugh, Administrative Officer
11:15 AM
Status—Ship Preservation Update, Wayne Boykin, Ships Manager and Staff
11:45 AM
Update—Disaster Plan; Museum Building Preservation/Restoration Projects, Marc Hayman, Chief IRM
12:00 PM
Status—Volunteer Program, Sue Schmidt, Volunteer Coordinator
12:15 PM
Update—National Maritime Museum Association Programs/Projects, Kathy Lohan, Chief Executive Officer
12:30 PM
Public Comments and Questions
12:45 PM
Agenda items/Date for next meeting

Jeanne C. Vaughn,

Superintendent.

[FR Doc. 97–32796 Filed 12–15–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission of OMB Emergency Review; Comment Request

December 12, 1997.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by December 17, 1997. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 x143).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Employment and Training, Office of Management and Budget, Room 10235, Washington, D.C. 20503 (202) 395–7316.

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title: Welfare-to-Work Competitive Grants: Solicitation for Grant Applications.

OMB Number: 1205–Onew.

Frequency: Annually.

Affected Public: Public and private entities.

Number of Respondents: 600.

Estimated Time Per Respondent: 20 hours.

Total Burden Hours: 12,000.

Total Burden Cost (capital/startup): $480,000.

Total Burden Cost (operating/ maintaining): 0.

Description: The Balanced Budget Act of 1997, signed by the President on August 5, 1997, authorized the Department of Labor to provide Welfare-to-Work (WtW) grants to State and local communities to provide transitional employment assistance to move Temporary Assistance for Needy Families (TANF) recipients with significant employment barriers into unsubsidized jobs providing long-term employment opportunities. Under the WtW grants program, 25% of funds not allocated by the formula grants (to the States) will be provided through competitive grants to local governments, PICs, and private entities. In order to receive competitive grant funds, the statute provides that the public or private entity must submit an application in conjunction with the applicable PIC or political subdivision.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 97–32943 Filed 12–15–97; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 30, 1998. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. U.S. Office of Government Ethics (N1–522–98–1). Questionnaire files, training plans, and internal training program files maintained by the Education and Program Services Division.
2. Administrative Office of the United States Courts (N1-116–96–2). Jury Modernization System.
3. Department of Agriculture, Agricultural Research Service, (N1–310–97–2). Routine administrative files related to the input of information into an automated system used to keep track of USDA research projects.
4. Department of the Treasury, Internal Revenue Service (N1–58–97–3). Records accumulated by the Communications Division in the National Office's field offices (RCS 205).
5. Department of the Treasury, Internal Revenue Service (N1–058–97–6). Records accumulated by the Legislative Affairs Division.
6. Department of the Treasury, Internal Revenue Service (N1–058–97–10). Records accumulated by the Appeals Division in the National office and field offices.
7. Department of the Treasury, Internal Revenue Service (N1–058–98–7). Electronic records of the Audit Information Management System (AIMS).
8. Bureau of Public Debt (N1–53–96–4). Electronic records systems.
9. Federal Retirement Thrift Investment Board (N1–474–97–6). TSP forms filed by plan participants and/or annuitants.
10. United States Commission on Immigration Reform (N1–220–98–4). Comprehensive schedule.

Dated: December 9, 1997.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97–32776 Filed 12–15–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

Time and Date: 10:00 a.m., Thursday, December 18, 1997.

Place: Board Room, 7th Floor, Room 7047 1775 Duke Street, Alexandria, VA 22314–3428

Status: Open.

Matters to be Considered:

1. Request from a Credit Union to Convert to Private Insurance.
2. Request from a Federal Credit Union to Convert to Community Charter.
3. Request from a Federal Credit Union to Merge and Convert Insurance.
4. Request from a Federal Credit Union to Convert from a Federal Credit Union and Merge into a Federal Mutual Savings Bank.
5. Final Rule: amendment to Part 725.19, NCUA's Rules and Regulation, Central liquidity Facility Collateral Requirements.
6. Community Development Revolving Loan Program for Credit Unions: Notice of Applications for Participation.
7. Proposed Operating Fee Scale.
8. Proposed National Fields of Membership for Corporate Credit Unions.

Recess: 11:15 a.m.

Time and Date: 11:30 a.m., Thursday, December 18, 1997.

Place: Board Room, 7th Floor, Room 7047 1775 Duke Street, Alexandria, VA 22314–3428.

Status: Closed.

Matters to be Considered:

1. One (1) Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
2. Four (4) Administrative Actions under Par 704 of NCUA's Rules and Regulations. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
3. Adoption of Robert's Rules of Order in the Absence of NCUA Rules and Regulations. Closed pursuant to exemptions (2) and (6).
4. Approval (In Part) of September 17, 1997, Open Board Minutes. Closed pursuant to exemptions (2) and (6).
5. Two (2) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–32852 Filed 12–11–97; 5:12 pm]

BILLING CODE 7535–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

Time and Date: 9:09 a.m., Thursday, December 11, 1997.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

Status: Closed.

Matters Considered:

1. Personnel Actions. Closed Pursuant to exemptions (2), (5), (6) and (9)(B).
2. Matters Relating to OPM Report. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. Deputy General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–32853 Filed 12–11–97; 5:12 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation Paducah Gaseous Diffusion Plant, Paducah, KY

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff

concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: August 29, 1997.

Brief description of amendment: The amendment proposes to revise the Technical Safety Requirements (TSRs) for the uranium hexafluoride release detection systems located in Zones 1 and 4 of Building C–360. The revision is to include operability and surveillance requirements for additional valves that are required to close upon C–360 Zone 1 or 4 uranium hexafluoride detection.

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed changes establish limiting conditions for operation and associated surveillance requirements to demonstrate the operability of containment isolation valves. The change has no effect on the generation or disposition of effluents. Therefore, the proposed TSR modifications will not result in a change to the types or amount of effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed changes will not significantly increase any exposure to radiation. Therefore, the changes will not result in a significant increase in individual or cumulative radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any construction, only procedure modification, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

Accidents of concern involve the release of uranium hexafluoride in the C–360 laboratory area (Zone 1) and the basement transfer room (Zone 4). The proposed TSR changes ensure that the TSRs adequately address the current plant configuration by establishing limiting conditions for operation and associated surveillance requirements to demonstrate the operability of containment isolation valves. These changes will enhance the overall plant safety. The changes will not increase the probability of occurrence or consequence of any postulated accident currently identified in the safety analysis report.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed TSR modifications are necessary to reflect the fact that multiple valves on the autoclave transfer and sampling piping will isolate upon detection of uranium hexafluoride. The current TSR does not reflect recent modifications requiring closure of at least two isolation valves on each transfer/sampling pathway. The proposed changes will not create the possibility of a different type of equipment malfunction or a different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed changes to the TSRs ensure that the TSRs adequately address the current plant configuration by establishing limiting conditions for operation and associated surveillance requirements to demonstrate the operability of containment isolation valves that are required to close upon detection of uranium hexafluoride. These changes do not decrease the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP–1 becomes effective 30 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: Amendment will revise TSR 2.1.4.1 and 2.1.4.2a to establish operability and surveillance requirements for additional valves required to close upon C–360 Zone 1 or 4 uranium hexafluoride detection.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 8th day of December 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–32760 Filed 12–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Amendment and Denial of Amendment Application to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, Kentucky

The Director, Office of Nuclear Material Safety and Safeguards, made a determination that the following amendment request is significant in accordance with 10 CFR 76.45. Notice of Receipt of Amendment Request appeared in the **Federal Register** on July 31, 1997, allowing a 30-day public comment period on the application.

The NRC staff has reviewed the certificate amendment application and concluded that, in part, it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant, approving portions of the amendment application. Other portions of the amendment application, as explained herein, are proposed to be denied. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC, or any person whose interest may be affected and who submitted written comments in response to the **Federal Register** Notice on the amendment application under § 76.37, may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: April 23, 1997, revised July 31, 1997.

Brief description of amendment: The amendment is related to the planned modifications to upgrade the seismic capability of Buildings C–331 and C–335 at the Paducah Gaseous Diffusion plant. Specifically, the proposed amendment will move back the completion date for the seismic modifications required by Compliance Plan Issue 36, from December 31, 1997, to June 30, 1999. Additionally, the amendment approves proposed resolutions of the following three issues: (1) The increased stiffness of the buildings following completion of the modifications may change the predicted type and number of seismically-induced equipment failures inside the buildings; (2) the process of installing the new structural steel will temporarily make the building and contained equipment more susceptible to seismically-induced failures as the existing structural frames are altered and/or replaced; and (3) the process of installing the new structural steel may temporally increase the probability of equipment failures due to load handling accidents during construction. The amendment will also partially deny the USEC request. USEC will be required to begin the planned 18-month construction effort when the amendment is effective, instead of delaying until after the NRC completes review of an updated seismic risk analysis, USEC's updated safety analysis report, and USEC's final design for the planned seismic modifications. The proposed amendment will also approve two editorial changes to the Justification for Continued Operation (JCO) in Compliance Plan Issue 36; one other proposed change to the JCO will be denied.

Effective date: The amendment to Certificate of Compliance GDP–1 becomes effective immediately upon being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: The amendment will revise Compliance Plan Issue 36 on the seismic modifications and will allow the planned modifications to proceed.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 8th day of December 1997.

For the Nuclear Regulatory Commission.
Carl J. Paperiello,
Director, Office of Nuclear Material Safety and Safeguards.
[FR Doc. 97–32761 Filed 12–15–97; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Meeting of the ACRS Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on January 23, 1998, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, January 23, 1998—8:30 a.m. until the conclusion of business

The Subcommittee will review the NRC staff activities regarding the license renewal implementation issues and proposed industry guidelines. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: December 10, 1997.
Gail H. Marcus,
Acting Deputy Executive Director.
[FR Doc. 97–32758 Filed 12–15–97; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Human Factors; Notice of Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on January 20, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 20, 1998—8:30 a.m. until the conclusion of business.

The Subcommittee will review the latest version of the Human Performance and Reliability Implementation Plan, status of a technique for human error analysis (ATHEANA) pilot program, integration of human factors considerations into the inspection process, results of studies that used the Human Performance Events Database, and associated activities. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: December 10, 1997.
Gail H. Marcus,
Acting Deputy Executive Director.
[FR Doc. 97–32759 Filed 12–15–97; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.
DATE: Weeks of December 15, 22, 29, and January 5, 1997.
PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.
STATUS: Public and Closed.
MATTERS TO BE CONSIDERED:

Week of December 15

Wednesday, December 17

2:00 p.m.
Briefing on Integration and Evaluation of Results from Recent Lessons-Learned Reviews (including 50.59 Process Improvements) (Public Meeting) (Contact: Eileen McKenna, 301–415–2189)

3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Thursday, December 18

10:00 a.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of December 22—Tentative

There are no meetings the week of December 22.

Week of December 29—Tentative

There are no meetings the week of December 29.

Week of January 5—Tentative

There are no meetings the week of January 5.

*The Schedule for Commission Meetings is Subject to Change on Short Notice. To Verify the Status of Meetings Call (Recording)—(301) 415–1292. Contact Person for More Information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: December 12, 1997.
William M. Hill, Jr.,
Secretary Tracking Officer, Office of the Secretary.
[FR Doc. 97–32953 Filed 12–12–97; 1:53 pm]
BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1609]

Standard Review Plan for Transportation Packages for Radioactive Material; Notice of Issuance and Availability

The United States Nuclear Regulatory Commission has issued a draft report NUREG–1609 entitled "Standard Review Plan for Transportation Packages for Radioactive Material" for review and comment.

The Standard Review Plan for Transportation Packages for Radioactive Material provides guidance for the review and approval of applications for packages used to transport radioactive material (other than irradiated nuclear fuel) under Title 10 of Code of Federal Regulations, Chapter 1, part 71 (10 CFR part 71). The document is intended for use by the U.S. Nuclear Regulatory Commission (NRC) staff. Its objectives are to (1) summarize 10 CFR Part 71 requirements for package approval, (2) describe the procedures by which the NRC staff determines that these requirements have been satisfied, and (3) document the practices developed by the staff in previous reviews of package applications.

Draft NUREG–1609 is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, D.C. 20555–0001. A free copy of draft NUREG–1609 may be requested by writing to the U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001.

Comments on all aspects of this draft document are solicited and will be considered and may be incorporated in the Standard Review Plan, as appropriate. Appendix B to draft NUREG–1609 contains a data form that will be used to aid the NRC staff in transcribing the comments. A photocopy of the form in Appendix B or a similar form containing the same information should be used. Comments on draft NUREG–1609 should be submitted by March 31, 1998. The Standard Review Plan is scheduled for publication as an NRC NUREG document in 1998.

A separate Standard Review Plan for Transportation Packages for Spent Nuclear Fuel (NUREG–1617) is in preparation. Draft NUREG–1617 is scheduled to be published for comment in the spring of 1998.

Mail comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to 11545 Rockville Pike, Rockville, Maryland between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Dated at Rockville, Maryland, this 10 day of December, 1997.

For the Nuclear Regulatory Commission.
Case R. Chappell,
Section Chief, Package Certification Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.
[FR Doc. 97–32762 Filed 12–15–97; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22935; 812–10878]

Emerald Funds, et al.; Notice of Application

December 10, 1997.
AGENCY: Securities and Exchange Commission ("SEC").
ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without shareholder approval, of new investment advisory and sub-advisory agreements ("New Advisory Agreements") for a period of up to 120 days following consummation of the merger between Barnett Banks, Inc. ("Barnett Banks") and NationsBank Corporation ("NationsBank") or a subsidiary of NationsBank (but in no event later than May 30, 1998) (the "Interim Period"). The order also would permit Barnett Capital Advisors, Inc. ("Adviser"), Rodney Square Management Corporation ("Rodney Square"), and Brandes Investment Partners, L.P. ("Brandes") (Brandes and Rodney Square, the "Sub-Advisers") to receive all fees earned under the New Advisory Agreements following shareholder approval.

Applicants: Emerald Funds (the "Trust"), the Adviser, and the Sub-Advisers.

FILING DATE: The application was filed on November 24, 1997 and amended on December 9, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or,

for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Trust, 3435 Stelzer Road, Columbus, Ohio 43219; Adviser, 9000 Southside Boulevard, Building 100, Jacksonville, Florida 32256; Rodney Square, Rodney Square North, Wilmington, Delaware 19890; Brandes, 12750 High Bluff Drive, San Diego, California 92130.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Nadya B. Roytblatt, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and currently offers fourteen investment portfolios (each, a "Fund"). The Adviser serves as investment adviser to each Fund. The Adviser is a wholly-owned subsidiary of Barnett Banks, N.A., which is the largest banking subsidiary of Barnett Banks, a registered bank holding company, and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") Rodney Square, a wholly-owned subsidiary of Wilmington Trust Company and a registered investment adviser under the Advisers Act, acts as a sub-adviser to one Fund of the Trust, the Tax-Exempt Fund. Similarly, Brandes, a registered investment adviser under the Advisers Act, acts as sub-adviser to one Fund of the Trust, the International Equity Fund. Brandes Investment Partners, Inc. owns a controlling interest in Brandes and serves as its general partner, and Charles Brandes is the controlling shareholder of Brandes Investment Partners, Inc.

2. On August 29, 1997, Barnett Banks announced that it had reached a definitive agreement with NationsBank to merge Barnett Banks into NationsBank or a subsidiary of NationsBank (the "Merger"). As a result of the Merger, the Adviser will become a direct or indirect wholly-owned subsidiary of NationsBank or a subsidiary of NationsBank. The consummation of the Merger is subject to certain conditions, including the receipt of certain regulatory approvals. Barnett Banks and NationsBank currently expect that the Merger will be consummated during the first quarter of 1998.

3. Applicants believe that the Merger may result in the assignment of the existing advisory agreements between the Funds and the Adviser and the existing sub-advisory agreements between the Adviser and the Sub-Advisers (the "Existing Advisory Agreements"). Applicants request an exemption to permit (i) the implementation, during the Interim Period, prior to obtaining shareholder approval, of the New Advisory Agreements, and (ii) the Adviser to receive from each Fund (and the Sub-Advisers to receive from the Adviser) all fees earned under the New Advisory Agreement if, and to the extent, the New Advisory Agreement is approved by the shareholders of the Fund. Applicants state that the New Advisory Agreements will have the same terms and conditions as the Existing Advisory Agreements, except for the dates of commencement and termination and the inclusion of escrow arrangements.

4. A meeting of the Trust's board of trustees (the "Board") was held on November 13–14, 1997 at which the Merger and its implications for the Trust were discussed. A majority of the members of the Board, including a majority of the Board members who are not "interested persons" of the Trust, as that term is defined in section 2(a)(19) of the Act (the "Independent Trustees"), participated in the meeting and concluded unanimously that it was in the best interests of the Trust and its shareholders to file the application as a necessary step in implementing the New Advisory Agreements during the Interim Period in a manner that would minimize the disruption in advisory services to the particular Funds involved. The Board met again on December 8, 1997 and approved the New Advisory Agreements in the manner prescribed in section 15(c) of the Act. At the December 8, 1997 meeting, the Board also voted to recommend that shareholders of the Funds approve the New Advisory Agreements during the Interim Period.

5. Fees earned under the New Advisory Agreements during the Interim Period will be maintained in an interest-bearing escrow account with a financial institution that is unaffiliated with the Adviser and Sub-Advisers. The escrow agent will release the amounts held in the escrow account (including any interest earned): (i) To the Adviser only upon approval of the New Advisory Agreement by the shareholders of the related Fund; or (ii) to the relevant Fund, in the absence of approval by such shareholders. Before amounts are released from the escrow account, the Board will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, as a result of the Merger, the Adviser will become a direct or indirect wholly-owned subsidiary of NationsBank or a subsidiary of NationsBank. Applicants believe, therefore, that the Merger may result in the "assignment" of the Existing Advisory Agreements, thus terminating these Agreements pursuant to their terms.

3. Rule 15a–4 provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) the new contract is approved by that company's board of directors (including a majority of the non-interested directors); (ii) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (iii) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that they may not be entitled to rely on rule 15a–4 because of the benefits Barnett Banks, the indirect holding company of the Adviser, will receive from the Merger.

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the timing of the Merger is influenced by a number of factors relating principally to the merging companies' commercial banking and other similar business concerns, as well as pending regulatory approvals and satisfaction of other closing conditions. Applicants state that these circumstances make it difficult, from a timing perspective, to secure prior approval of the New Advisory Agreements by the Funds' shareholders. Applicants state that, in addition, because it is likely that one or more of the Funds will be merged into corresponding funds of the Nations Funds family of funds in 1998, the granting of the requested order will allow the Funds to undertake a single proxy solicitation for obtaining shareholder approval of the plan of reorganization and the New Advisory Agreements, rather than conducting more than one proxy solicitation within a relatively short time frame, and should thus serve to reduce costs and minimize any potential shareholder confusion.

6. Applicants submit that they will take all appropriate actions to prevent any diminution in the scope of quality of services provided to the Funds during the Interim Period. Applicants state that the Existing Advisory Agreements were approved by the Board and the shareholders of the Funds. Applicants represent that the New Advisory Agreements will have the same terms and conditions as the Existing Advisory Agreements, except for the dates of commencement and termination and the inclusion of escrow arrangements. Accordingly, applicants assert that each Fund will receive, during the Interim Period, substantially identical investment advisory services, provided in the same manner, as it received prior to the Merger. Applicants state that, in the event there is any material change in the Adviser's personnel providing advisory services under the New Advisory Agreements during the Interim Period, the Adviser will apprise and consult the Board to ensure that the Board, including a majority of the Indepenednet Trustees, are satisfied that the services provided by the Adviser will not be diminished in scope or quality.

7. Applicants contend that to deprive the Adviser and Sub-Advisers of their customary fees during the Interim Period for no reason, other than the fact that the Merger may be deemed to result in an assignment of the Existing Advisory Agreements, would be an unduly harsh and unreasonable penalty to impose upon an investment adviser in the circumstances of the application. Applicants submit that, in good faith and consistent with the Act and the spirit of rule 15a-4, they seek to promote the interests of the Funds and their shareholders by undertaking the fee and other arrangements described in the application. Applicants emphasize that the fees payable to the Adviser and Sub-Advisers under the New Advisory Agreements have been approved by the Board, including a majority of the Independent Trustees, and that these fees will not be released by the escrow agent without the approval of the respective Fund's shareholders.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. Each New Advisory Agreement will have the same terms and conditions as the respective Existing Advisory Agreement, except for the effective and termination dates and the inclusion of escrow arrangements.

2. Fees earned by the Adviser and paid by a Fund during the Interim Period in accordance with a New Advisory Agreement will be maintained in an interest-bearing escrow account, and amounts in such account (including interest earned on such amounts) will be paid to the Adviser only upon approval of the New Advisory Agreement by the shareholders of the related Fund or, in the absence of approval by such shareholders, to the Fund.

3. The Trust will hold meetings of shareholders to vote on approval of the New Advisory Agreements on or before the 120th day following the termination of the Existing Advisory Agreements (but in no event later than May 30, 1998).

4. The Adviser will pay the costs of preparing and filing the application. The Adviser will pay the costs relating to the solicitation of approval of Fund shareholders, to the extent such costs relate to shareholder approval of the New Advisory Agreements necessitated by the Merger.

5. The Adviser will take all Appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the New Advisory Agreements will be at least equivalent, in the judgment of the Board, including a majority of the Independent Trustees, to the scope and quality of services provided under the Existing Advisory Agreements. In the event of any material change in personnel providing services pursuant to the New Advisory Agreements, the Adviser will apprise and consult the Board to assure that the Board and a majority of the Independent Trustees are satisfied that the services provided by the Adviser will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32754 Filed 12–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22933; 812–10670]

Financial Institutions Series Trust, et al.; Notice of Application

December 10, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under section 11(a) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants request an order permitting certain offers of exchange of shares (the "Exchange Program") between Summit Cash Reserves Fund Portfolio ("MMF"), a money market fund sponsored by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and certain non-money market funds in other groups of investment companies (the "Participating Funds") on a basis other than their respective net asset values per share.

APPLICANTS: Financial Institutions Series Trust; Fund Asset Management, L.P. ("FAM"); Merrill Lynch Asset Management, L.P. ("MLAM"); Merrill Lynch Funds Distributor, Inc. ("MLFD"); and Merrill Lynch.

FILING DATES: The application was filed on May 15, 1997. Counsel for applicants has agreed to file an amendment to the application during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. All requests must be received by the SEC by 5:30 p.m. on January 2, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certicate of service. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, D.C. 20549. Applicants, c/o Merrill Lynch Asset Management, L.P. Attn: Robert Harris, Esq., 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Senior Counsel, at (202) 942–0568 (Division of Investment Management, Office of Disclosure and Review), or Mercer E. Bullard, Special Counsel, at (202) 942–0659 (Division of Investment Management, Office of Chief Counsel).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee by writing the SEC's Public Reference Branch at 450 Fifth Street, N.W., Washington, D.C., or by telephone at (202) 942–8090.

Applicants' Representations

1. MMF, a money market fund, is a series of Financial Institutions Series Trust, an open-end management investment company registered under the Act. FAM and MLAM are wholly-owned by Merrill Lynch & Co. ("ML&Co.") and are registered as investment advisers under the Investment Advisers Act of 1940. FAM serves as MMF's investment adviser.[1] MLFD, a broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act") and a member of the National Association of Securities Dealers, Inc. (the "NASD"), serves as MMF's distributor. Merrill Lynch, a wholly-owned subsidiary of ML&Co., is a broker-dealer registered under the 1934 Act and a member of the NASD.

2. The Participating Funds will be non-money market open-end management investment companies registered under the Act (a) that are or will be sold to customers of Merrill Lynch under agreements whereby Merrill Lynch serves as a selected dealer or agent; (b) whose investment adviser is other than FAM or MLAM; (c) whose principal underwriter is other than MLFD; and (d) that have agreed to participate in the Exchange Program. Shares of Participating Funds may be sold with a front-end sales load ("FESL"), subject to a contingent deferred sales charge ("CDSC") or subject to alternative sales charge arrangements (*e.g.*, a level load). Each of the principal underwriters of the Participating Funds will be registered as a broker-dealer under the 1934 Act and a member of the NASD.

3. Customers of Merrill Lynch who have acquired shares of Participating Funds typically have such shares held in nominee name on the books of Merrill Lynch. Merrill Lynch provides consolidated account statements and year-end tax reports for its customers reflecting all positions held on the books of Merrill Lynch, including shares of Participating Funds. Merrill Lynch does not typically act as a selected dealer for money market funds other than those in the Merrill Lynch "group of investment companies" (including MMF), as that term is defined in rule 11a–3.[2] Accordingly, Merrill Lynch does not typically hold on its books shares of money market funds that currently have exchange privileges with the Participating Funds.

4. The Participating Funds generally offer exchange privileges that permit an investor to exchange shares of one Participating Fund for shares of another Participating Fund in the same group of investment companies without paying a CDSC on the redemption of the shares exchanged or a FESL on the shares purchased, depending on the sales loads charged by each Fund. Currently, a Merrill Lynch customer who is a shareholder of a Participating Fund may exchange into a money market fund with which the Participating Fund has an exchange privilege. In that event, because the customer's interest in that money market fund will not be carried on Merrill Lynch's books, Merrill Lynch is unable to provide a consolidated report of the customer's entire position. Alternatively, the customer could acquire a money market fund in the Merrill Lynch group of investment companies, the shares of which can be recorded on the books of Merrill Lynch. In that case, however, the customer would have to redeem shares of the Participating Fund and pay any applicable CDSC or, if Participating Fund shares subject to an FESL are redeemed, the customer may have to pay the FESL upon any subsequent repurchase of those shares.

5. The Exchange Program would enable Merrill Lynch customers who hold Participating Fund shares to maintain all of their holdings at Merrill Lynch, while also being able to avail themselves of the exchange privileges offered by the Participating Fund in which they have invested. These shareholders would be able to make exchanges into MMF, or exchanges back into shares of the same Participating Fund involved in the original exchange, without incurring a sales load. These shareholders also would be able to exchange their MMF shares at a reduced or no sales load into shares of certain other Participating Funds in the same group of investment companies as the Participating Fund involved in the original exchange.

6. Any exchange under the Exchange Program will be made in accordance with the exchange privileges offered by the Participating Fund group in which the Merrill Lynch customer has invested. Thus, shareholders of a Participating Fund who exchange their shares for shares of MMF may not exchange the MMF shares for shares of another fund that is not in the same group of investment companies as the Participating Fund. The Exchange Program also will not enable Participating Fund shareholders to exchange their shares directly for shares of another Participating Fund except in accordance with the exchange privileges offered by the particular Participating Fund group.

7. All shares involved in the Exchange Program will be held in Merrill Lynch's omnibus account on each Fund's books.[3] Merrill Lynch, as selected dealer for both MMF and the Participating Fund involved in the exchange, will process the sale and related purchase of shares at the price calculated in accordance with each Fund's prospectus. Merill Lynch will accept and record the payment of sales loads, administrative fees and redemption fees. In particular, upon receipt of a share exchange request, Merrill Lynch will process the share exchange on its mutual fund shareholder software system in accordance with the directions of the prospectuses for MMF and for the Participating Fund involved in the exchange. Merrill Lynch also will prepare and mail appropriate confirmations or statements related to the share exchange transactions.

8. The exchange arrangements for MMF and each Participating Fund will be described in general terms in MMF's prospectus, including the existence of any administrative or redemption fees charged (without necessarily identifying the specific Funds available for exchange). Each Participating Fund's prospectus will be required to disclose the amount of any administrative or redemption fees that will be imposed in connection with an exchange to or from MMF.

Applicants' Legal Analysis

1. Section 11(a) of the Act prohibits any offer by a registered open-end management investment company or its principal underwriter involving the exchange of the company's shares on any basis other than the relative net asset value of the securities to be exchanged, unless the terms of the offer have been approved in advance by the SEC or meet the requirements of any rules adopted to regulate exchange offers.

2. Rule 11a–3 allows an investment company or its principal underwriter to make exchange offers to its shareholders or to shareholders in another company in the same group of investment companies, and to charge a sales load, redemption fee, administrative fee or any combination thereof in connection with the exchange, subject to compliance with certain requirements. Among other requirements, paragraph (b)(6)(i) of the rule requires that the prospectus of the offering company disclose the amount of any administrative or redemption fee charged in connection with an exchange.

3. Applicants request an order under section 11(a) to permit the exchange of shares of MMF for shares of Participating Funds, and shares of Participating Funds for shares of MMF, at other than their respective net asset values at the time of exchange. Applicants state that these exchanges would include, for example, (i) exchanges of MMF shares for shares of a Participating Fund sold with an FESL or a CDSC ("CDSC Shares"), (ii) exchanges of CDSC Shares of a Participating Fund for MMF shares, and (iii) the imposition of an "administrative" and/or "redemption" fee (as defined in rule 11a–3) in connection with the exchanges.

4. Applicants state that each exchange will comply with all the requirements of rule 11a–3, except (a) the requirement that the Participating Funds and MMF be part of the same "group of investment companies," as that term is defined in paragraph (a)(5) of the rule, and (b) the requirement of paragraph (b)(6)(i) that MMF's prospectus disclose the amount of any administrative or redemption fee imposed on an exchange transaction for its securities, provided that MMF's prospectus will disclose the existence of these fees.

5. Applicants submit that the Exchange Program would not create any opportunity for improper gain by the underwriters of the Participating Funds, by MLFD, or by Merrill Lynch, and would not raise the possibility of inducing exchanges for the purpose of exacting additional sales charges, the abuse against which section 11(a) was directed. Furthermore, if the exchanges were always made at relative net asset values, applicants believe that the distribution systems of the Participating Funds could be disrupted because an investor could easily avoid applicable FESLs by acquiring shares of MMF and immediately exchanging those shares for Participating Fund shares, or avoid applicable CDSCs by exchanging CDSC Shares for MMF shares and then redeeming such shares without payment of any otherwise applicable CDSC. Applicants contend that the Exchange Program would avoid these problems.

6. Applicants also contend that the Exchange Program would benefit exchanging shareholders by crediting them for FESLs already paid, or, in the case of CDSC Shares, for the time the MMF shares are held or for distribution fees paid with respect to MMF shares under rule 12b–1 under the Act, consistent with the requirements of rule 11a–3. Finally, applicants contend Merrill Lynch is logically positioned to implement the Exchange Program even though members of different "groups of investment companies" are involved because it is the single entity with the information needed to execute both the redemption and purchase orders involved in a share exchange.

7. Applicants believe there will be such a wide variety of potential exchange arrangements offered by different families of Participating Funds that it would be impractical for MMF's prospectus to state the amounts of administrative or redemption fees imposed on an exchange transaction. Applicants also submit that shareholders will be fully informed of the fees and charges applicable to any exchange, because each Participating Fund's prospectus will include the information required by rule 11a–3.

Finally, applicants note that MMF's prospectus will include general information about the Exchange Program and refer shareholders to their financial consultants for more detailed information.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Merrill Lynch will be responsible for tracking the payment of sales loads, administrative fees and redemption fees by shareholders of investment companies or portfolios covered by the application, and otherwise will conduct share exchanges in accordance with the applicants' representations.

2. Offers of exchange pursuant to the applicants' Exchange Program will be conducted in accordance with rule 11a–3 under the Act, except that:

(a) An offering company will not be limited to making an exchange offer only to the holder of a security of the offering company, or of another open-end investment company within the same group of investment companies as the offering company;

(b) MMF's prospectus will describe the existence (but not the amount) of any administrative or redemption fees imposed on an exchange pursuant to the Exchange Program.

3. Merrill Lynch will maintain and enforce internal control procedures that are designed to assure the Exchange Program's compliance with all applicable provisions of rule 11a–3 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32749 Filed 12–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22937; 811–5517]

Heartland Technology, Inc. (Formerly Milwaukee Land Company); Notice of Application

December 10, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under section 8(f) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on June 20, 1997, and amended on

[1] In the future, MMF may be a feeder fund to another money market fund in reliance on section 12(d)(1)(E) of the Act, in which case the only investment securities it would hold would be shares of the master fund. In that event, either FAM or MLAM will serve as the investment adviser of the fund in which MMF invests.

[2] Rule 11a–3 defines "group of investment companies" to mean two or more open-end investment companies that hold themselves out as being related and that have a common adviser or principal underwriter (or advisers and underwriters that are affiliated persons of one another within the meaning of section 2(a)(3) of the Act).

[3] Shares held in certificated form will not be eligible for the Exchange Program.

December 2, 1997. Applicant has agreed to file an amendment during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicant, 547 West Jackson Blvd., Chicago, IL 60661.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. Milwaukee Land Company is a registered closed-end management investment company organized as a Delaware corporation. On October 31, 1997, Milwaukee Land Company amended its charter to change its name to Heartland Technology, Inc. (the "Company"). That charter amendment was approved by shareholders on September 17, 1997.

2. From its date of incorporation in 1881 until 1989, the Company was a subsidiary of the Chicago, Milwaukee, St. Paul and Pacific Railroad (the "Railroad"). The Company was formed for the purpose, among other things, of acquiring and managing land used in the Railroad's operations. Immediately prior to November 30, 1989, the Company was a wholly-owned subsidiary of CMC Real Estate Corporation ("CMC Real Estate"), the successor to the Railroad, which was in turn a wholly-owned subsidiary of Chicago Milwaukee Corporation ("CMC"). CMC filed a notification of registration under the Act in March, 1988, and as a result, the Company and CMC Real Estate each registered under the Act in March, 1988. CMC Real Estate was liquidated on November 30, 1989, and the Company became a wholly-owned subsidiary of CMC.

3. In 1991, the real estate assets held by the Company and certain other assets and liabilities were contributed by the Company and CMC to two newly-organized partnerships, Heartland Partners, L.P. ("Heartland") and CMC Heartland Partners ("CMC Heartland"). Heartland is a publicly traded limited partnership in which the Company is the general partner and holds a class B limited partner interest. CMC Heartland is a general partnership in which the Company and Heartland are the general partners and the Company is the managing general partner. Through Heartland and CMC Heartland, the Company is engaged in the business of developing real estate, including the properties formerly owned by the Company. In 1993, CMC distributed the Company's common stock to CMC's shareholders, spinning off the Company as a separate publicly-held company. The Company's stock has not otherwise been offered to the public, and the Company has never filed a registration statement under the Securities Act of 1933.

4. Since its spin-off from CMC in 1993, the Company has represented to its stockholders that it has been engaged in a search for one or more acquisitions of operating businesses. The Company disclosed to its stockholders and to the investing public that such an acquisition would likely result in the Company ceasing to be an investment company and would therefore require stockholder approval. The Company disclosed in its proxy statement to shareholders that deregistration would result in shareholders no longer having the benefit of the regulatory protections afforded by the Act. The Company states that it communicated to its shareholders, in the Company's semiannual report for the period ending June 30, 1997, that it no longer holds itself out as being engaged in the business of investing, reinvesting, or trading in securities within the meaning of section 3(a)(1)(A) of the Act. Applicant states that it communicated to shareholders that the Company's assets would be better used to acquire an operating business that would be managed by the Company.

5. On April 4, 1997, the board of directors of the Company (the "Board"), including those directors who are not "interested persons" of the Company under the Act, considered and approved for submission to the Company's shareholders a proposal for the Company and a new wholly-owned subsidiary of the Company called PG Newco Corp. ("PG Newco") to purchase substantially all the assets and assume certain liabilities of PG Design Electronics, Inc. ("PG Design"). PG Design is a company engaged in the business of contract design and manufacture of printed circuit boards for computer products. Proxy materials that were sent to shareholders were filed with the SEC on April 28, 1997. On May 27, 1997, the shareholders of the Company approved the acquisition of PG Design, certain changes in the Company's investment policies necessary to permit the acquisition, and the deregistration of the Company under the Act.

6. In determining that it was in the best interests of the Company and its shareholders that the Company cease to be an investment company, the Board considered the following factors: (a) The difficulty of managing operating businesses under the Act; (b) the limits on the Company's capital structure imposed by section 18 of the Act, which constrain the Company's ability to borrow and otherwise manage its capital structure in ways the Board believes prudent for an operating company, but prohibited for a registered investment company; and (c) the prohibitions on transactions with affiliates under section 17 of the Act, which prohibit many types of incentive-based compensation the Board considers reasonable and necessary to attract and retain the best-qualified persons to manage the Company's businesses. The Company believes that ceasing to be registered under the Act would result in the potential for greater long-term capital appreciation through its investment in PG Newco and potential further expansion into other operating businesses.

7. The acquisition of PG Design was completed on May 30, 1997, and PG Newco's name has since been changed to P.G. Design Electronics, Inc. ("PG Design Electronics"). The Company intends to continue investment in and expansion of the business of PG Design Electronics, specifically, the contract design and manufacture of printed circuit boards and other components for computer products, and, if and when feasible, entry into other operating businesses. The Company intends to maintain its interest in Heartland and CMC Heartland and through those entities continue to engage in the business of real estate development. However, the Company expects that it will focus its efforts and resources in the business of PG Design Electronics and other potential operations.

8. On September 30, 1997, the Company entered into a letter of intent to acquire all of the outstanding common stock of Solder Station One, Inc. ("Solder Station One"), a service provider to the circuit board industry. Subject to certain adjustments, the purchase price is expected to be $7,250,000. The Company expects to form a new wholly-owned subsidiary which will serve as the acquisition vehicle. The Company expects to invest $1,500,000 in cash in that subsidiary, all of which the Company expects to obtain from repayment of debt owned to the Company by PG Design Electronics. The new subsidiary then expects to borrow against the receivables and equipment of Solder Station One to raise additional cash, and to pay the shareholders of Solder Station One: (i) $5,250,000 in cash at closing, and (ii) notes to be issued by the new subsidiary in the aggregate amount of $2,000,000, bearing interest at 8% annually. The close of the Solder Station One acquisition is currently scheduled for January 2, 1998.

9. A predecessor of the Company was petitioner in a suit in the U.S. Court of Federal Claims for refund of claimed overpaid railroad retirement taxes. That claim was transferred to the Company as part of the Company's spin-off from its former parent corporation, CMC. A judgment adverse to the Company was entered in the trial court on April 26, 1996. The Company appealed to the U.S. Court of Appeals for the Federal Circuit, and is awaiting decision. The Company is not a party to any other litigation or administrative proceeding.

10. The Company states that it is not now operating and will not in the future operate its business so as to be an investment company required to be registered under the Act. The Company states that it does not now and will not in the future hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities.

Applicant's Legal Analysis

1. The Company asserts that it no longer holds itself out as being engaged in the business of investing, reinvesting, or trading in securities within the meaning of section 3(a)(1)(A) of the Act. For example, in the Company's semiannual report to shareholders for the period ended June 30, 1997, the Company stated: "During the second quarter of 1997, the Company liquidated its entire non-affiliated investment portfolio. Most of the resulting cash was used on May 30, 1997 to acquire the assets, subject to certain liabilities, of PG Design. Shortly after the successful acquisition of PG Design, the Company applied for deregistration under the Act."

2. Section 3(a)(1)(C) of the Act defines an investment company as any issuer which "is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding forty percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." [1] The Company asserts that it no longer meets the definition of an investment company under section 3(a)(1)(C) because it does not own, and does not propose to acquire "investment securities" having a value exceeding 40% of the value of its total assets.

3. The Company asserts that because PG Design Electronics is a wholly-owned subsidiary of the Company, its common stock owned by the Company is not an "investment security" within the meaning of section 3(a)(2) of the Act. The Company states that, at September 30, 1997, its "investment securities" for purposes of section 3(a)(1)(C), represented 32.6% of its total assets, excluding cash and Government securities.

4. The Company's total assets at September 30, 1997, totaled $24,087,022. The Company's interests in Heartland and CMC Heartland were valued at $7,589,129 and the Company's investment in PG Design Electronics was valued at $15,085,543. The Company's accounts payable and accrued liabilities at September 30, 1997 consisted of liabilities of a predecessor corporation, accrued federal income taxes, and other liabilities.

5. The Company states that its income from the date of the close of the acquisition of PG Design has consisted primarily of income generated by PG Design Electronics, and less than 5% of the Company's income during the period June 1, 1997 through September 30, 1997 was derived from "investment securities." The Company states that it anticipates receiving income from PG Design Electronics, the amount of which will be within the Company's control but limited by PG Design Electronics' net income. PG Design's 1996 revenues totaled $25,022,000, resulting in net income of $1,255,000. For the period June 1, 1997 through September 30, 1997, PG Design Electronics had net income of approximately $1,727,974. The Company anticipates similar revenues and income for PG Design Electronics for the coming year although there can be no assurance that such levels will be achieved.

6. If the planned acquisition of Solder Station One is consummated, the Company anticipates that it will receive income from that company. The amount will be within the Company's control, but limited by Solder Station One's net income. Solder Station One's revenues for the nine months ended September 30, 1997 were approximately $5,941,000 and net income before taxes was about $1,399,000. The Company anticipates similar revenues and net income for Solder Station One after consummation of the acquisition although there can be no assurance that such levels will be achieved.

7. The Company states that it receives an annual management fee of $425,000 from CMC Heartland, and that it does not anticipate receiving any significant income other than the management fee from Heartland or CMC Heartland.

8. The Company states that it currently intends to continue to develop and expand its operating business. The Company believes that the percentage of its total assets represented by its interests in Heartland and CMC Heartland will decline. Giving effect to the planned Solder Station One acquisition, the Company's investment securities would be 32.6% of the Company's total assets. The Company states that it has no intention to increase the number of investment securities it holds. The Company does not expect to invest its net income in investment securities within the meaning of section 3(a)(2) of the Act, except as discussed below. The Company expects that it may invest in short-term securities as a cash management tool when accumulation of cash is necessary or appropriate to meet the Company's requirements, including pending payment of dividends, to make additional investments in the Company's subsidiaries or to acquire other companies or businesses, or to repay borrowings. In addition, the Company expects that it may invest in longer-term debt securities to offset particular Company liabilities. The Company intends to manage its cash and its investments in such a way as to avoid again coming within the definition of investment company under the Act.

[1] Investment securities are defined in section 3(a)(2) of the Act to include all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in sections 3(c)(1) or 3(c)(7) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32775 Filed 12–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22936; 812–10682]

Mentor Funds, et al.; Notice of Application

December 10, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without shareholder approval, of new investment advisory agreements ("New Agreements") between Mentor Funds, Mentor Institutional Trust, Cash Resource Trust (collectively, the "Trusts"), America's Utility Fund, Inc., and Mentor Income Fund, Inc. (collectively with the Trusts, the "Funds"); and one or more of Mentor Investment Advisors, LLC ("Mentor Advisors"), Mentor Perpetual Advisors, LLC ("Mentor Perpetual") (each, an "Advisor"); Van Kampen American Capital Management, Inc. ("Van Kampen"), and Wellington, Management Company, LLP ("Wellington") (each, a "Sub-advisor"), for a period of up to 60 days following the date of consummation of a merger (but in no event later than March 31, 1998) (the "Interim Period"). The order also would permit the Advisors and Sub-advisors to receive all fees earned under the New Agreements following shareholder approval.

Applicants: Funds, Advisors, and Sub-advisors.

FILING DATES: The application was filed on November 20, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Mentor Funds, Mentor Institutional Trust, Cash Resource Trust, America's Utility Fund, Inc., Mentor Income Fund, Inc., Mentor Advisors, and Mentor Perpetual, 901 East Byrd Street, Richmond, VA 23219; Van Kampen, One Parkview Plaza, Oakbrook Terrace, IL 60181; Wellington, 75 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trusts, each a Massachusetts business trust, are registered under the Act as open-end management investment companies. America's Utility Fund, Inc., a Maryland corporation, is registered under the Act as an open-end management investment company. Mentor Income Fund, Inc., a Virginia corporation, is registered under the Act as a closed-end management investment company. The Funds currently offer twenty-three portfolios.[1]

2. The Advisors, investment advisers registered under the Investment Advisers Act of 1940 (the "Advisers Act"), serve as investment adviser for the Funds pursuant to existing investment advisory agreements that comply with section 15 of the Act (with existing sub-advisory agreements, the "Existing Agreements"). Mentor Perpetual serves as investment adviser to Mentor Perpetual Global Portfolio and Mentor Perpetual International Portfolio. Mentor Advisors serves as investment adviser to each of the other Funds. The Sub-advisors, investment advisers registered under the Advisers Act, serve as sub-advisers for certain of the Funds pursuant to the Existing Agreements. Van Kampen serves as Sub-advisor to the Mentor Municipal Income Portfolio. Wellington serves as Sub-advisor to the Mentor Income and Growth Portfolio.[2]

3. On August 20, 1997, Wheat First Butcher Singer, Inc. ("Wheat First"), the Advisors' parent, entered into an agreement and plan of merger with First Union Corporation ("First Union"), under which Wheat First will be merged into First Union (the "Merger"). Upon consummation of the Merger (expected to occur on December 31, 1997), First Union will become the owner of a majority of the beneficial interest in Mentor Advisors and of one-half of the beneficial interest in Mentor Perpetual.

4. Applicants believe that the Merger will result in an assignment of the Existing Agreements. Applicants request an exemption to permit: (a) The implementation during the Interim Period, prior to obtaining shareholder approval, of the New Agreements; and (b) the Advisors and Sub-advisors to receive from each Fund, upon approval of that Fund's shareholders of the relevant New Agreement, any and all fees earned under the New Agreement during the applicable Interim Period. Applicants state that the New Agreements will have substantially the same terms and conditions as the respective Existing Agreements, except in each case for the effective date, termination date, and escrow provisions.

5. The boards of trustees of the Trusts and the boards of directors of Mentor Income Fund, Inc. and America's Utility Fund, Inc. (collectively, the "Boards"), met on October 14, 1997, September 10, 1997, and November 19, 1997, respectively, to discuss the Merger and its implications for the Funds. At the meetings, the Boards, including a majority of the members who are not "interested persons" of any Fund, as that term is defined in section 2(a)(19) of the Act (the "Independent Board Members"), voted in accordance with section 15(c) of the Act to approve the New Agreements and to submit the New Agreements to the shareholders of each of the Funds at a meeting to be held on December 22, 1997 (the "Meeting"). On December 8, 1997, the Boards of the Trusts met in person and approved the escrow provisions of each of the New Agreements in accordance with section 15(c) of the Act. The Boards of Mentor Income Fund, Inc. and America's Utility Fund, Inc. will meet in person prior to the commencement of the Interim Period to approve the escrow provisions of each of the New Agreements in accordance with section 15(c) of the Act.

6. Applicants state that proxy materials were mailed to the Funds' shareholders on or about November 25, 1997. Applicants submit that, while it is possible that shareholders of each of the Funds will approve the New Agreements at the Meeting, it also is possible that an insufficient number of votes will have been received by the date of the Meeting to act upon the New Agreements in respect of one or more Funds, and that it may be necessary to adjourn the Meeting to permit additional shareholders to vote their shares by proxy. Applicants believe that the requested relief is necessary to permit continuity of investment management of the Funds during the Interim Period so that services to each Fund would not be disrupted if the Meeting is adjourned as to that Fund.

7. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Advisors and Sub-advisors during the Interim Period under the New Agreements will be paid into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (a) To the relevant Advisors or Sub-advisor only upon approval of the relevant New Agreement by the shareholders of the relevant Fund; or (b) to the relevant Fund if the Interim Period has ended and its New Agreement has not received the requisite shareholder approval. Before any such release is made, the Boards will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines the term "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, following the Merger, First Union will own 100% of the voting securities of Wheat First. Applicants believe, therefore, that the Merger will result in an assignment of the Existing Agreements, and that the Existing Agreements will terminate by their terms upon consummation of the Merger.

3. Rule 15a–4 provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that (a) the new contract is approved by the company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that because the Advisors and their affiliates may be deemed to receive a benefit in connection with the Merger, applicants may not be entitled to rely on rule 15a–4.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and timing of the Merger were determined by Wheat First and First Union in response to a number of factors beyond the scope of the Act and unrelated to the Funds and the Advisors. Applicants believe that allowing the Advisors and Sub-advisors to continue to provide investment advisory services to the Funds during the Interim Period is in the best interests of the Funds and their shareholders to avoid any interruption in services to the Funds and is in keeping with the spirit of the provisions of rule 15a–4 and with the purposes of section 15 of the Act.

6. Applicants submit that the scope and quality of services provided to the Funds during the Interim Period will not be diminished. During the Interim Period, the Advisors and Sub-advisors would operate under the New Agreements, which would be substantially the same as the Existing Agreements, except for their effective dates, termination dates, and escrow provisions. The Advisors have advised the Boards that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, the Funds should receive, during the Interim Period, the same advisory services, provided in the same manner, at the same fee levels, and by substantially the same personnel as they received before the Merger.

7. Applicants contend that the best interests of shareholders of the Funds would be served if the Advisors and Sub-advisors receive fees for their services during the Interim Period. Applicants submit that to deprive the Advisors and Sub-advisors of their customary fees during the Interim Period for no reason, other than the fact that the Merger may be deemed to result in an assignment of the Existing Agreements, would be an unduly harsh and unreasonable penalty. Applicants note that the fees to be paid during the Interim Period will be at the same rate as the fees that currently are being paid under the Existing Agreements, which have been approved by the Board and the shareholders of each Fund.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. Each New Agreement will have substantially the same terms and conditions as the respective Existing Agreement, except for the effective date, termination date, and escrow provisions.

2. Advisory fees earned by an Advisor or Sub-advisor, as the case may be, during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid (a) to the Advisor or Sub-advisor, as the case may be, in accordance with the relevant New Agreement, after the requisite shareholder approval is obtained, or (b)

[1] Mentor Funds is comprised of eleven portfolios: Mentor Growth Portfolio, Mentor Capital Growth Portfolio, Mentor Strategy Portfolio, Mentor Income and Growth Portfolio, Mentor Perpetual Global Portfolio, Mentor Quality Income Portfolio, Mentor Municipal Income Portfolio, Mentor Short-Duration Income Portfolio, Mentor Balanced Portfolio, Mentor Institutional Money Market Portfolio, and Mentor Institutional U.S. Government Money Market Portfolio. Mentor Institutional Trust is comprised of five portfolios: Mentor U.S. Government Cash Management Portfolio, Mentor Intermediate Duration Portfolio, Mentor Fixed-Income Portfolio, Mentor Perpetual International Portfolio, and SNAP Fund. Cash Resource Trust is comprised of five funds: Cash Resource Money Market Fund, Cash Resource U.S. Government Money Market Fund, Cash Resource Tax-Exempt Money Market Fund, Cash Resource California Tax-Exempt Money Market Fund, and Cash Resource New York Tax-Exempt Money Market Fund. Each of America's Utility Fund, Inc. and Mentor Income Fund, Inc. constitutes a single portfolio.

[2] In each of the foregoing cases, whether acting as investment adviser or subadviser, each Advisor and Sub-Advisor is acting as an investment adviser within the meaning of section 2(a)(20) of the Act.

to the Fund, in the absence of such approval.

3. Each of the Funds will hold a meeting of shareholders to vote on approval of the New Agreements on December 22, 1997, or within the 60 day period following the consummation of the Merger (but in no event later than March 31, 1998).

4. First Union or Mentor Advisors will bear the costs of preparing and filing the application, and First Union will bear any costs relating to the solicitation of shareholder approval necessitated by the Merger.

5. The Advisors and Sub-advisors will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Boards, including a majority of the Independent Board Members, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Agreements caused by the Merger, the Advisors will apprise and consult with the Boards to assure that the Boards, including a majority of the Independent Board Members, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32755 Filed 12–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26792]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

December 10, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 5, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al.

(70–8875)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, and its electric utility subsidiary companies, Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, The Connecticut Light and Power Company, 107 Selden Street, Berlin, Connecticut 06037, Holyoke Water Power Company, Canal Street, Holyoke, Massachusetts 01040, and Public Service Company of New Hampshire and North Atlantic Energy Corporation, both of 1000 Elm Street, Manchester, New Hampshire 03015, (collectively, "Applicants") have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45, and 54 under the Act.

By orders ("Orders") dated February 11, 1997 and March 25, 1997 (HCAR Nos. 26665 and 26692), Applicants were authorized to, among other things, enter into an unsecured revolving credit facility ("Existing Facility") with various lending institutions permitting borrowings aggregating up to $313.75 million. Among other Applicants, Northeast was authorized pursuant to the Orders to make short-term borrowings through December 31, 2000, evidenced by short-term notes issued to lending institutions through formal and informal lines of credit, including the Existing Facility. Under the Existing Facility, Northeast has a maximum borrowing limit of $150 million. Applicants state that Northeast is currently unable to borrow under the Existing Facility.

Northeast now proposes to issue and sell notes ("Notes") through December 31, 2000 under a supplementary revolving credit facility ("Supplementary Revolver") in the aggregate principal amount of up to $25 million. Under the Supplementary Revolver, the interest rate applicable to the Notes will be increased to an amount not to exceed the greater of (i) four percentage points over the London Interbank Offered Rate or (ii) three percentage points over the lender's base rate. In addition, the maximum annual fee payment for the issuance of the notes will be increased from 0.30% per annum to 1% per annum. Advances from the Supplementary Revolver will be used to meet Northeast's debt service requirements under its Employee Stock Option Plan and to support its other financial requirements until such time as Northeast begins to receive dividends from its subsidiaries again.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32722 Filed 12–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22934; International Series Release No. 1108/812–10846]

Toronto Dominion Holdings, Inc.; Notice of Application

December 10, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant Toronto Dominion Holdings (U.S.A.), Inc. ("Toronto Dominion") requests an order that would permit it to sell certain debt securities and use the proceeds to finance the business activities of its parent company, The Toronto-Dominion Bank ("TD") and other companies controlled by TD.

FILING DATES: The application was filed on May 9, 1997, and amended on November 12, 1997. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 5, 1998 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 31 West 52nd Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Toronto Dominion is a Delaware corporation incorporated in 1982. All of Toronto Dominion's outstanding voting securities are owned by TD. TD, a chartered bank governed by the Bank Act of Canada, offers a wide range of financial services to individuals, corporate and commercial enterprises, financial institutions and governments throughout Canada. In the United States, TD offers a broad range of credit and non-credit services to corporations, financial institutions and governments, as well as discount brokerage services through Waterhouse Investors Services, Inc. ("Waterhouse"). Outside North America, TD conducts treasury and wholesale corporate operations in the world's major financial centers.

2. Toronto Dominion's principal subsidiaries, all wholly-owned, are TD Securities (USA) Inc., The Toronto-Dominion Bank Trust Company, Toronto Dominion (New York), Inc., Toronto-Dominion (Texas), Inc., Toronto Dominion Investments, Inc., and Toronto Dominion Capital (U.S.A.), Inc. TD Securities (USA) Inc. is a registered broker-dealer operating under Section 20 of the Glass-Steagall Act, and is engaged in selling, trading and financing U.S. and Canadian government, corporate debt, equity and money market securities. It also acts as agent on behalf of various TD entities in the distribution and private placement of debt securities, swaps and derivatives, in arranging for loan products and in trading loans. The Toronto-Dominion Bank Trust Company is a New York trust company that provides limited corporate trust functions to its affiliates. Toronto Dominion (New York), Inc. and Toronto-Dominion (Texas), Inc. are engaged primarily in the loan servicing business and participate with unaffiliated companies in making loans. Toronto Dominion Investments, Inc. is an investment vehicle that holds debt and equity securities as well as limited partnership interests pursuant to section 4(c)(7) of the Bank Holding Company Act. Toronto Dominion Capital (U.S.A.), Inc. is organized for the sole purpose of operating as a specialized financing corporation under the Small Business Investment Act of 1958, as amended. It makes investments in small business concerns with a capacity for growth. Toronto Dominion's subsidiaries other than those described above are companies organized to hold real estate that was required in satisfaction of debt previously contracted in good faith.

3. Toronto Dominion was organized to act as a holding company and to engage in financing activities and provide funds for TD and companies controlled by TD. Toronto Dominion received a previous order under section 6(c) of the Act exempting it from all provisions of the Act on December 18, 1984.[1] However, Toronto Dominion may no longer be able to rely on the 1984 Order for its exemption from the Act because a statement made in the application for the 1984 Order (that Toronto Dominion "and its subsidiaries do not and will not constitute more than 10% of [TD's] assets.") is no longer true.

4. Toronto Dominion regularly issues commercial paper in the United States pursuant to the exemption contained in section 3(a)(3) of the Securities Act of 1933 (the "1933 Act"). Subject to the grant by the SEC of the order requested in the application, Toronto Dominion intends to obtain additional funds through the offer and sale of its debt securities in the United States, Europe and other overseas markets and to lend the proceeds to or invest the proceeds in TD and other companies that, after giving effect to the exemption requested hereby, will be companies controlled by TD within the meaning of rule 3a–5(b).

5. Any issuance of debt securities by Toronto Dominion will be guaranteed unconditionally by TD as to the timely payment of principal, interest, and premium, if any (the "Guarantee"). The Guarantee will provide each holder of debt securities issued by Toronto Dominion a direct right of action against TD to enforce TD's obligations under the Guarantee without first proceeding against Toronto Dominion. The Guarantee for a particular issuance may not be modified or amended in any manner adverse to the holders except with the consent of each holder affected.

6. Due to the nature of debt markets, Toronto Dominion may from time to time borrow amounts in excess of the amounts required by TD and companies controlled by TD at any given time. In accordance with rule 3a–5(a)(5) of the Act, at least 85% of any cash or cash equivalents raised by Toronto Dominion will be invested in or loaned to TD and subsidiaries of Toronto Dominion and TD and other companies that, after giving effect to the exemption requested in the application, will be companies controlled by TD within the meaning of rule 3a–5(b) as soon as practicable, but in no event later than six months after Toronto Dominion's receipt of such cash or cash equivalents. In the event that Toronto Dominion borrows amounts in excess of the amounts required TD and companies controlled by TD at any given time, Toronto Dominion will invest such excess in temporary investments pending investing the money in or lending the money to TD and companies controlled by TD. All investments by Toronto Dominion, including temporary investments, will be made in government securities, securities of TD or subsidiaries of Toronto Dominion or TD or other companies that, after giving effect to the exemption requested in the application, will be companies controlled by TD within the meaning of rule 3a–5(b) (or in the case of a partnership or joint ventures, the securities of the partners of participants in the joint ventures), debt securities that are exempted from the provisions of the 1933 Act by section 3(a)(3) of the 1933 Act, or equity securities of unaffiliated companies in an amount that does not exceed 4% of Toronto Dominion's assets. Applicant states that limited amounts of U.S. equities are acquired either as part of hedging activities for equity derivatives transactions or as proprietary positions. Were TD to own such securities itself, it would be subject to withholding taxes on the dividends it receives on such shares. Ownership of such securities by Toronto Dominion prevents the imposition of such taxes.

Applicant's Legal Analysis

1. Toronto Dominion requests relief under section 6(c) of the Act for an

[1] Investment Company Act Release Nos. 14245 (Nov. 21, 1984) (notice) and 14280 (Dec. 18, 1984) (order) ("1984 Order").

exemption from all provisions of the Act. Applicant notes that in the release adopting rule 3a–5,[2] the SEC stated that it may be appropriate to grant exemptive relief to the finance subsidiary of a section 3(c) issuer, but only on a case-by-case basis so that it can have the opportunity to evaluate all of the relevant factors. According to the adopting release, the concern was that a company may be considered a non-investment company for the purposes of the Act under section 3(c) and still be engaged primarily in investment company activities.

2. Rule 3a–5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). Certain of Toronto Dominion's subsidiaries do not fit within the technical definition of "companies controlled by the parent company" because they derive their non-investment company status from section 3(c) of the Act.

3. Toronto Dominion states that neither itself and its subsidiaries, nor TD and its subsidiaries, engage primarily in investment company activities. In addition, if TD were itself to issue the securities that are to be issued by Toronto Dominion and use the proceeds for its own purposes or advance them to its subsidiaries or affiliates, none of TD, Toronto Dominion nor any of their respective subsidiaries or affiliates would be subject to regulation under the Act. While TD has chosen to use Toronto Dominion as a financing vehicle, by virtue of the Guarantee, the holders of the securities issued by Toronto Dominion will have direct access to TD's credit.

4. Under rule 3a–5(a)(6), a finance subsidiary may only invest in government securities, securities of its parent company or a company controlled by its parent company or debt securities exempt under section 3(a)(3) of the 1933 Act. Toronto Dominion will hold equity securities of unaffiliated companies in an amount that does not exceed 4% of its assets. Toronto Dominion will hold such securities due to non-U.S. tax constraints applicable to TD. The primary purpose of Toronto Dominion, however, will continue to be to finance the business operations of TD and companies controlled by TD. Moreover, purchasers of Toronto Dominion's debt securities will receive disclosure documents that make clear that such purchasers should ultimately look to TD for repayment pursuant to the Guarantee. Neither Toronto Dominion's structure nor its mode of operation will resemble that of an investment company.

5. Section 6(c) of the Act, in pertinent part, provides that the SEC, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Toronto Dominion submits that its exemptive request meet the standards set out in section 6(c) and should therefore be granted.

Applicant's Condition

Toronto Dominion agrees that the order granting the requested relief will be subject to the following condition:

1. Toronto Dominion will comply with all of the provisions of rule 3a–5 under the Act, except: (1) Toronto Dominion will be permitted to invest in or make loans to, corporations, partnerships, and joint ventures that do not meet the portion of the definition of "company controlled by the parent company" in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company by section 3(c)(1), (2), (3), (4), (6) or (7), provided that any such entity that Toronto Dominion invests in or makes loans to that is excluded from the definition of investment company pursuant to section 3(c)(1) or section 3(c)(7) will be engaged solely in lending, leasing or related activities (such as entering into credit derivatives to manage the credit risk exposures of its lending and leasing activities) and will not be structured as a means of avoiding regulation under the Act, and provided, further, that any such entity excluded from the definition of investment company pursuant to section 3(c)(6) of the Act will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act; and (2) Toronto Dominion will be permitted to invest in, reinvest in, own, hold or trade in equity securities of unaffiliated companies with a purchase price not in excess of 4% of Toronto Dominion's assets.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32751 Filed 12–15–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule 3a–5 provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39412; File No. SR–Amex–97–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Providing for the Waiver of Shareholder Approval as a Prerequisite to Certain Issuances of Securities and the Removal of the Term "Backdoor Listing" From the Exchange's Company Guide

December 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 3, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 5, 1997, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Section 710 of its *Company Guide* to provide for the waiver of shareholder approval as a prerequisite to certain issuances of securities, when obtaining such approval would seriously jeopardize the financial viability of the issuer. The Exchange also seeks to revise Sections 142, 341, 713, and 1003 of its *Company Guide* to eliminate the term "backdoor listing."

[1] 15 U.S.C. § 78s(b)(1).

[2] Amendment No. 1 corrected a drafting error that inadvertently omitted Section 142 of the Exchange's *Company Guide* from the proposed rule change provision that would eliminate the term "backdoor listing." *See* Letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy, Exchange, to Michael L. Loftus, Attorney, Division of Market Regulation, Commission, dated December 3, 1997.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, along with the New York Stock Exchange ("NYSE") and The Nasdaq Stock Market, Inc. ("Nasdaq"), maintains guidelines requiring shareholder approval for certain issuances of securities. The Exchange's guidelines are set forth in Sections 711–713 of the Exchange's *Company Guide*. These requirements typically apply to the issuance of securities in connection with management stock option plans, large acquisitions, or discounted private placements involving the issuance of 20% or more of the issuer's shares. Because the process of obtaining shareholder approval may be time-consuming, the Exchange has long observed an unwritten policy allowing the waiver of the shareholder approval requirement in circumstances where the very process of obtaining shareholder approval would seriously jeopardize the issuer's ability to survive. The Exchange notes that the rules of the NYSE and Nasdaq specifically provide for such an exception.

To conform its rules to those of the other marketplaces, the Exchange proposes to amend Section 710 of the *Company Guide* to provide that waivers of the shareholder approval required for certain issuances of securities may be granted, upon written application to the Exchange when: (i) The delay in securing shareholder approval would seriously jeopardize the financial viability of the issuer; (ii) reliance by the issuer on this exception is expressly approved by the audit committee of the issuer's board of directors or a comparable body; and (iii) the issuer mails a letter to all shareholders, at least ten days before the shares are to be issued, describing the transaction, alerting the shareholders to its omission to seek the shareholder approval that would otherwise be required, and indicating that the audit committee of the issuer's board of directors or a comparable body has expressly approved the exception.

In addition, the Exchange proposes to eliminate the term "backdoor listing" from Section 341 of the *Company Guide* and certain related provisions.[3] The Exchange currently uses the term to describe a merger between a listed and unlisted company, the net effect of which is so substantial that the Exchange considers it appropriate to evaluate the listing eligibility of the surviving entity under the Exchange's original listing guidelines. The Exchange will retain the substance of the affected Sections, but eliminate the term "backdoor listing" because the Exchange believes the phrase creates an undesirable image. The Exchange contends that Section 341 actually enhances regulation by requiring a substantially changed company to meet original listing guidelines in order to remain listed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

[3] Conforming changes are also proposed to be made to Sections 142, 713 and 1003 of the *Company Guide*.

[4] 15 U.S.C. § 78f(b).

[5] 15 U.S.C. § 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from December 5, 1997, the date on which it was filed,[6] and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(e)(6)[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–42 and should be submitted by January 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[6] The proposed rule change filing is deemed filed as of the date Amendment No. 1 was received by the Commission.

[7] 15 U.S.C. § 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(6).

[9] 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,
Secretary.
[FR Doc. 97–32750 Filed 12–15–97; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39417; File No. SR–NASD–97–80]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Options Position Limits

December 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] notice is hereby given that on October 30, 1997, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 2860 of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to exempt conventional equity option transactions that are intermediated by a member pursuant to Exchange Act Rule 15a–6(a)(3) from options position limits provided that the member reports such transactions to the Association in accordance with the options position reporting requirements. Below is the text of the proposed rule change. Proposed new language is italicized.

2860. Options

(b)(3) Position Limits;

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of:

* * * * *

(E) Conventional equity option transactions effected by a member pursuant to Exchange Act Rule 15a–6(a)(3) shall not be subject to position limits set forth in this subparagraph, provided that such conventional equity option transactions are reported to the Association in accordance with the requirements of subparagraph (5).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would exempt conventional equity option transactions in which members act as agent or intermediary pursuant to Exchange Act Rule 15a–6(a)(3) from options position limits provided that such conventional equity option transactions are reported to the Association pursuant to Rule 2860(b)(5). NASD Rule 2860(b)(3) establishes limits on the number of options contracts that a member, a customer, or a group of investors acting in concert can write or hold. Specifically, Rule 2860(b)(3) provides that "no member shall effect * * * for the account of any customer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the * * * customer would * * * hold or control or be obligated in respect to an aggregate position in excess of [certain prescribed limits]."[2] Members have expressed uncertainty as to whether U.S. broker/dealers that intermediate conventional equity option transactions between their affiliated foreign broker/dealers and U.S. institutional investors and major U.S. institutional investors pursuant to Rule 15a–6(a)(3), and that do not carry such options positions, are subject to the limits of the Rule. The NASD's options position limits apply to both conventional and standardized equity options. The proposed rule change, however, would affect only transactions in conventional equity options intermediated by a member pursuant to Rule 15a–6(a)(3). Position limits for all other conventional equity options transactions, as well as for standardized options, would remain unchanged.

NASD Regulation believes that Rule 2860 is ambiguous as to whether the limits specified in the Rule apply to option position transactions intermediated by a member firm under Rule 15a–6(a)(3),[3] and understands that industry practice in this respect is inconsistent. NASD Regulation is filing this proposed rule change in order to provide clarity and consistency of treatment for all member firms participating in transactions with foreign broker/dealers under Rule 15a–6(a)(3), and also to ensure that such transactions are reported under paragraph (b)(5) of the Rule.

NASD Regulation proposes amending Rule 2860(b)(3) to expressly exempt conventional equity option transactions intermediated by U.S. broker/dealers pursuant to Rule 15a–6(a)(3), provided that the member report to the Association such transactions which establish an aggregate position of 200 or more option contracts pursuant to Rule 2860(b)(5). Exchange Act Rule 15a–6(a)(3) provides that a foreign broker or dealer may, without registering under the Securities Exchange Act of 1934, induce or attempt to induce the purchase or sale of any security by a U.S. institutional investor or major U.S. institutional investor so long as a registered U.S. broker/dealer intermediates such transaction.[4] By intermediating transactions, the U.S. broker/dealer is responsible for: (1) Effecting the transactions, other than negotiating their terms; (2) issuing all required confirmations and statements; (3) extending or arranging any credit to the U.S. institutional investor or major U.S. institutional investor in connection with the transactions; (4) maintaining required books and records relating to the transactions; (5) complying with the net capital requirements of Exchange Act Rule 15c3–1 with respect to the transactions; and (6) receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with Exchange Act Rule 15c3–3. While the responsibilities of a U.S. broker/dealer under Rule 15a–6(a)(3) may be significant, they do not otherwise change what is essentially a foreign transaction between a U.S. institutional customer and a foreign broker/dealer. Further, as a jurisdictional matter, the NASD's options position limits do not apply to transactions that occur directly between a U.S. customer and a foreign broker/dealer.

The proposed rule change would require Rule 15a–6(a)(3) conventional equity option transactions to be reported to the NASD in accordance with the reporting requirements for large options positions generally. Rule 2860(b)(5)(ii) imposes reporting obligations on "each account in which the member has an interest * * * and each customer account, which has established an aggregate position of 200 or more option contracts * * *." Under the proposed rule change, conventional equity option transactions intermediated by a member pursuant to Rule 15a–6(a)(3) that establish an aggregate position of 200 or more option contracts would be reported to the Association. Although an institutional investor entering into an option transaction with a foreign broker/dealer that is booked with a member pursuant to Rule 15a–6(a)(3) is a customer of the foreign broker/dealer, and not the member, the proposed rule change would require the member to report the identity of the person or persons having an interest in an option position and the total of number of contracts in accordance with Rule 2860(b)(5)(ii). The information reported to the Association would be used by the NASD Regulation Market Regulation staff as part of their ongoing market surveillance operations and should minimize the risk of any market manipulation or disruption related to the accumulation or disposition of large options positions.

The proposed rule change may raise concerns that it could motivate members to move their existing conventional equity options business to off-shore broker/dealer affiliates to avoid position limits entirely. In response to these concerns, NASD Regulation notes that the proposed rule change is limited to transactions "effected pursuant to Exchange Act Rule 15a–6(a)(3)"—*i.e.*, trades negotiated between a foreign broker/dealer and a U.S. institutional investor or major U.S. institutional investor for which the U.S. broker/dealer is acting solely in the limited capacity prescribed by Rule 15a–6(a)(3). The proposed rule change would *not* allow a member to negotiate an option transaction with a U.S. institutional customer and then book such transaction with a foreign broker/dealer affiliate and thereby avoid position limits because such transaction would not be "effected pursuant to Exchange Act Rule 15a–6(a)(3)."

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[5] in that it promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–97–80 and should be submitted by January 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97–32753 Filed 12–15–97; 8:45 am]
BILLING CODE 8010–01–M

[1] 15 U.S.C. § 78s(b)(1).

[2] On September 5, 1997, the NASD filed a proposed rule change to Rule 2860(b) to disaggregate conventional equity options from exchange-traded equity options for position limit purposes and to amend the OTC Collar Exemption to provide that the exemption may be utilized with respect to an entire conventional equity option position, not just that portion that was established pursuant to the NASD's position limit hedge exemption rule. SR–NASD–97–67. This proposed rule change is currently pending with the Commission.

[3] In NASD Notice to Members 94–46, the NASD answered common questions concerning position limits, and included the following:

Question #5: Do the NASD options rules apply to conventional option transactions effected abroad by an NASD member or a foreign branch of an NASD member?

Answer: Yes. If the option is booked and carried with an NASD member, it is subject to the NASD position-limit rule.

[4] In a no-action letter dated April 9, 1997, 1997 SEC No-Act. LEXIS 525, the Commission expanded the exemption under Rule 15a–6 to include transactions with any entity that owns or controls in excess of $100 million in aggregate financial assets and modified the clearance and settlement requirements of an intermediating U.S. broker/dealer with respect to foreign securities and U.S. Government securities. Additionally, the no-action letter expanded the range of permissible contacts between foreign broker/dealers and U.S. institutional investors.

[5] 15 U.S.C. § 78o–3.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39413; File No. SR-PCX-97-37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to Market Maker Outside Trading Accounts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 31, 1997, the Exchange submitted Amendment No. 1[3] and on November 6, 1997, the Exchange submitted Amendment No. 2[4] to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to eliminate the current requirements of routine submission by Market Makers of information relating to non-market-maker trading accounts (or "outside" accounts). The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Rule 6.39, "Securities Accounts and Orders of Market Makers." Specifically, the Exchange is amending Rule 6.39(a) regarding the identification of accounts, to eliminate the need for routine submission by Market Makers of information on non-market-maker trading accounts or "outside accounts." Currently, Exchange Market Makers are required to identify and report to the Exchange all accounts in which the Market Maker may engage in stock, option and securities trading, directly or indirectly, or over which it has investment discretion. The Rule in its current form is broad enough to require Market Makers to report professional trading accounts held at clearing firms, as well as outside personal accounts such as brokerage accounts. The rule change will require Market Makers to report outside account information only when requested by the Exchange. The Exchange also proposes amending Rule 6.39(b) regarding the reporting of Market Maker orders. Currently, each Market Maker is required to report to the Exchange every order entered into by that Market Maker within the specifications of the Rule. The Exchange proposes amending Rule 6.39(b) to require the clearing firm that maintains the Market Maker's trading account, rather than the Market Maker personally, to report executed order information to the Exchange. The Exchange believes it is appropriate to limit the required order information to "executed" orders only, based upon its position that only marginal surveillance benefits are derived from gathering unexecuted order information on a routine basis.

Under the proposal, the Market Maker will be held responsible for the reporting requirements only if the clearing firm is not reporting executed order information to the Exchange and/or if the Exchange has requested that the Market Maker provide the information. Furthermore, the proposed rule change will clarify that this reporting requirement applies to all accounts carried for Market Makers who are the subject of a clearing firm Letter of Guarantee issued to the Exchange pursuant to Rule 6.36.

The clearing firm thus will be the primary source for the reporting of Market Maker-executed order information to the Exchange. However, all firms that represent and execute market-maker orders will continue to be responsible for maintaining and retaining executed and unexecuted order information as required by Rules 17a–3 and 17a–4 under the Act and by Exchange Rule 6.68.

Finally, in an effort to improve reporting and move toward electronic reporting in the future, the Exchange proposed to eliminate from Rule 6.39(b) the existing description of specific order information required to be reported.[5]

2. Statutory Basis

The basis under the Act for the proposed rule change is the Section 6(b)(5)[6] requirement that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson, Senior Attorney, PCX to David S. Sieradzki, Attorney, SEC, dated October 29, 1997 ("Amendment No. 1"). Amendment No. 1 clarifies what types of transactions the clearing firm must report to the Exchange under Rule 6.39(b). In addition, Amendment No. 1 adds language to Rule 6.39(b) that requires Market Makers to report executed orders, upon the request of the Exchange, in instances where the clearing firm does not report executed orders.

[4] *See* letter from Michael D. Pierson, Senior Attorney, PCX to David S. Sieradzki, Attorney, SEC, dated November 5, 1997 ("Amendment No. 2"). In Amendment No. 2, the Exchange represents that it will issue a regulatory circular to Members and Member Firms stating that all of the specific order information currently contained in Rule 6.39(b) will continue to be required to be reported pursuant to the Rule. In addition, the Exchange acknowledges that if it seeks to eliminate the required reporting of any specific information, such a change would require a rule filing pursuant to Section 19(b) of the Act. Finally, Amendment No. 2 makes a minor, non-substantive change to the Rule.

[5] This provision states that the report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the time report of execution were received and, if all or part of the order was executed, the quality and execution price. The Exchange will continue to require the reporting of this information, but pursuant to a Regulatory Circular. *See* Amendment No. 2, *supra* note 4.

[6] 15 U.S.C. § 78f(b)(5).

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[9]

The Commission believes that the PCX's proposal to allow market-makers to provide outside account information upon request by the Exchange rather than providing such information on a routine basis is a reasonable revision to the Exchange's market-maker account reporting procedures. This conclusion is based on the Exchange's representation that outside account information provides little benefit to the Exchange's surveillance programs unless special circumstances exist. The Commission believes that the ability of the Exchange to request outside account information upon request should help preserve the Exchange's ability to conduct adequate surveillance.

The Commission believes that PCX's proposal to make a Market Maker's clearing firm the primary responsible source for reporting market-maker executed order information to the Exchange is a reasonable means of streamlining the order reporting process. Accordingly, the proposed change should result in more effective and efficient reporting of market-maker accounts and executed order information to the Exchange, thus promoting just and equitable principles of trade, perfecting the mechanism of a free and open national market system, and furthering investor protection and the public interest.

The Commission believes it is appropriate to limit the required submitted order information to "executed" orders only, based on PCX's representation that only minimal surveillance benefits are gained by gathering unexecuted order information on a routine basis. Where the clearing firm is not reporting the information to the Exchange and if the Exchange requests that the market-maker provide the information, the market-maker will be responsible for reporting executed order information. Moreover, while the clearing firm is the primary source for the reporting of market-maker executed order information, the firms representing and executing market-maker orders will continue to be responsible for maintaining and retaining executed and unexecuted order information pursuant to Rules 17a–3[10] and 17a–4[11] of the Act and Exchange Rule 6.68. These provisions offer further assurance that executed order information will be reported and records of executed and unexecuted orders will be maintained.

The Commission believes that the PCX's proposal to eliminate the existing description of specific order information required to be reported pursuant to Rule 6.39(b)[12] will provide the Exchange with greater flexibility in adding reporting requirements as needed. The Commission notes that the Exchange has agreed to issue a regulatory circular to its members reflecting that all of the specific order information currently contained in Rule 6.39(b) will continue to be required to be reported pursuant to the Rule.[13] If the PCX in the future seeks to eliminate the required reporting of any of the specific information, such a change would require the submission of a rule filing pursuant to Section 19(b) of the Act.[14]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal, as amended, is virtually identical to a proposal by the Chicago Board Options Exchange approved by the Commission on February 13, 1997, following a full notice period during which no comments were received.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–97–37 and should be submitted by January 6, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PCX–97–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32756 Filed 12–15–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. § 78f(b).

[8] 15 U.S.C. § 78f(b)(5).

[9] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[10] 17 CFR 240.17a–3.

[11] 17 CFR 240.17a–4.

[12] *See supra* note 5.

[13] *See* Amendment No. 2, *supra* note 4.

[14] *Id.*

[15] *See* Securities Exchange Act Release No. 38286 (Feb. 13, 1997), 62 FR 8287 (Feb. 24, 1997) (order approving File No. SR–CBOE–96–70).

[16] 15 U.S.C. § 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39409; File No. SR-PTC-97-04]

Self-Regulatory Organizations; Participating Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Conform PTC's Rules to the Revised Articles 8 and 9 of the Uniform Commercial Code of the State of New York

December 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 10, 1997, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends PTC's rules to make them consistent with the revisions to Articles 8 and 9 of the Uniform Commercial Code ("UCC") of the State of New York.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statement.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend PTC's rules to make them consistent with the amendments to Article 8 and Article 9 of the UCC (collectively "Article 8") that are effective in the State of New York on October 10, 1997. According to PTC, the proposed amendments retain the meaning of PTC's existing rules under the new Article 8 format and terminology by deleting certain cross-references to the former Article 8 and replacing obsolete terminology.

PTC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] and the rules and regulations thereunder because it calls for the prompt and accurate clearance and settlement of securities transactions and protects investors and the public interest, by conforming PTC's rules to changes in the New York State law in order to retain the meaning of PTC's existing rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Participants have requested that PTC make the proposed rule change. PTC has not solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[4] and pursuant to Rule 19b–4(e)(1)[5] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of existing PTC rules. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–97–04 and should be submitted by January 6, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(e)(1).

[6] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–32752 Filed 12–15–97; 8:45 am]
BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2993]

State of Mississippi (and Contiguous Parishes in Louisiana)

Pearl River County and the contiguous Counties of Forrest, Hancock, Harrison, Lamar, Marion, and Stone in the State of Mississippi, and St. Tammany and Washington Parishes in the State of Louisiana constitute a disaster area as a result of damages caused by a tornado which occurred on November 21, 1997. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 30, 1998 and for economic injury until the close of business on September 1, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere—7.625%

Homeowners without credit available elsewhere—3.812%

Businesses with credit available elsewhere—8.000%

Businesses and non-profit organizations without credit available elsewhere—4.000%

Others (including non-profit organizations) with credit available elsewhere—7.125%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere—4.000%

The numbers assigned to this disaster for physical damage are 299312 for Mississippi and 299412 for Louisiana. For economic injury the numbers are 967300 for Mississippi and 967400 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 1, 1997.

Ginger Lew
Acting Administrator.

[FR Doc. 97–32725 Filed 12–15–97; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2995]

State of Washington

Kitsap County and the contiguous Counties of Island, Jefferson, King, Mason and Pierce in the State of Washington constitute a disaster area as a result of damages caused by a fire which occurred on November 13, 1997 in the Kona Village Apartments in the City of Bremerton. Applications for loans for physical damages may be filed until the close of business on January 30, 1998 and for economic injury until the close of business on September 1, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere—7.625%

Homeowners without credit available elsewhere—3.812%

Businesses with credit available elsewhere—8.000%

Businesses and non-profit organizations without credit available elsewhere—4.000%

Others (including non-profit organizations) with credit available elsewhere—7.125%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere—4.000%

The number assigned to this disaster for physical damage is 299505 and for economic injury the number is 967500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 1, 1997.

Ginger Lew,
Acting Administrator.

[FR Doc. 97–32724 Filed 12–15–97; 8:45 am]
BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–22]

WTO Dispute Settlement Proceeding—U.S. Anti-Dumping Duties on Color Televisions From Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the Government of Korea has requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO) to examine the continuing maintenance by the United States with respect to Samsung Electronics Co., Ltd. (Samsung) of an antidumping order on color television receivers (CTVs) from the Republic of Korea (Korea). According to the Government of Korea, Samsung's dumping margins for CTVs exported from Korea to the United States from 1985–1991 were *de minimis*, and Samsung has not exported CTVs from Korea to the United States since 1991. The Department of Commerce has initiated a changed circumstances review to determine whether the antidumping order should be revoked in part, i.e., with respect to Samsung. The Department of Commerce has also initiated anti-circumvention inquiries to determine whether Samsung is circumventing the antidumping order by exporting CTVs assembled in Mexico and Thailand to the United States. The Government of Korea is challenging the Department of Commerce's failure to revoke with respect to Samsung the antidumping order on CTVs from Korea, as well as its initiation of the circumvention inquiries.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 12, 1998 to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Litigation Assistant, Office of Monitoring and Enforcement, Room 501, Attn: Korea Color Televisions Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Audrey Winter, Office of the General Counsel, (202) 395–7305.

SUPPLEMENTARY INFORMATION: By letter dated November 6, 1997, the government of Korea requested the establishment of a panel to examine the continued imposition of anti-dumping measures on color television receivers from Korea. The WTO Dispute Settlement Body is likely to establish the panel no later than December 1997. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the Government of Korea and Legal Basis of Complaint

In its request for the establishment of a panel, the Government of Korea challenges the Department of Commerce's continuing imposition of antidumping duties on Samsung's CTV exports from Korea pursuant to the Department's April 30, 1984 antidumping order. The Government of Korea also challenges the Department's initiation and conduct of the anti-circumvention inquiries. The Government of Korea alleges that these actions are inconsistent with several provisions of the WTO agreements, including the following specific allegations:

—The failure of the United States to review, on its own initiative, dumping and injury respectively and to revoke the order constitutes a violation of Article 11.1 combined with Article 11.2, as well as Article 5.8 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement).

—The United States' rejection of Samsung's request for revocation review on the ground of the U.S. concern about lack of current data as a result of "no shipment" violates Article 11.2 of the Antidumping Agreement, which does not provide such a standard.

—The failure of the United States to revoke the order, coupled with the U.S. position that the outcome of the revocation review is dependent on the outcome of the anti-circumvention investigation, is in violation of Article 11.1 combined with Article 11.2 and Article 11.4 of the Antidumping Agreement because it introduces considerations not mentioned in Articles 11.1 and 11.2, and because the review exceeds the Article 11.4 time limit and the requirement that review investigations must be carried out expeditiously.

—The United States' requirement (19 C.F.R. 353.25(b)) that applicants file revocation requests only in "the third and subsequent anniversary months" is in violation of Article 11.2, which stipulates no time limit whatsoever for such requests.

—The conduct of the United States of the anti-circumvention inquiries violates Article VI of GATT 1994 and several provisions of the Antidumping Agreement.

—The initiation of the anti-circumvention inquiries violates Article VI of GATT 1994 and Articles

1, 2.1 and 3.1 of the Antidumping Agreement, because it may lead to the imposition of antidumping duties on imports of CTVs from Mexico and Thailand without findings of dumping and resulting injury ever having been made.

—The refusal by the United States to conduct a standing inquiry before initiating its anti-circumvention investigation violates Article 3.1, 3.6, 4.1 and 5.6 of the Antidumping Agreement.

—Failure by the United States to make a determination in the anti-circumvention inquiries for more than 22 months violates Article 5.10 of the Antidumping Agreement.

—The conduct of the United States in the revocation review and the anti-circumvention inquiries, when examined and compared, violates Article X.3 of GATT 1994 and Article 17.6(i) of the Antidumping Agreement because the United States has not established the facts properly nor has it evaluated the facts in an unbiased and objective manner.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as "Submitted in Confidence" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20408. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D-22, "U.S.—Anti-Dumping Duties on Color Televisions from Korea") may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 97-32794 Filed 12-15-97; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 5, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-97-3187.

Date Filed: December 2, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 30, 1997.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for amendment and re-issuance of its Foreign Air Carrier Permit issued to it by Order 95-3-11 to the extent necessary to permit TAESA to engage in scheduled air transportation of persons, property and mail on the following Mexico-U.S. scheduled combination routes: The coterminal points Guadalajara, Zacatecas; Mexico City; Leon (El Bajio); and Morelia, Mexico, on the one hand, and Fresno, California on the other hand.

Docket Number: OST-97-3177.

Date Filed: December 1, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 29, 1997.

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for renewal of Segment 1 of its Experimental Certificate of Public Convenience and Necessity for Route 378, which authorizes Northwest to engage in foreign air transportation of persons, property and mail between the terminal point Chicago, the intermediate points Los Angeles, San Francisco, Seattle or Honolulu, an intermediate point in Japan, and the coterminal points Shanghai, Guanzhou, and Beijing, China. Northwest requests renewal of Segment 1 of its Route 378 Certificate for a period of five years.

Docket Number: OST-97-3207.

Date Filed: December 5, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 1998.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C., Sections 41102 and 41108 and Subpart Q of the Regulations, requests a new or amended Certificate of Public Convenience and Necessity authorizing Delta to provide scheduled foreign air transportation of persons, property and mail between a point or points in the United States and a point or points in Panama. Delta further requests route integration authority to permit Delta to combine services that will be operated pursuant to the grant of this application with all other Delta services authorized by existing certificates and exemptions granted by the Department, to the extent permitted by applicable international agreements.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97-32735 Filed 12-15-97; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29088]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of acceptance for review: Preliminary application for Stewart International Airport, Newburgh, New York.

SUMMARY: The Federal Aviation Administration (FAA) has completed its review of the Stewart International Airport (SWF) preliminary application for participation in the airport privatization pilot program. The preliminary application is accepted for review, with a filing date of October 23, 1997. The New York State Department of Transportation (NYSDOT), the airport sponsor, may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption under the pilot program.

49 U.S.C. Section 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice in the **Federal Register** after review of a preliminary application. The FAA must publish a final application in the **Federal Register** for public review and comment for a sixty day period. The SWF preliminary application is available for public review in the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 29088, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Benedict D. Castellano, Manager, (202-267-8728) or Kevin C. Willis (202-267-8741) Airport Safety and Compliance Branch, AAS-310, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Section 149 of the Federal Aviation Administration Authorization Act of 1996, Pub. L. No. 104-264 (October 9, 1996) (1996 Reauthorization Act), adds a new § 47134 to Title 49 of the U.S. Code. Section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the Federal Aviation Administration issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (62 FR 48693). That notice, and public comments received on a notice of proposed procedures issued in April 1997, are available for review in FAA Rules Docket No. 28895. A request for participation in the Pilot Program must be initiated by the filing of either a preliminary or final application for exemption with the FAA.

Final and preliminary applications were not accepted before December 1, 1997, unless an applicant has issued a request for proposal (RFP) on or before the date of the notice, September 16, 1997. Applicants that had already issued a RFP for proposals for the sale or lease of the airport on or before September 16, 1997 and had selected a private operator could submit a final application for review before December 1, 1997. Applicants that had issued the RFP but had not selected a private operator could file a preliminary application on or before December 1, 1997.

NYSDOT issued its RFP on June 19, 1997, for Stewart International Airport, Newburgh, New York and has not selected a private operator. It was, therefore qualified to submit a preliminary application prior to December 1, 1997. The filing date of the NYSDOT preliminary application is October 23, 1997, the date the preliminary application was received by the FAA. NYSDOT may select a private operator, negotiate an agreement and submit a final application to the FAA for exemption.

When a final application is reviewed by the FAA, a notice that the application is available for review will be published in the **Federal Register**, with a sixty day comment period.

Issued in Washington, DC on December 9, 1997.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 97-32773 Filed 12-15-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-97-62]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 6, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267-9681 or Tawana Matthews (202) 267-9783, Office of Rulemaking (ARM-1), Federal

Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on December 11, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29057.
Petitioner: The Boeing Company.
Sections of the FAR Affected: 14 CFR 25.785(d), 25.807(c)(1), 25.857(e), 25.1447(c)(1).
Description of Relief Sought: To permit a McDonnell Douglas Model MD–11 Freighter Aircraft operating with a Class E Cargo compartment to carry up to five supernumeraries in a Courier Area (aft of the cockpit door and forward of the rigid cargo barrier).

Docket No.: 28999.
Petitioner: Intimate Air, Inc.
Sections of the FAR Affected: 14 CFR 119.3.
Description of Relief Sought: To permit the petitioner, an on-demand charter operator, to operate more than four round-trip scheduled operations per week under the on-demand rules in 14 CFR part 135 rather than the commuter rules in part 135. The petitioner desires to operate between Long Beach, California; Brown Field Municipal Airport, San Diego, California; and San Felipe, Mexico.

Docket No.: 28989.
Petitioner: Renown Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.434(g).
Description of Relief Sought: To allow each Renown pilot in command and second in command to substitute 50 hours of line-operating flight time and 50 takeoffs and landings for the required 100 hours of line-operating flight time required under 14 CFR 121.443(g) for the consolidated of knowledge and skills.

Dispositions of Petitions

Docket No.: 28952.
Petitioner: Minebea Technologies PTE Ltd.
Sections of the FAR Affected: 14 CFR 119.5(h).
Description of Relief Sought/ Disposition: To permit the petitioner, the holder of a 14 CFR part 125 operating certificate, to conduct common carriage cargo operations.
Denial, November 24, 1997, Exemption No. 6700.

Docket No.: 28997.
Petitioner: Israel Aircraft Industries.
Sections of the FAR Affected: 14 CFR 25.813(a).
Description of Relief Sought/ Disposition: To permit an interior arrangement that does not provide the required passageway to the main entry door of the Astra SPX airplane.
Grant, November 20, 1997, Exemption No. 6699.

Docket No.: 28824.
Petitioner: Triad International Maintenance Corporation.
Sections of the FAR Affected: 14 CFR 25.807(c)(1) and 25.857(e).
Description of Relief Sought/ Disposition: To allow the accommodation of up to four supernumerary occupants forward of the main deck Class E cargo compartment on Boeing 767–200 aircraft converted by the petitioner from a passenger to an all-freighter configuration, and to deactivate the existing R1 passenger emergency escape exit.
Grant, November 12, 1997, Exemption No. 6698.

Docket No.: 23358.
Petitioner: Clarke Environmental Mosquito Management, Inc.
Sections of the FAR Affected: 14 CFR 91.313(c).
Description of Relief Sought/ Disposition: To permit the petitioner to carry passengers in its Bell 47G–4A and 47G–3B–1 helicopters, certificated in the restricted category, while performing aerial-site survey flights.
Grant, November 21, 1997, Exemption No. 6701.

Docket No.: 25624.
Petitioner: Boeing Commercial Airplane Group, Douglas Products Division.
Sections of the FAR Affected: 14 CFR 121.411(a)(2), (3), and (b)(2); 121.413(b), (c), and (d); and appendix H to part 121.
Description of Relief Sought/ Disposition: To permit Douglas Aircraft Company (DAC), without holding an air carrier operating certificate to train part 121 certificate holders' pilots and flight engineers in initial, transition, upgrade, differences, and recurrent training in FAA-approved simulators and in turbojet-powered airplanes manufactured by DAC, without DAC's instructors meeting all applicable training requirements of part 121, subpart N.
Grant, December 1, 1997, Exemption No. 5117D.

Docket No.: 29011.
Petitioner: Atlantic Coast Airlines.
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.441 (a)(1) and (b)(1), and Appendix F to part 121.
Description of Relief South/ Disposition: To permit the petitioner to conduct an FAA-monitored training program under which Atlantic Coast Airlines pilots in command and seconds in command meet ground and flight recurrent training and proficiency check requirement through a single visit training program.
Grant, December 1, 1997, Exemption No. 5783C.

Docket No.: 2899.
Petitioner: Sun 'N Fun Aviation Foundation Inc.
Sections of the FAR Affected: 14 CFR 91.413(a).
Decription of Relief Sought/ Disposition: To permit Sun 'N Fun members to use an air traffic control transponder specified in 14 CFR 91.215(a) without meeting the test and inspection requirements of the transponder every 24 calendar months, provided the transponder has been operationally checked within the last 30 days with an ATC facility and found to be functioning properly.
Denial, December 4, 1997, Exemption No. 6703.

Petition for Exemption

Docket No: 29057.
Petitioner: The Boeing Company.
Regulations Affected: 25.785(d), 25.807(c)(1), (25.857(e), 25.1447(c)(1).
Description of Petition: To exempt The Boeing Company from the requirements of 14 CFR 25.785(d), 25.807(c)(1), 25.857(e), 25.1447(c)(1) to permit a McDonnell Douglas Model MD–11 Freighter Aircraft operating with a Class E Cargo compartment to carry up to five supernumeraries in a Courier Area (aft of the cockpit door and forward of the rigid cargo barrier).

[FR Doc. 97–32774 Filed 12–15–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–3161]

Notice of Request for Reinstatement of an Expired Information Collection; Transportation of Hazardous Materials, Highway Routing

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3051, 3506(c)(2)(A)), the FHWA solicits comment on its intent to request the Office of Management and Budget (OMB) to reinstate the expired information collection for FHWA's Transportation of Hazardous Materials, Highway Routing.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard. Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rodgers, Office of Motor Carrier Safety and Technology, Safety and Hazardous Materials Division, (202) 366–4016, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register's** web page at: http://www.access.gpo.gov/su_docs.

Title: Transportation of Hazardous Materials; Highway Routing.
OMB Number: 2125–0554.

Background

Public comment is requested regarding the burden associated with this collection of information. The data for the Transportation of Hazardous Materials; Highway Routing designations are collected under authority of 49 U.S.C. 5112 and 5125, which places the responsibility on the Secretary of Transportation to specify and regulate standards for establishing, maintaining, and enforcing routing designations. The Federal Highway Administrator has the authority, as required in 49 CFR 397.73, to request that each State and Indian tribe, through its routing agency, provide information identifying hazardous materials routing designations within their respective jurisdictions. This information will be consolidated by the FHWA and published annually in whole or as updates in the **Federal Register.**

Respondents: The reporting burden is shared by the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Marianas, and the Virgin Islands.

Estimated Total Annual Burden: The annual reporting burden is estimated to be 63 hours.

Frequency: The data is collected by the respondents and submitted to FHWA within 60 days after any routing designation changes occur.

Authority: 49 U.S. Code 5112 and 5125; Section 3506 (c)(2)(A) of Pub. L. 104–13; 49 CFR 1.48.

Issued on: December 3, 1997.

George S. Moore,

Associate Administrator for Administration.

[FR Doc. 97–32736 Filed 12–15–97; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. MC–96–40; FHWA–1997–2287]

Motor Carrier Regulatory Relief and Safety Demonstration Project

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Extension of deadline for submission of applications.

SUMMARY: The FHWA is extending the deadline for motor carriers to submit applications to participate in the agency's Motor Carrier Regulatory Relief and Safety Demonstration Project (the Project). The Project will allow eligible motor carriers operating light- to medium-weight commercial motor vehicles in interstate commerce to qualify for an exemption from certain Federal Motor Carrier Safety Regulations (FMCSRs) for a three-year period.

DATES: Applications must be received on or before June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Miller, Office of Motor Carrier Field Operations, HMC–DC, (202) 523–0178, Federal Highway Administration, Union Center Plaza, Suite 750, 820 First Street, NE., Washington, DC 20002; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On November 28, 1995, the President signed the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568) (the Act). Section 344 of the Act, codified at 49 U.S.C. 31136(e)(2), requires the Secretary to implement a commercial motor vehicle regulatory relief and safety pilot program to grant and to monitor exemptions from provisions of the Federal Motor Carrier Safety Regulations. The exemptions would be applicable to motor carriers operating commercial motor vehicles with a gross vehicle weight rating (GVWR) between 4,537 and 11,794 kilograms (10,001 and 26,000 pounds), inclusive. However, commercial motor vehicles designed to transport more than 15 passengers, including the driver, and vehicles transporting hazardous materials in a quantity requiring placarding are not covered under the Project.

On August 28, 1996 (61 FR 44385), the FHWA requested public comment on the implementation of section 31136(e)(2). In response to comments which raised the concerns about the relationship between the Project and existing State motor carrier safety regulations, a supplemental notice was published on October 29, 1996 (61 FR 55835). The supplemental notice requested comment on the use of the FHWA's preemption authority to resolve any conflicts between the Project and State regulations. The FHWA issued the notice of final determination for the Project on June 10, 1997 (62 FR 31655).

Reason for Extending the Application Deadline

The FHWA has received numerous telephone calls from motor carriers interested in participating in the Project but uncertain about how to document the information that must be submitted with their requests to participate. These inquiries indicate there is need for additional information to assist motor carriers in understanding the criteria for

admission to, and the procedures for applying for, the Project. The agency will soon publish in the **Federal Register** additional information clarifying the eligibility criteria and application process. In the meantime, to ensure that all eligible motor carriers have an opportunity to submit the information required by the notice of final determination, the agency is extending the application period to June 30, 1998.

The FHWA notes that this extension of the deadline to submit applications does not alter the eligibility criteria for participating in the Project, or the information that must be submitted. Therefore, eligible motor carriers interested in participating in the Project must submit all of the information specified in the notice of final determination. If there are questions about the eligibility criteria or the application process, motor carriers should contact one of the individuals listed at the beginning of this notice.

Authority: 49 U.S.C. 31136, 31141, and 31502; 49 CFR 1.48.

Issued on: December 9, 1997.

Kenneth R. Wykle,

Administrator.

[FR Doc. 97–32737 Filed 12–15–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. 87–2]

RIN 2130–AB20

Automatic Train Control and Advanced Civil Speed Enforcement System; Northeast Corridor Railroads; Correction

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Correction.

SUMMARY: In proposed order document 97–30505 beginning on page 62097 in the issue of November 20, 1997, make the following corrections:

e. Missing transponder:

1. On page 62105 in the second column in line 13, the maximum speed for the North End should be changed to read 110 mph.

2. On page 62105 in the second column in line 14, the maximum speed for the South End should be changed to read 125 mph.

Dated: December 10, 1997.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 97–32772 Filed 12–15–97; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33413]

Trimax Holdings, Inc.—Corporate Family Transaction Exemption—Allegheny Valley Railroad Company and Southwest Pennsylvania Railroad Company

Trimax Holdings, Inc. (TMH), a noncarrier holding company, has filed a verified notice of exemption for the acquisition of control through stock ownership of the Allegheny Valley Railroad Company (AVR) and the Southwest Pennsylvania Railroad Company (SWP).[1] TMH is wholly owned and controlled by Russell A. Peterson (Peterson), a noncarrier individual. Prior to the transaction covered by the exemption, AVR and SWP were commonly controlled through stock ownership by Peterson, Philip C. Larson (P. Larson) and Dennis E. Larson (D. Larson), also noncarrier individuals.[2] TMH has acquired all of the outstanding stock of AVR that had previously been owned by P. Larson and D. Larson.[3] Following the issuance of stock to TMH by SWP's board of directors that is as anticipated to occur in the near future, TMH will own 92.69% of the stock of SWP.[4]

The transaction was to be consummated on or after the December 8, 1997 effective date of the exemption. TMH's acquisition of control of AVR and SWP is intended to create operating and management efficiencies for these entities.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in changes in service levels, operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33413, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036.

Decided: December 9, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32777 Filed 12–15–97; 8:45 am]

BILLING CODE 4915–00–P

[1] AVR and SWP are Class III common carriers by rail operating in the State of Pennsylvania.

[2] In addition, Peterson, P. Larson, and D. Larson commonly control the Camp Chase Industrial Railroad Corporation (CCIR), a Class III common carrier operating in the State of Ohio. No changes in the ownership of CCIR are planned at this time.

[3] The stock of AVR is currently 50% owned by Peterson and 50% owned by TMH.

[4] At that time, TMH would own 92.69% of the stock of SWP, Peterson would own 3.67%, and P. Larson and D. Larson would each own 1.82%.

federal register

Tuesday
December 16, 1997

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 205

National Organic Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number: TMD–94–00–2]

RIN: 0581–AA40

National Organic Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is seeking comments on a proposal to establish a National Organic Program (NOP or program). The program is proposed under the Organic Foods Production Act of 1990 (OFPA or Act), as amended, which requires the establishment of national standards governing the marketing of certain agricultural products as organically produced to facilitate commerce in fresh and processed food that is organically produced and to assure consumers that such products meet consistent standards. This program would establish national standards for the organic production and handling of agricultural products, which would include a National List of synthetic substances approved for use in the production and handling of organically produced products. It also would establish an accreditation program for State officials and private persons who want to be accredited to certify farm, wild crop harvesting, and handling operations that comply with the program's requirements, and a certification program for farm, wild crop harvesting, and handling operations that want to be certified as meeting the program's requirements. The program additionally would include labeling requirements for organic products and products containing organic ingredients, and enforcement provisions. Further, the proposed rule provides for the approval of State organic programs and the importation into the United States of organic agricultural products from foreign programs determined to have equivalent requirements.

DATES: Comments must be submitted on or before March 16, 1998.

ADDRESSES: Interested persons are invited to submit written comments on this proposal to: Eileen S. Stommes, Deputy Administrator, USDA–AMS–TM–NOP, Room 4007–So., Ag Stop 0275, P.O. Box 96456, Washington, DC 20090–6456. Comments also may be sent by fax to (202) 690–4632. Additionally, comments may be sent via the Internet through the National Organic Program's homepage at: http://www.ams.usda.gov/nop. See the **SUPPLEMENTARY INFORMATION** section for further details on submitting comments.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Senior Agricultural Marketing Specialist, USDA–AMS–TM–NOP, Room 2510-So., P.O. Box 96456, Washington, DC 20090–6456; Telephone: (202) 720–3252; Fax: (202) 690–3924.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Written comments submitted by regular mail and faxed comments should be identified with the docket number found in brackets in the heading of this document. Multiple page comments submitted by regular mail should not be stapled or clipped to facilitate the timely scanning and posting of these comments to the NOP homepage. Persons submitting written or faxed comments are requested to identify the topic and section number, if applicable, to which the comment refers: for example, for a comment regarding feed for organic livestock, reference Livestock and section 205.13. Topics should be selected from the following list: General, Proposed Effective Date, Regulatory Impact Assessment, Regulatory Flexibility Analysis, Paperwork Reduction Act, Definitions, Applicability (section 205.3), Crops, Livestock, Handling, National List, Labeling, Certification, Accreditation, State Programs, Fees, Compliance, Appeals, and Equivalency.

It is our intention to have all comments, whether mailed, faxed, or submitted via the Internet, available for viewing on the NOP homepage at http://www.ams.usda.gov/nop in a timely manner. Comments submitted in response to this proposal will be available for viewing at the USDA–AMS, Transportation and Marketing, Room 2945-South Building, 14th and Independence Ave., S.W., Washington, D.C., from 9:00 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposal are requested to make an appointment in advance by calling Martha Bearer at (202) 720–8037.

Purpose and Background of the National Organic Program

Members of organic industries across the U.S. have experienced numerous problems marketing their organically produced and handled agricultural products. Inconsistent and conflicting organic production standards may have been an obstacle to the effective marketing of organic products. There are currently 33 private and 11 State organic certification agencies (certifiers), each with their own standards and identifying marks. Some existing private certifying agencies are concerned that States might impose registration or licensing fees which would limit or prevent the private certifiers from conducting certification activities in those States. Labeling problems have confronted manufacturers of multi-ingredient organic food products containing ingredients certified by different certifiers because reciprocity agreements have to be negotiated between certifiers. Consumer confusion may exist because of the variety of seals, labels, and logos used by certifiers and State programs. Also, there is no industry wide agreement on an accepted list of substances that should be permitted or prohibited for use in organic production and handling. Finally, a lack of national organic standards may inhibit organic farmers and handlers from taking full advantage of international organic markets and may reduce consumer choices in the variety of organic products available in the marketplace.

To address these problems, the organic industry trade association attempted to establish a national voluntary organic certification program. However, the industry could not develop a consensus on the standards that should be adopted. Thereafter, Congress was petitioned by the organic industry trade association to establish a mandatory national organic program. Congress, in 1990, enacted the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*). The purposes of the OFPA, set forth in section 2102 (7 U.S.C. 6501) are to: (1) establish national standards governing the marketing of certain agricultural products as organically produced products; (2) assure consumers that organically produced products meet a consistent standard; and (3) facilitate commerce in fresh and processed food that is organically produced.

The National Organic Standards Board

Pursuant to section 2119 of the OFPA (7 U.S.C. 6518), the Secretary of Agriculture, hereafter referred to as the Secretary, established a National Organic Standards Board (NOSB or Board). The NOSB has assisted the Secretary in developing a National List of substances to be used in organic production and handling and has advised the Secretary on other aspects

of implementing the National Organic Program.

The Act establishes what the composition of the Board should be. In accordance with the Act, the Secretary appointed 14 members in January 1992 that included 4 organic farmers, 2 organic handlers, 1 owner or operator of a retail establishment with significant trade in organic products, 3 experts in environmental protection and resource conservation, 3 representatives of public interest or consumer interest groups, and 1 expert in the field of either toxicology, ecology, or biochemistry. The 15th member, an accredited certifier, would be appointed after certifying agents are accredited by the Secretary. The Act also provides that members of the NOSB be appointed for 5 year terms and that the original members be appointed to staggered terms of 3, 4 and 5 years to provide continuity of membership on the Board.

The NOSB has held 12 full Board meetings and 5 joint committee meetings since the appointment of its members in 1992. To make recommendations regarding specific issues, the Board formed 6 working committees: Crops Standards; Livestock (and Livestock products) Standards; Processing, Packaging and Labeling Standards; Materials; Accreditation; and International Committees. Each committee reviewed the provisions of the OFPA and standards previously established by other organic organizations to determine for which subject areas position papers would be developed. Based on the position papers developed, public input given by persons at NOSB meetings, and an extensive review and comment process used to develop draft recommendations, the Board provided recommendations to the Secretary about various matters. The recommendations included ones regarding production and handling standards, labeling, accreditation, product residue testing, and emergency spray programs.

The Board has provided recommendations regarding which synthetic substances should be permitted to be used in organic production and handling and which non-synthetic substances should be prohibited for use, in order to recommend to the Secretary whether they should be placed on the National List as synthetic substances approved for use or non-synthetic substances not approved for use. The Board has reviewed approximately 170 substances, including botanical pesticides as required in section 2119(k)(4) of the OFPA (7 U.S.C. 6518(k)(4)), for possible placement on the National List, and the Board used technical advisory panels to provide scientific evaluation of the materials considered in its review of the substances.

The NOSB's initial recommendations were presented to the Secretary on August 1, 1994. The NOSB has continued to make recommendations and has submitted 30 addenda to its initial recommendations. A copy of the NOSB recommendations may be viewed on the NOP home page at: http://www.ams.usda.gov/nop, or obtained by writing to: Maria Strother, Agricultural Marketing Specialist, USDA–AMS–TM–NOP, Room 2510-So., P.O. Box 96456, Washington, DC 20090–6456.

All of the NOSB recommendations were considered by AMS in developing the proposed regulation for the National Organic Program. The discussions and public input involved in generating the recommendations have been invaluable in assisting AMS to become aware of the complexity of various issues and to arrive at solutions that represent the interests of farmers, handlers and consumers. We have written a proposed regulation that incorporates to the greatest extent possible the organic principles and specifics contained in the NOSB recommendations. Many of the recommendations were restructured, reordered, or combined to be compatible with the format of the proposed rule. In the few instances where a section of our proposed rule does not reflect the NOSB recommendation, we explain the variation in the preamble for the specific section.

The NOSB recommendations and discussions on the following topics were especially helpful to AMS in developing the proposed rule: accreditation; labeling; importation; organic farm and handling plans; split operations; planting stock policies; emergency pest or disease treatments; livestock feed and health care; commercial availability; drift of synthetic substances; small farmer exemption; phase-in of NOP implementation; fiber processing; and the National List substance review process.

Public Input

In addition to the NOSB recommendations, AMS has received considerable input from interested persons regarding establishment of the National Organic Program and this proposed rule.

Section 2110(g) of the OFPA (7 U.S.C. 6509(g)) requires the Secretary to hold public hearings to obtain information to guide the implementation of standards for livestock products. Four such hearings were held during 1994: January 27–28 in Washington, DC; February 10 in Rosemont, Illinois; February 24 in Denver, Colorado; and March 22 in Sacramento, California. Oral and written testimony was received from more than 70 persons, including livestock producers, veterinarians, certifying agents, processors and members of the NOSB. Comments covered livestock production and product marketing, antibiotic use, livestock living conditions, feed availability, provisions for conversion to organic production, and label requirements. These comments have been beneficial in developing this proposed rule.

Prior to publication of this proposed rule, public comment also was received at public events attended by NOP staff members. Public comment was received at the 12 full Board and 5 joint committee meetings. NOP staff made presentations and received comments at local and regional organic conferences and workshops and at national and international organic and natural food shows. Comments also were received at: a national organic certifiers meeting held on July 21, 1995, to discuss accreditation issues; a meeting of State officials held on February 26, 1996, to discuss the role of States in the NOP; training sessions for organic inspectors; and numerous speaking engagements of the AMS Administrator, the NOP program manager, and the NOP staff where the public had an opportunity to participate in question and answer sessions.

Proposed Effective Date of the Regulation

We have received inquiries about when the various provisions of a final rule will be effective.

The final rule would establish a procedure and a time frame for designating private persons and State officials as accredited certifying agents under the program. One option would be to require organizations desiring to be included on the initial list of certifying agents accredited under the National Organic Program to submit their applications within approximately two months after publication of the final regulation. Applications submitted later than two months after publication of the final rule would not be considered for inclusion on the initial list of certifying agents, but would be reviewed as soon as possible after publication of the initial list of accredited certifying agents. Subsequent lists of accredited certifying agents would be published as they are developed.

If we adopted this option, we would publish an initial list of accredited certifiers in the **Federal Register** after

reviewing the applications received during the first two months after publication of the final regulation. We will publish subsequent lists of accredited certifying agents as new applicants become accredited. We would expect publication of the initial list to occur within six months after publication of the final rule. Only after publication of that list would the provisions of the regulation applicable to certification become effective. Thus, the provisions in the proposal that address the application process for, and decisions to be made about, the certification of farms, wild crop harvesting operations, and handling operations, would become effective only after certifiers have become accredited. Certifiers would begin certifying individual operations under the NOP six months after publication of the final rule.

In order for accredited certifying agents to begin certifying operations under the NOP six months after publication of the final rule, we believe we would need, as we previously indicated, to have accreditation applications submitted within two months after publication of the final regulation. We believe that the initiation of certification activities by accredited certifying agents six months after publication of the final rule would permit the implementation of the national standards for organic products within a reasonable time frame after publication of the final rule.

We request comments from all interested parties, particularly small businesses that want to obtain accreditation as certifying agents, as to whether a two month time frame after publication of the final rule for submission of applications for accreditation is a sufficient time period, or whether an extended time period, such as three or four months after publication of the final rule, should be permitted for those who want to be listed on the initial list of accredited certifiers. Any such extension, of course, would lengthen the implementation schedule.

In this implementation option, we would expect to allow a 12-month period of time after publication of the initial list of certifying agents for operations to become certified under the relevant provision of the final regulation. Thus, all provisions of the NOP would be implemented 18 months after publication of the final rule. On that date, which will be stated in the final rule, all organic operations required to be certified will have to be certified in order to sell or label their products as organic. Operations that are certified prior to 18 months after publication of the final regulation would be permitted to use the USDA organic seal upon certification by a USDA accredited certification organization.

We would like comments, particularly from small farm or handling operations, as to whether the 12-month period of time we anticipate allowing for farm, wild crop harvesting, and handling operations to become certified is a reasonable period of time for such operations to become certified. We are particularly interested in learning whether there are any economic or other factors that would create difficulties in obtaining certification within the 12-month time period we expect to provide for obtaining certification.

Several people have raised questions about what the impact of the rule would be when it is effective. Some farmers whose operations are currently certified as organic under private or State standards have asked what the status of their certified farming operations would be if a substance allowed for use under their current private or State certification is not on the National List, and, therefore, not allowed under the National Organic Program.

The OFPA requires that a product sold or labeled as an organically produced agricultural product must, except as otherwise provided in the Act and excluding livestock, be produced on land to which no prohibited substances, including synthetic chemicals, have been applied during the three years immediately preceding harvest of the agricultural product. We have incorporated this prohibition in our proposal. Thus, a farm would not be able to become certified under the National Organic Program until three years after the time any prohibited substance was last applied. Therefore, at the time the final rule becomes effective, such farming operations previously certified under private or State programs would not be able to sell or represent their products as organically produced if they could not satisfy the three year period established for nonuse of a prohibited substance.

Petitions, however, to amend the National List may be submitted immediately after publication of the final rule by using the petition process proposed in section 205.28 of subpart B. It may be possible, therefore, for a person who submits a petition immediately after publication of the final rule to the NOSB for review of a new synthetic substance to be included on the National List, to have this substance approved for use by the Secretary prior to the effective date of the program. If this were to occur, then prior use of the substance would not prevent the products from being sold or represented as organically produced.

Processors also have asked what impact the program's requirements would have on their existing product and label inventories. With regard to existing product and label inventories, we believe that our intended 18-month delayed effective date for the complete rule would provide ample time for handlers to use up existing product and label inventories required under their existing organic certification program before the rule becomes effective.

States also have asked what effect the rule would have on their current organic regulations. With regard to current State organic regulations, we also believe that the anticipated 18-month delayed effective date should provide State officials with ample time to make the necessary changes to their State regulations and submit their State proposed organic program to the Secretary for approval.

Because it is the intent of AMS to provide a final rule which facilitates trade and which is the least disruptive as possible for the production, handling and marketing of organic products, we request comment on our intended schedule of effective dates for the provisions of the rule. We also request comments on any problems that organic farmers and handlers, States, and others may encounter when adjusting their operations to meet the requirements of the National Organic Program, including the OFPA requirement of a 3-year period prior to the harvest of organic products from land to which a prohibited substance is applied. A time-table for implementation of the program would be published in the final rule.

Prior Documents in This Proceeding

The following notices related to the National Organic Standards Board and the development of this proposed regulation have been published in the **Federal Register.** Four notices of nominations for membership on the National Organic Standards Board were published between April 1991 and July 1996 (56 FR 15323, 59 FR 43807, 60 FR 40153, 61 FR 33897). Two notices of extension of time for submitting nominations were published on September 22, 1995, and September 23, 1996 (60 FR 49246, 61 FR 49725). Twelve notices of meetings of the National Organic Standard Board were published between March 1992 and August 1996 (57 FR 7094, 57 FR 27017, 57 FR 36974, 58 FR 85, 58 FR 105, 58 FR 171, 59 FR 58, 59 FR 26186, 59 FR 49385, 60 FR 51980, 60 FR 15532, 61 FR 43520). One notice of public hearings on organic livestock and livestock products was published on December 30, 1993 (58 FR 69315). One notice specifying a procedure to submit names of substances for inclusion on the National List was published on March 27, 1995 (60 FR 15744).

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

States and local jurisdictions are preempted under section 2115 of the OFPA (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to the USDA to be accredited as a certifying agent, as described in section 2115(b) of the OFPA (7 U.S.C. 6514(b)). States also are preempted under sections 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State, and for the certification of organic farm and handling operations located within the State, under certain circumstances. Such additional requirements must: (a) further the purposes of the OFPA; (b) not be inconsistent with the OFPA; (c) not be discriminatory towards agricultural commodities organically produced in other States; and (d) not be effective until approved by the Secretary.

Pursuant to section 2120(f) of the OFPA (7 U.S.C. 6519(f)), this proposal would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*) or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The Act also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

Executive Order 12866

This proposed rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). When proposing a regulation which has been determined to be economically significant, agencies are required to: assess the costs and benefits of available regulatory alternatives; base regulatory decisions on the best reasonably obtainable technical, economic, and other information; avoid duplicative regulations; and tailor regulations to impose the least burden on society consistent with obtaining regulatory objectives. Therefore, to assist in fulfilling the objectives of Executive Order 12866, and the Unfunded Mandates Reform Act of 1995, the USDA has prepared a Regulatory Impact Assessment (RIA) which is attached as an appendix to this proposed rule and from which the following summaries of the costs and benefits of the proposed National Organic Program have been taken.

Ideally, the net benefits of the proposed rule would be estimated by employing a quantitative analysis using information about the cost structure of the industry, the demand for organic food; and projected shifts in supply and demand resulting from the various factors discussed in the assessment. However, although researchers have conducted numerous small-scale studies to determine consumer willingness to pay for organic products and to identify reasons why conventional food buyers do not choose organic food products, the available data are insufficient to support a quantitative assessment of this type. At this time, USDA invites public input to provide additional data that may aid in the development of a quantitative assessment. This data should be submitted in response to the questions included in the Conclusion section of the RIA. These questions are intended to solicit information needed to develop baseline data about the potential program participants, the costs of organic production, revenues from organic sales, and the impact of the program on market growth.

Summary of the Costs of the Proposed Rule

The proposed rule would impose direct costs in the form of fees charged to certifiers for USDA accreditation and to farmers, wild crop harvesters and handlers for support of the National Organic Program. The proposed rule also would impose administrative costs, such as submission of information, recordkeeping, and access to records that may constitute an additional burden. The actual amount of the additional administrative costs that would be imposed by the final rule is expected to be different for those entities who currently are active in the organic industry, as compared to those new entities who would begin their activities only after the national program is implemented. Certifiers, farmers, wild crop harvesters and handlers who currently are active in the organic industry already perform most of these administrative functions; therefore, the additional costs to them would depend upon the extent to which their current practices are different from the requirements of the final regulation.

Farmers, wild crop harvesters and handlers would be required to produce and handle products in accordance with the standards set forth in the rule and provide certifiers with the required information necessary to verify certification requirements. Farmers, wild crop harvesters, and handlers would be charged a fee by the certifying agent for these certification services. We were not able to estimate the exact cost of certification fees that would be charged by certifying agents after implementation of the national program because these fees currently vary widely among existing certifiers: some existing private certifying agents are non-profit; some States who currently conduct certification activities subsidize these activities from other revenue sources; some existing certifying agents include the cost of inspection and, in some cases, laboratory testing, in their certification fee; and some existing larger certifying agents may charge lower fees because they are able to spread their fixed costs over a larger number of clients.

Farmers, wild crop harvesters, and handlers may experience certain costs to comply with the final regulations. For example, there may be costs associated

with the proposed requirement that organic products not come in contact with prohibited substances, or with the proposed requirement that pest control substances be used only if pest prevention measures are ineffective. However, since the proposed rule is a synthesis of existing State and private organic certification programs and the NOSB recommendations, we believe that farmers, wild crop harvesters and handlers who currently participate in existing State or private organic certification programs would experience little or no increased compliance costs as a result of implementation of the National Organic Program. Additionally, farmers and handlers who would be exempted or excluded under the rule, but who choose to become certified in order to receive the benefits of certification, would be subject to the additional cost of certification and recordkeeping. USDA requests data on the costs of organic production and the revenues from organic farming, and on a comparison of these costs and revenues to conventional systems.

The following are the upper-bound estimates of the cost of initial certification under the National Organic Program:

Estimated Cost to Farmers and Wild Crop Harvesters for Initial Certification

Certification fee *	$413
USDA fee	50
Total fees	463
Paperwork reporting burden	[1] 381
Paperwork record-keeping burden	34
Total reporting and recordkeeping	415
ESTIMATED COST TO FARMERS AND WILD CROP HARVESTERS FOR INITIAL CERTIFICATION	$878

Estimated Cost to Handlers for Initial Certification

Certification fee *	$943
USDA fee	500
Total fees	1,443
Paperwork reporting burden	[2] 433
Paperwork record-keeping burden	34
Total reporting and recordkeeping	467
ESTIMATED TOTAL COST TO HANDLERS FOR INITIAL CERTIFICATION	$1,910

* The estimated certification fee is based on the average of fees charged by a representative group of certifying agents: private non-profit, private for-profit and a State agency. Most certifying agents in our representative group include the cost of inspection and, if applicable, required laboratory testing in the certification fee.

[1] For new organic producers.

[2] For new organic handlers.

USDA requests data on certification fees currently paid by existing organic farmers, wild crop harvesters, and handlers in order to better assess the impact of the proposed program.

After implementation, all organic certification agencies, whether private or State, would be accredited by USDA and would pay fees for the following services provided by USDA: application review, annual report review, site evaluation visits, and administrative duties. A certifier who currently is accredited by a private accreditation organization might pay USDA lower site evaluation visit fees than a certifier who is not currently accredited, because of measures that are implemented by the certifier to receive its private accreditation. Additionally, as required by the OFPA, a private certifying agent would have to furnish reasonable security for the purpose of protecting the rights of farms and handling operations certified by the agent. The amount and type of security would be established through future rulemaking.

States that currently perform organic certification activities under their own regulations, or that have laws pertaining to the certification of organically produced and handled products, or that plan to have an organic program in the future, may incur some additional costs. For example, States with existing organic programs or regulations may be required to supplement or revise them in order to meet the criteria of the OFPA, including the provisions set forth in section 2107 of the OFPA (7 U.S.C. 6506). A State without an existing organic program that initiates a new State organic program would be expected to incur greater costs to establish its program.

The following are the upper-bound estimates for the cost of initial accreditation under the National Organic Program:

Estimated Cost to Certifying Agents for Initial Accreditation

Accreditation application fee	$640
Site evaluation fee *	3,500
USDA Administrative fee	[1] 2,000
Total fees	6,140
Paperwork reporting burden	[1] 23,931
Paperwork record-keeping burden	60
Total reporting and recordkeeping	23,991
ESTIMATED TOTAL COST FOR INITIAL ACCREDITATION	$30,131

*Each certifying agent would have a site-evaluation to confirm accreditation, and thereafter a subsequent renewal evaluation at least every 5 years following confirmation of accreditation. In some cases, a pre-confirmation site visit may be necessary. We anticipate that the frequency of site evaluations would be based on the performance of the certifying agent and would be higher during the initial years of the program.

[1] For new organic certifiers.

The USDA requests data on the fees currently paid by existing organic certifying agents for accreditation in order to better assess the impact of the proposed program.

The requirement in the proposed rule for qualified certification personnel to be used to evaluate certification applications and contribute to certification decisions may result in an increase in labor and training costs for some existing certifiers. The amount of additional costs to these certifiers would depend on the level of expertise among current certification personnel, the extent to which certifiers currently rely on volunteers, and the costs of training these persons. Our proposed inspector training requirements conform to current established practice in the industry and are not expected to impose an additional burden on existing certifiers who utilize inspectors.

We also have identified non-quantifiable costs that may result. Some certifiers consider the loss of independence in setting certification standards under a national program as imposing a cost. Other certifiers consider the establishment of uniform national standards and an accreditation program as a benefit in that the risk of potentially costly disputes over acceptance of other certifier's standards (reciprocity) is eliminated. We anticipate that the net impact would be positive because the reciprocity dispute problems would be eliminated.

Another non-quantifiable cost could result from the proposed requirements that certifiers provide access to all their records to the Secretary and the applicable governing State official, and provide access to laboratory analyses and certification documents, other than

confidential business information, to the general public. Although not quantifiable, these requirements may represent a change in the way some existing certifiers currently maintain these records.

Summary of Benefits of the Proposed Rule

In the absence of a nationally recognized definition of organic, consumers may be mislead by labels on products claiming to be organic, or claiming to contain organic ingredients, when in fact some of the products or ingredients may not have been organically produced. Because many consumers are willing to pay price premiums for organic food, producers have an economic incentive to label their products organic. But consumers generally are unable to distinguish organic products from conventionally produced products by sight inspection; hence, consumers rely on verification methods such as certification by private entities or verification by retailers. The USDA requests data to determine the extent to which mislabeling of non-organically produced products as organic occurs and the market impacts of mislabeling in terms of quantities of organic goods sold and the prices for organic goods.

Individual ingredients in multi-ingredient processed products may be certified under different standards of organic production, thus making it difficult for a consumer to determine the production standards under which each of the ingredients was produced. The proposed standards for organic production, enforced through accreditation of certifiers, would assure consumers that the organic ingredients were produced under one national standard. Furthermore, USDA regulation of labeling claims for organic food would allow the USDA and other federal agencies whose jurisdiction includes ensuring the veracity of labeling claims to prosecute those who mislabel products sold as organic.

Establishing a national definition for organic would be expected to increase the supply and variety of organic products, especially meat and poultry, available to consumers. The Food and Drug Administration (FDA) and the Bureau of Alcohol, Tobacco and Firearms (ATF) currently allow use of the word organic on most food and alcohol labels, but USDA has withheld approval for the use of organic labels on meat and poultry pending the outcome of this rule making. Without the regulation, however, FDA may decide to disallow use of the term organic on labels and USDA may continue their current restrictions on the use of organic on meat and poultry labels. The increased variety of organic products, especially meat and poultry, that might be marketed after implementation of the final rule may increase the variety of available organic products so as to parallel the variety of non-organic products. The USDA requests data and analyses which would support projections of the demand for organic meat and poultry.

By providing for the accreditation of certifiers, the proposed rule would establish the requirements and enforcement mechanism to protect producers and handlers from inconsistent certification services, lack of reciprocity between certifiers, and competition from fraudulent products, which can increase costs or reduce revenue for organic farmers and handlers. In the absence of the National Organic Program, the certifier of a final product may not be required to recognize the certification of an intermediate organic product used in the final product. Thus, both farmers and primary food processors face a risk of being unable to sell an organic product identified as certified when more than one certifier is involved. Monitoring by USDA of certification inspections and certifier personnel training and qualifications would help to ensure the quality of the certification, the use of consistent criteria for certification, and the use of certification personnel who are knowledgeable and free from conflicts of interest.

National organic standards and the assurance provided by the USDA accreditation of certifiers would benefit farmers and handlers by opening access to international markets. The trade restrictions that currently exist would be resolved if foreign countries who import organic products recognize the National Organic Program as equivalent. Farmers and handlers in the United States may expect larger growth in exports of organic products to follow implementation of the final rule.

The contributions of national organic standards to increased domestic demand and to expanded international markets for organic products may provide opportunities for current organic producers to expand the scale of their operations. Increased organic production also may provide incentives for input industries to develop new technologies which could lower producers' costs of organic production. Input costs also may decline as a result of economies of scale being achieved in input industries producing for the organic market. Expanded markets could encourage additional farmers and handlers to enter the marketplace, resulting in a potential decline of certifiers' average costs of operation as fixed costs are spread over a growing number of clients. The USDA requests information to determine whether the organic industry and consumers of organic goods have benefitted from industry growth resulting in economies of scale and production and marketing efficiencies, and whether industry participants anticipate such benefits from this rule.

There are three ways in which certifiers' administrative costs could be reduced as a result of the regulation. First, certifiers' costs of maintaining access to organic markets for their clients should be reduced because costs associated with determining equivalency between certifiers would be reduced or eliminated. Accreditation and uniform national standards would alleviate the need to negotiate individual reciprocity agreements with other certifiers. Furthermore, USDA oversight of certifiers would simplify the process of certifying multiple ingredient products, thus reducing certification costs. The responsibility for meeting production and certification requirements of each ingredient would rest with the certified producers and accredited certifying agents of the individual ingredients. National standards also would eliminate costly equivalency disputes between States which may affect interstate commerce.

Second, certifiers would no longer have to pay private organizations for the accreditation required to gain access to some international markets. This would be of particular benefit to the smaller certifiers who may have been unable to enter these markets because of the high cost of international accreditation. A portion of the administrative fees paid by each certifying agent would support USDA activities to negotiate equivalency of organic standards in world markets so that producer clients of all USDA accredited certifiers could have access to these markets.

Third, in the long run, uniform standards of production, certification and accreditation should reduce the cost of training certification staff. Industry-wide training costs may increase initially, but should decline as the pool of trained certifiers and certification personnel increases and the corresponding cost of training new certification personnel decreases, especially in those instances where personnel transfer from one certifier to another. Standardized materials, such as compliance guides and training manuals, also should contribute to a reduction in the cost of training

certification staff. In addition, USDA accreditation of certifiers would present opportunities for sharing information about standards, practices and the general requirements of the program through the National Organic Program staff.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires (in Section 202) that agencies prepare a qualitative and quantitative assessment of the anticipated costs and benefits before proposing any rule that may result in annual expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any one year. As discussed in the preceding section entitled "Executive Order 12866", USDA has prepared a Regulatory Impact Assessment (RIA) to assess the costs and benefits of this proposed rule. As explained in the RIA, which is attached as an appendix to this proposed rule, USDA was unable to provide a quantitative assessment of the costs and benefits of the proposed rule, except for the cost of fees and recordkeeping that would result from the proposed rule, because of insufficient data available to support a quantitative assessment. The cost of fees resulting from this proposed rule is estimated to be $1,000,000 during the first year of program implementation, and the cost of recordkeeping is estimated not to exceed $4,700,000 during any one of the first three years of program implementation. The RIA does, however, provide a qualitative assessment of the proposed rule's costs and benefits.

The USDA has posed a list of questions in the RIA to assist in the development of a quantitative assessment for the final RIA that will be published as part of the final rule for the National Organic Program. We will utilize public input received in response to these questions and to other provisions of this proposed rule, as well as other resources available to USDA before publication of the final rule, to develop a quantitative assessment of the costs and benefits of the final rule.

Although USDA has not determined whether this proposed rule would result in annual expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000, USDA has sought to meet the objectives of the Unfunded Mandates Reform Act. In addition to its qualitative cost/benefit assessment, USDA has identified in the RIA three regulatory alternatives to the proposed rule. We also discuss in the preamble sections entitled "Paperwork Reduction Act of 1995" and "The Regulatory Flexibility Act and the Effects on Small Businesses", the analysis we have employed in reaching a determination that this proposed rule is the least costly and least burdensome to the regulated parties, in that we have designed the proposed rule to be as consistent as possible with existing industry practices, while satisfying the specific requirements of the OFPA.

Additionally, we have had numerous occasions to communicate with State governments during the development of the proposed rule. Representatives of various State governments participated in several public meetings of the NOSB and they have provided valuable input to the NOSB for its recommendations on standards and the National List. USDA also hosted a meeting on February 26, 1996, to discuss with many State officials the status of the proposed rule and to listen to concerns about such topics as fees, enforcement, certifier logo use, and the range of additional requirements that States may include in their State programs. On numerous other occasions, AMS staff has had discussions with a wide array of State officials on subjects related to this proposed rule or the establishment of, or amendment to, State organic certification programs. USDA will continue to provide effective opportunities for the broadest possible input by States and all interested parties throughout the rulemaking process.

The Regulatory Flexibility Act and the Effects on Small Businesses

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the proposed rule on small entities. The AMS' analysis, as required by the RFA, considers the impact of this proposed regulation on small entities and evaluates alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the organic market. The following Initial Regulatory Flexibility Analysis was written with guidance from the Small Business Administration (SBA).

The size of the organic industry has risen dramatically in recent years from a low of $78 million in 1980, to $1 billion in 1990, to a total retail sales level of $3.5 billion in 1996. Certified organic cropland production has expanded from 473,000 acres to 667,000 acres in the period 1992 to 1994, and is expected to reach 2 million acres by the year 2000. Despite this rapid growth, it should be noted that the organic industry represents a very small percentage of total agricultural production and sales, and that organic certifiers, farmers and handlers tend to own smaller operations rather than larger ones.

Currently, organic certification is voluntary and self-imposed. According to the most complete data available to the AMS, there are 33 private and 11 State certifying agencies certifying approximately 4,000 farmers and 600 handlers in the United States. Over half of the private and State agencies certify both farm and handling operations, while the others certify only farms. Over three-fourths of State and private agencies each certify fewer than 150 farms and 20 handlers. Based on a review conducted by AMS of 16 certifiers, who provided information on the organic sales of products produced on certified farms, most of the farms certified have less than $25,000 in gross sales.

A national organic program would benefit farmers by opening access to international markets. U.S. exports of organic products totaled $203 million in 1994 or about 9 percent of the organic output. Export markets may become more substantial and offer price premiums for organic products with increased world-wide consumption of organically produced food. For example, the organic market share in the European Union (EU) has been projected to reach 2.5 percent of total food consumption expenditures by 1998. Austria expects its organic market share to equal one third of all food sales by the year 2000. In 1994, France and Germany combined had total retail sales of organic foods equal to that of the United States in the same year (approximately $2 billion). Japan's retail sales for that year were estimated to be $688 million. Other EU countries report growth rates equal to or greater than the current growth rate in the United States of about 20 percent per year.

The reason for regulatory action is fully explained in the Regulatory Impact Assessment which is attached as an appendix to this proposed regulation. In short, the organic market may be precluded from reaching its full potential until there is a definition of the term organic, which would be achieved by implementation of this proposed regulation that provides regulations for production, handling, labeling, certification and accreditation of U.S. certifiers. Domestic and international trade in organic products may also be hampered by the need to negotiate reciprocity agreements because of the differing standards of

production and handling that currently exist; meat and poultry, including processed products containing meat and poultry as ingredients, cannot be labeled organic; and few enforcement mechanisms exist to protect consumers against fraudulent organic labeling.

The statutory authority for this proposed rule is the OFPA, which in section 2104(a) (7 U.S.C. 6503(a)) requires the Secretary of Agriculture to develop a national organic program. In general, the Secretary must establish an organic certification program for farmers and handlers of agricultural products that have been produced using organic methods as provided for in the OFPA. In addition, section 2115 of the OFPA (7 U.S.C. 6514) requires the Secretary to establish and implement a program to accredit a governing State official and any private person who meets the requirements of the OFPA and the regulations in part 205 as a certifying agent for the purpose of certifying a farm or handling operation as being in compliance with the standards set forth in this proposed regulation.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to the actions in order that small businesses would not be unduly or disproportionately burdened. To accomplish this purpose, it first is necessary to define a small business. According to the Standard Industrial Codes (SIC) (13 CFR Part 121) which are developed by an inter-agency group, published by the Office and Management and Budget (OMB), and used by the SBA to identify small businesses, nearly all of the entities affected by this proposed regulation would be considered small businesses. According to the SIC, a small business in the agricultural services sector, such as certifiers, includes firms with revenues of less than $3.5 million (SIC Division A Major Group 07). In crop production, the SIC definition of a small business includes all farms with annual gross sales under $500,000 (SIC 0111–0191). (Most of the farms currently certified have less than $25,000 in gross sales of organic production. However, many farms combine organic and conventional production on the same operation, some with total sales that may exceed $500,000). In handling operations, according to the SIC, a small business is defined as having fewer than 500 employees (SIC Division D Major Group 20). (The workforce data needed to determine whether any organic handling operations exceed 500 employees is not available, but anecdotal information leads us to believe that no organic handling operations employ more than 499 persons).

We consulted with the SBA Office of Advocacy regarding the use of size standards different from those in 13 CFR 121. For the purpose of identifying those entities who would be most affected by this proposed regulation, alternative definitions were established for the purpose of this analysis. The alternative definition of a small certifier which we established for this analysis is one with total revenue from certification of less than $25,000. The alternative definition of a small farm which we established is one with a maximum of $5,000 in gross sales of agricultural products, as is set forth in section 2106(d) of the OFPA (7 U.S.C. 6505(d)). Additionally, for this analysis, we established the alternative definition of a small handling operations to be one whose sales are $50,000 or less.

Development of regulations for the National Organic Program began with the premise that the industry should be burdened as little as possible by the OFPA regulation. To accomplish the goal of regulation with minimal burden, we initially determined that most of the information needed for organic farmers and handlers to become certified, and for certifiers to become accredited, already exists for those entities currently operating. The challenge was to create a regulation which complied with the OFPA mandates and which embodied the customary and usual business practices already being carried out by the industry. No new forms have been proposed and few additional documents would be required in this proposed regulation. Certifiers may need to create some of the documents proposed for the application process; farmers may have to keep records for longer periods of time; and handlers may need to refine recordkeeping to ensure a clear audit trail. However, they would be allowed the flexibility to use the easiest and least expensive means available to provide information, as long as the required information is adequate to ensure compliance with the regulations.

Small and large farmers, handlers, and certifiers would be affected by additional fees resulting from implementation of the National Organic Program. Certifiers may be burdened with the accreditation requirements for business related activities, such as the requirement for a financial audit. However, because no particular form is required, current business records may be sufficient to provide the necessary information. The requirements to keep personnel records, explain administrative procedures, and evaluate personnel may be burdensome to small certification businesses. Yet, we have received the comment from at least one small business that requirements such as these can increase efficiency and make a small business more cost effective.

Section 2112(d) of the OFPA (7 U.S.C. 6511(d)) requires farmers and handlers to maintain records for five years, and section 2116 (c)(1) of the OFPA (7 U.S.C. 6515(c)(1)) requires certifiers to maintain records for ten years. Our research of the industry indicates that farmers and handlers already maintain records for five years and certifiers do not discard historical documents. This regulation, therefore, should not significantly increase the record retention burden beyond current industry practice. However, under the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506 and 3507), a burden is created when a law or regulation requires the storage of information. The burden to the industry is calculated on the time required to file a document. Under the PRA we are required to estimate and account for this burden.

No other burdens are expected to fall upon the organic industry as a result of overlapping Federal rules. This proposed regulation would not duplicate, overlap or conflict with any existing Federal rules. In preparing this proposed regulation, AMS consulted other Federal agencies such as the FDA, EPA, ATF, and the USDA's Food Safety and Inspection Service (FSIS) to ensure that this proposed regulation would complement existing regulations.

Whether using the SIC definitions for small businesses or the alternative definitions created for this analysis, our proposed regulation would have a significant impact on a substantial number of small businesses. However, we have considered several options with the intention of mitigating negative economic impacts. The following options were considered by AMS prior to and during the development of the proposed regulation.

Regulatory Options

Option 1: The Organic Market in the Absence of Regulation

We have explored the alternative of no government regulation of the organic industry. However, current problems in the organic industry would continue to affect small entities as well as large ones. In fact, it is likely that the effect of no regulation would negatively impact small businesses to a greater degree than larger ones. For example, without regulation, smaller certifiers

entering the industry with growth expectations based on implementation of the OFPA through Federal regulation would be negatively affected to a greater degree than larger certifiers who can spread fixed costs over a larger number of clients. Larger businesses do not depend as heavily on industry growth to maintain their business operations.

Organic farmers who have integrated livestock into their agricultural operation are negatively impacted in two ways without regulation of the organic industry. First, they do not receive the price premium for organic meat and poultry because at the present time FSIS does not allow for the use of the term organic on meat and poultry labels. This would impact small farmers to a greater extent because they have fewer animals from which to profit from a price premium. Second, to feed their livestock, farmers either must pay a higher price for organically produced livestock feed or raise the feed on their own land which otherwise could be used to produce organic cash crops. Smaller farmers are disproportionately impacted because the ratio of the number of livestock per acre of land is limited by the number of acres they must use for organic crop production in order to be a profitable business. Larger farmers face the same decision of whether to purchase organic feed or raise their own, but they have more acres over which to spread the cost of either choice.

Without Federal regulation, small certifiers and farmers wishing to export agricultural products are negatively impacted to a greater degree than larger organizations by a lack of resources and influence over foreign market systems. Also, completing the paperwork required for exporting products is disproportionately costly to small entities because of their limited resources. The burden of completing this paperwork can be eased if the certifier has attained private, third-party accreditation. We are aware that certifiers currently may pay in excess of $15,000 for accreditation by a private organization. Smaller certifiers cannot afford these fees, and therefore, potential clients wishing to export organic products choose to be certified by the larger, privately-accredited organizations.

Finally, we are required by the OFPA to regulate the industry through the National Organic Program. In fact, we have received requests from many small businesses, certifiers, farmers, and handlers, to move forward with implementation of a national program as quickly as possible. Therefore, we believe that regulating the organic industry would be the most appropriate action to help small businesses.

Option 2: Exemption of Small Certifiers From Accreditation

We considered the option to exempt small certifiers from accreditation requirements, just as small farmers and handlers are exempt from certification. However, the OFPA does not provide for such an exemption and this, therefore, would require a legislative amendment. Additionally, we do not believe that exempting small certifiers would be in the best interest of the industry or the small certifiers.

The exemption of small farmers carries with it limitations which may discourage some small farmers from claiming exemption, preferring instead to become certified. In this proposed regulation, small farmers who are not certified and who use the term organic to identify their products must comply with the USDA standards, yet they may not display the USDA seal or a certifying agent's logo on the labels or the labeling of their products. Furthermore, organic agricultural products produced on small farms that claim exemption from certification requirements cannot be labeled as organic ingredients in products processed by a certified operation. As a result, consumers and processors may not wish to pay a price premium for organic products from a non-certified operation.

The exemption of small certifiers from accreditation would carry with it limitations resulting from the absence of Federal oversight. Interstate and international trade would be hampered because it would likely be limited to products certified by accredited certifiers. Distinguishing exempt certifiers from accredited ones might require that product labels of accredited certifiers' clients include the USDA logo and lead to consumer confusion over labels in the marketplace.

Protecting consumers from fraudulent certification claims on labels would be difficult at the Federal level since AMS and other enforcement agencies, such as the FDA, ATF, and FSIS, would have to distinguish accredited certifiers from those who are exempt. Costly spot checks or site visits would be required by AMS to verify that products sold or labeled as organic are produced under systems that are consistent with the national program. To accomplish this, a mechanism would have to be established to charge exempt certifiers for spot checks or site visits and these charges might be more costly than becoming accredited.

One of the purposes of the OFPA is to assure consumers that organically produced products meet a consistent standard. Without the assurance provided by Federal oversight of certifiers through USDA accreditation, there is no way to ensure that one national standard of production and handling for organic agricultural products would be employed. The result could be the continuation of costly reciprocity agreements among small, exempt certifiers and large, USDA accredited certifiers. This could prove to be more costly to small entities than accreditation. For all of these reasons, we have determined that option 2 is not a viable alternative.

Option 3: The Proposed Regulation

The regulation we propose is a synthesis of existing organic standards and certification programs. We have done extensive outreach which is explained in the **SUPPLEMENTARY INFORMATION** section entitled "Public Input". After gathering the necessary information, we developed this proposed regulation to ensure industry integrity and help the organic industry grow. In this section, we will discuss how this proposed Federal regulation of the organic industry would: eliminate costly administrative tasks now necessary under current industry practice and thus mitigate the financial burden of USDA accreditation; level the playing field, enabling small entities to better compete in the industry; and benefit all farmers and handlers through industry growth. Finally, this proposed regulation includes three factors that would decrease its overall burden by providing flexibility in compliance and fees.

Certification organizations currently develop and interpret their own standards of production and handling. The consensus of our outreach to the industry is that one national standard with interpretation, decision making, and enforcement authority at the Federal level would eliminate the need for certifiers to develop and amend standards. Federal regulation also would provide a consistent process for certifying operations that produce and handle products bearing an organic label. Smaller certifiers would benefit to a greater degree than larger certifiers because the resources saved from creating and interpreting their own standards could be directed toward improving their business operations and offsetting any additional burden imposed by accreditation.

One national standard would eliminate the need to negotiate costly reciprocity agreements and thus save certifiers' resources used to negotiate the agreements, while also expanding markets for organic farmers and handlers certified by smaller organizations which currently do not have, or have a limited number of, such agreements. Eliminating the need for accreditation by private organizations prior to export would relieve certifiers of current financial and paperwork burdens while leveling the playing field for large and small organic entities wishing to export organic agricultural products.

An expanded market caused by the introduction of organic meat and poultry, added consumer confidence backed by consistent standards of production and handling, and additional export volumes of organic agricultural products would benefit all of the organic industry.

Another benefit of this proposed regulation to smaller certifiers would be an extended network of information exchange. Presently, information dissemination occurs on a one-to-one basis and through participation in industry groups, meetings, workshops and international trade fairs. Participation in these activities, which often are dominated by issues of the larger certifiers, is costly and frequently prohibitive to smaller entities. This proposed regulation would facilitate providing certifiers with information about the program, including standards, practices and general requirements. Small certifiers would have access to the same information at the same time as large certifiers, which could be passed on to their clients, typically small farmers and handlers.

In our previously discussed implementation option, we consider allowing a 6-month period of time after publication of the final rule for certifying agents to gain initial accreditation, followed by a 12-month period of time for farm, wild crop harvesting, and handling operations to become certified under the relevant provision of the final regulation. Thus, we intend that the provisions of the NOP would be implemented approximately 18 months after publication of the final rule. On that date, which will be stated in the final rule, all organic operations required to be certified in order to sell or label their products as organic would have to be certified. Operations that are certified prior to 18-months after publication of the final regulation would be permitted to use the USDA organic seal upon certification by a USDA accredited certification organization.

We would like comments, particularly from small farm or handling operations, as to whether the 12-month period of time we anticipate allowing for farm and handling operations to become certified is a reasonable period of time for such operations to become certified. We are particularly interested in learning whether there are any economic or other factors that would create difficulties in obtaining certification within the 12-month time period we expect to provide for obtaining certification.

Small certifiers have expressed concern that they may not have the expertise necessary to become accredited by USDA or to carry out the responsibilities associated with accreditation. However, we believe that this proposed regulation is consistent with, and builds upon, current industry practice. It was designed to allow existing certifiers, farmers and handlers to continue to operate within the organic industry.

In developing our proposal, we considered requiring that accreditation be renewed annually by large certifiers and bi-annually by small certifiers. However, annual or bi-annual preparation of accreditation application materials and the review of applications would be burdensome to accredited certifiers and the NOP staff, respectively. Therefore, in this regulation we have proposed that rather than extending the length of accreditation for small certifiers, we would require that all certifiers submit annually only information about their operation that had changed from the previous year. This requirement would eliminate the burden of certifiers annually refiling all of the information submitted in the initial accreditation. Renewal of accreditation would occur every fifth year.

Finally, this proposed regulation has three elements of flexibility that are advantageous to small entities: performance based production and handling standards and certifier requirements; production and handling standards that contain a range of allowable practices; and certifier site-evaluation fees that would reflect actual costs incurred in connection with the site-evaluation.

The standards in this proposed regulation are performance standards based on the results of a management system, rather than prescriptive or design standards that prescribe specific technology or a precise procedure for compliance. Performance standards allow for flexibility in compliance, which is especially important to organic farmers, handlers and certifiers with limited resources. Performance standards promote innovation and the development of new technologies which would help the industry as a whole be more efficient. Finally, they provide a less costly means of compliance than design standards. Small entities, in particular, benefit because compliance with performance standards allows for the adaptation of existing systems without costly capital investment.

The proposed rule allows for flexibility by providing a range of farming and handling practices that can be used when necessary to maintain the organic integrity of the operation. The use of a practice or substance that is allowable only when necessary must be described in the organic plan, as set forth in section 205.205 of subpart D of this proposed regulation, as a record for consideration by the certifier during a certification review. The benefit in providing a range of practices is that a farmer or handler would not lose their investment in an organic operation because of certain conditions, such as adverse weather or commercial unavailability. This is especially important to small farmers and handlers who depend on the organic price premium to a greater extent than larger firms.

Section 2107(a)(10) of the OFPA (7 U.S.C. 6506(a)(10)) authorizes the collection of reasonable fees from farmers, handlers, and certifying agents who participate in the national organic program. When developing this proposed rule, two alternative fee models were considered. The fee for direct services model proposed in sections 205.421 through 205.424 of this proposed regulation combines a fixed fee for all farmers, handlers and certifiers with a variable fee for certain direct services provided by AMS in the accreditation of certifiers. The second model considered, but not used in this proposal, was the fee per certification model which would have based accreditation fees on the numbers of farmers and handlers certified.

The fee for direct services model proposes to distribute program costs for services to certified farmers and handlers through fixed fees of $50 and $500, respectively. The difference between farmer and handler fees is designed to account for the greater overhead and staff time devoted to handler and processed product issues as compared to farmer and raw product issues. A more extensive explanation of farmer and handler fees is provided in the **SUPPLEMENTARY INFORMATION** section entitled "Fees". Additionally in this model, certifiers would be required to pay a fee of $640 when applying for accreditation and submitting annual reports to cover staff time needed to

process the application or review the report, and an annual administrative fee of $2,000 for program costs that cannot be allocated to a specific certifier. The balance of accreditation costs would be billed to certifiers on a time rate for direct services. A certifier would have to collect sufficient funds from the farmers and handlers it certifies to cover these program fees. Due to the fixed components of the fees in this model, large farmers and handlers, as well as large certifiers, would have the ability to spread their costs over a larger base and, consequently, lower their fixed costs per unit.

Under the fee for direct services model, labor hours, travel, and per diem costs for the site inspections required for accreditation would be included in the variable fee for direct services. AMS estimates the average cost to conduct an accreditation site visit to be $3,500 per visit. The travel cost component of this figure would vary based on the certifier's distance from Washington, D.C., because site visits would be conducted by the National Organic Program staff working away from program headquarters. An alternative method of distributing travel costs would be to estimate an average annual cost per trip, given the expected number of trips and the geographic distribution of certifiers, and charge that amount for all site visits regardless of location.

The advantage of the fee for direct services model is that it incorporates a measure of size in the fee structure, i.e., the time spent on each accreditation by National Organic Program staff. The variable portion of the fee would distribute program costs among certifiers according to the resources actually consumed in providing the accreditation service. The disadvantage of this model is that it introduces a source of variation in fees for which the derivation is not wholly transparent or predictable. With several National Organic Program staff conducting accreditation evaluations, a complaint about the efficiency of an individual accreditation would be difficult to resolve on the basis of objective measures.

Under the fee per certification model that we did not use in this proposal, in which certifiers would pay a fee to the USDA for each certification performed, the smallest one half of certifiers, who certify about 10 percent of organic operations, would pay about 10 percent of the estimated costs associated with accreditation. The largest 10 percent of certifiers, who certify about 45 percent of organic operations, would pay about 45 percent of accreditation costs. The remaining 40 percent of certifiers in the middle would pay 45 percent of the costs. The fee per certification would be fixed, regardless of the size of the operation being certified. This feature has the potential to create a barrier to market access for the smaller operations. Certifiers who charge farmers and handlers for certification based on size and scope of the operation would maximize their profits by certifying only the larger farmers and handlers from whom they would realize a higher return. If certifiers were to discriminate in this manner in favor of larger operations, smaller farmers and handlers would find the certification services available to them to be relatively limited and possibly more expensive than under the fee for direct services model that includes a variable fee for site visits. A fixed fee per certification also would not take into account, in the distribution of costs, the large difference in size between processors and primary producers. Processors are generally much larger than primary producers in terms of both total output and total revenue.

Even with the flexibility proposed in the regulation and the expanded market opportunities brought about by implementation of the National Organic Program, some small organic certifiers, farmers and handlers may choose not to continue because of the proposed fees. We invite comments concerning the expected benefits and costs to small entities as presented in this analysis.

Paperwork Reduction Act of 1995

This proposed rule contains recordkeeping and submission requirements that are subject to public comment and to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 and 3507). Therefore, in accordance with 5 CFR Part 1320, we are providing a description of the reporting and recordkeeping requirements and an estimate of the annual burden on the organic industry. The proposed requirements would not become effective prior to OMB approval.

Title: National Organic Program.

OMB Number: New collection.

Expiration Date of Approval: Three years from date of approval.

Type of Request: New.

Abstract: The information collection requirements in this proposed regulation are essential to carry out the mandate of the Organic Foods Production Act of 1990 (OFPA or Act). The OFPA requires the Secretary of Agriculture to establish and implement a program to accredit a governing State official, or any private person, who meets the requirements of the Act and the proposed regulations, as a certifying agent for the purpose of certifying a farm, wild crop harvesting, or handling operation as being in compliance with the standards set forth in the Act and this proposed regulation. After implementation of the National Organic Program, any agricultural product labeled as organic or made with certain organic ingredients would have to originate from an operation that is certified by an accredited USDA certifier.

The OFPA requires certified farms, wild crop harvesting operations and handling operations to maintain records for 5 years and certifying agents to maintain records for 10 years. The OFPA exempts from certification farm operations with gross agricultural sales of less than $5,000, and the proposed regulation also exempts handling operations with gross agricultural sales of less than $5,000. We propose that each exempt operation would be required to maintain records for one year that verify that such sales are less than $5,000. We also propose that operations that handle only multi-ingredient agricultural products that only represent the organic nature of ingredients in the ingredients statement would not have to be certified. These operations would be required to maintain records for one year that verify the source of organic products received and the operations to whom final organic products are sold. The OFPA also exempts from certification any retail operation, or portion of a retail operation, that only handles organically produced agricultural products, but does not process them. The exemptions and exclusions from certification requirements proposed in this regulation are discussed in the supplementary information provided for section 205.202 of subpart D.

Other information collection requirements proposed in this regulation include: petitioning the NOSB to review a substance for inclusion on the National List; developing labels; preparing inspector and peer review panel reports; documenting methods to prevent commingling of organic with non-organic products; notifying the proper authority in the case of non-compliance with the regulations or the possible violation of food safety laws; and submitting State organic certification programs to the Secretary for approval.

The USDA conducted extensive research while developing this proposed regulation so as to minimize disruption to the customary and usual business practices of certifiers, farms, wild crop harvesting operations and handling operations. The research included consultation with administrators of existing certification agencies; a review of certifiers' publications, recordkeeping forms, and business characteristics; discussions at meetings with State and private certifiers about their concerns regarding accreditation; communications with the organic industry trade association; and a review of the National Organic Standards Board recommendations that were presented to the Secretary after extensive public input. This research helped us determine that certifiers conduct their certification of farms, wild crop harvesting operations and handling operations in a similar manner and have similar recordkeeping systems and business operating practices. We also determined that most of the information we would require to conduct accreditation could be collected from certifiers' existing materials without creating new forms, and that the information currently used by certifiers to certify farmers, wild crop harvesters and handlers could be adapted to comply with this proposed regulation.

We are required under the PRA to report the amount of time necessary for participants to comply with the proposed regulation as if there were no previously existing documents. The PRA requires that our total reporting (creation and submission of documents) burden cover the greatest amount of reporting burden that might occur for any single creation or submission of a document during any one of the first three years following program implementation, i.e: 1999, 2000, and 2001. Therefore, our total estimated reporting burden reflects the greatest possible burden for each reporting activity that might occur during this three year period. We also are required by the PRA to measure the recordkeeping burden. The recordkeeping burden is the amount of time needed to store and maintain records. For the purpose of measuring the recordkeeping burden for our proposed rule, we use the burden for the year 2001, the reporting year for which we estimated that the largest number of records might be stored and maintained.

The USDA estimated the number of program participants who would be required to either create, submit, or store documents as a result of the proposed rule. To determine the number of organic farmers and handlers, we conducted an analysis of existing certified organic farmers and handlers in the United States for 1994, (Dunn, Julie Anton. 1995. "Organic Food and Fiber: An Analysis of 1994 Certified Production in the United States." U.S. Department of Agriculture, Agriculture) and examined an analysis of data collected for the California Department of Food and Agriculture Organic Program concerning registered organic farms and handling operations in that state (Klonsky, Karen, and Laura Tourte. September 1995. "Statistical Review of California's Organic Agriculture, 1992–93". Cooperative Extension, Department of Agricultural Economics, University of California, Davis). Our analysis indicated that an estimated 4,000 farms and 600 handling operations were certified by 33 private and 11 State certifiers. The data collected in the USDA analysis indicated that the number of certified organic farmers increased at an average rate of 12 percent in the period from 1991 to 1994, and the number of certified organic handlers increased at an average rate of 11 percent over the same 3 years. Based on this rate of growth, we estimate that 7,049 farmers and 1,011 handlers will seek certification in the year 1999 and that these numbers would increase to 8,843 farmers and 1,245 handlers in the year 2001. We also estimate, based on our inquiries to existing certifiers, that in the year 1999: 50 percent of certified organic farms will include livestock, 25 percent of certified organic farms and 75 percent of certified organic handling operations will be split operations, and 150 wild crop harvesting operations will seek certification.

Data from the California Department of Food and Agriculture study indicated that 50 percent of registered organic farmers in California had incomes below $10,000 in 1994. For the purposes of this burden analysis, we estimated for the year 2001 that 25 percent of all organic farmers and handlers would have an income of less than $5,000 from the sale of agricultural products and, therefore, would be exempt from certification. Based on our estimated rate of growth for organic farmers and handlers, we anticipate that there would be a total of 11,788 non-certified and certified organic farms and a total of 1,660 non-certified and certified organic handling operations in the year 2001. Of these farms and handling operations, we estimated that 25 percent (2,947 farms and 415 handling operations) could be exempt from certification. As proposed in this regulation, each exempt operation would be required to maintain records to verify that its gross sales of agricultural products is below $5,000. We request data and public input that would assist us to better determine the percentage of certified organic farms with livestock and the percentage of certified operations that may be split operations, the percentage of organic farms and handling operations that may be exempt from certification because they have sales less than $5,000, and the number of wild crop harvesters.

Our inquires to several existing certifiers indicated that of the total number of operations seeking certification, approximately 5 percent of farms and handling operations are denied certification; most of the farms and handling operations denied certification received certification after they reapply. Additionally, approximately 25 percent of certified operations were identified by certifiers during an annual review as having some deficiency; most of these operations retained their certification status.

Other than farmers and handlers, we have made burden estimates for other entities who will create, submit or maintain records as a result of the proposed National Organic Program. For instance, we expect to receive 5 petitions annually for substances to be reviewed by the NOSB for inclusion on the National List. We estimated a low number of petitions because prior to proposing the National List the NOSB researched and determined which substances are currently in use in the organic industry, and because the NOSB itself will be identifying new substances for inclusion on the National List.

We also estimated the time spent to develop product labels for products sold, labeled, or represented as organic or made with certain organic ingredients, or which use the term organic to modify an ingredient in the ingredients statement. The time spent deciding about use of the USDA seal, a State emblem, or the seal of a private certifier also is included in this burden. Our research indicated that operations using product labels containing the term organic handle an average of 19.5 product labels. Additional research indicated that there are currently about 16,000 products with the term organic used on the product label and that the number has been increasing by 250 products annually, based on marketing data from 1994, 1995 and 1996. We estimate, therefore, that by the year 2001, 17,000 products will be marketed with the label term organic.

Regarding operations that handle products that only represent the organic nature of ingredients in an ingredients statement, or that handle prepackaged organic products and do not remove them from the packaging (such as a warehouse or terminal market), the proposed rule contains certain recordkeeping requirements in addition to the requirement to document the procedures to prevent the commingling

of organic with non-organic products and the exposure of organic products to prohibited substances. These recordkeeping requirements are that documentation is to be maintained for 1 year to verify the source and quantity of organic products received and to verify the destination and quantity of products shipped from the operation. At this time, we do not have information as to the number of such operations, nor can we identify a means of collecting this information. We request public input to assist us in determining the number of such operations.

We estimated that the number of certifying agents would remain constant during the years 1999, 2000, and 2001 because our research indicates that the total number has remained unchanged since 1994. Although we predicted in the Regulatory Flexibility Analysis that some of the smallest entities may cease operation as a result of the NOP, we know of new certifying agents that have begun certifying operations, and others who intend to begin so after implementation of the NOP. We also know of existing certifiers who have ceased their operations. We further estimated that the number of organic inspectors would increase by the year 2001. We based this estimate on information obtained from a private organic inspector organization which indicated that each inspector performed approximately 35 inspections in 1996. Using this average of 35 inspections per inspector, we estimate that 293 inspectors would be required in the year 2001 to inspect the estimated 10,238 operations to be certified.

The proposed regulation has certain requirements for laboratory testing of products that are produced on certified organic farms or wild crop harvesting operations and handled through certified handling operations. These tests would be required to be conducted of certified operations not less frequently than every five years; therefore, approximately 20 percent of the total number of certified operations would have products tested each year. Based on our estimate that 10,238 operations would be certified in the year 2001, we estimate that 2,048 operations would have products tested in that year. Other residue testing may be conducted randomly of products at any point of production or distribution. Pre-harvest tissue testing is proposed to be conducted of crops grown on soil suspected of harboring a contaminant. We estimate that certifiers would be required to collect a combined total of 32 samples as part of this random and pre-harvest testing, and would report violations of food safety laws to the appropriate health agencies in 10 instances. We also propose that producers, handlers, and wild crop harvesters report to their certifier any instance of an application of a prohibited substance. We estimate that 25 such instances would be reported to a certifier.

We estimate that approximately 30 foreign programs would submit their programs to USDA in the year 1999 for review in order to seek equivalency with the NOP. These programs are important to handlers of multi-ingredient organic products, especially for the spices and flavoring agents that cannot be produced in the U.S. We also estimate that 15 approved foreign programs would be reviewed again by the Secretary for continued equivalency in the year 2001 and that 5 approved programs would submit substantive program amendments to the Secretary also in the year 2001.

ESTIMATED ANNUAL REPORTING BURDEN

Burden element	Respondents	Number of responses	Average hours per response	Total hours	Total cost
Monitor for measurable degradation of soil and water.	Farmers/handlers, harvesters.	2,560	4.00	10,238.00	$102,380
Petition to add to the National List	Interested parties	5	10.00	50.00	500
Development of a label	Farmers/handlers, harvesters.	17,056	2.00	34,113.00	682,260
Application for certification	Farmers/handlers, harvesters.	8,210	1.00	8,210.00	82,100
Farm organic plan (crops) [1]	Farmers	7,049	14.75	103,972.75	1,039,730
Farms with livestock [2]	Farmers	3,525	3.00	10,575.00	105,750
Split farms [2]	Farmers	1,762	2.50	4,405.00	44,050
Wild crop organic plan	Harvesters	150	9.50	1,425.00	14,250
Handler organic plan	Handlers	1,011	13.00	13,143.00	131,430
Handler split operation [2]	Handlers	759	5.00	3,795.00	37,950
Statement of compliance to USDA regulations	Farmers/handlers, harvesters.	8,210	0.50	4,105.00	41,050
Inspector report	Inspectors	10,240	4.00	40,960.00	409,640
Determination of certification status [3]	Certifying agents, farmers/handlers, harvesters.	8,254	1.24	10,209.10	102,090
Annual continuation of certification	Farmers/handlers, harvesters.	10,238	3.78	38,648.70	386,490
Notification to certified operation of non-compliance	Certifying agents	2,561	2.23	5,711.44	114,220
Certifying agent notification of Administrator [4]	Certifying agents	12,769	0.85	10,848.20	216,960
Accreditation requirements (other than record-keeping) [5].	Certifying agents	8,272	03.06	25,344.00	506,880
Accreditation application	Certifying agents	44	1.67	73.50	1,480
Evidence of ability to certify	Certifying agents	44	23.28	1,024.50	20,500
Statements of agreement	Certifying agents	44	0.69	30.25	600
Peer review panel [6]	Panel members, certifying agents.	72	11.00	792.00	15,840
Annual continuation of accreditation	Certifying agents	44	10.36	456.00	9,120
Transfer of records to Secretary	Certifying agents	2	40.00	80.00	1,600
Suspended certifying agent submits new application	Certifying agents	1	16.00	16.00	320
State program application	State officials	11	42.73	470.00	9,400
Periodic sampling for compliance	Certifying agents	2,048	3.00	6,144.00	122,880

ESTIMATED ANNUAL REPORTING BURDEN—Continued

Burden element	Respondents	Number of responses	Average hours per response	Total hours	Total cost
Additional sampling and residue testing	Certifying agents	22	3.00	66.00	1,320
Report residue and pre-harvest test results	Certifying agents	20	0.50	10.00	200
Report application of prohibited substances	Certifying agents, farmers/handlers, harvesters.	25	0.15	3.75	80
Equivalency of foreign programs	Foreign program officials	30	128.33	3,850.00	77,000
Total				338,771.00	4,278,034

[1] We do not have information to estimate the number of livestock operations that do not produce crops; therefore, it is not possible to estimate the burden hours for such an operation.
[2] Estimated hours for farms with livestock and split operations are in addition to the hours needed to complete a farm plan for crops or a handler plan.
[3] Respondents in the determination of certification status include 44 certifying agents who determine to grant or deny certification to 8,210 applicants. The time elements include the exchange of information necessary for a certifying agent to decide whether to grant or deny certification, issuance of a certificate, and notification of the Administrator when certification is denied and when applicants do not reapply.
[4] Notification of certification status includes notification of the Administrator by the certifier of both the operations that have been certified and those operations not in compliance. We estimate that about 25 percent of all operations will not be in compliance, and would be granted a continuation of certification with restrictions.
[5] The burden elements accounted for in this entry are not mentioned in other sections of the proposed rule. These include the time necessary to provide information to persons seeking certification and to establish a State or certifying agent logo, seal or identification.
[6] We estimate that 72 persons (50 peer review pool members and 22 certifying agents) would participate in the peer review panel process.

ESTIMATED ANNUAL REPORTING BURDEN

Burden element	Respondents	Number of responses	Average hours per response	Total hours	Total cost
Exempt and excluded operations	Farmers/handlers, harvesters.	3,362	1.00	3,362.0	$33,620
Production records	Farmers/handlers, harvesters.	10,238	3.41	34,905.5	349,055
Certification records	Certifying agent	44	3.00	132.0	2,640
Total				38,399.5	385,315

Annual Reporting and Recordkeeping Burden:

Estimated number of respondents: 13,967.

Total annual hours: 377,171.

Total Cost: $ 4,663,349.

It is important to note that the burden being reported is an estimate of the amount of time that would be required of program participants. It is not a measurement of the burden that would be required of existing certifying agents and currently certified farmers, harvesters and handlers in addition to the reporting and recordkeeping activities that they currently perform. In writing the proposed regulation, we carefully reviewed existing industry practice and made every effort to incorporate the documents and practices currently being used within the industry as a means of minimizing reporting and recordkeeping costs when the program begins full operation.

The USDA encourages farmers, handlers and certifiers to use any electronic means available to them to create, submit and store records, including: keeping data base records of crops or livestock produced on operations that are certified; lists of farm and handling operations and their location; creating certification or training documents; maintaining business accounting records; and sending documents by fax or over the Internet. Research of the industry indicates that most certifiers use electronic data creation and storage, fax machines, and the Internet. Some farm and handling operations use computers and word processors for their recordkeeping. Based on this information, we estimated that 25 percent of the collection of information would be performed by automated, electronic, mechanical, or other technological means. We request comments to help assess the number of organizations using computers, word processors, and other electronic equipment to create and store documents, as well as the extent to which the Internet is used to exchange information.

Additionally, comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the USDA, including whether the information would have practical utility; (2) the accuracy of the USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to: Office of Management and Budget, New Executive Office Building, 725 17th Street, N.W., Room 725, Washington, DC 20503, Attention: Lisa Grove, Desk Officer. Comments also should be sent to: Don Hulcher, Clearance Officer, USDA–OICO, Room 404W, Jamie Whitten Building, Ag Stop 7602, P.O. Box 96456, Washington, DC 20090–6456. Additionally, comments may be sent by fax to (202) 690–4632 or submitted via the Internet through the National Organic Program's homepage at: http://www.ams.usda.gov/nop.

Comments are best assured of having full effect if they are received within 30 days after publication of the proposed rule in the **Federal Register**.

National Organic Program Overview

Pursuant to the OFPA, this rule proposes regulations for the production, handling and marketing of organically produced agricultural products and for the management of the National Organic Program. The major components of the national organic program are summarized below. A reference to the placement of the regulatory text of the summarized topic is entered at the end of each program component's summary.

Definitions: Various terms used in the proposal are defined to ensure that regulatory requirements that must be met are clear. Subpart A.

Production and handling requirements: The OFPA requires that national standards be established for the organic production and handling of agricultural products. Agricultural products are any agricultural commodity, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human or livestock consumption. To establish consistent national standards for organic production and handling of agricultural products, this proposed rule provides for the implementation of a system of organic farming and handling that is consistent with the provisions of the OFPA. The standards proposed would apply to the production of crops and livestock and the harvesting of wild crops, and to fresh or processed agricultural products that are, or that are intended to be, sold, labeled, or represented as organically produced or as containing organic ingredients.

The proposed regulation provides for flexibility in the application of the proposed national organic standards and takes into account specific conditions that may occur at different production and handling sites. Under the proposal, each organic farmer and handler would be required to develop an organic plan for their operations. The plan would be evaluated and approved by an accredited certifying agent if it were determined to meet the requirements of the OFPA and the regulations promulgated under the OFPA. The performance of each farmer and handler in meeting the approved practices in their organic plans would be monitored by their certifiers. Subpart B.

National List: This proposal includes a National List of allowed synthetic substances that can be used, and provides for the development of a list of non-synthetic substances that cannot be used, in the production and handling of organically produced agricultural products. The NOSB provided recommendations to the Secretary with regard to synthetic substances it believed should be permitted to be used and the non-synthetic substances it believed should be prohibited for use. The Act establishes the criteria that must be considered before a synthetic substance can be placed on the National List of substances approved for use, and criteria that must be considered before a non-synthetic substance can be placed on the National List of substances prohibited for use. A procedure for petitioning the Secretary and the NOSB to have changes made to the National List of substances approved or prohibited for use is incorporated in the proposed regulations. Subpart B.

Labeling: This rule proposes regulations for the label, labeling, and market information for organically produced agricultural products. The proposal applies to agricultural products that contain various percentages of organic ingredients. The proposal also provides for the use of the USDA organic seal, States' organic seals, and a certifying agent's name, seal or logo, under certain conditions. Subpart C.

Certification: The proposed rule provides the requirements and procedures for farms, wild crop harvesting operations, and handling operations applying for organic certification under the NOP. The proposed rule would permit Indian tribes that as an entity operate a farm, a wild crop harvesting operation, and/or a handling operation, as well as individual tribal members who carry out such operations, to apply for organic certification for these operations. The application process for certification and the requirements that must be met to obtain certification, including the submission of an organic plan, are in the proposed regulations. The proposed regulations provide, in accordance with the Act, that the determination of whether a farm, wild crop harvesting, or handling operation should be certified as an organic farm, wild crop harvesting, or handling operation, would be made by certifying agents accredited by the Secretary. If a certifying agent initially determines that certification should not be granted, the proposed rule allows the applicant for certification to reapply under certain conditions. Additionally, the proposed rule provides for the denial of an application for certification and the termination of certification. It also provides for notice of these actions to the applicant or certified operation and an opportunity for the applicant or certified operation to respond to the notice prior to the denial or termination action. Subpart D.

Accreditation: This proposed rule establishes an accreditation program for persons who want to be accredited as a certifying agent. Persons who could become accredited if they meet the OFPA's requirements for accreditation would include Indian tribes or individual tribal members. Accredited certifying agents would be authorized to certify operations that meet the requirements of the OFPA and the regulations in part 205 as certified farms, certified wild crop harvesting operations, and certified handling operations. State governing officials and private persons may apply for and be accredited by the Secretary as certifying agents. Qualifications needed to obtain and to maintain accreditation are specified in the proposed rule. Procedures for denying, terminating, and suspending accreditation also are proposed. Subpart E.

State organic programs: This proposal permits States to establish or continue to operate their own organic programs, provided that the program reflects the requirements of the OFPA and its implementing regulations, and is approved by the Secretary.

In order for a State program to be approved as meeting the general requirements set forth in section 2107 of the OFPA (7 U.S.C. 6506), the program must have regulatory provisions that meet the following requirements: (1) provide that an agricultural product to be sold or labeled as organically produced must be produced only on certified organic farms and handled only through certified organic handling operations in accordance with the OFPA's requirements and be produced and handled in accordance with such program; (2) require that producers and handlers desiring to participate under such program establish an organic plan as provided for in section 2114 of the OFPA (7 U.S.C. 6513); (3) provide for procedures that allow producers and handlers to appeal an adverse administrative determination under this Act; (4) require each certified organic farm, certified organic wild crop operation, and each certified organic handling operation to certify to the governing State official, on an annual basis, that such farmer or handler has not produced or handled any agricultural product sold or labeled as organically produced except in accordance with this title; (5) provide for annual on-site inspection by the certifying agent of each farm, wild crop harvesting, and handling operation that has been certified under the OFPA requirements; (6) require periodic residue testing by certifying agents of agricultural products that have been produced on certified organic farms and handled through certified organic handling operations to determine whether such products contain any pesticide or other nonorganic residue or natural toxicants and to require certifying agents, to the extent that such agents are aware of a violation of applicable laws relating to food safety, to report such violation to the appropriate health agencies; (7) provide for appropriate and adequate enforcement procedures; (8) protect against conflicts-of-interest; (9) provide for public access to certification documents and laboratory analyses that pertain to certification; (10) provide for the collection of reasonable fees from producers, certifying agents and handlers who participate in the program; and (11) require such other terms and conditions as may be determined by the Secretary to be necessary.

Once a State program is approved, farm, wild crop harvesting, and handling operations in that State that wish to sell, label, or represent their product as organically produced would have to be approved as a certified operation under the State program. The determination as to whether or not a farm, wild crop harvesting, or handling operation meets a State's certification requirements would be made by an agent accredited by the USDA under the National Organic Program. The accredited agent who would make this determination either can be a private person who has been accredited by the USDA or a governing State official who has been accredited by the USDA.

In order to be certified under the State program, an operation would have to meet the State certification requirements. These certification requirements, as discussed previously, must reflect the requirements in the National Organic Program. Thus, certified operations in States that have their own program would be producing products that are represented as organically produced in accordance with the requirements of the National Organic Program that have been included in the State program, in accordance with section 2107 or the OFPA (7 U.S.C. 6506). Therefore, the provisions set forth in our proposal in part 205 would be applicable to operations that are located in States that have their own programs since these provisions would be included in programs that are approved by the Secretary.

States, however, could have requirements that are in addition to those of the NOP if they are approved by the Secretary and meet the statutory criteria for approval. This means that if a State has applied for, and received, approval from the Secretary for requirements in its program that are in addition to those in the NOP, farm, wild crop harvesting, and handling operations that operate in that State would have to comply with these additional requirements that have been approved. However, a State would not be allowed to require farm, wild crop harvesting, and handling operations in other States to comply with any additional requirements that the Secretary has approved for use by that State.

Fees: The proposed rule establishes a system of fees to be paid by farmers, wild crop harvesters, handlers, and certifying agents based on the services provided to them by the USDA. The fees collected from applicants for accreditation and from accredited certifying agents would be for reviewing applications and annual reports, performing administrative services for the benefit of all accredited certifying agents, and for conducting site evaluations to evaluate the certifying agent's performance. The fees collected from farmers, wild crop harvesters, and handlers would be assessed as a fixed fee for each category. Farmers, wild crop harvesters, and handlers operating under a State organic program would pay fees directly to USDA. Subpart F.

Compliance review and other testing: This proposal establishes a system for sampling and testing organically produced and handled products. It provides for pre-harvest tissue testing and residue testing to aid in enforcement of the regulations. Subpart F.

Appeals: The OFPA provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. This proposal provides a procedure for the appeal of these actions. Subpart F.

Equivalency of imported organic products: This proposal, in accordance with the OFPA, permits organic products produced and handled in foreign countries to be imported into the United States, and represented as organically produced, under certain conditions. These products would have to be produced and handled under an organic certification program that provide safeguards and guidelines that are at least equivalent to the requirements of the OFPA and the National Organic Program. Under this proposal, the Secretary would review and approve, if equivalent, the foreign organic programs. Subpart F.

Subpart A—Definitions

A number of the definitions provided in this proposed rule are terms defined in the Act, and for these definitions we have used the language provided in the Act. Some definitions are discussed in other parts of the supplementary information and other definitions provided are self-explanatory. However, for certain definitions, we have discussed below our reasons for establishing these definitions to help ensure that appropriate and consistent procedures are followed in complying with other requirements proposed here.

Active ingredient is a term found in section 2118(c)(1)(B)(i) of the OFPA (7 U.S.C. 6517(c)(1)(B)(i)). This section describes categories of substances that may include active synthetic ingredients that may be considered to be included on the National List. Although the Act does not specifically define the term active ingredient, EPA does define this term in section 2(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136(a)), as amended. The EPA defines the term active ingredient to be pesticides, herbicides, and other substances covered by the FIFRA. We have included the EPA definition of active ingredient as one of our definitions for this term, i.e., the definition that covers active ingredients in pesticide formulations.

The EPA definition, however, does not cover the full scope of all active synthetic substances that the Act would authorize for inclusion on the National List. Therefore, our other proposed definition for active ingredients, "active ingredients in any input other than pesticide formulations", covers these other substances. One type of substance that is included in this definition of active ingredient is a substance used in any aspect of organic production or handling that becomes chemically functional within an agroecosystem. A chemically functional substance is one that would be absorbed by plants or that would affect soil chemistry when used as permitted under this proposal, such as a micronutrient or a cation balancing agent. Substances or materials that do not fit this description, such as plastic mulches, sticky barriers or row covers, thereby would not be considered as

active ingredients under this definition. Our proposed definition also covers substances required to be listed as ingredients or additives on food labels, but it does not include incidental additives and processing aids that are not required to be listed on food labels.

The *agroecosystem* is a term that encompasses all the elements of a system of organic farming and handling, and as such is the primary focus of the proposed organic crop and livestock production standards. Section 2119(m)(5) of the OFPA (7 U.S.C. 6518(m)(5)) specifically indicates that the effects of a substance on the agroecosystem is a criterion that must be evaluated before a synthetic substance can be included on the National List of substances allowed for use.

Biodegradable refers to a specific quality of a material or substance that is used on or applied to the soil that makes the material or substance susceptible to biological decomposition. Most biodegradable materials are organic matter obtained from plant or animal sources. A material such as plastic that is not biodegradable will resist decomposition and persist in the soil, and may enter into unknown chemical interactions with soil and water. While chemical degradation of non-biodegradable materials into simpler compounds eventually occurs, this process happens very slowly compared to biological decomposition. The use of non-biodegradable materials as production inputs is considered to be incompatible with a system of organic farming or handling because they may leave residues of synthetic substances in the soil.

Chapter is defined here with reference to our proposal for the accreditation of certifying agents in subpart E. We are aware of two existing certifying agents that each operate as a single certification body through a system of chapters. We believe that this is an acceptable practice. Such chapters would, however, be expected to comply with the Act and the regulations in this part.

Commercially available is a term that was the subject of extensive deliberation by the NOSB, and our proposed definition reflects their recommendation. We believe that this definition is essential in order for producers and handlers to make appropriate decisions about whether it is necessary to use certain materials, such as the use of non-organically produced planting stock or livestock feed. It also is necessary to help certifying agents evaluate whether the use of such materials is justified or should be discontinued.

Contaminant is a term used in section 2112(b) of the OFPA (7 U.S.C. 6511(b)) with reference to substances that persist in the environment, that may be suspected to be present in soil, and which may necessitate a preharvest tissue test of crops grown on that soil to determine the level of the contaminant in an organically produced crop.

Cytotoxic mode of action is used in sections 205.9(f) and 205.21(a) of subpart B to describe the activity of a type of synthetic substance that is prohibited for use in organic production. Substances of this type chemically interact with plant and animal cells and interfere with normal cell functions. Our definition describes synthetic substances that are cytotoxic and that, therefore, would be prohibited for use.

Degradation is defined to allow organic producers, handlers and certifying agents to accurately identify when the use of a practice or substance that is otherwise permitted under this proposal should be ended or modified. This would occur when it results in measurable degradation of soil or water quality. For example, if nitrate levels in an adjacent well are found to increase over two or more crop years following application of a highly soluble mined source of nitrogen to soil, as set forth in proposed section 205.7 (c)(2) of subpart B, then the practice would have to be terminated or modified to prevent further adverse effects on water nitrate levels.

Detectable residue level (DRL) is proposed for the purposes of this part as being a residue of a pesticide or other prohibited substance that is five percent or greater than the established EPA tolerance level for the product that was tested, provided that if there is no tolerance level established but an action level has been established, the DRL will be the action level established by the FDA for the product tested. EPA tolerance levels, expressed in terms of parts of a pesticide residue per million parts of the food (ppm), refer to the amount of a pesticide residue that may be present in or on a raw agricultural commodity, processed food or processed feed. These tolerance levels are listed in 40 CFR Part 180 (raw agricultural commodities), Part 185 (processed foods) and Part 186 (processed feed). The FDA action levels are used to regulate the occurrence of very low levels of pesticide residues that result from the persistence of a pesticide in the environment and for which there is no tolerance level established by EPA. The action levels for certain pesticides found as residues in agricultural commodities, processed foods or processed feeds are listed in the FDA publication entitled "Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed." Certain pesticide residues may not be detectable by available residue testing techniques at a level as low as five percent of the EPA tolerance level; in these cases, we would consider the detectable residue level to be the lowest level measurable by available techniques.

The purpose of defining the DRL at the proposed levels is to establish a practical level for determining when to conduct an investigation, as required in section 2112(c)(2)(B) of the OFPA (7 U.S.C. 6511(c)(2)(B)), to determine when a residue is the result of an intentional application or when it is justified by site-specific unavoidable residual environment contamination due to the persistence of the detected substance. The proposed DRL should help eliminate unnecessary investigations and test procedures and is within the range of tolerance levels developed by existing State and private organic programs. As discussed with reference to unavoidable residual environmental contamination, the Secretary would establish on a case by case basis the residue levels which would indicate that a prohibited substance had been intentionally applied.

Fertilizers are addressed in section 2109(b)(1) of the OFPA (7 U.S.C. 6508(b)(1)), which prohibits the use in organic production of fertilizers that contain synthetic ingredients or any commercially blended fertilizers that contain prohibited substances under the Act or a State program. Although the Act does not define the term fertilizers, we have proposed a definition in order to clarify the kinds of synthetic soil amendment substances that may be considered for inclusion on the National List. Our proposed definition of fertilizers is consistent with those used by various State agencies that regulate the labeling of fertilizers, and refers to materials that supply the major plant nutrients nitrogen, phosphorus and potassium. Synthetic mineral substances, such as micronutrients and cation balancing agents, which do not supply quantities of the three major plant nutrients, would not be considered fertilizers under this definition and could, therefore, be considered for inclusion on the National List because they are not prohibited under section 2109(b)(1) of the OFPA (7 U.S.C. 6508(b)(1)).

Incidental additive is defined so that handlers clearly know that the substances included in this category may be used in handling organic products, even though the incidental additive itself may not be included on the National List.

Inert ingredient refers to any substance or group of structurally similar substances if designated by the EPA, other than an active ingredient that is intentionally included in a pesticide or formulated product. Inert ingredients used in pesticides are specifically regulated by EPA and have been classified by EPA with respect to their relative toxicity. This EPA classification of inert ingredients is referred to in Section 2118(c)(1)(B)(ii) of the OFPA (7 U.S.C. 6517(c)(1)(B)(ii)) and has been used in this proposal to indicate the types of inert ingredients that may be used in any pesticide product allowed for use on a certified farm or handling operation.

However, the EPA definition does not cover the full scope of inert ingredients that may be used in formulated products allowed for use in organic farming. Our proposed definition of this term also includes inert ingredients intentionally included in any product used in organic crop production, such as fertilizers or foliar sprays.

Non-agricultural ingredient is a term we use in various sections of this proposal to delineate the type and category of substances allowed for use as ingredients in or on organically produced agricultural products if the substance is included on the National List in section 205.26 of subpart B. As discussed in the supplementary information section in reference to the National List, we have used this term in order to accurately describe those substances that would satisfy the provisions of section 2118(c)(1) of the OFPA (7 U.S.C. 6517(c)(1)) related to handling.

Non-synthetic is a term used throughout our proposal to describe those substances that are not synthetic. As discussed in the supplementary information for the National List, we determined that this term is more appropriate than the word natural, which is not defined in the Act and which has other regulatory and marketing meanings.

Packaging is defined here as any material used to wrap, cover, or contain an agricultural product, and also includes wax applied directly to an edible surface of an agricultural product. This definition is proposed in response to the public input that expressed concerns that waxes that contain synthetic fungicides or preservatives may be used on organic products, such as fresh produce or cheese. We believe that this definition is needed to implement the prohibition against the use of packaging materials containing such prohibited substances, as set forth in section 2111(a)(5) of the OFPA (7 U.S.C. 6510(a)(5)), to any material that contacts an edible surface of an organic product.

Production aid is any substance, material, device or structure, but not an organism, that is used to produce an agricultural product. A production aid may or may not be synthetic, and may or may not function as an active ingredient. Examples of production aids are provided in section 2118(c)(1)(B)(i) of the OFPA (7 U.S.C. 6517(c)(1)(B)(i)) and include netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers. Any production aid that is determined to be active and synthetic must appear on the National List in either sections 205.22 or 205.24 of subpart B before it may be used in organic farming.

Putrefaction is defined in order to clarify the reasons why plant and animal materials that are prone to putrefaction are less preferable for use in proper manuring practice than those materials that are not prone to putrefaction, as proposed in section 205.7 of subpart B.

Soil quality is a term that serves as a central performance standard for the use of any method or substance in an organic farming system, in that such use may not result in measurable degradation of soil or water quality, as proposed in section 205.3(b)(1). In order to determine whether a given operation is in compliance with the regulations, farmers and certifiers must have a clear understanding of what soil quality is and how it may be measured. Our proposed definition of this term encompasses physical, chemical and biological soil quality indicators that could readily be measured or observed at a given location. Examples of soil quality indicators commonly measured in organic farming systems include erosion, aggregation, compaction, drainage, organic content, nutrient content, pH, cation balances, presence of contaminants, leaf tissue analysis, presence of indicator weed species, presence of pathogens, earthworm populations, and legume nodulation.

Subtherapeutic is a term used in section 2110(d)(1)(A) of the OFPA (7 U.S.C. 6509(d)(1)(A)) to refer to a dosage level of antibiotics that is prohibited for administration to organically managed livestock. Our proposed definition of this term indicates one of the circumstances in which use of an antibiotic is prohibited.

System of organic farming and handling is a term used throughout our proposal to refer to the general set of principles and objectives of the Act. This term also serves as the foundation of the organic production and handling provisions proposed here, and is discussed more fully in the supplementary information that introduces Subpart B.

Unavoidable residual environmental contamination (UREC) is a term used in section 2112(c)(2)(B) of the OFPA (7 U.S.C. 6511(c)(2)(B)) which we define as the residue level of a prohibited substance that could be expected to exist in the soil at, or in a product originating from, a specific production site to which the prohibited substance had not been applied for a minimum of three years. If a residue test of an organically produced product originating from a specific certified site reveals a detectable residue level of a prohibited substance, then the UREC level for the specific certified site would be determined by the Secretary in consultation with the applicable governing State official, and the appropriate environmental regulatory agency. A product found to contain a detectable residue level exceeding the UREC level for the specific site may not be sold or labeled as organic.

Subpart B—Organic Crop and Livestock Production and Handling Requirements

Introduction

USDA's proposed requirements for organic farming and handling, encompassed in subpart B, sections 205.3, 205.5 through 205.9, and 205.11 through 205.28, set forth the requirements for organic crop production, wild crop harvesting, organic livestock production, organic handling, and for products and substances allowed and prohibited in organic farming and handling. These requirements are proposed to implement the purposes of the Act as set forth in section 2102 of the OFPA (7 U.S.C. 6501) to establish national standards governing the marketing of organically produced agricultural products; to assure consumers that organically produced products meet a consistent standard; and to facilitate interstate commerce in fresh and processed food that is organically produced. Section 2106 of the OFPA (7 U.S.C. 6505) requires that any agricultural product that is sold or labeled as organically produced be produced and handled in accordance with the standards established under the Act. Section 2118 of the OFPA (7 U.S.C. 6517) requires that a National List of substances approved and prohibited for use in organic farming

and handling established by the Secretary be included in the standards. Active synthetic substances must appear on the National List as approved substances in order to be used in organic production, and a non-synthetic (natural) substance may not be used if it appears on the National List of substances prohibited for use.

We would like to point out that the word substance is used in a variety of ways in this docket. When the word substance refers to a material that meets the OFPA's definition of a synthetic substance, it is described as a "synthetic substance". When the word substance refers to a non-synthetic material (i.e., natural material), which is one that does not come within the OFPA's definition of a synthetic substance, it is described as a "non-synthetic substance." When the word substance refers to a material prohibited for use in the organic program, whether it be synthetic or non-synthetic (i.e., natural), it is described as a "prohibited substance." An example of such a prohibited material is a synthetic substance that does not appear on the National List of synthetic substances permitted for use in organic farming and handling. When the word substance is used without any modifiers, it is used to describe all materials (substances), regardless of whether such substances are synthetic or non-synthetic, or prohibited or allowed for use in organic farming and handling.

We have crafted this subpart to be consistent with the requirements of the Act, including its principles for organic farming and handling systems. Although the Act does not specifically define what a system of organic farming and handling is, it does refer in sections 2103(4) and (5) of the OFPA (7 U.S.C. 6502(4) and (5)) to a system of organic farming and a system of organic handling, respectively, as described in the Act. In order to establish consistent national standards for organic production and handling, we have determined that it is necessary to define what a system of organic farming and handling is, and to describe those practices that are consistent with such a system. Another purpose of this definition will be to provide an explicit point of reference for the organic industry to make determinations as to whether various practices and substances are consistent with organic farming and handling. We further expect the proposed definition of a system of organic farming and handling to serve as a reference point for program matters it is determined need further development.

We have defined a system of organic farming and handling to be: a system that is designed and managed to produce agricultural products by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the consumer. This is accomplished by using, where possible, cultural, biological and mechanical methods, as opposed to using substances, to fulfill any specific function within the system so as to: maintain long-term soil fertility; increase soil biological activity; ensure effective pest management; recycle wastes to return nutrients to the land; provide attentive care for farm animals; and handle the agricultural products without the use of extraneous synthetic additives or processing in accordance with the Act and the regulations in this part.

Our proposed definition has been derived from the underlying premises of what constitutes organic farming and handling systems, as reflected in various provisions of the Act. This definition also is consistent with the definitions and principles established by the existing public and private organic programs that we have reviewed and the definitions and principles of organic agriculture and production systems adopted by the National Organic Standards Board. The principles reflected in our definition of a system of organic farming and handling are incorporated in the regulations we are proposing.

The concept of maintaining the integrity of organic agricultural products is established by one of the purposes of the Act, stated in section 2102(2) of the OFPA (7 U.S.C. 6501(2)), to assure consumers that organically produced products meet a consistent standard. The Act generally delineates methods and substances that may or may not be used in organic farming and handling in furtherance of this purpose. Additionally, in section 2104 of the OFPA (7 U.S.C. 6503) it specifically provides for an organic certification program for producers and handlers of organic agricultural products. Such a program helps to ensure the integrity of organic products.

There is a preference for the use of cultural, biological and mechanical methods wherever possible, as opposed to using substances, in organic farming and handling. Examples of methods that do not involve the use of any substances are the planting of green manure crops instead of applying fertilizer substances, and the use of crop rotations and disease resistant plant varieties instead of applying disease-suppressing substances. Section 2105(1) of the OFPA (7 U.S.C. 6504(1)) provides that an organically produced agricultural product must be produced and handled without the use of synthetic chemicals, except as otherwise provided for in the Act. Further, the Act provides in section 2118 (7 U.S.C. 6517) a detailed scheme and criteria for determining whether a particular active synthetic substance may be exempted from the general prohibition on the use of synthetic chemicals, and further provides in that section for the prohibition of the use of certain substances that are not synthetic. Also, the Act specifically directs in section 2119(m)(6) of the OFPA (7 U.S.C. 6518(m)(6)) that the NOSB consider the use of practices or other available materials as alternatives to a synthetic substance being included on the National List. Furthermore, the use of certain substances in organic crop and livestock production and organic handling is specifically prohibited in several provisions of the Act, such as portions of sections 2109, 2110, and 2111 of the OFPA (7 U.S.C. 6508, 6509 and 6510). Therefore, we are proposing in our definition of a system of organic farming and handling that, where possible, cultural, biological and mechanical methods, as opposed to using substances, are preferred. These provisions support the concept that both non-synthetic substances and methods that do not involve the use of any substances, such as cultural, biological, and mechanical methods, are preferred alternatives to the use of synthetic chemicals.

The tenets of maintaining long-term soil fertility and increasing soil biological activity are established in section 2114(b)(1) of the OFPA (7 U.S.C. 6513(b)(1)), which requires that an organic plan contain provisions designed to foster soil fertility, primarily through the management of the organic content of the soil. The Act further addresses soil biological activity in section 2119(m)(5) of the OFPA (7 U.S.C. 6518(m)(5)) when it requires that the physiological effects of a synthetic substance on soil organisms be taken into consideration before the substance is allowed for use in organic production.

The need for effective pest management methods in an organic farming system is established in section 2109(c) of the OFPA (7 U.S.C. 6508(c)) which prohibits the use of certain substances and materials for the control of pests, weeds, and diseases. This section, considered together with the Act's prohibition of the use of most synthetic chemicals in organic production systems, necessitates that crop pest management methods be implemented that avoid the need to use synthetic substances and materials. In addition, the inclusion of crop rotation practices in an organic plan, as set forth in section 2114(b)(1) of the OFPA (7 U.S.C. 6513(b)(1)), is critical to implementing effective pest management strategies and soil fertility management in an organic farming system.

Recycling wastes to return nutrients to the land is a principle expressed in the language of section 2114(b)(1) of the OFPA (7 U.S.C. 6513(b)(1)) which requires the fostering of soil fertility and which provides for proper manuring to be used to manage soil organic content, and in section 2114(b)(2) of the OFPA (7 U.S.C. 6513(b)(2)) which delineates more specific requirements for the application of manure to crops. Although the use of livestock manure is one means of complying with this requirement, our proposed definition of proper manuring also includes the use of other plant or animal wastes to improve soil organic content and provide crop nutrients.

Attentive care for farm animals is implicit in the provisions of sections 2110(c) and (d) of the OFPA (7 U.S.C. 6509(c) and (d)), which specify what may or may not be fed to organically managed livestock, prohibit certain health care practices, and require the NOSB to recommend additional standards for the care of organic livestock. The alternative to using the methods and practices prohibited under this section of the Act is expressed by the concept of attentive care which is essential when relying on management methods, rather than substances such as medications, to maintain livestock health.

This proposed rule also incorporates the principle that organic agricultural products are to be handled without the use of extraneous synthetic additives and processing. Examples of extraneous additives are synthetic preservatives, coloring agents and flavors. These are not allowed because the Act, in section 6510(a)(1), prohibits the addition of any synthetic ingredient during the processing or postharvest handling of an agricultural product. Extraneous processing generally involves the use of additional substances during and after the processing. Extraneous processing would entail, for example, unnecessarily subjecting a product to temperatures that degrade its inherent antioxidant content, thereby requiring supplementation with an antioxidant to maintain the product's stability.

Our proposed program encompasses all agricultural products, as defined in section 2103 of the OFPA (7 U.S.C. 6502), and all aspects of their production and handling, ranging from soil fertility management to the packaging and labeling of the final product. Our requirements address the systems used to produce an agricultural product rather than the physical qualities of the product itself. No distinctions should be made between organically and non-organically produced products in terms of quality, appearance, or safety.

We believe that an effective regulatory scheme, which has to be applicable to diverse types of operations and geographic regions must be as flexible as possible and take into account site-specific conditions. We accordingly have developed this proposal to provide, within the parameters of the Act, provisions that take into account site specific conditions without impairing the organic integrity of the product produced. In creating this proposal, we examined various examples of, and ideas for, such provisions, including standards developed by existing organic programs, guidelines of international organic interest groups and standards setting organizations, recommendations of the NOSB, and suggestions provided in public input received in the course of NOSB meetings and as response to NOSB draft documents.

Existing organic certification programs, both State and private, have grappled with the need to provide flexibility in their allowed standards and procedures. One method that existing organic programs have used is to distinguish in their standards between practices that they consider to be acceptable for use without restrictions, those that they consider to be acceptable for use only in certain conditions (i.e., restricted practices), and those that they do not consider to be acceptable for use under any circumstance. An example of restricted use is illustrated by the case of botanical pesticides, which most organic practitioners consider to be a last resort for pest control, and which are considered acceptable for use only under certain circumstances. Many existing organic certification programs have thus included such substances within the area of restricted practices that must be closely evaluated and justified by site-specific needs.

We have approached this need for flexibility by incorporating two types of regulatory provisions into our proposed standards. The first type of regulatory provision establishes, where appropriate, an order of preference for selecting practices or materials. For example, we propose in section 205.7(b) of subpart B an order of preferred selection of five types of materials that would be acceptable for use in proper manuring. We also propose in section 205.9 of subpart B an order of preferred selection for the use of practices and substances to prevent and control crop pests, weeds, and diseases. We would like to solicit public comment as to whether or not the establishment of orders of preference would impose an unnecessary burden on organic producers.

The second type of regulatory provision we propose would permit the use of certain practices or substances only if necessary. The producer or handler would base their determination of the need to use a particular method or substance on site specific circumstances. The basis for a producer or handler determining that a certain practice or substance is necessary would be described in the organic plan, or update to the organic plan, and would be reviewed and evaluated by the certifying agent. An example of a practice that we are proposing be used only if necessary is the use of non-organically produced feedstuffs as a portion of an animal's feed ration, as proposed in section 205.13(a) of subpart B.

A number of the regulations are written as performance standards. Performance standards are generally written in terms of the results expected, rather than the specific actions that must be taken to achieve the desired result. An example of a performance standard is the requirement proposed in section 205.3(b) of subpart B that the use or application of any practice or substance must not result in measurable degradation of soil or water quality. This proposed provision requires that practices used in an organic operation be implemented in a manner that maintains soil and water quality, but does not specify the practices that have to be used.

Subpart B—Regulatory Overview

Subpart B of part 205 consists of USDA's proposed organic production and handling requirements, and a proposed list of (1) synthetic substances allowed and non-synthetic (natural) substances prohibited for use in organic crop and livestock production and (2) non-agricultural substances and non-organically produced agricultural products allowed in or on processed organic products. The proposed requirements for organic production and handling, and the provisions for the proposed National List and use of substances, have been integrated as a unified whole consistent with our

proposed definition of a system of organic farming and handling.

Section 205.3 (applicability) of subpart B delineates proposed general requirements and conditions for organic production and handling. Section 205.3 of subpart B includes the general requirement that the use of any method or substance not result in measurable degradation of soil or water quality. This section is followed by the sections that set forth the requirements for organic crop production (sections 205.5 through 205.9), wild crop harvesting (section 205.11), organic livestock management (sections 205.12 through 205.15), and organic handling (sections 205.16 through 205.19). Following the sections on production and handling, sections 205.20 through 205.28 contain the proposed National List. The proposed National List regulations consist of sections that describe the active synthetic substances that are allowed for use in organic crop and livestock production, the non-synthetic (natural) substances that are prohibited for use in organic crop or livestock production, and the non-agricultural and non-organically produced ingredients allowed in or on processed organic products. (The OFPA does not require non-synthetic (natural) substances allowed for use in organic crop and livestock production, or non-organically produced products prohibited for use in or on processed organic products, to be included in the National List). Sections 205.20 and 205.21 summarize all of the categories and types of substances allowed and prohibited for use in organic farming and handling, as provided under the Act and the proposed regulations in Subpart B.

Applicability—Section 205.3

In paragraph (a) of this section, we propose to establish the requirement that any agricultural product that is sold, labeled or represented as organic be produced in compliance with the relevant proposed crop, wild crop, livestock and handling requirements, including those of the National List. Crops and livestock would have to be produced or harvested on a certified organic farming operation and handled by a certified organic handling operation under a system of organic farming and handling.

We propose in paragraph (b) of this section that any use or application of a method or substance under these proposed requirements must be used in accordance with all applicable requirements of part 205 and must not result in measurable degradation of soil or water quality. This provision is proposed to clarify that all methods and substances used in a certified operation shall be consistent with a system of organic farming and handling, the purposes of the Act, and any other requirements in the regulations in part 205. This provision also is consistent with the recognition in the Act of the relation between organic practices and soil and water quality.

In most instances we are not proposing to require that any specific indicators of soil or water quality be monitored for compliance with this provision. Rather, we expect that appropriate and reliable indicators of soil or water quality would be chosen according to site-specific considerations, such as the nature of the crops or livestock being produced, the location and scale of the operation, and the kinds of practices being used. By not requiring monitoring of specific indicators, except in certain cases, we thus intend to leave the decision as to whether to monitor the effects of a method or substance, as well as the choice of indicators to be monitored, to the producer or handler in consultation with the certifying agent. We would expect any such monitoring activities to be described in the applicable organic plan, and therefore subject to approval by the certifying agent, who might require changes.

For example, if a certifying agent had some concerns about the impact on soil quality of any practice, such as the planting of a sloping field prone to erosion with corn or sorghum, the certifying agent might require the producer to monitor erosion in that field to ensure that soil quality was not being degraded. This could occur following a review of an organic plan or any required annual inspection of a certified operation. This provision also would address the requirement set forth in section 2114(b)(1) of the OFPA (7 U.S.C. 6513(b)(1)) that soil fertility be addressed in an organic farm plan for crop production. Additionally, a certifier who was concerned about the compliance of a cattle feeding operation with the manure management requirements proposed in section 205.15(c) might require that the producer monitor nitrate levels in a nearby well to show that cattle holding areas were not discharging manure-laden runoff into groundwater. A wild crop harvester similarly might be required by a certifier to estimate the population of the harvested plant species that remain in a given area after each harvest, to ensure that the harvesting was being done in compliance with section 2114(f) of the OFPA (7 U.S.C. 6513(f)), which requires that harvesting does not deplete the plant species being harvested (as proposed in section 205.11(b)).

Other indicators of soil or water quality that might be appropriate to monitor, depending on the situation, would include: residues in soil or water of substances prohibited for use in organic farming; soil biological activity as indicated by earthworm populations; soil organic matter and nutrient content; or soil compaction. It should be noted that much of this monitoring activity is widely practiced in the course of managing a farm or handling operation, and in many cases would coincide with measurements, assessments or observations already being undertaken routinely by a producer.

Although not required by statute, the NOSB recommended that irrigation and water management be addressed within an organic farm plan. At this time, however, we are not proposing regulations specifically for the quality of irrigation water.

Section 205.3(b)(2) further would require that, if the same function within an organic farming or handling operation may be fulfilled by either a commercially available non-synthetic substance or an allowed synthetic substance equally suitable for the intended use, then the producer or handler must choose the non-synthetic substance in preference to the synthetic substance if there is no discernable difference between the two in terms of impacts on soil or water quality. We recognize that such choices may seldom have to be made in any operation. However, we are proposing this provision to further reinforce the preference for the use of non-synthetic substances, as opposed to synthetic substances, that is implicit in the Act, as previously discussed. Any allowed synthetic substance will have been evaluated by the NOSB according to section 2119(m)(6) of the OFPA (7 U.S.C. 6518(m)(6)), regarding alternative practices and available materials, and our proposed requirement makes clear the choice producers and handlers must make in a situation where an equally suitable non-synthetic alternative is available.

Organic Crop Production Requirements

Land Requirements—Section 205.5

This proposed section addresses overall land management practices that we have determined are needed to ensure that the area on which organic crops are produced meets the requirements of the Act and the proposed regulations in subpart B. We have proposed in paragraph (a) of this section, in accordance with section 2105 of the OFPA (7 U.S.C. 6504), that land not have had any prohibited substances applied to it for at least three years prior to harvest of an organically produced crop.

We are proposing further that any land on which organic crops are produced have clearly defined and identifiable boundaries, as provided under section 2107(b)(1)(A) of the OFPA (7 U.S.C. 6506(b)(1)(A)). We believe that this requirement should apply to all land on which crops are grown under organic management for two reasons. First, organically managed fields must be clearly identifiable so that an inspector may verify that the observed conditions on a farm operation are consistent with the information provided by the producer in the application for certification. Secondly, organically managed fields need to be clearly identifiable to anyone who may be using prohibited substances on adjoining lands in order to help prevent unintentional application of prohibited substances to organically managed areas.

Paragraph (b) of this section would apply to any organically managed land area that adjoins land that is not organically managed, and would require that a producer implement, or propose a plan to implement, some means to prevent the possibility of unintended application of prohibited substances to land and contact of a prohibited substance with the land from which organically produced crops are to be harvested. This could be done through establishment of physical barriers, diversion of runoff, buffer zones, or other means, in accordance with section 2107(b)(1)(A) of the OFPA (7 U.S.C. 6506(b)(1)(A)). Existing State and private organic standards have customarily required producers to establish and maintain adequate buffer zones between adjoining organic and non-organic field units and usually specify the minimum size of a buffer area. The information we have reviewed indicates that such specific minimum size requirements should not be included in our proposal because they would not be applicable to every situation and could impose unnecessary burdens on some organic producers.

Crop Rotation—Section 205.6

Crop rotations, or other means of ensuring soil fertility and effective pest management, are the cornerstone of successful organic crop production. They are essential considerations in establishing and maintaining an organic farm system because they help to prevent pest, weed and disease problems; disrupt crop pest, weed, and disease cycles; provide habitat for beneficial organisms; stimulate positive biological and chemical interactions in the agroecosystem; and maintain soil and water quality in a manner that diminishes the need for the use of synthetic substances.

Section 2114(b)(1) of the OFPA (7 U.S.C. 6513 (b)(1)) requires a crop production farm (organic) plan to foster soil fertility through practices that include crop rotation. Although the Act includes a provision for crop rotations as a means of improving soil fertility, crop rotations also serve additional critical functions in an organic farming system. Primary among these functions are: the prevention of weed, pest and disease problems by the planting of species that do not support the pest organisms or that provide food or habitat for beneficial insects; the stimulation of populations of beneficial soil organisms, such as mycorrhizal fungi and predacious nematodes; and the occurrence of alellopathic effects that suppress weed growth.

Such functions similarly may be accomplished by techniques other than crop rotation. Additionally, crop rotation practiced in the production of annual crops, such as corn or soybeans, may not be feasible in the production of perennial crops, such as tree fruits or hay. Therefore, we are providing for alternative practices to crop rotations that also serve the purposes of ensuring soil fertility and effective pest management.

Examples of alternative practices which a producer might use include the following: one method would be to establish or preserve non-agricultural areas such as hedgerows, wetlands, native prairies and woodland, adjacent to or adjoining a farm or field, to serve, for example, as habitat for beneficial organisms. A second related method would be to plant species that serve this same function adjacent to or between rows of crops. A third related method would be the use on pasture areas of rotational or intensive grazing methods in which animals are moved frequently to fresh pasture in order to optimize nutritional content of the forage and extend the pasture season. Other methods commonly used in managing perennial plantings, which cannot be rotated from field to field, include interplanting, alley cropping, strip cropping and introduction of livestock into perennial systems.

As proposed in section 205.2, a crop rotation is defined as the practice of alternating the annual crops grown on a specific field in a planned pattern or sequence in successive crop years, so that crops of the same species or family are not grown repeatedly without interruption on the same field during two or more crop years. This rotation might include the use of sod, legumes or other nitrogen-fixing plants, or green manures in alternation with cultivated crops. These crops are universally recognized in the applicable literature as highly desirable methods of improving soil organic matter content and long-term fertility, as well as conferring other benefits associated with crop rotation.

However, a producer could repeatedly plant the same species or family in a given field over more than two crop years, provided that practices which ensure soil fertility and effective pest management, and which do not result in measurable degradation of soil or water quality, as proposed in section 205.3(b)(1), are used. For example, use of living mulches, such as clover interplanted between rows of carrots, could accomplish the same result as a more frequent rotation of carrots with other crops. Other examples of practices that might be used in place of the rotation of annual crops are the application of large amounts of leaf mulch or compost to beds in which the same crop family is grown several seasons in succession by a small-scale vegetable producer, and a grain operation in which early annual weeds may serve as a green manure crop that replenishes soil fertility and provides the other beneficial effects of crop rotations despite the continual commercial production of a single species in a field.

Soil Fertility and Crop Nutrient Management—Section 205.7

Section 2114(b) of the OFPA (7 U.S.C. 6513(b)) requires that an organic plan provide for the management of soil organic content through proper tillage, crop rotation and manuring, thereby acknowledging the importance of soil fertility for organic crop production. A fundamental tenet of organic management systems is that the primary objective of soil management is to nourish soil organisms which will in turn ensure soil fertility and properly balanced crop nutrition. We have incorporated this concept in drafting this proposal.

We consider the term proper manuring as used in section 2114(b) of the OFPA (7 U.S.C. 6513(b)) to mean any use or application of plant or animal materials, including green manure crops, to improve soil fertility, especially its organic content. The use of compost and other recycled organic wastes, whether or not they contain

livestock manure, are therefore considered to be part of proper manuring. Any practice, however, that could contribute significantly to water contamination by nitrates and bacteria, including human pathogens, or otherwise result in measurable degradation of soil or water quality, would accordingly not be considered proper manuring.

Section 2109(b) of the OFPA (7 U.S.C. 6508(b)) specifically addresses prohibitions on the use of certain materials as fertilizers and soil amendments; these provisions also are addressed in this section of the proposal. The practices we propose for fertility and nutrient management are also relevant to and essential for the prevention of pest, weed and disease problems that might otherwise have to be controlled through the use of synthetic substances.

Section 205.7(a) would require that any tillage or cultivation implements and practices be selected and used by an organic producer in a manner that does not result in measurable degradation of soil quality. Soil physical qualities include soil structure, aggregation, aeration, drainage and erodibility, all of which are indicators of soil fertility. While we have not proposed to prohibit any specific tillage or cultivation implement or practice, our proposal would require producers to select tools and practices that do not harm soil quality. For example, excessive use of rototillers has been shown to damage soil structure and lead to accelerated loss of organic content, while improper moldboard plowing may induce soil compaction. We would expect an organic producer to manage such tools or practices so that no measurable degradation of soil quality resulted.

Proper Manuring—Section 205.7(b)

In section 205.7(b) we propose the types of plant and animal wastes that may be used in an organic system. These materials would represent the methods, in conjunction with crop rotations and green manure crops, that can be used to build soil organic matter and provide essential crop nutrients in accordance with section 2114(b) of the OFPA (7 U.S.C. 6513(b)). The practices proposed are stated in an order of preference for choosing among available alternatives because we believe that these preferences most accurately reflect the concept of proper manuring. As proposed here, the preferred choices in this order of preference are for the practices that are least likely to result in measurable degradation of soil or water quality. For example, the application of compost, as provided in paragraph (b)(1) of this section, is least likely to contribute to contamination of water by nitrates and bacteria, including human pathogens, whereas uncomposted materials having a high soluble nutrient content, as provided in paragraph (b)(3) of this section, are more likely to adversely affect water quality. Because section 2114(b)(2)(C) of the OFPA (7 U.S.C. 6513(b)(2)(C)) requires manuring practices to not significantly contribute to water contamination by nitrates or bacteria, this section also would require that any application of plant or animal waste materials does not do so.

The first choice of materials, as stated in paragraph (b)(1) of this section, would be certain composted materials; these include materials such as livestock manure, food processing wastes, crop residues, spoiled hay and similar materials. The use of composted plant and animal matter recycles nutrients and builds soil organic content with minimal concern for measurable degradation of soil or water quality, and is fully compatible with our proposed definition of a system of organic farming and handling. This practice does not include composts made with certain materials that may pose greater concerns for soil or water quality, which are addressed in paragraphs (b)(4) and (b)(5) of this section.

Paragraph (b)(2) of this section includes plant or animal materials that are neither susceptible to anaerobic decomposition (which presents potential odor and pathogen problems) nor high in soluble nutrients (that may pollute water) and which therefore are suitable for application to soil without first being composted. These materials are the second best choice because applying them directly to soil permits them to decompose and contribute to soil organic content and fertility, thereby functioning in a manner similar to composted materials. This choice also is consistent with the proposed definition of a system of organic farming and handling because it furthers the use of methods in preference to substances. Paragraph (b)(2) of this section would cover materials such as seaweed, sawdust, peat, earthworm castings, leaves, rice hulls and similar dry, stable substances. Well-aged and fully decomposed animal manure that has not been subjected to a composting process might also be used under proposed paragraph (b)(2) of this section.

We propose in section 205.7(b)(3) to allow the use of agricultural waste materials that are known to be susceptible to anaerobic decomposition or that are high in soluble nutrients. These materials are the third choice because they require care in use and application in order to avoid causing measurable degradation of soil or water quality. However, we believe that their use should still be permitted because they are a potentially valuable source of soil organic content and crop nutrients. Examples of such materials include food processing wastes, such as fruit peelings or culls, slaughterhouse by-products, fish wastes, whey, and highly nitrogenous plant concentrates like alfalfa or soybean meal. This category also would include the use of raw animal manure.

Section 2114(b) of the OFPA (7 U.S.C. 6513(b)) permits the application of raw manure to any green manure crop, any perennial crop, and any crop not for human consumption. This section of the OFPA also restricts the use of raw manure, in that raw manure may only be applied to a crop intended for human consumption if the crop is harvested after a reasonable period of time determined by the certifying agent to ensure the safety of the crop, but in no event may the period be less than 60 days after the application of raw manure. Furthermore, section 2114 (b)(2)(C) of the OFPA (7 U.S.C. 6513 (b)(2)(C)) prohibits raw manure from being applied to any crop in a way that significantly contributes to water contamination by nitrates or bacteria.

Over recent months and years, there has been an increase in the incidence of food borne illness caused by certain human pathogens found in animal manure. In consideration of this increased incidence of illness, this proposed regulation does not address in detail the use of raw animal manure in crops intended for human consumption because of the need to develop more and better scientific data regarding the safety of the crop after application of raw manure. Although we acknowledge that the use of animal manure, whether applied directly to the field or composted, is common in organic agriculture, there is inadequate data to make the determinations necessary regarding the safety of the crop after application of raw manure. Similarly, data are needed to make the determinations necessary to ensure that livestock exposure to pathogens does not occur in cases where raw manure is used.

We are soliciting public comment and scientific and technical data in regard to the minimum time which must pass before a crop raised for human consumption on land to which raw manure has been applied may be harvested. Such technical information might include differentiating the type of crops to which differently treated manure can be applied with safety and, in addition, suitable time and temperature standards for composting animal manures. The Act specifies that when raw manure has been applied to land used to raise a crop intended for human consumption, at least 60 days must pass between application and harvesting to ensure the safety of the crop. If and when regulations regarding the safety of any food grown on land to which raw manure has been applied are promulgated by FDA, EPA and/or USDA, these regulations would be applicable to the use of raw manure in organic agriculture.

We also would like to obtain public comment and scientific and technical data as to whether there are any situations where composted manure would have essentially the same characteristics as raw manure, thus necessitating special measures to ensure the safety of the food. We would like to receive data as to whether under any circumstances, and if so which circumstances, the application of composted material to crops, or the method of preparation of composted material which is intended to be applied to crops, would create any human health or food safety concerns.

On October 2, 1997, President Clinton announced a plan to further ensure the safety of the nation's food supply. The plan, entitled "Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables," is geared towards increasing assurances that fruits and vegetables, whether produced domestically or imported, are safe. As part of this initiative, the President directed the Secretary of Health and Human Services, in partnership with the Secretary of Agriculture, and in close cooperation with the agricultural community, to issue guidance on good agricultural practices (GAP's) and good manufacturing practices (GMP's) for fruits and vegetables.

In response to this directive, FDA and USDA are developing guidance to minimize microbial food safety hazards for fresh fruits and vegetables. The guidance is intended to assist growers and handlers in continuing to improve the safety of domestic and imported produce. The agencies have identified several potential vehicles or mechanisms for pathogenic contamination of fruits and vegetables, including but not limited to: (1) Water; (2) the application of manure and municipal wastewater; (3) worker and field sanitation and hygiene; and (4) transportation and handling. The agencies will be publishing draft general guidance for public comment shortly.

Proposed paragraph (b)(4) of this section addresses the use of plant and animal waste materials containing a non-active residue of a substance. We define a non-active residue in section 205.2 as: any synthetic substance that does not appear on the National List of synthetic substances allowed for use, any non-synthetic substance that does appear on the National List of non-synthetic substances prohibited for use, or any non-synthetic (natural) poison (such as arsenic or lead salts) that has long-term effects and persists in the environment, and which occurs in a very small quantity as a non-active substance in a production input or water. This provision would apply to plant or animal waste materials resulting from industrial food or fiber processing, municipal solid waste streams, and similar sources in which the materials have been treated or mixed with other substances. These kinds of materials include non-organically produced cotton gin trash, cocoa hulls, and confinement livestock manure from animals that are known to have been treated with synthetic substances. Municipal yard wastes, including leaves, grass trimmings and prunings, also might fall into this category.

As discussed in the supplementary information to the National List, plant or animal materials that only have been treated or mixed with synthetic substances, but not chemically altered by such treatment, are not considered synthetic under the definition provided by section 2103(21) of the OFPA (7 U.S.C. 6502(21)), and are therefore not prohibited under the Act. Additionally, any non-active residues of substances found on such materials would have minimal or no impact on the organic agroecosystem and therefore the residues are not consistent with the definition of an active substance or ingredient when found in a compost feedstock. Furthermore, the residues themselves are not used to produce an organic crop since they occur as unintended additives that are not intentionally applied and do not perform nor interfere with any function in the agroecosystem.

Such materials would therefore be permitted for use as compost feedstock in organic crop production, but we are proposing that their use be restricted by the requirements that they be composted prior to application to soil, and that levels of any non-active residues detected in the raw plant or animal waste materials not increase in soil. Although certain synthetic substances resist decomposition or may persist if composting is incomplete, most residues present in these materials will decompose sufficiently when subjected to proper composting processes so as to be of negligible concern. A producer using these composted waste materials would be expected to use them in such a way that any persistent residues did not increase in the soil or accumulate to a level that caused measurable degradation to soil or water quality.

In paragraph (b)(5) of this section, we propose to permit the use of plant and animal waste materials that have been chemically altered (by the industrial process), and which are therefore considered active synthetic substances under section 2103(21) of the OFPA (7 U.S.C. 6502(21)), and can only be used if they appear on the National List of active synthetic substances allowed for use in organic farming. Unlike non-synthetic materials that may contain synthetic substances as non-active residues as permitted under paragraph (b)(4) of this section, this provision refers to materials derived from a process that chemically changes the material. Such materials might include leather meal, newspaper and kiln dust. Although this type of material would not have to be composted prior to application, a farmer using such substances in a system of organic farming would be expected to use them in such a way so that measurable degradation of soil or water quality did not occur.

Providing Mineral Nutrients—Section 205.7(c)

In section 205.7(c), we propose that certain mineral substances could be used as a means of fostering soil fertility by providing major nutrients or micronutrients. While use of proper rotations and recycled plant and animal wastes can often provide all the mineral nutrients required by crops, supplemental sources of these nutrients sometimes are needed. We have divided paragraph (c) into two subsections, which represent two broad types of mineral substances that may be used. The first two types consist of non-synthetic substances of low solubility and salinity, including mined substances such as lime, greensand and rock phosphate, and substances extracted from a plant or animal substance, such as liquid seaweed extracts, or from a mined mineral. Such substances historically have been accepted in organic production, and because they are not synthetic chemicals their use is consistent with the Act and with a system of organic farming and handling. It should be noted that, as we discuss in the supplemental information to the National List, we do not consider the extraction method to be consequential

when used to obtain substances from non-synthetic sources that are used in crop production. The extraction method alone would not cause the substance to be considered synthetic nor would we expect the resultant substances to have detrimental effects on biological and chemical interactions in the agroecosystem or cause any measurable degradation of soil or water quality. Fish emulsion products which contain synthetic stabilizers also would not be considered to be synthetic under this proposal because the stabilizers are not active synthetic ingredients, as discussed in the supplementary information to the National List.

The use of ash derived from the burning of a plant or animal material, such as wood or sunflower hulls, is also included in this category of non-synthetic mineral nutrient sources, except for certain instances. The use of ash would be prohibited if the ash is obtained from a practice prohibited under paragraphs (d)(2) or (3) of this section or if the ash appears on the National List of prohibited non-synthetic substances or if the material burned to create the ash had been treated or combined with a prohibited substance. It should be noted that a product of the combustion of an inorganic or mineral substance, such as sulfur or calcium carbonate, would be considered a synthetic substance under this proposal.

The second category of substances that could be used as sources of crop nutrients comprises any highly soluble or synthetic substance, which we propose may be added to soil to correct a known nutrient deficiency provided that its use does not result in measurable degradation of soil or water quality. These substances have historically been permitted by most organic certification programs we have reviewed, but with restrictions placed on their use. We would like to receive comment as to whether or not further restrictions on the use of any of these substances would be appropriate. Such restrictions might, for example, include designating this type of substance as representing a lower order of preference than substances included in paragraph (c)(1) of this section, or might include permitting their use only if necessary.

The three types of substances that would be covered by this second category include synthetic micronutrient substances, non-synthetic minerals that are highly soluble and have a high salt index, and cation balancing agents. Synthetic micronutrient minerals, such as soluble boron and chelated trace minerals (e.g. zinc, manganese, iron, and copper), may often be the most effective and practical choice for correcting soil deficiencies of these essential nutrients, and when properly used can be considered a beneficial practice in an organic soil management system. Their proposed use is restricted because, in addition to being synthetic substances, misuse or overuse of these substances can cause measurable degradation of soil or water quality. Synthetic micronutrients, which are minerals that we propose to consider as active ingredients in an organic system, are proposed in section 205.22(f) for inclusion on the National List as allowed synthetic crop production substances. However, the NOSB has recommended, and we agree, that it is not acceptable to use any of these substances in a way that takes advantage of their herbicidal nature which could result in measurable degradation of soil quality.

Other substances in this category include highly soluble and saline non-synthetic mined minerals, such as sodium (Chilean) nitrate or potassium nitrate (niter), which may be applied as a source of nitrogen, as well as potassium chloride (muriate of potash), langbeinite (sulfate of potash magnesia), and potassium sulfate, which are sometimes used to balance the soil cation nutrient content. Such substances are usually available as non-synthetic mined minerals, but are proposed to be restricted to cases of known nutrient deficiency because of their potential to degrade soil quality by contributing to soil salinization when excessively applied. While the Act makes no mention of these specific materials, section 2109(b)(2) of the OFPA (7 U.S.C. 6506(b)(2)) indicates that certain mineral nutrients and nitrogen should not be permitted if they are inconsistent with the applicable organic certification program. Soil amendment substances, such as langbeinite and potassium sulfate, used to balance cation nutrients are more widely considered to be acceptable adjuncts to an organic fertility management system, but are included in this category due to their high solubility and salinity, which could cause measurable degradation of soil quality if overused. As previously stated, a producer could use these substances only to correct a known nutrient deficiency.

As proposed and discussed in section 205.22(c) for allowed synthetic crop substances, certain cation balancing agents, such as potassium sulfate, may be available on the market either as non-synthetic mined minerals or as synthetic by-products of an industrial process. In cases where the origin of such a substance cannot be determined from readily available information, such as a label or labeling accompanying the product, the mineral is presumed to be synthetic and must appear on the National List as an allowed synthetic crop production substance before it may be used. This presumption would prevent the inadvertent application of a prohibited substance when the producer cannot readily determine the origin of a cation balancing agent.

Finally, we propose in paragraph (d) of this section to prohibit: the use of any fertilizers or commercially blended fertilizers that contain an active synthetic ingredient not allowed for use in crop production as provided for in section 205.22, or that contains an active prohibited substance; the use of ash obtained from the disposal of manure by burning; and burning as a means of disposal of manure or of crop residues produced on the farm. The first prohibition is proposed in accordance with section 2109(b)(1) of the OFPA (7 U.S.C. 6508(b)(1)) which requires that such a prohibition be established. The second and third prohibitions are proposed in agreement with the recommendations received from the NOSB. Burning these materials is not an appropriate method to use to recycle organic wastes and would not be considered as a proper method in a manuring program because burning removes the carbon from these wastes and thereby destroys the value of the materials for restoring soil organic content. Burning as a disposal method of these materials would therefore not be consistent with section 2114(b)(1) of the OFPA (7 U.S.C. 6513(b)(1)).

Selection and Use of Seeds, Seedlings and Planting Stock—Section 205.8

Section 2109(a) of the OFPA (7 U.S.C. 6508(a)) prohibits an organic producer from applying materials to or engaging in practices on seeds or seedlings that are inconsistent with the program established under the Act. Therefore, we are proposing that all seeds and planting stock, including annual seedlings and transplants, be organically produced. However, we recognize that at the present time this is impractical for many farms because organically produced seeds and planting stock are not widely commercially available; thus, we are proposing to permit exceptions to this requirement. It is our expectation that our requiring organic producers to use organic seed and planting stock except in limited circumstances will stimulate increased organic production of these essential farm inputs.

This proposal would permit the use of non-organically produced seeds and planting stock in producing an organic crop only when an equivalent organically produced variety is not commercially available. Planting stock includes, as we define it, any plant material used for plant reproduction, except seeds, and includes such materials as seedlings, cuttings, tubers, roots, slips, rhizomes, crowns, and plantlets derived through tissue culture techniques. Our proposal also would require that untreated planting stock be selected in preference to treated planting stock whenever there is a choice. With the exception of annual seedlings, most organic farm operations are not equipped to produce planting stock on the farm. In addition, certain planting stock, such as berry plants and tubers, are required by some State regulations to be treated with pesticides to prevent the introduction of plant diseases and other pests.

Although we have received some input in favor of prohibiting all uses of non-organically produced annual seedlings, we believe that the inclusion of such annual seedlings under this proposed rule is justified. The flexibility of allowing the use of non-organically produced annual seedlings would permit a farmer who lost a crop due to unanticipated or emergency circumstances shortly after transplanting to replant with a similar non-organically produced variety that was either treated or untreated. It should be noted that any annual seedlings that are produced and replanted on the same certified organic farm are considered transplants and could not be treated with prohibited substances, as proposed in section 205.8(c).

We are proposing that treated seeds could only be used if untreated seeds of the same variety are commercially unavailable or it is infeasible to obtain untreated seeds due to unanticipated or emergency circumstances. As discussed in the supplementary information for the National List, we are not proposing any seed treatment substance to be included on the National List because we are not proposing to allow a producer to use any seed treatment on a certified organic farm. Treated seeds under our proposal are not an active synthetic ingredient in the organic farming system and therefore are not required to appear on the National List. A producer could not use the treated seed in order to take advantage of the functional application of the seed treatment (this would be using the seed treatment as an active ingredient) or to use up treated seed remaining from the previous year if the appropriate untreated seed had since become available.

Because a full range of untreated non-organically produced crop seeds is widely available, the circumstances under which this exception would be justified are limited. These circumstances might include situations in which untreated seeds are not obtainable due, for example, to the fact that untreated seeds must sometimes be ordered well in advance of expected delivery or the fact that it may not be possible to order very small amounts of untreated seed of a new seed variety that a producer wishes to use on a trial basis. Emergency or unanticipated circumstances would include loss of a crop to flood or frost and untreated seeds were no longer available for replanting.

In section 205.8(b) we propose the requirements for how non-organically produced planting stock used as planting stock to produce a perennial crop could be sold, labeled or represented as organic. We propose this provision, as authorized by section 2107(a)(11) of the OFPA (7 U.S.C. 6506(a)(11)), in order to provide the means by which a nursery operation that operates in accordance with the Act and our proposed regulations in part 205 could purchase planting stock from a non-organic operation and later resell this stock as organically produced. This proposal would permit perennial planting stock to be represented as organic after it had been maintained under organic management on a certified organic farm for a period of at least one crop year. For example, a certified organic nursery operation could purchase non-organic dwarf apple rootstock and graft it with locally adapted varieties, then sell the resultant planting stock as organically produced after raising it organically for at least one year. We have proposed the one year period because we do not consider nursery stock that is held on a certified operation for less than a year before it is resold to have been organically produced. This provision is intended to stimulate a wider availability of key organic production inputs and thus make the ability to comply with the requirement that organic sources of planting stock be used, as set forth in proposed section 205.8(a), more feasible for organic producers.

In section 205.8(c), we propose to prohibit the use of transplants treated with a prohibited substance, as provided for in section 2109(c)(3) of the OFPA (7 U.S.C. 6508(c)(3)). It should be noted that we have defined a transplant as an annual seedling produced on an organic farm and transplanted to a field on the same farm operation to raise an organically produced crop. This definition also is consistent with section 2109(a) of the OFPA (7 U.S.C. 6508(a)) which prohibits farm producers from applying substances to seeds or seedlings that are contrary to or inconsistent with the proposed program. We do not propose to prohibit the use of seedlings or other planting stock that may have been treated with synthetic substances before reaching the organic farm since the treatment itself is not applied on, or intended to be used on, the organic farm.

While the OFPA mandates that the Secretary develop organic standards, it is silent on the issue of genetically engineered organisms (GEOs) and their products. However, the accompanying Senate report language states that "* * * as time goes on, various scientific breakthroughs, including biotechnology techniques, will require scrutiny for their application to organic production. The committee is concerned that production materials keep pace with our evolving knowledge of production systems."

In the time since the OFPA was passed, GEOs and their products have assumed a more significant role in agricultural production. The policy of the United States Government is that GEOs and their products should be regulated based on risk, not on how they are produced. The NOSB has recommended to the Secretary as a policy matter that GEOs should not be allowed in organic farming and handling.

Public comment is invited with respect to the use of GEOs or their products in a system of organic farming and handling. The USDA specifically invites comments on whether the use of GEOs or their products in organic farming and handling should be permitted, prohibited, or allowed on a case-by-case basis. Comments should detail the basis for the commenter's recommendations, including the agricultural, technical, or scientific factors involved. Comments should also identify the criteria that should be applied to case-by-case determinations.

Prevention and Control of Crop Pests, Weeds, and Diseases—Section 205.9

Section 2109(c) of the OFPA (7 U.S.C. 6508(c)) sets forth practices, such as the use of natural poisons that persist in the environment, or plastic mulches, that are prohibited or restricted in the control of pests, weeds and diseases in organic crops. Section 2118(c)(1)(B)(i) of the OFPA (7 U.S.C. 6517(c)(1)(B)(i)) lists the following categories of active synthetic substances (used for pest, weed, and disease control) that may be considered for exemption if they are

included on the National List: copper and sulfur compounds; toxins derived from bacteria; pheromones, soaps, horticultural oils, vitamins and minerals, and production aids including netting, tree wraps and seals, insect traps, and sticky barriers.

This section is designed to implement these two provisions of the Act and is consistent with the NOSB recommendations and public comments received by the NOSB, as well as being consistent with the proposed definition of a system of organic farming and handling. The structure of this section reflects an order of preference, in which the first choice is the use of management methods to prevent the occurrence of weeds, pests, and diseases, and the second choice is the use of methods and certain substances to control occurrences that may develop. This section is consistent with the definition of a system of organic farming and handling and with the NOSB recommendations because it requires that methods be chosen in preference to substances and that toxic substances, whether allowed synthetic substances or non-synthetic substances, be permitted only as a last resort.

In section 205.9(a), we propose to require that preventive measures be used by an organic producer for the prevention of pest, weed and disease problems in crops, including, but not limited to: crop rotations or other practices provided for by section 205.6; replenishment and maintenance of soil fertility, as proposed in section 205.7; appropriate sanitation measures, such as composting plant debris to remove disease vectors, weed seeds and pest habitat; cultural practices such as irrigation or timing of plantings to enhance crop health and avoid peak pest hatchings; and selection of species and varieties for traits such as disease resistance and suitability to local climate conditions.

When prevention is inadequate, sections 205.9(b) through (d) of our proposal would provide for a range of practices that could be used to control pest, weed, and disease problems. These methods are consistent with the section 2105(1) of the OFPA (7 U.S.C. 6504(1)) requirement that organic production not include the use of synthetic chemicals unless otherwise provided for in the Act. Although a preventive management approach, as exemplified in proposed section 205.9(a), would be preferable, we recognize that once pests or weeds are present they must be controlled in order to avoid economic or otherwise significant damage to crops. Pest control practices, as proposed in section 205.9(b), are: augmentation or introduction of predators or parasites, such as trichogramme wasps and ladybugs; mechanical or physical controls, such as pest barriers or traps; and use of non-synthetic and non-toxic controls, such as repellants or lures. All of these methods are fully consistent with a system of organic farming, as defined in section 205.2, and do not entail the use of any active synthetic substance.

Practices proposed in section 205.9(c) that could be used for weed control when preventive measures are not effective are: mulching with fully biodegradable materials, which include plant-derived matter such as straw, bark, leaves and paper, but do not include plastics that disintegrate but do not biodegrade; livestock grazing to reduce weed competition; any mechanical or physical controls, such as weeding and cultivation techniques; and, in accordance with section 2109(c)(2) of the OFPA (7 U.S.C. 6508(c)(2)), plastic or other synthetic mulches provided that they are removed from the field at the end of the growing or harvest season. It should be noted that the use of cultivation to control weeds under this proposal also would have to be consistent with the provisions proposed in section 205.7(a) for protecting soil quality.

In paragraph (d) of this section, we propose that practices that are intended to prevent the spread of diseases, such as steam sterilization to eliminate disease organisms from greenhouse growing media, could be used if disease preventive measures are not effective. Plant diseases, once they occur, are difficult to control with existing organic technologies, although some success has been demonstrated with the use of compost preparations that actively suppress plant pathogens, a practice that would be included in this provision.

In paragraph (e) of this section, we are proposing to permit the use of certain methods and substances to control pests, weeds, and diseases in an organic farming system if the practices proposed in paragraphs (a) through (d) are not effective, provided that their use does not result in measurable degradation of soil or water quality. Although the use of the proposed substances is often necessary, the use of these substances may pose concerns for soil or water quality when overused. Therefore, a producer who used any substance proposed for use in paragraph (e) of this section would have to describe in the organic plan how use of the substance was not resulting in measurable degradation of soil or water quality.

Botanical pesticides are specifically addressed in section 2119(k)(4) of the OFPA (7 U.S.C. 6518(k)(4)) as requiring a special review to determine whether any of them should be placed on the National List of prohibited natural substances. This review was undertaken by the NOSB at its meeting in Rohnert Park, California, in October, 1994. Considerable public input also has been received concerning the use of botanical pesticides in organic production. Some public input expressed concern as to whether organic farmers should be permitted to use any pesticide sprays, even if they are non-synthetic. Many organic practitioners who acknowledged the need to use botanical pesticides stated that they used them only after more ecologically compatible alternatives proved to be unsuccessful. Our review of existing organic programs and public input also indicated that non-synthetic substances used as biological controls may pose concerns for soil and water quality if used indiscriminately. Concerns also have been expressed that the use of these substances may impact biological and chemical interactions in the agroecosystem, including the possibility of inducing accelerated resistance in pest populations.

While many producers may not need to use botanical pesticides, prohibiting these materials entirely would severely restrict the availability of a wide range of organically produced crops. After concluding its technical review process, the NOSB recommended that neem, pyrethrums, rotenone, ryania, and sabadilla be allowed for use in organic agriculture. We agree with the NOSB recommendations on the basis of the aforementioned public input, and therefore provide in section 205.9(e) for the use of botanical pesticides under certain circumstances, provided that the botanical substance is not included as a prohibited non-synthetic (natural) substance on the National List.

Our proposal also would allow the use of any synthetic weed, pest, or disease control substance that is included on the National List as a crop production substance, such as dormant oils, vitamin-D based rodenticides, pheromones, and copper or sulfur fungicides. In addition, non-synthetic, biologically based materials, such as bacterial toxins, that are used to kill pests, weeds or plant diseases also would be included under this paragraph of our proposal.

This paragraph of section 205.9 also would permit the use of allowed synthetic substances for the purpose of cotton defoliation. We have determined that this provision should be proposed after reviewing testimony from organic cotton producers and scientific evidence that the substances in question, which are mineral compounds having a high salt index and solubility (and usually synthetically derived) are ordinarily not used in amounts that could cause concern for adverse impacts on soil fertility.

Prohibited Pest, Weed and Disease Control Practices—Section 205.9(f)

In section 205.9(f), we propose to prohibit the use of a synthetic carbon-based compound that kills insects, weeds, diseases or other pests through a cytotoxic mode of ection. We have defined the phrase cytotoxic mode of action to mean having a toxic effect by means of interference with normal cell functions. We believe this proposal is appropriate because section 2116 (c)(1)(B)(i) of the OFPA (7 U.S.C. 6517(c)(1)(B)(i)) does not delineate this category of substances as a category of active synthetic substances that could be considered for inclusion on the National List of permitted synthetic substances. In addition, these substances are prohibited under all existing State, private and international organic programs that we reviewed, and public input received from organic producers and other members of the public has raised frequent concerns that such substances potentially might be allowed for use in organic production. We therefore have determined that the use of any substance in this category would be inconsistent with a system of organic farming, as defined under proposed section 205.2, and with the organic certification program established under the Act.

Wild Crop Harvesting—Section 205.11

Wild crops are generally not produced and managed on a farming operation, but rather are harvested from public or private lands; therefore, most of the farming and management practices and materials described in this proposal, such as soil management practices or weed, pest and disease control, would not be applicable. However, because wild crops are addressed in section 2114(f) of the OFPA (7 U.S.C. 6513(f)) and because they are used extensively as ingredients in many organic products, we are proposing in this section provisions for the harvesting of organic wild crops. We note here that if management practices such as cultivation or fertilization are undertaken prior to the harvest of a wild crop, the wild crop would be considered as a managed agricultural product and would be subject instead to the relevant requirements proposed for organic crop production. This idea is reflected in our proposed definition of a wild crop as being harvested from an area of land that is not maintained under cultivation or other agricultural management. It should be noted that this section would apply only to crops harvested from the wild, and that game animals harvested from the wild are not addressed in this proposal.

As required under section 2105(2) of the OFPA (7 U.S.C. 6504(2)) and section 2114(f)(2) of the OFPA (7 U.S.C. 6513(f)(2)), we propose in section 205.11(a) that the land from which wild crops are harvested for sale as organic must have had no prohibited substances applied to it for the three years immediately preceding the harvest of the wild crop and any time thereafter. Our proposal requires that wild crop harvesting be done in a manner that would not be destructive to the environment and which would sustain the growth and production of the wild crop, as required under section 2114(f)(3) of the OFPA (7 U.S.C. 6513(f)(3)).

Organic Livestock Production Requirements

Section 2110 of the OFPA (7 U.S.C. 6509) sets forth certain requirements and prohibitions for organic animal production. It requires the Secretary to hold public hearings to guide the implementation of standards for livestock products. It also states that the NOSB shall recommend additional standards for livestock health care to ensure that such livestock is organically produced. Accordingly, the Secretary held public hearings in Washington, DC, on January 27–28, 1994; Rosemont, IL, on February 10, 1994; Denver, CO, on February 24, 1994; and Sacramento, CA, on March 22, 1994 on this matter. Additionally, the NOSB provided recommendations to the Secretary on August 1, 1994 and subsequently, as required in the Act. We have developed the provisions proposed in sections 205.12 through 205.15 in accordance with section 2110 of the OFPA (7 U.S.C. 6509), the input received at the public hearings, and the NOSB recommendations.

Origin of Livestock—Section 205.12

Livestock as defined in section 2103(11) of the OFPA (7 U.S.C. 6502(11)) are cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fish used for food, wild or domesticated game, or other nonplant life. Organically raised livestock should be the offspring of organically raised parents and live under organic management beginning with their first day of life. We propose in paragraph (a) of this section that livestock raised on a certified organic farm for the production of meat, milk, eggs, or other products to be sold, labeled, or represented as organically produced be under organic management from birth or hatching, or be the offspring of parents that have been under organic management, except in certain cases. These exceptions are based on the provisions of section 2110 of the OFPA (7 U.S.C. 6509) that provides that breeder stock, poultry from which meat or eggs are derived, and dairy animals from which milk and milk products are derived, can be purchased from non-organic sources and subsequently raised as organic livestock.

Paragraphs (a)(1) through (3) of this section are proposed in accordance with section 2110 of the OFPA (7 U.S.C. 6509). Paragraph (a)(1) of this section would permit the purchase of livestock from any source for use as breeder stock of organic livestock, except that a gestating mammal would have to be brought onto a certified facility prior to the last third of pregnancy. Paragraph (a)(2) of this section would permit dairy animals from which milk or milk products will be sold, represented, or labeled as organically produced to be brought onto a certified facility beginning no later than 12-months prior to the production of milk or milk products that are to be sold, represented, or labeled as organic. Paragraph (a)(3) of this section would permit the purchase of poultry from any source for use as organic slaughter stock (meat) or for organic egg production provided that the poultry are brought onto a certified facility no later than the second day of life.

We have proposed other provisions that cover what the practices are for bringing other types of livestock, such as bees, fish, and mammalian livestock designated as organic slaughter stock, into an organic operation to produce such products as fiber, honey, meat and caviar. These provisions are based on public input received at the USDA livestock hearings, NOSB meetings and public response to NOSB draft recommendations.

In section 205.12(a)(4) we propose that livestock may be designated for the production of non-edible organic products, such as hides, feathers, fur and fiber, if the animal is raised in compliance with one of the other provisions proposed in paragraph (a) of this section, as appropriate to the species. Additionally, we propose that livestock not raised under organic management from birth or hatching,

such as male breeder stock purchased from non-organic sources and subsequently raised as organic livestock for the production of certain non-edible products, shall have been maintained under organic management no less than 90 days prior to harvest of the organic product. For example, wool from a buck sheep designated as organic breeder stock in accordance with paragraph (a)(1) of this section could be sold or represented as organically produced only after the buck had been maintained under organic management for at least 90 days prior to the time of shearing. This time period is proposed in order to ensure that non-edible products, such as wool or hides, from breeder animals brought under organic management could not be represented as organically produced until the producer had included the livestock in the overall farm management system.

In section 205.12(a)(5) we are proposing how livestock types such as fish, crustaceans, mammalian livestock designated as organic slaughter stock, and other species not addressed in the previous four provisions, could be introduced onto an organic operation for the production of edible organic products.

We specifically propose in paragraph (a)(5)(i) that bees may be brought onto a certified facility at any stage of life. We propose this because we determined that the production of honey depends on the nature of the forage available to the bees at the time of honey flow. Additionally, because of the ephemeral life cycle of individual bees, previous locations of the hive would be inconsequential to the honey harvested at the certified organic facility.

We propose in paragraph (a)(5)(ii) of this section that, if necessary, mammalian livestock from any source could be used as organic slaughter stock for the production of meat if it is brought onto a certified facility no later than the 15th day of life. This proposed provision would allow producers a reasonable length of time to integrate animals from non-organic sources into their organic operation, while still ensuring that the animal is brought onto the certified facility early enough in life to develop primarily and substantially under organic care. Allowing a mammal up to 15 days to be introduced onto the certified facility would provide adequate time for the young stock to receive its mother's first milk, gain strength and be transported over any distance to the organic farm.

As noted, a producer could use non-organic sources of mammalian livestock to be designated as organic slaughter stock only if the use of non-organic livestock is necessary. The determination of necessity would be based on site-specific conditions that would be described by a producer in an organic plan, or updates to an organic plan, and reviewed by the certifying agent. Examples of site specific conditions that may serve as a basis for supporting the determination to purchase livestock from non-organic sources are: commercial unavailability of livestock from organic sources, and unanticipated or emergency circumstances that prevent the purchase of commercially available organic livestock.

We are requesting public comment as to the conditions under which non-organic mammalian livestock may be used as organic slaughter stock. For example, we would like public comment as to whether specific conditions, such as commercial unavailability of organic livestock or an emergency situation, should be a prerequisite for allowing mammalian livestock of non-organic origin to be designated as organic slaughter stock and, if so, what these conditions should be. We also request comment as to whether we should provide for the use of mammalian livestock of non-organic origin in the production of organic meat.

We propose in paragraph (a)(5)(iii) that all livestock types other than those described in paragraphs (a)(1) through (5)(ii) may be brought onto a certified facility no later than the earliest commercially available stage of life. Other livestock types represent a wide range of life spans and levels of commercial availability, and there is no basis for proposing specific time limits for their introduction into an organic facility. Sufficient time is required to raise the young of any such species from its earliest commercially available stage to reach marketable size; this time period will ensure that the stock is raised primarily under organic management.

Prohibited Practices for Origin of Livestock—Section 205.12(b)

In section 205.12(b)(1), we propose that producers be prohibited from moving animals in and out of organic care for the purpose of circumventing the proposed requirements. This provision addresses our concerns that the leeway provided by proposed paragraph (a)(1) of this section for the purchase of non-organic breeder stock might be misused by a producer who might, for example, repeatedly bring a pregnant mammal onto a certified farm just prior to the last third of pregnancy, remove the mammal from organic care after the offspring is born, and then reintroduce her to organic management again just before the last third of the next pregnancy. Paragraph (b)(2) of this section is consistent with section 2110(c)(3) of the OFPA (7 U.S.C. 6509 (c)(3)), which prohibits the use of hormones to stimulate the growth or production of organically produced livestock. In paragraph (b)(2) of this section we propose that the use of hormones for any breeding purposes be prohibited.

Livestock Feed—Section 205.13

Organically produced feed is one of the foundations of organic livestock management. Section 2110(c)(1) of the OFPA (7 U.S.C. 6509(c)(1)) requires producers of organic livestock to provide organically produced feed that meets the requirements of the Act to their livestock. Therefore, we propose in paragraph (a) of this section that the total feed ration for organically raised livestock be organically produced. This requirement would include all pasture or rangeland on which the livestock are grazed. Forage from rangeland would be considered a wild crop and, thus, would be considered to be organically produced if it complied with the proposed wild crop harvesting requirements proposed in section 205.11. Purchased feed supplements, such as soybean protein concentrates, would have to be produced in compliance with the Act and the regulations in subpart B to be considered organically produced.

During the livestock hearings conducted by USDA, producers expressed concerns that unless an allowance was provided for non-organic animal feed, the organic status of livestock could be jeopardized by unavoidable circumstances that would cause or prevent livestock from consuming non-organic feed. Some of the circumstances cited by the producers were poor growing conditions, severe weather, commercial unavailability and fence jumping. We believe that these concerns are valid and, therefore, propose in paragraph (a)(1)(i) through (iv) of this section to permit, if necessary, that livestock under organic management be allowed to receive other than a total feed ration that is organically produced. We believe that our additional proposed provisions are consistent with a system of organic farming and handling and that they will not result in a compromise of the integrity of organic products.

We propose in paragraph (a)(1)(i) of this section that an animal be allowed to receive up to twenty percent non-organic feed as part of its total feed ration in a given year. Paragraph (a)(1)(ii) of this section proposes that in emergency situations which affect the commercial availability of organic feed, such as weather related disasters, the Administrator could authorize the use of non-organic feed greater than the twenty percent non-organic feed allowed in paragraph (a)(1)(i) of this section.

As noted, a producer could use non-organic sources of feed if the use of non-organic feed is necessary. As previously described in regard to the use of non-organic sources of mammalian livestock to be designated as organic slaughter stock, determination of necessity would be based on site-specific conditions that would be described by a producer in an organic plan, or updates to an organic plan, and reviewed by the certifying agent.

We are requesting public comment as to conditions under which non-organic feed may be used. For example, we would like public comment as to whether specific conditions, such as commercial unavailability of organic feed, regional environmental factors, or an unanticipated situation, should be a prerequisite for allowing non-organic feed and, if so, what these conditions should be. We also request comment as to whether we should provide for the use of feed of non-organic origin in the production of organic livestock on certified organic farms.

In paragraph (a)(1)(iii) of this section, we propose an exemption that would allow an entire, distinct dairy herd, that is converted to organic management for the first time, to be fed non-organic feed up to 90 days prior to the production of milk or milk products labeled, sold, or represented as organic. In testimony received at the USDA public hearings, milk producers expressed concern that purchasing organic feed for twelve months prior to selling the milk as organic could hinder or prevent a producer from deciding to make the transition from non-organic to organic production. They further explained that the twelve-month period for feeding organic feed grown on the farm could not be initiated until after the farm was certified as organic, which might be three years after the producer first decided to make the transition to organic production so as to comply with section 2105(2) of the OFPA (7 U.S.C. 6504(2)) regarding prohibited substances applied to the land.

Our proposal would permit use of this exception only one time for any given discrete dairy herd. This exception applies only to feed; producers still would have to comply with all other organic livestock management requirements for the 12-month period prior to selling the milk or milk products from these animals as organic, as required in section 2110(e)(2) of the OFPA (7 U.S.C. 6509(e)(2)).

We propose in section 205.13(a)(1)(iv) that bees from which organic honey and other products are harvested be provided with access to enough organically managed forage to provide them with a predominant portion of their needs. The NOSB received many comments about organic honey production and considered several suggestions without making a recommendation to the Secretary. One suggestion considered by the NOSB was that the producers monitor their honey bees to ensure that only organic forage was accessed by the bees; honey producers maintain that it is infeasible to monitor and control all bee forage areas. Another suggestion considered was to require the hive to be surrounded by organic forage areas for the total radius of the distance for which bees are known to fly. However, this radius may vary and is impractical in most regions because the estimated two mile radius that bees are known to cover would entail more than 12.5 square miles of continuous organic forage area surrounding each hive.

In creating the proposed provision for bee forage areas, we considered the applicability of the proposed provision in paragraph (a)(1)(i) of this section for twenty percent non-organic feed. However, we decided that it would not be possible for a producer or certifier to ascertain the exact forage percentages for bees. We expect that producers of organic honey would meet our proposed requirement that bee forage areas be predominantly organic by actively managing on-farm plantings, including crops, buffer zones, biological islands, roadsides or other available areas during honey flows. A producer also could satisfy this provision by moving hives to other organically managed areas to take advantage of organic off-farm acreage.

The NOSB received public comments regarding the addition of vitamin and mineral supplements to an organic feed ration to prevent deficiency diseases. In their deliberations, the NOSB recognized that producers cannot easily determine whether an animal's nutritional requirements are being satisfied solely by the organically grown feed provided to them, especially in the case of grazing animals.

The NOSB subsequently recommended that organic feed be allowed to be supplemented with vitamins and minerals, as needed, to ensure an animal's health. Deficiency diseases, such as milk fever, may not be recognized until an animal becomes debilitated; moreover, allowing any animal to become weakened because of vitamin and mineral deficiencies may lead to more serious health problems. Accordingly, we propose in paragraph (a)(2) of this section that the use of non-agricultural products as vitamin and mineral supplements to satisfy the health requirements of livestock be permitted, provided that any synthetic supplement used in organic livestock production is included as an allowed synthetic on the National list in section 205.24. In accordance with section 2118(c)(1) of the OFPA (7 U.S.C. 6517(c)(1)), trace minerals and dietary supplements are included in proposed section 205.24 as synthetic substances permitted for use in organic livestock production.

We propose in section 205.13(a)(3) that producers be allowed to use synthetic amino acid additives as necessary for the purpose of fulfilling the nutritional requirements of the livestock, if the synthetic amino acid used is included as an allowed synthetic on the National list in section 205.24. During the USDA public hearings and NOSB meetings, organic livestock producers stated that it is sometimes necessary to add amino acid (protein) additives to feed rations to ensure optimal health and growth. They explained that producers cannot control, even by diversifying the feed ration, the quantity and type of protein available in organic feedstuffs. For example, the lysine content of many feedstuffs is known to be inadequate.

Tests to analyze the essential amino acid content in feed are inexpensive, and the National Research Council's Committee on Animal Nutrition publishes nutrient requirements for domestic animals, including requirements for essential amino acids, where applicable. These levels could be used as guidelines for producers and certifying agents to ensure that the amino acids were not used at levels high enough to artificially stimulate growth or production in the animal, which is proposed to be prohibited under section 205.13(b)(2). An analysis of feed showing that it required use of amino acid supplementation would constitute a site-specific condition that could be used to demonstrate that its use was necessary to fulfill the nutritional requirement of the livestock.

Prohibited Livestock Feeding Practices—Section 205.13(b)

Sections 2110(c)(2) and (3) of the OFPA (7 U.S.C. 6509(c)(2) and (3)) prohibit the use of plastic pellets for roughage; manure refeeding; feed formulas containing urea; and the use of

growth promoters and hormones, including antibiotics and synthetic trace elements to stimulate growth or production. We therefore propose in paragraphs (b)(1) through (3) of this section that these materials and practices be prohibited. It should be noted that this proposal differs from the language given in the Act for the purpose of clarifying the intent of this prohibition. This clarification is necessary because synthetic trace elements and other feed supplements, which are stated in the Act as prohibited when used to stimulate livestock growth or production, are proposed to be permitted, as allowed by the Act, in section 205.13(a) when used only to provide essential nutritional elements to supplement livestock feed. In accordance with section 2118(c)(1) of the OFPA (7 U.S.C. 6517(c)(1)), trace minerals and nutritional supplements are proposed to be included as synthetic substances permitted for use in organic livestock production in section 205.24 of the proposed National List.

Livestock Health Care—Section 205.14

In developing our proposed organic livestock health care requirements, we considered information from a number of sources. This research was necessary because the Act does not provide affirmative requirements for the health care of livestock in an organic operation. The primary sources of information we used were the NOSB recommendations, provided in accordance with section 2110(d)(2) of the OFPA (7 U.S.C. 6509(d)(2)), and public input received during the USDA organic livestock hearings held in accordance with section 2110(g) of the OFPA (7 U.S.C. 6509(g)). We also reviewed comments from the public provided during input sessions at NOSB meetings and in response to NOSB draft recommendations. And, finally, we reviewed the livestock production standards of the existing State and private certification organizations in an effort to learn as much as possible about the practices currently being used.

As a result of the research we did, we determined that health care in organic livestock production should be based on the prevention of diseases and should include the provisions of adequate feed, living conditions and attentive care so as to ensure a healthful living environment and prevent the occurrence of disease and injury.

We propose in paragraph (a) that the practice for maintaining livestock health would be a preventive management system. Preventive management includes providing diverse feedstuffs while minimizing conditions favorable to disease, illness, injury and parasites. Techniques such as providing isolation facilities for sick animals, rotating pastures, and introducing species that disrupt parasite reproduction would be appropriate for a certified operation. Sanitation practices, such as the use of antiseptics to cleanse wounds, and the removal of manure, spilled fodder, and soiled bedding material, would be suitable practices to prevent the occurrence and spread of infectious organisms.

We further propose to permit the use of veterinary biologics, such as vaccines and inoculants, as well as vitamins and minerals, to effectively prevent disease or injury. In fact, Federal and State regulations may require the use of vaccines and inoculants, and organic livestock producers would be expected to comply with any applicable regulations regarding mandatory vaccinations. Additionally, the practice of breeding animals for adaptability to site-specific conditions, including resistance to local diseases and parasites, also would play an important role in a system of organic farming.

The OFPA does not contain affirmative requirements for administering animal drugs in the event of illness or injury; section 2110(d)(1) of the OFPA (7 U.S.C. 6509(d)(1)) prohibits administering medications, other than vaccinations, in the absences of illness. This suggests that the use of medications in organic livestock production may be permitted. In determining the appropriate use of medications in organic livestock production, we reviewed the NOSB recommendations, public input received at NOSB meetings, livestock hearings testimony, and existing State and private standards. The result of this research indicated that there is little agreement about the kinds of medications that are appropriate in organic livestock production and how they should be used. There was agreement, however, that even with the best preventive management, animals sometimes become ill, injured or infested with parasites and that producers should be provided with a means of administering medications to sick or injured animals. We have used the term *animal drug* to include three of the terms used in the Act: "medication, antibiotic and parasiticide", since animal drug is the term commonly used by the Center for Veterinary Medicine of the FDA in referring to these substances.

In section 205.14(b) we propose that, in a situation where the preventive measures provided for in paragraph (a) were not effective in maintaining livestock health, animal drugs, except as prohibited in paragraph (d) of this section, may be administered to organic livestock and that they may be used at any life stage; restrictions are provided only for mammals and other stock intended for slaughter stock.

Our research indicated that it is appropriate in organic livestock health care to administer parasiticides either internally or externally to any animal at any life-stage, provided that the producer complies with the prohibition against routine use of a synthetic internal parasiticide, set forth in section 2110(d)(1)(B) of the OFPA (7 U.S.C. 6509(d)(1)(B)). Routine use is defined in section 205.2 as administering a parasiticide to an animal without cause. While some public comment favored prohibiting the use of internal parasiticides and the NOSB recommended a restricted use of parasiticides, many producers stated that parasites can threaten animal health at any life-stage and that the use of parasiticides is essential in certain regions of the country. Even under highly controlled situations, some parasites endemic to certain regions can be carried by wild birds, water, or feed. Concerns for the overall health of an animal would indicate that parasiticides be used as soon as possible after determining the presence of parasites at a level that would affect the health of the infected livestock.

Our review of information concerning organic livestock health care revealed a good deal of difference in the use of antibiotics. We found that most of the concern about this drug use in animals was with the subtherapeutic use of antibiotics, which is prohibited by the Act. The NOSB recommended prohibiting the use of antibiotics in the production of organic slaughter stock and restricting the use of antibiotics for other livestock. Public comment suggested that the health of organic livestock might benefit from receiving antibiotics. We would like to solicit public comment on the use of animal drugs in the production of organic livestock, including organic slaughter stock.

Based on the above reasons and after careful consideration of the information available, we propose to restrict the use of animal drugs in animals intended as organic slaughter stock. We propose in sections 205.14(b)(1) and (2) that animal drugs, other than those administered topically and parasiticides, could be administered to mammals intended as slaughter stock only during the first 21 days of life, and to all other slaughter stock only during the first 7 days after arrival at the certified facility. Animal drugs administered topically and

parasiticides could be administered at any time of life.

We propose to permit this limited allowance for the use of animal drugs in slaughter stock due to the concerns about the vulnerability of newly born or hatched livestock brought onto a certified operation from a non-organic source. Newborn animals are particularly vulnerable to diseases, such as diarrhea and pneumonia, during the time immediately following transport, as a result of the stress of adapting to a new environment. Allowing the use of animal drugs would be an appropriate safety net for young organic livestock during their first week of organic management. Since mammals may be as old as 15 days of age when brought onto an organic operation, as proposed in section 205.12(a)(5)(ii) dealing with the sourcing of animals, mammals could receive animal drugs up to the 21st day of life, or 7 days after the last possible date after arrival at the certified facility. This is consistent with the 7-day time period in which animal drugs may be administered to non-mammals after their arrivals onto an organic facility. We believe that restricting the use of animal drugs in organic slaughter stock production is consistent with a system of organic farming and handling which uses prevention methods, rather than substances, to optimize health.

Proposed section 205.14(c) restricts the sale of products from organic livestock to which an animal drug has been administered. We propose in this paragraph that the products from treated livestock could be obtained and thereafter sold, labeled, or represented as organic only after the producer has determined that the animal had fully recovered from the conditions being treated, but in no case sooner than the applicable withdrawal period stated on the label or labeling of the animal drug or as required by the veterinarian. This proposal was developed after a lengthy and extensive review of significant amounts of public input. Also, the NOSB submitted to the Secretary a subsequent addenda to their recommendations on the use of antibiotics and parasiticides in livestock used to produce milk and eggs, which stated:

> Just as soil health must be restored after the use of restricted materials, animals whose health has been threatened by illness or infection must be allowed adequate time to recuperate after administration of an antibiotic or parasiticide. The restoration of health is effected through adequate recovery management. Products from both restored soil and restored animals may then be labeled as organically produced.

In determining when animal health has been restored, a producer might observe the somatic cell counts in milk, the resumption of normal weight gain in a young animal, or an increase of egg production in a laying flock. Under this proposal, an organic producer might reasonably decide to withhold a product from the organic market beyond the withdrawal period specified on the label based on observations of the animal's health.

Some of the input received by the NOSB and the USDA requested extending FDA withdrawal period after internally administering animal drugs, particularly antibiotics or parasiticides, to organic livestock. The extended withdrawal periods suggested by the public input ranged from twice the FDA withdrawal time to a minimum of 90 days. However, our proposal does not make such a requirement because an extended withholding time does not further the goals of a system of organic farming and handling. We wish to point out that under our proposal, animals used for breeding or as a source of other products could later be sold as organic slaughter stock only if the animal complied with all of the other requirements for organic slaughter stock.

Prohibited Livestock Health Care Practices—Section 205.14(d)

Section 2110(d) of the OFPA (7 U.S.C. 6509(d)) prohibits producers from using subtherapeutic doses of antibiotics, synthetic internal parasiticides on a routine basis, or medications, other than vaccinations, in the absence of illness. Accordingly, we propose in paragraph (d) of this section to prohibit administering any medication, other than vaccinations, in the absence of illness; the routine use of synthetic internal parasiticides; and the subtherapeutic use of antibiotics.

Livestock Living Conditions and Manure Management—Section 205.15

Living conditions play a significant role in livestock health and production. At the USDA hearings and NOSB meetings, extensive testimony was received addressing the issue of livestock living conditions. As provided for under section 2110(d)(2) of the OFPA (7 U.S.C. 6509(d)(2)), the NOSB developed specific recommendations for additional standards for livestock living conditions, including manure management. This proposal is consistent with the NOSB recommendations.

In section 205.15(a), we propose to require that the following living conditions be provided, as appropriate to the species, to promote livestock health: protection from the elements; space for movement; clean and dry living conditions; and appropriate access to the outdoors, food and clean water. These conditions would provide a healthful environment to raise organically produced livestock and reduce or eliminate the need to administer animal drugs.

We propose in section 205.15(b) that, if necessary, animals could be maintained under conditions that restrict the available space for movement or access to outdoors, provided that other living conditions are adequate to maintain the animals' health without the use of animal drugs, except as provided in 205.14(b). In developing this proposal, we considered public input regarding the effects of climate, geographical location and physical surroundings on the ability of animals to have access to the outdoors. The premise that organic management is soil based and that animals should be allowed, as appropriate, access to the soil was considered in balance with animal health issues, such as prevention of exposure to harmful organisms carried by wild animals and the need to keep animals indoors during extended periods of inclement weather. The flexibility provided by the provisions of 205.15(b) would allow operations without facilities for outdoor access to be certified for organic livestock production and also would permit animals to be confined during critical periods such as farrowing.

As noted, the producer could maintain animals under conditions that restrict the available space for movement or access to outside only if the practice is appropriate and necessary. As previously discussed in regards to the use of non-organic sources of livestock feed and mammalian livestock designated as organic slaughter stock, the determination of necessity would be based on site-specific conditions that would be described by the producer in an organic plan, or updates to an organic plan, and reviewed and evaluated by the certifying agent.

We are requesting public comment as to the conditions under which animals may be maintained so as to restrict the available space for movement or access to outdoors. Examples of site-specific conditions which might serve as a basis for maintaining animals under conditions that restrict the available space for movement or access to outdoors are: emergency or unanticipated circumstances and site-specific soil, climate, animal health, or other environmental factors. We also

request comment as to whether we should allow practices that restrict the available space for movement or access to outdoors.

Manure Management—Section 205.15(c)

In section 205.15(c), we propose that in any area where livestock are housed, pastured or penned, manure would have to be managed in a way that does not cause measurable degradation of soil quality; does not significantly contribute to contamination of water by nitrates and bacteria, including human pathogens; optimizes nutrient recycling; and does not include burning or any practice inconsistent with section 205.14(a) of this subpart which addresses prevention of livestock health problems. These provisions are consistent with sections 2114(b)(1) and (2) of the OFPA (7 U.S.C. 6513(b)(1) and (2)) that address proper manuring and methods for applying livestock manure to soil. The proper management of manure requires that it be used in a way that optimizes nutrient recycling to be consistent with a system of organic farming. As discussed in the supplementary information for proposed section 205.7(d)(3), the disposal of manure by burning cannot be considered proper manuring.

Organic Handling Requirements

Product Composition—Section 205.16

This section of our proposal addresses the requirements and prohibitions for ingredients used in products that would be permitted to use the word organic in some manner on a label or labeling of an agricultural product. These provisions are in accordance with: section 2106(a)(1)(A) of the OFPA (7 U.S.C. 6505(a)(1)(A)) which requires that any product that is sold, labeled, or represented as organic must be produced and handled in accordance with the Act; section 2111(a)(4) of the OFPA (7 U.S.C. 6510(a)(4)) which provides for an organic product to contain up to 5 percent by total weight of the finished product, exclusive of water and salt, of non-organically produced ingredients that are on the National List; and sections 2106(c)(1) and (2) of the OFPA (7 U.S.C. 6505(c)(1) and (2)) which permit certain exemptions for agricultural products that contain more than 5 percent non-organically produced ingredients.

In paragraph (a)(1) of this section, we propose that an agricultural product, including a raw agricultural product, sold, labeled, or represented as organic, contain only organically produced agricultural ingredients, exclusive of water or salt, except in one circumstance. This exception is based on section 2111(a)(4) of the OFPA (7 U.S.C. 6510(a)(4)) which allows an organically produced agricultural product to contain up to 5 percent non-organically produced ingredients that are on the National List. Accordingly, we propose in paragraphs (a)(1)(i) and (ii) of this section that a product sold, labeled, or represented as organic could contain non-organically produced agricultural products and non-agricultural ingredients that are included on the National List, up to 5 percent of the total weight of the finished product, exclusive of water or salt. As proposed and discussed in the supplementary information to the National List section 205.27 for non-organic agricultural products, all non-organically produced agricultural products are proposed to be included on the National List, and therefore would be permitted for use in an organic product in accordance with section 2111(a)(4) of the OFPA (7 U.S.C. 6510(a)(4)).

We propose in paragraph (a)(2) of this section the order of preference by which all ingredients used in an organic product would have to be selected. We have determined that the provisions of paragraph (a)(2) of this section are needed to ensure the integrity of products sold, labeled, or represented as organic and to ensure that organic products are handled in accordance with a system of organic farming and handling, as defined in proposed section 205.2 of subpart A. Accordingly, we propose in paragraph (a)(2)(i) that a handler would have to select commercially available organically produced agricultural products as ingredients in preference to non-organic agricultural products and non-agricultural ingredients. For example, in a bread that contains 97 percent organically produced flour and also sesame seeds, a handler would have to use organically produced sesame seeds whenever they were commercially available.

We propose in paragraph (a)(2)(ii) that a handler would have to choose a commercially available non-organically produced agricultural product as an ingredient in preference to a non-agricultural ingredient. For example, a thickener such as corn starch or arrowroot, if commercially available, would need to be selected as an ingredient in a salad dressing in preference to a non-agricultural ingredient, such as disodium phosphate. Paragraphs (i) and (ii) of this section together would direct a handler toward the use of an organically produced agricultural product whenever possible for a given function in the product. The provisions of these two paragraphs are consistent with the NOSB recommendation that organic ingredients be used in a multi-ingredient product to the extent possible.

We propose in paragraph (a)(2)(iii) of this section that a non-organically produced agricultural product or non-agricultural ingredient that is extracted without the use of a synthetic volatile solvent, or which does not contain propylene glycol as a carrier, if commercially available, must be used as an ingredient in preference to a non-organically produced agricultural product or non-agricultural ingredient that is extracted with a synthetic volatile solvent or which contains propylene glycol as a carrier.

Although the NOSB recommended that substances extracted with a synthetic volatile solvent (such as hexane) or that contain propylene glycol as a carrier be prohibited for use in organic products, we believe our proposal to allow their use only when alternative substances or products are not commercially available does not affect the integrity of organically produced products.

Section 2106(c)(1) of the OFPA (7 U.S.C. 6505(c)(1)) authorizes products that contain at least 50 percent (but less than 95 percent) organically produced ingredients to use the word organic on the principal display panel of the product to describe those ingredients that are organically produced. Accordingly, the Secretary, in consultation with the NOSB and the Secretary of Health and Human Services, is proposing in subpart C of this part to allow the statement made with certain organic ingredients to appear on the principal display panel of this type of product.

We propose in paragraph (b) the composition requirements for a product labeled as made with certain organic ingredients. These proposed requirements are that the total weight of the finished product that is not comprised of organic agricultural products, excluding water and salt, shall consist of some combination of non-organically produced agricultural products and non-agricultural ingredients included on the National List. This is consistent with the proposed composition requirement for non-organic ingredients in products labeled as organic and is consistent with the composition requirements of section 2111(a)(4) of the OFPA (7 U.S.C. 6510(a)(4)).

Proposed paragraph (b)(3) of this section would require that products sold, labeled, or represented as made with certain organic ingredients have been produced in compliance with sections 205.16 through 205.19 of this proposal, with the exception of sections 205.16 (a) and (c) of this subpart. Section 205.16(a) applies to agricultural products, including raw agricultural products, that are labeled as organic. Section 205.16(c) applies to multi-ingredient agricultural products that only represent the organic nature of such ingredients in the ingredients statement and which themselves are not sold, labeled or represented as organic or made with certain organic ingredients. The provisions of proposed paragraph (b)(3) are necessary to assure consumers that products in which the predominant portion of ingredients are represented as organically produced have been produced and handled in accordance with a consistent standard, as provided under section 2102(2) of the OFPA (7 U.S.C. 6501(2)).

We note that processed agricultural products sold, labeled, or represented as made with certain organic ingredients are exempted by section 2106(c)(1) of the OFPA (7 U.S.C. 6505(c)(1)) from complying with the provisions of the Act, except as required by the Secretary in consultation with the NOSB and the Secretary of HHS. Therefore, handlers of this type of product can be exempted from complying with certain provisions of this proposal, provided that the exemptions do not affect the integrity of the organic ingredients in the product. Accordingly, as proposed and discussed in the supplementary information for section 205.201(b) of subpart D regarding an exemption for handlers of this type of product from the requirement set forth in section 205.3(b)(2) of subpart B that a commercially available non-synthetic substance be selected in preference to an allowed synthetic substance, we note that a handling operation that produces products sold, labeled, or represented as made with certain organic ingredients also would not be subject to the provisions in section 205.16(a) and (c) with respect to the handling of this type of product. For example, a manufacturer of a product sold, labeled, or represented as made with certain organic ingredients could use a non-organic agricultural ingredient instead of a commercially available organic agricultural ingredient, as is required in proposed section 205.16(a)(2) for the manufacturer of a product to be sold, labeled or represented as organic. However, the handling operation would be required to be certified and to demonstrate in the organic plan compliance with the applicable handling requirements in subpart B. We believe that these provisions will help assure the integrity of the organic ingredients in this type of product without imposing undue requirements on the handlers who produce them.

Paragraph (c) of this section is proposed in accordance with section 2106(c)(2) of the OFPA (7 U.S.C. 6505(c)(2)) and would exempt a multi-ingredient product that only represents the organic nature of such ingredients in the ingredients statement, and which itself is not sold, labeled or represented as organic or made with certain organic ingredients, from complying with the requirements proposed in this subpart. It is not critical for either the purposes of the Act or the integrity of the organic ingredients if a finished product that cannot be sold, labeled, or represented as organic or as made with certain organic ingredients on its principal display panel is not subject to the provisions of this subpart. We note, however, that although a finished product that contains less than 50 percent organically produced ingredients, or any other multi-ingredient product that represents the organic nature of ingredients in the ingredients statement and which is not labeled as organic or made with certain organic ingredients, need not be handled by a certified organic handling operation, the ingredients represented as organic in such a product must have been produced and handled in accordance with all the applicable provisions of the Act and the regulations of this part. In addition, while handling operations which handle only this type of product would not be required to become certified under the provisions proposed in section 205.202 of subpart D, this proposal would still require such operations to maintain records to show that any organic ingredients listed on product labels were obtained from operations that were certified in compliance with the Act and the regulations of this part.

Paragraph (d) of this section would prohibit the use of organic and non-organic forms of the same agricultural ingredient if the ingredient is listed as organic in the ingredients statement. We believe that such a provision is needed in order to avoid any possibility of confusion concerning the source and percentage of the organic ingredients in the product.

Paragraph (e) of this section would prohibit, in accordance with sections 2111(a)(3) and (7) of the OFPA (7 U.S.C. 6510(a)(3) and (7)), the addition of sulfites, nitrates, or nitrites to an organic food product, or the addition to the food of water that does not meet the Safe Drinking Water Act requirements (42 U.S.C. 300f *et seq.*).

Processing Practices—Section 205.17

In paragraph (a) of this section we propose that biological methods, such as fermentation, or mechanical methods, such as grinding, pressing, heating or drying, be used to process an agricultural product intended to be sold, labeled, or represented as organic or made with certain organic ingredients for the purpose of retarding spoilage or otherwise preparing an agricultural product for market. However, an incidental additive, except for the prohibition on the use of volatile synthetic solvents proposed in section 205.17(b)(3), may be used, if necessary, to process an agricultural product intended to be sold, labeled, or represented as organic or made with certain organic ingredients. An incidental additive used in the processing of agricultural products is defined in proposed section 205.2 as an additive present in an agricultural product at an insignificant level and that does not have any technical or functional effect in the product, and is therefore not considered an active ingredient. As discussed in the supplementary information for section 205.26 of subpart B, incidental additives may be used in organic handling without inclusion on the National List. Section 205.17(a) is consistent with the principles stated in our proposed definition of a system of organic farming and handling (section 205.2) and as further discussed in the introduction to the supplementary information for subpart B.

The NOSB recommended that handlers document that a food could not be processed without the use of a synthetic incidental additive and that the handler demonstrate progress to replace the synthetic incidental additive over time. The NOSB language is consistent with our proposal to permit the use of such substances only if necessary. By including several synthetic incidental additives in its National List recommendations, the NOSB also recognized that a wide range of currently available organic products could not be manufactured feasibly without the use of incidental additives, such as defoaming agents, adjuvants, clarifiers, filtering agents and equipment cleansers.

As noted, a producer could use an incidental additive if the use of the additive is necessary. As previously

described in the supplementary information for sections 205.12, 205.13, and 205.15 of subpart B regarding livestock production, determination of necessity would be based on site-specific conditions that would be described by a producer in an organic plan, or updates to an organic plan, and reviewed by the certifying agent.

We are requesting public comment as to the conditions under which incidental additives may be used. For example, we would like public comment as to whether specific conditions, such as the inefficacy or unavailability of mechanical or biological methods, should be a prerequisite for using an incidental additive and, if so, what these conditions should be. We also request comment as to whether handlers who handle only products sold, labeled, or represented as made with certain organic ingredients should be exempted from the restriction of using incidental additives only if necessary.

Paragraph (b) of this section proposes several practices that would be prohibited for the processing and preparation of any raw agricultural product, and on a finished agricultural product, sold, labeled, or represented as organic or as made with certain organic ingredients.

Paragraphs (b)(1) and (b)(2) of this section are proposed in accordance with sections 2111(a)(5) and (6) of the OFPA (7 U.S.C. 6510(a)(5) and (6)) and would prohibit the use of storage containers or bins, including packages and packaging materials that contain synthetic fungicides, preservatives or fumigants, and also would prohibit the use or reuse of any bag or container that previously had been in contact with any substance that could compromise the organic integrity of its contents. Our proposed definition of packaging set forth in section 205.2 encompasses waxes used in contact with an edible surface of an agricultural product.

Proposed paragraph (b)(3) of this section would prohibit the use of a volatile synthetic solvent. Volatile synthetic solvents, such as hexane or isopropyl alcohol, are used in processing and extraction. This proposed prohibition is made under the authority of section 2107(a)(11) of the OFPA (7 U.S.C. 6506(a)(11)) which authorizes this program to require such terms and conditions as are determined necessary. The prohibition of the use of a volatile synthetic solvent is in agreement with the NOSB recommendation that the use of a volatile synthetic solvent is not essential, and therefore should not be permitted in the handling of an organically produced product or a product sold, labeled, or represented as organic or made with certain organic ingredients.

As previously discussed in regard to the use of raw manure in organic crop production (section 205.7 of subpart B), there has been an increase in the incidence of food borne illness caused by certain pathogens. The application of ionizing radiation as a sanitation or preservation treatment currently is permitted by FDA for a wide range of agricultural products. Additionally, a request to permit the use of ionizing radiation on red meat products was recently approved by FDA. The NOSB has recommended to the Secretary that the practice of ionizing radiation should not be allowed in organic handling, and its use is prohibited by most existing organic certification programs which we have reviewed.

Public comment is invited with respect to the compatibility of the use of ionizing radiation with a system of organic farming and handling. The USDA also invites comments on whether there are effective alternatives to ionizing radiation, such as sanitary practices, heat pasteurization and incidental additives, that are compatible with a system of organic farming and handling, and, if so, how they are compatible. Additionally, we are soliciting comment as to whether the use of ionizing radiation is considered an essential standard industry practice, or good manufacturing practice, in the processing of any agricultural product: for example, in the sanitary handling of herbs and spices.

Prevention and Control of Facility Pests—Section 205.18

We are proposing provisions to safeguard the integrity of organic products that are handled in facilities in which pest control substances may be used. The NOSB recommendations and our review of most existing organic programs indicate that this area needs to be addressed. We have accordingly determined, as authorized by section 2107(a)(11) of the OFPA (7 U.S.C. 6506(a)(11)), which authorizes this program to require such terms and conditions as are determined necessary, that the proposed requirements for facility pest management in an organic handling operation are necessary and appropriate for an organic certification program.

As is true with crop production and livestock health care, prevention of pest occurrences should be the first strategy used by an organic handler. This is also consistent with the goal of maintaining the integrity of organic products by avoiding the need to use pest control substances in handling facilities, as reflected in our definition of a system of organic farming and handling. We propose in paragraph (a) of this section that the best practice for control and prevention of facility pests would be a preventive management system. This system would include measures to remove pest habitat and to prevent pests from gaining entrance to the handling facility, as well as managing environmental factors inside the facility such as temperature, light, air circulation and humidity to discourage proliferation of pest populations.

If prevention measures are not effective and pests do appear in organic handling facilities, we propose in paragraph (b) of this section for facility pest control to permit the use of pest control techniques, which include: mechanical controls such as traps or barriers; augmentation and introduction of predators and parasites for the pest species; and non-toxic, non-synthetic substances such as lures and repellants. Pest prevention and control is further discussed in the supplementary information provided in section 205.9 for crop pests, weeds and diseases.

However, if pest prevention or control measures provided in paragraph (a) and (b) of this section are not effective, we propose in paragraph (c) of this section to permit the use of any substance to control pests, provided the substance is approved for its intended use by the appropriate regulatory authority and the substance is applied in a manner that prevents such substance from contacting any ingredient or finished product intended to be sold, labeled, or represented as organic or made with certain organic ingredients. We have proposed paragraph (c) in recognition of the fact that handling facilities are subject to federal, state, and local regulations concerning food safety. The use of the practices in paragraph (c) of this section would entail maintaining adequate safeguards to protect organic products and ingredients from being contacted by any pest control substance.

As noted, proposed paragraph (c) would allow the use of any substance to control pests, provided such substances were used only when methods to prevent or control pests were not effective. Additionally, any substance used must be applied in a manner that prevents such substance from contacting any ingredient or finished product intended to be sold, labeled, or represented as organic or made with certain organic ingredients. Because eradication of a pest infestation may necessitate the use of substances, we are proposing to allow the use of any substance approved for use by the appropriate Federal, State or local regulatory agency to assure that organic handling operations have sufficient practices available to deal effectively with severe pest infestations. Structural pest control is unique in that substances used for this purpose are not considered to be used in the production and handling of organic crops, and are not applied to land used in the production of organic crops.

Many existing certification programs restrict synthetic substances used to control pests in certified handling facilities to substances reviewed and allowed for use by the certification agency. We request comment as to whether only those substances included on the National List of active synthetic substances allowed for use in organic crop production, as set forth in section 205.22, should be permitted to be used to control pests in certified handling facilities. Additionally, if the use of synthetic substances in structural pest control should not be restricted solely to those synthetic substances included on the National List of active synthetic substances, we request comment as to whether handlers should be required to use synthetic substances included on the National List of active synthetic substances (or a non-synthetic biological or botanical substance) before the use of synthetic substances not included on the National List.

Prevention of Commingling and Contact With Prohibited Substances—Section 205.19

There are two primary threats to organic integrity: the possibility of commingling organic products with similar products that were not organically produced, and the possibility of the organic product coming into contact with a prohibited substance. Since there is no apparent physical difference between an organically produced product and a non-organic product, commingling is a serious concern and an organic handling operation must make every effort to provide adequate measures to ensure that commingling does not occur, in addition to adopting measures to protect organic products from contacting prohibited substances.

Sections 2107(b)(1)(C) and 2111(b) of the OFPA (7 U.S.C. 6506(b)(1)(C) and 6510(b)) specifically provide for the prevention of commingling of organic and non-organic products, especially meat, in any operation that handles both types of products, and the implementation of practices that protect organic products from contact with prohibited substances. Therefore, we propose in this section that a certified handling operation, and a handling operation that is exempt or excluded from certification in accordance with section 205.202(a)(3) or section 205.202(b) of subpart D, shall be required to establish appropriate safeguards during handling, storage and transportation to both prevent the commingling of organic and non-organic products and to assure that organic products are protected from contact with prohibited substances.

These safeguards could take many forms depending on the nature of the products and the certified handling operation, and should encompass each step of the manufacturing or handling process, including storage and transportation. A certified handling operation that receives certification under our proposal might consist of disparate locations and facilities, including some that handle both non-organic and organic products. The public input we have received indicates that many certified handling operations use subcontractors to perform certain processing functions, such as dehydrating or freezing, rather than performing the function within the facilities maintained by the certified operation. Our primary concern in these instances is that adequate safeguards are maintained by the certified operation and the subcontractor to ensure that commingling and contact of organic products with prohibited substances did not occur. A certified handling operation that subcontracted with different facilities for cold storage, for example, would have to make sure that its products were clearly segregated from non-organic products and that an inspector examined all such subcontracted facilities as a part of the site visit to the certified operation. A certified handling operation also would have to take appropriate measures to ensure that organic products or ingredients were transported under conditions that protected their integrity. We note that the best method to prevent commingling or contact with prohibited substances would be to eliminate the possibility of such occurrences, such as when a certified operation handles only organic products and uses no prohibited pest control substances.

Subpart B—National List

Purpose and Basis of the Proposed National List

The National standards for organic production, provided for in section 2105 of the OFPA (7 U.S.C. 6504), include the requirement that an organically produced agricultural product shall have been produced without the use of synthetic chemicals, except as otherwise provided for in the Act. The exemptions to which section 2105 refers are specifically delineated in section 2118 of the OFPA (7 U.S.C. 6517), which provides for the establishment of a National List of substances that may be allowed for use in an organic farming or handling operation that are otherwise prohibited for use under the Act. This section also provides for the establishment of a National List of non-synthetic substances, that are otherwise allowed under the Act, that may not be used in organic farming or handling.

Section 2118(a) of the OFPA (7 U.S.C. 6517(a)) provides that the Secretary shall establish the National List of approved and prohibited substances, and section 2118(d)(1) of the OFPA (7 U.S.C. 6517(d)(1)) provides that the National List shall be based upon a proposed national list developed by the NOSB. In accordance with section 2119 of the OFPA (7 U.S.C. 6518), the NOSB conducted the prescribed review process, and solicited public comment at meetings, before recommending an initial proposed national list to the Secretary. The NOSB recommendations were based on at least one technical advisory panel review of each substance in question, as required in section 2119(k)(3) of the OFPA (7 U.S.C. 6518(k)(3)). The NOSB also reviewed available information from the Environmental Protection Agency, the National Institute of Environmental Health Studies, and other appropriate sources, as required in section 2119(l)(1) of the OFPA (7 U.S.C. 6518(l)(1)), to assist it in evaluating each substance under consideration in accordance with the criteria delineated in section 2119(m) of the OFPA (7 U.S.C. 6518(m)). The criteria that were considered for each substance are: the potential of the substance for detrimental chemical interactions with other materials used in organic farming systems; the toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence in the environment; the probability of environmental contamination during manufacture, use, misuse or disposal of the substance; its effects on human health; the effects of the substance on biological and chemical interactions in the agroecosystem; the alternatives to using the substance; and the compatibility of the substance with a system of sustainable agriculture. The NOSB recommendations, along with the results of the required evaluation and technical advisory panel review for each

substance, were considered by the Secretary in accordance with the requirements of section 2118(d) of the OFPA (7 U.S.C. 6517(d)).

Basis for Inclusion of Substances and Ingredients on the National List

Basis for Inclusion of Specific Synthetic Substances on the National List of Synthetic Substances Allowed for Use in Organic Farming and Handling

Section 2118(c)(1) of the OFPA (7 U.S.C. 6517(c)(1)) provides three sets of criteria upon which determinations to allow the use of substances that are otherwise prohibited by the Act must be based. The first set of criteria, in section 2118(c)(1)(A) of the OFPA (7 U.S.C. 6517(c)(1)(A)), requires that the Secretary, in consultation with the Secretary of the Department of Health and Human Services and the Administrator of EPA, determine that: use of the substance would not be harmful to human health or the environment; the substance is necessary to the production or handling of an agricultural product because of the unavailability of wholly natural substitute products; and the use of the substance is consistent with organic farming and handling.

The second set of criteria in section 2118(c)(1)(B) of the OFPA (7 U.S.C. 6517(c)(1)(B)) describes the types of substances that may be considered for use if they are included on the National List. The first type of substance is one that is used in production and contains an active synthetic ingredient that falls into one of the following categories: copper and sulfur compounds; toxins derived from bacteria; pheromones; soaps; horticultural oils; fish emulsions; treated seed; vitamins and minerals; livestock parasiticides and medicines; and production aids, including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers. The Secretary has accordingly reviewed each substance proposed in sections 205.22 and 205.24 for inclusion on the National List to determine that it is an active synthetic ingredient or includes an active synthetic ingredient. The second type is a substance that is used (in a formulation) in production and (the formulation) contains synthetic inert ingredients that the Administrator of the EPA has not classified as inerts of toxicological concern; and the third type of substance is one that is used in handling and is non-synthetic but is not organically produced.

The third criterion in section 2118(c)(1)(C) of the OFPA (7 U.S.C. 6517(c)(1)(C)) is that each specific exemption be developed according to the procedure described in section 2118(d) of the OFPA (7 U.S.C. 6517(d)) for establishing and amending the National List. This procedure includes basing the proposed National List on the recommendations received from the NOSB, and publishing such proposed National List in the **Federal Register** for public comment before establishing the National List. The same procedure must be used in developing any amendments to the National List.

After receiving the NOSB's recommendations, the Secretary determined, in consultation with the Secretary of HHS and the Administrator of the EPA that the use of each substance or ingredient being considered for inclusion on the proposed National List of synthetic substances allowed for use in organic farming would meet the first set of criteria. We then examined the second set of criteria to make determinations concerning substances being considered for inclusion on the National List of allowed synthetic substances. For each substance considered, it was first necessary to determine whether the substance is synthetic according to the definition provided by the Act. The Act defines a synthetic substance to be "a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes."

The language in section 2118(c)(1)(B)(i) of the OFPA (7 U.S.C. 6517)(c)(1)(B)(i)), which provides one set of criteria for placing a substance on the National List, makes it clear that only synthetic substances that contain active ingredients need to be on the National List in order to be permitted for use in organic production. This provision only encompasses active synthetic ingredients that are used in production and that come within certain categories. We have accordingly proposed a definition of an active ingredient or substance (in any input other than pesticide formulations) to include any substance that, when used in a system of organic farming or handling, becomes a chemically functional part of that system, or is otherwise of significant consequence to the production, handling and integrity of an organically produced product. This definition excludes substances that are present in insignificant amounts in the agroecosystem, such as equipment cleansers; do not chemically interact with the system, such as plastic mulches or row covers; or are otherwise inconsequential to the performance of any function within the system.

It should be noted that a formulated product that contains a substance that is an active synthetic ingredient and which also contains a synthetic inert ingredient may only be used if the active synthetic ingredient is included in one of the proposed allowed synthetic categories. Section 2118(c)(1)(B)(ii) of the OFPA (7 U.S.C. 6517(c)(1)(B)(ii)) does not require that inert ingredients be included as a separate category of the National List in order to be permitted for use in organic production. Rather, the Act requires only that the inert ingredients not be classified by the Administrator of the EPA as inerts of toxicological concern in order for the substance to be permitted for use. Our proposal for evaluating formulations that contain synthetic inert ingredients is included and discussed in proposed sections 205.20 through 205.21 and the corresponding supplementary information.

The discussions held by the NOSB as they evaluated substances under consideration, and their recommendations for their proposed National List, served as the primary basis for our determinations as to whether or not a particular substance is active and synthetic, and if so, whether to include it as an allowed synthetic substance on the proposed National List. A discussion of those substances that we have determined to be synthetic, but not active, and which therefore are not required to be included on the National List in order to be used in organic farming and handling, is included in the supplementary information to section 205.20 of this proposal, which sets forth all the categories of substances and ingredients that can be used in organic production and handling.

Basis for Including Specific Natural (Non-synthetic) Substances on the National List of Non-synthetic Substances Prohibited for Use in Organic Farming and Handling

In this proposal the word non-synthetic is used to address substances that are described in the Act as either natural or non-synthetic. No definition is provided in the OFPA for the word natural. There is also a great deal of ambiguity currently surrounding the use and meaning of the term in regard to production inputs, nutritional supplements, cosmetics and other products. The use of the term non-synthetic in section 2118 of the OFPA (7 U.S.C. 6517) provides us with the basis for using this term in our proposed rule to describe substances that are not synthetic. By using this one term to describe substances that are not determined to be synthetic, we hope to avoid the uncertainty that surrounds the current use of the term natural in the marketplace. Therefore, in agreement with the recommendations provided by the NOSB, we will use the word non-synthetic in this and all other provisions of this proposal to address substances that are described in the Act either as natural or non-synthetic substances.

Natural (non-synthetic) substances are generally allowed under the Act for use in organic farming and handling and thus do not have to be included on the National List in order to be used. However, the Act does provide for specific natural (non-synthetic) substances to be prohibited for use in organic farming and handling if certain criteria are met. The Act also provides that the specified natural (non-synthetic) substances which are prohibited for use in organic farming and handling are to be put on the National List of prohibited substances.

Section 2118(c)(2) of the OFPA (7 U.S.C. 6517(c)(2)) delineates the criteria upon which the decision to prohibit the use of a specific natural substance is to be based. These criteria require that the Secretary determine, in consultation with the Secretary of HHS and the Administrator of the EPA, that the use of the substance would be harmful to human health or the environment, and that its use would be inconsistent with organic farming or handling and the purposes of the Act.

Basis for Inclusion of Non-agricultural Substances and Non-organically Produced Agricultural Products on the National List as Substances Permitted for Use as Ingredients In or On Processed Organic Products.

One criterion provided by section 2118(c)(1)(A)(ii) of the OFPA (7 U.S.C. 6517(c)(1)(A)(ii)) for inclusion of a substance on the National List of synthetic substances permitted to be used is that it must be necessary to the production or handling of the agricultural product because of the unavailability of wholly natural substitute products. Thus, synthetic substances used in handling an organic product may be considered for inclusion on the National List of substances permitted to be used. Such substances, however, must be evaluated according to the same criteria as synthetic substances permitted to be used in crop or livestock production, in accordance with section 2118(c)(1)(A) of the OFPA (7 U.S.C. 6517(c)(1)(A)). Section 2118(c)(1)(B)(iii) of the OFPA (7 U.S.C. 6517(c)(1)(B)(iii)) permits the consideration of the inclusion of non-synthetic non-organically produced substances on the National List for use in handling organic processed products if they meet the same criteria set forth for synthetic substances in section 2118(c)(1)(A) of the OFPA (7 U.S.C. 6517(c)(1)(A)). Because a substance that is not an agricultural product is considered to be non-organically produced, this OFPA provision requires that the NOSB and the Secretary evaluate non-synthetic non-agricultural substances according to the same criteria and procedure as an active synthetic substance used in crop or livestock production or handling. For these reasons, we are proposing in section 205.26 a National List category of non-agricultural substances allowed as ingredients in or on organic processed products, that consists of both synthetic and non-synthetic substances. A separate category of non-organically produced agricultural products allowed as ingredients in organic processed products is proposed in section 205.27, also in accordance with section 2118(c)(1)(B)(iii) of the OFPA (7 U.S.C. 6517(c)(1)(B)(iii)).

Summary of the National List and Petition Process for Adding New Substances

Sections 205.20 and 205.21 of subpart B provide a summary of all the categories of substances, ingredients and formulated products that are either allowed or prohibited for use in organic farming and handling. These sections are proposed in order to make clear the status of any substance that may be considered for use in a certified operation. The following are the categories of substances that we propose comprise the National List: active synthetic substances allowed for use in organic crop production (section 205.22); non-synthetic substances prohibited for use in organic crop production (section 205.23); active synthetic substances allowed for use in organic livestock production (section 205.24); non-synthetic substances prohibited for use in organic livestock production (section 205.25); non-agricultural substances allowed as ingredients in or on processed products labeled as organic or as made with certain organic ingredients (section 205.26); and non-organically produced agricultural products allowed as ingredients in or on processed products labeled as organic or as made with certain organic ingredients (section 205.27).

The six categories of substances we propose for the National List delineate the substances that can and cannot be used in organic crop production, in organic livestock production, and in processed products labeled as organic or made with certain organic ingredients. Accordingly, only a substance that appears in more than one category, such as synthetic mineral nutrients that are proposed for use in both crop production and as livestock feed supplements, may be used for more than one purpose.

Proposed section 205.28 delineates the process by which a person may petition the NOSB to add new substances to the National List in any of the six aforementioned categories, which entails the submission of specified information to USDA.

Relationship of the National List to the Organic Production and Handling Requirements

Section 2118(a) of the OFPA (7 U.S.C. 6517(a)) requires the Secretary to establish a National List to be included in the standards for organic production and handling established under the Act. We have accordingly developed the proposed production and handling requirements (sections 205.3 through 205.19) and the National List (sections 205.22 through 205.28) as a unified whole. The practices delineated within the proposed requirements for organic production and handling include appropriate restrictions and conditions on the use of substances, while the National List delineates what substances may or may not be used. These standards also are intended to be consistent with our proposed definition of a system of organic farming and handling, which, as discussed previously, was created in order to provide a concise summary of the underlying principles implicit in the Act. Under this proposal, any substance that is permitted to be used in organic farming or handling must be used in compliance with the regulations delineated in sections 205.5 through 205.19 of subpart B and must also meet the requirements proposed in section 205.3(b)(1) that its use not result in any measurable degradation of soil or water quality. We believe that the provisions proposed here for the appropriate use and application of substances is consistent with the provisions of the Act that address the National List and with the definition of a system of organic farming and handling.

General Rules for Categories of Substances and Ingredients Permitted for Use in Organic Farming and Handling—Section 205.20

Section 205.20 has been proposed to make it clear that a substance or

ingredient on the National List of substances permitted to be used in organic farming and handling may have its use restricted under other proposed regulatory provisions.

In section 205.20(a) we propose that all active synthetic substances or non-organically produced ingredients that are included on the National List in sections 205.22, 205.24, 205.26, or 205.27, and therefore permitted to be used in organic farming and handling, would have to be used in compliance with the Act and all the regulations we are proposing. In paragraph (b) of this section we propose that any other substance that may be used in a system of organic farming and handling also would have to be used in compliance with the Act and the regulations. Thus, any substance or ingredient that is permitted for use only could be used if its use complied with any applicable restrictions on its use that are provided for in other sections of the proposed regulations. For example, section 205.7(c)(2)(i) permits the use of synthetic micronutrients to produce organic crops provided that the micronutrients are not applied in a manner intended to be herbicidal, and section 205.16(a) permits the use of non-organically produced ingredients in a product labeled as organic provided that the ingredients comprise less than 5 percent of the total weight of the product, excluding water and salt. Of course, all substances used in organic farming or handling also must be used in accordance with any other applicable Federal, State, or local regulations.

In section 205.20(b) we propose three categories of substances that are not required to be included on the National List in order to be permitted for use in the production or handling of organic products. A substance that does not appear on the National List would have to be included in one of these categories in order to be used in organic farming or handling, as applicable.

The first category of substances permitted for use in organic farming or handling, as proposed in paragraph (b) of this section, comprises non-synthetic substances that are not included on the National List in section 205.23 or section 205.25 as a non-synthetic substance prohibited for use. Section 2118(c)(2) of the OFPA (7 U.S.C. 6517(c)(2)) provides for a non-synthetic substance to be prohibited in organic farming and handling only when it is included as a prohibited substance on the National List. Also, section 2113 of the OFPA (7 U.S.C. 6512) states that a production or handling practice is permitted under the Act unless it is prohibited or otherwise restricted, or is determined to be inconsistent with the certification program established under the Act.

The following list contains various substances that we have reviewed in consultation with the NOSB and determined to be both non-synthetic and as not meeting the Act's criteria that would prohibit their use. Therefore, these substances are permitted for use in organic crop production. This list is not intended to be inclusive of all non-synthetic substances allowed for use. It is, however, based on lists of substances historically permitted for use in organic production by existing certification programs and is included here as a reference guide.

A List of Natural (Non-Synthetic) Substances Reviewed for Use in Organic Crop Production (Non-Inclusive, for Reference Only)

Animal substances or byproducts:
- Blood meal
- Bone meal and bones
- Feather meal
- Fish emulsions
- Fish hydrolysate
- Fish products (fish meal, fish bones, and fish powder)
- Fish solubles
- Guano, bat or bird
- Hoof and horn meal
- Insect extracts
- Manures, animal
- Manure tea
- Oyster shells and other sea shells
- Oyster shell lime
- Sea animal wastes
- Tankage
- Whey, dairy
- Worm castings

Beneficial organisms
- Algae
- Bacteria [including *Bacillus thuringiensis* (Bt)]
- Fungi
- Higher animals
- Higher plants
- Insects
- Microbial soil, compost, plant and seed inoculants
- Mites
- Nematodes
- Protozoa
- Viruses

Fermented or bio-processed substances and composts (see animal, plant and mineral categories for compost feed stocks):
- Alcohol from natural sources only (Ethyl)
- Biodynamic preparations
- Compost
- Compost tea
- Gibberellic acid
- Leaf mold
- Mushroom compost
- Vinegar

Mined minerals and other mined substances:
- Basalt
- Borate and boron products
- Calcium sulfate (gypsum)
- Chilean nitrate (sodium nitrate, nitrate of soda)
- Clays
- Colloidal phosphate
- Cryolite (sodium fluoaluminate)
- Diatomaceous earth
- Dolomite
- Feldspar
- Granite dust
- Greensand
- Humates, mined sources
- Humic acid derivatives
- Kieserite
- Lignite
- Limestone
- Marl
- Muriate of potash
- Niter (potassium nitrate)
- Peat moss
- Perlite
- Phosphate rock, raw
- Potassium sulfate
- Pumice
- Rock dust
- Sand
- Sulfur
- Sulphate of potash magnesia (langbeinite)
- Sodium bicarbonate
- Vermiculite

Plant substances or byproducts:
- Alfalfa pellets, or meal
- Aquatic plant extracts
- Citrus products
- Citrus oil
- Cocoa bean hulls
- Cotton gin trash
- Cottonseed meal
- Food processing wastes
- Garlic
- Grape and other pomaces
- Herbal preparations
- Hay
- Kelp or seaweed, unprocessed, meal, extracts or other derivatives
- Leaves
- Molasses
- Neem and Neem extracts
- Peanut meal
- Peanut hulls
- Plant extracts
- Propolis
- Pyrethrums
- Rice hulls and other residues
- Rotenone
- Ryania
- Sabadilla
- Saw dust, bark, wood chips and other wood wastes
- Soybean meal
- Straw
- Tobacco, and tobacco by-products
- Wood ash
- Vegetable waste, cannery waste

We consider a non-synthetic substance that is an industrial by-product to be synthetic only if the substance becomes chemically altered as a result of a manufacturing process. This is consistent with section 2103(21) of the OFPA (7 U.S.C. 6502(21)) which defines a synthetic substance as one that is formulated or manufactured by a chemical process or by a process that chemically changes the substance. Examples of industrial by-products that are synthetic substances are: paper manufacturing wastes, kiln dust, and leather meal. Whey solids and sawdust are examples of industrial by-products that are not chemically altered and are therefore non-synthetic.

We do not consider non-synthetic substances that have been treated with a synthetic substance, but which have not been chemically altered by a manufacturing process, to be synthetic under the definition given in the Act. This is because the residues of synthetic substances that may be present in these materials do not chemically combine with or change the chemical composition of the original substance. Additionally, the presence of these residues has no significant effect on biological and chemical interactions in the agroecosystem, including physiological effects on soil organisms, crops and livestock, nor would the residues cause measurable degradation to soil or water quality. The synthetic residues therefore are not considered to be active synthetic ingredients or substances under the definition we have proposed. Examples of non-synthetic substances that may have been treated with a synthetic substance, but not chemically altered, include municipal yard wastes and processing wastes from non-organically produced crops, such as cotton gin trash or cocoa hulls.

We also do not consider certain categories of substances that are delineated in section 2118(c)(1)(B)(i) of the OFPA (7 U.S.C. 6517(c)(1)(B)(i)), which provides one set of criteria for substances which may be included on the National List of synthetic substances allowed for use in organic farming and handling, as synthetic substances according to the definition of synthetic given in the Act. We are therefore proposing to allow the use of the following substances in organic production and handling without being included in the National List of active synthetic substances allowed for use in organic farming.

Toxins derived from bacteria are not synthetic and the use of non-synthetic toxins as pest control substances in organic crop production would be regulated under section 205.9(e)(1). We note, however, that toxins derived from genetically engineered microorganisms are included in this document as a separate listing on the proposed National List of active synthetic substances allowed for use in crop production, as set forth in section 205.22(d) of subpart B. We have included toxins derived from genetically engineered bacteria on the proposed National List primarily so that we can receive comment on the proper classification of these substances, and on whether they should be allowed, prohibited, or approved on a case-by-case basis.

Fish emulsions are non-synthetic, although they may contain synthetic preservatives or stabilizers. These preservatives or stabilizers would be considered as inert ingredients, as defined in section 205.2, because they are not active ingredients in the formulated product. Also, these preservatives or stabilizers do not chemically alter the non-synthetic fish emulsion; therefore, their presence in a formulated product would not make the fish emulsion synthetic under the definition in the Act. However, if the level of a synthetic stabilizer in the fish emulsion is higher than necessary to stabilize the product, the stabilizer would then be considered as a synthetic fertilizer and thus prohibited under section 2109(b)(1) of the OFPA (7 U.S.C. 6508(b)(1)).

Treated seed, i.e., seed treated with pesticides, itself is not a synthetic substance because seed is an agricultural product and the treatment does not chemically alter or combine with the seed. When a treated seed is used as permitted in proposed section 205.8(a), the seed treatment does not function as an active ingredient for its intended use, nor do we consider it as causing measurable degradation of soil or water quality; therefore, the seed treatment is incidental or inconsequential when treated seed is used in organic production.

The second category, proposed in paragraph (b)(2) of this section, includes those substances or devices that are not active synthetic ingredients or substances, as defined in section 205.2, in a system of organic farming and handling. This category encompasses certain production aids used in crop and livestock production, such as plastics or other synthetic materials used as mechanical devices, treatments used for structures, and substances that otherwise do not enter into chemical interactions in the agroecosystem under normal conditions of use. It also includes certain production aids and other substances used in handling that are considered to be incidental additives, as is consistent with FDA and FSIS regulations governing ingredients that must be included on product labels.

The following list of substances or categories of substances have been determined by us to fall into this category because they are aids, devices, or incidental additives that do not contain active synthetic ingredients and do not meet the proposed definition of active ingredient or substance, and are therefore permitted for use in organic production or handling without inclusion on the National List. Included in this listing are some categories of substances delineated in section 2118(c)(1)(B)(i) of the OFPA (7 U.S.C. 6517(c)(1)(B)(i)), which establishes one set of criteria for substances that may be included on the National List, as well as additional substances that were considered by the NOSB for inclusion on the National List. This discussion is not intended to be an all-inclusive listing of non-active substances that may be used in organic production or handling.

Production aids such as netting; tree wraps and seals; sticky barriers; row covers; equipment cleaners; flocculants; pelletizers; adjuvants; and surfactants and other substances added to water to change its physical properties do not contain or function as active ingredients under our proposed definition of active ingredient because proper use of these substances has no consequential effects on biological and chemical interactions in the agroecosystem and does not cause measurable degradation of soil or water quality. Agricultural plastics, whether used as insect barriers, mulch, irrigation pipe, season extenders, or similar purposes, cannot be said to enter into chemical interactions in the agroecosystem. Substances used to adjust the texture of dry materials (e.g., flocculants or pelletizers) or to change the physical qualities of water (e.g., adjuvants or surfactants) are considered to be inconsequential additives rather than active ingredients in fertilizer, pest control, tank mixes, or other types of product formulations.

Synthetic substances used in insect or rodent traps are not active synthetic ingredients because they are not integrated into an organic production or handling system and do not interact chemically with any element of the agroecosystem. They are, additionally, prohibited from directly contacting an organic product or crop and therefore would not affect the integrity of an organic product.

We do not consider wood that is treated with synthetic preservatives and used in buildings, trellises and fences to have a significant potential to cause degradation of soil or water quality because the wood preservatives do not chemically interact with, or affect the integrity of, any aspect of the agroecosystem when used for structures, even structures that are used in contact with the soil. However, in certain situations, treatments used to preserve wood have been shown to have effects on biological and chemical interactions in the agroecosystem that would cause the treated wood to be considered an

active substance under our proposed definition. These situations are conditions that bring the wood into prolonged contact with soil that has a very high organic content, as is commonly found in compost bins and containers used for greenhouse potting mixes. We therefore would consider treated wood to be an active synthetic substance in any such situation, and thus prohibited for use in conditions of prolonged contact with soil that has a very high organic content. Further, as discussed in the supplementary information for section 205.21, if treated wood were to be used as a bin or container for an organic product, its use would be prohibited under section 2111(a)(5) of the OFPA (7 U.S.C. 6510(a)(5)), which prohibits the use for the handling of organic products of any storage containers or bins that contain synthetic fungicides, preservatives or fumigants.

An incidental additive used in the processing of agricultural products, which we define as an additive present in an agricultural product at an insignificant level and that does not have any technical or functional effect in the product, does not therefore meet our definition of an active ingredient. As discussed in the supplementary information for section 205.26, incidental additives may be used in organic handling without inclusion on the National List, but their use is regulated in section 205.17(a).

In section 205.20(b)(3), we propose that formulated products containing inert ingredients may be used in a certified organic farming operation if the formulated product does not contain an active synthetic ingredient that is prohibited for use in organic farming, and any synthetic inert ingredient contained in the formulation is not classified by EPA as an inert of toxicological concern. In order for a formulated product to be used in organic crop production, each active ingredient it contains must be a substance that is permitted under the Act and subpart B of part 205.

Additionally, the Act in section 2118(c)(1)(B)(ii) of the OFPA (7 U.S.C. 6517(c)(1)(B)(ii)) specifically prohibits products containing substances classified by EPA as inerts of toxicological concern. We have determined that this prohibition applies only to EPA List 1 inerts (Inerts of Toxicological Concern), as explained in the supplementary information for section 205.21(d). Accordingly, formulations containing synthetic inert substances included on EPA List 2, Potentially Toxic Inerts; EPA List 3, Inerts of Unknown Toxicity; and EPA List 4, Inerts of Minimal Concern would be permitted in organic production under our proposal.

General Rules for Categories of Substances and Ingredients Prohibited for Use in Organic Farming and Handling—Section 205.21

Section 205.21 delineates five general categories of substances that would be prohibited for any use in organic production or handling. The first of these, proposed in paragraph (a) of this section, would be an active synthetic substance that is not included as an active synthetic substance permitted for use in either organic crop or livestock production in sections 205.22 or 205.24 of the National List. This category is proposed, as stated previously, in accordance with sections 2105(1) and 2118(c)(1)(B)(i) of the OFPA (7 U.S.C. 6504(1) and 6517(c)(1)(B)(i)) which prohibit the use of any active synthetic substance in organic production unless it is on the National List. Our proposed category specifically includes any synthetic carbon based substance that has a cytotoxic mode of action, as defined in section 205.2. These synthetic carbon based substances are discussed in the supplementary information for section 205.9(f). They are not one of the categories of substances that is identified in section 2118(c)(1)(B)(i) of the OFPA (7 U.S.C. 6517(c)(1)(B)(i)) as a possible category of synthetic substances that may be put on the National List, thus allowing their use. It should be noted that any active synthetic substance that does not belong to any of the categories of substances identified in this section of the Act could not be included on the National List and thus could not be permitted for use in organic farming or handling.

Paragraph (b) of this section would prohibit the use of a non-agricultural substance used as an ingredient in or on a processed product that is labeled as organic or as made with certain organic ingredients if the substance is not included in section 205.26 as an allowed non-agricultural substance. This category, as previously discussed, is proposed in accordance with section 2118(c)(1)(B)(iii) of the OFPA (7 U.S.C. 6517(c)(1)(B)(iii)), which permits the use of a non-organically produced ingredient in handling an organic product only if the substance is included on the National List.

The third category, proposed in paragraph (c) of this section, would include any prohibited non-synthetic substance included in either sections 205.23 or 205.25. The absence of any prohibited non-synthetic substances in this proposal is discussed in the supplementary information for proposed section 205.23.

The fourth category of substances prohibited under this proposal, in section 205.21(d), is in accordance with section 2118(c)(1)(B)(ii) of the OFPA (7 U.S.C. 6517(c)(1)(B)(ii)), which prohibits the use of formulated products that contain any synthetic inert ingredient that is classified by the Administrator of the EPA as an inert of toxicological concern. Inert ingredients of toxicological concern are those inert ingredients included on the EPA List 1 Inerts of Toxicological Concern (54 FR 48314, November 22, 1989). Our proposed provision would prohibit the use of any formulation containing an inert ingredient included on the EPA List 1, even if that product contained an active ingredient that was otherwise allowed in this subpart. Formulated pesticidal products that contain EPA List 1 inerts can be identified by organic producers and handlers because the EPA requires the phrase "This product contains the toxic inert ingredient . . ." to appear on the label of such products.

Paragraph (e) of this section would prohibit the use of any fertilizer or commercially blended fertilizer that contains an active synthetic ingredient not allowed for use in crop production as provided for in section 205.22, or that contains an active prohibited substance. This prohibition is consistent with section 2109(b)(1) of the OFPA (7 U.S.C. 6508(b)(1)) and would apply in this proposal only to substances or products which meet the definition of fertilizer which we propose in section 205.2. Under our proposal, the provisions of paragraph (e) of this section would not apply to substances used as micronutrients, foliar nutrients, soil cation balancing agents, soil conditioners, or substances with similar functions which do not meet our proposed definition of fertilizer as a single or blended substance applied to the soil to supply any of the three primary plant nutrients, nitrogen (N), phosphorus (P) and potassium (K), needed for the growth of plants. Micronutrients and these substances with similar functions are permitted for use in organic crop production in most of the existing organic programs we have reviewed, and to include them within the category of synthetic fertilizers, which are prohibited under the Act, would unnecessarily restrict the options available to organic farmers for providing essential plant nutrients and maintaining soil fertility.

The National List of Active Synthetic Substances Allowed for Use in Organic Crop Production—Section 205.22

This section of the proposed regulation lists the active synthetic substances that have been reviewed for use in organic crop production and which the Secretary proposes be allowed for such use because each meets the criteria in the Act that permits their use. These substances have been reviewed by the NOSB as required by the Act, and have been determined by the Secretary to contain or function as an active ingredient in one of the categories the Act permits for inclusion on the National List as a substance permitted for use.

Any synthetic substance included on the National List appears only according to its generic or most commonly used name. In some cases, we have indicated other commonly-known terms for certain substances, such as horticultural oils. A farmer or handler is expected to request clarification from the applicable certifying agent in the case of uncertainty about the generic name of a particular brand-name substance, or about the use of any substance for which there might be any other questions.

Section 205.22, the list of active synthetic substances allowed for use in organic crop production, is organized into groups according to the functions for which the substances may be used. These groups are: horticultural oils used as insect pest smothering or suffocating agents; soaps used as insecticides, algicides, de-mossers, large animal repellants, and herbicides; production aids; toxins derived from genetically engineered bacteria (that are not released live into the agroecosystem) for use as pesticides; copper and sulfur compounds used as pesticides; minerals used as micronutrients; and minerals used as defoliants in fiber production.

Most of the substances included in this section of the National List are proposed in accordance with the recommendations provided by the NOSB. There are, however, a few cases in which we have determined it necessary to amend the NOSB recommendations concerning a particular substance in consideration of the Act, public input, and other information, including evaluations by the technical advisory panels. The following are substances for which the NOSB recommendations differ from our proposed list in section 205.22.

The NOSB recommended restricting the use of herbicidal soaps (proposed in section 205.22(b)) to non-field applications. We determined, however, that the uses of herbicidal soaps allowed by EPA would not be harmful to human health or the environment and are consistent with the other criteria provided by the Act, and thus do not need to be restricted to non-field applications. The available evidence suggests that these soaps are not persistent in the agroecosystem and would not cause measurable degradation of soil or water quality or have discernable effects on biological and chemical interactions in the agroecosystem.

The NOSB recommended allowing certain specific antibiotics as pesticides in crop production, but did not recommend to allow others for this use, particularly Avermectin. Based on a review of the technical information for these substances, we determined that all the antibiotics labeled for use as pesticides by EPA are of equally minimal consequence in their effects on biological and chemical interactions in the agroecosystem and would not cause measurable degradation of soil or water quality when properly used according to label instruction and use restrictions, and there are no other criteria specified in the Act that any specific substance in this category fails to meet.

The synergist piperonyl butoxide (PBO) (proposed in section 205.22(c)(9)) was not recommended by the NOSB for inclusion on the National List; the vote to approve PBO failed by only one vote to achieve the two-thirds majority required for approval. PBO is extracted from a non-synthetic substance, but is modified synthetically in the process of extraction and refining; it does not appear to persist in the environment or otherwise have significant effects on biological and chemical interactions in the agroecosystem or cause measurable degradation of soil or water quality, and is consistent with the other criteria specified in the Act. It also functions in a manner that significantly reduces the amounts required of some botanical pesticides that may be applied. In consideration of the benefits of reducing the amount of botanical pesticides used in an organic farming operation, which the scientific evidence clearly indicates is more likely to effect biological and chemical interactions in the agroecosystem than the PBO, we have determined that PBO should appear as an allowed synthetic substance on the proposed National List.

The NOSB did not recommend to include on the proposed National List killed microbial pesticides (toxins derived from genetically engineered bacteria that are not released live into the agroecosystem), such as the *Bacillus thuringiensis* toxin (proposed in section 205.22(d)). However, several technical experts to the NOSB reviewed these substances positively, and did not raise concerns about their effects on biological and chemical interactions in the agroecosystem when these substances are properly used. We have included toxins derived from genetically engineered bacteria that are not released live into the agroecosystem on the proposed National List.

Our research indicates that the genetically engineered bacteria from which the toxins proposed for inclusion on the National List in section 205.22(d) are derived are not released live into the agroecosystem and therefore do not have the potential to reproduce. Our research, however, indicates that the toxins themselves if overused may have the potential to induce accelerated resistance of pest populations. In this regard, we would like to receive public comment and technical and scientific data as to the effects of the use of toxins derived from genetically engineered bacteria that are not released live into the agroecosystem on the biological and chemical interactions in the agroecosystem.

The NOSB recommended that minerals used as defoliants in organic fiber production (proposed in section 205.22(g)) should be restricted according to their use and source because of their potential to cause measurable degradation of soil and water quality. However, technical information we reviewed about the use of these substances indicates that they are unlikely to result in measurable degradation of soil and water quality in the amounts applied for the defoliation of fiber crops. We have, therefore, listed calcium chloride, magnesium chloride, sodium chlorate, and sodium chloride as allowed synthetic substances used to defoliate fiber crops. In accordance with proposed section 205.3(b)(2), a non-synthetic substance, such as sodium chloride extracted from brine, would have to be chosen in preference to any synthetic defoliant, whenever possible. However, we determined that all four substances reviewed should appear on the National List because they are relatively indistinguishable with respect to their potential for measurable degradation of soil and water quality. In addition, all these minerals are available in both synthetic and non-synthetic forms that are not readily distinguishable, and thus would have to appear on the National List in order to be permitted for use.

The NOSB has reviewed amino acids (proposed in section 205.22(b)(5)) but has not yet made a recommendation as to whether to include them on the

National List as allowed synthetic crop production substances. However, the NOSB did vote to allow the use of certain vitamins, which are similar to amino acids in their use as a crop production aid and their effects on soil and water quality. We did not find any scientific evidence that amino acids, which are synthetically derived but chemically identical to substances that are normally found in soil organic matter, pose any concern for measurable degradation of soil and water quality and they meet all the other criteria established in the Act. We therefore have included amino acids on the proposed National List for use as an organic crop production aid.

The NOSB recommended the following substances for inclusion on the National List of allowed synthetic substances, but we have not included them on the proposed National List because we determined that they were non-synthetic. Therefore, they may be used in organic farming without being included on the National List.

Fish products, aquatic plant extracts, and humic acid and its derivatives are not included because, as discussed previously, we determined that they are non-synthetic. Although the NOSB also had concerns about synthetic extractants used to produce these non-synthetic substances, we determined that the extraction methods for substances used in crop production are inconsequential in their effects on biological and chemical interactions in the agroecosystem or to measurable degradation of soil and water quality. Additionally, the addition of small amounts of synthetic stabilizers or preservatives to these products is of minimal concern and, as discussed in the supplementary information for section 205.20 of this proposal, the inclusion in a formulated product of synthetic inert ingredients that are not of toxicological concern does not cause the product to be prohibited for use in organic production. However, we are aware that synthetic stabilizers sometimes may be added to such products at levels higher than necessary to stabilize the formulation in order to increase its fertilizer value. In such cases, the stabilizers would be considered to be synthetic fertilizers, which are prohibited for use in organic production by section 2109(b)(1) of the OFPA (7 U.S.C. 6508(b)(1)) and proposed section 205.7(d)(1). A certified producer or handler is expected to request clarification from the certifying agent in the case of uncertainty about whether a specific product would be prohibited according to this definition.

Elemental sulfur also was recommended by the NOSB for inclusion in proposed section 205.21. However, we consider elemental sulfur to be non-synthetic regardless of its source.

Potassium nitrate (niter) was reviewed by the NOSB as a synthetic substance and was not recommended for inclusion as an allowed synthetic substance for organic crop production. However, we reviewed information that potassium nitrate also exists as a natural mineral deposit that may be mined for agricultural use. Although we agree with the NOSB and do not consider synthetic potassium nitrate to meet the criteria for inclusion as a synthetic substance on the National List, niter in the form of a non-synthetic mined product would be allowed for use in organic production under the Act and the proposed regulations in subpart B of this part.

The following substances were recommended by the NOSB for inclusion as allowed synthetic substances for organic crop production. We have not included them on the National List because we consider them not to be active substances or ingredients in the applications for which they are used and therefore, as previously discussed, are substances that may be used in a certified organic operation without inclusion on the National List:

Plastic mulches and row covers do not interact chemically with the agroecosystem and are specifically permitted under section 2109(c)(2) of the OFPA (7 U.S.C. 6508(c)(2)) if they are removed at the end of each harvest season.

Disinfectants, such as alcohols, hydrogen peroxide and chlorine bleach that are used to clean equipment; sticky traps and barriers; and ammonium carbonate used as bait in traps are not used directly on soil or crops and thus are not active because they have no significant consequence to the organic production system.

Lignin sulfonate, which is used as a dust suppressant or as a chelating agent, is not active in either use because, in the former instance it is not applied to soil used for crop production and, in the latter instance, it is not an active ingredient in a formulated (micronutrient) product.

Detergents and other emulsifiers used as surfactants or adjuvants often are added in very small quantities directly to tank mixes used for spraying and are considered to be non-active, just as inert ingredients within a formulated product are. Similar considerations apply to sodium silicate and other substances used to affect the surface tension of water, as is sometimes done to improve the buoyancy of tree fruit during packing.

The NOSB also recommended that lumber treated with arsenates not be included on the National List as an allowed synthetic substance. However, as previously discussed, we determined that a substance used to treat lumber that is used for such purposes as buildings, fences and trellises cannot be considered to be an active ingredient under our definition of an active ingredient. However, evidence we have reviewed indicates that arsenates and other synthetic lumber preservatives may become active when in contact with soil having a very high organic content, such as soil used in greenhouse beds or compost bins. Because arsenates and other synthetic substances used to preserve lumber are not proposed by us to be included on the National List as active synthetic substance, and because section 2109(c)(1) of the OFPA (7 U.S.C. 6508(c)(1)) specifically prohibits the use of arsenic or lead salts in organic crop production, the use of arsenates and other synthetic lumber preservatives in any manner that might be considered an active use would be prohibited under the Act and this proposal. Furthermore, section 2111(a)(5) of the OFPA (7 U.S.C. 6510(a)(5)) prohibits the use of storage containers or bins that contain any synthetic fungicides or preservatives in handling organic products and this would include bins constructed of arsenate treated lumber.

Finally, the NOSB recommended that biosolids, or municipal sludge, should be classified as synthetic and were not appropriate for use in organic crop production. The EPA defines biosolids as the primarily organic residuals, produced by current wastewater treatment processes that treat domestic sewage, that can be beneficially recycled. Under current EPA regulations, such recycling can include land application of biosolids to provide primary plant nutrients and micronutrients to crops and vegetation produced in agriculture and to improve soil characteristics by providing necessary moisture and/or organic matter to enhance soil tilth. Over the years, EPA, USDA, and FDA have issued joint policy statements that have endorsed the beneficial utilization of biosolids on land for purposes that include the production of fruits and vegetables. However, to prevent potential problems, the guidance contains steps that must be taken relative to issues such as the amount of cadmium and lead that can be applied to the soil, the amount of PCBs in the biosolids, and the relative accumulation of heavy metals into edible plant parts. Under these and other restrictions contained in 40 CFR Part 503, biosolids can be safely used in conventional agriculture. However, we are requesting comments to assess the extent to which biosolids may be used in organic production. The USDA specifically invites comments on whether the use of biosolids (municipal sludge) should be permitted or prohibited in organic production. The USDA also invites comments on the classification of biosolids as a synthetic rather than a non-synthetic substance. Comments should detail the basis for the commenter's recommendation, including the agricultural, policy, technical, or scientific factors.

The National List of Non-Synthetic (Natural) Substances Prohibited for Use in Organic Crop Production—Section 205.23

The NOSB has recommended that the rodenticide strychnine, the fertilizer ingredient manure ash, and the pesticide sodium fluoaluminate, which are non-synthetic (natural) substances, be prohibited for use in organic farming and handling. As stated previously, in order for the Secretary to prohibit the use of a non-synthetic (natural) substance in an organic farming or handling operation, it must be determined that the use of such substance both would be harmful to human health and the environment and inconsistent with organic farming or handling. Further, the Secretary of HHS and the Administrator of EPA must be consulted.

The Secretary of HHS and the Administrator of EPA, respectively, have the authority to regulate crop production substances according to human health and safety and environmental protection. These two agencies have the responsibility to review and establish appropriate restrictions on the use of any substance as a pest control, food, feed or drug, and the applicable agency must determine that allowed use of the substance poses no threat to human health and the environment before permitting a substance to be used in agricultural production or handling. In consulting with these agencies, they concluded that their review of these substances showed that, when used according to the requirements established by these agencies, the substances do not meet the criteria in the Act for inclusion on the National List of prohibited non-synthetic (natural) substances. In concurrence with this conclusion, we have determined that there can be no non-synthetic substance that meets both of the OFPA criteria for being designated as a prohibited non-synthetic substance, and we did not accept the NOSB's recommendation for the prohibition of strychnine, manure ash, and sodium fluoaluminate. We only include sections 205.23 and 205.25 in our proposal so that appropriate substances may be included on the National List in the future should this be determined to be necessary.

The National List of Active Synthetic Substances Allowed for Use in Organic Livestock Production—Section 205.24

The substances proposed for inclusion in this section of the National List are listed as the following six categories: trace minerals; nutrients and dietary supplements; feed additives (provided they are also included in section 205.26); animal drugs and other animal health care substances; vaccines and biologics; and pest control substances (provided they also are included in section 205.22).

This section would permit any active synthetic substance permitted by FDA, EPA and USDA in the specified categories to be allowed for use in organic livestock production when used in accordance with the restrictions specified by the approving agency and the restrictions specified in this section. We have proposed these active synthetic substances to be permitted for use after reviewing the NOSB recommendations for livestock substances to be included on the National List, and their recommendations for the use of vitamins, minerals, inoculants, vaccines, antibiotics and parasiticides in livestock production. Our proposed list is consistent with sections 2110 and 2118 of the OFPA (7 U.S.C. 6509 and 6517), which delineate feeding and health care practices to be used in organic livestock production and the categories of synthetic substances related to livestock production that may be included in the National List.

Section 2110(d) of the OFPA (7 U.S.C. 6509(d)) prohibits certain uses of veterinary medications, specifically subtherapeutic doses of antibiotics and routine administration of synthetic internal parasiticides, in organic livestock production. The use of other veterinary medications, except vaccines, is prohibited only in the absence of illness. This indicates that therapeutic doses of antibiotics, non-routine use of synthetic internal parasiticides, any use of vaccines, and administration of any veterinary medication to treat an illness are all permitted under the Act, without the need to include these substances on the National List of synthetic substances permitted to be used. However, because livestock parasiticides and medicines are also included among the categories of active synthetic substances in section 2118(c)(1)(B)(i) of the OFPA (7 U.S.C. 6517(c)(1)(B)(i)) that would need to be included on the National List in order to be permitted to be used, we have included animal drugs (veterinary medications) in this section of the proposed National List in order to clarify that their use is permitted.

All of the categories proposed for inclusion in this section of the National List, other than animal drugs and other animal health care substances and vaccines and biologics, have been explicitly reviewed by the NOSB itself and proposed for inclusion as either crop production substances in section 205.22 or as ingredients allowed in processed products in section 205.26. We are including the categories of animal drugs and animal health care substances and vaccines and biologics in the National List because these substances have already been evaluated by the applicable regulatory agency that approves them for general use by criteria similar to those in section 2119(m) of the OFPA (7 U.S.C. 6518(m)) that are to be used by the NOSB in evaluating a substance.

A representative of the FDA's Center of Veterinary Medicine (CVM) addressed the NOSB in Rohnert Park, California, in October 1994, to explain in detail the review process conducted by CVM in reviewing veterinary drugs and establishing withdrawal times. The NOSB voted at its meeting in Austin, Texas, on October 31, 1995, to accept the FDA evaluations of antibiotics, parasiticides, vitamins and minerals and the USDA evaluations of inoculants and vaccines as equivalent to the substance review process established for the NOSB in sections 2119(k), (l) and (m) of the OFPA (7 U.S.C. 6518 (k), (l) and (m)). However, in doing so, the NOSB did indicate that it would: defer the initial technical advisory panel review of synthetic vitamins and minerals for a period of two years unless a specific vitamin or mineral is identified in the interim as being in conflict with organic principles and therefore requires an immediate review; defer the initial review of vaccines and inoculants for a period of two years, except in the case of a substance that may be in conflict with organic principles and therefore requires an immediate review; and establish a priority ranking of antibiotics and parasiticides to be used by producers when administering animal drugs. To date, the NOSB has not yet established a priority ranking for preferred use of the antibiotics and parasiticides approved by FDA.

The National List of Non-Synthetic Substances Prohibited for Use in Organic Livestock Production—Section 205.25

As previously discussed with reference to proposed section 205.23, no substances are proposed in this section because we have determined that no non-synthetic substances meet the criteria provided in section 2118(c)(2) of the OFPA (7 U.S.C. 6517(c)(2)) for prohibiting their use.

The National List of Non-agricultural Substances Allowed as Ingredients in or on Processed Products Labeled as Organic or Made With Certain Organic Ingredients—Section 205.26

We propose in § 205.26 the National List category of non-agricultural substances allowed as ingredients in or on processed products labeled as organic or made with certain organic ingredients. As discussed previously, this section of the National List is proposed to satisfy the provision in section 2118(c)(1)(B)(iii) of the OFPA (7 U.S.C. 6517(c)(1)(B)(iii)) that a non-organically produced substance used in handling be evaluated as if it were synthetic, and therefore the use of such a substance is prohibited unless it appears on the National List.

The inclusion of both synthetic and non-synthetic non-agricultural substances in this category is necessary because, as was indicated in the NOSB's deliberations, it is often very difficult to decisively classify many non-agricultural ingredients as synthetic or non-synthetic. For example, citric acid is a naturally occurring substance that may be obtained from citrus fruits. However, after reviewing and discussing the process by which virtually all commercially available citric acid is formulated, the NOSB was almost evenly divided in its vote as to whether or not this process rendered the substance synthetic under the definition provided in section 2103 of the OFPA (7 U.S.C. 6502).

We have not, however, proposed to include in this section of the National List any substance (ingredient) that does not meet our definition of an active ingredient. Substances that are not active ingredients are considered to be incidental additives, and such substances are not consistent with the FDA and FSIS requirements for substances that must be listed on a product label. As previously discussed, because incidental additives are not active ingredients, they are not otherwise prohibited by the Act and may thus be used in handling organic products without having to be included on the National List. We are accordingly including only substances that do meet the definition of an active ingredient, and that therefore are required by the FDA and FSIS to be listed on a product label, in the National List of non-agricultural substances allowed as ingredients in or on processed organic products.

Proposed § 205.26 contains an alphabetical listing of the generic name of the non-agricultural substances which meet the Act's criteria for inclusion on the National List as substances permitted to be used. These substances have been reviewed by the NOSB and included in recommendations made by them to the Secretary regarding substances to be included on the proposed National List. In most cases, substances are listed individually, such as ammonium bicarbonate or lactic acid, but in many cases categories of substances, such as cultures (dairy, non-synthetic) or nutrient supplements, are listed. When a category is listed, the use of any substance that belongs to that category is allowed.

This section diverges from certain recommendations provided by the NOSB. As discussed with respect to allowed synthetic substances used in crop production, proposed in § 205.22, certain substances that the NOSB recommended be included on the National List of substances allowed for use as ingredients in or on processed organic products are not active, and are thus not included in this section. These substances, which may be used without inclusion on the National List, are diatomaceous earth, clays including kaolin and bentonite, nitrogen, oxygen, ozone, chlorine bleach, perlite, sodium hydroxide, ethylene, hydrogen peroxide, and potassium hydroxide.

Kelp was reviewed and recommended by the NOSB as a permitted non-agricultural substance in processed products. We have not included kelp as a non-agricultural substance permitted for use because kelp and other seaweeds are plants harvested from the wild, and so are considered agricultural products as opposed to non-agricultural products when used as ingredients in processed organic products. Kelp also might be considered a nutrient supplement when used as a source of iodine in food meant for human consumption and as a source of iodine and trace minerals in livestock feed.

The NOSB recommended the plant derived waxes carnauba wax and wood rosin for inclusion on the proposed National List. (Wood rosin also is referred to as lac-resin, shellac-based wax, or resin). We have included carnauba wax and wood rosin in this proposed section and additionally propose to include candelilla wax and beeswax as allowed non-agricultural substances. Candelilla wax is a plant derived wax that is commonly used, as is beeswax, in coatings for fresh produce. We consider both waxes to be necessary to the handling of agricultural products and as meeting the other requirements of section 2118(a) of the OFPA (7 U.S.C. 6517(a)) that must be met before such substances may be permitted to be used. In accordance with section 2111(a)(5) of the OFPA (7 U.S.C. 6510(a)(5)), which prohibits the use of any packaging materials that contain synthetic fungicides or preservatives, any wax used as a coating on fresh produce could not contain synthetic preservatives or fungicides.

The NOSB recommended the inclusion of unmodified cornstarch as a permitted substance and postponed a decision on other unmodified starches. Unmodified starches are agricultural ingredients because they are manufactured from agricultural products through methods that do not meet the Act's definition of synthetic. Their use would therefore be permitted as non-organic agricultural ingredients in proposed § 205.27.

The NOSB reviewed whey protein and did not recommend it for inclusion on the National List of allowed non agricultural ingredients. We consider whey protein to be necessary to the handling of certain agricultural products because of the unavailability of wholly natural products, which use is then provided for in section 2118(c)(1)(A)(ii) of the OFPA (7 U.S.C. 6517(c)(1)(A)(ii)). This substance also meets the other criteria in the Act for inclusion on the National List, and we accordingly propose that it be included as an allowed non-agricultural ingredient as part of our category whey and its fractions.

The NOSB also recommended not to include magnesium carbonate, potassium phosphate, magnesium stearate, and potassium iodide on their proposed National List of non-agricultural ingredients allowed in agricultural products labeled as organic. However, the NOSB recommended that these four substances be permitted in products labeled as made with certain organic ingredients. Because our proposed National List is applicable to both types of labeled products, we propose to include magnesium carbonate, potassium phosphate, magnesium stearate and potassium iodide in this section and allow their use in products labeled organic and made with certain organic ingredients.

(Potassium iodide is not listed separately because it is included within the nutrient supplement category).

Chymosin is an enzyme that occurs naturally in animals and currently is being produced through genetically engineered microorganism in quantities suitable for cheese production. The NOSB recommended that chymosin not be included on the proposed National List of non-agricultural substances because it is derived from a genetically engineered microorganism. We have included chymosin on the proposed National List so as to solicit public comment.

The NOSB recommended that enzymes derived from bacteria which were not genetically engineered are appropriate for use as non agricultural ingredients in agricultural products labeled as organic or made with certain organic ingredients. Although the NOSB has not completed its review of sources of non-synthetic enzymes, such as plant, animal, and micro-organisms other than bacteria, we have included the category of enzymes, non-synthetic in this section of the proposed National List for the purpose of receiving comment during the period that the NOSB completes its review and develops its recommendation. When they have completed their review, appropriate notice will be provided. We would consider animal-derived rennet to be included in the category of non-synthetic enzymes.

The NOSB classified calcium sulfate as synthetic and did not recommend it for inclusion on the proposed National List of non-agricultural substances permitted to be used. However, we are aware of at least one source of mined gypsum (non-synthetic) that is refined to food grade calcium sulfate. Also, we received comments from some manufacturers of tofu who stated their preference for calcium sulfate over other coagulants. Non-synthetic calcium sulfate could serve in some cases as a wholly natural alternative to the use of synthetic tofu coagulants, and otherwise meets the Act's criteria for inclusion on the National List of non-agricultural substances permitted to be used. We have therefore included calcium sulfate in this section of the proposed National List.

Some substances included in this proposed section 205.26 as non-agricultural substances are manufactured from feed stocks that are agricultural products, such as corn. Some persons may thus consider these substances to be agricultural products, and therefore not appropriate for inclusion in this section of the National List. We have included these substances because they are not easily recognizable as agricultural products, or because there is some likelihood that the processing methods used to purify these substances would render them synthetic as defined under the Act. The inclusion of these substances in this section is based on our definition of a non-agricultural ingredient (proposed in section 205.2) as a substance that is extracted, isolated from, or is a fraction of an agricultural product, so that the identity of the agricultural product is unrecognizable in the extract, isolate or fraction. Examples of these proposed substances include: ascorbic acid, beeswax, citric acid, candelilla wax, carnauba wax, carrageenan, non-synthetic colors, lactic acid, lecithin, mono and diglycerides, pectin, potassium acid tartrate, tartaric acid and whey and its fractions. Since many of these substances originate from agricultural products, it is possible that these substances could be available in the future as organic agricultural products.

Non-organically Produced Agricultural Products Allowed as Ingredients In or On Processed Products Labeled as Organic or Made With Organic Ingredients—Section 205.27

Non-organically produced agricultural ingredients are permitted for use in processed organic products under section 2111(a)(4) of the OFPA (7 U.S.C. 6510(a)(4)), provided that they comprise less than five percent by weight of the finished product, exclusive of water and salt, and are included on the National List. Section 2118(c)(1)(B)(iii) of the OFPA (7 U.S.C. 6517(c)(1)(B)(iii)) requires non-organically produced substances to be evaluated according to the same criteria used for active synthetic ingredients in order to be permitted for use as ingredients in organic products. In its review of non-organically produced agricultural products, the NOSB concluded that all agricultural products, considered as a category, meet the criteria for including substances on the National List, as set forth in sections 2118(c)(1)(A) and 2119(m) of the OFPA (7 U.S.C. 6517(c)(1)(A) and 6518(m)). In concurrence with the NOSB, we are proposing in this section that all non-organically produced agricultural products be allowed as ingredients in organic processed products. Under this proposal, any agricultural product could be used if such use complied with the provisions proposed in section 205.16.

Amending the National List—Section 205.28

Section 2119(n) of the OFPA (7 U.S.C. 6518(n)) requires the establishment of a petition procedure by which interested parties may request the NOSB to evaluate substances for inclusion on the National List. We accordingly have proposed in section 205.28 a process by which an interested party may petition the NOSB to review a substance and make a recommendation as to whether the substance should be included in the National List as an allowed active synthetic substance, a prohibited non-synthetic substance, or a non-agricultural substance allowed to be used as an ingredient in or on processed organic products.

This section also proposes the information that, to the extent it is available to the petitioner, should be included in the petition to assist the NOSB review of the substance and the Secretary's determination as to its inclusion on the National List. The information requested by proposed paragraph (d) of this section would provide information relevant to the issues that are to be examined when considering placing a substance on the National List. This would include information that would enable the Secretary to determine whether a substance functions as, or contains, an active synthetic ingredient, and whether it falls into one of the categories of active synthetic substances that may be included on the National List of approved substances. This would also include information needed to evaluate the health, environmental, and agroecosystem effects of the substance.

This proposed section also would require regulatory information, such as registration of the substance in question with EPA or FDA. Other required information would include a description of the manufacturing process of the substance, product characteristics, safety information relating to the substance, and bibliographies of scientific literature relating to the substance that may be available to the petitioner to be submitted. The petitioner would be requested to submit information that describes alternative substances or alternative cultural methods that could be utilized in place of the substance, and that summarizes the effects on the environment, human health, and farm ecosystem that might support the use of the substance. This information is needed to help determine whether a substance is an active synthetic ingredient in one of the categories that the Act, in section 2118(c)(1)(B)(i) of the

OFPA (7 U.S.C. 6517(c)(1)(B)(i)), permits to be used if it is on the National List and whether allowance of a synthetic substance is justified by the lack of a suitable non-synthetic or cultural alternative, as required under section 2118(c)(1)(A)(ii) of the OFPA (7 U.S.C. 6517(c)(1)(A)(ii)). Other information required to be submitted is needed to determine whether a non-synthetic substance will be prohibited for use under the criteria specified in section 2118(c)(2) of the OFPA (7 U.S.C. 6517(c)(2)).

Section 2118(d) of the OFPA (7 U.S.C. 6517(d)) includes provision for the procedure by which amendments may be made to the National List. Following receipt of a petition, as proposed in this section, the Secretary would determine whether the substance is within one of the categories of the National List. If the substance is within one of the defined categories, it would be reviewed by the NOSB in accordance with the criteria provided in the Act.

After the NOSB submits its recommendations concerning a petitioned substance to the Secretary, the Secretary would then determine whether the substance satisfies the criteria listed in section 2118(c) of the OFPA (7 U.S.C. 6517(c)) regarding the inclusion of substances on the National List as an allowed or prohibited substance. If the Secretary determines that the substance does meet these criteria, the addition of the substance to the National List would then be proposed as an amendment to the National List according to the procedure established in section 2118(d) of the OFPA (7 U.S.C. 6517 (d)), which includes publication in the **Federal Register** of a proposed amendment to the National List and an opportunity for public comment.

As provided for in section 2118(e) of the OFPA (7 U.S.C. 6517(e)), the NOSB also would review any substance on the National List within five years of the substance being allowed or prohibited for use, and would provide the Secretary with recommendations as to whether the substance should remain on the National List. The Secretary would decide whether to renew each allowance or prohibition in order for an allowed or prohibited substance to remain on the National List. The Secretary's decisions concerning this then would be published in the **Federal Register**.

Subpart C—Labels, Labeling, and Market Information

Sections 2106(a)(1)(A) and (B) of the OFPA (7 U.S.C. 6505(a)(1)(A) and (B)) state that persons may sell or label agricultural products as organically produced only in accordance with the Act, and that persons may affix a label to and provide other market information concerning organically produced agricultural products only when the products are produced and handled in accordance with the Act.

In accordance with the Act, we are proposing in subpart C of this part provisions regarding labels, labeling, and marketing information for agricultural products that are organically produced and for any agricultural products that contain organically produced ingredients. Additionally, provisions also are included for the use of the USDA seal on labels, labeling, and other market information as authorized by section 2106(a)(2) of the OFPA (7 U.S.C. 6505(a)(2)), and this subpart also addresses the use of products that originate from operations that sell no more than $5,000 annually in value of agricultural products. These operations are exempt from certain provisions of the Act.

Agricultural Products in Packages Sold, Labeled, or Represented as Organic—Section 205.100

In accordance with section 2106 of the OFPA (7 U.S.C. 6505) which provides for selling and labeling a product as organically produced, we propose in section 205.100 of this subpart our labeling provisions for agricultural products in packages described in section 205.16(a) that are sold, labeled, or represented as organic. These are finished products that contain at least 95 percent organically produced ingredients, by weight, excluding water and salt, hereafter referred to as "products that contain at least 95 percent organic ingredients". The percentage of the product that is not organic must be made of some combination of non-agricultural ingredients and/or non-organically produced agricultural products included on the National List. Packages are defined in our proposal as a container or wrapping that bears a label and which encloses an agricultural product, except for agricultural products in bulk containers, shipping containers, or shipping cartons.

In paragraph (a) of this section, we propose the terms that may be used on agricultural products described in section 205.16(a) that are sold, labeled, or represented as organic, (i.e., products that contain at least 95 percent organic ingredients). We propose to allow the term organic to be used on the principal display panel to modify the name of the product and in the ingredients statement to modify the name of each ingredient organically produced and handled in accordance with the Act and the regulations in this part. We have defined the principal display panel to be that part of a label that is most likely to be displayed, presented, shown or examined under customary conditions of display for retail sale. The ingredients statement is defined as the listing of the ingredients contained in a product listed by their common or usual names in the descending order of predominance. The ingredients statement is usually located on the information panel of products other than meat and poultry products and is often located on the principal display panel of meat and poultry products, but may be placed on other package panels because of package restrictions.

We are proposing to allow the term organic to appear on the principal display panel to ensure a clear, consistent and conspicuous identification of organically produced agricultural products for consumers. Examples of the use of this term are organic grapes, organic beef, organic peppermint tea, organic vegetable soup, organic whole wheat bread, and organic ice cream. We are proposing to allow the term organic to be used in the ingredients statement to modify the name of each organically produced ingredient in order to provide consumers with a means of knowing which ingredients have been organically produced. Many consumers would consider information about the specific organic ingredients contained in a product to be essential information to have as a part of their purchasing decision.

Section 2106(a)(2) of the OFPA (7 U.S.C. 6505(a)(2)) provides for products that meet USDA standards for organic production to incorporate the USDA seal on such agricultural products. Additionally, section 2108 of the OFPA (7 U.S.C. 6507) provides for a State to establish a State organic program that meets the requirements of the national organic program. If a State does so, and its program is approved by USDA, we believe it is appropriate to allow the State to have a seal representing its program, and to allow agricultural products produced under such a State program to bear a State seal. Accordingly, we propose in paragraph (a)(3) of this section that a USDA seal, and a State seal that represents a State organic program approved by the Secretary, as provided for in section 205.402 of subpart F, may be used on the principal display panel of packages of agricultural products labeled as organic. These seals would reflect that

the product was produced and handled in accordance with the Act and the regulations in this part, and if applicable, the requirements of a State organic program approved by the Secretary.

We think that the terms and marks used on the principal display panel, which is the most visible panel, should be those terms and marks which simply and clearly present information about the organic nature of the agricultural product and its compliance with the national organic program requirements and, if applicable, the requirements of an approved State organic program. This is consistent with the purposes stated in sections 2102(2) and (3) of the OFPA (7 U.S.C. 6501(2) and (3)) to assure consumers that organically produced products meet a consistent standard and to facilitate commerce.

We propose in paragraph (a)(4) of this section the terms and marks which may appear on the information panel of products in packages that are sold, labeled, or represented as organic (i.e., products that contain at least 95 percent organic ingredients). We have defined the information panel to be that part of the label immediately contiguous and to the right of the principal display panel as observed by an individual facing the principal display panel, unless an allowance has to be made for another section of the label to be designated as the information panel because of size or other limitations. Many meat and poultry products do not have an information panel.

Most of the terms and marks proposed to be permitted to be used on the information panel of products that contain at least 95 percent organic ingredients are the same terms and marks previously proposed to be allowed to be used on the principal display panel: the term organic, the USDA seal, and a State seal representing a State organic program approved by the Secretary. Additionally, we propose to permit on the information panel the use of a certifying agent's name, seal, logo or other identification which represents that the farm, wild crop harvesting, or handling operation that produced or handled the finished product is a certified operation. We are proposing here to allow only the identification of the certifying agent that certified the operation that produced or handled the finished product. We believe that allowance of the use of multiple identification of certifying agents who certify any operation involved in the production or handling of the product would be unwieldy and confusing to the consumer. We invite comments on this issue.

The NOSB received some public comment which requested that identification of a certifying agent on product labels be prohibited. Other public comments, however, indicated that the identification of a certifying agent should be required on product labels to inform consumers of the specific organization that performed the certification of the operation. Additionally, some public comments requested that the identification of a certifying agent be optional, so that each individual producer and handler could decide whether to include this identification on their label.

After evaluating the public comments, we agree that the decision as to whether to include the certifying agent's identification on a label should be optional. We believe that inclusion of the identification of the certifying agent who certified the operation that made the finished product is not essential. Therefore, we have included this identification of a certifying agent in our proposal as optional information that may be included on the information panel of a label of products that contain at least 95 percent organic ingredients.

We propose to allow the placement of the identification of the certifying agent on the information panel, but not on the principal display panel, because we want the principal display panel to include only those terms or marks that would be important to everyone, i.e., those terms or marks that present information about the organic nature of the agricultural product, its compliance with the national organic program requirements and, if applicable, the requirements of an approved State organic program; we do not feel that the identification of a certifying agent is this type of information. We propose to allow the placement of the identification of the certifying agent on the information panel, rather than restricting its use to other less prominent panels, because we agree with the public input we received that stated that this information would be important to some consumers in their purchasing decisions.

In paragraph (a)(5) of this section, we propose that the terms or marks that may appear on the information panel for products sold, labeled, or represented as organic (i.e., products that contain at least 95 percent organic ingredients) also may be used on any package panels of the product, excluding the principal display panel. Additionally, we are proposing that these same terms and marks may be used on the product's labeling and on market information about the product. We have defined labeling to be written, printed or graphic material accompanying a product at any time or displayed about the product at the retail store. Market information has been defined to be any written, printed, audio-visual or graphic information, including advertising, pamphlets, flyers, catalogues, posters, and signs, that are used to assist in the sale or promotion of a product. This provision is consistent with section 2106(a)(1)(B) of the OFPA (7 U.S.C. 6505(a)(1)(B)), which provides for labels and market information to be provided for and affixed on agricultural products that are produced and handled in accordance with the Act and the regulations in this part.

Agricultural Products in Packages Sold, Labeled, or Represented as Made With Certain Organic Ingredients—Section 205.101

Section 2106(c)(1) of the OFPA (7 U.S.C. 6505(c)(1)) authorizes the Secretary, in consultation with the NOSB and the Secretary of Health and Human Services, to allow the use of the word organic on the principal display panel of an agricultural product that contains at least 50 percent organically produced ingredients by weight, excluding water and salt, only for the purpose of describing the organically produced ingredients. Our proposed section 205.16(b) makes it clear that this type of product is one containing at least 50 percent, but less than 95 percent, organically produced ingredients. The Secretary has consulted with the Secretary of Health and Human Services and reviewed the NOSB recommendations for this matter. We are proposing to allow the word organic to appear on the principal display panel of products described in section 205.16(b) as discussed below, hereafter referred to as "products that contain between 50 and 95 percent organic ingredients".

We propose, in paragraph (a) of this section, the terms that must be used on agricultural products sold in packages, described in section 205.16(b), that are sold, labeled, or represented as made with certain organic ingredients, (i.e., products that contain between 50 and 95 percent organic ingredients). We propose in paragraph (a)(1) of this section that the statement made with certain organic ingredients must be used on the principal display panel of a product described in section 205.16(b). We believe that allowing the word organic to appear on the principal display panel of these products only when used within the statement made with certain organic ingredients would enable consumers to easily distinguish this type of product from a product that

contains at least 95 percent organic ingredients, on which the term organic must appear on the principal display panel to modify the name of the product.

We request comments from industry, consumers, consumer interest groups, and all other interested persons on our proposed use of the statement made with certain organic ingredients on the principal display panel of products that contain between 50 and 95 percent organic ingredients. We are soliciting information as to whether there are alternative label proposals, and if so, a description of them, that would accomplish our purpose of clearly distinguishing on the principal display panel between products that contain at least 95 percent organic ingredients and those that contain between 50 and 95 percent organic ingredients.

We also propose in paragraph (a)(2) of this section to require that the term organic be used in the ingredients statement to modify organically produced ingredients. We are proposing this in order to provide consumers with a means of knowing which ingredients have been organically produced.

We propose in paragraph (b) of this section the terms and marks that may, but that are not required to, be used on agricultural products described in section 205.16(b) that are sold, labeled, or represented as made with certain organic ingredients (i.e., products that contain between 50 and 95 percent organic ingredients). In paragraph (b)(1) of this section, we propose to allow the statement made with certain organic ingredients to appear on the information panel. We believe this would further assist consumers in readily identifying products that contain between 50 and 95 percent organic ingredients, and additionally may be useful in certain retail display situations where the view of the principal display panel may be obscured from the consumer. We also propose in paragraph (b)(1) of this section to allow the identification on the information panel of the certifying agent who certified the farm, wild crop harvesting, or handling operation that produced or handled the finished product. Our reasons for allowing the optional inclusion of the certifying agent's identification on the information panel and the prohibition of its placement on the principal display panel for these type of products, are the same ones we previously discussed with regard to products that contain at least 95 percent organic ingredients.

In paragraph (b)(2) of this section, we propose that any of the terms and marks proposed to be allowed to be used on the information panel may also be used on labeling, market information and any package panel, excluding the principal display panel, of products labeled as made with certain organic ingredients. The allowed terms or marks would be the statement made with certain organic ingredients and the certifying agent's identification. This provision is consistent with section 2106(a)(1)(B) of the OFPA (7 U.S.C. 6505(a)(1)(B)), which provides for labels and market information to be provided for and affixed on agricultural products that are produced and handled in accordance with the Act and the regulations in this part.

Multi-ingredient Agricultural Products That Only Represent the Organic Nature of Such Ingredients in the Ingredients Statement—Section 205.102

Section 2106(c)(2) of the OFPA (7 U.S.C. 6505(c)(2)) authorizes the Secretary, in consultation with the NOSB and the Secretary of Health and Human Services, to allow products that contain less than 50 percent organically produced ingredients by weight of the finished product, excluding water and salt, to include the word organic on the ingredient listing panel to describe those ingredients that are organically produced. The Secretary has consulted with the Secretary of Health of Human Services and reviewed the NOSB recommendations on this matter. We propose the following provisions for the use of the word organic in the ingredients statement of multi-ingredient agricultural products that only represent the organic nature of such ingredients in the ingredients statement.

We propose in section 205.102 that the term organic may be used in the ingredients statement of this type of product to modify the name of an ingredient organically produced and handled in accordance with the Act and the regulations in this part. We also propose in section 205.102 that agricultural products that are composed of more than one ingredient may represent in an ingredients statement that the ingredients are organic without the finished product having to be produced and handled in a certified operation, if certain conditions are met. One of the conditions that must be met is that the producer or handler of the finished product would have to maintain certain records that are required for non-certified operations. The second condition that must be met is that the only representation made about the organic nature of the product is a statement in the ingredients statement that identifies organic ingredients.

We also propose in paragraph (b) of this section that the term organic may be used on labeling, marketing information and package panels of labels other than the principal display panel and information panel, to describe the organic ingredients in products discussed above. We are permitting the identification of organic ingredients under these conditions for a variety of organic products in order to allow the organic industry flexibility in the production and marketing of organic products.

Use of Terms or Statements That Directly or Indirectly Imply That a Product is Organically Produced and Handled—Section 205.103

Section 2106(a)(1)(B) of the OFPA (7 U.S.C. 505(a)(1)(B)) provides that a person may affix or provide a label or other market information about an agricultural product, including an ingredient, that directly or indirectly implies that the product is organically produced and handled only when the product has been produced and handled using organic methods in accordance with the Act. Accordingly, we propose in this section that labels, labeling or market information that directly or indirectly imply organic production and handling practices may be provided for or affixed only on agricultural products produced and handled in accordance with the Act and the regulations in this part.

Our proposed regulations would authorize the use on a label, labeling, or market information of the term organic and other terms and phrases that directly or indirectly imply that the product was organically produced and handled. Therefore, under our proposal, any terms or phrases that directly or indirectly imply that a product has been organically produced or handled would be prohibited from being used on the label, labeling, or market information of products that are not produced in accordance with the Act and the regulations in this part.

We considered putting in our proposed requirement a specific list of the terms and phrases that we believe would directly or indirectly imply that a product was organically produced and handled. We have not done this because we are uncertain as to what terms and phrases should appropriately be placed on such a list. We request comment from the public as to what terms or phrases, other than organic or made with certain organic ingredients, they believe could directly or indirectly imply that a product was organically produced and handled and the rationale for the allowance of their use. Examples of terms or phrases which we consider may imply directly or indirectly that a product is organically produced and handled and about which we specifically request comment include: "produced without synthetic pesticides"; "produced without synthetic fertilizers"; "raised without synthetic chemicals"; "pesticide-free farm"; "no drugs or growth hormones used"; "raised without antibiotics"; "raised without hormones"; "no growth stimulants administered"; "ecologically produced"; "sustainably harvested"; and "humanely raised".

Informational Statements Prohibited—Section 205.104

We are proposing in this section to prohibit certain informational statements from being included on the principal display panel and ingredients statement of any products containing organically produced ingredients because we believe such statements might mislead consumers. Because these are the areas that consumers generally examine to obtain information about the nature of the product they are purchasing, we believe that these areas should therefore contain only terms or phrases that are familiar to consumers and are readily understood by them.

In paragraph (a) of this section, we propose to prohibit the phrase one hundred percent, stated in letters, numbers or symbols, when used as part of any phrase or sentence that includes the term organic, on the principal display panel and in the ingredients statement of a product that is sold, labeled, or represented as organic. Examples of phrases that would be prohibited by this paragraph are: our ingredients are one hundred percent organic; 100% organic whole wheat; and we only use 100 percent organic methods.

In paragraph (b) of this section, we propose to prohibit the placement of a statement of the percentage of organic ingredients on the principal display panel and in the ingredients statement of any product containing organic ingredients. Our proposal would not prohibit a statement of the percentage of organic ingredients from being used on labeling materials, market information and any panel other than the principal display panel.

The NOSB received comments from manufacturers both in favor and in opposition to allowing the inclusion of a statement of the percentage of organic ingredients on product labels. The NOSB recommended to the Secretary that a percentage statement be allowed on the principal display panel only for products containing one hundred percent organic ingredients. For all other products, the NOSB recommended that a percentage statement be restricted to the information panel.

We agree with the NOSB that a percentage statement should be permitted, and accordingly propose to allow a statement of the percentage of organic ingredients on a product label for the benefit of consumers who believe that this information is important to them as part of their purchasing decisions. However, we propose to prohibit its placement on the principal display panel and in the ingredients statement. We propose this prohibition on the placement of the percentage statement because we do not consider a percentage statement to be essential program information. Its use on the principal display panel and ingredients statement would be inconsistent with our proposed labeling scheme, as previously explained, which provides for placing only essential program information on the principal display panel and ingredients statement. We request comment on our proposal to allow a statement of the percentage of organic ingredients on a product package and on our proposal to prohibit its use on the principal display panel and in the ingredients statement.

In paragraph (c) of this section, we propose to prohibit the use of the phrase organic when available, or a term of similar meaning or intent, on the principal display panel and in the ingredients statement of products containing organic ingredients.

Agricultural Products in a Form Other Than Packages That are Sold, Labeled, or Represented as Organic or Made With Certain Organic Ingredients—Section 205.105

We propose in paragraphs (a) and (b) of this section the terms and marks that may be used on products in a form other than packages that are sold or represented as organic or made with certain organic ingredients, in order to prevent the possibility of mixing organic and nonorganic products. Products in a form other than packages are those products that either are not enclosed in a container or wrapping or are products labeled as bulk food items in containers. Products in other than package form include such products as bulk food items, unpackaged fruits and vegetables for sale in a retail store, raw agricultural products such as grains, and products in shipping containers for further processing.

We propose in paragraph (a)(1) of this section that agricultural products that contain at least 95 percent organic ingredients that are sold or represented as organic may use the term organic on a retail display label (or labeling) or display container to modify the name of the product. We propose in paragraph (a)(2) of this section that the term organic may be used in the ingredients statement to modify the name of an ingredient organically produced and handled in accordance with the Act and the regulations in this part. The proposals made in paragraphs (a)(1) and (a)(2) of this section would be applicable to organic products in other than package form at the time of retail sale and, thereby, would provide for organic products sold in retail stores in bulk or other non-package form to be identified by the same terms as we propose to be used on organic products in package form.

We propose in paragraph (a)(3) of this section that shipping containers for organic products in other than package form may bear a clearly recognizable organic identification mark(s) or term(s) in plain view on the shipping container. The mark(s) or term(s) are proposed to be chosen from the following: the term organic used to modify the name of the product; the USDA seal; a seal representing an approved State organic program; and the certifying agent's name, seal, logo, or other identification representing certification of the operation that produced or handled the product. We believe that this provision would assist those handlers who handle both organically produced and non-organically produced products to readily identify and separate the products and prevent their commingling, as required in proposed section 205.19.

We propose in paragraph (b) of this section the labeling requirements for agricultural products in other than package form that are sold or represented as made with certain organic ingredients. We believe that agricultural products in a form other than packages that are sold or represented as made with certain organic ingredients need to meet specific labeling requirements that are similar to the requirements proposed for agricultural products in other than package form that are sold, labeled, or represented as organic. These labeling requirements are needed to ensure that these products can be readily identified and to assist handlers in preventing the possibility of commingling products sold, labeled, or represented as made with certain organic ingredients with non-organically produced products. Accordingly, we propose in paragraph (b)(1) of this section that agricultural products that are sold or represented as made with certain organic ingredients

that are described in section 205.16(b) shall use the statement made with certain organic ingredients on a retail display label (or labeling) or display container to modify the name of the product. We propose in paragraph (b)(2) of this section that the term organic be used in the ingredients statement to modify the name of an ingredient organically produced and handled in accordance with the Act and the regulations in this part. Finally, we propose in paragraph (b)(3) of this section that agricultural products in a form other than packages would use the statement made with certain organic ingredients located in plain view on the shipping container, which may be accompanied by the certifying agent's name, seal, logo, or other identification. The rationale for the provisions proposed in paragraph (b) of this section are discussed in the supplementary information for paragraph (a) of this section regarding organic products in a form other than packages.

Agricultural Products Produced on an Exempt Farm or Handling Operation—Section 205.106

Section 2106(d) of the OFPA (7 U.S.C. 6505(d)) provides an exemption from the compliance requirements of section 2106(a)(1) of the OFPA (7 U.S.C. 6505(a)(1)), which does not permit a person to sell or label an agricultural product as organically produced unless it has been produced and handled in accordance with the Act. This exemption applies to a person who sells no more that $5,000 annually in value of agricultural products, unless such person voluntarily chooses to be certified. In § 205.202(a)(1) of subpart D, we propose that a farm, handling operation, or wild crop harvesting operation that produces, handles or harvests agricultural products, but which annually sells no more than $5,000 in value of agricultural products, would be exempt from the certification requirements of the Act and the regulations set forth in subpart D of this part. Consistent with section 2107(a)(11) of the OFPA (7 U.S.C. 6506(a)(11)), however, which allows the Secretary to require such other terms and conditions determined to be necessary, we propose in paragraphs (a) and (b) of this section certain labeling requirements for agricultural products that are produced on these exempt operations that have not been certified. We propose these labeling prohibitions in order to help ensure that consumers are not misled when they purchase agricultural products from them, and in order to assure that products and ingredients sold, labeled, or represented as meeting the requirements of the OFPA in fact have been produced and handled in accordance with the Act.

In paragraph (a) of this section, we propose to prohibit the displaying of the USDA seal or any certifying agent's name, seal, logo, or other identification of certification referring to the requirements of the Act and the regulations of this part. The purpose of this provision would be to ensure that only agricultural products that meet the proposed requirements for organic production and certification in part 205 could have a label or other market information that incorporated the USDA seal or certification identification, either of which would indicate compliance with the Act and the regulations in this part. Additionally, the provision proposed in paragraph (a) of this section would assist consumers in distinguishing between an organic product from an exempt operation and an organic product from an operation certified to national or State program requirements.

In paragraph (b) of this section, we propose that an agricultural product that is produced or processed on an exempt farm or handling operation that annually sells no more than $5,000 in value of agricultural products and which has not been certified could not be identified as an organic ingredient in a product produced or processed on a farm or handling operation that annually sells more than $5,000 in value of agricultural products. We propose this prohibition for the purpose of prohibiting organic agricultural products that originate from exempt uncertified operations from being commingled with organic agricultural products that originate from operations that are certified to national or State program requirements. This provision as proposed would help promote clarity for consumers in identifying when an agricultural product was produced and handled in accordance with the Act and the regulations in this part.

The USDA Seal—Section 205.107

Section 2106(a)(2) of the OFPA (7 U.S.C. 6505(a)(2)) allows labels affixed to, or market information provided for, domestic agricultural products that meet the USDA standards for organic production to incorporate the USDA seal. In accordance with this section of the OFPA, we propose in paragraph (a) of this section that the USDA seal could be used only on those agricultural products (raw or processed) labeled as organic (i.e., products that contain at least 95 percent organic ingredients), as described in § 205.16(a), that are produced in the U.S. and are produced and handled on a certified operation. This provision as proposed would permit a product produced in the U.S. which contained imported organic ingredients obtained from a program determined by the Secretary to be equivalent to the national program to display the USDA seal.

In paragraphs (b) and (c) of this section, we propose the form and design of the USDA seal. We propose to require the reproduction of the mark in a dark color on a light background, or in a light color on a dark background, or in a standard four color label. We propose that the USDA seal consist of an interior globe with continents displayed and a diagonal line across the globe (continents) with the word organic on the diagonal. The globe with continents would be surrounded by concentric circles with arrows containing the words meets USDA requirements. A triangle would enclose the globe and the concentric circles.

The use of the globe with continents is intended to represent the principles of organic production upon which the national organic program is founded. These principles are oriented toward the nurturing of a healthy agroecosystem as part of the biosphere, represented by the globe. The concentric circles with arrows represent the basic practice of recycling nutrients and materials which is essential to a system of organic farming. The triangle represents the stability of a healthy agroecosystem based upon the stewardship of soil, water and air as its components.

We believe that this seal, which may be used at the option of the producer or handler in accordance with the provisions of subpart C of this part, would allow consumers to readily identify that the organic product met the requirements of the National Organic Program as proposed in the regulations of this part. We request comment on the design of the USDA seal and its use as proposed in this subpart as to whether the proposed design will readily identify an organic product as one that meets the requirements of the National Organic Program.

In particular, we would like to receive examples of alternative designs for the USDA seal that would be effective in allowing consumers to readily identify that an organic product meets the requirements of the organic program. We would appreciate it if any alternative designs submitted are accompanied by an explanation about how the alternative design suggested would more effectively make organic products readily identifiable as being produced under the National Organic Program than the proposed design for the USDA seal. In addition, we would like comments from all interested persons as to whether the proposed design for the USDA seal would create any burdens for its use.

We have provided a chart of what is required to be reflected on the labels and labeling of various types of organic products, as well as what is required to be reflected on certain types of market information provided about organic products. The chart also indicates where required information is to be placed on labels, on labeling, and on certain types of market information. Additionally, the chart indicates what type of information may, but is not required, to be placed on labels, on labeling, and on certain types of market information for various types of organic products. Further, the chart indicates what type of information may not be placed on the labels, labeling, and market information of various types of organic products, and where it is prohibited from being placed.

SUBPART C—LABELS, LABELING, AND MARKET INFORMATION

Required	Discretionary	Prohibited
Agricultural products in packages sold, labeled or represented as organic		
Principal display panel: • None	• The term organic to modify the name of the product. • USDA seal • State seal	• Certifying agent's name, seal, logo, or other identification. • One hundred percent stated in letters, numbers, or symbols, used with any phrase or sentence that includes the term organic. • Statement of the percentage of organically produced ingredients contained in a product. • Phrase: organic when available (or term of similar meaning or intent).
Ingredients Statement: • None	• The term organic to modify the name of an ingredient organically produced and handled.	• One hundred percent stated in letters, numbers, or symbols, used with any phrase or sentence that includes the term organic. • Statement of the percentage of organically produced ingredients contained in a product. • Phrase: organic when available (or term of similar meaning or intent).
Information panel: • None	• Organic with product name • USDA seal. • State seal. • Certifying agent's name, seal, logo, or other identification.	• None.
Agricultural products in packages sold, labeled, or represented as made with certain organic ingredients		
Principal display panel: • Statement: made with certain organic ingredients.	• None	• One hundred percent stated in letters, numbers, or symbols, used with any phrase or sentence that includes the term organic. • Statement of the percentage of organically produced ingredients contained in a product. • Phrase: organic when available (or term of similar meaning or intent). • USDA seal. • State seal. • Certifying agent's name, seal, logo, or other identification
Ingredients statement: • The term organic to modify the name of an ingredient organically produced and handled..	• None	• One hundred percent stated in letters, numbers, or symbols, used with any phrase or sentence that includes the term organic. • Statement of the percentage of organically produced ingredients contained in a product. • Phrase: organic when available (or term of similar meaning or intent).
Information panel: • None	• Statement: made with certain organic ingredients. • Certifying agent's name, seal, logo, or other identification.	• USDA seal. • State seal.
Multi-ingredient agricultural products that are not produced by certified operations and that only represent the organic nature of such ingredients in the ingredient statement and which are not sold, labeled, or represented as organic or made with certain organic ingredients		
Principal display panel: • None	• None	• The term organic to modify the name of the product. • Statement: made with certain organic ingredients. • USDA seal. • State seal.

SUBPART C—LABELS, LABELING, AND MARKET INFORMATION—Continued

Required	Discretionary	Prohibited
		• Certifying agent's name, seal, logo, or other identification. • One hundred percent stated in letters, numbers, or symbols, used with any phrase or sentence that includes the term organic. • Statement of the percentage of organically produced ingredients contained in a product. • Phrase: organic when available (or term of similar meaning or intent).
Ingredients statement:		
• None	• Organic to modify the name of an ingredient that is organically produced and handled.	• One hundred percent stated in letters, numbers, or symbols, used with any phrase or sentence that includes the term organic. • Statement of the percentage of organically produced ingredients contained in a product. • Phrase: organic when available (or term of similar meaning or intent).
Information panel:		
• None	• None	• The term organic to modify the name of the product. • Statement: made with certain organic ingredients. • USDA seal. • State seal. • Certifying agent's name, seal, logo, or other identification.
Agricultural products in other than package form that are sold, labeled or represented as organic or made with certain organic ingredients.		
Retail display label or display container:		
For organic products:		
• None	• For organic products: • The term organic to modify the name of the product. • USDA seal. • State seal. • Certifying agent's name, seal, logo, or other identification..	• None.
For made with certain organic ingredients products:	For made with certain organic ingredients products:	
• Statement: made with certain organic ingredients.	• Certifying agent's name, seal, logo, or other identification.	None
Ingredients statement:		
For organic products:		
• None.	For organic products: • The term organic to modify the name of an ingredient organically produced and handled.:	• None.
For made with certain organic ingredients products:	For made with certain organic ingredients products:	
• The term organic to modify the name of an ingredient organically produced and handled.	• None	• None.
Shipping container:		
For organic products:		
• None	For organic products, one or more of the following: • The term organic to modify the name of the product; or • USDA seal; or. • State seal; or. • Certifying agent's name, seal, logo, or other identification..	• None.
For made with certain organic ingredients products:	For made with certain organic ingredients products:	
• Statement: made with certain organic ingredients.	• Certifying agent's name, seal, logo, or other identification.	• None.

Subpart D—Certification

Section 2104(a) of the OFPA (7 U.S.C. 6503(a)) requires that the Secretary establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods, and that this program be implemented through certifying agents. Section 2107(a) of the OFPA (7 U.S.C. 6506(a)) requires that all agricultural products sold or labeled as organically produced be produced on a farm and handled through a handling operation that has been certified, and delineates a number of other provisions that must be included in a certification program established under the Act. The Act, however, provides for certain exemptions from certification. In this subpart we propose the certification provisions of the National Organic Program, which includes the requirements that must be met by farm, wild crop harvesting, and handling operations that want to be certified, and the procedures that must be followed by certifying agents in evaluating and making determinations concerning operations seeking certification. Subpart E of this part delineates our proposed accreditation program for organic certifying agents, as required by section 2115(a) of the OFPA (7 U.S.C. 6514(a)), including the requirement that a certifying agent must conduct certification activities in accordance with the procedures proposed in subpart D of this part to maintain its accredited status.

The certification process is needed to ensure that products labeled as organic and made with certain organic ingredients are produced and handled in accordance with the requirements proposed in subpart B of this part. Numerous private organizations and States already have developed experience and expertise in organic certification procedures. In developing this proposal, we have consulted with and examined the programs developed by existing private and State certifying agencies, considered the NOSB's recommendations, and considered comments received from the public. We also have reviewed the guidelines for the certification or registration of quality systems and for the assessment or accreditation of certifying bodies, as promulgated by the International Organization for Standardization. Other information we have reviewed includes guidelines for inspection, certification and accreditation established by other countries, international organic interest groups, and standards setting organizations, such as the International Federation of Organic Agricultural Movements.

This proposal is consistent with the provisions of the Act and incorporates, to the extent possible, the current practices of the organic certification community. We have designed the proposed regulations to minimize the burdens placed on organic producers and handlers, ensure that decisions made by certifying agents are well founded and fair, and provide sufficient guidance and oversight to protect the integrity of the organic label. We also have developed this proposal to utilize the expertise that exists in the organic community, which encompasses a broad range of producers, handlers and geographic locales, and to allow for differences in size, scope and organizational style represented by existing and anticipated private and State certification programs.

Synopsis of Proposed Certification Program

The provisions of sections 205.201 through 205.206, and sections 205.216 through 205.217(a), address the certification of farm, wild crop harvesting and handling operations that produce agricultural products, including livestock, that are, or are intended to be, sold, labeled or represented as organic or as made with certain organic ingredients. These proposed sections delineate the types of operations that must be certified; the types of operations that would be exempt or excluded from the certification requirement; the general requirements that must be met to obtain and maintain certification; and the information that must be submitted when applying for certification, including the provisions of an organic plan. Certification applicants would have to submit a statement agreeing to comply with the proposed production and handling requirements and would have to allow access to their facilities and records by a certifying agent, representatives of the Secretary, and the applicable governing State official in the case of operations located in a State that operates an approved State program. An operation whose request for certification was approved would have to operate in compliance with the requirements proposed in Subpart B, maintain records of its operations to show that it was complying with those requirements, and submit updated information annually.

Sections 205.207 through 205.215, and sections 205.217(b) through 205.220, propose the procedures that a certifying agent must follow in determining the certification status of a certification applicant or a certified operation, including the procedure for conducting on-site inspections; the basis for approving an application for certification; the procedure for notifying an operation of, along with an opportunity to correct, non-compliance with the Act and the regulations; and the procedure for recommending that the certification of an operation or a portion of an operation be denied or terminated by the Administrator, after providing notice and an opportunity to be heard. The final section of this subpart proposes the notifications that a certifying agent would have to provide to the Administrator concerning operations that it certified.

It should be noted that, in a State that establishes an approved State program, as provided for and discussed in sections 205.401 through 205.403 of subpart F, the certifying agent also would have to provide these notifications to the applicable governing State official. Additionally, the certifying agent would be required to verify that an applicant for certification in a State that establishes an approved state program was complying with any additional requirements provided under the State program. Proceedings to deny or terminate certification, and an opportunity to appeal such actions, would be initiated and conducted in accordance with the approved State program regulations.

What Has to be Certified—Section 205.201

Section 2106(a)(1) of the OFPA (7 U.S.C. 6505(a)(1)) requires that agricultural products that are sold or labeled as organically produced, including products for which other market information is provided that directly or indirectly implies that the products have been produced and handled using organic methods, must comply with the requirements of the Act. Therefore, we propose that, except as discussed below in proposed section 205.202, any farming, wild crop harvesting, or handling operation, or portion of any of these operations, that intends to sell, label or represent an agricultural product as organic, or as made with certain organic ingredients, would have to comply with all the applicable production and handling requirements set forth in subpart B of this part and be certified in accordance with the regulations of this subpart.

We further propose in section 205.201(a) that any operation that provides handling services to fewer than 3 certified entities that produce or handle agricultural products that are, or that are intended to be, sold, labeled or represented as organic or made with certain organic ingredients, would not be required to be separately certified apart from the operations for which it provides such services. This provision is proposed because, as is sometimes the case in existing certification programs we have examined, a certified operation may comprise facilities owned by different entities that it contracts with to provide handling services, such as washing and packing fresh produce, freezing multi-ingredient products, or warehousing. In such cases, the facilities that provide these services would be included in the certification obtained by the contracting operation, and therefore considered certified with respect to the handling of any products to be sold, labeled or represented as

organic or made with certain organic ingredients. Such a facility would, for the purposes of this proposal, also be considered to be a distinct portion of the operation for which it provides the handling services. However, as proposed in this section, if such a facility were to provide handling services under contract to three or more certified handling operations, it would then have to obtain a separate certification. For example, a facility that provided washing and packing services to one or two organic produce growers could be included in the growers' certifications as a portion of each of their operations, but if it were to then provide packing services for a third organic produce grower it would have to obtain its own separate certification. Comment is invited concerning the potential impact of this proposed requirement on handling operations that currently contract for handling services or that currently provide such services.

Section 2106(c) of the OFPA (7 U.S.C. 6505(c)) exempts products that contain at least 50 percent (but less than 95 percent) organic ingredients from complying with the requirements of the Act, but allows the Secretary, in consultation with the NOSB and the Secretary of HHS, to permit such products to be labeled on the principal display panel as containing certain organically produced ingredients. In section 205.101 of subpart C, we propose that such products could be labeled as made with certain organic ingredients on the principal display panel. In section 205.201(b) we propose that a handling operation, or portion of a handling operation, that handles only agricultural products that are, or that are intended to be, sold, labeled or represented as made with certain organic ingredients would have to be certified but would be exempt from complying with the requirement proposed in section 205.3(b)(2) of Subpart B, which requires that a commercially available non-synthetic substance be selected in preference to an allowed synthetic substance.

Products labeled as made with certain organic ingredients would not, in accordance with section 2106(c) of the OFPA (7 U.S.C. 6505(c)), have to be handled by a certified organic handling operation. However, the organically produced ingredients contained in such products would not be exempt from the Act's certification requirement. Therefore, because the preponderance of the ingredients in such a product would be organically produced, we believe that the level of oversight provided by the certification process is needed in order to safeguard the integrity of the organically produced ingredients and to assure consumers that these ingredients comply with consistent national standards. Because this type of product would be able to use the word organic on its principal display panel within the statement made with certain organic ingredients, we believe that consumers will generally expect that such products are in compliance with the Act and the regulations in this part. However, because the product itself is not represented as an organic product, we are proposing that such products need not comply with the requirement to select non-synthetic substances in preference to allowed synthetic substances. Such products would still have to comply with all other applicable provisions, including selecting only non-agricultural ingredients that are included on the National List.

Exemptions and Exclusions—Section 205.202

In accordance with section 2106(d) of the OFPA (7 U.S.C. 6505(d)), paragraph (a)(1) of this section would exempt producers and handlers that produce, handle or harvest agricultural products who sell no more than $5,000 annually in value of agricultural products from complying with the certification requirements set forth in this subpart. However, we propose in subpart C to prohibit the products produced on these exempt operations from being represented as originating from a certified operation, displaying the USDA seal, or being identified as an organic ingredient in a product processed or produced on an operation that sells more than $5,000 in value of agricultural products. These prohibitions are necessary to ensure that the organically produced ingredients contained in products that originate from certified operations are accurately represented. These prohibitions would not apply to an otherwise exempt operation that voluntarily chose to become certified under the Act and the regulations.

As indicated above, the exemption from certification proposed in the regulations for producers and handlers who sell no more than $5,000 annually of agricultural products is what is provided for in section 2106(d) of the OFPA (7 U.S.C. 6505(d)). During the course of public input given at NOSB meetings, various commenters suggested that the exemption from certification should include producers and handlers who annually sell no more than $10,000 of agricultural products, as opposed to $5,000. In order to provide for such an exemption in our regulations, we would need to have the OFPA amended. We would appreciate comments as to whether the current statutory limitation of $5,000 for exemption from certification should be raised to $10,000, or to another amount, and why such an increased monetary limitation for exemption from certification is appropriate. In addition, we would like data as to the number of operations that may be exempt under the current $5,000 limitation for exemption, and the number of operations that may be exempt under any new monetary amount suggested.

In paragraph (a)(2) of this section, we propose to exempt retail operations, or portions of such operations, that handle organically produced agricultural products but do not process them. This is consistent with the definition of handling operation as set forth in section 2103(10) of the OFPA (7 U.S.C. 6502(10)). An exclusion for certain retail operations that do process organic agricultural products is proposed in paragraph (b)(3) of this section.

Section 2106(c) of the OFPA (7 U.S.C. 6505(c)) states that the provisions of section 2106(a) (7 U.S.C. 6505(a)) regarding compliance with the requirements of the Act do not apply to two types of processed agricultural products that contain less than 95 percent organic ingredients. This section of the Act exempts products that contain less than 50 percent organically produced ingredients from compliance with the regulations proposed in this part, and we have accordingly proposed, in paragraph (a)(3) of this section, to exempt any handling operation, or portion of a handling operation, that handles only agricultural products that contain less than 50 percent organic ingredients from all the requirements proposed in this part except the applicable labeling provisions proposed in subpart C and the provisions proposed in section 205.19 of subpart B for the prevention of commingling and contact of organic products by prohibited substances with regard to any organically produced ingredients used in this type of product. We believe that these requirements are necessary for a handler of this type of product in order to safeguard the integrity of the organic ingredients used in any such product, and to ensure that any use of the word organic in the ingredient listing is in accordance with our proposed labeling provisions.

In section 205.202(b), we propose that certain types of operations or portions of operations be excluded from compliance with the certification requirements in subpart D. After careful consideration of the NOSB recommendations, public input, and information received from representatives of various types of handling and retail operations, we believe that it would be burdensome to require certification of the types of handling operations addressed in this section and, furthermore, that such a requirement is unnecessary because it would not contribute to assuring the integrity of an organically produced product. Accordingly, we propose that three types of handling operations, or portions of operations, not be required to be certified.

In section 205.202(b)(1) we propose that a handling operation, or portion of a handling operation, would be excluded from compliance with the proposed regulations in this part, except for the requirements for the prevention of commingling and contact by an organic product with prohibited substances in section 205.19 of subpart B, if it handles only products labeled as organic or as made with certain organic ingredients that meet two criteria. These two criteria are that the products are packaged or otherwise enclosed in a container prior to being received by the operation, and that the products remain in the same package or container and are not processed while in the control of the operation. This exclusion would avoid creating an unnecessary barrier for handlers who distribute non-organic products and who want to include a selection of organic products in their offerings. However, in order to protect the integrity of the organically produced products, we do not propose to exempt this type of handling operation from the requirements set forth in section 205.19 of subpart B regarding the prevention of commingling and contact with prohibited substances with respect to any organically produced products.

In section 205.202(b)(2) we propose to exclude restaurants and other food-service type establishments that process ready-to-eat organic agricultural products but which do not enclose the food in a container labeled or represented to the consumer as organic or made with certain organic ingredients. As further explained below in paragraph (b)(3) of this section, we are not proposing to require certification of operations that process food as part of their normal retail operations if they do not repackage the food in containers that are labeled or represented by the operation as organic or as made with certain organic ingredients. We consider the act of preparing ready-to-eat food by restaurants to be part of their normal retail operations.

We propose in section 205.202(b)(3) to exclude a retail operation, or portion of a retail operation, that processes products labeled as organic or as made with certain organic ingredients in the course of its normal retail operations, but does not repackage products under its own organic label. A retail operation, or portion of a retail operation, excluded under this proposal in paragraph (b)(3) of this section would have to satisfy two requirements. First, the operation would have to process only products that were previously labeled as organic or made with certain organic ingredients before being acquired by the retailer. Second, the products would have to be processed by the operation in the course of its normal retail business solely for the purpose of presenting or offering the product to a consumer. These requirements mean that the product offered to the consumer by the retail operation could not be one that was created by the retailer by combining two or more ingredients into a single product that is then labeled or represented by the retail operation as organic or as made with certain organic ingredients, and it could not be a product that is repackaged by the operation and newly labeled or represented as organic or made with certain organic ingredients. We do not consider either creating a new product from two or more ingredients, or repackaging and relabeling a product, to be normal retail business practices for retail operations solely for the purpose of presenting or offering a product to a consumer. It should be noted that a weight label is not included within our proposed definition of label as set forth in section 205.2 of subpart A; therefore, we would not consider a retail operation applying a weight label to a product repackaged from a bulk container or sliced from a larger quantity to be a repackaging activity that would require certification because applying weight labels is an activity that we consider to be within normal retail business practices for retail operations.

Examples of retailer processing activities that would be excluded and which therefore would not require that the retail operation be certified are washing and sorting fresh produce for display in bulk; cutting cheese from a bulk wheel and placing weight labels on the cheese packages; repackaging two pound bags of organic brown rice from a 50 pound sack and placing weight labels on the two pound bags; and allowing consumers to package their own bags of organic grain from a bulk container. Examples of retailer processing activities that would not be excluded and which therefore would require that the retail operation be certified are baking organic bread; preparing an organic pasta salad for sale at the deli counter; repackaging a series of products such as grains or pastas under the retailer's own label that identifies the products as organic; and preparing a private label pizza labeled as made with certain organic ingredients for customers to purchase from a refrigerated display case for baking at home. We invite further comment concerning the exclusions proposed in this section.

In section 205.202(c) we propose that farm or handling operations that are either exempt from certification under section 205.202(a), or excluded from certification under section 205.202(b), would still be required to maintain certain records and to make those records available to authorized representatives of the Secretary and the applicable governing State official. Small operations that are exempt pursuant to paragraph (a)(1) of this section would have to keep records for no less than one calendar year to substantiate that the operation did not sell more than $5,000 in agricultural products in the previous calendar year, and therefore met the requirements for exemption of small operations provided by section 2106(d) of the OFPA (7 U.S.C. 6505(d)).

Handlers of products that contain less than 50 percent organic ingredients who are exempt under section 205.202(a)(3), or handlers who are excluded under section 205.202(b)(1), would have to maintain records for no less than one year from the date of receiving a product labeled as organic or made with certain organic ingredients, that are adequate to verify the source and quantity of the product and that the product or ingredient was handled in accordance with section 205.19 to prevent commingling and contact with prohibited substances. Records also would have to be maintained for no less than one year from the date of shipping a product that contains organic ingredients so as to verify the destination and quantity of the product shipped. The recordkeeping requirements proposed in paragraph (c)(2) of this section are necessary to assist in enforcement of the national organic program and to verify that the operation is adequately safeguarding the integrity of organically produced products and organically produced ingredients.

We would like comments on the various exemptions from certification we have proposed, as well as on any other exemptions from certification that should be proposed, keeping in mind that legislative changes may have to be

sought to provide additional exemptions from certification.

General Requirements for Certification—Section 205.203

This section of our proposal delineates the six general requirements with which an organic farm, wild crop harvesting, or handling operation must comply in order to receive and maintain certification. These proposed provisions summarize the requirements provided in the Act and various sections of the regulations proposed in this part, so that a person seeking organic certification can determine all the requirements which must be met by the operation to be certified.

The first requirement, proposed in paragraph (a) of this section, is to comply with the applicable organic production and handling requirements of the Act and the regulations in this part. Paragraph (b) of this section would require that the operation establish and implement an organic plan that is submitted to an accredited certifying agent, as required by section 2107(a)(2) of the OFPA (7 U.S.C. 6506(a)(2)), and updated annually. The provisions that must be in the organic plan are proposed in section 205.205. The third requirement, proposed in paragraph (c) of this section in accordance with section 2107(a)(5) of the OFPA (7 U.S.C. 6506(a)(5)) is that an annual on-site inspection by the certifying agent must be permitted. In paragraph (d) of this section we propose that a certified operation must maintain all records applicable to the organic operation for a period of not less than five years from the date of creation of the record, and allow the Secretary, the applicable governing State official if the operation is in a State where there is an approved State program, and the certifying agent, access to such records, as proposed in section 205.216. This provision is proposed because we believe it is necessary in order to determine the operation's compliance with the Act and the regulations in this part for the purpose of providing adequate enforcement procedures, as required in section 2107(a)(7) of the OFPA (7 U.S.C. 6506(a)(7)). Section 205.203(e) of this proposal requires that a certified operation submit the required fees to the certifying agent, as proposed in section 205.422 of subpart F in accordance with section 2107(a)(10) of the OFPA (7 U.S.C. 6506(a)(10)).

In section 205.203(f) we propose that a certified operation must immediately notify the certifying agent about any application of a prohibited substance to any field, farm unit, site, facility, livestock, or product that is part of the certified operation, and about any other change in a certified operation, or any portion of the operation, that may affect its compliance with the Act and the regulations in this part. This provision is necessary in order to ensure that an operation that is approved for certification would notify the certifying agent in the event that anything occurs that would change the operation's compliance with the requirements proposed in subpart B. This provision therefore would require notification of the certifying agent if an operation was subject to a Federal or State emergency pest or disease treatment program as described in proposed section 205.432 of subpart F and provided for in section 2107(b)(2) of the OFPA (7 U.S.C. 6506(b)(2)).

Applying for Certification—Section 205.204

As proposed in this section, a certification applicant would have to submit an organic plan, as proposed in section 205.205, and a statement agreeing to comply with the Act and the regulations, as proposed in section 205.206, to an accredited certifying agent. An applicant also would need to submit basic contact information, such as phone and fax numbers, for the operation for which certification is sought. In paragraph (c) of this section, we further propose that the applicant submit the name or names of any organic certifying agent to which any application for certification previously has been made, including the year or years of the application and the outcome of each application. It should be noted that, if the certification applicant previously had applied to a different certifying agent who issued a notification of non-compliance as proposed in section 205.215(a), the applicant also would have to submit documentation that shows that the defects in compliance identified in that notice had been corrected, in accordance with proposed section 205.215(b). Knowledge of previous certifications or applications for certification is needed in order to determine if information about implementation of an organic plan or other updated information, as proposed in section 205.217(a), should be provided. It also would enable a certifying agent to verify whether any new applicant for certification was previously issued a notification of non-compliance by another certifying agent.

Organic Plan—Section 205.205

Section 2114 of the OFPA (7 U.S.C. 6513) requires a producer or handler who wants certification to submit an organic plan to the certifying agent, and provides for certain provisions that should be in the plan to foster the production and handling of agricultural products in accordance with the Act. Section 2103(13) of the OFPA (7 U.S.C. 6502(13)) defines an organic plan as a plan of management of an organic farming or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling, including crop rotation and other practices required under the Act and the regulations in this part. The specific organic crop production and wild crop harvesting practices required by sections 2114(b) and (f) of the OFPA (7 U.S.C. 6513(b) and (f)) are addressed in this proposal in section 205.6 (crop rotation), section 205.7 (soil fertility and crop nutrient management), and section 205.11 (wild crop harvesting). The required provisions of the organic plan proposed here are consistent with the OFPA definition, and would enable a certifying agent to determine whether the applicant's management methods meet the requirements of the Act and the regulations of this part. We also believe that the establishment of an organic plan, as proposed here, would be a means by which organic producers and handlers could evaluate their operations and develop strategies to help them maintain compliance with the relevant organic production or handling requirements.

Section 205.205 of this proposal would require a certification applicant to submit an organic plan to the certifying agent. In a State with an approved State program, as proposed and discussed in section 205.402 of subpart F, the applicant also would have to submit the organic plan to the applicable governing State official. The organic plan would have to identify, as applicable to the operation for which certification is requested, a description of the practices and activities previously implemented, and intended to be implemented and maintained, to establish a system of organic farming and handling that complies with the applicable crop, livestock, wild crop harvesting, and handling requirements proposed in Subpart B. Details of any multi-year planning necessary in order to comply with all applicable requirements would have to be included in the organic plan. For example, a rotation plan or a description of other methods for ensuring adequate pest management, such as introduction of diverse species into areas planted with perennial crops, would have to be provided for each field or farm parcel, as provided for in section 205.6 of subpart B. The organic plan also would have to describe practices implemented and intended to be implemented to comply with proposed section 205.3(b) of subpart B, which proposes that any practices used not result in measurable degradation of soil and water quality and that non-synthetic substances be chosen in preference to synthetic substances, to the extent possible. For example, a farmer might describe practices implemented to ensure that soil quality is not measurably degraded by tillage practices or that contamination of water by nitrates does not occur when manure is applied. The organic plan also would have to describe activities to evaluate the effects of practices for which more specific restrictions are proposed. For example, a farmer who is using a composted waste material that contains a non-active residue of a substance, as proposed in section 205.7(b)(4), would include information in the organic plan to demonstrate that the level of non-active residues that may be present in the composted waste material was not increasing in the soil to which it is applied.

The information delineated in sections 205.205(b) through 205.205(e) would have to be submitted as it was applicable to the operation for which certification is sought. These proposed paragraphs would require sufficient information about the farm, wild crop harvesting or handling operation for which certification is sought to evaluate whether an applicant is complying with or is able to comply with the Act and our proposed organic production and handling requirements in sections 205.3 through 205.28 of subpart B. It also is needed to aid the certifying agent in determining which areas of the operation should be observed in the course of the on-site inspection.

Section 205.205(b) proposes the information that would have to be submitted with respect to a farm operation. This information includes a description of the farm's crops, livestock, and on-farm processing activities, total acreage, and a map or maps showing all fields or farm parcels for which certification is requested. The map(s) are required to show field and farm parcel boundaries, sizes, locations, and any significant identifying features. They must also show any adjoining land, that is not part of the operation to be certified, to which a prohibited substance may be applied, and the location of any facility used for livestock housing, storage, or post-harvest handling. Information also would be required that provides a history of the crops grown and fertilizers or other production inputs applied to each field or farm to be certified for the three year period immediately preceding the date of the request for certification. The information would have to include the crops intended to be planted or managed on each field in the coming crop year, and a list of agricultural products to be sold as organic or as made with certain organic ingredients.

A farm operation also would have to submit information about the intended use of certain categories of production inputs. First, information would have to be submitted that listed all substances intended to be used as production inputs in the crop year. This list would have to indicate each substance intended to be applied to land or crops, its source, the anticipated quantity of it to be used, and where it would be applied. We also propose to request a list of all the seeds or planting stock intended to be purchased that would indicate for each of these its source (e.g. nursery or seed company), the approximate quantity to be used, and whether it was organically produced, treated, or untreated.

We propose that a livestock producer submit a list of all animals or livestock management units (such as flocks of poultry or colonies of bees) to be maintained on the operation and to be purchased in the following year for use as organic livestock or for the production of organic livestock products. The list also would have to indicate the source of the livestock (e.g., born on the farm, or name of the hatchery), estimated number of each type of livestock to be used and purchased in the certification year, the intended use of the livestock (such as slaughter stock, milk, wool, or breeding), and whether the livestock were purchased from a certified operation. Other information required to be submitted would indicate the livestock feed and feed supplements intended to be purchased in the certification year, and their source (e.g., local feed mill, or neighboring farm) and estimated quantity. Additionally, information as to what portion, if any, of the purchased feed was not organically produced would need to be provided. The livestock operation also would have to submit the name of the veterinarian from whom the producer obtains animal drugs or prescriptions for animal drugs, and a list of any animal drug expected to be used in the certification year, including its source, estimated amount to be used, and the types of livestock to which it might be administered. Finally, a farm operation would have to describe the post-harvest handling or processing methods and facilities to be used. Examples of post-harvest handling facilities would include fresh produce washing and packing facilities, grain cleaners, milk bottling, herb drying, and slaughtering facilities, whether the facilities are part of the farm operation to be certified or located elsewhere.

It should be noted that, in cases where the regulation provides for the use of a particular substance or production input only when other applicable proposed methods or production inputs are not effective or are not commercially available, such as botanical pesticides (section 205.9), treated seeds (section 205.8), or non-organically produced livestock feed (section 205.13), a description of the reasons for using a restricted substance or production input would have to be included in the organic plan. For example, a farmer might describe why botanical pesticides, rather than measures that did not involve the use of a substance, were used to control particular pests on particular crops. Similarly, a livestock producer would describe the reasons for feeding non-organic feed, such as an unanticipated expansion of a dairy herd. Annual updates to the plan also would describe the conditions that necessitated any allowed emergency or unanticipated use of a particular production input. For example, if treated seed were used to replant a corn crop lost to flooding, the farmer would provide this information as part of the next annual update to the organic plan.

Paragraph (c) of this section would require that an applicant requesting certification of a split operation (a farm or facility using both organic and non-organic practices in different field units or aspects of the operation) submit certain additional information. This information would include: anticipated quantities and locations of any crop, livestock or livestock product intended to be grown or raised both organically and non-organically in the coming crop year; each prohibited substance that was applied on the farm in the three years prior to the request for certification; each prohibited substance or practice that may be used in the certification year on a non-organic portion of the farm; and a description of the measures that will be used to prevent commingling of organic and non-organic products, and contact of organic field units or products with prohibited substances. This information is needed to determine whether there is any potential for organically managed portions of the operation to come into

contact with synthetic pesticides or other substances that are prohibited for use in organic farming and handling under the Act.

In paragraph (d) of this section we propose that a certification applicant be required to submit the following information regarding a wild crop harvesting operation: a map showing each area from which wild crops will be harvested in the certification year; the ownership of the area and evidence of permission to harvest in this area; a history of this area that demonstrates that no prohibited substance has been applied within three years prior to the initial harvest of a wild crop to be sold or represented as organic; each species of plant to be harvested, as well as its botanical name, the part of the plant to be taken (such as leaves, roots, flowers, fruits, or the whole plant), and the quantities of the plant expected to be harvested in the coming crop year; the dates of the harvest season; other information that the certifying agent might need to assess the impacts of the harvest operation on the environment and sustained growth and production of the wild crop; each type of wild product expected to be sold or represented as organic or made with certain organic ingredients, and the quantity of each type of product to be sold or represented (such as dried flowers in bulk, fresh roots and potpourri mixes); and a list of all post-harvest handling or processing methods and facilities to be used by the applicant.

As proposed in paragraph (e) of this section for handling operations, a handling operation applying for certification must submit: a brief, general description of the type of handling operation and the processing, manufacturing or other handling procedures it will use (such as grain cleaning and milling, meat or produce packing, dairy processing, or frozen food manufacturing); a description of the structural pest management methods used and intended to be used in each facility; and a list of each product intended to be handled and sold or represented in the certification year as organic or made with certain organic ingredients. A handling operation that produces both organic and non-organic products also would have to provide a list of each non-organically produced product or type of product to be sold in the certification year, and a description of the measures to be used to prevent the commingling of organic and non-organic products and ingredients, and the contact of organic products, and packaging and storage areas used for organic products, with prohibited substances. Finally, the handling operation would have to submit a list of each ingredient, incidental additive, and type of packaging material to be used for organic products in the certification year, and specify for each, as applicable, whether it is an organic agricultural product, a non-organic agricultural product, or a non-agricultural ingredient; the estimated quantity to be used; its source or manufacturer (e.g., name of the farm(s), flavor company, or packaging manufacturer from which it is purchased); and the country of origin for each imported organic agricultural product to be used. The source of any water to be used as an ingredient in an organic product would have to be identified in order to determine that the water meets the Safe Drinking Water Act (*42 U.S.C. 300(f) et seq.*) requirements. This determination needs to be made because section 2111(a)(7) of the OFPA (7 U.S.C. 6510(a)(7)) prohibits handling operations from using water that does not meet all the Safe Drinking Water Act requirements.

We would like to point out that we believe that the information we are requiring be submitted to certifying agents when an application for certification is made could result in many positive benefits for the organic program. We believe that the submitted information will significantly decrease the amount of time it will take to conduct inspections of operations seeking certification. If this occurs, then the costs incurred by operations applying for certification will be reduced.

We also believe that the information submitted at the time an application for certification is made will also lessen the burdens that could be incurred by certifying agents in making their own certification decisions, and in responding to requests for information from other certifying agents. This could occur because certifying agents will not have to continually re-contact certification applicants or certified operations when carrying out their responsibilities.

Additionally, we believe that information that is immediately available will help ensure that timely decisions are made. For example, the marketing of multi-ingredient products that may require multiple certifications should be able to occur in a timely and efficient manner because accredited certifying agents will be able to readily exchange the information needed to assure that these multiple certifications occur. Additionally, the easy accessibility to information that documents what is to occur in a certified operation will provide both certifying agents and the Administrator with the ability to help ensure that violations of the organic program that occur can promptly be substantiated, thus helping to ensure the integrity of representations made about the organic nature of a product.

However, an alternative scheme for having the necessary records available for certification decisions might be a scheme in which information needed for certification decisions would be required to be created by an applicant and made available for review and copying at an applicant's sites of operation, but would not be required to be submitted to certifying agents at the time an application for certification is made. In this scheme, these records would be reviewed by inspectors acting on behalf of certifying agents when an inspection is carried out as part of the process of determining whether an applicant should be certified. If records are needed at any other time, they could either be submitted to the certifying agent or made available for review at a farm or handling operation.

We would like comments from the public in regard to our proposed scheme, and the possible alternative to it discussed above. In particular, we would like information regarding the following:

(1) Whether the suggested alternative scheme which would require the creation and availability, but not the submission, of needed records would provide certifying agents with the records they need to make certification decisions in a timely and efficient manner;

(2) Whether the suggested alternative scheme would be less, or alternatively, more burdensome economically, or in any other manner, than the proposed scheme for submission of records for anyone participating in the organic certification program, including certifying agents, inspectors, farming operations, and handling operations, and if so, how and why it would be less or more burdensome; and

(3) Whether any records we are proposing to be submitted as part of the certification application, which in our alternative scheme would be maintained at the sites of operation, are not needed to make appropriate certification decisions or to ensure the integrity of the organic program. For example, we would like comments as to whether certifying agents need to know the anticipated quantities of non-organic agricultural products intended to be grown or harvested in order to make certification decisions for split operations. We also would like comments in this area regarding our requirement that split operations submit information that indicates the expected quantity and location of each substance prohibited for use under the OFPA that may be used on a non-certified portion of the split operation.

Statement of Compliance—Section 205.206

We propose in this section, in accordance with section 2107(a)(4) of the OFPA (7 U.S.C. 6506(a)(4)), that an applicant for certification also submit a statement agreeing to comply with the Act and the regulations in this part, including the requirements for receiving and maintaining certification proposed in section 205.203, to the Secretary and the certifying agent. This statement of compliance would be submitted along with the certification application, and annually thereafter.

Preliminary Evaluation of an Application for Certification—Section 205.207

Section 205.207 would require a certifying agent to make a preliminary evaluation to determine whether the applicant may be in compliance with the applicable production and handling requirements before conducting an inspection. This preliminary evaluation, which would be based on an examination of the application materials received, would avoid the necessity of conducting an inspection of an applicant who clearly could not be in compliance with the applicable organic requirements, thus preventing unnecessary burdens on both the certifying agent and the applicant.

This section also would require that the certifying agent verify that an applicant who had previously applied to another certifying agent and received a notification of non-compliance, as proposed in section 205.215(a), had submitted documentation to support the correction of any deficiencies identified in the notification of non-compliance. This provision would assist a certifying agent to identify corrections made in response to deficiencies in compliance that previously had been noted by another certifier. Once the preliminary evaluation was completed and the information indicated that the operation may be in compliance with the Act and the regulations, the certifying agent would then arrange to conduct an on-site inspection of the operation.

Arranging for Inspections—Section 205.208

Section 2107(a)(5) of the OFPA (7 U.S.C. 6506(a)(5)) requires that an annual on-site inspection be performed by the certifying agent of each farm and handling operation that has applied for certification or that is certified. In section 205.208(a), we propose that a certifying agent arrange to conduct an initial on-site inspection of each farm, facility, and site that is included in an operation for which certification is requested, for the purpose of determining whether to approve the request for certification. Another on-site inspection would be conducted each year thereafter, to determine if the certification should be continued. Paragraph (b) of this section would require that such initial inspection be conducted within a reasonable time following a favorable preliminary evaluation of an application for certification, as proposed in section 205.207. While the Act does not specify that on-site inspections be performed prior to granting certification, performing at least one inspection prior to certification is the customary and required procedure for all existing certification programs of which we are aware, and we believe that it should be required in our proposal in order to verify that the information provided in an application for certification accurately reflects the practices used by the operation requesting certification. We have not specified a time period within which an inspection must be conducted because this will vary depending on when an application is submitted and the type of operation to be inspected.

In paragraph (c) of this section, we propose that an inspection be scheduled at a time when the inspector can observe land, facilities, and activities that demonstrate the operation's compliance with, or capacity to comply with, the organic production and handling requirements proposed in subpart B. Inspections also would have to be arranged so that the applicant or an authorized representative of the applicant who is knowledgeable about the operation will be present during the inspection. This requirement is necessary so that information pertinent to whether an applicant is complying or can comply with the Act and the regulations, can be obtained or clarified through discussion with personnel knowledgeable about the operation being certified.

Verification of Information—Section 205.210

Section 2105(3) of the OFPA (7 U.S.C. 6504(3)) requires that an agricultural product to be sold or labeled as an organically produced agricultural product must be produced and handled in compliance with an organic plan agreed to by the producer and handler of the product and the certifying agent. In section 205.210 we propose the means by which a certifying agent, through the use of an inspector, would verify that the information provided in the application for certification and in the organic plan, as proposed in sections 205.204 and 205.205, or in any annual update to this information, as provided in section 205.217, accurately represents that the applicant is complying or has the ability to comply with the Act and the regulations. When an inspection is conducted to evaluate continuation of certification, its purposes also would include verification that the provisions of the organic plan are being implemented.

The inspector should be able to determine from his or her observations whether the facilities and equipment used by an applicant for certification would enable the operation to be in full compliance with all the applicable requirements. For example, the inspector might verify that a produce operation that was preparing to plant annual vegetable seedlings had already obtained or produced seedlings that comply with section 205.8. If non-organically produced seedlings were being used, the inspector also would examine the operation's records that demonstrate that comparable organically produced seedlings were not commercially available.

In order to verify that the information submitted to the certifying agent is accurate and that practices used by the applicant are in compliance with the applicable provisions of the Act and the regulations, an inspection might include an examination of the applicant's fields, buildings, storage areas, production inputs, equipment, and other facilities, including any off-site facilities used by the operation for organic production or handling. In addition, all supplies and inventories of products that are, or that are intended to be, sold, labeled or represented as organic or as made with certain organic ingredients might be examined to observe whether they are stored and handled in a manner that creates any possibility of their being commingled with non-organic products. Labels, labeling, and other market information might also be examined to determine if such material was in compliance with the requirements of Subpart C. The inspector also might observe boundaries, buffer zones, and other critical control points where prohibited substances could contact organic crops, livestock, or other agricultural products, equipment or production areas used in organic production or handling, and places where commingling with nonorganic products might occur, especially in split

operations. Observations of the overall general health and condition of the soil, livestock, crops and other biological elements, such as hedgerows and waterways, as appropriate, also might be made. Additionally, the inspector might examine the operation's records and recordkeeping system, as needed to determine the applicant's compliance, or ability to comply with, the recordkeeping requirements proposed in section 205.216. Additionally, the inspector might need to collect samples of materials or substances for laboratory analysis that may serve as evidence of compliance, as proposed in sections 205.430 and 205.431 of subpart F, when instructed to do so by the certifying agent, or when the inspector observed a situation, such as herbicide damage to plants, which could indicate that any crop, field, livestock, product or facility within the operation has come into contact with a prohibited substance.

Post-Inspection Conference—Section 205.211

In section 205.211 we propose to require that the inspector conduct a post-inspection conference with the certification applicant or an authorized representative of the inspected operation. During this conference, the inspector would discuss specific observations made concerning the applicant's compliance, or ability to comply, with the Act and the regulations, such as the adequacy of buffer areas observed to prevent contact with organically managed fields by prohibited substances, or the adequacy of the segregation of organic products from non-organic products in storage areas. We have proposed this requirement because such discussions are routinely included in procedures currently used by most existing certification programs, and we believe that permitting an applicant to clarify any information that is to be reported by the inspector to the certifying agent would help ensure the accuracy of the information. For example, if a crop being grown in a particular field is different from the crop indicated in the applicant information, the applicant could explain why the alternative crop had been substituted. This discussion also would assist the applicant in preparing future revisions to the organic plan and in making other changes to the operation, such as implementing practices that reduce the need to use pest control substances or animal drugs.

Reporting to the Certifying Agent—Section 205.212

In section 205.212, we propose that the certifying agent would require that the inspector prepare and submit to the certifying agent, within thirty days of completing an inspection, a written report that describes the inspector's observations and assessments of the inspected operation's compliance, or ability to comply, with the Act and the regulations. The inspection report is a key document that will be used by the certifying agent to verify an applicant's compliance, or ability to comply, with the regulations of the National Organic Program.

In accordance with section 2105(3) of the OFPA (7 U.S.C. 6504(3)) which requires that organic products be produced and handled in compliance with an organic plan agreed to by both the producer or handler and the certifying agent, we believe that sufficiently detailed information must be contained in an inspection report in order for the certifying agent to determine whether to approve the organic plan or require that it be revised, and also to determine whether a certified operation is complying with the organic plan as previously approved. Therefore, it is critical that the report include a complete, detailed description of the observations and assessments made by the inspector pursuant to section 205.210.

Additional Inspections—Section 205.213

In paragraph (a) of this section, we propose that, in addition to the annual on-site inspection required in section 205.208(a), a certifying agent could conduct an inspection of any farm, facility, or site used by a certified operation or an applicant for certification when necessary to determine compliance with the Act and the regulations in this part. In paragraph (b) of this section, we propose that the Secretary also may require that additional inspections be performed for the purpose of determining compliance with the Act and the regulations in this part. In a State in which there was an approved State program, the governing State official also would be able to require additional inspections. A certifying agent thus could decide to conduct additional inspections of certification applicants or certified operations as necessary to obtain information that was needed by the certifying agent to determine or verify the certification of the operation.

We believe that the requirements and procedures proposed in sections 205.208 through 205.213 to be followed by a certifying agent in conducting an inspection of an applicant for organic certification or a certified operation represent a key provision of our proposed certification program. The inspection process is critical for maintaining the integrity of the national organic certification program and must be undertaken in a reliable, thorough and consistent manner. Clear, consistent criteria for performing inspections are essential because of the diversity of private and State certifying agents who will be conducting inspections and evaluating inspection reports under this program.

Approval of Certification—Section 205.214

In this section we propose the basis for a certifying agent to approve an application for certification, and the procedure to be used by the certifying agent in notifying the applicant of the approval. Paragraph (a) of this section would require that the certifying agent review the information submitted by the applicant, including the organic plan, and the report submitted by the inspector, and request that the certification applicant submit any additional information and documentation that may be needed to determine if the certification applicant is complying, or is able to comply, with the Act and the regulations. For example, this might include information about changes in crops actually planted in certain fields, additional livestock added to the operation, or new sources for ingredients in a processed product, that occurred since the inspection took place.

Based on a review of all the information submitted by the certification applicant and the inspector, including any additional information the applicant has provided pursuant to paragraph (a) of this section, paragraph (b) of this section would require the certifying agent to approve an application for certification after determining that the applicant's operation satisfies four criteria. First, the certifying agent would need to determine that the practices and substances used, or intended to be used, by the operation are consistent with a system of organic farming and handling, as defined in section 205.2, and comply with the applicable production and handling requirements in this proposal. The second criterion that must be met is that the applicant satisfies the general requirements for certification, as proposed in section 205.203. Third, the certifying agent would have to determine that the applicant's organic plan satisfies the applicable requirements of the Act and the production and handling regulations in subpart B, including the provisions for the use of substances proposed in the National List. The fourth criterion that must be met is that the applicant's records and recordkeeping system satisfy the applicable requirements proposed in section 205.216.

After the certifying agent determines that an application for certification should be approved, paragraph (c) of this section would require that the certifying agent send the applicant a written notification, and to state in the notice any restrictions or requirements that are being imposed as a condition of certification. For example, if the inspector noted that information about persons who had applied substances to certain farm parcels was missing from the applicant's records, the notice would require that such information be submitted by a certain time.

Along with the notification of approval, the certifying agent would provide a certificate which the operation could use as proof of certification. In paragraph (d) of this section, we propose that the certificate include the name of the certified operation, the effective date of the certification, and the category(ies) and type(s) of products and crop year, if applicable, covered by the certification.

Denial of Certification—Section 205.215

In this section we propose the procedure to be followed if the certifying agent has reason to believe, based on a review of the information specified in section 205.214(a), that an applicant for certification is not able to comply, or is not in compliance, with the requirements of the Act and the regulations in this part. When this occurs, the certifying agent would be required to provide a written notification of non-compliance to the applicant, as proposed in section 205.218(a). This notification would be sent by certified mail to the certification applicant, and would contain a description of each deficiency in the applicant's ability to comply with the Act and the regulations in this part that the certifying agent has reason to believe has occurred, the evidence on which the notification is based, and the date by which the operation must correct each deficiency in compliance identified in the notification.

Following the correction of deficiencies identified in the notification of non-compliance, section 205.215(b) would permit the applicant to submit a new application for certification to any accredited certifying agent. A new application would include documentation of actions taken by the applicant to correct the deficiencies in compliance identified in the notification of non-compliance sent pursuant to paragraph (a) of this section. If a new application is submitted to a different certifying agent, the certification applicant would be required to simultaneously inform the certifying agent who issued the notification of non-compliance that a new application has been submitted and the name of the certifying agent to whom it was submitted. It should be noted that an applicant for certification must provide information to a certifying agent about previous applications for certification and their outcome, as proposed in section 205.204(d) (applicant information). A certifying agent thus would be able to determine whether a new applicant previously had received a notification of non-compliance from a different accredited certifying agent and would be required to include with the application for certification documentation that deficiencies in compliance identified in the previous notification had been corrected.

Finally, in paragraph (c) of this section, we propose that if a certification applicant who receives a notification of non-compliance does not correct the deficiencies or does not notify the certifying agent that it has submitted a new application within the time specified in the notice of non-compliance, the certifying agent would submit to the Administrator a notice of its recommendation to deny certification to the applicant. The Administrator then could institute proceedings to deny certification pursuant to the Rules of Practice, 7 CFR 1.130, *et seq.* The Rules of Practice provide for the formal filing of a complaint by the Secretary, an opportunity for the certification applicant to answer the complaint, a procedure for holding a hearing, and a procedure for further appealing an adverse decision following any hearing that is held. A final determination to deny certification would not be made until the applicant had received notice and an opportunity to be heard.

Recordkeeping—Section 205.216

Section 2112(d) of the OFPA (7 U.S.C. 6511(d)) requires that producers who operate a certified organic farm or handling operation maintain certain records for five years concerning the production or handling of agricultural products that are sold or labeled as organically produced. We accordingly propose in section 205.216 that a certified operation maintain records concerning the production, harvesting, and handling of agricultural products that are, or that are intended to be, sold, labeled or represented as organic or made with certain organic ingredients sufficient to demonstrate compliance with the Act and the regulations, for a period of five years. These records would have to be made available to authorized representatives of the Secretary, the applicable governing State official in a State with an approved State program, as proposed and discussed in section 205.402 of subpart F, and the certifying agent, for the purpose of verifying the operation's compliance with the Act and the regulations in this part and the provisions of the applicable State program. Records maintained in accordance with this provision could include written, electronic, or graphic documentation, such as maps or plant diagrams, that serve to support and substantiate any information provided to the certifying agent concerning the operation's production and handling methods.

In paragraph (b) of this section we propose that certain specific records would have to be maintained by a certified operation. Other records, in addition to those indicated, also may be maintained as considered appropriate by the operation to support information provided to the certifying agent. In paragraphs (b)(1) and (b)(2) of this section it is proposed, in accordance with sections 2105(2) and 2112(d) of the OFPA (7 U.S.C. 6504(2) and 6511(d)), that the operation would have to maintain a list of all substances applied to fields or land that are part of the certified operation for a period of no less than three years preceding the intended or actual time of harvest of an organic crop from such fields or land, along with the name and address of any person who applies or has applied any substance to any part of the farm, the name of the substance, and the date(s), location(s), rate(s) and method(s) of application. Section 2110(f)(2) of the OFPA (7 U.S.C. 6509(f)(2)) requires that certain records be kept with respect to livestock maintained under organic management. Accordingly, we propose in section 205.216(b)(3) that, for each animal (or livestock management unit, such as a poultry flock or bee colony) that is, or whose products are, intended to be sold or represented as organic in accordance with the livestock production requirements proposed in sections 205.12 through 205.15 of subpart B, the producer would have to keep records of: the source of the animal or livestock management unit and the date it entered the certified operation; the amounts and sources of all animal drugs administered to it; all feeds and feed supplements fed to it; and the location of the field, farm unit, or

facility where it is maintained, as applicable. These records all are necessary in order to maintain a detailed, verifiable audit trail so that each animal (or livestock unit) can be traced back to the farm, as required by section 2110(f)(1) of the OFPA (7 U.S.C. 6509(f)(1)).

A fourth category of records we propose would have to be maintained includes any information submitted to a certifying agent as part of an application for certification or as part of continuation of certification, as proposed in sections 204.204 and 205.217.

We are also proposing that the records would have to be adequate to establish an audit trail. An audit trail is defined as the ability to follow, through documentation, the transfer of ownership and the transportation of any agricultural product labeled as organic or made with certain organic ingredients. This information would include, as applicable, the source, production and handling methods, transfer of ownership, and transportation of any agricultural product labeled as organic or made with certain organic ingredients that is received by or shipped from the certified operation. Although section 2110(f)(1) of the OFPA (7 U.S.C. 6509(f)(1)) imposes a verifiable audit trail requirment only on livestock operations, our proposal to establish a verifiable audit trail for all organically produced products is needed in order to adequately enforce the provisions of the Act. It also is consistent with the recordkeeping requirements of most existing certification programs we have reviewed, and consistent with the recommendations provided by the NOSB.

Paragraph (c) of this section reiterates that any operation that is exempt or excluded from certification under section 205.202 (a) or (b) must maintain records in accordance with proposed section 205.202(c).

Continuation of Certification—Section 205.217

Section 2107(a)(4) of the OFPA (7 U.S.C. 6506(a)(4)) requires that a certified operation certify on an annual basis that it is producing agricultural products that are sold, labeled, or represented as organic in compliance with the Act and the regulations. Additionally, section 2107(a)(5) of the OFPA (7 U.S.C. 6506(a)(5)) requires an annual on-site inspection of each certified operation. The annual submission of updated information proposed in paragraph (a) of this section would provide a certifying agent with information about changes that may have been made in an operation during the preceding year which is needed by the certifying agent to properly prepare for the annual inspection. Although nearly all the existing certification programs we reviewed require an annual renewal of certification, we are proposing in section 205.217 that a certified operation needs to submit only updated information to the certifying agent on an annual basis. As proposed here, an approved certification status would continue in effect until the operation voluntarily ceased to be certified or was terminated, as proposed in section 205.219.

As proposed in paragraph (a) of this section, a certified operation would submit to the certifying agent any additions or changes to each item of information contained in the previous year's application and any amendments to the organic plan, including a description of activities undertaken in the previous year, and intended to be undertaken in the coming year, to implement the provisions of the organic plan, as proposed in sections 205.204 and 205.205. For example, if a farm had expanded its acreage in organic production or the number of livestock included in its operation had decreased, this information would have to be included in the update. The certifying agent would have the previous application information on file, or would be able to obtain it from the certifying agent who had previously certified the operation, so that the applicable information specified in section 205.204 and 205.205 would be available when preparing for the on-site inspection.

The application materials also would have to include a statement that the certified operation will remain in compliance with the Act and the regulations in this part, as well as any other information that may be requested by the certifying agent. In section 205.217 (b) and (c) we propose that after receiving the updated information as specified in paragraph (a) of this section, the certifying agent would arrange to conduct an on-site inspection of the certified operation pursuant to sections 205.208 through 205.211. After conducting an on-site inspection of the certified operation pursuant to section 205.212, if a certifying agent has reason to believe that a certified operation is not complying with the requirements of the Act and the regulations, the certifying agent would provide a written notification of non-compliance to the operation, as proposed in section 205.218(a).

Notification of Non-compliance With Certification Requirements—Section 205.218

Section 2107(a)(7) of the OFPA (7 U.S.C. 6506(a)(7)) requires that a certification program established under the Act provide for appropriate and adequate enforcement measures. In section 205.218 we propose the procedure by which a certifying agent would identify any problems that may occur in the compliance with, or possible violations of, the Act or the regulations in this part by a certified operation, or a certification applicant, and then provide an opportunity for the operation to correct any defects in its compliance.

In paragraph (a) of this section we propose that a certifying agent would send a written notification of non-compliance by certified mail sent to the place of business of the certification applicant or the certified operation. The notification would have to contain the following information: a description of each deficiency in compliance and each possible violation of the Act and the regulations that the certifying agent has reason to believe has occurred; the evidence on which the notification is based; and the date by which the operation must correct each deficiency in compliance and each possible violation delineated in the notification, and submit documentation to the certifying agent to support such corrections.

In paragraph (b) of this section we propose the procedure to be followed after a certifying agent sends a notification of non-compliance to an operation it has certified. If the documentation to support corrections received by the certifying agent from an operation it has certified is not adequate to demonstrate that each deficiency in compliance and each possible violation has been corrected, we propose that the certifying agent would conduct an additional inspection, if one is necessary, to determine whether the operation is complying with, or has violated, the Act or the regulations. After conducting an additional inspection, if one is necessary, or without conducting an additional inspection, if one is not necessary, the certifying agent would review the status of the certified operation to determine whether the operation or any portion of the operation has ceased to comply with, or has violated, the Act and the regulations.

Paragraph (b)(3) of this section proposes the procedure to be followed after the certifying agent has reviewed the certified operation's status, pursuant to paragraph (b)(2) of this section. Following a review of a certified operations's status, if a certifying agent determines that the operation is in compliance with the Act and the regulations, the certifying agent would be required to notify the certified operation in writing of its determination of compliance. If the outcome of the review gives the certifying agent reason to believe that the certified operation or any portion of the operation is not in compliance with the Act and the regulations, the certifying agent would submit to the Administrator a notice of its recommendation to terminate the certification of the certified operation or any portion of the certified operation that the certifying agent believes to have ceased to comply with the Act and the regulations. It should be noted that a recommendation could be made to terminate the certification of only a portion of an operation: for example, when a prohibited substance is applied to only one field that is part of a certified farm operation, but all other fields remain in compliance with the Act and the regulations.

Termination of Certification—Section 205.219

In section 205.219 we propose the procedure to be followed to terminate the certification of an operation or a portion of an operation that a certifying agent believes has ceased to comply with the Act and the regulations. In paragraph (a) of this section we propose that a certifying agent would send the certified operation a notification of non-compliance and follow the other procedures proposed in section 205.218 if the certifying agent has reason to believe that a certified operation or a person responsibly connected with a farm, wild crop harvesting, or handling operation it has certified has: violated the purposes of the national organic certification program; made a false statement; or attempted to have a label indicating that an agricultural product is organically produced affixed to such product when such product was not organically produced in accordance with the Act and the regulations.

In section 205.219(b) we propose that if a certifying agent has reason to believe that a certified operation or a person responsibly connected with an operation certified by the certifying agent has wilfully violated the Act and the regulations, the certifying agent would not send a notification of non-compliance pursuant to section 205.218. Instead, the certifying agent would submit to the Administrator a notice of its recommendation to terminate the certification of the certified operation or any portion of the certified operation that the certifying agent believes to have ceased to comply with the Act and the regulations. The names of any persons the certifying agent believes to have willfully violated the Act and the regulations would have to be listed in the recommendation to terminate certification submitted to the Administrator.

In section 205.219(c) we propose that the Administrator could institute the proceedings to terminate certification (pursuant to the Rules of Practice 7 CFR 1.130, *et seq.*) following the Administrator's receipt from a certifying agent of a notification of a recommendation to terminate the certification of an operation or any portion of an operation. The Rules of Practice provide for the formal filing of a complaint by the Secretary, an opportunity for the person(s) named in the complaint to answer the complaint, a procedure for holding a hearing, and a procedure for further appealing an adverse decision following any hearing that is held. A final determination to terminate the certification would not be made, therefore, until the person(s) believed to have violated the Act and the regulations had received notice and an opportunity to be heard. A notification of a certifying agent's recommendation to terminate certification could be submitted either in accordance with paragraph (b) of this section, or in accordance with section 205.218(b)(3)(ii) following a review of the status of a certified operation.

Section 2120(c) of the OFPA (7 U.S.C. 6519(c)) requires that, after notice and an opportunity to be heard, a person who is determined to have violated the Act and the regulations; made a false statement; or attempted to have a label indicating that an agricultural product is organically produced affixed to such product that such person knows, or should have reason to know, was not organically produced, shall not be eligible to receive certification for five years from the occurrence of such violation. Section 205.219(d)(1) is proposed in accordance with the Act's requirement, with the period of ineligibility to begin when a determination is made subsequent to the proceedings to terminate certification as proposed in paragraph (c) of this section. This section of the Act also permits the Secretary to waive or reduce the period of ineligibility if it is in the best interests of the certification program established under the Act, and we accordingly propose in paragraph (d)(2) of this section that the Secretary may waive ineligibility for certification if it is in the best interests of the certification program established under subpart D.

Notification of Certification Status—Section 205.220

In section 205.220 we propose that a certifying agent would be required to submit to the Administrator a copy of any notification of non-compliance, sent pursuant to section 205.218, simultaneously with its issuance to the certification applicant or the certified operation, and also to submit to the Administrator on a quarterly calendar basis the name of each operation whose application for certification has been approved. This information is needed in order for the Administrator to maintain current information concerning the status of certified farm, wild crop harvesting and handling operations, and therefore provide adequate enforcement measures. Information about any operation that has received a notification of non-compliance, pursuant to section 205.218(a), is needed in order to ensure that information about possible violations of the Act and the regulations is provided to the Administrator in a timely manner. This provision also would enable a certifying agent to determine whether a new certification applicant had previously received a notification of non-compliance from a different certifying agent, and was therefore required to document that any defects in compliance had been corrected.

SUBPART D—WHAT HAS TO BE CERTIFIED

Entity	Needs to be certified	Records required for organic ingredients and organic products
ORGANIC OPERATION SELLING or HANDLING NO MORE THAN $5,000 annually in agricultural products §205.202(a)(1).	NO	*SALES RECORDS §205.202(c)(1). *Sales records for all agricultural products.

SUBPART D—WHAT HAS TO BE CERTIFIED—Continued

Entity	Needs to be certified	Records required for organic ingredients and organic products
ORGANIC OPERATION SELLING or HANDLING MORE THAN $5,000 in agricultural products or a HANDLING OPERATION (i.e., co-packer, etc.) that provides handling services to THREE (3) OR MORE operations that produce or handle agricultural products sold, labeled, or represented as organic or as made with certain organic ingredients §205.201(a).	YES	ALL RECORDS §205.216.
HANDLER of made with certain organic ingredients product §§205.201(a) and (b)	YES	ALL RECORDS §205.216.
HANDLER of products that contain less than 50% organic ingredients §205.202(a)(3).	NO	SOURCE/QUANTITY RECEIVED—§205.202(c)(3)(i). COMMINGLING/CONTACT—§205.202(c)(3)(i). DESTINATION/QUANTITY SHIPPED—§205.202(c)(3)(ii)).
HANDLER (distributor, warehouser, etc.) of packaged or otherwise enclosed products that remain in the same packages §205.202(b)(1).	NO	SOURCE/QUANTITY RECEIVED—§205.202(c)(3)(i). COMMINGLING/CONTACT—§205.202(c)(3)(i). DESTINATION/QUANTITY SHIPPED—§205.202(c)(3)(ii)).
RETAIL OPERATION that does not process organic products §205.202(a)(2)	NO	
RETAIL OPERATION that processes in the course of normal retail activity solely for the purpose of offering the product to the consumer §205.202(b)(3).	NO	
RETAIL OPERATION that processes other than in the course of normal retail activity, i.e., combines into a single product products previously labeled organic and represents for sale under a new label §205.201(a).	YES	ALL RECORDS—§205.216.
RESTAURANTS and FOOD SERVICE ESTABLISHMENTS that process ready-to-eat food but do not package and label the food §205.202(b)(2).	NO	

Subpart E—Accreditation of Certifying Agents

Section 2115(a) of the OFPA (7 U.S.C. 6514(a)) requires that the Secretary establish and implement a program to accredit a governing State official, and any private person, who meets the requirements of the Act, as a certifying agent for the purpose of certifying a farm or handling operation as a certified organic farm or certified organic handling operation. Section 2104 of the OFPA (7 U.S.C. 6503) provides for the establishment of an organic certification program, which we have proposed in subpart D of this proposal, and section 2104(d) of the OFPA (7 U.S.C. 6503(d)) requires that the Secretary implement the certification program through certifying agents. We accordingly have proposed the provisions contained in this subpart to establish a program to accredit certifying agents to implement the certification program that is proposed in subpart D. We have developed this subpart following an extensive review of information about, and consultation with representatives of, existing organic certification programs and existing accreditation programs. We also have reviewed recommendations provided by the NOSB and public input submitted to the NOSB and the USDA.

This subpart delineates the procedure which a governing State official or a private person must follow in order to apply for and maintain accreditation as a certifying agent. A governing State official is defined by the Act as the chief executive official of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of agricultural operations of the State, such official, who administers an organic certification program under the Act. A person is defined as an individual, group of individuals, corporation, association, organization, cooperative, or other entity. Over 33 private certification organizations currently exist, including some that are organized for profit and others that are non-profit membership organizations. Some of these organizations cover a broad geographic scope and certify a wide range of operations producing diverse agricultural products. Others are small and cover limited geographical areas or types of operations. This proposal has been developed to provide enough flexibility to allow for diversity of organizational types, while ensuring that the requirements of the Act are met. We anticipate that new private certifying agents will be organized when certification becomes mandatory for the marketing of agricultural products that are represented as organically produced. Eleven States currently certify organic producers in accordance with State laws, and additional States have expressed interest in establishing organic certification programs in their States.

Additionally, a governing State official may establish an approved State program, as proposed and discussed in section 205.402 of subpart F, in accordance with section 2108 of the OFPA (7 U.S.C. 6507). A State could elect to operate the certification component of an approved State program by utilizing accredited certifying agents who are private persons; the State would not need to apply for and receive accreditation as a certifying agent as a condition of its State program being approved by the Secretary. Conversely, a governing State official could apply for and receive accreditation as a State certifying agent without having to establish an approved State program.

Synopsis of Proposed Accreditation Program

This subpart delineates the requirements that must be met for a private person or a governing State official to receive and maintain accreditation as a certifying agent. These requirements include those that are provided under sections 2115 and 2116 of the OFPA (7 U.S.C. 6514 and 6515) which include having sufficient expertise in organic farming and handling techniques. They also include other requirements that we believe are necessary in order to perform the certification functions we have proposed in subpart D, such as having an annual internal review conducted of the accredited certifying agent's operations.

Subpart E also provides a procedure for applying for accreditation, including the information that an applicant must submit. The application material includes basic information about the applicant's operation, information that provides evidence of its expertise in organic farming and handling techniques, evidence of the applicant's ability to implement the organic certification program required under the Act, and an agreement to comply with the Act and the regulations, as well as certain other terms and conditions. A private person would have to agree to certain additional terms, including agreeing to hold the Secretary harmless for any failure on its part, and to furnish reasonable security to protect the rights of participants in the certification program in the event the applicant ceases its operations.

This subpart then delineates the procedures by which the Administrator either would approve or deny an application for accreditation. The procedure for denial of accreditation would not be initiated until the applicant had been notified of defects in its ability to comply with the requirements and given an opportunity to correct them. This proposal would require an initial on-site evaluation of an accredited certifying agent's operations within a reasonable time after approving an application for accreditation, and a subsequent review by a peer review panel, as provided under section 2117 of the OFPA (7 U.S.C. 6516). The Administrator then would review the site evaluation report and the recommendations provided by each peer reviewer to determine whether to confirm or deny confirmation of the agent's accredited status. Following confirmation of accreditation, this proposal would require a certifying agent to submit fees and reports annually, and to request renewal of accreditation every 5 years. Each USDA review of a certifier's request for renewal of accreditation would include an on-site evaluation of a certifying agent's operations and a subsequent review by a peer review panel. This proposal also would permit the Administrator to conduct site evaluations whenever needed, including prior to approving accreditation, in order to verify the accuracy of information submitted and ensure compliance with the Act and the regulations.

This proposal further provides for certain enforcement actions to be taken if a certifying agent is not complying with or has violated the Act or the regulations in this part. A notification would be sent to a certifying agent if the Administrator has reason to believe that the certifying agent is not complying with the Act and the regulations. The basis for initiating the procedure for suspending or terminating an accreditation, which would be initiated after the certifying agent had an opportunity to correct deficiencies in compliance, is then proposed. A private person or a governing State official whose accreditation was suspended could reapply for accreditation after taking corrective actions to bring its activities into compliance with the Act and the regulations. A private person whose accreditation was terminated would be ineligible to receive accreditation for no less than three years, as provided by section 2120(e)(2) of the OFPA (7 U.S.C. 6519(e)(2)).

Distinctions Between Certifying Agents

The OFPA provides that a governing State official and any private person can become an accredited certifying agent if it successfully can demonstrate that it meets the requirements for accreditation established by the Secretary. All organic certifying agents, whether new or existing, or a private person or a governing State official, generally will have to meet the same qualifications, demonstrate the same capabilities, and undergo the same accreditation process. There are, however, certain requirements stated in the OFPA that pertain only to private certifying agents. Section 2116(e) of the OFPA (7 U.S.C. 6515(e)) requires only private certifying agents to furnish reasonable security, in an amount determined by the Secretary, to protect the rights of participants in the organic certification program. This section of the Act also requires only a private certifying agent to agree to hold the Secretary harmless for any failure on its part to carry out the Act's provisions.

Another difference between private and State certifying agents concerns the termination of accreditation. Section 2120(e) of the OFPA (7 U.S.C. 6519(e)) provides for the loss of accreditation only for a private certifying agent who violates the provisions of the Act and the regulations or who negligently certifies an operation, and also requires that the private certifying agent be ineligible for accreditation for a period of at least three years. Section 2116(j)(1) of the OFPA (7 U.S.C. 6515(j)(1)) provides for the suspension of accreditation for any certifying agent who is not properly adhering to the provisions of the OFPA and does not require a minimum period of ineligibility. These provisions of the Act are reflected in our proposed section 205.316 (termination of accreditation).

Areas of Accreditation—Section 205.300

As provided by section 2115(a) of the OFPA (7 U.S.C. 6514(a)), this section proposes that the Secretary shall accredit a qualified accreditation applicant in the areas of crops, livestock, wild crops, or handling, or any combination thereof, to certify a farm, wild crop harvesting operation, or handling operation as a certified organic farm, a certified organic wild crop harvesting operation, or a certified organic handling operation. This proposal would allow certifying agents who may have limited areas of expertise to become accredited to conduct certifications only of those types of operations for which they have expertise. Thus, certifying agents would not be required to have expertise in areas for which they are not requesting accreditation, in order to obtain accreditation in the areas for which they request it. For example, a certifying agent that only wanted to be accredited to certify mushroom farming operations would not have to have expertise in the raising of organic livestock in order to become accredited to certify mushroom operations. Additionally, a number of the existing non-profit certification programs we have reviewed certify only farms, since their personnel are not knowledgeable enough about manufacturing and processing procedures to certify those types of operations. Under this proposal, these organizations would not have to acquire the capability to certify other types of operations in order to be accredited to certify only farms.

General Requirements for Accreditation—Section 205.301

Sections 2115 and 2116 of the OFPA (7 U.S.C. 6514 and 6515) delineate certain requirements that accredited certifying agents must meet in carrying out the organic certification program mandated by the Act. This section of our proposal delineates those general requirements that are provided in these sections of the Act, as well as certain additional requirements that we have determined to be necessary to ensure the integrity of the program. These additional requirements are authorized by section 2107(a)(11) of the OFPA (7 U.S.C. 6506(a)(11)) which permits a program established under the Act to require other necessary terms and conditions, as determined by the Secretary.

All of the requirements proposed in paragraph (a) of this section would apply equally to both State and private certifying agents. The first two require that an accredited certifying agent have sufficient expertise in organic farming and handling techniques, and demonstrate the ability to fully comply with the requirements for accreditation to implement the certification program under the Act and the regulations, as provided respectively in sections 2115(b)(2) and 2116(a) of the OFPA (7 U.S.C. 6514(b)(2) and 6515(a)).

The third requirement we propose in section 205.301(a) is that a certifying agent carry out the provisions of the Act and the regulations in this part, which would include sections 205.207 through 205.214 of subpart D that describe certifying agent responsibilities and section 205.430 of subpart F, concerning compliance testing. The fourth requirement proposed in paragraph (a) of this section is consistent with section 2116(b) of the OFPA (7 U.S.C. 6515(b)), which requires a certifying agent to use a sufficient number of inspectors to implement the applicable organic certification program. Our proposal also would include in this requirement personnel other than inspectors, such as those who review applicants for certification. After reviewing information from existing certification programs, we have concluded that sufficient qualified personnel in addition to inspectors are essential for a certifying agent to have the expertise necessary to implement the certification program as proposed in subpart D of this part. Paragraph (a)(4) of this section additionally would require that the personnel be adequately trained to implement the organic certification program established under the Act and the regulations.

In section 205.301(a)(5) we propose that a certifying agent be required to conduct an annual performance review for each inspector used and to implement measures to correct any possible defects in compliance with the Act and the regulations identified in each such review. The quality and consistency of the performance of inspections is critical to the integrity of the certification program we have developed and proposed in subpart D. In order to ensure that all inspections are conducted in a manner that adequately scrutinizes certified operations, we believe that a certifying agent must annually evaluate the performance of each inspector it uses during the year. Paragraph (a)(6) of this section similarly would require that an annual internal evaluation review be conducted of the certifying agent's own certification activities, and that measures to correct any possible defects in compliance with the Act and the regulations be implemented, as identified in each such review. We propose this requirement in order to safeguard further the integrity of the certification process, and also to provide an additional means of evaluating the adequacy of a certifying agent's performance and compliance with the Act and the regulations. Such a procedure is consistent with accepted quality management methods and would assist the certifying agent in helping to ensure that its operations continue to comply with the requirements of the Act and the regulations. The requirements proposed in paragraphs (a)(5) and (a)(6) of this section would help ensure that a certifying agent possesses the requisite expertise to conduct certification activities, as required by section 2115(b)(2) of the OFPA (7 U.S.C. 6514(b)(2)), and maintains the administrative capability to fully implement the proposed program, as required by section 2116(a) of the OFPA (7 U.S.C. 6515(a)).

In section 205.301(a)(7) we propose the requirement that a certifying agent provide sufficient information to persons seeking certification to enable an applicant for certification to comply with the applicable requirements of the Act and the regulations. This would require that a certifying agent provide applicable information, such as information about the National Organic Program's requirements for: the production and handling of agricultural products; wild crop harvesting; certification; labeling; inspection; appeals of adverse actions; fees and expenses; approved State program requirements; and any other information that is needed for a person to be able to apply for certification and comply with all the relevant requirements.

Section 2116(c) of the OFPA (7 U.S.C. 6515(c)) requires that a certifying agent maintain records of its activities under the Act for not less than 10 years, and that it allow only representatives of the Secretary and the governing State official access to these records. Paragraph (a)(8) of this section reflects those requirements. Section 2116(g) of the OFPA (7 U.S.C. 6515(g)) requires that a certifying agent maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose any business related information of its clients to third parties, with the exception of the Secretary or the applicable governing State official. Paragraph (a)(9) of this section reflects this provision, and also allows for certain exceptions, as proposed and discussed in section 205.304(b)(5) of this subpart.

The requirements provided in section 2116(h) of the OFPA (7 U.S.C. 6515(h)) address the prevention of conflicts of interest by certifying agents, and paragraph (a)(10) of this section is proposed to be consistent with those provisions. We have found it necessary in some cases to add certain clarifications to the language contained in the Act in order to establish requirements that are both feasible for the diverse range of certifying agents and adequate to prevent conflicts of interest. The first provision proposed in paragraph (a)(10) of this section is that a certifying agent could not certify an operation in which the agent, or a responsibly connected party of the agent, has held a commercial interest, including the provision of consultancy services, within 12 months prior to the application for certification. This provision also would require that a certifying agent not certify an operation through the use of any employee that has or has held a commercial interest in the operation, including the provision of consultancy services, within the 12 month period prior to the application for certification. This proposal therefore would permit a certifying agent to certify the operation of an employee provided that the employee was not used in certifying that operation. This clarification is consistent with the intent of the Act, and would permit the use by certifying agents of peer reviewers, as is the practice in many of the current organic certification programs we have examined. While the Act does not mention responsibly connected parties, which we have defined as any person who is a partner, officer, director, holder, manager, or owner of 10 per centum or more of the voting stock of an applicant or a recipient of certification or accreditation, we believe that any such person should be limited in the same way as the agent itself. Section 2116(h)(1) of the OFPA (7 U.S.C. 6515(h)(1)) also does not specify a time limit for previous commercial relationships in its conflict of interest provisions; however, we are proposing here that the prohibition of commercial relationships extend only to the previous 12 months. We believe that extending this period indefinitely into the past would prevent certifying agents from hiring qualified personnel who at some time had a financial interest in an operation certified by the agent. An indefinite extension would have the effect of severely curtailing most certifying agents' ability to comply with the Act's requirement of employing people with sufficient expertise to implement the applicable certification program. We believe that 12 months is a sufficient period to ensure that any previous commercial interest would not create a conflict of interest situation, since this time period is consistent with similar provisions governing conflict of interest for government employees.

The second provision proposed in paragraph (a)(10) of this section would similarly prohibit a certifying agent from assigning an inspector to perform an inspection of an operation in which the inspector has or has held a commercial relationship within the 12 months prior to conducting the inspection. We propose this because of the fact that many existing organic certification programs use inspectors who are neither employees nor responsibly connected parties, but who instead are independent contractors who work for multiple certifying agents. As proposed here, such inspectors would be appropriately prevented from performing inspections in which they had any conflict of interest.

In accordance with section 2116(h)(2) of the OFPA (7 U.S.C. 6515(h)(2)), the third provision proposed in paragraph (a)(10) of this section would prohibit a certifying agent and any employee, inspector, or other personnel involved in certification activities to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected. We would not consider a volunteer who performs services for a not-for-profit certifying agent as providing favors to any particular individual in that agency and, therefore, would not consider the certifying agent as being in a conflict of interest situation by accepting such services from volunteers. The final provision of paragraph (a)(10) of this section, proposed in accordance with section 2116(h)(3) of the OFPA (7 U.S.C. 6515(h)(3)), would prohibit a certifying agent from providing advice concerning organic practices or techniques to any certification applicant for a fee other than as part of the fees established for its accredited certification program.

Section 205.301(a)(11) would require that a certifying agent accept the certification decisions made by another USDA accredited certifying agent as equivalent to its own. We believe this provision is necessary so as to prevent certifying agents from requiring handlers to purchase only organic products originating from operations certified by the particular certifying agent, under the premise that products originating from operations certified by other certifying agents are not equivalent. Such a situation would conflict with the purposes of the Act to establish national standards for organically produced products and to facilitate interstate commerce for organically produced agricultural products.

Section 205.301(12) would require a certifying agent to refrain from making false or misleading claims about its accreditation status, the USDA accreditation program, or the nature or qualities of products labeled as organically produced. For example, a certifying agent could describe its procedure for certifying organic production methods, but it could not claim that its certification procedure offers a guarantee of product quality. We believe that this provision is needed to prevent the dissemination of inaccurate or misleading information to consumers about organically produced products, which is consistent with the purpose of the Act to assure consumers that organically produced products meet a consistent standard.

Section 205.301(a)(13) would require that a certifying agent charge only such fees to applicants for certification and operations it certifies that the Secretary determines are reasonable. This provision is consistent with section 2107(a)(10) of the OFPA (7 U.S.C. 6506(a)(10)), which requires the certification program established under the Act to provide for the collection of reasonable fees from producers and handlers who participate in such program. AMS will review the fees charged by the certifying agents when they apply for accreditation and when they submit annual reports to ensure that the fees are reasonable and that small businesses are not unduly burdened. Section 205.301(a)(14) would require a certifying agent to pay and submit fees to AMS in accordance with sections 205.421 and 205.422(b) of subpart F, in which we propose that certifying agents would be required to pay certain fees to become accredited and to maintain accreditation, and also would be required to collect National Organic Program fees from farmers and handlers to be submitted to AMS.

In section 205.301(a)(15) we propose that a certifying agent would have to comply with and implement such other terms and conditions deemed necessary by the Secretary. This provision is made in accordance with section 2116(d) of the OFPA (7 U.S.C. 6515(d)).

Paragraph (b) of this section would permit a certifying agent to establish a seal, logo or other identifying mark that could be used by farm, wild crop harvesting, and handling operations that it certifies for the purpose of denoting affiliation with that certifying agent. This provision, authorized by section 2107(a)(11) of the OFPA (7 U.S.C. 6506(a)(11)), is proposed in consideration of public input provided by many organic producers and handlers expressing their desire to identify their operations with a particular certification program. Some existing certification programs also stated that they have made a considerable investment in developing consumer recognition for their names or logos. Although we also received comments stating that the use of certifying agent seals or logos should be prohibited, we have determined that a prohibition of seals and logos is not necessary. We believe that the use of certifying agent identification to indicate affiliation with a certifying agent would provide information of value to some consumers and would not be in conflict with the purpose stated in section 2102(2) of the OFPA (7 U.S.C. 6501(2)) of assuring consumers that organically produced products meet a consistent national standard.

This proposal would require that the use of any such seal or logo not be required as a condition for receiving certification, and, thereby, its use would be optional on the part of the farmer or handler. In order to ensure that any use of a certifying agent's logo does not conflict with the purposes of the Act, proposed section 205.301(b)(2) also specifies that the agent could not require, as a condition for use of its identification mark, compliance with any farming or handling requirements in addition to those provided for in the Act and the regulations in this part. Some public input has been received suggesting that certifying agents be allowed to use their logo or seal to recognize "additional achievements" on the part of farmers and handlers that exceed the requirements proposed in the national organic standards. This position was not recommended by the NOSB, which instead adopted a recommendation as a policy matter that was consistent with the provisions of this section of our proposal. Our proposal would not prohibit a certifying agent from verifying that a producer or handler it certifies is meeting contractual specifications that include requirements in addition to those of the Act and the regulations. It would prohibit the use of the certifying agent's logo or seal on a label, labeling material or other market information to represent compliance with farming or handling requirements in addition to those

provided under the Act and the regulations in this part.

In accordance with section 2116(e) of the OFPA (7 U.S.C. 6515(e)), section 205.301(c) proposes three additional requirements for a certifying agent who is a private person. These requirements are that a private certifying agent must: hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations; furnish reasonable security, in an amount and according to terms as may be prescribed by regulation by the Secretary, for the purpose of protecting the rights of farms and handling operations certified by certifying agents under the Act and the regulations in this part; and transfer to the Secretary and make available to the applicable governing State official all records or copies of records concerning the person's certification activities in the event that the certifying agent dissolves or loses its accreditation. The amount and the type of reasonable security that must be furnished by a private certifying agent for the purpose of protecting the rights of operations certified by the agent will be the subject of future rule making by the Department.

Applying for Accreditation—Section 205.302

As provided under section 2115(b)(1) of the OFPA (7 U.S.C. 6514(b)(1)), this section instructs a private person or a governing State official who wishes to become accredited under this proposal to submit applicable documents and information, as delineated in proposed sections 205.303 through 205.305, and the fees required in section 205.421(a) of subpart F to the Program Manager of the National Organic Program. The Administrator then would determine whether the applicant demonstrates sufficient expertise and ability to fully implement the organic certification program proposed in subpart D of this part.

Information to be Submitted by an Accreditation Applicant—Section 205.303

In order to evaluate an applicant for accreditation, it is necessary to identify who the applicant is, how it may be contacted, who is responsible for conducting its operations, if it is a private person, and the extent of the certification activities it intends to conduct under the Act and the regulations. Accordingly, in this section we propose that a person seeking accreditation as a certifying agent provide certain descriptive information about its organization and intended certification activities. This includes the name of the applicant, location of its offices, and its contact numbers (telephone, fax number, and Internet address). A private person also would have to identify the individual responsible for its day-to-day operations, as required by section 2116(i) of the OFPA (7 U.S.C. 6515(i)), and its taxpayer identification number. Paragraph (b) of this section requires the applicant to submit a list of any organization units, such as chapters or subsidiary offices, including the names of contact persons, office addresses and other contact information. This information is needed in order to determine whether multiple sites are used to conduct certification activities and, if so, to evaluate whether these activities are conducted in compliance with the Act and the regulations.

In paragraph (c) of this section, we propose that the accreditation applicant specify the intended scope of its certification activities, and estimate the numbers of producers or handlers in each type of operation, such as crops, wild crops, livestock, or handling, that it expects to certify each year. This information is needed so that the Administrator may determine the types of certifications a certifying agent is qualified to conduct. This proposed provision would require an applicant that was limited in scope, such as one that intends to certify producers of only one commodity, to demonstrate only that it had sufficient capability and expertise to conduct the types and numbers of certifications that fell within its requested scope of accreditation.

Paragraph (d) of this section requests an accreditation applicant to indicate the type of entity it is (i.e., for profit, private, non-profit private, or State), and to provide documentation pertaining to its legal status and organizational structure. An applicant who is a governing State official would have to submit a copy of the official's statutory or regulatory authority to conduct certification activities in that State, and a private person would have to submit information about its status and organizational purpose, such as articles of incorporation, by-laws, ownership or membership provisions, and the date of establishment. This type of documentation is generally maintained on file by an organization, and would be required to assist the Administrator in verifying that the purposes of the organization are consistent with its intended activities under the Act and the regulations in this part.

Paragraph (e) of this section would require an applicant to submit a list of all the States where it currently conducts and intends to conduct certification activities. This information would be required so that the Administrator could determine whether a certifying agent who conducts or intends to conduct certifications in more than one State is knowledgeable of any additional requirements of an approved State program, if applicable, as provided under section 2108(b) of the OFPA (7 U.S.C. 6507(b)).

Evidence of Expertise and Ability to be Submitted by an Accreditation Applicant—Section 205.304

Sections 2115(b)(2) and 2116(a) of the OFPA (7 U.S.C. 6514(b)(2) and 6515(a)) require that a private person or a governing State official seeking accreditation as a certifying agent have sufficient expertise in organic farming and handling techniques and be able to fully implement the applicable organic certification program established under the Act. This section accordingly requests that an applicant for accreditation submit information and documents that demonstrate such expertise and ability. Paragraph (a) of this section requests information concerning personnel used by the applicant to conduct certification activities. The first item requested in this proposed paragraph is a description of the applicant's policies and procedures for training, supervising, and evaluating personnel. This information is needed for the Administrator to determine whether the applicant is providing sufficient oversight over personnel involved in certification activities to ensure compliance with the Act and the regulations in this part. The second item requested in this paragraph is the names and functions of all personnel intended to be used in the certification operation, including all parties responsibly connected to the applicant, administrative staff, certification inspectors, and members of certification review and internal evaluation committees. This information may include the job title or position of each person and a description of the organic certification functions they will perform. This information would enable the Administrator to determine that the applicant has sufficient personnel to perform the certification activities for which it seeks accreditation, and whether it has a sufficient number of inspectors to implement the certification program, as required under section 2116(b) of the OFPA (7 U.S.C. 6515(b)).

The third item in proposed paragraph (a) of this section requests the submission of more descriptive information about the qualifications, such as past experience, training, and education in organic farming and handling, of each of the applicant's inspectors and persons designated to review or evaluate certification applicants. This proposal would provide the Administrator with the information needed to evaluate the qualifications of inspectors and review personnel when determining whether the applicant possesses the requisite expertise in organic farming and handling techniques.

Although inspector qualifications would receive careful scrutiny by the Secretary, we have not proposed the specific types of training and experience a certification inspector must possess. We have determined through consultation with experienced organic inspectors that such provisions would not be feasible because of the variability of expertise needed for the types of operations to be inspected. Furthermore, current organic inspectors differ widely in terms of their background, training and experience, as well as in their relationship to existing certification programs. For example, current organic inspectors may be seasonal employees of a private certifying agent, full-time State employees who conduct inspections for several State regulatory agencies, or independent contractors used by several certifying agents, and the expertise required in each case would differ significantly. We also are aware of at least one existing association that accredits independent professional organic inspectors according to criteria consistent with the requirements of our proposed certification program; we would consider an inspector's receipt of such accreditation when we evaluate the inspector's qualifications.

The final item in paragraph (a) of this section would request a description of any training measures the accreditation applicant has provided or intends to provide to its personnel in organic farming and handling and in the skills needed to ensure compliance with the Act and the regulations in this part. This information would enable us to determine whether the applicant would take measures to ensure that its personnel maintain adequate levels of expertise and are able to fully implement the certification program.

Paragraph (b) of proposed section 205.304 delineates the information that we propose an applicant for accreditation must submit concerning its administrative policies and procedures. We have determined that this information is needed to evaluate whether the applicant is able to fully implement the proposed certification program and to meet the general responsibilities and requirements proposed in section 205.301. The first item in this paragraph would request a description of the procedure to be used by the applicant to evaluate certification applicants and issue certificates. This information might, for example, include copies of any forms to be used to record inspection visit results and other information about certification applicants. This information would be used by the Administrator to determine that an accreditation applicant has adequate procedures in place to properly evaluate the eligibility of a farmer or handler to receive certification for their operations.

The second item in this paragraph requests information about the applicant's procedures for reviewing whether operations that it will certify are in compliance with the Act and the regulations in this part and for reporting violations to the Secretary and the applicable governing State official. Sections 2112(a) through (c) of the OFPA (7 U.S.C. 6511(a) through (c)) require certain testing to be done to assist in enforcement of the Act. We have addressed and discussed these provisions in sections 205.430 through 205.432 of subpart F. The information requested in paragraph (b)(2) of this section would help the Administrator determine whether an applicant would be able to comply with these requirements. This information also would assist in determining whether the applicant would be able to comply with the requirement in section 2120(d) of the OFPA (7 U.S.C. 6519(d)) that a certifying agent immediately report any violations of the Act to the Secretary or the governing State official, if applicable.

The third and fourth items proposed in paragraph 205.304(b) request a description of procedures the applicant would use to comply with the recordkeeping and confidentiality provisions proposed in sections 205.301(a)(8) and (9), in accordance with sections 2116(c) and (g) of the OFPA (7 U.S.C. 6515(c) and (g)). This information would be used to evaluate an applicant's ability to maintain records of its activities under the Act for 10 years, maintain strict confidentiality of its records with respect to its clients' business information, and allow representatives of the Secretary and the governing State official access to these records, as required under the Act.

Section 2107(a)(9) of the OFPA (7 U.S.C. 6506(a)(9)) requires that a certification program provide for public access to certification documents and laboratory analyses that pertain to certification. The fifth item proposed in section 205.304(b) accordingly requests that an accreditation applicant submit a description of its procedures for making certain information available to the public upon request. This information includes a list of all the operations it has certified, effective dates of certification, organic products produced by each certified operation, and the results of laboratory analyses for residues of pesticides and other prohibited substances. This information would have to be made available for certifications conducted up to ten years prior to receipt of the request. As proposed here, the policies and procedures described also would provide for public access to other non-confidential business information as permitted by the producer or handler and approved by the Secretary. This provision would permit a certifying agent to disclose to the public other non-confidential information about its clients' production practices if permitted to do so by the client and approved by the Secretary.

Paragraph (c) of proposed section 205.304 requests a description of the applicant's policies and procedures for the collection and disbursement of funds, and documents that identify anticipated sources of income, including all fees to be collected from producers and handlers in accordance with the requirements proposed in section 205.301(a)(15) of this subpart and section 205.422(a) of subpart F. This information is needed to determine whether the applicant is charging reasonable fees to its clients, and whether it has sufficient income to submit the required fees proposed in section 205.421. This information also would help the Administrator determine that certification decisions were not influenced by the concern for their financial impact on the certifying agent and to review an applicant's anticipated revenue sources for other potential conflicts of interest, such as fees charged on the basis of the sale of organic products by certified operations.

Paragraph (d) of section 205.304 requests information about policies and procedures to be implemented by the applicant to prevent conflicts of interest. Conflict of interest requirements are proposed in section 205.301(a)(10) in accordance with section 2116(h) of the OFPA (7 U.S.C. 6515(h)). This proposal would request information concerning any food and agriculture-related business interests of the applicant's personnel, as well as the business interests of immediate family members, so that the Administrator may

determine whether conflicts of interest may exist.

Some accreditation applicants currently may be conducting organic certification activities under State laws or private programs. Paragraph (e) of this section accordingly provides for the optional submission of information about certification activities currently conducted by these applicants. This information could include a list of all farms and handling operations currently certified by the applicant, and copies of inspection reports and certification documents for representative farms or handling operations certified by the applicant during the previous year. An accreditation applicant who previously has undergone a process of accreditation or evaluation of its organic certification activities, such as might be performed by a private accreditation body, also could submit any information concerning such a process conducted within the previous year. We believe that documentation of a previously conducted independent evaluation of the applicant's expertise and organizational capability would be helpful in determining whether the certifying agent is qualified and prepared to comply with the Act and the regulations. Although we would not expect an applicant for accreditation to have been complying with the requirements of the Act and the regulations in this part prior to becoming accredited, these documents would be valuable as an indication of the applicant's prior experience in evaluating organic farming and handling operations and of its ability to implement the proposed certification program. Finally, because we recognize that an applicant may possess other information that is relevant to the Secretary's decision whether to approve an accreditation, we propose in paragraph (f) of this section that an applicant for accreditation could submit any other information the applicant believes may support the Secretary's evaluation of its request for accreditation.

As previously discussed, an applicant for accreditation may be a newly formed organization that intends to begin conducting certifications after it is accredited, or it may be a certification organization that currently exists. Based on a review of currently existing certification programs, we believe that all the information requested in sections 205.303 and 205.304 should be readily available to any person or governing State official who is eligible for accreditation under the Act and the regulations in this part and is applicable to both existing and newly formed organizations preparing to perform certification activities under the National Organic Program or an approved State program. We also believe that all of the information we are proposing to require in sections 205.303 and 205.304 is essential to enable the Administrator to make a determination concerning approval of an application for accreditation.

Statement of Agreement To Be Submitted by an Accreditation Applicant—Section 205.305

In this section we propose that an applicant for accreditation would have to submit a statement of agreement along with the information and documents delineated in sections 205.303 and 205.304. Paragraph (a) of this section delineates seven provisions to which a private person or governing State official seeking accreditation must agree. Two provisions of this agreement would be to carry out the provisions of the Act and the regulations in this part and to implement and carry out any other terms and conditions that the Secretary determines appropriate, both of which are required by section 2116(d) of the OFPA (7 U.S.C. 6515(d)). It should be noted that this agreement would encompass all the general requirements proposed under section 205.301, including the provision repeated here that a certifying agent accept a certification decision made by another USDA accredited certifying agent as equivalent to its own.

The remaining four provisions to which an accreditation applicant would have to agree would state the requirements proposed in sections 205.301(a)(5), (a)(6), (a)(12), and (a)(13). These provisions are that the applicant agrees to: refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced; conduct an annual performance review for each inspector to be used and implement measures to correct any possible defects in compliance with the Act and the regulations in this part identified in each review conducted; have an annual internal evaluation review conducted of its certification activities and implement measures to correct any possible defects in compliance with the Act and the regulations in this part identified in each review conducted; and pay and submit fees to AMS in accordance with sections 205.421 and 205.422(b) of subpart F of this part.

Paragraph (b) of this section provides for certain agreements that would apply only to certifying agents who are private persons, as provided for in section 2116(e) of the OFPA (7 U.S.C. 6515(e)), and as proposed in section 205.301(c) as general requirements for accreditation. These provisions are that a private certifying agent must agree to hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act, and also must furnish reasonable security for the purpose of protecting the rights of participants in the applicable organic certification program. We also have proposed, in accordance with section 2116(c)(3) of the OFPA (7 U.S.C. 6515(c)(3)), that a private certifying agent agree to transfer to the Secretary and make available to the applicable governing State official all records or copies of records concerning the person's certification activities in the event that the certifying agent dissolves or loses its accreditation.

Approval of Accreditation—Section 205.306

In this section we propose that if the Administrator determines that an applicant has submitted all of the information and the statement of agreement proposed in sections 205.303 through 205.305, has paid the required fee as proposed in section 205.421(c) of Subpart F, and meets or is capable of meeting the general requirements for accreditation as proposed in section 205.301, the Administrator would notify the applicant in writing that its request for accreditation has been approved. We also provide for the Administrator to consider information obtained from a site evaluation visit, as proposed in section 205.309, in making this determination. The written notice of approval of accreditation would state the area(s) for which accreditation was given and the effective date of the accreditation. A private person also would be notified of the amount and type of security determined by the Administrator that would be needed to protect the rights of farming and handling operations certified by such certifying agent, in accordance with section 2116(e)(2) of the OFPA (7 U.S.C. 6515(e)(2)).

We have received public input expressing concerns about granting accreditation to applicants prior to conducting a site evaluation and a peer review process. However, we believe that the procedure proposed here is appropriate for several reasons. First, we believe that the document review process proposed here is sufficiently rigorous to permit a well-founded assessment of the applicant's capabilities and qualifications. In cases where the application documentation reveals possible concerns about the applicant's expertise and ability to implement the proposed certification program, our proposed section 205.309 would authorize us to conduct a preliminary site evaluation visit. Our proposal would allow all eligible certifying agents, both existing and newly formed, to receive accreditation in a timely manner and would avoid conferring an advantage on those certifying agents for whom we complete the initial site evaluation and peer review process before those of competing certifying agents. We further believe that conducting a site evaluation of a newly established certifying agent before it had begun any certification activities might not contribute information that would be useful for our evaluation. Previously existing certifying agents also would need time to make adjustments in their operations to comply with the National Organic Program regulations.

Finally, section 2107(a)(1)(A) of the OFPA (7 U.S.C. 6506(a)(1)(A)) requires that any product sold as organic be produced and handled by a certified operation; this provision of the Act cannot be implemented until certifying agents have been accredited by AMS. We have received considerable public input that the OFPA should be implemented as quickly as possible. A proposal that would require full site evaluations and peer reviews to be conducted prior to granting accreditation would further delay implementation of the Act.

Denial of Accreditation—Section 205.307

In section 205.307 we propose the procedure for denying an application for accreditation. Paragraph (a) provides that, if there was reason to believe, based on a review of the information specified in sections 205.303 through 205.305, that an applicant for accreditation is not able to comply, or is not in compliance, with the requirements of the Act and the regulations in Part 205, including the general requirements proposed in section 205.301, the Administrator would provide a written notification of non-compliance to the applicant, as proposed in section 205.315(a). The notification would be sent by certified mail to the accreditation applicant, and would state any deficiencies in the ability of the applicant to comply with the Act and the regulations that the Administrator believes exist, the evidence on which the notification is based, and a date by which the deficiencies must be corrected.

In section 205.307(b) we propose that, following the correction of deficiencies identified in the notification issued in accordance with paragraph (a) of this section, the applicant could submit a new application for accreditation to the Administrator. The new application would have to include documentation of actions taken by the applicant to correct the deficiencies delineated in the notification of non-compliance.

If an accreditation applicant who receives a notification pursuant to paragraph (a) of this section does not correct the deficiencies identified within the time specified in the notice of non-compliance, paragraph (c) of this section would require that the Administrator institute proceedings to deny accreditation.

Maintaining Accreditation—Section 205.308

This section proposes that, in order to maintain its accreditation, a certifying agent must continue to satisfy the general requirements of section 205.301 of this subpart throughout the duration of its accredited status, and must pay the required fees in accordance with the provisions proposed in sections 205.421 and 205.422(b) of subpart F.

Site Evaluations—Section 205.309

This section of our proposal would require AMS to conduct a site evaluation of each certifying agent's operation initially, and at least once every 5 years thereafter, to examine its operations in order to evaluate the agent's compliance with the Act and the regulations. A site evaluation to determine compliance may include an examination of the certifying agent's facilities, records, procedures and activities conducted under the Act and the regulations set forth in Part 205. Although the Act does not specifically require that site evaluations be conducted, we concur with the recommendations made by the NOSB that such a process is necessary for the Secretary to maintain adequate oversight of the activities of accredited certifying agents under the Act and the regulations in this part. This procedure is integral to other accreditation programs that we reviewed, and is analogous to the annual on-site inspection that is required of all operations that are certified under the Act, as provided for in section 2107(a)(5) of the OFPA (7 U.S.C. 6506(a)(5)).

This proposal provides that the Administrator would arrange and conduct the site evaluations to verify compliance with the Act and the regulations in this part. In order to verify the certifying agents's compliance, the Administrator might conduct visits to selected farm, wild crop harvesting, and handling operations that have been certified by the agent. We anticipate that the operations to be visited might be chosen in consultation with the agent and as might be determined necessary by the Administrator to verify the agent's compliance with the regulations. A site evaluation report would be prepared which described the observations made about the certifying agent's compliance with the Act and the regulations in this part, including its performance of certification activities.

We have received some public input suggesting that we use peer reviewers, as provided for in section 2117 of the OFPA (7 U.S.C. 6516), in the site evaluation process. We have not provided for peer reviewers to participate in site evaluations. We believe that the use of peer reviewers to conduct site evaluations is unnecessary and could pose an excessive burden on the certifying agents, because the use of persons other than a single AMS evaluator would increase the costs of conducting site evaluations, due to additional travel and per diem expenses, and could delay site evaluations due to the need to accommodate the peer reviewers' scheduling constraints. Furthermore, AMS personnel will be sufficiently qualified and prepared to perform the site evaluations.

Paragraph (a) of this section also provides for a site evaluation of a newly accredited certifying agent to be conducted within a reasonable time after the date on which the certifying agent's notice of approval of accreditation is issued, provided that the agent has conducted sufficient certification activities under the Act and the regulations upon which the Administrator may base an evaluation. We expect to confer closely with newly established certifying agents prior to scheduling an initial site evaluation to determine that they have performed enough certifications on which to base the evaluation.

We proposed in paragraph (b) of this section that a site evaluation of an accreditation applicant or a certifying agent's operation and performance may be conducted by the Administrator at any time to determine compliance under the Act and the regulations in this part. For instance, site evaluations of the operations of a certifying agent requesting renewal of accreditation would be conducted under this proposal as part of the renewal process, which we propose in section 205.314(b) to occur

every five years. However, as proposed in section 205.309(b), site evaluations could be conducted whenever the Administrator determined that one was necessary to evaluate whether the certifying agent's operations and performance are in compliance with the Act and the regulations. Thus, although accreditation would have to be renewed every five years, a site evaluation could occur more often than every five years. We believe that the frequency of site evaluations needed to properly oversee the activities of certifying agents would likely be higher than once every five years in the initial few years after implementation, but that a five year period may be a reasonable interval of time for conducting site evaluations of established accredited certifying agents. This proposal would give us the flexibility to conduct site evaluations based on an assessment of the previous performance of the certifying agent and the need to oversee the agent's certification activities. Comments as to the impacts of this proposed provision on certifying agent operations are invited.

Additionally, this section would give the Administrator the authority to conduct an additional site evaluation prior to the approval of accreditation, as needed to verify whether an accreditation applicant can comply with the general requirements of section 205.301. We also believe it is essential to be able to conduct a site evaluation at any time that circumstances warrant a site visit to ensure the integrity of the organic certification program. For example, a site visit may be necessary if we receive a significant number of substantiated complaints from clients or the public about the performance of a certifying agent.

Peer Review Panel—Section 205.311

Section 2117 of the OFPA (7 U.S.C. 6516) provides for the establishment of a peer review panel to assist the Secretary in evaluating applicants for accreditation. This section of our proposal accordingly delineates the function, composition, duties, and the meeting and reporting procedures for the peer review panel. In section 205.311(a) we are proposing that a peer review panel be required to review the accreditation status of a certifying agent after AMS has conducted a site evaluation for confirmation or renewal of accreditation, as proposed in sections 205.309(a) and 205.314(b) of subpart E, respectively. This section would require the Administrator to consider the reports received from each individual member of a peer review panel when making a determination whether to confirm the accreditation of a certifying agent, pursuant to section 205.312, or when making a determination whether to renew the accreditation of a certifying agent, pursuant to section 205.314(b). We are also proposing that the Administrator could choose to convene a peer review panel at any time for the purpose of evaluating a certifying agent's activities under the Act and the regulations. This provision would provide flexibility for the Administrator to seek recommendations from peer reviewers at other times when it may be necessary to evaluate a certifying agent's compliance with the Act and the regulations.

In paragraph (b) of this section we propose that the Administrator establish a pool of peer review panel members to perform a review of any certifying agent for which an initial or renewal site evaluation has been conducted, pursuant to proposed section 205.309. We anticipate that a notice calling for candidates for the peer review panel pool would be published in the **Federal Register** shortly after publication of the final rule. Candidates would be requested to submit a letter to the Program Manager of the National Organic Program requesting appointment to the peer review panel pool, stating in the letter their name and address, qualifications, and a disclosure of any association with any person who is or who may become an accredited certifying agent, which may constitute a conflict of interest, such as being a responsibly connected party of a certified operation. Candidates accepted for this pool would be notified by the Administrator and could continue to serve until otherwise notified. As the need arose for additional members of the pool, the Administrator would publish an announcement to that effect in the **Federal Register**.

Section 2117(b) of the OFPA (7 U.S.C. 6516(b)) provides for the peer review panel to consist of no less than three persons who have expertise in organic farming and handling methods, and for at least two of the panelists to be other than USDA or approved State program personnel. This proposal is consistent with these requirements. Section 205.311(b) of this proposal calls for the Administrator to convene a three to five member panel from the pool of peer reviewers. Each panel would include one member from AMS as a permanent member, who would be responsible for presiding over any proceedings to ensure that they are conducted in accordance with AMS policy. Under the scheme proposed here, personnel from an approved State program could be included as an additional panel member on a panel that consisted of at least four members. Our proposal would keep the panel to a minimum size so as to minimize costs, but would permit sufficient numbers of persons with organic production and certification expertise to participate in the accreditation process.

In paragraph (b)(2) of this section we propose that each convened peer review panel include no less than one member who possesses sufficient expertise, as determined by the Administrator, in the areas of accreditation delineated in the notice of approval of accreditation, as proposed in section 205.306(a), for each certifying agent whose operations and performance are to be reviewed. This approach would allow for the selection of panelists whose expertise matches the characteristics of the particular certifying agents under review. For example, a panelist with a background in organic processing and manufacturing practices, but who was unfamiliar with organic mushroom production, would not be used to review a certifying agent whose scope of certification included only mushroom producers.

We propose in paragraph (b)(3) of this section to prohibit the selection of a peer reviewer who was associated with a certifying agent being reviewed in a manner that would constitute a known or perceived conflict of interest, as determined by the Administrator. We believe that to ensure the integrity of our proposed program we must take measures to ensure that any recommendations provided by peer reviewers are not influenced by the possibility of a financial interest in the outcome of the Administrator's determination.

Some public input we received suggested that we include representatives of consumer, environmental and other public interest groups as members of the peer review panel as a means of having broader public involvement in the oversight of certifying agents. The Act requires that persons who possess the necessary technical expertise in organic production and handling practices evaluate the performance of certifying agents. Persons representing consumer, environmental, or other similar groups who possess the necessary expertise could be eligible to participate in the peer review panel if they file a letter with the Administrator, and are determined to meet the criteria established to become a peer review panel member.

We propose in section 205.311(c) that each peer review panel member would individually review the site evaluation report prepared by the Administrator and any other information that may be provided by the Administrator relevant to confirming or renewing the accreditation status of a certifying agent. Each peer review panel member would provide an individual report to the Administrator regarding the certifying agent's ability to conduct and perform certification activities under the regulations. We also propose in this section that each peer reviewer would have to agree to treat the information received for review as confidential, and could not release, copy, quote, or otherwise use material from the information received, other than in the report required to be submitted. This provision is needed in order to protect the confidentiality of business information received by USDA concerning the operations of certifying agents, as well as any information about operations certified by those agents.

In section 205.311(d) we propose that the Administrator could decide to convene a meeting or conference call of a peer review panel, if necessary, for evaluating the accreditation status of a certifying agent, or if it is requested by at least one peer review panel member. This section also would permit the Administrator to include in this meeting or conference call the certifying agent being evaluated, or a representative of the agent, for the purpose of providing additional information. This provision is proposed so that members of the peer review panel may have the opportunity to request clarification of any aspect of the agent's activities described in the site evaluation report. However, any meeting or conference call would have to be conducted in a manner that will ensure that the actions of panel members are carried out on an individual basis with any opinions and recommendations by a member being individually made.

Section 205.311(d) would additionally permit copies of peer review panel reports to be provided to the certifying agent, who could then submit a written response for consideration by the Administrator. This provision would permit a certifying agent to submit clarifications or additional information bearing on its activities under the Act and the regulations, whether or not a meeting or conference call of the peer review panel was conducted.

In the final paragraph of this section we propose that each peer review panelist would individually provide a written report to the Administrator. This report would contain the panelist's recommendations concerning confirmation or renewal of accreditation for each certifying agent reviewed, and a description of the basis for each recommendation. These recommendations might, for example, include conditions that the reviewer believes should be included in the notice of confirmation of accreditation, as proposed in section 205.312, or the notice of renewal of accreditation, as proposed in section 205.314(c).

We are soliciting comments on our proposed accreditation provisions, including whether alternative provisions should be promulgated. In particular, we would like comments on whether the peer review process for accreditation should occur when the initial application for accreditation is made, as opposed to when accreditation is confirmed after a site visit.

Confirmation of Accreditation—Section 205.312

In this section we propose that the Administrator would make a determination whether or not to confirm the accreditation of a certifying agent. This determination would occur following review of a site evaluation report and the reports from the peer reviewers. If the Administrator determined that the certifying agent was in compliance with the Act and the regulations, including the general requirements proposed in section 205.301, the Administrator would issue the agent a written notice of confirmation of accreditation status. Confirmation notices, therefore, would not be issued to any certifying agent who was not complying with the Act and the regulations, which would include payment to AMS of all fees owed by the certifying agent and the furnishing of reasonable security by a private certifying agent. The confirmation notice would include any terms or conditions that must be addressed by the certifying agent before the certifying agent submits a request for renewal of its accreditation. After confirmation, a certifying agent's accreditation would be effective until such time that the certifying agent fails to renew accreditation in accordance with section 205.314, or the accreditation was suspended or terminated pursuant to section 205.316, or the certifying agent voluntarily ceased its certification operations.

Denial of Confirmation—Section 205.313

In section 205.313 we propose the procedure to be followed to deny confirmation of accreditation to a certifying agent. Paragraph (a) of this section provides that, if the Administrator has reason to believe, based on a review of the information specified in sections 205.303 through 205.305, and the results of a site evaluation and reports submitted by the peer review panel, pursuant to sections 205.309 and 205.311(e), respectively, that the certifying agent is not complying with the requirements of the Act and the regulations in this part, including the general requirements for accreditation proposed in section 205.301, the Administrator would provide a written notification of non-compliance to the applicant in accordance with section 205.315(a) of this subpart.

In paragraph (b) of this section we propose that if a certifying agent who receives a notification pursuant to paragraph (a) of this section corrects the deficiencies identified within the time specified in the notice of non-compliance, and submits documentation supporting actions taken by the certifying agent to correct the deficiencies, as proposed in section 205.315(a)(3), the Administrator would issue a notice of confirmation of accreditation to the certifying agent, pursuant to section 205.312(a). Paragraph (c) of this section would permit the Administrator to institute proceedings to deny confirmation of accreditation if the certifying agent does not correct the deficiencies identified in the notice of non-compliance.

Continued Accreditation—Section 205.314

We propose in paragraph (a) that an accredited certifying agent shall submit certain information annually to the Administrator on or before the anniversary date of the issuance of the notice of confirmation of accreditation. This information would be reviewed by the Administrator to determine whether the certifying agent was maintaining its accreditation status in accordance with proposed section 205.308 of subpart E and to assess the need to conduct a site evaluation visit. We believe that an annual process of reviewing information submitted by certifying agents is necessary so that the Administrator can be informed of any changes in the procedures and personnel used by certifying agents, who also must annually review the certification of producers and handlers, in accordance with section 2107(a)(4) of the OFPA (7 U.S.C. 6506(a)(4)).

We propose that the accredited certifying agent annually submit four kinds of information in addition to the proposed fees required in section 205.421(a) of subpart F. First, the agent would have to update the general information and evidence of expertise

and ability submitted in the previous year, pursuant to sections 205.303 and 205.304 of subpart E. Second, if an agent is requesting any changes in its areas of accreditation, as delineated in section 205.300, the additional information needed to support the request for a change in the certifying agent's scope of certification activities would be submitted. Third, we propose that the certifying agent submit a report that describes the measures the agent has implemented in the previous year, and any measures it plans to implement in the coming year, to address the conditions delineated by the Administrator in the most recent notice of confirmation of accreditation or renewal of accreditation. The certifying agent also would be required to describe the corrective actions implemented and intended to be implemented by the certifying agent in response to the most recent inspector performance reviews and the required internal evaluation review of the agent's operations.

Section 2115(c) of the OFPA (7 U.S.C. 6514(c)) provides for accreditation to be granted for a period not to exceed five years. Section 205.314(b) would accordingly require that an accredited certifying agent request renewal of accreditation on or before the fifth anniversary of the issuance of the notice of confirmation of accreditation, and of each subsequent renewal of accreditation. The Administrator would then review the information contained in the annual reports submitted in accordance with paragraph (a) of this section, along with the results of the site evaluation(s) performed in accordance with section 205.309 and peer review panel reports submitted in accordance with section 205.311(e), in order to determine whether the certifying agent was still in compliance with the Act and the regulations.

Because section 2115(c) of the OFPA (7 U.S.C. 6514(c)) stipulates that accreditation may be granted for a period of time "not to exceed" 5 years, we considered proposing a period of time less than 5 years before a certifying agent would be required to renew its accreditation. Our intent in considering a lesser period of time for renewal of accreditation would be to establish an adequate level of oversight activity to ensure that the certifying agent is in compliance with the Act and the regulations. However, we believe that an adequate level of oversight necessary to *ensure compliance with the Act and the* regulations would be provided by the requirement proposed in section 205.314(a) that certifying agents submit annual updates to the Administrator. Additionally, as proposed in sections 205.309(b) and 205.311(a)(2) of this subpart, the Administrator could decide to conduct an additional site evaluation and peer review of a certifying agent's activities at any time. We also believe that a requirement that accreditation be formally renewed more frequently than every five years might pose an undue burden on certifying agents. Comment concerning the length of time for which accreditation should be granted is invited.

We propose in section 205.314(c) that the Administrator would issue a notice of renewal of accreditation after having made the determination that the certifying agent continues to comply with the Act and the regulations in this part. The notice of renewal, as in the case of the notice of confirmation of accreditation, would specify any terms and conditions that would have to be addressed by the certifying agent, and the time within which the terms and conditions must be satisfied. In paragraph (d) of this section, we propose that if the Administrator determines that there is reason to believe that the certifying agent is not in compliance with the Act and the regulations, the Administrator would issue a notification of non-compliance to the certifying agent, as proposed in section 205.315.

Notification of Non-Compliance With Accreditation Requirements—Section 205.315

In section 205.315 we propose the procedure for the Administrator to notify an accredited certifying agent, or an applicant for accreditation, of deficiencies in its compliance, or ability to comply, with the Act and the regulations, including the general requirements proposed in section 205.301, and provide an opportunity to correct any deficiencies identified. In paragraph (a) of this section we propose that a written notification of non-compliance would be sent by certified mail to the place of business of the accreditation applicant or the certifying agent, as applicable. The notification would contain the following information: a description of each deficiency in compliance and each violation of the Act and the regulations in this part that the Administrator has reason to believe has occurred; the evidence on which the notification is based; and the date by which the accreditation applicant or the certifying agent, as applicable, must correct each deficiency and each violation delineated in the notification, and submit documentation to the Administrator to support such corrections.

In paragraph (b) of this section we propose the procedure to be followed if an accredited certifying agent does not provide documentation to the Administrator, pursuant to paragraph (a)(3) of this section, that is adequate to demonstrate that each deficiency in compliance and each violation has been corrected by the date indicated in the written notification. This paragraph would permit the Administrator to conduct an additional site evaluation, as provided for in section 205.309, to determine whether the certifying agent is complying with, or has violated, the Act or the regulations, including the general requirements proposed in section 205.301.

In section 205.315(c)(1) we propose that the Administrator would notify the certifying agent in writing of a determination that the agent was complying with the Act and the regulations, if, following receipt of a notification of non-compliance as proposed in paragraph (a) of this section, the certifying agent submitted the requisite documentation of corrective actions taken, and if, following any additional site evaluation conducted pursuant to paragraph (b) of this section, the Administrator determined that the certifying agent was fully complying with the Act and the regulations. This paragraph further provides in paragraph (c)(2) of this section that, if the Administrator has reason to believe that the certifying agent is not in compliance with the Act and the regulations in this part, the Administrator may institute a proceeding to suspend or terminate the certifying agent's accreditation.

Termination of Accreditation—Section 205.316

Section 2116(j)(1) of the OFPA (7 U.S.C. 6515(j)(1)) provides for the suspension of a certifying agent's accreditation if the Secretary determines that the certifying agent is not properly adhering to the provisions of the Act and the regulations. This provision of the OFPA would permit the Secretary to suspend the accreditation of either a governing State official or a private certifying agent. Section 2120(e) of the OFPA (7 U.S.C. 6519(e)) provides for the loss of accreditation by a private certifying agent if the certifying agent violates the provisions of the Act and the regulations, or if the agent falsely or negligently certifies any farming or handling operation that does not meet the requirements for a certified operation under the certification program established by the Act. In section 205.316 we accordingly propose that the accreditation of any certifying agent could be suspended, but that only a private certifying agent could have its accreditation terminated.

In section 205.316(a) we propose that if the Administrator has reason to believe that an accredited certifying agent or a person responsibly connected with an accredited certifying agent has ceased to comply with or has violated the Act or the regulations, including the general requirements proposed in section 205.301, then the Administrator would initiate the process proposed in section 205.315 by issuing a notification of non-compliance. However, as proposed in paragraph (b) of this section, if the Administrator has reason to believe that an accredited certifying agent or a person responsibly connected with an accredited certifying agent has wilfully violated the Act and the regulations in this part, including the general requirements proposed in section 205.301, the Administrator may institute a proceeding to suspend or terminate the accreditation of the certifying agent pursuant to the Rules of Practice 7 CFR 1.130, *et seq.* The Rules of Practice provide for the formal filing of a complaint by the Secretary, an opportunity for the certifying agent to answer the complaint, a procedure for holding a hearing, and a procedure for further appealing an adverse decision following any hearing that is held. A final determination to suspend the accreditation would not be made, therefore, until the certifying agent had received notice and an opportunity to be heard.

In section 205.316(c) we propose that a private person or a governing State official whose accreditation as a certifying agent is suspended or terminated would have to cease any certification activity in each area of accreditation and in each State for which its accreditation is suspended, or in the case of a private person whose accreditation is terminated, cease all certification activities conducted under the Act and the regulations. The person or governing State official whose accreditation was either suspended or terminated would have to transfer to the Secretary, and make available to the applicable governing State official, all records concerning its certification activities that were suspended or terminated. This would enable the Secretary to promptly determine whether farms or handling operations certified by such certifying agent may retain their organic certification. This provision is consistent with section 2116(j)(2) of the OFPA (7 U.S.C. 6515(j)(2)), which requires the Secretary to promptly determine whether farms or handling operations certified by a certifying agent who has lost accreditation may retain their organic certification.

As proposed, a certifying agent who was determined to be in compliance with all the requirements for certifying certain types of operations, such as farms, but no longer had the requisite expertise to certify other types of operations, such as handling operations, could have its accreditation suspended only in the area of handling operations. Additionally, if a certifying agent was determined not to be complying with the additional requirements of an approved State program, but was otherwise complying with the Act and the regulations, this proposal would permit its accreditation to be suspended only in that state.

The Act provides for the Secretary or a governing State official to suspend the accreditation of a private certifying agent. However, we have not included a provision for the governing State official to suspend accreditation in this proposal because the Act only provides for the Secretary, not the governing State official, to grant (or reinstate) accreditation. Therefore, we believe that the authority to remove an accredited status must remain with the Secretary. In the event that a private certifying agent was to cease complying with, or to violate, the provisions of an approved State program, we would expect the applicable governing State official to present this information to the Secretary for appropriate action.

In section 205.316(d) we propose that a private person or a governing State official whose accreditation as a certifying agent is suspended by the Secretary under this section could at any time submit a new request for accreditation, pursuant to section 205.302. The new request for accreditation would have to be accompanied by documentation that demonstrates that appropriate corrective actions to comply with and remain in compliance with the Act and the regulations, including the general requirements proposed in section 205.301, have been taken. This might, for example, entail payment of outstanding accreditation fees or evidence that sufficient funds have been provided for the required reasonable security to protect the rights of certified farms and handling operations.

In accordance with section 2120(e)(2) of the OFPA (7 U.S.C. 6519(e)(2)), we propose in section 205.316(e) that a private person whose accreditation as a certifying agent is terminated would be ineligible to be accredited as a certifying agent under the Act and the regulations for a period of not less than three years following the date of such determination.

Subpart F—Additional Regulatory Functions

State Programs

Section 2104(a) of the OFPA (7 U.S.C. 6503(a)) requires the Secretary to establish an organic certification program for producers and handlers of agricultural products. Section 2104(b) of the OFPA (7 U.S.C. 6503(b)) requires that the Secretary permit each State to implement a State organic certification program for producers and handlers of organic products that have been produced using organic practices as provided for in the OFPA. Section 2108(b) of the OFPA (7 U.S.C. 6507(b)) provides for State programs under certain circumstances to contain more restrictive requirements, than in the program established by the Secretary, for the production or handling of agricultural products sold or labeled as organically produced in such State and for the certification of farms and handling operations. Section 2103(20) of the OFPA (7 U.S.C. 6502(20)) defines a State organic certification program as one that meets the general requirements for an organic program set forth in section 2107 of the OFPA (7 U.S.C. 6506), is approved by the Secretary, and is designed to ensure that a product that is sold or labeled as organically produced is produced and handled using organic methods. Under a State program, an accredited State official and/or private certifying agent would perform certification activities for producers and handlers according to the procedures and requirements established in subpart D; such agents are discussed in subpart E (Accreditation) of this proposal. As discussed in subpart E, it is not necessary for a State to have a State program to be accredited as a certifying agent, and vice versa.

In order for a State program to be approved as meeting the general requirements set forth in section 2107 of the OFPA (7 U.S.C. 6506), the program must have regulatory provisions that meet the following requirements: (1) provide that an agricultural product to be sold or labeled as organically produced must be produced only on certified organic farms and handled only through certified organic handling operations in accordance with the requirements of the Act; and be produced and handled in accordance with such program; (2) require that producers and handlers desiring to participate under such program establish an organic plan as provided for in section 2114 of the OFPA (7 U.S.C.

6513); (3) provide for procedures that allow producers and handlers to appeal an adverse administrative determination under the Act; (4) require each certified organic farm, certified organic wild crop harvesting operation, and each certified organic handling operation to certify to the governing State official, on an annual basis, that such farmer or handler has not produced or handled any agricultural product sold or labeled as organically produced except in accordance with this title; (5) provide for annual on-site inspection by the certifying agent of each farm, wild crop harvesting, and handling operation that has been certified under this title; (6) require periodic residue testing by certifying agents of agricultural products that have been produced on certified organic farm and handled through certified organic handling operations to determine whether such products contain any pesticide or other nonorganic residue or natural toxicants and to require certifying agents, to the extent that such agents are aware of a violation of applicable laws relating to food safety, to report such violation to the appropriate health agencies; (7) provide for appropriate and adequate enforcement procedures; (8) protect against conflict-of-interest as specified under section 2116(h) of the OFPA (7 U.S.C. 6515(h)); (9) provide for public access to certification documents and laboratory analyses that pertain to certification; (10) provide for the collection of reasonable fees from producers, certifying agents and handlers who participate in the program; and (11) require such other terms and conditions as may be determined by the Secretary to be necessary.

Once a State program is approved, farm, wild crop harvesting, and handling operations in that State that wish to sell, label, or represent their product as organically produced would have to be approved as a certified operation under the State program. The determination as to whether or not a farm, wild crop harvesting, or handling operation meets a State's certification requirements would be made by a certifying agent accredited by the USDA under the National Organic Program. The accredited certifying agent who would make this determination either would be a private person who has been accredited by the USDA, or a governing State official who has been accredited by the USDA.

In order to be certified under the State program, an operation would have to meet all of the State certification requirements. However, these certification requirements, as discussed previously, must reflect the requirements of the National Organic Program. Certified operations in States that have their own program would be producing products that are represented as organically produced in accordance with the requirements of the National Organic Program, which will have been included in the State program in accordance with section 2107 of the OFPA (7 U.S.C. 6506). Therefore, the provisions set forth in our proposal in part 205 would be applicable to operations that are located in States that have their own programs since these provisions would be included in programs that are approved by the Secretary. It is important that all interested persons provide comments on the provisions of our proposed rule since these are the provisions that would be required to be included in a State program in accordance with section 2108 of the OFPA (7 U.S.C. 6507). If an operation is located in a State that does not have an approved State program, that operation would carry out its operations only under the requirements of the National Organic Program.

States may have requirements that are in addition to those of the National Organic Program if they are approved by the Secretary and meet the statutory criteria for approval. This means that if a State has received approval from the Secretary for requirements in its program that are in addition to those of the National Organic Program, all certified farm, wild crop harvesting, and handling operations that operate in that State would have to comply with these additional requirements that have been approved. However, one State would not be allowed to require farm, wild crop harvesting, and handling operations in another State to comply with any additional requirements that have been approved by the Secretary for the former State.

Requirements of State Programs—Section 205.401

As required in section 2104(b) of the OFPA (7 U.S.C. 6503(b)), we propose in section 205.401(a) to permit a State to establish a State program for producers and handlers of agricultural products within the State that have been produced and handled using organic methods as provided by the OFPA and its implementing regulations.

The accreditation of a governing State official to conduct certification activities of farms and handling operations is specifically authorized in section 2115(a) of the OFPA (7 U.S.C. 6514(a)) and is set forth in subpart E of our proposal. As reflected in our proposal, the approval by the Secretary of a State organic program would be a separate decision from the determination of whether a governing State official who applies to be a certifying agent should be accredited. Although the Act provides for the accreditation of a governing State official as a certifying agent, it does not require that the certification of producers and handlers operating in a State that has an approved program be performed solely by the State certifying agent. Rather, the required certification of producers and handlers operating under an approved State program can be conducted by either the State certifying agent or a private certifying agent. Producers and handlers of organic products operating in a State that chooses to implement a State program, but which does not obtain accreditation for a governing State official, would be certified by private certifying agents.

In accordance with section 2108(a) of the OFPA (7 U.S.C. 6507(a)), we would require in section 205.401(b) that a State program meet the requirements of the regulations in part 205 and the Act, including the general requirements for an organic program listed in section 2107(a) of the OFPA (7 U.S.C. 6506 (a)). These requirements would require: that an agricultural product that is to be sold or labeled as organically produced be produced and handled only on certified operations in accordance with the Act and the regulations in part 205; that participating producers and handlers establish an organic plan; that an annual on-site inspection by the certifying agent of each certified farm and handling operation be done; that reasonable fees be collected from producers, certifying agents and handlers who participate in such program; that public access to certification documents and laboratory analyses that pertain to certification be established; that procedures that allow producers and handlers to appeal an adverse administrative determination be established; that appropriate and adequate enforcement procedures and conflict-of-interest provisions be established; and that periodic residue testing by certifying agents of agricultural products that have been produced on certified organic farms and handled through certified organic handling operations be done.

As provided for in section 2108(b)(1) of the OFPA (7 U.S.C. 6507(b)(1)), we propose in section 205.401(c) that a State program that meets the requirements of regulations in part 205 and the Act also could contain more restrictive requirements governing the certification of organic farming and handling operations and the production and handling of organic agricultural products than those in USDA's National Organic Program. However, in accordance with section 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), we propose that any additional requirements must further the purposes of the Act and the regulations in part 205; not be inconsistent with the Act and the regulations in part 205; not be discriminatory towards agricultural commodities organically produced in other States in accordance with the Act and the regulations in part 205; and not become effective until approved by the Secretary.

One concern expressed by private certification organizations in response to the NOSB draft recommendations was that a State that had its own program also might implement its own accreditation program for certifying agents, and require that a certifying agent be accredited by the State, as well as by the USDA. In this regard, section 2115(a) of the OFPA (7 U.S.C. 6514(a)) requires that both a governing State official and a private person be accredited solely by the Secretary and, thus, provides for the Secretary alone to establish and implement an accreditation program for existing and new certifying agents. Accordingly, a State cannot implement an accreditation program for certifying agents.

Another concern expressed by private certification organizations was that a State might attempt to prevent them from certifying farm and handling operations in that State by charging a high, unreasonable fee to them for registering with the State as a certifying agent or for purchasing a business operating license. As part of the approval process for a State organic certification program, we would review any fees established by States with respect to the requirements in section 2107(a)(10) of the OFPA (7 U.S.C. 6506(a)(10)) for the collection of reasonable fees from certifying agents and in section 2108(b)(2)(A) of the OFPA (7 U.S.C. 6507(b)(2)(A)) that additional State program requirements further the purposes of the Act. In order for the State program to be approved, the fees established would have to be determined to be reasonable.

We know that some current requirements in existing State organic programs vary from our proposed regulations. We also expect State program proposals to include requirements we have not considered. Therefore, in section 205.401(c) of the proposed regulation we do not include a list of additional requirements which might be determined to be in compliance with the Act's criteria for approval of additional requirements. Rather, each State program's proposal would be reviewed to ensure that it complies with the provisions of section 205.401(c) (1) through (4) which are the Act's criteria for approval of additional requirements.

Approval of State Programs and Program Amendments—Section 205.402

In section 205.402(a), we propose that a governing State official must submit to the Secretary any proposed State program, or proposed substantive amendments to a State program, and must obtain the Secretary's approval prior to implementation of the program and any amendments to it. In section 205.402(b), we propose that the Secretary would notify the governing State official within six months after receipt of the program or any proposed change to the program as to whether the program or substantive amendment is approved or disapproved. This is consistent with the provisions of section 2108(c) of the OFPA (7 U.S.C. 6507(c)). After receipt of the notice disapproving a State program, the governing State official may reapply at any time.

Review of Approved Programs—Section 205.403

In section 205.403, we propose that the Secretary would review a State program not less than once every five years from the date of initial approval of the State program. This is consistent with section 2108(c)(1) of the OFPA (7 U.S.C. 6507(c)(1)), which requires this be done. The State program would be notified within six months after initiation of the review, whether the program is approved or disapproved, and if disapproved, the reasons for the disapproval.

Fees

Section 2107(a)(10) of the OFPA (7 U.S.C. 6506(a)(10)) authorizes the collection of reasonable fees from farmers, handlers, and certifying agents who participate in the national organic certification program. In sections 205.421 through 205.424 we propose the fees we intend to charge to reflect the cost of the services provided by the USDA. The statute provides that the fees collected be deposited into the general fund of the U.S. Treasury. Accordingly, the agency must obtain appropriated funds to operate this program.

In our efforts to assemble the economic and demographic information needed to develop the details for assessing and collecting reasonable fees, we consulted extensively with both State and private certifying agencies. We received assistance from the USDA Economic Research Service, as well as from other programs within AMS, in identifying various options for the assessment of fees in this program. Additionally, we determined the number of certifying agents and their chapters that are currently operating in the United States and conducted an analysis to determine the number of organic farms and handling operations that were operated in the United States for 1994 (Dunn, Julie Anton. 1995. "Organic Food and Fiber: An Analysis of 1994 Certified Production in the United States." U.S. Department of Agriculture, Agricultural). We also examined an analysis of data collected by the California Department of Food and Agriculture concerning registered organic farms and handling operations in that state (California Department of Health Services. 1995. "Report on the Registration of California Organic Processed Food Firms." Sacramento: State of California Marketing Service). Based on these analyses, we estimate that 44 certifying agents may apply for accreditation and that 30 chapters or subsidiary offices would be included in their applications. We further estimate that 4,000 farmers and 600 handlers would be eligible for certification.

We estimate that it will cost approximately $1,000,000 in the first full year of operation to operate our program when it is implemented. These costs include approximately $644,000 for the salaries and benefits of 12 staff members, which would be comprised of a program manager, 8 marketing specialists, and 3 support staff personnel, and approximately $356,000 for general administrative overhead and operating costs, such as printing, training, travel, NOSB meetings, equipment, supplies, rent, heat, and communications. A description of the services that would be provided to program participants by the NOP staff is presented in the applicable supplementary information sections on fees that follow.

Based on 1994 workload data, we estimate that $500,000 of this $1,000,000 will be collected from farms, handling operations, and wild crop harvesting operations, $389,000 from applicants for accreditation and accredited certifying agents, and $112,000 from private foreign certification programs, for a total of $1 million. Note, actual billing may be somewhat greater due to inflation since 1994. We have included a chart at the end of the fee discussion that illustrates the fees that will be charged. The fees in this rule are based upon estimates of the cost to AMS of providing each of the

services described, and may be adjusted in future years based upon program experience and projected or actual changes in the cost of operations (e.g. inflation).

We again would like to point out that, in addition to the fees that certified operations would be required to submit to USDA, farm, wild crop harvesting, and handling operations that want to be certified under the Act, and those that have been so certified, also would need to pay certifying agents, whether State or private, for the certification services provided by them. These certification services would include review of an initial application for certification, annual review of updated information, review of an organic plan and updates to the organic plan, and conducting annual inspections both before and after certification is granted. As part of the accreditation process for certifying agents that we propose in subpart E, USDA would require certifying agents to submit for approval the fees they intend to charge to operations for which they are going to conduct certification activities. If the intended fees submitted are deemed reasonable, as required in section 2107(a)(10) of the OFPA (7 U.S.C. 6506(a)(10), USDA will approve the fees schedule submitted.

The AMS, as set forth in section 205.423 of this proposal, also would be charging fees to foreign organic certification programs, other than those operated by a foreign country itself. These fees would cover the costs AMS will incur in determining whether these programs have requirements equivalent to those of the AMS program. These fees are authorized under the Independent Offices Appropriations Act (31 U.S.C. 9701 *et seq.*).

Fees for Accreditation Applicants and Accredited Certifying Agents—Section 205.421

Section 2107(a)(10) of the OFPA (7 U.S.C. 6506(a)(10)) provides for the collection of reasonable fees from certifying agents who participate in the program. This section discusses the fees proposed to be paid by applicants who are initially applying for accreditation and fees to be paid by accredited certifying agents.

In section 205.421(a)(1) we propose that each applicant for accreditation, and each accredited certifying agent submitting an annual report, would be required to submit to the Administrator a non-refundable fee of $640. This fee would cover the AMS cost to review and evaluate the material required to be submitted to become accredited or to continue accreditation. We believe it is appropriate to establish a fee structure to recover the cost of this service.

We estimate that it will take an average of 16 hours to review each application for accreditation, or each annual report, for certifying agencies that do not have chapters or subsidiary offices. Our estimation is based upon knowledge gained from examining current accreditation programs as well as our general experience and knowledge gained from other AMS programs that involve the submission and review of applications. We estimate that the hourly cost for AMS personnel to handle and review the applications and annual reports will be $40 per hour. This is the average hourly cost for AMS to conduct a program of this nature. Based on an hourly fee of $40 per hour and an estimated time of 16 hours for handling and review, we estimate the cost to evaluate accreditation applications and annual reports to be $640 per applicant or accredited certifying agent, as applicable. Therefore, we are proposing that each applicant of this type (i.e., single, non-multi-unit organization) seeking accreditation or submitting an annual report pay a $640 non-refundable fee at the time of submission of application for accreditation or an annual report.

Assessing a uniform fee for accreditation application and submission of an annual report is based on our knowledge gained from other AMS programs and current accreditation programs being operated. We are not proposing a fee for this activity based on the size and complexity of the certifying agent because we believe that differences in the size and complexity of the certifiers would result in an insignificant difference in the amount of time needed to review applications and annual reports.

We further propose in section 205.421(a)(2) that an additional application or annual report review fee of $160 be charged for each chapter or subsidiary office of an accreditation entity. This additional fee of $160 is the cost we estimate AMS will incur for the additional 4 hours we estimate will be necessary to review the additional information required to be submitted for each part of a multi-unit organization. We estimate the hourly cost will be $40, the same average hourly cost we propose for reviewing application information and annual reports submitted by applicants and accredited certifying agents. Based on our estimate that 44 certifying agents with 30 chapters or subsidiary offices may apply for accreditation, we estimate that we may collect $32,960 annually from fees associated with reviewing accreditation applications and annual reports.

In paragraph (b) of section 205.421, we are proposing the fees that certifiers would be assessed for a site evaluation visit conducted by AMS. The fees that would be assessed for a site evaluation visit would be any travel and per diem expenses incurred as a result of the conduct of site evaluations, as well as the hourly costs to conduct the site evaluation. Site evaluations are proposed in section 205.309(a) of subpart E to be performed by AMS within a reasonable time after issuance of a notice of approval of accreditation to verify compliance of the certifying agent with the Act and the regulations. In section 205.309(b), we propose that a site evaluation also may be conducted at any time to determine an applicant's or certifying agent's compliance with, or quality of performance under, the Act and the regulations. Additionally, we propose in section 205.314(b) that a site evaluation would occur every 5 years as part of the process of renewal of accreditation for an accredited certifying agent.

We estimate that the hourly cost of performing site evaluations will be $40, calculated to the nearest fifteen minute period, for each AMS evaluator conducting the site evaluation visit, including travel time to and from the evaluator's duty station. This is the average cost for AMS to conduct evaluations of this nature. We anticipate that the time necessary for AMS to conduct a site evaluation, and therefore the total cost to be assessed a certifying agent for a site evaluation, will vary between certifying agents due to differences in their size, complexity, and other similar factors. The fee we propose in paragraph (b) of this section would be a direct assessment on applicants and accredited certifying agents for the hourly costs and travel and per diem expenses associated with conducting our site evaluations. As proposed, an applicant or accredited certifying agent would be required to pay these fees within 30 days following the date the bill is issued. As proposed in section 205.424 of this subpart, the fees submitted as payment for the costs of the site evaluation would be required to be submitted by certified check or money order made payable to AMS and sent to the address specified on the bill.

AMS estimates that an average site evaluation would require 5 days and would cost a certifying agent $3,500. The $3,500 expense would result from the hourly costs for staff time necessary to prepare for and conduct the site evaluation, and the related travel and per diem expenses, such as air fare, car rental, lodging, meals, and incidental expenses. We estimate that of the $3,500 cost, approximately $1,100 would result from related travel and per diem expenses and approximately $2,400 would result from the time (hourly costs) necessary to prepare for and conduct the site evaluation. We anticipate that of this $2,400 hourly cost, $1,600 would result from the time spent by one AMS evaluator being on site for 5 days (40 hours) at $40 per hour, and $800 would result from the 20 hours we estimate will be needed to prepare for the evaluation, write an evaluation report, and communicate the results of the evaluation process to the certifying agent. As previously noted, the actual cost for each site evaluation will vary based on the length of the evaluation, due to such factors as the certifying agent's location, size and complexity.

Based on our estimate that 44 certifying agents with 30 subsidiary offices or chapters may be accredited, we expect to receive $259,000 annually from fees associated with site evaluations. We note that under our scheme for site evaluations proposed in section 205.309 of subpart E, a site evaluation visit may not be performed each year for every certifying agent and every subsidiary office or chapter. However, also under our scheme, a site evaluation may be performed more than once each year for a certifying agent or its subsidiary office or chapter, when determined necessary by the Administrator to determine the certifier's compliance or evaluate its performance. For the purpose of estimating fees to be collected annually from certifying agents, we assumed that for the intital year that site visits are performed, a site visit would be performed for each certifying agent and each subsidiary office or chapter. Thereafter, a site visit of a certifying agent, subsidiary office, or chapter may be performed more or less often than annually. The previously discussed number of 12 NOP staff members estimated to be needed to conduct program activities would be adjusted accordingly with an increase or decrease in workload.

A different model which we considered for the site evaluation fee, but which we are not proposing, was based on categorizing certifiers according to their size and assessing them a fee for a site evaluation based solely on this factor. In such a scenario, for example, a certifying agent who certified less than 50 clients might be assessed a fee equivalent to 3 days of work while a certifying agent that certified more than 500 clients would be assessed a fee equivalent to 30 days of work. We decided not to propose this model after determining that site evaluation costs would depend on factors other than the size of the certifying agent's operation, such as the complexity of the certification activities conducted by the certifier, the location of the certifier's facilities, and the certifier's organizational structure.

In paragraph (c) of this section, we propose that an administrative fee of $2,000 be paid by a certifying agent upon the initial granting of accreditation, upon the granting of confirmation of accreditation, and upon the submission of each subsequent annual report. Under the regulatory scheme we are proposing, a person who wants to be an accredited certifying agent first would have to apply for and be granted accreditation, then would have to have this accreditation confirmed, and then would have to submit annual reports to provide current information.

Our $2,000 fee is based upon the yearly cost we estimate we would incur for providing various administrative services to accredited agents which would cover the administrative costs discussed below. Since we expect that confirmation of accreditation would occur approximately 12 months after the granting of initial accreditation, and that submission of an annual report would occur subsequently one year later, we propose to assess a $2,000 fee for each of these yearly periods so that the fees charged will reflect the cost of the services provided. We also are proposing that, upon the granting of initial accreditation, upon the granting of confirmation of accreditation, and upon the submission of an annual report, a certifying agent would pay an additional fee of $300 for each chapter or subsidiary of the agent's organization. Our fees here are based on knowledge gained from the review of currently existing accreditation programs such as the International Organization for Standardization program and the International Federation of Organic Agricultural Movements program.

Our administrative fees would cover costs for the operation of our accreditation program that are not covered by paragraphs (a) and (b) of section 205.421. The $2,000 fee would cover day-to-day program activities and operational and overhead costs for single-site accreditation entities. Examples of operational and overhead costs are utilities, rent, supplies, printing, equipment purchases, and communication. Program activities include: develop and provide guidance on the NOP production, handling and certification requirements; compile, copy, and mail site evaluation reports; conduct peer review panel meetings or conference calls; and enforce the program. The $300 fee for each additional chapter or subsidiary would cover the additional time for program activities, and additional overhead and operating expenses, we believe can be attributed to, and which are necessary for, our providing the previously identified services to chapters and subsidiary offices. Based on our estimate that 44 certifying agents with 30 subsidiary offices or chapters may be accredited, we expect to receive $97,000 annually from administrative fees.

Payment of the non-refundable fees would be required 30 days from the date of issuance of a notification of approval of accreditation and notification of confirmation of accreditation, and with the submission of each annual report.

An alternative model for the administrative fee that we considered would be to base the administrative fee on the types of certifications performed by certifiers. For example, certifying agents who certify farmers and handlers trading in international markets, or who certify processors producing multi-ingredient products, would pay a higher administrative fee. The underlying assumption is that certifying agents who provide more complex services to farmers and handlers utilize more program resources and derive greater benefit from the National Organic Program than other certifiers. In evaluating this alternative, we considered that the AMS costs to administer this model would be considerably higher than the costs associated with the uniform administrative fee model we are proposing.

Fees for Certified Operations—Section 205.422

In order for AMS to carry out the OFPA, and in turn fulfill the mission of AMS, certain program activities must be undertaken. We used the time required to accomplish these program activities as the basis for determining the amount of fees charged to each certified farm or handling operation. Program activities that would have to be carried out include: financial and staff support for the NOSB; compliance and enforcement; provision to the public of information about the program; attendance at meetings, conferences and trade fairs conducted both inside and outside the United States to convey information about the program; and other general and administrative functions. To accomplish these activities, we would need to pay various

fixed costs, including costs for overhead (utilities, rent and communications), equipment costs for computers and copying machines, and staff expenses, which would include salaries, benefits and travel costs.

In this section, we propose the fees to be collected from certified farmers, wild crop harvesters, and handlers. The total cost for the program activities which we estimate that AMS will provide for farm, wild crop harvesting, and handling operations certified under the National Organic Program is $500,000, one half of the annual projected program cost of $1,000,000. We estimate that approximately 40 percent of the $500,000, or $200,000, would be needed to carry out program activities concerned with the issues of certified farms and wild crop harvesting operations, and that approximately 60 percent of the $500,000, or $300,000, would be needed to carry out activities concerned with the issues of certified handling operations.

The fee we propose is based upon dividing our estimated cost for program activities for farmers and harvesters, and handlers, respectively, among the estimated 4,000 farmers and 600 handlers we believe will participate in our program. Accordingly, we propose that each farmer and wild crop harvester would pay $50 annually, or $200,000 divided by 4,000 farmers. We propose that each handler would pay $500 annually, or $300,000 divided by 600 handlers. We used this manner to determine the fee that will be charged each farmer, each wild crop harvester, and each handler because almost all of the activities that would be carried out for each group, i.e., for the certified farmers and wild crop harvesters, and for the certifier handlers, will be equally applicable to each farmer and harvester, and each handler. It would not be practical to apply any of the possible small portion of activities that remain to individual farmers, wild crop harvesters, and handlers separate and apart from the overall costs to each group. We request any additional information that would improve the estimates of farmer, wild crop harvesting, and handler participation, so that a more accurate estimate of these fees can be developed.

In our consideration of farmer,' harvester, and handler fees, we determined that the allocation of a higher percentage of costs to handlers' issues (60 percent), as opposed to farmer/harvester issues (40 percent), would be appropriate. We anticipate that handling issues, especially such issues as enforcement; record keeping and auditing; labeling, including use of the USDA seal and State seals on different product lines; equivalency of imported organically produced ingredients; and maintenance of the National List of non-agricultural ingredients, will require greater program staff time and operating expenses than farming and harvesting issues.

In developing our proposed fee structure, we considered proposing a fee structure that did not include a fee collected directly from producers and handlers, but that instead assessed fees on certifying agents to cover the total $1,000,000 cost of the National Organic Program. We considered this alternative because we recognize that any fee charged to a certifying agent ultimately will be incorporated into the fee that the certifying agent charges the producer and handler for certification services. However, we did not propose this alternative because we consider our proposal that would directly assess producers, handlers and certifying agents for services we provide to them to better represent an appropriate and practical method of providing transparency and distributing overall program costs among the universe of potential participants and beneficiaries.

We also considered developing a sliding scale of fees to be charged to producers and handlers, based on the size and complexity of their operations. For example, a farmer or handler who sells $5,000 annually of agricultural products would be charged proportionately less than a farmer or handler whose sales exceed $5,000. However, we are proposing fees that are related directly to the costs of services provided by AMS, rather than to such factors as a participant's sales volume or income from the sale of organically produced products, because we estimate that a scheme for charging fees based on factors such as sales volume or income is a more complex scheme and would require additional recordkeeping burden and administrative costs for producers and certifiers.

As discussed previously, we have made a distinction between services provided to farmers/harvesters as a group and handlers as a group. However, we have not made a distinction within each group for assessing fees to farms and harvesting operations, and handling operations, based on their size, complexity, or other similar factor. Because we are concerned about the impact of our proposed uniform fee structure on smaller farms and smaller handling operations, we are requesting public comment on the impact of our proposed structure on smaller operations. Additionally, we are request public comment on alternative methods for calculating fees, including, but not limited to (1) the actual cost of providing services to each individual or operation, and (2) the size of the operation or value of the product(s) for which service is being provided.

Fees for Import Programs—Section 205.423

We are proposing in section 205.423(a) that foreign organic certification programs, other than those operated by a foreign country itself, pay a fee of $40 per hour plus any travel and per diem costs that might be incurred to establish the equivalency of the program. This is the average hourly cost for AMS to conduct a program of this nature. Before equivalency is final and effective for foreign certification programs for which payment for determination of equivalency is required, payment must be made to AMS.

In section 205.423(c) we are proposing that the fees must be submitted by certified funds made payable to AMS and paid within 30 days following the date of notification of AMS of its intent to approve the program subject to receipt of the fees. Fees should be submitted according to the instructions provided by AMS. As indicated in the proposal, no program would be approved until all required fees are paid.

Payment of Fees and Other Charges—Section 205.424

In section 205.424(a) we propose that all fees be submitted in the form of a certified check or money order made payable to AMS and sent to the address identified in the bill issued for these fees. We also propose, in accordance with section 3717 of the Debt Collection Act of 1982 as amended (31 U.S.C. 3717), that all fees required to be submitted would incur interest, penalties, and other costs in the case of late payment of the fees due. In addition, failure to submit payment, or a late payment, of a bill owed to AMS may result in the loss of, or failure to obtain, certification, accreditation, or equivalency status.

Fees for application for accreditation or for the review of an annual report must be included with the application or with the annual report. Without payment of the fee, AMS will not act on the application. Fees for site evaluations and administrative fees that are not paid or that are received late may cause AMS to refrain from issuing, confirming, or continuing accreditation. Certification of farm, wild crop harvesting and handling operations is dependent upon the payment of the fees. Import programs, other than those operated by a foreign country itself, would not be acknowledged as being equivalent until payment is made to cover the AMS cost for the establishment of equivalency.

ESTIMATED NATIONAL ORGANIC PROGRAM FEES

[Based on 1994 data]

Description	Certification agents (est. 44)	Subsidiary offices or chapters (est. 30)	Handlers (est. 600)	Farmers (est. 4,000)	Private foreign certification programs (est. 16)
Application or Annual Report Fee	$640/Annually	$160/Annually	$0	$0	$0
Administrative Fee	2,000/Annually	300/Annually	500/Annually	50/Annually	0
Site Evaluations	3,500*	3,500*	0	0	0
Equivalency Review	0	0	0	0	7,000
Total Estimated Fees**	270,160	118,800	300,000	200,000	112,000

* The $3,500 estimated cost is based on a 5 day site evaluation computed at $40 per hour plus travel and per diem costs. The actual cost will vary based on the length of the evaluation. Initial site evaluations would be performed approximately 12 months after initial granting of accreditation, after which site evaluations will be conducted at least once every 5 years and as necessary to determine compliance. The $40 per hour rate, which is used in many of the National Organic Program fees, is based upon the average hourly cost for AMS to conduct a program of the nature.

** The estimated numbers of farmers, handlers and certifiers are based on data collected in 1994; therefore, the total estimated fees may not represent the number of farmers, handlers and certifiers who might participate in the National Organic Program after implementation. We also estimated the number of equivalency reviews conducted for private foreign certification programs to be approximately 16 per year. An equivalency review may cost more than accreditation of a certification agent because it would include an analysis of the following: production standards, criteria for allowing certain substances to be used, certification requirements, enforcement measures and accreditation process, and may include a site visit to the foreign program headquarters. We request information that would improve the estimates of farmer, handler, certifier and private foreign program participation so a more accurate estimate of these fees can be developed.

Compliance Review and Other Testing

Sections 205.430 through 205.433 contain our proposed provisions for compliance review, preharvest tissue testing, application of a prohibited substance due to emergency pest or disease treatment, and the reporting of the application of a prohibited substance. Section 2107(a)(6) of the OFPA (7 U.S.C. 6506(a)(6)) requires the establishment of a program under which certifying agents would conduct periodic residue testing of agricultural products from certified farms and handling operations and report any violations of food safety laws which they are aware of to the appropriate health agencies. Section 2112 of the OFPA (7 U.S.C. 6511)) requirements in regard to preharvest tissue testing and testing of products sold or labeled as organically produced also are addressed in the proposal. Additionally, the proposal addresses the provisions of section 2107(b)(2) of the OFPA (7 U.S.C. 6506(b)(2)) regarding the application of prohibited substances on certified organic farms that occur as the result of a Federal or State emergency pest or disease treatment program.

Compliance Review—Section 205.430

This proposed section would implement the residue testing requirements of sections 2107(a)(6) of the OFPA (7 U.S.C. 6506(a)(6)) and 2112(a) and (b) of the OFPA (7 U.S.C. 6511(a) and (b)). Section 2107(a)(6) of the OFPA (7 U.S.C. 6506(a)(6)) requires a certifying agent to undertake periodic residue testing of products from certified farms and handling operations to determine if such products contain a detectable residue level of a pesticide or other prohibited substance and to report violations of food safety laws, if found, to the appropriate health agencies. Section 2112(a) of the OFPA (7 U.S.C. 6511(a)) requires the Secretary, the applicable governing State official or the certifying agent to utilize a system of residue testing to test products sold or labeled as organically produced to assist in enforcement of this title. Section 2112(c) of the OFPA (7 U.S.C. 6511(c)) further requires the Secretary, applicable governing State official and the certifying agent to conduct an investigation of a certified farm or handling operation when the residue test of a product from the certified farm or operation shows a detectable residue level of a pesticide or other prohibited substance, to determine if the organic certification program has been violated, and may require the producer or handler of such product to prove that any prohibited substance was not applied to such product.

In paragraph (a) of this section we propose that a certifying agent would arrange with inspectors to conduct periodic sampling for the purpose of testing organically produced agricultural products from farm, wild crop harvesting, and handling operations certified by that agent to enforce the Act and the regulations set forth in this part. Certifying agents would instruct inspectors when to sample organically produced products on certified farm, wild crop harvesting, and handling operations. We do not propose that this sampling would be performed at each annual inspection. We believe that the frequency of sampling should be adequate to monitor compliance with the section 2105(2) of the OFPA (7 U.S.C. 6504(2)) provision that prohibits the sale or labeling of agricultural products as organic that are produced on land to which any prohibited substances, including synthetic chemicals, have been applied during the 3 years immediately preceding the harvest of the agricultural products, but yet not so frequent as to be unnecessary or burdensome to the certified operations. We have proposed testing not less frequently than every 5 years. However, we specifically request comment on whether this period of time is appropriate. As required by the Act, we also propose to require certifying agents, to the extent that such agents are aware of a violation of applicable laws relating to food safety, to report such violation to the appropriate health agencies (Federal, State, and local).

In paragraph (b) of this section, which addresses the compliance provisions of section 2112(a) of the OFPA (7 U.S.C. 6511(a)), we propose that the Secretary or governing State official would arrange for sampling and residue testing of organically produced products at any point of production or distribution, and may require the certifying agent to conduct sampling and residue testing of organically produced products originating from operations certified by that agent. These product samples could be taken from any point in the

distribution chain, from the farm to the retail store. We believe that taking samples from any point in the distribution chain would assist in maintaining the integrity of organically produced agricultural products after they leave the certified operation and would provide consumers with added assurance that no pesticide or other prohibited substance was used in producing or handling the products.

The results from all sampling and testing would be used to determine if an agricultural product contains any detectable residue level of a pesticide or other prohibited substance. We define the detectable residue level in proposed section 205.2 of subpart A as being the level that is 5 percent or greater of the established EPA tolerance level for the product that was tested, provided that if there is no tolerance level established, but an action level has been established, the detectable residue level will be the action level established by FDA for the product tested. The EPA tolerance levels, expressed in terms of parts of a pesticide residue per million parts of the food (ppm), refer to the amount of a pesticide residue that may legally be present in or on a raw agricultural commodity, as set forth in section 408(a) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346(a)), or present in processed food or feed under the terms of the food additive regulation as set forth in section 409 of the FFDCA (21 U.S.C. 348). Tolerance levels for raw agricultural commodities are published in 40 CFR Part 180; for processed foods, in 40 CFR Part 185; and for processed feed, in 40 CFR Part 186. The FDA action levels, which are based on recommendations received from the EPA, also are expressed in terms of parts of a pesticide residue per million parts of the food and are used to regulate the occurrence of very low levels of pesticide residues that result from pesticides that are persistent in the environment and for which EPA does not establish a tolerance level. The FDA action levels are published in FDA's Compliance Policy Guide (CPG), Chapter 5 (Foods), subchapter 575, section 575.100. We have based our compliance testing proposals on the EPA tolerances and the FDA action levels because they represent the best data available on what are appropriate and safe residue levels.

In our proposal, we have determined that the detectable residue level for a prohibited substance would be at 5 percent of the EPA tolerance for the product tested, or at the actual FDA action level for the product tested, as applicable, so as to establish a practical benchmark for determining when to conduct an investigation pursuant to section 2112(c)(1) of the OFPA (7 U.S.C. 6511(c)(1)). A practical benchmark must be low enough to provide adequate protection against the use of pesticides or other prohibited substances and yet high enough not to burden a producer or handler, and the national or applicable State program, with an investigation unless a reasonable question of non-compliance exists. Our proposed levels of 5 percent of the EPA tolerance, or at the actual FDA action level, as indicators of a detectable residue level are based upon the historical use of 5 or 10 percent of the EPA tolerance, or the actual FDA action level, by States and other certifying agents in the organic industry.

The NOSB recommended that the USDA enter into an arrangement with the Department of Health and Human Services to conduct sampling and testing of raw organic agricultural products as a part of the FDA's regulatory monitoring program of all agricultural products for pesticide residues. The NOSB suggested a similar arrangement with States that conduct their own pesticide residue monitoring programs. After implementation, we will consider these possibilities and similar arrangements with other existing pesticide residue testing programs to fulfill the proposed sampling provision set forth in paragraph (b) of this section.

In paragraph (c) in this section, we propose to require each product sample collected by an inspector representing the Secretary, a certifying agent, or applicable governing State official, as part of the compliance review, to be submitted to a laboratory facility accredited to test the commodity sampled. (Laboratory accreditation is not a part of the USDA accreditation program and is currently administered through private and independent third parties.) Each product sampled would be collected in accordance with instructions provided in subchapter 400 of the FDA Investigations Operations Manual (IOM). We have chosen the IOM because it serves as the FDA's primary guide to field investigators and inspectors on investigational policies and procedures, and thus provides for consistency in periodic and random sample collection. The analytical methods used to test each product sample to determine if an agricultural product contains a detectable residue level of a pesticide or other prohibited substance would be selected as appropriate from the FDA's Pesticide Analytical Manual (PAM) Volumes I and II, the Official Methods of Analysis of the Association of Official Analytical Chemists, or the Food Safety Inspection Service (FSIS) Residue Chemical Guidebook. We have adopted the analytical methods contained or referenced in these publications because they serve as the standard analytical methods used by the FDA, FSIS, and other laboratories to examine food and animal feed for pesticide residues for regulatory purposes. The results of such tests would be reported to the certifying agent or governing State official, as applicable, and to the Secretary.

Our proposed paragraph (c)(3) of this section would require that the Secretary, the governing State official, or the certifying agent, as applicable, inform the appropriate regulatory agency in the event a residue test level exceeded either the EPA tolerance level or the FDA action level, as applicable, for that substance. This proposal is consistent with section 2107(a)(6) of the OFPA (7 U.S.C. 6506(a)(6)), which requires reporting of violations related to food safety to the appropriate health agencies.

Paragraphs (d)(1) and (2) of this section propose the actions that would be undertaken by the Secretary after the receipt of a residue test result that indicated a detectable residue level of a prohibited substance. Our proposed paragraph (d)(1) of this section would require the Secretary, applicable governing State official, or certifying agent to conduct an investigation to determine the cause of a detectable residue level of a prohibited substance in the sample, as provided for under section 2112(c)(1) of the OFPA (7 U.S.C. 6511(c)(1)). The investigation may include a visit to the certified operation to determine whether the detectable residue level exceeds the unavoidable residual environmental contamination level for the prohibited substance at the specific certified operation.

Proposed paragraph (d)(2) of this section would implement the provision of section 2112(c)(2) of the OFPA (7 U.S.C. 6511(c)(2)) which prohibits organically produced agricultural products from being sold or labeled as organically produced if the investigation into the cause of a detectable residue level in a sample determines that the residue was the result of an intentional application of a prohibited substance or was at a level greater than the unavoidable residual environmental contamination level for the prohibited substance. The NOSB recommended that the unavoidable residual environmental contamination level be at the actual FDA action level, or not to exceed 5 percent of the EPA tolerance, as applicable. We propose instead that the unavoidable residual environmental contamination be established for each specific site only after a product produced on that site is found to contain a detectable residue level of 5 percent of the EPA tolerance, or at the actual FDA action level, as applicable. We believe that unavoidable residual levels of contaminants in the environment vary so greatly by region, State, and site so as to render impractical the use of a uniform level. The certification eligibility of certified operations also would be better evaluated by our proposal to establish a site-specific unavoidable residual level during the investigation, rather than applying a pre-determined level. Proposed paragraph (d)(2) of this section would authorize the Administrator to institute proceedings to terminate the certification of an operation, or portion of an operation, after an investigation determined that the residue resulted from an intentional application of a prohibited substance or that the residue level exceeded the unavoidable residual environmental contamination level. The termination procedure is more fully described in section 205.219 of subpart D.

Preharvest Tissue Testing—Section 205.431

Section 2112(b) of the OFPA (7 U.S.C. 6511(b)) authorizes the Secretary, the governing State official, or the certifying agent to conduct preharvest tissue testing of any crop grown on soil suspected of harboring contaminants. We accordingly propose in paragraph (a) of this section that such a test may be conducted when the soil is suspected by the Secretary, the governing State official or the certifying agent of containing contaminants. We have defined contaminant in section 205.2 of subpart A to be a residue of a prohibited substance that persists in the environment. This pre-harvest tissue test would be conducted to determine whether the crop to be harvested contained levels of any contaminant greater than either the actual FDA action level, or EPA tolerance, as applicable, for that contaminant.

We also believe a pre-harvest tissue test could assist producers of organically grown crops raised on soil to which certain highly persistent prohibited substances were applied more than three years prior to the harvest of an organic crop to be knowledgeable of the residue levels contained in their crops. For example, any soil could potentially harbor sufficient amounts of prohibited substances, such as chlorinated hydrocarbons, that are known to causes certain types of crops, such as squash or cucumbers, to absorb enough of these contaminants to exceed established FDA action levels or EPA tolerances.

In paragraph (b) of this section, we propose that preharvest tissue samples be collected by an inspector representing the certifying agent or applicable governing State official and submitted in accordance with subchapter 400 of the FDA Investigations Operations Manual (IOM). The analytical methods used for determining if preharvest tissue samples contain a detectable residue of a pesticide or prohibited substance are identified among the methods contained or referenced in the FDA's Pesticide Analytical Manual Volume I and II or the Official Methods of Analysis of the Association of Official Analytical Chemists. This parallels the procedure for compliance testing and sampling as proposed in section 205.430(c).

Paragraph (c) of this section would require the certifying agent or the governing State official to report the results of each preharvest tissue test to the Secretary and to the appropriate health agencies if a pre-harvest tissue test result indicated that the residue level of a contaminant exceeds the EPA tolerance or the FDA action level, as applicable, for that contaminant.

The NOSB submitted recommendations addressing instances of drift of prohibited substances upon organically produced crops. The NOSB defined drift as the physical movement of prohibited pesticides or fertilizers from the intended target site onto a certified organic field or farm, or portion thereof, caused by a person who is not the certified organic producer or a person working under the direction of the certified organic producer. They recommended that agricultural products exposed to drift should not be sold or labeled as organically produced or fed to livestock on certified operations and that pre-harvest tissue tests be required to verify which crops were not drifted upon.

We have not provided in our proposal for instances of drift, or for the use of pre-harvest testing to verify portions of fields that receive drift. Although drift may be commonplace, especially in those agricultural regions where pesticide use on non-organic lands is routine and heavy, exposure to drift does not constitute use of a prohibited substance and does not affect the integrity of organically produced crops because the amount of prohibited substance to which the crops are exposed is negligible. We believe our provisions proposed in sections 205.430 and 205.431 for the testing of organically produced agricultural products, both before and subsequent to harvest, to determine residue levels and, if necessary, to conduct an investigation as to the cause of a detectable residue level, are adequate to protect the integrity of agricultural products sold or labeled as organically produced.

Emergency Pest or Disease Treatment—Section 205.432

This proposed section would address situations where certified organic farms are subject to Federal or State emergency pest or disease programs. It would, pursuant to the discretionary requirements of 2107(b)(2) of the OFPA (7 U.S.C. 6506(b)(2)), provide that a farm subject to such treatment program would not have its certification status affected, so long as certain prohibitions in the proposed regulations are complied with.

The NOSB recommended, and we agree, that land that is subject to an emergency treatment program with a prohibited substance should not be required to be withheld from production of organically produced products for a period of three years. Therefore, we are proposing that a certified farm that is otherwise in compliance with the regulations would not have its certification status affected as a result of a Federal or State emergency pest or disease treatment program, provided that the conditions stated in paragraphs (a) and (b) of this section, as applicable, are satisfied.

Paragraph (a) of this section would prohibit the sale or labeling of any crop harvested from a treated farm as organically produced if the harvested crop, or plant part to be harvested, had come in contact with a prohibited substance applied as part of the emergency program. Field observations by the producer, combined with the reporting requirements of proposed section 205.433 and the testing and sampling provisions of sections 205.430 and 205.431 would be used to determine which crops had come in contact with the prohibited substance and to monitor that they were not being sold or labeled as organically produced.

We propose in paragraph (b) of this section that any livestock that were treated with a prohibited substance as part of a Federal or State emergency pest or disease treatment program, or product derived from such livestock, could not be sold as organically produced. However, exceptions to the prohibition on the sale of treated livestock and their products as organically produced are proposed in paragraphs (b)(1) and (b)(2) of this section. In accordance with section 2110(e)(2) of the OFPA (7 U.S.C. 6509(e)(2)), we propose in paragraph

(b)(1) of this section that milk and milk products from a treated dairy animal could be sold as organically produced beginning no less than twelve months following the last treatment with the prohibited substance. Additionally, in accordance with section 2110(b) of the OFPA (7 U.S.C. 6509(b), we propose in (b)(2) of this section that offspring from breeder stock that was not in the last third of its gestation at the time of the last application of a prohibited substance could be considered as organic at the time of birth.

Reporting the Application of a Prohibited Substance—Section 205.433

Section 205.433 provides a general requirement that producers or handlers immediately notify the certifying agent of any instance of an application of a prohibited substance on their certified operations. This requirement would ensure that the certifying agent was made aware of any incident of this type, that occurs on an operation certified by them, which might affect the integrity and status of an agricultural product sold as organically produced by the operation or the status of the operation from which an agricultural product is harvested. Failure to notify the certifying agent may result in termination of certification, as provided for in section 205.219 of subpart D.

Appeals

General—Section 205.452

Section 2121(a) of the OFPA (7 U.S.C. 6520(a)) requires the Secretary to establish an administrative appeals procedure under which persons may appeal an action of the Secretary or a certifying agent that adversely affects such person or that is inconsistent with the applicable organic certification program. We accordingly propose in this section that any person subject to the OFPA who believes that he or she is adversely affected by a decision of a member of the National Organic Program staff or by a certifying official may appeal such decision to the Administrator of the Agricultural Marketing Service.

Equivalency of Imported Organic Products

Section 2106(b) of the OFPA (7 U.S.C. 6505(b)) provides that agricultural products imported into the United States may be sold or labeled as organically produced only if the Secretary determines that the products have been produced and handled under an organic certification program that provides safeguards and guidelines that are at least equivalent to the requirements of the Act. We are proposing provisions concerning equivalency and the process for establishing equivalency in accordance with this requirement.

Eligibility of Agricultural Products for Importation Into the United States—Section 205.480

Section 205.480 requires that imported agricultural products, or ingredients in products, that are to be sold or labeled as organic must have been produced and handled under an organic certification program that the Secretary has determined has safeguards and guidelines equivalent to those in the Act and our proposed regulations.

Determination of the Equivalency of Foreign Programs—Section 205.481

To provide for the importation of organic agricultural products, we propose in section 205.481 that an evaluation of a foreign organic certification program would include a review of its: standards for production and handling of agricultural products; lists of substances allowed and prohibited for use and the criteria used to establish the lists; inspection and certification requirements for farm and handling operations and oversight of certification provisions; enforcement provisions; the accreditation process and requirements for an accredited status; and any additional information deemed necessary by the Secretary to use to determine equivalency. Examples of other information that may be required to be submitted are a list of products certified by the program and copies of inspection reports used in determining certification status.

It is necessary to evaluate these elements in order to satisfy the provisions of the OFPA that foreign programs provide safeguards and guidelines at least equivalent to the requirements of the OFPA and its implementing regulations. These equivalent safeguards and guidelines should include: standards for organic farming and handling, including substances allowed and prohibited for use in the production and handling of organic products; provisions for certification of farming and handling operations; and oversight of persons and organizations who will be responsible for the certification of farm and handling operations. In addition, there should be equivalent measures provided for enforcement of any program requirements.

One example of an element that may be examined in determining equivalency is whether the program's standards for farm and handling operations incorporate, as does the Act and our proposed regulations, the principle of prevention, i.e., prevention of disease in animals, pest infestation in crops, and commingling of non-organic products with organic products in a food handling operation.

We note that farms and handling operations certified by agents operating under a foreign organic certification program that is determined to be equivalent with the USDA National Organic Program would be able to import products into the United States without the certified farm or handling operation itself having to apply for approval for importation from the USDA.

We recognize that not all organic products produced in foreign countries are produced in countries that would have established their own equivalent foreign organic certification programs. We intend that the determination of equivalency of any other type of foreign organic certification program, such as one conducted by a certifying agent that operates in a country that has not been determined to have an equivalent program, also be based on an evaluation and determination of the components set forth in section 205.481. We also are aware that the accreditation of some foreign organic certification programs may be conducted by an agency other than an agency of the government.

Process for Establishing Equivalency of Foreign Programs—Section 205.482.

In this section, we propose the process by which a foreign organic certification program may apply for a determination of the equivalency of its program with the National Organic Program, and in turn, the procedure for notification of a determination of equivalency or nonequivalency. In paragraph (a) of this section, a foreign organic certification program that wants to establish the equivalency of its organic program with the National Organic Program would submit to the Secretary a complete and accurate description of its program, including any of the laws and applicable requirements upon which the program is based and any other information requested by the Secretary.

In paragraph (b) of this section, we propose that the Secretary would make a determination of equivalency or nonequivalency and notify the foreign organic certification program of the decision. If the Secretary determines that a foreign organic certification program is equivalent to the USDA National Organic Program, we propose that the Secretary provide the foreign organic certification program written notification of the date upon which organically produced agricultural products produced and handled under the program may be imported into the United States and labeled or sold as organic. If a foreign organic certification program has been determined by the Secretary not to be equivalent, we propose that the Secretary provide the foreign organic certification program written notification and state the basis for such determination. After receipt of such notice, the foreign organic certification program may reapply at any time.

We propose in paragraph (c) of this section that, if at any time the Secretary determines that a foreign program is not equivalent, the Secretary may withdraw the equivalency status. Termination of the equivalency status will be effective upon receipt by the foreign organic program of the notice.

Maintenance of Eligibility for Importation—Section 205.483

In order to determine if a foreign organic certification program continues to be eligible to import agricultural products into the United States that are to be sold or labeled as organic, we propose in section 205.483 that reviews of the foreign organic certification program be conducted periodically to reevaluate whether the program continues to be equivalent. The Secretary will review, as a part of the reevaluation, documents and other information related to the conduct of the foreign organic certification program, including any amendments made to the program requirements since its last evaluation. Continuance of the eligibility for importation of products produced and handled under a program would depend on the results of these reviews and the timely submissions of all documents and other information needed for the review.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Foods, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter I of the Code of Federal Regulations be amended as follows:

1. Parts 205 through 209, which are currently reserved in subchapter K (Federal Seed Act), are removed.

2. A new subchapter M consisting of parts 205 through 209 is added to read as follows:

SUBCHAPTER M—ORGANIC FOODS PRODUCTION ACT PROVISIONS

PART 205—NATIONAL ORGANIC PROGRAM

Subpart A—Definitions

Sec.
205.1 Meaning of words.
205.2 Terms defined.

Subpart B—Organic Crop and Livestock Production and Handling Requirements

205.3 Applicability.
205.4 [Reserved]

Organic Crop Production Requirements

205.5 Land requirements.
205.6 Crop rotation.
205.7 Soil fertility and crop nutrient management.
205.8 Selection and use of seeds, seedlings and planting stock.
205.9 Prevention and control of crop pests, weeds, and diseases.
205.10 [Reserved]
205.11 Wild crop harvesting.

Organic Livestock Production Requirements

205.12 Origin of livestock.
205.13 Livestock feed.
205.14 Livestock health care.
205.15 Livestock living conditions and manure management.

Organic Handling Requirements

205.16 Product composition.
205.17 Processing practices.
205.18 Prevention and control of facility pests.
205.19 Prevention of commingling and contact with prohibited substances.

The Use of Active Synthetic Substances, Non-synthetic Substances, Non-Agricultural (Non-organic) Substances and Non-organically Produced Ingredients in Organic Farming and Handling Operations, Including the National List of Allowed and Prohibited Substances

205.20 General rules for categories of substances and ingredients permitted for use in organic farming and handling.
205.21 General rules for categories of substances and ingredients prohibited for use in organic farming and handling.

The National List of Allowed and Prohibited Substances

205.22 Active synthetic substances allowed for use in organic crop production.
205.23 Non-synthetic substances prohibited for use in organic crop production.
205.24 Active synthetic substances allowed for use in organic livestock production.
205.25 Non-synthetic substances prohibited for use in organic livestock production.
205.26 Non-agricultural (non-organic) substances allowed as ingredients in or on processed products labeled as organic or made with certain organic ingredients.
205.27 Non-organically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with certain organic ingredients.
205.28 Amending the National List.
205.29—205.99 [Reserved]

Subpart C—Labels, Labeling, and Market Information

205.100 Agricultural products in packages sold, labeled or represented as organic.
205.101 Agricultural products in packages sold, labeled or represented as made with certain organic ingredients.
205.102 Multi-ingredient agricultural products that only represent the organic nature of such ingredients in the ingredients statement.
205.103 Use of terms or statements that directly or indirectly imply that a product is organically produced and handled.
205.104 Informational statements prohibited.
205.105 Agricultural products in a form other than packages that are sold, labeled or represented as organic or made with certain organic ingredients.
205.106 Agricultural products produced on an exempt farm or handling operation.
205.107 The USDA seal.
205.108—205.200 [Reserved]

Subpart D—Certification

205.201 What has to be certified.
205.202 Exemptions and exclusions from certification.
205.203 General requirements for certification.
205.204 Applying for certification.
205.205 Organic plan.
205.206 Statement of compliance.
205.207 Preliminary evaluation of an application for certification.
205.208 Arranging for inspections.
205.209 [Reserved]
205.210 Verification of information.
205.211 Post-inspection conference.
205.212 Reporting to the certifying agent.
205.213 Additional inspections.
205.214 Approval of certification.
205.215 Denial of certification.
205.216 Recordkeeping.
205.217 Continuation of certification.
205.218 Notification of non-compliance with certification requirements.
205.219 Termination of certification.
205.220 Notification of certification status.
205.221—205.299 [Reserved]

Subpart E—Accreditation of Certifying Agents

205.300 Areas of accreditation.
205.301 General requirements for accreditation.
205.302 Applying for accreditation.
205.303 Information to be submitted by an accreditation applicant.
205.304 Evidence of expertise and ability to be submitted by an accreditation applicant.
205.305 Statement of agreement to be submitted by an accreditation applicant.
205.306 Approval of accreditation.
205.307 Denial of accreditation.
205.308 Maintaining accreditation.
205.309 Site evaluations.
205.310 [Reserved]
205.311 Peer review panel.
205.312 Confirmation of accreditation.
205.313 Denial of confirmation.

205.314 Continued accreditation.
205.315 Notification of non-compliance with accreditation requirements.
205.316 Termination of accreditation.
205.317—205.400 [Reserved]

Subpart F—Additional Regulatory Functions

State Programs

205.401 Requirements of State programs.
205.402 Approval of State programs and program amendments.
205.403 Review of approved programs.
205.404–205.420 [Reserved]

Fees

205.421 Fees for accreditation applicants and accredited certifying agents.
205.422 Fees for certified operations.
205.423 Fees for import programs.
205.424 Payment of fees and other charges.
205.425–205.429 [Reserved]

Compliance Review and Other Testing

205.430 Compliance review.
205.431 Preharvest tissue testing.
205.432 Emergency pest or disease treatment.
205.433 Reporting the application of a prohibited substance.
205.434–205.451 [Reserved]

Appeals

205.452 General.
205.453–205.479 [Reserved]

Equivalency of Imported Organic Products

205.480 Equivalency of agricultural products for importation into the United States.
205.481 Determination of the equivalency of foreign programs.
205.482 Process for establishing equivalency of foreign programs.
205.483 Maintenance of eligibility for importation.
205.484–205.999 [Reserved]

Authority: 7 U.S.C. 6501–6522.

PART 205—NATIONAL ORGANIC PROGRAM

Subpart A—Definitions

§ 205.1 Meaning of words.

For the purpose of the regulations in this subpart, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

§ 205.2 Terms defined.

Accreditation. A determination made by the Secretary that authorizes a governing State official or private person to conduct certification activities as a certifying agent under this part.

Act. The Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*).

Active ingredient in any input other than pesticide formulations. Any substance, that when used in a system of organic farming or handling, becomes a chemically functional part of that system; is a labeled ingredient or food additive; or is a substance that is otherwise of significant consequence to the production, handling and integrity of an organically produced agricultural product.

Active ingredient in pesticide formulations. Any substance (or group of structurally similar substances) as specified by the EPA in 40 CFR 152.3(b), that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant, within the meaning of section 2(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136(a)).

Administrator. The Administrator for the Agricultural Marketing Service (AMS), United States Departure of Agriculture, or the representative to whom authority has been delegated to act in the stead of the Administrator.

Agricultural product. Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human or livestock consumption.

Agroecosystem. A system consisting of the functions, interactions, and balances of biological, hydrological, geological, and other environmental elements that are found within a given farm operation.

Allowed synthetic. A substance that is included on the National List of synthetic substances allowed for use in organic farming.

Animal drug. Any drug as defined in Section 201 of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 321) that is intended for use in livestock, including any drug intended for use in livestock feed, but not including such livestock feed.

Annual seedling. A plant grown from seed that will complete its life cycle or produce a harvestable yield within the same crop year or season in which it was planted.

Area of operations. The types of operations: crops, livestock, wild crop harvesting, handling, or any combination thereof, that a certifying agent may be accredited to certify under this part.

Audit trail. Documentation that is sufficient to determine the source, transfer of ownership and transportation of any agricultural product labeled as organic or made with certain organic ingredients, or of any agricultural product identified as organic in an ingredients statement.

Biodegradable. Subject to biological decomposition into simpler biochemical or chemical components.

Biologics. All viruses, serums, toxins, and analogous products of natural or synthetic origin, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms and the antigenic or immunizing components of microorganisms intended for use in the diagnosis, treatment or prevention of diseases of animals.

Botanical pesticides. Natural (non-synthetic) pesticides derived from plants.

Breeding. Selection of plants or animals to reproduce desired characteristics in succeeding generations.

Buffer area. An area located between a certified farm or portion of a farm, and an adjacent land area that is not maintained under organic management. A buffer area must be sufficient in size or other features (e.g., windbreaks or a diversion ditch) to prevent the possibility of unintended contact by prohibited substances applied to adjacent land areas with an area that is part of a certified operation.

Cation balancing agent. A mineral substance applied to the soil to adjust the ratio among positively charged (cation) nutrients on soil colloids. The major cation nutrients are calcium (Ca), magnesium (Mg), and potassium (K), and the cation micronutrients include iron (Fe), zinc (Zn), copper (Cu) and manganese (Mn).

Certification or certified. A determination made by a certifying agent that a farm, wild crop harvesting, or handling operation is in compliance with the Act and the regulations in this part, which is documented by a certificate that identifies the entity certified, the effective date of certification, and the types of agricultural products for which certification is granted.

Certification activities. Activities conducted by a certifying agent in regard to certification applicants or certified farms, handling operations and wild crop harvesting operations.

Certification applicant. A producer or handler of agricultural products who applies to a certifying agent for certification.

Certified facility. A processing, manufacturing, livestock housing or other site or structure maintained or operated to grow, raise or handle organically produced agricultural products that is part of a certified organic farm, a certified organic wild crop harvesting operation, or a certified organic handling operation.

Certified organic farm. A farm, or portion of a farm, or site, where agricultural products or livestock are produced, that is certified by the certifying agent under the Act as utilizing a system of organic farming as described by the Act and regulations in this part.

Certified organic handling operation. An operation, or portion of a handling operation, that is certified by a certifying agent as utilizing a system of organic handling as described under the Act and the regulations in this part.

Certified organic wild crop harvesting operation. An operation, or portion of an operation, that is certified by a certifying agent as harvesting wild crops in compliance with the Act and the regulations in this part.

Certifying agent. The chief executive officer of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official, and any person (including private entities) who is accredited by the Secretary as a certifying agent for the purpose of certifying a farm, wild crop harvesting operation, or handling operation as a certified organic farm, wild crop harvesting, or handling operation.

Certifying agent's operation. All sites, facilities, personnel and records used by a certifying agent to conduct certification activities under the Act and the regulations in this part.

Chapter. A subsidiary organizational unit of a certifying agent that conducts certification activities in a manner consistent with relevant policies and procedures developed by the certifying agent in accordance with the Act and the regulations of this part.

Commercially available. The ability to obtain a production input in an appropriate form, quality, and quantity to be feasibly and economically used to fulfill an essential function in a system of organic farming and handling.

Commingling. Physical contact between unpackaged organically produced and non-organically produced agricultural products during production, transportation, storage or handling, other than during the manufacture of a multi-ingredient product containing both types of ingredients.

Compost. A process that creates conditions that facilitate the controlled decomposition of organic matter into a more stable and easily handled soil amendment or fertilizer, usually by piling, aerating and moistening; or the product of such a process.

Confirmation of accreditation. A determination made by the Secretary following the receipt of an AMS site evaluation report and peer review panel reports that a certifying agent is operating in compliance with the Act and regulations in this part.

Contaminant. A residue of a prohibited substance that persists in the environment.

Control. Any method that reduces or limits damage by, or populations of, pests, weeds or diseases to levels that do not significantly reduce productivity.

Critical control point. Any point, step or procedure in a certified production or handling operation where loss of control may result in a loss of an organic product's integrity, such as the commingling of organic products with non-organic products or contact of organic products with prohibited substances.

Crop. A plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

Crop residues. The plant parts remaining in a field after the harvest of a crop, which include stalks, stems, leaves, roots and weeds.

Crop rotation. The practice of alternating the annual crops grown on a specific field in a planned pattern or sequence in successive crop years, so that crops of the same species or family are not grown repeatedly without interruption on the same field during two or more crop years.

Crop year. That normal growing season for a crop as determined by the Secretary.

Cultivation. Digging up or cutting the soil to prepare a seed bed, control weeds, aerate the soil or work organic matter, crop residues or fertilizers into the soil.

Cultural. Methods used to enhance crop and livestock health and prevent weed, pest or disease problems without the use of substances; examples include the selection of appropriate varieties and planting sites; selection of appropriate breeds of livestock; providing livestock facilities designed to meet requirements of species or type of livestock; proper timing and density of plantings; irrigation; and extending a growing season by manipulating the microclimate with green houses, cold frames, or wind breaks.

Cytotoxic mode of action. Having a toxic effect by means of interference with normal cell functions.

Degradation. Measurable evidence of damage or adverse effects over the course of two or more crop years, as determined by monitoring one or more indicators of soil or water quality.

Detectable residue level. The level of a pesticide or other prohibited substance that is 5 percent or greater of the established EPA tolerance level, as set forth in 40 CFR Parts 180, 185, and 186, for the product that was tested, provided that if there is no tolerance level established, but an action level has been established, the detectable residue level will be the action level established by FDA for the product tested.

Disease vectors. Plants or animals that harbor and carry disease organisms which may attack crops or livestock.

Emergency pest or disease treatment program. A mandatory program authorized by a State, federal or local agency for the purpose of controlling or eradicating a pest or disease.

Employee. Any person who will be involved in certification decisions.

Extract. The action of producing a substance by a process of dissolving the soluble fractions of a plant, animal or mineral in water or another solvent; or the product thereof.

Farm. An agricultural operation maintained for the purpose of producing agricultural products.

Fertilizer. A single or blended substance applied to the soil to supply any of the three primary plant nutrients, nitrogen (N), phosphorus (P) and potassium (K), needed for the growth of plants.

Field. An area of land identified as a discrete unit within a farm operation.

Foliar nutrient. Any liquid substance applied directly to the foliage of a growing plant for the purpose of delivering essential nutrient(s) in an immediately available form.

Formulated product. A commercial product composed of more than one substance.

Fungicide. Any substance that kills fungi or molds.

Generic name. The general or scientific name of a substance that is not a trade name.

Genetic engineering. Genetic modification of organisms by recombinant DNA techniques.

Governing State official. The chief executive official of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official, who administers an organic certification program under the Act.

Handle. To sell, process, or package agricultural products.

Handler. Any person engaged in the business of handling agricultural products, except such term shall not include final retailers of agricultural products that do not process agricultural products.

Handling operation. Any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that receives or otherwise acquires

agricultural products and processes, packages, or stores such products.

Incidental additive. An additive present in agricultural products at an insignificant level that does not have any technical or functional effect in the product and is therefore not an active ingredient.

Inert ingredient in any input other than pesticide formulations. Any substance other than an active ingredient intentionally included in any product used in organic crop production.

Inert ingredient in pesticide formulations. Any substance (or group of structurally similar substances if designated by the EPA) other than an active ingredient which is intentionally included in a pesticide product (40 CFR 152.3(m)).

Information panel. That part of the label of a packaged product that is immediately contiguous and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size or other package limitations.

Ingredients statement. The listing of the ingredients contained in a product listed by their common and usual names in the descending order of predominance.

Inspector. Any person retained or used by a certifying agent who is qualified to conduct inspections of certification applicants or certified farms, handling operations or wild crop harvesting operations.

Intentionally applied. The deliberate use of a substance on a certified organic farm or handling operation.

Label. Any display of written, printed, or graphic material on the immediate container of an agricultural product, or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for a display of written, printed, or graphic material which contains only information about the weight of the product.

Labeling. All written, printed, or graphic material accompanying an agricultural product at any time, or written, printed, or graphic material about the agricultural product displayed at retail stores for the product.

Livestock. Any cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fish used for food, wild or domesticated game, or other nonplant life.

Made with certain organic ingredients. An agricultural product wherein organic agricultural products used as ingredients comprise at least 50 percent, but less than 95 percent, of the total weight of the finished product, excluding water and salt; additionally, the percentage of the total weight of the finished product, excluding water and salt, that is not comprised of organic agricultural products is some combination of non-agricultural ingredients and/or non-organically produced agricultural products included on the National List.

Market information. Any written, printed, audio-visual or graphic information, including advertising, pamphlets, flyers, catalogues, posters and signs, that are used to assist in the sale or promotion of a product.

Mating disrupter. A biochemical substance that serves to prevent pest insects from reproducing by interfering with their ability to locate a suitable mate.

Micronutrient. A soil or crop mineral nutrient required in very small quantities.

Mulch. Any material, such as wood chips, leaves, straw, paper or plastic that serves to suppress weed growth, moderate soil temperature or conserve soil moisture.

National list. A list of allowed and prohibited substances as provided for in section 2118 of the OFPA (7 U.S.C. 6517).

National organic program. The program authorized by the Act for the purpose of implementing its provisions.

National Organic Standards Board. A Board established by the Secretary under 7 U.S.C. 6518 to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the National Organic Program.

Non-active residues. Any synthetic substance that does not appear on the National List of synthetic substances allowed for use, any non-synthetic substance that appears on the National List of non-synthetic substances prohibited for use, or any non-synthetic (natural) poison (such as arsenic or lead salts) that has long-term effects and persists in the environment, and which occurs in a very small quantity as a non-active substance in a production input or water.

Non-agricultural ingredient. A substance that is not a product of agriculture, such as a mineral or a bacterial culture, that is used as an ingredient in an agricultural product. For the purposes of this part, a non-agricultural ingredient also includes any substance, such as gums, citric acid or pectin, that is extracted, isolated from, or is a fraction of an agricultural product, so that the identity of the agricultural product is unrecognizable in the extract, isolate or fraction.

Non-organic agricultural ingredient or product. An agricultural ingredient or product that has not been produced or handled in accordance with the Act and the regulations in this part.

Non-synthetic (natural). A substance that is derived from mineral, plant or animal matter and does not undergo a synthetic process as defined in section 2103(21) of the OFPA (7 U.S.C. 6502(21)). For the purposes of this part, non-synthetic is used as a synonym for natural as the term is used in the Act.

Non-toxic. Not known to cause any adverse physiological effects in animals, plants, humans or the environment.

Organic. A term that refers to a raw agricultural product produced in accordance with the Act and the regulations in this part; or, to an agricultural product wherein organic agricultural products used as ingredients comprise between 95 percent and 100 percent of the total weight of the finished product, excluding water and salt; additionally, the percentage of the total weight of the finished product, excluding water and salt, that is not comprised of organic agricultural products is some combination of non-agricultural ingredients and/or non-organically produced agricultural products included on the National List.

Organic matter. The remains, residues or waste products of any living organism.

Organic plan. A plan of management of an organic farming or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Act and the regulations in subpart B of this part, including crop rotation and other practices as required under the Act.

Package. A container or wrapping that bears a label and which encloses an agricultural product, except for agricultural products in bulk containers, shipping containers, or shipping cartons.

Packaging. Material used to wrap, cover, or contain an agricultural product, including wax applied directly to an edible surface of an agricultural product.

Peer review panel. A panel of individuals who have expertise in organic farming and handling methods and certification procedures, and who are appointed by the Administrator to assist in evaluating the performance of a certifying agent.

Person. An individual, group of individuals, corporation, association, organization, cooperative, or other entity.

Pesticide. Any substance which alone, in chemical combination, or in any formulation with one or more substances, is defined as a pesticide in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u) *et seq.*).

Petition. A request to amend the National List that is submitted by any person in accordance with this part.

Planting stock. Any plant or plant tissue, including rhizomes, shoots, leaf or stem cuttings, roots cr tubers used in plant production or propagation.

Preliminary evaluation. A determination made by a certifying agent, prior to an initial inspection of the operation to be certified, as to whether a person seeking certification of an operation may be in compliance with the regulations in this part.

Principal display panel. That part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale.

Processing. Cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

Processing methods. Mechanical, biological and chemical procedures used in the preparation of an agricultural product for market.

Producer. A person who engages in the business of growing or producing food or feed.

Production aid. A substance, material, structure, or device, but not an organism, which may or may not be an active ingredient and may or may not be a synthetic substance, used to significantly aid a producer or handler to produce, handle, or maintain the integrity of, an agricultural product during, production, handling and marketing.

Production input. A substance or agricultural product that is used to produce or handle an agricultural product.

Prohibited substance. A substance whose use in any aspect of organic production or handling is prohibited or not provided for in the Act or the regulations in subpart B of this part.

Proper manuring. Any use or application of plant or animal materials, including green manure crops, so as to improve soil fertility, especially its organic content, including the use of compost and other recycled organic wastes whether or not they contain livestock manure.

Putrefaction. Partial anaerobic decomposition of organic matter so that it releases noxious oxidation products and gases, attracts vermin, or harbors pathogens.

Records. Any information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this part. Records include questionnaires, affidavits, inspection reports, field or production logs, maps or facility diagrams, receipts, invoices, billing statements, bills of lading, inventory control documents, laboratory analysis reports, minutes of meetings, personnel files, correspondence, photographs and other materials.

Responsibly connected. Any person who is a partner, officer, director, holder, manager, or owner of 10 per centum or more of the voting stock of an applicant or a recipient of certification or accreditation.

Routine use of parasiticide. Administering a parasiticide to an animal without cause.

Secretary. The Secretary of Agriculture or a representative to whom authority has been delegated to act in the Secretary's stead.

Site evaluation. An examination of a certifying agent's operations and records at its places of business for the purpose of determining, reviewing or evaluating accreditation status under these regulations.

Slaughter stock. Any animal that is intended to be slaughtered for human consumption.

Soil amendment. Substance or material applied to the soil as a production input to improve its physical qualities or biological activity, complement or increase soil organic matter content, or complement or adjust a soil nutrient level.

Soil quality. Observable indicators of the physical, chemical or biological condition of soil.

Split operation. An organic farming operation that also produces crops or livestock that are not organically produced in accordance with the Act and the regulations of this part.

State. Any State, Territory, the District of Columbia, or the Commonwealth of Puerto Rico.

State organic certification program. A program that meets the requirements of section 2107 of the OFPA (7 U.S.C. 6506), is approved by the Secretary, and is designed to ensure that an agricultural product that is sold or labeled as organically produced under the Act is produced and handled using organic methods.

Subtherapeutic. Administration of an animal drug, at levels that are below the levels used to treat clinically sick animals, for the purpose of increasing weight gain or improving feed efficiency.

Suspension of accreditation. An action taken by the Secretary that results in a certifying agent losing its authority to carry out certification activities.

Synergist. A substance that is an active ingredient which enhances the activity or efficiency of another substance, thereby reducing the amount of other active ingredients needed to achieve the desired function or result.

Synthetic. A substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

Synthetic volatile solvent. A synthetic substance used as a solvent, which evaporates readily, such as hexane or isopropyl alcohol.

System of organic farming and handling. A system that is designed to produce agricultural products by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the consumer. This is accomplished by using, where possible, cultural, biological and mechanical methods, as opposed to using substances, to fulfill any specific function within the system so as to: maintain long-term soil fertility; increase soil biological activity; ensure effective pest management; recycle wastes to return nutrients to the land; provide attentive care for farm animals; and handle the agricultural products without the use of extraneous synthetic additives or processing in accordance with the Act and regulations in this part.

Transplant. An annual seedling grown on a certified organic farm and transplanted to a field on the same farm operation to raise an organically produced crop.

Treated. A seed, plant propagation material or other material purchased for use as a production input in an organic farming or handling operation that has been treated or combined with a synthetic pesticidal substance (that does not appear on the National List) prior to having been purchased.

Unavoidable residual environmental contamination. The residue level of a prohibited substance, as determined by the Secretary in consultation with the

applicable governing State official and the appropriate environmental regulatory agencies, that could be expected to exist in the soil at, or in a product originating from, a specific production site to which the prohibited substance had not been applied for a minimum of three years.

Untreated seeds. Seeds that have not been treated with a prohibited substance.

USDA Seal. The logo described in § 205.107 of subpart C of this part.

Weed. Any plant that directly competes or interferes with the growth or harvest of a crop.

Wild crop. Any plant or portion of a plant that is collected or harvested from an area of land that is not maintained under cultivation or other agricultural management.

Subpart B—Organic Crop and Livestock Production and Handling Requirements

§ 205.3 Applicability.

(a) Any agricultural product that is sold, labeled, or represented as organic shall be:

(1) Produced in accordance with the requirements specified in § 205.3 and §§ 205.5 through 205.9, or §§ 205.12 through 205.15, and all other applicable requirements of part 205 on a certified organic farm; or

(2) Harvested, if a wild crop, in accordance with the requirements specified in § 205.11 and all other applicable requirements of part 205; and

(3) Handled in accordance with the requirements specified in § 205.3 and §§ 205.16 through 205.19 and all other applicable requirements of part 205 in a certified organic handling operation.

(b) A method or substance that is used in accordance with this subpart shall be used in accordance with all applicable requirements of part 205 and shall be selected and used such that:

(1) Use or application of the practice or substance does not result in measurable degradation of soil or water quality; and

(2) A commercially available non-synthetic (natural) substance is selected in preference to an allowed synthetic substance if the two substances are equally suitable for the intended purpose and there is no discernable difference between the two substances in terms of their effects on soil or water quality.

§ 205.4 [Reserved]

Organic Crop Production Requirements

§ 205.5 Land requirements.

(a) Any field or farm parcel from which organically produced crops are intended to be harvested shall:

(1) Have had no prohibited substances, as delineated in the categories of substances prohibited for use in organic farming and handling set forth in § 205.21, applied to it for a period of three years immediately preceding harvest of the crop; and

(2) Have clearly defined and identifiable boundaries.

(b) If organically managed land adjoins any area that is not under organic management, a producer shall implement, or include in the organic plan a proposal to implement, physical barriers, diversion of runoff, buffer areas or other means to prevent the possibility of unintended application of a prohibited substance to the land or contact of a prohibited substance with the land on which organically produced crops are grown.

§ 205.6 Crop rotation.

A crop rotation or other means of ensuring soil fertility and effective pest management in any field or farm parcel shall be established.

§ 205.7 Soil fertility and crop nutrient management.

(a) *Tillage and cultivation.* Tillage and cultivation implements and practices shall be selected and used in a manner that does not result in measurable degradation of soil quality.

(b) *Proper manuring.* Composted or uncomposted plant or animal materials used to replenish soil organic matter content and essential crop nutrients shall be selected according to the following order of preference, and used in a manner that does not significantly contribute to water contamination by nitrates and bacteria, including human pathogens, or result in other measurable degradation of soil or water quality:

(1) Any composted materials, except those materials provided for in paragraphs (b)(4) and (5) of this section;

(2) Any uncomposted materials of plant or animal origin, including aged, fully decomposed animal manure, that are not known to have a high soluble nutrient content or that are not prone to putrefaction.

(3) Any materials of plant or animal origin that are known to have a high soluble nutrient content or that are prone to putrefaction.

(4) Plant or animal waste materials that contain non-active residues of substances may be applied, *Provided, That* the plant or animal material is composted prior to application, and *Provided, Further That* levels of any non-active residues detected in the raw plant or animal waste materials do not increase in the soil.

(5) Chemically altered plant and animal waste materials may be applied, *Provided, That* such material appears on the National list of active synthetic substances allowed for use in organic crop production provided for in § 205.22, and *Provided, Further That* levels of any non-active synthetic residues or heavy metals detected in the plant or animal waste materials do not increase in the soil.

(c) *Providing mineral nutrients.* A substance used as a source of major nutrients or micronutrients shall be selected from the following:

(1) A non-synthetic substance of low solubility may be added to soil, including:

(i) A non-synthetic mineral having a low solubility and salt index;

(ii) A substance extracted from a plant or animal substance or from a mined mineral; and

(iii) Ash obtained from the burning of a plant or animal material, except as prohibited in paragraphs (d) (2) or (3) of this section, *Provided, That* the material burned has not been treated or combined with a prohibited substance, or the ash is not included on the National List of non-synthetic substances prohibited for use in organic crop production.

(2) A highly soluble or synthetic substance may be added to soil to correct a known nutrient deficiency, *Provided, That* its use does not result in measurable degradation of soil or water quality. Highly soluble or synthetic substances include:

(i) A synthetic substance included on the National List of active synthetic substances allowed for use in organic crop production applied as a source of micronutrients, *Provided, That* the substance is not applied in a manner intended to be herbicidal;

(ii) A non-synthetic mineral that is highly soluble and has a high salt index; or

(iii) A cation balancing agent, *Provided, That* the specific cation balancing agent appears on the National List of active synthetic substances allowed for use in organic crop production if it is synthetic or of unknown origin.

(d) *Prohibited.* The following methods or substances are prohibited for use in soil fertility and crop nutrient management:

(1) The use of any fertilizer or commercially blended fertilizer that

contains an active synthetic substance not allowed for use in crop production as provided for in § 205.22, or that contains an active prohibited substance;

(2) The use of ash obtained from the disposal of manure by burning; and

(3) The burning of manure or crop residues produced on the farm as a means of disposal.

§ 205.8 Selection and use of seeds, seedlings and planting stock.

(a) Organically produced seeds and planting stock, including annual seedlings and transplants, shall be used, except that non-organically produced seeds and planting stock may be used to produce an organic crop when an equivalent organically produced variety is not commercially available, and *Provided, That:*

(1) Treated seeds are used only when untreated seeds of the same variety are not commercially available or unanticipated or emergency circumstances make it infeasible to obtain untreated seeds; and

(2) Untreated planting stock is selected in preference to treated planting stock whenever there is a choice.

(b) Non-organically produced planting stock to be used as planting stock to produce a perennial crop may be sold, labeled or represented as organically produced only after the planting stock has been maintained under a system of organic management on a certified organic farm for a period of no less than one crop year.

(c) Prohibited. Transplants that have been treated with a prohibited substance are prohibited for use as planting stock.

§ 205.9 Prevention and control of crop pests, weeds, and diseases.

(a) Pests, weeds, and diseases in crops shall be prevented by practices including, but not limited to:

(1) Crop rotation or other means provided for in § 205.6;

(2) Replenishment and maintenance of soil fertility in accordance with § 205.7;

(3) Sanitation measures to remove disease vectors, weed seeds and habitat for pest organisms; and

(4) Cultural practices that enhance crop health, including selection of plant species and varieties with regard to suitability to site-specific conditions and resistance to prevalent pests, weeds and diseases.

(b) If pest prevention measures provided for in paragraph (a) of this section are not effective, pest problems shall be controlled through:

(1) Augmentation or introduction of predators or parasites of the pest species;

(2) Mechanical or physical controls; or

(3) Non-synthetic, non-toxic controls such as lures and repellents.

(c) If weed prevention measures provided for in paragraph (a) of this section are not effective, weeds shall be controlled through:

(1) Mulching with fully biodegradable materials;

(2) Livestock grazing;

(3) Mechanical, heat or electrical means; or

(4) Plastic or other synthetic mulches, *Provided, That* they are removed from the field at the end of the growing or harvest season.

(d) If disease prevention measures provided for in paragraph (a) of this section are not effective, plant diseases shall be controlled through practices that suppress the spread of disease organisms, including, but not limited to, steam sterilization of growing media.

(e) If the practices provided for in paragraphs (a) through (d) of this section are not effective to prevent or control crop pests, weeds and diseases, the following substances may be used *Provided, That* its use does not result in measurable degradation of soil or water quality:

(1) Any non-synthetic biological or botanical substance, or synthetic substance that is included on the National List of active synthetic substances allowed for use in crop production, may be applied to prevent, suppress or control pests, weeds or diseases.

(2) A synthetic substance that is included on the National List of active synthetic substances allowed for use in crop production may be used to defoliate cotton.

(f) Prohibited. A synthetic carbon-based substance that functions through a cytotoxic mode of action shall not be applied for any prevention or control purpose.

§ 205.10 [Reserved]

§ 205.11 Wild crop harvesting.

(a) Any land from which a wild crop intended to be sold, labeled or represented as organic is harvested shall have had no prohibited substance, as delineated in the categories of substances prohibited for use in organic farming and handling set forth in § 205.21, applied to it for a period of three years immediately preceding the harvest of the wild crop and at any time thereafter.

(b) A wild crop shall be harvested in a manner that assures that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop.

Organic Livestock Production Requirements

§ 205.12 Origin of livestock.

(a) *Origin of livestock.* Livestock on a certified organic farm that themselves or their products are to be sold, labeled, or represented as organically produced shall have been under organic management from birth or hatching, or shall be the offspring of parents who have been under organic management, except that:

(1) *Breeder stock.* Livestock may be designated as breeder stock for offspring that are to be raised as organic livestock upon entry onto a certified facility, *Provided, That,* if such livestock is a gestating mammal, she must be brought onto the certified facility prior to the last third of pregnancy;

(2) *Dairy livestock.* Livestock may be designated as organic dairy livestock from which milk or milk products obtained therefrom can be sold, labeled or represented as organically produced, *Provided, That* she is brought onto a certified facility beginning no later than 12 months prior to the production of the milk or milk products that are to be sold, labeled or represented as organic;

(3) *Poultry.* Poultry may be designated as organic poultry from which meat or eggs obtained therefrom can be sold, labeled or represented as organically produced, *Provided, That* they are brought onto a certified facility beginning no later than the second day of life;

(4) *Livestock used for the production of non-edible livestock products.* Livestock may be designated as livestock from which skin, fur, feathers, fibers and all non-edible products obtained therefrom can be sold, labeled or represented as organically produced, *Provided, That* such livestock are brought onto a certified facility in accordance with one of the subparagraphs of paragraph (a) of this section and, *Provided, Further That* any livestock not raised under organic management from birth or hatching shall have been under organic management no less than 90 days prior to harvest of the non-edible product intended to be sold, labeled, or represented as organic; and

(5) *Other livestock.* Livestock, other than those described in paragraphs (a)(1) through (4) of this section, may be designated as organic livestock from which edible products obtained therefrom, can be sold, labeled, or represented as organically produced, if brought onto a certified facility:

(i) At any stage of life for bees;
(ii) If necessary, no later than the 15th day of life for mammalian livestock of non-organic origin to be designated as organic slaughter stock for the production of meat; or
(iii) No later than the earliest commercially available stage of life for livestock types other than bees, or mammalian livestock designated as slaughter stock.
(b) *Prohibited.* The following practices are prohibited:
(1) The switching of livestock or facilities between organic and non-organic management methods for the purpose of circumventing any provision of this part; and
(2) The use of hormones for breeding purposes.

§ 205.13 Livestock feed.

(a) *Feeding of livestock.* (1) Agricultural products, including pasture and forage, that are organically produced and, if applicable, organically handled in accordance with the Act and the regulations in subpart B of this part shall comprise the total feed ration of livestock under organic management, *Provided, However, That* if necessary:
(i) Livestock, other than as provided for in paragraphs (a)(1)(ii) through (iv) of this section, may receive a maximum of 20 percent of the total feed ration in a given year that is not organically produced;
(ii) The Administrator may authorize the use of non-organic feed in addition to the amount provided for in paragraph (a)(1)(i) of this section in an emergency situation determined by the Administrator to affect the commercial availability of organic feed;
(iii) An entire distinct herd of dairy livestock that is converted to organic management for the first time may be provided with non-organic feed until 90 days prior to the production of milk or milk products to be sold, labeled, or represented as organic; and
(iv) Bees from which organic honey and other products are harvested shall have access to forage organically produced in accordance with the requirements specified in §§ 205.3 through 205.11 so as to comprise the predominant portion of their forage needs.
(2) Non-agricultural products provided as vitamin or mineral supplements may be used to satisfy the health requirements of livestock under organic management, *Provided, That* a synthetic supplement is included on the list of synthetic substances permitted for use in livestock production provided for in § 205.24.
(3) Synthetic amino acid additives that appear on the list of synthetic substances permitted for use in livestock production as set forth in § 205.24 may be fed to livestock under organic management only as necessary for the purpose of fulfilling the nutritional requirements of the livestock.
(b) *Prohibited.* The following substances or methods for the feeding of livestock are prohibited:
(1) The use of hormones or growth promoters whether implanted, injected, or administered orally;
(2) The use of the following for the purpose of stimulating the growth or production of the livestock:
(i) Antibiotics or other animal drugs;
(ii) Synthetic amino acid additives or synthetic trace elements fed above levels needed for adequate nutrition; and
(3) The feeding of plastic pellets for roughage, feed formulas containing urea, or the refeeding of manure.

§ 205.14 Livestock health care.

(a) The health of livestock under organic management shall be maintained by the implementation of preventive measures, including, but not limited to:
(1) Providing diverse feedstuffs;
(2) Establishing appropriate housing, pasture conditions and sanitation practices so as to minimize the occurrence and spread of diseases and parasites;
(3) Administering veterinary biologics, vitamins and minerals; and
(4) Selecting species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites.
(b) If the preventive measures provided for in paragraph (a) of this section are not effective in maintaining livestock health, an animal drug may be administered to any animal at any time of life, except as prohibited by paragraph (d) of this section, and *Provided, That:*
(1) Animal drugs, other than animal drugs administered topically or parasiticides, may be administered to mammals intended as organic slaughter stock only within the first 21 days of life; and
(2) Animal drugs, other than animal drugs administered topically or parasiticides, may be administered to livestock intended as organic slaughter stock, other than mammals, only within the first 7 days after arrival onto a certified facility.
(c) A product from organic livestock to which an animal drug has been administered shall be obtained and thereafter sold, labeled, or represented as organic only after the producer has determined that the animal has fully recovered from the condition(s) being treated, but in no case shall that time be less than the withdrawal period specified on the label or labeling of the animal drug or as required by the veterinarian.
(d) Prohibited. The following livestock health care methods are prohibited:
(1) Administering any animal drug, other than vaccinations, in the absence of illness;
(2) The routine use of synthetic internal parasiticides; and
(3) The subtherapeutic use of antibiotics.

§ 205.15 Livestock living conditions and manure management.

(a) The following living conditions shall be adequately provided, as appropriate to the species, to promote livestock health:
(1) Protection from the elements;
(2) Space for movement;
(3) Clean and dry living conditions;
(4) Access to outside; and
(5) Access to food and clean water.
(b) If necessary, livestock may be maintained under conditions that restrict the available space for movement or their access to the outside, *Provided, That* the other living conditions specified in paragraph (a) of this section are adequate to maintain their health without the use of animal drugs, except as provided in § 205.14(b).
(c) Manure management practices used to maintain any area in which livestock are housed, pastured or penned shall be implemented in a manner that:
(1) Does not result in measurable degradation of soil quality;
(2) Does not significantly contribute to contamination of water by nitrates and bacteria, including human pathogens;
(3) Optimizes recycling of nutrients; and
(4) Does not include burning or any practice inconsistent with the provisions of § 205.14(a)(2).

Organic Handling Requirements

§ 205.16 Product composition.

(a) For an agricultural product, including a raw agricultural product, sold, labeled, or represented as organic:
(1) Organically produced agricultural products shall comprise 100 percent of the total weight of the finished product, excluding water and salt, except that not more than five percent of the total weight of the finished product, excluding water and salt, may consist of one or more of the following ingredients that are included on the National List:

(i) Non-agricultural substances allowed as ingredients in or on processed products sold, labeled, or represented as organic or made with certain organic ingredients, provided for in § 205.26; and
(ii) Non-organically produced agricultural products allowed as ingredients in or on processed products sold, labeled, or represented as organic or made with certain organic ingredients, provided for in § 205.27.
(2) An ingredient intended to be used in a processed product sold, labeled, or represented as organic shall be selected according to the following order of preference:
(i) An organically produced agricultural product, if commercially available, shall be selected for use as an ingredient in preference to a non-organically produced agricultural product or a non-agricultural ingredient included on the National List;
(ii) A non-organically produced agricultural product, if commercially available, shall be selected for use as an ingredient in preference to a non-agricultural ingredient allowed on the National List; and
(iii) A non-organically produced agricultural product or a non-agricultural ingredient included on the National List that is extracted without the use of a synthetic volatile solvent or which does not contain propylene glycol as a carrier, if commercially available, shall be selected in preference to a product or ingredient that is extracted with a synthetic volatile solvent or which contains propylene glycol as a carrier.
(b) For an agricultural product sold, labeled, or represented as made with certain organic ingredients on the principal display panel:
(1) Organically produced agricultural products shall comprise at least 50 percent, but less than 95 percent, of the total weight of the finished product, excluding water and salt;
(2) The percentage of the total weight of the finished product, excluding water and salt, that is not comprised of organically produced agricultural products shall consist of one or more of the following ingredients:
(i) Non-agricultural substances allowed as ingredients in or on processed products sold, labeled, or represented as organic or made with certain organic ingredients, provided for in § 205.26; and
(ii) Non-organically produced agricultural products allowed as ingredients in or on processed products sold, labeled, or represented as organic or made with certain organic ingredients, provided for in § 205.27; and
(3) The finished product shall have been produced in compliance with §§ 205.16 through 205.19 of this subpart, except that the provisions set forth in §§ 205.16 (a) and (c) shall not apply.
(c) Multi-ingredient agricultural products that only represent the organic nature of such ingredients in the ingredients statement and which themselves are not sold, labeled or represented as organic or made with certain organic ingredients shall not be subject to the provisions of this subpart, except for the provisions for prevention of commingling and contact of organic products by prohibited substances, as set forth in § 205.19, with respect to any organically produced ingredients.
(d) Organic and non-organic forms of the same agricultural ingredient shall not be combined in a product sold, labeled, or represented as organic or made with certain organic ingredients if the ingredient is represented as organic in the ingredient statement.
(e) The addition of the following substances to any agricultural product intended to be sold, labeled, or represented as organic or made with certain organic ingredients is prohibited:
(1) Any sulfites, nitrates, or nitrites; or
(2) Water that does not meet the requirements of the Safe Drinking Water Act. (42 U.S.C. 300(f) *et seq.*).

§ 205.17 Processing practices.

(a) Mechanical or biological methods, including cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing or chilling shall be used to process an agricultural product intended to be sold, labeled, or represented as organic or made with certain organic ingredients for the purpose of retarding spoilage or otherwise preparing the agricultural product for market; *Provided, However, That* if necessary an incidental additive, except for volatile synthetic solvents prohibited in paragraph (b)(3) of this section, may be used to process such agricultural product.
(b) Prohibited. The following methods and substances are prohibited for use in the processing and preparation of a raw agricultural product, and on a finished agricultural product, intended to be sold, labeled, or represented as organic or made with certain organic ingredients:
(1) Storing, coating or packaging in a storage container or bin, including packages or packaging materials, that contain a synthetic fungicide, preservative, or fumigant;
(2) The use or reuse of any bag or container that had previously been in contact with any substance in such a manner as to compromise the organic integrity of any products; and
(3) The use of a volatile synthetic solvent.

§ 205.18 Prevention and control of facility pests.

(a) Pest occurrence in a certified organic handling facility shall be prevented by methods including, but not limited to:
(1) Measures to remove potential habitat of, or access to handling facilities by, pest organisms; and
(2) Management of environmental factors, such as temperature, light, humidity, atmosphere and air circulation to prevent pest reproduction.
(b) If pest prevention measures provided in paragraph (a) of this section are not effective, facility pest problems shall be controlled through:
(1) Augmentation or introduction of predators or parasites for the pest species;
(2) Mechanical or physical controls including, but not limited to, traps, light or sound; or
(3) Non-toxic, non-synthetic controls, such as lures and repellants.
(c) If pest prevention or control measures provided for in paragraphs (a) and (b) of this section are not effective, any substance may be used to control pests, *Provided, That:*
(1) The substance is approved for its intended use by the appropriate regulatory authority; and
(2) The substance is applied in a manner that prevents such substance from contacting any ingredient or finished product intended to be sold, labeled, or represented as organic or made with certain organic ingredients.

§ 205.19 Prevention of commingling and contact with prohibited substances.

A certified handling operation, and a handling operation that is exempt or excluded from certification in accordance with § 205.202(a)(3) or § 205.202(b) of subpart D, shall establish, as appropriate, adequate safeguards during the handling, storage and transportation of organically produced products in order to:
(a) Prevent the commingling of organic and non-organic products; and
(b) Assure that organic products and certified facilities are protected from contact with prohibited substances.

The Use of Active Synthetic Substances, Non-Synthetic Substances, Non-Agricultural (Non-Organic) Substances and Non-Organically Produced Ingredients in Organic Farming and Handling Operations, Including the National List of Allowed and Prohibited Substances

§ 205.20 General rules for categories of substances and ingredients permitted for use in organic farming and handling.

(a) Any active synthetic substance or ingredient on the National List, as set forth in §§ 205.22, 205.24, 205.26 and 205.27, is permitted for use in a certified organic farming or handling operation in accordance with the Act and the regulations in part 205.

(b) Any other non-prohibited substance or ingredient may be used in a certified organic farming or handling operation if used in accordance with the Act and all other applicable provisions of part 205. These substances or ingredients are:

(1) A non-synthetic substance that is not included on the National List as a prohibited non-synthetic substance in either § 205.23 or § 205.25;

(2) A synthetic substance or device that does not function as an active ingredient or substance in a system of organic farming and handling, or as an active ingredient in a processed product; and

(3) A formulated product containing inert ingredients (substances) that is used in a certified organic farming operation, *Provided, That* the formulated product does not contain:

(i) Any active ingredient prohibited under § 205.21; and

(ii) Any synthetic inert ingredient classified by EPA as an inert of toxicological concern.

§ 205.21 General rules for categories of substances and ingredients prohibited for use in organic farming and handling.

The following synthetic and non-synthetic substances and ingredients are prohibited for use in a certified organic farming or handling operation:

(a) An active synthetic substance that is not included on the National List as an allowed synthetic substance in either § 205.22 or § 205.24, including any synthetic carbon-based substance that functions through a cytotoxic mode of action;

(b) A non-agricultural substance, used as an ingredient in or on a processed product labeled as organic or made with certain organic ingredients, that is not included on the National List as a non-agricultural substance in § 205.26;

(c) A non-synthetic substance that is included on the National List as a prohibited non-synthetic substance, in either § 205.23 or § 205.25;

(d) A formulated product that contains any synthetic inert ingredient classified by EPA as an inert of toxicological concern; and

(e) A fertilizer or commercially blended fertilizer that contains an active synthetic substance not allowed for use in crop production as provided for in § 205.22, or that contains an active prohibited substance.

The National List of Allowed and Prohibited Substances

Crop Production Substances

§ 205.22 Active synthetic substances allowed for use in organic crop production.

The following may be used in accordance with any restrictions specified in this section and §§ 205.3 through 205.10 of subpart B:

(a) Horticultural oils may be used as insect pest smothering or suffocating agents. Horticultural oils include:

(1) Dormant oils;

(2) Suffocating oils; and

(3) Summer oils.

(b) Soaps may be used as insecticides, algicides, de-mossers, large animal repellants, and herbicides.

(c) Production aids may be used as follows:

(1) Acetic acid may be used as a pesticide;

(2) Pheromones may be used as insect mating disruptors;

(3) Vitamins may be used as growth promoters and rooting facilitators;

(4) Vitamin D3 may be used as a rodenticide;

(5) Amino acids may be used as growth promoters;

(6) Antibiotics may be used as pesticides;

(7) Magnesium sulfate may be used as a cation balancing agent;

(8) Newspaper and other recycled paper products may be used as mulch and compost feedstocks;

(9) Piperonyl butoxide may be used as a synergist;

(10) Potassium sulfate may be used as a cation balancing agent; and

(11) Boric Acid may be used as a pesticide.

(d) Toxins, derived from genetically engineered bacteria (or other microorganisms) that are not released live into the agroecosystem, may be used as pesticides.

(e) Copper and sulfur compounds as follows may be used as pesticides:

(1) Bordeaux mixes;

(2) Copper, including fixed coppers exempt from tolerance by EPA: hydroxides, basic sulfates, oxychlorides, and oxides;

(3) Lime sulfur, including calcium polysulphide, and

(4) Sulfur dioxide.

(f) Micronutrient minerals as follows may be used:

(1) Chelated micronutrients;

(2) Soluble boron products; and

(3) Sulfates, carbonates, oxides, or silicates of zinc, iron, manganese, molybdenum, selenium, cobalt or copper.

(g) Minerals as follows may be used as defoliants in organic fiber production:

(1) Calcium chloride;

(2) Magnesium chloride;

(3) Sodium chlorate; and

(4) Sodium chloride.

§ 205.23 Non-synthetic substances prohibited for use in organic crop production.

None.

Livestock Production Substances

§ 205.24 Active synthetic substances allowed for use in organic livestock production.

Any substance in the following categories may be used in organic livestock production in accordance with any restrictions specified in this section and §§ 205.3, and 205.12 through 205.15 of subpart B:

(a) Trace minerals;

(b) Nutrients and dietary supplements;

(c) Feed additives, *Provided, That* they are also included in § 205.26;

(d) Animal drugs and other animal health care substances;

(e) Vaccines and biologics; and

(f) Pest control substances, *Provided, That* they are also included in § 205.22.

§ 205.25 Non-synthetic substances prohibited for use in organic livestock production.

None.

Processed Product Substances

§ 205.26 Non-agricultural (non-organic) substances allowed as ingredients in or on processed products labeled as organic or made with certain organic ingredients.

The following non-agricultural ingredients may be used only in accordance with any restrictions specified in §§ 205.3, and 205.16 through 205.19 of subpart B:

Non-agricultural Substances Allowed as Ingredients in or on Processed Products Labeled as Organic or Made With Certain Organic Ingredients

Agar-agar
Alginates
Aliginic Acid
Aluminum-free baking powder
Ammonium bicarbonate

Ammonium carbonate
Ascorbic acid
Beeswax
Calcium carbonate
Calcium chloride
Calcium citrate
Calcium sulfate
Calcium hydroxide
Calcium phosphates (mono, di and tribasic)
Candelilla wax
Carbon dioxide
Carnauba wax
Carrageenan
Chymosin
Citric acid
Colors, non-synthetic
Cultures, dairy, non-synthetic
Dipotassium phosphate
Enzymes, non-synthetic
Glycerin
Gums
Lactic acid
Lecithin, unbleached or bleached
Magnesium chloride
Magnesium carbonate
Magnesium stearate
Magnesium sulfate
Mono and diglycerides
Natural flavoring agents, non-synthetic
Nutrient supplements
Pectin, low-methoxy and native (high-methoxy)
Potassium acid tartrate
Potassium carbonate
Potassium chloride
Potassium citrate
Potassium phosphate
Silicon dioxide
Sodium bicarbonate
Sodium carbonate
Sodium citrate
Sodium phosphates (mono, di and tribasic)
Sulfur dioxide (not to exceed 100 ppm when used in wine)
Tartaric acid
Tocopherols
Whey and its fractions
Wood rosin
Xanthan gum
Yeast autolysate, non-synthetic
Yeast, bakers, non-synthetic
Yeast, brewers, non-synthetic
Yeast, nutritional, non-synthetic
Yeast, smoked, non-synthetic

§ 205.27 Non-organically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with certain organic ingredients.

Any non-organically produced agricultural product may be used in accordance with any restrictions specified in § 205.16.

§ 205.28 Amending the National List.

(a) Purpose of petition process. Any person may petition the NOSB for the purpose of having a substance evaluated for recommendation to the Secretary for inclusion on the National List.

(b) A petition may be submitted to: Program Manager, USDA/AMS/TM/NOP, Room 2945 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

(c) Categories of substances. A substance may be added to the National List only in the following categories:

(1) Active synthetic substances allowed for use in organic crop or livestock production;

(2) Non-synthetic substances prohibited for use in organic crop or livestock production; or

(3) Non-agricultural substances allowed for use as ingredients in or on processed products labeled as organic or made with certain organic ingredients.

(d) Content of the petition. A person should include in the petition as much of the following information as is available to the person for each specific substance:

(1) Background information about the following:

(i) Substance name (generic or common name);

(ii) Manufacturer's name, address, and telephone number, if different from the petitioner's;

(iii) Area of intended or current use (crops, livestock, or handling);

(iv) Current or intended use of the substance;

(v) Sources from which the substance is derived;

(vi) Description of the manufacturing or processing procedures for the substance; and

(vii) Summary of previous reviews of the substance by State or private organic certification programs or other organizations that review materials.

(2) Regulatory Information (as applicable) including, but not limited to:

(i) EPA registration (include the registration number);

(ii) Food and Drug Administration registration;

(iii) State regulatory authority registration (include State registration number);

(iv) Chemical Abstract Service (CAS) number or other product number; and

(v) Labels of products that contain the petitioned substance.

(3) Research, characteristics, and safety information:

(i) Detailed findings relevant to the following characteristics of the substance:

(A) Detrimental chemical interactions with other materials used in organic production;

(B) Toxicity and persistence in the environment;

(C) Environmental contamination resulting from its use and manufacture;

(D) Effects on human health; and

(E) Effects on soil organisms, crops and livestock;

(ii) Bibliographies of pertinent research on the substance;

(iii) Material Safety Data Sheet (MSDS);

(iv) Information on the substance obtained from the National Institute of Environmental Health Studies; and

(v) Information on whether all or part of any submission is believed to be confidential commercial information, and if so, what parts, and the basis for the belief that it is confidential commercial information and should not be released to the public.

(4) Statements of justification for placement on the National List, as follows:

(i) If petitioning for approval of an active synthetic substance or non-agricultural ingredient, state the reasons why the substance is necessary to the production or handling of the organic product;

(ii) If petitioning for prohibition of a non-synthetic substance, state the reasons why the use of the non-synthetic substance should not be permitted in organic farming or handling; or

(iii) Describe alternative substances or alternative cultural methods that could be utilized in place of the substance, summarize effects on the environment, human health, and the agroecosystem, and describe its compatibility with a system of sustainable agriculture.

(e) The Secretary or the NOSB may request additional information from the petitioner following receipt of the initial petition if necessary to evaluate the substance.

§§ 205.29 through 205.99 [Reserved]

Subpart C—Labels, Labeling, and Market Information

§ 205.100 Agricultural products in packages sold, labeled, or represented as organic.

(a) Agricultural products in packages described in § 205.16(a) of subpart B that are sold, labeled, or represented as organic may use the terms as described below:

(1) The term organic on the principal display panel to modify the name of the product;

(2) The term organic in the ingredients statement to modify the name of an ingredient organically produced and handled in accordance with the Act and the regulations in this part;

(3) On the principal display panel, the following terms or marks:

(i) The USDA seal described in § 205.107; and

(ii) A seal representing a State organic program approved by the Secretary, as

provided for in § 205.402 of subpart F; and

(4) On the information panel, the following terms or marks:

(i) The term organic used to modify the name of the product;

(ii) The USDA seal described in § 205.107;

(iii) A seal representing a State organic program approved by the Secretary, as provided for in § 205.402 of subpart F; and

(iv) A certifying agent's name, seal, logo, or other identification which represents that the farm, wild crop harvesting, or handling operation that produced or handled the finished product is a certified operation.

(5) On other panels of the label, labeling and market information: Any term or mark identified in paragraph (a)(4) of this section may be used on package panels of labels not covered by paragraph (a)(3) of this section as well as on any labeling or market information.

(b) [Reserved]

§ 205.101 Agricultural products in packages sold, labeled, or represented as made with certain organic ingredients.

(a) Agricultural products in packages described in § 205.16(b) of subpart B that are sold, labeled, or represented as made with certain organic ingredients shall use the terms and marks as described below:

(1) The statement made with certain organic ingredients on the principal display panel; and

(2) The term organic in an ingredients statement to modify the name of an ingredient organically produced and handled in accordance with the Act and the regulations in this part.

(b) Agricultural products in packages described in § 205.16(b) of subpart B that are sold, labeled or represented as made with certain organic ingredients may use the terms and marks as described below:

(1) On the information panel, the following terms or marks:

(i) The statement made with certain organic ingredients; and

(ii) A certifying agent's name, seal, logo, or other identification which represents that the farm, wild crop harvesting, or handling operation that produced or handled the finished product is a certified operation.

(2) On other panels of the label, labeling and market information: Any term or mark identified in paragraph (b)(1) of this section may be used on package panels of labels not covered by paragraphs (a) or (b)(1) of this section, as well as on labeling or market information.

§ 205.102 Multi-ingredient agricultural products that only represent the organic nature of such ingredients in the ingredients statement.

Any agricultural product composed of more than one ingredient, no matter the percentage organic ingredients it contains, that only represents in an ingredients statement the organic nature of its ingredients, may use the term organic in the ingredients statement of a label, labeling, or market information, to modify the name of an ingredient that is organically produced and handled in accordance with the Act and the regulations in this part, without the finished product having to comply with the certification requirements set forth in subpart D of this part, *Provided, That* the record keeping requirements of § 205.202(c) of subpart D are satisfied, and *Provided, Further That* the product itself is not sold, labeled, or represented as organic or made with certain organic ingredients.

§ 205.103 Use of terms or statements that directly or indirectly imply that a product is organically produced and handled.

Any label, labeling or market information that implies directly or indirectly that a product, including an ingredient, is organically produced and handled may be used only for an agricultural product, including an ingredient, that has been produced and handled in accordance with the Act and the regulations in this part.

§ 205.104 Informational statements prohibited.

The use of the following informational statements on the principal display panel and the ingredients statement of products sold, labeled, or represented as organic or made with certain organic ingredients, or products described in § 205.102 that contain organic ingredients, is prohibited:

(a) The phrase one hundred percent, stated in letters, numbers or symbols, used as part of any phrase or sentence that includes the term organic;

(b) A statement of the percentage of organic ingredients contained in a product; and

(c) The phrase organic when available or a term of similar meaning or intent.

§ 205.105 Agricultural products in a form other than packages that are sold, labeled or represented as organic or made with certain organic ingredients.

(a) Agricultural products described in § 205.16(a) of subpart B, in a form other than packages, that are sold or represented as organic at the time of retail sale may use the terms and marks as described below:

(1) The term organic on the retail display label, labeling or display container to modify the name of the product;

(2) The term organic in the ingredients statement to modify the name of an ingredient organically produced and handled in accordance with the Act and the regulations in this part; and

(3) A clearly recognizable organic identification mark(s) or term(s), selected from the following, located in plain view on the shipping container:

(i) The term organic used to modify the name of the product;

(ii) The USDA seal as described in § 205.107;

(iii) A seal representing a State organic program approved by the Secretary as provided for in § 205.402 of subpart F; or

(iv) The certifying agent's name, seal, logo, or other identification which represents that the farm, wild crop harvesting, or handling operation that produced or handled the finished product is a certified operation.

(b) Agricultural products described in § 205.16(b) of subpart B, in a form other than packages, that are sold, labeled, or represented as made with certain organic ingredients shall use the terms and marks as described below:

(1) The statement made with certain organic ingredients on the retail display label, labeling or display container;

(2) The term organic in the ingredients statement to modify the name of an ingredient organically produced and handled in accordance with the Act and the regulations in this part; and

(3) The statement made with certain organic ingredients, which may be accompanied by the certifying agent's name, seal, logo, or other identification, located in plain view on the shipping container.

§ 205.106 Agricultural products produced on an exempt farm or handling operation.

An agricultural product produced or processed on a farm, wild crop harvesting, or handling operation that annually sells no more than $5,000 in value of agricultural products and which has not been certified, shall not:

(a) Display the USDA seal, or any certifying agent's name, seal, logo, or other identification which represents that the farm, wild crop harvesting, or handling operation that produced or handled the product is a certified operation; or

(b) Be identified as an organic ingredient in a product produced or processed on a farm or handling operation that annually sells more than $5,000 in value of agricultural products.

§ 205.107 USDA seal.

(a) The USDA seal described in paragraphs (b) and (c) of this section shall be used in accordance with the provisions of this subpart and shall be used only on agricultural products (raw or processed) described in § 205.16(a) of subpart B that are sold, labeled, or represented as organic and which are produced and handled on certified operations.

(b) The USDA seal used on a label, labeling, or market information of an agricultural product shall replicate the form and design of the example in figure 1.



Figure 1

(c) Except as otherwise authorized by the Secretary, the USDA seal shall be:

(1) Printed on a light background with the wording and design in a dark color or on a dark background with the wording in a light color, *Provided, That* such design is legible and conspicuous on the material upon which it is printed; or

(2) Printed in a standard four color label as follows: concentric circles with arrows and diagonal on a light background with black letters; interior globe cyan blue with green continents; interior triangular sections green; exterior triangle (border) yellow; and both interior and exterior of triangular border edged with black.

§§ 205.108 through 205.200 [Reserved]

Subpart D—Certification

§ 205.201 What has to be certified.

(a) Each farm, wild crop harvesting operation, or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are, or that are intended to be, sold, labeled or represented as organic or made with certain organic ingredients must be certified according to the provisions of subpart D of this part, and must meet all other applicable requirements of this part, *Provided, That* any handling operation that provides handling services to fewer than three certified entities that produce or handle agricultural products that are, or that are intended to be, sold, labeled or represented as organic or made with certain organic ingredients, would not be required to be separately certified apart from the operations for which it provides such services, and *Provided, Further That* none of the operations set forth in paragraph (a) of this section must be certified if exempt or excluded in § 205.202 of this subpart.

(b) A handling operation, or portion of a handling operation, that handles only agricultural products that are, or that are intended to be, sold, labeled or represented as made with certain organic ingredients is exempt from the requirement to select a commercially available non-synthetic substance in preference to an allowed synthetic substance, as set forth in § 205.3(b)(2) of subpart B.

§ 205.202 Exemptions and exclusions from certification.

(a) *Exemptions.* (1) A farm, wild crop harvesting, or handling operation that sells agricultural products as organic or made with certain organic ingredients, but which annually sells no more than $5,000 in value of agricultural products, is exempt from complying with the requirements in this part, except for the applicable recordkeeping provisions delineated in paragraph (c)(1) of this section and the applicable labeling provisions set forth in subpart C of this part.

(2) A retail operation, or portion of a retail operation, that only handles organically produced agricultural products but does not process them is exempt from the requirements in this part.

(3) A handling operation, or portion of a handling operation, that handles only agricultural products that contain less than 50 percent organic ingredients by total weight of the finished product, excluding water and salt, is exempt from the requirements in this part, except:

(i) The provisions for prevention of commingling and contact of organic products by prohibited substances set forth in § 205.19 of subpart B with respect to any organically produced ingredients used in an agricultural product; and

(ii) The applicable provisions for labeling set forth in subpart C of this part.

(b) *Exclusions.* (1) A handling operation, or portion of a handling operation, is excluded from the requirements of this part, except for the requirements for the prevention of commingling and contact with prohibited substances as set forth in § 205.19 of subpart B with respect to any organically produced products, if such operation, or portion of the operation, sells only agricultural products labeled as organic or made with certain organic ingredients that:

(i) Are packaged or otherwise enclosed in a container prior to being received or acquired by the operation; and

(ii) Remain in the same package or container and are not otherwise processed while in the control of the handling operation.

(2) A restaurant or other similar food-service type establishment that processes ready-to-eat food from organic agricultural products and which does not enclose the food in a package or container labeled or represented to the consumer as organic or as made with certain organic ingredients is excluded from the requirements of this part.

(3) A retail operation, or portion of a retail operation, that processes only agricultural products that are previously labeled as organic or made with certain organic ingredients before receipt or acquisition by the retail operation, is excluded from the requirements in this part, *Provided, That* the operation meets both of the following requirements:

(i) The agricultural product is processed by the retail operation, or portion of the retail operation, in the course of normal retail business practice solely for the purpose of offering the product to a consumer; and

(ii) The agricultural product offered to the consumer:

(A) Has not been created by the retail operation by combining two or more ingredients into a single product that is then labeled or represented by the retail operation as organic or as made with certain organic ingredients; and

(B) Has not been repackaged by the retail operation so as to provide a new label or labeling for the repackaged product which represents it as organic or made with certain organic ingredients.

(c) *Records to be maintained by exempt or excluded operations.* Any operation that is exempt or excluded from certification, as specified in paragraphs (a) or (b) of this section, shall maintain records as follows and shall allow representatives of the Secretary and the applicable governing State official access to these records to determine compliance with the applicable regulations set forth in this part:

(1) *Small farm or handling operations.* An operation that is exempt from certification pursuant to paragraph (a)(1) of this section shall maintain records for no less than one calendar year to substantiate that the operation did not

sell agricultural products in excess of $5,000 in value during the previous calendar year;

(2) *Handling operations exempt or excluded from certification.* A handling operation that is exempt from certification pursuant to (a)(3) of this section, or excluded from certification pursuant to (b)(1) of this section, shall maintain records as follows:

(i) Documentation as sufficient to verify the source and quantity of organic products received and that all organic products and ingredients have been handled in accordance with § 205.19 to prevent commingling and contact with prohibited substances shall be maintained for no less than one year from the date of receipt by the operation of a product, including ingredients, labeled as organic or made with certain organic ingredients; and

(ii) Documentation as sufficient to verify the destination and quantity of a product shipped from the operation shall be maintained for no less than one year from the date of shipping a product labeled as organic or as made with certain organic ingredients, or which contains any organic ingredients.

§ 205.203 General requirements for certification.

In order to receive and maintain organic certification under the Act and the regulations in this part, a farm, wild crop harvesting or handling operation shall:

(a) Comply with the applicable organic production and handling requirements of the Act and the regulations in this part;

(b) Establish, implement, and update annually an organic plan that is submitted to an accredited certifying agent as provided for in § 205.205;

(c) Permit an annual on-site inspection by the certifying agent, as provided for in § 205.208 through 205.211;

(d) Maintain all records applicable to the organic operation for a period of not less than five years from the date of creation of the record, and allow authorized representatives of the Secretary, the applicable governing State official, and the certifying agent access to such records to determine compliance with the Act and the regulations in this part, as provided for in § 205.216;

(e) Submit the applicable fees to the certifying agent, as provided for in § 205.422 of subpart F; and

(f) Immediately notify the certifying agent concerning:

(1) Any application of a prohibited substance to any field, farm unit, site, facility, livestock, or product that is part of a certified operation; and

(2) Any change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part

§ 205.204 Applying for certification.

A person seeking certification of a farm, wild crop harvesting, or handling operation under this subpart shall submit a request for certification to the certifying agent. The request shall include the following information:

(a) An organic plan, as required in § 205.205;

(b) A statement of compliance, as required in § 205.206;

(c) The applicant's business name, address, phone and fax numbers, and, in addition, the names of personnel responsible for maintaining compliance with the Act and the regulations in this part; and

(d) The name(s) of any organic certifying agent(s) to which application has previously been made, the year(s) of application, and the outcome of the application(s) submission.

§ 205.205 Organic plan.

A certification applicant shall submit to the certifying agent an organic plan that identifies, as applicable to its operation:

(a) *General.* Practices previously implemented, and intended to be implemented and maintained, to establish a system of organic farming and handling that complies with the applicable crop, livestock, wild crop harvesting, and handling requirements, provided in §§ 205.3, 205.5 through 205.9, and 205.11 through 205.28 of subpart B.

(b) *Farm operations.* The following information shall be submitted concerning a farm operation:

(1) The total acreage of the operation, the types of crops grown and livestock raised, and any on-farm processing activities;

(2) Map(s) of each field and farm parcel for which certification is requested, showing, for each parcel: A list of crops intended to be planted and/or managed; identification name or number; size; location; boundaries; any significant features that may assist the certifying agent to identify the field or parcel; identification of any adjoining land to which a prohibited substance may be applied; and the location of any facility used for livestock housing, storage, or post-harvest handling;

(3) A history of the crops grown and production inputs used for each field or farm parcel for which certification is requested, which covers the three year period immediately preceding the date of the request for certification;

(4) A list of each type of agricultural product produced on the farm that is intended to be sold, labeled or represented as organic or made with certain organic ingredients;

(5) A list of each substance intended to be used as a production input, indicating: its source, anticipated quantity to be used, and location(s) where it will be used;

(6) A list of any seeds or planting stock intended to be purchased, indicating: its source, approximate quantity to be used and whether it is treated, untreated, or organically produced;

(7) A list of all livestock to be maintained by the operation and to be purchased in the certification year for the production of agricultural products to be sold, labeled or represented as organic, or as made with certain organic ingredients, indicating: their source, the estimated number to be maintained and purchased, their intended use (e.g. slaughter stock, egg production), and whether the livestock originate from a certified organic livestock operation;

(8) A list of all livestock feed and feed supplements intended to be purchased, indicating: its source, estimated amount to be purchased, and what, if any, portion of the feed to be purchased will not be organically produced;

(9) The name of a veterinarian from whom animal drugs or a prescription for animal drugs are obtained, if applicable, and a list of any animal drugs that may be used, including their sources, estimated amount of each animal drug to be used, and the types of livestock (such as hogs, fish, or chickens) to which such drugs are to be administered; and

(10) A list of all post-harvest handling or processing methods and facilities to be used by the applicant.

(c) *Split operations.* The following information shall be submitted, as applicable, concerning a farm or wild crop harvesting operation that produces both organic and non-organic products:

(1) A list and anticipated quantities of livestock and any other agricultural product intended to be grown, raised or harvested both organically and non-organically;

(2) A list, indicating expected quantity and location, of each substance or practice prohibited for organic production under the Act and the regulations in this part that may be used on a non-certified portion of the farm; and

(3) A list of the measures used and that will be used to prevent commingling of organic and non-organic products, and contact of organic field units, storage areas and packaging to be used for organic products, and organic products, including livestock, with prohibited substances.

(d) *Wild crop harvesting operations.* The following information shall be submitted concerning a wild crop harvesting operation:

(1) A map(s) of each area from which wild crops are designated to be harvested in the certification year;

(2) Information about the ownership of, and evidence of permission to harvest from, the area from which wild crops are designated to be harvested;

(3) A history of each designated area so as to demonstrate that no prohibited substance has been applied within three years prior to the initial harvest of a wild crop to be sold, labeled or represented as organically produced;

(4) A list of each species of plant(s) to be harvested, including: its botanical name(s); the part of the plant to be harvested (e.g., roots, flowers, fruits); the quantity expected to be harvested in the certification year; dates of the harvest season; and any available information on the impact of the intended harvest on the environment and on the growth and production of the wild crop;

(5) A list of each type of wild product to be sold or represented as an organic product, indicating the anticipated quantity of each type; and

(6) A list of all post-harvest handling or processing methods and facilities to be used by the applicant.

(e) *Handling operations.* The following information shall be submitted concerning a handling operation:

(1) A brief, general description of the type of handling operation and the processing, manufacturing, or other handling procedures used and intended to be used;

(2) A list of the structural pest management methods used or intended to be used;

(3) A list, including the quantity, of each product intended to be handled and sold or represented as organic, and as made with certain organic ingredients;

(4) A list of each non-organically produced product or type of product, if any, intended to be handled or sold;

(5) The measures that will be used to prevent the commingling of organic and non-organic products and ingredients and the contact of storage areas and packaging to be used for organic products, and organic products, with prohibited substances; and

(6) A list of each ingredient, incidental additive, and type of packaging material intended to be used as a production input in the handling of organic products specifying for each item listed, as applicable:

(i) Whether it is an organic agricultural product, a non-organic agricultural product, or a non-agricultural ingredient;

(ii) The estimated quantity to be used;

(iii) The source or manufacturer;

(iv) The country of origin for each imported organic agricultural product or ingredient; and

(v) The source of water used as an ingredient in any organic product, specifying whether it meets the Safe Drinking Water Act requirements (42 U.S.C. 300(f) *et seq.*).

§ 205.206 Statement of compliance.

A person seeking certification of a farm, wild crop harvesting or handling operation shall submit to the certifying agent a statement agreeing to comply with the Act and the regulations of this part, including the requirements for receiving and maintaining certification delineated in § 205.203 of this subpart.

§ 205.207 Preliminary evaluation of an application for certification.

A certifying agent shall, with respect to any applicant for certification:

(a) Make a preliminary evaluation of the operation's compliance and ability to comply with the applicable requirements of subpart B of this part;

(b) Verify that an applicant who previously applied to another certifying agent and received a notification of non-compliance, pursuant to § 205.215(a) of this subpart, has submitted documentation to support the correction of any deficiencies identified in such notification, as required in § 205.215(b) of this subpart; and

(c) Arrange to conduct an on-site inspection of the operation if the preliminary evaluation reveals that the farm, wild crop harvesting or handling operation may be in compliance with the applicable requirements of subpart B of this part.

§ 205.208 Arranging for inspections.

(a) A certifying agent shall arrange to conduct an initial on-site inspection of each farm, facility, and site that is included in an operation for which certification is requested, and an on-site inspection of each certified operation annually thereafter, for the purpose of determining whether to approve the request for certification or determining whether the certification of the operation should continue.

(b) The initial on-site inspection shall be conducted within a reasonable time following a favorable preliminary evaluation of an application for certification in accordance with § 205.207.

(c) The on-site inspection shall be scheduled at such time that:

(1) Land, facilities, and activities that demonstrate the operation's compliance with or capability to comply with the applicable provisions of subpart B of this part may be observed; and

(2) The applicant or an authorized representative of the applicant who is knowledgeable about the operation will be present during the inspection.

§ 205.209 [Reserved].

§ 205.210 Verification of information.

The inspection of an operation shall be sufficient to verify the operation's compliance, or ability to comply, with the Act and the regulations in this part, including verification that the information, including the organic plan, provided in accordance with §§ 205.204 or 205.217, and § 205.205, accurately reflects the practices used or to be used by the applicant for certification or by the certified operation and, in the case of an on-site inspection to evaluate continuation of certification, that the provisions of the organic plan are being implemented.

§ 205.211 Post-inspection conference.

The inspector shall conduct a post-inspection conference with an authorized representative of the inspected operation, and discuss observations made by the inspector regarding the compliance, or ability of the operation to comply, with the Act and the regulations in this part.

§ 205.212 Reporting to the certifying agent.

The certifying agent shall require that the inspector prepare and submit to the certifying agent, within thirty days of completing an inspection, a written report that describes the inspector's observations and assessments of the inspected operation's compliance, or ability to comply, with the Act and the regulations in this part.

§ 205.213 Additional inspections.

(a) In addition to the annual on-site inspection, required in § 205.208(a), a certifying agent may conduct an inspection of any farm, facility, or site used by a certified operation or an applicant for certification when necessary to determine compliance with the Act and the regulations in this part.

(b) The Secretary may require that additional inspections be performed for the purpose of determining compliance

with the Act and the regulations in this part.

§ 205.214 Approval of certification.

(a) Within a reasonable time after completion of the initial on-site inspection, a certifying agent shall review the inspection report, together with the application-materials submitted pursuant to §§ 205.204 through 205.206 or § 205.217, as applicable, and shall request the applicant for certification to submit any additional information and documentation needed to determine if the certification applicant is complying, or is able to comply, with the Act and the regulations in this part.

(b) Following the receipt of any additional information and documentation submitted in accordance with paragraph (a) of this section, the certifying agent shall approve the application for certification upon a determination that:

(1) The practices and substances used or intended to be used by the applicant for certification are consistent with a system of organic farming and handling, as set forth in § 205.2 of subpart A, and comply with the applicable organic production and handling requirements, as set forth in §§ 205.3, 205.5 through 205.9, and §§ 205.11 through 205.28 of subpart B;

(2) The applicant has satisfied the general requirements for certification set forth in § 205.203;

(3) The organic plan satisfies the applicable requirements of the Act and the regulations in subpart B of this part; and

(4) The records and recordkeeping system maintained by the applicant satisfy the applicable requirements of § 205.216.

(c) Upon determining, pursuant to paragraph (b) of this section, to approve an application for certification, a certifying agent shall provide a written notification to the certification applicant's place of business, indicating in such notification restrictions or requirements, if any, imposed as a condition of certification.

(d) A notice of approval of certification sent to a certification applicant pursuant to paragraph (c) of this section shall include a certificate that states:

(1) The name of the certified operation;

(2) The effective date of the certification; and

(3) The category(ies), type(s) of products, and crop years, if applicable, covered by the certification.

§ 205.215 Denial of certification.

(a) If the certifying agent has reason to believe, based on a review of the information specified in § 205.214(a), that an applicant for certification is not able to comply, or is not in compliance, with the requirements of the Act and the regulations in this part, the certifying agent shall provide a written notification of non-compliance to the applicant in accordance with § 205.218(a) of this part.

(b) Following the correction of deficiencies identified in the notification issued in accordance with paragraph (a) of this section, the applicant may submit a new application for certification to any accredited certifying agent. If a new application is submitted to a certifying agent other than the agent who issued the notification of non-compliance, the certification applicant shall simultaneously inform the certifying agent who issued the notification of non-compliance that a new application has been submitted and shall identify the new certifying agent to whom it was submitted. The new application shall include documentation of actions taken by the applicant to correct the deficiencies delineated in the notification of non-compliance.

(c) If a certification applicant who receives a notification pursuant to paragraph (a) of this section does not correct the deficiencies or does not notify the certifying agent that it has submitted a new application, as provided for in paragraph (b) of this section, within the time specified in the notice of non-compliance, the certifying agent shall submit to the Administrator a notice of its recommendation to deny certification to the applicant. Upon receipt of a notice of a recommendation to deny certification, the Administrator may institute proceedings to deny certification.

§ 205.216 Recordkeeping.

(a) A certified operation shall maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be, sold, labeled or represented as organic or made with certain organic ingredients for a period of five years sufficient to demonstrate compliance with the Act and regulations in the part, and shall make such records available to authorized representatives of the Secretary, the applicable governing State official, and the certifying agent.

(b) The records that shall be maintained by the certified operation in accordance with paragraph (a) of this section shall include, but are not limited to:

(1) A list of all substances applied to fields and land that are part of the certified operation for a period of no less than three years preceding the intended or actual time of harvest of an organic crop from such fields or land;

(2) The name and address of any person, including the operator of the certified operation and employees of the certified operation, who applies and who has applied any substance to any part of the farm and any livestock or other agricultural product, including the name of the substance, and the date(s), location(s), rate(s) and method(s) of application;

(3) For each animal (or livestock management unit, such as a poultry flock or bee colony) that is, or whose products are, intended to be sold, labeled or represented as organic livestock or organic livestock products in accordance with the livestock production standards set forth in §§ 205.12 through 205.15 of subpart B:

(i) The source of the animal or livestock management unit and the date it entered the certified operation;

(ii) The amounts and sources of all animal drugs administered;

(iii) All feeds and feed supplements fed; and

(iv) The location of the field, farm unit, or facility where it is maintained, as applicable.

(4) Any information submitted to the certifying agent as part of the application for certification or as part of continuation of certification in accordance with § 205.204 or § 205.217 of this subpart, respectively; and

(5) Records sufficient to show the quantities, source of, production and handling methods used for, transfer of ownership of, and transportation of, any agricultural product, including livestock, sold, labeled or represented as organic or as made with certain organic ingredients, that is received by or shipped from the certified operation, sufficient to establish an audit trail.

(c) A farm, wild crop harvesting, handling, or other operation that is exempt or excluded from certification under §§ 205.202(a) or (b) shall maintain records as provided for in § 205.202(c).

§ 205.217 Continuation of certification.

(a) A certified operation shall annually submit the following information, as applicable, to the certifying agent:

(1) Any additions and changes to the information about the operation submitted in the previous year;

(2) Any amendments to the organic plan, including a description of any

activities undertaken in the previous year, and intended to be undertaken in the coming year, to implement the provisions of the organic plan;

(3) A statement that the certified operation will remain in compliance with the Act and the regulations in this part; and

(4) Any other information requested by the certifying agent, in accordance with § 205.214(a) of this subpart.

(b) Following the receipt of the information specified in paragraph (a), the certifying agent shall arrange and conduct an on-site inspection of the certified operation, pursuant to §§ 205.208 through 205.211.

(c) If the certifying agent has reason to believe, based on the on-site inspection and a review of the information specified in § 205.214(a), that a certified operation is not complying with the requirements of the Act and the regulations in this part, the certifying agent shall provide a written notification of non-compliance to the operation in accordance with § 205.218(a) of this subpart.

§ 205.218 Notification of non-compliance with certification requirements.

(a) A written notification of non-compliance shall be sent by certified mail to the place of business of the certification applicant or the certified operation and shall contain the following information:

(1) A description of each deficiency in compliance and each possible violation of the Act and the regulations in this part that the certifying agent has reason to believe has occurred;

(2) The evidence on which the notification is based; and

(3) The date by which the operation must correct each deficiency in compliance and each possible violation delineated in the notification, and submit documentation to the certifying agent to support such corrections.

(b) If the documentation received by the certifying agent from an operation it has certified, pursuant to paragraph (a)(3) of this section, is not adequate to demonstrate that each deficiency in compliance and each possible violation has been corrected, the certifying agent shall:

(1) Conduct an additional inspection of the certified operation, as provided for in § 205.213, if the certifying agent determines that an additional inspection is necessary to determine whether the operation is complying with, or has violated, the Act or the regulations in this part;

(2) Review the status of the certified operation to determine whether the operation or any portion of the operation has ceased to comply with, or has violated, the Act or the regulations in this part; and

(3) *Notification of determination or recommendation.* (i) If, following the review specified in paragraph (b)(2) of this section, the certifying agent determines that the operation is in compliance with the Act and the regulations in this part, the certifying agent shall notify the certified operation in writing of its determination.

(ii) If, following the review specified in paragraph (b)(2) of this section, the certifying agent has reason to believe that the certified operation or any portion of the operation is not in compliance with the Act and the regulations in this part, the certifying agent shall submit to the Administrator a notice of its recommendation to terminate the certification of the certified operation or any portion of the certified operation that the certifying agent believes to have ceased to comply with the Act and the regulations in this part.

§ 205.219 Termination of certification.

(a) A certifying agent shall follow the procedures in accordance with § 205.218 of this subpart if the certifying agent has reason to believe that a certified operation or a person responsibly connected with a farm, wild crop harvesting, or handling operation it has certified has:

(1) Made a false statement;

(2) Attempted to have a label indicating that an agricultural product is organically produced affixed to such product when such product was produced or handled in a manner that is not in accordance with the Act and the regulations in this part; or

(3) Otherwise violated the purposes of the certification program established in Subpart D of this part.

(b) Notwithstanding paragraph (a) of this section, if a certifying agent has reason to believe that a certified operation or a person responsibly connected with an operation that has been certified by the certifying agent has wilfully violated the Act and the regulations in this part, the certifying agent shall submit to the Administrator a notice of its recommendation to terminate the certification of the certified operation or any portion of the certified operation that the certifying agent believes to have ceased to comply with the Act and the regulations in this part. A notice of recommendation to terminate certification shall list the names of any persons the certifying agent believes to have violated the Act and the regulations in this part.

(c) Upon receipt by the Administrator of a notification of a recommendation to terminate the certification of an operation or any portion of an operation, submitted pursuant to paragraph (b) of this section or § 205.218(b)(3)(ii) of this subpart, as applicable, the Administrator may institute the proceedings to terminate certification.

(d) *Ineligibility and waiver.* (1) A certified farm, wild crop harvesting, or handling operation, or a person responsibly connected with such an operation, that violates the Act and the regulations in this part, as determined following the proceedings instituted pursuant to paragraph (c) of this section, shall not be eligible to receive certification for any farm, wild crop harvesting, or handling operation in which such operation or person has an interest for a period of 5 years from the occurrence of such violation.

(2) Notwithstanding paragraph (d)(1) of this section, the Secretary may waive ineligibility for certification if it is in the best interests of the certification program established under subpart D of this part.

§ 205.220 Notification of certification status.

A certifying agent shall submit to the Administrator:

(a) A copy of any notification of non-compliance, sent pursuant to § 205.218, simultaneously with its issuance to the certification applicant or the certified operation; and

(b) On a quarterly calendar basis, the name of each operation whose application for certification has been approved.

§§ 205.221 through 205.299 [Reserved]

Subpart E—Accreditation of Certifying Agents

§ 205.300 Areas of accreditation.

The Secretary shall accredit a qualified applicant in the areas of crops, livestock, wild crops, or handling, or any combination thereof, to certify a farm, wild crop harvesting operation, or handling operation as a certified organic farm, certified organic wild crop harvesting operation, or certified organic handling operation.

§ 205.301 General requirements for accreditation.

(a) A private person or governing State official accredited as a certifying agent under this subpart shall:

(1) Have sufficient expertise in organic farming and handling techniques to fully comply with and implement the terms and conditions of

the organic certification program established under the Act and the regulations in this part;

(2) Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart;

(3) Carry out the provisions of the Act and the regulations in this part, including the provisions of §§ 205.207 through 205.214 of subpart D, and § 205.430 of subpart F.

(4) Use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, to comply with and implement the organic certification program established under the Act and the regulations in subpart D of this part;

(5) Conduct an annual performance review for each inspector used by the certifying agent, and implement measures to correct any possible defects in compliance with the Act and the regulations in this part identified in each review conducted;

(6) Have an annual internal evaluation review conducted of its certification activities, and implement measures to correct any possible defects in compliance with the Act and the regulations in this part identified in each review conducted;

(7) Provide sufficient information to persons seeking certification to enable an applicant for certification to comply with the applicable requirements of the Act and the regulations in this part;

(8) Maintain records and permit access to records as follows:

(i) Maintain all records concerning its activities under the Act and the regulations in this part for a period of not less than 10 years from the date of creation of the record; and

(ii) Allow representatives of the Secretary and the applicable governing State official access to any and all records concerning the certifying agent's activities under the Act and the regulations in this part;

(9) Maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (with the exception of the Secretary or the applicable governing State official) any business related information concerning any client obtained while implementing the regulations in this part, except as provided for in § 205.304(b)(5);

(10) Prevent conflict of interest by not:

(i) Certifying an operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the operation, including the provision of consultancy services, within the 12 month period prior to the application for certification, and by not certifying an operation through the use of any employee that has or has held a commercial interest in the operation, including the provision of consultancy services, within the 12 month period prior to the application for certification;

(ii) Assigning an inspector to perform an inspection of an operation if the inspector has or has held a commercial interest in the operation, including the provision of consultancy services, within the 12 months prior to conducting the inspection;

(iii) Permitting any employee, inspector, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected; and

(iv) Providing advice concerning organic practices or techniques to any certification applicant or certified organic farm or handling operation for a fee, other than as part of the fees established under the applicable certification program established under the Act;

(11) Accept the certification decisions made by another USDA accredited certifying agent as equivalent to its own;

(12) Refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced;

(13) Charge only such fees to applicants for certification and operations it certifies that the Secretary determines are reasonable;

(14) Pay and submit fees to AMS in accordance with §§ 205.421 and 205.422(b) of subpart F of this part; and

(15) Comply with and implement such other terms and conditions deemed necessary by the Secretary.

(b) A private person or governing State official accredited as a certifying agent under this subpart may establish a seal, logo or other identifying mark to be used by farms, wild crop harvesting operations, and handling operations certified by the certifying agent to denote affiliation with the certifying agent, *Provided*, That the certifying agent:

(1) Does not require as a condition of certification by it the display of its identifying mark on any product sold, labeled or represented as organically produced; and

(2) Does not require as a condition of use of its identifying mark compliance with any farming or handling requirements other than those provided for in the Act and the regulations in this part.

(c) A private person accredited as a certifying agent shall:

(1) Hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations in this part;

(2) Furnish reasonable security, in an amount and according to such terms as the Secretary may by regulation prescribe, for the purpose of protecting the rights of farms, wild crop harvesting operations, and handling operations certified by such certifying agent under the Act and the regulations in this part; and

(3) Transfer to the Secretary, and make available to any applicable governing State official, all records or copies of records concerning the person's certification activities in the event that the certifying agent dissolves or loses its accreditation.

§ 205.302 Applying for accreditation.

(a) A private person or governing State official seeking accreditation as a certifying agent under this subpart shall submit an application for accreditation which contains the applicable information and documents set forth in §§ 205.303 through 205.305 and the fees required in § 205.421(a) of subpart F to: Program Manager, USDA–AMS–TM–NOP, Room 2945–S, P.O. Box 96456, Washington, D.C. 20090–6456.

(b) Following the receipt of the information and documents, the Administrator will determine according to the provisions set forth in § 205.306 whether the applicant for accreditation should be accredited as a certifying agent.

§ 205.303 Information to be submitted by an accreditation applicant.

A private person or governing State official seeking accreditation as a certifying agent shall submit the following information:

(a) The name, primary office location, mailing address, and contact numbers (telephone, fax, and Internet address) of the applicant; additionally, for an applicant who is a private person, the name of the person designated to control its day-to-day operations, and its taxpayer identification number;

(b) The name, office location, mailing address, and contact numbers (telephone, fax, and Internet address) for each of its organizational units, such as chapters or subsidiary offices, and the name of a contact person for each unit;

(c) Each area of operation (crops, wild crops, livestock or handling) for which accreditation is requested and the estimated numbers of each type of operation anticipated to be certified annually by the applicant;

(d) The type of entity the applicant is (e.g. State government agricultural office, for-profit business, not-for-profit membership association); and, in addition, for:

(1) A governing State official, a copy of the official's authority to conduct certification activities under the Act and the regulations in this part; and

(2) A private person, documentation of its entity's status and organizational purpose, such as articles of incorporation and by-laws, ownership or membership provisions, and its date of establishment; and

(e) A list of each State in which the applicant currently certifies farms and handling operations, and, in addition, a list of each State in which the applicant intends to certify farms or handling operations.

§ 205.304 Evidence of expertise and ability to be submitted by an accreditation applicant.

A private person or governing State official seeking accreditation as a certifying agent shall submit the following documents and information to demonstrate its expertise in organic farming and handling techniques, its ability to fully comply with and implement the organic certification program established in §§ 205.201 through 205.220 of subpart D of this part, and its ability to comply with the requirements for accreditation set forth in § 205.301 of this subpart:

(a) *Personnel.* (1) A description of the applicant's policies and procedures for training, evaluating and supervising personnel;

(2) The name and functions of all personnel intended to be used in the certification operation, including administrative staff, certification inspectors, members of any certification review and internal evaluation committees, and all parties responsibly connected to the certification operation;

(3) A description of the qualifications, including past experience, training, and education in agriculture, including organic farming and handling, for:

(i) Each inspector intended to be used by the applicant; and

(ii) Each person designated or to be designated by the applicant to review or evaluate applications for certification; and

(4) A description of any training that the applicant has provided or intends to provide to personnel to ensure that they can comply with and implement the requirements of the Act and the regulations in this part.

(b) *Administrative policies and procedures.* (1) A description of the procedure to be used to evaluate certification applicants, make certification decisions and issue certification certificates;

(2) A description of the procedures to be used for reviewing compliance of certified farm, wild crop harvesting, and handling operations with the Act and the regulations in this part and the reporting of violations of the Act and the regulations in this part to the Administrator;

(3) A description of the procedures to be used for complying with the recordkeeping requirements set forth in § 205.301(a)(8);

(4) A description of the procedures to be used for maintaining the confidentiality of any business related information, as set forth in § 205.301(a)(9) of this subpart;

(5) A description of the procedures to be used for making the following information available to any member of the public upon request:

(i) A list of producers and handlers whose operations it has certified, and the effective dates of the certifications, during the ten year period preceding the receipt of the request from the public;

(ii) The organic agricultural products produced by each certified operation;

(iii) The results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the ten year period preceding the request from the public; and

(iv) Other non-confidential business information as permitted by the producer or handler and approved by the Secretary.

(c) *Financial policies and procedures.* A description of the applicant's policies and procedures for the collection and disbursement of funds, and documents that identify anticipated sources of income, including all fees to be collected from producers and handlers in accordance with § 205.301(a)(13) of this subpart and § 205.422(a) of subpart F.

(d) *Conflict of interest.* (1) A description of procedures intended to be implemented to prevent the occurrence of conflicts of interest, as delineated in § 205.301(a)(10); and

(2) For each person identified in § 205.304(a)(2), the identification of any food and agriculture-related business interests, including business interests of immediate family members, that may cause a conflict of interest.

(e) *Current certification activities.* An applicant who currently certifies farms, wild crop harvesting, or handling operations may additionally submit:

(1) A list of all farms, wild crop harvesting, and handling operations currently certified by the applicant;

(2) Copies of the inspection reports and certification evaluation documents for farms, wild crop harvesting, or handling operations certified by the applicant during the previous year; and

(3) The results of an accreditation process, if any, conducted of the applicant's operation by an accrediting body during the previous year for the purpose of evaluating its certification activities; and

(f) *Other information.* Any other information the applicant believes may support the Secretary's evaluation of the applicant's expertise and ability.

§ 205.305 Statement of agreement to be submitted by an accreditation applicant.

(a) A private person or a governing State official seeking accreditation under this subpart shall submit a statement which affirms that, if granted accreditation as a certifying agent under this subpart, the applicant will:

(1) Carry out the provisions of the Act and the regulations in this part;

(2) Accept the certification decisions made by another USDA accredited certifying agent as equivalent to its own;

(3) Refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced;

(4) Conduct an annual performance review for each inspector to be used and implement measures to correct any possible defects in compliance with the Act and the regulations in this part identified in each review conducted;

(5) Have an annual internal evaluation review conducted of its certification activities and implement measures to correct any possible defects in compliance with the Act and the regulations in this part identified in each review conducted;

(6) Pay and submit fees to AMS in accordance with §§ 205.421 and 205.422(b) of subpart F of this part; and

(7) Implement and carry out any other terms and conditions determined by the Secretary to be necessary.

(b) A private person who seeks accreditation as a certifying agent under this subpart shall additionally agree to:

(1) Hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations in this part;

(2) Furnish reasonable security, in an amount and according to such terms as the Secretary may by regulation prescribe, for the purpose of protecting the rights of the farming and handling operations certified by such certifying agent under the Act and the regulations in this part; and

(3) Transfer to the Secretary and make available to the applicable governing

State official all records or copies of records concerning the person's certification activities in the event that the certifying agent dissolves or loses its accreditation.

§ 205.306 Approval of accreditation.

(a) Accreditation will be approved if:

(1) The accreditation applicant has submitted the information required by §§ 205.303 through 205.305 of this subpart;

(2) The accreditation applicant pays the required fee in accordance with § 205.421(c) of subpart F of this part; and

(3) The Administrator determines that the applicant for accreditation meets or is capable of meeting the general requirements for accreditation as stated in § 205.301 of this subpart, as applicable, as determined by a review of the information submitted in accordance with §§ 205.303 through 205.305 and, if necessary, a review of the information obtained from a site visit as provided for in § 205.309.

(b) On making a determination to approve an application for accreditation, the Administrator shall notify the applicant of approval of accreditation in writing, stating:

(1) The area(s) for which accreditation is given;

(2) The effective date of the accreditation; and

(3) For a certifying agent who is a private person, the amount and type of security that must be established to protect the rights of farm, wild crop harvesting, and handling operations certified by such certifying agent.

§ 205.307 Denial of accreditation.

(a) If the Administrator has reason to believe, based on a review of the information specified in §§ 205.303 through 205.305 of this subpart, that an applicant for accreditation is not able to comply or is not in compliance with the requirements of the Act and the regulations in this part, including § 205.301 of this subpart, the Administrator shall provide a written notification of non-compliance to the applicant in accordance with § 205.315(a) of this subpart.

(b) Following the correction of deficiencies identified in the notification issued in accordance with paragraph (a) of this section, the applicant may submit a new application for accreditation to the Administrator. The new application shall include documentation of actions taken by the applicant to correct the deficiencies delineated in the notification of non-compliance.

(c) If an accreditation applicant who receives a notification pursuant to paragraph (a) of this section does not correct the deficiencies identified within the time specified in the notice of non-compliance, the Administrator may institute proceedings to deny accreditation.

§ 205.308 Maintaining accreditation.

To maintain accreditation, an accredited certifying agent must continue to satisfy the requirements of the Act and the regulations in this part throughout the duration of its accreditation, and pay and submit fees in accordance with §§ 205.421 and 205.422(b) of Subpart F of this part.

§ 205.309 Site evaluations.

(a) An initial site evaluation of the operation of each certifying agent shall be performed for the purpose of verifying its compliance with the Act and the regulations in this part within a reasonable period of time after the date on which the agent's notice of approval of accreditation is issued, as set forth in § 205.306 of this subpart, and after the agent has conducted sufficient certification activities for the Administrator to examine its operations and evaluate its compliance with § 205.301 of this subpart.

(b) A site evaluation of an accreditation applicant or certifying agent's operation and performance may be conducted at any time to determine whether an accreditation applicant can comply with the general requirements set forth in § 205.301 of this subpart or to evaluate the certifying agent's operation and performance under the Act and the regulations in this part.

§ 205.310 [Reserved].

§ 205.311 Peer review panel.

(a) *Peer review panel(s).* (1) A peer review panel shall review the accreditation status of a certifying agent after any site evaluation performed pursuant to §§ 205.309(a) and 205.314(b) of this subpart.

(2) The Administrator may convene a peer review panel at any time for the purpose of evaluating a certifying agent's activities under the Act and the regulations in this part.

(3) The Administrator shall consider the reports received from each individual member of a peer review panel when making a determination whether to confirm the accreditation of a certifying agent, or when making a determination whether to renew the accreditation of a certifying agent.

(b) *Composition of peer review panels.* (1) The Administrator shall convene a peer review panel, which shall consist of between three and five persons selected from the established peer review panel pool, with the following membership requirements:

(i) One member shall be personnel of AMS who shall be responsible for presiding over the convened panel; and

(ii) At least two members shall not be personnel of AMS or an approved State program.

(2) Each convened peer review panel shall include no less than one member who possesses sufficient expertise, as determined by the Administrator, in the areas of accreditation delineated in the notice of approval of accreditation, pursuant to § 205.306(a) of this subpart, for each certifying agent whose operations and performance are to be reviewed.

(3) No person participating on a convened peer review panel shall be, or shall have been, associated with a certifying agent being reviewed by the panel in a manner that would constitute a known or perceived conflict of interest, as determined by the Administrator.

(c) *Duties and responsibilities of panel members.* (1) Each person on a convened peer review panel shall individually review the site evaluation report prepared by the Administrator and any other information that may be provided by the Administrator relevant to confirming or renewing the accreditation status of a certifying agent;

(2) Information about the certifying agent received as part of the review process is confidential information, and peer reviewers shall not release, copy, quote, or otherwise use material from the information received, other than in the report required to be submitted;

(3) Each peer reviewer must agree, specifically, to treat the information received for review as confidential; and

(4) Each person on a convened peer review panel shall provide an individual written report to the Administrator regarding a certifying agent's ability to conduct and perform certification activities.

(d) *Optional meeting or conference call procedure for a convened peer review panel.* (1) The Administrator may convene a peer review panel meeting or conference call if necessary for evaluating the accreditation status of a certifying agent or at the request of at least one peer review panel member. The Administrator may include the certifying agent being evaluated, or a representative of the agent, for the purpose of providing additional information. Any meeting or conference call shall be conducted in a manner that will ensure that the actions of panel members are carried out on an individual basis with any opinions and recommendations by a member being individually made.

(2) Copies of the peer review panel reports may be provided to the certifying agent and written responses from the certifying agent may be submitted for consideration by the Administrator.

(e) *Peer review panel reports.* Each person who participates in a peer review panel shall provide a written report to the Administrator which shall contain the person's recommendations concerning confirmation or renewal of the accreditation for each agent reviewed and the basis for each recommendation.

§ 205.312 Confirmation of accreditation.

(a) *Notice of confirmation.* The Administrator shall issue a written notice of confirmation of accreditation to a certifying agent if the Administrator determines the agent is in compliance with the requirements of the Act and the regulations in this part. The notice of confirmation will set forth any terms and conditions that must be addressed by the certifying agent before submitting a request for renewal of accreditation.

(b) *Duration of accreditation.* The accreditation of a certifying agent shall continue in effect until such time as the certifying agent fails to renew accreditation as delineated in § 205.314, voluntarily ceases its certification activities, or accreditation is suspended or terminated pursuant to § 205.316.

§ 205.313 Denial of confirmation.

(a) If the Administrator has reason to believe, based on a review of the information specified in §§ 205.303 through 205.305 and the results of a site evaluation and the reports submitted by the peer review panel, pursuant to §§ 205.309 and 205.311(e) of this subpart, that the certifying agent is not complying with the requirements of the Act and the regulations in this part, the Administrator shall provide a written notification of non-compliance to the certifying agent in accordance with § 205.315(a) of this subpart.

(b) If a certifying agent who receives a notification pursuant to paragraph (a) of this section corrects the deficiencies identified within the time specified in the notice of non-compliance, in accordance with § 205.315(a)(3) of this subpart, the Administrator shall issue a notice of confirmation of accreditation to the certifying agent, pursuant to § 205.312(a).

(c) If a certifying agent who receives a notification pursuant to paragraph (a) of this section does not correct the deficiencies identified within the time specified in the notice of non-compliance, the Administrator may institute proceedings to deny confirmation of accreditation.

§ 205.314 Continued accreditation.

(a) *Annual report and fees.* An accredited certifying agent shall submit annually to the Administrator on or before the anniversary date of the issuance of the notice of confirmation of accreditation, pursuant to § 205.312(a) of this subpart, the following reports and fees:

(1) A complete and accurate update of information submitted pursuant to §§ 205.303 and 205.304;

(2) Information supporting any changes being requested in the areas of accreditation delineated in § 205.300;

(3) The measures that were implemented in the previous year, and any measures to be implemented in the coming year, to satisfy any terms and conditions determined by the Administrator to be necessary as specified in the most recent notice of confirmation of accreditation, in accordance with § 205.312(a) of this subpart, or notice of renewal of accreditation, in accordance with paragraph (c) of this section;

(4) The results of the most recent inspector performance reviews and internal evaluation review, and adjustments to the certifying agent's operation and procedures implemented, and intended to be implemented, in response to the reviews; and

(5) The fees required in § 205.421(a) of subpart F.

(b) *Renewal of accreditation.* An accredited certifying agent shall request renewal of accreditation on or before the fifth anniversary of issuance of the notice of confirmation of accreditation and each subsequent renewal of accreditation. Following receipt of the information submitted by the certifying agent in accordance with paragraph (a) of this section and the results of a site evaluation and the reports submitted by the peer review panel, pursuant to §§ 205.309 and 205.311(e) of this subpart, the Administrator shall determine whether the certifying agent remains in compliance with the Act and the regulations of this part.

(c) *Notice of renewal of accreditation.* Upon a determination that the certifying agent continues to comply with the Act and the regulations of this part, the Administrator shall issue a notice of renewal of accreditation. The notice of renewal shall specify any terms and conditions that must be addressed by the certifying agent and the time within which those terms and conditions must be satisfied.

(d) *Non-compliance.* Upon a determination that there is reason to believe that the certifying agent is not in compliance with the Act and the regulations of this part, the Administrator shall initiate the procedure delineated in § 205.315 of this subpart.

§ 205.315 Notification of non-compliance with accreditation requirements.

(a) A written notification of non-compliance shall be sent by certified mail to the place of business of the accreditation applicant or the certifying agent, as applicable, and shall contain the following information:

(1) A description of each deficiency in compliance and each violation of the Act and the regulations in this part that the Administrator has reason to believe has occurred;

(2) The evidence on which the notification is based; and

(3) The date by which the accreditation applicant or the certifying agent, as applicable, must correct each deficiency and each violation delineated in the notification, and submit documentation to the Administrator to support such corrections.

(b) If the documentation received by the Administrator, pursuant to paragraph (a)(3) of this section, is not adequate to demonstrate that each deficiency in compliance and each violation has been corrected by the date indicated in the written notification, the Administrator may conduct a site evaluation, as provided for in § 205.309, to determine whether the certifying agent is complying with, or has violated, the Act or the regulations in this part.

(c) *Notification of determination or recommendation.* (1) If, following the procedure pursuant to paragraphs (a) and (b) of this section, the Administrator determines that the certifying agent is in compliance with the Act and the regulations in this part, the Administrator shall notify the certifying agent in writing of this determination.

(2) If, following the procedure pursuant to paragraphs (a) and (b) of this section, the Administrator has reason to believe that the certifying agent is not in compliance with the Act and the regulations in this part, the Administrator may institute a proceeding to suspend or terminate the accreditation of the certifying agent.

§ 205.316 Termination of accreditation.

(a) The Administrator shall follow the procedures prescribed in § 205.315 of this subpart if the Administrator has reason to believe that an accredited certifying agent or a person responsibly

connected with an accredited certifying agent has ceased to comply with or has violated the Act or the regulations in this part.

(b) Notwithstanding paragraph (a) of this section, if the Administrator has reason to believe that an accredited certifying agent or a person responsibly connected with an accredited certifying agent has wilfully violated the Act and the regulations in this part, the Administrator may institute a proceeding to suspend or terminate the accreditation of the certifying agent.

(c) A private person or a governing State official whose accreditation as a certifying agent is suspended or terminated shall:

(1) Cease any certification activity in each area of accreditation and in each State for which its accreditation is suspended; or

(2) In the case of a private person whose accreditation is terminated, cease all certification activities; and

(3) Transfer to the Secretary and make available to any applicable governing State official all records concerning its certification activities that were suspended or terminated, so that the Secretary may promptly determine whether farms or handling operations certified by such certifying agent may retain their organic certification.

(d) A private person or a governing State official whose accreditation as a certifying agent is suspended by the Secretary under this section may at any time submit a new request for accreditation, pursuant to § 205.302 of this subpart. The request shall be accompanied by documentation that demonstrates that appropriate corrective actions have been taken to comply with and remain in compliance with the Act and the regulations in this part.

(e) A private person whose accreditation as a certifying agent is terminated shall be ineligible to be accredited as a certifying agent under the Act and the regulations in this part for a period of not less than three years following the date of such determination.

§§ 205.317 through 205.400 [Reserved].

Subpart F—Additional Regulatory Functions

State Programs

§ 205.401 Requirements of State programs.

(a) A State may establish a State organic certification program for producers and handlers of agricultural products that have been produced within the State using organic methods as provided for in the Act and the regulations in part 205.

(b) The State program shall meet the requirements of the Act and the regulations in part 205.

(c) A State program may contain more restrictive requirements governing the certification of organic farms and handling operations and the production and handling of agricultural products that are to be sold or labeled as organically produced than are contained in the National Organic Program established by the Secretary, *Provided, That* such additional requirements:

(1) Further the purposes of the Act and the regulations in part 205;

(2) Are consistent with the provisions of the Act and the regulations in part 205;

(3) Do not discriminate towards agricultural commodities organically produced in other States in accordance with the Act and the regulations in part 205; and

(4) Are approved by the Secretary prior to being implemented.

§ 205.402 Approval of State programs and program amendments.

(a) A governing State official shall submit to the Secretary a proposed State program, and proposed substantive amendment(s) to a State program, and shall obtain the Secretary's approval prior to implementation of the proposed program and any proposed substantive amendments thereto.

(b) The Secretary will notify the governing State official within six months after the receipt of the proposed State program and proposed substantive amendment to the State program, as to whether the program or substantive amendment is approved or disapproved, and if disapproved, the reasons for the disapproval. After receipt of a notice of disapproval, the State may reapply at any time.

§ 205.403 Review of approved programs.

The Secretary will review a State organic certification program not less than once during each five-year period following the date of the initial approval of such program. The Secretary will notify the governing State official within six months after the initiation of the review, whether the program is approved or disapproved, and if disapproved, the reasons for the disapproval.

§§ 205.404 through 205.420 [Reserved].

Fees

§ 205.421 Fees for accreditation applicants and accredited certifying agents.

(a) *Application fees.* (1) Each applicant for accreditation and each accredited certifying agent shall submit a non-refundable fee of $640 simultaneous with the submission of each application for accreditation or annual report, as applicable. Payment shall be made by certified check or money order made payable to Agricultural Marketing Service and sent with the application or annual report to: Program Manager, USDA/AMS/TM/NOP, Room 2945–S, P.O. Box 96456, Washington, D.C., 20090–6456.

(2) An applicant or an accredited certifying agent whose organizational structure consists of chapters or subsidiary offices also shall include a non-refundable fee of $160 for each chapter or subsidiary office, simultaneous with the submission of each application for accreditation or annual report, as applicable.

(b) *Site evaluation fees and related travel and per diem expenses.* Each applicant or accredited certifying agent for whom a site visit is conducted shall submit a non-refundable payment for the following fees and expenses related to a site evaluation visit conducted, pursuant to § 205.309 of subpart E, within 30 days following issuance of a bill from AMS for the cost of the site evaluation visit which shall include payment of:

(1) An hourly fee of $40 per hour, calculated to the nearest fifteen minute period, for each AMS evaluator to conduct the site evaluation visit, including travel time to and from the evaluator's duty station; and

(2) Travel expenses and per diem allowances for each AMS evaluator.

(c) *Administrative fee.* Each accredited certifying agent shall submit a non-refundable administrative fee of $2,000, and an additional non-refundable administrative fee of $300 for each chapter or subsidiary office belonging to the certifying agent, within 30 days following issuance of a notification of approval of accreditation pursuant to § 205.306(b) of subpart E; within 30 days following the issuance of a subsequent notification of confirmation of accreditation, pursuant to § 205.312(a) of subpart E; or with the submission of each annual report, pursuant to § 205.314(a) of subpart E.

§ 205.422 Fees for certified operations.

(a) Each farm or wild crop harvesting operation shall submit to the certifying agent a non-refundable fee of $50 and each handling operation shall submit to the certifying agent a non-refundable fee of $500 by money order or certified check made payable to the Agricultural Marketing Service within 15 days of the date of the issuance by a certifying agent of a notice of approval of certification pursuant to § 205.214(c) of subpart D.

(b) Each certifying agent shall submit to AMS, according to the instructions provided by the Administrator, all fees collected pursuant to paragraph (a) of this section within 15 days following the date of receipt by the certifying agent.

§ 205.423 Fees for import programs.

(a) Each foreign certification program, other than those operated by a foreign country itself, that wants AMS to determine whether its program is equivalent to the AMS organic certification program shall submit, as authorized by the Independent Offices Appropriations Act (31 U.S.C. 9701 *et seq.*), a non-refundable payment in the amount stated in the AMS notice of intent to acknowledge equivalency sent to them by AMS. The payment required will be based on an hourly charge of $40 per hour for review time plus any travel and per diem expenses incurred.

(b) No determination of equivalency of such a program shall be final and effective until such payment is made.

(c) The payment required shall be submitted by certified funds to AMS within 30 days following issuance of a bill from AMS according to the instructions provided with the notice of intent to acknowledge equivalency sent by AMS.

§ 205.424 Payment of fees and other charges.

(a) All fees shall be submitted in the form of a certified check or money order made payable to the Agricultural Marketing Service and sent according to the billing instructions.

(b) All fees submitted later than the time indicated in the applicable section shall be subject to interest, penalties and administrative costs, as provided in the Debt Collection Act of 1982 (31 U.S.C 3717), and may result in the loss of or failure to obtain certification, accreditation, or equivalency status.

§§ 205.425 through 205.429 [Reserved].

Compliance Review and Other Testing

§ 205.430 Compliance review.

(a) A certifying agent shall arrange for periodic sampling and residue testing, not less frequently than every five years, of agricultural products produced on certified organic farms or wild crop harvesting operations and handled through certified handling operations certified by that agent to determine if an agricultural product contains a detectable residue level of a pesticide or other prohibited substance. To the extent that certifying agents are aware of a violation of applicable laws relating to food safety, they are required to report such violation to the appropriate health agencies (Federal, State, and local).

(b) The Secretary or the applicable governing State official shall arrange for sampling and residue testing of agricultural products sold, labeled, or represented as organic, at any point of production or distribution, and may require the certifying agent to conduct sampling and residue testing of such products originating from operations certified by that agent in order to determine if such products contain a detectable residue level of a pesticide or other prohibited substance.

(c) *Sample collection.* (1) Each product sample collected pursuant to paragraphs (a) and (b) of this section shall be collected by an inspector representing the Secretary, certifying agent, or applicable governing State official and submitted for analysis to a laboratory accredited for the product test, in accordance with Subchapter 400 of the Food and Drug Administration "Investigations Operations Manual," available from the FDA, Division of Emergency and Investigation Operations, 5600 Fishers Lane, Rockville MD 20857.

(2) The analytical methods used to test each product sample shall be selected as appropriate from:

(i) The FDA "Pesticide Analytical Manual," Volumes I and II, available from the FDA, Department of Health, Education and Welfare, 200 C Street S.W., Washington, DC 20204;

(ii) The "FSIS Residue Chemistry Guidebook", available by request from: FSIS Quality Systems Branch, Room 516–A, Annex Building, 300 12th Street S.W., Washington, DC 20250–3700, or

(iii) The "Official Methods of Analysis" of the Association of Official Analytical Chemists International (AOACI), available by request from: AOACI, 481 North Frederick Ave., Suite 500, Gaithersburg, MD 20877.

(3) The results of all sampling and testing performed pursuant to paragraphs (a) and (b) of this section for each product sample shall be reported to the certifying agent or applicable governing State official, and to the Secretary, *Provided, That* if any test result indicates that the product sample contains a residue level of a pesticide or other prohibited substance that exceeds the EPA tolerance level [1] or the FDA action level,[2] as applicable, for that substance, the certifying agent, governing State official, or the Secretary also shall inform the appropriate health agencies of the results of the residue test.

(d) *Residue test investigations.* (1) If the results of the testing and sampling performed pursuant to paragraphs (a) and (b) of this section indicate that the product sample contains a detectable residue level of a pesticide or other prohibited substance, the certifying agent, the applicable governing State official, or the Secretary shall conduct an investigation of the certified operation that produced or harvested the product represented by the sample to determine the cause of the detectable residue level, and may require the producer or handler of such product to prove that any prohibited substance was not applied to such product.

(2) If the certifying agent, applicable governing State official, or the Secretary, determines as a result of the investigation that the detectable residue level of the pesticide or other prohibited substance exceeds the unavoidable residual environmental contamination level for the detected pesticide or other prohibited substance, or that the detected pesticide or other prohibited substance was the result of an intentional application, then the agricultural products represented by the sample shall not be sold or labeled as organically produced, and the Administrator may institute proceedings to terminate certification of the operation, or portion of an operation, from which the agricultural products represented by the sample originated, as provided for in § 205.219 of subpart D.

§ 205.431 Preharvest tissue testing.

(a) *General.* The Secretary, the applicable governing State official, or the certifying agent may require a preharvest tissue test of any crop to be sold or labeled as organically produced that is grown on soil suspected by the Secretary, the applicable governing State official, or the certifying agent of harboring a contaminant.

(b) *Preharvest tissue test sample collection.* (1) The preharvest tissue test sample collection conducted pursuant to paragraph (a) of this section shall be performed by an inspector representing the Secretary, certifying agent, or applicable governing State official and shall be collected and submitted for testing in accordance with Subchapter 400 of the "FDA Investigations

[1] 40 CFR parts 180, 185, and 186.

[2] The FDA action levels are published in the FDA publication entitled "Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed." Single copies of this booklet are available from: Industry Activities Section (HHF–326), CFSN/FDA, 200 C Street S.W., Washington, DC 20204.

Operations Manual" to a laboratory accredited for the product test.

(2) The analytical methods used to determine whether a preharvest tissue test sample contains a residue of a contaminant shall be selected as appropriate from the FDA "Pesticide Analytical Manual," Volumes I and II, or the "Official Methods of Analysis" of the Association of Official Analytical Chemists.

(c) *Reporting of preharvest tissue test results.* The results of each preharvest tissue test shall be reported to the Secretary and, *Provided, That* if the test result indicates that the residue level of a contaminant in the organically produced crop exceeds the EPA tolerance or FDA action level, the certifying agent or applicable official also shall report the results to the appropriate regulatory agency.

§ 205.432 Emergency pest or disease treatment.

If a pesticide or other prohibited substance is applied to a certified organic farm, wild crop harvesting, or handling operation due to a Federal or State emergency pest eradication or disease treatment program, and the certified operation otherwise meets the requirements of this part, the certification status of the operation shall not be affected as a result of the application of the pesticide or other prohibited substance, *Provided, That:*

(a) Any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a Federal or State emergency pest eradication or disease treatment program is not sold or labeled as organically produced; and

(b) Any livestock that are treated with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program, or product derived from such treated livestock, shall not thereafter be labeled or sold as organically produced, except that:

(1) Milk or milk products may be labeled or sold as organically produced beginning 12 months following the last date that the dairy animal was treated with the prohibited substance; and

(2) The offspring of gestating mammalian breeder stock treated with a prohibited substance may be considered organic *Provided, That* the breeder stock was not in the last third of gestation on the last date that the breeder stock was treated with the prohibited substance.

§ 205.433 Reporting the application of a prohibited substance.

A producer or handler shall immediately report any instance of application of a prohibited substance on their certified operation to their certifying agent and shall inform the agent of the reason for, or the cause of, the application.

§§ 205.434 through 205.451 [Reserved].

Appeals

§ 205.452 General.

Any person subject to the Act who believes that he or she is adversely affected by a decision of a member of the National Organic Program staff or by a certifying official may appeal such decision to the Administrator.

§§ 205.453 through 205.479 [Reserved].

Equivalency of Imported Organic Products

§ 205.480 Eligibility of agricultural products for importation into the United States.

Any agricultural product imported into the United States that is labeled or sold as organic or that contains an ingredient represented as organic shall have been produced and handled under an organic certification program that the Secretary has determined provides safeguards and guidelines governing the production and handling of such products that are at least equivalent to the requirements of the Act and the regulations set forth in part 205.

§ 205.481 Determination of the equivalency of foreign programs.

The determination of the equivalency to the Act and regulations in part 205 of a foreign organic certification program will be based on an evaluation of the following components of the program's provisions for organically produced and handled agricultural products:

(a) The standards of production and handling for agricultural products;

(b) The list of substances allowed and prohibited for use in the production and handling of agricultural products and the criteria for establishing the allowance or prohibition of substances used in organic production and handling;

(c) The requirements for, and process by which, farms and handling operations are inspected and certified as operating under a system of organic farming and handling, including the requirements for documentation of the practices and substances used;

(d) The measures identified to provide adequate enforcement for, and protection against, violations of the program requirements;

(e) The requirements for and process by which agents are evaluated and accredited by an agency of the government as being qualified to certify organic farm, wild crop harvesting, or handling operations; and

(f) Any other information relevant to the production and certification of organically produced products including the administration of the foreign organic certification program.

§ 205.482 Process for establishing equivalency of foreign programs.

(a) A foreign organic certification program that wants a determination of the equivalency of its program, as provided for in § 205.481, shall submit to the Secretary a complete and accurate description of its program, including any of the laws and applicable requirements upon which the program is based and any information requested by the Secretary.

(b) The foreign organic certification program shall be notified of the determination as follows:

(1) A foreign organic certification program that the Secretary determines to have safeguards and guidelines equivalent to the Act and regulations in part 205, the program's representative shall be notified in writing of the date upon which agricultural products produced and handled under that program may begin to be imported into the United States and sold or labeled as organically produced; and

(2) A foreign organic certification program that the Secretary determines does not have guidelines and safeguards equivalent to the Act and the regulations in part 205, the program's representative shall be notified in writing of the basis for such determination. After receipt of the notice, the program representative may reapply at any time.

(c) If at any time the Secretary determines that a foreign program is not equivalent, the Secretary may withdraw the equivalency status. Termination of the equivalency status will be effective upon receipt of the notice.

§ 205.483 Maintenance of eligibility for importation.

(a) Maintenance of eligibility for importation of agricultural products into the United States that are to be sold or labeled as organic will depend on the results of periodic reviews by the Secretary of the foreign organic certification program under which the products are produced and handled, and the timely submission of documents and other information necessary to reevaluate the equivalency status of the foreign organic certification program, as requested by the Secretary, including any amendments made to the foreign organic certification program's requirements.

(b) For agricultural products imported into the United States to continue to be eligible to be sold or labeled as organic, the program representative of the program under which they were produced and handled must notify the Secretary of any amendments made to the program requirements prior to their implementation.

§§ 205.484—205.999 [Reserved]

PARTS 206—209 [RESERVED]

Dated: December 5, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

Note: The following Attachment will not appear in the Code of Federal Regulations.

Attachment—Regulatory Impact Assessment for Proposed Rules Implementing the Organic Foods Production Act of 1990

The Need for the Proposed Action

The Organic Foods Production Act (OFPA) of 1990, Title XXI of the Food, Agriculture, Conservation and Trade Act of 1990 (Farm Bill), U.S.C. Title 7, mandates that the Secretary of Agriculture develop a national organic program. The OFPA states that the Secretary shall establish an organic certification program for farmers, wild crop harvesters and handlers of agricultural products that have been produced using organic methods as provided for in the OFPA. In addition, section 6514 of the OFPA requires the Secretary to establish and implement a program to accredit a governing State official or any private person, who meets the requirements of the Act, as a certifying agent to certify that farm, wild crop harvesting or handling operations are in compliance with the standards set out in the regulation. As mandated by the OFPA in section 6501, the regulations are proposed for the following purposes: (1) to establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced. The purposes of the OFPA are similar to those of the quality grading programs currently provided by USDA for many agricultural products.

The following regulatory assessment is provided to fulfill the requirements of Executive Order 12866. This assessment consists of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs. The analysis is necessarily descriptive of the anticipated impacts of the proposed rule. In the absence of basic market data on the prices and quantities of organic goods and services and the costs of organic production, it is not possible to provide quantitative estimates of the benefits and costs of the proposed rule, except for the cost of fees and recordkeeping proposed by the USDA. Consequently, the analysis does not contain an estimate of net benefits. Rather, it describes the developments leading up to the passage of the OFPA, outlines current market conditions and recent trends, and identifies the types of benefits and costs suggested by the changes in market conditions that the rule is expected to produce.

The OFPA was introduced at the request of the organic community after it experienced a number of problems in the marketing of organic products. Because many consumers are willing to pay price premiums for organic food, producers (farmers and wild crop harvesters) and handlers have an economic incentive to label their products organic. But one problem is that organic products cannot be distinguished from conventionally produced products by sight inspection; hence, consumers rely on verification methods, such as certification by private entities or verification by retailers. To the extent that consumers cannot verify organic product claims and are therefore vulnerable to fraud from the mislabeling of organic products, implementation of uniform organic standards and mandatory certification can be presumed to be beneficial.

A second problem is the lack of uniformity in various aspects of standards defining organic production. As organic production became established in the 1980's, certifying agencies were formed and some States passed laws establishing standards for organic production. However, many standards for production, processing and labeling of organic products were different to some degree, causing disagreements between certifiers over whose standards would apply to ingredients used in multi-ingredient organic processed products. Disagreements about standards also created sourcing problems for handlers of these multi-ingredient products, which at times resulted in losses for producers of organic ingredients.

Producers, handlers and certifiers appear to pay the costs resulting from the lack of uniformity in standards, which interferes with efficient resource allocation. However, whether these costs are significant is an empirical question. The data needed to estimate the effect of disagreements between certifiers on producer and handler costs would have to be collected. The costs of negotiating and maintaining reciprocity agreements among certifiers would provide one cost measure. These reciprocity agreements, which specify the conditions under which certifiers recognize each others' standards, would be unnecessary within a uniform national standards program. The costs of private accreditation or shipment-by-shipment certification, required to gain access to some foreign markets such as the European Union (EU), offer another indirect measure of the burden of the current system of variable standards. Certifiers would need to be surveyed to estimate these costs.

The lack of uniformity in various aspects of organic standards potentially reduces consumer welfare by creating confusion over the meaning of organic. However, the existence of different standards for organic production may provide consumers with a choice of products which they may not have under a program with a uniform standard. Our review of the literature did not find results of surveys of consumers' perceptions of the characteristics of organic foods. Consumer surveys focusing specifically on the meaning of organic and consumer preferences for organic standards would need to be conducted to determine more precisely the nature and extent of consumer confusion with, and level of confidence in, the status quo.

A third problem is the constraint on market growth resulting from the prohibition on labeling meat and poultry products as organic. The USDA Food Safety and Inspection Service (FSIS) has withheld approval for the use of organic labels on these products pending the outcome of this rulemaking. Industry data indicate the existence of a small market for "natural" meat, measured as sales of meat from natural foods stores, but no data are available on what proportion of these sales might be represented by organic meat. The data also are lacking with which to estimate the demand for organic meat and processed products containing organic meat. Consumer surveys indicating the degree of interest in these products would provide a measure of demand.

Alternatives to the Proposed Rule

Status Quo: The Organic Market in the Absence of Regulation

Sales of organic food products produced under a wide variety of protocols have grown at approximately 20 percent per year since 1990, the year the OFPA was passed (Table 1). Annual sales data are not available prior to 1990, but sales growth was approximately 10 percent from 1980 to 1989. Although the growth in the organic industry since 1989 has occurred without direct involvement of the Federal government, the establishment of national standards and accreditation could have been anticipated by the industry since 1990, when Congress passed the OFPA. Economic theory suggests the hypothesis that investments in production, new product development, and marketing during this period may have incorporated expectations for OFPA implementation. It has not been possible to test this hypothesis or to separate out the effect of these expectations from other forces on industry growth.

The EU is the largest market for organic food outside the United States. Valued at approximately $1.7 billion in 1990, the European market has been projected to grow at a rate of 25 percent per year, reaching approximately $14 billion by the year 2000 (Tate, p. 72). The EU regulations establishing the basis for equivalency in organic production among EU members and for imports from outside the EU were adopted in 1991 (Council Regulation 2092/91) (Byng, p. 21). These rules are being implemented by EU Member Countries, many of whom already have been operating under their own nationally recognized and mandated standards of production and inspection. The EU regulations allow for imports from non-EU countries whose national standards have been recognized as equivalent to the EU standards (Commission Regulation 94/92).

International access to domestic organic products may be very influential on development of the organic industry in the United States. In the absence of national standards, U.S. organic producers have been able to access European markets only by obtaining specific product permissions granted to individual importers by organic regulatory authorities in an EU Member State (Byng, p. 27–28). This process requires the importer to satisfy the authorities, through documentation and possible site inspection, that the product in question has been certified to have been produced under equivalent standards of production and inspection. It was intended as a temporary arrangement to accommodate non-EU countries that had not yet established government systems regulating organic production and certification. Growth in the trade of organic products, particularly exports, may be affected if equivalency between the EU and the United States is not established.

In the absence of a national program, the use of the term organic may be affected by the policies and regulations of other regulatory bodies. For example, FSIS currently does not approve the use of an organic label on meat and poultry, and without national standards they may continue their current restrictions, thus limiting growth in the sales of organic meat and poultry. The Food and Drug Administration (FDA) has allowed organic labeling for all other food products with the expectation that standards will be forthcoming. In the absence of a national standard, FDA's future position on organic labeling is uncertain. Additionally, in the absence of a national program, certifying agents would not be required to recognize another certifier's standards as equivalent. A lack of reciprocity between certifiers also may stifle the growth in trade of organic products for reasons previously discussed in the section of this assessment which discusses the need for this proposed action.

A Pure Food Model

Some consumers expect organic food to be pure food: that is, food which is completely free of synthetic chemicals (Burros, p. C–1). A pure food standard could be defined either as one which would not allow any exceptions to the prohibition on the use of synthetic substances, including the proposed use of some substances in emergency situations, or as one which would require that food test completely free of chemical residues. Such a standard could be posed as an alternative to the proposed rule; however, it would be more restrictive than the standard outlined in the OFPA, and would require an amendment to the OFPA.

Residue free food may be more restrictive than the standards of production and handling currently adopted by the organic industry itself. Standards based on residue testing have been rejected by the industry because: (1) residue testing focuses on the end product rather than the production process; (2) not all synthetic chemicals used in production are detectable as residues; and (3) some residues may appear in a product that has been produced organically because of unavoidable contamination in the soil, drift, or for other reasons which are beyond the farmer's control.

Establishing organic standards to meet a pure food definition could be expected to increase marginal costs, causing the supply curve to shift in and prices to increase, ceteris paribus. Some consumers, such as chemically sensitive persons or those who advocate pure food, likely would be willing to pay for a more restrictive definition for organic food. Other consumers would find the higher prices likely to result from a pure food standard beyond their willingness to pay for organic products and, therefore, may choose not to purchase organic products.

The niche market for pure food could be supplied by organic producers and handlers within the context of the regulations and restrictions contained in the final rule. Individual farmers and handlers would continue to have the option of putting additional information about their production methods on labeling materials of organic products, or otherwise meeting the product specifications of a pure food model, as long as these were not inconsistent with the national standards. Such additional information is subject to the same truth in labeling requirements as applied to all products. A certifier would be able to supply verification of additional product claims as a service to its clients, without requiring that all of its certified clients meet such product specifications.

Exemption of Small Certifiers From Accreditation

As explained below in the section entitled "Costs of the Proposed Rule" and as demonstrated in Table 5, the smallest certifiers (those with annual revenues of $25,000 or less) may not have the resources to meet all of the requirements of the rule, such as accreditation fees, administrative and personnel requirements, and conflict of interest restrictions, based on their current structure and revenues. Therefore, exempting the smallest certifiers from the accreditation requirement, similar to small producers being exempt from certification requirements, could mitigate the adverse impact of the rule on this group. This option, however, would require a legislative amendment to the OFPA.

The exemption of the smaller certifiers from accreditation would carry with it many of the limitations resulting from the absence of Federal oversight. International trade would likely be limited to products certified by accredited certifiers. Protecting domestic consumers from inappropriate organic claims on the labels of products certified by exempt certifiers would likely lead to greater confusion over labels in the marketplace. Federal enforcement agencies such as FDA, the Bureau of Alcohol, Tobacco and Firearms (ATF), and FSIS might wish to distinguish accredited certifiers from those certifiers who are exempt, perhaps by requiring accredited certifiers' clients to include the USDA seal on their product labels.

One of the purposes of the OFPA described in the statute is to assure consumers that organically produced products meet a consistent standard. Without Federal oversight of certifiers, it would be difficult to ensure that one national standard of production and handling for agricultural products would be employed. The result could be the continuation of reciprocity agreements between small, exempt certifiers and large accredited ones. This could result in a cost for small entities, while providing less benefit to certified producers and handlers than would be provided them by accreditation of all certifiers.

Benefits of the Proposed Rule

There are three points to note regarding the following discussion of benefits. First, while the costs of the rule may initially fall on certifiers, the benefits should be more widely distributed. The expected growth in the demand for organic products should create benefits for consumers, producers, handlers and certifiers. Second, not all benefits that may arise from the rule are primarily economic or quantifiable. Potential benefits which are neither quantifiable, such as increased protection for consumers producers and handlers, nor economic, such as greater communication among program participants and the NOP staff, are discussed here along with the economic benefits. Third, where economic data are available, they are generally not adequate to quantify economic benefits.

Consumer Benefits

Two potential benefits may accrue to consumers as a result of the proposed rule: protection from false and misleading organic food labels and a choice of a wider variety of organic foods.

Without a national standard, consumers can be mislead by labels on processed products claiming to contain organic ingredients, when in fact some of the ingredients may not be organically produced or individual ingredients may be certified under different standards of organic production. The proposed organic standards and USDA accreditation of certifiers might benefit consumers by providing assurance of the authenticity of organic claims. However, without additional data, it is not possible to quantify this benefit.

Establishing a national standard for the organic label is expected to increase the supply and variety of organic products, especially organic meat and poultry, available to consumers in the market. The organic label on meat and poultry products, including processed foods such as soups and entrees containing meat and poultry, would likely account for the bulk of new items that would enter the market following implementation.

Producer and Handler Benefits

As previously discussed, the proposed rule addresses the problem of existing certifying agents using different standards and not granting reciprocity to other certifying agents. By accrediting certifiers, the rule would establish the requirements and enforcement mechanism that would protect producers and handlers from inconsistent certification services, lack of reciprocity between certifiers, and competition from fraudulent products, all of which can increase costs or reduce revenues. In the absence of a system of accreditation, the certifier of a final product is not required to recognize the certification of an intermediate product. Thus, both primary farmers and food handlers face a risk of being unable to sell certified organic product when more than one certifier is involved. The monitoring activities of accreditation should reduce the risk of restricted market access, and ensure that certifiers are using consistent criteria for certification and that certification personnel are knowledgeable and free from conflicts of interest.

The lack of a national standard for the organic label may present a barrier to marketing organic food products in the United States and abroad. Current data show organic sales growing at the rate of about 20 percent per year. It is unclear whether the growth rate will continue, increase, or decrease as a result of regulating the organic industry. In the absence of technical barriers to increasing production, implementation of the rule is expected to result in an increase in the rate of growth for organic exports and organic meat and poultry.

It is expected that national standards would create the conditions necessary for increased access to international markets. Despite restricted access to the European market, the United States is the most important non-EU supplier of organic products to EU countries (Foreign Agriculture Service (FAS), 1995). Import authorizations have been granted for a number of raw and processed commodities, including sunflowers, buckwheat, beans, sugar and apples. Demand is strong throughout the European Union, and the organic market share has been projected to reach 2.5 percent of total food consumption expenditures by 1998. Austria expects its organic market share to equal one third of all food sales by the year 2000 (FAS, Austria). In 1994, France and Germany combined had total retail sales of organic foods equal to that of the United States (approximately $2 billion) (FAS, France and Germany). Japan's retail sales for that year were estimated to be $688 million (SRI International, p. 15). Other EU countries report growth rates equal to or greater than the current growth rate in the United States of about 20 percent per year. Upon recognition of equivalency by the EU and the removal of the trade restrictions expected to follow implementation of the final rule, larger growth in exports of organic food products might be anticipated.

Increased access to international markets also implies that imports of organic products to the U.S. may increase. Currently, there are no restrictions on importing organic products to the U.S. in addition to those regulations applying to conventional products. Data are needed on the current trade balance in organic products to establish a baseline from which to measure changes in trade following implementation. The U.S. Customs Agency does not collect trade data that distinguish organic from conventional goods.

The impact of national organic standards on domestic production depends on increasing demand and on whether producers and handlers can lower their unit costs through expansion of their economies of scale of operations. Increasing demand may also create an incentive for new producers to enter the organic market. Input costs also may decline if economies of scale are achieved in input industries producing for the organic market. These conclusions are necessarily speculative given the lack of information on costs and production relationships for organic goods. However, such expectations are consistent with economic theory and experiences in other industries. Gains to organic producers and handlers may be partially offset by a decrease in the demand for comparable non-organically produced agricultural products, causing conventional producers and handlers to lose market share.

With the introduction of national standards to regulate labeling of organic products, processed organic products would acquire commercial item descriptions which are currently used by the food industry to identify conventional products. Adopting bar codes and industry accounting practices which identify organic goods would make sales information more accessible for research and marketing purposes.

Certifier Benefits

Certifiers might experience benefits from the rule through reductions in their administrative costs, greater exchange of information, and an increase in demand for certification resulting from an increased demand for organic products and from an expansion of the organic market due to new products entering the market.

There are several ways in which certifiers' administrative costs may be reduced as a result of the rule. First, increased assurance through accreditation might reduce certifiers' costs of maintaining access to organic markets for their clients. Costs associated with establishing reciprocity between certifiers could be eliminated. Accreditation and national standards would remove the need to negotiate individual reciprocity agreements with other certifiers, and would simplify the process of certifying multiple ingredient products, thus reducing certification costs. The responsibility for meeting production and certification requirements of each ingredient would rest with the certified producers and accredited certifiers of the individual ingredients.

Second, certifiers would no longer would have to pay private organizations for the accreditation required to gain access to some international markets. This would be of particular benefit to the smaller certifiers who may have been unable to enter these markets because of the high cost of international accreditation. A portion of the administrative fees paid by each certifying agent would support USDA activities to negotiate equivalency of organic standards in world markets so that producer clients of all USDA accredited certifiers could have access to these markets.

Third, in the long run, uniform standard of production, certification and accreditation should reduce the cost of training certification staff. Industry-wide training costs may increase initially, but should decline as the pool of trained certifiers and certification personnel increases and the corresponding cost of training new certification personnel decreases, especially in those instances where personnel transfer from one certifier to another. Standardized materials, such as compliance guides and training manuals, also should contribute to a reduction in the cost of training certification staff. In addition, USDA accreditation of certifiers would present opportunities for sharing information about standards, practices and the general requirements of the program through the National Organic Program staff. This information is most frequently provided in Small Entity Compliance Guides and other printed material.

The contribution of national standards to increasing domestic demand and opening international markets to U.S. organic products provides opportunities for growth in certification services. Certifiers' average costs of operation may decline as fixed costs are spread over a growing number of producers.

Costs of the Proposed Rule

Direct Program Costs

The proposed rule would impose direct costs on certifiers in the form of a fee paid to the Federal government for USDA accreditation, which the OFPA requires of all certifiers of organic food products in the United States. Certifiers, in turn, generate revenue by charging producers and handlers a certification fee. Although the proposed rule does not regulate the amount of certification fees, the OFPA does require that food products labeled organic be certified, and that the fees which certifiers collect from producers and handlers for this service be reasonable.

The OFPA also provides for the collection of reasonable fees by USDA from producers and handlers who participate in the national program. The following analysis of costs thus considers both fees to be charged to certifiers and fees to be charged to producers and handlers to recover other program costs.

Certifiers' costs of accreditation are assumed to be passed on to producers and handlers through an increase in certification fees. Currently, supply and demand for certification services determine the fees charged in most areas. Some States charge minimal fees for certification and instead subsidize opereting costs from general revenues. The majority of certifiers structure their fee schedules on a sliding scale based on a measure of size, usually represented by the client's gross sales of organic products.

Direct national program costs would equal the cost of the accreditation program plus the costs of other functions carried out by the organic program staff (salaries, overhead, materials review, compliance costs, etc.). These costs are estimated at approximately $1 million for the first year that the program is in full operation (Table 2). In future years, direct national program costs would depend upon the number of accreditation applicants, annual reports received from certifiers, and the number of producers, handlers and certifiers who participate in the program. Data collected by AMS indicate that the number of organic farmers increased about 12 percent per year and the number of organic handlers increased at about 11 percent per year during the period 1990 to 1994. There

is no indication that the rate of growth has continued, or that the implementation of the organic program would cause an increase in the number of organic operations; however, growth in retail sales, the addition of meat and poultry to organic production, and the possibility of increased exports suggest that the number of operations may increase.

At the current (1995) level of retail sales, the $1 million program costs imply an additional consumer cost from the regulation of approximately .04 cents per dollar. If the known current 44 certifiers were to be accredited and assume the total program cost of $1 million, annual average costs per certifier would be $22,727. Assuming these costs are passed on to the estimated number of 4,600 existing certified organic farmers and handlers, and assuming that these certified farmers and handlers continue in business, certification costs for these 4,600 farmers and handlers would increase by an average of $217 per year as a result of the organic program. This increase may be smaller if more than 4,600 farmers and handlers are certified. Although the current fees are based on the anticipated certification of 4,600 farmers and handlers, we considered for purposes of estimating the reporting and recordkeeping burdens of the proposed rule that the actual total number of certified farmers and handlers who may participate in the national program during the first three years of the program may approximate 12,000 total farmers and handlers combined. These distributions of direct program costs are shown in Table 3. The actual distribution of program costs will be a function of the elasticity of demand for organic goods. The more inelastic the demand, the greater the portion of costs paid by consumers. If demand is elastic, producers and handlers will share a larger portion of the cost, and supply will be affected.

Producers and handlers would be required to produce and handle products in accordance with the standards set forth in the rule, and supply the information necessary to certifiers to verify certification requirements. These requirements are not expected to impose additional costs on those currently certified. Certified farmers and handlers of organic products are currently complying with certification requirements which are not substantially different from those in the proposed rule. Organic producers and handlers who currently are not certified, and new entrants to organic production and handling, would face higher costs.

The type of government fee structure largely would determine how program costs are distributed among certifiers and, secondarily, among producers and handlers. The impact of program costs on certifiers also would depend on the basis for the fees certifiers charge their customers, and on their customers' characteristics.

The provisions for assessing fee for direct services presented in the proposed rule set fixed application and administrative fees of $640 and $2,000, respectively, to be paid by certifiers, with the bulk of accreditation costs billed to certifiers on a time rate for direct services to conduct site visits. The level of these fixed fees, plus the variable fee for direct services, sets a lower bound on the size at which a certifier could operate and be economically viable. A certifier would have to collect enough revenue from the clients it certifies to cover these fees plus operating costs. Due to the fixed components of the fees, larger certifiers would have the ability to spread their costs over a greater number of farmers/handlers. Additionally, as required by the OFPA, a private certifying agent would have to furnish reasonable security for the purpose of protecting the rights of farms and handling operations certified by the certifying agent. The amount and type of security would be established through future rulemaking.

Under the fee for direct services provisions, labor hours, travel and per diem costs for the site inspection required for accreditation would be included in the variable fee for direct services. This practice is used by other USDA agencies that conduct inspection programs. The AMS estimates the average cost to conduct each accreditation site visit to be $3,500 per visit. The frequency of site-evaluations for each certifying agent could be expected to decrease as the operator becomes more familiar with the program regulations. Pre-accreditation site valuations might be necessary to enable the certifier to become accredited, and an evaluation would be required for confirmation of accreditation and thereafter for renewal of accreditation, which occurs every 5 years.

The travel cost component of this figure would vary based on the certifier's distance from Washington, D.C., because site visits will be conducted by the organic program staff headquartered there. An alternative method of distributing travel costs would be to estimate an average annual cost per trip, given the expected number of trips and the geographic distribution of all certifiers, and charge that amount for all site visits, regardless of location.

A measure of size is incorporated into the fee structure, i.e., the time spent conducting each accreditation by organic program staff. The variable portion of the fee would distribute program costs among certifiers according to the resources actually consumed in providing the accreditation service. The more complex and larger the certifier, the more time required to conduct an evaluation and the larger their fee for accreditation. However, imposing an hourly rate for accreditation services introduces a subjective measure in the determination of fees. With several national program staff conducting accreditation evaluations, disputes over the time required to complete a specific accreditation process would be difficult to resolve on an objective basis.

If program costs were distributed uniformly among existing certifiers, the smallest certifiers, those with annual revenues of $25,000 or less, may not have the financial capacity to continue to operate within the requirements of the regulation, based on their current revenues. Distributing program costs based on a measure of size would permit more small certifiers to stay in business, provided that they met other qualifications for accreditation. Generally, a fee structure proportionate to size would result in certifiers contributing to the costs of the program in proportion to the gains they accrue from it, their revenues being based largely on the share of total organic output produced by the operations they certify.

An additional feature of the proposed fees for direct services is that it attempts to distribute program costs according to a simplified measure of size through a variable fee charged directly to farmers and handlers who are certified by an accredited certifying agent. Under the proposed rule, a farmer would pay USDA an annual fee of $50 and a handler would pay $500 per year. The difference between farmer and handler fees is designed to account for the difference in staff time AMS estimates will be devoted to handler and processed food issues relative to farmer and raw product issues. Half of the total program cost of $1 million is assumed to be covered by these fees.

Administrative Requirements and Associated Costs

The proposed rule also would impose administrative costs, such as submission of information, recordkeeping, and access to records that may constitute an additional burden. The actual amount of the additional administrative costs that would be imposed by the final rule is expected to be different for those entities who would begin their activities only after the national program is implemented. Certifiers, farmers, wild crop harvesters and handlers who currently are active in the organic industry already perform most of these administrative functions; therefore, the additional costs to them would depend upon the extent to which their current practices are different from the requirements of the final regulation. The following list describes several proposed administrative requirements or optional submissions and the probable resources required for compliance:

1. A list of farmers, wild crop harvesters and handlers currently certified. This information could be compiled from existing records. After implementation, certifiers would be required to submit on a quarterly basis a list of operations certified during that quarter.

2. A description of the certification decision process, compliance review procedures, a plan for allowing public access to records, and measures taken to prevent conflicts of interest. These policies may have to be created or modified to conform to the regulation.

3. Documentation of financial capacity and compliance with other administrative requirements (e.g., fee structure, recordkeeping capability, income sources, and business relationships showing absence of conflicts of interest). Some of this information would be compiled from existing records (e.g., income sources and fee schedules), and some may be generated from other sources.

4. Retention of certification documents for 10 years. This activity requires records and database management capabilities and resources (storage space, file cabinets, electronic storage, etc.). In an informal inquiry, AMS found that most existing certifiers currently retain records for at least 10 years, and use both electronic and paper storage. We believe that this requirement would not pose an additional burden on existing certifiers.

The Act also requires producers and handlers to retain their records for a minimum of five years. According to the same informal AMS inquiry, the industry generally requires records to be kept for three years. Overall, producer and handler operation records required by the proposed regulation are extensions of, or modifications to, documents already maintained under normal industry practice, and therefore this requirement would have minimal impact on operations currently certified.

5. Public access would have to be provided to certification records, such as a list of certified farmers and handlers, their dates of certification, products produced, and the results of pesticide residue tests. This requirement would have minimal impact given the requirements for retaining records.

6. Certifiers are required to supply program information to certification applicants. To comply with this requirement, certifiers may need to modify existing standards and practice.

The criteria for qualified personnel required in the proposed rule may likely result in an increase in labor costs for some existing certifiers and, initially, an increase in training costs. The amount of additional costs to these certifiers would depend on the level of expertise among current certification agency staff, the extent to which certifiers currently rely on volunteers, and the current costs of training certification staff.

Our proposed inspector training requirements conform closely to current established practice in the industry and are not expected to impose an additional burden on most existing certifiers. Training programs are currently offered by the Independent Organic Inspectors Association (IOIA), an organization of approximately 165 organic certification inspectors, and by some of the larger certifiers (IOIA, p. 1).

Costs to existing certifiers to provide additional training to other staff are difficult to measure in the absence of information on current staff skill levels or the existence of formal training other than inspector training. Some agencies rely on volunteer staff who may have had no formal training, but the extent of this practice is unknown. AMS intends to offer assistance to certifiers, producers and handlers by providing guide books and other printed material that would enable participants to better understand the regulations. In addition, AMS intends to continue open and frequent communication with certifiers and inspectors to provide as much information as possible to aid them in fulfilling the requirements of the regulations.

Table 5 estimates the total initial costs for an applicant to become accredited as a certifying agent under the NOP, and the estimated total initial costs for a producer or handler to become certified. The costs presented in Table 5 are the upper-bound estimates for participation in the National Organic Program for new organic certifiers, farmers and handlers.

State Program Costs of the Proposed Rule

The proposed rule is based on the OFPA, a review of State and private certification programs, National Organic Standards Board (NOSB) recommendations, EU regulations, and foreign organic program provisions. Table 4 compares many general provisions of the proposed rule to existing State and private certification programs and the NOSB recommendations. The proposed rule encompasses most of the principles of existing State programs, with specific requirements modified to be performance-based rather than design-based. For example, the proposed standards for housing poultry require that farmers provide adequate light and space, rather than requiring a particular method of housing. With a performance-based rule, certifiers are free to exercise their judgement regarding how farmers meet the standards. Thus, the proposed rule provides greater flexibility than is provided by many existing programs in determining how a particular standard can be met.

In many cases, the proposed rule provides standards where many existing State programs are silent. For example, according to AMS data, only two of the eleven State agencies and 16 of the 33 private agencies certified livestock in 1994. In the same year, only six of the eleven States and 15 of the 33 private agencies certified processors or handlers.

There are 27 States with some standards governing the production or handling of organic food, and comparing features of State standards to the provisions of the proposed rule provides a means of examining the potential impact of the rule on existing State programs. There are two situations in which implementation of a national program may impose additional costs on States by requiring changes in their existing programs. First, where State standards are below Federal standards or where elements of the Federal standards are missing from a State program, these States would be required to make changes in their programs that they might otherwise not make. Second, where State standards exceed the Federal standards and the differences are not approved by the USDA, States also would be required to make changes in their programs. States without organic standards or whose current standards either would conform to those of the national program or would be approved by the Secretary would not incur additional costs resulting from required changes. In States with existing organic standards but no certification program, such as California, the national standards would apply to private certifiers operating within the State and, therefore, they also are relevant to indicating the degree of impact a national program would have on existing State programs. An analysis of selected aspects of specific standards follows:

Transition period. The transition period, which would specify the time period during which prohibited materials cannot be applied before a field can be certified as organic, is included in most State organic standards. The OFPA specifies a required transition period of three years before certifying a field. Existing certifiers and farmers will have had several years prior to implementation to conform with this requirement and its impact is expected to be minimal. In fact, a required transition period of three years is currently in effect in 20 out of 23 States.

Animal drug use. Another common feature of organic standards is the restricted use of animal drugs for livestock. Where livestock standards have been adopted by existing State programs, most prohibit the use of animal drugs except for the treatment of a specific disease condition. Use of animal drugs is generally prohibited within 90 days prior to slaughter, or the sale of milk or eggs as organic. The standards in the proposed rule would impose a more restrictive time period for drug use in animals for slaughter, but do not differ from most existing State standards in prohibiting the use of drugs on healthy animals.

Materials list. Lists of approved synthetic materials, including soil amendments and pesticides, vary from one State program to another. A detailed analysis of specific differences in the various existing materials lists shows them to be overlapping in most cases, but mutually exclusive in others. The impact of the national program would not be determined by how the national standards differ from current certification standards, but rather by how the national standards differ from actual practice. Data on materials currently used in organic production are not available to make this comparison.

Non-Quantifiable Costs

Some certifiers have identified the loss of independence in setting certification standards within a uniform national standard program as imposing a cost. Certification to a national standard has been described as "forced reciprocity," that is, compelling certifiers to recognize as equal in value a product certified by a competitor. A national accreditation program would preclude a certifier of an end product from refusing to accept a different certification of an ingredient used in the end product. A lack of reciprocity can, in fact, impose costs on manufacturers in the form of lost product (Natural Foods Merchandiser, April 1995). Other certifiers welcome the enforcement of uniform national standards and view mandatory accreditation as a benefit because it would eliminate the risk of potentially costly reciprocity disputes. What appears to be at stake is the determination of market shares among certifiers: losses to one certifier would constitute gains to others.

Another possible cost of the rule may result from the requirement thet certifiers provide access to records. The Secretary and the applicable governing State official would have access to all records and certifiers would have to provide public access to laboratory analyses and certification documents other than confidential business information. While not quantifiable, this requirement may represent a substantial change in the way some certifiers currently operate and interact with producers, other certifiers, government agencies, and the public.

Conclusion

Ideally, the net benefits of the proposed rule would be estimated by employing a welfare analysis. In a welfare model, the quantitative assessment of benefits would be represented by net changes in consumer and producer surplus, i.e., the difference between

the willingness to pay (or firm cost structure in the case of producers) and the market price of organic food. These net changes would be estimated using information about the cost structure of the industry, the demand for organic food, and projected shifts in supply and demand resulting from the various factors discussed in the assessment. Although researchers have conducted numerous small-scale studies to determine consumers' willingness to pay for certain organic products (primarily fresh produce) and to identify reasons why conventional food buyers do not choose organic food products (Hammitt, 1990 and 1993; Jolly; Misra et al.; Park and Lohr; Weaver et al.), the available data are insufficient to support a quantitative assessment of this type.

USDA has identified the entities that may be affected by the proposed rule and has analyzed the anticipated impacts of the rule on them based on our knowledge of the industry and limited data. However, USDA lacks data to thoroughly and quantitatively describe the existing organic industry and quantitatively analyze the effects of the proposed rule. To assist in the assessment of comments on the rule and to better report to the public the effects of the rule, USDA welcomes responses in the following areas. USDA is particularly interested in data and analyses that are nationally representative.

1. To establish a baseline, USDA requests data on the number of farmers producing and marketing organic goods, the number of handlers of organic goods, and the number of organic farmers, wild crop harvesters and handlers who are operating with third party certification, and the number who operating without third party certification..

2. To establish a baseline, USDA requests data on the number of entities certifying organic farmers and handlers and the number of organic certifiers who currently are accredited.

3. To establish a baseline, USDA requests data to characterize the costs of organic production and revenues from organic farming.

4. To assess the impact of the proposed program, USDA requests data on fees currently paid by organic producers and handlers for certification services and on fees currently paid by organic certifiers for accreditation.

5. To assess the impacts of the proposed program and to better project the costs of operating the National Organic Program (which will be recovered by fees), USDA requests information to project the number of organic producers and handlers who would apply for certification under the National Organic Program. USDA also requests information to project the number of entities which would seek USDA accreditation as an organic certifying agent.

6. The regulatory impact assessment for the proposed rule considers that cost may be incurred by fraudulent labeling of organic products. To what extent does mislabeling of non-organically produced products as organic occur and what are the market impacts in terms of quantities of organic goods sold and the prices for organic goods?

7. This rule would permit the marketing of meat and poultry products as organic, which is not currently permitted. USDA requests data and analyses which would support projections of the demand for organic meat and poultry.

8. The regulatory impact assessment for this rule reports that sales of organic goods have been growing at an annual rate of 20 percent. Are there data to support a different rate?

9. We estimate that the organic industry may grow after program implementation due to the introduction of organic meat and poultry and increased exports of organic agricultural products. Are there data to estimate the impact that this rule is likely to have on overall industry growth?

10. The organic industry and consumers of organic goods may benefit if industry growth results in economies of scale, and production and marketing efficiencies. What has been the industry experience in this area and do industry participants anticipate such benefits from this rule?

References

_____. 1995. Organic Update: Reciprocity Controversies Intensify, Exacerbating Certifier/Manufacturer Tensions. Natural Foods Merchandiser (April): (no page numbers).

Burros, Marian. 1996. A New Goal Beyond Organic: "Clean Food." The New York Times (February 7).

Byng, John. 1994. UK and European Community (EC) Legislation. In, Handbook of Organic Food Processing and Production. Simon Wright (ed.). pp. 17–30. Glasgow: Blackie Academic and Professional.

California Department of Health Services. 1995. Report on the Registration of California Organic Processed Food Firms. Sacramento: State of California.

Dunn, Julie Anton. 1995. Organic Food and Fiber: An Analysis of 1994 Certified Production in the United States. U.S. Department of Agriculture, Agricultural Marketing Service.

Emerich, Monica. 1996. Industry Growth: 22.6%. Natural Foods Merchandiser (June):1–39.

Hammitt, James K. 1990. Risk Perceptions and Food Choice: An Exploratory Analysis of Organic-Versus Conventional-Produce Buyers. Risk Analysis; Vol.10, No.3: 367–374.

Hammitt, James K. 1993. Consumer Willingness to Pay to Avoid Pesticide Residues. Statistica Sinica, 3.

Independent Organic Inspectors Association. 1996. IOIA 1996 Membership Directory. Winona, MN.

Jolly, Desmond A., Howard G. Schutz, Katherine V. Diaz-Knauf and Jagjeet Johal. 1989. Organic Foods: Consumer Attitudes and Use. Food Technology (November): 60-66.

Jolly, Desmond A. 1991. Differences Between Buyers and Nonbuyers of Organic Produce and Willingness to Pay Organic Price Premiums. Journal of Agribusiness (Spring): 97–111.

Klonsky, Karen, and Laura Tourte. 1995. Statistical Review of California's Organic Agriculture, 1992–93. Report prepared for the California Department of Food and Agriculture Organic Program. Cooperative Extension, Department of Agricultural Economics, University of California, Davis.

Mergentime, Ken. 1994. The USA Perspective. In, Handbook of Organic Food Processing and Production. Simon Wright (ed.). pp. 160–183. Glasgow: Blackie Academic and Professional.

Mergentime, Ken and Monica Emerich. 1995. Organic Sales Jump Over $2 Billion Mark in 1994. Natural Foods Merchandiser (June): 74–76.

Mergentime, Ken and Monica Emerich. 1996. Widening Market Carries Organic Sales to $2.8 Billion in 1995. Natural Foods Merchandiser (June): 36–38.

Misra, Sukant, Chung L. Huang and Stephen L. Ott. 1991. Georgia Consumers' Preference for Organically Grown Fresh Produce. Journal of Agribusiness (Fall): 53–65.

Park, Timothy A. and Luanne Lohr. 1996. Supply and Demand Factors for Organic Produce. American Journal of Agricultural Economics, Vol.78 (August): 647–655.

SRI International. 1992. The Japanese Market for Health Foods and Beverages. Prepared for the U.S. Agricultural Trade Office, Tokyo, Japan.

Tate, William. 1991. Organic Produce in Europe. The Economist Intelligence Unit Special Report No. 2128. London: Business International Limited.

Underhill, S. E. and E. E. Figueroa. 1993. Consumer Preferences for Non-Conventionally Grown Produce. Paper presented at the Valuing Food Safety and Nutrition Conference, organized by the NE–165 Regional Research Project. Alexandria, VA, June 2–4.

USDA Foreign Agricultural Service. 1995. Agricultural Situation: Agricultural Highlights—Winter 1995. Report from Austria. Code 24, Sequence No. 007.

USDA Foreign Agricultural Service. 1995. Agricultural Situation: Organic Food. Report from Germany. Code 24, Sequence No. 011.

USDA Foreign Agricultural Service. 1996. Agricultural Situation: Organic Food Market Potential and Regulations. Report from France. Code 24, Sequence No. 002.

Weaver, Robert D., David J. Evans and A. E. Luloff. 1992. Pesticide Use in Tomato Production: Consumer Concerns and Willingness-to-Pay. Agribusiness, Vol.8 No.2: 131–142.

TABLE 1.—ORGANIC SALES, 1980–1995

Year	Sales (in $ millions)
1980	178
1989	631
1990	1,000
1991	1,250
1992	1,540

TABLE 1.—ORGANIC SALES, 1980–1995—Continued

Year	Sales (in $ millions)
1993	1,890
1994	2,310
1995	2,800

Source: Emerich, p. 23.

TABLE 2.—BREAKDOWN OF PROJECTED NATIONAL ORGANIC PROGRAM COSTS

[Total Program Costs]

Salaries and Benefits	$644,000
Operating Costs *	180,617
Agency Overhead **	100,403
Division Overhead **	74,980
Total	1,000,000
Total Staffing	12

*Operating costs include travel, printing, training, equipment, supplies, rent and other services.

**Agency and Division overhead includes administrative support, contract and other fees for services, rent, heat, communications, and major equipment purchases.

Source: AMS.

TABLE 3.—DISTRIBUTION OF DIRECT ANNUAL PROGRAM COSTS FOR OFPA

[In dollars]

Direct program costs	$1,000,000
Costs per dollar sales ($2.8 billion)	0.00036 (.036¢)
Costs per certifier (44 certifiers)	22,727
Costs per farmer/handler (4,600 farmers/handlers)	217

Source: AMS data; Emerich, p. 23.

TABLE 4.—COMPARISON OF THE PROPOSED NATIONAL ORGANIC PROGRAM REGULATIONS WITH THE NOSB RECOMMENDATIONS AND REPRESENTATIVE STATE AND PRIVATE PROGRAMS

USDA provision in the proposed rule	NOSB recommendation	State programs	Private programs
PRODUCTION AND HANDLING:			
Standards based on identified organic principles	Recommended principles which USDA used in the proposed rule.	Similar principles	Similar principles.
Management includes long-range planning, such as an organic plan	Similar	Similar	Similar.
Preventive measures and mechanical or biological methods, as opposed to substances, used to control pests, weeds, and disease in crops and livestock.	Similar	Similar; few States have livestock standards.	Similar; few programs have livestock standards.
Organic planting stock, livestock, and ingredients used in preference to non-organic.	Similar	Similar	Similar.
Livestock may be fed non-organic feed under certain circumstances	Similar	Similar	Similar.
Prevention of prohibited substances contacting organic products	Similar	Similar	Similar.
Allowed use of specific synthetic substances	Proposed National List reflects almost all of the NOSB recommendations.	Similar; lists vary among States.	Similar; lists vary among programs.
Criteria for list of allowed synthetic substances	Similar	General criteria are similar.	General criteria are similar.
Mechanical or biological methods, as opposed to substances, used in handling operations.	Similar	Similar; few States have handling standards.	Similar; few programs have handling standards.
Allowed use of non-organic agricultural ingredients in processed organic food.	Similar	Similar	Similar.
Allowed use of specific non-agricultural ingredients in processed organic food.	Proposed National List reflects almost all of the NOSB recommendations.	Similar, but few States have handling standards; lists differ.	Similar, but few programs have handling standards; lists differ.
CERTIFICATION:			
Products labeled organic must originate from certified operations	Similar	Few States do their own certification but generally producers and handlers are certified.	Private programs generally certify.
Certification performed by a third-party in a prescribed manner	Similar	Similar for States that require certification.	Similar.
Annual certification with verification by inspection of site and records	Similar	Similar for States that require certification.	Similar.
All certifications granted by accredited certifiers are to be considered equivalent.	Similar	Equivalency granted on a case-by-case basis.	Equivalency granted on a case-by-case basis.
ACCREDITATION:			

TABLE 4.—COMPARISON OF THE PROPOSED NATIONAL ORGANIC PROGRAM REGULATIONS WITH THE NOSB RECOMMENDATIONS AND REPRESENTATIVE STATE AND PRIVATE PROGRAMS—Continued

USDA provision in the proposed rule	NOSB recommendation	State programs	Private programs
All certifiers must be accredited by USDA	Similar	Very few States accredit or register certifiers.	Very few programs are accredited by private organizations.
Certifiers evaluate and train inspectors and certification personnel	Similar	Similar; differs among States.	Similar; differs among programs.
Recordkeeping requirements, public access requirements, and safeguard requirements for confidential information.	Similar	Similar	Similar.
Measures enforced to prevent conflict of interest by certifier	Similar	Similar, as part of State's general requirements.	Similar, but may not be monitored.
Certifier performance reviewed by peers	Similar	Similar in any State accrediting certifiers.	Similar for the purpose of establishing reciprocity.
OTHER ELEMENTS:			
Site-specific unavoidable residual environmental contamination level used to determine organic status.	Predetermined unavoidable residual environmental contamination level should be used to determine organic status.	Similar, but some States also use a predetermined specified residue level to determine organic status.	Similar, but some programs also use a predetermined specified residue level to determine organic status.
Enforcement by Federal government	Similar	Intra-State enforcement of existing State regulations.	Enforcement of individual program policies.
Access to international markets	Not applicable	Individually acquired agreements.	Individually acquired agreements.
Evaluation of foreign programs to determine equivalency	Similar	Not applicable	Not applicable.

Source: AMS.

TABLE 5.—ESTIMATED UPPER-BOUND COSTS OF ACCREDITATION AND CERTIFICATION

ESTIMATED COST TO CERTIFIERS FOR INITIAL ACCREDITATION	
Accreditation application fee	$640
Site evaluation fee*	3,500
USDA Administrative fee	2,000
Total fees	6,140
Paperwork reporting burden	23,931 (for new organic certifiers)
Paperwork recordkeeping burden	60
Total reporting and recordkeeping	23,991
ESTIMATED TOTAL COST FOR INITIAL ACCREDITATION	30,131
ESTIMATED COST TO PRODUCERS FOR INITIAL CERTIFICATION	
Certification fee**	$413
USDA fee	50
Total fees	463
Paperwork reporting burden	381 (for new organic producers)
Paperwork recordkeeping burden	34
Total reporting and recordkeeping	415
ESTIMATED TOTAL COST TO PRODUCERS FOR INITIAL CERTIFICATION	878
ESTIMATED COST TO HANDLERS FOR INITIAL CERTIFICATION	
Certification fee**	943
USDA fee	500
Total fees	1,443
Paperwork reporting burden	433 (for new organic handlers)
Paperwork recordkeeping burden	34
Total reporting and recordkeeping	467

TABLE 5.—ESTIMATED UPPER-BOUND COSTS OF ACCREDITATION AND CERTIFICATION—Continued

ESTIMATED TOTAL COST TO HANDLERS FOR INITIAL CERTIFICATION	1,910

*Each certifying agent would have a site-evaluation to confirm accreditation, and thereafter a subsequent renewal evaluation at least every 5 years following confirmation of accreditation. In some cases, a pre-confirmation site visit may be necessary. We anticipate that the frequency of site evaluation would be based on the performance of the certifying agent and would be higher during the initial years of the program.

**The estimated certification fee is based on the average of fees charged by a representative group of certifying agents: private non-profit, private for-profit and a State agency. Most certifying agents in our representative group include the cost of inspection and, if applicable, required laboratory testing in the certification fee.

Source: AMS.

[FR Doc. 97–32322 Filed 12–15–97; 8:45 am]

BILLING CODE 3410–02–P

federal register

Tuesday
December 16, 1997

Part III

Department of Housing and Urban Development

Funding Availability for: The HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1997 and Fiscal Year 1998; and the Section 108 Loan Guarantee Program for Small Communities in New York State; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4256–N–01]

Notice of Funding Availability for: The HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1997 and Fiscal Year 1998; and the Section 108 Loan Guarantee Program for Small Communities in New York State

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability for Fiscal Years 1997 and 1998.

SUMMARY: This Notice of Funding Availability (NOFA) announces: (1) the availability of approximately $49,456,000 in Fiscal Year (FY) 1997 funding and approximately $54,000,000 in Fiscal Year 1998 funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant (CDBG) Program; and (2) the availability of a maximum of approximately $200,000,000—$250,000,000 in FY 1998 funding under the Section 108 Loan Guarantee program for small cities in New York State. Amounts available under the Section 108 Loan Guarantee program are not awarded competitively and are not rated under the criteria of this NOFA. Grants awarded under this NOFA for activities and projects for which Section 108 assistance will also be needed, however, will be conditioned upon approval of the requisite Section 108 application within a stated time.

The exact amount of funds that will be available from the approximately $49,456,000 of FY 1997 funds and the approximately $54,000,000 of FY 1998 funds that communities will be able to compete for under this NOFA is not known at this time. This amount will not be known until HUD receives applications and makes determinations for grants based on multiyear plans approved in FY 1995 and FY 1996. In addition, in FY 1997 HUD carried out the Canal Corridor Initiative (see the NOFA for this initiative in the **Federal Register** on December 3, 1996 (61 FR 64196) and the amendment published in the **Federal Register** on December 12, 1996 (61 FR 66892)). Pursuant to that NOFA, HUD approved Canal Corridor applications for approximately $6.5 million in Fiscal Year 1997 New York Small Cities funds. HUD must also be prepared, pursuant to 24 CFR 570.432, to use CDBG funds each year, as necessary, for the sole purpose of paying any amounts due on debt obligations, for up to 20 years, issued by units of general local government (or their designated public agencies) and guaranteed by the Secretary pursuant to section 108 of the Housing and Community Development Act of 1974, as amended, for projects approved under the Canal Corridor Initiative NOFA. At this time, the exact amount of CDBG funds that will be needed to meet required debt obligation payments during Fiscal Year 1998 is not known. However, in the December 3, 1996 NOFA, HUD estimated that the average amount of CDBG funds required to meet the debt obligation payments would not exceed an average of $3 million per year over a 20-year period.

The funds announced in this NOFA provide small communities and counties in New York State with an opportunity to propose programs that focus on creating or expanding job opportunities, addressing housing needs, or meeting local public facilities needs. HUD encourages communities to propose programs that are creative and innovative in addressing the needs of their community. A community may propose a program that is "single purpose" in nature addressing a specific area of need. In the final rule published in the **Federal Register** on November 25, 1997 (62 FR 62912), HUD decreased the maximum grant amount for a Single Purpose grant to $400,000, except for applications from a county. The maximum amount for a Single Purpose grant to a county is $600,000. However, because this NOFA covers funding for two fiscal years, applicants may submit and be funded for up to two applications. The $400,000 (or $600,000 in the case of a county) maximum grant award limit will apply to each application and grant awarded. Each application will be rated and ranked independently and must be for independent projects. HUD will not make any Single Purpose multiyear awards with FY 1997 or FY 1998 funds under this NOFA. HUD will honor previous multiyear plans approved in FY 1995 and FY 1996. Multiyear recipients should carefully review the limitations and requirements contained in section I.D. of this NOFA.

DATES: Applications (including applications from recipients approved for a multiyear plan for second or third component in FY 1997 or FY 1998) are due by March 2, 1998. Application kits may be obtained from and must be submitted to either HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.)

Applications, if mailed, must be postmarked no later than midnight on March 2, 1998. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4:00 p.m. (local time) on March 2, 1998.

Application kits will be made available by a date that affords applicants no fewer than 45 days to respond to this NOFA. For further information on obtaining and submitting applications, please see Section II. of this NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received by 4:00 p.m. on, or postmarked by, March 2, 1998. Applicants should take this procedure into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Cornelia B. Robertson-Terry, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1322 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Contents

I. Purpose and Substantive Description
A. Authority and Background
1. Authority
2. Background
3. Other Program Requirements
a. Abbreviated Consolidated Plan
b. Section 3
4. Accountability in the Provision of HUD Assistance
a. HUD Responsibilities
(1) Documentation and Public Access
(2) Disclosures
b. Units of Local Government Responsibilities
B. Allocation Amounts
1. Total Available Funding
2. Imminent Threats
C. Eligibility
1. Eligible Applicants
2. Previous Grantees
3. Eligible Activities and National Objectives
4. Environmental Review Requirements
D. Types of Grants
1. Comprehensive Grants
2. Single Purpose Grants
a. General
b. Grant Limits and Funding Requirements
c. Special Limitations for Multiyear Plan Recipients
3. Applications with Multiple Projects
4. Multiyear Plans
a. General
b. Previously Funded Multiyear Plans
E. Selection Criteria/Ranking Factors and Final Selection
1. General
2. Performance Evaluation
a. Community Development Activities
b. Compliance with Applicable Laws and Regulations
c. Performance Assessment Reports
3. Five Factor Rating
a. Need—Absolute Number of Persons in Poverty
b. Need—Percent of Persons in Poverty
c. Program Impact—Single Purpose Grants
(1) Program Impact—Single Purpose—Housing
(a) Housing Rehabilitation
(b) Creation of New Housing
(c) Direct Homeownership Assistance
(2) Program Impact—Single Purpose—Public Facilities Affecting Public Health and Safety
(3) Program Impact—Single Purpose—Economic Development
(a) Scoring
(b) The Appropriate Determination
(c) CDBG Assistance Must Minimize Business and Job Displacement
(d) Section 105(a)(17) Requirements
(e) National Objectives
(f) Application Requirements
d. Fair Housing and Equal Opportunity Evaluation
(1) Housing Achievements
(a) Provision of Fair Housing Choice
(b) Implementation of a Fair Housing Strategy that Affirmatively Furthers Fair Housing
(2) Entrepreneurial Efforts and Local Equal Opportunity Performance
(3) Equal Opportunity Employment
e. Welfare to Work Initiative
4. Final Selection
II. Application and Funding Award Process
A. Obtaining Applications
B. Submitting Applications
C. The Application
1. Application Requirements
2. Streamlined Application Requirements for Certain Applicants
D. Funding Award Process
III. Technical Assistance
IV. Checklist of Application Submission Requirements
V. Corrections to Deficient Applications
VI. Findings and Certifications

I. Purpose and Substantive Description

A. Authority and Background

1. Authority

Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (1974 HCD Act); 24 CFR part 570, subpart F, for the New York State Small Cities program, and subpart M for the Section 108 Loan Guarantee program.

2. Background

Title I of the 1974 HCD Act authorizes the Community Development Block Grant (CDBG) Program. Section 106(d) of Title I permits States, in such manner and at such time as the Secretary shall prescribe, to elect to assume the administrative responsibility for the CDBG Program for nonentitled areas within their jurisdiction. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within any State that does not elect to assume the administrative responsibility for the program. HUD's regulations at 24 CFR part 570, subpart F describe the requirements for HUD's administration of the CDBG Program in nonentitled areas (Small Cities Program). This NOFA supplements subpart F of 24 CFR part 570.

In accordance with 24 CFR 570.421(b), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (HUD Reform Act), HUD is issuing this NOFA for New York State's Small Cities Program for FY 1997 and FY 1998. This NOFA announces the allocation of funds for a Single Purpose grant competition, and establishes the deadline for filing grant applications. The NOFA explains how HUD will apply the regulatory threshold requirements for funding eligibility, and the selection criteria for rating and scoring applications for Single Purpose grants.

HUD has issued final regulations at 24 CFR 570.420—570.432 which govern the HUD-administered Small Cities program in New York. HUD will no longer approve new multiyear plans. HUD will honor previous multiyear plans approved in FY 1995 and FY 1996. HUD intends to fund future years of previously approved multiyear plans on a noncompetitive basis, based on satisfactory past performance and a continuing capacity for carrying out the proposed CDBG program activities and submission of an acceptable application and certifications.

Other information about the Small Cities Program will be provided in the application kit, which will be made available to applicants by HUD's New York Office and Buffalo Office (see Section II. of this NOFA).

3. Other Program Requirements

a. *Abbreviated Consolidated Plan.* Each jurisdiction that applies for funds under this NOFA must have submitted a consolidated plan, as provided in 24 CFR part 91. An applicant under this NOFA for more than one grant need submit only one consolidated plan or abbreviated consolidated plan, as applicable, covering the activities proposed in both applications. A jurisdiction that does not expect to be a participating jurisdiction in the HOME program under 24 CFR part 92 may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD (see 24 CFR 91.235). Any applicant that plans to undertake a housing activity with funds under this NOFA needs to prepare and submit, at a minimum, an abbreviated consolidated plan that is appropriate to the types and amounts of housing assistance sought under this NOFA.

Even if the community's Small Cities application is approved, HUD must also approve an abbreviated consolidated plan that covers activities proposed in such application(s) before the community may receive Small Cities funding. Further, that applicant must also include a certification that the housing activities in its CDBG Small Cities application are consistent with the consolidated plan. The applicant's consolidated plan must describe the jurisdiction's priority nonhousing community development needs eligible for assistance under the CDBG program by eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity (see 24 CFR 91.235(c)(2)).

The abbreviated consolidated plan is subject to the same citizen participation requirements as is the jurisdiction's Small Cities CDBG application. Both must meet the citizen participation requirements before they may be submitted to HUD (see 24 CFR 570.431). A Section 108 Loan Guarantee application would also have to meet citizen participation requirements, as described in 24 CFR 570.704, if the jurisdiction submits one to HUD for consideration.

If possible, an applicant should submit the abbreviated consolidated plan in advance of the Small Cities application due date. The latest time at which the abbreviated consolidated plan will be accepted by HUD for the HUD-administered Small Cities Program in New York will be March 2, 1998 (the application due date for the Small Cities application). *Failure to submit the abbreviated consolidated plan by the due date is not a curable technical deficiency.* Questions regarding the abbreviated consolidated plan should be directed to the appropriate HUD field office.

Any application that is fundable but does not have an approved consolidated

plan will receive a conditional approval subject to HUD's approval of the abbreviated consolidated plan. If HUD is unable to approve the abbreviated consolidated plan within a reasonable period of time (but not more than 60 days from the date that the conditional approval is announced), HUD will rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

b. *Section 3.* Assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations in 24 CFR part 135. One of the purposes of this NOFA, which is consistent with section 3, is to give, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance to low- and very low-income persons. Public entities awarded funds under this NOFA that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements set forth in 24 CFR part 135.

4. Accountability in the Provision of HUD Assistance: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. *HUD Responsibilities.* (1) *Documentation and Public Access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

b. *Units of General Local Government Responsibilities.* Units of general local government awarded assistance under this NOFA must ensure that documentation and other information regarding each application submitted to the recipient by a subsequent recipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The unit of general local government must make this material, including any letters of support, available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Unit of general local government recipients must also notify the public of the subsequent recipients of the assistance. Each recipient will develop documentation, public access, and notification procedures for its programs.

B. Allocation Amounts

1. Total Available Funding

The nonentitlement CDBG funds for New York State for FY 1997 total approximately $56,022,000 and for FY 1998 total approximately $54,000,000. The exact amount of funds available for the Small Cities CDBG is not known at this time. The final amount available will not be known until HUD receives applications and makes grants based on multiyear plans approved in FY 1995 and FY 1996. This amount will not be known until the communities have submitted their applications to HUD and determinations have been made by HUD regarding each community's past performance and the community's continuing capacity to carry out additional CDBG activities; however, the total amount of previously approved multiyear plans, if submitted and approved by HUD, would be approximately $24.6 million in FY 1997 funds and approximately $12 million in FY 1998 funds. In addition, in FY 1997 HUD carried out the Canal Corridor Initiative (see the NOFA for this initiative in the **Federal Register** on December 3, 1996 (61 FR 64196) and as amended on December 18, 1996 (61 FR 66692)). HUD must be prepared, pursuant to 24 CFR 570.432, to use CDBG funds each year, as necessary, for the sole purpose of paying any amounts due on debt obligations, for up to 20 years, issued by units of general local government (or their designated public agencies) and guaranteed by the Secretary pursuant to section 108 of the Housing and Community Development Act of 1974, as amended, for projects approved under the Canal Corridor Initiative NOFA. HUD approved approximately $6.55 million in FY 1997 Small Cities funds for Canal Corridor grants. However, at this time, the exact amount of CDBG funds that will be needed to meet required debt obligation payments during Fiscal Year 1998 is not known. Of the approximately $103,456,000 available under this NOFA, approximately *$90,835,000* is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Buffalo Field Office. Approximately *$12,621,000* is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Office. Once HUD has determined the final amount of funds available for competitive distribution under this NOFA, HUD will allocate such funds in the same ratio as above to HUD's Buffalo and New York Offices. However, HUD has the option to revise these final allocations between offices by up to $400,000 in order to assure full distribution of funds. Finally, HUD reserves the right, in its sole discretion, not to award all of the funds available under this NOFA and to make any such funds available in a future NOFA, if an insufficient number of applications are determined fundable under this NOFA.

2. Imminent Threats

All imminent threat projects must meet the national objective of benefitting low-and moderate-income persons. HUD may elect to set aside up to 15 percent of the FY 1997 and/or the FY 1998 allocations for imminent threat projects. These funds will be available until the rating and ranking process for funds distributed under this NOFA is completed.

C. Eligibility

1. Eligible Applicants

Eligible applicants are units of general local government in New York State, excluding: (1) metropolitan cities; (2) urban counties; (3) units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city; and (4) Indian tribes (as defined in section 102(a)(17) of the 1974 HCD Act). Applications may be submitted individually, or jointly, as described in 24 CFR 570.422. However, applicants that were approved for a 2- or 3-year comprehensive plan in FY 1995 or FY 1996 may submit the required application by the deadline date set above for applications under this NOFA in order to receive the second and/or third year increment as applicable (see sections I.D.2.b. and I.D.4.b. of this NOFA), but may not submit a separate application for single purpose grant under this NOFA unless they notify HUD no later than the deadline for receipt of applications under this NOFA that they are relinquishing their second or third year multiyear funds.

2. Previous Grantees

Eligible applicants that previously have been awarded Small Cities Program CDBG grants are also subject to an evaluation of capacity and performance (see generally, section I.E.2. of this NOFA). Numerical thresholds for drawdown of funds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.) In FY 1996 an additional threshold was established which relates to the submission of annual Performance Assessment Reports (PARs). A PAR was due on October 31, 1997, for each grant which a local government received prior to April 1, 1996. *Failure to submit a PAR is not a curable technical deficiency.*

Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

3. Eligible Activities and National Objectives

Eligible activities under the Small Cities CDBG Program are those identified in subpart C of 24 CFR part 570. With respect to the Section 108 Loan Guarantee program, eligible activities are identified in § 570.703. Note that § 570.703 does not include all CDBG-eligible activities. Each activity under both programs must meet one of the national objectives (i.e., benefit to low- and moderate-income persons, elimination of slums or blighting conditions, or meeting imminent threats to the health and safety of the community; see § 570.208), and each grant and use of Section 108 Loan Guarantee proceeds must meet the requirements for compliance with the primary objective of principally benefitting low- and moderate-income persons, as required under § 570.420(e). The principal benefit requirement under the CDBG program is 70 percent. The method of calculating the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.420(e). In general, all applications must describe the projects and activities proposed in sufficient detail that compliance with these and other applicable statutory, regulatory, and NOFA provisions can be determined.

4. Environmental Review Requirement

The HUD environmental review procedures contained in 24 CFR part 58 apply to this program. Under part 58, grantees assume all of the responsibilities for environmental review, decisionmaking and action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the other provisions of law specified by the Secretary in 24 CFR part 58 that would apply to the Secretary were he to undertake such projects as Federal projects.

D. Types of Grants

1. Comprehensive Grants

There will not be a competition for new comprehensive grant awards for FY 1997 or FY 1998. However, HUD will honor those existing multiyear commitments awarded in FY 1995 and FY 1996, provided the community submits to HUD an acceptable application and HUD's review of the community's past performance is satisfactory. HUD's review must also indicate that the community has sufficient continuing capacity to carry out the proposed CDBG activities.

2. Single Purpose Grants

a. *General.* Single Purpose grants are designed to address and resolve a specific community development need. A Single Purpose grant may consist of more than one project. A project may consist of one activity or a set of activities. Each project must address community development needs in one of the following problem areas:

- Housing.
- Public Facilities.
- Economic Development.

Each project will be rated against all other projects addressing the same problem area, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e., separate Needs Description, Community Development Activities, Impact Description and Program Schedule forms have been filled out, indicating project names). In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were rated as a whole, as has been the case with some economic development and housing projects. If, however, the projects tend to meet impact criteria to the same extent, or the weaker element is only a small portion of the overall project, there is no discernable benefit in designating separate projects.

b. *Grant Limits and Funding Requirements.* The maximum annual grant for a Single Purpose grant is $400,000, except that counties may apply for up to $600,000 in Single Purpose funds, if the project will be carried out in more than one community. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated. With respect to grant limits for joint applicants, the maximum amount that may be awarded pursuant to a joint application is the maximum single grant limit established above for communities and counties multiplied by the number of participants in the cooperation agreement, provided that for purposes of determining such a multiple grant limit, and in order to receive that amount, a participating joint applicant must receive a substantial direct benefit from the activities proposed in the application and must not be acting solely on behalf of or in conjunction

with another jurisdiction for the sole purpose of raising the maximum grant amount that may be awarded. In addition, the statistics of each participant counted for maximum grant limits purposes shall also be used for purposes of the selection factors under section I.E.3. of this NOFA.

Because this NOFA covers funding for two fiscal years, applicants may submit up to two applications and receive two grants. The $400,000 (or $800,000 in the case of a county) maximum grant award limit will apply to each application and grant awarded. Each application will be rated and ranked independently, and must be for independent projects.

c. *Special Limitations for Multiyear Plan Recipients.* With respect to a 3-year multiyear plan approved for FY 1995, FY 1996 and FY 1997, in which the applicant still wishes to apply for and receive its FY 1997 increment, the applicant may apply for and receive approval for one Single Purpose grant of $400,000 (or $600,000 in the case of a county) under this NOFA. Similarly, a grantee that received approval of a 2-year, multiyear plan for FY 1996 and FY 1997, and for which the applicant still wishes to apply for and receive its FY 1997 increment, that community may apply for and receive approval for one Single Purpose grant of $400,000 (or $600,000 in the case of a county) under this NOFA. However, an applicant that received approval of an FY 1996 multiyear plan for FY 1996, 1997, and 1998, and that still wishes to apply for and receive approval for its FY 1997 and FY 1998 increments, may not apply for a Single Purpose grant under this NOFA. Similarly, a multiyear applicant that wishes to forgo applying for its FY 1997 or FY 1998 multiyear grant increment(s) may do so and would thus be eligible to apply for and receive up to one or two Single Purpose grants, as applicable.

3. Applications With Multiple Projects

If an application contains more than one project, each project will be rated separately for program impact. Applicants should note that regardless of the number of projects, the total grant amount cannot exceed the limits identified in section I.D.2.b. of this NOFA.

4. Multiyear Plans

a. *General.* Multiyear plan grants will not be awarded for FY 1997 or FY 1998. However, multiyear plan grants awarded in FY 1995 and FY 1996 will be honored for the FY 1997 and FY 1998 funding increments, provided HUD's review indicates that the grantee has acceptable past performance, the grantee has continuing capacity to carry out the CDBG activities proposed in the application, and the grantee submits an acceptable application and certifications. HUD reserves the right to lower the amount of funds for succeeding years if grantees are not in compliance with performance requirements and applicable regulations. Note that a multiyear applicant that received a 3-year multiyear plan approval in FY 1996 for FY 1996, 1997, and 1998, should submit two separate applications: one application for the FY 1997 increment; and one application for the FY 1998 increment. See section I.D.2.b., above, regarding grant limits and funding requirements for guidance on when a previously approved multiyear applicant may submit an application for a Single Purpose Grant under this NOFA. All applications for funding of a second or third year increment of a previously approved multiyear plan must be submitted by the deadline date for applications established by this NOFA.

b. *Previously Funded Multiyear Plans.* The maximum annual grant available for a FY 1996 multiyear plan was $1,900,000. The maximum funding for implementing an entire multiyear plan was $3,100,000 for a 2-year multiyear plan, and $5,000,000 for a 3-year multiyear plan. The maximum grant awarded in FY 1996 was $1,200,000. Grant funds requested must have been sufficient, either by themselves or in combination with funds from other sources (including any Section 108 Loan Guarantee resources requested in conjunction with a Small Cities application under this NOFA), to complete the project within a reasonable amount of time. If other sources of funds were to have been used with respect to a project, the source of those funds should have been identified and the level of commitment indicated. The maximum grant for a multiyear plan that was originally funded in FY 1995 and which was not revised in FY 1996 was $900,000.

E. Selection Criteria/Ranking Factors and Final Selection

1. General

Complete applications received from eligible applicants by March 2, 1998 will be rated and scored by HUD. Applications are rated and scored against five factors. These five factors are discussed in more detail in section I.E.3. of this NOFA. Note that when an applicant proposes to use Section 108 Loan Guarantee assistance as a partial funding resource for a proposed project under this NOFA, HUD, when applying the rating factors to such projects, will consider the applicant's description of the Section 108 assisted project in arriving at the score for a particular factor. An applicant may either have an approved 108 Loan Guarantee application, submit a full Section 108 Loan Guarantee application or provide a description of the Section 108 Loan Guarantee application. (The description must be specific as to the amount of the Section 108 Loan Guarantee commitment that the applicant will request and the purpose for which the 108 Loan Guarantee proceeds will be used. See section II.C.1, of this NOFA for more information on this subject.) However, any such CDBG application under this NOFA that is fundable and relies upon Section 108 Loan Guarantee assistance to partially carry out the activities and does not have an approved Section 108 Loan Guarantee commitment will receive a conditional approval. If the applicant does not submit and HUD does not approve the required Section 108 Loan Guarantee application within a reasonable period of time (see section II.C.1.(f)(2) of this NOFA), HUD may rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

2. Performance Evaluation

As noted in section I.C. of this NOFA, previous grantees of Small Cities Program CDBG grants are subject to an evaluation of performance and continuing capacity to undertake the proposed program. For purposes of making performance evaluations, HUD will use any information that becomes available before grant awards are announced. Performance also will be evaluated using information which may be available already to HUD, including previously submitted performance reports, site visit reports, audits, monitoring reports and annual community assessments. The HUD Office may request and consider additional information in cases where it is essential to make the required performance judgments (see 24 CFR 570.423(d), Thresholds). No grants will be made to an applicant that does not have the capacity to undertake the proposed program. A performance determination will be made by an evaluation of the following areas:

a. *Community Development Activities.* The following thresholds for performance in expending CDBG funds have been established for FY 1997 and FY 1998 and pertain to all Single Purpose and Comprehensive Grants, including grants pursuant to approved multiyear plans:

FY 1992 and earlier—Grants must be closed out
FY 1993—Grant funds 100 percent expended
FY 1994—Grant funds 75 percent expended
FY 1995—Grant funds 30 percent expended
FY 1996—Recipients must be on target with respect to the latest Small Cities Program Schedule received by HUD.

Note: These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant that fails to meet the percentages specified above may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data received by HUD after March 2, 1998 be accepted, unless specifically requested by HUD.

b. *Compliance With Applicable Laws and Regulations.* An applicant will be considered to have performed inadequately if the applicant:

(1) Has not substantially complied with the laws, regulations, and Executive Orders applicable to the CDBG Program, including applicable civil rights laws as may be evidenced by: (1) an outstanding finding of civil rights noncompliance, unless the applicant demonstrates that it is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance; (2) an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance; (3) a deferral of Federal funding based upon civil rights violations; (4) a pending civil rights suit brought against it by the Department of Justice; or (5) an unresolved charge of discrimination issued against it by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;

(2) Has not resolved or attempted to resolve findings made as a result of HUD monitoring; or

(3) Has not resolved or attempted to resolve audit findings.

An applicant will be ineligible for a grant where the inadequate performance in compliance with applicable laws and regulations evidences a lack of capacity to carry out the proposed project or program. For example, an application will not be accepted from a unit of general local government which has an outstanding audit finding or monetary obligation for any HUD program. Additionally, applications will not be accepted from any entity which proposes an activity in a unit of general local government that has an outstanding audit finding or monetary obligation for any HUD program. The Director of the Community Planning and Development Division of the HUD field office may provide an exception to this prohibition if the unit of general local government has made a good faith effort to clear the audit finding. No exception will be provided if funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

c. *Performance Assessment Reports.* Under 24 CFR 570.507, Small Cities CDBG grantees are required to submit Performance Assessment Reports (PARs) on October 31st, for the period ended September 30th, for all open grants awarded before April 1st of the same year. For an application for FY 1997/1998 funds to be considered for funding, the applicant must be current in its submission of PARs. Failure to submit a PAR is not a curable technical deficiency under section V. of this NOFA.

3. Five Factor Rating

As noted in section I.E.1. of this NOFA, all applications are rated and scored against five factors. These five factors are:

- Need based on absolute number of persons in poverty;
- Need based on the percent of persons in poverty;
- Program Impact;
- Outstanding performance in fair housing and equal opportunity; and
- Welfare to Work Initiative.

A maximum of 605 points is possible under this system with the maximum points for each factor being:

	Points
Need—absolute number of persons in poverty	75
Need—percent of persons in poverty	75
Program Impact	400
Outstanding performance—FHEO:	
a. Provision of fair housing choice	20
b. New Horizons Fair Housing Assistance Project	20
c. Equal opportunity employment	10
Welfare to Work Initiative	5
Total	605

Each of the five factors is outlined below. All awarded points for each factor will be rounded to the nearest whole number.

a. *Need—Absolute number of persons in poverty.* HUD uses 1990 census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Applicants which are county governments are rated separately from all other applicants. For applications from joint applicants, data from each participating unit of general local government (as described in 24 CFR 570.422) will be aggregated. Applicants in each group are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 75.

b. *Need—Percent of persons in poverty.* HUD uses 1990 census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Applicants in each group are compared in terms of the percentage of their population below the poverty level. For applications from joint applicants, data from each participating unit of general local government will be aggregated. Individual scores are obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 75.

c. *Program Impact—Single Purpose Grants.* In evaluating program impact, HUD will consider various factors. Within each activity type described below is a set of factors and scoring weights that will be used. Each proposal will be rated using the factors and scoring weights described in the selection criteria below.

Assessments are done on a comparative basis and, as a result, it is important that each applicant present information in a detailed and uniform manner.

For projects consisting of more than one activity, the activity that directly addresses the need must represent at least the majority of funds requested. Other activities must be incidental to and in support of the principal activity. For example, public improvements included in a rehabilitation project that addresses housing need must: (1) be a relatively small amount in terms of funds requested; (2) clearly be in support of the housing objective; and (3) demonstrate a positive and direct link to the national objective. For incidental activities claiming benefit to low- and moderate-income persons on an area basis, the application must document that at least 51 percent of the residents of the service area meet the low- and moderate-income requirement. Funds should not be requested for activities

that are not incidental to and in support of the principal activity.

In addressing Program Impact criteria, applicants should adhere to the following general guidelines for quantification. Where appropriate, absolute and percentage figures should be used to describe the extent of community development needs and the impact of the proposed program. This includes, but is not limited to, appropriate units of measure (e.g., number of housing units or structures, linear feet of pipe, pounds per square inch, etc.), and costs per unit of measure. These quantification guidelines apply to the description of need, the nature of proposed activities and the extent to which the proposed program will address the identified need.

Appropriate documentation should be provided to support the degree of need described in the application. Basically, the sources for all statements and conclusions relating to community needs should be included in the application or incorporated by reference. Examples of appropriate documentation include planning studies, letters from public agencies, newspaper articles, photographs and survey data.

Generally, the most effective documentation is that which specifically addresses the subject matter and has a high degree of credibility. Applicants which intend to conduct surveys to obtain data are advised to contact the appropriate HUD office prior to conducting the survey for a determination as to whether the survey methodology is statistically acceptable.

There are a number of program design factors related to feasibility which can alter significantly the award of impact points. Accordingly, it is imperative that applicants provide adequate documentation in addressing these factors. Common feasibility issues include site control, availability of other funding sources, validity of cost estimates, and status of financial commitments as well as evidence of the status of regulatory agency review and approval.

Past productivity and administrative performance of prior grantees will be taken into consideration when reviewing the overall feasibility of the program. Overall program design, administration and guidelines are other feasibility issues that should be articulated and presented in the application, since they are critical in assessing the effectiveness and impact of the proposed program.

Each project will be rated against other projects addressing the same problem area, so that, for example, housing projects only will be compared with other housing projects, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e., separate Needs Descriptions, Community Development Activities, and Impact Description and Program Schedule forms have been filled out, indicating separate project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were all related as a whole, as has been the case with some economic development projects. If, however, the projects tend to meet the impact criteria to the same extent, or the weaker element is only a small portion of the overall program, there is no discernable benefit in designating separate projects.

Applicants should bear in mind that the impact of the proposed project will be judged by persons who may not be familiar with the particular community. Accordingly, individual projects will be rated according to how well the application demonstrates in specific, measurable terms, the extent to which the impact criteria are met. General statements of need and impact alone will not be sufficient to obtain a favorable rating. HUD will not make a Small Cities grant when it determines that the grant will only have a minimal or insignificant impact on the grantee. For the purposes of this NOFA, any application not scoring above 100 points of the possible 400 points for the Program Impact factor will be deemed to have a minimal or insignificant impact on the grantee and will not be funded regardless of the number of points the applicant may otherwise receive or the ranking it attains as a result of its score due to points received on other rating factors.

For purposes of this NOFA, *Champion Community* means an urban or rural area that: (1) was designated by the Secretary of HUD as an urban Empowerment Zone or Enterprise Community, or designated by the Secretary of Agriculture as a rural Empowerment Zone or Enterprise Community; or (2) was nominated by one or more local governments and the State or States in which it is located for consideration of designation as an Empowerment Zone or Enterpriso Community pursuant to 24 CFR part 597 or 7 CFR part 25, meets the eligibility requirements in 24 CFR part 597, subpart B, or 7 CFR part 25, subpart B, but was not so designated because of statutory limits on the number of such designations. The Champion Communities in New York State are: Kingston, Steuben County, Chenango County, Sullivan County and Chautauqua County.

(1) *Program Impact—Single Purpose—Housing.* There are three distinct types of Single Purpose Housing projects: Housing Rehabilitation, Creation of New Housing and Direct Homeownership Assistance. Separate rating criteria are provided for each type of project.

(a) *Housing Rehabilitation.* The following factors and weights will be used evaluate proposed housing rehabilitation projects:

(i) Severity of Need (proportion of units that are substandard and extent of disrepair) (up to 160 points of the total Program Impact score). Each application should provide information on the total number of units in the project area, the number that are substandard, and the number of substandard units occupied by low- and moderate-income households. The purpose of this information is to establish the relative severity of housing conditions within the designated project area compared to other housing rehabilitation applications. The application also should describe the date and methodology of any surveys used to obtain the information, including any explicit and detailed definition of "substandard."

Surveys of Housing Conditions. Surveys of housing conditions serve several purposes in evaluating applications for housing rehabilitation activities. These include establishing the seriousness of need for such assistance in the project area, providing a basis for estimating overall budgetary needs, and providing an indication of the marketability of the project.

(ii) Extent to which proposed program will resolve the identified problem (up to 40 points of the total Program Impact score). Note that programs that propose minimal rehabilitation may not necessarily be addressing the identified problem.

(iii) Feasibility (marketability, project design affecting timely completion of the project) (up to 40 points of the total Program Impact score). The application should describe the project in sufficient detail to allow the reviewer to assess its feasibility and its probable impact on the conditions described. It also should describe project requirements in such a way that regulatory and policy concerns will be addressed.

HUD encourages communities to support a new Secretarial initiative, called Healthy Homes. Applicants applying for Small Cities CDBG funds to rehabilitate housing and/or construct new housing units may support these initiatives by including Healthy Homes features in their program design, such as window locks, deadbolt locks on doors, locks or safety latches on medicine cabinets, smoke detectors, carbon monoxide detectors, energy efficient windows, elimination of lead-based paint, and any other activities that contribute to Healthy Homes, especially regarding children.

(iv) Leveraging of other resources (up to 60 points of the total Program Impact score). HUD encourages communities to design projects supplementing Small Cities rehabilitation funds with private funds wherever feasible and appropriate, especially in the case of rental units and housing not occupied by lower-income persons. In such cases, the Small Cities grant subsidy should be as low as possible, while retaining sufficient incentive to attract local participants. On the other hand, projects designed for low-income homeowners should not require private contributions at a level that puts the project out of reach of potential participants.

(v) Cost per unit (up to 80 points of the Program Impact score). HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications. In reviewing applications from grantees with prior housing rehabilitation projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance.

(vi) Extent to which the project supports the strategic plan of a Champion Community (up to 20 points of the total Program Impact score).

(b) *Creation of New Housing.* CDBG funds may be used to support the construction of new housing units, the creation of new units proposed through conversion of existing structures (currently vacant structures or conversion of nonresidential structures for residential use) and, in certain circumstances, to finance the actual cost of constructing new units. New construction may be carried out by an eligible nonprofit entity pursuant to 24 CFR 570.204, or as last resort housing. Note that for purposes of specific uses of Section 108 Loan Guarantee proceeds, eligibility is limited to assistance for community economic development projects under § 570.204(a)(2). See also 24 CFR 570.703(i)(2). Support of new construction could include nonconstruction assistance such as the acquisition and/or clearance of land, the provision of infrastructure, or the payment of certain planning costs.

The following factors and weights will be used to evaluate proposed projects for the creation of new housing:

(i) Severity of need for new housing affordable to low- and moderate-income persons shown in the project area (up to 160 points of the total Program Impact score). Where the creation of new units is proposed, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information.

(ii) Extent to which the proposed program will create new housing units affordable to low- and moderate-income persons (up to 40 points of the total Program Impact score). The proposed project clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from new construction projects for which the proposed project will provide nonconstruction assistance.

(iii) Feasibility (marketability, project design affecting timely completion of the project) (up to 40 points of the total Program Impact score). Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

(iv) Leveraging of other resources (up to 60 points of the total Program Impact score). Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact.

(v) Cost per unit (up to 60 points of the total Program Impact score). HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications. In reviewing applications from grantees with prior housing projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance.

(vi) Extent to which the project would affirmatively further fair housing (either through spatial deconcentration of minorities throughout the community or through spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration) (up to 20 points of the total Program Impact score).

(vii) Extent to which the project supports the strategic plan of a Champion Community (up to 20 points of the total Program Impact score).

(c) *Direct Homeownership Assistance.* Homeownership activities are defined as activities which would promote homeownership within the applicant jurisdiction, focusing particularly on aiding low- and moderate-income persons in becoming homeowners. This may include activities authorized under 24 CFR 570.201(n) for purposes of use of Small Cities grant funding. However, activities eligible solely under 24 CFR 570.201(n) are not permitted uses of Section 108 loan guarantee proceeds. While declining to identify any particular type of proposed project as superior, HUD is identifying several criteria which must be addressed within the project design, in order for the application to receive the maximum project impact.

Applications must include a well developed description of homeownership needs in the applicant jurisdiction, focusing particularly on the needs of low- and moderate-income persons. The description also should include, if applicable, any alternative approaches which have been considered in meeting homeownership needs. Project feasibility must be addressed as part of the application.

The application must demonstrate that the proposed project would make effective use of all available funds. This would include any local, State or other Federal funds which would be utilized by the proposed project. If other such funds are included as part of the proposed project, the applicant must demonstrate that such funds are committed and truly available for the project. Any efforts which would affirmatively further fair housing, by promoting homeownership among minorities as well as homeownership throughout the community, must be outlined in the application.

The application must explain how the project would benefit low- and moderate-income homebuyers, particularly focusing on first-time and minority homebuyers. The application also should address any homeownership counseling services, including counseling pertaining to Federal, State, and local fair housing

laws and requirements, which would be provided to persons selected to participate in the proposed project. Finally, the application should describe how the project would utilize public/private partnerships to promote homeownership, particularly in the sense that private sector financing would be accessible, as necessary, to project participants to complement available public sector funds, including CDBG money.

The following factors and weights will be used to evaluate proposed direct homeownership assistance projects:

(i) The extent to which the application demonstrates severity of homeownership needs in the community (up to 160 points of the total Program Impact score).

(ii) The extent to which: the project design is appropriate to meet demonstrated homeownership needs; the project would make effective us of available funds; alternative approaches to meeting the homeownership needs have been considered; and the proposed project would target first-time homebuyers (up to 60 points of the total Program Impact score).

(iii) The extent to which the project is feasible and likely to be implemented in accordance with a project schedule (up to 40 points of the total Program Impact score).

(iv) The extent to which the proposed project would: complement other Federal, State or local programs that promote homeownership; and utilize public/private partnerships in attempting to promote homeownership, particularly in regard to participation by local financial institutions considering the cost per unit (up to 80 points of the total Program Impact score).

(v) The extent to which the proposed project would provide homeownership counseling to project participants (up to 20 points of the total Program Impact score).

(vi) The extent to which the project would affirmatively further fair housing through proposed initiatives to reach out to potential minority homeowners and/or to promote homeownership opportunities throughout the community (up to 20 points of the total Program Impact score).

(vii) The extent to which the project supports the strategic plan of a Champion Community (up to 20 points of the total Program Impact score).

(2) *Program Impact—Single Purpose—Public Facilities Affecting Public Health and Safety.* In the case of public facility projects, documentation of the problem by outside, third-party sources is of primary importance. In the case of water and sewer projects, documentation from public agencies is particularly helpful, especially where such agencies have pinpointed the exact cause of the problem and have recommended courses of action which would eliminate the problem. Such supporting documentation should be as up-to-date as possible; the older the supporting material, the more doubt arises that the need is current and immediate. Applicants also should be sure to indicate how the project would address public health and safety needs and conditions. Quantification also is essential in describing needs. Documentation from those affected should be included.

The following factors and weights will be used to evaluate proposed public facilities projects affecting the public health and safety:

(a) Severity of Need (up to 160 points of the total Program Impact score). The applicant should describe, including appropriate documentation, as best as possible, the degree to which the need is serious, current and requires prompt attention.

(b) Extent to which the proposed program will resolve the identified problem and public health and safety concerns (up to 40 points of the total Program Impact score). The applicant should demonstrate that the project will completely solve the problem and, if applicable, the applicant should address whether the proposal would be satisfactory to other State/local agencies which have jurisdiction over the problem.

(c) Feasibility (up to 40 points of the total Program Impact score). The applicant should address whether the proposal is the most cost effective and efficient among the possible alternatives considered, and the funding requested will be sufficient to resolve the problem. Total project costs should be documented by qualified third-party estimates, and be as recent as possible.

(d) Extent of benefit to affected persons and the cost per household (up to 80 points of the total Program Impact score).

(e) Leveraging other resources to minimize project costs (up to 40 points of the total Program Impact score). To the extent that Small Cities grant funds will not cover all costs, the source of other funds should be identified and committed. If local funds are to be used, the applicant should show both the willingness and the ability to provide the funds.

(f) Extent to which the project addresses deficiencies in accessibility for disabled persons and/or provides a significant increase in the number of public facilities accessible to disabled persons (up to 20 points of the total Program Impact score).

(g) Extent to which the project supports the strategic plan of a Champion Community (up to 20 points of the total Program Impact score).

(3) *Program Impact—Single Purpose—Economic Development Projects.* As discussed earlier in this section of the NOFA, each individual Single Purpose project will receive a separate impact rating. Applicants whose proposed economic development program will include multiple proposals should determine the most appropriate form of submission. This determination will require a choice as to either the incorporation of all proposals into a single project or the submission of separate projects for each proposal (each transaction will be considered a separate project). The single project format presents an "all or nothing" situation. In determining the appropriate submission format, applicants should consider the ability of a transaction to rate well on its own, based on the magnitude of employment impact, size of the financial transaction and the other factors discussed in this section.

The submission of proposals as separate projects must be clearly designated by the applicant with individual Needs Descriptions, Community Development Activities, Impact Descriptions and Program Schedule forms, including an appropriate name for each project on HUD Form 4124.1.

Section 807(c)(3) of the Housing and Community Development Act of 1992 (42 U.S.C. 5305 note) provides that it is the sense of Congress that each grantee should devote one percent of its grant for the purpose of providing assistance under section 105(a)(23) of the 1974 HCD Act to facilitate economic development through commercial microenterprises. A "microenterprise" is defined as a commercial enterprise with five or fewer employees, one or more of whom owns the enterprise. While not a requirement, this intent should be considered in developing an economic development application.

It is noted that in accordance with section 105 of the 1974 HCD Act, HUD published on January 5, 1995 (60 FR 1922), a final rule relating to evaluation and selection of Economic Development activities by grantees, including evaluation of public benefit (generally codified at 24 CFR 570.209). Economic Development applications must be specific enough to permit a determination that such threshold public benefit standards are met.

(a) Scoring. The following factors and weights will be used to evaluate proposed economic development projects:

(i) The extent to which the project will have a direct and positive impact on employment opportunities for persons from low-and moderate-income households (up to 160 points of the total Program Impact score). Applicants are reminded that for an activity to be consistent with the statutory objective of low-and moderate-income benefit, as a result of the creation or retention of jobs, at least 51 percent of created or retained employment opportunities must be held by, or made available to, persons from low-and moderate-income families. Applicants must fully document and describe employment benefits. In addition, applicants should address the following issues:

a. All employment data must be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, and applicants must take into account such factors as seasonal and part-time employment. A seasonal job may be considered permanent if the season is long enough to be considered the person's principal occupation; permanent part-time jobs must be converted to the full-time equivalent.

b. The amount of CDBG assistance required to produce each full-time equivalent job will affect the impact assessment by HUD. Lower CDBG costs per job are preferable to higher CDBG costs per job. Such assessments of impact will be done on a comparative basis among all projects submitted, rather than by comparison to a given standard.

c. The use of CDBG funds to assist a business with transferring to a different community will generally be considered as having *no* employment impact. Exceptions to this rule may include an expansion to the business as a result of, or concurrent with, the transfer; or if the business can demonstrate that it is infeasible to continue operations at the current site. An applicant that fails to document a basis for such an exception could receive a substantially lower score under this ranking factor. Applicants are encouraged to use CDBG funds for projects that provide as many jobs as possible for individuals that are currently receiving public assistance. Providing employment to recipients of public assistance will help break the cycle of dependency and empower low-income citizens to take control of their lives.

(ii) The extent to which market analysis and other risk data provides assurance that the proposed project will be successful (up to 40 points of the total Program Impact score).

(iii) The extent to which the proposed project addresses all appropriate feasibility issues (including extent of firm private financing commitments) and the extent to which there is reasonable assurance that the project will be completed in a timely manner (up to 40 points of the total Program Impact score). Projects that are likely to encounter feasibility issues which would hinder the timely completion of the project will receive a lower score under this criterion. Such issues include, but are not limited to: site control, zoning, public approvals and permits, infrastructure, environment, and relocation. Applicants should address these and any other applicable issues and provide documentation where appropriate.

Applicants also must demonstrate the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis or market data, which indicates an inordinate risk in the undertaking of the project, will affect the overall rating of program impact. In order to receive a higher rating, the costs must be reasonable (i.e., not inflated).

(iv) Extent to which the project provides Public Benefits relative to other proposals' cost per job (up to 80 points of the total Program Impact score).

(v) The extent to which Small Cities grant funds will leverage the investment of private and other dollars and the extent to which Small Cities grant funds are NOT used to substitute for private financing (up to 60 points of the total Program Impact score). Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. Projects which provide the maximum feasible level of private investment will be considered as having appropriate leverage. The extent of firm commitments for private financing will be reviewed as well as the amount of equity investment. The project will be reviewed to determine whether CDBG funds are replacing private sources of funds. In order to receive maximum impact CDBG funds may not replace private financing, CDBG assistance must be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds should bear the greatest risk in the project.

(vi) The extent to which the project supports the strategic plan of a Champion Community (up to 20 points of the total Program Impact score).

In addition to the standard submission requirements, HUD will evaluate the following as part of its Eligibility Review prior to considering an application for funding in the FY 1997/1998 competition.

(b) *The Appropriate Determination.* HUD has developed guidelines for review of economic development activities undertaken with CDBG funds. These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating project costs and financial requirements are not. The guidelines for evaluating project costs are to ensure:

(i) *Reasonableness of Proposed Costs.* The applicant must review each project cost element and determine that the cost is reasonable and consistent with third-party, fair-market prices for that cost element. The general principle is that the level of CDBG assistance cannot be adequately determined if the project costs are understated or inflated.

(ii) *Commitment of Other Sources of Funds.* The applicant shall review all projected sources of funds necessary to complete the project and shall verify that all sources (in particular private debt and equity financing) have been firmly committed to the extent practicable, and are available to be invested in the project. Verification means ascertaining that: the source of funds is committed; that the terms and conditions of the committed funds are known; and the source has the capacity to deliver.

(iii) *No Substitution of CDBG Funds (including Section 108 Loan Guarantee proceeds) for Private Sources of Funds.* The applicant shall financially underwrite the project and ensure to the extent possible that CDBG funds are not being substituted for available private debt financing or equity capital. The analysis must be tailored to the type of project being assisted (e.g., real estate, user project, capital equipment, working capital, etc.). Real estate projects require different financial analysis than working capital or machinery and equipment projects. Applicants should ensure that both a significant equity commitment by the for-profit business exists and that the level of certainty of the end use of the property or project is sufficient to ensure the achievement of national objectives within a reasonable period of time.

(iv) *Establishment of Small Cities Grant Financing Terms.* The amount of Small Cities grant assistance provided to a for-profit business ideally should be

limited to the amount, with appropriate repayment terms, sufficient to go forward without substituting Small Cities grant funds for available private debt or cash equity. The applicant should structure its repayment terms so that the business is allowed a reasonable rate of return on invested equity, considering the level of risk of the project. Equity funds generally should bear the greatest risk of all funds invested in a project.

(v) *Public Benefit Determination.* The applicant's activities must meet the public benefit standards found in 24 CFR 570.209(b). Activities covered by these guidelines (subject to certain exceptions) must, in the aggregate, either:

- Create or retain at least one full-time equivalent, permanent job per $35,000 of CDBG funds used; or
- Provide goods or services to residents of an area, such as the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per $350 of CDBG funds used.

(c) *CDBG Assistance Must Minimize Business and Job Displacement.* Each applicant will evaluate the potential of each economic development project for causing displacement of existing businesses and lost jobs in the neighborhood where the project is proposed to be located. When the grantee concludes that the potential exists to cause displacement, given the size, scope or nature of the business, then the grantee must, to the extent practicable, take steps to minimize such displacement. The project file must document the grantee's review conclusions and, if applicable, the steps the grantee will take to minimize displacement.

(d) *Section 105(a)(17) Requirements.* Section 105(a)(17) of the 1974 HCD Act requires that an activity assisted under that section achieve one of the following criteria:

(i) Creates or retains jobs for low- and moderate-income persons (note that a project which meets the national objective of principally benefitting low- and moderate-income persons by creating or retaining jobs, 51 percent of which are for low- and moderate-income persons, will be deemed to have met this criterion without any additional documentation);

(ii) Prevents or eliminates slums or blight (note that a project which meets the national objective of aiding in the prevention or elimination of slums or blight on an area basis will be deemed to have met this criterion without any additional documentation);

(iii) Meets an urgent need (note that a project which meets the national objective of meeting community development needs having a particular urgency will be deemed to have met this criterion without any additional documentation);

(iv) Creates or retains businesses owned by community residents;

(v) Assists businesses that provide goods or services needed by and affordable to low- and moderate-income residents;

(vi) Provides technical assistance to promote any of the activities under (i) through (v) of this subsection.

(e) *National Objectives.* As previously stated in this NOFA, all CDBG-assisted activities must address one of the three broad national objectives. Since economic development projects usually result in new employment or the retention of existing jobs, these activities most likely would be categorized as principally benefitting low- and moderate-income persons in this manner. Such projects will be considered to benefit low- and moderate-income persons where the criteria of 24 CFR 570.208(a)(4) are met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are taken by or made available to such persons, or retained by such persons. The extent to which the proposed project will directly address employment opportunities for low- and moderate-income persons in the applicant jurisdiction will be a primary factor in HUD's assessment of the proposed program.

The application must contain adequate documentation to explain fully, and to support, the process that will be used to ensure that project(s) comply with the low- and moderate-income employment requirements. The documentation must be sufficient to show that the process has been developed and that program participants have agreed to adhere to that process. In determining whether the person is a low- and moderate-income person for these activities, it is the person's family income at the time the CDBG assistance is provided that is determinative. When making judgments concerning whether an individual qualifies as a low- and moderate-income person, both family size and the income of the entire family must be considered. This consideration is necessary because a "low- and moderate-income person" is defined as a member of a low- and moderate-income family.

HUD will accept a written certification by a person of his or her family income and size to establish low- and moderate-income status. The certification may simply state that the person's family income is below that required to be low- and moderate-income in that area. The form for such certification must include a statement that the information is subject to verification.

In addition to person-by-person income certifications discussed above, under section 105(c)(4) of the 1974 HCD Act, an employee may be presumed to be a low- and moderate-income person if the employee resides in a census tract where not less than 70 percent of the residents are low- and moderate-income persons, and a presumption of low- and moderate-income may also be made if the business is located in and/or the employee resides in a census tract (or block numbering group) where 20 percent of the residents are in poverty. The key consideration in this presumption is the location of the business or employee. The documentation to support the presumption must contain the location. (See 24 CFR 570.209(b)(2)(v) for more information on this subject.)

In cases where an activity (e.g., a shopping center or a super market) provides goods and services to residents of an area, the low- and moderate-income objective may be met by the area benefit requirements at 24 CFR 570.208(a)(1). To document low and moderate income, 51 percent of the residents of the area or block numbering group must be low- and moderate-income persons.

(f) *Application Requirements.* To the extent feasible, the material listed below should be submitted for economic development projects. The material should be submitted for each proposed activity, whether the proposed activity is presented as a separate project or as part of a project involving multiple activities. Since economic development projects are rated against each other, the more completely these submission requirements are met, the greater the potential exists for enhancing the impact score of the project.

(i) A letter from each appropriate developmental entity which includes at least the following information:

a. A detailed physical description of the project with a schedule of events and maps or drawings as appropriate.

b. The estimated costs for the project, including any working capital requirements.

c. A discussion of all financing sources, including the need for CDBG, the terms of the CDBG assistance, and the proposed lien structure. The amount, source, and nature of any equity investment(s) must also be provided as well as a commitment to invest the equity.

d. A discussion of employment impact which includes a schedule of newly created positions. The schedule should identify the number, salary and skill level of each permanent position to be created. If jobs are made available to low- and moderate-income persons, the applicant must also demonstrate and document how persons from low- and moderate-income households will be accorded first consideration for employment opportunities.

e. A discussion of all appropriate feasibility issues including, but not limited to: site control, zoning, public approvals and permits, impact fees, corporate authorizations, infrastructure, environment and relocation.

f. An analysis and summary of market and other data which supports the anticipated success of the project.

(ii) A development budget showing all costs for the project, including professional fees and working capital.

(iii) Documentation to support project costs. Documentation generally should be from a third-party source and be consistent with the following guidelines:

a. Acquisition costs should be supported by an appraisal.

b. Construction/renovation costs should be certified by an architect, engineer or contractor. Use of Federal Prevailing Wage Rates should be cited where applicable.

c. Machinery and equipment costs should be supported by vendor quotes.

d. Soft costs (e.g., legal, accounting, title insurance) need be substantiated only where such costs are anticipated to be abnormally high.

(iv) Letters from all financing sources discussing (at a minimum) the amount and terms of the proposed financing, and the current status of the application for funding.

(v) Historical financial data of the development entity, preferably for the last 3 years. This information may be submitted under separate cover with confidentiality requested. It is recognized that historical financial data may be unavailable or inappropriate for some projects (e.g., start-up companies and real estate transactions).

(vi) A 2- to 5-year cash flow pro forma with accompanying notes citing basic assumptions.

(vii) The applicant's assessment of the project's consistency with the CDBG program eligibility requirements and standards for evaluating project cost, financial requirements and public benefit.

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 50 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments. Clear, precise documentation will be required. Maps must have a census tract or block numbering area (BNA), and they must be in accordance with the 1990 Census data. Additionally, maps must identify the locations of areas with minorities by census tract or BNA. If there are no minority areas, state so on the map. Only population data from the 1990 Census will be acceptable for purposes of this section.

Please note that a "minority" is a person belonging to, or culturally identified as, a member of any one of the following racial/ethnic categories: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native. For the purposes of this section, the separate category of "women" is not considered a minority.

Counties claiming points under this criterion must use county-wide statistics (excluding entitlement communities). In the case of joint applications, points will be awarded based on the performance of the lead entity only.

The following factors will be used to judge outstanding performance in these areas. Please note that points for outstanding performance may be claimed under each criterion:

(1) *Housing Achievements* (40 points total).

(a) *Provision of Fair Housing Choice (20 points)*

(i) HUD will consider the extent to which the applicant demonstrates that it has provided housing assistance for low and moderate income families that results in housing choice in areas outside of minority or low- and moderate income concentration. Such actions may include the construction or rehabilitation of housing in areas outside of minority or low and moderate income concentration; the provision of Section 8 Existing Certificate or Voucher assistance in ways that lessen concentration of such assisted units within minority and low- and moderate income concentrated areas; or the provision of direct homeownership assistance such as homeownership counseling, downpayment assistance, or first-time homebuyer assistance. If applicable, the applicant may use a map to show the general location(s) of individual projects and/or housing occupied by Section 8 Existing Program participants.

(ii) Points also may be awarded for efforts which enable low- and moderate-income persons to remain in their neighborhood when such neighborhoods are experiencing revitalization and substantial displacement as a result of private reinvestment. Applicants requesting points under this criterion would not need to meet the requirements of paragraphs (a) and (b) in order to receive points. Points will be awarded where more than one-half of the families displaced were able to remain in their original neighborhood through the assistance of the applicant. Applicants must show that:

- The neighborhood experienced revitalization;
- The amount of displacement was substantial;
- Displacement was caused by private reinvestment;
- Low- and moderate-income persons were permitted to remain in the neighborhood as a result of action taken by the applicant.

If the community is inhabited predominantly by persons who are members of minority and/or low-income groups, points will be awarded where there is a balanced distribution of assisted housing throughout the community.

(b) *Implementation of a Fair Housing Strategy that Affirmatively Furthers Fair Housing (20 points).* The applicant must demonstrate that it is implementing or plans to implement a Fair Housing Strategy on its own or demonstrate that it does or plans to participate in a county/State or regional analysis of impediments to fair housing choice. A fair housing strategy must include the following elements:

- Local compliance activities;
- Educational programs to enhance the clarity and understanding of the community's fair housing policy. For communities with few or no minorities, this should include publication in the surrounding communities of the applicant's policy of fair housing for minorities and persons with disabilities;
- Assistance to minority families; and
- Special programs (e.g., utilization of Community Housing Resource Board (CHRB) Programs, efforts to encourage local realtors to enter into voluntary agreements to encourage equal access to financial institutions, etc.).
- Assistance to minority families through mobility counseling programs and other activities that encourage such families to pursue such housing opportunities outside of minority concentrated areas;
- Special programs targeted at lenders, builders, realtors, and other housing industry groups;
- Affirmative marketing strategies targeted at those groups in the eligible population considered least likely to apply without special outreach.

The fair housing strategy must include goals for each of the above elements. The date of adoption or development of the strategy should be indicated, as well as the date proposed activities will be or have been implemented.

(2) *Entrepreneurial Efforts and Local Equal Opportunity Performance.* HUD encourages the use of minority contracting, although it will not be used as an evaluation factor in this NOFA.

(3) *Equal Opportunity Employment.* (10 points) Under this factor, the applicant must document that its percentage of minority, permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

e. *Welfare to Work Initiative.* (5 points) Five bonus points will be added to proposals which support the Welfare to Work Initiative. These points will be added to those proposals that include activities which will provide assistance to persons moving from welfare to work. Examples of such activities are: jobs, day care slots, training or transportation assistance.

4. *Final Selection.* The total points received by a project for all of the selection factors are added, and the project is ranked against all other projects from all applications, regardless of the program areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. If an applicant submits two applications under this NOFA, it may receive up to two single grants in the amounts of the project or projects applied for in those applications which were ranked high enough to be funded. In the case of ties at the funding line, HUD will use the following criteria in order to break ties:

- The project receiving the highest program impact rating will be funded;
- If tied projects have the same program impact rating, the project having the highest combined score on the needs factors will be funded;
- If tied projects have the same program impact ratings and equal needs factor scores, the project having the highest score on the percent of persons in poverty needs factor will be funded; and
- If tied projects have the same program impact ratings, equal needs factor scores, and an equal percent of persons in poverty needs factor score, the application having the most outstanding performance in fair housing and equal opportunity will be funded.

As soon as possible after the rating and ranking process has been completed, HUD will notify all applicants regarding their rating scores and funding status. Thereafter, applicants may contact HUD to discuss scores or any aspects of the selection process.

II. Application and Funding Award Process

A. Obtaining Applications

All nonentitled communities in New York State may obtain application kits through HUD's New York or Buffalo Offices. The addresses for HUD's Buffalo and New York offices are:

Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068, Telephone (212) 264–2885

Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 551–5768

B. Submitting Applications

A final application must be submitted to HUD no later than March 2, 1998. A final application includes an original and two photocopies. Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, March 2, 1998. If an application is hand-delivered to the New York or Buffalo Offices, the application must be delivered by 4:00 p.m. on the application deadline date. Applicants in the counties of Sullivan, Ulster, Putnam, and in nonparticipating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nonentitled communities in New York State should submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the addresses listed above in section II.A.

The above-stated application deadline is firm as to *date* and *hour*. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received on, or postmarked by March 2, 1998. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

C. The Application

1. Application Requirements

An application for the Small Cities Program CDBG Grants is made by the submission of:

(a) A completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;

(b) A completed Standard Form 424;

(c) A signed copy of certifications required under the CDBG Program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying pursuant to section 319 of the Department of Interior Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), generally prohibiting use of appropriated funds, and, if applicable, Disclosure of Lobbying Activities (SF–LLL);

(d) Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart A of 24 CFR part 4 (Accountability in the Provision of HUD Assistance); and, if applicable,

(e) Abbreviated Consolidated Plan.

(f) A Section 108 Loan Guarantee application or request, if applicable, consisting of one of the following:

(1) A formal application for Section 108 Loan Guarantee(s), including the documents listed at § 570.704(b);

(2) A brief description of a Section 108 Loan Guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause on a case-by-case basis) of a notice of CDBG Small Cities grant award. (The CDBG grant award will be conditioned on approval of actual Section 108 Loan Guarantee commitments within a stated period of time.) This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance; or

(3) If applicable, a copy of a Section 108 Loan Guarantee approval document with grant number and date of approval.

2. Streamlined Application Requirements for Certain Applicants

Single Purpose applications submitted under the FY 1996 NOFA but not selected for funding will be reactivated for consideration under this NOFA, if the applicant notifies HUD in writing by March 2, 1998 that the applicant wishes the prior application to be considered in this competition. Applications which are reactivated may be updated, amended or supplemented by the applicant provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

D. *Funding Award Process.* In accordance with section 102 of the HUD Reform Act and HUD's regulation in 24 CFR part 4, HUD will notify the public by notice published in the **Federal Register** of all award decisions made by HUD under this competition. In accordance with the requirements of section 102 of the Reform Act and HUD's regulations at 24 CFR part 4, HUD also will ensure that documentation and other information regarding each application submitted under this NOFA is sufficient to indicate the basis upon which assistance was provided or denied. Additionally, in accordance with § 4.5(b) of these regulations, HUD will make this material available for public inspection for a period of 5 years, beginning not less than 30 calendar days after the date on which assistance is provided.

III. Technical Assistance

Prior to the application deadline, the Buffalo and New York offices will provide technical assistance on request to individual applicants, including explaining and responding to questions regarding program regulations, and defining terms in the application package. In addition, HUD will conduct informational meetings around the State to discuss the Small Cities Program, and will conduct application workshops in conjunction with these meetings. Please contact the New York or Buffalo Office for further information regarding these meetings. Application kits will be available at these meetings, as well as from the New York or Buffalo Offices. In order to ensure that the application deadline is met, it is strongly suggested that applicants begin preparing their applications immediately and not wait for the informational meetings.

IV. Checklist of Application Submission Requirements

The following checklist is intended to aid applicants in determining whether their application is complete:

Application Completeness Checklist

Applicant: _____

Amount Requested $ _____

1. Is amount of funds requested within established maximum?

2. Part I—Needs Description (HUD Form 4124.1).

a. Program Area
_____ Housing
_____ Target Area
_____ Nontarget Area
_____ Public Facilities
_____ Economic Development (If an "appropriate" analysis is required but is not included, the application cannot be rated.)

b. Is description of community development needs included in application?

3. Part II—Community Development Activities (HUD Form 4124.2).

a. Has national objective been identified for each activity? b. Will 70 percent of grant funds primarily benefit low-and moderate-income persons? (If not, the application cannot be rated.)

4. Part III—Impact Description (HUD Form 4124.3).

5. Part IV—Outstanding Performance (HUD Form 4124.4).

6. Part V—Program Schedule (HUD Form 4124.5).

7. Part VI—Maps.

a. Location of proposed activities. (Applicants must show the boundaries of the defined area or areas.)

b. Location of areas with minorities by census tract. (If there are no minority areas, state so on the map.)

c. Housing conditions if project involves housing rehabilitation. (Number and location of each standard and substandard unit should be clearly identified.)

8. a. Is Standard Form 424 complete?
Yes No

b. Is original signature on at least one copy?
Yes No

9. Is Certification signed with original signature?
Yes No

10. Has the abbreviated consolidated plan been prepared and submitted to HUD (or included with this application)?

11. Form HUD–2880, Application/Recipient Disclosure/Update Report.

12. Do proposed economic development activities meet the public benefit standards as defined in 24 CFR 570.209?

V. Corrections to Deficient Applications

Under no circumstances will HUD accept from the applicant unsolicited information regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. Situations not considered curable would be, for example, a failure to submit program impact descriptions.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

Applicants should note that if an abbreviated consolidated plan is not submitted, the failure to submit it in a timely manner is not considered a curable deficiency.

VI. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements related to this CDBG program have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB approval number 2506–0020. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Environmental Impact

This NOFA provides funding under, and does not alter environmental requirements of, a regulation previously published in the **Federal Register**. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act. The environmental review provisions of this regulation are in 24 CFR 570.604.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to the Small Cities Program of New York State, none of its provisions will have an effect on the relationship between the Federal Government and New York State, or the State's political subdivisions.

Accountability in the Provision of HUD Assistance

See Section I.A.4. of this NOFA.

Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included in the application package.

The Lobbying Disclosure Act of 1995, which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Prohibition Against Advance Information on Funding Decisions

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions, such as whether particular subject matter can be discussed with persons outside HUD, should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.)

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this program is 14.219.

Date: December 11, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–32851 Filed 12–12–97; 9:27 am]

BILLING CODE 4210–29–P

federal register

Tuesday
December 16, 1997

Part IV

The President

Proclamation 7060—Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Senior Officials of the National Union for the Total Independence of Angola ("UNITA") and Adult Members of Their Immediate Families

Executive Order 13069—Prohibiting Certain Transactions With Respect to UNITA

Federal Register
Vol. 62, No. 241
Tuesday, December 16, 1997

Presidential Documents

Title 3—

The President

Proclamation 7060 of December 12, 1997

Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Senior Officials of the National Union for the Total Independence of Angola ("UNITA") and Adult Members of Their Immediate Families

By the President of the United States of America

A Proclamation

In light of the failure of the National Union for the Total Independence of Angola ("UNITA") to comply with its obligations under the "Accordos de Paz," the Lusaka Protocol, and other components of the peace process in Angola, and in furtherance of United Nations Security Council Resolution 1127 of August 28, 1997, 1130 of September 29, 1997, and 1135 of October 29, 1997, I have determined that it is in the foreign policy interests of the United States to restrict the entry into the United States of aliens described in section 1 of this proclamation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the power vested in me as President of the United States by the Constitution and the laws of the United States of America, including sections 212(f) and 215 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f) and 1185), and section 301 of title 3, United States Code, hereby find that the entry into the United States of aliens described in section 1 of this proclamation as immigrants or nonimmigrants would, except as provided for in section 2 of this proclamation, be detrimental to the interests of the United States. I do therefore proclaim that:

Section 1. The entry into the United States as immigrants and nonimmigrants of senior officials of UNITA and adult members of their immediate families, is hereby suspended.

Sec. 2. Section 1 shall not apply with respect to any person otherwise covered by section 1 where the entry of such person would not be contrary to the interests of the United States.

Sec. 3. Persons covered by section 1 and 2 shall be identified by the Secretary of State.

Sec. 4. In identifying persons covered by section 2, the Secretary shall consider whether a person otherwise covered by section 1 is an official necessary for the full functioning of the Government of Unity and National Reconciliation, the National Assembly, or the Joint Commission, within the meaning of paragraph 4(a) of United Nations Security Council Resolution 1127 of August 28, 1997.

Sec. 5. This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated.

Sec. 6. The Secretary of State is hereby authorized to implement this proclamation pursuant to such procedures as the Secretary of State may establish.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of December, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–33033
Filed 12–15–97; 10:56 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13069 of December 12, 1997

Prohibiting Certain Transactions With Respect to UNITA

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c)(UNPA), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolution 1127 of August 28, 1997, and 1130 of September 29, 1997, and in order to take additional steps with respect to the actions and policies of the National Union for the Total Independence of Angola (UNITA) and the national emergency declared in Executive Order 12865, I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date of this order, all UNITA offices located in the United States shall be immediately and completely closed.

Sec. 2. Except to the extent provided in regulations, orders, directives, or licenses issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date of this order, the following are prohibited:

(a) the sale, supply, or making available in any form, by United States persons or from the United States or using U.S.-registered vessels or aircraft, of any aircraft or aircraft components, regardless of origin:

(i) to UNITA; or

(ii) to the territory of Angola other than through a point of entry specified pursuant to section 4 of this order;

(b) the insurance, engineering, or servicing by United States persons or from the United States of any aircraft owned or controlled by UNITA;

(c) the granting of permission to any aircraft to take off from, land in, or overfly the United States if the aircraft, as part of the same flight or as a continuation of that flight, is destined to land in or has taken off from a place in the territory of Angola other than one specified pursuant to section 4 of this order;

(d) the provision or making available by United States persons or from the United States of engineering and maintenance servicing, the certification of airworthiness, the payment of new claims against existing insurance contracts, or the provision, renewal, or making available of direct insurance with respect to:

(i) any aircraft registered in Angola other than those specified pursuant to section 4 of this order; or

(ii) any aircraft that entered the territory of Angola other than through a point of entry specified pursuant to section 4 of this order;

(e) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 3. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States;

(d) the term "UNITA" includes:

(i) the Uniao Nacional para a Independencia Total de Angola (UNITA), known in English as the "National Union for the Total Independence of Angola;"

(ii) the Forcas Armadas para a Liberacao de Angola (FALA), known in English as the "Armed Forces for the Liberation of Angola;" and

(iii) any person acting or purporting to act for or on behalf of any of the foregoing, including the Center for Democracy in Angola (CEDA).

Sec. 4. The Secretary of the Treasury, in consultation with the Secretary of State and, as appropriate, other agencies, is hereby authorized to take such actions, including the specification of places, points of entry, and aircraft registered in Angola for purposes of section 2(a), (c), and (d) of this order, the authorization in appropriate cases of medical emergency flights or flights of aircraft carrying food, medicine, or supplies for essential humanitarian needs, and the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the effective date of this order.

Sec. 5. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 6. (a) This order is effective at 12:01 a.m. eastern standard time on December 15, 1997.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
December 12, 1997.

[FR Doc. 97-33034
Filed 12-15-97; 10:57 am]
Billing code 3195-01-P

Reader Aids

Federal Register
Vol. 62, No. 241
Tuesday, December 16, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10
65197–65308	11
65309–65592	12
65593–65740	15
65741–65990	16

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987
Executive Orders:
13069 65989
Administrative Orders:
Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005

5 CFR

213 63627
315 63627
410 63630
531 65311
591 63630

7 CFR

2 65593
17 63606
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741
1412 63441
Proposed Rules:
70 63471
205 65850
610 64174
729 63678
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

78 ..... 64134, 65596
91 64265
93 64265
94 65747
Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 63825
70 63825
73 63640
Proposed Rules:
40 65039
50 ..... 63892, 63911
70 63911

11 CFR

Proposed Rules:
114 65040

12 CFR

8 64135
226 63441
265 64996
516 64138
543 64138
545 64138
552 64138
556 64138
563 64138
614 63644
703 64146
704 64148
790 65197
791 64266
934 65197
1806 64440
Proposed Rules:
225 64997
226 64769
404 64177
405 64177
708a 64185
708b 64187

14 CFR

39 ..... 63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750
71 ..... 64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606
73 ..... 65359, 65360
95 ..... 65016, 65361, 65363
97 ..... 63447, 63449, 63451
121 65202
255 63837
1260 63452
Proposed Rules:
39 ..... 63473, 63475, 63476,

63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65768
71 ..... 63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631

15 CFR

295 64682

Proposed Rules:

806 65043
960 65384

17 CFR

15 65203
230 ..... 64968, 65043
239 64968
270 64968
274 ..... 64687, 64968

18 CFR

35 64688
37 64715
401 64154

20 CFR

255 64161
340 64273
404 64274
422 64274

Proposed Rules:

211 64188
422 63681

21 CFR

101 ..... 63647, 63653, 64634
179 ..... 64102, 64107
520 65020
524 65752

Proposed Rules:

200 64048
808 65384
876 65770
1020 65235
1308 64526

22 CFR

Proposed Rules:

22 63478
51 63478
53 63478

23 CFR

1327 63655

Proposed Rules:

655 64324

24 CFR

201 65180
202 65180
203 65180
570 64634
888 64521

25 CFR

Proposed Rules:

514 65775

26 CFR

Proposed Rules:

1 64190

28 CFR

0 63453
540 ..... 65184, 65196

29 CFR

520 64956
521 64956
522 64956
523 64956
527 64956
1614 63847
1910 65203
4011 65607
4022 65607
4044 ..... 65609, 65610

Proposed Rules:

1910 65388

30 CFR

206 65753

Proposed Rules:

56 65777
57 ..... 64789, 65777
62 65777
70 65777
71 65777
75 64789
917 ..... 63684, 65044
926 ..... 63685, 64327
936 65632

31 CFR

500 64720

Proposed Rules:

356 64528

32 CFR

320 65020

Proposed Rules:

199 64191
901 63485

33 CFR

100 65021
117 63847
160 65203
165 65022

36 CFR

701 64279

Proposed Rules:

1 63488
14 63488
327 64192

37 CFR

202 63657

Proposed Rules:

253 ..... 63502, 65777
255 ..... 63506, 65778

38 CFR

4 65207
17 64722
21 ..... 63847, 63848
36 63454

Proposed Rules:

20 64790

39 CFR

111 63850
262 64280
265 64280

40 CFR

52 ..... 63454, 63456, 63658, 64264, 64522, 64722, 64725, 65224, 65611, 65613
62 65616
63 ..... 64736, 65022
64 63662
70 63662
71 63662
80 63853
81 ..... 64264, 64725, 65025
180 ..... 63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369
185 ..... 64048, 64264, 64287
186 64048
261 63458
264 ..... 64636, 64795
265 64636
268 64504
270 64636
300 65225
721 64738

Proposed Rules:

51 64532
52 ..... 63687, 64329, 64543, 647389, 65046, 65634
62 65635
63 65049
80 63918
81 63687
112 63812
194 64327
721 64738

41 CFR

105–60 64740
301 63798

42 CFR

417 63669

Proposed Rules:

1001 ..... 63689, 65049

43 CFR

3740 65376
3810 65376
3820 65376

Proposed Rules:

4 64544

45 CFR

205 64301
232 64301
233 64301
235 64301
250 64301
251 64301
255 64301
258 64301
257 64301

Proposed Rules:

1302 65778

46 CFR

114 64303
116 64303
117 64303
118 64303
121 64303
122 64303
175 ..... 64303, 65739
177 64303
178 64303
180 64303
185 64303
514 63463

47 CFR

20 63864
22 63864
25 64167
43 64741
52 64759
54 ..... 65036, 65389
63 64741
64 ..... 64741, 64759
69 65619
73 ..... 63674, 65392, 65764, 65765, 65766
74 65392

Proposed Rules:

1 65780
21 65780
32 65053
73 ..... 63690, 65781, 65782
74 65780

48 CFR

Ch. I 64912, 64952
1 ..... 64913, 64940
2 64914
4 ..... 64915, 64916
5 64914
6 64916
7 64914
8 ..... 64914, 64916
9 64914
12 ..... 64914, 64916
13 ..... 64914, 64916
16 ..... 64914, 64916
17 64914
19 ..... 64914, 64916, 64940
22 64914
25 64929
29 64930
31 ..... 64930, 64931, 64932
32 ..... 64914, 64916
33 ..... 64914, 64933
34 64914
37 64914
38 64914
39 64914
41 64916
42 ..... 64915, 64931, 64934, 64940
43 64916
45 64914
46 64914
47 64936
49 64916
51 64914
52 ..... 64914, 64915, 64916
53 ..... 64914, 64916, 64934, 64936, 64940

Proposed Rules:

204 65782
1843 64545
1852 64545

49 CFR

171 65188
219 ..... 63464, 63675
225 63675
240 63464
1241 65378

Proposed Rules:

195 65635
213 65401
243 65479
572 64546
Ch. X 64193

50 CFR

17 64306
20 63608
222 63467
622 63677
648 ..... 63872, 64765
660 63876
679 ..... 63877, 63878, 63880, 64760, 65379, 65622, 65626

Proposed Rules:

14 64335
17 ..... 64337, 64340, 64799, 64800, 65237, 65783, 65787
23 64347
229 65402
600 65055
622 65056
648 65055
679 ..... 63690, 65402, 65635, 65638, 65644

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 16, 1997

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Peas; published 12-16-97
FEDERAL RESERVE SYSTEM
Depository institutions; reserve requirements (Regulation D):
Transaction accounts; low reserve tranche adjustment; published 11-19-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
New drug applications—
Doramectin; published 12-16-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 12-1-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 12-22-97; published 10-23-97
Walnuts grown in California; comments due by 12-29-97; published 10-30-97
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Karnal bunt disease—
Texas et al.; comments due by 12-24-97; published 11-24-97
Mediterranean fruit fly; comments due by 12-22-97; published 10-21-97
AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Fresh market tomatoes, etc.; comments due by 12-29-97; published 12-2-97
COMMERCE DEPARTMENT
Export Administration Bureau
Export licensing:
Commerce control list—
Specially designed; definition; comments due by 12-29-97; published 10-29-97
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 12-29-97; published 12-10-97
Carribbean, Gulf, and South Atlantic fisheries—
Snapper grouper fishery; comments due by 12-29-97; published 10-30-97
Magnuson Act provisions; comments due by 12-29-97; published 12-10-97
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 12-26-97; published 11-26-97
Atlantic surf clam and ocean quahog; comments due by 12-24-97; published 11-24-97
DEFENSE DEPARTMENT
Closures and realignment:
Closed, transferred, and transferring military ranges containing munitions; appropriate response actions evaluation process; comments due by 12-26-97; published 9-26-97
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97
ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Nonroad diesel engines; emission standards; comments due by 12-22-97; published 11-18-97
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 12-22-97; published 11-20-97
Illinois; comments due by 12-26-97; published 11-26-97
New Jersey; comments due by 12-22-97; published 11-20-97
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Tennessee; comments due by 12-26-97; published 11-25-97
Hazardous waste program authorizations:
Alabama; comments due by 12-22-97; published 11-21-97
Georgia; comments due by 12-24-97; published 11-24-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile; comments due by 12-29-97; published 10-29-97
Avermectin; comments due by 12-29-97; published 10-29-97
Cyromazine; comments due by 12-22-97; published 10-22-97
Lambda-cyhalothrin; comments due by 12-29-97; published 10-29-97
Pyrithiobac sodium salt; comments due by 12-22-97; published 10-22-97
Tebuconazole; comments due by 12-29-97; published 10-29-97
FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Private land mobile services—
Public safety communications in 746-806 MHz band; technical and spectrum requirements development; comments due by 12-22-97; published 11-7-97
Radio stations; table of assignments:
Alaska; comments due by 12-22-97; published 11-19-97
Arizona; comments due by 12-29-97; published 11-19-97
Mississippi; comments due by 12-29-97; published 11-19-97
North Carolina et al.; comments due by 12-29-97; published 11-19-97
Oregon; comments due by 12-22-97; published 11-19-97
Texas; comments due by 12-22-97; published 11-19-97
Utah; comments due by 12-22-97; published 11-19-97
Television broadcasting:
Cable television systems—
Inside wiring; comments due by 12-23-97; published 11-14-97
FEDERAL DEPOSIT INSURANCE CORPORATION
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97
FEDERAL RESERVE SYSTEM
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Biological products:
Manufacturing errors and accidents reporting; comments due by 12-22-97; published 9-23-97

Human drugs:
Inhalation solution products; sterility requirements; comments due by 12-22-97; published 9-23-97
New drug applications—
Products for life-threatening diseases; clinical hold; comments due by 12-23-97; published 9-24-97
INTERIOR DEPARTMENT
Indian Affairs Bureau
Fish and wildlife:
Columbia River Indian in-lieu fishing sites; use; comments due by 12-23-97; published 10-28-97
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Northern goshawk; comments due by 12-29-97; published 9-29-97
Topeka shiner; comments due by 12-23-97; published 10-24-97
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 12-26-97; published 11-26-97
Maryland; comments due by 12-22-97; published 11-21-97
Montana; comments due by 12-22-97; published 12-5-97
INTERNATIONAL TRADE COMMISSION
Practice and procedure:
Import investigations; antidumping and countervailing duties; comments due by 12-22-97; published 10-23-97
JUSTICE DEPARTMENT
Immigration and Naturalization Service
Permanent residence status eligibility restrictions; temporary removal; comments due by 12-22-97; published 10-23-97
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright arbitration royalty panel rules of procedure:
Noncommercial educational broadcasting compulsory license; comments due by 12-26-97; published 12-1-97
Copyright office and procedures:
Mechancial and digital phonorecord delivery rate adjustment proceeding; comments due by 12-26-97; published 12-1-97
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97
PERSONNEL MANAGEMENT OFFICE
Health benefits, Federal employees:
Disenrollment; comments due by 12-29-97; published 11-28-97
POSTAL SERVICE
Domestic mail Manual:
Commercial mail receiving agency; delivery of mail; procedure clarification; comments due by 12-24-97; published 11-24-97
RAILROAD RETIREMENT BOARD
Railroad Retirement Act:
Annuity eligibility; comments due by 12-22-97; published 10-23-97
SMALL BUSINESS ADMINISTRATION
Disaster loan program:
Physical disaster and economic injury loans; increase request requirements; comments due by 12-26-97; published 11-25-97
STATE DEPARTMENT
Nationality and passports:
Passports; denying, revoking, or canceling procedures; comments due by 12-26-97; published 11-25-97
TRANSPORTATION DEPARTMENT
Coast Guard
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW):
Licensing and documentation of personnel serving on U.S. seagoing vessels; comments due by 12-23-97; published 6-26-97
Ports and waterways safety:
Mississippi River, LA; regulated navigation area; comments due by 12-29-97; published 10-30-97
TRANSPORTATION DEPARTMENT
Privacy Act; implementation; comments due by 12-29-97; published 11-28-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Air tour operators; Hawaii; comments due by 12-29-97; published 10-30-97
Aircraft products and parts; certification procedures:
Primary category seaplanes; weight limit increase; comments due by 12-26-97; published 11-25-97
Airmen certification:
Robinson model R-22 or R-44 helicopters; pilots and certified instructors special training and experience requirements; comments due by 12-22-97; published 11-21-97
Airworthiness directives:
Aeromot-Industria Mecanico Metalurgica Ltda.; comments due by 12-26-97; published 11-25-97
Airbus; comments due by 12-26-97; published 11-25-97
Airbus Industrie; comments due by 12-26-97; published 11-26-97
Boeing; comments due by 12-29-97; published 10-28-97
British Aerospace; comments due by 12-26-97; published 11-26-97
Dassault; comments due by 12-26-97; published 11-26-97
Dornier; comments due by 12-29-97; published 11-28-97
Empresa Brasileira de Aeronautica S.A.; comments due by 12-29-97; published 11-28-97
Extra Flugzeugbau GmbH; comments due by 12-29-97; published 10-23-97
Fokker; comments due by 12-29-97; published 11-28-97
New Piper Aircraft, Inc.; comments due by 12-26-97; published 10-21-97
Pratt & Whitney Canada; comments due by 12-23-97; published 10-24-97
Airworthiness standards:
Special conditions—
Cessna model 525 Citation Jet airplane; comments due by 12-22-97; published 11-20-97
EXTRA Flugzeugbau GmbH EA-400 airplane design; comments due by 12-22-97; published 11-20-97
Learjet Inc. model 55 airplane; comments due by 12-29-97; published 11-12-97
Class E airspace; comments due by 12-22-97; published 11-10-97
Restricted areas; comments due by 12-26-97; published 11-10-97
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Traffic operations:
Traffic control devices; national standards—
Uniform traffic control devices manual; railroad-highway grade crossings; comments due by 12-22-97; published 10-21-97
TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Track safety standards:
Miscellaneous amendments
Comment request; comments due by 12-22-97; published 12-12-97
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Hazardous liquid and carbon dioxide—
Pressure testing older pipelines; comments due by 12-22-97; published 10-21-97
Leak detection industry standard; incorporation by reference; comments due by 12-29-97; published 10-29-97
TREASURY DEPARTMENT
Comptroller of the Currency
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97

Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

TREASURY DEPARTMENT

Customs Service

Export control:

Used motor vehicles; exportation requirements; comments due by 12-29-97; published 10-28-97

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Administrative wage garnishment; comments due by 12-22-97; published 11-21-97

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:

Tax exempt organizations; public disclosure requirements; guidance availability and hearing; comments due by 12-26-97; published 9-26-97

TREASURY DEPARTMENT

Thrift Supervision Office

Risk-based capital:

Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97

Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

VETERANS AFFAIRS DEPARTMENT

Board of Veterans Appeals:

Appeals regulations and rules of practice—

Continuation of representation following claimant's death; comments due by 12-22-97; published 10-23-97



Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12-17-97
Vol. 62 No. 242

federal register

Wednesday
December 17, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106
133

12-17-97
Vol. 62 No. 242
Pages 65991-66250

federal register

Wednesday
December 17, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 242
Wednesday, December 17, 1997

Agricultural Marketing Service
PROPOSED RULES
Fruits, vegetables, and other products, fresh:
Destination market inspections; fees, 66033–66036

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 66059

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth disease, etc.; disease status change—
Luxembourg, 65999–66001

Army Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Evans Subpost Fort Monmouth, NJ; disposal and reuse, 66059
Privacy Act:
Systems of records, 66059–66061

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66105–66106
Grants and cooperative agreements; availability, etc.:
Human Immunodeficiency Virus (HIV) prevention; program application, 66106–66111

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Head Start—
Child development credentialing program, 66111–66112

Coast Guard
RULES
Drawbridge operations:
North Carolina, 66005–66006
Virginia, 66006
PROPOSED RULES
Drawbridge operations:
North Carolina, 66039–66040

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Macau, 66054–66055
Mexico, 66055–66056
Harmonized Tariff Schedule:
Textile and apparel categories; availability of correlation for 1998, 66057
Textile and apparel categories; changes to 1997 correlation, 66056–66057
Special access and special regime programs; requirements:
Carribean Basin countries, 66057–66058

Customs Service
NOTICES
Commercial guager:
Approval—
V.I.P. Cargo Surveys Inc., 66177

Defense Department
See Air Force Department
See Army Department
See Navy Department
NOTICES
Meetings:
Defense Science Board Task Force on Satellite Reconnaissance, 66058
Military Personnel Testing Advisory Committee, 66058

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority language affairs—
State bilingual program, 66068

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 66007–66008
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Ethalflualin, 66008–66014
Pesticide residues; tolerances revocation for commodities no longer regulated, 66020–66026
Primisulfuron-methyl, 66014–66020
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Pesticide active ingredient production, 66049
Air quality implementation plans; approval and promulgation; various States:
Arizona, 66040–66042, 66043–66046
Colorado; correction, 66046–66049
Texas, 66042–66043
Water pollution; effluent guidelines for point source categories:
Industrial laundry, 66182–66214

NOTICES
Air quality implementation plans; approval and promulgation; various States:
Montana, 66076–66077
Pesticide, food, and feed additive petitions:
Bayer Corp., 66077–66083
DowElanco, 66083–66091
Ecolab Inc., et al., 66091–66094
Pesticides; experimental use permits, etc.:
DowElanco, 66094–66095
Superfund; response and remedial actions, proposed settlements, etc.:
Industri-Plex Superfund Site; Woburn, MA, 66095
Norwood PCB Disposal Site; Norwood, MA, 66095–66096

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2)
Effective date; partial delay, 66248–66250
Airworthiness directives:
Agusta S.p.A., 66001–66002
Class E airspace
Correction, 66179
Restricted areas, 66002–66003
NOTICES
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 66171–66172

Federal Communications Commission
RULES
Common carrier services:
Access charges-
Local exchange carriers; price cap performance, etc; correction, 66029–66030
Radio stations; table of assignments:
Louisiana, 66030
Nevada, 66031
New York, 66030–66031

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Canola and rapeseed, 65991–65999

Federal Emergency Management Agency
RULES
Flood insurance program:
Insurance coverage and rates—
Standard flood insurance policy; deductable increase, 66026–66029

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Wisconsin Electric Power Co. et al., 66074–66075
Hydroelectric applications, 66075–66076
Applications, hearings, determinations, etc.:
Cinergy Services, Inc., 66068–66069
Columbia Gas Transmission Corp., 66069
DePere Energy L.L.C., 66069
KN Interstate Gas Transmission Co., 66069–66070
Logan Generating Co. L.P., 66070
MIGC, Inc., 66070–66071
National Fuel Gas Supply Corp., 66071
Southern Natural Gas Co. et al., 66071–66072
Tennessee Gas Pipeline Co., 66072
Williams Natural Gas Co., 66072–66073
Williston Basin Interstate Pipeline Co., 66073–66074

Federal Highway Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66172
Environmental statements; notice of intent:
Buchanan County et al., VA, 66173
Roanoke County et al., VA, 66173–66174

Federal Maritime Commission
NOTICES
Agreements filed, etc., 66096
Freight forwarder licenses:
EXPA Corp. et al., 66096

Federal Railroad Administration
NOTICES
Applications, hearings, determinations, etc.:
CSX Transportation, Inc. et al., 66174
Union Pacific Railroad Co. et al., 66174–66175

Federal Reserve System
RULES
Truth in lending (Regulaton Z):
Residential mortgage and variable-rate transactions—
Fifteen-year historical example of rates and payments; disclosure; correction, 66179
NOTICES
Banks and bank holding companies:
Change in bank control, 66096–66097
Permissible nonbanking activities, 66097

Federal Retirement Thrift Investment Board
NOTICES
Privacy Act:
Systems of records, 66097–66098

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 66098–66105

Fish and Wildlife Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Waters subject to subsistence priority; redefinition, 66216–66246

Food and Drug Administration
RULES
Medical devices:
Tumor-associated antigen immunological test system reclassification, 66003–66005
PROPOSED RULES
Medical devices:
State product liability claims preemption by Federal law
Correction, 66179
NOTICES
Medical devices:
Submission of tumor associated antigen premarket notifications [510(k)], to FDA; guidance availability, 66112–66113

Meetings:
Cardiovascular and Renal Drugs Advisory Committee, 66113
Reports and guidance documents; availability, etc:
Harmonization, international conference; general considerations for clinical trials; guidance, 66113–66119

Forest Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Waters subject to subsistence priority; redefinition, 66216–66246
NOTICES
Meetings:
Eastern Washington Cascades Provincial Advisory Committee, 66051
Yakima Provincial Advisory Committee, 66051

General Services Administration
NOTICES
Federal property management:
Sale of Government property—Negotiated Sales Contract (SF 114E); revision and stocking, 66105

Grain Inspection, Packers and Stockyards Administration
PROPOSED RULES
Grain standards:
Rye, 66036–66037
NOTICES
Agency designation actions:
Indiana, 66051
Iowa, 66051–66052

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66119–66124

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request
Correction, 66179

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Export trade certificates of review, 66053

International Trade Commission
NOTICES
Import investigations:
Carbon steel plate from—
China et al., 66128–66129
Recombinantly produced human growth hormones, 66129

Justice Department
NOTICES
Pollution control; consent judgments:
Barber & Sons Tobacco Co., 66129–66130
J&D Enterprises of Duluth, Inc., 66130
M&O Environmental Co. et al., 66130–66131
Trinity Industries, Inc. et al., 66131

Labor Department
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66131
North American Agreement on Labor Cooperation:
Operation and effectiveness; comment request, 66132

Land Management Bureau
NOTICES
Oil and gas leases:
Wyoming, 66124–66125
Public land orders:
California, 66125
Resource management plans:
San Juan, UT, 66125
Survey plat filings:
Illinois, 66125
Minnesota, 66126

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66175–66176

National Archives and Records Administration
NOTICES
NARA Archival Information Locator (NAIL); public evaluation, 66133

National Highway Traffic Safety Administration
NOTICES
Meetings:
Research and development programs, 66176
Motor vehicle safety standards; exemption petitions, etc.:
Cooper Tire & Rubber Co., 66176–66177

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering sea and Aleutian Islands groundfish, 66031–66032
Ocean and coastal resource management:
Marine sanctuaries—
Florida Keys National Marine sanctuary, 66003
PROPOSED RULES
Fishery conservation and management:
West States and Western Pacific fisheries—
Northern anchovy, 66049–66050
NOTICES
Permits:
Endangered and threatened species, 66053–66054
Marine mammals, 66054

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
North Dakota, 66052

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Naval Station Puget Sound at Sand Point, Seattle, WA; disposal and reuse, 66061–66065
U.S. West Coast; development of facilities to support basing U.S. Pacific Fleet F/A-18E/F aircraft; public hearings, 66065–66066
Inventions, Government-owned; availability for licensing, 66066
Privacy Act:
Systems of records, 66066–66068

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Crane, Peter G., 66036
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 66133–66151
Petitions; Director's decisions:
American Electric Power Co., 66151

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66132–66133

Office of United States Trade Representative
See Trade Representative, Office of United States

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66151–66152
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 66154–66158
Depository Trust Co., 66158–66160
National Association of Securities Dealers, Inc., 66160–66167
Options Clearing Corp., 66167–66169
Philadelphia Stock Exchange, Inc., 66169–66170
Applications, hearings, determinations, etc.:
Ballantyne of Omaha, Inc., 66152–66153
ProFutures Capital Management, Inc., 66153–66154

Small Business Administration
NOTICES
License surrenders:
Unco Ventures, Ltd., 66170

Surface Mining Reclamation and Enforcement Office
NOTICES
Valid existing rights determinations:
Helmick, Walter D.; Monongahela National Forest, WV, 66126–66128

Surface Transportation Board
NOTICES
Rail carriers:
Cost of capital; railroad industry's annual rate, 66177

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Tariff-rate quota amount determinations:
Certain cheeses from Hungary, 66170–66171

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Customs Service

United States Information Agency
NOTICES
Meetings:
Public Diplomacy, U.S. Advisory Commission, 66177–66178

Separate Parts In This Issue

Part II
Environmental Protection Agency, 66182–66214

Part III
Department of Agriculture, Forest Service, and Department of Interior, Fish and Wildlife Service, 66216–66246

Part IV
Department of Transportation, Federal Aviation Administration, 66248–66250

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
457.....65991
Proposed Rules:
51.....66033
800.....66036
810.....66036

9 CFR
94.....65999

10 CFR
Proposed Rules:
50.....66038

12 CFR
226.....66179

14 CFR
39.....66001
71.....66179
73.....66002
91.....66248
93.....66248
121.....66248
135.....66248

15 CFR
922.....66003

21 CFR
866.....66003
Proposed Rules:
808.....66179

33 CFR
117 (2 documents).....66005, 66006
Proposed Rules:
117.....66039

36 CFR
Proposed Rules:
242.....66216

40 CFR
52.....66007
180 (3 documents).....66008, 66014, 66020
185.....66020
186.....66020
Proposed Rules:
52 (3 documents).....66040, 66042, 66043, 66046
63.....66049
441.....66182

44 CFR
61.....66026

47 CFR
69.....66029
73 (3 documents).....66030, 66031

50 CFR
679.....66031
Proposed Rules:
100.....66216
660.....66049

Rules and Regulations

Federal Register
Vol. 62, No. 242
Wednesday, December 17, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Canola and Rapeseed Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of canola and rapeseed. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the canola and rapeseed pilot insurance program to a permanent insurance program.

EFFECTIVE DATE: This rule is effective December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–3826.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be not significant for the purposes of Executive Order 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not impose any burden on small entities than is required on the part of large entities. The amount of work required of insurance companies will not increase because the information to determine eligibility is already maintained in their office and the other required information is already being collected under the pilot program. No additional actions are required as a result of this rule on the part of the producer or the insurance companies. All producers must provide the same information regardless of size, including an application, acreage report, and notice of loss, if applicable. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, September 18, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 48956 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.161, Canola and Rapeseed Crop Provisions. The new provisions will be effective for the 1998 and succeeding crop years for canola and rapeseed with a November 30 contract change date and 1999 and succeeding crop years for canola and rapeseed with a June 30 contract change date. These provisions will replace and supersede the current unpublished pilot provisions for insuring canola and rapeseed.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 80 comments were received from an insurance service organization, reinsured companies, a national

commodity group, a regional commodity group, state commodity groups, a state extension service, a seed company, a State Department of Agriculture director and producers. The comments received and FCIC's responses are as follows:

Comment: An insurance company commented that it is impossible to comment on the accuracy of differences in the late planted period and associated guarantee reduction from location to location as mentioned in the Background section, because the Special Provisions are not available for review.

Response: It is difficult to comment on the potential differences in the late planting period and associated guarantee reduction when the commenter does not have the Special Provisions. FCIC has determined that the variance for dates and guarantee reductions is needed to address the normal variability of planting conditions, weather influences, and crop response to late planting on a county-by-county basis. The dates and guarantee reduction percentages are subject to change by the contract change date each year. Any inaccuracies can be addressed at that time. No change has been made.

Comment: A regional commodity group requested specific counties and states to be covered by the canola and rapeseed insurance program. These counties were not a part of the original pilot area.

Response: When the canola and rapeseed Crop Provisions are published as final rule, insurance will be available when counties are added through the expansion process used for other permanent crop insurance programs. This process is outlined in the procedure "General Guidelines and Criteria for Submitting Multiple and Individual County Crop Program Expansion Requests," dated May 9, 1996. A copy can be obtained by contacting the Deputy Administrator, Insurance Services Division, Risk Management Agency, 1400 Independence Avenue S.W., Washington, D.C. 20250–0801, telephone (202) 690–4494.

Comment: Grower associations, Extension specialists, a State Agriculture Department, a seed company, and producers submitted comments requesting that the pilot program be converted to a permanent program as soon as possible to allow for canola expansion into counties where canola and rapeseed insurance protection is not available.

Response: This rule converts the pilot program to a permanent program.

Comment: An insurance service organization recommended that the conversion of the canola and rapeseed pilot program to a permanent crop insurance program be deferred until the 1999 crop year since it is preferable for changes to be effective the same year for fall and spring.

Response: Many requests and comments have been received to expand the canola and rapeseed insurance program. Deferring the canola and rapeseed pilot program conversion until the 1999 crop year would delay the expansion of the canola and rapeseed insurance coverage to additional counties. Since the majority of canola and rapeseed producers are in counties with a March 15 sales closing date, converting the pilot program for 1998 spring crops will allow FCIC to meet its goal of converting the pilot program to a permanent program for most producing areas for the 1998 crop year.

Comment: A reinsured company suggested that the definition and references to "FSA" be deleted since there is no need for reliance on FSA information in the crop insurance program.

Response: FSA farm serial numbers are required to qualify for optional unit division in certain crop policies. In certain situations, FSA information may be used in the crop insurance program whether required or not. FCIC does not believe that such definitions "mandate" such use. No change has been made.

Comment: A reinsured company and an insurance service organization commented on the definition of "good farming practices." The commenters questioned whether cultural practices exist that are not necessarily recognized or known by the Cooperative State Research, Education and Extension Service (CSREES). In addition it was suggested that the term "county" in the definition of "good farming practices" should be changed to "area."

Response: FCIC believes that the CSREES recognizes farming practices that are considered acceptable for canola and rapeseed. If a producer is following practices currently not recognized as acceptable by CSREES, there is no reason why such recognition cannot be sought by any interested party. The term "area" is less clear than the term "county" and would tend to make determinations more subjective in nature. Further, the actuarial documents are on a county basis. No change has been made.

Comment: A reinsured company recommended that in the definition of "irrigated practice" the words "and quality" be inserted after the word "quantity."

Response: FCIC agrees that water quality is an important issue. However, since no standards or procedures have been developed to measure water quality for insurance purposes, quality cannot be included in the definition. No change has been made.

Comment: An insurance service organization suggested various editorial changes, including the updating of certain definitions which the commenter indicated were generic and would be updated in the Basic Provisions. In addition, it was suggested that the definition of "FSA" be changed either by including the phrase "an agency of the USDA" in parentheses, or by inserting a comma before that phrase. The commenter also suggested revising the definition of "practical to replant," by deleting the phrase "of 'Practical to replant'."

Response: All generic terms have been moved to the Basic Provisions, and any changes will be made in that rule.

Comment: A reinsured company recommended that in the definition of "late planted" the word "initially" be added between the words "acreage" and "planted."

Response: FCIC has revised the definition of "late planted" in the Basic Provisions to include the word "initially."

Comment: A reinsured company and an insurance service organization commented on the definition of "practical to replant." A question was raised whether "marketing window" is appropriate for this crop. In addition, comments were made whether such items as "moisture availability, condition of the field, marketing window and time to crop maturity" are subjective and add unnecessary complexity to the program.

Response: The concept of a "marketing window" is most applicable to processor and fresh market crops and recognizes that canola and rapeseed are unlike these crops. However, the Federal Crop Insurance Act mandates that marketing windows be considered in determining if it is practical to replant the insured crop. Factors such as moisture availability and condition of the field are necessary to determine whether the conditions are acceptable for the producer to produce and harvest the crop before the end of the insurance period. No change has been made.

Comment: An insurance service organization questioned the use of the term "price of damaged production." The commenter indicated the term is used several times in section 12, and questioned whether this definition adds anything beyond the "local market price" definition.

Response: The term price of damaged production is different from the local market price. The price of damaged production is used for quality adjustment if the canola production does not meet the U.S. No. 2 grade canola. No change has been made.

Comment: An insurance service organization suggested that clarification needs to be made to the current definition of "replanting" to ensure that the crop is replanted to the same crop as originally planted.

Response: FCIC has revised the definition of "replanting" in the Basic Provisions to specify replacing the seed or plants of the same crop in the insured acreage.

Comment: An insurance service organization suggested to remove the language describing when a crop must be replanted from section 7(a) for simplification.

Response: It is necessary to retain the language in section 7(a) of these Crop Provisions since acreage not replanted when it is practical to replant is uninsurable. FCIC has revised the condition when the crop must be replanted.

Comment: An insurance service organization questioned language regarding differences in conditions for replanting. Section 7(a) refers to insurable acreage "damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop," while the replanting payment section 10(a) says "damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee."

Response: FCIC has made the two provisions consistent.

Comment: An insurance service organization suggested deleting "if" at the beginning of the last phrase in section 10(a).

Response: FCIC has simplified the provision and made it consistent with other practical to replant provisions.

Comment: An insurance service organization recommended the reference in section 11 to the 10-foot-wide strip in each field should be more specific. One sample would not be adequate in large fields. The number of strips needed will depend on the size of the field.

Response: The Basic Provisions and Crop Provisions use the plural term "samples" to allow the insurance provider the discretion to require more than one 10-foot-wide strip if it is necessary to obtain a more accurate appraisal of production. No change has been made.

Comment: An insurance service organization recommended a chart be developed and used for quality adjustment for industrial oil types and non-industrial types (similar to those in the coarse grains loss adjustment handbook) instead of settling claims based on prices obtained from buyers as stated in section 12(4)(ii)(D)(3).

Response: This section has been redesignated as section 12(d)(5)(ii)(C) in these crop provisions. FCIC agrees that there may be an alternative method to determine quality adjustment. However, the information needed to develop a chart for quality adjustment is presently not available. No change has been made.

Comment: An insurance company stated that section 12(d) of these Crop Provisions should be corrected from "Mature canola and rapeseed may be adjusted for excess moisture and quality" to "mature canola may be adjusted for excess moisture and quality deficiencies. Mature rapeseed may be adjusted for excess moisture only." Rapeseed will not be adjusted for quality.

Response: FCIC has revised the Crop Provisions accordingly.

Comment: An insurance service organization commented that the calculation sequence in section 12 is difficult to follow because it is so wordy and it seems unnecessary to refer to the previous item by number as if it were on another page.

Response: Since some of the calculations involved are not performed in sequential order, it is necessary to refer to specific section numbers. Removal of the references would make the provisions less clear. No change has been made.

Comment: An insurance service organization received one comment stating that the policy should not allow the insured to defer settlement and wait for a later, generally lower appraisal.

Response: The provision in section 12(c)(1)(iv) allows deferment of a claim only if the insurance provider agrees that representative samples are necessary to more accurately determine the appraised amount of production and the insured agrees to care for the sample. If the insured does not provide sufficient care for the sample, the insurance provider may use the original appraisal. No change has been made.

Comment: A reinsured company commented that it appears that sections 13 and 14 are copied verbatim, except for one cited item addressing the percentage reduction for late planting, and that these sections were left out of other recently published Crop Provisions in anticipation of approval of the new Basic Provisions. The commenter questioned the difference with canola and rapeseed and how the subsequent removal of the sections would be accomplished. The commenter also questioned whether the comments made to the proposed Basic Provisions will be incorporated into the Basic Provisions Final Rule.

Response: The new Basic Provisions will be effective for the 1998 crop year for crops with a contract change date of November 30 or December 31 or later. Therefore, FCIC removed all common late planting and prevented planting provisions from these Crop Provisions. Sections 13 and 14 contain language that is necessary to recognize the differences in the late and prevented planting provisions for canola and rapeseed (as has been done for other crops). Those comments made to the proposed Basic Provisions deemed appropriate by FCIC have been incorporated into the Basic Provisions Final Rule.

Comment: An insurance service organization commented that sections 13(a)(1) and (2) of the proposed rule continue the current reductions for late-planted acreage, and are inconsistent with the Basic Provisions Proposed Rule, which listed a 1 percent reduction for each of the 25 days in the late planting period. The commenter noted that if the Special Provisions will vary by county, it would be better if the Crop Provisions matched the Basic Provisions. The commenter stated that different late planting periods determined by the Special Provisions is acceptable, if input from local people is considered in determining the late planting period, then the late planting period probably should not be 25 days for most crops in the northern states. The commenter questioned whether the current late planting provisions will apply if the new Basic Provisions Final Rule is not approved in time to be effective for the 1998 crop year for canola and rapeseed.

Response: FCIC has revised section 13 of these Crop Provisions to indicate that in lieu of section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date unless otherwise specified in the Special Provisions. The new Basic Provisions are effective beginning the 1998 crop year, in those counties with a November 30 contract change date listed in the revised canola and rapeseed Crop Provisions. The current (1997 crop year) late planting and prevented planting provisions apply to all other counties.

Comment: An insurance service organization questioned whether it is necessary in sections 13(a) and (b) to include "amount of insurance" (in addition to "production guarantee") for this APH crop. The commenter also questioned whether section 13(a) should read "by each day planted" or "for each day planted."

Response: Sections 13(a) and (b) have been moved to the Basic Provisions and, therefore, will need to include "amount of insurance" in addition to "production guarantee." FCIC has revised the phrase from "by each day planted" to "for each day planted" in section 16 of the Basic Provisions.

Comment: A reinsured company commented that section 13 reinforces that "practical to replant" must be defined as the time period running through the late planting period.

Response: While section 13, now section 16 of the Basic Provisions, allows the time period to run through the late planting period, it is not required. Factors other than time must also be considered. Based on a consideration of all the factors, it is possible to determine that it is practical to replant only before the final planting date, during the late planting period or after the late planting period if replanting is generally occurring in the area.

Comment: An insurance service organization commented that section 13(a)(3), as written, does not flow from the lead-in sentence in section 13(a).

Response: The Crop Provisions and Basic Provisions have been revised to correct any such problem.

Comment: An insurance service organization commented that section 13(b) is confusing because it states that acreage planted after the late planting period will have the same guarantee as acreage that is prevented from being planted, and then adds that it must have been prevented from being planted by an insurable cause of loss occurring within the insurance period. The commenter pointed out that such acreage was planted and, therefore, was not prevented from being planted. Rather, it was prevented from being planted timely or within the late planting period.

Response: This comment was also received during the proposed rule comment period for the Basic Provisions. Section 16(b)(2) of the Basic Provisions has been revised to indicate that planting on such acreage must have been prevented by the final planting date or during the late planting period by an insurable cause occurring within the insurance period for prevented planting coverage.

Comment: An insurance service organization suggested changing section 13(c) to read "during the late planting period" in both sentences rather than "after the final planting date" since this section deals only with late-planted acreage and not prevented planting as well.

Response: FCIC has revised section 16(c) of the Basic Provisions to state that the premium amount for insurable acreage specified in sections 16 (a) or (b) will be the same as that for timely planted acreage.

Comment: An insurance service organization commented that because section 14 is in the canola and rapeseed proposed rule Crop Provisions only until they are incorporated into the new Basic Provisions, the "Prevented planting" definition should be included in the Crop Provisions.

Response: Since all common provisions, including definitions, have been incorporated into the Basic Provisions, there is no need to repeat the definition in this rule. No change has been made.

Comment: An insurance service organization recommended that FCIC consider reversing phrases in section 14(a)(1)(i) to match the order in (ii), or vice versa. The commenter is recommending that section 14(a)(1)(i) begin with "For the crop year the application for insurance is accepted."

Response: The different order in these two sections facilitates readability and comprehension. No change has been made in the corresponding sections 17(a)(1)(i) and (ii) in the Basic Provisions.

Comment: An insurance service organization recommended that FCIC consider changing section 14(a)(1)(ii) to "...since that date (cancellation for the purpose of transferring the policy...will not be considered a break in continuity for this purpose); and."

Response: This change would not significantly add to the understanding of the statement. No changes have been made in the corresponding section 17(a)(1)(ii) in the Basic Provisions.

Comment: An insurance service organization commented that section 14(b) seems to suggest that insureds who have chosen additional levels of coverage may select a different additional level for prevented planting. The commenter also questioned whether the Special Provisions will state which prevented planting level will apply by default if one is not specifically elected, and asked which level would be in the Crop Provisions.

Response: Insureds who have chosen additional levels of coverage may, in fact, select a different level for prevented planting. Section 17(b) of the Basic Provisions now specifies that the actuarial documents may contain additional levels of prevented planting coverage the insured may purchase. If the insured does not purchase one of those additional levels by the sales closing date, or the insured has a Catastrophic Risk Protection Endorsement, the insured will receive the prevented planting coverage specified in these Crop Provisions.

Comment: An insurance service organization commented that section 14(d)(2) seems to suggest that insureds may choose to claim prevented planting on irrigated acreage instead of planting non-irrigated acreage. The commenter added that section 14(d)(2) seems to contradict section 9(b) of the current Basic Provisions, which states that "only that acreage for which you have adequate facilities and water, at the time coverage begins' can be reported and insured as irrigated. They also questioned whether carryover insureds could qualify for prevented planting payments based on an irrigated guarantee even though facilities or sufficient water did not exist at the time the crop should have been planted.

Response: To qualify for a prevented planting claim on irrigated acreage, the acreage must still meet all the requirements for irrigated acreage. Section 14(d)(2), now section 17(d)(2) of the revised Basic Provisions, does not contradict section 9(b) of the Basic Provisions since all it does is specify the date by which the acreage must qualify as irrigated to qualify for a prevented planting claim on irrigated acreage.

Comment: An insurance service organization commented on the organization of the table in section 14(e)(1). The commenter suggested combining portions of the table and other editorial changes which were also suggested for the table in the Basic Provisions.

Response: FCIC has revised portions of the table and made other editorial changes in section 17(e)(1) of the Basic Provisions.

Comment: An insurance service organization commented that there should be no written agreements for prevented planting acreage, and that an insured who has not raised a crop should not be able to have prevented planting acres of that crop on any ground. A reinsured company indicated it was not interested in more written agreements. However, it appeared that may be the only way to provide coverage in many cases.

Response: Based on the comments received on both the Basic Provisions and the Crop Provisions, FCIC has

determined that it is appropriate to delete references to "written agreements" in section 17(e) of the Basic Provisions, and to allow the use of an intended acreage report in certain instances as long as specified conditions are met.

Comment: A reinsured company commented that the word "base" should be deleted in all instances in section 14(e).

Response: This comment was also received on the Basic Provisions and the word "base" has been deleted from section 17 of the Basic Provisions.

Comment: A reinsured company commented that it presumed the determination of eligible acres in the table in section 14(e)(1) is done on a county basis.

Response: This comment was also received on the Basic Provisions and FCIC responded that eligible acres are determined on a county and crop basis.

Comment: A reinsured company commented on the determination of eligible acres for prevented planting in section 14(e)(1). The commenter stated that using the planted and prevented planting acres for the last four years will not be difficult for carryover policies. However, it will be a significant problem for transferred policies, as the prevented planting acres will not be a part of the APH record that is transferred. The commenter questioned how FCIC proposes that this information will be known by the company for a policy it gains by transfer.

Response: When policies are obtained by transfer, reinsured companies can obtain previous years' records of prevented planting acres from the insured, the ceding company, or the FCIC policyholder tracking system.

Comment: A reinsured company questioned the impact and acceptability of intended acreage reports concerning eligible prevented planting acres in section 14(e)(1). The commenter questioned the guidelines for approval of written agreements, and who has the authority to approve or disapprove such agreements. The company also questioned if, since the request for written agreement must be made on or before the sales closing date, all land added after the sales closing date by the insured is ineligible for prevented planting.

Response: The Basic Provisions have been amended so that a written agreement is no longer required to establish eligible acreage. Instead, intended acreage reports will be used. However, the reinsured company will be required to verify that the acreage reported does not exceed the number of acres of cropland in the producer's farming operation at the time the intended acreage report is submitted. The reinsured company will have the authority to accept or reject any intended acreage report based on standards approved by FCIC. This provision has also been revised to allow the number of acres determined to be eligible for prevented planting coverage to be increased if after the sales closing date specified conditions are met. Provisions in this section also allow producers who, in any of the four most recent crop years, have not produced any crop for which insurance was available, to establish eligible acres.

Comment: An insurance service organization commented that section 14(e)(3) says that the total number of acres requested for all crops cannot exceed the number of acres of cropland in the insured's farming operation for the crop year, and probably needs to allow for double-cropping, as in 14(f)(5).

Response: This provision, now located in section 17(e)(1) of the Basic Provisions, is revised to account for double cropped acreage.

Comment: An insurance service organization commented that section 14(e)(4) does not allow for land added after the sales closing date, or for business being conducted up to the last day of the sales period. The commenter also suggested that "us" be changed to "your agent" (or at least verify that "us" includes agents as well as the company underwriting office).

Response: These provisions, now included in section 17(e)(1)(i) of the Basic Provisions, have been revised to allow an increase in eligible prevented planting acres if the producer submits proof that additional acreage was purchased, leased, or released from any USDA program in time to plant it for the insured crop year and no cause of loss that will or could prevent planting is evident at the time the acreage is purchased, leased, or released from the USDA program. The term "us" refers to the company as provided in the section before the "Agreement to insure" in the Basic Provisions, and includes agents representing the company. No change has been made.

Comment: An insurance service organization questioned if section 14(f)(1) is intended to be a change from current language that allows prevented planting coverage for acreage less than 20 acres or 20 percent as long as the insured can show "inputs" were available.

Response: This change in what is now section 17(f) of the Basic Provisions, is intentional. FCIC requires the acreage to be contiguous to reduce prevented planting payments for small portions of fields that are wet in most years although planting occasionally may be possible.

Comment: A reinsured company suggested that in section 14(f)(1) the phrase "whichever is less" be changed to read "whichever is larger" and also suggested that the term "insurable crop acreage in the unit" be defined.

Response: The phrase "whichever is less" is appropriate. There is no reason to define the phrase "insurable crop acreage in the unit" since units, insured crop, and insured acreage are defined elsewhere in the policy. No change has been made.

Comment: An insurance service organization recommended that sections 14(f) (4) and (5) be revised to spell out the numeral "4" in the phrases "the last 4 years."

Response: This change does not significantly add to the understanding of these sections. No change has been made.

Comment: An insurance service organization questioned whether prevented planting acreage of either crop in a double-cropping history will maintain or break the continuity of the double-cropping history.

Response: Prevented planting acreage of either crop in a double-cropping history will not break the continuity of the double-cropping history. Sections 17(f)(4) and (5) of the Basic Provisions specify the last 4 years in which the insured crop was grown on the acreage.

Comment: A reinsured company commented on the provisions in section 14(f)(5). Although the commenter agreed with the concept, they questioned how a company would know if any crop from which a benefit is derived under any program administered by the USDA is planted and fails. The company also suggested modifying the sentence from may be hayed or grazed "* * * after the final planting date for the insured crop * * *" to "* * * 60 days after the final planting date for the insured crop * * *".

Response: Insurance providers must question insureds to determine if any crop was planted for the crop year on the acreage being claimed for prevented planting. Producers should not be denied grazing or haying benefits for 60 days after being prevented from planting. In many instances, cover crops are grown until preparation for planting occurs in the spring. If the producer was unable to remove the cover crop and plant a crop, such a cover crop could be hayed or grazed soon after the final planting date and a prevented planting payment would still be owed.

Comment: A reinsured company questioned how the insurer will know if a cash lease payment is also received for use of the same acreage in the same crop year as specified in section 14(f)(6), particularly if the cash lease payment is made after the prevented planting payment has already been made by the company.

Response: Insurance providers must question insureds to determine if a cash lease payment is, or will be, received for the acreage being claimed for prevented planting. Insureds who claim prevented planting on acreage they have or will cash lease would be misrepresenting a material fact and could be subject to civil and criminal false claim penalties.

Comment: A reinsured company stated that it did not disagree with the concept of section 14(f)(7) but that the provision is inconsistent with freedom to farm and is unenforceable.

Response: This section, now section 17(f)(7) of the Basic Provisions, indicates that prevented planting coverage will not be provided for any acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes. This provision is necessary to protect the integrity of the program. FCIC is charged with establishing an actuarially sound insurance program, and relying upon "intentions," without evidence to support such intentions is not an appropriate manner of achieving actuarial soundness. For example, if half the acreage in a farm has remained fallow every other year for the past ten years to maintain a summerfallow rotation, this is ample evidence that this is a normal practice. If such patterns exist, this provision is easier to administer than if the reinsured companies were forced to determine whether the producer actually intended to plant a crop. Since coverage for prevented planting now begins on the previous crop year's sales closing date for carry-over policies, producers could decide to claim an intent to plant acreage where the cause occurred months earlier in order to profit from the insurance program when they never intended to plant a crop. While the denial of prevented planting coverage may occasionally adversely affect some producers who genuinely intended to plant a crop, the inability to prove intent to plant and the need to protect the integrity of the program require FCIC to retain the provision. No change has been made.

Comment: An insurance service organization commented that section 14(f)(8) is unnecessary because it has been covered in 14(e).

Response: FCIC has separated the provisions of section 14(f)(8) into two separate provisions in section 17 of the Basic Provisions, and does not feel that either provision has been covered in section 14(e). No change has been made.

Comment: An insurance service organization commented that section 14(f)(9) has been added and might not be necessary if 14(f)(1) were changed to require "proof of inputs" available to plant and produce a crop. A reinsured company stated that they did not disagree with the concept of section 14(f)(9) but that it is an unenforceable provision. The company asked if capital on hand was considered proof that inputs were available.

Response: Since the prevented planting period could begin on the sales closing date for the previous crop year, many producers could know that they would be prevented from planting prior to the sales closing date and planting period. These producers would be in a position to claim the intent to plant higher valued crops than they normally plant. FCIC has revised the provision to clarify that proof of inputs is only necessary where there is a deviation from normal planting practices. For example, if the producer has rotated crops between corn and soybeans in alternate years and this was the year the rotational pattern showed that corn would normally be planted, the reinsured company does not need to determine whether the insured had sufficient inputs, if the producer seeks a prevented planting payment for corn. However, if the producer seeks a prevented planting payment for soybeans, the reinsured company would be required to determine whether the producer has sufficient inputs. Capital on hand would not be considered proof of inputs. If the producer could not produce receipts for seed, fertilizer, herbicides, etc., the lease of equipment or labor, or specific land preparation, it will be presumed that the crop usually planted by the producer was the crop that the producer intended to plant. While this provision may preclude a producer from receiving benefits for a crop that he or she genuinely intended to plant, the producer would still be eligible for a benefit on the crop usually planted and the need to protect program integrity outweighs its disadvantages. Since this situation should be rare, it should not impose an undue burden on the reinsured company.

Comment: A reinsured company stated that section 14(f)(11) is contrary to the freedom to farm concept. The company also questioned how the insurer would know if the crop was planted in one of the last four years.

Response: This section is now section 17(f)(12) of the Basic Provisions. The company should ask the insured if the crop was planted and this information can be verified from FCIC. This provision is intended to protect program integrity and avoid the problems associated with determining producer intent. FCIC has created an exception for new producers that qualify for coverage under section 17(e)(1)(i)(B).

Comment: An insurance service organization commented that the first sentence of section 14(f)(11) excludes prevented planting coverage on any crop types that have not been planted in at least one of the four most recent years. The commenter stated that the second sentence specifies that this refers to types requiring separate guarantees, amounts of insurance or price elections, and then says there must be an APH database or acreage must have been reported in one of the last four years. The commenter feels this suggests that, to get prevented planting coverage, the insured can set up an APH database for a type even if the insured has no actual history on it, and they recommended rewording the language if that is not the intent.

Response: Section 14(f)(11), now section 17(f)(12) of the Basic Provisions, still requires that the crop be planted in at least one of the four most recent years. The second sentence just specifies the conditions under which the crops must also be included in the APH database or reported on the acreage report. No change has been made.

Comment: Reinsured companies and an insurance service organization commented on the following provisions of section 15: (1) There are legitimate reasons for written agreements to be valid for more than one year, especially if no substantive changes occur from one year to the next. Limiting written agreements to one year only increases administrative cost, complexity and opportunity for misunderstanding and error, and flies in the face of efforts to simplify the program and reduce its administrative expense; (2) Written agreements should be effective for more than one year because: (a) There is already an exception since written agreements to establish units are continuous (unless the farming operation changes significantly); (b) FCIC does not often incorporate the written agreements into the actuarial documents within one year; and (c) FCIC's legal counsel objects to the concept of written agreements, which purportedly allows exceptions for those "in the know" while others may not be aware the possibility exists; (3) The commenters questioned whether these provisions will be revised to simplify renewals; (4) The policy should require the insured to pay the cost of inspections necessary to obtain a written agreement because, in many instances there is no economic reason or incentive for a company to pursue such agreements; (5) Sections 15(a) and (e) should be combined since both deal with deadlines for written agreement requests. (The response to this comment in prior final rules has been that the sales closing date is intended to be the deadline with only limited exceptions. However, 7 of the 13 written agreement types listed in the 1998 Crop Insurance Handbook allow requests at acreage reporting time and one allows the request after acreage reporting. Of the 6 types with a sales closing date deadline, 4 are specific cases of a practice or type not listed in the actuarial, which is curious since the general type of unrated practice, type or variety can be requested at acreage reporting time. So, the exceptions seem to outnumber the rule. Many of the situations calling for written agreements do not become apparent until the acreage report is received. Therefore, the commenter again suggests this provision might be less misleading if the acreage reporting date exception noted in (e) were incorporated into (a)); (6) Provisions in section 15 that specify timing and content of the FCI–2 written agreement should not be part of the insurance policy. (New insureds would not have this information until it is too late to request a written agreement. This should have been reviewed by the insurance agent prior to acceptance of the application or issuance of the crop insurance policy.); and (7) Some of the written agreement provisions need to be carefully considered and compared to current procedures and comments to the Written Agreement proposed rule before the deadlines and annual status of written agreements are mandated in the Basic Provisions.

Response: The written agreement section was moved to section 16 of the Basic Provisions. The following responses address the questions by referencing changes made to the written agreement section of the Basic Provisions. Written agreements are intended to change policy terms or permit insurance in unusual situations. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to keep non-uniform exceptions to a minimum and to ensure that the insured is well aware of the specific terms of the policy. There will no longer be exceptions to the timing or duration of written agreements except as provided in section 18. The provisions have been amended to indicate that written agreements may be submitted after the sales closing date only if the producer demonstrates that he or she was physically unable to apply prior to the sales closing date or in accordance with any regulation which may be promulgated under 7 CFR part 400. FCIC will be more vigilant in incorporating changes to the policy made by written agreement into the actuarial documents.

FCIC does not believe that a producer should bear the cost associated with any inspection done for the purposes of a written agreement. Such costs are a part of servicing the policy and, therefore, are already compensated by the expense reimbursement under the Standard Reinsurance Agreement.

In addition to the changes described above and minor editorial changes, FCIC has made the following changes to these Crop Provisions:

1. Section 1—Removed alphabetic paragraph designations and definitions of "days," "final planting date," "FSA," "good farming practices," "interplanted," "irrigated practice," "late planted," "late planting period," "practical to replant," production guarantee," "replanting," "timely planted," and "written agreement," and revised the definition of "planted acreage" for clarification.

2. Section 2—Revised to remove all provisions that were moved to the Basic Provisions.

3. Section 9(e)—Revised to add wildlife as a cause of loss to be consistent with other insurable crops.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule provides prevented planting coverage under the Basic Provisions. This rule must be effective prior to the contract change date for which these revised prevented planting provisions are effective. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance, Canola and rapeseed crop provisions.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.161 is added to read as follows:

§ 457.161 Canola and rapeseed crop insurance provisions.

The Canola and Rapeseed Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Canola and Rapeseed Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions.

Canola. A crop of the genus *Brassica* as defined in accordance with the Official United States Standards for Grain—Subpart C—U.S. Standards for Canola.

Harvest. Combining or threshing for seed. A crop that is swathed prior to combining is not considered harvested.

Local market price (Canola). The cash price per pound for U.S. No. 2 grade canola that reflects the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade canola.

Planted acreage. In addition to the definition contained in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Price of damaged production. The cash price per pound available if the production were sold for canola that qualifies for quality adjustment in accordance with section 12 of these crop provisions.

Rapeseed. A crop of the genus *Brassica* that contains at least 30 percent of an industrial type of oil as shown on the Special Provisions and that is measured on a basis free from foreign material.

Swathed. Severance of the stem and seed pods from the ground and placing into windrows without removal of the seed from the pod.

2. Unit Division.

In addition to optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices,

optional units may be by type if the type is designated on the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the canola and rapeseed in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each canola and rapeseed type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for a specific type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date, and June 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and Termination dates
All counties in Georgia	Sept. 30.
All other counties without fall planted types specified on the actuarial table.	Mar. 15.
All other counties with fall planted types specified on the actuarial table.	Aug. 31.

6. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all canola and rapeseed in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is planted for harvest as seed; and

(c) That is not, unless allowed by Special Provisions or by written agreement:

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

7. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions,

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that most producers producing crops on similarly situated acreage in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

8. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, the end of the insurance period is October 31 of the calendar year in which the crop is normally harvested.

9. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss which occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if applicable, caused by an insured cause of loss that occurs during the insurance period.

10. Replanting Payment.

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the insured crop is damaged by an insurable cause of loss to the extent that most producers producing the crop on similarly situated acreage in the area, would not continue to care for the crop and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your price election, multiplied by your insured share.

(c) When the canola or rapeseed is replanted using a practice or type that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment that is attributable to your share. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss.

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop that we may require must be at least 10 feet wide and extend the entire length of each field in the unit. If you intend to put the acreage to another use or not harvest the acreage, the samples must not be harvested or destroyed until our inspection.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election for each type, if applicable;

(3) If there are more than one type, totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(c)) by the respective price election;

(5) If there are more than one type, totaling the results in section 12(b)(4);

(6) If there are more than one type, subtracting the total in section 12(b)(5) from the total in section 12(b)(3);

(7) If there is only one type, subtracting the total in section 12(b)(4) from the total in section 12(b)(2); and

(8) Multiplying the result in section 12(b)(6) and 12(b)(7), as applicable, by your share.

(c) The total production to count (pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 12(d)); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature canola may be adjusted for excess moisture and quality deficiencies. Mature rapeseed may be adjusted for excess moisture only. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Canola and rapeseed production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 8.5 percent. We must be permitted to obtain samples of the production to determine the moisture content.

(2) Canola production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in the canola not meeting the grade requirements for U.S. No. 3 or better (U.S. Sample grade) because of kernel damage (excluding heat damage), or a musty, sour, or commercially objectionable foreign odor; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss in canola production only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these Crop Provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade canola under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health.

(4) Canola production that is eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced:

(i) In accordance with the quality adjustment factors contained in the Special Provisions; or

(ii) As follows if quality adjustment factors are not contained in the Special Provisions:

(A) Divide the price of damaged production by the local market price to determine the quality adjustment factor.

(B) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(5) For canola, the price of damaged production and the local market price will be determined at the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit subject to the following conditions:

(i) Discounts used to establish the price of damaged production will be limited to those that are usual, customary, and reasonable.

(ii) The price of damaged production will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes;

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the canola; except, if the price of damaged production can be increased by conditioning, we may reduce the price of damaged production after the production has been conditioned by the cost of conditioning but not lower than the price of damaged production before conditioning. We may obtain prices of damaged production from any buyer of our choice. If we obtain prices of damaged production from one or more buyers located outside your local market area, we will reduce such price of damaged production by the additional costs required to deliver the canola to those buyers; or

(D) Erucic acid or glucosinolates in excess of the amount allowed under the definition of canola contained in the Official United States Standards for Grain; and

(iii) Factors not associated with grading under the Official United States Standards for Grain including, but not limited to protein and oil, will not be considered.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

For example:

You have 100 percent share in 25 acres of Fall Oleic Canola in a unit with a 650 pound production guarantee and a price election of $0.11 per pound. You are only able to harvest 14,700 pounds and there is no appraised production. Your indemnity would be calculated as follows:

(1) 25 acres x 650 pounds = 16,250 pounds of Fall Oleic Canola;

(2) 16,250 pounds x $0.11 price election = $1,788 value of guarantee for Fall Oleic Canola;

(3) 14,700 pounds x $0.11 price election = $1,617 total value of production to count for Fall Oleic Canola;

(4) $1,788 value of guarantee – $1,617 value of production to count = $171 value of loss; and

(5) $171 value of loss x 100 percent = $171 indemnity payment.

You also have a 100 percent share in 50 acres of Fall High Erucic Rapeseed in the same unit with a production guarantee of 750 pounds per acre and a price election of $0.15 per pound. You are only able to harvest 14,000 pounds and there is no appraised production. Your total indemnity for both Fall Oleic Canola and Fall High Erucic Rapeseed would be calculated as follows:

(1) 25 acres x 650 pounds = 16,250 pounds guarantee for the Fall Oleic Canola, and 50 acres x 750 pounds = 37,500 pounds guarantee for the Fall High Erucic Rapeseed;

(2) 16,250 pounds guarantee x $0.11 price election = $1,788 value of the guarantee for the Fall Oleic Canola, and 37,500 pounds guarantee x $0.15 price election = $5,625 value of the guarantee for the Fall High Erucic Rapeseed;

(3) $1,788 + $5,625 = $7,413 total value of the guarantees;

(4) 14,700 pound x $0.11 price election = $1,617 value of production to count for the Fall Oleic Canola, and 14,000 pounds x $0.15 price election = $2,100 value of production to count for the Fall High Erucic Rapeseed;

(5) $1,617 + $2,100 = $3,717 total value of production to count;

(6) $7,413 value of guarantee – $3,717 value of production = $3,696 loss; and

(7) $3,696 value of loss x 100 percent = $3,696 indemnity payment.

13. Late Planting.

In lieu of section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date unless otherwise specified in the Special Provisions.

14. Prevented Planting.

In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

Signed in Washington, D.C., on December 11, 1997.

Suzette Dittrich,

Deputy Manager,

Federal Crop Insurance Corporation.

[FR Doc. 97–32846 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–118–1]

Change in Disease Status of Luxembourg Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Luxembourg to the list of regions where bovine spongiform encephalopathy (BSE) exists because the disease has been detected in a cow in that region. The effect of this action is to prohibit or restrict the importation of ruminants which have been in Luxembourg and certain fresh (chilled or frozen) meat, and certain other animal products and animal byproducts from ruminants which have been in Luxembourg. This action is necessary to reduce the risk that BSE could be introduced into the United States.

DATES: Interim rule effective December 2, 1997. Consideration will be given only to comments received on or before February 17, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–118–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comments refer to Docket No. 97–118–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, and 95 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants and is not known to exist in the United States.

It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in regions in which BSE exists, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants from regions in which BSE exists are imported.

Sections 94.18 and 95.4 of the regulations prohibit and restrict the importation of certain meat, animal products, and animal byproducts from ruminants which have been in regions in which BSE exists. These regions are listed in § 94.18 of the regulations. Furthermore, § 93.404(a)(3) states that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists.

Luxembourg's Ministry of Agriculture has reported a case of BSE in Luxembourg. BSE was confirmed by histopathological examination according to standardized procedures for the diagnosis of BSE. Luxembourg's Ministry of Agriculture confirmed that BSE was in a cow born in Luxembourg. The exposure of this animal to the BSE agent could only have occurred in Luxembourg. In order to reduce the risk of introducing BSE into the United States, we are, therefore, adding Luxembourg to the list of regions where BSE is known to exist. Thus, we are prohibiting or restricting the importation into the United States of ruminants which have been in Luxembourg, and certain fresh (chilled or frozen) meat, and certain other animal products and animal byproducts from ruminants which have been in Luxembourg.

We are making this action effective retroactively to December 2, 1997, as that was the day on which the case of BSE was reported by Luxembourg's Ministry of Agriculture. This effective date is necessary to ensure that the prohibitions and restrictions established by this rule apply to ruminants, as well as fresh (chilled or frozen) meat, and certain other animal products and animal byproducts from ruminants that have been shipped to the United States from Luxembourg on or after October 31, 1997.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of BSE into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective on December 2, 1997. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action adds Luxembourg to the list of regions where BSE exists. We are taking this action based on reports we have received from Luxembourg's Ministry of Agriculture, which confirmed that a case of BSE has occurred in Luxembourg.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule will have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to December 2, 1997; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.18 [Amended]

2. In § 94.18, paragraph (a) is amended by adding the word "Luxembourg," immediately after "Great Britain,".

Done in Washington, DC, this 11th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32811 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–54–AD; Amendment 39–10252; AD 97–26–09]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109K2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Agusta S.p.A (Agusta) Model A109K2 helicopters. This action requires inspecting the Gleason crown on the main transmission for cracks, and replacing the Gleason crown with an airworthy Gleason crown if any crack is found. This amendment is prompted by three reports of fatigue cracks found in the Gleason crown. The actions specified in this AD are intended to prevent failure of the Gleason crown, failure of the main transmission and subsequent loss of control of the helicopter.

DATES: Effective January 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–54–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. This information may be examined at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on Agusta Model A109K2 helicopters with main transmission assembly, part number (P/N) 109–0400–03, serial number (S/N) 005, 006, 007, 008, 010, 011, 012, 013, 014, 015, 016, 017, 018, 020, 022, 024, 027, 030, 031, 032, 033, 034, 035, 038, 039, 042, 047, 048, A2/1053, A2/1073, A2/1397, or B54895 e C347. The RAI advises that, due to reports of cracks being discovered in the Gleason crown on the main transmission, the actions specified by the Agusta Bollettino Tecnico (Technical Bulletin) No. 109K–16, dated April 24, 1997, are mandatory.

Agusta has issued Agusta Bollettino Tecnico (Technical Bulletin) No. 109K–16, dated April 24, 1997, which specifies a magnetic particle inspection of certain Gleason crowns for cracks. The RAI classified this service bulletin as mandatory and issued AD 97–122, dated April 29, 1997, in order to assure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta Model A109K2 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of the Gleason crown, failure of the main transmission, and subsequent loss of control of the helicopter. The Gleason crown is a part of the main transmission assembly and is therefore a critical component of the main rotor drive system. Due to the criticality of the Gleason crown to the continued safe flight of the affected helicopters, and the required inspection before the next 50 hours time-in-service (TIS), this rule must be issued immediately to correct an unsafe condition. This AD requires, within 50 hours TIS and thereafter at intervals not to exceed 300 hours TIS, a magnetic particle inspection of the main transmission Gleason crown for cracks. If any crack is found, replacement of the Gleason crown, P/N 109–0403–07–103, with an airworthy Gleason crown, P/N 109–0403–07–103, S/N B58264 through S/N B58270, or S/N B58272 and subsequent (S/N B58271 is not an acceptable replacement part), and vibro-etching the main transmission tag with "S.M. 109–25094" are required. These actions are required to be accomplished in accordance with the technical bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–54–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–26–09 Agusta S.p.A.: Amendment 39–10252. Docket No: 97–SW–54–AD.

Applicability: Model A109K2 helicopters with main transmission assembly, part number (P/N) 109–0400–03, serial number (S/N) 005, 006, 007, 008, 010, 011, 012, 013, 014, 015, 016, 017, 018, 020, 022, 024, 027, 030, 031, 032, 033, 034, 035, 038, 039, 042, 047, 048, A2/1053, A2/1073, 2/1397, or B54895 e C347, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main transmission Gleason crown (Gleason crown), failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 300 hours TIS, perform a magnetic particle inspection of the Gleason Crown, P/N 109–0403–07, for cracks in accordance with steps 1 through 3 of Part II of the Compliance Instructions of Agusta Bollettino Tecnico (Technical Bulletin) No. 109K–16, dated April 24, 1997.

(b) If any crack is found, remove the Gleason crown and replace it with an airworthy Gleason crown, P/N 109–0403–07–103, S/N B58264 through S/N B58270, or S/N B58272 and subsequent (S/N B58271 is not an acceptable replacement part), and vibro-etch the main transmission tag with "S.M. 109–25094". Replacement of the Gleason crown with an airworthy Gleason crown, P/N 109–0403–07–103, S/N B58264 through S/N B58270 or S/N B58272 and subsequent, constitutes a terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with Agusta Bollettino Tecnico (Technical Bulletin) No. 109K–16, dated April 24, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta S.p.A., 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. Copies may be inspected at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 2, 1998.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 97–122, dated April 29, 1997.

Issued in Fort Worth, Texas, on December 9, 1997.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–32992 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 97–ANM–10]

RIN 2120–AA66

Change Controlling Agency for Restricted Areas R–6412A and R–6412B; Camp Williams, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the published controlling agencies for Restricted Areas R–6412A and R–6412B, Camp Williams, UT. This is an administrative change initiated by the Northwest Mountain Region. There are no changes to the boundaries, altitudes, times of designation, or activities conducted within the restricted areas.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7686.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 73 by changing the published controlling agencies for Restricted Areas R–6412A and R–6412B, Camp Williams, UT. This is an administrative change initiated by the Northwest Mountain Region. There are no changes to the boundaries, altitudes, times of designation, or activities conducted within the restricted areas.

Since this action simply changes the published controlling agency of the affected restricted areas, and does not involve a change in the dimensions or operating requirements of the restricted areas, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.64 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8E, dated November 7, 1997.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1997); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Environmental Review

In accordance with FAA Order 1050.1D, "Polices and Procedures for Considering Environmental Impacts," this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 73.64 [Amended]

2. § 73.64 is amended as follows:

* * * * *

R–6412A Camp Williams UT [Amended]

By removing "Controlling agency. FAA, Salt Lake City Tower" and substituting the following:

"Controlling agency. FAA, Salt Lake City TRACON."

R–6412B Camp Williams UT [Amended]

By removing "Controlling agency. FAA, Salt Lake City Tower" and substituting the following:

"Controlling agency. FAA, Salt Lake City TRACON."

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32571 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 960712192–6192–01]

RIN 0648–AD85

Florida Keys National Marine Sanctuary Final Regulations

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations which were published Thursday, January 30, 1997 (62 FR 4578). The regulations pertain to the Florida Keys National Marine Sanctuary and made revisions to the national marine sanctuary program regulations at 15 CFR Part 922.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Weiss (301) 713–2969, ext. 216.

SUPPLEMENTARY INFORMATION: Final regulations for the Florida Keys National Marine Sanctuary were published on Thursday, January 30, 1997 (62 FR 4578). These regulations were subsequently amended on June 12, 1997 (62 FR 32154). The January 30, 1997 **Federal Register** document made revisions to the national marine sanctuary program regulations at 15 CFR Part 922. The January 30, 1997 **Federal Register** document that is the subject of this correction contains amendatory language for § 922.48(b) of the national marine sanctuary program regulations, which pertains to national marine sanctuary permits. The amendatory instruction for paragraph (b) of section 922.48 was incorrect by failing to state that only the introductory language to paragraph (b) was amended, thus leaving the remaining subparagraphs to paragraph (b) unchanged. Left uncorrected, the amendatory language would erroneously result in subparagraphs (1) through (5) of paragraph 922.48(b) being deleted from the Code of Federal Regulations.

Correction of Publication

Accordingly, the **Federal Register** document published on January 30, 1997 (62 FR 4578) is corrected by revising amendatory instruction 14 on page 4607, third column, to read as follows:

"14. Section 922.48 is amended by revising paragraph (a) and the introductory text of paragraph (b) as follows:"

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–32857 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 95P–0136]

Medical Devices; Reclassification of Tumor-Associated Antigen Immunological Test Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is codifying the reclassification of tumor-associated antigen immunological test systems intended as an aid in monitoring patients for disease progression or response to therapy or for the detection of recurrent or residual disease from class III (premarket approval) to class II (special controls). FDA is also announcing that it has issued an order in the form of a letter to Centocor, Inc., reclassifying serum tumor markers into class II. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 and the Safe Medical Devices Act of 1990.

EFFECTIVE DATES: The reclassification was effective September 19, 1996. The codification becomes effective December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices

and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 1995, FDA filed a petition submitted by Centocor, Inc., requesting reclassification from class III to class II of tumor-associated antigen immunological test systems, commonly called serum tumor markers, indicated for use in the monitoring of tumor-associated antigen levels in patient serum samples. The tumor-associated antigen immunological test system was a class III "transitional" device under section 520(l) of the act (21 U.S.C. 360j(l)). The petition, was seeking reclassification under the procedures set forth in section 520(l)(2) of the act and 21 CFR 860.136 of the agency's regulations.

FDA consulted with the Immunology Devices Panel (the Panel). During the open public meeting on December 1, 1995, the Panel recommended that FDA reclassify the tumor-associated antigen immunoassay systems for use in monitoring from class III to class II. It further recommended that those tumor markers used for screening indications remain in class III.

Based on its consultation with the Panel, review of the data and information contained in the petition and presented before the Panel, published studies and professional standards, FDA concurred with the Panel's recommendation that tumor-associated antigen immunoassay systems should be reclassified from class III into class II with implementing special controls. FDA further concurred that markers used for screening indications will remain in class III.

On September 19, 1996, FDA issued an order (Ref. 1) in the form of a letter to Centocor, Inc., reclassifying the generic type of device, tumor-associated antigen immunological test systems intended as an aid in monitoring patients for disease progression or response to therapy or for the detection of recurrent or residual disease, from class III to class II. The order identified the generic type of tumor-associated antigen immunological test system as a device that consists of the reagents used to qualitatively or quantitatively measure, by immunochemical techniques, tumor-associated antigens in serum, plasma, urine, or other body fluids. This generic type of device does not include tissue receptor assays, immunohistochemical stains, or direct tests for oncogenes or other genetic markers associated with a predisposition to development of certain cancers.

Measurement of tumor-associated antigen levels aid in the monitoring of certain cancers. Monitoring is defined here as assessing disease progression, recurrence, or response to therapy. This includes the serial measurement of antigens in patients with histologically confirmed diagnoses who are undergoing therapy for residual or advanced disease. Increasing tumor marker concentrations are indicative of progressive disease, decreasing concentrations are indicative of response to therapy, and constant serial tumor marker concentrations are associated with a stable disease state. Monitoring is further defined as single or serial measurements used as an aid in the detection of recurrent or residual disease in patients following primary curative treatment. Sustained elevations in marker concentrations are suggestive of residual disease, whereas increasing concentrations are indicative of recurring disease.

The order also identified FDA's designated special controls as a premarket notification, section 510(k) (21 U.S.C. 360(k)), guidance document for tumor-associated antigens (Ref. 2), and existing voluntary standards for assay performance by the National Committee for Clinical Laboratory Standards (the NCCLS) (Ref. 3). The guidance document provides the review criteria and data requirements for a 510(k) submission. The guidance document also provides suggestions for non-clinical laboratory studies and the design, conduct, and analysis of appropriate clinical studies to support the performance of these devices. The NCCLS assay performance standards provide evaluative techniques to assure the accurate performance of the antigen tests. FDA believes that these special controls provide the necessary control to reasonably assure the safety and effectiveness of these devices.

FDA notes that the risks associated with the use of tumor markers are relatively low in comparison to the benefits that result from their use for patient monitoring. Furthermore, the risks and benefits associated with the use of tumor markers in the practice of medical oncology are well understood by clinicians. The use and performance characteristics of these devices have been addressed in thousands of peer-review scientific reports and the evaluative techniques used to establish acceptable performance are well described and referenced in the special controls. Additionally, FDA has 20 years of scientific review experience to draw upon in the evaluation of new tumor markers, and believes that tumor antigen immunoassay systems are well characterized.

Consistent with the act and the regulations, FDA is announcing that on September 19, 1996, an order in the form of a letter was sent to Centocor, Inc., reclassifying the generic type tumor-associated antigen immunoassay system that is intended as an aid in monitoring patients for disease progression or response to therapy or for the detection of recurrent or residual disease from class III to class II. Additionally, FDA is codifying the reclassification of this device, by amending 21 CFR 866.6010.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The Commissioner of Food and Drugs, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million of more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

IV. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA letter (order) to Centocor, Inc., dated September 19, 1996.

2. Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications (510(k)) to FDA, September 19, 1996.

3. The National Committee for Clinical Laboratory Standards: Document EP5–T2, Evaluation of Precision Performance of Clinical Chemistry Devices; Document EP9–A, Method Comparison and Bias Estimation Using Patient Samples; Document EP7–P, Interference Testing in Clinical Chemistry.

List of Subjects in 21 CFR Part 866

Medical Devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 866.6010 is revised to read as follows:

§ 866.6010 Tumor-associated antigen immunological test system.

(a) *Identification.* A tumor-associated antigen immunological test system is a device that consists of reagents used to qualitatively or quantitatively measure, by immunochemical techniques, tumor-associated antigens in serum, plasma, urine, or other body fluids. This device is intended as an aid in monitoring patients for disease progress or response to therapy or for the detection of recurrent or residual disease.

(b) *Classification.* Class II (special controls). Tumor markers must comply with the following special controls: (1) A guidance document entitled "Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications (510(k)s) to FDA," and (2) voluntary assay performance standards issued by the National Committee on Clinical Laboratory Standards.

Dated: November 6, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–32876 Filed 12–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–009]

RIN 2115–AE47

Drawbridge Operation Regulations; Pasquotank River, Elizabeth City, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Highway 158 drawbridge across the Pasquotank River, mile 50.7, at Elizabeth City, North Carolina, by eliminating bridge openings for pleasure vessels from Monday through Friday between 7 a.m. and 9 a.m., and 4 p.m. and 6 p.m., except that, openings will be scheduled at 7:30 and 8:30 a.m., and 4:30 and 5:30 p.m. for any waiting pleasure vessels. This rule is intended to help relieve automobile traffic congestion during the morning and afternoon rush hours, while still providing for the reasonable needs of navigation.

DATES: This final rule is effective January 16, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 1, 1997, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Pasquotank River, Elizabeth City, North Carolina" in the *Federal Register* (62 FR 35453). The Coast Guard did not receive any comments on the proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Highway 158 drawbridge across the Pasquotank River, mile 50.7, at Elizabeth City, North Carolina is currently required to open on signal year round. The City of Elizabeth City, through the North Carolina Department of Transportation (NCDOT), requested permission to restrict drawbridge openings for pleasure vessels only to reduce highway traffic congestion during the morning and evening rush hours. In support of its request, the NCDOT contends that 10 years of records during the period from 1985 through 1995 show that highway traffic increases have caused excessive highway congestion.

Prior to publishing the Notice of Proposed Rulemaking the Coast Guard reviewed the NCDOT highway traffic data during the 10 year period from 1985 through 1995, and the drawbridge opening logs from January 1995 to December 1995, copies of which are included in the docket for this rulemaking. This data supports NCDOT's request. According to the 1995 drawbridge logs, 234 openings occurred between 7 a.m. and 9 a.m. and 235 openings occurred between 4 p.m. and 6 p.m. Thus, the daily average for the year was 0.6 openings for each of the proposed restricted periods. Only during the month of May 1995 were there more than 2.0 openings during the time periods in question. During May 1995, an average of 2.6 openings occurred between 7 a.m. and 9 a.m. Even though 2.6 openings is not excessive, NCDOT states that the random timing of the openings caused highway traffic to backup four to six blocks. In support of this contention, the NCDOT provided highway traffic data which shows that highway traffic volumes increased by an average of between 200 and 300 vehicles during the morning and evening restricted periods as compared to other daylight hours. Based upon this data, the Coast Guard believes that 2.0 scheduled openings for pleasures vessels for each time period is adequate for marine traffic and should help to reduce highway traffic congestion.

Discussion of Comment and Changes

The Coast Guard received no comments on the proposed rulemaking.

Therefore, the proposed rule is being implemented without change.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Cost Guard must consider whether this final rule will have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant encomic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Cost Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. The text of § 117.833 is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 117.833 Pasquotank River.

(a) * * *

(b) The draw of the US 158 Highway Bridge, mile 50.7, at Elizabeth City, shall open on signal; except that between 7 a.m. and 9 a.m., and 4 p.m. and 6 p.m., Monday through Friday, the draw need open only at 7:30 a.m., 8:30 a.m., 4:30 p.m., and 5:30 p.m. for any pleasure vessels waiting to pass.

Dated: December 8, 1997.

Roger Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–32885 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–066]

RIN 2115–AE47

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the US 460 (Berkley Bridge) drawbridge across the Eastern Branch of the Elizabeth River, mile 0.4, at Norfolk, Virginia. Beginning December 15, 1997 through January 9, 1998, this deviation restricts bridge openings between the hours of 9 a.m. to 3:30 p.m., seven days a week. During these times, vessels requiring bridge lifts will be required to provide the Berkley Bridge bridge tender with a two-hour advance notice. This closure is necessary to allow the Virginia Department of Transportation to conduct an oil change on the major lift equipment while still providing for the reasonable needs of navigation.

DATES: This deviation is effective from December 15, 1997 through January 9, 1998.

FOR FURTHER INFORMATION CONTACT:

Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Berkley Bridge is owned and operated by the Virginia Department of Transportation (VDOT) and maintained by the Elizabeth River Tunnels Department of Maintenance. On December 1, 1997, VDOT sent a letter to the Coast Guard requesting a temporary deviation from the normal operation of the bridge in order to accommodate the maintenance work. Presently, the draw is required to open on signal at any time except from 5:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays. Between the hours of 5:30 a.m. and 9 a.m. and 3:30 p.m. and 6:30 p.m., vessels with a draft of 22 feet or more may request a bridge lift provided at least 12 hours advance notice is given.

The maintenance work involves draining and subsequent refilling of oil in the gear boxes in the major lift equipment of the US 460 (Berkley Bridge) drawbridge. Vessels presently transiting through the Berkley Bridge during the hours of deviation will not be negatively impacted since bridge lifts will be provided with a two-hour advance notice.

From December 15, 1997 to January 9, 1998, this deviation restricts bridge lifts of the Berkley Bridge between the hours of 9 a.m. and 3:30 p.m. seven days a week. Vessels requiring a bridge lift during these times will be required to provide a two-hour advance notice to the Berkley Bridge bridge tender. All other provisions of § 117.1007 remain in effect during the period of the deviation.

Dated: December 8, 1997.

Roger Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–32884 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO47–1–6946 & CO–001–0020; FRL–5934–1]

Approval and Promulgation of Implementation Plans; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to procedures described at 54 FR 2214 (January 19, 1989), EPA has recently approved two minor State Implementation Plan (SIP) revisions for the State of Colorado. This document lists the revisions EPA has approved and revises the Code of Federal Regulations to reflect those approvals.

EFFECTIVE DATE: This action is effective December 17, 1997.

ADDRESSES: Copies of the State SIP revision requests and EPA's letter notices of approval are available for public inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and the Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, at the EPA regional office listed above, (303) 312–6445.

SUPPLEMENTARY INFORMATION: EPA Region VIII has approved the following minor SIP revision requests under section 110(a) of the Clean Air Act:

State	Pollutant	Subject matter	Date of submission	Date of approval
Colorado	PM–10	Aspen Element of the Colorado PM–10 SIP	Mar. 13, 1995	Aug. 21, 1997.
Colorado	PM–10	Pagosa Springs Element of the Colorado PM–10 SIP	Aug. 2, 1996	Aug. 21, 1997.

EPA has determined that these SIP revisions comply with all applicable requirements of the Act and EPA policy and regulations concerning such revisions. Due to the minor nature of these revisions, EPA concluded that conducting notice-and-comment rulemaking prior to approving the revisions would have been "unnecessary and contrary to the public interest" and, hence, was not required by the Administrative Procedures Act, 5 U.S.C. 553(b). Each of these SIP approvals became final and effective on the date of EPA approval as listed in the chart above.

I. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 601(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 21, 1997.

William P. Yellowtail,

Regional Administrator, Region VIII.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1 The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.332 is amended by redesignating paragraph (b) as paragraph (b)(1), redesignating paragraph (e) as paragraph (e)(1), and adding paragraphs (b)(2) and (e)(2) to read as follows:

§ 52.332 Moderate PM–10 nonattainment area plans.

* * * * *

(b) * * *

(2) On August 2, 1996, the Governor of Colorado submitted minor revisions to the Pagosa Springs Element of the Colorado PM–10 SIP.

* * * * *

(e) * * *

(2) On March 13, 1995, the Governor of Colorado submitted minor revisions to the Aspen Element of the Colorado PM–10 SIP.

* * * * *

[FR Doc. 97–32930 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300585; FRL 5756–4]

RIN 2070–AB78

Ethalfluralin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of ethalfluralin in or on canola seed. This action is in response to EPA allowing issuance of crisis emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on canola in Montana and North Dakota. This regulation establishes a maximum permissible level for residues of ethalfluralin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on October 31, 1998.

DATES: This regulation is effective December 17, 1997. Objections and requests for hearings must be received by EPA on or before February 17, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300585], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300585], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300585]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide ethalfluralin, in or on canola seed at 0.05 part per million (ppm). This tolerance will expire and is revoked on October 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135), November 13, 1996 (FRL 5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Ethalfluralin on Canola and FFDCA Tolerances

The Applicants state that as canola acreage has grown, wild buckwheat has become an increasingly significant weed pest, and that the only available herbicide, trifluralin, does not provided adequate control of this weed. Thus, the Applicants found it necessary to issue crisis exemptions for this use of ethalfluralin, to avoid significant economic loss. EPA has authorized under FIFRA section 18 (the crisis provisions) the use of ethalfluralin on canola for control of wild buckwheat in Montana and North Dakota.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of ethalfluralin in or on canola seed. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on October 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on canola seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether ethalfluralin meets EPA's registration requirements for use on canola or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of ethalfluralin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Montana or North Dakota to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for ethalfluralin, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100–fold MOE is based on the same rationale as the 100–fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and

non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants, < 1 year old was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of ethalfluralin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of ethalfluralin on canola seed at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by ethalfluralin are discussed below.

1. *Acute toxicity.* For acute dietary risk assessment, EPA scientists have determined that the developmental NOEL of 75 mg/kg/day, from the rabbit developmental study should be used. The LOEL of 150 mg/kg/day is based on increased number of resorptions and increased sternal and cranial variations. Since the effect of concern is reproductive in nature, the acute risk assessment will evaluate acute dietary risk to the population subgroup of concern, females 13 + years old.

2. *Short - and intermediate - term toxicity.* No short- or intermediate-term toxicity endpoints have been identified for ethalfluralin, and OPP scientists determined that this assessment is not necessary.

3. *Chronic toxicity.* EPA has established the RfD for ethalfluralin at 0.04 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 1–year feeding study in dogs with a NOEL of 4.0 mg/kg/day, and an uncertainty factor of 100. The LOEL of 20 mg/kg/day was based upon altered red cell morphology and urinary bilirubin.

4. *Carcinogenicity.* Based on mammary gland fibroadenomas and combined mammary gland adenomas and/or fibroadenomas in female rats, ethalfluralin has been classified in Group C possible human carcinogen, according to EPA's Cancer Assessment Guidelines. The OPP Cancer Peer Review Committee recommended using the Q^* approach for risk assessment, and the Q^* of 8.9×10^{-2} has been calculated.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.418) for the residues of ethalfluralin, in or on the following raw agricultural commodities: dry beans and peas, cucurbit vegetables, peanuts, soybeans, and sunflower seeds; and in animal commodities fat, meat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; and milk and eggs. According to the Ethalfluralin Reregistration Eligibility Document (RED), published March 1995, EPA is requiring revocation of all animal commodity tolerances, as they are not needed there is no expectation of finite residues. In the following risk assessments, the animal commodity tolerances are included, and then subsequently excluded from the refined cancer risk assessment. Risk assessments were conducted by EPA to assess dietary exposures and risks from ethalfluralin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute risk assessment used tolerance-level residues for all commodities having ethalfluralin tolerances. For the population subgroup of concern, females 13 + years old, the Margin of Exposure (MOE) for the high-end consumer was calculated to be 25,000 (an MOE of ≤ 100 represents a negligible risk. Canola seed is processed into canola oil, a commodity which is not listed in OPP's dietary risk exposure system (DRES), so a standard DRES risk analysis including it cannot be conducted. However, canola oil is a very low consumption human food item 0.01% of the RfD, see below, and would be expected to contribute only a minor incremental increase to the acute dietary exposure. Additionally, the estimate given above should be considered extremely conservative, and if it were refined, using a Monte Carlo technique and incorporating anticipated residues and percent of crop treated figures, the MOEs would likely be much higher.

ii. *Chronic exposure and risk.* The chronic dietary (food only) risk assessment for ethalfluralin was conducted using anticipated residue values and percent of crop treated information for some of the crops. Based on this, EPA has concluded that dietary exposure to ethalfluralin will utilize 2% of the RfD for the Overall US Population 0.01% of this attributed to canola oil. The major identifiable subgroup with the highest exposure is non-nursing infants < 1 year old, at 9% of the RfD. This is further discussed below in the section on infants and children. EPA generally has no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to ethalfluralin in drinking water. EPA does not expect the aggregate exposure to exceed 100% of the RfD.

2. *From drinking water.* According to available data, ethalfluralin is moderately persistent and relatively immobile in soil, and is not expected to be a groundwater contaminant. Ethalfluralin does appear to have some potential to reach surface waters on eroded soil particles, but in surface waters, ethalfluralin would be expected to photodegrade rapidly. According to EPA's Pesticides in Ground Water Database, a total of 188 wells in Texas were monitored for ethalfluralin residues in 1987–88, and no detectable residues were reported. There are no Maximum Contaminant Levels or Health Advisory Levels established for ethalfluralin in drinking water.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfDs or acute dietary NOELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause ethalfluralin to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with ethalfluralin in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Ethalfluralin is not currently registered for use on any residential non-food sites, and thus, it is not expected that non-occupational, non-dietary exposures will occur.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances and pesticides that produce a common toxic metabolite in which case common mechanism of activity will be assumed.

Although ethalfluralin is a member of the nitroaniline class of herbicides, EPA does not have, at this time, available data to determine whether ethalfluralin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, ethalfluralin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that ethalfluralin has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the population subgroup of concern, females 13 + years old, the calculated MOE value for dietary exposure from food only is

25,000. Although there is potential for exposure to ethalfluralin in drinking water, EPA does not expect that this would result in an aggregate MOE food plus water that would exceed the level of concern MOE < 100 for acute dietary exposure. Therefore, EPA concludes that there is reasonable certainty that no harm will result from aggregate acute exposure to ethalfluralin.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to ethalfluralin from food will utilize 2% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants < 1 year old, at 9% of the RfD, discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to ethalfluralin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate chronic exposure to ethalfluralin residues.

D. Aggregate Cancer Risk for U.S. Population

Based on the Q* of 0.089 $(mg/kg/day)^{-1}$, and the anticipated residue contribution, the upper bound cancer risk estimate for the U.S. population is 6.2×10^{-5}, contributed through all the published tolerances for ethalfluralin. However, as stated above, EPA is requiring revocation of the ethalfluralin tolerances for meat, milk, poultry, and eggs, due to the presumption that there are undetectable residues in these food items. When the cancer risk is calculated excluding these animal commodity tolerances, the resulting upper bound risk is 5.7×10^{-7}, which is considered a negligible risk. This cancer risk analysis does not include canola oil, which is not covered by the DRES analysis. However, the consumption of canola oil has been calculated to comprise only 0.01% of the RfD, and thus, in the best scientific judgment of EPA, would not contribute appreciably to the dietary cancer risk from food uses of ethalfluralin.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of ethalfluralin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 3-generation reproduction study in the rat, and a 7-month multigeneration study in rats. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional 10–fold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty safety factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100–fold safety factor usually 100 for combined inter- and intra-species variability and not the additional 10–fold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies.* In the developmental toxicity study in rats, the maternal systemic NOEL was 50 mg/kg/day, based on decreased body weight gain and dark urine at the LOEL of 250 mg/kg/day. The fetal developmental NOEL was 1000 mg/kg/day, at the highest dose tested (no effects observed to the fetuses).

In the developmental toxicity study in rabbits, the maternal systemic NOEL was 75 mg/kg/day, based on abortions and decreased food consumption at the LOEL of 150 mg/kg/day. The fetal developmental NOEL was also 75 mg/kg/day, based on a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants, at the LOEL of 150 mg/kg/day.

iii. *Reproductive toxicity study.* In a 3-generation reproductive toxicity study in rats, the parental systemic NOEL was 12.5 mg/kg/day, based on decreased mean body weight gains in males in all generations, at the LOEL of 37.5 mg/kg/day. The pup reproductive NOEL was 37.5 mg/kg/day, the highest dose tested no effects seen on the pups.

In a 7-month multigeneration study in rats, the parental NOEL of 20 mg/kg/day was based on increased liver weights at the LOEL of 61 mg/kg/day. The pup reproductive NOEL was ≤ 61 mg/kg/day, the highest dose tested no effects seen on the pups.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal effects is complete for ethalfluralin. Based on the results of the developmental and reproduction studies outlined above, there are no pre- or post-natal toxicity concerns for infants and children, from exposure to ethalfluralin.

v. *Conclusion.* Since no pre-or post-natal concerns have been identified for ethalfluralin, EPA scientists conclude that reliable data support use of the standard 100–fold uncertainty factor, and an additional uncertainty factor is not needed to protect infants and children.

2. *Acute risk.* For the population subgroup of concern, females 13 + years old, the MOE for ethalfluralin dietary (food only) exposure is 25,000; this accounts for both maternal and fetal exposure. Although there is potential for exposure to ethalfluralin in drinking water, EPA does not expect that this would result in an aggregate MOE (food plus water) that would exceed the level of concern MOE < 100 for acute dietary exposure. Therefore, EPA concludes that there is reasonable certainty that no harm will result, for both Females 13+ Years Old, and for the pre-natal development of infants, from aggregate acute exposure to ethalfluralin.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to ethalfluralin from food will utilize 9% of the RfD for the highest exposed subgroup of infants and children, non-nursing infants, < 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to ethalfluralin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate chronic exposure to ethalfluralin residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue of ethalfluralin in plants and animals is adequately understood; the residue of concern is ethalfluralin per se, as specified in 40 CFR 180.416.

B. Analytical Enforcement Methodology

Adequate enforcement methods gas-liquid chromatography with electron capture detection are available to enforce the tolerance, in both plant and animal tissues, and are listed in the Pesticide Analytical Manual, Volume II PAM-II.

C. Magnitude of Residues

Residues of ethalfluralin are not expected to exceed 0.05 ppm in/on canola seed as a result of this section 18 use. Residues are not expected to concentrate in the processed commodities meal, refined oil of canola, and no tolerances are required for these commodities.

D. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits established for ethalfluralin.

E. Rotational Crop Restrictions

There are no plantback restrictions needed, and tolerances for rotational crop commodities need not be established.

VI. Conclusion

Therefore, the tolerance is established for residues of ethalfluralin in canola seed at 0.05 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 17, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP—300585] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes [a tolerance] under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735), October 4, 1993. This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093), October 28, 1993, or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629), February 16, 1994, or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885), April 23, 1997.

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's

generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 25, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.416, is amended as follows:

i. By designating the existing text as paragraph (a) and adding a heading.

ii. By adding a new paragraph (b).

iii. By adding and reserving new paragraphs (c) and (d) with headings to read as follows.

§180.416 Ethalfluralin; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of the herbicide ethalfluralin, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Canola, seed	0.05	10/31/98

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–32933 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300573; FRL 5753–6]

RIN 2070–AB78

Primisulfuron-methyl; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of primisulfuron-methyl in or on bluegrass grown for seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on bluegrass grown for seed. This regulation establishes a maximum permissible level for residues of primisulfuron-methyl in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on October 31, 1998.

DATES: This regulation is effective December 17, 1997. Objections and requests for hearings must be received by EPA on or before February 17, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300573], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300573], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300573]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9357; e-mail: cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide primisulfuron-methyl, in or on bluegrass grown for seed at 0.10 parts per million (ppm). This tolerance will expire and is revoked on October 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL 5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance the legal limit for a pesticide chemical residue in or on a food only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Primisulfuron-methyl on Bluegrass Grown for Seed and FFDCA Tolerances

The applicant asserts that recent growing conditions and curtailment of burning, a cultural weed control method, by the federal, state, and/or county Clean Air Act requirements have created unacceptable levels of weedy grasses proliferating in Kentucky bluegrass fields. There are no effective registered pesticides or alternative control practices available which will provide adequate control of the weeds. EPA has authorized under FIFRA section 18 the use of primisulfuron-methyl on bluegrass grown for seed for control of quackgrass, windgrass, downey brome, wild oat, and other weeds in Washington and Idaho. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of primisulfuron-methyl in or on bluegrass grown for seed. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on October 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on bluegrass grown for seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether primisulfuron-methyl meets EPA's registration requirements for use on bluegrass grown for seed or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of primisulfuron-methyl by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than Washington and Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for primisulfuron-methyl, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as

infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants <1 year old was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of primisulfuron-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of primisulfuron-methyl on bluegrass grown for seed at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by primisulfuron-methyl are discussed below.

1. *Acute toxicity.* For acute dietary risk assessment, the Agency used a NOEL of 100 mg/kg/day, based on delayed or absent ossification effects in fetuses at the LEL of 500 mg/kg/day, from the oral developmental study in rats. This risk assessment will evaluate acute dietary risk to the population subgroup of concern, females 13+ years of age.

2. *Chronic toxicity.* EPA has established the RfD for primisulfuron-methyl at 0.006 milligrams/kilogram/day (mg/kg/day). This RfD is based on an 80–week mouse feeding study with a LOEL of 1.7 mg/kg/day based on increased absolute and relative liver weights. An uncertainty factor of 300 was used because a NOEL was not achieved.

3. *Carcinogenicity.* Primisulfuron-methyl has been classified as a Group D chemical incomplete evidence based on liver tumors in mice.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.452) for the residues of primisulfuron-methyl, in or on the raw agricultural commodities fresh corn and corn forage and fodder. Tolerances are also established on cattle, goat, hog, horse, sheep, and poultry commodities as well as milk and eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from primisulfuron-methyl as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary food only risk assessment used tolerance level residues for all commodities with primisulfuron-methyl tolerances. Therefore, the resulting exposure estimates should be viewed as conservative; further refinement using anticipated residues and/or Monte Carlo and percent of crop-treated would result in lower dietary exposure estimates. Since the acute dietary effect is based on delayed or absent ossification effects in fetuses, the subgroup of concern is females 13+ years of age. For females 13+ years of age, an MOE value of 71,000 was calculated using the high-end exposure value of 0.0014 mg/kg/day.

ii. *Chronic exposure and risk.* Because there are no human food items associated with bluegrass and existing meat/milk/poultry/egg tolerances are adequate to cover secondary residues, a new chronic Dietary Risk Evaluation System (DRES) run was not performed for this section 18 request. The latest chronic DRES run was performed in conjunction with the registration of primisulfuron-methyl on corn. The chronic dietary exposure estimates were not refined using anticipated residues and percent crop treated data. The existing primisulfuron-methyl tolerances result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Subpopulation	TMRC/food Value(mg/kg/day)	% RfD
U.S. Population	0.000571	10%
Nursing Infants	0.000484	8%
Non-Nursing Infants < 1 year old	0.001732	29%
Children 1–6 years old	0.001327	22%
Children 7–12 years old	0.000876	15%
Hispanics	0.000723	12%
Non-Hispanic Others	0.000644	11%

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* Based on information available to the Agency, primisulfuron-methyl is moderately persistent and highly mobile. There is no established Maximum Concentration Level for residues of primisulfuron-methyl in drinking water. No health advisory levels for primisulfuron-methyl in drinking water have been established. Based on "Pesticides in Groundwater Database" (EPA 734–12–92–001, Sept 1992), primisulfuron-methyl has not been analyzed for in water.

3. *Chronic exposure and risk.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause primisulfuron-methyl to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with primisulfuron-methyl in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

4. *From non-dietary exposure.* Primisulfuron-methyl is not registered for uses that would be expected to result

in indoor or outdoor residential exposure.

5. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether primisulfuron-methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, primisulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that primisulfuron-methyl has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from dietary food and water only. As noted earlier, the MOE for females 13+ years of age was calculated to be 71,000. Therefore, EPA does not have an acute aggregate risk concern.

2. *Chronic risk.* Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has calculated that dietary exposure to primisulfuron-methyl from food will utilize 10% of the RfD for the U.S. population. The Agency generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to primisulfuron-methyl in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to primisulfuron-methyl residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of primisulfuron-methyl, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* From the rat developmental study, the maternal (systemic) NOEL was less than 100 mg/kg/day, based on decreased weight gain during dosing at the LOEL of 100 mg/kg/day. The developmental (fetal) NOEL was 100 mg/kg/day, based on delayed or absent ossification at the LOEL of 500 mg/kg/day.

From the rabbit developmental study, the maternal (systemic) NOEL was 10 mg/kg/day, based on abortions, decreased weight gain and loose stool at the LOEL of 300 mg/kg/day. The developmental (fetal) NOEL was 600 mg/kg/day highest dose tested.

iii. *Reproductive toxicity study.* From the rat reproductive study, the parental (systemic) NOEL was 50 mg/kg/day, based on decreased weight gain at the LOEL of 250 mg/kg/day. The developmental (pup) NOEL was 50 mg/kg/day, based on decreased pup body weight findings at the LOEL of 250 mg/kg/day. The reproductive NOEL was 50 mg/kg/day, based on decrease in testicular/spermatic function at the LOEL of 250 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* In rats, although the developmental and maternal NOELs and LOELs were at the same dose levels, the finding of developmental effects [absent ossification] required that an acute dietary risk assessment be performed for females 13+ years of age. The calculated MOE of 71,000 demonstrated that acute pre-natal developmental risks were below EPA's level of concern. There were no pre-natal developmental concerns in rabbits, since the developmental NOEL was greater than 600 mg/kg/day (HDT).

Similarly, there were no post-natal rat reproductive study findings that required additional safety factors, since the maternal and pup NOEL and LOEL of 50 and 250 mg/kg/day, respectively, occurred at the same dose levels and both adult and pup animals had similar toxic effects (decreased weight gain).

v. *Conclusion.* The pre- and post-natal toxicology data base for primisulfuron-methyl is complete with respect to current toxicological data requirements. The Agency concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

2. *Acute risk.* The finding of developmental effects in the rat study absent ossification required that an acute dietary risk assessment be performed for females 13+ years of age. The calculated MOE of 71,000 demonstrated that acute pre-natal developmental risks were below EPA's level of concern.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to primisulfuron-methyl from food will utilize from 8% of the RfD for nursing infants up to 29% of the RfD for non-nursing infants < 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in corn and animals is adequately understood. The residue of concern is the parent compound only, as specified in 40 CFR 180.452.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (HPLC) has been submitted for inclusion in PAM Vol. II to enforce the tolerance expression. Method I of PAM II (Method AG–499A) has been validated on corn commodities and Method II (Method AG–506) has been validated on livestock commodities. Method A of PAM II is a confirmation method for plant commodities.

C. Magnitude of Residues

Residues of primisulfuron-methyl are not expected to exceed 0.10 ppm in/on bluegrass hay as a result of this section 18 use. A time-limited tolerance will be established at this level. Secondary residues in animal commodities are not expected to exceed existing tolerances as a result of this section 18 use.

D. International Residue Limits

No Codex (MRLs) have been established for residues of primisulfuron-methyl on grasses.

VI. Conclusion

Therefore, the tolerance is established for residues of primisulfuron-methyl in bluegrass grown for seed at 0.10 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 17, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300573] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does

not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 18, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.452, is amended as follows:

i. By designating the existing text as paragraph (a) and adding a heading.

ii. By adding new paragraph (b).

iii. By adding and reserving new paragraphs (c) and (d) with headings to read as follows.

§180.452 Primisulfuron-methyl; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide primisulfuron-methyl in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Bluegrass hay	0.10	10/31/1998

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–32937 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300503A; FRL–5753–1]

RIN 2070–AB78

Revocation of Tolerances for Commodities No Longer Regulated for Pesticide Residues and Other Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes tolerances for pesticide residues in or on livestock feed commodities that have been deleted from the list of significant livestock feed commodities in Table I of Pesticide Assessment Guideline 860.1000. In implementing the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA does not require data on or set individual tolerance levels for minor, non-significant livestock animal commodities. As explained in this document, EPA considers residues in minor, non-significant livestock feed commodities to be covered by the tolerances for the pesticide on the principal commodities of a crop.

DATES: This final rule becomes effective January 16, 1998. Written objections and requests for hearing must be received by February 17, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300503A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Information and Records Integrity Branch, Information Resources and Services (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300503A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202. Telephone: (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the Food Quality Protection Act of 1996, Pub. L. 104–170) authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods pursuant to section 408 of the FFDCA (21 U.S.C. 346(a), as amended). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136a(3)(a)).

II. Regulatory Background

A. Revisions to Table I

Most agricultural crops and their corresponding raw agricultural and processed commodities can be, and are, fed to livestock. EPA, however, only requires pesticide residue data on, and sets individual tolerances for, significant livestock feed commodities. EPA considers a livestock feed commodity to be significant if it has the potential to contribute to the human diet (through the consumption of livestock commodities) more than a negligible quantity of pesticide residue. EPA's listing of significant food and feed commodities (raw and processed) can be found in Table I of Guideline 860.1000. Because of minor nomenclature variations, the tolerances as written in 40 CFR may not coincide precisely with the commodity names as listed in Table I.

EPA revised Table I (formerly Table II) in June of 1994 because of the significant changes in agricultural, processing, and feeding practices that had occurred over the past decade. The June 1994 update was further revised in September of 1995 in order to reflect the most recent data and to address comments received in response to the June 1994 update. This September 1995 revision of table I resulted in the removal of numerous commodities from the table. Data used to update Table I came from such sources as Office of Pesticide Programs'(OPP) files, the U.S. Department of Agriculture (USDA), academia, industry, and trade associations throughout the United States.

In the June 1994 revisions, EPA used the following criteria to decide what feedstuffs are considered "significant:" (1) The annual U.S. production of a particular raw agricultural commodity (RAC) (e.g., wheat grain, or wheat straw) is greater than or equal to 250,000 tons and the maximum amount in the livestock diet is greater than or equal to 10 percent, or (2) the commodity is grown mainly as a feedstuff. (Processed commodities with less than 250,000 tons annual U.S. production were considered significant feeds in the 1994 revisions if the RAC from which they were derived exceeded 250,000 tons.) For the September 1995 revisions to Table I, EPA, in response to comments and in consultation with USDA and industry representatives, amended the criteria as follows: The amount of a commodity (raw agricultural or processed) produced or diverted for use as a feedstuff is at least 0.04 percent of the total annual tonnage of all feedstuffs available for livestock utilization in the United States. For feedstuffs less than 0.04 percent of the total estimated annual tonnage of all feedstuffs available, the 1995 revisions stated that those feedstuff are to be included in Table I, and therefore considered to be significant, if: (a) The feedstuff is listed and routinely traded on the commodities exchange markets; (b) there is regional production, seasonal considerations, or an incident history for use of the feedstuff or (c) the feedstuff is grown exclusively for livestock feeding in quantities greater than 10,000 tons (0.0015 percent of the total estimated annual tonnage of all feedstuffs available in the United States). EPA determined that any livestock feed commodities that met these criteria for exclusion from the list of significant feed commodities were likely to contribute no greater than a negligible amount of pesticide residue to the human diet. Moreover, EPA believes that the residue contribution from livestock feed commodities judged to be insignificant will contribute a negligible amount of pesticide residue to the human diet relative to the residues contributed by other portions of the same crop.

EPA expects that Table I after being revised based on the above criteria, now accounts for greater than 99 percent of the available tonnage (on a dry-matter basis) of feedstuffs used in the domestic production of greater than 95 percent of beef and dairy cattle, poultry, swine, milk, and eggs.

B. Proposed Revocations

EPA published a proposed rule to revoke the tolerances listed in this document on July 2, 1997 (62 FR 35760) [FRL–5722–3). EPA proposed these revocations because the livestock feed commodities associated with the tolerances have been removed from Table I of Pesticide Assessment Guideline 860.1000.

C. Comments and Corrections

EPA received one comment from the California Citrus Quality Council in support of the proposed rule. In addition, EPA became aware that the proposed rule was in error by proposing to remove peppermint hay and spearmint hay wherever they appear in 40 CFR part 180, because mint hay is used in the production of mint commodities and is not a livestock feed item. Rather, only references to "spent mint hay" should be removed from part 186, since spent mint hay is a commodity that EPA no longer considers to be a significant livestock feed item. In addition, EPA noted that the references to the removal of the term "peanut hulls" from §§ 180.230 and 180.236 are duplicative of the proposal to delete "peanut hulls" from wherever the term appears in part 180. These corrections have been made to the regulatory text of this document.

III. Final Action

This rule revokes the tolerances listed herein. Each of the tolerances revoked are for specific livestock feed items dropped from Table I due to a

determination that they were not a significant livestock feed commodity.

It is not EPA's intention that these revocations should have the effect of rendering the affected commodities adulterated due to the absence of a tolerance. Rather, EPA interprets its tolerance regulation for the principal RAC as covering any insignificant livestock feed commodities (i.e. those not on Table I) of that crop as provided below. Pesticide residues in an insignificant livestock feed commodity would be in compliance with the tolerance for the RAC of the same crop if the residues in the RAC from which the feedstuff is derived or with which it is associated (e.g., straw harvested at the same crop stage as grain, the RAC) are at or below the appropriate tolerance level. If no information is available regarding the residue level in the RAC from which the feedstuff is derived or with which it is associated, then pesticide residues in an insignificant livestock feed commodity would be considered in compliance with the RAC tolerance of that crop if the residue level in the insignificant livestock feed commodity is consistent with the RAC from which the feedstuff is derived or with which it is associated containing residues at or below the appropriate tolerance. This interpretation applies only to insignificant livestock feed commodities.

IV. Effective Date

These revocations will become effective January 16, 1998.

V. Objections and Hearing Request

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person adversely affected by this regulation may, by February 17, 1998, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket number [OPP–300503A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This action, which revokes tolerances previously established under FFDCA section 408(e), is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). In addition, this action does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that, absent extraordinary circumstances, the revocation of a tolerance after the use of the related pesticide becomes illegal in this country will not have a significant impact on a substantial number of small entities. Because the following factual basis is applicable to all tolerance revocations, it will also serve as the generic certification for the promulgation of any future tolerance revocation unless otherwise stated, and EPA will incorporate it by reference in future individual tolerance revocations.

The certification presented above is based on the following rationale. In the case of domestically grown food, the tolerance revocations contained in this notice, as is generally the case, will have no economic impact. The associated pesticide registered uses have already been canceled. Since U.S. growers may no longer use the pesticide in those ways, revoking the tolerance should have no effect on food grown in the United States, after cancellation of the registered uses of the pesticide. As for food grown before the cancellation occurred, it will not be considered adulterated if it was treated in a way that complied with the tolerance in effect at the time of treatment.

The revocation of a pesticide tolerance generally has a greater potential to affect foreign-grown food, since the uses of the pesticide prohibited in the United States may still be lawful in other countries. If foreign growers use the pesticide in the ways prohibited in the United States, the food they grow will be considered adulterated once the tolerance is revoked. However, while revocation may have an economic effect on foreign growers that import food to the United States, the RFA is concerned only with the effect of U.S. regulations on domestic small entities.

The revocation of a pesticide tolerance may also have an effect on domestic importers of foreign-grown food, to the extent their suppliers use pesticides in ways that result in residues no longer allowed in the United States. However, EPA believes that the effect on U.S. importers will generally be minimal. Theoretically, U.S. importers could face higher food prices and transactions costs. The revocation of a particular tolerance, however, is unlikely to have a significant impact on the price of a commodity on the international market. Transaction costs may occur as a result of having to find alternative suppliers of food untreated with pesticides for which tolerances were revoked. Affected importers would have the options of finding other suppliers in the same country or in other countries, or inducing the same supplier to switch to alternative pest controls. Given the existence of these options, EPA expects that any price increases or transaction costs resulting from revocations will be minor. Any such impacts will be further reduced by the FDA's enforcement policy of not considering imported foods with residues adulterated until, in most cases, three years after the effective date of the revocation. EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with the revoked pesticides, generally within the same countries from which the relevant commodities are currently imported.

Moreover, whatever the effect on U.S. importers of foreign-grown food, EPA believes that it would be inappropriate and inconsistent with the purpose of the RFA to ameliorate that effect. To the extent any adverse effect occurs, it will be the result of foreign growers using pesticides in ways not allowed in the United States. Domestic growers have no choice but to refrain from using pesticides in ways prohibited by U.S. law. U.S. growers and those who follow them in the chain of commerce — distributors and consumers — will bear the cost of complying with U.S. law. For EPA to somehow address the economic effect of the revocation on U.S. distributors of foreign-grown food would potentially give those distributors a competitive advantage over distributors of U.S.-grown food, and that advantage could potentially translate to a competitive advantage for foreign growers over domestic growers. The RFA was enacted in part to preserve competition in the marketplace, and it would be perverse to implement it in a way that creates competitive inequities, particularly between U.S. and foreign products.

Finally, EPA notes that potential increased costs to importers would not be cognizable as grounds for not revoking the tolerance. Because no extraordinary circumstances exist as to the present revocation that would change EPA's above analysis, the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This certification and the above rationale has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: November 14, 1997.

Jack E. Housinger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180, 185 and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

A. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

B. Part 180 is amended as follows:.

i. By removing the phrase "barley, forage," wherever it appears in part 180.

ii. By removing the phrases "barley, forage, green," and "barley green forage," wherever they appear in part 180.

iii. By removing the phrases "peanuts, hulls," "peanut vine hulls," "peanut hulls," or "peanuts (hulls) pre-H," wherever they appear in part 180.

C. Section 180.111 is amended as follows:

i. By designating the existing text as paragraph (a)(1), and adding a paragraph (a) heading.

ii. By removing the phrases "lupine, hay (PRE-H)" and "lupine, straw (Pre-H)" from the table in newly designated paragraph (a)(1).

iii. By adding and reserving new paragraphs (b), (c) and (d) with paragraph headings.

The additions read as follows:

§ 180.111 Malathion; tolerances for residues.

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.205 [Amended]

D. Section 180.205 is amended by removing the phrase "lentil, forage" wherever it appears.

§ 180.277 [Removed]

E. By removing § 180.277.

F. By revising § 180.288 to read as follows:

§ 180.286 2-(Thiocyanomethylthio)benzothiazole; tolerances for residues.

(a) *General.* Tolerances are established for negligible residues of the fungicide 2-(thiocyanomethylthio) benzothiazole in or on barley (fodder, grain and straw), corn (fodder, forage, and grain), cotton forage, cottonseed, oats (fodder, forage, grain, and straw), rice (grain and straw) safflower (seed), sorghum (fodder, forage, and grain), sugarbeets (roots and tops), and wheat (fodder, forage, grain, and straw) at 0.1 part per million.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

G. Section 180.314 is amended as follows:

i. By designating the existing text as paragraph (a) and adding a paragraph heading.

ii. By removing the phrase "lentils, forage" wherever it appears in § 180.314.

iii. By adding and reserving new paragraphs (b), (c) and (d) with paragraph headings.

The additions read as follows:

§ 180.314 S–2,3,3-Trichloroallyl diisopropylthiocarbamate; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

H. Section 180.330 is amended as follows:

i. In paragraph (a) by adding a paragraph heading.

ii. By removing the phrase "alfalfa, chaff, or seed" from the table in paragraph (a).

iii. By adding an entry in alphabetical order to the table in paragraph (a) for "sorghum milled fractions (except flour)."

iv. By redesignating paragraph (b) as paragraph (c), and adding a paragraph heading to newly designated paragraph (c).

v. By adding and reserving new paragraphs (b) and (d) with paragraphs headings.

The additions read as follows:

§ 180.330 S-[2-(Ethylsulfinyl)ethyl] O, O-dimethyl phosphorothioate; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	*
Sorghum milled fractions (except flour)	2.0
* * * * *	*

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

I. Section 180.332 is amended as follows:

i. By designating the existing text as paragraph (a) and adding a paragraph heading.

ii. By removing the phrase "lentils, forage" wherever it appears in § 180.332.

iii. By adding and reserving new paragraphs (b), (c) and (d) with paragraph headings.

The additions read as follows:

§ 180.332 4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.368 [Amended]

J. Section 180.368 is amended by removing from the table in paragraph (a) the phrases "barley, forage," "buckwheat, fodder," and "buckwheat, forage."

§ 180.379 [Amended]

K. In § 180.379, in paragraph (a)(3) by removing from the table the entries for dried apple pomace, dried tomato pomace, sugarcane begasse, and sunflower hulls.

L. By revising 180.408 to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dmethylphyenyl)-*N*-(methoxyacetyl) alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa, forage	6.0
Alfalfa, hay	20.0
Almonds	0.5
Almonds, hulls	10.0
Apples	0.2
Apple, pomace (wet)	0.4
Asparagus	7.0
Avocados	4.0
Beets	0.1
Beet, tops	0.1
Blueberries	2.0
Brassica (cole) leafy vegetables group [except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens]	0.1
Broccoli	2.0
Brussels sprouts	2.0
Cabbage	1.0
Cattle, fat	0.4
Cattle, kidney	0.4
Cattle, liver	0.4
Cattle, meat	0.05
Cattle, mbyp (except kidney and liver)	0.05
Cauliflower	1.0
Cereal grains (except wheat, barley, and oats)	0.1
Citrus fruit	1.0
Citrus, pulp	7.0
Clover, forage	1.0
Clover, hay	2.5
Cottonseed	0.1
Cranberry	4.0
Cucurbit vegetables group	1.0
Eggs	0.05
Fruiting vegetables (except cucurbits) group	1.0
Ginseng	3.0
Goats, fat	0.4
Goats, kidney	0.4
Goats, liver	0.4
Goats, meat	0.05
Goats, mbyp (except kidney and liver)	0.05
Grain, crops	0.1
Grapes	2.0
Grass, forage	10.0
Grass, hay	25.0
Hogs, fat	0.4
Hogs, kidney	0.4
Hogs, liver	0.4
Hogs, meat	0.05
Hogs, mbyp (except kidney and liver)	0.05
Hops, dry	2.0
Hops, green	2.0
Horses, fat	0.4
Horses, kidney	0.4
Horses, liver	0.4
Horses, meat	0.05
Horses, mbyp (except kidney and liver)	0.05
Leafy vegetables (except brassica) group (except spinach)	5.0

Commodity	Parts per million
Leaves of root and tuber vegetables (human food or animal feed) group	15.0
Legume vegetable, cannery waste	5.0
Legume vegetable foliage	8.0
Legume vegetable group (dry or succulent)	0.2
Lettuce, head	5.0
Milk	0.02
Mustard greens	5.0
Onions, dry bulb	3.0
Onions, green	10.0
Peanut, hay	20.0
Peanut, meal	1.0
Peanut, nuts	0.2
Peanut, shells	2.0
Peanut, vines	20.0
Pineapples	0.1
Pineapple fodder	0.1
Pineapple forage	0.1
Potato waste, dried, processed	4.0
Poultry, fat	0.4
Poultry, kidney	0.4
Poultry, liver	0.4
Poultry, meat	0.05
Poultry, mbyp (except kidney and liver)	0.05
Potatoes	0.5
Raspberries	0.5
Root and tuber vegetables group	0.5
Sheep, fat	0.4
Sheep, kidney	0.4
Sheep, liver	0.4
Sheep, meat	0.05
Sheep, mbyp (except kidney and liver)	0.05
Soybean, grain	1.0
Soybean, hulls	2.0
Soybean, meal	2.0
Spinach	10.0
Stonefruit group	1.0
Strawberries	10.0
Sugar beets	0.1
Sugar beet molasses	1.0
Sugar beet (roots)	0.5
Sugar beet (tops)	10.0
Sunflowers	0.1
Sunflower, forage	0.1
Walnuts	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration (refer to § 180.1(n)) are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the following raw agricultural commodity:

Commodity	Parts per million
Papaya	0.1

(d) *Indirect or inadvertent tolerances.* Tolerances are established for indirect or inadvertent residues of metalaxyl in or on the raw agricultural commodities when present therein as a result of the application of metalaxyl to growing crops listed in paragraph (a) of this section and other non-food crops to read as follows:

Commodity	Part per million
Barley, grain	0.2
Barley, fodder	2.0
Barley, straw	2.0
Cereal grains group (except wheat, barley, and oats), fodder	1.0
Cereal grains group (except wheat, barley, and oats), forage	1.0
Cereal grains group (except wheat, barley, and oats), straw	1.0
Oat, fodder	2.0
Oat, forage	2.0
Oat, grain	0.2
Oat, straw	2.0
Wheat, fodder	2.0
Wheat, forage	2.0
Wheat, grain	0.2
Wheat, straw	2.0

M. Section 180.422 is amended by adding paragraph (a)(3) to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

(a) * * *

(3) A feed additive tolerance of 0.02 part per million is established for the combined residues of the insecticide tralomethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl] cyclopropanecarboxylate) and its metabolites *cis*-deltamethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and *trans*-deltamethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl (1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate as follows:

(i) In or on all feed items (other than those covered by a higher tolerance as a result of use on growing crops) in feed-handling establishments.

(ii) The insecticide may be present as a residue from application of tralomethrin in feed-handling establishments, including feed manufacturing and processing establishments in accordance with the following prescribed conditions:

(A) Application shall be limited to a general surface and spot and/or crack and crevice treatment in feed-handling establishments where feed and feed products are held or processed. General surface application may be used only when the facility is not in operation provided exposed feed has been covered or removed from the area being treated. All feed-contact surfaces and equipment must be thoroughly cleaned after general surface applications. Spot and/or crack and crevice application may be used while the facility is in operation provided exposed feed is covered or removed from the area being treated prior to application. Spray concentration shall be limited to a maximum of 0.06 percent active ingredient. Contamination of feed and feed- contact surfaces shall be avoided.

(B) To assure safe use of the insecticide, its label and labelling shall conform to that registered with the U.S. Environmental Protection Agency and shall be used in accordance with such label and labelling.

* * * * *

PART 185—[AMENDED]

2. In part 185:

A. The authority citation for part 185 is revised to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.3850 [Partially Redesignated and Removed]

B. Section 185.3850 is amended as follows:

i. By transferring the text of § 185.3850 to § 180.111, and redesignating it as paragraphs (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (a)(3), respectively.

ii. By removing the remainder of § 185.3850.

PART 186—[AMENDED]

3. In part 186:

A. The authority citation for part 186 is revised to read as follows:

Authority: 21 .U.S. C 342, 348, and 371.

§ 186.250 [Partially Redesignated and Removed]

B. Section 186.250 is amended as follows:

i. By removing from the table the entries for "Sugarcane begasse" and "Tomato pomace, dried."

ii. By transferring the remaining entries in the table and adding them alphabetically into the table in § 180.332(a).

iii. By removing the remainder of § 186.250.

§ 186.350 [Amended]

C. Section 186.350 is amended by removing the entry beginning with "70 parts per million in dried apple pomace...".

§ 186.450 [Amended]

D. Section 186.450 is amended by removing the phrase "citrus molasses and".

§§ 186.600 [Removed]

E. By removing § 186.600.

§ 186.1000 [Amended]

F. Section 186.1000 is amended by removing from the table in paragraph (a) the entry for "apple pomace, dried," "corn soapstock," "grape, pomace, dried," and "sunflower seed hulls."

§ 186.1075 [Amended]

G. Section 186.1075 is amended by removing from the table in paragraph (a) the entry for "soybean soapstock."

§ 186.1350 [Amended]

H. Section 186.1350 is amended by removing the entry in the table for "apple pomace, dried."

I. Section 186.1650 is revised to read as follows:

§ 186.1650 Dialifor.

Tolerances are established for combined residues of the insecticide dialifor (*S*-(2-chloro-1-phthalimidoethyl) *O,O*-diethyl phosphorodithioate) and its oxygen analog *S*-(2-chloro-1-phthalimido-ethyl) *O,O*-diethyl phosphorothioate in or on the following processed foods when present therein as a result of application to the following growing citrus:

Commodity	Parts per million
Dried citrus pulp	15

§ 186.2000 [Amended]

J. Section 186.2000 is amended by removing the entry in the table for "Soybean soap stock."

§ 186.2400 [Removed]

K. Section 186.2400 is removed.

§ 186.2700 [Amended]

L. Section 186.2700 is amended by removing from the table in paragraph (a) the entry for "raisin waste."

§ 186.2950 [Amended]

M. Section 186.2950 is amended by removing from the table the entries "apple pomace (dried)," "citrus molasses," "grape pomace," and "raisin waste."

§ 186.3050 [Removed]

N. Section 186.3050 is removed.

O. Section 186.3250 is revised to read as follows:

§ 186.3250 Fluazifop-butyl.

Tolerances are established for residues of (±)-2-[4-[[5-(trifluoromethyl]-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of (±)-butyl 2[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the following feeds:

Food	Parts per million
Soybean, meal	2.0

§ 186.3350 and 186.3450 [Removed]

P. Sections 186.3350 and 186.3450 are removed.

§ 186.3550 [Amended]

Q. Section 186.3550 is amended by removing from the table in paragraph (a) the entries "apple pomace, dried," "grape pomace, dried," and "raisin waste."

§ 186.3750 [Amended]

R. Section 186.3750 is amended by removing from the table the entries "grape, pomace, dry," "raisin waste," and "soapstock."

§§ 186.4000 and 186.4800 [Removed]

S. Sections 186.4000, 186.4800 are removed.

T. Section 186.4975 is revised to read as follows:

§ 186.4975 Profenofos.

A regulation is established permitting residues of the insecticide profenofos [*O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate] and its metabolites converted to 4-bromo-2-chlorophenol and calculated as profenofos in cottonseed hulls at 6.0 ppm.

§ 186.5000 [Amended]

U. Section 186.5000 is amended by removing the entries in the table for "apple pomace, dried" and "grape pomace, dried."

§ 186.5450 [Removed]

V. Section 186.5450 is removed.

[FR Doc. 97–32788 Filed 12–16–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC73

National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule increases the amount of the deductible under the Standard Flood Insurance Policy—from $750 to $1,000—for structures with subsidized coverage.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 202–646–3422, (facsimile) 202–646–4327.

SUPPLEMENTARY INFORMATION: On October 7, 1997, FEMA published in the **Federal Register**, 62 FR 52304, a proposed rule to amend the regulations of the National Flood Insurance Program (NFIP) to increase the deductible from $750 to $1,000 for structures with subsidized coverage. The proposal also described a buy-back feature that would permit insureds to 'buy back,' in consideration of additional premium, a reduced deductible under the Standard Flood Insurance Policy (SFIP).

During the comment period, comments were received from: The Flood Insurance Producers National Committee (FIPNC), a staff underwriter from one of the insurance companies participating in the NFIP's Write Your Own (WYO) program, and the Association of State Flood Plain Managers (ASFPM).

FIPNC agreed with the proposed change in its entirety and recommended that the amount of the reduced deductible that a policyholder could buy back be set at $500. While the policy language itself will remain silent on the amount of the reduced buy-back, the $500 figure is the amount contemplated by the Federal Insurance Administration in implementing this rule.

The underwriter from one of the WYO companies expressed concern that changing the deductible would introduce complexities that would undermine the NFIP's growth and policy sales goals. Assuming that the commenter is referring to the underwriting steps to reduce the deductible to $500 for an additional charge, any additional complexity is more than offset by the ability of the insured to purchase the desired coverage. Since optional increased deductibles have already been available for many years, it would appear that the flexibility to reduce the deductible does not add any large degree of complexity in writing the policy.

The underwriter also expressed concern that increasing the deductible and offering a buy-back would require "enormous changes" to the computer systems of a participating company. It is unclear why this would be necessary. The FIA consulted with the NFIP Bureau and Statistical Agent and several WYO companies before initiating rulemaking. There was no indication at all that establishing a surcharge for an optional deductible would pose any difficulty. From past experience, the proposed lead-time for implementing this change should be adequate.

The underwriter also raised the question of whether increasing the deductible would "provide enough benefit to warrant such a drastic change." It is FEMA's position that the change is far from "drastic" and actually is only a modest one for agents and companies participating under the WYO Program. The reason for implementing this change is to benefit the general body of taxpayers by distributing costs more equitably between the public taxpayers who have subsidized the coverage and the policyholders who benefit from less than actuarial rates.

The last issue raised by the insurance underwriter focused on whether the deductible will be accepted by mortgage companies and recommended that FEMA coordinate the rule change with lending institutions prior to implementation. It is a standard procedure for FEMA to coordinate with the Federal agencies that regulate lending activities any change connected with the National Flood Insurance Program. This change will be no exception. Before the effective date of May 1, 1998, in addition to the close coordination FEMA will make with these agencies, FEMA will incorporate this change in its lenders workshops scheduled for this fiscal year.

ASFPM, the third commenter, believed that the "Federal Insurance Administration (FIA) has unnecessarily narrowed its options for building reserves for catastrophic loss years." ASFPM recommended that before FIA inaugurates an increase in the deductible for subsidized policies other measures should be taken. ASFPM said that, "Limiting the options to those whose costs are borne by the policy holder ignores a number of programmatic, process, and operational measures that should be examined. FIA has a responsibility to demonstrate to Congress, and the rate payers, that its performance as a business is efficient."

FEMA disagrees that it has restricted its options. To increase the deductible for subsidized policies through rulemaking, which is the necessary and appropriate vehicle for changes to the Standard Flood Insurance Policy, does not prevent FEMA from continuing to pursue other program improvements that do not require rulemaking, such as the ones recommended by the Association. FEMA does not believe that it serves business efficiency by delaying modest actions that can reasonably be taken now to reduce outlays from the National Flood Insurance Fund while other initiatives, including some of those proposed by the Association, are already underway independent of rulemaking.

ASFPM also expressed concern that the NFIP's "'administrative grandfathering' measure allows a policyholder to 'lock in' a rate regardless of future changes in risk or in the mapped Special Flood Hazard Area." Unlike the "lock in" feature of many home purchase agreements where a homebuyer may "lock in" a set interest rate for his or her mortgage loan for the term of the loan and can thereby be assured of the same monthly payment for the entire term of the loan, there are no such guarantees for policyholders under the NFIP. While the policyholder with a pre-FIRM structure may be entitled under the NFIP's "administrative grandfathering" provision to the same risk classification, it does not guarantee that the policyholder will not experience an increase in the premium paid each year for flood insurance coverage. The entire issue of "administrative grandfathering," however, is under review by the Federal Insurance Administration. In the meantime, FEMA will implement this modest change of increasing the deductible for subsidized policies.

FEMA agrees wholeheartedly with the ASFPM's recommendation that underused, low-cost mitigation measures should be encouraged, such as relocating furnaces and hot water heaters. FEMA encourages such measures in its Interagency Hazard Mitigation Team Reports, through its publications to homeowners and insureds, by assigning mitigation specialists to assist flood victims and communities during the recovery process, and by conducting on-site mitigation workshops after flood disasters. States, localities, and FEMA have been working in partnership for years on this issue and will continue to work to implement the type of low cost mitigation measures cited by the Association. To suggest that increasing the deductible should be delayed until *after* more success is achieved in this area is not reasonable.

ASFPM also recommended that FEMA improve "quality control when policies are written and by evaluating the policies currently on the books." The Association argued that corrections in ratings "will increase premium income in a manner that will benefit all policy holders." FIA has conducted studies to determine the possible extent of misrating. These studies show that only a relatively small percentage of NFIP policies are misrated. FEMA has underway efforts to improve the quality of underwriting in the NFIP.

First, during fiscal year 1997, the NFIP conducted 396 workshops for insurance agents to master the underwriting requirements of the NFIP so that policies will be rated properly when submitted to the NFIP or to the Write Your Own company participating in the NFIP. So far, 150 workshops for agents have been scheduled for fiscal year 1998.

Second, there are other initiatives underway designed to improve the quality control of NFIP's underwriting. In May 1998, FIA will use a Geographic Information System (GIS) to ensure that structures insured by Preferred Risk Policies (PRP) are in fact located in zones entitling them to PRP rates. If this proves to be an effective tool for monitoring structures insured under PRP policies, FIA may expand the use of the GIS system as a quality control tool for other policies as well. Also, a condominium re-inspection program has been an effective tool to ensure proper rating of condominiums.

ASPFM cited the difficult experience of State and local floodplain managers in administering the NFIP's 'substantial damage' provision after significant flood damage. The Association recommended that "FEMA should examine current methods for determining 'substantial damage' and seek to simplify the process." FEMA has long recognized the problems with regard to State and community implementation of the NFIP substantial damage requirement. The

NFIP substantial damage requirement, although a necessary step to reduce flood damages, has often created financial hardship for individual property owners who must comply with a floodplain management ordinance which requires that buildings be elevated or floodproofed to an elevation above the base flood elevation (a flood having a one percent chance of being equaled or exceeded in any given year). FEMA believes that the new Increased Cost of Compliance (ICC) coverage under the Standard Flood Insurance Policy, a coverage mandated by § 555 of Pub. L. 103–325 and implemented by FEMA through publication of a final rule on February 25, 1997, in the **Federal Register** 62 FR 8391, will help policyholders to pay for the additional costs to comply with State or community floodplain management laws or ordinances for substantially damaged as well as repetitively damaged buildings. In addition, FEMA has developed the "Residential Substantial Damage Estimator," which is a computer program to assist State and local officials in estimating building value and damage costs for both single family and manufactured homes. Furthermore, FIA has worked closely with the Mitigation Directorate to develop a procedure for alerting both the local community and the FEMA Regional Mitigation staff of potential cases of substantial damage after a flood event. Once sufficient claims have been paid on the new coverage, FEMA intends to evaluate how well the ICC coverage is working. FEMA will also continue to examine how well communities are implementing the substantial damage requirement and evaluate methods for determining substantial damage.

The Association also stated that "the claims adjustment process should be critically evaluated to determine that claims amounts are appropriate. The Association is aware of anecdotal evidence that some policyholders may be receiving claim payments that are in excess of damage. Occasionally, it is perceived that a claims adjuster may be lax because the dollars used to pay claims are not the responsibility of his or her insurance company."

On the broader issues of claims payments and fiscal responsibility, FEMA has adopted a number of safeguards to ensure a claim program of the highest quality and service possible. A company participating in the NFIP's Write Your Own program bears responsibility for overpayments that result from error—and not simply a matter of judgement—and must reimburse the National Flood Insurance Fund for overpayments due to such errors. FEMA has a regular system of re-inspections and audits to maintain quality control over the claim process. The NFIP has on its staff experienced general property adjusters who conduct random re-inspections of claims handled by each of the companies participating in the NFIP's Write Your Own program. In addition to the claims re-inspection program, claims are audited by an accounting firm selected by FEMA's Office of Inspector General. These audits include a representative number of claim files for each year that are reviewed for compliance with NFIP regulations. Under the NFIP's claim audit procedures, Write Your Own companies themselves must hire independent auditors to do audits every two years. In addition, FIA is about to conduct a study that will review the whole process of claims adjustments and audits. The experience from past audits and re-inspections is that claims overpayments have not been a significant problem. Nonetheless, FEMA invites concrete evidence on any policyholders who may have received "claim payments that are in excess of damage" or where the claims adjuster "may be lax." That information may be submitted directly to: Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, Attention: Director of Claims.

The Association also recommended that the expense allowance—the amount of premium retained by companies participating in the NFIP's Write Your Own program, especially the amount of commission paid to agents for policy renewals—be examined "carefully because the NFIP is fundamentally a program designed to reduce federal disaster expenditures and to help floodplain occupants." FEMA is in the process of evaluating what percentage of the expense allowance is appropriate for companies to retain and how that should relate to meeting specified growth goals.

Finally, the Association cited repetitive losses as a "significant drain on the National Flood Insurance Fund" and urged "closer examination of the repetitive loss problem in order to determine whether certain types of risks can be discriminated, and perhaps targeted with mitigation information." The problem of repetitive losses has presented a significant challenge to the program. In the past, FIA proposed several remedies, including premium surcharges, to address the problem of repetitive flood losses. These proposals, however, encountered political opposition and have not been implemented.

Currently, FEMA is addressing this problem through its Community Rating System (CRS), implementation of ICC coverage, and mitigation grant and assistance programs authorized by Congress. The NFIP's CRS, through community-wide premium discounts, gives incentives to communities to mitigate repetitive flood losses. In addition, Congress authorized ICC coverage not only for substantially flood-damaged buildings but also for repetitively flood-damaged buildings in States and communities that require compliance with laws and ordinances affecting these buildings. With passage of the National Flood Insurance Reform Act, Pub. L. 103–325, Congress also authorized establishment of a Federal grant program—Flood Mitigation Assistance (FMA)—to provide financial assistance to States and communities for flood mitigation planning and activities. A major statutory goal of FEMA is to fund cost-effective mitigation measures that reduce the number of repetitively damaged buildings. FEMA's Hazard Mitigation Grant Program authorized under § 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act also provides financial assistance to States and communities to fund mitigation measures for repetitively damaged buildings following a major disaster declaration. FEMA will continue to explore other measures to address the issue of repetitive losses.

Increasing the deductible is one relatively modest step that is expected to reduce outlays from the National Flood Insurance Fund by $6.3 million in the first full year of implementation. This action is a measured change compatible with Congressional intent for the program. The subsidy study that the ASFPM wished to see completed before the increase in deductible takes effect is intended to examine the affects of subsidy changes of much greater impact and wider scope. FEMA intends to pursue a balanced approach through its program initiatives for the NFIP with modest reductions in subsidy that are consistent with the larger NFIP subsidy issue. These efforts complement the recommendations made by the Association. FEMA does not agree that increasing the deductible should be delayed until larger scale solutions are identified and implemented.

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA has conducted an environmental assessment of this final rule. The assessment concludes that there will be no significant impact on the human environment as a result of the issuance of this final rule, and no Environmental Impact Statement will be prepared. Copies of the environmental assessment are on file for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The final rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

This final rule has been submitted to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a "major rule" within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, 44 CFR Part 61 is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Paragraph C. of Article 7 of Appendix A(1) is revised to read as follows:

Appendix A(1)—Federal Emergency Management Agency, Federal Insurance Administration Standard Flood Insurance Policy

* * * * *

C. For any *flood* insurance *policy* issued or renewed for a property located in an *Emergency Program community* or for any property located in a *Regular Program community* in Zones A, AO, AH, A1–A30, AE, AR, AR/AE, AR/AH, AR/AO, AR/A1–A30, AR/A, VO, V1–V30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $1,000, or the amount of any other deductible that you selected when you applied for this *policy* or subsequently by endorsement.

* * * * *

3. Paragraph C. of Article 7 of Appendix A(2) is revised to read as follows:

Appendix A(2)—Federal Emergency Management Agency, Federal Insurance Administration Standard Flood Insurance Policy

C. For any *flood* insurance *policy* issued or renewed for a property located in an *Emergency Program community* or for any property located in a *Regular Program community* in Zones A, AO, AH, A1–A30, AE, AR, AR/AE, AR/AH, AR/AO, AR/A1–A30, AR/A, VO, V1–V30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $1,000, or the amount of any other deductible that the Insured selected when it applied for this *policy* or subsequently by endorsement.

* * * * *

4. Paragraph C. of Article 7 of Appendix A(3) is revised to read as follows:

Appendix A(3)—Federal Emergency Management Agency, Federal Insurance Administration Standard Flood Insurance Policy

C. For any *flood* insurance *policy* issued or renewed for any property located in Zones A, AO, AH, A1–A30, AE, AR, AR/AE, AR/AH, AR/AO, AR/A1–A30, AR/A, VO, V1–V30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $1,000, or the amount of any other deductible that the Insured selected when it applied for this *policy* or subsequently by endorsement.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"; No. 83.516, "Disaster Assistance")

Dated: December 12, 1997.

Edward T. Pasterick,

Acting Executive Administrator, Federal Insurance Administration.

[FR Doc. 97–32945 Filed 12–16–97; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96–262, 94–1, 91–213, 95–72; FCC 97–368]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of October 29, 1997, (62 FR 56121), a document revising rules governing the access charges of incumbent local exchange carriers. Inadvertently, the Commission failed to amend the rule that describes how incumbent LECs that are not subject to price cap regulation calculate the transport interconnection charge. This document makes that amendment.

DATES: Effective December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Aaron Goldschmidt, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published FR Doc. 97–28546 in the **Federal Register** of October 29, 1997 (62 FR 56121), a document revising rules governing the access charges of incumbent local exchange carriers. Inadvertently, the Commission failed to amend the rule that describes how incumbent LECs that are not subject to price cap regulation calculate the transport interconnection charge. This document makes that amendment. The full text of this Erratum is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1997/err97368.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

In rule FR Doc. 97–28548 published on October 29, 1997, (62 FR 56121) make the following correction.

1. On page 56132, in the third column, correct the number of amendatory instruction 80 to read "81", and on page 56133, in the second column, correct the number of amendatory instruction 81 to read "82".

2. On page 56132, in the third column, add a new amendatory paragraph 80 to read as follows:

80. Section 69.124 is revised to read as follows:

§ 69.124 Interconnection charge.

(a) Local exchange carriers not subject to price cap regulation shall assess an interconnection charge expressed in dollars and cents per access minute upon all interexchange carriers and upon all other persons using the telephone company switched access network.

(b) If the use made of the local exchange carrier's switched access network includes the local switch, but not local transport, the interconnection charge assessed pursuant to paragraph (a) of this section shall be computed by subtracting entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport revenues, as well as any interconnection charge revenues that the local exchange carrier anticipates will be reassigned to other, facilities-based rate elements in the future, from the part 69 transport revenue requirement, and dividing by the total interstate local switching minutes.

(c) If the use made of the local exchange carrier's switched access network includes local transport, the interconnection charge to be assessed pursuant to paragraph (a) of this section shall be computed by dividing any interconnection charge revenues that the local exchange carrier anticipates will be reassigned to other, facilities-based rate elements in the future by the total interstate local transport minutes, and adding thereto the per minute amount calculated pursuant to paragraph (b) of this section.

Federal Communications Commission.

James D. Schlichting,

Chief, Competitive Pricing Division, Common Carrier Bureau.

[FR Doc. 97–32770 Filed 12–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–170; RM–8844, RM–9057]

Radio Broadcasting Services; Franklin and White Castle, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Annette G. Thompson, allots Channel 295C3 to Franklin, Louisiana, as the community's second local FM service. See 61 FR 44288, August 28, 1996. Channel 295C3 can be allotted in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 295C3 at Franklin are 29–47–42 NL and 91–30–12 WL. We also dismiss the counterproposal filed by White Castle Broadcasting (RM–9057) requesting the allotment of Channel 295A to White Castle, Louisiana. White Castle Broadcasting's counterproposal is not consistent with the Commission's procedural requirements. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 20, 1998. A filing window for Channel 295C3 at Franklin, Louisiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–170, adopted November 19, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 295C3 at Franklin.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32891 Filed 12–16–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–240; RM–8946, RM–9016]

Radio Broadcasting Services; Lockport and Amherst, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kevin O'Kane, allots Channel 221A to Amherst, NY, as the community's first local FM service. See 61 FR 65509, December 13, 1996. The request of Culver Communications Corp. to allot Channel 221A to Lockport, NY, is denied. Channel 221A can be allotted to Amherst in compliance with the Commission's minimum mileage separation requirements with respect to all domestic allotments without the imposition of a site restriction, at coordinates 42–58–42 North Latitude and 78–48–00 West Longitude. The allotment is short-spaced to Channel 219C1, St. Catharines, Ontario, Channels 221C1/221B, Brantford, Ontario, and Channel 222B, Oshawa, Ontario, Canada. However, concurrence by the Canadian government has been received in the Amherst allotment as a specially negotiated sort-spaced allotment. With this action, this proceeding is terminated.

DATES: Effective January 20, 1998. A filing window for Channel 221A at Amherst, New York, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–240, adopted November 19, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Amherst, Channel 221A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32890 Filed 12–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–132; RM–9081]

Radio Broadcasting Services; Mesquite, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Will Kemp, allots Channel 244C to Mesquite, NV, as the community's second local FM service. See 62 FR 27711, May 21, 1997. Channel 244C can be allotted to Mesquite in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) north, at coordinates 36–51–15 North Latitude and 114–03–30 West Longitude, to avoid a short-spacing to the outstanding construction permit (BMPH–960607IH) of Station KTVF, Channel 244C2, Williams, AZ, and to one of the pending applications (ARN–950825MB) for Channel 244C2 at Lake Havasu City, AZ. With this action, this proceeding is terminated.

DATES: Effective January 20, 1998. A filing window for Channel 244C at Mesquite, NV, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, 202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–132, adopted November 12, 1997, and released December 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 244C at Mesquite.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32889 Filed 12–16–97; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 120897B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Apportionment of Reserve

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS apportions reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to account for previous harvest of the total allowable catch (TAC). It is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

DATES: Effective December 16, 1997. Comments must be received no later than 4:30 p.m., Alaska local time, January 2, 1998.

ADDRESSES: Comments may be sent to Susan Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801 or P.O. Box 21688, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the

Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR parts 600 and 679.

The Administrator, Alaska Region, NMFS, has determined that the initial TACs specified for Greenland turbot in the Bering Sea subarea and squid and "other species" in the Bering Sea and Aleutian Islands subarea need to be supplemented from the non-specific reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the reserve to TACs for the following species: Bering Sea subarea—2,245 metric tons (mt) to Greenland turbot; Bering Sea and Aleutian Islands subareas—295 mt to squid, 3,870 mt to "other species."

The apportionments are consistent with § 679.20(b)(1)(ii) and do not result in overfishing of a target species or the "other species" category because the revised TACs are equal to or less than specifications of acceptable biological catch.

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O 12866.

The Assistant Administrator for Fisheries, NOAA, has determined, under section 553(b)(3)(B) and (d)(3) of the Administrative Procedure Act and 50 CFR 679.20(b)(3)(iii)(A), that good cause exists for waiving the opportunity for prior public comment and the 30-day delayed effectiveness period for this action. Fisheries are currently taking place that will be supplemented by this apportionment. Delaying the implementation of this action would be disruptive and costly to those ongoing operations.

Authority: 16 U.S.C. 1801, *et seq.*

Date: December 11, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32946 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 242

Wednesday, December 17, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–97–302]

RIN 0581–AB51

Fees for Destination Market Inspections of Fresh Fruits, Vegetables and Other Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 10 percent the fees charged for the inspection of these products at destination markets. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under the Agricultural Act of 1949 would also be affected. This rule would also revise the regulations with regard to the disposition of inspection certificates to require that one copy of the certificate be delivered or mailed to the shipper of the inspected product.

DATES: Comments must be postmarked or courier dated on or before February 17, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Program Support Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2049 South Building, Washington, D.C. 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rob Huttenlocker at the above address or call (202) 720–0297.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed by the Office of Management and Budget and has been determined not significant for purposes of Executive Order 12866.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projections for destination market inspection work during FY 97 are $12.0 million with costs projected at $11.9 million and an end-of-year reserve of $3.0 million. However, the Fresh Products Branch's (FPB) trust fund balance for this program will be approximately $1.0 million under the four-month level of approximately $4.0 million. Further, FPB's costs of operating the destination market program are expected to increase to approximately $12.9 million during FY 98 and to approximately $13.2 million in FY 99. These cost increases will result from both inflationary increases with regard to current FPB operations and services and the need to improve or expand current services.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 4.66 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase is expected to become effective in January 1998. In addition, inflation also impacts upon FPB's non-salary costs. These increases will increase FPB's costs of operating this program by approximately $300,000 per year.

Additional revenues are also needed to enable FPB to cover the costs of improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected. FPB estimates that it will cost $200,000 per year for the postage, envelopes and additional staff time to send the approximately 275,000 inspection certificates it issues annually. Additional revenues are also necessary in order that FPB may cover the costs of securing the additional staff ($200,000) needed to increase the timeliness of service delivery in several destination markets which are currently in need of additional staffing (e.g., Dallas, Texas). Finally, FPB needs an additional $200,000 per year for three to four years to cover the costs of securing the equipment (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

This proposed fee increase should result in an estimated $1.2 million in additional revenues per year (only $600,000 during FY 98 since any fee increase would be effective on April 1, 1998) and should enable FPB to cover its costs while maintaining current program reserves (at a level below that provided for by Agency policy).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The action described herein is being considered for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) providing current program operations and services; (2) improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected (the basis for the proposed change in regulation with regard to the disposition of inspection certificates to include that one copy be delivered or mailed to the shipper of the inspected product); (3) improving the timeliness with which inspection services are provided; and (4) acquiring technological advancements (e.g., digital imaging cameras and computers, inspector notebook

computers and Agency-mandated information systems upgrades) aimed at expanding FPB's services and making them more efficient in the future. The objective of this proposed rule is to increase user fee revenue generated under the destination market program by approximately $1.2 million or approximately 10 percent per year. This action is authorized under the Agricultural Marketing Act (AMA) of 1946 (see 7 U.S.C. 1622(h)) which states that the Secretary of Agriculture may assess and collect "such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *"

There are more than 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements [1]—inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this proposed rule.

Inasmuch as the destination market grading services are voluntary (except when required for imported commodities), and since the fees charged to users of these services vary with usage, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is small (approximately ten percent) and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Proposed Action

The AMA authorizes official inspection, grading and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This proposed rule will amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

AMS regularly reviews its user-fee programs to determine if the fees are adequate. While FPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 406.1). Current revenue projections for destination market inspection work during FY 97 are $12.0 million with costs projected at $11.9 million and an end-of-year reserve of $3.0 million. However, FPB's trust fund balance for this program will be approximately $1.0 million under the four-month level of approximately $4.0 million. Further, FPB's costs of operating the destination market program are expected to increase to approximately $12.9 million during FY 98 and to approximately $13.2 million in FY 99. These cost increases (which are outlined below) will result from both inflationary increases with regard to current FPB operations and services and the need to improve or expand current services.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 4.66 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase is expected to become effective in January 1998. In addition, inflation also impacts upon FPB's non-salary costs. These increases will increase FPB's costs of operating this program by approximately $300,000 per year.

Additional revenues are also needed to enable FPB to cover the costs of improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected. This is an essential step in FPB's ongoing effort to improve the integrity of the inspection process. This action will assist in preventing industry participants from using falsified inspection certificates to alter the terms of sales between shippers and receivers. In accordance with this effort, the regulations with regard to the disposition of inspection certificates in 7 CFR 51.21 are proposed to be revised to require that one copy of the certificate be provided to the shipper of the inspected product. FPB estimates that it will cost $200,000 per year for the postage, envelopes and additional staff time to send the approximately 275,000 inspection certificates it issues annually.

Additional revenues are also necessary in order that FPB may cover the costs of securing the additional staff ($200,000) needed to increase the timeliness of service delivery in several destination markets which are currently in need of additional staffing (e.g., Dallas, Texas). This action responds to industry feedback to FPB's FY 1996 Customer Service Survey which emphasized the importance of timeliness far more than cost containment.

Finally, FPB needs an additional $200,000 per year for three to four years to cover the costs of securing the equipment (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

This proposed fee increase should result in an estimated $1.2 million in additional revenues per year (only $600,000 during FY 98 since any fee increase would be effective on April 1, 1998) and should enable FPB to cover its costs while maintaining current program reserves. In order to reach a four month reserve, further increases in fees will be likely in future years.

Based on the aforementioned analysis of this program's increasing costs, AMS proposes to increase the fees for destination market inspection services. The following table compares current fees and charges with proposed fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Proposed
Quality and condition inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
Over a half carlot equivalent of each product	$78	$86.
Half carlot equivalent or less of each product	65	72.
For each additional lot of the same product	13	14.
Condition only inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
Over a half carlot equivalent of each product	65	72.
Half carlot equivalent or less of each product	60	66.
For each additional lot of the same product	13	14.
Quality and condition and condition only inspections of five or more products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
For the first five products	277	305.
For each additional product	39	43.
For each additional lot of any of the same product	13	14.
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
For each product	39	43.
For each additional lot of any of the same product	13	14.
Dock-side inspections of an individual product unloaded directly from the same ship:		
For each package weighing less than 15 pounds	1 cent	1.1 cents.
For each package weighing 15 to 29 pounds	2 cents	2.2 cents.
For each package weighing 30 or more pounds	3 cents	3.3 cents.
For each additional lot of any of the same product	13	14.
Minimum charge per individual product	78	86.
Inspections performed for other purposes (except for contract work) during the grader's regularly scheduled work week.	39 per hour	43 per hour.
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	19.50 per hour	21.50 per hour.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and record keeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.21 is revised to read as follows:

§ 51.21 Disposition of inspection certificates.

The original certificate, and not to exceed four copies (if requested by applicant prior to issuance), shall be delivered or mailed promptly to the applicant or to a person designated by him. One copy shall be delivered or mailed to the shipper of the inspected product. One copy shall be filed in the office of the inspector when the inspection is made by a Federal Government employee, otherwise, it shall be filed in the appropriate office of the cooperating Federal-State Inspection Agency. Unless otherwise directed by the Administrator, two copies of each official certificate issued on products received in destination markets shall be forwarded to the Administrator to be kept on file in Washington and no copies of official certificates issued at shipping point need be so forwarded. In the case of any product covered by a marketing agreement and/or order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), at least one copy of each certificate covering the inspection of such product shall, on request, be delivered to the administrative agency established thereunder, subject to such terms and conditions as the Administrator may prescribe. Copies may be furnished to other interested parties as outlined in § 51.41.

3. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) For products in quantities of 51 or more packages:

(i) Quality and condition inspection of 1 to 4 products unloaded from the same conveyance:

(A) $86 for over a half carlot equivalent of an individual product.

(B) $72 for a half carlot equivalent or less of an individual product.

(C) $14 for each additional lot of the same product.

(ii) Condition only inspection of 1 to 4 products unloaded from the same conveyance:

(A) $72 for over a half carlot equivalent of an individual product.

(B) $66 for a half carlot equivalent or less of an individual product.

(C) $14 for each additional lot of the same product.

(iii) Quality and condition inspection and/or condition only inspection of 5 or more products unloaded from the same conveyance:

(A) $305 for the first 5 products.

(B) $43 for each additional product.

(C) $14 for each additional lot of any of the same product.

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect.

Currently, there are 15 commodities subject to 8e import regulations: avocados, dates (other than dates for processing), filberts, grapefruit, kiwifruit, limes, olives (other than Spanish-style green olives), onions, oranges, Irish potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR Parts 944, 980 and 999. Section 999.600 establishes minimum quality, identification, certification and safeguard requirements for foreign produced farmers stock, shelled and cleaned in-shell peanuts presented for importation into the United States. Import requirements applicable to peanuts may be found under subparagraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c-3), as amended November 28, 1990, and August 10, 1993, and section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271).

(2) For quality and condition inspection and/or condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $43 for each individual product.

(ii) $14 for each additional lot of any of the same product.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) For each package inspected according to the following rates:

(i) 1.1 cent per package weighing less than 15 pounds;

(ii) 2.2 cents per package weighing 15 to 29 pounds; and,

(iii) 3.3 cents per package weighing 30 or more pounds.

(2) $14 for each additional lot of any of the same product.

(3) A minimum charge of $86 for each product inspected.

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dockside, the carlot fees in § 51.38(a) shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in the preceding paragraphs, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $43 an hour: *Provided*, That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections; and

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee.

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $21.50 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: December 11, 1997

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–32813 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

United States Standards for Rye

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to revise the United States Standards for Rye to certificate dockage to the nearest tenth of a percent. The current method of dockage certification rounds the actual dockage percentage down to the nearest whole percent. This method may result in understating the level of dockage up to 0.99 percent on the certificate. Certification of dockage to the nearest tenth of a percent is more precise than the current method and should enhance the marketability of U.S. Rye traded in the domestic and export markets. This change would also require the establishment of new inspection tolerances or breakpoints, as appropriate.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: Written comments must be submitted to George Wollam, GIPSA, USDA, Room 0623–S, Stop 3649, Washington, D.C., 20250–3649; FAX (202) 720–4628; or E-mail gwollam@fgisdc.usda.gov.

All comments received will be made available for public inspection at Room 0623 South Building, 1400 Independence Avenue, SW, Washington, D.C., during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Regulatory Flexibility Act Certification

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the regulations are applied equally to all entities.

The rye industry, including producers, handlers, exporters and processors, are the primary users of the U.S. Standards for Rye and utilize the official standards as a common trading language to market rye.

The rye industry in the United States is regional in nature, concentrated primarily in the upper midwest area. There are an estimated 10 processors of rye, utilizing a crop produced on approximately 355,000 acres in the United States. The average annual production of rye for the period 1988 through 1997 was 10,045,000 bushels. No rye has been officially inspected for export from the United States for several years.

The current method of dockage certification rounds the actual dockage percentage down to the nearest whole percent. This method may result in understating the level of dockage up to 0.99 percent on the certificate. Certification of dockage to the nearest tenth of a percent is more precise than the current method and should enhance the marketability of U.S. Rye traded in the domestic and potentially, the export markets. The potential benefits of revising the dockage certification procedure to report rye dockage to the nearest tenth of a percent include a more accurate description of the raw grain and the potential to improve pricing efficiency within the market. Certification to the nearest tenth of a percent would be more precise. A corresponding change would be made to the inspection tolerances or breakpoints, as appropriate.

Further, we understand that the rye industry already trades on dockage reported in tenths of a percent. Small entities, therefore, should experience no significant economic impact from these proposed changes.

Background

Certification of Dockage in Rye

Dockage consists primarily of dust, chaff, small weed seeds, very small pieces of broken rye, and coarse grains larger than rye. Domestic handlers and millers usually remove dockage during grain cleaning and may use it as animal feed. Foreign buyers use dockage in a variety of ways. Some use the dockage in animal feed, others mill the dockage with the rye, and some remove and discard the dockage.

In the current Official United States Standards for Grain (7 CFR part 810), the percentage of rye dockage is certified by rounding down to the nearest 1.0 percent (7 CFR 810.104 (b)). For example, for 0.0 to 0.99 percent, no dockage is reported on the certificate, 1.00 to 1.99 percent is reported as 1.0 percent dockage, 2.00 to 2.99 is reported as 2.0 percent dockage, and so forth. A domestic handler/processor has questioned the adequacy of the current dockage certification method asserting that the actual dockage is almost always understated. Further, the handler/processor suggested that the current U.S. Standards for Rye are not relevant, as the domestic rye industry trades on a dockage basis expressed in tenths of a percent and not whole percents.

Therefore, GIPSA is seeking industry comment for changing the current reporting and certification procedure to the nearest tenth percent on official inspection certificates to more accurately and precisely state dockage content in rye. Further, this action should also promote pricing efficiency.

Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected with a statistically based inspection plan. Inspection tolerances, commonly referred to as "breakpoints," are used to determine acceptable quality. The proposed change requires the establishment of a new breakpoint that reflects the greater accuracy to which rye dockage is proposed to be calculated and reported.

Therefore, GIPSA proposes to change the current breakpoint for rye dockage which is listed in Table 14 of section 800.86(c)(2). Specifically, GIPSA proposes to change the breakpoint from 0.32 to 0.2.

Proposed Action

GIPSA proposes to revise § 800.86, Inspection of shiplot, unit train, and lash barge grain in single lots, paragraph (c)(2) Table 14, by changing the breakpoint for dockage in rye from 0.32 to 0.2.

GIPSA also proposes to amend the Official United States Standards for Grain, Subpart A—General Provisions, § 810.104, Percentages, by revising paragraph (b) Recording. This change would require rye dockage to be determined and reported in whole and tenths of a percent to the nearest tenth of a percent.

Comments, including data, views, and arguments are solicited from interested persons. Pursuant to Section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be presented orally in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgement of the Secretary, the public health, interest, or safety require that they become effective sooner.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Exports, Grains.

7 CFR Part 810

Exports, Grains.

For reasons set out in the preamble, 7 CFR part 800 and 7 CFR part 810 are proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.86(c)(2) is amended by revising the entry for "Dockage" in Table 14 to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 14.—BREAKPOINTS (BP) FOR RYE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
* * * * *		
Dockage ..	As specified by contract or load order grade.	0.2
* * * * *		

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867 as amended (7 U.S.C. 71 *et seq.*)

4. Section 810.104 is amended by revising the first three sentences of paragraph (b) to read as follows:

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in flaxseed and sorghum is reported in whole percent with fractions of a percent being disregarded. Dockage in barley and triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. Dockage in wheat and rye is reported in whole and tenth percents to the nearest tenth percent. * * *

Dated: December 10, 1997.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 97–32780 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–63A]

Peter G. Crane; Receipt of an Amended Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Amended petition for rulemaking: Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on an amended petition for rulemaking filed by Mr. Peter G. Crane. The amended petition has been docketed by the Commission and has been assigned Docket No. PRM–50–63A. The petitioner states, in this amendment to the earlier petition, that the rulemaking he seeks is to amend NRC's emergency planning regulations to require consideration of sheltering, evacuation, and the prophylactic use of potassium iodide for the general public in developing a range of emergency planning protective actions.

DATES: Submit comments by January 16, 1998. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to those comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, 301–415–5905; e-mail: CAG@nrc.gov.

For a copy of the petition, write: Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the petition is also available for public inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–6534, e-mail: MTJ1@nrc.gov; or Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll Free: 1–800–368–5642, e-mail: MTL@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The NRC received a petition for rulemaking dated September 9, 1995, submitted by Mr. Peter G. Crane on his own behalf. The petition was docketed as PRM–50–63 on September 12, 1995. The notice of receipt of this petition was published on November 27, 1995 (60 FR 58256). On November 12, 1997, the NRC received an amendment to this petition submitted by Mr. Crane in response to the Commission's invitation at a public meeting held on November 5, 1997, at which the petitioner spoke. The amended petition was assigned docket number PRM–50–63A. The amended petition revises the original petition by requesting that the NRC add one sentence to the planning standard in 10 CFR 50.47(b)(10) that refers to considering evacuation, sheltering, and the prophylactic use of potassium iodide for the general population in developing a range of emergency planning protective actions. In particular, as proposed, 10 CFR 50.47 (b)(10) would include the use of potassium iodide (KI) as one action to be considered in emergency situations under onsite and offsite emergency plans.

Potassium Iodide

The petitioner states that KI protects the thyroid gland, which is highly sensitive to radiation, from the radioactive iodide that could be released in extremely serious nuclear accidents; that by saturating the gland with iodide in a harmless form, KI can prevent inhaled or ingested radioactive iodide from lodging in the thyroid gland, where it could lead to thyroid cancer or other illnesses; and that KI itself has a long shelf life—at least five years—and causes negligible side effects.

The petitioner further states that, in addition to preventing deaths from thyroid cancer, KI prevents radiation-caused illnesses. The petitioner states that thyroid cancer, curable in 90–95 percent of cases, generally means surgery, radiation treatment, and a lifetime of medication and monitoring. The petitioner asserts that the changes in medication that go with periodic scans put many patients on a physiological and psychological roller coaster. The petitioner also states that hypothyroidism can cause permanent retardation in children and, if undiagnosed, can condemn adults to a lifetime of fatigue, weakness, and chills.

The Petitioner's Proposed Amendment

The petitioner initially requested that 10 CFR 50.47 be amended by revising paragraph (b)(10) to read as follows:

§ 50.47 Emergency plans.

* * * * *

(b) * * *

(10) A range of protective actions, including sheltering, evacuation, and prophylactic use of iodide, have been developed for the plume exposure pathway EPZ [emergency planning zone] for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidelines, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

* * * * *

In the amended petition, the paragraph, as revised, would read as follows:

§ 50.47 Emergency plans.

* * * * *

(b) * * *

(10) A range of protective actions have been developed for the plume exposure EPZ for emergency workers and the public. In developing this range of actions, consideration has been given to evacuation, sheltering, and the prophylactic use of potassium iodide (KI), as appropriate. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidelines, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

* * * * *

As part of the amended petition, the petitioner also attached a proposed Statement of Considerations and, as invited by the Commission, a draft mark-up of a document from the Federal Emergency Management Agency entitled "Federal Policy on Distribution of Potassium Iodide Around Nuclear Power Sites for Use as a Thyroidal Blocking Agent."

Dated at Rockville, Maryland, this 11th day of December, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–32879 Filed 12–16–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–080]

Drawbridge Operation Regulation; Beaufort Channel, Beaufort, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the North Carolina Department of Transportation, the Coast Guard is proposing a change to the regulations that govern the operation of the Greydon Paul Drawbridge on US 70 across Beaufort Channel, (also known as Gallant's Channel) mile 0.1, located in Beaufort, North Carolina eliminating drawbridge openings at 7:40 a.m., 8:40 a.m., 4:40 p.m., and 5:40 p.m., on weekdays only. All other provisions of the existing regulation for this bridge would remain the same. This proposed rule is intended to reduce motor vehicle traffic delays and congestion related to commuter traffic going to and from work in the mornings and evenings, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before February 17, 1998.

ADDRESSES: Comments should be mailed to Commander (Aowb), USCG Atlantic Area, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Comments will become a part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, USCG Atlantic Area, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, comments, or arguments, including the reason for each comment. Persons responding to this proposal should include their names and addresses and should identify this rulemaking (CGD05–97–080) and the specific section of this proposal to which each comment applies. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (Aowb) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

The Greydon Paul Drawbridge, mile 0.1, across Beaufort Channel is currently required to open on signal except that from 6 a.m. to 10 p.m., the draw shall open on signal for all vessels waiting to pass every hour on the hour, twenty minutes past the hour and forty minutes past the hour.

The North Carolina Department of Transportation (NCDOT) has requested that openings of the Greydon Paul Drawbridge be further restricted during rush hours. This request to change the current regulation is based on heavy vehicular traffic traveling to and from the town of Beaufort during peak rush hour periods. The Greydon Paul Drawbridge is located on US Highway 70, which is the only corridor entering and exiting the town of Beaufort from Morehead City, North Carolina. During rush hour periods, drawbridge openings create long traffic backups often extending for 6 to 7 miles. The heavy congestion often results in vehicular accidents. NCDOT proposes that by eliminating one opening per hour during rush hours, vehicular traffic congestion on US Highway 70 will be reduced and highway safety will be increased. NCDOT provided statistical data which shows the number of openings and vessels passing through the Beaufort Bridge at 7:40 a.m., 8:40 a.m., 4:40 p.m. and 5:40 p.m., during August, 1997, which is one of the peak summer months for boating traffic for this area. The data revealed that only 42 out of a possible 120 drawbridge openings were required and a total of 65 vessels passed through the bridge. NCDOT contends that since the bridge was only required to open 35% of the time during these openings periods and there was minimal vessel traffic at these times, a reduction in the number of openings will not substantially impact navigational traffic. Overall, the Coast Guard believes that this proposed rule will reduce motor vehicle traffic delays and congestion related to rush hour traffic entering and exiting the town of Beaufort, North Carolina, while still providing for the reasonable needs of navigation.

Discussion of Proposed Amendments

The Coast Guard proposes to amend the regulations governing the Greydon Paul Drawbridge, across Beaufort Channel, mile 0.1, located in Beaufort North Carolina, by eliminating drawbridge openings at 7:40 a.m., 8:40 a.m., 4:40 p.m. and 5:40 p.m. on weekdays only, year-round. The regulation would state that from 6 a.m. to 10 p.m., the draw need only open every hour on the hour, twenty minutes past the hour and forty minutes past the hour; except that on weekdays the bridge need not open at 7:40 a.m., 8:40 a.m., 4:40 p.m., and 5:40 p.m. From 10 p.m. to 6 a.m. the bridge shall open on signal.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to plan their transits in accordance with the scheduled bridge openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant

economic impact on a substantial number of small entities.

Collection of Information

This proposal does not provide for a collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this proposed rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.822 is revised to read as follows:

§ 117.822 Beaufort Channel, NC.

The draw of the US 70 bridge, mile 0.1., at Beaufort, shall open as follows:

(a) From 6 a.m. to 10 p.m., the draw need only open every hour on the hour, twenty minutes past the hour and forty minutes past the hour; except that on weekdays the bridge need not open at 7:40 a.m., 8:40 a.m., 4:40 p.m. and 5:40 p.m.

(b) From 10 p.m. to 6 a.m., the bridge shall open on signal.

Dated: December 8, 1997.

Roger Rufe, Jr.,

Vice Admiral, U.S. Coast-Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–32886 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ017–0006; FRL–5935–4]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the Arizona State Implementation Plan (SIP) concerning the control of volatile organic compound (VOC) emissions from surface coating operations, Rule 336. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate VOC emissions according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposal will incorporate this rule into the federally approved SIP. Using CAA provisions regarding EPA actions on SIP submittals and general rulemaking authority, EPA has evaluated this rule and is proposing a simultaneous limited approval and limited disapproval because, while strengthening the SIP, this revision does not fully meet the CAA provisions and regulatory Control Technique Guidelines regarding regulatory requirements for nonattainment areas.

DATES: Comments must be received on or before January 16, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA, 94105–3901.

Copies of Rule 336 and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3003 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Department, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval (and limited disapproval) into the Arizona SIP is Maricopa County Rule 336, Surface Coating Operations. This rule was submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on February 26, 1997.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Maricopa County (see 43 FR 8964; 40 CFR 81.305). On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area to the Maricopa Association of Governments (MAG) Urban Planning Area (see 44 FR 16391, 40 CFR 81.303). On February 24, 1984, EPA notified the Governor of Arizona, pursuant to section 110(a)(2)(H) of the pre-amended Act, that MAG's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call, see 49 FR 18827, May 3, 1984). On May 26, 1988, again EPA notified the Governor of Arizona that MAG's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, see 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (see Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.) In amended section 182(a)(2)(A) of the CAA, Congress adopted statutorily the requirement that nonattainment areas fix their deficient RACT rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as serious[2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of Arizona submitted RACT rule, Maricopa County, Rule 336—Surface Coating Operations, for incorporation into its SIP on February 26, 1997. This document addresses EPA's proposed action for Maricopa County's Rule 336, Surface Coating Operations. Maricopa County adopted Rule 336 on June 19, 1996. EPA found Rule 336 complete on June 5, 1997 pursuant to EPA's completeness criteria set forth in 40 CFR part 51 Appendix V[3]. Now, EPA proposes a limited approval and limited disapproval of Rule 336.

Rule 336, Surface Coating Operations, reduces volatile organic compound (VOC) emissions at industrial sites engaged in preparing and coating a variety of substrates such as metal, paper, film, fabric, vinyl, and plastic. The provisions of this rule apply to surface preparation and coating operations in the following industries: Metal can and coil, metal furniture, large appliances, miscellaneous metal parts and products, aerospace assembly items and other components, paper, film, fabric, vinyl, plastic, and other flexible parts and products. VOCs contribute to the production of ground-level ozone and smog. Rule 336 was adopted as part of Maricopa County's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. Rule 336 is a new rule adopted by Maricopa County to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. EPA's evaluation and proposed action for Rule 336 follows below.

III. EPA Evaluation and Proposed Action

In reviewing a VOC rule for approval, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA's interpretation of these requirements, forming the basis for today's action, appears in the various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

To assist state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify presumptive norms defining RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents and other Agency policy for requiring States to "fix-up" their RACT rules (see section 182(a)(2)(A)). The following CTGs are applicable to Rule 336:

—"Control of Volatile Organic Emissions from Existing Stationary Sources Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light Duty Trucks," USEPA, May 1977, EPA–450/2–77–008;

—"Control of Volatile Organic Emissions from Existing Stationary Sources Volume III: Surface Coating of Metal Furniture," USEPA, December 1977, EPA–450/2–77-032;

—"Control of Volatile Organic Emissions from Existing Stationary Sources Volume V: Surface Coating of Large Appliances," USEPA, December 1977, EPA–450/2–77–034; and,

—"Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products," USEPA, June 1978, EPA–450/2–78–015.

The following Alternative Control Techniques (ACT) document was consulted for its recommended emission limits and other applicable provisions:

—"Surface Coating of Automotive/Transportation and Business Machine Plastic Parts," USEPA, EPA 453/R–94–017.

Accordingly, Rule 336 was evaluated for consistency with the general RACT requirements of the Clean Air Act (CAA section 110 and part D). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote one. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

There is no version of Rule 336—Surface Coating Operations in the SIP. The submitted rule includes the following provisions:

—A purpose statement,
—Definition of terms,
—Surface coating emission limits expressed in mass of VOC per unit volume of coating less water and non-precursor organic compounds,
—Emission control system, VOC clean-up, and VOC handling requirements,
—General and specific exemptions,
—Administrative requirements,
—Monitoring and record keeping requirements, and
—Compliance test methods.

Although Rule 336 strengthens the SIP, this rule contains deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. Rule 336's VOC emission limits conform to the respective CTG or ACT requirement and the rule contains adequate record keeping and test method provisions for monitoring the compliance of regulated facilities. However, several portions of the rule are unclear or contradict the subject CTG.

The following sections should be amended to be consistent with the applicable CTG and EPA policy:

—Section 306.4, Exemptions, Special Facilities/Operations,
—Section 306.5, Exemptions, Small Sources, and
—Section 402, Administrative Requirements, Minimal Use Days.

Sections 306.4 and 306.5 exempt some source categories in a manner inconsistent with their applicable CTG. Maricopa County should limit these exemptions to specific source categories consistent with their applicable CTG. Also, these sections are inconsistent with the Blue Book established applicability cut-off of three pounds per hour or fifteen pounds per day of VOC emissions. Two essential component concepts of the Blue Book's size cut-off policy are absent from the rule. First, a source's VOC emissions for comparison to the size cutoff should be determined

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register document," (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing Control Technique Guidelines (CTGs).

[2] The MAG Urban Planning Area retained its designations of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). On November 8, 1997, EPA published a final rule reclassifying the MAG Urban Planning Area from moderate to serious (62 FR 60001). This reclassification became effective on December 8, 1997.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

assuming no add-on controls. Second, once a source's VOC emissions exceed the size cutoff, that source is subject to the emission control requirements of the rule, even if those emissions later fall below the cutoff limit. A more detailed discussion of the rule's deficiencies can be found in the technical support document for Rule 336 available at the U.S. EPA, Region 9 office.

Given these deficiencies, the rule is not approvable pursuant to the section 182(a)(2)(A) of the CAA. Also, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

The approval is limited because EPA's action also contains a simultaneous limited disapproval. To strengthen the SIP, EPA is proposing a limited approval of Maricopa County's submitted Rule 336 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within eighteen months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and emission offsets. The eighteen month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Also, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this proposed rule making has been adopted by Maricopa County and is in effect. EPA's final limited disapproval action will not prevent Maricopa County, the State of Arizona, or EPA from enforcing this rule.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 5, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–32786 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–27–1–9845, FRL–5935–3]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas; Disapproval of Texas Clean Fuel Fleet Program Revision to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is extending the public comment period from November 17, 1997, to January 16, 1998, on the proposed disapproval notice of the Texas Clean Fuel Fleet (CFF) SIP revision under the Clean Air Act. The proposed disapproval document was published in the **Federal Register** on October 17, 1997. The extension to the public comment period is being granted by EPA in response to the State's request to have additional time to assess the proposal, analyze the alternative options available and submit comments reflecting this analysis. A similar request was also made by the National Association of Fleet Administrators. For additional information please refer to the proposed disapproval document published in the **Federal Register** on October 17, 1997 (62 FR 53997).

DATES: Comments on the proposed disapproval must be received in writing by January 16, 1998.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Regional Office listed below. Copies of the documents about this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day:

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202, telephone (214) 665–7354.

Dated: December 4, 1997.

W.B. Hathaway,

Acting Regional Administrator.

[FR Doc. 97–32785 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 017–0004; FRL–5936–4]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) that concern the control of volatile organic compound (VOC) emissions from solvent cleaning, petroleum solvent dry cleaning, rubber sports ball manufacturing, graphic arts, semiconductor manufacturing, vegetable oil extraction processes, wood furniture and fixture coating, wood millwork coating, and loading of organic liquids.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on these proposed rules will incorporate them into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before January 16, 1998.

ADDRESSES: Comments may be mailed to: Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3003 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Department, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the Arizona SIP include: Maricopa County Environmental Services Department, Technical Services Division (MCESD) Rules 331—Solvent Cleaning, 333—Petroleum Solvent Dry Cleaning, 334—Rubber Sports Ball Manufacturing, 337—Graphic Arts, 338—Semiconductor Manufacturing, 339—Vegetable Oil Extraction Processes, 342—Coating Wood Furniture and Fixture, 346—Coating Wood Millwork, and 351—Loading of Organic Liquids. These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on February 4, 1993 (Rule 339), August 31, 1995 (Rule 351), February 26, 1997 (Rules 331, 333, 334, 336, and 338) and March 4, 1997 (Rules 342, 337, and 346) respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), which included Maricopa County (43 FR 8964; 40 CFR 81.305). On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area to the Maricopa Association of Governments (MAG) Urban Planning Area (44 FR 16391, 40 CFR 81.303). On February 24, 1984, EPA notified the Governor of Arizona, pursuant to section 110(a)(2)(H) of the pre-amended Act, that MAG's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that MAG's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register**

Continued

guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as serious;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of Arizona submitted several RACT rules for incorporation into its SIP on February 4, 1993, August 31, 1995, February 26, 1997 and March 4, 1997, including the rules being acted on in this document. This document addresses EPA's proposed action for MCESD Rules 331—Solvent Cleaning, 333—Petroleum Solvent Dry Cleaning, 334—Rubber Sports Ball Manufacturing, 337—Graphic Arts, 338—Semiconductor Manufacturing, 339 Vegetable Oil Extraction Processes, 342—Coating Wood Furniture and Fixtures, 346—Coating Wood Millwork , and 351—Loading of Organic Liquids. MCESD adopted Rules 331, 333, 334 and 338 on June 19, 1996; Rule 339 on November 16, 1992; Rules 337, 342 and 346 on November 20, 1996 and Rule 351 on February 15, 1995. These submitted rules were found to be complete on March 10, 1993 (Rule 339), October 25, 1995 (Rule 351) and June 5, 1997 (Rules 331, 333, 334, 337, 338, 342 and 346, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being proposed for approval into the SIP.

Rule 331 limits the emissions of volatile organic compounds (VOCs) from surface cleaning and degreasing operations, Rule 333 controls emissions of VOCs from petroleum solvent dry cleaning operations, Rule 334 limits emission of VOCs from natural and synthetic rubber adhesives used in the manufacture of non-inflatable rubber balls, Rule 337 limits emissions of VOCs from screen, gravure, letterpress, flexographic and lithographic printing processes, including related coating and laminating processes, Rule 338 limits emissions of VOCs from semiconductor manufacturing, Rule 339 limits the emissions of VOCs from the extraction of vegetable oil using solvents, Rule 342 controls the emissions of VOC's emanating from applying finishing materials to furniture or fixtures made of wood or wood derived materials, Rule 346 limits VOC emissions from the surface preparation and coating of wood millwork, such as shutters, doors, windows and their associated woodwork, and Rule 351 controls emissions of VOCs from organic liquid loading operations at bulk plants and bulk terminals. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of MCESD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA amendments, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 331 is entitled, "Control of Volatile Organic Emissions From Solvent Metal Cleaning," EPA–450/2–77–022; the CTG applicable to Rule 333 is entitled, "Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners," EPA–450/3–82–009; the CTG applicable to Rule 337 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography," EPA–450/2–78–033; the CTG applicable to Rule 342 is entitled, "Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations" EPA–453/R–96–007; and the CTGs applicable to Rule 351 are entitled, "Control of Volatile Organic Emissions from Bulk Gasoline Plants," EPA–450/2–77–035 and "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," EPA–450/2–77–026. Rules 334, 338, 339 and 346 control emissions from source categories for which EPA has not issued CTGs. Accordingly these rules were evaluated for consistency with the general RACT requirements of the Clean Air Act (CAA section 110 and part D). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On February 1, 1996, EPA approved into the SIP a version of MCESD's Rule 331—Solvent Cleaning that had been adopted by MCESD on June 22, 1992. MCESD's submitted Rule 331—Solvent Cleaning includes the following changes from the current SIP:

- Increased the record retention time from 3 years to 5 years,
- Added the requirement to maintain a current list of solvents stating the VOC content in lbs/gal or g/l,
- Added the requirement to keep monthly records of make-up solvents added and other VOC containing materials used.

On February 1, 1996, EPA approved into the SIP a version of Rule 333—Petroleum Solvent Dry Cleaning that had been adopted by MCESD on June 22, 1992. MCESD's submitted Rule 333—Petroleum Solvent Dry Cleaning includes the following significant changes from the current SIP:

- Increased the record retention period from 3 years to 5 years,
- Requires the maintenance of a current list of solvents and any other VOC containing materials, including the VOC content of each in lbs/gal or g/l.
- Requires monthly records of the weight of clothing cleaned, the amount of solvent used, and the weight and type of any material disposed that contains any amount of cleaning solvents. The name of the company receiving such material must also be recorded.

On February 12, 1996, EPA approved into the SIP a version of Rule 334—Rubber Sports Ball Manufacturing, that had been adopted by MCESD on September 20, 1994. MCESD's submitted Rule 334—Rubber Sports Ball Manufacturing includes the following significant changes from the current SIP:

- Replaced daily cutoff of 300 lbs VOC with monthly cutoff of 8333 lbs,
- Increased the record retention period from 3 years to 5 years,
- Decreased frequency from daily to monthly for usage records of adhesives, solvents, and other VOC containing materials.

On September 5, 1995, EPA approved into the SIP a version of Rule 337—Graphic Arts that had been adopted by MCESD on April 6, 1992. MCESD's submitted Rule 337—Graphic Arts includes the following significant changes from the current SIP:

- Added a definition for capture efficiency,
- Establishes time phased lowering of VOC limits for fountain solutions and establishes VOC limits for fountain solutions refrigerated below 60°F,
- Establishes time phased lowering of vapor pressure of cleaning solutions,
- Allows monthly recordkeeping on presses which do not use alcohol in their fountain solution, provided they emit less than 25 tons of VOC per year,
- Increases the record retention period from 3 years to 5 years.

There is currently no version of MCESD's Rule 338—Semiconductor Manufacturing in the SIP. The submitted rule includes the following provisions:

- Requires facilities that emit more than 25 tons per year (tpy) of VOC from negative photoresist operations to vent the emissions to a control system with an overall control efficiency of at least 80%,
- Requires facilities that emit more than 50 tpy of VOC from positive photoresist operations to vent the emissions to a control system with an overall control efficiency of at least 80%,
- Provides an exemption for positive photoresist operations that use liquids that use less than 10% VOC by weight and never exceed a temperature of 104°F,
- Requires an operation and maintenance plan specifying key system operating parameters for the emission control system,
- Requires the use of closed containers for storing VOC containing material,
- Requires monthly usage records of all VOC containing material,
- Requires equipment operating records.

There is currently no version of MCESD's Rule 339—Vegetable Oil Extraction Processes in the SIP. The submitted rule includes the following provisions:

- Establishes a monthly VOC limit of 2.5 pounds per ton of processed seeds for any consecutive 30 day period of operation, and a weekly VOC limit of 3.0 pounds of VOC per ton of processed seeds for any 7 consecutive days of operation,
- Requires that VOC emissions from any extractor or desolventizer-toaster be controlled by a condenser and mineral-oil scrubber with an overall control efficiency of at least 90% by weight,
- Requires that the desolventizer-toaster discharge conveyor is vented to a mineral oil scrubber with an overall control efficiency of 90% by weight,
- Requires an operation and maintenance plan specifying key system operating parameters for the emission control system,
- Requires monthly inspection of equipment in solvent service for gaseous and liquid leaks and the keeping of a permanent leak detection and repair notebook,
- Requires daily recordkeeping.

There is currently no version of MCESD's Rule 342—Coating Wood Furniture and Fixture in the SIP. The submitted rule includes the following provisions:

- A purpose and applicability definition,
- Definition of terms,
- VOC standards consistent with the CTG expressed in grams per liter as well as pounds per pound of solids,
- A schedule of compliance for sources emitting in excess of 50 tpy,
- A limitation of conventional air-atomized spray and other spray methods,
- Process equipment operation and maintenance requirements,
- Procedures for the handling and disposing of VOC containing material,
- Labeling requirement of VOC containing storage containers,
- Monitoring and record keeping requirements,
- Compliance test methods,
- An appendix describing the averaging provisions.

There is currently no version of MCESD's Rule 346—Coating Wood Millwork in the SIP. The submitted rule includes the following provisions:

- A purpose and applicability definition,
- Definition of terms,
- VOC limits of coatings used on wood millwork,
- VOC trade-off options;

(1) lower VOC topcoat and unlimited VOC sealer

(2) lower VOC sealer and higher VOC topcoat

(3) single application finish,

- Allows alternative control by means of an emission control system,
- Allows an exemption for sources emitting less than 2 tons per year of VOC,
- A limitation of conventional air-atomized spray and other spray methods,
- Process equipment operation and maintenance requirements,
- Procedures for the handling and disposing of VOC containing material,
- Labeling requirement of VOC containing storage containers,
- Monitoring and record keeping requirements,
- Compliance test methods.

On April 6, 1992 EPA, approved into the SIP a version of MCESD's Rule 351—Loading of Organic Liquids that had been adopted by MCESD on April 6, 1992. MCESD's submitted Rule 351—Loading of Organic Liquids includes the following significant changes from the current SIP:

- Section 401 discussing equipment leak provisions has been reformatted, and a requirement to maintain a logbook for monthly leak inspections has been added,
- Section 503 now requires that all records be retained for 3 years.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MCESD Rules 331—Solvent Cleaning Operations, 333—Petroleum Solvent Dry Cleaning, 334—Rubber Sports Ball Manufacturing, 337—Graphic Arts, 338—Semiconductor Manufacturing, 339 Vegetable Oil Extraction Processes, 342—Wood Furniture and Fixture Coating, 346—Wood Millwork Coating, and 351—Loading of Organic Liquids are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols,

---

document" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The MAG Urban Planning Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA amendments. See 56 FR 56694 (November 6, 1991). On November 6, 1997 EPA published a final rule reclassifying the MAG Urban Planning Area from moderate to serious (FR 62 60001). This reclassification became effective on December 8, 1997.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 9, 1997.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 97–32929 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5933–7]

Approval and Promulgation of Implementation Plans; Colorado; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing corrections to the State Implementation Plan (SIP) for the State of Colorado. First, EPA is proposing corrections to its January 21, 1997 rulemaking in which EPA approved several Colorado new source review (NSR) SIP revisions. Specifically, pursuant to a December 17, 1996 request from the State of Colorado, EPA is proposing to remove from the approved SIP two sections of Colorado's prevention of significant deterioration (PSD) rules in Regulation No. 3. EPA is also proposing to disapprove a provision in the State's definition of "federally enforceable" in Regulation No. 3 that EPA inadvertently failed to disapprove in its January 21, 1997 rulemaking. Specifically, the provision in that definition states that provisions which are not required by the Federal Clean Air Act (Act) shall not be submitted as part of the SIP and shall not be federally enforceable. This provision is being proposed for disapproval because the Act provides that any provision approved by EPA as part of the SIP is federally enforceable unless and until the State requests, and EPA approves, a SIP revision removing such provision.

Second, EPA is proposing to correct an October 5, 1979 rulemaking in which EPA incorrectly listed Colorado House Bill 1109 as being approved as part of the Colorado SIP.

Last, EPA is proposing to correct a September 23, 1980 rulemaking, in which EPA mistakenly replaced a Colorado SIP approval in 40 CFR 52.320 with a Montana SIP approval.

DATES: Comments must be received in writing on or before January 16, 1998.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2-A, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466. Copies of the documents relative to this action are available for inspection during normal business hours at the following location: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII,(303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Corrections to January 21, 1997 Rulemaking

On January 21, 1997, EPA promulgated approval of five Colorado SIP revisions submitted on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. (See 62 FR 2910–2914.) All of these SIP submittals contained revisions to the State's NSR and PSD provisions in Parts A and B of Colorado Regulation No. 3.

A. Correction to Exclude Sections V.B. and VII.A.5. of Part B of Colorado Regulation No. 3 From the SIP

The November 12, 1993 SIP submittal contained revisions to Regulation No. 3 that were adopted by the Colorado Air Quality Control Commission (AQCC) at a July 15, 1993 public hearing. The primary purpose of the State's July 1993 rulemaking was to adopt an operating permit program to address the requirements of title V of the Clean Air Act Amendments of 1990 and 40 CFR part 70. Concurrent with the adoption of its operating permit program, the State made revisions to its construction permit regulations, which are also in Regulation No. 3, to make the two programs work together and to allow for the implementation of certain title V operating permit provisions. At the same time, the State also completely restructured and renumbered the provisions in Regulation No. 3. While the majority of the provisions in the State's construction permitting regulations were unchanged, the State's November 12, 1993 SIP submittal included the State's entire construction permitting regulations (including its PSD rules) because of the restructuring and renumbering of Regulation No. 3.

On December 17, 1996, the State submitted a request to exclude two sections of Part B of Regulation No. 3 from its November 12, 1993 SIP submittal, specifically Sections V.B. and VII.A.5. (referred to herein as Sections V.B. and VII.A.5. or as "the two provisions.") On January 21, 1997, EPA's approval of the State's November 12, 1993 SIP submittal was published (62 FR 2910). The approval did not exclude Sections V.B. and VII.A.5.

Section V.B. of Part B of Regulation No. 3 applies the Class I sulfur dioxide PSD increment to certain pristine areas in Colorado that are not designated Class I by the Federal PSD regulations. This is not required by the Act or Federal PSD regulations. Section VII.A.5. of Part B of Regulation No. 3 provides that no new major stationary source or major modification shall individually consume more than 75% of an applicable increment. No such provision (or similar provision) is required by the Act or Federal PSD regulations. Neither of the two provisions is necessary for the State to demonstrate attainment and/or maintenance of the National Ambient Air Quality Standards (NAAQS). Therefore, EPA believes that these two provisions may be removed from the SIP.

In this instance, EPA believes it is appropriate to remove the two provisions from the SIP pursuant to EPA's authority under section 110(k)(6) of the Act. Section 110(k)(6) of the Act provides as follows:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

The State submitted its request well before EPA's final approval of the State's November 12, 1993 SIP submittal was published in the **Federal Register** or was otherwise announced to the public. Thus, EPA had an opportunity to exclude the two provisions from the final published rule, but failed to do so.

Although there may be instances where a request to withdraw components of a SIP implicates the Act's requirement for State notice and hearing, EPA does not believe this is one of them. First, these two provisins had been part of the State's regulations for many years [1], but had been expressly excluded from the State's SIP submittals of prior PSD revisions and had been expressly excluded from EPA's rulemaking actions on those prior PSD rule revisions. (See 51 FR 31125, September 2, 1986, and 56 FR 12850, March 28, 1991.) Second, the State merely renumbered these two provisions at its July 15, 1993 hearing, and there was no indication that the State intended to change course and submit these two provisions to EPA for approval into the SIP. Presumably, if the State had intended such a change in course, the State would have focused its notice and public hearing on the two provisions prior to adopting the renumbering of Regulation No. 3 and submitting it to EPA. This did not occur, and the evidence suggests that submittal of these two provisions to EPA was merely an oversight. If EPA had reviewed the circumstances more carefully when it received the State's December 17, 1996 letter, EPA could have corrected its final rule before publication.

With respect to Section V.B., EPA also believes a correction is necessary because Section V.B. (which, as stated above, applies the Class I sulfur dioxide increment to certain pristine Class II areas in Colorado) is inconsistent with the requirements of EPA's PSD regulations. Specifically, 40 CFR 51.166(g) contains certain requirements for redesignating an area from Class II to Class I, and the State has not addressed those requirements for the areas listed in Section V.B. Thus, EPA erred in approving Section V.B. as part of the SIP. This position is consistent with EPA's prior rulemaking regarding this provision. In a September 2, 1986 action, EPA did not approve this provision into the SIP, explaining that the State had not followed the specific procedures outlined in 40 CFR 51.166(g) for redesignating an area from Class II to Class I. (See 51 FR 31125.)

For the reasons discussed above, EPA is correcting its January 21, 1997 SIP approval to remove Sections V.B. and VII.A.5. of Part B of Regulation No. 3 from the approved SIP.

[1] The AQCC originally adopted Section V.B. on March 10, 1983 and Section VII.A.5. on May 17, 1990.

B. Correction to Disapprove Provision in Definition of "Federally Enforceable" in Colorado Regulation No. 3

In the State's September 29, 1994 SIP submittal of revisions to Regulation No. 3, the State revised its definition of "federally Enforceable" in Section I.B.22. of Part A of Colorado Regulation No. 3. EPA's nonattainment NSR and PSD permitting regulations in 40 CFR 51.165 and 51.166, respectively, require this term to be defined in States' permitting programs, as it is used in various definitions and provisions of the Federal preconstruction permitting regulations.

Colorado's definition of "federally enforceable" basically mirrors the Federal definition in 40 CFR 51.165(a)(1)(xiv) and 51.166(b)(17). However, on August 18, 1994, the State revised this definition (among other things) to add a provision stating the following: "Notwithstanding the foregoing, and except for the voluntarily accepted limitations and conditions described in the preceding sentence, any provision, standard, or regulation that is not required by the Federal Act or that is more stringent than the Federal Act is adopted under powers reserved to the State of Colorado pursuant to section 116 of the Federal Act, is not to be submitted to the EPA as a provision of the SIP and shall not be federally enforceable." According to the State, this revision was made to mirror the definition found in Section 25–7–105.1 of the Colorado Air Pollution Prevention and Control Act.

During the State's public comment period on this regulatory change, EPA stated in an August 12, 1994 letter that it could not approve the statement quoted above as part of the SIP. Any provision that has been submitted by the State and approved by EPA as part of the SIP is considered to be federally enforceable regardless of whether it is required by the Act or more stringent than the Act. Similarly, terms and conditions incorporated into a permit that is issued under an EPA-approved permitting program, such as new source review or title V operating permits, are also generally considered to be federally enforceable. [2] The only way a State can change the Federal enforceability of any provision that has been approved by EPA as part of the SIP is by submitting a request for revision to the SIP and by receiving EPA approval of the SIP

[2] States can designate certain provisions in a title V permit that have not been approved as part of the SIP or that are not otherwise federally enforceable or federally required as "State-only" in a title V operating permit, and those terms would not be considered federally enforceable. (See 40 CFR 70.6(b)(2).)

revision (through notice and comment rulemaking via the **Federal Register**).

EPA believes the statement in the State's definition of "federally enforceable" quoted above is thus misleading to the public and the regulated community.

In EPA's January 21, 1997 rulemaking, EPA approved the definition of "federally enforceable" into the SIP in its entirety. (See 62 FR 2914.) However, for the reasons discussed above and in EPA's August 12, 1994 letter to the State, EPA believes its approval of the above-quoted statement was made in error. Consequently, EPA is proposing to correct its January 21, 1997 rulemaking to disapprove the statement in the State's definition of "federally enforceable" which states that any provision, standard or regulation not required by the Act is not to be submitted as part of the SIP and shall not be federally enforceable. EPA is proposing this correction pursuant to section 110(k)(6) of the Act.

II. Correction of October 5, 1979 Rulemaking

On October 5, 1979, EPA approved several submittals from the State of Colorado, which were made pursuant to the 1977 revisions to the Act. (See 44 FR 57401–57411.) In that action, EPA listed House Bill 1109 in 40 CFR 52.320(c)(14)as one of the submittals being approved (see 44 FR 57409, October 5, 1979). House Bill 1109 repealed and reenacted the State's Air Quality Control Act. The bill was signed into law by the Governor on June 20, 1979 and submitted to EPA on July 23, 1979, along with House Bill 1090 (regarding burning of solid wastes) and Senate Bill 1 (regarding provisions for reducing motor vehicle emissions). In the preamble to the October 5, 1979 rulemaking, EPA discussed the State's July 23, 1979 submittal of the three bills. EPA indicated that it was taking no action on House Bill 1109 at that time and would propose action in the **Federal Register** at a future date to take public comment on the acceptability of the State's revised Air Quality Control Act (see 44 FR 57403). Since EPA clearly stated in the preamble that it was not taking action on House Bill 1109, EPA erred in listing House Bill 1109 as being approved as part of the SIP in 40 CFR 52.320(c)(14). Therefore, pursuant to section 110(k)(6) of the Act, EPA is proposing to amend the regulatory text regarding the State's July 23, 1979 submittal to remove the reference to House Bill 1109.[3]

Although EPA's October 5, 1979 rulemaking indicated that EPA would propose action on House Bill 1109 at a future date, EPA no longer believes it is necessary to take action on House Bill 1109 or any successor provisions in the State's Air Quality Control Act. Generally, EPA does not believe it is necessary to approve State authorizing legislation into the SIP. Instead, EPA needs to be satisfied that such authorizing legislation exists and that it shows that the State has adequate legal authority to adopt, implement, and enforce the SIP. Therefore, EPA will not be taking action on House Bill 1109.

III. Correction of September 23, 1980 Rulemaking

On September 23, 1980, EPA approved various SIP submittals from the State of Montana intended to address the 1977 revisions to the Act. In that action, EPA mistakenly revised 40 CFR 52.320, which identifies SIP approvals for the State of Colorado, to reflect approval of these various Montana SIP submittals (see 45 FR 62984). EPA's original intention with the September 23, 1980 rulemaking was to revise 40 CFR 52.1370(c)(8) for the State of Montana's plan, but EPA promulgated the language regarding Montana's SIP at 40 CFR 52.320(c)(8). On June 30, 1982, EPA partially corrected this error for Montana by promulgating the September 23, 1980 approval at 40 CFR 52.1370(c)(10). (See 47 FR 28373.) However, no correction was ever made to the "Identification of Plan" for Colorado at 40 CFR 52.320. Consequently, EPA is proposing to revise 40 CFR 52.320(c)(8) to reinstate the previous Colorado SIP approval promulgated at 52.320(c)(8), as it was last revised on March 2, 1976 (see 41 FR 8958).

IV. Proposed Action

EPA is proposing to revise 40 CFR 52.320(c)(72)(I)(D) to exclude Sections V.B. and VII.A.5. of Part B of Regulation No. 3, which pertain to the State's PSD program, from the approved SIP.

EPA is proposing to correct its January 21, 1997 approval of Section I.B. of Part A of Regulation No. 3 (as in effect on September 30, 1994) to disapprove the last sentence in the definition of "federally enforceable" which states that any provision, standard or regulation not required by the Act is not to be submitted as part of the SIP and shall not be federally enforceable.

EPA is proposing to amend 40 CFR 52.320(c)(15) to remove the reference to House Bill 1109, which was incorrectly listed as being approved in EPA's October 5, 1979 Colorado rulemaking (see 44 FR 57409).

Last, EPA is proposing to amend 40 CFR 52.320(c)(8) to reinstate the Colorado SIP approval promulgated on March 2, 1976 (see 41 FR 8958) that was incorrectly replaced in a September 23, 1980 rulemaking (45 FR 62984).

EPA is making these corrections pursuant to section 110(k)(6) of the Act.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The proposed corrections would remove certain requirements from the SIP. However, regardless of EPA's final action, these requirements will still apply as a matter of State law. Thus, the proposed corrections would not alter the impact of these requirements on small entities, and EPA certifies that the removal of such requirements from the SIP would not have a significant economic impact on a substantial number of small entities.

The proposed corrections would also result in a disapproval of certain language in the State's definition of federally enforceable in its permitting regulations. Disapproval of this language would not create any new requirements and would not alter requirements that the State is already imposing. Therefore, EPA certifies that this disapproval would not have a significant economic impact on a substantial number of small entities.

[3] Note that the provision in 40 CFR 52.320(c)(10) promulgated on October 5, 1979 was renumbered as 40 CFR 52.320(c)(15) on June 27, 1980. See 45 FR 43411.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed corrections do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action would impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 17, 1997.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

[FR Doc. 97–32926 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5936–2]

RIN: 2060–AE–83

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: The EPA is announcing a 30-day extension of the public comment period for the proposed "National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production." As initially published in the **Federal Register** on November 10, 1997 (62 FR 60565), written comments on the proposed rule were to be submitted to the EPA on or before January 9, 1998 (a 60-day public comment period). The public comment period is being extended for 30 days and will now end on February 9, 1998.

DATES: Comments must be received on or before February 9, 1998.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–95–20, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed under the **FOR FURTHER INFORMATION CONTACT** section. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker; Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5420.

SUPPLEMENTARY INFORMATION: Electronic Filing. Electronic comments can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–95–20. Electronic comments may be filed online at many Federal Depository Libraries.

Discussion. On November 10, 1997, at 62 FR 60565, the EPA published the proposed National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production and provided a 60-day public comment period. Requests have been received to extend the public comment period beyond the 60 days originally provided. These requests have been made by businesses that will be affected by the rule. Their request for this extension is primarily based on the fact that Thanksgiving and Christmas holidays occur during the comment period which would cause hardship on their ability to provide timely and useful comments. In consideration of these concerns, the EPA is extending the comment period by 30 days (until February 9, 1998), in order to give all interested persons the opportunity to comment fully.

Dated: December 9, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–32928 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 971208290–7290–01; I.D. 112097C]

RIN 0648–AK51

Fisheries Off West Coast States and in the Western Pacific; Northern Anchovy Fishery; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: The Pacific Fishery Management Council (Council) is developing an amendment to the Northern Anchovy Fishery Management Plan (FMP) that may place small coastal pelagic species under Federal management along with northern anchovy. Proposed management options include limiting effort by controlling the number and/or capacity of vessels harvesting coastal pelagic resources off Washington, Oregon, and California. This notice is intended to notify fishermen that anyone entering the coastal pelagics fishery after November 5, 1997, may not be eligible to continue participating in the fishery under the new amendment.

DATES: Comments must be submitted by January 16, 1998.

ADDRESSES: Submit comments to the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Morgan, (562) 980–4036, or Mr. Svein Fougner, Acting Chief, Fisheries Management Division, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The current draft of the amendment to the FMP would add the following species to the management unit: Pacific mackerel

(*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), Pacific sardine (*Sardinops sagax*), market squid (*Loligo opalescen*), Pacific saury (*Cololabis saira*), and Pacific bonito (*Sarda chiliensis*). One of the management options to be considered in the amendment is controlling fishing effort by limiting the number and/or capacity of vessels harvesting coastal pelagics to levels that are economically efficient. If too many vessels enter a fishery, the profit for each fisherman dwindles, management and enforcement becomes more difficult and costly, the private investment needed by each fisherman to maintain an adequate share of the harvest rises, and the pressure to raise harvest levels increases. To keep harvesting capacity in line with the resources available, various limited access systems will be analyzed.

The first step in evaluating a system by which the number of participants can be limited is to identify the current participants. Although the decision has not been made on whether vessels, vessel operators, or owners of vessels will be considered "current participants," the Council, at its meeting in Portland, OR, on November 5, 1997, adopted the control date of November 5, 1997, for defining participants in the fishery. Therefore, a fisherman would have to have landed coastal pelagic species on or before November 5, 1997, to be considered a current participant in this fishery. Fishermen are put on notice that anyone entering the coastal pelagics fishery after this date might not be issued a permit to continue participating in the fishery if a limited access option is adopted for coastal pelagic resources. This decision by the Council rescinds the earlier control date for this fishery of November 13, 1991, which was published in the **Federal Register** on January 16, 1992 (57 FR 1899).

The control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the coastal pelagics fishery. Fishermen are not guaranteed future participation in this fishery, regardless of their entry date or intensity of participation before or after the control date. The Council may subsequently choose a different control date or it may choose a management regime that does not make use of such a date. Other qualifying criteria, such as documentation of commercial landings and sales, may be necessary for entry.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 10, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32865 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 242

Wednesday, December 17, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of upcoming meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee will meet on January 29, 1998, in the River Room at Campbell's Conference Center, 104 W. Woodin, Chelan, Washington. The meeting will begin at 9:00 and end at 3:00 p.m. This meeting will focus on Forest Plan monitoring, management of Late Successful Reserves, and management of noxious weeds. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: December 3, 1997.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 97–32855 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of upcoming meeting.

SUMMARY: The Yakima Provincial Advisory Committee will meet on January 28, 1998, at the Cle Elum Ranger District office, 803 W. 2nd Street, Cle Elum, Washington. The meeting will begin at 9:00 a.m. and end at 3:00 p.m. The meeting will focus on watershed restoration, Snoqualmie Pass Adaptive Management Area, and an update on Naches Ranger District projects. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: December 3, 1997.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 97–32856 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Northeast Indiana Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Northeast Indiana Grain Inspection (Northeast Indiana) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 21, 1997, **Federal Register** (62 FR 44439), GIPSA asked persons interested in providing official services in the Northeast Indiana area, currently assigned to East Indiana Grain Inspection, Inc., to submit an application for designation. There was one applicant: Northeast Indiana Grain Inspection, a proposed organization to be established by Steve Walker to be located at Hoagland, Indiana, applied for designation to provide official services in the Northeast Indiana region.

In the November 3, 1997, **Federal Register** (62 FR 59340), GIPSA asked for comments on the applicant for the Northeast Indiana region. Comments were due by December 2, 1997. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Northeast Indiana is able to provide official services in the Northeast Indiana area.

Effective January 1, 1998, and ending December 31, 2000, Northeast Indiana is designated to provide official services in the geographic area specified in the August 21, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Northeast Indiana at 219–639–6390.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 10, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–32901 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Eastern Iowa (IA) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), will end July 31, 1998, according to the Act. GIPSA is asking persons interested in providing official services in the Eastern Iowa area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before January 15, 1998.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Eastern Iowa, main office located in Davenport, Iowa, to provide official inspection services under the Act on August 1, 1995.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Eastern Iowa ends on July 31, 1998, according to the Act.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Iowa, is assigned to Eastern Iowa.

The Southern Area

Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line;

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and

Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.

The Northern Area

Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines;

Bounded on the East by the eastern Illinois State line south to the northern Will County line; the northern Will County line west to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

Eastern Iowa's assigned geographic area does not include the export port locations inside Eastern Iowa's area which are serviced by GIPSA.

Interested persons, including Eastern Iowa, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Eastern Iowa is for the period beginning August 1, 1998, and ending May 31, 2001. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: December 10, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–32902 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the Natural Resources Conservation Service's Field Office Technical Guide (FOTG)

AGENCY: Natural Resources Conservation Service (NRCS) in North Dakota, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of FOTG in North Dakota for review and comment.

SUMMARY: It is the intention of NRCS in North Dakota to issue a series of new and revised conservation practice standards in Section IV of the FOTG. These new standards include Cross Wind Stripcropping (589B); Residue Management, No-till and Strip Till (329A); Prescribed Grazing (528A); and Wildlife Watering Facility (648).

The revised standards are Field Border (386) and Riparian Forest Buffer (391A).

DATES: Comments will be received on or before January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Myron P. Senechal, State Resource Conservationist, Natural Resources Conservation Service (NRCS), PO Box 1458, Bismarck, ND 58502–1458. Copies of these standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in North Dakota will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS of North Dakota regarding disposition of those comments and a final determination of changes will be made.

Dated: December 11, 1997.

Scott Hoag, Jr.,

State Conservationist, Bismarck, North Dakota.

[FR Doc. 97–32864 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 83–00034.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Micro Products Company. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Micro Products Company.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5/3/. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1997). Pursuant to this authority, a certificate of review was issued on April 12, 1984 to Micro Products Company.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On April 3, 1997, the Department of Commerce sent to Micro Products Company a letter containing annual report questions with a reminder that its annual report was due on May 28, 1997. Additional reminders were sent on August 7, 1997 and on September 12, 1997. The Department has received no written response from Micro Products Company to any of these letters.

On November 6, 1997, and in accordance with Section 325.10 (c) (1) of the Regulations, (15 CFR 325.10 (c) (1)), the Department of Commerce sent a letter by certified mail to notify Micro Products Company that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Micro Products Company thirty days to respond was published in the **Federal Register** on November 12, 1997 at 62 FR 60690. Pursuant to 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of Micro Products Company to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Micro Products Company for its failure to file an annual report. The Department has sent a letter, dated December 12, 1997, to notify Micro Products Company of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11).

Dated: December 12, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–32881 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121197A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (1060, 1065, 1068, 1069, 1107).

SUMMARY: Notice is hereby given that the Simpson Timber Company (STC), in Korbel, CA, Humboldt Fish Action Council (HFAC), in Eureka, CA, the U.S. Fish and Wildlife Service (FWS), in Arcata, CA, Rellim Redwood Company (RRC), in Crescent City, CA, and Dr. Isaac Wirgin from the Institute of Environmental Medicine - New York University Medical Center have applied in due form for permits authorizing takes or possession of listed species for scientific research purposes.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before January 16, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1060, 1065, 1068, and 1069: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707 575–6066).

For permit 1107: Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401)

FOR FURTHER INFORMATION CONTACT: For permits 1060, 1065, 1068, and 1069: Thomas Hablett, Protected Resources Division, (707–575–6066).

For permit 1107: Terri Jordan, Office of Protected Resources, (301–713–1401)

SUPPLEMENTARY INFORMATION: STC, HFAC, FWS, RRC, and Dr. Isaac Wirgin request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

STC (1060) requests a five-year permit for takes of juvenile, threatened, southern Oregon/northern California coast (SONNC) coho salmon (*Oncorhynchus kisutch*) associated with STC ownership monitoring projects in Humboldt and Del Norte County coastal streams within the Evolutionarily Significant Unit (ESU). The studies consist of coho salmon distribution and abundance surveys for which ESA-listed fish are proposed to be taken. ESA listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also requested.

HFAC (1065) requests a five-year permit for takes of adult and juvenile, threatened, SONNC coho salmon (*Oncorhynchus kisutch*) associated with fish population studies in the Freshwater Creek drainage within the ESU. The studies consist of coho salmon abundance and spawner surveys for which ESA-listed fish are proposed to be taken. ESA-listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect

mortalities associated with the research are also requested.

FWS (1068) requests a five-year permit for takes of juvenile and adult, threatened, southern Oregon/northern California coast (SONNC) coho salmon (*Oncorhynchus kisutch*) associated with monitoring projects in the Klamath and Trinity River watersheds within the Evolutionarily Significant Unit (ESU). The studies consist of juvenile coho salmon distribution and abundance surveys, and spawner surveys for adults, for which ESA-listed fish are proposed to be taken. ESA-listed juveniles will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed adults will be observed, and carcasses will be handled. ESA-listed juvenile indirect mortalities associated with the research are also requested.

RRC (1069) requests a five-year permit for takes of juvenile, threatened, SONNC coho salmon (*Oncorhynchus kisutch*) associated with fish population and habitat studies on RRC ownership properties in the Smith River Basin within the ESU. The studies consist of coho salmon distribution and abundance surveys for which ESA-listed fish are proposed to be taken. ESA-listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also requested.

Dr. Isaac Wirgin (1107) requests authorization to conduct research on shortnose sturgeon using tissue samples (fin clips, barbels, blood) to isolate DNA. The purpose of the research is to determine if genetic differences exist among populations of shortnose sturgeon that span the species' entire range along the Atlantic coast.

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: December 11, 1997.

Joseph Blum,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–32947 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120697C]

Marine Mammals; Scientific Research Permit (PHF# 350–1434)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Brendan Kelly, University of Alaska Fairbanks, Juneau, Alaska 99801, has applied in due form for a permit to take ringed seals (*Phoca hispida*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before January 16, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media. Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The purpose of the proposed research is to investigate the behavioral responses of ringed seals to noise disturbances, the role of sound in ringed seal navigation, the under-ice foraging behavior of ringed seals, and improvements to methods for enumerating ringed seals. The study will take place between 15 January and 1 July each year in 1998–2002 in U.S. waters of the Bering, Chukchi, and/or Beaufort Sea, depending on ice conditions and appropriate overlap with aerial surveys conducted by other agencies.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 9, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–32866 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 9, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated. Integrated products will no longer be subject to quota. CITA has informed Macau of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for certain categories have been reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51632, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 9, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	2,954,722 square meters.
225	10,341,527 square meters.
313	7,386,805 square meters.
314	1,231,134 square meters.
315	3,693,403 square meters.
317	7,386,805 square meters.
326	2,954,722 square meters.
333/334/335/833/834/835.	290,585 dozen of which not more than 153,070 dozen shall be in Categories 333/335/833/835.
336/836	66,819 dozen.
338	353,663 dozen.
339	1,481,367 dozen.
340	336,030 dozen.
341	215,902 dozen.
342	97,673 dozen.
345	59,725 dozen.
347/348/847	837,111 dozen.
350/850	68,874 dozen.
351/851	78,140 dozen.
359–C/659–C [1]	390,694 kilograms.
359–V [2]	130,232 kilograms.
611	2,954,722 square meters.
625/626/627/628/629	7,386,805 square meters.
633/634/635	581,749 dozen.
638/639/838	1,811,583 dozen.
640	136,242 dozen.
641/840	234,164 dozen.
642/842	136,426 dozen.
645/646	319,364 dozen.
647/648	644,254 dozen.
659–S [3]	137,250 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt. [4] and 469pt. [5], as a group.	1,477,266 square meters equivalent.
Sublevel in Group II	
445/446	78,669 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Macau of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32893 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of an Import Restraint Level for Certain Cotton and Man-Made Textile Products Produced or Manufactured in Mexico

December 12, 1997

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a level.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist,

Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Government of the United States has agreed to increase the 1997 consultation level for Categories 347/348/647/648 to 690,000 dozen.

This level does not apply to NAFTA (North America Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, this consultation level does not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 20, 1996). Also see 61 FR 54986, published on October 23, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 17, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997. The levels established in that directive do not apply to NAFTA (North America Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of NAFTA or to goods assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

Effective on December 17, 1997, you are directed to increase the level for Categories 347/348/647/648 to 690,000 dozen [1], pursuant to exchange of letters dated December 5, 1997 and provisions of the NAFTA (North America Free Trade Agreement).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32900 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1997 Correlation

December 11, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1997 Correlation

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1997) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program. The Correlation should be amended to include the following changes:

Changes to the 1997 Correlation

The following changes for certain discharged printed cotton fabrics were effective on October 1, 1997:

Category 313
Delete 5208.52.3040.
Add 5208.52.3035—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of number 42 or lower number, sheeting, discharge printed.

[1] The level has not been adjusted to account for any imports exported after December 31, 1996.

Changes to the 1997 Correlation

Add 5208.52.3045—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of number 42 or lower number, sheeting, other than discharge printed.
Delete 5208.52.4040.
Add 5208.52.4035—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of numbers 43 to 68, sheeting, discharge printed.
Add 5208.52.4045—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of numbers 43 to 68, sheeting, other than discharge printed.
Delete 5209.51.6030.
Add 5209.51.6032—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, plain weave, sheeting, not napped, discharge printed.
Add 5209.51.6035—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, plain weave, sheeting, not napped, other than discharge printed.

Category 314
Delete 5209.51.6020.
Add 5209.51.6015—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, plain weave, poplin or broadcloth, discharge printed.
Add 5209.51.6025—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, plain weave, poplin or broadcloth, other than discharge printed.

Category 315
Delete 5208.52.4060.
Add 5208.52.4055—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of numbers 43 to 68, printcloth, discharge printed.
Add 5208.52.4065—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of numbers 43 to 68, printcloth, other than discharged printed.

Category 317
Delete 5208.59.2090.
Add 5208.59.2085—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2, other fabrics, satin weave or twill weave, other than sateens, discharged printed.
Add 5208.59.2095—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2, other fabrics, satin weave or twill weave, other than sateens, other than discharged printed.

Category 326
Delete 5208.59.2020.

Changes to the 1997 Correlation

Add 5208.59.2015—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2, other fabrics, satin weave or twill weave, sateens, discharged printed.
Add 5208.59.2025—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2, other fabrics, satin weave or twill weave, sateens, other than discharge printed.
Delete 5209.59.0020.
Add 5209.59.0015—Woven fabrics, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, printed, other fabrics, satin weave or twill weave, sateens, discharge printed.
Add 5209.59.0025—Woven fabrics, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, printed, other fabrics, satin weave or twill weave, sateens, other than discharge printed.
Delete 5211.59.0020.
Add 5211.59.0015—Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing more than 200 g/m2, printed, other fabrics, satin weave or twill weave, sateens, discharge printed.
Add 5211.59.0025—Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing more than 200 g/m2, printed, other fabrics, satin weave or twill weave, sateens, other than discharge printed.

The following changes were effective on August 1, 1997:

Category 622
Delete 7019.40.4000.
Add 7019.40.4030—Other woven fiberglass fabrics, not colored, silica filament fabric of filaments with a silica content greater than 93 percent.
Add 7019.40.4060—Other woven fiberglass fabrics, not colored, other than silica filament fabric of filaments with a silica content greater than 93 percent.
Delete 7019.40.9000.
Add 7019.40.9030—Other colored woven fiberglass fabrics, silica filament fabric of filaments with a silica containing greater than 93 percent.
Add 7019.40.9060—Other colored woven fiberglass fabrics, other than silica filament fabric of filaments with a silica containing greater than 93 percent.

Category 359
Delete 6117.80.9010.
Replace with 6117.80.9510—definition remains unchanged.
Delete 6217.10.9010.
Replace with 6217.10.9510—definition remains unchanged.

Category 459
Delete 6117.80.9020.
Replace with 6117.80.9520—definition remains unchanged.
Delete 6117.80.9030.
Replace with 6117.80.9530—definition remains unchanged.

Changes to the 1997 Correlation

Delete 6217.10.9020.
Replace with 6217.10.9520—definition remains unchanged.

Category 659
Delete 6117.80.9040.
Replace with 6117.80.9540—definition remains unchanged.
Delete 6217.10.9030.
Replace with 6217.10.9530—definition remains unchanged.

Category 859
Delete 6117.80.9070.
Replace with 6117.80.9570—definition remains unchanged.
Delete 6217.10.9050.
Replace with 6217.10.9550—definition remains unchanged.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32895 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1998

December 12, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Committee for the Implementation of Textile Agreements (CITA) announces that the 1998 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available either in December 1997 or January 1998 as part of the Office of Textiles and Apparel (OTEXA) CD-Rom of publications.

The CD-Rom may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Barbara Anderson, at a cost of $25. Checks or money orders should be made payable to the U.S. Department of Commerce.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32899 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Temporary Amendment to the Requirements for Participating in the Special Access Progam for Caribbean Basin Countries

December 11, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending amendment of requirements for participation in the Special Access Program for a temporary period.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice and letter to the Commissioner of Customs published in the **Federal Register** on July 2, 1997 (62 FR 35788) announced the temporary amendment to the foreign origin exception for findings and trimmings under the Special Access Program. By date of export, the foreign origin exception for findings and trimmings, including elastic strips of less than one inch in width, under the Special Access Program was temporarily amended to include non-U.S. formed, U.S. cut interlinings for the period June 23, 1997 through December 22, 1997 for women's and girls' suit jackets and suit-type jackets in Categories 435, 444, 635 and 644. This amendment is being extended for a one-year period beginning on December 23, 1997 and extending through December 22, 1998 for women's and girls' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and are of a type described below:

(1) A chest type plate, "hymo" piece or "sleeve header" of woven or welf-inserted warp knit construction of

coarse animal hair or man-made filaments used in the manufacture of women's or girls' tailored suit jackets and suit-type jackets;

(2) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets.

Note that the amendment is not being extended for weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachement by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets. These interlinings must be formed and cut in the United States.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends but does not cancel the directive issued to you on June 26, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns the foreign origin exception for findings and trimmings under the Special Access Program.

Effective on December 23, 1997, by date of export, you are directed to extend, for the one-year period December 23, 1997 through December 22, 1998, the amendment to treat non-U.S. formed, U.S.-cut interlinings, further described below, for women's and girls' wool and man-made fiber suit jackets and suit-type jackets in Categories 435, 444, 835 and 844 as qualifying for the exception for findings and trimmings, including elastic stripe less than one inch in width, created under the Special Access Program established effective September 1, 1986 (see 51 FR 21208). In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article.

The amendment implemented by this directive shall be of a temporary nature. With respect to women's and girls' suit jackets and suit-type jackets in Categories 435, 444, 635 and 644, the amendment will terminate on December 22, 1998, by date of export of the assembled article.

As described above, non-U.S. formed, U.S.-cut interlinings may be used in imports of women's or girls' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and of a type described below:

(1) A chest plate, "hymo" piece or "sleeve header" of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of women's or girls' tailored suit jackets and suit-type jackets;

(2) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets.

This amendment is not being extended for weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets. These interlinings must be formed and cut in the United States.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32896 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Satellite Reconnaissance

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Open Systems will meet in closed session on December 17–18, 1997 and January 27–28, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the benefits of, criteria for, and obstacles to the application of an open systems approach to weapon systems, and to make recommendations on revisions to DoD policy, practice, or investment strategies that are required to obtain maximum benefit from adopting open systems. The Task Force should examine application to new defense programs, to those that have already made substantial investments in a design, and to those that are already fielded, across the spectrum of weapon systems, not just those heavily dependent on advanced computers and electronics.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 12, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–32951 Filed 12–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on February 26, 1998 and from 8:30 a.m. to 4:30 p.m. on February 27, 1998. The meeting will be held at The Delta King Hotel, Sacramento, California. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests as well as renorming of those tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director for Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than January 23, 1998.

Dated: December 11, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense

[FR Doc. 97–32870 Filed 12–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Air and Space Command & Control Agency (ASC2A) Advisory Group Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at Langley Air Force Base, VA on January 13–14, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–32854 Filed 12–16–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Evans Subpost Fort Monmouth, New Jersey

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this FEIS is the disposal of the Evans Subpost Fort Monmouth, New Jersey, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The FEIS addresses the environmental consequences of the disposal and subsequent reuse of the 215 acres. Three alternative methods of disposal are analyzed: encumbered disposal, unencumbered disposal and retention of the property in a caretaker status (i.e., the no action alternative). The Army's preferred alternative for disposal of the Evans Subpost is encumbered disposal, which involves conveying the property with conditions imposed on historic resources, remedial activities, special easements and restrictive covenants to create or maintain buffer zones between sensitive areas or adjoining parcels. The FEIS concludes that the alternatives analyzed will have both long-term adverse and short-term adverse effects and that the significant adverse effects will result under the medium and high intensity reuse scenarios. The FEIS identifies mitigation measures that can be taken in the future to avoid or reuse any adverse impacts from reuse.

DATES: The public review period for this document ends 30 days after the date of publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the FEIS are available for review at the Wall Township Public Library, 2700 Allaire Road, Wall, New Jersey 07719. Copies of the FEIS may also be obtained by writing to Dr. Susan Rees, U.S. Army Engineer District, ATTN: CESAM–PD–E, P.O. Box 2288, Mobile, Alabama 36628–0001 or by telephone at (334) 694–4141 or telefax (334) 690–2721.

SUPPLEMENTARY INFORMATION: The Draft EIS (DEIS) was made available for public review and comment. A notice of availability (NOA) of the DEIS was published in the **Federal Register** (61 FR 22058) on May 13, 1996. The Army conducted a public meeting on May 29, 1996, to receive public input on the DEIS. Display advertisements informing the public were taken out in the local newspaper.

Dated: December 4, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 97–32944 Filed 12–16–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 16, 1998 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S, Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 11, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0001 DAPE–ARI

SYSTEM NAME:

Professional Staff Information File *(February 22, 1993, 58 FR 10025).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '5 U.S.C. 301, Departmental Regulations'.

* * * * *

A0001 DAPE–ARI

SYSTEM NAME:

Professional Staff Information File.

SYSTEM LOCATION:

Headquarters, U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Army civilian psychologists, engineers, economists, sociologists, and other professional staff members employed by the Army Research Institute who voluntarily supply information for release and military officers assigned to the Army Research Institute who voluntarily provide information for release.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain names of individuals and their curricula vitae, including data and information on the qualifications, expertise, experience and interests of the professional staff of the Army Research Institute. Data include name, grade or rank, Institute assignment,

education, prior professional experience, professional activities and development, lists of awards and recognitions, extra-government professional activities and significant professional publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 3013.

PURPOSE(S):

To establish and maintain a professional staff directory which is used to consider staff members with special expertise for special duty assignments and to produce evidence of professional staff qualifications during Institute peer reviews and similar independent evaluations.

Records are also used as basis for summary statistical reports concerning professional qualifications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on a personal computer.

RETRIEVABILITY:

Information is retrieved by the surname of professional person. Categorical data is retrieved by keyword.

SAFEGUARDS:

Records are accessible only to designated individuals having official need-to-know in the performance of assigned duties.

RETENTION AND DISPOSAL:

Information will be maintained during the tenure of the person and deleted upon permanent departure from the Institute.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Research Institute for the Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Research Institute for the Behavioral and Social Sciences, ATTN: PERSI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, U.S. Army Research Institute for the Behavioral and Social Sciences, ATTN: PERSI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 430–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals employed by or assigned to the Army Research Institute who voluntarily submit requested information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0602 DAPE–ARI

SYSTEM NAME:

Behavioral and Social Sciences Research Project Files *(February 22, 1993, 58 FR 10150).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013 and 2358; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders, CD ROM; computer disks, and magnetic tape.'

* * * * *

A0602 DAPE–ARI

SYSTEM NAME:

Behavioral and Social Sciences Research Project Files.

SYSTEM LOCATION:

U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600 and field offices located at Fort Benning, GA; Boise, ID; Mannheim, Germany; Naval Training Center, Orlando, FL; Fort Hood, TX; Fort Knox, KY; Fort Leavenworth, KS; Fort Bragg, NC; and Fort Rucker, AL. Official mailing addresses are published as an appendix to the Army's compilation or record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officer, warrant officer, and enlisted military personnel, including Army Reservists and National Guard; family members of the above service members; civilian employees of Department of Defense; and samples of civilians from the general U.S. population who are surveyed to determine why people do or do not consider military service as a career or a short-term employment option.

CATEGORIES OF RECORDS IN THE SYSTEM:

Service member: Individual's name and Social Security Number, Army personnel records and questionnaire-type data relating to service member's pre-service education, work experience and social environment and culture, learning ability, physical performance, combat readiness, discipline, motivation, attitude about Army life, and measures of individual and organizational adjustments; test results from Armed Services Vocational Aptitude Battery and Skill Qualification Tests.

Non-service member: Individual's name and Social Security Number, and questionnaire type data relating to non-service member's education, work experience, motivation, knowledge of and attitude about the Army. When records show military service or marriage to a service member, the appropriate non-service records will be linked to the service record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013 and 2358; and E.O. 9397 (SSN).

PURPOSE(S):

To research manpower, personnel, and training dimensions inherent in the recruitment, selection, classification, assignment, evaluation, and training of military personnel; to enhance readiness effectiveness of the Army by developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. (No decisions affecting an individual's rights or benefits are made using these research records).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, CD ROM; computer disks, and magnetic tape.

RETRIEVABILITY:

By individual's name and/or Social Security Number. For research purposes, the data are usually retrieved and analyzed with respect to relative times of entry into service, training performance, and demographic values. Scheduled data for follow-up data collections however, are retrieved by month of scheduled follow-up and by name.

SAFEGUARDS:

Access to records is restricted to authorized personnel having official need therefor. Automated data are further protected by controlled system procedures and code numbers governing access.

RETENTION AND DISPOSAL:

Information is retained until completion of appropriate study or report, after which it is destroyed by shredding or erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of survey, if known.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of survey, if known.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained form the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his or her peers, or, in the case of ratings and evaluations, from supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–32871 Filed 12–16–97; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE NAVY

Record of Decision for the Disposal and Reuse of Naval Station Puget Sound at Sand Point, Seattle, Washington

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to dispose of Naval Station Puget Sound at Sand Point, Seattle, Washington, (Sand Point).

Navy intends to dispose of the property in a manner that is consistent with the City of Seattle Community Preferred Reuse Plan for Sand Point (Reuse Plan) that was submitted in November 1993 by the City of Seattle, the Local Redevelopment Authority (LRA) for the base, as modified by certain revisions endorsed by the City Council in June 1997 and designated as Options to the City's 1993 Reuse Plan. The 1993 Reuse Plan and the 1997 Options are described in the Final Environmental Impact Statement (FEIS) as the Preferred Alternative. The Preferred Alternative proposes a mixed land use consisting of educational facilities, community facilities, arts and cultural facilities, open space and recreational areas, residential areas, and institutional land uses.

In deciding to dispose of Sand Point in a manner consistent with the Preferred Alternative, Navy has determined that this mixed land use will enhance community and cultural resources, provide housing for the homeless, limit adverse environmental impacts, and ensure land uses that are compatible with surrounding properties. This Record Of Decision (ROD) does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the mixed use redevelopment to the acquiring entity and the local zoning authority.

Background:

Sand Point is located in King County, Washington, and lies within the limits of the City of Seattle. The base occupies 152 acres on the western shore of Lake Washington, about 6 miles northeast of downtown Seattle.

Under the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Pub. L. 100–526, the Defense Secretary's Commission on Base Realignment and Closure recommended "closing the portion of Naval Station Puget Sound (Sand Point) whose mission is to serve fleet units at Naval Station Puget Sound (Everett)." The Commission's recommendation was approved by the Secretary of Defense and accepted by the One Hundred First Congress in April 1989. In 1991, under the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, the Defense Base Closure and Realignment Commission recommended the complete closure of Sand Point. This recommendation was approved by President Bush and accepted by the One Hundred Second Congress in September 1991. On September 28, 1995, Navy ceased operations at Sand Point and placed the property in caretaker status.

Two Federal agencies, the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior's U.S. Geological Survey (Biological Resources Division) requested interagency transfers of base closure property at Sand Point. Navy will transfer to NOAA Building 27 and Building 409 and about 10 acres of land in the northern part of the base adjacent to NOAA's Sand Point area facilities, as well as the access road that covers about 1.2 acres. Navy will transfer Building 61 and about 5 acres of land at the southeast corner of the base to Interior for use as the National

Fisheries Research Center. Navy declared the remaining property surplus to the needs of the Federal Government in the Notice published in the **Federal Register** on October 11, 1995.

Navy published a Notice of Intent in the **Federal Register** on November 19, 1993, announcing that Navy would prepare an Environmental Impact Statement (EIS) that would analyze the impacts of disposal and reuse of the land, buildings, and infrastructure at Sand Point. Navy conducted the public scoping process between November 19, 1993 and January 14, 1994. A public scoping meeting was held at NOAA's Building 9 Theater, adjacent to the base, on December 16, 1993.

On November 8, 1996, Navy distributed a Draft Environmental Impact Statement (DEIS) to Federal, State, and local agencies, elected officials, the Muckleshoot Indian Tribe, and interested persons. Navy held a public hearing on December 2, 1996, at the Eckstein Middle School in Seattle. The forty-five day public comment period on the DEIS expired on December 23, 1996, but was extended to January 17, 1997, to permit submission of additional comments.

Federal and State agencies, local governments, community groups and associations, and the general public submitted comments on the DEIS. The Muckleshoot Indian Tribe did not submit comments on the DEIS. These comments and Navy's responses were incorporated in the Final Environmental Impact Statement, which was distributed to the public on October 24, 1997, for a review period that concluded on November 24, 1997. Navy received two letter comments on the FEIS.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this Federal property. In the NEPA process, Navy analyzed the environmental impacts of various proposed land uses that could result from disposal of the Sand Point property. Navy also evaluated a "No action" alternative that would leave the property in a caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety. For its analysis, Navy relied upon the reuse and redevelopment plan proposed by the City of Seattle and a redevelopment plan proposed by the Muckleshoot Indian Tribe.

The City of Seattle presented its Reuse Plan to the Department of the Navy in November 1993. In a letter to the Navy dated February 22, 1996, the City set forth several revisions to the 1993 Reuse Plan. These changes, endorsed by the City Council in June 1997, were designated in the FEIS as Options to the City Plan.

The 1993 Reuse Plan proposed a mixed use of the Sand Point property that divided the base into six activity areas: (1) A waterfront park in the northern part of the base known as the north shore recreation area; (2) the education and community activities area in the western part of the base composed of educational and community activity buildings, a firefighter training facility, and a commercial film studio; (3) the Magnuson Park Arts, Culture and Community Center in the eastern part of the base composed of an indoor community center and an outdoor amphitheater for community events; (4) the Magnuson Park open space/recreation expansion area, composed of public parkland, athletic fields, pedestrian paths, bicycle paths and expanded bus routes in the southeastern part of the base adjacent to Magnuson Park, a new entrance to Magnuson Park at the intersection of Sand Point Way and Northeast 65th Street, and wetland restoration at the former Mud Lake in the southeastern part of the base; (5) the residential area composed of 50 low income housing units in a barracks building and 200 transitional housing units for the homeless in the southwestern part of the base; and (6) institutional uses reflected in the activities of the Federal agencies that will occupy property at Sand Point.

The 1997 Options to the City Plan eliminated the 50 low income housing units and instead proposed to use the former barracks building for educational classrooms and school administrative spaces. The Options proposed to use other facilities to train City employees such as police officers and to provide an activity center for senior citizens. The Options also proposed expanding the boundaries of the north shore recreation area to include Buildings 2 and 67. The Options would eliminate the fire training center that the 1993 Reuse Plan intended for Building 67 and replace it with a cultural and community activities center. The Options would also eliminate the film studio initially planned for Building 2 and instead use the building as an indoor athletic facility.

The Preferred Alternative in the FEIS is a combination of the 1993 Reuse Plan and the 1997 Options to the City Plan. This alternative also reflects the 1997 discussions between the City of Seattle and the University of Washington that resulted in the LRA's proposal to use certain facilities at Sand Point for classrooms and administrative activities.

In June 1993, the Muckleshoot Indian Tribe submitted a draft plan to Navy proposing reuse of the entire 152-acre base. The FEIS refers to this proposal as the Muckleshoot Plan. In a letter dated July 26, 1993, the Department of the Interior's Bureau of Indian Affairs (BIA) submitted a request on behalf of the Muckleshoot Indian Tribe under the Federal Property and Administrative Services Act of 1949, 40 U.S.C 471, seeking an interagency transfer of 85 acres of base closure property in the northern part of Sand Point. On September 7, 1995, BIA withdrew its request for transfer of the 85-acre Sand Point property. Nevertheless, Navy analyzed the Muckleshoot Plan in the FEIS as a reasonable alternative under NEPA.

The Muckleshoot Plan proposed a mixed use of the Sand Point property that included: (1) a commercial marina in the northern part of the base that would accommodate tribal fishing vessels and activities, fishing net storage, fisheries research, and recreational activities; (2) light industrial and warehousing activities in the north central part of the base; (3) social services, including a drug and alcohol treatment facility, a health clinic, a senior citizens center, and a student counseling facility in the central part of the base; (4) a vocational technical school for 5,000 to 7,000 Native American students with housing for the school's staff and approximately 600 students in the south central part of the base; (5) commercial activities in the southern part of the base; and (6) a new entrance to Magnuson Park at the intersection of Sand Point Way and Northeast 65th Street.

Environmental Impacts

Navy analyzed the potential impacts of the Preferred Alternative, the Muckleshoot Plan, and the "No action" alternative for each alternative's effects on land use, historic and cultural resources, socioeconomics (including demographics, housing, the local economy, social services, schools, and environmental justice), recreation, transportation, noise, public services and utilities, public health and safety, soils, biological resources and endangered species, water quality, and air quality. This Record Of Decision (ROD) focuses on the impacts that would likely result from implementing the Preferred Alternative.

In the FEIS, Navy used existing land uses as a basis for assessing the impact of the land uses proposed by the Preferred Alternative, the Muckleshoot Plan, and the "No action" alternative. Navy also considered the compatibility of the proposed land uses with the current uses of property adjacent to Sand Point.

The Preferred Alternative would result in a substantial increase in recreational and educational activity on the Sand Point property and a decrease in administrative and commercial activity as compared with the activities that Navy conducted on the base. These increased recreational and educational uses would not likely have a significant impact on the property or on the surrounding neighborhoods.

While the Preferred Alternative would result in an increase in residential use of the Sand Point property, this land use is similar in nature to the single family and multifamily residential community adjacent to Sand Point. The increase would not likely have an adverse impact on the surrounding area.

Several structures at Sand Point are eligible for listing on the National Register of Historic Places. Since the Preferred Alternative proposes to use these buildings for purposes similar to Navy's use of the buildings, their historic integrity will be maintained, as will that of the proposed historic district on the base. Although Navy did not discover any surface archeological resources at Sand Point, those resources could be present in undisturbed areas under the surface. If discovered, they will be protected by restrictions incorporated in documents conveying the property.

The Preferred Alternative proposes to consider demolition and modification of certain buildings within the proposed education and community activities area, if renovation and reuse are not feasible within 10 years. Either of these could have an adverse impact on buildings within the historic district. Thus, Navy entered into a Programmatic Agreement (PA) with the State Historic Preservation Officer (SHPO) on October 29, 1997, that was accepted by the Advisory Council on Historic Preservation (ACHP) on November 20, 1997. This PA would protect the historic district and its constituent elements after conveyance of the Sand Point property. The PA requires the incorporation of restrictive covenants in the conveyance documents to ensure protection of the historic properties and any subsurface archeological resources that may be discovered after conveyance.

Navy's consideration of the socioeconomic impacts of disposal and reuse examined the potential effects on demographics, housing, the local economy, social services, schools, and environmental justice. The Preferred Alternative would cause an increase in population in the Sand Point area of about 2 percent and an increase in homeless assistance housing units of about 2 percent. It would not have a significant impact on employment or social services in the region.

The Preferred Alternative would not have a significant impact on the regional economy. Navy's appraisal of its impact on property values, set forth in Appendix G of the FEIS (the Property Value Study), concluded that reuse of the southwestern part of the base along Sand Point Way for transitional multifamily housing should not result in a diminution in the value of nearby properties.

Children living in the transitional housing would continue to attend the same schools that they attended before occupying this housing, using transportation provided by the Seattle School District. Thus, the Preferred Alternative would not have an impact on schools in the Sand Point area.

Navy also analyzed the impacts on low-income and minority populations pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, reprinted in 42 U.S.C. 4321 note. There would be no disproportionately high and adverse human health or environmental effects on minority and low-income populations. The Preferred Alternative would, in fact, benefit minority and low-income populations by providing increased housing, social services and educational opportunities.

The Preferred Alternative would increase the amount of property available for recreational use by 160 percent, from 30 acres to 78 acres. This increase would be reflected in additional indoor and outdoor recreational facilities.

Navy's evaluation of the impacts on transportation considered current traffic conditions and transportation systems, transit routes, high occupancy vehicle routes, bicycle and pedestrian traffic, traffic volumes, traffic safety, and parking. The Preferred Alternative would generate about 9,050 average daily trips, compared with 7,600 such trips when the base was active in 1993. Although not a significant impact, the Preferred Alternative's housing and educational uses would result in an increase in bus ridership. Similarly, because it increases access to the property, this alternative would also result in an increase in the use of existing bicycle and pedestrian routes. In light of the availability of space on the base, parking and construction-related traffic would not likely cause adverse impacts in the Sand Point area.

The noise associated with the Preferred Alternative would emanate from four sources: (1) Traffic (both on and off site); (2) construction; (3) heating, ventilating, and other mechanical equipment; and (4) other sources (people, activities, and equipment). With the exception of noise generated by outdoor music concerts at the proposed amphitheater, the Preferred Alternative would not cause any significant impact. The noise generated by these concerts, however, could cause a significant impact on the surrounding area.

The Preferred Alternative would not cause any significant impact on public services (*i.e.*, water, wastewater and sanitary sewer, stormwater and solid waste) and utilities. Similarly, it would not have a significant impact on public health and safety (*i.e.*, crime and law enforcement, fire protection, emergency and medical services, and environmental health) in the Sand Point area.

The environmental remediation required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.* (CERCLA), and Washington's Model Toxics Control Act, RCW 70.105D, WAC 173–340 (MTCA), has been completed. Those areas on the base that still contain contaminants are not likely to cause an impact if left undisturbed. The Washington State Department of Ecology concurs that with proper notification to future users of the property and deed restrictions limiting use of the property, no further action is necessary. However, unless adequately mitigated, the disturbance of asbestos-containing materials and lead-based paint during demolition and remodeling could have an impact on human health.

The Preferred Alternative would not cause any significant impact on soils, geology, and topography. This alternative would have only minimal and insignificant impacts on vegetation, wildlife, endangered species, and wetlands. It would increase the amount of wetlands by restoring a wetland habitat at the former Mud Lake.

Bald eagles, which are on the Federal and State lists of threatened species, are present in the vicinity of Lake Washington and Sand Point. Peregrine falcons, which are on the Federal and State lists of endangered species, are also present in this area. The Preferred Alternative would not affect either the bald eagle or the peregrine falcon because it would not affect their critical

habitats or the species upon which they prey.

The Preferred Alternative would result in a decrease of 30 acres in the amount of paved surface on the property. This decrease would occur largely at the southeastern end of the base where the Mud Lake wetlands and grassy recreational areas would be restored. The conversion of impervious surface to wetlands and grassy fields, however, would not have an adverse impact on surface water in Lake Washington and may result in less pollutants draining into the lake.

There would not be any impact on air quality from implementation of the Preferred Alternative. This alternative, however, could result in the temporary and intermittent release of pollutants during demolition and construction activities. The Puget Sound Air Pollution Control Agency (PSAPCA) regulations governing demolition and construction activities (Washington Clean Air Act RCW T. 70 Ch. 94) will ensure consistency with applicable air quality standards. The increases in carbon monoxide that would result from the increased traffic would not exceed applicable regional standards.

Section 176 of the Clean Air Act, 42 U.S.C. 7506, as amended, requires Federal agencies to review their activities to ensure that they do not hamper local efforts to control air pollution. This statute prevents Federal agencies from conducting activities that do not conform to an approved implementation plan but recognizes certain categorically exempt activities. The conveyance of real property, regardless of the method, is such a categorically exempt activity. Accordingly, disposal of the Sand Point property does not require Navy to conduct a conformity analysis.

Mitigation

Implementation of the decision to dispose of Sand Point does not require Navy to perform any mitigation measures beyond those discussed here. Navy will include appropriate restrictive covenants in the deeds for any parcels where hazardous substances remain and for the historic properties in accordance with applicable Federal and State laws.

These restrictive covenants will limit the use of certain property and notify future users of the property's condition. In accordance with the Programmatic Agreement that Navy entered into with the SHPO and the Advisory Council, restrictive covenants in the deed conveying the property will protect both historic and archeological resources and establish a process for preserving the historic district and its constituent elements.

Navy's FEIS identified and discussed those actions that would be necessary to mitigate impacts associated with the reuse and redevelopment of Sand Point. The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

The fact that the Preferred Alternative conforms to the City of Seattle's Comprehensive Plan, Zoning Code, and Physical Development Management Plan provides assurance that the property will be redeveloped in a controlled manner. Additionally, the City of Seattle is developing a Transportation Management Program and a Construction Management Program for Sand Point that will mitigate the effects caused by increased traffic volumes and construction activities. The City's Design Guidelines will be applied to control Sand Point's reuse and preserve the property's unique and historic character.

Comments Received on the FEIS

Navy received comments from a community group and an individual. They expressed concern about the proposed reuse of certain Sand Point facilities by the University of Washington for educational activities. Their comments did not raise any new issues or problems concerning implementation of the Reuse Plan or propose any mitigation measures.

Navy's consideration in the FEIS of the impacts arising out of the City's educational proposal was sufficient to ascertain the impacts of the particular uses advanced by the University of Washington and proposed by the LRA after conclusion of the FEIS. Navy determined that the educational uses advanced by the University of Washington fall within the scope of impacts analyzed in the FEIS and that no further consideration is required.

Regulations Governing the Disposal Decision

Since the proposed action contemplates a disposal action under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Pub. L. 101–510, 10 U.S.C. 2687 note, selection of the City of Seattle's 1993 Reuse Plan and 1997 Options as the Preferred Alternative was based upon the environmental analysis in the FEIS and application of the standards set forth in DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 90 and 91.

Section 101–47.303–1 of the FPMR requires that the disposal of Federal property benefit the Federal government and constitute the highest and best use of the property. Section 101–47.4909 of the FPMR defines the "highest and best use" as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The "highest and best use" determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the highest and best use of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth at Sections 101–47.1 through 101–47.8 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of DBCRA, may Navy apply disposal procedures other than the FPMR's prescriptions.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Pub. L. 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 90.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the Local Redevelopment Authority's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, *e.g.*, reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 91.7(d)(3) of the DoD Rule provides that the Local Redevelopment Authority's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484, as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR Sec. 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid are committed by law to agency discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The City of Seattle's proposed reuse of the Sand Point property, which consists of the City's 1993 Reuse Plan and its 1997 Options and is embodied in the Preferred Alternative, is consistent with the prescriptions of the FPMR and Section 90.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for several purposes, including educational and community facilities, arts and cultural facilities, open space and recreational areas, residential areas, and institutional land uses. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

Although the "No action" alternative has less potential for causing adverse environmental impacts, this alternative would not take advantage of the property's location, physical characteristics and infrastructure or the current uses of adjacent property. Additionally, it would not foster local redevelopment of the Sand Point property.

The acquiring entity, under the direction of Federal, State and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

Accordingly, Navy will dispose of Naval Station Puget Sound at Sand Point in a manner that is consistent with the City of Seattle's 1993 and 1997 plans for the property.

Dated: December 8, 1997.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion And Redevelopment).

[FR Doc. 97–32938 Filed 12–16–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement (DEIS) for Development of Facilities to Support Basing U.S. Pacific Fleet F/A–18E/F Aircraft on the West Coast of the United States

AGENCY: Department of the Navy, DoD.

ACTION: Announcement of public hearings.

SUMMARY: The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for development of facilities to support basing U.S. Pacific Fleet F/A–18E/F aircraft on the West Coast of the United States. Two public hearings will be held for the purpose to receive oral and written comment on the DEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing.

DATES: Hearing dates are as follows:

1. January 7, 1998, 7:00 p.m., Lemoore, CA.
2. January 8, 1998, 7:00 p.m., El Centro, CA.

ADDRESSES: Hearing locations are:

1. Lemoore—Lemoore City Council Chamber, 429 C Street, Lemoore, California.
2. El Centro—Imperial County Board of Supervisors Chambers, 940 West Main Street, El Centro, California.

FOR FURTHER INFORMATION CONTACT: Mr. Surinder Sikand, (650) 244–3020.

SUPPLEMENTAL INFORMATION: Pursuant to the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), implementing the procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for development of facilities to support basing U.S. Pacific Fleet F/A–18E/F aircraft on the West Coast of the United States.

A Notice of Intent (NOI) to prepare the DEIS was published in the **Federal Register** on 7 April 1997 (62 FR 16563). Public scoping meetings for the proposed project were held on Monday, April 28, 1997, at the Lemoore High School Cafeteria, Lemoore, California; on Tuesday, April 29, 1997, at the Imperial County Board of Supervisors Office, El Centro, California; and on Wednesday, April 30, 1997, in the Bougainvillea Room, Orchid Professional Building, Camarillo, California.

The proposed action includes siting 164 F/A–18E/F aircraft, locating associated military personnel and family members, and providing associated training functions at the receiving installation. The two installations considered in detail for the West Coast base are Naval Air Station (NAS) Lemoore and Naval Air Facility (NAF) El Centro. NAS Lemoore is the preferred alternative evaluated in the

EIS. For NAS Lemoore, where F/A–18C/D strike fighter squadrons are currently based, the proposed action would result in an increase of 92 aircraft because 72 of the 164 aircraft would replace existing F/A–18 aircraft. Basing the aircraft at NAF El Centro, which does not have existing strike fighter squadrons, would result in an increase of 164 aircraft at the installation.

The DEIS analyzes potential environmental impacts to land use and airspace, visual resources, socioeconomics, cultural resources, traffic and circulation, air quality, noise, biological resources, water resources, utilities and services, public health and safety, and hazardous materials and waste. Potentially significant, but mitigable, environmental impacts include impacts to land use and airspace and biological resources at NAF El Centro, schools (socioeconomics) at NAS Lemoore, and traffic, air quality, and hazardous materials and storage at both installations. Significant, and not mitigable, impacts related to noise have been identified at NAF El Centro.

No decision on the proposed action will be made until the National Environmental Policy Act process has been completed.

The DEIS has been distributed to various federal, state, and local agencies, local groups, elected official, special interest groups, and individuals. The DEIS is also available for review at the following public libraries: Lemoore, Hanford, Fresno, Avenol, El Centro, and Brawely.

The 2 public hearings will be held for the purpose to receive oral and written comment on the DEIS. The first hearing will be held on Wednesday, January 7, 1998, at 7:00 p.m., at the Lemoore City Council Chamber, 429 C Street, Lemoore, California. The second hearing will be held on Thursday, January 8, 1998, at 7:00 p.m., at the Imperial County Board of Supervisors Chambers, 940 West Main Street, El Centro, California. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a court recorder. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Mr. Surinder Sikand (Code 70311), Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066, FAX (650) 244–3206. Written comments are requested not later than January 26, 1998.

Electronic Filing Address—comments and data may be submitted by electronic mail (e-mail) to: ssikand@efawest.navfac.navy.mil.

Dated: December 12, 1997.

Michael L Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 97–32939 Filed 12–16–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government Owned Invention for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Availability of Government Owned Invention for Licensing.

SUMMARY: U.S. Patent Number 4,906,879, entitled "Terbium-Dysprosium Magnetostrictive High Power Transducers," is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the patent cited or further information should be directed to Mr. Dick Bloomquist, Director, Technology Transfer, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700, telephone number: (301) 227–4299.

(Authority: 35 U.S.C. 207; 37 CFR part 404; 32 CFR part 746)

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 97–32908 Filed 12–16–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter a record system in its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding a routine use to permit the disclosure of personnel information to private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

DATES: The action will be effective without further notice on January 16, 1998 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 9, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Resporisibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

The specific changes to the record system being altered are set forth below followed by the notice, as altered, published in its entirety.

Dated: December 11 , 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–3

SYSTEM NAME:

Navy Personnel Records System *(September 9, 1996, 61 FR 47483).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.'

* * * * *

N01070–3

SYSTEM NAME:

Navy Personnel Records System.

SYSTEM LOCATION:

Active duty records are located at the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; Naval Reserve Personnel Center, New Orleans, LA 70149–7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Secondary systems are located at the Department of the Navy Activities in the chain of command between the local activity and the headquarters level; Federal Records Storage Centers; National Archives. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records are retained one year past retirement, removal, or resignation of the member and then transferred to the National Personnel Records Center (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5101 for permanent retention. An exception is made for copies of officer fitness

reports, enlisted evaluations, and officer and enlisted counseling forms which may be maintained by the member's commanding officer or command for a period not to exceed five years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–32872 Filed 12–16–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.194Q]

Office of Bilingual Education and Minority Languages Affairs; Bilingual Education: State Grant Program

Notice extending the closing date for transmittal of applications for new awards for fiscal year (FY) 1998.

Deadline for Transmittal of Applications: The deadline date for transmittal of applications is extended from January 9, 1998, to January 30, 1998.

On December 2, 1997, the Secretary published in the **Federal Register** (62 FR 63780) a notice inviting applications for new awards for fiscal year 1998 under the Bilingual Education: State Grant Program.

The purpose of this notice is to extend the deadline date for transmittal of applications. This action is taken to increase the amount of time applicants have to prepare applications.

Deadline for Intergovernmental Review: March 31, 1998.

For Applications: The notice published in the **Federal Register** on December 2, 1997 (62 FR 63780), was a complete application package, including all of the information, selection criteria, application forms, and instructions needed to apply for an award under this program.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau, U.S. Department of Education, 600 Independence Avenue, S. W., room 5623, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9907. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7454.

Dated: December 11, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 97–32898 Filed 12–16–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–421–000]

Cinergy Services, Inc.; Notice of Filing

December 11, 1997.

Take notice that on December 9, 1997, Cinergy Services, Inc. ("Services") made an amendment to its October 31, 1997 filing in the above-captioned docket. Services' October 31 filing petitioned the Commission for acceptance of Rate Schedules Nos. 1–5; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain commission regulations. Services has amended its filing to request only the approvals needed for Rate Schedule No. 1 for CinCap IV, LLC, a Delaware limited liability company which is a wholly-owned subsidiary of Cinergy Capital and Trading, Inc. Services has requested a January 1, 1998 effective date for Rate Schedule No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 22, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32846 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–117–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 4, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP98–117–000 a request pursuant to Sections 157.205, and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate four delivery points under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate four delivery points in West Virginia and Ohio. Columbia states that the there is no impact on Columbia's existing design day and annual obligation. The estimated cost to install the taps is $150.00 per tap.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32836 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4686–001]

De Pere Energy L.L.C.; Notice of Filing

December 11, 1997.

Take notice that on November 7, 1997, De Pere Energy L.L.C. tendered for filing its compliance filing pursuant to the Commission's October 31, 1997 order issued in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 23, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32845 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–114–000]

K N Interstate Gas Transmission Co.; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 4, 1997, K N Interstate Gas Transmission Co. (Applicant), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–114–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate thirteen new delivery taps, under blanket certificate issued in Docket No. CP83–140–000, *et al.*,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant proposes to construct thirteen new delivery taps located in Adams, Antelope, Buffalo, Custer, Pierce, and Sherman Counties, Nebraska and Kearny County, Kansas, which will be added as delivery points under an existing transportation agreement between Applicant and K N Energy Inc. (KNE). These proposed delivery points will be used by KNE to facilitate the delivery of natural gas to direct retail sales customers.

Applicant certifies that (1) the volumes of gas which will be delivered at these proposed delivery points will be within the current maximum transportation quantities set forth in Applicant's transportation service agreement with KNE; (2) the addition of the proposed delivery points is not prohibited by Applicant's existing FERC Gas Tariff; and (3) the addition of the proposed delivery points will not have any adverse impact, on a daily or annual basis, upon Applicant's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

[1] *See*, 22 FERC ¶ 62,330 (1983).

of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32833 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–120–000]

KN Interstate Gas Transmission Co.; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 5, 1997, K N Interstate Gas Transmission Co. (Applicant), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–120–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate two new delivery taps, under blanket certificate issued in Docket No. CP98–140–000, *et al.*,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant states that Kearny County Gas Irrigators has requested the installation of two new delivery points under a transportation service agreement with Applicant. Applicant proposes to construct and operate the two new delivery taps which will be located in Kearny County, Kansas. These proposed delivery points would be located on Applicant's main transmission system and would facilitate the delivery of natural gas for irrigation purposes for members of Kearny County Gas Irrigators.

Applicant certifies that (1) the volumes of gas which will be delivered at these proposed delivery points will be within the current maximum transportation quantities set forth in Applicant's transportation service agreement with Kearny County Gas Irrigators; (2) the addition of the proposed delivery points is not prohibited by Applicant's existing FERC Gas Tariff; and (3) the addition of the proposed delivery points will not have any adverse impact, on a daily or annual basis, upon Applicant's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32836 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–589–000]

Logan Generating Company, L.P.; Notice of Filing

December 11, 1997.

Take notice that on October 31, 1997, Logan Generating Company, L.P. tendered for filing its quarterly report regarding transactions entered into during the quarter ending September 30, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 22, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32847 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–125–000]

MIGC, Inc.; Notice of Application

December 11, 1997.

Take notice that on December 9, 1997, MIGC, Inc. (MIGC), 12200 N. Pecos Street, Denver, Colorado 80234, filed in Docket No. CP98–125–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to install and operate compression, and related appurtenant facilities at the Hilight Processing Plant in Campbell County, Wyoming and at the Platte River Compressor Station in Converse County, Wyoming. MIGC states that due to the urgent need for additional capacity on MIGC's mainline, authorization is requested on an expedited basis, in early February of 1998, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MIGC states that the installation and operation of these facilities will serve to alleviate an existing capacity constraint on MIGC's system and by so doing will enable MIGC to increase throughout on the 75.4-mile section of MIGC's system which runs south from the Hilight Processing Plant to the systems of Colorado Interstate Gas Company and KN Interstate Transmission Company from an existing level of 90,000 Mcf per day to a level of 130,000 Mcf per day. MIGC states that the cost of the proposed project is estimated to be $5.67 million.

MIGC further states that in order to substantiate the need for additional capacity on its system, MIGC posted a notice on its Electronic Bulletin Board and commenced a three-week open season running from August 18, 1997 through September 5, 1997. It is stated that such open season resulted in the execution of a binding Precedent Agreement by which one party has agreed to subscribe to the entire 40,000 Mcf per day of additional capacity on a firm basis for a term of 20 years, at MIGC's current maximum rate under Rate Schedule FTS–1.

[1] *See*, 22 FERC ¶ 62,330 (1963).

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before December 22, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protesters provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MIGC to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32843 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–116–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 4, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP98–116–000, a request, pursuant to Sections 157.205 and 157.214 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.214), for authorization to increase the storage capacity at its Keelor Storage Field in McKean County, Pennsylvania, under its blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National Fuel requests authorization to increase the storage capacity from 3.3 Bcf (with 1.8 Bcf working gas) to 3.9 Bcf (with 2.4 Bcf of working gas). National Fuel asserts that the new capacity resulting from this proposal will support storage service to be offered to its shippers. National Fuel states that the increase in capacity at the Keelor Storage Field will not require additional facilities within the meaning of the Commission's regulations. National Fuel indicates that the current and requested maximum storage pressures are 625 psig.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32835 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–113–000]

Southern Natural Gas Company; Florida Gas Transmission Company; Notice of Application

December 11, 1997.

Take notice that on December 4, 1997, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama, 35202–2563, and Florida Gas Transmission Company (FGT) (jointly referred to as Applicants) filed in Docket No. CP98–113–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's Regulations thereunder, for permission and approval to abandon from interstate service a natural gas exchange service by and between Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that the natural gas exchange agreement dated June 28, 1972, was originally authorized in Docket No. CP73–14. Applicants further state that the agreement provided for the exchange of natural gas by and between themselves, up to 50,000 Mcf per day, at a point of interconnection between their respective pipeline systems in Washington Parish, Louisiana. Applicants assert that the abandonment

proposed herein will not result in the abandonment of any facilities, nor will it result in any disadvantage to any of Applicants' customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32844 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–121–000]

Tennessee Gas Pipeline Company; Notice of Application

December 11, 1997.

Take notice that on December 5, 1997, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, pursuant to Sections 5 and 7(b) of the Natural Gas Act, filed in Docket No. CP98–121–000 an application to replace a no-fee gas transportation service performed on behalf of Southern Natural Gas Company (Southern) with service under Tennessee's generally applicable Part 284 tariff. The no-fee service was certificated in 1979 in Docket No. CP78–267–000 in connection with the Bear Creek Storage Company (Bear Creek) venture between Tennessee and Southern.

Tennessee states that under the no-fee service it provides storage-related transportation services for Southern for Southern's injections and withdrawals from Bear Creek, and that Southern does not provide any corresponding services for Tennessee. Tennessee further states that Southern does not nominate the no-fee services, that the services disrupt operations under Tennessee's open access tariff and that the certificated service is a carryover from the era of bundled pipeline sales that is no longer in the public interest. Tennessee proposes that the Commission grant authorization to replace the certificated no-fee transportation service with firm Part 284 service under Tennessee's Rate Schedule FT–A, at a level consistent with Southern's requirements and at Southern's election. Tennessee states that its proposal would maintain Southern's continued use of, and access to, the Bear Creek storage facility under terms and conditions applicable to all other Rate Schedule FT–A shippers on Tennessee.

Tennessee proposes to credit to its customers all firm revenues received from Southern under the replacement transportation service until the effectiveness of Tennessee's next rate case.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1998, file with Federal Energy Regulatory Commission, Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32839 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–119–000]

Williams Natural Gas Company; Notice of Application To Amend Certificate

December 11, 1997.

Take notice that on December 5, 1997, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application pursuant to section 7(c) of the Natural Gas Act, to amend Williams' Elk City Storage Field certificate, issued on September 24, 1958, in Docket No. G–10956 (20 FPC 390), by allowing an expansion of the Elk City storage facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The certificate issued in Docket No. G–10956 authorized Williams (formerly: Cities Service Gas Company) to construct and operate the Elk City Storage Field, in Elk, Chautauqua, and Montgomery Counties, Kansas, as an underground gas storage field.

Williams' application in Docket No. CP98–119–000 has been filed to comply with a November 13, 1996 order that the Commission issued in Docket No. CP96–311–000. The November 13 order authorized Williams to expand its buffer zone by 1,460 acres, and required Williams to conduct a detailed reservoir engineering/operational study and develop a new operational plan for the Elk City Storage Field, designed to prevent storage reservoir expansion and gas migration, and (to the maximum extent possible) to establish and maintain confinement of its Elk City storage gas within the original certificated storage field boundaries, i.e., south of the new 1,460 acre buffer zone. The Commission further instructed Williams' that its operating plan had include:

(1) Include the proper storage reservoir boundary requirement;

(2) Include the maximum storage volumetric operating capacity (without gas loss);

(3) Include the maximum working and cushion gas volumes;

(4) Include the maximum injection/withdrawal rates;

(5) Include the proper shut-in reservoir pressure requirement for the Elk City Storage Field;

(6) Detail all operational changes actually implemented by Williams as of November 30, 1997, and explain how those changes have affected the capacity and deliverability of the storage field and Williams' storage services; and

(7) Detail Williams' progress toward confining its storage gas within the original certificated storage field boundaries, or any alternative boundaries that Williams may propose.

Williams filed its reservoir engineering/operational study and its new operational plan for the Elk City Storage Field on November 28, 1997, and it is on file with the Commission and open to public inspection.

Williams now requests the Commission to authorize Williams to acquire gas storage rights (by lease, purchase, or the exercise of eminent domain under the Natural Gas Act) for the west half of Section 2, T31S, R13E, in Montgomery County, Kansas, and all of Section 3 and the east half of Section 4 in T31S, R13E, in Elk County, Kansas, and the south half of Section 34 in T30S, R13E, in Elk County, Kansas. The proposed increase in the storage area will add approximately 1,600 acres to the Elk City Storage Field, for a buffer zone, adjacent to the northern boundary of the storage leasehold interests previously authorized in Elk County, Kansas.

Williams also requests the Commission to authorize it to increase the maximum operating pressure of the storage field to 595 psig, wellhead (630 psia, reservoir), and to establish a maximum inventory level of 30.7 Bcf at 14.73 psia (30.9 Bcf at 14.65 psia). Williams further seeks to establish a range of working and cushion gas levels, and connect three storage observation wells to the storage field's injection/withdrawal system. Specifically, Williams seeks to connect the BH&W #15–1 well in Section 15, T31S, R13E, the BH&W #10–4 well in Section 10, T31S, R13E, and the Kimzey #10–5 well, in Section 10, T31S, R13E, by adding approximately 4,500 feet of 4-inch pipeline and approximately 1,500 feet of 6-inch pipeline to the existing system. Williams also proposes to install a check valve on the existing 6-inch lateral in the northeast quarter of Section 15, T13S, R13E, in Elk County, Kansas, just north of the Elk #1 well, to ensure that the Elk #60, Elk #61, BH&W #15–1, BH&W #10–4, Kimzey #10–5 wells will only be operated as withdrawal wells.

Williams asserts that the proposed changes are reasonable and required by the present and future public convenience and necessity.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before January 2, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32837 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–115–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 4, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed a request with the Commission in Docket No. CP98–115–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. (Montana-Dakota) authorized in blanket certicate issued in Docket Nos. CP98–467–000, *et al.*, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to add both right-of-way grantor and non right-of-way grantor and end-use customers to an existing transmission line tap at Station No. 9388+45 on Williston Basin's Belle Fourche-Rapid City pipeline in Meade County, South Dakota, at the request of Montana-Dakota. The estimated additional volume to be delivered is 600 Mcf per year. The existing tap was never connected by Montana-Dakota to the right-of-way grantor's residence and no service was ever provided through this facility. Williston Basin plans to provide natural gas transportation deliveries to Montana-Dakota for ultimate use by additional customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed

and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32834 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–741–000, et al.]

Wisconsin Electric Power Company, et al., Electric Rate and Corporate Regulation Filings

December 10, 1997.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER98–741–000]

Take notice that on November 20, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Notice of Cancellation of Service Schedule G (Presque Isle Power) sold by Wisconsin Electric to Upper Peninsula Power Company (UPPCO) under the interconnection agreement between the parties (Supplement No. 17 to Wisconsin Electric's FERC Rate Schedule No. 45).

Wisconsin Electric requests that this cancellation become effective January 1, 1998.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Energy Company

[Docket No. ER98–742–000]

Take notice that on November 20, 1997, Consumers Energy Company (Consumers), tendered for filing two service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit Edison). The four transmission customers are Wabash Valley Power Association, Inc., and Electric Clearinghouse, Inc. A copy of the filing was served on the Michigan Public Service Commission, Detroit Edison and the transmission customers.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Electric & Gas Company

[Docket No. ER98–743–000]

Take notice that on November 20, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing TransCanada Energy Ltd (TCEL), CNG Power Services Corporation (CNG), and Oglethorpe Power Corporation (OPC) as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon TCEL, CNG, OPC, and the South Carolina Public Service Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ER98–744–000]

Take notice that on November 20, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Ohio Edison Company (OEC), Arkansas Electric Cooperative Corporation (AECC), American Electric Power Service Corporation (AEPSC), and Delhi Energy Services, Inc. (DESI), as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon OEC, AECC, AEPSC, DESI, and the South Carolina Public Service Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Company; Cambridge Electric Light Company

[Docket No. ER98–745–000]

Take notice that on November 20, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers): NP Energy Inc., SCANA Energy Marketing, Inc.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement and Notice of Cancellation.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER98–746–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Etna Green (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Etna Green, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98–747–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Walkerton (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Walkerton, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–748–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Chalmers (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Chalmers, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER98–749–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Winamac (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Winamac, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–750–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Kingsford Heights (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Kingsford Heights, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Panther Creek Partners

[Docket No. QF87–59–010]

On December 5, 1997, Panther Creek Partners (Applicant) of 1001 Industrial Road, Nesquehoning, Pennsylvania 18240 submitted for filing an amendment to its application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The amendment provides information requested by Commission staff in support of the original submittal and also requests certification of additional sources of waste fuel not identified in the original application.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32892 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for New License

December 11, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: 719.

c. Date filed: October 14, 1997.

d. Submitted By: Trinity Conservancy, Inc.

e. Name of Project: Trinity Power Project.

f. Location: On Phelps and James Creeks in Chelan County, Washington.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Expiration date of original license: November 1, 2002.

i. The facilities under this license consist of small diversion dams on Phelps and James Creeks and flumes and penstocks leading to a powerhouse with a total installed capacity of 240 kilowatts.

j. Pursuant to 18 CFR 16.7, information on the project is available by contacting: Reid L. Brown, President, Trinity Conservancy, Inc., 3139 E. Lake Sammamish, Issaquah, WA 98029.

k. FERC contact: Héctor M. Pérez, (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 1, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32840 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

December 11, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: 1991–09.

c. Date filed: April 1, 1996.

d. Applicant: City of Bonners Ferry.

e. Name of Project: Moyie River Hydroelectric.

f. Location: On the Moyie River in Boundary County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mike Woodward, P.E., City of Bonners Ferry, 7232 Main Street, Bonners Ferry, ID 83805, 208 267–3105.

i. FERC Contact: Tim Looney at (202) 219–2852.

j. The project would consist of: (1) a 92-foot-concrete dam, impounding a 450-acre-foot reservoir, (2) a combination penstock/pressure tunnel about 990 feet long, (3) three powerhouses with a total installed capacity of 3,950 kilowatts, (4) a 1.3-mile-long, 13.8-kilovolt transmission line, and (5) appurtenant facilities.

k. Status of Environmental Analysis: This application is now ready for

environmental analysis—see attached paragraph D9.

l. Deadline for comments, recommendations, terms and conditions, and prescriptions: See paragraph D9.

m. This notice also consists of the following standard paragraphs: A4 and D9.

n. Available Locations of Application: A copy of the application, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20428, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D9. Filing and Service of Responsive Documents:—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32841 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for New License

December 11, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: 2031.

c. Date filed: December 15, 1997.

d. Submitted By: Springville City Corporation.

e. Name of Project: Hobble Creek Project.

f. Location: On Hobble Creek in Utah County, Utah.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Expiration date of original license: September 3, 2002.

i. The facilities under this license consist of the Upper Bartholomew Power Plant with an installed capacity of 200 kilowatts (kW), the New Bartholomew Power Plant with an installed capacity of 1,000 kW, the Original Bartholomew Power Plant with an installed capacity of 500 kW, and the Hobble Creek Power Plant with an installed capacity of 300 kW.

j. Pursuant to 18 CFR 16.7, information on the project is available by contacting: Delora P. Bertelsen, Mayor, Springville City Corporation, 50 South Main, Springville, UT 84663, (801) 489–2700.

k. FERC contact: Héctor M. Pérez, (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 3, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32842 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5834–6]

Approval and Promulgation of State Implementation Plans; Call for Carbon Monoxide SIP Revisions for Kalispell, Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: EPA hereby gives notice that it notified the Governor of Montana on August 1, 1997 that the Montana State Implementation Plan (SIP) for the Kalispell area is substantially inadequate to attain and maintain the carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS) and must be revised.

DATES: A SIP revision for the Kalispell area is due within 18 months of the date that EPA notified the Governor.

FOR FURTHER INFORMATION CONTACT: Sara L. Laumann, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6443.

SUPPLEMENTARY INFORMATION:

I. Background

On September 13, 1985, EPA promulgated NAAQS for CO under section 109 of the Act (50 FR 37501). The primary NAAQS for carbon monoxide is a 9 ppm 8-hour nonoverlapping average not to be exceeded more than once per year. On March 15, 1996, the Montana Department of Environmental Quality (DEQ) notified EPA that CO NAAQS exceedances were recorded in Kalispell, Montana on January 8, 1996 with an eight-hour average of 11.1 ppm and on January 18, 1996 with an eight-hour average of 11.4 ppm. The Montana DEQ requested EPA delay in taking action for one year in order to determine the geographical extent and severity of the CO problem. EPA agreed to this request.

According to the Montana DEQ, data from the Idaho and Main CO monitoring site in conjunction with the results from the CO saturation study suggested the CO problem was a traffic corridor problem extending six- to eight-blocks in either direction along Idaho and Main. Montana DEQ determined that the CO saturation study did not sufficiently look at the effects of CO in the surrounding neighborhoods. Therefore, an additional CO monitoring site was installed next to Laser School, a residential site located one block north of Highway 2 and approximately five blocks north and east of the Idaho and Main site. Data collection at Laser School began on November 1, 1996.

II. Finding of Inadequacy

On January 10, 1980 (45 FR 2036), EPA approved Montana's plans for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. EPA now finds [1] the SIP inadequate based on the reported exceedances of the CO NAAQS in Kalispell.

III. Call for SIP Revision

This finding of SIP inadequacy requires Montana to submit a SIP revision no later than 18 months from the date of EPA's letter to the Governor. To ensure that the SIP deadline is met, EPA requested the State to submit an action plan for the development of the SIP revision within 60 days from receipt of EPA's letter to the Governor. The State submitted an action plan to EPA on September 9, 1997. Any control strategies adopted and implemented as part of this SIP revision must provide for attainment and maintenance of the CO NAAQS within 5 years from the date of EPA's letter to the Governor. (See, e.g., section 110(n)(2) of the Act.)

IV. Final Action

This finding of inadequacy does not constitute a final agency action that is ripe for judicial review. EPA's action is a first step in an administrative process that will not be sufficiently concrete for judicial resolution until additional action is taken by EPA on a plan submittal by the State of Montana.

The 60-day time period for filing a petition for review under section 307(b) of the CAA is tolled until EPA makes the finding ripe by taking additional action in reliance on it, such as imposing sanctions on the State of Montana for failure to submit a SIP revision or promulgating approval of a SIP revision. A time limitation on petitions for judicial review can only run against challenges ripe for review.

A technical support document (TSD) is available from the contact person listed above. The TSD discusses in more detail the ambient standard and its health effects, the SIP call and legal authority, and the SIP revision schedule.

Authority: Sections 101, 107, 110, 116 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7401, 7407, 7410, 7416 and 7610(a)].

Dated: November 17, 1997.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 97–32931 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–U

[1] The finding is made pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) and 7410(k)(5).

ENVIRONMENTAL PROTECTION AGENCY

[PF–781; FRL–5758–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–781, must be received on or before January 16, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
James Tompkins (PM 25).	Rm. 265, CM #2, 703–305–7801, e-mail:tompkins.james@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Elizabeth Haeberer	Rm. 207, CM #2, 703–308–2891, e-mail: haeberer.elizabeth@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–781]

(including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number PF-781 and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 4, 1997

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Bayer Corporation

PP 5F4480

EPA has received a pesticide petition (PP 5F4480) from Bayer Corporation, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of imidacloprid in or on the raw agricultural commodity pecans at 0.05 parts per million (ppm). The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of imidacloprid in plants is adequately understood for the purposes of these tolerances. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloro-pyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method.* The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and HPLC-UV which has been validated by the EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues.* Field studies were conducted to determine imidacloprid residues on pecans following treatment with either a single soil or two foliar applications. Seven field studies were conducted using a single soil application of 0.5 lb active ingredient per acre. 5–field studies were conducted using two foliar applications at a rate of 0.17 lb active ingredient per acre, with a 10–day interval. After the final foliar application or the soil application, samples were collected at earliest harvest which ranged from 4 to 21–days for the foliar application or 99 to 150 days for the soil application. Maximum residues, in pecans, detected following either 2 foliar applications or 1 soil application were >0.05 ppm. Therefore, a tolerance of 0.05 ppm of pecans is being proposed with a preharvest interval defined as earliest harvest (shuck split). CBTS has concluded that existing poultry meat and egg tolerances are adequate to support the proposed new uses of imidacloprid.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} values for imidacloprid technical ranged from 424 - 475 milligrams/kilogram/bodyweight (mg/kg/bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4–hour rat inhalation LC_{50} was >69 mg/m^3 air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicty.* Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity.* A 2–generation rat reproduction study gave a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity.* 90–day feeding studies were conducted in rats and dogs. The NOEL's for these tests were 14 milligrams/kilogram/bodyweight/day (mg/kg/bwt/day) (150 pm) 5 mg/kg/bwt/day (200 ppm) for the rat and dog studies respectively.

5. *Chronic toxicity.* A 2–year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1–year dog feeding study indicated a NOEL of 1,250 ppm (41 mg/kg/bwt). A 2–year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm 208 milligrams/kilogram/day (mg/kg/day).

Imidacloprid has been classified under "Group E" (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee. There is no cancer risk associated with exposure to this chemical. The reference dose (RfD) based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.008187 mg/kg/bwt/day utilizing 14.4% of the RfD.

6. *Animal metabolism.* The metabolism of imidacloprid in animals is adequately understood. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloro-pyridinylmoiety, all calculated as imidacloprid.

C. Aggregate Exposure

Imidacloprid is a broad-spectrum insecticide with excellent systemic and contact toxicity characteristics with both food and non-food uses. Imidacloprid is currently registered for use on various food crops, tobacco, turf, ornamentals, buildings for termite control, and cats and dogs for flea control.

1. *Dietary exposure.* The EPA has determined that the reference dose (RfD) based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt.

2. *Food.* The theoretical maximum residue contribution (TMRC) from this proposed use on Pecans as well as all published uses and pending uses is 0.008149 mg/kg/bwt/day utilizing 14.3% of the RfD for the general population. For the most highly exposed subgroup in the population, children (1–6 years), the TMRC for the all uses is 0.018367 mg/kg/day. This is equal to 32.2% of the RfD. Therefore, dietary exposure from the existing uses including the currently proposed tolerance will not exceed the reference dose for any subpopulation (including infants and children).

3. *Drinking water.* Although the various imidacloprid labels contain a statement that this chemical demonstrates the properties associated with chemicals detected in ground water, the Registrant is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the U.S. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. In addition, ground water monitoring studies are currently underway in California and Michigan. Therefore, contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

4. *Non-dietary exposure*— i. *Residential turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied is young children. Margins of safety (MOS) of 7,587 - 41,546 for 10–year–old children and 6,859 - 45,249 for 5–year–old children were estimated by comparing dermal exposure doses to the imidacloprid no-observable effect level of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year–old children ranged from 5.6 - 38.2 g/cm^2 and for 5–year–old children from 5.1 - 33.5 g/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 g/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch (OREB) and Bayer. Data indicate that the Margins of Safety for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0×10^7 and 2.4×10^8, respectively - and exposure can thus be considered negligible.

iii. *Tobacco smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2% of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's OREB who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 15% of the RfD for the U.S. population. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a 2–generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development . The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post- natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to pre- and post-natal effects is complete. Further for imidacloprid, the NOEL of 5.7 mg/kg/bwt from the 2–year rat feeding/ carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100-fold uncertainty factor is already used to calculate the RfD, it is surmised that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg/bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above, it can be concluded that the TMRC from use of imidacloprid from published and pending uses is 0.008149 mg/kg/bwt/day utilizing 14.3% of the RfD for the general population. For the most highly exposed subgroup in the population, children (1–6 years), the TMRC for the published tolerances is 0.018367 mg/kg/day. This is equal to 32.2% of the RfD. Therefore, dietary exposure from the existing uses including the currently proposed tolerances will not exceed the reference dose for any subpopulation (including infants and children).

E. International Tolerances

No CODEX Maximum Residue Levels (MRL's) have been established for residues of Imidacloprid on any crops at this time. (Elizabeth Haeberer)

2. E. I. Du Pont de Nemours & Company

PP 5F4545

EPA has received a pesticide petition (PP 5F4545) from E. I. Du Pont de Nemours & Company (DuPont), P.O. Box 80038, Wilmington, DE 19880-0038, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for quizalofop (2-[4-(6-chloroquinoxalin-2-yl)oxy) phenoxy]) - propanoic acid), and quizalofop ethyl [ethyl-2- [4-(6-chloroquinoxalin-2-yl)oxy) phenoxy) propanoat in or on the raw agricultural commodities canola seed and canola meal . The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Quizalofop-p ethyl ester is metabolized by cleavage at three sites as follows:

(i) Primary pathway is hydrolysis of the ethyl ester to form the quizalofop-p acid, then (ii) Cleavage of the enol ether linkage in the acid, between the phenyl and quinoxalinyl rings, to form phenols, and (iii) Cleavage of the ether linkage between the isopropanic group and the phenyl ring to form a phenol.

The plant metabolism data show that quizalofop-p ethyl ester does not translocate, but is rapidly hydrolyzed to the corresponding acid; then the phenols conjugate with the plant sugars. Metabolism studies in soybeans using the racemic mixture quizalofop ethyl ester and the resolved D+ isomer show nearly identical pathways.

The nature of the quizalofop-p ethyl ester residue in plants is adequately understood. The residues of concern are quizalofop-p ethyl ester and its acid metabolite, quizalofop-p, and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-p ethyl ester.

2. *Analytical method*. An adequate analytical methodology (high-pressure liquid chromatography using either ultraviolet or fluorescence detection) is available for enforcement purposes in Vol. II of the Food and Drug Administration Pesticide Analytical Method (PAM II, Method I).

Adequately validated residue analytical methods, LAN-1 and LAN-3, were used to gather the magnitude of the quizalofop-p, its acid metabolite, phenols 1, 2, and 4, residue data on canola and canola processed commodities.

3. *Magnitude of residues*. Dupont proposes establishing tolerances for the combined residues of quizalofop (2-[4-(6-chloroquinoxalin-2-yl)oxy) phenoxy])-propionic acid], and quizalofop ethyl [ethyl-2- [4-(6-chloroquinoxalin-2-yl)oxy) phenoxy) propanoat for the raw agricultural commodities canola seed at 1.0 parts per million (ppm) and canola meal at 1.5 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Several acute toxicology studies were conducted and the overall results placed technical grade quizalofop ethyl in toxicity Category III. These include the following studies in Category III: acute oral toxicity (LD_{50}s 1,480 and 1,670 for female and male rats, respectively) and eye irritation (mild effects; reversible within 4–days). Dermal toxicity (LD_{50} > 5,000 mg/kg; rabbit), inhalation toxicity (LC_{50} > 5.8 mg/L; rat) and dermal irritation were classified within Category IV. Technical quizalofop ethyl was not a dermal sensitizer.

2. *Genotoxicty*. Technical quizalofop ethyl was negative in the following genotoxicity tests: bacterial gene mutation assays with *E. coli* and *S. typhimurium*; gene mutation assays in Chinese hamster ovary(CHO) cells ; *in vitro* DNA damage assays with B. subtillis and in rat hepatocytes; and an *in vitro* chromosomal aberration test in CHO cells.

3. *Reproductive and developmental toxicity*. Studies supporting the registration include: A developmental toxicity study in rats administered dosage levels of 0, 30, 100, and 300 milligrams/kilogram/day (mg/kg/day) highest dose tested (HDT). The maternal toxicity no-observed effect level (NOEL) was 30 mg/kg/day and a developmental toxicity NOEL was greater than 300 mg/kg/day (HDT). The maternal NOEL was based on reduced food consumption and increased liver weights. A developmental toxicity study in rabbits administered dosage levels of 0, 7, 20, and 60 mg/kg/day with no developmental effects noted at 60 mg/kg/day (HDT). The maternal toxicity NOEL was 20 mg/kg/day based on decreases in food consumption and body weight gain at 60/mg/kg/day (HDT). A 2-generation reproduction study in rats fed diets containing 0, 25, 100 or 400 ppm (or approximately 1, 1.25, 5, and 20 mg/kg/day, respectively) with a developmental (systemic effects) NOEL of 1.25 mg/kg/day for F_{2a} weanlings based on increased liver weights and increased incidence of eosinophilic changes in the livers at 5.0 mg/kg/day. These liver changes were considered to be physiological or adaptive changes to compound exposure among weanlings. When access to the mother's feed is available, it is a common observation that young rats will begin consuming chow prior to complete weaning at 21–days of age. Consumption could not be quantified; therefore, the maternal consumption was assumed as the NOEL (if normalized on a body weight basis, exposures to the weanling rats were likely higher). The parental NOEL of 5.0 mg/kg/day was based on decreased body weight and premating weight gain in males at 20 mg/kg/day (HDT).

4. *Subchronic toxicity*. A 90-day study was conducted in rats fed diets containing 0, 40, 128, 1,280 ppm (or approximately 0, 2, 6.4 and 64 mg/kg/day, respectively). The NOEL was 2 mg/kg/day. This was based on increased liver weights at 6.4 mg/kg. A 90–day feeding study in mice was conducted with diets that contained 0, 100, 316 or 1,000 ppm (or approximately 0, 15, 47.4, and 150 mg/kg/day, respectively). The NOEL was > 15 mg/kg/day lowest dose tested (LDT) based on increased liver weights and reversible histopathological effects in the liver at the LDT. A 6-month feeding study in dogs was conducted with diets that contained 0, 25, 100 or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOEL was 2.5 mg/kg/day based on increased blood urea nitrogen at 10 mg/kg/day. A 21–day dermal study was conducted in rabbits at doses of 0, 125, 500 or 2,000 mg/kg/day. The NOEL was 2,000 mg/kg/day (HDT).

5. *Chronic toxicity*. An 18–month carcinogenicity study was conducted in CD-1 mice fed diets containing 0, 2, 10, 80 or 320 ppm (or approximately 0, 0.3, 1.5, 12, and 48 mg/kg/day, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day. A marginal increase in the incidence of hepatocellular tumors was observed at 48 mg/kg/day, the (HDT) which exceeded the maximum tolerated dose (MTD). (Please see the discussion by the EPA HED Carcinogenicity Peer Review Committee.)

A 2–year chronic toxicity/carcinogenicity study was conducted in rats fed diets containing 0, 25, 100 or 400 ppm (or 0, 0.9, 3.7, and 15.5 mg/kg/day for males and 0, 1.1, 4.6, and 18.6 mg/kg/day for females, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 18.6 g/kg/day (HDT). The systemic NOEL was 0.9 mg/kg/day based on altered red cell parameters and slight/minimal centrilobuler enlargement of the liver at 3.7 mg/kg/day.

A 1–year feeding study was conducted in dogs fed diets containing 0, 25, 100 or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOEL was 10 mg/kg/day (HDT).

The Carcinogenicity Peer Review Committee (CPRC) of HED has evaluated the rat and mouse cancer studies on quizalofop along with other relevant short-term toxicity studies, mutagenicity studies, and structure activity relationships. The CPRC concluded, after three meetings and an evaluation by the OPP Science Advisory panel, that the classification should be a Category D (not classifiable as to human cancer potential). No new cancer studies were required.

The first CPRC review tentatively concluded that quizalofop should be classified as a Category B2 (probable human carcinogen). That classification was based on liver tumors in female rats, ovarian tumors in female mice, and liver tumors in male mice. This classification was downgraded to a Category C (possible human carcinogen) at a second CPRC review. The change in classification was due to a reexamination of the liver tumors in female rats and ovarian tumors in female mice. The first peer review had found a statistically significant positive trend for liver carcinomas in female rats. Subsequent to this conclusion the tumor data was reevaluated, and the revaluation showed a reduced number of carcinomas. Although there remained a statistically significant positive trend for carcinomas in the study, the CPRC concluded that the carcinomas were not biologically significant given the few carcinomas identified (one at the mid-dose and two at the high dose). Noting that this level of carcinomas was within historical levels, the CPRC concluded that administration of quizalofop did not appear to be associated with the liver carcinomas.

As to the ovarian tumors in female mice, the CPRC had first attached importance to the fact that these tumors were statistically significant at the high dose as compared to historical control values although statistically significant when compared to concurrent controls. However, review of further historical control data showed that the level of ovarian tumors in the quizalofop study was similar to the background rate in several other studies. Given this information and that the quizalofop study showed no hyperplasia of the ovary, no signs of endocrine activity related to ovarian function, and no dose response relationship, the CPRC concluded that the ovarian tumors were probably not compound-related.

The findings of the second CPRC review were presented to EPA's Scientific Advisory Panel (SAP). The SAP concurred with the CPRC conclusion that the liver tumors in female rats and the ovary tumors in female mice showed no evidence of carcinogenicity. However, the SAP disagreed with CPRC's classification of quizalofop as a Category C based on the liver tumors in male mice. The SAP concluded that the mouse liver tumors did not support such a classification because the tumors occurred at a dose above the MTD and because they were not statistically significant if a "p" value of less than 0.05. The SAP believed that such greater statistical rigor was appropriate for variable tumor endpoints such as male mouse liver tumors.

Following the SAP review, the CPRC changed the classification for quizalofop to Category D. The Category D classification is based on an approximate doubling in the incidence of male mice liver tumors between controls an the high dose. This finding was not considered strong enough to warrant the finding of a Category C (possible human carcinogen) since the increase was of marginal statistical significance, occurred at a high dose which exceeded the predicted MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls, while the high dose control group was at the upper end of previous historical control-groups.

EPA has found the evidence on the carcinogenicity of quizalofop-p ethyl ester in animals to be equivocal and therefore concludes that quizalofop-p ethyl ester does not induce cancer in animals within the meaning of the Delaney clause. Important to this conclusion was the following evidence: (1) The only statistically significant tumor response that appears compound-related was seen at a single dose in a single sex in a single species; (2) the response was only marginally statistically significant; (3) the response was only significant when benign and malignant tumors were combined; (4) the tumors were in the male mouse liver; (5) the tumors were within historical controls; and (6) the mutagenicity studies were negative. Although in some circumstances a finding of animal carcinogenicity would be made despite any one, or even several, of the six factors noted, the combination of all of these factors here cast sufficient doubt on the reproducibility of the response in the high dose male mouse that EPA concludes the evidence on carcinogenicity is equivocal.

6. *Animal metabolism*. The metabolism of quizalofop ethyl in animals (rat, goat and poultry) is well understood. ^{14}C-phenyl and ^{14}C-quinoxaline quizalofop ethyl ester metabolism studies have been conducted in each species. There are similarities among these species with respect to metabolism. Quizalofop ethyl is rapidly and extensively metabolized and rapidly excreted by rats. The principal metabolites were the quizalofop-p acid and two dechlorinated hydroxylated forms of the acid. Tissue residues were minimal and there was no evidence of accumulation of quizalofop ethyl or its metabolites in the rat.

The primary pathway in ruminants is hydrolysis of the ethyl ester to form the quizalofop-p methyl ester. In poultry, the primary metabolic pathway is also the hydrolysis of the ethyl ester to form the quizalofop-p acid, then the methyl esterification to form the quizalofop methyl ester becomes a minor pathway.

The nature of the quizalofop ethyl ester residue in livestock is adequately understood. The residues of concern are quizalofop ethyl, quizalofop methyl, and quizalofop, all expressed as quizalofop ethyl.

7. *Metabolite toxicology*. There is no evidence that the metabolites of quizalofop ethyl as identified as either the plant or animal metabolism studies are of any toxicological significance.

C. Aggregate Exposure

1. *Dietary exposure*. Quizalofop ethyl is a herbicide with proposed use on canola. The only potential for non-occupational aggregate exposure would come from dietary intake.

An analysis of chronic dietary risk was conducted to determine the impact of the possible addition of canola to the Assure label. A Reference Dose (RfD) of 0.009 mg/kg/day was used in the analyses. Consumption data for canola

had to be estimated using various production and usage statistics.

2. *Food.* The first step in the analysis was to run the TAS (Tolerance Assessment System) program using current tolerances with an RfD of 0.009 mg/kg/day. The Theoretical Maximum Residue Concentration (TMRC), based on the current tolerances, was 0.000288 mg/kg/day for the U.S. population (48 states) and 0.000759 mg/kg/day for the population subgroup with the highest estimated exposure (non-nursing infants > 1–yr. old). For the U.S. population subgroup this represents approximately 3.2% of the RfD while for the most exposed population this represents approximately 8.4% of the RfD. Based on the risk estimates arrived at in this analysis, chronic dietary risk from the current uses of Assure is minimal.

Unfortunately the 1977–1979 food consumption database does not contain any consumption data for canola oil. At the time the survey was conducted, canola oil was not a significant part of the U.S. diet. Since 1977 more canola oil is used in U.S. homes, although total production and usage are still minor as compared to soybean oil. Conservative assumptions were used to estimate canola consumption in the U.S. The USDA's Oilseed Analysis Division indicated that an average of 1.1 billion pounds of canola oil was used in the U.S. annually over the past 5–years. The dietary exposures that might occur by way of consumption of canola oil can be estimated by taking the average annual consumption of canola oil in the U.S. (includes both domestically produced and imported canola oils) and dividing it by the approximate U.S. population of 266.3 million people. This gives a per-capita consumption estimate for the general population. To calculate exposure, this number is divided by the average number of days in a year and the average body weight of a person (60 kg). (This weight is the same that was used by EPA as part of their "Food Factor" system that predated the current Tolerance Assessment System). This value is also supported by taking the average weight of children between the ages of 6–months to 19–years (36 kg) and the average weight of adults (70 kg), and assuming that an average person lives to be 69–years old (Review Draft of the Exposure Factors Handbook, U.S. EPA). Using these assumptions, canola oil consumption was calculated to be 0.088 g/kg bw/day.

While this method provides a useful estimate of exposure, it is clearly a conservative estimate for risk assessment purposes, since this estimate assumes that all the canola oil used in the U.S. is indeed ingested. In reality some percentage of any commodity is lost between production and consumption. In addition, oil may be used in cooking activities such as deep-fat frying where most of the oil is not actually eaten but is discarded or recycled. With the understanding that the dietary analysis will be very conservative, the consumption data for canola used in the DRES analysis for all population subgroups was set at 0.088 g/kg bw/day. This was done by entering a consumption estimate of 0.088 for "rapeseed" for all population subgroups (there is no agricultural commodity in TAS for canola oil).

When a tolerance for canola (1.0 ppm) was added to the current tolerances, the TMRC was 0.000376 mg/kg/day for the U.S. population (48 states) and 0.000847 mg/kg/day for the highest population subgroup (non-nursing infants >1–yrs. old). When expressed as a percentage of the RfD, the U.S. population (48 states) was approximately 4.2% and the highest population subgroup was approximately 9.4%. These results indicate that predicted chronic exposure after the addition of a canola tolerance is well below the RfD even with the conservative (high) nature of the assumptions that were made in calculating consumption.

3. *Drinking water.* Another potential source of dietary exposure to pesticides is residues in drinking water. There is no established Maximum Concentration Level (MCL) for quizalofop ethyl in water. Based on the low use rate of quizalofop ethyl, and a use pattern that is not widespread (since the current and proposed uses are on minor crops), DuPont does not anticipate residues of quizalofop in drinking water and exposure from this route is unlikely.

4. *Non-dietary exposure.* Quizalofop ethyl is not registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

There is no evidence to indicate or suggest that quizalofop p-ethyl has any toxic effects on mammals that would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the most sensitive species chronic NOEL of 0.9 mg/kg and a reference dose (RfD) of 0.009 mg/kg/day, the existing tolerances and proposed use of quizalofop ethyl on canola are expected to utilize 4.2% of the RfD for the general U.S. population. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to quizalofop ethyl resulting from proposed agricultural use on canola.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of quizalofop ethyl, data were considered from developmental toxicity studies in the rat and rabbit, and a multi-generation reproduction study in rats. There were no developmental effects observed in the absence of maternal toxicity in the rat and rabbit developmental studies. Minimal adaptive or physiological effects were observed in livers of weanlings in the 2–generation rat reproduction study described earlier. However, this effect was only observed at a dose that far exceeds any expected human exposure. Further, the NOEL of 0.9 mg/kg/day from the 2–year rat study with quizalofop ethyl which was used to calculate the RfD (discussed above), is already lower than any of the NOEL's defined in the developmental and reproductive toxicity studies with quizalofop ethyl.

As mentioned previously, canola oil is a very minor component of the diet, and thus had not been included as part of the 1977–79 food survey used in EPA's DRES system. DuPont is not aware of specific food survey data concerning consumption of canola oil by infants and children. However, the 1977–79 food survey database does provide consumption data for other edible oils for each of the population subgroups, including infants and children. This data indicates that non-nursing infants consume more soybean and coconut oil than any of the other 22 population subgroups, specifically consuming 4.2 times more soybean oil and 49.1 times more coconut oil than the consumption by the general U.S. population. The data also show that children 1–6 consume more corn, cottonseed, peanut, and sunflower oil than any other subgroup listed, to a maximum of 2 times more than the general U.S. population. Using this data and making the most conservative assumption to extrapolate to canola oil, we can estimate that infants and children consume 49 times more canola oil than does the U.S. population, and calculate an approximate daily consumption of 4.3 grams canola oil/kg body weight. If we use the additional conservative assumptions that all the canola oil consumed contains quizalofop ethyl residues at tolerance levels of 1.0 ppm, we calculate that the TMRC in the infants' and children's diets would be 0.000847 mg/kg/day or 9.4% of the RfD.

As indicated above, infants and children have a low potential for quizalofop ethyl exposure because of both the low levels of canola oil in the diet, and the absence of detectable residues in field-treated canola. The toxicology profile of quizalofop ethyl demonstrates low mammalian toxicity. Because there was no evidence that offspring were uniquely susceptible to the toxic effects of quizalofop ethyl, an additional 10-fold uncertainty factor should not be required to protect infants and children. Therefore, the RfD of 0.009 mg/kg/day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children from aggregate exposure to quizalofop ethyl.

F. International Tolerances

Harmonization of Tolerances: Since there are no Mexican or Codex MRLs/tolerances, compatibility is not a problem at this time. Compatibility cannot be achieved with the Canadian negligible residue type limit at 0.1 ppm at the USA use pattern, which had findings of real residues above 0.1 ppm. (James Tompkins)

[FR Doc. 97–32935 Filed 12–16–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–782; FRL–5759–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–782, must be received on or before January 16, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne Miller (PM 23) ...	Rm. 237, CM #2, 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
James Tompkins (PM 25).	Rm. 239, CM #2, 703–305–5697, e-mail: tompkins.james@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–782] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–782] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 3, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. DowElanco

PP 6F4772

EPA has received a pesticide petition (PP 6F4772) from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of fluroxypyr methylheptyl ester (MHE) and its only significant metabolite fluroxypyr, free and conjugated, all expressed as fluroxypyr in or on the raw agricultural commodities wheat, barley, and oats as follows: 0.5 parts per million (ppm) (grain), 10 ppm (straw and forage), 20 ppm (hay), and 0.5 ppm (aspirated grain fractions, wheat). Because residues of fluroxypyr MHE or fluroxypyr, free or conjugated, may occur in animal feeds derived from wheat, barley, and oats, the following meat and milk tolerances are also being proposed: 0.1 ppm (meat, fat, milk, and meat byproducts except for kidney) and 0.5 ppm (kidney). The proposed analytical method is based on gas chomatography (GC) with mass spectral (MS) detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fluroxypyr MHE in plants (wheat) and animals (goats and poultry) is adequately understood for the purposes of this tolerance. A rotational crop study showed no carryover of significant fluroxypyr MHE related residues in representative test crops except for cereal grains for which tolerances are being proposed.

2. *Analytical method.* There is a practical method (GC with MS detection) for measuring levels of fluroxypyr MHE in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set for the proposed tolerances. Fluroxypyr has been tested through the FDAs Multiresidue Methodology, Protocols C, D. and E. The results have been published in the FDA Pesticide Analytical Manual, Volume I.

3. *Magnitude of residues.* Magnitude of residue studies were conducted for wheat, barley, and oats. Residues of fluroxypyr MHE did not concentrate in process fractions in samples treated at a 7.5 X application rate.

B. Toxicological Profile

1. *Acute toxicity.* Fluroxypyr MHE has low acute toxicity. The rat oral LD_{50} is >5000 mg/kg, the rabbit dermal LD_{50} is >2000 mg/kg, and the rat inhalation LC_{50} is >1.0 mg/l (1,000 mg/cubic meter), the maximum attainable concentration. In addition, fluroxypyr MHE is not a skin sensitizer in guinea pigs, has no dermal irritation in rabbits, and shows mild ocular irritation in rabbits. The end use formulation of fluroxypyr MHE has a similar low acute toxicity profile.

2. *Genotoxicity.* Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an in vitrochromosomal aberration assay using rat lymphocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with fluroxypyr MHE. DowElanco believes that these studies show a lack of genotoxicity. In addition, short term assays for genotoxicity consisting of an Ames metabolic activation test, point mutations at the HGPRT-Locus of Chinese hamster ovary cells, *in vivo* and *in vitro* chromosomal aberrations in the Chinese hamster ovary cells, unscheduled DNA synthesis in human embryonic cells, and an assay in mouse lymphoma cells have been conducted with fluroxypyr. DowElanco believes that the weight of evidence also indicates a lack of genotoxicity.

3. *Reproductive and developmental toxicity.* Developmental studies in rats and rabbits were conducted with both fluroxypyr MHE and fluroxypyr. Studies with fluroxypyr MHE showed maternal and fetal no observed effect levels (NOELs) of 300 milligram/kilogram (mg/kg/day) (rat) and 500 mg/kg/day (rabbit). Studies with fluroxypyr showed no observed adverse effect levels (NOAELs) in the rat of 250 mg/kg/day for maternal effects and 500 mg/kg/day for fetal effects and a NOEL in the rabbit of 250 mg/kg/day for both maternal and fetal effects. DowElanco believes that these studies show that fluroxypyr and fluroxypyr MHE are not teratogenic nor will they interfere with in utero development. Two multi-generation reproduction studies were conducted with fluroxypyr in rats. The first in Wistar rats showed no effect on fertility or reproductive performance and had a NOAEL of 500 mg/kg/day (highest dose tested). The second study in Sprague-Dawley rats showed a parental NOEL for systemic effects of 100 mg/kg/day in male rats and 500 mg/kg/day in female rats. The NOEL for reproductive effects was 750 mg/kg/day for males and 1,000 mg/kg/day for females (highest dose tested). The NOEL for neonatal effects was 500 mg/kg/day.

4. *Subchronic toxicity.* Fluroxypyr MHE showed a NOEL of 1,000 mg/kg/day in a 90-day rat dietary study and a 21-day rabbit dermal study. Ninety day feeding studies with fluroxypyr showed NOELs of 80 mg/kg/day (Wistar rats), 700 mg/kg/day (Fischer 344 rats), 1342 mg/kg/day (male mice), and 1,748 mg/kg/day (female mice). In a 4-week dietary, range finding study with fluroxypyr in dogs the NOEL was >50 mg/kg/day.

5. *Chronic toxicity.* Based on chronic testing with fluroxypyr in the mouse, dog, and rat (two studies), a reference dose (RfD) of 0.8 mg/kg/day is proposed for fluroxypyr and fluroxypyr MHE. The RfD has incorporated a 100-fold safety factor to the NOEL found in the rat chronic test. NOELs found in the chronic dietary studies are as follows: 150 mg/kg/day (dog), 300 mg/kg/day (mouse), 80 mg/kg/day (Wistar rats), 100 mg/kg/day (male Fischer 344 rats), and 500 mg/kg/day (female Fischer 344 rats).

6. *Animal metabolism.* Both fluroxypyr and fluroxypyr MHE have been evaluated in rat metabolism studies. In summary, these studies show that fluroxypyr MHE is rapidly hydrolyzed and the fate of the hydrolysis products, fluroxypyr and 1-methylheptanol, are independent of whether they were given as the ester or the acid. Fluroxypyr, *per se*, was extensively absorbed and rapidly excreted principally unchanged in the urine. 1-Methylheptanol also was rapidly absorbed and rapidly eliminated. Repeated administration of fluroxypyr MHE was not associated with accumulation in tissues. Also, the metabolism and pharmacokinetics of methylheptanol are comparable to that of the methylheptyl portion of fluroxypyr MHE.

7. *Metabolite toxicology.* Administration of fluroxypyr, as the acid or methylheptyl ester, in a variety of toxicological studies has produced similar effects. The principal response to sufficiently high dosages, whether administered over the short-term or, in some cases, over a lifetime, was nephrosis. Fluroxypyr is an organic acid that is actively excreted into the urine by the kidney. Thus, the target organ and dose response relationship for fluroxypyr toxicity are entirely consistent with the data on the toxicokinetics of fluroxypyr. Metabolism studies have shown that fluroxypyr MHE is rapidly and completely hydrolyzed to fluroxypyr acid and methylheptanol.

8. *Carcinogenicity.* Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that fluroxypyr and fluroxypyr MHE be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. DowElanco believes that there was no evidence of carcinogenicity in an 18-month mouse feeding study and a 24-month rat feeding study at all dosages tested. The NOELs shown in the mouse and rat oncogenicity studies were 1,000 and 320 mg/kg/day, respectively. A maximum tolerated dose was achieved at the top dosage level tested in both of these studies based on excessive renal toxicity. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, DowElanco believes that a cancer risk assessment is not needed.

9. *Endocrine effects.* There is no evidence to suggest that fluroxypyr and fluroxypyr HME have an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* An over estimation of dietary exposure from use of fluroxypyr MHE on wheat, barley, oats is determined by basing the TMRC on the conservative assumptions that all cereal grain commodities will have tolerance level residues of fluroxypyr and that 100% of the wheat, barley, and oat crops grown in the U.S. are treated with fluroxypyr MHE. The TMRC is obtained by multiplying the tolerance residue levels by the consumption data which estimates the amount of crops and related foodstuffs consumed by various population subgroups. There are no other established U.S. tolerances or exemption from tolerances for fluroxypyr MHE and no other registered uses for fluroxypyr MHE on food or feed crops in the United States. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for the use of fluroxypyr MHE on wheat, barley, and oats that is based on a conservative exposure assessment.

ii. *Drinking water.* Another potential source of dietary exposure are residues in drinking water. Based on the available environmental studies conducted with fluroxypyr MHE and fluroxypyr wherein the properties of these materials show little persistence in the soil environment, there is no anticipated exposure to residues of fluroxypyr MHE and fluroxypyr in drinking water. In addition, there is no established Maximum Concentration Level for residues of fluroxypyr MHE and fluroxypyr in drinking water.

2. *Non-dietary exposure.* There are no other uses currently registered for fluroxypyr MHE and fluroxypyr. The proposed use on wheat, barley, and oats involves application of fluroxypyr MHE to crops grown in an agriculture environment. Thus, the potential for non-occupational exposure to the general population is not expected to be significant.

D. Cumulative Effects

The potential for cumulative effects of fluroxypyr MHE and fluroxypyr and other substances that have a common mechanism of toxicity is also considered. There is no reliable information to indicate that toxic effects produced by fluroxypyr MHE and fluroxypyr would be cumulative with those of any other pesticide chemical. Thus, it is appropriate to consider only the potential risks of fluroxypyr MHE and fluroxypyr in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions and the proposed RfD, the dietary exposure to fluroxypyr MHE use on wheat, barley, and oats will utilize 0.2% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since there are no anticipated residues in drinking water or from other non-occupational sources and no reliable information exists on cumulative effects due to common mechanism of toxicity, the aggregate exposure to fluroxypyr MHE is adequately represented by the dietary route. Thus, DowElanco believes that there is reasonable certainty that no harm will result from aggregate exposure to fluroxypyr MHE residues on wheat, barley, and oats.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of fluroxypyr MHE, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database for fluroxypyr MHE relative to pre- and post-natal effects for children is complete. Further, for fluroxypyr MHE, the NOEL in the chronic feeding studies which was used to calculate the RfD (0.8 mg/kg/day) is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of more than three.

Concerning the reproduction studies in rats, the pup effects shown at the highest dose tested (1,000 mg/kg/day) were attributed to maternal toxicity. Therefore, DowElanco concludes that an additional uncertainty factor is not needed and that the RfD at 0.8 mg/kg/day is appropriate for assessing risk to infants and children.

As noted above for the general U.S. population, aggregate exposure for infants and children will result from the dietary (i.e. not drinking water or non-occupational) route of exposure. In addition, there is no reliable information that shows cumulative effects based on a common mechanism of toxicity for infants and children. Using the conservative exposure assumptions previously described, the percent RfD utilized by the aggregate dietary exposure to residues of fluroxypyr MHE on wheat, barley, and oats is 0.6% for children 1 to 6 years old, the most sensitive population subgroup. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, DowElanco believes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fluroxypyr MHE residues on wheat, barley, and oats.

F. International Tolerances

There are no Codex maximum residue levels established for residues of fluroxypyr MHE and fluroxypyr on any food or feed crop. (J. Miller)

2. E.I. du Pont de Nemours and Company

PP 1F4032

EPA has received a pesticide petition (PP 1F4032) from E.I. du Pont de Nemours and Company, Barley Mill Plaza, Walker's Mill Bldg. 37, Wilmington, DE 19880-0038, proposing

pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of ethametsulfuron in or on the raw agricultural commodity canola at 0.1 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of ethametsulfuron methyl is adequately understood. The unmetabolized parent compound was the major residue found in a canola metabolism study up to 30 days after application. The principal route of metabolic breakdown of ethametsulfuron methyl in canola is dealkylation from the triazine ring. The initial step in the metabolic breakdown is deethylation to form *O*-deethyl ethametsulfuron methyl. Further metabolism forms *N*-demethyl-*O*-deethyl ethametsulfuron methyl and more minor polar metabolites. For purposes of establishing the proposed tolerance, the parent compound ethametsulfuron methyl is the only residue of concern.

The available metabolism studies indicate that total radioactive residues found in mature seeds, when rapeseed was treated at a rate equivalent to the proposed application rate, ranged from 0.008 to 0.012 ppm. These terminal residues may consist of the parent compound, *O*-deethyl ethametsulfuron methyl, O-deethyl-N-demethyl ethametsulfuron methyl and other minor metabolites.

2. *Analytical method.* Analytical methods are available to measure the parent compound in oil seeds, and in oil seed processing fractions. The quantification of ethametsulfuron methyl is by normal phase high performance liquid chromatography (HPLC) using a photoconductivity detector. The Limit of Quantitation (LOQ) for the analytical method is 0.02 ppm.

3. *Magnitude of residues*—i. *Magnitude of the residue in plants.* The results of the seed analyses from canola/seed show that no detectable residues of ethametsulfuron methyl were found in canola/seed harvested 60 to 137 days after treatment at exaggerated rates of 3X of the normal application rate.

ii. *Magnitude of the residue in processed commodities.* Analyses of canola processed fractions (whole seed, pressed cake, desolventized meal, crude oil, pressed oil, solvent extracted oil, degummed oil, refined washed oil, refined bleached oil, and deodorized oil) show that levels of ethametsulfuron methyl were found to be less than 0.02 ppm, the limit of quantitation of the method in all of the fractions evaluated. All of the processed fractions were obtained from seed harvested 92 days after application at proposed use rates and exaggerated rates.

B. Toxicological Profile

1. *Acute toxicity.* Based on EPA criteria, ethametsulfuron methyl is relatively non-toxic, and be categorized as Toxicity Category IV (oral and inhalation routes) and Category III (dermal exposure). LD_{50}s are >5,000 mg/kg for acute oral toxicity in rats, >2,000 mg/kg for acute dermal toxicity in rabbits, and >5.7 mg/L for acute inhalation toxicity in rats. For technical grade active ingredient, primary eye irritation in rabbits is classified as Tox Cat II. For formulated product, primary eye irritation in rabbits is classified as Tox Cat IV. Primary dermal irritation in rabbits is classified as Tox Cat IV. Dermal sensitization in guinea pigs is classified as "Not a skin sensitizer."

2. *Genotoxicity.* This compound was negative in the following tests that have been conducted to determine the genotoxic and mutagenic potential of ethametsulfuron methyl: Mutagenicity assays conducted in bacteria (Ames test) and in cultured Chinese Hamster Ovary cells; a test that measures the induction of chromosomal aberrations in bone marrow cells isolated from rats treated with ethametsulfuron methyl; micronuclei induction in bone marrow cells from mice; and negative in a text that measures DNA damage in cultured rat liver cells. Based on the weight of these data, E.I du Pont concludes that ethametsulfuron methyl is neither genotoxic or mutagenic.

3. *Reproductive and developmental toxicity.* A 2-generation, four litter reproduction study with CD rats treated with dietary levels of 0, 250, 5,000, 20,000 ppm of ethametsulfuron methyl failed to reveal any evidence suggestive of an adverse effect on reproductive potential. A NOEL was indicated at the mid dose level of 5,000 ppm (equivalent to approx. 433 mg/kg b.w./day, actual intake) based on significantly ($p<0.5$) decreased body weights in the high dose treated F0 and F1 generation males.

A developmental toxicity study of ethametsulfuron methyl in rabbits indicated that dams administered 4,000 mg/kg (highest dose tested) had a higher mortality rate, lower food consumption and body weight gains, increased incidences of gross clinical signs of toxicity and of abortions, and increased absolute and relative liver weights. Absolute and relative liver weights were also slightly greater for dams administered 1,000 mg/kg. There were no compound-related effects observed for dams administered 250 mg/kg.

Dams administered 4,000 mg/kg also had a decrease in the number of live fetuses. This was related to an increase in the number of early resorptions. There were no other compound-related effects on the dams, nor were there any effects on fetal weights, malformations or variations incidences. The NOELs for this study were 250 mg/kg for the dams and 1,000 mg/kg for the fetus. Ethametsulfuron methyl was neither teratogenic in rabbits nor uniquely toxic to the conceptus.

A developmental toxicity study was also conducted in rats treated at doses of 0, 60, 250, 1,000, or 4,000 mg/kg. Among the dams of the groups given ethametsulfuron methyl, no compound-related mortality or clinical abnormalities were observed. For the treatment period, the high dose group had a lower weight gain and significantly decreased food consumption compared to the control group. No other significant differences in body weight changes or food consumption were observed. A significant trend was indicated for mean fetal weight and the mean fetal weight of the high dose group was lower than that of the control group. No significant differences were observed in the rates of malformations or developmental variations. Under the conditions of the study, the apparent no effect level for the dam and fetus was 1,000 mg/kg/day. Thus ethametsulfuron methyl was not uniquely toxic to the conceptus nor was it teratogenic in rats.

4. *Subchronic toxicity—i. Rat.* A 90-day feeding study followed by a 1-generation reproduction phase in rats at dietary levels of 0, 100, 1,000, and 5,000 ppm of ethametsulfuron methyl failed to elicit any signs of overt toxicity or any adverse effect on reproductive performance at levels as high as 5,000 ppm (equivalent to 0.5% of the diet or approximately 409 mg/kg b.w./day, actual intake). The No Observed Adverse Effect Level (NOAEL) for this study was, therefore, the high dose level of 5,000 ppm.

ii. *Mouse.* A 90-day dietary feeding study in CD-1 mice at levels of 0, 50, 500, 2,500 and 5,000 ppm indicated a No Observed Effect Level (NOEL) for females and a NOAEL for males set at the high dose level of 5,000 ppm (equivalent to approximate 687 mg/kg b.w./day, actual intake for males).

iii. *Dog.* Dietary administration of technical ethametsulfuron methyl to dogs for 90 days at levels of 0, 100, 3,500 or 10,000 ppm failed to reveal any evidence of treatment-related toxicity at levels as high as 10,000 ppm (equivalent to 1% of the diet or approximately 386 mg/kg b.w./day, based on actual intake).

5. *Chronic toxicity*—i. *Rat.* Administration of ethametsulfuron methyl to Sprague-Dawley rats for up to 24 months at dietary levels of 0, 50, 500 and 5,000 ppm revealed a NOAEL for in-life parameters of 5,000 ppm (equivalent to 238.5 mg/kg b.w./day, actual intake), based on questionable toxicological significance of decreased ($p<0.05$) serum sodium levels in both the 5,000 ppm treated males and females during the first 12 months of treatment. The effects on serum sodium levels in the high dose groups were described as mild (representing a decrease in 2-6% of the control values) and occurring in the absence of any associated pathological changes in the kidney. Treatment with the test material at dietary levels as high as 5,000 ppm (equivalent to 0.5% of the diet) failed to elicit any evidence of treatment-related neoplastic potential.

ii. *Dogs.* Chronic dietary administration of the test material to dogs at levels of 0, 250, 3,000 and 15,000 ppm for 1-year indicated a NOEL of 3,000 ppm, equivalent to approximately 87 mg/kg b.w./day actual intake, based on compound-related effects expressed in the 15,000 ppm treated group as decreased body weight gain and food efficiency values in the males. Significantly decreased serum sodium levels in both sexes at the high dose treated level were not associated with any evidence of renal pathology. In the absence of any collaborative clinical or pathological findings differences in organ weights relative to body or brain weight were considered to be of doubtful biological significance.

iii. *Mouse.* Administration of the test material to CD-1 mice at dietary levels of 0, 25, 500, and 5,000 ppm for the period of up to 78 weeks failed to reveal any overt signs of treatment-related toxicity of dietary levels of up to 5,000 ppm (equivalent to 818 mg/kg bwt/day, actual intake). Although a direct effect of treatment on body weights or weight gains could not be established, overall body weight gain in the 5,000 ppm treated male mice was depressed (non-significant, $p>0.05$) by 10% when compared to the controls. There was no evidence of any treatment-related oncogenic potential.

6. *Animal metabolism.* When administered via oral gavage to rats, ethametsulfuron methyl was rapidly metabolized and excreted in the urine and feces. Within 3 days, greater than 90% of the administered dose was excreted by male rats and greater than 80% was excreted by females. Approximately 50% of the administered dose was excreted as unchanged ethametsulfuron methyl. The remainder was converted predominately to *N*-demethyl ethametsulfuron methyl and *O*-deethyl ethametsulfuron methyl, which are considered by by-products of cytochrome P450-mediated reactions. Less than 0.02% of the administered dose remained in the carcass or tissues. There was no significant or preferential accumulation of ethametsulfuron methyl or its metabolites in any tissue. Because of the short excretion half-life, repeated daily exposures are not expected to result in significant body burdens of ethametsulfuron methyl.

7. *Metabolite toxicology.* There is no evidence that the metabolites of ethametsulfuron methyl as identified as either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine effects.* No special studies investigating potential estrogenic or endocrine effects of ethametsulfuron methyl have been conducted. However, the standard battery of required toxicology studies have been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. Based on these studies there is no evidence to suggest that ethametsulfuron methyl has an effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* Based on the residue data and the proposed single-crop use, potential for dietary exposure of ethametsulfuron methyl from food sources is extremely low. Residue studies have shown no residues above the LOQ (residues <0.02 ppm) in any canola seed samples evaluated, including the canola oil processed fractions. No dietary exposure is anticipated from secondary residues in meat or milk. Although canola meal is considered a minor feedstuff for cattle and poultry (representing a maximum of 15% of an animal's diet), field residue studies showed ethametsulfuron methyl residues were all below the LOQ (<0.02 ppm) in all of the canola RACs and processed fractions, including meal, even when the crop was treated at 2-3X the proposed maximum use rate.

Direct human consumption of canola as a food commodity in the United States is extremely low. Canola is a minor crop in the U.S., and the only canola fraction used as a food product is the refined canola oil. A dietary risk evaluation (DRES) was conducted to determine the theoretical maximum residue contribution of ethametsulfuron methyl in the diet as a result of agricultural use on canola. Unfortunately, consumption data for canola oil does not exist in the 1977-1979 food consumption database used in EPA's DRES system, since at that time, canola oil was not a significant part of the U.S. diet. Since 1977 more canola oil is used in U.S. homes, although total production and usage are still minor when compared to other edible oils such as soybean oil.

Conservative assumptions were used to estimate canola consumption in the United States. The USDA's Oilseed Analysis Division has indicated that an average of 1.1 billion pounds of canola oil was used in the United States annually over the past 5 years. The dietary exposures that might occur by way of canola oil consumption can be estimated by taking the average annual use of canola oil in the United States (includes both domestically produced and imported canola oils) and dividing it by the approximate US population of 266.3 million people. This provides a per-capita consumption estimate for the general population. Using this approach, total canola oil consumption on a grams per kg body weight per day was calculated by dividing by the average days in a year and average body weight of a person (60 kg). The 60 kg value is used by the US EPA as part of their "Food Factor" system, and is also supported by taking the average weight of children between the ages of 6 months to 19 years (36 kg) and the average weight of adults of 70 kg and assuming a 69 year life span (as proposed in the review draft of the US EPA's Exposure Factors Handbook). Using these assumptions, canola oil consumption was calculated to be 0.088 g/kg bw/day.

While this method provides a useful approximation of canola consumption, this is clearly a conservative estimate for risk assessment purposes, since this estimate assumes that all of the canola oil used in the US is indeed ingested. In reality, not all the oil that is used in cooking or deep-fat frying is consumed but instead, is discarded or recycled. Another indication that the consumption value of 0.088 g/kg bw/day is an over-estimate is from the USDA's 1989-1992 food survey (not yet included in the EPA's DRES system),

which indicates canola oil consumption is 0.00023 g/kg/day for the general U.S. population.

Using the consumption estimate of 0.088 g canola oil/ kg bw/day for the general US population, and assuming that 100% of the canola crop is treated with ethametsulfuron methyl and all canola consumed contains residues at the proposed tolerance level of 0.1 ppm, the theoretical maximum residue contribution of ethametsulfuron methyl in the diet is calculated to be 0.00001 mg/kg/day or <0.01% of the RfD of 0.87 mg/kg/day.

ii. *Drinking water.* Another potential source of dietary exposure to pesticides are residues in drinking water. There is no established Maximum Concentration Level (MCL) for ethametsulfuron methyl in water. Based on the low use rate of ethametsulfuron methyl, and a use pattern that is not widespread (since the only proposed use is on a minor crop), DuPont does not anticipate residues of ethametsulfuron in drinking water and exposure from this route is unlikely.

2. *Non-dietary exposure.* Ethametsulfuron methyl is not registered for any use which could result in non-occupational, non-dietary exposure to the general population. Ethametsulfuron methyl is a herbicide with proposed use only on canola. There are no other food uses, nor are there any residential or non-crop uses of this active ingredient. Therefore, the only potential for non-occupational aggregate exposure would come from dietary intake.

D. Cumulative Effects

Ethametsulfuron methyl belongs to the sulfonylurea class of compounds. Other compounds in this class are registered herbicides. However, the herbicidal activity of the sulfonylureas is due to the inhibition of acetolactase synthase (ALS), an enzyme only found in plants. ALS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the low toxicity of the sulfonylurea compounds in animals. There is no evidence to indicate or suggest that ethametsulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the most sensitive species chronic NOEL of 87 mg/kg and a Reference Dose (RfD) of 0.87 mg/kg/day, the proposed use of ethametsulfuron methyl on canola is expected to utilize 0.001% of the RfD for the general U.S. population. Generally, exposures below 100 percent of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose risk to human health. Thus, DuPont concludes that there is a reasonable certainty that no harm will result from aggregate exposure to ethametsulfuron methyl resulting from proposed agricultural use on canola.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of ethametsulfuron methyl, data were considered from developmental toxicity studies in the rat and rabbit, and a multi-generation reproduction study in rats. The developmental toxicity studies demonstrated that even at the high oral doses used in these studies (up to 4,000 mg/kg in rabbits and rats), no teratogenic effects were found in either species nor was the compound found to be uniquely toxic to the conceptus.

The 2-generation reproduction study in rats treated at dietary levels as high as 20,000 ppm on a daily basis throughout 2 generations (equivalent to 1,582 mg/kg/day for males and 1817 mg/kg/day for females), showed no evidence of effects on reproductive performance in the adults, or evidence of gross or histopathological effects in the adult or weanling rats in any test group. This study indicates that ethametsulfuron methyl is not a reproductive toxicant.

As mentioned previously, canola oil is a very minor component of the diet, and thus had not been included as part of the 1977-79 food survey used in EPA's DRES system. DuPont is not aware of specific food survey data concerning consumption of canola oil by infants and children. However, the 1977-79 food survey database does provide consumption data for other edible oils for each of the population subgroups, including infants and children. This data indicate that non-nursing infants consume more soybean and coconut oil than any of the other 22 population subgroups, specifically consuming 4.2 times more soybean oil and 49.1 times more coconut oil than the consumption by the general US population. The data also show that children 1-6 consume more corn, cottonseed, peanut and sunflower oil than any other subgroup listed, to a maximum of 2 times more than the general U.S. population. Using these data and making the most conservative assumption to extrapolate to canola oil, we can estimate that infants and children consume 49 times more canola oil than does the U.S. population, and calculate an approximate daily consumption of 4.3 g canola oil/kg body weight. If we use the additional conservative assumptions that all the canola oil consumed contains ethametsulfuron methyl residues at tolerance levels of 0.1 ppm, we calculate that the maximum theoretical residue concentration of ethametsulfuron methyl in the infants' and children's diets would be 0.00049 mg/kg/day or <0.05% of the RfD.

As indicated above, DuPont concludes that infants and children have a low potential for ethametsulfuron methyl exposure because of both the low level of canola oil in the diet, and the absence of detectable residues in field-treated canola. The toxicology profile of ethametsulfuron methyl demonstrates low mammalian toxicity, and results from the developmental and reproduction studies indicate that there is no additional sensitivity for infants and children. Therefore, DuPont concludes that an additional safety (uncertainty) factor is not warranted and the RfD of 0.87 mg/kg body weight/day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children from aggregate exposure to ethametsulfuron methyl.

F. International Tolerances

Ethametsulfuron methyl and its end-use product Muster are registered only in Canada on canola/rape and mustard with a MRL value of 0.1 ppm. A CODEX tolerance for ethametsulfuron methyl has not been established. (Jim Tompkins)

3. Monsanto

PP 7F4840

EPA has received a pesticide petition (PP 7F4840) from Monsanto, Suite 1100, 700 14th St., NW., Washington, DC 2005, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of sulfosulfuron 1-(4,6-dimethoxypyrimidin-2-yl)-3-[(2-ethanesulfonyl-imdazo(1,2-a)pyridine-3-yl)sulfonyl]urea in or on the raw agricultural commodities. The proposed analytical method involves hydrolyzing sulfosulfuron and its imadazopyridine-containing metabolites under acidic conditions to the common chemophore, ethyl sulfone. Ethyl sulfone is then separated and quantitated by High Performance Liquid Chromatography (HPLC) with fluorescence detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Metabolism of sulfosulfuron in plants is negligible. The nature of the major sulfosulfuron residues in wheat matrices depends primarily on the mode of application with reliance upon metabolism in the soil.

Postemergence applications result in residues that are mostly made up of parent compound, with small amounts of five to six metabolites that together make up less than 15% of the total radioactive residue.

Preemergence application result in soil degradation of the parent compound followed by uptake primarily of the imidazopyridine ring-containing metabolites and small amounts of the parent compound. The pyrimidine ring-containing metabolites under these conditions are tightly bound to the soil, resulting in negligible uptake of these residues. Little further metabolism of the imidazopyridine metabolites takes place in the plant. The predominant residues resulting from preemergence applications were sulfonamide (22% TRR) and guanidine (18.3% TRR).

In both cases, translocation of residue to the grain is negligible. The highest residues are observed following postemergence applications and the residues are primarily parent compound.

In rotational crops, residues were low, with the TRR's not exceeding 0.01 ppm in most crops. The most abundant metabolite was sulfonamide, with low levels of a sulfonamide-sugar conjugate and parent compound also observed.

2. *Analytical method.* The primary crop (wheat) residue and the secondary (animal products) residues are analyzed as total residue by hydrolyzing sulfosulfuron and its imadazopyridine-containing metabolites under acidic conditions to the common chemophore, ethyl sulfone. Ethyl sulfone is then separated and quantitated by High Performance Liquid Chromatography (HPLC) with fluorescence detection.

3. *Magnitude of residues.* EPA has received a pesticide petition from Monsanto Company proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide sulfosulfuron in or on the following:

Commodity	Part per million (ppm)
Wheat	
grain	0.01 ppm (limit of quantitation 0.008 ppm)
straw	0.1 ppm
hay	0.3 ppm
forage	3.0 ppm
Animal Products	
milk	0.004 ppm
fat	0.004 ppm
meat	0.004 ppm
muscle	0.004 ppm
meat by-products	0.1 ppm
kidney	0.1 ppm
liver	0.1 ppm

B. Toxicological Profile

1. *Acute toxicity.* A rat acute oral study with an LD_{50} of ≥5,000 mg/kg, EPA Category IV. A rabbit acute dermal study with an LD_{50} of >5,000 mg/kg, EPA Category IV. A rat inhalation study with and LC_{50} of >3.0 mg/l, the highest concentration generated, EPA Category IV. A primary eye irritation study in the rabbit showing moderate eye irritation, EPA Category III. A primary dermal irritation study in the rabbit showing essentially no irritation, EPA Category IV. A dermal sensitization study in the guinea pig showing no potential for sensitization. Acute and subchronic neurotoxicity studies in rats demonstrating no neurotoxicity potential. Sulfosulfuron has a low order of acute toxicity.

2. *Genotoxicity.* An *in vitro* Ames/ *Salmonella* mutagenicity assay in five commonly used strains was negative for mutagenic potential.

An *in vitro* CHO/HGPRT Gene Mutation assay was negative for mutagenicity up to the limit of solubility.

An *in vitro* chromosomal aberration test in cultured mammalian cells demonstrated the induction of chromosomal aberrations only under conditions of prolonged incubation at high dose levels that exceeded the solubility of the test material. The mechanism responsible for this induction and the biological relevance of the effect is not clear. Other, more relevant, chromosomal aberration tests (see below) were negative.

An *in vitro* chromosome aberration study in human lymphocytes was negative for chromosomal aberrations.

An *in vivo* bone marrow micronucleus assay in the mouse was negative for chromosomal effects.

The weight of evidence demonstrates that sulfosulfuron does not produce significant genotoxic or mutagenic effects.

3. *Reproductive and developmental toxicity.* A developmental study in the rat demonstrated no signs of maternal or developmental toxicity up to the maximum dose level of 1,000 mg/kg/day. The NOEL was considered to be 1,000 mg/kg/day.

A developmental study in the rabbit demonstrated no signs of maternal or developmental toxicity up to the maximum dose level of 1,000 mg/kg/day. The NOEL was considered to be 1,000 mg/kg/day.

A 2-generation reproduction study in the rat demonstrated a subchronic toxicity NOEL of 5,000 ppm based on body weight and food consumption decreases, urinary bladder calculi formation and minor bladder and kidney pathology. There were no effects on reproduction or fertility up to 20,000 ppm, the highest dose tested. Sulfosulfuron demonstrates no reproductive effects in rats and no teratogenic or developmental effects in rats and rabbits.

4. *Subchronic toxicity.* A 28-day dermal study in the rat with a NOEL of at least 1,000 mg/kg/day, the highest dose tested. A 90-day feeding study in the rat resulted in only mild body weight/weight gain effects at 20,000 ppm, the highest dose tested. The NOEL for both males and females was considered to be 6,000 ppm. A 90-day feeding study in the dog demonstrated subchronic toxicity, primarily in the urinary bladder, secondary to urinary crystal formation and urolithiasis at dose levels of 300 and 1,000 mg/kg/day in females and at 1,000 mg/kg/day in males. The NOEL was considered to be 100 mg/kg/day in females and 300 mg/kg/day in males. Sulfosulfuron has a low order of subchronic toxicity, related only to the precipitation of test material in the urinary bladder of dogs at high doses.

5. *Chronic toxicity.* A 1-year study in the dog demonstrated toxicity in the urinary bladder secondary to urinary crystal and calculus formation at 500 mg/kg/day in a single male animal. Urinary crystal formation was observed in females at 500 mg/kg/day with no subsequent pathology. The NOEL was considered to be 100 mg/kg/day for male and female dogs.

A combined chronic toxicity/ oncogenicity study in the rat demonstrated chronic toxicity, primarily in the urinary bladder, in males and females at 5,000 and females at 20,000 mg/kg/day. The NOEL for chronic toxicity was considered to be 500 ppm or 24.4 mg/kg/day. This is the

lowest NOEL and is used in the calculation of the Reference Dose (RfD).

An 18-month oncogenicity study in the mouse demonstrated chronic toxicity, primarily in the urinary bladder, of male mice at 3,000 and 7,000 ppm. No chronic toxicity was observed in females. The NOEL for chronic toxicity was considered to be 700 ppm for male mice and 7,000 ppm for female mice. Sulfosulfuron demonstrates chronic toxicity related only to the formation of crystals and calculi of the compound in the urinary bladders of mice, rats and dogs.

6. *Carcinogenicity.* An 18-month oncogenicity study in the mouse demonstrated a small increase in the incidence of benign mesenchymal tumors of the urinary bladder submucosa in male mice with urinary bladder calculi at 7,000 ppm. However, these tumors are reportedly unique to Swiss-derived mice and were considered to be of biological relevance only to the mouse by a Independent Working Group on Mouse Mesenchymal Tumors convened by the International Life Sciences Institute (ILSI).

A combined chronic toxicity/ oncogenicity study in the rat (same as above) demonstrated a urinary bladder transitional cell carcinoma and a urinary bladder transitional cell papilloma in two females at 5,000 mg/ kg/day, probably secondary to urinary system calculi formation and (chronic) irritation.

The low incidences of oncogenicity observed in the oncogenicity studies conducted with sulfosulfuron are either considered to be relevant to the mouse only or a secondary threshold effect related to chronic irritation resulting from bladder stone formation at high doses. Sulfosulfuron is not considered to be a primary oncogen.

Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986, Monsanto believes that the EPA would classify sulfosulfuron as a Group "C" carcinogen, without quantitative risk assessment, i.e., using the margin of exposure (MOE) approach for risk assessment. Under the proposed guidelines published April 10, 1996, however, Monsanto believes that sufosulfuron should be included in the "Not Likely Human Carcinogen" category based upon mechanistic considerations. To quote the 1996 EPA guideline document discussing a similar effect in a rat study:

"A major uncertainty is whether the profound effects of (substance 5) may be unique to the rat. Even if (substance 5) produced stones in humans, there is only limited evidence that humans with bladder stones develop cancer. Most often human bladder stones are either passed in the urine or lead to symptoms resulting in their removal."

In either case, a Margin of Exposure assessment or reference dose (RfD) approach would be utilized. Since the chronic NOEL for male rats is lower than the oncogenic NOEL for female rats (24 mg/kg/day vs 30 mg/kg/day), the male rat chronic NOEL was used with a 100 fold safety factor for a reference dose of 0.24 mg/kg/day, for the quantitation of human risk.

7. *Animal metabolism.* An animal metabolism study was conducted in the rat using sulfosulfuron radiolabeled in both the pyrimidine and iminodazopyridine rings to detect possible cleavage of the sulfonylurea bond. Following oral dosing of sulfosulfuron, absorption was found to be greater at low doses (>90%) than at the higher doses (40%). Sulfosulfuron was readily excreted, mostly unchanged, with urinary excretion the major route of elimination at low doses and fecal excretion the major route at high doses. Greater than 90% of the dose was excreted 3 days after administration. Expiration as carbon dioxide or volatiles was not a significant route of elimination. Metabolism of sulfosulfuron in the rat occurred to only a limited extent with demethylation and pyrimidine ring hydroxylation as the major metabolic routes, yielding desmethyl-sulfosulfuron and 5-hydroxy-sulfosulfuron as the major metabolites. There was no evidence of bio-retention of sulfosulfuron or its metabolites; tissue and blood levels were negligible, with no individual tissue showing levels exceeding 0.2% of the dose.

8. *Metabolite toxicology.* Dietary residues are comprised almost entirely of parent sulfosulfuron and the imidazopyridine-containing metabolites sulfonamide and guanidine. Specific toxicology data is not available on these metabolites, but the structures do not suggest any specific toxicologic concern and the level of dietary exposure is low. These metabolites are not considered to present a significant toxicological risk.

C. Aggregate Exposure

1. *Dietary exposure—*i. *Food.* Estimates of dietary exposure to residues of sulfosulfuron utilized the proposed tolerance-level residues for wheat grain (0.01 ppm) and for the following animal products: milk (0.004 ppm), fat (0.004 ppm), meat (0.004 ppm) and meat by-products (0.1 ppm, including kidney and liver). One-hundred percent market share was assumed as well as the assumption that no loss of residue would occur due to processing and cooking. A Reference Dose (RfD) of 0.24 mg/kg/day was assumed based on the low NOEL from the chronic/oncogenicity study in rats (~ 24 mg/kg/day) with a safety factor of 100. Since the present label lists only wheat or fallow as approved rotations, no residues were entered for rotational crops. Using these conservative assumptions, dietary residues of sulfosulfuron contribute only 0.000149 mg/kg/day (0.006% of the RfD) for children 1-6 years, the most sensitive sub-population. For the U.S. Population as a whole, the exposure was only 0.000048 mg/kg/day (0.02% of the RfD).

ii. *Drinking water.* Given the low use rates, rapid soil degradation, strong soil binding characteristics and low soil mobility of sulfosulfuron, the risk of significant ground and surface water contamination and exposure via drinking water is considered to be negligible. Assuming that 10% of the RfD is allocated to drinking water exposure (0.024 mg/kg/day), and the average, 70 kg human consumes 2 liters of water per day, a Maximum Allowable Concentration value for drinking water of 0.84 mg/l is proposed for sulfosulfuron.

2. *Non-dietary exposure.* Sulfosulfuron is proposed for a variety of non-crop uses including roadsides, fencerows, industrial sites, parks, apartment complexes, schools and other public areas. Exposure assessments have been made for mixer/loaders and applicators in these situations (occupational exposure) and the cumulative (amortized) daily exposure from both these activities has been estimated to be less than 0.5 µg/kg/day, or approximately 0.2% of the RfD. The non-occupational exposure in these locations to the casual passer-by would be expected to be orders of magnitude less. The exposure in either instance does not present a significant exposure risk.

D. Cumulative Effects

Sulfosulfuron falls into the common category of sulfonylurea (SU) herbicides; however there is no information to suggest that any of the SU's have a common mechanism of mammalian toxicity or even produce similar effects. It is not appropriate to combine exposures in this case, and Monsanto is considering only the potential risk of sulfosulfuron in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* As presented above, the exposure of the U.S. General population to sulfosulfuron is low, and the risks, based on comparisons to the reference dose, are negligible. Margins of safety are expected to be considerable. Monsanto concludes that there is a reasonable certainty that no harm will result to the U.S. Population from aggregate exposure to sulfosulfuron residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of sulfosulfuron, Monsanto considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in rats. No developmental or reproductive effects were observed up to the highest dose tested in each of the three studies. The Observed NOEL's were 1,000 mg/ kg/day, 1,000 mg/kg/day and 20,000 ppm, respectively. Using the same conservative assumptions that were made previously for the dietary exposure analysis for the U.S. General population, the percent of the RfD utilized by pre-adult sub-populations are: all infants-0.03%; nursing infants-0.005%; non-nursing infants-0.04%; children, 1-6 years-0.06%; children, 7-12 years-0.04%. Monsanto concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to sulfosulfuron residues.

F. International Tolerances

There are currently no international (Codex) tolerances established for sulfosulfuron. Sulfosulfuron is currently registered on wheat in Switzerland, Poland, the Czech Republic, Slovakia and South Africa. Petitions for tolerances for sulfosulfuron in/on wheat have been submitted in Canada, Australia and the European Union. (Jim Tompkins)

[FR Doc. 97–32936 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–785; FRL–5760–5]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number [PF–785], must be received on or before January 16, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Amelia M. Acierto, Registrtion Division (7505W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Office location, telephone number and e-mail address: Rm. 4W60 4th floor, CS1, 2800 Crystal Drive, Arlington VA, (703)308-8377, e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–785] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–785] and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 4, 1997

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Ecolab Inc.

PP 7E4922

EPA has received a pesticide petition (PP 7E4922) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, Minnesota 55102, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.1001(c) to establish an exemption from the requirement of a tolerance for the residues of

hydroxyethylidine diphosphonic acid (HEDP) when used as an inert ingredient at levels of 0.9% in pesticide formulations applied to agricultural commodities after harvest.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting the petition. Additional data may be needed before EPA rules on the petition.

A. Proposed Use Practices

HEDP is proposed for use as an inert ingredient in an antimicrobial treatment formulation contacting raw agricultural commodities.

1. *Acute toxicity.* The acute and chronic toxicity of HEDP have been tested extensively. Adverse effects are not expected when used in the proposed manner.

Pure HEDP exhibits low acute oral and dermal toxicity. The oral LD_{50} ranged from 1,340 to 3,130 milligrams/kilogram (mg/kg) (Toxicity Category III) and the dermal LD_{50} ranged from 7,940 to greater than 10,000 mg/kg (Toxicity Category IV). HEDP is moderately irritating to the skin (Toxicity Category III) and is corrosive to the eyes (Toxicity Category I).

2. *Genotoxicity.* No mutagenic activity was observed in microbial assays using five *Salmonella* strains or in a L5178Y TK mouse lymphoma cell point mutation assay, with and without mammalian microsomal activation. There are no significant genotoxicity concerns for HEDP.

3. *Reproductive and developmental toxicity.* No reports were found in the open literature indicating that HEDP caused developmental or reproductive effects.

4. *Subchronic toxicity.* Subchronic studies were conducted in both rats and dogs. In these studies, rats were exposed to HEDP in the diet at concentrations up to 30,000 parts per million (ppm) and in dogs up to 10,000 ppm. Histopathological evaluations of tissues from the reproductive systems in male and female animals of both species did not demonstrate any lesions, morphological changes or weight variations. Although the functionality of the reproductive systems were not evaluated, there was no indication that the HEDP treatment affected these tissues.

In a 90–day feeding study, rats were fed diets containing 3,000, 10,000 or 30,000 ppm HEDP (disodium monohydrate salt). At 30,000 ppm average body weight gains of both males and females were reduced and absolute and relative liver weights of males were decreased. Increased erythrocyte counts (males), decreased hemoglobin concentration (both sexes), decreased hematocrit values (both sexes), and decreased leukocyte counts (females at 84–days only) were observed at 30,000 ppm. No other hematologic, urinalysis, or clinical chemistry parameter was affected. The no-observed-effect level (NOEL) was greater than 10,000 ppm.

The disodium monohydrate salt of HEDP was administered to beagle dogs at dietary concentrations of 1,000, 3,000, or 10,000 ppm for 90–days. No adverse hematologic, biochemical, or histopathologic effects were observed. The NOEL was 10,000 ppm.

The NOEL from both the rat and the dog studies was 10,000 ppm. Based on the data from these studies the daily intake of HEDP can be estimated. The estimated intake of HEDP by male and female rats at 10,000 ppm was 635 and 724 milligrams/kilogram/day (mg/kg/day), respectively. The estimated intake of HEDP by male and female dogs at 10,000 ppm was 278 and 385 mg/kg/day, respectively.

5. *Carcinogenicity.* Nothing in the available literature suggests that HEDP is known to be a carcinogen; thus, a discussion of aggregate excess lifetime cancer risk resulting from exposure to the chemical from residues in food and drinking water (ground and surface water) and from residential and other non-occupational source(s) is not applicable.

6. *Endocrine effects.* HEDP does not acts as an endocrine disrupter or possess intrinsic hormonal activity.

B. Aggregate Exposure

1. *Dietary exposure—i. Food.* There are no established U.S. food tolerances for HEDP. Because the compound has an affinity for water, residues are expected to drain away with wash water instead of "sticking" to the food items. Tests on broccoli and tomatoes indicate only trace amounts of HEDP remain on these food items that have contacted treated equipment. For broccoli (cut), an average of 0.78 ppb HEDP residues were found. An average of 0.09 ppb HEDP residues were found on tomatoes. While these data are not meant to be representative of all fruits and vegetables, it shows that any potential HEDP residues are not significant. Dietary exposure from the proposed use is possible; however, any residues that may remain are expected to be very minimal and, because of the low toxicity of the undiluted raw material, these residues would not be of toxicological concern.

ii. *Drinking water.* There should be no concern about the potential for transfer of HEDP residues to human drinking water because it does not interfere with routine removal of organics in laboratory semi-continuous activated sludge sewage treatment units. Because of the physical chemistry of this compound, it is unlikely that any States are conducting water monitoring programs for HEDP.

HEDP is proposed for use as an inert ingredient in a pesticide formulation used on fruits, vegetables, tree nuts, cereal grain, herbs, and spices. HEDP is classified as slow to intermediate in biodegradation to CO_2. Additionally, the biodegradation is accelerated by light. Data in the aforementioned reference indicates that 0.2 ppm HEDP solutions in a mineral medium biodegrade by 79% in 3–days when exposed to sunlight.

The maximum expected concentration of HEDP in waste water treatment streams from the use of the proposed pesticide product is 0.07 ppm. Furthermore, HEDP will biodegrade in waste water treatment plants and in the environment. Therefore, HEDP released from the use of the proposed pesticide product poses no threat to drinking water.

iii. *Non-dietary, non-occupational exposure.* The estimated non-occupational exposure to HEDP has been evaluated based on its proposed use pattern.

The compound, as an inert ingredient in a pesticide formulation in the form of a soluble concentrate/liquid, is used in industrial and commercial settings.

HEDP use in homes does not occur.

The potential for significant non-occupational non-dietary exposure under the use proposed in this petition to the general population (including infants and children) is unlikely. HEDP is proposed in this petition to be used only at commercial establishments (including farms) and is not to be used in or around the home.

iv. *Environmental fate and ecological effects.* HEDP is classified as slow to intermediate in biodegradation to CO_2. Additionally, the biodegradation is accelerated by light. Data in the aforementioned reference indicates that 0.2 ppm HEDP solutions in a mineral medium biodegrade by 79% in 3–days when exposed to sunlight. Degradation of HEDP has been shown in several test soils at rates similar to biodegradable linear alkybenzenesulfonate. Complexes of HEDP with copper (II) and iron (III) rapidly photodegrade in aqueous solution under irradiation from a mercury arc lamp in the laboratory.

Environmental effects data on HEDP (including Daphnia magna, Midge Larvae, Grass Shrimp, Oyster Shell Deposition, Bluegill Sunfish, Rainbow Trout, Channel Catfish, and Sheepshead Minnow) show HEDP is classified as practically non-toxic, with the exception of oysters, in which it is classified as being slightly toxic. The maximum expected concentration of HEDP in waste water treatment streams from the use of the proposed pesticide product is 0.07 ppm. This value is three orders of magnitude below the lowest toxic concentration listed above (oysters). Furthermore, HEDP will biodegrade in waste water treatment plants and in the environment. Therefore, HEDP released from the use of the proposed pesticide product poses no threat to aqueous organisms present in the environment.

C. Cumulative Effects

Review of EPA's list of inert ingredients found no similar approved inert ingredients or compounds with similar structures.

The list of currently registered active ingredients from the National Pesticide Information Retrieval System (NPIRS) was reviewed for compounds similar to HEDP. The ethylene-releasing growth regulator ethephon (chemical name 2-chloroethylphosphonate) is somewhat similar in that a two-carbon fragment is the organic component of a phosphonic acid. However, HEDP contains two phosphonic acid groups attached to the same carbon and contains no chlorine. Ethephon, on the other hand, contains a single phosphonic moiety but has a chlorine attached at the 2-position of the ethyl group. Further, the mode of action of ethephon is to release ethylene by rapidly decomposing with loss of the chlorine and the phosphonate; this pathway is not available for HEDP. Thus, combining exposures to HEDP with this compound is not appropriate.

D. Safety Determination

1. *U.S. population.* Tests conducted by Ecolab Inc. indicate very low residues of HEDP are expected to remain on treated commodities (whether raw agricultural commodities or processed); thus, exposure to the U.S. general population including infants and children would be very minimal as a result of the proposed use.

In testing for Ecolab using tomatoes and broccoli the HEDP residue on these vegetables was generally below 1 ppb. Assuming that a normal adult weighing 70 kg ingests approximately 2,000 g of food a day, and that all the food ingested is fruits and vegetables that contain a 1 ppb residue of HEDP, the daily intake of HEDP would be estimated at 0.000027 mg/kg/day.

Comparing the daily intake of HEDP under these worst case situations with the lowest NOEL for HEDP in the subchronic animal studies (278 mg/kg/day) provides a margin of exposure of approximately 10,000,000. Clearly this larger margin of exposure demonstrates the lack of concern about the presence of the minute residues of HEDP on food.

Dietary exposure to HEDP is possible; however, any residues that may remain are expected to be very minimal and, because of the low toxicity of the undiluted raw material, these residues would not be of toxicological concern.

Therefore, exposure of this inert ingredient (from the use proposed in this petition) to the U.S. general population would not pose a health risk.

2. *Infants and children.* HEDP should not pose a health risk to the U.S. population subgroup of infants and children.

Tests conducted by Ecolab Inc. indicate very low residues of HEDP are expected to remain on treated commodities (whether raw agricultural commodities or processed); thus, exposure to the U.S. general population including infants and children would be very minimal as a result of the proposed use. Dietary exposure to HEDP is possible; however, any residues that may remain are expected to be very minimal and, because of the low toxicity of the undiluted raw material, these residues would not be of toxicological concern.

Therefore, exposure of this inert ingredient (from the use proposed in this petition) should not pose a health risk to the U.S. population subgroup of infants and children.

E. Analytical Method

Because this petition is for an exemption from the requirement of a tolerance, an enforcement method for HEDP is not needed. However, a spectrophotometric method to determine residues of HEDP has been submitted to the Agency .

F. International Tolerances

The petitioner understands that there are no current established Maximum Residue Levels for HEDP.

2. Wacker Silicones Corporation

PP 7E4794

EPA has received a pesticide petition (PP 7E4794) from Walker Silicones Corporation, on behalf of Wacker-Chemie, 3301 Sutton Road, Adrain, Michigan 49221-9397 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend the exemption from the requirement of a tolerance established under 40 CFR 180.1001(c) for the residues of pentaerythritol stearates (CAS. No. 85116-93-4) from 25 ppm to 500 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting the petition. Additional data may be needed before EPA rules on the petition.

A. Proposed Use Practices

As in the tolerance exemption established and published in the **Federal Register** on July 3, 1996 (61 FR 34741–34743) (FRL–5381–2), the proposed use of a pentaerythritol stearates which include pentaerythritol monostearate (CAS No. 78–23–9), pentaerythritol distearate (CAS No. 13081–97–5), pentaerythritol tristearate (CAS No. 28188–24–1), pentaerythritol tetrastearate (CAS No. 115–83–3) is limited to agricultural food use. This includes use on crops and seeds used to grow crops.

B. Toxicological Profile

A summary of the toxicology data is included in the proposed rule that was published in the **Federal Register** on April 17, 1996 (61 FR 16747–16749) (FRL–5355–7).

Pentaerythritol stearates are large, branched hydrocarbons. All carbon-carbon bonds are single bonds. Degradation is anticipated in the presence of enzymes. Hypothesized degradation products include free pentaerythritol and stearic acid (a natural product). The degradation products are likely to be polar and readily eliminated in urine.

1. *Acute toxicity.* The acute oral LD_{50} in rats was determined to be >2,000 mg/kg. This study demonstrates that the mixture of pentaerythritol stearates is practically non-toxic to mammals. Wacker Silicones Corporation and Wacker-Chemie are not aware of any data that suggest that pentaerythritol stearates pose any potentially greater acute risk to infants or children.

2. *Reproductive and developmental toxicity.* Wacker Silicones Corporation and Wacker-Chemie are not aware of any developmental or reproductive effects resulting from exposure to pentaerythritol stearates.

3. *Chronic toxicity.* Wacker Silicones Corporation and Wacker-Chemie are not aware of any effects resulting from chronic exposure to pentaerythritol

stearates. In addition, Wacker Silicones Corporation and Wacker-Chemie are not aware of any data that suggests that chronic exposure to pentaerythritol stearates, including during infancy and childhood, poses any potentially greater lifetime risk.

4. *Carcinogenicity.* Wacker Silicones Corporation and Wacker-Chemie are not aware of any oncogenic effects resulting from exposure to pentaerythritol stearates. In addition, Wacker Silicones Corporation and Wacker-Chemie are not aware of any data that suggests that chronic exposure to pentaerythritol stearates, including during infancy and childhood, poses any potentially greater lifetime cancer risk.

5. *Endocrine effects.* Pentaerythritol stearates are not structurally similar to any compounds with known endocrine effects. Wacker Silicones Corporation and Wacker-Chemie are not aware of any endocrine effects resulting from exposure to pentaerythritol stearates either individually or in combination with other substances.

C. Aggregate Exposure

Exposure to pentaerythritol stearates via both the diet and drinking water is anticipated to be negligible. Pentaerythritol stearates are ingredients in a product that Wacker-Chemie proposes to market in the United States exclusively as an inert ingredient in pesticide formulations that are used exclusively on crops and seeds used to grow crops.

1. *Dietary exposure— Food.* In its review on the previous exemption, EPA's Chemistry Branch determined that the maximum residue of pentaerythritol stearates in food/feed resulting from a single application of pentaerythritol stearates at 0.53 grams/acre (0.0012 lb/acre) would be 0.6 ppm assuming that (a) all the pentaerythritol stearates contained in the pesticide formulation applied to the crop are in the harvested commodity, (b) there is no loss of residue through weathering or volatilization, and (c) pentaerythritol stearates are used on low yield crops (2,000 lb/acre). Further assuming that (i) a maximum of 10 applications per season, (ii) all crops are treated at the proposed maximum seasonal rate, the maximum theoretical seasonal residues of pentaerythritol stearates would be 6 ppm.

Actual seasonal residues are anticipated to be several orders of magnitude lower than the 6 ppm calculated maximum residue for the following reasons:

(i) Only a portion of the pesticide spray is intercepted by edible plant parts.

(ii) Degradation of residues following application is anticipated.

(iii) Treated crops may be medium or high yield crops.

(iv) Crops generally received less than 10 applications per season.

(v) Only a small percentage of pesticide formulations will include pentaerythritol stearates as an inert ingredient.

Actual seasonal residues of pentaerythritol stearates are therefore anticipated to be negligible.

2. *Drinking water.* Exposure to pentaerythritol stearate via drinking water will be negligible. Pentaerythritol stearates have very low solubility in water (>0.1 mg/100 g water at 30° C). Solubility in organic solvents is also anticipated to be low due to the high molecular weight (403– 1201 amu) of the pentaerythritol stearates. The potential for pentaerythritol stearate contamination of ground water or surface water is therefore negligible. If residues did contaminate ground water or surface water, it is highly probable that the low solubility of pentaerythritol stearates in water and organic solvents would result in removal of the residues via standard drinking water purification techniques.

3. *Non-dietary, non-occupational exposure.* Pentaerythritol stearates are ingredients in a product that Wacker-Chemie proposes to market in the United States exclusively as an inert ingredient in pesticide formulations that are used exclusively on crops and seeds used to grow crops. No non-occupational exposure of the United States population to pentaerythritol stearates will result from the proposed use of pentaerythritol stearates.

D. Cumulative Effects

Pentaerythritol stearates do not have any known significant toxicological mechanism or mode of action. Therefore, there is no known significant cumulative risk associated with the proposed use of pentaerythritol stearates.

E. Safety Determination

1. *U.S. population.* Exposure to pentaerythritol stearates via both the diet and drinking water is anticipated to be negligible. Pentaerythritol stearates are ingredients in a product that Wacker-Chemie proposes to market in the United States exclusively as an inert ingredient in pesticide formulations that are used exclusively on crops and seeds used to grow crops. No non-occupational exposure of the United States population to pentaerythritol stearates will result from the proposed use of pentaerythritol stearates.

Aggregate exposure to pentaerythritol stearates is therefore anticipated to be negligible.

2. *Infants and children.* Wacker Silicones Corporation and Wacker-Chemie are not aware of any data that suggest that pentaerythritol stearates pose any potential greater acute or chronic risk to infants or children.

F. International Tolerances

There are no Codex maximum residue levels (MRLs) or exemptions from MRLs for pentaerythritol stearates established for residues of pentaerythritol stearates.

[FR Doc. 97–32932 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50638; FRL–5761–5]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 239, CM #2, Arlington, VA, 703–305–5697, e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit:

62719–EUP–1. Issuance. DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This experimental use permit allows the use of 7,000 pounds of the herbicide triclopyr on 1,950 aquatic acres to evaluate the control of various weeds. The program is authorized only in the States of Alabama, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin. The experimental use permit is effective from November 25, 1997 to December 31, 1998. Time-limited tolerances have been established for residues of the active ingredient in or on fish and shellfish (40 CFR 180.417).

Persons wishing to review this experimental use permit are referred to the designated product manager. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 9, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–32934 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5935–8]

Proposed Administrative Settlement Under The Comprehensive Environmental Response, Compensation, And Liability Act; In Re: Parcel A—Industri-Plex Superfund Site; Woburn, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* A document is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA Dayton Hudson Corporation and National Development Associates of New England, Inc. for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the Industri-Plex Superfund Site in Woburn, Massachusetts.

DATES: Comments must be provided on or before January 16, 1998.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts 02203, and should refer to: Agreement and Covenant Not to Sue Re: Parcel A, Industri-Plex Superfund Site, Woburn, Massachusetts, U.S. EPA Docket No. CERCLA–I–98–1009.

FOR FURTHER INFORMATION CONTACT: Daniel H. Winograd, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 565–3686.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, notification is hereby given of a proposed prospective purchaser agreement concerning the Industri-Plex Superfund Site in Woburn, MA. The settlement was approved by EPA Region I, subject to review by the public pursuant to this document. Dayton Hudson Corporation and National Development Associates of New England, Inc. have executed signature pages committing them to participate in the settlement. Under the proposed settlement, Dayton Hudson Corporation and National Development Associates of New England, Inc. will construct and operate a retail shopping complex and pay $30,000 to the Hazardous Substance Superfund. In addition, all of the settling parties agree to abide by institutional controls and to provide access to the property. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice has also signed this agreement. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this document.

A copy of the proposed administrative settlement may be obtained in person or by mail from Daniel H. Winograd, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 565–3686.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–98–1009).

Dated: December 4, 1997.

Patricia Meaney,

Acting Regional Administrator.

[FR Doc. 97–32923 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5936–1]

Proposed Administrative Settlement Under The Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Norwood PCB Disposal Site; Norwood, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* This document is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Joseph Laham, individually, and 921 Inc. for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at properties on the Norwood PCB Disposal Superfund Site in Norwood, Massachusetts.

DATES: Comments must be provided on or before January 16, 1998.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts 02203, and should refer to: In re: Joseph Laham and 921 Inc., U.S. EPA Docket No. CERCLA–I–97–1044.

FOR FURTHER INFORMATION CONTACT: Robert Cianciarulo, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 573–5718.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended

(CERCLA), 42 U.S.C. 9601 *et seq.*, notification is hereby given of a proposed prospective purchaser agreement concerning the Norwood PCB Disposal Site in Norwood, MA. The settlement was approved by EPA Region I on September 29, 1997, subject to review by the public pursuant to this document. Joseph Laham, individually, and 921, Inc., collectively the Settling Respondents, have executed a signature page committing them to participate in the settlement. Under the proposed settlement, the Settling Respondents are required to establish a trust fund to finance redevelopment activities at the site, to pay $10,000 to the Hazardous Substance Response Trust Fund, to fund specified redevelopment activities and to demolish a Groundwater Treatment System building at the end of its useful life. Further, Respondents are required to provide access to the site and to impose on the property subject to the agreement institutional controls that will protect the remedial action at the site.

EPA is entering into this agreement under the authority of CERCLA section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under sections 106 and 107 of CERCLA for costs incurred by the United States. The U.S. Department of Justice will have approved this settlement in writing prior to the agreement becoming effective. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this document.

A copy of the proposed administrative settlement may be obtained in person or by mail from Robert Cianciarulo, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode HIO, Boston, Massachusetts 02203, (617) 573–5778.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–97–1044).

Dated: September 29, 1997.

Patricia Meaney,

Assistant Regional Administrator.

[FR Doc. 97–32922 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby given notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010689–069
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd. ("APL")
Hapag-Lloyd Container Line GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Neptune Orient Container Line, Inc. ("NOL")
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Synopsis: The proposed amendment provides that, as affiliated companies, APL and NOL shall have a single vote on Agreement matters.

Agreement No.: 202–011528–005
Title: Japan/U.S. Eastbound Freight Conference
Parties:
American President Lines, Ltd. ("APL")
Hapag-Lloyd Container Line GmBH
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines, Ltd. ("NOL")
Orient Overseas Container Line (U.S.A.)
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Wilhelmsen Lines AS
Synopsis: The proposed amendment provides that APL and NOL shall be considered a single member for voting and quorum purposes in conducting the Agreement's business.

Dated: December 11, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32818 Filed 12–16–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Expa Corporation, 4719 N.W., 72nd Avenue, Miami, FL 33166, Officers: Jose F. Estrada, President, Cecilia Estrada, Secretary

Olympic International Freight Forwarders, 2058 NE Lind Court, Poulsbo, WA 98370, Kelly M. Cloward, Sole Proprietor

R S Exports, Inc., 701 W. Manchester Blvd., Suite 203, Inglewood, CA 90301, Officer: Charles Rosales, President

Dated: December 11, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32817 Filed 12–16–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 1998.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Langer Family Limited Partnership, Helen Langer Smith, General Partner, Port Orchard, Washington; to retain voting shares of Olympic Bancorp, Port Orchard, Washington, and thereby indirectly retain shares of Kitsap Bank, Port Orchard, Washington.

Board of Governors of the Federal Reserve System, December 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32917 Filed 12-16-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Deutsche Bank, Frankfurt am Main, Federal Republic of Germany; to acquire through its wholly owned subsidiary, Deutsche Morgan Grenfell, Inc., New York, New York, certain assets of National Westminster Bank PLC, London, England, and of its wholly owned subsidiary NatWest Securities Corporation, New York, New York, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; securities brokerage activities; riskless principal activities; private placement services; futures commission merchant activities and other transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; investing and trading activities, pursuant to § 225.28(b)(8)(ii) of the Board's Regulation Y. Notificant also proposes to engage as principal in (1) buying and selling bank-ineligible securities; and (2) forward contracts, options, futures, swaps, and similar contracts, whether traded on exchanges or not, on bank-ineligible securities. *See Deutsche Bank AG*, 79 Fed. Res. Bull 161 (1995).

Board of Governors of the Federal Reserve System, December 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32916 Filed 12-16-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; System of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Amend payroll records system.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending systems notice, FRTIB–5, Payroll Records, to include new routine uses allowing disclosure to the Department of Health and Human Services Federal Parent Locator System for the purpose of locating Board employees involved in child support cases and enforcing employees' child support obligations.

DATES: Comments must be received no later than January 16, 1998. The proposed notice will be effective January 16, 1998 unless the Board receives comments which would result in a different determination. If comments received result in a different determination, the document will be republished with the change.

ADDRESSES: Comments may be sent to Thomas L. Gray, Assistant General Counsel for Administration, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, Assistant General Counsel for Administration, (202) 942–1662. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Additions to Routine Use

Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Board will disclose data from its payroll system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services (DHH) for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System.

The FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for the purposes of establishing paternity and securing support. Effective October 1, 1997, the FPLS will be enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective October 1, 1998, the FPLS will be further expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support and enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

Data to be disclosed by the Board to the FPLS include: employee name, address, Social Security number, and quarterly wages. In addition, names and Social Security numbers (SSN) submitted by the Board to the FPLS will be disclosed by the DHH to the Social Security Administration for verification to ensure that the SSN provided is correct. The data disclosed to the FPLS will also be disclosed by the DHH to the Department of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

II. Compatibility of Proposed Routine Uses

We are proposing these routine uses in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a compatible use is a use which is necessary and proper. See OMB Guidelines, 51 FR 18982, 18985 (1986). Since the proposed uses of the data are required by Pub. L. 104–193, they are clearly necessary and proper uses, and therefore compatible uses which meet Privacy Act requirements.

III. Effect of the Proposed Changes on Individuals

We will disclose information under the proposed routine uses only as required by Pub. L. 104–193 and as permitted by the Privacy Act.

Accordingly, FRTIB–5, Payroll Records, system notice originally published in the **Federal Register** at 52 FR 12065 (April 14, 1987) and finalized at 55 FR 18949 (May 7, 1990) is further amended by adding new text after the existing text for "Routine Uses of Records" to read as follows:

FRTIB–5

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

The information in this system will also be disclosed as follows:

a. To the Department of Health and Human Services Federal Parent Locator System and Federal Tax Offset System for use in locating current and former employees involved in child support and paternity cases and identifying their income sources to be used in child support orders and enforcement actions.

b. To the Department of Health and Human Services Federal Parent Locator System for release to the Social Security Administration for verifying Social Security numbers in connection with the operation of the FPLS.

c. To the Department of Health and Human Services Federal Parent Locator System for release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program and verifying a claim with respect to employment in a tax return.

* * * * *

Roger W. Mehle,

Executive Director.

[FR Doc. 97–32830 Filed 12–16–97; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/27/97 AND 11/07/97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Thermo Electron Corportion, Allied Healthcare Products, Inc., Bear Medical Systems, Inc	98–0078	10/27/97
Heritage Fund I, L.P., Donald R. Swortwood and Letitia H. Swortwood, Westek Associates, Inc	98–0107	10/27/97
Silicon Valley Group, Inc., Tinsley Laboratories, Inc., Tinsley Laboratories, Inc	98–0135	10/27/97
Kenneth A. Hendricks, Perfection Roofing Materials, Inc., Perfection Roofing Materials, Inc	98–0140	10/27/97
Kenneth A. Hendricks, United Building Supply, Inc., United Building Supply, Inc	98–0141	10/27/97
Renal Treatment Centers, Inc., Satellite Dialysis Centers, Inc., California Kidney Centers, A California partnership, Ca	98–0150	10/27/97
Renal Treatment Centers, Inc., Kidney Healthcare Centers, Inc., California Kidney Centers, a California general partner	98–0151	10/27/97
Unit Corporation, H.C. Hickman and Bonnie B. Hickman (Husband and Wife), Hickman Drilling Company	98–0152	10/27/97
Kenneth A. Hendricks, Marshall Roofing Supply, Inc., Marshall Roofing Supply, Inc	98–0160	10/27/97
CGW Southeast Partners III, L.P., Youth Services International, Inc., YSI Holdings-Georgia, Inc	98–0178	10/27/97
BTG, Inc., Micros-To-Mainframes, Inc., Micros-To-Mainframes, Inc	98–0184	10/27/97
Blackstone Capital Partners III Merchants Banking Fnd LP, Whitehall Associated, L.P., Borden Decorative Products Holdings, Inc	98–0187	10/27/97
Nippon Telegraph and Telephone Corporation, The Associated Group, Inc., Teligent, LLC	98–0200	10/27/97
MicroAge, Inc., Gaines Computer Service, Inc., Gaines Computer Service, Inc	98–0201	10/27/97
Retail Networks, Inc., Silas Creek Retail, Inc. (Debtor-in-Possession), Silas Creek Retail, Inc	98–0207	10/27/97
HBO & Company, National Health Enhancement Systems, Inc., National Health Enhancement Systems, Inc	98–0208	10/27/97
Mr. Reinhard Mohn (a German person), K–III Communications Corporation, Newbridge Book Clubs	98–0212	10/27/97
Fleet Financial Group, Inc., Columbia Management Company, Columbia Management Company	98–0214	10/27/97
Fleet Financial Group, Inc., Columbia Funds Management Company/Columbia Trust Co., Columbia Funds Management Company/Columbia Trust Co	98–0215	10/27/97
HealthSouth Corporation, Horizon/CMS Healthcare Corporation, Horizon/CMS Healthcare Corporation	97–1816	10/28/97
Petco Animal Supplies, Inc., PetCare Plus, Inc., PetCare Plus, Inc	97–3698	10/28/97
The Nebraska Synod-Evangelical Luthern Church, Quorum Health Group, Inc., Midlands Medical Associates, L.P	98–0015	10/28/9
American Home Products Corporation, Genset SA (A French Company), Genset Asset	98–0049	10/28/97
NOVA Corporation, Firstar Corporation, Elan Merchant Services, LLC	98–0115	10/28/97
The Restaurant Company, Perkins Family Restaurants, LP, PFR Assets	98–0133	10/28/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/27/97 AND 11/07/97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Adidas AG, (a German company), Sport Development S.C.A. (a French company), Salomon S.A	98–0139	10/28/97
Cable Plus Holding Company, MultiTechnology Services, L.P., MultiTechnology Services, L.P	98–0172	10/28/97
Ameritech Corporation, Sprint Corporation, Central Telephone Company of Illinois; The Cendon	97–1889	10/29/97
Chiquita Brands International, Inc., Stokely USA, Inc., Stokely USA, Inc	98–0063	10/29/97
Asplundh Tree Expert Co., Central Locating Service, Ltd., Central Locating Service, Ltd	98–0072	10/29/97
American Disposal Services, Inc., John Sexton Contractors Co., John Sexton Contractors Co	98–0142	10/29/97
Marshall Industries, Sterling Electronics Corporation, Sterling Electronics Corporation	98–0145	10/29/97
Daisytek International Corporation, Richard D. Schoenberg, Steadi Systems, Ltd	98–0173	10/29/97
Thomas H. Lee Equity Fund III, Fisher Scientific International, Inc., Fisher Scientific International, Inc	98–0177	10/29/97
Degussa Aktiengeselichaft, Ney Dental International, Inc. a Debtor in Possession, Ney Dental International, Inc	98–0182	10/29/97
SOS Staffing Services, Inc., Michael A. Jones, Jones Assets	98–0191	10/29/97
Arctic Slope Regional Corporations, Dale R. and Carol A. Lindsey, Harbor Enterprises, Inc. (d/b/a Petro Marine Services)	98–0192	10/29/97
Rauma Corporation, James L. Read, Read Corporation; Read Management Inc. & F.T. Read &	98–0193	10/29/97
Citadel Communications Corporation, Charles H. Wilson and Jo Anne J. Wilson, Pacific Northwest Broadcasting Corporation	98–0209	10/29/97
Action Performance Companies, Inc., Voting Trust dated December 4, 1968 of Hallmark Cards, Revell-Monogram, Inc	98–0220	10/29/97
Electro Scientific Industries, Inc., Applied Intelligent Systems, Inc., Applied Intelligent Systems, Inc	97–3696	10/30/97
John A. Catsimatidis, Sloan's Supermarkets, Inc., Sloan's Supermarkets, Inc	98–0060	10/30/97
Midcoast Energy Resources, Inc., Ted Collins, Jr., Republic Gas Partners, LLC & v/s of Mid Louisiana et al	98–0104	10/30/97
Wallace Computer Services, Inc., Mark C. Pope, III, Graphics Industries, Inc	98–0126	10/30/97
Whitehall Associates, L.P., Melamine Chemicals, Inc., Melamine Chemicals, Inc	98–0197	10/30/97
LDI, Ltd., Thompson PBE, Inc., Thompson PBE, Inc	98–0248	10/30/97
Rohr, Inc., James J. Lockshaw, Tolo Incorporated	98–0122	10/31/97
Fred's Inc., CVS Corporation, Big B, Inc. & Big B Drugs, Inc	98–0171	10/31/97
Steven E. Karol, Harrisons and Crosfield plc, Harcros Lumber and Building Supplies, Inc. d/b/a Moore'	98–0238	10/31/97
L. Francis Rooney, III, Harrisons & Crosfield plc, Harcros Lumber and Building Supplies, Inc. d/b/a Moore'	98–0242	10/31/97
Jordan Industries, Telephone Services, Inc. of Florida, Telephone Services, Inc. of Florida	98–0245	10/31/97
William J. Barkett, Metropolitan Life Insurance Company, MLI assets plus Met West Agribusiness, Inc	98–0287	10/31/97
Precision Castparts Corp., Harnischfeger Industries, Inc., J&L Fiber Services, Inc	98–0341	10/31/97
American General Corporation, Western National Corporation, Western National Corporation	98–0035	11/02/97
Philip Services Corp. (a Canadian company), Industrial Services Technologies, Inc., Industrial Services Technologies, Inc	98–0036	11/02/97
AMERCO, Encore Financial, Inc., Encore Financial, Inc	98–0038	11/02/97
United States Filter Corporation, John W. & Linda L. VandenBos (Husband and Wife), JWI, Inc	98–0124	11/03/97
James B. Page, Angelica Corporation, Angelica Assets	98–0143	11/03/97
Darwin Deason, Computer Data Systems Inc., Computer Data Systems, Inc	98–0164	11/03/97
Alternative Resources Corporation, International Business Machines Corporation, CGI Systems, Inc	98–0183	11/03/97
E. Bronson Ingram Q–TIP Marital Trust, Empresas Quintec, S.A., Comptacion Tenica S.A.; Cameron Financial Business S.A	98–0194	11/03/97
Frontier Insurance Group Inc., William F. Galtney, Jr., Western Indemnity Insurance Company and Professional	98–0202	11/03/97
J.W. Childs Equity Partners, L.P., Lawrence M. Posen, Beltone Electronics Corporation	98–0211	11/03/97
J.W. Childs Equity Partners, LP, Faye Posen, Beltone Electronics Corporation	98–0221	11/03/97
Madison Dearborn Capital Partners II, L.P., Tuesday Morning Corporation, Tuesday Morning Corporation	98–0227	11/03/97
The Home Depot, Inc., David Katzman, DeeKay Enterprises, Inc.	98–0232	11/03/97
Winterthur Swiss Insurance Company, Federated American Insurance Company, Federated American Insurance Company	98–0236	11/03/97
Titan Exploration, Inc., Offshore Energy Development Corporation, Offshore Energy Development Corporation	98–0244	11/03/97
Atlas Copco A.B. (a swedish company), Keesling Familty Trust, Arizona Mite-E-Lift Corp. Assets	98–0246	11/03/97
Citizens Utilities, Company, Ogden Telephone Company, Ogden Telephone Company	98–0253	11/03/97
Saratoga Partners III, L.P., Equality Acquisition Corp., Equality Acquisition Corp	98–0254	11/03/97
Conseco, Inc., Washington National Corporation, Washington National Corporation	98–0255	11/03/97
University of Pittsburgh Medical Center System, Memorial Hospital of Bedford County, Memorial Hospital of Bedford County	98–0259	11/03/97
Nicholas J. Ferrante, PMT Services, Inc., PMT Services, Inc	98–0260	11/03/97
The Morris Belkin Family Trust, A. Ahlstrom Corporation, Sanford Warranty Company, SJF Aviation Holdings, Inc	98–0261	11/03/97
The Hartford Financial Services Group, Inc., Royal & Sun Alliance Insurance Group, plc, Royal Life Insurance Company of America	98–0262	11/03/97
Apache Corporation, Mobil Corporation, Ampolex (Western Australia) Inc	98–0265	11/03/97
Ingersoll-Rand Company, Robert L. Ogur, Johnstone Pump Company	98–0267	11/03/97
Peter Brant, Bear Island Paper Company, L.P., Bear Island Paper Company, L.P	98–0280	11/03/97
Joseph Allen, Bear Island Paper Company, L.P., Bear Island Paper Company, L.P	98–0281	11/03/97
KKR 1996 Fund, L.P., Norman Lear, Act III Cinemas, Inc	98–0282	11/03/97
Gannett Co., Inc., Maine Radio and Television Company, Maine Radio and Television Company	98–0285	11/03/97
Trivest Fund I, Ltd., Katzenberg Holding Corporation, Katzenberg Holding Corporation	98–0296	11/03/97
Golder, Thoma, Cressey, Rauner Fund V, L.P., Grady F. Burrow, National Computer Print, Inc. an Alabama Corp	98–0308	11/03/97
General Electric Company, InSight Health Services Corp., InSight Health Services Corp	98–0315	11/03/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/27/97 AND 11/07/97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Steve L. Volla, Roxborough Memorial Health Foundation, Jamestown Associates, Memorial Properties, Roxborough	98–0352	11/03/97
J.M. Huber Corporation, John Hancock Mutual Life Insurance Co., Nahelo Forest LLC	98–0137	11/04/97
Green Equity Investors, L.P., Larry J. Hochberg and Barbara P. Hochberg, Sportmart, Inc	98–0167	11/04/97
Thermo Electron Corporation, Peek plc, Peek plc	98–0243	11/04/97
AMR Corporation, U.S. Airways Group, Inc., U.S. Airways Group, Inc	98–0249	11/04/97
The Estee Lauder Companies, Inc., Donna Karan International Inc., Donna Karan Studio	98–0251	11/04/97
McLeod Regional Medical Center of the Pee Dee, Inc., SSM Health Care Corporation, Saint Eugene Community Hospital	98–0294	11/04/97
Unifi, Inc., Lamar Beach, SI Holding Company	97–3258	11/05/97
Kimberly-Clark Corporation, Tecnol Medical Products, Inc., Tecnol Medical Products, Inc	97–3526	11/05/97
Glenn R. Jones, Cable TV Fund 12–D, Ltd., Cable Assets	98–0058	11/05/97
New England Investment Companies, L.P., Caisse Nationale de Credit Agricole (a French company), Daniel Breen & Company, L.P	98–0199	11/05/97
Genicom Corporation, Novadyne Acquisition Company, Inc. or Heller Financial, Novadyne Computer Systems, Inc	98–0218	11/05/97
Washington Mutual, Inc., Textron Inc., Avco Financial Services of Hollywood, Fla., Inc	98–0224	11/05/97
Arrow Electronics, Inc., SN Holding, Inc., SN Holding, Inc	98–0230	11/05/97
Robert J. Tomsich, Noel Group, Inc., Curtis Industries, Inc	98–0263	11/05/97
Land O'Lakes, Inc., Alpine Lace Brands, Inc., Alpine Lace Brands, Inc	98–0276	11/05/97
UICI, Information Partners Capital Fund, L.P., EduServ Technologies, Inc	98–0299	11/05/97
Regal Cinemas, Inc., Irwin R. Cohen, Capitol Industries, Inc	98–0317	11/05/97
Brunswick Corporation, Peter D. Brown, Hammer Strength Corporation	98–0226	11/06/97
Grupo UNO S.A. (an Argentine company), Tescorp, Inc., Tescorp, Inc	98–0250	11/06/97
Eastern Environmental Services, Inc., Delmarva Power & Light Company, Pine Grove, Inc	98–0309	11/06/97
Rental Service Corporation, David P. Lanoha, Rent-It-Center,Inc., d/b/a Center Rental and Sales, In	98–0311	11/06/97
Sulza Foods Corporation, Country Fresh, Inc., Country Fresh, Inc	98–0031	11/07/97
International Business Machines Corporation, Unison Software, Inc., Unison Software, Inc	98–0064	11/07/97
Pluma, Inc., Harold Robinson, Frank L. Robinson Company	98–0300	11/07/97
PPC Holdings, Inc., Judd's, Incorporated, Judd's Incorporated	98–0312	11/07/97
American Buildings Company, United Dominion Industries Limited, Windsor Door Division of United Dominion Industries Ltd	98–0313	11/07/97
Union Bank of Switzerland, William Blair Capital Partners V, L.P., GNWC Wire Cable & Network Products, Inc	98–0332	11/07/97
MBNA Corporation, National Commerce Bancorporation, National Bk. of Commerce, Nashville Bk of Commerce et al	98–0335	11/07/97
United States Filter Corporation, Puro Water Group, Inc., Puro Water Group, Inc	98–0340	11/07/97
Warburg, Pincus Ventures, LP, Time Warner Inc., Cinamerica Theatres, LP	98–0342	11/07/97
Warburg, Pincus Ventures, LP, Mr. Sumner M. Redstone, Cinamerica Theatres, LP	98–0343	11/07/97
N.V. Koninklijke (Royal Dutch Shell) (a Dutch company), Bechtel Group, Inc., International Generating Co., & DGC Holdings, Ltd	98–0347	11/07/97
Hicks, Muse, Tate & Furst Equity Fund III, L.P., C. G. Reuther, III, Reuther's Sea Food Company, Inc., Reuther, Inc	98–0353	11/07/97
Hicks, Muse, Tate & Furst Equity Fund III, L.P., David A. Pippin, Reuther's Sea Food Company, Inc., Reuther, Inc	98–0354	11/07/97
Dynacare Inc., General Health Systems, Louisiana Reference Laboratories, Inc	98–0356	11/07/97
Jerry E. Kimmel, Shelter Components Corporation, Shelter Components Corporation	98–0360	11/07/97
Guidant Corporation, EndoVascular Technologies, Inc., EndoVascular Technologies, Inc	98–0365	11/07/97
Fuji Photo Film Co., Ltd., International Paper Company, Anchor/Lith-Kem-Ko, Inc	98–0378	11/07/97
Berkshire Fund IV, Limited Partnership, Robert Stephen Holdings Limited (a U.K. company), Holmes Products Corp	98–0380	11/07/97
ALRENCO, Inc., RTO, Inc., RTO, Inc	98–0390	11/07/97
John W. Kluge, Image Entertainment, Inc., Image Entertainment, Inc	98–0392	11/07/97
United Auto Group, Inc., Homer D. Skelton, Covington Pike Toyota, Inc., Homer Skelton, Inc. Homer	98–0395	11/07/97
Untied Auto Group, Inc., Paulette and Gene Doe (husband and wife), Covington Pike Dodge, Inc	98–0396	11/07/97
Incentive AB, Memorial Health System, Memorial Medical Center, Inc	98–0404	11/07/97
Ohio Edison Company, Roth Bros., Inc., Roth Bros., Inc	98–0416	11/07/97
Boston Chicken, Inc., Boston Chicken, Inc., Great Lakes Bagels, L.P.; Sunbelt Bagels, L.L.C	98–0418	11/07/97
National Data Corporation, Physician Support Systems, Inc., Physician Support Systems, Inc	98–0423	11/07/97
George D. Johnson, Jr., ALRENCO, Inc., Alrenco, Inc	98–0426	11/07/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–32955 Filed 12–16–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/10/97 AND 11/21/97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Kenneth R. Thomson, Dow Jones & Company, Inc., IDD Enterprises, L.P.	97–3644	11/12/97
Western Atlas Inc., Arthur Kelsey, Weldmation, Inc	98–0292	11/12/97
Kenneth R. Thomson, Dow Jones & Company, Inc., Ottaway Newspapers, Inc	98–0304	11/12/97
Dow Jones & Company, Inc., Kenneth R. Thomson, Thomson Newspapers, Inc	98–0305	11/12/97
Thermo Electron Corporation, Novartis AG (a Swiss company), Novartis Assets	98–0318	11/12/97
AccuStaff Incorporated, Richard A. Koplow, Office Specialists, Inc	98–0326	11/12/97
The Vincam Group, Inc., Theodore L. Gatsas, Staffing Network, Inc	98–0330	11/12/97
The Vincam Group, Inc., Michael J. Gatsas, Staffing Network, Inc	98–0337	11/12/97
Renal Care Group, Inc., Laidlaw Inc. (a Canadian corporation), STAT Dialysis, Inc.; STAT Management Corporation	98–0359	11/12/97
Insignia Financial Group, Inc., P. Wesley Foster, Jr., Barnes Morris Pardoe & Foster Management Services, LLC	98–0364	11/12/97
J.W. Childs Equity Partners, L.P., Hicks, Muse, Tate & Furst Equity Fund II, L.P., Desa Holdings Corporation	98–0376	11/12/97
Mediacom LLC, Jones Cable Income Fund 1–C, Ltd., Jones Cable Income Fund 1–B/C Venture	98–0377	11/12/97
Chase Manhattan Corporation, (The), Bank of New York Company, Inc., (The), The Bank of New York (Delaware)	98–0385	11/12/97
The Bank of Nova Scotia, Standard Chartered PLC (a U.K. company), Standard Chartered Bank (Mocatta Bullion and Base Metal)	98–0408	11/12/97
CM Holdings, Inc., WH Smith Group, plc (a British company), The Wall Music, Inc	98–0437	11/12/97
General Electric Company, Lockheed Martin Corporation, LMT Sub Inc	98–0441	11/12/97
The Presbyterian Foundation for Philadelphia, Foundation for the Elderly, Inc., FFE/Maplewood-Cliveden, Inc	98–0196	11/13/97
Group Financial Partners, Inc., M. Stuart Millar, Datatape Inc. and Delta Tango, Inc	98–0258	11/13/97
Theodore L. Gatsas, The Vincam Group, The Vincam Group	98–0338	11/13/97
Michael J. Gatsas, The Vincam Group, Inc., The Vincam Group, Inc	98–0339	11/13/97
Paul G. Allen, Metricom, Inc., Metricom, Inc	98–0344	11/13/97
Paul G. Allen, Metricom, Inc., Metricom, Inc	98–0345	11/13/97
Jacor Communications, Inc., American Radio Systems Corporation, American Radio Systems License Corp	98–0398	11/13/97
Pioneer Natural Resources Company, Electrafina S.A., Plum Creek Pipeline, Co	98–0406	11/13/97
Atlas Copco AB, Joseph A. Paradis, III, Rental Equipment Service Company	98–0457	11/17/97
Jerrold M. Jung, Wolverine Tractor & Equipment Company, Wolverine Tractor & Equipment Company	98–0257	11/18/97
Crown NorthCorp, Inc., ULLICO, Inc., AMI Capital, Inc	98–0288	11/18/97
Mr. and Mrs. Marc Ladreit de Lacharriere, Robert D. and Judith M. Van Kampen, Fitch Investors Service, L.P., Fitch Information Service	98–0351	11/18/97
Frontier Vision Partners, L.P., Cox Enterprises, Inc., CoxCom, Inc	98–0375	11/18/97
Frontier Insurance Group, Inc., ACCEL International Corporation, Acceleration Life Insurance Co., Acceleration National	98–0382	11/18/97
International Business Machines Corporation, International Business Machines Corporation, Technology Service Solutions	98–0386	11/18/97
Sumner Redstone, Mari Hulman George, IMS Broadcasting, LLC	98–0403	11/18/97
Creative Technology Ltd., Cambridge SoundWorks Inc., Cambridge SoundWorks Inc	98–0420	11/18/97
CKE Restaurants, Inc., Alvin E. (Spike) Ehrhardt and Theresa Ehrhardt, Great River Restaurants; Hannibal Sandy's, Inc	98–0443	11/18/97
Inland Resources, Inc., Crysen Corporation, Crysen Refining, Inc. & Sound Refining, Inc	98–0465	11/18/97
Patriot American Hospitality Operating Company, Wyndham Hotel Corporation, Wyndham Hotel Corporation	98–0472	11/18/97
Spartan Motors, Inc., Smeal Fire Apparatus Co., Smeal Fire Apparatus Co	98–0478	11/18/97
Media General, Inc., T. Eugene Worrell, Bristol Newspapers, Inc and Abingdon Newspapers, Inc	98–0483	11/18/97
Guy J. Turcotte (a resident of Canada), Pioneer Natural Resources Company, Pioneer Natural Resources Company	98–0484	11/18/97
Pioneer Natural Resources Company, Chauvco Resources Ltd. (a Canadian company), Chauvco Resources Ltd	98–0485	11/18/97
MedPartners, Inc., Blue Cross and Blue Shield of Massachusetts, Inc., Blue Cross and Blue Shield of Massachusetts, Inc	98–0486	11/18/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/10/97 AND 11/21/97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Emerson Electric Co., Computational Systems, Incorporated,Computational Systems, Incorporated	98-0487	11/18/97
Lason, Inc., Lou Lee, VIP Litho, Inc	98-0488	11/18/97
Lason, Inc., Melvin A. and Perl Valdez, VIP Litho, Inc.	98-0489	11/18/97
ShopKo Stores, Inc.Penn-Daniels, Incorporated, Penn-Daniels, Incorporated	98-0492	11/18/97
Video Update, Inc., Moovies, Inc., Moovies, Inc	98-0499	11/18/97
Discount Auto Parts, Inc., Hi-Lo Automotive, Inc., Hi-Lo Automotive, Inc	98-0518	11/18/97
Kinetic Concepts, Inc., Charles E. Hasty, CH Industries, Inc	98-0531	11/18/97
Textron, Inc., Ransomes plc, Ransomes plc	98-0532	11/18/97
Omaha World-Herald Company,BRC Holdings, Inc., Business Records Corporation	97-0605	11/19/97
Caritas Christi, Neponset Valley Health System, Inc., Neponset Valley Health System, Inc	98-0436	11/19/97
Metals USA, Inc., Thomas J. Shapiro, Wayne Steel, Inc	98-0448	11/19/97
Anthony Kies, The Edgar B. Rumble Marital Trust, Michigan Hangar Co., Inc	98-0455	11/19/97
Monsanto Company, Milennium Pharmaceuticals, Inc, Milennium Pharmaceuticals, Inc	98-0476	11/19/97
Hutchison Whampoa Limited, Western Wireless Corporation, Western Wireless Corporation	98-0503	11/19/97
The FINOVA Group, Inc., The Nomura Securities, Co., Ltd., AT&T Commerical Finance Corporation	98-0514	11/19/97
MBNA Corporation Broadway National Bank, Broadway Bancshares, Inc	98-0521	11/19/97
N.V. Koninklije Nederlandsche Petroleum Maatschappij, Tejas Gas Corporation, Tejas Gas Corporation	98-0266	11/20/97
Republic Industries, Inc., The Charlie Roberts Hillard Marital Deduction Termin-Hillard Auto Group, Inc	98-0275	11/20/97
Worldtex Inc., NFA Corp., NFA Corp's Elastic Corporation of America division	98-0302	11/20/97
C.H. Boehringer Sohn, Ben Venue Laboratories, Inc., Ben Venue Laboratories, Inc	98-0409	11/20/97
USA Waste Services, Inc., Longview Group, Inc., Longview Group, Inc	98-0414	11/20/97
Richard M. Scaife, Gannett Co., Inc., Gannett Satelite Information Network, Inc., Media West	98-0435	11/20/97
Integrated Electrical Services, Inc., Bob Weik, Baxter Electric Company, Ltd	98-0516	11/20/97
Bob Weik, Integrated Electrical Services, Inc., Integrated Electrical Services, Inc	98-0517	11/20/97
Dover Corporation, Sanger Works Factory Holdings, Inc., Sanger Works Factory Holdings, Inc	98-0233	11/21/97
Lucent Technologies, Inc., Livingston Enterprises, Inc., Livingston Enterprises, Inc	98-0328	11/21/97
Terry L. Hunter, The Registry, Inc., The Registry, Inc	98-0348	11/21/97
The Registry, Inc., Terry L. Hunter, The Hunter Group, Inc	98-0349	11/21/97
Steven M. Willens, Lucent Technologies, Inc., Lucent Technologies, Inc	98-0387	11/21/97
Ronald H. Willens, Lucent Technologies, Inc., Lucent Technologies, Inc	98-0388	11/21/97
ICG Communications, Inc., NETCOM On-Line Communication Services, Inc., NETCOM On-Line Communication Services, Inc	98-0401	11/21/97
The Hartford Financial Services Group, Inc., Omni Insurance Group, Inc., Omni Insurance Group, Inc	98-0405	11/21/97
Allen E. Paulson, Riviera Holdings Corporation, Riviera Holdings Corporation	98-0407	11/21/97
J&J Snack Foods Corp., National ICEE Corporation, National ICEE Corporation	98-0427	11/21/97
CMI Corporation, Rexworks, Inc., Rexworks, Inc	98-0431	11/21/97
American Buildings Company, Neal C. and Brenda L. DuCharme (husband and wife), Modular Structures International, Inc	98-0442	11/21/97
ICN Pharmaceuticals, Inc., Dr. h.c. Paul Sacher, Hoffmann-La Roche, Inc.; Roche Products, Inc	98-0444	11/21/97
Thomas J. Shapiro, Metals USA, Inc., Metals USA, Inc	98-0447	11/21/97
Orion Capital Corporation, Michigan Mutual Insurance Company, Unisun Insurance Company	98-0449	11/21/97
Cooper Industries, Mr. Jack Pearlman, AtLite Lighting Equipment, Inc	98-0450	11/21/97
Bridgestone Corporation, Gerald W. Fletcher, Fletcher's Cobre Tire, Inc	98-0451	11/21/97
Metal Management, Inc., Michael Suisman, Aerospace Metals, Inc	98-0456	11/21/97
Metropolitan Life Insurance Company, Bankers Trust New York Corporation, Bankers Trust New York Corporation	98-0463	11/21/97
Mrs. L. Bettencourt, Angeion Corporation, Angeion Corporation	98-0477	11/21/97
SmarTalk Teleservices, Inc., Frontier Corporation, Frontier Corporation	98-0481	11/21/97
TDS Voting Trust, Yves Jacques Rey-Millet, Indiantown Company, Inc	98-0491	11/21/97
TDS Voting Trust, Christian Rey-Millet, Indiantown Company, Inc	98-0497	11/21/97
Everett R. Dobson Irrevocable Family Trust, Tina K. Chang, Texas 16 Cellular Telephone Company	98-0504	11/21/97
Siemens Aktiengesellschaft, Allen K. and Johnnie C. Breed, husband & wife, BREED Technologies, Inc	98-0506	11/21/97
Continental Grain Company, Empire Funding Holding Corporation, Empire Funding Holding Corporation	98-0507	11/21/97
Occidental Petroleum Corporation, Elf Aquitaine, Elf Atochem North America, Inc	98-0510	11/21/97
Carolyn Louise Adams, Enron Corp., Taurus Energy Corp	98-0511	11/21/97
James N. Isaacs, Empire Funding Holding Corporation, Empire Funding Holding Corporation	98-0512	11/21/97
W.W. Clyde Investment Co., Geneva Rock Products, Inc., Geneva Rock Products, Inc	98-0524	11/21/97
Berkshire Hathaway Inc., International Dairy Queen, Inc., International Dairy Queen, Inc	98-0526	11/21/97
The Chase Manhattan Corporation, Triton PCS, Inc. (Joint Venture), Triton PCS, Inc. (Joint Venture)	98-0527	11/21/97
J.P. Morgan & Co. Incorporated, Triton PCS, Inc. (Joint Venture), Triton PCS, Inc. (Joint Venture)	98-0528	11/21/97
Private Equity Investors III, L.P., Triton PCS, Inc. (Joint Venture), Triton PCS, Inc. (Joint Venture)	98-0529	11/21/97
Equity-Linked Investors II, L.P., Triton PCS, Inc. (Joint Venture), Triton PCS, Inc. (Joint Venture)	98-0530	11/21/97
American Mutual Holding Company, AmVestors Financial Corporation, AmVestors Financial Corporation	98-0533	11/21/97
Saputo Group, Inc., Specialty Foods Acquisition Corporation, Stella Holdings, Inc	98-0535	11/21/97
Delco Remy International, Inc., Ballantrae Corporation, Ballantrae Corporation	98-0537	11/21/97
Access Beyond, Inc., Hayes Microcomputer Products, Inc., Hayes Microcomputer Products, Inc	98-0538	11/21/97
Ellicott Associates, L.P., Solid State Geophysical Inc., Solid State Geophysical Inc	98-0540	11/21/97
Linsalata Capital Partners Fund II, L.P., The Tranzonic Companies, The Tranzonic Companies	98-0541	11/21/97
Mail-Well, Inc., Golden Books Family Entertainment, Inc., Golden Books Publishing Company, Inc	98-0544	11/21/97
Nextel Communications, Inc., Industrial Wireless Technologies, Inc	98-0550	11/21/97
University of Pittsburgh Medical Center System, The Rehabilitation Institute of Pittsburgh, The Rehabilitation Institute of Pittsburgh	98-0551	11/21/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/10/97 AND 11/21/97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
George S. Hofmeister, Daniel P. Crawford, Danvid Company, Inc	98-0556	11/21/97
AAA Auto Club South, Inc., The American Automobile Association, Inc., The American Automobile Association, Inc.—Florida Div	98-0557	11/21/97
Texas Health Resources, L.P. McCuistion Community Hospital, McCuistion Regional Medical Center	98-0562	11/21/97
Fiskars Oy Ab, Triumph Capital Investors, L.P., EnviroWorks Holding Company	98-0564	11/21/97
Man Chi Tam (a Hong Kong resident), Access Beyond, Inc., Access Beyond, Inc	98-0569	11/21/97
Outdoor Systems, Inc., Jon Gunderson, Outdoor Media Group, Inc	98-0577	11/21/97
N.V. Koninklije Nederlandsche Petroleum Maatschappij, N.V. Koninklije Nederlandsche Petroleum Maatschappij, Corpus Christi Natural Gas Company, L.P	98-0582	11/21/97
Tele-Communications, Inc., Tele-Communications, Inc., Robin Cable Systems, L.P	98-0588	11/21/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97-32956 Filed 12-16-97; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/24/97 AND 12/05/97

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Spectra-Physics AB, FLIR Systems, Inc., FLIR Systems, Inc	98-0086	11/26/97
Allied Capital Lending Corporation, Allied Capital Corporation, Allied Capital Corporation	98-0494	11/26/97
Allied Capital Lending Corporation, Allied Capital Corporation II, Allied Capital Corporation II	98-0495	11/26/97
Allied Capital Lending Corporation, Allied Capital Commercial Corporation, Allied Capital Commercial Corporation	98-0496	11/26/97
The Toa Fire and Marine Reinsurance Co., Ltd., Swiss Reinsurance Company (a Swiss corporation), The Mercantile and General Reinsurance Company of America	98-0548	11/26/97
George S. Hofmeister, Mario J. Gabelli, Binnings Building Products, Inc	98-0555	11/26/97
Recycling Industries, Inc., Jack Levin, United Metal Recyclers	98-0560	11/26/97
Recycling Industries, Inc., Brenner Companies, Inc., Brenner Companies, Inc. and United Metal Recyclers	98-0561	11/26/97
Recycling Industries, Inc., Seymour Levin, United Metal Recyclers	98-0570	11/26/97
Pacific Mutual Holding Company, Oppenheimer Capital, L.P., Oppenheimer Capital, L.P	98-0575	11/26/97
Ambac Financial Group, Inc., Construction Loan Insurance Corporation, Construction Loan Insurance Corporation	98-0583	11/26/97
The Dow Chemical Company, Sentrachem Limited, Sentrachem Limited	97-3189	11/28/97
Fiserv, Inc., Hanifen, Imhoff Holdings, Inc., Hanifen, Imhoff Holdings, Inc	98-0314	11/28/97
Morgan Stanley, Dean Witter, Discover & Co., CSG Systems International, Inc., CSG Systems International, Inc	98-0411	11/30/97
Northland Cable Properties Six Limited Partnership, Tele-Communications, Inc., Robin Cable Systems, L.P. InterMedia Partners, L.P	98-0393	12/01/97
Northland Communciations Corporation, Tele-Communications, Inc., Robin Cable Systems, L.P. InterMedia Partners, L.P.	98-0394	12/01/97
United States Filter Corporation, Stranco, Inc., Stranco, Inc	98-0433	12/01/97
Preussag AG, Hapag-Lloyd AG, Hapag-Lloyd AG	98-0445	12/01/97
Cedar Fair, L.P., Knott's Berry Farm (a partnership), Knott's Berry Farm (a partnership)	98-0565	12/01/97
Patriot American Hospitality Operating Company, WHG Resorts & Casinos, Inc., WHG Resorts & Casinos, Inc	98-0567	12/01/97
Pharma Vision 2000 AG, Tularik Inc., Tularik Inc	98-0568	12/01/97
Robotic Vision Systems, Inc., Vanguard Automation, Inc., Vanguard Automation, Inc	98-0578	12/01/97
Global Private Equity III Limited Partnership, Kay Juel, III, Contact East, Inc	98-0586	12/01/97
The Guarantee Life Companies, Inc., PFG, Inc., PFG, Inc	98-0589	12/01/97
Legal and General Group Plc, Georgia Duck & Cordage Mill, Georgia Duck & Cordage Mill	98-0652	12/01/97
John W. Pope, Rose's Holdings, Inc., Rose's Stores, Inc	98-0432	12/02/97
Clear Channel Communications, Inc., Hicks, Muse, Tate & Furst Equity Fund II, L.P., Benchmark Jackson, L.L.C	98-0466	12/02/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/24/97 AND 12/05/97—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Arbed S.A., Minorco (a Luxembourg company), Hochschild Partners	98–0471	12/02/97
Wisconsin Energy Corporation, ESELCO, Inc., ESELCO, Inc	98–0509	12/02/97
Hillenbrand Industries, Inc., Vickers PLC, Air-Shields Vickers, Inc. & TECA Corporation	98–0522	12/02/97
American Industrial Partners Capital Fund II, L.P., John W. Kluge, Stanadyne Automotive Holding Corp	98–0546	12/02/97
U.S. Office Products Company, Mr. Thomas S. Bagley, AASI Holding Corporation	98–0549	12/02/97
Woodgrain Millwork, Inc., Fenway Partners Capital Fund, L.P., Brown Moulding Company, Inc	98–0563	12/02/97
Advanced Communications Group, Inc., Liberty Cellular, Inc., KIN Network, Inc	98–0576	12/02/97
Ryder Systems, Inc., Russ Jones, International Truck Rental and Leasing, Inc	98–0579	12/02/97
Cablevision System Corporation, Mitsubishi Estate Co., Ltd. (a Japanese corporation), Radio City Productions LLC	98–0580	12/02/97
Ricoh Company, Ltd. (a Japanese company), Jeffry M. Picower, Monroe Systems For Business, Inc	98–0594	12/02/97
Home Products International, Inc., The Chase Manhattan Corporation, Seymour Sales Corporation	98–0598	12/02/97
BASF Aktiengesellschaft, Hoechst Aktiengesellschaft, BHC Company	98–0599	12/02/97
Citicorp, Amerisource Health Corporation, Amerisource Health Corporation	98–0609	12/02/97
Marshall T. Reynolds, Portec, Inc., Portec Assets	98–0613	12/02/97
Clarian Health Partners, Inc., Lakeland Health Corporation, Lakeland Health Corporation	98–0614	12/02/97
Legal & General Group Plc, BTR Plc, Schlegal Corporation; Schlegel Oklahoma Inc	98–0615	12/02/97
Questor Partners Fund, LP, Lord Moyne-Jonathan Guinness, AP Parts International, Inc	98–0617	12/02/97
Phoenix Packaging Corporation, Sequa Corporation, Northern Can Systems, Inc., Sequa Corporation	98–0623	12/02/97
DLJ Merchant Banking Partners, II, L.P., Victor J. Barnett, Arcade Holding Corporation	98–0625	12/02/97
Whole Foods Market, Inc., Edward and Juliette Jonna, Merchant Management Affiliates, Inc.; Merchant of Vino	98–0626	12/02/97
Central Parking Corporation, Lewis Katz, Kinney System Holding Corporation	98–0628	12/02/97
Lewis Katz, Central Parking Corporation, Central Parking Corporation	98–0629	12/02/97
Starwood Lodging Corporation, ITT Corporation, ITT Corporation	98–0631	12/02/97
The Clayton & Dubilier Private Equity Fund IV LP, Rubin Brown, Brown Wholesale Electric Company, Inc	98–0634	12/02/97
Mannesmann AG, R. William Milton, Crane America Services, Inc.; Crane America Leasing, In	98–0636	12/02/97
J. Frank Harrison, Jr., Walter Matthews, Jr., Coca-Cola Bottling Company, Southeast, Incorporated	98–0643	12/02/97
Jordan Industries, Inc., Motion Control Engineering, Inc., Motion Control Engineering, Inc	98–0646	12/02/97
Tribune Company, James M. Landoll, Landoll, Inc	98–0648	12/02/97
Tribune Company, The McConnell Family Trust, Landoll, Inc	98–0649	12/02/97
Tyler Corporation, William D. Oates, Business Resources Corporation	98–0650	12/02/97
General Electric Company, James Bastian, SimuFlite Training International, Inc	98–0704	12/02/97
VS&A Communications Partners II, L.P., The Dun & Bradstreet Corporation, The Reuben H. Donnelly Corporation (Proprietary East Di	98–0534	12/03/97
First Data Corporation, NationsBank Corporation, Boatmen's Merchant Processing Company, LLC	98–0584	12/03/97
Olympus Growth Fund II, LP, Steven C. Francis and Gayle A. Francis, AMN Healthcare, Inc	98–0607	12/03/97
Health Care Service Corporation a Mutual Legal Reserve, Medical Mutual of Ohio, Medical Life Insurance Company	98–0616	12/03/97
Telephone and Data Systems, Inc. Voting Trust, Bennet R. and Maxine H. Miller (Husband and Wife), Tri-County Telephone Company, Inc	98–0679	12/03/97
General Dynamics Corporation, Ceridian Corporation, Computing Devices International and Subs	98–0452	12/04/97
Newcor, Inc., Machine Tool & Gear, Inc., Machine Tool & Gear Inc	98–0591	12/04/97
Allied Waste Industries, Inc., Laidlaw Inc., ECDC Environmental, L.C	98–0624	12/04/97
Robbins & Myers, Inc., J.M. Huber Corporation, Flow Control Equipment, Inc	98–0665	12/04/97
Martin Marietta Materials, Inc., Hanson, P.L.C., Milestone Materials, Inc	98–0718	12/04/97
American Radio Systems Corporation, Latin Communications Group, Inc., Radio Exito, Inc.; Portland Radio, Inc	97–2054	12/05/97
Apple Computer, Inc., Power Computing Corporation, Power Computing Corporation	97–3427	12/05/97
Jeffrey J. Prosser, B. John Klindworth, St. Croix Cable T.V., Inc., Virgin Islands Cable T.V	97–3457	12/05/97
Interstate Bakeries Corporation, Estate of Elizabeth B. Noyce, JSC Corporation	98–0264	12/05/97
Wang Laboratories, Inc., David A. Banning & Mary Lynn Banning, Bannex Corporation	98–0439	12/05/97
Wasserstein Perella Group, Inc., Boston Ventures Limited Partnership IV, National Law Publishing Company, Inc	98–0453	12/05/97
Rally's Hamburgers, Inc., Checkers Drive-in Restaurants, Inc., Checkers Drive-in Restaurants, Inc	98–0475	12/05/97
G. James Roush, FDX Corporation, FDX Corporation	98–0536	12/05/97
Newcor, Inc., Stephen Grand, Grand Machining Company d/b/a Deco-Grand; Deco Technolo	98–0590	12/05/97
MasTec, Inc., Employee Stock Ownership Plan of Weeks Construction Co., Weeks Construction Company	98–0592	12/05/97
Material Sciences Corporation, Marshal I. Wais, Colorstrip's, Inc	98–0597	12/05/97
RJR-Nabisco Holding, Inc., Comnuts, Inc., Comnuts, Inc	98–0606	12/05/97
The SKM Equity Fund II, LP, Dan Neuhar, Wee Good Corporation	98–0621	12/05/97
The SKM Equity Fund II, LP, Michel Bernstein, Wee Good Corporation	98–0622	12/05/97
Lear Corporation, Stronach Trust, Magna Interior Systems (USA), Inc	98–0627	12/05/97
Mid-America Dairymen, Inc., Whitehall Associates, L.P., Starflake Foods Company, Inc. & Borden Fun Cheese Busi	98–0630	12/05/97
The Clayton & Dubilier Private Equity Fund IV LP, Kenneth Moskowitz, Avon Electrical Supplies, Inc.; Avon Electrical	98–0632	12/05/97
The Clayton & Dubilier Private Equity Fund IV, Leonard Moskowitz, Avon Electrical Supplies, Inc.; Avon Electrical Product	98–0633	12/05/97
MedPartners, Inc., American Medical Management, Ltd., American Medical Management, Ltd	98–0642	12/05/97
JELD–WEN, Inc., Grossman's, Inc. (debtor in possession), Grossman's, Inc. (debtor in possession)	98–0645	12/05/97
TPG Partners, L.P., Nestle S.A. (A Swiss company), Nestle Assets	98–0647	12/05/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/24/97 AND 12/05/97—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Omnicom Group Inc., John H. Kragie & Elizabeth J. Newell, Kragie/Newell Advertising, Inc	98–0653	12/05/97
Newcourt Credit Group Inc., Dover Corporation, Chief Automotive Systems, Inc	98–0657	12/05/97
George R. and Ruth J. Wackenhut, Celeste D. Dockery, Professional Employee Management, Inc., et al	98–0659	12/05/97
Ronald O. Perelman, Millard E. Morris, Enlram Funding, LLC; & Enlram Securitization, LLC	98–0661	12/05/97
Deere & Company, Cameco Industries, Inc., Cameco Industries, Inc	98–0667	12/05/97
Mitsui & Co. Ltd., Unilever N.V., Conopco, Inc. doing business as Lipton	98–0671	12/05/97
Galey & Lord, Inc., Polymer Group, Inc., Dominion Textile, Inc. plus five foreign subs	98–0683	12/05/97
Bain Capital Fund V–B, L.P., Sandman Merger Corporation, Sandman Merger Corporation	98–0688	12/05/97
The President and Fellows of Harvard College, Sandman Merger Corporation, Sandman Merger Corporation	98–0689	12/05/97
The Dow Chemical Company, The Dow Chemical Company, Radian International, LLC	98–0691	12/05/97
Joseph Bick, Keystone Automotive Industries, Inc., Keystone Automotive Industries, Inc	98–0695	12/05/97
Ametek, Inc., EG&G Inc., Rotron Incorporated	98–0706	12/05/97
Suiza Foods Corporation, M. Jay Skirboll, Liquitane Corp., Liquitane Associates, S&Z Development	98–0713	12/05/97
Genesis Health Ventures, Inc. Genesis ElderCare Corp., Institutional Health Care Services, Inc., Care 4, L.P	98–0717	12/05/97
Eastern Maine Healthcare, Osteeopathic Healthcare Services, Inland Hospital	98–0732	12/05/97
O'Neal Steel, Inc., Prudential Corporation plc, Carolina Steel Corporation	98–0745	12/05/97
Mitsui & Co. Ltd, MidAmerican Energy Holdings Company, UNITRAIN, Inc.	98–0747	12/05/97
Lynch Corporation, Sappi Limited (a South African company), S.D. Warren Company	98–0748	12/05/97
Pluma, Inc., John R. Beale and Linda Beale, Stardust Corporation	98–0749	12/05/97
Nippon Paper Industries Co., Ltd., Weyerhaeuser Company, North Pacific Paper Company	98–0750	12/05/97
General Electric Company, Preferred Machine and Tool Products Corporation, Preferred Machine and Tool Products Corporation	98–0755	12/05/97
Sinclair Broadcast Group, Inc., Lakeland Group Television, Inc., Lakeland Group Television, Inc	98–0756	12/05/97
Welsh, Carson, Anderson & Stowe VII, L.P., Tenet Healthcare Corporation, Tenet Healthcare Corporation	98–0767	12/05/97
The 1818 Fund II, LP, National HealthCare, L.P., National HealthCare Corporation	98–0770	12/05/97
ACX Technologies, Inc., Britton Group, plc, Britton Group, plc	98–0777	12/05/97
ConAgra, Inc., Lawrence Zoll, Zoll Foods Corporation	98–0784	12/05/97
Lawrence Zoll, ConAgra, Inc., ConAgra, Inc	98–0785	12/05/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–32957 Filed 12-16-97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Transportation and Property Management, Property Management Division, Federal Supply Service; Revision and Stocking Change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/Office of Transportation and Property Management, Property Management Division, is changing the stocking of the following Standard form because of low user demand:

SF 114E, Sale of Government Property—Negotiated Sales Cotnract

Since this form is now authorized for local reproduction, you can obtain the updated camera copy in three ways:

From the "U.S. Government Management Policy CD–ROM;

On the internet. Address: http://www.gsa.gov/forms, or;

From CARM, Attn.: Barbara Williams, (202) 501–0581.

Also, the form was revised for database compatibility.

FOR FURTHER INFORMATION CONTACT: Deidre Huber, Director, Property Management Division, (703) 305–7240. This contact is for information on completing the form and interpreting the Federal Property Management Regulation only.

DATES: Effective upon publication in the **Federal Register**.

Dated: December 4, 1997.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 97–32810 Filed 12–16–97; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Formative Research on Weapons Carrying and Use Among Youth—New—The Division of Violence plans to conduct formative research on weapon carrying behavior among young persons and victims of interpersonal violent injury. CDC has initiated an effort to collect qualitative information from: 1. Systems representatives (adults 18 and older who work and interact with youth) and 2. adolescents, (ages 11–18), who are at high, medium and low risk for weapon carrying and interpersonal injury. The purpose of the proposed data collection is to explore what factors influence youths to possess or carry weapons. The results of this study will be useful to officials planning or operating violence prevention interventions in the study community and other communities.

The study is to be conducted in two phases: Phase 1 will involve the collection of research data from one-on-one, semi-structured interviews with 70 systems representatives. Systems representatives are persons who have contact with youth (which includes but is not limited to): (1) Formal providers or people who serve in an official capacity, or interact with youth (e.g. youth outreach workers, youth hostel workers, community-based agency staff members, law enforcement officers who patrol gang areas); and (2) informal providers: people who informally serve, the target population of youth (e.g. mall shop owners, school bus drivers, drug dealers).

In Phase 2, qualitative survey research will be conducted with key participant informants (youth ages 11–18), to verify data collected during Phase I, and to collect ethnographic data regarding risk and protective behaviors among youth. Specifically, Phase 2 will involve the collection of research data from one-on-one, semi-structured interviews with 132 key participant informants. The specific target area includes the East, North, West Downtown and Wrigley areas of the City of Long Beach and one segment of Dominuez. Interviews will be conducted in a setting or location which is most comfortable and convenient for the study subjects. There is no cost to Respondents.

Respondents	No. of respondents	No. of responses	Average burden/response (in hrs.)	Total burden (in hrs.)
Systems Representatives	70	1	1	70
Key Participant Informants	132	1	1.5	198
Total				268

Dated: December 11, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–32868 Filed 12–16–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 802]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for the Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention. CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000 and CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992), see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Section 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, or early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are non-profit organizations including universities, colleges, research institutions, hospitals, other public and private (e.g., national, regional) non-profit organizations and federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations. State and local health departments may only apply for funding under Category 2 (See Application Section).

Note: Organizations authorized under section 501(c)(4) of the Internal Revenue Code of 1986 are not eligible to receive Federal grant/cooperative agreement funds.

Availability of Funds

Approximately $400,000 is available in FY 1998 to fund approximately 15 to 25 awards. It is expected that the average award will be $20,000 and will be funded for a 12-month budget and project period. Funding estimates may vary and are subject to change.

Use of Funds

- CDC funds may be used for direct cost expenditures: salaries, speaker fees, rental of conference related equipment, registration fees, and transportation cost (not to exceed economy class fares) for non-Federal employees.
- CDC funds may be used for only those parts of the conference specifically supported by CDC as documented in the Notice of Cooperative Agreement (award document).
- CDC funds may not be used for the purchase of equipment, payments of honoraria, organizational dues, entertainment or personal expenses, cost of travel and payment of a Federal employee, or per diem or expenses, other than mileage, for local participants.
- CDC funds may not be used for reimbursement of indirect costs.
- CDC funds may not be used to purchase novelty items (e.g., bags, T-shirts, hats, pens) distributed at meetings.
- CDC will not fund 100 percent of the proposed conference. Part of the cost of the proposed conference must be supported with other than Federal funds.
- CDC will not fund a conference after it has taken place.
- CDC funds may be used for only those parts of the conference specifically supported by CDC as documented on the notice of award.

Restrictions on Lobbying

Fiscal year 1997 appropriation lobbying language remains in full effect as follows: Applicants should be aware of restrictions on the use of HHS funds for lobbying under the requirements of Section 1352 of Public Law 101–121, effective December 23, 1989. This law provides, in pertinent part, that recipients (and their subtier contractors and/or subgrantees) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement or loan. This would include grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly encouraging participants to lobby or instructing participants on how to lobby.

Section 503 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 104–208), effective October 1, 1996, establishes additional restrictions on the use of Federal funds for lobbying. Whereas previous anti-lobbying prohibitions involved only activities for or against passage of legislation pending before the Congress, the FY 1997 appropriations language establishes an additional prohibition against lobbying for or against legislation pending before State legislatures:

Section 503(a): No part of any appropriation contained in the FY 1997 Appropriations Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress itself or any State legislature.

Section 503(b): No part of any appropriation contained in the Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Under Section 503, any activity designed to influence action in regard to a particular piece of pending legislation would be considered "lobbying." That is, Section 503 prohibits lobbying for or against pending legislation, as well as indirect or "grass roots" lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives at the Federal or State levels to urge support of, or opposition to, pending legislative proposals. As a matter of policy, CDC extends the prohibitions to lobbying with respect to local legislation and local legislative bodies.

The new provisions are not intended to prohibit all interaction with the legislative branch, or to prohibit educational efforts pertaining to public health. Clearly there are circumstances when it is advisable and permissible to provide information to the legislative branch in order to foster implementation of prevention strategies to promote public health. However, it would not be permissible to influence, directly or indirectly, a specific piece of pending legislation.

It remains permissible to use CDC funds to engage in activity to enhance prevention; collect and analyze data; publish and disseminate results of research and surveillance data; implement prevention strategies; conduct community outreach services; provide leadership and training, and foster safe and healthful environments.

Recipients of CDC grants and cooperative agreements need to be careful to prevent CDC funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and "grassroots" activities that relate to specific legislation; recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds. CDC also cautions recipients of CDC funds to be careful not to give the appearance that CDC funds are being used to carry out activities in a manner that is prohibited under Federal law.

Background

The HIV epidemic constitutes a significant threat to the public health of the United States. The most recent estimate of HIV prevalence indicates that between 650,000 and 900,000 Americans are living with HIV. Recently, there has been a marked decrease in deaths among people with AIDS. The decline in deaths is likely due to both the slowing of the epidemic and to improved treatments over the past several years. However, women and people of color are still disproportionately affected by HIV. Declines in deaths were greater among whites (28 percent) than among blacks (10 percent) and Hispanics (16 percent). Among women, AIDS deaths declined only 7 percent in the first three quarters of 1996. HIV/AIDS remains a leading cause of death.

Although the number of AIDS cases in men who have sex with men has declined, they continue to account for the largest proportion of reported cases. In 1996, women represented 20 percent of adults and adolescents reported with AIDS, greater than the proportion in any previous year. Among women, heterosexual contact and injecting drug use accounted for 40 percent and 34 percent, respectively, of cases reported in 1996. For the first time, blacks represented 41 percent of adults and adolescents reported with AIDS, exceeding the proportion in the white population.

A great number of public and private health care providers have made significant strides in developing effective strategies for HIV information dissemination and prevention. However, mechanisms are needed to disseminate information about the newest developments in disease prevention, health promotion techniques, and their practical applications nationwide.

CDC supports local, State, regional, national, and international health efforts to prevent unnecessary disease, disability, and premature death and to improve the quality of life. This support often takes the form of education, including the transfer of research findings and public health strategies and practices, through symposia, seminars, and workshops. Through its support of conferences and meetings related to the areas of public health research, education, and prevention applications, CDC is a key participant in the dissemination of essential prevention information and in the implementation of HIV prevention programs.

National HIV Prevention Goal

Applications must be consistent with the CDC national goal of assisting in building and maintaining the necessary

State, local, and community infrastructure and technical capacity to carry out necessary HIV and STD prevention programs.

Purpose

The purpose of the HIV Prevention Conference Support funding is to provide PARTIAL support for specific non-Federal conferences in the areas of health promotion, disease prevention information and education programs, and applied research. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. CDC funds will not be expended for non-approved portions of conference. In addition, CDC will reserve the right to approve or reject the content of the full agenda, press events, promotional materials (including press releases), speaker selection, and site selection. Contingency awards will be made allowing usage of only 25 percent of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds to support costs associated with preparation of the agenda. The remainder of funds will be released only upon approval of the final full agenda. CDC reserves the right to terminate co-sponsorship at any time.

This program is not meant for conferences to educate the general public or to deliver prevention interventions to persons at risk for HIV infection.

- Any conference sponsored by CDC shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations. The Director, or his/her designee, of the CIO(s) providing funds or approving CDC sponsorship of a conference must assure that the proposed meeting facilities comply with ADAAG.
- The conference organizer(s) may use CDC's name only in factual publicity for the conference and should understand that CDC involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, or products.

Topics concerned with issues and areas other than HIV prevention should be directed to other public health agencies or in accordance with the current **Federal Register** Notice (see **Federal Register** Notice 803, [61 FR 19296] published on April 29, 1997).

Program Requirements

Development of HIV prevention conferences may require substantial CDC collaboration and involvement. In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under A. (Recipient Activities) and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Manage all activities related to conference content (e.g., objectives, topics, participants, session design, workshops, special exhibits, speakers, fees, agenda composition, printing). Many of these items may be developed in concert with assigned CDC project personnel.
2. Provide draft copies of the agenda and proposed ancillary activities to the CDC Grants Management Office for review and comment. Submit a copy of the final agenda and proposed ancillary activities to the CDC Grants Management Office for acceptance.
3. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press). CDC must review and approve the use of any materials with reference to CDC involvement or support.
4. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures).
5. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.
6. Develop and conduct education and training programs on HIV prevention.
7. If the proposed conference is or includes a satellite broadcast:
   a. Provide individual, on-camera rehearsals for all presenters,
   b. Provide at least one full dress rehearsal involving the moderator, all presenters, equipment, visuals, and practice telephone calls at least one day before the actual broadcast and as close to the actual broadcast time as possible,
   c. Provide full scripting and Teleprompter use for the moderator and all presenters,
   d. Select a professional moderator.
8. Collaborate with CDC staff in reporting and disseminating results and relevant HIV prevention and education and training information to appropriate Federal, State, and local agencies, health-care providers, HIV/AIDS prevention and service organizations, and the general public.

B. CDC Activities

1. Provide technical assistance through telephone calls, correspondence, and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.
2. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on risk factors for HIV infection, preventive measures, and program strategies for the prevention of HIV infection.
3. Review draft agendas and the Grants Management Officer will issue approval or disapproval of the final agenda and proposed ancillary activities prior to release of restricted funds.
4. Assist in the reporting and dissemination of research results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, and HIV/AIDS prevention and service organizations, and the general public.

Technical Reporting Requirements

An original and two copies of final performance and financial status reports (reporting actual expenses) are required no later than 90 days after the end of the budget/project period. The performance report should include: (1) The cooperative agreement number; (2) title of the conference; (3) name of the principal investigator, program director or coordinator; (4) name of the organization that conducted the conference; (5) a copy of the agenda; (6) a list of individuals who participated in the formally planned sessions of the meeting; (7) a summarization of the results of the meeting, including a discussion of the accomplishments related to stated conference objectives; and (8) the Program Review Panel's report that all written materials have been reviewed as required (see the section Program Review Panel).

With the prior approval of CDC, copies of proceedings or publications resulting from the conference may be substituted for the final performance report, provided they contain the information requested in items (1) through (8) above.

Application Content

Organizations should submit separate applications in any of the three following categories:

Category 1: Regional, national, or international conferences for individuals or organizations implementing HIV prevention programs or providing relevant services. The focus will be on information exchange including lessons learned and successful programs;

Category 2: Local, statewide, or regional conferences providing information about technology transfer regarding interventions for effective HIV prevention for a defined population within a specific locality, State, or multi-state area (State and local health departments may apply only under Category 2); and

Category 3: Regional, national, or international conferences for researchers to impart theoretically based or empirically demonstrated health research with the intention to train health and other professionals in innovative, enhanced interventions, e.g., newly emerging science-based interventions for health professionals.

A. Letter Of Intent (LOI)

Applicants must submit an original and two copies of a two-page typewritten LOI that briefly describes the application category (1, 2, or 3), title, location, proposed conference dates, purpose, target population(s) (e.g., youth, women, Men Who Have Sex with Men (MSM), Injecting Drug Users (IDU), and the intended audience (number and description)). The LOI must also include the estimated total cost of the conference, the percentage of the total cost (which must be less than 100 percent) being requested from CDC, and the relationship of the conference to CDC Topics of Special Interest (listed below).

Topics of Special Interest

1. Prevention of HIV infection among:
   A. Under-served populations (e.g., women of reproductive age, racial and ethnic minorities)
   B. High-risk populations (e.g., men who have sex with men, drug users, in-school and out-of-school youth, and migrant workers)
   C. Populations in special settings (e.g., correctional institutions)
   D. Under-served geographic areas

   Preferences may be given to supporting organizations that serve multiple high-risk populations.
2. Development of HIV prevention strategies with a broad range of community, regional, or national partners.

Preferences are established to include national priorities, to ensure a balance of CDC HIV prevention funding, and to address at-risk populations and geographic areas that are under-served. No preference will be given to organizations that have received funding in past years.

LOIs will be reviewed by CDC and an invitation to submit an application will be made based on:

1. Documented need for the proposed conference,
2. Contribution to the prevention of HIV/AIDS,
3. National HIV prevention priorities based on emerging trends in the epidemic,
4. The proposed conference's relationship to the CDC determined topics of special interest,
5. Timing of the conference that will allow for CDC input, and
6. Availability of funds.

Also include the name, mailing address, telephone number, and if available, fax number and e-mail address of the organization's primary contact person. Current recipients of CDC HIV funding must provide the award number and title of the funded programs. No attachments, booklets, or other documents accompanying the LOI will be considered. The two page limitation (inclusive of letterhead and signatures), must be observed or the letter of intent will be returned without review.

B. Final Application

Applicants invited to apply must develop applications in accordance with PHS Form 5161–1 (OMB Number 0937–0189). Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two required copies of the application must be submitted unstapled and unbound. All material must be typewritten in unreduced type on 8½ by 11" paper, with at least 1" margins, and printed on one side only. Materials which should be part of the basic plan should not be in the appendices. Use the evaluation criteria described below to develop your application. The body of the application must be limited to 12 pages.

The following information must be included:

1. A project summary cover sheet that includes:
   a. Application category (1, 2, or 3),
   b. Name of organization,
   c. Name of conference,
   d. Location of conference,
   e. Date (s) of conference,
   f. Target population(s) (e.g., youth, women, MSM, IDU),
   g. Intended audience and number,
   h. Dollar amount requested,
   i. Total conference budget.
2. Biographical sketches and job descriptions of the individuals responsible for planning and coordinating the conference.
3. A Budget Narrative separately identifying and justifying line items to which the requested Federal funds would be applied.
4. A draft agenda for the proposed conference.
5. Award number and title(s) of funded program(s) for current recipients of CDC HIV funding. Must not have submitted the same proposal for review for funding to other parts of CDC.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (TOTAL 100 POINTS).

1. Category-specific criterion (20 points):
   A. Category 1: Extent to which the applicant provides evidence of an opportunity for participants and presenters to interact during the conference.
   B. Category 2: Extent to which the applicant relates the specific connection of the conference content to HIV prevention community planning priorities and provides a description of need for the proposed conference.
   C. Category 3: Extent to which the applicant demonstrates the scientific soundness of the technology to be transferred as evidenced by inclusion in HIV prevention research publications, peer reviewed journals, or scientific consensus panel review.

   The following criteria apply to all applications:
2. Proposed Program and Technical Approach (30 points):
   A. The extent to which the applicant's description of the proposed conference relates to HIV prevention and education, including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices, and the extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with HIV prevention.
   B. The applicant's description of conference objectives in terms of quality, specificity, and the feasibility of the conference based on the operational plan, and the extent to which evaluation mechanisms for the conference adequately assess increased knowledge, attitudes, and behaviors of the target participants.
   C. The relevance and effectiveness of the proposed agenda in addressing the chosen HIV prevention and education topic.
   D. The degree to which conference activities proposed for CDC funding

strictly adhere to the prevention of HIV transmission.

3. Applicant Capability (25 points):

A. The adequacy and commitment of institutional resources to administer the program for the proposed conference.

B. The adequacy of existing and proposed facilities and resources for conducting conference activities.

C. The degree to which the applicant has established and used critical linkages with health and education departments and community planning groups with the mandate for HIV prevention. Letters of support (limit of 5) from such agencies addressing related capability and experience should be included. They must explain how the agency will work with the applicant to plan the proposed conference. Letters that do not pertain directly to the proposed conference will not be considered.

4. Qualifications of Program Personnel (25 points):

A. The qualifications, experience, and commitment of the principal staff person, and his or her ability to devote adequate time and effort to provide effective leadership.

B. The competence of associate staff persons, discussion leaders, and speakers to accomplish conference objectives.

C. The degree to which the application demonstrates that all key personnel have education and expertise relative to the conference objectives, are informed about the transmission of HIV, and understand nationwide information and education efforts currently underway that may affect, and be affected by, the proposed conference.

5. Budget Justification and Adequacy of Facilities: (not scored) The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, consistency with the intended use of cooperative agreement funds, and the extent to which the applicant documents financial support from other sources.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.941.

Submission Requirements and Deadlines

A. Letter of Intent (LOI)

1. One original and two copies of the LOI must be postmarked by the following deadline dates in order to be considered. (Facsimiles are not acceptable.) An invitation to submit an application does not constitute a commitment to fund.

2. Letter of Intent Due Dates: January 31, 1998.

B. Application

One original and two copies of the invited application must be submitted on PHS Form 5161–1 (OMB Number 0937–0189) and must be postmarked by the date specified in the acceptance letter in order to be considered in the application cycles.

Applications may be accepted by CDC only after the LOI has been reviewed by CDC and written invitation from CDC has been received by prospective applicant. Availability of funds may limit the number of Letters of Intent, regardless of merit, that receive an invitation to submit an application.

C. Addresses for Submission of Letter of Intent and Invited Applications

One original and two copies of the Letters of Intent and invited application must be postmarked on or before the deadline date and mailed to: Juanita Dangerfield, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–15, Atlanta, GA 30305.

D. Deadlines

Letters of Intent and Application shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

E. Late Applications

Applications that do not meet the criteria in D.1. or D.2. above are considered late applications and will be returned to the applicant without review.

Other Requirements

Program Review Panel

Recipients must comply with the document entitled 'Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (June 1992) (a copy is in the application kit). To meet the requirements for a Program Review Panel, recipients are encouraged to use an existing Program Review Panel such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own Program Review Panel, at least one member must also be an employee (or a designated representative) of an appropriate health or educational agency, consistent with the Content Guidelines. The names of review panel members must be listed on the Assurance of Compliance form (CDC Form 0.1113) which is also included in the application kit.

Use of CDC Name

The conference organizer(s) may use CDC's name only in factual publicity for the conference, and should understand that CDC involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, or products.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and phone number, and refer to Announcement Number 802. You will receive a complete program announcement, a list of the relevant "Healthy People 2000" HIV objectives, and the addresses and phone numbers for CDC contact personnel. CDC will not send application kits by facsimile or express mail unless the cost for the latter is paid by the addressee.

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is bttp://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Ms. Juanita Dangerfield, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–15, Room 300, Atlanta, GA 30305, telephone (404) 842–6577. Programmatic technical assistance may be obtained from Ms. Linda LaChanse, Program Analyst, Training and Technical Support Systems Branch, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, GA 30333, telephone (404) 639–0964.

Please refer to Announcement Number 802 when requesting information, submitting your Letter of Intent and submitting the invited application in response to the announcement.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800. Single copies of CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992) can be obtained by calling the CDC National AIDS Clearinghouse at (800) 458–5231.

Dated: December 11, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–32867 Filed 12–16–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Program; Notice of Award

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families, HHS.

ACTION: Notice of Sole Source Award to Administer the Head Start Child Development Credentialing Program.

SUMMARY: The Head Start Bureau announces its intention to enter into a noncompetitively awarded cooperative agreement with The Council for Early Childhood Professional Recognition to administer the Child Development Associate (CDA) Credentialing Program. The CDA Program is a national project to credential qualified caregivers who work with children birth to age five in a variety of public and private agency settings, and in a variety of roles, including as center-based caregivers of infants and toddlers or preschool age children, as home visitors, or as family child care providers.

If there are organizations interested in competing for this grant to administer the Head Start Child Development Credentialing Program, they are requested to express their interest by contacting either E. Dollie Wolverton or Lynda Perez by January 16, 1998.

DATES: Effective on January 16, 1998.

FOR FURTHER INFORMATION CONTACT: E. Dollie Wolverton, Head Start Bureau, ACYF, P.O. Box 1182, Washington, D.C. 20013, (202) 205–8418 (Not a toll free call); or Lynda Perez, Grants Officer, Head Start Bureau, ACYF, P.O. Box 1182, Washington, D.C. 20013, (202) 205–7359 (Not a toll free call).

SUPPLEMENTARY INFORMATION:

I. Background

The project period for this cooperative agreement will be four years. The award is approximately $1,000,000 annually. The authority for this credentialing program is section 648(e) of the Head Start Act (42 U.S.C. 9843).

The Head Start Program is committed to staff development for all individuals employed in local programs to increase the understanding and skills necessary to carry out their jobs, as well as professional development leading to credentials and degrees. In addition to ongoing staff development, section 648A of the Head Start Act directs the Secretary to ensure that each of the 55,000 Head Start classrooms for preschool-age children has a qualified teacher, with a minimum of a CDA credential.

Those who are credentialed include prekindergarten staff from the various military sectors, child care, church-affiliated preschools, Title I school-based programs, and Head Start. Also, the revised Head Start Program Performance Standards, which become effective January 1, 1998, include new standards for infant and toddler programs and the requirement that infant and toddler teachers also be qualified by January 1, 1999, and thereafter within one year of hire, holding a CDA credential at a minimum.

Beginning in 1972, ACYF has supported various organizations to administer the CDA National Credentialing Program. These organizations included a Consortium of several child development and early childhood education associations and the Bank Street College of Education. The first decade of this credential award program was unstable and problematic due, in large measure, to the fact that the grant was recompeted frequently, leading to several changes in administering organizations and resulting breaks in services. The general instability and under-use of the CDA credential system caused concern to the Department and the Congress. The Department requested that the National Association for the Education of Young Children create a non-profit subsidiary to become a free standing organization that would permanently administer the CDA credentialing program. Accordingly, the Council for Early Childhood Professional Recognition was established to administer the national CDA Credentialing Program through a cooperative agreement. The intent of maintaining a permanent home for the national Child Development Associate credentialing program was reinforced in 1992, when Section 7 of the 1992 Juvenile Justice Act, entitled, "Head Start Training Improvement," amended the Head Start Act, requiring the funding of an organization to administer a centralized child development credential and national assessment program.

II. Reason for Sole Source Award

The Council for Early Childhood Professional Recognition has effectively restored public confidence in the CDA Credential and increased the number of credentials awarded. The number of candidates credentialed each year has steadily grown from about 2,000 credentialed candidates annually to nearly 8,000 per year. As of June 1997, nearly 83,000 teachers, home visitors and family child care providers have been credentialed. The Council has also increased the recognition and credibility of the CDA Credential among the States, and now 47 States, the District of Columbia and Puerto Rico recognize the Child Development Associate credential as the requirement for the licensing of a child care center. This provides those certified with the CDA credential with the mobility to move from State-to-State with State recognition of their credential and qualifications.

The Council is efficiently and cost-effectively administering the National CDA Credentialing Program at a time when the demand for the credential has greatly increased. This allows the Council to maintain the assessment and credentialing fee to the candidate (the majority are low-income) at $325.

Because of the mandate for qualified teachers of infants and toddlers and preschool age children, welfare reform, and the President's intended expansion of the Head Start Program to serve one million eligible children by the year 2002, the need for qualified, credentialed staff is an urgent matter, particularly given the annual turnover rate of 17 percent among Head Start staff. To address the expansion of the

Head Start Program and the expansion of services by other agencies providing child care and early childhood education, it is estimated that approximately 8,000 CDA candidates will require assessment and a credential award during each of the next four years.

In the face of these challenges, the Department seeks to ensure the continuity of the administration of this unique national credentialing program, which provides affordable credentialing award services which are nationally recognized, cost effective, represent quality standards for staff working with children ages birth to five years, and enjoy the confidence of the States, institutions of higher learning, and the field of early childhood.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: December 11, 1997.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 97–32954 Filed 12–16–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0430]

Medical Devices; Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA." The guidance document provides suggestions for the nonclinical laboratory studies and the design, conduct, and analysis of appropriate clinical studies that the Center for Devices and Radiological Health (CDRH), FDA, believes will provide reasonable assurance of the safety and effectiveness of these devices. The guidance document also sets forth the review criteria and describes the data to support a 510(k) submission. The guidance accompanies a final rule, which appears elsewhere in this issue of the **Federal Register**, announcing the reclassification of tumor associated antigen immunological test systems from class III (premarket approval) to class II (special controls).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments concerning this guidance document to the contact person listed below. Submit written requests for single copies of "Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA" to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist the office in processing your request, or fax your request to 301–443–8818. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION:

I. Background

FDA issued an order (September 19, 1996) in the form of a letter reclassifying tumor associated antigen immunological test systems from class III to class II. The order identified the premarket notification guidance document for tumor associated antigens as one of the designated special controls. The guidance document contains general information on the definition of qualifying devices and the administrative requirements for submitting a 510(k) to FDA. The document also lists the types of nonclinical (analytical) studies to be included in the submission. These studies include reagent characterization, assay specificity, and device performance characteristics to include precision, linearity, interfering substances, analytical sensitivity and methods of comparison to another device. Finally, the document provides guidance on the design of clinical studies to support a submission for a new tumor marker intended to monitor previously treated patients.

This guidance document represents the agency's current thinking on the design of clinical studies expected to support a 510(k) submission for new tumor markers intended to monitor previously treated patients. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

II. Requests for Comments

Interested persons may, at any time, submit to the contact person listed above written comments regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

III. Electronic Access

In order to receive the "Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA" via your fax machine, call the CDRH Facts-On-Demand system at 1–800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (957) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). The CDRH maintains an entry on the WWW for easy access to the Web. Updated on a regular basis, the CDRH home page includes "Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA" will be available at http://www.fda.gov/cdrh/ode/ed—cl.html.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 1–800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

Dated: October 7, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–32875 Filed 12–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on January 27, 1998, 8:30 a.m. to 5:30 p.m.; and January 28, 1998, 9 a.m. to 4 p.m.

Location: National Institutes of Health, Natcher Conference Center, 45 Center Dr., Bethesda, MD 20892.

Contact Person: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), 419–259–6211, or Danyiel A. D'Antonio (HFD–21), 301–443–5455, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 27, 1998, the committee will review and discuss: (1) New drug application (NDA) 20–736, Verdia™ (tasosartan, Wyeth-Ayerst Research), as a therapy for hypertension; and (2) the unapproved outpatient use of intermittent intravenous positive inotropic agents. On January 28, 1998, the committee will review and discuss NDA 20–718, Integrilin™ (eptifibatide, Cor Therapeutics, Inc.), for use in the settings of percutaneous transluminal angioplasty and acute coronary syndrome.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 20, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on January 27, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 20, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 11, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–32874 Filed 12–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0188]

International Conference on Harmonisation; Guidance on General Considerations for Clinical Trials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "E8 General Considerations for Clinical Trials." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance sets forth general scientific principles for the conduct, performance, and control of clinical trials.

DATES: Effective December 17, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: G. Alexander Fleming, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6391.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research (CDER) and CBER, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of May 30, 1997 (62 FR 29540), FDA published a draft tripartite guideline entitled "General Considerations for Clinical Trials." The notice gave interested persons an opportunity to submit comments by July 1, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 17, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The guidance describes internationally accepted principles and practices in the conduct of clinical trials and development strategy for new drug products. It is intended to facilitate the evaluation and acceptance of foreign clinical trial data by promoting a common understanding of general principles and approaches. The guidance also presents an overview of ICH clinical safety and efficacy documents.

This guidance represents the agency's current thinking on general considerations for the conduct, performance, and control of clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet (http://www.fda.gov/cder/guidance/index.htm) or at CBER's World Wide Web site at "http://www.fda.gov/cber/publications.htm".

The text of the guidance follows:

E8 General Considerations for Clinical Trials[1]

1. Objectives of This Document

In the three ICH regions, the evolution of drug development strategies and evaluation processes has led to the establishment of regional guidances on general considerations for clinical trials and the process of clinical development of pharmaceuticals for human use. This harmonized guidance is derived from those regional documents as well as from ICH guidances.

The ICH document "General Considerations for Clinical Trials" is intended to:

(a) Describe internationally accepted principles and practices in the conduct of both individual clinical trials and overall development strategy for new medicinal products.

(b) Facilitate the evaluation and acceptance of foreign clinical trial data by promoting a common understanding of general principles, general approaches, and the definition of relevant terms.

(c) Present an overview of the ICH clinical safety and efficacy documents and facilitate the user's access to guidance pertinent to clinical trials within these documents. The relevant ICH documents are listed in Annex 1.

(d) Provide a separate glossary of terms used in the ICH clinical safety and efficacy related documents that pertain to clinical trials and indicate which documents contain these.

For the sake of brevity, the term "drug" has been used in this document. It should be considered synonymous with "investigational (medicinal) product," "medicinal product," and "pharmaceutical," including vaccines and other biological products. The principles established in this guidance may also be applied to other clinical investigations (e.g., radiotherapy, psychotherapy, surgery, medical devices and alternative therapies).

2. General Principles

2.1 Protection of Clinical Trial Subjects

The principles and practices concerning protection of trial subjects are stated in the ICH guidance on Good Clinical Practice (ICH E6). These principles have their origins in The Declaration of Helsinki and should be observed in the conduct of all human drug investigations.

Before any clinical trial is carried out, results of nonclinical investigations or previous human studies should be sufficient to indicate that the drug is acceptably safe for the proposed investigation in humans. The purpose and timing of animal pharmacology and toxicology studies intended to support studies of a given duration are discussed in ICH M3. The role of such studies for biotechnology products is cited in ICH S6.

Throughout drug development, emerging animal toxicological and clinical data should be reviewed and evaluated by qualified experts to assess their implications for the safety of the trial subjects. In response to such findings, future studies and, when necessary, those in progress should be appropriately modified in a timely fashion to maintain the safety of trial participants. The investigator and sponsor share responsibility for the protection of clinical trial subjects together with the Institutional Review Board/Independent Ethics Committee. The responsibilities of these parties are described in ICH E6.

2.2 Scientific Approach in Design and Analysis

Clinical trials should be designed, conducted, and analyzed according to sound scientific principles to achieve their objectives, and should be reported appropriately. The essence of rational drug development is to ask important questions and answer them with appropriate studies. The primary objectives of any study should be clear and explicitly stated.

Clinical studies can be classified according to when the study occurs during clinical development or, as shown in Table 1, by their objectives. (The illustrative examples are not intended to be exhaustive.) The cardinal logic behind serially conducted studies of a medicinal product is that the results of prior studies should influence the plan of later studies. Emerging data will frequently prompt a modification of the development strategy. For example, results of a therapeutic confirmatory study may suggest a need for additional human pharmacology studies.

The availability of foreign clinical data should obviate the need to generate similar data in an ICH region if the ICH E5 and ICH E6 guidances are followed (see ICH E5).

[1] This guidance represents the agency's current thinking on general considerations for the conduct, performance, and control of clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

TABLE 1.—AN APPROACH TO CLASSIFYING CLINICAL STUDIES ACCORDING TO OBJECTIVE

Type of Study	Objective of Study	Study Examples
Human Pharmacology	• Assess tolerance • Define/describe PK[1] and PD[2] • Explore drug metabolism and drug interactions • Estimate activity	• Dose-tolerance studies • Single and multiple dose PK and/or PD studies • Drug interaction studies
Therapeutic Exploratory	• Explore use for the targeted indication • Estimate dosage for subsequent studies • Provide basis for confirmatory study design, endpoints, methodologies	• Earliest trials of relatively short duration in well-defined narrow patient populations, using surrogate or pharmacological endpoints or clinical measures • Dose-response exploration studies
Therapeutic Confirmatory	• Demonstrate/confirm efficacy • Establish safety profile • Provide an adequate basis for assessing the benefit/risk relationship to support licensing • Establish dose-response relationship	• Adequate, and well controlled studies to establish efficacy • Randomized parallel dose-response studies • Clinical safety studies • Studies of mortality/morbidity outcomes • Large simple trials • Comparative studies
Therapeutic Use	• Refine understanding of benefit/risk relationship in general or special populations and/or environments • Identify less common adverse reactions • Refine dosing recommendation	• Comparative effectiveness studies • Studies of mortality/morbidity outcomes • Studies of additional endpoints • Large simple trials • Pharmacoeconomic studies

[1] Pharmacokinetics
[2] Pharmacodynamics

3. Development Methodology

This section covers issues and considerations relating to the development plan and to its individual component studies.

3.1 Considerations for the Development Plan

3.1.1 Nonclinical Studies

Important considerations for determining the nature of nonclinical studies and their timing with respect to clinical trials include:

(a) Duration and total exposure proposed in individual patients.

(b) Characteristics of the drug (e.g., long half life, biotechnology products).

(c) Disease or condition targeted for treatment.

(d) Use in special populations (e.g., women of childbearing potential).

(e) Route of administration.

The need for nonclinical information including toxicology, pharmacology, and pharmacokinetics to support clinical trials is addressed in the ICH M3 and S6 documents.

3.1.1.1 *Safety studies.* For the first studies in humans, the dose that is administered should be determined by careful examination of the prerequisite nonclinical pharmacokinetic, pharmacological, and toxicological evaluations (see ICH M3). Early nonclinical studies should provide sufficient information to support selection of the initial human dose and safe duration of exposure, and to provide information about physiological and toxicological effects of a new drug.

3.1.1.2 *Pharmacological and pharmacokinetic studies.* The basis and direction of the clinical exploration and development rests on the nonclinical pharmacokinetic and pharmacology profile, which includes information such as:

(a) Pharmacological basis of principal effects (mechanism of action).

(b) Dose-response or concentration-response relationships and duration of action.

(c) Study of the potential clinical routes of administration.

(d) Systemic general pharmacology, including pharmacological effects on major organ systems and physiological responses.

(e) Studies of absorption, distribution, metabolism, and excretion.

3.1.2 Quality of Investigational Medicinal Products

Formulations used in clinical trials should be well characterized, including information on bioavailability wherever feasible. The formulation should be appropriate for the stage of drug development. Ideally, the supply of a formulation will be adequate to allow testing in a series of studies that examine a range of doses. During drug development, different formulations of a drug may be tested. Links between formulations, established by bioequivalence studies or other means, are important in interpreting clinical study results across the development program.

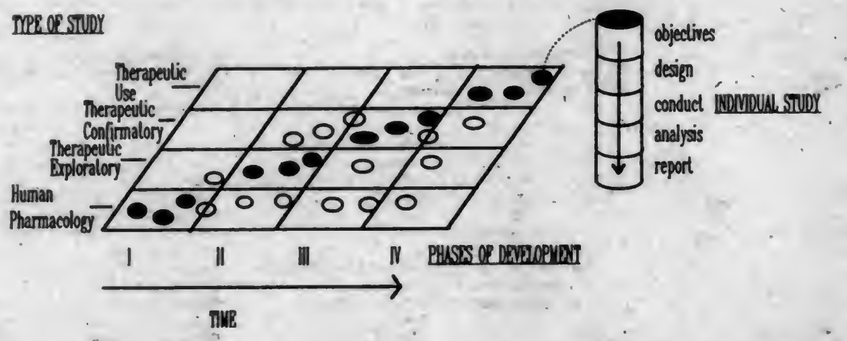
3.1.3 Phases of Clinical Development

Clinical drug development is often described as consisting of four temporal phases (Phases I–IV). It is important to recognize that the phase of development provides an inadequate basis for classification of clinical trials because one type of trial may occur in several phases (see Figure 1). A classification system using study objectives as discussed in section 2.2 is preferable. It is important to appreciate that the phase concept is a description, not a set of requirements. It is also important to realize that the temporal phases do not imply a fixed order of studies since for some drugs in a development plan the typical sequence will not be appropriate or necessary. For example, although human pharmacology studies are typically conducted during Phase I, many such studies are conducted at each of the other three stages, but nonetheless are sometimes labeled as Phase I studies. Figure 1 demonstrates this close but variable correlation between the two classification systems. The distribution of the points of the graph shows that the types of study are not synonymous with the phases of development.

BILLING CODE 4160-01-F

[1] This matrix graph illustrates the relationship between the phases of development and types of study by objective that may be conducted during each clinical development of a new medicinal product. The shaded circles show the types of study most usually conducted in a certain phase of development, the open circles show certain types of study that may be conducted in that phase of development but are less usual. Each circle represents an individual study. To illustrate the development of a single study, one circle is joined by a dotted line to an inset column that depicts the elements and sequence of an individual study.

Figure 1.—Correlation Between Development Phases and Types of Study[1]



BILLING CODE 4160-01-C

Drug development is ideally a logical, step-wise procedure in which information from small early studies is used to support and plan later larger, more definitive studies. To develop new drugs efficiently, it is essential to identify characteristics of the investigational medicine in the early stages of development and to plan an appropriate development based on this profile.

Initial trials provide an early evaluation of short-term safety and tolerability and can provide pharmacodynamic and pharmacokinetic information needed to choose a suitable dosage range and administration schedule for initial exploratory therapeutic trials. Later confirmatory studies are generally larger and longer and include a more diverse patient population. Dose-response information should be obtained at all stages of development, from early tolerance studies, to studies of short-term pharmacodynamic effect, to large efficacy studies (see ICH E4). Throughout development, new data may suggest the need for additional studies that are typically part of an earlier phase. For example, blood level data in a late trial may suggest a need for a drug-drug interaction study, or adverse effects may suggest the need for further dose finding and/or additional nonclinical studies. In addition, to support a new marketing application approval for the same drug, e.g., for a new indication, pharmacokinetic or therapeutic exploratory studies are considered to be in Phase I or Phase II of development.

3.1.3.1 *Phase I (Most typical kind of study: Human pharmacology).* Phase I starts with the initial administration of an investigational new drug into humans.

Although human pharmacology studies are typically identified with Phase I, they may also be indicated at other points in the development sequence. Studies in this phase of development usually have nontherapeutic objectives and may be conducted in healthy volunteer subjects or certain types of patients, e.g., patients with mild hypertension. Drugs with significant potential toxicity, e.g., cytotoxic drugs, are usually studied in patients. Studies in this phase can be open, baseline controlled, or may use randomization and blinding, to improve the validity of observations.

Studies conducted in Phase I typically involve one or a combination of the following aspects:

(a) Estimation of initial safety and tolerability

The initial and subsequent administration of an investigational new drug into humans is usually intended to determine the tolersbility of the dose range expected to be needed for later clinical studies and to determine the nature of adverse reactions that can be expected. These studies typically include both single and multiple dose administration.

(b) Pharmacokinetics

Characterization of a drug's absorption, distribution, metabolism, and excretion continues throughout the development plan. Their preliminary characterization is an important goal of Phase I. Pharmacokinetics may be assessed via separate studies or as a part of efficacy, safety and tolerance studies. Pharmacokinetic studies are particularly important to assess the clearance of the drug and to anticipate possible accumulation of parent drug or metabolites and potential drug-drug interactions. Some pharmacokinetic studies are commonly conducted in later phases to answer more specialized questions. For many orally administered drugs, especially modified release products, the study of food effects on bioavailability is important. Obtaining pharmacokinetic information in subpopulations such as patients with impaired elimination (renal or hepatic failure), the elderly, children, women, and ethnic subgroups should be considered. Drug-drug interaction studies are important for many drugs; these are generally performed in phases beyond Phase I, but studies in animals and in vitro studies of metabolism and potential interactions may lead to doing such studies earlier.

(c) Assessment of pharmacodynamics

Depending on the drug and the endpoint studied, pharmacodynamic studies and studies relating drug blood levels to response (PK/PD studies) may be conducted in healthy volunteer subjects or in patients with the target disease. In patients, if there is an appropriate measure, pharmacodynamic data can provide early estimates of activity and potential efficacy and may guide the dosage and dose regimen in later studies.

(d) Early measurement of drug activity

Preliminary studies of activity or potential therapeutic benefit may be conducted in Phase I as a secondary objective. Such studies are generally performed in later phases but may be appropriate when drug activity is readily measurable with a short duration of drug exposure in patients at this early stage.

3.1.3.2 *Phase II (Most typical kind of study: Therapeutic exploratory).* Phase II is usually considered to start with the initiation of studies in which the primary objective is to explore therapeutic efficacy in patients.

Initial therapeutic exploratory studies may use a variety of study designs, including concurrent controls and comparisons with baseline status. Subsequent trials are usually randomized and concurrently controlled to evaluate the efficacy of the drug and its safety for a particular therapeutic indication. Studies in Phase II are typically conducted in a group of patients who are selected by relatively narrow criteria, leading to a relatively homogeneous population, and who are closely monitored.

An important goal for this phase is to determine the dose(s) and regimen for Phase III trials. Early studies in this phase often utilize dose escalation designs (see ICH E4) to give an early estimate of dose response and later studies may confirm the dose response relationship for the indication in question by using recognized parallel dose-response designs (could also be deferred to phase III). Confirmatory dose response studies may be conducted in Phase II or left for Phase III. Doses used in Phase II are usually but not always less than the highest doses used in Phase I.

Additional objectives of clinical trials conducted in Phase II may include evaluation of potential study endpoints, therapeutic regimens (including concomitant medications), and target populations (e.g., mild versus severe disease) for further study in Phase II or III. These objectives may be served by exploratory analyses, examining subsets of data, and by including multiple endpoints in trials.

3.1.3.3 *Phase III (Most typical kind of study: Therapeutic confirmatory).* Phase III usually is considered to begin with the initiation of studies in which the primary objective is to demonstrate, or confirm therapeutic benefit.

Studies in Phase III are designed to confirm the preliminary evidence accumulated in Phase II that a drug is safe and effective for use in the intended indication and recipient population. These studies are intended to provide an adequate basis for marketing approval. Studies in Phase III may also further explore the dose-response relationship, or explore the drug's use in wider populations, in different stages of disease, or in combination with another drug. For drugs intended to be administered for long periods, trials involving extended exposure to the drug are ordinarily conducted in Phase III, although they may be started in Phase II (see ICH E1). ICH E1 and ICH E7 describe the overall clinical safety database considerations for chronically administered drugs and drugs used in the elderly. These studies carried out in Phase III complete the information needed to support adequate instructions for use of the drug (official product information).

3.1.3.4 *Phase IV (Variety of studies: Therapeutic use).* Phase IV begins after drug approval. Therapeutic use studies go beyond the prior demonstration of the drug's safety, efficacy and dose definition.

Studies in Phase IV are all studies (other than routine surveillance) performed after drug approval and related to the approved indication. They are studies that were not considered necessary for approval but are often important for optimizing the drug's use. They may be of any type but should have valid scientific objectives. Commonly conducted studies include additional drug-drug interaction, dose-response, or safety studies and studies designed to support use under the approved indication, e.g., mortality/morbidity studies, epidemiological studies.

3.1.3.5 *Development of an application unrelated to original approved use.* After initial approval, drug development may continue with studies of new or modified indications, new dosage regimens, new routes of administration, or additional patient populations. If a new dose, formulation, or combination is studied, additional human pharmacology studies may be indicated, necessitating a new development plan.

The need for some studies may be obviated by the availability of data from the original development plan or from therapeutic use.

3.1.4 Special Considerations

A number of special circumstances and populations require consideration on their own when they are part of the development plan.

3.1.4.1 *Studies of drug metabolites.* Major active metabolite(s) should be identified and deserve detailed pharmacokinetic study. Timing of the metabolic assessment studies within the development plan depends on the characteristics of the individual drug.

3.1.4.2 *Drug-drug interactions.* If a potential for drug-drug interaction is suggested by metabolic profile, by the results of nonclinical studies or by information on similar drugs, studies on drug interaction during clinical development are highly recommended. For drugs that are frequently coadministered, it is usually important that drug-drug interaction studies be performed in nonclinical and, if appropriate, in human studies. This is particularly true for drugs that are known to alter the absorption or metabolism of other drugs (see ICH E7), or whose metabolism or excretion can be altered by effects of other drugs.

3.1.4.3 *Special populations.* Some groups in the general population may require special study because they have unique risk/benefit considerations that need to be taken into account during drug development, or because they can be anticipated to need modification of use of the dose or schedule of a drug compared to general adult use.

Pharmacokinetic studies in patients with renal and hepatic dysfunction are important to assess the impact of potentially altered drug metabolism or excretion. Other ICH documents address such issues for geriatric patients (ICH E7) and patients from different ethnic groups (ICH E5). The need for nonclinical safety studies to support human clinical trials in special populations is addressed in the ICH M3 document.

Particular attention should be paid to the ethical considerations related to informed consent from vulnerable populations and the procedures scrupulously followed (see ICH E6).

(a) Investigations in pregnant women

In general, pregnant women should be excluded from clinical trials where the drug is not intended for use in pregnancy. If a patient becomes pregnant during administration of the drug, treatment should generally be discontinued if this can be done safely. Followup evaluation of the pregnancy, fetus, and child is very important. Similarly, for clinical trials that include pregnant women because the medicinal product is intended for use during pregnancy, followup of the pregnancy, fetus, and child is very important.

(b) Investigations in nursing women

Excretion of the drug or its metabolites into human milk should be examined where applicable. When nursing mothers are enrolled in clinical studies, their babies should be monitored for the effects of the drug.

(c) Investigations in children

The extent of the studies needed depends on the current knowledge of the drug and the possibility of extrapolation from adults and children of other age groups. Some drugs may be used in children from the early stages of drug development (see ICH M3).

For a drug expected to be used in children, evaluation should be made in the appropriate age group. When clinical development is to include studies in children, it is usually appropriate to begin with older children before extending the trial to younger children and then infants.

3.2 Considerations for Individual Clinical Trials

The following important principles should be followed in planning the objectives, design, conduct, analysis, and reporting of a clinical trial (see ICH guidances in Annex 1). Each part should be defined in a written protocol before the study starts (see ICH E6).

3.2.1 Objectives

The objective(s) of the study should be clearly stated and may include exploratory or confirmatory characterization of safety and/or efficacy and/or assessment of pharmacokinetic parameters and pharmacological, physiological, or biochemical effects.

3.2.2 Design

The appropriate study design should be chosen to provide the desired information. Examples of study design include parallel group, crossover, factorial, dose escalation, and fixed dose-dose response (see ICH E4, E8, E9 and E10). Appropriate comparators should be utilized and adequate numbers of subjects included to achieve the study objectives. Primary and secondary endpoints and plans for their analyses should be clearly stated (see ICH E9). The methods of monitoring adverse events by changes in clinical signs and symptoms and laboratory studies should be described (see ICH E3). The protocol should specify procedures for the followup of patients who stop treatment prematurely.

3.2.2.1 *Selection of subjects.* The stage of development and the indication to be studied should be taken into account in selecting the subject population (e.g., normal healthy subjects, cancer patients or other special populations in early phase development) as should prior nonclinical and clinical knowledge. The variability of groups of patients or healthy volunteers studied in early trials may be limited to a narrow range by strict selection criteria, but as drug development proceeds, the populations tested should be broadened to reflect the target population.

Depending on the stage of development and level of concern for safety, it may be necessary to conduct studies in a closely monitored (i.e., inpatient) environment.

As a general principle, trial subjects should not participate concurrently in more than one clinical trial but there can be justified exceptions. Subjects should not be enrolled repetitively in clinical trials without time off treatment adequate to protect safety and exclude carryover effects.

In general, women of childbearing potential should be using highly effective contraception to participate in clinical trials (see ICH M3).

For male subjects, potential hazards of drug exposure in the trial to their sexual partners or resulting progeny should be considered. When indicated (e.g., trials involving drugs that are potentially mutagenic, or toxic to the reproductive system), an appropriate contraception provision should be included in the trial.

3.2.2.2 *Selection of control group.* Trials should have an adequate control group. Comparisons may be made with placebo, no treatment, active controls, or of different doses of the drug under investigation. The choice of the comparator depends on, among other things, the objective of the trial (see ICH E9 and E10). Historical (external) controls can be justified in some cases, but particular care is important to minimize the likelihood of erroneous inference.

3.2.2.3 *Number of subjects.* The size of a trial is influenced by the disease to be investigated, the objective of the study, and the study endpoints. Statistical assessments of sample size should be based on the expected magnitude of the treatment effect, the variability of the data, the specified (small) probability of error (see ICH E9), and the desire for information on subsets of the population or secondary endpoints. In some circumstances, a larger database may be needed to establish the safety of a drug. ICH E1 and ICH E7 suggest a minimum experience to assess safety for a registrational database for a new indication. These numbers should not be considered as absolute and may be insufficient in some cases (e.g., where long-term use in healthy individuals is expected).

3.2.2.4 *Response variables.* Response variables should be defined prospectively, giving descriptions of methods of observation and quantification. Objective methods of observation should be used where possible and when appropriate (see ICH E9).

Study endpoints are the response variables that are chosen to assess drug effects that are related to pharmacokinetic parameters, pharmacodynamic measures, efficacy and safety. A primary endpoint(s) should reflect clinically relevant effects and is typically selected based on the principal objective of the study. Secondary endpoints assess other drug effects that may or may not be related to the primary endpoint. Endpoints and the plan for their analysis should be prospectively specified in the protocol.

A surrogate endpoint is an endpoint that is intended to relate to a clinically important outcome but does not in itself measure a clinical benefit. Surrogate endpoints may be used as primary endpoints when appropriate (when the surrogate is reasonably likely or well known to predict clinical outcome).

The methods used to make the measurements of the endpoints, both subjective and objective, should be validated and meet appropriate standards for accuracy, precision, reproducibility, reliability, and responsiveness (sensitivity to change over time).

3.2.2.5 *Methods to minimize or assess bias.* The protocol should specify methods of allocation to treatment groups and blinding (see ICH E9 and E10).

(a) Randomization

In conducting a controlled trial, randomized allocation is the preferred means of assuring comparability of test groups and minimizing the possibility of selection bias.

(b) Blinding

Blinding is an important means of reducing or minimizing the risk of biased study outcomes. A trial where the treatment assignment is not known by the study participant because of the use of placebo or other methods of masking the intervention is referred to as a single blind study. When the investigator and sponsor staff who are involved in the treatment or clinical evaluation of the subjects and analysis of data are also unaware of the treatment assignments, the study is double blind.

(c) Compliance

Methods used to evaluate patient usage of the test drug should be specified in the protocol and the actual usage documented.

3.2.3 Conduct

The study should be conducted according to the principles described in this guidance and in accordance with other pertinent elements outlined in ICH E6 and other relevant ICH guidances (see Annex 1). Adherence to the study protocol is essential. If modification of the protocol becomes necessary, a clear description of the rationale for the modification should be provided in a protocol amendment (see ICH E6). Timely adverse event reporting during a study is essential and should be documented. Guidance is available on expedited reporting of safety data to appropriate officials, on the content of safety reports, and on privacy and confidentiality of data (see ICH E2A, E2B, and E6).

3.2.4 Analysis

The study protocol should have a specified analysis plan that is appropriate for the objectives and design of the study, taking into account the method of subject allocation, the measurement methods of response variables, specific hypotheses to be tested, and analytical approaches to common problems including early study withdrawal and protocol violations. A description of the statistical methods to be employed, including timing of any planned interim analysis(es), should be included in the protocol (see ICH E3, E6, and E9).

The results of a clinical trial should be analyzed in accordance with the plan prospectively stated in the protocol and all deviations from the plan should be indicated in the study report. Detailed guidance is available in other ICH guidances on planning of the protocol (ICH E6), on the analysis plan and statistical analysis of results (ICH E9), and on study reports (ICH E3).

Studies are normally expected to run to completion, although in some studies the possibility of early stopping is formally recognized. In such cases, this should be clearly described in the protocol with due statistical attention to the overall levels of statistical significance and to the need to adjust the estimates of the size of treatment effects (ICH E9).

Safety data should be collected for all clinical trials, appropriately tabulated and with adverse events classified according to their seriousness and their likely causal relationship (see ICH E2A).

3.2.5 Reporting

Clinical study reports should be adequately documented following the approaches outlined in other ICH guidances (see E3 and E6).

4. Annex 1

TABLE 2.—LIST OF RELEVANT ICH GUIDANCES AND TOPICS

Code	Topic
E1	The Extent of Population Exposure to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions
E2A	Clinical Safety Data Management: Definitions and Standards for Expedited Reporting
E2B	Clinical Safety Data Management: Data Elements for Transmission of Individual Case Safety Reports
E2C	Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs
E3	Structure and Content of Clinical Study Reports
E4	Dose-Response Information to Support Drug Registration
E5	Ethnic Factors in the Acceptability of Foreign Clinical Data
E6	Good Clinical Practice: Consolidated Guideline
E7	Studies in Support of Special Populations: Geriatrics
E8	General Considerations for Clinical Trials
E9	Statistical Considerations in the Design of Clinical Trials
E10	Choice of Control Group in Clinical Trials
M3	Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals
S6	Safety Studies for Biotechnology-Derived Products

Dated: December 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32877 Filed 12–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–26]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendment (CLIA) and the Information Collection Requirements (ICRs) contained In the Supporting Regulations 42 CFR 493.1–2001; *Form No.:* HCFA–R–26 (OMB# 0938–0612); *Use:* The ICRs referenced in 42 CFR 493.1–.2001 outline the requirements necessary to determine an entities compliance with CLIA. CLIA requires laboratories that perform testing on human specimens to meet performance requirements in order to be certified by HHS. HHS conducts inspections in order to determine a laboratory's compliance with the CLIA requirements. CLIA implements certificate, laboratory standards and inspection requirements.; *Frequency:* As needed; *Affected Public:* Individuals or Households, Business or other for profit, Not for profit institutions, Federal Government, State, local or tribal government; *Number of Respondents:* 149,700; *Total Annual Responses:* 631,459; *Total Annual Hours:* 9,133,625.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 5, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–32859 Filed 12–16–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Document Identifier: HCFA–R–205 and HCFA–R–206

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This is necessary to ensure compliance with section 111 of HIPAA necessary to implement congressional intent with respect to guaranteeing availability of individual health insurance coverage to certain individuals with prior group coverage. We cannot reasonably comply with the normal clearance procedures because public harm is likely to result because eligible individuals will not receive the health insurance protections under the statute.

HCFA is requesting OMB review and approval of this collection by 12/31/97, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 12/29/97. It should be noted that HCFA will continue to consider and respond as appropriate to the public comments received in response to the 04/08/97 **Federal Register** notices requesting public comment on the collections referenced below. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: Extension, without change, of a currently approved collection.

Title of Information Collection: Individual Health Insurance. Reform: Portability from Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules BPD–882–IFC.

Form Number: HCFA–R–205 (OMB approval #: 0938–0703).

Use: These information collection requirements help ensure access to the individual insurance market for certain individuals and allows the States to

implement their own program to meet the HIPAA requirements for access to the individual market. The information collection requirements outlined in this document are necessary for issuers and States to ensure individuals receive protection under section 111 of HIPAA.

Frequency: On occasion.

Affected Public: States, businesses or other for profit, not-for-profit institutions, Federal Government, individuals or households.

Number of Respondents: 1,035.

Total Annual Responses: 3.5 million in 1997; 3 million each in 1998 and 1999; Total Annual Hours Requested: 335,000 to 586,000 hours in 1997; 384,000 to 882,000 in 1998; and 377,000 to 882,000 in 1999.

Total Annual Cost: $4.9 million to $6.8 million in 1997; $5.1 million to $8.7 million in 1998; and $5.4 million to $8.7 million in 1999.

Section 148.120 Guaranteed Availability of Individual Health Insurance Coverage to Certain Individuals With Prior Group Coverage

States are given the flexibility either to enforce the Federal requirements set forth in Sec. 148.120, or to implement an alternative mechanism, under State law, that achieves the statutory mandate of providing eligible individuals with access to individual health insurance, or comparable coverage, without preexisting condition exclusions. However, a State could choose to do nothing, resulting in Federal enforcement of the individual market regulations under HIPAA. Thirty States have indicated to us an intent to implement an alternative mechanism under Sec. 148.128. The information collection requirements associated with implementing and enforcing the alternative mechanism are discussed below for Sec. 148.128.

If a State chooses to enforce the Federal guaranteed availability requirements (sometimes referred to as the "Federal fall back" requirements), the provisions of Sec. 148.120 apply, and must be enforced by the State under State law. Since many of these requirements are enforced under existing State law, for these instances, they are exempt from the Paperwork Reduction Act (PRA) as described under 5 CFR 1320.3(b)(3). Although applicable PRA burden will vary by State and issuer, we anticipate that ten States will be required to review materials submitted by at most 325 issuers per State on an annual basis to ensure compliance with the requirements of all products guaranteed or alternative coverage, which are not currently required under State laws and regulations. Therefore, the PRA burden imposed under this option is the time required by the ten States to review the materials submitted by the issuers. This burden is 1,625 hours based on each of the ten States reviewing the material for 30 minutes for each issuer on an annual basis. We estimate the cost associated with this burden to be $24,375.

If a State implements neither an alternative mechanism, nor the Federal fall back requirements, we will implement the Federal fall back provisions in that State and will enforce those requirements using the penalty provisions specified in Secs. 148.200 and 148.202. We anticipate that fewer than ten States will rely on Federal enforcement of the statute. In particular, the only jurisdictions that we believe will choose this option are the five U.S. territories.

This section also requires an issuer who elects the alternative coverage option to document any actuarial calculations necessary to satisfy State and/or Federal oversight provisions referenced in Sec. 148.120. Since the majority of issuers rely on automated means of storing their calculations, we estimate the annual burden for this record keeping activity to be 25 hours. This is based on the assumption that it will take approximately 10 issuers per State, in 15 States, on an annual basis, 10 minutes per issuer, to electronically store and verify the storage of their calculations. We estimate the cost associated with this burden to be $375.

Section 148.122 Guaranteed Renewability of Individual Health Insurance Coverage

In this section issuers are only required to report if they are discontinuing a particular type of coverage or discontinuing all coverage. This requirement exists in the absence of this regulation because under current insurance practices, State insurance departments oversee discontinuance of insurance products in their State as a normal business practice. Therefore, these information collection requirements are exempt from the PRA under 5 CFR 1320.3(b)(2) and 5 CFR 1320.3(b)(3). However, under HIPAA, States must review policies during their oversite process to make sure there is a guarantee renewability clause in each policy. For the 21 States that currently require guaranteed renewability, it is our understanding that this is normal business practice. For the other 34 States, however, we see this State burden to be about 10 minutes per policy, since States already review policies for other requirements and this process does not prescribe a timetable for reviewing the policies. We see this as a total annual burden of 20,000 hours. We estimate the cost associated with this burden to be $300,000. If the State identifies a violation and a State has to take some action, we believe that each State will be required to initiate fewer than 10 administrative actions on an annual basis against specific individuals or entities who failed to implement the Federal guarantee renewability requirements.

Section 148.124 Certification and Disclosure of Coverage

Section 148.124 specifies that an issuer in the individual market must provide a written certificate of creditable coverage, and, if required, make other certain disclosures regarding an individual's coverage under an individual policy. In general, the certification and disclosure requirements are substantially identical to the relevant provisions of Sec. 146.115 that apply to health insurance coverage offered by issuers in the group market. The preamble accompanying the group market regulation explains these procedures in detail. In general, the certificates from issuers in the individual market and other disclosure of information are intended to enable individuals to avoid or reduce preexisting condition exclusions included under subsequent group health insurance coverage the individual may obtain.

Individuals have the right to receive a certificate automatically (an automatic certificate) when they lose coverage under an individual policy. A certificate must also be provided upon a request by, or on behalf of, an individual for the period not later than 24 months after coverage ceases. The certificate must be provided at the earliest time that an issuer, acting in a reasonable and prompt fashion, can provide the certificate. The certificate must also be provided consistent with State law.

An issuer of an individual policy is required, to the same extent as an issuer of insurance in the group market, to prepare certificates with respect to the coverage of any of the individual's dependents that are covered under the individual policy.

We anticipate that 3 million individual market-based certificates will be generated on an annual basis. We are assuming that the majority of certificates issued in the individual market will require issuers to find out the application date since many individuals will have less than 18 months of credible coverage with that issuer.

The range of time estimates, shown in the table below, are based on discussions with industry individuals. We believe that as a routine business practice, the issuers' administrative staff have the necessary information readily available to generate the required certificates. In addition, we have determined that the majority of issuers have or will have the capability to automatically computer generate and disseminate the necessary certification when appropriate.

	Total respondents	Total responses	Average time (in minutes) per response (range)	Burden hours (range)	Cost (range)
1997	1,000	3,418,052	4.63	263,548	$3,897,932
			8.95	509,665	5,716,826
1998	1,000	2,929,759	6.94	338,781	4,542,924
			17.11	835,517	8,035,131
1999	1,000	2,929,759	6.81	332,480	4,746,736
			17.11	835,517	8,035,131

Section 148.126 Determination of an Eligible Individual

In this section, issuers may maintain records for those individuals who they determine are not HIPAA eligible individuals. We estimate this to be on average less than 50 individuals per the 1,000 issuers nationwide each year. At 20 minutes per record, this represents an annual burden of 16,667 hours. We estimate the cost associated with this burden to be $183,000.

Section 148.128 State Flexibility in Individual Market Reforms—Alternative Mechanisms

As explained above, 30 or more States may implement acceptable alternative mechanisms as allowed under this section. It is estimated that this reporting burden will range from 33,000 to 38,500 hours depending on the number of States that choose to submit the required information. We estimate the cost associated with this burden to be $495,000 to $577,500.

Section 148.200 Enforcement and Section 148.202 Civil Money Penalties

We anticipate identifying violations through individual nonstandardized consumer complaints. Therefore, the complaints submitted and our enforcement activities do not fall within the requirements of the PRA, as outlined in 5 CFR 1320.3(c) and 5 CFR 1320.4(a).

Type of Information Request: Extension, *without change*, of a currently approved collection.

Title of Information Collection: Information Requirements Referenced in HIPAA for Group Health Plans.

Form Number: HCFA–R–206 (OMB approval #: 0938–0702).

Use: This regulation and related information collection requirements will ensure that group health plans provide individuals with documentation necessary to demonstrate prior creditable coverage, and that group health plans notify individuals of their special enrollment rights in the group health insurance market.

Frequency: On occasion.

Affected Public: State and local governments, Business or other for profit, not-for-profit institutions, individuals or households, Federal government.

Number of Respondents: 1,430.

Total Annual Responses: Due to the rolling effective dates in the statute, the number of annual responses is estimated to be 32.5 million in 1997, but will increase to 41 million in 1998 and 42.5 million in 1999.

Total Annual Hours Requested: 1.8 million to 3.6 million hours in 1997; 2.3 million to 5.8 million hours in 1998; and 2.6 million to 5.9 million hours in 1999.

Total Annual Costs: $36.8 million to $53.9 million in 1997; $42.4 million to $78.3 million in 1998; and $43.5 million to $77.3 million in 1999. 45 CFR Secs. 146.120, 146.122, 146.150, 146.152, 146.160, and 146.180 of this document contain information collection requirements.

45 CFR 146.120 Certificates and Disclosure of Previous Coverage

This section sets forth guidance regarding the certification and other disclosure of information requirements relating to prior creditable coverage of an individual. In general, the certificate must be provided in writing and must include the following information: (1) The date any waiting or affiliation period began, (2) the date coverage began, and (3) the date coverage ended (or indicate if coverage is continuing). The regulations also allow a plan or issuer in an appropriate case to simply state in the certificate that the individual has at least 18 months of creditable coverage that is not interrupted by a significant break and indicate the date coverage ended. In general, individuals have the right to receive a certificate automatically (an automatic certificate) when they lose coverage under a plan and when they have a right to elect COBRA continuation coverage.

We anticipate that approximately 1,400 issuers will be required to produce 30 million certifications per year based on the model certificate provided. Our estimate of issuers (1,400) includes commercial insurers and HMOs, but does not include some types of issuers, such as Preferred Provider Organizations (PPOs); however, these types of issuers are small in number. The time estimate includes the time required to gather the pertinent information, create a certificate, and mail the certificate to the plan participant. This time estimate is based on discussions with industry individuals. We believe that, as a routine business practice, the issuers' administrative staff have the necessary information readily available to generate the required certificates. In addition, we have determined that the majority of issuers have or will have the capability to automatically computer generate and disseminate the necessary certification when appropriate. These estimates include the certificates required by issuers acting as service providers on behalf of group health plans and state and local government health plans. We anticipate that most, if not all, state and local government health plans will contract with an issuer to develop the certificate.

ESTIMATES FOR CERTIFICATIONS

Year	Total respondents	Total responses	Average time per response (range) (minutes)	Burden hours (range)	Cost (range)
1997	1,400	32,698,845	3.32	1,809,119	$36,366,106
			6.34	3,456,036	53,434,628
1998	1,400	28,072,131	5.19	2,242,866	40,928,939
			12.23	5,720,198	74,859,759
1999	1,400	28,055,984	5.37	2,510,461	42,124,907
			12.41	5,804,408	75,760,119

Note: The costs above include the costs associated with issuers acting as service providers for group health plans. The costs are also included in the Department of Labor's estimates.

Notice to all participants: Under this section, issuers are required to notify all participants at the time of enrollment stating the terms of the issuer's pre-existing condition exclusion provisions, the participant's right to demonstrate creditable coverage, and that the issuer will assist in securing a certificate if necessary.

We have estimated the burden associated with this information collection requirement to be the time required for issuers to develop standardized language outlining the existence and terms of any preexisting condition exclusion under the plan and the rights of individuals to demonstrate creditable coverage. In specific, we anticipate that issuers will be required to develop approximately 660,000 notices in 1997; 5.6 million notices in 1998; and 6.2 million notices in 1999. At 30 seconds for each notice, we estimate the total hour burden to be 4,400 hours in 1997; 30,000 hours in 1998; and 34,000 hours in 1999. The respective costs will be $49,000 in 1997; $330,000 in 1998; and $377,000 in 1999. These estimates and subsequent estimates are based on an hourly wage of $11 for issuers and $15 for State and local government employees. These estimates include the notices required by issuers on behalf of state and local government health plans, since we anticipate that most, if not all state and local government health plans will contract with an issuer to develop the notice. The estimates have been disaggregated below:

Year	Issuers	State health plans	Local health plans	Total notices
Total notices:				
1997	320,000	129,826	214,880	664,706
1998	4,878,200	259,653	429,761	5,567,814
1999	5,734,300	259,653	429,761	6,189,714
Total burden hours:				
1997	1,592	1,078	1,784	4,454
1998	14,293	2,155	3,567	30,015
1999	28,557	2,155	3,567	34,279

Notice to individual of period of preexisting condition exclusion. Within a reasonable time following the receipt of the certificate, information relating to the alternative method, or other evidence of coverage, a plan or issuer is required to make a determination regarding the length of any preexisting condition exclusion period that applies to the individual and notify the individual of its determination. Whether a determination and notification is made within a reasonable period of time will depend upon the relevant facts and circumstances including whether the application of the preexisting condition exclusion period would prevent access to urgent medical services. The individual need only be notified, however, if, after considering the evidence, a preexisting condition exclusion period will be imposed on the individual. The basis of the determination, including the source and substance of any information on which the plan or issuer relied, must be included in the notice. The plan's appeals procedures and the opportunity of the individual to present additional evidence must also be explained in the notification.

We estimate that issuers will be required to develop approximately 29,000 notices in 1997; 425,000 notices in 1998; and 498,000 notices in 1999. At 2 minutes for each notice, we estimate the total hour burden to be 960 hours in 1997; 14,000 hours in 1998; and 16,600 hours in 1999. We estimate the respective costs associated with these burdens to be $10,600 in 1997; $156,000 in 1998; and $183,000 in 1999. These estimates include the notices required by issuers on behalf of state and local government health plans, since we anticipate that most, if not all state and local government health plans will contract with an issuer to develop the notice. The estimates have been disaggregated below:

Year	Issuers	State health plans	Local health plans	Total notices
Total notices:				
1997	27,650	588	766	29,004
1998	422,136	1,176	1,531	425,143
1999	498,182	1,176	1,531	498,889
Total burden hours:				

Year	Issuers	State health plans	Local health plans	Total notices
1997	921	20	25	29,004
1998	14,057	40	51	14,148
1999	16,553	40	51	16,644

45 CFR 146.117 Special Enrollment Periods

This section in the regulation provides guidance regarding new enrollment rights that employees and dependents have under HIPAA. A health insurance issuer offering group health insurance coverage is required to provide a description of the special enrollment rights to anyone who declines coverage at the time of enrollment. The regulations provide a model of such a description containing the minimum information mandated by the statute.

The first burden associated with this requirement is the time required for health insurance issuers and state and local government health plans to incorporate the model notice into the plan's standard policy information. We estimate the burden to be 2 hours annually per issuer, for a total burden of 2,800 hours. The cost associated with this hour burden is estimated to be $30,800 annually.

The second burden associated with this requirement is the time required to disseminate the notice to new enrollees. We estimate that issuers will be required to develop approximately 1 million notices in 1997; 5.3 million notices in 1998; and 5.9 million notices in 1999. At 30 seconds for each notice, we estimate the total hour burden to be 8,300 hours in 1997; 43,000 hours in 1998; and 48,000 hours in 1999. We have estimated the costs associated with these hour burdens to be $91,000 in 1997; $469,000 in 1998; and $527,000 in 1999. These estimates include the notices required by issuers on behalf of state and local government health plans, since we anticipate that most, if not all state and local government health plans will contract with an issuer to develop the notice. The estimates have been disaggregated below:

Year	Issuers	State health plans	Local health plans	Total notices
Total notices:				
1997	245,508	287,938	500,750	1,034,196
1998	3,750,024	575,875	1,001,500	5,327,399
1999	4,407,828	575,875	1,001,500	5,985,203
Total burden hours:				
1997	1,964	2,304	4,006	8,273
1998	30,000	4,607	8,012	42,619
1999	35,263	4,607	8,012	47,881

45 CFR 146.150 Guaranteed Availability of Coverage for Employers in the PHS Act Group Market Provisions

This section allows a health insurance issuer to deny health insurance coverage in the small group market if the issuer has demonstrated to the applicable State authority (if required by the State authority) that it does not have the financial reserves necessary to underwrite additional coverage and that it is applying this denial uniformly to all employers in the small group market in the State consistent with applicable State law and without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to those employees and dependents. Thus, issuers are only required to report to the applicable State authority if they are discontinuing coverage in the small group market.

This requirement exists in the absence of this regulation because under current insurance practices, State insurance departments oversee discontinuance of insurance products in their State as a normal business practice. Therefore, these information collection requirements are exempt from the PRA under 5 CFR 1320.3(b)(2) and 5 CFR 1320.3(b)(3). However, under HIPAA, States must review policies during their oversight process to make sure there is a guaranteed availability clause in each policy. For the 37 States that currently require guaranteed availability, it is our understanding that this is normal business practice. For the other 18 States, however, we see this State burden to be about 10 minutes per policy, since States already review policies for other requirements and this process does not prescribe a timetable for reviewing the policies. We see this as a total burden of 10,850 hours. We have estimated the cost associated with this hour burden to be $163,000. If the State identifies a violation and a State has to take some action, we believe that each State will be required to initiate fewer than 10 administrative actions on an annual basis against specific individuals or entities who failed to implement the Federal guarantee availability requirements.

45 CFR 146.152 Guaranteed Renewability of Coverage for Employers in the PHS Act Group Market Provisions

In this section issuers are only required to report if they are discontinuing a particular type of coverage or discontinuing all coverage. This requirement exists in the absence of this regulation because under current insurance practices, State insurance departments oversee discontinuance of insurance products in their State as a normal business practice. Therefore, these information collection requirements are exempt from the PRA under 5 CFR 1320.3(b)(2) and 5 CFR 1320.3(b)(3). However, under HIPAA, States must review policies during their oversight process to make sure there is a guaranteed availability clause in each policy. For the 43 States that currently require guaranteed renewability, it is our understanding that this is normal business practice. For the other 12 States, however, we see this State burden to be about 10 minutes per policy, since States already review policies for other requirements and this process does not prescribe a timetable for reviewing the policies. We see this

as a total burden of 6,700 hours. We have estimated the cost associated with this hour burden to be $100,500. If the State identifies a violation and a State has to take some action, we believe that each State will be required to initiate fewer than 10 administrative actions on an annual basis against specific individuals or entities who failed to implement the Federal guarantee renewability requirements.

45 CFR 146.160 Disclosure of Information by Issuers to Employers Seeking Coverage in the Small Group Market in the PHS Act Provisions

This section requires issuers to disclose information to employers seeking coverage in the small group market. This section requires information to be provided by a health insurance issuer offering any health insurance coverage to a small employer. This information includes the issuer's right to change premium rates and the factors that may affect changes in premium rates, renewability of coverage, any preexisting condition exclusion, any affiliation periods applied by HMOs, the geographic areas served by HMOs, and the benefits and premiums available under all health insurance coverage for which the employer is qualified. The issuer is exempted from disclosing information that is proprietary or trade secret information under applicable law.

The information described in this section must be language that is understandable by the average small employer and sufficient to reasonably inform small employers of their rights and obligations under the health insurance coverage. This requirement is satisfied if the issuer provides an outline of coverage, the minimum contribution and group participation rules that apply to any particular type of coverage, and any other information required by the State. An outline of coverage is defined as a general description of benefits and premiums. This would include an outline of coverage similar to the manner in which Medigap policies are presented, allowing the employer to easily compare one policy form to another to determine what is covered and how much the coverage will cost.

We have estimated the total burden associated with this activity to be 2,400 hours. We anticipate that 1,200 issuers will be required to provide disclosure to small employers on an annual basis. We estimate this time to be approximately 2 hours for each issuer to develop and update the standard information related to the general description of benefits and premiums on an annual basis and include this information in their policy information. We have estimated the cost associated with this hour burden to be $36,000.

45 CFR 146.180 Treatment of non-Federal Government Plans

Section 145.180(b) includes rules pertaining to nonfederal governmental plans, which are permitted under HIPAA to elect to be exempted from some or all of HIPAA's requirements in the PHS Act. The regulation establishes the form and manner of the election. In particular, a nonfederal governmental plan making this election is required to notify plan participants, at the time of enrollment and on an annual basis, of the fact and consequences of the election. The burden imposed by this is the requirement for plans to disseminate standard notification language describing the plans' election and the consequences of this election. We anticipate that between 3,500 and 5,000 nonfederal governmental plans will make this election and will therefore be required to disseminate notifications to their participants on an annual basis. Since this is standard language that will be incorporated into plans' existing policy documents, we see the burden as approximately 2 hours per plan to develop and update this standardized disclosure statement on an annual basis. Thus, we estimate the total burden for this activity to range from 7,000 to 10,000 hours. We estimate the cost associated with these hourly burdens to range from $77,000 to $110,000 per year.

The above estimate does not include the cost of disseminating the notices to all plan participants on an annual basis and to new enrollees at the time of enrollment. Although we do not have an accurate estimate of the number of nonfederal governmental plans will choose to opt out of these provisions, we have provided for a range of 50 to 100 percent. Using these ranges, we estimated 400,000 to 800,000 of these notices would need to be produced in 1997 and 800,000 to 1.6 million in 1998 and 1999. At 30 seconds per notice, we estimate the total burden hours to range from 3,400 to 6,800 in 1997; and 6,800 to 13,600 in 1998 and 1999. We have estimated the costs associated with these hour burdens to range from $37,400 to $74,800 in 1997; and from $74,800 to $149,600 in 1998 and 1999.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 12/29/97:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–1415, Attn: John Burke HCFA–R–205 and/or HCFA–R–206

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: December 10, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33063 Filed 12–16–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW136450]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW136450 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW136450 effective September 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–32862 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–01; CACA 7569]

Public Land Order No. 7304; Partial Revocation of Secretarial Order dated September 14, 1942; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 138.90 acres of lands withdrawn for the Bureau of Reclamation's American River Investigations. The lands are no longer needed for the purpose for which they were withdrawn and the revocation is necessary to consummate pending land exchanges. The lands are temporarily closed to surface entry and mining due to the pending land exchanges. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order, dated September 14, 1942 (CACA 7569), which withdrew public lands for the Bureau of Reclamation's American River Investigations, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 11 N., R. 10 E.,
Sec. 8, W½SW¼; Sec. 18, lots 5 to 10, inclusive (originally described as SW¼SW¼NE¼ and NW¼SW¼), and NW¼NE¼NW¼.

The areas described aggregate 138.90 acres in El Dorado County.

2. The above described lands are hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1994).

Dated: December 3, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–32913 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–069–1220–00–25.7]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare proposed plan amendment for the San Juan Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management San Juan Field Office is proposing to amend the San Juan RMP in order to change certain specific management decisions regarding recreation and other programs.

DATES: Comments on these proposed amendments should be submitted no later than 30 days after publication of this notice or January 16, 1998 to the address listed below.

ADDRESSES: Comments and/or questions regarding this proposed amendment must be submitted to San Juan Field Office, Bureau of Land Management, 435 North Main Street, P. O. Box 7, Monticello, UT 84535.

FOR FURTHER INFORMATION CONTACT: Robin Fehlau, Outdoor Recreation Planner, Project Lead, San Juan Field Office, Bureau of Land Management, 435 North Main Street, P. O. Box 7, Monticello, UT 84535. Telephone (801) 587–1500.

SUPPLEMENTARY INFORMATION: The San Juan RMP was approved in March of 1991. Since that period there has been a significant increase in recreational use that has lead to degradation of sensitive resources including riparian areas, cultural sites, visual resources etc., in the Indian Creek Area and other areas of the Canyon Basins Special Recreation Management Area. Preliminary issues that have been identified for proposed plan amendment include camping restrictions and modifications to existing OHV designations in order to reduce resource degradation, firewood closures to reduce degradation in riparian areas, and the addition of specific management prescriptions in the Bridger Jack Mesa Areas of Critical Environmental Concern (ACEC), Lavender Mesa ACEC, and Shay Canyon ACEC to reduce resource degradation from uncontrolled recreation use.

No new planning criteria have been developed specifically for this proposed plan amendment. An interdisciplinary team will be used to analyze this proposed amendment in addition to other alternatives that may be considered.

Dated: December 10, 1997.

Linda Colville,

Acting State Director.

[FR Doc. 97–32915 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–060–1420–00; ES–48992, Group 28, Illinois]

Notice of Filing of Plat of Survey; Illinois

The plat, in five sheets, of the dependent resurvey of the west boundary and subdivisional lines, and the survey of the Lock and Dam No. 26 Acquisition Boundary, Township 12 South, Range 1 West, and the dependent resurvey of portions of the north boundary, portions of the subdivisional lines, and the survey of the Lock and Dam Nos. 25 and 26 Acquisition Boundaries, Township 12 South, Range 2 West, and the dependent resurvey of the north and east boundaries and subdivisional lines, Township 12 South, Range 3 West, all of the Fourth Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on January 20, 1998.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., January 20, 1998.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: December 8, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–32912 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–060–1910–00–4488; ES–49260, Group 179, Minnesota]

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey and survey of the U.S. Bureau of Mines, Twin Cities Research Center, located within the Fort Snelling Military Reservation in Township 28 North, Range 23 West, Fourth Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on January 20, 1998.

The survey was requested by the U.S. Bureau of Mines.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., January 20, 1998.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: December 5, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–32911 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Monongahela National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has been ordered by the United States District Court for the Northern District of West Virginia to determine whether Walter D. Helmick has valid existing rights (VER) to surface mine coal on 1,045.3 acres of Federal lands within the Monongahela National Forest in Pocahontas County, West Virginia. Mr. Helmick claims to hold certain coal rights in these lands. Ernest J. Van Gilder had previously submitted a VER request in connection with the same property. Prior to the court order, OSM had suspended action on a VER determination request by Mr. Van Gilder for surface mining, on the basis that his request was administratively incomplete due to an unresolved dispute over whether he possessed all of the necessary property rights to mine coal by the intended method. Since there is still an unresolved property rights dispute as to whether the current mineral holder, Mr. Helmick, has the necessary property right to surface mine, OSM hereby determines that Mr. Helmick has not demonstrated VER to surface mine the coal on the 1,045.3 acres of Federal lands within the Monongahela National Forest.

FOR FURTHER INFORMATION CONTACT: Peter R. Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15200, Telephone: (412) 937–2867. E-mail address: pmichael@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. VER Requirements on National Forest Lands

Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)) prohibits surface coal mining operations on certain lands unless a person has VER to conduct such operations or unless the operation was in existence on August 3, 1977. Section 522(e)(2), in relevant part, applies the prohibition to Federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and the surface operations and impacts are incident to an underground coal mine.

Under section 523 of the Act ("Federal Lands") and 30 CFR 740.11, the approval State program (including the State definition of VER) applies to all Federal lands within States with regulatory programs approved under section 503 of SMCRA. However, under 30 CFR 745.13, the Secretary has exclusive authority to determine VER for surface coal mining and reclamation operations on Federal lands within the boundaries of the areas specified in paragraphs (e)(1) and (e)(2) of section 522 of the Act. OSM reaffirmed these basic principles in the preamble to the suspension notice concerning VER published on November 20, 1986 (51 FR 41954).

Subsection 2.130 of the West Virginia Surface Mining Reclamation Regulations provides, in relevant part, that VER exists in each case in which a person demonstrates that the limitation provided for in Section 22–3–22(d) of the West Virginia Surface Coal Mining and Reclamation Act (the State counterpart to section 522(e) of SMCRA) would result in the unconstitutional taking of that person's rights. OSM approved this definition as being no less effective than the 1983 version of the Federal definition of VER at 30 CFR 761.5. Paragraphs (a) and (d) of the 1983 Federal definition clarify that the takings standard for VER applies only to those property interests that existed on August 3, 1977 [paragraph (a)], or any subsequent date that the lands come under the protection of section 522(e) of SMCRA (paragraph (d)). *See also* 48 FR 41313, third column (September 14, 1983). The West Virginia program does not specifically address this issue. However, in accordance with OSM's basis for approval of the West Virginia provision, OSM is interpreting the West Virginia definition consistent with the 1983 Federal definition. Because the lands in question came under the protection of section 522(e) on August 3, 1977, OSM will consider only the property interests as they existed on that date.

In this case, the critical property interest is the coal rights beneath certain Federal lands within the Monongahela National Forest in the Little Levels District of Pocahontas County, West Virginia (hereafter, Tract 574). Administrative Record No. 2.1 (hereafter, "A.R._____"). The threshold determation OSM must make is whether Mr. Helmick has demonstrated the property right to mine the coal. If so, OSM must then determine whether Mr. Helmick has demonstrated, as of 1977, that he or a predecessor in interest had the property right to surface mine the coal.

B. Factual Background

The record before OSM indicates that, in September of 1990, Walter D. Helmick acquired from Cecil Nichols certain mineral rights in Tract 574. This tract contains 1,045.3 acres and is situated seven miles west of Hillsboro, West Virginia, on the waters of Hills Creek and the waters of Robbins Run, a tributary of Spring Creek. The property is located on Briery Knob. It was mined during the 1940's surface mining methods.[1] The surface of this land is owned by the United States of America and managed by the United States Forest Service. (A.R. 2.352).

One month before Mr. Helmick acquired the mineral rights, the documents submitted by Mr. Helmick indicate he had deeded an undivided one-half interest in those rights to Ernest J. Van Gilder. (A.R. 2.527). Mr. Van Gilder later requested a VER determination from OSM for a surface mining operation on the property in question.[2] (A.R. 2.317).

Five years later, in September of 1995, Mr. Helmick acquired the remaining mineral interests in the property, by partition deed. (A.R. 2.527).

On November 17, 1989, in regard to a then-pending VER request on Tract 574, the U.S. Department of Agriculture (USDA) Forest Service advised OSM of the USDA Office of General Counsel's opinion that ". . . the owners did not reserve the right to remove the coal by surface mining when these lands were acquired by the United States." (A.R. 2.260). This opinion was reaffirmed on February 6, 1991, after Mr. Van Gilder asserted an interest in the coal and requested a VER determination. (A.R. 2.333). On April 23, 1991, OSM informed Mr. Van Gilder that the agency could not consider his request to be administratively complete in light of ". . . the unresolved difference of opinion concerning the nature of the property rights you possess." (A.R. 2.337). In December 1995, Mr. Helmick filed an action in the United States District Court for the Northern District of West Virginia, claiming that his mineral interests had been taken without just compensation when the Forest Service determined that Mr. Van Gilder's interest in the tract did not include the right to conduct surface mining. *Helmick* versus *United States*, No. 95–0115 (N.D. W. Va.) After the Government filed a motion to dismiss for failure to state a claim on February 15, 1996, Mr. Helmick amended his complaint by adding the Department of the Interior as a party, by eliminating his claim of a taking under the Tucker Act, and by substituting three new counts seeking to review "agency action" under the Administrative Procedure Act (APA). On October 20, 1997, the court in *Helmick* ordered the Secretary of the Interior to render a final VER determination by December 8, 1997.

In order to comply with the Court's order in the *Helmick* litigation, and because of the time that had passed since OSM's last administrative action in this matter, OSM believed it was appropriate to reopen the administrative record to allow all interested persons to provide any additional factual information as to whether Mr. Helmick has the property right to mine by the proposed method, and as to whether he has VER under the applicable standards. In a notice published in the October 16, 1997, **Federal Register** (62 FR 53798), OSM provided opportunity for public comment on the Helmick request until October 31. In response to the request of Mr. Helmick's attorney, the public comment period was reopened from November 4 to November 12, 1997. (62 FR 59731).

After the close of the reopened comment period and upon reviewing the administrative record, OSM determined that the record contained no legally cognizable documentation of any current interest of Mr. Helmick in Tract 574. OSM therefore contacted Mr. Helmick's counsel and advised him of this lack of title documentation. Mr. Helmick's counsel subsequently provided OSM with relevant documentation. That documentation has been entered in the administrative record, and is reflected in this decision document.[3]

II. VER Determination

In order to establish that Mr. Helmick has VER for surface coal mining on the property in question, OSM must first determine that he has demonstrated all necessary property rights to surface mine the coal .

In a November 11, 1997, letter to OSM, Mr. Helmick provided comments pertaining to the disputed USDA title opinion and to OSM's responsibilities in VER determinations. (A.R. 2.517). Mr. Helmick claims he has the property right to surface mine by virtue of two things: first, the use of the word, "stripping" in a December 4, 1939, deed in which a predecessor in title conveyed the surface estate in Tract 574 to the United States of America; and second, evidence that allegedly shows that surface mining was a known and accepted method of mining in the area surrounding the subject property. Mr. Helmick also posits that ". . . the OSM may not simply defer to an opinion of the Forest Service or the U.S. Department of Agriculture in rendering the property rights determinations which form the underlying basis of a VER determination." Further, he stated that, "The OSM also may not refuse to render the necessary determinations in reliance upon a Memorandum of Understanding (MOU) between the Forest Service and the OSM, which was not adopted as a rule after notice and comment in accordance with the required procedures of the APA."

OSM did not defer to the opinion of the U.S. Forest Service on Mr. Helmick's property rights; and does not rely on the MOU with the U.S. Forest Service to establish the basis and standards for OSM's actions in this case. Rather, the aforementioned MOU delineates the process by which OSM verifies whether a property rights dispute exists regarding requests for VER determinations on lands where the U.S. Forest Service is the surface owner. Under section 510(b)(6) of the Surface Mining Control and Reclamation Act of 1977, OSM is not authorized to adjudicate a property rights dispute. This section of SMCRA sets out specific requirements to be met prior to approval of a permit or revision application for surface mining and forbids approval in cases where ". . .the private mineral estate has been severed from the private surface estate, . . ." unless the applicant has submitted:

"(A) the written consent of the surface owner to the extraction coal by surface mining methods; or

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with State law: *Provided*, That nothing in this act shall be construed to authorize the regulatory authority to adjudicate property rights disputes."

OSM, which acts as a regulatory authority when it issues VER determinations, does not, and cannot, adjudicate property rights between competing claimants. *See* 30 U.S.C. 1260(b); 54 FR 52469. OSM regulations specifically provide that, when the Secretary acts in an enforcement capacity or other regulatory capacity, he

[1] An additional property, Tract 372, was included in previous requests for VER determinations relating to Tract 574. This parcel is adjacent to Tract 574. However, neither the court order (A.R. 2.345) nor the materials submitted by Mr. Helmick (A.R. 2.368–2.510 and 2.516–2.523) mention or assert any interest in Tract 372. Mr. Helmick's counsel has confirmed that this tract is no longer a subject of this request. (A.R. 2.526).

[2] It is not clear from the record before OSM what, if any, interest Mr. Van Gilder may have had in the property during the pendency request, as the transfer from Mr. Helmick to Mr. Van Gilder apparently occurred when Mr. Helmick had no documented interest in the property. On December 4, 1997, Mr. Van Gilder quitclaimed back to Mr. Helmick any interests "that may have been acquired" under the August, 1990 deed (A.R. 2.527).

[3] OSM does not believe that accepting this documentation after the close of the comment period affects the fairness of the proceedings. Because of the court's order in the pending *Helmick* litigation, OSM believes it would have been constrained to issue a VER determination even in the absence of the late documentation. If the record did not demonstrate that Mr. Helmick owned the property, OSM would have made its VER determination with regard to the most recent holder shown in the record before it. If the record established that VER existed in 1977, then VER would have conveyed in any subsequent conveyances. And if VER was not demonstrated as of 1977, then VER could not have been created in any subsequent conveyances.

constitutes the "regulatory authority." 30 CFR 700.5; see also 44 FR 14913 (March 13, 1979). In his role with respect to federal lands programs, the Secretary of the Interior is a regulatory authority subject to SMCRA sections 507(b)(9) and 510(b)(6)(C). Thus, when the Secretary makes VER determinations on federal lands, he is acting as the regulatory authority. See *National Wildlife Federation* v. *Lujan*, 950 F.2d 765, 767 (D.C.Cir. 1991), citing 30 CFR 700.5.

Mr. Helmick argues that he has an express right to strip mine the subject property because a boiler plate regulation incorporated into the deed of severance references "stripping." But that reference explicitly relates to a separate tract of property, Tract 574–I, that is not an issue in this determination. The deed is silent as to "stripping" on Tract 574. If any inference can be drawn from the reference to stripping for one tract (574–I) and exclusion of the language for the second tract (574), it is that strip mining was expressly not intended for the second tract (574).

A property rights dispute presently exists between the U.S. Forest Service and Mr. Helmick. Mr. Helmick has alleged in the 1995 lawsuit, that he has the right to surface mine the property in question. The U.S. Forest Service contested that allegation. The trial court has not ruled on the issue of whether the requester has the property right to surface mine. Moreover, the U.S. Forest Service has reiterated its position, in a letter to OSM, that it is of the opinion that Mr. Helmick does not possess the right to surface mine in the Monongahela National Forest. (A.R. 2.352). As a result, the dispute remains unresolved in the record before OSM. And, for the reasons set out above, section 510(b)(6) precludes OSM from adjudicating that property rights dispute. Thus the record before OSM does not demonstrate whether, under applicable State law, Mr. Helmick holds the property right to surface mine tract 574.

Consequently, based on the record before it, OSM has reached the following conclusions in this matter: First, the written consent of the surface owner to surface mine was not provided, and is not in the record. Second, the 1939 deed which severed the coal rights did not expressly reserve the right to extract the coal on Tract 574 by surface mining methods. Finally; in light of the pending unresolved dispute concerning the property right to surface mine this coal, Mr. Helmick has not met his burden of demonstrating the property right to mine by the method intended. Therefore, OSM must also conclude that Mr. Helmick has not demonstrated VER to surface mine the property in question.[4]

III. Summary and Disposition of Comments

OSM received numerous comments opposed to VER requests pertinent to Tract 574, most of which were submitted in January and February 1990, in response to an application by Cecil E. Nichols. (A.R. 2.73). The protests focus on property rights, environmental concerns, and economic issues. In this decision, OSM is not responding to comments as to whether the coal holder has the necessary rights, because, as explained above, OSM cannot adjudicate the property rights dispute between the U.S. Forest Service and the current requester, Mr. Helmick. OSM is not addressing the remaining comments, because this decision cannot reach the takings analysis to which those comments may relate.

IV. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390. Notice of intent to appeal must be filed within 30 days after receipt of the determination by a person who has received a copy by certified mail or overnight delivery service; or within 30 days of the date of publication of this notice of decision in the **Federal Register** by any person who has not received a copy by certified mail or overnight delivery service.

Dated: December 9, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–32850 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–05–M

[4] Because the record does not demonstrate that Mr. Helmick holds the necessary property rights, OSM will not address the second stage of a takings analysis, the analysis of whether, as of 1977, application of the section 522(e) prohibition to Mr. Helmick's property rights would effect a compensable taking. (OSM notes that judicial case law concerning compensable takings would also require a threshold determination as to whether Mr. Helmick has demonstrated the property right to surface mine the coal. *See Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003, 1027 (1992).)

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–753–756 (Final)]

Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury [2] by reason of imports from China, Russia, South Africa, and Ukraine of cut-to-length carbon steel plate,[3] provided for in provisions of headings 7208 through 7212 of the Harmonized Tariff Schedule (HTS) of the United States, [4] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[5]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford determines that an industry in the United States is materially injured by reason of the subject imports. Pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673d(b)(4)(A)), Commissioner Crawford makes a negative determination regarding critical circumstances.

[3] For purposes of these investigations, cut-to-length carbon steel plate is hot-rolled iron and nonalloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included in this definition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling"), such as products which have been beveled or rounded at the edges. Excluded from this definition is grade X–70 plate.

[4] Cut-to-length carbon steel plate is currently covered by the following statistical reporting numbers of the HTS: 7208.40.3030; 7208.40.3060; 7208.51.0030; 7208.51.0045; 7208.51.0060; 7208.52.0000; 7208.53.0000; 7208.90.0000; 7210.70.3000; 7210.90.9000; 7211.13.0000; 7211.14.0030; 7211.14.0045; 7211.90.0000; 7212.40.1000; 7212.40.5000; and 7212.50.0000.

[5] The Commission further determines, pursuant to 19 U.S.C. 1673d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

Background

The Commission instituted these investigations effective November 5, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by Geneva Steel Co., Provo, UT, and Gulf States Steel, Inc., Gadsden, AL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of cut-to-length carbon steel plate from China, Russia, South Africa, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 20, 1997 (62 FR 44287). The hearing was held in Washington, DC, on October 28, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on December 11, 1997. The views of the Commission are contained in USITC Publication 3076 (December 1997), entitled "Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine: Investigations Nos. 731–TA–753–756 (Final)."

Issued: December 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–32950 Filed 12–16–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–358]

Notice of Commission Determination to Terminate the Investigation Based on Withdrawal of the Complaint; Vacatur of Alternative Findings; Denial of Respondents' Motion to Terminate; Denial of Motions for Leave to File Reply Briefs

In the matter of: Certain Recombinantly Produced Human Growth Hormones.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation on the basis of complainant's motion to withdraw its complaint and to vacate the alternative findings on the merits made by the presiding administrative law judge (ALJ) in his initial determination (ID) of November 29, 1994. The Commission has also determined to deny certain respondents' motion for termination of the investigation, as well as the various motions for leave to file reply briefs.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 29, 1993, based on a complaint filed by Genentech, Inc. of South San Francisco, California. 58 FR 50954. Six firms were named as respondents, *i.e.*, Novo Nordisk 2 A/S of Denmark; Novo Nordisk of North America, Inc. of New York; Novo Nordisk Pharmaceuticals, Inc. of New Jersey; ZymoGenetics, Inc. of Seattle, Washington (collectively, "Novo"); Biotechnology General Corp. of New York; and Bio-Technology General Corp. (Israel) Ltd. (collectively, "BTG").

On November 29, 1994, the presiding ALJ issued an ID dismissing the complaint and terminating the investigation as a sanction for complainant's alleged misconduct in withholding certain documents during discovery. In the alternative, the ALJ reached the merits of the investigation, finding that there would have been a violation of section 337 based on the record as it closed on April 24, 1994, although noting that the record was incomplete because of complainant's conduct. On January 17, 1995, the Commission decided not to review the portion of the ID that dismissed the complaint as a sanction for discovery abuse, but took no position on the portion of the ID that found a violation of section 337 based on an incomplete record. 60 FR 4923 (January 25, 1995). Genentech appealed the Commission's determination to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On August 14, 1997, the Federal Circuit reversed the Commission's decision to dismiss the investigation as a sanction and remanded the investigation to the Commission. *Genentech, Inc.* v. *USITC*, 43 USPQ2d 1722 (Fed. Cir. 1997). The court issued its mandate on September 4, 1997.

On September 22, 1997, Novo filed a motion to terminate the investigation with a finding of no violation based on certain findings adverse to Genentech that were made in the ALJ's ID of November 29, 1994, and on an unrelated intervening Federal Circuit decision concerning one of the patents asserted by Genentech in the Commission investigation. On September 30, 1997, BTG responded to Novo's motion that it had no objection to withdrawal of the complaint. On October 2, 1997, Genentech opposed Novo's motion and filed its own motion to terminate the investigation based on its withdrawal of its complaint. On October 4, 1997, the Commission investigative attorney (IA) opposed Novo's motion to terminate. On October 14, 1997, the IA supported Genentech's motion to withdraw. Between October 4 and October 30, 1997, the private parties filed four motions for leave to file additional briefs replying to the response briefs.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission interim rule 210.51, 19 CFR 210.51 (1994).

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Issued: December 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–32948 Filed 12–16–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act ("CAA")

Notice is hereby given that a proposed Consent Decree in *United States* v. *Barber & Sons Tobacco Company, d.b.a. Barber & Sons Aggregates*, Civil Action No. 97–1540–CV–W–2, was lodged on November 25, 1997, with the United

States District Court for the Western District of Missouri. The proposed Consent Decree resolves claims brought by the United States, on behalf of the Environmental Protection Agency, pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.*, arising from Barber & Sons Tobacco Company, d.b.a. Barber & Sons Aggregates' ("Barber") ownership and operation of a non-metallic mineral processing plant, specifically a limestone quarry, located in Lee's Summit, Missouri.

The Complaint alleges that Barber is liable for violations of the CAA for failure to comply with notice and testing, reporting, and permitting requirements. The proposed Consent Decree requires Defendant Barber to pay a civil penalty of $300,865. The proposed Consent Decree further requires future compliance by Defendant Barber with the CAA, regulations promulgated thereunder, and the Missouri State Implementation Plan.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and refer to *United States* v. *Barber & Sons Tobacco Company, d.b.a. Barber & Sons Aggregates*, DOJ number 90–5–2–1–2119.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, 1201 Walnut Street, Suite 2300, Kansas City, Missouri; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $4.00 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section Environment & Natural Resources Division.

[FR Doc. 97–32906 Filed 12–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in United States v. J&D Enterprises of Duluth, Inc. under the Clean Air Act

Notice is hereby given that a Consent Decree in *United States* v. *J&D Enterprises of Duluth, Inc.*, No. 5–95–298 (PAM/RLE) (D. Minn.), has been entered into by the United States on behalf of U.S. EPA and J&D Enterprises of Duluth, Inc. ("J&D") and lodged with the Court on November 21, 1997. The proposed Consent Decree resolves certain claims of U.S. EPA against J&D under Section 112 of the Clean Air Act and the asbestos NESHAP regulations, 40 C.F.R. Part 61, Subpart M, with respect to an operation located at 923 Shepard Road in Saint Paul, Ramsey County, Minnesota. Under the Decree, J&D will, *inter alia*, pay the United States a civil penalty of $27,500.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *J&D Enterprises of Duluth, Inc.*, D.J. Ref. No. 90–5–2–1–1427B.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Minnesota, 300 South Fourth Street, Minneapolis, MN 55415; the Region 5 Office of the United States Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $9.75 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 97–32904 Filed 12–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on November 25, 1997, a proposed Consent Decree in *United States* versus *M & O Environmental Company, et al.*, Civil No. 1:95–CV–1786, was lodged with the Unite.. States District Court for the Northern District of Illinois. This Consent Decree resolves claims against M & O Environmental Company, Inc. ("M & O"), for violations of Sections 112 and 114 of the Clean Air Act ("Act"), 42 U.S.C. §§ 7412 and 7414, and various work practice standards and notice requirements promulgated as part of the National Emission Standard for Hazardous Air Pollutants for asbestos ("asbestos NESHAP").

The Consent Decree requires M & O (1) pay $100,000 in civil penalties; (2) maintain compliance with the asbestos NESHAP and the Act; (3) report to EPA on a monthly basis the status of all asbestos abatement work undertaken by M & O in the previous month, and (4) implement certain managerial and operational measurements to ensure M & O's continuous compliance with the asbestos NESHAP and the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer in *United States* versus *M & O Environmental Company, et al.*, D.J. Ref. 90–5–2–1–1885.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Illinois, Everett McKinley Dirksen Building, Fifth Floor, 219 South Dearborn Street, Chicago Illinois 60604, at the Region V Office of the Environmental Protection Agency, 200 West Adams Street, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $26.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–32905 Filed 12–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree with ASARCO in *United States* v. *Trinity Industries, Inc., et al.*, No. 97–2598–EEO, was lodged on November 24, 1997, with the United States District Court for the District of Kansas.

In this action the United States sought the recovery of response costs it incurred at the Kansas City Structural Steel Site in Kansas City, Kansas. The Consent Decree provides that ASARCO will pay to the United States $318,212 of approximately $450,000 in outstanding costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Trinty Industries, Inc., et al.*, DOJ Ref. #90–11–2–789B.

The proposed Consent Decree may be examined at the office of the United States Attorney, 500 State Avenue, Suite 360, Kansas City, Kansas 66101; the Region 7 office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 97–32907 Filed 12–16–7; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506]. OMB approval has been requested by January 2, 1998. A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Todd R. Owen, at (202) 219–5095, ext. 143.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, ATTN: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Indian and Native American Welfare-to-Work Programs.

Frequency: Quarterly (report submission).

Affected Public: State, Local or Tribal Government.

Number of Respondents: 130 (estimated).

Total Responses: 1,040.

Estimated Time Per Respondent: 9 hours.

Total Burden Hours: 9,360.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $3,000,000.00 per year (program administrative costs).

Description: This ICR is associated with the issuance of forms and instructions necessary to report on activity conducted under the Indian and Native American Welfare-to-Work (INA WtW) program. The ICR concerns the submission of program and financial reports by Federally-recognized tribes and Alaska Native entities (or consortia thereof) awarded grants under the INA WtW program. These reports will document employment activity conducted by INA WtW grantees who provide employment services to adult recipients of benefits under the Temporary Assistance for Needy Families (TANF) program, established by Pub. L. 104–193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly called the "Welfare Reform Act").

Information submitted on these reports will be utilized by the Department to evaluate the success of individual INA WtW programs and to provide data for reports to Congress and the White House on the success of the overall INA WtW program. These instructions and forms are being issued in conjunction with the publication of the Interim Final Rule governing the INA WtW program in compliance with the requirements of section 412(a)(3)(C)(iii) of the Social Security Act, as amended by section 5001(c) of Pub. L. 105–33 (the Balanced Budget Act of 1997). This emergency clearance is necessary to enable the Department to implement the INA WtW program as close to the legislatively-mandated beginning date of October 1, 1997 (Fiscal Year 1998) as possible. Also, quick implementation of the INA WtW program is desirable because many TANF recipients are reaching the exhaustion of their benefits, due to the time limits for receiving those benefits imposed by Pub. L. 104–193 (the "Welfare Reform Act").

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 97–32942 Filed 12–16–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Notice of Request for Comment

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: Article 10(1)(a) of the North American Agreement on Labor Cooperation (NAALC) calls for the Council for the Commission for Labor Cooperation to review the operation and effectiveness of the NAALC within four years of its entry into force. In order to undertake the review, the Council agreed to a process which includes seeking public input. A notice was issued (62 Fed. Reg. 61552). The time period within which to comment is being extended. Written comments are requested.

DATES: Written comments on the operation and effectiveness of the NAALC should be submitted by January 30, 1998.

ADDRESSES: Send written comments to the U.S. National Administrative Office, U.S. Department of Labor, Room C–4327, 200 Constitution Avenue, NW., Washington, DC 20210 or the Secretariat, Commission for Labor Cooperation, 350 North St. Paul, Suite 2424, Dallas, Texas 75201–4240.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, NW., Room C–4327, Washington, DC 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The North American Agreement on Labor Cooperation (NAALC) was signed by the Presidents of the United States of America, and of the United Mexican States, and the Prime Minister of Canada in September 1993 and entered into force on January 1, 1994. Article 10(1)(a) of the NAALC provides that the Council shall "oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within four years after the date of entry into force of this Agreement, review its operation and effectiveness in light of the experience * * *." The Council agreed to a process of review that includes issuing an invitation for written public comments on the operation and effectiveness of the NAALC. Written comments may be made to the National Administrative Office or to the international Secretariat. Any comments received by the U.S. National Administrative office will be transmitted verbatim to the Secretariat, which has been delegated the responsibility by the Council to oversee the review process.

Signed at Washington, DC on December 11, 1997.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 97–32941 Filed 12–16–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 97–46]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazard Communication

ACTION: Extension of comment period; Supplemental Information.

SUMMARY: On November 21, 1997, the Occupational Safety and Health Administration (OSHA) published a **Federal Register** notice soliciting comments concerning the proposed extension of the information collection request for the Hazard Communication Standard 29 CFR 1910.1200; 1915; 1918; 1926, and 1928. With this notice, OSHA is providing supplemental information and extending the close of the comment period from January 20, 1998 to February 19, 1998.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 19, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–46, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW, Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Ave. NW, Washington, D.C. 20210. Telephone: (202) 219–7075 extension 105. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Adrian Corsey (202) 219–7057 extension 105, or Barbara Bielaski on 219–8076, extension 142. For electronic copies of the Hazard Communication Information Collection Request, contact the Labor News Bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION: OSHA requested public comment on the proposed extension of the Hazard Communication Standard (HCS) Information Collection Request on November 21, 1997 (92 FR 62355). The deadline for submitting comments was January 20, 1998. The November 21, 1997, **Federal Register** notice estimated the total burden hours for hazard communication to be 7,301,762 hours. This notice provides additional information regarding the burden hour estimate. Specifically, the Agency is proposing to reduce the burden hours for HCS from 13,198,751 to 7,301,762 hours, a burden reduction of 5,896,991 hours. The majority of this burden reduction resulted when the Agency eliminated the burden it had assigned to the task of affixing labels to certain containers. Under the implementing rules and regulations of the Paperwork Reduction Act, activities that are normal and customary are not counted when assessing the burden associated with a collection of information. The Agency believes that placing labels on containers is a normal and customary business practice for manufacturers and importers of hazardous chemicals. OSHA's revised estimates include only the burden to develop (i.e., determine) the specific information required by OSHA's Hazard Communication Standard that is beyond normal and customary business practices. To support the Agency's belief that affixing labels in normal and customary, OSHA points out that the Environmental Protection Agency, the Department of Transportation, the Consumer Product Safety Commission, and the Food and Drug Administration require labeling. In addition, international standards require labeling. OSHA also believes that manufacturers normally affix labels to identify and promote their products.

In the November 21, 1997 **Federal Register** Notice on this collection of information, OSHA did not fully explain how it arrived at its estimated reduction. For this reason OSHA believes it is reasonable and appropriate to provide this supplemental information and to give commenters an additional 30 days to comment on the Information Collection Request [paperwork package]. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 9, 1997.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 97–32863 Filed 12–16–97; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Evaluation of NARA Archival Information Locator (NAIL)

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is inviting the public to participate in an evaluation of its prototype online information system, the NARA Archival Information Locator (NAIL).

As part of its Electronic Access Project, NARA is constructing a nationwide, integrated online information delivery system. The project, a priority under the agency's Strategic Plan, will eventually result in a virtual card catalog of all NARA holdings nationwide, including those in the Presidential libraries and regional archives. In addition, copies of some of NARA's most popular and significant manuscripts, photographs, sound recordings, maps, drawings and other documents will be digitized and available for researchers to view online through the catalog.

To complete the final functional requirements for the catalog, NARA is undertaking an evaluation of its prototype, the NARA Archival Information Locator (NAIL). All members of the public are invited to use NAIL and to comment on its ease of use, functionality, and terminology.

NAIL can be accessed on the World Wide Web at http://www.nara.gov/nara/nail.html.

DATES: Comments should be received by January 31, 1998.

ADDRESSES: Comments can be sent through the online comments link in NAIL or by e-mail to nail.mailbox@arch2.nara.gov.

Dated: December 10, 1997.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 97–32914 Filed 12–16–97; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 21, 1997, through December 5, 1997. The last biweekly notice was published on December 3, 1997 (62 FR 63970).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 16, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public

document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: February 28, 1997.

Description of amendment request: The proposed amendments would revise Byron and Braidwood Technical Specifications (TS) Sections 3/4.4.5, "Steam Generators," and 3/4.4.8, "Reactor Coolant System Specific Activity," for both the Byron Station, Units 1 and 2, and the Braidwood Station, Units 1 and 2. The intent of these proposed revisions is to restore for both Byron, Unit 1, and Braidwood, Unit 1, the original TS related to steam generator (SG) inspections and the primary coolant dose equivalent iodine-131 (DEI) concentrations. These amendments will become effective when the original steam generators (OSG) which are Westinghouse Model D4 SGs, are removed and the replacement steam generators (RSG) made by Babcock and Wilcox, International (BWI), are installed. The RSGs are presently being installed at Byron, Unit 1, while the RSGs will be installed at Braidwood, Unit 1, in fall 1998.

The SG inspection methodology, inspection frequency, reporting requirements and acceptance criteria for the RSGs in both Byron, Unit 1, and Braidwood, Unit 1, will revert to the TSs for the OSGs before several prior license amendments incorporated into the TSs: (1) The interim plugging criteria (IPC) consistent with Generic Letter (GL) 95–05; (2) the F* criteria for the SG tube expansions into the tubesheet; and (3) the criteria for repairing SG tubes using either Westinghouse laser welded sleeves or Combustion Engineering tungsten inert gas (TIG) welded sleeves. The TSs applicable to Byron, Unit 2, and Braidwood, Unit 2, both of which have Westinghouse Model D5 SGs, remain unchanged except for designating them in the TSs as model D5 SGs.

With respect to the limiting value of the DEI primary coolant concentration, both the Byron, Unit 1, TSs and the Braidwood, Unit 1, TSs will revert from their present TS limit of 0.35 to 1.0 microcuries per gram. A license amendment request to lower the Byron, Unit 1, TS DEI limit from 0.35 to 0.20 microcuries per gram was submitted on January 31, 1997, but this request was subsequently withdrawn on November 11, 1997, because the RSGs were being installed in the Byron, Unit 1, refueling outage which started in early November 1997. A license amendment request to lower the Braidwood, Unit 1, TS DEI limit from 0.35 to 0.10 microcuries per gram was submitted on September 2, 1997. Action on this request is still pending but in any case, will not affect the subject license amendment request for Braidwood, Unit 1, because the September 2, 1997, request is only applicable to the OSGs which are presently using the IPC that were originally incorporated into the TSs on November 9, 1995. The applicable bases sections of the Byron, Unit 1, TSs and Braidwood, Unit 1, TS will also be revised to reflect the TS changes discussed above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Due to design differences between the replacement Steam Generators (RSGs) and OSGs, the analyses supporting the application of the F* and voltage-based repair criteria do not apply to the RSGs. Also, the analyses supporting sleeving repair by the Westinghouse laser welded or Combustion Engineering Tungsten Inert Gas (TIG) welded sleeving methodologies do not apply to the RSGs due to the design differences. The RSG and OSG tube bundle configurations are similar, however, the RSG tubes are smaller in diameter, constructed of Inconel Alloy 690 instead of Alloy 600, and supported by stainless steel lattice grids instead of the drilled carbon steel plates used in the OSGs. The RSG tubes are hydraulically expanded into the tube sheet during initial assembly. The RSG upper tube bundle shape consists of tubes with continuous, smooth, long radius bends.

The structural analysis demonstrates that the tube integrity is maintained for a Main Steamline Break (MSLB) occurring during normal full power operation. The structural evaluation of the tubing for faulted conditions was performed in accordance with the ASME Boiler and Pressure Vessel Code Section III requirements. The tube material selection and size exceed the strength requirements of the existing steam generators. Comparison of the Alloy 690 tube material used in the RSGs with the Alloy 600 tube material in the OSGs show that the RSG material strength characteristics are as good as or better than those of the existing design. A comparison of the stress margins of the RSG and OSG show that the stress margin in the RSG tubes exceed the stress margin in the OSG tubes.

RSG portions of the reactor coolant pressure boundary are designed to permit periodic inspection and testing of important areas and features to assess structural and leak-tight integrity. ASME Section XI, provides the depth of an allowable outside diameter (O.D.) flaw for tubes in service. The RSG has tubing fabricated from SB–163 material (Inconel Alloy 690) which is examined by eddy current methods to the requirements of ASME Section III, NB–2550. The tubing has a radius to thickness (r/t) ratio less than 8.70. In accordance with ASME Section XI, for tubing having an r/t ratio of less than 8.70, the depth of an allowable O.D. flaw shall not exceed 40% of the nominal tube wall thickness.

The potential for tube rupture is not increased from the OSGs as demonstrated in the qualification analysis and testing for the RSGs. The program for periodic inservice inspection of the steam generators monitors the integrity of the SG tubing to ensure that there is sufficient time to take proper and timely corrective action if any tube degradation is detected. Therefore, installation of the RSGs will not increase the probability of the occurrence of primary-to-secondary leakage or a steam generator tube rupture (SGTR) during normal or accident conditions.

The design basis doses calculated for postulated accidents involving degradation of SG tubes, such as SGTR and MSLB accidents, as presented in UFSAR [Updated Final Safety Analysis Report] Chapter 15 accident analysis have been evaluated and are decreased by installation of the RSGs and restoration of the RCS activity limit to 1.0 microcuries/gm. The decrease in offsite dose is primarily due to the smaller RSG tube diameter and less primary-to-secondary transfer during the event. The dose calculations are performed consistent with NUREG–0800, "Standard Review Plan" and ensure site boundary doses are within a small fraction of the Title 10 Code of Federal Regulations Part 100 (10 CFR 100) requirements. Therefore, the change does not involve a significant increase in the consequences of an accident previously evaluated.

Limiting the applicability of TS provisions to a specific cycle or SG type are administrative changes in that they provide clarification consistent with current analyses and do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Restricting application of IPC, F* and sleeving methodologies to the OSGs and reinstating an RCS activity limit of 1.0 microcuries/gm upon installation of the RSGs will not introduce significant or adverse changes to the plant design basis that could lead to a new or different kind of accident being created. The RSG tubing meets the requirements of General Design Criteria (GDC) 14, 15, 30, 31, and 32 of 10 CFR 50, Appendix A. The RSG tubing has been designed and evaluated consistent with ASME Code Section III criteria and the inspection criteria for the RSGs is consistent with ASME Code Section XI criteria. The RSGs have thermally treated Inconel Alloy 690 tubes which are hydraulically expanded into the tube sheet during initial assembly. Alloy 690 is more resistant to stress corrosion cracking (SCC) than Alloy 600 which is used in the OSG tubing. Overall tube bundle structural and leakage integrity is maintained at a level consistent with or better than the originally supplied tubing during all plant conditions.

ComEd will continue to apply the TS maximum primary-to-secondary leakage limit of 150 gpd (0.1 gpm) through any one SG at Byron and Braidwood to help preclude the potential for excessive leakage during all plant conditions. The EPRI recommended 150 gpd limit provides for leakage detection and plant shutdown in the event of an unexpected tube leak and precludes the potential for excessive leakage or tube burst in the event of a Main Steam Line Break or under Loss of Coolant Accident conditions.

Limiting the applicability of TS provisions to a specific cycle or SG type are administrative changes in that they provide clarification consistent with current analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Restricting application of IPC, F*, and sleeving methodologies to the OSGs for which the supporting analyses apply, does not involve a reduction in a margin of safety. The RSG tubing has been shown to retain adequate structural and leakage integrity during normal, transient, and postulated accident conditions consistent with GDC 14, 15, 30, 31, and 32 of 10 CFR 50 Appendix A. The RSG tubing has been designed and evaluated consistent with the margins of safety specified in ASME Code Section III. The proposed program for periodic inservice inspection of the replacement steam generators monitors the integrity of the SG tubing to ensure that there is sufficient time to take proper and timely corrective action if any tube degradation is present. The proposed program is consistent with the Standard Technical Specifications.

The Unit 1 RCS dose equivalent I–131 limit is being raised upon installation of the RSGs to eliminate the compensatory lower limit that was adopted in conjunction with IPC for the existing Westinghouse D4 SGs. With the RCS activity limit returned to the Standard Technical Specification value of 1.0 (mu)Ci/gm, the assessment of postulated UFSAR Chapter 15 accidents (including SGTR and MSLB) has concluded that the calculated design basis doses presented in Chapter 15 are not adversely impacted by the RSGs. This ensures that the resulting 2-hour dose rates at the Byron and Braidwood site boundaries will not exceed an appropriately small fraction of 10 CFR 100 dose guideline values.

Limiting the applicability of TS provisions to a specific cycle or SG type are

administrative changes in that they provide clarification consistent with current analyses.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety with respect to plant safety as defined in the UFSAR or the Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: March 26, 1997.

Description of amendment request: The proposed amendment would revise the containment system technical specifications (TS) contained in TS Sections 3.6 and 4.5. The licensee has classified the changes as "More Restrictive," "Less Restrictive," and "Administrative." "More Restrictive" changes include reduction of the allowable containment pressure, addition of an action statement defining action to be taken when the containment pressure limit is exceeded, addition of a restriction on containment temperature, and revision of the applicable conditions for the containment purge valves to require that the valves be operable above 210 degrees F versus the current requirement that they be operable above 525 degrees F. "Less Restrictive" changes include addition of an allowance to enter an air lock through a locked door to perform maintenance, addition of an allowance to open containment isolation valves under administrative control, revision of the applicable conditions for containment pressure to exclude the cold shutdown operating condition, and addition of an exception to the surveillance requirement requiring verification of the status of "locked-closed" manual isolation valves after a refueling outage to exclude requiring such verification for valves opened under administrative control. "Administrative" changes include the deletion of containment isolation valve tables and component identifiers from the TS in accordance with Generic Letter 91–08 ("Removal of Component Lists from Technical Specifications") and editorial restructuring of the affected TS sections to clarify the remaining requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Each proposed change has been classified as "Administrative," "More Restrictive," or "Less Restrictive." "Administrative" and "More Restrictive" changes are discussed generically; "Less Restrictive" changes are discussed individually.

Five of the proposed changes are classified as being "Less Restrictive":

(G.1) Allowance in LCO [Limiting Condition for Operation] 3.6.1 to enter an air lock to perform maintenance.

(G.2) Allowance in LCO 3.6.1 to open containment isolation valves under administrative control.

(L.2) Revising the applicable conditions of LCO 3.6.2, Containment Pressure to exclude Cold Shutdown.

(J.2) Exception in SR [Surveillance Requirement] 4.5.3d for valves opened under administrative control as allowed by LCO 3.6.1.

(P) Allowance in SR 4.5.2 to enter an air lock to perform maintenance.

Four of the proposed changes are classified as being "More Restrictive":

(L.1) Revising LCO 3.6.2 to reduce the allowable containment pressure.

(L.3) Addition of an action statement to LCO 3.6.2, Containment Pressure.

(K) Addition of a new LCO which restricts Containment Temperature.

(M.2) Revising the applicable conditions for LCO 3.6.5, Purge Valves.

The remaining changes are all classified as being "Administrative".

Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

1. Changes G.1, G.2, J.2, and P: Proposed changes G.1 and P allow limited access through the operable door of an air lock when the other door is inoperable; current Technical Specifications [TS] do not. Proposed changes G.2 and J.2 allow unisolating containment penetration flow paths intermittently under administrative control; current TS do provide a similar allowance, but only for one specific penetration. These changes cannot significantly increase the probability of an accident because opening an air lock door or a containment penetration is not, itself, an initiator and does not affect the items which are initiators of any analyzed accident.

The ability to open the operable door or to open a containment penetration, even if it means the containment boundary is temporarily not intact, does not significantly increase the consequences of an accident previously evaluated because of the low probability of an event that could pressurize the containment occurring during the short time the operable door or containment penetration is expected to be open. In a case where containment integrity (or containment operability) is lost due to excessive leakage, both the Palisades Technical Specifications and the Standard Technical Specifications [STS] allow one hour of continued operation for its restoration. That time period is allowed without regard to the magnitude of the potential leakage, and would be allowed even if both personnel air lock doors [were] leaking excessively. The additional allowance of permitting the operable door to be opened momentarily for entry or egress when the other door is inoperable due to excessive leakage would not significantly add to the probability of containment leakage and the resultant consequences of an accident. Similarly, the allowance to open any containment penetration intermittently under administrative control, which currently is allowed for one penetration, would not significantly add to the probability of containment leakage and the resultant consequences of an accident.

Therefore, operation of the Facility in accordance with proposed changes G.1, G.2, J.2, and P would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Change L.2: Change L.2 alters existing LCO 3.6.2, Containment Pressure so that it no longer applies during Cold Shutdown. LCO 3.6.2 is intended to limit containment pressure to that value used as an initial condition in the safety analysis. Containment pressure is an initial condition in analyses which assure that containment internal pressure will not exceed the containment design values during a LOCA or MSLB. Containment pressure is not an initiator of any accident previously evaluated. Neither a LOCA [loss-of-coolant accident] nor a MSLB [main steam line break] occurring during Cold Shutdown would pressurize the containment. Therefore, a containment pressure LCO is not necessary, during Cold Shutdown, to assure that containment design pressure and temperature is not exceeded. The STS Containment pressure LCO is not applicable in Cold Shutdown.

Therefore, operation of the Facility in accordance with proposed change L.2 would not involve a significant increase in the probability or consequences of an accident previously evaluated.

3. More Restrictive Changes: "More Restrictive" changes only add new requirements, or revise existing requirements to result in additional operational restrictions. The TS, with all "More Restrictive" changes incorporated, will still contain all of the requirements which existed prior to the changes. Therefore, "More Restrictive" changes cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

4. "Administrative" changes make wording changes which clarify existing TS requirements, without affecting their technical content. Since "Administrative" changes do not alter the technical content of any requirements, they cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

1. Changes G.1, G.2, J.2, and P: Proposed changes G.1 and P allow limited access through the operable door of an air lock when the other door is inoperable; current Technical Specifications do not. Proposed changes G.2 and J.2 allow unisolating containment penetration flow paths intermittently under administrative control; current TS do provide a similar allowance, but only for one specific penetration. Opening an air lock door or a containment penetration does not affect the operating conditions or operation of any plant systems (other than the containment); it does not create a threat to the integrity of any operating system or alter any system operating practice or settings.

Since the opening of an air lock door or a containment penetration only affects the potential leakage from the containment, and does not affect any of the operating plant systems, operation of the Facility in accordance with the proposed Technical Specifications change would not create the possibility of a new or different kind of accident from any previously evaluated.

2. Change L.2: Change L.2 alters existing LCO 3.6.2, Containment Pressure so that it no longer applies during Cold Shutdown. LCO 3.6.2 is intended to limit containment pressure to that value used as an initial condition in the safety analysis. Containment pressure is an initial condition in analyses which assure that containment internal pressure will not exceed the containment design values during a LOCA or MSLB. Neither a LOCA nor a MSLB occurring during Cold Shutdown would pressurize the containment. Therefore, a containment pressure LCO is not necessary, during Cold Shutdown, to avoid creation of a new or different kind of accident. The STS Containment pressure LCO is not applicable in Cold Shutdown.

Therefore, operation of the Facility in accordance with proposed change L.2 would not create the possibility of a new or different kind of accident from any previously evaluated.

3. More Restrictive Changes: "More Restrictive" changes only add new requirements, or revise existing requirements to result in additional operational restrictions. The TS, with all "More Restrictive" changes incorporated, will still contain all of the requirements which existed prior to the changes. Therefore, "More Restrictive" changes cannot create the possibility of a new or different kind of accident from any previously evaluated.

4. "Administrative" changes make wording changes which clarify existing TS requirements, without affecting their technical content. Since "Administrative" changes do not alter the technical content of any requirements, they cannot create the possibility of a new or different kind of accident from any previously evaluated.

Do the proposed changes involve a significant reduction in a margin of safety?

1. Changes G.1, G.2, J.2, and P: Proposed changes G.1 and P allow limited access through the operable door of an air lock when the other door is inoperable; current Technical Specifications do not. Proposed changes G.2 and J.2 allow unisolating containment penetration flow paths intermittently under administrative control; current TS do provide a similar allowance, but only for one specific penetration. The ability to open the operable door or a containment penetration, even if it means the containment boundary is temporarily not intact, does not involve a significant reduction in a margin of safety because of the low probability of an event that could pressurize the containment occurring during the short time the operable door or penetration is expected to be open.

Therefore, operation of the Facility in accordance with the proposed Technical Specifications change would not involve a significant reduction in a margin of safety.

2. Change L.2: Change L.2 alters existing LCO 3.6.2, Containment Pressure so that it no longer applies during Cold Shutdown. LCO 3.6.2 is intended to limit containment pressure to that value used as an initial condition in the safety analysis. Containment pressure is an initial condition in analyses which assure that containment internal pressure will not exceed the containment design values during a LOCA or MSLB. Neither a LOCA nor a MSLB occurring during Cold Shutdown would pressurize the containment. Therefore, elimination of a Cold Shutdown LCO for containment pressure would not affect the post-accident pressure or temperature. Since peak post accident [pressure] and temperature would be unaffected by the proposed change, operation of the Facility in accordance with proposed change L.2 would not involve a significant reduction in a margin of safety.

3. More Restrictive Changes: "More Restrictive" changes only add new requirements, or revise existing requirements to result in additional operational restrictions. The TS, with all "More Restrictive" changes incorporated, will still contain all of the requirements which existed prior to the changes. Therefore, "More Restrictive" changes cannot involve a significant reduction in a margin of safety.

4. "Administrative" changes make wording changes which clarify existing TS requirements, without affecting their technical content. Since "Administrative" changes do not alter the technical content of any requirements, they cannot involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John N. Hannon.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 29, 1997.

Description of amendments request: The proposed amendments to the Technical Specifications (TS) for the Brunswick Steam Electric Plant (BSEP) Units 1 and 2 would revise the description of the control rod assemblies (CRAs) in TS 5.3.2. The proposed revision was requested to support replacement of a portion of the BSEP Unit 1 CRAs during that unit's next refueling outage with assemblies of a different design. Carolina Power & Light Company, the licensee, has proposed adopting the description of CRAs used in NUREG–1433, Revision 1, "Standard Technical Specifications General Electric Plants, BWR/4," which includes the number and shape of CRAs and a stipulation that NRC-approved absorber material be used in CRAs. The more detailed description in the current TS of CRAs would be relocated to the Updated Final Safety Analysis Report. The licensee has stated that the CRA description proposed for TS 5.3.2 will be sufficient to ensure that any future changes in CRA design that may affect safety will require prior NRC review and approval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Relocation of the control rod assembly descriptive information from the Technical Specifications to the Updated Final Safety Analysis Report will ensure that adequate control of the information is maintained. Any changes to this design information must conform with the requirements of 10 CFR 50.59. Restricting use of control rod assembly absorber materials to those listed, or to materials that have been approved by the NRC, will ensure any changes which may affect safety to require prior NRC review and approval. Since the information with a potential to affect safety is sufficiently addressed by the Technical Specifications, the criteria of 10 CFR 50.36(c)(4) for

including the relocated information as Design Features are not met. Because the relocated information is not required to be in the Technical Specifications to provide adequate protection of the public health and safety, relocation of control rod assembly descriptive information will not increase either the probability or the consequences of an accident previously evaluated.

2. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Relocation, to the Updated Final Safety Analysis Report, of the information pertaining to the control rod assembly designs ensures that adequate control of the information will be maintained. Since the information with a potential to affect safety is sufficiently addressed by the Technical Specifications, the criteria of 10 CFR 50.36(c)(4) for including the relocated information as Design Features are not met. Because the relocated information is not required to be in the Technical Specifications to provide adequate protection of the public health and safety, the proposed Technical Specification changes to relocate the control rod assembly design information to the Updated Final Safety Analysis Report does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

As discussed in Items 1 and 2 above, relocation of the control rod assembly descriptive information from the Technical Specifications to the Updated Final Safety Analysis Report will ensure that adequate control of the information is maintained. Any changes to this design information must conform with the requirements of 10 CFR 50.59. Restricting use of control rod assembly absorber materials to those listed, or to materials that have been approved by the NRC, will ensure any changes which may affect safety to require prior NRC review and approval. The information with a potential to affect safety is sufficiently addressed by the Technical Specifications, therefore, the proposed Technical Specification changes to relocate control rod assembly design information to the Updated Final Safety Analysis Report do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Caroline 27602.

NRC Project Director: James E. Lyons.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: July 16, 1997, as supplemented October 30, 1997.

Description of amendment request: The amendment would update License condition 2.C(4) to reflect the latest revision levels of the Oyster Creek Security Training and Qualification Plan, License Amendment Request No. 252.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has concluded that the proposed changes to the Security Plan do not involve a significant hazard consideration. In support of this determination, an evaluation of each of the three standards set forth in 10 CFR 50.92 is provided below.

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Security Plan provisions are not associated with design basis accident initiators nor do they constitute part of any mitigation system. Therefore, the probability and consequences of accidents are not increased.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Security Plan changes do not create new or change existing physical interfaces with plant equipment. Therefore, the changes do not create the possibility of a new or different kind of accident.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

Margins associated with reactor and fuel storage nuclear safety are not affected by the proposed Security Plan changes since neither physical nor procedural changes to associated systems, structures and components are involved. Vital area security measures, which are reduced, are compensated by commitments to hold contingency drills at a frequency sufficient to maintain response capability for response personnel and to use organic-type X-ray equipment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Ronald B. Eaton, Acting Director.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 14, 1997.

Description of amendment request: The proposed change to Technical Specification 4.5.2.d.1 will clarify the wording and increase the setpoint for the open pressure interlock (OPI).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Increasing the Technical Specification Open Pressure Interlock (OPI) pressure to 412.5 psia [pounds per square inch—atmospheric] will still maintain the required function of preventing the MOVs [motor operated valves] from opening inadvertently. The increased pressure is within the design limits of the RHR [residual heat removal] piping system and components. The pressure signal is generated from a transmitter and results in an electronic input to the bistable. This is a clarification of the conditions under which the OPI is tested.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no change to the function of the OPI. The protection provided by the interlock remains intact. The Technical Specification OPI pressure has been raised to take into account instrument accuracies and reset deadbands. The RHR system design pressure remains protected from being exceeded by inadvertent opening of the isolation MOVs. The method for the OPI surveillance is clarified by clearly stating that the bistable receives a simulated transmitter signal representative of the process pressure.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The design pressure of the RHR system is 600 psig [pounds per square inch—gauge]. The most limiting case is to prevent the RHR pump developed head pressure from exceeding the design pressure when aligned to the RCS [reactor coolant system] as suction pressure. RHR pump testing has determined that a maximum pump differential pressure of 195 psi [pounds per square inch] exists for deadhead/no flow conditions. Therefore, to maintain the 600 psig design pressure limit, RCS/suction pressure must be limited to 405 psig [420 psia, assuming a 15 psi conversion from psig to psia]. The proposed maximum pressure, including setpoint tolerances and reset deadbands, is less than this value; i.e. 412.5 psia. Head corrections due to elevation differences are considered to be insignificant.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: November 3, 1997.

Description of amendment request: The proposed amendment would revise Sections 1, 3.1, 3.3, 4.3, and 6 of Appendix A of the Indian Point 3 Technical Specifications. These revisions extend the Heatup-Cooldown limits from 11 to 13 effective full power years (EFPYs), provide the corresponding Overpressure Protection System (OPS) limits, relocate the new pressure temperature limit curves and low-temperature overpressurization protection (LTOP) system limits to the pressure temperature limit report (PTLR) and include some minor revisions which ensure specification clarity and conservatism.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: The proposed license amendment does not involve a significant increase in the probability or consequences of a previously analyzed accident. The pressure-temperature limit changes proposed by this amendment are based on supporting data and evaluation methodologies previously submitted to the NRC in Reference 3 [see application dated November 3, 1997] and approved as Amendments 109 and 121 (References 4 and 5) [see application dated November 3, 1997]. These limits are based upon the irradiation damage prediction methods of Regulatory Guide 1.99, Revision 2. The LTOPs changes contained in this submittal have been conservatively adjusted in accordance with the new pressure-temperature limits, in accordance with the methodology contained in Reference 3 and ASME Code Case N–514.

The relocation of the pressure-temperature and LTOPs limits from the Technical Specifications to the PTLR does not eliminate the requirement to operate in accordance with the limits specified in 10 CFR [Part] 50, Appendix G. The requirement to operate within the limits in the PTLR is specified in and controlled by the Technical Specifications.

The revised version of Section 3.1.A.8 clarifies existing requirements related to the OPS system and adds an eight hour completion time for compensating actions, consistent with the STS (standard technical specifications). The changes to Section 3.1.A.1.h, i, and j revise the requirements associated with the start of an RCP [reactor coolant pump]. These changes improve specification clarity and do not increase the probability or consequences of an accident.

The Technical Specification changes associated with the restriction on SI [safety injection] pumps provides added conservatism to the Technical Specifications and limits the likelihood of an RHR [residual heat removal] overpressurization event. Current plant procedures prohibit actuation of any SI pumps when RHR is in service, except during testing, loss of RHR cooling, or reduced inventory operations. Therefore, the change to the Technical Specifications will not alter current plant operation.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously analyzed. The pressure-temperature limits are updating the existing limits by taking into account the effects of radiation embrittlement, utilizing criteria defined in Regulatory Guide 1.99, Revision 2, and extending the effective period to 13 EFPYs. The updated OPS limits have been adjusted to account for the effect of irradiation on the limiting reactor vessel material. These changes do not affect the way the pressure-temperature or OPS limits provide plant protection and no physical p'ant alterations are necessary. The relocation of the pressure-temperature and OPS limits from the Technical Specifications to the PTLR does not alter the requirements associated with these limits.

The revisions to Section 3.1.A.8 concerning the OPS system improve on the clarity of existing specifications and add a completion time for compensating actions that is consistent with the STS. These changes do not involve any hardware modifications and do not affect the function of the OPS system.

The revisions concerning the operation of SI pumps bring the Technical Specifications into line with current operating procedures. The changes to Specification 3.1.A.1.h, i, and j provide specification clarity and are more conservative than existing Technical Specifications. Therefore, the changes cannot create the possibility of a new or different kind of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed amendment does not involve a significant reduction in a margin of safety. The margins of safety against fracture provided by the pressure-temperature limits are those limits specified in 10 CFR Part 50, Appendix G and ASME Boiler and Pressure Vessel Code Section XI, Appendix G. The guidance in these documents has been utilized to develop the pressure-temperature limits with the requisite margins of safety for the heatup and cooldown conditions. The new LTOP limits are based upon Reference 3 and ASME Code Case N–514. The relocation of the pressure-temperature and OPS limits to the PTLR does not alter the requirements associated with these limits.

The revisions to Section 3.1.A.8 clarify the requirements associated with the OPS system. The revisions associated with the operation of SI pumps with RHR in service (Sections 3.3.A.8, 9 and 10) and the changes regarding RCP starts (Section 3.1.A.1.h, i, and j) are more conservative than the current Technical Specifications, and are consistent with plant operating procedures. Therefore, they do not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library,

100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: S. Singh Bajwa.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 24, 1997.

Description of amendment request: The amendments would increase the containment hydrogen analyzer surveillance frequency in Technical Specification 4.6.4.1 from once per refueling outage to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment hydrogen analyzers provide control room indication of hydrogen concentration in the containment atmosphere. They do not affect the probability of any previously evaluated accident. The proposed change would increase the calibration frequency specified in TS 4.6.4.1 to make it consistent with manufacturer's recommendations and the current calibration frequency at [Salem Generating Station] SGS as imposed by administrative controls. The change in TS-required calibration frequency is in the conservative (more frequent) direction, to ensure that potential degradation of the sensor electrolyte over time would not result in unacceptable performance of the hydrogen analyzers. The change in specified frequency would not adversely affect the consequences of any previously evaluated accident.

2. Proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed [evaluated].

The proposed change affects only the specified calibration frequency of the containment hydrogen analyzers. The proposed change does not affect the design of any SGS structure, system or component, nor would it result in any new plant configuration. Therefore, it does not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to the containment hydrogen analyzer calibration frequency does not affect the design or operating limits of any SGS structure, system or component. The change would make the specified calibration frequency more conservative, to ensure the hydrogen analyzers perform as designed over time. The proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 24, 1997.

Description of amendment request: The amendments would revise Technical Specification (TS) 3/4.7.7, "Auxiliary Building Exhaust Air Filtration System." The revisions would: (1) Require both Auxiliary Building Ventilation (ABVS) supply fans to be operable, (2) require all three ABVS exhaust fans to be operable, (3) align ABVS TSs to be consistent with current TS bases and recently revised system descriptions in the Salem Updated Final Safety Analysis Report (UFSAR), (4) assure that negative pressure is maintained in the Auxiliary Building under all postulated single active failures, (5) clarify required Engineered Safety Feature filter testing, (6) provide consistency between Unit 1 and Unit 2 TSs, and (7) for Unit 2 only, remove the requirement to verify safety injection auto-start capabilities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change alters the number of fans which must be OPERABLE to ensure that a sufficient number of supply and exhaust fans will be operable, following a most limiting single failure, to mitigate the consequences of design basis accidents. The changes to the ABVS surveillance requirements still provide an appropriate means for demonstrating the operability of the ABVS.

The ABVS cannot initiate or otherwise cause any accident or operational transient evaluated in the UFSAR. Consequently, the probability of such events is not increased. The ABVS cannot increase the consequences of a design basis LOCA unless: (1) Auxiliary Building negative pressure is lost, resulting in uncontrolled, ground level release of radioactive material; (2) ABVS carbon adsorbers are bypassed, resulting in uncontrolled release of radioactive iodine from the plant vent; or (3) Auxiliary Building temperatures are not controlled, resulting in failure of accident mitigating equipment.

By requiring OPERABILITY of all ABVS supply and exhaust fans, the proposed changes contained in this submittal assures Auxiliary Building negative pressure is maintained under all postulated post-accident, single-failure scenarios. The proposed changes to ABVS will not affect the elemental iodine adsorption capability of the system. Finally, engineering analyses conclude that these fan combinations, with single-active failures of the fans or their support systems considered, provide sufficient Auxiliary Building ventilation. Under the most limiting temperature conditions, the fans will maintain room temperatures within design limits. Accordingly, the consequences of a design basis LOCA, hence applicable design basis accidents or operational transients, are not increased.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

ABVS supply fans are not considered essential to the primary safety-function of preventing or mitigating radioactive releases, nor are they currently required to be OPERABLE. Similarly, accident analyses take no credit for operation of supply fans. Accordingly, malfunctions of vital buses and ABVS exhaust fans are the only malfunctions of active ABVS related equipment important to safety that are previously evaluated.

The probability of failure of a vital bus is not increased by this proposal since the proposal has no direct effect on electrical power. Neither is the probability of exhaust fan failure increased by the proposal, since exhaust fans are not affected by this proposal, except that the number that must be OPERABLE is increased from two to three.

By requiring additional supply fans and exhaust fans to be OPERABLE, no single failure of either a vital bus or ABVS fan prevents (1) maintenance of negative Auxiliary Building pressure or (2) maintenance of temperatures within design limits. Since ABVS supply and exhaust fans cannot initiate accidents, increasing the number of fans required to be OPERABLE cannot create the possibility of a new or different kind of accident from any accident previously evaluated. In addition, the proposed changes to the ABVS surveillance testing concern ABVS leakage, HEPA filter and carbon adsorber capabilities, and laboratory test methods. Therefore, the proposed surveillance requirement changes would have no impact on the initiation of accidents.

Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is dependent upon the maintenance of specific operating parameters within designated design limits. Since iodine removal capability is not affected by the proposed changes, and negative Auxiliary Building pressure and temperatures will continue to be maintained within existing design limits under post-accident conditions, including consideration of the most limiting single active failure, the margin of safety is not reduced. By imposing new restrictions on the allowed outage times of ABVS components, the margin of safety is increased with the proposed changes to the ABVS Technical Specification Limiting Condition for Operation (LCO).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 4, 1997.

Description of amendment request: The amendments would change Technical Specification (TS) 3/4.6.2, "Containment Spray System," to verify on recirculation flow that the containment spray pumps develop a differential pressure of at least 204 psi.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the CS [containment spray] pump technical specification surveillance test acceptance from pump discharge pressure to pump differential pressure. This will account for the effect of RWST [refueling water storage tank] level on test results and provide acceptance criteria that verifies each CS pump performs as assumed in the accident analyses. This surveillance test is also being added to the Salem Unit 1 TS. The proposed change does not alter the physical plant arrangement or the method of CS pump inservice testing. Therefore it does not increase the probability of an accident. There is no change to pump performance requirements as assumed in the accident analyses. There is no change to CS system performance in response to an accident. Therefore, the proposed change does not involve an increase in the consequences of an accident previously evaluated.

The proposed change also corrects a typographical error by removing a repeated word. This change does not involve an increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the Salem Unit 2 CS pump surveillance test acceptance criteria from pump discharge pressure to pump differential pressure. This will account for the effect of RWST level on test results and provide acceptance criteria that verify the CS pumps perform as assumed in the accident analyses. This surveillance test is also being added to the Salem Unit 1 TS. The proposed change does not alter the plant configuration. The change does not alter the method of performing inservice testing on the CS pumps. The change does not alter the CS pump performance assumed in the accident analyses. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change also corrects a typographical error by removing a repeated word. This change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change ensures the CS pump Salem Unit 2 TS surveillance test acceptance criteria verify CS pump performance as assumed in the accident analyses accounting for RWST level effects. This surveillance test is also being added to the Salem Unit 1 TS. The proposal does not change the CS pump performance requirements assumed in the accident analyses and thus does not reduce the margin of safety.

The proposed change also corrects a typographical error by removing a repeated word. This does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 14, 1997.

Description of amendment request: The proposed changes to the Technical Specifications (TSs) include administrative and editorial changes to correct errors in the TSs that have either existed since initial issuance or were introduced during subsequent changes. In addition, surveillance requirements are added that are considered administrative changes since the surveillances should have been incorporated with the TS when the applicable amendment to the TSs was approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the TS are administrative or editorial changes to the TS and do not involve any physical changes to the plant. The administrative changes and editorial changes do not delete any existing surveillance requirements or delete any requirements from the Limiting Condition for Operations (LCOs) or Action Statements and therefore do not reduce the actions that are currently taken in the TS to demonstrate operability of plant structures, systems, or components (SSCs). The additional surveillance requirements that are being added to the TS including the new surveillances correct past administrative errors and should have been incorporated within the TS as part of the approved Amendments to the TS. These changes will provide additional assurance that SSCs perform their intended safety functions. Surveillance testing has been and is currently being performed for the surveillance requirements that should have been incorporated and are now administratively being added to the TS. Since these changes do not modify any SSCs or reduce the current requirements for demonstrating operability of these SSCs or reduce the current requirements for demonstrating operability of these SSCs, the proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS are administrative and editorial corrections to the TS that do not affect the ability of the plant systems to meet their current TS requirements or design basis functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. These changes also do not involve any physical changes to plant SSCs. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative and editorial corrections to the TS that do not affect the ability of plant SSCs to perform their design basis accident functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 14, 1997.

Description of amendment request: The proposed changes to the Technical Specifications (TSs) include administrative and editorial changes to correct errors in the TSs that have either existed since initial issuance or were introduced during subsequent changes. In addition, surveillance requirements are added that are considered administrative changes since the surveillances should have been incorporated with the TS when the applicable amendment to the TSs was approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the TS are administrative or editorial changes to the TS and do not involve any physical changes to the plant. The administrative changes and editorial changes do not delete any existing surveillance requirements or delete any requirements from the Limiting Condition for Operations (LCOs) or Action Statements and therefore do not reduce the actions that are currently taken in the TS to demonstrate operability of plant structures, systems, or components (SSCs). The additional surveillance requirements that are being added to the TS including the new surveillances correct past administrative errors and should have been incorporated within the TS as part of the approved Amendments to the TS. These changes will provide additional assurance that SSCs perform their intended safety functions. Surveillance testing has been and is currently being performed for the surveillance requirements that should have been incorporated and are now administratively being added to the TS. Since these changes do not modify any SSCs or reduce the current requirements for demonstrating operability of these SSCs or reduce the current requirements for demonstrating operability of these SSCs, the proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS are administrative and editorial corrections to the TS that do not affect the ability of the plant systems to meet their current TS requirements or design basis functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. These changes also do not involve any physical changes to plant SSCs. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative and editorial corrections to the TS that do not affect the ability of plant SSCs to perform their design basis accident functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: October 29, 1997.

Description of amendment request: The proposed amendment would make a one-time change to Technical Specification 3/4.4.6, "Steam Generators," to require that the next inspection be performed within 24 months of criticality for fuel cycle 10, rather than within 24 months from the previous inspection. The previous inspection was performed in May 1996; thus, adhering to the current Technical Specification would require inspection by May 1998 and would require a forced outage. It would also eliminate description of an alternate sampling plan that was applicable only to Unit 2's fourth refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Design Basis Accident (DBA) analyzed in UFSAR Chapter 15.4.4, is Steam Generator Tube Rupture. The Technical Specification steam generator tube inspection attempts to avoid this DBA by maintenance of the integrity of the primary to secondary coolant boundary represented by steam generator tubes. The process by which this integrity is maintained is inspection of steam generator tubes at prescribed intervals, and the removal of defective tubes from service. Inspection intervals are based on preventing corrosion growth from exceeding tube structural strength, thereby preventing tube failure. An extensive steam generator inspection in May of 1996 characterized existing steam generator tube degradation, and degraded tubes were removed from service at that time. Degradation growth rates were evaluated for the next operating interval and it was determined that full cycle operation would not challenge tube structural integrity. Because degraded tubes were plugged, the integrity of the steam generators has been restored, and, because further degradation was prevented by a strictly controlled wet lay-up program in place since the inspection, steam generator integrity has since been maintained at the May 1996 level. This is the level normally expected for commencement of full power operations at the beginning of a fuel cycle. Thus, it can be reasonably concluded that this request to extend the inspection interval to conclude 24 months after the start of Unit 2 fuel cycle 10 does not involve an increase in the probability of an accident previously analyzed.

Salem UFSAR Chapter 15, Section 15.4.4., discusses the Design Basis Accident involving steam generator tube rupture. Since the Salem Unit 2 steam generators were extensively inspected and all degraded tubes were removed from service by plugging, integrity of the generators was restored to fully serviceable condition at that time. Degradation of steam generator tubes has been prevented since the inspection by a carefully controlled, EPRI Guidelines based, corrosion prevention program. It follows, then, that the Unit 2 steam generators were in the same condition immediately prior to fill and vent as if the inspection had just been concluded. This is the condition assumed for commencement of normal operation. Thus, it is reasonable to conclude that this proposal to extend the current steam generator inspection interval to end 24 months after start of Unit 2 fuel cycle 10 represents no significant increase in the consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Steam generator tube inspections determine tube integrity and provide reasonable assurance that a tube rupture or primary to secondary leak will not occur. Accidents involving steam generator tube rupture are analyzed in Salem UFSAR Section 15.4.4, Steam Generator Tube Rupture. The only type of accident that can be postulated from extending the steam generator inspection interval would be a tube leak or rupture. Thus, it can be concluded that extending the steam generator inspection interval on a one-time basis cannot create the possibility of a different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety, as with any TS, depends upon maintenance of specific operating parameters within design limits. In the case of steam generators, that margin is maintained through assurance of tube integrity as the primary to secondary boundary. Assurance of tube integrity is provided through periodic inservice testing of tube integrity and removal from service of defective tubes. Additional margin is provided through protection from possible consequences of steam generator tube failure by detection and mitigation systems. As discussed in 1., above, there was an extensive steam generator inspection, and the steam generators have been maintained since the inspection, using a lay-up program that complies with EPRI Guidelines, to prevent further tube degradation. Also, N–16 monitors were added, enhancing detection capabilities. The margin as established by the latest inspection has been maintained by the corrosion control program of EPRI Primary and Secondary Guidelines based on wet lay-up conditions. Thus, it can be reasonably concluded that this proposal to amend the Salem Unit 2 Technical Specifications, on a one-time basis, to extend the steam generator inspection interval to end 24 months after start of Unit 2 fuel cycle 10 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: August 8, 1997.

Description of amendment request: The proposed amendment would revise the surveillance requirements (SR) of Technical Specification (TS) 3/4.7.4 "Essential Service Water System" by removing the requirement to perform SR 4.7.4.b.1, 4.7.4.b.2 and 4.7.4.c during shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS has no adverse impact on the probability of occurrence or the consequences of an accident. The proposed amendment does not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident and the methodologies used in the accident analysis remain unchanged. The operating limits and the radiological consequences will not be changed. No design basis accidents will be affected by this change since the required TS surveillances will continue to be performed on an 18 month frequency.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

All design and performance criteria continue to be met and no new failure mechanisms have been identified. The proposed change does not affect the design or operation of any system or component in the plant since the required TS surveillances will continue to be performed on an 18 month frequency. The safety functions of the related structures, systems or components are not changed in any manner, nor is the reliability of any structure, system or component reduced. Conducting these surveillances online will not increase the possibility of plant transients. Since the safety functions and reliability are not adversely affected, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not affect or change a safety limit or affect plant operations since the required TS surveillances will continue to be performed on an 18 month frequency. This change will not reduce the margin of safety assumed in the accident analysis nor reduce any margin of safety as defined in the basis for any TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: August 8, 1997.

Description of amendment request: The proposed amendment would revise Table 3.3–3, Functional Units 4.b.2 and 5.a.2 of the Callaway Technical Specifications (TS) by (1) changing the main steam and feedwater isolation system (MSFIS) channels to be consistent with the requirements for the solid state protection system (SSPS), (2) adding a clarifying note, and (3) deleting and replacing Action Statements 27a and 34a with Action Statements 27 and 34. In addition, Table 4.3–2, Functional Units 4.b and 5.a are proposed to be revised by changing the slave relay quarterly surveillance to a quarterly actuation logic test for the MSFIS actuation and relays.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications (TS) have no adverse impact on the probability of occurrence or the consequences of an accident. The proposed amendment does not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident and the methodologies used in the accident analysis remain unchanged. The operating limits and the radiological consequences will not be changed. No design basis accidents will be affected by these changes. The proposed changes do not result in any hardware changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. All design and performance criteria continue to be met and no new failure mechanisms have been identified. The proposed changes do not affect the design or operation of any system or component in the plant. The safety functions of the related structures, systems or components are not changed in any manner, nor is the reliability of any structure, system or component reduced. However, these changes are consistent with the requirements for the SSPS. Since the safety functions and reliability are not adversely affected, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will not affect or change a safety limit or affect plant operations. These changes will not reduce the margin of safety assumed in the accident analysis nor reduce any margin of safety as defined in the basis for any TS. The proposed changes do not affect the acceptance criteria for any analyzed event. No setpoints are revised and the system response time will not be affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: August 8, 1997.

Description of amendment request: The proposed amendment would revise Table 3.7–2 of the Technical Specifications to specify that the lift setting tolerance for the main steam line safety valves be +3/−1% as-found and plus or minus 1% as-left. Table 2.2–1 would be revised by reducing the sensor error for the pressurizer pressure-high trip.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The main steam line safety valves are designed to mitigate transients by preventing overpressurization of the main steam system. The proposed change does not alter this design basis. The revised analysis shows that the probability or consequences of all previously analyzed accidents are not changed by increasing the setpoint tolerance of the safety valves. Therefore, there is no increase in the probability of occurrence or the consequences of any accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no new type of accident or malfunction created, the method and manner of plant operation will not change nor is there a change in the method in which any safety related system performs its function. Any main steam safety valve lifting at the extremes of the proposed tolerance will not result in a low lift setpoint that is less than the normal no load system pressure or a high lift setpoint that allows main steam system overpressurization.

3. The proposed change does not involve a significant reduction in a margin of safety.

This is based on the fact that no plant design changes are involved and the method and manner of plant operation remains the same. With the increased setpoint tolerance, the main steam safety valves will still prevent pressure from exceeding 110 percent of design pressure in accordance with the ASME code. All FSAR accident analysis conclusions remain valid and unaffected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: August 8, 1997.

Description of amendment request: The proposed amendment application would revise feedwater isolation engineered safety feature actuation system (ESFAS) functions in Technical Specification Tables 3.3–3, 3.3–4 and 4.3–2 as follows:

(1) The Applicable MODES for Functional Units 5.a.1), Automatic Actuation Logic and Actuation Relays, and 5.a.2), Automatic Actuation Logic and Actuation Relays, in Tables 3.3–3 and 4.3–2 would be revised to add MODE 3.

(2) A new Functional Unit 5.d, Steam Generator (SG) Water Level Low-Low (for feedwater isolation only), would be added to Tables 3.3–3, 3.3–4, and 4.3–2.

(3) In conjunction with the changes under item (2), the Applicable MODES in Table 3.3–3 for AFW SG Water Level Low-Low Functional Units 6.d.1).c), Start Motor-Driven Pumps Vessel delta T (Power-1, Power-2), would be revised to delete MODE 3. Functional Unit 6.d.3) in Table 4.3–2 would also be revised to delete MODE 3.

(4) The Bases for Functional Unit 11.b, Reactor Trip P–4, in Table 3.3–3 would be revised to add a note allowing the feedwater isolation function on P–4 coincident with low T_{avg} to be blocked.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Actuation Logic Applicability and New SG Water Level Low-Low Functional Unit

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes impose more stringent requirements and have been reviewed to ensure no previously evaluated accident has been adversely affected. The more stringent requirements are imposed to ensure the plant's operation and testing are consistent with the safety analysis and licensing basis. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed other than the bypass switch addressed in a separate 50.92 evaluation below) or changes in controlling parameters. The proposed changes do impose different requirements; however, these changes are consistent with assumptions made in the safety analysis and licensing basis. Actuation logic applicability is extended to MODE 3 and the SSPS slave relays that implement feedwater isolation on SG water level low-low will continue to be surveilled quarterly as they have always been tested. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The imposition of more stringent requirements does not reduce the margin of safety. The margin of safety would be increased since the scope of the Technical Specifications has been increased to include additional plant equipment and add additional Applicability requirements. The changes are consistent with the safety analysis and licensing basis. Therefore, the proposed changes do not involve a reduction in a margin of safety.

TTD Applicability

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The proposed change adds a relaxation to the Applicability for the SG Water Level Low-Low Vessel delta T channels. The proposed change in the Applicability will not affect any of the analysis assumptions for any of the accidents previously evaluated. The proposed change will not affect the probability of any event initiators nor will the proposed change affect the ability of any safety-related equipment to perform its intended function. A Vessel delta T channel should only be tripped if it is inoperable and the reactor is operating, when the need to restrict trip time delays is applicable. There will be no degradation in the performance of nor an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. Accident analyses have been performed with the maximum trip time delays enabled at power levels up to 19% RTP (10% RTP plus uncertainty). Therefore, operation in MODE 3 with the maximum trip time delays is enveloped. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The change in Applicability will not impact the normal method of plant operation. The maximum trip time delay should be enabled in MODE 3 to preclude an unnecessary feedwater isolation or auxiliary feedwater actuation from occurring prior to the expiration of the trip time delay previously analyzed for MODE 1 operation. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on any margin of safety.

Feedwater Isolation on P–4/Low T_{avg} Bypass Switch

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses. The P–4/Low T_{avg} Bypass Switch design change will not impact any accidents previously evaluated in the FSAR since feedwater isolation upon reaching this function was never credited.

The ESFAS will continue to function in a manner consistent with the accident analysis assumptions and the plant design basis. As such, there will be no degradation in the performance of nor an increase in the number of challenges to equipment assumed to function during an accident situation.

This Technical Specification change does not affect the probability of any event initiators. There will be no change to normal plant operating parameters or accident mitigation capabilities. Therefore, there will be no increase in the probability or consequences of any accident occurring due to this change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no changes in the method by which any safety-related plant system performs its safety function and the normal manner of plant operation is unaffected, other than the proposed allowance to bypass feedwater isolation on P–4 coincident with low T_{avg}. This bypass switch modification will be performed under the design standards applicable to all safety system bypasses at Callaway, except for Section 4.12 of IEEE 279–1971. Section 4.12 of IEEE 279–1971 requires that an operating bypass of a protective function be automatically removed whenever permissive conditions are not met. However, the subject circuitry does not provide a protective function. It is not assumed or credited in any safety analysis. In addition, plant conditions that would call for the restoration of the feedwater isolation function cannot occur without operator action to close the reactor trip breakers. Administrative controls will govern the proper use of and restoration from the proposed bypass. Although the addition of the bypass switch introduces the potential for an equipment malfunction of a different type from any previously evaluated in the FSAR, the possibility of a new or different type of accident is not created. The switch functions only to allow a manual bypass of feedwater isolation. The failure of the switch or its improper use will not be an event initiator for the previously analyzed Loss of Normal Feedwater event in FSAR Section 15.2.7 since it cannot fail in such a manner as to cause feedwater isolation.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effect or challenges imposed on any safety-related system as a result of this change. Therefore, the possibility of a new or different type of accident is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on DNBR limits, F_Q, F-delta-H, LOCA PCT, peak local power density, or any other margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 5, 1997.

Description of amendment request: The current Technical Specifications requirements prohibit loads in excess of 2500 pounds from traveling over irradiated fuel assemblies in the spent fuel pit. Due to the number of irradiated fuel assemblies currently stored in the spent fuel pit over years of operation, additional flexibility is needed to accomplish the movement of the spent fuel pit gates during refueling activities and to reduce fuel handling activities in preparation for refueling outages. In order to perform gate seal maintenance prior to each outage, a gate is moved across the irradiated fuel storage area to the cask handling area where it can be lifted out of the spent fuel pit. When a clear path of empty fuel storage cells cannot be established, seal maintenance cannot be performed unless relief from the current Limiting Condition of Operation is granted. The proposed changes will exempt these requirements for the movements of the spent fuel gates provided specific administrative controls are satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the North Anna Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The accident in question is a fuel handling accident in the spent fuel pit. The proposed changes will actually reduce the probability of a fuel handling accident by eliminating unnecessary fuel assembly movements. After this change is implemented, only those assemblies containing control rod assemblies will be subjected to such moves prior to movement of the gates instead of the current practice of moving all the fuel necessary to establish a load path of empty cells. A redundant rigging system will be provided which eliminates the possibility of a load drop due to a hoist failure. Furthermore, even though the double rigging system makes a load drop due to a hoist failure an incredible event, a calculation was performed to determine the effects of a direct impact load on a single fuel storage cell or the SFP (spent fuel pit) structure. The calculation concludes that there will be no adverse consequences to either irradiated fuel or the SFP structure. The plant design basis fuel handling accident will not be violated. Therefore, with the administrative controls in place to eliminate the possibility of a gate drop the probability of occurrence or the consequences of a fuel handling accident are not increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes establish adequate administrative controls over the spent fuel pit gate movements to prevent damage to stored irradiated fuel and fuel racks thereby ensuring the design basis fuel handling accident remains bounding and that fuel spacing is maintained in the racks precluding criticality.

3. Involve a significant reduction in any margin of safety.

The new administrative controls ensure that a postulated gate drop will not occur due to compliance with our licensing commitments to NUREG–0612 and the requirement to install a redundant rigging system to eliminate the possibility of a load drop initiated by hoist failure. Analysis has determined that in the event the gate was to be dropped from its controlled lift height: (1) There will be no damage to irradiated fuel caused by the direct impact loading on a single storage cell and (2) the fuel storage rack will maintain fuel in a non-critical array. A new criteria, demonstrating the ability of the pool floor to remain intact after a gate drop has been shown by analysis. New controls prevent the degradation of the existing margin of safety and ensure an adequate safety margin for the new criteria. The administrative controls added for the gate lift preclude the possibility of a load drop induced by a hoist failure and, therefore ensure the potential for radioactivity release and inadvertent criticality remain bounded by the present design basis. Therefore, the margin of safety is not reduced by the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: James E. Lyons.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 18, 1997.

Description of amendment request: The Technical Specifications surveillance requirements currently require testing and inspection of the Turbine Overspeed Protection System control valves, at least once per 31 days, to ensure their ability to prevent overspeeding of the turbine. Based on an analysis of Westinghouse BB–296 turbines with steam chests, the proposed change would increase the surveillance test interval from at least once per 31 days to at least once per 92 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the North Anna Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No new or unique accident precursors are introduced by these changes in surveillance requirements. The probability of turbine missile ejection with an extended test interval to 92 days for the turbine governor and throttle valves has been determined to remain within the applicable NRC acceptance criteria. The heavy hub design of the turbine rotors provides further assurance that the probability of ejection of turbine missiles due to destructive overspeed remains within the acceptance criteria. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The demonstrated high reliability of the turbine governor and throttle valves and the verification of the operability of the other turbine control valves provide adequate assurance that the turbine overspeed protection system will operate as designed, if needed. Turbine governor and throttle valve testing performed to date has demonstrated the reliability of these valves. In addition, the operability of the other turbine valves (i.e., reheat and intercept stop valves) will continue to be verified every 18 months as required by the Technical Specifications.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the implementation of the proposed change to the surveillance requirements will not require hardware modifications (i.e., alterations to plant configuration), operation of the facilities with these proposed Technical Specifications does not create the possibility for any new or different kind of accident which has not been already been evaluated in the Updated Final Safety Analysis Report (UFSAR). In addition, the results of the probabilistic evaluation indicate that no additional transients have been introduced.

The proposed revision to the Technical Specifications will not result in any physical alteration to any plant system, nor would there be a change in the method by which any safety-related system performs its function. The design and operation of the turbine overspeed protection and turbine control systems are not being changed.

The proposed Technical Specifications changes do not affect the design, operation, or failure modes of the valves and other components of the turbine overspeed protection system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not reduce the margin of safety as defined in the basis for any Technical Specifications. Furthermore, the total turbine missile ejection probability continues to be enveloped by the applicable acceptance criteria of 1E–5. The design and operation of the turbine overspeed protection and turbine control systems are not being changed and the operability of the turbine governor and throttle valves will be demonstrated on a refuelling outage basis. In addition, the results of the accident analyses, which are documented in the UFSAR, continue to bound operation with the proposed change in surveillance interval for the turbine throttle and governor valves, so that there is no safety margin reduction. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: James E. Lyons.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket Nos. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: November 21, 1997.

Description of amendments request: Amend Technical Specifications to add a one-time allowance through Operating Cycle 9 to Surveillance Requirement 4.4.3.2.1.b to perform stroke testing of the power-operated relief valve in Mode 5 rather than in Mode 4.

Date of publication of individual notice in the **Federal Register:** December 1, 1997 (62 FR 63565).

Expiration date of individual notice: December 31, 1997.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 30, 1995, as supplemented March 15, 1996, March 6, 1997, and June 27, 1997.

Brief description of amendments: The amendments incorporate references to a new Combustion Engineering, Inc. topical report describing steam generator tube sleeves, delete references to the previous CE topical report, incorporate sleeve/tube inspection scope and expansion criterion, revise the plugging limit for a CE sleeve to 28% of the nominal sleeve wall thickness, and incorporate a post weld heat treatment for free span welds.

Date of issuance: November 18, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 223 and 199.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 3, 1996 (61 FR 176). The March 15, 1996, March 6, 1997, and June 27, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated November 18, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 6, 1997.

Brief description of amendments: The amendments address an unreviewed safety question associated with the handling of the spent fuel shipping cask at the Brunswick Steam Electric Plant, Units 1 and 2.

Date of issuance: December 2, 1997.

Effective date: December 2, 1997.

Amendment Nos.: 190 and 221.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments authorize changes to the facility's Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: September 17, 1997 (62 FR 48897) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 18, 1997.

Brief description of amendment: This amendment revises the maximum allowable power range neutron flux high setpoints (percent of rated thermal power) shown in Technical Specification Table 3.7–1.

Date of issuance: November 25, 1997.

Effective date: November 25, 1997.

Amendment No.: 75.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 9, 1997 (62 FR 17225) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: April 7, 1997, as supplemented on August 7, 1997.

Brief description of amendments: The amendments revise the technical specifications to permit installation and use of C&D Charter Power Systems, Inc., batteries.

Date of issuance: November 25, 1997.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 93 and 93.

Facility Operating License Nos. NPF–37 and NPF–66: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54868). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 13, 1997, as supplemented by letters dated October 28 and November 5, 1997.

Brief description of amendments: The amendments revise TS Table 3.3–4, "Engineered Safety Features [ESF] Actuation System Instrument Trip Setpoints." Specifically, the amendments support the replacement of three safety-related narrow range Refueling Water Storage Tank level instruments with three safety-related wide range level instruments. The ESF trip setpoint for the refueling water automatic switchover to recirculation is revised to account for the difference in instrument uncertainty associated with wide range level instruments and provides additional operator response time margin.

Date of issuance: November 25, 1997.

Effective date: Unit 1—As of the date of issuance to be implemented consistent with the refueling outage scheduled for June 1998; Unit 2—As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 177 (Unit 1); 159 (Unit 2).

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54859). The October 28 and November 5, 1997, letters provided additional and clarifying information that did not change the scope of the October 13, 1997, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: October 10, 1997, as supplemented by letters dated November 3, 6, and 10, 1997.

Brief description of amendments: The amendments revise Technical Specifications to implement alternate repair criteria for steam generator tubes that have degraded roll joints inside of the upper tubesheet. The alternate repair criteria would allow new roll joints to be installed below the degraded roll joints in the upper tubesheet.

Date of issuance: November 21, 1997.

Effective date: November 21, 1997.

Amendment Nos.: Unit 1—227; Unit 2—227; Unit 3—224.

Facility Operating License Nos. DPR–38, DPR–47, AND DPR–55: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (62 FR 55835 dated October 28, 1997). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by November 28, 1997, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and a final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 21, 1997.

Attorney for licensee: M. J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: March 10, 1997, as supplemented July 28 and September 17, 1997.

Brief description of amendment: The amendment modifies Technical Specification 3/4.4.5, "Steam Generators," and its associated Bases

and adds a new license condition to Appendix C for Beaver Valley Power Station, Unit No. 1 (BVPS–1) to allow repair of steam generator tubes by installation of sleeves developed by ABB Combustion Engineering. In addition, the amendment deletes the option for using the kinetic sleeving methodology previously approved for use at BVPS–1.

Date of issuance: November 25, 1997.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 208.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register**: April 23, 1997 (62 FR 19829). The July 28 and September 17, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the April 23, 1997, **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 25; 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: September 12, 1997, as supplemeneted November 7, 1997.

Brief description of amendment: The proposed amendment involves a revision to the Emergency Diesel Generator protective relaying scheme at Crystal River Unit 3, to be reflected in the next revision to the Final Safety Analysis Report (FSAR).

Date of issuance: December 1, 1997.

Effective date: Effective upon issuance.

Amendment No.: 159.

Facility Operating License No. DPR–72:. Amendment revises the FSAR.

Date of initial notice in **Federal Register**: September 30, 1997 (62 FR 51165). By letter dated November 7, 1997, the licensee provided additional information which did not affect the original no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 10, 1996, as supplemented March 25, June 6, and August 29, 1997.

Brief description of amendment: The amendment extends the instrumentation surveillances for the condenser low vacuum, high temperature main steamline tunnel, recirculation flow, and reactor coolant leakage. Additionally, the change extends the equipment test/operability checks for containment vent and purge isolation, electromagnetic relief valve operability, and drywell to torus leakage test.

Date of Issuance: November 26, 1997.

Effective date: November 26, 1997, with full implementation within 60 days.

Amendment No.: 193.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 6, 1996 (61 FR 57485). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 26, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of application for amendment: May 20, 1997, as supplemented on September 23, 1997.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by relocating the containment isolation valve (CIV) list from the TSs to the Technical Requirements Manual in accordance with Generic Letter 91–08, "Removal of Component Lists from the Technical Specifications." The amendment also changes the surveillance requirement for valves, blind flanges, and deactivated automatic valves located inside containment that are locked, sealed, or otherwise secured in the closed position from once every 31 days to during each cold shutdown, but no more than once per 92 days. The TS Bases is changed to reflect the relocation of the containment isolation valve list from the TSs to the Technical Requirements Manual and dicusses administrative controls for CIV operation in Modes 1 through 4. Also, a license condition has been added to paragraph 2.C. of the Operating License to ensure enforceability and to provide a method of tracking the license condition back to the license amendment.

Date of issuance: November 19, 1997.

Effective date: As of the date of issuance, to be implemented within 90 days.

Amendment No: 210

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications and License Conditions.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33128). The September 23, 1997, letter provided clarification of the initial submittal and did not affect the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut.

Date of application for amendment: September 16, 1997.

Brief description of amendment: The amendment changes the main steam line American Society of Mechanical Engineers Code (Code) safety valves Technical Specifications (TSs) by: (1) Deleting TS Table 3.7.1, "Maximum Allowable Power Level-High Trip Setpoint with Inoperable Steam Line Safety Valves During Operation with Both Steam Generators," by not allowing operation in Mode 1 or 2 with inoperable Code safety valves while allowing operation in Mode 3 with up to three Code safety valves inoperable per steam generator, (2) modifing the associated action statement in TS 3.7.1.1 to reflect the operational changes, and (3) updating the TS Bases to reflect the proposed changes and include the correct amendment history numbers to

reflect previously approved amendments.

Date of issuance: November 19, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 211.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1997 (62 FR 52582). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: September 26, 1997.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.4.B, "Auxiliary Feedwater System," to provide specific guidance for conducting post-maintenance operational testing of the turbine-driven auxiliary feedwater pump and associated system valves to meet operability requirements and limiting conditions for operation during unit startup. Additionally, the amendments revise Table TS.3.5.2B to allow the auxiliary feedwater pump auto-start actuation instrumentstion to be bypassed during startup and shutdown operations when the main feedwater pumps are not required to supply feedwater to the steam generators.

Date of issuance: November 25, 1997.

Effective date: November 25, 1997, with full implementation within 30 days.

Amendment Nos.: 134 and 126.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1997 (62 FR 54874). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 20, 1996.

Brief description of amendment: The amendment revises the technical specifications to correct and clarify surveillance test requirements for the reactor protective system and other plant instrumentation and control systems.

Date of issuance: November 24, 1997.

Effective date: November 24, 1997, to be implemented within 120 days of the date of issuance.

Amendment No.: 182.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1996 (61 FR 44361). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Public Service Electric & Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: May 10, 1996, as supplemented March 19 and August 29, 1997.

Brief description of amendment: The amendment incorporates into the Technical Specifications the Margin Recovery portion of the Fuel Upgrade Margin Recovery Program and support increased steam generator plugging, improved fuel reliability, reduced fuel costs, longer fuel cycles, reduced spent fuel pool storage, and enhanced reactor safety.

Date of issuance: November 26, 1997.

Effective date: As of date of issuance. To be implemented on Unit 1 prior to entry into Mode 2 from the current outage.

Amendment No.: 201.

Facility Operating License No. DPR–70: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1996 (61 FR 34898). The March 19 and August 29, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: January 4, 1996.

Brief description of amendments: These amendments delete License Condition 2.C(26) for SONGS Unit 2 and License Condition 2.C(27) for SONGS 3. These license conditions require that Southern California Edison implement and maintain a plan for scheduling all capital modifications based on an NRC approved Integrated Implementation Schedule Program Plan.

Date of issuance: December 3, 1997.

Effective date: December 3, 1997.

Amendment Nos.: Unit 2—137; Unit 3—129.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses.

Date of initial notice in **Federal Register:** April 10, 1996 (61 FR 15997). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 3, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 20, 1997.

Brief description of amendment: This amendment revises Technical Specification (TS) Section 3/4.5.2, "Emergency Core Cooling Systems, ECCS Subsystems – T_{avg} greater than or equal to 280°F," TS Section 3/4.5.3, "Emergency Core Cooling Systems, ECCS Subsystems – T_{avg} less than 280 °F," and TS Section 3/4.7, "Plant Systems." Several surveillance intervals were changed from 18 months to once each refueling interval.

Date of issuance: December 2, 1997.

Effective date: December 2, 1997.

Amendment No.: 216

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1997 (62 FR 11498). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: September 17, 1996, as supplemented by letters dated November 27, 1996, and October 14, 1997.

Brief description of amendment: This amendment revises the surveillance interval from 18 months to less than or equal to 730 days, nominally 24 months, for Technical Specification (TS) 3/4.5.2, "Emergency Core Cooling Systems—ECCS Subsystems—T_{avg} greater than or equal to 280 degrees F"; TS 3/4.6.5.1, "Containment Systems—Shield Building—Emergency Ventilation System"; TS 3/4.7.6.1, "Plant Systems—Control Room Emergency Ventilation System"; TS 3/4.7.7, "Plant Systems—Snubbers"; TS 3/4.9.12, "Refueling Operations—Storage Pool Ventilation"; and TS Bases 3/4.7.7—"Snubbers."

Date of issuance: December 2, 1997.

Effective date: Immediately, and shall be implemented no later than 120 days after issuance.

Amendment No.: 217.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1996 (61 FR 52972). The supplemental information submitted by the licensees did not impact the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: December 11, 1996 (as supplemented by letter dated January 6, 1997), January 30, 1997 (as supplemented by letter dated September 15, 1997), and April 18, 1997.

Brief description of amendment: This amendment extends surveillance requirement intervals from 18 to 24 months, revises setpoints, and revises TS 2.2, "Limiting Safety System Settings." Administrative changes have also been made.

Date of issuance: December 2, 1997.

Effective date: December 2, 1997.

Amendment No.: 218.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Dates of initial notice in **Federal Register:** January 15, 1997 (62 FR 2194), March 12, 1997 (62 FR 11498) and June 4, 1997 (62 FR 30654). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1997.

No significant hazards consideration comments received: No. The supplemental information provided by the licensees did not affect the proposed no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 10th day of December 1997.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32763 Filed 12–16–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

American Electric Power Company; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated October 9, 1997, David A. Lochbaum, on behalf of the Union of Concerned Scientists, has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Donald C. Cook Nuclear Plant, Units 1 and 2, operated by American Electric Power Company (the Licensee).

The Petition requests that the operating licenses for D.C. Cook, Units 1 and 2, be modified, revoked, or suspended until there is reasonable assurance that the Licensee's systems are in conformance with design-and licensing-bases requirements. The Petition requests that systems with a safety function at D.C. Cook be qualified and capable of performing their required function under all design conditions before restart. The Petition also requests that a public hearing into this matter be held in the Washington, DC, area before the first unit at D.C. Cook is authorized to restart.

As the basis for these requests, the Petition states that the NRC recently completed an architect/engineer design inspection at D.C. Cook. The Licensee had previously reviewed the same systems as part of its design-basis documentation reconstitution program. Findings by the NRC inspection team led to a shutdown of both units and has necessitated changes to the plant's physical configuration. Therefore, the Petition asserts that the Licensee's design-basis documentation reconstitution and updated final safety analysis report validation programs lack the necessary rigor and focus. The Petition further asserts that deficiencies in the Licensee's design control programs may also be responsible for similar problems in its safety systems, which were not examined by the NRC.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on this Petition within a reasonable time. A copy of the Petition is available for public inspection at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 9th day of December 1997.

For The Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32878 Filed 12–16–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange

Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 17Ad–2(c), (d), and (h), SEC File No. 270–149 OMB Control No. 3235–0130
Rule 17Ad–10, SEC File No. 270–265 OMB Control No. 3235–0273

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17Ad–2(c), (d) and (h) Transfer Agent Turnaround, Processing and Forwarding Requirements

Rule 17Ad–2(c), (d), and (h), under the Securities Exchange Act of 1934, enumerate the requirements with which transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 1,326 transfer agents, approximately ten notices pursuant to 17Ad–2(c), (d), and (h) are filed annually. In view of (a) the readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion that such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on the average, most Notices require approximately one-half hour to prepare. The Commission staff estimates a cost of approximately $30.00 for each half hour spent preparing the notices per year, transfer agents spend an average of five hours per year complying with the rule at a cost of $300.

Rule 17Ad–10 Prompt Posting of Certificate Detail to Master Securityholder Files; Maintenance of Accurate Securityholder Files and Control Book; and Retention of Certificate Detail

Rule 17Ad–10, under the Securities Exchange Act of 1934, requires approximately 1,326 registered transfer agent to create and maintain minimum information on securityholders' ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityholder records to keep certificate detail that has been cancelled from those records for a minimum of six years and to maintain and keep current an accurate record of the number of shares or principle dollar amount of debt securities that the issuer has authorized to be outstanding (a "control book"). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding overissuance.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 20 hours per year, totalling 26,520 hours industry-wide. The average cost is approximately $20 per hour, with the industry-wide cost estimated at approximately $530,400. However, the information required by Rule 17Ad–10 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 8, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32826 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Ballantyne of Omaha, Inc., Common Stock, $.01 Par Value) File No. 1–13906

December 11, 1997.

Ballantyne of Omaha, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security recently was listed for trading on the New York Stock Exchange ("NYSE") pursuant to a Registration Statement which became effective December 1, 1997. Trading in the Security commenced on the NYSE on December 5, 1997. The Company's Board of Directors determined that in order to avoid the costs and the division of the market resulting from a dual-listing, the Security should be withdrawn from listing and registration on the Amex.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons and facts supporting the withdrawal.

In making the decision to withdraw its Security from listing and registration on the Amex, the Company also considered the increased visibility and liquidity that a listing on the NYSE may provide.

By letter dated November 14, 1997, the Amex informed the Company that it had no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports with the Commission and the Exchange under Section 13 of the Act.

Any interested person may, on or before January 6, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32820 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1606/803–116]

ProFutures Capital Management, Inc.; Notice of Application

December 11, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

Applicant: ProFutures Capital Management, Inc. ("PMC").

Relevant Advisers Act Sections: Exemption requested under section 203A(c) from section 203A(a).

Summary of Application: Applicant requests an order to permit it to register with the SEC as an investment adviser.

Filing Dates: The application was filed on July 8, 1997, and amended on October 3, 1997 and December 2, 1997.

Hearing or Notification of Hearing

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the requests, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 7, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, ProFutures Capital Management, Inc., Suite 200, 1310 Highway 620 South, Austin, Texas 78374.

FOR FURTHER INFORMATION CONTACT: Robert J. Leonard, Attorney, at (202) 942–0646, or Jennifer S. Choi, Special Counsel, at (202) 942–0716 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Texas corporation with its principal place of business in Austin, Texas. Applicant researches and evaluates the performance and trading programs of other investment advisers who manage client accounts on a discretionary basis and refers clients to those advisers selected by applicant.

2. Applicant assists prospective clients in identifying their investment objectives and risk tolerance, and provides information on investment advisers whose trading programs seek to meet those objectives. Applicant provides clients with account opening documents and reviews all account documents for accuracy before forwarding them to the adviser that the client has selected. Applicant also reviews all accounts for client suitability. Additionally, applicant assists clients in allocating assets among the selected investment advisers and suggests adjustments to the allocations. Applicant does not have discretionary authority on behalf of clients to select the advisers or allocate client funds to selected advisers.

3. Applicant is compensated for referring clients to selected advisers by sharing in up to one half of the management fee charged by such adviser. Applicant has over 700 clients located nationwide. These clients include individuals, financial institutions, pension and profit sharing plans, trusts, estates and other corporate entities

4. Applicant is legally obligated to be registered in at least 30 states as an investment adviser, taking into account the national de minimis standard in section 222(d) of the Advisers Act and all applicable exemptions and exclusions under the securities laws and regulations of such states. Applicant is currently registered in 46 states. Applicant was registered as an investment adviser with the SEC until July, 1997.

Applicant's Legal Analysis

1. On October 11, 1996, the National Securities Markets Improvement Act of 1996 was enacted. Title III of the Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), added new section 203A to the Advisers Act. Under section 203A(a)(1),[1] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the SEC unless the investment adviser (i) has assets under management of not less than $25 million or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940 ("Investment Company Act"). Section 203A(a)(2) defines the phrase "assets under management" as the "securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services."[2]

2. applicant states that it does not qualify for registration as an investment adviser with the SEC. Applicant states that it has no assets under management, does not act as an investment adviser to an investment company registered under the Investment Company Act, and does not qualify for exemption from the prohibition on SEC registration as provided in rule 203A–2 under the Advisers Act. Applicant also maintains its principal place of business in Texas, which regulates applicant as an investment adviser.

3. Section 203A(c) of the Advisers Act authorizes the SEC to permit an investment adviser to register with the SEC if prohibiting registration would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A]."[3]

4. Applicant states that Congress noted that "the definition of 'assets under management' . . . may, in some cases, exclude firms with a national or multistate practice from being able to register with the SEC."[4] Applicant asserts that to remedy any unfairness, burdens or inconsistencies caused by the assets under management requirement, Congress intended the SEC to use its exemptive authority to "permit, where appropriate, the registration of such firms with the [SEC]."[5]

5. Applicant believes that Congress in adopting section 203A intended the SEC

[1] 15 U.S.C. 80b–3a(a)(1).
[2] 15 U.S.C. 80b–3a(a)(2).
[3] 15 U.S.C. 80b–3a(c).
[4] S. Rep. No. 293, 104th Cong., 2d Sess. 4 (1996).
[5] *Id.* at 5.

to grant these exemptions to advisers having a "national or multistate practice" and that "[l]arger advisers, with national businesses, should be registered with the [SEC] and be subject to national rules." [6] Applicant notes that Congress chose an assets under management requirement as a rough proxy that would divide responsibilities between the SEC and the states; investment advisers managing $25 million or more of assets under management are more likely to be national investment advisers.

6. Applicant asserts that prohibiting it from registering with the SEC would be a burden on interstate commerce in that applicant would be subject to the regulations and oversight of at least 30 jurisdictions, which would impede applicant's ability to operate its national business on a uniform basis. Applicant states that it is legally obligated to be registered in at least 30 jurisdictions as an investment adviser, taking into account the national de minimis standard in section 222(d) of the Advisers Act and all applicable exemptions and exclusions under the securities laws and regulations of such states. Applicant states that the extent of its investment advisory services means that it does not qualify for the national de minimis exemption, as set forth in section 222(d) of the Advisers Act, in at least 30 states because it has provided investment advisory services to more than five clients during the preceding twelve months who are residents of those states.

7. Section 222(d) of the Advisers Act makes state investment advisers statutes inapplicable to investment advisers that do not have a place of business located within that state and, during the preceding twelve month period, have fewer than six clients who are residents of that state.

8. Applicant also asserts that to prohibit it from registered with the SEC would be unfair because applicant's investment advisory business is substantially similar to that of other national investment advisers who are eligible for SEC registration and oversight. Moreover, applicant believes that it would be inconsistent with the purposes of section 203A if it is prohibited from being registered with the SEC.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32919 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

[6] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39418; File No. SR–CBOE–97–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Margin and Net Capital Requirements for Joint Back Office Arrangements

December 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 27, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rule 12.3 and adopt new Exchange Rule 13.4 to establish margin and net capital requirements for Joint Back Office ("JBO") participants and clearing firms.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Exchange Rule 12.3 and adopt new Exchange Rule 13.4 to establish margin and net capital requirements for JBO participants and clearing firms. JBO arrangements permit a participating broker-dealer to be deemed self-clearing for margin purposes and entitle the participating broker-dealer to good faith credit.[2]

In recent amendments to Regulation T,[3] the Board of Governors of the Federal Reserve System ("FRB") placed its reliance on the authority of self-regulatory organizations ("SROs") to ensure the reasonableness of JBO arrangements.[4] When the provision permitting JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit extended to a JBO participant and its ownership interest in the clearing firm. Consequently, the FRB did not establish any explicit requirement for the amount of ownership each participant should have in the JBO. Because Regulation T does not provide an ownership standard,[5] however, good faith credit has been extended to "owners" holding merely a nominal interest in a clearing firm.

In conjunction with other SROs and representatives from the securities industry, the Exchange has established standards for JBO participants and clearing firms. These standards will permit the extension of good faith credit to clearing firm "owners" only when the owners maintain meaningful assets on deposit with the JBO clearing firm, and the clearing firm maintains sufficient net capital and risk control procedures to carry such accounts. The Exchange's proposed rule change would establish the following requirements:

Net Capital Requirements. As proposed, Exchange Rule 13.4 will require each JBO participant [6] to be a registered broker-dealer subject to the net capital requirements prescribed by Commission Rule 15c3–1 ("Rule 15c3–1").[7] JBO participants may not claim the net capital exemption available to option market makers under Commission Rule 15c3–1(b)(1).[8] JBO participants will be required to deposit and maintain minimum account equity of $1,000,000, and also will be subject to Financial and Operational Combined Uniform Single Report ("FOCUS") filings and certified audits. In addition, each JBO participant must meet and maintain the ownership standards established by the JBO clearing member. To ensure that adequate procedures exist for complying with these requirements, JBO participants will be required to employ or have access to a qualified Series 27 principal.

In addition, the proposed rule change will require a clearing member carrying JBO accounts to notify its Designated Examining Authority in writing of its intention to clear such accounts and will require the clearing member to comply with additional net capital requirements prescribed by the Exchange. Such a clearing member must maintain either: (i) tentative net capital of $25 million; [9] or (ii) net capital of $10 million, if the clearing member's primary business is the clearance of option market maker accounts. A clearing member will be deemed to conduct a primary options market maker business if at least 60% of the gross haircuts calculated for all options market maker and JBO participant accounts, in aggregate, is attributable to options market maker transactions. A JBO clearing firm conducting a primary options market maker business must include the gross deductions calculated for all JBO participant accounts in its ratio of gross options market maker deductions to adjusted net capital.

Further, each JBO clearing member shall adjust its net worth daily by deducting any deficiency between a JBO participant's account equity and the proprietary haircut calculated pursuant to Rule 15c3–1 for the positions maintained in the JBO account. As previously referenced, each clearing member which maintains JBO accounts must require and maintain equity of $1,000,000 for each JBO participant, over all related funds. The clearing member is required to issue a margin call if the JBO participant's account equity falls below the $1,000,000 threshold. Finally, each JBO clearing member will be required to establish and maintain written ownership standards for JBO accounts.[10] The clearing member also must develop risk analysis standards which are acceptable to the Exchange and comply with the requirements of Exchange Rule 15.8.

Margin Requirements. The Exchange proposes to revise Exchange Rule 12.3, Margin Requirements, to permit a member organization to carry the accounts of JBO participants on a good faith margin basis. The JBO accounts must comply with the requirements established in Regulation T, Section 220.11,[11] and Exchange Rule 13.4, as modified above. JBO participants must maintain equity of at least $1,000,000 in their accounts. If the equity falls below $1,000,000, the JBO clearing firm must issue a margin call for additional funds or securities which must be satisfied within 5 business days.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Exchange further believes that the proposed rule change is designed to ensure the reasonableness of JBO arrangements in accordance with the FRB's directive in its recent amendments to Regulation T.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and argument concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–58 and should be submitted by January 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32823 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Under the proposed rule change, JBO participants would not be considered self-clearing for any purpose other than the extension of credit under Exchange Rule 12.3, as revised, or under the comparable rules of another self-regulatory organization.

[3] 12 CFR 220 *et seq.* Regulation T is entitled "Credit by Brokers and Dealers." The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

[4] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[5] Section 220.11(a)(2) of Regulation T only requires that a JBO clearing firm be "a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers]." 12 CFR 220.11(a)(2).

[6] The proposed rule change allows members and member organizations to establish JBO arrangements with JBO clearing members.

[7] 17 CFR 240.15c3–1.

[8] 17 CFR 240.15c3–1(b)(1).

[9] The term "tentative net capital" refers to a clearing member's net capital before the application of haircuts and undue concentration deductions.

[10] The Exchange will not require JBO clearing members to establish ownership standards that meet any minimum guidelines in addition to the rules of the Exchange. As a result, clearing members will possess the discretion to develop the ownership criteria governing their JBO accounts. However, should the Exchange learn of any inappropriate ownership standards through its audit and surveillance activities, the Exchange will move to correct the impropriety. Telephone conversation between Timothy Thompson, Senior Attorney, Exchange, and Michael L. Loftus, Attorney, Division of Market Regulation, Commission (November 25, 1997).

[11] 12 CFR 220.11.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39433; File No. SR–CBOE–97–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Transaction Fees for Options on the Three Dow Jones Averages

December 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify the Exchange transaction fees applicable to transactions in options based on Dow Jones & Company indexes ("Dow Jones").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the large trade discount program applicable to transactions in options based on Dow Jones indexes, three of which began trading on October 6, 1997.[3] The fee changes, implemented by the Exchange pursuant to CBOE Rule 2.22, will be made retroactive to the launch of these products on October 6, 1997.

The Exchange believes that because of the relatively small size of the option contracts on the Dow Jones indexes, the current transaction fees have been somewhat of a disincentive for institutional trading. Consequently, the Exchange has decided to reduce the fees applicable to large trade (*i.e.* those trades of over 1000 contracts) for all market participants. Under the current Dow Jones large trade discount program, customer orders in excess of one thousand contracts have received a fifty percent discount on all contracts in excess of one thousand. As before, the Dow Jones program will be separate and distinct from the Large Trade Discount Program currently applicable to all other CBOE products.

Retroactive to the launch date of October 6, 1997,[4] the large trade discount program for the Dow Jones products will be:

Customer Orders

- First 1,000 contracts of an order are assessed regular transaction fees (same as current program):
- $0.40 per contract when the premium is $1 or more;
- $0.20 per contract when the premium is under $1.
- Contracts 1,001 and above of an order will receive a 100% discount. (The current program provides a 50% discount.)

Member Firm Proprietary Orders

- First 1,000 contracts are assessed regular transaction fees of $0.10 (same as current program).
- Contracts 1,001 and above will receive a 100% discount. (The current program does not provide a discount.)

Market-Makers on the Other Side of Large Orders

- All market-maker contracts on the other side of a Dow Jones customer or member firm proprietary order of more than 1,000 contracts will receive a 100% discount on transaction fees. The waiver of the transaction fee is applicable to all market-makers on the other side of the trade and is applicable to the entire order, not just the portion over 1,000 *contracts.*

Trade match fees of $0.04 per contracts and floor brokerage fees of $0.03 per contracts under the original program will not be changed. Large trade discounts will be calculated after each month end. Discounts will be credited to clearing firms in the following month's Exchange billing statements.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] On September 3, 1997, the Commission approved CBOE's request to trade options on the following Dow Jones indexes, the Dow Jones Industrial Index ("DJX"), the Dow Jones Utilities Index ("DUX"), and the Dow Jones Transportation Index ("DTX"). *See* Securities Exchange Act Release Nos. 39011, 62 FR 47841 (September 11, 1997) (order approving File No. SR–CBOE–97–26); 39013, 62 FR 47845 (September 11, 1997) (order approving File No. SR–CBOE–97–28); and 39012, 62 FR 47850 (September 11, 1997) (order approving File No. SR–CBOE–97–27).
[4] The Exchange will recalculate October discounts with the intent of including credits in November billing statements sent to clearing firms. If programming changes are not completed by the end of November, the Exchange will endeavor to send checks to clearing firms in early December for October discounts.
[5] 15 U.S.C. 78f(b).
[6] 15 U.S.C. 78f(b)(4).
[7] 15 U.S.C. 78s(b)(3)(A).
[8] 17 CFR 19b–4(e).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the CBOE. All submissions should refer to File No. SR–CBOE–97–62 and should be submitted by January 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–32918 Filed 12–16–97; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39435; File No. SR–CBOE–97–55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Telephone Policy for the S&P 100 Index ("OEX") Options Post

December 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 9, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its current policy governing the use of member-owned or Exchange-owned telephones located at the post where Standard & Poor's 100 Index ("OEX") options are traded to allow market makers to receive incoming telephone calls from locations outside the CBOE building on telephones at the OEX post.[1]

The text of the regulatory circular is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's current regulatory circular (Regulatory Circular 96–73) governing the use of telephones at the OEX option trading post by eliminating the restriction against market makers receiving incoming calls at the OEX post from locations outside of the Exchange building. According to the CBOE, when the OEX Floor Procedure Committee ("Committee") recommended that the Exchange adopt a policy prohibiting market makers from receiving incoming calls at the OEX post, the Committee was concerned that the receipt of telephone calls would interfere with the market makers' fulfillment of their duties to make markets and fill orders. However, the CBOE notes that all other trading posts on the CBOE's floor have successfully allowed market makers to receive incoming calls without any detrimental effects on the conduct of business at those locations. In fact, the Exchange has found that allowing market makers to receive incoming calls can allow them to stay in contact with outside parties who can provide information to the market makers that may assist them in performing their duties.

The proposed change to allow market makers to receive incoming calls will make the OEX telephone policy consistent with the telephone policy at all other trading locations on the CBOE's floor in this respect. Under the proposal, the Exchange will allow market makers to have their own dedicated telephone or telephone line if space permits. The Exchange will retain the discretion to decide whether a market maker may have its own telephone or a dedicated line on an Exchange telephone depending on the space restrictions in the post.

The Exchange also is amending the OEX telephone installation application and agreement to reflect the proposed change.

The Exchange believes the proposed rule change will allow market makers to better perform their duties by giving them more open access to outside information. In addition, the proposed change will make the OEX telephone policy consistent with the policies elsewhere on the Exchange floor. For the foregoing reasons, the Exchange believes the rule proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by providing better access to the OEX post.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to

[9] 17 CFR 200.30–3(e)(12).
[1] The Commission approved the Regulatory Circular (Regulatory Circular 96–73) containing the current OEX telephone policy on July 26, 1996. *See* Securities Exchange Act Release No. 37487 (July 26, 1996), 61 FR 40686 (August 5, 1996) (order approving File No. SR–CBOE–96–14).

Section 19(b)(2) of the Act. According to the CBOE, the proposed change is consistent with the use of telephones at other locations on the CBOE floor, including at the equity option telephone posts, where the use of telephones is governed by a policy approved by the Commission.[2]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[3] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and maintain fair and orderly markets.[4] Specifically, the CBOE has represented that allowing OEX market makers to receive incoming calls from outside the CBOE building may allow OEX market makers to receive information that will assist OEX market makers in performing their duties. In addition, the proposal will make the OEX telephone policy regarding market makers' receipt of incoming calls consistent with the telephone policies at all other trading locations on the CBOE floor.

The Commission believes that it is reasonable for the Exchange to amend its telephone policy for OEX market makers to make the policy consistent with the procedures applicable to all other trading locations on the CBOE has indicated that market makers' receipt of incoming calls at other trading posts on the CBOE floor. In this regard, the Commission notes that the CBOE floor has produced no detrimental effect on the conduct of business at those trading posts. In addition, the CBOE states that the Exchange has not detected any improper trading activity resulting from its telephone policies.[5] The Commission believes, as it found in approving the CBOE's telephone policy for equity options, that the Exchange's existing surveillance procedures will ensure that the CBOE is aware of any options transactions that raise manipulation concerns.[6] Accordingly, the Commission believes that the CBOE's modification of its telephone policy for OEX market makers will not diminish the Exchange's ability to detect and deter manipulation.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerated approval will allow the CBOE to implement a uniform policy regarding market makers' receipt of incoming calls at their trading posts. Accordingly, the Commission believes that granting accelerated approval to the proposal is appropriate and consistent with Section 6 of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and argument concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–97–55 and should be submitted by January 7, 1998.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–97–55) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–32920 Filed 12–16–97; 8:45 am]
BILLING CODE 8010–01–M

[2] The Commission approved the CBOE's proposal to incorporate its telephone policy for equity options into the rules of the Exchange in 1994. *See* Securities Exchange Act Release No. 33701 (March 2, 1994), 59 FR 11336 (March 10, 1994) (order approving File No. SR–CBOE–93–24) ("Equity Option Approval Order").

[3] 15 U.S.C. 78f(b)(5)(1988).

[4] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(b)(5).

[5] Telephone conversation among Timothy Thompson, Senior Attorney, CBOE, Pat Cerny, Market Surveillance, CBOE, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on November 18, 1997 ("November 18 Conversation").

[6] *See* Equity Option Approval Order, *supra* note 2.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39422; File No. SR–DTC–97–20]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Expanding the Money Market Instrument Settlement Program

December 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 22, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on November 13, 1997, amended the proposed rule change (File No. SR–DTC–97–20) as described in Items I and II below, which items have been primarily prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change on a permanent basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks permanent approval of DTC's expanded money market instrument ("MMI") settlement program. The Commission previously approved DTC's expanded MMI program on a temporary basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's expanded MMI program is an extension of DTC's same-day funds settlement ("SDFS") system. The proposed rule change seeks permanent approval of DTC's expanded MMI settlement program for transactions in institutional certificates of deposit, municipal commercial paper, and bankers' acceptances.[3] The proposed rule change also seeks to permanently approve changes made to DTC's MMI programs for corporate commercial paper ("CP"), medium term notes, preferred stock in a CP-like mode, short term bank notes, and discount notes.[4]

The Commission previously granted only temporary approval to the expansion of DTC's MMI settlement program because at the time DTC had not yet implemented the largest provisional net credit ("LPNC") control. The LPNC control consists of two new risk management features which are designed to protect DTC against the combined failure of a MMI issuer and a participant.

Under the first LPNC risk management feature, DTC subtracts from a participant's actual overall SDFS net debit or credit the amount of the participant's largest provisional net credit due to transactions in any single issuer's MMI program. If a transaction causes the resulting net debit ("simulated net debit") to exceed the participant's net debit cap, the transaction will be blocked until the account receives sufficient credits to complete the transaction.

Under the second LPNC risk management feature, DTC subtracts from the participant's collateral monitor the amount of a participant's largest provisional net credit due to transactions in any single issuer's MMI program. If a transaction will cause the resulting collateral monitor ("simulated collateral monitor") to become negative (*i.e.*, the participant's collateral would be insufficient to cover its simulated net debit after the transaction), the transaction will be blocked until the account receives sufficient collateral to complete the transaction.[5]

[3] Securities Exchange Act Release Nos. 33958 (April 22, 1994), 59 FR 22678; and 35655 (April 28, 1995), 60 FR 22423.

[4] *Id.*

[5] Because transactions in a failing MMI issue would be reversed by DTC only if DTC is informed of the default by 3:00 PM (Eastern Time), LPNC procedures remain in effect only until approximately 3:05 PM (Eastern Time). After this time, collateralization and net debit cap controls are applied to net debits incurred by participants as a result of transactions that have actually completed.

DTC has reported that MMI issuers have defaulted both before and after the LPNC controls were implemented in September 1995. However, since the implementation of the LPNC controls, DTC stated that it has not had any problems with liquidity or blocked transactions. DTC indicated that the application of LPNC controls may cause some participants to reach their net debit cap and as a result, block the completion of further transactions. However, DTC reported that participants generally complete blocked transactions by sending intraday funds to DTC for credit to their participant settlement account.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations promulgated thereunder because it promotes the prompt and accurate clearance and settlement of transactions in MMIs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited comments on the proposed rule change. Discussions with DTC participants indicate continued wide support for the MMI programs.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act.

Because the Commission was concerned that the proposed expanded MMI settlement program increased risks associated with the use of provisional credits, the Commission previously approved the proposed rule change on a temporary basis until the new LPNC controls could be implemented and monitored for their effectiveness. During the temporary approval period, the LPNC risk management features have helped minimize the impact of a default by an MMI issuer. In this regard, since the LPNC controls were implemented in September 1995, DTC has reported that it has had no problems with liquidity or blocked transactions. Thus, the Commission finds that DTC's expanded MMI settlement program, with the addition of the LPNC controls, is consistent with its obligations under the Act to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow DTC to continue to use its MMI program without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–20) be and hereby is permanently approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(e)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97–32821 Filed 12–16–97; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39423; File No. SR–NASD–97–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Regarding Excused Market Maker Withdrawals and Reinstatements

December 10, 1997.

On January 24, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") proposed rule changes [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [2] and Rule 19b–4 thereunder.[3] The proposal amends NASD Rule 4619 (excused market maker withdrawals), NASD Rule 4620 (voluntary termination of market maker registrations), and NASD Rule 4730 (reinstatement of market makers that have been "SOESed out of the Box" [4] or that accidentally withdrew from a security). Notice of the proposed rule changes, including the substance of the proposal and Amendment No. 1 thereto, was published for comment in the **Federal Register**.[5] No comments were received. On December 3, 1997, the NASD filed with the Commission Amendment No. 2.[6] The Commission is hereby approving the proposed rule changes, including Amendment No. 1 thereto. In addition, the Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2; the Commission hereby approves that amendment.

I. Description of Rule Changes

To ensure that market makers are complying with their obligation to maintain continuous, firm, two-sided quotations,[7] NASD Rule 4620 provides that a market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for 20 business days. This rule is commonly referred to as the "20-Day Rule." With respect to SOES, withdrawal from participation as a market maker in a Nasdaq National Market ("NNM") security constitutes termination of registration as a market maker in that security for purposes of NASD Rule 4620. NASD Rule 4730(b)(6), an SOES rule, provides that for NNM securities a market maker will be suspended from SOES if its bid or offer has been decremented to zero due to SOES executions. If this occurs, the market maker will be permitted a standard grace period (*i.e.*, five minutes) within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. A market maker that fails to reenter a two-sided quotation in an NNM security within the allotted time will be deemed to have withdrawn as a market maker. Unless the market maker's withdrawal is "excused," that market maker may not reenter SOES as a market maker in that security for twenty (20) business days.[8] When a market maker is deregistered from a security because it failed to restore its quotation, it is referred to as being "SOESed out of the Box."[9]

Notwithstanding NASD Rules 4620 and 4730(b)(6), NASD Rule 4619 permits market makers to obtain an "excused" withdrawal in certain limited circumstances. Under NASD Rule 4619, a market maker may withdraw quotations in a security without being subject to the 20-Day Rule or NASD Rule 4730(b)(6) (for SOES market makers). A market maker that withdraws from a security for a reason permitted by NASD Rule 4619 may re-enter its quotes once the circumstances justifying the withdrawal no longer exist.[10] The rule currently allows excused withdrawals for:

(1) Physical circumstances beyond the market maker's control (NASD Rule 4619(b));

(2) Demonstrated legal or regulatory requirements (*e.g.*, the market maker is in possession of material non-public information regarding the issue) (NASD Rule 4619(b));

(3) Religious holidays (provided the request is submitted five business days in advance of the holiday) (NASD Rule 4619(b));

(4) Vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with three or fewer Nasdaq level 3 terminals) (NASD Rule 4619(b));

(5) A market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in that issue pursuant to applicable NASD rules;

(6) Involuntary failures to maintain clearing arrangements (NASD Rule 4619(c)); and

(7) The duration of the "cooling off" periods mandated by certain rules under Regulation M under the Exchange Act (NASD Rule 4619(d)).

The SEC criticized the NASD's handling of excused withdrawal requests and the reinstatement of market makers that had been "SOESed out of the Box" in the SEC's 21(a) Report on the NASD and The Nasdaq Stock Market.[11] The SEC found, among other things, that the NASD had improperly granted waivers of the 20-Day Rule for market makers that were "SOESed out of the Box" and that the NASD had not followed its own rules when granting excused withdrawals. Until 1995, the 21(a) Report found, the practice of Nasdaq Market Operations was to grant SOES withdrawal waivers as a matter of course without inquiring into the reasons for the withdrawals. A market maker merely had to request the waive and Nasdaq Market Operations granted it. Beginning in 1995, Nasdaq Market Operations started to make some inquiry into the reasons for the SOES withdrawals, granting waivers based upon an examination of four factors.[12] These factors, however, are not generally relevant to the permissible reasons, as articulated in the NASD's rules, for granting excused withdrawal status.[13] Nor were these factors included in any filing made by the NASD with the Commission pursuant to Section 19(b) of the Exchange Act, as amendments or interpretations of its rules. The NASD's willingness to grant waivers for reasons other than those listed in the applicable rules,[14] allowed market makers to avoid suspension penalties.

As a result, the SEC stated in its 21(a) Report that:

> [t]he NASD's failure to enforce its excused withdrawal rules has fostered an environment that allowed market makers to avoid their responsibilities to maintain continuous quotes in the securities in which they made markets. Market makers were able to withdraw voluntarily from SOES beyond the permitted five-minute window, or otherwise withdraw from the market during periods of volatility without substantial risk that the NASD will enforce a twenty-day suspension.[15]

The Commission also found that the NASD did not place administration of the excused withdrawal rule with its enforcement or regulatory staff, but rather with its market and trading services staff. The Commission noted that the excused withdrawal rule "should be administered from a regulatory standpoint."[16]

Accordingly, to ensure that market makers are not able to avoid or circumvent their market making obligations through inappropriate excused maket maker withdrawals or inappropriate market maker reinstatements, the NASD submitted this rule proposal. As detailed below, the proposal makes changes in the following areas:

(1) Bases for excused withdrawals;

(2) Market maker reinstatements upon being "SOESed out of the Box" or after accidental market maker withdrawals; and

(3) The jurisdiction of the Market Operations Review Committee ("MORC") over excused market maker withdrawals and reinstatements.

By modifying the rules to reflect better the operational realities of the marketplace, as well as establishing more objective standards for the reinstatement of market makers that either have been "SOESed out of the Box" or have accidentally withdrawn from a security, the NASD believes that the proposed modifications are responsive to the deficiencies noted in the Commission's 21(a) Report.

A. Bases For Excused Withdrawal

The proposed changes to NASD Rule 4619 are intended to bring the rule more in line with the realities of the marketplace. NASD Rule 4619(b) presently provides that excused withdrawal status may be granted for a variety of reasons provided that certain conditions, with are discussed above, are satisfied. While the NASD continues to believe that it is critical for the maintenance of the integrity of the market for Nasdaq to grant excused withdrawals only when warranted, particularly in light of the Commission's 21(a) Report, the NASD contends that the present excused withdrawal rule is not broad enough to encompass all of the legitimate reasons for granting an excused withdrawal. The NASD also believes that the time parameters for advance notice of vacations and religious holidays are unnecessarily long.

Accordingly, the NASD proposes a number of amendments to NASD Rule 4619(b). First, excused withdrawals may be granted for "circumstances" beyond the market maker's control instead of for just "physical circumstances" beyond its control as is currently the case. With this amendment, unpredictable events, such as jury duty, bomb threats, the birth of a child, or a sudden illness, could be used as a basis for an excused withdrawal. Second, requests for excused withdrawals based on vacations (currently 20 days) and religious holidays (currently five days) may be submitted one business day in advance of the proposed withdrawal. Requests for excused withdrawals based on legal or regulatory requirements will continue to be made in writing, although Nasdaq acknowledges that counsel to market makers often do not want to disclose the specific legal basis for their clients' withdrawal requests, particularly when the basis for the withdrawal is that the market maker is in possession of material, non-public information. In this connection, Nasdaq would continue its current practice of apprising NASD Regulation, Inc. of all such requests.[17]

B. Reinstatement of Market Makers Upon Being "SOESed Out of the Box" and for Accidental Withdrawals

1. Reinstatements Upon Being "SOESed Out of the Box"

The proposed rule changes to NASD Rule 4730 are designed to ensure that a market maker is not reinstated without the required 20 day suspension unless the market maker withdrew for an excused reason. Specifically, the proposed changes to NASD Rule 4730 provide that a market maker can be reinstated under only one of two circumstances: (1) pursuant to NASD Rule 4730(b)(7), the market maker obtains an excused withdrawal pursuant to NASD Rule 4619; or (2) the market maker satisfies criteria set forth in NASD Rule 4730(b)(6). Under NASD Rule 4730(b)(6), a market maker can be reinstated after being SOESed out of the Box with respect to a particular security if:

(1) The market maker notifies Nasdaq Market Operations to request reinstatement within one hour of being "SOESed out of the Box," and immediately thereafter provides written notification of the request;

(2) It was a Primary Market Maker at the time it was SOESed out of the Box; [18]

(3) The reinstatement would not result in the market maker's firm exceeding certain limitations on the

---

[1] On September 30, 1997, the NASD submitted an amendment ("Amendment No. 1") to the proposed rule change to make technical amendments to the text of the proposed rule change. *See* Letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market, Inc. ("Nasdaq"), to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 30, 1997.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] "SOES" refers to Nasdaq's Small Order Execution System.

[5] Securities Exchange Act Release No. 39218 (October 8, 1997) 62 FR 53675 (October 15, 1997).

[6] Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 3, 1997 ("Amendment No. 2"). In Amendment No. 2, the NASD made certain technical changes to NASD Rules 4620 and 4730 as well as clarified certain issues involving NASD Rule 4730. These points are discussed in detail below.

[7] *See* NASD Rule 4613.

[8] NASD Rule 4730(b)(6).

[9] To avoid being "SOESed out of the Box," members can elect not to have their quote size decremented ("no dec") upon the execution of SOES orders, provided the market maker's quote size is equal to or greater than the applicable SOES tier size (*i.e.*, the maximum SOES order size). *See* NASD Rule 4730; *see also* Nasdaq *Subscriber Bulletin*, vol. 15, July 1997, at page 2. In the alternative, the market maker may use Nasdaq's auto-refresh feature, which automatically updates a market maker's quote after its quote size has been decremented. NASD Rule 4730(b)(2).

[10] *See* NASD Rule 4730(b)(7).

[11] *See* Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market ("21(a) Report"), SEC, August 8, 1996, at p. 91–95.

[12] The factors were (1) the timeliness of the market maker's call to Market Operations; (2) the volatility of the stock; (3) the liquidity of the market and the number of market makers in the stock; and (4) the number of Nasdaq terminals at the market makers to which the orders could be routed (which was relevant in cases where the market maker requested an excused withdrawal due to mechanical or electronic failure of a Nasdaq terminal).

[13] *See, e.g.*, NASD Rule 4619(b)(3), which states in part: "[t]he withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status."

[14] For example, market makers were granted waivers after their SOES exposure was exhausted because they were away from their desks, working another order, or covering other trades' stocks. Appendix 21(a) Report at A–78 and note 217.

[15] Appendix to 21(a) Report at A–78.

[16] *Id.*, note 220.

[17] As discussed below, the proposal also adds a new paragraph (e) to Rule 4619 to give the MORC jurisdiction over proceedings to review denials of excused withdrawals or conditions imposed on reentry under Rule 4619.

[18] In Amendment No. 2, the NASD states that the Primary Market Maker standards currently contained in NASD Rule 4612 have been suspended on a temporary basis since February of this year. (*See* Securities Exchange Act Release Nos. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997); 39198 (October 3, 1997) 62 FR 53365 (October 14, 1997)). The suspension was necessary because the previous numerical criteria used to establish Primary Nasdaq Market Maker status was rendered significantly less relevant due to implementation of the new SEC Order Execution Rules (*i.e.*, the Limit Order Display Rule and amendments to the Quote Rule). (This is because the old standards were based primarily on [a] market maker's quotes in relation to the inside quote and the quotes of other market makers, and the ratio of executions to quote changes. Because the new SEC rules, implemented in January of this year, are designed to incorporate customer limit orders in a market maker's quote, a market maker's proprietary activity has become indistinguishable from its customer activity.) As a result, all market makers are deemed Primary Market Makers until new standards can be implemented. Accordingly, all market makers similarly will be deemed to be in satisfaction of the Primary Market Maker provision in Rule 4730(b)(6)(A), until such time that new standards are imposed. (Footnotes incorporated into text.)

number of reinstatements per year; [19] and

(4) a designated Nasdaq officer determines that the withdrawal was not an attempt by the market maker to avoid its obligations to make a continuous two-sided market, taking into account factors including market conditions at the time, the frequency with which the firm has been SOESed out of the Box in the past, procedures adopted by the firm to avoid being SOESed out of the Box inadvertently, and the length of time before the firm sought reinstatement.

Decisions to reinstate a market maker would be made by Nasdaq Market Operations staff and appeals of such decisions would be considered by the MORC.

2. Reinstatements for Accidental Withdrawals

There have been instances in the past when a market maker accidentally withdrew from a security because someone associated with the firm inadvertently typed the wrong symbol for the security or made a similar mistake. The NASD believes that it would be appropriate for the market maker to be reinstated in such circumstances, but NASD rules currently do not provide that market makers can be reinstated in these instances. As a result, the NASD proposal amends NASD Rule 4620 to permit reinstatements in such instances provided the withdrawal was clearly accidental and did not reflect an attempt by the market maker to avoid its market making obligations. Specifically, under the proposal, a market maker that accidentally withdraws as a market maker may be reinstated if:

(1) The market maker notifies Nasdaq Market Operations of the accidental withdrawal within one hour of such withdrawal, and immediately thereafter provides written notification of the withdrawal and request for reinstatement;

(2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and

(3) The market maker's firm would not exceed specific reinstatement limitations per year.[20]

If the above conditions are satisfied, Nasdaq will consider the following factors, among others, in deciding whether to grant a reinstatement in a given case:

(1) The number of accidental withdrawals by the market maker in the past as compared to other market makers making markets in a comparable number of stocks;

(2) The similarity between the symbol of the stock that the market maker intended to withdraw from and the symbol of the stock that the market maker actually withdrew from;

(3) Market conditions at the time of the withdrawal;

(4) Whether the withdrawal served to reduce the market maker's exposure to market risk; and

(5) The timeliness with which the market maker notified Nasdaq Market Operations of the error.

Determinations initially would be made by Nasdaq Market Operations staff and be subject to review by the MORC.

C. Jurisdiction of the MORC Over Excused Market Maker Withdrawals and Market Maker Reinstatements

Presently, appeals of Nasdaq staff determinations concerning excused withdrawal requests and market maker reinstatements are within the purview of the NASD's Qualifications Committee pursuant to NASD Rule 4730(b)(8). Pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, however, The Board of Directors of Nasdaq has delegated its authority over such matters to the MORC. Accordingly, the NASD proposes to amend its Rules 4619, 4620, and 4730, to effectuate the transfer of jurisdiction over these matters from the Qualifications Committee to the MORC. Under the recently revised NASD Delegation Plan, the MORC's compositional and quorum requirements now provide for member diversity, as well as non-industry and public participation. Further, NASD Regulation is to receive weekly reports of MORC determinations; [21] it cannot, however, overturn MORC decisions.

II. Discussion

It is a fundamental premise of the dealer market that market makers stand willing to buy and sell securities at all times. Permitting market makers to evade this responsibility could reduce liquidity in the market and threaten the ability of investors to execute trades.[22] The Commission finds that proposed rule changes, by helping to ensure that market makers stand willing to buy and sell securities at all times, are consistent with the Exchange Act and in particular with Sections 15A(b)(6), 15A(b)(7), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Exchange Act.

Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities. Section 15A(b)(6) also requires that the rules of a national securities association be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(7) requires that the rules of the association provide that its members shall be appropriately disciplined for violations of the rules of association. Section 15A(b)(9) provides that the rules of the association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 15A(b)(11) requires the NASD, as an association, to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations. Section 11A(a)(1)(C) provides that, among other things, it is in the public interest to assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Commission believes that the proposed amendments will help to ensure that market makers will only be relieved of their market making obligations for legitimate reasons and that waivers of the "20-day rule" will only be made when Nasdaq has determined that the market maker receiving the waiver was not attempting to avoid its market making obligations when it withdrew or was withdrawn from the security. As a result, the proposed rule changes should increase market makers' compliance with their obligation to make continuous, two-sided markets and promote quote competition among market makers. Such competition among market makers should, in turn, enhance the integrity of the Nasdaq market, the best execution of customer orders, and the price discovery process for Nasdaq securities.

Thus, the proposed changes to NASD Rules 4620 (reinstatement for accidental withdrawal) and 4730 (reinstatement upon being SOESed out of the Box) are consistent with the Exchange Act and in particular with the following sections of that Act:

(1) Section 15A(b)(6) because they are designed to prevent market makers from failing to meet their market making obligations;

(2) Section 15A(b)(11), because they are designed to produce fair and informative quotations and prevent fictitious or misleading quotations by eliminating opportunities for market makers to back away from what otherwise may be effectively fictitious quotes; and

(3) Section 11A(a)(1)(C)(i)–(iii), because they are in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets; they assure fair competition among brokers and dealers by encouraging fair and accurate quotations, economically efficient executions based on these fair and accurate quotations; and they improve the availability to brokers, dealers, and investors of information concerning these fair and accurate quotations.

Further, the proposed changes to NASD Rule 4619 relating to the advance notice market makers must provide before withdrawing quotations in securities for an excused reason, as well as expanding those excused purposes, are consistent with the Exchange Act, and in particular with Section 15A(b)(9), because they do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, but merely add additional legitimate reasons for granting an excused withdrawal and make the time provisions of NASD Rule 4619 more fair and reasonable. Finally, the proposal to amend NASD Rules 4619, 4620, and 4730 to grant the MORC jurisdiction over proceedings brought by market makers seeking review of a:

(1) Denial of a reinstatement pursuant to NASD Rule 4619 or the conditions imposed on a reentry;

(2) Denial of a reinstatement pursuant to NASD Rule 4620(b); or

(3) Removal from SOES pursuant to NASD Rule 4730(6) or (7)

is consistent with the Exchange Act. In particular, these amendments are consistent with Exchange Act Section 15A(b)(7) in that they will help to ensure that NASD members are appropriately disciplined for violations of the rules of the association.

Finally, the Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The NASD's proposal, along with Amendment No. 1 thereto, was published in the **Federal Register** for the full statutory period.[23] In Amendment No. 2, the NASD merely makes a technical correction to NASD Rules 4620(b)(3)(B) and 4730(b)(6)(A)(iii)(b) and (c) to replace "more than 250" with "250 or more" and to replace "more than 500" with "500 or more." In Amendment No. 2, the NASD also notes that the Primary Market Maker criterion in NASD Rule 4730(b)(6)(A) currently applies to all Nasdaq market makers. (*See* note 18). Finally, the NASD notes that the Nasdaq officers referred to in NASD Rule 4730(b)(6) are those senior officers specifically designated by the President of The Nasdaq Stock Market, Inc., for this purpose.[24] The list is maintained by the NASD Corporate Secretary's Office, and is part of the procedures of Nasdaq Market Operations. Consequently, lack of prior notice of these changes will not disadvantage any market participant. Based on the above, the Commission finds that there is good cause, consistent with the Exchange Act, to accelerate approval of Amendment No. 2.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–04 and should be submitted by January 7, 1998.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASD–97–04) be, and hereby is, approved.[25]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32822 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

[19] In particular, under the proposal, including minor modifications made by Amendment No. 2, firms that simultaneously made markets in less than 250 securities during the previous calendar year could receive no more than four reinstatements per year. Firms that simultaneously made markets in more than 250 but less than 500 securities during the previous calendar year could receive no more than six reinstatements per year. Firms that simultaneously made markets in 500 or more securities during the previous calendar year could receive no more than 12 reinstatements per year.

Notwithstanding a market maker's exhaustion of these numerical limitations, in certain instances the designated Nasdaq officer may grant a reinstatement request if he or she finds that such action is necessary for the protection of investors or the maintenance of fair and orderly markets. In addition to making these findings, the designated officer also must determine that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where (1) a member firm experiences a documented problem or failure (other than a chronic failure within the firm's control) impacting the operation or use of any automated system operated by or for the firm or involving an automated system operated by Nasdaq; (2) the market maker is a manager or co-manager of a secondary offering from the time the offering is announced until ten days after it is complete; or (3) absent the reinstatement, the number of market makers in a particular issue is less than or equal to two or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter. If a market maker has a regular pattern of being frequently SOESed out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.

[20] In particular, firms that simultaneously made markets in less than 250 securities during the previous calendar year could receive no more than two reinstatements per year. Firms that simultaneously made markets in 250 or more but less than 500 securities could receive no more than three reinstatements per year. Firms that simultaneously made markets 500 or more securities could receive no more than six reinstatements per year. *See* minor modifications made by Amendment No. 2.

[21] *See* Appendix to 21(a) Report at A–78.

[22] *Id.* A–76–79.

[23] *See* Securities Exchange Act Release No. 39216, *supra* note 5.

[24] This list coincides with the list of officers similarly appointed for adjudicating erroneous trades pursuant to NASD Rule 11890.

[25] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change likely will enhance the efficiency and fairness of the process by which market maker withdrawals are handled by Nasdaq. It likely also will enhance the competition between market makers by strengthening enforcement of their requirement to display continually two-sided quotes. These rule changes should also lead to more accurate quotes being disseminated to the public. The net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39421; File No. SR-NASD–97–77]

Self-Regulatory Commission Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Arbitration of Employment Discrimination Claims

December 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1997,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10201 of the NASD's Code of Arbitration Procedure ("Code") to remove the requirement to arbitrate claims of statutory employment discrimination. Below is the text of the proposed rule change. Proposed new *language is in italics; proposed* deletions are in brackets.

* * * * *

CODE OF ARBITRATION PROCEDURE

10200. INDUSTRY AND CLEARING CONTROVERSIES

10201. Required Submission

(a) *Except as provided in paragraph (b),* [Any] *a* dispute, claim or controversy eligible for submission under the Rule 10100 Series between or among members and/or associated persons, and/or certain others, arising in connection with the business of such member(s) or in connection with the activities of such associated person(s), or arising out of the employment or termination of employment of such associated person(s) with such member, shall be arbitrated under this Code, at the instance of:

(1) a member against another member;

(2) a member against a person associated with a member or a person associated with a member against a member; and (3) a person associated with a member against a person associated with a member.

(b) A claim alleging employment discrimination or sexual harassment in violation of a statute is not required to be arbitrated. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose.

[(b)] *(c)* Any dispute, claim or controversy involving an act or failure to act by a clearing member; a registered clearing agency; or participants, pledgees, or other persons using the facilities of a registered clearing agency, under the rules of any registered clearing agency with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures shall be arbitrated in accordance with such agreement and the rules of such registered clearing agency.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule change

1. Purpose

The proposed rule change will modify the current requirement that associated persons arbitrate all disputes arising out of their employment or termination of employment with a member broker/dealer. The proposed rule provides that associated persons are no longer required, solely by virtue of their association of their registration with the NASD, to arbitrate claims of statutory employment discrimination. Associated persons still will be required to arbitrate other employment-related claims, as well as any business-related claims involving investors or other persons.

Background

Although most arbitration claims submitted to the NASD involve disputes between members and customers, a growing number of matters involve employment-related disputes between members and their associated persons.[2] The growth in this area is the result of several recent court decisions concerning the requirement of persons associated with a broker/dealer to arbitrate their employment disputes.

The requirement for associated persons to register with the NASD arises from Section 15A(g)(3)(B) of the Act, which provides that the NASD may "require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established [by the rules of the association]." The registration requirement was made mandatory by Exchange Act Rule 15b7–1 in 1993.[3] The NASD, other self-regulatory organizations ("SROs"), and state regulatory authorities require all applicants for registration as persons associated with a broker/dealer (registered representatives, assistant representatives or principals) to complete and sign the Form U–4, the "Uniform Application for Securities Industry Registration or Transfer."[4] Form U–4 requires registered persons to submit to arbitration any claim that is eligible under the rules of the organizations with which they register (as indicated in Item 10 of the Form U–4). The relevant language on the Form U–4 states:

I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations indicated in Item 10 as may be amended from time to time and that any arbitration award rendered against me may be entered as a judgement in any court of competent jurisdiction.[5]

Thus, the Form U–4 incorporates by reference the rules of the SRO with which the individual is to be registered. NASD Rule 10101 provides as follows:

This Code of Arbitration Procedure is prescribed . . . for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company . . . between or among members and associated persons . . . .

For industry and clearing controversies, Rule 10201 requires that all matters eligible under Rule 10101 be submitted to arbitration at the request of any member or associated person.[6] Rules 10101 and 10201 were amended in 1993 to include the language relating to disputes "arising out of the employment or termination of employment" of an associated person. This language was added in order to clarify that employment disputes were required to be arbitrated, since a California court had held that the Code of Arbitration Procedure did not cover such disputes, but only covered disputes arising out of or in connection with business transactions.[7] The Commission found the amendment to be consistent with Section 15A(b)(6) of the Act and approved the rule change.[8]

Over the past several years, employees have raised several challenges to the mandatory arbitration of employment discrimination disputes. Such challenges were addressed by the Supreme Court in *Gilmer* v. *Interstate/Johnson Lane Corp.*[9] In *Gilmer*, which involved a person registered with the New York Stock Exchange, the Court examined many challenges to the adequacy of arbitration procedures raised by the registered representative and found that none was sufficient to prevent the Court from enforcing the representative's agreement, pursuant to his signing of the Form U–4, to arbitrate his federal age discrimination claim. Therefore, the Court held that Mr. Gilmer had not met his burden of showing that Congress intended to preclude arbitration of claims under the Age Discrimination in Employment Act of 1967.[10]

Subsequent to the *Gilmer* decision, courts have declined to find a Constitutional or statutory bar to enforcement of the agreement to arbitrate contained in the Form U–4.[11] They have extended the reasoning of *Gilmer* to cover disputes arising under Title VII of the Civil Rights Act of 1964,[12] the Americans with Disabilities Act,[13] and state statutes of similar nature.[14] Courts also have extended the application of *Gilmer* to the NASD, since its rules are similar to the NYSE rule at issue in *Gilmer*.[15] Nevertheless, registered persons and others have continued to challenge the requirement to arbitrate claims of statutory employment discrimination.[16]

Task Force Views

In January 1996, the NASD's Arbitration Policy Task Force ("Task Force")[17] released its Report on Securities Arbitration Reform ("Report"). The Task Force's Report made numerous recommendations to improve the arbitration process. Since the Report was released, NASD Regulation has been engaged in a major effort to implement the Task Force recommendations.

Employment arbitration was not an area of major focus for the Task Force.[18] The Task Force found, however, that such arbitration offers the advantages of speed and cost that are identified with customer arbitration, and observed that statutory discrimination claims are almost always interwoven with industry-specific issues. Moreover, the Task Force believed that arbitration's equitable approach to dispute resolution is fully capable of vindicating the important public rights expressed in the anti-discrimination statutes. The Task Force, therefore, found compelling reasons to keep employment-related disputes within NASD arbitration. The Task Force Report recommended that employment-related disputes, including statutory discrimination claims, remain eligible for arbitration with certain enumerated enhancements, many of

---

[1] The NASD filed Amendment No. 1 to the proposed rule filing on November 21, 1997, the substance of which is incorporated into the notice. *See* letter from Joan C. Conley, Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated November 20, 1997 ("Amendment No. 1").

[2] The number of employment discrimination claims filed with the NASD rose from 4 to 1991 to 109 in 1996. The latter figure represents, however, less than 2 percent of all arbitration claims filed with the NASD in 1996

[3] 17 C.F.R. 240.15b7–1. The rule provides as follows: "No registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees, and passing any required examinations) established by the rules of any national securities exchange or national securities association of which such broker or dealer is a member or under the rules of the Municipal Securities Rulemaking Board (if it is subject to the rules of that organization)."

[4] The Form U–4 was adopted effective October 1, 1975.

[5] From page 4 of the Form U–4 as revised in November 1991. A new version of the Form U–4 was approved by the Commission on July 5, 1996. Securities Exchange Act Release No. 37407 (July 5, 1996), 61 FR 36595 (July 11, 1996). Use of the revised form has been deferred pending related changes to the Central Registration Depository ("CRD"). Securities Exchange Act Release No. 37994 (November 27, 1996), 61 FR 64549 (December 5, 1996). The substance of the quoted language was not changed in the revision.

[6] As one court explained, "Section 1 [now Rule 10101] defines the general universe of issues that *may* be arbitrated, and Section 6 [now Rule 10201] describes a subset of that universe that *must* be arbitrated under the Code." *Armijo* v. *Prudential Ins. Co., of Am.*, 72 F.3d 793, 798 (10th Cir. 1995).

[7] *Higgins* v. *Superior Court of Los Angeles County*, No. B057028 (Cal. App. Oct. 8, 1991), *review denied and decision ordered not officially published*, 1 Cal. Rptr. 2d 57 (1992). The state court noted the difference between the NYSE rule (at issue in the Supreme Court's *Gilmer* decision, discussed below), which refers to disputes arising out of the employment or termination of employment of an associated person, and the NASD rule, which at the time did not contain the phrase relating to employment. A federal court reached the same conclusion while the rule change was pending approval. *Farrand* v. *Lutheran Bhd.*, 993 F.2d 1253 (7th Cir. 1993). The Association stated in its rule filing that the amendment was a clarification of existing intent rather than a new policy; some courts accepted this view, while other courts interpreted the rule amendment as a change in policy. *See Kuehner* v. *Dickinson & Company*, 84 F.3d 316, 320 n.1 (9th Cir. 1996) (describing splits in the Seventh, Tenth and Eleventh Circuits of this issue).

[8] Securities Exchange Act Release No. 32802 (August 25, 1993), 58 FR 45932 (August 31, 1993). In its order approving this change and a related change in the composition of arbitration panels to hear employment disputes, the Commission recognized that claims based on allegations of age, sex, or race discrimination, or relating to sexual harassment, were subject to the arbitration requirement.

[9] 500 U.S. 20 (1991). Those challenges included contentions that anti-discrimination laws are designed to further important social policies that should be addressed in a public forum, that arbitration panels may be biased, that discovery is more limited in arbitration than in court, that arbitrators often do not issue written opinions, that arbitration procedures do not provide for broad equitable relief and class actions, and that there is unequal bargaining power between employers and employees. The Court noted that most of these contentions were generalized attacks on arbitration that had been rejected in prior Supreme Court decisions. *Id.* at 30.

[10] *Id.* at 35. The Court cited its earlier holding that, "So long as the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function." 500 U.S. at 28, quoting *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 (1985).

[11] The U.S. Court of Appeals for the Ninth Circuit has held that a registered person's waiver of the right to adjudication in court through signing of the Form U–4 must be "knowing" in order for the arbitration requirement to be enforced. *Prudential Ins. Co. of Am.* v. *Lai*, 42 F.3d 1299, 1305 (9th Cir. 1994), *cert. denied*, 116 S. Ct. 61 (1995). *But see Prudential Ins. Co. of Am. Sales Prac. Litig.*, 924 F. Supp. 627, 642 (D.N.J. 1996) (". . . *Lai* has been rather extensively criticized"), and cases cited therein.

[12] *See, e.g., Alford* v. *Dean Witter Reynolds, Inc.*, 939 F.2d 229 (5th Cir. 1991).

[13] *See, e.g., Austin* v. *Owens-Brockway Glass Container, Inc.*, 78 F.3d 875, 881 (4th Cir.), *cert. denied*, 117 S. Ct. 432 (1996).

[14] *See, e.g., Kaliden* v. *Shearson Lehman Hutton, Inc.*, 789 F. Supp. 179, 180 (W.D. Pa. 1991).

[15] *See, e.g., Metz* v. *Merrill Lynch Pierce, Fenner & Smith, Inc.*, 39 F.3d 1482, 1488 (10th Cir. 1994).

[16] *See, e.g.* Commission on Future of Worker-Management Relations ("Dunlop Commission"), *Report and Recommendations* 33 n.15 (1994); Equal Employment Opportunity Commission, *Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment* n.2 (1997).

[17] The NASD formed the Arbitration Policy Task Force in September 1994 for the purposes of studying the securities arbitration process administered by the NASD and of making suggestions for reform. The Task Force, chaired by David S. Ruder, former Chairman of the Securities and Exchange Commission, delivered its Report to the NASD Board in January 1996.

[18] The Task Force directed its attention primarily to customer-member arbitration. *See* Task Force Report at 123.

which had been recommended elsewhere in the Report in the context of customer arbitration.[19] The NASD intends to implement many of the recommended enhancements to its arbitration forum in the next year.[20]

Controversy Surrounding the Issue

In the past year, there has been a great deal of activity and public discussion about the arbitration of employment discrimination disputes. In February of 1997, three members of Congress wrote to the SEC and questioned the authority of the NASD and other SROs to require arbitration of discrimination claims in employment disputes through an associated person's signing of the Form U–4.[21] Legislation was introduced this year in both the House and the Senate[22] that would prohibit employers and employees from entering into predispute arbitration agreements concerning claims of unlawful employment discrimination. Under the proposed legislation, the parties could agree, after a dispute arose, whether to resolve it by arbitration or to go to court.

The NASD has received letters on this subject from groups with differing points of view, such as the Securities Industry Association, the Equal Employment Opportunity Commission ("EEOC"), the National Women's Law Center, the Women's Legal Defense Fund, the American Civil Liberties Union, the National Employment Lawyers Association, the National Association of Investment Professionals, several members of Congress, and attorneys representing parties in employment disputes.

Recent NASD Actions

To gather a wide assortment of views on this issue, NASD staff met with various groups and individuals, including national and regional member firms, members of NASD Regulation District Committees, attorneys representing employees and attorneys representing employers in employment litigation, members of the Bar of the City of New York Labor and Employment Committee, and staff of the New York Stock Exchange. In general, the groups from or representing the securities industry believed the current practice is fair, and that it is more cost-effective for all parties than going to court. The groups representing employees were unanimous in believing that the NASD and other SROs should remove the requirement for registered persons to arbitrate employment discrimination disputes as a condition of registration in the industry.

Many persons meeting with NASD staff recommended that the SROs adopt the Due Process Protocol endorsed by the American Bar Association and various dispute resolution organizations. Some attendees expressed a willingness to work with the SROs in revising the process if arbitration of discrimination claims were made voluntary.

In May 1997, NASD Regulation formed an Advisory Committee to assist it in reaching a decision on the outstanding questions. The Advisory Committee consisted of six persons of varying and distinguished backgrounds. The Advisory Committee held a meeting in Washington, D.C. on June 16, 1997 and invited to speak representatives of civil rights organizations, the EEOC, general counsels of member firms, attorneys who represent employees, representatives of employee organizations, and attorneys who represent member firms. Afterward, the Advisory Committee spoke with neutral experts in the alternative dispute resolution field, and discussed the issues with NASD management and staff.

After consideration of all the views presented, and in light of the public perception that civil rights claims may present important legal issues better dealt with in a judicial setting, the NASD determined that the appropriate action was to remove the arbitration requirement for such claims, but to further improve the forum so that it is viewed by both registered employees and firms as the fairest and most efficient forum for resolving all employment disputes. In August 1997, proposals were presented to the NASD Regulation and NASD Boards, which authorized the proposed rule change.[23]

Details of the Proposed Rule Change

Paragraph (a) of the proposed rule adds a prefatory phrase indicating that the requirement to arbitrate employment disputes contains an exception, set forth in paragraph (b).

New paragraph (b) provides that claims alleging employment discrimination or sexual harassment in violation of a statute are not required to be arbitrated by NASD rules. This means that such claims may be filed in the appropriate court, if the employee chooses to do so and is not under a separate predispute obligation to arbitrate the dispute.[24] An employee also may agree to arbitrate after a dispute arises, and may choose to do so for a number of reasons.[25]

Paragraph (b) applies only to claims alleging employment discrimination or sexual harassment[26] in violation of a statute.[27] Paragraph (b) does not apply to causes of action created solely by judicial precedents.[28] Similarly, it does not apply to other causes of action under state or federal law, which remain subject to mandatory arbitration under paragraph (a).

Paragraph (c) of the proposed rule is former paragraph (b), which is unchanged except for the renumbering.

Effective Date and Related Issues

The NASD has requested that the proposed rule become effective one year from the date of Commission approval for several reasons. The NASD believes that a one year period from the date of Commission approval would permit employees and firms to determine what agreements they might wish to reach with regard to dispute resolution. During this period, the NASD will make related enhancements to the forum so that employees will have confidence that there are adequate procedures and safeguards of their rights in NASD arbitration. The NASD has formed an advisory working group to explore various options for the employment arbitration area, including additional due process standards, standard discovery lists, arbitrator list selection, and other related issues. It is expected that the working group will be able to provide advice to NASD management and the Boards during 1998. Such enhancements to the NASD's arbitration forum are expected to be the subject of future rule proposals.

In this connection, the NASD also plans to provide improved disclosure to employees of the effect of signing the Form U–4, their rights under the proposed rule, and the features of arbitration, so that they can make informed decisions.

Finally, the NASD intends to work with other regulators to consider expanded disclosure on the Form U–4 itself. Amendment to the Form U–4, an industry-wide form, requires the agreement of the SROs, the state regulatory authorities, and NASAA, as well as approval by the Commission. This process could take several months or longer.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[29] in that the amendment will protect the public interest by allowing associated persons to choose whether to pursue their statutory claims of employment discrimination in court or in arbitration, and by improving parties' confidence in the arbitration process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–77 and should be submitted by January 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32825 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

---

[19] The Task Force noted that employment arbitration, and in particular the issue of whether cases that raise statutory civil rights claims should remain subject to predispute arbitration agreements, is an area in which the law and commentary are rapidly evolving. Therefore, the Task Force recommended that the NASD closely monitor developments in employment arbitration and look to other sources in formulating future recommendations for the direction the NASD should pursue in this area. Task Force Report at 123 and n.164.

[20] The Task Force recommended certain changes that would enhance the NASD's ability to handle employment-related arbitrations, including expanded arbitrator education, greater disclosure to registered person, the inclusion of employment-related disputes in the early neutral evaluation pilot, and development of a list of documents that parties should produce during discovery for various kinds of employment-related claims. In addition, the Task Force felt that its other recommendations relating to early automatic document production, mediation, simplified arbitration, punitive damages, and list selection should apply to arbitration of employment-related disputes.

[21] Letter from Representatives Edward J. Markey, Anna G. Eshoo, and Jesse L. Jackson, Jr., to Arthur Levitt, Chairman, SEC (February 3, 1997). With regard to whether the mandatory arbitration requirement was within the scope of the NASD's authority, the Commission's response stated that sound arguments could be made on both sides of the issue. Letter from Chairman Levitt to Representative Markey (March 17, 1997). The Commission acknowledged that the NASD rule requiring registered persons to arbitrate employment disputes was approved by the Commission as being consistent with the Act, and that it would not be unreasonable to conclude that SROs do have the authority to mandate the arbitration of discrimination claims, provided that fair procedures are in place. The response also acknowledged the concerns of the Equal Employment Opportunity Commission, members of Congress, and others about the special role of civil rights legislation. The Commission concluded that, given the self-regulatory scheme of the Act, it would be premature for the Commission to take any action, and suggested that it would defer expressing any conclusions until the matter was sent to the Commission by the NASD in the form of a proposed rule change.

[22] H.R. 983 and S. 63, 105th Cong. (1997).

[23] The text of the proposed rule change was provided to the NASD Regulation Board at its meeting on September 22, 1997, and the NASD Board had an opportunity to review the final rule language at its meeting on October 9, 1997.

[24] The NASD takes no position regarding private agreements between employees and firms to arbitrate employment disputes.

[25] The Task Force Report observed that arbitration of employment related disputes offers advantages in terms of speed and cost, and that arbitration's essentially equitable approach to dispute resolution is fully capable of vindicating the important public rights expressed in anti-discrimination statutes. Task Force Report at 119. Therefore, the NASD expects that many employees will continue to file their discrimination claims in arbitration if the proposed rule becomes effective, and the NASD intends to make further enhancements to its arbitration forum to make it even more attractive to parties.

[26] Sexual harassment has been held to be a form of sex discrimination, and thus a violation of Title VII. *Meritor Savings Bank* versus *Vinson*, 477 U.S. 57, 64 (1986).

[27] the term "statute" is intended to be interpreted in its broad sense, as defined in *Black's Law Dictionary* 1410 (6th Ed. 1990): "A formal written enactment of a legislative body, whether federal, state, city, or county."

[28] Such judicially created causes of action might include, for example, claims alleging "wrongful discharge" without any accompanying claim of discrimination on account of age, sex, race, or other status protected by a specific law.

[29] 15 U.S.C. 78o-3.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39420; File No. SR–OCC–97–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change to Create a New Office of Management Vice Chairman and to Change the Title of Vice Chairman to Member Vice Chairman

December 10, 1997.

On May 9, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on May 12, 1997, amended[1] a proposed rule change (File No. SR–OCC–97–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] Notice of the proposal was published in the **FEDERAL REGISTER** on August 29, 1997.[3] On September 29, 1997, OCC filed a second amendment to the proposed rule change. No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

The proposal amends OCC's by-laws to create a new office of Management Vice Chairman and to change the title of Vice Chairman to Member Vice Chairman. The proposal amends Article IV, Section 1 to clarify that the existing Vice Chairman is elected by the Board of Directors from among OCC's Member Directors[4] and will be renamed the Member Vice Chairman. Article IV, Section 1 is also amended to create the position of Management Vice Chairman which will be elected at the discretion of the Board of Directors. The board will not be required to fill this position. Only OCC staff members will be eligible to serve as the Management Vice Chairman, and any person serving in

---

[1] The amendment was technical in nature and therefore did not require republication of notice of filing.

[2] 15 U.S.C. 78s(b)(1)(1988).

[3] Securities Exchange Act Release No. 38954 (August 23, 1997) 62 FR 45001.

[4] To distinguish the title of the current Vice Chairman from the staff position of Management Vice Chairman, the modifier "Member" has been added to the office's title. Conforming changes have also been made to several other sections of OCC's by-laws to reflect addition of the modifier "Member" to the office's title.

this office shall not be eligible to serve concurrently in any other OCC office.

Article IV, Section 7, paragraphs (a) and (b) are amended to provide for the duties and responsibilities of the Management Vice Chairman and to clarify the duties and responsibilities of the Member Vice Chairman. The duties of the Management Vice Chairman include assuming all of the Chairman's responsibilities in the absence or disability of the Chairman, including presiding over meetings of the Board of Directors and the shareholders.[5] The Member Vice Chairman presides at such meetings and assumes all of the Chairman's responsibilities only in the absence of the Chairman and Management Vice Chairman. The Member Vice Chairman remains the chair of any committee responsible for evaluating the performance of OCC or the compensation of OCC's officers.[6]

The proposal also amends Article III, Section 15 paragraphs (a), (b), and (e) to add the office of Management Vice Chairman to the list of officers who may be granted emergency powers to declare the existence of an emergency, call special meetings during such emergency, and who may be empowered to act on behalf of any other officer who is unable to fulfill any emergency powers granted to such officer. Accordingly, the Management Vice Chairman position adds another person to OCC's line of succession, which reduces the risk that OCC would be without qualified leadership. The proposals establish a clear line of succession. Article II, Section 4 is amended to add the office of the Management Vice Chairman to the list of officers who may direct the notice of meetings of shareholders. The purpose of this change is to ensure the managerial readiness of OCC in the event the Chairman is unavailable.

A technical correction to Article IV, Section 1 deletes the requirement that the Board of Directors elect a senior management officer of OCC to be in charge of each OCC office that is (i) responsible for 20% or more of the volume of exchange transactions cleared through OCC or (ii) located in the same city as an exchange on which 20% or more of the volume of the exchange's transactions are cleared through OCC. This requirement is no longer necessary due to advances in systems design.

Article IX, Section 1(a) is amended to add the office of the Management Vice Chairman to the list of officers who may, in conjunction with at least one director, access or withdraw securities owned by OCC from the appropriate safekeeping vault or account. Article IX, Section 11 is similarly amended to give the Management Vice Chairman the authority to sign OCC's share certificates.

Interpretations and Policies .03 to Article V, Section 1 is amended to add the office of the management vice Chairman to the list of officers authorized to approve or disapprove applications for clearing membership on a temporary basis. Interpretations and Policies .01 to Article V, Section 3 is similarly amended with respect to approvals and disapprovals of deadline extensions for satisfaction of the preconditions for qualification as a clearing member.

Interpretations and Policies .01 to Article VI, Section 17 is amended to include the Management Vice Chairman as one who may act on behalf of OCC in imposing exercise restrictions pursuant to Section 17(b).

In addition to the changes to OCC's by-laws, the proposal also makes several conforming changes to OCC rules. Spxeifically, Rule 305 paragraphs (a), (b), and (c) are amended to authorize the management vice chairman to impose restrictions on clearing members' transactions, positions, and activities. Interpretations and Policies .07 and .10 to Rule 305 are amended to include the Management Vice Chairman. Rule 309(d) is amended to enable the Management Vice Chairman to act pursuant to Rule 305(a) in the event a managing clearing member's net capital shall fall below a prescribed minimum level.

Certain Interpretations and Policies to Rules 601 and 602, and Rules 608, 609, and 609A, are amended to add the office of the Management Vice Chairman to the list of officers authorized to act pursuant to such rules in connection with members' margin positions, the withdrawal of margin, intra-day margin, and the waiver of margin.

Rules 801(e), 804, and 1905 are amended to authorize the Management Vice Chairman to permit clearing members to file, revoke, or modify eligible exercise notices and to require clearing members to file certain reports with respect to the allocation of exercises, including allocations of IP exercises.

Rule 913(d) is amended to permit the Management Vice Chairman to extend or postpone the deadline for the delivery of securities in the event that certain settlement arrangements are revoked. Rule 1312 is amended to authorize the Management Vice Chairman to determine whether good cause exists for any delay in delivery or payment for transactions in GNMA options by its clearing members. Rules 1411, 1512, 1610, 2110, and 2408 are similarly amended for such determinations regarding the settlement of transactions in treasury security options, certificate of deposit options, foreign currency options, cross-rate foreign currency options, and flexibly structured index options denominated in a foreign currency, respectively.

Rule 1104(b) and Rule 1106 paragraphs (d) and (e) are amended to authorize the Management Vice Chairman to take certain actions with respect to the suspension of a clearing member and the creation of a liquidating settlement account. These changes permit the Management Vice Chairman to determine whether it is in the best interest of OCC, its clearing members, or the general public to convert to cash a suspended clearing member's margin deposits and whether to close out such member's unsegregated long or short positions. If such margin is not converted to cash, or such long or short position is not closed out, the change to Rule 1106(e) permits the Management Vice Chairman to engage in hedging transactions to reduce the risk to OCC resulting from such decisions.

II. Discussion

Section 17A(b)(3)(A) requires that a clearing agency have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.[7] The Commission believes that the proposal is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the addition of the position of Management Vice Chairman should strengthen the line of succession in the absence or disability of the Chairman of the Board and should ease any transition from an existing Chairman of the Board to his or her successor. As a result, these changes should promote the efficiency of OCC's operations and therefore should support the goals of Section 17A of the Act.

[5] A conforming change is being made to Article IV, Section 9 to clarify that the office of the Management Vice Chairman shall be in the line of succession in the absence of the Chairman.

[6] As proposed, the rule change would have also included a conforming amendment to Article IV, Section 8 that would have added the Member Vice Chairman to the line of succession in the event of the absence or disability of the Chairman. This proposed change would have additionally clarified that the President's duty to act in the place of the Chairman would arise only in the absence of the Chairman, the Management Vice Chairman, and the Member Vice Chairman. In accordance with OCC's second amendment, Article IV, Section 8 will not be amended.

[7] 15 U.S.C. 78q–1(b)(3)(A).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32827 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39419; File No. SR–Phlx 97–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Margin and Net Capital Requirements for Joint Back Office Arrangements

December 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 7, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 24, 1997, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rules 703 and 722 to establish margin and net capital requirements for Joint Back Office ("JBO") participants and clearing firms.

The text of the proposed rule change is available at the office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to revise Exchange Rules 703 and 722 to establish margin and net capital requirements for JBO participants and clearing firms. JBO arrangements permit a participating broker-dealer to be deemed self-clearing for margin purposes and entitle the participating broker-dealer to good faith credit.[3]

In recent amendments to Regulation T,[4] the Board of Governors of the Federal Reserve System ("FRB") placed its reliance on the authority of self-regulatory organizations ("SROs") to ensure the reasonableness of JBO arrangements.[5] When the provision permitting JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit extended to a JBO participant and its ownership interest in the clearing firm. Consequently, the FRB did not establish any explicit requirement for the amount of ownership each participant should have in the JBO. Because Regulation T does not provide an ownership standards,[6] however, good faith credit has been extended to "owners" holding merely a nominal interest in a clearing firm.

In conjunction with other SROs and representatives from the securities industry, the Exchange has established standards for JBO participants and clearing firms. These standards will permit the extension of good faith credit to clearing firm "owners" only when the owners maintain meaningful assets on deposit with the JOB clearing firm, and the clearing firm maintains sufficient net capital and risk control procedures to carry such accounts. The Exchange's proposed rule change would establish the following requirements:

Net Capital Requirements. As proposed, Exchange Rule 703 will require each JBO participant[7] to be a registered broker-dealer subject to the net capital requirements prescribed by Commission Rule 15c3–1 ("Rule 15c3–1).[8] JBO participants may not claim the net capital exemption available to option market makers under Commission Rule 15c3–1(b)(1).[9] JBO participants will be required to deposit and maintain minimum account equity of $1,000,000, and also will be subject to Financial and Operational Combined Uniform Single Report ("FOCUS") filings and certified audits. In addition, each JBO participant must meet and maintain the ownership standards established by the JBO clearing member. To ensure that adequate procedures exist for complying with these requirements, JBO participants will be required to employ or have access to a qualified Series 27 principal.

In addition, the proposed rule change will require a clearing member carrying JBO accounts to notify its Designated Examining Authority in writing of its intention to clear such accounts and will require the clearing member to comply with additional net capital requirements prescribed by the Exchange. Such a clearing member must maintain either: (i) tentative net capital of $25 million;[10] or (ii) net capital of $10 million, if the clearing member's primary business is the clearance of option market maker accounts. A clearing member will be deemed to conduct a primary options market maker business if at least 60% of the

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 modified the proposed rule change to require Joint Back Office clearing members to develop risk analysis standards which are acceptable to the Exchange. *See* Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Exchange, to Michael L. Loftus, Attorney, Division of Market Regulation, Commission, dated November 21, 1997.

[3] Under the proposed rule change, JBO participants would not be considered self-clearing for any purpose other than the extension of credit under Exchange Rule 722, as revised, or under the comparable rules of another self-regulatory organization.

[4] 12 CFR 220 *et seq.* Regulation T is entitled "Credit by Brokers, and Dealers." The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

[5] *See* Board of Goverors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[6] Section 220.11(e)(2) of Regulation T only requires that a JBO clearing firm be "a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers]." 12 CFR 220.11(a)(2).

[7] The proposed rule change allows member organizations and foreign currency option participant organizations to establish JBO arrangements with JBO clearing members.

[8] 17 CFR 240.15c3–1.

[9] 17 CFR 240.15c3–1(b)(1).

[10] The term "tentative net capital" refers to a clearing member's net capital before the application of haircuts and undue concentration deductions.

gross haircuts calculated for all options market maker and JBO participant accounts, in aggregate, is attributable to options market maker transactions. A JBO clearing firm conducting a primary options market maker business must include the gross deductions calculated for all JBO participant accounts in its ration of gross options market maker deductions to adjusted net capital.

Further, each JBO clearing member shall adjust its net worth daily by deducting any deficiency between a JBO participant's account equity and the proprietary haircut calculated pursuant to Rule 15c3–1 for the positions maintained in the JBO account. As previously referenced, each clearing member which maintains JBO accounts must require and maintain equity of $1,000,000 for each JBO participant, over all related funds. The clearing member is required to issue a margin call if the JBO participant's account equity falls below the $1,000,000 threshold. Finally, each JBO clearing member will be required to establish and maintain written ownership standards for JBO accounts.[11] The clearing member also must develop risk analysis standards which are acceptable to the Exchange.

Margin Requirements. The Exchange proposes to revise Exchange Rule 722, Margin Accounts, to permit a member organization to carry the accounts of JBO participants on a good faith margin basis. The JBO accounts must comply with the requirements established in Regulation T, Section 220.11,[12] and Exchange Rule 703, as modified above. JBO participants must maintain equity of at least $1,000,000 in their accounts. If the equity falls below $1,000,000, the JBO clearing firm must issue a margin call for additional funds or securities which must be satisfied within 5 business days.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[13] in general, and with Section 6(b)(5),[14] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and to protect investors and the public interest. The Exchange further believes that the proposed rule change is designed to ensure the reasonableness of JBO arrangements in accordance with the FRB's directive in its recent amendments to Regulation T.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–56 and should be submitted by January 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32824 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

[11] The Exchange will not require JBO clearing members to establish ownership standards that meet any minimum guidelines in addition to the rules of the Exchange. As a result, clearing members will possess the discretion to develop the ownership criteria governing their JBO accounts. However, should the Exchange learn of any inappropriate ownership standards through its audit and surveillance activities, the Exchange will move to correct the impropriety. Telephone conversation between Michele R. Weisbaum, Vice President and Associate General Counsel, Exchange, and Michael L. Loftus, Attorney, Division of Market Regulation, Commission (November 26, 1997).

[12] 12 CFR 220.11.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(e)(12).

SMALL BUSINESS ADMINISTRATION

Greater Washington Investments, Inc.; Notice of Surrender of License

Notice is hereby given that Unco Ventures, Ltd. (Unco), 520 Post Oak Blvd., Suite 130, Houston, TX 77027–9405, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Unco was licensed by the Small Business Administration on September 30, 1988.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was acted on this date, and accordingly, all rights, privileges and franchises derived therefrom have been terminated

(Catalog of Federal Domestic Assistance Program No. 59.11, SmallBusiness Investment Companies)

Dated: December 8, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32816 Filed 12–16–97; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Modification of the Tariff-Rate Import Quota for Certain Cheeses From Hungary

AGENCY: Office of the United States Trade Representative.

ACTION: Modification of the Harmonized Tariff Schedule of the United States.

SUMMARY: This document modifies Additional U.S. Notes 21 and 25 to Chapter 4 of the Harmonized Tariff Schedule of the United States (HTS) to delete the tariff-rate quota (TRQ) allocation of 400,000 kilograms to Hungary for Italian-type cheese and to increase TRQ allocation to Hungary for Swiss or Emmenthaler cheese to 800,000 kilograms.

EFFECTIVE DATE: This modification is effective on January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne Early, Senior Policy Advisor, Office of the United States Trade Representatives, 600 17th Street NW, Washington, D.C. 20508; telephone (202) 395–6127.

SUPPLEMENTARY INFORMATION: On May 4, 1993, the United States and Hungary signed a Memorandum of Understanding on the Results of Uruguay Round Negotiations on Agriculture. In this Memorandum, the United States agrees on a one-time basis to reallocate Hungary's TRQ allocations among cheese categories, provided Hungary's request was received by the United States prior to the fourth year of the TRQ implementation period (1998).

Beginning on January 1, 1995, and each year thereafter, Hungary is allocated: (1) 400,000 kilograms of the TRQ for Italian-Type cheeses under Additional U.S. Note 21 of Chapter 4 of the HTS; and (2) 400,000 kilograms of the TRQ for Swiss or Emmenthaler cheese under Additional U.S. Note 25 of Chapter 4 of the HTS. On December 12, 1996 the Government of Hungary requested that its entire 800,000 kilograms of cheese allocation be shifted to the TRQ Swiss or Emmenthaler cheese. The Government of Hungary was advised at that time that reallocation requires several administrative procedures which could not be implemented before 1998.

Section 404(d)(3) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3601(d)(3)) authorizes the President to allocate in-quota quantities of a TRQ for any agricultural product among countries or customs areas and to modify an allocation as the President determines appropriate. Section 604 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

In paragraph (3) of Proclamation 6763 of December 23, 1994, the President delegated his authority under section 404(d)(3) of the URAA to the United States Trade Representative (USTR). In paragraph 5 of Proclamation 6914 of August 26, 1996, the President determined that it is appropriate to authorize the USTR to exercise his authority under section 604 of the Trade Act to embody in the HTS the substance of any action taken by USTR under section 404(d)(3) of the URAA.

Modification of the HTS

Pursuant to the above authority, the USTR has determined that it is appropriate to modify the TRQ allocations of Hungary and to embody such modifications in the HTS. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1998: (1) Additional U.S. note 21 to chapter 4 of the HTS is modified by deleting "Hungary 400,000" from the list of countries and quantities in such note; and (2) addditional U.S. note 25 to Chapter 4 of the HTS is modified by deleting the quantity "400,000" set out opposite Hungary and by inserting the quantity "800,000" in lieu thereof.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 97–32960 Filed 12–16–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Training and Qualifications Issues—Revised Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of revised task assignments for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of revised tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Tom Toula, Federal Aviation Administration, Flight Standards Service, AFS–210, 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–3729; fax (202) 267–5229.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is training and qualifications issues. These issues involve training and qualification of air carrier crewmembers and other air transport employees.

The Tasks

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following revised harmonization tasks. The original tasks were published in the **Federal Register** on November 3, 1997 (62 FR 59382).

Task 1. Determine the benefits of licensing harmonization.

Task 2. Define criteria for Federal Aviation Administration (FAA) conversion of Joint Aviation Authorities (JAA) issued licenses, and for JAA conversion of FAA issued licenses. Consider only the Airline Transport Pilot (ATP) license, except where that license might convert to only a Commercial pilot license.

Task 3. Develop a recommendation, with justification, on whether the product (i.e., a specific level of license or certificate) should be harmonized, or the process (i.e., the curriculum, prerequisite experience, length of training, etc.) should be harmonized.

(a) If recommending that the product should be harmonized, develop a matrix of essential requirements for the FAA and JAA to impose on license holders of the other in order to convert licenses.

(b) If recommending that the process should be harmonized, develop a matrix of specific differences and how those differences should be equalized.

(c) Make specific recommendations about which FAA regulations or Joint Aviation Requirements should be changed to achieve the recommended actions. Any recommendations requiring changes to Title 14 of Code of Federal Regulations must be forwarded to the FAA for consideration of rulemaking priority, resource allocation, and additional tasking to ARAC to develop rulemaking, as appropriate.

Task 4. Review the current standards of 14 CFR sections 61.75 and 61.77 as part of the overall task. In light of this review, recommend appropriate guidance material that could later be incorporated into advisory material or an appendix to 14 CFR part 61 that

contains the criteria developed in task 3 (a) or (b) above.

The FAA expects ARAC to complete these tasks within 12 months and submit a report through ARAC to the FAA and to the JAA.

ARAC Acceptance of Tasks

ARAC has accepted the tasks and has chosen to establish a new Licensing Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

As is the case with all harmonization working groups, meetings of the Licensing Harmonization Working Group will be held alternately between the United States and Europe. Tentatively, the next two meetings will be held in Washington, DC, in January 1998 and in Hoofddorp, The Netherlands, in February 1998.

The Licensing Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend to ARAC a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider Training and Qualifications Issues held following publication of this notice.

2. Give a detailed conceptual presentation to ARAC of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Provide a status report at each meeting of ARAC held to consider Training and Qualifications Issues.

Participation in the Working Group

The Licensing Harmonization Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

The Secretary of Transportation has determined that the formation and use of ARAC are necess ry and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Licensing Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on December 12, 1997.

Thomas K. Toula,

Assistant Executive Director for Training and Qualifications Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–32883 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–3199]

Notice of Request for Extension of Currently Approved Information Collection; Nationwide Survey of Public Roads Readers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection that measures the manner and extent to which the FHWA's magazine, Public Roads, is achieving its objectives and meeting the needs of its readers/customers.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., E.T., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Barsanti, Office of Research and Development, Federal Highway Administration, U.S. Department of Transportation, 6300 Georgetown Pike, McLean, VA 22101–2296, (703) 285–2102 or (703) 285–2443. Office hours are from 7:30 a.m. to 4:00 p.m., E.T., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Nationwide Survey of *Public Roads* Readers.

OMB Number: 2125–0562.

Background: This study is pursuant to President Clinton's Executive Order 12862, which requires all agencies to identify their customers, survey their satisfaction with current services, set standards for service and measure results against them. In addition, a nationwide census of readers was conducted in 1995 to gauge the overall satisfaction of readers and to measure, in particular, reader satisfaction with significant changes that had been made in the magazine's design and content, subject scope, and audience. Now, it is time to survey a sample of the readership and compare the results to the benchmark established in 1995. Also, the results of this survey will form the basis of a major, direct-mail campaign to increase the number of paid subscribers.

Respondents: Paid and complementary subscribers to *Public Roads* magazine.

Average Burden Per Response: The average burden per response is 0.25 hours.

Estimated Total Annual Burden: The estimated total annual burden is 375 hours.

Frequency: FHWA intends to use biennial followup surveys, starting in 1998, to track any changes in the baseline data collected in 1995, as well as to measure satisfaction with resulting improvements in the product and services.

Authority: Presidential Executive Order 12862.

Issued on: December 10, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–32959 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Buchanan, Dickenson, and Wise Counties, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that a draft environmental impact statement will be prepared for a proposed transportation corridor between Route 23 in Pound, Virginia and the West Virginia State Line, including the Virginia Counties of Buchanan, Dickenson, and Wise.

FOR FURTHER INFORMATION CONTACT: Bruce Turner, Planning and Environment Program Manager, Federal Highway Administration, The Dale Building, Suite 205, 1504 Santa Rosa Road, Richmond, Virginia 23229, Telephone 804–281–5111.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environment Impact Statement (EIS) on a proposed highway from Route 23 in Pound, Virginia to the West Virginia State Line. The National Highway System Designation Act of 1995 extended the Coalfields Expressway from West Virginia into Virginia and defined the roadway as going to Pound, Virginia generally following State route 83 through Buchanan, Dickenson and Wise Counties. The proposed project involves a location study for the Coalfields Expressway in Virginia. The corridor will be developed as a two lane facility on an ultimate four lane design. Improvements could involve existing Route 83, a new highway on new location, or a combination of both. Access control will also be developed as part of this study.

Alternatives under consideration include: (1) taking no action (no build); (2) transportation system management (improvement to the existing roadway network); (3) mass transit; and (4) various build alternatives on both new location and combinations of existing and new location. The build alternatives will incorporate variations of vertical and horizontal grade alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, private organizations, and citizens who have previously expressed or are known to have an interest in this proposal. The scoping process is anticipated to begin in Fall of 1997. A series of public informational meetings and a public hearing will be held in the near future. Public notice will be given indicating the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Issued on: December 5, 1997.

Bruce Turner,

Planning and Environment Program Manager, Richmond, Virginia.

[FR Doc. 97–32880 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Roanoke, Franklin and Henry Counties, Virginia

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that a draft environmental impact statement will be prepared for a proposed highway project in the counties of Roanoke, Franklin and Henry in Virginia.

FOR FURTHER INFORMATION CONTACT: Bruce Turner, Planning and Environment Program Manager, Federal Highway Administration, The Dale Building, Suite 205, 1504 Santa Rosa Road, Richmond, Virginia 23229, Telephone 804–281–5111.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environment Impact Statement (EIS) to identify a location for a future Interstate (I–73) in Roanoke, Franklin and Henry counties, Virginia. The project would involve the location an construction of a new four-lane interstate facility, interchanges, and redesign and construction of local access roads and roadway systems between Roanoke, Virginia to a point south of Martinsville, Virginia in the vicinity of the Virginia/North Carolina border for a total distance of approximately 70 miles.

Improvements to the corridor are considered necessary to provide for existing and future traffic demand, to reduce accidents and improve safety in the existing U.S. Route 220 corridor, and to provide a portion of new interstate in accordance with the Intermodal Surface Transportation Efficiency Act (ISTEA) passed by the United States Congress in 1991. ISTEA identified I–73 as a highway corridor of national significance and directed the corridor be included on the National Highway System. Congress defined I–73 as a north-south corridor from Charleston, South Carolina to Detroit, Michigan that would pass through Winston-Salem, North Carolina, Portsmouth, Ohio, and Cincinnati, Ohio. Also included in the this proposal is the redesign and reconstruction of affected service roads and local access, including the identification of potential interchange locations along the corridor. Alternatives under consideration include: (1) taking no action (no build); (2) transportation system management (improvement to the existing roadway network) and/or intelligent transportation system methods and techniques; (3) widening the existing U.S. 220 highway to a four-lane, limited access highway; and (4) construction of a new four-lane, limited access highway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, private organizations, and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings will be held between now and December 1999. In addition, public hearings will be held. Public notices will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the draft EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Issued On: December 8, 1997.

Edward S. Sundra,

Environmental/Air Quality Engineer, Richmond, Virginia.

[FR Doc. 97–32861 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)—No. 3438

Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the two main tracks, near East Garrett, Indiana, milepost BI–126.1, Garrett Subdivision, Chicago Service Lane, consisting of the discontinuance and removal of controlled signals A34E, B34E, C34E, A34W, and B34W, the discontinuance and removal of the power-operated right turnout on Main Track No. 1, and conversion of the power-operated crossover between Main Tracks No. 1 and 2 to electrically locked hand operation.

The reason given for the proposed changes is the installation of a third main track.

BS—AP–No. 3439

Applicants: SOO Line Railroad Company, Mr. Roscoe VanPelt, District Coordinator Signals & Communications, Canadian Pacific Railway, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440.

Burlington Northern Santa Fe, Mr. D. G. Boll, Assistant Vice President Signal Engineering, 1900 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102–5384.

Wisconsin Central Limited, Mr. John R. Lamz, Chief Engineer Communications & Signals, P.O. Box 96, Stevens Point, Wisconsin 54481.

The SOO Line Railroad Company (SOO), Burlington Northern Santa Fe (BNSF), and Wisconsin Central Limited, jointly seek approval of the proposed discontinuance and removal of the smash boards from the home signals, at Bald Eagle Interlocking, milepost 18.11, Bald Eagle, Minnesota, where the SOO single main track crosses at grade the BNSF single main track, on the SOO's Paynesville Subdivision, including installation of a FPC monitor.

The reason given for the proposed changes is to reduce maintenance associated with smash boards.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 10, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–32910 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3440

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Wellton, milepost 770.8 and Arlington, milepost 861.6, Arizona, on the Gila Subdivision, Phoenix Line, former Southern Pacific Lines, a distance of approximately 91 miles. The proposed changes include removal of signals; switch point, and fouling protection; conversion of Signals 7719 and 8608 to inoperative D signals; conversion of Signals 40RA and 38RB at Wellington to red-lunar aspects; and conversion of Signal 8617 at Arlington to a lunar aspect.

The reason given for the proposed changes is that this portion of the Phoenix Line has been shut down for a period of time and does not have any more rail traffic; the trackage will no longer be a main track, but will be used as a storage track.

BS–AP–No. 3441

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Port Chicago, milepost 40.9 and Tracy, milepost 78.7, California, on the Martinez Subdivision, Mococo Line, former Southern Pacific Lines, a distance of approximately 38 miles. The proposed changes include removal of signals, switch point, and fouling protection; conversion of Signal 433 to an operative D signal; conversion of Signal FA at Port Chicago to red-green aspect; and designation of the trackage to DTC operations.

The reason given for the proposed changes is that this portion of the Mococo Line does not have rail traffic to warrant the signal system.

BS–AP–No. 3442

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the rail locks and associated power-operated switch machines, on the Barge Canal Bridge, milepost 216.1, near Bloomington, Texas, on the Brownsville Subdivision.

The reason given for the proposed changes is to modernize the operation of the Barge Canal Bridge.

BS–AP–No. 3443

Applicants:

Arkansas and Missouri Railroad, Mr. G. B. McCready, Vice President and General Manager, 306 East Emma, Springdale, Arkansas 72764

Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000

The Arkansas and Missouri Railroad and Union Pacific Railroad Company jointly seek approval of the proposed discontinuance and removal of the traffic control system on the single main track, from the Arkansas River Bridge, milepost 410.6 to North Fort Smith, Arkansas, milepost 412.1, First Subdivision. The proposed changes include the discontinuance and removal of the North Fort Smith Control Point and the three controlled signals, conversion of the power-operated switch to hand operation, installation of an approach signal near milepost 411.3, and conversion of the remotely controlled lift span bridge to local control utilizing radio signals to activate the automatic bridge lowering sequence.

The reason given for the proposed changes is that the current traffic levels do not warrant the complexity, expense, and occasional delays of the existing CTC system controlled by the BNSF dispatcher in Ft. Worth, Texas.

BS–AP–No. 3444

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the signal system, on the single main track, near Harpers Ferry, West Virginia, Shenandoah Subdivision, Baltimore Service Lane, consisting of the replacement of Automatic Block Signal System Rules 243–247, between milepost BAD–1.0 and milepost BAD–0.0, with Yard Limit Rule 93, and conversion of the 5R automatic block signal to an inoperative approach signal.

The reason given for the proposed changes is to enhance switching operations and increase efficiency.

BS–AP–No. 3445

Applicant: Buffalo and Pittsburgh Railroad, Incorporated, Mr. David C. Baer, Chief Engineer, 201 North Penn Street, Punxsutawney, Pennsylvania 15767.

The Buffalo and Pittsburgh Railroad, Incorporated seeks approval of the proposed discontinuance and removal of the traffic control and automatic block signal system, on the main tracks, between Ashford Junction, New York, milepost 43.3 and Riker, Pennsylvania, milepost 223.5, on the Main Line Subdivision, a distance of approximately 180.2 miles, consisting of the removal of all governing signals, 16 power-operated switches, and 3 electric switch locks within the above milepost limits.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 10, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–32909 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–97–3221]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas M.P. Christensen of the Office of National Security Plans, Maritime Administration, MAR–720, Room P1–1303, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–5900 or FAX 202–488–0941. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Voluntary Tanker Agreement.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0505.

Form Number: NONE.

Expiration Date of Approval: September 30, 1998.

Summary of Collection of Information: The collection consists of a request from MARAD that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered, or contracted for by the participant, and their size and flags of registry. There is no prescribed format for this information.

Need and Use of the Information: The collected information is necessary to evaluate tanker capability and make plans for the use of this capability to meet national emergency requirements. This information will be used by both MARAD and Department of Defense to establish overall contingency plans.

Description of Respondents: The respondents are tanker companies that operate in international trade and who have agreed to participate in the Voluntary Tanker Agreement.

Annual Responses: 20.

Annual Burden: One hour for each respondent.

Comments: Signed, written comments should refer to the docket number that appears at the top of this document and

must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

Dated: December 12, 1997.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 97–32940 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on December 17, 1997, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Clarion Inn, Detroit Metro Airport, 9191 Wickham Road, Romulus, Michigan.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the nineteenth in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on December 17, 1997. The meeting was announced on December 3, 1997 (62 FR 64041). For additional information about the meeting, consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

Research and Development Update;
Crash Injury Research and Engineering Network;
General Motors Settlement Briefing, Fire Safety Research;
Update on Crashworthiness Research Activities Including Upgraded Side Crash Protection, Improved Frontal Crash Protection, and Restraint Systems for Rollover Protection;
Benefits Analysis of the Inflatable Tubular Structure; and
Update of Research on Family of Dummies.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received in response to the announcement published December 3, 1997.

As announced on December 3, 1997, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing to Raymond P. Owings, Ph.D., Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: December 11, 1997.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 97–32958 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3154]

Cooper Tire & Rubber Company; Receipt of Application for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) of Findlay, Ohio has determined that some of its tires fail to comply with the labeling requirements of 49 CFR Part 574 "Tire Identification and Recordkeeping," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Cooper has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Although the applicant expresses noncompliance with Part 574, NHTSA considers this to be a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, New pneumatic tires for vehicles other than passenger cars. Paragraph S6.5(b) of FMVSS No. 119 requires each tire to be marked with a "tire identification number" required by Part 574 of this chapter. If a tire lacks this number, it fails to comply with FMVSS No. 119 and is subject to notification and remedy.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In § 574.5(d) Fourth Grouping—The manufacturer is required to identify the week and year of manufacture using three symbols. The first two symbols identify the week of the year using "01" for the first full calendar week in each year. The third symbol identifies the year. The purpose of this information is to facilitate the notification of purchasers regarding defective or non-conforming tires, pursuant to Sections 30118 and 30119 of Title 49, United States Codes, so that the appropriate action can be taken in the interest of public safety—such as, a safety recall notice.

During the thirty-second production week of 1997, Cooper produced and inadvertently shipped twenty-eight (28) tires without the date code. This occurred after the tires originally were labeled with the correct date code upside-down; Cooper removed the improperly oriented date code by buffing. The tires were then inadvertently shipped with only the identification of "DOT UPOP"—where "UP" is the identification code for Cooper's Findlay plant and "OP" is the identification of the tire size. The subject tires are Cooper SRM Radial LT 215/85R16, Load Range D.

Cooper supports its application for inconsequential noncompliance with the following:

"The incomplete DOT identification code on each tire does not present a safety-related defect."

"The involved tires are capable of being registered with UPOP. They have a unique DOT identification with would permit Cooper to notify the purchasers of these tires, if properly registered, should they be recalled for other reasons."

"The involved tires produced from this mold during the aforementioned production period comply with all other requirements of 49 CFR 571.119 and 574.5."

Interested persons are invited to submit written data, views, and arguments on the application of Cooper described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room Pub. L. 401, 400 Seventh Street, S.W., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 16, 1998.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 11, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–32882 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB ex Parte No. 558 (Sub–No. 1)]

Railroad Cost of Capital—1997

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1997 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 1997. The decision solicits comments on: (1) the railroads' 1997 cost of debt capital; (2) the railroads' 1997 current cost of preferred stock equity capital; (3) the railroads' 1997 cost of common stock equity capital; and (4) the 1997 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than December 30, 1997. A service list will then be prepared and issued by January 14, 1998. Statements of the railroads are due by March 20, 1998. Statements of other interested persons are due by April 10, 1998. Rebuttal statements by the railroads are due by April 24, 1998.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 6.1, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Surface Transportation Board, 1925 K Street, N.W., Room 700, Washington, DC 20423. Telephone: (202) 565–1650. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] A copy of the decision can also be obtained from the Board's internet site (www.stb.dot.gov).

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 5, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32778 Filed 12–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–99]

Customs Approval of V.I.P Cargo Surveys Incorporated as a Commercial Gauger and Accredited Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval and accreditation of V.I.P Cargo Survey, Inc. as a commercial gauger and accredited laboratory.

SUMMARY: V.I.P Cargo Surveys, Inc. of Aransas Pass, Texas, has applied to U.S. Customs to extend its approval to gauge petroleum and petroleum products and accreditation to perform petroleum analysis methods under Part 151.13 of the Customs Regulations (19 CAR 151.13) to their Texas City, Texas facility. Customs has determined that this office meets all of the requirements for approval as a commercial gauger. Additionally, Customs has determined that this facility meets all requirements for accreditation as a Commercial Laboratory to perform (1) API Gravity, (2) Water by Distillation, (3) Sediment by Extraction, (4) Saybolt Universal Viscosity, (5) Sediment and Water and (6) Distillation. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, V.I.P Cargo Surveys, Inc., Texas City, Texas, is approved to gauge the products named above and to perform the analysis methods listed above in all Customs ports.

LOCATION: V.I.P Cargo Surveys Inc. approved and accredited site is located at: 1442 Texas Avenue, Texas City, Texas 77590.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.5–B, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 25, 1997.

George D. Heavey,

Director, Laboratories and Scientific Service.

[FR Doc. 97–32858 Filed 12–16–97; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on December 17 in Room 600, 301 4th Street, S.W., Washington, D.C., from 11:00 a.m. to 12:00 noon.

The Commission will meet with the Honorable Joseph Duffey, Director, U.S. Information Agency, and the Honorable Penn Kemble, Deputy Director, U.S. Information Agency, to discuss legislation, budget, and reorganization matters.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: December 11, 1997.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 97–32814 Filed 12–16–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 62, No. 242

Wednesday, December 17, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0960]

Truth in Lending

Correction

In rule document 97–31087 beginning on page 63441, in the issue of Monday, December 1, 1997, make the following correction:

Appendix H to Part 226 [Corrected]

On page 63445, in the table, in the Interest Rate column, in the eighth line, "**12.41" should read "***12.41".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 97N–0222]

Medical Devices; Preemption of State Product Liability Claims

Correction

In proposed rule document 97–32551, beginning on page 65384, in the issue of Friday, December 12, 1997, make the following correction:

On page 65388, in the first column, under **VI. Reguest for Comments**, in the second line, "*(insert date 60 days after date of publication in the* **Federal Register**)" should read "February 10, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4203–N–54]

Notice of Proposed Information Collection for Public Comment

Correction

In notice document 97–29961, appearing on page 61134, in the issue of Friday, November 14, 1997, in the first column, in the **DATES** section, "January 13, 1997" should read "January 13, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AGL-36]

Modification of Class E Airspace; Coshocton, OH

Correction

In rule document 97–32348 appearing on page 65014, in the issue of Wednesday, December 10, 1997, make the following correction:

§71.1 [Corrected]

On page 65014, in the third column, under the heading, **AGL OH E5 Coshocton, OH [Revised]**, in the sixth line, "4.9" should read "4.0"

BILLING CODE 1505-01-D

federal register

Wednesday
December 17, 1997

Part II

Environmental Protection Agency

40 CFR Part 441

Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 441

[FRL–5922–2]

RIN 2040–AB97

Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would limit the discharge of pollutants into waters of the United States and publicly owned treatment works (POTWs) from existing and new industrial laundries by establishing pretreatment standards for existing and new sources (PSES and PSNS, respectively). These standards are based on a determination of the degree to which pollutants pass through or interfere with POTWs; the best available technology economically achievable for PSES; and best available demonstrated control technology for PSNS. EPA estimates the proposed rule would cost approximately $139.4 million ($1997 pretax total social cost) annually (posttax compliance costs to affected facilities would be $93.9 million annually) while it reduces the discharge of toxic and nonconventional pollutants to POTWs by approximately 13 million pounds resulting in reduced discharges of 5 million pounds per year of such pollutants as well as significant amounts of other conventional pollutants per year to waters of the U.S. This proposed rule would also reduce the impacts of these discharges to aquatic life and human health and reduce potential interference with POTW operations. EPA is reserving effluent limitations guidelines for direct dischargers since EPA has identified no direct dischargers and has no means to evaluate performance to determine the appropriate level of control. If any such discharges were to occur, they would be subject to limitations set on a best professional judgement basis.

DATES: EPA must receive comments on the proposal by February 17, 1998.

EPA will conduct a public hearing on pretreatment standards on January 15, 1998 from 9am EST to 12 noon.

ADDRESSES: Submit comments in writing to W–97–14, Ms. Marta Jordan, Engineering and Analysis Division (4303), U.S. EPA, 401 M. St. SW, Washington, DC 20460. Please submit any references cited in your comments. EPA requests an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. For additional information on how to submit electronic comments see **SUPPLEMENTARY INFORMATION** "How to Submit Comments".

The public record for this proposed rulemaking has been established under docket number W–97–14 and is located in the Water Docket, Room M2616, 401 M. St. SW, Washington, DC 20460. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials call (202) 260–3027 to schedule an appointment. You may have to pay a reasonable fee for copying.

EPA will conduct a public hearing on pretreatment standards in EPA's Auditorium, Waterside Mall, 401 M. St. SW, Washington, DC. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

FOR FURTHER INFORMATION CONTACT: For technical information contact Ms. Marta E. Jordan at (202) 260–0817. For economic information contact Mr. George Denning at (202) 260–7374.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This proposed rule would apply to industrial laundries. An industrial laundry is any facility that launders industrial textile items from off-site as a business activity (*i.e.*, launders industrial textile items for other business entities for a fee or through a cooperative arrangement). Either the industrial laundry facility or the off-site customer may own the industrial laundered textile items. This definition includes textile rental companies that perform laundering operations. For this proposed rule, laundering means washing with water, including water washing following dry cleaning. This proposed rule would not apply to laundering exclusively through dry cleaning. Industrial textile items include, but are not limited to, industrial: shop towels, printer towels/rags, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents, uniforms, filters and clean room items. If any of these items otherwise considered to be industrial textile items are used only by hotels, hospitals, or restaurants, they are not industrial items and would not be covered by this rule.

Category	Examples of regulated entities
Industry	Facilities that launder industrial textile items from off-site as a business activity.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated by this proposed action. To determine whether your facility is regulated by this proposed action, you should carefully examine the Industrial Laundries Definition section of the proposed rule. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person(s) listed in the "For Further Information Contact" section of this proposed rule.

The proposed rule would not apply to discharges from: on-site laundering at industrial facilities, laundering of industrial textile items originating from the same business entity, and facilities that exclusively launder linen items, denim prewash items, new items (*i.e.*, items directly from textile manufacturers, not yet used for intended purpose), any other laundering of hospital, hotel, or restaurant items or any combination of these items. This proposed rule would apply to hotel, hospital, or restaurant laundering of industrial textile items from off-site industrial users, (*e.g.*, shop towels). In addition, this proposed rule would not apply to the discharges from oil-only treatment of mops.

By linen items, EPA means: sheets, pillow cases, blankets, bath towels and washcloths, hospital gowns and robes, tablecloths, napkins, tableskirts, kitchen textile items, continuous roll towels, laboratory coats, household laundry (such as clothes, but not industrial uniforms), executive wear, mattress pads, incontinence pads, and diapers. This list is meant to be all inclusive. By linen items, EPA does not mean to specify a particular type of fabric, but instead the types of items listed above.

For facilities covered under the Industrial Laundry definition, wastewater from all water washing operations would be covered, including the washing of linen items as long as these items do not constitute 100 percent of the items washed.

Exclusions

Under Pretreatment Standards for Existing Sources (PSES), EPA is proposing to exclude existing facilities that launder less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. EPA proposes this exclusion in order to eliminate unacceptable disproportionate adverse economic impacts on these smaller facilities. The excluded facilities would be disproportionately adversely affected relative to all facilities covered by this proposed rule, as discussed further below. If any excluded facility launders one million pounds or more of incoming laundry per calendar year or 255,000 pounds or more of shop and/or printer towels/rags per calendar year, it will no longer be excluded from the standards. All of the excluded facilities are small entities under the Small Business Administration (SBA) definition of small entity. The excluded facilities account for less than three percent of the pollutant removals from the waters of the U.S. than would occur if the proposed rule were implemented without the exclusion.

Under Pretreatment Standards for New Sources (PSNS), EPA is proposing no exclusion since the economic projections indicate that there would be no barrier to entry as a result of the proposed new source standards.

Supporting Documentation

The basis for this proposed rule is detailed in five documents, each of which is supported in turn by additional information and analyses in the rulemaking record. EPA's technical foundation for the regulation is presented in the Technical Development Document for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category. (Hereafter, "Development Document"; EPA Report No. EPA–821–R–97–007). EPA's economic analysis is presented in the Economic Assessment for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category. (Hereafter, "Economic Assessment"; EPA Report No. EPA–821–R–97–008) and the Cost-Effectiveness Analysis for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category (Hereafter, "Cost-Effectiveness Analysis"; EPA Report No. EPA–821–R–97–005). EPA's statistical analysis is presented in the Statistical Support Document for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category. (Hereinafter, "Statistical Support Document"; EPA Report No. EPA–821–R–97–006). EPA's environmental benefits analysis is presented in the Water Quality Benefits Analysis for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category. (Hereinafter, "WQBA"; EPA Report No. EPA–821–R–97–009). These background documents are available from the Office of Water Resource Center, RC–4100, at the U.S. EPA, Washington, DC address shown above; telephone (202) 260–7786 for the voice mail publication request line.

How to Submit Comments

Comments may be filed electronically to Jordan.Marta@epamail.epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect 6.1 file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–14 and must be received by midnight of February 17, 1998. Electronic comments on this notice may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

Protection of Confidential Business Information

EPA notes that many documents in the record supporting the proposed rule have been claimed as confidential business information (CBI) and therefore, are not included in the record that is available to the public in the Water Docket. To support the rulemaking, EPA is presenting certain information in aggregated form or is masking facility identities to preserve confidentiality claims. Further, the Agency has withheld from disclosure some data not claimed as CBI because release of this information could indirectly reveal information claimed to be confidential.

Some facility-specific data, claimed as CBI, are available to the company that submitted the information. To ensure that all CBI is protected in accordance with EPA regulations, any requests for company-specific data should be submitted to EPA on company letterhead and signed by a responsible official authorized to receive such data. The request must list the specific data requested and include the following statement, "I certify that EPA is authorized to transfer confidential business information submitted by my company, and that I am authorized to receive it."

Organization of this Document

I. Legal Authority
II. Summary of Proposed Pretreatment Standards
III. Background
  A. Clean Water Act Statutory Requirements
  B. Pollution Prevention Act
  C. Industrial Laundries Definition
  D. Summary of Public Participation
IV. Description of the Industry
V. Summary of Data Gathering Efforts
VI. Development of the Pretreatment Standards
  A. Wastewater Characteristics
  B. Selection of Pollutant Parameters to be Regulated
  C. Available Treatment Technologies
  D. Technology and Regulatory Options Considered
  E. Costs
  F. Rationale for Selection of PSES and PSNS
  G. Determination of Long-Term Averages (LTAs), Variability Factors, and Limitations for PSES and PSNS
VII. Economic Analysis
  A. Introduction
  B. Economic Impact Methodology
  C. Summary of Costs and Economic Impacts
  D. Cost-Benefit Analysis
  E. Cost-Effectiveness Analysis
VIII. Non-Water Quality Environmental Impacts
IX. Environmental Benefits Analysis
  A. Introduction
  B. Overview of the Industrial Laundry Industry's Effluent Discharges
  C. Benefits of the Proposed Rule
  D. Human Health Benefits
  E. Ecological Benefits Valued on the Basis of Enhanced Recreational Fishing Opportunities
  F. Benefits From Reduced Cost of Sewage Sludge Disposal and Reduced Incidence of Inhibition
  G. Discussions With POTW Operators and Pre-Treatment Coordinators
X. Related Acts of Congress, Executive Orders, and Agency Initiatives
  A. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)
  B. Executive Order 12866
  C. Unfunded Mandates Reform Act (UMRA)
  D. Paperwork Reduction Act
  E. National Technology Transfer and Advancement Act
XI. Related Rulemakings
  A. Office of Solid Waste (OSW) Activities Related to This Effort
XII. Regulatory Implementation
  A. Upset and Bypass Provisions
  B. Variances and Modifications
Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

I. Legal Authority

This regulation is being proposed under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean

Water Act (CWA), 33 U.S.C. sections 1311, 1314, 1316, 1317, 1318, and 1361.

II. Summary of Proposed Pretreatment Standards

EPA proposes to establish "Pretreatment Standards for Existing Sources" (PSES), and "Pretreatment Standards for New Sources" (PSNS). Under PSES, EPA is proposing pretreatment standards for the entire facility wastestream based on Chemical Precipitation treatment of the portion of facility wastewater generated by laundering the industrial items only (CP–IL). EPA's data shows that these standards can be met by treating only this portion of wastewater. EPA finds this option to be the best available technology economically achievable based on the data collected during development of the proposed rule. CP–IL also provides effective treatment to minimize/prevent pass through and interference at POTWs. Under PSNS, EPA is also proposing standards based on Chemical Precipitation treatment of the portion of facility wastewater generated only by laundering of the industrial items since it is the best available demonstrated technology for pretreatment and the costs are not projected to be a barrier to entry.

EPA is not developing effluent limitations guidelines and New Source Performance Standards for direct dischargers because EPA has identified no direct dischargers and there is no available information with which to accurately determine "Best Available Technology Economically Achievable" (BAT) or "Best Available Demonstrated Control Technology" (BADCT) performance for direct dischargers. Proposed limitations based on pretreatment control technologies would not likely represent best available technology or best available demonstrated technology for direct dischargers because the treatment technologies at existing industrial laundries that EPA evaluated were not designed for treatment prior to discharging directly to surface waters. The type or design (*i.e.*, size) of treatment would not represent BAT because in all cases facilities rely on additional treatment at POTWs. For the pollutants evaluated in this proposed rule, the POTW's biological treatment removes from 4%–99% depending on the pollutant. Because EPA has not identified any POTWs receiving a very large proportion of their load (70–100%) from an industrial laundry, a determination of direct discharge effluent limitations cannot be performed. Thus, EPA is reserving effluent limitations guidelines and standards for direct dischargers in this rulemaking.

This proposed rule would not apply to discharges from: on-site laundering at industrial facilities, laundering of industrial textile items originating from the same business entity, and facilities that exclusively launder linen items, denim prewash items, new items (*i.e.*, items directly from textile manufacturers, not yet used for intended purpose), any other laundering of hotel, hospital, or restaurant items or any combination of these items. This proposed rule would apply to hotel, hospital, or restaurant laundering of industrial textile items. In addition, this proposed rule would not apply to laundering exclusively through dry cleaning and the oil-only treatment of mops.

The rule also would not apply to certain small industrial laundries; see "Regulated Entities" discussion above, industrial laundries definition, and rule text below.

Pursuant to CWA section 307(b)(1), indirect dischargers are required to comply with pretreatment standards for existing sources by three years of the effective date of the final rule. For purposes of this rule, indirect dischargers must comply with this rule by three years after the date of publication of the final rule.

III. Background

A. Clean Water Act Statutory Requirements

The objective of the Clean Water Act (CWA) is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA section 101(a). To assist in achieving this objective, EPA issues effluent limitation guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These standards relevant to this rulemaking are summarized here:

1. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

BAT effluent limitations guidelines apply to direct dischargers of toxic and nonconventional pollutants. In general, they represent the best existing economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and such factors as the Administrator deems appropriate. EPA retains considerable discretion in assigning the weight to be accorded these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, the achievability is determined on the basis of total costs to the industrial subcategory and the rule's effect on the overall industry financial health. Where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

2. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS are based on the best available demonstrated control technology (BADCT) and apply to all pollutants (conventional, nonconventional, and toxic). New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Under NSPS, EPA is to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible. In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

3. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. Those regulations contain a definition of pass through that addresses localized rather than national instances of pass through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586 January 14, 1987.

4. Pretreatment Standards for New Sources (PSNS)—Section 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are incompatible with the operations of POTWs. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

5. Best Management Practices (BMPs)

Section 304(e) of the CWA gives the Administrator the authority to publish regulations, in addition to the effluent limitations guidelines and standards listed above, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage that the Administrator determines may contribute significant amounts of pollutants. Some industrial laundry facilities have BMPs in place and these BMPs are further discussed in Sections III.B. and VI.C.1. below and in more detail in the Development Document.

6. CWA Section 304(m) Requirements

Section 304(m) of the CWA requires EPA to establish schedules for (I) reviewing and revising existing effluent limitations guidelines and standards and (ii) promulgating new effluent limitations. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised guidelines for several industry categories, including the industrial laundries point source category. Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia, (*NRDC et al* v. *Reilly*, Civ. No. 89–2980). On January 31, 1992 the Court entered a consent decree (the "304(m) Decree"), which establishes schedules for, among other things, EPA's proposal and promulgation of effluent guidelines for a number of point source categories, including the industrial laundries point source category. The most recent Effluent Guidelines Plan Update was published in the **Federal Register** on February 26, 1997 (62 FR 8726). This plan requires, among other things, that EPA propose the Industrial Laundries Effluent Limitations Guidelines and Pretreatment Standards by September 1997 and take final action on the Guidelines and Standards by June 1999.

B. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*; Pub. L. 101–508, November 5, 1990) "declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *" (Sec. 6602; 42 U.S.C. 13101(b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. The PPA directs the Agency to, among other things, "review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction" (Sec. 6604; 42 U.S.C. 13103(b)(2)). This effluent guideline was reviewed for its incorporation of pollution prevention.

According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants or residuals at the source, usually within a process. The term source reduction "include[s] equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service." 42 U.S.C. 13102(5). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

EPA has undertaken several pollution prevention related activities involving the industrial laundries industry. Part of the efforts were Agency wide, including the Office of Research and Development (ORD) and EPA's Region 9, while other efforts were included as part of the engineering studies in the development of the proposed rule.

The Agency-wide efforts, called the Industrial Pollution Prevention Project (IP3), were multi-media and examined how industrial pollution prevention can be incorporated into EPA's regulatory framework and how the pollution prevention ethic can be promoted throughout industry, the public and government. A report summarizing the results of these efforts, entitled "Summary Report of the Industrial Pollution Prevention Project (IP3)," EPA–820–R–95–007, July 1995, included the results of two case studies involving industrial laundries. More detailed discussions of the two studies are contained in the individual reports, "Pollution Prevention at Industrial Laundries: Assessment Observations and Waste Reduction Options," EPA–820–R–95–010, July 1995, and "Pollution Prevention at Industrial Laundries: A Collaborative Approach in Southern California," EPA–820–R–95–012. These studies identified a number of "best management practices" (BMP's) and water and energy savings technologies as potential pollution prevention practices at industrial laundries.

Similarly, during the engineering study phase of the development of the proposed rule, a number of potential pollution prevention practices and technology applications were identified. Discussion of the pollution prevention technologies and practices and their uses with respect to this proposed rule are contained later in Section VI of this preamble and in the Development Document.

C. Industrial Laundries Definition

An industrial laundry is any facility that launders industrial textile items from off-site as a business activity (*i.e.*, launders industrial textile items for other business entities for a fee or through a cooperative arrangement). Either the industrial laundry facility or the off-site customer may own the industrial laundered textile items. This definition includes textile rental companies that perform laundering operations. For this proposed rule, laundering means washing with water, including water washing following dry cleaning. This proposed rule would not apply to laundering exclusively through dry cleaning. Industrial textile items include, but are not limited to industrial: shop towels, printer towels/rags, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents, uniforms, filters and clean room garments. If any of these items are used by hotels, hospitals, or restaurants, they are not industrial items.

The proposed rule would not apply to discharges from: on-site laundering at industrial facilities, laundering of

industrial textile items originating from the same business entity, and facilities that exclusively launder linen items, denim prewash, new items (*i.e.* items directly from textile manufacturers, not yet used for intended purpose), any other laundering of hotel, hospital, or restaurant items or any combination of these items. This proposed rule would apply to hotel, hospital, or restaurant laundering of industrial textile items. In addition, this rule would not apply to discharges from the oil-only treatment of mops.

The focus of this rule is on industrial laundries that function independently of other industrial activities that generate wastewater. The reason EPA is excluding from applicability on-site laundries is that EPA believes it is more appropriate to address on-site laundry discharges at industrial facilities as part of the effluent from the facility as a whole, for several reasons. First, many such facilities commingle laundry wastewater with wastewater from other processes. Second, EPA anticipates that contaminants removed from laundered items can best be treated with process wastewater containing similar contaminants. EPA has already established effluent limitations guidelines and standards for 51 industries (see Development Document). These regulations generally apply to wastewater generated from these industries, including on-site laundering. For example, the OCPSF effluent guidelines control discharges from garment laundering at OCPSF facilities. For industries not yet covered by effluent limitations guidelines and standards, it makes sense to examine these industries and the wastewater treatment processes at these industrial facilities in the context of the entire industrial facility, not just the laundering portion of the facility. Addressing on-site laundering discharges along with other industrial discharges in an industry allows EPA to examine all of the production and processing equipment used by the industry, all of the discharges in an industry, all the potential wastewater treatment applicable to the industry, and all of the economic impacts of any such national regulation for the industrial subcategory as a whole. This is consistent with EPA's efforts to make common-sense regulatory decisions.

EPA has also considered concerns expressed by industrial launderers that by excluding on-site laundering of industrial items, EPA has created an incentive for businesses to switch from using industrial launderers covered by the rule to on-site laundering. EPA does not believe this will happen because the average increased price per pound of laundering as a result of the proposed rule ($0.003 per pound) is so small that the cost of buying the equipment and operating the equipment on-site (capital, operation and maintenance including labor, chemicals, water) to do on-site laundering rather than using industrial launderers would not be justified. Furthermore, an increase in pollutant loads at the facility may necessitate additional changes in the facility's NPDES permit if it is a direct discharger or its pretreatment permit issued by the local POTW if it is an indirect discharger. See Section 8 of the EA and Chapter 6 of the Development Document.

EPA also looked at the types of items that were water washed to determine if any specific items should be excluded from regulation. EPA reviewed the available data to determine differences in types of items laundered, and determined that wastewater characteristics of denim prewash items and linen items are significantly different from the wastewater characteristics of industrial items, based on a statistical comparison of untreated wastewater pollutant concentrations. The pollutant concentrations in wastewater from laundering denim prewash items and linen items are lower on average than industrial item wastewater concentrations. The available data indicate that the pollutant concentrations are lower for denim prewash items and linen items, and POTWs can adequately treat wastewater streams generated from these types of items. Therefore, EPA is excluding facilities discharging 100 percent denim prewash items and linen item wastewater from the scope of this proposed rule.

EPA is excluding new items from regulation since these items are laundered prior to being used for their intended purpose and therefore may not contain pollutants at concentrations that are incompatible with or interfere with POTWs.

The rule also would not apply to certain small facilities; see "Regulated Entities" discussion above and rule text below.

D. Summary of Public Participation

EPA encouraged full public participation in developing the proposed rule. During the data gathering activities that preceded development of the proposed rule, EPA met with industry trade associations, state and local governments, and industrial laundry and linen facilities. EPA has also participated in numerous industry talks and meetings. To further public participation on this rule, on March 4, 1997, EPA held a public meeting about the content and status of the proposed regulation. The meeting was announced in the **Federal Register** (62 FR 3849; January 27, 1997) and information packages were distributed at the meeting. The public meeting also gave interested parties an opportunity to provide information, data, and ideas or comments on key issues.

During the development of the proposed rule, EPA sent a screener questionnaire to assess the number of facilities that could potentially be considered industrial laundries, and followed this with a detailed questionnaire to a stratified random sample of the industry under authority of section 308 of the CWA. During the design of the detailed questionnaire, EPA met with industry trade associations to discuss EPA's plans to issue a questionnaire; and distributed several drafts of the questionnaire to both the industry trade associations and the Natural Resources Defense Council, Inc., for review and comment. The detailed questionnaire was subsequently completed, reviewed and approved by the Office of Management and Budget (OMB) and sent to industrial laundry facilities. Two trade associations, the Textile Rental Services Association of America (TRSA) and Uniform and Textile Service Association (UTSA) sent letters to OMB supporting EPA's data collection efforts, particularly the detailed questionnaire. EPA held workshops for the public on how to complete the detailed questionnaire.

EPA also sent a screener questionnaire to hotels, hospitals, and prisons to assess whether these facilities should be included in the scope of the industrial laundries regulation. Also, following receipt of the detailed questionnaire responses and as part of the technology performance data gathering effort, EPA requested detailed monitoring data from 37 facilities that had already received the detailed questionnaire so that data specific to these facilities could be evaluated as part of EPA's analyses.

IV. Description of the Industry

Industrial laundry facilities are located in all 50 states and all 10 EPA regions. By State, the largest number of industrial laundries are in California. By EPA Region, the largest concentration of industrial laundries is in Region V. Most of the industrial laundering facilities are in large urban areas. EPA estimates that there are 1,747 facilities nationwide.

Industrial laundries vary in size from one- or two-person facilities to large corporations that operate many facilities with hundreds of employees nationwide. Annual laundry production per facility ranges from 44,100 to 32,620,000 pounds.

Facilities launder most items using water washing. Water washing involves washing items in water. Some facilities launder items using dry cleaning, which involves washing items in an organic solvent. Facilities that only dry clean (with solvent washing) are not covered by this proposed rule. Dry cleaning is not a water washing process and generates little, if any, wastewater, therefore EPA excluded this process from this proposed rule. The pollutants generated in the dry cleaning operation are recovered from the solvent through distillation and then disposed of off-site as a hazardous waste. Air emissions from dry cleaning may be controlled by EPA in Maximum Achievable Control Technology (MACT) standards issued under the Clean Air Act. In some cases, facilities combine the two processes to wash items that have large amounts of both water soluble and organic-solvent soluble soils. When water washing and dry cleaning are performed in series without drying the items between the solvent and water phases, the process is called dual-phase washing. The order in which these processes are performed depends on the solvent used, type of soil, and drying energy requirements. Typically, in dual-phase washing, the solvent wash occurs prior to the water wash; none of the facilities responding to the detailed questionnaire reported performing water washing followed by solvent wash. Facilities performing dual-phase washing of industrial items are covered by this proposed rule if they process industrial textile items.

At some facilities, dust mops are not water washed, but are cleaned and treated with heated oil instead of water. After cleaning, the oil is extracted from the mops, leaving them coated with the desired quantity of oil. Since the oil treatment of mops is not a water washing process and generates no wastewater, EPA excluded this process from this proposed regulation.

A more detailed description of the industry is included in the Industrial Laundries Development Document contained in the record for this proposed rule.

V. Summary of Data Gathering Efforts

EPA has collected data from various sources. EPA has collected industry-supplied data from industrial laundries through the screener questionnaires, detailed questionnaires and the detailed monitoring data requests. EPA has also collected data through site visits and sampling activities. EPA distributed a screener questionnaire in 1993 and a supplemental screener questionnaire in 1994 to develop the scope of the rule, identify the population of the industry, and select facilities to receive the more-detailed questionnaire. Also, in response to comments from industrial laundry and linen trade associations, EPA mailed 100 screener questionnaires in January 1995 to hospitals, hotels, and prisons, which potentially operate on-site laundries.

The industrial laundries industry detailed questionnaires were sent to a stratified random sample of facilities that were identified from two sources: Trade association mailing lists and information obtained from Dun & Bradstreet. These sources produced a list of 3,726 possible facilities generating industrial laundry wastewater. Based on responses to the screener questionnaires, EPA estimated there were 1,960 facilities generating industrial laundry wastewater.

To minimize the burden on the respondents to the trade association screener questionnaire, EPA chose to send detailed questionnaires to only a selected sample group of facilities. EPA grouped facilities by the type of items they laundered, their 1992 revenues, and the type of wastewater treatment they had in place. The Dun & Bradstreet detailed questionnaire (which was identical to the trade association detailed questionnaire in content) was based on groupings of Standard Industrial Classification codes of 7218 (industrial laundering) and 7213 (linen supply servicing). This technique is known as stratification of the population. Depending on the number of facilities within the strata, EPA either censused or chose a random sample of facilities within each strata. The chosen facilities were given survey weights based on a facility's probability of selection. If the stratum was censused, those facilities represent themselves only. Otherwise, the facility is given a survey weight that allows them to represent themselves and other facilities, within that stratum, that were not selected to receive a detailed questionnaire.

Of the 1,960 facilities generating industrial laundry wastewater, 255 received detailed questionnaires and were used to develop survey weights. After analyzing responses to the questionnaires, EPA chose to exclude facilities that launder 100% linen items. EPA was left with 193 complete responses representing 1,747 industrial laundry facilities nationwide. After examining economic impacts, EPA then decided to exclude existing facilities that launder less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. Therefore, EPA estimates the total number of facilities that currently would be subject to the standards in this proposed rule to be 1,606 facilities. All analyses of impacts of the rule are based on 193 questionnaire respondent facilities and then the survey weight is applied to develop national estimates for all facilities. See the Statistical Support Document for the Industrial Laundries Pretreatment Standards for additional information on the development of survey weights.

The responses to the detailed questionnaires provided EPA with detailed technical, economic, and financial information from industrial laundry and linen supply facilities. EPA used the information reported to develop an industry profile, characterize industry production and water use; develop pollutant loadings and reductions estimates, and develop compliance cost estimates.

In 1995, EPA mailed out 37 requests for detailed monitoring data to a selected group of industrial laundries. EPA identified this selected group of facilities because they indicated in their initial responses in the detailed questionnaires that they had available monitoring data that EPA determined might be useful in characterizing performance of certain treatment technologies. EPA has also collected data through site visits and sampling activities. EPA conducted more than 30 site visits between 1992 and 1997 to collect information about industrial laundry processes, water use practices, pollution prevention practices, wastewater treatment technologies, and waste disposal methods. EPA conducted eight sampling episodes to characterize industrial laundry wastewaters and to assess treatment technology effectiveness. A more detailed description of these data collection efforts can be found in Chapter 3 of the Industrial Laundries Development Document.

VI. Development of the Pretreatment Standards

A. Wastewater Characteristics

Industrial laundry facilities generate wastewater discharges from water washing industrial textile items. All of the facilities identified in the data gathering phase of this rulemaking were found to be indirect dischargers and discharge all laundry process wastewater to publicly owned treatment works.

The detailed questionnaires requested information on the types of analytes tested during wastewater sampling activities performed at the facilities in 1993. The facilities reported analytes in the following categories: oil and grease/total petroleum hydrocarbons (O&G/TPH), conventional pollutants, metals, organics, and pesticides.

Based on data collected through the detailed questionnaires and sampling and analysis of industry wastewater, EPA has determined that 67% of the total industry raw wastewater toxic pollutant loading is generated from laundering of shop and printer towels. Shop and printer towels represent 80% of the raw wastewater toxic pollutant loading from industrial laundry items.

B. Selection of Pollutant Parameters To Be Regulated

1. Pollutants Regulated

EPA collected data to determine the conventional, toxic/priority, and nonconventional pollutants present in industrial laundries wastewaters. EPA analyzed industrial laundries wastewater for 315 pollutants consisting of four conventional, 98 toxic or priority, and 213 nonconventional organic and metal pollutants, during the 1993–1996 industrial laundries sampling program. This section of the preamble discusses how EPA determined the pollutants to be regulated under the selected option. Other options have the same list of regulated pollutants, although EPA's rationale for regulating these pollutants varies depending on the option. This is discussed in Chapter 7 of the Development Document.

EPA reduced the list of 315 pollutants to 72 pollutants for further consideration for control using the following criteria: eliminating pollutants never detected in laundry wastewater, pollutants detected only a small percentage of the time in laundry wastewater (less than 10% of the time), pollutants detected in source water at concentrations similar to concentrations in laundry wastewater, pollutants analyzed for screening purposes, but not analyzed in a quantitative manner due to a lack of acceptable analytical methods, and pollutants likely to be adequately regulated on a case-by-case basis by POTWs using the current regulations on controlling pass through and interference. (See Development Document, Chapter 7).

For the selected option (CP-IL), the 72 pollutants were subsequently reduced to 59 pollutants by eliminating n-alkanes (11 separate pollutants), which make up part of TPH as measured by SGT-HEM, as well as two pollutants used as treatment chemicals (Aluminum and Iron). EPA also eliminated 31 pollutants from regulation because these pollutants are not removed by the treatment technology for the selected option or because these pollutants were present below treatable concentrations in wastewaters influent to the treatment system and therefore would not be substantially removed by the treatment technology. For purposes of this rule, EPA considers treatable concentrations to be greater than 10 times the method detection level. Based on these analyses, this left EPA with 28 pollutants under consideration for regulation.

Before proposing pretreatment standards, EPA examines whether the pollutants discharged by the industry pass through a POTW to waters of the U.S. or interfere with the POTW operation or sludge disposal practices. Generally, in determining whether pollutants pass through a POTW, EPA compares the percentage of the pollutant removed by well-operated POTWs achieving secondary treatment with the percentage of the pollutant removed by facilities meeting BAT effluent limitations. In this case, where only pretreatment standards are being considered, EPA compared the POTW removals with removals achieved by indirect dischargers using the candidate technology that satisfies the BAT factors. For specific pollutants, such as volatile organic compounds or highly biodegradable compounds, EPA may use other means to determine pass through. For volatile compounds, a volatile override test based on the Henry's Law Constant is used to determine pass through. If a pollutant has a Henry's Law Constant greater than 2.4×10^{-5} atm-m^3/mole, it is generally determined to pass through because it is assumed to be sufficiently volatile such that a significant portion of the compound would not be treated by the POTW. For highly biodegradable compounds, the pass through determination may be conducted using engineering modeling.

The primary source of POTW data was the Fate of Priority Pollutants in Publicly Owned Treatment Works (also known as the 50 POTW Study). Since the 50 POTW Study did not cover all the pollutants detected in industrial laundry wastewater, EPA used additional data from the Risk Reduction Engineering Laboratory (RREL) database. The RREL database EPA used included data relating to activated sludge and aerated lagoons reflecting POTW secondary treatment from domestic and industrial wastewater sources.

EPA eliminated three conventional pollutants (O&G, BOD, and TSS) from regulation without conducting the percent removal comparison because EPA believes POTWs adequately treat these parameters in the concentrations found in IL wastewaters. Thus, these parameters are deemed to not pass through. EPA conducted the pass through analysis on the remaining 25 pollutants.

For this proposed rule, the percent removal comparison between indirect dischargers using the candidate PSES-BAT technology and POTWs and the volatile override test were used to determine pass through. Since EPA has not identified any direct dischargers, EPA used PSES percent removals for evaluating pass through. EPA finds that a pollutant passes through when the average percentage removed nationwide by well-operated POTWs (those meeting secondary treatment requirements) is less than the percentage removed by facilities meeting candidate PSES standards for that pollutant.

EPA eliminated POTW and PSES data from the analysis where the influent levels for the pollutant were less than 10 times the method detection level because EPA reasoned that low removals may simply reflect low influent rather than ineffective treatment. For pollutants for which none of the POTW influent concentrations exceeded 10 times the method detection level, in order to conduct the analysis using the 50 POTW Study, EPA modified its editing criteria to eliminate data where the influent values were less than 20 µg/L or the method detection level. EPA selected 20 µg/L or the method detection level because for pollutants with low influent concentrations, *i.e.*, less than 20 µg/L or the method detection level, the effluent concentrations were consistently below the detection level and could not be precisely quantified.

EPA then averaged the remaining influent data and the remaining effluent data. The percent removals achieved for each pollutant were determined from these averaged influent and effluent levels. This percent removal was then compared to each of the PSES treatment technology options.

Of the 25 pollutants that were evaluated, 23 were found to pass through. A more detailed description of the results of the pass through analysis is provided in Chapter 7 of the Development Document.

The remaining 23 pollutants were reviewed in an attempt to streamline the control and compliance process. To do this, EPA determined whether certain pollutants could serve as "indicator" pollutants for others. Because many of the pollutants originate from similar sources and have similar treatability properties, setting standards for some "indicator" pollutants would effectively control a broader set of pollutants. Based on this analysis, EPA determined that setting limits for 11 pollutants would control the remaining 23 pollutants. The list of 11 pollutants is as follows: SGT-HEM, Copper, Lead, Zinc, Bis(2-Ethylhexyl) Phthalate, Ethylbenzene, Naphthalene, Tetrachloroethene, Toluene, m-Xylene and o&p-Xylene. The limitations for the Xylenes parameters contained in the proposed rule are based on data obtained from EPA sampling episodes using EPA Method 1624 and detailed monitoring questionnaires which reported EPA Method 624 which are contained in Part 136 but not identified for use in measuring Xylenes. A more detailed description of the selection of the regulated pollutants and the pollutants controlled by regulation of these pollutants is in Chapter 7 of the Development Document.

EPA is proposing to establish PSES and PSNS that would regulate SGT-HEM as an indicator pollutant controlling the discharge of toxic and nonconventional pollutants. Chemical precipitation technology has shown that the SGT-HEM limitation is a good indicator reflecting the correct operation of the control technology that results in removals of both organic and metal compounds. EPA is regulating SGT-HEM rather than total recoverable oil and grease since SGT-HEM more closely corresponds to the toxic portion of oil and grease in industrial laundry wastewaters, while POTWs can generally treat the other portions of oil and grease consisting of vegetable oils, animal fats, soaps, etc. Also, since petroleum-based oils degrade slowly at the POTWs, if sufficient quantities exist in the influent, it can pass through the treatment plant as discussed in Pretreatment of Industrial Wastes prepared by the Water Environment Federation, 1994. The SGT-HEM measurement used to develop the limitations is based on the proposed analytical method 1664 (Silica Gel Treated N-Hexane Extractable Material; "SGT-HEM") (61 FR 1730; January 23, 1996) and not on the current method contained in 40 CFR Part 136, which uses freon extraction. The data collected from the detailed monitoring questionnaires are based on the current Part 136 method of measuring TPH, while the EPA sampling data are based on the proposed Method 1664, which measures SGT-HEM. EPA proposes to regulate SGT-HEM based on calculating limitations with EPA sampling data only. EPA is soliciting comment or information on any additional data regarding the use of this analytical method.

EPA is also regulating SGT-HEM based on interference. Petroleum-based oils have a low rate of biodegradation at the POTWs. These oils tend to coat the biological organisms, preventing or reducing oxygen transfer and degradation of other organics as discussed in Pretreatment of Industrial Wastes prepared by the Water Environment Federation, 1994. Pretreatment coordinators have indicated that interference can be a problem at POTWs as discussed further in Section IX.G.

2. Pollutants Not Regulated

Tables 7–3,7–4, and 7–5 in Chapter 7 of the Development Document list the pollutants EPA proposes not to regulate and the bases for these decisions.

C. Available Treatment Technologies

1. Current Practice

Facilities in the detailed questionnaire reported having a range of wastewater treatment equipment from no treatment to well-operated Chemical Precipitation (CP) or Dissolved Air Flotation (DAF) systems. Many industrial laundry facilities currently have no treatment (approx. 87%). Although many facilities have no treatment, some facilities have reported that they have best management practices in place to limit pollution. Many laundries have adopted the practice of requiring incoming laundry to have no free liquids. Liquids may be removed through various mechanisms at the laundry or by the customer (e.g., hand wringing, mechanical wringing, or centrifuging).

EPA, based on responses to the detailed questionnaire, considered several technologies to develop standards for this industry. The major wastewater treatment technologies reported included: Chemical Emulsion Breaking (CEB), DAF, and CP. Other technologies reported included: screening, equalization, gravity settling, sludge dewatering, pH adjustment, ultrafiltration, centrifugation, filtration, oil/water separation, carbon adsorption, air stripping and vacuum degassing. In addition, facilities reported dry cleaning and steam tumbling as in-process treatment technologies to remove pollutants from items prior to water washing.

During the site visit and field sampling phase of the proposed rule development and as follow up to responses in the detailed questionnaires, EPA identified three major technologies for further evaluation. These major technologies, CEB, DAF and CP are described below.

CEB is used primarily to remove oil and grease, as well as other related pollutants, from process wastewater streams. CEB is effective in treating wastewater streams having stable oil-in-water emulsions. The treatment consists of lowering the pH of the wastewater to break the emulsions, and skimming the surface of the water to remove the floating substances.

DAF is used to remove suspended solids, oil, and some dissolved pollutants from process wastewater. DAF treatment involves coagulating and flocculating the solids and oil and grease and then floating the resulting floc to the surface using pressurized air injected into the unit and removing the floating material. Some DAF systems also have the means to remove material that settles to the bottom of the tank on a continuous basis.

CP is used to remove dissolved pollutants from process wastewater. Precipitation aids, such as lime, work by reacting with the cations (e.g., metals) and some anions to convert them into an insoluble form (e.g., metal hydroxides). The pH of the wastewater also affects how much pollutant mass is precipitated, as pollutants precipitate more efficiently at different pH ranges. Coagulation and flocculation aids are usually added to facilitate the formation of large agglomerated particles that settle more readily and can be removed from the bottom of the clarifiers.

In addition to these major technologies identified and described above, a number of controls that are common to or make up part of the treatment systems at many facilities include: screening, equalization, gravity settling and pH adjustment or neutralization.

Screening is often performed prior to subsequent treatment to remove grit and suspended solids that may potentially damage or clog process equipment located downstream.

Equalization controls fluctuations in flow and pollutant loadings in process wastewater prior to treatment to overcome operational problems that may result from the fluctuations, reduce the size and cost of the downstream treatment units, and improve the overall performance of these units.

Gravity settling is primarily used to remove suspended solids, including pollutants that are in insoluble particulate form such as metals from industrial laundry process wastewater.

Most facilities currently have gravity settling alone without chemical addition. The wastewater is typically collected in a catch basin where the water is detained for a period of time, allowing solids with a higher specific gravity to settle to the bottom of the tank and solids with a lower specific gravity to float to the surface. The effectiveness of the solids settling depends on the characteristics of the laundry wastewater, the length of time the wastewater is held in the catch basin and the regular maintenance of the basin, especially regular removal of the solids.

pH adjustment is used to increase treatment effectiveness—since many treatment technologies used in this industry are sensitive to pH fluctuations—and to meet discharge requirements.

Other wastewater treatment technologies identified as being used in this industry are carbon adsorption, air stripping with and without carbon adsorption, ultrafiltration, centrifugation, sludge dewatering, filtration, oil/water separation without chemical addition, and vacuum degassing.

• Carbon adsorption uses activated carbon to remove dissolved VOCs from process wastewater.

• Air stripping is normally performed in a countercurrent, packed tower, or tray tower column. The wastewater is introduced at the top of the column and allowed to flow downward through the packing material or trays. Air is simultaneously introduced at the bottom of the column and blows upward through the water stream. Volatile organics are stripped from the water stream, transferred to the air stream, and carried out of the top of the column with the air, preferably through activated carbon. The treated water is discharged out of the bottom of the column.

• Ultrafiltration uses semipermeable polymeric membranes to separate emulsified or colloidal materials suspended in the process wastewater stream by pressurizing the liquid so that it permeates the membrane.

• Centrifugation applies centrifugal forces to settle and separate higher density solids from process wastewater. Some facilities use centrifugation as a method to separate solids from wastewater; and centrifugation can be chemically enhanced to remove additional pollutants.

• Sludge dewatering processes remove water from sludge generated from the wastewater treatment process. Many industrial laundry facilities (31%), including some of those with only screening or gravity settling but no additional treatment, reported dewatering their sludge prior to disposal. The types of dewatering devices used in the industrial laundries industry include: plate and frame filters, rotary vacuum filters, and sludge dryers.

• Industrial laundries use bag and sand filters to remove solids from wastewater. Among the facilities visited or responding to the detailed questionnaire, filtration most common to this industry included bag filters and sand filters.

• Oil/water separation without chemical addition technology removes a separated oil layer. The oil layer can be removed by a skimming device or decanted from the wastewater.

• EPA sampled one facility using vacuum degassing. At this facility the vacuum degasser was intended to remove organic compounds.

EPA identified the following in-process treatment technologies that remove pollutants from industrial laundry items prior to water washing:

• Dry cleaning involves cleaning soiled items with an organic-based solvent that removes VOCs as well as organic pollutants (e.g., oil and grease). The pollutants generated in the dry cleaning operation are recovered from the solvent through distillation and then disposed of off-site as a hazardous waste.

• Steam tumbling involves agitating soiled items within a modified washer/extractor while steam is injected into the chamber. The tumbling items contact the steam, which removes the VOCs. The steam is condensed, and the pollutants are recovered through a phase separation and are then disposed of as a hazardous waste.

2. Technologies Rejected From Further Consideration

The technologies described above were those reported in the detailed questionnaire. EPA then determined that certain major technologies should be considered as best available in the industry and chose to sample these candidate technologies.

Based on the data EPA gathered and evaluated, EPA rejected the following technologies from further consideration: bag filtration, sand filtration, ultrafiltration, oil/water separation and vacuum degassing.

EPA removed sand and bag filtration from the list of technology options because data for both sand filtration and bag filtration showed poor removals of most pollutants.

EPA sampled one facility using ultrafiltration. Based on conversations with industrial laundries and corporate contacts, many laundry facilities that have tried ultrafiltration as wastewater treatment have reported problems with fouling, and solids building up in the unit requiring constant maintenance and/or inhibiting the performance of the unit. Some facilities have replaced ultrafiltration units with dissolved air flotation or chemical precipitation units. Therefore, EPA did not further consider ultrafiltration as a regulatory option.

EPA investigated oil/water separation as part of the data analysis. After some assessment, EPA determined that oil/water separation without chemical addition to lower the pH is not nearly as effective as CEB. EPA sampled one facility using CEB.

Vacuum degassing, which was sampled for the removal of organics, did not remove organic pollutants effectively. Therefore, EPA did not continue evaluating this technology as an option. See Chapter 9 of the Development Document.

D. Technology and Regulatory Options Considered

1. Initial Regulatory Options for PSES and PSNS

For the proposed rule, EPA initially developed the following regulatory options based on evaluating screener and detailed questionnaire data submitted by industry. In addition to using the major technologies described above (CEB, DAF, and CP), EPA considered regulatory options using stream splitting, a common practice at some facilities. Stream splitting provides a means of treating a portion of the total wastewater generated at industrial laundries. Stream splitting may be used to isolate and treat a stream with a higher pollutant load, while a stream with a lower load is either recycled and reused or discharged to the POTW without treatment. A divided trench and sump system is used to split process wastewater streams. Washer modification (dual valves) is also part of stream splitting.

The initial regulatory options included standards based on: Chemical Emulsion Breaking of wastewater from the washing of heavy industrial items only (CEB-heavy), Dissolved Air Flotation of wastewater from the washing of heavy industrial items only (DAF-heavy), Chemical Precipitation of wastewater from the washing of heavy industrial items only (CP-heavy), Dissolved Air Flotation of all wastewater (DAF-all), Chemical Precipitation of all wastewater (CP-all) and a Combined Option establishing limits based on using either DAF or CP of all wastewater (Combo-all). For the "heavy" options in this proposed rule, heavy is defined as wastewater from the laundering of shop towels, printer towels, fender covers, filters and mops. As part of the options listed above EPA also included gravity settling, screening, equalization, pH adjustment, sludge dewatering (for CP and DAF only), and the use of common pollution prevention practices (or best management practices).

Based on evaluation of the effluent concentration data from these site visits and sampling, some of the initial options were no longer pursued, or were further modified. The DAF-heavy and CP-heavy options were determined not to be appropriate because at some facilities the untreated waste streams for those items not considered to be heavy by the facility had higher concentrations of pollutants than the average treated effluent concentrations for the same pollutants. This problem, in part, was caused by the different mix of "heavy" items being laundered at the different facilities from which wastewater data were obtained. If sufficient treated effluent data could be obtained related to the laundering of the same set of "heavy" items, the heavy option may be a feasible alternative for the final rule. However, any option that would regulate only the wastewater from washing heavy industrial items would require an in-plant compliance monitoring location or a separate discharge point to the sewer after the treatment system which could increase the compliance burden on the control authority. In some cases where the end-of-pipe monitoring for some parameters was still required based on local limits, the costs of this option would increase due to the in-plant plus end-of-pipe monitoring. At the same time, EPA recognizes that targeting the rule to heavy items only could reduce costs to the regulated community by removing some facilities from the scope of the rule. Some facilities could also save money by segregating heavy items from other items and treating only the heavy items. The CEB-heavy option was determined not to be feasible due to less pollutant removals at higher costs than the DAF-heavy and CP-heavy options. See Chapters 9 and 10 of the Development Document. EPA solicits comments and data on the feasibility of either the DAF or CP heavy only options where the definition of heavy includes only the laundering of printer rags, shop towels, mops, fender covers and filters.

2. Modified Regulatory Options

EPA evaluated proposing pretreatment standards for the entire facility wastestream based on only a portion being treated, specifically only the portion of facility wastewater generated by laundering industrial items was costed for treatment by DAF and CP. The basis for costing partial treatment is that EPA's data shows these standards can be met by treating only the portion of wastewater from laundering industrial items. EPA called these options DAF–IL, CP–IL, Combo-IL and Combo-IL2Lim.

EPA evaluated the combo option in two scenarios. Under the first scenario (Combo-IL) either DAF or CP would form the basis of the standards by establishing one set of standards based on the less stringent of the two standards for each regulated pollutant for the two technologies. Having one set of such standards would allow some flexibility for facilities with either technology to meet the limitations. This option would base the standard for each parameter on the lesser performance between DAF and CP, and based on current data, remove less total pollutants.

Under the second combo scenario (Combo-IL2Lim), facilities with DAF in place as of the publication date of the proposal would have to comply with the standards based on DAF and all other facilities would have to comply with standards based on CP.

EPA additionally considered an organics control option, which involves the use of steam tumbling for treatment of shop and printer towels and mops for removal of organic pollutants.

EPA also considered proposing a no regulation option, but rejected it because the available discharge loadings data identified a number of pollutants that were estimated to pass through or have the potential to interfere with POTW operations.

Under Section 307(b) of the CWA, EPA is directed to establish pretreatment standards that prevent the discharge of pollutants to POTWs that interfere with, pass-through, or are otherwise incompatible with the operation of POTWs. EPA has interpreted the pass-through provision to mean that a pollutant "passes through" the POTW if the removal efficiency of an available pretreatment option is greater than the removal efficiency of the POTW. Based on available data, EPA believes that pretreatment technology is available to the industrial laundries industry that removes some pollutants with greater efficiency than is achieved by most POTWs.

Nonetheless, both the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel, which is comprised of representatives from three federal agencies (EPA, the Small Business Administration, and the Office of Management and Budget), and small entity representatives recommended that EPA solicit comments on a no regulation option. EPA has the discretion under the CWA to decline to regulate an industrial subcategory based on lack of pollutant loadings, the small number of affected facilities, or other relevant factors, one of which could be a determination that there is no pass through or interference due to the pollutant discharges of the industry. The SBREFA Panel noted, among other things, that "the total pollutant loadings (pre-regulation) are not as high for this industry as they were for most industries with effluent guidelines in place and that the regulatory options are not as cost-effective as those selected for most other effluent guidelines." In addition, EPA notes that if we did not use a toxic weighting factor for TPH (see Section VII.E below), the cost per pound equivalent removed of this rule relative to previous rules would be still higher.

As indirect dischargers, industrial laundries are subject to the general prohibitions in the pretreatment requirements and any additional pretreatment requirements set by local POTWs. Any pass-through or interference problems potentially caused by a laundry can be directly addressed by the POTW through the establishment of appropriate local limits. Some POTWs support the no regulation option because it provides them with the flexibility to design less stringent local pretreatment requirements that are appropriate to local conditions. Other POTWs prefer to have EPA establish uniform pretreatment standards because of the resources required to determine and enforce local limits on a case-by-case basis.

EPA solicits comments on the no regulation option and encourages commenters to support such arguments with information and data, particularly data on the loadings and the degree of pass through at POTWs. Further, EPA encourages commenters to explain how the no regulation option would be consistent with those requirements of sections 301, 304 and 307 of the CWA that require the control of pollutants discharged to POTWs that pass through or interfere with POTW operations.

Based on the above evaluations, EPA decided to evaluate the following options: organics control(OC), combo-IL, combo-IL2Lim, DAF–IL, and CP–IL.

E. Costs

EPA estimated the cost for industrial laundries to implement each of the

model technologies considered for the proposed standards. These estimated costs are summarized in this section and discussed in more detail in the Development Document. All cost estimates in this preamble are expressed in 1997 dollars. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, and the annual operating and maintenance costs associated with that equipment. In section VII, costs are expressed in terms of a different cost component, total annualized costs, which are used to estimate economic impacts. Annualized costs better describe the actual compliance costs that a facility/company would incur, allowing for interest, depreciation, and taxes. A summary of the economic impact analysis for the proposed regulation is contained in section VII of today's notice. See also the Economic Assessment.

EPA estimated the cost for implementing the candidate PSES by calculating the engineering costs of meeting the required effluent reductions for each industrial laundry facility. EPA used information from the 193 in-scope facilities responding to the questionnaire as the basis for the cost estimates calculated by the cost model for these facilities. Using statistically calculated facility weighting factors, EPA then extrapolated the results to the entire industrial laundries industry. The facility-specific engineering cost assessment for PSES began with a review of present wastewater treatment technologies at each facility. For facilities without treatment-in-place equivalent to the candidate PSES technology options, EPA estimated the cost to upgrade the facility's existing treatment technology or if none was in place install treatment to achieve the proposed discharge standards. EPA based these estimates on vendor quotes and engineering judgment. Facilities that had treatment in place equivalent to that option were costed for monitoring only. EPA believes that this approach overestimates the costs to achieve the candidate PSES standards because many facilities can achieve the standards without using all of the components of the technology basis or by treating wastewater from certain items only. For the current options, EPA assumed treating all wastewater except for wastewater from linen items, denim prewash items, and new items. EPA solicits comments on these costing assumptions. See Development Document for more details. The following table summarizes by option, the capital expenditures, the annual operating and maintenance costs, and the annual pretax cost for implementing PSES. Note that pretax costs are presented here, but are not used in determining economic achievability of the proposed rule on the industrial laundries industry. Rather, the posttax costs, the costs industry actually bears, are used to determine economic achievability (see Table VII.C.3.1). The annual costs in this table below also account for the ability of some facilities to haul wastewater at a lower cost than the cost of installing and operating the pollution control technology.

TABLE VI.E.1. COSTS OF IMPLEMENTING PSES REGULATIONS

[In millions of 1997 dollars]

Options	Capital costs	Annual operating and maintenance costs	Annual pretax cost
OC	290	35.0	65.7
CP–IL	470	86.6	136.4
DAF–IL	364	138.2	176.8
Combo-IL	440	98.5	145.1
Combo-IL2Lim	364–470	86.6–138.2	136.4–176.8

In addition to costs, EPA estimated the removals for industrial laundry facilities for the following technology options.

TABLE VI.E.2. REMOVALS FOR PSES OPTIONS

Option	Removals (lb-eq)
OC	5,278
CP–IL	407,358
DAF–IL	402,921
Combo-IL	402,253
Combo-IL2Lim	402,921–407,358

The estimated removals summarized in the table are discussed in more detail in the Development Document. The removals are based on the difference between each facility's current discharge load and each facility's discharge load after implementation of the proposed rule.

F. Rationale for Selection of PSES and PSNS

1. Existing Sources

After considering all of the technology options described above, and in light of the factors specified in section 304(b)(2)(B) of the CWA, EPA has tentatively selected Chemical Precipitation-IL (CP–IL) as the technology basis for the pretreatment standards for existing sources in the proposed rule. As discussed in more detail below, the proposed rule would exclude existing facilities laundering less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. However, these excluded facilities would still be subject to local pretreatment standards where appropriate. If any excluded facility launders one million pounds or more of incoming laundry or 255,000 pounds of shop and/or printer towels/rags per year, it will no longer be excluded from the standards. Further, once a facility is subject to the standards, even if the facility becomes "small" as defined by the rule's exclusion, it would still be subject to the rule. This is because once a facility has installed wastewater treatment to meet the requirements of the rule, it is technologically available and economically achievable for the facility to continue to comply with the standards.

The record establishes that this option is technically available. As discussed in more detail below, EPA also tentatively concludes that this option is economically achievable and represents the best performance that is economically achievable. Further, this option has acceptable non-water quality environmental impacts.

The specific standards proposed in this rule were derived based on a statistical analysis of the performance of

chemical precipitation in industrial laundries that are sufficiently similar to all facilities that are subject to the standards, as discussed below and in the Development Document. Although chemical precipitation is currently only used at 3 percent of industrial laundry facilities, chemical precipitation is a widely used technology in other industries such as the metal products and machinery industry, chemicals and allied products industry and centralized waste treatment industry.

Thus, although CP is only used at three percent of industrial laundry facilities, EPA is well within its authority to select it as BAT. BAT means not that the technology be in routine use, but rather that the technology must be available at a cost and at a time that the Administrator determines to be reasonable, and that the technology has been adequately demonstrated if not routinely applied. See *American Frozen Food Institute* v. *Train*, 539 F.2d 107, 132 (D.C. Cir. 1976), citing "A Legislative History of the Water Pollution Control Act Amendments of 1972" (Comm. Print 1973), at 1469–1470. See also *Kennecott* v. *United States EPA*, 780 F.2d 445, 448 (4th Cir. 1985). (The BAT standard reflects the intention of Congress to use the latest scientific research and technology in setting effluent limits, pushing industries toward the goal of zero discharge as quickly as possible. In setting BAT, EPA uses not the average plant, but the optimally operating plant—the pilot plant that acts as a beacon to show what is possible.); *Association of Pacific Fisheries* v. *EPA*, 615 F.2d 794, 816 (9th Cir. 1980) (BAT can be based on statistics from a single plant).

EPA has determined that the selected option for the industrial laundries category is economically achievable for the following reasons. EPA estimates that the proposed standards would cause 33 industrial laundry facility closures and a direct loss of 2,872 jobs from facility closure (although longer term, net direct losses are estimated to total only 470 as the market equilibrates). The number of incremental closures (33) is about 1.9 percent of in-scope industrial laundry facilities (1,747) and 2.1 percent of the (1600) facilities in the facility level analysis. The loss of jobs associated with these closures is about two percent (short-term) or 0.4 percent (longer term) of the category employment. EPA's bankruptcy analysis shows that 65 firms (of 681 total firms in the firm level analysis, or 9.5 percent) move into the bankruptcy likely category under the proposed standards (*i.e.*, they would have trouble obtaining the financing necessary to install the required pollution control equipment). In all cases, these are single-facility firms where EPA's closure analysis shows that the facility would still be financially viable (making money) after complying with the rule if financing could be obtained. In this industry in particular, where demand is relatively inelastic and facilities are geographically tied to their service areas, production is not easily shifted to another geographic area. Therefore, EPA predicts that these bankruptcies do not mean that the facilities will close down, but rather that they may be a target for acquisition by another entity that has better access to financing for pollution control equipment and continue to operate with all or nearly all employees. Based on this analysis, EPA finds the standards to be economically achievable as that term is used in the CWA.

EPA has concluded that application of the selected option is not economically achievable for the smallest industrial laundries that launder less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. If EPA were to require standards based on chemical precipitation, the closure rate among facilities with annual revenues less than $1 million, would be 28.9 percent, as compared to 4.4 percent for the category as a whole without the size exclusion. This economic impact is clearly disproportionate and EPA is exercising its discretion under sections 301 and 304 of the CWA to determine what is economically achievable to establish this exclusion.

Further, EPA believes that it is appropriate to establish this exclusion because it alleviates the harshest economic impact, facility closure, without excluding from the national standards a significant pollutant load. A chart illustrating what EPA found follows:

TABLE VI.F.1.1—CLOSURES AND REMOVALS WITH AND WITHOUT EXCLUSION

Option	Closures		Pollutant Removals (lb-eq) taking POTW removals into account	
	Without exclusion	With exclusion	Without exclusion	With exclusion
CP–IL	70	33	416,920	407,358

As the chart demonstrates, the exclusion would alleviate closures for the smallest facilities. EPA also notes that the excluded facilities account for less than three percent of the pollutant removals from the waters of the U.S. that would occur if the rule were implemented without the exclusion. Thus, the exclusion represents a reasonable approach to addressing the disproportionate adverse economic impacts of the rule consistent with the objectives and requirements of the CWA.

The Agency also evaluated higher thresholds reflecting up to 3 to 5 million pounds of total production and from 255,000 to 500,000 pounds of shop and/or printer towels. See Section X.A. for more discussion of the SBREFA panel findings. The Agency solicits comments on these alternative exclusions as well as the exclusion proposed today.

Finally, EPA has determined that the selected option has acceptable non-water quality environmental impacts discussed further in section IX, below and in chapter 14 of the Development Document.

EPA evaluated the organics control option as a low cost alternative, however, this technology was not effective in terms of pollutant removals and was rejected.

EPA, based on the data gathered to date, did not select DAF–IL because EPA's current data show that CP technology achieves slightly higher toxic pollutant removals. While, DAF is currently more prevalent in the industry than CP (EPA estimates that approximately eight percent of the industry are currently using DAF compared to approximately four percent using CP) EPA estimates that DAF is more costly to operate than CP on an annualized basis. DAF requires a smaller initial capital investment and

may be attractive to many facilities for this reason, however, EPA estimates that its lower capital costs are more than offset by higher operating and maintenance costs associated with the need to chemically condition the flotation residual sludges, making it more expensive than CP overall.

The Combo-IL option would base the standard for each parameter on the lesser performance between DAF and CP, and current data indicate that it would remove slightly fewer pounds of pollutants than if all facilities were required to meet standards based on CP only.

EPA also rejected the Combo-IL2Lim option because current data indicate that overall this option did not remove as many pollutants as the CP option and would cost more than the selected CP–IL option. See Chapters 9 and 12 of the Development Document. EPA solicits additional information and data on the costs and performance of both CP and DAF technologies used to treat wastewaters from laundering industrial textile items. Although EPA rejected the options based on DAF, the pollutant removals were similar enough for further consideration of the DAF and Combo options. If additional data and information provides support that DAF is generally comparable to CP in removing pollutants, EPA would consider for the final rule basing standards on either the less stringent of CP or DAF standards or on DAF for those facilities that already have it in place and on CP for all other facilities.

If the standards for the final rule are based on the Combo-IL2Lim option, the standards based on DAF technology would apply to those facilities with DAF in place as of the publication date of this proposal. Although EPA estimates that CP is cheaper to operate on an annualized basis than DAF (even for facilities that already have DAF installed), EPA's costing analysis for the Combo-IL and Combo-IL2Lim options assumed that some facilities that already have DAF installed would continue to operate it if given the choice because of constraints on financing. This is the explanation for the results in Table VI.E.1 that a less stringent regulatory option would apparently have higher compliance costs. EPA recognizes that while its cost estimates are based on simplifying assumptions that it believes to be correct on average, actual costs will vary from facility to facility, so that DAF may in fact be the cheaper technology for some facilities. This is particularly likely for facilities that already have DAF installed. In this case, the Combo-IL and Combo-IL2Lim options would be expected to entail lower national compliance costs than either the DAF–IL or the CP–IL options. EPA is soliciting information that may help it refine its estimates of the relative costs on a facility-by-facility basis of DAF and CP. Given that EPA's estimates that CP's removals are only slightly better than DAF, this could also be a factor in determining whether CP only, or both CP and DAF represent BAT and/or BADCT in addition to the other factors specified in Section III of this preamble.

2. New Sources

After considering all of the technology options described above, and in light of the factors specified in sections 306 and 307 of the CWA, EPA has selected CP–IL as the technology basis for the pretreatment standards for new sources in the proposed rule. As stated in Section III.A. of the preamble, PSNS are analogous to NSPS, which in turn are based on best available demonstrated control technology. New facilities have the opportunity to install the most efficient treatment technologies and under NSPS, EPA is to consider standards that will eliminate pollution to the maximum extent feasible. These PSNS are based on the performance of CP at one or more facilities using CP depending on the pollutant. Although CP is currently only used at three percent of industrial laundry facilities, CP is a widely used technology in other industries such as the metals products and machinery, chemicals and allied products, and centralized waste treatment industries. *See, e.g., American Iron and Steel Institute* v. *EPA*, 526 F.2d 1027, 1058 (3rd Cir. 1975) (By demonstration, it will be sufficient that there be one operating facility which demonstrates that the level can be achieved or that there is sufficient information and data from a relevant pilot plant or semi-work plant to provide the needed economic and technical justification for such new source).

EPA has determined that the proposed PSNS are economically achievable and present no barrier to entry. EPA has found that overall impacts from the proposed IL standards on new sources would not be any more severe than those on existing sources, since the costs faced by new sources generally will be the same as or less than those faced by existing sources. It is typically easier to incorporate pollution prevention technologies such as those identified in the Development Document in Chapter 8 & 10, and it is less expensive to incorporate pollution control equipment into the design at a new plant than it is to retrofit the same pollution control equipment in an existing plant because no demolition is required, and space constraints, which can add to costs if specifically designed equipment must be ordered, are not an issue in new construction. Because most new sources face either less or similar costs than existing sources, EPA has determined that PSNS requirements should not pose a barrier to entry on the basis of competitiveness for new facilities based on available data. EPA also has shown CP to be an economically achievable option for existing sources. Therefore, the same requirements for PSNS also should have an acceptable level of impact on new facilities.

EPA also examined whether there would be a barrier to entry for small new sources. EPA's analysis showed no closures of new sources at single-facility firms. See section VII.C.2.b of this preamble or the EA for more details. Thus, EPA proposes not to exclude these new sources based on a finding that it is economically achievable for these new sources to comply with the CP standards contained in the proposed rule. EPA solicits comments on its proposed finding that the proposed CP option is economically achievable and does not constitute a barrier to entry for new small sources and on its proposal not to include a small facility exclusion for PSNS. See also section VII.B. below.

G. Determination of Long-Term Averages (LTAs), Variability Factors, and Limitations for PSES and PSNS

Although chemical precipitation (CP) is widely used in other industries, CP only exists at an estimated three percent of industrial laundry facilities. EPA based the proposed standards on sampling data EPA gathered at one industrial laundry facility using CP and from data submitted by as many as four CP facilities (depending on the pollutant) in response to EPA's detailed monitoring questionnaire. Because effluent from even the best performers in an industry can reasonably be expected to vary both above and below the long-term average (LTA) concentration for a given pollutant, even when treatment systems are operating optimally, EPA calculates limitations and standards by multiplying LTAs by variability factors to insure that reasonable excursions from the LTAs do not result in violation of the CWA.

The proposed limitations, as presented in today's notice, are provided as daily maximums and monthly averages for SGT–HEM and daily maximums for all other regulated pollutants. Monitoring was assumed to occur four times per month for SGT–HEM and one day per month for all other pollutants. Monitoring requirements are determined by the pretreatment control authority, but EPA has assumed a schedule that might be appropriate. However, EPA notes the high costs to facilities ($20,000–$23,000 annually) of monitoring at this frequency and requests comment on whether it should recommend a less frequent schedule to pretreatment control authorities.

The limitations for a pollutant are the product of the pollutant long-term average and the pollutant variability factor. The procedures used to estimate the pollutant LTAs and variability factors are briefly described below. A more detailed explanation is provided in the Statistical Support Document.

The LTA of a pollutant for each facility was calculated based on either an arithmetic average or the expected value of the distribution of the samples, depending on the number of total samples and the number of detected samples for that pollutant at that facility. The pollutant long-term average for a treatment technology was the median of the long-term averages from the facilities using CP.

EPA calculated variability factors by fitting a statistical distribution to the data. The distribution was based on an assumption that the furthest excursion from the LTA that a well operated plant using chemical precipitation could be expected to make on a daily basis was a point below which 99% of the data for that facility falls, under the assumed distribution. The daily variability factor for each pollutant at each facility is the ratio of the estimated 99th percentile of the distribution of the daily pollutant concentration values divided by the expected value of the distribution of the daily values. The pollutant variability factor for a treatment technology was the median of the pollutant variability factors from the facilities with that technology. The daily maximum limitation is a product of the pollutant long-term average and the pollutant variability factor.

The monthly maximum limitation is also calculated as the product of the pollutant long-term average and the pollutant variability factor, but the pollutant variability factor is based on the 95th percentile of the distribution of daily pollutant concentrations.

By accounting for these reasonable excursions above the LTA, EPA's use of variability factors results in standards that are generally well above the actual LTAs. Thus, if a facility operates its treatment system to meet the relevant LTA, EPA expects the plant to be able to meet the standards. Variability factors ensure that normal fluctuations in a facility's treatment are accounted for in the limitations.

As stated above, EPA rejected an option that would be based on one set of standards for facilities with DAF currently in place and another set of standards based on CP for all other facilities. Although EPA has rejected this option for the reasons stated in section VI.D above, EPA has also provided standards based on sampling data EPA gathered at two facilities using DAF and from data submitted in response to EPA's detailed monitoring questionnaire by as many as four facilities (depending on the pollutant) that were using DAF. These DAF standards are shown for comparative purposes below. EPA solicits comments on both the proposed CP and DAF standards and encourages commenters to substantiate their comments by submitting data.

TABLE VI.G.1—PRETREATMENT STANDARDS

Pollutant parameter	DAF		CP	
	Daily Maximum(mg/L)	Monthly Average (mg/L)	Daily Maximum (mg/L)	Monthly Average (mg/L)
Bis (2-Ethylhexyl) Phthalate	0.44		0.13	
Ethylbenzene	0.73		1.64	
Naphthalene	0.24		0.23	
Tetrachloroethene	1.35		1.71	
Toluene	5.63		2.76	
m-Xylene	2.11		1.33	
o&p-Xylene	0.98		0.95	
Copper	1.83		0.24	
Lead	0.52		0.27	
Zinc	3.47		0.61	
TPH (as measured by SGT–HEM)	42.9	21.3	27.5	15.4

EPA is proposing concentration-based limits. An alternative is mass-based limits calculated by multiplying the concentrations in the table above by the 75th percentile production normalized flow of 3.13 gallons per pound laundered. However, EPA found no relationship between gallons per pound laundered and items washed, total production or the amount of recycle/reuse. Because of this, even if operators were employing the appropriate level of control, it would be difficult to develop achievable mass limits.

Some stakeholders have advocated mass-based standards while others prefer concentration-based standards. POTWs generally prefer concentration-based standards because it is much easier for them to implement. Mass-based standards require information about flow and/or production both to set the standards and to enforce them, but have the added advantage of encouraging flow reduction. EPA solicits comments on this issue.

VII. Economic Analysis

A. Introduction

This section describes the capital investment and annualized costs of compliance with the proposed industrial laundries pretreatment standards and the potential impacts of these compliance costs on current and future facilities and firms in the industrial laundries industry. EPA's economic assessment is presented in detail in the Economic Assessment (EA) included in the rulemaking record. The EA estimates the economic effect of compliance costs on facilities, firms, employment, domestic and international markets, inflation, distribution, environmental justice and industrial laundries customers. EPA also has conducted an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (),

which estimates effects on small entities, and a cost-effectiveness analysis of all evaluated options. Except where otherwise noted, only the results for the option used as the basis for the proposed rule are presented here. Impacts for other options are presented in Section C.3 below and in the EA.

B. Economic Impact Methodology

1. Introduction

This section (and, in more detail, the EA and record for the proposed rule) evaluates several measures of economic impacts that result from compliance costs. The analysis in the EA consists of eight major components: (1) an assessment of the number of facilities that could be affected by this rule; (2) an estimate of the annual aggregate cost for these facilities to comply with the rule using facility-level capital and operating and maintenance (O&M) costs; (3) an evaluation, using a financial model, of compliance cost impacts on facilities' cash flow (closure analysis); (4) an evaluation, using a financial model, of compliance cost impacts on the financial health of firms in the industry (firm failure analysis); (5) an evaluation of secondary impacts such as those on employment, markets, inflation, distribution, environmental justice and industrial laundry customers; (6) an assessment of the potential for impact on new sources (barrier to entry); (7) an analysis of the effects of compliance costs on small entities pursuant to the RFA as amended by; and (8) a cost-benefit analysis pursuant to E.O. 12866.

All costs are reported in this preamble in 1997 dollars, with the exception of cost-effectiveness results, which, by convention, are reported in 1981 dollars. The EA report presents all costs in 1993 dollars. In the EA, any costs not originally in the base year (1993) dollars have been inflated or deflated to 1993 dollars using the Engineering News Record Construction Cost Index, unless otherwise noted in that report (see the EA for details). This same cost index is used to further inflate costs to 1997 dollars for this preamble. Generally, other indices are used to inflate benefits to 1997 dollars, as cited in the EA. The primary source of data for the economic analysis is the *1994 Industrial Laundries Industry Detailed Questionnaire* (Section 308 Survey). Other sources include government data from the Bureau of the Census, industry trade journals, and several preliminary surveys of the industry, including the *1989 Preliminary Data Summary for Industrial Laundries*, the *1993 Industrial Laundries Industry Screener Questionnaire*, the *1994 Industrial Laundries Supplemental Screener Questionnaire*, and EPA's Development Document for this rulemaking.

2. Methodology Overview

Central to the EA is the cost annualization model, which uses facility-specific cost data and other inputs (discussed in Chapter 12 of the Development Document) to determine the annualized capital and operating and maintenance (O&M) costs of improved wastewater treatment. This model uses these costs along with an annual compliance monitoring cost with the industry-specific real cost of capital (discount rate) over a 16-year analytic time frame to generate the annual cost of compliance for the selected option, as well as the other options considered during the course of the proposal effort. EPA chose the 16-year time frame for analysis based on the depreciable life for equipment of this type, 15 years according to Internal Revenue Service (IRS) rules, plus approximately one year for purchasing and installing the equipment. As an alternative to installing wastewater treatment, facilities may choose, within many of the technology options considered, to have wastewater hauled offsite (a decision handled within the model, as discussed below). The model generates the annualized cost for each option (including the annual cost of hauling wastewater) for each facility in the survey, which is then used in the facility and firm analyses, discussed below.

In the facility analysis, EPA models the economic impacts of regulatory costs on individual industrial laundry facilities, irrespective of ownership. In this part of the analysis, the model uses the annualized costs of each option, compares them to the alternative annual wastewater hauling costs (where this alternative is available), and selects the lowest of the two.

EPA then reduces this resulting cost to take into account that portion of compliance costs that can be passed through to customers. Compliance costs are adjusted downward by a factor (the cost pass-through factor) that is calculated using EPA's model of the industrial laundries market. This model, which quantifies the price and quantity changes in the industrial laundries market due to the proposed rule, shows that the industry will be able to pass some portion of the compliance costs of the proposed rule through to their customers and calculates the percentage that can be passed through. The market model is a simultaneous equation for determining price and quantity using supply and demand curves for the industry that EPA developed based on data in the Section 308 Survey and U.S. Census Bureau economic data. EPA estimates, for this industry, that 32 percent of compliance costs can be passed through to customers. Although EPA believes that its cost pass-through projection is reasonable, an analysis in the EA shows that a zero-cost pass through assumption produces nearly identical closure analysis results.

EPA then converts the adjusted annual cost for each facility into a present value change in cash flow, which is subtracted from the estimated baseline present value of facility cash flow. Estimated baseline present value of facility cash flow is based on the average of three years of financial data from each facility in the Section 308 survey under an assumed no-growth scenario (*i.e.*, the annual cash flow, calculated as the 3-year average, is expected to remain the same over the 16-year period of analysis). If the change in present value of cash flow (which is derived from the adjusted annualized costs of compliance) causes a facility's estimated cash flow to change from positive in the baseline to zero or negative after implementing the requirements of the proposed rule over the 16-year period of analysis, EPA considers the facility likely to close (*i.e.*, liquidate) as a result of the regulation. This approach is somewhat different from methodologies used in other EAs and economic impact analysis for manufacturing industries, since salvage value is not considered in the closure analysis here. For a number of reasons, outlined in the EA (see Section 5 and Appendix C), EPA found that using salvage value in a closure analysis for this industry is not the best way for determining whether a facility would be liquidated. EPA found that baseline closures calculated using salvage value accounted for a large percentage (nearly 30 percent) of existing facilities. Furthermore, EPA found that many of these closures using salvage value were driven by current assets. EPA believes that firms would not be likely to liquidate on the basis of high current assets (cash on hand) relative to cash flow. EPA also believes that costs of liquidation could easily equal or exceed salvage value in low-asset service industries such as this one, unlike in the more highly capital-intensive manufacturing industries.

Note that facilities that reported negative cash flow over the 3-year period of the survey are considered baseline closures and are not considered affected by the rule for several reasons:

(1) Many of these facilities (50 non-excluded facilities) are nonindependent facilities owned by multifacility firms. These facilities may be transferring production (laundering services at or near cost) from other facilities owned by the same parent company, or otherwise not expected to be self-supporting by the parent. EPA analyzes the parent firms of these facilities in the firm-level analysis and as long as the parent firm can afford to install and operate compliance equipment in these facilities, EPA assumes these facilities will close neither in the baseline nor postcompliance. (2) OMB guidance suggests that agencies develop a baseline that is "the best assessment of the way the world would look absent from the proposed regulation. That assessment may consider a wide range of factors, including the likely evolution of the market * * *" EPA's best assessment is that some facilities currently operating may not remain in business to install and operate the pollution control equipment. EPA cannot say for certain which facilities these may be, but can assert that those facilities that are currently considered not financially viable because their cash flow is zero or negative (among those not owned by multifacility firms—57 non-excluded facilities) are the likeliest facilities to close without ever installing and operating pollution control equipment. It is possible that a facility estimated to be a baseline closure may remain open, but the converse is also true—a facility projected to remain open until it is subject to the rule may actually close independently of the effects of the rule (both results might be equally possible). Thus, consistent with OMB guidance, EPA estimated postcompliance closures by counting closures that are projected to close solely due to the effect of the proposed rule.

In the firm failure analysis, EPA uses the adjusted annualized costs to compute a change in earnings, assets, liabilities, and working capital at the firm level (accounting for costs for multiple facilities, where applicable). These postcompliance financial figures are used in a computerized model of financial health on a firm-by-firm basis. The model uses an equation known as "Altman's Z", which was developed based on empirical data to characterize the financial health of firms. This equation calculates one number, based on the financial data, that can be compared to index numbers that define "good" financial health, "indeterminate" financial health, and "poor" financial health. All firms whose "Altman's Z" number changes such that the firm goes from a "good" or "indeterminate" baseline category to a "poor" postcompliance category are classified as likely to have significant difficulties raising the capital needed to comply with the proposed rule, which can indicate the likelihood of firm bankruptcy, or loss of financial independence.

As the panel noted, there is uncertainty associated with both the methodology for predicting facility and firm closures, and the figures used to make those projections, such as interest rate, assumption of the life of the pollution control equipment and compliance costs. One of the small entity representatives consulted during the outreach process specifically questioned several of EPA's costing assumptions, relating to interest rate, use life of equipment, and labor requirements to operate a treatment system. EPA recognizes the uncertainties associated with its analyses, and has performed sensitivity analyses in the EA that addresses some of these issues. EPA believes that its choice of methodology and input data is appropriate and results in a conservative calculation of costs and facility and firm closures, but solicits comments and data that would support more refined analyses for the final rule.

EPA also notes that a methodological concern has been raised regarding its facility closure analysis that relates to its use of cash flow as the appropriate measure of funds available to cover the compliance costs of the proposed rule. Cash flow is defined as income plus depreciation. It has been suggested that calculating a facility's costs without including depreciation fails to account for the future cost of replacing existing capital as it wears out, and thus underestimates long-term costs and overstates funds available for compliance. EPA, however, believes it is appropriate to include depreciation in the funds available for compliance because, while under standard accounting practices depreciation is deducted from gross revenue during the calculation of income, it does not represent an expenditure actually incurred in the current period but rather an amortization of costs incurred in a previous period. EPA requests comments on its use of cash flow as an appropriate measure of funds available for compliance.

In the employment analysis, EPA undertakes several types of analyses, all based in part on a type of analysis known as input-output analysis. These employment analyses include: (1) a national-level analysis for estimating employment gains and losses throughout the U.S. economy in all industry sectors using both compliance costs and employment losses driven by facility closures to determine a range of possible gross and net (losses minus gains) impacts at the national level; (2) a regional impact analysis using employment losses driven by facility closures (closure losses) to determine whether impacts on individual communities might be experienced; and (3) an analysis using EPA's estimate of market-determined production losses to derive an estimate of direct, net employment losses in the industrial laundries industry alone. This last analysis is undertaken to determine losses within the industrial laundries industry alone because while closure losses can be considered the immediate impact of the proposed rule on the industry, production-driven losses might be greater or less than closure losses over time, as equilibrium in the market is attained. Furthermore, closure losses do not account for the fact that some portion of production workers might transfer wholly or in part to operating pollution control equipment, thus some accounting for employment gains within the industry is necessary.

National-level analysis. EPA uses input-output analyses to determine the effects of the regulation using national-level employment and output multipliers. Input-output multipliers allow EPA to estimate the effect of a loss in output in the industrial laundries industry on the U.S. economy as a whole. Every loss in output in the industrial laundries industry results in employment losses in that industry. Additionally, these losses have repercussions throughout the rest of the economy, and the output and employment multipliers allow EPA to calculate the total losses in output and employment nationally using the output loss estimated for the industrial laundries industry alone. See Section Seven of the EA for more details.

Regional-level analysis. EPA also determines the impacts on regional-level employment, which is estimated using facility closures and employment at those closing facilities. These analyses are based on the use of Bureau of Economic Analysis RIMS II input-output regional (not national-level) multipliers, which allow EPA to determine employment impacts on other sectors of the regionally economy that depend on the industrial laundries industry. EPA uses the regional-loss estimates using the facility closure-driven estimates of employment losses to perform a community impact analysis, which investigates the potential for impacts on community unemployment rates based on the

immediate dislocation effects of facility closures. Firm failures are not considered in the job loss or community impact analyses because in all cases, these firms are single-facility firms whose facility is shown to be financially viable after complying with the rule. The impact of the proposed rule on these facilities thus might be the loss of their financial independence, as they would likely be purchased by a larger firm and continue to operate with all or nearly all employees. This is not always the case in all industries, but in this industry, facilities are geographically tied to their service areas and thus their production is not easily shifted to another geographic area. Furthermore, they are generally not asset-rich and are thus not suitable for acquisition for the purpose of selling off assets rather than for operation.

EPA conducts a regional analysis because even if net employment effects (losses minus gains) are relatively small on a national level, an employment loss might still have a substantial negative effect on an individual community (see the EA for more details).

Industry level analysis. Facility closure losses could overstate or understate employment losses strictly within the industrial laundries industry on a longer-term basis, since total *longer-term employment losses* are driven by production losses and employment losses from closures are driven by costs of compliance, and these two losses may not be equal. Therefore, EPA uses its market model to predict any reductions in production and the subsequent employment effects (production-driven effects) within the industrial laundries industry alone. This analysis also accounts for some gains within the industrial laundries industry due to a need for operators of pollution control equipment. This analysis also uses the national-level input-output multipliers to compute a direct loss of employment on the basis of output effects. EPA considers this employment loss the longer-term impact of the rule on the industrial laundries industry.

EPA investigates additional secondary impacts qualitatively and quantitatively. These impacts include impacts on domestic and international markets, impacts on substitutes for industrial laundry services, impacts on inflation, distributional impacts, and impacts on environmental justice. EPA also investigates the impact of the rule on domestic markets. The rule will affect domestic markets to the extent that excluded facilities can affect market share. EPA makes an assessment of the potential for effect on domestic market on the basis of pounds of laundry processed by excluded facilities to the total pounds processed by the industry.

EPA also looks at impacts on customers. The agency obtained IRS data on the major customer groups and summed total operating costs for their major customers. Under the worst-case assumption that all compliance costs would be borne by only 10 percent of these major customers, EPA conservatively determined a percentage by which total operating costs might increase due to the proposed rule. Additionally, EPA investigates the potential for any impacts on hotels, hospitals, prisons and other such establishments should they be accepting industrial items from off-site sources.

Another key analysis EPA performs is an analysis to determine impacts on new sources, which is primarily a "barriers-to-entry analysis" to determine whether the costs of the PSES would prevent a new source from entering the market. This analysis looks at whether new industrial laundries would be at a competitive disadvantage compared with existing sources. Market effects and barriers to entry associated with the small source exclusion also are qualitatively investigated.

Also, pursuant to E.O. 12866, EPA performs a cost-benefit analysis. This analysis looks at the social cost of the regulation measured as the pretax costs of compliance plus government administrative costs plus the costs of administering unemployment benefits. See Section IX of this preamble for more details of the benefits analysis.

C. Summary of Costs and Economic Impacts

1. Overview of the Economic Assessment Analyses

The EA focuses first on the costs and economic impacts of the proposed rule, using the best data and information available—that reported by industry in the Section 308 Survey data—as representative of the regulatory baseline. The analysis addresses costs and economic impacts of the pretreatment (PSES and PSNS) requirements for industrial laundries wastewater. As noted earlier, EPA has elected to reserve Best Practicable Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), BAT, and NSPS requirements. Direct discharger requirements will be determined on a case-by-case basis under CWA section 402(a)(1).

2. Total Costs and Impacts of the Proposed Rule

This section presents the total costs and impacts of the standards in this proposed rule. EPA estimates that there are 1,747 industrial laundries facilities (given the items processed, the definition of an industrial laundry item in the proposed rule, and Section 308 Survey statistical weights). Of these, 141 facilities meet the definition of "small" under EPA's proposed designation of the small industrial laundries exclusion. This exclusion is defined as all facilities laundering less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. Of these excluded facilities, all meet the definition of "small" under Small Business Administration (SBA) Guidelines. There are 903 firms owning the 1,747 facilities. A total of 837 out of the 903 firms or 93 percent are "small businesses" according to SBA Guidelines (revenues less than $10.5 million per year). The analysis looks separately at single-facility firms (those firms where the firm and the facility are a single entity) and multifacility firms (firms that own more than one facility; generally, these firms are larger than single facility firms). There are a total of 830 single-facility firms out of 903 total firms in the industry (92 percent), the vast majority of which meet the SBA definition of small.

The total cost of the proposed rule is based on engineering cost estimates. To develop these estimates, EPA identified candidate end-of-pipe treatment technologies and grouped appropriate technologies into regulatory options. EPA then developed cost equations for capital and O&M costs for each of the technologies.

For each wastewater treatment technology, EPA developed a cost module. The following cost modules make up the selected CP option: screen, stream splitting, equalization, chemical precipitation, pH adjustment, sludge dewatering, building and monitoring. For further detail, see Chapter 12 of the Development Document.

Total costs of the proposed regulation are estimated to be $93.9 million (see Table VII.C.2.1).

TABLE VII.C.2.1.—COSTS OF PROPOSED PSES OPTION ($1997)

Option	Postax Annual Costs ($ million)
PSES: CP–IL	$93.9

a. Impacts From Pretreatment Standards for Existing Sources (PSES)

EPA estimates that the proposed rule would result in 33 facilities (2.1 percent of all facilities in the facility-level analysis and 1.9 percent of all in-scope facilities) closing as a result of compliance costs. All are single-facility firms. EPA estimates total direct job loss of 2,872 full-time equivalents (1 FTE = 2,080 hours of labor) as a result of the facility closures projected under the proposed rule. The employment losses associated with closures overstate actual net losses to the industry, because some employment gains in the industry will occur (although the gains may not occur in the same geographic location or at the same time as the losses). These gains include operators of pollution control systems that might be hired by facilities and additional workers hired to expand some production at facilities located in market areas with facility closures (lost production from closures is estimated to exceed the amount of reductions required to meet market equilibrium conditions). EPA estimates the actual *net direct* losses in the industrial laundries industry would be 470 FTEs (0.36 percent of total industry employment), considerably less than the number of direct losses predicted solely on the basis of closures.

Additional to these closures, EPA predicts that the proposed regulatory option would affect the ability of 65 firms (all of which are single-facility firms) to raise the capital needed to purchase and install the pollution control equipment. This impact may result in the loss of financial freedom for these firms, up to and including the sale of the firms to larger multifacility firms. This impact does not mean that these firms will close; all these firms are viable at the facility level and are thus considered likely to be of interest to other firms for acquisition and operation.

EPA predicts employment impacts to the national-level economy on the basis of input-output analysis described above. Based on this analysis, which estimates both national employment losses stemming from increased output in the industrial laundries industry and offsetting gains stemming from increased output of pollution control equipment, the proposed option would result in a net loss of employment at the national level in all industry sectors of 582 to 5,534 FTEs, which is about 0.0005 to 0.005 percent of the U.S. labor force in 1997. Net output loss would be thus $100.7 million at most, which is about 0.001 percent of Gross Domestic Product in 1997. Thus EPA expects, at the national level, that the IL Standards would have negligible impact on U.S. employment and output.

EPA also investigated employment impacts in the industrial laundries industry alone. EPA determined that within the industrial laundries industry, many *nonclosing* facilities might actually experience gains in production (and thus gains in output and employment). This is because when facilities close, other nonclosing facilities in the local market area might expand production to take over a portion of the closing facility's production. Thus, while the proposed rule is estimated to produce a long-term net employment loss to the industrial laundries industry of 470 FTEs, this is less than the short-term direct employment and output losses that would be calculated on the basis of closures alone.

For the community-level analysis, under the conservative approach for estimating community employment impacts described above, EPA determined that most closures will result in a maximum change in a community's unemployment rate of 0.32 percent or less and EPA estimates no single community will sustain impact on its unemployment rate of greater than one percent.

EPA expects the proposed rule to have a minimal impact on international markets. Domestic markets might initially be slightly affected by the exclusion for very small facilities, since these facilities may not be subject to the same requirements; however, the number of these facilities, the small volume of their production relative to total industry production (0.7 percent), and the likelihood that they are not concentrated in any one market area, are expected to limit the effects of any competitive advantages they may have. EPA's economic analysis shows that there is a very slight increase in price ($0.003 per pound) and that customers are not very sensitive to price changes; therefore, dischargers subject to the proposed rule would be able to compete with those dischargers excluded from the proposed rule. Further, if any excluded facility annually launders more than one million pounds of laundry or more than 255,000 pounds of shop and/or printer towels/rags per calendar year, it will no longer be excluded from the standards. The small excluded facilities are also the most likely of any size group to exit the market regardless of the rule. Given these observations, it is likely that this group of existing sources would shrink in size over time, and any small market effects would be reduced. As discussed below in the Regulatory Flexibility Analysis section, EPA believes that the small impacts of the exclusion on markets are far outweighed by the benefits of reducing adverse economic impacts on the most vulnerable firms in the industry.

EPA also expects the proposed rule to have minimal impacts on inflation, insignificant distributional effects, and no major impacts on environmental justice. The rule also would have minimal impacts on industrial laundries customers. The price increase expected as a result of the proposed option is an average of $0.003 per pound, or 0.4 percent of current average price. Because this percentage increase is so small compared to even the modest rates of inflation currently experienced, it is unlikely that most customers would be able to distinguish this effect from the effect of inflation. If EPA assumes that only 10 percent of the customers in the major groups of customers absorb 100 percent of the cost of the rule, total compliance costs would increase customers' operating costs by an average of less than 0.02 percent. Therefore, EPA does not expect price increases to have a major impact on customers.

EPA also investigated the likelihood that customers might substitute *disposable items for laundered items or* begin operating on-site laundries. Both the substitution of disposable items for laundered items and the installation and operation of on-site laundries are associated with potential negative impacts on customers that might deter them from choosing these potential substitutes. Disposable items can be more expensive to use than laundered items, may not meet quality requirements (e.g., disposable printer towels tend to be linty) and are, in certain circumstances, regulated under other environmental statutes. Meanwhile because of the high initial costs to install equipment on-site and the small increase in price of industrial laundry services discussed earlier, on-site laundries could require years before any cost savings might be realized. Also, EPA's market model provides a means for estimating price increase and reduction in quantity demanded for industrial laundering services at the higher price. This analysis shows a very small decrease in production as a result the proposed rule, 0.3 percent of baseline production. Given the disincentives towards those substitutes indicated above, EPA does not expect the proposed rule to cause customers to substitute disposable items for laundered items or commence industrial laundering on-site for industrial laundries services in any major way.

The small reduction in production of 0.3 percent is more likely to occur from customers delaying cleaning (rather than weekly pickups of mats, for example, some might substitute biweekly pickups) or dropping certain rental items, such as uniforms used only for image purposes. This decline in production is negligible compared to the approximate 4 percent per year growth in revenues seen for the industry between 1990 and 1993, according to Section 308 data.

EPA also determined that impacts on hotels, hospitals, and prisons, which could be processing industrial laundry from offsite sources are likely to be negligible. First, EPA's survey of a subset of hotels, hospitals, and prisons turned up no facilities that were currently accepting industrial items from offsite sources. Second, EPA's survey shows that some of these sources could meet the definition of the small industrial laundry exclusion. Several process considerably less than 1 million pounds of laundry per year, thus it is possible that if any of these types of establishments do accept industrial items from offsite sources, some might be excluded from coverage on the basis of pounds laundered. Finally, if there were facilities large enough not to qualify for an exclusion, their major source of revenues are from their primary business, not from operating a laundry. Therefore, EPA expects that these facilities can afford to comply with the proposed limitations by offsite shipping of industrial laundry wastewater. Because EPA's data on these types of establishments is not exhaustive, however, the Agency solicits comment and additional data on this issue.

b. Impacts From Pretreatment Standards for New Sources (PSNS)

EPA investigated all options considered under PSES as potential PSNS options. EPA has tentatively selected the CP–IL option for both sets of proposed standards. This section presents EPA's assessment of impacts on new sources. EPA assesses impacts on new sources by determining whether the proposed rule would result in a barrier to entry into the market.

EPA has found that overall impacts from the proposed IL Standards on new sources would not be any more severe than those on existing sources, since the costs faced by new sources generally will be the same as or less than those faced by existing sources. It is typically less expensive to incorporate pollution control equipment into the design at a new plant than it is to retrofit the same pollution control equipment in an existing plant because no demolition is required, and space constraints, which can add to costs if specifically designed equipment must be ordered, are not an issue in new construction. Because most new sources and existing sources face similar costs, EPA has determined that PSNS requirements should not pose a barrier to entry on the basis of competitiveness for most new facilities. EPA also has shown CP–IL to be an economically achievable option, having an acceptable level of impact on existing sources. Therefore, the same requirements for PSNS also should have an acceptable level of impact on most new facilities.

EPA also examined whether there would be a barrier to entry for small new sources. EPA proposes not to exclude these new sources because it has found it to be economically achievable for these new sources to comply with the CP–IL standards contained in the proposed rule. Based on the Section 308 Survey data, EPA expects that new sources generally exceed the threshold size cutoff that EPA proposed for existing sources. EPA investigated facilities in the Section 308 Survey that indicated they were new or relatively new at the time of the survey. The number of new source facilities coming on line each year is extremely small. Over a three year period (1991, 1992, and 1993), according to Section 308 Survey data, laundry operations began only at about 80 facilities (and it is not absolutely clear from the data whether these facilities were actually new dischargers or were existing dischargers acquired in that year by a different firm). Over the 3-year period, this amounts to 27 new sources a year at most, or only 1.5 percent of existing facilities. Given the small level of growth in the industrial laundries industry, EPA believes that new sources are primarily replacing production from closing facilities that exit the market.

Of these facilities identified as new or relatively new facilities, EPA determined that the average revenues of this group exceeded $4 million per year, and the amount of laundry processed averaged over 5 million pounds per year. Only 24 facilities out of 80 total newer facilities (weighted), or 30 percent, would meet the size threshold for the exclusion applicable to existing sources. On a yearly basis (given that 24 facilities started up over the 3 years of the survey) EPA estimates that up to 8 facilities of the size that would meet an exclusion similar to that for existing sources might be started up each year. Overall, in the group of 80 facilities, only 6 facilities (weighted) were identified as postcompliance closures (based on a closure by one surveyed nonindependent facility). No single-facility firm would close postcompliance. EPA is less concerned about a closure of a nonindependent facility, since nonindependent facilities often can fall back on their parent firm during the financially shaky first few start up years. Furthermore, these 6 facilities are represented by a survey facility that might, on the basis of the types of laundry processed, be able to meet the requirements of the rule possibly without having to install any pollution control whatsoever (that is, their current effluent might not exceed the CP–IL based standards). EPA has conservatively assigned this facility compliance costs because the Agency has no sampling data from this facility to support this assertion. Given the above results, EPA finds that not excluding new sources laundering less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year from PSNS will be economically achievable and will present no barriers to entry.

EPA also investigated whether there might be a barrier to entry due to competitive disadvantages for all new sources in markets where excluded facilities are located. According to the Section 308 Survey, excluded facilities process only 0.7 percent of the laundry processed by all facilities represented in the survey. EPA thus concludes that the market share of excluded facilities is so small that excluded facilities are unlikely to have a measurable impact in the market for industrial laundry services. Furthermore, EPA has shown that even if no compliance costs are passed through to customers, the impacts are similar to the results assuming cost pass-through does occur, and thus new sources should be able to compete with excluded facilities on price (by not raising prices) even if they perceive the need. EPA thus concludes that competition with excluded facilities will not pose a barrier to entry.

3. Economic Impacts of Rejected Options

The economic impacts from rejected options are as follows.

The OC option is associated with the lowest level of economic impacts of all options considered. This option is associated with 3 facility closures, and only 22 firms are projected to be likely to fail (but not close) and are thus likely to lose their financial independence. A net direct total of 275 FTEs would be lost in the industrial laundries industry (direct, production-driven losses) had EPA chosen this option, and other secondary impacts (effects on trade, inflation, and customers) would be negligible. The option basing limits on the lesser performance between DAF–IL and CP–IL is associated with nearly identical impacts as EPA's preferred CP–IL option. Facility closures are estimated to be 33, and 65 firms are estimated to be likely to fail (but not close) and thus are likely to lose their financial independence. A net total of 456 FTEs would be lost in the industrial laundries industry (direct, production-driven losses), and, as for the CP–IL option, this option would most likely have minimal additional secondary impacts.

EPA investigated a variant to the Combo option based on both CP–IL and DAF–IL. In this option, rather than setting limits based on the lesser performance, EPA would set limits based on DAF limits for all those currently operating DAF systems, with CP limits for all others. Costs would be very slightly less than the other CP/DAF option, with impacts being approximately the same (in no case would costs or impacts be less than CP–IL).

Under the DAF–IL option facility closures are estimated to total 34. A total of 66 firms are expected to be likely to fail (but not close) and are thus likely to lose their financial independence. A net 421 FTEs would be lost in the industrial laundries industry (direct, production-driven losses), if EPA had chosen this option. Other secondary impacts would be greater than those for the proposed option, but still minimal. Table VII.C.3.1 compares the economic impacts of the rejected option with those of the preferred option.

TABLE VII.C.3.1.—IMPACTS OF THE PREFERRED OPTION VS. REJECTED OPTIONS

Option	Annualized posttax costs ($ MM 1997)	Facility closures	Firm failures	Net direct employment losses (FTEs) as a result of production losses
OC	$46.0	3	22	275
CP–IL	93.9	33	65	470
Combo-IL2Lim*	99	33	65	450
Combo-IL	99.5	33	65	456
DAF–IL	118.6	34	66	421

*DAF–IL limits for existing DAF systems; CP–IL limits for all others.

D. Cost-Benefit Analysis

The proposed option is expected to have a total annual social cost of $139.4 million ($1997), which includes $136.4 million in pretax compliance costs, $2.9 million in administrative costs, and $0.1 million in unemployment benefits administration costs. Annual monetized benefits are expected to range from $2.9 million to $10.6 million, which includes $0.09 million to $0.5 million for human health benefits, $1.9 million to $6.7 million for recreational benefits, $0.9 million to $3.4 million from nonuse benefits, and $0.006 million to $0.01 million for POTW sewage sludge benefits. Table VII.D.1 summarizes the results of the cost-benefit analysis.

TABLE VII.D.1.—RESULTS OF THE COST-BENEFIT ANALYSIS

Category	Dollar value (millions $1997)
Costs:	
Pretax Costs of Compliance	$136.4
Administrative Costs of Permitting	2.9
Administrative Costs of Unemployment Benefits	0.1
Total Social Costs	139.4
Monetized Benefits:	
Human Health Benefits	$0.09–0.5
Recreational Benefits	1.9–6.7
Nonuse Benefits	0.9–3.4
Benefits to POTWs	0.006–0.01
Total Monetized Benefits	2.9–10.6

There are a number of additional benefits associated with the proposed IL Standards that could not be monetized. Examples include: reduced noncancer health effects, reduced POTW operating and maintenance costs, reduced administrative costs at the local level to develop and defend individually derived local limits for industrial laundries, improved aesthetic quality of near discharge outfalls, enhanced water-dependent recreation other than fishing, benefits to wildlife and to threatened or endangered species, tourism benefits, and biodiversity benefits.

E. Cost-Effectiveness Analysis

In addition to the foregoing analyses, EPA has conducted cost-effectiveness analyses for all options it considered. Results of these analyses are presented in the Cost-Effectiveness Analysis (C–E), which is included in the rulemaking record. C–E analysis evaluates the relative efficiency of options in removing toxic and nonconventional pollutants. Costs evaluated include the pretax direct compliance costs, such as capital expenditures and O&M costs, including compliance monitoring.

Cost-effectiveness results are expressed in terms of the incremental and average costs per "pound equivalent" (PE) removed. PE is a measure that addresses differences in the toxicity of pollutants removed. Total PEs are derived by taking the number of pounds of a pollutant removed and multiplying this number by a toxic weighting factor (TWF). EPA calculates TWFs for priority pollutants and some additional nonconventional pollutants using ambient water quality criteria and toxicity values. The TWFs are then standardized by relating them to a particular pollutant, in this case, copper. As of 1985 the water quality criterion for copper was revised, thus the TWF for copper also has been revised. PEs are calculated only for pollutants for which TWFs have been estimated, thus they do not reflect potential toxicity of some nonconventional and, to date, any conventional pollutants though the newly added TWF for TPH does capture a large portion of the more toxic components of the conventional pollutant, oil and grease. EPA's standard procedure is to rank the options considered for each waste stream in order of increasing PE removed. EPA then calculates incremental cost-

effectiveness as the ratio of the incremental annual costs to the incremental PE removed under each option, compared to the previous (less effective) option. Average cost-effectiveness is calculated for each option as a ratio of total costs to total PE removed. In the case of pretreatment standards, EPA does not include pollutant removals if those pollutants could be removed at the POTW, but only includes the removal of pollutants that would pass through the POTW in its cost-effectiveness determination. (Note that EPA assumes for this analysis that POTW removal efficiency is the same for treated influent as for untreated influent. To the extent that the removal efficiency is lower for influent that has already been pretreated this methodology could overestimated removals resulting from the pretreatment standards. EPA reports annual costs for all cost-effectiveness analyses in 1981 dollars, to enable limited comparisons of the cost-effectiveness among regulated industries. Incremental cost-effectiveness is the appropriate measure for comparing one regulatory option to an alternative, less stringent regulatory option for the same rule. Some believe that it may also be used to compare cost-effectiveness across rules when considering how the last increment of stringency in one rule compares to the last increment of stringency in another. For comparing the overall cost-effectiveness of one rule to another, average cost-effectiveness may be a more appropriate measure, but must be considered in context with caution. (Average cost-effectiveness can be thought of as the "increment" between no regulation and the selected option, for any given rule).

As part of the cost-effectiveness analysis for this proposed rule, the nonconventional pollutant parameter TPH (SGT–HEM) was included and individual components of TPH, such as the alkanes, were removed from the cost-effectiveness calculations to avoid double counting removals. Although TPH has not been included in cost-effectiveness calculations for past rules, EPA believes that it is appropriate to include it here because, for this industry, a large portion of the toxic constituents of TPH are compounds not specifically included in the database of toxic substances and associated toxic weighting factors that past cost-effectiveness calculation have relied upon. In fact, TPH constitutes over 90 percent of the pounds equivalent removals that EPA has estimated for this proposed rule.

The inclusion of TPH were based on alkanes data to estimate POTW removal and soluble hydrocarbon data to represent toxicity of TPH to calculate the toxic weighting factor (TWF). The POTW removal of 65 percent was estimated using the U.S. EPA Risk Reduction Engineering Laboratory (RREL) Treatability Data Base's average percent removal for the three N-alkanes with available percent removal data. EPA recognizes that this approach may not adequately characterize removals of the soluble hydrocarbons on which its TWF is based and requests comment on how the estimate might be improved. The TWF was calculated using an aquatic life toxicity value of 560 µg/L for soluble hydrocarbons (EPA's Water Quality Criteria, 1976) multiplied by an application factor of 0.01 (EPA's 1986 Quality Criteria for Water) and divided into the criteria for copper (5.6 µg/L) to give a value of 0.1. EPA solicits additional information and data related to these results and the methodology used to calculate both the POTW removal rate and the TWF. EPA also solicits comments on the appropriateness of its inclusion of TPH in the cost-effectiveness calculation for this proposed rule.

Table VII.E.1. presents the cost-effectiveness of the OC and CP–IL options using TPH data in lieu of the alkanes data. The other options considered for industrial laundries wastewater treatment, DAF–IL, and Combo–IL (including Combo-IL2Lim), are not presented in this table because they remove fewer pollutants at a greater cost. EPA's cost-effectiveness methodology requires non cost-effective options to be removed before incremental cost-effectiveness is calculated, since the incremental cost per pound equivalent removed would be negative for the next higher option. See the C–E for more details. As the table shows, the incremental cost-effectiveness of the proposed option is $108 per PE, and the average cost effectiveness of the proposed option is $206 per PE.

TABLE VII.E.1.—COST-EFFECTIVENESS ANALYSIS RESULTS

Option	Total annual		Incremental		Incremental C–E $1981) ($/lb. eq.)	Average C–E ($1981) ($/lb. eq.)
	PE removed	Cost ($Mil. 1981)	PE removed	Cost ($Mil. 1981)		
OC	5,278	$40.3	5,278	$40.3	$7,640	$7,640
CP–IL	407,358	83.7	402,080	43.4	108	206

Table 4–1 in the Cost-Effectiveness Analysis compares the incremental cost-effectiveness of this proposed rule with the incremental cost-effectiveness of 21 other pretreatment standards that EPA has promulgated previously. The table shows that 18 of these were more cost-effective on an incremental basis than this proposed rule. However, as noted earlier, average (rather than incremental) cost-effectiveness is generally a more appropriate measure to use in comparing the overall cost-effectiveness of one rule to another. Unlike incremental cost-effectiveness, average cost-effectiveness is not affected by the particular choice of alternative options that were considered and rejected. In this proposed rule, the incremental or marginal cost-effectiveness is lower than average cost-effectiveness because the proposed option (CP) is being compared to the (OC) option that costs about half as much as CP but removes only slightly more than one percent of the pound equivalents that are removed by the CP option. Due to data limitations and time constraints, EPA has not included in the Cost-Effectiveness Analysis a comparison of the average cost effectiveness of this proposed rule to that of previously promulgated rules. Such a comparison may show this rule to be even less cost-effective relative to other rules than appears from Table 4–1. Care should be used in interpreting this comparison, however. Because the initial focus of regulatory efforts was on highly polluting manufacturing industries, it is not surprising that over time, fewer and fewer toxic removals should come at higher and higher costs, as the initial less treated, higher pollutant concentration wastewaters are addressed and the focus of regulation move increasingly to less polluting

service industries and those which are already regulated.

EPA also analyzed the cost effectiveness of these same options using the alkanes data and not using the TPH toxic weighting factor and POTW removal. Under this assumption, the incremental cost effectiveness of the proposed option is $1,660 per PE, and its average cost effectiveness is $2,664 per PE.

EPA recognizes that the proposed rule is not very cost-effective. However, cost-effectiveness analysis only considers pollutants for which a toxic weighting factor has been estimated. Although this proposed rule would eliminate over 13 million pounds of toxic and nonconventional pollutants to POTWs (See Table IX.C.1), only 1.3 million pounds of these pollutants are considered in the cost-effectiveness analysis.

Furthermore, cost-effectiveness is not a factor to be directly considered under the CWA in setting such standards. Elsewhere in this preamble, EPA has requested comment on the option of not regulating this industry and on whether such a decision would be consistent with the CWA.

VIII. Non-Water Quality Environmental Impacts

As required by sections 304(b) and 306 of the Clean Water Act, EPA has considered the non-water quality environmental impacts associated with the treatment technology options for the industrial laundries industry. Non-water quality impacts are impacts of the proposed rule on the environment that are not directly associated with wastewater. Non-water quality impacts include changes in energy consumption, air emissions, and solid waste generation of oil and sludge. In addition to these non-water quality impacts, EPA examined the impacts of the proposed rule on noise pollution, and water and chemical use. Based on these analyses, EPA finds the relatively small increase in non-water quality impacts resulting from the proposed rule to be acceptable.

1. Air Pollution

Industrial laundry facilities generate wastewater that contains significant concentrations of organic compounds, some of which are on the list of Hazardous Air Pollutants (HAPs) in Title 3 of the Clean Air Act Amendments (CAAA) of 1990. Atmospheric exposure of the organic-containing wastewater may result in volatilization of both volatile organic compounds (VOCs) and HAPs from the wastewater. VOCs and HAPs are emitted from the wastewater beginning at the point where the wastewater first contacts ambient air. Thus, VOCs and HAPs may be of concern immediately as the wastewater is discharged from the process unit. Emissions occur from wastewater collection units such as process drains, manholes, trenches, and sumps, and from wastewater treatment units such as screens, equalization basins, DAF and CP units, and any other units where the wastewater is in contact with the air.

EPA believes that air emissions from industrial laundry wastewater would be similar before and after implementation of the proposed rule because the wastewater from all industrial laundries currently has contact with ambient air as it flows to the POTW. At facilities that do not currently have treatment on site, the wastewater typically flows from the washers to an open or partially open catch basin, then to the sewer and on to the POTW, where the wastewater is typically treated in open aerated basins or lagoons. Air emissions from the wastewater occur as the wastewater flows from the facility to the POTW. At a facility with treatment the wastewater would have more contact with air while still at the facility as it is treated in open units such as equalization basins and CP units prior to flowing through the sewer to the POTW. Air emissions from the treated wastewater occur at the treatment units at the facility, as well as while the wastewater flows to the POTW. Thus, EPA expects that the location of a portion of air emissions from industrial laundry wastewater would shift from the POTW collection and treatment system to the facility treatment system, but EPA believes that the overall amount of air emissions from industrial laundries wastewater would not change.

EPA examined the total air emissions from one industrial laundry's untreated wastewater stream assuming all volatile pollutants volatilize from that stream. EPA considered whether this total amount of air emissions would be acceptable assuming it represented incremental air emissions due to the proposed rule. (EPA does not believe that the total amount of air emissions, as calculated below, represents incremental air emissions because the air emissions would be similar before and after implementation of the rule.) EPA estimated that, in the worst-case scenario, 14 Mg per year of HAPs would be emitted from an industrial laundry's wastewater on an annual basis. Under the CAAA, major sources of HAP(s) emissions are defined as having either a total emission of 25 Mg per year or higher for the total of all HAP emitted by a facility or an emission of 10 Mg per year or higher for a single HAPs emitted by a facility.

Based on the worst-case scenario and this definition industrial laundries would not emit HAP(s) to the degree that they would be classified as a major source as defined by the CAAA. EPA also believes that no adverse air impacts would be expected to occur due to the proposed regulations. Thus, because EPA does not expect an overall increase in the amount of air emissions as a result of the proposed rule and based on EPA's determination of the total emissions from one industrial laundry's untreated wastewater, EPA finds the air emissions impacts of the proposed rule to be acceptable.

2. Solid Waste Generation

The proposed regulations are based on the use of CP followed by dewatering of the sludge generated from CP. Based on information collected in the industrial laundries detailed questionnaires, most industrial laundry sludge from CP or DAF treatment systems is disposed of in nonhazardous landfills. Based on site visits to industrial laundries, EPA has found that some facilities voluntarily dispose of their sludge as hazardous waste even though hazardous waste disposal is not required by law.

EPA estimates that the incremental increase in sludge generation (not including savings in the volume of sludge generated at POTWs that would result from the proposed rule) for the 1,606 facilities in the industry covered by the rule would be 74 thousand tons per year of wet sludge, or 26,000 tons per year of dry solids. For more details, see Chapter 14 of the Development Document. Approximately 430 million tons (dry basis) of industrial nonhazardous waste was sent to landfills in the U.S. in 1986 (Subtitle D Study Phase I: Report EPA No. 530SW86–054). This proposed rule would result in only a 0.006% increase in sludge generation. Data, from the Waste Treatment Industry Phase II: Landfills, suggests that current landfill capacity can accept this increase in solid waste generation. Therefore, EPA believes the solid waste impacts of the proposed rule are acceptable.

3. Energy Requirements

EPA estimates that implementation of the proposed regulation would result in a net increase in energy consumption for the industrial laundries industry. The incremental increase is based on electricity used to operate wastewater treatment equipment at facilities that are not currently operating treatment

systems comparable with the proposed CP option.

EPA estimates that the incremental increase in electricity use for the industrial laundries industry as a result of the proposed rule would be 76 million kilowatt hours per year. Approximately 2,805 billion kilowatt hours of electric power were generated in the U.S. in 1990. The incremental increase in energy use for the industrial laundries industry corresponds to 0.0027% of the national energy requirements. EPA estimates the incremental energy increase to be a small percentage of electricity currently used by the industrial laundries industry to operate all washing, drying, and treatment equipment. For these reasons, energy impacts of the proposed rule are acceptable.

IX. Environmental Benefits Analysis

A. Introduction

This section describes results of EPA's environmental benefits analysis. For more details, see the WQBA.

B. Overview of the Industrial Laundry Industry's Effluent Discharges

EPA's record indicates that industrial laundry facilities nationwide currently discharge to POTWs 4.9 million pounds per year of priority and nonconventional pollutants (excluding COD, TOC, and SGT–HEM), and 35.9 million pounds of HEM. Of the 35.9 million pounds of HEM, 13.2 million pounds are SGT–HEM (see Table IX.C.1 for loadings of all pollutants). SGT–HEM, consisting of polycyclic aromatic hydrocarbons, are components of HEM; SGT–HEM is being used as an indicator for priority and nonconventional pollutants.

For this rulemaking, EPA evaluated the environmental benefits of controlling the pollutant discharges from industrial laundries facilities to POTWs through national analyses of the primary treatment options: OC, DAF–IL, CP–IL, and Combo-IL. Since EPA determined that the OC option removed smaller amounts of organics than the other options, EPA did not perform a separate environmental assessment for this option.

Discharges of priority and nonconventional pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and water. Furthermore, these pollutants may interfere with POTW operations through contamination of sewage sludge, thereby restricting the method of disposal, or through inhibition of the microbes present in activated sewage sludge. Many of the pollutants of concern from industrial laundries have at least one toxic effect (human health carcinogen and/or non-cancer toxicant or aquatic toxicant). In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

C. Benefits of the Proposed Rule

EPA estimates that the proposed standards would significantly reduce pollutant discharges to POTWs, as shown by the loadings estimates in Table IX.C.1 for five categories of pollutants. Note that there is significant overlap among some of the pollutants listed. These five categories were segregated in order to minimize the double counting of pollutants within each category, although some overlap remains (*e.g.*, some TOC is also measured as COD). It is not appropriate to sum loadings across categories as there is overlap between categories, for example, BOD and COD. Reductions in industrial laundry pollutant discharges to POTWs would result in a number of benefits, including: reduced cost of disposal or use of municipal sewage sludge that is affected by industrial laundry pollutant discharges; and reduced occurrence of biological inhibition of activated sludge at POTWs. Resulting reductions in discharges from POTWs to surface waters of the US would have additional benefits: improved quality of freshwater, estuarine, and marine ecosystems; increased survivability and diversity of aquatic life and terrestrial wildlife; and reduced risks to human health through consumption of fish or water taken from affected waterways.

TABLE IX.C.1.—SUMMARY OF ESTIMATED POLLUTANT LOADINGS FROM INDUSTRIAL LAUNDRIES TO POTWS

[National Estimates]

Regulatory option	Priority and nonconventional pollutants [1] (million lb/yr)	HEM (million lb/yr) [2]	SGT–HEM (million lb/yr)	Other conventional pollutants (million lb/yr) [3]	Other nonconventional pollutants (million lb/yr) [4]
Baseline	4.9	35.9	13.2	178	346
DAF–IL	2.9	15.9	2.6	137	252
CP–IL	2.9	15.2	2.4	139	258
Combo-IL	3.1	15.9	2.6	139	258

[1] Excludes Total Organic Carbon (TOC), Silica Gel Treated N-Hexane Extractable Material (SGT–HEM), and Chemical Oxygen Demand (COD).
[2] Includes the pounds of SGT–HEM.
[3] Includes Biological Oxygen Demand (BOD) and Total Suspended Solids (TSS).
[4] Includes Chemical Oxygen Demand (COD) and Total Organic Carbon (TOC).

EPA assessed the benefits from the expected pollutant reductions in three broad classes: human health, ecological, and economic productivity benefits. Each class is composed of a number of more narrowly defined benefit categories. EPA expects that benefits will accrue to society in all of these categories. However, because of data limitations and the understanding of how society values some of these benefit categories, EPA was not able to analyze all of these categories with the same level of rigor. At the highest level of analysis, EPA was able to quantify the expected effects for some benefit categories and attach monetary values to them. Benefit categories for which EPA developed dollar estimates include reduction in cancer risk from fish consumption and increased value of recreational fishing opportunities, reduced risk to aquatic life, and other non-use benefits. For other benefit categories, reduced risk of non-cancer toxic effects to human health from consumption of fish and drinking water; and reduced costs of biological inhibition at POTWs, EPA was able to quantify expected effects but not able to estimate monetary values for them. Finally, there is an additional non-quantified, non-monetized benefit categories of enhanced water-dependent recreation other than fishing. Note that benefits to wildlife and to threatened or endangered species; and biodiversity benefits are often included as non-quantified benefits but in the current analysis an attempt has been made to monetize them.

D. Human Health Benefits

EPA analyzed the following measures of health-related benefits from the proposed rule in the WQBA: reduced cancer risk from fish consumption; reduced risk of non-cancer toxic effects from fish and water consumption; and, reduced occurrence of in-waterway pollutant concentrations in excess of human health-based ambient water quality criteria (AWQC) or in excess of documented toxic effect levels for those chemicals for which EPA has not published water quality criteria. Of these measures, EPA was able to monetize only the reduction in cancer risk.

EPA first predicted steady-state, in-stream pollutant concentrations by assuming complete immediate mixing with no loss from the system. Of the 172 in-scope respondent facilities, EPA was unable to include 33 facilities in the benefits analysis because of incomplete information on the POTWs to which these sample facilities discharge. The remaining 139 facilities are discharging to 118 POTWs that in turn discharge to 113 water bodies (88 rivers/streams, 21 bays/estuaries, and 4 lakes).

EPA then extrapolated the environmental assessment results for the sample facilities to the entire regulated population of industrial laundry facilities nationwide (approximately 1,606 facilities discharging to 1,178 POTWs). For this extrapolation, each sample facility received a sample weight based on the varying number of additional facilities of the same approximate size engaged in similar activities under similar economic conditions. EPA then estimated the change in aggregate cancer risk through consumption of fish in waterbodies where the identified POTWs discharge. EPA predicted pollutant concentrations in fish by using the in-stream pollutant concentration based on modeled POTW effluent concentrations due to pass-through, and pollutant-specific bioconcentration factors that account for the degree to which the pollutant in the water will be concentrated in fish tissue. EPA used data on licensed fishing populations by state and county, presence of fish advisories, fishing activity rates, and average household size to estimate the exposed population of recreational and subsistence anglers and their families that would benefit from reduced pollutant concentrations in fish. EPA used fish consumption rates for recreational and subsistence anglers to estimate the change in cancer risk among these populations.

For the proposed rule, the benefits associated with reduced incidence of cancer from fish consumption are estimated to range from $0.089 million to $0.50 million per year ($1997), depending on the choice of willingness-to-pay value that is used to value the avoided cancer events and depending on the treatment option considered. For combined recreational and subsistence angler household populations, EPA projects that the treatment options would eliminate approximately 0.04 cancer cases per year from a baseline of about 0.1 cases estimated at the current discharge level (see Table IX.D.1). EPA valued the reduced cancer cases using estimated willingness-to-pay values for avoiding premature mortality. The values used in this analysis are based on a range of values recommended by EPA's Office of Policy Analysis from a review of studies quantifying individuals' willingness to pay to avoid increased risks to life. In 1997 dollars, these values range from $2.4 million to $12.5 million per statistical life saved.

TABLE IX.D.1.—ESTIMATED ANNUAL AVOIDED CANCER CASES FROM FRESHWATER FISH CONSUMPTION

Regulatory option	Number of cases avoided (National estimates)
Baseline	—
CP–IL	0.04
DAF–IL	0.04
Combo-IL	0.04

To estimate the reduced risk of non-cancer health effects (e.g., systemic effects, reproductive toxicity, and developmental toxicity) from fish and water consumption for each treatment option, EPA used risk reference doses, in conjunction with in-stream pollutant concentrations, to calculate a hazard score. A value of one or greater for a hazard score indicates the potential for non-cancer hazards to occur. In this analysis, EPA analyzed only pollutant loadings from industrial laundries to particular water bodies, *i.e.*, EPA did not consider background loadings from other sources. The hazard score, which EPA calculated by summing over all pollutants, was less than one for baseline conditions as well as for all treatment options.

EPA also evaluated reduced occurrence of in-waterway pollutant concentrations in excess of human-health based AWQC. At current discharge levels, in-stream concentrations of two pollutants—bis(2-ethylhexyl)phthalate and tetrachloroethene—are projected to exceed human health criteria (developed for consumption of water and organisms) in 9 receiving streams nationwide (see Table IX.D.2) for a total of 17 exceedences. The proposed PSES regulated discharge levels would eliminate the occurrence of pollutant concentrations in excess of the human health-based AWQCs in 7 of 9 affected streams.

TABLE IX.D.2. DISCHARGE REACHES WITH POLLUTANT CONCENTRATIONS EXCEEDING AWQC LIMITS FOR PROTECTION OF HUMAN HEALTH, AND REDUCTIONS ACHIEVED BY REGULATORY OPTIONS

Regulatory option	Number of reaches with concentrations exceeding health-based AWQCs for water and organisms (national basis)
Baseline	9
CP–IL	2
DAF–IL	2
Combo-IL	2

E. Ecological Benefits Valued on the Basis of Enhanced Recreational Fishing Opportunities

EPA analyzed one measure of ecological benefits from the proposed regulation: reduced occurrence of in-waterway pollutant concentrations in excess of acute and chronic AWQCs that protect aquatic life. EPA used the findings from the analysis of reduced occurrence of pollutant concentrations in excess of both EPA's ecological and human health AWQCs to assess improvements in recreational fishing habitats and, in turn, to estimate a monetary value for the enhanced recreational fishing opportunities.

To assess aquatic life benefits, EPA estimated the effect of facility discharges of regulated pollutants on pollutant concentrations in affected waterways. EPA compared the estimated concentrations on a baseline and post-compliance basis, with the Agency's AWQCs for acute and chronic exposure impacts to aquatic life. Pollutant concentrations in excess of these values indicate potential impacts to aquatic life. EPA's analysis found that

78 stream reaches exceed chronic AWQC values at baseline discharge levels for a total of 93 exceedences (see Table IX.E.1). Under three options, EPA estimates that the proposed regulation would eliminate concentrations in excess of the chronic AWQC values for aquatic life in 66 affected reaches. EPA predicts that no pollutants under current or proposed discharge levels would exceed acute AWQC.

EPA expects that society will value improvements in aquatic species habitat, resulting from the reduction of pollutant concentrations in excess of the chronic AWQC values, by a number of mechanisms. For this analysis, EPA estimated a partial monetary value of ecological improvements based on the value of enhanced recreational fishing opportunities. Specifically, the elimination of pollutant concentrations exceeding AWQC limits for protection of aquatic species and human health is expected to generate benefits to recreational anglers. Such benefits are expected to manifest as increases in the value of the fishing experience per day fished or the number of days anglers subsequently choose to fish the cleaner waterways. These benefits, however, do not include all of the benefits that are associated with improvements in aquatic life. For example, recreational benefits do not capture the benefit of increased assimilative capacity of a receiving waterbody, improvements in the taste and odor of the instream flow, or improvements to other recreational activities such as swimming and wildlife observation that may be enhanced by improved water quality.

TABLE IX.E.1.—DISCHARGE REACHES WITH POLLUTANT CONCENTRATIONS EXCEEDING CHRONIC AWQC LIMITS FOR PROTECTION OF AQUATIC SPECIES, AND REDUCTIONS ACHIEVED BY REGULATORY OPTIONS

Regulatory option	Number of pollutants estimated to exceed chronic AWQC limits	Number of reaches with concentrations exceeding chronic AWQC limits	Total exceedences of chronic AWQC limits
Baseline	3	78	93
CP–IL	2	12	19
DAF–IL	2	12	19
Combo-IL	2	12	19

None of the acute AWQC limits were estimated to be exceeded in the baseline.

EPA calculated the value of enhanced recreational fishing opportunities from the proposed rule based on the concept of achievement of a contaminant-free fishery. For this analysis, EPA assumed for an affected waterway that elimination of all instances in which industrial laundry pollutant concentrations exceed AWQCs that protect human health or aquatic species may be interpreted as approximately equivalent to the achievement of a contaminant-free fishery. EPA first estimated a baseline value of those fisheries in which all instances of industrial laundry pollutant concentrations in excess of AWQCs are estimated to be eliminated by regulation. This value is based on the number of annual fishing days at the affected waterway and the value of a fishing day. Second, EPA estimated the value of improving the water quality in these fisheries based on the incremental percentage increase in value to anglers of freeing the fishery of contaminants (*Lyke, 1992*). Estimates of the increase in value of recreational fishing to anglers range from $1.9 million to $6.7 million annually ($1997) for all three treatment options, depending on the baseline value of the fishery and the estimated incremental benefit values associated with freeing the fishery from contaminants. This analysis does not account for sources of pollutant contamination other than industrial laundries or for pollutants not discharged by industrial laundries.

EPA also estimated non-market non-use benefits. These non-market non-use benefits are not associated with current use of the affected ecosystem or habitat; instead, they arise from (1) the *realization* of the improvement in the affected ecosystem or habitat resulting from reduced effluent discharges and (2) the value that individuals place on the *potential for use* sometime in the future. Because nonuse value is a sizable component of the total economic value of water resources, EPA estimated change in nonuse values in proportion to recreational fishing benefits. For this analysis, as was done in the Great Lakes Water Quality Guidance, EPA conservatively estimated that nonuse benefits compose one-half of recreational fishing benefits. For all three treatment options, this method yields non-use benefits attributable to the proposed regulation ranging from $0.94 million to $3.4 million ($1997) per year.

F. Benefits From Reduced Cost of Sewage Sludge Disposal and Reduced Incidence of Inhibition

EPA expects that reduced effluent discharges from the industrial laundries industry would also yield economic productivity benefits. For this analysis, EPA estimated productivity benefits for two benefit categories: (1) reduced pollutant contamination of effluent discharged by industrial laundry facilities to sewage treatment systems and (2) associated savings in sewage sludge use or disposal costs; and, a reduction in biological inhibition of activated sludge. For the former category, EPA examined the following: (1) whether industrial laundry baseline discharges would prevent POTWs from being able to meet the metals concentration limits required for certain lower cost sewage sludge use or disposal practices—beneficial land application and surface disposal; and (2) whether limitations on the selection of management practices would be removed under regulatory options.

EPA has promulgated regulations establishing standards for sewage sludge when it is applied to the land, disposed of at dedicated sites (surface disposal), and incinerated (40 CFR Part 503). In addition, EPA has also established standards for sewage sludge when it is disposed of in municipal solid waste landfills (40 CFR Part 258). For land application, the regulations include three sets of pollutant limits for ten metals: (1) Pollutant Ceiling Limits, which all land applied sewage sludge must meet with certain limitations, (2) Cumulative Pollutant Loading Limits (which limit the cumulative amount of metal which may be applied to the soil) and (3) more stringent Pollutant Concentration Limits, which provide more favorable terms for land application of sewage sludge. Sewage sludge that meets only the less stringent Ceiling Limits may be applied to land; however, the use of the sewage sludge is subject to pollutant loading limits, which restrict the quantity of sewage sludge that may be applied to a given site. If the sewage sludge meets the more stringent Concentration Limits, it is considered high quality sewage sludge and is not subject to the cumulative limits on land application and other regulatory requirements in the land application subpart, *i.e.*, general conditions and certain management practices, such as more extensive recordkeeping requirements. Thus, disposing of high quality sewage sludge costs less than disposing of low quality sewage sludge that meets only the ceiling concentrations for metals.

EPA estimated sewage sludge concentrations of ten metals for sample facilities under baseline and post-regulatory options discharge levels. EPA compared these concentrations with the relevant metal concentration limits for the following sewage sludge management options: Land Application-High (Concentration Limits), Land Application-Low (Ceiling Limits), and Surface Disposal. In the baseline case, EPA estimated that concentrations of one pollutant (lead) at 10 POTWs would fail the Land Application-High limits while meeting the Land Application-Low limits. EPA estimated that no POTWs would fail any of the Surface Disposal limits. Under all three options, EPA estimated that all 10 POTWs would meet the Land Application-High limits and that an estimated 6,200 dry metric tons (DMT) of annual disposal of sewage sludge would newly qualify for beneficial use under the Land Application-High limits. EPA estimated the reduced time required for record-keeping for sewage sludge meeting the more stringent Land Application-High criteria, and, on this basis, developed a partial estimate of monetary benefits from reduced metals contamination of sewage sludge. For all three options, the proposed regulation is expected to result in benefits from sewage sludge quality improvements of $0.006 million to $0.01 million ($1997) annually. (EPA notes that the rule would also generate additional metals-contaminated sludge at industrial laundries, but has already included the costs of disposing of this sludge in the compliance costs of the rule.)

EPA estimated inhibition of POTW operations by comparing predicted POTW influent concentrations to available inhibition levels for 45 pollutants. At current discharge levels, EPA estimates POTW concentrations of lead exceed biological inhibition criteria at two POTWs. Under all treatment options, inhibition problems are eliminated.

EPA based the POTW inhibition and sludge values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Because the values used in this analysis are not, in general, regulatory values, EPA did not base the proposed pretreatment discharge standards directly on this approach. However, the values and methodology used in this analysis are helpful in identifying potential benefits for POTW operations and sludge disposal that may result from the compliance with proposed pretreatment discharge requirements.

G. Discussions With POTW Operators and Pre-Treatment Coordinators

To understand the frequency and characteristics of problems to POTWs resulting from industrial laundry discharges, EPA obtained information from discussions with EPA regional staff, and with POTW operators representing 40 POTWs that receive discharges from industrial laundries. Of these 40 POTWs, 11 encounter some difficulty resulting from industrial laundry discharges either currently or in the recent past. A number of the other POTWs that encountered problems with industrial laundry discharges in the past have established local limits applicable to laundries to address those problems. Problems encountered by POTWs, as reported by the operators, included: oil and grease, which may clog pipes and pump stations, inhibit activated sludge and otherwise inhibit POTW operations; metals, which may also inhibit activated sludge; and pH fluctuations, which can injure POTW workers and deteriorate concrete pipes and manholes. The Water Quality Benefits Analysis notes that there are solutions available to POTWs for these problems, although they do entail costs to the POTWs. A further analysis of three case studies do not document substantial problems from industrial laundries discharges that would be reduced by regulation.

X. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by SBREFA, EPA generally is required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities. Under section 605(b) of the RFA, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare the IRFA.

EPA conducted an IRFA pursuant to section 603(b) of the RFA addressing:

- The need for, objectives of, and legal basis for the rule;
- A description of, and where feasible, an estimate of the number of small entities to which the rule would apply;
- The projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that would be subject to the rule and the types of professional skills necessary for preparation of the report or record;
- An identification, where practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule;
- A description of any significant regulatory alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of the CWA, the analysis discusses significant alternatives such as—

(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards;

(4) an exclusion from coverage of the rule, or any part thereof, for such small entities. The IFRA is presented in Chapter 9 of the EA. Based on the IRFA and other factors, this proposed rule incorporates an exclusion to eliminate disproportionate impacts on small businesses and also reduces the number of small businesses affected by the proposed rule.

Pursuant to the RFA as amended by SBREFA, EPA convened a Small Business Advocacy Review Panel. The Panel is comprised of representatives from three federal agencies: EPA, the Small Business Administration, and the Office of Management and Budget. The Panel reviewed materials EPA prepared in connection with the RFA, and collected the advice and recommendations of small entity representatives. For this proposed rule, the small entity representatives

included owners of small industrial laundries and trade association representatives. The Panel prepared a report (available in the public docket for this rulemaking) that summarizes the outreach to small entities and the comments submitted by the small entity representatives. The Panel's report also presents their findings on issues related to the elements of an IRFA.

As part of the findings, the Panel recommended that the Agency evaluate other thresholds for excluding small businesses, in addition to the proposed one million pounds of total production and 255,000 pounds of shop and/or printer towels. Examples of alternative thresholds that the Panel recommended EPA solicit comment on are three to five million pounds of total production with shop and/or printer towel thresholds between 255,000 and 500,000 pounds.

EPA evaluated a total of 17 threshold combinations as possible bases for excluding small businesses. The analysis of 13 threshold combinations are presented in a table in the final Panel report. In response to the recommendations in the Panel report, EPA analyzed 4 additional threshold combinations. The results of all 17 threshold combinations are found in Appendix E of the EA.

The thresholds (*i.e.*, exemption cutoffs) ranged from one million to five million pounds of production, both with and without cutoffs related specifically to shop and/or printer towels. The shop and/or printer towel cutoffs ranged from 255,000 to 500,000 pounds. In addition, EPA analyzed threshold cutoffs involving only "heavy production," defined as shop and/or printer towels, mops, fender covers, and filters, and excluding all small businesses (as defined by revenues less than $10.5 million per year).

Results of these higher threshold analyses suggest that, by using the three to five million pounds of production levels, between 15 and 34 percent of the pollutant removals would be excluded from regulation. As noted earlier, with EPA's proposed exclusion, the excluded facilities would account for less than 3 percent of the pollutant removals from the waters of the U.S. than would occur if the proposed rule were implemented without the exclusion. Furthermore, with the higher thresholds, approximately 600 to 1000 facilities (depending on the actual threshold) would be excluded from coverage by the proposed regulation, while closures resulting from the proposed rule would be reduced by only two facilities. Costs for the proposed rule could be reduced by up to 60 percent with higher thresholds and cost per toxic pound equivalent removed could also be reduced by up to 40 percent. See the Cost-Effectiveness Analysis. The total amount of removals excluded under the highest threshold considered (about 150,000 PE), while a significant share of potential removals from the industrial laundries industry, is small compared to removals by other effluent guidelines for primary manufacturing industries. The SBREFA Panel also noted the statement by one of the small entity representatives that the number of small facilities has declined since EPA surveyed the industry in 1993. If this is true, it would mean that both the cost savings and the amount of potential removals excluded for any particular small business exclusion would be less than estimated. A table summarizing the results of the 17 threshold analyses is contained in Appendix E of the EA and a table summarizing the results of the original 13 threshold analyses is contained in the Panel report. The Agency solicits comments on these alternative exclusion levels as well as the exclusion level proposed today.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule would contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. Accordingly, EPA has prepared the written statement required by section 202 of the UMRA. This statement is contained in the EA for the rule and is summarized below. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirements of section 203 of UMRA. Nevertheless, EPA has consulted with state and local governments as described in Section III of this preamble.

EPA prepared several supporting analyses for the proposed rule. Throughout this preamble and in the supporting analyses, EPA has responded to the UMRA section 202 requirements. As anticipated by OMB, most considerations with respect to costs, benefits, and regulatory alternatives are addressed in the EA, which is summarized in Sections VII and IX of this preamble and presented in detail in Section Ten of the EA. A very brief summary follows.

The statutory authority for this proposal is found in multiple sections of the CWA (see section I of this preamble). In part, these sections of the CWA authorize EPA to issue standards to address effluent discharges.

EPA prepared a qualitative and quantitative cost-benefit assessment of the federal requirements imposed by today's proposed rule. In large part, the private sector, not other governments, will incur the costs. Specifically, the costs of this federal mandate are compliance costs to be borne by the regulated industrial laundry facilities. In addition, although some States and local governments will incur costs to implement standards, these costs to governments will not exceed the thresholds established by UMRA and in general, these standards will make it easier for POTWs to establish limits on discharges to POTWs.

EPA estimates that the total annualized costs for the private sector to comply with the federal mandate are $93.9 million (post-tax)/$136.4 million (pre-tax). The mandate's benefits are primarily in the areas of reduced health risk and improved water quality. The EA describes, qualitatively, such benefits. The analysis also quantifies a portion of the benefits and monetize a subset of these benefits. EPA estimates that annual monetized benefits would be $2.9 to $10.3 million.

EPA does not believe that there will be any disproportionate budgetary effects of the rule on any particular areas of the country, particular types of communities, or particular industry segments. EPA's basis for this finding is the analysis of economic impacts, which is summarized in section VII of the preamble and in the EA. A key feature of the analysis is the estimation of financial impacts for each facility incurring compliance costs. EPA considered the costs, impacts and other effects and found no disproportionate budgetary effects on any specific regions or individual communities. The EA also describes the rule's effects on the national economy in terms of effects on productivity, economic growth, and international competitiveness; EPA found such effects to be minimal.

For each regulatory decision in today's proposal, EPA believes it has selected the "least costly, most cost-effective, or least burdensome alternative" that achieves the objective of the rule. This satisfies the section 205 of the UMRA. Some, including members of the SBREFA panel, have suggested that EPA consider other options including no regulation or higher thresholds for the small business exclusion and EPA is soliciting comments on those alternatives. EPA believes, however, that the proposed option appropriately reflects what is economically achievable for the reasons elsewhere discussed in this preamble.

D. Paperwork Reduction Act

The proposed industrial laundries pretreatment standards contain no new information collection activities beyond that which is already required in 40 CFR Part 403, and therefore, no information collection request will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

E. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. This section summarizes EPA's response to the requirements of the NTTAA for the analytical test methods promulgated as part of today's effluent limitations guidelines and standards. EPA performed literature searches to identify any analytical methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to measure the analytes in today's proposed rulemaking. The results of this search formed the basis for EPA's analytical method development and validation in support of this proposed rulemaking.

EPA's analytical test method development is consistent with the requirements of the NTTAA. Although the Agency initiated data collection for these effluent guidelines many years prior to enactment of the NTTAA, traditionally, analytical test method development has been analogous to the Act's requirements for consideration and use of voluntary consensus standards.

The proposed rule would require dischargers to monitor for SGT-HEM, Copper, Lead, Zinc, Bis (2-Ethylhexyl) Phthalate, Ethylbenzene, Naphthalene, Tetrachloroethene, Toluene, m-Xylene, and o-&p-Xylene. Except for SGT-HEM and Xylenes, methods for monitoring these pollutants are specified in tables at 40 CFR Part 136. When available, methods published by voluntary consensus standards bodies are included in the list of approved methods in these tables. Specifically, voluntary consensus standards from the American Society for Testing and Materials (ASTM) and from the 18th edition of Standard Methods (published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation) are approved for Copper, Lead and Zinc. In addition, USGS methods are approved for these three inorganic pollutants. Voluntary consensus standards from the 18th edition of Standard Methods are also approved for Bis (2-Ethylhexyl) Phthalate, Ethylbenzene, Naphthalene, Tetrachloroethene, and Toluene.

For SGT-HEM, EPA is proposing to use EPA Method 1664. This method was proposed for promulgation in 40 CFR Part 136 on January 23, 1996 (61 FR 1730). Method 1664 was developed by EPA to replace previously used gravimetric procedures (for determination of oil and grease and total petroleum hydrocarbons) that employed Freon-113, as part of EPA's efforts to reduce the dependency on the use of chlorofluorocarbons pursuant to Title VI of the Clean Air Act. EPA is unaware of the existence of an appropriate non-Freon method from a voluntary consensus standards body.

For the Xylenes, EPA proposes to use EPA Methods 1624 and 624 which are promulgated at 40 CFR Part 136. These analytical methods were used in data collection activities in support of today's proposed limitations although the xylenes are not specified as analytes in the methods. EPA has not identified any methods from a voluntary consensus standards body that could be used to measure these analytes.

EPA requests comments on the discussion of NTTAA, on the

consideration of various voluntary consensus standards, and on the existence of other voluntary consensus standards that EPA may not have found.

XI. Related Rulemakings

A. Office of Solid Waste (OSW) Activities Related to This Effort

Solvent-contaminated industrial shop towels have been a longstanding issue within the Resources Conservation and Recovery Act (RCRA) program. As mentioned earlier, a free liquids inspection policy exists in the industry. The industrial laundry trade association also has established guidance for industrial laundries and their customers to use in the management of solvent-contaminated shop towels—foremost being that the industrial laundry not accept any shop towels bearing free liquids and their customers use a collection system or other process to remove any free liquids. OSW is currently collecting data to better understand the use and management of both disposable and reusable solvent-contaminated industrial shop towels. The objective of this range-finding effort is to assist the Agency in determining whether the Agency's rules and policies should be modified to address current problems with the regulation of these materials. Questions being addressed in this study include:

Site Visits

1. What are the demographics of industry using solvents and shop towels/wipers; *i.e.*, type of industry, size of firm, Material Safety Data Sheets, type of wipers used, number of wipers used monthly or annually, range of solvent amounts put on wiper, amount of solvent used monthly or annually, RCRA regulatory status [Small Quantity Generator (SQG)/Large Quantity Generator(LQG)], other environmental permits, removal technology utilized, material disposition (municipal landfill, laundry, incineration, etc.), etc.

2. What is the variability of solvent amounts placed on shop towels?

3. What is the variability of solvent remaining on shop towels immediately after usage and after 18–24 hours? How were shop towels stored to derive results? What factors explain low evaporation rates?

4. What is the variability of solvents in usage? How often are "high risk" solvents used, at what percentage?

5. Does percolation occur during storage? What factors might influence or explain any percolation seen?

6. What removal technologies were used in the site-visits? What are their removal efficiencies?

7. How are shop towels managed after usage? Open containers/closed containers/placed on shelves, etc.

Lab results

8. What are the absorbability rates for different types of shop towels? What factors explain these findings?

9. What were the removal efficiencies for different types of shop towels and solvents? What can we conclude in terms of variability or consistency? What factors might explain these results?

10. What were the evaporation rates we found for different types of solvents and shop towels? What factors help explain these results?

11. What were the percolation rates we found in our experiments? What were the experiments we conducted? What factors might explain results?

Risks

12. What are the relative risks to the air, ground water and surface water for the solvent constituents? What was the methodology used to derive these results?

13. Based upon the above analysis, are there solvent constituents that deserve further analysis to clearly determine whether they pose little or no risk to human health and the environment? Are there solvent constituents that we should clearly discourage?

XII. Regulatory Implementation

A. Upset and Bypass Provisions

A "bypass" is an intentional diversion of wastestreams from any portion of a treatment facility in an emergency situation. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations for indirect dischargers concerning bypasses and upsets are set forth at 40 CFR 403.16 and 403.17.

B. Variances and Modifications

The CWA requires application of the pretreatment standards established pursuant to sections 304 and 307 to all indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity of relief from the application of national pretreatment standards for categories of existing sources.

1. Fundamentally Different Factors (FDFs) Variances

EPA may develop pretreatment standards different from the otherwise applicable requirements for existing sources if an existing facility is fundamentally different with respect to factors considered in establishing the standards applicable to the individual facility. Such a modification is known as a FDF variance. See 40 CFR 403.13. Dischargers subject to PSNS are not eligible for an FDF variance.

In the Water Quality Act of 1987, Congress added new section 301(n) of the Act to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in 403 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standards. Section 301(n), also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have the opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR Part 403, authorizing the Regional Administrators to establish alternative standards, further detail the substantive criteria used to evaluate FDF variance requests for existing dischargers to POTWs. Thus, 40 CFR 403.13(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable pretreatment standards. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 403.13(c)(2), a request for limitations less stringent than the national limitation may be approved only if compliance with the pretreatment standards would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the standards, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the standards.

The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 403.13 are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit that are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the standards. While EPA encourages facilities, or categories of facilities, that believe they qualify for the FDF variance to apply for it, EPA also recognizes that the circumstances under which it can be granted are limited to specific statutory factors that few applicants have satisfied.

2. Removal Credits

The CWA establishes a discretionary program for POTWs to grant "removal credits" to their indirect dischargers. This credit in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW. *See* 40 CFR 403.7. EPA has promulgated removal credit regulations as part of its pretreatment regulations. In addition, currently five of the approximately 1500 authorized pretreatment programs have the authority to issue removal credits. Under EPA's pretreatment regulations, the availability of a removal credit for a particular pollutant is linked to the POTW method of using or disposing of its sewage sludge. The regulations provide that removal credits are only available for certain pollutants regulated in EPA's 40 CFR Part 503 sewage sludge regulations (58 FR 9386). The pretreatment regulations at 40 CFR Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants (40 CFR 403.7(a)(3)(iv)(A)).

For this proposed rule, removal credits would be available for the following pollutant parameters being regulated under each of the criteria discussed: (1) land application—Copper, Lead and Zinc; (2) surface disposal—none; (3) incineration—in addition to Lead, removal credits would also be available for Bis(2-Ethylhexyl) Phthalate, Ethylbenzene, Tetrachloroethene, and Toluene if the requirements in 40 CFR part 403, Appendix G.I.(1) are met.

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals [40 CFR 403.7(a)(3)(iv)(B)].

Under this proposed rule, additional pollutant parameters that would be available for removal credits are as follows: (1) land application—none; (2) surface disposal—Bis(2-Ethylhexyl) Phthalate, Copper, Lead and Zinc and (3) incineration—Copper, and Zinc.

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill (MSWLF) that meets the criteria of 40 CFR Part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)). Thus, given compliance with the requirements of EPA's removal credit regulations,[1] following promulgation of the pretreatment standards being proposed today, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a municipal solid waste landfill that meets the requirements of 40 CFR Part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): Arsenic, Cadmium, Chromium, Copper, Iron, Lead, Mercury, Molybdenum, Nickel, Selenium and Zinc. Given compliance with § 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: Benzene; 1,1-Dichloroethane; 1,2-Dibromoethane; Ethylbenzene; Methylene Chloride; Toluene; Tetrachloroethene; 1,1,1-Trichloroethane; 1,1,2-Trichloroethane and Trans-1,2-Dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under Part 403. Under Sections 307(b) and 405 of the CWA, EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, that the increased discharges of a pollutant to POTWs resulting from removal credits will not affect POTW sewage sludge use or disposal adversely. As discussed in the preamble to amendments to the Part 403 regulations (58 FR 9382–9383), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant (1) for which EPA has established a numerical pollutant limit in Part 503; or (2) which EPA has determined will not threaten human health and the environment when used or disposed of in sewage sludge. The pollutants described in paragraphs (1)–(3) above include all those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sewage sludge use and disposal.

Consequently, in the case of a pollutant for which EPA did not perform a risk assessment in developing its Round One sewage sludge regulations, removal credit for pollutants will only be available when the Agency determines either a safe level for the pollutant in sewage sludge or that regulation of the pollutant is unnecessary to protect public health and the environment from the reasonably anticipated adverse effects of such a pollutant.[2]

[1] Under 40 CFR 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. See 40 CFR 403.7(a)(3)(I), (ii), and (iii).

[2] In the Round One sewage sludge regulation, EPA concluded, on the basis of risk assessments, that certain pollutants (see Appendix G to Part 403)

Continued

EPA has concluded that a POTW discharge of a particular pollutant will not prevent sewage sludge use (or disposal) so long as the POTW is complying with EPA's Part 503 regulations and so long as the POTW demonstrates that use or disposal of sewage sludge containing that pollutant will not adversely affect public health and the environment. Thus, if the POTW meets these two conditions, a POTW may obtain removal credit authority for pollutants other than those specifically regulated in the part 503 regulations. What is necessary for a POTW to demonstrate that a pollutant will not adversely affect public health and the environment will depend on the particular pollutant, the use or disposal means employed by the POTW and the concentration of the pollutant in the sewage sludge. Thus, depending on the circumstances, this effort could vary from a complete 14-pathway risk assessment modeling exercise to a simple demonstration that available scientific data show that, at the levels observed in the sewage sludge, the pollutant at issue is not harmful. As part of its initiative to simplify and improve its regulations, at the present time, EPA is considering whether to propose changes to its pretreatment regulations so as to provide for case-by-case removal credit determinations by the POTWs' permitting authority.

EPA has already begun the process of evaluating several pollutants for adverse potential to human health and the environment when present in sewage sludge. In November 1995, pursuant to the terms of the consent decree in the *Gearhart* case, the Agency notified the United States District Court for the District of Oregon that, based on the information then available at that time, it intended to propose only two pollutants for regulation in the Round Two sewage sludge regulations dioxins/dibenzofurans (all monochloro to octochloro congeners) and polychlorinated biphenyls.

The Round Two sewage sludge regulations are not scheduled for proposal until December, 1999, and promulgation in December 2001. However, given the necessary factual showing, as detailed above, EPA could propose that removal credits should be authorized for identified pollutants before promulgation of the Round Two sewage sludge regulations. However, given the Agency's commitment to promulgation of effluent limitations and guidelines under court-supervised deadlines, it may not be possible to complete review of removal credit authorization requests by the time EPA must promulgate these pretreatment standards.

did not pose an unreasonable risk to human health and the environment and did not require the establishment of sewage sludge pollutant limits. As discussed above, so long as the concentration of these pollutants in sewage sludge are lower than a prescribed level, removal credits are authorized for such pollutants.

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Administrator—The Administrator of the U.S. Environmental Protection Agency.

Agency—The U.S. Environmental Protection Agency.

Annually—For purposes of the exclusion, annually would mean per calendar year.

AWQS—Ambient Water Quality Standards are provisions of State or Federal law that consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water Quality Standards are designed to protect health or welfare, enhance the quality of the water and serve the purposes of the Act (40 CFR 131.3).

BADCT—best available demonstrated control technology, as described in section 306 of the CWA.

BAT—The best available technology economically achievable, as described in section 304(b)(2) of the CWA.

BMPs—Best Management Practices—As authorized by section 304(e) and 402 of the CWA. Gives the Administrator the authority to publish regulations to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

BCT—Best Conventional Pollutant Control Technology, as described in section 304(b)(4) of the CWA.

BPT—Best Practicable Control Technology Currently Available, as described in section 304(b)(1) of the CWA.

CAA—Clean Air Act, 33 U.S.C. 7401–7671q.

CBI—Confidential Business Information.

CEB—Chemical Emulsion Breaking.

C–E—Cost-Effectiveness Analysis

Conventional pollutants—The pollutants identified in section 304(a)(4) of the CWA and the regulations thereunder (BOD_5, total suspended solids, oil and grease, fecal coliform, and pH).

Cooperative—An enterprise or organization owned by and operated for the benefit of those using its services. For purposes of this rule, a laundry serving like facilities owned by and/or operated for the benefit of those facilities.

CP—Chemical Precipitation.

CWA—Clean Water Act. The Federal Water Pollution Act, 33 U.S.C. 1251 *et seq.*

DAF—Dissolved Air Flotation.

Daily discharge—The discharge of a pollutant measured during any calendar day or any 24-hour period.

Direct discharger—A facility that discharges treated or untreated pollutants into waters of the United States.

Dry cleaning—The cleaning of fabrics using an organic-based solvent rather than water-based detergent solution.

EA—Economic Assessment.

EIA—Economic Impact Analysis.

Effluent—Wastewater discharges.

Effluent limitation—Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean. (CWA Sections 301(b) and 304(b)).

EPA—The U.S. Environmental Protection Agency.

E.O.—Executive Order.

Facility—A facility is all contiguous property owned, operated, leased or under the control of the same person, or corporate or business entity. The contiguous property may be divided by public or private right-of-way.

FDF—Fundamentally Different Factor—Section 301(n) of the CWA. This section authorizes modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified at 40 CFR 403.13.

FTE—Full-time Equivalent.

HAPs—Hazardous Air Pollutants.

HEM—N-Hexane Extractable Material.

Indirect discharger—A facility that discharges or may discharge pollutants into a publicly owned treatment works.

IL—Industrial Laundry.

Industrial laundry facility—any facility that launders industrial textile items from off-site as a business activity. Either the industrial laundry facility or the off-site customer may own the industrial laundered textile items. This includes textile rental companies that perform laundering operations.

Industrial textile items—items such as, but are not limited to: shop towels, printer towels/rags, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents, uniforms, filters, and clean room garments.

IRFA—Initial Regulatory Flexibility Analysis.

IRIS—Integrated Risk Information System.

IRS—Internal Revenue Service.

Laundering—washing items with water, including water washing following dry cleaning.

Linen—items such as sheets, pillow cases, blankets, bath towels and washcloths, hospital gowns and robes, tablecloths, napkins, tableskirts, kitchen textile items, continuous roll towels, laboratory coats, family laundry, executive wear, mattress pads, incontinence pads, and diapers. This list is intended to be an inclusive list.

LTA—Long Term Average. For purposes of the pretreatment standards, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the standards in today's proposed rule.

MACT—Maximum Achievable Control Technology.

NTTAA—National Technology Transfer and Advancement Act

New Source—"New source" is defined in section 306 of the CWA and at 40 CFR 122.12 and 122.29 (b).

Non-conventional pollutants—Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR part 401.

Non-detect value—A concentration-based measurement reported below the sample specific detection limit that can reliably be measured by the analytical method for the pollutant.

Non-water quality environmental impact—An environmental impact of a control or treatment technology, other than to surface waters (including energy requirements).

NPDES—The National Pollutant Discharge Elimination System authorized under Section 402 of the CWA. NPDES requires permits for discharge of pollutants from any point source into waters of the United States.

NSPS—New Source Performance Standards—Based on BADCT and apply to all pollutants (conventional, nonconventional, and toxic). Section 306 of the CWA.

OC—Organics Control.

O&G—Oil and Grease.

OMB—Office of Management and Budget.

Off-Site—"Off-site" means outside the boundaries of a facility.

On-site—"On-site" means within the boundaries of a facility.

OSW—USEPA Office of Solid Waste.

POTW/POTWs—Publicly owned treatment works, as defined at 40 CFR 403.3(o).

Pretreatment standard—A regulation that establishes industrial wastewater effluent quality required for discharge to a POTW.

Priority pollutants—The pollutants designated by EPA as priority in 40 CFR part 423, Appendix A.

PSES—Pretreatment standards for existing sources on indirect discharges, under Section 307 (b) of the CWA.

PSNS—Pretreatment standards for new sources of indirect discharges, under Section 307(b) and (c) of the CWA.

RCRA—Resources Conservation and Recovery Act (Pub. L. 94–580) of 1976, as amended.

RFA—Regulatory Flexibility Act.

RREL—Risk Reduction Engineering Laboratory.

SBA—Small Business Administration.

SBREFA—Small Business Regulatory Enforcement Fairness Act.

SGT-HEM—Silica Gel Treated N-Hexane Extractable Material.

SIC—Standard Industrial Classification.

Small Business—Businesses with annual revenues less than $10.5 million. This is the higher of the two Small Business Administration definition of small business for SIC codes 7218 and 7213.

TPH—Total Petroleum Hydrocarbons.

TRSA—Textile Rental Services Association of America.

TSS—Total suspended solids.

TWF—Toxic Weighting Factor.

UMRA—Unfunded Mandates Reform Act (PL 104–4), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector.

UTSA—Uniform and Textile Service Association.

Variability factor—The daily variability factor is the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, median or mean, of the distribution of the daily data. The monthly variability factor is the estimated 95th percentile of the distribution of the monthly averages of the data divided by the expected value of the monthly averages.

VOC—Volatile Organic Compound.

Water washing—The process of washing laundry items in which water is the solvent used.

List of Subjects in 40 CFR Part 441

Environmental protection, Industrial laundry discharges, Water pollution control, Waste treatment and disposal.

Dated: November 7, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by adding part 441 as follows:

PART 441—THE INDUSTRIAL LAUNDRIES INDUSTRY POINT SOURCE CATEGORY

General Provisions

Sec.
441.1 General definitions.
441.2 Applicability.
441.21 Pretreatment Standards for Existing Sources (PSES).
441.22 Pretreatment Standards for New Sources (PSNS).
Table 1 to Part 441—Pretreatment Standards

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

General Provisions

§ 441.1 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) *Dry cleaning*—The cleaning of fabrics using an organic-based solvent rather than water-based detergent solution.

(b) *Off-site*—"Off-site" means outside the boundaries of a facility.

(c) *On-site*—"On-site" means within the boundaries of a facility.

(d) *Water washing*—The process of washing laundry items in which water is the solvent used.

§ 441.2 Applicability.

(a) Except as stated in paragraphs (b) through (e) of this section, the provisions of this part apply to wastewater discharges from industrial laundry facilities. An industrial laundries facility is any facility that launders industrial textile items from off-site as a business activity (*i.e.*, launders industrial textile items for other business entities for a fee or through a cooperative arrangement). Either the industrial laundry facility or the off-site customer may own the industrial laundered textile items. This definition includes textile rental companies that perform laundering operations. Laundering means washing with water, including water washing following dry cleaning. Industrial textile items include, but are not limited to industrial: shop towels, printer towels/rags, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents, uniforms, filters and clean room garments. If any of these items are used by hotels, hospitals, or restaurants, they are not industrial items.

(b) The provisions of this part do not apply to discharges from: on-site laundering at industrial facilities, laundering of industrial textile items originating from the same business entity, and facilities that exclusively launder linen items, denim prewash items, new items (i.e. items directly from textile manufacturers, not yet used for intended purpose), any other items that come from laundering of hotel, hospital, or restaurant items or any combination of these items. This part does apply to hotel, hospital, or restaurant laundering of industrial textile items. In addition, the provisions of this part do not apply to discharges from the oil-only treatment of dust mops. Furthermore, the provisions of this part do not apply to laundering exclusively through dry cleaning.

(c) By linen items EPA means: sheets, pillow cases, blankets, bath towels and washcloths, hospital gowns or robes, tablecloths, napkins, tableskirts, kitchen textile items, continuous roll towels, laboratory coats, household laundry, executive wear, mattress pads, incontinence pads, and diapers. This list is an inclusive list.

(d) For facilities covered under the Industrial Laundry definition, wastewater from all water washing operations is covered, including the washing of linen items as long as these items do not constitute 100 percent of the items washed.

(e) The provisions of this part do not apply to industrial laundry facilities that as of [the effective date of the final rule] always launder less than one million pounds of incoming laundry per year and launder less than 255,000 pounds of shop and/or printer towels/rags per year. By per year, EPA means on a calendar year basis for the industrial laundry facility. If any excluded facility launders one million pounds or more of incoming laundry per year or 255,000 pounds or more of shop and/or printer towels/rags per

year, it will no longer be excluded from the standards.

§ 441.21 Pretreatment Standards for Existing Sources (PSES).

Pursuant to the CWA section 307(b)(1), indirect dischargers are required to comply with pretreatment standards for existing sources by three years of [the effective date of the final rule]. For purposes of this part, indirect dischargers must comply with this part by three years after [the date of publication of the final rule].

§ 441.22 Pretreatment Standards for New Sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this part that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve as pretreatment standards for new sources (PSNS) the same standards as those specified in § 441.21 for existing sources (PSES).

TABLE 1 TO PART 441—PRETREATMENT STANDARDS

Pollutant parameter	CP—Daily maximum (mg/L)
Bis (2-Ethylhexyl) Phthalate	0.13
Ethylbenzene	1.64
Naphthalene	0.23
Tetrachloroethene	1.71
Toluene	2.76
m-Xylene	1.33
o&p-Xylene	0.95
Copper	0.24
Lead	0.27
Zinc	0.61
SGT-HEM [1]	27.5

[1] Monthly average limitation for SGT-HEM under CP option is 15.4 mg/L.

[FR Doc. 97-30240 Filed 12-16-97; 8:45 am]
BILLING CODE 6560-50-P

federal register

Wednesday
December 17, 1997

Part III

Department of Agriculture

Forest Service
36 CFR Part 242

Department of the Interior

Fish and Wildlife Service
50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition To Include Waters Subject to Subsistence Priority; Proposed Common Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AD68

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition To Include Waters Subject to Subsistence Priority

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the scope and applicability of the Federal Subsistence Management Program in Alaska to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. The amendments being proposed also would extend the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act or the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation, as required by the Alaska National Interest Lands Conservation Act (ANILCA). In addition, the amendments being proposed would clearly specify that the Secretaries are retaining the authority to determine when hunting, fishing or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority on the public lands to such an extent as to result in a failure to provide the subsistence priority and to take action to restrict or eliminate the interference. The Departments also are proposing to provide the Federal Subsistence Board with authority to investigate and make recommendations to the Secretaries regarding the possible existence of additional Federal reservations, Federal reserved water rights or other Federal interests, including those which attach to lands in which the United States has less than fee ownership. The regulatory amendments being proposed would conform the Federal subsistence management regulations to the court decree issued in *State of Alaska* v. *Babbitt*, 72 F.3d 698 (9th Cir. 1995). The proposed rule includes updated Customary and Traditional Use Determinations and annual seasons and harvest limits for fisheries. This proposed rulemaking also responds to the Petitions for Rulemaking submitted by the Northwest Arctic Regional Council et al. on April 12, 1994, and the Mentasta Village Council, et al. on July 15, 1993.

DATES: Written public comments on this proposed rule must be received no later than April 20, 1998.

ADDRESSES: Comments should be sent to Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503. See Supplementary Information section for electronic filing address.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management; telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION: The Federal Subsistence Board will hold public meetings to receive comments on this proposed rule at various locations in Alaska. Notice of specific dates, times, and meeting locations will be published in local and statewide newspapers prior to the meetings. Locations and dates may need to be changed based on weather or local circumstances.

Comments may also be submitted by sending electronic mail to: ASM@mail.fws.gov.

Background

The Federal Subsistence Board assumed subsistence management responsibility for public lands in Alaska in 1990, after the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska*, 785 P.2d 1 (Alaska. 1989), *reh'g denied* (Alaska 1990), that the rural preference contained in the State's subsistence statute violated the Alaska Constitution. This ruling put the State's subsistence program out of compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) and resulted in the Secretaries assuming subsistence management on the public lands in Alaska. The "Temporary Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule" was published in the **Federal Register** (55 FR 27114–27170) on June 29, 1990. The "Subsistence Management Regulations for Public Lands in Alaska; Final Rule" was published in the **Federal Register** (57 FR 22940–22964) on May 29, 1992.

In both cases, the rule "generally excludes navigable waters" from Federal subsistence management. 55 FR 27114, 27115 (1990); 57 FR 22940, 22942 (1992). In a lawsuit consolidated with *Alaska* v. *Babbitt*, plaintiff Katie John challenged these rules, arguing that navigable waters are properly included within the definition of "public lands" set out in ANILCA. At oral argument before the United States District Court for Alaska, the United States took the position that Federal reserved water rights which encompass the subsistence purpose are public lands for purposes of ANILCA. The United States Court of Appeals for the Ninth Circuit subsequently held: "[T]he definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine." *Alaska* v. *Babbitt*, 72 F.3d at 703–704. In the course of its decision, the Ninth Circuit also directed: "[T]he federal agencies that administer the subsistence priority are responsible for identifying those waters." Id. at 704.

The amendments being proposed would conform the Federal subsistence management regulations to the Ninth Circuit's ruling in *Alaska* v. *Babbitt*. As the Ninth Circuit directed, this document identifies Federal land units in which reserved water rights exist. These are "public lands" under the Ninth Circuit's decision in *Alaska* v. *Babbitt* and thus are subject to the Federal subsistence priority in Title VIII of ANILCA. The amendments being proposed here also provide the Federal Subsistence Board with clear authority to administer the subsistence priority in these waters.

On July 15, 1993, the Mentasta Village Council, Native Village of Quinhagak, Native Village of Goodnews Bay, Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP, Katie John, Doris Charles, Louie Smith and Annie Cleveland filed a "Petition for Rulemaking by the Secretaries of Interior and Agriculture that Navigable Waters and Federal Reserved Waters are 'Public Lands' Subject to Title VIII of ANILCA's Subsistence Priority." On April 12, 1994, the Northwest Arctic Regional Council, Stevens Village Council, Kawerak, Inc., Copper River Native Assoc., Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP and Dinyee Corporation filed a "Petition for Rule-Making by the Secretaries of Interior and Agriculture

that Selected But Not Conveyed Lands Are To Be Treated as Public Lands for the Purposes of the Subsistence Priority in Title VIII of ANILCA and that Uses on Non-Public Lands in Alaska May Be Restricted to Protect Subsistence Uses on Public Lands in Alaska." A Request for Comments on this Petition was published at 60 FR 6466 (1995). This proposed rule also responds to both petitions for rulemaking.

The Secretaries published an Advance Notice of Proposed Rulemaking (ANPR) (61 FR 15014) on April 4, 1996, and during May and June held ten public hearings around Alaska to solicit comments on the Advance Notice.

Public Review and Comment

In addition to the oral testimony received at the public hearings, an additional 64 written comments including 1 petition representing 1,379 individuals and 1 letter submitted in behalf of 2 individuals, 6 Native organizations, and 4 local governments were received. The comments received both in writing and during the hearings in response to the Advance Notice provided the agencies with a sense of how the public viewed the general jurisdictional concepts outlined in the notice. A number of issues were raised by the public.

- The Federal government should not be interfering in any Alaska management. Previously, the Federal government managed fish and shellfish poorly. The State should manage fishing, hunting, and trapping throughout Alaska. The Secretaries agree that the State should be managing the fish and wildlife resources of Alaska and will work with the State to return management to it as soon as the State is in compliance with Title VIII of ANILCA.
- The State has failed to provide for subsistence uses; the Federal government should take over management of all navigable waters throughout Alaska. Federal jurisdiction should also be extended to include all marine waters. The 9th Circuit Court has ruled that Federal jurisdiction of subsistence fisheries management only includes those waters in which the Federal government has reserved water rights. When hunting, fishing, or trapping activities taking place in Alaska off of the public lands interfere with the subsistence priority on the public lands to such an extent as to result in a failure to provide the subsistence priority, the Federal Subsistence Board may recommend that Secretaries take action to restrict or eliminate the interference.
- The identified waters are too extensive in scope. The waters identified in this rulemaking comply with the court's direction to identify those waters in which the Federal government has reserved water rights.
- Native allotments and water flowing through or past should be included. Native allotments are small, scattered, and remote, parcels whose boundaries are not readily identifiable on the ground. The existence of reserved water rights would have to be determined on a case-by-case basis. It is not practicable in the time available to identify any Federal reserved water rights which might be associated with individual allotments. Authority to make recommendations for inclusion of these lands, if appropriate, may be made by the Board under proposed §____.10(d)(xviii).
- The Federal government should step in to regulate the Area M (False Pass intercept) fishery. At the present time the Federal government is preparing to assume jurisdiction over waters for which the Federal government has reserved water rights. Area M waters are not included in this jurisdiction. However, if there is interference with the subsistence priority for fishing on public lands as a result of activities in Area M, the proposed regulations clarify that the Secretaries have and will retain the authority to take action.
- ANILCA does not authorize the extension of Federal jurisdiction off of Federal lands. The Federal courts have long ruled that the Federal government may extend jurisdiction off of Federal lands in order to protect the interests and purposes of those Federal areas. This document clarifies that the Secretaries will retain that authority. The Board, located in Alaska and much more familiar with the unique situations there, will evaluate the situation and make recommendations to the Secretaries for their action.
- Congress did not intend for selected but not yet conveyed lands to be subject to Title VIII. Section 906(o)(2) provides that "the laws applicable to such unit" are to apply to the Federal lands within the unit until conveyed. Since selected lands are Federal lands, the only question is whether ANILCA's Title VIII governing subsistence uses is part of the body of laws "applicable to such unit." This question is easily answered in the affirmative. Each of the titles of ANILCA that establishes or expands a conservation system unit identifies the laws that apply to the unit. For example, new national parks established by ANILCA "shall be administered by the Secretary under the laws governing the administration of such lands and under the provisions of this Act." In each case, the new units established by ANILCA are to be administered in accordance with ANILCA as well as other applicable organic legislation. The subsistence provisions in Title VIII are part of ANILCA and are therefore part of the body of law applicable to the new units under ANILCA section 906(o)(2). The statutes establishing the new units do not distinguish among the titles of ANILCA which are applicable; they simply say that along with the other statutes, ANILCA applies. Section 906(o)(2) applies this whole body of law to selected but not conveyed lands.
- The Federal Subsistence Board should not be granted authority to identify additional lands for designation as public lands. The authority to identify and include additional lands in the Federal Subsistence Management Program remains with the Secretaries. The change would clarify the Board's duty for identification and recommendation and specify that any inclusion of lands in the program would remain the authority of the Secretaries as provided under existing laws.
- The ANPR violates the Alaska Statehood and Submerged Lands Acts. Case law and subsequent legislation (e.g. Alaska Native Claims Settlement Act, ANILCA, etc.) have modified the Statehood and Submerged Lands Acts. This rulemaking, therefore, does not violate the Acts with their subsequent modifications and revisions.
- Some people commented that various procedural requirements have not been fulfilled, such as complying with NEPA, the Executive Order on Federalism, or preparing a Regulatory Flexibility Act analysis. The preparation of an environmental assessment and an economic analysis have been completed. The final rule will not be promulgated prior to the completion of all procedural requirements.

Alternatives Considered in Preparing the Proposed Rule

The primary consideration in implementation of the Ninth Circuit Court directive is the identification of inland navigable waters considered Federal Public lands in Alaska (non-navigable waters are currently in the Federal program). The Court directed that the Federal Agencies responsible for administering the subsistence priority identify those waters, which are defined as waters in which the United States has a reserved water right. Accordingly, the responsible agencies identified alternatives based on different interpretations of the extent of jurisdiction associated with reserved

water rights. These alternatives are discussed in the Environmental Assessment which has been prepared for this Proposed Rule. The base case (Alternative I) is the no action alternative in which Federal jurisdiction does not change; it is used for purposes of analysis and is not consistent with the Court directive. Alternative II identifies a minimal definition of jurisdiction that includes only those inland navigable waters directly adjacent to Federal public lands. Alternative III is a broader definition than Alternative II and includes all inland navigable waters within the exterior boundaries of listed Parks, Preserves, Wildlife Refuges, and other specified units managed by the Department of the Interior and all inland navigable waters bordered by lands owned by the Federal government within the exterior boundaries of the two National Forests. With the exception of a few areas (National Petroleum Reserve-Alaska, national recreation areas and wild and scenic river corridors), navigable waters on lands managed by the Bureau of Land Management are not included in any of these alternatives. Aleska has a total of 196,234 miles of streams and rivers (data from the Digital Chart of the World); under Alternative II, 80,572 miles would be under Federal jurisdiction; and under Alternative III, 102,491 miles would be under Federal jurisdiction.

An alternative considered but not analyzed was the extension of Federal jurisdiction to all navigable waters in Alaska. This broad definition of jurisdiction was advocated by the plaintiff, Katie John, and adopted by the District Court. The court based this part of its decision on the Federal navigational servitude. The Ninth Circuit Court of Appeals reversed the district court's judgment on this point and remanded the decision. The directive of the Ninth Circuit was based on a determination that navigational servitude is not "public land" within the meaning of ANILCA because navigational servitude is not a sufficient Federal interest to define public land in the context of ANILCA. Instead, the appeals court relied upon the reserved water rights doctrine, which holds that when the United States withdraws lands from the public domain and reserves them for a Federal purpose, then the United States implicitly reserves the associated, unappropriated waters to the extent needed to accomplish the purposes of the withdrawal. The court held that these Federal reserved waters are a sufficient interest to constitute public lands under ANILCA.

Alternative III was chosen as the preferred alternative for this Proposed Rule because it would fully implement the Ninth Circuit's ruling while avoiding the serious management difficulties that would arise from checkerboard jurisdiction over segments of rivers within Department of Interior Conservation System Units that is contemplated in Alternative II.

There are two issues that are common to all alternatives that were considered: dual management and customary trade. Two underlying premises are associated with dual management. The first is that the Federal and State programs will cooperate in the management of fisheries. The second premise is that a primary focus of the Federal program will be on the existing State Fishery Management plans, which identify parameters (harvest and escapement goals) used to make in-season decisions. A key aspect of the Federal-State cooperation will be the adoption of what are now the State Fishery Management plans into the Federal program. In general, this will involve the Regional Councils and Federal Subsistence Board in the evaluation of existing plans, modification if necessary to adequately address and accommodate subsistence uses, and development of new plans where necessary.

Although the Federal definition of Customary Trade was initially drawn from the State, the current Federal and State regulations differ in the definition and regulatory restrictions on Customary Trade. The differences are due to changes incorporated by the State to regulations addressing specific fisheries' issues. The proposed Federal regulations provide additional provisions to ensure separation of commercial markets and traditional customary trade practices. The same definition of Customary Trade would apply to all alternatives.

Alternative I—No Action

In the base case, or No Action Alternative, the Federal government would not extend jurisdiction to navigable waters. In this case, the fishery allocation and harvest decisions on all navigable waters would continue to be made by the State; the State would retain jurisdiction over all 196,234 miles of streams and rivers in the state that are not currently in the Federal Program (less than 1 percent of navigable waters are currently under Federal jurisdiction). Fishery decisions by the Federal Subsistence Board would be limited to non-navigable waters on Federal Public Lands and those limited marine waters included in Conservation System Units. This alternative is counter to the Ninth Circuit's directive.

Alternative II—Limited Federal Jurisdiction

Alternative II is a restricted determination of jurisdiction. In this case, jurisdiction would only extend to waters directly adjacent to Federal Public lands; 80,572 miles of streams and rivers (41%) would be under Federal subsistence jurisdiction and 115,662 (59%) would remain under State jurisdiction. Only those navigable waters where at least one shoreline is Federal public land would be included. Lands and waters on selected but not yet conveyed parcels within DOI CSU's, national conservation and recreation areas, and new national forests or forest additions also would be included in Alternative II as well as Alternative III.

Land status becomes paramount for determining jurisdiction and the extent of jurisdiction could be dynamic as land ownership patterns change. With the current pattern of land ownership within the boundaries of CSUs managed by the Department of the Interior, Federal Subsistence fishery management would be fragmented due to the "checkerboard pattern" of "in-holdings" within most CSUs. Navigable waters within the boundaries of the majority of Bureau of Land Management lands are not included.

Alternative III—Preferred Alternative

Jurisdiction in Alternative III is broader than in Alternative II for lands managed by the Department of Interior but remains the same for lands managed by the Department of Agriculture (Forest Service lands). In Alternative III, all inland navigable waters within and adjacent to exterior boundaries of DOI Conservation System Units would be included under Federal jurisdiction. As in Alternative II, however, navigable waters on most BLM lands would not be included. Of the 196,234 miles of rivers and streams in the State, 102,491 (52%) would be under Federal subsistence jurisdiction and 93,743 (48%) would remain under State jurisdiction.

Land ownership patterns are the same as discussed in Alternative II, however, the extent of jurisdiction differs significantly. The difference is due to the inclusion of inland waters within the outer perimeter of DOI CSU's. The inclusion of these waters avoids the problems associated with the checkerboard pattern of land ownership within lands managed by the Department of the Interior. Jurisdiction on Forest Service lands remains the same as in Alternative II. The regulations proposed in this document would implement this alternative.

Economic Impacts for All Alternatives

For all three alternatives, economic impacts are expected to be insignificant. Such impacts would only occur due to shifts in harvest allocations between user categories (i.e. from commercial or sport allocations to subsistence allocations). The State's existing fisheries management program already accommodates most subsistence users. No major new groups of users would be added as a result of federal management. Significant shifts in allocations are not proposed or expected under any alternative.

For Alternative I (No Action) there would be no change in allocations and therefore no economic impacts.

For Alternative II, most subsistence fisheries that pose potential conflicts with sport or commercial fisheries would continue under State jurisdiction and management. The State of Alaska has exceptionally abundant fishery resources, and subsistence harvests of salmon are relatively low (about 1 percent of all salmon harvested statewide) compared to other uses. Therefore, any redirection of allocations to subsistence fisheries under Federal jurisdiction would likely be minimal, and would not result in significant reductions to commercial or sport fisheries. Moreover, subsistence uses would remain the highest priority even under State management, even though State law precludes a preference for rural residents. The practical difference between State and Federal management in this Alternative would be minimal. Therefore, Alternative II would not result in any significant economic impacts.

For Alternative III, Federal Subsistence jurisdiction would be more expansive. This expansion may lead to some increases in harvest allocations in subsistence fisheries under Federal jurisdiction. This in turn could possibly lead to some reallocation of harvests from commercial or sport fisheries in the future, though none are contemplated in the current proposed rule. The potential for impacts to commercial and sport fisheries are highest (1) where relatively large subsistence harvests are occurring, such as the Yukon, Kuskokwim, and Copper rivers; (2) in certain locations where a run or species of fish are prized for their subsistence use, such as sockeye salmon in several Southeast and Southcentral Alaska river systems or steelhead in the Situk River; or (3) in certain locations where subsistence uses are relatively common but access to fish is limited, such as at or near some village sites in headwater and tributary stream systems in Aleska's interior. In general, however, any increases in subsistence allocations would have little, if any, effects on commercial or sport fisheries, because fishery resources are generally abundant and subsistence harvests are quite low (1% of salmon harvests statewide) compared to commercial and sport harvests.

Fisheries with the greatest potential for conflict include the Yukon, Kuskokwim, and Copper rivers. However, the Yukon and Kuskokwim rivers both have state-appointed advisory groups in place that provide recommendations for State management. These groups are made up of local users and have been effective in addressing and resolving drainage-wide issues. An important dynamic in balancing concerns between user groups in these drainages is that the subsistence users and commercial users are largely the same group of people (83% of the commercial permits on the Yukon River and 98 percent on the Kuskokwim are held by local rural residents). As an example, the current Yukon River Fall Chum Management Plan was developed through consultation with the Yukon River Drainage Fisheries Association. The YRDFA is made up of both commercial and subsistence users throughout the drainage. This existing plan maintains a subsistence priority at all escapement levels—commercial, sport, and personal use fisheries are opened by emergency order only at higher escapement levels, and the subsistence fishery is larger than the in-river commercial fishery. Effective local involvement would also be important to the Federal program, which would seek to incorporate input from organizations such as YRDFA. A second example, the Copper River Management Plan (5 AAC 01.249), already requires a large escapement that provides for all upriver uses including subsistence. Generally, subsistence needs are already being met through the subsistence and personal use fisheries (60% of the personal use permits were held by local, rural residents) in the Copper River. Therefore, no significant shifts in allocations and therefore no significant economic impacts are anticipated under Alternative III.

Federal Subsistence Regional Advisory Councils

Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule.

Summary of Proposed Changes

The following sections are proposed to have major revisions:

§ ____.3(b)—Text is inserted to identify scope of the Federal Subsistence Management Program to include the waters in which the Federal government has reserved water rights.

§ ____.4 "Federal lands"—The definition is revised to conform to the decision of the 9th Circuit Court of Appeals.

§ ____.4 "Inland waters"—A new definition is inserted.

§ ____.4 "Public lands or public lands"—The definition is revised to include the selected but not yet conveyed lands located within the boundaries of conservation system units, national recreation areas, national conservation areas, new additions to the national forests, and new national forests.

§ ____.4 "Regulatory year"—A change in the regulatory year for fish and shellfish is needed in order to avoid having regulations change in the middle of a fishing season.

§ ____.4 "Reserved water right(s)"—The definition is added to conform to the decision of the 9th Circuit Court of Appeals.

§ ____.6—Language is inserted to clarify that the subsistence user must possess an Alaska *resident* hunting or trapping license. (No license is required for subsistence fishing.) The language in this section is also reorganized and simplified and some of the text is moved to § ____.10(d).

§ ____.10(a)—Language is added clarifying the Secretaries' existing authority to extend jurisdiction off of Federal lands to protect subsistence uses occurring on Federal lands.

§ ____.10(d)(4)(xvii)—Language is added clarifying Board's authority to evaluate situations where there is a failure to provide the subsistence priority and make recommendations to the Secretaries for their action.

§ ____.10(d)(4)(xviii)—Language is added clarifying Board's authority to identify additional lands where Federal interests exist and to recommend for

inclusion of those lands in the Federal Subsistence Management Program.

§ ____.10(d)(5)—Language is added to allow delegation of the authority to open or close established harvest seasons or harvest limits or open areas to field officials (i.e. Park Superintendents, Refuge Managers, etc).

§ ____.24(a)(2)—The proposed language in this section is based on the last Alaska Department of Fish and Game customary and traditional use determinations that were in compliance with Title VIII (January 1990). Additionally, proposed changes have been added to address backlogged proposals relating to fish in the Kuskokwim and Bristol Bay Areas and Regional Council suggestions in the Southeastern Alaska Area. In these three areas, suggestions were made to include in the Customary and Traditional Use Determinations positive findings for the use of additional species by local residents.

§ ____.26 and .27—The proposed wording of these sections is based on the existing State subsistence regulations with some exceptions. The primary modifications are to:

- accommodate past Federal Subsistence Board actions (making rod and reel a legal method of subsistence harvest, allowing the 24-hour taking of salmon in Kodiak, and restricting the method and harvest of king crab in the Kodiak Area);
- provide for ongoing customary trade practices. In this case, the modification would recognize and legalize the common (and previously prohibited, though unenforced) practice of selling or trading small quantities of subsistence-taken fish by rural residents;
- eliminate specific references to State "non-subsistence areas" or other items clearly inconsistent with the Federal Program;
- replace references to the "Commissioner" with "Board";
- remove Board of Fish management guidance to the Department of Fish and Game; and,
- specify a different fin to be removed from subsistence-taken salmon in Southeast to accommodate traditional fish drying practices in response to a request from the Southeast Regional Advisory Council.

For the purpose of clarity and ease of understanding, the entire text of the proposed rule for subparts A, B, and C, and sections ____.26, and ____.27 of subpart D is being printed. The unpublished section (Section ____.25) relates to wildlife regulations that are revised annually. Because this proposed rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR Part 242 and 50 CFR Part 100.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

A preliminary environmental assessment has been prepared on the expansion of Federal jurisdiction and is available by contacting the office listed under "Addresses."

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

An evaluation of the effects of the Proposed Rule was conducted in accordance with section 810 and it does not appear that the Proposed Rule, if adopted as currently written, would significantly restrict subsistence users.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements are a revision of the collection requirements already approved by OMB under Clearance Number 1018–0075. This revision is being submitted to OMB for approval. A comment period through April 20, 1998, is open on these collection requirements.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Hunter Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (one hour or less). This information is accessed via computer data base. The current overall annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under the existing rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

The proposed collection of information will be achieved through the use of a Federal Subsistence Registration Permit Application, which would be the same form as currently approved and used for the hunting program. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence fisheries on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish populations. The annual burden of reporting and recordkeeping is estimated to average 0.50 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 10,000, yielding a total annual reporting and recordkeeping burden of 5,000 hours or less.

As required by OMB regulations at 5 CFR 1320.8(d)(1), public comments are solicited as to:

a. whether the collection of information is necessary for the proper performance of the function of the program, including whether the information will have practical utility;

b. the accuracy of the estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. the quality, utility, and clarity of the information to be collected; and

d. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Direct comments on the burden estimate or any other aspect of this collection to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule was classified as non-significant under Executive Order 12866 and was not submitted to OMB for review.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon and $0.58 per pound for other fish, would equate to about $34 million State wide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Departments have determined that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

The Departments have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities.

Drafting Information

These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments propose to amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Revise subparts A, B, and C of 36 CFR part 242 and 50 CFR part 100 to read as follows:

Subpart A—General Provisions

Sec.

____.1 Purpose.
____.2 Authority.
____.3 Applicability and scope.
____.4 Definitions.
____.5 Eligibility for subsistence use.
____.6 Licenses, permits, harvest tickets, tags, and reports.
____.7 Restriction on use.
____.8 Penalties.
____.9 Information collection requirements.

Subpart B—Program Structure

____.10 Federal Subsistence Board.
____.11 Regional advisory councils.

____.12 Local advisory committees.
____.13 Board/agency relationships.
____.14 Relationship to State procedures and regulations.
____.15 Rural determination process.
____.16 Customary and traditional use determination process.
____.17 Determining priorities for subsistence uses among rural Alaska residents.
____.18 Regulation adoption process.
____.19 Closures and other special actions.
____.20 Request for reconsideration.
____.21 [Reserved].

Subpart C—Board Determinations

____.22 Subsistence resource regions.
____.23 Rural determinations.
____.24 Customary and traditional use determinations.

Subpart A—General Provisions

§ ____.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ ____.2 Authority.

The regulations in this part are issued pursuant to authority designated in this part, and specifically the authority vested in the Secretary of the Interior and Secretary of Agriculture specified in section 814 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3124.

§ ____.3 Applicability and scope.

(a) The regulations in this part implement the provisions of Title VIII of ANILCA relevant to the taking of fish and wildlife on public lands in the State of Alaska. The regulations in this part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. The regulations in this part do not supersede agency specific regulations.

(b) The regulations contained in this part apply:

(1) On all public lands including all non-navigable waters located on these lands, on all navigable and non-navigable water within the exterior boundaries of the following areas, and on inland waters adjacent to the exterior boundaries of the following areas:

(i) Alaska Maritime National Wildlife Refuge;

(ii) Alaska Peninsula National Wildlife Refuge;

(iii) Aniakchak National Monument and Preserve;

(iv) Arctic National Wildlife Refuge;

(v) Becharof National Wildlife Refuge;

(vi) Bering Land Bridge National Preserve;

(vii) Cape Krusenstern National Monument;

(viii) Denali National Preserve and the 1980 additions to Denali National Park;

(ix) Gates of the Arctic National Park and Preserve;

(x) Glacier Bay National Preserve;

(xi) Innoko National Wildlife Refuge;

(xii) Izembek National Wildlife Refuge;

(xiii) Katmai National Preserve;

(xiv) Kanuti National Wildlife Refuge;

(xv) Kenai National Wildlife Refuge;

(xvi) Kobuk Valley National Park;

(xvii) Kodiak National Wildlife Refuge;

(xviii) Koyukuk National Wildlife Refuge;

(xix) Lake Clark National Park and Preserve;

(xx) National Petroleum Reserve in Alaska;

(xxi) Noatak National Preserve;

(xxii) Nowitna National Wildlife Refuge;

(xxiii) Selawik National Wildlife Refuge;

(xxiv) Steese National Conservation Area;

(xxv) Tetlin National Wildlife Refuge;

(xxvi) Togiak National Wildlife Refuge;

(xxvii) White Mountain National Recreation Area;

(xxviii) Wrangell-St. Elias National Park and Preserve;

(xxix) Yukon-Charley Rivers National Preserve;

(xxx) Yukon Delta National Wildlife Refuge;

(xxxi) Yukon Flats National Wildlife Refuge;

(xxxii) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakle River.

(2) On all public lands including all inland waters, located on or bordered by other public lands, within or adjacent to the exterior boundaries of the following reservations:

(i) Chugach National Forest;

(ii) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument.

(c) The public lands described in paragraph (b) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

§ ____.4 Definitions.

The following definitions apply to all regulations contained in this part:

Agency means a subunit of a cabinet level Department of the Federal government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

ANILCA means the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, 94 Stat. 2371, (December 2, 1980) (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § ____.10.

Commissions means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

Conservation of healthy populations of fish and wildlife means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

Customary and traditional use means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

Customary trade means cash sale of fish and wildlife resources regulated herein, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

FACA means the Federal Advisory Committee Act, Pub.L. 92–463, 86 Stat. 770 (October 6, 1972) (codified as amended, at 5 U.S.C. Appendix II, 1–15).

Family means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

Federal Advisory Committees or Federal Advisory Committee means the Federal Local Advisory Committees as described in § ____.12

Federal lands means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

Game Management Unit or GMU means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

Inland Waters means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust or society.

Public lands or public land means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1) (i) through (iii) in this definition, until conveyed, all Federal lands within the boundaries of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

Regional Councils or *Regional Council* means the Regional Advisory Councils as described in § ____.11.

Regulatory year means July 1 through June 30, except for fish and shellfish where it means March 1 through the last day of February.

Reserved water right(s) means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

Resident means any person who has his or her primary, permanent home within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose.

Rural means any community or area of Alaska determined by the Board to qualify as such under the process described in § ____.15.

Secretary means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

Take or *taking* as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Year means calendar year unless another year is specified.

§ ____.5 Eligibility for subsistence use.

(a) The taking of fish and wildlife on public lands for subsistence uses is restricted to Alaskans who are residents of rural areas or communities. Other individuals, including Alaskans who are residents of non-rural areas or communities listed in § ____.23, are prohibited from taking fish and wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § ____.24, only those Alaskans who are residents of rural areas or communities so designated are eligible for subsistence taking of that population or stock, on public lands for subsistence uses, under the regulations in this part. All other individuals are prohibited from taking fish or wildlife from that population under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g. "no determination"), all Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of that stock or population under the regulations in this part.

(d) This section does not limit the authority of the National Park Service to regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR part 13.

§ ____.6 Licenses, permits, harvest tickets, tags, and reports.

(a) To take fish and wildlife on public lands for subsistence uses, subsistence users must:

(1) Possess the pertinent valid Alaska resident hunting and trapping licenses (no license required to take fish) unless Federal licenses are required or unless otherwise provided for in subpart D of this part;

(2) Possess and comply with the provisions of any pertinent Federal

permits (Federal Subsistence Registration Permit or Federal Designated Hunter Permit) required by subpart D of this part; and

(3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless superseded by the requirements in subpart D of this part.

(b) Individuals designated on a permit to take fish and wildlife must have that permit in their possession during the taking and must comply with all requirements of the permit and the regulations in this section pertaining to validation and reporting and to regulations in subpart D of this part pertaining to methods and means, possession and transportation, and utilization. Licenses, permits, harvest tickets, tags or other documents required by this section must be produced by individuals upon the request of a State or Federal law enforcement agent. Persons engaged in taking fish and wildlife under these regulations must allow State or Federal law enforcement agents to inspect any apparatus designed to be used, or capable of being used to take fish or wildlife, or any fish or wildlife in possession.

(c) The subsistence user must validate the harvest tickets, tags, permits, or other required documents before removing the kill from the harvest site. Persons engaged in taking fish and wildlife under these regulations must comply with all reporting provisions as set forth is subpart D of this part.

(d) When a community takes fish and wildlife under a community harvest system, the harvest activity must be reported in accordance with regulations specified for that community in subpart D of this part, and as required by any applicable permit conditions. Individuals may be responsible for particular reporting requirements in the conditions permitting a specific community's harvest. Failure to comply with these conditions is a violation of these regulations. Community harvests are reviewed annually under the regulations in subpart D of this part.

(e) To make a fraudulent application for Federal or State licenses, permits, harvest tickets or tags or intentionally file an incorrect harvest report is prohibited.

§ _____.7 Restriction on use.

(a) When fish and wildlife are taken pursuant to the regulations in this part, trade of the fish and wildlife, other than for customary trade or barter, is prohibited.

(b) When fish and wildlife are taken pursuant to the regulations in this part, use or trade of the fish and wildlife which constitutes a significant commercial enterprise is prohibited.

§ _____.8 Penalties.

A person convicted of violating any provision of 50 CFR part 100 or 36 CFR part 242 may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the public land where the violation occurred.

§ _____.9 Information collection requirements.

(a) The rules in this part contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to fish and wildlife harvest activities on public lands in Alaska. Subsistence users will not be required to respond to an information collection request unless a valid OMB number is displayed on the information collection form.

(1) Section ____.20, Request for reconsideration. The information collection requirements contained in § ____.20 provide a standardized process to allow individuals the opportunity to appeal decisions of the Board. Submission of a request for reconsideration is voluntary but required to receive a final determination by the Board. The Department of the Interior estimates that a request for reconsideration will take 4 hours to prepare and submit.

(2) Section _____.6, Licenses, permits, harvest tickets, tags, and reports. The information collection requirements contained in § ____.6 (Federal Subsistence Registration Permit or Federal Designated Hunter Permit forms) provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. Identity and location of residence are required to determine eligibility for a harvest and report of success is required after a harvest attempt. These requirements are not duplicative with the requirements of paragraph (a)(3) of this section. The regulations in § ____.6 require this information before a rural Alaska resident may engage in subsistence uses on public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 0.25 hours.

(3) The remaining information collection requirements contained in this part imposed upon subsistence uses are those adopted from State regulations. These collection requirements would exist in the absence of Federal subsistence regulations and are not subject to the Paperwork Reduction Act. The burden in this situation is negligible and information gained from these reports are systematically available to Federal managers by routine computer access requiring less than one hour.

(b) Direct comments on the burden estimate or any other aspect of the burden estimate to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, N.W., MS 224 ARLSQ, Washington, D.C. 20240; and the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Additional information requirements may be imposed if Local Advisory Committees or additional Regional Councils, subject to the Federal Advisory Committee Act (FACA), are established under subpart B of this part. Such requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structure

§ _____.10 Federal Subsistence Board.

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign them responsibility for, administering the subsistence taking and uses of fish and wildlife on public lands, and the related promulgation and signature authority for regulations of subparts C and D of this part. The Secretaries, however, retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority.

(b) Membership. (1) The voting membership of the Board shall consist of a Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved]

(c) Liaisons to the Board shall consist of a State liaison, and the Chairpersons of each Regional Council. The State liaison and the Chairpersons of each Regional Council may attend public sessions of all Board meetings and be actively involved as consultants to the Board.

(d) Powers and duties. (1) Meetings shall occur at least twice per year and at such other times as deemed necessary by the Board. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of four members.

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent necessary, to implement Title VIII of ANILCA, to:

(i) Promulgate regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Determine which communities or areas of the State are rural or non-rural;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate subsistence uses of fish and wildlife populations on public lands;

(v) Ensure that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Close public lands to the non-subsistence taking of fish and wildlife;

(vii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(viii) Restrict or eliminate taking of fish and wildlife on public lands;

(ix) Determine what types and forms of trade of fish and wildlife taken for subsistence uses constitute allowable customary trade;

(x) Authorize the Regional Councils to convene;

(xi) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xii) Establish Federal Advisory Committees within the subsistence resource regions, if necessary and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;

(xiii) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xiv) Review and respond to proposals for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native corporations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xvii) Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make recommendation to the Secretaries for their action;

(xviii) Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and

(xix) Take other actions authorized by the Secretaries to implement Title VIII of ANILCA.

(5) The Board may implement one or more of the following harvest and harvest reporting or permit systems:

(i) The fish and wildlife is taken by an individual who is required to obtain and possess pertinent State harvest permits, tickets, or tags, or Federal permit (Federal Subsistence Registration Permit);

(ii) A qualified subsistence user may designate another qualified subsistence user (by using the Federal Designated Hunter Permit) to take fish and wildlife on his or her behalf;

(iii) The fish and wildlife is taken by individuals or community representatives permitted (via a Federal Subsistence Registration Permit) a one-time or annual harvest for special purposes including ceremonies and potlatches; or

(iv) The fish and wildlife is taken by representatives of a community permitted to do so in a manner consistent with the community's customary and traditional practices.

(6) The Board may delegate to agency field officials the authority to set harvest limits, define harvest areas, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.

(7) The Board shall establish a Staff Committee composed of a member from the U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, Bureau of Indian Affairs, and USDA Forest Service for analytical and administrative assistance. The U.S. Fish and Wildlife Service representative shall serve as Chair of the Staff Committee.

(8) The Board may establish and dissolve additional committees as necessary for assistance.

(9) The U.S. Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(10) The Board shall authorize at least two meetings per year for each Regional Council.

(e) Relationship to Regional Councils. (1) The Board shall consider the reports and recommendations of the Regional Councils concerning the taking of fish and wildlife on public lands within their respective regions for subsistence uses. The Board may choose not to follow any Regional Council recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, would be detrimental to the satisfaction of subsistence needs, or in closure situations, for reasons of public safety or administration or to assure the continued viability of a particular fish or wildlife population. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision, in writing, in a timely fashion.

(2) The Board shall provide available and appropriate technical assistance to the Regional Councils.

§ _____.11 Regional advisory councils.

(a) The Board shall establish a Regional Council for each subsistence resource region to participate in the Federal subsistence management program. The Regional Councils shall be established, and conduct their activities, in accordance with the FACA. The Regional Councils shall provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Regional Councils shall provide for public participation in the Federal regulatory process.

(b) Establishment of Regional Councils; membership. (1) The number of members for each Regional Council shall be established by the Board, and shall be an odd number. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about the region and subsistence uses of the public lands therein. The Board shall accept nominations and recommend to the Secretaries that representatives on the Regional Councils be appointed from those nominated by subsistence users. Appointments to the Regional Councils shall be made by the Secretaries.

(2) Regional Council members shall serve 3 year terms and may be reappointed. Initial members shall be appointed with staggered terms up to three years.

(3) The Chair of each Regional Council shall be elected by the applicable Regional Council, from its membership, for a one year term and may be reelected.

(c) Powers and Duties. (1) The Regional Councils are authorized to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions, after the Chair of the Board or the designated Federal Coordinator has called the meeting and approved the meeting agenda;

(ii) Elect officers;

(iii) Review, evaluate, and make recommendations to the Board on proposals for regulations, policies, management plans, and other matters relating to the subsistence take of fish and wildlife under these regulations within the region;

(iv) Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission (Commission) within their region in accordance with the requirements of section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses among rural Alaska residents pursuant to §_____.17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under these regulations, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

§_____.12 Local advisory committees.

(a) The Board shall establish such Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in § ____.11.

(b) Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

§_____.13 Board/agency relationships.

(a) General. (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall promulgate regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subpart C and D regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to promulgate regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

§_____.14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by the regulations in this part.

(b) The Board may close public lands to hunting and fishing, or take actions to restrict the taking of fish and wildlife despite any State authorization for taking fish and wildlife on public lands. The Board may review and adopt State closures or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240.

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

§_____.15 Rural determination process.

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area

(2) Communities or areas with populations above 2500 but not more than 7000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Use of fish and wildlife;

(ii) Development and diversity of the economy;

(iii) Community infrastructure;

(iv) Transportation; and

(v) Educational institutions.

(6) Communities or areas which are economically, socially and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a ten year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of five years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at § ____.23.

§_____.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § ____.24.

§_____.17 Determining priorities for subsistence uses among rural Alaska residents.

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b)(1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

§_____.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subpart D of this part shall be accepted by the Board according to a published schedule, but at least once a year. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § ____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and

means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for their decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart D of this part in the **Federal Register**.

(b) Proposals for changes to subpart C of this part shall be accepted by the Board according to a published schedule. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Public and governmental proposals shall be made available for a thirty (30) day review by the regional councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § ____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for their decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart C of this part in the **Federal Register**. A Board decision to change a community's or area's status from rural to non-rural will not become effective until five years after the decision has been made.

(c) [Reserved]

(d) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.

§ _____.19 Closures and other special actions.

(a) The Board may make or direct restriction or closure of the taking of fish and wildlife for non-subsistence uses on public lands when necessary to assure the continued viability of particular fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(b) After consulting with the State of Alaska, providing adequate notice to the public, and holding at least one public hearing in the vicinity of the affected communities, the Board may make or direct temporary closures to subsistence uses of a particular fish or wildlife population on public lands to assure the continued viability of a fish or wildlife population, or for reasons of public safety or administration. A temporary closure will not extend beyond the regulatory year in which it is promulgated.

(c) In an emergency situation, the Board may direct immediate closures related to subsistence or non-subsistence uses of fish and wildlife on public lands, if necessary to assure the continued viability of a fish or wildlife population, or for public safety reasons. The Board shall publish notice and reasons justifying the emergency closure in the **Federal Register** and in newspapers of any area affected. The emergency closure shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined by the Board, after notice and hearing, that such closure should be extended.

(d) The Board may make or direct a temporary change to open or adjust the seasons or to increase the bag limits for subsistence uses of fish and wildlife populations on public lands. An affected rural resident, community, Regional Council, or administrative agency may request a temporary change in seasons or bag limits. Prior to implementing a temporary change, the Board shall consult with the State, shall comply with the provisions of 5 U.S.C. 551–559 (Administrative Procedure Act or APA), and shall provide adequate notice and opportunity to comment. The length of any temporary change shall be confined to the minimum time period or bag limit determined by the Board to be necessary to satisfy subsistence uses. In addition, a temporary change may be made only after the Board determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations. The decision of the Board shall be the final administrative action.

(e) Regulations authorizing any individual agency to direct temporary or emergency closures on public lands managed by the agency remain unaffected by these regulations, which authorize the Board to make or direct restrictions, closures, or temporary changes for subsistence uses on public lands.

(f) Taking fish and wildlife in violation of a restriction, or temporary change authorized by the Board is prohibited.

§ _____.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the **Federal Register** are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earliest, for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why the action by the *Board* should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, and mailing address;

(2) The action for which reconsideration is requested and the date of **Federal Register** publication of that action;

(3) A detailed statement of how the requestor is adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council for review and recommendation. The Board shall consider any Regional Council recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551–559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

§ _____.21 [Reserved]

Subpart C—Board Determinations

§ _____.22 Subsistence resource regions.

(a) The following areas are hereby designated as subsistence resource regions:

(1) Southeast Region;
(2) Southcentral Region;
(3) Kodiak/Aleutians Region;
(4) Bristol Bay Region;
(5) Yukon-Kuskokwim Delta Region;
(6) Western Interior Region;
(7) Seward Peninsula Region;
(8) Northwest Arctic Region;
(9) Eastern Interior Region;
(10) North Slope Region.

(b) Maps delineating the boundaries of subsistence resources regions are available from the U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

§ _____.23 Rural determinations.

(a)(1) All communities and areas have been determined by the Board to be rural in accordance with § ____.15 except the following:

Adak;
Fairbanks North Star Borough;
Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek;
Juneau area—including Juneau, West Juneau and Douglas;
Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;
Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennock Island;
Municipality of Anchorage;
Seward area—including Seward and Moose Pass; Valdez; and
Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenberg Butte.

(2) Maps delineating the boundaries of non-rural areas listed in paragraph (a)(1) of this section are available from the U.S. Fish and Wildlife Service.

(b) [Reserved]

§ _____.24 Customary and traditional use determinations.

(a) Rural Alaska residents of the listed communities and areas have been determined to have customary and traditional subsistence use of the specified species on Federal public lands in the specified areas. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C)	Black Bear	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1(A)	Brown Bear	Rural residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Rural residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Rural residents of Unit 1(C), Haines, Hoonah, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Rural residents of 1(A) and 2.
1(B)	Deer	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Rural residents of 1(C) and (D), and residents of Hoonah and Gustavus.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Rural residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Klukwan, and Hoonah.
1(B)	Moose	Rural residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Rural residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Rural residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake,
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Moose	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, Remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(C) and (D)	Goat	Rural residents of Unit 6(C) and (D).
6	Moose	No Federal subsistence priority.
6	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.

Area	Species	Determination
7, that portion draining into Kings Bay.	Moose	Residents of Chenega Bay and Tatitlek.
7, Remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A), (C) and (D)	Brown Bear	No Federal subsistence priority.
9(B)	Brown Bear	Residents of Unit 9(B).
9(E)	Brown Bear	Residents of Chignik Lake, Egegik, Ivanof Bay, Perryville, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Units 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	No Federal subsistence priority.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, Remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Caribou	Residents of False Pass.
10, Remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11	Brown Bear	No Federal subsistence priority.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Moose	Residents of Unit 11 and Unit 13 (A)–(D) and the residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake.
12	Caribou	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12, South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13 (A)–(D) and the residents of Chickaloon and residents of Dot Lake.
12, East of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12.

Area	Species	Determination
12, Remainder	Moose	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	No Federal subsistence priority.
13	Caribou Nelchina Herd	Residents of Units 11, 13 and the residents of Chickaloon, and 12 (along Nabesna Road).
13(E)	Caribou	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13(A), (B), and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon and Dot Lake.
13(E)	Moose	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, Remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas.	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
17(A)	Brown Bear	Residents of Unit 17, and residents of Goodnews Bay and Platinum.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Toglak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.

Area	Species	Determination
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake; to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Chuathbaluk, Aniak, Lower Kalskag, Holy Cross, Stebbins, St. Michael, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18, North of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, Remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage..	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C), (D)	Bison	No Federal subsistence priority.
19(A)	Brown Bear	Residents of Unit 19(A), (D), and Residents of Tuluksak, Lower Kalskag and Kwethluk.
19(B)	Brown Bear	Residents of Kwethluk.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Unit 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Unit 19(A) and (B) and Kwethluk; and residents of Unit 18 in Kuskokwim Drainage and Kuskokwim Bay during the winter season.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.

Area	Species	Determination
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A), (C) (Delta, Yanert, and 20(C) herds) and (D).	Caribou	No determination, except no subsistence for residents of households of the Denali National Park Headquarters.
20(D) and 20(E)	Caribou 40-Mile Herd	Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—rural residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Rural residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 21	Brown Bear	Rural residents of Unit 21 and 23.
21	Caribou, Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of 23 and 24.
21(A) and (E)	Caribou	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk and Takotna.
21(A)	Moose	Residents of Unit 21(A), (E), Takotna, McGrath, Aniak and Crooked Creek.
21(B) and (C)	Moose	Residents of Unit 21(B) and (C), residents of Tanana and Galena.
21(D)	Moose	Residents of Unit 21(D), and residents of Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's Sheldon Point, and Alakanuk.
22, Remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Resident of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Brouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 23	Brown Bear	Rural residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.

Area	Species	Determination
23 South of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, Remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16-26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Resident of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area
24	Caribou	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, and residents of Koyukuk and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(A)	Moose	Residents of Unit 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek and Stevens Village.
25(D), Remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25 (B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Arcti Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

(2) Fish and shellfish determinations.

Area	Species	Determination
KOTZEBUE-NORTHERN AREA—Northern District.	All fish	Residents of the Northern District, except for those domiciled in State of Alaska Unit 26–B.
Kotzebue District	Salmon, sheefish, char	Residents of the Kotzebue District.
NORTON SOUND-PORT CLARENCE AREA.	Salmon	Residents of the Norton Sound-Port Clarence Area.
YUKON AREA	Salmon	Residents of the Yukon Area, including the community of Stebbins.
	Yukon River Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
	Freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon Area.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
Waters adjacent to the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and around Nunivak Island.	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA—Nushagak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichek District—Naknek River drainage.	Salmon and other freshwater fish	Residents of the Naknek and Kvichek River drainages.
Naknek-Kvichek District—Iliamna-Lake Clark drainage.	Salmon and other freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
KODIAK AREA—except the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) midstream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
KODIAK AREA—except the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA—Port Graham Subdistrict.	Dolly Varden	Residents of Port Graham and English Bay.
Port Graham Subdistrict and Koyuldolik Subdistrict.	Salmon	Residents of Port Graham and English Bay.
Tyonek Subdistrict	Salmon	Residents of the village of Tyonek.
PRINCE WILLIAM SOUND AREA—South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
PRINCE WILLIAM SOUND AREA—North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
YAKUTAT AREA—Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden char, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.

Area	Species	Determination
SOUTH-EASTERN ALASKA AREA—District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′ W. long. and east of 132°25′ W. long.
District 3—Section 3–A	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island, north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
District 15—Chilkat and Chilkoot Rivers.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River, but not elsewhere in Klukwan; and, those residents of other areas of the city and borough of Haines, excluding residents in the drainage of Excursion Inlet.

Subpart D—Subsistence Taking of Fish and Wildlife

3. In subpart D, revise §§ ____.26 and ____.27 of 36 CFR part 242 and 50 CFR part 100 to read as follows:

§ ____.26 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) Fish may be taken for subsistence uses at any time by any method unless restricted by the subsistence fishing regulations found in this section.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section and § ____.27:

Abalone Iron means a flat device which is used for taking abalone and which is more than one inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Anchor means a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Char means the following species: Arctic char (*Salvelinus alpinis*); lake trout (*Salvelinus namaycush*); brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

Crab means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi*; all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear means any type of hard hat or skin diving equipment, including SCUBA equipment.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

Drift gill net means a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

Federal lands means lands and waters and interests therein the title to which is in the United States.

Fishwheel means a fixed, rotating device for catching fish which is driven by river current or other means of power.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gill net means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Groundfish—bottomfish means any marine fish except halibut, osmerids, herring and salmonids.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Harvest Limit means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice.

Lead means either a length of net employed for guiding fish into a seine, set gill net, or other length of net, or a length of fencing employed for guiding fish into a fishwheel, fyke net or dip net.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15 day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Rockfish means all species of the genus *Sebastes*.

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole.

Salmon means the following species: pink salmon (*Oncorhynchus gorbusha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning or for travelling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Set gill net means a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel means a hand-operated implement for digging clams or cockles.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Take or *Taking* means to pursue, hunt, shoot, trap, net capture, collect, kill, harm, or attempt to engage in any such conduct.

To operate fishing gear means any of the following: the deployment of gear in the waters of Alaska; the removal of gear from the waters of Alaska; the removal of fish or shellfish from the gear during an open season or period; or the possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit, the following are legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A beach seine;
(v) Troll gear;
(vi) A fish wheel;

(vii) A trawl;
(viii) A pot;
(ix) A ring net;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A rod and reel; and
(xix) A spear.

(2) All pots used to take fish must contain an opening on the webbing of a sidewall of the pot which has been laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by regulations for particular areas set forth in this section. The gill net web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Any fishing gear used to take fish for subsistence uses may not obstruct more than one-half the width of any stream. A stationary fishing device may obstruct not more than one-half the width of any stream.

(5) The use of live non-indigenous fish as bait is prohibited.

(6) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(7) Kegs or buoys attached to any permitted gear may be any color but red.

(8) Each keg, buoy, stakes attached to gill nets, stakes identifying gear fished under the ice, and any other unattended fishing gear which a person employs to take fish for subsistence uses must have the first initial, last name, and address of the operator plainly and legibly inscribed.

(9) No person may use explosives or chemicals to take fish for subsistence uses.

(10) No person may take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Subsistence-taken fish, their parts, or their eggs may not be purchased for use in a significant commercial enterprise. Persons licensed by the State of Alaska to engage in a fisheries business may not receive for resale or barter or solicit to barter for subsistence-taken fish, their parts or their eggs.

(13) Except as provided elsewhere in this subpart, the taking of rainbow trout and steelhead trout is prohibited.

(14) Fish taken for subsistence use or under subsistence regulations may not be subsequently used as bait for commercial or sport fishing purposes.

(15) Harvest limits authorized in this section or § ____.27 may not be accumulated with harvest limits authorized in State seasons.

(16) Unless specified otherwise in this section, use of a rod and reel to take fish is permitted without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) Where a subsistence fishing permit issued by the ADF&G is required by this section, that permit is required to take fish for subsistence uses with rod and reel. The harvest and possessions limits for taking fish for subsistence uses with a rod and reel in those areas are the same as indicated on the ADF&G permit issued for subsistence fishing with other gear types;

(ii) Where a subsistence fishing permit is not required by this section, the harvest and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(17) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, fish for subsistence uses may be taken at any time.

(18) Fish or their parts taken in violation of Federal law may not be possessed, transported, given, received or bartered.

(d) *Fishing by designated fishing permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take fish on his or her behalf. The designated fisherman must obtain a designated fishing permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) a person may not fish with more than one legal limit of gear as established by this section.

(5) A beneficiary may not designate more than one person to take or attempt to take fish on the beneficiary's behalf at one time. A beneficiary may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on behalf of a beneficiary.

(e) *Fishing permits and reports.* If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(1) The number of fish taken for subsistence use may not exceed the limits sout in the permit;

(2) The permit must be obtained prior to fishing;

(3) The permit must be in the possession of the permittee and readily available for inspection while fishing or transporting subsistence-taken fish;

(4) If specified on the permit, the permittee shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(5) If the return of catch information necessary for management and conservation purposes is required by a fishing permit, a permittee who fails to comply with such reporting requirements is ineligible to receive a subsistence permit for that activity during the following calendar year, unless the permit applicant demonstrates that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(f) *Relation to commercial fishing activities.* (1) Federally-qualified subsistence users who commercial fish may retain fish for their subsistence purposes from their lawfully-taken commercial catch.

(2) No person, when participating in a commercial and subsistence fishery at the same time, may use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) No person may possess or transport subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) *Fishery management area restrictions.*—(1) *Kotzebue-Northern Area.* The Kotzebue-Northern Area includes all waters of Alaska north of the latitude of the westernmost tip of Cape Prince of Wales and west of 141° West longitude, including those waters draining into the Chukchi Sea and Arctic Oceans.

(i) Fish may be taken for subsistence purposes without a permit.

(ii) Salmon may be taken only by gill nets, beach seines, or a rod and reel.

(iii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(iv) In the Kotzebue District, gill nets used to take sheefish may not be more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(v) In the Kotzebue District, the Noatak River one mile upstream and one mile downstream from the mouth of the Kelly River, and the Kelly River from its mouth to ¼ mile upstream are closed to subsistence char fishing from June 1 through September 20.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point light, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) In the Port Clarence District, fish may be taken at any time except that during the period July 1 through August 15, salmon may only be taken from 6:00 p.m. Thursday until 6:00 p.m. Tuesday.

(ii) In the Norton Sound District, fish may be taken at any time except as follows:

(A) In Subdistricts 2 through 6, commercial fishermen may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, commercial fishermen may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, salmon may be taken only from 8:00 a.m. Monday until 8:00 p.m. Saturday.

(iii) Salmon may be taken only by gill nets, beach seines, fishwheel, or a rod and reel.

(iv) In Subdistrict 1, only set gillnets may be used, except as otherwise specified.

(v) In the Unalakleet River from June 1 through July 15, no person may operate more than 25 fathoms of gillnet in the aggregate and no person may operate an unanchored fishing net.

(vi) In the Norton Sound District, fish may not be taken for subsistence purposes seaward of the mouth of the Unalakleet River in an area between ADF&G regulatory markers on each side of the river to an outer line established by ADF&G regulatory markers and buoys.

(vii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(3) *Yukon Area.* The Yukon Area includes all waters of Alaska between the latitude of Canal Point light and the latitude of the westernmost point of Naskonat Peninsula, including those draining into the Bering Sea.

(i) Unless otherwise restricted in this section, salmon may be taken in the Yukon Area at any time.

(ii) In the following locations, salmon may be taken only during the open weekly fishing periods of the commercial salmon fishing season and may not be taken for 24 hours before the opening and 24 hours after the closure of the commercial salmon fishing season:

(A) District 4, excluding the Koyukuk and Innoko River drainages;

(B) in Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) District 6, excluding the Kantishna River drainage.

(iii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In Subdistricts 6–A and 6–B, excluding the Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River, salmon may not be taken from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(iv) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, there is no closed season on fish other than salmon.

(v) In Districts 1, 2, 3, and Subdistrict 4–A, salmon may not be taken for subsistence purposes:

(A) During the 24 hours immediately before the opening of the commercial salmon fishing season; and

(B) 18 hours immediately before, during, and 12 hours after each weekly fishing period of the commercial salmon fishing season.

(vi) In the upper Yukon River drainage, Birch Creek, the Dall River from June 10–September 10, and within 500 feet of their mouths are closed to subsistence fishing, except that whitefish and suckers may be taken under the authority of a subsistence fishing permit.

(vii) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River upstream from a point five miles downstream of the state highway crossing;

(B) Fish Creek upstream from the mouth of Bonanza Creek;

(C) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork; and

(D) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(viii) Salmon may be taken only by gillnet, beach seine or fish wheel, subject to the restrictions set forth in this section.

(ix) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season using gillnets larger than six-inch mesh after a date specified by ADF&G emergency order issued between July 10 and July 31.

(x) In Districts 4, 5, and 6, salmon may not be taken for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, king salmon may be taken by drift gillnets from June 21 through July 14, and chum salmon may be taken by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, king salmon may be taken by drift gillnets from June 15 through July 14; and

(C) No person may operate a drift gillnet that is more than 150 feet in length during the seasons described in paragraphs (h)(3)(x)(A) and (B) of this section.

(xi) Unless otherwise specified in this section, fish other than salmon may be taken subject to the following

restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, a commercial fisherman may not operate more than one type of gear at a time, for commercial and subsistence purposes;

(B) The aggregate length of set gillnet in use by an individual may not exceed 150 fathoms and each drift gillnet in use by an individual may not exceed 50 fathoms in length; and

(C) In Districts 4, 5, and 6, it is unlawful to set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear except that, at the site approximately one mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the "Slide," subsistence fishing gear may be set within 200 feet of other operating commercial or subsistence fishing gear.

(xii) In District 4, from September 21 through May 15, jigging gear may be used from shore ice.

(xiii) Except as provided in this section, fish may be taken for subsistence purposes without a subsistence fishing permit.

(xiv) A subsistence fishing permit is required as follows:

(A) For the Yukon River drainage from ADF&G regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the U.S.-Canada border;

(B) For whitefish and suckers in Birch Creek, Dall River from June 10–September 10, and within 500 feet of their mouths;

(C) For the taking of salmon in Subdistricts 6–A and 6–B.

(xv) Only one subsistence fishing permit will be issued to each household per year.

(xvi) Permits issued for the taking of salmon in Subdistricts 6–A and 6–B must also contain the following requirements:

(A) Salmon may be taken only by set gillnet or fish wheel. No household may operate more than one fish wheel;

(B) Each subsistence fisherman shall keep accurate daily records of his or her catch, the number of fish taken by species, location and date of the catch, and other information that the department may require for management or conservation purposes;

(C) The annual harvest limit for the holder of a Subdistrict 6–A or 6–B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15;

(D) Unless otherwise provided, from June 20 through September 30, open subsistence salmon fishing periods are concurrent with open commercial salmon fishing periods. During closures of the commercial salmon fishery, open subsistence salmon fishing periods will be identified by ADF&G;

(E) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(xvii) In Districts 1, 2, and 3, no person may possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xviii) A commercial salmon permit holder registered for the setnet only locations may not use drift gillnets for the subsistence taking of salmon in Districts 1, 2, and 3.

(xix) A commercial salmon fisherman who is registered for District 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, fish may be taken in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, salmon may not be taken for 16 hours before, during, and for six hours after, each open commercial salmon fishing period for District 1.

(iii) In District 1, Kuskokuak Slough only from June 1 through July 31, salmon may not be taken for 16 hours before and during each open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, salmon may not be taken for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 salmon may not be taken for 16 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(vi) The Kanektok River is closed to the subsistence taking of fish by nets upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(vii) The Arolik River is closed to the subsistence taking of fish by nets upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(viii) Salmon may be taken only by gillnet, beach seine, or fish wheel subject to the restrictions set out in this section, except that salmon may also be taken by spear in the Holitna River drainage, Kanektok River drainage, and Arolik River drainage.

(ix) The aggregate length of set gillnets or drift gillnets in use by any individual for taking salmon may not exceed 50 fathoms.

(x) Each subsistence gillnet operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line.

(xi) In that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, no part of a set gillnet located within a tributary to the Kuskokwim River may be set or operated within 150 feet of any part of another set gillnet.

(xii) The maximum depth of gillnets is as follows:

(A) Gillnets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than six-inch mesh may not be more than 35 meshes in depth.

(xiii) Subsistence set and drift gillnets operated in Whitefish Lake in the Ophir Creek drainage may not exceed 15 fathoms in length.

(xiv) A person may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. A person operating a subsistence set or drift gillnet shall check the net at least once every 24 hours.

(xv) Rainbow trout may be taken by residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak, subject to the following restrictions:

(A) Rainbow trout may be taken only by the use of gill nets, rod and reel, or jigging through the ice;

(B) The use of gill nets for taking rainbow trout is prohibited from March 15–June 15.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, fish, may be taken at any time in the Bristol Bay area.

(ii) In all commercial salmon districts, from May 1 through May 31 and October 1 through October 31, subsistence fishing for salmon is permitted from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, salmon may be taken only during open commercial salmon fishing periods.

(iii) In the Egegik, and Ugashik Rivers from 9:00 a.m. June 23 through 9:00 a.m. July 17, salmon may be taken only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) Except for the western shore of the Newhalen River, waters within 300 feet of a stream mouth used by salmon are closed to the subsistence taking of fish.

(v) Within any district, salmon, herring, and capelin may be taken only by drift and set gillnets.

(vi) Gillnets are prohibited in that portion of the Naknek River upstream from Savonaski.

(vii) Outside the boundaries of any district, salmon may only be taken by set gillnet, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) Set gillnets may not exceed 10 fathoms in length in the Egegik and Ugashik Rivers, in the Nushagak District during the emergency order subsistence openings; in Naknek Lake;

(B) In the remaining waters of the area, set gillnets may not exceed 25 fathoms in length.

(ix) In the Nushagak District, during special subsistence openings, no set gillnet may be set or operated within 450 feet of another set gillnet.

(x) No part of a set gillnet may be operated within 300 feet of any part of another set gillnet.

(xi) Each set gillnet must be staked and buoyed.

(xii) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xiii) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(xiv) Only one subsistence fishing permit may be issued to each household per year.

(xv) After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36' North latitude.

(i) Fish, other than salmon, rainbow trout, and steelhead trout, may be taken at any time unless restricted under the terms of a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries are lawfully taken and may be retained for subsistence purposes.

(ii) In the Unalaska District, salmon may be taken for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, a salmon seine vessel may not be used to take salmon for subsistence 24 hours before, during, or 24 hours after an open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, a purse seine vessel may be used to take salmon only with a gillnet and no other type of salmon gear may be on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Akutan and Umnak Districts, salmon may be taken at any time.

(iv) The waters of Unalaska Lake (at Unalaska Village), its drainages and the outlet stream and within 500 yards of its terminus are closed to subsistence fishing.

(v) The Adak District is closed to the taking of salmon.

(vi) Salmon may be taken by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vii) Fish other than salmon may be taken by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) Salmon, trout and char may only be taken under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak Districts.

(ix) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit except that in the Unalaska District, the holder of a subsistence salmon fishing permit may take no more than 25 salmon plus an additional 25 salmon for each member of the same household whose name is listed on the permit.

(x) A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned no later than October 31.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the latitude of the tip of Cape Menshikof.

(i) Fish, other than salmon, rainbow trout and steelhead trout, may be taken at any time unless restricted by the terms of a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries or through the ice, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit.

(iii) A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the department no later than October 31.

(iv) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth;

(C) Inshore of a line from the Pacific Pearl Dock to Black Point, including the inlet and Humboldt Creek.

(vi) Salmon may be taken by seine, gill net, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) Fish other than salmon may be taken by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) No set gillnet may exceed 100 fathoms in length.

(ix) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156° 21′ 13″ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) Fish, other than rainbow trout and steelhead trout, may be taken at any time, except as may be specified by a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon may not be taken in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) Salmon may be taken by seines, gill nets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake salmon may not be taken with purse seines.

(iv) Fish other than salmon may be taken by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(v) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit.

(vi) Not more than 250 salmon may be taken for subsistence purpose unless otherwise specified on the subsistence fishing permit.

(vii) A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned no later than October 31.

(viii) From 48 hours before the first commercial salmon fishing opening in the Chignik Area through September 30, a commercial fishing license holder may not subsistence fish for salmon.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58° 52′ N. lat.), west of 150° W. long., north of 55° 30′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156° 20′ 13″ W. long.).

(i) Fish, other than salmon, rainbow trout and steelhead trout, may be taken at any time unless restricted by the terms of a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon may be taken for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, purse seine vessels may be used to take salmon only with gillnets and no other type of salmon gear may be on board the vessel.

(iii) The following locations are closed to the subsistence taking of salmon:

(A) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(B) All waters closed to commercial salmon fishing in Anton Larsen Bay and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last Point to the tip of River Mouth Point in Afognak Bay;

(C) All waters 300 yards seaward of the terminus of Monks Creek;

(D) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(E) All freshwater systems of Afognak Island.

(iv) Salmon may only be taken by gill net, rod and reel, or seine.

(v) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(vi) A subsistence fishing permit is required for taking salmon, trout, and char for subsistence purposes. A subsistence fishing permit is required for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from April 15 through June 30.

(vii) A subsistence salmon fishing permit allows the holder to take 25 salmon plus an additional 25 salmon for each member of the same household whose names are listed on the permit. An additional permit may be obtained if it can be shown that more fish are needed.

(viii) All subsistence fishermen shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish taken shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence-caught fish, and must be returned by February 1 of the year following the year the permit was issued.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 52′ N. lat.) and a line extending south from Cape Fairfield (148° 40′ W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, fish, other than rainbow trout and steelhead trout, may be taken at any time in the Cook Inlet Area. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries and through the ice, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon may be taken for subsistence purposes only as follows: no part of a set gillnet may be set or operated within 600 feet of any part of another set gill-net.

(iii) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(iv) Bottomfish may be taken by legal gear for commercial bottomfish fishing in the area.

(v) Herring may be taken only with gill nets. Gill nets used to take herring may not exceed 50 feet in length and 2 inches in mesh size.

(vi) Gill nets may not be used in fresh water.

(vii) Dolly Varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(viii) Salmon may be taken only under the authority of a subsistence fishing permit issued by ADF&G; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by ADF&G.

(ix) Whitefish may not be taken.

(x) Dolly Varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by ADF&G; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily Dolly Varden catches on forms provided by ADF&G.

(xi) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(xii) The total annual possession limit for each subsistence salmon fishing permit is as follows:

(A) 25 salmon for the head of a household and 10 salmon for each dependent of the permit holder;

(B) In addition to the limits in paragraph (h)(10)(xii)(A) of this section, the holder of a Tyonek Subdistrict subsistence salmon fishing permit may take 70 king salmon.

(xiii) In the subsistence taking of smelt there are no harvest or possession limits and smelt may be taken only with dip nets or gill nets:

(A) In salt water from April 1 through May 31 and September 1 through October 30;

(B) In fresh water from April 1 through June 15;

(C) No gillnet fished in salt water may exceed 50 feet in length and two inches in mesh size;

(D) No gillnet fished in fresh water may exceed 20 feet in length and two inches in mesh size;

(E) Each gillnet must be attended by the fisherman at all times when it is being used to take fish.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish, other than rainbow trout and steelhead trout, may be taken at any time in the Prince William Sound Area.

(ii) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) The Chitina Subdistrict is closed to subsistence salmon fishing.

(iii) Rainbow trout and steelhead trout taken incidentally in other subsistence finfish net fisheries are lawfully taken and may be retained for subsistence purposes.

(iv) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(v) Salmon, other than chinook salmon, may be taken in the vicinity of the former Native village of Batzulnetas under the following conditions:

(A) Salmon may be taken only under the authority of a Batzulnetas subsistence salmon fishing permit;

(B) Salmon may be taken only in those waters of the Copper River between ADF&G regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between ADF&G regulatory markers identifying the open waters of the creek;

(C) Fish wheels and dip nets only may be used on the Copper River; dip nets and spears only may be used in Tanada Creek;

(D) Salmon may be taken only from June 1 through September 1 or until the season is closed; openings will be established by the Board and will be two days per week during the month of June and 3.5 days per week for the remainder of the season;

(E) Chinook salmon taken must be released to the water unharmed; fish wheels must be equipped with a livebox or be monitored at all times;

(F) Annual harvest and possession limits are as specified in this section;

(G) The permit must be returned no later than September 30 of each year.

(vi) Salmon may not be taken in any area closed to commercial salmon fishing unless specifically permitted in this section.

(vii) Fish may be taken by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(viii) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fish wheels, rod and reel, or dip nets;

(B) In salt water by gill nets and seines; and

(C) Fish wheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fish wheels must be removed from the water at the end of the permit period. Each permittee may operate only one fish wheel at any one time. No person may set or operate a fish wheel within 75 feet of another fish wheel. No fish wheel may have more than two baskets.

(ix) A permit holder (permittee) must personally operate the fish wheel or dip net. A subsistence fish wheel or dip net permit may not be loaned or transferred.

(x) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fish wheel so that the name and address are plainly visible.

(xi) Except as provided in this section, fish other than salmon and freshwater fish species may be taken for subsistence purposes without a subsistence fishing permit.

(xii) Salmon and freshwater fish species may be taken only under authority of a subsistence fishing permit.

(xiii) Only one subsistence fishing permit will be issued to each household per year.

(xiv) A subsistence fishing permit for the Upper Copper River District will be issued only to residents of this state. The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) Permits must be returned no later than October 31, or a permit for the following year may be denied;

(D) A household may not be issued both a Copper River salmon fishing permit and a Chitina Subdistrict salmon fishing permit.

(xv) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) No more than a total of 200 salmon for a permit issued to a household with one person, of which no more than five may be chinook salmon if taken by dip net;

(B) No more than a total of 500 salmon for a permit issued to a household with two or more persons, of which no more than five may be chinook salmon if taken by dip net.

(xvi) A person may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless both lobes of the caudal (tail) fin have been immediately removed from the salmon.

(xvii) In locations open to commercial salmon fishing, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household; and

(D) No more than five king salmon may be taken per permit.

(12) *Yakutat Area.* The Yakutat Area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat Area.

(ii) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(v) Any gillnet nor seine used for subsistence fishing may block up to two-thirds of a stream.

(vi) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(vii) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(viii) Subsistence fishermen must remove the dorsal fin from subsistence-caught salmon when taken.

(ix) No person may possess subsistence-taken and sport-taken salmon on the same day.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, fish, other than rainbow trout and steelhead trout, may be taken in the Southeastern Alaska Area at any time.

(ii) Coho salmon may only be taken from Salt Lake and Mitchell Bay from August 1 through October 31. Only one subsistence salmon fishing permit will be issued for a household for the Salt Lake and Mitchell Bay coho fishery.

(iii) From July 7 through July 31, sockeye salmon may be taken in the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(iv) In District 15, saltwaters of Lynn Canal including Chilkat and Chilkoot, are closed to the subsistence taking of salmon during closed periods of the commercial salmon net fishery in the district.

(v) Fish may be taken by gear listed in this part except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(A) In District 13, Redoubt Bay, gill net or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing;

(B) Beach seines, rod and reel, and gaffs only may be used to take coho salmon;

(C) Set gill nets may be used in Yes Bay north of a line from Bluff Point to Syble Point, except within 500 yards of the terminus of Wolverine Creek; the subsistence permit holder shall be physically present at the gill net while it is in operation.

(vi) Salmon, trout, and char may only be taken under authority of a subsistence fishing permit.

(vii) Permits will not be issued for the taking of chinook or coho salmon, except for coho salmon as provided in this section, but chinook or coho salmon taken incidentally by gear operated under terms of a subsistence permit for other salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon fishing permit must report any chinook or coho salmon taken in this manner on his or her permit calendar.

(viii) In the Chilkat River, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(ix) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(x) Subsistence fishermen shall immediately remove the pelvic fins of all salmon when taken.

(xi) No person may possess subsistence-taken and sport-taken salmon on the same day.

(xii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems of Petersburg, Wrangell, and Sitka.

(xiii) In the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, no person may subsistence salmon fish from a vessel that is powered by a motor of greater than 35 horsepower.

§ ____.27 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of dungeness crab, king crab, tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of § ____.26 or this section.

(c) Methods, means, and general restrictions.

(1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that a person or designated group who has taken the harvest limit for a particular species under a subsistence season specified in this section may not after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section, gear as specified in the definitions of § ____.26 is legal for subsistence taking of shellfish.

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Each subsistence fisherman shall plainly and legibly inscribe their first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent ADF&G vessel license number. The keg or buoy may be any color except red.

(6) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(7) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(8) In addition to the marking requirements in paragraph (c)(5) of this section, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(9) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in paragraph (f) of this section.

(10) In the subsistence taking of shrimp in the Glacier Bay National Preserve, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Glacier Bay National Preserve, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Taking shellfish by designated fishing permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take shellfish on his or her behalf. The designated fisherman must obtain a designated shellfish permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) a person may not fish with more than one legal limit of gear as established by this section.

(5) A beneficiary may not designate more than one person to take or attempt to take shellfish on the beneficiarry's behalf at one time. A beneficiary may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on behalf of a beneficiary.

(e) If a subsistence fishing permit is required by this chapter, the following conditions apply unless otherwise specified by the subsistence fishing regulations this section:

(1) The numbers of shellfish taken for subsistence use may not exceed the limits set out in the permit;

(2) Permits must be obtained prior to subsistence fishing;

(3) Permits must be retained in the possession of the permittee and be readily available for inspection while taking or transporting the species for which the permit is issued;

(4) If specified on the permit, each subsistence fisherman shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch and such other information may be required for management or conservation purposes;

(5) Subsistence fishing reports must be completed and submitted at a time specified for each particular area and fishery;

(6) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit, a permittee who fails to comply with such reporting requirements is ineligible to receive a subsistence permit for that activity during the following calendar year, unless the permit applicant demonstrates to the department that failure to report was due to loss in the mail, accident, sickness or other unavoidable circumstances.

(f) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, commercial fishermen may retain shellfish for their own use from their lawfully taken commercial catch.

(g) No person may take or possess shellfish smaller than the minimum legal size limits.

(h) Unlawful possession of subsistence shellfish. Shellfish or their parts taken in violation of Federal or State regulations may not be possessed, transported, given, received or bartered.

(i) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* (i) Shellfish may be taken for subsistence purposes in the Glacier Bay National Preserve only under the authority of a subsistence shellfish fishing permit.

(ii) Sea cucumbers may not be taken with the use of diving gear.

(iii) In the subsistence taking of shrimp, no more than 10 pots per person, and no more than 20 pots per vessel may be used; in the subsistence taking of shellfish other than shrimp, no more than five pots of any type, per person, and no more than 10 pots of any type, per vessel, may be used.

(iv) No commercially licensed and registered shrimp fishing vessel may be used to take shrimp for subsistence purposes in Districts 6, 7, 8 and 10 from February 15 through April 30.

(v) In the subsistence taking of Dungeness crab:

(A) The daily harvest and possession limit is 20 crab per person except that, in waters of Thorne Bay west of the longitude of the southernmost tip of Thorne Head, the daily harvest and possession limit is five crab;

(B) Only male crab six and one-half inches or greater in shoulder width may be taken or possessed;

(C) Spears and gaffs may not be used in Districts 1 through 16;

(D) Live holding facilities utilized to accumulate or pool multiple harvest limits by an individual or individuals are not allowed.

(vi) In the subsistence taking of king crab:

(A) Red and blue king crab may not be taken from April 1 through June 30;

(B) Only male red and brown king crab seven inches and male blue king crab six and one-half inches or larger in width of shell may be taken or possessed;

(C) In the Yakutat Area the daily harvest and possession limit is two crab per person and only male crab may be taken;

(D) An operator of a commercially licensed and registered king crab fishing vessel shall obtain a permit before taking king crab for subsistence purposes in waters of Yakutat Bay enclosed by a line from the westernmost tip of Ocean Cape to the easternmost tip of Point Manby during the open commercial king crab fishing season.

(vii) The possession limit for Tanner crab is 30 crab per person per day.

(viii) The harvest limit is six geoducks per person per day.

(ix) In the subsistence taking of abalone:

(A) The possession limit is 50 abalone per person;

(B) The minimum legal size is three inches (76 mm) in greatest diameter of shell, except in District 13 the minimum legal size is three and one-half inches (89 mm) in greatest diameter of shell;

(C) Subsistence fishing is prohibited while engaged in commercial abalone fishing; prior to engaging in the subsistence fishery, commercial abalone fishermen must return the commercial permit to ADF&G and land the commercial catch in possession.

(x) In the subsistence taking of rock scallops (Hinnites sp) and weathervane scallops (Pecten sp), the daily harvest and possession limit is five rock scallops and 10 weathervane scallops.

(2) *Cook Inlet Area.* (i) Except as otherwise provided in this section, no person may take shellfish for subsistence purposes.

(ii) All waters within the boundaries of the Kenai National Wildlife Refuge are closed to the taking of shellfish for subsistence purposes.

(3) *Kodiak Area.* (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male dungeness crab per person; only male Dungeness crab with a shell width of six and one-half inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or

Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is three crabs per household; only male king crab seven inches or greater in width of shell may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) No more than one crab pot no more than 75 cubic feet in capacity may be used to take king crab;

(D) King crab may be taken only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of tanner crab:

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 15–February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a commercial king or tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crab with a shell width five and one-half inches or greater per person.

(4) *Alaska Peninsula-Aleutian Islands Area.* (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male dungeness crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(iv) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crab per person; only crabs with a shell width of six and one-half inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1–January 31.

(v) The daily harvest and possession limit is 12 male tanner crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(5) *Bering Sea Area.* (i) In waters South of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male dungeness crab per person.

(v) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., crab may be taken only from June 1–January 31.

(vi) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male tanner crab.

Dated: December 1, 1997.

Bruce Babbitt,

Secretary of the Interior.

Dated: December 4, 1997.

Phil Janik,

Regional Forester, USDA Forest Service.

[FR Doc. 97–32345 Filed 12–15–97; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

federal register

Wednesday
December 17, 1997

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135
Special Flight Rules in the Vicinity of Grand Canyon National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; Amendment Nos. 92–255, 93–75, 121–267, 135–71]

RIN 2120–AG54

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; request for comments.

SUMMARY: On February 26, 1997, the FAA delayed the implementation of certain provisions of the December 31, 1996 final rule, Special Flight Rules in the Vicinity of Grand Canyon National Park. That final rule codified the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modified the dimensions of the GCNP Special Flight Rules Area (SFRA); established new and modified existing flight-free zones; established new and modified existing flight corridors; established reporting requirements for commercial sightseeing companies operating in the SFRA; prohibited commercial sightseeing operations in certain areas during certain time periods; and limited the number of aircraft that can be used for commercial sightseeing operations in the SFRA. Specifically, the February 1997 action delayed the effective date for the new and modified flight-free zones, SFRA modification, and corridors portion of the final rule and reinstated portions of and amended the expiration date of SFAR No. 50–2. However, that action did not effect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or other portions of the rule. This action further delays the effective date for the flight-free zones, SFRA modification, and corridors portions of the December 31, 1996, final rule until January 31, 1999, and extends the expiration date of SFAR 50–2 until 0900 UTC January 31, 1999. This action is necessary to allow the FAA time to establish a route structure for the GCNP.

DATES: The effective date of January 31, 1998, for 14 CFR Sections 93.301, 93.305, and 93.307, is delayed until 0901 UTC January 31, 1999. Section 9 of SFAR No. 50–2 is amended effective January 16, 1998. Comments must be received on or before January 16, 1998.

ADDRESSES: Comments should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28537, 800 Independence Ave., SW., Washington, DC 20591. Comments may be sent electronically to the Rules Docket by using the following Internet address 9-nprm-cmts@faa.dot.gov. Comments must be marked Docket No. 28537. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Manager, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the DATES section. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Background

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking, and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69301) as part of an overall strategy to reduce further the impact of aircraft noise on the GCNP environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91. The final rule amended part 93 of the Federal Aviation Regulations and added a new subpart to codify the provisions of SFAR No. 50–2, modified the dimensions of the GCNP SFRA; established new and modified existing flight-free zones; established new and modified existing flight corridors; and established reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibited commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and placed a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA. These provisions originally were to become effective on May 1, 1997.

Also published was an NPRM, Notice No. 96–15, proposing to establish noise limitations for certain aircraft operating in the vicinity of GCNP. Finally, a Notice of Availability of Proposed Commercial Air Tour Routes for the GCNP was published. This Notice requested comment on the proposed new or modified existing air tour routes, which would complement the final rule affecting the Special Flight Rules in the Vicinity of GCNP.

On February 21, 1997, the FAA issued a final rule that delayed the implementation of certain sections of the final rule (62 FR 8862; February 26, 1997). Specifically, this action delayed the implementation date, until January 31, 1998, of those sections of the rule that address the SFRA, flight-free zones, and flight corridors, respectively sections 93.301, 93.305, and 93.307. In addition, certain portions of SFAR No. 50–2 were reinstated and the expiration date was extended. With the goal to produce the best air tour routes possible, implementation was delayed to allow the FAA and the Department of Interior (DOI) to consider comments and suggestions to improve the proposed route structure. This latter action did not affect or delay the implementation of the curfew, aircraft cap, or reporting requirements of the rule.

On May 15, 1997, the FAA published an NPRM, Notice No. 97–6, and a companion Notice of Availability of Proposed Routes that proposed two quiet technology corridors in GCNP. The first corridor, through the Bright Angel flight-free zone, would be used for quiet technology aircraft only. The second corridor, through National Canyon, would be for quiet technology aircraft for westbound traffic after December 21, 2001.

After certain provisions of the final rule become effective on May 1, the FAA discovered that it had significantly underestimated the number of commercial air tour aircraft operating over the GCNP in 1995. Based on this new information, the FAA reevaluated the economic and environmental analyses completed for the final rule. While the benefits of the final rule, as analyzed with the new information, are less than originally predicted by the FAA, the rule continues to provide benefits in comparison to withdrawing portions of the rule or the rule in its entirety. Since the final rule is one step towards the substantial restoration of natural quiet that will be augmented by further steps, the changes in the

analyses are not of such magnitude as to affect the Agency's position on the implementation of the final rule or the Federal government's overall policy to address the effects of air tour operations in GCNP. An explanation of the new information, along with the reevlaution of the economic and environmental analyses, was published as a Notice of Clarification on October 31, 1997 (62 FR 58898).

Also in the Notice of Clarification, the FAA announced that after discussions with the DOI and NPS, the Agencies jointly agreed to delay the final route selection for commercial air tour operations in the GCNP until the fall of 1998. This delay would permit valuable time for further review and discussions to take place with particular emphasis on the proposed National Canyon corridor.

Notice and Comment

Development of the air tour routes is a critical step in the completion of the airspace structure for GCNP and towards achieving NPS's goal of substantially restoring the natural quiet in GCNP. The air tour routes, flight-free zones and flight corridors must be implemented at the same time in order to complete the airspace structure and to provide for the transition to the new operating environment in GCNP. If the FAA were to implement, as scheduled, the airspace portions of the final rule, particularly the expansion of the flight-free zones, without the corresponding new routes, certain air tour routes currently in use would disappear on January 31, 1998. The loss of these air tour routes would force the commercial air tour traffic onto the remaining air tour routes, creating a potentially unsafe operating situation in GCNP. Since the agencies have determined to delay selection and finalization of the air tour routes, the FAA finds that the airspace portions of the final rule, which were to be effective on January 31, 1998, must also be further delayed. In order for the commercial air tour operators conducting operations in GCNP to be made aware of the delay of the implementation of the airspace portions of the final rule and to avoid any confusion that could result in an unsafe operating environment at GCNP, the FAA finds that there is sufficient justification under 5 U.S.C. 553(b) to issue this rule without notice and prior opportunity for comment.

The FAA maintains its past position that the training of pilots on new routes during a peak tourist season could be unsafe. Peak season at GCNP extends approximately from May through October. To eliminate the potential for unsafe operations within the Park, the FAA has determined that the training should take place in the Park when the volume of air traffic traditionally decreases, i.e., after the summer tourist season. The FAA expects that the new route structure will be completed by the Fall of 1998. For the above reasons, the FAA is delaying implementation of sections 93.301, 93.305, and 93.307 of the December 31, 1996, final rule for a full season, until January 31, 1999, to give the operators sufficient time to train their pilots adequately and safely after the close of the busy summer season. Additionally, the FAA is amending the expiration date for those portions of SFAR No. 50–2 reinstated in the February 26, 1997, final rule until January 31, 1999.

While there is not sufficient time to allow prior notice and comment concerning the FAA decision to delay the January 31, 1998, effective date, comments are invited concerning any other aspect of this rule, including the new implementation date of January 31, 1999.

Economic Evaluation

In issuing the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket No. 28537. That economic evaluation was later revised based on new information that showed that the number of aircraft being operated in the GCNP was greater than originally estimated. The reevaluation of the economic data, including alternatives considered, was published in the Notice of Clarification discussed earlier (62 FR 58898). In the notice, the FAA concluded that the rule is still cost beneficial. This extension of the effective date for the final rule will not affect that reevaluation, although the delay in the implementation of the extended FFZs will be cost relieving.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This analysis was also reevaluated and revised findings were published in the Notice of Clarification referenced above, as a Supplemental Regulatory Flexibility Analysis. This extended delay of the compliance date will not affect that supplemental analysis.

Federalism Implications

The amendment set forth herein will not have substantial direct effects on the States, or the relationship between the national Government and the State, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation imposes no additional burden on any person. Accordingly, it determines that this action: (1) is not a significant action under Executive Order 12866; and, (2) is not a significant action under Department of Transportation Regulatory Policy and Procedures (44 FR 11034). In addition, the FAA certifies that this action, delaying certain provisions of the final rule issued on December 31, 1996, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. However, when ultimately implemented, the final rule will have a significant impact on a substantial number of small entities as described in the Notice of Clarification.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121 AND 135—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47506, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Section 9, Termination date. Sections 1, Applicability, Section 4, Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0900 UTC, January 31, 1999.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new Sections 93.301, 93.305, and 93.307 published at 61 FR 69330 (December 31, 1996), corrected at 62 FR 2445 (January 16, 1997), and delayed at 62 FR 8862 (February 26, 1997) to be added to 14 CFR Part 93 is delayed until 0901 UTC, January 31, 1999.

Issued in Washington, DC, on December 11, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 97–32832 Filed 12–12–97; 11:16 am]

BILLING CODE 4910–13–M

Reader Aids

Federal Register

Vol. 62, No. 242

Wednesday, December 17, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail info@fedreg.nara.gov	
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10
65197–65308	11
65309–65592	12
65593–65740	15
65741–65990	16
65991–66250	17

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987

Executive Orders:
13069 65989

Administrative Orders:

Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005

5 CFR
213 63627
315 63627
410 63630
531 65311
591 63630

7 CFR
2 65593
17 63606
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741, 65991
1412 63441

Proposed Rules:
51 66033
70 63471
205 65850
610 64174
729 63678
800 66036
810 66036
1301 65226

8 CFR
213a 64048
299 64048

9 CFR
78 ..... 64134, 65596
91 64265
93 64265
94 ..... 65747, 65999

Proposed Rules:
85 65630
381 64767
441 64767

10 CFR
30 63634
32 63634
50 63825
70 63825
73 63640

Proposed Rules:
40 65039
50 ..... 63892, 63911, 66038
70 63911

11 CFR

Proposed Rules:
114 65040

12 CFR
8 64135
226 ..... 63441, 66179
265 64996
516 64138
543 64138
545 64138
552 64138
556 64138
563 64138
614 63644
703 64146
704 64148
790 65197
791 64266
934 65197
1806 64440

Proposed Rules:
225 64997
226 64769
404 64177
405 64177
708a 64185
708b 64187

14 CFR
39 ..... 63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750, 66001
71 ..... 64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606, 66179
73 ..... 65359, 65360, 66002
91 66248
93 66248
95 ..... 65016, 65361, 65363

97 .....63447, 63449, 63451
121.....65202, 66248
135.....66248
255.....63837
1260.....63452

Proposed Rules:
39 .....63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65768
71 .....63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631

15 CFR

295.....64682
922.....66003

Proposed Rules:
806.....65043
960.....65384

17 CFR

15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

18 CFR

35.....64688
37.....64715
401.....64154

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:
211.....64188
422.....63681

21 CFR

101 .....63647, 63653, 64634
179.....64102, 64107
520.....65020
524.....65752
866.....66003

Proposed Rules:
200.....64048
808.....65384, 66179
876.....65770
1020.....65235
1308.....64526

22 CFR

Proposed Rules:
22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:
655.....64324

24 CFR

201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

25 CFR

Proposed Rules:
514.....65775

26 CFR

Proposed Rules:
1.....64190

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203
4011.....65607
4022.....65607
4044.....65609, 65610

Proposed Rules:
1910.....65388

30 CFR

206.....65753

Proposed Rules:
56.....65777
57.....64789, 65777
62.....65777
70.....65777
71.....65777
75.....64789
917.....63684, 65044
926.....63685, 64327
936.....65632

31 CFR

500.....64720

Proposed Rules:
356.....64528

32 CFR

320.....65020

Proposed Rules:
199.....64191
901.....63485

33 CFR

100.....65021
117 .....63847, 66005, 66006
160.....65203
165.....65022

Proposed Rules:
117.....66039

36 CFR

701.....64279

Proposed Rules:
1.....63488
14.....63488
242.....66216
327.....64192

37 CFR

202.....63657

Proposed Rules:
253.....63502, 65777
255.....63506, 65778

38 CFR

4.....65207
17.....64722
21.....63847, 63848
36.....63454

Proposed Rules:
20.....64790

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

52 .....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613, 66007
62.....65616
63.....64736, 65022
64.....63662
70.....63662
71.....63662
80.....63853
81 .....64284, 64725, 65025
180 .....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369, 66008, 66014, 66020
185 .....64048, 64284, 64287, 66020
186.....64048, 66020
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738

Proposed Rules:
51.....64532
52 .....63687, 64329, 64543, 647389, 65046, 65634, 66040, 66042, 66043, 66046
62.....65635
63.....65049, 66049
80.....63918
81.....63687
112.....63812
194.....64327
441.....66182
721.....64738

41 CFR

105–60.....64740
301.....63798

42 CFR

417.....63669

Proposed Rules:
1001.....63689, 65049

43 CFR

3740.....65376
3810.....65376
3820.....65376

Proposed Rules:
4.....64544

44 CFR

61.....66026

45 CFR

205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301

Proposed Rules:
1302.....65778

46 CFR

114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303, 65739
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
69.....65619, 66029
73 .....63674, 65392, 65764, 65765, 65766, 66030, 66031
74.....65392

Proposed Rules:
1.....65780
21.....65780
32.....65053
73 .....63690, 65781, 65782
74.....65780

48 CFR

Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19 .....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31 .....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42 .....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52 .....64914, 64915, 64916

53 .....64914, 64916, 64934, 64936, 64940

Proposed Rules:
204.....65782
1843.....64545
1852.....64545

49 CFR

171.....65188
219.....63464, 63675
225.....63675
240.....63464
1241.....65378

Proposed Rules:
Ch. X.....64193
195.....65635
213.....65401
243.....65479
572.....64546

50 CFR

17.....64306
20.....63608
222.....63467
622.....63677
648.....63872, 64765
660.....63876
679 .....63877, 63878, 63880, 64760, 65379, 65622, 65626, 66031

Proposed Rules:
14.....64335
17 .....64337, 64340, 64799, 64800, 65237, 65783, 65787
23.....64347
100.....66216
229.....65402
600.....65055
622.....65056
648.....65055
660.....66049
679 .....63690, 65402, 65635, 65638, 65644

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 17, 1997

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Imported plants and plant parts; interstate movement prohibition subsequent to importation; published 11-17-97
AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Canola and rapeseed; published 12-17-97
AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Poultry inspection:
Nutrition labeling—
Raw poultry products; use of term "fresh"; published 12-17-96
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Ocean and coastal resource management:
Marine sanctuaries—
Florida Keys National Marine sanctuary; published 12-17-97
COMMODITY FUTURES TRADING COMMISSION
Reporting requirements:
Large trader reports; reporting levels changes; published 11-17-97
Correction; published 12-11-97
DEFENSE DEPARTMENT
Navy Department
Environmental statements; availability, etc.:
Base realignment and closure—
Naval Station Puget Sound at Sand Point, Seattle, WA; disposal and reuse; published 12-17-97
EDUCATION DEPARTMENT
Educational research and improvement:
Exemplary and promising programs designation; conduct standards and activities evaluation; published 11-17-97
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Colorado; published 12-17-97
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Ohio et al.; published 11-17-97
Virginia; published 11-17-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Ethalfluralin; published 12-17-97
Primisulfuron-methyl; published 12-17-97
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Access charges-
Local exchange carriers; price cap performance, etc; correction; published 12-17-97
Access charges—
Local exchange carriers; price cap performance review, etc.; published 12-15-97
FEDERAL RESERVE SYSTEM
Freedom of Information Act; implementation
Federal Open Market Committee; information availability; published 11-17-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Tumor-associated antigen immunological test system reclassification; published 12-17-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 11-12-97
Dornier; published 11-12-97
Fokker; published 11-12-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 12-22-97; published 10-23-97
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Karnal bunt disease—
Texas et al.; comments due by 12-24-97; published 11-24-97
Mediterranean fruit fly; comments due by 12-22-97; published 10-21-97
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 12-26-97; published 11-26-97
Atlantic surf clam and ocean quahog; comments due by 12-24-97; published 11-24-97
DEFENSE DEPARTMENT
Closures and realignment:
Closed, transferred, and transferring military ranges containing munitions; appropriate response actions evaluation process; comments due by 12-26-97; published 9-26-97
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97
ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Nonroad diesel engines; emission standards; comments due by 12-22-97; published 11-18-97
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 12-22-97; published 11-20-97
Illinois; comments due by 12-26-97; published 11-26-97
New Jersey; comments due by 12-22-97; published 11-20-97
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Tennessee; comments due by 12-26-97; published 11-25-97
Hazardous waste program authorizations:
Alabama; comments due by 12-22-97; published 11-21-97
Georgia; comments due by 12-24-97; published 11-24-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyromazine; comments due by 12-22-97; published 10-22-97
Pyrithiobac sodium salt; comments due by 12-22-97; published 10-22-97
FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Private land mobile services—
Public safety communications in 746-806 MHz band; technical and spectrum requirements development; comments due by 12-22-97; published 11-7-97
Radio stations; table of assignments:
Alaska; comments due by 12-22-97; published 11-19-97
Oregon; comments due by 12-22-97; published 11-19-97
Texas; comments due by 12-22-97; published 11-19-97
Utah; comments due by 12-22-97; published 11-19-97
Television broadcasting:
Cable television systems—
Inside wiring; comments due by 12-23-97; published 11-14-97
FEDERAL DEPOSIT INSURANCE CORPORATION
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97
FEDERAL RESERVE SYSTEM
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Biological products:
Manufacturing errors and accidents reporting; comments due by 12-22-97; published 9-23-97
Human drugs:
Inhalation solution products; sterility requirements; comments due by 12-22-97; published 9-23-97
New drug applications—
Products for life-threatening diseases; clinical hold; comments due by 12-23-97; published 9-24-97
INTERIOR DEPARTMENT
Indian Affairs Bureau
Fish and wildlife:
Columbia River Indian in-lieu fishing sites; use; comments due by 12-23-97; published 10-28-97
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Topeka shiner; comments due by 12-23-97; published 10-24-97
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 12-26-97; published 11-26-97
Maryland; comments due by 12-22-97; published 11-21-97
Montana; comments due by 12-22-97; published 12-5-97
INTERNATIONAL TRADE COMMISSION
Practice and procedure:
Import investigations; antidumping and countervailing duties; comments due by 12-22-97; published 10-23-97
JUSTICE DEPARTMENT
Immigration and Naturalization Service
Permanent residence status eligibility restrictions; temporary removal; comments due by 12-22-97; published 10-23-97
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright arbitration royalty panel rules of procedure:
Noncommercial educational broadcasting compulsory license; comments due by 12-26-97; published 12-1-97
Copyright office and procedures:
Mechancial and digital phonorecord delivery rate adjustment proceeding; comments due by 12-26-97; published 12-1-97
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97
POSTAL SERVICE
Domestic mail Manual:
Commercial mail receiving agency; delivery of mail; procedure clarification; comments due by 12-24-97; published 11-24-97
RAILROAD RETIREMENT BOARD
Railroad Retirement Act:
Annuity eligibility; comments due by 12-22-97; published 10-23-97
SMALL BUSINESS ADMINISTRATION
Disaster loan program:
Physical disaster and economic injury loans; increase request requirements; comments due by 12-26-97; published 11-25-97
STATE DEPARTMENT
Nationality and passports:
Passports; denying, revoking, or canceling procedures; comments due by 12-26-97; published 11-25-97
TRANSPORTATION DEPARTMENT
Coast Guard
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW):
Licensing and documentation of personnel serving on U.S. seagoing vessels; comments due by 12-23-97; published 6-26-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft products and parts; certification procedures:
Primary category seaplanes; weight limit increase; comments due by 12-26-97; published 11-25-97
Airmen certification:
Robinson model R-22 or R-44 helicopters; pilots and certified instructors special training and experience requirements; comments due by 12-22-97; published 11-21-97
Airworthiness directives:
Aeromot-Industria Mecanico Metalurgica Ltda.; comments due by 12-26-97; published 11-25-97
Airbus; comments due by 12-26-97; published 11-25-97
Airbus Industrie; comments due by 12-26-97; published 11-26-97
British Aerospace; comments due by 12-26-97; published 11-26-97
Dassault; comments due by 12-26-97; published 11-26-97
New Piper Aircraft, Inc.; comments due by 12-26-97; published 10-21-97
Pratt & Whitney Canada; comments due by 12-23-97; published 10-24-97
Airworthiness standards:
Special conditions—
Cessna model 525 Citation Jet airplane; comments due by 12-22-97; published 11-20-97
EXTRA Flugzeugbau GmbH EA-400 airplane design; comments due by 12-22-97; published 11-20-97
Class E airspace; comments due by 12-22-97; published 11-10-97
Restricted areas; comments due by 12-26-97; published 11-10-97
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Traffic operations:
Traffic control devices; national standards—
Uniform traffic control devices manual; railroad-highway grade crossings; comments due by 12-22-97; published 10-21-97
TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Track safety standards:
Miscellaneous amendments
Comment request; comments due by 12-22-97; published 12-12-97
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Hazardous liquid and carbon dioxide—
Pressure testing older pipelines; comments due by 12-22-97; published 10-21-97
TREASURY DEPARTMENT
Comptroller of the Currency
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97
TREASURY DEPARTMENT
Fiscal Service
Financial management services:
Administrative wage garnishment; comments due by 12-22-97; published 11-21-97
TREASURY DEPARTMENT
Internal Revenue Service
Procedure and administration:

Tax exempt organizations; public disclosure requirements; guidance availability and hearing; comments due by 12-26-97; published 9-26-97

TREASURY DEPARTMENT

Thrift Supervision Office

Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

VETERANS AFFAIRS DEPARTMENT

Board of Veterans Appeals:
Appeals regulations and rules of practice—
Continuation of representation following claimant's death; comments due by 12-22-97; published 10-23-97

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1604/P.L. 105–143

Michigan Indian Land Claims Settlement Act (Dec. 15, 1997; 111 Stat. 2652)

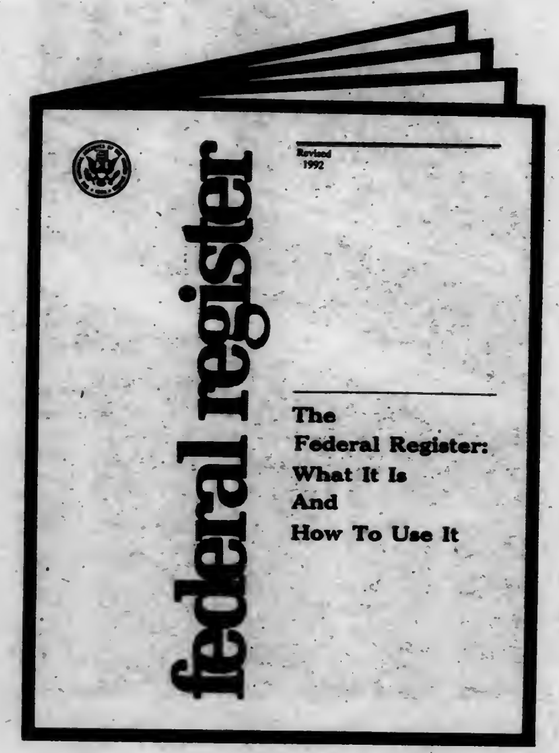
H.R. 2979/P.L. 105–144

To authorize acquisition of certain real property for the Library of Congress, and for other purposes. (Dec. 15, 1997; 111 Stat. 2667)

H.J. Res. 95/P.L. 105–145

Granting the consent of Congress to the Chickasaw Trail Economic Development Compact. (Dec. 15, 1997; 111 Stat. 2669)

Last List December 10, 1997



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order processing code: *6173 — P3

☐ **YES**, please send me the following:

Charge your order. It's Easy! VISA

To fax your orders (202)-512-2250

_____ copies of **The Federal Register - What It Is and How To Use It**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

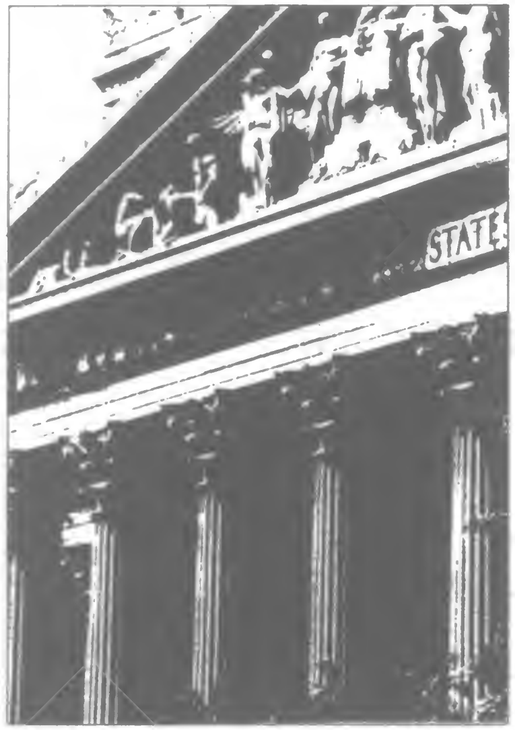
LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents Subscription Order Form

Order Processing Code
* 5421

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions for one year:

___ **LSA (List of CFR Sections Affected),** (LCS) for $27 per year.
___ **Federal Register Index** (FRSU) $25 per year.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers
Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFR  SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO  SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code:
* 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐**YES,** please enter my subscriptions as follows:

___ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

___ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. (Price includes regular domestic postage and handling, and is subject to change.) International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
❑ Do not make my name available to other mailers
Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

105th Congress, 2nd Session, 1998

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 105th Congress, 2nd Session, 1998.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code
* 6216

S3

Charge your order. It's Easy!

☐ **YES**, enter my subscription(s) as follows:

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 105th Congress, 2nd Session, 1998 for $190 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

_____ _____
(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) 12/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00



Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5419

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions in 24x microfiche format:

____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

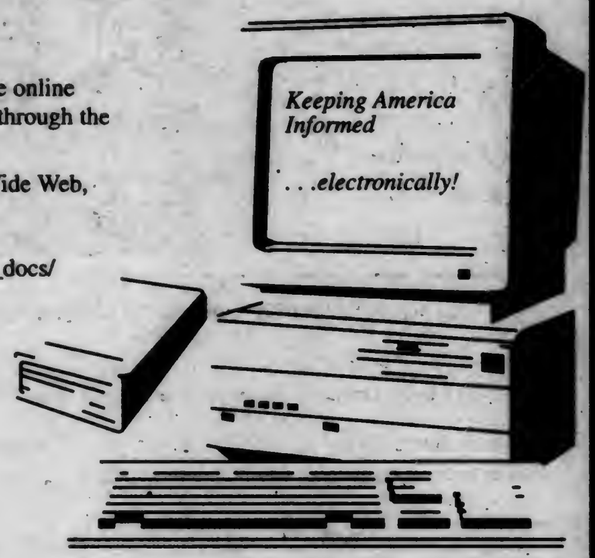
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.access.gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–18–97
Vol. 62 No. 243

federal register

Thursday
December 18, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106
133

12–18–97
Vol. 62 No. 243
Pages 66251–66494

federal register

Thursday
December 18, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 243
Thursday, December 18, 1997

Agricultural Marketing Service
RULES
Dairy products; grading, inspection, and standards:
Fee increases, 66257–66258
PROPOSED RULES
Tomatoes grown in Florida and imported, 66312–66315

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control:
Tuberculosis-exposed animals; transportation and disposal expenses, 66259

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66373

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Arkansas, 66339

Coast Guard
RULES
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase, 66277–66278

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
AmeriCorps* programs—
VISTA America Reads projects (nationwide), 66343–66346

Defense Department
RULES
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase, 66277–66278

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Individuals with disabilities—
Outreach projects for children with disabilities, etc., 66436–66440

Employment and Training Administration
NOTICES
Adjustment assistance:
Brandon Apparel Group, Inc., 66387
Everbrite et al., 66387–66388
G.E. Medical Systems, 66388
KD Industries, 66389
Levi Strauss & Co., 66389
NAFTA transitional adjustment assistance:
C&B Farms, 66389
Conaway Winter et al., 66389–66393
Fruit of the Loom, 66393
Levi Strauss & Co., 66393–66394
Steven Borek Farms, Inc.; correction, 66394

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 66279–66294
Clean Air Act:
Acid rain program—
Continuous emission monitoring; excess emissions, etc., rules streamlining; correction, 66278–66279
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66360–66367
Meetings:
Clean Air Act Advisory Committee, 66367
Water pollution; discharge of pollutants (NPDES):
Kodiak, AK; shore-based seafood processors; general permit, 66367–66368

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace, 66264–66266
Empresa Brasileira de Aeronautica S.A., 66271–66272
MAULE, 66269–66271
Mooney Aircraft Corp., 66266–66268
New Piper Aircraft, Inc., 66268–66269
PROPOSED RULES
Airworthiness directives:
Fokker, 66317–66319
Saab, 66315–66317

Federal Communications Commission
RULES
Radio stations; table of assignments:
Hawaii, 66294–66295

PROPOSED RULES
Common carrier services:
Complaint adjudication; accelerated docket procedures, 66321–66323
Radio stations; table of assignments:
Florida, 66323
Mississippi, 66324
Oklahoma, 66324–66325
Texas, 66324
NOTICES
Reporting and recordkeeping requirements, 66368–66370

Federal Deposit Insurance Corporation
NOTICES
Alternative dispute resolution; policy statement, 66370–66371
Coastal Barrier Improvement Act; property availability:
State Road 33 South, FL, 66371

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Interstate Power Co. et al., 66350–66353
P.H. Rio Volcan, S.A., et al., 66353–66355
Environmental statements; availability, etc.:
Viking Voyageur Gas Transmission Co., L.L.C., 66355–66358
Hydroelectric applications, 66358–66360
Applications, hearings, determinations, etc.:
Arkansas Western Pipeline Co., 66346
Florida Gas Transmission Co., 66346
Koch Gateway Pipeline Co., 66346
MIECO Inc., 66347
OXY USA, Inc., 66347
Ozark Gas Transmission System, 66347–66348
Paiute Pipeline Co., 66348
Sea Robin Pipeline Co. et al., 66348–66349
Tennessee Gas Pipeline Co., 66349
Texas Gas Transmission Corp., 66349
Trailblazer Pipeline Co., 66349–66350
Williston Basin Interstate Pipeline Co., 66350

Federal Reserve System
RULES
Equal credit opportunity (Regulation B):
Creditor compliance with Equal Credit Opportunity Act; legal privilege for information, 66412–66421
Home mortgage disclosure (Regulation C):
Depository institutions asset-size exemption threshold; adjustment; staff commentary, 66259–66260
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 66371–66372
Permissible nonbanking activities, 66372

Fish and Wildlife Service
RULES
Endangered and threatened species:
Peck's cave amphipod (three aquatic invertebrate species in Comal and Hays Counties, TX), 66295–66304
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Anadromous Atlantic salmon in seven Maine rivers; withdrawn, 66325–66338

Food and Drug Administration
RULES
Food for human consumption:
Food labeling—
Dietary supplements, nutrition and ingredient labeling; compliance policy guide (vitamin products for human use—low potency), revocation; correction, 66275
NOTICES
Medical devices:
Changes in medical device tracking and postmarket surveillance authority, 66373–66374
Medical devices; premarket approval:
Telectronics Guardian ATP II Model 4211 Implantable Cardioverter Defibrillator System, 66374–66375

Forest Service
NOTICES
Meetings:
Klamath Provincial Advisory Committee, 66339

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Scientific misconduct findings; administrative actions:
Imam, S. Ashraf, Ph.D., 66372–66373

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66375–66376
Submission for OMB review; comment request, 66376–66377

Housing and Urban Development Department
RULES
Fair housing:
Discriminatory conduct under Fair Housing Act—
Residential real estate-related lending transactions; lender-initiated self-testing, 66424–66433
PROPOSED RULES
Fair housing:
Fair Housing Act violations; civil penalties, 66488–66490

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 66377–66381

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66403–66405

Meetings:
Information Reporting Program Advisory Committee, 66405

International Trade Administration
NOTICES
Overseas trade missions:
Secretarial business development missions to—
Turkey, 66339–66341
United States-India Commercial Alliance (USICA) Board:
Applications to serve opportunity, 66341–66342

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Oil and gas leases:
Wyoming, 66384
Opening of public lands:
Nevada, 66384
Recreation management restrictions, etc.:
Imperial Sand Dunes, CA; parking/camping restrictions; supplementary rule, 66384

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Leadership Initiatives Advisory Panel, 66394
Partnership Advisory Panel, 66394

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Friedman, Donald, 66401–66403

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66381

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 66304
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Ice and slime standard allowances for unwashed Pacific halibut and sablefish; correction, 66311
Northeastern United States fisheries—
Summer flounder, scrup, and black sea bass, 66304–66310
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Anadromous Atlantic salmon in seven Maine rivers; withdrawn, 66325–66338
NOTICES
Endangered and threatened species:
Candidate species list; revision, 66342
Permits:
Marine mammals, 66342

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Bexar-Medina-Atascosa water conservation plan, TX, 66339

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
GPU Nuclear Corp. et al., 66399–66400
Long Island Lighting Co., 66400
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 66394–66396
Conam Inspection, Inc., 66396
Public Service Electric & Gas Co., 66397–66399

Occupational Safety and Health Administration
RULES
Safety and health standards, etc.:
Methylene chloride; occupational exposure
Partial stay, 66275–66277

Panama Canal Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66400–66401

Patent and Trademark Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Trademark Affairs Public Advisory Committee, 66342–66343

Pension Benefit Guaranty Corporation
PROPOSED RULES
Single-employer plans:
Benefit overpayments and underpayments; recoupment and reimbursement, 66319–66320

Presidential Documents
PROCLAMATIONS
Special observances:
Wright Brothers Day, 1997 (Proc. 7061), 66251–66252
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Intelligence Oversight Board; amendment (EO 13070), 66493
ADMINISTRATIVE ORDERS
Albania, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan; continuation of waiver authority (Presidential Determination No. 98-7), 66253–66254
Palestine Liberation Organization; suspending restrictions on relations with U.S. (Presidential Determination No. 98-8), 66255–66256

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
RULES
Newlands Reclamation Project, NV; operating criteria and procedures adjustments, 66442–66485
NOTICES
Meetings:
Glen Canyon Adaptive Management Work Group, 66384–66386

Patent licenses; non-exclusive, exclusive, or partially exclusive:
Rust Environmental & Infrastructure Inc., 66386

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66381–66382
Submission for OMB review; comment request, 66382–66383

Surface Mining Reclamation and Enforcement Office
NOTICES
Valid existing rights determination:
Blaire, Edward, et al.; Wayne National Forest, OH; correction, 66387

Thrift Supervision Office
RULES
Federal regulatory reform:
Capital, charter and bylaw, conversion, etc., regulations; technical amendments, 66260–66264

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
RULES
Computer reservation systems, carrier-owned:
Expiration date extension, 66272–66274

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Women's leadership training program for Central and Eastern Europe, 66405–66408

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase, 66277–66278
PROPOSED RULES
Vocational rehabilitation and education:
Veterans education—
Educational assistance awards to veterans who were voluntarily discharged; effective dates, 66320–66321
NOTICES
Cost-of-living adjustments and headstone or marker allowance rate, 66408–66410
Meetings:
Wage Committee, 66410

Separate Parts In This Issue

Part II
Federal Reserve System, 66412–66421

Part III
Department of Housing and Urban Development, 66424–66433

Part IV
Department of Education, 66436–66440

Part V
Department of the Interior, 66442–66485

Part VI
Department of Housing and Urban Development, 66488–66490

Part VII
The President, 66493

Reader Aids

Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamation:
7061 ..... 66251+
Executive Orders:
13069 65989
13070 66493
Administrative Orders:
Presidential Determinations:
No. 98–7 of December 5, 1997 66253
No. 98–8 of December 5, 1997 66255
7 CFR
58 66257
Proposed Rules:
966 66312
980 66312
9 CFR
50 66259
12 CFR
202 66412
203 66259
506 66260
544 66260
545 66260
552 66260
559 66260
560 66260
561 66260
563 66260
565 66260
567 66260
575 66260
14 CFR
39 (5 documents) 66264, 66266, 66268, 66269, 66271
255 66272
Proposed Rules:
39 (2 documents) 66315, 66317
21 CFR
101 66275
24 CFR
100 66424
103 66424
Proposed Rules:
180 66488
29 CFR
1910 66275
Proposed Rules:
4022 66319
38 CFR
21 66277
Proposed Rules:
21 66320
40 CFR
9 66278
52 66279
72 66278
73 66278
74 66278
75 66278
77 66278
78 66278
43 CFR
418 66442
47 CFR
73 (2 documents) 66294, 66295
Proposed Rules:
1 66321
73 (4 documents) 66323, 66324
50 CFR
17 66295
622 66304
648 66304
679 66311
Proposed Rules:
17 66325
227 66325
425 66325

Federal Register
Vol. 62, No. 243
Thursday, December 18, 1997

Presidential Documents

Title 3—

The President

Proclamation 7061 of December 16, 1997

Wright Brothers Day, 1997

By the President of the United States of America

A Proclamation

On December 17, 1903, Orville Wright lay inside the first heavier-than-air powered craft that permitted controlled flight. His brother Wilbur stood nearby, steadying the craft at one wing tip. In a few moments, the brothers would know if their years of hard work and painstaking experimentation would finally bear fruit. With Wilbur running beside the plane to build its momentum, Orville achieved, for a scant 12 seconds over a distance of 120 feet, what humankind had always dreamed of—he flew.

That historic moment marked the first step in a long journey through the skies that would ultimately take Americans beyond Earth's atmosphere and into space. The Mars Pathfinder spacecraft that captured the world's attention and imagination this past summer reflects the same American ingenuity and pioneering spirit that sent the Wrights' fragile craft aloft so briefly over Kitty Hawk almost a century ago. With unwavering perseverance in the face of many failures, steady conviction in the possibility of flight, and a determination to bring their vision to reality, the Wright brothers expanded our horizons and also brought the world closer together.

We are still reaping the benefits of their extraordinary achievement. America's aerospace industry has experienced enormous growth and development since the Wright brothers' first flight. It has strengthened our economy, created new business and recreational opportunities, freed us from many of the limits of time and distance, and made our Nation's aviation system the finest in the world. And thanks in large part to the efforts of the men and women throughout the Federal Government—in the Departments of Transportation and Defense, the National Transportation Safety Board, and the National Aeronautics and Space Administration—that system is also the safest in the world.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated December 17 of each year as "Wright Brothers Day" and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 17, 1997, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-33269
Filed 12-17-97; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Presidential Determination No. 98-7 of December 5, 1997

Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of Albania, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan

Memorandum for the Secretary of State

Pursuant to the authority vested in me by subsections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a) (the "Act")), I determine that Albania, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan are not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2), or (3) of subsection 409(a) of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 5, 1997.

[FR Doc. 97-33233
Filed 12-17-97; 8:45 am]
Billing code 4710-10-M

Presidential Documents

Presidential Determination No. 98–8 of December 5, 1997

Presidential Determination on Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me under section 539(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, Public Law 105–118, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204, through June 4, 1998.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 5, 1997.

[FR Doc. 97–33234
Filed 12–17–97; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 62, No. 243
Thursday, December 18, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–97–13]

RIN 0581–AB50

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products: Revision of User Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees charged for services provided under the dairy inspection and grading program. This rule will yield an estimated $343,000 during 1998. The program is a voluntary, user fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. This action increases the hourly rate to $51.00 per hour for continuous resident services and $56.00 per hour for nonresident services between the hours of 6:00 a.m. and 6:00 p.m. The fee for nonresident services between the hours of 6:00 p.m. and 6:00 a.m. would be $61.60 per hour. These fees represent an increase of four dollars per hour.

The fees are being increased to cover the costs of recent salary increases and locality adjustments, the costs necessary to maintain adequate levels of service during changing production and purchasing patterns within the dairy industry, the continued full funding for standardization activities, and other nonpay operating costs.

EFFECTIVE DATE: January 4, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Programs, Dairy Grading Branch, Room 2750—South Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 720–9381.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the AMS has considered the economic impact of this action on small entities.

There are more than 600 users of Dairy Grading Branch's inspection and grading services. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). This rule will raise the fee charged to businesses for voluntary inspection services and grading services for dairy and related products. Even though the fees will be raised, the increase is approximately 8 percent and will not significantly affect these entities. These businesses are under no obligation to use these services, and any decision on their part to discontinue the use of the services should not prevent them from marketing their products. The AMS estimates that overall this rule will yield an additional $343,000 during 1998. The rule reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Without a fee increase, revenue projections for FY 1998 would remain constant at $4.695 million. Costs are projected to increase to $5.628 million. The shortfall, if allowed to continue, would translate into an approximate 1.6 month operating reserve at the end of FY 1998, which is less than Agency policy requires.

The AMS has determined that this action will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601).

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of maintaining the program.

FY 1997 revenue was projected to be $4.733 million and costs to be $5.240 million. The shortfall during the year reduced the operating reserve from 5.6 months at the beginning of the year to 3.8 months at the end of August, and is projected to further reduce the operating reserve to approximately 1.6 months at the end of FY 1998. With this proposed increase, assuming a slightly increased workload, revenue for FY 1998 is projected to be $5.540 million with costs totaling $5.628 million. Of these costs, the general salary increase represents $110,000 per year and is scheduled to be effective in January 1998. Employee salaries and benefits are major program costs and account for approximately 70 percent of the total operating budget. Program travel costs (of which approximately 80 percent are reimbursed by the industry), general contract obligations and Agency overhead account for another 24 percent of the budget. Changing workloads are analyzed on a regular basis in order to maximize grading assignment efficiency and to minimize grader and supervisory costs. Future increases would be proposed as necessary in following years to cover any annual increases in program costs and to maintain the capital reserve at four months.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased when necessary to cover the cost of maintaining a financially self-supporting program. The last fee increase under this program became effective on January 5, 1997. On the same effective date, the salaries of

Federal employees increased by 3 percent, which included locality pay. Also, there have been normal increases in other nonpay operating costs that include utilities, office space, and reimbursable travel. In addition, recent congressional action will result in additional salary increases of 3 percent in 1998. Although the program's operating reserves were adequate to cover the January 5, 1997, salary increase, this will not be the case for 1998 salary increases, and a fee increase is needed.

The grading program fees need to be increased to cover the costs associated with maintaining adequate levels of service during shifting production patterns within the dairy industry. The industry changes include plant consolidations, geographical shifts of dairy production areas, and changes in the types of dairy products being manufactured and offered for inspection and grading services. To minimize the necessary fee increase, the Department has initiated cost-reduction efforts which include the reduction of staff and program overhead.

On October 16, 1997, the AMS published in the **Federal Register** (62 FR 53760), a proposed rule for public comment. Only one comment was received. A U.S. Senator forwarded a constituent comment from a dairy product manufacturer to the Department for its review. That commenter opposed the proposed fee increase as harmful to the dairy industry.

The commenter was of the view that the proposed fee increase coupled with the most recent increase made effective on January 5, 1997 (61 FR 68997), is far out of line with the general economic conditions in the United States. The commenter went on to conclude that manufacturers who must have USDA inspection to sell their products domestically or internationally would bear the brunt of the fee increase. The commenter discussed passing the fee increase on to customers but stated that it would be unable to pass though the increases to its customers. The commenter further stated that it would not accept price increases from its suppliers unless it was an absolute last resort. As stated previously, the Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the service to cover, as nearly as practicable, the cost of maintaining the program. The fees, as proposed in this rulemaking, are consistent with the provisions of the 1946 Act. The Agency conducts continuing fee analyses and has instituted annual fee increases, when necessary, to recover salary and other routine costs. The programs' financial situation described herein requires implementation of the fee increase. Even so, every effort has been and will continue to be made to operate the program as efficiently as possible and to seek cost-cutting measures that are consistent with the Agency's mission under this program.

With regard to the commenters passing increases forward or backward, such actions are subject to agreement between buyers and sellers as is any provision between the parties to require inspection. This program is a voluntary program under the 1946 Act. Even though the fees will be revised, the increase is approximately 8 percent and will not significantly affect the industry. Accordingly, consistent with the provisions of the Agricultural Marketing Act of 1946, the fees as proposed are made final in this rule.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the **Federal Register**. A revenue shortfall warrants putting the higher rates into effect as quickly as possible. The increase in fees is essential for effective management and operation of the program and to satisfy the intent of the Agricultural Marketing Act of 1946. A proposed rule setting forth proposed fee increases was published in the **Federal Register** on October 16, 1997 (62 FR 53760).

Accordingly, the program fees are being increased as set forth below.

Program Changes Adopted in the Final Rule

This rule document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for nonresident services from $52.00 to $56.00 for services performed between 6:00 a.m. and 6:00 p.m. The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel plus travel costs.

2. Increases the hourly fee for continuous resident services from $47.00 to $51.00. The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round resident basis.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

2. In subpart A, § 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $56.00 for service performed between 6:00 a.m. and 6:00 p.m. and $61.60 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident services.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $51.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: December 12, 1997.

Enrique E. Figueroa,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97–33005 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 97–061–2]

Expenses Associated With Transporting and Disposing of Tuberculosis-Exposed Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations concerning animals destroyed because of tuberculosis to allow the U.S. Department of Agriculture to pay herd owners some of their expenses for transporting tuberculosis-exposed cattle, bison, and cervids to slaughter or to the point of disposal, and for disposing of the animals. Prior to the interim rule, herd owners could only receive help with these costs for affected animals. Consequently, herd owners in some cases elected to keep exposed animals in a herd until testing revealed them to be either free of tuberculosis or affected with tuberculosis, or elected not to depopulate an affected herd, providing opportunity for further spread of the disease. The interim rule also made minor changes to the provisions for paying some of the expenses for transporting tuberculosis-affected animals to the point of disposal and disposing of them. The interim rule was necessary to ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

EFFECTIVE DATE: The interim rule was effective on September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 36, Riverdale MD 20737–1231, (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective September 17, 1997, and published in the **Federal Register** on September 23, 1997 (62 FR 49590–49593, Docket No. 97–061–1), we amended the regulations in 9 CFR 50.8 to allow the U.S. Department of Agriculture (the Department) to pay herd owners one-half the expenses of transporting tuberculosis-exposed cattle, bison, and cervids to slaughter or to the point of disposal, and for disposing of the animals. The interim rule also provided that the Department may pay more than one-half of the expenses when the Administrator of the Animal and Plant Health Inspection Service (APHIS) determines that doing so will contribute to the tuberculosis eradication program. Prior to this interim rule, herd owners could only receive help with these costs for affected animals. We also amended § 50.8 in the interim rule to allow the Department to pay herd owners of tuberculosis-affected cattle, bison, and cervids more than one-half of the expenses of transporting the animals to slaughter or the point of disposal, and for disposing of the animals when the Administrator of APHIS determines that doing so will contribute to the tuberculosis eradication program. In addition, we amended § 50.8 to remove the provisions concerning forms for payment of expenses for disposal or transportation of tuberculosis-affected animals, and we amended § 50.8 to remove the provision that the Department will not pay any portion of the expenses for transporting or disposing of affected animals when the transportation or disposal is provided by the owner of the affected animals.

Comments on the interim rule were required to be received on or before November 24, 1997. We received one comment by that date. The commenter supported the interim rule as written. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 50 and that was published at 62 FR 49590–49593 on September 23, 1997.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 12th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–33037 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0993]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

AGENCY: Final rule; staff commentary.

SUMMARY: The Board is publishing revisions to its staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The Board is required to adjust annually the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The adjustment reflects changes for the twelve-month period ending in November. In 1998, depository institutions with assets totaling $29 million or less are not required to collect data.

DATES: *Effective date.* This rule is effective January 1, 1998.

Applicability date. This rule applies to all data collection in 1998.

FOR FURTHER INFORMATION CONTACT: Pamela C. Morris, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan statistical areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal supervisory agencies and make disclosures available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA. Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) amended HMDA to modify the exemption threshold for small depository institutions. Until 1997, HMDA exempted depository institutions with assets of $10 million or

less, as of the preceding year end. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to $26 million for 1997 data collection.

To implement the statutory amendment, the Board published an interim rule in January 1997. (62 FR 3603, Jan. 24, 1997). The interim rule was made final in May. (62 FR 28620, May 27, 1997; correction at 62 FR 62339, June 19, 1997). Section 203.3(a)(1)(ii) provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. During the period ending in November 1997, the Consumer Price Index for Urban Wage Earners and Clerical Workers increased by 2.4%. As a result, the new threshold is $29 million. Thus, depository institutions with assets of $29 million or less as of December 31, 1997 are exempt from data collection in 1998. An institution's exemption from collecting data in 1998 does not affect its responsibility to report the 1997 data if it was required to collect it.

The Board is adopting this amendment to the staff commentary to implement the annual change in the exemption threshold. The Administrative Procedure Act provides that notice and opportunity for public comment are not required if an agency finds that notice and public comment are unnecessary or would be contrary to the public interest. 5 U.S.C. 553(b)(B). Regulation C establishes a formula (adopted by the Board after notice and comment) for determining the annual adjustment, if any, to the exemption threshold. The Board's amendment to the staff commentary, which merely applies the formula, is technical and not subject to interpretation. For these reasons, the Board has determined that publishing a notice of proposed rulemaking for public comment for the following amendment is unnecessary. Therefore, the Board has adopted this amendment, establishing a new threshold, in final form. This rule is effective as of January 1, 1998, so that institutions that are no longer covered can avoid collecting data unnecessarily.

II. Section Analysis

Section 203.3—Exempt Institutions

Comments 3(a)–2 and 3(a)–3 have been redesignated as comments 3(a)–3 and 3(a)–4, respectively, and a new comment 3(a)–2 has been added to specify the exemption threshold, which is adjusted annually each December. Depository institutions with assets that are at or below the threshold as of December 31, 1997, need not collect the HMDA data for 1998.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for Part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. In Supplement I to part 203, under Section 203.3—Exempt Institutions, under 3(a) *Exemption based on location, asset size, or number of home-purchase loans*, paragraphs 2 and 3 are redesignated as paragraphs 3 and 4, respectively; and a new paragraph 2 is added to read as follows:

Supplement I to Part 203—Staff Commentary

* * * * *

Section 203.3—Exempt Institutions

3(a) *Exemption based on location, asset size, or number of home-purchase loans.*

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 1998, the asset-size exemption threshold is $29 million. Depository institutions with assets at or below $29 million are exempt from collecting data for 1998.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 12, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–33036 Filed 12–17–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 544, 545, 552, 559, 560, 561, 563, 565, 567, 575

[No. 97–126]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. The OTS is amending its capital rules to remove transition periods that are outdated, making technical revisions to final rules issued during December, 1996 pursuant to the regulatory reinvention initiative, and making other miscellaneous technical changes to existing regulations.

EFFECTIVE DATE: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Senior Paralegal (Regulations), (202) 906–7135, or Karen A. Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Capital

OTS is today adopting several technical amendments to its capital regulations to remove references to transition periods that have elapsed and to streamline its definitions relating to capital.

Regulatory Burden Reduction Regulations

OTS is also making a number of technical corrections to its charter and bylaw, conversion, and subordinate organization regulations [1] that were substantially revised during December, 1996, pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.[2]

In particular, § 552.10, regarding the mailing of annual reports to stockholders, is being amended. Section 552.10 currently requires Federal stock associations that are not wholly-owned to send out annual reports to their shareholders within 90 days of the end of the association's fiscal year.

OTS's regulation regarding Corporate Governance [3] extended the time frame within which an association must hold its annual meeting from 120 days to 150 days after the close of its fiscal year. OTS inadvertently did not extend the time frame for mailing annual reports to stockholders.

Section 552.10 is, therefore, being amended to provide a 130-day mailing requirement for annual reports to enable federal savings associations that are subject to the Securities Exchange Act of 1934 to take advantage of the full time period permitted for delivery of an annual report under the SEC's Proxy Rules, [4] and to conform to the changes to the regulations under Corporate Governance. The extension to 130 days also ensures that the mailing requirement in section 552.10 is consistent with the OTS rule that a notice for an annual meeting be sent 20 to 50 days before the meeting.[5]

In addition, section 545.71, which restates federal savings associations' statutory authority to invest in liquid assets, is being removed. The substance of the provision was added to the lending and investment powers chart found at 12 CFR 560.30 as part of the final rule on Subsidiaries and Equity Investments.

Miscellaneous

Finally, OTS is making the following technical revisions:

—OTS's subordinated debt securities regulation is amended to remove references to the Resolution Trust Corporation.

—Erroneous cross-references are corrected throughout OTS's regulations.

—The definition of service corporation in § 561.45 is revised to correct a cross-reference to OTS's subordinate organizations regulations.

—Part 506 is amended to include language mandated by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and to update the display table of OMB control numbers.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

The OTS has found good cause to dispense with both prior notice and comment on this final rule and a 30-day delay of its effective date mandated by the Administrative Procedure Act.[6] OTS believes that it is contrary to public interest to delay the effective date of the rule, as it eliminates provisions that have caused confusion. Because the amendments in the rule are not substantive, they will not detrimentally affect savings associations by becoming effective immediately.

In addition, this document is exempt from the requirement found in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 [7] that regulations must not take effect before the first day of the quarter following publication, as it imposes no new requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, [8] it is certified that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 559

Savings associations, Subsidiaries.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 561

Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

12 CFR Part 567

Capital, Savings associations.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V, of the Code of Federal Regulations as set forth below:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended:

a. In paragraph (a) by adding a sentence at the end of the paragraph;

b. In paragraph (b) by adding two entries to the table in numerical order, and revising the entry for Part 575.

The additions and revisions read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) * * * Respondents/recordkeepers are not required to comply with any collection of information unless it displays a currently valid OMB control number.

(b) * * *

[1] Corporate Governance, 61 FR 64007 (December 3, 1996). Subsidiaries and Equity Investments, 61 FR 66561 (December 18, 1996).

[2] 12 U.S.C. 4803(a)(1).

[3] 61 FR 64007 (December 3, 1996).

[4] See 17 CFR 240.14a–3(b), which requires that proxy statements sent to shareholders must be accompanied or preceded by the annual report to shareholders.

[5] 12 CFR 552.6(b).

[6] 5 U.S.C. 553.

[7] Pub. L. 103–325, 12 U.S.C. 4802.

[8] Pub. L. 96–354, 5 U.S.C. 601.

12 CFR part or section where identified and described	Current OMB control No.
Part 516	1550–0005, 1550–0006, 1550–0016
550.3	1550–0037
Part 575	1550–0072

PART 544—CHARTER AND BYLAWS

3. The authority for part 544 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 544.5 [Amended]

4. Section 544.5 is amended, in paragraph (a), by removing the word "shall" from the last sentence, and by adding in lieu thereof the word "may".

PART 545—OPERATIONS

5. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.71 [Removed]

6. Section 545.71 is removed.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

7. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.4 [Amended]

8. Section 552.4 is amended in paragraph (b)(4), Section 5 of the charter, by removing the word "section", and by adding in lieu thereof the word "Section", where it appears in:

a. The second sentence of the first paragraph;

b. The first sentence of the third paragraph;

c. The first sentence of paragraph (iii); and

d. The first sentence of paragraph A.

§ 552.6–1 [Amended]

9. Section 552.6–1 is amended by removing, in the last sentence of paragraph (c), the word "such", and by adding in lieu thereof the word "regular".

§ 552.10 [Amended]

10. Section 552.10 is amended by removing the word "ninety" in the first sentence, and by adding in lieu thereof the number "130".

PART 559—SUBORDINATE ORGANIZATIONS

11. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

§ 559.3 [Amended]

12. Section 559.3(g)(2) is amended by removing the phrase "entities be aggregated", and by adding in lieu thereof the phrase "entities must be aggregated".

PART 560—LENDING AND INVESTMENT

13. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

14. Section 560.93 is amended by removing and reserving paragraph (b)(6), and revising paragraph (d)(3)(ii) to read as follows:

§ 560.93 Lending limitations.

* * * * *

(d) * * *

(3) * * *

(ii) The savings association is, and continues to be, in compliance with its capital requirements under part 567 of this chapter;

* * * * *

§ 560.100 [Amended]

15. Section 560.100 is amended by removing the phrase "12 CFR 567.1(l)", and by adding in lieu thereof the phrase "12 CFR 567.1".

PART 561—DEFINITIONS

16. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 561.45 [Amended]

17. Section 561.45 is amended by removing the phrase "§ 545.74 of this chapter", and by adding in lieu thereof the phrase "part 559 of this chapter".

PART 563—OPERATIONS

18. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806; 42 U.S.C. 4106.

§ 563.41 [Amended]

19. Section 563.41(b)(11) is amended by removing the phrase "§ 563.93(b)(11) of this part", and by adding in lieu thereof the phrase "§ 560.93(b)(11) of this chapter".

20. Section 563.81 is amended by revising paragraphs (A) and (B) of the certificate statement contained in paragraph (d)(1)(vi), and by removing the phrase "or RTC" where it appears in paragraph (d)(3), to read as follows:

§ 563.81 Issuance of subordinated debt securities and mandatorily redeemable preferred stock.

* * * * *

(d) * * *

(1) * * *

(vi) * * *

* * * (A) If the FDIC shall be appointed receiver for the issuer of this certificate (the "issuer") and in its capacity as such shall cause the issuer to merge with or into another financial institution, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another financial institution or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more other financial institutions, the FDIC shall have no obligation, either in its capacity as receiver or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligation represented by this certificate in whole or in part by any financial institution or institutions which results from any such merger or which has purchased or otherwise acquired from the FDIC as receiver for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with the FDIC, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by a financial institution with or into which the issuer may have been merged, as described in this paragraph (A), and/or by one or more financial institutions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by the FDIC as receiver for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in accordance with the procedures and priorities set forth in any applicable receivership regulations or in orders of the FDIC relating to such receivership.

(B) In the event that the obligation represented by this certificate is assumed in full by another financial institution, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with the FDIC assume all or portion of the liabilities of the issuer, and payment or provision for payment shall have been made in respect of all matured installments of interests upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by acceleration, then any default caused by the appointment of a receiver for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded.

* * * * * *

21. Section 563.134 is amended by:

a. Revising paragraph (a)(3); and

b. By removing, in paragraphs (a)(7), (a)(8), and (a)(9), the phrase "fully phased-in capital requirement", and by adding in lieu thereof the phrase "capital requirement'.

The revisions read as follows:

§ 563.134 Capital distributions.

(a) * * *

(3) *Capital requirement* means an association's capital requirement under part 567 of this chapter.

* * * * *

PART 565—PROMPT CORRECTIVE ACTION

22. The authority citation for part 565 continues to read as follows:

Authority: 12 U.S.C. 1831o.

§ 565.2 [Amended]

23. Section 565.2 is amended, in paragraph (f), by removing the phrase "§ 567.1(m)", and by adding in lieu thereof the phrase "§ 567.1".

PART 567—CAPITAL

24. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

25. Section 567.1 is amended by:

a. removing paragraph (ll) and the alphabetic paragraph designations for the remaining definitions, and placing the definitions in alphabetical order;

b. in the definition of *adjusted total assets*, removing paragraph (2)(ii), adding the word "and" at the end of paragraph (2)(i), redesignating paragraph (2)(iii) as paragraph (2)(ii) and revising it, and revising paragraphs (1), (3)(i), and (3)(iii);

c. in the definition of *equity investments*, redesignating paragraph (2) introductory text and paragraphs (2)(i) through (2)(vii) as paragraph (2)(i) introductory text and paragraphs (2)(i)(A) through (2)(i)(G), respectively, designating the concluding text of paragraph (2) as paragraph (2)(ii) and revising it, and adding a colon at the end of newly redesignated paragraph (2)(i) introductory text;

d. in the definition of *Qualifying multifamily mortgage loan*, revising paragraph (3) and paragraph (4) introductory text;

e. in the definition of *Qualifying residential construction loan*, revising paragraph (2); and

f. in the definition of *Qualifying supervisory goodwill*, revising paragraphs (2)(i), (2)(ii)(A), (2)(ii)(B), and (2)(ii)(C) introductory text.

The revisions read as follows:

§ 567.1 Definitions.

* * * * *

Adjusted total assets. * * *

* * * * *

(1) A savings association's total assets as that term is defined in this section;

* * * * *

(2) * * *

(ii) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in the definition of *qualifying supervisory goodwill* in this section;

(3) * * *

(i) Assets not included in the applicable capital standard except for those subject to paragraphs (3)(ii) and (3)(iii) of this definition; * * *

(iii) Investments in any subsidiary subject to consolidation under paragraph (2)(ii) of this definition; and

* * * * *

Equity investments. * * *

* * * * *

(2) * * *

(ii) The term *equity securities* does not include investments in a subsidiary as that term is defined in this section, equity investments that are permissible for national banks, ownership interests in pools of assets that are risk-weighted in accordance with § 567.6(a)(1)(vi) of this part, or the stock of Federal Home Loan Banks or Federal Reserve Banks.

* * * * *

Qualifying multifamily mortgage loan. * * *

* * * * *

(3) For purposes of paragraphs (1) (vi) and (vii) of this definition, the term *value of the property* means, at origination of a loan to purchase a multifamily property: the lower of the purchase price or the amount of the initial appraisal, or if appropriate, the initial evaluation. In cases not involving purchase of a multifamily loan, the *value of the property* is determined by the most current appraisal, or if appropriate, the most current evaluation.

(4) In cases where a borrower refinances a loan on an existing property, as an alternative to paragraphs (1)(iii), (vi), and (vii) of this definition:

* * * * *

Qualifying residential construction loan. * * *

* * * * *

(2) The documentation for each loan and home sale must be sufficient to demonstrate compliance with the criteria in paragraph (1) of this definition. The OTS retains the discretion to determine that any loans not meeting sound lending principles must be placed in a higher risk-weight category. The OTS also reserves the discretion to modify these criteria on a case-by-case basis provided that any such modifications are not inconsistent with the safety and soundness objectives of this definition.

Qualifying supervisory goodwill.

* * *

* * * * *

(2) * * *

(i) Supervisory goodwill as defined in this section that is included in goodwill that is reflected in the current reporting period under generally accepted accounting principles ("GAAP"); or

(ii)(A) Supervisory goodwill as defined in this section that is included in goodwill that is reflected in the current reporting period under GAAP;

(B) Plus any amortization of the goodwill in paragraph (2)(ii)(A) of this definition that occurred subsequent to April 12, 1989 for GAAP reporting purposes;

(C) Minus the amortization of the goodwill in paragraph (2)(ii)(A) of this definition through the current reporting period that results when the goodwill is amortized subsequent to April 12, 1989 on a straightline basis over the shorter of—

* * * * *

§ 567.2 [Amended]

26. Section 567.2 is amended by removing and reserving paragraph (b).

27. Section 567.5 is amended by:

a. revising paragraphs (a)(1)(v), (a)(2)(i), (a)(2)(v), and (c);

b. in paragraph (a)(2)(vi), removing the word "subsidi.ary", and by adding in lieu thereof the word "subsidiary", and removing the phrase "§ 567.1(l)", and by adding in lieu thereof the phrase "§ 567.1"; and

c. in paragraph (b)(4), removing the last two sentences.

The revisions read as follows:

§ 567.5 Components of capital.

(a) * * * (1) * * *

(v) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in paragraph (1) of the definition for *qualifying supervisory goodwill* in § 567.1 of this part.

(2) *Deductions from core capital.* (i) Intangible assets, as defined in § 567.1 of this part, are deducted from assets and capital in computing core capital,

except as otherwise provided by § 567.12 of this part.

* * * * *

(v) If a savings association has any investments (both debt and equity) in one or more subsidiaries engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, core capital in accordance with this paragraph (a)(2)(v). The savings association must first deduct from assets and, thus, core capital the amount by which any investments in such subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next the savings association must deduct from assets and, thus, core capital the lesser of:

(A) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(B) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

* * * * *

(c) *Total capital.* (1) A savings association's total capital equals the sum of its core capital and supplementary capital (to the extent that such supplementary capital does not exceed 100% of its core capital).

(2) The following assets, in addition to assets required to be deducted elsewhere in calculating core capital, are deducted from assets for purposes of determining total capital:

(i) Reciprocal holdings of depository institution capital instruments;

(ii) All equity investments; and

(iii) That portion of land loans and nonresidential construction loans in excess of 80 percent loan-to-value ratio.

(3) For the purposes of any risk-based capital requirement under this part, a savings association's total capital equals the amount calculated pursuant to paragraphs (c)(1) and (c)(2) of this section, minus the amount of its IRR component as calculated pursuant to § 567.7 of this part.

28. Section 567.6 is amended by revising paragraph (a)(1)(iii)(D) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(iii) * * *

(D) Qualifying residential construction loans as defined in § 567.1 of this part.

* * * * *

29. Section 567.9 is amended by:

a. in paragraph (c)(1), removing the phrase "§ 567.1(m)", and by adding in lieu thereof the phrase "§ 567.1";

b. revising paragraph (c)(3); and

c. in paragraph (c)(4), removing the phrase "§ 567.1(1)", and by adding in lieu thereof the phrase "§ 567.1".

The revisions read as follows:

§ 567.9 Tangible capital requirement.

* * * * *

(c) * * *

(3) If a savings association has any investments (both debt and equity) in one or more subsidiary(ies) engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, tangible capital in accordance with this paragraph (c)(3). The savings association must first deduct from assets and, thus, capital the amount by which any investments in such a subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next, the savings association must deduct from assets and, thus, tangible capital the lesser of:

(i) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(ii) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

* * * * *

30. Section 567.12 is amended by revising paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 567.12 Qualifying intangible assets and mortgage servicing rights.

(a) *Scope.* This section prescribes the maximum amount of qualifying intangible assets, as defined in § 567.1 of this part, and mortgage servicing rights that savings associations may include in calculating tangible and core capital.

(b) * * * Intangible assets, as defined in § 567.1 of this part, other than purchased credit card relationships and core deposit intangibles grandfathered by paragraph (g)(3) of this section, must be deducted in computing tangible and core capital.

* * * * *

PART 575—MUTUAL HOLDING COMPANIES

31. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.9 [Amended]

32. Section 575.9 is amended, in the last sentence of paragraph (a)(4), by removing the phrase "remaining paragraphs of section 11", and by adding in lieu thereof the phrase "remaining paragraphs of section 12".

Dated: December 11, 1997.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 97–32829 Filed 12–17–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–222–AD; Amendment 39–10248; AD 97–26–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model HS 748 series airplanes. This action requires inspections of the inspection holes in all engine 'W' frame socket fittings to determine if certain fasteners have been installed, or if the inspection holes have been reworked; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fatigue cracking at the inspection hole locations, due to the installation of certain fasteners or hole enlargement, which could result in failure of the engine mount structure and consequent separation of the engine from the airplane.

DATES: Effective January 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace (Jetstream) Model HS 748 series airplanes. The CAA advises that drive screws have been found installed in the inspection holes of engine 'W' frame socket fittings, which resulted in fatigue cracks at the inspection holes. In addition, investigation revealed that, in some cases, the inspection holes had been enlarged beyond the original 0.125-inch diameter, which would reduce the structural strength of the fittings. Such fatigue cracking at the inspection hole locations, if not detected and corrected in a timely manner, could result in failure of the engine mount structure and consequent separation of the engine from the airplane.

Explanation of Relevant Service Information

British Aerospace (Jetstream) has issued Viscount Preliminary Technical Leaflet (PTL) No. 501, Issue 2, dated June 1, 1994, including Appendix 1, dated January 1, 1994, which describes procedures for a detailed visual inspection of the inspection holes in all engine 'W' frame socket fittings to determine if drive screws, and/or blind rivets have been installed, or if the original 0.125-inch diameter hole size has been reworked. The PTL also describes procedures for reworking the inspection holes and/or replacement of the 'W' frame fitting, if necessary. The CAA classified this service information as mandatory and issued British airworthiness directive 002–09–94, dated September 1994, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the PTL described previously, except as described below.

Differences Between This AD and the Service Information

Operators should note that, unlike the procedures described in the referenced PTL and the British airworthiness directive, this AD will not permit further flight if drive screws, blind rivets, and/or reworked holes are found to exist at the inspection hole locations. The FAA has determined that, due to the safety implications and consequences associated with the installation of drive screws, blind rivets, and/or the existence of reworked holes at the inspection hole locations, corrective action must be accomplished prior to further flight.

Cost Impact

None of the Jetstream Model HS 748 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 13 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $780 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–222–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–26–05 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10248. Docket 97–NM–222–AD.

Applicability: All Model HS 748 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking at the inspection hole locations, due to the installation of drive screws, and/or blind rivets, or hole enlargement, which could result in failure of the engine mount structure and consequent separation of the engine from the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a detailed visual inspection of the inspection holes in all of the aft engine 'W' frame socket fittings to determine if drive screws and/or blind rivets have been installed, and to determine if the inspection holes have been reworked, in accordance with PART ONE of the Accomplishment Instructions of British Aerospace (Jetstream) Viscount Preliminary Technical Leaflet (PTL) No. 501, Issue 2, dated June 1, 1994, including Appendix 1, dated January 1, 1994. If a drive screw or blind rivet is installed, or if any inspection hole has been reworked, prior to further flight, accomplish follow-on corrective actions, as applicable, in accordance with PART THREE of the Accomplishment Instructions of the PTL.

(b) At the next engine 'W' frame removal, or within 24 months after the effective date of this AD, whichever occurs first: Perform a detailed visual inspection of the inspection holes in all of the forward engine 'W' frame socket fittings to determine if drive screws and/or blind rivets have been installed, and to determine if the inspection holes have been reworked, in accordance with PART TWO of the Accomplishment Instructions of British Aerospace (Jetstream) Viscount PTL No. 501, Issue 2, dated June 1, 1994, including Appendix 1, dated January 1, 1994. If a drive screw or blind rivet is installed, or if any inspection hole has been reworked, prior to further flight, accomplish follow-on corrective actions, as applicable, in accordance with PART THREE of the Accomplishment Instructions of the PTL.

Note 2: Accomplishment of the inspections and/or corrective actions in accordance with Jetstream Service Bulletin HS748–71–33, dated September 2, 1994, is considered acceptable for showing compliance with the requirements of paragraphs (a) and (b) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with British Aerospace (Jetstream) Viscount Preliminary Technical Leaflet (PTL) No. 501, Issue 2, dated June 1, 1994, including Appendix 1, dated January 1, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 002–09–94, dated September 1994.

(f) This amendment becomes effective on January 2, 1998.

Issued in Renton, Washington, on December 9, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32610 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–51–AD; Amendment 39–10251; AD 97–26–06]

RIN 2120–AA64

Airworthiness Directives; Mooney Aircraft Corporation Models M20F, M20J, and M20L Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Mooney Aircraft Corporation (Mooney) Models M20F, M20J, and M20L airplanes. This action requires removing the fuel cap retaining lanyard from the fuel filler cap assemblies. A report of lost engine power during flight because of fuel starvation prompted the action. The investigation revealed that the airplane fuel float became trapped by the fuel cap retaining lanyard, keeping the float from following the fuel level. This condition caused the pilot to get a false fuel quantity reading. The actions specified by this AD are intended to prevent loss of engine power and fuel depletion during flight caused by a false fuel gauge reading.

DATES: Effective January 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1998.

ADDRESSES: Service information that applies to this AD may be obtained at Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas, 78028. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Alma Ramirez-Hodge, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5147; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Mooney Models M20F, M20J, and M20L airplanes was published in the **Federal Register** on March 26, 1997 (62 FR 14359). The action proposed to require removing the lanyard (nylon type material) from the fuel cap assembly. Accomplishment of the proposed action would be in accordance with Mooney Aircraft Bulletin M20–259, Issue Date: September 1, 1996.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter was opposed to the AD based on the premise that the total cost impact to the U.S. fleet outweighs the report of only one incident. The commenter goes on to say that if the pilot had been following good operating practices by doing a visual check of the fuel and using time as a basis for fuel consumption, there most probably wouldn't have been an incident to report. The commenter thinks the AD is not justified by one occurrence of a captured fuel cap lanyard.

The FAA disagrees. The FAA believes that one incident, in some cases, does justify the issuance of an AD. When the single incident indicates that there could be a loss of engine power to the affected airplane model, the justification for the AD is the continued safe flight and safe landing of over 2,000 airplanes. The total cost impact per airplane is minimal, $60 per airplane, when compared to the damage that could be done, should another fuel cap lanyard become trapped. The pilot that experienced a loss of engine power in his/her airplane was fortunate to have landed safely and without further incident. Therefore, this final rule will not change as a result of this comment.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,526 airplanes in the U.S. registry will be affected by this AD, that it would take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. There are no parts to include in this cost estimate. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $151,560 or $60 per airplane. The FAA has no way to determine how many owners/operators have already accomplished this action, and assumes that no operator has accomplished this action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adopting of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORHTINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–26–06 Mooney Aircraft Corporation: Amendment 39–10251; Docket No. 96–CE–51–AD.

Applicability: The following Models and serial numbered airplanes, certificated in any category.

Models	Serial numbers
M20F	All serial numbers.
M20J	24–0001 through 24–3381.
M20L	26–0001 through 26–0041.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of engine power and fuel depletion during flight caused by a false fuel gauge reading, accomplish the following:

(a) Remove the lanyard (nylon type material) from the left-hand (LH) and right-hand (RH) fuel filler cap assembly in accordance with the INSTRUCTIONS section of Mooney Aircraft Corporation Service Bulletin M20–259, Issue Date: September 1, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(d) The removal required by this AD shall be done in accordance with Mooney Aircraft Service Bulletin M20–259, Issue Date: September 1, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas, 78028. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–10251) becomes effective on January 20, 1998.

Issued in Kansas City, Missouri, on December 9, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32849 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–41–AD; Amendment 39–10255; AD 97–26–12]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all The New Piper Aircraft, Inc. (Piper) Models PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: January 26, 1998.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–41–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 24, 1997 (62 FR 39793).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received on the NPRM. No comments were received regarding the FAA's determination of the cost to the public.

Comment Disposition

The commenter states that the applicability statement of the NPRM is unclear. The commenter explains that the NPRM references Models PA–42, PA–42–720, and PA–42–1000 airplanes. No reference is made to Model PA–42–720R airplanes. The commenter explains that since common practice is for the FAA to refer to groups of aircraft as a "series", a reasonable inference would be that the Model PA–42–720R airplanes should be included in the applicability of the NPRM. On the other hand, the Model PA–42–720R airplanes are covered by another type certificate than the models referenced in the NPRM so one could also infer that the Model PA–42–720R airplanes should not be included. The commenter asks for clarification on this issue and requests that the FAA not make such obvious differing inferences.

The FAA concurs that the NPRM references Models PA–42, PA–42–720, and PA–42–1000 airplanes, and that no reference is made to Model PA–42–720R airplanes. The FAA also concurs that referencing the term "series" in the Applicability section of an AD could cause confusion. The FAA is making a conscious effort to list all affected models in the Applicability section of all AD's, as was done in the NPRM. The term series in the Applicability section puts the burden of interpreting which airplanes are affected on the owners/operators. The term "series" is acceptable when referring to a large number of airplane models in the narrative of the preamble of the AD. In this NPRM, the FAA's intent was to not include the Model PA–42–720R airplanes. All affected models are listed in the Applicability section. No changes to the final rule have been made as a result of this comment.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 607 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–26–12 The New Piper Aircraft, Inc.: Amendment 39–10255; Docket No. 97–CE–39–AD.

Applicability: Models PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10255) becomes effective on January 26, 1998.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32991 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–40–AD; Amendment 39–10257; AD 97–26–14]

RIN 2120–AA64

Airworthiness Directives; MAULE Models MX–7–420 and MXT–7–420 Airplanes and Models M–7–235 and M–7–235A Airplanes Modified in Accordance With Maule Supplemental Type Certificate (STC) SA2661SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that

applies to all MAULE Models MX–7–420 and MXT–7–420 airplanes, and all Models M–7–235 and M–7–235A airplanes that are modified in accordance with Maule STC SA2661SO, which incorporates a certain gas turbine engine, certain amphibious floats, and certain propellers. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: January 28, 1998.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all MAULE Models MXT–7–420 and MX–7–420 airplanes and all Models M–7–235 and M–7–235A airplanes that are modified in accordance with STC SA2661SO was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 24, 1997 (62 FR 39789).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 3 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–26–14 Maule: Amendment 39–10257; Docket No. 97–CE–40–AD.

Applicability: The following airplane models, certificated in any category:

—Models MXT–7–420 and MX–7–420 airplanes, all serial numbers; and

—Models M–7–235 and M–7–235A airplanes, all serial numbers, that are modified in accordance with Maule Supplemental Type Certificate (STC) SA2661SO.

Note 1: Maule STC SA2661SO includes the procedures for incorporating the following items on the Maule Models M–7–235 and M–7–235A airplanes:

—An Allison 250–B17C gas turbine engine;

—Edo Model 797–2500 amphibious floats; and

—Hartzell Model HC–B3TF–7A/T10173–11R or HC–B3TF–7A/T10173F–11R propellers.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while in flight is prohibited. Such positioning could lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10257) becomes effective on January 28, 1998.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32990 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–39–AD; Amendment 39–10256; AD 97–26–13]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Models EMB–110P1 and EMB–110P2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB–110P1 and EMB–110P2 airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent increased propeller drag beyond the certificated limits caused by the power levers being positioned below the flight idle stop while the airplane is in flight, which could result in loss of airplane control or engine overspeed with consequent loss of engine power.

EFFECTIVE DATE: January 28, 1998.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–39–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to EMBRAER Models EMB–110P1 and EMB–110P2 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 24, 1997 (62 FR 39791).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may result in increased propeller drag beyond the certificated limits.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and would assure that all owners/operators

of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 54 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–26–13 Empresa Brasileira De Aeronautica S.A.: Amendment 39–10256; Docket No. 97–CE–39–AD.

Applicability: Models EMB–110P1 and EMB–110P2 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent increased propeller drag beyond the certificated limits caused by the power levers being positioned below the flight idle stop while the airplane is in flight, which could result in loss of airplane control or engine overspeed with consequent loss of engine power, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

"Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may result in increased propeller drag beyond the certificated limits."

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10256) becomes effective on January 26, 1998.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32995 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–97–3057]

RIN 2105–AC67

Computer Reservations System Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is adopting a rule which amends its rules governing airline computer reservations systems (CRSs) (14 CFR part 255) by changing their expiration date from December 31, 1997, to March 31, 1999. This amendment will keep the rules from terminating on December 31, 1997, and will thereby cause those rules to remain in effect while the Department carries out its reexamination of the need for CRS regulations. The Department believes that the current rules should be maintained during that reexamination because they appear to be necessary for promoting airline competition and helping to ensure that consumers and travel agents can obtain complete and accurate information on airline services.

DATES: This rule is effective on December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: When the Department adopted its rules governing CRS operations, 14 CFR part 255, in 1992, it included a sunset date for the rules to ensure that the need for the rules and their effectiveness would be reexamined within several years. The sunset date is December 31, 1997. 14 CFR 255.12. We have begun the process of reexamining the rules but cannot complete that task by the rules' current sunset date. We therefore proposed to change the sunset date to March 31, 1999. 62 FR 59313, November 3, 1997. We gave interested persons an opportunity to comment on our proposal, but no one except America West Airlines submitted comments. America West supports the proposal. We have determined to adopt our proposed rule.

Background

As we explained in the notice of proposed rulemaking, in our last major CRS rulemaking, and in recent CRS proceedings, CRS regulations are necessary to protect airline competition and ensure that consumers can obtain accurate and complete information on airline services. *See, e.g.*, 57 FR 43780, 43783–43787, September 22, 1992. CRSs have become essential for the marketing of airline services, and market forces do not discipline the price and quality of service offered airlines by the systems. Furthermore, the systems operating in the United States are each entirely or predominantly owned by one or more airlines or airline affiliates. Without regulations, a system's owners could use it to unreasonably prejudice the competitive position of other airlines or to provide misleading or inaccurate information to travel agents and their customers. 62 FR 59315, November 3, 1997.

When we last reexamined the CRS rules, we readopted them with changes designed to promote airline and CRS competition. 57 FR 43780, September 22, 1992. Our rules included a sunset date, December 31, 1997, to ensure that we would reexamine them after several years. 14 CFR 255.12; 57 FR at 43829–43830, September 22, 1992.

We have begun the process of reexamining our rules by publishing an advance notice of proposed rulemaking asking interested persons to comment on whether we should readopt the rules and, if so, whether changes are needed. 62 FR 47606, September 10, 1997. At the request of some parties, we gave the parties more time for submitting their comments and reply comments on the advance notice. 62 FR at 58700, October 30, 1997. We later invited interested persons to comment on a rulemaking petition filed by America West Airlines in their comments on our advance notice. 62 FR 60195, November 7, 1997.

Our Proposed Extension of the Current Rules

We obviously cannot complete the rulemaking proceeding for the reexamination of our rules by December 31, 1997, the current sunset date set forth in our rules. We therefore proposed to change the rules' sunset date to March 31, 1999. The proposed amendment would keep the current rules in force while we conducted our overall reexamination of the rules.

We reasoned that a temporary extension of the current rules would preserve the status quo while we determine whether our existing rules should be readopted. As we noted, the systems, airlines, and travel agencies have been operating with the expectation that each system will comply with the rules. They would be unduly burdened if the rules expired and were later reinstated by us, since they could have changed their method of operations in the meantime. 62 FR at 59315, November 3, 1997.

We also tentatively determined that a short-term continuation of the current rules was necessary to protect airline competition and consumers against unreasonable practices. The findings made in our last major CRS rulemaking on the need for CRS rules still appeared to be valid. Those findings indicated that the rules should be maintained to protect airline competition and consumers against the injuries that could otherwise occur.

We further found that an extension of the rules was unlikely to impose significant costs on the systems and their owners, since they had already adjusted their operations to comply with the rules and since the rules did not impose costly burdens of a continuing nature on the systems. 62 FR 59316, November 3, 1997.

Finally, we suggested that our obligation under section 1102(b) of the Federal Aviation Act, recodified as 49 U.S.C. 40105(b), to act consistently with the United States' obligations under treaties and bilateral air services agreements provided an additional ground for maintaining our current rules during our reexamination of their need and effectiveness. 62 FR 59316, November 3, 1997.

Due to the need to make the proposed amendment effective by the end of 1997, we shortened the comment period to fifteen days. As we noted, however, the advance notice of proposed rulemaking for the reexamination of the CRS rules had stated that we intended to propose an extension of the current rules. 62 FR at 59314, November 3, 1997.

Comments

America West was the only party that filed comments on our proposal to change the rules' sunset date. America West agrees with our tentative findings in the notice of proposed rulemaking that the systems have market power that requires continuing regulation and the findings made in our parity clause rulemaking and in our last major CRS rulemaking. America West further cites the complaints made by it in its recent petition for a rulemaking on CRS booking fee practices and travel agency transactions, Docket OST–97–3014, and asks that we act promptly on that petition.

Decision

We will amend the rules' sunset date as proposed by our notice of proposed rulemaking. America West supports our proposal, and no one objected to it. The analysis underlying that proposal is consistent with the findings made by us in other recent rulemakings on CRS issues, as stated in our notice and America West's comments. We will, of course, review our past findings on the need for continued CRS regulation as part of our overall reexamination of the CRS rules.

We recognize America West's interest in prompt action on its rulemaking petition, but we plan to address its petition when we review the comments and reply comments being filed in the proceeding for reexamining all of the CRS rules. We have already asked parties to include their responses to America West's petition in their comments on our advance notice of proposed rulemaking. 62 FR 60195, November 7, 1997.

Effective Date

We have determined for good cause to make this amendment effective on December 31, 1997, rather than thirty days after publication as required by the Administrative Procedure Act, 5 U.S.C. 553(d), except for good cause shown. In order to maintain the current rules in effect on a continuing basis, we must make this amendment effective by December 31, 1997. Since the amendment preserves the status quo, it will not require the systems, airlines, and travel agencies to change their operating methods. As a result, making the amendment effective less than thirty days after publication will not burden anyone.

Regulatory Process Matters

Regulatory Assessment

This rule is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. Executive Order 12866 requires each executive agency to prepare an assessment of costs and benefits for each significant rule under section 6(a)(3) of that order. The rule is also not significant under the

regulatory policies and procedures of the Department of Transportation, 44 FR 11034, February 26, 1979.

In our notice of proposed rulemaking we tentatively determined that maintaining the current rules should impose no significant costs on the CRSs. The systems have done the work necessary to comply with the rules' requirements on displays and functionality. Continuing to operate in compliance with the rules would not impose a substantial burden on the systems. Maintaining the rules would benefit airlines using CRSs, since otherwise they could be subjected to unreasonable terms for participation, and would benefit consumers, who otherwise might obtain incomplete or inaccurate information on airline services.

We also noted that our notice of proposed rulemaking in our last major rulemaking included a tentative regulatory impact statement whose analysis we made final in adopting the rules. In proposing to change the rules' sunset date, we stated our belief that the analysis remained applicable to that proposal and that no new regulatory impact statement therefore seemed necessary. We further stated our willingness to consider any comments on that analysis before making our proposal final.

As indicated, no one filed any comments. We will therefore base this rule on the analysis used in our last major CRS rulemaking, as discussed in our notice of proposed rulemaking. We will, of course, undertake a new regulatory assessment as part of our review of the existing rules, if we determine that rules remain necessary.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies.

Our notice of proposed rulemaking set forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposed rule. We also pointed out that keeping the current rules in force would not change the existing regulation of small businesses. In addition, we presented a regulatory flexibility analysis on the impact of the rules in our last major CRS rulemaking. That analysis appeared to be valid for our proposed amendment of the rules' sunset date. We therefore adopted that analysis as our tentative regulatory flexibility statement and stated that we would consider any comments submitted on that analysis in this proceeding.

We noted that the continuation of our existing CRS rules will primarily affect two types of small entities, smaller airlines and travel agencies. To the extent that the rules enable airlines to operate more efficiently and reduce their costs, changing the sunset date of the CRS rules would also affect all small entities that purchase airline tickets, since airline fares may be somewhat lower than they would otherwise be.

We reasoned that the rules would benefit smaller airlines without a CRS ownership affiliation, by protecting them from certain potential system practices that could injure their ability to operate profitably and compete successfully. If there were no rules, the systems' airline owners could use them to prejudice the competitive position of smaller airlines. The rules protect smaller airlines, for example, by prohibiting display bias and discriminatory fees for services provided airlines. The rules also impose no significant costs on smaller airlines.

The CRS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. Among other things, the rules give travel agencies the right to use third-party hardware and software and prohibit display bias.

No one filed comments on our Regulatory Flexibility Act analysis. We will adopt the analysis set forth in the notice of proposed rulemaking.

The Regulatory Flexibility Act also requires each agency to periodically review rules which have a significant economic impact upon a substantial number of small entities. 5 U.S.C. 610. Our rulemaking reexamining the need for the CRS rules and their effectiveness will constitute the required review of those rules. Our reexamination of the rules will include a Regulatory Flexibility Act analysis if we propose new CRS rules.

Our rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

The Department certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

This rule will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that the rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR part 255, Carrier-owned Computer Reservations Systems, as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 is revised to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

§ 255.12 Termination.

Unless extended, these rules on carrier-owned computer reservation systems shall terminate on March 31, 1999.

Issued in Washington, D.C. on December 11, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–32897 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 95N–0245 and 94P–0110]

RIN 0910–AA59

Food Labeling; Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements; Compliance Policy Guide, Revocation; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of September 23, 1997 (62 FR 49826). The final rule amended the food labeling regulations to establish requirements for the identification of dietary supplements and for their nutrition labeling and ingredient labeling in response to the Dietary Supplement Health and Education Act of 1994 (the DSHEA). The document was published with several inadvertent editorial errors. This document corrects those errors.

DATES: The regulation is effective March 23, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5587.

In FR Doc. No. 97–24739, appearing on page 49826 in the **Federal Register** of Tuesday, September 23, 1997, the following corrections are made:

1. On page 49829, in the first column, in the last sentence of the first paragraph, add "§ 101.36(b)(2)." after the word "modifying".

2. On page 49833, in the first column, in the third paragraph, in the second line from the bottom, "or" is corrected to read "for".

3. On page 49840, in the third column, in the first full paragraph, in the eleventh line, add "514" after "U.S.".

§ 101.12 [Corrected]

4. On page 49848, § 101.12 *Reference amounts customarily consumed per eating occasion* is corrected in paragraph (b), Table 2, under the subheading "Miscellaneous category", by adding seven asterisks above the entry for Dietary supplements.

Dated: December 9, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32806 Filed 12–17–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA95

Methylene Chloride; Partial Stay

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; partial stay of start-up dates for compliance.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has received a motion for reconsideration of certain provisions of its standard regulating occupational exposure to methylene chloride, 62 FR 1494 (Jan. 10, 1997). The motion, filed jointly by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW; the Halogenated Solvents Industry Alliance, Inc., and others, requests, among other things, extensions of the current start-up dates for installation of engineering controls and use of respiratory protection for certain employers. It also requests an interim stay of those compliance dates pending OSHA's ruling on the motion for reconsideration.

OSHA has preliminarily evaluated the motion for reconsideration and, based on that evaluation, finds good cause to grant in part the movants' request for an interim stay of the start-up dates. Accordingly, for those employers subject to the motion who would otherwise need to use respiratory protection or install engineering controls on or before April 10, 1998, OSHA is hereby delaying until August 31, 1998 the requirement to use respiratory protection to achieve the 8-hour TWA PEL, and to December 10, 1998 the requirement to achieve the 8-hour TWA PEL and the STEL through engineering controls.

DATES: The effective date of this partial stay is December 18, 1997. Under the stay, the start-up date for certain employers to use respiratory protection to achieve the 8-hour TWA PEL is August 31, 1998, and the start-up date for certain employers to install engineering controls is December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA Office of Public Affairs, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA published a new methylene chloride (MC) standard on January 10, 1997 (62 FR 1494). The standard establishes an 8-hour time-weighted-average permissible exposure limit (8-hour TWA PEL) for MC of 25 per million (ppm). It also sets a short term exposure limit (STEL) of 125 ppm averaged over a 15 minute period. Employers must achieve the 8-hour TWA PEL and the STEL, to the extent feasible, by engineering and work practice controls. If such controls are unable to achieve the exposure limits, and during the time they are being implemented, employers must use respirators to protect employees against excessive MC exposure.

The methylene chloride standard establishes different start-up dates for employers in different size categories. It requires compliance with the engineering control requirement by April 10, 2000 for employers with fewer than 20 employees; April 10, 1999 for polyurethane foam manufacturers with 20 to 99 employees; and April 10, 1998 for all other employers. As originally published, compliance with the requirement for respiratory protection was required by April 10, 1998 for employers with fewer than 20 employees; January 5, 1998 for polyurethane foam manufacturers with 20 to 99 employees; and October 7, 1997 for all other employers. OSHA subsequently extended certain start-up dates, including the requirement for all other employers to use respiratory protection, to December 21, 1997. (62 FR 54382, Oct. 20, 1997).

On November 24, 1997, OSHA received a joint motion for reconsideration of certain aspects of the standard from the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW; the Halogenated Solvents Industry Alliance, Inc.; Benco Sales, Inc.; Brock Woodcraft; Masters Magic Products, Inc.; Bassco Foam, Inc; and Tupelo Foam Sales, Inc. Among other things, the movants ask that the compliance dates for installation of engineering controls and use of respiratory protection to achieve the 8-hour TWA PEL be extended for employers who use methylene chloride in certain specific applications. Those applications are polyurethane foam

manufacturing; foam fabrication; furniture refinishing; general aviation aircraft stripping; formulation of products containing methylene chloride; boat building and repair; recreational vehicle manufacture; van conversion; upholstery; and use of methylene chloride in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing.

The motion for reconsideration requests that the standard's current final engineering control start-up date of April 10, 2000, which is now limited to employers with fewer than 20 employees, also apply to employers in the specified application groups with 20–49 employees and foam fabricators with 20–149 employees. According to the parties, employers in these size categories, like those with fewer than 20 employees, have limited resources with which to develop and implement engineering controls and will be able to use those resources more efficiently if given sufficient time to develop and install effective controls and to take advantage of compliance assistance that OSHA plans to offer. The motion requests shorter extensions of the engineering control dates for larger employers in these application groups. The parties further request that respirator use to achieve the 8-hour TWA PEL not be required before the engineering control start-up dates for the employers covered by the motion. The parties assert that it would better protect workers to enable these employers to concentrate their resources on implementation of effective engineering controls rather than divert part of those resources to interim respiratory protection that would no longer be needed once full compliance with the 8-hour TWA PEL and STEL is achieved by engineering controls. Unlike for most substances, inexpensive respirators do not protect against MC exposures. Thus, the extensions of start-up dates the parties seek are designed to allow employers to allocate their resources effectively in developing permanent engineering solutions that will reduce worker MC exposures to below the 8-hour TWA PEL and STEL.

OSHA generally agrees that worker protection against MC exposure will best be achieved if employers develop and install effective engineering controls as soon as practicable. The agency recognizes that employers require a reasonable amount of time to develop and install such controls. OSHA's preliminary evaluation of the motion for reconsideration indicates that the parties have provided good cause for the extensions they seek. However, the agency intends to further evaluate the motion and to ask for public comment on it.

In their motion, the parties ask that OSHA temporarily stay the start-up dates for which they request extensions until OSHA takes final action on the motion. OSHA finds good cause to grant in part the movants' request for an interim stay in order to avoid the need for employers to meet start-up dates that would no longer apply if the motion is granted. At present, certain start-up dates that would be extended if the motion is granted take effect on or before April 10, 1998. These include: December 21, 1997 for employers with 20 or more employees (except polyurethane foam manufacturers with 20–99 employees) to use respiratory protection to achieve the 8-hour TWA PEL; January 5, 1998 for polyurethane foam manufacturers with 20–99 employees to use respiratory protection to achieve the 8-hour TWA PEL; April 10, 1999 for employers with fewer than 20 employees to use respiratory protection to achieve the 8-hour TWA PEL; and April 10, 1998 for employers with 20 or more employees (except polyurethane foam manufacturers with 20–99 employees) to install engineering controls to achieve the 8-hour TWA PEL and STEL. The only start-up dates scheduled to take effect on or after April 10, 1998 are: April 10, 1999 for polyurethane foam manufacturers with 20–99 employees to use engineering controls to achieve the 8-hour TWA PEL and STEL; and April 10, 2000 for employers with fewer than 20 employees to use engineering controls to achieve the 8-hour TWA PEL and STEL.

OSHA recognizes that employers should receive a reasonable amount of notice before the start-up dates for installation of engineering controls and use of respirators take effect. Accordingly, to assure that employers who would receive extensions of the start-up dates if the motion is granted have sufficient notice, OSHA concludes it is appropriate to extend the start-up dates that would otherwise take effect on or before April 10, 1998. Accordingly, the agency is (1) extending the start-up date for all employers subject to the motion to use respiratory protection to achieve the 8-hour TWA PEL to August 31, 1998; and (2) extending the start-up for employers with 20 or more employees (except polyurethane foam manufacturers with 20–99 employees) to install engineering controls to achieve the 8-hour TWA PEL and STEL to December 10, 1998. To further assure that employers are afforded a reasonable amount of notice of the date by which they must comply with these provisions, OSHA may further extend these start-up dates if a final ruling on the joint motion is not issued sufficiently far in advance of the August 31, 1998 start-up date for use of respiratory protection to achieve the 8-hour TWA PEL that is being established by this partial stay.

The parties request extensions of compliance deadlines only for installation of engineering controls and for use of respiratory protection to meet the 8-hour TWA PEL. As their motion points out, employees exposed to methylene chloride will still receive important protection from other provisions of the standard even if their motion is granted. Thus, during the period covered by this partial stay, employers will, by the start-up dates currently established by the standard be required to achieve the STEL (by either engineering controls or respiratory protection, at their option), implement all feasible work practice controls to reduce methylene chloride exposures, and comply with all other provisions of the MC standard that are not being stayed. Moreover, all employers must achieve the prior limits specified in 29 CFR 1910.1000 Table Z–2 with feasible engineering controls until the new exposure limits take effect.

OSHA further finds that there is good cause to issue this stay without notice and public comment because following such procedures would be impractical, unnecessary or contrary to the public interest in this case.

Authority and Signature: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

List of Subjects in 29 CFR Part 1910

Chemicals, Hazardous Substances, Occupational safety and health.

Signed at Washington, DC this 12th day of December 1997.

Charles N. Jeffress,

Assistant Secretary of Labor.

Part 1910 of title 29 of the Code of Federal Regulations is amended as follows:

PART 1910—[AMENDED]

1. The general authority citation for subpart Z of 29 CFR part 1910 continues to read, in part, as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable; and 29 CFR Part 1911.

* * * * *

2. A note is added after paragraph (o) of § 1910.1052 to read as follows:

§ 1910.1052 Methylene Chloride.

* * * * *

[**Note to paragraph (o):** The requirement of 29 CFR 1910.1052(g)(1) to use respiratory protection whenever an employee's exposure to methylene chloride exceeds or can reasonably be expected to exceed the 8-hour TWA PEL is hereby stayed until August 31, 1998 for employers engaged in polyurethane foam manufacturing; foam fabrication; furniture refinishing; general aviation aircraft stripping; formulation of products containing methylene chloride; boat building and repair; recreational vehicle manufacture; van conversion; upholstery; and use of methylene chloride in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing.

The requirement of 29 CFR 1910.1052(f)(1) to implement engineering controls to achieve the 8-hour TWA PEL and STEL is hereby stayed until December 10, 1998 for employers with more than 100 employees engaged in polyurethane foam manufacturing and for employers with more than 20 employees engaged in foam fabrication; furniture refinishing; general aviation aircraft stripping; formulation of products containing methylene chloride; boat building and repair; recreational vehicle manufacture; van conversion; upholstery; and use of methylene chloride in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing.]

[FR Doc. 97–33027 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI89

Reservists' Education: Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute, the monthly rates of basic educational assistance payable to reservists under the Montgomery GI Bill—Selected Reserve must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Selected Reserve for fiscal year 1998 (October 1, 1997, through September 30, 1998) are changed to show a 2.8% increase in these rates.

DATES: This final rule is effective December 18, 1997. However, the changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs (202) 273–7187.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 10 U.S.C. 16131(b) for fiscal year 1998, the rates of basic educational assistance under the Montgomery GI Bill—Selected Reserve payable to students pursuing a program of education full time, three-quarter time, and half time must be increased by 2.8%, which is the percentage by which the total of the monthly Consumer Price Index-W for July 1, 1996, through June 30, 1997, exceeds the total of the monthly Consumer Price Index-W for July 1, 1995, through June 30, 1996.

10 U.S.C. 16131(b) requires that full-time, three-quarter time, and half-time rates be increased as noted above. In addition, 10 U.S.C. 16131(d) requires that monthly rates payable to reservists in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, there is a 2.8% raise for such training as well.

10 U.S.C. 16131(b) also requires that the Department of Veterans Affairs (VA) pay reservists training less than half time at an appropriately reduced rate. Since payment for less than half-time training became available under the Montgomery GI Bill—Selected Reserve in fiscal year 1990, VA has paid less than half-time students at 25% of the full-time rate. Changes are made consistent with the authority and formula described in this paragraph.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied retroactively from October 1, 1997 in accordance with the applicable statutory provisions discussed above.

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Defense, the Commandant of the Coast Guard, and the Acting Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 17, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

Approved: November 7, 1997.

Al H. Bemis,

Deputy Assistant Secretary for Defense for Reserve Affairs (Manpower and Personnel).

Approved: Novmeber 25, 1997.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out above, 38 CFR part 21, subpart L, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L, continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

2. In 21.7636, paragraphs (a)(1), (a)(2)(i), and (a)(3) are revised to read as follows:

§ 21.7636 Rates of payment.

(a) *Monthly rate of educational assistance.* (1) Except as otherwise provided in this section or in § 21.7639, the monthly rate of educational assistance payable to a reservist is the amount stated in this table:

Period of pursuit of training	Training time			
	Full-time	¾ time	½ time	¼ time
Oct. 1, 1996-Sept. 30, 1997	$203.24	$152.43	$101.62	$50.81
On or after Oct. 1, 1997	208.93	156.70	104.47	52.23

(2) * * *

(i)

Training period	Monthly rate	
	Oct. 1, 1996—Sept. 30, 1997	On or after Oct. 1, 1997
First six months of pursuit of training	$152.43	$156.70
Second six months of pursuit of training	111.78	114.91
Remaining pursuit of training	71.13	73.13

* * * * *

(3) The monthly rate of educational assistance payable to a reservist for pursuit of a cooperative course during the period beginning on October 9, 1996, and ending on September 30, 1997, is $203.24. The monthly rate of educational assistance payable to a reservist for pursuit of a cooperative course on or after October 1, 1997, will be the rate stated in paragraph (a)(1) of this section.

* * * * *

[FR Doc. 97–32988 Filed 12–17–97; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 72, 73, 74, 75, 77, and 78

[FRL–5936–3]

RIN 2060–AF43

Acid Rain Program: Revisions to Permits, Allowance System, Sulfur Dioxide Opt-Ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: Title IV of the Clean Air Act authorizes the Environmental Protection Agency (EPA or the Agency) to establish the Acid Rain Program. The purposes of the Acid Rain Program is to significantly reduce emissions of sulfur dioxides and nitrogen oxides from utility electric generating plants in order to reduce the adverse health and ecological impacts of acidic deposition (or acid rain) resulting from such emissions. On January 11 and March 23, 1993, the Agency promulgated final rules governing permitting, the allowance system, continuous emissions monitoring, excess emissions, and appeal procedures. On October 24, 1997, EPA published final revisions to those rules. This action corrects certain inadvertent, drafting errors in the October 24, 1997 document.

EFFECTIVE DATE: December 18, 1997.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, attorney-advisor, at (202) 564–9151 (U.S. Environmental Protection Agency, 401 M Street, SW, Acid Rain Division (6204J), Washington DC 20460); or the Acid Rain Hotline at (202) 564–9620.

SUPPLEMENTARY INFORMATION: On October 24, 1997 (62 FR 55460 (1997)), EPA promulgated final revisions to the permits, allowance system, sulfur dioxide opt-ins, continuous emission monitoring, excess emissions, and appeal procedures rules. Subsequently, EPA identified certain inadvertent, drafting errors in the October 24, 1997 document. While the errors may cause some confusion, they do not alter the substance of the rule revisions. Today's action corrects those errors.

The October 24, 1997 final rule, EPA revised the procedures for fast-track modifications of Acid Rain permits. In particular, § 72.82(d) was revised to provide State permitting authorities 90 days after the close of the 30-day comment period (or a total of 120 days) for acting on a requested fast-track modification. 62 FR 55485; *see also* 61 FR 68340, 68377 (1996) (proposed rule revisions). The October 24, 1997 preamble erroneously stated that proposed rule revisions (promulgated on December 27, 1996) and the final rule revisions gave State permitting authorities only 60 days after the comment period (or a total of 90 days). Today's action corrects the preamble language to make it consistent with the rule language.

The other corrections made by today's action involve minor corrections to ensure that revised language for certain rule provisions is correctly incorporated into those provisions. For example, the October 24, 1997 document removed certain words in § 78.4(c)(1) and replaced them with new language. In so doing, the October 24, 1997 document failed to state all of the words that are to be removed. This is corrected by today's action.

For the reasons discussed above, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (1993)). For the same reasons, this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. With regard to this action, the Agency thus has no obligations under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, the action is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this document and any other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this document in today's **Federal Register**. This action is not a "major rule" as defined in 5 U.S.C. 804(2).

Dated: December 9, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

Accordingly, for the reasons set out above, the publication on October 24, 1997 of the final rule at 62 FR 55460 is corrected as follows:

1. On page 55470, first column, lines 45–47, the words "a 90-day period (i.e., the 30-day comment period and 60 days after the end of the period)" are removed and replaced by the words "a 120-day period (i.e., the 30-day comment period and 90 days after the end of the period)".

PART 72—[CORRECTED]

§ 72.8 [Corrected]

2. On page 55477, third column, § 72.8(b)(2), line 4, the words "which that the unit" are removed and replaced by the words "which the unit".

PART 77—[CORRECTED]

§ 77.4 [Corrected]

3. On page 55487, second column, amendatory instruction 49, line 4, the words "and removing paragraph (g)(2)(i)(D)" are added after the words "(k)(2)".

PART 78—[CORRECTED]

§ 78.4 [Corrected]

4. On page 55488, second column, amendatory instruction 54, line 11, the word "shown" is added after the words "based on good cause".

[FR Doc. 97–32927 Filed 12–17–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL117–3; FRL–5835–2]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action on the following revisions to the Illinois ozone State Implementation Plan (SIP): Rate-Of-Progress (ROP) plans for the purpose of reducing Volatile Organic Compound (VOC) emissions in the Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Oswego Township in Kendall County, and Aux Sable and Goose Lake Townships in Grundy County) and in the Metro-East St. Louis ozone nonattainment area (Madison, Monroe, and St. Clair Counties) by 15 percent by November 15, 1996, relative to 1990 baseline emissions; contingency plans for the same ozone nonattainment areas for the purpose of achieving an additional 3 percent VOC emission reductions beyond the 15 percent ROP plans; and transportation control measures (TCM) for the Metro-East St. Louis area. Previously, on July 14, 1997, EPA issued a direct final approval of these SIP revisions. On the same day (July 14, 1997), EPA proposed approval and solicited public comment on the SIP revisions. This proposed rule established a 30-day public comment period noting that if adverse comments were received regarding the direct final rule EPA would withdraw the direct final rule and publish an additional final rule to address the public comments. Adverse comments were received during the public comment period, and EPA withdrew the direct final rule on September 3, 1997 (62 FR 46446). This final rule addresses these comments and finalizes the approval of the Chicago and Metro-East area 15 percent and contingency plans, and the Metro-East area TCMs.

DATES: This final rule is effective January 20, 1998.

ADDRESSES: Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office).

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background on Rate-Of-Progress and Contingency Plan Requirements and EPA Review Criteria

On November 15, 1990, Congress enacted amendments to the Clean Air Act (Act); Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(1) of the Act requires States with ozone nonattainment areas classified as moderate and above to submit ROP plans to reduce VOC emissions by 15 percent from 1990 levels by November 15, 1996, accounting for growth in the VOC emissions occurring after 1990. For purposes of these plans, the Act, under sections 182(b)(1) (B) and (D), defines baseline emissions as the total amounts of actual VOC emissions from all anthropogenic sources in the ozone nonattainment areas during the calendar year of the enactment of the revision of the Act (1990), subtracting or factoring out emission reductions achieved by the Federal Motor Vehicle Emissions Control Program (FMVCP) regulations promulgated before January 1, 1990, and by the 1990 gasoline Reid Vapor Pressure (RVP) regulations (55 FR 23666, June 11, 1990).[1] The baseline emissions are also referred to as the "1990 adjusted base year inventories." EPA interprets "calendar year" emissions to consist of typical ozone season weekday emissions, because the applicable ozone National Ambient Air Quality Standard (NAAQS) (0.12 parts per million, one-hour average) is generally exceeded or violated during ozone season weekdays when ozone precursor emissions and meteorological conditions are the most conducive to ozone formation. (See "State Implementation Plans: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," proposed rule (57 FR 13507), **Federal Register**, April 16, 1992 (hereafter referred to as the General Preamble)).

Section 182(b)(1)(D) of the Act places limits on what emission reductions can be claimed by ROP plans. All permanent and enforceable VOC emission reductions occurring after 1990 are creditable with the following exceptions: (1) Those resulting from any emission control measure relating to

[1] The 1990 RVP regulations limit the volatility of gasoline in ozone nonattainment areas during the ozone season. The FMVCP provides vehicle emission limits that automobile manufacturers must meet in designing and building new automobiles.

motor vehicle exhaust and evaporative emissions promulgated by the Administrator by January 1, 1990; (2) those due to RVP regulations promulgated by the Administrator by November 15, 1990, or due to regulations required under section 211(h) of the Act; (3) those due to measures to correct Reasonably Available Control Technology (RACT) regulations as required under section 182(a)(2)(A) of the Act; and (4) those due to measures to correct previously noted problems in an existing vehicle inspection and maintenance (I/M) program as required under section 182(a)(2)(B) of the Act.

Section 172(c)(9) of the Act as implemented by EPA requires States with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve ROP or fails to attain the NAAQS within the time-frames specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revision for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. As provided by these sections of the Act, the contingency measures must take effect without further action by the State or by the EPA Administrator upon failure by the State to meet ROP requirements or attainment of the NAAQS by the required deadline, or other applicable milestones of the Act.

The General Preamble states that the contingency measures, in total, must generally be able to provide for 3 percent reductions from the 1990 baseline emissions. While all contingency measures must be fully adopted rules or measures, States can use the measures in two different ways. A State can choose to implement contingency measures before the November 15, 1996, ROP milestone deadline. Alternatively, a State may decide not to implement a contingency measure until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the contingency measure emission reduction must be achieved within one year following identification of a milestone failure.

The EPA has developed a number of guidelines addressing the review of ROP and contingency plans and addressing such topics as: (1) The relationship of ROP plans to other SIP elements required by the Act; (2) recommended emission reduction levels for various control measures including Federal emission control measures; and (3) emission inventory projection procedures. All relevant guidelines are listed below.

1. *Procedures for Preparing Emissions Projections*, EPA–450/4–91–019, Environmental Protection Agency, July 1991.

2. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed rule (57 FR 13498), **Federal Register**, April 16, 1992.

3. "November 15, 1992, Deliverables for Reasonable Further Progress and Modeling Emission Inventories," memorandum from J. David Mobley, Edwin L. Meyer, and G. T. Helms, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 7, 1992.

4. *Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans*, EPA–452/R–92–005, Environmental Protection Agency, October 1992.

5. "Quantification of Rule Effectiveness Improvements," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 1992.

6. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–002, March 1993.

7. "Correction to 'Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent Rate of Progress Plans'," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 2, 1993.

8. "15 Percent Rate-of-Progress Plans," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 16, 1993.

9. *Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA–452/R–93–007, Environmental Protection Agency, May 1993.

10. "Credit Toward the 15 Percent Rate-of-Progress Reductions from Federal Measures," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, May 6, 1993.

11. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–005, Environmental Protection Agency, June 1993.

12. "Correction Errata to the 15 Percent Rate-of-Progress Plan Guidance Series," memorandum from G. T. Helms, Chief, Ozone and Carbon Monoxide Programs Branch, Environmental Protection Agency, July 28, 1993.

13. "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, August 13, 1993.

14. "Region III Questions on Emission Projections for the 15 Percent Rate-of-Progress Plans," memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, August 17, 1993.

15. "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans," memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, Environmental Protection Agency, August 23, 1993.

16. "Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 10, 1993.

17. "Reclassification of Areas to Nonattainment and 15 Percent Rate-of-Progress Plans," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, September 20, 1993.

18. "Clarification of Guidance for Growth Factors, Projections and Control Strategies for the 15 Percent Rate of Progress Plans," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

19. "Review and Rulemaking on 15 Percent Rate-of-Progress Plans," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, October 6, 1993.

20. "Questions and Answers from the 15 Percent Rate-of-Progress Plan Workshop," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Environmental Protection Agency, October 29, 1993.

21. "Rate-of-Progress Plan Guidance on the 15 Percent Calculations," memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, October 29, 1993.

22. "Clarification of Issues Regarding the Contingency Measures that are due November 15, 1993, for Moderate and Above Ozone Nonattainment Areas," memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Environmental Protection Agency, November 8, 1993.

23. "Credit for 15 percent Rate-of-Progress Plan Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, December 9, 1993.

24. "Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, January 21, 1994.

25. "Guidance on Projection of Nonroad Inventories to Future Years," memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, February 4, 1994.

26. "Discussion at the Division Directors Meeting on June 1 Concerning the 15 Percent and 3 Percent Calculations," memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, June 2, 1994.

27. "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, November 28, 1994.

28. "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, November 29, 1994.

29. "Transmittal of Rule Effectiveness Protocol for 1996 Demonstrations," memorandum from Susan E. Bromm, Director, Chemical, Commercial Services and Municipal Division, Office of Compliance, Environmental Protection Agency, December 22, 1994.

30. "Future Nonroad Emission Reduction Credits for Locomotives," memorandum from Philip A. Lorang, Director, Emission Planning and Strategies Division, Office of Air and Radiation, Environmental Protection Agency, January 3, 1995.

31. "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 22, 1995.

32. "Fifteen Percent Rate-of-Progress Plans—Additional Guidance," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, May 5, 1995.

33. "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, June 22, 1995.

34. "Update on the credit for the 15 percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule," memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, March 7, 1996.

II. Rate-Of-Progress and Contingency Plan Submittals for the Chicago and Metro-East St. Louis Ozone Nonattainment Areas

A. Administrative Actions/ Requirements

The Act requires States to observe certain procedural requirements in developing SIPs and SIP revisions for submittal to the EPA. Sections 110(a)(2) and 110(l) of the Act provide that each SIP submitted by a State must be adopted by the State after reasonable notice and public hearing.

The State of Illinois held a public hearing on October 15, 1993, to hear and collect public comments on the 15 percent ROP and 3 percent contingency plans for both the Chicago and the Metro-East St. Louis ozone nonattainment areas. Subsequently, the plans were adopted by the State and submitted to EPA on November 15, 1993. The submittals included records of public comments, hearing records, and responses to public comments. The plans were supplemented with additional submittals to the EPA on February 18, 1994, November 22, 1994, January 31, 1995, and May 23, 1995. These subsequent submittals contain supplemental documentation on the State's emission reduction estimates for various source categories. At EPA's request, the Illinois Environmental Protection Agency (IEPA) made additional submittals of technical support information and updated emission estimates on May 9, 1996, and July 22, 1996. All of the above submittals are considered to be part of the record of decision for this rulemaking. All submittals are available for review at the EPA Region 5 offices noted above.

On January 21, 1994, by letter, the EPA found the November 1993, submittals to be incomplete due to an incomplete set of State emission control regulations. Subsequently, the State adopted and submitted all required regulations. EPA found the ROP and contingency plan submittals to be complete, by letter, on June 15, 1995.

B. Accurate Emission Inventories

Sections 172(c)(3) and 182(b)(1) of the Act require nonattainment plans to include and be based on comprehensive, accurate, and current inventories of actual emissions from all sources of relevant pollutants in the nonattainment areas. On March 14, 1995 (60 FR 13631), EPA approved base year (1990) VOC emission inventories for the Chicago and Metro-East St. Louis ozone nonattainment areas (the inventories also included major source emissions from surrounding areas). The VOC emissions from these emission inventories establish the baseline for Illinois' ROP and contingency plans.

It should be noted throughout the discussions that follow that volatile organic emissions are referred to as VOC emissions. In the Illinois ROP and contingency plans (as well as in the base year emission inventory documentation), the State uses the term "Volatile Organic Material (VOM)" rather than VOC. The State's definition of VOM is equivalent to EPA's definition of VOC. The two terms are interchangeable when discussing volatile organic emissions. For consistency with the Act and with EPA policy, the term VOC is used in this rulemaking. VOC emissions referred to in today's action are identical to VOM emissions referred to in Illinois' ROP and contingency measure plans.

C. Required VOC Emission Reductions

Following EPA ROP guidelines (primarily guidance contained in the *Guidance on the Adjusted Base Year*

Emissions Inventory and the 1996 Target of the 15 Percent Rate of Progress Plans, EPA–452/R–92–005, October 1992, and in the *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*, EPA–452/R–93–002, March 1993), the IEPA has determined that creditable VOC reductions (as opposed to noncreditable emission reductions defined in section 182(b)(1)(D) of the Act) of 249.98 tons per day (TPD) for the Chicago ozone nonattainment area, and 26.66 TPD for the Metro-East St. Louis ozone nonattainment area are needed to achieve the 15% ROP requirement. To meet the 3 percent contingency requirement, the IEPA determined that the contingency measures must also be able to achieve a 31.92 TPD VOC emission reduction in the Chicago ozone nonattainment area and 4.96 TPD VOC emission reduction in the Metro-East St. Louis ozone nonattainment area. The IEPA has fully documented the calculation of these emission reduction requirements and has shown that EPA recommended procedures were followed. This documentation includes identification of emission/source growth factors and noncreditable emission reductions from emission controls referenced in section 182(b)(1)(D) of the Act. Tables 1 and 2 summarize the calculation of emission reductions needed by 1996.

TABLE 1.— EMISSION REDUCTIONS REQUIRED BY 1996 FOR THE CHICAGO AREA

Calculation of reduction needs by 1996	Tons VOC/day
1990 Chicago Area Total VOC Emissions	1,363.40
1990 ROP Emissions (Anthropogenic only)	1,216.56
1990–1996 Noncreditable Reductions (Reductions from 1990 RVP, Pre-1990 FMVCP, and RACT Fix-up Regulations)	199.93
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	1,064.05
15 Percent of Adjusted Base Year Emissions	159.61
Total Required Emission Reductions by 1996 (15 Percent of Adjusted Base Year Emissions plus Noncreditable Reductions)	359.54
1996 Target Level (1990 ROP Emissions minus Total Required Emission Reductions by 1996)	857.02
1996 Projected Emissions (1990 Adjusted Base Year Emissions plus Growth Factors)	1,107.00
Reduction Needs By 1996 To Achieve 15 Percent Net Of Growth (1996 Projected Emissions plus 1996 Target Level)	249.98
Contingency Measure Requirement (3% of Adjusted Base Year Emissions)	31.92
Total Emission Reductions Required	281.90

TABLE 2.—EMISSION REDUCTIONS REQUIRED BY 1996 FOR THE METRO-EAST ST. LOUIS AREA

Calculation of reduction needs by 1996	Tons VOC/day
1990 Metro-East Area Total VOC Emissions	234.79
1990 ROP Emissions (Anthropogenic only)	174.85
1990–1996 Noncreditable Reductions (1990 RVP, Pre-1990 FMVCP, and RACT Fix-Up Reductions)	10.75
1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions)	165.24
15 Percent of Adjusted Base Year Emissions	24.79
Total Required Emission Reductions by 1996 (15 Percent of Adjusted Base Year Emissions plus Noncreditable Reductions)	35.54
1996 Target Level (1990 ROP Emissions minus Total Required Emission Reductions by 1996)	139.11
1996 Projected Emissions (1990 Adjusted Base Year Emissions plus Growth Factors)	165.77
Reduction Needs By 1996 To Achieve 15 Percent Net Of Growth (1996 Projected Emissions minus 1996 Target Level)	26.66
Contingency Measure Requirement (3% of Adjusted Base Year Emissions)	4.96
Total Emission Reductions Required	31.62

D. Control Measures

Tables 3 and 4 below summarize the creditable emission reductions from the 15% ROP and 3% contingency plan control measures. These tables indicate the emission reduction credit the State has claimed for each control measure, and the actual emission reduction credit which EPA finds acceptable. Unless otherwise noted, the emission control measures apply to both the Chicago and Metro-East St. Louis ozone nonattainment areas. Table 5 indicates the date of EPA approval of State adopted control measures, date of EPA promulgation of Federal control measures, or an identification of the source for taking credit for a control measure, where EPA promulgation has not occurred. Following the tables is a discussion describing each of the emission control measures selected to help achieve ROP and contingency measure plan requirements, and EPA's review of the emission reduction claimed for each control measure. (Note that the IEPA, in describing the selected emission control measures and emission reduction impacts, does not distinguish between ROP plan measures and contingency plan measures).

Emission reductions not needed to achieve 15 percent ROP and 3 percent contingency requirements in the Chicago and Metro-East St. Louis ozone nonattainment areas, respectively, will be applied toward achieving the post-1996 ROP requirement, leading to attainment of the ozone air quality standard. (Post-1996 ROP plans are required to be submitted under section 182(c)(2)(B) of the Act).

Certain federal measures relied on by Illinois to meet the 15 percent ROP requirement were not implemented by 1996: non-road small engine standards, Toxic Substance Disposal Facility (TSDF) RACT Phase II Controls, Architectural and Industrial Maintenance (AIM) coating, traffic coating, and consumer and commercial products solvent control. Many of the 15 percent ROP SIPs originally submitted to EPA have relied on some of these federal measures as well as reductions from enhanced I/M programs which were not implemented by 1996. Consequently, it is no longer possible for these States to achieve the portion of the 15 percent reductions attributed to these programs by November 15, 1996. Under these circumstances, disapproval of the 15 percent SIPs would serve no purpose. Therefore, in these circumstances, EPA will approve a 15 percent ROP plan SIP if the emission reductions under the plan will achieve the 15 percent level as soon after November 15, 1996, as practicable. To make this "as soon as practicable" determination, the EPA must determine that the 15 percent ROP plan contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15 percent level is achieved. The EPA does not believe that measures meaningfully accelerate the 15 percent date if they provide only an insignificant amount of reductions. However, as a minimum requirement, EPA will approve a 15 percent SIP only if it achieves the reductions from the measures needed to reach the 15 percent level by no later than November 15, 1999.

The federal rules for federal non-road small engine standards and TSDF RACT Phase II have been promulgated and emission reductions will occur before November 15, 1999. Proposed rules have been published for AIM coatings, traffic coatings, and consumer and commercial products, and EPA expects final rules to be promulgated in 1998, with compliance dates for these rules to occur no later than November 15, 1999. EPA has reviewed other VOC SIP measures that are at least theoretically available to Illinois, and has concluded that implementation of any such measure that might be appropriate would not accelerate the date of achieving the 15 percent reductions. Therefore, EPA finds that Illinois' ROP plans for the Chicago and Metro-East ozone nonattainment areas achieve 15 percent emission reduction as soon as practicable.

TABLE 3.—CONTROL MEASURES FOR THE CHICAGO OZONE NONATTAINMENT AREA

Control Measure	VOC reduction state claimed tons/day	VOC reduction credit accepted tons/day
Mobile Source Measures:		
Enhanced Vehicle I/M Program	19.60	See below
Conventional TCMs	2.00	2.00
National Energy Policy Act of 1992	0.20	0.20
Post-1994 Tier 1 Vehicle Emission Rates	2.40	2.40
1995 Reformulated Gasoline	112.79	112.79
1992 Vehicle I/M Program Amendments	8.40	8.40
Federal Detergent Additive Gasoline	2.20	2.20
Federal Non-Road Small Engine Standards	4.37	4.37
Subtotal	151.96	132.36
Industrial Source Measures:		
RACT Geographic Expansion	3.43	3.43
Expanded RACT—Lowered Source Size Cutoffs (25 Tons Per Year)	2.78	2.78
New Control Technique Guidelines (CTG):		
Batch Processes	12.60	3.21
Industrial Waste Treatment Facilities (IWTF)	0.14	0.14
Volatile Organic Liquid (VOL) Storage	2.18	2.18
Plastic Parts Coating	0.28	0.28
Lithographic Printing	4.06	4.06
Automobile Refinishing	16.30	16.30
Coke Oven National Emission Standard for Hazardous Air Pollutants (NESHAP)/Maximum Available Control Technology (MACT)	6.93	6.93
SOCMI NESHAP	1.33	1.33
TSDF RACT Phase I and II Controls	2.08	2.08
Marine Vessel Loading	1.40	1.40
Tightening of RACT Standards and Source Size Cutoffs	12.05	12.05
Plant Shut-Downs	31.60	31.60
Improved Rule Effectiveness from Clean Air Act Permit Program (CAAPP)	26.30	26.30
Subtotal	123.46	114.07
Area Source Measures:		
Stage II Service Station Vapor Recovery	23.67	23.67
AIM Coating	13.28	10.60
Traffic and Maintenance Coatings	3.73	3.73
Underground Gasoline Storage Tank Breathing Control	4.87	4.87
Consumer and Commercial Products Solvent Control	8.10	8.10
Subtotal	53.65	50.97
Total	329.07	297.40

TABLE 4.—CONTROL MEASURES FOR THE METRO-EAST ST. LOUIS OZONE NONATTAINMENT AREA

Control measure	VOC reduction credit requested (TPD)	VOC reduction credit approved (TPD)
Mobile Source Measures:		
Enhanced Vehicle I/M Program	4.80	See below
Conventional TCMs	0.20	0.20

TABLE 4.—CONTROL MEASURES FOR THE METRO-EAST ST. LOUIS OZONE NONATTAINMENT AREA—Continued

Control measure	VOC reduction credit requested (TPD)	VOC reduction credit approved (TPD)
Post–1994 Tier 1 Vehicle Emission Rates	0.19	0.19
7.2/8.2 psi RVP Conventional Gasoline	8.55	8.55
1992 Vehicle I/M Program Amendments	0.20	0.20
Federal Detergent Additive Gasoline	0.20	0.20
Federal Non-Road Small Engine Standards	0.42	0.42
Subtotal	14.56	9.76
Industrial Source Measures:		
New CTGs or Available CTGs:		
Batch Processes	0.36	0.36
IWTF	0.10	0.10
Automobile Refinishing	1.20	1.20
Coke Oven NESHAP/MACT	0.10	0.10
SOCMI NESHAP	0.26	0.26
TSDF RACT Phase I and II Controls	0.06	0.06
Marine Vessel Loading	11.82	11.82
Tightening of RACT Standards and Source Size Cutoffs	0.39	0.39
Plant Shut-Downs	1.44	1.44
Improved Rule Effectiveness from CAAPP	9.50	9.50
Hazardous Air Pollutant (HAP) Standards Early Reduction Program	0.74	0.74
Subtotal	25.97	25.97
Area Source Measures:		
AIM Coating	0.94	0.75
Traffic and Maintenance Coating	0.62	0.62
Underground Gasoline Storage Tank Breathing Control	0.44	0.44
Consumer and Commercial Product Solvent Reduction	0.58	0.58
Subtotal	2.58	2.39
Total	43.11	38.12

TABLE 5.—FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES

Control measure	Date of EPA approval
Chicago Area TCMs	September 21, 1995 (60 FR 4886).
Metro-East Area TCMs	Date of EPA approval action is date of today's **Federal Register**. See discussion below.
1992 National Energy Policy Act	Federal Regulation March 14, 1996 (61 FR 10621).
Post-1994 Tier 1 Vehicle Emission Rates	Federal Regulation June 5, 1991 (56 FR 25724).
1995 Reformulated Gasoline	Federal Regulation February 16, 1994 (59 FR 7716).
Metro-East area 7.2 psi RVP Conventional Gasoline Rule.	March 23, 1995 (60 FR 5318).
1992 Vehicle I/M Program Amendments	April 9, 1996 (61 FR 15715).
Federal Gasoline Detergent Additive	Federal Regulation November 1, 1994 (59 FR 54706).
Federal Non-Road Small Engine Standards	Federal Regulation August 2, 1995 (60 FR 34582) See "Guidance on Projection of Nonroad Inventories to Future Years," February 4, 1994, and "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," November 28, 1994.
Chicago Area RACT Geographic Expansion	September 9, 1994 (59 FR 46562).
Chicago Area Expanded RACT—Lowered Size Cutoffs (25 Tons VOC Per Year).	October 21, 1996 (61 FR 54556).
Batch Processes	April 2, 1996 (61 FR 14484).
IWTF	Federal Regulation April 22, 1994 (59 FR 19468).
VOL Storage Tanks	August 8, 1996 (61 FR 41338).
Plastic Parts Coating	October 26, 1995 (60 FR 54807).
Lithographic Printing	November 8, 1995 (60 FR 56238).
Automobile Refinishing	July 25, 1996 (61 FR 38577).
Coke Oven NESHAP	Federal Regulation October 27, 1993 (58 FR 57911).
SOCMI NESHAP	Federal Regulation April 22, 1994 (59 FR 19454).
TSDF RACT (RCRA) Phase I and II	Federal Regulation Phase I, June 21, 1990 (55 FR 25454) Phase II, December 8, 1994 (59 FR 62896) See "Credit Toward the 15 Percent Rate-Of-Progress Reductions from Federal Measures," May 6, 1993.
Marine Vessel Loading Control	April 3, 1995 (60 FR 16801).
Tightened RACT Coating Standards	February 13, 1996 (61 FR 5511).
Tightened RACT SOCMI Air Oxidation	September 27, 1995 (60 FR 49770).
Plant Shut-downs	See discussion below.
Improved Rule Effectiveness from CAAPP	March 7, 1995 (60 FR 12478).
HAP Standards Early Reduction Program	Federal Regulation November 21, 1994 (59 FR 59924).
Underground Gasoline Storage Tank Breathing Controls.	March 23, 1995 (60 FR 15233).

TABLE 5.—FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES—Continued

Control measure	Date of EPA approval
Stage II Gasoline Vapor Recovery	January 12, 1993 (58 FR 3841).
AIM Coatings	Creditable toward ROP. See "Update on the Credit for the 15 Percent ROP Plans for Reductions from the AIM Coatings Rule," March 7, 1996.
Traffic and Maintenance Coatings	Creditable toward ROP. See "Update on the Credit for the 15 Percent ROP Plans for Reductions from the AIM Coatings Rule," March 7, 1996.
Consumer and Commercial Products Solvent Control.	Creditable toward ROP. See "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," June 22, 1995.

1. Mobile Sources

a. Enhanced Vehicle I/M. The Illinois 15 percent ROP plan submittal claims emission reduction credit for enhanced vehicle I/M for the Chicago and Metro-East St. Louis areas. The State has signed a contract for the construction and implementation of enhanced I/M, which provides that enhanced I/M testing will begin in January 1999. Based on EPA's review of the State's plan submittal, the State has adopted sufficient measures, in conjunction with credit from certain Federal measures, to achieve 15 percent ROP and 3 percent contingency requirements without enhanced I/M. Enhanced I/M will play a significant role in achieving post-1996 9 percent ROP requirements, and ultimately, help bring the Chicago and Metro-East St. Louis ozone nonattainment areas into attainment of the public health based ozone air quality standards. The amount of emission reduction credit which can be taken for enhanced I/M will be determined when Illinois submits and EPA takes action on the State's 9 percent ROP plan.

b. Conventional TCMs. The Metropolitan Planning Organizations (MPO) for the Chicago and Metro-East St. Louis areas (Chicago Area Transportation Study and East-West Gateway Coordinating Council, respectively) are administering a number of TCM projects to both reduce vehicle miles traveled (VMT) and the amount of VOC emissions per VMT. The projects have been programmed and funded through the areas' Transportation Improvement Programs (TIP) under the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ).[2] Illinois is claiming emission reductions from the TCMs in its 15 percent ROP plans for the Chicago and Metro-East areas.

States can take credit for TCMs which are approved as revisions to the SIP. EPA's requirements for TCMs are summarized in the June 1993, EPA guidance document, *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans.* The required elements are (1) a complete description of the measure, and, if possible, its estimated emissions reduction benefits; (2) evidence that the measure was properly adopted by a jurisdiction(s) with legal authority to execute the measure; (3) evidence that funding will be available to implement the measure; (4) evidence that all necessary approvals have been obtained from all appropriate government offices; (5) evidence that a complete schedule to plan, implement, and enforce the measure has been adopted by the implementing agencies; and (6) a description of any monitoring program to evaluate the measure's effectiveness and to allow for necessary in-place corrections or alterations.

The Chicago area TCMs were approved on September 21, 1995 (60 FR 4886). The Metro-East St. Louis area's 15 percent ROP plan includes work trip reductions, transit improvements, and traffic flow improvements TCMs. These TCMs are being approved in today's action as a revision to the SIP because they fully satisfy all the requirements based on the following: (1) a complete description of the program and estimated emission reduction are provided in documentation included in the docket for this rulemaking action; (2) the measure has been adopted by the East-West Gateway Coordinating Council, the authorized MPO for the St. Louis metropolitan area; (3) the program is currently operating and has received federal CMAQ program money for operation; (4) all necessary approvals have been obtained from DOT in the FY 1994–1997 TIP (which includes the TCMs); (5) the TIP provides the schedule, implementation mechanism, and also the enforcement mechanism for the TCM (the conformity provisions in 40 CFR part 93 provide that TCMs in an approved SIP must be implemented on schedule before a conformity determination can be made by DOT); and (6) the CMAQ program requires monitoring of programs funded under CMAQ and annual reports to DOT on achieved emission reductions.

The emission reductions claimed in the ROP plans for both the Chicago and Metro-East TCMs are adequately documented and acceptable.

c. National Energy Policy Act of 1992. The National Energy Policy Act (EPAct) was enacted in October 1992. EPAct mandates implementation (use) of Alternative Fueled Vehicles (AFVs) in federal, State, and utility fleets. EPAct requires that 25% of new vehicle purchases by federal fleets, 10% of new vehicle purchases by State fleets, and 30% of new vehicle purchases by utility fleets must be AFVs beginning in 1996. IEPA estimated that EPAct would implement approximately 2,000 AFVs in the Chicago Area by 1996. The EPA mobile source emission factor model, MOBILE5a, was used to determine the impacts of EPAct on mobile source emissions. The State's emission reduction estimates for this federal measure are adequately documented and acceptable.

d. Post-1994 Tier 1 Emission Rates. Section 202 of the Act sets new Tier 1 emission standards for motor vehicles, some of which will be implemented prior to the end of 1996. The Tier 1 standards are approximately twice as stringent as prior (established prior to the 1990 Clean Air Act amendments) motor vehicle emission standards. For passenger cars and light-duty trucks weighing up to 6,000 pounds, the implementation of the standards is to be phased-in over three years, 40 percent of the manufactured vehicles for model year 1994, 80 percent of the manufactured vehicles in model year 1995, and 100 percent of the manufactured vehicles in the model year 1996 and later. For gasoline and diesel powered light-duty trucks weighing more than 6,000 pounds, the Tier 1 standards are to be met in 50 percent of the manufactured vehicles in model year 1996 and in 100 percent of the manufactured vehicles thereafter.

The IEPA has determined that the emission reductions resulting from these tightened vehicle standards are

[2] MPOs can utilize United States Department of Transportation (DOT) funds from CMAQ. CMAQ is a federal program which provides funding for transportation related projects and programs designed to contribute to attainment of air quality standards.

creditable toward the 15 percent ROP plan and used the MOBILE5a emission factor model to calculate the VOC emission reductions for this control measure. The State's emission reduction estimates are adequately documented and acceptable.

e. 1992 I/M Program Amendments. As a result of an agreement resolving a lawsuit between Wisconsin and EPA, the State of Illinois added a tamper check and two-speed idle test to the basic I/M program in the Chicago metropolitan area. The I/M program area coverage was also increased to encompass almost all of the Chicago metropolitan area. These changes in the I/M program were implemented in 1992, and were approved by EPA on April 9, 1996 (61 FR 15715). Similar changes in the components of the I/M program were implemented in the Metro-East St. Louis area, as well.

The IEPA used the MOBILE5a emission factor model to estimate the emission reductions for both areas. The State's emission reduction estimates are adequately documented and are acceptable.

f. Federal Detergent Gasoline Additive. The Federal detergent gasoline additive regulation was promulgated November 1, 1994 (59 FR 54706). This regulation requires, beginning January 1, 1995, that gasoline sold nationwide contain additives to prevent accumulation of deposits in engines and fuel systems. Preventing such deposits maintains the efficiencies of engine systems and reduces VOC emissions resulting from engine efficiency degradation.

The State has reviewed guidance from EPA's Office of Mobile Sources which indicates that the use of gasoline containing the required additives will reduce vehicle VOC emissions by 0.7 percent in 1996. This guidance is the basis for the VOC emission reductions claimed in the 15 percent ROP plans for this control measure. The emission reduction estimates are acceptable.

g. Federal Non-Road Small Engine Standards. Federal standards for non-road engines (25 horsepower and below) were promulgated on July 3, 1995 (60 FR 34582). The standards would primarily affect 2 stroke and 4 stroke lawn and garden equipment and light commercial, construction, and logging equipment. Although full implementation of this control measure will not occur until after November 15, 1996, the States can take credit for this measure pursuant to EPA policy memoranda, "Guidance on Projection of Nonroad Inventories to Future Years," February 4, 1994, and "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," November 28, 1994. Based on this policy, the IEPA assumed that the Federal non-road small engine standards would reduce 1996 VOC emissions from these sources by 4.5 percent. The IEPA also assumes that these rules will have a rule effectiveness of 100 percent because the rules affect all manufacturers of small engines in the nation. The 4.5 percent emission reduction claim is assumed to appropriately account for rule penetration (the fraction of small engine emissions affected by the rule). The assumed emission reduction percentage is acceptable.

h. Reformulated Gasoline. Beginning January 1, 1995, sellers of gasoline in the Chicago ozone nonattainment area were required to sell only reformulated gasoline as required under federal regulation promulgated February 16, 1994 (59 FR 7716). Using the MOBILE5a emission factor model, the IEPA has determined that the use of reformulated gasoline will result in a 15 percent reduction in vehicle VOC emissions. The IEPA notes that the use of reformulated gasoline will also result in lower gasoline marketing and off-road engine emissions in the Chicago ozone nonattainment area. The emission reduction estimates are adequately documented and acceptable.

i. 7.2 RVP Gasoline. On October 25, 1994, the IEPA submitted to the EPA a SIP revision request for the purpose of lowering the RVP of gasoline from 9.0 pounds per square inch (psi) to 7.2 psi in the Metro-East St. Louis ozone nonattainment area. EPA approved this SIP revision on March 23, 1995 (60 FR 15233). The Illinois rule requires the use of 7.2 psi RVP gasoline in the Metro-East St. Louis area during the period of June 1 through September 15 each year beginning in 1995. The rule grants a 1 psi waiver for ethanol blended gasolines that have an ethanol content between 9 and 10 percent ethanol by volume.

The IEPA used the MOBILE5a emission factor model to calculate the resulting VOC emission reduction for on-highway mobile sources. Illinois used a RVP ratio (reduced RVP versus average RVP of gasoline sold in 1990) along with 1996 gasoline usage estimates to calculate the VOC emission reduction from gasoline marketing sources. The calculation of the emission reduction is adequately documented and acceptable.

2. Industrial Sources

a. RACT Geographic Expansion. The State, on August 13, 1992, adopted a rule to expand the coverage of existing RACT regulations to include Oswego Township in Kendall County, and Aux Sable and Goose Lake Townships in Grundy County. This geographic expansion has affected several facilities, which are adequately documented in the ROP plan submittal. EPA approved this expansion on September 9, 1994 (59 FR 46562). The emission reduction estimate is acceptable.

b. RACT—Reduction in Major Source Threshold. Section 182(d) of the Act defines "major source" for severe ozone nonattainment areas to include any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons of VOC per year. This establishes a maximum source size cutoff for the application of RACT rules (the State has adopted RACT rules with much smaller source size cutoffs for most applicable source categories) for severe ozone nonattainment areas, such as the Chicago area.

On January 6, 1994, the Illinois Pollution Control Board (IPCB) adopted modified source size cutoffs of 25 tons per year, potential to emit, for flexographic/rotogravure printing operations, petroleum solvent dry cleaners, and non-Control Technology Guideline (non-CTG) sources in the Chicago ozone nonattainment area. Other source categories regulated in the Chicago area are covered by category-specific source size applicability cutoffs well below the 25 ton VOC per year specified in section 182(d) of the Act. EPA approved this regulation on October 21, 1996 (61 FR 54556). The State's emission reduction estimates for this rule are adequately documented and acceptable.

c. Post-1990 CTG Rules. Section 182(b)(2)(A) of the Act requires States with moderate and above ozone nonattainment areas to adopt RACT rules covering post-1990 CTG source categories. Illinois claimed emission reduction credit for many of the State rules adopted to meet the section 182(b)(2)(A) requirement. The following briefly discusses these rules and claimed emission reduction credit taken by the State:

i. Batch Processes. Illinois' batch process rule controls VOC emissions from batch chemical processes found in the following industries: plastic materials and resin manufacturing; cyclic crudes and intermediates manufacturing and processing; industrial organic chemical manufacturing; pharmaceuticals manufacturing; gum and wood chemicals manufacturing; and agricultural chemicals manufacturing. This rule was derived from an EPA draft CTG dated December 29, 1993, and an EPA Alternative Control Techniques (ACT) document completed in February 1994. The rule was approved by EPA on April 2, 1996 (61 FR 14484). The IEPA used RACT flow rate equations from the draft CTG for the development of the control specifications of batch processes. Emissions must be controlled using condensers, absorbers, adsorbers, thermal destruction systems, flares, thermal incinerators, or catalytic incinerators. In determining the applicability of the control requirements of the rule, owners or operators must determine the actual average flow rates for vent streams. If the actual average vent stream flow rate (standard cubic feet per minute) is below the applicability flow rate value calculated using the RACT flow rate equations (specific to volatility), the VOC from a process vent must be controlled with a reduction efficiency of 90 percent (or down to a VOC concentration of no more than 20 parts per million volume). Sources are exempted from emission controls if the annual VOC emissions are less than 500 pounds for individual batch operations or less than 30,000 pounds for a batch process train. The owner or operator must keep records of average flow rates during testing periods and annual VOC mass emission rates. Compliance with this rule is required by March 15, 1996.

The IEPA has determined there are 15 affected facilities in the Chicago ozone nonattainment area and 3 affected facilities in the Metro-East St. Louis ozone nonattainment area. The EPA accepts the emission reductions of 3.21 TPD claimed for facilities in the Chicago area, and 0.36 TPD in the Metro-East area.

It should be noted that the State, during discussions with the EPA, has raised the point that a significant additional VOC emission reduction may be claimed for this source category. In the earlier submittals, the State indicated a significant emission reduction of 9.39 TPD for an alcohol stripper unit at the Stepan Company's Millsdale facility (Chicago ozone nonattainment area) (permit/source number 78030038087). The State and EPA are working with the affected company to determine the exact timing of the emission reduction. If it is ultimately determined that the emission reduction occurred after 1990, the State will seek the correction of the ROP plan to credit this emission reduction in the post-1996 ROP plans.

ii. IWTF. The State is claiming emission reduction from the NESHAP for this source category, 40 CFR part 63, subpart G, promulgated April 22, 1994 (59 FR 19468). The State's emission reduction estimates for this rule are adequately documented and acceptable. It should be noted, however, that the IEPA is still expected to develop a State rule for this source category to implement RACT. If a RACT level rule is adopted and implemented in the near future, the State may claim additional emission reduction credits for this source category in the post-1996 ROP plans.

iii. VOL Storage. On November 30, 1994, the IEPA submitted an adopted rule and supporting information for the control of VOC emissions at VOL storage operations in the Chicago and Metro-East St. Louis ozone nonattainment areas. The EPA approved this rule on August 8, 1996 (61 FR 41339).

The VOL storage emission control requirements apply to facilities storing VOLs with vapor pressures of 0.75 pounds per square inch absolute (psia) or greater (facilities storing VOLs with vapor pressures equal to or exceeding 0.5 psia must keep records of VOLs stored including VOL vapor pressures) in any storage tank of 40,000 gallons capacity or greater. The rule does not apply to vessels storing petroleum liquids, which are covered under other rules.

For fixed roof tanks, the VOL storage rule requires the installation of internal floating roofs with foam or liquid-filled seals and secondary seals to close the gap between the tank's inner wall and the floating roof. These controls must be implemented by March 15, 1996.

External floating roof tanks must be equipped with primary and secondary seals before March 15, 2004, or at the time of the next tank cleaning, whichever comes first.

For internal floating roof tanks, the internal floating roofs must be equipped with primary and secondary seals before March 15, 2004, or at the time of the next tank cleaning, whichever comes first.

Sources may also use closed vent systems and emission control devices provided the emission control systems are operated with no detectable emissions or monitored VOC concentrations above 500 parts per million above background levels. Control devices must be operated to reduce VOC emissions by at least 95 percent. Storage vessels of 40,000 gallons or greater storage capacity that store VOLs with a maximum true vapor pressure equal to or greater than 11.1 psia must be equipped with a closed vent system and emission control device with emission control efficiency equal to or greater than 95 percent.

Recognizing that only fixed roof tanks would be required to implement emission controls by the end of 1996, the IEPA claimed emission reductions for only these types of tanks. The emission reduction estimates are adequately documented and acceptable.

iv. Plastic Parts Coating. On May 5, 1995, the IEPA submitted an adopted rule for the control of VOC emissions from automotive/transportation and business machine plastic parts coating operations in the Chicago and Metro-East St. Louis ozone nonattainment areas (no applicable sources exist in the Metro-East St. Louis area). The EPA approved this rule on October 25, 1995 (60 FR 54807).

The rule specifies the VOC content limits for various types of coating distinguishing between coating of automotive/transportation plastic parts and business machine plastic parts (see 60 FR 54808). Sources may also choose to use add-on control devices which achieve equivalent emission reductions. Compliance with this rule must be met by March 15, 1996. The emission reductions claimed for this source category are adequately documented and acceptable.

v. Lithographic Printing. Using EPA's September 1993 draft CTG for this source category, the IEPA developed a regulation establishing VOC content limits, emission control requirements, and required work practices for this source category. The State's rule includes limitations on the VOC content of fountain solutions and cleaning solutions. The rule also provides for the use of afterburners and other emission control devices for heat set web offset lithographic printing operations. The rule establishes recordkeeping, testing, and reporting requirements as well as work-practice requirements, such as a requirement for the storage of cleaning materials and spent cleaning solutions in air-tight containers.

The rule is applicable to all lithographic printing lines at a facility if the VOC emissions, in total, from the lithographic printing lines exceed 45.5 kilograms per day or 100 pounds per day. The rule also applies to facilities with heat set web offset printing lines if the maximum theoretical emissions of VOC, in total, ever exceed 90.7 megagrams per year or 100 tons per year. Compliance with the rule is required by March 15, 1996. The EPA approved this rule on November 8, 1995 (60 FR 56238).

The IEPA has determined that 113 facilities in the Chicago ozone nonattainment area will be potentially affected by the rule, with 49 facilities likely to require new emission controls

or process modifications. Only one facility in the Metro-East St. Louis area is expected to be affected by the rule, with no anticipated reduction in VOC emissions. Emission reduction credits for the Chicago facilities were calculated using the emission reduction factors for add-on controls, fountain solution reformulation or process modification, and cleaning solution reformulation provided for model plants in the September 1993 draft CTG. The emissions reduction credit claimed is adequately documented and acceptable.

vi. Automobile Refinishing. The EPA, on the behalf of the IEPA, contracted with Midwest Research Institute (MRI) to conduct a study of the motor vehicle refinishing industry in the Chicago and Metro-East ozone nonattainment areas. This study included an estimate of the 1990 base year emissions and the study report recommended emission control strategies and possible resultant emission reductions. The study concluded that approximately 1,463 refinishing shops are located in the Chicago ozone nonattainment area, and 107 are located in the Metro-East ozone nonattainment area.

Based on the study, review of similar regulations developed by the California Air Resources Board (CARB), and discussions with local automobile refinishing representatives, the IEPA adopted the following coating VOC content limits (pounds VOC per gallon of coating, minus water and exempt compounds):

Pretreatment Wash Primer	6.5
Precoat	5.5
Primer/Primer Surfacer Coating	4.8
Primer Sealer	4.8
Topcoat System	5.0
Basecoat/Clearcoat	5.0
Three or Four Stage Topcoat System	5.2
Specialty Coatings	7.0
Anti-Glare/Safety Coating	7.0

In addition to these VOC content limits, the regulation also establishes VOC content limits for surface preparation/cleaning products (6.5 pounds VOC per gallon of plastic parts cleaning compounds and 1.4 pounds of VOC per gallon of other surface cleaning/preparation products). The rule also requires the use of gun cleaners designed to minimize solvent evaporation during the cleaning, rinsing, and draining operations with recirculation of solvent during the cleaning operation and collection of spent solvent. Spent and fresh solvent must be stored in closed containers. Coating application must be done using High Volume, Low Pressure guns or electrostatic application systems. As an alternative to the VOC content limits, a facility may use add-on control systems, such as incinerators or carbon adsorbers, which would reduce VOC emissions by at least 90 percent. Facilities that use less than 20 gallons of coatings per year total are exempted from the coating application and gun cleaner equipment requirements.

Refinishing facilities are required to keep monthly records of coating purchases and the VOC contents of these coatings. Facilities are also required to use coatings in accordance with the coating manufacturer's specifications. Compliance with the rule must be met by March 15, 1996. The EPA approved the rule on July 25, 1996 (61 FR 38577). The emission reduction estimates for this rule are adequately documented and acceptable.

d. Coke Oven NESHAP. The coke oven NESHAP, 40 CFR part 63, subpart L, promulgated on October 27, 1993 (58 FR 57911), control emissions from coke oven doors, off-takes, lids, and charging. The emission control requirements of the rule must be met by the end of 1995. The emission reduction estimates are adequately documented and acceptable.

e. Hazardous Organic NESHAP—SOCMI. The SOCMI NESHAP, 40 CFR part 63, subpart F, promulgated April 22, 1994, (59 FR 19454) affects processes which produce one or more of the 396 designated SOCMI chemicals using one or more designated HAPs as a reactant or producing HAPs as a byproduct or co-product. Under EPA policy memorandum, "Credit Toward the 15 Percent Rate-Of-Progress Reductions from Federal Measures," May 6, 1993, 5 percent emission reduction from 1990 base line levels can be claimed from this rule. The State's emission reduction estimates are acceptable.

f. TSDF RACT Phase I and II. Under RCRA, EPA is taking action to control VOC emissions in three phases. Phase I regulations were promulgated by the EPA in June 1990 and became effective in December 1990. Phase II regulations were promulgated on December 6, 1994. The effective date for the Phase II regulations was suspended until December 6, 1996 (see 61 FR 59932, November 25, 1996). The Phase II compliance date is December 8, 1997. Although final compliance with the Phase II regulation will occur after November 15, 1996, States can take emission reduction credit for Phase II TSDF regulations toward the 15 percent ROP plan pursuant to EPA policy memorandum, "Credit Toward the 15 Percent Rate-Of-Progress Reductions from Federal Measures," May 6, 1993. Illinois' emission reduction estimates for these federal rules are acceptable.

g. Marine Vessel Loading Controls. The State's rule requires a 95 percent reduction in VOC emissions resulting from the loading of gasoline and crude oil into marine vessels at all marine terminals in the Chicago and Metro-East St. Louis ozone nonattainment areas which load gasoline or crude oil into tank ships and barges. The rule applies between May 1 and September 30 each year beginning in 1996, and requires that vessel cargo compartments be closed to the atmosphere during loading using: (1) Devices to protect tanks from underpressurization and overpressurization; (2) level-monitoring and alarm systems designed to prevent overfilling; and (3) devices for cargo gauging and sampling. VOC capture must be achieved with either (1) a vacuum-assisted vapor collection system, or (2) certification of vessel vapor-tightness. Piping used in the transfer of gasoline or crude oil must be maintained and operated to prevent visible liquid leaks, significant odors, and visible fumes. Owners and operators must use leak inspection procedures similar to those used at petroleum refineries.

Based on IEPA's records, there are five affected facilities in the Chicago ozone nonattainment area and six affected facilities in the Metro-East St. Louis ozone nonattainment area. To calculate VOC emission reduction for this source category, the IEPA assumed that vapor recovery and emissions control systems can reduce VOC emissions by 90 percent. The rule was adopted on October 20, 1994, and was approved by the EPA on April 3, 1995 (60 FR 16801). The emission reduction credits claimed are adequately documented and acceptable.

h. Tightening of RACT Standards and Cutoffs. Based on an April 1993, Science Applications International Corporation (SAIC) report titled, "Technical Document for Reasonably Available Control Technology for Illinois to Assist in Achieving 15 Percent Reduction in Ozone Nonattainment Areas," the IEPA determined that the VOC content limits for coatings could be lowered for the following source categories: Automobile/Truck Coating; Paper Coating; Fabric Coating; Metal Furniture Coating; Flexographic/Rotogravure Printing; Miscellaneous Surface Coating; Can Coating; Metal Coil Coating; Vinyl Coating; Miscellaneous Metal Coating; and Large Appliance Coating. After further consideration, the IEPA determined that no additional tightening of existing coating VOC content limits could be justified at this time for automobile/truck coating and flexographic/rotogravure printing.

The State's tightened RACT coating limits are similar to those used in the South Coast Air Quality Management District of California. The tightened limits were adopted by the Illinois Pollution Control Board on April 20, 1995, and were approved by EPA on February 13, 1996 (61 FR 5511). The tightened SOCMI air oxidation requirements were adopted on October 20, 1994, and were approved by EPA on September 27, 1995 (60 FR 49770). The 15 percent ROP documentation indicates that for the Chicago area an estimated 8.00 TPD emission reduction has occurred from sources covered under the tightened RACT coating limit rule, and 4.05 TPD emission reduction has occurred from sources covered under the tightened SOCMI air oxidation rule. In the Metro-East area, 0.39 TPD were claimed, while no emission reductions occurred due to the SOCMI air oxidation rule. The emission reductions claimed are acceptable.

i. Plant Shut-downs. Facilities or plant units which have been shut-down since 1990 were identified through: (1) Facility responses to permit renewals; (2) responses to Annual Emission Report (AER) requests; (3) direct field inspections; and (4) requests from the facilities themselves to have their source permits withdrawn due to shut-down. Facility closings and emission reductions were verified through review of Emission Inventory System (EIS) records, permit file data, and field reports.

To further support the estimated emission reductions, the IEPA has provided the EPA with a list of closed facilities. The IEPA maintains a plant shut-down file which documents the methods of verification.

The shut-down credits were calculated using 1990 emissions projected to 1996 using the Emissions Growth Assessment System (EGAS) growth factors for specific source units. The projected 1996 emissions were used because these emissions had already been built into the projected 1996 emissions used to calculate the emission targets under the ROP plans.

Emission reductions from the plant shut-downs are made permanent through the closing of source permits and, therefore, are acceptable. The source permits for these facilities will not be reissued by the IEPA. If these sources wish to restart, they will have to go through new source review and will be controlled through new source emission control requirements.

j. Improved Rule Effectiveness. Illinois' Title V program, the CAAPP, covers most source facilities in the two ozone nonattainment areas. The IEPA submitted the CAAPP to the EPA in November 1993, and the EPA gave the program interim approval on March 7, 1995 (60 FR 12478). The program became effective in 1996.

A primary emphasis of the CAAPP is rigorous recordkeeping, reporting, and monitoring. The CAAPP regulations include recordkeeping, reporting, and monitoring requirements not covered under existing regulations or emphasizes existing regulations for such requirements. Sources must submit progress reports to the IEPA at a minimum of every 6 months and the permittees must certify no less frequently than annually that the facilities are in compliance with the permit requirements. Source owners or operators must also promptly report any deviances from permit conditions to the IEPA. The CAAPP requirements contain significant civil and criminal penalties for source owners or operators failing to comply with the permit requirements, including the recordkeeping, reporting, and monitoring requirements.

The IEPA used EPA's rule effectiveness evaluation questionnaire, and, based on the requirements of the CAAPP regulations, determined that the CAAPP requirements should lead to a rule effectiveness of 95 percent for all source facilities covered by the CAAPP. The IEPA determined the VOC emission reduction credit for this rule effectiveness improvement by considering the "current" rule effectiveness for each facility or source category used to develop the 1990 base year emissions inventory (80 percent for most facilities, with some facilities starting at 92 percent based on prior study results). The IEPA documented the rule effectiveness improvement findings in a report titled "Impact of CAAPP on Inventory RE."

In comments on a draft version of the ROP plan, the EPA had indicated to the IEPA that recent changes in Title V requirements and guidelines to allow more source flexibility could jeopardize the anticipated improvement in rule effectiveness since some of the changes in EPA policy could relax compliance monitoring. Particularly, the increased flexibility would allow sources to switch from enhanced monitoring procedures to less stringent Compliance Assurance Monitoring (CAM) procedures. The IEPA, however, views this increased source flexibility as having minimal impact on the rule effectiveness to be obtained from the CAAPP, in light of the overall requirements sources are still subject to under CAAPP. It is pointed out that the EPA engineers who are technically supporting the compliance assurance monitoring procedures in EPA's revised Title V policy agree with a rule effectiveness estimate of 95 percent for programs like the CAAPP. The EPA agrees with this view and accepts the estimated emission reduction claimed.

k. HAP Early Reduction Program. This program, promulgated on November 21, 1994 (59 FR 59924), allows an existing source subject to an applicable section 112(d) standard to be granted a 6-year compliance extension upon commitment by the owner or operator of the source that the source has achieved a reduction of 90 percent or more of HAP by 1994. Emission reductions are determined by comparing the post-control emissions with verifiable and actual emissions in a base year not earlier than 1987, except that 1985 or 1986 may be used as a base year if the emissions data are based on information received before November 15, 1990. In the Metro-East St. Louis nonattainment area, only one applicable facility has committed to the early reduction program. Under the program, such commitments are federally enforceable. The reduction in VOC from this facility due to the program, therefore, is creditable.

3. Area Sources

a. Stage II Vapor Recovery. On August 13, 1992, Illinois adopted Stage II vapor recovery rules, which require the return of gasoline vapors to underground storage tanks during automobile refueling. Full phase-in of the requirements occurred on November 1, 1994. EPA approved these rules on January 12, 1993 (58 FR 3841).

The IEPA has monitored the effectiveness of the Stage II regulations and the status of service station compliance. The Stage II controls have been established at most service stations in the Chicago nonattainment area and have been certified to reduce VOC emissions by at least 95 percent. The emission reduction estimates derived from this observation are acceptable.

b. Architectural Coating. EPA is in the process of adopting a national rule applicable to manufacturers of AIM coatings. EPA proposed this rule on June 25, 1995 (61 FR 32729). Based on EPA policy memoranda, the State has assumed that an emission reduction credit of 20 percent could be taken for this source category. Even though the final rule has not been promulgated, and the compliance with the rule is not expected until 1998, the EPA is allowing States to take credit for 20

percent emission reduction credit for this source category, relative to 1990 emission levels. See "Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the AIM Coating Rule," March 22, 1995, and "Update on the Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule," March 7, 1996. The State has calculated emission reductions for architectural coatings separate from the traffic marking and maintenance coating provisions of the AIM rule. The State's emission reduction estimates for architectural coatings are acceptable.

c. Traffic Marking and Maintenance Coating. The State has chosen to rely on the Federal AIM rule (now expected to be implemented in 1998) for emission reductions in this source category. Although EPA policy memoranda, "Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coating Rule," March 22, 1995, and "Update on the Credit for the 15 Percent Rate-Of-Progress Plans for Reductions from the Architectural and Industrial Maintenance Coatings Rule," March 7, 1996, indicated that the State can assume a 20 percent emission reduction for this source category, the State notes that a more appropriate method for determining the emission reduction for traffic marking and maintenance coatings would involve consideration of the VOC content limit (150 grams VOC/liter coating) proposed in EPA's draft AIM rule. Data supplied by the Illinois Department of Transportation indicates that the median VOC content in traffic/maintenance coatings in the State of Illinois in 1990 was 413 grams/liter coating (this median VOC content level is assumed to apply to both ozone nonattainment areas in the State). Comparing the proposed limit to this median VOC content level indicates that a 63.7 percent reduction in VOC emissions would occur if the proposed VOC content limit were attained. This leads to VOC reduction estimates of 3.73 TPD for the Chicago area and 0.62 TPD for the Metro-East St. Louis area. These estimates are acceptable.

d. Underground Gasoline Storage Tank Breathing Controls. The State rule, adopted by the State on September 15, 1994, requires the installation of Pressure/Vacuum relief-control valves (P/V valves) on gasoline storage tank vents by March 15, 1995. The P/V valves must remain closed against tank pressures of at least 3.5 inches water column and tank vacuums of at least 6 inches water column. Gasoline storage tank owners must maintain records of malfunctions and repairs and must register installation of the P/V valves with the IEPA prior to March 15, 1995. The P/V valves must be tested annually and the owners must keep records of the tests. EPA approved this rule on March 23, 1995 (60 FR 15233).

The IEPA estimates that this rule will reduce gasoline breathing emissions by 90 percent. This emission reduction estimate is acceptable as are the emission reduction credits claimed for the Chicago and Metro-East St. Louis areas.

e. Consumer and Commercial Solvents. The March 23, 1995 **Federal Register** contained EPA's list of affected product categories and schedule for regulation of consumer and commercial solvent contents as required by section 183(e) of the Act. The EPA intends to regulate the solvent contents in 24 product categories. The **Federal Register** action states that the EPA expects the regulation to achieve a 25 percent reduction in VOC emissions from the regulated product categories. This regulation was scheduled to be promulgated in 1996. Under EPA policy memorandum "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," June 22, 1995, EPA will grant an emission reduction credit for this source category even though emission reductions are not expected to occur until after 1996.

The IEPA cites an EPA study which states that the best estimate of VOC emissions for consumer and commercial products is 8.03 pounds per person per year. The study further states that the Federal regulation of consumer and commercial product solvents is expected to reduce these emissions by 1 pound per person per year. Using the 1996 projected populations and the ratio of 8.3 pounds VOC per person per year used for this source category in the 1990 base year emissions inventory to the 8.03 pounds per person per year specified in the EPA study, the IEPA has determined that the Federal rule gives an 8.10 tons VOC per day reduction in the Chicago ozone nonattainment area and a 0.58 tons VOC per day reduction in the Metro-East St. Louis ozone nonattainment area. The emission reduction credits are acceptable.

III. Public Comments and Response

During the 30-day public comment period for the July 14, 1997, proposed rulemaking, EPA received two comment letters adverse to approval of the Chicago and Metro-East area 15 percent plans: an August 13, 1997, letter from the American Lung Association of Metropolitan Chicago, Citizens for a Better Environment (Wisconsin), Citizens Commission for Clean Air in the Lake Michigan Basin, the Hoosier Environmental Council, the Illinois Chapter of the Sierra Club, and the Michigan Environmental Council (ALA et al); and an August 6, 1997 letter from a concerned citizen. The following discussion summarizes the comments and EPA's response to those comments.

A. Post-1996 Federal Measures

Comments: ALA et al indicate that Illinois should not be allowed to take credit for certain federal control measures which were not implemented by November 15, 1996, including Federal Non-Road Small Engine Standards, TSDF RACT Phase II, AIM coating, and Consumer and Commercial Products Solvent Control. According to the commenters, section 182(b)(1) of the Act clearly requires States to submit plans that demonstrate a 15 percent emission reduction before November 15, 1996. The commenters also state the policy memoranda regarding credit for post-1996 measures cited in the July 14, 1997, proposed rulemaking provide no good basis for thwarting the clear intent and requirements of the Clean Air Act, and were issued without formal public comment.

Response: Section 182(b)(1)(A) of the Act requires States to submit their 15% SIP revisions by November 15, 1993. Section 182(b)(1)(C) of the Act provides the following general rule for creditability of emissions reductions toward the 15 percent requirement: "Emissions reductions are creditable toward the 15 percent required, to the extent they have actually occurred, as of [November 15, 1996], from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under Title V." In addition, section 182(b)(1)(D) identifies specific control measures which cannot be creditable toward the 15 percent plan, including pre-1990 FMVCP, 1990 RVP, RACT fix-ups, and I/M fix-ups.

Between 1992 and 1996, EPA issued a series of policy memoranda indicating its intention to implement several federal measures before November 15, 1996, and provided emission reductions estimates from these measures for States to use in their 15 percent plans. However, several federal measures have been significantly delayed. By the time it was realized that some federal measures would not be implemented by November 1996, several States had already completed and submitted their

15 percent plans relying on the federal measures.

Section 182(b)(1)(C) is ambiguous as to whether emission reductions from federal measures expected to occur by November 1996 are creditable now that the deadline has passed. Read literally, section 182(b)(1)(C) provides that although the 15 percent SIPs are required to be submitted by November 1993, emissions reductions are creditable as part of those SIPs only if "they have actually occurred, as of [November 1996]". This literal reading renders the provision internally inconsistent. Accordingly, EPA believes that the provision should be interpreted to provide, in effect, that emissions reductions are creditable "to the extent they will have actually occurred, as of [November 1996], from the implementation of [the specified measures]" (the term "will" is added). This interpretation renders the provision internally consistent.

Moreover, section 182(b)(1)(C) of the Act explicitly includes as creditable reductions those resulting from "rules promulgated by the Administrator." This provision does not state the date by which those measures must be promulgated, i.e., does not indicate whether the measures must be promulgated by the time the 15% SIPs were due (November 1993), or whether the measures may be promulgated after this due date.

Because the statute is silent on this point, EPA has discretion to develop a reasonable interpretation, under *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). EPA believes it is reasonable to interpret section 182(b)(1)(C) of the Act to credit reductions from federal measures as long as those reductions were expected to occur by November, 1996, even if the federal measures are not promulgated by the November 1993 due date for the 15 percent SIPs.

EPA's interpretation is consistent with the Congressionally mandated schedule for promulgating regulations for consumer and commercial products, under section 182(e) of the Act. This provision requires EPA to promulgate regulations controlling emissions from consumer and commercial products that generate emissions in nonattainment areas. Under the schedule, by November 1993—the same date that the States were required to submit the 15% SIPs—EPA was to issue a report and establish a rulemaking schedule for consumer and commercial products. Further, EPA was to promulgate regulations for the first set of consumer and commercial products by November 1995. It is reasonable to conclude that Congress anticipated that reductions from these measures would be creditable as part of the 15% SIPs.

Since all the federal measures Illinois relied on were expected to occur by November 1996, these measures are creditable for purposes of the 15 percent plan. It is not intended under section 182(b)(1)(C) of the Act for EPA to disapprove 15 percent plans which claim credit for federal measures which were not implemented as was expected during plan development. To interpret the Act otherwise would unfairly punish the State for delays in federal rule implementation for which the State had no power to control.

In addition, all the post-1996 federal measures for which Illinois has claimed credit are close to being implemented since the measures either have been promulgated or have been proposed. The following table indicates the post-1996 federal measures included in Illinois' 15 percent plans, the statutory provisions which require the measures' promulgation, and the status of the measures' implementation:

Federal measure	Statutory requirement	Status
Non-road Engines 25 hp and below (Phase I)	Act Section 213(a)(2)	Phase I standards published July 3, 1995 (60 FR 34582). Final Compliance date MY 1997, except Class V engine families, which must comply January 1, 1998.
TSDF RACT and RCRA Phase II Control	RCRA Section 3004(n)	Final rule published December 6, 1994 (59 FR 62896). Final Compliance Date December 8, 1997 (61 FR 59932).
AIM Coatings	Act Section 183(e)(3)	Proposed rule published June 25, 1996 (61 FR 32729).
Traffic and Maintenance Coatings	Act Section 183(e)(3)	Proposed rule published June 25, 1996 (61 FR 32729).
Consumer and Commercial Products	Act Section 183(e)(3)	Proposed rule published April 2, 1996 (61 FR 14531).

To exclude credit for these mandated federal measures would mean the State would have to develop and submit a new 15 percent plan and adopt substitute State measures. This would force the State to achieve more than a 15 percent emission reduction once the reductions from the mandated federal measures occur. EPA believes this over compliance with the 15 percent requirement would not be supported by the intent of the Act and would be unreasonably burdensome for the State, especially since the State is already obligated to secure substantial additional VOC reductions in the Chicago area to meet post-1996 ROP requirements.

The fact that EPA cannot determine precisely the amount of credit available for federal measures not yet promulgated does not preclude granting the credit. The credit can be granted as long as EPA is able to develop reasonable estimates of the amount of VOC reductions from the measures EPA expects to promulgate. EPA believes that it is able to develop reasonable estimates, particularly because EPA has either already proposed or promulgated the measures at issue. Many other parts of the SIP, including State measures, typically include estimates and assumptions concerning VOC amounts, rather than actual measurements. For example, EPA's document to estimate emissions, "Compilation of Air Pollutant Emission Factors," January 1995, AP–42), provide emission factors used to estimate emissions from various sources and source processes. AP–42 emission factors have been used, and continue to be used, by States and EPA to determine base year emission inventory figures for sources and to estimate emissions from sources where such information is needed. Estimates in the expected amount of VOC reductions are commonly made in air quality plans, even for those control measures that are already promulgated. Moreover, the fact that EPA is occasionally delayed in its rulemaking is not an argument against granting credits from these measures. The measures are statutorily required, and States and citizens could bring suit to enforce the requirements that EPA promulgate them. If the amount of credit that EPA allows the State to claim turns out to be greater than the amount EPA determines to be appropriate when EPA promulgates the federal measures, EPA intends to take appropriate action to require correction of any shortfall in necessary emissions reductions that may occur.

The above analysis focuses on the statutory provisions that include

specific dates for 15 percent submittal (November 1993) and implementation (November 1996). These dates have expired, and EPA has developed new dates for submittal and implementation. EPA does not believe that the expiration of the statutory dates, and the development of new ones, has implications for the issue of whether reductions form federal measures promulgated after the date of the 15 percent SIP approval may be counted toward those 15 percent SIPs. Although the statutory dates have passed, EPA believes that the analysis described above continues to be valid.

B. Rule Effectiveness Improvements

Comments: ALA et al indicate that the rule effectiveness improvement credit is an "extraordinarily large paper reduction," and that neither Illinois nor EPA have adequately demonstrated that 95 percent rule effectiveness has been or will be achieved in light of changes to Title V monitoring requirements under the upcoming CAM rule. The commenters also note that the emission reduction credit given for rule effectiveness improvements in the Chicago area is comparable to the emission reduction credit given for reformulated gasoline in the Milwaukee ozone nonattainment area. The commenters find their concerns substantiated by a recent University of Southern California study which found that industrial sources in Houston have been emitting VOC hundreds of times more than what has been reported. Also, the commenters claim that neither Illinois nor EPA could provide the commenters a complete list of Illinois sources subject to non-CTG RACT requirements, or compliance information related to these sources, even after the commenters submitted a Freedom of Information Act (FOIA) request to the IEPA. The commenters recommend that credit should be allowed for only 85 percent rule effectiveness for most sources until the actual changes are verified through the 1996 update to Illinois' emission inventories.

Response: The CAAPP program realizes VOC emission reductions through improving the implementation of existing VOC add-on control requirements in the Chicago and Metro-East areas. CAAPP requires more stringent record keeping, reporting, compliance certification, and monitoring requirements, and provides more severe enforcement penalties than the existing State rules. These provisions, in turn, assure higher rates of compliance, and, correspondingly, lower emissions from the sources.

As was indicated in the July 14, 1997, direct final rule, IEPA's rule effectiveness evaluation is reported in the April 1995 document, "Impact of Clean Air Act Permit Program on Inventory Rule Effectiveness," included in the State submittal. One of the elements of the CAAPP program considered in the Illinois rule effectiveness evaluation was Title V enhanced monitoring. After IEPA completed the study, however, EPA decided to promulgate more flexible Title V monitoring requirements known as CAM.

The original enhanced monitoring program would have required many affected facilities to install expensive Continuous Emission Monitoring Systems (CEMS) or develop other monitoring directly correlated with emission values. After consultation with stakeholders, EPA decided that such requirements would be overly prescriptive and excessively burdensome for many industries to install and operate CEMS and on State and local agencies in implementing their operating permit programs. On October 22, 1997, the EPA promulgated the final CAM rule (62 FR 54899), which requires monitoring of operating parameters of add-on control equipment to assure compliance. The CAM rule is much less burdensome to administer by State and Local agencies than the original enhanced monitoring program, allowing agencies to direct resources in assuring compliance more effectively. Furthermore, the CAM rule covers more sources than the original enhanced monitoring proposal. The rule also provides State and local agencies an additional enforcement tool to address persistent control device operation problems through a Quality Improvement Plan (QIP). A QIP is a comprehensive two-step evaluation and correction process that will require the facility owner to prepare a formal plan and a schedule for correcting control device problems. Such activities may include significant repairs to or even replacement of control devices. The QIP provisions are intended to provide compliance assurance benefits equivalent to the direct monitoring provisions contained in the original enhanced monitoring. Finally, sources already subject to more stringent monitoring requirements are not provided any additional flexibility under CAM, and CAM does not affect the stringency of any other record keeping, reporting and compliance certification requirements required under CAAPP. For these reasons, the EPA finds that the CAM rule does not negatively impact Illinois' estimate of rule effectiveness improvement from CAAPP.

EPA is not required under the Act to withhold 15 percent plan credit from control measures until the actual reduction is verified. Rather, EPA interprets section 182(b)(1) of the Act to allow States to rely on reasonable estimates of emission reductions when developing the 15 percent plans. The State's report "Impact of the CAAPP on Inventory Rule Effectiveness," represents a reasonable estimate of rule effectiveness improvement due to CAAPP. It should also be noted that Illinois' rule effectiveness improvement estimate is consistent with EPA's Regulatory Impact Analysis (RIA) for the new ozone NAAQS, which found 95 percent rule effectiveness to be the most representative value for proposed Act control assumptions (See appendix A of the RIA for the July 18, 1997 ozone NAAQS). To the extent that future verification of the rule effectiveness improvements from CAAPP demonstrates less emission reductions than anticipated, Illinois will be expected to make up the shortfall.

The Milwaukee area 15 percent plan is not an appropriate basis from which to judge the reasonableness of the Chicago 15 percent plan's rule effectiveness improvement credit. This is because the two plans are based on vastly different emission baselines (see EPA's March 22, 1996, approval of the Milwaukee 15 percent ROP plan (61 FR 11735)). There is significantly more industrial activity and vehicle miles traveled in the Chicago area compared to the Milwaukee area, and, correspondingly, control measures implemented in the Chicago area achieve a higher aggregate emission reduction than similar control measures in Milwaukee. The 1990 base-year emission inventory for the Milwaukee area is 559.9 TPD of VOC, while the 1990 inventory for the Chicago area is 1,363.4 TPD. The commenters note that the emission reduction estimate for improved rule effectiveness in Chicago (26.3 TPD), is comparable with the emission estimate of reformulated gasoline in Milwaukee (34.06 TPD accounting for both reformulated gasoline and enhanced I/M). However, the reformulated gasoline program in Chicago alone secures a 112.79 TPD emission reduction. Given this disparity, the EPA finds the emission reduction estimates in the Milwaukee and Chicago 15 percent plans are incomparable for purposes of the determining the adequacy of either plan.

Finally, in regard to the commenters' concern regarding non-CTG sources,

EPA contacted IEPA to determine the status of the FOIA request for a complete list of non-CTG sources in the Chicago area. IEPA has indicated that it responded by sending two lists to Citizens for a Better Environment, a January 25, 1996, list of non-CTG sources with Maximum Theoretical Emissions (MTE) of 100 TPY of VOC and above, and a May 16, 1996, list of sources which emit greater than or equal to 100 TPY of VOC. IEPA also provided to the American Lung Association of Metropolitan Chicago a list of non-CTG sources with a Potential To Emit (PTE) of greater than or equal to 25 TPY of VOM, and Maximum Theoretical Emissions (MTE) of less than 100 TPY of VOC. These lists should have been sufficient to meet the commenters' requests. If the commenters' would like additional information about these lists, the commenters should contact the IEPA.

C. Plant Closures

Comments: ALA et al indicated that it is unclear how the emission reduction credits associated with plant shutdowns were calculated, and that Illinois should receive only credit equal to the extra emissions that were built into the 1996 projections specifically for the individual facilities that have shut down. The commenters also note that EPA should make it clear that no market-based credits can be attributed to these shutdowns once the reductions have been credited toward a SIP. This prohibition should apply to New Source Review (NSR) offset credits and any credits or allowances that are transacted as part of Illinois' proposed VOC cap and trade program.

Response: Each plant shutdown emission estimate represents the projected 1996 VOC emission estimate used in calculating the State's overall emission reduction requirement under the 15 percent plan. Section 182(b)(1) requires the 15 percent emission reduction to account for source growth, so IEPA had factored into its 15 percent calculation what emissions would be in 1996 had no 15 percent control strategies occurred. (See *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans* for more detailed discussion on the growth projection requirement). Because IEPA used projected 1996 emissions from the closed plants when calculating the emission reduction needed for 15 percent reduction, the IEPA claimed those 1996 projections as creditable emission reductions in the 15 percent plan. The projected 1996 emissions were calculated using EGAS growth factors for specific emission units. These same growth factors were used to determine the plant closure emission reductions. Therefore, Illinois has received plant closure credit equal to the emission projections built into the 15 percent requirement calculation.

As for the concern regarding the double-counting of emission reductions from plant closures in other VOC control programs, the State's NSR rules prohibit source closure reductions which are credited toward ROP to be used to meet NSR offset requirements. Illinois adopted a VOC trading program on November 20, 1997, as part of its post-1996 ROP plan. Under the rules, no shutdown emissions reduction claimed in the 15 percent plan can be used as credits in the trading program.

D. Stage II Gasoline Vapor Recovery

Comments: A comment from a citizen indicates that emission reductions associated with the Stage II vapor recovery rule are being overestimated because of low levels of cooperation with the rule. This comment was made based on visits to five gasoline dispensing stations in the Chicago nonattainment area and finding four of the stations have either "no controls" or "breaks in the existing controls." Specifically, out of the five stations the commenter visited, the commenter contends that one station has all boots, one station has "no vapor controls," one station has "no boots," and two stations have "some broken or missing boots."

Response: The IEPA has indicated that the four stations in question have been inspected according to an annual inspection schedule and use Stage II equipment which do not need boots to work effectively. The "boot" the commenter refers to is the device used in conjunction with a particular Stage II control system called the "vapor balance system." The vapor balance system collects vapors by using the displacement pressure between the vehicle tank and the station's underground tank during vehicle refueling. For the vapor balance system to work effectively, a tight seal must be made at the interface between the gasoline dispensing nozzle and the vehicle fuel inlet. The boot, or bellow, is the device fitted onto the nozzle which creates the tight seal during refueling.

Another type of Stage II system, known as a "vacuum assist system" draws in vapors during refueling by using a vacuum-generating device. Because of this design, vacuum assist systems can recover vapors effectively without a tight seal at the nozzle/fillpipe interface. Therefore, boots are not needed for assist systems, and the lack of a boot is by itself no indication that the gasoline dispensing nozzle has no Stage II control.

The four stations considered by the commenter to be out of compliance are all registered with the IEPA to use vacuum assist systems, while the one station considered by the commenter to be in compliance uses a vapor balance system. The commenter apparently assumes that all Stage II systems utilize balance systems with booted nozzles and used their existence as evidence of a Stage II vapor recovery system, or more importantly, that their absence indicates no vapor recovery system. Both vapor balance and vacuum assist systems are required under Illinois' Stage II rules to be certified by CARB to have a 95 percent control efficiency. The IEPA has conducted inspections of the five stations between December 1996 and January 1997, in accordance with an annual Stage II inspection program, and has found that all five stations use Stage II equipment which meet the CARB certification requirement. Therefore, unless the IEPA discovers compliance violations at the stations at future inspections, the EPA assumes the stations to be in compliance with Stage II controls.

In addition, it should be noted that the IEPA has built into its Stage II emission reduction estimates the assumption that not all gasoline dispensing stations in the Chicago nonattainment area may be in compliance at all times; malfunctions in the Stage II equipment can occur. Therefore, IEPA used EPA guidance to determine the in-use efficiency of its overall Stage II program. (See "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Stations," November 1991). Under the Technical guidance, the State's throughput exemption level of 10,000 gallons per month, combined with an annual inspection frequency yields a program efficiency of 84 percent. Illinois has applied the in-use efficiency of 84 percent when calculating the emission reduction estimate for this source category.

Because the four stations the commenter believed to be out of compliance use Stage II equipment which were found to be in compliance at the time of the most recent IEPA inspection, and that equipment malfunctions are taken into account in IEPA's emission reduction estimate for the Stage II program, the EPA finds IEPA's estimate of Stage II emission reductions is reliable.

IV. EPA Rulemaking Action

The EPA is approving, through final rulemaking action, Illinois' 15 percent ROP and 3 percent contingency plan SIP revisions for the Chicago and Metro-East St. Louis ozone nonattainment areas, and the Metro East St. Louis TCM work trip reductions; transit improvements; and traffic flow improvements.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: December 5, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraphs (p), (q), and (r) to read as follows:

§ 52.726 Control Strategy: Ozone.

* * * * *

(p) Approval—On November 15, 1993, Illinois submitted 15 percent rate-of-progress and 3 percent contingency plans for the Chicago ozone nonattainment area as a requested revision to the Illinois State Implementation Plan. These plans satisfy sections 182(b)(1), 172(c)(9), and 182(c)(9) of the Clean Air Act, as amended in 1990.

(q) Approval—On November 15, 1993, Illinois submitted 15 percent rate-of-progress and 3 percent contingency plans for the Metro-East St. Louis ozone nonattainment area as a requested revision to the Illinois State Implementation Plan. These plans satisfy sections 182(b)(1) and 172(c)(9) of the Clean Air Act, as amended in 1990.

(r) Approval—On November 15, 1993, Illinois submitted the following transportation control measures as part of the 15 percent rate-of-progress and 3 percent contingency plans for the Metro-East ozone nonattainment area: Work trip reductions; transit improvements; and traffic flow improvements.

[FR Doc. 97–32641 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–195; RM–9126]

Radio Broadcasting Services; Haiku, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293C to Haiku, Hawaii, as that community's first local FM transmission service, in response to a petition for rule making filed on behalf of Native Hawaiian Broadcasting. *See* 62 FR 47786, September 11, 1997. Coordinates used for Channel 293C at Haiku, Hawaii, are 20–55–03 and 156–19–33. With this action, the proceeding is terminated.

DATES: Effective January 26, 1998. A filing window for Channel 293C at Haiku, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–195, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Haiku, Channel 293C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33047 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–193; RM–9125]

Radio Broadcasting Services; Kaunakakai, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 272C to Kaunakakai, Hawaii, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Native Hawaiian Broadcasting. *See* 62 FR 47406, September 9, 1997. Coordinates used for Channel 272C at Kaunakakai, Hawaii, are 21–05–30 and 157–01–24. With this action, the proceeding is terminated.

DATES: Effective January 26, 1998. A filing window for Channel 272C at Kaunakakai, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–193, adopted November 26, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kaunakakai, Channel 272C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33045 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD28

Endangered and Threatened Wildlife and Plants; Final Rule To List Three Aquatic Invertebrates in Comal and Hays Counties, TX, as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines three aquatic invertebrate species known only from Comal and Hays counties, Texas, to be endangered species under the Endangered Species Act of 1973, as amended (Act). The invertebrates to be listed are Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*). The primary threat to these species is a decrease in water quantity and quality as a result of water withdrawal and other human activities throughout the San Antonio segment of the Edwards Aquifer. This action implements Federal protection provided by the Act for these three invertebrates.

EFFECTIVE DATE: January 20, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

FOR FURTHER INFORMATION CONTACT: Ruth Stanford, Ecologist [see **ADDRESSES** section) (512/490–0057; facsimile (512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

The Service designates Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*) as endangered under the authority of the Act (16 U.S.C. 1531 *et seq.*). These three aquatic invertebrate species are restricted in distribution to spring sites in Comal and Hays counties, Texas, and in the case of Peck's cave amphipod and Comal Springs dryopid beetle, the associated aquifer. Peck's cave amphipod is known from Comal Springs and Hueco Springs, both in Comal County. The Comal Springs riffle beetle is known from Comal Springs and San Marcos Springs (Hays County). The Comal Springs dryopid beetle is known from Comal Springs and Fern Bank Springs (Hays County).

The water flowing out of each of these spring orifices comes from the Edwards Aquifer (Balcones Fault Zone—San Antonio Region), which extends from Hays County west to Kinney County. Comal Springs are located in Landa Park, which is owned and operated by the City of New Braunfels, and on private property adjacent to Landa Park. Hueco Springs and Fern Bank Springs are located on private property. The San Marcos Springs are located on the property of Southwest Texas State University.

Peck's cave amphipod is a subterranean, aquatic crustacean in the family Crangonyctidae. The Comal Springs riffle beetle is an aquatic, surface-dwelling species in the family Elmidae. The Comal Springs dryopid beetle is the only known subterranean member of the beetle family Dryopidae. Elmid and dryopid beetles live primarily in flowing, uncontaminated waters.

The first recorded specimen of the amphipod *Stygobromus* (=*Stygonectes*) *pecki* (Holsinger 1967) was collected by Peck at Comal Springs in June 1964. Reddell collected a second specimen at the same place in May 1965. In 1967, Holsinger named the species *Stygonectes pecki*, in Peck's honor, selecting the 1965 specimen as the type specimen. Later he included all the nominal *Stygonectes* species in the synonymy of the large genus *Stygobromus*. The Service has used "cave amphipod" as a generic common name for members of this genus, and this name was simply transliterated as "Peck's cave amphipod" without reference to a particular cave.

Over 300 specimens of Peck's cave amphipod have been collected since its description. Most specimens were netted from crevices in rock and gravel near the three largest orifices of Comal Springs on the west side of Landa Park in Comal County, Texas (Arsuffi 1993, Barr 1993). Barr collected one specimen from a fourth Comal spring run on private property adjacent to Landa Park and one specimen from Hueco Springs, about 7 kilometers (km) (4 miles (mi)) north of Comal Springs (Barr 1993). Despite extensive collecting efforts, no specimens have been found in other areas of the Edwards Aquifer.

Like all members of the exclusively subterranean genus *Stygobromus*, this species is eyeless and unpigmented, indicating that its primary habitat is a zone of permanent darkness in the underground aquifer feeding the springs. Above ground, individuals are easy prey for predators, but they usually take shelter in the rock and gravel crevices and may succeed in reentering the spring orifice. Barr (1993) got most specimens in drift nets at spring orifices and found them less often as she moved downstream, supporting the notion that they may be easy prey and do not likely survive for long outside the aquifer.

The Comal Springs riffle beetle is a small, aquatic beetle known from Comal Springs and San Marcos Springs. It was first collected by Bosse in 1976 and was described in 1988 by Bosse *et al.* The closest relative of *H. comalensis* appears to be *H. glabra*, a species that occurs farther to the west in the Big Bend region (Bosse *et al.* 1988).

Adult Comal Springs riffle beetles are about 2 millimeters (mm) (⅛ inch (in)) long, with females slightly larger than males. Unlike the other two organisms listed here, the Comal Springs riffle beetle is not a subterranean species. It occurs in the gravel substrate and shallow riffles in spring runs. Some riffle beetle species can fly (Brown 1987), but the hind wings of *H. comalensis* are short and almost certainly non-functional, making the species incapable of this mode of dispersal (Bosse *et al.* 1988).

Larvae have been collected with adults in the gravel substrate of the spring headwaters and not on submerged wood as is typical of most *Heterelmis* species (Brown and Barr 1988). Usual water depth in occupied habitat is 2 to 10 centimeters (cm)(1 to 4 in) although the beetle may also occur in slightly deeper areas within the spring runs. Populations are reported to reach their greatest densities from February to April (Bosse *et al.* 1988). The Comal Springs riffle beetle has been collected from spring runs 1, 2, and 3 at Comal Springs in Landa Park (springs j, k, and l in Brune 1981) and a single specimen was collected from San Marcos Springs 32 km (20 mi) to the northeast.

The Comal Springs dryopid beetle is a recently discovered species. It was first collected in 1987 and described as a new genus and species in 1992 by Barr (California State University) and Spangler (National Museum of Natural History, Smithsonian Institution). Adult Comal Springs dryopid beetles are about 3.0–3.7 mm (⅛ inch) long. They have vestigial (non-functional) eyes, are weakly pigmented, translucent, and thin-skinned. This species is the first subterranean aquatic member of its family to be discovered (Brown and Barr 1988; Barr, *in litt.* 1990; Barr and Spangler 1992).

Collection records for the Comal Springs dryopid beetle are primarily from spring run 2 at Comal Springs, but they have also been collected from runs 3 and 4 at Comal and from Fern Bank Springs about 32 km (20 mi) to the northeast in Hays County. Collections have been from April through August. Most of the specimens have been taken from drift nets or from inside the spring orifices. Although the larvae of the Comal Springs dryopid beetle have been collected in drift nets positioned over the spring openings, they are presumed to be associated with air-filled voids inside the spring orifices since all other known dryopid beetle larvae are terrestrial. Unlike Peck's cave amphipod, the Comal Springs dryopid beetle does not swim, and it may have a smaller range within the aquifer.

The exact depth and subterranean extent of the ranges of the two subterranean species (Comal Springs dryopid beetle and Peck's cave amphipod) are not precisely known because of a lack of methodologies available for studying karst aquifer systems and the organisms that inhabit such systems. Presumably an interconnected area, the subterranean portion of this habitat, provides for feeding, growth, survival, and reproduction of the Comal Springs dryopid beetle and Peck's cave amphipod. However, no specimens of these species have appeared in collections from 22 artesian and pumped wells flowing from the Edwards Aquifer (Barr 1993) suggesting that these species may be confined to small areas surrounding the spring openings and are not distributed throughout the aquifer. Barr (1993) also surveyed nine springs in Bexar, Comal, and Hays counties considered most likely to provide habitat for endemic invertebrates and found *Stygoparnus comalensis* only at Comal and Fern Bank springs and *Stygobromus pecki* only at Comal and Hueco springs.

Although these species are fully aquatic and two of the three require flowing water for respiration, the absolute low water limits for survival are not known. They survived the drought of the middle 1950's, which resulted in cessation of flow at Comal Springs from June 13 through November 3, 1956. Hueco Springs is documented to have gone dry in the past (Brune 1981, Barr 1993) and, although no information is available for Fern Bank Springs, given its higher elevation, it has probably gone dry as well (Glenn Longley, Edwards Aquifer Research and Data Center, personal communication, 1993). San Marcos Springs has not gone dry in recorded history.

These invertebrates were not extirpated by the only recorded temporary cessation of spring flow. However, given that they are fully aquatic and that no water was present in the springs for a period of several months, they were probably negatively impacted. These species are not likely adapted to surviving long periods of drying (up to several years in duration) that may occur in the absence of a water management plan for the Edwards Aquifer that accommodates the needs of these invertebrates. Stagnation of water may be a limiting condition, particularly for the Comal Springs dryopid beetle and Peck's cave amphipod.

Stagnation of water and/or drying within the spring runs and the photic (lighted) zone of the spring orifices would probably be limiting for the Comal Springs riffle beetle because natural water flow is considered important to the respiration and therefore survival of this invertebrate species. Elmid and dryopid beetles have a mass of tiny, hydrophobic (unwettable) hairs on their underside where they maintain a thin bubble of air through which gas exchange occurs (Chapman 1982). This method of respiration loses its effectiveness as the level of dissolved oxygen in the water decreases. A number of aquatic insects that use dissolved oxygen rely on flowing water to obtain oxygen.

Previous Federal Action

In a petition dated September 9, 1974, the Conservation Committee of the National Speleological Society requested the Service to list *Stygobromus* (=*Stygonectes*) *pecki*. The species was included in a notice of review published on April 28, 1975 (40 FR 18476). A "warranted but precluded" finding regarding several species in that petition was made on October 12, 1983, and published on January 20, 1984 (49 FR 2485). A warranted but precluded finding means that available information indicates listing the species as threatened or endangered is appropriate but that the listing is precluded by higher priority actions. The same determination has been repeated for Peck's cave amphipod in subsequent years. The species was included as a category 2 candidate in comprehensive notices of review published on May 22, 1984 (49 FR 21664), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). Category 2 candidates were those species for which data in the Service's possession indicated that listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not known or on file to support proposed rules. *Stygobromus pecki* was elevated to category 1 status in the 1994 notice of review (59 FR 58982). Category 1 candidates were those species for which the Service had on file substantial information on biological vulnerability and threats to support a proposal to list. As published in the **Federal Register** on February 28, 1996 (61 FR 7596), candidate category 2 status was discontinued and only category 1 species are currently recognized as candidates for listing purposes.

In a petition dated June 20, 1990, and received June 21, 1990, Mr. David Whatley, then Director of the City of New Braunfels Parks and Recreation Department, requested that the Service list five invertebrate taxa, including Peck's cave amphipod and four insects. The Service treated this as a second petition for the amphipod. A notice of finding published April 29, 1991 (56 FR 19632), announced that the petition presented substantial information and that listing the Comal Springs riffle beetle and the Comal Springs dryopid beetle may be warranted. Formal status review was initiated for those species. Both species became candidates for listing in the 1994 notice of review (59 FR 58982).

Peck's cave amphipod, Comal Springs riffle beetle, and Comal Springs dryopid beetle were proposed for listing on June 5, 1995 (60 FR 29537). The Act requires that a final determination on a proposed listing be made within one year of the proposal. However, a congressionally-imposed moratorium on final listing actions combined with a recision of funding for the Service's listing program prohibited timely publication of this final rule.

Summary of Comments and Recommendations

In the June 5, 1995, proposed rule (60 FR 29537) and associated **Federal Register** notices all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. Appropriate Federal and State agencies, local governments, scientific organizations, and other interested parties were contacted and requested to comment.

A public hearing request came from Mr. David Langford, Executive Vice President of the Texas Wildlife Association, by letter dated June 22, 1995. The hearing was held on July 24, 1995 at the New Braunfels Civic Center in New Braunfels, Texas. Legal notices of the public hearing, which invited general public comment, were published in The New Braunfels Herald-Zeitung, the San Marcos Daily Record, the Uvalde Leader-News, the Medina Valley-Times, and the San Antonio Express-News. Sixteen people attended the public hearing and one person provided oral testimony.

The Service received 1 oral and 24 written comments on the proposal. Of the letters and oral testimony received, nine supported the proposed action, seven opposed it, and nine did not clearly state support or opposition.

The Service solicited formal scientific peer review of the proposal from six professional biologists during the public comment period and received comments from two reviewers. Their comments are either incorporated into this listing decision as appropriate, or are addressed below.

Written and oral comments presented at the public hearing and received during the comment period were incorporated into this final rule where appropriate. Comments not incorporated are addressed in the following summary. Comments of a similar nature or point are grouped and summarized. Where differing viewpoints around a similar issue were made, the Service has briefly summarized the general issue.

Comment 1: Threats to the species are greatly exaggerated and inconsistent with available data. No real or immediate threat exists that would justify listing these invertebrates.

Service Response: The primary threat to these species is loss of water in their habitat at Comal Springs and other springs where they occur. This threat is discussed in detail in Factor A of this rule.

Comment 2: Samples of all three of the species were collected after the springs had ceased flowing in the immediately preceding years.

Service Response: Spring flow did not cease from all outlets in 1990, and only spring run 1 at Comal saw significant loss of water. During brief periods of very low spring flow the spring runs probably retain sufficient subsurface moisture to allow the Comal springs riffle beetle to survive. Furthermore, when periods of low spring flow are brief and the spring runs are not completely dry, the subsurface water level likely remains higher and closer to the spring openings. These conditions may allow the survival of these species, whereas a period of extensive, long-term cessation of spring flow likely would not. Because these invertebrates are fully aquatic and require relatively well-oxygenated water, a reduction or cessation of spring flows, even if standing water remains around the spring orifices, may negatively impact the species. Loss of water entirely, within their habitat, would result in the extirpation of these aquatic species.

Comment 3: It was noted that the Edwards Aquifer Authority (Authority) was created by S.B. 1477 to regulate withdrawal of water from the aquifer. The Authority withstood legal challenges with the passage of H.B. 3189, which was passed with the cooperation and guidance of the Department of Justice and implementation is anticipated. The commenter further stated that implementation of S.B. 1477 and H.B. 3189 will regulate water withdrawal,

thus eliminating the primary threat, and the need to list the species.

Service Response: Some of the legal issues regarding the establishment of the Authority have been resolved since the time the proposed rule was published and the elected board is in effect at this time. However, an aquifer management plan that would provide for protection of these species and their habitat is not yet in place. Further progress of this board could be beneficial in the future and, if threats are reduced or removed, could result in downlisting or, possibly, delisting the species.

Comment 4: The City of New Braunfels has obtained surface water to meet base demand which will eliminate pumping in the immediate area of the springs and substantially diminish threats to the species.

Service Response: As discussed in Factor A, all of the springs where these species occur are affected by water withdrawal throughout the aquifer's artesian zone to the west. Therefore, a management plan for the entire aquifer, not just the area near the springs, is necessary to moderate threats to the species.

Comment 5: Service treatment of this complex and dynamic issue is incomplete and erroneous. The Service ignores Texas Natural Resources Conservation Commission (TNRCC) rules and proposed amendments to address water quality.

Service Response: The Service acknowledges the extreme complexity of issues regarding the quality and quantity of water in the Edwards Aquifer. The TNRCC rules deal primarily with water quality issues. The more significant issue, however, is maintaining adequate spring flows and the likelihood that a water management plan will be in effect in the foreseeable future that will provide protection for these invertebrates, as discussed in Factor A.

Comment 6: If currently listed species are provided adequate spring flow, then species that have survived previous cessation of spring flow will receive adequate protection without the need to list.

Service Response: While there are species within the Comal and San Marcos ecosystems that are presently listed as threatened or endangered, none of these listed species are assured adequate spring flow. Furthermore, some of the techniques, such as spring flow augmentation, under consideration by some for providing spring flow, will not adequately provide for the invertebrates addressed in this final rule. For example, the Comal Springs riffle beetle occurs in the spring runs. If water is "augmented" into this area after the springs cease flowing, the spring orifices will act as recharge features. The water would return to the aquifer rather than remaining in the spring runs. In addition, if augmentation is attempted through subsurface modifications of the aquifer, the habitat of the two subterranean species could be negatively impacted.

Comment 7: In 1991, the Service reported that these invertebrates were endemic to Comal Springs. Now each of the invertebrates is known from one other spring and each is known from all of the upper springs at Comal. This establishes a potentially wide range for the species. The subterranean habits of two of the species and the fact that they are found at springs as much as 20 miles apart suggests a much wider distribution in the aquifer that would obviate the need to list them as endangered.

Service Response: Status surveys that were conducted for each of these species following the petition to list them found only one new location for each species. Locations in more than one spring run at Comal Springs is not surprising given the proximity of the spring runs. As stated previously, extensive surveys for the species at springs throughout Bexar, Comal, and Hays counties and examination of numerous well samples have found each of the species at Comal Springs and in very low numbers at one additional spring system each. The species were not found at most of the locations surveyed.

Disjunct distributions (e.g., those that are separated by 20 miles) are common in nature and can arise from many evolutionary and ecological processes. Unfortunately, these species are not sufficiently studied to allow us to give a precise explanation for the disjunct distribution, or to determine with certainty whether it is disjunct. Information in the Background section discusses the fact that specimens of the subterranean species have not been found in well samples throughout the aquifer area, in spite of extensive sampling. The Service believes this is a good indication that the species are not widely distributed underground. We do believe that efforts to collect the species in any appropriate habitat where researchers were granted access were sufficient to determine that, in all probability, the species do not exist throughout the underground portions of the aquifer.

Comment 8: Listing is not warranted until highly variable and interruptible spring flow is considered as part of the historical cycle to which these species are adapted to survive.

Service Response: These species exhibit no morphological characteristics or behaviors indicating an ability to survive extended drying of their habitat. The Comal Springs riffle beetle lacks the ability to fly that many other riffle beetles have, suggesting that it is adapted to continuous and reliable spring flows (although flow may still be variable). The more frequent and severe drying that is expected at current and increasing rates of withdrawal from the aquifer will create a condition to which these species are not adapted to survive.

Comment 9: As late as 1991, the Service made a warranted but precluded finding for Peck's cave amphipod. The proposed listing gives no explanation of the change in position from "warranted but precluded" to "proposed for listing." This is ironic since potential threats to the species have been substantially addressed during this 4-year period.

Service Response: A warranted but precluded finding means that the best available information indicates that listing the species is appropriate but that other pending listing actions are more urgently needed and given a higher priority. Many of those other listing actions have now been completed. Before publishing the proposed listing, the Service reviewed the most current information available and determined that the threats to the species are still significant. The Service acknowledges and commends the efforts that so many individuals, agencies, and organizations have put into looking for ways to manage the Edwards Aquifer in a manner that will both protect the endemic species and provide for human water users. However, significant aquifer issues remain unresolved.

Comment 10: Spring flow may be irrelevant to the suitability of habitat in the aquifer for the subterranean species.

Service Response: The Service recognizes that the Peck's cave amphipod and the Comal Springs dryopid beetle are fully aquatic and show morphological adaptations to a subterranean existence. However, neither of these species has shown up in well samples and both have only been collected near the spring orifices, a key feature of their habitat is the water/spring orifice boundary. Reduced spring flows will alter the position and the nature of this boundary and may have a negative effect on these species. Further information is discussed in the Background section.

Comment 11: The Service's failure to define a range or location of habitat for these species is tantamount to an admission that the Service does not know enough about the species to warrant a conclusion that the species' habitat is threatened by drought.

Service Response: The best available information indicates that the range of each species is limited to a small area near each spring opening where the species have been found. The range of each of the species is both small in size and probably disjunct in distribution. Further information on each species' habitat is presented in the Background section.

Comment 12: Until more is known about the proposed species, and some real harm is shown as a consequence of variable and interruptible spring flows, they are not endangered species.

Service Response: The Service must make determinations for listing of species based on "the best scientific and commercial data available" at the time of listing. Existing knowledge indicates that these species require a reliable supply of clean water. The species have survived past dry periods, but models and predictions cited in the proposal and in this final rule all agree that cessation of spring flow is likely to be more frequent and of longer duration given present pumping levels, as well as those outlined in S.B. 1477. Although S.B. 1477 limits total water withdrawal from the aquifer, the limits may currently be too high to assure long-term spring flow. The Texas Water Development Board (1992) models indicate that at the proposed pumping limit of 450,000 acre-feet, and given recharge levels and patterns similar to those that occurred from 1934 to 1990, Comal Springs could spend 10 to 20 years below 100 cubic feet per second (cfs), and could stop flowing entirely for several years at a time (Texas Water Development Board, personal communication). Negative impacts to the habitat in spring run 1 at Comal Springs, including drying, occur as flows approach 100 cfs.

Comment 13: Studies show that dissolved oxygen is high even at the lowest spring flows. Dissolved oxygen does not appear to be a determinative factor in the decision whether to list the species.

Service Response: The primary factor threatening the long-term survival of these species is availability of a sufficient quantity of water to maintain essential characteristics of their habitat. Although water quality, including the need for certain levels of dissolved oxygen, may be an important factor in their survival, the magnitude of the threat from total loss of water is viewed as the greater threat.

Comment 14: There is no economic advantage to protecting these invertebrates, and putting the life of virtually unknown species ahead of human welfare does not make sense.

Service Response: Like these invertebrates, humans depend on reliable supplies of clean water, and thus protecting our water resources is vital to protecting human health. While the Service cannot consider the economic consequences of species listings when making listing determinations, we believe that protecting these species will have a positive effect to humans in that it will ensure the persistence of the water resource for future generations and will maintain a healthy ecosystem. In addition, continuing spring flow is economically important both in the vicinity of the springs for water recreation businesses and downstream as far as the Gulf of Mexico, where inflow of fresh water into the bays and estuaries is vital to recreational and commercial fisheries.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*) should be classified as endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to these three invertebrate species are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

The main threat to the habitat of these aquatic invertebrates is a reduction or loss of water of adequate quantity and quality, due primarily to human withdrawal of water from the San Antonio segment of the Edwards (Balcones Fault Zone) Aquifer and other activities. Total withdrawal from the San Antonio region of the Edwards Aquifer has been increasing since at least 1934, when the total well discharge was 101,900 acre-feet (Edwards Underground Water District 1989). In 1989, the total well discharge was the highest on record at slightly more than 542,000 acre-feet (Longley 1991, Edwards Underground Water District 1992a). Between 1989 and 1995, total well discharge has ranged from 327,000 acre-feet in 1992 to 489,000 acre-feet in 1990 (U.S. Geological Survey, San Antonio, 1996).

There is an integral connection between the water in the aquifer west of the springs and the water serving as habitat for these species. Water in the Edwards Aquifer flows from west to east or northeast and withdrawal or contamination of water in the western part of the aquifer can have a direct effect on the quantity and quality of water flowing toward the springs and at the spring openings. Prior to wells being drilled into the aquifer, almost all of the water entering the aquifer eventually exited at springs (Guadalupe-Blanco River Authority 1988).

The Texas Water Commission (TWC) (1989) classified the San Antonio segment of the Edwards Aquifer as a critical area in terms of its potential for groundwater problems related to overdrafting. They also ranked Bexar, Comal, and Hays counties among the top 23 counties in Texas for number of active groundwater public supply systems. Human population in the region is expected to increase (Technical Advisory Panel 1990, Edwards Underground Water District 1993), which will result in increased demand for water from the aquifer.

The Texas Water Development Board has applied its model (1992) of the Edwards Aquifer to determine the maximum pumping level that would allow Comal Springs to continue to flow, assuming historic recharge (Technical Advisory Panel 1990). They found that during a drought similar to that of the 1950's, the maximum pumpage that would allow spring flow at Comal Springs is about 250,000 acre-feet per year. "At this pumping level, Comal Springs could be expected to maintain some annual flow although they may flow on an intermittent basis during a recurrence of the drought of record" (Technical Advisory Panel 1990). The Panel also stated that in the year 2000, if pumping continues to grow at historical rates and a drought occurs, Comal Springs would go dry for a number of years (Technical Advisory Panel 1990).

Wanakule (1990) states that "the present problem facing the Edwards Aquifer is the threat of overdrafting of the annual average recharge rate." McKinney and Watkins (1993) evaluated the Texas Water Development Board model and other models and concluded that, without limiting withdrawal to about 200,000 acre-feet per year, Comal Springs will likely go

dry for extended periods during even a minor drought. The recent creation of the Authority may help to alleviate this threat to some degree (see Factor D for further discussion).

The Texas Water Development Board model runs indicate that at the proposed pumping limit of 450,000 acre-feet, and given recharge levels and patterns similar to what occurred from 1934 to 1990, Comal Springs could spend 10 to 20 years below 100 cfs, and could stop flowing entirely for several years at a time (Texas Water Development Board, personal communication, 1997). A model run with the same general parameters but a withdrawal of 400,000 acre-feet shows the same pattern with some increase in spring flow, but still extended periods with no spring flow (Texas Water Development Board, personal communication, 1997).

In 1984 and 1990, some of the higher-elevation Comal Springs ceased flowing and water levels in the index well (J–17) in San Antonio dropped to within 3.7 meters (m) (12 feet (ft)) of the historic low of 186.7 m (612.5 ft) that occurred in 1956 (Wanakule 1990). During the drought conditions in the summer of 1996, spring flows at Comal Springs dropped to a low of 83 cfs. During the entire year of 1996, spring flow stayed below 200 cfs for about 252 days and below 100 cfs, the approximate flow at which spring run 1 stops flowing, for about 59 days. Because these invertebrates require relatively well-oxygenated water, a reduction or cessation of spring flows, even if standing water remains around the spring orifices, may negatively impact the species. Complete loss of water would likely result in the extirpation of these aquatic species.

In addition to a loss of water, a decrease in the water level in the aquifer could lead to decreased water quality at the springs. The Balcones Fault Zone—San Antonio Region is bounded on the south and east by a "bad water" interface across which the groundwater quality abruptly deteriorates to greater than 1000 mg/l total dissolved solids. Crossing the bad water interface, groundwater goes from fresh to saline or brackish. Lowered water levels resulting from groundwater pumpage and/or decreased recharge may at some point result in deterioration of water quality in the fresh water section of the aquifer through movement of the bad water interface. The Comal and San Marcos Springs are less than 305 and 62 m (1,000 and 200 ft), respectively, from the bad water interface (TWC 1989, Edwards Underground Water District 1992b). Although the data are inconclusive at present, even a small movement of the water may negatively impact the species.

Other possible effects of reduced spring flow exist. These include changes in the chemical composition of the water in the aquifer and at the springs, a decrease in current velocity and corresponding increase in siltation, and an increase in temperature and temperature fluctuations in the aquatic habitat (McKinney and Watkins 1993).

Another threat to the habitat of these species is the potential for groundwater contamination. Pollutants of concern include, but are not limited to, those associated with human sewage (particularly septic tanks), leaking underground storage tanks, animal/feedlot waste, agricultural chemicals (especially insecticides, herbicides, and fertilizers) and urban runoff (including pesticides, fertilizers, and detergents).

Pipeline, highway, and railway transportation of hydrocarbons and other potentially harmful materials in the Edwards Aquifer recharge zone and its watershed, with the attendant possibility of accidents, present a particular risk to water quality in Comal and San Marcos Springs. Comal and San Marcos Springs are both located in urbanized areas. Hueco Springs is located alongside River Road, which is heavily traveled for recreation on the Guadalupe River, and may be susceptible to road runoff and spills related to traffic. Fern Bank Springs is in a relatively remote, rural location and its principal vulnerability is probably to contaminants associated with leaking septic tanks, animal/feedlot wastes, and agricultural chemicals.

Of the counties containing portions of the San Antonio segment of the Edwards Aquifer, the potential for acute, catastrophic contamination of the aquifer is greatest in Bexar, Hays, and Comal counties because of the greater level of urbanization compared to the western counties. Although spill or contamination events that could affect water quality do happen to the west of Bexar County, dilution and the time required for the water to reach the springs may lessen the threat from that area. As aquifer levels decrease, however, dilution of contaminants moving through the aquifer may also decrease.

The TWC reported that in 1988 within the San Antonio segment of the Edwards Aquifer, Bexar, Hays, and Comal counties had the greatest number of land-based oil and chemical spills in central Texas that affected surface and/or groundwater with 28, 6, and 4 spills, respectively (TWC 1989). As of July, 1988, Bexar County had between 26 and 50 confirmed leaking underground storage tanks, Hays County had between 6 and 10, and Comal County had between 2 and 5 (TWC 1989) putting them among the top 5 counties in central Texas for confirmed underground storage tank leaks. The TWC estimates that, on average, every leaking underground storage tank will leak about 500 gallons per year of contaminants before the leak is detected. These tanks are considered one of the most significant sources of groundwater contamination in the state (TWC 1989).

The TWC (1989), using the assessment tool DRASTIC (Aller, *et al.* 1987), classified aquifers statewide according to their pollution potential. The Edwards Aquifer (Balcones Fault Zone—Austin and San Antonio Regions) was ranked among the highest in pollution potential of all major Texas aquifers. The project's objective was to identify areas sensitive to groundwater pollution from a contaminated land surface based on the hydrogeologic setting. The area of particular concern was the Edwards Aquifer recharge zone and its watershed.

The TWC (1989) also reviewed and reported known and potential risks to Texas aquifers, such as from sanitary landfills, hazardous waste disposal facilities, industrial waste and sewage disposal wells, commercial feedlots, and graveyards. They found the following: "Based on this statewide assessment of potential and actual ground-water contaminants, waste disposal practices being employed and existing regulations which are available for contamination detection and mitigation, it was concluded that there are still conditions that exist or practices being used that are cause for concern. For the most part, the state presently has in place regulations that will effectively reduce future pollution, however pest practices may return to haunt us."

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No threat from overutilization of this species is known at this time.

C. Disease or Predation

While individuals of these three species may be preyed upon by various predatory insects or fish, no information indicates that this is a substantial threat.

D. The Inadequacy of Existing Regulatory Mechanisms

Invertebrates are not included on the Texas Parks and Wildlife Department's (TPWD) list of threatened and endangered species and are provided no protection by the State. The TPWD regulations do not contain provisions for protecting habitat of any listed species.

Traditionally, the State of Texas has had no authority to regulate withdrawal of groundwater from an aquifer. After a lawsuit filed against the Service by the Sierra Club (*Sierra Club* v. *Babbitt*, formerly *Sierra Club* v. *Lujan*), the Texas State Legislature passed a bill (S.B. 1477) authorizing the creation of the Authority and granted the Authority the power to regulate groundwater withdrawal from the Edwards Aquifer. The bill limits groundwater withdrawal from the aquifer to 450,000 acre-feet per year initially, reducing it to 400,000 acre-feet per year by January 1, 2008. However, Texas Water Development Board models indicate that, at these proposed withdrawal limits, the upper-elevation spring runs at Comal Springs could go dry frequently and for significant periods of time (as happened in 1996) and significant negative impacts to the species could occur before continuous minimum springflows are in place.

One goal of the bill is to provide continuous minimum spring flow, as defined by Federal statute, at Comal and San Marcos Springs by the year 2012. This minimum flow is to protect species that are designated as threatened or endangered under Federal or State law, but does not protect unlisted species. In addition, an evaluation of the Texas Water Development Board models used to set these withdrawal limits shows that flow at Comal Springs will drop below 100 cfs and will likely go dry for extended periods in time of severe drought and probably during minor droughts (McKinney and Watkins 1993, TWDB 1992). McKinney and Watkins (1993) believe it is unlikely that spring flow in Comal Springs of at least 100 cfs for 80 percent of the time, except during severe drought, can be met with a pumping limit greater than 200,000 acre-feet per year. In addition, when the flow drops to 96 cfs, spring run 1 at Comal Springs has already dried substantially (Thornhill, deposition in Sierra Club v. Lujan). Finally, efforts to maintain minimum spring flow at Comal and San Marcos Springs would not necessarily be sufficient to maintain flow at Hueco and Fern Bank Springs, which lie at higher elevations.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

The effect of natural droughts in south central Texas will increase in severity due to the large increase in human groundwater withdrawals (Wanakule 1990). These species' very limited habitat is likely to be lost through drying or decreased volume of spring flow during minor or severe drought.

At present, competition is not known to be a significant threat to these species. However, two exotic snail species, *Thiara granifera* and *Thiara tuberculata*, are common in the spring runs and, as grazers, may compete for food. Another exotic species, the giant ramshorn snail (*Marisa cornuarietis*), is present in two of the spring runs and may colonize the other runs at low flow levels. *Marisa* can have a tremendous impact on vegetation, that in turn may affect the habitat for surface-dwelling grazers like the riffle beetle.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in making this final rule. Based on this evaluation the preferred action is to list the Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*) as endangered. Endangered status is determined appropriate for these three invertebrates given that threats are significant and could result in extinction of these species throughout all or a significant portion of their range. The immediate nature of these threats precluded determining these species to be threatened species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Peck's cave amphipod, the Comal Springs riffle beetle, and the Comal Springs dryopid beetle. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Designation of critical habitat would provide no benefits to these species beyond those provided by listing and the subsequent evaluation of activities under section 7 of the Act. Section 7 prohibits Federal agencies from jeopardizing the continued existence of listed species or destroying or adversely modifying listed species' designated critical habitat.

In the Service's section 7 regulations at 50 CFR part 402, the definition of "jeopardize the continued existence of" includes "to reduce appreciably the likelihood of both the survival and recovery of the listed species," and "destruction or adverse modification" is defined as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Both of these definitions refer to actions that reduce the survival and recovery of a listed species. Any action that would appreciably diminish the value, in quality or quantity, of spring flows (habitat) on which the species depend would also reduce appreciably the likelihood of survival and recovery of the three species. Because these species are endemic to such highly localized areas, actions that affect water quality and quantity at the springs will be fully evaluated for their effects on the three species through analysis of whether the actions would be likely to jeopardize their continued existence. The analysis for possible jeopardy applied to these species would therefore be identical to the analysis for determining adverse modification or destruction of critical habitat. Therefore, there is no distinction between jeopardy and adverse modification for activities impacting the springs on which these species depend.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies, private

organizations, and individuals. The Act provides for cooperation with the States and requires that recovery actions be carried out for all species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Conservation and management of the Peck's cave amphipod, Comal Springs riffle beetle, and Comal Springs dryopid beetle are likely to involve protection and conservation of the Edwards Aquifer and spring flow at Comal, Hueco, San Marcos, and Fern Bank Springs. It is also anticipated that listing will encourage research on critical aspects of the species' biology.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species or to destroy or adversely modify its critical habitat.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal actions that may require consultation include projects that would affect the quality or quantity of water within the San Antonio segment of the Edwards Aquifer or otherwise significantly affect the outlets or water output of Comal Springs in New Braunfels, Texas; San Marcos Springs in San Marcos, Texas; Hueco Springs in Comal County, Texas; and Fern Bank Springs in Hays County, Texas. Examples of these types of activities include projects that would involve withdrawal of water from the aquifer; permits for municipal wastewater discharge; agricultural irrigation; use of pesticides and herbicides; Environmental Protection Agency National Discharge Elimination System permits; section 18 exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act; Corps of Engineers permits for stream crossings; and Department of Housing and Urban Development projects.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. It is anticipated that few trade permits would ever be sought or issued because these species are not known to be in trade.

It is the policy of the Service (July 1, 1994; 59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing on proposed and ongoing activities within a species' range. The purpose of this guidance is not only to identify activities that would or would not likely result in take of individuals, but activities that in combination will ultimately affect the long-term survival of these species. This guidance should not be used to substitute for local efforts to develop and implement comprehensive management programs.

The Service believes that, based on the best available information, activities that could potentially harm these invertebrates and result in "take" include, but are not limited to:

(1) Collecting or handling of the species;

(2) Activities that may result in destruction or alteration of the species' habitat including, but not limited to, withdrawal of water from the aquifer to the point at which habitat becomes unsuitable for the species, alteration of the physical habitat within the spring runs, or physical alteration of the spring orifices or of the subsurface pathways providing water to the springs;

(3) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other material into the springs or into areas that provide access to the aquifer and where such discharge or dumping could affect water quality;

(4) Herbicide, pesticide, or fertilizer application in or near the springs containing the species; and

(5) Introduction of non-native species (fish, plants, other) into these spring ecosystems.

The Service believes that a wide variety of activities would not harm these species if undertaken in the vicinity of their habitats and thus would not constitute taking. In general, any activity in the contributing, recharge, or artesian zones of the Edwards aquifer that would not have potential for the cumulative or acute/catastrophic negative effects on water quantity or quality within the aquifer should not harm these species. Inquiries concerning the possible effects of specific activities, copies of regulations regarding listed wildlife, or inquiries regarding prohibitions and permits should be directed to the Service's Austin Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

Aller, L., T. Bennett, J.H. Lehr, R.J. Petty, and G. Hackett. 1987. DRASTIC: a standardized system for evaluating groundwater pollution potential using hydrogeologic settings. U.S. Environmental Protection Agency. EPA/600/2–87/035. 622 pp.

Arsuffi, Thomas L. 1993. Status of the Comal Springs Riffle Beetle (*Heterelmis comalensis* Bosse, Tuff, and Brown), Peck's Cave Amphipod (*Stygobromus pecki* Holsinger), and the Comal Springs Dryopid Beetle (*Stygoparnus comalensis* Barr and Spangler). Prepared for the U.S. Fish and Wildlife Service. 25 pp.

Barr, C.B. 1993. Survey for two Edwards Aquifer invertebrates: Comal Springs dryopid beetle *Stygoparnus comalensis* Barr and Spangler (Coleoptera: Dryopidae) and Peck's cave amphipod *Stygobromus pecki* Holsinger (Amphipoda: Crangonyctidae). Prepared for U.S. Fish and Wildlife Service. 70 pp.

Barr, C.B., and P.J. Spangler. 1992. A new genus and species of stygobiontic dryopid beetle, *Stygoparnus comalensis* (Coleoptera: Dryopidae), from Comal Springs, Texas. Proc. Biol. Soc. Wash. 105(1):40–54.

Bosse, L.S., D.W. Tuff, and H.P. Brown. 1988. A new species of *Heterelmis* from Texas (Coleoptera: Elmidae). Southwestern Naturalist 33(2):199–203.

Brown, H.P. 1987. Biology of Riffle Beetles. Annual Review of Entomology. 32:253–73

Brown, H.P., and C.B. Barr. 1988. First report of stygobiontic (subterranean) riffle beetles in North America. Program abstract for April 22, 1988, meeting of Southwestern Association of Naturalists. 5 pp.

Brune, G. 1981. Springs of Texas, Volume 1. Branch-Smith Inc., Ft. Worth, Texas.

Chapman, R.F., 1982. The Insects: Structure and Function. Harvard University Press, Cambridge, MA. 919 pp.

Edwards Underground Water District. 1989. Compilation of hydrologic data for the Edwards Aquifer, San Antonio area, Texas, 1988, with 1934–88 summary: Bulletin 48, 157 pp.

Edwards Underground Water District. 1992a. Report of the technical data review panel on the water resources of the south central Texas region. 307 pp.

Edwards Underground Water District. 1992b. Investigation of the fresh/saline water interface in the Edwards Aquifer in New Braunfels and San Marcos, Texas. Report 92–02. 18 pp.

Edwards Underground Water District. 1993. Urban Development on the Edwards Aquifer Recharge Zone. Report 93–09. 40 pp.

Guadalupe-Blanco River Authority. 1988. The Edwards Aquifer: Underground River of Texas. Guadalupe-Blanco River Authority, Seguin, Texas. 63 pp.

Holsinger, J.R. 1967. Systematics, speciation, and distribution of the subterranean amphipod genus *Stygonectes* (Gammaridae). Bull. U.S. Nat. Mus. 259:1–176.

Longley, G. 1991. Status and trends of the Edwards (Balcones Fault Zone) Aquifer in the San Antonio Region. pp. 4–16 *In:* Proceedings of South Texas Irrigation Conference. Guy Fipps, ed. 146 pp.

McKinney, D.C., and D.W. Watkins, Jr. 1993. Management of the Edwards Aquifer: A critical assessment. Technical Report CRWR 244. Center for Research in Water Resources, Bureau of Engineering Research. University of Texas at Austin. 94 pp.

Technical Advisory Panel. 1990. Technical factors in Edwards Aquifer use and management. Prepared for Special Committee on the Edwards Aquifer. 57 pp.

Texas Department of Water Resources. 1979. Geohydrology of Comal, San Marcos, and Hueco Springs. Report 234. Prepared by Guyton ans Associates. 85 pp.

Texas Water Commission. 1989. Groundwater quality of Texas-an overview of natural and man-affected conditions. Austin, Texas. 197 pp. and 3 plates.

Texas Water Development Board. 1992. Model Refinement and Applications for the Edwards (Balcones Fault Zone) Aquifer for the San Antonio Region, Texas. Texas Water Development Board. Report 340. July 1992. 33 pp.

U.S. Geological Survey. 1996. Unpublished summary tables on Edwards Aquifer discharge. U.S. Geological Survey, San Antonio. 3 pp.

Wanakule, N. 1990. Stochastic drought analysis of the Edwards Aquifer. Edwards Aquifer Research and Data Center No. R1.–90, San Marcos, Texas. 32 pp.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, the Service amends as follows:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Crustaceans and Insects, respectively, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
CRUSTACEANS							
Stygobromus (=Stygonectes) pecki.	Amphipod, Peck's cave.	U.S.A. (TX)	Crangonyctidae	E		NA	NA
INSECTS							
Stygoparnus comalensis.	Beetle, Comal Springs dryopid.	U.S.A. (TX)	Dryopidae	E		NA	NA
Heterelmis comalensis.	Beetle, Comal Springs riffle.	U.S.A. (TX)	Elmidae	E		NA	NA

Dated: October 21, 1997.
Jamie Rappaport Clark,
Director, Fish and Wildlife Service.
[FR Doc. 97–33041 Filed 12–17–97; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 121297A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to protect the Atlantic migratory group Spanish mackerel resource.

DATES: Effective 6:00 a.m., local time, December 16, 1997, through March 31, 1998, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The Councils recommended and NMFS implemented an adjusted quota and commercial trip limits for Atlantic migratory group Spanish mackerel from the southern zone. As set forth at 50 CFR 622.44(b)(2), the adjusted quota is 3.25 million lb (1.47 million kg). In accordance with 50 CFR 622.44(b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic migratory group Spanish mackerel from the southern zone is taken until 100 percent of the adjusted quota is taken, Atlantic migratory group Spanish mackerel in or from the EEZ in the southern zone may not be possessed on board or landed from a vessel in a day in amounts exceeding 1,500 lb (680 kg). The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42'45.6" N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary.

NMFS has determined that 75 percent of the adjusted quota for Atlantic migratory group Spanish mackerel from the southern zone was taken by December 15, 1997. Accordingly, the 1,500–lb (680–kg) per day commercial trip limit applies to Atlantic migratory group Spanish mackerel in or from the EEZ in the southern zone effective 6:00 a.m., local time, December 16, 1997, through March 31, 1998, unless changed by further notification in the **Federal Register**.

Classification

This action is taken under 50 CFR 622.44(b)(2) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 15, 1997.
Gary C. Matlock,
Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 97–33099 Filed 12–15–97; 3:12 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 100897D]

RIN 0648–AK44

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final specifications for the 1998 summer flounder, scup, and black sea bass fisheries; final rule, technical amendment; notifications of commercial quota harvest.

SUMMARY: NMFS issues the final specifications for the 1998 summer flounder, scup, and black sea bass fisheries. The intent of this document is to comply with implementing regulations for the summer flounder, scup, and black sea bass fisheries that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these species. NMFS announces that no quota is available in several states for specified 1998 fisheries as follows: the State of Delaware is notified that no commercial summer flounder or Summer period commercial scup quotas are available in 1998; the State of New Hampshire is notified that no Summer period commercial scup quota is available for 1998. NMFS advises vessel and dealer permit holders that no commercial quotas are available for landing those species in those States during the specified time periods.

DATES: The amendments to §§ 648.14(u)(1), 648.100(a), 648.143(a), and § 648.144(a)(1)(i) are effective January 1, 1998. The final specifications for the 1998 summer flounder, scup, and black sea bass fisheries and notifications of commercial quota harvest are effective January 1, 1998, through December 31, 1998.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment (EA), Regulatory Impact Review, and the Final Regulatory Flexibility Analysis (FRFA) are available from: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978) 281–9221.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°15.3' N. latitude, the latitude of Cape Hatteras Light, NC, northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and § 648.140 (black sea bass), the Administrator, Northeast Region, NMFS (Regional Administrator), implements certain measures for the fishing year to ensure achievement of the appropriate target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP. The management schedule adopted in Amendment 7 to the FMP for summer flounder established a target F equal to that which results in the maximum yield per recruit (F_{max}), currently 0.24, in 1998 and thereafter. The target exploitation rate for scup for 1998 is 47 percent, the rate corresponding to F = 0.72. For black sea bass, the FMP specifies a target exploitation rate for 1998 of 48 percent, corresponding to F = 0.73. The annual measures contained in this final rule are unchanged from the proposed 1998 specifications that were published in the **Federal Register** on October 20, 1997 (62 FR 54427). Some regulatory clarifications are described in the section Changes From the Proposed Rule of this document. The management measures are summarized below by species. Detailed background information regarding the development of this rule was provided in the proposed specifications for the 1998 summer flounder, scup, and black sea bass fisheries (October 20, 1997, 62 FR 54427), and is not repeated here. NMFS will publish in the **Federal Register** at a later date the 1998 recreational management measures for summer flounder, scup, and black sea bass.

Summer Flounder

This rule will implement the following measures for summer flounder in 1998: (1) Total Allowable Landings (TAL) of 18.52 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.04 million kg); and (3) a coastwide recreational harvest limit of 7.41 million lb (3.36 million kg). The TAL is unchanged from 1997, despite the most recent assessment for summer flounder (Stock Assessment Workshop (SAW) 25, August 1997) that indicates that the FMP measures have yet to reduce F below 1.0. However, the allocation of the TAL has been revised.

SAW–25 recommended that additional measures should be considered to minimize commercial and recreational discard mortality. To address these concerns, this rule specifies that 15 percent of a state's commercial quota allocation must be set aside for a bycatch fishery and that a state must implement trip limits with the objective of keeping its fishery open all year. Since the FMP does not specifically include a provision for a bycatch allocation, the measure must be enacted by the states. Therefore, this provision was made mandatory under the Atlantic Coastal Fishery Cooperative Management Act (Atlantic Coastal Act) and was adopted as a compliance criterion by the Commission's Summer Flounder, Scup, and Black Sea Bass Board. The commercial quota is allocated among the states based on historical catch shares specified in the FMP.

The bycatch allocation is effectively a 15-percent reduction in the commercial quota for the directed summer flounder fishery. The bycatch quota allocation will extend the season and will reduce discard waste in the fishery. When combined with anticipated commercial quota deductions due to overages in the 1997 fishing year, this provision will increase the probability of achieving F_{max}. Based on commercial landings as of November 8, 1997, there will be an estimated quota overage in 1997 of 273,156 lb (123,901 kg) (3.3 percent) if there are no further late reports during 1997 and all states are closed with no additional overages. Recent approval of Amendment 10 to the FMP (62 FR 63872, December 3, 1997) means that a minimum mesh size requirement throughout the net will be implemented effective on June 3, 1998, further reducing F on sublegal fish.

In 1997, the State of Delaware was closed to the landing of summer flounder by Federal permit holders as a result of deductions to the 1997 quota for quota overages in 1996 (62 FR 10473, March 7, 1997). As a result of those deductions and further quota reductions as published in the **Federal Register** on July 15, 1997 (62 FR 37741), the 1997 commercial quota allocation to the State of Delaware was -5,662 lb (-2,568 kg). The final 1998 quota for Delaware, when added to its 1997 quota, is not sufficient to offset this negative allocation. Consequently, Delaware will have no commercial quota for 1998. To prevent landings in Delaware by Federal permit holders, the State is closed to the landing of summer flounder by Federal permit holders for 1998. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours January 1, 1998, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase summer flounder from Federally permitted vessels that land in Delaware for the remainder of the calendar year, or until additional quota becomes available through a transfer. No landings of summer flounder in Delaware have been reported for 1997 by Federally permitted dealers or by the State of Delaware. If landings should be reported for 1997, the commercial quota for the State of Delaware will be adjusted pursuant to § 648.100(d)(2).

The commercial quotas for all coastal states for 1998 are presented in Table 1. These quota figures are preliminary and will be adjusted for overages in the 1997 fishing year, as required by § 648.100(d)(2).

TABLE 1.—1998 STATE SUMMER FLOUNDER COMMERCIAL QUOTAS

State	Share (%)	1998 quota (pounds)	1998 quota (kg) [1]
ME	0.04756	5,284	2,397
NH	0.00046	51	23
MA	6.82046	757,841	343,751
RI	15.68298	1,742,583	790,422
CT	2.25708	250,791	113,757
NY	7.64699	849,680	385,408
NJ	16.72499	1,858,363	842,939
DE	0.01779	[2] (3,685)	(1,671)
MD	2.03910	226,570	102,770

TABLE 1.—1998 STATE SUMMER FLOUNDER COMMERCIAL QUOTAS—Continued

State	Share (%)	1998 quota (pounds)	1998 quota (kg) [1]
VA	21.31676	2,368,569	1,074,365
NC	27.44584	3,049,589	1,383,270
Total	.....	11,105,636	5,037,432

[1] Any differences expressed in the conversion of pounds to kilograms are due to rounding.
[2] Numbers in parentheses are negative.

Scup

The most recent assessment for scup (SAW–25, August 1997) indicates that F has been above 1.0 for the period 1984–96. SAW–25 examined 1996 total catch and estimated that a 34-percent reduction from that exploitation level would result in a Total Allowable Catch (TAC) of 7.275 million lb (3.3 million kg) and would likely reduce F to below 1.0. The TAC is allocated to the commercial (78 percent) and recreational (22 percent) sectors. Then, a discard estimate is deducted from each TAC to establish the allowed harvest. This rule establishes for 1998 (1) a coastwide TAC of 7.275 million lb (3.3 million kg), (2) a commercial TAC of 5.675 million lb (2.6 million kg), (3) a commercial discard estimate of 1.103 million lb (0.50 million kg), (4) a commercial quota of 4.572 million lb (2.07 million kg), (5) a recreational TAC of 1.6 million lb (0.73 million kg), (6) a recreational discard estimate of 0.048 million lb (0.02 million kg), and (7) a recreational harvest limit of 1.553 million lb (0.70 million kg). This rule also implements a 20,000 lb (9,072 kg) commercial trip limit for the Winter I season, which is to decrease to 1,000 lb (453.6 kg) when 85 percent of the Winter I quota is harvested, and an 8,000 lb (3628.7 kg) trip limit in Winter II, with no decrease. The commercial quota represents a 24-percent reduction from the 1997 quota of 6.0 million lb (2.7 million kg). The commercial quota, allocated to the seasonal periods as specified in the FMP, is shown in Table 2:

TABLE 2.—PERIOD ALLOCATIONS OF COMMERCIAL SCUP QUOTA

Period	Percent	TAC [1]	Discards [2]	Quota allocation (LB)	Quota allocation (KG) [3]
WINTER I	45.11	2,559,992	497,563	2,062,429	935,502
SUMMER	38.95	2,210,413	429,619	1,780,794	807,755
WINTER II	15.94	904,595	175,818	728,777	330,568
TOTAL	100.00	5,675,000	1,103,000	4,572,000	2,073,824

[1] Total Allowable Catch, in pounds.
[2] Discard estimates, in pounds.
[3] Kilograms are as converted from pounds.

The 1998 commercial quota for the Summer period (1,780,794 lb; 807,755 kg), apportioned among the states according to the percentage shares specified in § 648.120(d)(3), is presented in Table 3. The quota figures for both the Winter and Summer periods are preliminary and will be adjusted for overages in 1997, as required by § 648.120(d) (5) and (6).

TABLE 3.—SUMMER PERIOD (MAY–OCTOBER) COMMERCIAL SCUP QUOTA SHARES

State	Share (percent)	1998 allocation (LB)	1998 allocation (KG) [1]
Maine	0.13042	2,322	1,053
New Hampshire	0.00004	1	0
Massachusetts	15.49117	275,866	125,131
Rhode Island	60.56588	1,078,554	489,224
Connecticut	3.39884	60,526	27,454
New York	17.05295	303,678	137,746
New Jersey	3.14307	55,972	25,388
Delaware	0.00000	0	0
Maryland	0.01288	229	104
Virginia	0.17787	3,167	1,437
North Carolina	0.02688	479	217
Total	100.00000	1,780,794	807,755

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Section 648.121(b) requires the Regional Administrator to monitor the Summer period state commercial quotas and determine the date when a state's commercial quota is harvested. NMFS is required to publish notification in the **Federal Register** advising a state and notifying vessel and dealer permit holders that, effective upon a specific date, a state's Summer period commercial quota has been harvested and that no Summer period commercial quota is available for landing scup in that state for the remainder of the period. The amount of commercial quota that is allocated for the Summer period to the State of New Hampshire is 1 lb (less than 1 kg) and to the State of Delaware is 0 lb (0 kg). Therefore, the Regional Administrator has determined that no commercial quota is available for landings in those states for the Summer period. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land scup in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours May 01, 1998, until 2400 hours, October 31, 1998, landings of scup in New Hampshire or Delaware by vessels holding commercial Federal fisheries permits are prohibited, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase scup from Federally permitted vessels that land in New Hampshire or Delaware for the Summer period, or until additional quota becomes available through a transfer.

Black Sea Bass

The most recent assessment for black sea bass (SAW–25, August 1997) estimated that F has generally exceeded 1.0 for the period 1984–96. SAW–25 examined 1996 total catch and estimated that a 33-percent reduction in landings from the 1996 level (9.0 million lb; 4.1 million kg) would be necessary to reduce F below 1.0. As a result, this rule would implement the following specifications: (1) A commercial quota of 3.025 million lb (1.4 million kg) and (2) a recreational harvest limit of 3.148 million lb (1.43 million kg). This rule will also increase the minimum commercial fish size to 10 inches (25.4 cm), consistent with measures being implemented by the Commission and proposed by the South Atlantic Fishery Management Council in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP). Additionally, the catch threshold level that would trigger the minimum mesh size requirement will increase from 100 to 1,000 lb (45.4 to 453.6 kg).

This rule also implements trip limits for all commercial gear types for each of the four quarterly quotas. In Quarter 1 (Q1), the trip limit will be 11,000 lb (4,990 kg); in Q2, 7,000 lb (3,175 kg); in Q3, 3,000 lb (1,361 kg), and in Q4, 4,000 lb (1,814 kg). While the trip limits could, in theory, prevent quarterly closures, the limits impact only approximately 5 percent of the trips in this fishery. NMFS remains concerned about the cost of enforcement compared to the effectiveness of these trip limits. However, no change to the trip limits are made at this time since the states are implementing these limits for January 1, 1998, as compliance criteria under the Commission requirements. Changes at this time would result in differing limits for state-permitted and Federally-permitted vessels, compounding the concerns about the measure. Such an inconsistency would be confusing to the industry and would prevent effective enforcement. NMFS recommends continued oversight of these trip limits to monitor their enforceability, their impact on the fishery and their effectiveness at achieving the conservation goals of the FMP. NMFS expects that the Council will carefully examine the impacts of these trip limits as part of the annual specification process for 1999.

The 1998 commercial quota, apportioned by quarter according to the percentage shares specified in § 648.140(d)(1), and the trip limits associated with those quarters are presented in Table 4:

TABLE 4.—1998 BLACK SEA BASS QUARTERLY COASTWIDE QUOTAS AND QUARTERLY TRIP LIMITS

Quarter	Percent	Pounds	(kg) [1]	Trip limits lbs	Trip limits (kg)
1. (Jan-Mar)	38.64	2,385,247	1,081,930	11,000	4,990
2. (Apr-Jun)	29.26	1,806,220	819,288	7,000	3,175
3. (Jul-Sep)	12.33	761,131	345,243	3,000	1,361
4. (Oct-Dec)	19.77	1,220,402	553,565	4,000	1,814
Total	100.00	6,173,000	2,800,026		

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Changes From the Proposed Rule

In the proposed rule, Table 4 specified the quarterly coastwide allocations and trip limits for the commercial black sea bass fishery. The table erroneously identified Quarter 2 as comprising the months of April through May. Instead, Quarter 2 comprises the months of April through June, and the table is corrected to read as such in this final rule.

This document corrects the language specified in § 648.100(a), established by the final rule implementing Amendment 7 to the FMP, that set the target F for summer flounder for 1998 and beyond as F = 0.23 and specified that the allowable levels of fishing in 1996 and 1997 may not exceed 18,518,830 lb (8.4 million kg), unless such fishing levels have an associated F of 0.23. The stated management strategy of Amendments 2 and 7 to the FMP defines overfishing for summer flounder as fishing in excess of F_{max} level. F_{max} is a biological reference point that corresponds to the level of F that produces the maximum yield per recruit. As a reference point, F_{max} may change based on changes in the summer flounder stock. Although F_{max} corresponded with an F of 0.23 when the final rules implementing Amendments 2 and 7 to the FMP were developed, F_{max} is currently 0.24. As a result, while F = 0.23 was F_{max} at that time, the section must be corrected to implement the intent of the Council in Amendments 2 and 7 that the target is F_{max}, and not 0.23. Thus, the final rule, technical amendment contained in this action changes the wording of the target F for 1998 and beyond for summer flounder to be the fishing mortality rate that yields the maximum yield per recruit (F_{max}), rather than a numerical term that varies slightly over time.

Comments and Responses

A total of 24 letters from the public, one (1) letter from the Commonwealth of Massachusetts, Division of Marine Fisheries (MA–DMF), and one (1) letter from the Commonwealth of Massachusetts, Marine Fisheries Commission (MA–MFC) were received during the comment period for this action, which ended on November 17, 1997. Three form letters were submitted by several individuals. Several of the letters contained comments on the FMP in general or offered suggestions for future management that are not within the scope of this action. Only comments relevant to the proposed specifications that were received by NMFS prior to the close of business on the date specified as the close of comments were considered for this rulemaking.

Summer Flounder

Comment: One letter from the public and two form letters signed by 15 people supported a commercial quota of 19 million lb (8.6 million kg) for the 1998 summer flounder fishery. They noted that this quota was examined under Option 4 in the 1997 stock assessment (SAW–25) report.

Response: SAW–25 examined a range of landings projections, including Option 4, which was examined at the request of industry participants. Option 4 projected a TAL of 31.7 million lb (14.4 million kg) and a commercial quota of 19 million lb (8.6 million kg), as noted by the commenters. This option provides a median F of 0.65 for 1998, indicating that this option has over 96 percent probability of resulting in F that will be in excess of F_{max} for summer flounder in 1998. Both the Council and NMFS found that a TAL of this level does not have a reasonable likelihood of achieving the target F for 1998 and is not in compliance with the FMP or with NMFS policy, which is to be cautious in the face of uncertainty.

Comment: One letter from the public and one form letter signed by 8 individuals stated that the 15-percent bycatch provision should be in addition to the recommended quota, not included within the recommended amount.

Response: The TAL for summer flounder specified by this rule has a 50-percent probability of achieving F = 0.35. The target F for 1998 is 0.24. The most recent assessment for summer flounder (SAW–25) noted that F for summer flounder has not yet been reduced below 1.0. As a consequence, SAW–25 recommended a reduction in the TAL to 13.889 million lb (6.30 million kg). SAW–25 also noted the need to reduce discard and discard mortality in both the commercial and recreational fisheries. The provision to include a 15 percent bycatch fishery within the TAL of 18.518 million lb (8.40 million kg) is both a serious attempt to address discards, and, in effect, a 15-percent reduction in the commercial quota allocated to the directed fishery. The bycatch quota allocation will extend the season and reduce waste due to discards following the end of the directed fishery. The inclusion of the 15-percent bycatch provision within the TAL is one of the factors that provide a reasonable likelihood that the TAL will achieve the F rate specified in the FMP. To add the 15 percent to the present quota would merely create additional landings, and hence additional mortality on the stock, and lessen the likelihood that the TAL will achieve the target F.

Comment: One comment letter signed by 7 individuals stated that 15 percent of any other catch should be allowed for summer flounder bycatch, so that scallop, squid, croaker, dogfish and other fisheries could land a bycatch and not throw the summer flounder overboard. This summer flounder should not be counted against the quota.

Response: This suggestion would violate several provisions of the FMP and would undermine the integrity of the commercial quota. The regulations governing summer flounder at § 648.100(d)(2) specifically state that all summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Additionally, in the EEZ, any fishery participant, regardless of the species targeted, may land summer flounder for sale provided that the participant complies with the requirements of the FMP, including, but not limited to, the possession of a vessel moratorium permit. Most states also have vessel permit requirements.

Comment: The MA–DMF and MA–MFC question whether a 15-percent bycatch provision will result in a reduction in discards and waste sufficient to compensate for the fact that the adopted TAL is 4.63 million lb (2.1 million kg) in excess of a TAL of 13.889 million lb (6.30 million kg), the level specified by SAW–25 as having a 50-percent probability of achieving F 0.24 in 1998.

Response: The 15-percent bycatch provision is not the only measure that increases the likelihood that the TAL of 18.518 million lb (8.4 million kg) will achieve F_{max} in 1998. Anticipated deductions due to overages in the 1997 fishing year will also increase the probability of achieving F_{max}. Based on commercial landings to date, there will be an estimated quota overage in 1997 of 273,156 lb (123,901 kg) (3.3 percent) if there are no further late reports during 1997 and all states are closed with no additional overages. On June 3, 1998, the measure requiring a minimum mesh size throughout the net approved as part of Amendment 10 will become effective thereby further reducing F on sublegal fish.

SAW–25 notes that, in the retrospective analysis of the summer flounder virtual population analysis (VPA) for terminal catch years 1990–1996, the pattern of estimation of F for 1994–1995 alters the pattern noted in the last assessment. The last assessment noted that F was underestimated in the terminal catch years 1991–1993. SAW–25 concluded that the reversal in terminal year F estimates may be due to improved accuracy of catch estimates in 1995 and 1996, more accurate indices of stock size due to revised aging, and improved monitoring and estimation of discards. NMFS agrees that there have been substantive improvements in quota monitoring and prevention of quota overages over the past year. Since there is no reason to expect that these factors will change, this pattern could likely hold for the 1997 stock estimates. A greater stock size in 1997 would increase the projected stock size in 1998, which means more fish being available for harvest at a given F. This, in turn, increases the probability that the proposed TAL of 18.518 million lb (8.4 million kg) would achieve F_{max} in 1998.

Scup

Comment: One comment letter signed by 7 individuals states that scup landings have already been reduced by the 5.5 inch (14.0 cm) mesh size requirement in summer flounder and by the 6 inch (15.2 cm) mesh size requirement in the multispecies fisheries, and therefore, it is wrong that these scup, when caught in these nets, must be discarded.

Response: Any vessel fishing with a net that meets or exceeds the 4.5 inch (11.4 cm) diamond minimum mesh requirement for the scup fishery and is issued a valid scup moratorium permit may retain all scup of legal size. Other provisions may limit fishing activity, for instance, if landings are prohibited due to quota attainment. Data do not indicate that scup landings have decreased due to the 1993 (Federal) implementation of the summer flounder minimum mesh size.

Comment: MA–DMF and MA–MFC comment that the minimum mesh size should be required throughout the net, so that the scup requirement is consistent with the summer flounder requirement in Amendment 10.

Response: Amendment 8 to the FMP, which implemented comprehensive management measures for the scup fishery, authorizes the Council to recommend to the Regional Administrator measures necessary to assure that the specified exploitation rate will not be exceeded. Among the measures the Council may recommend is a minimum mesh size. However, this mesh may be applied to the codend of the net only. There is no mechanism in the scup regulations by which the Council, or NMFS, could implement mesh throughout the net for scup. Such a mechanism would have to be established through an amendment to the FMP.

Comment: MA–DMF and MA–MFC commented on concerns expressed in SAW–25 concerning the inadequacy of the input data. Specifically, exploratory VPA estimates of fishing mortality in 1996 were used to set a TAC for 1998, an approach which these agencies feel is inappropriate. The comments state it is unjustifiable to cut landings when the target F may have been achieved in 1997. MA-MFC urged a "different approach" to management other than just cutting landings. Further, the agencies maintain that discard levels of scup are high in the offshore small mesh (squid) fishery and that measures must be implemented to reduce them prior to quota reductions.

Response: SAW–25 utilized the best available data to complete an assessment of the scup stock. There were concerns about the data that SAW–25 noted, and NMFS believes that these concerns should not logically be interpreted that landings cannot be reduced. Although the agency is concerned about the issue of discards, SAW–25 notes that there are serious limitations in the data used to estimate and characterize commercial discards and landings and that there is not an obvious solution. The commenter did not elaborate what "different approach" to management might be appropriate for this fishery, so NMFS cannot respond further.

Black Sea Bass

Comment: One comment letter signed by 7 individuals states that black sea bass landings have already been reduced by the 5.5 inch (14.0 cm) mesh requirement in summer flounder and by the 6 inch (15.2 cm) mesh requirement in the multispecies fisheries, and, therefore, it is wrong that these fish, when caught in that net, must be discarded.

Response: Any vessel fishing with a net that meets or exceeds the 3.5 inch (8.9 cm) diamond or the 4.0 inch (10.2 cm) square minimum mesh requirement for the black sea bass fishery and being issued a valid black sea bass moratorium permit may retain all black sea bass of legal size. Other provisions may limit fishing activity, for instance if landings are prohibited due to quota attainment. Data do not indicate that black sea bass landings have decreased due to the 1993 (Federal) implementation of the summer flounder minimum mesh size.

Comment: One member of the public and the MA-MFC advocated a 12-inch (30.5 cm) minimum fish size for black sea bass, instead of the 10-inch (25.4 cm) minimum fish size.

Response: A 12-inch (30.5 cm) minimum fish size for black sea bass would certainly compound any benefits to the resource and stock rebuilding, and NMFS commends any state, such as Massachusetts, that implements that minimum size. However, both the Commission and the South Atlantic Fisheries Management Council (by way of the Snapper/Grouper FMP) voted to increase the minimum black sea bass size to 10 inches (25.4 cm). There are benefits associated with consistency for both industry participants and law enforcement. Additionally, length frequency data from the NMFS weighout data (Maine to Virginia) and the North Carolina winter trawl fishery data indicate that a 12-inch (30.5 cm) minimum fish size would decrease dramatically the amount of fish that could be legally landed. This decrease in landings would increase discards unless gear restrictions were also modified. Gear modifications were not considered by the Council.

Comment: One member of the public supports the 1,000 lb (454 kg) threshold for triggering minimum mesh size in the black sea bass fishery because it will require the directed black sea bass fishery to use appropriate gear and still allow an incidental catch to be harvested from other fisheries.

Response: NMFS agrees.

Comment: One member of the public supports black sea bass trip limits as a method to extend a quota. MA–DMF and MA–MFC feel that the trip limit for the second quarter is too high and advocate a 2,000 lb (907.2 kg) trip limit instead.

Response: NMFS agrees that trip limits could, in theory, extend a quota and prevent quarterly closures. However, NMFS remains concerned about the adopted limits since they impact only approximately 5 percent of the trips in this fishery. NMFS' primary concern focuses on the cost of enforcement compared to the effectiveness of these trip limits. NMFS determined to make no changes to the trip limits at this time since the states are implementing these limits by January 1, 1998, as Commission compliance criteria. Changes at this time would result in differing limits for state and Federal vessels, compounding agency enforcement concerns.

Classification

These proposed specifications have been determined to be non-significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for this certification are based on an assessment of this action under NMFS's long standing Regulatory Flexibility Act guidelines discussed in the proposed rule. Although not required to do so, because a full examination of the economic impact of this rule is important, NMFS prepared an IRFA. NMFS received no comments on the IRFA or the determination that would result in a change to the finding of no significant impact. Editorial corrections were made to the IRFA at the request of Council staff. Therefore, the IRFA is adopted as final with these corrections.

NMFS considered several alternatives in the development of the specifications contained in this rule. Two other alternatives were considered for the 1998 summer flounder specifications: a TAL of 13.889 million lb (6.30 million kg), and a TAL 22.046 million lb (10.00 million kg). For the first alternative, landings would be substantially reduced in 1998 without significant long-term benefit to either the commercial or recreational fishing industries or the stock. The second non-preferred alternative (22.046 million lb/10 million kg TAL) represents an increase of almost 19 percent from the 1997 level. Based on stochastic projections, this alternative would have a 1 percent probability of achieving the target F of 0.24 in 1998. Thus, while this alternative would minimize significant economic impacts on small entities, it would not accomplish the stock rebuilding objectives of the FMP.

For scup, two alternatives, other than the preferred alternative, were considered for the 1998 specifications

using varying discard estimates: commercial quotas of 3.626 million lb (1.64 million kg) and 5.675 million lb (2.57 million kg). The recreational harvest limit was 1.553 million lb (0.70 million kg) for each alternative. The first alternative assigns 2.049 million lb (0.929 million kg) to the discard estimate, and would set the coastwide commercial quota at 3.626 million lb (1.64 million kg). This alternative implies that the effects of the mesh and minimum size regulations are minimal or nonexistent, and assigns a larger percentage of the TAC to discards. To minimize significant economic impacts on small entities, the Council did not adopt this alternative. Conversely, the second alternative sets a discard level of 0 lb (0 kg) and a commercial quota of 5.675 million lb (2.57 million kg). This assumption is unrealistic given the nature of the scup fishery. As such, this alternative would not accomplish the stock rebuilding objectives of the FMP.

In black sea bass, two alternative TALs were considered. The first is a TAL of 4.519 million lb (2.05 million kg). This alternative would accelerate stock rebuilding, but at the expense of the commercial and recreational fishing industries. The second alternative considered would set the TAL equal to the total landings for 1996. This landing limit has no probability of achieving the target in 1998 set forth in Amendment 9 to the FMP. Therefore, it would not accomplish the stock rebuilding objectives of the FMP. The Council also considered other management measures for black sea bass. For further information on these alternatives, please consult the FRFA. Copies of the FRFA are available (see **ADDRESSES**).

This action adopts final 1998 specifications for the summer flounder, scup, and black sea bass fisheries and implements associated management measures. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. This action establishes year-long quotas which are used to close the fishery when a quota is harvested. Closures must be taken immediately to conserve fishery resources. The minimum fish size requirement for black sea bass implements a measure for Federal permit holders that has been adopted by the Commission as a compliance criteria with an effective date of January 1, 1998. Since this measure has already been adopted by the states for an effective date of January 1, 1998, it is not practical to delay the effectiveness beyond that. The change in the possession limit that triggers the minimum net mesh size requirement relieves a restriction by allowing a bycatch fishery to be prosecuted that would otherwise be restricted by the requirement to change to a larger mesh at a lower threshold. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(d)(1), waives the 30-day delayed effectiveness period with respect to such provisions. For the technical regulatory change, the AA finds good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B). The technical change corrects the regulation's wording of the target F for summer flounder for 1998 and beyond to reflect accurately the stated management strategy of the FMP which defines overfishing for summer flounder as fishing in excess of F_{max} level. As such, the AA finds that prior notice and comment are unnecessary. Further, there is no requirement to delay the effective date of this technical change under 5 U.S.C. 553(d) as it is not a substantive rule.

List of Subjects in 50 CFR Part 648

Fisheries, Reporting and record keeping requirements.

Dated: December 12, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (u)(1) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *

(1) Possess 1,000 lb (453.6 kg) or more of black sea bass, unless the vessel meets the minimum mesh requirement specified in Sec. 648.144(a).

* * * * *

3. In § 648.100, paragraph (a) is revised to read as follows:

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.30 in 1997, and the F that produces the maximum yield per recruit (F_{max}) in 1998 and thereafter, provided the allowable levels of fishing in 1997 may not exceed 18,518,830 lb (8,400 mt), unless such fishing levels have an associated F of F_{max}: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

* * * * *

4. In § 648.143, the first sentence of paragraph (a) is revised to read as follows:

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 10 inches (25.4 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) which fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border.

* * *

* * * * *

5. In § 648.144, paragraph (a)(1)(i) is revised to read as follows:

§ 648.144 Gear restrictions.

(a) * * *

(1) * * * (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 1,000 lb or more (453.6 kg or more) of black sea bass per trip, must fish with nets that have a minimum mesh size of 4.0 inches (10.2 cm) diamond or 3.5 inches (8.9 cm) square (inside measure) mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

* * * * *

[FR Doc. 97–33076 Filed 12–15–97; 4:14 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 870520118–7251–02; I.D. 050197A]

RIN 0648–AJ00

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Standard Allowances for Ice and Slime; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulations, which were published in the **Federal Register** November 12, 1997 (62 FR 60667), pertaining to the fisheries of the exclusive economic zone off Alaska and the Individual Fishing Quota program (IFQ). This action corrects regulations by correcting the conversion factor for Product Code 55, Pacific halibut.

DATES: December 12, 1997.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on November 12, 1997 (62 FR 60667) that implemented standard allowances for ice and slime found on unwashed Pacific halibut and sablefish landed in the IFQ fisheries and incorporated them into conversion factors for halibut and product recovery rates for sablefish. This final rule becomes effective December 12, 1997.

Need for Correction

As published, the conversion factor for Product Code 55, gutted halibut, head off, with ice and slime, contained a typographical error. NMFS is correcting this error as follows and makes no substantive changes.

Dated: December 11, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, the following correction is made to the final rule amending 50 CFR part 679, which was the subject of FR Doc 97–29707. This document is corrected as follows:

§ 679.42 [Corrected]

On page 60670, in the third column of the table under § 679.42(c)(2)(iii), correct the "Conversion Factor" for "Product Code" 55 from "0.90" to "0.98."

[FR Doc. 97–33074 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 243
Thursday, December 18, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966 and 980

[Docket No. FV98–966–1 PR]

Tomatoes Grown in Florida and Imported Tomatoes; Proposed Rule to Change Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would increase the minimum grade requirements for Florida and imported tomatoes. The grade requirements would be changed from U.S. No. 3 to U.S. No. 2. The proposed rule would help the Florida tomato industry meet domestic market needs, increase returns to producers, and provide consumers with higher quality tomatoes. Application of the increased grade requirements to imported tomatoes is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by January 20, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 301 Third Street, N.W., Suite 206, Winter Haven, Florida 33881; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 8e of the Act specifies that whenever certain specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements are specified in § 966.323 of the handling regulations issued under the order. These requirements apply during the period October 10 through June 15 each year. The regulated area includes the portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. That is, the entire State of Florida, except the panhandle. The production area is part of the regulated area. Specialty packed red ripe tomatoes, yellow meated tomatoes, and single and double layer place packed tomatoes are exempt from container net weight requirements.

Under § 966.323, all tomatoes, except for pear shaped, paste, cherry, hydroponic, and greenhouse tomatoes, must be inspected as specified in the United States Standards for Grades of Fresh Tomatoes (7 CFR part 51.1855 through 51.1877; standards). Such tomatoes also must be at least 2 $^{6}/_{32}$ inches in diameter, and sized with proper equipment in one or more of the following ranges of diameters.

Size designation	Inches minimum diameter	Inches maximum diameter
Medium	2 $^{6}/_{32}$	2 $^{17}/_{32}$
Large	2 $^{16}/_{32}$	2 $^{25}/_{32}$
Extra large	2 $^{24}/_{32}$	

These size designations and diameter ranges are the same as specified in § 51.1859 of the standards. All tomatoes in the Medium size designation are required to grade at least a U.S. No. 2, while tomatoes in the larger size designations are only required to grade at least a U.S. No. 3. Section 966.52 of the order provides authority for the establishment and modification of regulations applicable to the handling of particular grades, sizes, and size designations of tomatoes.

This rule would increase the minimum grade requirements from U.S. No. 3 to U.S. No. 2 for all tomatoes regardless of size. This change in grade requirements was recommended by the Florida Tomato Committee (Committee) on September 5, 1997, by a vote of 10 in favor and 2 opposed. The grade requirement change would eliminate shipments of U.S. No. 3 grade tomatoes from the regulated area. The opponents of this change stated that there were good markets for U.S. No. 3 tomatoes in years of short supply, and when crop quality was down due to adverse weather conditions. The members in favor countered stating that during normal seasons U.S. No. 3 grade tomatoes comprised a small share of total shipments and that such shipments had a price depressing effect on the higher quality tomatoes shipped during those seasons.

At the same meeting, the Committee unanimously recommended an increase in the diameter size requirement for Florida tomatoes from 2 $^{6}/_{32}$ inches to 2 $^{6}/_{32}$ inches, that the size designations of Medium, Large, and Extra Large be changed to numeric size designations of 6x7, 6x6, and 5x6, respectively, and that the diameter size ranges for the designated sizes be increased slightly. These size ranges are different from those specified in § 51.1859 of the standards. The proposed minimum size and size designation changes were addressed in a separate rulemaking action. That action was published in the **Federal Register** on October 6, 1997 (62 FR 52047). Interested persons were invited to submit written comments until October 16, 1997. Subsequently, the period for comments was reopened until November 5, 1997, by a document published in the **Federal Register** on October 22, 1997 (62 FR 54809).

Based on an analysis of markets and demands of buyers, the Committee believes that increasing the minimum grade from U.S. No. 3 to U.S. No. 2 would improve the marketing of Florida tomatoes, and help the industry protect its markets from foreign competition. The increase in grade requirements is expected to prevent low-quality tomatoes from reaching the marketplace, and improve the overall quality of tomatoes in fresh market channels.

Tomatoes grading U.S. No. 3 must be well developed, may be misshapen, and cannot be seriously damaged by sunscald (7 CFR 51.1858). Tomatoes grading U.S. No. 2 have to be well developed, reasonably well-formed, and free from sunscald (7 CFR 51.1857). Sunscald is an injury which usually occurs on the sides or upper half of the tomato, but may occur wherever the rays of the sun strike most directly. Sunscald results in the formation of a whitish, shiny, blistered area on the tomato. The affected tissue gradually collapses, forming a slight sunken area that may become pale yellow, and wrinkle or shrivel as the tomato ripens. This detracts from the overall quality of the tomato.

The difference between tomatoes grading U.S. No. 3 and U.S. No. 2 with regard to development, shape, and sunscald is especially noticeable in smaller sized tomatoes, but also noticeable in larger sized tomatoes. U.S. No. 3 grade tomatoes are generally of very poor quality, and are not desired by the consumer.

The Committee indicated that when tomatoes of this quality are offered for sale to consumers in a normal season these tomatoes have an adverse affect on the demand and sale of other Florida tomatoes. The increase in grade requirements is expected to improve the quality of the tomato packs shipped from Florida.

The proponents of the change indicated that the marketplace is changing and that the Florida industry has been shipping fewer U.S. No. 3 grade tomatoes than it had in past seasons in response to those changes. During the last three shipping seasons, the quantity of U.S. No. 3 grade tomatoes shipped as a percentage of total shipments ranged from a low of 4.4 percent to a high of 7.6 percent.

At the meeting, the Committee discussed whether eliminating U.S. No. 3 tomatoes would diminish the quality of the U.S. No. 2 grade pack by handlers trying to commingle more U.S. No. 3 grade as U.S. No. 2 grade. The proponents acknowledged that some of the tomatoes currently being sold at the U.S. No. 3 grade could be reworked to make U.S. No. 2 grade. They stated, however, that they were interested in eliminating the true U.S. No. 3 grade which in normal seasons has tended to detract from the overall pack and depress prices for higher quality tomatoes.

The proposed grade increase is expected to improve the overall tomato pack, provide consumers with the quality of tomatoes desired, and, thus, encourage repeat purchases. In other words, the new grade requirements would allow handlers to respond better to market preferences which is expected to benefit producers and handlers of Florida tomatoes.

Section 8e of the Act requires that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. The current import regulations are specified in 7 CFR 980.212. Similar to the order, regulations apply during the period October 10 through June 15 when the Florida handling requirements are in effect. Because this proposal would increase the minimum grade for domestic tomato shipments, this increase would be applicable to imported tomatoes.

Florida tomatoes must be packed in accordance with three specified size designations, and tomatoes falling into different size designations may not be commingled in a single container. These pack restrictions do not apply to imported tomatoes. Because pack requirements do not apply, different sizes of imported tomatoes may be commingled in the same container.

Current import requirements specify that all lots with a minimum diameter of 2 $^{17}/_{32}$ inches and larger shall meet at least a U.S. No. 3 grade. All other tomatoes shall meet at least a U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2 $^{17}/_{32}$ inches in diameter is required to grade at least U.S. No. 2. This proposed rule would change these requirements to reflect the size and size designation changes proposed in the October 6 and 22, 1997, issue of the **Federal Register** by requiring all lots of imported tomatoes to grade at least U.S. No. 2, regardless of size.

This change is expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with the higher quality tomatoes they desire. The Department has contacted a few tomato importers concerning imports. The importers indicated that they will not have difficulty meeting the U.S. No. 2 grade requirements. Thus, the Department believes that the proposed increase will not limit the quantity of imported tomatoes or place an undue burden on exporters, or importers of tomatoes. The expected increase in customer satisfaction should benefit all tomato importers regardless of size.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products. Thus, this proposed rule would have small entity orientation, and would impact both small and large business entities in a manner comparable to those rules issued under marketing orders.

There are approximately 65 handlers of Florida tomatoes who are subject to regulation under the order and approximately 75 tomato producers in the regulated area. In addition, at least 170 importers of tomatoes are subject to import regulations and would be affected by this proposed rule. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1996–97 season, and the 1996–97 season average price of $7.97 per 25 pound equivalent carton, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities. Moreover, the Department believes that most importers may be classified as small entities.

Under § 966.52 of the Florida tomato marketing order, the Committee, among other things, has authority to increase the minimum grade requirements for tomatoes grown in the defined production area and handled under the order. This proposed rule would increase the minimum grade from U.S. No. 3 to U.S. No. 2. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the proposed grade increase would apply to imported tomatoes.

The Committee recommended the grade increase to improve the marketing of Florida tomatoes and follow the recent industry trend of shipping higher grade tomatoes. This trend is in response to a strong consumer demand for such tomatoes. The Committee noted that a tomato can be unattractive and still meet the requirements of the U.S. No. 3 grade, and that this can have a negative impact on the market for higher quality tomatoes.

According to the Committee, when supplies are not short or crop quality is not lowered due to adverse weather conditions, U.S. No. 3 grade tomatoes comprise a small share of total shipments. During the last three shipping seasons, the quantity of U.S. No. 3 grade shipped as a percentage of total shipments ranged from a low of 4.4 percent to a high of 7.6 percent. Thus, the increase in the minimum grade requirements is not expected to significantly impact the total number of Florida shipments. It is, however, expected to have a positive effect in the marketplace by providing a strong price base for the industry. As mentioned earlier, the Committee believes that U.S. No. 3's have a price depressing effect on higher grade shipments.

According to the Committee, during the 1996–1997 season, about 47.9 million 25 pound equivalents were shipped from Florida. Of that amount, only 4.9 percent were U.S. No. 3 grade. The value of all sales during that season totaled about $381.4. The value of the U.S. No. 3 grade tomatoes totaled about $16.6 million, or about 4.4 percent of total sales during that season. In 1995–96, the total of all tomatoes shipped was 47.3 million 25 pound equivalents. The U.S. No. 3 grade portion was 7.9 percent. That season, the value of all sales totaled about $369.7 million, and the U.S. No. 3's comprised 7.6 percent of the total value. The percentages for the 1994–95 season were similar with U.S. No. 3's making up about 6.8 percent of the total shipments, and the sales value of the U.S. No. 3 grade making up about 6.1 percent of the total value. That season, total industry shipments totaled about 55.5 million 25 pound equivalents, and the total value was about $388.3 million.

The Committee also noted that a recent voluntary elimination of U.S. No. 3 grade by the industry had been successful in strengthening the market and in supporting grower returns. This proposal is expected to continue those successes. Without an increase in grade requirements, the Committee believes that an erosion of market confidence and producer returns could occur.

The raising of the minimum grade from U.S. No. 3 to U.S. No. 2 is expected to impact all handlers uniformly, whether small or large, because all handlers, regardless of size, currently pack about the same percentage of U.S. No. 3 grade tomatoes. The benefits of the higher prices resulting from eliminating the U.S. No. 3's will be distributed evenly among all handlers, and are expected to be greater than the minimal costs expected to be incurred.

Direct costs to the industry associated with the minimum grade requirement increase would include sorting and packing line adjustments to operate under the new requirements. These costs are expected to be minimal relative to the benefits expected. Other costs would include possible losses from tomatoes not meeting the U.S. No. 2 grade requirements. These losses also are expected to be minimal when compared to marketplace benefits expected, and the fact that tomatoes lower in quality than U.S. No. 2 could continue to be shipped within the regulated area, as defined in the marketing order, or shipped for processing.

This proposal is expected to similarly impact importers of tomatoes as far as the grade increase is concerned. That is, tomatoes lower in grade than U.S. No. 2 could be marketed outside the United States. Additionally, the marketplace price and quality benefits expected for Florida growers and handlers as a result of this proposal would also benefit exporters and importers of tomatoes. Consumers would also benefit as a result of the higher quality product available in the marketplace. As mentioned earlier, the benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including leaving the grade requirements unchanged. However, after thoroughly discussing the issue the majority of the Committee members agreed that the grade increase was necessary to improve pack appearance and effectively compete in the present market. During the discussion, most Committee members acknowledged that U.S. No. 3 grade tomatoes could be important to the market in years of short supply and lower than normal quality resulting from adverse weather conditions. However, those members also pointed out that during normal seasons U.S. No. 3 tomatoes were not popular in the marketplace, and that the lower grade had a price depressing effect on better grade tomatoes.

Mexico is the largest exporter of tomatoes to the United States. Over the last 10 years, Mexican exports to the United States averaged 32,527 containers of 25,000 pound equivalents per season (October 5–July 5) and comprised about 99 percent of all imported tomatoes to the United States during that time. Total imports during that period averaged 32,752 containers of 25,000 pound equivalents (October 5–July 5). Some of the imports from Mexico may have been transhipped to Canada. Small quantities of tomatoes are imported from Caribbean Basin countries. Domestic shipments for the past 10 years averaged 108,577 containers of 25,000 pound equivalents (October 5–July 5). Florida shipments comprised about 48 percent of the total shipments for the same period. This information is from AMS Market News Branch data that most closely approximates the Florida shipping season.

The grade increase is expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with higher quality tomatoes. The Department has contacted a few tomato importers concerning imports. The importers indicated that they would not have undue difficulty meeting the higher grade requirements. Also, Department fresh products inspectors at the Port of Nogales, Arizona, the port were most Mexican produced tomatoes enter the United States, estimated that only 2 to 3 percent of the total tomato imports from Mexico were U.S. No. 3 grade. The remainder were U.S. No. 2 grade and higher. Thus, the Department believes that the proposed increase will not limit the quantity of imported tomatoes or place an undue burden on exporters, or importers of tomatoes. The expected increase in customer satisfaction and more positive marketplace atmosphere resulting from providing the desired quality should benefit all tomato importers regardless of size.

This action would not impose any additional reporting or record keeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Florida tomato handlers began shipping tomatoes in October. Thirty days is deemed appropriate because this rule, if adopted, needs to be in place as soon as possible to cover as much of the 1997–96 shipping season as feasible. In addition, handlers need time to adjust their sorting and packing line equipment to meet the higher grade requirements. Florida tomato handlers are aware of this issue, which has been widely discussed at various industry and association meetings and was recommended by a majority of the Committee. All comments received in a timely manner will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Parts 966 and 980

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

PART 980—VEGETABLES; IMPORT REGULATIONS

1. The authority citation for 7 CFR parts 966 and 980 continue to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraph (a)(1) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(a) *Grade, size, container, and inspection requirements*—(1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, or U.S. No. 2 of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of the tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than 1 percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

* * * * *

3. Section 980.212 is amended by revising paragraph (b)(1) to read as follows:

§ 980.212 Import regulations; tomatoes.

* * * * *

(b) * * *

(1) From October 10 through June 15 of each season, tomatoes offered for importation shall be at least 2 8/32 inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots of tomatoes shall be at least U.S. No. 2 grade.

* * * * *

Dated: December 12, 1997.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33004 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–289–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require application of sealant to the auxiliary power unit (APU) firezone bulkhead. This proposal is prompted by issuance of mandatory continued airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent hazardous amounts of flame, fuel, and vapor from entering the passenger compartments due to unsealed openings in the firezone bulkhead, which could result in a fire outside the APU firezone compartment.

DATES: Comments must be received by January 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–289–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that hazardous amounts of flame, fuel, and vapor could enter the passenger compartment due to unsealed openings in the auxiliary power unit (APU) firezone bulkhead. Unsealed openings in the firezone bulkheads have been attributed to an oversight during manufacturing. This condition, if not corrected, could result in a fire outside the APU firezone compartment.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–53–024, dated December 2, 1996, which describes procedures for applying sealant to the firezone bulkhead in the APU area. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–105, dated December 4, 1996, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 3 Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 97–NM–289–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers –004 through –040 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent hazardous amounts of flame, fuel, and vapor from entering the passenger compartment due to unsealed openings in the firezone bulkhead, which could result in an uncontrollable fire outside the auxiliary power unit (APU) firezone compartment, accomplish the following:

(a) Within 400 flight hours or 2 months after the effective date of this AD, whichever occurs later, apply sealant to the APU firezone bulkhead, in accordance with Saab Service Bulletin 2000–53–024, dated December 2, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–105, dated December 4, 1996.

Issued in Renton, Washington, on December 11, 1997.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32997 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–290–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require replacement of certain hinges on the forward, center, and aft cargo doors with improved hinges. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the cargo door hinges caused by stress corrosion or fatigue cracks, which could result in decompression of the airplane, and possible in-flight separation of the cargo door.

DATES: Comments must be received by January 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–290–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–290–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–290–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes. The RLD advises that it has received reports of fracturing of the cargo door hinges due to stress corrosion. Approximately one-half of the lugs of the fuselage-mounted hinge were cracked on one airplane. In addition, the RLD received one report of fatigue cracks in the cargo door hinge on a test article. These conditions, if not corrected, could result in failure of the cargo door hinges, which could result in decompression of the airplane, and possible in-flight separation of the cargo door.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F28/52–110, dated April 7, 1993, which describes procedures for replacement of the hinges on the forward, center, and aft cargo doors with improved hinges made of a material that is less sensitive to stress corrosion. Accomplishment of the replacement is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 93–055 (A), dated April 23, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between the Proposal and the Related Service Bulletin

Operators should note that this AD proposes to require replacement of the hinges on the forward, center, and aft cargo doors within 12 months. The Fokker service bulletin described previously recommends that the replacement be accomplished within four years from the date of issuance of the service bulletin. However, the FAA has determined that, due to the safety implications and consequences associated with such cracking, a shorter compliance time of 12 months is necessary.

Cost Impact

The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 62 work hours per airplane to replace the forward cargo door hinge, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,740 per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $350,020, or $9,460 per airplane.

It would take approximately 62 work hours per airplane to replace the center cargo door hinge, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,650 per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $346,690, or $9,370 per airplane.

It would take approximately 46 work hours per airplane to replace the aft cargo door hinge, at an average labor rate of $60 per work hour. Required parts would cost approximately $6,470 per airplane. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $341,510, or $9,230 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 97–NM–290–AD.

Applicability: Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes; serial numbers 11003 through 11241 inclusive, 11991, and 11992; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cargo door hinges caused by stress corrosion and/or fatigue cracks, which could result in decompression of the airplane, and possible in-flight separation of the cargo door; accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the hinges on the forward, center, and aft belly cargo doors with improved hinges in accordance with Part 1, Part 2, and Part 3, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin F28/52–110, dated April 7, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 93–055 (A), dated April 23, 1993.

Issued in Renton, Washington, on December 11, 1997.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32996 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–13–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

RIN 1212–AA87

PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation proposes to amend its regulation governing recoupment of benefit overpayments in trusteed plans to stop the reduction of monthly benefits under its actuarial recoupment method once the amount of the benefit overpayment is repaid. The amendment also makes other related changes.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. For TTY/TDD users, call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–325–4024.

SUPPLEMENTARY INFORMATION: Some participants and beneficiaries in PBGC-trusteed plans receive benefit payments in excess of their entitlements under Title IV of ERISA after plan termination and before the PBGC determines their benefit entitlements. Under the PBGC's current recoupment regulation, unless a participant or beneficiary elects to repay a benefit overpayment in a single payment, the overpayment is recouped through a permanent actuarial reduction in future benefit payments.

When overpayments are made, recipients are generally unaware that they are receiving amounts in excess of their entitlements. In effect, overpayments are unsolicited loans. Many participants and beneficiaries are unable to afford to repay the overpayment in a single payment and thus cannot avoid permanent actuarial reductions. Participant and beneficiary inquiries reflect their difficulty understanding why the PBGC would continue to reduce their monthly benefit beyond the time the PBGC has fully recouped the amount of the overpayment.

The PBGC proposes to revise the regulation to provide that recoupment will cease when the amount of the overpayment is repaid. This will help to minimize hardship to participants and beneficiaries as well as to cut down the number of participant and beneficiary inquiries about recoupment, thereby reducing burden both on them and the PBGC. The amendment also gives the PBGC flexibility to waive recoupment of *de minimis* amounts and to accept repayment ahead of the recoupment schedule, and modifies the rules governing calculation of net overpayments and underpayments.

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

This rule affects only individuals. Therefore, the PBGC certifies that, if adopted, the amendment will not have a significant economic effect on a substantial number of small entities. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects in 29 CFR Part 4022

Pension insurance, Pensions.

For the reasons set forth above, the PBGC proposes to amend 29 CFR Part 4022, subpart E as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D) and 1344.

2. In § 4022.81, paragraph (a) is amended by removing the last two sentences, adding a new phrase, and paragraphs (a)(1) and (a)(2) in their place, and revising paragraphs (c) and (d)(2) to read as follows:

§ 4022.81 General rules.

(a) *Recoupment of benefit overpayments.* * * *

Notwithstanding the previous sentence, the PBGC may, in its discretion—

(1) Decide not to recoup net overpayments that it determines to be *de minimis;* and

(2) Recover overpayments by methods other than recouping in accordance with the rules in this subpart. The PBGC will not normally do so unless net benefits paid after the termination date exceed those to which a participant or beneficiary is entitled under the terms of the plan before any reductions under subpart D.

* * * * *

(c) *Payments subject to recoupment or reimbursement.* The PBGC shall recoup net overpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA, and shall reimburse net underpayments made on or after the termination date.

(d) *Interest.* * * *

(2) *Receipt of both overpayments and underpayments.* If both benefit overpayments and benefit underpayments are made with respect to a participant, the PBGC shall compare the net overpayment or underpayment calculated without interest to the net overpayment or underpayment calculated with interest. (The interest calculation shall be made by charging or crediting interest from the first day of the month after the date of payment to the first day of the month in which recoupment begins.) Of these two net amounts, the PBGC shall use the one more favorable to the participant or

beneficiary in applying either §§ 4022.81 and 4022.82 or §§ 4022.81 and 4022.83, as applicable.

3. Section 4022.82 is amended by removing the words, "lump sum", in paragraph (a)(3) and adding, in their place, the words; "single payment", and by revising paragraph (a) introductory text and the heading of paragraph (b) to read as follows:

§ 4022.82 Method of recoupment.

(a) *Future benefit reduction.* Unless a participant or beneficiary elects otherwise under paragraph (b) of this section, the PBGC shall recoup overpayments of benefits in accordance with this paragraph. The PBGC shall reduce the amount of each future benefit payment to which the participant or any beneficiary is entitled by the fraction determined under paragraphs (a)(1) and (a)(2) of this section, except that benefit reduction will cease when the amount of the net benefit overpayment is recouped. Notwithstanding the preceding sentence, the PBGC may accept repayment ahead of the recoupment schedule. Recoupment under this section constitutes full repayment of the net benefit overpayment.

* * * * *

(b) *Single payment.* * * *

Issued in Washington, D.C. this 12th day of December, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–33028 Filed 12–17–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI88

Veterans' Education: Effective Date for Awards of Educational Assistance to Veterans Who Were Voluntarily Discharged

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational-assistance and educational-benefit regulations of the Department of Veterans Affairs (VA). It proposes to establish effective dates of awards of educational assistance to certain voluntarily discharged veterans who are eligible for the Montgomery GI Bill—Active Duty (MGIB). The effective dates are intended to correspond with a statutory mandate for the effective dates. The proposed rule also clarifies that these veterans may not receive educational assistance for training that occurs before they pay the Federal government $1,200.

DATES: Comments must be received on or before February 17, 1998.

Applicability Dates: It is proposed that the effective dates be made retroactive from the effective dates of the statutory provisions. For more information concerning the proposed effective dates, see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI88." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: This document clarifies 38 CFR part 21, subpart K, regarding the effective dates for awards of educational assistance to certain voluntarily discharged veterans.

Pub. L. 102–484 (sec. 4404, 38 U.S.C. 3018B) allows a veteran who was voluntarily separated under either 10 U.S.C. 1174a or 1175 before Oct. 23, 1992, to elect to receive educational assistance under the Montgomery GI Bill—Active Duty. The veteran was given until Oct. 23, 1993, to do so. The law also requires such a veteran to submit $1,200 to VA as a condition of receiving such educational assistance. However, the law does not specify a time limit for submitting the $1,200 and the proposed rule clarifies that there is no such time limit.

The effective date of an award also is affected by when VA received the $1,200. VA is required by 38 U. S. C. 5113 to make the effective dates of the award of educational assistance, to the extent feasible, correspond to the effective dates relating to awards of disability compensation. The provisions of 38 U.S.C. 5110 and 5111 contain the rules for determining the effective date of an award of disability compensation. The general intent of 38 U.S.C. 5110 is to allow the effective date of an award of compensation to be the day following the date of discharge if application is filed within one year after discharge. Otherwise, the earliest date of the award shall be the date of receipt of application. Further, 38 U.S.C. 5103 provides, as to benefit claims generally, that information or evidence necessary to complete the claim must be submitted within one year of the date requested by VA; otherwise, no benefits are payable based on that claim. Accordingly, when payment of the $1,200 must be made as a condition of receiving benefits, it is proposed to establish effective dates for educational assistance consistent with the provisions of 38 U.S.C. 5103 and 5110.

The Secretary of Veterans Affairs hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule will affect individual, not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Educational institutions, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 5, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21, subpart K, is proposed to be amended as set forth below.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30 and 36, unless otherwise noted.

2. In § 21.7131, paragraph (n) is added to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(n) *Eligibility established under § 21.7045(c).* The effective date of an award of educational assistance when the veteran has established eligibility under § 21.7045(c) is as follows:

(1) If the veteran is not entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following.

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) October 23, 1992, provided that VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) October 23, 1993; or

(B) One year from the date VA requested the $1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(1)(ii) of this section are not met.

(2) If the veteran is entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following:

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) The date on which the veteran made a valid election to receive educational assistance under 38 U.S.C. chapter 30 provided that VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) One year from the date VA received the valid election; or

(B) One year from the date VA requested the $1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(2)(ii) of this section are not met.

(Authority 38 U.S.C. 3018B)

[FR Doc. 97–32989 Filed 12–17–97; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 96–238; DA 97–2178]

Accelerated Docket Procedures for Formal Complaints Filed Against Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On November 25, 1997, the Commission adopted its Report and Order in this docket promulgating new, streamlined rules for handling formal complaints filed with the Commission (the "Complaint R&O"). In the Complaint R&O, the Commission encouraged its staff to explore and use alternative approaches to complaint adjudication designed to ensure the prompt discovery of relevant information and the full and fair resolution of disputes in the most expeditious manner possible. By this Public Notice, additional comment is sought on issues relating to the possible alternative forms of complaint adjudication that, complementing the rules recently announced in the Complaint R&O, ultimately should redound to the benefit of telecommunications consumers by enhancing competition in the relevant markets. Specifically, comment is invited regarding the feasibility of creating an "Accelerated Docket" that would provide for a 60-day complaint adjudication process.

DATES: Written comments are due on or before January 12, 1998.

ADDRESSES: Comments should be sent to the Office of Secretary, Federal Communications Commission, 1919 M Street, N.W., suite 222, Washington, D.C. 20554. In addition, parties are asked to submit two copies each of their comments directly to: (1) The Enforcement Task Force, Office of General Counsel, Federal Communications Commission, Room 650–L, 1919 M Street, N.W., Washington, D.C. 20554 and (2) Enforcement Division, Common Carrier Bureau, Federal Communications Commission, Room 6120, 2025 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in response to this notice with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Jeffrey H. Dygert, Common Carrier Bureau, Enforcement Division, (202) 418–0960, or Glenn T. Reynolds, Common Carrier Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Public Notice in CC Docket No. 96–238, adopted on December 12, 1997 and released December 12, 1997. The full text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text of the Public Notice may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

Summary of the Public Notice

1. On November 25, 1997, the Commission adopted its Report and Order in this docket promulgating new, streamlined rules for handling formal complaints filed with the Commission (the "Complaint R&O").[1] By this Public Notice, the Competition Enforcement Task Force (the "Task Force") and the Common Carrier Bureau (the "Bureau") seek additional comment on issues relating to the possible alternative, accelerated forms of complaint adjudication that would supplement or provide an alternative to the procedures set out in the Complaint R&O.

2. Specifically, the Task Force and the Bureau currently are evaluating whether the needs of some industry participants better could be met by an "Accelerated Docket" for complaint adjudication that would (1) provide for the presentation of live evidence and argument in a hearing-type proceeding and (2) operate on a 60-day time frame, or on some other schedule that is more compressed than that applicable more generally to complaint proceedings under the new procedures set out in the Complaint R&O.

3. The Accelerated Docket would serve as a hearing-style alternative to the normal process for resolution of formal complaints, administered by the Bureau's Enforcement Division, which relies primarily on the parties' presentation of arguments on paper. To the extent possible, Accelerated Docket proceedings would be governed by the requirements announced in the Complaint R&O. In accordance with the Commission's authority under sections 1, 4, 201–205, 208, 215, 218 and 220 of

[1] *See* Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers, *Report & Order*, CC Docket No. 96–238, FCC 97–396 (rel. Nov. 25, 1997) (the "Complaint R&O").

the Communications Act, interested parties are invited to submit comments and recommendations as to how such a hearing-based process could be designed to ensure speedy, consistent and fair adjudication of complaints. Specifically, commenters should address the extent to which the rules set forth in the Complaint R&O could be applied to the Accelerated Docket. Additionally, where appropriate, comments should identify specialized procedures or requirements that may be necessary in the context of the alternative, hearing-style process under consideration. Commenters should restrict themselves to addressing the feasibility of using the below-discussed rules and requirements promulgated in the Complaint R&O and the extent to which different requirements may be necessary for the alternative docket. Comments should not attempt to revisit issues previously decided in this proceeding.

4. With reference to the Accelerated Docket discussed above, comment is invited on the following issues:

(i) Need for Accelerated Docket. Commenters are invited generally to discuss factors that may support the creation of a hearing-type, accelerated complaint process like that discussed herein. Thus, commenters should provide information about specific events, general industry trends or particular categories of disputes that might benefit from treatment under the Accelerated Docket. Additionally, comment is sought on whether the Accelerated Docket initially should be limited to issues of competition in the provision of telecommunications services. In particular, comments should offer suggestions and recommendations as to how the Commission can work cooperatively with state utility commissions on such enforcement matters to ensure that the respective interests of the Commission and the states are protected.

(ii) Minitrials. The Bureau and the Task Force are considering whether the requirements of speed and fairness would be served by conducting minitrials of complaints accepted onto the Accelerated Docket. Such a hearing-type proceeding would permit the parties to present evidence and argument to the fact-finder and would likely permit closer inquiry into factual issues and more effective credibility determinations than are possible on a paper record. As currently envisioned, these minitrials would cover a broader range of issues than those hearings likely to arise from the Bureau's newly expanded authority to designate issues for hearing before an ALJ. As with other complaints brought under Sections 206 through 209 of the Communications Act, these minitrials would not be subject to the on-the-record hearing requirements of the Administrative Procedure Act. *See Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers.* Report and Order, CC Dkt No. 92–26, 58 FR 25569 (April 27, 1993). Under the 60-day process currently under consideration, such a hearing would need to be conducted no later than 45 days after the filing of the complaint. During the hearing, each side would be permitted to present evidence in support of their respective positions. Given the need for dispatch, one approach under consideration is to allot each side an equal amount of time within which to present its case and to cross-examine its opponent's witnesses. Comment is sought as to the feasibility and desirability of adjudicating complaints using this or a similar process.

(iii) Discovery. One of the key elements to streamlining the enforcement process is to maximize staff control over the discovery process. For the Accelerated Docket to be successful, discovery must be as targeted and focused as possible. As the Accelerated Docket is currently envisioned, its proceedings would be governed by the recently announced discovery rules unless otherwise noted. In this regard, comment is invited on how best to conduct discovery in connection with the 60-day complaint process currently under contemplation. Given the compressed time frame for Accelerated Docket proceedings, commenters should address whether parties should submit all discovery requests and disputes to the Task Force in advance of the initial status conference so that the Task Force may issue its decision on these issues at that conference. Should the parties exchange all documents relevant to the issues raised in the complaint and answer either when they file their initial pleadings, or at some other point before the initial status conference discussed below? If not all relevant documents, should the parties be required to exchange all documents that bear some closer relationship to the claims and defenses in the proceeding? Finally, given the short time frame available for discovery, what sanctions would be appropriate when a party fails to provide discovery as ordered by the Task Force, including the production of witnesses for depositions?

(iv) Pre-filing Procedures. Under the recently announced rules, a complaint must certify that it has discussed, or attempted to discuss, the possibility of a good faith settlement with the defendant carrier's representative(s) before filing the complaint. Comment is sought on whether a complainant seeking acceptance onto the Accelerated Docket should, as a precondition of such acceptance, have attempted to undertake informal settlement discussions under the auspices of the Task Force. Should adequate advance notice to the prospective defendant of the issues to be covered in these informal settlement discussions be one of the criteria considered in determining acceptance onto the Accelerated Docket? What other criteria should be applied by the Task Force and the Bureau in determining what complaints should be accepted onto the Accelerated Docket? To what extent, if any, would the Commission's *ex parte* rules be implicated by the Task Force's involvement in such pre-filing discussions between prospective parties to a potential complainant proceeding? If a complaint does not request expedited treatment, might an action be included on the Accelerated Docket at the defendant's request? Comment is also sought on whether, or in what circumstances, previously filed complaints should be designated for inclusion on the Accelerated Docket. What steps would be necessary to provide adequate protection to the confidential or propriety information of the parties engaged in such informal, pre-filing discussions?

(v) Pleading Requirements. The Commission's recently announced pleading requirements require greater diligence by complainants and defendants in presenting and defending against claims of misconduct. Pleadings submitted in Accelerated Docket proceedings would be required to meet these same standards. In light of these recently heightened requirements for pleading content, comment is invited on the reasonableness of requiring the answer to be filed within seven calendar days of a complaint, as likely would be necessary in the 60-day complaint process currently under contemplation.

(iv) Status Conferences. Under a hearing-type, 60-day process, an initial status conference would seem necessary no later than 15 calendar days after the filing of the complaint. Comment is sought as to the feasibility of holding a status conference at that time. The Bureau and the Task Force contemplate that the initial status conference for Accelerated Docket proceedings would proceed under the newly announced rules in the Complaint R&O. Thus, before the status conference, the parties would meet and confer about the following issues: (1) Settlement prospects, (2) discovery, (3) issues in dispute, (4) a schedule for the remainder of the proceeding. The parties would be required to reduce to a joint, written statement their agreements and remaining disputes regarding these matters, and submit it to the Commission two days in advance of the status conference. The parties also would be required to agree to a joint statement of stipulated facts, disputed facts and key legal issues, which also would be submitted to the Commission two days before the status conference. Comment is invited on imposing these requirements for the initial status conference in a 60-day process. Additionally, comment is invited on the nature of the briefing schedule, if any, that the Task Force should set at the initial status conference.

(vii) Damages. Given the fact that adjudications of damages would be extremely difficult to complete within a 60-day time frame, commenters should address whether the Accelerated Docket should be restricted to bifurcated, liability claims, with damages claims to be handled separately under the procedures set out in the Complaint R&O.

(viii) Other Issues. Commenters are invited to address whether any other rules should be specifically tailored to accommodate a 60-day, hearing-type adjudication process.

(ix) Review by the Commission. To satisfy statutory requirements for the disposition of certain categories of complaints, it likely would be necessary in Accelerated Docket proceedings, for all briefing on any petition seeking review of an initial decision by the Task Force to be completed between 20 and 30 days of the decision's release. Also under consideration is the possibility of *en banc* oral argument before the Commission for Accelerated Docket proceedings in which the Commission does not summarily adopt the initial Task Force decision. Comment is sought on issues relating to this type of review process for initial decisions in the Accelerated Docket.

5. Comments should be filed on or before January 12, 1998. There will be no reply comments. Commenters should organize their comments under the numbered paragraph headings set out above. Interested parties must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Additionally, commenters are asked to submit two copies each directly to: (1) The Enforcement Task Force, Office of General Counsel, Federal Communications Commission, Room 650–L, 1919 M Street, N.W., Washington, D.C. 20554 and (2) The Enforcement Division, Common Carrier Bureau, Federal Communications Commission, Room 6120, 2025 M Street, N.W., Washington, D.C. 20554.

6. Comments should be clearly labeled with CC Docket No. 96–238. Parties also should send comments to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036. Comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

7. Parties are also asked to submit comments on diskette. Such diskette submissions will be in addition to, and not a substitute for, the formal filing requirements set out above. Parties submitting diskettes, should submit them to Jeffrey H. Dygert, Common Carrier Bureau, Enforcement Division, Room 6120, 2025 M Street, N.W., Washington D.C. 20554. Comments on diskette should be submitted in "read only" mode in WordPerfect 5.1 for Windows. The diskette should be clearly labelled with the party's name, proceeding and date of submission. The diskette should be accompanied by a cover letter.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Investigations, Penalties.

Federal Communications Commission.

A. Richard Metzger, Jr.,

Chief, Common Carrier Bureau.

[FR Doc. 97–33183 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–239, RM–9195]

Radio Broadcasting Services; Otter Creek, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Tony Downes proposing the allotment of Channel 240A to Otter Creek, Florida, as that community's first local broadcast service. There is a site restriction 9.6 kilometeres (6.1 miles) south west of the community. The coordinates for Channel 240A are 29–16–52 and 82–51–42.

DATES: Comments must be filed on or before February 2, 1998, and reply comments on or before February 17, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Tony Downes, 3092 SW Harbor Hills Road, Dunnellon, Florida 34431.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–239, adopted November 26, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33050 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–242, RM–9192]

Radio Broadcasting Services; Eastland and Baird, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Cowboy Broadcasting, LLC, licensee of Station KVMX (FM), Channel 236A, Eastland, Texas, requesting the substitution of Channel 236C3 for Channel 236A, the reallotment of Channel 236C3 from Eastland to Baird, Texas, and the modification of Station KVMX (FM)'s license to specify Baird as its community of license. Channel 237C3 can be allotted to Baird in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.3 kilometers (0.2 miles) north. The coordinates for Channel 237C3 are 32–23–45 NL and 99–23–44 WL. In accordance with the provision of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 236C3 at Baird.

DATES: Comments must be filed on or before February 2, 1998, and reply comments on or before February 17, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cliff Boyd, Cowboy Broadcasting, LLC., 1110 South Santa Fe Trail, Ducanville, Texas 75137 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–242, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33049 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–243, RM–9194]

Radio Broadcasting Services; Belzoni and Tchula, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Team Broadcasting Company, Inc., permittee of Station WGNG (FM), Channel 292A, Belzoni, Mississippi, requesting the substitution of Channel 292C3 for Channel 292A; the reallotment of Channel 292C3 from Belzoni to Tchula and the modification of Station WGNG(M)'s authorization to specify Tchula as its community of license. Channel 292C3 can be allotted to Belzoni in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 kilometers (1.8 miles) southeast of the community. The coordinates for Channel 292C3 at Tchula are 33–09–43 NL and 90–12–34 WL. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 292C3 at Tchula.

DATES: Comments must be filed on or before February 2, 1998, and reply comments on or before February 17, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ruben C. Hughes, President, Team Broadcasting Company, Inc., 581 Golden Avenue, Mobile Alabama 36616 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–243, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts:

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33048 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–238, RM–9201]

Radio Broadcasting Services; Guymon, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Clear Channel Radio Licenses, Inc., to allot Channel 258C1 to Guymon, OK, as the community's second local FM service. Channel 258C1 can be allotted to Guymon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–41–00 North Latitude; 101–29–06 West Longitude.

DATES: Comments must be filed on or before February 2, 1998, and reply comments on or before February 17, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff, Christopher L. Robbins, Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–238, adopted November 26, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33046 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 227 and 425

[I.D. 950214048–7291–03]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 425

RIN 1018–AD12

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List a Distinct Population Segment of Atlantic Salmon (Salmo Salar) as Threatened

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce and Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), collectively the Services, withdraw the September 29, 1995, proposed rule (60 FR 50530) to list a distinct population segment (DPS) of Atlantic salmon (*Salmo salar*) in seven Maine rivers as threatened under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). This decision is based on an evaluation of the best scientific data available and consideration of ongoing and planned actions by State and Federal agencies and private entities including the development by the State of Maine of the Atlantic Salmon Conservation Plan for Seven Maine Rivers (Conservation Plan).

ADDRESSES: National Marine Fisheries Service, Northeast Region, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930; U.S. Fish and Wildlife Service, Region 5, Endangered Species Division, 300 Westgate Center Drive, Hadley, MA 01035.

FOR FURTHER INFORMATION CONTACT: Mary Colligan (NMFS) at 978/281–9116 or Paul Nickerson (FWS) at 413/253–8615.

SUPPLEMENTARY INFORMATION:

Background

Information on the life history, distribution and abundance of U.S. Atlantic salmon can be found in the proposed rule published in the **Federal Register** on September 29, 1995 (60 FR 50530).

Previous Federal Action

Atlantic salmon populations in the Dennys, Machias, East Machias, Narraguagus, and Pleasant rivers were designated as category 2 candidate species by the FWS on November 21, 1991 (56 FR 58804). Category 2 candidates, a designation discontinued in a Notice of Review published by the FWS on February 28, 1996 (61 FR 7596), were taxa for which information in possession of the FWS indicated that proposing to list as endangered or threatened was possibly appropriate but for which conclusive data on biological vulnerability and threats were not currently available. On October 1, 1993, the Services received a petition from RESTORE: The North Woods, the Biodiversity Legal Foundation, and Jeffrey Elliott to list anadromous Atlantic salmon throughout its known historical range in the United States. The Services published a notice of their 90-day finding on January 20, 1994 (59 FR 3067), stating that the petition presented substantial information indicating that the requested action may be warranted. A biological review team conducted a status review and prepared a draft report entitled "Status Review for Anadromous Atlantic Salmon in the United States, January 1995" (Status Review) (FWS and NMFS 1995). On March 17, 1995, the Services published a notice of their 12-month finding (60 FR 14410) stating that available biological evidence indicated that the species described in the petition did not meet the definition of a "species" under the Act. Consequently, the Services concluded that the petitioned action to list Atlantic salmon throughout its historical range within the United States was not warranted. However, the Services did find that sufficient information was available to support a listing action for a DPS comprised of seven river populations of Atlantic salmon in Maine (the seven rivers DPS) and stated that preparation of a proposed rule to list this DPS had begun.

On September 29, 1995, the Services published a proposed rule to list the seven rivers DPS of Atlantic salmon as threatened (60 FR 50530) (hereafter referred to as "the proposed rule"). Pursuant to section 4(d) of the Act, the proposed rule (60 FR 50530) offered the State of Maine an opportunity to develop a Conservation Plan to retain the lead for the species' recovery. The Services reopened their comment period on the proposed rule (60 FR 50530) on August 27, 1996 (61 FR 44032), to announce three public hearings which were held in Maine in September of that

year. The State prepared and circulated a draft Conservation Plan and sought public input at hearings also held in September 1996. The State submitted the final Conservation Plan to the Services on March 5, 1997, and made it available for public comment. The Services again reopened their comment period on May 23, 1997 (62 FR 28413), to invite comments on the Conservation Plan and on other information that had become available after the publication of the proposed rule (60 FR 50530).

Consideration as a "Species" Under the Act

The term "species" is defined by section 3(15) of the Act as including "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature." In the proposed rule (60 FR 50530), the Services stated that Atlantic salmon populations in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias and Dennys rivers (the seven rivers) comprised one DPS (the seven rivers DPS). Also in the proposed rule (60 FR 50530), Atlantic salmon populations in the Kennebec River, Penobscot River, St. Croix River, and Tunk Stream were designated as category 2 candidate species by the FWS and as candidate species by NMFS until investigations into the presence and persistence of native Atlantic salmon populations within these rivers could be conducted.

On February 7, 1996, the Services published a national policy (the Services' DPS policy) (61 FR 4722) to clarify their interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" for the purposes of listing, delisting, and reclassifying species under the Act. The policy identified the following three elements to be considered in deciding whether to list a possible DPS as endangered or threatened under Act: The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; the significance of the population segment to the species or subspecies to which it belongs; and the conservation status of the population segment in relation to the Act's standards for listing.

Discreteness of the Population Segment

According to the Services' DPS policy, a population segment may be considered discrete if it satisfies either one of the following conditions: it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or it is delimited by international governmental boundaries across which there is a significant difference in control of exploitation, management of habitat, or conservation status. Mitochondrial DNA and microsatellite DNA data obtained through an ongoing peer-reviewed genetic study by the U.S. Geological Survey—Biological Resources Division (USGS–BRD) demonstrate that North American Atlantic salmon stocks are reproductively isolated and genetically distinct from European stocks (King, *et al.* 1997). Differences within the North American complex are less clear, but due to differences in management and conservation programs between the United States and Canada, U.S. Atlantic salmon populations are considered to be discrete for the purposes of the Act. Management and conservation programs in the United States and Canada have similar goals, but differences in legislation and policy support the use of the United States/Canada international boundary as a measure of discreteness.

Significance of the Population Segment

The Services' DPS policy states that the consideration of the significance of the population segment to the taxon to which it belongs may include, but is not limited to, the following: Persistence of the discrete population in an ecological setting unusual or unique for the taxon; evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere; or evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A critical factor in determining the significance of river populations of Atlantic salmon is the persistence of a substantial component of native stock reproduction. Results of the USGS–BRD genetics study (King, *et al.* 1997) provide a range-wide survey of mitochondrial and nuclear DNA variation in Atlantic salmon. Composite mitochondrial DNA haplotypes revealed a strong discontinuity between North American and European salmon. Gene flow estimates for both mitochondrial and nuclear DNA at the inter-continental scale were less than one migrant per generation, strongly indicating a major discontinuity between North American and European populations. Pair-wise comparisons of microsatellite genotypes revealed evidence of some significant population subdivisions described by the researchers as worthy of management consideration. This is consistent with the Services' recommendation in the proposed rule (60 FR 50530) that Atlantic salmon populations should be managed on a river-by-river basis.

The DPS proposed for listing by the Services consisted of those seven river populations in Maine for which the greatest evidence of the persistence of historical, river-specific characteristics having evolutionary significance could be found. The results of the USGS–BRD genetics study (King, *et al.* 1997) together with phenotypic traits, life history and habitat characteristics suggest that the seven rivers DPS could be expanded in the future. Because the possibility exists that additional populations could be added to the seven rivers DPS in the future, and for purposes of future conservation activities, the Services are renaming the seven rivers DPS the Gulf of Maine DPS. Other Atlantic salmon populations will be added to the Gulf of Maine DPS if they are found to be naturally reproducing and to have historical, river-specific characteristics. The area within which populations meeting these criteria for addition to the DPS would most likely be found is from the Kennebec River north to, but not including, the St. Croix River.

The Services believe that the Atlantic salmon populations in Togus Stream, a tributary to the Kennebec River, and Cove Brook, a tributary to the Penobscot River, may warrant inclusion in the Gulf of Maine DPS. Further investigation of these and other extant river populations from the Kennebec River north to, but not including, the St. Croix River will continue in order to determine if they meet the criteria for inclusion in the DPS. Populations that resulted primarily from colonization by fish unintentionally released or by fish which escaped from commercial aquaculture operations will not be included in the Gulf of Maine DPS; populations that resulted from private or public hatchery stockings where the broodstock did not originate from populations within the range of the Gulf of Maine DPS also will not be included.

Summary of Comments and Responses

The Services held three public hearings in Maine in September 1996 to solicit comments on the proposed listing determination for the seven rivers DPS of Atlantic Salmon. Over 150 individuals attended the hearings, and the Services received additional written comments on the proposed rule (60 FR 50530) from the State, Federal, and local government agencies, Indian tribes, non-governmental organizations, the scientific community, and other individuals. In accordance with policy published on July 1, 1994 (59 FR 34270), the Services requested scientific peer review of the proposed rule (60 FR 50530) and draft Status Review and received comments from 15 reviewers. In addition, on March 25, 1997, the Services sent available genetics information to 23 individuals for scientific peer review and received comments from 15 reviewers. The comment period on the proposed rule (60 FR 50530) was reopened in May 1997 to allow public review and comment on additional information, including the Conservation Plan, that had become available since the publication of the proposed rule (60 FR 50530). Following is a summary of the major issues identified in public comments and the Services' responses to those issues.

Issue 1: Accuracy and Sufficiency of Scientific Data

Comment: A few individuals stated that the biological data used was flawed and that, in fact, the salmon population is sufficiently large and growing. Other commenters stated that the stocks are declining and cited habitat degradation as a potential cause. The primary area of disagreement concerning the availability and assessment of data surrounded the issue of delineation of the DPS and, in particular, the role of genetic information in making that determination.

Response: The Act requires that listing determinations be made on the basis of a population's status which is determined by utilizing the best available scientific and commercial data, with consideration being given to State and foreign efforts to protect such species. Data on species distribution and abundance is provided each year by the U.S. Atlantic Salmon Assessment Committee (USASAC), and additional information specific to the seven watersheds is provided in field activity reports prepared jointly by the FWS and the Maine Atlantic Salmon Authority (ASA). To specifically address concerns raised over the delineation of the DPS and the role of genetic information in that determination, the Services sent out the genetics section of the draft Status Review and a State-prepared genetics report (Maine Atlantic Salmon Task Force 1996) for an additional peer review. Many of these reviewers stated a desire for additional information; however, many supported the Services' proposal given the existing information. Many reviewers acknowledged that the USGS–BRD genetics report (King, *et al.* 1997) contains the most comprehensive analysis ever conducted of U.S. Atlantic salmon populations. Some reviewers posed questions regarding the sampling and collection methodology and the statistical analysis of the results. These comments have been provided to the authors of the report to be addressed during preparation of the final report. The Services believe that, due to the nature of these comments, the results of the study will not be changed in a way which would affect the decision to withdraw the proposed rule (60 FR 50530).

Detailed assessments have been conducted in the Narraguagus River to document the extent to which Atlantic salmon mortality in the freshwater phase of the salmon's life cycle may be responsible for the declines in adult abundance first observed in the mid-1980's (FWS and NMFS 1995). One of the specific objectives of this research was to determine the abundance and age structure of the adult and juvenile Atlantic salmon populations. This study concluded that rearing habitats in the Narraguagus River, although not pristine, are in good condition and capable of supporting robust juvenile salmon populations. Macroinvertebrate population data also suggest that freshwater habitats are in good condition, with diversity and abundance indices similar to those obtained 20 years earlier (FWS and NMFS 1995). Water chemistry data indicate that the mainstem Narraguagus River has adequate water quality to support juveniles, and contaminant sampling data suggest that most chemicals used in blueberry culture and forestry are not detected in the fish or waters of the Narraguagus River (ASA 1997).

In 1992, native Atlantic salmon parr (young salmon in freshwater) were collected from the Dennys, Machias and Narraguagus rivers to be raised to maturity and used as broodstock. Adults that were produced by this program were released back into their rivers of origin in June and October 1996. Redd (spawning bed) counts on all three rivers indicated a surplus of redds relative to known returning sea run adults suggesting that reconditioned hatchery broodstock spawned successfully.

Issue 2: Delineation of the Seven Rivers DPS

Comment: Some commenters expressed the opinion that all Atlantic salmon in New England are artificial and have been affected so greatly by hatchery practices that no aboriginal Atlantic salmon remain. They stated that these populations did not qualify for consideration for protection under the Act due to this mixed heritage. Some commenters stated that the Services were abusing their authority under the Act by making such a proposal. Other commenters stated that protection under the Act should be considered for all stocks in rivers that historically contained Atlantic salmon.

Response: The Services' DPS policy (61 FR 4722) and its application to Atlantic salmon is explained in the section of this notice entitled "Consideration as a 'Species' Under the Act." The Services note that, in addition to the information presented in that section, the results of the recently completed USGS–BRD genetics study (King, *et al.* 1997) do not support the claim that Atlantic salmon have been homogenized by migration, stocking and/or aquaculture operations. Analysis of the most current information on genetics, life history and stock assessment provides very strong evidence that the North American Atlantic salmon population is discrete and significant.

Issue 3: Appropriateness of Listing at This Time

Comment: Some commenters urged the Services to delay the decision whether to list in order to allow more time for the river-specific rearing program to work, and some suggested that more time should be allowed for the Conservation Plan to be implemented. Others recommended that the Services immediately list Atlantic salmon and designate critical habitat.

Response: The Act requires the Services to make listing determinations based on the biological status of the species and consideration of State and international efforts being made to protect it. Although adult returns to the seven rivers remain low and average less than 10 percent of the escapement goal (the number of adult returns sufficient to fully seed the habitat), collection of fish and the subsequent stocking of their progeny, as explained in the proposed rule (60 FR 50530), has resulted in substantially higher juvenile counts. Also, projections of marine survival have improved steadily since 1994 (International Council for Exploration of the Seas (ICES) 1997). In addition, as explained in detail in the section of this notice entitled "Efforts to Protect Maine Atlantic Salmon," the Services have determined that protection efforts have substantially reduced the level of threat to the DPS. Consequently, the Services have concluded that the DPS is not likely to become endangered within the

foreseeable future and that, therefore, listing is not justified at this time.

Issue 4: Adequacy of Existing Conservation Measures and Regulatory Mechanisms

Comment: Many commenters expressed the opinion that existing regulations were more than adequate to provide protection to Atlantic salmon. Some asserted that the factor most responsible for the species' decline was marine survival and suggested that, since this was not a controllable factor, nothing was to be gained by listing the species. Other commenters expressed concern about the State of Maine acquiring management authority stating that Maine had a history of ineffective management of Atlantic salmon. They argued for increased Federal involvement through a listing action.

Response: The Services agree that there are a number of existing conservation measures and regulatory mechanisms in place to protect Atlantic salmon. Those conservation measures and regulatory mechanisms are discussed in more detail in the "Summary of Factors Affecting the Species" and the "Efforts to Protect Maine Atlantic Salmon" sections of this notice. It is important to note that the Services have been, and will continue to be, closely involved in the management of Atlantic salmon in Maine, as well as throughout the rest of New England. The Services do not agree that Maine has a history of ineffective management of Atlantic salmon. The Status Review does state that the recreational harvest of the 1970's was likely too high but that, subsequently, restrictions were placed on the fishery, and currently only catch and release fishing is permitted. The Services also reviewed past management measures to determine their role, if any, in the species' decline. Current management measures were reviewed for their ability to protect and assist with the recovery of Atlantic salmon populations. The Services have determined that existing State regulations and management measures, together with additional efforts outlined in the Conservation Plan, sufficiently protect the species during the portion of its life cycle spent in Maine waters and will facilitate its continued improvement.

Issue 5: Economic Ramifications of Listing Atlantic Salmon as Endangered

Comment: Many individuals stated that listing would add more government regulations that would cripple local economies. Concerns were raised over potential ramifications to forestry, aquaculture and agriculture. Other commenters cited economic benefits of successful salmon restoration.

Response: The Act does not allow the Services to consider economics in making listing determinations. The Act does require Federal agencies to consult with the Services on any action they undertake, fund or authorize which may affect a proposed or listed species. In the majority of cases, these consultations do not slow or halt project planning and construction. The Services agree that there are many benefits, including economic benefits, to Atlantic salmon restoration.

Issue 6: Effects of Agriculture on Atlantic Salmon

Comment: Commenters provided a broad range of views regarding the relationship between agricultural practices and Atlantic salmon. Some stated that agricultural practices do not threaten Atlantic salmon. Some of the same commenters expressed concern that listing Atlantic salmon would have negative effects on agriculture. Finally, a few commenters stated that erosion, pesticide run-off, and water withdrawal associated with agriculture are contributing to the decline of the species.

Response: The Services examined the potential impact of agricultural practices on Atlantic salmon in the draft Status Review and concluded that current agricultural practices do not pose a major threat to Atlantic salmon. In response to the proposed rule (60 FR 50530), the Governor of Maine formed a Task Force to address the decline of Atlantic salmon in the State. The Agriculture Working Group of the Task Force conducted an in-depth analysis of the relationship between agricultural practices and Atlantic salmon protection and recovery. This group identified a number of potential threats including water use, non-point source pollution and peat mining. The group also cited the increased interest in cranberry cultivation in the seven watersheds as a potential threat. The sections of this notice entitled "Summary of Factors Affecting the Species" and "Efforts To Protect Maine Atlantic Salmon" discuss ongoing and proposed actions to address threats from agriculture.

Issue 7: Effects of Recreational Fishing on Atlantic Salmon

Comment: Many commenters stated that recreational fishing does not threaten Atlantic salmon populations and some suggested that, if a listing resulted in the termination of a recreational fishery, the support of anglers for salmon recovery would be lost.

Response: In the proposed rule (60 FR 50530), the Services stated that multi-sea-winter fish (fish which have spent two or more winters at sea) could incur some mortality from catch and release fishing and that parr could be vulnerable to incidental hooking mortality or illegal harvest by trout anglers. The Services also expressed some concern over the potential for poaching. In the past the recreational harvest of Atlantic salmon had the potential to negatively impact species abundance, however, there is no legal harvest in Maine at this time. In the Conservation Plan, the State of Maine has imposed further restrictions on the catch and release fishery for Atlantic salmon to reduce or eliminate the potential for adverse impacts to salmon by restricting the season, area and gear to be used. In addition, the State has imposed restrictions on recreational trout fishing to address concerns over impacts from incidental catch. To improve compliance with these new regulations, the State has added two seasonal wardens and has recommended increased fines for violations.

During their review of the Conservation Plan, the Services requested that the State further define biological parameters for the catch and release fishery by identifying conditions under which a river may be closed and by describing monitoring or assessment efforts. The State has subsequently informed the Services that the Maine Technical Advisory Committee (TAC) is being requested to recommend to the ASA the appropriateness of catch and release fishing on each river. The ASA will then take this recommendation through a public hearing process and promulgate regulations. The TAC was advised to consider the following factors: Parr densities at index sites; sea temperature index developed for the North American Salmon Conservation Organization (NASCO); returns of adults or redd counts; availability of hatchery fry; and incidental mortality related to catch and release. The State has informed the Services that estimates of actual returns (numbers of adult salmon returning to their rivers of origin) would be compared to minimum biologically acceptable limits of spawners (spawning adult salmon) to determine the feasibility of catch and release for any given season. The Services are satisfied with this proposed plan of action and as members of the TAC will have an active role in the development of specific criteria.

Issue 8: Effects of Aquaculture on Wild Atlantic Salmon

Comment: There was a wide range of opinions expressed concerning the effects of aquaculture on wild Atlantic salmon populations. Some commenters felt that aquaculture has negative impacts, whereas others stated that aquaculture does not threaten wild salmon populations and could in fact aid restoration or rehabilitation of wild populations through breeding and stocking programs. Finally, some commenters expressed concern that listing would have negative impacts on the aquaculture industry.

Response: Through the Aquaculture Working Group of the Task Force, the Services and the aquaculture industry have identified industry practices that could impact wild populations. Strategies to mitigate or eliminate these potential impacts have been identified and are being implemented. The Maine Aquaculture Association is working with the University of Maine and representatives of the industry to develop a biosecurity code that will incorporate both a loss control code of practice and a fish health code. These codes will reduce the potential for genetic and health impacts to wild stocks. The Services will continue to monitor the development and implementation of these codes.

The aquaculture industry is conducting further investigations into marking of cultured stock and is experimenting with the commercial culture of sterile triploids. The aquaculture industry, in an effort to actively participate in salmon recovery, has accepted river-specific eggs for 2 years and is raising those eggs to smolts (sub-adults) and/or adults to be released back into their rivers of origin. The FWS has secured funds to construct weirs on three rivers that will aid in both wild stock management efforts and in culling aquaculture escapees.

Issue 9: Effects of Forestry on Atlantic Salmon

Comment: Comments on forestry ranged from identifying forestry as having a negative impact on salmon recovery to stating that there is no proven link between forestry and the decline of salmon. Those who stated that forestry negatively impacts Atlantic salmon cited non-point source pollution and habitat degradation. Concerns were also raised over the potential economic ramifications of listing to the forestry industry.

Response: In the draft Status Review and the proposed rule (60 FR 50530), the Services cited forestry as a predominant land use in the central and northern coastal Maine watersheds. The Services concluded that while past forestry practices may have adversely affected salmon and their habitat, the regulatory mechanisms currently in place are sufficient to ensure that ongoing practices do not pose a major threat to the species. The Conservation Plan identifies potential impacts from forestry to include non-point source pollution, alteration of stream temperatures and hydrology, direct disturbance to habitat, and blockage of fish passage by deposition of woody debris. The Conservation Plan outlines a number of existing protective measures which address potential threats from forestry. These measures are discussed in detail in the section of this notice entitled "Efforts to Protect Maine Atlantic Salmon."

Issue 10: Effects of Hydroelectric Operations on Atlantic Salmon

Comment: Many commenters stated that dams have played a major role in the reduction in range of Atlantic salmon and in the depressed levels of remaining populations. Others stated that dams are not responsible for the decline of salmon. Finally, a few expressed concern over the potential negative effects of a listing on the hydroelectric industry.

Response: In the draft Status Review and the proposed rule (60 FR 50530), the Services stated that the construction of dams was a major cause for the decline of U.S. Atlantic salmon. The rivers included in the seven rivers DPS do not have hydroelectric dams on them and, therefore, listing would not have impacted the hydroelectric industry.

Issue 11: Effects of Marine Survival on the Decline of Atlantic Salmon

Comment: A few commenters stated that natural fluctuations in the marine environment are responsible for the decline of salmon and that, because these fluctuations could not be affected by listing, listing is not necessary.

Response: As required by the Act, the determination as to whether a listing action is appropriate is based on the biological status of the species and consideration of State and international efforts to protect it. The Services considered all threats to the species including natural fluctuations in the marine environment in determining to propose the seven rivers DPS of Atlantic salmon as threatened and in deciding to withdraw the proposal.

Issue 12: Genetics Information

Comment: The Service received comments from 15 individuals who conducted a scientific peer review of the genetics information. Most reviewers agreed it was difficult with the information available at that time to draw any conclusion regarding the correct delineation of a DPS. One reviewer stated that the metapopulation paradigm was more relevant than the stock concept as it emphasizes the interconnections between population units within metapopulations and the multi-layered nature of the relationships among them (the metapopulation theory, in part, proposes that the loss of the species at one site can be compensated through reoccupation of the site from adjacent sites). In contrast, another reviewer pointed out, as evidence against the metapopulation theory, that populations tend to stay extirpated. In general, many reviewers desired more information, but most stated that if "a substantial component of native genetic variation persists in the populations of the named rivers, they are presumably the last reservoirs of these genes, and hence deserving of the strongest possible protection." An additional reviewer agreed that there is no "pure" native race of Atlantic salmon remaining but the remnant of mixed populations that does exist is all that is left of the original diversity of New England salmon.

There was general agreement among reviewers that rivers south of Maine are not appropriate for listing because the original populations were extirpated, and current populations represent introductions of non-native stocks of mixed origin. One reviewer questioned the logic of excluding the Kennebec, Penobscot and St. Croix rivers from the DPS. This reviewer believed that, due to their size, these three rivers might become the last source of broodstock for stocking the seven rivers in the event the Atlantic salmon populations in the seven rivers DPS become extinct. Another reviewer argued that the populations in the Kennebec, Penobscot, and St. Croix rivers and Tunk Stream, which were designated as candidates by the Services in the proposed rule (60 FR 50530), should be included in the seven rivers DPS. Some felt that the differences between U.S. and Canadian populations were overstated or exaggerated.

Some comments specifically addressed the question of "significance" and one reviewer stated that additional analyses of selectively neutral genetic variation would probably not be helpful for determining how to conserve and manage any adaptive variation that may reside in the rivers of Maine. Also, another reviewer stated that neutral markers do not reveal much about

significance. One reviewer offered an operational test of evolutionary value and suggested that if a climatic warming trend occurred, the Ducktrap River might be an appropriate source of broodstock for restocking rivers in the central part of the present species' distribution. This reviewer suggested that, putting genetics and statistics aside, if it is likely that a river population would be singled out to be used in the future as a source for restocking other rivers, then it should probably be preserved. Many reviewers emphasized the fact that Maine Atlantic salmon are at the southern extent of the species' range. One reviewer stated the following: "The fact is that some salmon do continue to return to Maine's rivers in spite of all the difficulties put in their way. Furthermore, these fish hang on near the southern limits of the species' global range, in spite of the extreme nature of the environment and the challenges they must overcome." These reviewers believed that these facts supported the contention that Maine Atlantic salmon constitute a highly selected group (or DPS) uniquely suited to life in Maine's rivers.

Some reviewers believed that the effects of hatcheries and stocking were adequately addressed in the draft Status Review, while others commented that more detail was needed. Most reviewers agreed that past extensive stocking raised concerns but was not conclusive evidence of the disruption or replacement of locally adapted native strains. Some commenters cited the suggestion in the State-prepared genetics report's (Maine Atlantic Salmon Task Force 1996) that the situation with Atlantic salmon is analogous to that with the lower Columbia River coho salmon for which both DPS status and Evolutionary Significant Unit (ESU) status was rejected due to the effects of stock transfers and hatchery propagation. One reviewer stated that this comparison was not appropriate as Columbia River coho lie in the middle of the species' range surrounded by populations that are less genetically compromised. Maine Atlantic salmon, on the other hand, are at the edge of the species' range. One reviewer offered his view that if a historical ESU can be identified with reasonable confidence (as is the case with Maine Atlantic salmon) there should be a presumption that it still remains unless there is a preponderance of evidence to indicate that it does not.

Commenters on the most recent USGS–BRD genetics report (King, *et al.* 1997) generally were impressed with the volume of data contained and analyzed. All reviewers agreed that the results supported earlier studies clearly demonstrating a statistically significant genetic difference between North American and European populations of Atlantic salmon. There was no such consensus regarding the interpretation of results for populations within North America. Most reviewers agreed that delineation of U.S. and Canadian populations as two separate DPS's could not be justified based on these results; however, they pointed out that sampling of Canadian populations was too sparse to conclude that they were part of the same DPS.

Response: The Services' carefully reviewed all of the available information concerning to the genetics of Atlantic salmon. The Services' identified the seven rivers DPS as a "species" under the Act in accordance with the Services' DPS policy (61 FR 4722). The Services' DPS policy and its application to the delineation of the seven rivers DPS (and the Gulf of Maine DPS) are described in the "Consideration as a 'Species' Under the Act" section of this notice.

Issue 13: The Conservation Plan

Comments: Eleven letters of comment were received on the Conservation Plan. Seven of those were from State agencies and industries and organizations operating within the State which voiced enthusiasm and support for the Conservation Plan and encouraged the Services to accept the Conservation Plan and not list Atlantic salmon under the Act. The State's response included a list of ongoing actions under the Conservation Plan. Some concern was raised over funding for implementation of the Conservation Plan and for work on rivers not included in the seven rivers DPS originally proposed for listing. In addition, one commenter recommended that the FWS should closely monitor implementation of the Conservation Plan. One commenter, offered the opinion that the Conservation Plan lacks accountability and enforceability and is not biologically defensible.

Response: The Services have worked closely with the State during the development of the Conservation Plan and believe that a very critical part of the Conservation Plan is the detailed implementation schedule and monitoring plan for each river. Each party's ability to meet funding obligations under the Conservation Plan will be evaluated annually as part of the review process.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal list. Section 4 requires that listing determinations be based solely on the best scientific and commercial data available, without reference to possible economic or other impacts of such determinations. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. The information presented here primarily concerns new developments since the publication of the proposed rule (60 FR 50530) and indicates the ways in which implementation of the Conservation Plan is further reducing threats to the DPS.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Forestry

One of the predominant land uses of central and northern coastal Maine watersheds is the growing and harvesting of forest products. Forest management practices can cause numerous short and long-term negative impacts to Atlantic salmon as a result of increased runoff, decreased shade and increased water temperatures, deposition of woody debris and silt into waterways, and the use of insecticides or herbicides. In the proposed rule (60 FR 50530), the Services presented their finding that while historical forest practices have had harmful effects on Atlantic salmon in certain watersheds, numerous State and Federal laws now in existence prevent significant adverse impacts to Atlantic salmon and other aquatic species. The Conservation Plan offers further protection against potential impact to Atlantic salmon from forestry activities. Ongoing actions outlined in the Conservation Plan include: Formation of Project SHARE (Salmon Habitat and River Enhancement) addressing potential threats from forestry in 5 Downeast watersheds; establishment of riparian management zones; Champion International's adoption of self-imposed restrictive management standards for timber operations near streams and rivers; providing code enforcement training and shoreline technical assistance to help municipalities administer shoreline zoning standards; promoting best management practices in forests within the State through Maine's non-point source pollution management program; and finally, formation of several river coalitions to improve watershed protection.

Agriculture

Lowbush blueberry agriculture is another significant land use in eastern Maine watersheds. The associated extraction and diversion of water and application of herbicides, fungicides, and insecticides could adversely affect Atlantic salmon and their habitat. In the proposed rule (60 FR 50530), the Services concluded that current agricultural practices were not considered a major threat to Atlantic salmon due to protective measures in place. Cranberry production, a small but rapidly increasing component of Downeast Maine agriculture, requires land conversion, a large supply of water, and significant use of pesticides. Significant acreage is currently being converted to cranberry production.

The Conservation Plan identifies the following programs and management activities currently being implemented to reduce impacts to Atlantic salmon from agricultural practices: Integrated crop management practices and best management practices for blueberry and cranberry production developed by the Maine Cooperative Extension Service; the State management plan for pesticides and ground water, as well as a more specific plan to protect groundwater from hexazinone; and the non-point source pollution and coastal zone management programs which include best management practices to protect water quality. Additional activities proposed in the Conservation Plan are the development and implementation of total water use management plans for each watershed, the development of a non-point source pollution control program for the Sheepscot River, and the identification of wetlands with functions that maintain the integrity of salmon habitat.

Peat Mining

Many eastern Maine watersheds contain deposits of peat. Commercial peat mining has the potential to adversely affect salmon habitat through the release of peat fibers, arsenic, and other chemical residues present in peat deposits. There are no known current impacts to Atlantic salmon, but further study is recommended to determine possible impacts, if any, of peat mining on Atlantic salmon and their habitat. The Conservation Plan identifies additional actions which are being taken to eliminate potential impacts from peat mining including: Improving the permit review process; increasing standards for erosion control; and evaluating possible threats to Atlantic salmon from water quality changes.

Dams

In the proposed rule (60 FR 50530), the Services cited the historical impact of dams on Atlantic salmon but stated that there were no hydroelectric projects on any of the seven rivers which constitute the range of the seven rivers DPS. Portions of two other rivers, the Kennebec and the Penobscot, are heavily impacted by hydroelectric dams. The fact that naturally reproducing populations of Atlantic salmon are likely restricted to tributaries below the lowermost mainstem dam on each of these rivers is directly attributable to the impact of these dams. While expansion of the range of Atlantic salmon in these river systems may be limited at present, it does not appear that the continued persistence of the lower tributary populations is threatened by the presence of dams on the mainstems upstream of these lower tributaries. Beaver (*Castor canadensis*) dams and debris dams, which have been documented on many of the rivers within the seven rivers DPS, are typically partial, temporary obstructions to Atlantic salmon migration. The Conservation Plan identifies activities underway to address this threat which include breaching problematic beaver dams, removing debris dams, and expanding the beaver trapping season in certain areas. In addition, the Conservation Plan includes a commitment to identify and rectify fish passage problems at the Cooper's Mills Dam on the Sheepscot River.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The proposed rule (60 FR 50530) discussed protective measures against any potential impact from a commercial Atlantic salmon fishery either domestically or internationally. A quota agreement was reached in 1997 for the West Greenland fishery, and Canada announced the continuation of the moratorium in Newfoundland and further restrictions and a comprehensive management plan for Labrador. Reduced ocean harvest resulting from these actions should benefit salmon runs throughout North America during the next several years. The Conservation Plan does not attempt to deal with ocean harvest, as that is beyond the State's jurisdiction.

The Conservation Plan notes that there is no legal harvest of Atlantic salmon in Maine but that a catch and release fishery is permitted. As outlined in the Conservation Plan, the State is addressing potential threats from poaching and catch and release fishing by restricting seasons, locations and gear; increasing law enforcement by adding two seasonal wardens; modifying regulations on other targeted fisheries to reduce any impact to Atlantic salmon caught as bycatch; and agreeing, where necessary, to close cold water adult salmon holding areas to all fishing. In addition, any catch and release fishing will be permitted only after analyzing data from all phases of the species' life cycle to assess risks to the DPS. Furthermore, a monitoring and reporting program has been created for incidental take, and there is a recommendation to increase penalties for poaching. During 1997, additional seasonal restrictions were imposed, and seasonal wardens were employed to reduce poaching in the seven rivers.

C. Disease or Predation

The proposed rule (60 FR 50530) included a comprehensive list of potential predators of Atlantic salmon but concluded that the effects and magnitude of competition and predation in the riverine, estuarine, and marine environments are not known. The Conservation Plan proposes further investigation of predation issues such as impacts of seal (harbor seal (*Phoca vitulina*) and gray seal (*Halichoerus grypus*)) and cormorant (double-crested cormorant (*Phalacrocorax auritus*)) predation and food habits of American eels (*Anguilla rostrata*) collected in juvenile Atlantic salmon habitat. The Conservation Plan also proposes a change in the daily limits on chain pickerel (*Esox niger*) to reduce pickerel populations that prey on migrating salmon smolts.

While Atlantic salmon are susceptible to a number of diseases and parasites that can result in high mortality, furunculosis caused by a bacterium (*Aeromonas salmonicida*) is the only known source of disease-related mortality that has been documented in wild Atlantic salmon in New England. The Conservation Plan describes efforts that are being implemented to reduce threats from disease. These include: maintenance of the current State, Federal, and New England fish health inspection protocols; continued vaccinations of farmed fish prior to placement in sea cages; and enforcement of private insurance standards. It is also noted that a State/Federal/industry fish health advisory board has been established to monitor and improve the current fish health protocols as they relate to salmonid fish culture. Additional protection will be provided by an emergency disease eradication program involving action steps to be taken in the event of the

detection of exotic fish pathogens in public or private rearing facilities; expansion of an ongoing epidemiological monitoring program to determine the type, incidence and geographic distribution of salmonid pathogens in Maine; documentation, evaluation and compilation of industry husbandry practices into a fish health code of practices; and, finally, complete adoption of an industry code of practices to minimize escapes of farmed fish.

D. Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms governing aquaculture, forestry, agriculture, poaching, recreational fishing, and commercial harvest are discussed elsewhere in this section and in the "Efforts to Protect Maine Atlantic Salmon" section of this notice.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Scientific evidence suggests that low natural survival in the marine environment is a major factor contributing to the decline of Atlantic salmon throughout North America. Recent research indicates that major seasonal events influence survival of post-smolts (young salmon which have reached the ocean and are beginning to migrate). It appears that survival of the North American stock complex of Atlantic salmon is at least partly explained by sea surface water temperature during the winter months when Atlantic salmon concentrate at the mouth of the Labrador Sea and east of Greenland. The marine survival index improved in 1997 for the third consecutive year, suggesting the likelihood of improved adult returns during the next few years.

Research initiated by the USASAC, the ICES-North Atlantic Salmon Study Group (ICES–NASSG), and the ICES-North Atlantic Salmon Working Group (ICES–NASWG) has furthered our basic understanding of the marine ecology of Atlantic salmon. Natural mortality in the marine environment can be attributed to four general sources: predation, starvation, disease/parasites and abiotic factors. Scientists have discovered correlations between mortality in the marine environment and abiotic factors, particularly sea surface temperature (ICES 1997). Correlations between survival rates for Atlantic salmon from numerous North American rivers led these scientists to suspect that a critical source of mortality was acting upon all the stocks when they were mixed and sharing a common habitat (the ocean). These scientists further speculated that sea temperatures influenced Atlantic salmon survival and abundance at West Greenland and, therefore, homewater catches. Patterns of stock production were found to relate to the area of winter habitat available to North American post-smolts.

Recent research has pointed to the importance of the availability of suitable marine habitat as defined by sea surface temperature in the North Atlantic Ocean and particularly the Labrador Sea region (ICES 1997). A natural climatic phenomenon known as the North Atlantic Oscillation appears to regulate general sea surface temperature patterns in this region and influence the marine survival and growth of Atlantic salmon. The cyclic character of this naturally occurring climatic pattern could be responsible for widespread patterns of low survival in Atlantic salmon observed recently (ICES 1997). The ICES's 1997 report stated that estimates of pre-fishery abundance of non-maturing and maturing one-sea-winter (1SW) salmon for 1995 and 1996 suggest an end to the historically low values of non-maturing 1SW salmon and a clear increase in maturing 1SW salmon. The report concluded that the gradual upward trend of multi-sea-winter (MSW) returns to U.S. rivers is expected to continue.

Conclusion—Summary of Factors Affecting the Species

The proposed rule (60 FR 50530) concluded that there were basically three major factors which continue to threaten the continued survival of Atlantic salmon within the seven rivers DPS—poaching, low natural survival of fish during their first winter at sea, and potential impacts from Atlantic salmon aquaculture operations and fish hatcheries to the genetic integrity and disease vulnerability of the DPS. The tightening of recreational fishing regulations described in the Conservation Plan and the increased enforcement of these regulations through the addition of two seasonal wardens to the rivers of the seven rivers DPS reduce the threat of poaching. Threats to the genetic integrity and disease vulnerability of the DPS from aquaculture and fish hatcheries are also alleviated by existing fish health protocols, screening of outlets at freshwater hatcheries, development of a code for fish health and containment at freshwater rearing and sea cage sites, experimental rearing of sterile triploids, and the construction of weirs. These ongoing and proposed actions, together with the river-specific rearing program and projected improvements in the marine index, have improved the status of the DPS such that the Services are now able to conclude that the DPS is not likely to become endangered within the foreseeable future.

Efforts To Protect Maine Atlantic Salmon

The Services, New England States and private industries and organizations have a long history of working cooperatively for the protection, restoration, and rehabilitation of Atlantic salmon. In 1991 the FWS expressed concern about the status of Atlantic salmon and designated salmon in five rivers as category 2 candidate species. A prelisting strategy to advance the recovery of these stocks was developed in 1992 which included plans for stock assessment, habitat inventory, and procurement of river-specific broodstock for a fry stocking program. The Maine Wild Atlantic Salmon Stewardship Program was initiated by the FWS in 1994. Program activities include angler surveys, habitat surveys, and weir and trap installation and maintenance. Consistent with the Services' mandate to consider efforts being made to protect species in making listing determinations, the Services have considered the following Federal and State conservation efforts.

A. Federal Conservation Efforts

Narraguagus River Study

In 1991 the NMFS initiated an intensive juvenile population monitoring program on the Narraguagus River in Maine. Juvenile population estimates have been obtained annually at approximately 30 sites within the river. These data are then analyzed by the ASA and NMFS to refine models for estimating drainage-wide parr abundance, smolt recruitment, and adult return rates for wild Atlantic salmon. Accurate estimates of juvenile populations will continue to greatly enhance the ability to develop and refine effective management strategies. Cooperative research on Atlantic salmon production conducted by the Northeast Fisheries Science Center (NEFSC) and the ASA has examined, in detail, production from the spawner to the pre-smolt stage in the Narraguagus River. The NEFSC and ASA research has yielded a 7-year time series with accurate adult counts and basin-wide pre-smolt production indices (FWS and NMFS 1995). In 1997 the ASA and NEFSC monitored outmigration of Atlantic salmon smolts in the Narraguagus River with four rotary screw fish traps. More accurate estimates of smolt production increases

the reliability of estimates of marine survival rates. Research has confirmed that overwinter survival of pre-smolts is a critical phase in Atlantic salmon population dynamics (FWS and NMFS 1995). Refinements in these estimates may be critical to determining the mechanisms that influence this life history stage. Five traps were utilized in 1997 as part of a mark/recapture population study. This information provides a baseline for studying the correlation between environmental conditions and overwinter survival. In the future, if suspect relationships are found, then the probable causes of mortality can be investigated, and work can be undertaken to identify possible habitat rehabilitation or enhancement that could increase survival to the smolt stage.

Data is being obtained by the NEFSC and the ASA on smolt emigration mortality, movements and dispersal to provide more accurate estimates of parameters that might influence early marine survival and ocean movement patterns. Electrofishing is utilized to assess the survival of stocked fry, to track parr populations over time, and to collect parr for broodstock. A unique drainage-wide age 1+ parr population assessment method (Basin-wide Geographic and Ecological Stratification Technique, BGEST) has been developed for the Narraguagus River (FWS 1997). This drainage-wide approach was developed to overcome the difficulties of comparing population data from individual sites when those data do not account for juvenile salmon movements within each drainage.

River-Specific Stocking

In 1992 the ASA and the FWS implemented a Prelisting Recovery Plan for the Atlantic salmon populations in the seven rivers DPS (Baum et al. 1992). The highest priority identified in the Prelisting Recovery Plan was the development of river-specific broodstocks which could be utilized for restocking efforts in the rivers of concern. The management goal established for the seven rivers was to maximize the production of wild Atlantic salmon smolts by augmenting low wild juvenile populations with hatchery-produced fry. River-specific stocking was endorsed to protect the genetic integrity of remaining salmon stocks and to increase the adaptability and survival of stocked fry.

During the period 1992 to 1996, more than 4,000 wild-origin Atlantic salmon parr were collected from 6 Maine rivers and raised to maturity in freshwater. Each parr that survived to maturity resulted in the production of approximately 1,000 feeding fry for restocking. The survival rate from stocked fry to the parr stage is assumed to be between 5 and 10 percent which means that between 50 and 100 parr will replace each of the original parr collected (Baum, King, and Marancik 1996). Currently the majority of the nursery habitat in the Dennys, Narraguagus, and Machias rivers is utilized as a result of extensive fry stocking. Fry stocking began in 1996 in the East Machias and Sheepscot rivers. Two year classes of immature parr are being held to be used as broodstock for the Pleasant River. No collections have been made on the Ducktrap River. During 1995, approximately 1.5 million eggs were produced from river-specific broodstock. The resulting 790,000 fry were stocked in 5 rivers in May of 1996. More than 1.7 million eggs were taken from broodstock from 5 rivers during the 1996 spawning season which resulted in approximately 1.07 million fry for the 1997 stocking season.

Approximately 50,000 Machias River-origin eggs were transferred from Craig Brook National Fish Hatchery to a private hatchery operated by volunteers from the Pleasant River Fish and Game Conservation Association and the Downeast Salmon Federation. The 34,000 fry which resulted from this cooperative effort were stocked back into the Machias River. Experimentation continued with otolith and elastomer marking techniques. In addition to the stocking of fry, adult surplus broodstock have been released to supplement the river populations. Marked or tagged adults were released in the Narraguagus, Machias and Dennys rivers in June 1997. Additional adults were released in the Dennys, Machias and Narraguagus rivers in October 1997 to augment wild spawning stock. Age 2 smolts were also released in the Dennys and Machias rivers and were adipose fin clipped for identification when they return in 2 years as adults to spawn.

Adult salmon counts are obtained on the Narraguagus River by a permanent salmon trapping facility operated by the ASA since 1991 and supplemented by analysis of videos to document any additional adults that had jumped over the water control dam. A portable weir has been operated on the Dennys River since 1992 and on the Sheepscot River from 1994 to 1996. Angler data and redd counts also provide information useful in assessing adult abundance. Difficult weather conditions in 1995 resulted in poor visibility and incomplete, or absent, redd count data for most river reaches. Conditions were significantly better in 1996 and a total of 429 redds were counted in the 7 drainages, the highest number since 1991. Not all redds can be attributed to wild spawners, however, as captive broodstock were released to some of the rivers. Redd counts on rivers that did not receive releases of captive broodstock, with the exception of the Sheepscot River, were higher than at any other time since 1992.

Watershed Characterization Project

Staff of the ASA have worked with the USGS and the Maine Geological Survey to undertake a Sub-Watershed Characterization Study for the Narraguagus River. The study utilizes digital data to create an overview, maps, and data sheets for each sub-watershed which provide information on the land cover composition, erosion potential, hypsometric curve and Atlantic salmon habitat. This will lead to a better understanding of the relationships between flows, water depths and wetted habitat. For each of the 49 sub-watersheds, the percentage of total spawning and nursery habitat within that sub-watershed, land cover composition, wetland types, stream flow data, a hypsometric curve, surficial geologic statistics and an erosion indicator will be provided.

Habitat Protection

Staff from the ASA and FWS have worked with private organizations such as the National Fish and Wildlife Foundation and The Baker Conservation Trust to acquire parcels of land to protect Atlantic salmon habitat on the Ducktrap and Sheepscot rivers. The Coastal Mountains Land Trust acquired 123 acres and over 1 mile of Ducktrap River shoreline bordering spawning habitat. The Fish and Wildlife Foundation acquired 2 additional parcels totaling 10.3 hectares directly adjacent to spawning areas. The FWS, through its Partners for Wildlife Program, dedicated funds to restore two damaged areas on the Ducktrap River that are the sites of abandoned gravel quarries identified as sources of siltation and sedimentation directly upstream of spawning and rearing habitat. Funds were also contributed to this effort by the Natural Resources Conservation Service, and the Ducktrap Watershed Coalition. The gravel pit owner, the Ducktrap River Coalition, and campers from the 4–H Tanglewood Camp provided expertise and labor. Through a cooperative effort, a one-half-mile stretch of the Dyer River, lacking vegetated buffer and being used as a cattle wallow, is being restored and protected. This required working with the farmer to identify alternative drinking water for his cattle,

constructing a fence along the stream, planting to establish a vegetated buffer along the stream, and establishing pool and riffle habitat in the stream.

Habitat and Juvenile Assessments

With the recognition that knowledge of habitat quantity and quality is a prerequisite for effective management of Atlantic salmon populations, intensive habitat inventories have been undertaken in recent years. By the end of the 1997 field season, highly accurate computerized data sets will be compiled for all seven rivers. These data will be used to coordinate future redd counting, parr collecting, and fry stocking activities. The planning and logistics of stocking a large number (850,000) of fry in the 7 drainages has been facilitated by a geographic information system. These data are also being made available to other agencies and interested parties for land conservation and management. An atlas was produced for the Machias River for use during fry stocking. In addition, maps were produced for redd count activities on the Dennys, Machias, Narraguagus, Pleasant, and Sheepscot rivers. A separate pilot project was undertaken to consolidate data from multiple sources into an overview of the hydrological characteristics for each sub-basin within the Narraguagus River watershed. The next step will be to identify factors that could affect stream flow, water depth, and wetted habitat and to evaluate the potential of those factors to affect habitat suitability and production potential. River temperatures were monitored extensively, and investigations are ongoing to identify and understand the role of cold water refugia.

Surveys to locate and breach beaver dams and debris dams were conducted on each of the seven rivers. During the 1996 field season, a total of 85 obstructions were recorded on the 7 rivers and their tributaries. Seventy-four of these were located below spawning habitat and were breached or removed at least once in October of 1996. Breaching beaver dams and debris dams provided upstream passage to over 292 kilometers of river containing quality spawning and rearing habitat. Breaching is timed just prior to spawning in order to provide an adequate migration window for salmon. A significant number of redds have been counted upstream from breached dams indicating a degree of success from this management measure. This work was conducted again in 1997, and will continue in the future.

North American Salmon Conservation Organization

The NASCO is an international organization with the goal of promoting the conservation, restoration, enhancement, and rational management of Atlantic salmon stocks in the North Atlantic Ocean through international cooperation. In 1993 the West Greenland Commission adopted a 5-year scientifically-based quota-setting agreement (West Greenland Commission 1993). At the Thirteenth Annual Meeting of NASCO in 1996, the Commission was unable to agree upon a quota utilizing that agreement due to differing interpretations of agreement components. As a result, West Greenland unilaterally set a quota which was higher than the scientists advised. The United States was very concerned about this departure and met with the other NASCO parties prior to the Fourteenth Annual Meeting in 1997 to attempt to reach agreement. In 1997 the Commission adopted an addendum to the 1993 agreement which maintains the scientific method for setting quotas but allows for a reserve quota to be established in years of low abundance (West Greenland Commission 1997). Accordingly, a reserve quota of 57 tons, much lower than quotas for previous years, was set for the 1997 fishery including local use and subsistence fisheries. The events in 1997 add assurance that the United States will be able to successfully negotiate in the international forum to protect U.S. stocks on their migration.

B. State Conservation Efforts

The designation of some Atlantic salmon populations as candidate species under the Act and the subsequent receipt of a petition to list them as endangered prompted additional interest in the species. The forestry industry began Project SHARE, and other organizations such as the Sheepscot Valley Conservation Association, the Ducktrap River Coalition, and the Midcoast Atlantic Salmon Watershed Council were founded as a result of this interest.

Atlantic Salmon Authority

The ASA was formed by the Maine Legislature in September 1995 replacing the Atlantic Sea Run Salmon Commission (ASRSC) which had been in existence since 1945. The ASA is governed by the Atlantic Salmon Board which consists of nine members appointed by the Governor. The ASA has sole authority, except for those rights lawfully held by Maine's Native American Indian Tribes, and responsibility to manage the Atlantic salmon fishery in the State, including sole authority to introduce Atlantic salmon into Maine inland waters. Sole authority for the inland waters of the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap and Sheepscot rivers was transferred to the ASA from the Task Force on July 1, 1997. The State-wide goal of the ASA is to protect, conserve, restore, manage, and enhance Atlantic salmon habitat, populations, and fisheries within historical habitat in Maine (Baum *et al.* 1997).

Management activities outlined in the 1995 ASRSC plan (Baum 1995) include restoration of self-sustaining runs of Atlantic salmon, increasing natural reproduction of existing Atlantic salmon populations, providing recreational angling opportunities and compatible non-consumptive uses of Maine's Atlantic salmon resources, improving fish passage for Atlantic salmon where there are natural and artificial barriers to migration, establishing partnerships which will benefit salmon restoration and management programs, and increasing public awareness and broadening support for attainment of the ASA's overall goal through development of a public education program. The Report of the Maine Atlantic Salmon Authority to the Joint Standing Committee on Inland Fisheries and Wildlife (Baum and Atlantic Salmon Board 1997), states: "Many of the challenges facing restoration and management of Atlantic salmon runs are found within the State of Maine, including the following: inadequate or incomplete information and biological data pertaining to salmon habitat and populations, upstream and downstream fish passage at hydroelectric dams, land-use practices, conflicts with other fishery programs, insufficient broodstock and inadequate numbers of juvenile salmon for restocking efforts."

The ASA is currently the sole management authority for Atlantic salmon management in the State, and staff work with the Division of Inland Fish and Wildlife and the Department of Marine Resources to address areas of overlap. The Chair of the ASA Board now has a seat on the board of the State's Land and Water Resources Council (Council). It is through this venue that the ASA can address activities conducted, funded or authorized by other State agencies to ensure that they do not negatively impact Atlantic salmon. This is a very positive step that recognizes the interrelationship of Atlantic salmon with other species and its dependence on a healthy ecosystem.

Conservation Plan

The Services' proposed rule (60 FR 50530) included a special 4(d) rule inviting the State of Maine to develop a conservation plan for the species. Following the publication of that proposed rule (60 FR 50530), the Governor of Maine issued an Executive Order on October 20, 1995, establishing the Task Force and charged it with preparation of a conservation plan for the protection and recovery of Atlantic salmon populations in the seven rivers. The Task Force included scientists, academics, State employees, Native American sustenance fishers, conservationists and private citizens. The Task Force was organized into the following six working groups: genetics, aquaculture, agriculture, forestry, recreational fisheries, and the four rivers group to address four rivers (Kennebec River, Penobscot River, St. Croix River and Tunk Stream) containing Atlantic salmon populations which had been identified by the Services in the proposed rule (60 FR 50530) as candidates for listing.

The stated intent of the Conservation Plan is to minimize human impacts on the Atlantic salmon and to restore the species with the involvement of the citizens who know and use the resources in the watersheds. The introduction to the Conservation Plan states that this collaborative approach to protection and rehabilitation of Atlantic salmon is vital to maintaining the commitment of Maine citizens to the conservation of the species.

The Conservation Plan identifies the following factors that affect juvenile, adult, and migratory smolt survival in rivers and streams: Stream hydrology, seasonal water temperatures, pH, dissolved oxygen, streambed characteristics, food availability, competition, predation, pollution, recreational angling, and illegal harvest. Factors influencing survival of salmon at sea include water temperature, food availability, competition, predation, and commercial fisheries. The Conservation Plan includes ongoing and proposed actions to reduce potential threats to Atlantic salmon and its habitat. These actions are discussed below.

1. Agriculture: The Conservation Plan identifies a wide range of agricultural activities that take place in the seven river watersheds including dairy, hay, silage corn, horse, sheep, beef cattle, and Christmas tree operations; production of vegetables, blueberries, and cranberries; landscape and horticultural operations; and peat mining. Wild blueberry culture is the primary form of agriculture in the five Washington County watersheds (Narraguagus, Pleasant, Machias, East Machias and Dennys rivers). The only active peat mine is located in the Narraguagus River watershed. Livestock production is the predominant form of agriculture in the Sheepscot River watershed.

The Conservation Plan groups agricultural activities that could affect Atlantic salmon habitat into three groups: Water use (including irrigation and use and disposal of process water), agricultural practices (non-point source pollution caused by crop production), and peat mining. The Conservation Plan identifies ongoing actions to address these potential threats: integrated crop management and best management practices for blueberry and cranberry production; a Coastal Zone Management program to protect water quality; a State pesticide management plan for protection of ground water; a State hexazinone management plan for protection of ground water; and soil and water conservation district programs offering technical support to farmers utilizing best management practices to reduce non-point source pollution.

The Conservation Plan proposes additional actions for enhanced protection: development and implementation of total water use management plans for each watershed; development of a watershed specific non-point source pollution control program for the Sheepscot River; targeted integrated crop management programs and promotion of best management practices to further reduce potential threats from pesticide use and non-point source pollution; identification of wetlands with functions important for maintaining the integrity of Atlantic salmon habitat; enhancement of the Board of Pesticide Control programs that evaluate and mitigate the threats to Atlantic salmon associated with pesticide use; improvement of the permit review process and standards for erosion control for peat mines; and evaluation of the threat to Atlantic salmon from water quality changes associated with peat mining. The Conservation Plan concludes that these new actions, implemented through cooperative efforts of watershed steering committees, in conjunction with existing programs, laws, and regulations, will protect Atlantic salmon habitat quantity and quality.

Interest in expansion of the cranberry industry in Maine increased during the development of the Conservation Plan, and all parties involved in the review of these proposals are working cooperatively, in compliance with the Conservation Plan, to examine these proposals for their potential effect on Atlantic salmon. The Services expect that new activities which could potentially impact Atlantic salmon will be proposed. These activities will be addressed using the collaborative and cooperative approach endorsed in the Conservation Plan. In monitoring the success of the Conservation Plan, the Services will assess how effectively new issues are being addressed.

2. Aquaculture: The Conservation Plan states that potential threats to salmon from aquaculture include: disease and parasite transmission from farmed fish to wild fish; reduction of survival fitness as a result of escaped farmed fish interbreeding with wild fish; disruption of the incubation of wild salmon eggs by redd superimposition (redd formation by an escaped farmed fish on top of a redd constructed by a wild fish); or competition for food and space in river habitats from escaped juvenile farmed fish. The Conservation Plan further noted that potential threats from poor husbandry practices in freshwater fish culture operations could affect wild salmon in the Sheepscot, Pleasant and East Machias rivers. Current actions addressing these potential threats identified in the Conservation Plan include: State, Federal and New England fish health inspection protocols; vaccination of farmed fish prior to stocking in sea cages; enforcement of private insurance standards; harvesting of farmed salmon (with the exception of commercial broodstock) prior to the onset of maturation; escape control measures including careful site selection, regular equipment maintenance and storm preparation procedures; minimization of seal-induced escapement through the use of predator nets and acoustic and visual deterrent devices; and minimization of farmed juvenile salmon escapes through screening of water intakes and discharges of freshwater culture facilities.

Additional proposed measures to enhance protection include: Development of an emergency disease eradication program; expansion of the ongoing epidemiological monitoring program; creation of a fish health code of practices and a code of containment (for culture in freshwater and sea cage sites); participation in a river-specific rearing program; construction and operation of weirs to aid in research and management and to cull aquaculture escapees; development of a marking system for farmed fish to assist in distinguishing them from wild fish at

the weirs; and research into seal behavior around cages.

The construction of weirs will allow the collection of data on returning adults, collection of broodstock, and exclusion of aquaculture escapees. The FWS has secured funding for the construction of three weirs on the Dennys, Machias and East Machias rivers, and currently the design of those weirs is being finalized. The weirs will be constructed with state-of-the-art technology and will operate continuously and effectively without compromising the ability of wild, river-specific Atlantic salmon to migrate upriver or out to sea.

3. Forestry: Forestry is the dominant land use in five of the seven watersheds. Forestry-related actions proposed in the Conservation Plan are designed to build upon present regulations and initiatives, and, therefore, provide incremental improvements to existing Atlantic salmon protection. These actions will help to reduce non-point source pollution, alteration of stream temperatures and hydrology, direct disturbance of salmon habitat, blockage of fish passage with poorly designed road crossings, and deposition of woody debris in streams.

The Conservation Plan identifies current efforts to address potential threats to Atlantic salmon and their habitat from forestry activities: Project SHARE, a private non-profit organization dedicated to conserving and enhancing Atlantic salmon habitat; Sustainable Forestry Initiative, a forestry industry effort to promote a wide range of values in forest management decisions; riparian management zones; Champion International's self-imposed, restrictive management standards for timber operations near streams and rivers; Maine's non-point source pollution control program; code enforcement training and local shoreland zoning technical assistance; and the Sheepscot Valley Conservation Organization and the Ducktrap River Coalition.

The Conservation Plan also identifies proposed actions to enhance protection which include: control of non-point source pollution by increased coordination among State agencies, municipalities, industry and local volunteers to increase compliance with prescribed best management practices through education and enforcement; protection of important habitat through conservation agreements; education of logging contractors and resource managers to raise awareness about the importance of maintaining riparian shade trees; increasing State enforcement of regulations and monitoring of harvesting activities near streams; the Maine Department of Environmental Protection (DEP), the Board of Pesticide Control and the ASA will review the geographic usage of pesticides in the seven watersheds and the DEP will target areas for in-stream assessment; the Board of Pesticide Control will work cooperatively with the Cooperative Extension Service and the Department of Agriculture Food and Rural Resources to update pesticide best management practices based on the latest research and to promote these practices in the seven river watersheds; and the Board of Pesticide Control will adjust State pesticide regulations to eliminate any threats to Atlantic salmon.

4. Recreational Fishing: The Conservation Plan states that until recently the greatest threat to Atlantic salmon was legal harvest through directed fishing but that currently only catch and release fishing is allowed. It states that mortality can occur from a directed catch and release fishery but cites new data from several reports that suggest a carefully designed and regulated catch and release fishery will have little impact on the species. The Conservation Plan states that poaching is a continuing problem. In addition, the Conservation Plan states that the number of Atlantic salmon killed each year as a result of recreational fishing for other freshwater and estuarine species is estimated to be very small. The Plan proposes additional steps to further minimize, if not eliminate, the risk of an accidental bycatch. To address these threats, no direct harvest of Atlantic salmon will be permitted and recreational fishing regulations will be enforced.

The ASA adopted new angling regulations, which became effective on June 30, 1997, in an effort to reduce the potential mortality of Atlantic salmon that are caught and released during periods of high water temperature. The Maine Department of Inland Fisheries and Wildlife also promulgated regulations to close specific areas of rivers from fishing for all species to protect Atlantic salmon. The Maine Department of Inland Fisheries and Wildlife and the Maine Department of Marine Resources have filled two new warden positions devoted to Atlantic salmon on the seven rivers. They will provide a law enforcement presence on the rivers and collect valuable information about habitat and angling trends which will be reported weekly. The Maine Land Use Regulation Commission is pursuing enforcement (fines and reparation) of two separate violations related to clearing vegetation in riparian areas along the Narraguagus River.

The Conservation Plan proposes additional protective actions, some of which have been implemented. These include: modifying the catch and release program for Atlantic salmon to further restrict dates, location and gear allowed; instituting a reporting and monitoring program to better estimate any incidental take; restricting anglers to the use of artificial lures only; requiring a minimum length for all trout of 8 inches in the mainstem and major tributaries of all 7 rivers; requiring a maximum length for brown trout (*Salmo trutta*) and landlocked salmon of 25 inches within the Sheepscot River and estuary; requiring a maximum length of 25 inches for landlocked salmon within all Washington County waters, except West and Grand lakes; eliminating size and bag restrictions on black bass (*Micropterus* sp.), a predator of juvenile Atlantic salmon, on the Dennys River and Cathance Stream; when justified, closing cold water adult Atlantic salmon holding areas to all fishing; and finally, increasing penalties for poaching.

5. Other Natural and Human Related Threats: The Conservation Plan identifies additional actions that could affect Atlantic salmon: Commercial harvest of suckers (*Castostomus commersoni*), eels, elvers (young eels), and alewives (*Alosa pseudoharengus*); interbreeding among wild Atlantic salmon, landlocked salmon, brown trout, and salmon which have escaped from inland hatcheries; predation on juveniles by splake (lake trout (*Salvelinus fontanilis*) x brook trout (*S. namaycush*)) and brown trout; predation by cormorants on migrating smolts; predation by seals on returning adults; beaver dam blockage of migration routes and flooding salmon habitat; residential development and gravel mining operations; and possibly restricted passage at the Cooper's Mills Dam on the Sheepscot River.

Current actions addressing these potential threats were identified as follows: Monitoring of the bycatch of commercial fisheries; placement of a moratorium on new eel weirs; stricter regulation of elver fisheries; enforcement of commercial fishing regulations; breaching of beaver dams in the fall; expansion of the beaver trapping season; enforcement of municipal shoreland zoning restrictions; development of municipal comprehensive plans and institution of local ordinances designed to steer development away from sensitive resources and to manage the effects of gravel mining and development; implementation of a surface water ambient toxic monitoring program by the DEP; evaluation of the Dennys River Superfund site; and toxic removal action at Smith Junk Yard.

Additional actions proposed for enhancing protection include: Placing exclusion panels on elver nets; instituting a moratorium on commercial sucker harvesting in freshwater on the seven rivers; monitoring other salmonid populations that could interbreed with Atlantic salmon; screening the outlet of Meddybemps Lake to prevent the drop down of landlocked salmon during the spawning season; screening the outflows of hatcheries to prevent escapement of small salmon and trout; evaluating the impact of splake, brown trout, cormorant and seal predation; identifying and rectifying fish passage problems at Cooper's Mills Dam; evaluating the Eastern Surplus Superfund site at Meddybemps Lake; and instituting a moratorium on the disposal of toxic materials at Smith Junk Yard.

The Conservation Plan concludes that the key to successfully providing for the needs of Atlantic salmon, other fisheries resources, agriculture, and forestry is watershed planning. The Conservation Plan uses specific watershed councils, which include all interested stakeholders (State and Federal agencies, conservation groups, industries, towns, landowners, etc.), to guide and oversee Atlantic salmon conservation activities related to land use and other activities within each watershed. The Sheepscot River Watershed Council was organized in the spring of 1996 and immediately began addressing agricultural non-point source pollution within that watershed. The Ducktrap Coalition is addressing a variety of conservation issues within that watershed, and the Midcoast Atlantic Salmon Watershed Council was established to coordinate planning on the Ducktrap and Sheepscot rivers. Two new local watershed councils have been formed on the Sheepscot and Pleasant rivers.

Project SHARE has coordinated conservation efforts on the five Downeast rivers since 1994. Local angler groups are present on all of the rivers and are very active in salmon conservation. Project SHARE continues to provide support for Atlantic salmon conservation and serves as a valuable forum for exchanging ideas and resolving conservation issues. Specific examples of work Project SHARE has undertaken include: A temperature monitoring study on five rivers; the design of a prototype trap to improve collection at the Dennys River weir; repair of the fish ladder, gate, and screen at Meddybemps Lake; upgrading the Pleasant River Hatchery and Education Center; and training of land managers and foresters on salmon biology and management. Champion International, a significant landowner in five of the seven watersheds, has instituted riparian management standards that exceed the regulatory standards enforced by the State. The U.S. Environmental Protection Agency (EPA) is currently completing preliminary assessment work on the Eastern Surplus Superfund site at Meddybemps Lake, and the DEP is investigating the nearby Smith Junk Yard site for contaminants migrating into the Dennys River.

6. Monitoring and Implementation: The Conservation Plan is complex and will require the commitment from and cooperation of numerous State, private and Federal entities to succeed. The Services intend to conduct thorough monitoring of plan implementation. This oversight will be accomplished through membership in various groups and by inspecting projects, attending ASA and Project SHARE meetings, and remaining in contact with Maine officials. Beginning in 1998, the FWS will have additional staff to accomplish these tasks. The Services also anticipate relying on the expertise of the Technical Advisory Committee (TAC) of the ASA to continue to assess the salmon's status and needs.

The Conservation Plan recognizes that the continued rehabilitation of Atlantic salmon in the seven rivers will depend on partnerships between State and Federal agencies and private sector groups. The Council is responsible for the implementation and monitoring of the Conservation Plan and will supervise the Conservation Plan Coordinator, in consultation with the ASA. Because its members include the Commissioners from all the natural resource and development related agencies in Maine, the Council can affect State-wide policy and direct State agency actions. An Atlantic Salmon Committee has been formed under the Council, and the Chair of the ASA is as a full voting member of that Committee.

During the Services' second reopened comment period, the State of Maine submitted a report which provided an update on progress in implementation of the Conservation Plan. The Maine State Legislature approved and funded a Conservation Plan Coordinator at the State Planning Office and an Atlantic salmon biologist at the ASA. State agencies have been advised of their responsibilities under the Conservation Plan and are planning for the implementation of their respective responsibilities. The Conservation Plan contains a 5-year monitoring and implementation schedule that will allow the Conservation Plan Coordinator to assess progress toward achievement of goals. The Council, with the assistance of the Conservation Plan Coordinator, will provide annual reports of Conservation Plan activities and results from each watershed. Information for that report will be solicited from the ASA, State agencies, private organizations and watershed councils. Monitoring reports will be organized under the following four headings: habitat protection, habitat enhancement, species protection, and fishery management. The Services will make these reports available for public review and comment.

Finding and Withdrawal

Section 4(b)(1)(a) of the Act provides that the Secretaries of Interior and Commerce shall make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account those efforts being made by any State or foreign nation to protect such species. The Services have considered the current status of the seven rivers DPS of Atlantic salmon and have taken into account the efforts being made to protect the species including development of the Conservation Plan, the extent of implementation of the Conservation Plan to date, private and Federal efforts to restore the species, and international efforts to control ocean harvest through NASCO. The Services believe that ongoing actions, including those identified in the Conservation Plan, have substantially reduced threats to the species and that these ongoing actions, together with additional planned actions, will facilitate the continued rehabilitation of the seven rivers DPS. Consequently, the Services find that the seven rivers DPS of Atlantic salmon is not likely to become endangered in the foreseeable future and that, therefore, listing is not warranted at this time.

In addition, because the possibility exists that other populations of Atlantic salmon could be added to the seven rivers DPS in the future, and for purposes of future conservation activities, the Services are renaming the seven rivers DPS the Gulf of Maine DPS. Other populations of Atlantic salmon will be added to the Gulf of Maine DPS if they are found to be naturally reproducing and to have historical, river-specific characteristics. The area within which populations of Atlantic salmon meeting the criteria for inclusion in the DPS are most likely to

be found is from the Kennebec River north to, but not including, the St. Croix River. The Services believe that the populations in Togus Stream, a tributary to the Kennebec River, and Cove Brook, a tributary to the Penobscot River, may warrant inclusion in the Gulf of Maine DPS. Further investigation of these and other extant river populations from the Kennebec River north to, but not including, the St. Croix River will continue in order to determine if they meet the criteria for inclusion in the DPS.

The Conservation Plan was developed for the seven rivers DPS of Atlantic salmon originally proposed for listing by the Services. The Services will work with the State to determine the status of any other populations of Atlantic salmon which may be added to the DPS in the future and whether the Conservation Plan should be modified to address any threats faced by any added populations.

The Conservation Plan calls for annual reporting of plan implementation on a river-by-river basis. In order to inform interested citizens and to give them an opportunity for comment, the Services will make the annual reports available for review upon request and solicit comments through a notice in the **Federal Register** and news releases.

The Conservation Plan identifies numerous ongoing and planned actions for the protection and rehabilitation of the seven rivers DPS of Atlantic salmon. Modifications to the recreational fishery including the addition of wardens, shortened seasons and gear restrictions are already being implemented. The Services are seeking additional refinements to the catch and release program to further remove the likelihood of mortality including closure of some of the rivers when biological conditions warrant closure. The Services have received a commitment by the State that such modifications will be in place prior to the 1998 angling season. Efforts to minimize impacts from aquaculture include institution of the most stringent fish health regulations in the country, weir construction on several rivers, development of a code of practices, and continued research on marking and triploidy. The Services will continue to monitor the development of a code of practice for the aquaculture industry and its subsequent implementation and assessment. The United States remains active in the international forum for Atlantic salmon management, NASCO, and the parties have endorsed scientific establishments of quotas to protect U.S. fish during their migration. Numerous other tasks dealing with agriculture, forestry, recreational fishing for other species, outreach and education, were discussed in the "Factors Affecting the Species" and the "Efforts to Protect Maine Atlantic Salmon" sections of this notice. The development of river specific stocks, ongoing habitat assessment work, establishment of watershed councils, juvenile survival studies, and conversion of Craig Brook Hatchery further support the Services' finding that listing is not justified at this time.

Endangered Species Act Oversight

The process for listing Maine Atlantic salmon under the Act will be reinitiated if:

1. An emergency which poses a significant risk to the well-being of the Gulf of Maine DPS is identified and not immediately and adequately addressed;
2. The biological status of the Gulf of Maine DPS is such that the DPS is in danger of extinction throughout all or a significant portion of its range, or;
3. The biological status of the Gulf of Maine DPS is such that the DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

The circumstances described under 1, 2, and 3 above could be a result of: insufficient progress in implementation of the Conservation Plan; a failure to modify the Conservation Plan to address a new threat(s) or an increase in the severity of a threat(s); a failure to modify the Conservation Plan, if necessary, to address a threat(s) facing any other populations added to the Gulf of Maine DPS in the future; or the inability of the State of Maine to address a threat(s). A decision to reinitiate the listing process generally would be made shortly after the end of an annual reporting period; however, under circumstances involving an emergency threat, the decision would be made immediately following a determination by the Services that the emergency threat is not being adequately addressed. Appropriate notice will be provided to State officials should the Services decide to reinitiate the listing process.

References/Administrative Record

The complete citations for the references used in the preparation of this document can be obtained by contacting Mary Colligan or Paul Nickerson (see **ADDRESSES** section). Persons wishing to review the Administrative Record relating to this action may contact either individual to set up an appointment.

Authors: The primary authors of this notice are Mary Colligan and Paul Nickerson (see **ADDRESSES** section).

Authority: The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: December 12, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: December 12, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33042 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 243

Thursday, December 18, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on January 8 and 9, 1998 at the Best Western Hilltop Inn California Room 2300 Hilltop Drive, Redding, California. On January 8, the meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. The meeting on January 9 will resume at 8:00 a.m. and adjourn at 2:00 p.m. Agenda items to be covered include: (1) ecological and soci-economic considerations associated with the Northwest Forest Plan (green tree retention vs. thinning); (2) Tribal panel presentation on impacts from the Northwest Forest Plan; (3) subcommittee reports; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 530–842–6131, (FTS) 700–467–1309.

Dated: December 9, 1997

Jan Ford,

Acting Forest Supervisor.

[FR Doc. 97–33002 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Bexar-Medina-Atascosa Counties Water Conservation Plan and Environmental Impact Statement, Bexar, Medina, Atascosa Counties, Texas

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: John P. Burt, State Conservationist, responsible Federal Officer for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Texas, is hereby providing notification that a Record of Decision to proceed with the Bexar-Medina-Atascosa Counties Water Conservation Plan is available. Single copies of this Record of Decision may be obtained from John P. Burt at the address shown below.

For further information contact John P. Burt, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone 254–742–9800.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

Dated: December 8, 1997.

John P. Burt,

State Conservationist.

[FR Doc. 97–33082 Filed 12–17–97; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:30 p.m. on Thursday, January 22, 1998, at the Little Rock Hilton, 925 South University, Little Rock, Arkansas 72204. The purpose of the meeting is to provide orientation for new members, brief the Committee on Commission activities, and plan future Committee activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 10, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–33001 Filed 12–17–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Business Development Mission to Turkey

SUMMARY: Secretary of Commerce William M. Daley will lead a business development mission to Turkey, one of Eurasia's most significant emerging markets, to promote expanded trade opportunities, advocate for U.S. business interests, advance significant commercial policy objectives, and support the inaugural meeting of the U.S.-Turkey Business Development Council.

This mission to one of the most rapidly growing Big Emerging Markets will advance the Secretary's priorities on behalf of American firms and workers, including: (1) Ensuring participation by U.S. firms in major Turkish projects; (2) reducing/eliminating non-tariff barriers to U.S. exports and investments; (3) securing compliance with trade agreements, especially those related to international arbitration; (4) advocating for acceptable terms for U.S. energy investment projects; and (5) strengthening Turkish government officials and business executives' favorable impression of U.S. technology, business practices and companies.

The Secretary's mission will focus on the energy sector, with particular

emphasis on power equipment and services and will include U.S. companies whose interests range from assessing opportunities in the Turkish market to expanding existing business relationships. The mission will begin in Ankara, the capital of Turkey, for meetings with Government officials, Turkish business representatives and U.S. companies currently active in Turkey. It will continue on to Istanbul. A key focus of the mission will be to explore ways U.S. firms may put their technologies and know-how to work in helping Turkey to execute pending power development projects, which will total billions of dollars. The mission also will seek to capitalize on opportunities in other sectors for mutually-beneficial trade and investment.

DATES: January 19–21, 1998.

ADDRESSES: (none).

FOR FURTHER INFORMATION CONTACT: Applications may be submitted any time after December 15th to Cheryl Bruner, Director of the Office of Business Liaison, or Eric Schwerin at (202) 482–1360, fax (202) 482–4054. All applications must be received by January 7, 1998. Applications received after January 7th will be considered on a space available basis.

SUPPLEMENTARY INFORMATION:

The Mission itinerary will be as follows:

January 18 (Sunday)—Mission arrival and orientation
January 19 (Monday)—Ankara
January 20 (Tuesday)—Ankara with departure for Istanbul
January 21 (Wednesday)—Istanbul—Mission concludes Wednesday evening

Overall Commercial Setting

Turkey, with its geographic relationship to Europe, the Middle East and the southern tier of the Newly Independent States, is a natural Big Emerging Market for U.S. business. Over the past decade, Turkey had the highest average GNP growth rate of any OECD country. Its large population, growing private sector, extensive infrastructure and building requirements, and a government commitment to liberalize the economy are expected to propel continued economic expansion into the 21st century.

Increased industrial and urban growth has created an overburdened physical infrastructure, and the continuing stress of rapid urbanization has generated a massive investment requirement to improve living conditions. Increasingly, the Turkish government has encouraged the local private sector and international investors to construct and operate urgently needed energy, transportation, and environmental infrastructure.

Privatization plans present significant opportunities for U.S. firms. Successive Turkish governments have recognized that privatization generates financial resources, reduces fiscal drain, and improves economic efficiency. Electricity generation, transportation and petroleum refining and distribution are among the sectors offering such opportunities.

Energy, Power Equipment and Services Commercial Setting

Recent legislative changes and the formation of a new centrist government may be opening the way for rapid private power development. This situation has led to the following developments which should create a strong equipment and services market in Turkey:

- The Turkish national power company held a tender for five new power plants with 5200 MW of capacity on a Build-Operate basis, at an estimated cost of $3.75 billion.
- The Turkish power company has tendered the Transfer of Operating Rights (TOR) for eight plants and announced the winning bidders on October 17. Renovation investments in these plants could amount to several hundred million dollars.
- The Turkish distribution monopoly has issued a TOR for 25 local distribution systems, with awards expected shortly.
- Turkish energy officials have informed energy companies that they will tender seven additional new plants in 1998.

These opportunities exist alongside important tender, contract and financing issues which often stand in the way of project realization. It is hoped that the Secretary's mission can assist in the resolution of such problems.

Goals for the Mission

Reaffirm U.S. Government commitment and support for Turkey's program of privatization of state enterprises and heighten U.S. private sector participation in Turkey's economic growth.

Increase sales of U.S. energy products and services to Turkey, particularly in the power equipment and services sector, by exposing representatives of qualified U.S. companies in the power equipment and services sector to currently expanding opportunities brought about by the construction of large new power plants, privatization of existing plants and distribution networks, and renovation and modernization of inefficient and environmentally-damaging plants. Increase sales of other U.S. products and services to Turkey.

Seek resolution of outstanding bilateral commercial issues and advocate U.S. interests regarding specific problems and opportunities in certain key areas: (1) Power generation and energy; (2) economic reforms; and (3) compliance with trade agreements, especially those related to international arbitration.

Scenario for the Mission

The Secretary's business development mission will visit the capital of Turkey, Ankara, and conclude in Istanbul. This mission will promote Turkey as a key emerging market that warrants the attention of a wide range of U.S. firms, from ready to export small or medium sized firms to large firms exploring new business opportunities.

Mission recruitment of 8 to 10 enterprises will focus on the energy, power equipment and services sectors. Mission recruitment will also draw on commercial opportunities for goods and services resulting from the privatization plans of the Turkish government and from other opportunities for U.S. firms in Turkey.

In his meetings with officials of the Government of Turkey, the Secretary will work to move our commercial dialogue forward, identifying issues that still impede U.S. companies' ability to do business in Turkey and encouraging steps to remove the obstacles. The timing of the trip to coincide with the inaugural meeting of the U.S.-Turkey Business Development Council will provide an exceptional venue for advancing cooperation between the U.S. and Turkish private sectors.

The program for the mission will include:

Embassy/consulate briefings on the commercial/economic environment
Meetings with Turkish Government Officials
Meetings with Turkish enterprises and trade associations
Meetings with American business executives based in Turkey

Company Participation Will Be Determined on the Basis of

Status as U.S.-owned or U.S.-based company with capacity to deliver relevant equipment or services to Turkey. The goods or services provided must either be produced in the United States or, if not, must be marketed in the name of a U.S. firm and have at least 51% U.S. content in the value of the finished product or service. The company must not be owned or controlled, indirectly or directly by a foreign government.

Consistency of the company's goals with the scope and desired outcome of the mission as described herein.

Past, present and prospective business in Turkey.

Diversity of company size, type, location, demographics, and traditional under-representation in business.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

Other Trip Objectives and Events

In addition to the mission scenario described above, Secretary Daley will also support the inaugural meeting in Ankara of the U.S.-Turkey Business Development Council in order to establish an improved bilateral business and government cooperation for expanding commercial, trade and investment relations. The Secretary will seek to accomplish several commercial policy objectives in bilateral government to government meetings with Turkish officials in Ankara and with the press and private sector in Istanbul. Our bilateral policy agenda includes addressing IPR issues, investment barriers to U.S. companies, insuring compliance with international arbitration agreements, regulatory issues related to the privatization of telecommunications companies, Caspian pipeline construction and supply issues, and investment policies related to "Build-Operate" and "Build, Operate Transfer."

Dated: December 12, 1997.

Catherine Vial,

Acting Director, Energy Division/OEIM/BI/TD.

[FR Doc. 97–32966 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Opportunity to Apply to Serve on the Board

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Opportunity to Apply to Serve on the Board of the United States-India Commercial Alliance.

SUMMARY: The Department of Commerce is currently seeking applications for three individuals to serve on the U.S. section of the Board of the United States-India Commercial Alliance (USICA). On January 16, 1995, Ronald H. Brown, U.S. Secretary of Commerce, and Pranab Mukherjee, India's Minister of Commerce, signed terms of reference creating USICA. On October 17, 1996, Michael Kantor, U.S. Secretary of Commerce, and B.B. Ramaiah, India's Minister of Commerce, signed an agreement extending USICA for two years, until January 15, 1999. The purpose of USICA is to facilitate the further development of commercial relations, trade, and investment between U.S. and Indian private sector businesses. USICA is administered and its activities are coordinated by a Board composed of an equal number of private sector representatives from the United States and India. U.S. and Indian Board members are selected by the U.S. Secretary of Commerce and Indian Minister of Commerce, respectively. The work of the USICA, which includes trade missions, conferences, and roundtables bringing together business persons from the United States and India, currently is focused on four economic sectors: information technology, transportation and infrastructure, food processing and packaging ("agribusiness"), and power. Individual Board members generally concentrate their efforts on one of these sectors.

Further Information: Private sector representatives will be appointed to the Board for a two year term, or until January 15, 1999, if USICA is not extended beyond its current expiration date. Applications are now being sought for private sector members to serve for a term beginning February 9, 1998. Private sector members will serve at the discretion of the Secretary. They are expected to participate fully in defining the agenda for USICA and in implementing its work program. It is expected that private sector individuals chosen for the USICA Board will attend at least 75% of USICA meetings which will be held in the U.S. and India.

Private sector Board members are fully responsible for travel, living and personal expenses associated with their participation in USICA. The private sector Board members will serve in a representative capacity presenting the views and interests of the particular business sector in which they operate; private sector Board members are not special government employees.

USICA works on issues of common interest to encourage bilateral trade and investment, including, but not limited to, the following:

—Implementing trade/business development and promotion programs including trade missions, conferences, exhibits, seminars and other events, and
—Adopting sectoral or project oriented approaches to expand business opportunities and discussing concerns relating to expanding commercial opportunities

Selection: There are ten positions on the U.S. side of the USICA Board, of which three are currently vacant. This notice is seeking applications for those three positions.

Eligibility requirements. Applicants must be:

- A U.S. citizen residing in the United States or a permanent United States resident;
- A CEO or other top management level employee of a U.S. company or organization involved in commercial activities between the United States and India;
- A member of a leading business association; and
- Not a registered foreign agent under the Foreign Agents Registration Act of 1938 (FARA).

In reviewing eligible applicants, the Commerce Department will consider:

- The applicant's expertise in one of the following business sectors in which USICA is active: transportation and infrastructure, and food processing and packaging (agribusiness);
- Readiness to initiate and be responsible for USICA activities in the business sectors in which USICA is active;
- Ability to contribute in light of overall Board composition (for example, to ensure balance in representation of industry sectors):
- Diversity of company size, type, location, demographics or additional under-representation in business.

To be considered for membership, please provide the following: name and title of the individual requesting consideration; name and address of the company or organization sponsoring each individual; company's product or service line; size of the company; export experience and major markets; a brief statement of why each candidate should be considered for membership on the USICA Board; the particular segment of the business community each candidate would represent; a personal resume; and a statement that the applicant is not a registered foreign agent under FARA.

Deadline: In order to receive full consideration, requests must be received no later than: January 20, 1998.

ADDRESSES: Please send your requests for consideration to Richard D. Harding, Director, Office of South Asia and Oceania, U.S. Department of Commerce, Room 2308, 14th St. and Constitution

Ave., N.W., Washington, D.C. 20230, fax (202) 482–5330.

FOR FURTHER INFORMATION CONTACT: Richard D. Harding, Director, Office of South Asia and Oceania, U.S. Department of Commerce, Room 2308, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, telephone (202) 482–2955, fax (202) 482–5330.

Authority: 15 U.S.C. 1512.

Dated: December 12, 1997.

Peter Hale,

Acting Deputy Assistant Secretary for Asia and the Pacific.

[FR Doc. 97–33053 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120697A]

Endangered and Threatened Species; Revision of Species on Candidate Species List Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of modification to list of candidate species.

SUMMARY: NMFS revises its candidate species list in regard to Atlantic salmon (*Salmo salar*).

ADDRESSES: Comments and reliable documentation concerning this revision should be sent to the Chief of Endangered Species, NMFS, Office of Protected Resources, 1315 East-West Highway, F/PR3, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Nancy Chu or Terri Jordan at (301) 713–1401.

SUPPLEMENTARY INFORMATION: In a notice published today, NMFS and the U.S. Fish and Wildlife Service (FWS) renamed the Seven Rivers Distinct Population Segment (DPS) of Atlantic Salmon the Gulf of Maine DPS in order to allow future inclusion in the DPS those extant populations from the Kennebec River north to, but not including, the St. Croix River. NMFS believes that the populations previously identified in Togus Stream, a tributary to the Kennebec River, and Cove Brook, a tributary to the Penobscot River, and other extant river populations warrant further investigation and may warrant future inclusion in the Gulf of Maine DPS.

NMFS previously identified populations of Atlantic Salmon in the Kennebec River, Penobscot River, Tunk Stream, and St. Croix River as candidate species and included them in the July 14, 1997, candidate notice of review (62 FR 37560). With this notice, NMFS revises its List of Candidate Species to include the Gulf of Maine DPS of Atlantic salmon, which includes some of the populations previously identified as candidate species. In addition, NMFS notes that the proposed rule to list the Seven Rivers DPS as threatened under the ESA (60 FR 50530) was withdrawn in a notice published today.

Dated: December 15, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

TABLE 1.—Revised List of Candidate Species

Common name	Scientific name	Family	Area of concern
Atlantic salmon*.	Salmo salar.	Salmonidae.	Gulf of Maine DPS.

*This is a revision of the listing for "Atlantic Salmon" found in the table at 62 FR 37562, July 14, 1997.

[FR Doc. 97–33043 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120497A]

Marine Mammals; Scientific Research Permit No. 1016 (P167H)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 1016 submitted by Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA 92109, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (562/980–4001).

SUPPLEMENTARY INFORMATION: On October 28, 1997, notice was published in the **Federal Register** (62 FR 55787) that an amendment of permit no. 1016, issued October 16, 1996 (61 FR 53901) had been requested by the above-name organization. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permittee currently has authorization to harass several species of stranded rehabilitated and permanently captive pinnipeds and small cetaceans in order to measure their interaction with fishing gear and to determine the effect of introducing an auditory stimulus (i.e., pinger) on responses. The research is authorized to be conducted over a five year period. The permit has been amended to authorize: the addition of 2 pinger trials and 2 net trials with 14 of the 18 California sea lions (*Zalophus californianus*) currently authorized to be involved in motivational state trials; and an increase in the number of California sea lions to be used in the naive trials from 30 to 40.

Dated: December 12, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–33075 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Soliciting Applications for Membership on Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office is seeking five members for the Public Advisory Committee for Trademark Affairs. Member terms would begin on January 1, 1998. A member must be an organization that is representative of the intellectual property community, e.g., a bar group, a business organization or an academic institution. Organizations interested in membership should send a letter expressing that interest and containing the information set out in the Supplementary information to the Patent and Trademark Office.

DATES: Submit applications on or before January 8, 1998.

ADDRESSES: Mail letters of request to participate in the Public Advisory Committee for Trademark Affairs to The Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, United States Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: David E. Bucher, Deputy Assistant Commissioner for Trademark Policy and Projects, at (703) 308–9100, ext. 20.

SUPPLEMENTARY INFORMATION: This Committee is chartered under the Federal Advisory Committee Act (Pub. L. 92–463). Its purpose has been, and continues to be, that of advising the Patent and Trademark Office (Office) on ways to increase the Office's efficiency and effectiveness and to provide a continuing flow of insights and perceptions from the private sector to the Office in the area of international and domestic trademark law.

The Office amended the charter of the Committee in 1996 to make the Committee more diverse and more representative of trademark owners, trademark practitioners and the intellectual Property community as a whole. Accordingly, the Commissioner will select five representative organizations from among intellectual property organizations, bar groups, business-related organizations and academia. The five organizations whose members' terms will expire on December 31, 1997, are not precluded from responding to this notice. However, no member may serve more than two consecutive terms.

Each organization's letter to the Commissioner should explain the nature, size and characteristics of the organization and why this particular group is deserving of membership on this committee.

Selection of the organizations will be based on the following criteria: (1) members' familiarity with the operations of the Patent and Trademark Office relating to trademarks and trademark rules, trademark practices, and the administration of the trademark operations; (2) members' experience practicing before the Patent and Trademark Office in trademark matters; and (3) an indication of the organization's interest in trademark practices by programs such as established committees designed to improve trademark operations, or legal education activities regarding trademark practices.

Dated: December 12, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–33059 Filed 12–17–97; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for AmeriCorps*VISTA America Reads Projects—Nationwide

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter "the Corporation") announces the availability of funds for fiscal year 1998 for new AmeriCorps*VISTA (Volunteers in Service to America) program grants focusing on the America Reads initiative in all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. The program grants are authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). Project applications will be written to cover a 24-month period although grants will be awarded for a 12-month period with a renewal option. As part of this effort, the Corporation is soliciting applicants which are public or private non-profit organizations, including current AmeriCorps*VISTA project sponsors. Approximately 35–40 grants are expected to be awarded in April 1998 with AmeriCorps*VISTA members beginning service prior to the start of the 1998–99 school year.

DATES: Applications must be received by 5:00 p.m., Eastern Standard Time, January 28, 1998.

ADDRESSES: Application instructions and kits are available from AmeriCorps*VISTA, Corporation for National and Community Service, 1201 New York Ave., NW, Washington, DC 20525, (202) 606–5000, ext. 249, TDD (202) 565–2799, or TTY via the Federal Information Relay Service at (800) 877–8339. Applications should be submitted to the Corporation for National and Community Service, 1201 New York Avenue, NW, Mailstop 9207, Washington, DC 20525, Attn: Kathleen Dennis. The Corporation will not accept applications that are submitted via facsimile or e-mail transmission.

FOR FURTHER INFORMATION CONTACT: For further information, contact Kathleen Dennis at (202) 606–5000, Ext. 249.

SUPPLEMENTARY INFORMATION:

A. Background

AmeriCorps*VISTA is authorized under the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of AmeriCorps*VISTA is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups . . . (to) assist in the solution of (such) problems, and . . . to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purpose (of the program)." (42 U.S.C. 4951)

AmeriCorps*VISTA carries out its legislative mandate by assigning individuals 18 years and older, on a full-time, year-long basis, to public and private non-profit organizations whose goals are in accord with AmeriCorps*VISTA's legislative mission. Each AmeriCorps*VISTA project must focus on the mobilization of community resources, the transference of skills to community residents, and the expansion of the capacity of community-based organizations to solve local problems. Programming should encourage permanent, long-term solutions to problems confronting low-income communities rather than short-term approaches for handling emergency needs.

AmeriCorps*VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success as well as to make the activities undertaken by AmeriCorps*VISTA members self-sustaining when the Corporation no longer provides resources.

B. Purpose of This Announcement

The goal of the America Reads initiative is to mobilize Americans from all walks of life to ensure that all children can read well and independently by the end of third grade. The America Reads initiative is a comprehensive, nationwide effort to create in-school, after-school, weekend, and summer tutoring programs in reading. Working to support the efforts of teachers and parents, this initiative calls on Americans in all fields—schools, libraries, religious organizations, universities, community

and national groups, and cultural organizations, as well as college students, business leaders, and senior citizens—to ensure that every child can read independently by the end of third grade.

AmeriCorps*VISTA's participation in the America Reads initiative will focus primarily on:

1. Initiation and/or expansion of community-based children's literacy programs in areas with a substantial percentage of children from low-income families;

2. Support of after-school, weekend, and in-school reading programs for children being served;

3. Recruitment, training, coordination and management of local volunteer tutors;

4. Mobilization of resources needed to support literacy programs;

5. Involvement of parents in family literacy activities to prepare them to effectively serve as first teachers of their children;

6. Introduction of, and support for, age-appropriate computer technology in areas under served by such technology;

7. Promotion of literacy partnerships among schools, libraries, youth-serving groups, businesses, public and private agencies, and other community organizations; and,

8. Sustainability of activities and programs developed or expanded through AmeriCorps*VISTA's efforts.

C. Eligible Applicants

Eligible applicants for AmeriCorps*VISTA program grants supporting the America Reads initiative must be public or private non-profit organizations. Such entities may include: local, State, regional or national literacy organizations; local and State education agencies, educational institutions, libraries, state or local governments, tribal or territorial governments, or organizations representing tribal populations. Current AmeriCorps*VISTA sponsoring organizations may apply without affecting the status of their existing projects. Priority consideration will be given to: (1) Entities planning or operating city, county, statewide, or multi-state America Reads initiatives; (2) local governments planning or operating area-wide America Reads initiatives; (3) volunteer centers engaged in recruiting trained literacy tutors for the America Reads initiative; and, (4) university service-learning centers coordinating work-study and other college students for the Initiative.

D. Scope of Grant

Each grant budget will support 20 or more AmeriCorps*VISTA members on a full-time basis for one year of service. (Although the project application will reflect two years of activity, grants will be awarded on a twelve-month basis with a renewal option subject to need, satisfactory performance, and the availability of Corporation resources.)

The amount of each grant will include: a monthly subsistence allowance for AmeriCorps*VISTA members which is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing, utilities, and incidental expenses; an end-of-service cash stipend payment, accrued at the rate of $100 per month, for those members not selecting the AmeriCorps education award; and, relocation expenses for those AmeriCorps*VISTA members who must relocate in order to serve. The grant will also include funds for member in-service training, member supervision, and member/supervisor job-related transportation.

The average Federal cost per AmeriCorps*VISTA service year contained in the grant, i.e., total Federal cost divided by total number of members, will range from approximately $11,000 to $13,000 in the continental United States depending upon the location of the assignment(s). (Higher rates apply in Alaska and Hawaii.) Specific budget guidance is available in the project application kit; average allowance costs contained in the instructions should be used to prepare the budget submission.

The following costs will be covered by the Corporation outside of the grant budget: an AmeriCorps education award in the amount of $4725 for AmeriCorps*VISTA members who complete their year of service, health support for all AmeriCorps*VISTA members; a child care allowance for eligible AmeriCorps*VISTA members; pre-service orientation; and, travel from home of record to training to assignment for all AmeriCorps*VISTA members as well as travel home at the end of service.

Grant applicants should demonstrate their commitment to matching the Federal contribution toward the operation of the AmeriCorps*VISTA America Reads program grant by offsetting all, or part of, the costs of member supervision, transportation, and training, as well as the basic costs of the literacy program itself (e.g. books, reading specialists, etc.). This support can be achieved through cash or in-kind contributions.

Publication of this announcement does not obligate the Corporation to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the AmeriCorps*VISTA program.

E. Submission Requirements

To be considered for funding applicants must submit five copies, with original signatures on items 2 and 3, of the following:

(1) A one-page narrative summary description, single-spaced, single-sided in 10–12 point, of the proposed AmeriCorps*VISTA America Reads project including the name, address, telephone number, and contact person for the applicant organization as shown on the SF 424. The summary should include the major objectives and expected outcomes of the project. The summary will be used as a project abstract to provide reviewers with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

(2) Application for Federal Assistance, SF 424, with a detailed narrative budget justification.

(3) AmeriCorps*VISTA Project Application, Form 1421, Parts A and B. All project information must be contained in the space provided on the application form except where additional sheets may be submitted for the Project Work Plan and/or Member Assignment Description(s).

(4) Current resume of potential AmeriCorps*VISTA supervisor(s), if available, or resume of the director of the applicant organization.

(5) List of members of the Board of Directors including their professional affiliations and/or literacy-related activities.

(6) Organizational chart illustrating the location of the AmeriCorps*VISTA project within the overall applicant organization.

Applicants must also submit one copy of the following:

(1) Current Articles of Incorporation.

(2) Proof of non-profit status, or an application for non-profit status and related documentation.

(3) CPA certification of accounting capability.

No additional attachments, such as annual reports or brochures, are to be included. Such attachments will not be read or given to reviewers. All applications and related materials must be complete at the time of submission.

F. General Criteria for AmeriCorps*VISTA Program Grant Selection

The general criteria for AmeriCorps*VISTA America Reads program grants are consistent with those established for the selection of all AmeriCorps*VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission:

The proposed project must:

1. Address the needs of low-income communities and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951 et seq.) applicable to AmeriCorps*VISTA and all applicable published regulations, guidelines, and Corporation policies.

2. Lead to building organizational and/or community capacity to continue the efforts of the project once AmeriCorps*VISTA resources are withdrawn. This will be demonstrated through measurable goals and objectives, and the stated tasks of AmeriCorps*VISTA members which should be attainable within the time frame of the project.

3. Be designed to generate public and/or private sector resources, and to promote local, part-time volunteer service at the community level.

4. Describe in measurable terms the anticipated self-sufficiency outcomes at the conclusion of the project, including outcomes related to the sustainability of the project activities.

5. Clearly state how AmeriCorps*VISTA members will be trained, supervised, and supported to ensure the achievement of program goals and objectives as stated in the project work plan.

6. Be internally consistent, i.e., the problem statement which demonstrates need, the project work plan, the AmeriCorps*VISTA member assignment description, and all other components must be related logically to each other.

7. Ensure that AmeriCorps*VISTA and community resources needed to achieve project goals and objectives are available.

8. Have the management and technical capability to implement the project successfully.

9. Describe how the number of AmeriCorps*VISTA members requested is appropriate for the project goals/objectives, and how the skills requested are appropriate for the assignment(s).

10. Describe how AmeriCorps*VISTA assignments are designed to utilize the full-time AmeriCorps*VISTA member's time to the maximum extent.

G. Specific Criteria for AmeriCorps*VISTA America Reads Project Selection

The following elements related to the purpose of the America Reads initiative must be incorporated in the applicant's submission:

1. Project applications must contain clear and measurable outcome objectives for a 24-month period that address the overall objectives of the America Reads initiative. Proposed projects must show how the activities of AmeriCorps*VISTA members contribute to specific outcomes related to reading/literacy achievements for children, birth-through third grade. Outcome objectives should also address expectations for community volunteers, schools and teachers, parents, and the community at-large. It is expected that outcome objectives will reflect the evolution of the project over the 24-month period.

2. Project activities must provide a direct benefit to children that is valued by the school and/or community-based organization. Activities include the involvement of volunteers from the community in working with individual children, supporting classroom activities, supporting families, and serving as catalysts/organizers of community-level reading initiatives. Activities proposed must be well-designed and able to be successfully implemented, including the use of qualified professionals such as reading specialists in the provision of on-going training and support for the project, and special efforts where appropriate to meet the needs of children whose first language is other than English.

3. Applicant organizations must describe the specific approach that will be used to improve children's reading abilities, and must demonstrate the reliability and effectiveness of this approach.

4. Projects must include activities and mechanisms that provide for the involvement of families, parents, or guardians.

5. Projects must have systems for the evaluation and monitoring of project activities. Applicants must describe the systems that will be used to track progress toward the stated objectives, and the management procedures that will provide the feedback needed to make adjustments and improve program quality. Projects must also be prepared to cooperate with the Corporation for National Service and its evaluation partners in all Corporation monitoring and evaluation efforts.

6. Applicants should indicate how the proposed project complements and/or enhances children's literacy activities already underway in, or planned for, the community(ies) which will be served by the project. To the extent possible, projects should seek out opportunities to collaborate with other Corporation programs, as well as with other community partners such as literacy groups, youth-serving organizations, senior citizen groups, PTAs, churches, libraries, institutions of higher education, private volunteer organizations, etc.

7. Letters of support must be provided from participating schools and other organizations which will be collaborating in the overall project effort. Letters should reflect knowledge and endorsement of the specific objectives of the project, as well as any commitment of resources to the project if applicable.

H. Application Review

The Corporation for National and Community Service is looking for high-quality programs that are innovative, have potential to be replicated in other areas, and can be sustained with other support when the project period ends.

Proposal Evaluation

To ensure fairness to all applicants, the Corporation reserves the right to take action, up to and including disqualification, in the event that a proposal fails to comply with any requirements specified in this Notice.

1. Project Application/Narrative (70% as described below):

The project application allows the Corporation to assess the capacity of the applicant organization to implement the project and accomplish the purpose of the America Reads initiative. The overall quality of the application will be evaluated as follows:

a. Responsiveness to General Criteria for AmeriCorps*VISTA Program Grant Selection (30%)

b. Responsiveness to Specific AmeriCorps*VISTA America Reads Criteria (40%)

2. Organizational Capacity and Sustainability (20%)

The applicant organization's capacity to direct, manage, support, provide technical assistance, and assess the project, and enhance sustainability of the project's efforts, must be reflected in the Project Application.

3. Budget (10%)

Applicants must prepare the budget according to information contained in Item D above, and instructions about costs and allowance levels contained in the application kit. A detailed Budget Narrative must identify and justify each line item and cost. The Corporation will assess the cost-effectiveness of the

proposed project and the project's ability to leverage significant resources from private and/or public sources.

I. Geographic Diversity

In addition to evaluating the overall quality of the proposal and its responsiveness to the criteria noted above, the Corporation will also ensure that funded projects are geographically diverse, include projects in both urban and rural areas, and focus on the needs of low-income communities, including those in empowerment zones and enterprise communities.

Dated: December 15, 1997.

Stewart A. Davis,

Acting General Counsel.

[FR Doc. 97–33052 Filed 12–17–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–187–007]

Arkansas Western Pipeline Company, Notice of Proposed Changes in FERC Gas Tariff

December 12, 1997.

Take notice that on December 8, 1997, Arkansas Western Pipeline Company (AWP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of December 8, 1997:

Second Revised Sheet No. 7
Original Sheet No. 7A
Second Revised Sheet No. 8
Second Revised Sheet No. 29

AWP states that the filing sets forth the revisions to AWP;s tariff sheets that are necessary to comply with Order No. 587–C in Docket No. RM96–1–004.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32983 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–112–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

December 12, 1997.

Take notice that on December 4, 1997, Florida Gas Transmission Company (FGY), 1400 Smith Street, Post Office Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–112–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point in Gadsden County, Florida to accommodate interruptible natural gas deliveries to Chesapeake Utilities Corporation (Chesapeake). FGT makes such request under its blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to construct, operate, and own an additional delivery point for Chesapeake at or near mile post 394.7 on FGT's existing 24-inch mainline. FGT states that the subject delivery point will include a tap, minor connecting pipe, electronic flow measurement equipment, and any other related appurtenant facilities necessary for FGY to transport and deliver up to 820 MMBtu per day and 206,158 MMBtu per year of natural gas to Chesapeake. FGT avers that the volumes proposed to be delivered to Chesapeake will be within Chesapeake's existing entitlement. It is stated that the end-use of the gas will be for commercial, industrial and residential uses.

It is stated that Chesapeake will reimburse FGT for the $60,000 estimated construction cost. FGT further states that Chesapeake will construct, own, and operate the meter and regulation station and any other necessary appurtenant facilities required for receiving the gas from FGT.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32973 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–58–000]

Koch Gateway Pipeline Company; Notice of Section 4 Filing

December 12, 1997.

Take notice that on December 10, 1997, Koch Gateway Pipeline Company (Koch Gateway), tendered for filing a section 4 filing pertaining to the termination of gathering services associated with the abandonment of South Texas facilities granted in FERC Docket No. CP97–337–001.[1]

Koch Gateway proposes no changes to its published tariff therefore no revised tariff sheets are included in this filing. Koch Gateway filed with the Commission a list of gathering customers affected by the abandonment.

Any persons desiring to be heard or to make any protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed as provided by Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not served to make protestants parties at the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32985 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Koch Gateway Pipeline Co., 81 FERC ¶61,228 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–51–000]

MIECO Inc.; Notice of Issuance of Order

December 12, 1997.

MIECO Inc. (MIECO) submitted for filing a rate schedule under which MIECO will engage in wholesale electric power and energy transactions as a marketer. MIECO also requested waiver of various Commission regulations. In particular, MIECO requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MIECO.

On November 17, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MIECO should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MIECO is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MIECO's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 12, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32969 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR98–3–000]

OXY USA, Inc. v. Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation and Unocal Pipeline Company; Notice of Complaint

December 12, 1997.

Take notice that on December 9, 1997, pursuant to the provisions of the Interstate Commece Act (ICA), 49 U.S.C. App. §§ 2, 3(1), 6(7), 8, 9, 13(1) and 15(1) and the Rules and Regulations of the Federal Energy Regulatory Commission, 18 CFR 343.2(c)(3), 385.206(a) and 385.207(a), OXY USA, Inc. (OXY) filed a complaint and petition for declaratory relief against Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company (collectively the TAPS Carriers).

OXY states that the TAPS Carriers have entered into two private agreements with the State of Alaska, a payor of TAPS transportation rates, under which the TAPS Carriers have agreed to pay rate rebates totaling $26,500,000.00 to the State and to no other shipper. The settlements concern resolution of the electrical, as built and management remediation case and resolution of the costs related to certain public communications and government relations activities. Also pursuant to the said agreements, the TAPS Carriers have the option of making future payments directly to the State in order to rebete to the State certain costs included in rates charged to all shippers.

OXY contends that the two settlements are in violation of Sections 2, 3(1), and 6(7) of the ICA, 49 U.S.C. App. §§ 2, 3(1), 6(7), and demands that it be awarded $923,186 as an equivalent pro rata rebate comparable to Alaska's, in reparation for the period commencing two years preceding the filing of this action, adjusted for costs through the entry of a final order in this case, plus costs of this action and reasonable attorneys fees, pursuant to Sections 8, 9 and 13(1) of the ICA, 49 U.S.C. App. §§ 8, 9 and 13(1). OXY also requests that the Commission, under Sections 13(1) and 15(1) of the ICA, 49 U.S.C. App. §§ 13(1) and 15(1), investigate these settlements and the practices of the TAPS Carriers pursuant thereto and that the Commission declare unlawful those provisions of the agreements that allow the TAPS Carriers in the future to make preferential and discriminatory rate rebates to the State of Alaska. Further, should the Commission determine that illegal rebates have been paid but that reparations should not be made to OXY, OXY requests that the Commission order a general refund of all such illegal rebates pursuant to Section 15(7) of the ICA, 49 U.S.C. App. § 15(7).

OXY states that copies of the complaint were served on each person the service list attached to the filing.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and procedure. All such motions or protests should be filed on or before January 8, 1998. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before January 8, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32976 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–179–006]

Ozark Gas Transmission System; Notice of Tariff Filing

December 12, 1997.

Take notice that on September 30, 1997, Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 43, with an effective date of November 1, 1997.

Ozark states that in compliance with Order No. 587–C, which approved GISB Standard 4.3.6, and the Commission's May 30, 1997 Order granting Ozark an extension of the time to comply with Order No. 587–C, this tariff sheet has been revised to include a reference to Ozark's web site. Ozark states that it has

established an HTML World Wide Web page that parties can access via the Internet at http://www.ozrkgas.com to retrieve certain information about the pipeline.

Ozark states that copies of the filing are being served on Ozark's customers and parties to the Docket No. RP97–197–000 proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 18, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32982 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–29–003]

Paiute Pipeline Company; Notice of Compliance Filing

December 12, 1997.

Take notice that on December 4, 1997, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to be effective January 1, 1998.

Eighth Revised Sheet No. 10
Third Revised Sheet No. 21
Third Revised Sheet No. 63
Second Revised Sheet No. 63A
Seventh Revised Sheet No. 161

Paiute asserts that the purpose of this filing is to comply with the Commission's order issued August 1, 1996 in Docket No. CP94–29–000, et al.

Paiute states that the Commission's order, among other things, authorized Paiute to construct and operate certain pipeline loop and pressure regulating and measurement facilities, referred to as the Lake Tahoe Area expansion facilities. According to Paiute, the purpose of the expansion facilities is to expand the delivery capacity of Paiute's system between the Wadsworth Junction and the terminus of the North Tahoe Lateral to enable Paiute to deliver an additional 10,333 Dth/d to Southwest Gas Corporation—Northern California and an additional 2,455 Dth/d to Southwest Gas Corporation—Northern Nevada at its Incline Village delivery points. Paiute states that the Commission's order authorized Paiute to recover the cost of service associated with the expansion project by means of an incremental rate surcharge to be assessed to the two shippers. By its filing, Paiute proposes to establish the initial incremental rate and tariff sheets be permitted to become effective on January 1, 1998, in order to coincide with the expected in-service date of the expansion construction project.

Any person desiring to be heard or to protest this filing should file on or before January 2, 1998, a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32971 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–111–000]

Sea Robin Pipeline Company and Transcontinental Gas Pipe Line Corporation; Notice of Application

December 12, 1997.

Take notice that on December 3, 1997, Sea Robin Pipeline Company (Sea Robin), P.O. Box 2563, Birmingham, Alabama 35202–2563, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1397, filed in Docket No. CP98–111–000 an abbreviated joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Transco performed under Sea Robin's Rate Schedule X–28 which was authorized in Docket No. CP79–433, all as more fully set forth in the application on file with the Commission and open to public inspection.

Sea Robin and Transco state that Sea Robin has provided transportation service of up to 4,690 Mcf per day on behalf of Transco pursuant to Sea Robin's Rate Schedule X–28 from Eugene Island Block 261, offshore Louisiana, to delivery points onshore at Erath, Louisiana. Such service was provided pursuant to a transportation agreement dated October 2, 1980, which primary term expired December 4, 1990, and the term of the agreement extended from year to year thereafter. Transco states that the abandonment of this Rate Schedule is appropriate since Transco has not nominated gas or received service under the agreement since March, 1992. The abandonment of the Rate Schedule will not require any abandonment of facilities. Sea Robin and Transco state that they are agreeable to the termination effective as of the date the Commission approves abandonment of Rate Schedule X–28.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Sea Robin and Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32972 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–312–006]

Tennessee Gas Pipeline Company, Notice of Compliance Filing

December 12, 1997.

Take notice that on December 10, 1997, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Nineteenth Revised Sheet No. 30.

Tennessee states that this filing is in compliance with the Commission's November 25, 1997 Order in the above-referenced docket, Tennessee Gas Pipeline Company, 81 FERC ¶61,261 (1997) (November 25 Order).

Tennessee further states that in accordance with the November 25 Order, Tennessee requests that this tariff sheet be deemed effective November 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32981 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–122–000]

Texas Gas Transmission Corporation; Notice of Application

December 12, 1997.

Take notice that on December 8, 1997, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed an abbreviated application in Docket No. CP98–122–000 pursuant to section 7(b) of the Natural Gas Act, and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon by removal an existing engine at its Slaughters Compressor Station in Webster County, Kentucky, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas proposes to abandon by removal a 41-year-old, seldom used Ingersoll-Rand SVG engine rated at 330 horsepower. Although the total rated horsepower for the Slaughters Compression Station will be slightly lower, this is of no significance because there still exists sufficient horsepower at the Dixie Storage Field to which the compressor engine was dedicated that will ensure that certificated injection and withdrawal capacities are met.

Texas Gas states that the costs associated with the removal of this engine are approximately $92,900.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1998, file with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32975 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–490–002]

Trailblazer Pipeline Company, Notice of Compliance Filing

December 12, 1997.

Take notice that on December 9, 1997, Trailblazer Pipeline Company, (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Substitute First Revised Sheet No. 112 and Substitute Original Sheet No. 112A, to be effective October 1, 1997.

Trailblazer states that the purpose of this filing is to comply with the OPR letter order issued November 26, 1997 in Docket No. RP97–490–001, which directed Trailblazer to file revised tariff sheets to delete tariff language contained in parentheses in Sections 6.3(c) and (d) of Trailblazer's General Terms and Conditions' definition of Secondary Points.

Trailblazer states that copies of the filing have been mailed to Trailblazer's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–490.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32984 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–118–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

December 12, 1997.

Take notice that on December 5, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismark, North Dakota 58501, filed a request with the Commission Docket No. CP98–118–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. (Montana-Dakota) authorized in blanket certificate issued in Docket No. CP82–487–000, *et al.*, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to utilize an existing tap, located in Dawson County, Montana which would effectuate additional natural gas transportation deliveries to Montana-Dakota for ultimate use by additional end-use customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32974 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–926–000, et al.]

Interstate Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 11, 1997.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket Nos. ER97–926–000, ER97–1601–000, ER97–1602–000, ER97–1671–000, ER97–1773–000, ER97–2348–000, ER97–2349–000, ER97–2457–000, ER97–2929–000, ER97–2932–000, and ER97–3215–000]

Take notice that on December 4, 1997, Interstate Power Company tendered for amendments in the above-referenced dockets.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ER98–677–000]

Take notice that on November 25, 1997, Western Resources, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER98–751–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Bremen (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Bremen, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER98–752–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Brookston (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Brookston, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Energy Sales Network, Incorporated

[Docket No. ER98–753–000]

Take notice that on November 21, 1997, Energy Sales Network, Incorporated [hereafter ENERGY] petitioned the Commission for acceptance of ENERGY Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based prices; and the waiver of certain Commission regulations.

ENERGY intends to engage in wholesale electric power and energy purchases and sales as a marketer. ENERGY is not in the business of generating or transmitting electric power. ENERGY is a new corporation which is affiliated with MM Answering Services, Inc. of Bradford, Pennsylvania.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ER98–754–000]

Take notice that on November 21, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission supplementary information regarding the termination of IPC's power sale agreement to the City of Banning, California.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER98–755–000]

Take notice that on November 21, 1997, Orange and Rockland Utilities, Inc. ("Orange and Rockland") filed a Service Agreement between Orange and Rockland and Entergy Power Marketing Corp. ("Customer"). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of November 4, 1997 for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Deseret Generation & Transmission Co-operative

[Docket No. ER98–756–000]

Take notice that on November 21, 1997, Deseret Generation & Transmission Co-operative on November 21, 1997, tendered for filing an executed umbrella non-firm point-to-point service agreement with Illinova Power Marketing, Inc. Under its open access transmission tariff. Deseret requests a waiver of the Commission's notice requirements for an effective date of November 21, 1997. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Illinova Power Marketing, Inc. Has been provided a copy of this filing.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER98–758–000]

Take notice that on November 21, 1997, PECO Energy Company (PECO) filed a Service Agreement dated November 13, 1997 with New Energy Ventures, L.L.C. (NEV) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NEV as a customer under the Tariff.

PECO requests an effective date of November 13, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to NEV and to the Pennsylvania Public Utility Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER98–759–000]

Take notice that on November 21, 1997, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with AIG Trading Corporation for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on December 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER98–760–000]

Take notice that on November 21, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with PanEnergy Power Services, Inc., for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on December 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER98–761–000]

Take notice that on November 21, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Duke/Louis Dreyfus Services for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on December 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. New Century Services, Inc.

[Docket No. ER98–762–000]

Take notice that on November 24, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Continental Energy Services LLC.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Kentucky Utilities Company

[Docket No. ER98–763–000]

Take notice that on November 24, 1997, Kentucky Utilities Company (KU), tendered for filing a non-firm transmission service agreement between KU and Constellation Power Source, Inc., and firm transmission agreements between KU and Cinergy Services, Inc., Williams Energy Services Company and KU and itself, under the Transmission Services Tariff.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98–764–000]

Take notice that on November 24, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 35 to add three (3) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of November 21, 1997, to American Energy Solutions, Inc., DTE-CoEnergy, L.L.C., mc2, Inc., and Southern Energy Retail Trading and Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. New Century Services, Inc.

[Docket No. ER98–765–000]

Take notice that on November 21, 1997, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their

Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Avista Energy, Inc.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER98–766–000]

Take notice that on November 24, 1997, PacifiCorp, tendered for filing in accordance with Part 35 of the Commission's Rules and Regulations, a Service Agreement with Green Mountain Energy Resources, L.L.C. under PacifiCorp's FERC Electric Tariff, Fourth Revised Volume No. 3.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER98–767–000]

Take notice that on November 24, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service under the Pennsylvania Retail Pilot with Southern Energy Retail Trading and Marketing, Inc. and CNG Retail Services Corp. (dba Peoples Plus) pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Sierra Pacific Power Company

[Docket No. ER98–768–000]

Take notice that on November 24, 1997, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with Cook Inlet Energy Supply, LP for both Firm and Non-Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff):

Sierra filed the executed Service Agreements with the Commission in compliance with 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet Nos. 148 and 148A (Attachment E) to the Tariff, which is an updated list of all current subscribers. Sierra requests waiver of the Commission's notice requirements to permit an effective date of November 26, 1997 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Western Resources, Inc.

[Docket No. ER98–900–000]

Take notice that on November 26, 1997 Western Resources, Inc., tendered for filing certain revised pages to its FERC Electric Service, First Revised Volume No. 5. Western Resources states that the change is to permit Western Resources to curtail point-to-point transmission service in order to maintain system reliability on any system with which Western Resources is directly or indirectly interconnected. Western Resources has proposed that the change become effective on December 1, 1997.

Copies of the filing were served upon Western Resources' open access transmission customers and the Kansas Corporation Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Southern California Edison Company

[Docket No. ER98–921–000]

Take notice that on December 4, 1997, Southern California Edison Company (Edison) tendered for filing the Edison-Banning 1997 Restructuring Agreement (Restructuring Agreement) between Edison and the City of Banning, California (Banning), and a Notice of Cancellation of various agreements and rate schedules applicable to Banning. Included in the Restructuring Agreement as Appendices B, C, D, E, F, G, and H are: the Wholesale Distribution Access Tariff Service Agreement, Amendment No. 1 to the Edison-Banning Hoover Firm Transmission Service Agreement, Amendment No. 1 to the Edison-Banning Palo Verde Nuclear Generating Station Firm Transmission Service Agreement, Amendment No. 2 to the Edison-Banning Pasadena Firm Transmission Service Agreement I, Amendment No. 2 to the Edison-Banning 1995 San Juan Unit 3 Firm Transmission Service Agreement, Amendment No. 1 to the Amended Edison-Banning Sylmar Firm Transmission Service Agreement, and the Edison-Banning Pacific Intertie Firm Transmission Service Agreement.

The Restructuring Agreement is the result of negotiations between Edison and Banning to modify existing contracts to accommodate the emerging Independent System Operator (ISO)/ Power Exchange market structure. The Restructuring Agreement significantly simplifies the existing operational arrangements between Edison and Banning. In addition, the Restructuring Agreement provides for cancellation of existing bundled service arrangements and obligations between Edison and Banning. Edison is requesting that the Restructuring Agreement become effective on the date the ISO assumes operational control of Edison's transmission facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison

[Docket No. ER98–922–000]

Take notice that on December 4, 1997, Southern California Edison Company (Edison) tendered for filing the Edison-Azusa 1997 Restructuring Agreement (Restructuring Agreement) between Edison and the City of Azusa, California (Azusa), and a Notice of Cancellation of various agreements and rate schedules applicable to Azusa. Included in the Restructuring Agreement as Appendices B, C, D, E, F, G, and H are: the Wholesale Distribution Access Tariff Service Agreement, Amendment No. 1 to the Edison-Azusa Hoover Firm Transmission Service Agreement, Amendment No. 1 to the Edison-Azusa Palo Verde Nuclear Generating Station Firm Transmission Service Agreement, Amendment No. 3 to the Edison-Azusa Pasadena Firm Transmission Service Agreement, Amendment No. 2 to the Edison-Azusa 1995 San Juan 3 Firm Transmission Service Agreement, Amendment No. 1 to the Amended Edison-Azusa Sylmar Firm Transmission Service Agreement, and the Edison-Azusa Pacific Intertie Firm Transmission Service Agreement.

The Restructuring Agreement is the result of negotiations between Edison and Azusa to modify existing contracts to accommodate the emerging Independent System Operator (ISO)/ Power Exchange market structure. The Restructuring Agreement significantly simplifies the existing operational arrangements between Edison and Azusa. In addition, the Restructuring Agreement provides for cancellation of existing bundled service arrangements and obligations between Edison and Azusa. Edison is requesting that the Restructuring Agreement become effective on the date the ISO assumes operational control of Edison's transmission facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Southern California Edison Co.

[Docket No. ER98–923–000]

Take notice that on December 4, 1997, Southern California Edison Company (Edison) tendered for filing the Authorized Representatives' Procedures For Post-Restructuring Operations And Accounting (Procedures), and a Notice of Cancellation of various rate schedules with the City of Colton. The Procedures address issues relating to the operation of the Independent System Operator (ISO) and Power Exchange.

To the extent necessary, Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign to the Procedures an effective date concurrent with the date the ISO assumes operational control of Edison's transmission facilities, which is expected to be January 1, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northwestern Public Service Company

[Docket No. ES98–14–000]

Take notice that on November 28, 1997, Northwestern Public Service Company (NWPS) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue and to renew or extend the maturity of promissory notes to evidence short-term borrowings in a principal amount not exceeding $75,000,000. The proceeds from the notes will be used to provide funds for the conduct of its business.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Consumers Energy Company

[Docket No. ES98–15–000]

Take notice that on December 4, 1997, Consumers Energy Company filed an Application pursuant to Section 204 of the Federal Power Act seeking authority to issue loan guarantees during the period January 15, 1998 through December 31, 1999, in an aggregate principal amount of up to $25 million outstanding at any one time. The loans to be guaranteed would be to Michigan residents for financing various home energy efficiency measures, including new heating, ventilating and air-conditioning equipment.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ES98–16–000]

Take notice that on December 4, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), filed an application for an order, pursuant to Section 204 of the Federal Power Act, authorizing Con Edison during the period from January 1, 1998, through December 31, 1999, to issue and sell unsecured evidences of indebtedness maturing not more than nine months after their date of issue up to an amount not in excess of $500 million at any one time.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Citizens Utilities Company

[Docket No. ES98–18–000]

Take notice that on December 5, 1997, Citizens Utilities Company (Citizens) filed an application under Section 204 of the Federal Power Act, requesting an order authorizing the assumption by Citizens as guarantor of obligations of a subsidiary company under a bank credit facility.

Comment date: January 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32970 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–15–000, et al.]

P.H. Rio Volcan, S.A., et al.; Electric Rate and Corporate Regulation Filings

December 12, 1997.

Take notice that the following filings have been made with the Commission:

1. P.H. Rio Volcan, S.A.

[Docket No. EG98–15–000]

Take notice that on December 4, 1997, P.H. Rio Volcan, S.A., a corporation organized under the laws of Costa Rica (Applicant), with its principal place of business at Santo Domingo de Heredia del Hotel Bouganville 200 Mts. al Este de la Iglesia Catolica (Primera Entrada Porton con Ruedas de Artilleria) Heredia, Costa Rica, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it intends to own and operate an approximately 17 megawatt (net), hydroelectric power production facility located in the District of Sarapiqui, Canton of Alajuela, Province of Alajuela, Costa Rica.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. The United Illuminating Company

[Docket No. ER98–769–000]

Take notice that on November 24, 1997, The United Illuminating Company (UI), tendered for filing for informational purposes all individual Purchase Agreements and Supplements to Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, as amended, during the six-month period May 1, 1997, through October 31, 1997.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Electric & Gas Company

[Docket No. ER98–770–000]

Take notice that on November 24, 1997, South Carolina Electric & Gas Company, tendered for filing proposed cancellation of Service Agreement FERC No. 28 with Southern Company Services, Inc., and Service Agreement FERC No. 37 with Carolina Power & Light Company.

Under the proposed cancellation, the contracts which expired effective May 21, 1997 and August 31, 1997, respectively, will be canceled.

Copies of this filing were served upon Southern Company Services, Inc., and Carolina Power & Light Company.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Company

[Docket No. ER98–771–000]

Take notice that on November 24, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that the filing has been served on the affected customers and on the Public Utility Commission of Texas.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER98–772–000]

Take notice that on November 25, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and LG&E Energy Marketing, Inc., (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on November 5, 1997.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER98–773–000]

Take notice that on November 25, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and NESi Power Marketing, Inc. (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on November 5, 1997.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER98–774–000]

Take notice that on November 25, 1997, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Dighton Power Associates Limited Partnership (Dighton Power). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Dighton Power's signature page would permit NEPOOL to expand its membership to include Dighton Power. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Dighton Power a member in NEPOOL. NEPOOL requests an effective date of December 1, 1997, for commencement of participation in NEPOOL by Dighton Power.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER98–775–000]

Take notice that on November 25, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with the Ak-Chin Electric Utility Authority.

A copy of this filing has been served on the Ak-Chin Electric Utility Authority and the Arizona Corporation Commission.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER98–776–000]

Take notice that on November 25, 1997, Arizona Public Service Company (APS or Company), tendered for filing a Notice of Cancellation of Interruptible Transmission Service Agreement between Arizona Public Service Company (APS or Company) and Southern California Edison Company (Edison) (APS–FERC Rate Schedule No. 103).

APS requests that this cancellation become effective January 1, 1998.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER98–777–000]

Take notice that on November 25, 1997, Southern California Edison Company (Edison), tendered for filing a Notice of Cancellation of FERC Rate Schedule Nos. 246.34 and 340, and all supplements thereto.

Edison requests that this cancellation become effective October 31, 1997.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Long Island Lighting Company

[Docket No. ER98–778–000]

Take notice that on November 25, 1997, Long Island Lighting Company (LILCO) filed Service Agreements for Non-Firm Point-to-Point Transmission Service between LILCO and Williams Energy Services company (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of November 12, 1997, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER98–779–000]

Take notice that on November 25, 1997, PECO Energy Company (PECO), filed under § 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated October 30, 1997, with Enron Power Marketing, Inc. (Enron), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Transaction Agreement is for a term of fourteen (14) months.

PECO requests an effective date of November 1, 1997, for the Transaction Agreement.

PECO states that copies of this filing have been supplied to Enron and to the Pennsylvania Public Utility Commission.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER98–780–000]

Take notice that on November 25, 1997, PECO Energy Company (PECO), filed under § 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated October 30, 1997, with NorAm Energy Management, Inc. (NEM), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Transaction Agreement is for a term of fourteen (14) months.

PECO requests an effective date of November 1, 1997, for the Transaction Agreement.

PECO states that copies of this filing have been supplied to NEM and to the Pennsylvania Public Utility Commission.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Company

[Docket No. ER98–781–000]

Take notice that on November 25, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and AIG Trading Corporation and Tenaska Power Services Company. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Union Electric Company

[Docket No. ER98–782–000]

Take notice that on November 25, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and Morgan Stanley Capital Group Inc., and PacifiCorp Power Marketing, Inc. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Union Electric Company

[Docket No. ER98–783–0000]

Take notice that on November 25, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between UE and AIG Trading Corporation, Morgan Stanley Capital Group Inc., and Tenaska Power Services Company. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER98–784–000]

Take notice that on November 25, 1997, PECO Energy Company (PECO), filed under § 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated October 30, 1997, with Horizon Energy company (HORIZON ENERGY) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Transaction Agreement is for a term of fourteen (14) months.

PECO requests an effective date of November 1, 1997, for the Transaction Agreement.

PECO states that copies of this filing have been supplied to HORIZON ENERGY and to the Pennsylvania Public Utility Commission.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The Empire District Electric Company

[Docket No. ER98–785–000]

Take notice that on November 25, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Aquilla Power Corp., providing firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Aquilla Power Corp., 10750 E 350 Highway, Kansas City, MO 64138.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33040 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–60–000; and CP98–62–000]

Viking Voyageur Gas Transmission Company, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Viking Voyageur Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

December 15, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Viking Voyageur Pipeline Project.[1]

[1] Viking Voyageur Gas Transmission Company, L.L.C.'s application was filed with the Commission

Continued

This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Additionally, with this notice we are asking a number of Federal agencies (see appendix 2) with jurisdiction and/or special expertise with respect to environmental issues to cooperate with use in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Viking Voyageur Gas Transmission Company, L.L.C. (Voyageur) proposes to build new natural gas pipeline and compression facilities to transport 1.4 billion cubic feet per day of natural gas from Noyes, Minnesota to Joliet, Illinois to move new natural gas supplies from western Canada markets to the Upper Midwest.

Voyageur requests Commission authorization, in Docket No. CP98–60–000, to construct and operate the following facilities:

- 773 miles of 42-inch-diameter pipeline extending from the border of the United States (U.S.) and Canada near Noyes, Minnesota in Kittson County to a point near Joliet, Illinois in Will County. Of the 773-mile-long mainline, about 359 miles would be located in Minnesota, 325 miles in Wisconsin, and 89 miles in Illinois;
- 22 new meter stations including one in Kittson County, Minnesota, four in Wood County, Wisconsin, two in Waushara County, Wisconsin, two in Dodge County, Wisconsin, one in Jefferson County, Wisconsin, three in Walworth County, Wisconsin, three in McHenry County, Illinois, one in Kane County, Illinois, one in Kendall County, Illinois, and four in Will County, Illinois;
- Four compressor stations each with 31,000 horsepower of compression in Kittson County, Minnesota, Otter Tail County, Minnesota, Polk County, Wisconsin, and Waushara County, Wisconsin. The two compressor stations in Minnesota and the compressor station in Polk County, Wisconsin would be built within the fenced property of existing Viking Gas Transmission Company compressor station sites;
- Associated pipeline facilities, including 48 new mainline valves and four pig launchers and five pig receivers, and permanent access roads for access to compressor stations and valves; and
- Two new operations and maintenance facilities in Walworth County, Wisconsin and Kendall County, Illinois.

The general location of Viking Voyageur's proposed project facilities is shown in appendix 1. If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

In addition, Voyageur requests in Docket No. CP98–62–000 a Presidential Permit to site, construct, operate, own, and maintain facilities at the international border between the U.S. and Canada near Noyes, Minnesota. Voyageur's pipeline would originate at the point of interconnection with the Canadian facilities of TransVoyageur Gas Transmission.

In Illinois and Wisconsin, several local distribution companies are considering building lateral pipelines to interconnect with Voyageur. Although these facilities would not be under the jurisdiction of the FERC, to the extent they can be identified they will be discussed in the EIS. The following is a list of the nonjurisdictional laterals currently under consideration:

Lateral pipeline	Pipeline diameter (inches)	Approximate length (miles)	State
Marshfield ..	6	1.9	WI
Wausau	12	65.0	WI
Wisconsin Rapids	6	0.2	WI
Steven Point	8	20.7	WI
Green Bay/ Sheboygan	30/24/12	191.8	WI
Madison	16	42.8	WI
Milwaukee	22	32.5	WI
Eagle	16	7.8	WI
Delavan	8	0.6	WI
Hampshire	16	0.11	IL
Plano	20	0.34	IL
Aux Sable ..	20	0.21	IL

Land Requirements for Construction

Approximately 670 miles (86 percent) of Voyageur's pipeline would be installed parallel to various existing utility rights-of-way. Where possible, Voyageur's right-of-way would overlap the existing rights-of-way as much as 85 feet during construction to minimize impacts. Voyageur's proposed route deviates from the existing rights-of-way in selected locations to avoid impact on homes, existing utility structures (meter stations, etc.), improve waterbody crossings, and for other environmental or engineering reasons.

Construction of the Viking Voyageur Pipeline Project would affect a total of about 12,851 acres. Of this total, about 10,321 acres would be disturbed by construction along the pipeline right-of-way. The aboveground facilities would affect about 72 acres of land during construction. Pipe storage, staging ares and warehouse sites would affect about 2,458 acres. All these acreage figures are subject to change.

Voyageur proposes to use a right-of-way width of 105 feet for construction, with provisions for additional temporary work areas as necessary for waterbody, highway and railroad crossings, and extra topsoil storage. Following construction and restoration of the right-of-way and temporary work spaces, Voyageur would retain a 30-to 50-foot-wide permanent pipeline right-of-way depending on whether the pipeline is co-located with other utilities or on new right-of-way. Total land requirements for the permanent right-of-way would be about 4,476 acres. About 72 acres would be retained for the operation of the new aboveground facilities. The remaining 8,303 acres of land affected by construction of the project would be restored and allowed to revert to its former use.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Voyageur. These issues are listed below. This is a preliminary list of issues and may be changed based on your comments and our analysis.

- Air Quality and Noise
  - —Effect on local air quality and noise environment as a result of construction.
  - —Effect on local air quality and noise environment as a result of operation of the compressor stations.
- Soils
  - —Temporary and permanent impacts on prime farmland soils.
  - —Mixing of topsoil and subsoil during construction.
  - —Compaction of soil by heavy equipment.
  - —Impacts on drain tiles and irrigation systems.
  - —Erosion control and right-of-way restoration.
- Water Resources
  - —Effect of construction on areas with shallow
  - —Effect of construction on crossings of 186 perennial waterbodies.
  - —Crossing of 14 rivers 100 feet wide or greater.
  - —Crossing the St. Croix River which is designated as a National Scenic Waterway containing federally listed endangered mussels, and the Rum River which is designated as a Minnesota State Wild and Scenic River.
  - —Crossing 21 trout streams, 7 exceptional resource waters, 4 outstanding resource waters, 2 Northern Pike spawning waters, and 1 wildlife/fish migration corridor.
  - —Potential for erosion and sediment transport to the waterbodies.
  - —Effect of construction on groundwater and surface water supplies.
  - —Impact on wetland hydrology.
- Biological Resources
  - —Short- and long-term effects of right-of-way clearing and maintenance on wetlands, forests, riparian areas, and vegetation communities of special concern.
  - —Effect on wildlife and fisheries habitats.
  - —Impact on federally threatened species such as the bald eagle and prairie bush clover, and federally endangered species such as the Karner blue butterfly, gray wolf, winged mapleleaf mussel, Higgins' eye pearly mussel, and the Indian bat.
- Cultural Resources
  - —Effect on historic and prehistoric sites.
  - —Native American concerns.
- Socioeconomics
  - —Effect of the construction workforce on demands for services in surrounding areas.
  - —Impact on property values.
- Land Use
  - —Impact on crop production.
  - —Impact on residential areas.
  - —Effect on public lands and special use areas including waterfowl production areas, state game refuge, state wildlife management areas, national and state scenic trails, state forest lands, state canoe rivers, state parks and recreation areas, public fishing areas, public hunting grounds, and forest preserves.
  - —Impact on future land uses and consistency with local land use plans and zoning.
  - —Visual effect of the aboveground facilities on surrounding areas.
- Reliability and Safety
  - —Assessment of hazards associated with natural gas pipelines.
- Cumulative Impact
  - —Assessment of the combined effect of the proposed project with other projects, including other natural gas transmission and distribution lines, which have been or may be proposed in the same region and similar time frames.
- Nonjurisdictional Facilities
  - —Assessment of the effects of the construction of lateral pipelines that would be entirely within state jurisdiction.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received on the Draft EIS and will be used by the Commission in its decision-making process to determine whether to approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send two copies to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, D.C. 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket Nos. CP98–60–000 and CP98–62–000; and
- Mail your comments so that they will be received in Washington, D.C. on or before January 20, 1998.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings the FERC will conduct in the project area. The locations and times for these meetings are listed below.

Schedure of Public Scoping Meetings for the Viking Voyageur Pipeline Project Environmental Impact Statement

Jan. 5, 1998 7:00 pm—Elgin, Illinois, Holiday Inn, 345 West River Road, 847–695–5000

Jan. 6, 1998 7:00 pm—Nekoosa, Wisconsin, Lake Arrowhead Clubhouse, 1195 Apache Lane, 715–325–2938

Jan. 7, 1998 7:00 pm—Dresser, Wisconsin, Trollhaugen Ski Area, Convention Center, 2232 100th Avenue, 715–755–2955

Jan. 8, 1998 1:00 pm—Crookston, Minnesota, Northland Inn, Highway 2, 218–281–5210

7:30 pm—Detroit Lakes, Minnesota, Holiday Inn, 1155 Highway 10 East, 218–847–2121.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Voyageur representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues

under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

they believe should be addressed in the Draft EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

On the dates of the meetings, we will also be conducting limited site visits to the project area. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing of timely motions to intervene in this proceeding has been extended to January 4, 1998. After that date, parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. As details of the project become established, representatives of Voyageur may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

All commentors will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS, you must return the Information Request (appendix 4). If you do not send comments or return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33039 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 12, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2347–022.

c. *Date filed:* November 5, 1997.

d. *Applicants:* Wisconsin Power & Light Company and Midwest Hydro, Inc.

e. *Name of Project:* Janesville Central.

f. *Location:* On the Rock River, in the City of Janesville, in Rock County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicants Contact:* Charles Alsberg, President, Midwest Hydro, Inc., 116 State Street, P.O. BOX 167, Neshkoro, WI 54960, (920) 292–4628.

i. *FERC Contact:* Thomas F. Papsidero (202) 219–2715.

j. *Comment Date:* January 28, 1998.

k. *Description of Filing:* Application to transfer the license for the Janesville Central Project to Midwest Hydro, Inc.

l. This notice also consists of the following standard paragraphs: B, C1 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32977 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 12, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2348–013.

c. *Date filed:* November 5, 1997.

d. *Applicants:* Wisconsin Power & Light Company and Midwest Hydro, Inc.

e. *Name of Project:* Beloit Blackhawk.

f. *Location:* On the Rock River, near the City of Beloit, in Rock County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicants Contact:* Charles Alsberg, President, Midwest Hydro, Inc., 116 State Street, P.O. Box 167, Neshkoro, WI 54960, (920) 292–4628.

i. *FERC Contact:* Thomas F. Papsidero (202) 219–2715.

j. *Comment Date:* January 28, 1998.

k. *Description of Filing:* Application to transfer the license for the Beloit Blackhawk Project to Midwest Hydro, Inc.

l. This notice also consists of the following standard paragraphs: B, C1 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32978 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 12, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2373–008.

c. *Date filed:* November 5, 1997.

d. *Applicants:* Wisconsin Power & Light Company and Midwest Hydro, Inc.

e. *Name of Project:* Rockton.

f. *Location:* On the Rock River, in the Town of Rockton, in Winnebago County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicants Contact:* Charles Alsberg, President, Midwest Hydro, Inc., 116 State Street, P.O. BOX 167, Neshkoro, WI 54960, (920) 292–4628.

i. *FERC Contact:* Thomas F. Papsidero (202) 219–2715.

j. *Comment Date:* January 28, 1998.

k. *Description of Filing:* Application to transfer the license for the Rockton Project to Midwest Hydro, Inc.

l. This notice also consists of the following standard papragraphs: B, C1, & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32979 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 12, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 2536–109.

c. Date filed: October 31, 1997.

d. Applicants: Niagara of Wisconsin Paper Corporation and Consolidated Papers, Inc.

e. Name of Project: Little Quinnesec Falls.

f. Location: On the Menominee River in Marinette County, Wisconsin and Dickinson County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Douglas B. Clark, Attorney for Niagara of Wisconsin Paper Corporation and Consolidated Papers, Inc., Foley & Lardner, 150 E. Gilman Street, P.O. Box 1497, Madison, WI 53701–1497, (608) 258–4276.

i. FERC Contact: Thomas F. Papsidero (202) 219–2715.

j. Comment Date: January 22, 1998.

k. Description of Filing: Application to transfer the license for the Little Quinnesec Falls Project to Consolidated Papers, Inc.

1. This notice also consists of the following standard paragraphs: B, C1 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may became a party to the proceeding. Any comments, protests, or motions to intervene must

be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32980 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5936–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Spill Prevention, Control, and Countermeasure Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the Spill Prevention, Control, and Countermeasures Plan continuing Information Collection Request (ICR) to the Office of Management and Budget. The ICR expires on May 31, 1998 (ICR 0328.05, OMB No. 20050–0021). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: Oil Program Center, 401 M Street, SW (5203G), Washington, D.C. 20460. Materials relevant to this ICR may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, by visiting the Public Docket, located at 1235 Jefferson Davis Highway (ground floor), Arlington, Virginia. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, (703) 603–8769. Facsimile number: (703) 603–9116. Electronic address: fleischman.hugo@epamail.epa.gov. Note that questions but not comments will be accepted electronically.

SUPPLEMENTARY INFORMATION:

Affected Entities

The Oil Pollution Prevention regulation applies only to non-transportation-related facilities that could reasonably be expected to discharge oil into or upon the navigable waters of the U.S., or adjoining shorelines, and that have a total underground buried oil storage capacity of more than 42,000 gallons; or a total aboveground oil storage capacity of more than 660 gallons in a single container.

The specific private industry sectors expected to be affected by this action include petroleum and coal products manufacturing (NAICS 324); petroleum bulk stations and terminals (NAICS 42271); crude petroleum and natural gas extraction (NAICS 211111); transportation (including pipelines), warehousing, and marinas (NAICS 482–486/488112–48819/4883/4889/492–493/71393); electric power generation, transmission, and distribution (NAICS 2211); other manufacturing (NAICS 31–33); gasoline stations/automotive rental and leasing (NAICS 4471/5321); heating oil dealers (NAICS 454311); coal mining, non-metallic mineral mining and quarrying (NAICS 2121/2123/213114/213116); heavy construction (NAICS 234); elementary and secondary schools, colleges (NAICS 6111–6113); hospitals/nursing and residential care facilities (NAICS 622–623); and crop and animal production (NAICS 111–112).

Title

"Spill Prevention, Control, and Countermeasure (SPCC) Plans," OMB Control Number 2050–0021. EPA Control Number 328.05. Expiration date: May 31, 1998.

Abstract

Under section 311 of the Clean Water Act, EPA's Oil Pollution Prevention regulation requires facilities to prepare and implement SPCC Plans to help "minimize the potential for oil discharges." This regulation is codified at 40 CFR part 112. The SPCC Plan must be "a carefully thought-out plan, prepared in accordance with good engineering practices." Preparation of the SPCC Plan requires that a facility's staff analyze how the facility will prevent oil discharges, thereby encouraging appropriate facility design and operations. The information in the SPCC Plan also promotes efficient response in the event of a discharge. Finally, proper maintenance of the SPCC Plan will promote important spill-reducing measures, facilitate leak detection, and generally ensure that the facility is at peak capability for deterring discharges. The specific activities and reasons for the information collection are described below.

New Plan

Preparation of the Plan, required under section 112.3, involves several tasks, mostly conducted by the facility's technical personnel. These tasks include: field investigations to understand facility design and possible failures and to predict the flow paths of spilled oil and the potential harm that the spilled oil would have on navigable waters; a regulatory review to ensure that personnel are fully aware of all requirements and limitations imposed in the rule; an evaluation of current spill prevention and control practices the facility employs; preparation of the Plan according to the specification of section 112.7, and certification by a Registered Professional Engineer (P.E.)

Modification of Plan

Under section 112.5(a) the SPCC Plan must be amended whenever there is a change in the facility's design, construction, operation, and maintenance that materially affects the facility's potential to discharge oil into navigable waters or onto adjoining shorelines. The amended Plan must also be certified by a P.E.

Triennial Review

Under section 112.5(b), owners or operators of regulated facilities must review and evaluate the Plan at least once every three years. This involves review of spill prevention and control procedures being implemented under the current Plan, as well as a regulatory review. Facility owners/operators must amend the SPCC Plan within six months of the review to include more effective prevention and control technology if such technology will significantly reduce the likelihood of a spill event; and such technology has been field-proven at the time of the review. If amended, the Plan must also be certified by a P.E.

Oil Discharge

Under section 112.4, in the event of certain oil discharges, facility owner/operators must submit information to the Regional Administrator within 60 days. Discharges of oil that trigger the reporting requirements are a single spill event of more than 1,000 U.S. gallons into navigable waters; or two or more spills (in a twelve month period) of harmful quantities as defined in 40 CFR part 110.

Submitting a Plan after a discharge involves time to collect the required information, as well as time for review by management. The facility must also submit a copy of this information to the appropriate state agency in charge of water pollution control activities. After the Regional Administrator and the appropriate state agency have reviewed the Plan, the Regional Administrator may require amendment of the SPCC Plan. The amended Plan must be certified by a P.E. prior to implementation. Facilities may appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan.

Recordkeeping

Under section 112.3, the facility owner/operator must maintain a copy of the SPCC Plan at the facility, or under certain circumstances, at the nearest field office. The Plan must be available for review during normal working hours. In addition, facilities must maintain (and update) records of Plan-specific inspections as outlined under section 112.7(e).

Purpose of Data Collection

EPA does not collect the information required by the Oil Pollution Prevention regulation (i.e., the SPCC Plan) on a routine basis. Preparation, implementation, and maintenance of the SPCC Plan by the facility help prevent oil discharges, and mitigate environmental damage caused by such discharges. Therefore, the primary user of the data is the facility itself. For example:

(i) As facility staff accumulate the necessary data, they must analyze the facility's capability to prevent oil discharges, facilitate safety awareness, and promote appropriate modifications to facility design and operations;

(ii) Because facility staff keep the required information in a single document, they can respond efficiently in the event of a discharge;

(iii) To implement the Plan according to the specifications of section 112.7, the facility must meet certain design and operational standards that reduce the likelihood of an oil discharge;

(iv) Inspection records help facilities to promote important maintenance, facilitate leak detection, and demonstrate compliance with the SPCC requirements; and

(v) When facility staff review the Plan every three years, they ensure implementation of more effective spill prevention control technology.

EPA recognizes that the additional data would help to better demonstrate the effectiveness of the program and better understand the nature of the threat of oil pollution posed by facilities regulated under the SPCC program. As such, in 1995, EPA surveyed a random sample of potentially regulated facilities that produce, use, or store oil products. In July 1996, EPA published a report on the effectiveness of the SPCC program, using the data from the 1995 survey. In the 1996 report, EPA found that approximately 438,000 facilities were regulated under the SPCC program in 1996. The industries that make up the greatest proportion of potentially-regulated facilities are farms (37 percent) and oil production facilities (33 percent). The results of the EPA analysis indicate that facilities with larger storage capacity are likely to have a greater number of oil spills, larger volumes of oil spilled, and greater cleanup costs. Similar increases were found at facilities with more tanks and greater annual throughput. The results of the analysis also appear to indicate that there are no statistically significant relationships between certain other facility characteristics and spill risk. In particular, EPA did not identify a strong and stable relationship between the type of business conducted at a facility and the number of spills or volume of oil spilled. The analysis also revealed that the average age of a facility's tanks, the annual number of transfers, and the annual average tank turnover do not appear to be strongly related to oil spills. The report is available to the public for review at the Public Docket. EPA requests comments on that report.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA primarily uses SPCC plan data to ensure that facilities comply with the regulation, including design and operation specifications and inspection requirements. EPA reviews SPCC Plans when facilities submit the Plans because of oil discharges, and as part of EPA's inspection program. State and local governments also use the data, which is not necessarily available elsewhere and can greatly assist local emergency preparedness planning efforts. Coordination with state governments is facilitated when, after certain spill events, a facility sends a copy of the SPCC Plan and additional information on the spill to the relevant state agency.

As part of the Agency's efforts to reduce the overall paperwork burden on regulated facilities, EPA would like to solicit comments on how the Agency could best reduce the total paperwork burden hours for this rule while maintaining an effective level of environmental protection.

EPA would also like to solicit public comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Additionally, the Agency has recently proposed revisions to the SPCC rule to reduce the burden imposed on regulated facilities (cite FR date). Proposed revisions would give facility owners or operators flexibility to use alternative formats for SPCC Plans; allow the use of certain records maintained pursuant to usual and customary business practices, or pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to be used in lieu of records mandated by the SPCC requirements; reduce the information required to be submitted after certain spill events; and extend the period in which SPCC Plans must be reviewed and evaluated.

Burden Statement

This document first presents the estimated number of existing and new storage and production facilities regulated under the Oil Pollution Prevention Regulation. Next, the estimated burden hours and costs to

facilities to perform required actions are presented. Costs are composed of facility labor costs, the cost to use consultants, and any associated capital and operation and maintenance (O&M) expenditures. The cost to a facility to use consultants is listed as an O&M expenditure for purposes of this analysis. Finally, the estimated total annual burden hours and costs for all facilities to comply with the requirements of this regulation are presented. The burden hours shown for each action represent the hours in both the existing ICR and the corresponding hours in the ICR renewal, where there are differences. Costs have been updated to 1997 dollars.

To account for the role of consultants in the process of developing and updating SPCC Plans, EPA re-allocated a percentage of the burden for completing certain paperwork and recordkeeping activities (50 percent for large facilities, 25 percent for medium facilities, and five percent for small facilities) from facility personnel to consultants. The analysis assumes that the burden to a consultant to perform these activities would approximately be equal to that of facility personnel. In reality, a consultant may take slightly less time due to the expected economies of scale associated with performing similar tasks for different facilities (e.g., rule familiarization) but on average, especially when it comes to performing more physical activities (e.g., reviews/inspections, modifications) the burden is expected to remain relatively constant regardless of who performs the activity.

As of January 1998, approximately 451,000 existing facilities are assumed to be regulated under the SPCC program with approximately 4,500 new facilities joining the program in 1998. These numbers are based on the previous ICR estimate of approximately 446,500 existing and new facilities as of January 1996. A one percent annual growth in the number of facilities is assumed. For purposes of this ICR, all facilities were grouped into two distinct categories: production facilities (facilities whose operations and oil storage activities are exclusively limited to oil production) and storage facilities (all other SPCC-regulated facilities whose operations do not include oil production). This categorization of facilities reflects differences in the estimated burden of compliance activities depending on the nature of the facility's operations.

The current ICR assumes that storage facilities make up 65 percent of small facilities, 69 percent of medium facilities, and 98 percent of large facilities. Production facilities make up 35 percent of small facilities, 31 percent of medium facilities, and two percent of large facilities. These ratios, as well as the Agency's estimate concerning the number of regulated facilities, are based on the results of a 1995 survey of SPCC regulated facilities conducted by EPA. The results of this survey are available for public review at the Public Docket. The definitions of small, medium, and large facility are based on oil storage capacity and are defined as follows, based on the Agency's January 1991 "SPCC Facilities Study":

(i) Small facility—a facility that has aboveground storage capacity greater than 1,320 gallons (or 660 gallons in a single container), but less than or equal to 42,000 gallons;

(ii) Medium facility—a facility that has total (aboveground or underground) storage capacity greater than 42,000 gallons but less than or equal to one million gallons; and

(iii) Large facility—a facility that has total storage capacity greater than one million gallons.

An estimate of the number of existing and new storage and production facilities in 1998 are shown in Exhibits 1 and 2.

EXHIBIT 1.—ESTIMATED NUMBER OF EXISTING FACILITIES (1998)

	Small	Medium	Large	Total
Storage	231,406	57,697	13,188	302,290
Production	122,812	25,551	309	148,672
Total	354,217	83,248	13,497	450,963

EXHIBIT 2.—ESTIMATED NUMBER OF NEW FACILITIES (1998)

	Small	Medium	Large	Total
Storage	2,314	577	132	3,023
Production	1,228	256	3	1,487
Total	3,542	832	135	4,510

The facility cost estimates for each category of activities are based on 1997 hourly wage rates for managerial ($38.59), technical ($28.26), and clerical ($17.71) work. These wage rates include wages and salaries, benefit costs, and overhead costs and reflect private industry averages, which were estimated by the U.S. Bureau of Labor Statistics. The Agency recognizes that these wage rates may underestimate the actual wages received by some SPCC personnel but overestimate the actual wage rate received by other facility personnel. The Agency estimated wage rates for consultants using the 1994 Facility Response Plan Regulatory Impact Analysis (RIA). This RIA "loaded" the direct, private industry wages by a factor of 2.75 to develop wage rates for consultants. Consequently, this loading factor was applied to the direct labor rates for private industry managerial, technical, and clerical workers to estimate the following rates: managerial ($106.12), technical ($77.72), and clerical ($48.70).

Each exhibit represents separate burden estimates for small, medium, and large storage and production facilities. Exhibits 3 through 8 summarize the estimated facility burden associated with performing each separate task associated with an SPCC Plan. Not all of the activities will be performed on an annual basis by all facilities. For the purposes of estimating respondent burden, EPA assumes that consultants are retained by some facilities to assist in the following activities: preparation of a new plan; modification of an existing plan; and conducting a triennial review. Again, EPA assumed that a large facility would use outside consultants about 50 percent of the time, a medium facility would use outside consultants about 25 percent of the time, and a small facility would use outside consultants about five percent of the time to perform the above activities.

New Plan

Exhibit 3 presents the estimated burden and costs for a facility to perform the activities associated with preparing an SPCC Plan. All new facilities must prepare and implement an SPCC Plan.

EXHIBIT 3.—ESTIMATED BURDEN HOURS AND COSTS—PREPARATION OF NEW PLAN

Type of Facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total[1]
Storage:							
Small	5.7	23.8	3.8	33.3	0	$86	$1,044
Medium	4.5	33.0	4.5	42.0	0	672	1,858
Large	3.0	38.0	4.0	45.0	0	2,141	3,402
Production:							
Small	5.7	26.8	3.8	36.1	0	93	1,132
Medium	4.5	34.5	4.5	43.5	0	696	1,924
Large	3.0	38.5	4.0	43.5	0	2,165	3,440

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Modification of Plan

Exhibit 4 presents the burden hours and costs for a facility to revise an SPCC Plan after any modification that materially affects the facility's potential to discharge oil into navigable waters. An estimated ten percent of facilities will need to modify their SPCC Plans each year.

EXHIBIT 4.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—MODIFICATION OF PLAN

Type of facility	Burden Hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total[1]
Storage:							
Small	0.0	4.3	1.0	5.2	$0	$12	$150
Medium	0.0	3.4	0.8	4.1	0	61	170
Large	0.0	2.3	0.5	2.8	0	123	195
Production:							
Small	0.0	4.3	1.0	5.2	0	12	150
Medium	0.0	3.4	0.8	4.1	0	61	170
Large	0.0	2.3	0.5	2.8	0	123	195

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Triennial Review

Exhibits 5 and 6 present the estimated burden hours and costs for a facility to complete a triennial review, with and without amendment. As a result of the review process, the facility may need to amend its Plan, incurring additional costs. Annual burdens and costs per facility are one-third of the values in Exhibits 5 and 6. An estimated three percent of all existing facilities will need to amend their Plans each year.

EXHIBIT 5.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—TRIENNIAL REVIEW—NO AMENDMENT

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total[1]
Storage:							
Small	1.0	2.4	0.5	3.8	$0	$10	$122
Medium	0.8	3.4	0.8	4.9	0	78	216
Large	0.5	4.0	0.5	5.0	0	240	381
Production:							
Small	1.0	3.3	0.5	4.8	0	12	151
Medium	0.8	4.1	0.8	5.6	0	90	249
Large	0.5	4.5	0.5	5.5	0	264	419

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

EXHIBIT 6.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—TRIENNIAL REVIEW—AMENDMENT

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total[1]
Storage:							
Small	1.0	6.7	1.9	9.5	$0	$23	$281
Medium	0.8	6.8	1.5	9.0	0	140	386
Large	0.5	6.3	1.0	7.8	0	363	577
Production:							
Small	1.0	7.6	1.9	10.5	0	26	311
Medium	0.8	7.5	1.5	9.8	0	151	419
Large	0.5	6.8	1.0	8.3	0	387	615

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Oil Discharge

Exhibit 7 presents estimated burden hours and costs for a facility to submit information to the Regional Administrator in the event of certain discharges of oil into navigable waters. It is assumed that the probability of a facility having such a spill in any given year is 0.15 percent.

EXHIBIT 7.—ESTIMATED BURDEN HOURS AND COSTS—OIL DISCHARGE

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total[1]
Storage:							
Small	1.0	1.0	0.0	2.0	$0	$0	$67
Medium	1.0	1.0	0.0	2.0	0	0	67
Large	1.0	1.0	0.0	2.0	0	0	67
Production:							
Small	1.0	1.0	0.0	2.0	0	0	67
Medium	1.0	1.0	0.0	2.0	0	0	67
Large	1.0	1.0	0.0	2.0	0	0	67

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Recordkeeping

Exhibit 8 presents the burden hours and costs for a facility to perform Plan maintenance and Plan-specific recordkeeping activities. All regulated facilities are subject to these requirements.

EXHIBIT 8.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS-RECORDKEEPING

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total[1]
Storage:							
Small	0.0	2.0	0.5	2.5	$0	$0	$65
Medium	0.0	4.5	0.5	5.0	0	0	136
Large	0.0	9.5	0.5	10.0	0	0	277
Production:							
Small	0.0	3.0	0.5	3.5	0	0	94
Medium	0.0	3.0	0.5	3.5	0	0	94
Large	0.0	3.0	0.5	3.5	0	0	94

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Annual Expected Facility Burden

The total annual burden per facility reflects the sum of the annual burdens incurred by the facility for each category of activities outlined above. The estimated annual burden for an existing facility is shown in Exhibit 9. Exhibit 10 presents the estimated annual burden for a new facility.

EXHIBIT 9.—ESTIMATED BURDEN HOURS AND COSTS PER FACILITY-EXISTING FACILITIES

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total
Storage:							
Small	0.3	3.3	0.8	4.3	$0	$5	$123
Medium	0.3	6.0	0.8	7.1	0	33	227
Large	0.2	11.1	0.7	12.0	0	94	426
Production:							
Small	0.3	4.8	0.8	5.7	0	6	161
Medium	0.3	4.7	0.8	5.8	0	37	195
Large	0.2	4.7	0.7	5.6	0	102	255

EXHIBIT 10.—ESTIMATED BURDEN HOURS AND COSTS PER FACILITY—NEW FACILITIES

Type of facility	Burden hours				Cost		
	Managerial 38.59	Technical 28.26	Clerical 17.71	Total burden hours	Capital	O&M	Total
Storage:							
Small	5.7	26.2	4.4	38.3	$67	$87	$1,192
Medium	4.5	37.8	5.1	47.4	67	678	2,078
Large	3.0	47.7	4.6	55.3	67	2,153	3,765
Production:							
Small	5.7	30.0	4.4	40.1	67	94	1,308
Medium	4.5	37.8	5.1	47.4	67	702	2,102
Large	3.0	41.7	4.6	49.3	67	2,177	3,620

Total Annual Expected Facility Burdens

The total annual burdens for all existing facilities and all new facilities are shown in Exhibits.11 and 12. The approximately 451,000 existing facilities will incur a combined burden of about 2.42 million hours and 72 million. In addition, around 4,500 new facilities will incur a combined burden of about 180,137 hours at a cost of 6.6 million. The total annual reporting and recordkeeping burden to the regulated community as a result of the SPCC Program is estimated to be approximately 2.6 million hours at a cost of about 78.6 million.

EXHIBIT 11.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—ALL EXISTING FACILITIES

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total
Storage:							
Small	73,626	755,173	177,623	1,006,422	$0	$1,091,079	$28,418,284
Medium	14,511	346,051	48,033	408,595	0	1,891,286	13,080,463
Large	2,218	146,152	9,517	157,887	0	1,233,329	5,617,205
Production:							
Small	39,075	562,489	94,268	695,832	0	677,170	19,749,279
Medium	6,426	121,312	21,272	149,010	0	939,632	4,992,377
Large	52	1,468	223	1,743	0	31,375	78,810

EXHIBIT 12.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—ALL NEW FACILITIES

Type of facility	Burden hours				Cost		
	Managerial $38.59	Technical $28.26	Clerical $17.71	Total burden hours	Capital	O&M	Total
Storage:							
Small	13,194	60,580	10,170	83,944	$155,042	$201,558	$2,757,678
Medium	2,597	21,832	2,928	27,357	38,657	391,318	1,198,967
Large	396	6,294	600	7,290	8,836	283,996	496,585
Production:							
Small	7,002	36,879	5,398	49,279	82,284	115,801	1,605,988
Medium	1,150	9,668	1,297	12,115	17,119	179,422	537,095
Large	9	129	14	152	207	6,730	11,189

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed at 40 CFR part 9.

Send comments regarding these matters, or any other aspects of information collection, including suggestions for reducing the burden, to the address listed above under **ADDRESSES** near the top of this document.

Dated: December 11, 1997.

Elaine F. Davies,

Deputy Director, Office of Emergency and Remedial Response.

[FR Doc. 97–33078 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5936–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Class V Underground Injection Control Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Class V Underground Injection Control Study, EPA ICR #1834.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: To obtain a copy of the ICR without charge please contact the Office of Ground Water and Drinking Water, EPA Headquarters, 401 M Street SW, Washington, DC 20460 or contact the persons listed below.

FOR FURTHER INFORMATION CONTACT: Safe Drinking Water Hotline, (800) 426–4791, e-mail: hotline-sdwa-group@epamail.epa.gov; or Anhar Karimjee, (202) 260–3862, fax (202) 260–0732, e-mail: karimjee.anhar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which own, operate or use Class V underground injection wells, or collect, record, or know of information on their existence and/or their location including, but not limited to: State Environmental Water Quality Agencies, State Oil and Gas Divisions, State Energy Divisions, State Departments of Health, State Agricultural Agencies, State Coastal Commissions or Oceanic Divisions, State Mining and Minerals Divisions, and State Hazardous Waste Divisions.

Title: Class V Underground Injection Control Study, EPA ICR #1834.01.

Abstract: The purpose of this information collection is to gather data on Class V underground injection wells. The collection will be conducted by EPA's Office of Ground Water and Drinking Water (OGWDW) as required by section 2c of the EPA's modified consent decree with the Sierra Club (*Sierra Club v. Carol M. Browner*, Civil Action No. 93–2644 NHJ, 1997) in order to comply with section 1421 of the Safe Drinking Water Act (42 U.S.C. 300h). These wells may pose a risk to underground sources of drinking water (USDWs) and therefore EPA is collecting information necessary to determine whether a national regulation is appropriate.

The collection will involve two components. First, a small number of initial site visits for agricultural drainage wells, storm water drainage wells, large capacity septic systems, and certain industrial wells will be conducted to count the number of those well types in certain geologic settings. This data will then be used to create a mathematical model that will eventually be used to estimate the number of wells in existence on a national scale. Once the model is created, additional site visits will be conducted to calibrate the model.

The second component of the collection, for fourteen other well subclasses (electric power return flow wells, direct heat return flow wells, heat pump/AC return flow wells, aquaculture wells, wastewater treatment effluent, aquifer recharge wells, aquifer storage and recovery wells, saltwater intrusion barrier wells, subsidence control wells, mining, sand and other backfill wells, spent brine recovery wells, solution mining wells, in-situ fossil fuel recovery wells and aquifer remediation wells), involves general data collection from State and local agencies on the number of wells in existence and their location on a county level. EPA may also, for some well subclasses in some States, ask for additional information such as permitting requirements, contamination incidents and injectate constituents. The site visits and the data collection component will provide EPA with an estimation of the number of wells, which will provide, in part, the basis for determining whether national regulations for the well subclasses are necessary, and if so, the extent of the regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: It is estimated that this information collection will involve a total cost burden to the Respondents of $72,073 and a total hour burden to the Respondents of 2,019 hours. There will be no capital, start-up or operation and maintenance costs but the collection will involve a one time response, from 2,369 respondents, of approximately 0.85 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 12, 1997.

Elizabeth A. Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–33081 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5936–6]

Clean Air Act Advisory Committee; Mobile Sources Technical Review Subcommittee; Notification of Public Advisory Subcommittee Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet on January 14, 1998, from 9:30 am to 4 pm (Eastern Standard Time) at the Doubletree Hotel National Airport, 300 Army-Navy Drive, Arlington, VA 22202, Ph: 703/416–4100. This is an open meeting and seating will be on a first-come basis. During this meeting, the subcommittee will hear progress reports from its workgroups and be briefed on and discuss other current issues in the mobile source program.

Members of the public requesting technical information should contact:

Philip A. Lorang, Designated Federal Officer, U.S. EPA—NVFEL, 2565 Plymouth Road, Ann Arbor, MI 48105, Ph: 734/668–4374, Fax: 734/741–7821, email: lorang.phil@epamail.epa.gov

or

John T. White, Alternate Designated Federal Officer, U.S. EPA—NVFEL, 2565 Plymouth Road, Ann Arbor, MI 48105, Ph: 734/668–4353, Fax: 734/741–7821, email: white.johnt@epamail.epa.gov.

Further information can also be obtained by visiting the FACA website for the Mobile Sources Technical Review Subcommittee and its workgroups at: http://transaq.ce.gatech.edu/epatac/index.htm. Members requesting administrative information should contact:

Jennifer Criss, Management Officer, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, FACA Help Line: 734/668–4518, Fax: 734/741–7821, email: criss.jennifer@epamail.epa.gov.

Written comments of any length (with at least 20 copies provided) should be sent to the subcommittee no later than January 4, 1998.

The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Michael Shields,

Acting Director, Office of Mobile Sources.

[FR Doc. 97–33077 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5935–9]

Draft General NPDES Permit for Shore-Based Seafood Processors Operating in Kodiak, Alaska (General NPDES Permit No. AK–G52–8000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft general NPDES permit.

SUMMARY: The Director, Office of Water, EPA Region 10, is proposing to issue a general National Pollutant Discharge Elimination System (NPDES) permit no. AK–G52–8000 for shore-based seafood processors operating in Kodiak, Alaska, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The proposed general NPDES permit authorizes discharges to St. Paul Harbor and Near Island Channel. The existing ten shore-based facilities are engaged in the processing of fresh, frozen, and canned seafood, surimi and fish powder. Discharges authorized by the proposed general permit include processing wastes, process disinfectants, and other wastewater, including cooling water, boiler water, freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to a facility, and live tank water. One facility discharges treated domestic and sanitary wastewater to St. Paul Harbor. The proposed permit authorizes discharge of wastewater to waters of the United States in and contiguous to the State of Alaska.

The processing facilities are required to collect and route all seafood processing wastes and wastewater to a treatment system consisting of 1 mm screens or equivalent technology. All seafood solid wastes are collected and transported to the by-product recovery facility in Kodiak. One facility processes fish wastes into fish powder at their location.

The proposed general permit contains the same effluent guideline limitations as the previous individual permits. Separate monitoring of the surimi and fish powder waste streams are new additions to the proposed general permit.

The proposed general NPDES permit for seafood processors in Kodiak, Alaska, does not authorize discharges of petroleum hydrocarbons, toxic pollutants, or other pollutants not specified in the permit.

DATES: The issuance date of this public document is December 18, 1997. The expiration date of this public document is on or before January 20, 1998.

Public Comments: Interested persons may submit written comments on the draft general NPDES permit to the attention of Florence Carroll at the address below. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. Comments must be submitted to EPA on or before the expiration date of the public document.

After the expiration date of the public document, the Director, Office of Water, EPA Region 10, will make a final determination with respect to issuance of the general permit. The tentative requirements contained in the draft general permit will become final conditions if no substantive comments are received during the public comment period. The permit is expected to become effective on March 12, 1998.

Persons wishing to comment on State Certification of the proposed general NPDES permit should submit written comments within this 30-day comment period to the State of Alaska, Alaska Department of Environmental Conservation (ADEC), 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801–1795.

Comments should be addressed to the attention of Alaska Water Quality Standards Consistency Review.

Persons wishing to comment on the State Determination of Consistency with the Alaska Coastal Management Program should submit written comments within this 30-day comment period, to the State of Alaska, Office of Management and Budget, Division of Governmental Coordination, P.O. Box 110030, Juneau, Alaska 99811–0030. Comments should be addressed to the attention of Alaska Coastal Management Program Consistency Review.

Public Hearing: No public hearings have been scheduled. Persons requesting a public hearing should submit their request to Florence Carroll at the address below. Notice of a public

hearing will be published in the **Federal Register**. Notices will also be mailed to all interested persons receiving copies of the proposed general permit.

Appeal of Permit: Within 120 days following the service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal the general permit in the Federal Court of Appeal in accordance with section 509(b)(1) of the Clean Water Act. Persons affected by a general permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge the permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual permit.

Administrative Record: The complete administrative record for the draft general permit is available for public review; contact Florence Carroll at the telephone number below in the EPA Region 10. Copies of the draft general NPDES permit and fact sheet are available upon request from the Region 10 Public Information Center at the following telephone number: 1–800–424–4EPA(4372)if calling from Idaho, Oregon, and Washington and 1–206–553–1200 if calling from Alaska and all other states.

ADDRESSES: Public comments should be sent to: Environmental Protection Agency Region 10, NPDES Compliance Unit (OW–133), Attn: Florence Carroll, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Florence Carroll, of EPA Region 10, at the address listed above or telephone (206) 553–1760.

Regulatory Flexibility Act: After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: December 5, 1997.

Roger K. Mochnick,

Assistant Director, Office of Water.

[FR Doc. 97–32921 Filed 12–17–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

December 12, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0806.

Expiration Date: 05/31/98.

Title: Universal Service—Schools and Libraries Universal Service Program.

Form No.: FCC Forms 470 and 471.

Respondents: Business or other for profit.

Estimated Annual Burden: 50,000 respondents; 12 hours per response (avg.); 600,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: On May 8, 1997, the Commission adopted rules in CC Docket 96–45 providing discounts on all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. The following forms will be used to implement these requirements and obligations: a. *FCC Form 470 "Description of Services Requested and Certification."* Schools and libraries ordering telecommunications services, Internet access, and internal connections under the universal service discount program must submit a description of the services desired to the Administrator. Schools and libraries may use the same description they use to meet the requirement that they generally face to solicit competitive bids. The Administrator will then post a description of the services sought on a website for all potential competing service providers to see and respond to as if they were requests for proposals (RFPs). 47 CFR 54.504(b)(2), 47 CFR 54.504(b)(3). Pursuant to section 254(h) of the 1996 Act, schools and libraries must certify under oath that: (1) The school or library is an eligible entity under section 254(h)(4); (2) the services requested will be used solely for educational purposes; (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) if the services are being purchased as part of an aggregated purchase with other entities, the identities of all co-purchasers and the portion of the services being purchased by the school or library. 47 CFR 54.504(b)(2). For schools ordering telecommunications services at the individual school level (i.e. primarily non-public schools), the person ordering such services should certify to the Administrator the percentage of students eligible in that school for the national school lunch program (or other comparable indicator of economic disadvantage ultimately selected by the Commission). This requirement arises in the context of determining which schools are eligible for the greater discounts being offered to economically disadvantaged schools. For schools ordering telecommunications services at the school district level, the person ordering such services for the school district should certify to the Administrator the number of students in each of its schools eligible for the national school lunch program (or other comparable indicator of economic disadvantage). Schools and libraries must also certify that they have developed a technology plan that has been approved by an independent entity or the Administrator. The technology plan should demonstrate that they will be able to deploy any necessary hardware, software, and wiring, and to undertake any necessary teacher training required to use the services ordered pursuant to the section 254(h) discount effectively. 47 CFR 54.504(b)(2). (No. of respondents: 50,000; hours per response: 6 hours; total annual burden: 300,000). b. *FCC Form 471 "Services Ordered and Certification."* Schools and libraries that have ordered telecommunications services, Internet access, and internal connections under the universal service discount program must file FCC Form 471 with the Administrator. This form requires schools and libraries to indicate whether funds are being requested for an existing contract, a master contract or whether it wishes to terminate service. Form 471 requires schools and libraries to list all services that have been ordered and the corresponding discount to which it is entitled. The school or library must also estimate its funding needs for the current funding year and for the following funding year. 47 CFR 54.504(b)(2). All schools and libraries planning to order services eligible for universal service discounts must file FCC Forms 470 and 471. The purpose of this information is to help determine which schools are eligible for the greater discounts. Schools and libraries must certify to the Administrator that they have developed an approved technology plan via Form 470. Copies of the forms may be obtained via e-mail from: <washtemp@neca.org>. Obligation to respond: Required to obtain benefits.

OMB Control No.: 3060–0807.

Expiration Date: 05/31/98.

Title: 47 CFR 51.803 and Supplemental Procedures for Petitions Pursuant to Section 252(e) of the Communications Act of 1934, as amended.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 50 respondents; 40.8 hours per response (avg.); 2040 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission as follows: (1) File with the Secretary of the Commission a detailed petition, supported by an affidavit, that states with specificity the basis for any claim that it has failed to act; and (2) serve the state commission and other parties to the proceeding on the same day that the party serves the petition on the Commission. Within 15 days of the filing of the petition, the state commission and parties to the proceeding may file a response to the petition. See 47 U.S.C. 252 and CFR 51.803. In a Public Notice (DA 97–2540), the Commission sets out procedures for filing petitions for preemption pursuant to section 252(e)(5) of the Communications Act of 1934, as amended. Section 252(e)(5) provides that "[i]f a State commission fails to act to carry out its responsibllity under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission." (1) *Filing of Petitions for Preemption.* Each party seeking preemption should caption its preemption petition, "Petition of [Petitioner's Name] pursuant to Section 252(e)(5) of the Communications Act (the Act)." In addition, on the date of the petition's filing, the petitioner should serve a copy of the petition by hand delivery on the Common Carrier Bureau, and send a copy to the Commission's contractor for public service records duplication. Section 51.803(a)(2) of the Commission's rules requires each party seeking preemption pursuant to section 252(e)(5) to "ensure that the state commission and the other parties to the proceeding or matter for which preemption is sought are served with the petition * * * on the same date that the petitioning party serves the petition on the Commission." Therefore, each section 252(e)(5) petitioner should state in its certificate of service the steps it is taking to comply with this requirement (e.g., hand delivery or overnight mail). Petitions seeking preemption must be supported by affidavit and state with specificity the basis for the petition and any information that supports the claim that the state has failed to act. See 47 CFR 51.803. Each petitioner should append to its petition the full text of any State commission decision regarding the proceeding or other matter giving rise to the petition as well as the relevant portions of any transcripts, letters, or other documents on which the petitioner relies. Each petitioner should also provide a chronology of that proceeding or matter that lists, along with any other relevant dates, the date the petitioner requested interconnection, services, or network elements pursuant to section 251 of the Act, the dates of any requests for mediation or arbitration pursuant to section 252(a)(2) or (b)(1), and the dates of any arbitration decisions in connection with the proceeding or matter. (*No. of respondents:* 50; *hours per response:* 40 hours; *total annual burden:* 2000). b. *Submission of Written Comments by Interested Third Parties.* Interested third parties may file comments on a preemption petition in accordance with a public notice to be issued by the Commission. (*No. of respondents:* 2; *hours per response:* 20 hours; *total annual burden:* 40 hours). All of the requirements would be used to ensure that petitioners have complied with their obligations under the Communications Act of 1934, as amended. Obligation to respond: Mandatory.

OMB Control No.: 3060–0791.

Expiration Date: 11/30/2000.

Title: Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–240.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1 respondents; 36 hours per response (avg.); 36 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In CC Docket No. 93–240, the Commission adopted accounting rules that would: require carriers to account for adverse federal antitrust judgments and post-judgment settlements of federal antitrust claims below the line in Account 7370, a nonoperating account for special charges. With regard to settlements of such lawsuits, there will be a presumption that carriers can recover the portion of the settlement that represents the avoidable costs of litigation, provided that the carrier makes a required showing. To receive recognition of its avoided costs of litigation, a carrier must demonstrate, in a request for special relief, the avoided costs of litigation by showing the amount corresponding to the additional litigation expenses discounted to present value, that the carrier reasonably estimates it would have paid if it had not settled. Settlement costs in excess of the avoided costs of litigation are presumed not recoverable unless a carrier rebuts that presumption by showing the basic factors that indicated the carrier to settle and demonstrating that ratepayers benefited from the settlement. A carrier requesting recovery of the avoided costs of litigation must accompany its request with clear and convincing evidence that, without the settlement, it would have incurred the expenses it estimates. The evidence will vary according to the circumstances. Among the data a carrier may provide are any avoidable cost estimates provided by the law firm representing the carrier, an estimate of attorney hours needed to complete the case along with the hourly rates for the attorneys involved, information regarding the discovery remaining to be completed, the amount of trial time scheduled by the judge, and information regarding the number of witnesses or documents that would have been introduced at trial, including any pretrial statements filed with the court, costs of expert witnesses, travel time, saved in-house counsel replacement costs, and any other material the carrier considers relevant. The avoided costs of litigation of a pre-judgment settlement would include the anticipated costs of litigating until a judgment. The avoided cost of litigation of a post-judgment settlement would anticipate a successful appeal in the particular case. A fundamental

requirement of Title II of the Communications Act of 1934, as amended, is that "all charges for and in connection with interstate communication service, shall be just and reasonable." This provision safeguards consumers against rates that are unreasonably high and guarantees carriers that they will not be required to charge rates that are so low as to be confiscatory. Carriers under the Commission's jurisdiction must be allowed to recover the reasonable costs of providing service to ratepayers, including reasonable and prudent expenses and a fair return on investment. Obligation to respond: Mandatory.

OMB Control No.: 3060–0760.

Expiration Date: 05/31/98.

Title: Access Charge Reform, CC Docket No. 96–262 (First Report and Order); Second Order on Reconsideration and Memorandum Opinion and Order; and Third Report and Order.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 14 respondents; 129,001 hours per response (avg); 1,806,018 total annual burden hours (for all collections approved under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $33,000.

Frequency of Response: On occasion; one-time requirement.

Description: In CC Docket No. 96–262, the Commission adopted a Third Report and Order. In the Third Report and Order, FCC adopts, consistent with principles of cost causation and economic efficiency, that where price cap LECs use general purpose computers and other general support facilities (GSF) to provide nonregulated billing and collection services to interexchange carriers, such GSF costs should not be allocated to these LECs' regulated access and interexchange categories but, instead, should be allocated to their nonregulated billing and collection categories. In the Third Report and Order, the Commission requires affected price cap LECs to make certain exogenous adjustments to their respective price cap indices (PCIs) and related basket indices. LECs affected by this Order are those price cap LECs that use regulated assets to provide nonregulated billing and collection services to interexchange carriers. For the purposes of estimating the information collection burdens for the Third Report and Order, we assume all price cap LECs are affected by the Order. Such LECs must determine the amount of GSF costs that they allocated to their respective access and interexchange categories during 1996 and then calculate the amount of such costs that would have been allocated to those categories during that year if the rule changes adopted in the Third Report and Order had been in effect at that time. Once that difference is determined, each affected price cap LEC is required to make an exogenous adjustment to its PCIs and related basket indices to prevent the earlier misallocation of these costs from continuing to inflate the rates charges for regulated services. Separate from the possible tariff filing burden described below, we estimate that it would take each of these price cap LECs four hours to complete the steps necessary to determine the amount of the exogenous price cap index (PCI) and related basket adjustments required by the Third Report and Order. Because we assume this particular burden applies to all 14 price cap LECs, we estimate the total burden to be 56 hours. Under the Third Report and Order, affected price cap LECs are required to make tariff revision filings on or before December 17, 1997, to implement these exogenous price cap adjustments. Because most of these 14 price cap LECs have not yet made such filings, there should be little or no additional tariff filing burden associated with these LECs' compliance with the Third Report and Order. For the four price cap LECs that have already made access reform tariff filings under other orders, we estimate that there will be an additional tariff filing burden of 1272 hours for these LECs as a group. Incremental burden associated with the Third Report and Order in this proceeding is as follows: *No. of respondents:* 14; *hours per response:* 94.8; *total annual burden:* 1328.

Obligation to respond: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–33044 Filed 12–17–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Alternative Dispute Resolution

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement.

SUMMARY: The FDIC has adopted a Statement of Policy to further its commitment to the use of Alternative Dispute Resolution for resolving appropriate disputes in a timely and cost efficient manner and to comply with the spirit of the Administrative Dispute Resolution Act of 1996, Pub. L. 104–320.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: James D. Hudson, Counsel (202) 736–0581, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Board of Directors of the FDIC has adopted a Statement of Policy on Alternative Dispute Resolution. The text of the Policy Statement follows:

Statement of Policy on Alternative Dispute Resolution

The Federal Deposit Insurance Corporation (FDIC) has been and continues to be committed to the use of Alternative Dispute Resolution (ADR) for resolving appropriate disputes in a more timely, less costly manner than litigation or administrative adjudication. The FDIC hereby adopts this policy to reiterate its commitment to ADR, to express its full support for ADR and to set forth a framework for the continuing and expanding use of ADR. The Corporation views ADR not as an end in itself, but rather, as an additional tool to accomplish its business efficiently, economically and productively. To that end, the FDIC believes that its ADR policy should be dynamic and continually developing.

The FDIC fully supports the cost-effective use of ADR, including negotiation, mediation, early neutral evaluation, neutral expert fact-finding, mini-trials and other hybrid forms of ADR in appropriate instances. The purpose of this policy is to use ADR in appropriate instances to resolve disputes at the earliest stage possible, by the fastest and least expensive method possible and at the lowest possible organizational level consistent with applicable delegations of authority.

The Deputy General Counsel for Corporate Operations (or his/her designee) serves as the Dispute Resolution Specialist for the Corporation. In addition, an ADR Steering Committee, composed of the Dispute Resolution Specialist (or his/her designee) and representatives from each Division and Office, was established by the Board of Directors in 1994 to coordinate and encourage appropriate and cost-effective conflict management practices in all aspects of FDIC operations and programs. The Dispute Resolution Specialist, working with the ADR Steering Committee, shall report to the Board of Directors on an annual basis regarding the Corporation's ADR efforts, implementation of this policy, and any revisions or actions necessary.

It is the responsibility of all FDIC employees to implement this policy and to practice and promote cost-effective dispute resolution in FDIC programs and other areas of Corporation operation. All management and employees of the FDIC are hereby directed to take the necessary steps to implement this policy and to cooperate to the fullest extent with the ADR Steering Committee and the Dispute Resolution Specialist (and his/her designee) to promote effective and appropriate use of ADR at the Corporation in furtherance of this policy.

The FDIC welcomes and encourages input on the use of ADR and comment on current and potential uses of ADR from both within and outside the Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of December, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–33038 Filed 12–17–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability; State Road 33 South, Lake County, Florida

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as State Road 33 South, located in the City of Groveland, Lake County, Florida, is affected by section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the FDIC until March 18, 1998.

ADDRESSES: Copies of detailed descriptions of this property, including maps, may be obtained from or are available for inspection by contacting the following person: Mr. Richard Espinoza, Federal Deposit Insurance Corporation, Northeast Service Center, 101 East River Drive, East Hartford, CT. 06108, (860) 291–4051; Fax (860) 291–4077.

SUPPLEMENTARY INFORMATION: The State Road 33 South property (a.k.a. 11804 State Road 33 South) consists of approximately 100 acres of undeveloped land divided into two tracts in a rural area approximately two miles south of the city limits of the City of Groveland, FL. The legal description of the site is Tracts 1, 2, 15, 16, 34, 47, 48, 49, 50, 63 and 64 in Section 6, Township 23 South, Range 25 East, Groveland Farms, according to the plat thereof as recorded in Plat Book 2, Pages 10 and 11, Public Records of Lake County, FL. The State Road 33 South property is predominately wetlands and contains dense vegetation. This property is within the State of Florida's Green Swamp Area of Critical Concern and is adjacent to Mill Stream Swamp which is managed by the St. John's River Water Management District for natural resource conservation purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before March 18, 1998 by the Federal Deposit Insurance Corporation at the appropriate address stated above.

Eligible Entities

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and,

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Form of Notice

Written notices of serious interest must be submitted in the following form:

NOTICE OF SERIOUS INTEREST

RE: State Road 33 South

Federal Register Publication Date: December 18, 1997.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the FDIC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: December 12, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–33006 Filed 12–17–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of

a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Shore Financial Corporation, Onley, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Shore Bank, Onley, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First United Bancshares, Inc., El Dorado, Arkansas; to merge with Citizens National Bancshares of Hope, Inc., Hope, Arkansas, and thereby indirectly acquire Citizens National Bank of Hope, Hope, Arkansas, and Peoples Bank and Loan Company, Lewisville, Arkansas.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. FNB Financial Services, Inc. ESOP, Durant, Oklahoma; to acquire .3 percent of the voting shares of FNB Financial Services, Inc., Durant, Oklahoma, and thereby indirectly acquire The First National Bank in Durant, Durant, Oklahoma.

Board of Governors of the Federal Reserve System, December 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-33087 Filed 12-17-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Gold Banc Corporation, Inc., Leawood, Kansas; to acquire Midwest Capital Management, Inc., Kansas City, Missouri, and thereby indirectly engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; agency transactional services for customer investments including securities brokerage, riskless principal transactions and private placement services, pursuant to §§ 225.28(b)(7)(i), (ii), and (iii) of the Board's Regulation Y; investment transactions as principal, including underwriting and dealing in government obligations and money market instruments, pursuant to § 225.28(b)(8)(i) of the Board's Regulation Y; investing and trading activities, i.e. engaging as principal in financial futures, pursuant to § 225.28(b)(8)(ii)(B) of the Board's Regulation Y; providing management consulting advice, pursuant to § 225.28(b)(9)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-33086 Filed 12-17-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

S. Ashraf Imam, Ph.D., University of Southern California: Based on an investigation report forwarded to the Office of Research Integrity (ORI) by the University of Southern California (USC) as well as information obtained by ORI during its oversight review, ORI found that Dr. Imam, an Associate Professor in the Department of Pathology, USC, engaged in scientific misconduct by including plagiarized material in a grant application submitted to the National Cancer Institute (NCI), National Institutes of Health (NIH).

Specifically, Dr. Imam's NIH grant application contained extensive paraphrasing of the text of another researcher's independent grant application to a state agency. Dr. Imam had been given that application by a colleague in confidence. The colleague was a reviewer on the state grant application and requested that Dr. Imam evaluate it and return the application to him.

The other researcher's application was subsequently funded. Dr. Imam paraphrased or copied into his NIH application all of the other researcher's specific aims, the background on proposed methods, the experimental design and research plan, and most of the references; only the preliminary results sections of Dr. Imam's application were different.

Dr. Imam has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has agreed, for the three (3) year period beginning December 8, 1997, to exclude himself voluntarily from:

(1) any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR Part 76 (Debarment Regulations); and

(2) serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443-5330.

Chris B. Pascal, J.D.,

Acting Director, Office of Research Integrity.

[FR Doc. 97-33035 Filed 12-17-97; 8:45 am]

BILLING CODE 4160-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request, Proposed Projects

Title: IRS Project 1099.

OMB No.: New Collection.

Description: A voluntary program which provides States' Child Support Enforcement agencies upon there request access to all of the earned and unearned income information reported to IRS by employers and financial institutions. The IRS 1099 information is used to locate noncustodial parents and to verify income and employment, which has proven essential to accurately establishing and enforcing child support obligations.

Respondents: State, Local, or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE 1099 Request Records	43	12	1	1,032

Estimated Total Annual Burden Hours: 1,032.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 15, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97-33083 Filed 12-17-97; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N-0517]

Changes in Medical Device Tracking and Postmarket Surveillance Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Changes in medical device tracking and postmarket surveillance authority under the Food and Drug Administration Modernization Act of 1997. The topic to be discussed is postmarket controls, including tracking and/or surveillance of devices.

Date and Time: The meeting will be held on January 15, 1998, 9 a.m. to 3 p.m.

Location: The meeting will be held at the University of Maryland Auditorium, 9640 Gudelsky Dr., Rockville, MD.

Contact: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ-300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-4692, FAX 301-594-4610.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number) and written material and requests to make oral presentations to the contact person by January 5, 1998. Written comments may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, by January 5, 1998.

If you need special accommodations due to a disability, please contact Casper E. Uldriks at least 7 days in advance of the meeting.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

The agency is interested in discussing the statutory changes concerning tracking and postmarket surveillance under the Food and Drug Administration Modernization Act of 1997 and whether the agency should develop additional criteria to use to determine whether tracking or postmarket surveillance requirements should be ordered by FDA. The agency would like to supplement the statutory criteria with additional nonbinding criteria to help determine which devices may need to be added or removed from the list of devices subject to tracking and/or postmarket surveillance requirements. FDA intends to publish its revised lists by February 19, 1998, the effective date of the new law.

By way of example, additional criteria that would support a tracking order might include the likelihood of a recall, or the likelihood of irreversible clinical outcomes. Additional criteria that might not support a tracking order, for example, might include current, standard clinical practices that mitigate risk. Additional criteria that would support a postmarket surveillance order might include, for example, the use of a new technology or the need to assess a new public health issue based on measurable outcomes. Additional criteria that would not support a

postmarket surveillance order, for example, might be whether there are alternative postmarket data collection mechanisms to obtain the same kind of information about the device. The agency could use such criteria to guide its decision whether to impose tracking or postmarket surveillance in a particular case.

The agency requests that comments or presentations be provided concerning the statutory requirements for medical device tracking and postmarket surveillance and related proposed risk assessment criteria which may be useful to the agency to determine whether tracking orders or postmarket surveillance orders should be issued for devices that meet the basic statutory requirements of section 519(e) or 522 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i(e) or 360l). The agency would like to encourage comments, discussion and proposals from the industry, the professional community, consumers, and any other interested parties or organizations. Written comments may be submitted in advance of the meeting to the Dockets Management Branch (address above).

To help focus discussion, FDA requests answers to the following questions:

(1) What factors (or criteria) should lead FDA to order tracking and/or postmarket surveillance?

(2) What factors (or criteria) should lead FDA not to order tracking and/or postmarket surveillance?

(3) Under what circumstances should FDA order both tracking and postmarket surveillance for a device?

(4) Under what circumstances should FDA order tracking but not postmarket surveillance, or vice versa?

Electronic Access

Additional information regarding the public meeting may be found on the Internet on the home page for the Center for Devices and Radiological Health under the "New Items on the Internet" section at www.cdrh.fda.gov. This will be an informal meeting conducted in accordance with 21 CFR 10.65.

Dated: December 15, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–33090 Filed 12–15–97; 3:02 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0500]

Telectronics Pacing Systems, Inc.; Premarket Approval of Telectronics Guardian™ ATP II Model 4211 Implantable Cardioverter Defibrillator System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Telectronics Pacing Systems, Inc., Englewood, CO, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Guardian™ ATP II Model 4211 Implantable Cardioverter Defibrillator System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 3, 1997, of the approval of the application.

DATES: Petitions for administrative review by January 20, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris J. Terry, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: On July 8, 1994, Telectronics Pacing Systems, Inc., Englewood, CO 80112, submitted to CDRH an application for premarket approval of the Guardian™ ATP II Model 4211 Implantable Cardioverter Defibrillator System. The Guardian™ ATP II Model 4211 Implantable Cardioverter Defibrillator System is indicated for use in patients who are at high risk of sudden death due to ventricular fibrillation and/or ventricular tachyrhythmias and who have experienced one of the following situations:

- survival of at least one episode of cardiac arrest (manifested by a loss of consciousness) due to a ventricular tachyrhythmia
- recurrent, poorly tolerated sustained ventricular tachycardia (VT). Note: The clinical outcome for hemodynamically stable, sustained-VT patients is not fully known. Safety and effectiveness studies have not been conducted.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On July 3, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 20, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information,

identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–32968 Filed 12–17–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–265]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Independent Renal Dialysis Facility Cost Report Form and Supporting Regulations 42 CFR 413.198, 413.20; *Form No.:* HCFA–265; *Use:* The Medicare Independent Renal Dialysis Facility Cost Report provides for determinations and allocation of costs to the components of the Renal Dialysis facility in order to establish a proper basis for Medicare payment. *Frequency:* Annually; *Affected Public:* Business or other for profit; *Number of Respondents:* 2,472; *Total Annual Responses:* 2,472; *Total Annual Hours:* 484,512.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration: Phase II Adult Interview, Phase II Child Interview, Survey of Agency Providers; *Form No.:* HCFA–R–221; *Use:* These survey instruments will be used to evaluate the Oregon Medicaid Reform Demonstration. The Phase II Adult and Phase II Child interviews are designed to collect information on health status, access to care and past health insurance status for adults and children participating in Phase II of the Oregon Health Plan (OHP). The survey of Agency providers is designed to collect information on the experience under OHP of agencies that traditionally treat disabled and elderly Medicaid beneficiaries. *Frequency:* One Time; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Governments; *Number of Respondents:* 4,150; *Total Annual Responses:* 4,150; *Total Annual Hours:* 1,730.

3. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Health Maintenance Organizations & Competitive Medical Plans National Data Reporting Requirements and Supporting Regulations 42 CFR 417.100, .940, .126, .478, .162; *Form No.:* HCFA–906; *Use:* This form captures information which governs qualification of new Health Maintenance Organizations (HMOs) and the eligibility of Competitive Medical Plans (CMPs), employer compliance, recovery of Federal loan and loan guarantees, financial disclosure, and continuing regulation of qualified HMOs and CMPs which provide health care services to beneficiaries for a fixed fee which is paid on a periodic basis. *Frequency:* Other; Annually, Quarterly; *Affected Public:* Federal Government, Business or other for-profit, Not-for-profit institutions, State, local or Tribal Government; *Number of Respondents:* 313; *Total Annual Responses:* 953; *Total Annual Hours:* 3,130.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 11, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–33064 Filed 12–17–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Document Identifier: HCFA–179

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Transmittal and Notice of Approval of State Plan Material and Supporting Regulations in 42 CFR 430.10–430.20 and 440.167; *Form No.:* HCFA–179 (OMB #0938–

0193); *Use:* The HCFA–179 is used by State agencies to transmit State plan material to HCFA for approval prior to amending their State plan. The State Plan is the method in which States inform staff of State policies, standards, procedures and instructions; *Frequency:* On occasion; *Affected Public:* State, local and tribal government; *Number of Respondents:* 57; *Total Annual Responses:* 1,254; *Total Annual Hours:* 1,254.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 12, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33067 Filed 12–17–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–53]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Imposition of Cost Sharing Charges Under Medicaid and Supporting Regulations contained in 42 CFR 447.53; *Form No.:* HCFA–R–53 (OMB# 0938–0429); *Use:* The information collection requirements contained in 42 CFR 447.53 require the States to include in their Medicaid State Plan their cost sharing provisions for the medically and categorically needy. The State Plan is the method in which States inform staff of State policies, standards, procedures and instructions; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 2,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 10, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33071 Filed 12–17–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form #HCFA–855]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHSS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 C.F.R., Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because a statutory deadline imposed by the Balanced Budget Act of 1997 (Pub. L. 105–33). Without this information, HCFA would not be able to properly implement the requirements set forth in the statute.

HCFA is requesting OMB review and approval of this collection by 12/31/97, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, by 12/29/97.

During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR. 1320.5.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare and Other Federal Health Care Program Providers/Supplier Enrollment Application; *Form No.:* HCFA–855, HCFA–855C, HCFA–855R, HCFA–855S; *Use:* This information is needed to enroll providers and suppliers into the Medicare program by identifying them, and verifying their qualifications and eligibility to participate in Medicare, and to price and pay their claims.; *Frequency:* Initial Enrollment/Recertification; *Affected Public:* Business or other for-profit, individuals or households, not-for-profit institutions, and Federal Government; *Number of Respondents:* 225,000; *Total Annual Responses:* 225,000; *Total Annual Hours:* 435,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designee referenced below, by 12/29/97: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: December 12, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33066 Filed 12–17–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 1997

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ARBAUGH, CHARLES B, W PALM BEACH, FL	12/18/1997
BARNARD, KEITH L, BROOKLYN, NY	12/18/1997
BONANNO, STEVEN, BROOKLYN, NY	12/18/1997
BONE, DONALD RAY, LITTLE ROCK, AR	12/18/1997
BORGES, ALFREDO LAZARO JR, EGLIN AFB, FL	12/18/1997
CABRERA, JUAN, PLANDOME HEIGHTS, NY	12/18/1997
CHERKAS, MARK W, YARDLEY, PA	12/18/1997
FOLSE, NADINE M, RACELAND, LA	12/18/1997
FOSTER, RAMONA, CAROLINA, RI	12/18/1997
FRAZIER, JAMES, OAK PARK, MI	12/18/1997
GONZALEZ, PEDRO LEONARDO, MIRAMAR, FL	12/18/1997
HOWARD, LINDA J, CHEPACHET, RI	12/18/1997
HUDSON, LOVEY LEE, JACKSONVILLE, AR	12/18/1997
IRVING, LEWIS M JR, BRIDGETON, NJ	12/18/1997
LAMBERT, DIANNA, BRYAN, TX	12/18/1997
LAWRENCE, THOMAS JAMES, WAYNESVILLE, MO	12/18/1997
LEE, STEVEN K, LAFAYETTE HILL, PA	12/18/1997
MCDONALD, J T, LITTLE ROCK, AR	12/18/1997
MCKENZIE, MARIE, WHEATLEY HGHTS, NY	12/18/1997
MER, EVGENYA, SHARON SPRINGS, NY	12/18/1997
OVERTON, PAMELA SALERNO, NEW HAVEN, CT	12/18/1997
RODRIQUEZ, SONIA, NEW YORK, NY	12/18/1997
ROWELL, GEORGE P, DELANO, CA	12/18/1997
SCHUSTER, STANLEY, ANN ARBOR, MI	12/18/1997
STAGGER, ROBERT W, UPPER SANDUSKY, OH	12/18/1997
STEVEN LEE, INC, LAFAYETTE HILL, PA	12/18/1997
TAING, SOPHY, POMONA, CA	12/18/1997
TARAWALY, TEJAN, OREGON, WI	12/18/1997
THOMAS, SHARMAINE, AUSTIN, MN	12/18/1997
VIDU, DORIAN M, CLEVELAND, OH	12/18/1997
WEATHERLY, BILLY WAYNE, FORREST CITY, AR	12/18/1997
YANEZ-LEMIRE, FAITH, GOFFSTOWN, NH	12/18/1997
ZWEIG, MARK ALAN, BOSSIER CITY, LA	12/18/1997
PATIENT ABUSE/NEGLECT CONVICTIONS	
BLOOM, RICHARD M, BROOKLINE, MA	12/18/1997
BUTLER, HENRY, NOBLE, IL	12/18/1997
CACIOPPO, DINO T, SAN LEANDRO, CA	12/18/1997
CICHON, DANIEL FRANK, OSHKOSH, WI	12/18/1997
COLLINS, ANN, BEVERLY, MA	12/18/1997
CROWLEY, JENNIFER LENAE, SWISHER, IA	12/18/1997
FREDERICK, JANENE L, ST LOUIS, MO	12/18/1997
GRIFFIN, MICHAEL JAMES, OSAWATOMIE, KS	12/18/1997
LOPEZ, ADAM, LOVINGTON, NM	12/18/1997

Subject, city, state	Effective date
NIVEN, CAROL, TRIADELPHIA, WV	12/18/1997
OBAS, JULIUS O, BOSTON, MA	12/18/1997
REITER, SUE ELLEN, OTTUMWA, IA	12/18/1997
SHELTON, MALCOLM, TN COLONY, TX	12/18/1997
THOMAS, ANNAMAE, BRONX, NY	12/18/1997
THOMPSON, DENNIS, KNOXVILLE, TN	12/18/1997
WASHINGTON, DONNA LYNNETTE, FORT WORTH, TX	12/18/1997
CONVICTION FOR HEALTH CARE FRAUD	
ADAMS, RONALD J, MANSFIELD, MA	12/18/1997
DOLAN, DAVID W, LIVONIA, MI	12/18/1997
KATZ, ARNOLD S, HUNTINGDON VALLEY, PA	12/18/1997
LAZAR, CALVIN, BURTON, MI	12/18/1997
MARTIN, CEDRIC, NEW ORLEANS, LA	12/18/1997
NASSER, GEORGE J, CAIRO, IL	12/18/1997
SLATTON, TOSCNELLIS, HARVEY, IL	12/18/1997
SPERL, LOIS A, WABASHA, MN	12/18/1997
UEBERALL, MARC, NEW YORK, NY	12/18/1997
WEINSTOCK, SANFORD, WESTLAND, MI	12/18/1997
CONVICTION—OBSTRUCTION OF AN INVESTIGATION.	
HARRELL, WILLIAM, CENTRALIA, IL	12/18/1997
CONTROLLED SUBSTANCE CONVICTIONS	
EVANS, LEONARD M, MONTGOMERY, PA	12/18/1997
MADEY, EDWARD V, LOS ANGELES, CA	12/18/1997
SARGENT, WENDELL A, STREATOR, IL	12/18/1997
LICENSE REVOCATION/SUSPENSION/SURRENDER	
ARBETTER, STEPHEN, MILFORD, MA	12/18/1997
ARTHUR, GREGORY L, BRONX, NY	12/18/1997
BAILEY, SUSAN, SOUTH BOSTON, VA	12/18/1997
BALOGH, LASZLO, SAN DIEGO, CA	12/18/1997
BERNARD, MARTINO, YONKERS, NY	12/18/1997
BIETER, THOMAS, MINNEAPOLIS, MN	12/18/1997
BLOOM, CHARLES, HINCKLEY, MN	12/18/1997
BODMER, MERAL O, SELINSGROVE, PA	12/18/1997
BOMPUS, LUCY J, BLUEFIELD, VA	12/18/1997
CANDELARIO, WALTER, MIDLOTHIAN, VA	12/18/1997
CHRISTENSEN, KAREN, MCGREGOR, MN	12/18/1997
CRAWFORD, JODI ANN, NORFOLK, VA	12/18/1997
DELGADO, ALEXANDER, UTICA, NY	12/18/1997
DIN, GLORIA JEAN, RICHMOND, VA	12/18/1997
DOWNS, TINA MARIE, KALAMAZOO, MI	12/18/1997
ELGABRI, TAREK H, BARRINGTON, RI	12/18/1997
EMBLOM, JOHN W, BUFFALO, MN	12/18/1997
ERICKSEN, MICHAEL, DULUTH, MN	12/18/1997
ESSEN, JAMES A, ZIM, MN	12/18/1997
FINLAY MEDICAL LABORATORY, W NEW YORK, NJ	12/18/1997
FORD, MICHELLE GARRETT, LYNCHBURG, VA	12/18/1997
FRANZ, JOSEPH W, TEMECULA, CA	12/18/1997
FREISTAT, ERIC T, CAMP HILL, PA	12/18/1997
FRIEDENSON, HARVEY, MINNEAPOLIS, MN	12/18/1997
GAGNER, KATHRYN L, NEW HOPE, PA	12/18/1997
GALLUP, JOSEPH, TAYLOR, MI	12/18/1997
GERMAIN, TRESA M, SOMERSET, WI	12/18/1997
GLOVER, MICHAEL W, GRAND RAPIDS, MI	12/18/1997
GOLTZ, JEFFREY I, OXON HILL, MD	12/18/1997
GOTTESMAN, ALBERT, GREAT NECK, NY	12/18/1997
GRAFF, RUSSELL GARDEI, GRAND RAPIDS, MI	12/18/1997
GREY, DAVID FRANCIS, VENTURA, CA	12/18/1997
HARRIS, ANGELA V, CAPRON, VA	12/18/1997
HASS, PATSY A, NORTH TAZEWELL, VA	12/18/1997
HUANG, PAKY, YONKERS, NY	12/18/1997
HUH, MOON HO, ELMHURST, NY	12/18/1997
JOHNSON, MARGARET M, ST LOUIS, MN	12/18/1997
KAMARA, KADIATU, ALEXANDRIA, VA	12/18/1997
KIM, SAMUEL, WASHINGTON, DC	12/18/1997
KLICKSTEIN, MURRAY, SALEM, MA	12/18/1997
KOECKE, DAVID A, FREDERICKSBURG, VA	12/18/1997

Subject, city, state	Effective date
KOVACH, CYNTHIA P, VIRGINIA BEACH, VA	12/18/1997
LANGE, PAUL A, WASHINGTON, DC	12/18/1997
LEE, STEVEN, MINNEAPOLIS, MN	12/18/1997
LEMING, LYNN G, HAVANA, IL	12/18/1997
LEWIS, DAWN E, PHILADELPHIA, PA	12/18/1997
LINT, TERRY W, BLANCHARD, MI	12/18/1997
LITTLEJOHN, EDWARD, WINONA, MN	12/18/1997
LOEWEN, BRENDA S, OWATONNA, MN	12/18/1997
LUGAR, NINA B, COVINGTON, VA	12/18/1997
MAGRI, MICHAEL B, GOODE, VA	12/18/1997
MAMZELLIS-HEIM, CAROLANN, SPRINGFIELD, VA	12/18/1997
MARSHALL, PAMELA A, STAFFORD, VA	12/18/1997
MCLEOD, RUTH, PLYMOUTH, NH	12/18/1997
MONTGOMERY, LINDA, VIRGINIA BEACH, VA	12/18/1997
MUNZ, JOHN, CIRCLE PINES, MN	12/18/1997
MURN, MELANIE C, SHOREWOOD, MN	12/18/1997
NASIR, IQBAL, BINGHAM FARMS, MI	12/18/1997
NEENAN, CHERYL ANN, SAN DIEGO, CA	12/18/1997
PALMA, JORGE M, E PROVIDENCE, RI	12/18/1997
PARKER, LILA SOPHIA, WESTLAND, MI	12/18/1997
PARRISH, LOUIS, NEW YORK, NY	12/18/1997
PASCHKE, RICHARD E, GRAND RAPIDS, MI	12/18/1997
PEDERSEN, BRIAN CHARLES, CHAPPAQUA, NY	12/18/1997
PIERCE, MICHELE ANN, HAMPTON, VA	12/18/1997
PISCITELLO, JAMES J, GREENDALE, WI	12/18/1997
POKRZYWINSKI, JOHN, ST PAUL, MN	12/18/1997
PONISCHIL, WOLFGANG SIEGFRIED, E LANSING, MI	12/18/1997
PROBASCO, ROBIN J, VIRGINIA BEACH, VA	12/18/1997
QUILL, DIANNA M, MANASSAS, VA	12/18/1997
RAFKIN, MYRON D, WOLLASTON, MA	12/18/1997
REED, HOMER B C, HOPKINTON, MA	12/18/1997
RITTELMEYER, PAUL V, ARLINGTON, VA	12/18/1997
ROE, SARAH DALTON, ROCKY MOUNT, VA	12/18/1997
RUSSELL, GEORGE BRENT, KALAMAZOO, MI	12/18/1997
SCHMIDT, MARY ANN, POWHATAN, VA	12/18/1997
SCHOEFIELD, ANNA, SOUTH BOSTON, VA	12/18/1997
SCHUFT, LESTER E, HUTCHINSON, MN	12/18/1997
SERRANO, CARIDAD, SUNNYSIDE, NY	12/18/1997
SHAW, STEVEN K, CLEARFIELD, PA	12/18/1997
SHAW, WILLIAM JAMES, HAVERILL, MA	12/18/1997
SHELOR, FRANCES SHEPPARD, HARDY, VA	12/18/1997
SMITH, PAULETTE DOMINICK, HARVEY, LA	12/18/1997
SNYDER, RICHARD, JACKSON, MI	12/18/1997
SORDELETT, STARR S, HOPEWELL, VA	12/18/1997
SPIVEY, VICKIE E, COURTLAND, VA	12/18/1997
STEPHENS, BEATRICE BEARDEN, DETROIT, MI	12/18/1997
STURM, REGINA FOSTER, HAMPTON, VA	12/18/1997
SWEENEY, MICHAEL, VIENNA, VA	12/18/1997
TAEFI, PARVIZ, GRAND ISLAND, NY	12/18/1997
TAYLOR, CLARK E, HARBOR SPRINGS, MI	12/18/1997
TESTERMAN, AMY T, SUTHERLIN, VA	12/18/1997
THOMPSON, GREG R, HAMPSTEAD, NH	12/18/1997
THOMPSON, LINDA G, WASHINGTON, PA	12/18/1997
TOOT, BYRON V, IRVINE, CA	12/18/1997
TRICARICO, MICHAEL ANTHONY, ROCKY HILL, NJ	12/18/1997
WEISSMAN, MICHAEL GARY, WELLESLEY, MA	12/18/1997
WHEELER, CHARLES A JR, LEOMINSTER, MA	12/18/1997
WHITE, TONY F, NEWPORT NEWS, VA	12/18/1997
WITT, LINDA, LISBON, ME	12/18/1997
WORDELL, WILLIAM A, WHITE RIVER JUNCTION, VT	12/18/1997
ZALUZEC, DANIEL J, FREDERICKSBURG, VA	12/18/1997
FEDERAL/STATE EXCLUSION/SUSPENSION	
BERGEN MEDICAL ASSOCIATES, INC, JERSEY CITY, NJ	12/18/1997
CARPIO, STEPHEN H, E NORTHPORT, NY	12/18/1997
FHS PHARMACY, BRONX, NY	12/18/1997
HARUTHUNIAN, ASPET, PORT WASHINGTON, NY	12/18/1997
HUGHES, JOHN, E NORTHPORT, NY	12/18/1997
JARAVATA, BLANCA, STONYBROOK, NY	12/18/1997
MONEMVASITIS, GEORGE, BROOKLYN, NY	12/18/1997
NIEDZIELSKI, LUELLA, LAKE GROVE, NY	12/18/1997
SALEMA, JOSEPH, WENONAH, NJ	12/18/1997
WESTCHESTER SURGICAL SUPPLY, LARCHMONT, NY	12/18/1997

Subject, city, state	Effective date
OWNED/CONTROLLED BY CONVICTED EXCLUDED	
BASS ORTHOPEDIC LAB, EGLIN AFB, FL	12/18/1997
BASS ORTHOPEDIC, INC, EGLIN AFB, FL	12/18/1997
CENTRAL ORTHOPEDIC OF MIAMI, HIALEAH, FL	12/18/1997
CHILDREN'S HOME CARE MEDICAL, LARCHMONT, NY	12/18/1997
NORTH DELTA MEDICAL TRANS, INC, MANGHAM, LA	12/18/1997
NORTHEAST CAB COMPANY, ALTON, IL	12/18/1997
QUIRANTES INTERPRISE, HIALEAH, FL	12/18/1997
FAILURE TO GRANT IMMEDICARE ACCESS	
FREILICH, IRA W, ALTAMONTE SPGS, FL	11/30/1997
DEFAULT ON HEAL LOAN	
ADAMS, RICK, GLEN ROCK, NJ	12/18/1997
ADONIZIO, CHARLES P, WILKES-BARRE, PA	12/18/1997
ALFORD, GEORGE R, HOUSTON, TX	12/18/1997
BARBATO, BEVERLY V, CAPE CORAL, FL	12/18/1997
BEHLKE, RICHARD T, SCRANTON, PA	12/18/1997
BELL, JEFFREY S, EAGAN, MN	12/18/1997
BERRY, SHELLIE J, CANTON, TX	12/18/1997
BLISSENBACH, DAVID A, DUBLIN, OH	12/18/1997
BOLINGER, MARK A, HADDONFIELD, NJ	12/18/1997
BROOKS, SHARON L, MILWAUKEE, WI	12/18/1997
CHAMBERLAIN, RONALD W, LAKE ST LOUIS, MO	12/18/1997
CHASTEN, CLARK M, CAMDEN, NY	12/18/1997
CLARK, JOHN E, WASHINGTON, DC	12/18/1997
CRAWFORD, KENNETH ANTHONY, PRIMGHAR, IA	12/18/1997
DIPPIE, MARY BETH MATTHEWS, QUITMAN, TX	12/18/1997
ENOGWE, FELIX G, NEWARK, NJ	12/18/1997
FANIZZI, THOMAS, BRIGHTWATERS, NY	12/18/1997
FERNANDEZ, ENRIQUE A, NEW YORK, NY	12/18/1997
GARCIA, JAVIER, SAN ANTONIO, TX	12/18/1997
KRALJ, MLADEN M, CHICAGO, IL	12/18/1997
LANDSIEDEL, RANDY J, JASPER, TX	12/18/1997
LEARY, PAUL T, KINNELON, NJ	12/18/1997
LOPEZ, BRENT K, HOUSTON, TX	12/18/1997
MANZONI, JANET M (CAVALIERI), MORGANVILLE, NJ	12/18/1997
MARGAS, LILLIAN E, HICKSVILLE, NY	12/18/1997
MAYS, DEWEY O III, DAYTON, OH	12/18/1997
MAZUR, BONNIE L (PANICO), LINWOOD, NJ	12/18/1997
MCDONALD, NATALIE A, MINEOLA, NY	12/18/1997
MEYER, CHARLES D, BRICK, NJ	12/18/1997
MITTET, DAVID J, DILWORTH, MN	12/18/1997
MOSCOVITZ, BENJAMIN H, FAR ROCKAWAY, NY	12/18/1997
MOSER, DAVID R, EL PASO, TX	12/18/1997
MOSS, MARK ERIC, ROCHESTER, NY	12/18/1997
MURPHY, STEPHEN J, CHICAGO, IL	12/18/1997
NICOLL, DOLORES L, NEW YORK, NY	12/18/1997
O'HEA, JOHN M, MEDFORD, NJ	12/18/1997
PENNY (HARGREAVES), PATRICIA E, DOYLESTOWN, PA	12/18/1997
PICARD (ALLEN), KAREN KAYE, CHESTERFIELD, MO	12/18/1997
RIBERDY (DUFFY), JEAN M, BENSALEM, PA	12/18/1997
RODMAN, KAREN D, INDIANAPOLIS, IN	12/18/1997
SARVER, PAUL A, ADA, MI	12/18/1997
SAVELLI, CHRISTINE A, BETHLEHEM, PA	12/18/1997
SCHUERHOLZ, DONNA J, DEERFIELD BEACH, FL	12/18/1997
SCOTT, ANNETTE E, ALEXANDRIA, VA	12/18/1997
SPALDING, MARSHA D, NACOGDOCHES, TX	12/18/1997
TORAN, ALEV A, NEW YORK, NY	12/18/1997
WUERTZ, CHRISTOPHER, ST LOUIS, MO	12/18/1997
ZITA, GINO, TRENTON, NJ	12/18/1997
ZUCKER, RONALD G, LONG BEACH, NY	12/18/1997

Dated: December 10 , 1997.
Joanne Lanahan,
Director, Health Care Administrative Sanctions, Office of Inspector General, OI.
[FR Doc. 97–33060 Filed 12–17–97; 8:45 am]
BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office for Protection From Research Risks; Submission for OMB Review; Comment Request; Protection of Human Subjects: Assurance Identification/Certification Declaration

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office for Protection from Research Risks (OPRR), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** of August 22, 1997 (62 FR 44701) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Protection of Human Subjects: Assurance Identification/Certification/ Declaration. *Type of Information Collection Request:* Extension. *OMB Control Number:* 0925–0418. *Expiration Date:* 12/31/97. *Need and Use of Information Collection:* The Federal Policy for the Protection of Human Subjects was promulgated on June 18, 1991 (56 FR 28003) and requires applicant and awardee institutions receiving Federal funds to initiate procedures to report, disclose, and keep required records for the protection of human subjects of research. Optional Form 310, Protection of Human Subjects: Assurance Identification/ Certification/Declaration is necessary for the implementation and administration of the reporting and recordkeeping requirements set forth in the Federal Policy. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Business or other for-profit; Not for-profit institutions; Federal Government; State, local or tribal government. *Type of Respondents:* Researchers. The annual reporting burden is as follows: Estimated number of Respondents: 3,831. *Estimated Number of Responses per Respondent:* 56.8. *Average burden hours per response:* 0.755; and *Estimated total Annual Burden Hours Requested:* 164,428. The annualized cost to respondents is estimated at: $2,096. There are not Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information will have the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Michele Russell-Einhorn, Director of Regulatory Affairs, Office for Protection from Research Risks, 6100 Executive Blvd., Suite 3B–01, Rockville, MD. 20892–7507, or call non-toll-free-number (301) 435–5649 or E-mail your request, including your address to:<einhornm@od.nih.gov>.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: December 10, 1997.
Gary B. Ellis,
Director, OPRR.
[FR Doc. 97–33016 Filed 12–17–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed information requests, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of each proposed collection of information. To request a copy of these documents, contact the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The 1997 Sample Survey of Mental Health Organizations and General Hospitals with Separate Psychiatric Services—Revision of the Inventory of Mental Health Organizations and General Hospital Mental Health Services (IMHO/ GHMHS). The survey will be conducted in two phases. Phase I will be a brief two page inventory consisting of two forms—one for all organizations that provide mental health treatment services and the other for all managed behavioral health care organizations. Phase II will be a sample survey of 3,800 organizations drawn from the universe of organizations providing mental health treatment services identified in the first phase. The sample survey will use a more comprehensive, but very similar form to the one used in the 1994 IMHO/GHMHS. The organizational data to be collected include ownership and management, client/patient

demographics, revenues and expenditures, and staffing. The dataset produced will be used to provide national statistical estimates and will be the basis of the National Directory of Mental Health Services. The annual burden estimate is as follows:

	Number of respondents	Annual number of responses per respondent	Average hours per response	Annual burden hours
Phase I	10,559	1	0.23	2,478
Specialty Mental Health Organizations	(3,235)	(1)	(00.20)	(647)
General Hospitals with Psychiatric Services	(1,374)	(1)	(00.25)	(343)
General Hospitals to be screened for Psychiatric Services	(4,080)	(1)	(00.25)	(1,020)
Community Residential Organizations	(1,275)	(1)	(00.25)	(319)
Managed Care Organizations	(595)	(1)	(00.25)	(149)
Phase II (Sample Survey)	3,229	1	2.0	6,939
Specialty Mental Health Organizations	(2,267)	(1)	(02.0)	(4,534)
General Hospitals with Psychiatric Services	(962)	(1)	(02.5)	(2,405)
Total	13,788			9,417

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 12, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–33011 Filed 12–17–97; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Community Mental Health Services (CMHS) Block Grant Application, FY98—Revision—The ADAMHA Reorganization Act 42 U.S.C. 300x1–9 established the Community Mental Health Services Block Grant program which authorized block grants to States to provide community based mental health services. Under provision of the law, States may receive allotments only after an application is approved by the Secretary. Further, the Act requires States to submit to the Secretary a plan for providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance and an annual implementation report on the block grant fund activities for the previous year. This block grant program is administered by SAMHSA's Center for Mental Health Services (CMHS). The proposed application reflects the criteria, assurances, and requirements set forth in Pub. L. 102–321. The revision includes the consolidation of the criteria for application and reduced respondent burden.

The annual burden estimates are as follows:

	Number of respondents	Number of responses per respondent	Average burden per response	Annual burden hours
States and Territories	59	1	210	12,390

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 12, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–33014 Filed 12–17–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–8005.

Proposed Project: 1998 Inventory of Mental Health Services in Juvenile Justice Facilities—New—This survey will gather information for the first time about the availability of mental health services in the universe of approximately 3,100 juvenile justice facilities nationwide. State and national information will be collected about the organization of mental health services, characteristics of youth receiving these services, and mental health staffing patterns and costs.

The total annual burden estimate is shown below.

	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden (hours)
Juvenile Justice Facilities	3,100	1	1.5	4,650

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel J. Chenok, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: December 12, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–33012 Filed 12–17–97; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–8005.

Proposed Project

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Final Rule—Information collection requirements in the Final Rule for the protection and advocacy programs serving individuals with mental illness. The development of regulations and issuance of the Final Rule meets the directive under Pub. L. 102–173, "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991" (PAIMI Act), 42 U.S.C. 10826(b), requiring the Secretary to promulgate final regulations to carry out the Act. 45 CFR Subchapter 51 of the Final Rule contains information collection requirements.

The PAIMI Act (Pub. L. 99–319) authorized funds to support activities on behalf of individuals with mental illness. Recipients of this formula grant program are required by law to annually report their activities and accomplishments to include the number of individuals served, types of facilities involved, types of activities undertaken and accomplishments resulting from such activities. This summary must also include a separate report prepared by the PAIMI Advisory Council descriptive of its activities and assessment of the operations of the protection and advocacy system. The annual burden estimate is as follows:

	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Section 51.8(a)(2) Program Performance Report:	56	1	35.0	*1,960
Part I			(33.0)	
Part II			(2.0)	
Section 51.8(a)(8) Advisory Council: Report	56	1	10.0	*560
Section 51.10 Remedial Actions:				
Corrective Action Plan	6	1	8.0	48
Implementation Status Report	6	3	2.0	36
Section 51.23(c) Reports, materials and fiscal data to Advisory Council	56	1	1.0	56
Section 51.25(b)(2) Grievance Procedure	56	1	0.5	28
Total	124			2,688

*Burden hours associated with the Annual Performance Report and Advisory Council Report are approved under OMB Control No. 0930–0169.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel J. Chenok, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: December 12, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–33013 Filed 12–17–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW116753]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

December 10, 1997.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW116753 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW116753 effective September 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–33061 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–98–1430–01; N–59348]

Termination of Recreation and Public Purposes Classification; Nevada

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes Classification N–59348 in its entirety and provides for opening the land to disposal by exchange to Perma Bilt, pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 CFR 2200).

EFFECTIVE DATE: December 18, 1997.

FOR FURTHER INFORMATION CONTACT: Cheryl Ruffridge, Las Vegas Field Office, Bureau of Land Management, 4765 Vegas Drive, Las Vegas, NV 89108, (702) 647–5064.

SUPPLEMENTARY INFORMATION: On February 16, 1996, a Notice of Realty Action (NORA) was published for the Clark County School District for a senior high school under the Recreation and Public Purposes Act (43 CFR 2740) for the following described land comprising 40 acres:

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E.,
Sec. 12, S½NE¼SE¼, N½SE¼SE¼.

The senior high school was not constructed and the proponent relinquished the parcel on July 3, 1996, Perma Bilt has requested the parcel in an exchange. The lands are segregated for exchange purposes by notation to the public land records and will remain closed to other forms of dispostion.

Pursuant to Recreation and Public Purpose Act of July 25, 1979 (43 CFR 2740), classification of the above described lands, serial number N–59348, is hereby terminated in its entirety. And in accordance with section 206 of the Federal Land Policy and Management Act of October 21, 1976, (43 CFR 2200), and the Federal Land Exchange Facilitation Act of August 20, 1988, (43 CFR parts 2090 and 2200), the land will remain closed to all other forms of appropriation including the mining and mineral laws, pending disposal of the land by exchange.

Dated: December 12, 1997.

Joel I. Mur,

Acting Assistant District Manager, Non-Renewable Resources.

[FR Doc. 97–33068 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–7123–6663]

Establishment of Supplementary Rule for Parking/Camping Restrictions Along California State Hwy. 78 in the Imperial Sand Dunes.

AGENCY: Bureau of Land Management.

ACTION: Establishment of supplementary rule.

SUMMARY: The primary purpose of this supplementary rule is to prohibit parking or camping within 25 feet of California State Hwy. 78 where it passes through the Imperial Sand Dunes. This rule would reduce the potential of serious injury or death to both campers and drivers as they recreate in or pass through this area of the Imperial Sand Dunes.

1. No person may park a vehicle or camp within 25 feet of California State Hwy. 78 where it passes through the Imperial Sand Dunes. This prohibition will extend along both sides of Hwy. 78 from the intersection of Hwy. 78 and the Coachella Canal easterly to the intersection of Hwy. 78 and the Glamis Flats off ramp.

Background: In the past, hundreds of off highway vehicle (OHV) enthusiasts have parked immediately adjacent to Hwy. 78 during the winter and spring months. They car-camp out of sedans, trucks and RV's. By camping along this stretch of the highway, they expose themselves and their children to a high potential of being struck by traffic along the highway. Campers step out into the line of traffic in their normal meandering around their campsite, when they work on their vehicles or in the process of loading or unloading their trailers and trucks. In addition, they pose a serious hazard to passing motorists who must swerve to try to avoid hitting them. Hwy. 78 is a major truck route through Imperial County and traffic travels at 65 MPH in this area. The chances of a serious accident due to a blown tire, sleepy driver or other vehicle or driver malfunction is greatly increased with such large crowds lining the side of the highway.

EFFECTIVE DATE: Effective upon date of publication and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Chief Area Ranger Robert Zimmer, Bureau of Land Management, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243; (760) 337–4407.

SUPPLEMENTARY INFORMATION: The authority for this restriction is provided in 43 CFR 8365.1–6. Violation of this restriction is punishable by a fine not to exceed $100,000.00 and/or imprisonment not to exceed 12 months.

Dated: December 10, 1997.

Terry Reed,

Area Manager.

[FR Doc. 97–33072 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group

AGENCY: Bureau of Reclamation, DOI.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Adaptive Management Work Group (AMWG) will conduct an open public meeting to discuss administrative and program related issues. The meeting will discuss the following agenda items: Review of the previous meeting minutes, administrative operating procedures, payment for attendance at subgroup meetings (Solicitor Report), budget, report from the Technical Work Group (1999 program, management objectives, approach to beach/habitat building flow trigger criteria, annual report to Congress, and request to study beach/habitat building flow releases above 45,000 cubic feet per second), November 1997 high flows from Glen Canyon Dam, 1998 beach/habitat building flow, update on the Glen Canyon Dam temperature control device, endangered species, cultural resources/ Programmatic Agreement, the 1999 Annual Operating Plan process, the 1997–1998 Annual Report, and the Grand Canyon Monitoring and Research Center Report.

DATES AND LOCATION: The AMWG public meeting will be held at the following time and location:

Phoenix, Arizona—January 15–16, 1998. The two-day meeting will begin at 9:30 a.m. the first day and conclude at 4:00 p.m. on the second day. The meeting will be held at the LaQuinta Inn, 2510 W. Greenway Road, Phoenix, Arizona.

Anyone wishing to present written or oral comments (limited to 10 minutes) at the meeting must provide written notice to Mr. Steven Lloyd, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102 no later than noon on Friday, January 9, 1997, telephone (801) 524–3690, faxogram (801) 524–5499, or E-mail: slloyd@uc.usbr.gov. Time will be provided on the meeting agenda for public comments. Written comments will be provided the AMWG members at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Magnussen, designated Federal official for the AMWG, telephone (202) 208–4081, faxogram (202) 208–3887, E-mail: smagnussen@usbr.gov.; Mr. Bruce Moore, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail: bmoore@uc.usbr.gov.; or Mr. Steven Lloyd, telephone (801) 524–3690, faxogram (801) 524–5499; E-mail: slloyd@uc.usbr.gov.

Dated: December 12, 1997.

R. Steve Richardson,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 97–33008 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation, DOI.

ACTION: Notice of public meetings.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG) on September 10, 1997. The TWG members were named by the members of the AMWG and will provide advice and information to the AMWG. The AMWG will use this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center science program and other direction as requested by the Secretary. All meetings are open to the public; however, seating is limited and is available on a first come, first served basis. The agenda for each meeting will be as follows: Monitoring and research plans for fiscal year 1999, maintenance and beach/ habitat-building flows (BHBF), study of BHBF higher than 45,000 cubic feet per second, review of management objectives, resource management questions and objections, budget, and temperature control device.

DATES AND LOCATION: The TWG public meetings will be held at the following times and location:

Phoenix, Arizona—There will be three two-day public meetings on January 20–21, 1998, February 17–18, 1998, and March 17–18, 1998. Each one of the two-day meetings will begin at 9:30 a.m. on the first day and conclude at 4:00 p.m. on the second day. The meetings will be held at the LaQuinta Inn, 2510 W. Greenway Road, Phoenix, Arizona.

Time will be allowed on the agenda for any organization or individual wishing to make formal oral comments (limited to 10 minutes) at the meetings, but written notice must be provided to Mr. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov at least five (5) days prior to the meetings. Any written comments received will be provided to the TWG members at the meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov.

Dated: December 12, 1997.

R. Steve Richardson,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 97–33009 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation, DOI.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG) on September 10, 1997. The TWG members were named by the members of the AMWG and will provide advice and information to the AMWG. The AMWG will use this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center science program and other direction as requested by the Secretary. All meetings are open to the public; however, seating is limited and is available on a first come, first served basis. The agenda for the meeting will discuss beach/habitat building flow monitoring and research and program cost estimates.

DATE AND LOCATION: The TWG public meeting will be held at the following time and location:

Phoenix, Arizona—January 14, 1997. The meeting will begin at 12:00 p.m. and conclude at 5:00 p.m. The meeting will be held at the LaQuinta Inn, 2510 W. Greenway Road, Phoenix, Arizona.

Time will be allowed on the agenda for any organization or individual wishing to make formal oral comments (limited to 10 minutes) at the meeting, but written notice must be provided to Mr. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the TWG members at the meeting.

FOR FURTHER INFORMATION CONTACT:

Bruce Moore, telephone (801) 524–3702, faxorgram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov.

Dated: December 12, 1997.

R. Steve Richardson,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 97–33010 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Prospective Grant of Exclusive Patent Licenses

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I). The Bureau of Reclamation (Reclamation) is contemplating the granting of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,806,264, titled "Method of Selectively Removing Selenium Ions From an Aqueous Solution". The exclusive license is to be granted to Rust Environmental & Infrastructure Inc., having a place of business in Salt Lake City, Utah. The patent rights in this invention has been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce Reclamation's intent to grant an exclusive license to practice the patent listed above, it also serves to publish the availability of this patent for licensing in accordance with law. The prospectus license may be granted unless Reclamation receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: Written evidence and arguments against granting the prospective license must be received by March 18, 1998.

ADDRESSES: Inquiries, comments, and other materials relating to the contemplated license may be submitted to Donald E. Ralston, Bureau of Reclamation, Research and Technology Transfer, MS–7621, 1849 C Street, NW., Washington, DC 20240.

A copy of the above-identified patent may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Donald E. Ralston by telephone at (202) 208–5671.

SUPPLEMENTARY INFORMATION: The invention relates to removal techniques of selenium from water. The patent, a method of selectivity removing selenium ions from an aqueous solution containing selenium ions, comprises contacting the solution with an amount of ferrous ion effective to reduce the selenium ions to elemental selenium. The contacting is preferably conducted at a pH of about 9 and the ferrous ions are preferably provided in situ in the form of ferrous hydroxide. The method may further comprise removing ferric oxides to which the ferrous ions are oxidized, these ferric oxides containing the elemental selenium produced by the reduction of the selenium ions, and separating the ferric oxides from the elemental selenium by adding a strong acid thereto.

Properly filed competing applications received by Reclamation in response to this notice will be considered as objections to the grant of the contemplated license.

Dated: December 1, 1997.

Stanley L. Ponce,

Director, Research and Technology Transfer.

[FR Doc. 97–33069 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Prospective Grant of Exclusive Patent Licenses

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I). The Bureau of Reclamation (Reclamation) is contemplating the granting of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,089,141, titled "Chemical Process for Removing Selenium From Water". The exclusive license is to be granted to Rust Environmental & Infrastructure Inc., having a place of business in Salt Lake City, Utah. The patent rights in this invention has been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. While the primary purpose of this notice is to announce Reclamation's intent to grant an exclusive license to practice the patent listed above, it also serves to publish the availability of this patent for licensing in accordance with law. The prospective license may be granted unless Reclamation receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: Written evidence and arguments against granting the prospective license must be received by March 18, 1998.

ADDRESSES: Inquiries, comments, and other materials relating to the contemplated license may be submitted to Donald E. Ralston, Bureau of Reclamation, Research and Technology Transfer, MS–7621, 1849 C Street, N.W., Washington, D.C. 20240.

A copy of the above-identified patent may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Donald E. Ralston by telephone at (202) 208–5671.

SUPPLEMENTARY INFORMATION: The invention relates to removal techniques of selenium from water. The patent addresses a chemical process for selectively removing organoselenium compounds and selenate from water supplies. The process utilizes a combination of transition metal selected from the group consisting of nickel and copper and an electropositive metal selected from the group consisting of magnesium and aluminum to effectively remove selenium whether present in water as organic or inorganic compounds or in ionic or non-ionic form.

Properly filed competing applications received by Reclamation in response to this notice will be considered as objections to the grant of the contemplated license.

Dated: December 1, 1997.

Stanley L. Ponce,

Director, Research and Technology Transfer.

[FR Doc. 97–33070 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Wayne National Forest; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision; correction.

SUMMARY: This notice announces a correction to a November 26, 1997 **Federal Register** notice (62 FR 63187) which announced the decision of the Office of Surface Mining Reclamation and Enforcement (OSM) on a request by Edward and Madeiline Blaire and Buckingham Coal Company, Inc. (Buckingham) for a determination of valid existing rights (VER) under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The required correction pertains to part VII. of the notice, entitled "Appeals."

FOR FURTHER INFORMATION CONTACT: Peter Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2867. E-mail address: pmichael@osmre.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** notice published on November 26, 1997 (62 FR 63187), Part VII in the decision stated:

> Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* [1988]. Notice of intent to appeal must be filed within 30 days from the date of publication of this notice of decision in a local newspaper with circulation in Perry County, Ohio.

However, 43 CFR 4.1391 states, in relevant part:

> The request for review shall be filed within 30 days of the date of publication of notice in the **Federal Register** that a determination has been made for any person who has not received a copy by certified mail or overnight delivery service.

Accordingly, any person who is or may be adversely affected by the VER decision in this matter may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* [1988]. Notice of intent to appeal must be filed within 30 days of the date of publication of the notice of decision in the **Federal Register**, which was on November 26, 1997, by any person who has not received a copy by certified mail or overnight delivery service.

Dated: December 12, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–33015 Filed 12–17–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,715]

Brandon Apparel Group, Incorporated, Columbus, Wisconsin; Notice of Negative Determination on Reconsideration

On October 31, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented new evidence that the collection of information regarding company sales and imports was incomplete for the time period relevant to the investigation. The notice was published in the **Federal Register** on November 26, 1997 (62 FR 63193).

The Department initially denied TAA to workers of Brandon Apparel Group, Columbus, Wisconsin because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of children's sports apparel. The layoffs at the Columbus plant were attributed to the corporate decision to close the subject plant and transfer all production to an affiliated domestic facility. Corporate-wide sales, production and imports increased from 1995 to 1996. Company imports, however, decreased as a percentage of company sales during this time.

On reconsideration, the Department requested that Brandon Apparel provide data for the January through July time periods of 1996 and 1997. Information provided by the company shows that corporate-wide sales and production increased from January through July 1997, compared to the January through July 1996 time period. During the same time period company imports declined.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Brandon Apparel Group, Columbus, Wisconsin.

Signed at Washington, D.C., this 9th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33023 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 29, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 29, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

PETITIONS INSTITUTED ON 12/01/97

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,032	Everbrite (IBEW)	Milwaukee, WI	11/17/97	Neon Signs.
34,033	Northern Technologies (Wrks)	Pocahontas, AR	11/12/97	Electrical Connectors.
34,034	AST Research (Wrks)	Fort Worth, TX	11/18/97	Computers.
34,035	Garfield Sportswear (UNITE)	Garfield, NJ	09/11/97	Ladies' Coats.
34,036	Con Agra (AFGM)	Buffalo, NY	11/17/97	Flour and Flour by-Products.
34,037	Barry Callebaut USA, Inc (Wrks)	Pennsauken, NJ	11/17/97	Cocoa/Chocolate.
34,038	Alltrista Zinc Products (Comp)	Greeneville, TN	11/19/97	Casts, Rolls and Slit Zinc Strip.
34,039	F.R. Gross, Inc. (Wrks)	Warren, PA	11/06/97	Fabricated Structural Steel.
34,040	Butler Design Service (Wrks)	Aurora, CO	11/12/97	Drafting Services—Telecommunications.
34,041	Jam Enterprises (Comp)	El Paso, TX	11/04/97	Cloth Cutting Service.
34,042	Rotorex Company, Inc (IUE)	Walkersville, MD	10/28/97	Machined Shafts, Cylinders, Rollers.
34,043	Hogg's Factory (Wrks)	Malden, MO	11/14/97	Fleece Shirts.
34,044	Brown Shoe Group (Wrks)	Fredericktown, MO	11/17/97	Dress, and Sport Shoes.
34,045	ITT Automotive ()	Archbold, OH	11/17/97	Gas and Bake Line Tubing.
34,046	Manchester Knitted Fash. (Comp)	Manchester, NH	11/20/97	Men's, Ladies', Children's tops and bottom.
34,047	John Wiley and Sons, Inc (Wrks)	Colorado Sprgs, CO	11/20/97	Publish Legal Books.
34,048	Dresser Rand Co (IUE)	Painted Post, NY	11/18/97	Air Compressors.
34,049	Buehler Lumber Co (Wkrs)	Ridgway, PA	11/18/97	Cherry Panels.
34,050	Bazflex USA (Comp)	Gainesville, TX	11/18/97	Shoe Soles.
34,051	Franke Contract Group (Wrks)	North Wales, PA	11/21/97	Kitchen Equipment Supplier.
34,052	Matsushita Microwave Oven (Wrks)	Franklin Park, IL	11/18/97	Home Electronic Applicances.
34,053	Frontier Corp (Wrks)	Rochester, NY	11/07/97	Telecommunication Service.
34,054	Identity Headwear USA (Wrks)	Maysville, MO	11/20/97	Sport Caps.
34,055	TRW—Auto Electronics (ICWU)	Auburn, NY	11/10/97	Switches for Automobiles.
34,056	Crown Pacific (Comp)	Gilchrist, OR	11/18/97	Lumber.
34,057	Oldham Co (The) (Comp)	Burt, NY	11/19/97	Saw Blades.
34,058	Aquarius Manufacturing (Owner)	El Paso, TX	11/10/97	Living Room and Den Furniture.
34,059	Alcoa Fujikura Ltd (UAW)	Campbellsburg, KY	11/18/97	Automotive Wiring Harness.
34,060	General Motors (Wrks)	Albany, GA	11/17/97	Alternators and Parts.
34,061	Oxford of Alma (Comp)	Alma, GA	11/19/97	Ladies' Dresses and Pants.

[FR Doc. 97–33025 Filed 12–17–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,479]

G.E. Medical Systems Milwaukee, Wisconsin; Notice of Negative Determination Regarding Application for Reconsideration

By application dated November 3, 1997, the X-Ray Lodge No. 1916 of the International Association of Machinists requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance. The denial notice, applicable to workers of G.E. Medical Systems producing medical diagnostic imaging equipment in Milwaukee, Wisconsin, was signed on October 9, 1997 and published in the **Federal Register** on November 5, 1997 (62 FR 59882).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners assert that products produced by workers of the subject firm are now being produced in foreign countries by their suppliers and add that a large percentage of the subject firm sales come from the offshore market.

The TAA petition investigation for workers of the subject firm showed that the criterion (2) of the Group Eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. Sales and production at the subject firm increased in 1996 compared to 1995 and in January-April of 1997 compared to the same time period in 1996.

The petitioner's assertion regarding company sales of imported diagnostic imaging equipment was addressed in the negative determination applicable to workers of G.E. Medical Systems in Milwaukee.

As specified in the group eligibility requirements of criterion (3) of Section 222 of the Trade Act of 1974, as amended, the Department must establish that increased imports of articles like or directly competitive with articles produced at the workers' firm, contributed to worker separations.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 11th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33019 Filed 12–17–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,939]

KD Industries, Division of Lees Manufacturing, Blountsville, Alabama; Notice of Termination of Certification

This notice terminates the Determination Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on November 18, 1997, applicable to all workers of KD Industries, Division of Lees Manufacturing, located in Blountsville, Alabama. The notice will soon be published in the **Federal Register.**

At the request of the State agency, the Department reviewed the worker certification. The workers produce children's sleepwear and sportswear. Findings on review show that on June 17, 1997, the Department issued a certification of eligibility applicable to all workers of KD Industries, Incorporated, Division of Lees Manufacturing Company, Incorporated, Blountsville, Alabama, TA–W–33,492. Workers separated from employment with the subject firm on or after May 2, 1996 through June 17, 1999, are eligible to apply for worker adjustment assistance.

Based on this new information, the Department is terminating the certification for petition number TA–W–33,939. Further coverage for workers under this certification would serve no purpose, and the certification has been terminated.

Signed in Washington, DC this 4th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33026 Filed 12–17–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,513; TA–W–33,513Y; TA–W–33,513Z; TA–W–33,513AA]

Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters 1440 Goodyear El Paso, Texas, Fayetteville, Arkansas; Harrison, Arkansas; Dallas CF Regional Office Dallas, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48888). The certification was subsequently amended to include the subject firm workers at El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997, and published in the **Federal Register** on September 30, 1997 (62 FR 51155).

At the request of the State agency and the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations will occur at the Levi Strauss and Company production facilitates located in Fayetteville and Harrison, Arkansas. The company also reports layoffs at the Dallas CF Regional Office in Dallas, Texas. The workers at these three locations are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover the subject firm' workers in Fayetteville and Harrison, Arkansas, and Dallas, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports of men's, women's and youth's denim jeans and jackets.

The amended notice applicable to TA–W–33,513 is hereby issued as follows:

All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (TA–W–33,513), Fayetteville, Arkansas (TA–W–33,513Y), Harrison, Arkansas (TA–W–33,513Z), and Dallas, Texas (TA–W–33,513AA) who were engaged in employment related to the production of men's, women's and youth's denim jeans and jackets who became totally or partially separated from employment on or after May 13, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 9th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33020 Filed 12–17–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01733]

C & B Farms Clewiston, Florida; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 27, 1997 in response to a petition filed on behalf of workers at C & B Farms, located in Clewiston, Florida. The workers harvest watermelon.

In a letter dated December 8, 1997, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 11th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33018 Filed 12–17–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of

the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than December 29, 1997.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than December 29, 1997.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of November, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Conaway Winter (Wkrs)	Birch Tree, MO	08/25/97	NAFTA–1,893	Children's shoes.
Jostens (Wkrs)	Princeton, IL	08/25/97	NAFTA–1,894	Rings.
Chrysler (Co.)	Belvidere, IL	08/25/97	NAFTA–1,895	Automobiles.
Electrohome (Co.)	Carthage, MO	08/26/97	NAFTA–1,896	Display monitors, printed wiring boards.
SMS Textile Mills (Wkrs)	Allentown, PA	08/26/97	NAFTA–1,897	Elastic and spanex fabrics.
Frolic Footwear (Wkrs)	Jonesboro, AR	08/22/97	NAFTA–1,898	Footwear.
Remington Apparel (Co.)	Graham, TX	08/27/97	NAFTA–1,899	Men's neckwear.
Perfect Circle—Sealed Power Division (UAW).	Rochester, IN	08/11/97	NAFTA–1,900	Cylinder liners (piston sleeves).
Ergodyne Corporation (Wkrs)	Pence, WI	08/27/97	NAFTA–1,901	Gloves, tennis elbows and wrist braces.
General Electric (IUE)	Ft. Wayne, IN	08/25/97	NAFTA–1,902	Electric motors and transformers batteries.
Bassett Walker (Co.)	North Wilkesboro, NC	08/26/97	NAFTA–1,903	T-shirts, sweatsuits.
Thomson Consumer Electronics (IBEW).	St. Bloomington, IN	08/11/97	NAFTA–1,904	Television assembly.
Thomas and Betts (Wkrs)	Sanford, ME	08/26/97	NAFTA–1,905	Terminal blocks and plastic molds.
Prewash and Pressing Services (Co.)	El Paso, TX	09/02/97	NAFTA–1,906	Prewash, stonewash & press denim jeans.
Dana Design Limited (Co.)	Bozeman, MT	09/02/97	NAFTA–1,907	Backpacks.
Dana Design Limited (Co.)	Livingston, MT	09/02/97	NAFTA–1,907	Backpacks.
Dana Design Limited (Co.)	Lewistown, MT	09/02/97	NAFTA–1,907	Backpacks.
Dana Design Limited (Co.)	Belgrade, MT	09/02/97	NAFTA–1,907	Backpacks.
Malone Manufacturing (Wkrs)	Malone, NY	09/03/97	NAFTA–1,908	T-shirts and sweat pants.
Union City Body (UAW)	Union City, IN	09/03/97	NAFTA–1,909	Delivery vans.
Heinz Bakery Products (BCTW)	Buffalo, NY	09/03/97	NAFTA–1,910	Frozen unbaked sweet goods.
Dorn Textiles (Wkrs)	New York, NY	09/03/97	NAFTA–1,911	Woven fabric.
Collegiate Sportswear (Wkrs)	Kingston, TN	09/03/97	NAFTA–1,912	Sports jerseys.
Fisher Rosemount Petroleum (Co.)	Statesboro, GA	09/04/97	NAFTA–1,913	Magnetic flow meters.
Forsyth Sales (Co.)	Greensboro, NC	09/05/97	NAFTA–1,914	Supplied and repaired sewing machines.
Whisper Soft Mills (Wkrs)	Wallace, NC	09/04/97	NAFTA–1,915	Sheets sets, wall borders, tablecloths.
Irwin Manufacturing (Co.)	Alma, GA	09/05/97	NAFTA–1,916	Infant bedding.
Seymour Housewares (Wkrs)	Mooresville, NC	09/05/97	NAFTA–1,917	Laundary sorters, ironing board covers.
Elkin Valley Apparel (Wkrs)	Elkin, NC	09/15/97	NAFTA–1,918	Ladies sportswear.
Applied Molded Products (URC)	Watertown, WI	09/09/97	NAFTA–1,919	Fiberglass reinforced plastics.
Hillsboro Glass (GMP)	Hillsboro, IL	09/05/97	NAFTA–1,920	Amber glass bottles.
Kimberly Clark (UPIU)	Oconto Falls, WI	07/09/97	NAFTA–1,921	Tissue paper, bath tissue.
Solomon Company (The) (Co.)	Leeds, AL	09/11/97	NAFTA–1,922	Men's dress slacks.
Sew More (Wkrs)	Albermarle, NC	09/05/97	NAFTA–1,923	T-shirts, sweatshirts.
Echo Bay Management (Wkrs)	Englewood, CO	09/17/97	NAFTA–1,924	Administrative duties supporting mining.
Nukote International (Wkrs)	Franklin, TN	09/17/97	NAFTA–1,925	Ink ribbon & ink jet cartridges.
General Electric Company (Wkrs)	Salem, VA	09/18/97	NAFTA–1,926	Material handling production.
Dana Corporation (Wkrs)	Reading, PA	09/19/97	NAFTA–1,927	Truck side rails, ford pick-up frames.
Lummi Casino (Wkrs)	Bellingham, WA	09/10/97	NAFTA–1,928	Gambling services.
Trutom (US) Limited (Wkrs)	Albany, NY	09/15/97	NAFTA–1,929	Specialized testing services.
Anvil Knitwear (Wkrs)	Gibson, NC	09/12/97	NAFTA–1,930	T-shirts and tanktops.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Stanley Works (The) (USWA)	York, PA	09/17/97	NAFTA–1,931	Hand saws, hacks saws, hand tools.
Trans World Airlines (IAMAW)	Kansas City, MO	09/22/97	NAFTA–1,932	Repair and maintenance on aircraft.
CAE Screenplates (Co.)	Glens Falls, NY	09/22/97	NAFTA–1,933	Stainless steel screen plates.
Great American Products (Wkrs)	Broadview, IL	09/22/97	NAFTA–1,934	Pewter castings.
Jansport (Wkrs)	Burlington, WA	09/23/97	NAFTA–1,935	Backpacks.
Ace Metal Fabricators (IBT)	Bronx, NY	09/22/97	NAFTA–1,936	Alarm boxes, door covers, brackets.
Ace Sprayfinishing (IBT)	Bronx, NY	09/22/97	NAFTA–1,936	Alarm boxes, door covers, brackets.
Sweetheart Cup (IBEW)	Springfield, MO	09/24/97	NAFTA–1,937	Paper cups.
Sweetheart Cup (IBEW)	Riverside, CA	09/24/97	NAFTA–1,937	Paper cups.
California Curves (Wkrs)	Temecula, CA	09/25/97	NAFTA–1,938	Wooden television and speaker cabinets.
Cabot Oil and Gas (Co.)	Carlton, PA	09/29/97	NAFTA–1,939	Oil and gas.
Elf Atochem North America (ICWU)	Tacoma, WA	09/29/97	NAFTA–1,940	Sodium chlorate.
F. W. Woolworth (Wkrs)	Berwyn, IL	09/30/97	NAFTA–1,941	Retail store.
General Motors (UAW)	Danville, IL	09/30/97	NAFTA–1,942	Automobile iron castings.
Graham Chemical (Wkrs)	Jamaica, NY	10/03/97	NAFTA–1,943	Dental anesthetics.
Fleetwood Metals Industries (USWA)	Tecumseh, MI	09/30/97	NAFTA–1,944	Metal stamping for automobile dashboards.
Simpson Industries (IAM)	Jackson, MI	09/24/97	NAFTA–1,945	Automotive components, brake drums, etc.
Braden Manufacturing (Wkrs)	Ft. Smith, AR	10/04/97	NAFTA–1,946	Gas turbine.
Simpson Industries (Co.)	Gladwin, MI	09/22/97	NAFTA–1,947	Isolators and dampers.
Texas Instruments (Wkrs)	Central Lake, MI	10/02/97	NAFTA–1,948	Thermal overload motor devices.
Almark Mills (Co.)	Dawson, GA	10/03/97	NAFTA–1,949	T-shirts, boxers, shorts.
Fiskars (Wkrs)	Fergus Falls, MN	10/06/97	NAFTA–1,950	Surge protection products.
Wolverine World Wide (Wkrs)	Kirksville, MO	10/07/97	NAFTA–1,951	Men's & women's boots & shoes.
JLG Industries (Wkrs)	McConnellsburg, PA	10/06/97	NAFTA–1,952	Electrical wiring harnesses.
General Binding (Co.)	Sparks, NV	10/03/97	NAFTA–1,953	Rotary and flat files.
Taylor Togs (Co.)	Micaville, NC	10/07/97	NAFTA–1,954	Blue jeans.
Taylor Togs (Co.)	Green Mountain, NC	10/07/97	NAFTA–1,954	Blue jeans.
Best Manufacturing (Co.)	Salisbury, NC	10/07/97	NAFTA–1,955	Tee shirts and sweatshirts.
Stroh Brewery Company (The) (IAM)	St. Paul, MN	10/08/97	NAFTA–1,956	Beer.
Lees Manufacturing (Co.)	Cannon Falls, MN	10/09/97	NAFTA–1,957	Children's sleepwear and sportswear.
Oregon Woodworking (Co.)	Bend, OR	10/08/97	NAFTA–1,958	Door jambs.
Bourns (Wkrs)	Riverside, CA	10/01/97	NAFTA–1,959	Pressure transducers.
Loralie Originals (Wkrs)	Redding, CA	09/25/97	NAFTA–1,960	Women's formalwear.
DQ Investment Corporation (Co.)	San Diego, CA	10/01/97	NAFTA–1,961	Data base information.
Basler Electric (Wkrs)	Corning, AR	10/09/97	NAFTA–1,962	Class II transformer.
Apparel Brands (Co.)	Wrightsville, GA	10/10/97	NAFTA–1,963	Men's and ladies uniform pants & shorts.
Payless Cashways (Wkrs)	Wichita Falls, TX	10/08/97	NAFTA–1,964	Retail sales of building materials.
Robinson (Wkrs)	Parsons, TN	10/13/97	NAFTA–1,965	Sportswear
Hamburg Shirt—Bernstein and Sons (Co.).	Hamburg, AR	10/08/97	NAFTA–1,966	Knit and woven shirts.
University Technical Services (Wkrs)	San Diego, CA	10/10/97	NAFTA–1,967	Electricity generation.
Frolic Footwear (Wkrs)	Walnut Ridge, AR	10/13/97	NAFTA–1,968	Women's shoes.
Timberline Lumber (Wkrs)	Kalispell, MT	10/02/97	NAFTA–1,969	Studs and stud products.
Tru Stitch Footwear (UFCW)	Malone, NY	10/14/97	NAFTA–1,970	Soft moccasin and boot style slippers.
Reef Gear (Wkrs)	Marine City, MI	10/14/97	NAFTA–1,971	Output and input gear.
Fedco Automotive Components (Wkrs)	Buffalo, NY	10/15/97	NAFTA–1,972	Heater cores for automobile industry.
Oneita Industries (Co.)	Fayette, AL	10/16/97	NAFTA–1,973	T-shirts.
Dana Corporation (USWA)	Reading, PA	10/08/97	NAFTA–1,974	Truck frame.
Lehigh Furniture (Co.)	Marianna, FL	10/16/97	NAFTA–1,975	Wooden bedroom furniture.
International Paper (UPIU)	Erie, PA	10/17/97	NAFTA–1,976	Pulp and high grade paper products.
Rockwell Automation (IUE)	Ashtabula, OH	10/21/97	NAFTA–1,977	AC electric motors.
Bonita Packing (Wkrs)	Bonita Springs, FL	10/21/97	NAFTA–1,978	Tomatoes.
Kysor Michigan Fleet—Scott (UAW)	Scottsburg, IN	10/21/97	NAFTA–1,979	Auxiliary fuel tanks.
Woodgrain Millwork (Wkrs)	Lakeview, OR	10/20/97	NAFTA–1,980	Moulding.
Carolyn of Virginia (Co.)	Bristol, VA	10/20/97	NAFTA–1,981	Ladies robes and dusters.
Ellen B. Sport (Co.)	Whitehall, IL	10/17/97	NAFTA–1,982	Nightware and dresses.
Sterling Stainless Tube (Wkrs)	Englewood, CO	10/21/97	NAFTA–1,983	Automotive antenna components.
Veratec (UPWI)	Lewisburg, PA	10/22/97	NAFTA–1,984	Carded non-woven goods.
Cornelius Farms (Co.)	Florida City, FL	10/23/97	NAFTA–1,985	Green beans.
Bose (Wkrs)	Westboro, MA	10/22/97	NAFTA–1,986	Audio products and components.
Maine Yankee Atomic Power (UWUA)	Wiscasset, ME	10/22/97	NAFTA–1,987	Electric power.
Henchel (Wkrs)	Potosi, MO	10/23/97	NAFTA–1,988	Cap.
A.O. Smith (Wkrs)	Upper Sandusky, OH	10/28/97	NAFTA–1,989	Fractional horsepower electric motors.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Cason Manufacturing (Co.)	Stephenville, TX	10/27/97	NAFTA–1,990	Women's skirts and pants.
Hantke and Ford Printers (Wkrs)	Los Angeles, CA	10/01/97	NAFTA–1,991	Printing blister and skin cards.
Trade Apparel (Wkrs)	El Paso, TX	10/28/97	NAFTA–1,992	Jean pants.
Banner Packaging (Wkrs)	Shelbyville, TN	10/27/97	NAFTA–1,993	Poultry baas.
Cooper Industrial (IBEW)	Weatherly, PA	10/27/97	NAFTA–1,994	Aircraft power supplies.
Lenworth Aminco (Wkrs)	Meadville, PA	10/28/97	NAFTA–1,995	Accounting dept. for automotive racking.
Fonda Group (UPW)	Three Rivers, MI	10/23/97	NAFTA–1,996	Paper plates, cups, bowls.
Hamilton Beach-Proctor Silex (Co.)	Mt. Airy, NC	10/28/97	NAFTA–1,997	Small electrical appliance.
Tennessee River (Co.)	Russelville, AL	10/30/97	NAFTA–1,998	T-shirts, sweat shirts/pants.
Pacific Refining (Wkrs)	Hercules, CA	10/07/97	NAFTA–1,999	Asphalt.
Jetricks (Wkrs)	Selmer, TN	10/29/97	NAFTA–2,000	T-shirts, sports shirts
Lockheed Martin (IUPPE)	Liverpool, NY	10/31/97	NAFTA–2,001	Projection screens.
NGC Corporation (OCAW)	Houston, TX	10/31/97	NAFTA–2,002	Natural gas.
Packwood Lumber (UBC)	Packwood, WA	10/31/97	NAFTA–2,003	Dimensional lumber.
Electra Sound (Wkrs)	Parma, OH	10/31/97	NAFTA–2,004	Engine controls modules.
Active Transportation (IBT)	Louisville, KY	11/03/97	NAFTA–2,005	Transporation of motor vehicles.
Gary Peterson Logging (Co.)	Cascade, ID	10/23/97	NAFTA–2,006	Logging.
Brownsville Products (Wkrs)	Brownsville, TX	11/03/97	NAFTA–2,007	Metal.
Shenandoah Knitting Mills (Wkrs)	Edinburg, VA	11/03/97	NAFTA–2,008	Knitting machines.
Dublin Garment (Co.)	Dublin, VA	11/03/97	NAFTA–2,009	Uniforms, shirts, pants.
American Tissue (Wkrs)	Tomahawk, WI	11/04/97	NAFTA–2,010	Tissue porducts.
Alcatel Telecommunications Cable (IUE).	Roanoke, VA	11/07/97	NAFTA–2,011	Fiber optics.
American Standard Apparel-Bertha's Boy (Wkrs).	Williamsport, PA	11/06/97	NAFTA–2,012	Women's, men's and children's apparel.
SRAM Corporation (Wkrs)	Elk Grove, IL	11/06/97	NAFTA–2,013	Bicycle shifters.
Alcoa Fujikura (Co.)	Campbellsburg, KY	11/10/97	NAFTA–2,014	Automotive wire harness assemblies.
Carrier Technology (Wkrs)	Syracuse, NY	11/10/97	NAFTA–2,015	Drawings.
Umbro North America (Co.)	Fairbluff, NC	11/07/97	NAFTA–2,016	Soccer apparel, shorts and jerseys.
Marion Power Shovel Company (The) (USWA).	Marion, OH	11/10/97	NAFTA–2,017	Mining equipment.
Aluminum Conductor (USWA)	Vancouver, WA	11/12/97	NAFTA–2,018	Aluminum conductor, cable products.
Barbee Mill (WCIW)	Renton, WA	11/12/97	NAFTA–2,019	Softwood dimensional lumber.
Green Veneer (Wkrs)	Mill City, OR	11/10/97	NAFTA–2,020	Plywood.
San Antonio Garment and Finishers (Co.).	San Antonio, TX	11/07/97	NAFTA–2,021	Men's levi docker pants.
Mapa Pioneer (USWA)	Willard, OH	11/13/97	NAFTA–2,022	Natural rubber gloves.
Tyco International (Co.)	Ocala, FL	11/10/97	NAFTA–2,023	Disposable medical devices.
TRI Americas (Wkrs)	El Paso, TX	11/17/97	NAFTA–2,024	Men's pants.
Louisiana Pacific (Co.)	Hyden Lake, ID	11/14/97	NAFTA–2,025	Lumber products.
Jam Enterprises (Co.)	El Paso, FL	11/19/97	NAFTA–2,026	Jeans.
Kemet Electronics (Co.)	Shelby, NC	11/19/97	NAFTA–2,027	Ceramic capacitors.
ITT Automotive (IAMAW)	Arshbold, OH	11/19/97	NAFTA–2,028	Gas.
Hogg's Factory (Wkrs)	Malden, MO	11/19/97	NAFTA–2,029	Fleece shirts and sets.
Crown Pacific (Co.)	Gilchrist, OR	11/20/97	NAFTA–2,030	Forest products, lumber.
Weyerhaeuser (WCIW)	Snoqualmie, WA	11/20/97	NAFTA–2,031	Fiber.
Alltrista Zinc Products (Co.)	Greeneville, TN	11/21/97	NAFTA–2,032	Zinc cans.
Identity Headwear U.S.A. (Wkrs)	Maysville, MO	11/25/97	NAFTA–2,033	Ball caps.
Dee's Manufacturing (Co.)	El Paso, TX	11/25/97	NAFTA–2,034	Women's denim jeans.
Maxton Sewing Plant (Co.)	Maxton, NC	11/25/97	NAFTA–2,035	T-shirts.
ConAgon Maple Leaf (AFCM)	Buffalo, NY	11/24/97	NAFTA–2,036	Flour and flour by-products.
TRW (ICWUC)	Augurn, NY	11/25/97	NAFTA–2,037	Switches for auto headlamps, air-bags.
Racal Data (Wkrs)	Sunrise, FL	11/26/97	NAFTA–2,038	PC boards, chassis.
Everbrite (IBEW)	South Milwaukee, WI	11/19/97	NAFTA–2,039	Neon signs.
International Wire (Co.)	Bourbon, IN	11/01/97	NAFTA–2,040	Wire.
International Wire (Co.)	Bremen, IN	11/01/97	NAFTA–2,041	Wire.
Swansboro Garment (Wkrs)	Swansboro, NC	12/01/97	NAFTA–2,042	Men's dress shirts.
Franke (Wkrs)	North Wales, PA	12/01/97	NAFTA–2,043	Commercial kitchen equipment.
MASCO (Wkrs)	LaFollette, TN	12/01/97	NAFTA–2,044	Grills, registers, diffusers for heating.
Standard Keil—Tap Rite (UNITE)	Allenwood, NJ	11/25/97	NAFTA–2,045	Specialty hardware components.
Freeport McMoran (Wkrs)	New Orleans, LA	12/01/97	NAFTA–2,046	Mining sulphur.
Bazflex USA (Co.)	Gainesville, TX	12/02/97	NAFTA–2,047	Injection molding of shoe soles.
Oxford of Alma (Co.)	Alma, GA	12/02/97	NAFTA–2,048	Ladies dresses, pants and fleece jackets.
J and L Specialty Steel (USWA)	Detriot, MI	12/01/97	NAFTA–2,049	Steel.
Thunderbird Moulding Company (Co.)	Yreka, CA	12/01/97	NAFTA–2,050	Wood moulding.
Kock Refining (OCAW)	St. Paul, MN	12/02/97	NAFTA–2,051	Refinined crude oil products.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Greenfield Industries (Co.)	South Deerfield, MA	12/02/97	NAFTA–2,052	Hacksaw blades & wood boring tool bits.
General Cable (Co.)	Kenly, NC	12/04/97	NAFTA–2,053	Electrical cordsets.
Procter and Gamble (Co.)	Greenville, SC	12/05/97	NAFTA–2,054	Ingredients for over counter medicine.
Kessler Foundry and Machine (Co.)	Canutillo, TX	12/03/97	NAFTA–2,055	Metal furniture castings.
Johnstown Wire (USWA)	Buffalo, NY	12/04/97	NAFTA–2,056	Coil steel materials.
Sutersville Lumber (Co.)	Sutersville, PA	12/03/97	NAFTA–2,057	Building products, lumber, doors, windows.

[FR Doc. 97–33024 Filed 12/17/97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01881; NAFTA–01881D]

Fruit of the Loom; Martin Mills, Inc. D/B/A/ St. Martinville Mills Including Former Employees of Jeanerette Mills St. Martinville, Louisiana; Jeanerette Mills; Division of Martin Mills, Inc., Jeanerette, Louisiana; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 29, 1997, applicable to workers of Fruit of the Loom, Martin Mills, Inc., located in St. Martinville, Louisiana. The certification was amended on September 14, 1997, to specify that Martin Mills, Inc., is doing business in St. Martinville, Louisiana as St. Martinville Mills, and to include those workers of the subject firm whose wages were reported under the separate Unemployment Insurance tax account for Jeanerette Mills. The notice of amended certification was published in the **Federal Register** on September 30, 1997 (62 FR 51160).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations will occur at the Jeanerette Mills, Division of Martin Mills in Jeanerette, Louisiana. The workers are engaged in employment related to the production of T-shirts, briefs, and A-shirts.

The intent of the Department's certification is to include all workers of Fruit of the Loom adversely affected by increased imports of underwear.

The amended notice applicable to NAFTA–01881 is hereby issued as follows:

All workers of Fruit of the Loom, Martin Mills, Inc., doing business as St. Martinville Mills, including former employees of Jeanerette Mills, St. Martinville, Louisiana (NAFTA–01881) and Jeanerette Mills, Division of Martin Mills, Inc., Jeanerette, Louisiana (NAFTA–01881D), who became totally or partially separated from employment on or after August 14, 1996, are eligible to apply for adjustment assistance under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 9th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33021 Filed 12–17–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01807; NAFTA–01807Y; NAFTA–01807Z; NAFTA–01807AA]

Levi Strauss and Company; Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas; Fayetteville, Arkansas; Harrison, Arkansas; Dallas CF Regional Office, Dallas, Texas; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48889). The certification was subsequently amended to include the subject firm workers at the El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51161).

At the request of the State agency and the company, the Department reviewed the certification for workers of the subject firm. New information submitted by the company shows that worker separations will occur at the Levi Strauss and Company production facilities located in Fayetteville and Harrison, Arkansas. The company also reports layoffs at the Dallas CF Regional Office in Dallas, Texas. The workers at these three locations are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover the subject firm's workers in Fayetteville and Harrison, Arkansas, and Dallas, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports from Mexico of men's, women's and youth's denim jeans and jackets.

The amended notice applicable to NAFTA–01807 is hereby issued as follows:

All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (NAFTA–01807), Fayetteville, Arkansas (NAFTA–01807Y), Harrison, Arkansas (NAFTA–01807Z) and Dallas, Texas (NAFTA–01807AA) who were engaged in employment related to the production of men's, women's and youth's denim jeans and jackets who became totally or partially separated from employment on or after July 9, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 9th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33022 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–1750]

Steven Borek Farms, Inc., Princeton, Florida; Investigations Regarding Certifications of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance; Correction

This notice corrects the notice for petition number NAFTA–1750 which was published in the **Federal Register** on August 8, 1997 (62 FR 42823) in FR Document 97–21018.

This revises the subject firm name and location for NAFTA–1750 in the first and second columns in the appendix table on page 42823. The first column (subject firm), should read Stevan Borek Farms, Inc., and the second column (location), should read Princeton, Florida.

Signed at Washington, D.C., this 11th day of December 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–33017 Filed 12–17–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel, Folk & Traditional Arts Infrastructure Section, to the National Council on the Arts will be held on January 7–8, 1998. The panel will meet from 9:00 a.m. to 7:00 p.m. on January 7, and from 9:00 a.m. to 12:30 p.m. on January 8 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 9:00 to 10:00 a.m. on January 8, will be open to the public for a policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on January 7, and from 10:00 a.m. to 12:30 p.m. on January 8, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: December 15, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–33085 Filed 12–17–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnership Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Partnership Panel, Partnership Agreements Section, to the National Council on the Arts will be held on January 12–14, 1998. The panel will meet from 9 a.m. to 6:30 p.m. on January 12, from 9 a.m. to 5:30 p.m. on January 13, and from 9 a.m. to 4:30 p.m. on January 14 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 9, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–33084 Filed 12–17–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77 issued to Commonwealth Edison Company (the licensee) for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendment would allow licensee control of the reactor coolant system pressure and temperature limits for heatup, cooldown, low temperature operation and hydrostatic testing. ComEd also proposed to relocate the reactor vessel capsule withdrawal schedule in accordance with Generic Letter 91–01.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes relocate RCS [reactor coolant system] P/T [pressure and temperature] limits, LTOP [low temperature overpressure protection] system setpoints, hydrostatic testing requirements, and the reactor vessel capsule withdrawal schedule, along with supporting information, from the Technical Specifications to a PTLR [pressure temperature limits report]. Compliance with these limits will continue to be required by the Technical Specifications. However, the limits themselves will be maintained in a Licensee-controlled document. Changes to the limits will be controlled by Section 6.9.1.11 of the Technical Specifications. Changes to the RCS P/T limits can only be made in accordance with the NRC-approved methodologies listed in the Technical Specifications. The limits and the Technical Specifications will continue to assure the function of the reactor vessel as a pressure boundary. Revision to the LTOP limits can only be made in accordance with the approved methodologies listed in the Technical Specifications, and any resulting setpoint changes are made through the provisions of 10 CFR 50.59. Changes to the specimen withdrawal requirements are governed by Appendix H to 10 CFR 50.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements or introduce a new accident or malfunction mechanism. There is no significant change in the types or significant increase in the amounts of any effluent that may be released offsite, and there is no significant increase in individual or cumulative occupational radiation exposure. In addition, the Byron and Braidwood Technical Specifications will continue to require that the reactor is maintained within acceptable operational limits and ensure that the LTOP system meets operability requirements. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not result in any reduction in the margin of safety because they have no impact on safety analysis assumptions. The proposed changes have been shown to ensure that the P/T and LTOP limits in the PTLR continue to meet all necessary requirements for reactor vessel integrity. Any future changes to the RCS P/T, LTOP limits, or supporting information must be performed in accordance with NRC-approved methodologies. Technical Specifications continue to require compliance with the limits in the PTLR. Additionally, any revision to the LTOP limits which result in setpoint changes will be evaluated under the provisions of 10 CFR 50.59. The reactor vessel capsule withdrawal schedule will continue to meet the requirements of Appendix H to 10 CFR 50. Therefore, these changes do not involve a significant reduction in the margin of safety.

ComEd has concluded that the RCS P/T and LTOP limits are no longer required to be located in the Technical Specifications under 10 CFR 50.36 or Section 182a of the Atomic Energy Act, and are not required to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety. Additionally, they do not fall within any of the four criteria set forth in 10 CFR 50.36(c)(2)(ii) for defining Technical Specification Limiting Condition for Operations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 20, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room: for Byron, located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and

how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 21, 1997, as supplemented on November 18, 1997, and December 3, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms: for Byron, located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 12th day of December, 1997.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33055 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–31373–CivP and ASLBP No. 98–735–01–CivP]

CONAM Inspection, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

CONAM Inspection, Inc.; Order Imposing Civil Monetary Penalty

This Board is being established pursuant to the request of Conam Inspection, Inc. for an enforcement hearing. The hearing request was made in response to an Order issued by the Director, Office of Enforcement, dated November 5, 1997, entitled "Order Imposing Civil Monetary Penalty" (62 FR 60923, November 13, 1997).

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 12th day of December 1997.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 97–33058 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–272]

Public Service Electric and Gas Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–70 issued to Public Service Electric & Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Unit 1, located in Salem County, New Jersey.

The proposed amendment would provide a one-time change to the Technical Specifications to allow purging of the containment during Modes 3 (Hot Standby) and 4 (Hot Shutdown) upon return to power from the current outage (1R13). Because of the replacement of the steam generators, a large amount of new thermal insulation was installed. Although this insulation was pre-baked to minimize off-gassing, previous Salem and other industry experience indicates that there could be significant off-gassing from the insulation during the plant heat-up resulting in an uninhabitable containment atmosphere. The ability to purge the containment during Modes 3 and 4 will provide the most safe, efficient means of removing the off-gasses from the insulation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Performance of containment purging as proposed in this license change request does not modify any primary system, secondary system, or power supply system. The purging equipment will be operated as it was designed to be operated. In summary, no accident initiator will be affected by the proposed containment purging in Modes 3 and 4. For this reason, the activity does not involve an increase in the probability of an accident previously evaluated.

A conservative engineering evaluation was performed to calculate an upper bound for the dose consequences of a postulated LOCA during Modes 3 or 4 prior to Unit 1 Cycle 13 power operation. The computations performed evaluate a postulated release of the entire core inventory. The release is modeled as a "puff" release of core activity that is transported directly to the environment via the plant vent, taking no credit for containment isolation. The release is modeled as being instantaneous. This is conservative because the highest atmospheric dispersion factors are associated with the initial release period (0 to 2 hours). Twenty-five percent of the core radioactive iodine and one hundred percent of the core noble gas inventories were assumed to be immediately available for release from the containment in accordance with Regulatory Guide 1.4. Computations were developed for whole body gamma dose, beta skin dose and thyroid dose at the Unit 1 control room air intakes, and whole body gamma dose and thyroid dose at the exclusion area boundary (EAB).

The evaluation results show that the whole body dose and the thyroid dose at the EAB are negligible compared to the 10 CFR 100 limits and that the doses are less than the corresponding doses calculated for the design basis LOCA.

The results also indicate that the thyroid dose at the control room air intakes is negligible when compared to the GDC 19 and SRP 6.4 criteria and that the calculated whole body dose is well within its limit. The computed thyroid and whole body control room doses are less than the corresponding doses calculated for the design basis LOCA.

The computations indicate that the calculated control room beta skin dose is within the 75 rem limit for protective eyewear use. In consideration of the possibility of a LOCA, however low, protective eyewear will be provided to control room personnel during the purging process.

Even though no credit is taken for containment isolation in the dose assessment, it should be noted that the valves are expected to close when requested to do so. The containment supply and exhaust valves are tested within the surveillance program to check valve stroke times. Additionally, they are designed to close in response to Containment Ventilation Isolation and Phase A Isolation signals. This response is also tested periodically. Each purge penetration is protected by two automatic isolation valves which are safety related and leak tested. Therefore, although no credit has been taken for isolation of the purge supply and exhaust penetrations, the valve closure will probably occur in the event of a design basis accident in Modes 3 or 4.

Additionally, the actual time of purging will be minimized, significantly reducing the chance that the worst case of a LOCA while purging could occur.

Plant effluent monitors provide the same monitoring capability in Modes 3 and 4 as they do in Modes 5 and 6 and the guidance necessary to assess the radiological consequences of any purge in Modes 3 and 4 is contained, and will be followed, in existing plant procedures.

For the above reasons, it is concluded that purging of the containment in Modes 3 and 4 during return from 1R13 does not involve a significant increase in either the probability or the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As is noted above, no accident initiators are affected by the proposed activity. The safety function of the purge valves is containment isolation. Performance of containment purging as proposed in this license change request does not modify any primary system, secondary system, or power supply system. Purging proposed in Modes 3 and 4 will be conducted and monitored in the same manner as it is routinely carried out in the shutdown modes. Therefore no new "accident initiators" are created by this activity. One difference is considered in the dose analysis. Although it is believed that containment isolation would occur, the conservative dose analysis, which takes no credit for containment isolation, calculates the doses for a LOCA during purging, to be within regulatory guidance. For these reasons, the activity will not create the possibility of a new or different type of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Margin of safety is associated with the confidence in the ability of the fission product barriers (the fuel and fuel cladding, the Reactor Coolant System pressure boundary, and the containment) to limit the level of radiation doses to the public. The proposed purging of the containment will occur at the end of an extended outage of over 2 1/2 years in length. The level of decay heat and activity in the reactor is very low compared to the levels associated with full power operations. For this reason, the likelihood of fuel damage following a LOCA occurring during the purging process is significantly reduced. Additionally the length of time that the purging will occur has been limited. This reduces the likelihood of the LOCA occurring during the purging process.

Conservative dose assessment performed to provide an upper bound shows that whole body and thyroid dose to the public is virtually non existent, and whole body and thyroid dose to the control room personnel is well within regulatory guidance and lower tha[n] design basis accident analysis.

The dose computations indicate that the calculated control room beta skin dose is

within the 75 rem limit for protective eyewear use. In consideration of the possibility of a LOCA, however low, protective eyewear will be provided to control room personnel during the purging process.

For these reasons, the activity does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 20, 1998 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 11, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 12th day of December 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33054 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corporation and Jersey Central Power & Light Company; Oyster Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation, et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station (OCNGS) located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the OCNGS operating license and technical specifications (TSs) to reflect the registered trade name of "GPU Nuclear" under which the owner of OCNGS now does business and to reflect the change of the legal name of the operator of OCNGS from GPU Nuclear Corporation to GPU Nuclear, Inc. In addition, the proposed action includes two minor editorial corrections associated with the name changes.

Specifically, license conditions 1.A, 1.E, 1.F, and 2 have been revised to indicate Jersey Central Power & Light Company doing business as (d/b/a) GPU Energy and GPU Nuclear, Inc. as the licensed operator of the facility and TSs 6.2.1, 6.5.1, 6.5.2, 6.5.3, 6.18, and 6.19 have been modified to change GPU Nuclear Corp. to GPU Nuclear or GPU Nuclear, Inc. as applicable.

The proposed action is in accordance with the licensee's application for amendment dated October 10, 1997.

The Need for the Proposed Action

The proposed action is needed to conform the license to reflect the registered trade name under which the owner of OCNGS now does business and reflect the change in the legal name of the operator of OCNGS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed amendment to the OCNGS operating license to reflect the trade name of the owner and to reflect the change in the legal name of the operator will have no impact on the continued safe operation of the facility. The corporate existence of the owner and operator of OCNGS will continue uninterrupted, and all legal characteristics other than the legal name of the operator will remain the same. The State of incorporation, registered agent, registered office, directors, officers, rights or liabilities of either the owner or the operator of OCNGS have not and will not change as a result of the amendment. Similarly, there will be no change in the function of either the owner or the operator of OCNGS or the way they do business. The owner's financial responsibility for OCNGS and the source of funds to support the facility will remain the same. There will be no alteration in any of the existing licensing conditions applicable to OCNGS, and no change to GPU Nuclear Corporation's ability to comply with any licensing conditions or any other obligation or responsibility under the license. Specifically, the owner of OCNGS will remain an electric utility as defined in 10 CFR 50.2. The funds accrued by the owner will continue to be available to fulfill all obligations related to OCNGS. The two minor editorial changes relate to a name change in the title of the President of GPU Nuclear Corporation that will similarly have no effect on the safe operation or licensing conditions of the facility.

Therefore, the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the OCNGS.

Agencies and Persons Consulted

In accordance with its stated policy, on December 12, 1997, the staff consulted with the New Jersey State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 10, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local

public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 12th day of December 1997.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33056 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Long Island Lighting Company Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment And Finding Of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding a proposed indirect transfer of control of ownership and possessory rights held by Long Island Lighting Company (LILCO) under the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2). The indirect transfer would be to the Long Island Power Authority (LIPA), a corporate municipal instrumentality of New York State. LILCO is licensed by the Commission to own and possess an 18 percent interest in NMP2, located in the town of Scriba, Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the indirect transfer of control of the license to the extent affected by LILCO becoming a subsidiary of LIPA. This restructuring of LILCO as a subsidiary of LIPA would result from LIPA's proposed purchase of LILCO stock through a cash merger at a time when LILCO consists of its electric transmission and distribution system, its retail electric business, substantially all of its electric regulatory assets, and its 18 percent share of NMP2. LILCO would continue to exist as an "electric utility" as defined in 10 CFR 50.2 providing the same electric utility services it did immediately prior to the restructuring. No direct transfer of the operating license or interests in the station would result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation (NMPC), which is responsible for operating and maintaining NMP2 and is not involved in the LIPA acquisition of LILCO. The proposed action is in accordance with LILCO's application dated September 8, 1997, as modified and supplemented October 8, 1997, and November 7, 1997.

The Need for the Proposed Action

The proposed action is required to enable LIPA to acquire LILCO as described above.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to NMP2. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate and maintain the facility, as NMPC will continue to be responsible for the maintenance and operation of NMP2 and is not involved in the acquisition of LILCO by LIPA.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2, (NUREG–1085) dated May 1985.

Agencies and Persons Contacted

In accordance with its stated policy, on December 10, 1997, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see LILCO's application dated September 8, as modified and supplemented by letters dated October 8 and November 7, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 9th day of December 1997.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33057 Filed 12–17–97; 8:45 am]

BILLING CODE 7590–01–P

PANAMA CANAL COMMISSION

Revision of a Currently Approved Collection of Information

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163), this notice announces the Panama Canal Commission (PCC) is planning to submit to the Office of Management and Budget a Paperwork Reduction Act Submission (83-I) for a revision of a currently approved collection of information entitled "Personnel Administration Forms," OMB Number 3207–0005.

DATES: Written comments on this proposed action regarding the collection of information must be submitted by February 17, 1998.

ADDRESSES: Address all comments concerning this notice to Edward H. Clarke, Desk Officer for Panama Canal Commission, Office of Information and Regulatory Affairs, Room 10202, New Executive Office Building, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Ruth Huff, Office of the Secretary, Panama Canal Commission, 202–634–6441.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1.1320.3(c). Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires Federal agencies to provide a 60-day notice in the **Federal Register**, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, by soliciting comments to: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title: Personnel Administration Forms.

Type of Request: Revision of a currently approved collection.

Background: The information requested is authorized by 35 Code of Federal Regulations (CFR), Parts 251 and 253, and sections 3652, 3654, and 3661–3664 of Title 22, United States Code. The information is needed to determine the qualifications, suitability and availability of applicants for Federal employment in the Panama Canal area so U.S. Federal agencies can be supplied with elegibles to fill vacant positions.

Abstract: On December 30, 1981, PCC requested OMB approval for a collection of information entitled "Personnel Administration Forms." OMB approved this collection for use through January 31, 1985 and assigned it OMB Number 3207–0005. On December 17, 1984, PCC requested another extension and received OMB approval and use through March 31, 1988. Prior to the expiration of the collection in subsequent years, PCC continued requesting approval for a revision of the collection and received approval through July 31, 1991, September 30, 1994, and February 28, 1998. The information requested is used by Recruitment and Examining Division (HRR) employees performing examining and suitability duties, by subject-matter experts on rating panels, and by agency officials making selections to fill vacancies.

Estimated Burden: The estimated burden of providing the information varies, depending upon the applicant's individual circumstances. The burden time for a full application is estimated to vary from 40 to 300 minutes with an average of 120 minutes per response, including supplemental qualifications forms when required, and 10 to 60 minutes with an average of 30 minutes to update applications already on file.

Estimated Number of Respondents: 7453.

Total Annual Reporting Hour Burden: 9082.

Respondents: Applicants for employment.

Frequency of Collection: When persons apply or update applications.

Jacinto Wong,

Chief Information Officer, Senior Official for Information Resources Management.

[FR Doc. 97–33003 Filed 12–17–97; 8:45 am]

BILLING CODE 3640–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration (NHTSA)

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of motor vehicle defect petition.

SUMMARY: This notice sets forth the reasons for the denial of a June 19, 1997 petition submitted to NHTSA under 49 U.S.C. 30162 by Donald Friedman, requesting that the agency commence a proceeding to determine the existence of defects related to motor vehicle safety in the air bag systems and the two-point automatic seat belt systems in all vehicles manufactured since 1987. After reviewing the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the allegations in the petition does not appear to be warranted. The agency accordingly has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Cooper, Chief, Vehicle Integrity Branch, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5218.

SUPPLEMENTARY INFORMATION: On June 19, 1997, Mr. Donald Friedman submitted a petition requesting the agency to investigate "the safety performance of certain motor vehicles built in compliance with the automatic crash protection requirements of Federal Motor Vehicle Safety Standards (FMVSS) No. 208; 'Occupant crash protection.'" The petition concerns vehicles with "driver air bags built from 1987 to the present." It also "concerns some automobiles with two-point automatic belts."

The petition alleges two distinct defects in the subject vehicles. One alleged defect involves the safety of those individuals who are of a "short stature (around 5 feet tall)" who position the seat so that they can both reach the pedals and see "safely" through the windshield. By positioning themselves in such a manner, they may be very close to the air bag. The petitioner alleges that this positioning, when combined with air bags which deploy at a delta V [1] of 12 miles per hour (mph) and less and which deploy with aggressive force, can cause serious and fatal injuries.

The petition alleges a second defect in vehicles with automatic seat belts that restrain only the torso portion of the body. It alleges that if shorter people "ride without the lap belt and with their seat in a rearward position" they are "likely to submarine" in a crash, and that ["w]hen this happens, the two-point belt can catch the occupant's chin and cause serious neck injuries including paraplegia or quadriplegia."

NHTSA is denying the petition for the following reasons:

I. Alleged "Aggressive Air Bags"

The petition covers all vehicles with driver side air bags built since 1987. Essentially, this includes all vehicles sold with air bags in the United States. Previously, NHTSA studied this class of vehicles and found that the performance

[1] Delta V is the rapid change of a vehicle's speed due to a crash. A 12 mph delta V is the equivalent of a vehicle traveling at 12 mph crashing into an immovable solid object such as a heavy concrete wall.

of the air bag systems in crashes resulted in a significant reduction in fatalities and serious injuries. The agency's findings from this study of the "real-world" performance of air bag systems are contained in its third Report to Congress, "Effectiveness of Occupant Protection Systems and Their Use," December 1996. More recently, the agency has estimated that as of November 1, 1997, approximately 2620 lives have been saved by air bags.

ODI recently conducted a review of air bag fatalities and the "real-world" crash performance of air bags in evaluating a petition from the Center for Auto Safety (CAS) requesting the agency to conduct a defect investigation of certain specified vehicles. CAS alleged that these vehicles were over-represented in driver-side air bag fatalities, and identified low speed deployment (less than 12 mph delta V) and aggressive deployment as prime contributing factors. In its review of "real-world" crash data, the agency compared the performance of the vehicles identified in the CAS petition to the performance of other vehicles with driver-side air bags and found that some risk of a serious or fatal injury to an out-of-position occupant is present in any air bag-equipped vehicle. Data from the agency's National Accident Sampling System (NASS) indicated that the air bags in many vehicles deploy during impacts of less than 10 mph change of speed. Data provided by the Insurance Institute for Highway Safety (IIHS) showed that the vehicles that were the subject of the CAS petition had a rate of air bag deployments per 100 crashes that was similar to that of many other vehicles. The agency found that the subject vehicles did not show a tendency toward excessive air bag deployments. NHTSA concluded that further investigation of these vehicles was unlikely to result in a determination that the air bag systems in the vehicles identified in the petition contain safety-related defects as alleged by the petitioner, and that a further commitment of agency resources in this effort was not warranted. The denial decision is published at 62 FR 41477 (July 28, 1997).

Mr. Friedman has not provided in his petition any new evidence to suggest the existence of a vehicle design defect that creates an unreasonable risk to motor vehicle safety. His petition is similar to the CAS petition in that he also has identified low speed deployment and aggressive deployment of air bags as alleged defects. However, Mr. Friedman's petition is far broader in scope than CAS', in that it covers virtually all vehicles equipped with air bags. Because NHTSA has already concluded that it could not identify a defect trend in the smaller set of specific vehicle models identified in the CAS petition, it follows that it is even less likely that an agency investigation would identify a defect trend in the larger group of vehicles identified by Mr. Friedman.

The agency has taken or proposed a number of actions to reduce the risk of driver injury from air bags. NHTSA presently permits individuals with valid reasons (such as a medical reason) to request the agency's Chief Counsel to exercise prosecutorial discretion and allow a dealer or repair shop to deactivate their vehicles' air bag(s). Also, the agency has issued a final rule (62 FR 62405 (November 21, 1997)) that will exempt dealers and repair businesses from the statutory prohibition against making federally-required safety equipment inoperative so that, beginning January 19, 1998, they may install retrofit manual on-off switches for air bags in vehicles owned by or used by persons in specified risk groups whose requests for switches have been approved by the agency.

Both NHTSA and the motor vehicle industry are presently providing vast amounts of information about the safe use of vehicles with air bags to the general public, through the print media, radio and television. Also, all vehicle manufacturers either have sent or are in the process of sending letters to owners of vehicles with air bags to supplement information that already is provided in warnings on the sun visor and in the owner's manual. The messages alert owners to the dangers of air bags and inform them of the proper procedures for occupying a seating position that is protected by an air bag.

II. Alleged "Submarining" in Vehicles With Two Point Automatic Seat Belt Systems

FMVSS No. 208 has required passive restraints in at least a percentage of passenger motor vehicles manufactured since September 1, 1986. Starting with MY 1987, manufacturers were required to phase in automatic occupant restraints to meet specified injury criteria. Although most manufacturers installed automatic seat belts in the early years of the passive restraint requirement, in more recent years air bags have become the more popular form of passive restraint. Beginning with MY 1990, all vehicles were required to meet the automatic restraint injury criteria and manufacturers began to make significant numbers of vehicles with driver air bags. Then in 1991, the Intermodal Surface Transportation Efficiency Act ("ISTEA") directed NHTSA to amend FMVSS 208 to require air bags as the form of automatic crash protection in light vehicles. As amended, Standard No. 208 requires the installation of air bags in all passenger cars manufactured on or after September 1, 1997, and all light trucks manufactured on or after September 1, 1998.

Mr. Friedman's petition is premised on the assumption that the covered vehicles were "built in compliance with the automatic crash protection requirements of [FMVSS No. 208]." Until FMVSS No. 208 was amended pursuant to ISTEA, the standard gave manufacturers the option of providing "two-point'automatic seat belt systems that included a combination of an automatic shoulder harness and a manual lap belt. Because manufacturers were legally authorized to meet the standard with this combination of equipment, NHTSA cannot conclude that two-point automatic belt systems that meet the performance requirements of the standard when operated as specified are "defective" if they are not operated as specified.

Furthermore, alleged "submarining" by short individuals who "ride without the lap belt and with their seat in a rearward position" normally will not occur if those individuals use the manual lap belts in their vehicles, in accordance with instructions. Individuals who find that they either cannot see properly or cannot reach the foot controls due to their height and/or the design of the vehicle seating system may avail themselves of certain vehicle modifications to correct the problem. Very short individuals may consider sitting on a booster pad to raise their seating position and/or contacting a dealer to have the vehicle fitted with a device to extend the foot pedals. Sitting on a booster pad does not reduce the protection that the vehicle's restraint system (the air bag and the safety belt) provides.

All manufacturers presently provide warnings to owners about the need to fasten manual safety belts despite the presence of an automatic restraint system. Warnings are located on the vehicle sun visor and in the owner's manual. Furthermore, NHTSA is conducting an extensive public education campaign to encourage the use of manual seat belts, and also is encouraging "primary" enforcement of state mandatory seat belt use laws. The agency anticipates that these measures will increase the use of manual lap belts in vehicles that are equipped with "two-point" automatic seat belts.

For the foregoing reasons, further expenditure of the agency's investigative resources on the allegations in the petition does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162 (d); delegations of authority at CFR 1.50 and 501.8.

Issued on: December 9, 1997.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 97–33032 Filed 12–17–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–65

AGENCY: Internal Revenue Service (IRS), Treasury..

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97-65, Income Tax Return Preparer Penalties—1997 Federal Income Tax Returns Due Diligence Requirements for Earned Income Credit (EIC).

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Income Tax Return Preparer Penalties—1997 Federal Income Tax Returns Due Diligence Requirements for Earned Income Credit (EIC).

OMB Number: 1545–1570.

Notice Number: Notice 97–65.

Abstract: Notice 97–65 sets forth due diligence requirements for tax preparers on returns involving the earned income tax credit (EIC). The due diligence requirements include soliciting the information necessary to determine a taxpayer's eligibility for the EIC and the amount of the EIC, and the retention of this information.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 160,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32962 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–58–83]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–58–83 (T.D. 7959), Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations (§§ 1.955A–2 and 1.955A–3).

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

OMB Number: 1545–0755.

Regulation Project Number: LR–58–83.

Abstract: This regulation concerns the election made by a related group of controlled foreign corporations to determine foreign base company shipping income and qualified investments in foreign base company shipping operations on a related group basis. The information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to that shareholder.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondents: 2 hours, 3 minutes.

Estimated Total Annual Burden Hours: 205.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32963 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–46–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–46–89 (TD 8641), Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions (§§ 1.597-2, 1.597–4, 1.597–6, and 1.597–7).

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

OMB Number: 1545–1300.

Regulation Project Number: FI–46–89.

Abstract: Recipients of Federal financial assistance ("FFA") must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and the Federal Government.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 4 hours, 24 minutes.

Estimated Total Annual Burden Hours: 2,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32964 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–189–80]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–189–80 (TD 7927), Amortization of Reforestation Expenditures (§§ 1.194–2 and 1.194–4).

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amortization of Reforestation Expenditures.

OMB Number: 1545–0735.

Regulation Project Number: LR–189–80.

Abstract: Internal Revenue Code section 194 allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the IRS to determine if the election is proper and allowable.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 6,001.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–32965 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TREASURY

Internal Revenue Service

Notice of Renewal of the Charter of the Information Reporting Program Advisory Committee

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), this announcement serves as notice that the Department of the Treasury and the General Services Administration's Committee Management Secretariat have renewed the charter of the Information Reporting Program Advisory Committee (IRPAC) for a two-year period beginning on November 7, 1997. As the services of IRPAC are expected to be needed for an indefinite period of time, no termination date has been established which is less than two years from this date.

SUPPLEMENTARY INFORMATION: In 1991 the Internal Revenue Service (IRS) established IRPAC in response to a recommendation made by the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP). IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for information reporting payer compliance. IRPAC is instrumental in providing advice to enhance the IR Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC is currently comprised of 18 representatives from various segments of the information reporting payer community and one member from the Social Security Administration. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two or three meetings each year.

DATES: The request for renewal of the charter was signed by the Secretary of the Treasury on November 7, 1997. Official approval from the General Service Administration's Committee Management Secretariat was obtained on the same day. This charter renewal will expire in two years.

ADDRESSES: Questions or concerns should be directed to Ms. Kate LaBuda at IRS, Office of Payer Compliance, CP:EX:ST:PC, Room 2013, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call Ms. Kate LaBuda at 202–622–3404 (not a toll-free number).

Dated: December 12, 1997.

Kate LaBuda,

(Acting) Director, Office of Payer Compliance, Office of Specialty Taxes.

[FR Doc. 97–32961 Filed 12–17–97; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Women's Leadership Training Program for Central and Eastern Europe; Request for Proposals

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop training programs that offer leadership training skills to women in Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia,

Lithuania, Poland, Romania, Serbia, Slovakia, and Slovenia.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Progams and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/P–98–19.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, February 27, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. We anticipate that grants will begin on or about June 1, 1998.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchange (E/PE) Room 224, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202–619–5319, fax: 202–619–4350, or Internet address: cminer@usia.gov, to request a Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download A Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive A Solicitotion Package Via FAX on Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Christina Miner on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–98–19, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

USIA is interested in proposals that encourage the growth of democratic institutions in Central and Eastern Europe. Exchanges and training programs supported by the Office of Citizen Exchange's institutional grants should operate at two levels: they should enhance institutional relationships; and they should offer practical information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: an existing partner relationship between an American organization and an in-country institution in Central and Eastern Europe; a proven track record of conducting program activity; cost-sharing from American or in-country sources, including donations or air fares, hotel and/or housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources. We recommend that programs with a U.S. component include letters of commitment from host institutions, even if tentative. Letters of commitment from any in-country partners should also be provided. Applicants are encouraged to consult with USIS offices regarding program content and partner institutions before submitting proposals. Award-receiving applicants will be expected to maintain contact with the USIS post throughout the grant period.

USIA requests proposals for projects that offer leadership training skills to representatives of women's organizations who are active in their own communities in Albania, Bosnia, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Serbia, Slovakia, and Slovenia. The focus of the training program should be on how to identify priorities, organize and form coalitions, and influence decision makers about issues and problems affecting the well-being of people in local communities. Proposals are not limited to a one-country focus but may address how to build networks among women's organizations in several countries. Project activities may include: internships; study tours; short-term training; consultations; and extended, intensive workshops taking place in the United States or in Central and Eastern Europe. Prospective grantee institutions should identify the Central and Eastern European local organizations and individuals with whom they are proposing to collaborate and describe in detail previous cooperative programming and contacts. Program activity may take place in Central and Eastern Europe or in the United States. This activity is intended to follow-up on issues addressed in the Vital Voices conference held in Vienna from July 9–11. For more information on the conference, please see the Vital Voices Homepage at http://www.usia.gov/vitalvoices.

Selection of Participants

Programs should describe clearly the type of persons who will participate in the program as well as the process by which participants will be selected. In the selection of foreign participants, USIA and USIS posts abroad retain the right to nominate participants and to approve or reject participants recommended by the grantee institution. Priority will be given to foreign participants who have not previously traveled to the United States.

Visa Regulations

Foreign participants on programs sponsored by the Office of Citizen Exchanges are granted J–1 Exchange Visitor visas by the American Embassy in the sending country.

Project Funding

Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations, and other institutions will be considered highly competitive.

Although no set funding limit exists, proposals for less that $75,000 will receive preference. Organizations with less that four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location or activity in order to facilitate USIA decisions on funding. While a comprehensive line item budget based on the model in the Solicitation Package must be submitted, separate component budgets are optional.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S. the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at http://www.policyworks.gov/.

3. Interpreters. If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreters, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Administrative Costs. Other costs necessary for the effective administration of the program, including salaries or grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Idea:* Proposals should respond to the program requirements of the RFP and exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program planning and ability to achieve objectives:* Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the topic in this announcement and should relate to the current conditions in the target countries. They should be reasonable and attainable. A detailed work plan should explain step by step how objectives will be achieved. The substance of seminars, presentations, consulting, intership, and itineraries should be spelled out in detail. A timetable indicating when major program tasks will be undertaken should be provided. Responsibilities of in-country partners should be clearly described.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-

up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The narrative should demonstrate proven ability to handle logistics. Proposal should reflect the institution's expertise in the subject area and knowledge of the country. Proposals should demonstrate the institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation:* USIA is results-oriented, Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire and/or plan for use of another measurement technique (such as focus group) to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

7. *Cost-effectiveness/cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 11, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–32815 Filed 12–17–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension, parents' dependency and indemnity compensation (DIC), and spina bifida programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one-year period ending September 30, 1997. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1998, which began on October 1, 1997.

DATES: These COLAs are effective December 1, 1997. The headstone or marker allowance rate is effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (213B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Pub. L. 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of a VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1997 under the above computation method was $109. Therefore, effective October 1, 1997, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1998 is $109.

Cost-of-Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.1 percent cost-of-living increase in Social Security benefits effective December 1, 1997. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1997:

TABLE 1.—IMPROVED PENSION

Maximum annual rates
(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
Veteran with no dependents, $8,665
Veteran with one dependent, $11,349
For each additional dependent, $1,476
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $13,859
Veteran with one dependent, $16,542
For each additional dependent, $1,476
(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $10,591
Veteran with one dependent, $13,275
For each additional dependent, $1,476
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $11,349
Either veteran in need of aid and attendance, $16,542
Both veterans in need of aid and attendance, $21,734
Either veteran housebound, $13,275
Both veterans housebound, $15,202
One veteran housebound and one veteran in need of aid and attendance, $18,465
For each dependent child, $1,476
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $5,808
Surviving spouse and one child in his or her custody, $7,607
For each additional child in his or her custody, $1,476
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $9,288
Surviving spouse with one child in his or her custody, $11,082
For each additional child in his or her custody, $1,476
(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $7,101
Surviving spouse and one child in his or her custody, $8,895
For each additional child in his or her custody, $1,476
(8) Surviving child alone (38 U.S.C. 1542), $1,476

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,963. (38 U.S.C. 1521(g)).

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

Table 2

One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $412, reduced on the basis of the parent's annual income, according to the following formula:

For each $1 of annual income

The $412 monthly rate		
Shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	9,857

No DIC is payable under this table if annual income exceeds $9,857.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $297, reduced on the basis of each parent's annual income, according to the following formula:

Table 3

For each $1 of annual income

The $297 monthly rate		
Shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	9,857

No DIC is payable under this table if annual income exceeds $9,857.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $278 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

Table 4

For each $1 of annual income

The $278 monthly rate		
Shall be reduced by	Which is more than	But not more than
$.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	13,250

No DIC is payable under this table if combined annual income exceeds $13,250.

The rates in this table are also applicable in the case of one surviving

parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $221 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $9,857 (Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $10,357 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $13,250 (Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $13,750 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse), $8,057 (Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $3,144 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $8,628 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $12,440 (Pub. L. 95–588, section 306(b)).

Spina Bifida Benefits

Section 421 of Pub. L. 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are natural children of veterans who served in the Republic of Vietnam during the Vietnam era. Pursuant to 38 U.S.C. 1805(b)(3), spina bifida rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.). Effective December 1, 1997, spina bifida monthly rates are as follows:

Level I: $205

Level II: $715

Level III: $1,226

Dated: December 10, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–32986 Filed 12–17–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, January 14, 1998, at 2:00 p.m.

Wednesday, February 18, 1998, at 2:00 p.m.

Wednesday, March 25, 1998, at 2:00 p.m.

The meetings will be held in Room 246, Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee (05), 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: December 11, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–32987 Filed 12–17–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
December 18, 1997

Part II

Federal Reserve System

12 CFR Part 202

Equal Credit Opportunity; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0965]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to Regulation B (Equal Credit Opportunity). The revisions implement recent amendments to the Equal Credit Opportunity Act (ECOA). These amendments create a legal privilege for information developed by creditors as a result of "self-tests" that they voluntarily conduct to determine the level of their compliance with the ECOA. The Department of Housing and Urban Development will publish similar revisions to the regulations implementing the Fair Housing Act.

DATES: The rule is effective January 30, 1998.

FOR FURTHER INFORMATION CONTACT: James A. Michaels, Senior Attorney, or Natalie E. Taylor, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Diane Jenkins, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The act is implemented by the Board's Regulation B (12 CFR part 202).

On September 30, 1996, the President signed into law amendments to the ECOA as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) (1996 Act). Section 2302 of the 1996 Act creates a legal privilege for information developed by creditors through voluntary "self-tests" that are conducted to determine the level or effectiveness of their compliance with the ECOA, provided that appropriate corrective action is taken to address any possible violations that may be discovered. Privileged information may not be obtained by a government agency for use in an examination or investigation relating to compliance with the ECOA, or by a government agency or credit applicant in any proceeding in which a violation of the ECOA is alleged. The 1996 Act also provides that a challenge to a creditor's claim of privilege may be filed in any court or administrative law proceeding with appropriate jurisdiction.

The 1996 Act directs the Board to issue implementing regulations, including a definition of what constitutes a "self-test." The Act also establishes a privilege for creditor self-testing under the Fair Housing Act (42 U.S.C. 3601 *et seq.*), which is administered by the Department of Housing and Urban Development (HUD). The statute directs the Board and HUD to issue substantially similar regulations. In January, the Board published a proposed rule to Regulation B implementing the amendments to the ECOA (62 FR 56, January 2, 1997). After consultation with the federal agencies responsible for enforcing the ECOA and with HUD, the Board is publishing final rules to implement the 1996 Act's amendments to the ECOA. HUD will publish rules to implement the amendments to the Fair Housing Act.

After reviewing both regulations, the Board and HUD believe that there is no substantial difference in the final rules and that they should be interpreted to have the same effect, except where differences in the coverage of the ECOA and FHA dictate otherwise. For example, the ECOA covers nonmortgage credit transactions that are not covered by the FHA. Moreover, although there are organizational differences in the agencies rules, these differences are not intended to have any substantive effect, and merely reflect the Board's longstanding practice of publishing its interpretative rules in a separate Staff Commentary. HUD has no staff commentary and has generally included these interpretations in the text of its regulation. The consistency of the Board and HUD rules is evident based on a comparison of the complete documents published by the agencies, including the preambles to the regulatory amendments, and the revisions to the Board's Official Staff Commentary to Regulation B.

II. Regulatory Provisions

The amendments to Regulation B implement the 1996 Act by defining what constitutes a privileged self-test. A "self-test" is defined as any program, practice, or study that is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the ECOA or Regulation B, if it creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions. The privilege serves as an incentive, by assuring that evidence of discrimination voluntarily produced by a self-test will not be used against a creditor, provided the creditor takes appropriate corrective actions for any discrimination that is found.

This definition of "self-test" includes, but is not limited to, the practice of using fictitious applicants for credit (testers). A creditor also may develop and use other methods of generating information that is not available in loan and application files, for example, by surveying mortgage loan applicants to assess whether applications were processed appropriately. The definition does not include creditor reviews and evaluations of loan and application files, either with or without a statistical analysis.

The 1996 Act makes the results or report of a self-test privileged if the creditor takes appropriate corrective action to address possible violations identified by the self-test. In response to commenters' concerns about the proposal's effectiveness as an incentive for self-correction, the final rule provides additional guidance on the corrective action requirement.

The Board's final rule becomes effective January 30, 1998. The 1996 Act provides that self-tests will be privileged even if they were conducted before the regulation's effective date, with two exceptions. Self-tests previously conducted will not become privileged on the regulation's effective date if a court action or administrative proceeding has already commenced against the creditor alleging a violation of the ECOA or Regulation B or the Fair Housing Act. In addition, a self-test previously conducted will not become privileged on the regulation's effective date if any part of the report or results has already been voluntarily disclosed by the creditor.

III. Section-by-Section Analysis

Section 202.12—Record Retention

12(b)(6) Self-Tests

Paragraph 12(b)(6) contains provisions on record retention that were designated as Paragraph 15(e) of the proposed rule. There are no substantive changes to the provision as proposed. The redesignation allows all of the regulation's record retention requirements to be listed together in one section. Paragraph 12(b)(6) states that a creditor has a duty to retain self-testing records for 25 months, which is the general standard for retaining other records required under the regulation.

Several commenters opposed any retention requirement for self-testing records. Some commenters suggested that retention of self-testing records should only be required if the creditor claims the self-testing privilege. Under the approach suggested by these commenters, a creditor that did not intend to claim privilege for the self-testing results could discard all related records even if the self-test identified violations; the creditor could decide whether or not to take corrective action, and the creditor could be required to provide oral testimony about the self-test results.

The provision requiring record retention has been adopted as proposed. The Board believes that retention of self-testing records is warranted whether or not the creditor ultimately decides to assert a privilege for the results. If the privilege is asserted, the self-test results may be needed to determine whether the creditor's claim of privilege is consistent with the corrective action requirement and other prerequisites. But in any event, allowing creditors to choose between claiming the privilege and discarding the self-testing records would be inconsistent with the intent of the legislation. The statute encourages testing, but its ultimate goal is to provide incentive for creditors to use the results to take appropriate corrective actions that increase compliance with the law. This goal is not furthered if creditors elect to destroy evidence of self-test results as one alternative to taking corrective action. The Board intends for the record retention requirement to encourage creditors to take the full measure of corrective action that is warranted in light of the self-test results.

Section 202.15—Incentives for Self-Testing and Self-Correction

15(a) General Rules

15(a)(1) Voluntary Self-Testing and Correction

Paragraph 15(a)(1) states the general rule that the report or results of a creditor's voluntary self-test are privileged if the conditions specified in this rule are satisfied. The language has been modified slightly for clarification. Data collection that is required by law or any government authority is not a voluntary self-test and does not qualify for the privilege.

15(a)(2) Corrective Action Required

Paragraph 15(a)(2) implements the requirement imposed by the 1996 Act that a creditor must take appropriate corrective action in order for the privilege to apply. A self-test is also privileged when it identifies no violations. The Board believes this is necessary to avoid the anomaly of requiring creditors to disclose self-test results when no violations are identified, which would make a creditor's claim of privilege tantamount to an admission that violations were found.

In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take corrective action on a timely basis after the results of the self-test are known. An adjudicator's final decision on whether the privilege applies should be withheld until the creditor has taken the appropriate corrective action.

A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an in camera inspection of the privileged documents by a court or administrative law judge.

15(a)(3) Other Privileges

Several commenters requested that the Board clarify the effect of the self-testing rule on other privileges that may also apply, such as the attorney-client privilege or the privilege for attorney work product. Paragraph 15(a)(3) has been added to clarify that the self-testing privilege may be asserted in addition to any other privilege.

15(b) Self-Test Defined

15(b)(1) Definition

Paragraph 15(b)(1) states what constitutes a "self-test" for purposes of the ECOA. The 1996 Act does not define "self-test" and authorizes the Board to define by regulation the practices covered by the privilege. In the proposed rule, the privilege was limited to self-tests that create data or factual information about a creditor's compliance that is not available and cannot be derived from the creditor's loan or application files or other records related to credit transactions. The Board solicited views on whether a broader definition should be considered, for example, a definition that would also include creditors' analyses of their loan and application files. Comments were sought on whether a broader definition might adversely affect the ability of enforcement agencies and private parties to obtain needed information or whether it would provide needed incentives for creditor monitoring and self-correction.

Most of the comments received, from creditors and their representatives, favored a broad definition of "self-test." The Board has carefully considered all the comments along with the views of the agencies charged with enforcement of the act and regulation. For the reasons explained below, the scope of the definition as proposed has been retained in the final rule, although the language has been revised somewhat for clarity.

Under the final rule, the principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications handled by a particular loan officer or processed by a specific branch, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, for example, by surveying mortgage loan applicants to assess whether applications were processed appropriately. To the extent permitted by law, creditors might also

develop methods that go beyond traditional pre-application testing, such as arranging for testers to submit fictitious loan applications for processing.

A creditor's evaluation or analysis of credit applications, loan files, Home Mortgage Disclosure Act data or similar types of records (such as broker or loan officer compensation records), does not produce new factual information about a creditor's compliance and is not a self-test for purposes of this section. Information derived from such records, even if it has been aggregated or reorganized to facilitate the creditor's analysis, also would not be privileged. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

As some commenters pointed out, the proposed rule focused only on testing for compliance with the prohibitions on discrimination contained in sections 202.4 and 202.5(a) of Regulation B. The statute refers, however, to self-testing for compliance with the ECOA generally. Accordingly, the language of the final rule has been modified to apply to self-testing for compliance with any requirement of the ECOA as implemented by Regulation B.

To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed and used to determine compliance with other laws or regulations or for other purposes, is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Most creditors that commented believed that the proposed definition of "self-test" was too narrow because it would not provide incentives for creditors to review their existing loan files, either with or without a statistical analysis. These commenters asserted that the proposed definition would effectively be limited to testing for a narrow range of discriminatory practices—tests for illegal discouragement of loan applicants during the pre-application process. They believed there should be incentives to analyze a creditor's policies and evaluate its underwriting or other lending practices after an application is made, and that an audit and review of actual credit transactions are the most effective ways of monitoring compliance with the ECOA. These activities were generally characterized as "self-audits" or "self-examinations." In addition, some commenters suggested using an even broader definition, one that would privilege any critical self-analysis performed by a creditor.

A few commenters believed that a narrow definition of "self-test" only encourages the use of "testers," and will effectively limit the privilege to certain creditors and loan products. They cited wholesale lenders and secondary market purchasers as parties that do not have retail operations and cannot use testers. Also, testers generally are not used for credit cards, automobile loans, or other loan programs that do not typically involve personal contacts. Some commenters noted that "mystery shopper" tests are relatively expensive and are not used as frequently among smaller institutions, which are more likely to rely on paper audits.

Civil rights and community organizations favored a narrow definition of "self-test." Some claimed that creditors already have adequate incentives to monitor their loan and application files because they are subject to review by regulatory and enforcement agencies. They asserted that the risks and costs of litigation and creditors' potential liability are also sufficient incentives for creditors to audit their loan files. These commenters believed that the Board should maximize the amount of information available to private litigants by reading the privilege narrowly. In addition, one commenter believed that a broad definition would encourage creditors to shield as much information as possible and would force plaintiffs alleging discrimination to engage in lengthy and expensive litigation to challenge creditors' claims of privilege.

As directed by the statute, the Board consulted with the other federal bank regulatory agencies, and with the Federal Trade Commission and Department of Justice, all of which share some responsibility for enforcement of the ECOA. As a general matter, the agencies expressed support for implementing the privilege in a manner that encourages creditors to self-test and take voluntary corrective action, but does not hinder appropriate enforcement efforts that are undertaken through compliance examinations and, when necessary, the filing of legal actions. All of the agencies favored the narrow definition used in the proposed rule.

The bank regulatory agencies consulted by the Board believed that a broad privilege would make compliance examinations less efficient and more burdensome for financial institutions without necessarily increasing the level of self-testing. They noted that most large depository institutions already conduct some type of audit or self-evaluation, frequently involving the review or evaluation of actual loan files, even though the results of such evaluations currently are not privileged. As a matter of policy, the Office of the Comptroller of the Currency does not require national banks to disclose the results of self-evaluations, although banks that do so voluntarily may be eligible for more streamlined examinations. Generally, banks could be expected to continue their audit programs if the Board adopts a broader privilege, however, they probably would be less likely to share the results with their supervisory agencies because, if they did, they would lose any privilege to withhold the results from private litigants.

The bank regulatory agencies also expressed concern that a broader privilege is likely to result in more disputes over what information lenders may withhold from examiners, thereby making the examination process more adversarial. The enforcement agencies noted that a broader privilege is likely to require the commitment of greater resources to the adjudication of privilege claims.

The Department of Justice preferred the implementation of a narrow privilege so that the rule's benefits, risks, and overall effect could be studied before considering a broader rule with potentially greater impact on the government's and private litigants' access to creditor records.

The Board also consulted extensively with HUD in connection with that agency's mandate to implement the self-testing privilege under the Fair Housing Act. As noted in its notice of final rulemaking, HUD too favored the narrower rule.

The Board believes that adoption of either the broad or narrow definition of "self-test" would be within the Board's rulemaking authority under the statute, which does not define the term "self-test." There is some evidence in the legislative history that the congressional sponsors intended a narrow definition. The statute itself, however, defers to the agencies by expressly delegating to the Board and HUD the task of defining the term under the ECOA and the FHA.

The statutory language does not mandate a privilege that covers every method that a creditor might use to evaluate its performance. The only statutory guidance is language stating that the regulation should specify that a self-test must be sufficient to determine the level and effectiveness of the creditor's compliance with the law. That language has been incorporated into the final rule.

The Board believes that the Congress intended the agencies to weigh the competing interests of creditors, private litigants, and the regulatory and enforcement agencies in developing a definition that furthers compliance with the antidiscrimination policies of the ECOA and Fair Housing Act, as well as the purpose of the self-testing privilege, which is to increase creditor self-correction efforts. Balancing these interests to derive a definition calls for the agencies to make a prediction about future events that is necessarily imprecise—which definition and which enforcement methods are likely to produce the greatest increase in compliance with the two statutes.

The narrow definition of "self-test" provides added incentive for creditors to look beyond their ordinary business records and develop new factual evidence about the level and effectiveness of their compliance. In particular, it creates an incentive for creditors to use self-testing to monitor the pre-application process, a stage which typically does not produce the type of documentation that lends itself to traditional compliance reviews. But even under a narrow definition of "self-test," principles of sound lending dictate that a creditor have appropriate audit and control systems. These may take the form of compliance reviews, file analyses, the use of second-review committees, or other methods that examine loan and application files that are subject to examination by the regulatory and enforcement agencies and may be obtained by a private litigant alleging a violation. Creditors have incentives to conduct routine compliance reviews and file analyses as good business practices and to avoid or minimize potential liability for violations.

A broad definition of "self-test" might give some creditors greater incentive to evaluate their performance. To the extent they conduct such evaluations, a broad definition would also provide less information to government agencies or private litigants seeking to enforce the ECOA. It is difficult to know whether a broad definition would significantly increase creditor self-monitoring, or merely prevent or deter disclosure of audit results by creditors that routinely undertake such audits as a prudent business practice.

In the proposed rule, the Board also noted that extending the self-testing privilege to audits of existing business records could have an unintended negative effect on the levels of cooperation between creditors and the regulatory agencies. The agencies consulted by the Board agreed with that view. In addition to the Board, these agencies possess considerable expertise in supervising and regulating financial institutions and in enforcing the fair lending laws. In view of the concerns about the uncertain benefits and potential impact of a broader rule on government enforcement and the legal rights of private litigants, the Board is adopting the narrower definition as proposed. In reaching this decision, the Board has also given some weight to the argument that a broadly defined privilege would result in more disputed claims of privilege that must be adjudicated.

The Board expects creditors to continue conducting routine compliance reviews as a good business practice to eliminate discrimination and avoid or minimize their potential liability for violations, even without the self-testing privilege. After several years' experience, it may be appropriate to review the rule to determine if the incentives for self-testing and self-correction can be strengthened without impairing other enforcement mechanisms.

15(b)(2) Types of Information Privileged

Paragraph 15(b)(2) of the final rule was designated as paragraph 15(b)(3) of the proposed rule. The paragraph clarifies what information generated by a self-test is privileged. The examples of self-tests that had been listed in paragraph 15(b)(2) of the proposed rule are discussed in the Official Staff Commentary.

15(b)(3) Types of Information Not Privileged

Paragraph 15(b)(3) of the final rule had been designated as paragraph 15(b)(4) of the proposed rule. Paragraph 15(b)(3)(i) clarifies that information about the existence of a self-test, its scope, or the methodology used in conducting the test, is not privileged. Such information may be necessary to determine whether the prerequisites for a claim of privilege have been satisfied.

Paragraph 15(b)(3)(ii) clarifies that the underlying loan and application files or other business records related to actual credit transactions are not privileged. Information derived from such records also is not privileged, even if it has been aggregated, summarized, or reorganized to facilitate analysis. Examples of the types of records that are not privileged include property appraisal reports, loan policies or procedures, underwriting standards, employee or broker compensation records, and minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

15(c) Appropriate Corrective Action

Paragraph 15(c) has been revised in response to commenters' concerns. To give creditors more specific guidance, the final rule lists certain situations that will not require remedial relief to individual applicants in order for the privilege to apply.

The rule only addresses what corrective actions are required for a creditor to take advantage of the privilege in this section. A creditor may still be required to take other actions or provide additional relief if a formal finding of discrimination is made.

15(c)(1) General Requirement

The final rule has been revised to clarify that corrective action is required when the results of a self-test show that it is more likely than not that one or more violations occurred. The proposed rule used the language of the 1996 Act, stating that corrective action would be required when a creditor identified a "possible" violation. The final rule has been revised in light of commenters' concerns that this language was capable of differing interpretations. For example, some commenters feared that the rule might be construed to require corrective action if a violation was "possible" even if unlikely. The Board believes the statute was intended to require corrective action only if a violation is more likely than not, and that the reference to "possible" violations merely recognizes that corrective action is required even though no violation has been formally adjudicated or admitted. The language of the final rule has been modified accordingly.

In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan

applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take appropriate corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

15(c)(2) Determining the Scope of Appropriate Corrective Action

Paragraph 15(c)(2) provides that a creditor must take corrective actions that are reasonably likely to remedy both the cause and effects of the violation; this requires identification of the practice or policy that is the likely cause and an assessment of the extent and scope of the violation. This determination must be made on a case-by-case basis. The rule is not intended to suggest that in each case there is a single, most appropriate response. To provide additional guidance, a list of sample corrective actions, including both prospective and remedial relief, is included in the Official Staff Commentary.

Many commenters believed that creditors will be less likely to self-test if the availability of the privilege cannot be determined until after their corrective action has been determined to be sufficient. A number of them suggested adopting a good-faith standard, so that creditors using reasonable business judgment about how to correct potential violations would be deemed to satisfy the corrective action requirement.

The Board recognizes that creditors' incentive to self-test may be affected by the fact that creditors' claims that the self-test report and results are privileged are subject to challenge. This is inherent in the statutory framework established by the 1996 Act, which allows parties who are denied access to self-test data an opportunity to contest the creditor's assertion of the privilege in a formal adjudication. The application of a good-faith or business judgment rule would significantly limit the right and ability of these parties to do so, by allowing creditors' own business judgment to serve as the ultimate guide on the corrective action requirement. The Board believes a good-faith or business judgment rule would be inconsistent with the legislative intent. Accordingly, as proposed, the rule continues to recognize that determining whether a creditor has taken appropriate corrective action must be made on a case-by-case basis and that the applicable standard is whether the corrective action is reasonably likely to remedy both the cause and effect of the violation.

Paragraph 15(c)(2) also provides that in determining the appropriate corrective action, creditors should identify the practice or policy that is the likely cause of the violation and assess the extent and scope of the violation. For example, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices—for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

15(c)(3) Types of Relief

Paragraph 15(c)(3) has been added in response to commenters' concerns. It is intended to give creditors more specific guidance, and lists certain situations that do not require remedial relief to individual applicants in order for the privilege to apply.

The proposed rule stated that corrective action includes both prospective and retroactive relief, as may be appropriate. Some commenters believed that this was too broad, especially in light of the narrow definition of "self-test." They expressed the view that the use of pre-application testers to identify policies and practices that illegally discriminate should not require creditors to review existing loan files to identify and compensate applicants who might have been adversely affected.

The final rule has been revised. For the privilege to apply, a creditor must take corrective action that is appropriate for the type of self-test and the scope of the likely violation. A creditor is required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated, but is not required to identify other persons who might have been adversely affected. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected. Because this rule only addresses the types of relief required in order to assert the self-testing privilege, creditors should make efforts to identify other potential victims, however, as a good business practice and to avoid or minimize potential liability.

Some commenters asserted that creditors' incentive to self-test would be weakened if the rule is interpreted to require remedial relief equal to or beyond what applicants could obtain in a legal action. The final rule clarifies that a creditor is not required to provide remedial relief to an applicant if the statute of limitations expired before the results of the self-test were obtained or if the applicant is otherwise ineligible for such relief. For example, the creditor need not offer credit to a denied applicant who no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

15(c)(4) No Admission of Violation

This paragraph has been added in response to commenters' requests for clarification that a creditor's corrective actions not be deemed an admission that a violation occurred. The provision is intended to provide additional incentive for creditors to take preventive measures that may address potential problems even though a violation has not yet occurred.

15(d)(1) Scope of Privilege

Paragraph 15(d)(1) describes the scope of the privilege for covered self-tests. Privileged documents may not be obtained by a government agency for use in an examination or investigation relating to compliance with the ECOA, or by a government agency or applicant (including prospective applicants alleging they were discouraged from pursuing an application on a prohibited basis) in any civil proceeding in which a violation of the ECOA or Regulation B is alleged. This paragraph applies to federal, state, and local government agencies. Accordingly, in a case brought under the ECOA, the privilege established under this section would preempt inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data.

Some commenters believed that the privilege should also apply in cases filed under state law if the information would be privileged in a case filed under the ECOA. They argued that creditors would be unable to rely on the privilege as an incentive to self-test if parties can obtain the information by filing state law claims. The 1996 Act, however, establishes only a limited privilege, that protects self-testing data from disclosure or use in examinations and investigations conducted under the ECOA and Fair Housing Act, and in proceedings alleging a violation of those laws.

In proceedings where the self-testing privilege does not apply (for example, litigation that is filed only under a state's fair lending statute), if the court orders a creditor to disclose self-test results, that disclosure would not be a voluntary waiver of the privilege for purposes of the ECOA. But the privilege could be undermined for purposes of the ECOA if the privileged self-testing data are made public. Creditors could seek a protective order to limit the availability and use of the self-testing data and prevent its dissemination beyond what is necessary in that particular case. In any event, as long as the self-testing privilege is not forfeited by the creditor, paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA.

15(d)(2) Loss of Privilege

Paragraph 15(d)(2) describes the circumstances that would result in the loss of privileged status. This paragraph is adopted substantially as proposed with only minor modifications for clarification.

Paragraph 15(d)(2)(i) provides that the results or report of a self-test, including any data generated by the self-test, will no longer be privileged under this section once the creditor voluntarily discloses all or part of the contents to any government agency, loan applicant, or the general public. This paragraph has been revised to clarify that the privilege is lost if the creditor discloses privileged information, such as the results of the self-test, but that the privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Comment was solicited on a possible exception to the general rule in paragraph 15(d)(2)(i), whereby creditors could voluntarily share privileged information with a regulatory or law enforcement agency without causing the information to lose its privileged status when it is subsequently sought by private litigants. Under such an exception, however, such disclosures would cause the documents or information to lose their privileged status with respect to all supervisory and enforcement agencies.

A significant number of commenters supported such an exception and believed it would be particularly useful in enabling creditors to seek guidance from the agencies in determining the appropriate corrective action that is a prerequisite for the privilege. It would also encourage financial institutions to voluntarily share self-testing data with examiners, to reduce the burden associated with compliance examinations performed by those agencies. A few commenters believed that mandatory sharing of self-test results with regulatory and enforcement agencies was appropriate.

Some commenters opposed any exception that would allow creditors to voluntarily share privileged information with government agencies while maintaining the privilege as to private litigants. They also questioned whether such an exception would be consistent with the law.

The Board believes that such an exception would be useful and could be adopted pursuant to the Board's statutory authority to create regulatory exceptions under the ECOA. The 1996 Act, however, directs the Board and HUD to enact substantially similar regulations under the ECOA and Fair Housing Act. For the reasons stated in its notice of final rulemaking under the Fair Housing Act, HUD does not believe that there is statutory authority for such an exception, and also does not believe it is advisable. Accordingly, the Board has adopted the rule as initially proposed.

As provided in the 1996 Act, the proposed rule stated that self-testing data loses its privileged status if it is disclosed by a person with "lawful access" to the self-test report or results. Some commenters suggested the privilege should be lost only if the person with access to the privileged information is also authorized to make such a disclosure. However, if a creditor has no formal method for authorizing individual employees to disclose privileged information, that approach would impose the added burden of determining the nature and scope of particular employees' duties and authority. Several commenters also requested that the rule expressly state that the privilege is not lost through an inadvertent or accidental disclosure.

The statutory language does not specifically address these issues. It may have been the legislative intent to allow such matters to be resolved under the substantial body of judicial law that has already developed regarding privileges generally. For example, some courts have held that a privilege is lost even if the disclosure was unintentional or inadvertent. Other courts have declined to adopt a strict rule and opt instead for an approach that takes account of the facts surrounding the particular disclosure before deciding whether or not the privilege should be deemed to be lost. In the absence of any clear legislative intent, the Board believes these issues are best resolved under the existing law concerning privileges and the rules of evidence as administered by the courts. Thus, the final rule has been adopted as proposed.

Several commenters sought additional clarification because they believed the rule regarding loss of the privilege when information is disclosed by a person with "lawful access" might be interpreted to include any person lawfully on the creditor's premises. Whether a particular individual has "lawful access" for purposes of disclosing privileged information is a factual issue. Consideration should be given to whether the individual was an employee or agent of the creditor who reasonably should be expected to have access to or knowledge of the privileged information. The Board believes such matters should be resolved by a court or administrative law judge under the existing law relating to privileges generally. Accordingly, the proposed rule has been adopted without change.

A few commenters requested clarification that the privilege is not lost if the creditor discloses self-testing results to independent contractors acting as auditors or consultants on compliance matters. The Official Staff Commentary is being revised to reflect this interpretation.

Some commenters expressed concern that if a creditor notified applicants or loan customers that they were eligible for remedial relief, that would be viewed as a disclosure of the self-test results, causing the privilege to be lost. A provision has been added to the Official Staff Commentary clarifying that a creditor's corrective actions alone will not be considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. A voluntary disclosure could occur, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

Under paragraph 15(d)(2)(ii), if a creditor elects to rely on the self-testing results as a defense to alleged violations of the ECOA in court or administrative proceedings, the privilege will not apply if the documents are sought in connection with those proceedings. This paragraph has been revised to clarify that the privilege is lost if the creditor discloses privileged information, such as the results of the self-test, but that the privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

15(d)(3) Limited Use of Privileged Information

Paragraph 15(d)(3) is adopted as proposed, and implements the statutory provision that allows for a limited use of privileged documents for the purpose

of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with this requirement does not evidence the creditor's intent to give up the privilege.

Supplement I to Part 202—Official Staff Interpretations

The Official Staff Commentary is being revised to reflect the amendments to Regulation B and incorporate the interpretations provided above.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the amendments to Regulation B. Overall, the amendments are not expected to have any significant impact on small entities. The amendments implement the legal privilege created by the 1996 Act for certain information that creditors may voluntarily develop about their compliance with the fair lending laws through self-testing. The regulation does not impose any significant regulatory requirements on creditors. Consequently, the amendments are not likely to have a significant impact on institutions' costs, including the costs to small institutions.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). 5 CFR 1320 Appendix A.1.

Regulation B applies to individuals and businesses that regularly extend credit or participate in the decision to extend credit. This includes all types of creditors. Under the Paperwork Reduction Act, however, the Board accounts for the paperwork burden associated with Regulation B only for state member banks. Any estimates of paperwork burden for other financial institutions would be provided by the federal agency or agencies supervising those lenders.

The collection of information relating to self-tests and corrective actions is mandatory under this final rule. These requirements are located in 12 CFR 202.12(b)(6). The recordkeepers are for-profit financial institutions, including small businesses that voluntarily conduct self-tests as defined in the rule. Records relating to self-tests must be retained for at least twenty-five months and may be stored electronically. The purpose of the recordkeeping is to facilitate a determination about whether the results or report of a creditor's self-test are privileged under the rule, in the event of a challenge. The recordkeeping requirement also encourages creditors to take appropriate corrective action if the self-testing results demonstrate that violations are likely. The recordkeeping burden consists of the additional effort necessary to retain self-testing records; it does not include the effort necessary to conduct and document the self-test.

There are 1,005 state member banks that are potential recordkeepers under this rule. In connection with the proposed rule, the Board estimated the recordkeeping burden based on each state member bank conducting one self-testing program per year. This was done in order to estimate the potential burden under the broad definition of "self-test" on which the Board was soliciting comment. Although the Board anticipates that all institutions will conduct audits of their performance under the fair lending laws, compliance programs that are covered by the final rule's narrow definition of self-test, which requires the production of new data, are most likely to be adopted by large institutions. The Board believes that the banks most likely to use compliance programs that also meet the rule's definition of "self-test" are those having assets of over $250 million, which is about 18 percent of the state member banks. The Board estimates that about half of these banks (approximately 90) will conduct such tests about once every 24 months, which is approximately once during each examination cycle. This is the equivalent of self-tests being conducted by approximately 45 state member banks during any one calendar year.

The Board previously estimated between one and eight hours (or an average of two hours) as the burden for retaining the relevant records of a self-test conducted by a state member bank. One comment was received from a bank holding company that believed the Board's estimate was too low. This commenter did not provide an explanation or provide any other estimate of the burden on state member banks or its organization. The Board is retaining its initial estimate.

The Board estimates that 25 percent of the state member banks that conduct self-tests will improve their compliance programs or take other actions in response to the self-test results, even if no likely violations are found. The improvements or corrective action taken will depend on self-test findings, and the nature and scope of any possible violation. The amount of time needed to document the creditors' actions will also vary. The Board estimates that at a typical state member bank the effort to retain records associated with corrective action would take an additional two to 20 hours, with an average of eight recordkeeping burden hours per year.

The total annual burden that this rule adds to the burden of Regulation B on a combined basis for all state member banks is estimated to be 178 hours. There is estimated to be no annual cost burden over the annual hour burden, and no capital or start up costs.

Because the records would be maintained at state member banks, no issue of confidentiality under the Freedom of Information Act normally will arise. If information does come into the Board's possession, it will be protected from disclosure by exemptions 4 and 6 of the Freedom of Information Act (FOIA). 5 U.S.C. 552(b)(4) and (6). In addition, if such information is in the workpapers of Board examiners or extracted in Board reports of examination, the information would also be protected by exemption 8 of the FOIA. 5 U.S.C. 552(b)(8).

An agency may not collect or sponsor the collection or disclosure of information, and an organization is not required to collect or disclose information unless a currently valid OMB control number is displayed. The OMB control number for Regulation B is 7100–0201.

The Board has a continuing interest in the public's opinions about the collection of information under the Board's rules. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, 12 CFR part 202 is amended as follows:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.12 is amended by adding a new paragraph (b)(6) to read as follows:

§ 202.12 Record retention.

* * * * *

(b) *Preservation of records.* * * *

(6) *Self-tests.* For 25 months after a self-test (as defined in § 202.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

3. Section 202.15 is added to read as follows:

§ 202.15 Incentives for self-testing and self-correction.

(a) *General rules*—(1) *Voluntary self-testing and correction.* The report or results of the self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) *Corrective action required.* The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) *Other privileges.* The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the act or this regulation; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) *Types of information privileged.* The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) *Types of information not privileged.* The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if it has been aggregated, summarized, or reorganized to facilitate analysis.

(c) *Appropriate corrective action*—(1) *General requirement.* For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) *Determining the scope of appropriate corrective action.* A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) *Types of relief.* Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) *No admission of violation.* Taking corrective action is not an admission that a violation occurred.

(d)(1) *Scope of privilege.* The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the act or this regulation; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § 202.5(a)) in any proceeding or civil action in which a violation of the act or this regulation is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results):

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the act or regulation; or

(iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under § 202.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 202.12.

(3) *Limited use of privileged information.* Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the act or this regulation has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

4. In Supplement I to Part 202, under *Section 202.12—Record Retention,* a new paragraph 12(b)(6) is added to read as follows:

Supplement I To Part 202—Official Staff Interpretations

* * * * *

Section 202.12—Record Retention

* * * * *

12(b) Preservation of Records

* * * * *

12(b)(6) Self-tests

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

* * * * *

5. Supplement I to Part 202 is amended by adding *Section 202.15—Incentives for Self-testing and Self-correction,* to read as follows:

* * * * *

Section 202.15—Incentives for Self-testing and Self-correction

15(a) General Rules

15(a)(1) Voluntary Self-Testing and Correction

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for federal, state, and local governments.

15(a)(2) Corrective Action Required

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this regulation. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an in camera inspection of the privileged documents.

15(a)(3) Other privileges

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work product privilege. Self-testing data may still be privileged under this section, whether or not the creditor's assertion of another privilege is upheld.

15(b) Self-test Defined

15(b)(1) Definition

Paragraph 15(b)(1)(i)

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

Paragraph 15(b)(1)(ii)

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

15(b)(3) Types of Information not Privileged

Paragraph 15(b)(3)(i)

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether pre-application testers were used or data were compiled by surveying loan applicants. Information about the scope of the self test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

Paragraph 15(b)(3)(ii)

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

15(c) Appropriate Corrective Action

1. The rule only addresses what corrective actions are required for a creditor to take advantage of the privilege in this section. A creditor may still be required to take other actions or provide additional relief if a formal finding of discrimination is made.

15(c)(1) General Requirement

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

15(c)(2) Determining the Scope of Appropriate Corrective Action

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are the likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional polices or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

15(c)(3) Types of Relief

Paragraph 15(c)(3)(ii)

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant that was subject to discrimination on a prohibited basis, in order to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor would not be required under this paragraph to identify other applicants who might also have been adversely affected.

Paragraph 15(c)(3)(iii)

1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible from obtaining certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

15(d)(1) Scope of Privilege

1. The privilege applies with respect to any examination, investigation or proceeding by federal, state, or local government agencies relating to compliance with the Act or this regulation. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases, for example, litigation filed solely under a state's fair lending statute. In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); creditors may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntarily disclosure under paragraph 15(d)(2).

15(d)(2) Loss of Privilege

Paragraph 15(d)(2)(i)

1. Corrective action taken by a creditor, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. Disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

Paragraph 15(d)(2)(ii)

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

Paragraph 15(d)(2)(iii)

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

Paragraph 15(d)(3) Limited use of Privileged Information

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with this requirement does not evidence the creditor's intent to forfeit the privilege.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 10, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–32663 Filed 12–17–97; 8:45 am]

BILLING CODE 6210–01–P

federal register

Thursday
December 18, 1997

Part III

Department of Housing and Urban Development

24 CFR Parts 100 and 103
HUD'S Regulation on Self-Testing Regarding Residential Real Estate-Related Lending Transaction and Compliance With the Fair Housing Act; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 100 and 103

[Docket No. FR–4160–F–02]

RIN 2529–AA82

HUD's Regulation on Self-Testing Regarding Residential Real Estate-Related Lending Transactions and Compliance With the Fair Housing Act

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 814A of the Fair Housing Act, which encourages voluntary compliance by lenders with the Fair Housing Act (FHAct) through lender-initiated self-tests of lenders' residential real estate-related lending transactions and, where appropriate, corrective action designed to remedy any possible violations of the FHAct revealed by such tests. This rule also makes technical amendments to the fair housing complaint processing regulations.

EFFECTIVE DATE: January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Kaplan, Director, Office of Policy and Regulatory Initiatives, Fair Housing and Equal Opportunity, (202) 708–2904. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. A telecommunications device for hearing- and speech-impaired persons (TTY) is available at (202) 708–9300 (these are not toll-free telephone numbers).

SUPPLEMENTARY INFORMATION:

I. General. Incentives for Self-testing and Self-correction

On January 31, 1997 at 62 FR 4882, the Department published a proposed rule to implement section 814A of the FHAct, promulgated at section 2302 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 (Pub. L. 104–208, approved September 30, 1996). Section 2302, found in title II of Pub. L. 104–208, entitled the "Economic Growth and Regulatory Paperwork Reduction Act" ("Act"), amends the FHAct to promote compliance by establishing a privilege for lender-initiated self-tests of residential real estate-related lending transactions.

The Economic Growth and Regulatory Paperwork Reduction Act: Sec. 2302

Section 2302 adds a new section 814A to the FHAct which creates a legal and administrative enforcement privilege for "self-tests" conducted by entities engaged in residential real estate-related lending to determine compliance under the FHAct. This provision also adds a new section 704A to the Equal Credit Opportunity Act ("ECOA") which creates the same privilege with respect to credit transactions by a creditor. A report or result of a self-test is privileged from disclosure if a lender conducts, or authorizes an independent third party to conduct, a self-test of a real estate-related lending transaction to determine the level or effectiveness of compliance with the FHAct, and has taken, or is taking, appropriate corrective action to address possible violations discovered as a result of the self-test.

The Act requires the Department, with respect to the FHAct, and the Federal Reserve Board (the Board), with respect to the ECOA, to implement section 2302 and define "self-testing" in substantially similar regulations within six months of enactment. This final rule was drafted after consideration of the comments the Department received on the January 31, 1997 proposed rule, and in consultation with the Board, the Department of Justice (DOJ), and appropriate Federal regulatory and enforcement agencies, including the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Federal Trade Commission (FTC). The Act's requirement that the Board's and the Department's regulations be substantially similar, the comments received on the proposed rule, and the consultation which followed, delayed publication of the final rule beyond the six months the Act prescribed.

After reviewing both regulations, the Department and the Board have determined that there is no substantial difference in the final rules and that they should be interpreted to have the same effect except where differences in the FHAct and ECOA dictate otherwise. For example, ECOA covers non-mortgage credit transactions which are not residential real estate-related transactions under the FHAct. This dictated slight differences in the definition of "self-test" in the agencies' rules.

Moreover, although there are organizational differences in the agencies' rules, these differences are not intended to have any substantive effect, and merely reflect the Board's longstanding practice of publishing its interpretative rules in a separate staff commentary. The Department has no staff commentary, therefore some of this material appears in the Department's rule and other material appears in its preamble. The consistency of the Department and the Board rules is evident based on a comparison of the complete documents published by the agencies, including the preambles to the regulatory amendments and the revisions to the Board's Official Staff Commentary to Regulation B.

Public Comments

In the proposed rule, the Department invited public comments for consideration in drafting a final rule. The Department received a total of 52 public comments, 18 of which were from lenders, 16 from public interest organizations, 15 from lending industry associations, and one each from a law firm, a government agency, and an individual. The comments are addressed in the Section-by-Section Analysis of this final rule preamble. The Department revised the proposed rule based on its consideration of the comments received. The Department also made editorial, non-substantive revisions to use plain English wherever possible and to meet Congress's mandate of substantial similarity between final rules issued by it and the Board. The preamble discusses the revisions made to the proposed rule to effect a substantive change.

Existing Self-testing Policies

The Department notes that prior to the amendment of the FHAct to create this privilege, several agencies stated their enforcement policy in regard to self-testing by a lender.[1] To the extent this final rule does not contravene an agency's or department's enforcement policies, those policies remain in effect until the agency or department determines otherwise. Accordingly, for example, OCC Bulletin 95–51 (September 15, 1995) remains in effect. The Department's prior policy, on the other hand, is superseded by this regulation.

Review of Rule

As the proposed rule noted, in developing the regulation to implement the self-testing privilege, the Department seeks to provide a real incentive for innovative, effective, and non-routine fair lending monitoring and self-correction while ensuring the rights of discrimination victims. Lending discrimination, however, is an evolving area of the law, and modifications may be appropriate. Therefore, the Department and the Board may review this rule, including the definition of self-test, after several years' experience. Should it determine to conduct such a review, the Department will seek public comment on whether the rule should be amended. A review would focus on whether the self-testing incentives created by Congress and implemented in this rule should be strengthened, and whether the definition of self-test should be broadened. Since there is a corresponding relationship between the breadth of the definition of self-test and the scope of corrective actions, the review would also examine the extent to which corrective actions as defined in the rule provide appropriate relief for victims of discrimination.

[1] OCC Bulletin 95–51 (September 15, 1995); Deval Patrick, Assistant Attorney General for Civil Rights, Letter to the Mortgage Bankers Association, et al. (February 21, 1995).

II. Changes From the Proposed Rule

This final rule includes several changes from the proposed rule:

—The statement of the general rule applying the self-testing privilege contained in § 100.140 has been modified to reflect the need to address only likely violations and to incorporate the requirement to take appropriate corrective action. As a result, § 100.141 of the proposed rule is deleted and the sections which followed were renumbered. As more fully explained in § 100.143, Appropriate Corrective Action, the revised rule provides a privilege when a lender takes corrective action which is reasonably likely to remedy the cause and effect of a violation identified by a self-test in instances where it is more likely than not that a violation has occurred.

—The section on Definitions, now § 100.141, explicitly includes applicant and customer surveys within the definition of self-test and makes clear that self-tests are not limited to the pre-application stage of loan processing.

—Section 100.142 now specifies that material such as appraisal reports, loan committee meeting minutes, underwriting standards or compensation records is not privileged, nor is any information or data derived from them privileged.

—As discussed above, Appropriate Corrective Action, § 100.143, now refers to "likely violations" rather than "possible violations." Rather than requiring appropriate corrective action to address possible violations, this section now specifies that corrective action is only required when it is more likely than not that a violation occurred, even though no violation was adjudicated formally.

—The proposed rule § 100.141 requirement (now deleted) that lenders "take whatever actions are reasonable in light of the scope of the possible violations to fully remedy both their cause and effect" is now addressed in § 100.143(b), which requires a lender to take action "reasonably likely to remedy the cause and effect of a likely violation."

—A new § 100.143(c) states that to establish a privilege a lender is not required to provide remedial relief to a tester in a self-test; is only required to provide remedial relief to an applicant if the self-test identified that applicant as one who was more likely than not the subject of a violation; and is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the lender obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

—The illustrative list of appropriate corrective actions contained in § 100.143 no longer includes notifying persons whose applications were inappropriately processed of their legal rights.

—Section 100.143(f) clarifies that taking appropriate corrective action is not an admission a violation occurred.

—Section 100.145(b), Loss of Privilege, specifies that lenders will not lose their privilege by notifying persons about remedial relief.

In discussing the public comments received on the proposed rule, the next section provides a more detailed description of these and other changes made in the final rule.

III. Section-by-Section Analysis of the Rule

Section 100.140 General Rule

Voluntary Self-Testing and Self-Correction

Section 100.140(a) states the general rule that the report or results of a self-test a lender voluntarily conducts or authorizes are privileged if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. The privilege applies whether the lender conducts the self-test or employs the services of a third-party. Data collection required by law or governmental authority is not a voluntary self-test.

Subsection (a) also implements the Act's requirement that a lender must take appropriate corrective action to address likely violations identified by the self-test before the privilege can be invoked. This subsection incorporates the requirement that corrective action must be taken for the privilege to apply, as stated in § 100.141 in the proposed rule. The requirement in the proposed rule § 100.141 that lenders "fully remedy possible violations" has been modified and is now addressed in § 100.143, Appropriate Corrective Action, which also discusses "likely violation."

Other Privileges

Subsection (b), a new subsection, clarifies in the final rule itself the language contained in the preamble to the proposed rule at § 100.140, which stated that the privilege of self-testing is in addition to any other privileges which may exist, such as attorney-client privilege or the privilege for attorney work product. This change was requested by some commenters. A lender may assert the privilege created by this subpart as well as any other applicable privilege.

Section 100.141 Definitions

The Act does not define "self-test" and authorizes the Department to define by regulation the practices covered by the privilege. The Department received substantial comment on the definition of self-test.

The Department defines a self-test as any program, practice or study a lender voluntarily conducts or authorizes which is designed and used specifically to determine the extent or effectiveness of compliance with the FHAct. The self-test must create data or factual information that is not available and cannot be derived from loan files, application files, or other residential real estate-related lending transaction records. The final rule substitutes the phrase "residential real estate-related lending transaction records" in place of "records related to credit transactions" to reflect more accurately the coverage of the FHAct.

Self-testing includes, but is not limited to, using fictitious credit applicants (testers), including matched-pair testers. It includes surveys of applicants and mortgage customers, and is not restricted to the pre-application stage of the credit process.

As the proposed rule's preamble noted, the principal attribute of self-testing is that it constitutes a voluntary undertaking by the lender to produce new—otherwise unavailable—factual information. The definition contained in the rule provides added incentives for lenders to look beyond their business records and develop new factual evidence about the level of their compliance. The rule does not define self-test so broadly as to include all types of lender self-evaluation or self-assessment. While versions of the legislation initially introduced in

Congress extended the privilege to a lender's test or review, the statute as adopted refers only to a self-test.

The Department notes that a lender's analysis performed as part of processing or underwriting a credit application is not privileged under the final rule. A lender's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data or similar types of records (such as broker or loan officer compensation records) is derived from loan files, application files and other real-estate-related lending transaction records and is, therefore, not a self-test and is not privileged under this rule. However, new data or factual information created as a result of self-testing would be privileged.

A broader definition of self-testing is within the Department's rulemaking authority under the statute. A broad definition of self-testing, however, was generally opposed by Federal regulatory and enforcement agencies, civil rights and consumer organizations, and fair lending enforcement agencies.

As the proposed rule's preamble noted, principles of sound lending dictate that a lender have adequate policies and procedures in place to ensure compliance with applicable laws and regulations, and that lenders adopt appropriate audit and control systems. These may take the form of compliance reviews, file analyses, the use of second review committees, or other methods that examine lender records kept in the ordinary course of business. Notwithstanding any evaluation performed by the lender, the underlying loan records are subject to examination by the supervisory and law enforcement agencies and must usually be disclosed to a private litigant alleging a violation.

In consultation with Federal regulatory and enforcement agencies in developing the proposed and final rules, the Department found that, according to a 1994 survey of large depository institutions by one regulator, approximately 78% of the institutions surveyed performed reviews that included comparative file reviews or statistical modeling as part of their fair lending management and oversight. This is evidence that an additional incentive for such reviews may not be required. Providing a privilege for such reviews could make information now provided to supervisory agencies unavailable, and could make examinations less efficient.

A comment letter on the proposed rule from a Federal regulatory agency noted:

> We agree that a broader definition of self-test could have an unintended negative effect on the levels of cooperation between creditors and the regulatory agencies. Institutions use internal fair lending audits and reviews to monitor their compliance with the Fair Housing Act and regulatory agencies consider them valuable examination tools to identify areas most in need of supervisory attention . . . [M]oreover, a broader definition could create a more confrontational examination setting due to arguments over the scope of the privilege. There would be no clear line between documents that institutions maintain in the ordinary course of business and documents that are part of an internal audit.

Civil rights and community organization comments generally opposed a broad definition of self-testing. A comment letter from a national civil rights organization said the self-testing privilege should not extend beyond the proposed rule's definition to encompass other self-evaluations and self-assessments, including fair lending business records lenders now maintain routinely. The organization said incentives for self-testing should not undermine the strong Federal interest in full relief for all victims of discrimination, and should not place an undue burden on regulators, enforcement agencies or litigants. The letter further noted:

> In general, the new privilege is likely to lead to more lengthy and expensive litigation. In the context of litigation or enforcement investigation, many lenders will have an incentive to overreach by broadly defining "self-test" in order to shield more information under the new privilege. Furthermore, some lenders may try to narrowly define "any possible violation" to mean "only clear violations," and many lenders may prefer a low standard for "appropriate corrective action." Plaintiffs alleging discrimination, on the other hand, will be forced to challenge every assertion of privilege.

A national community advocacy organization cited the history of legal privileges while commenting in opposition to a broad definition of self-testing. That organization said:

> Historically in this country, we have granted legal privilege in very limited circumstances. It applies to communications between individuals and their clergy, to communications between individuals and their attorneys, and in few, if any, other circumstances. In these cases, the need for open, honest and unrestricted communication is viewed as outweighing the need of the legal system for access to information. This historical practice of limiting the scope of privilege should certainly be applied in this case. It may be beneficial to encourage lenders to undertake self-testing. However, given the rudimentary nature of the nation's understanding of the problem of lending discrimination and the evolving nature of the field of fair lending enforcement, it is critical not to unduly limit the availability of information necessary to enforce the law.

Comments from lenders were generally in opposition to a narrow definition of self-testing. A coalition of national mortgage lenders and servicers said in a comment letter:

> It is clear from the statute that Congress intended a broad definition of self-test. Congress essentially forged a quid pro quo for obtaining the self-test privilege under which a lender is allowed not to disclose self-test reports if it undertakes appropriate corrective action with respect to the findings. Given this tradeoff, there is every reason to *expand* the types of self-assessments which are to be subject to this rule, not limit them. Otherwise, Congress' efforts to encourage self-tests will largely have been in vain.

At this time, the Department believes lenders already have adequate incentive to conduct routine compliance reviews and file analyses as good business practices to avoid or minimize potential liability for violations. Therefore, the Department does not believe it is now appropriate to extend the privilege to audits of actual business records. A broader privilege, which would extend to comparative reviews of file contents (whether or not conducted with use of statistical methods such as sampling and regression analysis) would greatly limit the availability of evidence of violations. To do so also would make the analysis of records lenders now maintain as part of routine fair lending activities unavailable to supervisory and enforcement agencies conducting fair lending examinations. Moreover, it could have the unintended result of effectively precluding the use of discovery and other fact-finding mechanisms by private litigants seeking relief under the FHAct.

Testing designed and used for compliance with other laws, or for other purposes, is not privileged under this rule. For instance, a self-test designed to observe employees' efficiency and thoroughness in meeting customer needs is not covered by the privilege even if it incidentally uncovers evidence of discrimination. The final rule clarifies that to qualify for the privilege, a self-test must be designed and used specifically to determine the extent or effectiveness of a lender's compliance with the FHAct, giving effect to the statutory language of the Act at paragraph 814(a)(1). If a test is designed for multiple purposes, only the portion designed to determine compliance with the FHAct would be eligible for the privilege.

Some commenters were critical of the emphasis on matched-pair testing in the proposed rule, stating such tests are expensive and may, due to a small sample size, yield statistically invalid conclusions. In addition, some commenters maintained such tests are often inadequately performed or analyzed, leading to unwarranted conclusions. Matched-pair testing, they asserted, is impractical for many small community banks because of the expense and because testers would be obvious in many rural areas where "strangers" would be readily apparent to bank personnel.

As defined in the final rule, the principal attribute of self-testing is that it constitutes a voluntary undertaking by the lender to produce new factual information that otherwise would not be available or derived from loan or application files or other residential real estate-related lending transaction records. While this includes matched-pair testing, it is not limited to such testing. A lender is not required to use matched-pair testing or to test only in the pre-application process. For instance, a lender could survey mortgage brokers with whom it has a relationship to determine whether minority applicants were treated similarly to non-minority applicants, or use testers (in matched-pairs or otherwise) in the mortgage process.

Section 100.142 Types of Information

Subsection (a) provides that the types of information the privilege covers include: the report or results of the self-test; data or factual information created by the self-test; workpapers, draft documents and final documents; analyses, opinions, and conclusions if they directly result from the self-test report or results.

The final rule clarifies the self-testing privilege applies to any data generated by the self-test, as well as any analysis of that data, workpapers and draft documents. Thus, testers, attorneys, auditors, experts and others who participate in the testing, or who review the results to help the lender determine what corrective action, if any, is needed, may not be compelled to produce testimony or documents describing these matters. This assurance to lenders responds to concerns expressed in the comments.

Subsection (b) lists exclusions from the privilege. The privilege does not cover information about whether a lender has conducted a self-test, the methodology or scope of the self-test, the time period covered, or the dates it was conducted. This list of exclusions is exemplary and not exhaustive.

Commenters differed on whether lenders must disclose the fact that tests were conducted, and the scope and methodologies of the tests. A few commenters wanted the existence of the test and its methodology to be privileged. One commenter suggested that requiring lenders to disclose the existence of a self-testing program, its scope, and its methodology defeats the purpose of the privilege. That commenter stated that only the factual information underlying the analysis should be excluded from the privilege coverage. Another commenter maintained that since nothing in the statute requires disclosure of the parameters of the analysis, the regulation should not require it. Yet another commenter stated the rule should limit privilege-related disclosures to a reasonable identification of purportedly privileged documents, together with a general description of the basis of that claim.

The Department considered these views. This section of the rule is consistent with the statute, which specifically provides that only reports or results of self-tests are privileged. The statute does not prohibit an aggrieved person, complainant, department or agency from requesting information about whether and, if so, how a lender has conducted a self-test. Disclosure of the existence of a privileged self-test, the self-test's scope, methodology or the time period when it was conducted are essential to a decision as to whether to seek the final results or report or to challenge the lender's claim of privilege. This disclosure is essential to ensure the testing information at issue can properly be identified in any proceeding challenging a lender's claim of privilege.

This subsection also clarifies that loan and application files, or other real-estate related lending transaction records, or information derived from such sources, are not privileged, even if the data is aggregated, summarized or reorganized to facilitate analysis. Records related to applications submitted by testers are not "real estate-related lending transaction records" for purposes of this subsection and may be privileged self-testing records.

Section 100.143 Appropriate Corrective Action

Section 100.143(a) Generally

Commenters expressed diverse opinions about the standard by which corrective measures should be judged. Several wanted a "good faith" standard for corrective actions which would be met if the lender in good faith takes the corrective actions it determines appropriate. Neither the statute nor the legislative history suggests Congress intended a "good faith" standard.

Other commenters suggested a "business judgment rule" as a measure of appropriate corrective action. Under that standard, the prevailing practices in the lending industry would dictate what corrective actions are appropriate. As with the "good faith" standard, the Department believes a "business judgment rule" would be inconsistent with the legislative intent.

The rule does provide a standard by which corrective actions are to be measured. The action must be reasonably likely to remedy the cause and effect of a likely violation. Although an action may be taken in good faith, it may not be reasonably likely to remedy the cause and effect.

The Department further notes that a lender's determination as to whether corrective action is needed, and, if so, what type, is not conclusive in determining whether the privilege requirements are satisfied.

If a lender asserts a claim of privilege, the adjudicator would have to assess the need for, and the type of, appropriate corrective action based on a review of the self-testing results. Such an assessment might be accomplished by an in camera inspection of the privileged documents, or by sealed pleadings.

Section 100.143(a) Has Taken or Is Taking

This subsection also states that the report or results of a self-test are privileged if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. In some cases, the issue of whether certain information is privileged may arise before self-tests are complete or before the corrective actions are fully under way. This would not necessarily prevent a lender from asserting the privilege.

In situations where the self-test is not complete, the lender must complete the requirements of this subpart within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the lender establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Furthermore, lenders must take corrective action on a timely basis after the results of the self-tests are known. An adjudicator's final decision on whether the privilege applies should be withheld until the creditor has taken the appropriate corrective action.

Section 100.143(a) Likely Violations

The Act states that corrective action is required for possible violations. Some

commenters noted lenders have no FHAct liability for "possible violations," only proven ones. The term "possible violations" means that there need not have been an adjudication by a court or an administrative law judge before lenders should begin corrective actions. Otherwise, corrective actions would only begin following an adjudication, which would effectively render the privilege moot.

The Act requires appropriate self-correction in the case of possible violations for the privilege to apply. To implement the Act and address the interpretation of possible violations, the final rule now refers to "likely violations," which means instances where it is more likely than not that a violation has occurred even though no violation was adjudicated formally.

Although corrective actions are required when a likely violation is found, a self-test is also privileged when it does not identify any likely violation and no corrective action is necessary. The self-test incentive would be undermined if the privilege applied only when violations were discovered, because the mere assertion of the privilege would amount to an admission that it is more likely than not that a violation occurred.

Section 100.143(b) and (d) Cause and Effect

Some commenters asserted that corrective action must include both prospective and retroactive relief to fully remedy both the cause and effect of the violations. For example, in the instance of charging higher interest rates to minorities, they urged that relief would require not only lowering the rate, but reimbursing the overpayment with interest, and paying damages for pain and suffering.

The final rule requires a lender to take corrective action reasonably likely to remedy the cause and effect of a likely violation. The Department revised the phrase "fully remedy" that appeared in the proposed rule since, as many commenters argued, that phrase implied that damages paid, or remedies provided, would have to equal those a court would award if there had been an adjudication. It would be difficult or impossible for a lender to determine in advance whether corrective action met that standard, and the Act included no such requirement. However, there may be situations where the violation and the facts known to the lender are such that limiting the corrective action solely to out-of-pocket damages would be inappropriate. The final rule standard of "reasonably likely to remedy the cause and effect" intends that payments of out-of-pocket and other compensatory damages be determined on a case-by-case basis without any adjudication.

Section 100.143(b) and (d) Policies or Practices; Extent and Scope

A lender must: (1) Identify the policies or practices that are the likely cause of the violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and (2) assess the extent and scope of any likely violation, by determining which areas of its operation are likely to be affected by those policies and practices, such as stages of the loan application process, types of loans, or the branches or offices where likely discrimination has occurred.

Generally, if the scope of the testing is broad, the need to examine information beyond that generated by the self-test is correspondingly broad. For example, a lender that self-tests its marketing practices and discovers evidence of discrimination may focus its corrective actions on its marketing practices, and is not required to expand its testing to other aspects of its operation. Also, for example, if the testing focuses on a particular loan officer at a particular branch, and a likely violation is found, then the lender need not commence a nationwide loan file review. Nevertheless, a comprehensive examination of that loan officer's activities would be required, covering all mortgage loan products handled by that officer.

In some instances, a pre-application matched-pair test may reveal that potential borrowers in minority areas are not offered or made aware of the full range of available loan products offered or advertised to borrowers in non-minority areas. In this case, the lender, in determining prospective relief, should examine its marketing, sales, and outreach activities both as a whole and in its individual branches, and should implement prospective actions to address the results of the test, where necessary.

Section 100.143(b) and (d) Interagency Guidance

Subsection (d) provides lenders with additional direction on what is appropriate corrective action to remedy the cause and effect of a likely violation, as required by subsection (b).

Several commenters recommended the rule should offer greater guidance on what is and is not appropriate corrective action, and on how to apply the actions listed in the proposed rule. Some suggested the actions listed were too vague, thereby diluting the self-test incentive. These commenters generally recommended that specific standards be established and limitations be placed upon the amount of corrective action required in connection with past discrimination.

Others maintained a case-by-case analysis invites unrestrained second-guessing of difficult judgments on likely violations and remedies. Several commenters viewed the case-by-case approach as an ex post facto assessment of a lender's corrective actions. Other commenters, generally those supporting case-by-case determinations, argued that if the rule mandated any particular corrective action, it would impede fair lending litigation and/or settlement proceedings.

The Department carefully weighed the comments received and recognizes the need for certainty as to whether corrective actions are appropriate. However, it is not possible to develop a standard that would describe the specific appropriate action in every hypothetical situation. Rather, the final rule contains a standard that describes the criteria for determining the corrective action appropriate to the fact pattern involved, and retains the general categories developed by the Interagency Task Force on Fair Lending.[2] The final rule does note that not every corrective measure listed need be taken for each likely violation.

Section 100.143(c) Prospective and Remedial Relief

There were many comments with differing views on the issue of whether corrective action should be prospective only, or whether retrospective actions also should be necessary. Those favoring prospective action only argued that Congress intended to eliminate disincentives to self-testing, and that a requirement for retrospective relief deterred self-testing. Some commenters suggested that while corrective action should generally be limited to prospective relief, if the self-test has confirmed actual violations of law by the lender in connection with the lender's extension of credit to specific individuals, retrospective relief may be appropriate. Another commenter opposed any unilateral determination and payment of out-of-pocket and compensatory damages since such damages are only determinable and obligatory following a finding of a violation of the FHAct at the conclusion of a contested case.

With respect to whether remedial relief is required, the final rule does not require a lender who seeks to establish a self-testing privilege to provide remedial relief to individuals if the self-test does not discover evidence of likely discrimination against an actual applicant identified by the self-test. Accordingly, a pre-application matched-pair test which reveals that potential borrowers in minority areas were not offered or made aware of the full range of available loan products which borrowers in non-minority areas were offered would require prospective, but not remedial, relief because the self-test did not discover evidence of likely discrimination against an actual applicant identified by the self-test.

Were lenders required to undertake reviews of loan or application files to identify actual applicants who were victims in such instances, the result of such a review would not be privileged as a self-test under this subpart, since it involves information contained in or derived from a loan or application file. Such an outcome, therefore, could require a lender who undertook a self-test with the expectation of a privilege to be required to provide incriminating evidence.

It is also worth noting that the fact that a tester has an agreement with a lender that waives the tester's legal right to assert a violation does not eliminate the requirement for the lender to take corrective action although no remedial relief for the tester is required.

Lenders should note that while application of the privilege does not require a lender to take extra measures to identify and compensate individual victims of discrimination, such persons still may file a complaint with the Department or in court and may obtain the remedies available in such cases. A lender should consider an effort to identify such individuals as a good business practice to avoid or minimize potential liability.

The final rule does not require a lender to provide remedial relief to an actual applicant if the FHAct's two year statute of limitations [3] expired before the lender obtained the results of the self-test, or if the applicant is otherwise ineligible for such relief.

Changed circumstances might mitigate against giving an applicant certain types of relief. For example, a lender is not required to offer credit to an unlawfully denied applicant if the applicant no longer qualifies for credit due to a change in financial circumstances, although some other type of relief may be appropriate.

Section 100.143(e)

Determination of appropriate corrective action is fact-based. Not every corrective measure listed in subsection (d) need be taken for each likely violation.

Section 100.143(f)

In response to commenters who fear incriminating themselves by taking corrective actions, the Department added a new subsection (f) which provides that taking corrective action by a lender is not an admission a violation occurred.

Section 100.144 Scope of Privilege

This section, which explains the nature of the qualified privilege afforded by the Act, states that the report or results of a self-test may not be obtained or used by an aggrieved person, complainant, department or agency in any: (1) Proceeding or civil action in which a violation of the FHAct is alleged, or (2) examination or investigation relating to compliance with the FHAct.

Several commenters wanted the privilege extended to encompass alleged violations of State and local fair housing laws. In addition, one commenter wanted the Department to clarify that if, in litigation involving the Real Estate Settlement Procedures Act (RESPA), a court orders a lender to perform a self-test, and to furnish the results of that test to the opposing party, those results may not later be used in a proceeding or investigation pursuant to the FHAct.

The Department did not adopt either suggestion. The Act states specifically that the self-testing privilege applies only in proceedings, civil actions, examinations, and investigations under the FHAct. Congress indicated no intent to have the privilege apply to actions under any other law, including State and local fair housing laws. The Department lacks the legal authority to extend the privilege's application beyond the FHAct. However, the Department will encourage States or localities, who have sought and received a determination that their law is substantially equivalent to the FHAct in the rights and remedies accorded, to provide a privilege equal to that provided by Congress and implemented in this rule. Such States and localities will be asked to provide a privilege through the application of their fair housing law, its regulations or binding rules, or they must agree to refer all complaints involving lending discrimination where the privilege has been invoked to the Department for processing.

The Department intends to propose rulemaking which would require States and localities seeking a substantial equivalency determination in the future to accord a self-testing privilege substantially equivalent to the Act and this subpart. Under such a rule, if the proceeding, civil action, examination or investigation is pursuant to the FHAct, or pursuant to a State or local law which has been deemed substantially equivalent to the FHAct, the privilege would apply. States and localities which do not have laws which are substantially equivalent to the FHAct may choose to adopt the privilege for use in proceedings under their laws.

As to the furnishing of information in a RESPA proceeding, the self-testing privilege applies only if the test is performed "in order to determine the level or effectiveness of compliance" with the FHAct. Since a court-ordered self-test under RESPA would be performed to ascertain compliance with RESPA, rather than the FHAct, the self-test would not come within the parameters of the privilege. Consequently, unless the court in the RESPA matter ordered that use of the RESPA-related self-testing information was limited to that proceeding, the information would not be privileged in a FHAct proceeding.

If, however, the RESPA court ordered the lender to produce information privileged under the Act, that information could not, by virtue of that order, be used in a subsequent FHAct case. The privilege would still apply because material privileged under this subpart may not be "used" in FHAct litigation, regardless of how it was "obtained," unless it was obtained by the lender's voluntary disclosure. Thus, the privilege covers material obtained involuntarily in collateral litigation, such as suits filed under RESPA, the Truth-in-Lending Act, or under State laws.

Another commenter suggested the final rule's use of the term "agency," with regard to those who may not obtain or use privileged information, must be construed to encompass State, municipal and other agencies. The Department agrees that "agency" would include a State or local agency that sought to obtain or use the privileged information in a proceeding or civil action alleging a violation of, or an examination or investigation relating to, the FHAct, or pursuant to a State or local law which provides for the privilege and has been deemed substantially equivalent to the FHAct, as discussed above. If, however, the State or local agency sought the information under the auspices of a law, other than

[2] 59 FR 18266, 18270–18271 (April 15, 1994).

[3] 42 U.S.C. 3613(a).

those discussed in the preceding sentence, including a State or local fair housing law, the privilege would not apply.

Section 100.145 Loss of Privilege

This section explains the circumstances that would cause documents to lose their privileged status. Generally, the self-test report or results are not privileged if the lender or person with lawful access to the report or results, or any other information otherwise privileged under this subpart, discloses or uses the report, results or such information as a defense to charges a lender violated the FHAct, or fails or is unable to produce self-test records or information needed to determine whether the privilege applies. This section has been revised to clarify that the privilege is lost if the lender discloses privileged information, such as the results of the self-test, but that the privilege is not lost if the creditor merely reveals or refers to the existence of the self-test. As discussed, future rulemaking will address record retention requirements.

The Department received a number of comments on this section of the proposed rule. Several commenters wanted the rule to specify that unauthorized disclosure would not forfeit the privilege. The Department did not adopt this suggestion. To do so would require a plaintiff to disprove a lender's assertions as to what its internal policies, practices, and chain-of-command are, which is an unreasonable burden. Moreover, the statute provides that the report or results of a self-test are not privileged if disclosed by a person with lawful access to the report or results. Accordingly, disclosures made by such persons are treated as disclosures made by the lender, without regard to whether the person was authorized to make the particular disclosure. Existing law adequately addresses the issues of scope of employment and agency.

Under the rule, a lender's production of records in response to a judicial order, or a disclosure in a case where the privilege does not apply, e.g., in a non-FHAct case, does not necessarily mean that the lender intended to give up the privilege voluntarily. Accordingly, if such disclosures are not voluntary, e.g., under a court order, they will not affect the privileged status of the documents.

One commenter stated that without a record retention requirement, lenders could conduct self-tests, find violations, and destroy all records without taking corrective action. According to this commenter, the rule should require any records, results, analyses, work product, or other material related to or created from self-tests to be maintained by the lender and/or its agents for at least 48 months if litigation or an enforcement action is pending against the lender. The Department's proposed rule included no provision on record retention. Since the issue was not addressed in the proposed rule, the Department has not included it in the final regulation. Instead, the Department in the near future will propose for comment a rule on record retention as it relates to self-testing information and the FHAct, with appropriate recognition of the ECOA requirements in this area. In the meantime, to assert the self-test privilege, lenders who are subject to ECOA must comply with the record retention requirements of the Board's rule for ECOA purposes.

Some commenters wanted the regulation changed to specify that release of part of a report only forfeits the privilege as to that part of the report released. However, the statute does not permit this result, since it states that release of "all, or any part of, the report or results" waives the privilege.

In the proposed rule, the Department solicited comments on whether the regulation should provide that lenders could voluntarily share privileged information with a Federal or State bank supervisory or law enforcement agency without the information losing its privileged status in litigation by private plaintiffs. The disclosures on which comments were solicited, however, would have caused the documents to lose their privileged status with respect to all supervisory and law enforcement agencies, e.g., HUD and DOJ, as well as the Board, the OCC, the FDIC, the OTS, the NCUA, and the FTC.

A substantial number of commenters supported the idea. According to these commenters, this would encourage lenders to seek guidance from regulators in developing appropriate corrective actions. The commenters stated further that the Department should draw no negative inferences from a lender's decision not to provide information voluntarily. Another group of commenters wanted mandatory sharing of self-test results with regulatory and enforcement agencies to ensure that the scope of the remedy is appropriate and that the remedy is entirely and effectively implemented. One commenter strongly opposed allowing lenders to voluntarily share privileged information with a supervisory agency while maintaining the privilege as to private litigants. Yet, another commenter argued that such a mechanism directly conflicts with the statute, which specifically provides that voluntary disclosure in such instances constitutes a waiver of the privilege. A number of other commenters similarly maintained there is nothing in the statute which suggests the Department could adopt a partial waiver of privilege. Furthermore, they maintained, the law of privileges generally does not recognize a right to waive a privilege (as with the attorney-client privilege) only as to some parties but not others. According to these commenters, several bank counsel expressed reluctance to rely on such a split privilege if based on the Department's rulemaking authority, absent specific legislative language, or a court ruling upholding such an interpretation of the privilege.

Other commenters supported limited disclosure to determine whether appropriate corrective action had been taken, but opposed any interpretation of the privilege that allowed blanket protection for all voluntary disclosures of "self-tests" to banking or enforcement agencies so as to immunize banks or enforcement agencies from disclosure in private litigation. Another commenter asserted the Act was enacted to provide creditors with the necessary protection to encourage them to self-test, not to promote cooperation between creditors and their regulators.

The Department concluded that a mechanism that would permit lenders to provide privileged information to the independent financial regulatory agencies, and simultaneously to enforcement agencies, e.g., HUD, DOJ, while still maintaining a privilege as to private litigants, is not allowed by the statute. Such a mechanism might help lenders secure certainty that the privilege was properly asserted. However, some commenters were concerned that allowing disclosure to the regulatory agencies with simultaneous disclosure to enforcement agencies might result in enforcement action if the self-test were not within the statutory privilege, and that this would be a deterrent to self-testing. The process would also raise resource issues concerning the capacity of the regulatory and enforcement agencies to issue advisory opinions. In any case, after careful study, the Department determined that in addition to the policy consequences, this step is not allowed by the statutory language.

Section 100.146 Limited Use of Privileged Information

This section provides for a limited use of privileged documents that will not be treated as a voluntary disclosure affecting the privileged status of the documents under § 100.144. The report or results of a privileged self-test may be obtained and used solely for the purpose of determining a penalty or remedy after a violation of the Act has been formally adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission is made. Information disclosed under this section remains otherwise privileged under this subpart.

Section 100.147 Adjudication

The Act provides that the privilege may be challenged in any court or administrative law proceeding with appropriate jurisdiction. The Department expects such challenges to be resolved according to the laws and procedures used for other types of privilege claims, such as attorney-client or attorney work product.

One commenter recommended the privilege remain in effect during the period in which an adjudicator is determining whether the privilege applies. The Department agrees. As with other privileges, a lender's claim that information is privileged protects that information from disclosure during the time the adjudicator is determining whether the lender is entitled to the privilege. However, the adjudicator may order the lender to disclose the information so that the adjudicator can determine whether the privilege was invoked properly. The adjudicator may require in camera proceedings, the filing of documents and pleadings under seal, and the production of documents to other parties under a protective order limiting the purpose for which they may be used. If the adjudicator orders disclosure for the limited purpose of determining whether the privilege was invoked properly, the information is protected from use in any proceeding, civil action, examination or investigation until the adjudicator determines the privilege does not apply.

One commenter urged that since assertion of, and challenges to, the privilege will result in more lengthy and expensive litigation, the Department should include a provision for attorney's fees and costs for private plaintiffs who successfully challenge the assertion of the privilege. If a judge finds, during the discovery phase of a proceeding, that a lender improperly invoked the privilege, the judge may order appropriate sanctions, including those provided by Rule 37 of the Federal Rules of Civil Procedure or by 24 CFR 180.540. In appropriate circumstances, this may include attorneys' fees and costs. Moreover, the FHAct and its implementing regulations specifically provide for the award of attorney's fees to the prevailing party in any court or administrative proceeding.[4] A party is entitled to reasonable attorney's fees and costs to the extent provided under the Equal Access to Justice Act.[5] Any award of fees would be made in accordance with those provisions.

Section 100.148 Effective Date

Lenders and others may invoke the self-testing privilege regarding self-tests undertaken prior to the effective date of the final rule, but not if either a formal complaint has been filed involving matters covered by the self-test, or if the privilege has been lost pursuant to § 100.145. A complaint filed in a court with jurisdiction over the FHAct is a "formal complaint." Moreover, as the proposed rule preamble noted, a formal complaint alleging a FHAct violation includes one filed with the Department or a substantially equivalent agency (pursuant to subsection 810(f) of the FHAct, 42 U.S.C. 3610(f)). Any other interpretation would conflict with Congress' intent in the Fair Housing Amendments Act of 1988 to establish an administrative process that is an equally effective alternative to the filing of a complaint in a Federal court.

Technical Correction to 24 CFR Part 103

A final rule published October 4, 1996 (61 FR 52216) consolidated HUD's hearing procedures for nondiscrimination and equal opportunity matters in a new 24 CFR part 180. In that rulemaking, conforming changes were made throughout 24 CFR to replace references to parts eliminated as a result of the consolidation with references to new part 180. Although part 103 was included in the list of parts in which all references to part 104 were to be replaced by 180, paragraph (b) of § 103.215 contained two references to 104, and only the first reference was changed to 180. The reference in this paragraph to § 104.590 is corrected to read § 180.545. Similarly, references to part 104 are corrected to read part 180 in §§ 103.1(c), 13.230(a)(1), 103.405(b)(2) and (3).

[4] *See* 42 U.S.C. 3612(p), 3613(c)(2), and 3614(d)(2); 24 CFR 180.705.

[5] 5 U.S.C. 504.

IV. Findings and Certifications

Regulatory Planning and Review

This rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review area available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(1) of the Department's regulations, the policies and procedures contained in this rule do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the rule only proposes to implement a statutory provision that allows an evidentiary privilege for the report and results of self-tests of FHAct compliance undertaken by lenders.

Executive Order 13145, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk for children.

List of Subjects

24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties,

Reporting and recordkeeping requirements.

Accordingly, parts 100 and 103 of title 24 of the Code of Federal Regulations are amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3620.

2. In subpart C, new sections 100.140, 100.141, 100.142, 100.143, 100.144, 100.145, 100.146, 100.147, and 100.148 are added to read as follows:

§ 100.140 General rules.

(a) *Voluntary self-testing and correction.* The report or results of a self-test a lender voluntarily conducts or authorizes are privileged as provided in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Data collection required by law or any governmental authority (federal, state, or local) is not voluntary.

(b) *Other privileges.* This subpart does not abrogate any evidentiary privilege otherwise provided by law.

§ 100.141 Definitions.

As used in this subpart:

Lender means a person who engages in a residential real estate-related lending transaction.

Residential real estate-related lending transaction means the making of a loan:

(1) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(2) Secured by residential real estate.

Self-test means any program, practice or study a lender voluntarily conducts or authorizes which is designed and used specifically to determine the extent or effectiveness of compliance with the Fair Housing Act. The self-test must create data or factual information that is not available and cannot be derived from loan files, application files, or other residential real estate-related lending transaction records. Self-testing includes, but is not limited to, using fictitious credit applicants (testers) or conducting surveys of applicants or customers, nor is it limited to the pre-application stage of loan processing.

§ 100.142 Types of information.

(a) The privilege under this subpart covers:

(1) The report or results of the self-test;

(2) Data or factual information created by the self-test;

(3) Workpapers, draft documents and final documents;

(4) Analyses, opinions, and conclusions if they directly result from the self-test report or results.

(b) The privilege does not cover:

(1) Information about whether a lender conducted a self-test, the methodology used or scope of the self-test, the time period covered by the self-test or the dates it was conducted;

(2) Loan files and application files, or other residential real estate-related lending transaction records (e.g., property appraisal reports, loan committee meeting minutes or other documents reflecting the basis for a decision to approve or deny a loan application, loan policies or procedures, underwriting standards, compensation records) and information or data derived from such files and records, even if such data has been aggregated, summarized or reorganized to facilitate analysis.

§ 100.143 Appropriate corrective action.

(a) The report or results of a self-test are privileged as provided in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Appropriate corrective action is required when a self-test shows it is more likely than not that a violation occurred even though no violation was adjudicated formally.

(b) A lender must take action reasonably likely to remedy the cause and effect of the likely violation and must:

(1) Identify the policies or practices that are the likely cause of the violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and

(2) Assess the extent and scope of any likely violation, by determining which areas of operation are likely to be affected by those policies and practices, such as stages of the loan application process, types of loans, or the particular branch where the likely violation has occurred. Generally, the scope of the self-test governs the scope of the appropriate corrective action.

(c) Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this subpart:

(1) A lender is not required to provide remedial relief to a tester in a self-test;

(2) A lender is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated;

(3) A lender is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the lender obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(d) Depending on the facts involved, appropriate corrective action may include, but is not limited to, one or more of the following:

(1) If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the applications were improperly denied; compensating such persons for any damages, both out-of-pocket and compensatory;

(2) Correcting any institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

(3) Identifying, and then training and/or disciplining the employees involved;

(4) Developing outreach programs, marketing strategies, or loan products to serve more effectively the segments of the lender's market that may have been affected by the likely violation; and

(5) Improving audit and oversight systems to avoid a recurrence of the likely violations.

(e) Determination of appropriate corrective action is fact-based. Not every corrective measure listed in paragraph (d) of this section need be taken for each likely violation.

(f) Taking appropriate corrective action is not an admission by a lender that a violation occurred.

§ 100.144 Scope of privilege.

The report or results of a self-test may not be obtained or used by an aggrieved person, complainant, department or agency in any:

(a) Proceeding or civil action in which a violation of the Fair Housing Act is alleged; or

(b) Examination or investigation relating to compliance with the Fair Housing Act.

§ 100.145 Loss of privilege.

(a) The self-test report or results are not privileged under this subpart if the lender or person with lawful access to the report or results:

(1) Voluntarily discloses any part of the report or results or any other information privileged under this subpart to any aggrieved person, complainant, department, agency, or to the public; or

(2) Discloses the report or results or any other information privileged under this subpart as a defense to charges a lender violated the Fair Housing Act; or

(3) Fails or is unable to produce self-test records or information needed to determine whether the privilege applies.

(b) Disclosures or other actions undertaken to carry out appropriate corrective action do not cause the lender to lose the privilege.

§ 100.146 Limited use of privileged information.

Notwithstanding § 100.145, the self-test report or results may be obtained and used by an aggrieved person, applicant, department or agency solely to determine a penalty or remedy after the violation of the Fair Housing Act has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission is made. Information disclosed under this section remains otherwise privileged under this subpart.

§ 100.147 Adjudication.

An aggrieved person, complainant, department or agency that challenges a privilege asserted under § 100.144 may seek a determination of the existence and application of that privilege in:

(a) A court of competent jurisdiction; or

(b) An administrative law proceeding with appropriate jurisdiction.

§ 100.148 Effective date.

The privilege under this subpart applies to self-tests conducted both before and after January 30, 1998, except that a self-test conducted before January 30, 1998 is not privileged:

(a) If there was a court action or administrative proceeding before January 30, 1998, including the filing of a complaint alleging a violation of the Fair Housing Act with the Department or a substantially equivalent state or local agency; or

(b) If any part of the report or results were disclosed before January 30, 1998 to any aggrieved person, complainant, department or agency, or to the general public.

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

3. The authority citation for part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

4. In the list below, for each section indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section, and add the reference indicated in the right column:

Section	Remove	Add
103.1(c)	Part 104	Part 180 of this chapter.
103.215(b)	104.590	180.545.
103.230(a)(1)	Part 104	Part 180 of this chapter.
103.405(b)(2)	104.410(b)	24 CFR 180.410(b).
103.405(b)(3)	104.410(a)	180.410(a).

Dated: December 8, 1997.

Susan M. Forward,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 97–32657 Filed 12–17–97; 8:45 am]

BILLING CODE 4210–28–P

federal register

Thursday
December 18, 1997

Part IV

Department of Education

Notice Inviting Applications for New Awards for Fiscal Year 1998; Notice

DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards for Fiscal Year 1998

AGENCY: Department of Education.

SUMMARY: On June 4, 1997, the President signed into law Pub. L. 105–17, the Individuals with Disabilities Education Act Amendments, amending the Individual with Disabilities Education Act (IDEA).

This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1998 competitions under two programs authorized by IDEA, as amended. The priorities under these programs are based on previously published priorities for which public comment was sought and received. Only changes required by IDEA were made to priorities previously published. For example, IDEA no longer refers to "youth with disabilities". "Youth with disabilities" is no longer distinguished from "children with disabilities" under IDEA; therefore, all references to "youth with disabilities" have been deleted from the priorities. Also, the types of entities eligible to apply for grants under these programs have been changed where necessary to reflect changes in IDEA.

This notice supports the National Education Goals by improving understanding of how to enable children with disabilities to reach higher levels of academic achievement.

Note: The Department of Education is not bound by any estimates in this notice.

Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities [CFDA No. 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to: (1) Improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 76, 77, 80, 81, 82, 85, and 86; and (b) The selection criteria included in regulations in 34 CFR 324.31 for priority 2, and 34 CFR 324.32 for priority 1.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priorities: Under section 672 of IDEA and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only those applications that meet these absolute priorities:

Absolute Priority 1—Outreach Projects for Children With Disabilities (84.324R)

This priority supports projects that assist educational and other agencies in implementing proven models, components of models, and other exemplary practices to improve services for infants, toddlers, children with disabilities, and individuals with disabilities transitioned into postsecondary settings. The models, components of models, or exemplary practices selected for outreach may include models developed for pre-service and in-service personnel preparation, and do not need to have been developed through projects funded under IDEA, or by the applicant. To increase the impact of outreach activities, projects are encouraged to select implementation sites in multiple regions or States.

An outreach project must—

(a) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices;

(b) Coordinate dissemination and replication activities as appropriate with dissemination projects, technical assistance providers, consumer and advocacy organizations, State and local educational agencies, and the lead agencies for Part C of IDEA;

(c) Ensure interagency coordination if multiple agencies are involved in the provision of services;

(d) Ensure that the models, components of models, or exemplary practices are consistent with Parts B and C of IDEA, are state-of-the-art, match the needs of the proposed sites, and have evaluation data supporting their effectiveness;

(e) Include public awareness, product development and dissemination, training, and technical assistance activities and written plans for working with sites;

(f) Describe criteria for selecting implementation sites where outreach activities will be conducted; and the expected costs, needed personnel, staff training, equipment, and sequence of implementation activities;

(g) Evaluate the outreach activities to determine their effectiveness. The evaluation must include the types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of children and families served at each outreach site, child and family progress and satisfaction, and changes in the model or practices made by sites;

(h) Make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA); and

(i) Prepare products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities. (See section 661(f)(2)(B) of IDEA).

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects. (See section 661(f)(1)(A) of IDEA).

Projects must budget for two trips annually to Washington, DC, for: (1) A two-day project directors' meeting; and (2) a meeting to collaborate with the Federal project officer and other projects funded under this priority, to share information and discuss project implementation issues.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $150,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits

The applicant must limit Part III of its application to the equivalent of no more than 60 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 2—Research Institute to Accelerate Learning for Children With Disabilities With Curricular and Instructional Interventions in Kindergarten Through Grade Three (84.324V)

Background

The consequences of failing to learn are serious. Lack of learning in one domain reduces an individual's capacity to benefit from other educational experiences. Failure in education establishes a self-perpetuating cycle and negatively affects the individual's disposition toward lifelong learning, employment, and contribution to society. Most children with disabilities face challenges to learning. These challenges are amplified as calls are made for higher standards to be achieved by all students, including children with disabilities, and as more children with disabilities are educated in general education classrooms.

Evidence from the National Longitudinal Transition Study indicates that many children with disabilities are not learning subject matter content. An urgency exists to develop powerful curricular and instructional interventions that maximize rates of development, promote generalized learning, and reduce discrepancies between their performance and that of their peers.

Intervention research has demonstrated that children with disabilities possess the potential to learn, participate, and contribute in school, home, community, and workplace. Research on instructional interventions for children with disabilities has been the hallmark of special education research. For example, research on direct instruction, behavioral management interventions, learning strategies, peer mediated learning, and reciprocal teaching has led to improvements in professional practice.

Yet, single solution interventions are insufficient for teaching children with disabilities complex subject matter content. In many instances, these interventions are content free. Moreover, little empirical evidence is available on the context of the classroom for supporting the implementation of these solutions.

Priority

The Secretary establishes an absolute priority for the purpose of establishing a research institute to study curricular and instructional classroom based interventions in kindergarten through grade three that accelerate subject matter learning for children with disabilities and promote sustained use of these interventions by practitioners.

The Institute must examine—

(a) The effectiveness of the various interventions for children with disabilities; and

(b) The classroom context that supports the implementation of the interventions that produce and sustain positive learning outcomes for children with disabilities, including such factors as classroom groups; classroom and cross-classroom management strategies; curriculum design principles; classroom settings; instructional materials; amount of time on task; integration into the curriculum; and teacher actions, skills, and attitudes.

The research may include, for example, studying classroom based exemplars and models, designing and implementing interventions, and collecting student and teacher data from exemplars, using a rich array of research methods to reach the intended goals of this priority and as articulated by the proposed research hypotheses.

The Institute must—

(a) Design and conduct a strategic program of research that focuses on helping students with disabilities learn subject matter content in critical areas such as reading and math, and builds upon the existing research knowledge for teaching children with disabilities;

(b) Design and conduct a strategic program of research across multiple sites to represent organizational and demographic diversity;

(c) Collect, analyze, and communicate student outcome data and supporting context data, and multiple outcome data for teachers, parents, and administrators, as appropriate;

(d) Collaborate with other research institutes supported under the Individuals with Disabilities Education Act and experts and researchers in related subject matter and methodological fields, as appropriate for the program of research, to design and conduct the strategic program of research;

(e) Collaborate with communication specialists and professional and advocacy organizations to ensure that findings are prepared in formats that are useable for specific audiences such as teachers, administrators, and other service providers;

(f) Develop linkages with Education Department technical assistance providers to communicate research findings and distribute products;

(g) Provide training and research opportunities for a limited number of graduate students, including students who are from traditionally underrepresented groups;

(h) Meet with the Office of Special Education Programs (OSEP) project officer in the first four months of the project to review the program of research and communication approaches;

(i) Make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA); and

(j) Prepare the research and evaluation findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities. (See section 661(f)(2)(B) of IDEA).

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects. (See section 661(f)(1)(A) of IDEA).

The project must budget for two trips annually to Washington, D.C. for: (1) a two-day Research Project Directors' meeting; and (2) another meeting to meet and collaborate with the OSEP project officer.

Under this priority, The Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the Institute for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the Institute are to be performed during the last half of the Institute's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the Institute's budget for year two. These costs are estimated to be approximately $4,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and

(c) The degree to which the Institute's research design and methodology demonstrates the potential for advancing significant new knowledge.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $700,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application to the equivalent of no more than 60 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Program Authority: Section 672 of IDEA.

Special Education—Technology and Media Services for Individuals With Disabilities [CFDA No. 84.327]

Purpose of Program: The purpose of this program is to promote the development, demonstration, and utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria included in regulations for these programs in 34 CFR 332.32.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under section 687 and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds under these competitions only those applications that meet these absolute priorities:

Absolute Priority 1 —Closed-Captioned Daytime Television Programs (84.327S)

This priority would continue and expand closed-captioning of a variety of daytime television programs broadcast nationally for persons who are deaf or hard of hearing during this segment of the day that has proven to be the most difficult in terms of private sector support.

To be considered for funding under this priority, a project must—

(a) Include the criteria used to determine which programs are proposed for captioning. These criteria must take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational and cultural experiences of individuals with hearing impairments;

(b) Determine the total number of hours and the projected cost per hour for each program to be captioned;

(c) For each proposed program to be captioned, identify the source of private or other public support and the projected dollar amount of that support;

(d) Identify the methods of captioning to be used for each hour and the projected cost per hour for each method used;

(e) Provide and maintain back-up systems that would ensure successful, timely captioning service;

(f) Demonstrate the willingness of major national television networks and cable companies to permit captioning of their programs; and

(g) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects. (See section 661(f)(1)(A) of IDEA).

All projects funded under this priority must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA).

A project's budget must include funds to attend a two-day Project Directors' meeting to be held in Washington, D.C. each year of the project.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $350,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application to the equivalent of no more than 40 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 2—Cultural Experiences for Deaf or Hard of Hearing Individuals (84.327T)

Background

In the past, projects under this priority have supported a variety of activities, including: theatrical experiences in which cast members included deaf, hard-of hearing, and hearing performers; theater and set design, directing, dance, and storytelling; cultural experiences focusing on Native American art and culture; hands-on theater experience involving persons from minority groups; and a touring "instant theater'.

Priority: This priority supports a variety of cultural activities designed to enrich the lives of deaf or hard-of hearing individuals, including children and adults. These activities must use an approach that integrates children and adults who are deaf or hard of hearing with those who can hear while conducting cultural experiences that will increase public awareness and understanding of deafness and other hearing impairments, and of the artistic and intellectual achievements of deaf and hard of hearing individuals.

A grantee may not use funds under this priority for passive activities such as viewing a play or video, or passively watching a storyteller or artist at work.

To be considered for funding under this priority, a project must—

(a) Use an integrated approach that mixes children and adults who are deaf or hard of hearing, with those who are hearing in carrying out project activities; and

(b) Develop and implement strategies that will increase public awareness and understanding of deafness and other hearing impairments and of the artistic and intellectual achievements of deaf and hard of hearing individuals, including children and adults. Outreach activities such as promoting the project to schools, community organizations, news media, and relevant national organizations are encouraged.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. (See section 661(f)(1)(A) of IDEA).

All projects funded under this priority must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA).

A project's budget must include funds to attend a two-day Project Directors' meeting to be held in Washington, D.C. each year of the project.

Invitational Priority

Within this absolute priority, the Secretary is particularly interested in applications that meet the following invitational priority. However, pursuant to 34 CFR 75.105(c)(i), an application that meets this invitational priority does not receive competitive or absolute preference over applications that do not meet this priority:

Projects that include people from a variety of cultural, racial, or ethnic backgrounds.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $110,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application to the equivalent of no more than 40 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Absolute Priority 3—Video Description Projects (84.327C)

This priority supports the description of national television programming in order to make television more accessible to persons with visual impairments. The intent of this priority is to provide access to diverse programming in order to enhance shared educational, social, and cultural experiences of persons who are visually impaired. The range of programs proposed for description may include, but is not limited to, children's programs, prime time programming, movies, and specials.

To be considered for funding under this priority, a project must—

(a) In selecting programs to be video described, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experience of individuals with visual impairments;

(b) Determine the total number of hours and the projected cost per hour for each program to be described;

(c) For each program to be described, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(d) Identify the methods to be used in the provision of described video;

(e) Demonstrate the willingness of major national television networks and cable companies to permit video description of their programs; and

(f) Implement procedures for monitoring the extent to which an accurate description is provided and use this information to make refinements in the video description operations.

Applicants and resulting projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects. (See section 661(f)(1)(A) of IDEA).

All projects funded under this priority must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act. (See section 606 of IDEA).

A project's budget must include funds to attend a two-day Project Directors' meeting to be held in Washington, D.C. each year of the project.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $350,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The applicant must limit Part III of its application to the equivalent of no more than 40 double-spaced 8½ x 11" pages (on one side only) with one inch margins (top, bottom, and sides). Please refer to the "Page Limit Requirements for All Applications" section of this notice for more specific information on this page limit requirement.

Program Authority: Section 687 of IDEA.

Page Limit: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of the number of pages listed under each priority, using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

For Applications and General Information Contact

Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 600 Independence Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for those program.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 1998

CFDA number and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)*	Page limit**	Estimated number of awards
84.324R Outreach Projects for Infants, Toddlers, and Children with Disabilities	12/29/97	2/23/98	4/27/98	$150,000	40	21
84.324V Research Institute to Accelerate Learning for Children with Disabilities with Curricular and Instructional Interventions in Kindergarten through Grade Three	12/29/97	2/23/98	4/27/98	700,000	60	1
84.327S Closed-Captioned Daytime Television Programs	12/29/97	2/23/98	4/27/98	350,000	40	4
84.327T Cultural Experiences for Deaf or Hard of Hearing Individuals	12/29/97	2/23/98	4/27/98	110,000	40	5
84.327C Video Description Projects	12/29/97	2/23/98	4/27/98	350,000	40	2

*The Department rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

**Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the "Page Limit" section of this notice for the specific requirements. The Secretary rejects and does not consider an application that does not adhere to this requirement.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: December 12, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–33007 Filed 12–17–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
December 18, 1997

Part V

Department of the Interior

Bureau of Reclamation

43 CFR Part 418

Adjustments to 1988 Operating Criteria and Procedures (OCAP) for the Newlands Irrigation Project in Nevada; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 418

RIN 1006–AA37

Adjustments to 1988 Operating Criteria and Procedures (OCAP) for the Newlands Irrigation Project in Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rulemaking.

SUMMARY: This rule adjusts the 1988 Operating Criteria and Procedures (OCAP) for the Newlands Irrigation Project (Project). Adjustments are made to the Project efficiency requirements, maximum allowable diversion calculations, and Lahontan Reservoir storage targets in the 1988 OCAP to reflect current irrigated acreage, court decrees which have lowered the water duty applicable to certain Project lands, and other factors affecting water demand. To better manage diversions from the Truckee River to the Project, the rule provides flexibility to adjust the water supply in response to Project demand, flexibility in using snowpack and runoff forecasts, and extends the time frame for storing water in Truckee River reservoirs in lieu of diversions to the Project from the Truckee River.

DATES: Effective December 16, 1997.

FOR FURTHER INFORMATION CONTACT: Dave Overvold, Acting Area Manager, Lahontan Area Office, Bureau of Reclamation, P.O. Box 640, Carson City, NV 89702, telephone (702) 882–3436; or Jeffrey Zippin, Team Leader, Truckee-Carson Coordination Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (702) 887–0640. Copies of Adjusted OCAP regulations may be obtained from either office.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 1988, the Secretary of the Interior (Secretary) implemented new Operating Criteria and Procedures (OCAP) governing management of water diverted to and used within the Newlands Project. These 1988 OCAP were approved by the U.S. District Court for the District of Nevada, subject to a hearing on objections raised by various parties. In 1990, Congress directed in the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Title II of Pub. L. 101–618, Section 209 (j) (104 Stat. 3294) that the 1988 OCAP remain in effect at least until December 31, 1997, unless changed by the Secretary in his sole discretion. Prior to the proposed rule, the 1988 OCAP had not been published in the **Federal Register**.

These 1988 OCAP were designed to increase the reliance of the Project on water from the Carson River, minimize the use of water from the Truckee River as a supplemental supply, increase efficiency of water use in the Project, and establish a regulatory scheme to manage deliveries to Project water users including incentives for efficiency and penalties for inefficiency.

An environmental impact statement (EIS) was prepared for the 1988 OCAP. That EIS served as the basis for reviewing the environmental effects of these adjustments. The Department of the Interior (DOI) has prepared an environmental assessment on the adjustments which tiers off of the analysis in that EIS. Copies of the environmental assessment may be obtained from the Truckee-Carson Coordination Office.

The Department is making a number of revisions to the 1988 OCAP to adjust for changes in use of water rights, to increase flexibility, and to clarify the language of the OCAP based on experience gained in administering the 1988 OCAP through nine irrigation seasons. These revisions are within the basic framework of the 1988 OCAP and its environmental documentation and are being published for codification.

The need for additional changes to the 1988 OCAP beyond those in this rule may be appropriate as well, but consideration of such changes is expected to require further examination including the preparation of an EIS.

Description of the 1988 OCAP

The 1988 OCAP provisions were preceded by a preamble which is equally applicable to the Adjusted OCAP. The 1988 OCAP preamble is reproduced with minor grammatical editing. The following *1988 OCAP Preamble* is taken from the 1988 OCAP:

1988 OCAP Preamble

The development of Operating Criteria and Procedures for the Newlands Project in western Nevada was initiated in the late 1960's and has proven to be a divisive, contentious issue for the people in Nevada who rely on the waters of the Carson and Truckee Rivers. Competition for the water in the Project's desert environment is intense and growing. The conflicts among uses are clearly apparent in the effects forecast on various areas where the DOI has program responsibilities. The issue is complicated further by the requirements of the Endangered Species Act and the listing of the Cui-ui, a fish inhabiting the lower Truckee River and Pyramid Lake.

In order to proceed effectively and fairly, the DOI had to have guiding principles for the OCAP. These are to:

—Provide water deliveries sufficient to meet the water right entitlements of Project water users;
—Meet the requirements of the Endangered Species Act as they specifically relate to the Truckee River/Pyramid Lake Cui-ui;
—Fulfill Federal trust responsibilities to the Pyramid Lake Paiute Indian Tribe and the Fallon Paiute-Shoshone Tribes;
—Conserve wetland and wildlife values in both the Truckee and Carson River basins;
—Give cognizance to the State laws affecting water rights and uses;
—Provide for stable economies and improve quality of life in the region to the extent it is influenced by the DOI-managed resources and facilities;
—Allow local control and initiative to the maximum extent possible; and
—Provide stability and predictability through straightforward operation based on actual versus forecast conditions.

The DOI believes that the proposed OCAP best satisfy these principles within the limits of the Department's legal authority. Each of the competing uses for the water is critical in its own right. They are all essentially separable for decision making purposes even though they clearly impact upon each other since the available supply is far less than the demand.

The OCAP deal with the operation and use of Federal facilities related to the Newlands Project. Therefore, their primary responsibility is supplying the water rights to the Project water users. To the extent this can be done effectively and efficiently, then the remaining water supply is available for other competing uses. The secondary impacts of the OCAP must, however, act to support or encourage results which benefit the other competing uses.

The basic structure of the OCAP relies on both rules and incentives which we believe will ensure reasonable, efficient water management through reliance on local control and initiatives. The direct consequences of the OCAP will be delivery of full water entitlements within the Newlands Project, protection of endangered species, fulfillment of trust responsibilities, and encouragement for the protection of other environmental and quality of life values.

Adjusted OCAP Proposed Changes

The Notice of Proposed Rulemaking for the Adjusted OCAP, published in the **Federal Register**, 61 FR 64832, December 9, 1996, proposed a number of changes to the 1988 OCAP based, in part, on a comparison of the assumptions in the 1988 OCAP about the size of the Project and patterns of water use with Project size in 1995 and new patterns of water use. Specifically, the changes are:

• *Acreage:* The anticipated increase in acreage has not materialized; actual irrigated acreage in 1995 was 59,075 acres. This amount reflects efforts of the Bureau of Reclamation (BOR) to limit irrigation to water-righted lands and that, on average, irrigators have not increased the acreage of lands in production. In the Notice of Proposed Rulemaking for Adjusted OCAP, the 1995 preliminary estimate of irrigated acreage for that year was shown in the text as 59,023. However, modeling was based on 59,075 irrigated acres. In this final rule, both the text, tables, and modeling consistently use 59,075 irrigated acres for 1995. When this rule becomes effective, the provisions of section 418.22 will be used to adjust Lahontan Reservoir storage targets to reflect the current water demand.

• *Average Water Duty:* The average water duty for the project has been reduced as a result of the so-called "bench/bottom" litigation (1995 Order of Judge McKibben, in *U.S. v. Alpine*, United States District Court for the District of Nevada No. D–185). This bench/bottom court ruling approved a change in the designation of some Project lands from bench lands to bottom lands. Bench lands have a maximum water duty of 4.5 acre-feet/acre; bottom lands have a maximum water duty of 3.5 acre-feet/acre. (The Project includes pasture lands with a duty of 1.5 acre-feet/acre.) The bench/bottom decision reclassified approximately 9,000 acres of irrigated lands in the project, reducing Project water entitlements by approximately 9,000 acre-feet. The change in demand is expected to be approximately 5,000 acre-feet of water when measured at the farm headgates. This is based on historic use of about 90 percent of the headgate entitlement at 4.5 acre-feet/acre versus projected use of 100 percent of the 3.5 acre-feet/acre entitlement.

• *Average Use of Entitlement:* Actual water use as a percentage of entitlement is usually less than 100 percent, historically about 90 percent. The reduced percentage of entitlement use results from on-farm practices and efficiencies, fallowing of lands, and varying weather conditions. The current projected percent use of entitlement is 93.4 percent. This is based on irrigation use of 91.8 percent and 95 percent for Carson and Truckee Divisions, respectively, and 100 percent water use for pasture lands and wetlands. Several factors will affect use of entitlement in the future:

—Irrigators whose lands were reclassified from bench lands with a water duty of 4.5 acre-feet per acre to bottom lands with a 3.5 acre-feet per acre duty may use more than 90 percent of their entitlement.
—The Fallon Paiute-Shoshone Tribes reservation is within the Project and the Tribes have a cap on the water they receive. The Tribes are expected to use their full water entitlement under the cap every irrigation season.
—The Naval Air Station Fallon, as part of an agreement with the U.S. Fish and Wildlife Service (FWS), will use less of its irrigation water and is also developing less water intensive cropping strategies, decreasing percent use of entitlement.
—The FWS and the State of Nevada are acquiring water rights within the Newlands Project for restoration of wetlands at Stillwater National Wildlife Refuge. The FWS has been transferring the consumptive use portion, 2.99 acre-feet per acre, of the water rights they acquire. This changes their effective entitlement to 2.99 acre-feet per acre of which they are expected to take 100 percent, thus increasing percent use of entitlement.

These and other changes in water use will cause the percent use of entitlement to vary from year to year. The percent use will be determined based on actual experience and will be used in calculating the expected irrigation diversion for each irrigation season.

• *Efficiency:* Within the same size project, more irrigated acreage results in greater efficiency; with less irrigated acreage lower efficiencies are expected. Project irrigated acreage never reached the level anticipated in the 1988 OCAP but the associated target efficiencies have remained in effect. As water rights are acquired for Stillwater Wildlife Refuge (Pub. L. 101–618, section 206), the effect on Project efficiencies may vary at first, but as more water is acquired and moves to the Refuge, efficiencies should improve stemming from the concentration of deliveries through the system.

This rule addresses only those adjustments to the 1988 OCAP in the following areas:

1. Target Efficiency Adjustments (§§ 418.12 (c)(3), 418.13 (a), and Newlands Project Water Budget table): The 1988 OCAP envisioned and allowed for increasing irrigated acreage, assuming the Project would grow to over 64,650 irrigated acres by 1992 compared to a base of approximately 60,900 acres being irrigated in 1987. The annual calculations of the Maximum Allowable Diversion (MAD) to the Project and efficiency requirements currently in use are based on a Project consisting of 64,850 or more irrigated acres and a commensurate target efficiency of 68.4 percent. However, the acreage increase has not materialized and the 1995 irrigated acreage was approximately 59,075 acres. The Project conveyance efficiency that can be achieved, which is the relationship between the total annual diversion to the Project and total delivery to farm headgates, is directly related to irrigated acreage; efficiency generally decreases as the irrigated acreage in the Project decreases. The 1988 OCAP does not accurately reflect the current acreage, and as a consequence, the higher efficiency requirement remains in effect. This may decrease the water available to the Project as calculated in the MAD and increases the likelihood of penalties for inefficiency.

In response to less irrigated acreage and varying water demand, the DOI will calculate the annual Project water budget for each irrigation season in accordance with the elements in the Newlands Project Water Budget table of the Adjusted OCAP. Each year the MAD will be based on the projected irrigated acreage for that year and applicable water duties. The other elements in Newlands Project Water Budget, including appropriate Project efficiency at 100 percent use, would be calculated to determine the MAD and Project efficiencies for each year. Only the first 10 lines of the water budget would be calculated before the irrigation season to determine the MAD, then the remaining lines would be calculated after the irrigation season to determine target efficiency. Through this approach, the Project water budget can accommodate anticipated changes in Project characteristics.

Using the 1995 Actual Acres column from the Newlands Project Water Budget, Maximum Headgate Entitlement (line 2) is the product of Irrigated Acres (line 1) and the average water duty (calculated annually). Variable distribution system losses of Canals/Laterals Evaporation (line 3), Canals/Laterals Seepage (line 5), and Operational Losses (line 7) are extrapolated to determine the Total Losses (line 8) for a given Project size. The combined Maximum Headgate Entitlement (line 2) and the Total Losses (line 8) determines the MAD (line 9), and the relationship of Maximum Headgate Entitlement (line 2) to Total Losses (line 8) estimates Project Efficiencies at 100 percent water use (line 10). Actual use of entitlement, based on historic patterns, is less than 100 percent (not all irrigators take all of their entitlement each year), so the Maximum Headgate Entitlement is adjusted by the projected percent use of entitlement (calculated annually) to yield Expected Headgate Entitlement Unused (line 11) and the Diversion Reduction for Unused Water (line 12). The Diversion Reduction for Unused Water (line 12) is subtracted from the MAD (line 9) to determine Expected

Irrigation Diversions (line 13). Finally, the adjusted Project demand (calculated from line 2 minus line 11) is divided by the Expected Irrigation Diversions (line 13) to determine the Expected Efficiency (line 14).

The effect of this is to have the Adjusted OCAP more accurately reflect the Project water demand. Reducing the annual Project efficiency target will recognize the limitation of the present water distribution system facilities and assist the Project in achieving efficiency requirements. No changes are proposed for the 1988 OCAP relative to how the MAD is calculated and administered, determination of eligible land, reporting, or calculation of credits or debits.

2. Adjustments to Lahontan Reservoir Storage Targets (§§ 418.20, 418.21, and 418.22, and tables of Monthly Values for Lahontan Storage Computations, End of Month Storage Targets for July Through December, and Adjustments to Lahontan Reservoir Storage Targets): The 1988 OCAP prescribes when water may be diverted from the Truckee River to supplement Carson River inflow to Lahontan Reservoir to serve the Carson Division of the Project. (The Truckee Division of the Project is supplied entirely by water from the Truckee River.) The Truckee River diversion to the Carson Division is governed by end-of-month storage target levels in Lahontan Reservoir. Water is diverted from the Truckee to the Reservoir only if it is forecast that the storage target will not be met by Carson River inflow by the end of the month. In years of low flow on the Carson River, a greater percentage of the Carson Division Project water supply is diverted from the Truckee River. In wet years, the Carson Division supply may come entirely from the Carson River. Thus, storage targets are used to help maintain a steady water supply despite the natural climatic variability and differences in annual runoff between the two river basins.

The formula used to determine how much water may be diverted to Lahontan Reservoir from the Truckee River in January through June relies, in part, on the runoff forecast for the Carson River. The imprecision inherent in such forecasting can lead to variable consequences. Sometimes more Truckee River water is diverted than is needed to serve Project water users. This is particularly problematic when the Carson River fills Lahontan Reservoir to the point that water spills over Lahontan Dam or so that a precautionary spill (release) of water must be made to avoid later flooding. In either situation, spilled water that cannot be transported to water-righted lands or Lahontan Valley wetlands flows into Carson Sink in the desert. This situation occurred most recently in 1995, 1996, and 1997 with the consequence that Truckee River water that could have flowed into Pyramid Lake contributed to water that was spilled.

Because of their imprecision, forecasts for Carson River runoff do not always reflect actual conditions and the water may not materialize. If not enough water was brought over from the Truckee River earlier in the water year, or Truckee River flow is insufficient to make up for the shortfall from the Carson River, then the water supply may be inadequate to meet the annual irrigation demand. This situation occurred in 1994 when the Carson River was forecast to have a 100 percent water year but only produced a 50 percent water supply.

Two of the objectives of OCAP are to minimize spills and moderate shortages. It is important to note that for the 95 years of records, the climatic/hydrologic variability of both rivers is so great that even if there were no limits on the diversion of Truckee River water, in some years shortages would result. Conversely, even if no Truckee River water were diverted, in some years Lahontan Reservoir would spill just from Carson River inflow.

The 1988 OCAP has a June end-of-month storage target of 215,000 acre-feet in Lahontan Reservoir. The 215,000 acre-feet would serve at least 4,000 to 5,000 more acres of water-righted and irrigated land than has been irrigated in actual practice. The reclassification of some bench lands to bottom lands further reduces water demand in the Carson Division. The difference in headgate demand between what the 1988 OCAP projected and current Carson Division demand is approximately 21,000 acre-feet. The current storage targets permit unnecessary diversions from the Truckee River to the Project. The proposed Adjusted OCAP storage targets were based on the lower Carson Division demand and reducing water loss to seepage, evaporation, and spill. Accordingly, the proposed end-of-June storage target was adjusted to 174,000 acre-feet, and the July through December targets were lowered as shown in Table A. However, in this final rule, the end-of-June storage target is 190,000 acre-feet, as shown in the table Monthly Values for Lahontan Storage Calculations (section 418.20 of the rule), while the January–May targets are retained, subject to the adjustment procedures described below. July and August end-of-month storage targets are also increased to help maintain recreation levels in Lahontan Reservoir. This is discussed in the Response to Comments, II.7., in this preamble.

A comparison of the 1988 OCAP, the proposed Adjusted OCAP, and the final Adjusted OCAP storage targets for Lahontan Reservoir are shown in Table A of this preamble. In addition, this final Adjusted OCAP, in response to comments, adopts a flexible storage target regime that can respond to future changes in Project water demand. This is discussed in the Response to Comments, II.1, in this preamble and set out in section 418.22 of the rule. The new storage targets will be used to calculate diversions from the Truckee River in accordance with section 418.20 *et seq.* of the proposed rule.

BILLING CODE 4310-RK-P

TABLE A

TRUCKEE-CARSON MODEL RESULTS FOR ADJUSTED OCAP FOR 1901-1995

KEY MODELING ASSUMPTIONS[1]	1988 OCAP[2]	Current Condition[3]	Proposed Adjusted OCAP[4]	Final Adjusted OCAP[5]
Newlands Project Diversion Demand	320.0	294.0	294.0	294.0
Newlands Project Acreage	64,800	59,075	59,075	59,075
Newlands Project Use of Entitlement	90.0%	93.4%	93.4%	93.4%
Newlands Project Conveyance Efficiency	66.7%	65.7%	65.7%	65.7%
1 TRUCKEE CANAL				
2 Diversion from Truckee Canal	131.8	113.6	91.2	91.4
3 Truckee Canal Loss	21.1	18.7	16.8	16.8
4 TRUCKEE DIVISION				
5 Diversion Demand	28.00	23.00	23.00	23.00
6 Diversion from Truckee Canal	27.54	22.71	22.71	22.71
7 Diversion Supply (% of demand)	98.36%	98.74%	98.74%	98.74%
8 Percent Use of Entitlement	90.0%	95.0%	95.0%	95.0%
9 LAHONTAN RESERVOIR				
10 Inflow from Truckee Canal	82.9	72.1	51.7	51.9
11 Carson River near Ft. Churchill	289.8	289.8	289.8	289.8
12 Reservoir Loss	39.3	40.8	35.0	35.1
13 Total Release and Spill	332.8	320.7	305.8	305.9
14 Reservoir Spill	48.7	54.2	41.9	42.0
15 CARSON DIVISION				
16 Demand at Lahontan Reservoir	292.0	271.0	271.0	271.0
17 Lahontan Release Shortage	7.98	4.50	7.10	7.05
18 Average Water Supply (% of demand)	97.27%	98.34%	97.38%	97.40%
19 Number of Shortage Years	9	8	9	9
20 Normal Conveyance Efficiency	67.0%	65.0%	65.0%	65.0%
21 Average Percent Use of Entitlement	90.0%	93.2%	93.2%	93.2%
22 PYRAMID LAKE				
23 Truckee River Inflow to Lake	441.3	458.7	480.6	480.5
24 Beginning Elevation (feet)	3,804.0	3,804.0	3,804.0	3,804.0
25 Ending Elevation (feet)	3,824.3	3,831.5	3,841.0	3,840.9
26 Beginning Cui-ui (adult females)	50,000	50,000	50,000	50,000
27 Ending Cui-ui (adult females)	217,100	526,900	1,052,200	1,051,900
28 Number of Cui-ui Spawning Years	73	73	75	75
29 CORE ASSUMPTIONS				
30 Carson Division Acreage Served	60,400	55,075	55,075	55,075
31 Truckee Division Acreage Served	4,400	4,000	4,000	4,000
32 Lahontan End of Month Targets:				
33 January through May	215	215	174	174
34 June	215	215	174	190
35 July	160	160	139	160
36 August	140	140	95	100
37 September	120	120	64	64
38 October	80	80	52	52
39 November	160	160	74	74
40 December	210	210	101	101
41 Lahontan Maximum Storage	295.5	295.5	295.5	295.5
42 Lahontan Minimum Storage	4.0	4.0	4.0	4.0

1. All modeling from the Adjusted OCAP Notice of Proposed Rulemaking (NPR) has been updated for 1995 hydrology and for new operations at Lahontan Reservoir to limit storage to 295,500 acre-feet. At the time of the NPR, the Reservoir was being managed to store additional water on flash boards installed in Lahontan Dam, bringing the storage level to 316,900 acre-feet.
2. All the 1988 OCAP assumptions for 1992, including serving 64,850 irrigated acres, are modeled using the 1901-1995 hydrology. This represents what Project conditions would be today if the 1988 OCAP acreage assumptions had been borne out.
3. Current Condition or No Action models the 1988 OCAP at the 1995 Project acreage level.
4. Proposed Adjusted OCAP has been updated only as noted in footnote 1.
5. Final Adjusted OCAP includes changes to Lahontan Reservoir storage targets.

BILLING CODE 4310-RK-C

The storage targets were developed using the Truckee River settlement negotiations water balance model. The model was used to examine how different storage targets affected spills, inflow to Pyramid Lake, and other parameters. Key assumptions used in modeling were reduced Project water demand from the 1988 OCAP, lower efficiency targets, current Truckee River operations, and Project shortages consistent with the 1988 OCAP. The model uses the 95-year (1901–1995) historic hydrologic record for the Truckee and Carson Rivers.

For the proposed Adjusted OCAP, a series of modeled storage targets was evaluated based on the degree to which a set of targets reduced spills, increased inflow to Pyramid Lake, increased the estimated number of spawning years for cui-ui, increased the estimated number of cui-ui, reduced Lahontan Reservoir and Truckee Canal seepage and evaporation losses, and held frequency and magnitude of Project shortages consistent with the 1988 OCAP. These goals are consistent with the Secretary of the Interior's responsibilities as the District Court ruled in *Pyramid Lake Paiute Tribe of Indians* v. *Rogers C.B. Morton (Tribe* v. *Morton)*, 354 F. Supp. 252 (D.D.C. 1973).

Though not a specific feature of the Adjusted 1988 OCAP, the modeling used in making decisions on this proposed rule took cognizance of the 4,000 acre-foot minimum pool that the Truckee-Carson Irrigation District (TCID), the Project operator, voluntarily has maintained in Lahontan Reservoir to protect fish resources there. Though this action to maintain a minimum pool is purely voluntary on the part of TCID and Newlands Project water right holders, it provides environmental benefits, was assumed to be continued into the future, and was credited in the modeling used to establish new Lahontan storage targets; that is to say, the targets would have been somewhat lower to achieve the same release shortage percentage and Truckee River inflow volume to Lahontan Reservoir assuming no anticipation of the 4,000 acre-foot minimum pool.

Table A presents the model results examined in developing the Adjusted OCAP, and the values are averages for the 95-year period of record. Modeled results for the 1988 OCAP with current hydrology are compared to the Current Conditions, the proposed Adjusted OCAP, and the final Adjusted OCAP. In a number of categories, the modeled results show improvements under the final Adjusted OCAP storage targets as compared with the 1988 OCAP. For example, there is less Truckee Canal loss (line 3), less Lahontan Reservoir loss (line 12), and less Lahontan Reservoir spill (line 14). Compared to the Current Conditions, the final Adjusted OCAP is an improvement in all areas except for Project water supply (line 18) and the additional shortage year (line 19). The modeled reduction of water loss and spill from the Project increases inflow to Pyramid Lake under the final Adjusted OCAP (line 23). Compared to the Current Conditions, approximately 19,800 acre-feet of water is modeled to be saved from the Truckee River under the Final Adjusted OCAP from reduced Truckee Canal loss, reduced Lahontan Reservoir loss, and reduced spills. Of this 19,800 acre-feet of Truckee River water saved, approximately 2,550 acre-feet of the water saved reduces Project water supply compared to Current Conditions.

3. Truckee River Storage in Lieu of Diversions (§ 418.20 (f)): Project diversions from the Truckee River may be fine-tuned by retaining water in upper Truckee River reservoirs that would otherwise have been diverted to Lahontan Reservoir to meet storage targets. Depending upon how much Carson River runoff reaches Lahontan Reservoir and whether storage targets are met by the Carson River inflow, the water retained in storage may be released later in that year and diverted to Lahontan Reservoir for delivery to the Carson Division, or retained for Pyramid Lake if the water is not needed for Carson Division irrigation.

Under the 1988 OCAP, water was allowed to be stored upstream on the Truckee River in lieu of diversion only from April to June. In 1995, this limitation contributed to approximately 80,000 acre-feet of water being diverted from the Truckee River to Lahontan Reservoir before March 31, then spilling because of high Carson River runoff. None of the Truckee River water was needed because the Carson River more than filled Lahontan Reservoir and precautionary releases were made to avoid spilling over the dam. While the 80,000 acre-foot-diversion from the Truckee was controversial, it resulted from managing the diversion in strict adherence with the 1988 OCAP targets. In the 1996 and 1997 water years, respectively, 6,000 and 22,000 acre-feet were diverted from the Truckee River in late fall and winter, and again spilled. It is possible that a similar occurrence may result in the 1998 water year from continued application of the 1988 OCAP storage targets. The proposed Adjusted OCAP provided more flexibility to reduce such unnecessary diversions.

Consistent with managing Project diversions from the Truckee River, the proposed Adjusted OCAP expanded the opportunity to credit store water for the Project in reservoirs on the upper Truckee River by allowing storage as early as January of each year. In this final Adjusted OCAP, Truckee River storage would be allowed as early as November of the previous year. The water would be credited based on water actually retained in Truckee River reservoirs or, if water was not being released for Project diversion, credited as Newlands Project water in Stampede Reservoir adverse to other water (fish water) stored in Stampede Reservoir. In the latter situation, concurrence by the FWS will be required. For example, a reduction of diversions in January through March of 1995, would have required FWS approval to create Newlands Project credit water out of Stampede Reservoir water because water was not being released for Project diversion. Newlands Project credit water could be released for diversion to Lahontan Reservoir, if needed, as early as July 1 through the end of the irrigation season, but not thereafter. The water would only be used for the Carson Division. Water in storage could be exchanged to other reservoirs but it will not carry over to the next year for use in the Project. If it is not used in the year in which it is stored, it will not be available thereafter to the project. To protect the water users, the water held in storage on the Truckee River would not be reduced by evaporation and would be gaged at the US Geological Survey gage on the Truckee Canal near Wadsworth, Nevada, to ensure that diversion to the Project matches the diversion foregone earlier in the season. Water could spill, but if spilled, it would be subject to diversion to Lahontan when needed to meet storage targets. Water stored but not needed for the Project would be managed to benefit cui-ui and Lahontan cutthroat trout in Pyramid Lake.

This change provides flexibility to reduce excessive diversions from the Truckee River. The BOR is expected to use this proposed provision only in years when Carson River runoff is forecast to be above average and is intended to fine tune diversions and avoid over-diversions from the Truckee River. Such storage in Stampede Reservoir or other Truckee River Reservoirs is not intended to make up for shortages in drier years.

There is little advantage to foregoing diversions in below average runoff years if the likelihood is that all the credit stored water would need to be diverted to the Project in any event. The changes in Section 418.20 (f) of the rule include provisions for BOR to consult with TCID, the Federal Water Master, FWS, Bureau of Indian Affairs (BIA), and the Pyramid Lake Paiute Tribe before any credit storing is initiated.

4. Expanded Forecasting (section 418.20 (a)): In calculating the January to June monthly diversions from the Truckee River, the 1988 OCAP uses the monthly forecast for April through July runoff published by the Natural Resources Conservation Service (NRCS) (formerly the Soil Conservation Service). Rather than continuing to rely on that forecast alone, the proposed Adjusted OCAP provided flexibility to examine other forecasts and allow the use of a deliberative process to determine how to manage Truckee River diversions. This provision remains unchanged in this final Adjusted OCAP. The intent of this change is to allow the BOR to take advantage of other forecasts and the experience and knowledge of the Federal Water Master, the TCID water master, and other parties. The desired effect of this change is to improve precision in forecasting and managing the Truckee River diversion to the Project to avoid spills and shortages.

5. Additional Revisions: In addition to the changes identified in 1. through 4. above, a number of minor revisions have been made to the 1988 OCAP. Most changes are editorial and do not affect the meaning of the text. Some changes provide opportunities for consultation with interested and affected parties before BOR makes a decision.

A few changes add language to clarify or interpret the meaning of the 1988 OCAP in light of experience administering the OCAP, passage of time, or new statutory provisions. Changes to the text of the 1988 OCAP occur at:

Section 418.2: Other Project purposes are added in accordance with Pub. L. 101–618, 104 Stat. 3289, § 209 (a) (1).

Section 418.13 (a) (3): Explains the use of efficiencies in calculating the MAD.

Section 418.18 (b): Calculates terminal flow in the Truckee Canal by averaging flows during the time when water is not being diverted to Lahontan Reservoir.

Section 418.24: Water captured in Project facilities from a spill or precautionary drawdown is used to make deliveries to eligible lands but does not count as a Project diversion or as Lahontan Reservoir storage.

Section 418.29: Deletes the reference to the February 14, 1984, Contract for Operation and Maintenance between the United States and the District.

Section 418.37 (d): Adds new text clarifying that a natural drought greater than or equal to the debit will eliminate the debit.

Section 418.38 (b): Allows TCID to divert up to the MAD if needed to meet headgate entitlements.

Rulemaking Process

The DOI announced in 1995 that it intended to revise the 1988 OCAP through adjustments to that OCAP. In the summer of 1995 the TCCO held four public workshops in Fernley, Nevada to invite affected and interested parties to offer their thoughts on changes to the 1988 OCAP affecting storage targets, conveyance efficiency, storage in lieu of diversions, and the use of runoff forecast data.

The Notice of Proposed Rulemaking on the Adjusted OCAP was published December 9, 1996, with the 60-day comment period scheduled to close on February 7, 1997. As a result of being preoccupied with the worst floods in decades on both the Carson and Truckee Rivers in January 1997, the DOI received many requests for an extension of the comment period. By notice in the **Federal Register** on February 18, 1997, the comment period was extended an additional 60 days until April 8, 1997. The Notice extending the comment period also included frequently asked questions and answers regarding the Adjusted OCAP, and made known the availability of general and detailed modeling results related to the rulemaking.

During the initial comment period, the TCCO conducted an information briefing for the State of Nevada, TCID, Fallon Tribe, and Pyramid Lake Tribe. Two public workshops to explain and answer questions about the proposed rule were held in Fallon and Fernley, Nevada. The TCCO received 47 written comments on the proposed rule. Comments addressed the proposed rule and are responded to in this preamble. Many comments addressed the draft environmental assessment (EA), which had been made available for review, and have been responded to with changes in the EA. Two commenters submitted pleadings in litigation on the 1988 OCAP which were not addressed in this final rule because they were already addressed in the United States' responsive pleadings in that case.

Changes Made in This Final Rule

In response to comments and additional information, the DOI has made several changes in this final Adjusted OCAP rule. The proposed change in Lahontan Reservoir storage targets received more comments than any other issue in the proposed rule. This final Adjusted OCAP addresses two storage target issues raised in comments: future increases or decreases in Project water demand, and effects of lower storage targets on recreation. In this final rule, a system of demand responsive storage targets is implemented to provide a stable water supply to the Project over a range of water demands that may result from changes in irrigated acres, use of entitlements, or other circumstances. In addition, summer storage targets have been increased to help maintain recreation levels at Lahontan Reservoir, without substantial effect on Pyramid Lake inflow or threatened and endangered fish recovery. This also provides a slight benefit to Project water supply. These changes are described in sections II.1. and II.7. of the *Response to Comments* in this preamble and sections 418.20, 418.21, and 418.22 of the rule.

The Adjusted OCAP proposal to extend the period for storage of Truckee River water in lieu of diversions back to January each year has been changed in the final rule by extending it back to include November and December. November and December targets increase significantly to take advantage of winter flows in the Truckee River when the water will clearly be needed in the Project. Adding storage in lieu of diversions in November and December will help avoid a repeat of the situation that developed in late 1996 and early 1997 when all reservoir storage levels were up yet diversions from the Truckee River to the Project continued through the end of December, only to begin spilling as a precautionary release from Lahontan Reservoir on January 1, 1997. The final rule also allows Newlands credit water spilled from Truckee River reservoirs to be diverted to Lahontan Reservoir subject to applicable storage targets. These changes are described in sections II.5 of the *Response to Comments* in this preamble and section 418.20(f) of the rule.

The proposed Adjusted OCAP lowered the Project conveyance efficiency target based on increases in the percent use of entitlements and decreases in the Project size. The intent was for the conveyance efficiency target to be dynamic and continue to vary with the use of entitlements and the Project size. However, Figure 1, the graph in Appendix A at the end of the proposed rule, showed target efficiencies varying only in proportion to percent use of entitlement. This has been replaced in the rule at section 418.13(a)(4) and by the table Expected Project Distribution System Efficiency that shows required efficiency for a range of irrigated acreage and a range of percent use of entitlement. The table also provides the

slope and y-intercept so that a new graph may be prepared. Appendix A in this final rule has a table Calculation of Efficiency Equation which shows how the Expected Project Distribution System Efficiency is calculated using a range of percent use of entitlement from 100 percent to 75 percent.

The proposed Adjusted OCAP made several corrective adjustments to the 1988 OCAP to have the Adjusted OCAP reflect actual Project operations. One of these affected how water released into Rock Dam Ditch was counted. Rock Dam Ditch may receive water directly from releases at Lahontan Reservoir, or may get water directly from the Truckee Canal via a siphon pipe under the stilling basin below Lahontan Dam. In the proposed Adjusted OCAP rule, diversions directly from the Truckee Canal would have counted against the Truckee Division. As was noted in comments, this is incorrect, as the water that reaches Rock Dam Ditch would, in all cases, come from water in Lahontan Reservoir or destined to arrive in Lahontan Reservoir. This change is noted at section III.1 of the preamble and in the rule at section 418.23.

Modeling used to compare various OCAP scenarios and storage target regimes has been updated since the proposed rule was published. The new modeling retains the Project acreage and water use assumptions from the proposed rule but is modeled over the 95-year period 1901–1995, it also includes the additional hydrology for 1995, and does not include storage in Lahontan Reservoir on the flash boards above 295,500 acre-feet.

Based on technical comments from the BOR, which will administer this rule, the language in section 418.13(a) has been revised to clarify the timing and procedures for recalculating the Project water budget, the MAD, and the required conveyance efficiency. At the start of the irrigation season, a provisional water budget and MAD will be recalculated. After the irrigation season when actual irrigated acres and percent use of headgate entitlement is known, a final target conveyance efficiency will be determined from the table Expected Project Distribution System Efficiency.

This final rule has been revised to conform to numbering and plain language requirements for publication of the Adjusted OCAP rule in the Code of Federal Regulations. Some extraneous introductory text has been removed or incorporated into the preamble. Throughout the text of the rule, "must" or other appropriate wording replaces "shall" and references to "these OCAP" has been replaced by "this part." Additional text has been changed only to clarify the meaning. The new format includes a section on definitions and has moved a few sections forward as General Provisions of Adjusted OCAP. Also, the rule has been divided into more sections, each dealing more discretely with each subject. With these exceptions, the text of this rule appears in the same order as in the Notice of Proposed Rulemaking and can be easily compared.

Need for Immediate Effect

This adjusted OCAP rule is effective December 16, 1997, to allow its provisions to address imminent diversions of water from the Truckee River to Lahontan Reservoir. Under the Administrative Procedure Act, sec. 553(d)(3), a rule may have immediate effect when the agency finds that there is good cause for waiving the normal 30-day period between publication of the rule and its effective date. This waiver of the normal 30-day waiting period for this rule to become effective is critical for the Secretary to meet all obligations in the Truckee River basin. A 30-day delay in implementation will compromise the effectiveness of the Adjusted OCAP by allowing unnecessary diversions of more than 14,000 acre-feet of water from the Truckee River.

Delayed implementation of the rule would be contrary to the public interest. The Adjusted OCAP more accurately limits Truckee River diversions to only that amount of water that the water users in the Project require. In the past three years, the 1988 OCAP storage targets have allowed Truckee River diversions of about 80,000 acre-feet, 6,000 acre-feet, and 22,000 acre-feet of water that was not needed to satisfy diversionary rights and which ultimately was spilled during required precautionary drawdowns of Lahontan Reservoir increasing the danger of flooding in the Carson River valley.

Immediate implementation will not harm those affected by the rule because there will be sufficient water available to serve water rights during the 1998 irrigation season. Lahontan Reservoir storage levels in November resulted in diversions of nearly 10,400 acre-feet of Truckee River water under the existing 1988 OCAP storage targets. Projections for December 16–31, 1997, indicate that an additional 14,000 acre-feet of water might need to be diverted from the Truckee River to meet 1988 OCAP storage targets. Under the Adjusted OCAP storage targets in this rule, no water would have been diverted in November or would need to be diverted in December. Moreover, the November and December diversions are not needed to serve Project water rights. The 160,000 acre-feet already in Lahontan Reservoir, less evaporation and seepage, along with the water that would be available if needed from the Truckee River based on current water storage in Truckee River reservoirs, indicates that there will be sufficient water to meet Project requirements for the 1998 irrigation season. Therefore, immediate implementation is necessary to prevent the waste of at least 14,000 acre-feet of water that will be diverted from the Truckee River in December if the Adjusted OCAP is not in effect. If the rule were not in effect until January 16, 1998, additional water would be diverted that will not be needed.

In addition, immediate implementation will benefit Pyramid Lake by maintaining needed Truckee River flows with no attendant harm to Project water users, because the Adjusted OCAP does not affect decreed water rights. Conversely, diversions at Derby Dam in December pursuant to the existing 1988 OCAP storage targets would significantly decrease Truckee River flows to the detriment of Lahontan Cutthroat Trout, which is a threatened species under the Endangered Species Act.

A 30-day delay in implementation would result in an irretrievable commitment of at least 14,000 acre-feet of water from the Truckee River to Lahontan Reservoir. Immediate implementation of the Adjusted OCAP will allow better management of the Project, and will avoid potential threats to public health and safety due to the increased risk under the 1988 OCAP of flooding those downstream of Lahontan Reservoir.

The main reason for a 30-day waiting period prior to implementation is to provide affected parties with an opportunity to adjust their actions. The need for this is obviated by the fact that the Adjusted OCAP are an outgrowth of the 1988 OCAP. They are designed to fine tune the 1988 OCAP, not to replace them with an entirely new regulatory scheme. The revisions fall within the basic framework of the 1988 OCAP, a regulatory system that the affected parties have been operating under for nine years. Further, the Adjusted OCAP have been in circulation for many months, and all affected entities have had ample opportunity to participate in workshops on the proposed rule and to comment.

The affected parties have participated in the development of the Adjusted OCAP and are aware of the content of the rule as well as the approximate time it would be implemented. In spring 1997, the DOI extended the period for comment on the proposed rule for 60 days to accomodate interested parties who had been preoccupied by flooding during the original comment period. This 60-day delay should not be allowed to compromise the rationale underlying the Adjusted OCAP's development. The potential for harm to the public outweighs any possible prejudice to the affected parties. Therefore, the Department finds that there is good cause for the Adjusted OCAP to be effective on December 16, 1997.

Response to Comments on Proposed Rule

The proposed rulemaking provided a 60-day public comment period which was later extended another 60 days to end on April 8, 1997. The Truckee-Carson Coordination Office (TCCO) received 46 letters from commenters during the comment period. One additional commenter submitted late comments that TCCO received on April 9, 1997, and accepted for review, for a total of 47 comments. Fifteen comments were from an irrigation district, twelve from interested parties, seven from local governments, six from organizations or public interest groups, three from Nevada State agencies, two from Tribes, one from a public utility, and one from a Federal agency.

We reviewed and analyzed all comments, and in some instances revised the final rule based on these comments. The following is a discussion of the comments received and our response. First, we addressed general comments and concerns. Second, we responded to specific comments referred to by regulation section.

I. General Concerns

1. Why Propose These Changes? Some commenters asked what the purpose and need was for making adjustments to the 1988 OCAP. One commenter asked when the continued encroachment on water rights by successive OCAP's will end. Other commenters said that the proposed Adjusted OCAP rule does not meet the goals stated in the 1988 OCAP regarding service of water entitlements, conservation of wetlands and wildlife, Trust obligations to the Fallon Paiute-Shoshone Tribes (FPST), stable economies, and stability of operations. Other commenters argued that the diversion and subsequent spill of more than 100,000 acre-feet of Truckee River water in the past three seasons points to the need to adjust the 1988 OCAP to avoid a recurrence of such diversions and spills. Finally, one commenter suggested that instead of having an OCAP, that a discussion process be used to determine the need for fall or winter diversions from the Truckee River.

Response: As explained in the preamble to the proposed Adjusted OCAP rule published in December 1996, the primary purpose of this rule is to adjust the OCAP to reflect the fact that demand for water to meet Newlands Project water rights is less than projected at the time the 1988 OCAP were adopted and the OCAP can be adjusted to better reflect new water demand assumptions which will increase Newlands Project reliance on the Carson River as the primary source of water for the Carson Division. Other adjustments are made to provide flexibility in operations to help conserve water based on experience gained in the past nine years. The changes in this rule are designed to reduce diversions from the Truckee River in such a way that approximately 87 percent of the reduction comes from reduced Truckee Canal loss, reduced reservoir loss, and reduced spills. For the reasons explained above under the heading, "Adjusted OCAP Proposed Changes," demand for water to serve water rights has been less than anticipated in the 1988 decision which means that more water is being diverted from the Truckee River under the 1988 OCAP than is necessary to serve Newlands Project water rights. This is inconsistent with the Secretary's trust responsibility as spelled out in the Gesell decision in *Tribe* v. *Morton* to ensure that only the water needed to serve Project water rights is diverted from the Truckee River and away from Pyramid Lake. As such, this is not an encroachment on Newlands Project water rights, but a limited refinement of diversion criteria to assure that Project water rights are met but with maximum reliance on the Carson River.

This final OCAP rule is consistent with the 1988 OCAP goals. Water entitlements in the Newlands Project are served subject to such regulations or requirements as the Secretary may impose. This final rule is the Secretary's OCAP regulation for the Project, provides for the full service of water rights so long as the water is available, meets the OCAP goal of satisfying entitlements, and therefore, fulfills the *Alpine* and *Orr Ditch* decrees. The Adjusted OCAP is not expected to interfere with efforts to restore Lahontan Valley wetlands and wildlife resources because the proposed Adjusted OCAP was considered in the decision making process for the FWS Water Rights Acquisition Program (WRAP) EIS and it is being considered as the FWS develops its comprehensive management plan for Stillwater National Wildlife Refuge. The DOI is negotiating an agreement with the FPST on a number of issues including maintaining the Tribe's irrigation water supply. This agreement with the FPST is expected to help ensure that the DOI will meet its trust responsibilities to the Tribe under the Adjusted OCAP.

The Adjusted OCAP decreases slightly— from 98.41 percent to 97.48 percent—the average water supply in the Carson Division of the Project and would have an effect on farm production, profits, and income in drought years (see response to I–12). However, the modeled average water supply under Adjusted OCAP is similar to the modeled supply in the 1988 OCAP EIS assumptions under current conditions (1988 OCAP in Table A), therefore the economic stability of the Project is not expected to change compared to 1988 OCAP projected conditions. Finally, the Adjusted OCAP rule does not impose new operational requirements and is, therefore, consistent with the goal of stability in operations.

This Adjusted OCAP addresses the comment regarding the need to manage early season diversions of Truckee River water to Lahontan Reservoir to avoid subsequent spills. We believe the proposed storage target regime in the rule will minimize, but cannot eliminate, the possibility of Truckee River diversions being spilled later. We believe, further, that we cannot legally abandon OCAP in favor of a discussion process as the basis for controlling Truckee River diversions.

2. Why Change the OCAP Now? A number of commenters questioned why the DOI is changing the OCAP at this time. They cite the December 31, 1997, expiration of the prohibition on litigation on the 1988 OCAP in Section 209 of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Pub. L. 101–618), the absence of any court order for a new OCAP, and question why the DOI was moving "swiftly" on Adjusted OCAP in light of numerous concerns. Some commenters questioned the timing and need for the Adjusted OCAP in light of the DOI's announced plans to develop a revised, long-term OCAP. Other commenters asked to have the Adjusted OCAP rule in effect by October 1, 1997, to avoid potentially unnecessary diversions from the Truckee River.

Response: Section 209 of Pub. L. 101–618 allows the Secretary to decide, in his sole discretion, that changes to the OCAP are necessary to comply with his obligations. No court order is needed to

make these changes. The experience of initially seven and now nine years implementing the 1988 OCAP indicates that a number of changes could be made to save additional diversions of Truckee River water within the framework of the 1988 OCAP. The timing of this rulemaking relative to December 31, 1997, is coincidental since the rulemaking started in 1995. The DOI announced its intent to develop an interim or Adjusted OCAP in March 1995, held public planning workshops on Adjusted OCAP in August 1995, published a proposed rule in December 1996, held public workshops on the proposed rule in December 1996 and January 1997, and extended the comment period by 60 days in February 1997. We believe this history reflects the ample opportunities for public input and the deliberative pace of rulemaking to allow due consideration of issues.

The DOI's intention to develop a revised OCAP was also announced in March 1995. Unlike the Adjusted OCAP which makes some changes in the 1988 OCAP as an interim correction, the revised OCAP contemplates more fundamental changes to OCAP, will take a number of years to develop, and will be the subject of an EIS that also considers other related water management issues. The fact that the DOI conducted EIS scoping meetings for this EIS during the comment period on the Adjusted OCAP is more a reflection on the lengthy EIS process than on the DOI's intent to rush into the next OCAP before this rulemaking is concluded.

As to when the rule will go into effect, it had been the DOI's hope to have the Adjusted OCAP in effect prior to when Truckee River diversions might have begun under the current OCAP storage targets.

3. What is the legal authority for changing OCAP and for making OCAP a regulation? A number of commenters questioned the DOI's authority and the legal basis to make changes to the 1988 OCAP and to do so via rulemaking. One commenter made the point that this rulemaking will "grandfather" the 1988 OCAP which never was published in the **Federal Register**, never underwent notice and comment rulemaking, and which has not undergone judicial review. Another commenter asked if the Secretary had the approval of the Pyramid Lake Paiute Tribe (PLPT) to change OCAP.

Response: The Secretary of the Interior is authorized to promulgate regulations for the operation of irrigation projects under the Reclamation Act of 1902, as amended. Promulgation of the Adjusted OCAP rules replaces the existing 1967 OCAP regulations and a number of court approved OCAPs. Promulgation of Adjusted OCAP affords the public a formal opportunity to participate and have their concerns considered in the rulemaking process.

The Adjusted OCAP is based on the 1988 OCAP framework with changes in efficiency requirements, storage targets, upstream storage, and forecasting. It is correct that the 1988 OCAP was not published in the **Federal Register**, was not included in the Code of Federal Regulations, and has not gone completely through judicial review. However, Congress, through Pub. L. 101–618, directed the 1988 OCAP to remain in effect until changed by the Secretary, at his sole discretion, and to be barred from judicial review until December 31, 1997. The public law also declared valid all actions taken by the Secretary under any OCAP prior to that law, including implementation of the 1988 OCAP, and not subject to judicial review.

Newlands Project OCAP may be implemented through approval by the *Tribe* versus *Morton* court, or with the approval of the PLPT. The DOI believes it has received the approval of the PLPT through the Tribe's comments on the proposed Adjusted OCAP rule.

4. Adjusted OCAP Violates Water Rights under the Alpine and Orr Ditch Decrees: A number of commenters contend that the Adjusted OCAP reduces the water supply to the Newlands Project, and that any reduction in water supply affects water rights in violation of Nevada water law. These commenters also view this as a violation of water rights adjudicated under the *Orr Ditch* and *Alpine* decrees. Several commenters cite the court's decision in *Tribe* v. *Morton* which said that OCAPs should not alter the *Orr Ditch* or *Alpine* decrees.

Response: Under Nevada water law, water rights holders are entitled to a certain water duty per acre which represents the maximum amount of irrigation water that can be beneficially used on water righted lands. This water duty is neither a minimum amount of the entitlement that must be received, nor is it a guarantee that that amount of water will always be available. As the Carson and Truckee Rivers' runoff varies from year to year, so too does the water supply, resulting in full years serving up to the water duty, and in drought years where the available water supply serves less than the water duty.

As shown in Table A, line 19, under final Adjusted OCAP there is an additional shortage year compared to the current condition. The additional shortage year results from reduced carry over storage of Truckee River water in Lahontan Reservoir. Under Judge Gesell's decision in *Tribe* v. *Morton*, the Truckee River water left in Lahontan Reservoir at the end of the irrigation season is water that was not needed to serve water rights, and the Project is not entitled to this water.

Nothing in the Adjusted OCAP changes anyone's water right or affects the *Orr Ditch* or *Alpine* decrees. What OCAP does is determine under what conditions Truckee River water may be diverted to Lahontan Reservoir to supplement the water supply from the Carson River for purposes of serving such rights that year. That combined supply in Lahontan Reservoir is the water supply available to meet the water demand in the Carson Division in a given year. Our modeling analysis of the Adjusted OCAP, which considers the hydrologic record for the Carson and Truckee Rivers from 1901 to 1995, indicates that in more than 9 out of 10 years Lahontan Reservoir has enough water to fully satisfy the Carson Division demand, with an average water supply of more than 97 percent of demand. This combined use of Carson and Truckee River ensures a more secure and consistent water supply for the Carson Division than most other *Alpine* decree water rights holders experience on the Carson River.

5. The Adjusted OCAP Affects Property Rights: Commenters have expressed concern that Adjusted OCAP may cause shortages that are a taking of property rights. A State Agency believes that any action by the Federal government that results in water rights holders not receiving their legal entitlement of water is a taking of personal property. Also, because the State Agency is a holder of water rights in the Newlands Project, it says that Adjusted OCAP may devalue its water right holdings when they receive less water than is available in the system. Other commenters say this is stealing water or a taking without just compensation.

Response: Newlands Project irrigators do indeed have a property right in their water rights, as do other water rights holders in Nevada. However, as pointed out in the response to issue number 4, the Adjusted OCAP has no effect on water rights or on the *Alpine* and *Orr Ditch* decrees. In addition, these water rights are not an entitlement to a certain amount of water every year, but rather an entitlement to receive up to a certain amount of water, when that water is available. In drought years, water may not be available to serve all entitlements. Thus, the water that reaches and is retained in Lahontan Reservoir constitutes the available water for Newlands Project irrigators in the Carson Division. Further, these water rights are subject to applicable laws, rules, and judicial decrees. The supply of water in Lahontan Reservoir, out of which Carson Division water rights are served, is subject at least to the segmentation and priority provisions of the *Alpine* decree for the Carson River, and to the Floriston flow rate and priority provisions of the *Orr Ditch* decree for the Truckee River. Under Pub. L. 101–618 and *Tribe* v. *Morton*, OCAP may not affect the decrees; it merely provides that the deliveries be limited to those actually needed to serve water rights. As such, this is not a taking of a constitutionally protected property right by the Adjusted OCAP.

6. The Adjusted OCAP Denies Carry Over Storage Rights: Carry over storage refers to the ability to store in a reservoir water that is not needed in one year for use in the next year, if needed. Five commenters believe the Adjusted OCAP, as well as the 1988 OCAP currently in place, take away carry over rights in Lahontan Reservoir by limiting the diversion of Truckee River water. They contend the diminution of carry over storage under Adjusted OCAP erodes the principle of storing in times of plenty for times of drought. Further, one commenter contends that carry over storage is a right that was given to irrigators when they traded their pre-Project vested water rights to the Federal government for water rights in Lahontan Reservoir. In contrast, one commenter felt that the proposed end-of-month storage target for October of 52,000 acre-feet was too high because it could allow carry over of Truckee River water diverted right at the end of the irrigation season.

The Adjusted OCAP provides for storage of Truckee River water in Stampede Reservoir in lieu of diversions to Lahontan. One commenter asked why the Adjusted OCAP would not allow carry over storage of Newlands Project water in Stampede Reservoir.

Response: All water remaining in Lahontan Reservoir at the end of the irrigation season does carry over to the next year and this is not changed by the Adjusted OCAP. The Project water users benefit from carry over storage of all the Carson River water that remains in Lahontan Reservoir and provides protection against future droughts. However, to the extent that any portion of the water remaining in Lahontan Reservoir is water that had been diverted from the Truckee River, such water is, by definition, water that was not needed to serve Project water rights. It is the presence of this Truckee River water in Lahontan Reservoir at the end of the irrigation season that Adjusted OCAP seeks to minimize because it conflicts with the court's basic requirement of OCAP: that the Newlands Project receive only the Truckee River water needed to serve water rights so that the Secretary's trust responsibility to the PLPT may be fulfilled. Likewise, for Newlands Project water stored in Truckee River reservoirs, any water left over at the end of the season is water that was not needed to serve Project water rights and, therefore, should go to Pyramid Lake.

The goal of OCAP is to divert just that amount of Truckee River water needed to serve water rights in the Project and to let the rest continue to Pyramid Lake. The ideal OCAP would be based on demand and only allow diversions of Truckee River water to Lahontan Reservoir when it was actually needed for the Carson Division, and then, in quantities sufficient to always meet the water demand. This would ensure serving all water rights all the time with no over-diversions of water and no Truckee River water spilled from Lahontan Reservoir. Unfortunately, our analysis indicates that such a "demand only" OCAP would not serve water rights because of the variability in the amount of water available for diversion from the Truckee River from month to month, and because of the capacity limits of the Truckee Canal.

Instead of a demand-only OCAP, the Adjusted OCAP rule continues to allow diversions of Truckee River water to Lahontan Reservoir, even at times when the water is not immediately needed to serve water rights at the time of diversion, as a safeguard for a water supply later in the year against the unpredictability of the runoff from the Carson River. This is why the Adjusted OCAP includes a storage target greater than zero for October. The modeling analysis of the Adjusted OCAP indicates that it provides a water supply for the Newlands Project consistent with the water supply evaluated in the 1988 OCAP, even though the supply is less than under current (i.e., 1997) conditions.

7. There was Inadequate Information Provided to Evaluate the Proposed Rule: Eight commenters raised questions and concerns about the amount of information made available by the DOI in support of the Notice of Proposed Rulemaking. These concerns centered on modeling evaluations of the proposed Adjusted OCAP and alternative OCAP scenarios that had been considered. Some commenters believe that due process is being "trampled" or that modeling results were skewed because all of the information in the government's possession was not made public. Others questioned how the proposed rule could be evaluated without foundational data and assumptions. Yet another commenter chided DOI for manipulating data to achieve a predetermined result. Specific questions were posed regarding the need for a modeling scenario that allowed Lahontan Reservoir to fill without storage target limits and another modeling scenario for current conditions.

Response: In developing the Adjusted OCAP rulemaking, the DOI evaluated five OCAP alternatives based on different storage target regimes. These were modeled and compared with modeled scenarios for current conditions and for the 1988 OCAP with 1988 time frame assumptions and 1994 time frame assumptions. In all, nine modeling runs were examined. The printout from each modeling run is approximately 400 pages long. To facilitate comparisons of the modeling runs a single summary table labeled Table 9 was prepared listing 9 input assumptions and 53 key output parameters for each run. The DOI did not model a "full reservoir" scenario because it would not be consistent with the decision in *Tribe* v. *Morton* and would serve no practical purpose.

In response to requests for information on modeling runs considered by the DOI, Table 9 was made available to all parties. In response to requests for more detailed information, we also provided copies of the full 400-page proposed rule modeling run and a 36-page document of 94 years of modeled monthly output for 29 parameters. Table 9 was made available at three public workshops on the proposed rule and the availability of the remaining materials was announced in a **Federal Register** notice dated February 18, 1997, extending the comment period on the proposed rule by 60 days. The DOI believes that the modeling information provided was specific to the proposed rule and sufficient, when used in conjunction with the Notice of Proposed Rulemaking, to allow the public to evaluate and comment on the proposed rule.

8. OCAP Modeling: Many questions and comments were received regarding the Truckee River operations model used in developing the Adjusted OCAP. Commenters noted concerns both with the model itself and with DOI's use of the modeled data. One commenter noted that DOI is relying on a long string of assumptions in using the

model, and that the model cannot be used to determine the water supply for decreed rights. Another believes the operations model to be a product of collusion between the United States, the Pyramid Lake Paiute Tribe of Indians, and Sierra Pacific Power Company.

Several commenters wanted to know if and how the operations model had been calibrated or verified. There were also questions about the reliability of the model's estimates of parameters like seepage and evaporation, sensitivity to various parameters, and about the uncertainty these parameters create in the modeled output. One commenter asked if the model was available for review.

Another series of comments questioned why "real data" were not used and the model generates certain input data for missing stream gauges or extrapolates reservoir operations for time periods when the reservoirs were not in existence. Commenters also questioned why the model examines a 94 year time period instead of the last 30 years, especially when early stream gauges were not accurate.

Commenters also addressed the modeling results. Several noted that the modeled results do not match what actually occurred in some years and asked if DOI would monitor the actual Project hydrology, and if DOI would change the OCAP if it did not match what actually happens. Modeling was also thought by some to underestimate or to cover the actual effects of shortages that result from not achieving high efficiency requirements. One commenter suggested that the model does not show the economic effect of lower Lahontan Reservoir storage on hydropower generation, and does not account for the effect of upstream storage in lieu of diversions to the Project. Some recommended identifying shortages, or using the first year of a drought instead of listing average shortages because averages do not show the one in ten year event.

Response: The Truckee River operations model, a monthly river and reservoir operations accounting model, was developed by the BOR and has been added to and upgraded by contractors and BOR staff. The model is in the public domain and has been used as an analytical tool in a number of negotiations in western Nevada and has been accepted by parties to these negotiations as the best modeling program available for evaluating various Truckee River and Newlands Project operating scenarios. Over the years, various versions of the model have been made available to many organizations to use independently, including Sierra Pacific Power Company, the Pyramid Lake Paiute Tribe, TCID, and the States of Nevada and California.

Critics of the model point out that it does not use "real" data and its results do not replicate the historic record. The reason is that the model uses historic hydrology of the Truckee and Carson Rivers starting with 1901, but has to extrapolate to fill data gaps from the early 1900's. Also, the Truckee River operations and hydrology are modified in the model to assume that all the reservoirs and operations in place today have been in place since 1901, which is not this case. This allows the model to keep a single accounting book of reservoir records rather than having a new set of accounting books added to the program when each new reservoir was built. Thus, modeled output reflects operating the rivers with today's reservoirs and physical features in place using 94 or 95 years of hydrology. Though suggestions have been made to use a shorter time period such as 30 years of hydrology, we believe the longer time period is a more robust data base.

The model has undergone reviews by a number of modeling peers and users of the model and has been evaluated for sensitivity to certain parameters. Its input parameters for terms like seepage and evaporation are based on field tests and observations. Because the model has been widely accepted for use as a comparative tool for examining different water management scenarios, it has not been calibrated for or verified against any particular year or period of record.

The model uses historic hydrology, so it cannot be used predictively, and by standardizing physical features, it cannot be used to create an accurate hindcast. However, standardizing the river and reservoir operations allows users to look prospectively at what might happen in the future if the range of hydrology of the past is representative of what might happen in the future.

By holding the physical features and hydrology constant, the DOI uses the model to examine, compare, and contrast different operations scenarios. The modeling is only used for comparative purposes and not to suggest a specific future condition will exist. Operations under the Adjusted OCAP will be monitored, but not for the purpose of comparing the day to day operations in the Project with modeled results. As one commenter noted, upstream storage in lieu of diversions to Lahontan is not accounted for in the model. Upstream storage is intended to refine the Truckee River diversion so that there is no inadvertent over diversion. Because the model does account for forecasting errors and so allows occasional over diversion, it may overestimate the water supply in years when upstream storage might be used. Also, the model does not consider the effects of lower reservoir levels on hydropower production; this is considered in the environmental assessment for the Adjusted OCAP rulemaking.

The DOI has examined and considered the severity of drought years besides looking only at average water supplies. Table B shows the modeled water supply for drought years in four modeled scenarios: 1988 OCAP assumptions with current hydrology; the Current Conditions, Proposed Adjusted OCAP, and Final Adjusted OCAP. The Project water supply under Final Adjusted OCAP is comparable to, though slightly better than, what was modeled for the 1988 OCAP with the demand assumptions for 1992, however it is less than the Current Condition water supply. In the nine driest years, Final Adjusted OCAP is better than what the Project is modeled to experience under the 1988 OCAP, but worse than Current Conditions by 27,000 acre-feet on average for those nine years. The additional shortage is the result of reduced carry over of Truckee River in Lahontan Reservoir at the start of each year under Adjusted OCAP.

BILLING CODE 4310-RK-P

TABLE B

Carson Division Release Shortages for 1901 - 1995[1]
(1000 acre-feet)

	1988 OCAP	Current Condition	Proposed Adjusted OCAP	Final Adjusted OCAP
Demand	292.00	271.00	271.00	271.00
Year and Shortage:				
1931	79.04	44.69	81.47	80.42
1934	91.21	40.99	70.08	70.28
1961	58.23	3.68	38.05	38.05
1977	79.56	38.19	74.99	74.99
1988	72.35	33.32	66.03	66.03
1990	29.80	0.00	34.73	30.67
1991	137.77	110.84	113.66	113.66
1992	172.79	150.08	149.48	149.59
1994	37.09	5.30	46.37	46.37
95-Year Average Release Shortage	7.98	4.50	7.10	7.05
95-Year Average Water Supply (Percent)	97.27%	98.34%	97.38%	97.40%
Number of Shortage Years	9	8	9	9
Average Release Shortage in 9 Driest Years	84.2	47.5	75.0	74.5
9 Driest Years Water Supply (Percent)	71.2%	83.5%	72.3%	72.5%

1. All the footnotes from Table A apply to this Table.

BILLING CODE 4310-RK-C

9. OCAP Development and Alternatives Selection: When it was first announced in March 1995 that the DOI would be making adjustments to the 1988 OCAP, then Assistant Secretary for Water and Science Betsy Rieke made a commitment to the TCID and Newlands Water Protective Association (NWPA) that they would be consulted about changes the DOI was considering before any decisions were made. Several commenters have argued that the government did not fulfill this commitment, while others have asked for a new proposed rule to be developed in cooperation with all parties. One commenter objected to the rulemaking process because they were not invited to a briefing on the proposed rule after the **Federal Register** notice was published. Another commenter asked if the State of Nevada had been informed about the proposed rule. One commenter viewed the proposed rulemaking as a "take it or leave it" ultimatum without consideration of reasonable alternatives, and suggested that a new proposal should be developed in cooperation with other parties. Two commenters believe the attorney for the PLPT had "inside knowledge" of the proposed rule and that TCID and NWPA were excluded from participation while the PLPT and DOI developed the rule. Another cited DOI's alleged fiduciary responsibility to water right owners that the DOI must fulfill. Yet another commenter supported the proposed rule but thought that DOI should have selected an alternative that provided more benefits to Pyramid Lake. A State agency recommended delaying the rule for more complete environmental and economic evaluations and to await completion of negotiations between TCID and PLPT. Commenters also suggested that the DOI take notice of the draft *Truckee-Carson River Basin Study for the Western Water Policy Review Advisory Commission.*

Response: The rulemaking was conducted in accordance with Administrative Procedure Act requirements, which included notice published in the **Federal Register** and an opportunity for comment by all interested parties, as detailed in the Rulemaking Process section of the preamble. In addition, certain parties were advised early in 1995 that before a decision was made, they would have an opportunity to review changes DOI was considering making to the 1988 OCAP. The DOI honored this by meeting with TCID, NWPA, PLPT, FPST, the State of Nevada, and other parties to brief them on the content of the proposed rule after it was published in the **Federal Register**. For interested parties that did not attend this briefing, the same presentation was made later at two public workshops on the proposed rule.

The view that the Adjusted OCAP is a "take it or leave it" proposal without considering alternatives presumes that the proposed rule was a negotiating position. It was not. The DOI has been unsuccessful in several multiparty efforts to negotiate an OCAP settlement for the Newlands Project. The most recent effort, outside of current "out of court" discussions to settle pending litigation, was a facilitated negotiation that ended in March 1995, after which the DOI announced its intention to proceed with changes to the 1988 OCAP. In developing the Adjusted OCAP rule, the DOI has examined a wide range of alternatives, including those that were presented during the facilitated negotiations. The DOI held four well-attended public workshops in August and September 1995 to discuss possible changes to the 1988 OCAP and afford the public early input to developing the Adjusted OCAP. With the exception of these public workshops, no outside parties participated in DOI's development of the Notice of Proposed Rulemaking. As well, to our knowledge, no outside party has participated or been privy to development of this Notice of Final Rulemaking.

The DOI has reviewed and takes notice of the draft Western Water Policy Review Advisory Commission report.

The DOI selection of Alternative D for the proposed Adjusted OCAP and as the basis for the final Adjusted OCAP is primarily based on the mix of water savings and water supply impacts this alternative provides. The obligation owed to the water rights holders in the Newlands Project is a contractual obligation, not a fiduciary obligation. In evaluating OCAP alternatives, the DOI must seek to satisfy its contractual obligation to serve water rights, and to meet its Trust responsibility to the PLPT. Also, the DOI has completed both environmental and economic analyses in promulgating this rule.

10. Relationship of OCAP to the Truckee River Operating Agreement: Three commenters raise concerns regarding ongoing Truckee River Operating Agreement (TROA) negotiations which address, in part, storage in Truckee River reservoirs. Their concerns fall into three areas. First, that absent the TROA, the DOI has no authority to implement the upstream storage provisions necessary for storage in lieu of diversions, and therefore the Adjusted OCAP cannot precede TROA. Second, that until the TROA is completed there is no way for the DOI to evaluate opportunities for storage in lieu of diversions or assess what impact TROA may have on Truckee River flows available to the Project. Third, that the relationship of OCAP storage to other storage under TROA is not clear, and OCAP storage cannot adversely affect existing storage agreements.

Response: The Adjusted OCAP rule does not establish credit storage in lieu of diversions; that was established in the 1988 OCAP already in effect. This Adjusted OCAP rule extends the time period during which water may be credit stored, from April–June, to November–June, and it clarifies the procedures for storage in lieu of diversions. Therefore, the TROA negotiations need to address OCAP storage regardless of whether the 1988 OCAP is replaced by Adjusted OCAP or not. Also, the United States already has the authority to capture this water in Stampede Reservoir or to credit store the water out of fish water in Stampede by exchange and does not need TROA to be in place.

Modeling for the Adjusted OCAP does not assume that the TROA is in effect and therefore does not assess whether the TROA would have any impact on the Newlands Project. However, Pub. L. 101–618 mandates that the TROA must not adversely affect water rights. Preliminary modeling results for the draft TROA EIS indicate that flows in the Truckee River are affected by increased water use over time in the Truckee Meadows, and by effluent reuse programs associated with the Water Quality Settlement Agreement.

The effect of OCAP storage is unclear, but the DOI has agreed preliminarily that it will not credit store water in lieu of diversions if such credit storage would adversely impact the storage, retention, or use of other categories of credit water under TROA. The text of the Adjusted OCAP in section 418.3(e)(8) has been modified to ensure that OCAP storage does not interfere with other storage in Truckee River reservoirs. It should be noted that TROA is the subject of continuing negotiations among many parties and that its timing and configuration are not yet known.

11. Compliance with National Environmental Policy Act (NEPA): The DOI received many comments on the draft EA that accompanied publication of the proposed Adjusted OCAP rule. Those comments, including recommendations for mitigation of environmental effects, are addressed in the final EA.

Eight commenters questioned the DOI's preliminary determination that the Adjusted OCAP is not a significant Federal action requiring preparation of an EIS, citing general impacts to wildlife, wetlands, ground water, and socio-economic effects. One commenter suggested that because the Adjusted OCAP violated laws related to water rights, this must be considered a significant impact under NEPA. Several commenters cited the need for a programmatic EIS to be prepared on the Adjusted OCAP and all other actions under Pub. L. 101–618.

Response: All comments received regarding environmental effects have been considered and addressed in the EA. While the EA does discuss possible effects on wildlife, wetlands, ground water, and socio-economic impacts, none of these were considered to be significant for NEPA purposes. Further, nothing in this Adjusted OCAP rule causes a violation of law. Where appropriate, mitigation measures and their environmental benefits are discussed in the EA.

A number of parties have advocated that the DOI must prepare a single, programmatic EIS on all actions under Pub. L. 101–618, including for the Adjusted OCAP. The DOI disagrees with this position. This issue was the subject of litigation brought by Churchill County and the Town of Fallon, was dismissed by the U.S. District Court for Nevada, and is currently the subject of an appeal to the United States Court of Appeals for the Ninth Circuit.

12. Compliance with Executive Orders: One commenter questioned whether this rulemaking complies with various Executive Orders that must be considered in promulgating regulations. This person believes the more than 120,000 acre-foot reduction in storage targets in Lahontan Reservoir poses an unreasonable cost on society and triggers the need for the rule to be reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order (E.O.) 12866. Under E.O. 12612 on Federalism, the commenter questions whether the DOI has properly evaluated the need for Federal action and the impacts of the Adjusted OCAP on the State of Nevada's sovereignty and costs or burdens on the State. The commenter asks that DOI not adopt the Adjusted OCAP rule until it completes the requirements of E.O. 12606 on the Family, particularly with respect to impacts on family earnings. The commenter also believes the Adjusted OCAP rulemaking does not comply with E.O. 12988 on Civil Justice Reform because of the likelihood that the DOI will be sued on the rule.

Response: The cited change in Lahontan Reservoir storage targets is inaccurate and is not a basis for review of the Adjusted OCAP rulemaking by OMB. The proposed Adjusted OCAP reduced the key January to June storage target from the 1988 OCAP level of 215,000 acre-feet to 174,000 acre-feet, a reduction of 41,000 acre-feet. The reference to "more than 120,000 acre-feet" assumes a reduction from the reservoir capacity of 295,000 acre-feet to 174,000 acre-feet. The changes in storage targets only affect the trigger points for diversion of Truckee River water to Lahontan Reservoir. The storage targets do not impose any limit on the amount of Carson River water or the total amount of water that can be held in Lahontan Reservoir. Further, in response to comments, the DOI has revised the end-of-June storage target to 190,000 acre-feet, though retains the January–May targets at 174,000 acre-feet, subject to the adjustment procedure in section 418.22 of the rule.

The economic threshold for OMB review under E.O. 12866 is if the proposed rule is anticipated to have an economic impact of $100 million or more on a single entity or an economic sector. The economic impact of the Adjusted OCAP rule is based on average changes to the water supply and its effects on foregone production of alfalfa. These effects would only be experienced in drought years, the intensity of which would determine any actual changes in production. The average effect is calculated to be in the range of $561,000 to $283,000 per year, gross, to the agricultural sector. This estimate reflects the price of alfalfa without subtracting production costs. A 1994 study by the University of Nevada Cooperative Extension (Fact Sheet 94–22, Alfalfa Production Costs for Fallon, Nevada Area, by Wheeler and Meyer) concluded that the per acre profit for alfalfa was approximately $220 per acre which places the economic impact of the Adjusted OCAP at approximately $160,380 based on the rule having a water supply impact that might otherwise have served 729 acres. Nor does the Adjusted OCAP rule meet any of the other criteria for significance under E.O. 12866 regarding a serious conflicting action with another Federal agency, creating a budgetary impact, or raising novel legal or policy issues.

The Adjusted OCAP makes changes to four existing provisions of the 1988 OCAP. It neither creates any new requirement affecting the sovereignty of the State of Nevada, nor changes the role of the State or its rights and responsibilities with respect to regulating the Newlands Irrigation Project. The State was notified of the DOI's intent to proceed with the Adjusted OCAP rulemaking in 1995, participated in workshops on developing the proposed rule, and was consulted with before publication of the proposed rule. The DOI believes the requirements of E.O. 12612 on Federalism have been satisfied.

The DOI has examined the impact on family income as a result of the Adjusted OCAP in accordance with E.O. 12606. The economic impact of the Adjusted OCAP, which is experienced only within the Carson Division of the Project and only during the first year of a drought, translates into an estimated average economic impact on production of between $10 and $5 per acre per year, and an impact on profits of approximately $2.90 per acre per year. This cost is neither considered to have a significant impact on family budgets, nor expected to have any effect on any other family criteria under E.O. 12606. In addition, each farmer's strategy for managing a reduced water supply in a drought will affect their costs of production, which are typically $450 to $476 per acre, and gross receipts, which may mitigate or exacerbate the effects of the rule. If a farmer's net return is $220 per acre as noted, it is possible that leasing water in a drought year would generate more profit than alfalfa production in a full water year. However, none of these economic assessments includes the costs of replanting crops which might be necessary following severe droughts or leasing water. While the precise impact to each family budget is unknown, the DOI is cognizant of and has considered these overall effects in this rulemaking.

The applicable standards of E.O. 12988 on Civil Justice Reform do not set a threshold on the possibility of litigation as a consequence of the rulemaking. While we seek to avoid litigation, we recognize that all rulemaking holds the possibility of litigation by an allegedly aggrieved party. The DOI does not consider the litigious and turbulent history of Newlands Project OCAPs to be dissuasive in pursuing its responsibilities.

II Adjusted OCAP Issues

1. Project Acreage Base: The adjustments to the 1988 OCAP are based, in part, on anticipated increases in irrigated Project acreage that did not take place under that OCAP and some changes that did take place. The 1988 OCAP anticipated and was based upon the acreage in the Project increasing to 64,850 acres with an attendant headgate entitlement of 237,485 acre-feet and a total diversion demand of 346,985 acre-feet. Instead, the project acreage is

currently approximately 59,000–60,000 acres with a headgate entitlement of approximately 206,500–210,000 acre-feet and a total diversion demand of approximately 301,900–307,000 acre-feet. The current diversion demand figures for the Project are the result of a smaller acreage base than had been anticipated in the 1988 OCAP, reduced entitlements based on the so-called "bench/bottom" litigation (1995 Order of Judge McKibben, in *U.S.* v. *Alpine*, United States District Court for the District of Nevada No. D–185), ongoing water transfer litigation, a cap on water use by the Fallon Paiute-Shoshone Tribes, and a transfer rate of 2.99 acre-feet per acre for acquired wetland water rights as has been transferred to date instead of 3.5 or 4.5 acre-feet per acre. In response to the reduced water demand, the Adjusted OCAP changes the Lahontan Reservoir storage targets to provide a commensurate reduction in water supply from the Truckee River.

The DOI has received comments from eight parties objecting to the proposed storage targets using a 1995 acreage base of 59,075 water-righted, irrigated acres, when there are nearly 73,000 acres in the Project assessed annual charges for operations and maintenance (O&M). Commenters also disagree with BOR's determinations as to which lands are eligible for water deliveries. They contend that acreages and entitlements could change as a result of rulings favorable to irrigators in the transfer litigation and individual readjudications of the bench/bottom decision.

Response: The DOI agrees that the Project water demand may change over time. When the Notice of Proposed Rulemaking was published, the DOI assumed that changes affecting water demand might not occur for some years. It appears, now, that resolution for some proposed water rights transfers may occur sooner. Also, the 1995 actual irrigated acreage figure used in developing the Adjusted OCAP may have been depressed following several years of drought. The irrigated acreage reported for 1996 and estimated for 1997 has increased somewhat. On the other hand, additional acreage has been acquired for wetlands use at 2.99 acre-feet per acre which would tend to reduce water demand on the Project.

In response to these comments, the DOI is adopting, in effect, a sliding scale of storage targets predicated on holding the water supply available to the Project commensurate over a range of water demands. The table Adjustments to Lahontan Reservoir Storage Targets in the rule shows targets corresponding to water demands from 249,800 acre-feet to 290,200 acre-feet, and section 418.22 includes formulae for demands below and above those levels. For all levels of demand, the average annual water supply is about 97.4 percent. As an example of using the storage targets to match demand, Table C shows key modeling results for two demand levels below the Adjusted OCAP level and two above the Adjusted OCAP. In the four variations, the water supply to the individual irrigators remains at approximately the same level consistent with the proposed Adjusted OCAP water supply level.

BILLING CODE 4310–RK–P

TABLE C

Truckee-Carson Model Results for 1901-1905 for a Carson Division Demand Range from 250,000 to 290,000 Acre-Feet

KEY MODELING ASSUMPTIONS	Lower Demand 2	Lower Demand 1	Final Adjusted OCAP	Higher Demand 1	Higher Demand 2
Newlands Project Diversion Demand	273.0	283.0	294.0	303.0	313.0
Lahontan Reservoir End-of-June Target	150	170	190	210	229
Lahontan Average Target in July-Dec.	55.5	71.8	91.8	111.8	130.8
Lahontan Loss for LSOCM (Feb.-Jun.)	18.2	18.2	18.2	18.2	18.2
TRUCKEE CANAL					
Diversion from Truckee River	70.6	79.5	91.4	103.1	115.5
Truckee Canal Loss	14.2	15.3	16.8	18.2	19.5
LAHONTAN RESERVOIR					
Inflow from Truckee Canal	33.7	41.5	51.9	62.2	73.3
Carson River near Ft. Churchill	289.8	289.8	289.8	289.8	289.8
Reservoir Loss	34.3	34.4	35.1	36.3	37.6
Total Release and Spill	288.4	296.1	305.9	315.0	324.8
Reservoir Spill	44.9	42.9	42.0	42.3	42.4
Average End of Month Storage					
May	208.9	211.6	217.2	225.4	234.1
June	208.9	210.9	215.7	222.6	229.7
July	179.4	179.9	183.3	189.0	194.8
August	141.3	140.5	142.5	147.0	151.6
September	114.7	113.3	114.6	118.4	122.1
October	103.6	102.4	103.8	107.8	112.2
CARSON DIVISION					
Demand at Lahontan Reservoir	250.0	260.0	271.0	280.0	290.0
Lahontan Release Shortage	6.52	6.79	7.05	7.24	7.52
Water Supply (%of Demand)	97.39%	97.39%	97.40%	97.41%	97.41%
No. of Shortage Years	9	9	9	9	9
PYRAMID LAKE					
Truckee River Inflow to Lake	500.9	492.2	480.5	469.8	457.6
Ending Elevation (feet)	3,849.3	3,845.9	3,840.9	3,835.9	3,830.5
Beginning Cui-ui (1,000's of adult females)	50.0	50.0	50.0	50.0	50.0
Ending Cui-ui (1,000's of adult females)	1,735.3	1,259.7	1,051.9	572.6	311.6
Number of Cui-ui Spawning Years	77	75	75	71	69

BILLING CODE 4310–RK–C

The BOR will determine at the end of each irrigation season what change, if any, is to be made to the monthly Lahontan Reservoir storage target for the next year, starting with the November end-of month storage target. Changes in the storage targets shall be implemented in whole increments of 1,000 acre-feet as indicated on the Table. For water demands above or below the values shown on the table Adjustments to Lahontan Reservoir Storage Targets, the two formulae associated with the table will be used to calculate the target adjustments, but will only be implemented in whole units of 1,000 acre-feet.

Carson Division water demand from the previous full water year (100 percent supply) will be the basis for changes in storage targets. Following any water year there will be a one-year lag in water demand data because verification of the irrigated acreage cannot be determined until about March for the prior irrigation season ending in October. For example, the Carson Division water demand for the 1997 irrigation season, a full water year, will not be known until March 1998. Under this rule, any further adjustments to storage targets could not go into effect before November 1998.

These flexible storage targets in Adjusted OCAP will address the concern that the DOI has selected an unreasonably low acreage or is relying on an inflexible demand base for setting Lahontan Reservoir storage targets. This provision assures the irrigators a consistent water supply as Project acreage changes.

2. Changes in Storage Targets: The Adjusted OCAP change Lahontan Reservoir storage targets to bring the water supply in Lahontan Reservoir in line with the Carson Division water demand in a manner that is consistent with the 1988 OCAP. The DOI received specific comments from nine parties, some saying that this change in storage targets will cause shortages and artificial droughts. Some comments say the reduced December and winter storage targets will cause diversions to begin later in the spring and summer when less water is available in the Truckee River. This will cause shortages that will prevent water entitlements from being satisfied or will satisfy entitlements in normal water years but leave less water in storage at the end of the irrigation season creating new droughts or worsening droughts in future years. In turn, this will reduce crop yields, and in drought years, more farmland will be fallowed, requiring larger capital investment to replant after a drought. One commenter asked if DOI only looked at elements that might reduce Truckee River diversions rather than increase them. It appears to some that the DOI is deliberately creating shortages in the Project water supply by only adjusting OCAP provisions that increase shortages, and asking the water rights owners to bear these shortages and the related economic effects. After all, one asks, isn't the goal to reduce risks of shortages? Another commenter said basing reduced diversions on trust obligations is disingenuous because the real reason is to allow growth in the Reno and Sparks area.

Another area of stated concern in comments is that the change in Lahontan Reservoir storage targets is unjustified because the percentage reduction in storage targets exceeds the percentage reduction in Project acreage. One commenter asks whether DOI is assuming a 1:1 relationship of storage targets to water demand and whether that same relationship applies to the current project acreage.

Other commenters suggest that the Adjusted OCAP storage targets are too high and the October storage target should be reduced to 4,000 acre-feet, the November and December targets reduced, and, in years of high precipitation, the October to December targets reduced. One suggests that the 4,000 acre-foot minimum pool in Lahontan should be eliminated or maintained out of water rights acquired for that purpose, otherwise it is, in effect, maintained out of the Truckee River by a higher storage target.

Response: The Adjusted OCAP do not lower storage targets for the purpose of creating water shortages in the Project. The purpose of lower targets is to reduce unnecessary diversions of water from the Truckee River. The storage targets are calibrated to meet the Secretary's trust responsibility to minimize Truckee River diversions while satisfying the Secretary's contractual obligation to provide an appropriate water supply to serve Project water rights. Also, the benefits of reduced Truckee River diversions accrue to water users downstream of Derby Dam and to Pyramid Lake. Reno and Sparks derive no benefits from Adjusted OCAP.

The 1988 OCAP established a set of Lahontan Reservoir storage targets that were expected to satisfy the existing and increasing future water demands of the Newlands Project. It was assumed that the Project would grow to 64,850 acres and be served in the Carson Division by the 215,000-acre-foot-storage-target set defined in the 1988 OCAP. Modeling indicates that the 1988 OCAP with conditions projected for 1992 would provide approximately a 97.27 percent water supply. However, the Project did not attain the size envisioned. The fortuitous consequence for the Carson Division water users has been to have the current acreage level and corresponding water demand served out of a water supply capable of serving a larger Project. Thus, the Project today enjoys an average water supply modeled at 98.34 percent, but also increased spills and other losses at the expense of the Truckee River and Pyramid Lake. The proposed Adjusted OCAP would have provided an average water supply of 97.38 percent, a reduction from current conditions by about 2,550 acre-feet on average. This Adjusted OCAP final rule, by increasing the end-of-June storage target to 190,000 acre-feet, provides a modeled average water supply of 97.40 percent, which is approximately the same supply the 1988 OCAP would have provided with expected growth.

The lower Lahontan Reservoir storage targets do reduce, as noted in comments, the available Project water supply, but still serve water right entitlements for full water years in nine out of ten years, based on the historic hydrologic record. Lower storage targets also result in less water remaining in the Reservoir at the end of each season which means that in the approximately one year in ten when there is a drought, there is less water carried over to cushion the Project from the drought, as shown in Table B. Generally, if a drought lasts for more than one year, the storage targets have no effect on the Project water supply because the target limits are never met and TCID can continue diversions of water from the Truckee River that may be available, subject to higher priority *Orr Ditch* water rights. Any additional shortage resulting from Adjusted OCAP has an economic effect, which is discussed in I.12. of this preamble.

Regarding percentage reductions in acreage and targets, there is not a one to one relationship between Project acreage and storage targets under the Adjusted OCAP or the 1988 OCAP. Storage target levels determine when TCID can divert water from the Truckee River to Lahontan Reservoir. Under the Adjusted OCAP, during January through May when Lahontan Reservoir storage is forecast to be below 174,000 acre-feet at the end of June, TCID may divert Truckee River water to Lahontan. If the water level in Lahontan Reservoir is forecast to be above the storage level of 174,000 acre-feet at the end of June, then TCID may not divert Truckee River water to Lahontan. The 174,000-acre-foot target is not a new limit on how much water Lahontan Reservoir may

hold. Lahontan Reservoir can still fill to capacity with Carson River water, as it has done, for instance, in the past three years.

The percentage change in Project acreage from a projected 64,850 acres to 59,075 acres is an 8.9 percent reduction. Acreage is directly related to water demand and OCAP's goal is to provide the appropriate water supply to meet the demand for water righted acreage in irrigation. In the Adjusted OCAP rule, storage targets are adjusted so that in most years, the Project water supply in Lahontan matches or exceeds (based primarily on Carson River inflow) the water demand at current acreage levels. The corresponding percentage reduction in average water supply from the 1988 OCAP with 1992 assumptions to the Final Adjusted OCAP (from Table A) is modeled to be about a 7 percent reduction (264,020 acre-feet and 263,950 acre-feet, respectively). Separate from the percentage reductions in acreage and water demand, the OCAP determines how to get enough water in Lahontan Reservoir to satisfy the water demand. Lahontan Reservoir receives an average annual inflow of approximately 355,000 acre-feet of which, on average, about 80 percent is Carson River inflow and 20 percent Truckee River diversions to Lahontan. Therefore, a given percentage reduction in the storage target for Truckee River diversions has a much smaller percentage effect on the total water supply in Lahontan Reservoir. For example, a 50 percent reduction in storage targets would still provide, on average, about a 90 percent supply to the Project; a 100 percent reduction in storage targets (no Truckee River water) would still leave an 80 percent water supply, on average.

On the issue of maintaining a 4,000 acre-foot minimum storage in Lahontan Reservoir, that is not a provision of OCAP, but rather appears to be an informal agreement between TCID and the Nevada Department of Conservation and Natural Resources to provide some water for fish in the Reservoir. Although Lahontan Reservoir was designed for irrigation water storage, Pub. L. 101–618 expands the authorized purposes of the Newlands Project to include recreation and fish and wildlife (Section 209 (a)), though no water rights have been transferred to the Reservoir for that purpose. The DOI supports maintenance of the recreational fishery at Lahontan Reservoir, and by modeling the Reservoir with a 4,000 acre-foot minimum level, the DOI acknowledges that this amount of water is, in effect, unavailable for use in the Project. Also, the minimum reservoir pool is beneficial to dam safety and operations because both the dam and the valves and packing in the outlet works perform best if kept wet instead of being subject to frequent wetting and drying.

3. Project Conveyance Efficiency: The Adjusted OCAP does not change the assumptions underlying the conveyance efficiency provision in the 1988 OCAP, but it does reduce the conveyance efficiency requirement based on less Project acreage than was envisioned in the 1988 OCAP. The basis for the new, lower conveyance efficiency requirement is that conveyance efficiency generally decreases as the irrigated acreage in the Project decreases because conveyance losses (seepage and evaporation) are about the same even though deliveries to headgates decrease.

Thirteen commenters questioned why DOI was continuing to rely on the efficiency assumptions in the 1988 OCAP. The comments focus on a table of 22 Potential Water Conservation Measures for the Newlands Project first published as Table 4 in the 1988 OCAP and republished in a modified form in the Adjusted OCAP proposed rule. Commenters object to using this table because the conservation measures, many of which were implemented by TCID, have not always achieved the water savings predicted in the 1988 OCAP. Some stated that continuing to cite these conservation measures perpetuates in the Adjusted OCAP the errors from the 1988 OCAP. Some feel that DOI has not recognized the efforts of TCID in trying to achieve the conveyance efficiency requirements by relying on these conservation measures. One commenter stated that DOI had used these conservation measures to justify unreasonable conveyance efficiency requirements in the 1988 OCAP, while another commenter stated that the requirements were made artificially high to run up Project debits. Another commenter stated that the conservation measures had interfered with getting irrigation deliveries at the optimum times for plants. Several commenters wanted to know what other irrigation projects the Newlands Project had been compared to in determining what level of conveyance efficiency was possible.

Five commenters raised questions about how the Adjusted OCAP conveyance efficiency was developed, whether DOI had considered the 1994 Report to Congress on the Newlands Project Efficiency Study, how the lower storage targets relate to efficiency, and if we can be very accurate in measuring conveyance efficiency.

Two commenters stated that the conveyance efficiency requirement should not be lowered because the 1994 BOR Efficiency Study shows that efficiencies could be increased to 75 percent, and that lower efficiencies were inconsistent with BOR policy on water conservation.

Response: In planning the adjustments to be made to the 1988 OCAP, the DOI identified four changes within the scope of the 1988 OCAP: adjustments to Lahontan Reservoir storage targets based on current irrigated acres, conveyance efficiency requirements based on current irrigated acres, extending the time period for storage in lieu of diversions to avoid winter over diversions, and giving BOR flexibility in determining what snowpack/runoff forecasts to use. The DOI was asked to consider more fundamental changes to the 1988 OCAP approach to conveyance efficiency; however, the suggested changes were far beyond the scope of the Adjusted OCAP analysis. The DOI has committed to a review of conveyance efficiency requirements and conservation measures as part of long-term revisions to OCAP, but not as part of Adjusted OCAP.

The expected water savings from the 22 conservation measures identified in Table 4 in the 1988 OCAP were based on information available at the time. Many of those measures were suggested as a relatively inexpensive means to achieve the conveyance efficiency requirements in the 1988 OCAP. Some of the measures in Table 4 were expensive and some of the predicted savings have not been achieved in practice. Many of the 22 measures were implemented by TCID, although not always consistently, but the predicted water savings were not realized in all cases. In its 1994 Efficiency Study, the BOR recognized the differences between the water savings predicted in the 1988 OCAP and what had been achieved. It also identified other measures, some at quite low cost, that could increase project efficiency. The Adjusted OCAP incorporates the new information from the 1994 Efficiency Study and updates the table on Potential Water Conservation Measures. However, the 1988 OCAP neither required those specific measures from Table 4 to be implemented nor precluded the Project from implementing any other measures to improve water conservation and meet the efficiency requirement. The conservation measures are not a means of justifying conveyance efficiency requirements but were suggested as a way to achieve those requirements. Nor are the conveyance efficiency requirements a way to increase debits in the Project.

As suggested in a comment, it is difficult to know with precision how a particular conservation measure improves conveyance efficiency. One of the problems—and one of the twenty-two conservation measure suggestions—is the inaccuracy of measuring deliveries to headgates. As a result of the new Project O&M contract, TCID is undertaking installation of water measurement devices to improve measurement of headgate deliveries. The efficiency study estimates that this will actually increase efficiency by about 7.5 percent because the current measurement is inaccurate and seems to produce systematic over-diversions to Project irrigators.

In formulating the conveyance efficiency requirements for the 1988 OCAP, BOR compared the Newlands Project to two other irrigation projects concerning the conveyance efficiencies that might be achieved. The BOR looked at the Payette Division of the Boise Project and the South Side Pumping Division of the Minidoka Project, both in Idaho. The observed conveyance efficiency in the Payette Division is 66.3 percent and in the South Side Pumping Division 64.4 percent. As might be expected, the Newlands Project shares some characteristics with these projects and is different from them in other ways. The 1988 OCAP considered these to be "comparable" projects, but no assessment has been made of the validity of any comparisons.

The Adjusted OCAP reduction in the conveyance efficiency requirement is calculated based solely on the current Project acreage compared with the 1988 OCAP acreage assumptions and is unrelated to the calculation of the Adjusted OCAP storage targets. The conveyance efficiency requirement will be extrapolated each year using the 1988 OCAP acreage assumptions and the current acreage.

The DOI believes the reduced efficiency requirement to be consistent with other changes in the Adjusted OCAP based on Project acreage. This change recognizes the difficulty in meeting the efficiency requirements when headgate deliveries are lower. It is not a windfall for the irrigators because the reduced efficiency requirement still cannot be met without physical or operational improvements in the Project, although there is a benefit because it will reduce the debit the Project may incur in certain years.

4. Effects of Other Actions on Efficiency: One commenter noted that various water rights acquisition programs could result in the acquisition and transfer out of the Newlands Project of a significant portion of the water rights in the Truckee Division. The conveyance efficiency in the Truckee Division is approximately 74 percent, and this higher conveyance efficiency improves the overall Project conveyance efficiency. The commenter is concerned that Truckee Division water rights acquisitions will shift more of the burden of meeting efficiency targets to the less efficient Carson Division.

Four other commenters say that the wetlands water rights acquisition program managed by the FWS to acquire water rights for Stillwater National Wildlife Refuge will make it difficult to achieve the required efficiencies. The wildlife refuge is at the end of the Project delivery system and commenters contend delivering increasing amounts of water to the end of the system will reduce conveyance efficiency. Another concern is that the pattern of water rights acquisitions may eliminate deliveries to some properties along a delivery lateral and result in less efficient water deliveries to other remaining properties on the lateral. One commenter disagreed with the assumption that the water rights acquisition program will, over time, help to improve conveyance efficiency in the Carson Division, and cited the 1994 BOR Efficiency Study to support this claim.

Response: While the concern for conveyance efficiency is legitimate, the specific argument is questionable considering that wasteful deliveries occur, including one at no more than about five percent efficiency.

The DOI continues to believe that the pattern of purchases, predominantly in the Stillwater and St. Clair Districts, the areas closest to the wetlands, will improve Project efficiencies by concentrating deliveries through the system. This is consistent with the 1994 BOR Efficiency Study which states that delivery of more water to wetlands should not affect seepage because the canals used to deliver water to the wetlands are generally full throughout the irrigation season, and that the wetted area of the canal and not flow determines seepage.

The DOI recognizes that absent targeted water rights acquisitions, the FWS may buy water rights in other areas of the Project. It is the DOI position that if, at some appropriate point in the future, water rights acquisitions in the Truckee Division or the Carson Division are shown, on the whole, to have a demonstrable adverse effect on Project conveyance efficiency, the calculation of Project conveyance efficiency may be adjusted. This would be done solely at the discretion of the BOR and only if a feasible technical approach can be developed to remove the inefficient component of the delivery system from the calculation of conveyance efficiency.

This should not affect the Secretary's carrying out his trust obligations to the PLPT because each wetlands acquisition reduces the demand for Truckee River water in the Project by transferring to the wetlands only 2.99 acre-feet of every 3.5 or 4.5 acre-feet acquired. Also, the conveyance efficiency improvements from concentrating deliveries to the wetlands further reduces the demand for Truckee River water in the Carson Division.

5. Credit Storage in Lieu of Diversions: The proposed Adjusted OCAP rule extended the time period during which water might be stored in Stampede Reservoir on the Truckee River in lieu of diverting that water to Lahontan Reservoir. The 1988 OCAP allowed storage in lieu of diversion from April through June. The proposed rule extended storage in lieu of diversion to begin as early as January each year.

Six commenters raised a number of questions, foremost seeking a better description of when credit storage provisions would be utilized, how much water could be stored, when it would be released from storage, and how it relates to storage targets. Another question was why DOI was using credit storage to address unique events like high runoff years, but not drought years. One commenter suggested that there would be little benefit for the Truckee River or Pyramid Lake if credit storage is only used in years that are full water years or better. Some comments expressed concern for water levels in Lahontan Reservoir when water was being stored in Truckee River reservoirs, and saw the potential for less carry over storage in Lahontan and more diversions from the Truckee River. One commenter questioned why unused Newlands Project water could not be carried over to the next year in Truckee River reservoirs. Another commenter asked why the credit water could only be used in the Carson Division when the greater need for the water might be in the Truckee Division.

Two commenters recommended that the credit storage in lieu of diversions start in October to avoid excess diversions, particularly in November and December. One commenter suggested that storage in lieu of diversions should be done whenever possible, regardless of runoff forecasts, and that credit water only be taken to Lahontan Reservoir after June and then only to meet storage targets.

One commenter was concerned about the effects of storage in Truckee River reservoirs and recommended that water be stored in all Truckee River reservoirs, not just Stampede reservoir, and that unused portions of the credit storage should revert to the reservoir in which the water would have been captured. The commenter wanted the storage priority for OCAP credit water to be junior to all existing categories of stored water and junior to all future storage under the TROA, and that it not be stored adverse to Floriston rates without a hydropower waiver from Sierra Pacific Power Company. Also, they indicated that the OCAP credit storage should be subject to reductions by evaporation and spills.

Response: Extending the time period during which the credit storage provision is applicable is intended to fine-tune the amount of water the Project receives from the Truckee River. It is a way to avoid excess winter diversions of Truckee River water that ultimately spills from Lahontan Reservoir, as occurred in 1995, 1996, and 1997. The following discussion is intended to clarify when and how the credit storage provision (§ 418.20 (f)) will be used. In response to comments received, and in consideration of the experience in December 1996 when approximately 22,000 acre-feet of water was diverted from the Truckee River to Lahontan Reservoir and then was spilled in January 1997 due to high Carson River runoff, the Adjusted OCAP rule extends credit storage in lieu of diversion to include November and December. October was not included because it is during the irrigation season and because it is the month with the lowest storage target—52,000 acre-feet—so there is little risk that Truckee River diversions to meet that target would result in a spill. As revised, this Adjusted OCAP rule provides the BOR flexibility to determine, in consultation with other parties, whether to initiate credit storage any time from November through June of the next year.

Under this credit storage provision, water that otherwise would have been released for diversion to Lahontan Reservoir that is actually retained in Truckee River reservoirs would be credited as Newlands Project credit water. Also, water that could be diverted to Lahontan Reservoir but is allowed to pass Derby Dam may be credited as Newlands Project credit water in Stampede Reservoir from the fish water stored in Stampede Reservoir. In the latter situation, concurrence by the FWS, and as appropriate, the PLPT, will be required because they control the use of fish water, and the storage would have to be accomplished by exchange with water dedicated to help restore endangered and threatened fish at Pyramid Lake. For example, a reduction of diversions in January through March of 1995, would have required FWS approval because water was not being released for Project diversions.

Newlands Project credit water could be exchanged to other special categories of water in Truckee River reservoirs such as project water held for fish recovery, and can be retained in storage until the end of the irrigation season. The number of categories available for such exchanges is expected to increase if the TROA currently in negotiation is completed and entered into effect.

Newlands Project credit water that spills may be captured and diverted to the Project at Derby Dam if the diversion is within the applicable OCAP storage targets. However, Newlands Project credit water remaining in storage at the end of the Project irrigation season will be managed to benefit threatened or endangered fish in Pyramid Lake.

Newlands Project credit water may be released for diversion to Lahontan Reservoir, if needed, as early as July 1 through the end of the irrigation season, but not thereafter. Credit water can be diverted to Lahontan Reservoir only to meet applicable storage targets during the irrigation season. Newlands Project credit water will not carry over to the next year for use in the Project, therefore, if it is not used in the year in which it is stored, it will not be available thereafter to the Project. To protect the water users, the Newlands Project credit water held in storage on the Truckee River will not be reduced as a result of seepage or evaporation. If Newlands Project credit water spills from Truckee River reservoirs it can be diverted at Derby Dam for Lahontan Reservoir subject to applicable storage targets.

If the entire amount in credit storage is needed to meet Lahontan Reservoir storage targets, then the amount of water released from Truckee River reservoirs will be the amount actually captured in storage. If the Newlands Project credit storage is based on water that was allowed to pass Derby Dam, then sufficient water will be released from credit storage to ensure that the diversion to the Project, as measured at the U.S. Geological Survey gauge on the Truckee Canal near Wadsworth, Nevada, matches the diversion foregone earlier in the season.

The BOR is expected to apply this provision starting in November or December only in years when the water levels in Lahontan Reservoir and Truckee River Federal reservoirs are high enough to indicate that a normal or near normal water year would be expected to satisfy Project water demand. For example, there would be no point in credit storing potential Truckee River diversions in November or December if Lahontan Reservoir were nearly empty due to a drought in the preceding irrigation season. Thereafter, Newlands Project credit water will be stored in lieu of diversion if the Carson River runoff is forecast to provide a full supply of water to Lahontan Reservoir.

The reason Newlands Project credit storage is not allowed to carry over to subsequent years is because, by definition, the water left in storage at the end of the irrigation is water that was not needed to serve Project water rights. In accordance with *Tribe* v. *Morton*, the credit water remaining is water that must flow to Pyramid Lake.

The effect of this provision on water levels in Lahontan Reservoir will vary from year to year, depending on the amount and timing of the Carson River spring runoff. The information on storage levels in Table D does not include any effects from storage in lieu of diversion. If, as expected, credit storage is exercised only during above average water years, it may have little effect on recreation levels in Lahontan Reservoir. Credit storage will tend to reduce water levels in Lahontan, particularly in the spring and early summer recreation seasons, but if the credit water is needed and taken to Lahontan later in the summer it will increase water levels. The fine tuning facilitated by credit storing will tend to reduce carry over of Truckee River water in Lahontan and this will decrease spills.

BILLING CODE 4310-RK-P

TABLE D

Percent of Time Lahontan Reservoir Storage is Less Than Given Value on Indicated Date (1901-1995)[1]					
Date	Lahontan Reservoir Storage[2]	1988 OCAP	Current Condition	Proposed Adjusted OCAP	Final Adjusted OCAP
April 30	160,000[3]	7%	4%	20%	20%
	120,000[4]	3%	3%	3%	3%
	90,000[5]	2%	2%	2%	2%
May 31	200,000[3]	13%	13%	43%	43%
	120,000	6%	3%	7%	7%
	90,000	3%	2%	3%	3%
June 30	200,000[3]	20%	20%	45%	45%
	120,000	9%	7%	10%	10%
	90,000	8%	3%	8%	8%
July 31	160,000[3]	24%	21%	48%	44%
	120,000	14%	10%	18%	18%
	90,000	10%	8%	12%	12%
August 31	120,000[3]	31%	21%	51%	51%
	100,000[6]	20%	15%	39%	26%
	90,000	20%	13%	25%	23%
September 30	120,000[3]	49%	41%	58%	58%
	90,000[5]	23%	20%	53%	52%
	25,000[6]	10%	10%	11%	11%

1. All the footnotes from Table A apply to this Table.
2. Values in acre-feet
3. State of Nevada monthly preferred reservoir storage levels for recreation.
4. 120,000 acre-feet is the minimum reservoir storage levels allowing safe use of existing boat ramps.
5. New storage level for safe use of boat ramps after extension of ramps as a mitigation measure.
6. State of Nevada recommended minimum storage level.

BILLING CODE 4310-RK-C

The Newlands Project credit water is not intended to be used to balance the water supply between the Truckee and Carson Divisions of the Project. The credit storage is created out of water that would have gone to Lahontan Reservoir. If the credit water is needed to meet storage targets in Lahontan Reservoir but it is instead diverted for use in the Truckee Division, that leaves the Reservoir below targets and places an additional call on Truckee River water. On the other hand, if diversions out of winter and spring Truckee River water would have met Lahontan storage targets and summer and fall flows are insufficient to meet current demand there would be no bar to using a portion of the stored water to equalize deliveries between the two Divisions. It is expected that this situation could occur rarely, if at all, since the intention is to divert sufficient water, when available, to serve water rights and to store water in Stampede Reservoir only when Carson River flows are expected to meet the Lahontan Reservoir storage target criteria.

The priority of storage for Newlands Project credit water in relation to other stored water and to Sierra Pacific Power Company's hydropower right is expected to be resolved in TROA negotiations which are not yet completed. (See also the response I.10. on the relationship of Adjusted OCAP to TROA.)

6. Cui-ui Fish: Measures to recover the endangered cui-ui, a fish species unique to Pyramid Lake, are detailed in the 1992 Cui-ui Recovery Plan prepared by the FWS. These measures include increasing the inflow of the Truckee River to the Lake to first stabilize what has been a falling lake level, then increasing the water level in the Lake so that the fish can eventually swim unaided up the Truckee River to the fish passage facility at Marble Bluff Dam where they are passed upstream to spawn. If the Lake level rises above Marble Bluff Dam, the cui-ui will be able to spawn upstream without human assistance to get over the dam.

Three good water years and four years of cui-ui spawning runs have dramatically increased the population of cui-ui in Pyramid Lake, although much of the increased population is juvenile fish which have yet to contribute to spawning. Along with successful spawning and increasing population have come questions about how much water the cui-ui need for recovery. Nine commenters raised a number of issues regarding cui-ui, the heart of which is questioning the need for Adjusted OCAP in light of recent increases in the cui-ui population. The underlying assumption is that the Adjusted OCAP's purpose is to obtain more water from the Newlands Project for cui-ui recovery. This notion was probably reinforced by the Endangered Species Act (ESA) consultation on the 1988 OCAP which effectively limited the maximum allowable diversion in the Project to 320,000 acre-feet per year to avoid jeopardizing the continued existence of cui-ui. One commenter asked what the current biological opinion shows for cui-ui at current population levels.

One commenter asked why the 1988 OCAP was being changed when the Recovery Plan was still under review by the National Academy of Science. Two commenters questioned if a water demand for Pyramid Lake or cui-ui had been defined or if DOI had performed a demand study for the Newlands Project and concluded it needed 110,000 acre-feet for cui-ui. Several commenters believed that modeling done for Adjusted OCAP is flawed because it doesn't reflect current cui-ui data on population or lake level relationships, and there is no information on how the cui-ui index was formulated. These commenters also thought too much water might be going to Pyramid Lake and could affect boating, the delta wetlands, pelicans, and grazing. One commenter questioned why getting 110,000 acre-feet of water to Pyramid Lake for recovery of the cui-ui was the sole responsibility for the Newlands Project.

Response: The original litigation in *Tribe* v. *Morton* is the basis for the current OCAP for the Newlands Project, and that case is based on the Secretary's trust responsibilities to the Pyramid Tribe, not the Secretary's responsibilities under ESA to recover cui-ui. This is not to say that cui-ui recovery is ignored in developing OCAP. As with any action that may affect a species listed under the ESA, the Secretary had to consider the effects of the 1988 OCAP on cui-ui and consult with the FWS which resulted in the 1988 biological opinion. We have again consulted with the FWS on this Adjusted OCAP and the FWS has confirmed that the Adjusted OCAP will not adversely affect listed species, including the endangered cui-ui. The recent population increase does not alter the Secretary's trust responsibility to ensure that only the water needed to serve Project water rights is diverted from the Truckee River.

The Cui-ui Recovery Plan calls for annual inflow to Pyramid Lake to increase by 110,000 acre-feet, although some of this water may be in the form of equivalent benefits like improvements in lower Truckee River habitat or enhanced fish passage over Marble Bluff Dam. This amount of water or its equivalent is not based on a study of how much water can or should be taken from the Newlands Project for cui-ui, but on a determination of the water flows and Lake levels needed to ensure the persistence of the species.

A revised provisional version of the cui-ui model has undergone peer review and will be submitted to the cui-ui recovery team for their consideration of the model and its results. The revised model includes new information on cui-ui spawning and survival developed since the current model version was developed. The revised model is expected to better mirror the recent increases in cui-ui population. Even with the current cui-ui model, the cui-ui results presented in Table A show a marked increase in cui-ui numbers over the proposed rule modeling because of the inclusion of the three good spawning years in the hydrology. Except for the peer review of the model noted above, we are not aware of any review of the Cui-ui Recovery Plan by the National Academy of Science.

The reduced diversions of Truckee River water under Adjusted OCAP do increase inflow to Pyramid Lake and, if the next 95 years match the hydrology of the last 95 years (as the model operates), Pyramid Lake could rise as much as 37 feet. This would inundate some existing recreational facilities and possibly some roads, all of which would have to be relocated. However, this only brings the elevation of Pyramid Lake to approximately 3,840 feet, which is still lower than Marble Bluff Dam and well below the Lake level when the Newlands Project began.

7. Impacts on Recreation: Lahontan Reservoir is one of Nevada's most important recreational lakes. It is operated as a State park recreation area through an agreement with the BOR. A number of comments were received citing the effects of lower storage targets in Lahontan Reservoir on use of the lake for boating, fishing, swimming, and camping. Nine commenters expressed concerns for recreation.

Several commenters cited Nevada's investment of $6.5 million in facilities at Lahontan Reservoir, and view the Adjusted OCAP as a breach of trust of the recreation agreement between the State and the BOR, and further, as a conflict with the Reclamation Recreation Management Act of 1992 section 2802 findings.

Most impacts are related to the lower water levels in Lahontan during summer holidays. One commenter says the times the July target of 150,000 acre-feet won't

be met increases from 38 years to 54 years out of 94 years. Another commenter cites a 41 percent reduction in storage. There is also a concern that these impacts occur at a time of rapid growth in Nevada. One commenter says the impact of losing 50,000 acre-feet to Pyramid Lake is minimal compared with the virtual destruction of recreation at Lahontan by these changes. One commenter suggested that the State of Nevada should purchase and dedicate water rights for recreation at Lahontan.

Response: Lahontan Reservoir was constructed for the purpose of storing water to serve the Newlands Project. The Reservoir itself does not enjoy an adjudicated or quantified water right. The United States Court of Appeals for the Ninth Circuit has opined that "The Lahontan Reservoir, as a Project built under the federal Reclamation Act, was intended for the primary benefit of the farmers who would use its waters for irrigation, and any beneficial use of the reservoir by way of recreation could only be incidental to that purpose." Further, the United States has an affirmative duty pursuant to its trust obligations to the PLPT not to divert any more water from the Truckee River than is needed to meet Project water rights.

Not surprisingly, the water level in Lahontan fluctuates during the irrigation season and from year to year, and is not always favorable to recreational uses. Modeling results for the proposed Adjusted OCAP indicate lower levels in Lahontan Reservoir during the recreation season than are experienced under the 1988 OCAP. In response to comments, but taking the Secretary's trust responsibility into account, the storage targets in Adjusted OCAP have been modified from the proposed rule as shown in Table A, lines 33 through 40. This change in the final rule provides a slight increase in recreation levels in Lahontan during the summer season.

Water levels in Lahontan Reservoir under the Adjusted OCAP will not cause any damage to the existing recreation facilities developed and constructed by the State of Nevada. The concern is that lower water levels will "virtually destroy" the Reservoir as an important recreation resource. The main obstacle to Lahontan recreation from lower water levels is the boating access to the Reservoir via paved boat ramps. The boat ramps are currently useable down to a storage level of 120,000 acre-feet. As a mitigation measure to ensure continued boating access to Lahontan Reservoir, the DOI proposes to extend the boat ramps so that there is safe access down to a storage level of 90,000 acre-feet. With the extended boat ramps, modeling results for Final Adjusted OCAP shown on Table D indicate that there should be boating access through the Labor Day holiday about 75 percent of the time.

Regarding the suggestion that the State of Nevada should purchase and dedicate water rights for Lahontan Reservoir, this is beyond the scope of this rule and beyond DOI jurisdiction. However, the State has had discussions with the DOI on doing exactly this in conjunction with acquiring water rights upstream of Lahontan Reservoir for recreational and wetlands use.

8. Impacts on Wetlands: Eight commenters were concerned that Adjusted OCAP would adversely affect the efforts of the FWS and the State of Nevada to restore 25,000 acres of wetlands in Lahontan Valley because of reduced flows to the wetlands. Flows to wetlands might be reduced in three ways. First, agricultural water rights acquired by the FWS or the State and transferred to wetlands are subject to all OCAP requirements and effects on the water supply. Any increase in water shortages for farmers is an increase in shortages for wetlands. Second, the lower Lahontan Reservoir storage targets will reduce the frequency and quantity of spills and precautionary draw-downs from the Reservoir, a portion of which flows to wetlands. Third, any reduction in the water applied to farm lands reduces the return flows to agricultural drains, some of which carry water to the wetlands.

Several commenters felt that Adjusted OCAP conflicts with or invalidates the assumptions in the Water Rights Acquisition EIS recently published by the FWS, because they will need to acquire more agricultural water rights. They did not believe it was the role of the State or Federal water rights acquisition programs to mitigate for effects from Adjusted OCAP. One also questioned if needing to mitigate for effects on wetlands was contrary to the 1988 OCAP preamble.

Finally, one commenter asked how the OCAP would account for any wetland water rights acquired above Lahontan Reservoir.

Response: Adjusted OCAP will not cause a net loss in wetlands, however, it will have a minor effect on how quickly the FWS can obtain all the water it needs for wetlands, and will require the FWS to obtain additional water rights. Modeling results show that the long-term effect of Adjusted OCAP will reduce slightly the yield from acquired water rights for wetlands, reduce drainflows, and reduce water reaching the wetlands from spills. The effect of Adjusted OCAP may be a reduction in headgate deliveries and drainflows by about 1,100 acre-feet. The average reduction in spilled water may be 4,000 acre-feet. Neither of these effects are necessarily additive because the average spill reduction does not occur in the same year as droughts which would cause delivery and drainflow reductions. However, the Project and the wetlands are expected to receive a full supply of water in 9 out of 10 years. In full water years or in years with spills, there would be no effect on headgate deliveries and drain flows.

The precise amount of additional water that may need to be acquired cannot be determined at this time because the modeled effects described above do not occur simultaneously, and there has not been enough time to precisely assess the long-term average acreage produced by a given water supply. The wetlands acreage will naturally vary because of wet years and dry years. The TCID policy of basing a water right owner's share of water in a drought year on both active and inactive water rights will slightly augment the amount of water the FWS might otherwise receive for wetlands. This is because a portion of the water rights acquired by the FWS are inactive, and because they are not transferring the full water duty. Also, the amount of water reaching wetlands during a spill or precautionary release is variable. Most of the water released does not reach the wetlands because of limitations in the system to deliver water to the wetlands. The FWS is considering improvements in the Project delivery capacity to the wetlands which will help get more water to wetlands during spills. Under a separate action, new criteria for the management of excess water from precautionary releases and spills from Lahontan Reservoir are being developed by the BOR. These criteria will help ensure that deliveries of excess water to wetlands are given a high priority.

The effects of Adjusted OCAP were considered in the FWS Water Rights Acquisition Final EIS (pages 4–145 to 4–147) and in its Record of Decision on the water acquisition alternative. The FWS acknowledged that it might have to acquire additional water rights to make up for any reductions. It is expected to take the FWS some 10 to 20 years and perhaps longer to acquire water needed to create, on average, 25,000 acres of wetlands. Over that time, in managing water to have an average amount of wetlands, it will be very difficult to determine how much additional water had to be acquired because of Adjusted OCAP. In its Record of Decision, the FWS said it would periodically reassess its water needs and its ability to obtain water from all the sources under consideration.

The State of Nevada would experience similar effects on wetlands water, proportional to the amount of water rights they own, however, the FWS must acquire the necessary water rights to achieve the full 25,000 acres of wetlands.

The Adjusted OCAP does not address how to account for wetlands water rights acquired above Lahontan Reservoir. This may be managed on a case-by-case basis by the DOI.

9. Impacts on Groundwater: The Newlands Project is the principal source of water for recharge to the shallow aquifers in the Lahontan Valley and Fernley areas. Both Fallon and Fernley have municipal water supplies that rely on groundwater. Elsewhere in the Lahontan Valley, individual wells and community wells provide a domestic water supply.

Fourteen commenters have expressed concerns about the effects of the Adjusted OCAP on groundwater. The source of concern is that Adjusted OCAP will reduce the amount of water that moves through the Truckee Canal and that is available for use in the Lahontan Valley. A number of commenters said there would be significant reductions in the recharge to the shallow aquifer resulting in reduced water for domestic wells, for municipal and industrial use, and adverse effects on water quality.

Several commenters were concerned about recharge to the basalt aquifer from which the City of Fallon draws its municipal water supply, and the secondary effects this might have on future water supplies and economic development in the area. One commenter said the effects of reduced drain flows posed qualitative risks for humans and the environment and might have legal implications for the Carson River above Lahontan Reservoir and in California.

Several commenters also were concerned about reduced Truckee Canal flow affecting recharge to the aquifers in the Fernley area, and thus affecting municipal water quantity and quality, and having socio-economic and environmental impacts.

Response: The recharge of groundwater from irrigation in the Newlands Project is incidental and there is no water right to require recharge. Using data from the U.S. Geological Survey [1] (USGS), the FWS, in their water rights acquisition EIS,[2] estimates the current average recharge in the Lahontan Valley from irrigated agriculture to be about 123,300 acre-feet a year. At completion of their water rights acquisitions, the FWS estimates that recharge to groundwater will be about 93,000 acre-feet per year.

The modeled change in the quantity of water from the Truckee River reaching Lahontan Reservoir from the Current Condition to the Final Adjusted OCAP in Table A is 20,200 acre-feet (line 10). This difference in inflow is offset because the lower targets result in 5,700 acre-feet of less reservoir loss (line 12) from evaporation and seepage. The exact amount of loss that might go to seepage is unclear, however, seepage is thought to contribute only minor amounts of water to groundwater recharge in Lahontan Valley (Mauer, *et. al.*). Of the remaining reduction, part is accounted for by a difference of about 12,200 acre-feet per year in reduced spills (line 14), much of which is surface flow that goes directly to wetlands and the Carson Sink and does not recharge groundwater. The remaining portion of the reduction is 2,550 acre-feet from water applied to irrigated lands (line 17). The combination of spills and reduction to irrigation is 14,750 acre-feet per year, resulting in a net annual recharge of about 108,550 acre-feet at current rates, and about 78,250 acre-feet after wetland water acquisitions. This recharge rate far exceeds the current water consumption of about 13,000 acre-feet in the Lahontan Valley from municipal and domestic well sources.

Adjusted OCAP will increase shortages during drought years as shown in Table B. However, well monitoring in the Lahontan Valley by the USGS during and following the last drought period shows that water levels in the shallow aquifer drop during droughts but returned to pre-drought levels during full water years.[3] The Adjusted OCAP is modeled to provide full water years in 9 out of 10 years. Generally, any effect the Adjusted OCAP might have on groundwater levels in the shallow aquifer during droughts would be eliminated by subsequent full water years.

The basalt aquifer is already being mined by the municipal water withdrawals for the City of Fallon, Naval Air Station, and Fallon Tribe. The degree to which the basalt aquifer is recharged by the shallow and intermediate aquifers is uncertain, but is the subject of a study by the USGS being funded by the Navy and DOI. The study will help define how the basalt aquifer is recharged and its potential for recharge from surface water supplies. If the shallow aquifer is an important recharge pathway for the basalt aquifer, then in 9 out of 10 years the Adjusted OCAP would have no effect on recharge to the basalt aquifer. Even in drought years and with any additional water shortage related to the Adjusted OCAP, the effect on groundwater levels in the shallow aquifer is unknown and the degree to which this affects the basalt aquifer likewise unknown, but is not expected to be large.

Lahontan Valley, formed under ancient Lake Lahontan and then from the sediments borne by the meandering Carson River, has numerous discontinuous, unconsolidated deposits of sands, silts, and clays that caused great variability in local use and quality of groundwater. The local variability and the small reduction in groundwater recharge compared with natural events like droughts makes it impossible to identify any effects on groundwater quality or drain water quality.

Reducing the total flow of water through the Truckee Canal to Lahontan Reservoir will likely reduce seepage into groundwater in the Fernley, Hazen, and Swingle Bench areas. The modeled change in canal loss from the current condition to Adjusted OCAP is about 1,900 acre-feet per year out of a current canal and irrigation recharge of more than 41,000 acre-feet per year of recharge from Project irrigation. The percent reduction in recharge that may affect a particular community along the Truckee Canal is not known.

10. Effects on the Fallon Paiute-Shoshone Tribes: The Fallon Paiute-Shoshone Tribe Reservation is located within the Project and has Project water rights. One commenter asked why the protection of the Tribe's trust interests had been dropped from the guiding principles in Adjusted OCAP. Another commenter was concerned with effects of Adjusted OCAP on the domestic water supply of the Tribe. Two commenters objected to the Tribe receiving a full supply of water down to a 56 percent water year and wanted to know why this didn't apply to other water users in the Project.

Response: The reference to fulfilling Federal trust responsibilities to the Fallon Tribe was inadvertently deleted from the list of guiding principles that appeared in the proposed rule. The

[1] Mauer, D.K., A.K. Johnson, and A.H. Welch. 1994. "Hydrology and potential effects of changes in water use, Carson Desert agricultural area, Churchill County, Nevada." U.S. Geological Survey Open File Report 93–463.

[2] U.S. Fish and Wildlife Service. 1996. "Final environmental impact statement: Water rights acquisition for Lahontan Valley wetlands, Churchill County, Nevada." Portland, Oregon.

[3] Personal communication: USGS, Water Resources Division, Carson City, NV. 1997.

Fallon Tribe is added to this principle in the preamble to this Adjusted OCAP rule.

The domestic water supply on the Fallon Indian Reservation comes from wells in the basalt aquifer. The discussion on the basalt aquifer in 9. above applies here as well.

Regarding the allocation of water to the Tribe in a water short year, the Tribe is treated by TCID exactly as everyone else is in the Project. In water short years, TCID bases water allocations on each water users total water right including active and inactive water rights. The Fallon Tribe has 19,041.05 acre-feet of water rights appurtenant to their Reservation. However, Pub. L. 101–618 limited the Tribe to using only 10,587.5 acre-feet or approximately 56 percent of that water right per year as part of a settlement with the Tribe. Though the remaining 8,453.55 acre-feet of water rights are not active because the Tribe cannot call for this water, the DOI pays operations and maintenance fees to TCID on the full 19,041.05 acre-foot water right. Therefore, in a 56 percent water year (or better), the Tribe gets 56 percent of 19,041.05 acre-feet of water which equals their use cap of 10,587.5 acre-feet.

III. Technical Issues

1. Rock Dam Ditch: The proposed Adjusted OCAP rule would have changed how certain diversions to Rock Dam Ditch are counted. Rock Dam Ditch may receive water directly from releases at Lahontan Reservoir, or may get water directly from the Truckee Canal via a siphon pipe under the stilling basin below Lahontan Dam. In the proposed rule, diversions directly from the Truckee Canal would have counted against the Truckee Division. Two commenters noted that this is incorrect and all diversion to Rock Dam Ditch should be counted in the Carson Division.

Response: The commenters are correct, as the water that reaches Rock Dam Ditch would, in all cases, come from water in Lahontan Reservoir or destined to arrive in Lahontan Reservoir. The language at section 418.23 has been revised.

2. Credit and Debit Procedures: Three commenters object to how the credit and debit incentive provisions preserved from the 1988 OCAP provide for a full debit but a credit of only two-thirds of the actual savings. They suggest the credit should be a full credit.

Response: These credit and debit provisions are in the 1988 OCAP as a way to encourage the Project to meet or exceed the efficiency targets. The debit is based fully on the excess water that was used in the season. Using that excess water leaves Lahontan Reservoir with less winter carryover storage, and allows for larger amounts of Truckee River water to be diverted to make up for the "hole" that was left in the Reservoir.

The credit provision allows the Project to take advantage of the unused water any time it exceeds the efficiency targets. By definition, this unused water is water that was not needed to serve Project water rights. The Gesell decision in *Tribe* v. *Morton* specifies that only the water needed to serve Project water rights can be diverted to the Project from the Truckee River. Therefore, the Project earns a credit for the portion of the Carson River water saved through greater efficiency, presumed to be about two-thirds because about two-thirds of the Project water comes from the Carson River. The remaining third stays in Lahontan Reservoir to help reduce future diversions of Truckee River water as a way of returning the Truckee River water that was not needed when the credit was earned.

3. Forecasting: One commenter wanted clarification of how the deliberative forecasting process will work and wanted to know if this would avoid what happened in the 1993–1994 season when a full water year was initially forecast and it turned out to be one of the driest years on record.

Response: The 1988 OCAP required the BOR to rely solely on the NRCS runoff forecasts for the Carson River. However, there are runoff forecasts prepared by other Federal and State agencies that can be used along with the NRCS forecast. The consultation process also allows the BOR to take advantage of the years of experience available from local authorities. This change was proposed in the Adjusted OCAP in response to the situation that occurred in 1993–1994.

4. Water Rights Maps: Two commenters object to using the TCID's water maps to determine eligible land irrigated with transferred water rights, saying that the maps were never intended to be in OCAP. They suggest that eligible lands should follow what is defined in contracts, decrees, and State law.

Response: The BOR relies on the TCID to maintain and keep up-to-date these water rights maps as the basis for determining which lands are eligible to be irrigated. The land definitions in contracts and decrees do not indicate whether a particular parcel has been irrigated and is deemed to have a valid water right. Issues of eligible land and valid transfers are before the Nevada State Engineer at this time.

5. Floods: One commenter said that before completing the rulemaking a study needs to be done of whether OCAP contribute to flooding.

Response: The flooding on the Carson and Truckee Rivers in 1997 was an excellent example of how OCAP do not affect flooding. Thanks to Lahontan Dam and Reservoir, the communities below the dam were the only areas that were not flooded in January 1997. The irrigation system below the Dam, including the Carson River, can handle releases of about 2,000 cubic feet per second (cfs) without causing flooding. During the flood, the inflow to Lahontan Reservoir was higher than 10,000 cfs at times. That flow would have caused widespread flooding in the Lahontan Valley if not for the storage available in the Reservoir. Without any OCAP, much less space would have been available to capture and regulate the flood waters because, prior to OCAP, the Project diverted water from the Truckee River year-round. The Adjusted OCAP will further help reduce flooding risks.

6. 1967 OCAP Language: One commenter suggested leaving in place the Statement of Considerations and some objectives from the 1967 OCAP that is currently in the Code of Federal Regulations at 43 CFR Part 418 and is to be replaced by this rule. The commenter says the information is important to understanding the need for OCAP.

Response: Much of the information contained in the 1967 OCAP Statement of Considerations has been incorporated in the preamble to this rulemaking and prior OCAPs. The 1967 OCAP is being replaced in its entirety.

Administrative Matters

- This rule has been made effective on publication to stop ongoing diversions of water from the Truckee River to Lahontan Reservoir. Under the current 1988 OCAP storage target provisions, approximately 500 acre-feet per day are being diverted. The diversion will continue to divert until the Adjusted OCAP and a new set of Lahontan Reservoir storage targets go into effect. This water is not needed to serve water rights in the Newlands Project at this time and in accordance with the requirements of *Tribe* v. *Morton* is water that must flow to Pyramid Lake.
- This rule is not a significant rule under Executive Order (E.O.) 12866 and does not require review by the OMB.
- As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.
- This rule does not include any collections of information requiring approval under the Paperwork Reduction Act.
- The DOI has determined that the proposed rule is not a major Federal action having significant effects on the human and natural environment. An environmental assessment (EA) has been prepared on the effects of the proposed rule.
- The proposed rule has no substantial effects on Federalism under the requirements of E.O. 12612.
- The proposed rule does not have a significant impact on family formulation, maintenance, and general well-being under the requirements of E.O. 12606.
- The proposed rule does not represent a government action that would interfere with constitutionally protected property rights and does not require a Takings Implications Assessment under E.O. 12630.
- The proposed rule meets the applicable standards of civil justice reform in accordance with E.O. 12988.
- The proposed rule will not result in aggregate annual expenditures in excess of $100 million by state, local, and tribal governments, or the private sector and is, therefore, not subject to the requirements of Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

The author of this rule is Jeffrey Zippin of the Department of the Interior, Truckee-Carson Coordination Office.

The rule replaces the 1967 OCAP regulations at 43 CFR 418. That regulation was superseded by subsequent U.S. District Court-approved OCAP, including the 1988 OCAP, which are the basis for this rule.

List of Subjects in 43 CFR Part 418

Irrigation, Water supply, Newlands Irrigation Project; Operating criteria and procedures.

Dated: December 11, 1997.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons set forth in the preamble, 43 CFR part 418 is revised to read as follows:

PART 418—OPERATING CRITERIA AND PROCEDURES FOR THE NEWLANDS RECLAMATION PROJECT, NEVADA

General Provisions

Sec.

418.1 Definitions.
418.2 How Project water may be used.
418.3 Effect of these regulations on water rights.
418.4 Prohibited deliveries.
418.5 Responsibility for violations.
418.6 Fallon Paiute-Shoshone Indian Reservation.

Conditions of Water Delivery

418.7 Who may receive irrigation deliveries.
418.8 Types of eligible land.
418.9 Reporting changes in eligible land.
418.10 Determining the amount of water duty to be paid.
418.11 Valid headgate deliveries.
418.12 Project efficiency.
418.13 Maximum allowable limits.

Monitoring Diversions

418.14 Recordkeeping requirements.
418.15 Operations monitoring.

Operations and Management

418.16 Using water for power generation.
418.17 Truckee and Carson River water use.
418.18 Diversions at Derby Dam.
418.19 Diversions from the Truckee River to the Truckee Division.
418.20 Diversions from the Truckee River to Lahontan Reservoir, January through June.
418.21 Diversion of Truckee River water to Lahontan Reservoir, July through December
418.22 Future adjustments to Lahontan Reservoir storage targets.
418.23 Diversion of Rock Dam Ditch water.
418.24 Precautionary draw down and spills from Lahontan Reservoir.
418.25 Water use for other than Newlands Project.
418.26 Charges for water use.
418.27 Distribution system operation.

Enforcement

418.28 Conditions of delivery.
418.29 Project management.
418.30 Provisions required in future contracts.

Water Management and Conservation

418.31 Conservation measures.
418.32 Cooperative programs.

Implementation

418.33 Purpose of the implementation strategy.
418.34 Valid headgate deliveries.
418.35 Efficiencies.
418.36 Incentives for additional long term conservation.
418.37 Disincentives for lower efficiency.
418.38 Maximum allowable diversion (MAD).

Appendix A to Part 418—Expected Project Conveyance Efficiency

Authority: 43 U.S.C. 391, et seq.; 43 U.S.C. 373; 43 U.S.C. 614, et seq.; 104 Stat. 3289, Pub. L. 101–618.

General Provisions

§ 418.1 Definitions.

Bureau means the Bureau of Reclamation.

Decrees means the *Alpine* decree (*United States* v. *Alpine Land and Reservoir Co.*, 503 F. Supp. 877 (D. Nev. 1980)) and the *Orr Ditch* decree (*United States* v. *Orr Water Ditch Co.*, Equity No. A–3 (D. Nev.))

District means the Truckee-Carson Irrigation District or any other approved Newlands Project operator.

Eligible land means Project land which at the time of delivery has a valid water right and either:

(1) Is classified as irrigable under Bureau land classification standards (Reclamation Instruction Series 510); or

(2) Has a paid out Project water right.

Full reservoir means 295,500 acre-feet in Lahontan Reservoir using Truckee River diversions. The Reservoir can fill above 295,500 acre-feet to 316,500 acre-feet with Carson River inflow and the use of flash boards. Intentional storage on the flash boards will occur only after the peak runoff.

Project means the Newlands Irrigation Project in western Nevada.

§ 418.2 How Project water may be used.

Project water may be delivered only to serve valid water rights used for:

(a) Maintenance of wetlands and fish and wildlife including endangered and threatened species;

(b) Recreation;

(c) Irrigation of eligible land; and

(d) Domestic and other uses of Project water as defined by the decrees.

§ 418.3 Effect of these regulations on water rights.

This part governs water uses within existing rights. This part does not in any way change, amend, modify, abandon, diminish, or extend existing rights. Water rights transfers will be determined by the Nevada State Engineer under the provisions of the *Alpine* decree.

§ 418.4 Prohibited deliveries.

The District must not deliver Project water or permit its use except as provided in this part. No Project water will be released in excess of the maximum allowable diversion or delivered to ineligible lands. Delivery of water to land in excess of established water duties is prohibited.

§ 418.5 Responsibility for violations.

Violations of the terms and provisions of this part must be reported immediately to the Bureau. The District or individual water users will be responsible for any shortages to water users occasioned by waste or excess delivery or delivery of water to ineligible land as provided in this part.

§ 418.6 Fallon Paiute-Shoshone Indian Reservation.

Nothing in this part affects:

(a) The authority of the Fallon Paiute-Shoshone Tribe to use water on the

Tribe's reservation which was delivered to the Reservation in accordance with this part; or

(b) The Secretary's trust responsibility with respect to the Fallon Paiute-Shoshone Tribe.

Conditions of Water Delivery

§ 418.7 Who may receive irrigation deliveries.

Project irrigation water deliveries may be made only to eligible land to be irrigated. The District must maintain records for each individual water right holder indicating the number of eligible acres irrigated and the amount of water ordered and delivered.

§ 418.8 Types of eligible land.

(a) *Eligible land actually irrigated.* During each year, the District, in cooperation with the Bureau, must identify and report to the Bureau the location and number of acres of eligible land irrigated in the Project. Possible irrigation of ineligible land will also be identified. The Bureau will review data to ensure compliance with this part. The District, in cooperation with the Bureau, will be responsible for field checking potential violations and immediately stopping delivery of Project water to any ineligible land. The Bureau may also audit as appropriate.

(b) *Eligible land with transferred water rights.* The District water rights maps dated August 1981 through January 1983 will be used as the basis for determining which lands have a valid water right. The original maps will be maintained by the District. The District must provide copies of the maps to the Bureau. The District will alter the maps and the copies to account for water right transfers as the transfers are approved by the Nevada State Engineer.

(c) *Other eligible land.* The Bureau will also identify eligible land that was not irrigated during the prior irrigation season.

§ 418.9 Reporting changes in eligible land.

(a) *Eligible land anticipated to be irrigated.* (1) Anticipated changes in irrigated eligible land from the prior year will be reported to the Bureau's Lahontan Area Office by the District by March 1 of each year. The District will adjust the acreage of the eligible land anticipated to be irrigated to correct for inaccuracies, water right transfers that have been finally approved by the Nevada State Engineer, and any other action that affects the number of eligible acres, acres anticipated to be irrigated, or water deliveries.

(2) As the adjustments are made, the District will provide updated information to the Bureau for review and approval. The District must adjust anticipated water allocations to individual water users accordingly. The allocations will at all times be based on a maximum annual entitlement of 3.5 acre-feet (AF) per acre of bottom land, 4.5 AF per acre of bench land, and 1.5 AF per acre of pasture land that is anticipated to be irrigated and not on the number of water-righted acres.

(3) The District will provide the individual water users with the approved data regarding the anticipated acreage to be irrigated and water allocations for each water user that year.

(i) Any adjustments based on changes in lands anticipated to be irrigated during the irrigation season must be reported by the individual water user to the District.

(ii) The District will, in turn, notify the Bureau of any changes in irrigated acreage which must be accounted for.

(iii) Each landowner's anticipated acreage must be less than or equal to the landowner's eligible acreage.

(4) Should a landowner believe that the number of acres of eligible land he or she is entitled to irrigate is different from the number of acres as approved by the Bureau, the landowner must notify the District and present appropriate documentation regarding the subject acreage. The District must record the information and present the claim to the Bureau for further consideration.

(i) If the Bureau determines there is sufficient support for the landowner's claim, then adjustments will be made to accommodate the changes requested by the landowner.

(ii) If the Bureau disallows the landowner's claim, the Bureau must notify the District in writing. The District will, in turn, inform the landowner of the disposition of the claim and the reasons therefore, and will further instruct the landowner that he or she may seek judicial review of the Bureau's determination under the decrees. If the dispute affects the current year, then the Bureau and the District will seek to expedite any court proceeding.

(b) *Changes in domestic and other uses.* By March 1 of each year, the District must report to the Bureau all anticipated domestic and other water uses. This notification must include a detailed explanation of the criteria used in allowing the use and sufficient documentation on the type and amount of use by each water user to demonstrate to the satisfaction of the Bureau that each water user is in compliance with the criteria. With adequate documentation, the District may notify the Bureau of any changes in domestic water requirements at any time during the year.

§ 418.10 Determining the amount of water duty to be delivered.

(a) Eligible land may receive no more than the amount of water in acre-feet per year established as maximum farm headgate delivery allowances by the decrees. All water use is limited to that amount reasonably necessary for economical and beneficial use under the decrees.

(b) The annual water duty as assigned by the decrees is a maximum of 4.5 AF per acre for bench lands and a maximum of 3.5 AF per acre for bottom lands. The water duty for fields with a mixture of bench and bottom lands must be the water duty of the majority acreage. Bench and bottom land designations as finally approved by the United States District Court for the District of Nevada will be used in determining the maximum water duty for any parcel of eligible land. The annual water duty for pasture land established by contract is 1.5 AF per acre.

§ 418.11 Valid headgate deliveries.

The valid water deliveries at the headgate are set by the product of eligible land actually irrigated multiplied by the appropriate water duty in accordance with §§ 418.8 and 418.10. The District will regularly monitor all water deliveries and report in accordance with § 418.9. No amount of water will be delivered in excess of the individual water user's headgate entitlement. In the event excess deliveries should occur, such amount will be automatically reflected in the efficiency deficit adjustment to the Lahontan storage. Water delivered in excess of entitlements must not be considered valid for purposes of computing project efficiency.

§ 418.12 Project efficiency.

(a) The principal feature of this part is to obtain a reasonable level of efficiency in supplying water to the headgate by the District. The efficiency targets established by this part are the cornerstone of the enforcement and the incentive provisions and when implemented will aid other competing uses.

(b) The efficiency is readily calculable at the year's end, readily applicable to water appropriate to that year, able to be compared to other irrigation systems even though there may be many dissimilarities, appropriate for long term averaging, adjustable to any headgate delivery level including droughts or allocations, automatically adjusts to

changes during the year and accurately accounts for misappropriated water. Efficiency also can be achieved through any number of measures from operations to changes in the facilities and can be measured as an end product without regard to the approach. Thus it is flexible enough to allow local decision making and yet is fact based to minimize disputes.

(c) Assuming the headgate deliveries are valid and enforceable, conveyance efficiency is the only remaining variable in determining the quantity of water needed to be supplied to the District. Conveyance efficiency is a measure of how much water is released into the irrigation system relative to actual headgate deliveries. Differences in efficiency, therefore, are directly convertible to acre-feet. The differences in efficiency, expressed as a quantity in acre-feet, may be added to or subtracted from the actual Lahontan Reservoir storage level before it is compared to the monthly storage objective. Thus, the diversions from the Truckee River, operation of other facilities (e.g., Stampede Reservoir) and decisions related to Lahontan Reservoir are made after the efficiency storage adjustments have been made. Operating decisions are made as if the adjusted storage reflected actual conditions.

(1) *Efficiency incentive credits.* In any year that the District's actual efficiency exceeds the target efficiency for the actual headgate delivery, two-thirds of the resultant savings, in water, will be credited to the District as storage in Lahontan. This storage amount will remain in Lahontan Reservoir as water available to the District to use at its discretion consistent with Nevada and Federal law. Such uses may include wetlands (directly or incidentally), power production, recreation, a hedge against future shortages or whatever else the District determines. The storage is credited at the end of the irrigation season from which it was earned. This storage "floats" on top of the reservoir so that if it is unused it will be spilled first if the reservoir spills. The District may use all capacity of Lahontan Reservoir not needed for project purposes to store credits.

(2) *Efficiency disincentive debits.* In any year that the District's actual efficiency falls short of the target appropriate to the actual headgate deliveries, then the resultant excess water that was used is considered borrowed from the future. Thus it becomes a storage debit adjustment to the actual Lahontan Reservoir storage level for determining all operational decisions. The debit may accumulate but may not exceed a maximum as defined in § 418.13(b). The debit must be offset by an existing incentive credit or, if none is available, by a subsequent incentive at a full credit (not a 2/3 credit), or finally by a restriction of actual headgate deliveries by the District. This would only be done prospectively (a subsequent year) so the District and the water users can prepare accordingly. Since the debit does not immediately affect other competing uses or the District (except in a real drought), it allows for future planning and averaging over time.

(3) *Efficiency targets.* To determine the efficiency target, the system delivery losses were divided into categories such as seepage, evaporation and operational losses. The "reasonable" level of savings for each category was then determined by starting with current operating experience and applying the added knowledge from several measures. Means of achieving the efficiency targets, including the specific conservation measures and amounts, are identified in the table Possible Water Conservation Measures for the Newlands Project. Applicable target efficiencies will be determined each year as described in § 418.13 (a)(4).

(4) *Available conservation measures.* The water conservation measures referred to in paragraph (c)(3) of this section and others currently available to the District are listed in the following table. The table has been revised based upon the Bureau of Reclamation's Final Report to Congress of the Newlands Project Efficiency Study, 1994.

POSSIBLE WATER CONSERVATION MEASURES FOR THE NEWLANDS PROJECT

Conservation measures [1]	Expected savings in acre-feet (AF) per year [2]	Notes
1. Water ordering	1,000	Require 48-hour advance notice.
2. Adjust Lahontan Dam releases frequently	++ [3]	Match releases to demand with daily adjustments.
3. Increase accuracy of delivery records and measurement devices	12,000	Account for deliveries to nearest cfs and to nearest minute.
4. Change operation of regulating reservoirs	?? [4]	Eliminate use of all or parts of regulating reservoirs; drain at end of season.
5. Shorten irrigation season	4,000	Reduce by 2 weeks.
6. Control delivery system	++	Eliminate spills, better scheduling, grouping deliveries.
7. System improvements	??	O&M activity: repair leaky gates, reshape canals, improve measuring devices.
8. Dike off 2/3 S-Line Reservoir	2,720	500 ft. dike; (5' evaporation, 0.75' seepage).
9. Dike off south half of Harmon Reservoir	2,130	5,000 ft. dike; large savings considering canal losses (5' evap., 1.8' seepage).
10. Dike off west half of Sheckler Reservoir	2,400	6,000 ft. dike.
11. Eliminate use of Sheckler Reservoir	4,000	Use for Lahontan spill capture only; restore 200 ft. of E-Canal; A-Canal is OK.
12. Line 20 miles of Truckee Canal [5]	20,000	Reduces O&M.
13. Line large canals	26,100–31,000	Line large net losers first.
14. Line regulatory reservoirs	2.3 AF/acre	
15. Reuse drain water for irrigation	7,100	Assuming blended water quality would be adequate
16. Ditch rider training each year	??	
17. Canal automation	??	Reduced canal fluctuations.
18. Community rotation system	??	Grouping deliveries by area.
19. Reclamation Reform Act water conservation plan:	??	District implementation of water conservation plan.
a. Weed and phreatophyte control		

POSSIBLE WATER CONSERVATION MEASURES FOR THE NEWLANDS PROJECT—Continued

Conservation measures [1]	Expected savings in acre-feet (AF) per year [2]	Notes
b. Fix gate leaks		
c. Water measurement		
d. Automation		
e. Communication		
20. Pumps and wells for small diverters	400	
21. Water pricing by amount used	++	Incurs administrative costs to implement.
22. Incentive programs	??	For District personnel and/or water users.
23. Drain canals	1,065	At the end of each irrigation season.
24. Acquire parcels with inefficient delivery [6]	22,280	Acquire and retire water rights from irrigated acreage with particularly inefficient delivery. Lesser savings from transferring water rights to lands with more efficient delivery.

[1] The first seven measures were considered in developing the water budget in Table 1 for the 1988 OCAP. Additional measures could be implemented by the District to help achieve efficiency requirements.
[2] Water savings have been updated in accordance with Bureau of Reclamation's Report to Congress on Newlands Project Efficiency, April 1994.
[3] ++ indicates a positive number for savings but not quantifiable at this time.
[4] ?? indicates uncertainty as to savings.
[5] This measure was included in the 1988 OCAP and effects overall Project efficiency; it is recognized that savings from this measure are not accounted for in the OCAP.
[6] Identified in the 1994 BOR Efficiency Study: 31 Corporation, below Sagouspe Dam, and N Canal.

(5) The measures in paragraph (c)(4) of this section are discretionary choices for the District. The range of measures available to the District provides a level of assurance that the target efficiency is reasonably achievable. The resultant efficiency targets were also compared to the range of efficiencies actually experienced by other irrigation systems that were considered comparable in order to provide a further check on "reasonable." Most of the delivery losses are relatively constant regardless of the amount of deliveries. The efficiency will necessarily vary with the amount of headgate deliveries.

(6) The target efficiency for any annual valid headgate delivery can be derived from the table in Appendix A to this part.

§ 418.13 Maximum allowable limits.

(a) Maximum allowable diversions. (1) A provisional water budget in the Newlands Project Water Budget table must be recalculated for each irrigation season to reflect anticipated water-righted acres to be irrigated. At the start of the irrigation season, the maximum allowable diversion (MAD) for each year must be determined by revising the first 10 lines of the Newlands Project Water Budget table based on acres of eligible land anticipated to actually be irrigated in that year (§ 418.9(a)) and the water duties for those lands (§ 418.10). At the end of the irrigation season, the required target efficiency must be recalculated for the irrigation season based on the actual irrigated acres and percent use of headgate entitlements.

BILLING CODE 4310-RK-P

NEWLANDS PROJECT WATER BUDGET

Line		1988 OCAP[1], Base	1988 OCAP, 1992 Assumptions	1988 OCAP, 1992 w/o Additional Acres	1995 Example
1	Irrigated Acreage (acres)	60,900	64,850	61,630	59,075
2	Maximum Headgate Entitlement [2]	226,450	237,485	226,555	206,230
	Distribution System Losses				
	Evaporation:				
3	Canals/Laterals	6,000	6,200	6,000	5,838
4	Regulatory Reservoirs	15,000	7,500	7,500	7,500
	Seepage:				
5	Canals/Laterals	50,000	51,000	48,500	46,481
6	Regulatory Reservoirs	7,000	4,000	4,000	4,000
7	Operational Losses	87,980	40,800	39,400	38,270
8	TOTAL LOSSES [3]	165,980	109,500	105,400	102,089
9	Max. Allowable Diversion[4] (MAD)	392,430	346,985	331,955	308,319
10	Projected Efficiency (%) [5] Assuming 100% Water Use	58.4	68.4	68.2	66.9
11	Expected Headgate Entitlement Unused[6]	20,930	23,700	22,700	13,611
12	Diversion Reduction for Unused Water[7]	25,430	26,500	25,400	15,279
13	Expected Irrigation Diversions[8]	367,000	320,485	306,555	293,040
14	Expected Efficiency (%) [9]	56.0	66.7	66.5	65.7 [10]

1. All values are in acre-feet except where noted. The first 3 columns of numbers come from the 1988 OCAP, Table 1.
2. Derived by multiplying the acreage by the appropriate water duty.
3. In deriving the 1988 OCAP water budget, it was recognized that the District had reduced losses by 7,400 acre-feet prior to 1988.
4. Maximum Headgate Entitlement (line 2) plus Total Losses (line 8).
5. Maximum Headgate Entitlement (line 2) divided by Maximum Allowable Diversion (line 9) multiplied by 100.
6. Water delivery records show that, historically, lands have been irrigated with less than their full entitlement. In the 1988 OCAP base, the unused portion of the entitlement was assumed to be approximately 9 percent; in the 1988 OCAP 10 percent; in the 1995 example 6.6 percent.
7. Unused Water (line 11) plus a proportional share of Operational Loss (line 7).
8. Maximum Allowable Diversion (line 9) minus Diversion Reduction (line 12).
9. Maximum Headgate Entitlement (line 2) minus Unused Water (line 11) divided by Expected Irrigation Diversion (line 13) multiplied by 100.
10. Expected efficiency at 93.4 percent use of headgate entitlement; other entries based on 90 percent.

BILLING CODE 4310-RK-C

(2) The MAD will be calculated annually to ensure an adequate water supply for all water right holders whose water use complies with their decreed entitlement and this part. The MAD is the maximum amount of water permitted to be diverted for irrigation use on the Project in that year. It is calculated to ensure full entitlements can be provided, but is expected to significantly exceed Project requirements. The MAD will be established by the Bureau at least 2 weeks before the start of each irrigation season. All releases of water from Lahontan Reservoir and diversions from the Truckee Canal (including any diversions from the Truckee Canal to Rock Dam Ditch) must be charged to the MAD except as provided in §§ 418.23 and 418.35 of this part.

(3) On the basis of the methodology adopted in this part (i.e., actual irrigated acres multiplied by appropriate water duties divided by established project efficiency) an example of the MAD calculated for the projected irrigated acreage as shown in the Newlands Project Water Budget table would be 308,319 acre-feet for the 1995 Example. The sample MAD corresponds to a system efficiency for full deliveries at 66.9 percent for 1995 actual acres. Target efficiencies must be based on the percentage of maximum headgate entitlement delivered and not on the percent of water supply available.

(4) The table Expected Project Distribution System Efficiency shows the target efficiencies which will be used over the range of irrigated acreage and percent use of entitlement expected in the future. At the beginning of the irrigation season, the target efficiencies from the Expected Project Distribution System Efficiency table used to calculate the MAD will be based on the expected irrigated acreage and expected percent use of entitlement. At the end of the irrigation season, the actual acreage irrigated and actual percent use of entitlement will be used to determine the required efficiency from the Expected Project Distribution System Efficiency. The target efficiencies are read directly from the table if the acreage and use of entitlement values are shown, otherwise the target efficiency must be extrapolated from the table or calculated using the Efficiency Equation. Appendix A of this part shows the calculations used to derive the Efficiency Equation and the efficiency targets.

BILLING CODE 4310-RK-P

Expected Project Distribution System Efficiency
(Not Valid Below 75 Percent Headgate Delivery)

Project Acreage	Efficiency Equation A and B values: Effic. = AxD + B		Actual Project Headgate Delivery Expressed as a Percent of Full Entitlement (efficiency equation variable D)									
	A	B	75%	80%	85%	90%	92%	93%	94%	95%	96%	98%	100%
64,850	0.1840	49.02	62.8	63.7	64.7	65.6	65.9	66.1	66.3	66.5	66.7	67.1	67.4
64,500	0.1842	48.97	62.8	63.7	64.6	65.5	65.9	66.1	66.3	66.5	66.7	67.0	67.4
64,000	0.1845	48.90	62.7	63.7	64.6	65.5	65.9	66.1	66.2	66.4	66.6	67.0	67.3
63,500	0.1847	48.83	62.7	63.6	64.5	65.5	65.8	66.0	66.2	66.4	66.6	66.9	67.3
63,000	0.1850	48.76	62.6	63.6	64.5	65.4	65.8	66.0	66.2	66.3	66.5	66.9	67.3
62,500	0.1853	48.69	62.6	63.5	64.4	65.4	65.7	65.9	66.1	66.3	66.5	66.8	67.2
62,000	0.1856	48.62	62.5	63.5	64.4	65.3	65.7	65.9	66.1	66.2	66.4	66.8	67.2
61,500	0.1858	48.54	62.5	63.4	64.3	65.3	65.6	65.8	66.0	66.2	66.4	66.8	67.1
61,000	0.1861	48.47	62.4	63.4	64.3	65.2	65.6	65.8	66.0	66.1	66.3	66.7	67.1
60,500	0.1864	48.39	62.4	63.3	64.2	65.2	65.5	65.7	65.9	66.1	66.3	66.7	67.0
60,000	0.1867	48.31	62.3	63.3	64.2	65.1	65.3	65.5	65.7	65.9	66.1	66.2	66.6	67.0
59,500	0.1870	48.24	62.3	63.2	64.1	65.1	65.3	65.4	65.6	65.8	66.0	66.2	66.6	66.9
59,000	0.1873	48.16	62.2	63.1	64.1	65.0	65.2	65.4	65.6	65.8	66.0	66.1	66.5	66.9
58,500	0.1876	48.08	62.1	63.1	64.0	65.0	65.1	65.3	65.5	65.7	65.9	66.1	66.5	66.8
58,000	0.1879	47.99	62.1	63.0	64.0	64.9	65.1	65.3	65.5	65.7	65.8	66.0	66.4	66.8
57,500	0.1882	47.91	62.0	63.0	63.9	64.9	65.0	65.2	65.4	65.6	65.8	66.0	66.4	66.7
57,000	0.1886	47.83	62.0	62.9	63.9	64.8	65.0	65.2	65.4	65.6	65.7	65.9	66.3	66.7
56,500	0.1889	47.74	61.9	62.9	63.8	64.7	64.9	65.1	65.3	65.5	65.7	65.9	66.3	66.6
56,000	0.1892	47.66	61.8	62.8	63.7	64.7	64.9	65.1	65.3	65.4	65.6	65.8	66.2	66.6
55,500	0.1895	47.57	61.8	62.7	63.7	64.6	64.8	65.0	65.2	65.4	65.6	65.8	66.1	66.5
55,000	0.1899	47.48	61.7	62.7	63.6	64.6	64.8	64.9	65.1	65.3	65.5	65.7	66.1	66.5
54,500	0.1902	47.39	61.7	62.6	63.6	64.5	64.7	64.9	65.1	65.3	65.5	65.6	66.0	66.4
54,000	0.1906	47.30	61.6	62.5	63.5	64.4	64.6	64.8	65.0	65.2	65.4	65.6	66.0	66.4
53,500	0.1909	47.20	61.5	62.5	63.4	64.4	64.6	64.8	65.0	65.1	65.3	65.5	65.9	66.3
53,000	0.1913	47.11	61.5	62.4	63.4	64.3	64.5	64.7	64.9	65.1	65.3	65.5	65.9	66.2
52,500	0.1916	47.01	61.4	62.3	63.3	64.3	64.4	64.6	64.8	65.0	65.2	65.4	65.8	66.2
52,000	0.1920	46.91	61.3	62.3	63.2	64.2	64.4	64.6	64.8	65.0	65.2	65.3	65.7	66.1

BILLING CODE 4310-RK-C

(5) Adjustments in the MAD must be made by the Bureau each year based on changes in irrigated eligible land from the

(5) Adjustments in the MAD must be made by the Bureau each year based on changes in irrigated eligible land from the prior year and subsequent decisions concerning transfers of Project water rights, using the methodology established in this section.

(6) If the MAD for a given year will not meet the water delivery requirements for the eligible land to be irrigated due to weather conditions, canal breaks, or some other unusual or unforeseen condition, the District must ask the Bureau for additional water.

(i) The District's request must include a written statement containing a detailed explanation of the reasons for the request.

(ii) The Bureau must promptly review the request and after consultation with the Federal Water Master and other interested parties, will determine if the request or any portion of it should be approved. The Bureau will make reasonable adjustments for unforeseen causes or events but will not make adjustments to accommodate waste or Project inefficiency or other uses of water not in accordance with this part or with State and Federal law.

(iii) The Bureau will then notify the District of its determination. If the District does not agree with the Bureau's decision, it may seek judicial review. The Bureau and the District will seek to expedite the court proceeding in order to minimize any potential adverse effects.

(b) *Maximum allowable efficiency debits (MED).* The debits in Lahontan Reservoir storage from the District's actual conveyance efficiency not achieving the target efficiency can accumulate over time. If these amounts of borrowed storage get too large they may not be offset later by increased efficiencies and may severely affect the District's water users by imposing an added "drought" on top of a real one. Therefore, the maximum efficiency debit cushion is set at 26,000 acre-feet. However, unlike the MAD, it only applies to the subsequent year's operation. The MED is approximately 9 percent of the headgate entitlements.

Monitoring Diversions

§ 418.14 Recordkeeping requirements.

(a) By the end of each month, the District must submit to the Bureau's Lahontan Area Office reports for the previous month which document monthly inflow and outflow in acre-feet from the Truckee and Carson divisions of the Project for that month. Reports must include any data the Bureau may reasonably require to monitor compliance with this part.

(b) Accounting for farm headgate deliveries must be based on the amount of water actually delivered to the water user. Project operations must provide for the amount of water ordered and the distribution system losses.

(c) The District must keep records of all domestic and other water uses showing the purpose and amount of water usage for each entity. The District must make the records available for review by the Bureau upon request. The Bureau may audit all records kept by the District.

§ 418.15 Operations monitoring.

(a) The Bureau will work with the District to monitor Project operations and will perform field inspections of water distribution during the irrigation season.

(1) Staff members of the Bureau's Lahontan Area Office and the District will meet as often as necessary during the irrigation season after each water distribution report has been prepared to examine the amounts of water used to that point in the season.

(2) On the basis of the information obtained from field observations, water use records, and consultations with District staff, the Bureau will determine at monthly intervals whether the rate of diversion is consistent with this part for that year.

(3) The District will be informed in writing of suggested adjustments that may be made in management of diversions and releases as necessary to achieve target efficiencies and stay within the MAD.

(b) Project operations will be monitored in part by measuring flows at key locations. Specifically, Project diversions (used in the calculations under § 418.18 below) will be determined by:

(1) Adding flows measured at:

(i) Truckee Canal near Wadsworth—U.S. Geological Survey (USGS) gauge number 10351300;

(ii) Carson River below Lahontan Dam—USGS gauge number 10312150;

(iii) Rock Dam Ditch near the end of the concrete lining; and

(2) Subtracting:

(i) Flows measured at the Truckee Canal near Hazen—USGS gauge number 10351400;

(ii) The Carson River at Tarzyn Road near Fallon (below Sagouspe Dam) for satisfying water rights outside of the Project boundaries as described in § 418.25, USGS gauge number 10312275;

(iii) Estimated losses in the Truckee Canal; and

(iv) Spills, precautionary drawdown, and incentive water released at Lahontan Dam under §§ 418.24 and 418.36.

Operations and Management

§ 418.16 Using water for power generation.

All use of Project water for power generation must be incidental to releases charged against Project diversions, precautionary drawdown, incentive water (§ 418.35), or spills.

§ 418.17 Truckee and Carson River water use.

Project water must be managed to make maximum use of Carson River water and to minimize diversions of Truckee River water through the Truckee Canal. This will make available as much Truckee River water as possible for use in the lower Truckee River and Pyramid Lake.

§ 418.18 Diversions at Derby Dam.

(a) Diversions of Truckee River water at Derby Dam must be managed to maintain minimum terminal flow to Lahontan Reservoir or the Carson River except where this part specifically permits diversions.

(b) Diversions to the Truckee Canal must be managed to achieve an average terminal flow of 20 cfs or less during times when diversions to Lahontan Reservoir are not allowed (the flows must be averaged over the total time diversions are not allowed in that calendar year; i.e., if flows are not allowed in July and August and then are allowed in September then not allowed in October and November, the average flow will be averaged over the four months of July, August, October, and November).

(c) The Bureau will work cooperatively with the District on monitoring the flows at the USGS gage on the Truckee Canal near Hazen to determine if and when flows are in excess of those needed in accord with this part and bringing the flows back into compliance when excessive.

(d) Increases in canal diversions which would reduce Truckee River flows below Derby Dam by more than 20 percent in a 24-hour period will not be allowed when Truckee River flow, as measured by the gauge below Derby Dam, is less than or equal to 100 cfs.

(e) Diversions to the Truckee Canal will be coordinated with releases from Stampede Reservoir and other reservoirs, in cooperation with the Federal Water Master, to minimize fluctuations in the Truckee River below Derby Dam in order to meet annual flow regimes established by the United States Fish and Wildlife Service for listed species in the lower Truckee River.

§ 418.19 Diversions from the Truckee River to the Truckee Division.

Sufficient water, if available, will be diverted from the Truckee River through the Truckee Canal to meet the direct irrigation, domestic and other entitlements of the Truckee Division.

§ 418.20 Diversions from the Truckee River to Lahontan Reservoir, January through June.

(a) Truckee River diversions through the Truckee Canal will be made to meet Lahontan Reservoir end-of-month storage objectives for the months of January through June. The current month storage objective will be based, in part, on the monthly Natural Resources Conservation Service (NRCS) April through July runoff forecast for the Carson River near Fort Churchill. The forecast will be used to determine the target storage for Lahontan Reservoir and anticipated diversion requirements for the Carson Division. The Bureau, in consultation with the District, Federal Water Master, Fish and Wildlife Service, the Pyramid Lake Paiute Tribe, and other affected parties, will determine the exceedance levels and predicted Carson River inflows based on the reliability of the NRCS forecast and other available information such as river forecasts from other sources. The end-of-month storage objectives may be adjusted any time during the month as new forecasts or other information become available.

(b) The January through June storage objective will be calculated using the following formula:

LSOCM=TSM/J – (C1* AJ)+L+(C2* CDT)

Where:

(1) LSOCM=current end-of-month storage objectives for Lahontan Reservoir.

(2) TSM/J=current end-of-month May/June Lahontan Reservoir target storage.

(3) C1* AJ=forecasted Carson River inflow for the period from the end of the current month through May or June, with AJ being the Bureau's April through July runoff forecast for the Carson River at Fort Churchill and C1 being an adjustment coefficient.

(4) L=an average Lahontan Reservoir seepage and evaporation loss from the end of the current month through May or June.

(5) C2 * CDT=projected Carson Division demand from the end of the current month through May or June, with CDT being the total Carson Division diversion requirement (based on eligible acres anticipated to be irrigated times the appropriate duty times a 95 percent usage rate), and C2 being the estimate of the portion of the total diversion requirement to be delivered during this period.

(6) Values for TSM/J will vary with the Carson Division water demand as shown in § 418.22 and the Adjustments to Lahontan Reservoir Storage Targets table. Values C1, L and C2 are defined in the following table along with an example of TSM/J for Carson River water demand of 271,000 acre-feet.

MONTHLY VALUES FOR LAHONTAN STORAGE COMPUTATIONS

	January	February	March	April	May	June
TSM/J	174.0	174.0	174.0	174.0	174.0	190.0
C1/MAY	0.863	0.734	0.591	0.394		
C1/JUNE	1.190	1.061	0.918	0.721	0.327	
L/MAY	13.9	12.5	9.9	7.1		
L/JUNE	18.2	16.8	14.2	11.4	4.3	
C2/MAY	0.30	0.30	0.28	0.18		
C2/JUNE	0.47	0.47	0.45	0.35	0.17	

(c) The Lahontan Reservoir storage objective for each month is contained in the following table.

LAHONTAN RESERVOIR STORAGE OBJECTIVES

Period	Monthly storage objective
January through April	Lowest of the May calculation, the June calculation, or full reservoir.
May	Lower of the June calculation or full reservoir.
June	June storage target.

(d) Once the monthly Lahontan Reservoir storage objective has been determined, the monthly diversion to the Project from the Truckee River will be based upon water availability and Project demand as expressed in the following relationship:

TRD=TDD+ TCL+CDD+LRL+ LSOCM – ALRS – CRI

Where:

(1) TRD=current month Truckee River diversion in acre-feet to the Project.

(2) TDD=current month Truckee Division demand.

(3) TCL = current month Truckee Canal conveyance loss.

(4) CDD = current month Carson Division demand.

(5) LRL = current month Lahontan Reservoir seepage and evaporation losses.

(6) LSOCM = current month end-of-month storage objective for Lahontan Reservoir.

(7) ALRS = current month beginning-of-month storage in Lahontan Reservoir. (Includes accumulated Stampede credit described below and further adjusted for the net efficiency penalty or efficiency credit described in §§ 418.12, 418.36, and 418.37).

(8) CRI = current month anticipated Carson River inflow to Lahontan Reservoir (as determined by Reclamation in consultation with other interested parties).

(e) The following procedure is intended to ensure that monthly storage objectives are not exceeded. It may be implemented only if the following conditions are met:

(1) Diversions from the Truckee River are required to achieve the current

month Lahontan Reservoir storage objective (LSOCM);

(2) Truckee River runoff above Derby Dam is available for diversion to Lahontan Reservoir;

(3) Sufficient Stampede Reservoir storage capacity is available.

(f) The Bureau, in consultation with the Federal Water Master, the District, Fish and Wildlife Service, the Bureau of Indian Affairs, and the Pyramid Lake Paiute Tribe will determine whether the calculated current month Truckee River diversion to Lahontan Reservoir (TRD-TDD-TCL) may be reduced during that month and the amount of reduction credit stored in Stampede Reservoir.

(1) Reductions in diversions may begin in November and continue until the end of June.

(2) Reductions in diversions to Lahontan Reservoir with credit storage in Stampede Reservoir may be implemented to the extent that:

(i) The reduction is in lieu of a scheduled release from Stampede Reservoir for the purpose of supplementing flows to Pyramid Lake; and/or

(ii) Water is captured in Stampede Reservoir that is scheduled to be passed through and diverted to the Truckee Canal.

(3) The Fish and Wildlife Service must approve any proposal to reduce diversions to Lahontan Reservoir for Newlands Project credit purposes without a comparable reduction in release from Stampede Reservoir or any conversion of Stampede Reservoir project water to Newlands Project credit water.

(4) The diversion to Lahontan Reservoir may be adjusted any time during the month as revised runoff forecasts become available. The accumulated credit will be added to current Lahontan Reservoir storage (ALRS) in calculating TRD. If the sum of accumulated credit and Lahontan Reservoir storage exceeds 295,000 acre-feet, credit will be reduced by the amount in excess of 295,000 acre-feet. Credit will also be reduced by the amount of precautionary drawdown or spills in that month. If the end-of-month storage in Lahontan Reservoir plus the accumulated credit in Stampede Reservoir at the end of June exceeds the end-of-month storage objective for Lahontan, the credit will be reduced by the amount exceeding the end-of-month storage objective.

(5) Following consultation with the District, the Federal Water Master, and other interested parties as appropriate, the Bureau will release credit water as needed for Project purposes from July 1 through the end of the irrigation season in which the credit accrues with timing priority given to meeting current year Project irrigation demands.

(6) Conveyance of credit water in the Truckee Canal must be in addition to regularly scheduled diversions for the Project and will be measured at the USGS gauge number 10351300 near Wadsworth.

(7) Newlands credit water in Stampede Reservoir storage will be subject to spill and will not carry over to subsequent years. Newlands credit water in Stampede can be exchanged to other reservoirs and retain its priority. The credit must be reduced to the extent that Lahontan Reservoir storage plus accumulated credit at the end of the previous month exceeds the storage objectives for that month. If Newlands credit water is spilled, it may be diverted to Lahontan Reservoir subject to applicable storage targets.

(i) The Bureau, in consultation with the District, the Federal Water Master, and other interested parties, may release Newlands Project credit water before July 1.

(ii) If any Newlands credit water remains in Stampede Reservoir storage after the end of the current irrigation season in which it accumulated, it will convert to water for cui-ui recovery and will no longer be available for Newlands credit water.

(iii) Newlands credit water stored in Stampede Reservoir will be available for use only on the Carson Division of the Newlands Project.

(g) Subject to the provisions of § 418.20 (b), LSOCM may be adjusted as frequently as necessary when new information indicates the need and diversions from the Truckee River to the Truckee Canal must be adjusted daily or otherwise as frequently as necessary to meet the monthly storage objective.

§ 418.21 Diversion of Truckee River water to Lahontan Reservoir, July through December.

Truckee River diversions through the Truckee Canal to Lahontan Reservoir from July through December must be made only in accordance with the Adjustments to Lahontan Reservoir Storage Targets table and § 418.22. Diversions shall be started to achieve the end-of-month storage targets listed in the table in § 418.22 and will be discontinued when storage is forecast to meet or exceed the end-of-month storage targets at the end of the month. Diversions may be adjusted any time during the month as conditions warrant (i.e., new forecasts, information from other forecasts becoming available, or any other new information that may impact stream forecasts).

§ 418.22 Future adjustments to Lahontan Reservoir storage targets.

(a) The Lahontan Reservoir storage targets must be adjusted to accommodate changes in water demand in the Carson Division. Using the information reported by the District by March 1 of each year on eligible land expected to be irrigated and end-of-year data on eligible land actually irrigated (§ 418.9(b)), the Bureau will determine if the Lahontan Reservoir storage targets need to be changed. If no change is needed, the storage targets currently in effect will remain in effect.

(1) Only the actual water demand reported for full water years (100 percent water supply) will be considered. Targets will not be changed based on water demand reported for less than full water years.

(2) All changes in storage targets must start on October 1 of any year. If information provided by March 1 and other available information indicates that the Lahontan Reservoir storage targets must be changed, the new set of storage targets must be applied starting October 1 of the same year and remain in effect until changed according to this section.

(b) All changes to storage targets will be made according to the table in this section. The table of storage targets has been developed to provide a consistent Project water supply over a range of demands.

(1) A storage target adjustment must be made in increments of thousands of acre-feet for the change as indicated in the column listing Carson Division Demand and the complete set of monthly targets must be applied.

(2) If the change in reported water demand is above or below the values in the table of storage targets, the adjustment to the storage targets can be calculated. The calculated adjustment is the number that would appear in the column Target Adjustment in the table. The calculated Target Adjustment is then added or subtracted to the base storage target for each month. Target Adjustments must be made in whole increments of 1,000 acre-feet and calculated values will be rounded to the nearest 1,000 acre-feet.

(i) For demands greater than those set forth on the table, the formula for the Target Adjustment is: Target Adjustment = 0.00208 (Demand in acre-feet—271,000 acre-feet). For example, if water demand increased to 292,635 acre-feet per year, the Target Adjustment calculation would be = 0.00208×(292,535 − 271,000). The result would be a Target Adjustment of 45 or 45,000 acre-feet. This would be added to the base monthly storage target values

so, the January–May target would be 219,000 acre-feet, June would be 235,000 acre-feet, and so on.

(ii) For demands less than those set forth on the table, the formula for the Target Adjustment is: Target Adjustment = 0.00174 (Demand in acre-feet—271,000 acre-feet). For example, if water demand decreased to 248,011 acre-feet per year, the Target Adjustment calculation would be = 0.00174×(248,011 − 271,000). The result would be a Target Adjustment of −40 or −40,000 acre-feet. This would be subtracted from the base monthly storage target values so, the January–May target would be 134,000 acre-feet, June would be 150,000 acre-feet, and so on.

BILLING CODE 4310-RK-P

ADJUSTMENTS TO LAHONTAN RESERVOIR STORAGE TARGETS

Increase in Storage Targets for Carson Division Diversion Demand Greater than 271,000 acre-feet									
Target Adjustment	Carson Division Demand	Jan-May	June	July	Aug	Sep	Oct	Nov	Dec
0	271.0	174	190	160	100	64	52	74	101
1	271.5	175	191	161	101	65	53	75	102
2	272.0	176	192	162	102	66	54	76	103
3	272.4	177	193	163	103	67	55	77	104
4	272.9	178	194	164	104	68	56	78	105
5	273.4	179	195	165	105	69	57	79	106
6	273.9	180	196	166	106	70	58	80	107
7	274.4	181	197	167	107	71	59	81	108
8	274.8	182	198	168	108	72	60	82	109
9	275.3	183	199	169	109	73	61	83	110
10	275.8	184	200	170	110	74	62	84	111
11	276.3	185	201	171	111	75	63	85	112
12	276.8	186	202	172	112	76	64	86	113
13	277.3	187	203	173	113	77	65	87	114
14	277.7	188	204	174	114	78	66	88	115
15	278.2	189	205	175	115	79	67	89	116
16	278.7	190	206	176	116	80	68	90	117
17	279.2	191	207	177	117	81	69	91	118
18	279.7	192	208	178	118	82	70	92	119
19	280.1	193	209	179	119	83	71	93	120
20	280.6	194	210	180	120	84	72	94	121
21	281.1	195	211	181	121	85	73	95	122
22	281.6	196	212	182	122	86	74	96	123
23	282.1	197	213	183	123	87	75	97	124
24	282.5	198	214	184	124	88	76	98	125
25	283.0	199	215	185	125	89	77	99	126
26	283.5	200	216	186	126	90	78	100	127
27	284.0	201	217	187	127	91	79	101	128
28	284.5	202	218	188	128	92	80	102	129
29	284.9	203	219	189	129	93	81	103	130
30	285.4	204	220	190	130	94	82	104	131
31	285.9	205	221	191	131	95	83	105	132
32	286.4	206	222	192	132	96	84	106	133
33	286.9	207	223	193	133	97	85	107	134
34	287.3	208	224	194	134	98	86	108	135
35	287.8	209	225	195	135	99	87	109	136
36	288.3	210	226	196	136	100	88	110	137
37	288.8	211	227	197	137	101	89	111	138
38	289.3	212	228	198	138	102	90	112	139
39	289.8	213	229	199	139	103	91	113	140
40	290.2	214	230	200	140	104	92	114	141

Decrease in Storage Targets for Carson Division Diversion Demand Less than 271,000 acre-feet									
Target Adjustment	Carson Division Demand	Jan-May	June	July	Aug	Sep	Oct	Nov	Dec
0	271.0	174	190	160	100	64	52	74	101
-1	270.4	173	189	159	99	63	51	73	100
-2	269.9	172	188	158	98	62	50	72	99
-3	269.3	171	187	157	97	61	49	71	98
-4	268.7	170	186	156	96	60	48	70	97
-5	268.1	169	185	155	95	59	47	69	96
-6	267.6	168	184	154	94	58	46	68	95
-7	267.0	167	183	153	93	57	45	67	94
-8	266.4	166	182	152	92	56	44	66	93
-9	265.8	165	181	151	91	55	43	65	92
-10	265.3	164	180	150	90	54	42	64	91
-11	264.7	163	179	149	89	53	41	63	90
-12	264.1	162	178	148	88	52	40	62	89
-13	263.5	161	177	147	87	51	39	61	88
-14	263.0	160	176	146	86	50	38	60	87
-15	262.4	159	175	145	85	49	37	59	86
-16	261.8	158	174	144	84	48	36	58	85
-17	261.2	157	173	143	83	47	35	57	84
-18	260.7	156	172	142	82	46	34	56	83
-19	260.1	155	171	141	81	45	33	55	82
-20	259.5	154	170	140	80	44	32	54	81
-21	258.9	153	169	139	79	43	31	53	80
-22	258.4	152	168	138	78	42	30	52	79
-23	257.8	151	167	137	77	41	29	51	78
-24	257.2	150	166	136	76	40	28	50	77
-25	256.6	149	165	135	75	39	27	49	76
-26	256.1	148	164	134	74	38	26	48	75
-27	255.5	147	163	133	73	37	25	47	74
-28	254.9	146	162	132	72	36	24	46	73
-29	254.3	145	161	131	71	35	23	45	72
-30	253.8	144	160	130	70	34	22	44	71
-31	253.2	143	159	129	69	33	21	43	70
-32	252.6	142	158	128	68	32	20	42	69
-33	252.0	141	157	127	67	31	19	41	68
-34	251.5	140	156	126	66	30	18	40	67
-35	250.9	139	155	125	65	29	17	39	66
-36	250.3	138	154	124	64	28	16	38	65
-37	249.7	137	153	123	63	27	15	37	64

BILLING CODE 4310-RK-C

§ 418.23 Diversion of Rock Dam Ditch water.

Project water may be diverted directly to Rock Dam Ditch from the Truckee Canal only when diversions cannot be made from the outlet works of Lahontan Reservoir. Such diversions will require the prior written approval of the Bureau and be used in calculating Project diversions.

§ 418.24 Precautionary drawdown and spills from Lahontan Reservoir.

(a) Even though flood control is not a specifically authorized purpose of the Project, at the request of the District and in consultation with other interested parties and the approval of the Bureau, precautionary drawdown of Lahontan Reservoir may be made to limit potential flood damage along the Carson River. The Bureau will develop criteria for precautionary drawdown in consultation with the District and other interested parties.

(1) The drawdown must be scheduled sufficiently in advance and at such a rate of flow in order to divert as much water as possible into the Project irrigation system for delivery to eligible land or storage in reregulating reservoirs for later use on eligible land.

(2) During periods of precautionary drawdown, or when water is spilled from Lahontan Reservoir, Project diversions will be determined by comparison with other years' data and normalized by comparison of differences in climatological data. The Bureau will estimate the normalization in consultation with the District and other interested parties.

(3) Spills from Lahontan Reservoir and precautionary drawdown of the reservoir to create space for storing flood waters from the Carson River Basin that are in excess of the normalized diversions will not be used in calculating Project diversions.

(4) Water captured in Project facilities as a result of a precautionary drawdown or spill will not be counted as storage in Lahontan Reservoir for the purpose of calculating Truckee River Diversions. Such water will not be counted as diversions to the Project unless such water is beneficially applied as described in (a)(5) of this section.

(5) Water from precautionary drawdowns or spills that is captured in Project facilities must be used to the maximum extent possible, and counted as deliveries to eligible lands in the year of the drawdown. If all the drawdown water captured in Project facilities cannot be used in the year of capture for delivery to eligible lands, then that water must be delivered to eligible lands in subsequent years to the maximum extent possible and counted against the water users' annual allocation.

(b) If a precautionary drawdown in one month results in a failure to meet the Lahontan Reservoir storage objective for that month, the storage objective in subsequent months will be reduced by one-half of the difference between that month's storage objective and actual end-of-month storage. The Bureau is not liable for any damage or water shortage resulting from a precautionary drawdown.

§ 418.25 Water use for other than Newlands Project purposes.

The District will release sufficient water to meet the vested water rights below Sagouspe Dam as specified in the *Alpine* decree. These water rights are usually met by return flows. Releases for these water rights will in no case exceed the portion of 1,300 acre-feet per year not supplied by return flows. This water must be accounted for at the USGS gauge number 10312275 (the Carson River at Tarzyn Road near Fallon). Releases for this purpose will not be considered in determining Project diversions since the lands to which the water is being delivered are not part of the Project. (See § 418.15(b)(2)(ii).) Any flow past this gage in excess of the amount specified in this part will be absorbed by the District as an efficiency loss.

§ 418.26 Charges for water use.

The District must maintain a financing and accounting system which produces revenue sufficient to repay its operation and maintenance costs and to discharge any debt to the United States. The District should give consideration to adopting a system which provides reasonable financial incentives for the economical and efficient use of water.

§ 418.27 Distribution system operation.

(a) The District must permit only its authorized employees or agents to open and close individual turnouts and operate the distribution system facilities. After obtaining Bureau approval, the District may appoint agents to operate individual headgates on a specific lateral if it can be shown that the water introduced to the lateral by a District employee is completely scheduled and can be fully accounted for with a reasonable allowance for seepage and evaporation losses.

(b) If agents need to adjust the scheduled delivery of water to the lateral to accommodate variable field conditions, weather, etc., they must immediately notify the District so proper adjustments can be made in the distribution system. Each agent must keep an accurate record of start and stop times for each delivery and the flow during delivery. This record will be given to the District for proper accounting of water delivered.

(c) The program of using agents to operate individual headgates will be reviewed on a regular basis by the District and the Bureau. If it is found that problems such as higher than normal losses, water not accounted for, etc., have developed on an individual lateral, the program will be suspended and the system operated by District employees until the problems are resolved.

Enforcement

§ 418.28 Conditions of delivery.

There are four basic elements for enforcement with all necessary quantities and review determined in accordance with the relevant sections of this part.

(a) *Valid headgate deliveries.* If water is delivered to ineligible land or in excess of the appropriate water duty then:

(1) The District will stop the illegal delivery immediately;

(2) The District will notify the Bureau of the particulars including the known or estimated location and amounts;

(3) The amount will not be included as a valid headgate delivery for purposes of computing the Project efficiency and resultant incentive credit or debit to Lahontan storage; and

(4) If the amount applies to a prior year, then the amount will be treated directly as a debit to Lahontan storage in the same manner as an efficiency debit.

(b) *District efficiency.* To the extent that the actual District efficiency determined for an irrigation season is greater or less than the established target efficiency, as determined for the corresponding actual valid headgate deliveries, then the difference in efficiency, expressed as a quantity in acre-feet, may be added to or subtracted from the actual Lahontan Reservoir storage level before it is compared to the monthly storage objective as follows:

(1) Greater efficiency—Credited to the District as storage in Lahontan or subtracted from any accumulated debit, or two-thirds as storage in Lahontan for their discretionary use in accordance with state law.

(2) Less efficient—Debited or added to Lahontan storage as an adjustment to the actual storage level.

(c) *Maximum Allowable Diversion (MAD).* The MAD must be computed each year to determine the amount of water required to enable the delivery of full entitlements at established Project efficiencies. Project diversions must not exceed the MAD. Within the operating year, the Bureau will notify the District in writing of any expected imminent violations of the MAD. The District will take prompt action to avoid such violations. The Bureau will exercise reasonable latitude from month to month to accommodate the District's efforts to avoid exceeding the MAD.

(d) *Maximum Efficiency Debit (MED).* If the MED exceeds 26,000 AF at the end of any given year, the District must prepare and submit to the Bureau for review and approval, a plan detailing the actions the District will take to either earn adequate incentive credits or to restrict deliveries to reduce the MED to less than 26,000 AF by the end of the next year. The plan must be submitted to the Bureau in writing before the date of March 1 immediately subsequent to the exceeding of the MED. If the District fails to submit an approvable plan, Project allocations will be reduced by an amount equal to the MED in excess of 26,000 plus 13,000 (one-half the allowable MED). Nominally this will mean a forced reduction of approximately five percent of entitlements. The Bureau will notify the District in writing of the specific allocation and method of derivation in sufficient time for the District to implement the allocation. Liabilities arising from shortages occasioned by operation of this provision must be the responsibility of the District or individual water users.

§ 418.29 Project management.

In addition to the provisions of § 418.28, if the District is found to be operating Project facilities or any part thereof in substantial violation of this part, then, upon the determination by the Bureau, the Bureau may take over from the District the care, operation, maintenance, and management of the diversion and outlet works (Derby Dam and Lahontan Dam/Reservoir) or any or all of the transferred works by giving written notice to the District of the determination and its effective date. Following written notification from the Bureau, the care, operation, and maintenance of the works may be retransferred to the District.

§ 418.30 Provisions required in future contracts.

The Bureau must provide in new, amended, or replacement contracts for the operation and maintenance of Project works, for the reservation by the Secretary of rights and options to enforce this part.

Water Management and Conservation

§ 418.31 Conservation measures.

(a) Specific conservation actions will be needed for the District and its members to achieve a reasonable efficiency of operation as required by this part. The District is best able to determine the particular conservation measures that meet the needs of its water users. This ensures that the measures reflect the priorities and collective judgment of the water users; and will be practical, understandable and supported. The District also has the discretion to make changes in the measures they adopt as conditions or results dictate.

(b) The District will keep the Bureau informed of the measures they expect to utilize during each year. This will enable the Bureau to stay apprised of any helpful information that may, in turn, help the Bureau assist other irrigation districts. The Bureau will work cooperatively in support of the District's selection of measures and methods of implementation.

§ 418.32 Cooperative programs.

(a) The Bureau and the District will work cooperatively to develop a water management and conservation program to promote efficient management of water in the Project. The program will emphasize developing methods, including computerization and automation, to improve the District's operations and procedures for greater water delivery conservation.

(b) The Bureau will provide technical assistance to the District and cooperatively assist the District in their obligations and efforts to:

(1) Document and evaluate existing water delivery and measurement practices;

(2) Implement improvements to these practices; and

(3) Evaluate and, where practical, implement physical changes to Project facilities.

Implementation

§ 418.33 Purpose of the implementation strategy.

The intent of the implementation strategy for this part is to ensure that the District delivers water within entitlements at a reasonable level of efficiency as a long term average.

(a) The incentives and disincentives provided in this part are designed to encourage local officials with responsibilities for Project operations to select and implement through their discretionary actions, operating strategies which achieve the principles of this part.

(b) The specified efficiencies in the Expected Project Distribution System Efficiency table (§ 418.13 (a)(4)) were developed considering implementation of reasonable conservation measures, historic project operations, economics, and environmental effects.

(c) The efficiency target will be used as a performance standard to establish at the end of each year on the basis of actual operations, whether the District is entitled to a performance bonus in the form of incentive water or a reduction in storage for the amount borrowed ahead.

§ 418.34 Valid headgate deliveries.

Project water may be delivered to headgates only as provided in §§ 418.8 and 418.10. Water delivered to lands that are not entitled to be irrigated or not in accord with decreed water duties is difficult to quantify at best because it is not typically measured. Since it is not likely to be a part of the total actual headgate deliveries, yet is a part of the total deliveries to the Project, it will manifest itself directly as a lower efficiency. Thus, it will either reduce the District's incentive credit or increase the storage debit by the amount improperly diverted. All other users outside the Project are thereby held harmless but the District incurs the consequence. This approach should eliminate any potential disputes between the District and the Bureau regarding the quantity of water misappropriated.

§ 418.35 Efficiencies.

The established target efficiencies under this part are shown in the Expected Project Distribution System Efficiency table (§ 418.13 (a)(4)). The efficiency of the Project will vary with the amount of entitlement water actually delivered at the headgates. Since most of the distribution system losses such as evaporation and seepage do not change significantly with the amount of water delivered (i.e., these losses are principally a function of water surface area and the wetted perimeter of the canals), the Project efficiency requirement is higher as the percent of entitlement water actually delivered at the headgates increases. The actual efficiency is calculated each year after the close of the irrigation season based on actual measured amounts. The application of any adjustments to Lahontan Reservoir storage or Truckee River diversions resulting from the efficiency is always prospective.

§ 418.36 Incentives for additional long term conservation.

(a) As an incentive for the District to increase the efficiency of the delivery system beyond the expected efficiency of 65.7 percent (66.9 percent with full delivery) as shown in the Newlands Project Water Budget table, 1995 Example, the District will be allowed to store and use the Carson River portion of the saved water at its discretion, in accordance with Nevada State Law and this part.

(1) If the District is able to exceed its expected efficiency, the District may store in Lahontan Reservoir two-thirds (2/3) of the additional water saved. (The remaining one-third (1/3) of the water saved will remain in the Truckee River through reduced diversions to Lahontan Reservoir). This water will be considered incentive water saved from the Carson River and will not be counted as storage in determining diversions from the Truckee River or computing the target storage levels for Lahontan Reservoir under this part.

(2) For purposes of this part, incentive water is no longer considered Project water. The District may use the water for any purpose (e.g., wetlands, storage for recreation, power generation, shortage reduction) that is consistent with Nevada State Law and Federal Law. The water will be managed under the District's discretion and may be stored in Lahontan Reservoir until needed subject to the limitations in (a)(3) of this section.

(3) The amount of incentive water stored in Lahontan Reservoir will be reduced under the following conditions:

(i) There is a deficit created and remaining in Lahontan Reservoir from operations penalties in a prior year;

(ii) The District releases the water from the reservoir for its designated use;

(iii) During a spill of the reservoir, the amount of incentive water must be reduced by the amount of spill; and

(iv) At the discretion of the District, incentive water may be used to offset the precautionary drawdown adjustment to the Lahontan storage objective.

(v) At the end of each year, the amount of incentive water will be reduced by the incremental amount of evaporation which occurs as a result of the increased surface area of the reservoir due to the additional storage. The evaporation rate used will be either the net evaporation measured or the net historical average after precipitation is taken into account. The method of calculation will be agreed to by the District and the Bureau in advance of any storage credit.

(b) An example of this concept is:

Example: *Incentive Operation*—

(1) At the end of the 1996 irrigation season, the Bureau and the District audit the District's water records for 1996. The District's water delivery records show that 194,703 acre-feet of water were delivered to farm headgates. On the basis of their irrigated acreage that year (59,075) the farm headgate entitlement would have been 216,337 acre-feet. On the basis of 90 percent deliveries for 59,075 acres (194,203 divided by 216,337 = 0.90) the established Project efficiency requirement was 65.1 percent.

(2) On the basis of the established Project efficiency (66.1 percent), the Project diversion required to make the headgate deliveries would be expected to be 291,909 acre-feet (194,703 divided by 0.651 = 291,909). An examination of Project records reveals that the District only diverted 286,328 acre-feet which demonstrated actual Project efficiency was 68 percent and exceeded requirements of this part.

(3) The 5,581 acre-feet of savings (291,909–286,328 = 5,581) constitutes the savings achieved through efficiency improvements and the District would then be credited two-thirds (3,721 acre-feet = 5,581 x 2/3) of this water (deemed to be Carson River water savings) as incentive water.

(4) This incentive water may be stored in Lahontan Reservoir or otherwise used by the District in its discretion consistent with State and Federal Law (e.g., power generation, recreation storage, wildlife, drought protection, etc.).

§ 418.37 Disincentives for lower efficiency.

(a) If the District fails to meet the efficiencies established by this part, then, in effect, the District has borrowed from a subsequent year. The amount borrowed will be accounted for in the form of a deficit in Lahontan Reservoir storage. This deficit amount will be added to the actual Lahontan Reservoir storage quantity for the purpose of determining the Truckee River diversions to meet storage objectives as well as all other operating decisions.

(b) The amount of the deficit will be cumulative from year to year but will not be allowed to exceed 26,000 acre-feet (the expected variance between the MAD and actual water use). This limit is expected to avoid increasing the severity of drought and yet still allow for variations in efficiency over time due to weather and other factors. This approach should allow the District to plan its operation to correct for any deficiencies.

(c) The deficit can be reduced by crediting incentive water earned by the District or reducing the percentage of headgate entitlement delivered either through a natural drought or by the District and its water users administratively limiting deliveries while maintaining an efficiency greater than or equal to the target efficiency.

(d) If there is a natural drought and the shortage to the headgates is equal to or greater than the deficit, then the deficit is reduced to zero. If the shortage to headgates is less than the deficit then the deficit is reduced by an amount equal to the headgate shortage. During a natural drought, if the percentage of maximum headgate entitlement delivered is 75 percent or more then the District will be subject to the target efficiencies and resultant deficits or credits.

(e) If the District has a deficit in Lahontan Reservoir and earns incentive water, the incentive water must be used to eliminate the deficit before it can be used for any other purpose. The deficit must be credited on a 1 to 1 basis (i.e., actual efficiency savings rather than ⅓–⅔ for incentive water).

(f) An example of the penalty concept is:

Example: *Penalty*—

In 1996 the District delivers 90 percent of the maximum headgate entitlement or 194,703 acre-feet 216,337 x .90) but actually diverts 308,000 acre-feet. The efficiency of the Project is 63.2 percent (194,703 divided by 308,000). Since the established efficiency of 65.1 percent would have required a diversion of only 299,083 acre-feet (194,703 divided by .651) the District has operated the system with 8,917 acre-feet of excess losses. Therefore, 8,917 acre-feet was borrowed and must be added to the actual storage quantities of Lahontan Reservoir for calculating target storage levels and Truckee River diversions.

§ 418.38 Maximum allowable diversion.

(a) The MAD established in this part is based on the premise that the Project should be operated to ensure that it is capable of delivering to the headgate of each water right holder the full water entitlement for irrigable eligible acres and includes distribution system losses. The MAD will be established (and is likely to vary) each year. The annual MAD will be calculated each year based on the actual acreage to be irrigated that year.

(b) Historically, actual deliveries at farm headgates have been approximately 90 percent of entitlements. This practice is expected to continue but the percentage is expected to change. This variance between headgate deliveries and headgate entitlements will be calculated annually under this part and is allowed to be diverted if needed and thereby provides an assurance that full headgate deliveries can be made. The expected diversion and associated efficiency target for the examples shown in the Newlands Project Water Budget table would be: 285,243 AF and 65.1 percent in 1996 and beyond. These are well below the MAD limits; however, the District may divert up to the MAD if it is needed to meet valid headgate entitlements.

Appendix A to Part 418-Calculation of Efficiency Equation

BILLING CODE 4310-RK-P

Calculation of Efficiency Equation Slope and Y-Intercept for Adjusted OCAP

	1988 OCAP		With Adjusted OCAP										
	Projected for 1992	Without added ac.											
Irrigated Acreage	64,850	61,630	64,850	64,500	64,000	63,500	63,000	62,500	62,000	61,500	61,000	60,500	60,000
Max. Headgate Entitlement	237,485	226,555	226,586	225,363	223,616	221,869	220,122	218,375	216,628	214,881	213,134	211,387	209,640
Distribution System Losses													
Evaporation													
Canals/Laterals	6,200	6,000	6,200	6,178	6,147	6,116	6,085	6,054	6,023	5,992	5,961	5,930	5,899
Reg. Reservoirs	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500
Seepage													
Canals/Laterals	51,000	48,500	51,000	50,728	50,340	49,952	49,564	49,175	48,787	48,399	48,011	47,623	47,234
Reg. Reservoirs	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Operational Losses	40,800	39,400	40,800	40,648	40,430	40,213	39,996	39,778	39,561	39,343	39,126	38,909	38,691
Total System Losses	109,500	105,400	109,500	109,054	108,418	107,781	107,144	106,508	105,871	105,234	104,598	103,961	103,325
100% Use of Entitlement:													
Allowable Diversion	346,985	331,955	336,086	334,417	332,034	329,650	327,266	324,883	322,499	320,115	317,732	315,348	312,965
Conveyance Efficiency	68.44%	68.25%	67.42%	67.39%	67.35%	67.30%	67.26%	67.22%	67.17%	67.13%	67.08%	67.03%	66.99%
75% Use of Entitlement:													
Headgate Ent. Unused	59,371	56,639	56,646	56,341	55,904	55,467	55,031	54,594	54,157	53,720	53,284	52,847	52,410
Headgate Delivery	178,114	169,916	169,939	169,022	167,712	166,402	165,092	163,781	162,471	161,161	159,851	158,540	157,230
Diversion Reduction	68,717	65,554	65,563	65,209	64,704	64,198	63,693	63,187	62,682	62,176	61,671	61,165	60,660
Allowable Diversion	278,268	266,401	270,523	269,208	267,330	265,452	263,574	261,696	259,817	257,939	256,061	254,183	252,305
Conveyance Efficiency	64.01%	63.78%	62.82%	62.78%	62.74%	62.69%	62.64%	62.58%	62.53%	62.48%	62.43%	62.37%	62.32%
Slope	0.1774	0.1787	0.1840	0.1842	0.1845	0.1847	0.1850	0.1853	0.1856	0.1858	0.1861	0.1864	0.1867
Y-Intercept	50.70	50.38	49.02	48.97	48.90	48.83	48.76	48.69	48.62	48.54	48.47	48.39	48.31

Note: (1) The average water duty with Adjusted OCAP assumed to be 3.494 acre-feet/acre based on 1995 conditions.

(2) The conveyance efficiency of the unused entitlement (75% use) assumed to be 86.4% based on Figure 1 and Table 1 of 1988 OCAP.

Calculation of Efficiency Equation Slope and Y-Intercept for Adjusted OCAP

Adjusted OCAP (continued)

Irrigated Acreage	59,500	59,000	58,500	58,000	57,500	57,000	56,500	56,000	55,500	55,000	54,500	54,000	53,500	53,000	52,500	52,000
Max. Headgate Ent.	207893	206146	204399	202652	200905	199158	197411	195664	193917	192170	190423	188676	186929	185182	183435	181688
Distribution Losses																
Evaporation																
Canal/Laterals	5868	5837	5806	5775	5743	5712	5681	5650	5619	5588	5557	5526	5495	5464	5433	5402
Reg. Reservoirs	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500
Seepage																
Canal/Laterals	46846	46458	46070	45682	45293	44905	44517	44129	43741	43352	42964	42576	42188	41800	41411	41023
Reg. Reservoirs	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000
Operational Losses	38474	38257	38039	37822	37604	37387	37170	36952	36735	36517	36300	36083	35865	35648	35430	35213
Total System Losses	102688	102051	101415	100778	100141	99505	98868	98231	97595	96958	96321	95685	95048	94411	93775	93138
100% Use of Ent.																
Allowable Diversion	310581	308197	305814	303430	301046	298663	296279	293895	291512	289128	286744	284361	281977	279593	277210	274826
Convey. Efficiency	66.94%	66.89%	66.84%	66.79%	66.74%	66.68%	66.63%	66.58%	66.52%	66.47%	66.41%	66.35%	66.29%	66.23%	66.17%	66.11%
75% Use of Ent.																
Entitlement Unused	51973	51537	51100	50663	50226	49790	49353	48916	48479	48043	47606	47169	46732	46296	45859	45422
Headgate Delivery	155920	154610	153299	151989	150679	149369	148058	146748	145438	144128	142817	141507	140197	138887	137576	136266
Diversion Reduction	60154	59649	59143	58638	58132	57627	57121	56616	56110	55605	55099	54594	54088	53583	53077	52572
Allowable Diversion	250427	248549	246670	244792	242914	241036	239158	237280	235401	233523	231645	229767	227889	226011	224133	222254
Convey. Efficiency	62.26%	62.20%	62.15%	62.09%	62.03%	61.97%	61.91%	61.85%	61.78%	61.72%	61.65%	61.59%	61.52%	61.45%	61.38%	61.31%
Slope	0.1870	0.1873	0.1876	0.1879	0.1882	0.1886	0.1889	0.1892	0.1895	0.1899	0.1902	0.1906	0.1909	0.1913	0.1916	0.1920
Y-Intercept	48.24	48.16	48.08	47.99	47.91	47.83	47.74	47.66	47.57	47.48	47.39	47.30	47.20	47.11	47.01	46.91

Note: (1) The average water duty with Adjusted OCAP assumed to be 3.494 acre-feet/acre based on 1995 conditions.

(2) The conveyance efficiency of the unused entitlement (75% use) assumed to be 86.4% based on Figure 1 and Table 1 of 1988 OCAP.

[FR Doc. 97-32795 Filed 12-15-97; 3:23 pm]
BILLING CODE 4310-RK-C

federal register

Thursday
December 18, 1997

Part VI

Department of Housing and Urban Development

24 CFR Part 180
Civil Penalties for Fair Housing Act Violations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 180

[Docket No. FR–4302–P–01]

RIN 2529–AA83

Civil Penalties for Fair Housing Act Violations

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule interprets the Fair Housing Act to allow Administrative Law Judges (ALJs) to assess a separate civil penalty for each of multiple acts involving housing discrimination. Under the Fair Housing Act, housing discrimination violations carry maximum civil penalties for first-, second-, and third-time offenders. This proposed rule would interpret the Fair Housing Act to clarify that, in a given case, an ALJ may assess more than one maximum civil penalty against a respondent in a given case, where the respondent has committed separate and distinct acts of discrimination.

The proposed rule is also part of President Clinton's "Make 'Em Pay" initiative, which is designed to fight housing-related acts of hate violence and intimidation with increased enforcement and monetary penalties. Such housing-related hate acts continue to pose a significant problem; last year, according to FBI statistics, of 8,759 hate crimes, 2,416, or 27%, were housing-related. The rule would describe how ALJs are to consider housing-related hate acts under the six factors ALJs apply in determining the amount of a civil penalty to assess against a respondent found to have committed a discriminatory housing practice.

DATES: Comments on the proposed rule are due on or before: January 20, 1998.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Stephen I. Shaw, Trial Attorney, Office of Litigation and Fair Housing Enforcement, Room 10258, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1042. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the "800" number, these are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Civil Penalties for Separate and Distinct Fair Housing Act Violations

The Fair Housing Act (42 U.S.C. 3601–3619), allows an Administrative Law Judge (ALJ) in a Fair Housing Act case to assess a civil penalty if the ALJ "finds that a respondent has engaged in or is about to engage in a discriminatory housing practice" (42 U.S.C. 3612(g)(3) (emphasis added)). A "discriminatory housing practice" is defined as "*an* act that is unlawful under section 804, 805, 806 or 818 of the [Fair Housing] Act" (42 U.S.C. 3602(f) (emphasis added)). The Fair Housing Act specifically does not say that an ALJ may assess only a single civil penalty for *all* separate and distinct violations that respondent is found to have committed in a case. Likewise, the Fair Housing Act does not specify that the ALJ may assess a civil penalty for each separate discriminatory housing act. Thus, the statutory language is ambiguous with respect to the issue of whether an ALJ may assess multiple civil penalties for multiple discriminatory housing practices. The legislative history also does not address this point. In such a case of statutory ambiguity, the agency's interpretation will be upheld if it is "based on a permissible construction of the statute." *Chevron, U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

It is certainly a permissible and reasonable interpretation of the Fair Housing Act that, where a respondent commits a single discriminatory housing practice, that is, a single act of discrimination, an ALJ has the discretion to assess a civil penalty against that respondent, up to the maximum, for that particular illegal act. It is similarly reasonable and permissible to interpret the Fair Housing Act to indicate that, where a respondent has committed multiple, separate illegal acts, an ALJ has discretion to assess a separate civil penalty against a respondent for *each separate* discriminatory housing practice that respondent committed in a case.

In accordance with the foregoing construction of the Fair Housing Act, HUD interprets the language of the statute to indicate that an ALJ may assess multiple penalties against a respondent in cases where the respondent is found to have committed multiple discriminatory acts. Accordingly, under the proposed rule, ALJs will have the discretion to assess multiple civil penalties in cases where a respondent has committed more than one discriminatory act, limited only by the number of violations that respondent is found to have committed.

This rule proposes to amend HUD's regulations at 24 CFR part 180 (Hearing Procedures for Civil Rights Matters) to clarify that, in a given case, an ALJ may, and in appropriate circumstances should, assess more than one civil penalty against a given respondent where the respondent has committed separate and distinct acts of discrimination

II. Housing Related Hate Acts

ALJs often assess maximum civil penalties against respondents in cases of particularly heinous or pervasive hate acts. Traditionally, ALJs have applied six factors in determining the amount of a civil penalty to assess: (1) Whether the respondent has previously been adjudged to have committed unlawful housing discrimination; (2) the respondent's financial resources; (3) the nature and circumstances of the respondent's violation; (4) the degree of the respondent's culpability; (5) the goal of deterrence; and (6) other matters as justice may require (*HUD* v. *Housing Authority of Las Vegas*, 2A Fair Housing Fair Lending ¶ 25,116 (Nov. 6, 1995); H.R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988)).

This proposed rule would also amend 24 CFR part 180 to define "housing related hate act" and articulate that it is appropriate that ALJs consider, under the last four of the traditional requirements, the commission of a housing-related hate act to provide a basis for assessing a maximum civil penalty. Nothing in this regulation, however, is intended to lead ALJs to infer that they should necessarily assess a less than maximum penalty in any particular case that does not involve a hate act.

III. Creation of New § 180.671

In addition to the amendments described above, this rule proposes to make a clarifying change to 24 CFR part 180. Specifically, the provisions governing the assessment of civil penalties currently found at § 180.670(b)(3)(iii)(A), (B), and (C) would be moved to a new § 180.671. With the exception of the amendments described above, no substantive revisions would be made to these provisions. HUD, however, is proposing to make changes to certain of these provisions for purposes of clarity. The creation of a new § 180.671 is designed to make the part 180 regulations easier to understand.

IV. Justification for Reduced Comment Period

It is HUD's policy generally to afford the public not less than 60 days for submission of comments on its notices of proposed rulemaking (24 CFR 10.1). In this case, HUD has determined that it would be contrary to the public interest to provide a public comment period greater than 30 calendar days. The current interpretation of the civil penalty structure has not been sufficient to deter discriminatory housing practices, particularly housing-related acts of hate violence. The proposed amendments interpret the Fair Housing Act to insure that ALJs have the necessary flexibility to assess the appropriate number of civil penalties to deter these egregious acts of housing discrimination. The provision of a 60-day comment period would delay implementation of the proposed amendments, and tend to limit the ability of the government to maximize the use of civil penalties in cases involving housing-related hate violence.

HUD believes that the 30-day comment period strikes a balance between the need for public input in the regulatory process, and the need to address housing discrimination and, particularly, housing-related acts of hate violence. HUD recognizes the value and necessity of public comments in the development of final regulations and welcomes comments on this proposed rule. All public comments will be addressed in the final rule.

V. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this proposed rule set out nondiscrimination standards and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would have no federalism implications, and that the policies are not subject to review under the Order.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule would not pose an environmental health risk or safety risk to children.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule would not impose a Federal mandate that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12866, Regulatory Planning and Review.

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Number.

The Catalog of Federal Domestic Assistance Number for this program is 14.400.

List of Subjects in 24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 180 is proposed to be amended as follows:

PART 180—HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

1. The authority citation for 24 CFR part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

2. Section 180.670 is amended by revising paragraph (b)(3)(iii) to read as follows:

§ 180.670 Initial decision of ALJ.

* * * * *

(b) * * *

(3) * * *

(iii) Assessing a civil penalty against any respondent to vindicate the public interest in accordance with § 180.671.

* * * * *

3. Section 180.671 is added to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) *Amounts.* The ALJ may assess a civil penalty against any respondent under § 180.670(b)(3) for each separate and distinct discriminatory housing practice (as defined in paragraph (b) of this section) that the respondent committed, each civil penalty in an amount not to exceed:

(1) $11,000, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency, to have committed any prior discriminatory housing practice.

(2) $27,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) $55,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the seven-year period preceding the date of the filing of the charge.

(b) *Definition of separate and distinct discriminatory housing practice.* A

separate and distinct discriminatory housing practice is a single, continuous, uninterrupted transaction or occurrence that violates section 804, 805, 806, or 818 of the Fair Housing Act, even if committed by the same person. Each single, continuous, uninterrupted transaction or occurrence that violates more than one provision of the Act, violates one provision more than once, or violates the fair housing rights of more than one person constitutes a separate and distinct discriminatory housing practice.

(c) *Factors for consideration by ALJ.* (1) In determining the amount of the civil penalty to be assessed against any respondent for each separate and distinct discriminatory housing practice the respondent committed, the ALJ shall consider the following six (6) factors:

(i) Whether that respondent has previously been adjudged to have committed unlawful housing discrimination;

(ii) That respondent's financial resources;

(iii) The nature and circumstances of the violation;

(iv) The degree of that respondent's culpability;

(v) The goal of deterrence; and

(vi) Other matters as justice may require.

(2)(i) Where the ALJ finds any respondent to have committed a housing-related hate act, the ALJ shall take this fact into account in favor of imposing a maximum civil penalty under the factors listed in paragraphs (c)(1)(iii), (iv), (v), and (vi) of this section.

(ii) For purposes of this section, the term "*housing-related hate act*" means any act that constitutes a discriminatory housing practice under section 818 of the Fair Housing Act and which constitutes or is accompanied or characterized by the threat, or any action toward carrying out, or the carrying out of actual violence, intimidation, coercion, assault, bodily harm, and/or harm to property.

(iii) Nothing in this paragraph shall be construed to require an ALJ to assess any amount less than a maximum civil penalty in a non-hate act case, where the ALJ finds that the factors listed in paragraphs (c)(1)(i) through (vi) of this section warrant the assessment of a maximum civil penalty.

(d) *Persons previously adjudged to have committed a discriminatory housing practice.* If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods set forth in paragraphs (a)(2) and (3) of this section do not apply.

(e) *Multiple discriminatory housing practices committed by the same respondent; multiple respondents.* (1) In a proceeding where a respondent has engaged in or is about to engage in more than one separate and distinct discriminatory housing practice, a separate civil penalty may be assessed against the respondent for each separate and distinct discriminatory housing practice.

(2) In a proceeding involving two or more respondents, one or more civil penalties, as provided under this section, may be assessed against each respondent that has been determined to have been engaged in or is about to engage in one or more discriminatory housing practices.

Dated: November 24, 1997.

Andrew Cuomo,

Secretary.

[FR Doc. 97–33051 Filed 12–17–97; 8:45 am]

BILLING CODE 4210–32–P

federal register

Thursday
December 18, 1997

Part VII

The President

Executive Order 13070—The Intelligence Oversight Board, Amendment to Executive Order 12863

Federal Register
Vol. 62, No. 243
Thursday, December 18, 1997

Presidential Documents

Title 3—

The President

Executive Order 13070 of December 15, 1997

The Intelligence Oversight Board, Amendment to Executive Order 12863

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to emphasize the role of the Intelligence Oversight Board in providing executive branch oversight, it is hereby ordered that Executive Order 12863 is amended as follows:

Section 1. The text in section 2.1 is deleted and the following text is inserted in lieu thereof: "The Intelligence Oversight Board (IOB) is hereby established as a standing committee of the PFIAB. The IOB shall consist of no more than four members designated by the President from among the membership of the PFIAB. The Chairman of the PFIAB may also serve as the Chairman or a member of the IOB if so designated by the President. The IOB shall utilize such full-time staff and consultants as authorized by the Chairman of the IOB with the concurrence of the Chairman of the PFIAB."

Sec. 2. The first sentence in section 2.3 is deleted and the following sentence is inserted in lieu thereof: "The IOB shall report to the President."

William J. Clinton

THE WHITE HOUSE,
December 15, 1997.

[FR Doc. 97–33299
Filed 12–17–97; 10:29 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 62, No. 243

Thursday, December 18, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10
65197–65308	11
65309–65582	12
65593–65740	15
65741–65990	16
65991–66250	17
66251–66494	18

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987
7061 66251

Executive Orders:
13069 65989
13070 66493

Administrative Orders:

Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005
No. 96–7 of December 5, 1997 66253
No. 96–8 of December 5, 1997 66255

5 CFR

213 63627
315 63627
410 63630
531 65311
591 63630

7 CFR

2 65593
17 63606
58 66257
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741, 65991
1412 63441

Proposed Rules:
51 66033
70 63471
205 65850
610 64174
729 63678
800 66036
810 66036
966 66312
980 66312
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

50 66259
78 ..... 64134, 65596
91 64265
93 64265
94 ..... 65747, 65999

Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 63825
70 63825
73 63640

Proposed Rules:
40 65039
50 ..... 63892, 63911, 66038
70 63911

11 CFR

Proposed Rules:
114 65040

12 CFR

8 64135
202 66412
203 66259
226 ..... 63441, 66179
265 64996
506 66260
516 64138
543 64138
544 66260
545 ..... 64138, 66260
552 ..... 64138, 66260
556 64138
559 66260
560 66260
561 66260
563 ..... 64138, 66260
565 66260
567 66260
575 66260
614 63644
703 64146
704 64148
790 65197
791 64266
934 65197
1806 64440

Proposed Rules:
225 64997
226 64769
404 64177
405 64177

708a.....64185
708b.....64187

14 CFR

39.....63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750, 66001, 66264, 66266, 66268, 66269, 66271
71.....64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606, 66179
73.....65359, 65360, 66002
91.....66248
93.....66248
95.....65016, 65361, 65363
97.....63447, 63449, 63451
121.....65202, 66248
135.....66248
255.....63837, 66272
1260.....63452

Proposed Rules:

39.....63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65788, 66315, 66317
71.....63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631

15 CFR

295.....64682
922.....66003

Proposed Rules:

806.....65043
960.....65384

17 CFR

15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

18 CFR

35.....64688
37.....64715
401.....64154

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:

211.....64188
422.....63681

21 CFR

101.....63647, 63653, 64634, 66275
179.....64102, 64107
520.....65020
524.....65752
886.....66003

Proposed Rules:

200.....64048
808.....65384, 66179
876.....65770
1020.....65235
1308.....64526

22 CFR

Proposed Rules:

22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:

655.....64324

24 CFR

100.....66424
103.....66424
201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

Proposed Rules:

180.....66488

25 CFR

Proposed Rules:

514.....65775

26 CFR

Proposed Rules:

1.....64190

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203, 66275
4011.....65607
4022.....65607
4044.....65609, 65610

Proposed Rules:

1910.....65388
4022.....66319

30 CFR

206.....65753

Proposed Rules:

56.....65777
57.....64789, 65777
62.....65777
70.....65777
71.....65777
75.....64789
917.....63684, 65044
926.....63685, 64327
936.....65632

31 CFR

500.....64720

Proposed Rules:

356.....64528

32 CFR

320.....65020

Proposed Rules:

199.....64191
901.....63485

33 CFR

100.....65021
117.....63847, 66005, 66006
160.....65203
165.....65022

Proposed Rules:

117.....66039

36 CFR

701.....64279

Proposed Rules:

1.....63488
14.....63488
242.....66216
327.....64192

37 CFR

202.....63657

Proposed Rules:

253.....63502, 65777
255.....63506, 65778

38 CFR

4.....65207
17.....64722
21.....63847, 63848, 66277
36.....63454

Proposed Rules:

21.....66320
20.....64790

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

9.....66278
52.....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613, 66007, 66279
62.....65616
63.....64736, 65022
64.....63662
70.....63662
71.....63662
72.....66278
73.....66278
74.....66278
75.....66278
77.....66278
78.....66278
80.....63853
81.....64284, 64725, 65025
180.....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369, 66008, 66014, 66020
185.....64048, 64284, 64287, 66020
186.....64048, 66020
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738

Proposed Rules:

51.....64532
52.....63687, 64329, 64543, 647389, 65046, 65634, 66040, 66042, 66043, 66046
62.....65635
63.....65049, 66049
80.....63918
81.....63687
112.....63812
194.....64327
441.....66182
721.....64738

41 CFR

105–60.....64740
301.....63798

42 CFR

417.....63669

Proposed Rules:

1001.....63689, 65049

43 CFR

418.....66442
3740.....65376
3810.....65376
3820.....65376

Proposed Rules:

4.....64544

44 CFR

61.....66026

45 CFR

205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301

Proposed Rules:

1302.....65778

46 CFR

114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303, 65739
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64187
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
69.....65619, 66029
73.....63674, 65392, 65764, 65765, 65766, 66030, 66031, 66294, 66295
74.....65392

Proposed Rules:

1.....65780, 66321
21.....65780
32.....65053

73.....63690, 65781, 65782, 66323, 66324
74.....65780

48 CFR

Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19.....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31.....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42.....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52.....64914, 64915, 64916
53.....64914, 64916, 64934, 64936, 64940

Proposed Rules:

204.....65782
1843.....64545
1852.....64545

49 CFR

171.....65188
219.....63464, 63675
225.....63675
240.....63464
1241.....65378

Proposed Rules:

Ch. X.....64193
195.....65635
213.....65401
243.....65479
572.....64546

50 CFR

17.....64306, 66295
20.....63608
222.....63467
622.....63677, 66304
648.....63872, 64765, 66304
660.....63876
679.....63877, 63878, 63880, 64760, 65379, 65622, 65626, 66031, 66311

Proposed Rules:

14.....64335
17.....64337, 64340, 64799, 64800, 65237, 65783, 65787, 66325
23.....64347
100.....66216
227.....66325
229.....65402
425.....66325
600.....65055
622.....65056
648.....65055
660.....66049
679.....63690, 65402, 65635, 65638, 65644

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 18, 1997

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Scallop; published 12-9-97

DEFENSE DEPARTMENT
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase; published 12-18-97

ENVIRONMENTAL PROTECTION AGENCY
Clean Air Act:
Acid rain program—
Continuous emission monitoring; excess emissions, etc., rules streamlining; correction; published 12-18-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Hazard Analysis Critical Control Point (HACCP) principles:
Fish and fishery products, safe processing and importing; procedures; published 12-18-95

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Single Audit Act Amendments of 1996; implementation:
Audits of States, local governments, and non-profit organizations expending Federal awards; published 11-18-97

LABOR DEPARTMENT
Occupational Safety and Health Administration
Safety and health standards, etc.:
Methylene chloride; occupational exposure
Partial stay; published 12-18-97

TRANSPORTATION DEPARTMENT
Coast Guard
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase; published 12-18-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Fairchild; published 11-13-97

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection—
Air bag on-off switches; published 11-21-97

TREASURY DEPARTMENT
Thrift Supervision Office
Federal regulatory reform:
Capital, charter and bylaw, conversion, etc., regulations; technical amendments; published 12-18-97

VETERANS AFFAIRS DEPARTMENT
Vocational rehabilitation and education:
Reservists' education—
Montgomery GI Bill-Selected Reserve; rates payable increase; published 12-18-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 12-22-97; published 10-23-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Karnal bunt disease—
Texas et al.; comments due by 12-24-97; published 11-24-97
Mediterranean fruit fly; comments due by 12-22-97; published 10-21-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 12-26-97; published 11-26-97
Atlantic surf clam and ocean quahog; comments due by 12-24-97; published 11-24-97

DEFENSE DEPARTMENT
Closures and realignment:
Closed, transferred, and transferring military ranges containing munitions; appropriate response actions evaluation process; comments due by 12-26-97; published 9-26-97
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Nonroad diesel engines; emission standards; comments due by 12-22-97; published 11-18-97
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 12-22-97; published 11-20-97
Illinois; comments due by 12-26-97; published 11-26-97
New Jersey; comments due by 12-22-97; published 11-20-97
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Tennessee; comments due by 12-26-97; published 11-25-97
Hazardous waste program authorizations:
Alabama; comments due by 12-22-97; published 11-21-97
Georgia; comments due by 12-24-97; published 11-24-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyromazine; comments due by 12-22-97; published 10-22-97
Pyrithiobac sodium salt; comments due by 12-22-97; published 10-22-97

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Private land mobile services—
Public safety communications in 746-806 MHz band; technical and spectrum requirements development; comments due by 12-22-97; published 11-7-97
Radio stations; table of assignments:
Alaska; comments due by 12-22-97; published 11-19-97
Oregon; comments due by 12-22-97; published 11-19-97
Texas; comments due by 12-22-97; published 11-19-97
Utah; comments due by 12-22-97; published 11-19-97
Television broadcasting:
Cable television systems—
Inside wiring; comments due by 12-23-97; published 11-14-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

FEDERAL RESERVE SYSTEM
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Biological products:
Manufacturing errors and accidents reporting; comments due by 12-22-97; published 9-23-97
Human drugs:
Inhalation solution products; sterility requirements; comments due by 12-22-97; published 9-23-97
New drug applications—
Products for life-threatening diseases; clinical hold; comments due by 12-23-97; published 9-24-97

INTERIOR DEPARTMENT
Indian Affairs Bureau
Fish and wildlife:
Columbia River Indian in-lieu fishing sites; use; comments due by 12-23-97; published 10-28-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Topeka shiner; comments due by 12-23-97; published 10-24-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 12-26-97; published 11-26-97
Maryland; comments due by 12-22-97; published 11-21-97
Montana; comments due by 12-22-97; published 12-5-97

INTERNATIONAL TRADE COMMISSION
Practice and procedure:
Import investigations; antidumping and countervailing duties; comments due by 12-22-97; published 10-23-97

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Permanent residence status; eligibility restrictions; temporary removal; comments due by 12-22-97; published 10-23-97

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright arbitration royalty panel rules of procedure:
Noncommercial educational broadcasting compulsory license; comments due by 12-26-97; published 12-1-97
Copyright office and procedures:
Mechancial and digital phonorecord delivery rate adjustment proceeding; comments due by 12-26-97; published 12-1-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97

POSTAL SERVICE
Domestic mail Manual:
Commercial mail receiving agency; delivery of mail; procedure clarification; comments due by 12-24-97; published 11-24-97

RAILROAD RETIREMENT BOARD
Railroad Retirement Act:
Annuity eligibility; comments due by 12-22-97; published 10-23-97

SMALL BUSINESS ADMINISTRATION
Disaster loan program:
Physical disaster and economic injury loans; increase request requirements; comments due by 12-26-97; published 11-25-97

STATE DEPARTMENT
Nationality and passports:
Passports; denying, revoking, or canceling procedures; comments due by 12-26-97; published 11-25-97

TRANSPORTATION DEPARTMENT
Coast Guard
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW):
Licensing and documentation of personnel serving on U.S. seagoing vessels; comments due by 12-23-97; published 6-26-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft products and parts; certification procedures:
Primary category seaplanes; weight limit increase; comments due by 12-26-97; published 11-25-97
Airmen certification:
Robinson model R-22 or R-44 helicopters; pilots and certified instructors special training and experience requirements; comments due by 12-22-97; published 11-21-97
Airworthiness directives:
Aeromot-Industria Mecanico Metalurgica Ltda.; comments due by 12-26-97; published 11-25-97
Airbus; comments due by 12-26-97; published 11-25-97
Airbus Industrie; comments due by 12-26-97; published 11-26-97
British Aerospace; comments due by 12-26-97; published 11-26-97
Dassault; comments due by 12-26-97; published 11-26-97
New Piper Aircraft, Inc.; comments due by 12-26-97; published 10-21-97
Pratt & Whitney Canada; comments due by 12-23-97; published 10-24-97
Airworthiness standards:
Special conditions—
Cessna model 525 Citation Jet airplane; comments due by 12-22-97; published 11-20-97
EXTRA Flugzeugbau GmbH EA-400 airplane design; comments due by 12-22-97; published 11-20-97
Class E airspace; comments due by 12-22-97; published 11-10-97
Restricted areas; comments due by 12-26-97; published 11-10-97

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Traffic operations:
Traffic control devices; national standards—
Uniform traffic control devices manual; railroad-highway grade crossings; comments due by 12-22-97; published 10-21-97

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Track safety standards:
Miscellaneous amendments
Comment request; comments due by 12-22-97; published 12-12-97

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Hazardous liquid and carbon dioxide—
Pressure testing older pipelines; comments due by 12-22-97; published 10-21-97

TREASURY DEPARTMENT
Comptroller of the Currency
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

TREASURY DEPARTMENT
Fiscal Service
Financial management services:
Administrative wage garnishment; comments due by 12-22-97; published 11-21-97

TREASURY DEPARTMENT
Internal Revenue Service
Procedure and administration:
Tax exempt organizations; public disclosure requirements; guidance availability and hearing; comments due by 12-26-97; published 9-26-97

TREASURY DEPARTMENT
Thrift Supervision Office
Risk-based capital:
Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97
Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

VETERANS AFFAIRS DEPARTMENT
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Continuation of representation following claimant's death; comments due by 12-22-97; published 10-23-97

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before the shown date.

```
AFR  SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before the shown date.

```
AFRDO  SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. (Price includes regular domestic postage and handling, and is subject to change.) International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers
Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

105th Congress, 2nd Session, 1998

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 105th Congress, 2nd Session, 1998.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

S3

Charge your order. It's Easy!

☐ **YES**, enter my subscription(s) as follows:

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 105th Congress, 2nd Session, 1998 for $190 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

_____
(Company or Personal Name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

_____
(Daytime phone including area code)

_____
(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

_____
(Authorizing Signature) 12/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
*** 5419**

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions in 24x microfiche format:

____ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

____ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $_____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, Zip code)

_____
(Daytime phone including area code)

_____
(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

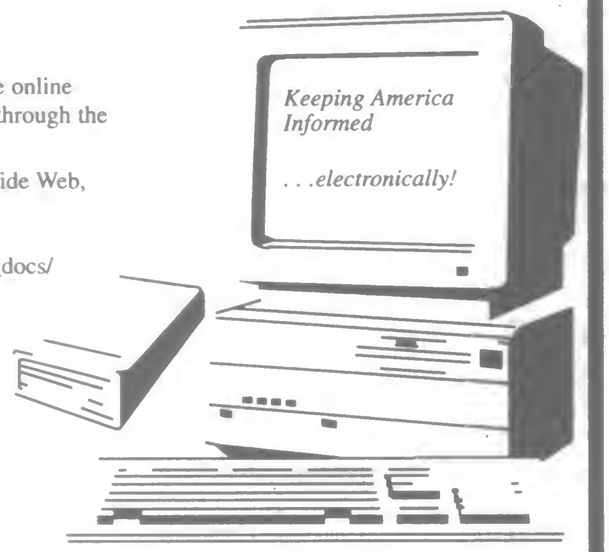
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.access.gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/21)



(Rev. 12/97)

Public Papers of the Presidents of the United States

William J. Clinton

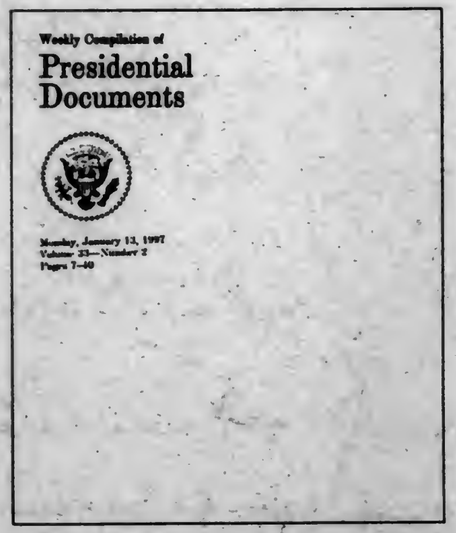
1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5420

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, Zip code)

_____
(Daytime phone including area code)

_____
(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–19–97
Vol. 62 No. 244

federal register

Friday
December 19, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106
133

12–19–97
Vol. 62 No. 244
Pages 66495–66812

federal register

Friday
December 19, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 244
Friday, December 19, 1997

Agricultural Marketing Service
RULES
Pears (winter) grown in Oregon et al., 66495–66497
Potatoes (Irish) grown in—
Colorado, 66497–66498
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66592–66593

Agriculture Department
See Agricultural Marketing Service
See Food and Consumer Service
See Forest Service
See Natural Resources Conservation Service
See Rural Utilities Service

Air Force Department
NOTICES
Environmental statements; notice of intent:
Dyess AFB, TX and Barksdale AFB, LA; realistic bomber training initiative, 66605

Army Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Fort McClellan, AL, 66605–66606
Privacy Act:
Systems of records, 66606–66608

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66598

Commerce Department
See Census Bureau
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
RULES
Javits-Wagner-O'Day program; miscellaneous amendments, 66527–66529
NOTICES
Procurement list; additions and deletions, 66596–66598
Procurement list; additions and deletions; correction, 66598

Commodity Futures Trading Commission
PROPOSED RULES
Commodity option transactions:
Futures-style margining of options traded on regulated futures exchanges, 66569–66575

Comptroller of the Currency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66718–66719

Copyright Office, Library of Congress
NOTICES
Uruguay Round Agreements Act (URAA):
Copyright restoration of certain Berne Convention and World Trade Organization works—
List, 66766–66811

Customs Service
RULES
Vessels in foreign and domestic trades:
Nations entitled to special tonnage tax exemptions; list additions—
Hong Kong, 66521–66522
NOTICES
Automation program test:
Electronic cargo declarations, 66719–66720
Customhouse broker license cancellation, suspension, etc.:
Caliber Customs Brokers & Freight Forwarders, Inc., et al., 66720
Martinez, Sam, 66720

Defense Department
See Air Force Department
See Army Department
RULES
Closures and realignment:
Revitalizing base closure communities and community assistance—
Lease back of property transferred to local redevelopment authorities, 66523–66527
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66604
Meetings:
Strategic Environmental Research and Development Program Scientific Advisory Board, 66604–66605

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Ansys Diagnostics, Inc., 66667
Applied Science Labs, 66666
Cambridge Isotope Lab, 66666
Damocles10, 66666
Dupont Pharmaceutical Co., 66667
High Standard Products, 66667

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66608–66609

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 66668–66669

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Kern County, CA; Naval Petroleum Reserve No. 1 sale, 66609–66616
Grants and cooperative agreements; availability, etc.:
Aluminum partnerships program, 66616
High-energy-density and laser-matter interaction studies program, 66616–66617
Senior Executive Service:
Performance Review Board; membership, 66617–66619

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Texas, 66576–66578
Air quality planning purposes; designation of areas:
California, 66578–66583
NOTICES
Committees; establishment, renewal, termination, etc.:
Pesticide Program Dialogue Committee, 66623
Environmental statements; availability, etc.:
Agency statements—
Weekly receipts, 66623–66624
Grants and cooperative agreements; availability, etc.:
Investigator-initiated grants, 66624
Pesticide programs:
Federal Insecticide, Fungicide, and Rodenticide Act—
Agricultural Research Service and Washington State University; genetically engineered microbial pesticide; small-scale field testing, 66624–66625
Pesticide registration, cancellation, etc.:
Novartis Seeds, Inc., 66625–66626
Superfund; response and remedial actions, proposed settlements, etc.:
Lindsley Lumber Site, FL, 66626
Toxic and hazardous substances control:
Testing requirements—
1,1,2-Trichloroethane, 66628–66631
Ethylene dichloride, 66626–66628

Export Administration Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66598–66601

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 66500–66502
Cessna, 66508–66511
Empresa Brasileira de Aeronautica, S.A., 66512–66521
Eurocopter France, 66506–66508
Raytheon, 66498–66500, 66511–66512
Teledyne Continental Motors, 66502–66506
PROPOSED RULES
Airworthiness directives:
Alexander Schleicher Segelflugzeugbau, 66560–66561, 66563–66565, 66567–66569
AlliedSignal Aerospace Bendix/King, 66565–66567
Pilatus Aircraft Ltd., 66561–66563

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arizona et al., 66530
New York, 66530

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 66621–66622
Meetings; Sunshine Act, 66622–66623
Applications, hearings, determinations, etc.:
Chicago Energy Exchange of Chicago, Inc., 66619
Clean Air Capital Markets Corp., 66619
Current Energy, Inc., 66619–66620
Eastern Energy Marketing, Inc., 66620
Electric Lite, Inc., 66620
Koch Gateway Pipeline Co., 66620–66621
Sithe Power Marketing, Inc., 66621

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Orange County, NY, 66713–66714

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Prem International, Inc., et al., 66631

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Northeast Illinois Railroad Corp., 66714

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 66631

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Mobile River Basin, AL; cylindrical lioplax, etc. (six equatic snails), 66583–66584
NOTICES
Endangered and threatened species permit applications, 66660
Monomoy National Wildlife Refuge, MA; management plan, 66660–66661

Food and Consumer Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66593–66594

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Decoquinate and bacitracin zinc, 66522–66523

Human drugs:
Current good manufacturing practice—
Positron emission tomography radiopharmaceutical products; revocation, 66522
NOTICES
Advisory committee information line, procedures for accessing, 66631–66632
Agency information collection activities:
Proposed collection; comment request, 66632–66633
Submission for OMB review; comment request, 66633–66635
Meetings:
Medical Devices Advisory Committee, 66635
Reporting and recordkeeping requirements, 66635
Reports and guidance documents; availability, etc.:
Positron emission tomography drug products; guidance Revocation, 66636

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Michigan
Diesel Technology Company Inc.; diesel engine fuel injection components manufacturing facilities, 66601
South Carolina
Zeuna-Starker USA, Inc.; automotive exhaust systems, 66601
Wisconsin
Polaris Industries, Inc.; small spark-ignition engine manufacturing plant, 66601–66602

Forest Service
NOTICES
Environmental statements; notice of intent:
Flathead National Forest, MT, 66594–66595

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration

Health Care Financing Administration
PROPOSED RULES
Medicare and medicaid:
Hospital participation conditions; provider agreements and supplier approval, 66726–66763

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66636–66638
Grant and cooperative agreement awards:
Community outreach partnership centers demonstration program, 66638–66639
Hispanic-serving institutions work study program, 66639–66640
Housing assistance payments (Section 8)—
Rental voucher and rental certificate, family unification, and family self-sufficiency programs, 66640–66659
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 66660

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
PROPOSED RULES
Income taxes:
Investment income; passive activity income and loss rules for publicly traded partnerships, 66575–66576
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66720–66723

International Trade Administration
NOTICES
Antidumping:
Cut-to-length carbon steel plate from—
Finland, 66602
Pasta from—
Italy, 66602–66603
Applications, hearings, determinations, etc.:
Purdue University, 66603

International Trade Commission
NOTICES
Import investigations:
Automotive scissors jacks, 66665–66666

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment Standards Administration
See Pension and Welfare Benefits Administration
NOTICES
Meetings:
North American Agreement on Labor Cooperation National Advisory Committee, 66667–66668

Land Management Bureau
NOTICES
Meetings:
Resource advisory councils—
Southeast Oregon, 66661
Public land orders:
Colorado, 66661
Realty actions; sales, leases, etc.:
California, 66661–66662
Oregon, 66662–66663
Survey plat filings:
New Mexico, 66663
Withdrawal and reservation of lands:
Colorado, 66663–66664

Libraries and Information Science, National Commission
See National Commission on Libraries and Information Science

Library of Congress
See Copyright Office, Library of Congress

National Commission on Libraries and Information Science
NOTICES
Meetings; Sunshine Act, 66692

National Foundation on the Arts and the Humanities
RULES
Organization, functions, and authority delegations:
Institute of Museum Services; name change to Institute of Museum and Library Services, 66529–66530

NOTICES
Meetings:
Humanities Panel, 66692–66693

National Labor Relations Board
NOTICES
Privacy Act:
Systems of records, 66693–66696
Senior Executive Service:
Performance Review Boards; membership, 66696

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Magnuson Act provisions—
Essential fish habitat, 66531–66559
PROPOSED RULES
Endangered and threatened species:
Atlantic green and hawksbill turtles—
Critical habitat designation, 66584–66591
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 66603–66604
Western Pacific Fishery Management Council, 66604

National Park Service
NOTICES
Concession contract negotiations:
Glacier Bay National Park, AK; cruise ship services, 66664

Natural Resources Conservation Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66595

Nuclear Regulatory Commission
NOTICES
Reporting and recordkeeping requirements, 66702
Sealed source and device evaluation and approval authority relinquishment by New Mexico and reassumption by NRC, 66702
Applications, hearings, determinations, etc.:
Cabot Performance Materials, 66696–66697
Commonwealth Edison Co., 66697–66702

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Equitable Life Assurance Society of the United States et al., 66669–66685
Fortunoff Fine Jewelry & Silverware, Inc., et al., 66685–66689
State Street Bank & Trust Co. et al., 66689–66692

Public Health Service
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Privacy Act:
Systems of records, 66702–66703

Rural Utilities Service
NOTICES
Electric loans:
Quarterly municipal interest rates, 66595–66596

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co. et al., 66703–66706
National Association of Securities Dealers, Inc., 66706–66709
Philadelphia Stock Exchange, Inc., 66709–66711

Small Business Administration
NOTICES
Disaster loan areas:
Northern Mariana Islands, 66711
Virginia et al., 66711–66712
Applications, hearings, determinations, etc.:
Pioneer Ventures L.P., 66711

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66712–66713

State Department
NOTICES
Countries providing sanctuary to indicted war criminals; determinations:
Serbia et al., 66713

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66664–66665

Surface Transportation Board
NOTICES
Motor carriers:
Finance applications—
Greyhound Lines, Inc., 66715
Rail carriers:
Cost recovery procedures—
Adjustment factor, 66715–66716
Railroad services abandonment:
CSX Transportation, Inc., 66716

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66716–66718

Separate Parts in This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 66726–66763

Part III
Library of Congress, 66766–66811

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
927.....66495
948.....66497

14 CFR
39 (7 documents).....66498, 66500, 66502, 66506, 66508, 66511, 66512

Proposed Rules:
39 (5 documents).....66560, 66561, 66562, 66563, 66565, 66567

17 CFR
Proposed Rules:
1.....66569
33.....66569

19 CFR
4.....66521

21 CFR
211.....66522
558.....66522

26 CFR
Proposed Rules:
1.....66575

32 CFR
175.....66523

40 CFR
Proposed Rules:
52.....66576
81.....66578

41 CFR
51-2.....66527
51-4.....66527
51-6.....66527

42 CFR
Proposed Rules:
416.....66726
482.....66726
485.....66726
489.....66726

45 CFR
Ch. XI.....66529

47 CFR
73 (2 documents).....66530

50 CFR
600.....66531
Proposed Rules:
17.....66583
226.....66584

Rules and Regulations

Federal Register
Vol. 62, No. 244
Friday, December 19, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV97–927–1 FIR]

Winter Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate established for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1997–98, and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of winter pears grown in Oregon and Washington. Authorization to assess winter pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period began July 1 and ends June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated. The marketing order was amended recently and California was removed from the production area.

EFFECTIVE DATE: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440, or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 927, both as amended (7 CFR part 927; 62 FR 60999, November 14, 1997), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." Effective November 17, 1997, the marketing agreement and order were amended by removing the State of California from the production area. The production area now covers the States of Oregon and Washington.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, winter pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable winter pears beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect an assessment rate established for the Committee for the 1997–98, and subsequent fiscal periods of $0.44 per standard box of winter pears.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of winter pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 30, 1997, and unanimously recommended 1997–98 expenditures of $8,066,790 and an assessment rate of $0.44 per standard box of winter pears. In comparison, last year's budgeted expenditures were $5,502,979. The assessment rate of $0.44 is $0.035 more than the rate previously in effect. The Committee discussed alternatives to this rule, including alternative expenditure levels, but decided that an assessment rate of less than $0.44 would not generate the income necessary to administer the program with an adequate reserve. An assessment rate of more than $0.44 would have resulted in a reserve that exceeded the level the Committee believes is necessary to administer the program.

The assessment rate recommended by the Committee was derived by dividing

anticipated expenses by expected shipments of winter pears. Applying the $0.44 per standard box rate of assessment to the Committee's 17,310,000 standard box shipment estimate should provide $7,616,400 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (approximately $268,000) will be kept within the maximum permitted by the order (one fiscal period's expenses; § 927.42).

Major expenditures recommended by the Committee for the 1997–98 include *$7,010,550 for paid advertising,* $346,200 for improvement of winter pears (production research), $161,549 for salaries, and $75,000 for industry development. Budgeted expenses for these items in 1996–97 were $4,674,675, $249,316, $154,387, and $75,000, respectively.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget was approved by the Department on August 25, 1997, and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

A final rule amending the order was published in the **Federal Register** on November 14, 1997 (62 FR 60999). One of the amendments removed California from the production area effective November 17, 1997. The removal of California from the order is expected to have minimal effect on the Committee's anticipated revenue from assessments, and on expenses. Shipments of winter pears from California averaged 548,691 standard boxes or approximately four percent of the total winter pear shipments during the prior five year period. Assessments on shipments of winter pears from Oregon and Washington, along with interest income and funds from the Committee's authorized reserve, will be adequate to meet Committee expenses.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Since the interim final rule was issued, the Department has received new figures on the number of producers and handlers in the production area. There are now approximately 1,700 producers of winter pears in the production area and approximately 93 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of winter pear producers and handlers may be classified as small entities.

This rule continues in effect an increased assessment rate established for the Committee and collected from handlers for the 1997–98, and subsequent fiscal periods. The Committee unanimously recommended 1997–98 expenditures of $8,066,790, and an assessment rate of $0.44 per standard box of winter pears. The assessment rate of $0.44 is $0.035 more than the rate previously in effect. Winter pear shipments for the year are estimated at 17,310,000 standard boxes, which should provide $7,616,400 in assessment income. Income derived from handler assessments on shipments of winter pears from Oregon and Washington, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (approximately $268,000) will be kept within the maximum permitted by the order (one fiscal period's expenses; § 927.42).

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve. An assessment rate of more than $0.44 would have resulted in a reserve that exceeded the level the Committee believes is necessary to administer the program.

Major expenditures recommended by the Committee for the 1997–98 include $7,010,550 for paid advertising, $346,200 for improvement of winter pears (production research), $161,549 for salaries, and $75,000 for industry development. Budgeted expenses for these items in 1996–97 were $4,674,675, $249,316, $154,387, and $75,000, respectively. The increase in paid advertising is needed to help the industry market this season's crop, which is significantly larger than last year's crop. A lower level of funding for paid advertising was ruled out by the Committee because it felt that a more aggressive advertising program was needed this season to market the large crop. The increased level for production research provides funds for current and anticipated research in 1997–98. The increase in salaries provides funds for staff salary adjustments.

Recent price information indicates that the grower price for the 1997–98 season will range between $4.82 and $11.81 per standard box of winter pears. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between 4 and 9 percent.

This action will increase the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 30, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The interim final rule concerning this action was published in the **Federal Register** (62 FR 44202) on August 20, 1997, and requested comments to be received by September 21, 1997. A copy of the interim final rule was also made available on the Internet by the U.S. Government Printing Office. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 927 which was published at 62 FR 44202 on August 20, 1997, is adopted as a final rule without change.

Dated: December 15, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33168 Filed 12–18–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV97–948–1 FIR]

Irish Potatoes Grown in Colorado; Change in Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which changed the size requirement from a 2 inch minimum diameter or 4 ounce minimum weight to a 1⅞ inch minimum diameter for Centennial Russet variety potatoes grown in Area No. 2 of Colorado. The size requirement for Centennial Russets had been larger than the requirement for similar long varieties. The change recognized the similarity among all long varieties and provided potato handlers with more marketing flexibility, growers with increased returns, and consumers with a greater supply of potatoes.

EFFECTIVE DATE: January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440, or Anne M. Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The interim rule relaxed the size requirement for Centennial Russet variety potatoes grown in Area No. 2 from the current 2 inch minimum diameter or 4-ounce minimum weight to a 1⅞ inch minimum diameter with no minimum weight option. This change enabled handlers to market a larger portion of the crop in fresh market outlets and improved the marketing of Colorado potatoes. Further, all Russet varieties are now required to meet the same size specifications.

Section 948.22 (7 CFR 948.22) authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period.

Section 948.4 of the order defines the counties included in Area No. 2, which is commonly known as the San Luis Valley. The Colorado Potato Administrative Committee, San Luis Valley Office (Area No. 2) (Committee), is the agency responsible for local administration of the Federal marketing order in Area No. 2.

Size regulations for potatoes grown in Area No. 2 are currently in effect under § 948.386. Centennial Russet variety potatoes had to be 2 inches minimum diameter or 4 ounces minimum weight. Other long varieties, which include other Russet varieties, had to be 1⅞ inch minimum diameter with no minimum weight option. The interim final rule amended that section by removing the weight requirement option for Centennial Russets and reducing the minimum diameter requirement for Centennial Russets to 1⅞ inches. Thus, all Russet varieties are now required to meet the same minimum diameter. The Committee unanimously recommended this change at its August 21, 1997, meeting.

When the previous size regulations were established, the Centennial Russet was the dominant variety in the San Luis Valley (Area No. 2), accounting for approximately 65–75 percent of the crop. The other major Russet variety grown in the San Luis Valley was the Russet Burbank, a slimmer potato which was required to meet the 1⅞ inch minimum diameter. Today, the Russet

Burbank has been phased out completely and the Centennial Russet accounts for less than 10 percent of the crop. The Burbank and the Centennial have been replaced by other varieties, including new Russet varieties which have the same bulky features as the Centennial.

The new varieties, however, were required only to meet the 1⅞ inch minimum diameter, not the 2 inch minimum diameter or 4 ounce minimum weight requirements that Centennial Russets were required to meet. The industry was concerned that Centennial Russets could be misrepresented as one of the new Russet varieties, so as to comply only with the smaller size requirement. The interim final rule, by establishing the same size requirements for all Russet varieties, eliminated that possibility.

Reducing the size requirement allowed handlers to market a larger portion of the Centennial Russet crop in fresh outlets. That change improved the marketing of Colorado potatoes and increased returns to producers.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

There are approximately 118 handlers of Colorado Area 2 potatoes who are subject to regulation under the marketing order and approximately 280 producers of Colorado potatoes in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

Section 948.22 of the order authorizes the issuance of handling regulations for potatoes grown in Colorado. The interim final rule relaxed the size requirement for Centennial Russet variety potatoes grown in Area No. 2 from a 2 inch minimum diameter or 4-ounce minimum weight to a 1⅞ minimum diameter with no weight option. This change enabled handlers to market a larger portion of the crop in fresh market outlets and improved the marketing of Colorado potatoes. There is no available information detailing how many potatoes this relaxation allowed to be marketed which could not have been marketed prior to this action.

The rule also eliminated a potential compliance problem, as all Russet varieties are now required to meet the same size specifications. Other Russet varieties were required only to meet the smaller size regulation of 1⅞ inch diameter. Because some of the new Russet varieties with characteristics very similar to Centennials faced the smaller size requirement and have surpassed Centennials in popularity, there was a possibility that Centennials could have been misrepresented as one of the new Russet varieties.

The only viable alternative to reducing the size requirement for Centennials was to increase the size requirement for all other long potatoes, including all other Russets. The Committee surveyed 270 growers from Area No. 2 concerning the grade and size regulation. Both options for equalizing the size regulations for all long potatoes were included in the survey. The participating growers rejected increasing the size requirements for all other long potatoes, which would have reduced the number of Colorado potatoes on the market, in favor of the size requirement reduction established by the interim final rule.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 21, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which 5 are handlers and 7 are producers, the majority of whom are small entities.

Also, the Committee surveyed 270 producers in Area No. 2, the majority of whom are small entities, concerning regulation during the 1997–98 potato shipping season. This rule reflects the outcome of that survey of predominantly small growers.

An interim final rule concerning this action was published in the **Federal Register** on September 26, 1997 (62 FR 50479). Copies of the rule were mailed or sent via facsimile to all Committee members and Area 2 potato producers and handlers. Finally, the rule was made available through the Internet by the Office of the **Federal Register**. A 60-day comment period was provided. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule amending 7 CFR part 948 which was published at 62 FR 50479 on September 26, 1997, is adopted as a final rule without change.

Dated: December 15, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33167 Filed 12–18–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–13–AD; Amendment 39–10258; AD 97–26–15]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes (formerly referred to as Beech Models 1900, 1900C, and 1900D airplanes). This AD requires lubricating the main landing gear actuator rod ends and eventually replacing these rod ends with Teflon-lined rod ends. The AD results from reports of in-flight separations of the rod end that attaches the actuator to the arm of the main landing gear drag brace assembly on two of the affected airplanes caused by excessive friction in the rod end bearing. The actions specified by this AD are intended to prevent actuator rod end failure caused by excessive friction in the rod end bearing, which could result in the inability to lower the main landing gear or result in landing gear collapse during landing.

DATES: Effective January 25, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 25, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Models 1900, 1900C, and 1900D airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 23, 1997 (62 FR 39492). The NPRM proposed to require lubricating the actuator rod ends of the P/N 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuators in accordance with Raytheon Safety Communique 1900–128, dated October 25, 1996. The proposed AD would also require eventually replacing the rod ends of the P/N 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuators with Teflon-lined rod ends, P/N M81935/1–8K (or FAA-approved equivalent part number). Accomplishment of this proposed replacement would be in accordance with Raytheon Mandatory Service Bulletin No. 2730, Issued: November, 1996.

Raytheon Models 1900, 1900C, and 1900D airplanes could have main landing gear actuators installed that have Parts Manufacturer Approval (PMA). For those airplanes having PMA parts that are equivalent (PMA by equivalency) to those referenced in the proposed AD, the phrase "or FAA-approved equivalent part number" means that the proposed actions, if followed by a final rule, would also apply to airplanes with PMA by equivalency actuators installed.

The NPRM resulted from reports of in-flight separations of the rod end that attaches the actuator to the arm of the main landing gear drag brace assembly on two of the affected airplanes caused by excessive friction in the rod end bearing.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received from one commenter. No comments have been received regarding the FAA's estimate of the cost impact upon the public.

Comment No. 1: Language Change in the AD

The commenter requests that the FAA add the following language to paragraph (b) of the proposed AD:

Installation of P/N M81935/1–8K (or FAA-approved equivalent part) rod end constitutes terminating action to the lubricating requirements of provision (a) of this AD.

The commenter feels that adding this language to paragraph (b) of this AD will eliminate the need for the language in paragraph (a)(1) and (a)(2) of this AD.

The FAA partially agrees. The FAA believes that language similar to that proposed by the commenter could replace paragraph (a)(1) of the proposed AD, which currently reads:

This lubrication is not needed on airplanes that have P/N M81935/1–8K (or FAA-approved equivalent part number) main landing gear actuator rod ends installed, as required by paragraph (b) of this AD.

However, paragraph (a)(2) states that the operator may accomplish the installation at any time prior to 600 hours time-in-service (TIS). The FAA feels that this paragraph is necessary as it provides information and clarification necessary for persons who might want to accomplish the installation at a regular maintenance interval, and would prefer to accomplish the installation and not accomplish the lubrication requirements of the AD. The FAA will replace the language of paragraph (a)(1) with language similar to that requested by the commenter. Paragraph (a)(1) of the final rule has been changed accordingly.

Comment No. 2: Wrong reference to Raytheon Safety Communiqué 1900–128

The commenter states that Raytheon Safety Communiqué 1900–128 was incorrectly referenced in the proposed AD as Raytheon Safety Communiqué 1900–28. The commenter requests that the proposed AD be changed to reflect the correct reference to this service information.

The FAA concurs and will change the final rule accordingly.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the changes described above and minor editorial corrections. The FAA has determined that these changes and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 507 airplanes in the U.S. registry would be affected by this AD, that it would take approximately 4 workhours per airplane (2 workhours per actuator with 2 actuators per airplane) to accomplish the required installation, and that the average labor rate is approximately $60 an hour. Parts cost approximately $233 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $239,811, or $473 per airplane. These figures are based on the presumption that no owner/operator of the affected airplanes has incorporated the required installation.

Raytheon has informed the FAA that approximately 609 actuator rod ends have been shipped from the Raytheon Aircraft Authorized Service Center. This is enough to equip approximately 300 of the affected airplanes (two main landing gear actuators per airplane). Presuming that these actuator rod ends were incorporated on the affected airplanes (two per airplane), this would reduce the cost impact of this AD by $141,900 from $239,811 to $97,911.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–26–15 Raytheon Aircraft Company: Amendment 39–10258; Docket No. 97–CE–13–AD.

Applicability: The following model and serial number airplanes, certificated in any category, that are equipped with at least one part number (P/N) 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuator:

Model	Serial numbers
1900	UA–2 and UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900C (C–12J).	UD–1 through UD–6.
1900D	UE–1 through UE–249 and UE–252.

Note 1: The airplanes affected by this AD could have main landing gear actuators installed that have Parts Manufacturer Approval (PMA). For those airplanes having PMA parts that are equivalent (PMA by equivalency) to those referenced in this AD, the phrase "or FAA-approved equivalent part number" means that this AD applies to airplanes with PMA by equivalency main landing gear actuators installed.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the installation, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent actuator rod end failure caused by excessive friction in the rod end bearing, which could result in the inability to lower the main landing gear or result in landing gear collapse during landing, accomplish the following:

(a) Upon accumulating 1,200 hours time-in-service (TIS) on each P/N 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuator or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, lubricate the actuator rod ends in accordance with Raytheon Safety Communiqué 1900–128, dated October 25, 1996.

(1) Installation of P/N M81935/1–8K (or FAA-approved equivalent part number) main landing gear actuator rod ends constitutes terminating action to the lubricating requirements of paragraph (a) of this AD.

(2) Installing the P/N M81935/1–8K (or FAA-approved equivalent part number) main landing gear actuator rod ends may be accomplished at any time prior to the next 600 hours TIS, at which time they must be installed (see paragraph (b) of this AD).

(b) Within the next 600 hours TIS after the effective date of this AD, install Teflon-lined main landing gear actuator rod ends, P/N M81935/1–8K (or FAA-approved equivalent part number), in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin No. 2730, Issued: November, 1996.

(c) As of the effective date of this AD, no person may install a P/N 114–380041–11 (or FAA-approved equivalent part number) main landing gear actuator without replacing the rod ends with P/N M81935/1–8K (or FAA-approved equivalent part number). Installing these Teflon-lined rod ends re-identifies the main landing gear actuator as P/N 114–380041–13.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) The lubrication required by this AD shall be done in accordance with Raytheon Safety Communiqué 1900–128, dated October 25, 1996. The installation required by this AD shall be done in accordance with Raytheon Mandatory Service Bulletin No. 2730, Issued: November, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–10258) becomes effective on January 25, 1998.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32994 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–140–AD; Amendment 39–10254; AD 97–26–11]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes, that requires an inspection to detect corrosion of the rear spars of the wings, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct possible corrosion on the rear spars of the wings, which could result in reduced structural integrity of the wings.

DATES: Effective January 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, –320 series airplanes was published in the Federal Register on October 01, 1997 (62 FR 51388). That action proposed to require an inspection to detect corrosion of the rear spars of the wings, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request to Withdraw the Proposal

The Direction Générale de l'Aviation Civile (DGAC) has no technical objection to the proposal, but requests that the FAA withdraw it because French airworthiness directive 95–127–062(B) was issued against a target set of airplanes, and was intended to evaluate and quantify the problems with corrosion in the area of the wing spars. The results of the inspection enabled the manufacturer to define long term actions and revise the airplane maintenance program (known as the Maintenance Review Board or MRB), to include the necessary inspections and corrective actions. The commenter further states that the revised MRB has been implemented by U.S. operators, and that an AD mandating these same actions is not required.

The FAA does not concur with the commenter's request to withdraw the proposal. The MRB document referenced by the commenter is not mandatory for U.S. operators. Therefore, the issuance of this AD is the only means available to the FAA to require changes in the maintenance of the airplane which are related to an unsafe condition. The "Compliance" provision of this AD states that compliance is required as indicated, "unless accomplished previously." Therefore, if an operator has adopted and complied with MRB provisions that describe the inspection required by this AD, it may take credit for prior accomplishment of those actions.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 16 Model ATR42–200, –300, and –320 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $23,040, or $1,440 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–26–11 Aerospatiale: Amendment 39–10254. Docket 95–NM–140–AD.

Applicability: Model ATR42–200, -300, and -320 series airplanes, as listed in Aerospatiale Service Bulletin ATR42–57–0044, dated May 30, 1995, or Revision 1, dated June 28, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion on the rear spars of the wings, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time detailed visual inspection to detect corrosion of the rear spars of the wings, in accordance with Aerospatiale Service Bulletin ATR42–57–0044, dated May 30, 1995, or Revision 1, dated June 28, 1995.

(1) If no corrosion is detected, prior to further flight, apply a protective compound to the areas specified in the service bulletin, in accordance with the service bulletin.

(2) If any corrosion is detected, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Aerospatiale Service Bulletin ATR42–57–0044, dated May 30, 1995; or Aerospatiale Service Bulletin ATR42–57–0044, Revision 1, dated June 28, 1995; which contain the specified effective pages.

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
ATR42–57–0044, May 30, 1995	1–17	Original	May 30, 1995.
ATR42–57–0044, Revision 1, June 28, 1995	1, 4, 6–8, 15–16	1	June 28, 1995.
	2, 3, 5, 9–14, 17	Original	May 30, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 95–127–063(B), dated August 2, 1995.

(e) This amendment becomes effective on January 23, 1998.

Issued in Renton, Washington, on December 11, 1997.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32999 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–06; Amendment 39–10260; AD 97–26–17]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors IO–360, TSIO–360, LTSIO–360, IO–520, LIO–520, TSIO–520, LTSIO–520 Series, and Rolls-Royce plc IO–360 and TSIO–360 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Teledyne Continental Motors (TCM) IO–520 and TSIO–520 series reciprocating engines, that currently requires ultrasonic inspection for subsurface fatigue cracks in crankshafts installed in TCM IO–520 and TSIO–520 series engines and replacement of the crankshaft if a crack is found. This amendment adds a requirement to remove crankshafts manufactured using the airmelt process and replace them with crankshafts manufactured using the vacuum arc remelt (VAR) process, incorporates new ultrasonic inspection criteria in the AD, adds engine series TCM IO–360, TSIO–360, LTSIO–360, IO–520, LIO–520, TSIO–520, LTSIO–520 and Rolls-Royce, plc IO–360 and TSIO–360 to the applicability, and revises the economic impact analysis. This amendment is prompted by reports of crankshaft failures due to subsurface fatigue cracking on engines that had been inspected in accordance with the current AD. The actions specified by this AD are intended to prevent crankshaft failure and subsequent engine failure.

DATES: Effective January 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Ave., Suite 2–160, College Park, GA 30337–2748; telephone (404) 305–7371, fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Teledyne Continental Motors (TCM) IO–360, TSIO–360, LTSIO–360, IO–520 and TSIO–520 series reciprocating engines was published as a supplemental notice of proposed rulemaking (SNPRM) in the **Federal Register** on August 24, 1995 (60 FR 43995). That proposal would have superseded AD 87–23–08, Amendment 39–5735 (52 FR 41937, October 30, 1987), which currently requires ultrasonic inspection of TCM IO–520 and TSIO–520 series engines for subsurface fatigue cracks in the crankshaft and replacement of the crankshaft, if a crack is found. The proposed AD would have retained the ultrasonic inspection, but would have required the removal of crankshafts manufactured using the airmelt process and required replacement with crankshafts that were manufactured using the vacuum arc remelt (VAR) process. The proposed AD would have also expanded the affected population of engines to add the TCM IO–360, TSIO–360 and LTSIO–360 series engines to the IO–520 and TSIO–520 series engines affected by AD 87–23–08. That proposal was prompted by reports of crankshaft failures due to subsurface fatigue cracking on engines that had been inspected in accordance with AD 87–23–08. That condition, if not corrected, could result in crankshaft failure and subsequent engine failure.

Since the issuance of that SNPRM, TCM has revised and improved the ultrasonic test procedure and the Federal Aviation Administration (FAA) determined that the proposed AD should reference this new procedure. In addition, the FAA has also determined that TCM LIO–520 and LTSIO–520 and Rolls-Royce, plc IO–360 and TSIO–360 series engines are affected and should be included in this proposal as they are identical in design and manufacturing process. The number of Rolls-Royce, plc engines that were added was small, estimated to be 500 worldwide. The added TCM engines were affected only by the repetitive ultrasonic inspection requirements, as they already have VAR crankshafts.

Since those changes expanded the scope of the originally proposed rule, the FAA determined that it was necessary to reopen the comment period to provide additional opportunity for public comment. On March 12, 1997, the FAA issued a second SNPRM (62 FR 15133, March 31, 1997).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received from these three notices: 41 to the original NPRM, 26 to the SNPRM, and 4 to the second SNPRM.

One group of commenters state that the AD should be withdrawn, since the listed price of the replacement part is not believed to be accurate nor will it be available for a sustained period of time. The FAA concurs in part. Since the original issuance of the NPRM, the cost of the exchange crankshaft has increased from $2,222 to $2,599 and the cost analysis has been corrected to reflect this new price. This price assumes the customer exchanges an airmelt crankshaft for a VAR crankshaft. However, some commenters have stated that the price of the crankshaft is $7,000 or higher, but this is based on the outright purchase price without an exchange crankshaft (actual TCM List Outright prices currently range from $7,407 to $8,979). The cost analysis is based on the exchange price because the applicability of this action is limited to registered owners of the specified TCM engine models, and it is assumed these owners have crankshafts installed in their engines.

One group of commenters state that the AD should be withdrawn, since the data used for the NPRM is invalid and the handling of the data is not statistically correct. The FAA does not concur. The data used to justify the AD is valid; as stated previously, it is derived from crankshaft failures where the failure mode was determined by engineering evaluation of numerous failure events, which included reviews of engine operating histories, analytical engine teardowns, and laboratory analyses of the failed crankshafts. The FAA participated in many of these investigative activities.

One commenter (ARSA) presented data from repair stations which they insist is the only valid data. Their data is derived from ultrasonic inspection of airmelt and VAR crankshafts and shows 29 airmelt removals out of 3,821 crankshafts inspected and 3 VAR removals out of 488 crankshafts inspected. They then conclude that statistically there is no difference in the two types of crankshafts. Their statistical comparison of the number they found to the number they inspected is invalid. The comparison must be mada to the total population.

A better comparison is to combine their inspection data with the FAA/TCM failure data. This is still not completely accurate but it includes all the data currently available. When this is done, there are 77 airmelt "events" out of an initial population of 23,000 and 7 VAR "events" out of an initial population of 35,800; this comparison showed an airmelt to VAR "event" rate of 17 to 1. An "event" is either crankshaft removal per ARSA data or crankshaft failure per FAA/TCM data. When the one set of ARSA data is combined with the latest FAA/TCM data (the latest data includes failures for 1993 through 1996), there are 89 airmelt "events". There were no VAR subsurface fatigue failures for 1993 through 1996. The population of the engines has changed since this process was initiated and continues to change, literally each day, which makes failure rate comparisons extremely difficult, if not impossible, to accurately calculate; the airmelt population is now estimated at 10,100. The FAA has determined that the failure rate is high enough to warrant an AD.

One group of commenters state that the AD should be withdrawn, since they operate 10–12 of these engines with no failures to date. The commenters' justification is that in complying with the AD there is no increase in aviation safety but expenses and operating costs will increase. The FAA does not concur. These five comments were all identical but with different signatures. No technical justification was given for not publishing the AD. The FAA is aware of the costs this AD will impose on operators, but has determined that an unsafe condition exists which must be addressed by performing the actions required by this AD. These actions are necessary to return the affected engines to the level of safety established at the time the engine design was type certified by the FAA.

One group of commenters state that the AD should be withdrawn, since unreported propeller strikes have contaminated the data and cannot be eliminated; therefore, the data is invalid. The FAA does not concur. The history of the engines for each data point was evaluated to eliminate any data from propeller strikes and improper operation; however, there is the remote possibility that some of the failures were due to a propeller strike or improper operation. There is no way to be 100% sure that all failures due to propeller strikes and improper operation were eliminated from the data. The data, however, is reliable enough that the FAA feels that the AD is warranted.

One group of commenters state that the AD should be withdrawn, since the FAA did not use the service difficulty reports (SDR) database to validate the findings of the AD; therefore, the data is not valid. The FAA does not concur. As stated in the SNPRM, the SDR database does not identify cracks as being subsurface fatigue cracks or originating from some other source, nor does it easily identify airmelt versus VAR. This information may not have been available at the time the "M" or "D" report was submitted. The FAA requires the submission of "M" or "D" reports in certain cases and certainly encourages submittal of all pertinent findings. The SDR database may be used to determine if a particular part/engine is experiencing a problem; however, it may not be possible to determine the exact nature of the problem. Using data sources other than the SDR database does not invalidate the FAA's determination that an AD is warranted.

One commenter states that the AD should be made applicable to engines installed on single-engine aircraft only, since with twin-engine aircraft the second engine is available. The FAA does not concur. Although the second engine is available, the accident/incident data shows that a high percentage of engine out incidents involving twin-engine aircraft result in off airport landings/crashes. For this reason, engines installed on twins should remain in the AD.

One commenter states that TCM should identify VAR crankshafts on the propeller flange instead of on the cheek, as this would allow the identification of VAR crankshafts without separating the case halves. The FAA does not concur.

If the crankshaft has had an ultrasonic inspection in accordance with TCM Service Bulletin M87–5, Revision 1, or AD 87–23–08, the heat code, the letter "V" (only if it is a VAR crankshaft) and the letter "U" will be vibroetched on the propeller flange. If the "V" is missing then it is an airmelt crankshaft. In addition, this AD requires compliance at overhaul or whenever the crankshaft is removed from the engine so that the internal marking will be visible. Of course, any new crankshaft purchased from TCM will be VAR, and even if TCM started to mark them now there is still over a decade of production which have no marking on the exterior.

One commenter states that the IO–360 series engines should be removed from the AD's applicability, as verbal contact with their members (600 total, 225 using the IO–360 engine) indicate no problems. The commenter believes that the failures are associated with ground strikes and improper operation of engines with under 1,200 hours total time. The FAA does not concur. The issue of propeller strikes and improper operation has been previously addressed. The FAA data shows that 5 of the 8 IO/TSIO–360 airmelt crankshaft failures occurred on IO–360 engines (the data from ARSA does not differentiate between 360 and 520 series engines). Of the five IO–360 failures, two had more than 1,200 hours total time.

One group of commenters state that the AD should be withdrawn, since the time in service of the engines are not accurately represented in FAA data because TCM rebuilt engines are included in data. Engines with serial numbers (S/Ns) lower than 300000 are reserved by TCM for rebuilt engines. The FAA does not concur. The FAA agrees that many of the engines listed are rebuilt by TCM, where the time in service of the crankshaft cannot be accurately determined, but the crankshaft would be considered high time. However, there are other engines listed which are "first run" with low time in service failures. The data supports the FAA's position that the failures are random and time in service is not the determining factor.

One group of commenters state that the AD should be withdrawn, since there will be a loss of revenue to the repair stations, overhaulers, etc. Some commenters state that TCM is replacing the crankshafts in rebuilt engines at no charge to the customer, thereby reducing the potential for overhauls. The commenters state that they have lost numerous overhauls because their customers have elected to buy a TCM rebuilt engine instead of paying for an overhaul. The commenters consider this an unfair business practice and feel that the FAA is furthering this scheme by issuing an AD.

The FAA disagrees. The commenters ignore the FAA's determination that an unsafe condition is likely to exist or develop on engines of this type design. The FAA recognizes that competition affects the profitability of entities engaged in the aviation industry, but denies any scheme to aid one competitor over another. That the original manufacturer of these engines has elected to compete in the overhaul market does not affect the FAA's determination that an unsafe condition exists or the need for this AD to address that safety issue.

One commenter states that the cost is shown as an annual amount but should have been shown as a total amount. The commenter believes this economic analysis is unprecedented and irregular and undermines the confidence of the aviation general public in the rulemaking process. The FAA does not concur. The FAA normally shows costs on an annual basis when compliance with an AD will be extended over a long time frame. The total costs are generally shown, but in this case, as stated in the SNPRM, "The FAA estimates that approximately 10% of the affected engines will be overhauled each year"; thus it should be clear that it will take approximately 10 years before all the affected engines are in compliance. The total cost is easily derived by multiplying the annual cost estimate by 10. This issue was avoided in the second SNPRM by showing both annual and total costs.

Two commenters state that the cost estimate is too low, as a big cost in procuring a new crankshaft is not stated; i.e., the shipping/freight cost, which should be included in the cost estimate for this AD. The FAA concurs. Since the FAA's cost estimate of a replacement crankshaft is based on an "exchange" part, the FAA concurs that the costs of shipping are appropriately included as direct cost of the replacement part. Shipping costs will vary widely however, and the FAA has no reasonable means to estimate those costs. Therefore, the FAA will use the commenters' estimate of $100 for shipping costs and adjust the cost analysis accordingly.

One commenter states that the AD should be withdrawn, since the economic impact does not include the cost to remove the engine and propeller from the airplane and to reinstall them. The FAA does not concur. The AD is to be accomplished at overhaul or whenever the crankcase is separated. Since the engine and propeller, in either case, must be removed anyway, there will be no additional expense to remove/reinstall the engine and propeller in order to comply with the AD.

One commenter states that the FAA should acquire more data about the currently required ultrasonic inspection before issuing the AD. The commenter questions whether any of the engines that failed that were listed in the TCM data had undergone the required ultrasonic inspection. The FAA does not concur. Of the failures listed in the FAA/TCM data, 22 airmelt and 1 VAR had been inspected one or more times in accordance with AD 87–23–08 and/or TCM SB M87–5, or M87–5, Revision 1. All of the crankshafts in the data provided by ARSA (29 airmelt and 3 VAR) were removed from service because they failed the ultrasonic inspection.

One group of commenters state that the AD should be withdrawn, since the data on which the FAA's determination that an unsafe condition exists was not available to the commenter for review. The FAA does not concur. The commenters have filed a number of comments with the AD docket file that indicate a careful review of available data from a number of sources, including the docket file. The FAA denies that the information available in the docket file is inadequate to warrant AD action. While some information cannot be included in the public docket file due to the proprietary nature of the information, the FAA has placed in the docket a summary of the data on which it bases its determination that an unsafe condition exists, that the unsafe condition is likely to exist or develop on other products of the same type design, and that this AD is necessary to address this safety concern.

One commenter states that in Note 2 of the proposed AD, reference was made to the term magnaflux; the commenter correctly points out that magnaflux is a registered trademark and should not be used in this context. The generic terminology magnetic particle inspection should be used instead. The FAA concurs and has revised this final rule accordingly.

Two commenters state that the AD should be withdrawn, since the FAA has failed to address comments made to the previous NPRM and SNPRM. The FAA does not concur. The purpose of the SNPRM is to continue the fact gathering process. For clarity, certain comments were partially addressed in the SNPRMs; however, all comments have been addressed in the processing of this final rule.

One commenter states that the AD should be withdrawn, since the FAA has not substantiated the inclusion of the Rolls-Royce, plc engines which are not US type certificated. The FAA does not concur. The FAA stated in the second SNPRM that the Rolls-Royce, plc engines are identical in design and manufacturing process, which substantiates their inclusion. It is true that there is no US type certificate for these engines; however, these engines are accepted for use on US type certificated airplanes, and several are installed on US registered aircraft. Therefore, TCM service information and FAA ADs apply to these engines.

One commenter states that the AD should be withdrawn, since a number of alternatives to AD action already exist and they have been shown to be as effective as an AD. The alternatives include the current TCM service information, special TCM pricing, strong sales of TCM rebuilt engines and attrition of older airmelt crankshafts. The FAA does not concur. There was TCM service information prior to the initial issuance of the original NPRM and that did not affect the failure rate. The special TCM pricing has helped but is not enough to warrant no AD action. Strong sales of TCM rebuilt engines and attrition of older crankshafts certainly help the situation, but, again, are not sufficient to warrant no AD action. The data reflects the need for the AD and does not show that the alternatives presented are as effective as an AD.

One commenter states that the AD should be withdrawn since the SNPRM mandates a standard maintenance practice which is in conflict with FAA internal guidance on the issuance of ADs. The FAA does not concur. The problem here is not a maintenance procedure, but a manufacturing process, and it affects all the affected engines regardless of who is performing the maintenance, or the quality of maintenance. The FAA has determined that an unsafe condition exists or can develop on these crankshafts. It is therefore incumbent on the FAA to issue an AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will not increase the scope of the AD.

The FAA estimates that 10,100 engines are installed on aircraft of U. S. registry and will need to have the crankshaft replaced, that it will take approximately 1 work hour per engine to determine the type of crankshaft installed and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,599 and shipping will cost approximately $100. Based on these figures, the cost impact of replacing crankshafts on U. S. operators is estimated to be $27,865,900 over a 10-year period or $2,786,590 annually.

The FAA further estimates that 59,300 engines with VAR crankshafts installed would require ultrasonic inspections and the estimated cost of performing an ultrasonic inspection is $200. The FAA estimates that approximately 10%, or 5,930 engines, would need to be overhauled annually, so the estimated total cost impact for ultrasonic inspections is $1,186,000 annually.

Therefore, the FAA estimates the total cost impact of the AD to be $27,865,900 over a 10-year period, plus an additional $1,186,000 annually for the repetitive ultrasonic inspections.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5735 (52 FR 41937, October 30, 1987) and by adding a new airworthiness directive, Amendment 39–10260, to read as follows:

97–26–17 Teledyne Continental Motors and Rolls-Royce, plc: Amendment 39–10260. Docket 93–ANE–08. Supersedes AD 87–23–08, Amendment 39–5735.

Applicability: Teledyne Continental Motors (TCM) IO–360, LTSIO–360, TSIO–360, IO–520, LIO–520, LTSIO–520 and TSIO–520 series reciprocating engines built on or prior to December 31, 1980; rebuilt TCM IO–360, LTSIO–360, TSIO–360, IO–520, LIO–520, LTSIO–520 and TSIO–520 series reciprocating engines with serial numbers lower than those listed in TCM Critical Service Bulletin (SB) No. CSB96–8, dated June 25, 1996; TCM factory overhauled IO–360, LTSIO–360, TSIO–360, IO–520, LIO–520, LTSIO–520 and TSIO–520 series reciprocating engines with serial number of 901203H and lower; and Rolls-Royce, plc IO–360 and TSIO–360 series reciprocating engines with any serial number. These engines are installed on but not limited to the following aircraft: Raytheon (formerly Beech) models 95–C55, 95–C55A, D55, D55A, E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, S35, V35, V35A, V35B, E33A, E33C, 35–C33A, 36, A36, F33A, F33C and A36TC; Bellanca model 17–30A; Cessna models 172XP, A185, A188, T188C, 206, T206, 207, T207, 210, T210, P210, 310R, T310P, T310Q, T310R, 320D, 320E, 320F, 336, 337, T337, P337, 340, 401, 402, 414 and T41B/C; Colemill conversion of Commander 500A; Goodyear Airship Blimp 22; Maule Model M–4–210, M–4–210C, M–4–210S, M–4–210T, and M–5–210C; Mooney model M20–K; Navion model H; Pierre Robin HR 100; The New Piper Aircraft, Inc. (formerly Piper Aircraft Company) models PA28–201T, PA28R–201T, PA28RT–201T, PA34–200T and PA34–220T; Prinair Dehavilland Heron; Reims models FR172, F337 and FT337; and Swift Museum Foundation, Inc. models GC–1A and GC–1B equipped with the IO–360 engine.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe

condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent crankshaft failure and subsequent engine failure, accomplish the following:

(a) At the next engine overhaul, or whenever the crankshaft is next removed from the engine, after the effective date of this AD, whichever occurs first, determine if the crankshaft was manufactured using the airmelt or vacuum arc remelt (VAR) process in accordance with the identification procedure described in TCM Critical SB No. CSB96–8, dated June 25, 1996. If the crankshaft was manufactured using the airmelt process or if the manufacturing process is unknown, remove the crankshaft from service and replace with a serviceable crankshaft manufactured using the VAR process.

(b) For all TCM IO–360, LTSIO–360, TSIO–360, IO–520, IO–520, LTSIO–520 and TSIO–520 and Rolls-Royce, plc IO–360 and TSIO–360 engine models that have VAR crankshafts installed, regardless of serial number; at the next and every subsequent crankshaft removal from the engine case or installation of a replacement crankshaft, prior to crankshaft installation in the engine, conduct an ultrasonic inspection of the crankshaft in accordance with the procedures specified in TCM Mandatory SB No. MSB96–10, dated August 15, 1996; and, if necessary, replace with a serviceable part.

Note 2: Accomplishment of the ultrasonic inspection required by this AD does not fulfill any requirements for magnetic particle inspection or any other inspections specified in TCM or Rolls-Royce, plc overhaul manuals.

(c) The ultrasonic inspection of the crankshaft must be performed by a non-destructive test (NDT) ultrasonic (UT) Level II inspector who is qualified under the guidelines established by the American Society of Nondestructive Testing or MIL–STD–410 or FAA-approved equivalent, or must be trained by TCM personnel or their designated representative on how to accomplish and conduct this inspection procedure. The person approving the engine for return to service is required to verify that the UT inspection was accomplished in accordance with the requirements of this paragraph.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following TCM service documents:

Document No.	Pages	Date
CSB96–8 ..... Total pages: 6.	1–6	June 25, 1996.
MSB96–10 ..... Total pages: 3.	1–3	August 15, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 23, 1998.

Issued in Burlington, Massachusetts, on December 12, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–33142 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–50–AD; Amendment 39–10261; AD 97–26–18]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–360C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA–360C helicopters. This action requires replacement of the main gear box (MGB) input bevel pinion (bevel pinion). This amendment is prompted by service reports of bevel pinion fatigue cracking. This condition, if not corrected, could result in failure of the MGB and a subsequent forced landing.

DATES: Effective January 5, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW–50-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA–360C helicopters with MGB, part number (P/N) 360A32–2000—all dash numbers, installed. The DGAC advises that replacement of the MGB bevel pinion, P/N 360A32–1021–20, is necessary at 1,000 hours time-in-service (TIS) intervals to prevent fatigue cracking of the bevel pinion, failure of the MGB, and a subsequent forced landing.

Eurocopter France has issued Service Bulletin No. 01.35, dated January 14, 1997, which specifies replacement of the MGB bevel pinion at 1,000 hour TIS intervals. The DGAC classified this service bulletin as mandatory and issued DGAC AD 97–027–041(B), dated February 12, 1997, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–360C helicopters of the same type design registered in the United States, this AD is being issued to prevent bevel pinion fatigue cracking, failure of the MGB, and a subsequent forced landing. This AD requires replacement of the bevel pinion at specified TIS intervals.

None of the Eurocopter France Model SA–360C helicopters affected by this AD action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register, it will require approximately 8.5 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost $17,000 per helicopter for each replacement. Based on these figures, the cost impact of this AD will be $17,510 per helicopter for each MGB bevel pinion replacement.

Since this AD action does not affect any helicopter that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-SW–50-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation and therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–26–18 Eurocopter France: Amendment 39–10261. Docket No. 97–SW–50–AD.

Applicability: Model SA–360C helicopters with main gearbox (MGB), part number (P/N) 360A32–2000—all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the MGB bevel pinion, failure of the MGB, and a subsequent forced landing, accomplish the following:

(a) Before further flight, and thereafter at intervals not to exceed 1,000 hours time-in-service (TIS), replace the MGB bevel pinion, P/N 360A32–1021–20, on MGBs that have accumulated 900 or more hours TIS since first installed on any helicopter or since the last MGB overhaul.

(b) On or before the accumulation of 1,000 hours TIS, and thereafter at intervals not to exceed 1,000 hours TIS, replace the bevel pinion, P/N 360A32–1021–20, on MGBs that have accumulated less than 900 hours TIS since first installed on any helicopter or since the last MGB overhaul. This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the bevel pinion, P/N 360A32–1021–20, of 1,000 hours TIS.

Note 2: Eurocopter France Mandatory Service Bulletin No. 01.35, dated January 14, 1997, contains additional information concerning the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on January 5, 1998.

Note 4: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (France) AD 97–027–041(B), dated February 12, 1997.

Issued in Fort Worth, Texas, on December 12, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–33145 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–28–AD; Amendment 39–10259 AD 97–26–16]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 402C and 414A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 85–13–03 R2, which currently requires repetitively inspecting the engine mount beams for cracks on certain Cessna Aircraft Company (Cessna) Models 402C and 414A airplanes, and replacing any cracked beams. This AD requires incorporating engine mount kits that will eliminate the need for the repetitive inspection requirement of AD 85–13–03 R2. This AD results from the Federal Aviation Administration's policy on aging commuter-class aircraft, which is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The actions specified by this AD are intended to prevent failure of the engine mount beam caused by fatigue cracks, which could result in loss of the engine with consequent loss of the airplane.

DATES: Effective February 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277, telephone (316) 941–7550; facsimile (316) 942–9006. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 90–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Ostrodka, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

AD 85–13–03 R2, Amendment 39–5147, currently requires repetitively inspecting the engine mount beams for cracks on certain Cessna Aircraft Company (Cessna) Models 402C and 414A airplanes, and replacing any cracked beams. On August 9, 1990 (55 FR 32442), a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would supersede AD 85–13–03 R2 was published in the **Federal Register** as a notice of proposed rulemaking (NPRM). This NPRM proposed to supersede AD 85–13–03 R2 with a new AD that would have retained the repetitive inspections initially, and would have required eventual modification of the engine mount beams upon the accumulation of a certain amount of usage time on the airplane, as terminating action for the repetitive inspections.

Interested persons were afforded an opportunity to participate in the making of this amendment. One comment was received regarding the NPRM and no comments were received regarding the FAA's determination of the cost to the public.

Cessna recommended a change to the original NPRM to account for airplanes that may have Cessna Kit SK414–19 incorporated without Cessna Kit SK414–17 ever being incorporated. Cessna stated that, as written, the NPRM would not require the 9,600 hour time-in-service (TIS) repetitive radiographic inspections for these airplanes.

The FAA concurred and determined that any AD action on this issue should require mandatory incorporation of the two appropriate Cessna SK414–19–* kits (five different kits) and then repetitive radiographic inspections at 9,600-hour TIS intervals on all airplanes. This would assure that all airplanes are covered by the repetitive radiographic inspections.

The FAA re-examined this issue and determined that the actions proposed in the original NPRM were still valid safety issues, but that the engine mount beams should be modified at a certain time period for all airplanes instead of relying on repetitive inspections to detect cracks until each airplane accumulates a certain amount of hours TIS.

Since the comment period for the original NPRM had closed and revision of the NPRM to require engine beam modification at a certain period of time for all of the affected Cessna Model 402C and 414A airplanes proposed actions that went beyond the scope of what was already proposed, the FAA issued a supplemental NPRM (62 FR 39490, July 23, 1997) to allow additional time for the public to comment.

Interested persons were again afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received on the supplemental NPRM.

Comment No. 1: Change of Compliance Time

One commenter states that the compliance time of "within the next 100 hours time-in-service (TIS) after the effective date of this AD" is unrealistic for airplane owners/operators that have the Cessna Kit SK414–17 incorporated on their airplanes. The commenter states that a more realistic time would be to coincide with the next 1,600-hour engine overhaul.

The FAA concurs that this would be a more realistic compliance time for these owners/operators with these kits incorporated on their airplanes. In addition, the FAA has determined a more realistic compliance time for those owners/operators not having the Cessna Kit SK414–17 incorporated on their airplanes would be at 200 hours TIS to coincide with the inspections currently required by AD 85–13–03 R2. The final rule has been changed accordingly.

Comment No. 2: The Cost Estimate is Too Low

Two commenters state that the FAA's estimate of the cost impact on the public is too low by a factor of two or more. One of these commenters presented an example of the cost impact for a specific design configuration, which includes adding multiple kits to both engines. This example also includes 30 hours of labor for engine removal. The commenters request that the FAA re-examine the cost estimate and then change it to more accurately reflect the actual costs of accomplishing the AD.

The FAA has re-examined the cost impact upon the public and has determined that the proposed cost impact in the NPRM is low. The FAA will change the cost impact estimate to reflect the configuration of incorporating multiple kits on each engine. Since the FAA is changing the compliance time to coincide with the next engine overhaul or scheduled inspection, the 30 workhours necessary to remove the engines will not be part of the cost impact estimate.

Comment No. 3: Parts Availability

One commenter questions whether parts are available for all of the affected airplanes. According to the commenter's research, only 10 owners/operators of the affected airplanes could comply with the proposed AD. The commenter states that a large portion of the 583 affected airplanes that haven't already incorporated the kits would be grounded waiting on parts if the AD would become effective as proposed. With this in mind, the commenter recommends that the FAA allow the owners/operators of the affected airplanes to continue to repetitively inspect their airplanes until cracks are found.

The FAA concurs that parts availability for all airplanes could initially be a problem. If parts are not available, Cessna will manufacture these parts as ordered. With this in mind, the FAA has determined that repetitive inspections may continue if parts are not available provided the parts have been ordered from the manufacturer and any cracked engine mount beam is either repaired or replaced, as applicable. The final rule will be changed to provide for repetitive inspections in the event parts are not available.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the AD as proposed in the supplemental NPRM, except for the changes described above and minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA's Aging Commuter Aircraft Policy

The actions of this AD are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

Cost Impact

The FAA estimates that 681 airplanes in the U.S. registry will be affected by this AD. The initial radiographic inspection will take approximately 10 workhours per airplane to accomplish at an average labor rate of $60 per hour. Based on these figures, the total cost impact of this initial radiographic inspection on U.S. operators is estimated to be $408,600, or $600 per airplane. These figures do not take into account the cost of repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator will incur over the life of the airplane.

Labor and parts vary per affected airplane. The following cost estimate would be for airplanes needing one SK414–19–1A and one SK414–19–3A kit per engine. The FAA estimates 17 workhours per airplane to install these kits at $60 per hour. Parts would cost approximately $2,250 per airplane (two SK414–19–1A kits at $474 each; and two SK414–19–3A kits at $651 each). Based on these figures (using the above kit configurations on every affected airplane), the total cost impact of the modification on U.S. operators is estimated to be $2,226,870, or $3,270 per airplane. This figure is based on the presumption that no affected airplane owner/operator has incorporated the modification. Costs for removing the engines are not included in the cost since the FAA is adjusting the compliance times to coincide with regularly scheduled engine overhauls or already required inspections.

Cessna has informed the FAA that kits have been sold to accommodate approximately 98 of the affected airplanes. Presuming that each set of parts is incorporated on the affected airplanes, the cost impact of the modification would be reduced $320,460 from $2,226,870 to $1,906,410.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures [44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 85–13–03 R2, Amendment 39–5147, and by adding a new AD to read as follows:

97–26–16 Cessna Aircraft Company: Amendment 39–10259; Docket No. 90–CE–28–AD.

Applicability: Airplanes with the following model and serial number designations, certificated in any category:

Model	Serial Nos.
402C	402C0001 through 402C0808.
414A	414A0001 through 414A1206.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the engine mount beam caused by fatigue cracks, which could result in loss of the engine with consequent loss of the airplane, accomplish the following:

(a) For airplanes with Cessna Kit SK414–17 incorporated, within the next 1,600 hours time-in-service (TIS) after the effective date of this AD (to coincide with the next engine overhaul), incorporate Cessna Kit SK414–19–1, and one of the following, as applicable, in accordance with the instructions to Service Kit SK414–19B, Revised: March 4, 1986:

(1) Cessna Kit SK414–19–2: All of the affected Models 402C and 414A airplanes that are equipped with propeller unfeathering accumulators;

(2) Cessna Kit SK414–19–3: Model 402C airplanes, serial numbers 402C0001 through 402C0468; and Model 414A airplanes, serial numbers 414A0001 through 414A0646;

(3) Cessna Kit SK414–19–5: Model 402C airplanes, serial numbers 402C0469 through 402C0808; and Model 414A airplanes, serial numbers 414A0647 through 414A1206.

(b) For airplanes without Cessna Kit SK414–17 incorporated, within the next 200 hours time-in-service (TIS) after the effective date of this AD (to coincide with the next inspection that would have been required by AD 85–13–03 R2, which is superseded by this AD), incorporate Cessna Kit SK414–19–1, and one of the following, as applicable, in accordance with the instructions to Service Kit SK414-19B, Revised: March 4, 1986:

(1) Cessna Kit SK414–19–2: All of the affected Models 402C and 414A airplanes that are equipped with propeller unfeathering accumulators;

(2) Cessna Kit SK414–19–4: Model 402C airplanes, serial numbers 402C0001 through 402C0468; and Model 414A airplanes, serial numbers 414A0001 through 414A0646;

(3) Cessna Kit SK414–19–5: Model 402C airplanes, serial numbers 402C0469 through 402C0808; and Model 414A airplanes, serial numbers 414A0647 through 414A1206.

(c) Within 9,600 hours TIS after the modification required by paragraph (a) or (b) of this AD, as applicable, and thereafter at intervals not to exceed 9,600 hours TIS, inspect, using radiographic methods, the engine mount beams for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Attachment to Service Bulletin MEB85–3, Revised—August 23, 1985, as referenced in Cessna Service Bulletin MEB85–3, Revision 2, dated October 23, 1987.

(1) If any crack is found in the left side (vertical portion) of the left engine beam of either nacelle, prior to further flight, obtain a repair scheme from the manufacturer through the FAA, Wichita Aircraft Certification Office (ACO), at the address specified in paragraph (g) of this AD, and then incorporate this repair scheme.

(2) If cracks are found in the top (horizontal portion) of the engine beam and the total length of the cracks is less than 1.75 inches, prior to further flight, stop drill each end of each crack using a 0.098-inch drill bit.

(3) If cracks are found in the top (horizontal portion) of the engine beam and the total length of the cracks is equal to or greater than 1.75 inches, but less than 2.75 inches, prior to further flight, obtain a repair scheme from the manufacturer through the FAA, Wichita Aircraft Certification Office (ACO), at the address specified in paragraph (g) of this AD, and then incorporate this repair scheme.

(4) If cracks are found in the top (horizontal portion) of the engine beam and the total length of the cracks is equal to or greater than 2.75 inches, prior to further flight, replace the engine beam with a part number specified in the instructions to Service Kit SK414–19B, Revised: March 4, 1986.

(d) If parts for any of the engine beam modifications required by paragraphs (a) and (b) of this AD have been ordered from the manufacturer but are not available, accomplish the following in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Attachment to Service Bulletin MEB85–3, Revised—August 23, 1985, as referenced in Cessna Service Bulletin MEB85–3, Revision 2, dated October 23, 1987:

(1) For airplanes with Cessna Kit SK414–17 incorporated, within the next 1,600 hours time-in-service (TIS) after the effective date of this AD (to coincide with the next engine overhaul); and thereafter at intervals not to exceed 1,600 hours TIS; provided no provision specified in paragraph (e) of this AD occurs, inspect the engine mount beams using radiographic methods.

(2) For airplanes without Cessna Kit SK414–17 incorporated, within the next 200 hours time-in-service (TIS) after the effective date of this AD (to coincide with next inspection that would have been required by AD 85–13–03 R2, which is superseded by this AD); and thereafter at intervals not to exceed 200 hours TIS; provided no provision specified in paragraph (e) of this AD occurs, fluorescent penetrant inspect the engine mount beams.

(e) If any one of the following occurs during any of the inspections required by paragraph (d) of this AD, prior to further flight, accomplish the specified actions:

(1) If parts become available, terminate the repetitive inspections specified in paragraph (d) of this AD, incorporate the modification kits as required by paragraph (a) or (b) of this AD, and inspect the engine mount beams as specified in paragraph (c) of this AD;

(2) If any crack is found in the left side (vertical portion) of the left engine beam of either nacelle, obtain a repair scheme from the manufacturer through the FAA, Wichita ACO, at the address specified in paragraph (g) of this AD, incorporate this repair scheme, and continue the repetitive inspections required by paragraph (d) of this AD;

(3) If cracks are found in the top (horizontal portion) of the engine beam and the total length of the cracks is less than 1.75 inches, stop drill each end of each crack using a 0.098-inch drill bit, and continue the repetitive inspections required by paragraph (d) of this AD;

(4) If cracks are found in the top (horizontal portion) of the engine beam and the total length of the cracks is equal to or greater than 1.75 inches, but less than 2.75 inches, obtain a repair scheme from the manufacturer through the FAA, Wichita ACO, at the address specified in paragraph (g) of this AD, incorporate this repair scheme, and continue the repetitive inspections required by paragraph (d) of this AD; or

(5) If cracks are found in the top (horizontal portion) of the engine beam and the total length of the cracks is equal to or greater than 2.75 inches, replace the engine beam with a part number specified in the instructions to Service Kit SK414–19B, Revised: March 4, 1986, and inspect the engine mount beams as specified in paragraph (c) of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 85–13–03 R2 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(h) The modifications required by this AD shall be done in accordance with Service Kit SK414–19B, Revised: March 4, 1986. The inspections required by this AD shall be done in accordance with Attachment to Service Bulletin MEB85–3, Revised—August 23, 1985, as referenced in Cessna Service Bulletin MEB85–3, Revision 2, dated October 23, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment (39–10259) becomes effective on February 2, 1998.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32993 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–140–AD; Amendment 39–10253; AD 97–26–10]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 1000 series airplanes, that requires modifying the aft core cowl nozzles of the engine nacelles. This amendment is prompted by a report indicating that the sealant on the core cowl nozzles may extend higher than the forward flange of the core cowl nozzles, which could result in contact between the cowl sealant surface and the lever of the engine mechanical over-speed control system. The actions specified by this AD are intended to prevent such contact, which could cause the over-speed system to function improperly and consequent engine structural failure.

DATES: Effective January 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager, Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Randy Griffith, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4145; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 1000 series airplanes was published in the **Federal Register** on October 1, 1997 (62 FR 51385). That action proposed to require modifying the aft core cowl nozzles of the engine nacelles.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal.

Change to Cost Impact Information

The FAA has determined that 48 airplanes, rather than 14 airplanes (as stated in the cost impact paragraph of the proposal), will be affected by this AD. The FAA has revised the cost impact information, below, to reflect this change.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 52 Model Hawker 1000 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,520, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-26-10 Raytheon Aircraft Company (Formerly Raytheon Aircraft Corporation; Beech Aircraft Corporation; Raytheon Corporate Jets, Inc.; British Aerospace, PLC; deHavilland; Hawker Siddeley): Amendment 39-10253. Docket 97-NM-140-AD.

Applicability: Model Hawker 1000 series airplanes; serial numbers 258151, 258159, and 259003 through 259052 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

To prevent contact between the cowl sealant surface and the lever of the engine mechanical over-speed control system, which could cause the over-speed system to function improperly and consequent engine structural failure; accomplish the following:

(a) Within 150 flight hours or 3 months after the effective date of this AD, whichever occurs first, modify the aft core cowl nozzles of the left- and right-hand engine nacelles in accordance with Raytheon Service Bulletin SB.71-48-25F021B, dated May 20, 1997.

Note 2: The Raytheon service bulletin references Nordam Hawker 1000 Service Bulletin FW300 71-9, dated April 29, 1995, as the appropriate source of service information for accomplishment of the modification.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Raytheon Service Bulletin SB.71-48-25F021B, dated May 20, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager, Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 23, 1998.

Issued in Renton, Washington, on December 11, 1997.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-32998 Filed 12-18-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-46-AD; Amendment 39-10249; AD 97-26-06]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all EMBRAER Model EMB-120 series airplanes, that requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the ice protection systems, and to add information regarding operation in icing conditions. This amendment also requires installing an ice detector system and revising the AFM to include procedures for testing system integrity. This amendment is prompted by reports indicating that flightcrews experienced difficulties controlling the airplane during (or following) flight in normal icing conditions, when the ice protection system either was not activated when ice began to accumulate on the airplane, or the ice protection system was never activated. These difficulties may have occurred because the flightcrews did not recognize that a significant enough amount of ice had formed on the airplane to require activation of the deicing equipment. The actions specified by this AD are intended to ensure that the flightcrew is able to recognize the formation of significant ice accretion and take appropriate action; such formation of ice could result in reduced controllability of the airplane in normal icing conditions.

DATES: Effective January 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from EMBRAER, Empresa Brasileira De Aeronautica S/A, Sao Jose Dos Campos, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carla Worthey, Aerospace Engineer, Systems and Flight Test Branch, ACE-116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (770) 703-6062; fax (770) 703-6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all EMBRAER Model EMB-120 series airplanes was published in the **Federal Register** on May 13, 1997 (62 FR 26258). That action proposed to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the ice protection systems, and to add information regarding operation in icing conditions. That action also proposed to require installing an ice detector system and revising the AFM to include procedures for testing system integrity.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Several commenters support the FAA's intent to revise the FAA-approved AFM procedures for flight in icing conditions and/or to require installation of an ice detector system.

Compliance Time To Install Ice Detector

Two commenters request additional time to install the ice detector system. One of the commenters states that the manufacturers of the ice detector installations (Grimes for the cockpit indications, and Rosemount Aerospace for the ice detector) will not have kits available for all U.S. operators until the end of January 1998, although at least 120 kits were available on October 31, 1997. The other commenter states that 6 months is an unreasonable schedule for retrofitting their fleet of aircraft and requests a 24-month compliance time. Another commenter requests additional time to provide operators the opportunity to consider other options of ice detection and flightcrew response to such conditions, as proposed under the FAA's Inflight Aircraft Icing Plan. The commenter did not request a specific period of time for the extension.

The FAA concurs that the compliance time can be extended somewhat, since parts will not be available for all aircraft early enough to allow completion within 6 months. The FAA finds that, once parts are available, operators must comply with the AD prior to the next icing season. Therefore, paragraph (b) of the final rule has been revised to specify a compliance time of 10 months after the effective date of the AD. The FAA does not consider that this extension will adversely affect safety. If an operator obtains FAA design and installation approval for an alternative to the ice detector, the operator may request approval of an alternative method of compliance in accordance with paragraph (c) of the final rule.

Master Minimum Equipment List (MMEL) Requirements

One commenter requests that any ice detection equipment installed on an aircraft must be operational prior to dispatch into known or forecasted icing conditions. Two other commenters request that the MMEL grant relief for dispatch with inoperative ice detector equipment.

The FAA acknowledges the commenters' requests. However, MMEL requirements are determined by the FAA Flight Operations Evaluation Board (FOEB). The FOEB has determined that it is permissible to dispatch with an inoperative ice detection system provided that all ice protection systems are turned on (except leading edge deicing during takeoff) and AFM limitations and normal procedures for operating in icing conditions are complied with whenever operating in visible moisture at temperatures below 10 degrees Centigrade (50 degrees Fahrenheit). Revision 5c of the MMEL for EMBRAER Model EMB-120 series airplanes, dated October 9, 1997, incorporated this relief.

Additional Analysis

One commenter states that flight control difficulties of the airplanes in icing conditions were reported and known as far back as 1989, but action is only being taken now. The commenter requests that additional analysis be conducted on the previous icing events, and the proposal be revised based on the results of that analysis. The commenter believes that the proposed AD tends to fall short of what is required to preclude subsequent reports of aircraft control problems on Model EMB-120 series airplanes.

The FAA does not concur that additional analysis is required. The initial certification test data for flight into known icing approval indicate that Model EMB-120 series airplanes meet all of the certification requirements specified in Appendix C of part 25 ("Airworthiness Standards: Transport Category Airplanes") of the Federal Aviation Regulations (14 CFR part 25), provided the ice protection systems are activated properly. In addition, available information concerning the roll upset event history of the EMB-120 has been analyzed thoroughly by the FAA; the Centro Tecnico Aeroespacial (CTA), which is the airworthiness authority for Brazil; and the airplane manufacturer. That analysis indicates that the flightcrews did not activate the de-ice boots prior to the roll upset events. Based on this analysis, the FAA has determined that sufficient data exist to require that an AD be issued to ensure that the flightcrew is able to recognize the formation of significant ice accretion and take appropriate action.

Another commenter requests that roll upset, tailplane icing, and uncommanded roll and/or pitch studies be completed prior to issuing the final rule. The commenter also suggests that additional research should be done regarding the location of ice detectors on the airframe.

The FAA does not concur that additional research is needed. Roll upset, tailplane icing, and uncommanded roll and/or pitch studies have been completed, as suggested by the commenter.

Further review of the event history revealed occurrences of controllable departures from normal flight in icing conditions after loss in airspeed when the ice protection systems of the lifting and control surfaces were not activated. Additionally, operational experience and flight testing conducted by the manufacturer indicate that maintaining proper airspeeds and the additional action of activating the ice protection system at the first detection of airframe icing will eliminate future occurrences of roll upset events.

The FAA finds that supplementing appropriate visual cues for icing with dependable detection and annunciation of encountering icing conditions by an ice detector will ensure flightcrew recognition of icing conditions. In addition, the revision of the FAA-approved AFM, as required by this final rule, will help to ensure activation of the ice protection system, regardless of whether detection of icing is from visual cues or the ice detector, and will require appropriate minimum operating speeds.

The FAA finds that additional research need not be done regarding the location of ice detectors. The FAA and CTA have already conducted a thorough review of that issue, including analysis of flight test data that show that the proposed location of the ice detector will provide early and consistent indication of ice accretion on the airframe.

"Bridging" Phenomenon

Several commenters express concern that the FAA proposal to mandate use of the deicing equipment at the first sign of ice accretion, rather than delaying until ¼- to ½-inch ice has accumulated, could result in ice forming the shape of an inflated boot, which would make further attempts to de-ice difficult. These commenters request that this phenomenon, commonly referred to as "bridging," be addressed in terms of its validity prior to mandating the change to the AFM procedures. Another commenter noted that, even though the manufacturer already issued Revision 43, dated April 23, 1996, of the AFM to indicate the ice protection systems should be activated with the first sign of ice accretion, some operators continue to caution pilots about "prematurely" activating the de-ice boots because of the "bridging" concern.

The FAA does not concur that it is necessary to withdraw the proposal until "bridging" is addressed further. The FAA is aware that the "bridging" condition continues to influence the attitudes of many pilots and operators with respect to the use of de-ice boots. However, prior to approving Revision 43 of the AFM, the FAA and CTA, along with the manufacturer, investigated activating the de-ice boots at the first sign of ice to determine whether

"bridging" of the de-ice boots was a concern. It was noted that the de-ice system is controlled by a timer that inflates the de-ice boots in a three-minute cycle in "light" mode and in a one-minute cycle in "heavy" mode. Since there are approximately three minutes when the boots are deflated in the "light" cycle, it is likely that inflation cycles have already been occurring in service with less than the earlier recommended ¼- to ½-inch ice accumulation, with no documented indication of "bridging."

The FAA was not able to find documented evidence of "bridging" occurring on the airplane. The National Transportation Safety Board (NTSB) also noted in its response to the proposed rule that it "* * * knows of no documented evidence of 'bridging' occurring on current generation turbopropeller airplanes." Moreover, de-icing system technology has improved over the years by using higher pressures, smaller chambers, more rapid inflation and deflation, and greater coverage of the leading edge, which have increased the system's ability to shed smaller accretions.

Unsafe Condition

Two commenters state that the Model EMB–120 series airplane has completed extensive testing in icing conditions and was found to have no adverse flight characteristics associated with ice accreted on the aircraft. Additionally, it was found to perform well within established safety parameters. This testing included natural icing tests within icing conditions specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) as part of the original icing certification, testing of ice contaminated tailplane stall characteristics, and subsequent investigations of susceptibility to roll control anomalies following flight in supercooled large droplet icing conditions. One commenter states that the airplane was properly certified for flight into known or forecast icing conditions in 1985, and remains in complete compliance with current icing requirements and all FAA policies, practices, and procedures.

Two commenters state that all turbo-prop aircraft are tested to the same criteria, and that if the EMB–120 requires an ice detector, then all turbo-prop aircraft should be required to install a detector. Another commenter states that the justification given for the AD to "enable the flight crew to more accurately determine the need to activate the ice protection systems on the airplane and to take appropriate action" is insufficient reason to distinguish Model EMB–120 series airplanes from other airplane models.

Another commenter notes that another aircraft type with an ice detector system installed experienced a recent accident (Roselawn, Indiana) where icing conditions were determined to be a contributing cause. The commenter states that after the Roselawn accident, the FAA, in conjunction with the Brazilian aviation certification authorities, conducted an extensive review of the Model EMB–120 series airplanes and concluded that the aircraft was safe to fly in inadvertent icing environments without adverse handling or flight characteristics.

The FAA infers that these commenters request the FAA withdraw the notice of proposed rulemaking (NPRM), since they believe that an unsafe condition has not been established. The FAA acknowledges the previous testing and results. However, a review of the service history of Model EMB–120 series airplanes reveals that there have been several roll upset events in icing conditions, that the flightcrews did not activate the de-ice system prior to the events, and that they did not maintain proper airspeed. This indicates the flightcrews were either unaware of the ice accretion or underestimated the depth of ice accreted and the resultant loss in airplane performance, and delayed activation of the de-ice system too long. As stated in the NPRM, it is this lack of recognition of icing conditions, and the consequent failure to deploy the ice protection systems, rather than the performance of the airplane once this system is activated, that constitute the unsafe condition addressed by this AD. In this regard, the service history of the Model EMB–120 is significantly different from that of other turbo-prop aircraft. The requirements of the final rule will increase the level of pilot awareness, ensure appropriate flightcrew actions, and increase the operational level of safety over that which currently exists.

As further information is obtained, the FAA may consider addressing the question of requiring an ice detector to supplement visual icing cues for all commercial air transports as a part of future rulemaking actions.

Flightcrew Training

Several commenters request that crew training be instituted to increase pilot awareness of the criticality of aircraft performance degradation during an icing encounter, in lieu of the proposed rule to mandate installation of an ice detector.

One of these commenters states that the installation of an ice detector is not necessary, is overly burdensome, and that proper training of the flightcrews to the visual cues associated with ice formation on the propeller spinner is the best solution.

Another commenter, the manufacturer, states that the FAA's review of the icing related incidents cited in the proposed rule revealed that pilot indecision (as to when to activate the aircraft's de-ice system), and the lack of appreciation of the criticality of aircraft performance degradation during an icing encounter were the basic causes of the reported icing occurrences. The manufacturer concludes that, in addition to mandating immediate activation of the de-ice system, improved pilot training and recurrent training is needed to ensure that the information gained in recent years about icing is passed along to line pilots.

A third commenter agrees with the proposed requirement to install an ice detection system, but notes that pilots have been trained for years to operate the de-ice boots only after ¼- to ½-inch of ice has accumulated on the wings. The commenter states that the pilots need to be provided training to unlearn old habits and to emphasize the new icing procedures.

The FAA does not concur that substituting training for installation of an ice detector is an adequate solution to address the unsafe condition. However, the FAA supports the development of advisory materials and periodic training to increase awareness of the potential for aircraft performance degradation during an icing encounter, including ensuring that flightcrews are aware of the visual icing cues available to determine if the aircraft is in severe icing conditions. The FAA acknowledges that pilot indecision as to when to activate the de-ice system may have been a factor in the roll upset events. Training to ensure that flightcrews activate the ice protection systems at the first sign of ice accumulation will help address this issue. Part 121 ("Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft") of the Federal Aviation Regulations (14 CFR part 121), and part 135 ("Air Taxi Operators and Commercial Operators,") of the Federal Aviation Regulations (14 CFR part 135), require that appropriate training concerning limitations such as those contained in this AD are incorporated into air carriers' training programs.

However, based on the roll upset event history of Model EMB–120 series airplanes, the FAA considers that the use of advisory materials and training alone are not adequate to address the subject unsafe condition. Therefore, the FAA has determined that installation of an ice detection system is necessary to achieve an acceptable operational level of safety.

Availability of Adequate Visual Cues

Several commenters request that the requirement for an ice detection system be removed from the proposal because the visual cues of ice accumulation already provide notification of icing conditions. One of the commenters further states that the ice detector is simply another indicator of the presence of ice, and that it does not have the ability to measure ice or alert the crews to icing environments beyond the capability of the de-ice system.

The manufacturer states that the FAA's brief discussion of the icing related incidents in the NPRM indicates that the natural visual cues of icing accretions are unsatisfactory or insufficient, thus necessitating the installation of the additional means of ice detection. The manufacturer disagrees with this conclusion because a review of the icing related incidents cited in the NPRM indicates that the common contributing factor to the icing related incidents was a lack of crew attentiveness, rather than a lack of availability of visual cues.

One commenter wrote that there is a definite difference in the visual pattern of ice buildup on the propeller spinner between supercooled large droplet (SLD) and "normal" ice buildup. The commenter concludes that the installation of an ice detector system is not the best option for dealing with ice on the aircraft.

Another commenter states that the visual cues for detecting icing conditions and operating de-icing equipment are inadequate and must be researched further.

The FAA does not concur with the request to remove the requirement for an ice detection system. The FAA acknowledges that natural icing testing conducted during the initial certification indicated that the visual cues for ice detection were adequate. Later testing revealed that the visual cues in freezing drizzle were adequate to provide identification of possible severe icing conditions. Nevertheless, a review of service history reveals that in several roll upset events in icing conditions, the flightcrew did not activate the de-ice system, and subsequently allowed the airspeed to decrease prior to the roll upset event. The fact that the flightcrews did not activate the de-ice system indicates that the flightcrews were either unaware of the ice accretion or underestimated the depth of ice accreted, and delayed activation of the de-ice system too long.

The FAA acknowledges the fact that the ice detector system does not have the ability to measure the amount of ice or to alert crews when icing environments are beyond the capability of the de-ice system. The FAA concurs that the visual cues associated with the SLD icing conditions, including ice on the propeller spinner farther aft than normally observed, are adequate to indicate severe icing conditions. Additionally, the FAA finds that the roll control characteristics testing in SLD conditions has shown that once the flightcrews are alerted that they are in icing conditions and activate the de-ice system, the handling characteristics are adequate to allow the crews to safely exit the severe icing conditions. Therefore, an adequate level of safety will be provided by alerting the crew that they are in icing conditions and requiring them to immediately activate the de-ice system. (Since the crew will be alerted to the presence of icing conditions, they will be able to monitor the aircraft for the visual cues associated with severe icing conditions, in accordance with the procedures currently provided in the FAA-approved AFM, and take appropriate action.)

The FAA does not concur that further research is warranted before issuance of the final rule. The visual cues available for detecting ice accumulation have already been defined for both Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), and SLD icing conditions; further research is unlikely to improve these available cues. However, the roll upset events indicate that flightcrews relying on these visual cues are not consistently activating the de-ice system at the proper time. Therefore, installation of an ice detection system which provides early and active annunciation to the flightcrew that they are in icing conditions, in conjunction with continuous flightcrew monitoring of the visual cues available, is necessary to provide an acceptable level of safety.

Installation of Ice Evidence Probe

One commenter indicates that it disagrees with the need to install an ice detection system. However, if the FAA requires some additional means other than visual cues to assist the crews in identifying icing conditions, the commenter suggests installing an ice evidence probe similar to the probe installed on Aerospatiale Model ATR series airplanes instead of an ice detector. Such a probe would indicate the first sign of ice on the airframe and would also be the last location to have ice sublimate from the airframe. The commenter states that the installation of this type of probe would require a minimum amount of time to install, and would take less time to train flightcrews in its operation than the proposed ice detection system.

The FAA does not concur that an ice evidence probe should be required to be installed in lieu of an ice detector. The FAA finds that the service histories of Model EMB–120 series airplanes and Aerospatiale Model ATR series airplanes warrant different approaches to satisfy an acceptable level of safety. An ice evidence probe is a passive device that would provide another visual indication of ice accretion, but would require the flightcrew to monitor and assess the appearance of the probe in order to be effective. Conversely, the ice detection system is an active system that provides an amber light on the multiple alarm panel, an aural warning system chime, and illumination of the master caution light. These multiple indications provide early and active notification to the flightcrew that they are in icing conditions. The ice detection system also provides a high level of pilot awareness without constant monitoring, and will increase the level of safety over the installation of a passive system such as an ice evidence probe. Consequently, the FAA has determined that the service history of Model EMB–120 series airplanes warrants installation of an ice detector to meet an acceptable level of safety.

Proposed Ice Detection System

One commenter states that ice detection equipment installed on an aircraft must have the capability of detecting all types and severity of ice accretions, as specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25), as well as those types and severities of ice accretions outside the scope of Appendix C. The commenter further states that such a system must also have the capability to differentiate between the two conditions and annunciate to the flightcrew which condition is being encountered. Additionally, the commenter states that monitoring of icing conditions should be conducted at all times during a flight. The commenter also states that any ice detection equipment installed on an aircraft should be considered an aid to flightcrew recognition and should not be considered a primary ice detection method.

The FAA does not concur with the commenter's suggestion that ice

detection equipment must have the capability to differentiate between the severity and types of ice accretion. The intent of this AD is to ensure that the flightcrew is able to recognize the formation of ice accretion and to take appropriate action. It is unnecessary to provide an ice detector that is capable of distinguishing between icing conditions that are defined in Appendix C and those icing conditions that are not defined in Appendix C in order to accomplish this intent.

The FAA has determined that the combination of early ice detection and the additional visual cues associated with severe icing conditions are adequate to determine if severe icing conditions have been encountered and should be exited. Additionally, the roll control characteristics testing of the Model EMB–120 series airplane in SLD conditions conducted in early 1996 has shown that once the flightcrew activates the de-ice system, the handling characteristics are adequate to allow the airplane to safely exit the severe icing conditions. The installation of an ice detection system, as required by the final rule, will provide a clear annunication of the presence of ice that will alert the flightcrew to monitor the aircraft for ice accumulation. The flightcrew will then be responsible for determining whether the visual cues associated with severe icing conditions are present and for taking appropriate action in accordance with procedures currently provided in the FAA-approved AFM. The FAA finds that reliance on the flightcrew to make this determination, in conjunction with the installation of an ice detection system, will provide an adequate level of safety.

The FAA concurs that the flightcrew has the primary responsibility for monitoring the icing conditions and for taking appropriate action. The FAA also concurs that the ice detection system required by the final rule is an aid to the flightcrew for early recognition of icing conditions. The FAA considers the definition of a "primary" ice detection system as one that is sufficiently reliable to serve as the sole source of information for flightcrew recognition of icing conditions. Primary systems do not require the flightcrew to monitor the icing conditions to determine if the ice protection equipment should be activated; the FAA does not consider the ice detection system required by the final rule as a "primary" system. Ice accumulation is signaled by either illumination of the "ICE CONDITION" light on the multiple alarm panel, or by flightcrew observation of other visual cues.

Installation of Ice Detector

One commenter states that compliance with § 25.1419 of the Federal Aviation Regulations (14 CFR 25.1419) concerning ice protection requirements is optional. The commenter also states that the FAA can only mandate operational limitations on the aircraft based on whether or not these requirements have been met. The commenter further states that such limitations could be so stringent that it would not be economical to operate the airplane in scheduled operations. Additionally, the commenter states that the need to install ice detection systems on the aircraft should be determined solely by the operator.

The FAA does not concur. As described in the NPRM, this AD is based on the FAA's finding that an unsafe condition exists on Model EMB–120 series airplanes, not that the type design does not comply with 14 CFR 25.1419. The FAA has determined that the operating limitations prescribed in this AD are necessary to address the identified unsafe condition. Therefore, the FAA is fully authorized under 49 U.S.C. 44701 and 14 CFR part 39 to impose these limitations by AD. The FAA considers these limitations to be highly cost effective, and the commenter has provided no information to the contrary.

Regarding the applicability of 14 CFR 25.1419, although the commenter is correct that compliance with this section is optional, the decision to comply is made only by applicants for type certificates (in this case, EMBRAER), and changes to those certificates, rather than by individual operators. EMBRAER chose to show compliance with 14 CFR 25.1419, and the Model EMB–120 is therefore permitted to operate in icing conditions.

Any operator that does not wish approval to operate into known or forecast icing conditions may request approval of an alternative method of compliance with the requirements of this AD in accordance with the provisions stated in paragraph (c) of the final rule.

Conflict With FAA's Inflight Aircraft Icing Plan

One commenter requests that the proposed rule be withdrawn because the FAA's Inflight Aircraft Icing Plan contains a task to consider a regulation to install ice detectors, aerodynamic performance monitors, or other means to warn flightcrews of ice accumulation on critical surfaces. Therefore, the commenter concludes that the proposed rule is in conflict with the FAA's Inflight Aircraft Icing Plan.

The FAA does not concur that the proposed rule conflicts with the FAA's Inflight Aircraft Icing Plan. As the commenter stated, the icing plan does identify a task to consider a regulation to require ice detectors. However, in the case of Model EMB–120 series airplanes, the FAA has identified an unsafe condition and has determined that installation of an ice detector is warranted. The potential for future adoption of a regulation to require an ice detector neither negates nor conflicts with the need to correct the existing unsafe condition.

AFM Procedures

One commenter requests that the FAA revise paragraph (a)(2) of the NPRM which currently requires revision of the ". . . Normal Procedures Section of the AFM by removing any icing procedures that contradict the procedures specified in (a)(1) and (a)(3) of this AD. . . ." The commenter requests that the FAA specify which portions of the Normal Procedures Section of the AFM should be revised rather than leaving this open to interpretation by individual operators.

One commenter requests that the FAA compare the recently proposed AFM changes in NPRM Docket Number 97–NM–46–AD to those AFM changes mandated by AD 96–09–24, amendment 39–9600 (61 FR 20677, May 7, 1996), as some of the procedures appear to conflict with one another. In particular, the commenter is concerned that the procedure in AD 96–09–24 indicates that flaps should be left wherever they are, whereas the current proposed rule indicates that flaps must be left up.

One commenter states that there is presently no guidance to many flightcrews to operate their deicing equipment at the first sign of ice accretions. The commenter further states that this guidance must first be evaluated for its validity and subsequently generated for flightcrew use.

Another commenter states that all temperature references and limitations specified in the proposed rule should be referenced in terms of Indicated Outside Air Temperature.

Two commenters request that the FAA review the language of the proposed AD specified in paragraph (a)(1) to validate whether continuous ignition should be used for extended periods of time. The current proposal is for a new limitation to require "Turn on . . . Ignition Switches . . . When atmospheric or ground icing conditions exist." One of the commenters states that operation of the ignition system on the ground while taxiing may mask other engine or fuel control problems. In addition, one commenter requests that the FAA review the language of the proposed AD to validate whether deicing equipment should be operated on the ground for extended periods of time.

One commenter notes that there is currently no guidance provided in the AFM concerning when to use the heavy or light modes of operation of the ice protection system.

One commenter questioned paragraph (a)(3) of the proposed AD, which states: "Daily Checks of the Ice Protection System, add the following: Ice Detector System Test Button (if installed) * * * Press. Check normal test sequence." The commenter states that system reliability on similar aircraft do not require daily tests of this system, and that the system should be checked prior to dispatch into known or forecast icing conditions.

The FAA concurs that clarification is necessary to specify which portions of the Normal Procedures Section of the AFM should be revised. Since the issuance of the NPRM, the manufacturer has advised the FAA of new, revised procedures of the AFM. Therefore, the FAA has clarified and combined the requirements of paragraphs (a)(2) and (a)(3) of the proposal into a new paragraph (a)(2) of this final rule. The new paragraph (a)(2) of the final rule includes complete information to be incorporated into the AFM under the Normal Procedures Section for "Operation in Icing Conditions for Flying into Icing Conditions." However, it should be noted that this information does not replace or revise any of the current AFM information provided under the subsequent section of the AFM regarding severe icing conditions.

The FAA does not concur that procedures specified in AD 96–09–24 conflict with the procedure of this final rule. AD 96–09–24 required revising the AFM to provide the flightcrew with recognition cues for severe icing conditions and procedures for exiting from severe icing conditions, and to limit or prohibit the use of various flight control devices, including flaps, in those severe icing conditions. The Limitations and Normal Procedures changes included in this final rule ensure that the flightcrew will be advised of when to operate the ice protection system during any icing condition. Therefore, the FAA finds that the change to AFM procedures do not conflict with the earlier AD requirements.

The FAA does not concur that operators (flightcrews) have not been provided guidance to operate the deicing equipment at the first sign of ice accretion. The FAA has approved Revision 43 of the AFM, dated April 23, 1996. This revision included a change in the Normal Procedures section for flight in icing conditions to indicate that wing and tail leading edges, engine air inlet, and windshield ice protection systems should be turned on at the first sign of ice formation. The originally approved AFM suggested a delay in activation of the wing and tail de-ice boots until ¼- to ½-inch ice had accumulated. However, the FAA recognizes that not all EMB–120 operators incorporated this change in procedures into their Operators Manuals. Therefore, the final rule requires that this procedure be added to the Limitations Section of the FAA-approved AFM, as well as in the Normal Procedures Section. As previously stated, Federal Aviation Regulations require that all operating limitations such as those specified in this AD be incorporated into air carriers' training programs and operators' manuals. In addition, as explained previously, the FAA has already determined the validity of the revised procedure to activate the ice protection systems at the first sign of ice accumulation, and has determined that this change is required in order to provide an adequate level of safety.

The FAA concurs that the temperature references specified in the final rule should be Indicated Outside Air Temperature, and has revised the final rule accordingly.

The FAA does not concur that continuous ignition should not be used for extended periods of time or that the operation of the ignition system on the ground while taxiing may mask other engine or fuel control problems. The FAA has reviewed information indicating that CTA, EMBRAER, and Pratt & Whitney have reviewed operation of continuous ignition, and the results indicate that extended use of continuous ignition does not have a detrimental effect on the operation of the engine, although it may decrease the life of the igniters. That information also indicated that engine or fuel control problems are diagnosed by monitoring other parameters available for the flightcrew. In addition, the FAA has reviewed the language of the AD concerning the extended operation of deicing equipment on the ground. The FAA has determined that operation of the deicing equipment for extended periods on the ground will not result in any adverse operating characteristics of the deicing equipment.

The FAA concurs that there is currently no guidance in the AFM regarding when, or under what conditions, to use the light or heavy modes of the ice protection system. However, the EMBRAER Operators Manual recommends that the pilot assess the severity and rate of accretion of ice and select the appropriate mode using pilot judgment. Paragraph (a)(2) of the final rule has been revised to provide that guidance by adding the following procedures in the Normal Procedures Section of the FAA-approved AFM under Operation in Icing Conditions for Flying into Normal Icing Conditions: "Visually evaluate the severity of the ice encounter and the rate of accretion and select light or heavy mode (1 minute or 3 minute cycle) based on this evaluation."

The FAA concurs that the ice protection system is required to be checked only once a day prior to dispatch into known or forecast icing conditions. The AFM change required by paragraph (a) of the final rule adds the ice detection system under "Daily Checks of the Ice Protection System." Both the CTA and the FAA interpret this AFM guidance to mean that the daily checks of the ice protection system must be performed once a day before operation into known or forecast icing conditions, rather than before every flight into icing. To further clarify this procedure, the final rule has been revised to add the following procedures of the AFM under "Daily Checks of the Ice Protection System:" "The following tests must be performed prior to the first flight of the day for which known or forecast icing conditions are anticipated."

Minimum Airspeed in Icing Conditions

A number of commenters question the validity of the minimum airspeed specified in paragraph (a)(3) of the proposed AD that would require addition of the following: "Operation in Icing Conditions for Flying Into Normal Icing Conditions: Airspeed * * * 160 KIAS Minimum. If buffet onset occurs, increase airspeed."

One commenter states that buffet onset is dangerously close to the recommended minimum operating speed in icing conditions and should not be considered a prerequisite for speed additives. The commenter further states that the recommended minimum speed in icing lacks empirical data to substantiate its usage, and that any recommended minimum speeds must be scientifically determined.

Another commenter agrees that setting a clear 160-knot minimum airspeed in icing conditions will provide an immediate improvement in safety and should be implemented. However, the commenter questions whether the language provided in the proposed AD establishes appropriate speeds for all conditions (i.e., all flap settings and phases of flight) as proposed in the National Transportation Safety Board's Safety Recommendation A–97–31. The commenter also notes that further tests may show that a higher minimum airspeed is required to provide an adequate safety margin.

Several commenters also questioned the adequacy of the revised approach procedure specified in paragraph (e)(3) of the proposed AD which states: "Operation in Icing Conditions for Flying Into Normal Icing Conditions: Approach procedure: Increase approach speeds (according to flap setting) by 10 KIAS until landing is assured."

One commenter recommends the establishment of minimum operating speeds for each flap configuration to include no flaps, regardless of whether or not the aircraft is operating in icing conditions. With flaps up, the commenter recommends the use of 1.4Vs @ 30° bank; for approach procedures, the commenter recommends the use of 1.3Vs @ 30° bank. The commenter further recommends that climb procedures in the AFM be revised to reflect the higher speeds required with ice accumulation.

Another commenter asks what approach speed should be utilized since an approach speed has not been defined by the manufacturer.

The FAA concurs that clarification of the justification of the minimum airspeed specified in paragraph (a) of the proposal is necessary. The 160-knot minimum speed was defined by EMBRAER as the recommended holding speed for icing conditions during the original icing certification. The simulated ice shapes on unprotected surfaces used for the handling qualities and stall testing prior to icing approval were defined using the leading edge impingement criteria associated with this speed. These tests demonstrated that the aircraft can be maneuvered at this speed (160 KIAS) up to 30° of bank angle, the normal maximum bank angle for holding, with an adequate stall margin to the buffeting boundary, stick shaker, and stick pusher with these ice shapes on the aircraft. In addition, natural icing tests were conducted at this speed and ice shapes accumulated were recorded and compared to the simulated ice shapes to determine their validity. These tests demonstrate that the airplane meets the requirements specified in part 25 of the Federal Aviation Regulations (14 CFR part 25) during flight in icing conditions, provided the ice protection systems are properly activated. The flight tests also demonstrated that there is a minimum airspeed margin of at least 15 knots indicated airspeed (KIAS) in turns and 20 KIAS in level flight between the initial buffeting with ice on the unprotected surfaces, and the minimum recommended airspeed of 160 KIAS. Therefore, the FAA has determined that the recommended minimum speed with flaps up of 160 KIAS in icing conditions has not only been scientifically determined, but also has been validated by certification flight tests and has shown adequate margin to buffet boundary and to stall. Consequently, the FAA has determined that the procedure in the proposed rule that stated "If buffet onset occurs, increase airspeed" is not necessary, and has been removed from the final rule.

The FAA concurs that appropriate speeds for flap settings and phases of flight following flight in icing conditions should be provided in the final rule. The proposed AD provided a change to the Normal Procedures Section of the AFM that stated: "When flying into known or forecast icing conditions, proceed as follows: AIRSPEED * * * 160 KIAS MINIMUM. If buffet onset occurs, increase airspeed." The FAA recognizes that this proposed change does not clearly indicate that this is the minimum speed for the flaps up, gear up configuration only. The FAA also acknowledges that, without clarification, some operators may be led to believe this is the minimum speed for all gear and flap configurations, even though additional proposed information states: "Approach procedure: Increase approach speeds (according to flap setting) by 10 KIAS until landing is assured."

Therefore, the FAA has revised the wording in paragraph (a) of this AD to clarify the procedures for flying into known or forecast icing conditions, approach and landing procedures, and go-around procedures.

The FAA has determined that this revised information will provide adequate information regarding minimum speeds to be used for all configurations after a continuous maximum icing encounter, which has been determined to provide the most severe ice accumulation on the airplane. The FAA has further determined that no change to the normal takeoff speeds is necessary as ice accumulation during this phase of flight with the ice protection system operating should have no impact on the flight characteristics of the airplane, provided the takeoff is accomplished with a properly de-iced aircraft.

The FAA does not concur with the commenter's recommendations for revision of in-flight minimum operating speeds. Those speeds are established by FAA regulations as V_2 speed for takeoff, a minimum speed of $1.25V_S$ to meet final takeoff climb requirements in the cruise configuration, and a climb speed established in connection with normal landing procedures, but not exceeding $1.5V_S$ to meet approach climb gradient requirements. Landing speed is required to be not less than $1.3V_S$ or the minimum control speed. These speeds, and their associated maneuver margins to stall warning, are in part defined by assuming an engine failure. Consideration is also given to ensuring adequate maneuver and stall warning margins as the wing trailing edge flaps are retracted or extended. Experience has shown these minimum speeds to be acceptable. Increasing the minimum operating speeds to those suggested would improve maneuver and stall warning margins beyond accepted levels. Moreover, use of the suggested higher flaps extended minimum operational speeds would significantly increase takeoff and landing field length requirements, and unnecessarily adversely affect the operating economics of the airplane. However, under the provisions of paragraph (c) of the final rule, the FAA may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

The FAA concurs that the recommended approach speeds for operations in non-icing conditions are not clearly defined in the current FAA-approved AFM. Consequently, the final rule has been revised to include the following information in the Approach Checklist for Operation in Non-icing Conditions: "Minimum Airspeed * * * Appropriate to Flap Position. Gear Up/Flaps 0, Minimum Recommended Airspeed 150 KIAS. Gear Up/Flaps 15, Minimum Recommended Airspeed 130 KIAS." The requirements of the final rule to increase approach speeds by 10 KIAS following flight in icing conditions would, therefore, give minimum approach speeds of 160 KIAS and 140 KIAS for flaps 0 and 15, respectively.

Incorporation of AFM Changes Into Operators Manuals

Several commenters expressed concern that the NPRM does not specify how the changes to the Normal Procedures Section of the FAA-approved AFM will be implemented in operator flight manuals and training programs. This concern stems from the fact that although EMBRAER issued revision number 43 to the Normal Procedures Section of its AFM in April 1996 to require activating the de-ice boots "at the first sign of ice formation," this new icing procedure has not yet been implemented by several operators.

The FAA acknowledges that the final rule does not specify how changes to the Normal Procedures Section of the AFM should be implemented in operator flight manuals and training programs. FAA Order 8400.10 recognizes that operators may rewrite these AFM procedures to tailor them to the operators' operation and to make them more suitable for flightcrew use in operation under parts 121 and 135 of the Federal Aviation Regulations (14 CFR parts 121 and 135). However, the FAA has chartered a team to review the process being used to transfer information in the manufacturer's flightcrew operating documents, including AFM's, to operators' documents. The team will make recommendations to revise the current process, which could lead to a higher level of safety. However, this issue is beyond the scope of this rulemaking, and no change has been made to the final rule.

Cost Impact Information

Two commenters state that the cost of retrofit will be substantially higher than the estimated cost in the NPRM if aircraft down time and canceled/rescheduled equipment are considered.

One commenter requests an explanation as to why a complete cost-benefit analysis is unnecessary and redundant. This commenter states that the explanation given in the NPRM relates to FAA's position not to consider additional costs of accomplishment of the AD after a determination has been made by the FAA that an unsafe condition exists in a product. Nevertheless, the commenter believes a cost-benefit analysis should be used to determine if a rule should be adopted in the first place.

The FAA acknowledges the concerns of the commenters of the cost of retrofit required by this final rule. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur other costs in addition to the "direct" costs that are estimated in the cost impact. However, the FAA makes every effort to consider all other costs (such as downtime and canceled/rescheduled equipment, etc.) to operators in establishing the terms of compliance in a AD. For example, the FAA generally establishes AD compliance times that coincide with most operators' maintenance schedules, unless safety considerations dictate more urgent corrective action. The FAA also frequently revises AD's when commenters identify less costly alternatives to address the unsafe condition.

Finally, since the issuance of the NPRM, EMBRAER has issued Service Bulletin No. 120–30–0027, dated May 9, 1997, which describes procedures for installation of an ice detector that will enable the flightcrew to more accurately determine the need to activate the ice protection systems on the airplane and to take appropriate action. The service bulletin includes specific costs for the installation of the ice detector. Those figures have enabled the FAA to provide a more realistic estimate in the cost impact section of the final rule.

The FAA does not concur that further discussion is necessary to explain why a complete cost-benefit analysis is unnecessary and redundant, since those reasons were stated in the NPRM. Further, the FAA does not concur that a cost-benefit analysis should be used to determine if a rule should be adopted in the first place. Once an unsafe condition is identified, as in this case, it must be corrected regardless of cost. When the FAA has determined what actions are necessary to correct an unsafe condition, the FAA is obligated to require that those actions be accomplished. This obligation arises from the statutory requirement that the FAA, not aircraft operators, determines the minimum required safety standards for civil aircraft. Therefore, it would be inappropriate in issuing AD's for the FAA to engage in the same kind of balancing of costs and benefits as when it is considering regulations to improve an already high level of safety. If an operator has an alternative method of compliance that would ease the economic burden for the operator, as well as provide an acceptable level of safety, the operator may request approval of that alternative method of compliance, as provided by paragraph (c) of the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 282 EMBRAER Model EMB–120 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 220 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 1 work hour per airplane to accomplish the AFM revisions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $13,200, or $60 per airplane.

The FAA estimates that it will take approximately 47 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts will cost approximately $13,054 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,492,280, or $15,874 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–26–06 Empresa Brasileira de Aeronautica, S.A., (EMBRAER): Amendment 39–10249. Docket 97–NM–46–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is able to recognize the formation of significant ice accretion, which could result in reduced controllability of the airplane in normal icing conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"TURN ON ICE PROTECTION SYSTEM and IGNITION SWITCHES AS FOLLOWS:

• AOA, TAT, SLIP, ENGINE AIR INLET, and IGNITION SWITCHES:

—When atmospheric or ground icing conditions exist.

• PROPELLER:

—When atmospheric or ground icing conditions exist, OR

—At the first sign of ice formation anywhere on the aircraft.

WING and TAIL LEADING EDGES, and WINDSHIELD:

—At the first sign of ice formation anywhere on the aircraft.

Note: On takeoff, delay activation of the wing and tail leading edge de-ice systems until reaching the final segment speed.

Note: Atmospheric icing conditions exist when:

—Indicated Outside Air Temperature (OAT) during ground operations or Total Air Temperature (TAT) in flight is 10 degrees C or below; and

—Visible moisture in any form is present (such as clouds, fog with visibility of one mile or less, rain, snow, sleet, or ice crystals).

Note: Ground icing conditions exist when:

—Indicated OAT during ground operations is 10 degrees C or below; and

—Surface snow, standing water, or slush is present on the ramps, taxiways, or runways.

Note: For Operation in Atmospheric Icing Conditions:

—Follow the procedures in the Normal Procedures Section under Operation in Icing Conditions."

(2) Revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following additional and revised information regarding operation in icing conditions. This may be accomplished by inserting a copy of this AD in the AFM.

"Under DAILY CHECKS of the Ice Protection System, add the following:

The following tests must be performed prior to the first flight of the day for which known or forecast icing conditions are anticipated.

Ice Detector System TEST Button (if installed).....PRESS

Check normal test sequence.

Under APPROACH Checklist, add the following:

Minimum Airspeed.....APPROPRIATE TO FLAP POSITION (See Table Below)

Gear/Flap	Minimum Recommended Airspeed
UP/0°	150 KIAS
UP/15°	130 KIAS

Under OPERATION IN ICING CONDITIONS for FLYING INTO ICING CONDITION, *replace* the current AFM section information for normal icing conditions with the following:

—During flight, monitoring for icing conditions should start whenever the indicated outside air temperature is near or below freezing or when operating into icing conditions, as specified in the Limitations Section of this manual.

—When operating in icing conditions, the front windwhield corners (unheated areas), propeller spinners, and wing leading edges will provide good visual cues of ice accretion.

—For airplanes equipped with an ice between system, icing conditions will also be indicated by the illumination of the ICE CONDITION light on the multiple alarm panel.

—When atmospheric or ground icing conditions exist, proceed as follows:

AOA, TAT, SLIP, and ENGINE AIR INLET.....ON

IGNITION Switches.....ON

AIRSPEED (Flaps and Gear UP).....160 KIAS MINIMUM

—When atmospheric or ground icing conditions exist, OR

—At the first sing of ice formation any where on the aircraft, proceed as follows:

PROPELLER Deicing Switch.....ON

Select NORM mode if indicated OAT is above −10° C (14° F) or COLD mode if indicated OAT is below −10° C (14° F).

—At the first sign of ice formation anywhere on the aircraft, proceed as follows:

WINDSHIELD.....ON

WING and TAIL LEADING EDGE.....ON

Visually evaluate the severity of the ice encounter and the rate of accretion and select light or heavy mode (1 minute or 3 minute cycle) based on this evaluation.

Note: On takeoff, delay activation of the wing and tail leading edge de-ice systems until reaching the final segment speed.

Note: The minimum NH required for proper operation of the pneumatic deicing system is 80%. At lower NH values, the pneumatic deicing system may not totally inflate, and the associated failure lights on the overhead panel may illuminate. If this occurs, increase NH.

Holding configuration:

Landing Gear Lever.....UP

Flap Selector Lever.....UP

N_p.....85% MINIMUM

Increase N_p as required to eliminate propeller vibrations.

Approach and Landing procedure:

Increase approach and landing speeds, according to the following flap settings, until landing is assured. Reduce airspeed to cross runway threshold (50 ft) at V_{REF}.

Flaps 15—Increase Speed by 10 KIAS (130+10)

Flaps 25—Increase Speed by 10 KIAS (V_{REF25}+10)

Flaps 45—Increase Speed by 5 KIAS (V_{REF45}+5)

Go-Around procedure:

Reduce values from Maximum Landing Weight Approach Climb Limited charts by:

1500 lbs. for PW 118 Engines

1544 lbs. for PW 118A and 118B Engines

Flaps 15—Increase approach climb speed by 10 KIAS (V_2+10); Decrease approach climb gradient by:

3.0% for PW 118 Engines

2.9% for PW 118A and 116B Engines

Flaps 25—Increase landing climb speed by 10 KIAS (V_{REF25}+10)

Flaps 45—Increase landing climb speed by 5 KIAS (V_{REF}+5)

CAUTION: The ice protection systems must be turned on immediately (except leading edge de-icers during takeoff) when the ICE CONDITION light illuminates on the multiple alarm panel or when any ice accretion is detected by visual observation or other cues.

CAUTION: Do not interrupt the automatic sequence of operation of the leading edge de-ice boots once it is turned ON. The system should be turned OFF only after leaving the icing conditions and after the protected surfaces of the wing are free of ice.

(b) Within 10 months after the effective date of this AD, install an ice detector in accordance with EMBRAER Service Bulletin No.: 120–30–0027, dated May 9, 1997.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The installation of the ice detector shall be done in accordance with EMBRAER Service Bulletin No. 120–30–0027, dated May 9, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from EMBRAER, Empresa Brasileira De Aeronautica S/A, Sao Jose Dos Campos, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 23, 1998.

Issued in Renton, Washington, on December 11, 1997.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33000 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 98–3]

RIN 1515—AC27

Addition of Hong Kong to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to information provided by the Department of State, the United States Customs Service has found that Hong Kong does not impose or levy any discriminating duties of tonnage or imposts upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported in these vessels from the United States or any foreign country and that, accordingly, vessels of Hong Kong are exempt from the payment of special tonnage taxes and light money in ports of the United States. This document amends the Customs Regulations by adding Hong Kong to the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

EFFECTIVE DATE: The amendment to the 19 CFR 4.22 is effective on December 19, 1997. The exemption from special tonnage tax and light money for vessels registered in Hong Kong became effective on July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Craig Clark, Entry and Carrier Rulings Branch (202) 927–2320.

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton denominated "light money", on all foreign vessels which enter United States ports (46 U.S.C. App. 121 and 128). Vessels of a foreign nation, however, may be exempted from the payment of such special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost are imposed by that foreign nation on United States vessels or their cargoes (46 U.S.C. App. 141). The list of nations whose vessels have been found to be reciprocally exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money is found at § 4.22, Customs Regulations [19 CFR 4.22). Nations granted these commercial privileges that subsequently impose discriminatory duties are subject to retaliatory suspension of the commercial privileges (46 U.S.C. App. 141 and 142).

Treatment of Hong Kong

On July 1, 1997, Hong Kong became a Special Administrative Region of the People's Republic of China. Before that date, vessels from Hong Kong had an exemption from special tonnage tax by virtue of Hong Kong's status as a British colony.

The Department of State has requested that Customs add Hong Kong to the list of nations under § 4.22 in order that vessels from Hong Kong receive the same treatment as they did prior to July 1, 1997. In addition, the Department of State has submitted information regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of Hong Kong.

The Department of State's request is consistent with the terms of section 2 of the Act of October 5, 1992, referred to as the United States-Hong Kong Policy Act (Pub. L. 102–383, 106 Stat. 1448) codified in title 22, United States Code, section 5701, *et seq.*, which embodies the policy of the United States applicable to dealing with Hong Kong following reversion, including trade and commerce matters. That law demonstrates that dealings with Hong Kong after June 30, 1997, are to be conducted without change until and unless the Administration (the President) makes a determination that different treatment is warranted.

Finding

Based on the request and information submitted by the Department of State, and based on 22 U.S.C. 5701, *et seq.*, in order that vessels from Hong Kong remain exempt from the payment of special tonnage tax following reversion, the Customs Service has determined that Hong Kong should be added to the list of nations contained in 19 CFR 4.22, effective July 1, 1997. The Customs Regulations are amended accordingly.

Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary; further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Furthermore, this amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 4

Cargo vessels, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the Regulations

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 and relevant specific authority continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.22 also issued under 46 U.S.C. App. 121, 128, 141;

* * * * *

§ 4.22 [Amended]

2. Section 4.22 is amended by adding "Hong Kong" in appropriate alphabetical order.

Dated: December 15, 1997

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 97–33169 Filed 12–18–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 94N–0421]

Revocation of Regulation on Positron Emission Tomography Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; revocation.

SUMMARY: The Food and Drug Administration (FDA) is revoking a regulation on positron emission tomography (PET) radiopharmaceutical drug products. The regulation permits FDA to approve requests from manufacturers of PET drugs for exceptions or alternatives to provisions of the current good manufacturing practice (CGMP) regulations. FDA is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (Modernization Act). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice revoking two notices concerning certain guidance documents on PET drugs and the guidance documents to which the notices relate.

EFFECTIVE DATE: December 21, 1997.

FOR FURTHER INFORMATION CONTACT: Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5649.

SUPPLEMENTARY INFORMATION: On November 21, 1997, President Clinton signed into law the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115). Section 121(c)(1)(A) of the Modernization Act directs FDA to develop appropriate procedures for the approval of PET drugs as well as CGMP requirements for such drugs, taking into account any relevant differences between not-for-profit institutions that compound PET drugs and commercial manufacturers. FDA is to establish these procedures and requirements not later than 2 years after the date of enactment. In doing so, the agency must consult with patient advocacy groups, professional associations, manufacturers, and persons licensed to make or use PET drugs.

Under section 121(c)(2) of the Modernization Act, FDA cannot require the submission of new drug applications or abbreviated new drug applications for compounded PET drugs that are not adulterated under section 501(a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(a)(2)(C)) for a period of 4 years after the date of enactment, or 2 years after the date that the agency adopts special approval procedures and CGMP requirements for PET drugs, whichever is longer.

Section 121(d) of the Modernization Act requires FDA, within 30 days of enactment, to publish in the **Federal Register** a notice terminating the application of FDA's final rule, published in the **Federal Register** of April 22, 1997 (62 FR 19493), permitting the agency to approve requests from manufacturers of PET drug products for exceptions or alternatives to provisions of FDA's CGMP regulations (21 CFR 211.1(d)). FDA already has received one such request for an exception or alternative to the CGMP requirements for PET drugs in the form of a citizen petition submitted by Case Western Reserve University (CWRU) (Docket No. 97P–0198/CP1). As required by the Modernization Act, the final rule on exceptions and alternatives is hereby revoked, which also renders the CWRU citizen petition moot. The information and views presented in the CWRU citizen petition will be considered as a part of the rulemaking proceeding to establish appropriate CGMP requirements for PET drugs under section 121(c)(1)(A)(ii) of the Modernization Act.

Section 121(d) of the Modernization Act also directs FDA to terminate the application of two notices concerning certain guidance documents on PET drugs. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice revoking these two notices and the guidance documents to which the notices relate.

The revocation of the final rule on CGMP exceptions or alternatives for PET drugs is effective December 21, 1997.

In accordance with section 121(c)(1)(A) of the Modernization Act, FDA intends to begin the development of new PET drug approval procedures and CGMP requirements immediately and will obtain appropriate public input during this process.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 211 is amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374.

§ 211.1 [Amended]

2. Section 211.1 *Scope* is amended by removing paragraph (d).

Dated: December 16, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–33187 Filed 12–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate and Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved decoquinate and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency.

EFFECTIVE DATE: December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–213 that provides for combining approved decoquinate and bacitracin zinc Type A medicated articles to make Type C medicated feeds for broilers containing decoquinate 27.2 grams per ton (g/t) and bacitracin zinc 10 to 50 g/t. The Type C medicated feed is used as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*; and for increased rate of weight gain; and improved feed efficiency.

ANADA 200–213, filed by Alpharma Inc., is approved as a generic copy of Rhone Poulenc's NADA 45–348. The ANADA is approved as of September 19, 1997, and the regulations are amended in the table in 21 CFR 558.195(d) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.195 [Amended]

2. Section 558.195 *Decoquinate* is amended in the table in paragraph (d), in the entry for "27.2 (0.003 pct)", in the second column, in the entry for "Bacitracin 10 to 50", under the column "Limitations" by removing "No. 000061" and adding in its place "Nos. 046573 and 011716".

Dated: December 8, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–33095 Filed 12–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 175

[DoD Instruction 4165.67]

RIN 0790–AF62

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

ACTION: Final rule.

SUMMARY: This rule establishes procedures for implementing section 2837 of the National Defense Authorization Act for FY96 concerning the Federal Agency leaseback of property transferred to Local Redevelopment Authorities (LRAs) at installations approved for closure or realignment, and informs communities affected by base closure of these procedures.

EFFECTIVE DATE: December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Atkin, Base Closure and Community Reinvestment Office, 400 Army-Navy Drive, Suite 200, Arlington, VA 22202, telephone (703) 604–2400.

SUPPLEMENTARY INFORMATION:

Regulatory History and Background Information

DoD published a proposed rule on February 21, 1997 (62 FR 7966) implementing section 2837 of the National Defense Authorization Act for FY96 (Pub. L. 104–106). Public comments were accepted until April 22, 1997. This final rule addresses the comments received on the proposed rule.

Discussion of Public Comments

During the public comment period, the Department received over 40 public comments from 14 sources, including numerous LRAs. The comments are summarized generically below. Changes that have been made to the rule in response to public comments are noted. The comments fall into eight broad categories including:

Federal Tenant Procurement Authority

Many comments requested that the rule revise the provisions regarding what services a Federal tenant may pay for and how the services can be obtained. Examples include: (1) The rule should authorize LRAs to charge Federal leaseback tenants a Common Area Maintenance Fee; (2) the rule should authorize Federal tenants to sole source for "landlord" services; and, (3) the rule should require Federal tenants to pay for services if the Agency paid for the services when it owned the property (note: this would only apply to existing Federal tenants rather than agencies relocating to the site).

Response: The Federal Government cannot pay for municipal services that are provided by a locality to its population using tax revenues. Doing so would, in effect, result in a taxing of the Federal Government. But, as evidenced by numerous Supreme Court Cases interpreting the Supremacy Clause of Article VI of the United States Constitution, States cannot tax the Federal Government. With respect to other services, Federal tenants can only pay for those services that are a requirement of the Federal Government. Paying a Common Area Maintenance Fee could result in the Federal tenant paying for services that are above and beyond what is needed to use the property being leased. For those services that are necessary, the leaseback authority does not remove the Federal Government's responsibility to abide by existing procurement laws. As a result, such services must be acquired using existing procurement laws and regulations. In some circumstances, a sole source contract may be allowable.

Leaseback Transfer Approval/Rejection Authority

Out of concern that prospective Federal tenants will reject an LRA's request for a leaseback transfer with virtually no justification, some comments requested that the rule establish criteria that would have to be

met for a Federal Agency to reject a leaseback in favor of property ownership. Other comments suggested that an arbitration or grievance process be established or that the General Services Administration (GSA) should be assigned the task of approving leaseback requests.

Response: The Federal Property and Administrative Services Act of 1949 gives Federal Departments and Agencies priority on the use of base closure and realignment property. This "right of first refusal" to obtain ownership of property is unchanged by the leaseback authority. As a result, DoD does not have the legal authority to require a Federal Department or Agency to give up the right of ownership in favor of a leasehold interest. However, if a leaseback is requested by an LRA, the Department urges Federal Agencies to give serious consideration to leasing the property from the LRA instead of pursuing ownership through a Federal-to-Federal transfer.

Process For Securing Another Federal Tenant

The proposed rule specified that if the Federal Tenant no longer requires use of the property before the expiration of the lease term, the remainder of the term may be satisfied by the same or another Federal Agency for a similar use. The rule stated that GSA would assist in identifying interest in the property. Comments raised by the public requested that this process be clarified to include how GSA will screen for another user and how long GSA will have to secure another tenant.

Response: Section 175.7(k)(10(vi) has been amended to provide more guidance on how a replacement tenant would be identified by GSA. The rule also stipulates that GSA would have only 60 days in which to find a new tenant.

Valuation and Consideration

Numerous public comments addressed the issue of determining value for the leaseback property and setting the level of consideration. The comments included: (1) The value of leaseback property should be set at zero; (2) consideration for the leaseback property should not be due until after the Federal tenant vacates; (3) consideration for leaseback property should be set at zero; and, (4) the rule should define how value will be determined for a stand-alone leaseback.

Response: The leaseback authority requires the Department to determine the fair market value of the property before transfer. As a result, the value of the leaseback property cannot be preset through regulation. The rule does allow, however, for flexibility with respect to payment terms. Consideration can be in cash or in kind, and can be paid up front, over time, or when the Federal tenant vacates the property, as long as the amount of consideration (or formula for determining the amount of consideration) and the schedule for payment are agreed upon before the property is transferred. The value of leaseback property being transferred under an Economic Development Conveyance (EDC) will be determined in accordance with existing EDC valuation procedures. Property being conveyed as a stand-alone leaseback will be valued based on the proposed reuse.

Federal Tenant Improvements

Several LRAs expressed concern that the proposed rule allows a Federal tenant to repair, improve, and maintain the property at its expense without the approval of the LRA. The comments stated that without requiring a Federal tenant to consult with the LRA, alterations made to the property could be inconsistent with the community's plans for ultimate use of the property.

Response: The Department agrees with the comments that were submitted and has revised the rule to require Federal tenants to consult with the LRA before making repairs and improvements.

Insurance

A few comments requested that the rule require Federal tenants to obtain insurance for property leased back from an LRA in the same way that LRAs are required to have insurance for property leased from DoD.

Response: Requiring Federal tenants to obtain insurance is unnecessary because the Federal Government is self insured.

Leaseback Compatibility With Other Conveyance Regulations

Comments received from another Federal Agency raised concerns that a leaseback transfer may be incompatible with a public benefit transfer (PBT) when the leaseback property is located within the PBT property. For example, for leaseback property located within or adjacent to property being conveyed via a PBT, the public benefit grantee may not be the LRA—the recipient of the leaseback property. In addition, if leaseback property is located within or adjacent to PBT property, the Federal Agency's use of the property may be incompatible with the public benefit use (e.g. obstructing airspace near a public airport). The comment recommended that the rule require the Military Departments to consult with the Federal sponsoring Agency if the property to be transferred under the leaseback authority is within or adjacent to PBT property.

Response: Property needed by another Federal Department or Agency is either transferred using the Federal-to-Federal transfer process or it is transferred to an LRA and then leased back to the Federal entity under the leaseback authority. The use of the property is the same regardless of the transfer method. The Department does not consult with Federal sponsoring Agencies when using a Federal-to-Federal transfer, so the rule has not been changed to require consultation when using a leaseback. In some cases use of a leaseback transfer rather than a Federal-to-Federal transfer could actually be more beneficial if the property is located within or adjacent to PBT property because the leaseback rule allows the property to be transferred to another entity (e.g. an airport authority) and provides a guarantee on the future use of the property.

Legality of a Lease/Leaseback Arrangement

One comment stated that, contrary to the provisions of § 175.7(k)(7) of the proposed rule, it is legally impossible to have a leaseback without first deeding the property to the LRA. The letter stated that if a Federal Agency needs access to the property before a deed can be issued, the Military Department can allow the Agency access without first going through a leasback transaction. The letter also stated that non-DoD Federal agencies would refuse to enter into lease/leaseback arrangement.

Response: The Department's legal counsel indicates that a lease in furtherance of conveyance/leaseback transaction is allowable if a deed transfer cannot yet be accomplished. But, the Department acknowledges that in some circumstances other options may be available to provide a Federal Agency access to the property including the use of a permit.

Statement of Determination and Certifications

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this rule is not a significant regulatory action as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Public Law 95–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

Public Law 104–13, "Paperwork Reduction Act of 1995" (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose any reporting or recordkeeping requirements.

List of Subjects in 32 CFR Part 175

Community development, Government employees, Military personnel, Surplus Government property.

Accordingly, 32 CFR part 175 is amended to read as follows:

PART 175—[AMENDED]

1. The authority citation for 32 CFR part 175 continues to read as follows:

Authority: 10 U.S.C. 2687 note.

2. Section 175.3 is amended by adding a new paragraph (l) to read as follows:

§ 175.3 Definitions.

* * * * *

(l) *Similar use.* A use that is comparable to or essentially the same as the use under the original lease.

3. Section 175.4, § 175.5, and § 175.6 are revised to read as follows:

§ 175.4 Policy.

It is DoD policy to help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases-more quickly, more efficiently, and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation. This regulation does not create any rights of remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Public Law 103–160, Public Law 103–421, or Title XXVII of Public Law 104–106.

§ 175.5 Responsibilities.

(a) The Deputy Under Secretary of Defense (Industrial Affairs and Installations), after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue guidance through the publication of a Manual or other such document necessary to implement laws, Directives and Instructions on the retention or disposal of real and personal property at closing or realigning bases.

(b) The Heads of the DoD Components shall ensure compliance with this part and guidance issued by the Assistant Secretary of Defense for Economic Security and the Deputy Under Secretary of Defense (Industrial Affairs and Installations) on revitalizing base closure communities.

§ 175.6 Delegations of authority.

(a) The authority provided by sections 202 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483 and 484) for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator, GSA, to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; September 13, 1991; and, September 1, 1995.[1] Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.

(b) Authorities delegated to the Deputy Under Secretary of Defense (Industrial Affairs and Installations)[2] by § 174.5 of this chapter are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this part or other DoD Directive, Instruction, Manual, or Regulation. These authorities may be delegated further.

4. Section 175.7 is amended by revising paragraph (a)(13)(i) and paragraph (d)(3)(i), by reserving paragraph (j) and by adding paragraph (k) to read as follows:

§ 175.7 Procedures.

(a) * * *

(13) * * *

(i) In unusual circumstances, extensions beyond six months can be granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

* * * * * *

(d) * * *

(3) * * *

(i) In the event there is no LRA recognized by DoD and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under paragraph (a)(13) of this section, (unless an extension of time has been granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations)), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

* * * * *

(k) *Leaseback of real property at base closure and realignment sites.* (1) Section 2905(b)(4)(c) of Public Law 101–510, 10 U.S.C. 2687 note (BRAC 1990), as added by section 2837 of Public Law 104–106, gives the Secretary of Defense the authority to transfer real property that is still needed by a Federal Department or Agency to an LRA provided the LRA agrees to lease the property back to the Federal Department or Agency in accordance with all statutory and regulatory guidance. The purpose of this authority, hereinafter referred to as a "leaseback," is to enable the LRA to obtain ownership of the property pursuant to the BRAC process while still ensuring that the Federal need for use of the property is accommodated.

(2) Subject to BRAC 1990 and this part, the decision whether to transfer property pursuant to a leaseback rests with the relevant military department. However, a military department may only transfer property via a leaseback if the Federal entity that needs the property agrees to the leaseback arrangement.

(3) If for any reason property cannot be transferred pursuant to a leaseback (e.g., the relevant Federal Agency prefers ownership, the LRA and the Federal entity cannot agree on terms of the lease, or the military department determines that a leaseback would not be in the Federal interest), such property shall remain in Federal ownership unless and until the relevant landholding entity determines that it is surplus pursuant to the Federal Property Management Regulations.

(4) If a building or structure is proposed for transfer under this authority, that which is leased back to the Federal Department or Agency may be all or a portion of that building or structure.

(5) The leaseback authority may be used at all installations approved for closure or realignment under BRAC 1990.

(6) Transfers under this authority must be to an LRA.

(7) Transfers under this authority may be by lease in furtherance of conveyance or deed. A lease in furtherance of conveyance is appropriate only in those circumstances where deed transfer cannot be accomplished because the requirements of the Comprehensive Environmental Response,

---

[1] Available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: "base_reuse@acq.osd.mil"

[2] A Deputy Secretary of Defense memorandum of May 15, 1996, "OUSD (Acquisition and Technology) Reorganization" disestablished the office of the Assistant Secretary of Defense for Economic Security and established the office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations). Copies are available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, email: "base_reuse@acq.osd.mil"

Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, *et seq.*) for such transfer have not been met. The lease in furtherance of conveyance or accompanying contract shall include a provision stating that the LRA agrees to take title to the property when requirements for the transfer have been satisfied.

(8) The leaseback authority can be used to transfer property that is needed either by existing Federal tenants or by Federal Departments or Agencies desiring to locate onto the property after operational closure. The Military Department that is closing or realigning the installation may not transfer property to an LRA under this authority and lease it back unless:

(i) The Military Department is acting in an Executive Agent capacity on behalf of a Defense Agency that certifies that a leaseback is in the interest of that Defense Agency; or,

(ii) The Secretary of the Military Department certifies that a leaseback is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign the installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.

(9) Property eligible for a leaseback is not surplus because it is still needed by a Federal entity. However, notwithstanding that the property is not surplus and that the LRA would not otherwise have to include such property in its redevelopment plan, the LRA should include the proposed leaseback of property in its redevelopment plan, taking into account the planned Federal use of such property.

(10) The terms of the LRA's lease to the Federal entity should afford the Federal Department or Agency rights as close to those associated with ownership of the property as is practicable. The requirements of the General Services Acquisition Regulation (GSAR) (48 CFR Part 570) are not applicable to the lease, but provisions in the GSAR may be used to the extent they are consistent with this part. The terms of the lease are negotiable subject to the following:

(i) The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal Department or Agency concerned. The lease term should be based on the needs of the Federal entity.

(ii) The lease, or any renewals or extensions thereof, shall not require rental payments.

(iii) The lease shall not require the Federal Government to pay the LRA or other local government entity for municipal services including fire and police protection.

(iv) The Federal Department or Agency concerned may be responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal Department or Agency is to be accomplished through the use of Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements.

(v) The lease shall include a provision prohibiting the LRA from transferring fee title to another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal Department or Agency occupying the leaseback property.

(vi) The lease shall include a provision specifying that if the Federal Department or Agency concerned no longer needs the property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal Department or Agency that needs property for a similar use.

(A) Prior to exercising this option, the Federal tenant shall consult with the LRA concerned or other property owner if the property has been conveyed by the LRA to another entity in accordance with § 175.7(k)(10)(v) of this part.

(B) If the Federal tenant decides to exercise this option after consulting with the LRA or other property owner, it shall notify the appropriate General Services Administration regional office that the property is available for use by a Federal Department or Agency. The General Services Administration regional office shall have 60 days from the date of notification in which to identify a Federal Department or Agency to serve out the term of the lease and to notify the LRA or other property owner of the new tenant. If the regional office does not notify the LRA or other property owner of a new tenant within 60 days from the date of notification, the property is available for use by the LRA or other property owner.

(C) If the Federal tenant decides not to exercise this option after consulting with the LRA or other property owner, the property is available for use by the LRA or other property owner.

(vii) The terms of the lease shall provide that the Federal Department or Agency may repair and improve the property at its expense after consultation with the LRA.

(11) Conveyance to an LRA under this authority shall be in one of the following ways:

(i) Lease back property that will be conveyed under an Economic Development Conveyance (EDC) shall be conveyed as part of the EDC in accordance with the existing EDC procedures and § 175.7(k)(11)(ii)(B)(*4*). The LRA shall submit the following in addition to the application requirements outlined in § 175.7(e)(5):

(A) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(B) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(C) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(ii) Leaseback property not associated with property to be conveyed under an EDC shall be conveyed in accordance with the following procedures:

(A) As soon as possible after the LRA's submission of its redevelopment plan to the DoD and HUD, the LRA shall submit a request for a leaseback to the Military department. The Military Department may impose additional requirements as necessary, but at a minimum, the request shall contain the following:

(*1*) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(*2*) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(*3*) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(B) The transfer may be for consideration at or below the estimated present fair market value. In those instances in which the property is conveyed for consideration below the estimated present fair market value, the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained.

(*1*) In a rural area, the transfer shall comply with § 175.7(f)(5).

(*2*) Payment may be in cash or in-kind.

(*3*) The Military Department shall determine the estimated present fair market value of the property before transfer under this authority.

(*4*) The exact amount of consideration, or the formula to be used to determine that consideration, as well as the schedule for payment of consideration must be agreed upon in writing before transfer under this authority.

Dated: December 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33109 Filed 12–18–97; 8:45 am]

BILLING CODE 5000–04–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–4, and 51–6

Miscellaneous Amendments to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee is changing five sections of its regulations to clarify them and improve the efficiency of operation of the Committee's Javits-Wagner-O'Day (JWOD) Program. The changes are necessary to clarify and expand earlier regulation changes and to eliminate unnecessary regulatory language.

EFFECTIVE DATE: January 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–0665. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: The Committee is amending § 51–2.4 of its regulations to clarify further that its authorizing statute, the JWOD Act, 41 U.S.C. 46—48c, treats addition of commodities and services to the Procurement List and the establishment by the Committee of a fair market price as two separate functions and applies the requirement for notice and comment rulemaking only to the addition function. This area was first addressed in 1994 (59 FR 59338, Nov. 16, 1994) with the removal of fair market price from the list of suitability criteria for Procurement List additions, in accordance with a 1992 court decision, *McGregor Printing Corporation* v. *Kemp*, 802 F. Supp. 519, 527 (D.D.C), *rev'd on other grounds*, 20 F.3d 1188 (D.C. Cir. 1994). The amendment states that the Committee does not consider comments on proposed fair market prices for commodities and services proposed for addition to the Procurement List to be pertinent to a suitability determination. Accordingly, they will not be addressed when the Committee makes an addition decision. This amendment will not affect the ability of Government and other appropriate parties to comment on proposed fair market prices and price changes in connection with the Committee's fair market pricing process. The Committee is also removing paragraph 51–2.4(a)(4)(C) of its regulations to eliminate one of two essentially redundant statements in § 51–2.4 to the effect that the Committee considers pertinent comments when making its addition decisions.

The Committee also amended paragraphs (b)(6) and (c)(1) of § 51–4.3 of its regulations in 1994 (59 FR 59343) to allow the acceptance of State certifications of blindness or other severe disabilities as documentation of disability, in addition to reports by individual health professionals. Many of these certifications, however, are done by health professionals at local governmental bodies, such as public schools. The new amendment to this section will allow acceptance of these certifications.

Paragraph (c) of § 51–4.4 of the Committee's regulations permits nonprofit agencies participating in the JWOD Program to subcontract a portion of the process for providing a commodity on the Procurement List. The amendment will extend this permission to services on the Procurement List, and would specify how the Committee will oversee routine subcontracting of a part of the production process.

Paragraph (c) of § 51–6.12 of the Committee's regulations requires Government contracting activities to provide a 90-day notice when changing the scope of work of a service on the Procurement List. The amendment will make it clear that this notice requirement also applies to situations where the contracting activity converts a service to performance by Government personnel.

Prior to the 1991 revision of the Committee's regulations (56 FR 48974, Sept. 26, 1991), the matters contained in current parts 51–5 and 51–6 were in a single part 51–5, which had a disputes provision applicable to the entire part of the Committee's regulations. The amendment clarifies the disputes provision, § 51–6.14, to state its applicability to both parts 51–5 and 51–6.

Public Comments on the Proposed Rule

The Committee published the proposed rule in the **Federal Register** of September 26, 1997 (62 FR 50547). One comment was received, from counsel for a manufacturer which is objecting to a recently proposed addition to the Procurement List. The comment addressed only the proposed changes to 41 CFR 51–2.4, which contains the Committee's criteria for making additions to the Procurement List. No comments were received on the other proposed regulatory changes announced by the Committee at that time.

As noted above, the changes to 41 CFR 51–2.4 were intended to emphasize the Committee's conclusion that its authorizing statute treats the Committee's addition of commodities and services to the Procurement List and its establishment of fair market prices for these commodities and services as two separate Committee functions. The statutory requirement for notice and comment rulemaking, in the Committee's view, applies only to the first of these functions.

The commenter challenged the Committee's conclusion that the holding cited from the 1992 *McGregor* decision in support of the Committee's view was not reversed by the 1994 appeals court decision. While unable to point to specific language in the later decision reversing the lower court's holding, the commenter indicated that the holding was reversed "by implication" because the later decision discussed the Committee's shortcomings on its fair market price determination in the rulemaking at issue. If the appeals court did not intend to reverse the lower court's holding, the commenter argued, this discussion would be a mere waste of space in the appeals court's opinion.

The *McGregor* appellate decision set aside the Committee's rulemaking, and reversed the lower court, because the appellate court concluded that the Committee's rulemaking record did not support the Committee's conclusions and the Committee did not adequately explain the basis for its conclusions. The regulation stating the Committee's criteria for Procurement List additions which was in effect when the contested rulemaking took place included fair market price among the criteria. Accordingly, the discussion cited by the commenter from the appellate court opinion noted the shortcomings in the Committee's administrative record and **Federal Register** notice which pertained to the Committee's explanation of its rationale for deciding that the pricing criterion had been met, as a part of its longer discussion of the Committee's

shortcomings in documenting and explaining its conclusions on all the addition criteria. Because the regulation made fair market price an addition criterion, and thus subject to the rulemaking requirement, the appellate court did not have to address the lower court's holding that pricing determinations are reserved to the Committee alone because the JWOD Act makes price determinations a separate function from additions to the Procurement List.

The Committee's 1994 regulatory change (59 FR 59338, Nov. 16, 1994) removed fair market price from the addition criteria to restore the separation of functions established by the JWOD Act. The current revisions to 41 CFR 51–2.4 merely make the separation clearer, in light of subsequent failures by commenting parties, notably this commenter, to see the distinction. The Committee does not believe that the current revision to this regulation, and the 1994 revision, which the commenter also challenged, are legally improper, as the commenter claimed.

The commenter also objected to the Committee's reliance on the lower court opinion in *McGregor* on the grounds that the *McGregor* decisions did not address a situation in which a commenter made specific allegations about information supporting proposed prices submitted for Committee consideration by central nonprofit agencies. Because *McGregor* did not address this situation, the commenter claims that it cannot be used as a basis for excluding comments on a proposed addition merely because they concern pricing issues.

The Committee does not believe that the commenter's claim on this point is relevant to the Committee's legal authority to revise 41 CFR 51–2.4 as it did in 1994 and is doing now. As noted below, the Committee does not intend to ignore significant comments on its fair market prices. It will consider them in connection with the process for establishing a fair market price, not in connection with the rulemaking process required for a Procurement List addition.

The commenter also advanced several legal and policy arguments for his position that comments on a fair market price must be addressed in connection with a Procurement List addition. The commenter claimed that a fair market price is set before the corresponding addition decision is made, so if the price is incorrect, the addition would be legally defective unless the price is corrected. The commenter also claimed that a correct fair market price is the only restraint on addition to the Procurement List of commodities and services on which little direct labor is performed by people with severe disabilities, and that it would do no good for a commenter to question a fair market price after the decision is made, because the Government would contract for the commodity or service and the price could not be corrected. The commenter indicated that resolving these price questions at the time of addition would not be unduly burdensome for the Committee staff.

The Committee does not agree with the commenter's contention that a fair market price is established before a commodity or service is added to the Procurement List. While a proposed fair market price is calculated in accordance with the Committee's pricing policies, and the nonprofit agency agrees to produce at that price, before the proposal is sent to the Committee for an addition decision, the Committee must make the actual pricing decision once it has made its addition decision. The Committee may exercise its discretion to reject the proposed price and set another which falls within its pricing guidelines. The addition decision function, including the rulemaking requirement, precedes the pricing function in the JWOD Act, and the Committee's decision format was revised in 1994 to be consistent with the statute.

The Committee also disagrees with the commenter's contention that a fair market price ensures that sufficient qualifying direct labor is being performed by the nonprofit agency. Direct labor was a separate addition criterion from fair market price before the 1994 regulatory revision, and the two had to be independently satisfied before a commodity or service could be added to the Procurement List. Direct labor remains an addition criterion since the removal of fair market price from the criteria list.

The commenter's contention that fair market price cannot be changed after a Procurement List addition is made is not consistent with either the Committee's pricing policy or its practice in the pricing area. The Committee has a long history of making price changes as appropriate, including changes made as a result of informed comments. The very document in which the commenter made his comments on this rulemaking also contains information submitted to demonstrate to the Committee that some of its prices are not correct, and this document supplements earlier and more detailed information on that same subject which the Committee staff is analyzing with a view toward correcting the prices at issue if appropriate.

The burden on the Committee staff of reviewing comments on prices as part of an addition would not greatly exceed the burden of considering them as part of the pricing process. The Committee believes, however, that it would not be appropriate to burden the addition process with a matter more logically belonging to the pricing process. As indicated above, there is now no statutory or regulatory requirement to confuse these two processes as the commenter would have the Committee do.

Finally, the commenter claimed that the Committee must allow comments on fair market price "at some point in the process." That point is the pricing process, which includes both the establishment of an initial fair market price and changes in the price. As indicated above, the Committee will entertain significant comments on specific prices from affected parties in connection with that process. The Committee will not, however, allow commenters to use the addition process to raise issues not covered by the addition criteria, or to delay the addition process with larger policy questions such as the nature of a fair market price, as has occurred in the past.

Regulatory Flexibility Act

I certify that this revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Part 51–2

Organization and functions (Government agencies).

41 CFR Part 51–4

Reporting and recordkeeping requirements.

41 CFR Part 51–6

Government procurement, Handicapped.

For the reasons set out in the preamble, Parts 51–2, 51–4, and 51–6 of Title 41, Chapter 51 of the Code of Federal Regulations are amended as follows:

1. The authority citation for Parts 51–2, 51–4, and 51–6 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

PART 51–2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

2. Section 51–2.4 is amended by removing paragraph (a)(4)(C) and adding a sentence to paragraph (b), to read as follows:

§ 51–2.4 Determination of suitability.

* * * * *

(b) * * * Because the Committee's authority to establish fair market prices is separate from its authority to determine the suitability of a commodity or service for addition to the Procurement List, the Committee does not consider comments on proposed fair market prices for commodities and services proposed for addition to the Procurement List to be pertinent to a suitability determination.

PART 51–4—NONPROFIT AGENCIES

3. Section 51–4.3 is amended by revising paragraphs (b)(6) and (c)(1), to read as follows:

§ 51–4.3 Maintaining qualification.

* * * * *

(b) * * *

(6) Maintain a file for each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction, signed by a person licensed to make such an evaluation, or a certification of blindness by a State or local governmental entity.

* * * * *

(c) * * *

(1) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability, or a certification of the disability or disabilities by a State or local governmental entity.

* * * * *

4. Section 51–4.4 is amended by revising paragraph (c), to read as follows:

§ 51–4.4 Subcontracting.

* * * * *

(c) Nonprofit agencies may subcontract a portion of the process for producing a commodity or providing a service on the Procurement List provided that the portion of the process retained by the prime nonprofit agency generates employment for persons who are blind or have other severe disabilities. Subcontracting intended to be a routine part of the production of a commodity or provision of a service shall be identified to the Committee at the time the commodity or service is proposed for addition to the Procurement List and any significant changes in the extent of subcontracting must be approved in advance by the Committee.

* * * * *

PART 51–6—PROCUREMENT PROCEDURES

5. Section 51–6.12 is amended by revising paragraph (c), to read as follows:

§ 51–6.12 Specification changes and similar actions.

* * * * *

(c) For services on the Procurement List, the contracting activity shall notify the nonprofit agency furnishing the service and the central nonprofit agency concerned at least 90 days prior to the date that any changes in the statement of work or other conditions of performance will be required, including assumption of performance of the service by the contracting activity.

* * * * *

6. Section 51–6.14 is revised to read as follows:

§ 51–6.14 Disputes.

Disputes between a nonprofit agency and a contracting activity arising out of matters covered by parts 51–5 and 51–6 of this chapter shall be resolved, where possible, by the contracting activity and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties shall be referred to the Committee for resolution.

Dated: December 16, 1997.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–33200 Filed 12–18–97; 8:45 am]

BILLING CODE 6353–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Chapter XI, Subchapter E

Change of Code of Federal Regulations Subchapter Heading To Reflect New Name of Institute

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Final rule.

SUMMARY: This final rule implements The Museum and Library Services Act of 1996, which expanded the functions of the existing Institute of Museum Services to create The Institute of Museum and Library Services (the "Institute"), by amending the title of the Institute of Museum Services regulations to reflect the new name of the agency.

DATES: This final rule is effective December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Ann Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20405. Telephone: (202) 606–8536.

SUPPLEMENTARY INFORMATION: The Museum and Library Services Act of 1996 (the "Act"), set forth at 20 U.S.C. 961 *et seq.*, expanded the functions of the existing Institute of Museum Services to create The Institute of Museum and Library Services. This rule implements the Act, by amending the title of the Institute of Museum Services regulations to reflect the new name of the agency.

The Institute of Museum and Library Services considers this rule to be a technical amendment which is exempt from notice-and-comment under 5 U.S.C. 533(b)(3)(A). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, the Institute certifies that these regulatory amendments will not have a significant impact on small business entities.

For the reasons stated in the preamble and under the authority of 20 U.S.C. 961 et seq., the Institute of Museum and Library Services amends 45 CFR, Chapter XI, Subchapter E as follows:

1. Revise the heading for Subchapter E to read as follows:

SUBCHAPTER E—INSTITUTE OF MUSEUM AND LIBRARY SERVICES

Dated: December 16, 1997.

Mary Ann Bittner,

Federal Register Officer.

[FR Doc. 97–33214 Filed 12–18–97; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–218; RM–8912]

Radio Broadcasting Services; Windsor, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Vixon Valley Broadcasting, allots Channel 294A to Windsor, NY, as the community's first local aural transmission service. See 61 FR 58361, November 14, 1996. Channel 294A can be allotted to Windsor with a site restriction of 11.6 kilometers (7.2 miles) east, at coordinates 42–03–04 North Latitude and 75–30–18 West Longitude, to avoid a short-spacing to Station WHCD, Channel 295B, Auburn, NY. Canadian concurrence in the allotment has been received since Windsor is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 26, 1998. A filing window for Channel 294A at Windsor, NY, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–218, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Windsor, Channel 294A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33184 Filed 12–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 231C and adding Channel 231C1 at Safford.

3. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 286C1 and adding Channel 286C2 at Liberal.

4. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 296C2 and adding Channel 296C3 at Durant and by removing Channel 245C1 and adding Channel 245C at Enid.

5. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 266A and adding Channel 266C3 at Sutherlin.

6. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 231C and adding Channel 231C1 at Beaumont, by removing Channel 248C and adding Channel 248C1 at Beaumont, and by removing Channel 283C and adding Channel 283C1 at Orange.

7. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 256A and adding Channel 256C3 at Walla Walla.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33186 Filed 12–18–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 961030300–7238–04; I.D. 120996A]

RIN 0648–AJ30

Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues this interim final rule to implement the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule establishes guidelines to assist the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans (FMPs), including identification of adverse impacts from both fishing and non-fishing activities on EFH, and identification of actions required to conserve and enhance EFH. The regulations also detail procedures the Secretary (acting through NMFS), other Federal agencies, state agencies, and the Councils will use to coordinate, consult, or provide recommendations on Federal and state activities that may adversely affect EFH. The intended effect of the rule is to promote the protection, conservation, and enhancement of EFH.

DATES: Effective on January 20, 1998. Comments must be received no later than February 17, 1998.

ADDRESSES: Requests for copies of the Environmental Assessment (EA) should be sent to the Director, Office of Habitat Conservation, Attention: EFH, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. (see **SUPPLEMENTARY INFORMATION**). These documents are also available via the NMFS Office of Habitat Conservation Internet website at: http://kingfish.ssp.nmfs.gov/rschreib/habitat.html or by contacting one of the regional NMFS Offices:

Northeast Regional Office, Attention: Habitat and Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930–2298; 978/281–9328.

Southeast Regional Office, Attention: Habitat Conservation Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; 813/570–5317.

Southwest Regional Office, Attention: Habitat Conservation Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; 562/980–4041.

Northwest Regional Office, Attention: Habitat Conservation Branch, 525 N.E. Oregon St., Suite 500, Portland, OR 97232–2737; 503/230–5421.

Alaska Regional Office, Attention: Protected Resources Management Division, 709 West 9th Street, Federal Bldg., Room 461, P.O. Box 21668, Juneau, AK 99802–1668; 907/586–7235.

FOR FURTHER INFORMATION CONTACT: Lee Crockett, NMFS, 301/713–2325.

SUPPLEMENTARY INFORMATION: This rulemaking is required by the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) as reauthorized by the Sustainable Fisheries Act, signed into law on October 11, 1996. Details concerning the justification for and development of this interim final rule were provided in the proposed rule (62 FR 19723, April 23, 1997) and will not be repeated here. In the proposed rule, the guidelines to the Councils for amending FMPs and the regulations outlining the processes for coordinating and consulting with, and providing recommendations to, the appropriate Federal and state agencies were combined within one subpart. For increased clarity and easier access for agencies involved in coordination or consultation, the interim final regulations separate the guidelines from the coordination, consultation, and recommendation procedures. The former is in subpart J and the latter is in subpart K of 50 CFR part 600. Both subparts are being issued together because of the importance for all affected parties to understand the implications of an area being identified as EFH.

Overview of EFH FMP Amendment Guidelines

The themes of sustainability and risk-averse management are prevalent throughout the Magnuson-Stevens Act, both in the management of fishing practices (e.g., reduction of bycatch and overfishing and consideration of ecological factors in determining optimum yield [OY]) and in the protection of habitats (i.e., prevention of direct and indirect losses of habitats, including EFH). Management of fishing practices and habitat protection are both necessary to ensure long-term productivity of our Nation's fisheries. Mitigation of EFH losses and degradation will supplement the traditional management of marine fisheries. Councils and managers will be able to address a broader range of impacts that may be contributing to the reduction of fisheries resources. Habitats that have been severely altered or impacted may be unable to support populations adequately to maintain sustainable fisheries. Councils should recognize that fishery resources are dependent on healthy ecosystems; and that actions that alter the ecological structure and/or functions within the system can disturb the health or integrity of an ecosystem. Excess disturbance, including over-harvesting of key components (e.g., managed species) can alter ecosystems and reduce their productive capacity. Even though traditional fishery management and FMPs have been mostly based on yields of single-species or multi-species stocks, these regulations encourage a broader, ecosystem approach to meet the EFH requirements of the Magnuson-Stevens Act. Councils should strive to understand the ecological roles (e.g., prey, competitors, trophic links within food webs, nutrient transfer between ecosystems, etc.) played by managed species within their ecosystems. They should protect, conserve, and enhance adequate quantities of EFH to support a fish population that is capable of fulfilling all of those other contributions that the managed species makes to maintaining a healthy ecosystem as well as supporting a sustainable fishery.

Councils must identify in FMPs the habitats used by all life history stages of each managed species in their fishery management units (FMUs). Habitats that are necessary to the species for spawning, breeding, feeding, or growth to maturity will be described and identified as EFH. These habitats must be described in narratives (text and tables) and identified geographically (in text and maps) in the FMP. Mapping of EFH maximizes the ease with which the information can be shared with the public, affected parties, and Federal and state agencies to facilitate conservation and consultation. EFH that is judged to be particularly important to the long-term productivity of populations of one or more managed species, or to be particularly vulnerable to degradation, should be identified as "habitat areas of particular concern" (HAPC) to help provide additional focus for conservation efforts. After describing and identifying EFH, Councils must assess the potential adverse effects of all fishing-equipment types on EFH and must include management measures that minimize adverse effects, to the extent practicable, in FMPs. Councils

are also directed to examine non-fishing sources of adverse impacts that may affect the quantity or quality of EFH and to consider actions to reduce or eliminate the effects. Councils are directed to identify proactive means to further the conservation and enhancement of EFH.

Overview of Coordination, Consultation, and Recommendation Regulations

This regulation establishes procedures for implementing the coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. NMFS will coordinate with other Federal and state action agencies by providing them with descriptions and maps of EFH, as well as information on ways to conserve and enhance EFH. The regulations allow Federal agencies to use existing consultation/environmental review procedures or the procedures outlined in the regulation to fulfill their requirement to consult with NMFS on actions that may adversely affect EFH. Consultations may be conducted at a programmatic and/or project-specific level. In cases where effects from an action will be minimal, both individually and cumulatively, a General Concurrence (GC) procedure has been developed to simplify the Federal consultation requirements. Consultation on Federal actions may be conducted under Abbreviated or Expanded Consultation, depending on the severity of the threat to EFH. NMFS anticipates that a majority of Federal actions with the potential for adverse effects on EFH may be addressed through the abbreviated consultation process or the General Concurrence process. Coordination between NMFS and the Councils is encouraged in the identification of threats to EFH and the development of appropriate EFH conservation recommendations to Federal or state agencies. When NMFS or a Council provides EFH conservation recommendations to a Federal agency, that agency must respond in writing within 30 days. If the action agency's decisions differ from NMFS' conservation recommendations, further review of the decision may be continued by the two agencies, as detailed in the regulations.

Related Documents

Other related documents that led to this interim final rule were referenced in the proposed rule. The Technical Assistance Manual that was released for public comment concurrent with the proposed rule received very little public comment. This was in part due to the very technical nature of the document. Therefore, NMFS will maintain this information as internal technical guidance, and as such, is not making it available for public comment again.

Comments and Responses

Six regional public meetings and numerous briefings were held during the comment period to explain the proposed rule and solicit public comments from all interested parties. Fishery and non-fishery representatives attended the public meetings and were included in briefings. Comments were received in writing from 6 Regional Fishery Management Councils, 3 Interstate Marine Fishery Commissions, 8 Federal agencies, 22 state agencies, 13 fishery groups, 49 conservation/environmental groups, 60 non-fishing industry groups, 11 other non-governmental organizations, 11 academicians, 1 local government, and 40 individuals.

1. Comments Asking for Additional Time to Comment

Comments: Several commenters requested that, given the complex nature of the proposed regulations, additional time should be granted for public comment.

Response: NMFS agrees that, because the EFH rule outlines a new program, additional public comment is desirable. However, because it is critical that these guidelines be available to the Councils and to the Secretary as soon as possible so that EFH FMP amendments can be developed and submitted to the Secretary in time to meet the statutory deadline of October 11, 1998, NMFS is issuing this rule as an interim final rule to provide necessary certainty to conduct this work. NMFS will also consider additional comments received during the comment period on this interim final rule before issuing the final rule. NMFS is particularly interested in receiving comments on those sections of the interim final rule that have been changed in response to comments and any new information not previously submitted.

2. Comments in Favor of Protection of Fish Habitats

Comments: Most of the commenters supported the concept of protecting fish habitats as a means to support fisheries, sustain ecosystems, or preserve aesthetics, some in spite of the fact that they were wary of the approach outlined in the proposed rule because of potential adverse impacts on their activities. Numerous groups and individuals expressed concern that the habitat conservation approach set forth in the proposed rule was a dilution of the previously presented ecosystem approach from the Framework for the Description and Identification of EFH (62 FR 1306, January 9, 1997) (Framework) and feared that it would be weakened further in the interim final rule under pressure from non-fishing interests. Many commenters pointed out that marine fisheries belong to all Americans, not just to certain industries.

Response: NMFS believes that EFH must be conserved and enhanced to prevent future depletions of managed species and to restore many presently overfished stocks. Measures detailed in these regulations are necessary to ensure that adverse impacts from both fishing and non-fishing will be adequately addressed in accordance with the requirements of the Magnuson-Stevens Act. The regulations were developed by NMFS to provide the Councils with guidance that is both feasible and scientifically defensible. Although the guidelines vary superficially from the Framework, they are not fundamentally different. Additional input from Councils and the public, and discussions with other Federal agencies, were used to make the program workable. NMFS will continue to work with all parties to protect both quantity and quality of these habitats in a streamlined and efficient manner. NMFS has worked to insure that an ecologically sound approach was developed to protect, conserve, and enhance EFH to support sustainable fisheries and the ecosystems that support them in accordance with the mandate set by Congress.

3. Comments on the Interpretation of EFH

Comments: Some industry groups commented that linking EFH to the amount of habitat necessary to support a healthy ecosystem exceeds the authority granted to NMFS under the Magnuson-Stevens Act. Additionally, they criticized this linkage as vague and overly broad. Some fishing interests expressed concern that ecosystem considerations might interfere with the focus on maintaining fishing production. Other commenters supported the linkage to healthy ecosystems, but asked that a healthy ecosystem be more clearly defined. Some commenters suggested that healthy ecosystems should be defined by species composition and abundance, presence of key interactions, and habitat persistence.

Response: In the proposed rule, NMFS linked EFH to the amount of habitat required to support a sustainable fishery and healthy ecosystem. In the interim final rule, NMFS clarified this linkage to be the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem.

The Magnuson-Stevens Act provides authority for the link between EFH and the managed species' contribution to a healthy ecosystem in a number of places. Ecosystem themes are common in the definitions of "fishery resources," "conservation and management," and "optimum." These definitions link protection of the marine environment to managing fisheries. Specifying that Councils should address the degradation and loss of EFH from both fishing and through conservation and enhancement measures further reflects support for more ecologically-based management of marine fisheries. In addition to its present emphasis on ecological components of management, the Magnuson-Stevens Act, in section 406, calls for the establishment of an advisory panel to analyze the extent to which ecosystem principles are being applied, and to recommend to the Secretary and Congress ways to expand the application of ecosystem principles in fishery conservation and management in the future.

Although the implementation of ecosystem management varies among the agencies and organizations that have adopted it, there are common elements among the approaches. Ecosystem management encourages sustainable resource use that is achieved through goal setting and the use of ecological precepts and understanding to achieve those goals; recognition that different processes occur at different temporal and spatial scales and must be addressed appropriately; recognition of the complexity and integration of ecosystems; recognition of humans as active components in ecosystems; recognition of the uncertainties inherent in management and the need to make risk-averse decisions; and the need for adaptive management (Christensen *et al.*, 1996; Grumbine, 1997; Hancock, 1993). This regulation embraces those concepts and urges Councils to seek environmental sustainability in fishery management of living marine and anadromous resources, within the current statutorily-prescribed fishery management framework (i.e., management by FMPs).

Linking EFH to healthy ecosystems will improve conserving and enhancing the habitats of all living marine resources which depend on the same marine ecosystem. Applying an ecosystem approach to the conservation and enhancement of EFH will require NMFS and the Councils to consider the inter-relationships between and among species managed under the Magnuson-Stevens Act, the Marine Mammal Protection Act, and the Endangered Species Act (ESA). Carrying out the habitat conservation mandates of these laws independently is inefficient, because the interrelationships between species are not considered. Concerns expressed by fishing interests that focusing on the ecosystem will divert attention from promoting sustainable fisheries are unfounded since sustainable resource use must be grounded in a sustained ecosystem.

In response to comments requesting clarification, this interim final rule provides additional guidance by listing the general attributes of a healthy ecosystem in a definition. The linkage between a healthy ecosystem and EFH has been clarified to mean the habitat required to support a sustainable fishery and the managed species contribution to a healthy ecosystem.

Comments: Many comments, mainly from conservation groups, opposed linking EFH to fisheries in the definition and throughout the proposed rule. In particular, they wanted the quantity of EFH to be linked to the support of fish populations rather than to fisheries production. Conversely, some Councils' comments suggested that NMFS link EFH to a quantifiable fishery term such as maximum sustainable yield (MSY) or OY. One Council urged NMFS to clarify that the term sustainable fishery means the level necessary to maintain at least the current production. Other commenters supported the linkage of EFH to sustainable fisheries, but were unclear about the meaning of target production goal as used in the proposed rule. One asked that the time period over which sustainable should apply be better defined. Some non-fishing commenters criticized the linkage to sustainable fisheries as vague and too broad.

Response: The Magnuson-Stevens Act mandates that EFH requirements be incorporated into FMPs. It also explicitly states that one of its purposes is to provide for the preparation and implementation of FMPs that will achieve and maintain on a continuing basis, the OY from each fishery. The definition of optimum states that the yield from a fishery should provide the greatest national benefit. This benefit includes food production and recreational opportunities, and takes into account protection of marine ecosystems. This is the basis for long-term sustainable fisheries. Therefore, NMFS continues to maintain that linking EFH to sustainable fisheries is appropriate and based on the Magnuson-Stevens Act. Because managed species are integral parts of the ecosystems that support them, consideration of ecosystem processes are equally important, as expressed in the rule.

In managing a fishery under their jurisdiction, Councils limit the quantity of fish that can be harvested by fishers from a population or stock. These limits or yields, usually expressed as MSY or OY, are based on estimates of the total population (or stock) size and the ability of the population to sustain itself when subjected to some level of fishing pressure. When considering the EFH requirements of a managed species, Councils must describe and identify enough habitat to support the total population, not just the individual fish that are removed by fishing (the fisheries production). "Target production goal" was intended to portray this concept in the proposed rule; but, because commenters confused biological production with fisheries production, NMFS has modified this wording. The interim final rule states that FMPs should identify enough EFH to support a population adequate to maintain a sustainable fishery and the managed species' contributions to a healthy ecosystem. If the current stock size supports the long-term potential yield of the fishery then EFH should be adequate to support that population and its contribution to a healthy ecosystem. If the current stock size is lower than that (i.e., overfished), then EFH may need to be bigger or annually enlarged to support a larger spawning stock if habitat is limiting.

Comments: Some commenters stated that including "biological properties" and "biological communities" in the interpretation of "waters" and "substrate" was an inappropriate expansion of the Magnuson-Stevens Act. Other commenters criticized NMFS for including "chemical properties" in the interpretation of "waters" because other agencies have greater expertise in, and jurisdiction over, water quality issues.

Response: NMFS disagrees with these comments and did not change the rule. "Biological properties" and "biological communities" are fundamental aspects of habitat and have long been recognized as such by the scientific and technical communities. The fact that an area is aquatic or contains a specific physical structure may not necessarily make it fish habitat. Fish species require waters with, among other things, appropriate biological properties and chemical properties (e.g., prey, nutrient sources, salinities, dissolved oxygen concentrations, and pH) to meet their

physiological/habitat requirements. Substrata also must often have certain biological communities (typically sessile organisms) before they function as fish habitat. For example, it is the presence of seagrasses (associated biological community) that provides appropriate settlement habitat for post-larval queen conch, not just the underlying coarse grain sand.

NMFS and other NOAA offices have considerable expertise and state-of-the-art scientific facilities to assess and evaluate water quality issues. The fact that NMFS does not have statutory authority for regulation of water quality makes it no less important in the research and management of resources under NMFS' jurisdiction.

Comments: Some commenters objected to the inclusion of "structures underlying the waters" in the interpretation of "substrate." Others supported the inclusion of "structures," but questioned whether the owners of structures that are identified as EFH would be required to maintain them as EFH. Several commenters, primarily dive groups, recreational fishers, and oil industry representatives, applauded the inclusion of artificial reefs as structures, and further stressed the importance of offshore oil platforms as artificial reefs and potential EFH. One commenter pointed out that artificial reefs, if inappropriately established, have the potential to adversely impact EFH.

Response: NMFS included "structures underlying the waters" in its interpretation of substrate to clarify that structures such as artificial reefs, jetties, and shipwrecks may be considered EFH if they provide essential habitat for a managed species. This should not be interpreted to mean that all such structures are EFH. Only those structures that meet the criteria outlined in these guidelines and identified as such in an FMP are EFH. If a structure is identified as EFH, the Secretary is required to comment on any state or Federal action that may have an adverse impact on such habitat. Activities, such as routine maintenance, that do not require a state or Federal permit or license would not require consultation. If a state or Federal agency is involved in creating or modifying an artificial reef in, or affecting, EFH, NMFS will be required to comment on ways to minimize or mitigate any adverse impacts to the EFH.

Comment: Some commenters were opposed to interpreting "spawning, breeding, feeding, or growth to maturity" to cover a species' full life cycle. Other commenters supported it.

Response: The Magnuson-Stevens Act established this definition for EFH. NMFS recognizes that some may interpret spawning, breeding, and growth to maturity to exclude key life stages, (e.g., mature adults). However, all immature life stages grow to maturity and all mature adults feed, spawn, and/or breed. Therefore, it is appropriate to interpret this phrase to cover the entire life cycle.

Comments: Some commenters criticized the definition of EFH in the proposed rule for allowing historic or degraded habitat to be identified as EFH "if the loss of that habitat has contributed to reduced yields for the species and it is feasible to restore the lost habitat." Other commenters criticized NMFS for allowing degraded or inaccessible habitat to be identified as EFH. The commenters argued that these provisions exceed NMFS' statutory authority. Port authorities in particular are concerned that facilities on dry land may be identified as EFH.

Response: These provisions were included in the proposed rule because the restoration of historic, degraded, or inaccessible habitat, where technologically and economically feasible, may be necessary to meet the rule's stated goal of ensuring the production necessary for some species to support a sustainable fishery and contribute to a healthy ecosystem. This interim final rule continues to allow the identification of historic or degraded habitat as EFH but further clarifies that "historic habitat" must currently be an aquatic area before it can be identified as EFH and that restoration must be technologically and economically feasible. Therefore, dry land could not be identified as EFH.

4. Comments Requesting Definition of Other Terms in the Interim Final Rule

Comment: Several commenters suggested that the interim final rule contain a definition of "adverse impact."

Response: NMFS agrees and has included a definition in the rule.

Comment: Several commenters suggested that a definition for critical habitat" is necessary.

Response: NMFS disagrees that a definition is necessary but has modified the rule to clarify that "critical habitat" relates to species that are listed as threatened or endangered under the ESA.

Comment: Some commenters suggested that the acronym "FMU" needs to be defined.

Response: The acronym FMU is already defined in 50 CFR 600.10, which contains the definitions for all of part 600. The EFH provisions contained in this interim final rule will become subparts of part 600 and as such are subject to those definitions.

Comment: Several commenters suggested that the terms "high value habitat" and "ecosystem scale" need to be defined in the interim final rule.

Response: NMFS disagrees that these terms need to be defined in the rule since they may be interpreted from the contexts in which they are used in the rule.

5. Comments on the Purpose and Scope of the Rule

Comments: Several commenters criticized NMFS for not requiring Councils to describe and identify EFH for all fish species inhabiting the geographic jurisdiction of a Council, and suggested that such a limitation is not supported by the Magnuson-Stevens Act. Other commenters suggested that EFH be described and identified for all major fisheries, even those not in an FMP. They stated that Councils should be able to describe and identify EFH of non-managed species in order to protect habitats that are affected by fishing for a managed species. Others suggested that as soon as EFH is identified in a proposed FMP, management measures and consultations should begin without waiting for final approval of the FMP.

Response: NMFS continues to maintain that the Magnuson-Stevens Act requires Councils to describe and identify EFH for only those species managed under an FMP. According to section 303(a)(7) of the Magnuson-Stevens Act, EFH provisions are required components of an FMP. Therefore, it is appropriate to describe and identify EFH only for those species managed in the FMP. However, the Magnuson-Stevens Act does not preclude Councils from identifying habitat of a fishery resource under its authority. Section 305(b)(3) describes the Councils' commenting responsibilities for activities that may affect such habitat. In the rule, NMFS points out that Councils have the option to describe and identify habitats (not EFH) and institute management measures to protect species (and their habitats) that are not managed under FMPs. This is currently done by some Councils. However, the habitats of species not managed under a Federal FMP would not be considered EFH for the purposes of consultation.

EFH consultation and management measures can not be implemented until FMPs include an EFH provision. Consultation and management measures would have no statutory basis without the EFH provisions in an FMP.

Comments: Several commenters questioned whether EFH would be identified in state waters. Many commenters urged NMFS to do so; others opposed it. Commenters urged NMFS to clearly state that management actions regarding fishing impacts only apply to species managed by Councils in Federal waters. While some commenters pointed out that NMFS cannot regulate fishing in state waters, others asked that fishing be regulated in state waters as well as Federal waters. Three commenters suggested that the Submerged Lands Act, in combination with the Magnuson-Stevens Act, would allow NMFS to assert jurisdiction over state waters, and that the rule should explain how states' authority over their waters and submerged lands will be affected by this rule. Some suggested that fishing regulations be closely coordinated with state management agencies to ensure consistency in habitat protection. The commenters who stated that EFH should not be identified in state waters, further asserted that NMFS should not provide comments on Federal and state activities that take place in state waters.

Response: The Magnuson-Stevens Act requires Councils to describe and identify EFH based on all life stages of the managed species, with no limitations placed on the geographic location of EFH. Therefore, EFH may be in state or Federal waters depending on the biological requirements of the species. Regarding actions that occur in state waters that may adversely affect EFH, the Magnuson-Stevens Act provides authority for NMFS to provide EFH conservation recommendations, not regulate.

With few exceptions, direct NMFS regulatory authority applies only to Federal waters, the exclusive economic zone (EEZ). Generally, without appropriate preemptive procedures, NMFS can not implement management measures for state waters. However, many species targeted in Federal fisheries spend part of their life cycle in state waters and may be impacted by fishing activities that are managed by a state. Effective management of marine resources that cross jurisdictional boundaries requires coordination between management entities, and NMFS has added additional language to the interim final rule to emphasize such arrangements. Adverse impacts to EFH that result from state-managed fisheries will be addressed through conservation recommendations to the appropriate state agency. Failure to consult or comment on activities adversely affecting all habitats would be a failure to carry out the legislative mandate to protect EFH for all life history stages.

Comments: Several commenters recommended that the EFH mandate should be applied beyond U.S. territorial waters. They argue that many of the species managed under the Magnuson-Stevens Act range beyond U.S. territorial waters, e.g., New England groundfish and Alaska salmon are found in Canadian waters and the high seas. The highly migratory species that are managed under Secretarial FMPs range into international waters and the waters of other nations. The basic question raised in the comments is whether NMFS and the Councils can identify EFH for those species in the territorial waters of another country or in international waters.

Response: The EFH provisions under the Magnuson-Stevens Act do not direct the Councils to include waters beyond the jurisdiction of the U.S. Since provisions in statutes are not presumed to apply extraterritorially, NMFS has determined that waters beyond the United States' EEZ are not to be identified as EFH. Therefore, NMFS will not regulate fishing beyond the EEZ, and Federal consultation will not be required. However, Councils may describe, identify, and promote protection of habitats for managed species in waters beyond the EEZ. The Secretary will use such information in discussions with Federal agencies involved in international actions, including negotiations with foreign nations.

Comment: One Federal agency commented that the Great Lakes should be added to the EFH program. Other commenters suggested that interjurisdictional fisheries be added to the program.

Response: In order for an area, like the Great Lakes, to be identified as EFH, it must provide essential habitat for a species managed under the Magnuson-Stevens Act. Similarly, an interjurisdictional fishery must be at least partially managed under the Magnuson-Stevens Act for the EFH mandate to apply.

Comment: Commenters asked whether EFH would be described and identified in waters under the jurisdiction of tribes or native corporations.

Response: NMFS intends that tribal and native corporation waters be treated the same as state waters for the purposes of describing and identifying EFH (i.e., EFH may be identified in those waters if the habitat is essential for a managed species). However, tribes and native corporations are not required to consult with NMFS on actions that do not require Federal or state authorization or action. Tribal and native corporation actions, including activities carried out through Federal financial assistance and under permits or licenses issued by Federal or state governments, will require the appropriate procedures for consultation and/or recommendations as set forth in subpart K.

Comment: Commenters voiced concern that this regulation would affect the rights of private landowners to manage their own property.

Response: Private landowners have no new responsibilities to consult with NMFS on private land activities as a result of the Magnuson-Stevens Act or this interim final rule. No consultation is required unless an activity may have an adverse impact on EFH and it requires a Federal or state action, such as permitting or licensing. Those Federal or state actions will trigger the consultation and/or recommendation requirements of section 305(b)(2–4) of the Magnuson-Stevens Act. EFH coordination, consultation, and recommendation procedures are detailed in this interim final rule and will be added to part 600 as new subpart, K. Use of existing consultation procedures to minimize adverse impacts to EFH is strongly advocated in the rule.

Comment: One organization suggested that EFH should be expanded beyond aquatic areas to include riparian areas and hydrological basins.

Response: The statutory definition of EFH limits it to "waters"; therefore, terrestrial areas may not be identified as EFH. However, there is not a similar legal limit on Federal or state activities that may adversely impact EFH. The only criteria is that the activity may have an adverse impact on EFH, with no limits on where the activity is located. An adverse effect on EFH should be reasonably foreseeable for the action to require consultation. Therefore, NMFS may comment on Federal or state actions which take place within riparian areas or hydrological basins if they may have a reasonably foreseeable adverse impact on EFH. In this rule, NMFS has confined EFH to include only aquatic habitat because the Magnuson-Stevens Act definition of EFH limits it to "waters." However, NMFS believes that areas important to a sustainable fishery necessarily include riparian and upland areas, as well as aquatic areas, particularly in the case of anadromous species. Areas that NMFS considers important are illustrated in the critical habitat designation for Snake River chinook.

Comment: One commenter expressed concern that those areas not identified as EFH will be subject to greater threat of disturbance because they will be thought of as expendable.

Response: The Fish and Wildlife Coordination Act (FWCA) provides a directive to Federal agencies to consult with NMFS when waters of the United States may be modified by activities requiring a Federal permit or license. The FWCA will continue to allow the Secretary to comment on Federal activities that may adversely affect living marine resources and their habitat, even if such habitat is not identified as EFH.

6. Comments on Mandatory Contents of Fishery Management Plans

Comments: Some non-fishing industry commenters argued that NMFS has exceeded the authority granted by the Magnuson-Stevens Act by including mandatory provisions in the EFH guidelines. They argue that Congress intended the guidelines to be voluntary. Other commenters argued that proposing discretionary components that "should" be included in an FMP will expose the Councils and NMFS to third-party suits. They stated that the guidelines need to be far less prescriptive to guard against such suits. Conversely, other commenters argued that NMFS should change many of the discretionary components of FMPs in the proposed rule to mandatory components in the interim final rule.

Response: The Magnuson-Stevens Act directs the Secretary to "establish by regulation guidelines to assist Councils" in carrying out the EFH mandate. The mandatory components specified in the rule reflect requirements of the Magnuson-Stevens Act, or are logical extensions of it. Since receiving these comments, NMFS has reviewed the use of each term (i.e., must, should, may, etc.) to ensure that the requirements of the Magnuson-Stevens Act are reflected in the interim final rule. NMFS will continue to maintain a mixture of voluntary (may), strongly suggested (should), and mandatory (must) components to inform Councils of the elements needed in an EFH amendment to receive Secretarial approval.

7. Comments on Description and Identification of EFH in Fishery Management Plans

Comment: A commenter criticized NMFS for not providing tighter, less vague standards for the description and identification of EFH.

Response: The guidelines contained in this rule apply to all regions of the United States, including the Caribbean and western Pacific territories, and will be used to amend 39 different FMPs covering over 400 species. Because of this diversity of regional needs, the guidelines need to be flexible, while providing consistent guidance to ensure that amendments meet equivalent standards.

Comments: Many commenters suggested other types of information that should be included in describing and identifying EFH. These include: (1) Sensitive life stages; (2) reproductive and dispersal patterns; (3) information generated from spatial, temporal, and fishing gear experiments; (4) historical information for each data level; (5) carrying capacity, habitat availability, quality, and utilization; and (6) spawning structures and structural complexity.

Response: NMFS concurs that this information may be useful. The lists of information types were intended to be instructive, not exhaustive. The interim final rule has been modified to provide more flexibility with regard to the data used.

8. Comments on the Sources and Quality of Information Used

Comment: Several comments, particularly from state agencies, stressed the need to involve states and use state agency data in satisfying the EFH requirements of the Magnuson-Stevens Act. Several commenters urged NMFS to cooperate with states in gathering information, developing FMP amendments, and funding restoration.

Response: NMFS agrees, and is already collaborating with the states in many activities. For example, NMFS is coordinating with the state fisheries agencies and the three interstate fisheries commissions to gather the best available information for use in the EFH amendments. NMFS is also working with state coastal zone programs to coordinate EFH efforts with approved coastal management plans. These interactions with states are facilitated by the fact that Council members represent each state under the Council's jurisdiction, and many resource agency experts also serve on various Council committees and panels, including habitat committees and advisory panels. All Council activities are open to the public, which affords further opportunities for cooperation. Subpart J of the interim final rule has been further modified to emphasize coordination between states, interstate commissions, and Councils in the development of EFH FMP provisions.

Comment: Several commenters suggested that "best available information" might preclude NMFS and the Councils from using local knowledge and log books as sources of information to describe and identify EFH.

Response: Section 305(b)(1)(B) of the Magnuson-Stevens Act requires NMFS to consult with participants in the fishery before submitting its recommendations and information to the Councils to assist in the description and identification of EFH. This indicates Congress' intent to use information from fishers. NMFS intends for Councils to use the best available information, including local knowledge and log books, to describe and identify EFH. However, all information should be evaluated with regard to the reliability of the information and its source.

9. Comments on the Four-Level Approach for Gathering and Organizing EFH Data

Comments: Many commenters expressed concern about the four-level approach to gathering and organizing data for the description and identification of EFH. Some expressed concern that there is no incentive for Councils to move beyond level 1 information (i.e., presence/absence information) and that Councils would identify all habitats occupied by managed species as EFH to ensure the greatest amount of protection. Other commenters suggested that there should be a rebuttable presumption that all habitat is EFH if data from levels 2 through 4 are used to refine the identification of EFH. Finally, some commenters criticized NMFS for allowing the identification of EFH to be based on production rates by habitat type, because it restricts the goal of the Magnuson-Stevens Act to promote the protection of EFH.

Response: The four-level approach provides a logical method to gather and organize data for the identification of EFH. There is a natural incentive to gather and use information from progressively higher levels, because this will enable NMFS and the Councils to target their habitat conservation efforts to ensure that the most productive habitats receive greater attention. The rule has been modified to reinforce this intention. Councils are required to demonstrate that the best scientific information available was used in the identification of EFH. NMFS also disagrees with the comment that linking EFH to production will not promote the protection of EFH. Clearly linking EFH to biological production, and advocating research to quantify these relationships, will increase awareness of the importance of habitat to sustainable fisheries and will likely lead to greater emphasis on protecting EFH. NMFS did not create a rebuttable presumption that all habitat identified by levels 2 through 4 information is EFH because it could lead to an overly broad area being identified as EFH without adequate scientific justification. NMFS' use of the four levels of information is a means of organizing the available data for the identification of EFH. This data will be considered in determining the extent of EFH.

Comment: One commenter suggested that NMFS require Councils to submit a schedule detailing when higher levels of information will be developed.

Response: Periodic updates are required for EFH amendments. Amendments should include an assessment of the information needed to improve the description and identification of EFH. The research needs identified in an FMP should include a schedule for meeting those needs.

10. Comments on Criteria for EFH Determinations

Comments: Several commenters questioned the role of Council judgment when there is only level 1 information available. Others asked for additional guidance on how to interpret level 1 information.

Response: The role of Councils is to evaluate information and use the EFH determination criteria in the interim final rule to identify EFH and the measures required to conserve it. Councils will need to evaluate all available information, according to its merit, and use best scientific judgement in arriving at their decisions. Demonstration that this identification is based on the best scientific information available will be necessary to attain Secretarial approval of an EFH amendment. Additional clarification on how to interpret level 1 information to identify EFH has been added to the interim final rule.

Comments: Comments from conservation groups, many fishing groups, and most individual commenters fully supported a "precautionary approach" and encouraged expansion of these provisions. A few commenters urged that all habitats be designated EFH and that those people who impact the habitat should be responsible for proving that their activities are not decreasing the habitat's capacity to support fish populations. Many comments, primarily from non-fishing industry interests, criticized NMFS for establishing a "risk-averse" process for identifying EFH that they claim will result in most aquatic areas being identified as EFH. Of particular concern is the guidance in the proposed rule that if only species distribution information is available, EFH should be everywhere a species is found. Also of concern is a provision which states that, if a species is overfished, all habitats used by the species, plus certain historic habitats, should be considered EFH. The commenters believed that these provisions will result in most, if not all, habitats being identified as EFH and that this is not the intent of the Magnuson-Stevens Act.

Response: The "risk-averse" approach to describing and identifying EFH was advocated in the proposed regulation because of the uncertainty inherent in much of our knowledge of habitat-productivity relationships. Care should be exercised in the face of inadequate information or overfished stocks to guard against habitat losses or alterations that may prove significant to the long-term productivity of the species. The rule continues to endorse these risk-averse approaches, but clarifies that Councils should use information from all available levels to make best scientific judgments on how to describe and identify EFH. Presence/absence data should be used to delineate the geographic range of the species. Habitat-specific information on density, reproduction, and growth should be used to identify EFH within that range. If only presence/absence information are available on a managed species, these data should be evaluated to identify those areas most commonly used by the species as EFH. The rule also clarifies that, for overfished species, all habitats currently used, and certain historic habitats, should be identified as EFH only if habitat loss or degradation may be contributing to the species' being identified as overfished.

11. Comments on the Relationship Between EFH and Critical Habitat

Comments: Some commenters criticized the proposed rule for stating that EFH will always be greater than or equal to "critical habitat." One commenter noted that some critical habitat can include upland habitats and therefore this linkage is not consistent with the statutory definition of EFH. Others stated that EFH should not be described and identified for species listed under the ESA. One commenter questioned why NMFS is allowing fishing on endangered species. Some commenters supported EFH being equal to or greater than critical habitat because it will promote the recovery of endangered species.

Response: NMFS maintains that it is appropriate to state that EFH will always be greater than or equal to critical habitat, as defined under ESA. The interim final rule includes a minor modification to the language that helps distinguish between critical habitat and EFH and to reiterate that EFH is aquatic only. EFH includes habitats for all life history stages of a species, while for some anadromous salmonids listed under ESA, adult marine habitats have not been identified as critical habitat. NMFS does recognize that critical habitat may contain terrestrial areas and has modified the interim final rule to clarify that those areas may not be considered EFH.

NMFS and the Councils do not allow directed fishing on listed species but EFH requirements are still necessary if the species are covered by an FMP. Certain stocks of west coast salmon are currently part of the management unit of an FMP. Specific runs of those stocks are listed as threatened or endangered under the ESA. Even though certain runs of a larger stock are listed under the ESA, the Magnuson-Stevens Act still requires Councils to describe, identify, and consider actions to conserve and enhance EFH for the species. This does not mean that directed fishing will be allowed on the listed runs.

12. Comments on Inclusion of Mariculture and Indirect Fishing Effects

Comments: NMFS received comments suggesting that fishing activities should include all components of the activity (e.g., anchoring, refueling). Some commenters requested that mariculture be considered a fishing activity.

Response: As fishing is defined in section 3(4) of the Magnuson-Stevens Act it includes "harvesting of fish." Commercial fishing, in the same section, means "fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade." NMFS agrees that mariculture is included within these definitions because the fish harvested enter commerce. The interim final rule was not changed, because mariculture was already considered to be part of commercial fishing. Under these regulations Councils would be required to assess the impacts of mariculture activities and minimize any adverse effects that impact EFH within their jurisdiction. The indirect effects of fishing activities should also be considered, when evaluating adverse impacts from fishing, as well as when analyzing cumulative impacts on EFH.

In the rule, NMFS has used the term "fishing equipment" to replace the term "fishing gear," that was used in the proposed rule. Fishing equipment is used to portray the intention to more broadly consider impacts from fishing-related activities when assessing

adverse impacts on EFH. Councils should assess impacts of different fishing gears, fishing techniques, equipment, and practices used in mariculture, and other factors, as appropriate.

13. Comments on Fishing Gear (Equipment) Assessment

Comments: In addition to completing an assessment of fishing gear, commenters requested that Councils rank gear based on the severity of impacts to specific habitats. Some argued that recreational fishing impacts should be excluded from such assessment.

Response: The effects of fishing practices or gear types is habitat-dependent. NMFS has modified the rule to direct that during the assessment of fishing equipment (gear) impacts, the relative effect of different equipment types or techniques on different habitat types should be assessed. This will help the Councils focus research and management efforts on those habitats that require the most attention. Assessments and subsequent research should be conducted on all types of fishing impacts, including recreational and commercial fishing equipment or practices, however relative impacts should be prioritized and management and research should address needs accordingly.

NMFS also emphasizes in the rule that the fishing equipment assessment should be conducted periodically with subsequent review or revision. As new equipment is developed, techniques are changed, or additional research is conducted, new information on effects on EFH will be developed. Language has been added to the rule to clarify that Councils should assess all new information regarding EFH, including new assessments of fishing equipment impacts, to determine when an amendment needs to be updated. EFH amendments are to be reviewed and revised as appropriate, but at least once every 5 years. New information regarding equipment effects on EFH should be incorporated as available into any updates of EFH amendments.

Comments: Commenters suggested that technology, such as the use of remotely operated vehicles, should be an acceptable alternative to research closure areas in assessing the effects of gear. One Council asked that it be able to base assessments on operational characteristics of gear in their specific area rather than inference from studies in other areas.

Response: The rule recommends "consideration of the establishment of research closure areas and other measures" to assess the effects of fishing equipment on EFH. It does not restrict Councils from considering any options. Councils should use the most appropriate measures to assess impacts. Councils, however, should not discount some methods or tools because they may be time-consuming or require management action, if they are the most appropriate method to use. All relevant research should be considered when assessing impacts of fishing gear on EFH, including research that has been conducted in other, biogeographically similar areas.

Comment: Several commenters expressed concern that there is no requirement to conduct a cumulative impacts assessment of fishing impacts, as there is for non-fishing impacts.

Response: NMFS assumed that all forms of adverse impacts, including those from fishing, were included as cumulative impacts on EFH. However, NMFS has modified the rule to further clarify this intent. Impacts of fishing and non-fishing activities should be considered when a cumulative impacts analysis is conducted. This may be particularly important where fishing gear of one fishery impacts the habitat of another fishery. Furthermore, cumulative impacts analysis should consider synergistic effects of both fishing and non-fishing impacts on habitat, and should give additional consideration to cumulative impacts affecting HAPC.

Comment: Commenters stated that adverse impacts from fishing should be demonstrated scientifically.

Response: National standard 2 requires that conservation and management measures be based upon the best scientific information available. Councils should, however, take into consideration information available through other valid sources. If scientific information is limited, the best available information should be considered for assessing adverse impacts of fishing equipment on habitats. This information should be weighed, based on the quality of information, and considered appropriately in the development of EFH conservation and management decisions.

14. Comments on the Threshold That Requires Councils To Regulate Fishing Activities That Adversely Impact EFH

Comments: The proposed rule required Councils to act to mitigate or minimize any adverse effect from fishing, to the extent practicable, if there is evidence that a fishing practice is having "substantial" adverse effect on EFH. Many comments from environmental and fishing groups criticized the proposed rule for using "substantial" to characterize adverse impacts that would require a Council to regulate damaging fishing practices. They claimed this was a higher threshold than intended in the Magnuson-Stevens Act. Under the Magnuson-Stevens Act, Councils are required to "minimize to the extent practicable adverse effects on such habitat caused by fishing." Many of the commenters maintain that this "higher threshold," is so high that Councils will never act to control a damaging fishing practice, nor will research be conducted to assess less understood impacts from fishing. Commenters, additionally, suggested that the burden to prove they are in fact causing no impact should be placed on those wishing to exploit the public resource.

Response: The language of the proposed rule was not meant to raise the threshold of damage from fishing impacts higher than that intended in the statute. The language was intended to provide guidance to assist Councils in determining when they are required to take action on a fishing impact. NMFS believes that the intent of the Magnuson-Stevens Act is to regulate fishing gears or techniques that reduce an essential habitat's capacity to support marine resources, not practices that produce inconsequential changes in the habitat. Therefore, NMFS continues to support this concept but has deleted the word "substantial" from the rule and added new language to clarify this concept. Impacts from fishing practices that justify the implementation of management actions should be "identifiable" (i.e., both more than minimal and not temporary in nature).

Comments: Commenters stated that the inclusion of a formal cost-benefit analysis to determine whether it is practicable to impose management restrictions on a damaging fishing activity goes beyond the statute. Costs to industry and costs to the environment cannot be directly compared because they are measured differently. Commenters pointed out that the legislative history indicates that while the term "to the extent practicable" was intended to allow for the consideration of costs; it was not a requirement that the benefits justify the costs. Commenters suggested that the long-term costs to the ecosystem and long-term benefits to the fishery and all potential users (since this is a public resource) must be weighed and that short-term cost to the fishers is only one of many factors that must be considered.

Response: NMFS agrees that the Magnuson-Stevens Act does not require a formal cost/benefit analysis or a demonstration that the benefits of minimizing adverse impacts justifies the costs to fishers. In considering management measures, Councils should evaluate the long-term benefits to the habitat and the managed species (including long-term benefits to the fishery), as well as short-term economic consequences to the fishery. This provision is intended to simply focus Council attention on costs and benefits consistent with national standard 7, which requires consideration of costs and benefits in the development of conservation and management measures. Further, Executive Order (E.O.) 12866 requires NMFS to regulate in the most cost effective manner to achieve the regulatory objective. The rule has additional clarifying language to avoid the interpretation that a formal cost/benefit analysis must be completed before taking action.

Comment: Several commenters urged that immediate management measures should be taken as precautionary measures against further EFH degradation, rather than waiting for Councils to identify and describe EFH, and assess gear impacts on EFH. Many commenters identified specific gear types that should be immediately banned or restricted.

Response: Councils must know what types and locations of habitats constitute EFH before they will be able to act to prevent, minimize, or mitigate adverse impacts from either fishing or non-fishing activities on EFH. Banning a gear type to protect EFH before it is identified, in an FMP and without assessment of adverse impacts, is contrary to the Magnuson-Stevens Act. The interim final rule presents a logical progression for description and identification of EFH, identification of adverse impacts to EFH, and development of management, conservation, or enhancement measures, as appropriate.

15. Comments Objecting to Listing of Specific Fishing Gears/Diving as Fishing Impacts

Comment: Commenters opposed the listing of diving or specific fishing gears as potentially causing adverse impacts that would require fishing restrictions. Dive groups commented that commercial diving should be distinguished from recreational diving, or that diving should not be listed at all. Commenters suggested that anchoring on artificial reefs was as damaging as the other examples listed and that it should also be included in the list of potential restrictions.

Response: The intent of this language was to provide the Councils with some examples of typical activities that have the potential to adversely affect diverse types of EFH (e.g., careless divers and snorkelers have been widely documented to cause adverse effects on coral reef habitats). However, NMFS agrees that it is more appropriate to address these considerations in a broader manner. As a result, the language in the interim final rule was modified to present general options that Councils should consider in determining appropriate management measures. These general options are illustrative only, many activities may result in habitat-specific impacts. Councils should examine all practices that may contribute to EFH degradation and act to minimize the impacts as appropriate.

16. Comments on Marine Fishery Reserves as Options for Managing Adverse Effects From Fishing

Comment: Many commenters, primarily individuals, fishing groups, and conservation groups, requested that language be added to the interim final rule to clarify that Councils are not restricted from considering closed areas (Marine Protected Areas, Marine Fishery Reserves, No-Take Zones, or Research Closure Areas) as management tools for protection of habitats and habitat functions and for enhancing recovery of overfished species, as well as for conducting research. Commenters felt that a statement in the preamble of the proposed rule which stated, "NMFS has clarified that the intent (of the regulation) is not to preclude fishing in areas identified as EFH," could be interpreted to mean that fishing or specific fishing gears would never be restricted in any area. Commenters indicated that establishment of such zones is supportive of a precautionary approach to habitat conservation where there is uncertainty on the extent and degree of impacts that occur from fishing. They suggested that early establishment of such zones could protect areas and stocks from further impacts while additional information is gathered. Additional commenters suggested that NOAA's National Marine Sanctuaries and National Estuarine Research Reserves and the Environmental Protection Agency's National Estuary Program provide sites that should be utilized for research areas. These areas are the focus of current research efforts and many have extensive databases on habitat types and usage within the reserve areas.

Response: The interim final rule continues to advocate research closures areas and other measures, as appropriate, to evaluate the impact of fishing equipment and techniques on EFH. The regulations continue to encourage Councils to consider time/area closures as management tools for minimizing impacts of fishing gears on EFH. The language in the preamble of the proposed rule, "* * * that the intent [of the regulation] is not to preclude fishing in areas identified as EFH," was intended to confirm that identification of an area as EFH did not automatically bring restrictions on fishing in the area. NMFS altered the language in the interim final rule to clarify that Councils are encouraged to consider marine protected areas as management tools for habitat conservation as well as management of fishing practices. Currently established Federal and state research areas (e.g., National Marine Sanctuaries or Estuarine Research Reserves) should be evaluated as logical locations for additional studies.

17. Comments on the Statutory Authority To Address Adverse Impacts on EFH From Non-Fishing Activities

Comments: Many commenters, primarily non-fishing industry groups, did not agree that the Magnuson-Stevens Act provided NMFS or the Councils the statutory authority to comment and make recommendations on non-fishing activities. They proposed that the sections regarding identification of adverse impacts from non-fishing activities and consultation be deleted in their entirety.

Response: NMFS disagrees for a number of reasons. First, one of the stated purposes of the Magnuson-Stevens Act is to promote the protection of EFH through the review of projects conducted under Federal permits, licenses, or other authorities that affect, or have the potential to affect, such habitat. These projects would include non-fishing activities. Second, the Magnuson-Stevens Act, in section 303(a)(7), requires that FMPs identify conservation and enhancement measures for EFH. These measures are not limited by statute to addressing only fishing activities. A necessary first step to identifying conservation and enhancement measures is to identify adverse impacts that will require conservation and enhancement measures to adequately promote the protection of EFH. Therefore, a logical extension of the Magnuson-Stevens Act requirement to identify conservation and enhancement measures is the consideration of adverse impacts from non-fishing activities that would necessitate the use of such measures. Third, the requirements for coordination, consultation, and

recommendations relate directly to non-fishing actions. The Magnuson-Stevens Act requires that other Federal agencies consult with the Secretary and then consider and respond in writing to the Secretary's EFH conservation recommendations regarding actions that may adversely impact EFH. These actions will be non-fishing actions. Therefore, the EFH amendments must include consideration of adverse impacts from non-fishing activities to aid NMFS and the Councils when they are consulting/commenting on actions that may adversely impact EFH.

18. Comments on Different Levels of Scrutiny of Non-Fishing Impacts

Comment: Many non-fishing interests commented that their impacts on EFH were being held to a higher standard than adverse impacts from fishing, because NMFS does not have to determine whether it is practicable to minimize or mitigate the adverse impact before providing a recommendation. The commenters were also concerned that too much emphasis is placed on non-fishing adverse impacts on EFH.

Response: Non-fishing and fishing impacts are held to two different levels of scrutiny because of legal differences in how the impacts are addressed. Fishing impacts, as required by the Magnuson-Stevens Act, must be minimized to the extent practicable by implementing conservation and management measures. For non-fishing activities, NMFS is required to provide EFH conservation recommendations to action agencies for all actions that may have an adverse impact on EFH. NMFS and the Councils control fishing activities through regulation, whereas recommendations by NMFS and the Councils on non-fishing activities are advisory. The action agency then considers NMFS' recommendations according to its statutory requirements. The emphasis placed on non-fishing in the coordination, consultation, and recommendation process will depend on the level of impact from each.

19. Comments on the Identification of Specific Industries With Potential Adverse Effects on EFH

Comments: Many commenters objected to their particular industries or activities being highlighted in the proposed rule as having potential adverse effects on EFH. Many pointed out that non-fishing activities do not always adversely impact fish habitat. Some forest industry groups pointed out that they are involved in restoration of anadromous fish habitats. Oil and gas industry commenters pointed out that oil platforms have been documented as artificial reefs that support fish populations and therefore produce positive effects on fisheries, not adverse effects.

Response: NMFS acknowledges that many industries take certain actions specifically to improve fish habitat even if other activities conducted by the industry may adversely affect fish habitat. Therefore, NMFS agrees that the language of the rule should be more generic and that the types of activities that have been demonstrated to have potentially adverse effects on EFH should be highlighted for the Councils in the interim final rule rather than identifying the industries that may engage in these activities. NMFS revised this section to clarify that its intent is to avoid, minimize, or compensate for adverse impacts on EFH. The rule avoids singling out specific industries just because they have the potential to adversely impact EFH.

20. Comments on Cumulative Impacts Analysis

Comments: Several commenters were concerned that the relationship between the required analysis of cumulative impacts and EFH was not clearly specified. Many cited an ecological risk assessment as a lengthy, expensive procedure that would tell little about EFH. Some commenters asked NMFS to provide criteria for conducting an ecological risk assessment.

Response: NMFS has clarified the cumulative impacts analysis requirements in the rule. Cumulative impacts analysis is intended to monitor the effect on EFH of the incremental impacts, occurring within a watershed or marine ecosystem context, that may result from individually minor but collectively significant actions. The assessment of ecological risks is intended in a generic sense to examine actions occurring within the watershed or marine ecosystem that adversely affect the ecological structure or function of EFH. The assessment should specifically consider the habitat variables, previously noted while describing and identifying EFH, that control or limit a managed species' use of a habitat. It should consider the effects of all impacts that affect either the quantity or quality of EFH. The term "ecological risk assessment" was not meant to be interpreted in the stricter toxicological sense. NMFS will continue to develop further criteria for conducting an ecological risk assessment.

21. Comments on Mapping of Cumulative Impacts Analysis

Comments: Some commenters thought the requirement to map adverse impacts should be discretionary. Others thought it should be deleted altogether.

Response: NMFS disagrees and considers mapping of the impacts to be one of the most important ways to analyze the data and to easily share the information with other resource management agencies and the public. It is also an efficient way to track cumulative effects over time and detect when effects are reaching threshold limits. The rule has been revised to clarify that the mapping requirements are strongly encouraged.

22. Comments on the Options for Conservation and Enhancement of EFH

Comments: Several commenters were concerned about the broad examples given in this section. They recommended that FMPs address site-specific activities because an activity might adversely impact EFH under certain conditions and not under others. Other commenters expressed concern that statements suggesting that certain activities (such as diversion of fresh water) always produce adverse effects did not reflect their regional perspective. There were many comments about the examples used and questions over whether these were the best or even proper examples. There were many suggestions of different examples to include in the rule. Several commenters were concerned that NMFS was mandating best management practices for non-fishing activities.

Response: NMFS recognizes that this section did not provide the clarity that it intended, and that the listing of examples, while not meant to be exhaustive, needs modification. The section has been revised in the interim final rule to clarify that the intent of the section is to provide examples of proactive and reactive measures to conserve and enhance EFH. The revisions focus on avoiding, minimizing, or compensating for impacts on EFH derived from activities both inside and outside of EFH and the need for Councils to provide recommendations to address those impacts. The management measures listed in this section are intended to be optional. Certain actions may have positive or negative impacts on EFH depending on the location and the purpose of the action. The effect of actions should be judged within the context of watershed planning and/or by ecosystem considerations.

Comment: One commenter expressed concern that habitat creation was listed as an option to conserve and enhance EFH.

Response: The Magnuson-Stevens Act requires NMFS and the Councils to conserve and enhance EFH. NMFS believes that, under certain circumstances, habitat creation is a viable means to enhance EFH on a watershed basis.

Comment: One commenter criticized NMFS for not encouraging proactive measures to conserve and enhance EFH.

Response: NMFS modified the rule to include language stating that the Councils and NMFS will provide information on ways to improve ongoing Federal operations.

23. Comments on the Treatment of Prey Species Under the Proposed Rule

Comments: Several commenters asked that the proposed rule be modified to require that EFH be described and identified for all prey species. Numerous commenters stated that habitat for forage species should be included in an ecosystem approach, and mapped as well. Other commenters, against the inclusion of prey, stated that loss of prey should not categorically be considered an adverse impact because the fishery decline could be due to other factors such as overfishing, rather than loss of prey. Inclusion of threats to prey, they commented, exceeds the scope of the statute. Commenters concerned with anadromous species stated that predators should be considered if prey are included. They stated that this reflects more of an ecosystem approach and could take into consideration the effects of pinniped predation on the fishery. One Council asked NMFS to clarify that Councils may not place harvest limits on prey species unless the prey species is managed under an FMP.

Response: NMFS continues to maintain that describing and identifying separate EFH for prey species not included in an FMU is beyond the scope of the Magnuson-Stevens Act. However, NMFS recognizes the importance of prey to the managed species. The statutory definition of EFH includes "feeding" as an ecological function of EFH necessary to a species. Therefore, presence of adequate prey is one of the biological properties that can make a habitat essential. It is appropriate to consider loss of prey as an adverse impact to a managed species' EFH because the species would not be able to use the habitat for feeding. Therefore, the rule requires Councils to identify prey species for managed species in the FMU and the habitats of major prey species. Councils must address threats to the prey species and its habitat if there is evidence that such adverse effects may lead to a decline in the prey species population and by extension reduce the quality of a managed species' EFH. These threats should be covered under the adverse effects section of the EFH amendment.

A requirement to describe and identify EFH for predators is not authorized by statute, and therefore, not included in the rule. In identifying EFH through an ecosystem approach, however, NMFS does suggest that Councils consider the extent to which the managed species is prey for other managed and non-managed species or marine mammals in determining the habitat necessary to support a sustainable fishery and the managed species' contribution to a healthy ecosystem. Predators of managed species need to be considered a source of natural mortality inherent in the ecosystem. The MMPA does include provisions which address the interactions between marine mammals and other species. NMFS is able to address these interactions through that statute.

24. Comments on Vulnerable Habitats (Habitat Areas of Particular Concern)

Comment: Some commenters asked for a definition of "vulnerable habitat" and wanted to know how broad this category may be. Other commenters supported the identification of vulnerable habitats or prioritizing actions in "areas of special concern" and suggested that important habitats be ranked. Some commenters asked for guidance in determining whether a habitat type is vulnerable. They asked that impacts analyses consider both fishing and non-fishing impacts as human-induced degradation in vulnerable habitats. Some commenters thought that an additional level of habitat delineation, as envisioned with the identification of vulnerable habitats would add confusion, and thought that this was beyond the scope of the statute.

Response: Comments on the Framework indicated a need for prioritizing the habitats and determining which should be given greatest attention in the coordination and consultation process when little is known about a species' distribution. The vulnerable habitat provision was added to the proposed rule to address these concerns. After consideration of comments on the proposed rule, NMFS has refined this concept to include ecological function of the habitat along with considerations of vulnerability. In the rule, NMFS renamed vulnerable habitats as "habitat areas of particular concern" (HAPC). In determining HAPCs, Councils should consider ecological value of a type or area of EFH, its susceptibility to perturbation from both anthropogenic (human-caused) sources and natural stressors, and whether it is currently stressed or rare. HAPC criteria are outlined in the interim final rule. NMFS will elaborate on these criteria in internal technical guidance.

These HAPCs can be used to focus the conservation, enhancement, management, and research efforts of NMFS and the Councils, as well as the consultation requirements of the Federal action agencies and EFH conservation recommendations. These areas should be a primary focus to provide insight into relationships between key habitat characteristics and ecological productivity or sustainability and the ways in which human activity adversely affects such habitat and its contribution to population productivity.

25. Comments on Research Needs and FMP Amendments and Updates

Comment: Commenters suggested annual reviews of research needs and assessments of progress towards meeting those needs. Other commenters were concerned that reviewing EFH sections of FMPs at least once every 5 years is too long.

Response: The proposed rule states that reviews of EFH sections of FMPs must be completed as recommended by the Secretary, at least once every 5 years. NMFS considers this amount of time appropriate and has maintained it in the rule. Councils are strongly encouraged to include interim reviews of EFH information needs during annual reviews of Stock Assessment and Fishery Evaluation (SAFE) reports. NMFS will work to develop an appropriate format for future SAFE reports to address the requirements under the Magnuson-Stevens Act EFH mandate.

Comment: One Council commented that Councils should have the option of including a framework adjustment mechanism in the EFH amendment to allow for more timely changes in management measures.

Response: NMFS agrees that framework amendments may be an appropriate way to institute management measures to conserve and enhance EFH.

Comments: Commenters called for incentives to encourage research to address gear effects and management measures to minimize adverse impacts. They suggested that a schedule be established under which the Councils or industry will be obliged to conduct the

necessary research that will indicate the extent, if any, of impacts caused by fishing sectors. As written, there is no incentive to conduct further research. They feel there is a disincentive, because findings of impacts could be used to restrict a fishery.

Response: To address this concern the interim final rule specifies that, as part of a Council's assessment of impacts caused by fishing, a schedule should be developed detailing the Council's plan to collect any missing information. Regular reporting of progress toward meeting these research goals will provide added incentive for Councils to conduct added research. A standardized schedule for all FMPs would not be useful since existing data and research needs regarding each fishery's impacts to different habitats vary greatly both within and among regions.

Comments: Some commenters asked that research needs be categorized and that cost estimates be included in FMPs. Many commenters stressed that gear effects research is needed.

Response: In developing research recommendations in FMPs, the interim final rule encourages Councils to prioritize research needs. The interim final rule does not require cost estimates; however, Councils may include budget information if they choose. Fishing gear-effects research should be considered, along with research on habitat utilization, habitat availability, and adverse impacts from non-fishing activities. Research should be conducted on all types of fishing impacts, including recreational and commercial fishing equipment or practices, however relative impacts should be prioritized and research should address needs accordingly.

26. Comments on Development and Review of NMFS EFH Recommendations to Councils

Comments: Many commenters stated that a public process must be available for participation in the development and review of EFH recommendations. They sought participation outside of the Council process. They want all stakeholders to be involved in the development of recommendations. Some state resource agencies commented that, prior to approval of recommendations, public meetings should be held in each state. Some commenters suggested that conservation groups should be specifically listed as interested parties, and some commenters suggested that any potentially impacted party should be contacted so that they could review the recommendations.

Response: The proposed rule stated that the NMFS draft recommendation will be made available for public review. The interim final rule continues to suggest that the public review process be coordinated with Council meetings in order to accommodate those user groups most closely associated with the regulation. Stakeholders that have not previously been involved in the Council process are not precluded from participating. Where appropriate, additional meetings outside the Council process may be held. Individual meetings in every state may not be practicable, but where feasible, should be considered, as is standard practice with many Council proceedings. Contacting individual stakeholders to extend the review process is not practicable. It is incumbent upon stakeholders to take the initiative and become involved in the EFH process.

Comment: One commenter criticized NMFS for establishing a standard of "best available scientific information" for NMFS EFH conservation recommendations to Councils. The commenter pointed out that this standard is stricter than that established in § 600.815(a)(2)(i).

Response: NMFS agrees and has modified the rule to allow other appropriate information to be used. However, NMFS will evaluate the quality of information in determining if it is appropriate to use.

27. Comments on Authority To Issue the Coordination, Consultation, and Recommendation Section

Comment: Many non-fishing industry representatives doubted the Agency's legal authority to issue regulations for the consultation process, including the requirements that Federal action agencies prepare EFH Assessments or participate in a dispute resolution process.

Response: First, NMFS does have authority to issue the coordination, consultation, and recommendation regulations. Section 305(d) of the Magnuson-Stevens Act gives the Secretary the authority to issue regulations to carry out any provision of the Act. This rulemaking authority applies directly to the EFH coordination, consultation, and recommendation provisions of the Magnuson-Stevens Act.

The provision calling for dispute resolution has been retitled "further review" in the interim final rule to clarify that a formal dispute resolution is not envisioned. Further review is not required each time agencies disagree. It is an option available to reach agreement only if both agencies so choose. Information in an EFH Assessment is needed to allow NMFS to fulfill its requirement to provide EFH conservation recommendations to a Federal or state action agency. Thus, the requirements calling for EFH Assessments and further review are mechanisms to improve the efficiency of the consultative process.

28. Comments on the Inclusion of Coordination, Consultation, and Recommendation Procedures

Comments: Many comments from non-fishing industries suggested that NMFS develop the consultation regulations at a later time. Some suggested that the EFH guidelines to Councils and the regulations detailing the coordination, consultation, and recommendation procedures should be published separately.

Response: Within section 305(b), the Magnuson-Stevens Act requires Councils to amend FMPs in order to describe, identify, conserve, and enhance EFH, and requires Federal action agencies to consult with NMFS if their actions may adversely affect EFH identified in FMPs. Developing the consultation regulations at a later date would be neither efficient for implementing the Magnuson-Stevens Act, nor clear to the public. Including the consultation provisions in this rulemaking allows the public and affected parties to fully understand the significance and effect of an area being identified as EFH in an FMP. Description and identification of EFH does not automatically require increased management measures (for fishing) or consultation (for non-fishing) except when Federal or state actions may adversely impact the quality or quantity of EFH. In those cases, it is important for the Councils and the action agency to understand completely the procedures involved. Therefore, NMFS considers it necessary for the development of the two sections to proceed in parallel. Moreover, between completion of this interim final rule and before the first required consultations, NMFS and the Councils will need to develop memoranda or other agreements with Federal and state agencies on how to work within or modify existing consultation procedures and in developing general concurrences, consistent with the rule. The Councils and NMFS will also need to establish procedures to coordinate sharing of information, tracking of projects, and development of conservation recommendations. NMFS does acknowledge that the coordination, consultation, and recommendation provisions for action agencies and guidelines to the Councils may be clearer and better presented by assigning them to separate subparts (J and K) of 50 CFR part 600.

29. Comments on Use of Existing Consultation/Environmental Review Procedures

Comments: Many non-fishing groups and one government agency commented that the proposed consultation process was burdensome and duplicative because it did not recognize existing procedures that may fulfill the Magnuson-Stevens Act mandate that Federal action agencies must consult with NMFS on actions that may adversely impact EFH.

Response: The coordination, consultation, and recommendation procedures in the proposed and interim final rules reflect the Magnuson-Stevens Act's mandate. The proposed rule included a provision that EFH consultation may be consolidated with other existing consultation and environmental review processes. To clarify that it is NMFS' intention to use existing processes whenever appropriate, the interim final rule contains language strongly encouraging the use of existing consultation and environmental review processes to fulfill the EFH consultation requirements. The procedures will not be duplicative because only one review process will be used.

Existing Federal statutes such as the FWCA, ESA, and National Environmental Policy Act (NEPA) already require consultation or coordination between NMFS and other Federal agencies. Therefore, the need for Federal agencies to evaluate the effects of their actions on fish and fish habitat is not a new requirement imposed by the Magnuson-Stevens Act. As required by section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will coordinate with, and provide information to, other Federal agencies on conservation and enhancement of EFH. This will include distribution of maps, tables and narrative descriptions of EFH. The EFH FMP amendments, which will be widely available at all NMFS Regional offices (see **ADDRESSES**), the NMFS Office of Habitat Conservation, Council offices, and other locations such as the World Wide Web, will provide additional information to assist Federal agencies in the assessment of their actions. FMPs will describe EFH and identify those characteristics of EFH that control or limit the habitat's use by a managed species. Action agencies can use this information to determine if, and how, an action will affect EFH. Thus, EFH consultation should not be burdensome, since it will use readily available information that may be incorporated into the same processes that are currently invoked to satisfy existing review requirements.

Comments: Several industry groups commented that the EFH coordination, consultation, and recommendation process will mean additional restrictions on non-fishing industry activities and will not result in any benefit to EFH.

Response: The coordination, consultation, and recommendation process itself will not automatically impose additional restrictions, because NMFS' and the Councils' EFH conservation recommendations are non-binding. However, one of the purposes of the Magnuson-Stevens Act is to promote the protection of EFH in the review of projects that require Federal or state action. Accordingly, Federal and state action agencies must give NMFS' and the Councils' comments and EFH conservation recommendations due weight in their decision-making process. After consideration, Federal or state action agencies may recommend modifications of any actions with adverse effects on EFH, in order to conserve EFH. Benefits to EFH will depend on the extent to which these recommendations are followed.

Comments: Many environmental groups commented that NMFS' recommendations should be mandatory and that NMFS should be able to either stop a project based on adverse effects on EFH or postpone it pending completion of consultation.

Response: The Magnuson-Stevens Act does not provide such authority. Therefore, NMFS' EFH conservation recommendations are not mandatory, and NMFS has no authority to stop a project based on adverse effects on EFH.

Comment: One environmental group suggested that NMFS EFH conservation recommendations contain performance criteria.

Response: Where appropriate, NMFS EFH conservation recommendations will contain performance criteria.

Comments: Several agencies and many industry representatives commented that actions covered by other consultation procedures should be exempt from EFH consultation or covered by a General Concurrence. Many industry groups or resource management programs requested a blanket exemption for their activities.

Response: A purpose of the Magnuson-Stevens Act is "to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat." The Magnuson-Stevens Act does not provide exemptions from its consultation requirements in section 305(b)(2). Therefore, NMFS has no authority to exempt any actions from the consultation requirement. Existing environmental consultation procedures do not necessarily "promote" the protection of EFH. The rule is sufficiently flexible to consolidate EFH requirements with those environmental review procedures that do promote EFH, or that are modified to conform to the EFH consultation requirements. To address programs or groups of actions that have minimal adverse effects on EFH, the interim final rule allows NMFS to issue a General Concurrence rather than review each of these actions separately.

Comment: One Council commented that the Coastal Zone Management Act (CZMA) consistency process be cited as an existing environmental review that may be used to evaluate adverse impacts from Federal activities.

Response: The CZMA consistency process is a state-run program which would not be appropriate for NMFS to use to evaluate Federal actions. However, NMFS recognizes that state CZM programs may be helpful in learning of, and providing recommendations on, state actions that may adversely impact EFH, and has included this in the rule. Moreover, through joint permitting processes used by many Federal agencies, NMFS attends monthly permit review meetings along with state CZM representatives. NMFS encourages exchanges of this type.

Comment: Four commenters would prefer that the consultation procedures focus on only those activities with the potential for the most significant impacts.

Response: NMFS agrees that effective coordination, consultation, and recommendation will require prioritization of efforts. The three-tiered consultation process (GCs, abbreviated consultation, and expanded consultation) is intended to focus effort on those activities with the greatest potential to adversely affect EFH. If HAPCs are identified in an FMP, NMFS and the appropriate Council may use these as areas to further focus the consultation procedures.

Comments: Several environmental groups commented that states should be subject to the same consultation requirement as Federal agencies. Those commenters also asked for more details on state roles in the consultation process.

Response: The Magnuson-Stevens Act does not require that states consult with the Secretary. NMFS and the Councils are required to provide EFH conservation recommendations to states on activities that may adversely affect EFH. This is why the rule suggests establishing formal agreements with states to inform NMFS and the Councils of such activities. The Secretary and the state may also enter into agreements to promote the protection of EFH.

Comment: One Council commented that NMFS should keep a record of Federal and state actions for which it provides recommendations.

Response: NMFS agrees and plans to establish a system to track the disposition of its recommendations.

Comment: One commenter asked whether it was NMFS' responsibility to develop agreements with states to facilitate providing recommendations on state actions that may adversely impact EFH.

Response: It is NMFS' responsibility to develop such agreements.

Comment: One commenter stated that NMFS should separate the consultation functions from the recommendation functions.

Response: The requirement in the Magnuson-Stevens Act for Federal agencies to consult with NMFS is immediately followed by the provisions that Councils and NMFS provide recommendations to Federal action agencies. The two are also linked because consultation is the main way NMFS receives information about actions that may adversely affect EFH. NMFS must provide EFH conservation recommendations for these actions. Congress clearly intended that these activities be linked; therefore, NMFS continues to link the requirements in the rule.

30. Comments Regarding Federal Actions Requiring Consultation

Comment: Many state and Federal agencies and several non-fishing industries questioned when EFH consultations would begin, whether ongoing or delegated Federal actions require consultation, and to what extent Federal funding may trigger consultation.

Response: No consultation is required until the Secretary has approved an FMP amendment identifying EFH. The Councils are required to submit these amendments to the Secretary by October 11, 1998. Once EFH is identified, completed actions such as issued permits do not require consultation. Permit renewals, modifications, or reviews are a Federal action that could result in further consultation. Delegated programs will require consultation at the time of delegation or renewal of delegation. All Federal funding for programs that may have an adverse effect on EFH will trigger consultation. NMFS encourages agencies funding programs that may adversely affect EFH to initiate programmatic consultation to evaluate their programs. Once funds are dispersed to a non-Federal entity, they are no longer considered Federal funds. Therefore, non-Federal entities receiving Federal funds for certain actions are not required to consult on these actions.

Comments: Several commenters expressed concern about requiring EFH consultation for actions not actually occurring in EFH.

Response: The Magnuson-Stevens Act requires consultation for all actions that may adversely affect EFH, and it does not distinguish between actions in EFH and actions outside EFH. Any reasonable attempt to encourage the conservation of EFH must take into account actions that occur outside of EFH when those actions may have an adverse effect on EFH. Therefore, EFH consultation is required on any Federal action that may adversely affect EFH, regardless of its location. An adverse effect on EFH must be reasonably foreseeable before consultation is required.

31. Comments Regarding Participation in the Consultation Process

Comments: Several individuals and non-fishing interests expressed concern that the rule allowed no clear role for applicants, private landowners, or the conservation community in the consultation process. Those commenters urged more opportunities for public participation.

Response: NMFS' coordination, consultation, and recommendation procedures include opportunities for public involvement, and all Council meetings are open to the public. Most existing environmental review processes, which can be used to satisfy the EFH consultation requirements, already include opportunities for applicants and the public to participate, (e.g., permit reviews under the Clean Water Act section 404 program). Additionally, § 600.905(c)(2) of the rule allows a designated non-Federal representative of a Federal action agency to participate in consultation or preparation of an EFH Assessment. This non-Federal representative could be an applicant or landowner.

Comment: A few commenters requested that the rule clarify the role of Councils in the EFH coordination, consultation, and recommendation process.

Response: The Magnuson-Stevens Act does not require Federal action agencies to consult with Councils on actions that may adversely affect EFH. However, the Act authorizes Councils to provide comments and recommendations on Federal or state activities that may affect fish habitat, including EFH, and requires Councils to comment and provide recommendations if the activity may affect anadromous fish habitat. NMFS included a specific section on coordination between the Councils and NMFS in the interim final rule. The Councils are viewed as integral partners in the entire EFH process. Councils will have a significant role in describing and identifying EFH, in considering threats to EFH, and in selecting conservation measures to enhance EFH. The rule encourages the establishment of agreements between the Secretary and appropriate Council(s) to facilitate provision of Council EFH conservation recommendations to Federal and state agencies.

Comment: Several non-fishing industry groups were concerned that the Councils might institute their own, completely different consultation process. Those commenters urged that NMFS should be the only point of contact.

Response: The Magnuson-Stevens Act does not require Federal agencies to consult with the Councils, although Federal agencies are required to respond to Council comments and recommendations. NMFS and the Councils will be developing agreements to minimize duplication when dealing with action agencies, but Councils will have the ability to act on their own.

32. Comments on the Determination of Adverse Impact

Comments: Several commenters asked that the rule clarify who determines adverse effects.

Response: The action agency is responsible for making an initial determination of whether its activity is going to have an adverse effect on EFH. If NMFS becomes aware of an action that appears to have an adverse effect, and the action agency has not initiated consultation, NMFS may advise the action agency of its concerns and request the initiation of consultation. If the action agency does not initiate consultation, NMFS still has the responsibility to provide EFH conservation recommendations to which the action agency must respond within 30 days of receipt. The rule contains additional language to clarify this process.

33. Comments on the Use or Development of General Concurrences (GCs)

Comments: Several commenters felt the criteria for GCs were ambiguous.

Response: The wide range of actions that may affect EFH makes it impossible to implement more specific criteria for GCs. GCs, established for actions that cause no greater than minimal adverse impact on EFH, will be developed on a case-by-case basis in response to specific programs, activities, habitats, species, and areas. GCs developed for actions that affect HAPCs should be subject to a higher level of scrutiny. GCs will be developed through a public process to allow participation by all interested parties.

Comment: Several Councils believe that GCs should not restrict them from commenting on activities.

Response: GCs are agreements between Federal action agencies and NMFS. Each GC will be developed in coordination with the Councils to improve agreement on which activities have minimal impacts both individually and cumulatively. The informal Council role in developing each GC is separate from the Councils' authority to provide comments and recommendations to Federal and state action agencies and will not restrict Councils from commenting on any action that may affect EFH.

Comments: Several commenters suggested that NMFS should track all activities covered by GCs.

Response: NMFS will ask each Federal action agency to track activities they authorize that are covered by a GC. Tracking and providing information to NMFS may be a GC requirement. NMFS may maintain its own tracking system for specific issues that warrant special attention based on geography, habitat types, species, or other factors.

Comment: An interstate commission commented that the rule should require that GCs be reviewed every 5 years. The commission also suggested that NMFS clarify that GCs it initiates will be subject to public review before issuance.

Response: The rule states that NMFS will periodically review and revise its findings of general concurrence, as appropriate. It is NMFS' intent to conduct this review at least once every 5 years. The rule also requires that GC tracking information be made available to the public annually. Such information will allow the public to review GCs prior to NMFS' review and revision. Additionally, the rule states that NMFS will provide an opportunity for public review prior to the issuance of a GC, even those initiated by NMFS.

34. Comments on the Use of Appropriate Level of Consultation

Comment: Several Federal agencies requested clarification on what triggers the expanded consultation. They sought guidance on whether the action agency or NMFS can initiate expanded consultation.

Response: The rule has been clarified to address this comment. Expanded consultation is appropriate when a proposed action may have substantial adverse impacts on EFH. The action agency determines the appropriate level of consultation. However, if NMFS feels that a proposed action will have substantial effects on EFH and its concerns are not receiving proper consideration, NMFS may request expanded consultation.

35. Comments on EFH Assessments

Comments: Some commenters supported the standard of "best scientific information" that is mandated in the Federal consultation and EFH Assessment section of the rule. They felt that all portions of the EFH rule should specify the same standard.

Response: NMFS applies the best scientific information standard throughout the rule. When describing and identifying EFH, Councils should seek the broadest possible information base, since the data are widely scattered among various state and Federal agencies, university or private researchers, and diverse fishery participants. Best professional judgment will be required to properly weigh all data collected regarding habitat usage for the various life history stages of the managed species. With respect to assessing the effects of both fishing and non-fishing activities on EFH, the rule states that the best scientific information available should be used, but that other appropriate sources of information may also be considered. This standard is appropriate and consistent with national standard 2 that requires all FMP conservation and management measures to be based on the best scientific information available. EFH Assessments during Federal consultation should also be based on best scientific information available. An action agency's conclusions regarding the potential adverse impact of an action on EFH should be well supported by relevant research, when available. Conclusions that are contrary to the readily available information will not be considered adequate assessment of adverse effects.

Comment: One commenter was concerned that an EFH Assessment would be required for actions with any adverse impact on EFH and suggested that NMFS establish a threshold level of adverse impact, preferably the NEPA significance threshold, for when such an assessment would be required.

Response: The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on any action that may adversely affect EFH. The requirement for an EFH Assessment is a mechanism to improve the efficiency of the consultation process. The level of detail in the EFH Assessment should be commensurate with the potential impact. If the action's impacts will be minimal, then it may qualify for a GC and no EFH Assessment would be required.

Comment: One commenter criticized NMFS for allowing the use of a completed EFH Assessment for other similar actions because of temporal and spatial differences in adverse impacts on EFH.

Response: The rule states that completed EFH Assessments may be used for other actions only if the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting.

36. Comments on the Establishment of Timelines in the Consultation, Recommendation, and Response Processes

Comment: Several commenters sought clarification on timelines for NMFS action in consultation process. Some commenters were concerned that the consultation process would slow projects. Others expressed concern that NMFS would delay projects while preparing their recommendations.

Response: The timelines presented in the proposed rule have been clarified in this rule. If an existing process is used to meet the EFH consultation requirement, NMFS will work within that procedure's specified timelines, assuming that NMFS receives timely notification of the action. NMFS has clearly established timelines for preparation and submission of its recommendations during consultation. For example, the interim final rule requires NMFS to respond to Federal action agencies within 30 days during abbreviated consultation and within 60 days during expanded consultation. Those timelines may be adjusted based on mutual agreement between the action agency and NMFS (e.g., a compressed schedule for special situations).

Comment: Several commenters suggested that NMFS should not extend the time for the consultation process without concurrence from the Federal action agency.

Response: That has always been NMFS's intent and the rule has been modified to clarify that intent.

Comment: One commenter suggested that NMFS extend the time required for a Federal action agency to respond to a NMFS recommendation from 30 to 90 days.

Response: The deadline for Federal agency response is established in the Magnuson-Stevens Act and can not be extended by regulation.

Comment: One commenter stated that the rule should clarify that if NMFS does not respond to a Federal action agency's request for consultation, the action agency may proceed with the action.

Response: The rule states that Federal action agencies will have fulfilled their consultation requirement after submittal of a complete EFH Assessment to NMFS. The Magnuson-Stevens Act requires Federal agencies to consult with NMFS and NMFS is required to provide recommendations as part of that consultation. Federal agencies and NMFS will follow the requirements of the statute and the rule.

37. Comments on Supplemental Consultation

Comment: Three commenters want supplemental consultation deleted from the interim final rule.

Response: NMFS reconsidered the entire consultation process during its analysis of comments received on the proposed rule. The Agency concluded that supplemental consultation is an important element of the EFH rule. A Federal action agency must reinitiate consultation with NMFS if the agency substantially revises its plans for an action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations. This rule clarifies the language on supplemental consultation.

38. Comments on NMFS' EFH Conservation and Enhancement Recommendations

Comments: Comments from several industry interests and one Federal agency urged NMFS not to recommend measures that are impracticable, too costly, or beyond the action agency's authority.

Response: NMFS will use scientific assessments of impacts on EFH as the basis for conservation recommendations. NMFS agrees that its recommendations should be practical and cost-effective, but it is not NMFS' statutory responsibility to conduct a benefit/cost analysis or to do a public interest test. NMFS expects that action agencies will make their own decisions about the practicality and economic aspects of the EFH conservation recommendations as part of their review of proposed actions. NMFS will not make recommendations that are beyond the action agency's authority.

39. Comment on Federal Action Agency Response to NMFS EFH Recommendations

Comment: One commenter stated that NMFS has no statutory authority to require Federal action agencies to provide the scientific justification for disagreeing with a NMFS EFH conservation recommendation.

Response: As stated previously, section 305(d) of the Magnuson-Stevens Act gives the Secretary authority to issue regulations to carry out any provision of this Act. Therefore, NMFS has the authority to issue regulations detailing how Federal action agencies should respond to NMFS' EFH recommendations. The requirement to provide scientific justification applies to disagreements over the anticipated adverse effects of the proposed action and elaborates on the requirements of section 305(b)(4)(B) of the Magnuson-Stevens Act that a Federal agency explain its reasons for disagreeing with the NMFS EFH conservation recommendation. Federal action agencies may also include discussions of non-scientific issues (e.g., lack of legal authority to carry out the recommendation or economic in feasibility) in their response.

40. Comments Regarding the Interpretation of Anadromous

Comments: Several commenters were confused by the use of the term "anadromous fishery resource" in the rule and how such species and their habitat are covered by the EFH mandate.

Response: NMFS included this section in the rule to clarify the meaning of the term "anadromous fishery resource under a Council's authority," as it applies to a Council's commenting responsibilities under section 305(b)(3)(B) of the Magnuson-Stevens Act. Anadromous fish are treated differently from other fishery resources in the Magnuson-Stevens Act. Section 3 of the Magnuson-Stevens Act defines "anadromous species" as "fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters." It further defines "fishery resources" as "any fishery, any stock of fish, any species of fish, and any habitat of fish." In § 600.930(c)(4) of this interim final rule, "an anadromous fishery resource under a Council's authority" is described as an anadromous species that inhabits waters under the Council's authority at some time during its life. Although EFH is identified only for species managed under an FMP, the Magnuson-Stevens Act requires Councils to comment on any activity that is likely to substantially affect the habitat of an anadromous fishery resource under its authority.

41. Comments on Extending the Deadline for Councils To Submit FMP Amendments to the Secretary

Comments: Several commenters asked NMFS to extend the deadline for Councils to submit EFH FMP amendments to the Secretary one year beyond the October 11, 1998 deadline.

Response: The Sustainable Fisheries Act, Pub. L. 104–297, requires that each Council submit to the Secretary amendments to each of their FMPs to comply with the amendments of the Act by October 11, 1998. The Secretary does not have the authority to extend this statutory deadline through regulation.

42. Comment on How the NMFS National Habitat Plan Relates to Implementation of the EFH Mandate

Comment: One Council commented that the rule should discuss the relationship between the NMFS National Habitat Plan (NHP) and the EFH mandate of the Magnuson-Stevens Act.

Response: The major themes of the NHP: better integrate habitat and fishery management; promote habitat restoration as a routine part of fisheries and habitat management; expand habitat conservation to assess and manage habitat degradation on a watershed scale; expand understanding of the interrelationships between habitat quality and quantity and the healthy of fisheries, are woven throughout the rule.

43. Comments on Consistency With Coastal Zone Management Plans

Comments: Several state agencies commented concerning consistency with their states' federally approved Coastal Zone Management Programs (CZMP). There was general agreement that the intent of the rule was consistent with CZMPs. Several of the state agencies cautioned that the FMP amendments and their site-specific actions that result from compliance with these regulations would require further review for consistency.

Response: NMFS agrees with this analysis. These regulations guide the Councils in amending FMPs, and detail procedures for NMFS, the Councils, and Federal and state action agencies to use in meeting the EFH requirements of the Magnuson-Stevens Act. Analysis of the effects of specific EFH amendments to FMPs at this time would be purely speculative; they are not reasonably foreseeable. EFH amendments to FMPs will be submitted to state coastal zone agencies. CZMP consistency will be determined for each FMP EFH section, as is required for all Federal FMPs.

44. Comments on the EA Prepared for the Rulemaking

Comments: Some non-fishing industry commenters questioned the preparation of an EA, rather than an Environmental Impact Statement (EIS), and the finding of no significant impact.

Response: In compliance with NEPA, NMFS prepared an EA for the regulations implementing EFH requirements of the Magnuson-Stevens Act. The environmental review process led to the conclusion that this action will not have a significant effect on the human environment. The rule provides guidelines to the Councils to assist them in developing EFH sections in FMPs. The rule itself does not establish any new regulatory jurisdiction for NMFS or the Councils over these habitats, but it does provide procedures for NMFS, the Councils, and Federal and state action agencies to use in coordinating, consulting, and providing recommendations on actions that may adversely affect EFH. NEPA documentation will be undertaken for each EFH FMP amendment, as is currently done, to fully address FMP-specific effects of EFH implementation. Therefore, an EIS is not required by section 102(2)(C) of NEPA or its implementing regulations.

45. Comments on NMFS' Determination of Significance for the Purposes of E.O. 12866

Comments: One commenter disagreed with NMFS's determination that the rule is not significant for purposes of E.O. 12866 because NMFS did not consider whether the proposed rule was duplicative or inconsistent with existing regulations, and interfered with actions by other agencies. Another commenter did not give the basis for its disagreement.

Response: NMFS continues to believe that the rule does not meet any of the criteria for a significant regulatory action established in E.O. 12866, including those mentioned in the comment. This rule establishes procedures for coordination, consultation, and recommendations to other agencies on actions that may adversely affect EFH. The consultations will be fit into existing procedures whenever possible, and when this is not possible, will be fit into the other agency's time frame for decision-making. The EFH conservation recommendations are not mandatory, but will be part of the action agency's decision-making process. Therefore, the rule does not meet E.O. 12866's requirements for significance.

46. Comments on NMFS' Regulatory Flexibility Act Determination

Comments: One commenter agreed with NMFS that no regulatory flexibility analysis needs to be prepared now, but that regulations affecting EFH will be subject to the analysis. Other commenters disagreed with NMFS' conclusion that the rule would not have a significant economic impact on a substantial number of small entities engaged in non-fishing activities and requested that NMFS prepare a regulatory flexibility analysis.

Response: NMFS does not have mandatory authority over non-fishing interests. NMFS provides EFH conservation recommendations to a Federal or state action agency if their action may adversely affect EFH. The action agency considers the recommendation in its decision-making process and decides for itself whether it will impose any requirements on the entity seeking a permit or license and assess any economic impact on small entities. Additionally, the consultation process itself should not impose any additional burdens on small businesses engaged in non-fishing activities because the Federal action agency will most likely use existing consultation/environmental review procedures. If there are no existing consultation procedures, then the procedures in the rule must be used by the Federal agency. The information requested in the rule is material that the action agency already will need to make its decision on issuing a permit or license. Therefore, there will be no additional burden on small businesses engaged in non-fishing activities.

47. Comments on NMFS' determination That a Federalism Assessment is not Required

Comments: Commenters expressed the opinion that NMFS' determination is incorrect that this rule does not include policies with federalism implications requiring preparation of a Federalism Assessment. This rule does not contain policies that have a substantial direct effect on the states, on the relationship between the National government and the states, or on the distribution of power or responsibilities among the various levels of government. Some commenters stated that while EFH conservation recommendations are not mandatory, the states will be pressured to comply with the recommendations. One commenter stated that the process to guide the agencies is mandatory and therefore raises federalism issues. Other commenters raised the concern that because EFH may be identified in state waters, and many adverse impacts may occur there, a federalism assessment should be prepared.

Response: NMFS disagrees with the commenters and continues to take the position that the rule does not contain policies that have federalism implications sufficient to warrant preparation of a Federalism Assessment. States are not required to consult with NMFS on their actions that may adversely affect EFH. As stated in the Classification section of the rule, NMFS EFH conservation recommendations are not mandatory, and states are not required to undertake action in any way not of their own choosing.

48. Comments on NMFS Compliance With the Paperwork Reduction Act

Comments: Two commenters expressed their opinion that NMFS has not complied with the Paperwork Reduction Act (PRA) because the rule neither displays an Office of Management and Budget (OMB) control number nor states that the rule is not subject to OMB review. They stated that the proposed rule is clearly a collection of information subject to the PRA. They claim that this will be a big burden on many entities.

Response: Commenters correctly state that the PRA requires OMB approval before NMFS may require a collection of information. However, they overlook the regulatory definition of information in 5 CFR 1320.3(h)(4) stating that information does not generally include "facts or opinions submitted in response to general solicitations of comments from the public published in the **Federal Register** * * * regardless of the form * * *". The rule clearly fits the regulatory exemption for information and therefore is not subject to OMB approval. As such, it does not need either an OMB control number or a statement that the rule is not a collection of information.

49. Comments on Compliance With the ESA

Comments: Two commenters stated they think that promulgation of the rule is an action that may affect listed species, requiring consultation under section 7(a)(2) of the ESA.

Response: NMFS complied with the ESA by requesting the U.S. Fish and Wildlife Service (FWS) and NMFS'

office that handles ESA issues to concur with its determination that the proposed activity is not likely to adversely affect listed species. Both responded to NMFS stating their concurrence that the EFH rule is not likely to adversely affect listed species.

Changes From the Proposed Rule

The proposed rule contained guidelines to the Councils and procedures addressing the requirements to coordinate, consult, and recommend under the EFH provisions of the Magnuson-Stevens Act. The guidelines to the Councils will be in part 600 subpart J, but NMFS has determined that the regulations on coordination, consultation, and recommendation should be moved to a separate subpart, K. This provides easier access to the regulations, clarification of purpose, and still maintains their proximity to subpart J so that the implications of EFH designation are readily apparent. This is not a substantive change from the proposed rule.

NMFS reorganized parts of the coordination, consultation, and recommendation procedures by addressing use of existing procedures before the regulatory requirements for GCs, and abbreviated and expanded consultation. The use of existing procedures section includes more detail. NMFS reordered this section and expanded it in response to commenter's concerns that consultation could be duplicative with existing consultation/environmental review procedures.

Changes made are technical or administrative in nature and clarify intent or otherwise enhance administration of the EFH process. These changes are listed in the order that they appear in the regulations; grammatical or other minor changes are not detailed. Unless otherwise discussed, the rationale for why changes were made from the proposed rule is contained in the Comments and Response section.

In § 600.10, "aquatic" was added to the interpretation of historically used areas of EFH.

In § 600.10, "the managed species' contribution to" was added to denote that the healthy ecosystem is the local ecosystem in which the managed species participates.

In § 600.805, references to the consultation procedures required by the Magnuson-Stevens Act have been removed since these regulations have been separated into a new subpart as noted above.

In § 600.805, a new paragraph was added to describe the geographic scope of EFH and clarify the relationship of the regulations to Federal waters, state waters, and extraterritorial waters.

Section § 600.810 was changed to add "Definitions and Word Usage" for terms specific to this subpart; subsequent sections were renumbered.

Section 600.815 was renumbered from § 600.810.

In § 600.815, paragraph (a)(2)(i)(B), the phrase "the habitat requirements by life stage, and the distribution and characteristics of those habitats" was added to be consistent with later sections regarding information on the habitat; the phase "but not limited to" was added to emphasize that this list is intended to be illustrative not exhaustive; "or formerly occupied" was added to correct the language to agree with the definition of EFH.

In § 600.815, paragraph (a)(2)(i)(C), "should" was substituted for "will be" to emphasize that Councils should use information from all levels that are available.

In § 600.815, paragraph (a)(2)(i)(C)(*2*), "relative densities" was changed to "density or relative abundance" as more scientifically acceptable language; "gear" was changed to "methods" to include different techniques using the same gear.

In § 600.815, paragraph (a)(2)(ii)(A), the phrase "erring on the side of inclusiveness" was deleted because it is redundant with the concept of identifying EFH in a "risk-averse fashion." Wording has been changed to clarify that Level 1 information "should be used to identify the geographic range" of a species, Levels 2–4 information should be used to identify EFH within that range. If only Level 1 data exist, appropriate analyses should be used to identify EFH based on utilization of habitats. The sentence, "Councils must demonstrate that the identification of EFH is based on the best scientific information available, consistent with national standard 2" was added to clarify that Councils must use all available information to focus their identification of EFH.

In § 600.815, paragraph (a)(2)(ii)(B), references to populations recovering from "declines" were removed in favor of the terms "overfished" or "rebuilding the fishery," which are more commonly used fishery management terms. NMFS added the phase "and habitat loss or degradation may be contributing to the species being identified as overfished" to clarify that habitat limitations should be considered when identifying historic habitat as EFH. "Once the fishery is no longer considered overfished, the EFH identification should be reviewed, and the FMP amended, as appropriate" was added to clarify the dynamic nature of EFH identification.

In § 600.815, paragraph (a)(2)(ii)(C), "aquatic areas" has been added to clarify that the statutory definition limits EFH to aquatic portions of "critical habitat."

In § 600.815, paragraphs (a)(2)(ii)(D) and (E), the phrase "a sustainable fishery and the managed species' contribution to a healthy ecosystem" replaced "target production goal."

In § 600.815, paragraph (a)(2)(ii)(E), the listing of ecological roles to be considered in determining EFH has been removed, these ecological factors are considered broadly in the national standards. Councils should address these needs on a case-by-case basis.

In § 600.815, paragraph (a)(2)(ii)(F), "aquatic" is added to qualify "degraded or inaccessible habitat" to clarify that this is not intended to be dry land.

In § 600.815, paragraphs (a)(3), (a)(4), and (a)(5), have been reordered to strengthen the connections between EFH identification and description and the management of fishing activities that may adversely affect EFH as suggested by commenters. Non-fishing activities are addressed under § 600.815(a)(5).

In § 600.815, paragraph (a)(3)(ii), the phrase "fishing equipment" has replaced "fishing gear" to encompass all sources of fishing-related adverse impacts to EFH; the wording clarifies that "best scientific data" should be used but that other "appropriate information sources" should be considered. The wording also clarifies for the Councils that gear assessments should include effects on all EFH types potentially impacted (especially HAPC) and Councils should evaluate relative impacts.

In § 600.815, paragraph (a)(3)(iii), "identifiable" replaces "substantial." The phrase "and cumulative impacts analysis" clarifies that fishing impacts should be included in an analysis of cumulative impacts on EFH.

In § 600.815, paragraph (a)(3)(iv) clarifies that consideration should be given to long- and short-term benefits and costs to both EFH and the fishery when assessing management actions. "EFH" is substituted for "the marine ecosystem" to improve consistency with the Magnuson-Stevens Act.

In § 600.815, paragraph (a)(4)(i) is retitled "Fishing equipment restrictions." NMFS replaced the list of mixed general and specific examples of fishing types with more general examples of potential gear restrictions.

In § 600.815, paragraph (a)(4)(ii), wording was added to clarify that "marine protected areas" can be used for management of adverse effects on

EFH, as well as research on fishing equipment impacts; especially in HAPC.

In § 600.815, paragraph (a)(5) is a consolidation of § 600.810 (a)(3) paragraphs (i) and (ii) from the proposed rule.

In § 600.815, paragraph (a)(5), illustrative examples of "activities which can adversely affect EFH" were made more consistent so that broad actions, not industries potentially causing those actions, were highlighted. The phrases, "actions that contribute to non-point source pollution and sedimentation" and "introduction of potentially hazardous materials" were added for clarity in place of "runoff" and "placement of contaminated material." The mapping provisions specific to this section were moved from the Cumulative Impacts Analysis section of the proposed rule.

Section 600.815, paragraph (a)(6)(i), clarifies that fishing effects as well as non-fishing impacts on EFH should be subject to cumulative impacts analysis, separately and in concert. NMFS added the term "feasible" to emphasize that a cumulative impacts analysis may not be possible because of technological or other limitations. NMFS replaced the phrase "natural stresses" with "natural adverse impacts". NMFS changed the wording to avoid misinterpretation of "ecological risk assessment" as a formalized toxicological test.

In § 600.815, paragraph (a)(6)(ii) was split out from the cumulative impacts section to emphasize cumulative impacts from fishing and to highlight that HAPCs should be examined for cumulative effects.

In § 600.815, paragraph (a)(6)(iii) splits the mapping of cumulative impacts into a separate paragraph.

In § 600.815, paragraph (a)(6)(iv), "*Research needs,*" was added to emphasize that Councils should pursue research efforts geared to understand ecosystem and watershed effects on fish populations and incorporate them into their protection of EFH if they are unable to conduct cumulative impacts analyses.

In § 600.815, paragraph (a)(7) was renumbered from paragraph (a)(3)(iv) and reordered. NMFS modified the language to emphasize that the preferred approach to EFH conservation should be to avoid, minimize, or compensate for adverse effects on EFH from specific actions to focus EFH conservation efforts. NMFS added "especially in habitat areas of particular concern."

In § 600.815, paragraphs (a)(7)(ii)(A), (B), (C), and (D) have been renumbered from paragraphs (a)(3)(iv)(A–F) of the proposed rule reflecting the incorporation of the wording from paragraph (a)(7)(ii)(A) (proposed rule) into the previous paragraph mentioned, and titles were generally modified for grammatical consistency. Language was added to clarify that conservation measures presented in these paragraphs are illustrative of measures that Councils may consider to proactively or reactively address past or present adverse effects to conserve and enhance EFH.

In § 600.815, paragraph (a)(7)(iii)(A) has been retitled "Enhancement of rivers, streams, and coastal areas." Paragraph (a)(3)(iv)(C) from the proposed rule has been incorporated into this paragraph. The phrase "modification of operating procedures for dikes and levees" was added to clarify that removal is not always the preferred option for providing fish passage. The final sentence in the paragraph was added to emphasize governmental planning in watershed management.

In § 600.815, paragraph (a)(7)(iii)(B), "and quantity" has been added to the title; and "providing appropriate in-stream flow" has been added to reflect general options to apply to all regions.

In § 600.815, paragraph (a)(7)(iii)(C), "subsequent watershed" was deleted from the title. Specific examples have been replaced by more general examples of watershed-scale conservation and enhancement options.

In § 600.815, paragraph (a)(7)(iii)(D), the example has been deleted since it may be only regionally applicable; "(converting non-EFH to EFH)" was added for clarity; "and degraded" has been added to clarify that such areas may be appropriate for enhancement through habitat creation; "conversion" was included as a synonym for "creation;" "within an ecosystem context" has been added for clarity.

In § 600.815, paragraph (a)(8), "and their habitat" has been added to better explain how prey species should be addressed. Language was added to explain why adverse impacts to prey and prey habitat may be adverse impacts to EFH.

In § 600.815, paragraph (a)(9) has been renumbered from paragraph (a)(7) of the proposed rule and retitled "Identification of habitat areas of particular concern;" language has been included to denote that HAPC might include not only those areas especially vulnerable to degradation, but those that provide important ecological functions for one or more managed species; the paragraphs have been renumbered after the inclusion of paragraph (i), The importance of the ecological function provided by the habitat.

In § 600.815, paragraph (a)(10) has been renumbered from paragraph (a)(8) of the proposed rule; "cumulative impacts from fishing," "priority," "and a schedule for obtaining that information" have been added; "equipment" replaced "gear;" "maintaining a sustainable fishery and the managed species' contribution to a healthy ecosystem" replaces "reaching target long-term production levels." All of these changes were made to ensure that this section is consistent with other parts of the rule.

In § 600.815, paragraph (a)(11) has been renumbered from paragraph (a)(9) of the proposed rule; "including an update of the equipment assessment originally conducted pursuant to paragraph (a)(3)(ii) of this section" has been added, as has been "This information should be reviewed as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to § 600.315(e)" and "complete."

In § 600.815, paragraph (c), language has been added to clarify that NMFS EFH FMP recommendations may include "other appropriate information." Language was added to acknowledge differences between Council procedures in preparing FMPs and to assure the flexibility to work within each process.

In § 600.815, paragraph (d) has been added to encourage coordination with other fishery management authorities.

The consultation, coordination, and recommendation provisions in the proposed rule have been separated out into a new subpart K of part 600.

Sections 600.905, 600.915, 600.920, 600.925, and 600.930 have been reorganized from the proposed rule's § 600.815 to provide better access and understanding to the provisions. Each of the provisions that applies to a different part of the Magnuson-Stevens Act has been separated into a different section to highlight the different requirements in response to many commenters who failed to recognize the distinctions between coordination, consultation, and commenting (or providing recommendations) and the entities involved in each process.

Section 600.905 has been added to clarify the intent of these provisions in promoting the protection of EFH in the review of Federal and state actions that may adversely affect EFH.

Section 600.905(c) has been revised adding language to emphasize cooperation between Councils and NMFS in all phases of EFH implementation. The clarification that "NMFS and the Councils also have the

authority to act independently," has been added.

Section 600.910 has been added for definitions and word usage that apply to this subpart.

Section 600.915 has been renumbered and expanded to provide the details of the coordination between NMFS and other action agencies and to indicate that NMFS will take a proactive approach in promoting the conservation of EFH.

Section 600.920 has been revised to combine all sections of the Federal agency consultation provisions in a more organized fashion. The proposed rule recommended incorporation of EFH consultations with other existing environmental reviews, but this was overlooked by some commenters. These sections clarify the details of appropriate consultation and emphasize that NMFS' preference is for consultations to occur within existing consultation/environmental review procedures, whenever possible.

Section 600.920, paragraphs (a) (1) and (2) were added to provide specific information on which Federal actions require consultation, and the use of programmatic consultation.

In § 600.920, paragraph (d), language has been added to clarify that "other appropriate sources of information may also be considered" when evaluating the effects of a proposed action on EFH.

In § 600.920, paragraph (f)(1), "minimal" has been changed to "no more" than minimal.

Section 600.920, paragraph (f)(2)(ii) clarifies the requirements for tracking actions included in General Concurrences.

Section 600.920, paragraph (f)(2)(iv) explains that in HAPC, activities will be held to a greater level of scrutiny before being granted a General Concurrence.

In § 600.920, paragraph (f)(4), "if appropriate" has been added.

Section 600.920, paragraph (g)(1) has been rewritten to improve clarity.

Section § 600.920, paragraph (g)(2)(iv), has been moved from the Additional information section.

In § 600.920, paragraph (g)(3)(iv), "particularly when an action is non-water dependent" has been added to emphasize alternatives when an action is not water dependent.

In § 600.920, paragraph (h)(1) contains additional criteria to determine when abbreviated consultation is appropriate.

In § 600.920, paragraph (h)(2), "must" was changed to "should" and language was added to clarify when notification should be sent to a Council.

In § 600.920, paragraph (h)(5), language on combining EFH Assessments with other environmental reviews was deleted because the same concept is included in § 600.920(e)(2).

In § 600.920, paragraph (i)(1) contains additional explanation of the intent of expanded consultation and criteria to determine when expanded consultation is appropriate.

In § 600.920, paragraph (i)(3) provides additional clarification regarding NMFS' response to Federal agencies during expanded consultation.

In § 600.920, paragraph (i)(4) clarifies that there is flexibility in the schedules for consultation; "or emergency situation" has been added, and the NMFS deadline has been changed from 90 to 60 days.

In § 600.920, paragraph (i)(5), "must" has been changed to "should."

Section 600.920, paragraph (j)(2) has been retitled "Further review of decisions inconsistent with NMFS or Council recommendations" from "Dispute resolution;" language has been added to describe actions available in the case when an action agency's decision is inconsistent with NMFS or the Council's EFH conservation recommendations.

Section 600.920, paragraph (j)(1) has been rewritten to improve clarity.

In § 600.925, paragraph (c), "use existing coordination procedures under statutes such as the Coastal Zone Management Act or establish new" and other language has been added to further encourage the use of existing procedures to coordinate with state agencies, and to encourage sharing information with states.

In § 600.925, paragraph (a), language has been added stating that NMFS will not make recommendations beyond a Federal agency's authority.

In § 600.925, paragraph (b) has been added to clarify the relationship between Federal consultation and providing EFH conservation recommendation to Federal agencies.

Classification

The Assistant Administrator for Fisheries (AA), NMFS, has determined that this interim final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an EA for this interim final rule, and the AA concluded that there will be no significant impact on the human environment as a result of this rule. The regulations contain guidelines to the Councils for amending FMPs in accordance with the EFH requirements of the Magnuson-Stevens Act, and procedures to be used by NMFS, the Councils, and Federal and state action agencies to satisfy the coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. Any specific effects on the human environment will be addressed in NEPA documents prepared for individual FMP provisions that are prepared pursuant to this rule. A copy of the EA is available from NMFS (see **ADDRESSES**).

This interim final rule has been determined to be not significant for the purposes of E.O. 12866. Each EFH amendment to an existing FMP and all new FMPs will contain detailed analyses of the benefits and costs of the management programs under consideration, to ensure compliance with E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. NMFS received comments regarding this certification. As addressed earlier, NMFS' consideration of these comments did not cause it to change its determination regarding the certification. This rule establishes guidelines for Councils to identify and describe EFH, including adverse impacts, and conservation and enhancement measures. The regulations require that the Councils conduct assessments of the effects of fishing on EFH within their jurisdiction. The Magnuson-Stevens Act requires the Councils to examine their existing FMPs and all future FMPs and amend them as required to comply with the EFH guidelines in this rule. These guidelines are intended to provide direction on compliance with the EFH provisions and in themselves, do not have the force of law. Should Councils establish regulations on fishing as a result of the guidelines and the assessment of fishing equipment, that action may affect small entities and could be subject to the requirement to prepare a Regulatory Flexibility analysis at the time they are proposed. Any future effects on small entities that may eventually result from amendments to FMPs to bring them into compliance with the Magnuson-Stevens Act would be speculative at this time. Finally, the consultation procedures establish a process for NMFS to provide conservation recommendations to Federal and state action agencies. However, because compliance with NMFS recommendations is not mandatory, any effects on small businesses would be speculative. As a result, a regulatory flexibility analysis was not prepared.

For the purposes of E.O. 12612, the AA has determined that this interim final rule does not include policies that have federalism implications sufficient to warrant preparation of a Federalism Assessment. This rule establishes procedures for coordination between the states and NMFS or the Councils in situations where state action may adversely impact EFH. The rule states that, in such circumstances, NMFS or the Councils would furnish the state with EFH recommendations. NMFS EFH conservation recommendations are not mandatory, and the states are not required to expend funds in a way not of their own choosing.

References

Christensen, N.L., A.M. Bartuska, J.H. Brown, S. Carpenter, C. D'Antonio, R. Francis, J.F. Franklin, J.A. MacMahon, R.F. Noss, D.J. Parsons, C.H. Peterson, M.G. Turner, and R.G. Woodmansee. 1996. The report of the Ecological Society of America committee on the scientific basis for ecosystem management. Ecological Applications, 6(3): 665–691.

Grumbine, R.E. 1997. Reflections on "What is Ecosystem Management?" Conservation Biology 11(1): 41–47.

Hancock, D.A. (ed.) 1993. Sustainable Fisheries through Sustaining Fish Habitat, Australian Society for Fish Biology Workshop, Victor Harbor, SA, 12–13 August, Bureau of Resource Sciences Proceedings, AGPS, Canberra.

List of Subjects in 50 CFR Part 600

Administrative practice and procedures, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations.

Dated: December 15, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, the National Marine Fisheries Service amends 50 CFR part 600 as follows:

PART 600—[AMENDED]

1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 600.10 is amended by adding the definition for "Essential fish habitat", in alphabetical order, to read as follows:

§ 600.10 Definitions.

* * * * *

Essential fish habitat (EFH) means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: *Waters* include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; *substrate* includes sediment, hard bottom, structures underlying the waters, and associated biological communities; *necessary* means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

* * * * *

3. New subparts J and K are added to part 600 to read as follows:

* * * * *

Subpart J—Essential Fish Habitat (EFH)

600.805 Purpose and scope.
600.810 Definitions and word usage.
600.815 Contents of Fishery Management Plans.

Subpart K—EFH Coordination, Consultation, and Recommendations

600.905 Purpose, scope, and NMFS/Council cooperation.
600.910 Definitions and word usage.
600.915 Coordination for the conservation and enhancement of EFH.
600.920 Federal agency consultation with the Secretary.
600.925 NMFS EFH conservation recommendations to Federal and state agencies.
600.930 Council comments and recommendations to Federal and state agencies.

Subpart J—Essential Fish Habitat (EFH)

§ 600.805 Purpose and scope.

(a) *Purpose.* This subpart provides guidelines for Councils and the Secretary to use in adding the required provision on EFH to an FMP, i.e., description and identification of essential fish habitat (EFH), adverse impacts on EFH (including minimizing, to the extent practicable, adverse impacts from fishing), and actions to conserve and enhance EFH.

(b) *Scope*—(1) *Species covered.* An EFH provision in an FMP must include all fish species in the FMU. A Council may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act.

(2) *Geographic.* EFH may be described and identified in waters of the United States, as defined in 33 CFR 328.3 and the exclusive economic zone, as defined in § 600.10. Councils may describe, identify, and protect habitats of managed species beyond the exclusive economic zone; however, such habitat may not be considered EFH for the purposes of section 303(a)(7) and 305(b) of the Magnuson-Stevens Act. Activities that may adversely impact such habitat can be addressed through any process conducted in accordance with international agreements between the United States and the foreign nation(s) undertaking or authorizing the action.

§ 600.810 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact which reduces quality and/or quantity of EFH. Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, or reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Council includes the Secretary, as applicable, when preparing Secretarial FMPs or amendments under sections 304(c) and (g) of the Magnuson-Stevens Act.

Ecosystem means communities of organisms interacting with one another and with the chemical and physical factors making up their environment.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(9).

Healthy ecosystem means an ecosystem where ecological productive capacity is maintained, diversity of the flora and fauna is preserved, and the ecosystem retains the ability to regulate itself. Such an ecosystem should be similar to comparable, undisturbed, ecosystems with regard to standing crop, productivity, nutrient dynamics, trophic structure, species richness, stability, resilience, contamination levels, and the frequency of diseased organisms.

Overfished means any stock or stock complex, the status of which is reported as overfished by the Secretary pursuant to § 304(e)(1) of the Magnuson-Stevens Act.

(b) *Word usage.* The terms "must", "shall", "should", "may", "may not", "will", "could", and "can", are used in the same manner as in § 600.305(c).

§ 600.815 Contents of Fishery Management Plans.

(a) *Mandatory contents*—(1) *Habitat requirements by life history stage.* FMPs must describe EFH in text and with tables that provide information on the biological requirements for each life

history stage of the species. These tables should summarize all available information on environmental and habitat variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity of the managed species. Information in the tables should be supported with citations.

(2) *Description and identification of EFH*—(i) *Information requirements.* (A) An initial inventory of available environmental and fisheries data sources relevant to the managed species should be used in describing and identifying EFH. This inventory should also help to identify major species-specific habitat data gaps. Deficits in data availability (i.e., accessibility and application of the data) and in data quality (including considerations of scale and resolution; relevance; and potential biases in collection and interpretation) should be identified.

(B) To identify EFH, basic information is needed on current and historic stock size, the geographic range of the managed species, the habitat requirements by life history stage, and the distribution and characteristics of those habitats. Information is also required on the temporal and spatial distribution of each major life history stage (defined by developmental and functional shifts). Since EFH should be identified for each major life history stage, data should be collected on, but not limited to, the distribution, density, growth, mortality, and production of each stage within all habitats occupied, or formerly occupied, by the species. These data should be obtained from the best available information, including peer-reviewed literature, data reports and "gray" literature, data files of government resource agencies, and any other sources of quality information.

(C) The following approach should be used to gather and organize the data necessary for identifying EFH. Information from all levels should be used to identify EFH. The goal of this procedure is to include as many levels of analysis as possible within the constraints of the available data. Councils should strive to obtain data sufficient to describe habitat at the highest level of detail (i.e., Level 4).

(*1*) *Level 1: Presence/absence distribution data are available for some or all portions of the geographic range of the species.* At this level, only presence/absence data are available to describe the distribution of a species (or life history stage) in relation to potential habitats. Care should be taken to ensure that all potential habitats have been sampled adequately. In the event that distribution data are available for only portions of the geographic area occupied by a particular life history stage of a species, EFH can be inferred on the basis of distributions among habitats where the species has been found and on information about its habitat requirements and behavior.

(*2*) *Level 2: Habitat-related densities of the species are available.* At this level, quantitative data (i.e., density or relative abundance) are available for the habitats occupied by a species or life history stage. Because the efficiency of sampling methods is often affected by habitat characteristics, strict quality assurance criteria should be used to ensure that density estimates are comparable among methods and habitats. Density data should reflect habitat utilization, and the degree that a habitat is utilized is assumed to be indicative of habitat value. When assessing habitat value on the basis of fish densities in this manner, temporal changes in habitat availability and utilization should be considered.

(*3*) *Level 3: Growth, reproduction, or survival rates within habitats are available.* At this level, data are available on habitat-related growth, reproduction, and/or survival by life history stage. The habitats contributing the most to productivity should be those that support the highest growth, reproduction, and survival of the species (or life history stage).

(*4*) *Level 4: Production rates by habitat are available.* At this level, data are available that directly relate the production rates of a species or life history stage to habitat type, quantity, quality, and location. Essential habitats are those necessary to maintain fish production consistent with a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(ii) *EFH determination.* (A) The information obtained through the analysis in paragraph (a)(2)(i) of this section will allow Councils to assess the relative value of habitats. Councils should interpret this information in a risk-averse fashion, to ensure adequate areas are protected as EFH of managed species. Level 1 information, if available, should be used to identify the geographic range of the species. Level 2 through 4 information, if available, should be used to identify the habitats valued most highly within the geographic range of the species. If only Level 1 information is available, presence/absence data should be evaluated (e.g., using a frequency of occurrence or other appropriate analysis) to identify those habitat areas most commonly used by the species. Areas so identified should be considered essential for the species. However, habitats of intermediate and low value may also be essential, depending on the health of the fish population and the ecosystem. Councils must demonstrate that the best scientific information available was used in the identification of EFH, consistent with national standard 2, but other data may also be used for the identification.

(B) If a species is overfished, and habitat loss or degradation may be contributing to the species being identified as overfished, all habitats currently used by the species should be considered essential in addition to certain historic habitats that are necessary to support rebuilding the fishery and for which restoration is technologically and economically feasible. Once the fishery is no longer considered overfished, the EFH identification should be reviewed, and the FMP amended, if appropriate.

(C) EFH will always be greater than or equal to aquatic areas that have been identified as "critical habitat" for any managed species listed as threatened or endangered under the Endangered Species Act.

(D) Where a stock of a species is considered to be healthy, then EFH for the species should be a subset of all existing habitat for the species.

(E) Ecological relationships among species and between the species and their habitat require, where possible, that an ecosystem approach be used in determining the EFH of a managed species or species assemblage. The extent of the EFH should be based on the judgment of the Secretary and the appropriate Council(s) regarding the quantity and quality of habitat that is necessary to maintain a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(F) If degraded or inaccessible aquatic habitat has contributed to the reduced yields of a species or assemblage, and in the judgment of the Secretary and the appropriate Council(s), the degraded conditions can be reversed through such actions as improved fish passage techniques (for fish blockages), improved water quality or quantity measures (removal of contaminants or increasing flows), and similar measures that are technologically and economically feasible, then EFH should include those habitats that would be essential to the species to obtain increased yields.

(iii) *EFH Mapping Requirements.* The general distribution and geographic limits of EFH for each life history stage should be presented in FMPs in the form of maps. Ultimately, these data should be incorporated into a geographic information system (GIS) to facilitate analysis and presentation. These maps may be presented as fixed in time and space, but they should encompass all appropriate temporal and spatial variability in the distribution of EFH. If the geographic boundaries of EFH change seasonally, annually, or decadally, these changing distributions need to be represented in the maps. Different types of EFH should be identified on maps along with areas used by different life history stages of the species. The type of information used to identify EFH should be included in map legends, and more detailed and informative maps should be produced as more complete information about population responses (e.g., growth, survival, or reproductive rates) to habitat characteristics becomes available. Where the present distribution or stock size of a species or life history stage is different from the historical distribution or stock size, then maps of historical habitat boundaries should be included in the FMP, if known. The EFH maps are a means to visually present the EFH described in the FMP. If the maps identifying EFH and the information in the description of EFH differ, the description is ultimately determinative of the limits of EFH.

(3) *Fishing activities that may adversely affect EFH.* (i) Adverse effects from fishing may include physical, chemical, or biological alterations of the substrate, and loss of, or injury to, benthic organisms, prey species and their habitat, and other components of the ecosystem.

(ii) FMPs must include management measures that minimize adverse effects on EFH from fishing, to the extent practicable, and identify conservation and enhancement measures. The FMP must contain an assessment of the potential adverse effects of all fishing equipment types used in waters described as EFH. This assessment should consider the relative impacts of all fishing equipment types used in EFH on different types of habitat found within EFH. Special consideration should be given to equipment types that will affect habitat areas of particular concern. In completing this assessment, Councils should use the best scientific information available, as well as other appropriate information sources, as available. Included in this assessment should be consideration of the establishment of research closure areas and other measures to evaluate the impact of any fishing activity that physically alters EFH.

(iii) Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing practice is having an identifiable adverse effect on EFH, based on the assessment conducted pursuant to paragraph (a)(3)(ii) of this section and/or the cumulative impacts analysis conducted pursuant to paragraph (a)(6)(ii) of this section.

(iv) In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider whether, and to what extent, the fishing activity is adversely impacting EFH, including the fishery; the nature and extent of the adverse effect on EFH; and whether the management measures are practicable, taking into consideration the long and short-term costs as well as benefits to the fishery and its EFH, along with other appropriate factors, consistent with national standard 7.

(4) *Options for managing adverse effects from fishing.* Fishery management options may include, but are not limited to:

(i) *Fishing equipment restrictions.* These options may include, but are not limited to: Seasonal and area restrictions on the use of specified equipment; equipment modifications to allow escapement of particular species or particular life stages (e.g., juveniles); prohibitions on the use of explosives and chemicals; prohibitions on anchoring or setting equipment in sensitive areas; and prohibitions on fishing activities that cause significant physical damage in EFH.

(ii) *Time/area closures.* These actions may include, but are not limited to: Closing areas to all fishing or specific equipment types during spawning, migration, foraging, and nursery activities; and designating zones for use as marine protected areas to limit adverse effects of fishing practices on certain vulnerable or rare areas/species/life history stages, such as those areas designated as habitat areas of particular concern.

(iii) *Harvest limits.* These actions may include, but are not limited to, limits on the take of species that provide structural habitat for other species assemblages or communities, and limits on the take of prey species.

(5) *Identification of Non-fishing related activities that may adversely affect EFH.* FMPs must identify activities that have the potential to adversely affect EFH quantity or quality, or both. Broad categories of activities which can adversely affect EFH include, but are not limited to: Dredging, fill, excavation, mining, impoundment, discharge, water diversions, thermal additions, actions that contribute to non-point source pollution and sedimentation, introduction of potentially hazardous materials, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. An FMP should describe the EFH most likely to be adversely affected by these or other activities. For each activity, the FMP should describe known and potential adverse impacts to EFH. The descriptions should explain the mechanisms or processes that may cause the adverse effects and how these may affect habitat function. A GIS or other mapping system should be used to support analyses of data. Maps geographically depicting impacts identified in this paragraph should be included in an FMP.

(6) *Cumulative impacts analysis*—(i) *Analysis.* To the extent feasible and practicable, FMPs should analyze how fishing and non-fishing activities influence habitat function on an ecosystem or watershed scale. This analysis should describe the ecosystem or watershed, the dependence of the managed species on the ecosystem or watershed, especially EFH; and how fishing and non-fishing activities, individually or in combination, impact EFH and the managed species, and how the loss of EFH may affect the ecosystem. An assessment of the cumulative and synergistic effects of multiple threats, including the effects of natural stresses (such as storm damage or climate-based environmental shifts), and an assessment of the ecological risks resulting from the impact of those threats on the managed species' habitat should also be included. For the purposes of this analysis, cumulative impacts are impacts on the environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of who undertakes such actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time.

(ii) *Cumulative impacts from fishing.* In addressing the impacts of fishing on EFH, Councils should also consider the cumulative impacts of multiple fishing practices and non-fishing activities on EFH, especially, on habitat areas of particular concern. Habitats that are particularly vulnerable to specific fishing equipment types should be identified for possible designation as habitat areas of particular concern.

(iii) *Mapping cumulative impacts.* A GIS or other mapping system should be used to support analyses of data. Maps depicting data documenting cumulative

impacts identified in this paragraph should be included in an FMP.

(iv) *Research needs.* If completion of these analyses is not feasible or practicable for every ecosystem or watershed within an area identified as EFH, Councils should, in consultation with NMFS, identify in the FMP priority research areas to allow these analyses to be completed. Councils should include a schedule for completing such research. Such schedule of priority research areas should be combined with the research needs identified pursuant to paragraph (a)(10) of this section.

(7) *Conservation and enhancement*—(i) *Contents of FMPs.* FMPs must describe options to avoid, minimize, or compensate for the adverse effects identified pursuant to paragraphs (a) (5) and (6) of this section and promote the conservation and enhancement of EFH, especially in habitat areas of particular concern.

(ii) *General conservation and enhancement recommendations.* Generally, non-water dependent actions should not be located in EFH if such actions may have adverse impacts on EFH. Activities that may result in significant adverse affects on EFH, should be avoided where less environmentally harmful alternatives are available. If there are no alternatives, the impacts of these actions should be minimized. Environmentally sound engineering and management practices should be employed for all actions which may adversely affect EFH. Disposal or spillage of any material (dredge material, sludge, industrial waste, or other potentially harmful materials) which would destroy or degrade EFH should be avoided. If avoidance or minimization is not possible, or will not adequately protect EFH, compensatory mitigation to conserve and enhance EFH should be recommended. FMPs may recommend proactive measures to conserve or enhance EFH. When developing proactive measures, Councils may develop a priority ranking of the recommendations to assist Federal and state agencies undertaking such measures.

(iii) *Conservation and enhancement options.* FMPs should provide a variety of options to conserve or enhance EFH, which may include, but are not limited to:

(A) *Enhancement of rivers, streams, and coastal areas.* EFH located in, or influenced by, rivers, streams, and coastal areas may be enhanced by reestablishing endemic trees or other appropriate native vegetation on adjacent riparian areas; restoring natural bottom characteristics; removing unsuitable material from areas affected by human activities; or adding gravel or substrate to stream areas to promote spawning. Adverse effects stemming from upland areas that influence EFH may be avoided or minimized by employing measures such as, but not limited to, erosion control, road stabilization, upgrading culverts, removal or modification of operating procedures of dikes or levees to allow for fish passage, structural and operation measures at dams for fish passage and habitat protection, or improvement of watershed management. Initiation of Federal, state, or local government planning processes to restore watersheds associated with such rivers, streams, or coastal areas may also be recommended.

(B) *Water quality and quantity.* This category of options may include use of best land management practices for ensuring compliance with water quality standards at state and Federal levels, improved treatment of sewage, proper disposal of waste materials, and providing appropriate in-stream flow.

(C) *Watershed analysis and planning.* This may include encouraging local and state efforts to minimize destruction/degradation of wetlands, restore and maintain the ecological health of watersheds, and encourage restoration of native species. Any analysis of options should consider natural variability in weather or climatic conditions.

(D) *Habitat creation.* Under appropriate conditions, habitat creation (converting non-EFH to EFH) may be considered as a means of replacing lost or degraded EFH. However, habitat conversion at the expense of other naturally functioning systems must be justified within an ecosystem context.

(8) *Prey species.* Loss of prey is an adverse effect on EFH and a managed species, because one component of EFH is that it be necessary for feeding. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species may be considered adverse effects on a managed species and its EFH. FMPs should identify the major prey species for the species in the FMU and generally describe the location of prey species' habitat. Actions that cause a reduction of the prey species population, including where there exists evidence that adverse effects to habitat of prey species is causing a decline in the availability of the prey species, should also be described and identified. Adverse effects on prey species and their habitats may result from fishing and non-fishing activities.

(9) *Identification of habitat areas of particular concern.* FMPs should identify habitat areas of particular concern within EFH. In determining whether a type, or area of EFH is a habitat area of particular concern, one or more of the following criteria must be met:

(i) The importance of the ecological function provided by the habitat.

(ii) The extent to which the habitat is sensitive to human-induced environmental degradation.

(iii) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

(iv) The rarity of the habitat type.

(10) *Research and information needs.* Each FMP should contain recommendations, preferably in priority order, for research efforts that the Councils and NMFS view as necessary for carrying out their EFH management mandate. The need for additional research is to make available sufficient information to support a higher level of description and identification of EFH under paragraph (a)(2)(i) of this section. Additional research may also be necessary to identify and evaluate actual and potential adverse effects on EFH, including, but not limited to, direct physical alteration; impaired habitat quality/functions; cumulative impacts from fishing; or indirect adverse effects such as sea level rise, global warming and climate shifts; and non-equipment related fishery impacts. The Magnuson-Stevens Act specifically identifies the effects of fishing as a concern. The need for additional research on the effects of fishing equipment on EFH and a schedule for obtaining that information should be included in this section of the FMP. If an adverse effect on EFH is identified and determined to be an impediment to maintaining a sustainable fishery and the managed species' contribution to a healthy ecosystem, then the research needed to quantify and mitigate that effect should be identified in this section.

(11) *Review and revision of EFH components of FMPs.* Councils and NMFS should periodically review the EFH components of FMPs, including an update of the equipment assessment originally conducted pursuant to paragraph (a)(3)(ii) of this section. Each EFH FMP amendment should include a provision requiring review and update of EFH information and preparation of a revised FMP amendment if new information becomes available. The schedule for this review should be based on an assessment of both the existing data and expectations when new data will become available. This information should be reviewed as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to § 600.315(e). A complete review of information should be conducted as recommended by the Secretary, but at least once every 5 years.

(b) *Optional components.* An FMP may include a description and identification of the habitat of species under the authority of the Council, even if not contained in the FMU. However, such habitat may not be EFH. This subpart does not change a Council's ability to implement management measures for a managed species for the protection of another species.

(c) *Development of EFH recommendations.* After reviewing the best available scientific information, as well as other appropriate information, and in consultation with the Councils, participants in the fishery, interstate commissions, Federal agencies, state agencies, and other interested parties, NMFS will develop written recommendations for the identification of EFH for each FMP. In recognition of the different approaches to FMP development taken by each Council, the NMFS EFH recommendations may constitute a review of a draft EFH document developed by a Council, or may include suggestions for a draft EFH FMP amendment and may precede the Council's development of such documents, as appropriate. In both cases, prior to submitting a written EFH identification recommendation to a Council for an FMP, the draft recommendation will be made available for public review and at least one public meeting will be held. NMFS will work with the affected Council(s) to conduct this review in association with scheduled public Council meetings whenever possible. The review may be conducted at a meeting of the Council committee responsible for habitat issues or as a part of a full Council meeting. After receiving public comment, NMFS will revise its draft recommendations, as appropriate, and forward a final written recommendation and comments to the Council(s).

(d) *Relationship to other fishery management authorities.* Councils are encouraged to coordinate with state and interstate fishery management agencies where Federal fisheries affect state and interstate managed fisheries or where state or interstate fishery regulations affect the management of Federal fisheries. Where a state or interstate fishing activity adversely impacts EFH, NMFS will consider that action to be an adverse effect on EFH pursuant to paragraph (a)(5) of this section and will provide EFH conservation recommendations to the appropriate state or interstate fishery management agency on that activity.

Subpart K—EFH Coordination, Consultation, and Recommendations

§ 600.905 Purpose and scope and NMFS/Council cooperation.

(a) *Purpose.* These procedures address the coordination, consultation, and recommendation requirements of sections 305(b)(1)(D) and 305(b)(2–4) of the Magnuson-Stevens Act. The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH.

(b) *Scope.* Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with, and provide information to, other Federal agencies regarding the conservation and enhancement of EFH. Section 305(b)(2) requires all Federal agencies to consult with the Secretary on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH. Sections 305(b) (3) and (4) direct the Secretary and the Councils to provide comments and EFH conservation recommendations to Federal or state agencies on actions that affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. Section 305(b)(4)(B) requires Federal agencies to respond in writing to such comments. The following procedures for coordination, consultation, and recommendations allow all parties involved to understand and implement the requirements of the Magnuson-Stevens Act.

(c) *Cooperation between Councils and NMFS.* The Councils and NMFS should cooperate as closely as possible to identify actions that may adversely affect EFH, to develop comments and EFH conservation recommendations to Federal and state agencies, and to provide EFH information to Federal or state agencies. The Secretary will seek to develop agreements with each Council to facilitate sharing information on actions that may adversely affect EFH and in coordinating Council and NMFS comments and recommendations on those actions. However, NMFS and the Councils also have the authority to act independently.

§ 600.910 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact which reduces quality and/or quantity of EFH. Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitatwide impacts, including individual, cumulative, or synergistic consequences of actions.

Council includes the Secretary, as applicable, when preparing FMPs or amendments under section 304 (c) and (g) of the Magnuson-Stevens Act; and when commenting and making recommendations under the authority of section 305(b)(3) of the Magnuson-Stevens Act to any Federal or state agency on actions that may affect the habitat of fishery resources managed under such FMPs.

Federal action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(9).

State action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a state agency.

(b) *Word usage.* The terms "must", "shall", "should", "may", "may not", "will", "could", and "can", are used in the same manner as in § 600.305(c).

§ 600.915 Coordination for the conservation and enhancement of EFH.

To further the conservation and enhancement of EFH in accordance with section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will compile and make available to other Federal and state agencies, information on the locations of EFH, including maps and/or narrative descriptions. NMFS will also provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. Federal and state agencies empowered to authorize, fund, or undertake actions that may adversely affect EFH are encouraged to contact NMFS and the Councils to become familiar with areas designated as EFH, and potential threats to EFH, as well as opportunities to promote the conservation and enhancement of such habitat.

§ 600.920 Federal agency consultation with the Secretary.

(a) *Consultation generally*—(1) *Actions requiring consultation.* Pursuant

to section 305(b)(2) of the Magnuson-Stevens Act, Federal agencies must consult with NMFS regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may adversely affect EFH. EFH consultation is not required for completed actions, e.g., issued permits. Consultation is required for renewals, reviews, or substantial revisions of actions. Consultation on Federal programs delegated to non-Federal entities is required at the time of delegation, review, and renewal of the delegation. EFH consultation is required for any Federal funding of actions that may adversely affect EFH. NMFS and Federal agencies responsible for funding actions that may adversely affect EFH should consult on a programmatic level, if appropriate, with respect to these actions.

(2) *Appropriate level of consultation.* (i) NMFS and other Federal agencies may conduct consultation at either a programmatic or project-specific level. Federal actions may be evaluated at a programmatic level if sufficient information is available to develop EFH conservation recommendations and address all reasonably foreseeable adverse effects to EFH. Project-specific consultations are more appropriate when critical decisions are made at the project implementation stage, or when sufficiently detailed information for the development of EFH conservation recommendations does not exist at the programmatic level.

(ii) If, after a Federal agency requests programmatic consultation, NMFS determines that all concerns about adverse effects on EFH can be addressed at a programmatic level, NMFS will develop EFH conservation recommendations that cover all projects implemented under that program, and no further EFH consultation will be required. Alternatively, NMFS may determine that project-specific consultation is needed for part or all of the program's activities, in which case NMFS may develop some EFH conservation recommendations at a programmatic level, but will also recommend that project-specific consultation will be needed to complete the EFH consultation requirements. NMFS may also determine that programmatic consultation is not appropriate, in which case all EFH conservation recommendations will be deferred to project-specific consultations.

(b) *Designation of lead agency.* If more than one Federal agency is responsible for a Federal action, the consultation requirements of sections 305(b)(2–4) of the Magnuson-Stevens Act may be fulfilled through a lead agency. The lead agency must notify NMFS in writing that it is representing one or more additional agencies.

(c) *Designation of non-Federal representative.* A Federal agency may designate a non-Federal representative to conduct an abbreviated consultation or prepare an EFH Assessment by giving written notice of such designation to NMFS. If a non-Federal representative is used, the Federal action agency remains ultimately responsible for compliance with sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act.

(d) *Best available information.* The Federal action agency and NMFS must use the best scientific information available regarding the effects of the proposed action on EFH. Other appropriate sources of information may also be considered.

(e) *Use of existing consultation/environmental review procedures*—(1) *Criteria.* Consultation and commenting under sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes, such as the National Environmental Policy Act (NEPA), Fish and Wildlife Coordination Act, Clean Water Act, Endangered Species Act (ESA), and Federal Power Act. The consultation requirements of section 305(b)(2) of the Magnuson-Stevens Act can be satisfied using existing or modified procedures required by other statutes if such processes meet the following criteria:

(i) The existing process must provide NMFS with timely notification of actions that may adversely affect EFH. The Federal action agency should notify NMFS according to the same timeframes for notification (or for public comment) as in the existing process. However, NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter timeframes if they allow sufficient time for NMFS to develop EFH conservation recommendations.

(ii) Notification must include an assessment of the impacts of the proposed action on EFH that meets the requirements for EFH Assessments contained in paragraph (g) of this section. If the EFH Assessment is contained in another document, that section of the document must be clearly identified as the EFH Assessment.

(iii) NMFS must have made a finding pursuant to paragraph (e)(3) of this section that the existing process satisfies the requirements of section 305(b)(2) of the Magnuson-Stevens Act.

(2) *EFH conservation recommendation requirements.* If an existing consultation process is used to fulfill the EFH consultation requirements, then the comment deadline for that process should apply to the submittal of NMFS conservation recommendations under section 305(b)(4)(A) of the Magnuson-Stevens Act, unless a different deadline is agreed to by NMFS and the Federal agency. The Federal agency must respond to these recommendations within 30 days pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act. NMFS may request the further review of any Federal agency decision that is inconsistent with a NMFS EFH recommendation, in accordance with paragraph (j)(2) of this section. If NMFS EFH conservation recommendations are combined with other NMFS or NOAA comments on a Federal action, such as NOAA comments on a draft Environmental Impact Statement, the EFH conservation recommendations shall be clearly identified as such (e.g., a section in the comment letter entitled "EFH conservation recommendations") and a response pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act is required for only the identified portion of the comments.

(3) *NMFS finding.* A Federal agency with an existing consultation process should contact NMFS at the appropriate level (regional offices for regional processes, headquarters office for national processes) to discuss how the existing process, with or without modifications, can be used to satisfy the EFH consultation requirements. If, at the conclusion of these discussions, NMFS determines that the existing process meets the criteria of paragraph (e)(1) of this section, NMFS will make a finding that the existing or modified process can satisfy the EFH consultation requirements of the Magnuson-Stevens Act. If NMFS does not make such a finding, or if there are no existing consultation processes relevant to the Federal agency's actions, the action agency and NMFS should follow the consultation process in the following sections.

(f) *General Concurrence*—(1) *Purpose.* The General Concurrence process identifies specific types of Federal actions that may adversely affect EFH, but for which no further consultation is generally required because NMFS has determined, through an analysis of that type of action, that it will likely result in no more than minimal adverse effects individually and cumulatively. General Concurrences may be national or regional in scope.

(2) *Criteria.* (i) For Federal actions to qualify for General Concurrence, NMFS must determine, after consultation with the appropriate Council(s), that the actions meet all of the following criteria:

(A) The actions must be similar in nature and similar in their impact on EFH.

(B) The actions must not cause greater than minimal adverse effects on EFH when implemented individually.

(C) The actions must not cause greater than minimal cumulative adverse effects on EFH.

(ii) Actions qualifying for General Concurrence must be tracked to ensure that their cumulative effects are no more than minimal. In most cases, tracking will be the responsibility of the Federal action agency, but NMFS also may agree to track actions for which General Concurrence has been authorized. Tracking should include numbers of actions, amount of habitat adversely affected, type of habitat adversely affected, and the baseline against which the action will be tracked. The agency responsible for tracking such actions should make the information available to NMFS, the Councils, and to the public on an annual basis.

(iii) Categories of Federal actions may also qualify for General Concurrence if they are modified by appropriate conditions that ensure the actions will meet the criteria in paragraph (f)(2)(i) of this section. For example, NMFS may provide General Concurrence for additional actions contingent upon project size limitations, seasonal restrictions, or other conditions.

(iv) If a General Concurrence is developed for actions affecting habitat areas of particular concern, the General Concurrence should be subject to a higher level of scrutiny than a General Concurrence not involving a habitat area of particular concern.

(3) *General Concurrence development.* A Federal agency may request a General Concurrence for a category of its actions by providing NMFS with a written description of the nature and approximate number of the proposed actions, an analysis of the effects of the actions on EFH and associated species and their life history stages, including cumulative effects, and the Federal agency's conclusions regarding the magnitude of such effects. If NMFS agrees that the actions fit the criteria in paragraph (f)(2) of this section, NMFS, after consultation with the appropriate Council(s), will provide the Federal agency with a written statement of General Concurrence that further consultation is not required, and that preparation of EFH Assessments for individual actions subject to the General Concurrence is not necessary. If NMFS does not agree that the actions fit the criteria in paragraph (f)(2) of this section, NMFS will notify the Federal agency that a General Concurrence will not be issued and that abbreviated or expanded consultation will be required. If NMFS identifies specific types of Federal actions that may meet the requirements for a General Concurrence, NMFS may initiate and complete a General Concurrence.

(4) *Notification and further consultation.* NMFS may request notification for actions covered under a General Concurrence if NMFS concludes there are circumstances under which such actions could result in more than a minimal impact on EFH, or if it determines that there is not a process in place to adequately assess the cumulative impacts of actions covered under the General Concurrence. NMFS may require further consultation for these actions on a case-by case basis. Each General Concurrence should establish specific procedures for further consultation, if appropriate.

(5) *Public review.* Prior to providing any Federal agency with a written statement of General Concurrence for a category of Federal actions, NMFS will provide an opportunity for public review through the appropriate Council(s), or other reasonable opportunity for public review.

(6) *Revisions.* NMFS will periodically review and revise its findings of General Concurrence, as appropriate.

(g) *EFH Assessments*—(1) *Preparation requirement.* For any Federal action that may adversely affect EFH, except for those activities covered by a General Concurrence, Federal agencies must provide NMFS with a written assessment of the effects of that action on EFH. Federal agencies may incorporate an EFH Assessment into documents prepared for other purposes such as ESA Biological Assessments pursuant to 50 CFR part 402 or NEPA documents and public notices pursuant to 40 CFR part 1500. If an EFH Assessment is contained in another document, it must include all of the information required in paragraph (g)(2) of this section and be clearly identified as an EFH Assessment. The procedure for combining an EFH consultation with other consultation of environmental reviews is set forth in paragraph (e) of this section.

(2) *Mandatory contents.* The assessment must contain:

(i) A description of the proposed action.

(ii) An analysis of the effects, including cumulative effects, of the proposed action on EFH, the managed species, and associated species, such as major prey species, including affected life history stages.

(iii) The Federal agency's views regarding the effects of the action on EFH.

(iv) Proposed mitigation, if applicable.

(3) *Additional information.* If appropriate, the assessment should also include:

(i) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.

(ii) The views of recognized experts on the habitat or species that may be affected.

(iii) A review of pertinent literature and related information.

(iv) An analysis of alternatives to the proposed action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH, particularly when an action is non-water dependent.

(v) Other relevant information.

(4) *Incorporation by reference.* The assessment may incorporate by reference a completed EFH Assessment prepared for a similar action, supplemented with any relevant new project specific information, provided the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting. It may also incorporate by reference other relevant environmental assessment documents. These documents must be provided to NMFS with an EFH Assessment.

(h) *Abbreviated consultation procedures*—(1) *Purpose and criteria.* Abbreviated consultation allows NMFS to quickly determine whether, and to what degree, a Federal action may adversely affect EFH. Federal actions that may adversely affect EFH should be addressed through the abbreviated consultation procedures when those actions do not qualify for a General Concurrence, but do not have the potential to cause substantial adverse effects on EFH. For example, the abbreviated consultation procedures should be used when the adverse effect(s) of an action or proposed action could be alleviated through minor modifications.

(2) *Notification by agency.* The Federal agency should notify NMFS and, if NMFS so requests, the appropriate Council(s), in writing as early as practicable regarding proposed actions that may adversely affect EFH. Notification will facilitate discussion of measures to conserve the habitat. Such early consultation should occur during

pre-application planning for projects subject to a Federal permit or license, and during preliminary planning for projects to be funded or undertaken directly by a Federal agency.

(3) *Submittal of EFH Assessment.* The Federal agency must submit a completed EFH Assessment, prepared in accordance with paragraph (g) of this section, to NMFS for review. Federal agencies will have fulfilled their consultation requirement under paragraph (a) of this section after notification and submittal of a complete EFH Assessment.

(4) *NMFS response to Federal agency.* NMFS must respond in writing as to whether it concurs with the findings of the EFH Assessment. If NMFS believes that the proposed action may result in substantial adverse effects on EFH, or that additional analysis is needed to accurately assess the effects of the proposed action, NMFS will request that the Federal agency initiate expanded consultation. Such request will explain why NMFS believes expanded consultation is needed and will specify any new information needed. If additional consultation is not necessary, NMFS will respond by commenting and recommending measures that may be taken to conserve EFH, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act. NMFS will send a copy of its response to the appropriate Council.

(5) *Timing.* The Federal action agency must submit its complete EFH Assessment to NMFS as soon as practicable, but NMFS must receive it at least 60 days prior to a final decision on the action. NMFS must respond in writing within 30 days. NMFS and the Federal action agency may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 30 days for consultation, or to conduct consultation earlier in the planning cycle for proposed actions with lengthy approval processes.

(i) *Expanded consultation procedures.*—(1) *Purpose and criteria.* Expanded consultation allows maximum opportunity for NMFS and the Federal agency to work together in the review of the action's impacts on EFH and the development of EFH conservation recommendations. Expanded consultation procedures must be used for Federal actions that would result in substantial adverse effects to EFH. Federal agencies are encouraged to contact NMFS at the earliest opportunity to discuss whether the adverse effect of a proposed action makes expanded consultation appropriate.

(2) *Initiation.* Expanded consultation begins when NMFS receives from the Federal agency an EFH Assessment completed in accordance with paragraph (g) of this section and a written request for expanded consultation. Federal action agencies are encouraged to provide in the EFH Assessment the additional information identified under paragraph (g)(3) of this section. Subject to NMFS's approval, any request for expanded consultation may encompass a number of similar individual actions within a given geographic area.

(3) *NMFS response to Federal agency.* NMFS will:

(i) Review the EFH Assessment, any additional information furnished by the Federal agency, and other relevant information.

(ii) Conduct a site visit, if appropriate, to assess the quality of the habitat and to clarify the impacts of the Federal agency action. Such a site visit should be coordinated with the Federal agency and appropriate Council(s), if feasible.

(iii) Coordinate its review of the proposed action with the appropriate Council(s).

(iv) Discuss EFH conservation recommendations with the Federal agency and provide recommendations to the Federal action agency, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act. NMFS will also provide a copy of the recommendations to the appropriate Council(s).

(4) *Timing.* The Federal action agency must submit its complete EFH Assessment to NMFS as soon as practicable, but at least 90 days prior to a final decision on the action. NMFS must respond within 60 days of submittal of a complete EFH Assessment unless consultation is extended by agreement between NMFS and the Federal action agency. NMFS and Federal action agencies may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate a 60-day consultation period.

(5) *Extension of consultation.* If NMFS determines that additional data or analysis would provide better information for development of EFH conservation recommendations, NMFS may request additional time for expanded consultation. If NMFS and the Federal action agency agree to an extension, the Federal action agency should provide the additional information to NMFS, to the extent practicable. If NMFS and the Federal action agency do not agree to extend consultation, NMFS must provide EFH conservation recommendations to the Federal action agency using the best scientific information available to NMFS.

(j) *Responsibilities of Federal action agency following receipt of EFH conservation recommendations.*—(1) *Federal action agency response.* As required by section 305(b)(4)(B) of the Magnuson-Stevens Act, the Federal action agency must provide a detailed response in writing to NMFS and the appropriate Council within 30 days after receiving an EFH conservation recommendation. Such a response must be provided at least 10 days prior to final approval of the action, if a decision by the Federal agency is required in fewer than 30 days. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with NMFS conservation recommendations, the Federal action agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

(2) *Further review of decisions inconsistent with NMFS or Council recommendations.* If a Federal action agency decision is inconsistent with a NMFS EFH conservation recommendation, the Assistant Administrator for Fisheries may request a meeting with the head of the Federal action agency, as well as any other agencies involved, to discuss the proposed action and opportunities for resolving any disagreements. If a Federal action agency decision is also inconsistent with a Council recommendation made pursuant to section 305(b)(3) of the Magnuson-Stevens Act, the Council may request that the Assistant Administrator initiate further review of the Federal agency's decision and involve the Council in any interagency discussion to resolve disagreements with the Federal agency. The Assistant Administrator will make every effort to accommodate such a request. Memoranda of agreement or other written procedures will be developed to further define such review processes with Federal action agencies.

(k) *Supplemental consultation.* A Federal action agency must reinitiate consultation with NMFS if the agency substantially revises its plans for an action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations.

§ 600.925 NMFS EFH conservation recommendations to Federal and state agencies.

(a) *General.* Under section 305(b)(4) of the Magnuson-Stevens Act, NMFS is required to provide EFH conservation recommendations to Federal and state agencies for actions that would adversely affect EFH. NMFS EFH conservation recommendations will not suggest that state or Federal agencies take actions beyond their statutory authority.

(b) *Recommendations to Federal agencies.* For Federal actions, EFH conservation recommendations will be provided to Federal action agencies as part of EFH consultations conducted pursuant to § 600.920. These recommendations fulfill the requirements of section 305(b)(4)(A) of the Magnuson-Stevens Act. If NMFS becomes aware of a Federal action that would adversely affect EFH, but for which a Federal agency has not completed an EFH consultation, NMFS may request that the Federal agency initiate EFH consultation or NMFS will provide EFH conservation recommendations based on the information available. NMFS will provide a copy of such recommendation to the appropriate Council(s).

(c) *Recommendations to state agencies.*—(1) *Establishment of procedures.* Each NMFS Region should use existing coordination procedures under statutes such as the Coastal Zone Management Act or establish new procedures to identify state actions that may adversely affect EFH, and for determining the most appropriate method for providing EFH conservation recommendations to the state agency. NMFS will provide a copy of such recommendation to the appropriate Council(s).

(2) *Coordination with states on recommendations to Federal agencies.* When an action that would adversely affect EFH requires authorization or funding by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH conservation recommendations developed as part of the Federal consultation procedures in § 600.920. NMFS will also seek agreements on sharing information and copies of recommendations with Federal or state agencies conducting similar consultation and recommendation processes to ensure coordination of such efforts.

§ 600.930 Council comments and recommendations to Federal and state agencies.

(a) *Establishment of procedures.* Each Council should establish procedures for reviewing Federal or state actions that may adversely affect the EFH of a species managed under its authority. Each Council may receive information on actions of concern by methods such as: Directing Council staff to track proposed actions; recommending that the Council's habitat committee identify actions of concern; or entering into an agreement with NMFS to have the appropriate Regional Administrator notify the Council of actions that may adversely impact EFH. Federal and state actions often follow specific timetables which may not coincide with Council meetings. Therefore, Councils should consider establishing abbreviated procedures for the development of Council recommendations.

(b) *Early involvement.* Councils should provide comments and recommendations on proposed state and Federal actions of concern as early as practicable in project planning to ensure thorough consideration of Council concerns by the action agency. Copies of Council comments and recommendations should be provided to NMFS.

(c) *Anadromous fishery resources.* For the purposes of the commenting requirement of section 305(b)(3)(B) of the Magnuson-Stevens Act, an "anadromous fishery resource under a Council's authority" is an anadromous species that inhabits waters under the Council's authority at some time during its life cycle.

[FR Doc. 97–33133 Filed 12–15–97; 4:58 pm]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 244
Friday, December 19, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–107–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK–21 sailplanes. The proposed AD would require replacing any tow release cable assembly that does not have a swivel-type end with a cable assembly that does have a swivel-type end. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent the inability to release the tow rope because of the design of the cable assembly, which could result in loss of control of the sailplane during towing operations.

DATES: Comments must be received on or before January 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–107–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–107–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–107–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASK–21 sailplanes. The LBA reports that service difficulty reports indicate that the tow release cable creates loops over time. The loops are relatively short and lead to strong bending loads on the cable, mainly at the binding clamp. The original design of the tow release cable does not consist of a swivel-type end.

This condition, if not corrected, could result in the inability to release the tow rope with consequent loss of control of the sailplane during towing operations.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 10, dated October 10, 1983, which specifies procedures for replacing any tow release cable assembly that does not have a swivel-type end with a tow release cable assembly that does have a swivel-type end.

The LBA classified this service bulletin as mandatory and issued German AD No. 84–2, dated January 13, 1984, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASK–21 sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing any tow release cable assembly that does not have a swivel-type end with a tow release cable assembly that does have a swivel-type end. Accomplishment of the proposed installation would be in accordance with the technical note previously referenced.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per sailplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $20 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,200, or $140 per sailplane.

Compliance Time of the Proposed AD

Although the loops that form in the cable assembly would only occur during flight over time and the bending loads are related to sailplane operation, the FAA has no basis to determine the approximate number of hours time-in-service (TIS) when the unsafe condition is likely to occur. For example, the loops could form in the tow release cable assembly on a sailplane with 10 hours TIS, but not form until 500 hours TIS on another sailplane. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher Segelflugzeugbau: Docket No. 97–CE–107–AD.

Applicability: Model ASK–21 sailplanes, serial numbers 21–001 through 21–196, certificated in any category, that are equipped with a tow release cable assembly that does not have a swivel-type end.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the inability to release the tow rope because of the design of the cable assembly, which could result in loss of control of the sailplane during towing operations, accomplish the following:

(a) Replace any tow release cable assembly that does not have a swivel-type end with a tow release cable assembly that does have a swivel-type end in accordance with Alexander Schleicher Technical Note No. 10, dated October 10, 1983.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 10, dated October 10, 1983, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

Note 3: The subject of this AD is addressed in German AD No. 84–2, dated January 13, 1984.

Issued in Kansas City, Missouri, on December 11, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33144 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–46–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed action would require installing aluminum bonding bushings over certain screws in certain fuel tank underwing access panels. Several reports from the field revealing fuel tank access panels insufficiently electrically bonded to the airframe prompted this proposed AD. The actions specified by

the proposed AD are intended to prevent electrical arcing in the fuel tanks and detonation of the fuel-air mixture, which can be created by poor electrical bonding of fuel tank underwing access panels, and if not corrected, could result in a fire on the airplane.

DATES: Comments must be received on or before February 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland; telephone +41–41–6196–233; facsimile +41–41–6103–351. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Gabrys, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–46–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Model PC–12 and PC–12/45 airplanes. FOCA reports that during routine inspections of some of these airplanes, the inspectors found that the underwing access panels to the fuel tank were not sufficiently electrically bonded to the airframe. These conditions, if not corrected, could result in detonation of the airplane's fuel tanks by electrical arcing through the fuel-air mixture.

Relevant Service Information

Pilatus Aircraft Ltd. has issued service bulletin (SB) No. 57–001, dated February 28, 1997 which specifies procedures for installing aluminum bonded bushings over the screws to the underwing fuel tank access panels to assure a positive electrical bonding to the airframe structure.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, FOCA has kept the FAA informed of the situation described above. The FAA has examined the findings of FOCA, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the proposed AD would require installing aluminum bonding bushes over the screws in the fuel tank underwing access panels. Accomplishment of the proposed action would be in accordance with Pilatus Service Bulletin No. 57–001, dated February 28, 1997.

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts would be provided at no cost by the manufacturer. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,400, or $360 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 97–CE–46–AD.

Applicability: Model PC–12 and PC–12/45 airplanes (serial numbers MSN 001 through MSN 166), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent electrical arcing in the fuel tanks and detonation of the fuel-air mixture, which can be created by poor electrical bonding of fuel tank underwing access panels, and if not corrected, could result in a fire on the airplane, accomplish the following:

(a) Install aluminum bonding bushings onto the screws for certain fuel tank underwing access panels in accordance with Part A and Part B of the Accomplishment Instructions in Pilatus Aircraft LTD PC12 Service Bulletin No. 57–001, dated February 28, 1997.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 11, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33143 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–101–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASW–19 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASW–19 sailplanes. The proposed AD would require modifying the inspection hole cover in the fuselage area. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent loss of aileron and flap control caused by an inspection hole cover entering the fuselage, which could result in loss of control of the sailplane.

DATES: Comments must be received on or before January 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–101–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–101–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–101–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASW–19 sailplanes. The LBA reports that an inspection hole cover entered the fuselage area on a Model ASW–20 sailplane and jammed the aileron and flap controls.

The Model ASW–19 sailplanes are of a similar design to that of the ASW–20 sailplanes, so the condition is likely to exist or develop on certain Model ASW–19 sailplanes. The Model ASW–20 sailplanes are not type certificated for operation in the United States.

This condition, if not corrected, could result in loss of aileron and flap control with consequent loss of control of the sailplane.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 7, September 11, 1978, which specifies procedures for modifying the inspection hole cover in the fuselage area. This service bulletin also specifies taping the inspection hole cover before the modification to assure that it doesn't enter the fuselage, and taping the inspection hole after the modification to reduce noise and rattle and improve the aerodynamics.

The LBA classified this service bulletin as mandatory and issued German AD No. 78–303, dated November 13, 1978, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in certain Alexander Schleicher Models ASW–19 sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying the inspection hole cover in the fuselage area. Accomplishment of the proposed installation would be in accordance with the technical note previously referenced.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per sailplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $40 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,600, or $220 per sailplane.

Differences Between German AD, the Technical Note, and This Proposed AD

Alexander Schleicher Technical Note No. 7 specifies taping the inspection hole cover prior to each flight before the modification to assure that it doesn't enter the fuselage, and taping the inspection hole after the modification to reduce noise and rattle and improve the aerodynamics.

German AD No. 78–303, dated November 13, 1978, requires taping the inspection hole cover prior to each flight until the modification is accomplished at the next annual inspection.

The FAA does not have service history to require taping the inspection hole cover prior to each flight before accomplishment of the modification. Instead the FAA has determined that 6 calendar months is a reasonable time period for the affected sailplane owners/operators to have the inspection hole cover modified. In addition, although the FAA believes that taping the inspection hole cover after the modification to reduce noise and rattle and improve the aerodynamics is a good idea, there is nothing unsafe about the sailplanes if not accomplished. The FAA is including a note in the proposed AD to recommend this action.

Compliance Time of the Proposed AD

Although the inspection hole cover would only enter the fuselage and jam the aileron and flap controls during flight, this unsafe condition is not a result of the number of times the sailplane is operated. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it would be for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher Segelflugzeugbau: Docket No. 97–CE–101–AD.

Applicability: Model ASW–19 sailplanes, serial numbers 19001 through 19232, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent loss of aileron and flap control caused by an inspection hole cover entering the fuselage, which could result in loss of control of the sailplane, accomplish the following:

(a) Modify the inspection hole cover in the fuselage area in accordance with the *Instructions:* section of Alexander Schleicher Technical Note No. 7, dated September 11, 1978.

Note 2: Alexander Schleicher Technical Note No. 7 specifies taping the inspection hole cover after the modification to reduce noise and rattle and improve the aerodynamics. Although this action does not address the unsafe condition specified in this AD, the FAA recommends taping the inspection hole cover after accomplishing the modification required by paragraph (a) of this AD.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 7, dated September 11, 1978, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

Note 4: The subject of this AD is addressed in German AD No. 78–303, dated November 13, 1978.

Issued in Kansas City, Missouri, on December 11, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33141 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–74–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Aerospace Bendix/King Model KSA 470 Autopilot Servo Actuators, Part Numbers 065–0076–10 Through 065–0076–15

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain AlliedSignal Aerospace Bendix/King Model KSA 470 autopilot servo actuators, part numbers 065–0076–10 through 065–0076–15, that are installed on aircraft. The proposed AD would require replacing the autopilot servo actuator with a modified actuator. The proposed AD is the result of two reports of the affected autopilot servo actuators containing loose roll pins within the servo housing. Loose roll pins could fall out, become lodged in the output shaft clutch mechanism, and prevent this mechanism from disengaging. The actions specified by the proposed AD are intended to prevent such an occurrence, which could result in increased effort by the pilot to control the aircraft and possible loss of control of the affected flight control axis.

DATES: Comments must be received on or before February 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–74–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from AlliedSignal Aerospace, Commercial Avionics Systems, 400 N. Rogers Road, Olathe, Kansas 66062–1212. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Ligon, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4138; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–74–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–74–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AlliedSignal Aerospace recently advised the FAA that an unsafe condition may exist on certain Bendix/King Model KSA 470 autopilot servo actuators, part numbers 065–0076–10 through 065–0076–15, that are installed on aircraft. AlliedSignal reports two incidents where the roll pins within the servo housing became loose on the affected autopilot servo actuators. An analysis of the design of the affected servo actuators reveals that the roll pin holes are larger than that recommended by the roll pin specification.

Loose roll pins could fall out and become lodged in the output shaft clutch mechanism, which would prevent this mechanism from disengaging. This condition, if not

corrected in a timely manner, could result in increased effort by the pilot to control the aircraft and possible loss of control of the affected flight control axis.

Relevant Service Information

AlliedSignal Aerospace has issued Bendix/King Service Bulletin No. SB KSA 470–3, dated May 1997. This service bulletin references a factory modification (Mod 3) that, when incorporated, corrects the servo actuator roll pin condition described above. This service bulletin lists the following aircraft that the affected AlliedSignal Aerospace Bendix King Model KSA 470 actuators are installed in:

Aircraft Type	FD/AP System	KSA 470 Part No.	Location
Raytheon 400 series	KFC 400	065–0076–11	Yaw axis.
		065–0076–15	Roll axis.
Raytheon 200 series	KFC 400	065–0076–11	Yaw axis.
Raytheon 300 series	KFC 400	065–0076–15	Yaw axis.
Raytheon 350 series	KFC 400	065–0076–15	Yaw axis.
Dassault Falcon 20	KFC 400	065–0076–15	Pitch axis.
		065–0076–15	Roll axis.
Fairchild C26A/C26B	KFC400	065–0076–11	Yaw axis.
Fairchild SA227–AC/AT/BC/CC/DC	KFC400	065–0076–15	Roll axis.
Learjet 31A	KFC 3100	065–0076–12	Pitch axis.
		065–0076–14	Yaw axis.
		065–0076–15	Roll axis.
Lockheed S–2 Tracker	KFC 325	065–0076–10	Special.
Piper 400LS and PA–42–1000	KFC 400	065–0076–15	Yaw axis.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the service information previously referenced, the FAA has determined that AD action should be taken to prevent the servo actuator roll pins from becoming loose; falling out; becoming lodged in the output shaft clutch mechanism; and preventing this mechanism from disengaging, which could result in increased effort by the pilot to control the aircraft and possible loss of control of the affected flight control axis.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in AlliedSignal Aerospace Bendix/King Model KSA 470 autopilot servo actuators, part numbers 065–0076–10 through 065–0076–15, that are installed on aircraft, the FAA is proposing an AD. The proposed AD would require replacing the autopilot servo actuator with an actuator incorporating Mod 3. Accomplishment of the proposed modifications would be required in accordance with the applicable maintenance manual.

Cost Impact

The FAA estimates that 500 of the affected servo actuators could be installed on aircraft in the U.S. registry. The proposed replacement would take approximately 2 workhours per airplane to accomplish, at an average labor rate of approximately $60 an hour. Servo actuators with Mod 3 incorporated cost $2,350. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,235,000, or $2,470 per aircraft. These figures are based on the presumption that no owner/operator of the affected aircraft has accomplished the proposed replacement.

AlliedSignal has informed the FAA that costs of the required labor and modification of the servo actuators on affected aircraft may be recovered under an AlliedSignal conditional warranty program. Information regarding warranty claims associated with this action can be obtained directly from AlliedSignal at the address included in the **ADDRESSES** section of the proposed AD.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alliedsignal Aerospace: Docket No. 97–CE–74–AD.

Applicability: Bendix/King Model KSA 470 Autopilot Servo Actuators; part numbers 065–0076–10 through 065–0076–15; serial numbers 0001 through 3061; that are installed on, but not limited to, the following aircraft, certificated in any category:

Aircraft type	FD/AP system	KSA 470 Part No.	Location
Raytheon 400 Series	KFC 400	065–0076–11	Yaw axis.
		065–0076–15	Roll axis.
Raytheon 200 Series	KFC 400	065–0076–11	Yaw axis.
Raytheon 300 Series	KFC 400	065–0076–15	Yaw axis.
Raytheon 350 Series	KFC 400	065–0076–15	Yaw axis.
Dassault Falcon 20	KFC 400	065–0076–15	Pitch axis.
		065–0076–15	Roll axis.
Fairchild C26A/C26B	KFC 400	065–0076–11	Yaw axis.
Fairchild SA227–AC/AT/BC/CC/DC	KFC 400	065–0076–15	Roll axis.
Learjet 31A	KFC 3100	065–0076–12	Pitch axis.
		065–0076–14	Yaw axis.
		065–0076–15	Roll axis.
Lockheed S–2 Tracker	KFC 325	065–0076–10	Special.
Piper 400LS and PA–42–1000	KFC 400	065–0076–15	Yaw axis.

Note 1: This subject is addressed in AlliedSignal Bendix/King Service Bulletin No. SB KSA 470–3, dated May 1997. This service bulletin references serial number 3062. Regardless of this reference, serial number 3062 is not affected by this AD.

Note 2: This AD applies to each aircraft identified in the preceding applicability provision that incorporates one of the affected actuators, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the servo actuator roll pins from becoming loose; falling out; becoming lodged in the output shaft clutch mechanism; and preventing this mechanism from disengaging, which could result in increased effort by the pilot to control the aircraft and possible loss of control of the affected flight control axis, accomplish the following:

(a) Replace the autopilot servo actuator with an actuator that incorporates Mod 3 in accordance with the applicable maintenance manual. This modification changes the size of the servo actuator roll pin holes to assure that the pins do not become loose and fall out.

(b) As of the effective date of this AD, no person may install, on aircraft, one of the affected servo actuators that does not incorporate Mod 3.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1601 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to AlliedSignal Aerospace, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 10, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33146 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–109–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK–21 sailplanes that do not have a certain automatic elevator connection installed. The proposed AD would require drilling a drainage hole in the elevator pushrod, inspecting the elevator pushrod for corrosion damage, and replacing any elevator pushrod if a certain amount of corrosion damage is found. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent failure of the elevator pushrod caused by corrosion damage, which could result in loss of control of the sailplane.

DATES: Comments must be received on or before January 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–109–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking

action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–109–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–109–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASK–21 sailplanes that do not have an automatic elevator connection installed in accordance with Alexander Schleicher Technical Note No. 11, dated December 20, 1983. The LBA reports several cases where the elevator pushrods are heavily corroded.

This condition, if not corrected, could cause corrosion damage to the elevator pushrod and result in failure of the elevator pushrod with consequent loss of control of the sailplane.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 26, dated July 1, 1993, which specifies procedures for the following:

—Drilling a drainage hole in the elevator pushrod; and

—Inspecting the elevator pushrod for corrosion damage.

The LBA classified this service bulletin as mandatory and issued German AD No. 93–186, dated September 15, 1993, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASK–21 sailplanes of the same type design registered in the United States sailplanes that do not have a certain automatic elevator connection installed, the FAA is proposing AD action. The proposed AD would require drilling a drainage hole in the elevator pushrod, inspecting the elevator pushrod for corrosion damage, and replacing any elevator pushrod if a certain amount of corrosion damage is found. Accomplishment of the proposed installation would be in accordance with the service bulletin previously referenced.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per sailplane to accomplish the proposed elevator pushrod drainage hole drilling and elevator pushrod inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,800, or $60 per sailplane.

Compliance Time of the Proposed AD

The unsafe condition specified by the proposed AD is caused by corrosion. Corrosion can occur regardless of whether the sailplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in the proposed AD does not go undetected for a long period of time, the compliance time is presented in calendar time instead of hours time-in-service (TIS).

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher Segelflugzeugbau: Docket No. 97–CE–109–AD.

Applicability: Model ASK–21 sailplanes, serial numbers 21–001 through 21–205, certificated in any category, that do not have an automatic elevator connection installed in accordance with Alexander Schleicher Technical Note No. 11, dated December 20, 1983.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the elevator pushrod caused by corrosion damage, which could result in loss of control of the sailplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, drill a drainage hole in the elevator pushrod in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993.

(b) Within the next 3 calendar months after the effective date of this AD, inspect the elevator pushrod for corrosion damage in accordance with Alexander Schleicher Technical Note No. 26, dated July 1, 1993.

(1) If no corrosion damage is found or corrosion damage is found that does not exceed the amount specified in the service bulletin, prior to further flight after the inspection required by paragraph (b) of this AD, apply a corrosion agent as described in the service bulletin.

(2) If corrosion damage is found that exceeds the amount specified in the service bulletin, prior to further flight after the inspection required by paragraph (b) of this AD, replace the elevator pushrod in accordance with the maintenance manual, and apply a corrosion agent as described in the service bulletin.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Alexander Schleicher Technical Note No. 26, dated July 1, 1993, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

Note 3: The subject of this AD is addressed in German AD No. 93–186, dated September 15, 1993.

Issued in Kansas City, Missouri, on December 11, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33147 Filed 12–18–97; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 33

Proposed Rulemaking Permitting Futures-Style Margining of Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing the repeal of Commission Regulation 33.4(a)(2) which requires the full upfront payment of commodity option premiums. The effect of the repeal would be to permit the futures-style margining of commodity options traded on regulated futures exchanges. Futures-style margining offers several potential benefits over the current margining system, including the possibility for more efficient cash flows across markets. The Commission is publishing notice of the proposed rulemaking and requesting public comment.

DATES: Comments on the proposed rulemaking must be received by February 2, 1998.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; transmitted by facsimile to (202) 418–5521; or transmitted electronically to (secretary@cftc.gov).

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5495.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is proposing the repeal of Commission Regulation 33.4(a)(2). Regulation 33.4(a)(2) requires that, when a commodity option is purchased, each clearing member must pay to the clearinghouse, each member must pay to the clearing member, and each option customer must pay to the futures commission merchant ("FCM") the full option premium.[1] The Commission is considering repealing this regulation in order to permit the "futures-style margining" of commodity options.

A futures-style margining system for options would include two components: Original margin, set according to the underlying risk, and variation margin, reflecting the daily change in the value of the option premium. Consistent with the current treatment of futures positions, long and short option positions would be marked-to-market, and gains and losses would be paid and collected daily. Futures-style margining may benefit market participants by improving cash flow in futures and options markets generally, thereby increasing liquidity and efficiency.

II. Background

A. Option Pilot Program

In 1981 the Commission instituted a pilot program for exchange-traded options on non-agricultural futures contracts. 46 FR 54500 (November 3, 1981). Concurrently, the Commission adopted Part 33 of its regulations, including the full-payment-of-premium requirement of Regulation 33.4(a)(2).

In approving the pilot program, the Commission was cognizant of the history of fraudulent practices associated with the offer and sale of commodity options to the general public. In this connection, the Commission proceeded cautiously by, among other things, prohibiting the margining of option premiums. The Commission viewed the full payment of option premiums "as essential to the protection of option purchasers who otherwise could reasonably expect that an initial payment of margin on an option contract constituted the full

[1] Regulation 33.4 in pertinent part states:

Sec. 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade * * * as a contract market for the trading of options on contracts of sale for future delivery * * * when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these relations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade * * *

(2) Provides that the clearing organization must receive from each of its clearing members, that each clearing member must receive from each other person for whom its clears commodity option transactions, and that each futures commission merchant must receive from each of its option customers, the full amount of each option premium at the time the option is purchased.

extent of their obligations on the option." 48 FR 54504.

The pilot program was made permanent effective August 1, 1986. 51 FR 17464 (May 13, 1986). Subsequently, the Commission approved trading of options involving agricultural futures contracts and options involving non-agricultural physicals on designated contract markets. 52 FR 777 (January 9, 1987). The proposed futures-style margining would apply to each of these exchange-traded commodity option categories.

B. Previous Commission Considerations of Futures-Style Margining of Commodity Options

In June 1982 the Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE") petitioned the Commission to repeal Regulation 33.4(a)(2). The Commission denied CSCE's petition, but resolved to reconsider margining of option premiums "after the Commission and industry ha[d] gained some experience with the trading of options under the pilot program." [2]

The following year, the Commission solicited comments concerning "[t]he advantages and disadvantages of permitting margining of option premiums paid by floor traders." 48 FR 10857, 10858 (March 15, 1983). After considering comments made in response to the **Federal Register** release, the Commission published a "Notice of Proposed Rulemaking" in which it proposed to allow contract markets to adopt rules permitting their members to make a deposit with respect to option premium. 49 FR 8937 (March 9, 1984). However, the intervening circumstances of the margin default in the gold futures option market on the Commodity Exchange, Inc. raised concerns about option margining which caused the Commission to defer further consideration of futures-style margining.[3]

In July 1988 the Chicago Board of Trade ("CBT") and the Chicago Mercantile Exchange filed separate petitions with the Commission requesting repeal of Regulation 33.4(a)(2). The petitioners noted that, as a result of a study of the October 1987 market break, the President's Working Group on Financial Markets recommended that market participants and regulators study the potential for improving liquidity through the use of futures-style margining of options.[4] The petitions were published, and the public was invited to file written comments. 54 FR 11233 (March 17, 1989). The Commission received numerous comments supporting and opposing the proposal. Futures exchanges and futures clearing organizations favored it. Securities exchanges and securities clearing organizations opposed it. FCMs and introducing brokers ("IBs") expressed varying views, with some in support and some in opposition. With a few exceptions, commenters from the agricultural industry generally opposed the proposal. The Commission took no further action on the petitions.

Since 1988, a great deal of experience has been gained with option trading in numerous products. Industry officials have continued to indicate to the Commission that implementation of futures-style margining might be beneficial. The Commission notes that futures-style margining has been in place at the London International Financial Futures and Options Exchange ("LIFFE") for over ten years. Moreover, LIFFE contracts executed in Chicago pursuant to the CBT/LIFFE link have been subject to futures-style margining since May 1997 with no adverse consequences.

III. Comparison of Option Margining Systems

Under the current "stock-style" option margining system, the option buyer or "long" must pay the entire premium when the transaction is initiated. No further payments are required. The premium is credited to the account of the option seller or "short," who must keep it posted as margin. The option seller also must put up risk margin to cover potential adverse market moves in his obligation. If the option increases in value, the short must deposit additional funds into the account. These funds, however, are not transferred to the long, who must exercise or offset the option in order to realize any increase in its value. By contrast, if the option value decreases, the short may withdraw any excess funds from its account.

Under the proposed "futures-style" margining system, both the long and short position holders would post risk-based original margin upon entering into their option positions. During the life of the option, the option value would be marked-to-market daily. Any increase in value would result in a credit to the long option holder's account and a corresponding debit against the short's account. Conversely, any decrease in value would result in a credit to the short's account and a corresponding debit to the long's account. Thus the cash flows in option contracts would be symmetric, as is the case for futures. The change in the margin system, however, would not alter the fundamental nature of each party's overall obligation. A long's potential for loss would remain limited to the full option premium and transaction costs. As is the case now, a short's potential for loss would not be so limited.

The difference between the current stock-style margining system and the proposed futures-style margining system are illustrated by the following examples. In each example assume that an at-the-money call option with an exercise price of 270 and sixty days to expiration is purchased for a premium of $5,000. Further assume that the minimum price tick in both the futures and the option is $500.

Example 1: Option Value Decreases

At expiration the futures price has fallen below the exercise price, and the option expires out-of-the-money. Under both stock-style and futures-style margining, the long's loss is limited to the $5,000 option premium. Only the timing of the payments differs.

[2] Letter dated July 2, 1982, from Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, to Bennett J. Corn, President, CSCE.

[3] See Report on Volume Investors Corporation, Division of Trading and Markets, July 1986.

[4] Interim Report of the Working Group on Financial Markets, submitted to the President of the United States, May 1988.

Long	Short
Stock-Style Margining	
Day 1—Pays full premium of $5,000	Day 1—Posts full $5,000 premium received from long plus initial margin.
Day 2–59—Pays no additional funds	Day 2–59—May withdraw amount equal to decrease in value of option position since day of purchase. Total amount withdrawn may not exceed $5,000 premium.
Day 60—Option expires valueless. Nothing is returned	Day 60—Option expires valueless. Initial margin is returned.
Futures-Style Margining	
Day 1—Posts initial margin	Day 1—Posts initial margin.
Day 2–59—Pays aggregate variation of $5,000	Day 2–59—Collects aggregate settlement variation settlement of $5,000.
Day 60—Option expires valueless. Initial margin is returned	Day 60—Option expires valueless. Initial margin is returned.

Example 2: Option Value Increases

By expiration the futures price has risen above the exercise price to 285. The option is in the money by 15 points, and the premium is $7,500 ($500 X 15 points) per contract. Under both systems, the long's profits are the same. Again, only the timing of the payments differs.

Long	Short
Stock-Style Margining	
Day 1—Pays full premium of $5,000	Day 1—Posts full $5,000 premium received from long plus initial margin.
Day 2–59—Collects nothing over life of option	Day 2–59—Posts additional funds equal to the increase in value of option position over the life of the option.
Day 60—Liquidates position by selling the option for $7,500 for a gain of $2,500.	Day 60—Liquidates position by buying the option for $7,500 for a loss of $2,500. Total margin payments are returned.
Futures-Style Margining	
Day 1—Posts initial margin	Day 1—Posts initial margin.
Day 2–59—Over life of option collects pays aggregate settlement variation of $2,500..	Day 2–59—Over life of option pays aggregate settlement variation of $2,500.
Day 60—Liquidates position. Initial margin is returned.	Day 60—Liquidates position. Initial margin is returned.

The long also may choose to exercise the in-the-money call instead of liquidating the option position. Exercising a futures-style option is analogous to taking delivery on a futures position. In order to receive a cash commodity by taking delivery on a futures contract, the long must pay the settlement price of the futures contract prevailing at the time of delivery. Similarly, in order to obtain a futures position by exercising an option, the long must pay the settlement of the option prevailing at the time of exercise. In other words, the long must pay the full premium marked-to-market on the day of exercise. Under a futures-style margining system, this payment is offset by the variation payments received by the long during the life of the option. The difference between this procedure and the exercise of stock-style options are demonstrated in a final example.

Example 3: Exercise of In-The-Money Option.

As in Example 2, the futures price has risen to 285 by expiration. The long option holder decides to exercise the call.

Long	Short
Stock-Style Margining	
Exercises option	Option is exercised.
Receives long futures position at strike price of 270. Futures position is marked-to-market by the clearinghouse, and the long is credited $7,500 ((285–270)X $500.	Receives short futures position at strike price of 270. Futures position is marked-to-market market by the clearinghouse, and short is debited $7,500.
Futures-Style Margining	
Exercises option	Option is exercised.
Clearinghouse debits account for premium settlement price of $7,500 ..	Clearinghouse credits short with $7,500 settlement of premium.
Receives long futures position at option strike price of 270. Futures position is marked-to-market by the clearinghouse, and the long is credited with $7,500 ((285–270)X $500.	Receives short futures position at option price of 270. Futures position is marked-to-market by the clearinghouse, and the short is debited $7,500.
Option position is closed through exercise, but risk margin is retained until the futures position is offset.	Option position is closed through exercise, but risk margin is retained until the futures position is offset.

IV. Potential Benefits and Costs of Futures-Style Margining

A. Potential Benefits

Futures-style margining of options could enhance financial integrity and market liquidity by providing for more efficient cash flows across markets. Currently, certain spread or risk neutral positions can give rise to substantial funds requirements due to asymmetrical cash flows. The problem arises, for example, where a short futures position is hedged with a long call option. If the price of the futures position increases, the value of the call also increases. However, the trader cannot apply the increased option value toward the

corresponding loss in the futures position.[5] Instead, the trader must put up funds to pay the futures variation requirement. Similar cash flow shortages can arise for traders holding arbitrage positions such as conversions, reverse conversions, and box spreads. Such problems may be particularly acute when there are major market moves.

With futures-style margining of options, these asymmetrical cash flows could be reduced. Each increase in an option position's value (long or short) would result in a related variation payment which would be accessible to the option trader. The trader could in turn use the option gains to contribute to margin payments on other positions with losses.

Futures-style margining also may reduce financing requirements for market participants and, thus, financing risk for FCMs and clearinghouses. Under the current margining system, financing risk is created because long option equity cannot be used to make variation margin payments on short option or futures positions. Moreover, financing based on option equity may not be readily available to market participants because banks may be reluctant to provide such financing. Futures-style margining of options, with its variation pay and collect feature, would reduce the need for market participants to borrow against their long option equity. Thus, FCMs no longer would be exposed to the resulting credit risk beyond their control.

Market liquidity may increase under a futures-style margining system for two reasons. First, the ability of traders to participate in option markets could be less dependent on their ability to obtain financing. Second, the incentive for early exercise of options could be reduced. Under the present system, an option purchaser can realize increases in the value of an option only by offsetting or exercising that option. Thus, some long option holders may choose to exercise their options early in order to obtain the option profits. This possibility of early exercise may act as a disincentive to writing options due to the uncertainty it creates. The daily pay and collect feature of the futures-style system could reduce the incentive for early exercise.

[5] Of course, the trader may obtain the excess funds by exercising or offsetting the option, but this would eliminate the original hedge strategy or require reestablishing the option with the potential for a less favorable price and additional transaction costs.

B. Potential Costs

Futures-style margining would increase leverage in the option markets. A long would be required to put up a smaller initial payment to purchase a given option than he or she would under the current system. This would introduce a risk of default that does not exist today. The Commission notes, however, that futures and short options currently may be margined. It is anomalous that long options, which entail less risk, are subject to a more stringent standard. Under futures-style margining, the total risk of a long option would still be fixed at the time of purchase. Moreover, FCMs would remain free to require an initial payment equal to the value of the option premium.

Over the years, the Commission has brought enforcement actions involving the fraudulent offer and sale of options on exchange-traded futures contracts to unsophisticated retail customers. Futures-style margining may provide unscrupulous individuals with an additional opportunity to mislead unsophisticated option customers. Such customers may not fully understand that they are liable for the full premium payment if the market moves against their option position. In addition, less well-capitalized customers could be persuaded to invest since the initial margin would be lower than currently required. Institution of futures-style margining would require efforts to educate market participants. Of course, consistent with Commission Regulation 1.55, full and accurate disclosure of potential liability also would be necessary at the time an option position was entered in order to ensure investor protection. The Commission welcomes comments on what measures might be appropriate to address these concerns.

Implementation of futures-style margining would alter option pricing which could adversely affect certain market participants. Option premiums potentially would be higher under a futures-style margining system because shorts likely would demand a higher price to compensate for the loss of interest income on the full premium and longs would be willing to pay a higher price because they would be gaining such interest income. Some market participants believe that this could affect various trading strategies by potentially diminishing the usefulness of certain option writing strategies.

Implementation of futures-style margining might also create issues for participants in the securities markets. To the extent the latter retained the current system, customer confusion could result.[6] In addition, certain intermarket strategies such as "buy-write" might be less useful because option grantors would not receive the full option premium upfront.

Finally, there could be costs to the industry in making a transition to futures-style margining. FCMs would have to adjust their risk management systems to address the increased leverage and altered cash flow features. Moreover, insofar as small retail firms currently only handle long option positions, such firms would have to install risk management systems if they planned to allow margining of premiums. In addition, if all exchanges were not ready or willing to switch from stock-style option margining to futures-style margining at the same time, FCMs might incur operational costs in order to maintain multiple option margining systems and to comply with different disclosure requirements for different exchanges. Furthermore, even if all exchanges introduced futures-style margining simultaneously, there would be a necessary transition period during which exchanges and market participants would be required to deal with both margining systems.

In addition, because of the impact of the futures-style margining on option pricing, only a newly-issued option series could be margined in the proposed manner. Any previously issued option series would require margining under the existing stock-style system. Thus, a change to futures-style margining would necessitate the maintenance of a two-tiered margining system for a period of time.

VI. Proposed Regulatory Changes

A. Repeal of Commission Regulation 33.4(a)(2)

The Commission believes that futures-style margining could provide substantial benefits to the marketplace and that steps are available to minimize the potential costs. Accordingly, the Commission is proposing to delete Regulation 33.4(a)(2) which requires full payment of the option premium at the time of purchase. This would not impose future-style margining on the industry but would merely make it available. Any exchange or clearinghouse that wished to implement it would be required to submit appropriate rule changes to the Commission pursuant to Section

[6] In May 1996 the Board of Governors of the Federal Reserve amended Regulation T to allow securities exchanges to adopt, pursuant to Securities and Exchange Commission approval, rules permitting the margining of options on securities. 61 FR 20386 (May 6, 1996). To date, no exchange has submitted such a rule.

5a(a)(12)(A) of the Act and Commission Regulation 1.41. The Commission would review any such proposal to ensure that adequate safeguards were in place. In particular, the Commission would reemphasize the need to use systems and procedures that took into account the unique risk characteristics of options. Moreover, as previously mentioned, exchange margin requirements are minimums. Any FCM would remain free to collect the full premium at the time of purchase just as it is currently free to collect more than the exchange minimum margin on futures positions.

B. Amendment of Commission Regulations 1.55 and 33.7

The Commission is proposing several amendments to the language of the generic futures and option risk disclosure statement set forth in Appendix A of Commission Regulation 1.55(c) and the more detailed domestic exchange-traded option disclosure statement set forth in Regulation 33.7. The proposed amendments would inform potential investors that option transactions may be subject to either a stock-style or futures-style margining system. The proposed amendments would not relieve an FCM or IB from any other disclosure obligation it may have under applicable law.

C. Technical Amendments

Implementation of futures-style margining will require changes to other Commission requirements to provide for appropriate accounting treatment of options. See, Financial and Segregation Interpretation No. 8, Comm. Fut. L. Rep., (CCH) ¶7116 (August 12, 1982), relating to the proper accounting, segregation and net capital treatment of options, and Commission Regulation 1.17 relating to minimum financial requirements for FCMs and IBs. The Commission requests comments on the appropriate technical amendments to these provisions. The Commission also request comments on any other technical changes to its regulatory requirements.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact on small businesses. The rules discussed herein will affect FCMs and IBs. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA. FCMs have been determined not to be small entities under the RFA.

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze that economic impact on such entities at that time. The proposed rule amendments would not require any IB to alter its current method of doing business as FCMS have the responsibility of administering customer funds. Further, these rule amendments, as proposed should, impose no additional burden or requirements on IBs and, thus, if adopted would not have a significant economic impact on a substantial number of IBs.

Therefore, the Chairperson, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b), that the action taken herein would not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any person or entity which believes that the proposal would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995[7] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act.

While proposed Rule 1.55 has no burden, the group of rules (3038–0024), which Rule 1.55 is a part, has the following burden:

Average burden hours per response: 128.

Number of Respondents: 3,148.

Frequency of responses: 36.

While proposed Rule 33.7 has no burden, the group of rules (3038–0007), which Rule 33.7 is a part, has the following burden:

Average burden hours per response: 50.57.

Number of Respondents: 190,422.

Frequency of responses: 1,111.

Copies of the OMB approved information collection package associated with these rules may be obtained from Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington DC 20503, (202) 395–7340.

[7] Pub. L. 104–13 (May 13, 1995).

List of Subjects

17 CFR Part 1

Commodity Futures, Domestic exchange-traded commodity option transactions.

17 CFR Part 33

Commodity Futures, Domestic exchange-traded commodity option transactions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4b, 4c, and 8a thereof, 7 U.S.C. 2a, 6b, 6c, and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 9, 12, 12a, 12c, 13a, 13a–, 16, 16a, 19, 21, 23, 24.

2. Section 1.55(c) is amended by revising section 3 of Appendix A to read as follows:[8]

Appendix A to CFTC Rule 1.55(c)—Generic Risk Disclosure Statement

Risk Disclosure Statement for Futures and Options

* * * * *

Options

3. Variable degree of risk.

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarize themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

[8] The Commission will republish the entire appendix in the final rule.

Selling ("writing" or "granting") an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavorably. The seller will also be exposed to the risk of the purchaser exercising the option, and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin (see the section on Futures above). If the position is "covered" by the seller holding a corresponding position in the underlying interest or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges, domestic and foreign, permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE TRADED COMMODITY OPTION TRANSACTIONS

3. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, and 21.

§ 33.4 [Amended]

4. Section 33.4 is amended by removing and reserving paragraphs (a)(2).

5. The disclosure statement in paragraph (b) of § 33.7 is amended by revising the text preceding paragraph (1) and paragraph (2)(v), (4) and (5) to read as follows:

§ 33.7 Disclosure.

* * * * *

(b) The disclosure statement must read as follows:

OPTION DISCLOSURE STATEMENT

BECAUSE OF THE VOLATILE NATURE OF THE COMMODITIES MARKETS, THE PURCHASE AND GRANTING OF COMMODITY OPTIONS INVOLVE A HIGH DEGREE OF RISK. COMMODITY OPTION TRANSACTIONS ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. SUCH TRANSACTIONS SHOULD BE ENTERED INTO ONLY BY PERSONS WHO HAVE READ AND UNDERSTOOD THIS DISCLOSURE STATEMENT AND WHO UNDERSTAND THE NATURE AND EXTENT OF THEIR RIGHTS AND OBLIGATIONS AND OF THE RISKS INVOLVED IN THE OPTION TRANSACTIONS COVERED BY THIS DISCLOSURE STATEMENT.

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW WHETHER THE PARTICULAR OPTION IN WHICH THEY CONTEMPLATE TRADING IS AN OPTION WHICH, IF EXERCISED, RESULTS IN THE ESTABLISHMENT OF A FUTURES CONTRACT (AN "OPTION ON A FUTURES CONTRACT") OR RESULTS IN THE MAKING OR TAKING OF DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION (AN "OPTION ON A PHYSICAL COMMODITY"). BOTH THE PURCHASER AND THE GRANTOR OF AN OPTION ON A PHYSICAL COMMODITY SHOULD BE AWARE THAT, IN CERTAIN CASES, THE DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION MAY NOT BE REQUIRED AND THAT, IF THE OPTION IS EXERCISED, THE OBLIGATIONS OF THE PURCHASER AND GRANTOR WILL BE SETTLED IN CASH.

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW WHETHER THE PARTICULAR OPTION IN WHICH THEY CONTEMPLATE TRADING IS SUBJECT TO A "STOCK-STYLE" OR "FUTURES-STYLE" SYSTEM OF MARGINING. UNDER A STOCK-STYLE MARGINING SYSTEM, A PURCHASER IS REQUIRED TO PAY THE FULL PURCHASE PRICE OF THE OPTION AT THE INITIATION OF THE TRANSACTION. THE PURCHASER HAS NO FURTHER OBLIGATION ON THE OPTION POSITION. UNDER A FUTURES-STYLE MARGINING SYSTEM, THE PURCHASER DEPOSITS INITIAL MARGIN AND MAY BE REQUIRED TO DEPOSIT ADDITIONAL MARGIN IF THE MARKET MOVES AGAINST THE OPTION POSITION. THE PURCHASER'S TOTAL MARGIN OBLIGATION, HOWEVER, WILL NOT EXCEED THE ORIGINAL OPTION PREMIUM. IF THE PURCHASER OR GRANTOR DOES NOT UNDERSTAND HOW OPTIONS ARE MARGINED UNDER A STOCK-STYLE OR FUTURES-STYLE MARGINING SYSTEM, HE OR SHE SHOULD REQUEST AN EXPLANATION FROM THE FUTURES COMMISSION MERCHANT ("FCM") OR INTRODUCING BROKER ("IB").

A PERSON SHOULD NOT PURCHASE ANY COMMODITY OPTION UNLESS HE OR SHE IS ABLE TO SUSTAIN A TOTAL LOSS OF THE PREMIUM AND TRANSACTION COSTS OF PURCHASING THE OPTION. A PERSON SHOULD NOT GRANT ANY COMMODITY OPTION UNLESS HE OR SHE IS ABLE TO MEET ADDITIONAL CALLS FOR MARGIN WHEN THE MARKET MOVES AGAINST HIS OR HER POSITION AND, IN SUCH CIRCUMSTANCES, TO SUSTAIN A VERY LARGE FINANCIAL LOSS.

A PERSON WHO PURCHASES AN OPTION SUBJECT TO STOCK-STYLE MARGINING SHOULD BE AWARE THAT, IN ORDER TO REALIZE ANY VALUE FROM THE OPTION, IT WILL BE NECESSARY EITHER TO OFFSET THE OPTION POSITION OR TO EXERCISE THE OPTION. OPTIONS SUBJECT TO FUTURES-STYLE MARGINING ARE MARKED-TO-MARKET, AND GAINS AND LOSSES ARE PAID AND COLLECTED DAILY. IF AN OPTION PURCHASER DOES NOT UNDERSTAND HOW TO OFFSET OR EXERCISE AN OPTION, THE PURCHASER SHOULD REQUEST AN EXPLANATION FROM THE FCM OR IB. CUSTOMERS SHOULD BE AWARE THAT IN A NUMBER OF CIRCUMSTANCES, SOME OF WHICH WILL BE DESCRIBED IN THIS DISCLOSURE STATEMENT, IT MAY BE DIFFICULT OR IMPOSSIBLE TO OFFSET AN EXISTING OPTION POSITION ON AN EXCHANGE.

THE GRANTOR OF AN OPTION SHOULD BE AWARE THAT, IN MOST CASES, A COMMODITY OPTION MAY BE EXERCISED AT ANY TIME FROM THE TIME IT IS GRANTED UNTIL IT EXPIRES. THE PURCHASER OF AN OPTION SHOULD BE AWARE THAT SOME OPTION CONTRACTS MAY PROVIDE ONLY A LIMITED PERIOD OF TIME FOR EXERCISE OF THE OPTION.

THE PURCHASER OF A PUT OR CALL SUBJECT TO STOCK-STYLE OR FUTURES-STYLE MARGINING IS SUBJECT TO THE RISK OF LOSING THE ENTIRE PURCHASE PRICE OF THE OPTION—THAT IS, THE PREMIUM CHARGED FOR THE OPTION PLUS ALL TRANSACTION COSTS.

THE COMMODITY FUTURES TRADING COMMISSION REQUIRES THAT ALL CUSTOMERS RECEIVE AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT BUT DOES NOT INTEND THIS STATEMENT AS A RECOMMENDATION OR ENDORSEMENT OF EXCHANGE-TRADED COMMODITY OPTIONS.

* * * * *

(2) * * *

(v) An explanation and understanding of the option margining system.

* * * * *

(4) Margin requirements. An individual should know and understand whether the option he or she is contemplating trading is subject to a stock-style or futures-style system of margining. Stock-style margining requires the purchaser to pay the full option premium at the time of purchase. The purchaser has no further financial obligations, and the risk of loss is limited to the purchase price and transaction costs. Futures-style margining requires the purchaser to pay initial margin only at the time of purchase. The option position is marked-to-market, and gains and losses are collected and paid daily. The purchaser's risk of loss is limited to the initial option premium and transaction costs.

An individual granting options under either a stock-style or futures-style system of margining should understand that he or she may be required to pay additional margin in the case of adverse market movements.

(5) Profit potential of an option position. An option customer should carefully calculate the price which the underlying futures contract or underlying physical commodity would have to reach for the option position to become profitable. Under a stock-style margining system, this price would include the amount by which the underlying futures contract or underlying physical commodity would have to rise above or fall below the strike price to cover the sum of the premium and all other costs incurred in entering into and exercising or closing (offsetting) the commodity option position. Under a future-style margining system, option positions would be marked-to-market, and gains and losses would be paid and collected daily, and an option position would become profitable once the variation margin collected exceeded the cost of entering the contract position.

Also, an option customer should be aware of the risk that the futures price prevailing at the opening of the next trading day may be substantially different from the futures price which prevailed when the option was exercised. Similarly, for options on physicals that are cash settled, the physicals price prevailing at the time the option is exercised may differ substantially from the cash settlement price that is determined at a later time. Thus, if a customer does not cover the position against the possibility of underlying commodity price change, the realized price upon option exercise may differ substantially from that which existed at the time of exercise.

* * * * *

Issued in Washington, D.C., on this 15th day of December, 1997, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–33125 Filed 12–18–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105163–97]

RIN 1545–AV15

Certain Investment Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the treatment of certain investment income under the qualifying income provisions of section 7704(d) and the application of the passive activity loss rules to publicly traded partnerships. The regulations would affect the classification of certain partnerships for federal tax purposes and would also affect the passive activity loss limitations with respect to items attributable to publicly traded partnerships. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by March 19, 1998. Requests to speak (with outlines of oral comments) at a public hearing scheduled for April 28, 1998, at 10 a.m., must be received by April 7, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105163–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105163–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Christopher Kelley, (202) 622–3080; concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Introduction

This document proposes to add § 1.7704–3 to the Income Tax Regulations (26 CFR part 1) relating to the definition of qualifying income for publicly traded partnerships under section 7704(d) of the Internal Revenue Code (Code). This document also proposes to amend § 1.469–10 of the Income Tax Regulations relating to the application of section 469 of the Code to publicly traded partnerships.

Explanation of Provisions

Qualifying Income

Section 7704 of the Code provides that a publicly traded partnership is generally treated as a corporation for federal tax purposes unless 90 percent or more of the gross income of the partnership consists of qualifying income. Section 7704(d) defines qualifying income to include certain types of passive investment income, such as interest, dividends, real property rents, and income that would qualify under the regulated investment company provisions in section 851(b)(2) or the real estate investment trust provisions in section 856(c)(2). Since section 7704 was enacted, however, several new types of financial instruments have been developed that generate passive-type investment income similar to interest and dividends. The preamble to the regulations under § 1.7704–1, issued December 4, 1995, (regarding the definition of public trading) requested comments from the public on the definition of qualifying income for investment partnerships and other partnerships engaged in various types of securities transactions.

In response to comments received, the proposed regulations provide that qualifying income for purposes of section 7704(c) includes income from holding annuities, income from notional principal contracts (as defined in § 1.446–3), and other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner. Qualifying income, however, includes income from a notional principal contract only if the property, income, or cash flow that measures the amounts to which the partnership is entitled under the contract would give rise to qualifying income if held or received directly by the partnership. The proposed regulations also confirm that capital gain from the sale of stock is qualifying income, regardless of whether the stock pays dividends. The proposed regulations also provide that qualifying income (as defined in the proposed regulations) does not include income derived in the ordinary course of a trade or business by a broker, dealer, or market maker. Income derived by traders and investors can be qualifying income under the proposed regulations. The proposed regulations, including the trade or business restriction, are consistent with the legislative history of section 7704, which indicates that the exception for passive investment income was intended to distinguish between partnerships engaged in investment activities and those partnerships engaged in active business activities that are more typically conducted in corporate form. See H.R. Rep. No. 391 (Part 2), 100th Cong., 1st Sess. 1066–69 (House Report). The IRS also requests comments on the appropriate way to determine how gains should be measured for purposes of determining whether 90 percent or more of the partnership's gross income is qualifying income when a partnership makes a mixed straddle account election under § 1.1092(b)–4T. The IRS believes that use of the daily mark-to-market method provided for by § 1.1092(b)–4T would be inconsistent with the congressional purpose behind section 7704.

Passive Activity Loss Rules

Section 469(a) generally provides that if for any taxable year the taxpayer is an individual, estate, trust, closely held C corporation, or personal service corporation, neither the passive activity loss nor the passive activity credit for the taxable year is allowed. Section

469(k) provides that section 469 applies separately with respect to items attributable to each publicly traded partnership. Section 469(k)(2) defines a publicly traded partnership in the same manner as section 7704(b). The legislative history of section 469(k) indicates that the term publicly traded partnership has the same meaning for purposes of section 469(k) as it does for purposes of section 7704. See H.R. Rep. No. 495, 100th Cong., 1st Sess. 952–53 (1987) (Conference Report). In addition, Notice 88–75 (1988–2 C.B. 386) provided the same guidance on the definition of a publicly traded partnership for purposes of both sections 469(k) and 7704.

The recently issued regulations under § 1.7704–1, however, define a publicly traded partnership only for purposes of section 7704. The proposed regulations implement the legislative history of section 469(k) by providing that the definition of a publicly traded partnership for purposes of section 469(k) is the same as the definition of publicly traded partnership under section 7704.

Proposed Effective Date

These regulations are proposed to apply for taxable years of a partnership beginning on or after the date the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, April 28, 1998, at 10 a.m., in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit timely written comments (preferably a signed original and eight (8) copies) by March 19, 1998 and submit an outline of the topics to be discussed and the time to be devoted to each topic by April 7, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Christopher Kelley, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.469–10 is revised to read as follows:

§ 1.469–10 Application of section 469 to publicly traded partnerships.

(a) [Reserved].

(b) *Publicly traded partnership*—(1) *In general.* For purposes of section 469(k), a partnership is a publicly traded partnership only if the partnership is a publicly traded partnership as defined in § 1.7704–1.

(2) *Effective date.* This section applies for taxable years of a partnership beginning on or after the date final regulations are published in the **Federal Register**.

Par. 3. Section 1.7704–3 is added to read as follows:

§ 1.7704–3 Qualifying income.

(a) *Certain investment income*—(1) *In general.* For purposes of section 7704(d)(1), qualifying income includes capital gain from the sale of stock, income from holding annuities, income from notional principal contracts (as defined in § 1.446–3), and other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner. Income from a notional principal contract is included in qualifying income only if the property, income, or cash flow that measures the amounts to which the partnership is entitled under the contract would give rise to qualifying income if held or received directly by the partnership.

(2) *Limitations.* Qualifying income as defined in paragraph (a)(1) of this section does not include income derived in the ordinary course of a trade or business. For purposes of the preceding sentence, income derived from an asset with respect to which the partnership is a broker, market maker, or dealer is treated as income derived in the ordinary course of a trade or business; income derived from an asset with respect to which the taxpayer is a trader or investor is not treated as income derived in the ordinary course of a trade or business.

(b) *Effective date.* This section applies for taxable years of a partnership beginning on or after the date final regulations are published in the **Federal Register**.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–33105 Filed 12–18–97; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 61–1–7270: FRL–5837–4]

Approval and Promulgation of State Implementation Plans (SIP) for Texas: Accelerated Vehicle Retirement (AVR) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove the SIP revision submitted by the State of Texas for the Accelerated Vehicle Retirement (AVR) program which allows stationary sources to purchase Emission Reduction Credits (ERCs) through a vehicle scrappage program. For areas which face relatively high stationary source control costs, Mobile Emission Reduction Credits (MERCs) offer stationary sources another option to achieve required emission reductions through early retirement and scrappage of motor vehicles which fail mandated emissions testing. The EPA is proposing disapproval because the State's AVR SIP revision uses a vehicle emission testing method from a vehicle Inspection and Maintenance (I/M) program that has changed since the ARV SIP was submitted. This action is being taken under sections 110 and 182 of the Clean Air Act, as amended in 1990 (the Act).

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed. Copies of the documents relevant to this action area available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Rennie, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

I. Background

The Act broadly encourages, and in Title I of the Act, mandates, States to develop and facilitate market-based approaches for achieving the environmental goals of the Act for attainment and maintenance of the National Ambient Air Quality Standards, and to meet associated emission reduction milestones. The Agency has developed comprehensive guidance and rules (as required by the Act) for States and individual sources to follow in designing and adopting such programs for inclusion in SIPs. The Economic Incentive Program (EIP) Rules (April 7, 1994, 59 FR 16690–16717) provide a broad framework for the development and use of a wide variety of incentive strategies for stationary, area, and/or mobile sources. One such approach is the generation and trading of ERCs, which historically have been allowed under guidance provided in the 1986 Emission Trading Policy Statement. In certain areas where emission control costs for stationary sources may be high relative to mobile source control costs, creating EIPs which allow for the trading of emission reduction credits from mobile sources to stationary sources can be beneficial.

On October 31, 1994, the State of Texas submitted revisions to the SIP making changes to the Texas Administrative Code (30 TAC), Chapter 114: Control of Air Pollution from Motor Vehicles. In this revision, section 114.29, Accelerated Vehicle Retirement Program, was added to the Code. The new section provides specific requirements for the purchase, screening, and processing of scrappage vehicles, so that all emission reductions generated through AVR are creditable, enforceable, surplus, quantifiable, and permanent. The scrappage program requires all potential vehicles to get an "IM240" emission test at an I/M testing facility.

The AVR program was planned when the State was intending to implement an I/M program which utilized the IM240 emission test in a centralized, test-only setting. The I/M program was designed, developed, and began operation in January 1995, before being halted by the Governor and the Texas Legislature.

However, various states, including Texas, desired greater flexibility in implementing their I/M programs. On September 18, 1995, EPA revised and finalized I/M rules that gave states much greater flexibility in implementing I/M programs. One element of the I/M flexibility amendments included a provision for a new low enhanced performance standard that would allow for less stringent I/M programs if overall air quality goals were met. In addition, on November 28, 1995, President Clinton signed the National Highway System Designation Act of 1995 (NHSDA) which allowed even greater flexibility in I/M programs for states, especially in the area of emission reduction estimates.

In response to this additional flexibility, the State of Texas, in a letter dated March 12, 1996, submitted its revised I/M program to the Region 6 office within the submission deadlines contained in the NHSDA. The EPA granted conditional interim approval (July 11, 1997, 62 FR 37138) of the revised Texas I/M plan. As a result, the State has implemented a decentralized testing network which allows for both test-and-repair and test-only stations, and includes remote sensing. Testing stations administer a two-speed idle test. This program is referred to as the Texas Motorist Choice Program. With the IM240 test no longer available, the tailpipe emission measurements needed for AVR calculations as outlined in section 114.29 of 30 TAC 114 cannot be obtained. The EPA believes this is a significant deficiency which prohibits approval of the SIP under section 110 of the Act.

II. Evaluation of Accelerated Vehicle Retirement (AVR) SIP

Several key program elements in EIP rules must generally be included in any MERC program to ensure that the EIP principles and requirements are met. One of the elements calls for credible, workable, replicable procedures for quantifying emissions and/or emission-related parameters.

In the State's submittal, emission reductions in grams/vehicle/year for each vehicle are calculated using tailpipe emissions, evaporative emissions, vehicle replacement emissions, and vehicle miles traveled. Tailpipe emissions are measured by using the IM240 test. The MERCs are calculated in tons/year from the emission reductions from all vehicles in a scrappage program.

The owner of a scrappage vehicle must obtain an IM240 vehicle emission certificate at a testing facility showing that the vehicle has failed the mandated emissions test prior to the sale of the vehicle to a scrappage program. A motorist must submit the vehicle to an emissions test according to specific procedures outlined in the SIP. In the Texas Motorist Choice I/M program, which is in operation, the test stations offer only the idle test. The IM240 test is not an option. Consequently, tailpipe emissions can no longer be quantified according to the procedure outlined in the SIP. This prevents the State from satisfying the program element for obtaining credible emissions data.

In summary, the Texas AVR SIP submittal does not reflect current programs which are necessary to implement the scrappage program as designed. Based on the analysis, EPA cannot approve the Texas AVR SIP.

III. Proposed Action

The EPA proposes to disapprove the Texas AVR SIP under sections 110 and 182 since the State failed to update elements of the AVR SIP submitted October 31, 1994. The AVR SIP submittal represents vehicle emission testing for vehicle scrappage using an I/M loaded mode transient emission test (IM240). The Texas Legislature halted the operation of that particular program, and has since chosen to implement a different I/M program, the Texas Motorist Choice Program, which requires a two-speed idle test. This test has not been shown to be equivalent to

the IM240 test. Consequently, the AVR SIP is not applicable to current programs as submitted.

This revision is not required by the Act. Therefore, this proposed disapproval action does not impose sanctions for failure to meet Act requirements.

The EPA is soliciting public comment on the proposed action discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rule making procedure by submitting written comments to the EPA Regional office listed in the **Addresses** section of this document.

Nothing in today's action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Regional Administrator's decision to approve or disapprove the AVR SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Act, as amended, and EPA regulations in 40 CFR part 51.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The EPA's proposed disapproval of the State request under sections 110 and 301, and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this proposed disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, the EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements, nor does it impose any new Federal requirements.

C. Unfunded Mandates Act

Under section 202 of the Unfunded Mandate Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local or tribal governments in aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not impose new requirements. Accordingly, no additional costs to State, local, or tribal governments, or private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Volatile organic compounds.

Dated: December 10, 1997.

Lynda F. Carroll,

Acting Deputy Regional Administrator, Region VI.

[FR Doc. 97–33222 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–004–BU; FRL–5837–5]

Designation of Areas for Air Quality Planning Purposes; State of California; Redesignation of the San Francisco Bay Area to Nonattainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 22, 1995, EPA redesignated the San Francisco Bay Area (Bay Area) from moderate nonattainment for the federal 1-hour ozone standard to attainment (60 FR 27028). The redesignation became effective on June 21, 1995. Two days later, the Bay Area experienced its first violation of the federal 1-hour ozone standard as an attainment area. There have been a total of 43 exceedances and 17 violations of the standard since redesignation. The Clean Air Act (CAA or Act) provides that EPA may at any time notify the Governor that available air quality information indicates that the designation of an area within the State should be revised. EPA must consider the response from the Governor as well as public comment on the proposed redesignation before finalizing its action.

On August 21, 1997, EPA sent a letter to the Governor of California notifying him of the Agency's intent to redesignate the Bay Area from attainment to nonattainment of the federal 1-hour ozone standard. In today's action, EPA is proposing to redesignate the Bay Area as a nonattainment area for ozone.

DATES: Comments on this proposed action must be received in writing by February 17, 1998. Comments should be addressed to the contact listed below.

ADDRESSES: EPA's technical support document and other supporting documentation for the proposal are contained in the docket for this rulemaking. A copy of this document and the technical support document are also available in the air programs section of EPA Region IX's website, http://www.epa.gov/region09. The docket is available for inspection during normal business hours at EPA Region IX, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. (415) 744-1288.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1288.

SUPPLEMENTARY INFORMATION:

I. Background

A. Original Designation

The Bay Area was originally designated under section 107 of the 1977 CAA as nonattainment for ozone on March 3, 1978 (40 CFR 81.305). The Bay Area consists of the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano (part), and Sonoma (part). Following the 1990 amendments to the Act, the area was classified by operation of law, under section 181(a), as a "moderate" nonattainment area. (56 FR 56694, November 6, 1991).

B. Redesignation to Attainment

On November 12, 1993, after three years without any violations of the federal ozone standard according to quality assured ambient air quality data from the official monitoring network [1] of the Bay Area Air Quality Management District (Bay Area, District, or BAAQMD), the California Air Resources Board (CARB) submitted to EPA for approval a maintenance plan and a request to redesignate the Bay Area ozone nonattainment area to attainment. On September 28, 1994, EPA proposed to approve the State of California's submittal (59 FR 49361). On May 22, 1995, EPA published the final rule redesignating the Bay Area to attainment for ozone (60 FR 27028). The redesignation to attainment became effective on June 21, 1995.

C. Violations of the Ozone Standard After Redesignation

Despite implementation of most of the measures in the Bay Area's maintenance plan, the Bay Area's monitoring network [2] has recorded 46 exceedances (43 since the redesignation to attainment in June 1995) and 17 violations of the federal 1-hour ozone standard over the 3-year period 1994–1996.[3]

An exceedance of the 1-hour ozone standard occurs when the hourly average ozone concentration at a given monitoring site is greater than or equal to .125 ppm. A violation of the standard occurs when the expected number of days per calendar year with maximum hourly average ozone concentrations above 0.12 ppm is greater than one. 40 CFR part 50.9. The average number of days is calculated for a 3-year period. 40 CFR part 50, appendix H. This 3-year period was established to reduce the impact of yearly fluctuations in ozone levels. Table 1 lists both the exceedances and the 3-year average number of days over the 1-hour ozone standard for each SLAMS monitoring site in the Bay Area for the period 1994–1996.

TABLE 1.—AVERAGE NUMBER OF EXCEEDANCES FOR THE OZONE SLAMS NETWORK 1994–1996

Monitoring site	Observed values greater than standard	Average number of exceedances per year
Livermore	17	5.7
Oakland	0	0.0
San Leandro	3	1.0
Fremont	2	0.7
Hayward	2	0.7
Concord	4	1.3
Richmond	0	0.0
Bethel Island	2	0.7
Pittsburg	0	0.0
San Rafael	0	0.0
Napa	1	0.3
San Francisco	0	0.0
Redwood City	1	0.3
Gilroy	1	0.3
San Jose (4th Street)	1	0.3
Los Gatos	5	1.7
Mountain View	0	0.0
San Jose (W. San Carlos)	0	0.0
San Jose (Piedmont)	3	1.0
San Martin	2	0.7
Fairfield	1	0.3
Vallejo	1	0.3
Santa Rosa	0	0.0
Sonoma	0	0.0

Source: AIRS/AQS.

D. Petitions to the Administrator

EPA has received two petitions requesting that the Administrator redesignate the Bay Area to nonattainment with the federal 1-hour ozone standard. On March 31, 1997, the Sierra Club and Communities for a Better Environment requested that EPA withdraw the 1995 redesignation action, or alternatively redesignate the area to nonattainment. The Sierra Club also requested that EPA issue a section 110(k)(5) SIP call based on the inadequacy of the current SIP.[4] On July 14, 1997, U.S. Congressman Gary Condit and a coalition of federal, state and local elected officials and public interest and industry groups from downwind areas (primarily the San Joaquin Valley) also requested that EPA withdraw the 1995 redesignation to attainment, or alternatively redesignate the area to nonattainment and issue a SIP call.

E. Applicable Statutory Provisions

Section 107(d)(3) of the Act gives the Administrator the authority to redesignate areas. Under this provision, the Administrator may "(O)n the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, * * * at any time notify the Governor of any State that available information indicates that the designation of any area * * * should be revised." Section 107(d)(3)(A). The Governor then has 120 days to submit the redesignation, as the Governor considers appropriate. Section 107(d)(3)(B). The Administrator must promulgate the redesignation within 120 days of the Governor's response. The Administrator may make any modifications to the Governor's redesignation which she deems necessary, but must notify the Governor of such changes 60 days before promulgating a final redesignation. If the Governor does not submit the redesignation, the Administrator shall promulgate the redesignation which she deems appropriate. Section 107(d)(3)(C). EPA notified the Governor of California by letter dated August 21, 1997, that EPA believes that, based on air quality data, the Bay Area should be redesignated to nonattainment.[5] The

---

[1] There were no monitored violations of the federal ozone standard at the District's official State and Local Air Monitoring Station (SLAMS) network monitors. There were, however, two violations at special purpose monitors (SPMs) that were established for research purposes. EPA was aware of these violations at the time it redesignated the area to attainment. However, EPA excluded these data because the monitors were not part of the official monitoring network and were not intended to monitor ambient air quality for federal compliance purposes. For policy reasons, EPA did not want to discourage the Bay Area, or other areas, from establishing monitors for research purposes. EPA has since determined that all quality assured data that meet the requirements of 40 CFR 58.14, with the exception of fine particulate matter data (PM–2.5), must be considered for any regulatory purpose, including an ozone redesignation action. (August 22, 1997 memorandum entitled, "Agency Policy on the Use of Special Purpose Monitoring Data," from John Seitz, Director of the Office of Air Quality Planning and Standards, to Air Division Directors, EPA Regions I-X) While EPA has determined that the SPMs data should have been considered in the 1995 redesignation action, the Agency is not basing today's proposed action on these data. Today's action is based on the 17 violations recorded during 1995 and 1996.

[2] Air quality in the Bay Area is monitored by the District's State and Local Air Monitoring Station (SLAMS) network, which comprises 24 monitoring stations. All data must be quality assured.

[3] As required by section 175A of the Act, the Bay Area maintenance plan contains contingency measures that should be designed to correct any violation of the standard occurring after redesignation to attainment. The Bay Area maintenance plan contains six equipment-specific NOx controls and several improvements to the federally mandated Basic Inspection and Maintenance Program (I/M). While the District is continuing to implement the contingency measures in its maintenance plan, the remaining emission reductions to be gained from these measures total 1.2 tons per day in NOx reductions and almost no reductions of Volatile Organic Compounds (VOCs).

[4] A SIP call is a determination under section 110(k)(5) of the Clean Air Act that the SIP is inadequate and must be revised.

[5] This letter is available to the public as part of the docket for this rulemaking action. While EPA indicated in this letter that the Bay Area would be classified as "moderate," the Agency has determined that a moderate classification is not necessary under subpart 1 of the Act. (See discussion at II.A.) Furthermore, the planning requirement to prepare a modeling plan for the 8-hour ozone standard will no longer be required as the District is already engaged in such an exercise with the California Air Resources Board and downwind air districts.

Governor must respond to this letter by December 19, 1997.

F. Proposed Action

In today's document, EPA proposes to redesignate the San Francisco Bay Area to nonattainment for the 1-hour ozone NAAQS because ozone levels have violated the federal standard 17 times over the three year period 1994–1996. Today's action further proposes to require the Bay Area to develop and submit a SIP revision designed to demonstrate attainment of the 1-hour ozone NAAQS by November 15, 1999. Finally, today's action proposes an amendment to 40 CFR parts 52 and 81 to reflect the change in designation. These actions are proposed in accordance with sections 107(d), 110, and 172 of the CAA.

II. Applicable Plan Requirements

A. Clean Air Act Provisions

The classifications and attainment dates for areas classified nonattainment under the 1990 amendments to the Act are contained in section 181(a). The provisions for new designations to nonattainment are found in subsection (b)(1). This subsection provides that areas that were attainment or unclassifiable at the time of the 1990 amendments and are subsequently redesignated to nonattainment are to be classified according to the table in section 181(a)(1). This language contains no reference to areas that were designated nonattainment as a result of the 1990 amendments.

For areas that were designated attainment or unclassifiable following the 1990 amendments, this section further provides that such areas are subject to the same requirements of section 110 and subparts 1 and 2 of the Act as areas designated nonattainment pursuant to the 1990 amendments. In addition, these areas are given an extension of all fixed date deadlines equal to the length of time between November 15, 1990, and the date the area is redesignated.

Although section 181(b)(1) deals with designations to nonattainment occurring after the initial round of classifications under the 1990 amendments, it does not address areas, such as the Bay Area, that were designated nonattainment under the amendments, redesignated to attainment, and that subsequently fall out of attainment and are redesignated back to nonattainment. Because this provision does not, on its face, apply to areas like the Bay Area, EPA believes that it has discretion to determine whether such areas should fall under subpart 2 of the Act when they are redesignated to nonattainment, or should only be subject to the more general provisions of subpart 1.

EPA believes the latter is the appropriate result for a number of reasons. First, the plain language of section 181(b)(1) of the statute applies only to areas designated attainment under section 107(d)(4) and excludes areas like the Bay Area. Second, it is logical to grant the generous extension of deadlines to areas that have never been nonattainment and must devise their first nonattainment area SIPs. Conversely, an area that was previously designated as nonattainment has already done much of this work and should not need this lengthy time period to complete its planning process. Moreover, areas such as the Bay Area generally will have already implemented the section 181 requirements applicable to their previous classification (moderate, serious, severe or extreme). Assuming that these requirements continue to be implemented, placing the area back into the section 181 scheme would do little to bring the area back into attainment. On the other hand, placing the area under section 172 provides the flexibility for the area to identify a new mix of measures that, when combined with those already implemented under section 181, will bring the area back into attainment. Finally, sections 172(a)(1) and (2) contain express statements that they do not apply to nonattainment areas that are specifically covered by other provisions of part D of the Act, thereby demonstrating that the Act contemplates that some areas will fall under subpart 1, rather than subpart 2. See sections 172(a)(1)(C) and (a)(2)(D). For these reasons, EPA believes the best interpretation of the Act is that it intentionally excludes areas like the Bay Area from section 181 and places them under section 172.

B. Section 172 Requirements

General nonattainment plan requirements are contained in section 172(c). Section 172(b) requires the Bay Area plan to meet the "applicable" requirements of section 172(c). For reasons set forth below, we believe that some of the section 172(c) requirements have already been satisfied and therefore need not be part of the plan revisions the Bay Area would be required to submit under this proposed action. A table containing the proposed submittals and submittal dates is located at the end of section II.D. below.

Section 172(c)(1) requires that the plan provide for implementation of all reasonably available control measures (RACM) as expeditiously as practicable, including emission reductions from existing sources through adoption of reasonably available control technology (RACT). This provision is applicable to the Bay Area only to the extent that it has not already been complied with. EPA believes that the Bay Area implemented all VOC RACT and most, if not all, oxides of nitrogen (NO_X) RACT measures prior to being redesignated to attainment in 1995.[6] 60 FR 27028.

As required by section 172(c)(1), the plan must provide for attainment. Generally, new modeling is required in order to demonstrate that a plan will indeed provide for attainment. During the stakeholder process that preceded the Agency's decision to propose redesignation EPA heard two points made fairly consistently by all those involved. First, all parties agreed on the importance of a new field study and modeling effort in order to better understand the ozone problem in the Bay Area, as well as its effects on downwind areas. Second, the parties agreed that it would be impossible to conduct a new field study and modeling effort for a short term plan, particularly in light of the fact that the Bay Area will be required to undertake such an effort for the new 8-hour standard if designated nonattainment for the 8-hour standard.

In response to public input, EPA is proposing to require an assessment, employing available modeling information, of the level of emission reductions needed to attain the 1-hour ozone NAAQS. The assessment should take into account the meteorological conditions and ambient concentrations associated with the ozone violations in 1995 and 1996, and should be based on likely control measures for reducing VOC and NO_x emissions. This work may include previous photochemical modeling that was based on Bay Area's 1989 field study, the 1990 modeling analysis done for the San Joaquin Valley, modeling conducted for Bay Area's SIP attainment demonstration that was based on the Empirical Kinetic Modeling Approach [EKMA], and any other work that will lend insight into the nature of the ozone problem in the Bay Area. It may be appropriate to form a committee made up of representatives with technical modeling expertise from the BAAQMD, CARB, and EPA to review the analysis. EPA recommends that the committee also include technical staff from downwind districts. EPA is proposing that this assessment be submitted on May 1, 1998.

[6] The Bay Area requested and received a NO_x waiver pursuant to section 182(f) of the Act. 60 FR 27026, May 22, 1995. The waiver was based on 3 years of clean ambient air quality data showing that ozone attainment was achieved without application of the section 182(f) NO_x control requirements. Since the waivers only apply to nonattainment areas, they remain in effect only during the period before redesignation of the area to attainment under section 107(d)(3). Thus, when the Bay Area's redesignation to attainment became effective on June 21, 1995, precursor emissions, like NO_x, were addressed, as appropriate, under terms of the Bay Area maintenance plan. It is clear, upon final redesignation of the Bay Area to nonattainment based on subsequent violations of the ozone NAAQS, that the basis for granting the original NO_x waiver no longer exists.

Section 172(c)(2) contains the requirement for reasonable further progress (RFP). RFP is defined as "such annual incremental reductions in emissions * * * as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment * * * by the applicable date." Section 171(1). Because EPA is not proposing to require submission of adopted measures until September 1998, the Agency believes that the RFP requirement would be satisfied if all required emission reductions occur by 1999, the proposed attainment year.

Under section 172(c)(3) the Bay Area must submit a comprehensive, accurate, and current inventory of actual emissions from all sources. To address this requirement, EPA proposes that the Bay Area must submit a current and complete baseline annual average and summer weekday and weekend day[7] emissions inventory for VOC, NO_x, and carbon monoxide (CO). This submittal would be due on May 1, 1998.

Section 172(c)(4) requires the area to identify and quantify emissions that will be allowed from new major sources or major modifications in urban enterprise zones identified by the Administrator in consultation with the Secretary of Housing and Urban Development under section 173(a)(1)(B) of the Act. No such zones have been identified in the Bay Area nonattainment area. Thus, no submission is required for this plan. Were such zones to be identified, a growth allowance would have to be included in the SIP to ensure that emission increases from new sources in the urban enterprize zones would not interfere with attainment.

Section 172(c)(5) requires submittal of a new source review (NSR) program consistent with section 173 of the Act. While the Bay Area does have a SIP-approved NSR program, it is out of date and does not meet current statutory requirements.[8] The Bay Area has submitted a revised new source review rule designed to meet the requirements of the 1990 amendments to the Act. EPA will act on this rule and the NSR requirement in separate rulemaking. Based on the Bay Area's design value of .138 ppm, EPA believes that the NSR program should, by analogy, meet the requirements applicable to a moderate area. Thus, we are proposing that the NSR permitting requirements, applicability thresholds, and offset ratios be set at the same levels that apply to moderate ozone nonattainment areas under sections 182(a)(2)(C) and 182(b)(5).

Section 172(c)(6) requires enforceable emission limitations and other control measures, means or techniques, necessary to provide for attainment by the applicable date. We are proposing that the Bay Area submit by September 1, 1998, adopted regulations (and/or enforceable commitments to adopt and implement control measures in regulatory form by specified dates) sufficient to attain the 1-hour ozone NAAQS by November 15, 1999. Section 172(c)(6) allows the Bay Area to identify and adopt a mix of measures that best meets the needs of the area.

Section 172(c)(7) requires that nonattainment plans meet the general SIP requirements of section 110(a)(2).

Section 172(c)(8) allows the District to apply to the Administrator to use equivalent modeling, emission inventory, and planning procedures.

Under section 172(c)(9), a plan must contain contingency measures that go into effect if the area fails to make RFP or fails to attain the standard. The Bay Area plan will need to contain contingency measures that go into effect if the area is unable to attain the 1-hour ozone NAAQS by the attainment date. As discussed above, the short attainment period for the Bay Area means that failure to make RFP and failure to attain are equivalent.

C. Applicable Attainment Date

Section 172(a)(2) governs attainment dates for nonattainment areas that fall under section 172. This section provides that the attainment date for an area designated nonattainment shall be as expeditiously as practicable, but no later than 5 years from the date the area is designated nonattainment. Thus, the Administrator may set the attainment date at any point up to 5 years based on an assessment of what is "as expeditiously as practicable."

Because the Bay Area's emissions appear to be on a downward trend based on currently available information,[9] and because the area was attaining the standard as recently as 1994, EPA believes that the Bay Area should be able to identify and implement measures that will bring it back into attainment fairly quickly. Thus, EPA is proposing to set the Bay Area's attainment deadline as November 15, 1999. This is the date by which the area would have had to attain if it had been bumped up to a "serious" classification rather than being redesignated to attainment. As discussed above, the Bay Area recorded 43 exceedances and 17 violations of the standard from June 21, 1995 (the date on which the area was redesignated to attainment) and November 15, 1996, the attainment deadline for moderate ozone nonattainment areas. These violations far exceed those recorded during the same time frame by other moderate ozone nonattainment areas which EPA is proposing to bump up to serious for failure to attain by November 15, 1996.

EPA proposes to make the determination as to whether the area has attained based on monitoring data from the years 1997, 1998 and 1999. During this time frame, EPA will be reviewing 1997–1999 monitoring data for the entire country to determine whether areas are violating the new NAAQS. Areas that violate the 8-hour standard but attain the 1-hour standard prior to designation under the new standard will be eligible for classification as a "transitional" area when designated nonattainment for the new 8-hour NAAQS.[10] If the Bay Area attains the 1-hour standard by 1999 and meets the requirements for transitional areas, it may take advantage of this status and avoid certain enumerated requirements under the new NAAQS.

In the event that the Bay Area does not meet the 1999 attainment date, it may, in the future, be eligible for up to two 1-year extensions of this date if it were to meet the requirements of section 172(a)(2)(C).

EPA is particularly interested in receiving public comment on the proposed November 15, 1999 attainment deadline. The Agency has received preliminary input from the District indicating that it believes a later date should be chosen. EPA solicits comment from all interested parties on this issue.

D. Schedule for Plan Submissions

The schedule for plan submissions is governed by section 172(b). This section

[7] EPA Guidance Document #EPA–450–4–91–014, entitled "Preparation of Emissions for CO and Ozone Precursors for Air Quality Modeling," Volume II, May 1991.

[8] See 54 FR 11866 (March 19, 1982).

[9] "Bay Area Emission Inventory Projections: 1980–2002," provided by the Bay Area to EPA May 1997.

[10] 62 FR 38426, July 18, 1997.

provides that the Administrator must establish a schedule for each area to submit a plan or plan revision that meets the applicable requirements of sections 172(c) and 110(a)(2). The schedule must, at a minimum, require submission of the attainment plan no later than three years after designation to nonattainment. EPA is proposing two separate submittal dates for elements of the Bay Area plan that are designed to achieve the November 15, 1999 attainment date. These submittals will be due on May 1, 1998 and September 1, 1998. The contents of these submittals are discussed in section II.B. above.

SCHEDULE OF SUBMITTAL OF REVISIONS TO THE STATE IMPLEMENTATION PLAN FOR OZONE FOR THE SAN FRANCISCO BAY AREA

Action/SIP submittal	Date
Current and complete baseline annual average and summer weekday and weekend day emissions inventory for volatile organic compounds (VOC), nitrogen oxides (NO_X), and carbon monoxide	5–1–98
Assessment, employing available modeling information, of the level of emission reductions needed to attain the current 1-hour ozone National Ambient Air Quality Standard (NAAQS). This assessment should take into account the meteorological conditions and ambient concentrations associated with the violations of the ozone NAAQS in the period 1995–6, and should be based on likely control measures for reducing VOC and NO_X emissions	5–1–98
Adopted regulations and/or control measures, with enforceable commitments to adopt and implement the control measures in regulatory form by specified dates, sufficient to meet reasonable further progress and attain the 1-hour NAAQS expeditiously	9–1–98

III. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's proposal is a "significant regulatory action" within the meaning of the E.O., and therefore should be subject to OMB review, economic analysis, and the requirements of the E.O. See E.O. 12866, § 6(a)(3). The E.O. defines, in § 3(f), a "significant regulatory action" as a regulatory action that is likely to result in a rule that may meet at least one of four criteria identified in section 3(f), including,

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that the redesignation to nonattainment proposed today, as well as the establishment of SIP submittal schedules, would result in none of the effects identified in E.O. 12866 § 3(f). Under section 107(d)(3) of the Act, redesignations to nonattainment are based upon air quality considerations. The finding, based on air quality data, that the Bay Area is not attaining the ozone NAAQS and should be redesignated to nonattainment does not, in and of itself, impose any new requirements on any sectors of the economy. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

A redesignation to nonattainment under section 107(d)(3), and the establishment of a SIP submittal schedule for a reclassified area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply proposes to make a factual determination and to establish a schedule to require the State to submit SIP revisions, and does not propose to directly regulate any entities. Because EPA is proposing to apply the same permitting applicability thresholds and offset ratios applicable to moderate areas, no additional sources will be subject to these requirements as a result of EPA's action. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates "any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more" in any one year. A "Federal mandate" is defined, under section 101 of UMRA, as a provision that "would impose an enforceable duty" upon the private sector or State, local, or tribal governments," with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA "establish[es] any regulatory requirements that might significantly or uniquely affect small governments." Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's "regulatory proposals" that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates "any rule for which a written statement is required under [UMRA sec.] 202", EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least-burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

EPA has concluded that this proposed rule is not likely to result in the promulgation of any Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments in the aggregate, or for the private sector, in any one year. It is questionable whether a redesignation would constitute a federal mandate in any case. The obligation for the state to revise its State Implementation Plan that arises out of a redesignation is not legally enforceable and at most is a condition for continued receipt of federal highway funds. Therefore, it does not appear that such an action creates any enforceable duty within the meaning of section 421(5)(a)(i) of UMRA (2 U.S.C. 658(5)(a)(i)), and if it does the duty would appear to fall within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

Even if a redesignation were considered a Federal mandate, the anticipated costs resulting from the mandate would not exceed $100 million to either the private sector or state, local and tribal governments. Redesignation of an area to nonattainment does not, in itself, impose any mandates or costs on the private sector, and thus, there is no private sector mandate within the meaning of section 421(7) of UMRA (2 U.S.C. 658(7)). The only cost resulting from the redesignation itself is the cost to the State of California of developing, adopting and submitting any necessary SIP revision. Because that cost will not exceed $100 million, this proposal (if it is a federal mandate at all) is not subject to the requirements of sections 202 and 205 of UMRA (2 U.S.C. 1532 and 1535). EPA has also determined that this proposal would not result in regulatory requirements that might significantly or uniquely affect small governments because only the State would take any action as result of today's rule, and thus the requirements of section 203 (2 U.S.C. 1533) do not apply.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 11, 1997.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 97–33225 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE36

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Three Aquatic Snails, and Proposed Threatened Status for Three Aquatic Snails in the Mobile River Basin of Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing on the proposed endangered status for the cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), and plicate rocksnail (*Leptoxis plicata*); and the proposed threatened status for the painted rocksnail (*Leptoxis taeniata*), round rocksnail (*Leptoxis ampla*), and lacy elimia (*Elimia crenatella*). The Service also announces the reopening of the comment period for these actions. The public hearing and the reopening of the comment period will allow additional comments on this proposal to be submitted from all interested parties.

DATES: The public hearing will be held from 7 to 10 p.m. on Tuesday, January 13, 1998, in Birmingham, Alabama. The comment period now closes on January 23, 1998. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Dwight Beeson Hall Auditorium on the campus of Samford University, 800 Lakeshore Drive, Birmingham, Alabama 35229. Written comments and materials concerning the proposal may be submitted at the hearing or sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield (see **ADDRESSES** section), 601/965–4900, extension 25.

SUPPLEMENTARY INFORMATION:

Background

The six aquatic snail species are endemic to portions of the Mobile River Basin, Alabama. The cylindrical lioplax, flat pebblesnail, and round rocksnail are found in the Cahaba River drainage; the lacy elimia and painted rocksnail are in the Coosa River drainage; and the plicate rocksnail is in the Black Warrior River drainage. All six species have disappeared from 90 percent or more of their historic range. Known populations are restricted to small portions of stream drainages. The past decline of the snails is attributed to impoundment, habitat fragmentation, and water quality degradation. Current threats include the gradual and cumulative effects of sedimentation and nutrification originating from nonpoint sources on the snails' localized and isolated stream refugia.

On October 17, 1997, the Service published a rule proposing endangered status for the cylindrical lioplax, flat pebblesnail, and plicate rocksnail; and threatened status for the painted rocksnail, round rocksnail, and lacy elimia in the **Federal Register** (62 FR 54020–54028. Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. A public hearing request by Gorham & Waldrep, P.C., was received within the allotted time period. The Service has scheduled a public hearing in Birmingham, Alabama on Tuesday, January 13, 1998, at Samford University's Dwight Beeson Hall Auditorium from 7:00 to 10:00 p.m.

Oral and written comments will be accepted and treated equally. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials submitted at the hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing are being published in newspapers concurrently with this **Federal Register** notice. The comment period on the proposal was initially closed on December 16, 1997. To accommodate the hearing, the public comment period is reopened upon publication of this notice. Written comments may now be submitted until January 23, 1998, to the Service office in the **ADDRESSES** section.

Author: The primary author of this notice is Paul Hartfield (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 11, 1997.

H. Dale Hall,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 97–33140 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 971124276–7276–01; I.D. No. 110797B]

RIN 0648–AH68

Designated Critical Habitat; Green and Hawksbill Sea Turtles

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments; and notice of public hearings.

SUMMARY: NMFS proposes to designate critical habitat pursuant to the Endangered Species Act of 1973 (ESA) for the threatened green turtle (*Chelonia mydas*) to include waters extending seaward 3 nautical miles (nm) [5.6 kilometers(km)] from the mean high water line of Culebra Island, Puerto Rico (see Figure 1), and for the endangered hawksbill turtle (*Eretmochelys imbricata*) to include waters extending seaward 3 nm (5.6 km) from the mean high water line of Mona and Monito Islands, Puerto Rico (see Figure 2). The designation of critical habitat provides explicit notice to Federal agencies and to the public that these areas and features are vital to the conservation of the species.

DATES: Comments must be received on or before February 17, 1998.

The public hearings on this proposed action are scheduled from 7 p.m. to 9 p.m. as follows:

1. Monday, January 26, 1998—Eugene Francis Conference Room, Physics Building, University of Puerto Rico at Mayaguez, Palmeras Road, Mayaguez, Puerto Rico.

2. Tuesday, January 27, 1998—Puerto Rico Department of Natural and Environmental Resources, Central Office Auditorium, Munoz Rivera Avenue (Bus Stop 3½), Puerta Tierra, Puerto Rico.

3. Thursday, January 29, 1998—Center for Multiple Use, Williamson Street, Culebra, Puerto Rico.

ADDRESSES: Comments and requests for a copy of the environmental assessment (EA) for this proposed rule should be addressed to Barbara Schroeder, National Sea Turtle Coordinator, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michelle Rogers, 301–713–1401 or Bridget Mansfield, 813–570–5312.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1997, NMFS announced the receipt of a petition presenting substantial information to warrant a review (62 FR 6934) to designate critical habitat for green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) turtles to include all coastal waters surrounding the islands of the Culebra archipelago. At that time, NMFS also requested additional information concerning other areas in the U.S. Caribbean where the designation of critical habitat for listed sea turtles may be warranted.

Upon further review, NMFS has determined that substantial information exists to warrant the designation of critical habitat for green and hawksbill turtles in the Caribbean. Therefore, NMFS proposes to designate critical habitat for the threatened green turtle to include coastal waters surrounding Culebra Island, Puerto Rico, and for the endangered hawksbill turtle to include coastal waters surrounding Mona and Monito Islands, Puerto Rico (see Proposed Critical Habitat; Geographic Extent section of this notice). This designation of critical habitat for the hawksbill turtle complements the U.S. Fish and Wildlife Service (USFWS) action which designated critical habitat for this species to include all areas of beachfront on the west, south, and east sides of Mona Island, as well as certain nesting beaches on Culebra, Cayo Norte, and Culebrita in the Culebra archipelago (47 FR 27295, June 24, 1982).

In accordance with the July 18, 1977, Memorandum of Understanding between NMFS and the USFWS, NMFS was given responsibility for sea turtles while in the marine environment. Such responsibility includes proposing and designating critical habitat. The designation of critical habitat for sea turtles while on land is the jurisdiction of the USFWS; therefore, this rule includes only marine areas.

Green and hawksbill turtles are largely restricted to tropical and subtropical waters. Once abundant throughout the Caribbean, green and hawksbill turtle populations have diminished to the point where they may likely be extirpated from this area. The green turtle is listed as threatened under the ESA, except for the Florida and Pacific coast of Mexico breeding populations, which are listed as endangered. The hawksbill turtle is listed as endangered throughout its range.

Additionally, green and hawksbill turtles, as well as other marine turtle species, are protected internationally under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Without these protections, it is highly unlikely that either species, traditionally highly prized in the Caribbean for their flesh, fat, eggs, and shell, would exist today.

The extensive seagrass beds of the Culebra archipelago support a large juvenile population of green turtles. Researchers estimate that over 150 juvenile green turtles are resident on Culebra seagrass beds at any given time. Additionally, a small population of adult green turtles have been documented in these waters (Collazo *et al.*, 1992).

On November 10, 1993, the USFWS designated Culebra seagrass beds as Resource Category 1, recognizing these seagrasses as critical foraging habitat for juvenile green turtles (USFWS, 1993). The USFWS mitigation policy classifies habitats into different resource categories according to their importance on a national or ecoregional scale. This classification provides guidance to the USFWS, NMFS, action agencies, and private developers that mitigation may be necessary if impacts to these habitats are anticipated. Resource Category 1 designation recognizes the habitat as unique and irreplaceable on a national or ecoregional level and states that loss of the habitat is not acceptable.

Green turtles nest sporadically on Puerto Rico's beaches. Green turtle nests have been observed on the main island of Puerto Rico, as well as on Mona and Vieques Islands, and have been reported periodically on Culebra Island (Bacon *et al.*, 1984; Carr, 1978; Pritchard and Stubbs, 1981). The natal beaches of Culebra's juvenile green turtles and the location of their nesting beaches are unknown.

The coastal waters of Culebra provide habitat for hawksbill and leatherback turtles as well. Hawksbill turtles forage extensively on the nearby reefs, and both hawksbills and leatherbacks use Culebra's coastal waters to access nesting beaches. Culebra and St. Croix

beaches have the greatest density of leatherback nests within U.S. waters.

Mona and Monito Islands are uninhabited natural reserves managed by the Puerto Rico Department of Natural and Environmental Resources. The waters surrounding Mona Island are one of the few known remaining locations in the Caribbean where hawksbill turtles occur with considerable density (Diez and van Dam, 1996). Researchers have shown that the large juvenile population of hawksbill turtles around Mona and Monito are long term residents, exhibiting strong site fidelity for periods of at least several years (Diez, 1996). Mona Island supports the largest population of nesting hawksbill turtles in the U.S. Caribbean. During the most recent nesting season, a record 354 nests and 288 false crawls were recorded from July 31, 1996, to January 17, 1997 (Diez, 1996).

Additionally, the waters surrounding Mona Island support a small green turtle population, which possibly is surviving only because of Mona's remoteness and the full-time presence of Puerto Rico Department of Natural and Environmental Resources fisheries/wildlife enforcement personnel. Limited green turtle nesting still occurs on Mona Island.

Use of the term "essential habitat" within this Notice refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species." (see 16 U.S.C. 1532(5)(A)). The term "conservation," as defined in section 3(3) of the ESA, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." (see 16 U.S.C. 1532(3)).

In designating critical habitat, NMFS must consider the requirements of the species, including: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species (see 50 CFR 424.12(b)).

In addition to these factors, NMFS must focus on and list the known physical and biological features (primary constituent elements) within the designated area(s) that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, breeding/nesting areas, food resources, water quality and quantity, and vegetation and soil types (see 50 CFR 424.12(b)).

Consideration of Economic, Environmental and Other Factors

The economic, environmental, and other impacts of a critical habitat designation have been considered and evaluated. NMFS identified present and anticipated activities that (1) may adversely modify the areas being considered for designation and/or (2) may be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (see 18 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to a species' habitat, in many cases the economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal (see Significance of Designating Critical Habitat section of this proposed rule). In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the "take" prohibitions contained in section 9 of the ESA and associated regulations. "Take," as defined in the ESA means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (see 16 U.S.C. 1532(19)). Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding, or sheltering.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery action. A critical habitat designation contributes to species conservation primarily by identifying critically important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and does not affect exclusively state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to adversely modify or destroy the designated critical habitat. Activities that adversely modify or destroy critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (see 50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (see 50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat may also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision.

A designation of critical habitat, in addition to emphasizing and alerting public and private entities to the critical importance of said habitat to listed species, provides a clear indication to Federal agencies regarding when section

7 consultation is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists Federal action agencies in determining which activities conducted outside the designated area are subject to section 7 (i.e., activities that may affect essential features of the designated area). For example, discharge of sewage or disposal of waste material, or construction activities that could lead to soil erosion and increased sedimentation in waters in or adjacent to a critical habitat area may affect an essential feature of the designated habitat (water quality) and would be subject to the provisions of section 7 of the ESA.

A critical habitat designation will also assist Federal agencies in planning future actions since the designation establishes, in advance, those habitats that will be given special consideration during section 7 consultations. With a designation of critical habitat, potential conflicts between projects and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of a critical habitat designation is that it helps focus Federal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of those proposed regulations and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

Developing a proposal for critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and habitat areas and features that are essential to the conservation of the species are identified. If alternative areas exist that would provide for the conservation of the species, such alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features are evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, the proposed critical habitat designation is published in the **Federal Register** for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is published within one year of the proposed rule. Final critical habitat designations may be revised, using the same process, as new information becomes available.

A description of the critical habitat, need for special management, impacts of designating critical habitat, and the proposed action are described in the following sections for green and hawksbill sea turtles.

Critical Habitat of the Green Turtle

Biological information for listed green turtles can be found in the Recovery Plan for U.S. Population of Atlantic Green Turtle (NMFS and USFWS, 1991), the most recent green turtle status review (NMFS in prep.), and the **Federal Register** notices of proposed and final listing determination (see 40 FR 21982, May 20, 1975; 43 FR 32800, July 28, 1978). These documents include information on the status of the species, its life history characteristics and habitat requirements, as well as projects, activities and other factors affecting the species.

While the precise space requirements for populations of green turtles are unknown, globally this species is primarily restricted to tropical and subtropical waters. In U.S. Atlantic and Gulf of Mexico waters, green turtles are found from Massachusetts to Texas and in the U.S. Virgin Islands and Puerto Rico. Caribbean populations of green turtles have diminished significantly from historical levels, primarily due to the directed turtle fishery that existed prior to their listing under the ESA. Additionally, researchers have documented that habitat loss is a primary factor slowing the recovery of the species throughout its range. Degradation of seagrass beds has slowed recovery of green turtles in the Caribbean due to reduced carrying capacity of seagrass meadows (Williams, 1988). Therefore, the extent of habitat required for foraging green turtles is likely to be increasing due to the reduced productivity of remaining seagrass beds.

Seagrasses are the principal dietary component of juvenile and adult green turtles throughout the Wider Caribbean region (Bjorndal, 1995). The seagrass beds of Culebra consist primarily of turtle grass (*Thalassia testudinum*). While seagrasses are distributed throughout temperate and tropical latitudes, turtle grass beds are a tropical phenomenon. In the Caribbean, turtle grass beds consist primarily of turtle grass, but may include other species of seagrass such as manatee grass (*Syringodium filiforme*), shoal grass (*Halodule wrightii*), and sea vine (*Halophila decipiens*), as well as several species of algae including green algae of the genera *Halimeda, Caulerpa*, and *Udotea*.

The natal beaches of Culebra's juvenile green turtles have not yet been identified. After emerging from nests on natal beaches, post-hatchlings may move into offshore convergence zones for an undetermined length of time (Carr, 1986). Upon reaching approximately 25 to 35 cm carapace length, juvenile green turtles enter benthic feeding grounds in relatively shallow, protected waters (Collazo *et al.*, 1992).

The importance of the Culebra archipelago as green turtle developmental habitat has been well documented. Researchers have established that Culebra coastal waters support juvenile and subadult green turtle populations and have confirmed the presence of a small population of adults (Collazo *et al.*, 1992). These findings, together with information obtained from studies conducted in the U.S. Virgin Islands, have reaffirmed the importance of developmental habitats throughout the eastern portion of the Puerto Rican Bank (Collazo *et al.*, 1992). Additionally, the coral reefs and other topographic features within these waters provide green turtles with shelter during interforaging periods that serve as refuge from predators.

Culebra seagrasses provide foraging habitat for many valuable species. In addition to green turtles, the commercially important queen conch (*Strombus gigas*) and coral reef bony fishes (Class Osteichthyes), such as parrotfish (*Sparisoma spp.*), grunts (*Haemulon spp.*), porgies or sea breams (*Archosargus rhomboidalis*), and others, utilize this important habitat. Culebra's seagrass beds also provide habitat for the endangered west Indian manatee (*Trichechus manatus*) and several species of cartilaginous fishes (Class Chondrichthyes). Additionally, seagrass beds beneficially modify the physical, chemical, and geological properties of coastal areas. They provide nutrients, primary energy, and habitats that help sustain coastal fisheries resources while enhancing biological diversity and wildlife (Vicente and Tallevast, 1992).

Critical Habitat of the Hawksbill Turtle

Biological information for listed hawksbill turtles can be found in the Recovery Plan for the Hawksbill Turtle in the U.S. Caribbean, Atlantic and Gulf of Mexico (NMFS and USFWS, 1993), the Hawksbill Turtle Status Review (NMFS, 1995), and the **Federal Register** notice of final listing determination (see 35 FR 8495, June 2, 1970). These documents include information on the status of the species, its life history characteristics and habitat requirements, as well as projects, activities, and other factors affecting the species.

The hawksbill turtle occurs in tropical and subtropical waters of the Atlantic, Pacific and Indian Oceans. The species is widely distributed in the Caribbean Sea and western Atlantic Ocean. Within the United States, hawksbills are most common in Puerto Rico and its associated islands, the U.S. Virgin Islands, and Florida.

International commerce in hawksbill shell, or "bekko," is considered the most significant factor endangering hawksbill turtle populations around the world. Despite international trade protections under CITES, trade in hawksbill shell continues. The illegal take of hawksbills at sea has not yet been fully quantified, but it is a continuing and serious problem.

Juvenile hawksbills are thought to lead a pelagic existence before recruiting to benthic feeding grounds at a size of approximately 25 cm straight carapace length (Meylan and Carr, 1982). Coral reefs, like those found in the waters surrounding Mona and Monito Islands, are widely recognized as the primary foraging habitat of juvenile, subadult, and adult hawksbill turtles. This habitat association is directly related to the species' highly specific diet of sponges (Meylan, 1988). Gut content analysis conducted on hawksbills collected from the Caribbean suggest that a few types of sponges make up the major component of their diet, despite the prevalence of other sponges on the coral reefs where hawksbills are found (Meylan, 1984). Vicente (1993) observed similar feeding habits in hawksbills foraging specifically in Puerto Rico. Additionally, the ledges and caves of the reef provide shelter for resting and refuge from predators.

The hawksbill's dependence on coral reefs for shelter and food links its well-being directly to the condition of reefs. Destruction of coral reefs due to deteriorating water quality and vessel anchoring, striking, or grounding is a growing problem.

The coral reefs of Mona and Monito Islands are among the few known remaining locations in the Caribbean where hawksbill turtles occur with considerable density (Diez and van Dam, 1996). Recent genetic studies indicate that this resident population of immature hawksbills comprises individuals from multiple nesting populations in the Wider Caribbean. These data indicate that the conservation of the juvenile population of hawksbill turtles at Mona can contribute to sustaining healthy nesting populations throughout the Caribbean Region (Bowen *et al.*, 1996). Additionally, data on hawksbill turtle diet composition and foraging behavior suggest that this high-density hawksbill population may play a significant role in maintaining sponge species diversity in the nearshore benthic communities of Mona and Monito Islands (van Dam and Diez, 1997).

Hawksbills utilize both low- and high-energy nesting beaches in tropical oceans of the world. Both insular and mainland nesting sites are known. Hawksbills will nest on small pocket beaches and, because of their small body size and great agility, can traverse fringing reefs that limit access by other species.

Nesting within the southeastern United States occurs principally in Puerto Rico and in the U.S. Virgin Islands, the most important sites being Mona Island in Puerto Rico and Buck Island Reef National Monument in the U.S. Virgin Islands. Mona Island supports the largest population of nesting hawksbill turtles in the U.S. Caribbean. Considerable nesting also occurs on the beaches of Culebra, Vieques, and mainland Puerto Rico, as well as St. Croix, St. John, and St. Thomas.

Need for Special Management Considerations or Protection

In order to assure that the essential areas and features described in previous sections are maintained or restored, special management measures may be needed. Activities that may require special management considerations for listed green and hawksbill turtle foraging and developmental habitats include, but are not limited to, the following:

(1) Vessel traffic—Propeller dredging and anchor mooring severely disrupt benthic habitats by crushing coral, breaking seagrass root systems, and severing rhizomes. Propeller dredging and anchor mooring in shallow areas are major disturbances to even the most robust seagrasses. Trampling of seagrass beds and live bottom, a secondary effect of recreational boating, also disturbs seagrasses and coral.

(2) Coastal construction—The development of marinas and private or commercial docks in inshore waters can negatively impact turtles through destruction or degradation of foraging habitat. Additionally, this type of development leads to increased boat and vessel traffic which may result in higher incidences of propeller- and collision-related mortality.

(3) Point and non-point source pollution—Highly colored, low salinity sewage discharges may provoke physiological stress upon seagrass beds and coral communities and may reduce the amount of sunlight below levels necessary for photosynthesis. Nutrient over-enrichment caused by inorganic and organic nitrogen and phosphorous from urban and agricultural run-off and sewage can also stimulate algal growth that can smother corals and seagrasses, shade rooted vegetation and diminish the oxygen content of the water.

(4) Fishing activities—Incidental catch during commercial and recreational fishing operations is a significant source of sea turtle mortality. Additionally, the increased vessel traffic associated with fishing activities can result in the destruction of habitat due to propeller dredging and anchor mooring.

(5) Dredge and fill activities—Dredging activities result in direct destruction or degradation of habitat as well as incidental take of turtles. Channelization of inshore and nearshore habitat and the disposal of dredged material in the marine environment can destroy or disturb seagrass beds and coral reefs.

(6) Habitat restoration—Habitat restoration may be required to mitigate the destruction or degradation of habitat that can occur as a result of the activities previously discussed. Additionally, habitat degradation resulting from episodic natural stresses such as hurricanes and tropical storms may require special mitigation measures.

Activities That May Affect Critical Habitat

A wide range of activities funded, authorized, or carried out by Federal agencies may affect the critical habitat requirements of listed green and hawksbill turtles. These include, but are not limited to, authorization by the U.S. Army Corps of Engineers for beach renourishment, dredge and fill activities, coastal construction such as the construction of docks and marinas, and installation of submerged pipeline; actions by the U.S. Environmental Protection Agency to manage freshwater discharges into waterways; regulation of

vessel traffic by the U.S. Coast Guard; U.S. Navy activities; authorization of oil and gas exploration by the Minerals Management Service; authorization of changes to state coastal zone management plans by NOAA's National Ocean Service; and management of commercial fishing and protected species by NMFS.

The Federal agencies that will most likely be affected by this critical habitat designation include the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency; the U.S. Coast Guard, the U.S. Navy, the Minerals Management Service, and NOAA. This designation will provide clear notification to these agencies, private entities, and the public of the existence of marine critical habitat for listed green and hawksbill turtles in the U.S. Caribbean, of the boundaries of the habitat, and of the protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed green and hawksbill turtles and their critical habitat and in determining when consultation with NMFS would be appropriate.

Expected Economic Impacts of Designating Critical Habitat

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see Consideration of Economic, Environmental and Other Factors section of this proposed rule). Incremental impacts result from special management activities in areas outside the present distribution of the listed species that have been determined to be essential to the conservation of the species. However, NMFS has determined that the present range of both species contains sufficient habitat for their conservation. Therefore, NMFS finds that there are no incremental impacts associated with this critical habitat designation.

Proposed Critical Habitat; Geographic Extent

NMFS is proposing to designate the waters surrounding Culebra, Mona, and Monito Islands, Puerto Rico, as critical habitat necessary for the continued survival and recovery of green and hawksbill sea turtles in the region.

Proposed critical habitat for listed green turtles includes waters extending seaward 3 nm (5.6 km) from the mean high water line of Culebra Island, Puerto Rico. These waters include Culebra's outlying Keys including Cayo Norte, Cayo Ballena, Cayos Geniquí, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven (see Figure 1). Culebra Island lies approximately 16 nm (29.7 km) east of the northeast coast of mainland Puerto Rico. The area in general is bounded north to south by 18°24′ North to 18°14′ North and east to west by 65°11′ West and 65°25′ West.

Proposed critical habitat for listed hawksbill turtles includes waters extending seaward 3 nm (5.6 km) from the mean high water line of Mona and Monito Islands, Puerto Rico. (see Figure 2). Mona Island lies approximately 39 nm (72 km) west of the southwest coast of mainland Puerto Rico. The area in general is bounded north to south by 18°13′ North to 18°00′ North and east to west by 67°48′ West and 68°01′ West.

Note: Figures 1 and 2 will not be published in the Code of Federal Regulations.

BILLING CODE 3510-22-P

Figure 1—Critical Habitat for Green Turtles. Critical Habitat Includes Waters Extending Seaward 3 nm (5.6 km) From the Mean High Water Line of Isla de Culebra (Culebra Island), Puerto Rico

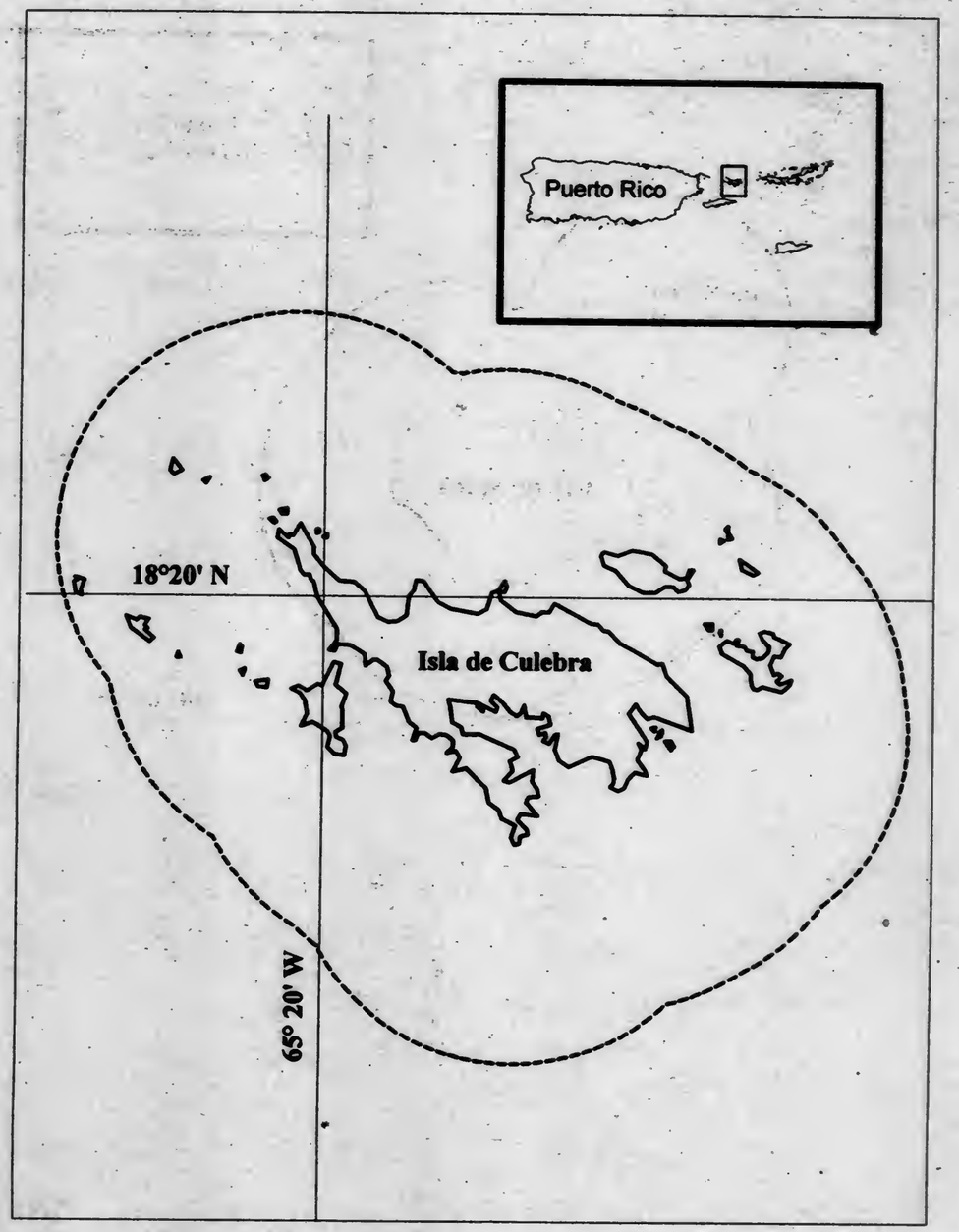
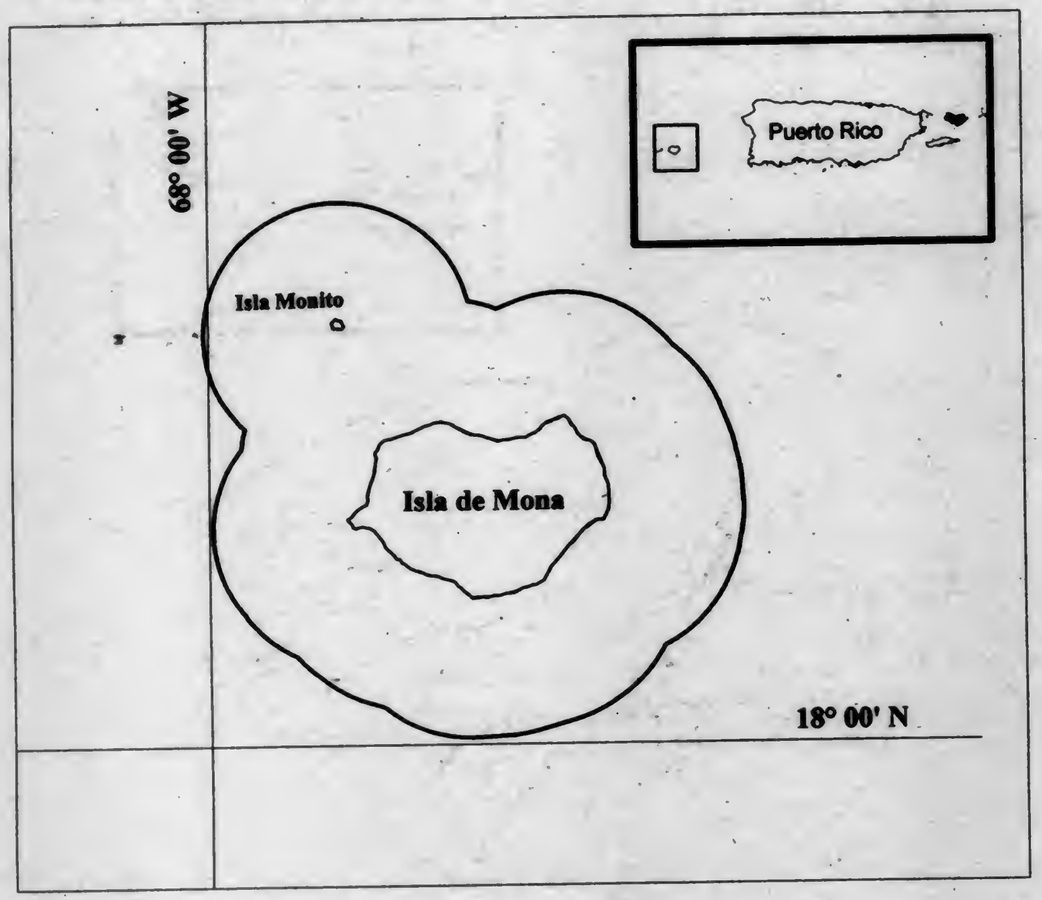


Figure 2—Critical Habitat for Hawksbill Turtles. Critical Habitat Includes Waters Extending Seaward 3 nm (5.6 km) From the Mean High Water Line of Isla de Mona (Mona Island) and Isla Monito (Monito Island), Puerto Rico



BILLING CODE 3510-22-C

Public Comments Solicited

NMFS is soliciting information, comments and/or recommendations on any aspect of this proposed rule from all concerned parties (see **ADDRESSES**). NMFS will consider all information, comments, and recommendations received before reaching a final decision.

Department of Commerce ESA implementing regulations state that the Secretary "shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to designate critical habitat." (see 50 CFR 424.16(c)(3)). Public hearings on the proposed rule provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters.

The public hearings on this proposed action have been scheduled for the month of January, 1998 (see **DATES**). Interested parties will have an opportunity to provide oral and written testimony at the public hearings. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Bridget Mansfield (see **FOR FURTHER INFORMATION CONTACT**).

Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this rule is not significant for purposes of Executive Order (E.O.) 12866.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS proposes to designate only areas within the current range of these sea turtle species as critical habitat; therefore, this designation will not impose any additional requirements or economic effects upon small entities, beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (ESA § 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside either species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on local businesses, organizations, and governments.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact of a substantial number of small entities, as described in the Regulatory Flexibility Act.

The AA has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the Commonwealth of Puerto Rico. This determination will be submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

NOAA Administrative Order 216–6 states that critical habitat designations under the ESA are categorically excluded from the requirement to prepare an EA or an environmental impact statement. However, in order to more clearly evaluate the impacts of the proposed critical habitat designation, NMFS has prepared an EA. Copies of the assessment are available on request (see **ADDRESSES**).

References

The complete citations for the references used in this document can be obtained by contacting Michelle Rogers, NMFS (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: December 15, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Sections 226.72 and 226.73 are added to subpart D to read as follows:

§ 226.72 Green sea turtle (Chelonia mydas).

(a) Culebra Island, Puerto Rico—Waters surrounding the island of Culebra from the mean high water line seaward to 3 nautical miles (5.6 km). These waters include Culebra's outlying Keys including Cayo Norte, Cayo Ballena, Cayos Geniquí, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven.

(b) [Reserved]

§ 226.73 Hawksbill sea turtle (Eretmochelys imbricata).

(a) Mona and Monito Islands, Puerto Rico—Waters surrounding the islands of Mona and Monito, from the mean high water line seaward to 3 nautical miles (5.6 km).

(b) [Reserved]

[FR Doc. 97–33217 Filed 12–18–97; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 62, No. 244
Friday, December 19, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

(Docket No. FV97–33–1 NC)

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for the Export Fruit Acts, Apple and Pear Act and the Export Grape and Plum Act.

DATES: Comments on this notice must be received February 17, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline C. Thorpe, Marketing Order Administration Branch, F & V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C., 20090-6456, Telephone (202) 720–8139 or Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION:

Title: Export Fruit Regulations—Export Apple and Pear Act (7 CFR part 33) and the Export Grape and Plum Act (7 CFR part 35).

OMB Number: 0581–0143.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Fresh apples, pears and grapes grown in the United States shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple and Pear Act (7 U.S.C. 581–590) and the Export Grape and Plum Act (7 U.S.C. 591–599). Currently, plums are not regulated under the Export Grape and Plum Act. The regulations issued under the Export Grape and Plum Act (7 CFR part 35) cover fresh grapes grown in the United States and shipped to foreign destinations, except Canada and Mexico. The regulations issued under the Export Apple and Pear Act (7 CFR part 3) cover fresh apples and pears grown in the United States shipped to foreign destinations. The Secretary of Agriculture is authorized to oversee the implementation of the export fruit acts and issue regulations regarding these commodities.

The information collection requirements in this request are essential to carry out the intent and administration of the export fruit acts. The Export Apple and Pear Act and the Export Grape and Plum Act have been in effect since 1933 and 1960 respectively.

Both Acts were designed to promote the foreign trade of the United States in apples, pears, grapes and plums; to protect the reputation of these American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce.

The regulations issued under the Acts (§ 33.11 for apples and pears, and § 35.12 for grapes) require that the U.S. Department of Agriculture (USDA) officially inspect and certify that each shipment of fresh apples, pears, and grapes is in compliance with all pertinent regulatory requirements effective under the Acts. Persons who ship fresh apples, pears, and grapes grown in the United States to foreign destinations must have such shipment inspected and certified by Federal or Federal-State Inspection Service (FSIS) inspectors. The FSIS is administered by the Agricultural Marketing Service.

The forms covered under this information collection require the minimum information necessary to effectively carry out the export fruit acts, and their use is necessary.

The information collection requirements in this request is primarily in the form of recordkeeping. Information needed by USDA is available on official Federal-State Inspection Service (FSIS) inspection certificates, and on phytosanitary inspection certificates issued by USDA's Animal Plant Health Inspection Service.

Export carriers are required to keep on file for three years copies of inspection certificates for apples, pears, and grapes transported by them. Export shippers are required to label certain containers of apples, pears, and grapes used for export shipments.

The number of exporters has remained fairly constant in recent years. There are an estimated 115 exporters who use the required forms and the corresponding forms have remained constant.

The information collection requirements in this request are periodically reviewed to ensure that they place as small a burden on the exporter as possible. Procedures have been streamlined to assure efficiency in administering the Acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.9528 hours per response.

Respondents: Fruit export shippers and export carriers.

Estimated Number of Respondents: 115.

Estimated Number of Responses per Respondent: 3.96.

Estimated Total Annual Burden on Respondents: 2,204.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C., 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 15, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33166 Filed 12–18–97; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service [1]

Food Stamp Program: Quality Control Provisions of the Mickey Leland Childhood Hunger Relief Act

AGENCY: Food and Consumer Service, USDA.

ACTION: Request for comments on proposed collection of information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this action invites the general public and other public agencies to comment on proposed information collections. Requirements in changes to the Food Stamp Program regulations based on the Mickey Leland Childhood Hunger Relief Act are the basis for information collection in the areas of arbitration and good cause. This action revises the information collection burden that currently includes the Quality Control (QC) sampling plan by adding to it the burdens for the QC arbitration and good cause processes. While these processes have existed since 1981, they have not been included in the burden previously. A notice for the development of the QC sampling plan, as required by Food Stamp Program regulations, was published March 4, 1997 and has been approved through July 31, 2000. The Department of Agriculture published a final rule on June 2, 1997, entitled Food Stamp Program: Quality Control Provisions of the Mickey Leland Childhood Hunger Relief Act, which implements changes to the arbitration and good cause processes.

DATES: Written comments must be submitted on or before February 17, 1998.

ADDRESSES: Send comments and requests for copies of this information collection to: Retha Oliver, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this action will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record. The Food and Consumer Service (FCS) will publish a document in the rules section of the **Federal Register** announcing the effective and implementation dates of the provisions contained in 7 CFR §§ 275.3(c)(4) and 275.23(e)(7) of the Leland Rule after the approval of the provisions by OMB under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Retha Oliver, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Regulations, Part 275—Quality Control.

OMB Number: 0584–0303.

Expiration Date: July 31, 2000.

Type of Request: Revision of a currently approved collection of information.

Abstract: Pursuant to Section 13951 of the Mickey Leland Childhood Hunger Relief Act (Pub. L. 103–66), the final rule entitled Quality Control Provisions of the Mickey Leland Childhood Hunger Relief Act, ("The "Leland Rule"), published June 2, 1997 (62 FR 29652), contains information collections which are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The reporting and recordkeeping burden associated with the Food Stamp Program QC sampling plan is approved through July 31, 2000, under OMB No. 0584–0303. This notice proposes to add the burdens for the QC arbitration and good cause processes to the burden that currently includes the QC sampling plan. The burden approved for the QC sampling plan is 266 hours per year. The annual burdens associated with the QC arbitration and good cause processes are estimated to total 1647 and 1917 respectively. The total annual burden for the QC sampling plan, arbitration and good cause processes is estimated to be 3630 hours. The increase of 3564 hours is solely the result of adding the arbitration and good cause processes to the burden.

The QC system contains procedures for resolving differences in review findings between State agencies and FNS. This is referred to as the arbitration process. The QC system also contains procedures which provide relief for State agencies from all or a part of a QC liability when a State agency can demonstrate that a part or all of an excessive error rate was due to an unusual event which had an uncontrollable impact on the State agency's payment error rate. In the past, information collections associated with the QC arbitration or good cause processes have not been included in the reporting and recordkeeping burden. However, since the good cause and arbitration processes have been implemented since 1981, in practice State agencies will not notice an actual increase in burden from current practice.

Quality Control Burden Associated With the Sampling Plan, Arbitration, and Good Cause

1. Sampling Plan

Affected Public: State agencies.

Estimated Number of Respondents: 53.

Estimated Number of Responses Per Respondent: 1.

Estimated Time Per Response: 5.0236 hours.

Estimated Total Annual Burden: 266.

2. Arbitration Process

Affected Public: State agencies.

Estimated Number of Respondents: 53.

Estimated Number of Responses Per Respondent: 3.1.

Estimated Time Per Response: 10.0236 hours.

Estimated Total Annual Burden: 1647.

3. Good Cause Process

Affected Public: State agencies.

Estimated Number of Respondents: 53.

Estimated Number of Responses Per Respondent: 0.226.

Estimated Time Per Response: 160 hours.

Estimated Total Annual Burden: 1917.

4. Combined Quality Control Burden Associated With the Sampling Plan,

[1] The agency name of the Food and Consumer Service was changed to the Food and Nutrition Service by order of the Secretary of Agriculture on November 25, 1997.

Arbitration and Good Cause: 3830 hours.

Dated: December 15, 1997.

Yvette S. Jackson,

Administrator, Food and Consumer Service.

[FR Doc. 97–33190 Filed 12–18–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Fatty-Piper Access Requests Project, Flathead National Forest, Swan Lake Ranger District, Lake County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Flathead National Forest, Swan Lake Ranger District, will prepare an environmental impact statement on a proposal to grant easements and authorize construction of roads across National Forest System lands in the Cedar Creek, Fatty Creek, and Piper Creek watersheds. The action is proposed in response to an applicant seeking permanent, roaded access to approximately 1,760 acres of non-federal land located within the Flathead National Forest boundary. The requested easements are located roughly 20 miles south of Swan Lake, Montana. The non-federal land to be accessed is located in sections 9, 15, and 23, Township 22 North, Range 18 West and section 35, Township 23 North, Range 18 West, Lake County, Montana. The easements are requested on National Forest System lands in sections 4, 10, and 14, Township 22 North, Range 18 West and section 34, Township 23 North, Range 18 West. The proposed project will be in compliance with the direction in the Flathead National Forest Land and Resource Management Plan (December, 1985), which provides the overall guidance for management of the area. The agency gives written notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing at the address shown below by January 23, 1998.

ADDRESSES: Submit written comments to Charles E. Harris, District Ranger, Swan Lake Ranger District, 200 Ranger Station Road, Bigfork, Montana 59911.

FOR FURTHER INFORMATION CONTACT: Questions about this environmental impact statement should be directed to Dennis McCarthy, Planning Team Leader, Swan Lake Ranger District, 200 Ranger Station Road, Bigfork, Montana 59911; phone (406) 837–7500.

SUPPLEMENTARY INFORMATION: The Swan Lake Ranger District is initiating this action in response to four applications filed by Plum Creek Timber Company, L.P. (Plum Creek). Plum Creek requested rights-of-way across Forest Service lands for the purpose of establishing permanent, roaded access to approximately 1,760 acres in four sections of Plum Creek land. The applications involve requests for five segments of road totaling approximately three miles across Forest Service land. Plum Creek has stated that it intends to manage these sections of land for long-term timber production using conventional ground-based logging systems and build roads on the permitted rights-of-way, sufficient to support timber production.

Plum Creek has no roaded access to two of the sections of land, which are surrounded by National Forest System lands. Plum Creek has limited access to the other two sections and has requested additional roaded access to them. Plum Creek seeks permanent, roaded access pursuant to federal regulations at 36 CFR part 251 (subpart D—Access to Non-Federal Lands), 36 CFR part 212 (Ingress and Egress) and the Alaska National Interest Lands Conservation Act (ANILCA) and its implementing regulations.

Swan Lake Ranger District personnel invited comments on the environmental analysis for this project in September, 1996, by sending a scoping notice to people on the District's mailing list. Subsequently, District personnel determined that they should prepare an environmental impact statement. The comments received in response to the September, 1996 scoping will be taken into consideration along with comments received on the draft environmental impact statement. Some of the issues identified include impacts to: Water quality; soils and slope stability; air quality; proximity to the Mission Mountains Wilderness; threatened, endangered, and sensitive animal, plant, and fish species and habitat (i.e., grizzly bear, bull trout, water howellia); old-growth forests; roadless area; and recreational experiences.

Swan Lake Ranger District personnel will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. The scoping period for the draft environmental impact statement will extend to January 23, 1998. This information will be used in preparation of the draft environmental impact statement.

The draft environmental impact statement will be filed with the Environmental Protection Agency and will be made available for public review in February, 1998. At that time, copies of the draft environmental impact statement will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The Environmental Protection Agency will publish a notice of availability of the draft environmental impact statement in the **Federal Register**. The comment period will be no less than 45 days from the date that appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corporation* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (8th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wisconsin, 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of chapters of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final environmental impact statement is scheduled to be completed by May, 1998. In the final environmental impact statement, the Swan Lake Ranger District is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft environmental impact statement and applicable laws, regulations and policies considered in making the decision regarding this proposal. Charles E. Harris, District Ranger, Swan Lake Ranger District, is the responsible official and his decision and reasons for this decision will be documented in the Record of Decision. The decision will be subject to Forest Service appeal regulations (36 CFR 215).

Dated: December 8, 1997.

Charles E. Harris,

District Ranger.

[FR Doc. 97–33062 Filed 12–18–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent To Request a Revision of a Currently Approved Information Collection

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and the Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Natural Resources Conservation Service's (NRCS) intention to request a revision to a currently approved information collection, the Rural Abandoned Mine Program.

DATES: Comments on this notice must be received by February 17, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Marcella Graham, Agency OMB Clearance Officer, Natural Resources Conservation Service, U.S. Department of Agriculture, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890, (202) 720–5699.

SUPPLEMENTARY INFORMATION:

Title: Rural Abandoned Mine Program.

OMB Number: 0578–0019.

Expiration Date of Approval: May 31, 1998.

Type of Request: To reinstate, with change, a previously approved collection for which approval has expired.

Abstract: The primary objective of the Natural Resources Conservation Service is to work in partnership with the American people to conserve and sustain our natural resources. The Rural Abandoned Mine Program authorizes Federal technical and financial long-term cost-sharing assistance for conservation treatment and reclamation of abandoned coal mined land with eligible land users. The financial assistance is based on a conservation plan for reclamation which is made a part of an agreement or contract for a 5 or 10-year period of time. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, Federal cost-share payments are made to the land users, or third party, upon successful application of the conservation treatment.

Information collected is used by the NRCS to ensure proper utilization of program funds. The *NRCS–LTP–013* is used to record progress in applying the conservation/reclamation plan (7 CFR 632.24), such as the verification, revision or modification of the conservation plan, as well as recording the need for any follow up technical assistance. The *NRCS–LTP–150* is for the land user to enter into a contract with NRCS to receive Federal cost-share assistance (7 CFR 632.22). The *NRCS–LTP–151* is used to notify the participant, with an active agreement or contract, that information has been received which indicates a violation of the contract (7 CFR 632.42 (b)(1)(2)). The *NRCS–LTP–152* is used during the contract period when the land user loses control of all or part of the right and interest in the land (7 CFR 632.22(f)). The *NRCS–LTP–153* is used is used when non-compliance of the contract is indicated (7 CFR 632.41). The *NRCS–LTP–156* is the basic document used by landowners to request assistance through the local NRCS field office (7 CFR 632.20). The *NRCS–FNM–140* is used to authorize the vendor to furnish the conservation materials and services described in column (b) of the form (7 CFR 632.31(e)). This information collection is being resubmitted to reflect the elimination of two forms previously authorized (*NRCS–LTP–154* and *NRCS–LTP–155*) and to reflect a scaled-down program. NRCS will ask for 3-year OMB approval within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.50 hours per response.

Respondents: Farms, individuals or households, or State, local, or Tribal governments.

Estimated Number of Respondents: 438.

Estimated Total Annual Burden on Respondents: 223 hours.

Copies of this information collection and related instructions can be obtained without charge from Marcella Graham, the Agency OMB Clearance Officer, at (202) 720–5699.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information,including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology. Comments may be sent to: Marcella Graham, Agency OMB Clearance Officer, U.S. Department of Agriculture, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C. on December 15, 1997.

Thomas A. Weber,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 97–33126 Filed 12–18–97; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the First Quarter of 1998

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the first quarter of 1998.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for

advances on municipal rate loans with interest rate terms beginning during the first calendar quarter of 1998.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning January 1, 1998, and ending March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn Dotson, Loan Funds Control Assistant, U.S. Department of Agriculture, Rural Utilities Service, room 2234–S, Stop 1524, 1400 Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–1928. FAX: 202–690–2268. E-mail: CDotson@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the first calendar quarter of 1998 for municipal rate electric loans. RUS regulations at 7 CFR 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to 7 CFR 1714.5, the interest rates on these advances are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in 7 CFR 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of "Municipal Market Data—General Obligation Yields" or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 1998 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under 7 CFR 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.375 percent.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the first calendar quarter of 1998.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2019 or later	5.250
2018	5.250
2017	5.250
2016	5.125
2015	5.125
2014	5.125
2013	5.125
2012	5.000
2011	4.875
2010	4.750
2009	4.750
2008	4.625
2007	4.500
2006	4.500
2005	4.375
2004	4.375
2003	4.250
2002	4.125
2001	4.000
2000	3.875
1999	3.750

Dated: December 10, 1997.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 97–33165 Filed 12–18–97; 8:45 am]

BILLING CODE 3410–15–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the J Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Janitorial/Grounds Maintenance, U.S. Army Reserve Center, 1900 Green Springs Highway, Birmingham, Alabama
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–33196 Filed 12–18–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies (Requirements for the Naval Support Activity, Millington, Tennessee)
NPA: National Industries for the Blind, Alexandria, Virginia

Pillow, Bed
7210–01–448–9432
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina

Services

Janitorial/Custodial, Department of Veterans Affairs Service and Distribution Center, Building #37—Warehouse, Hines, Illinois
NPA: Jewish Vocational Service & Employment Center, Chicago, Illinois
Switchboard Operation, West Los Angeles VAMC, Los Angeles, California
NPA: Service Disabled Veterans Business Association, Stanford, California

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Napkin, Paper
8540–01–350–6418
Napkin, Junior Dispenser
8540–01–350–6419

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–33198 Filed 12–18–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 20, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 24, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (62 F.R. 55390) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pen, Metal Barrel & Refills
7520–01–445–7221
7520–01–445–7226
7520–01–445–7230
7520–01–445–7237
7510–01–446–4835
7510–01–446–4845
7510–01–446–4846
7510–01–446–4850

Services

Janitorial/Custodial, U.S. Army Reserve Center, Middletown, Connecticut
Janitorial/Custodial, U.S. Army Reserve Center, Springfield, Massachusetts
Janitorial/Custodial, U.S. Army Reserve Center, Westover, Massachusetts

Janitorial/Custodial, Federal Building and Courthouse, 300 Virginia Street, Charleston, West Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–33199 Filed 12–18–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 64351, F.R. Doc. 97–31939, in the issue of December 5, 1997, in the third column, the listing for Office and Miscellaneous Supplies (Requirements for the Marine Corps Air Station, Beaufort, North Carolina) should read (Requirements for the Marine Corps Air Station, Beaufort, South Carolina).

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–33197 Filed 12–18–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Advance Monthly Retail Sales Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Ronald L. Piencykoski, Bureau of the Census, Room 2626–FOB 3, Washington, D.C. 20233–6500, (301) 457–2713.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Advance Monthly Retail Sales Survey (MARTS) provides an early indication of current retail sales activity at the United States level. Policymakers such as the Federal Reserve Board need to have the most timely estimates in order to anticipate economic trends and act accordingly. The Bureau of Economic Analysis (BEA), the Council of Economic Advisors, and other government agencies and businesses use the data to formulate economic policy and make decisions. These estimates have a high BEA priority because of their timeliness. There would be approximately a month delay in the availability of these data if this survey were not conducted. Data are collected monthly from small, medium, and large size businesses, selected using a stratified random sampling procedure. The MARTS sample is reselected periodically, generally at two year intervals. Small and medium-size retailers are requested to participate for those two years, after which they are replaced with new panel members. Smaller firms have less of a chance for selection due to our sampling procedure. Firms canvassed in this survey are not required to maintain additional records and carefully prepared estimates are acceptable if book figures are not available. The change in the response burden is a result of a larger sample size. The sample was increased from 3,363 to 4,100 to improve the quality of the estimates.

II. Method of Collection

We will collect this information by mail, FAX and telephone follow-up.

III. Data

OMB Number: 0607–0104.
Form Number: B–104.
Type of Review: Regular Submission.
Affected Public: Retail Businesses.
Estimated Number of Respondents: 4,100.
Estimated Time Per Response: .0833 hrs (5 minutes).
Estimated Total Annual Burden Hours: 4,100 hours.
Estimated Total Annual Cost: The cost to the respondent is estimated to be $55,965, based on annual response burden of 4,100 hours and a rate of $13.65 per hour to complete the form.
Respondent's Obligation: voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 15, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–33173 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Security Assessment of the U.S. High Performance Military Explosives and Components Sector

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration (BXA), Department of Commerce, Room 3876, 14th and Constitution Avenue, NW, Washington, DC 20230 (telephone no. (202) 482–4060).

SUPPLEMENTARY INFORMATION:

I. Abstract

Commerce/Bureau of Export Administration (BXA) is conducting an assessment of the domestic high performance military explosives and components sector in order to determine the competitiveness of the U.S. industry and its ability to support current and future defense needs.

II. Method of Collection

The information will be collected using a non-recurring, mandatory survey. It will be collected in written form.

III. Data

The survey will collect information on the nature of the business performed by each firm; estimated sales and employment data; financial information; research and development expenditures and funding sources; capital expenditures and funding sources; and competitiveness issues.

OMB Number: none.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: The domestic high performance military explosives and related components industry.
Estimated Number of Respondents: 40.
Estimated Time Per Response: 6.0 hours.
Estimated Total Annual Burden Hours: 240 hours.
Estimated Total Annual Cost: $8,194 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 15, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–33174 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

International Import Certificate

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, Room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States and twenty other countries have undertaken to increase the effectiveness of their respective controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country with respect to a specific transaction, the importer certifies to the U.S. Government that he/she will import specific commodities into the United States and will not reexport such commodities except in accordance with the export control regulations of the United States. The U.S. Government, in turn, certifies that such representations have been made.

II. Method of Collections

This information is provided in written form.

III. Data

OMB Number: 0694–0017.
Form Number: Form BXA–645P, International Import Certificate.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 7,441.
Estimated Time Per Response: 16 minutes per response.
Estimated Total Annual Burden Hours: 1,986.
Estimated Total Annual Cost: $148,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 15, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–33175 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Short Supply Regulations, Petroleum (Crude Oil)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th & Constitution Avenue, NW, Room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is collected as supporting documentation for license applications to export petroleum (crude oil) and used by licensing officers to determine the exporter's compliance with the 5 statutes governing this collection.

II. Method of Collection

The information is provided in written form.

III. Data

OMB Number: 0694–0027.
Form Number: BXA–748P.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 24.
Estimated Time Per Response: 4–12 hours per response.
Estimated Total Annual Burden Hours: 192.
Estimated Total Annual Cost: $2,880.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 15, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–33176 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Notification of Commercial Invoices That Do Not Contain a Destination Control Statement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, Room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

To insure that U.S. exports go only to legally authorized destinations, "a destination control statement" is required to be entered on all commercial invoices and bills of lading or air waybills covering an export from the United States. The same statement must appear on all copies of all such shipping documents that apply to the same shipment. The exporter has the primary responsibility for assuring that the statement is entered on the commercial invoice, regardless of whether he prepares this document. If a forwarder, a carrier acting as a forwarder, or any other party prepares, presents, and/or executes a commercial invoice, that person is also responsible for assuring that an appropriate statement is entered on the document. Consequently, when a forwarding agent finds the documentation lacks the appropriate destination control statement, then he/she is required to notify the exporter of the problem. The forwarder must obtain a written assurance from the exporter that all copies have been corrected.

II. Method of Collection

This collection is a written requirement between freight forwarders and exporters.

III. Data

OMB Number: 0694–0038.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 40.
Estimated Time Per Response: 18 minutes per response.
Estimated Total Annual Burden Hours: 11.
Estimated Total Annual Cost: $420.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they will also become a matter of public record.

Dated: December 15, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–33177 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 936]

Grant of Authority for Subzone Status, Diesel Technology Company (Inc.) (Diesel Engine Fuel Injection Components), Kentwood, Michigan

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Kent Ottawa Muskegon Foreign Trade Zone Authority, grantee of Foreign-Trade Zone 189, for authority to establish special-purpose subzone status for the diesel engine fuel injection components manufacturing facilities of the Diesel Technology Company (Inc.), in Kentwood, Michigan, was filed by the Board on October 31, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 80–96, 61 FR 58036, 11–12–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Diesel Technology Company (Inc.), facilities in Kentwood, Michigan (Subzone 189A), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 11th day of December 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–33239 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 938]

Approval of Manufacturing Activity Within Foreign-Trade Zone 38, Spartanburg, South Carolina; Zeuna Stärker USA, Inc. (Automotive Exhaust Systems)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the South Carolina State Ports Authority, grantee of FTZ 38, has requested authority under § 400.28(a)(2) of the Board's regulations on behalf of Zeuna Stärker USA, Inc., to manufacture automotive exhaust systems under zone procedures within FTZ 38—Site 4, Spartanburg, South Carolina (filed 2–18–97; FTZ Doc. 10–97, 62 FR 10022, 3–5–97);

Whereas, the Board adopts the findings and recommendation of the examiner's report, including a recommended restriction on stainless steel pipe, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied and that the proposal is in the public interest, subject to restriction;

Now, therefore, the Board hereby approves the request subject to the Act and the Board's regulations, including § 400.28, and further subject to a restriction requiring that privileged foreign status (19 CFR 146.41) must be elected on all foreign origin stainless steel pipe admitted to FTZ 38 for the Zeuna Stärker USA, Inc., activity, as indicated in the application.

Signed at Washington, DC, this 11th day of December 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–33240 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order NO. 940]

Grant of Authority For Subzone Status Polaris Industries, Inc. (Small Sperk-Ignition Engines) Osceola, Wisconsin

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

WHEREAS, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

WHEREAS, an application from Brown County, Wisconsin, grantee of Foreign-Trade Zone 167, for authority to establish special-purpose subzone status for the small internal-combustion engine manufacturing plant of Polaris Industries, Inc., in Osceola, Wisconsin, was filed by the Board on December 11, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 84–96, 61 FR 66652, 12–18–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Polaris Industries, Inc., plant in Osceola, Wisconsin (Subzone 167B), at the location described in the application,

subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 11th day of December 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. De Pente, Jr.,

Executive Secretary.

[FR Doc. 97–33241 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–802]

Certain Cut-to-Length Carbon Steel Plate From Finland: Antidumping Duty Administrative Review: Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of the antidumping duty administrative review of Certain Cut-to-Length Carbon Steel Plate from Finland. This review covers the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Heather Osborne or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.; telephone (202) 482–3019 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: Due to the complexity of issues involved in this case, it is not practicable to complete this review within the original time limit. The Department is extending the time limit for completion of the final results until January 12, 1998, in accordance with Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. See memorandum to Robert S. LaRussa from Joseph A. Spetrini regarding the extension of the case deadline, dated December 12, 1997.

This extension is in accordance with 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: December 12, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–33236 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–818)

Certain Pasta From Italy: Termination of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 27, 1997, the Department of Commerce published a notice of initiation of a new shipper administrative review of the antidumping duty order on certain pasta from Italy. The Department is now terminating this review.

EFFECTIVE DATE: December 19, 1997.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Sunkyu Kim, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5288 or 482–2613, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to the regulations at 19 CFR Section 353, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1997, GSA S.r.l. ("GSA") requested that the Department conduct a new shipper review of the antidumping duty order on certain pasta from Italy. On February 27, 1997, the Department published in the **Federal Register** (62 FR 8927) a notice of initiation of a new shipper administrative review of the antidumping duty order on certain pasta from Italy covering GSA and the period July 1, 1996, through January 31, 1997. On March 3, 1997, we issued the Department's antidumping duty questionnaire [1] to GSA. GSA submitted its response to Section A of the questionnaire on March 28, 1997. Based on our review of the Section A response, we issued a supplemental questionnaire on April 25, 1997. GSA submitted its response to the supplemental Section A questionnaire along with its Sections B and C responses on May 6, 1997. Subsequently, we issued additional supplemental questionnaires to GSA. GSA's responses to these questionnaires were received in June, July and September 1997.

On August 13, 1997, in accordance with 19 CFR 353.22 (h)(7), the Department extended the time for completion of the preliminary results of this review to no later than December 17, 1997, because the Department determined that this case is extraordinarily complicated (62 FR 44107 (August 19, 1997)).

Termination of Review

The respondent, GSA, is a trading company in Italy that purchased the merchandise under review from an unaffiliated producer and resold to customers in the home market and the United States during the POR. Based on our analysis of the data submitted to date by GSA, we conclude that the producer of GSA's pasta, which is unaffiliated with GSA, knew or had reason to know that its merchandise was destined for export to the United States at the time it sold the merchandise to GSA. Specifically, GSA stated that the subject pasta was packaged and labeled at the time of production by the producer. A copy of the packaging, provided in GSA's July 18, 1997, submission, which is identical in all material respects to the packaging for the pasta actually purchased and shipped to the United States by GSA, contains information indicating that the product is destined for the United States. Specifically, the packaging contains the address of the U.S. importer. Additionally, certain proprietary information on the record concerning the nature of the relationship between the parties involved in this review demonstrate that the producer knew or had reason to know that the pasta it sold to GSA was destined for the United States. For a further discussion, see Memorandum to Richard Moreland, Acting Deputy

[1] Section A of the questionnaire requests information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request home market sales listings and U.S. sales listings, respectively.

Assistant Secretary, Import Administration, dated November 23, 1997.

In determining the basis for export price, we examine the price at which the first party in the chain of distribution which has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of destination, is the appropriate party to be reviewed. See Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review 61 FR 68229 (December 27, 1996).

In this case, GSA's unaffiliated producer knew or had reason to know that its merchandise was destined for export to the United States at the time it sold the merchandise to GSA. Therefore, we determine that it is inappropriate to review GSA's sales transactions. Moreover, no request was made to review the producer's sales. Accordingly, we are terminating the current new shipper review with respect to GSA.

This notice is published pursuant to 19 CFR 353.22(h).

Dated: December 12, 1997.

Robert S. LaRussa,

Assistant Secretary, For Import Administration.

[FR Doc. 97–33237 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Purdue University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–046R. *Applicant:* Purdue University, West Lafayette, IN 47907–1084. *Instrument:* Stopped-Flow Spectrophotometer/Fluorimeter System, Model SF–61DX2/X. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 62 FR 58706, October 30, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Double-mixing of up to four independent solutions, (2) a wide range of aging times and (3) a microvolume rapid quench-flow system. The National Institutes of Health advises in its memorandum dated November 5, 1997 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–33238 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121197D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Reef Fish Stock Assessment Panel (RFSAP) and the Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

DATES: A joint meeting of the RFSAP and Standing and Special Reef Fish SSC will be held beginning at 1:00 p.m. on Monday, January 5, 1998, and will conclude by 3:00 p.m. on Thursday, January 8, 1998.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The RFSAP and SSC will review the NMFS Gulf of Mexico red snapper stock assessment that was prepared in October 1997. The RFSAP conducted a preliminary review of this assessment in October, but were unable to recommend an acceptable biological catch (ABC) at that time due to insufficient time to conduct a thorough review. In addition to the NMFS Gulf of Mexico red snapper stock assessment, the RFSAP and SSC will also review the NMFS South Atlantic red snapper stock assessment for comparison to the Gulf of Mexico assessment; an independent Gulf of Mexico red snapper stock assessment by Dr. Brian Rothschild, University of Massachusetts; new information on shrimp trawl bycatch reduction devices; and independent peer group evaluations of the red snapper management process that were compiled for NMFS by the American Fisheries Society.

The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. They advise the Council on the status of stocks and level of ABC. The SSC is composed of biologists, economists, and sociologists who are knowledgeable about the technical aspects of fisheries in the Gulf of Mexico. They assess the acceptability of the scientific information and of the ABC recommendation. The SSC may also recommend a specific level of total allowable catch (TAC) from within the ABC range, and management measures needed to implement the TAC, in particular, management measures that may prevent a recreational quota closure in 1998.

The Council will set the 1998 red snapper TAC and associated management measures at its meeting in Point Clear, AL, on January 19–23, 1998, based on the recommendations of the RFSAP, SSC, and public testimony that will be taken at the Council meeting.

Although other issues not contained in this agenda may come before the joint RFSAP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during this meeting. RFSAP/SSC action will be restricted to those issues specifically identified in the agenda listed in this notice.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 29, 1997.

Dated: December 12, 1997.

Gary C. Matlock, Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33216 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121197C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Precious Corals Plan Team.

DATES: The meeting will be held on January 30, 1998, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the NMFS Honolulu Laboratory, 2570 Dole St., Rm. 112, Honolulu, HI; telephone: 808–943–1221.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Precious Corals Plan Team will discuss (1) the status of the precious corals fishery and the recent survey of Makapu'u Bed; (2) a final draft of a Precious Corals Fishery Management Plan (FMP) amendment to establish a framework procedure in the FMP and include the exclusive economic zone around the Northern Mariana Islands in the FMP area; (3) the inconsistency of Hawaii State and Federal regulations for the harvest of precious corals; (4) other issues as required.

Although other issues not contained in this agenda may come before this Plan Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Plan Team action during this meeting. Plan Team action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: December 12, 1997.

Gary C. Matlock, Ph.D.,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33134 Filed 12–18–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: TRICARE Retiree Dental Program enrollment Form; Contractor Designed Format (No DD Form Number); OMB Number 0720–0015.

Type of request: Extension.

Number of Respondents: 286,570.

Responses per Respondent: 1.

Annual Responses: 286,570.

Average Burden per response: 15 minutes.

Annual Burden Hours: 71,640.

Needs and Uses: Conditional approval for the information collection was granted under OMB approval number 0720–0015 pending development of a contractor designed enrollment form which is being submitted for approval. The form will be submitted to OMB concurrently with publication of the final rule. The collection instrument serves as an application form for military members entitled to retired pay and eligible dependents to enroll in the TRICARE Retiree Dental Program. The enrollment application will allow the Department to collect the information necessary to properly identify the program's applicants and to determine their eligibility for enrollment in the TRICARE Retiree Dental Program. In completing and signing an enrollment form, applicants will acknowledge that they understand the benefits offered under the program and the rules they must follow to continue their participation in the program. Further, applicants will acknowledge that the premium will be withheld from retired pay when such pay is available. Initial enrollment will be for a period of 24 months followed by month to month enrollment as long as the enrollee chooses to continue enrollment.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD/Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suit 1204, Arlington, VA 22202–4302.

Dated: December 15, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33112 Filed 12–18–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

DATE OF MEETING: January 28, 1998 from 1200 to 1700 and January 29, 1998 from 0830 to 1200.

PLACE: National Highway Institute, Conference Room 302, 901 North Stuart Street, Arlington, VA.

MATTERS TO BE CONSIDERED: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Levine, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: December 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33106 Filed 12–18–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare Environmental Impact Statement for the Realistic Bomber Training Initiative in Texas and New Mexico

The United States Air Force (USAF) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of a proposal to implement the Realistic Bomber Training Initiative (RBTI). This proposal is intended to provide efficient, integrated training opportunities for aircrews flying B–1B aircraft from Dyess Air Force Base (AFB), Texas, and B–52H aircraft from Barksdale AFB, Louisiana. The proposed action for RBTI would involve several interrelated elements:

1. Modifications and additions to existing military training route (MTR) airspace used generally for low-altitude training activities;
2. Modifications and additions to existing military operations area (MOA) airspace used for medium to high altitude training and maneuvering;
3. Increased flights by B–1B and B–52H aircraft in the MTR and MOA airspace;
4. Acquisition of a total of 12, 15-acre parcels under the MTR and MOA airspace for construction and operation of an Electronic Scoring Site system consisting of electronic emitters and associated facilities; and
5. Closure of existing Electronic Scoring Site systems at Harrison, Arkansas and La Junta, Colorado, and transfer of equipment to the proposed Electronic Scoring Site system developed for RBTI.

The Air Force has developed three alternatives, each of which fulfills the requirements of the proposed action. Two of these alternatives use airspace over lands located in west Texas; the third uses airspace in northeastern New Mexico. All three of these alternatives, and the No-Action alternative will be evaluated in the EIS. If feasible alternatives are developed as part of the scoping process, they will be included in the EIS.

Implementation of any of the three alternatives fulfilling the proposed action would require the Federal Aviation Administration to modify existing special use airspace and to chart new airspace. Similarly, the Air Force would undertake real estate actions to acquire access to the 12, 15-acre sites for the electronic scoring system.

The information in this EIS will be considered in making the decision whether to implement RBTI, and if so, to select an alternative for implementation. A separate EIS is currently being conducted by the Air Force to address use of existing military airspace over west Texas and northeastern New Mexico by units stationed at Holloman AFB, New Mexico. This proposal, as well as other actions, will be assessed for potential cumulative impacts in the RBTI EIS.

The Air Force intends to hold several public scoping meetings in the potentially affected areas of Texas and New Mexico. Dates, times, and locations for these meetings will be announced through press releases, newspapers and other media sources accessible to the public and agencies. These meetings are the first step in asking for public and government agency comments on the RBTI proposal. Comments provided at these meetings and throughout the scoping process should focus on the merits of the proposal, alternatives, and the nature and scope of environmental issues and other concerns that need to be addressed in the EIS. During the meetings, the Air Force will describe the proposed action and all alternatives, the National Environmental Policy Act process, and outline the opportunities for public involvement in the process.

Comments will be accepted throughout the analysis process, however, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by February 17, 1998.

RBTI EIS, c/o 7 CES/CEV, 710 3rd Street, Dyess AFB, TX 79607.

Barbara A. Carmichael

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–33209 Filed 12–18–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of Fort McClellan, Alabama

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality, the Army has prepared a DEIS for the Disposal and Reuse of Fort McClellan (FMC), Alabama. The approved 1995 base closure and realignment actions required by the Base Closure and Realignment Act of 1990 (Pub. L. 101–510), and subsequent actions in compliance wit this law, mandated the closure of FMC. It is Department of Defense (DoD) policy to dispose of property no longer needed by DoD. Consequently, as a result of the mandated closure of FMC, the Army is disposing of excess property at FMC.

The DEIS analyzes three disposal alternatives: (1) The no action alternative, which entails maintaining the property in caretaker status after closure; (2) the encumbered disposal alternative, which entails transferring the property to future owners with Army-imposed limitations, or encumbrances, on the future use of the property; and (3) the unencumbered disposal alternative, which entails transferring the property to future owners with fewer or no Army-imposed restrictions on the future use of the property. The preferred action identified in this DEIS is encumbered disposal of excess property at FMC. Based upon the analysis contained in the DEIS, encumbrances and deed restrictions associated with the Army's disposal actions for FMC will be mitigation measures.

Planning for the reuse of the property to be disposed of is a secondary action resulting from closure. The local community has established the Fort McClellan Reuse and Redevelopment Authority (FMRRA) to produce a reuse development plan for the surplus property. The impacts of reuse are evaluated in terms of land use intensities. This reuse analysis is based upon implementing one of three reuse alternatives, all of which are based upon the FMRRA draft reuse plan. The Army has not selected one of these three alternatives as the preferred action. Selection of the preferred reuse plan is a decision that will be made by the FMRRA.

DATES: The review period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the EPA. Comments on the DEIS will be used in preparing the Final Environmental Impact Statement and a Record of Decision for the Army action.

COPIES: Copies of the DEIS have been forwarded to the Environmental Protection Agency (EPA), other Federal, state and local agencies, public officials; and organizations and individuals who previously requested copies of the DEIS. Copies of the DEIS and related support studies are available for review at the following FMC libraries: Abrams (Fort McClellan Community) Library, Building 2102, Fort McClellan, Alabama 36205–5020; Fischer Library, U.S. Army Chemical School, Fifth Avenue, Building 1081, Fort McClellan, Alabama 36205; and the Military Police School Library, U.S. Army Military Police School, Building 3181, Fort McClellan, Alabama 36205; as well as the following public and other libraries: Anniston-Calhoun County Public Library, 108 East 10th Street, Anniston, Alabama 36202; Cole Library, Jacksonville State University, 700 Pelham Road, North, Jacksonville, Alabama 36265; Jacksonville Public Library, 200 Pelham Road, North, Jacksonville, Alabama 36205; Oxford Public Library, 213 Choccolocco Street, Oxford, Alabama 36203; and Mobile District, Army Corps of Engineers, 109 Saint Joseph Street, Mobile, Alabama 36628.

ADDRESSES: Questions and/or written comments regarding the DEIS, or a request for a copy of the document may be directed to Mr. Curtis Flakes at the Mobile District, U.S. Army Corps of Engineers (ATTN: CESAM–PD–EC), P.O. Box 2288, Mobile, AL 36602–3630; phone: 334–690–2693 and telefax: 334–690–2727.

SUPPLEMENTARY INFORMATION: A public meeting will be held during the 45-day comment period to afford the public the opportunity to provide oral and written comments on the DEIS. The location and time of the meeting will be announced in local newspapers at least 15 days prior to the meeting. Interested persons are invited to attend this public meeting. Verbal comments at the public meeting will be limited to 5 minutes per person. Individuals desiring to make longer statements may provide written comments to the address above.

Dated: December 9, 1997.

Gary W. Abrisz,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–32880 Filed 12–18–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to Amend System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 20, 1998 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December , 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0640–10a TAPC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ) *(February 22, 1993, 58 FR 10166).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add '(includes documents pertaining to pre-separation and job assistance needs in transition from military to civilian life),' after 'retirement' in line 42.

* * * * *

A0640–10a TAPC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ).

SYSTEM LOCATION:

Active and Reserve Army Commands/field operating agencies, installations, activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted, warrant and commissioned officers on active duty in the U.S. Army; enlisted, warrant and commissioned officers of the U.S. Army Reserve in active reserve (unit or non-unit) status; retired persons; commissioned/warrant officers separated after June 30, 1917 and enlisted personnel separated after October 31, 1912.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records reflecting qualifications, emergency data, enlistment and related service agreement/extension/active duty orders; military occupational specialty evaluation data; group life insurance election; record of induction; security questionnaire and clearance; transfer/discharge report/Certificate of Release or Discharge from Active Duty; language proficiency questionnaire; police record check; statement of personal history; application for ID; Department of Veterans Affairs compensation forms and related papers; dependent medical care statement and related forms; training and experience documents; survivor benefit plan election certificate; efficiency reports; application/nomination for assignment; achievement certificates; record of proceeding and appellate or other supplementary actions, Article 15 (10 U.S.C. 815); weight control records; personnel screening and evaluation records; application/prior service enlistment documents; certificate barring reenlistment; waivers for enlistment; physical evaluation board summaries; service record brief; Army School records; classification board proceedings; correspondence relating to badges, medals, and unit awards, including foreign decorations; correspondence/letters/administrative reprimands/censures/admonitions relating to apprehensions/confinement/discipline; dependent travel and movement of household goods; personal indebtedness correspondence and related papers; documents relating to proficiency pay, promotion, reduction in grade, release, retirement (includes documents pertaining to pre-separation and job assistance needs in transition

from military to civilian life), temporary duty, individual flight records, physical examination records, aviator flight record, instrument certification papers, duty status, leave, and similar military documents prescribed for filing by Army regulations or directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

Personnel records are created and maintained to manage the member's Army Service effectively, document historically the member's military service, and safeguard the rights of the member and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the General Services Administration for records storage and archival services and for printing of directories and related material which includes personal data.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs to provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management to facilitate participation of Army members in civil defense planning, training, and emergency operations pursuant to the military support of civil defense as prescribed by DoD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

To the Military Banking Facilities Overseas. Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

NOTE: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

County and city welfare organizations to provide information needed to consider applications for benefits.

Penal institutions to provide health information to aid patient care.

State, county, and city officials to include law enforcement authorities to provide information to determine benefits or liabilities, or for the investigation of claim or crimes.

Patriotic societies incorporated, pursuant to 36 U.S.C., in consonance

with their respective corporate missions when used to further the welfare, morale, or mission of the soldier. Information can only be disclosed only if the agency which receives it adequately prevents its disclosure to persons other than their employees who need such information to perform their authorized duties.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAILING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated individuals whose official duties require access; they are transferred from station to station in personal possession of the individual whose record it is or, when this is not feasible, by U.S. Postal Service.

RETENTION AND DISPOSAL:

The maintenance, forwarding, and disposition of the MPRJ (DA Form 201) and its contents are governed by Army Regulations 640–10, Individual Military Personnel Records, and 635–10, Processing Personnel for Separations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–33107 Filed 12–18–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 20, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 USC Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 15, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Survey of Middle School Parents on Level of Knowledge Concerning College Costs and Admission Requirements.
Frequency: One time.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 500, Burden Hours: 42.

Abstract: This collection of information will provide baseline data on the level of knowledge concerning college costs and college admission requirements among parents of middle school children. The data will help the U.S. Department of Education to evaluate and refine its early awareness initiative.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Report of Financial Need and Certification Report for the Jacob K. Javits Fellowship Program.
Frequency: Annually.
Affected Public: Individuals or households; business or other for-profit; Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden: Responses: 100, Burden Hours: 400.
Abstract: These instructions and forms provide the means to collect data in order to make funding determinations for fellows selected under the Jacob K. Javits Fellowship Program.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: State Plan for Independent Living, Rehabilitation Act of 1973, as Amended (Act), Title VII, Chapter 1.
Frequency: Every three years.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden: Responses: 56, *Burden Hours:* 4,480.
Abstract: The purpose of Chapter 1 of Title VII of the Act (Ch.1) is to promote a philosophy of independent living which includes control, peer support, self-help, self-determination, equal access and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society. To implement this purpose, Ch.1 authorizes financial assistance to States for providing, expanding and improving the provisions of State independent living services (SILS), to develop and support statewide networks of centers for independent living (CILs), to improve working relationships among State IL services programs (SILS), CILs, Statewide Independent Living Councils (SILCs), programs funded under other titles of the Act, and other programs that address issues relevant to duals with disabilities funded by Federal and non-Federal authorities.

Section 704 of the Act requires the designated State unit(s) (DSU), jointly with the SILC to develop and sign an approvable SPIL in each State to receive financial assistance under Ch. 1.

[FR Doc. 97–33151 Filed 12–18–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision: Supplemental Environmental Impact Statement/ Program Environmental Impact Report for the Sale of Naval Petroleum Reserve No. 1 (Elk Hills), Kern County, California

AGENCY: U.S. Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) is issuing this Record of Decision to proceed, subject to review by Congress, with the sale to Occidental Petroleum Corporation (Occidental) of all right, title, and interest of the United States in Naval Petroleum Reserve No. 1 (NPR–1) located in Kern County, California, in accordance with Title XXXIV of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106 (hereinafter the "Elk Hills Sales Statute" or "Act").

The Act requires that DOE undertake a process to sell NPR–1 in a manner consistent with commercial practices and in a manner that maximizes the proceeds to the Federal government. Furthermore, the Act requires DOE to complete the sale of NPR–1 by February 10, 1998, unless DOE and the Office of Management and Budget (OMB) jointly determine that (i) the sale is proceeding in a manner inconsistent with achievement of a sale price that reflects full value, or (ii) another course of action is in the best interests of the United States. The Act also specifies a process for determining the minimum acceptable price for the sale of NPR–1.

Based on the analyses in the Supplemental Environmental Impact Statement/Program Environmental Impact Report (SEIS/PEIR) titled, "Sale of Naval Petroleum Reserve No. 1 (Elk Hills) Kern County, California," consideration of the Congressional direction contained in the Elk Hills Sales Statute, and an offer submitted by Occidental that exceeded the minimum acceptable sale price as determined pursuant to section 3412(d) of the Act and exceeded all other offers received following a competitive sales process, DOE has determined that implementation of the Proposed Action and Preferred Alternative in the SEIS/PEIR (i.e., the sale of all right, title and interest in NPR–1 in accordance with the Act to Occidental) is in the best interests of the United States. Accordingly, DOE is publishing this Record of Decision (ROD) under the authority of the National Environmental Policy Act (NEPA) of 1969 to proceed with the sale of NPR–1 to Occidental and to document the basis for this decision.

ADDRESSES: For further information on the sale of NPR–1 (Elk Hills), contact Anthony J. Como, NEPA Document Manager, Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, D.C. 20585, (202) 586–5935 or 1–888–NPR–EIS1. For further information on the NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, D.C. 20585, (202) 586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: DOE is issuing a ROD pursuant to the regulations of the Council on Environmental Quality implementing the procedural provisions of NEPA[1] and DOE's NEPA implementing regulations.[2]

Background

The Elk Hills Sales Statute, signed by President Clinton on February 10, 1996, authorized and directed the Secretary of Energy (the "Secretary") to enter into one or more contracts for the sale of NPR–1 by February 10, 1998, unless the Secretary and the Director of OMB jointly determine that (i) the sale is proceeding in a manner inconsistent with achievement of a sale price that reflects full value, or (ii) another course of action is in the best interests of the United States. The Act further directed that the sales process be conducted "in a manner consistent with commercial practices and in a manner that maximizes sale proceeds to the Government."

The Act directed the Secretary to take certain measures which were designed to assure that the sale of NPR–1 would result in the maximum return to the government and that the full value of the reserve would be realized. These measures included:

(1) The retention of an investment banker to independently administer the sale in a manner that maximizes sale proceeds to the government;

(2) The hiring of an independent petroleum engineer to prepare a reserve report in a manner consistent with commercial practices;

(3) The finalization of equity interests of known oil and gas zones;

[1] 40 CFR Parts 1500–1508.
[2] 10 CFR Part 1021.

(4) Conducting a competitive sale that was fair and open to all interested and qualified parties;

(5) The establishment of a process for setting the minimum acceptable sales price; and

(6) The authority to transfer to the purchaser(s) of NPR–1 the otherwise nontransferable incidental take permit[3] issued to the Secretary by the U.S. Fish and Wildlife Service (FWS) under section 7 of the Endangered Species Act (ESA).

The Act also requires that DOE submit a written notification to Congress of the conditions of the proposed sale at least 31 days before DOE enters into any contract(s).

Minimum Acceptable Sales Price

Section 3412(d) of the Act prescribes a process for the Secretary of Energy, in consultation with the Director of OMB, to set the minimum acceptable price for the sale of NPR–1. As required by this section of the Act, the Secretary retained the services of five independent experts in the valuation of oil and gas fields to conduct separate assessments, in a manner consistent with commercial practices, of the value of NPR–1 to the United States under continued government ownership and operation. Section 3412(d) specifies that in making their assessments, the independent experts shall consider, among other factors, the net present value of the anticipated revenue stream that the Secretary and the Director of OMB jointly determine the Treasury would receive from NPR–1 if it were not sold, adjusted for any anticipated increases in tax revenues that would result if NPR–1 were sold. This net present value determination was prepared jointly by DOE and OMB and was provided to the five independent experts for consideration in making their assessments.

Section 3412(d)(3) of the Act specifies that the Secretary may not set the minimum acceptable sale price below the higher of: (a) The average of the five independent assessments; and (b) the average of three assessments after excluding the high and low assessments. The five independent assessments were submitted to DOE on September 15, 1997. After reviewing these assessments, on September 26, 1997, the Secretary and the Director of OMB jointly established the minimum acceptable price for the sale of NPR–1 as the average of the five assessments, which average was higher than the average of the middle three assessments. The best and final offer submitted by Occidental on October 3, 1997, exceeded the minimum acceptable sale price established by the above process, as well as all other offers, and combinations of other offers, submitted by qualified offerors.

Transfer of Incidental Take Permit

Section 3413(d) of the Elk Hills Sales Statute permits the Secretary to transfer to the purchaser(s) of NPR–1 the incidental take permit issued to the Secretary by the FWS and in effect on February 10, 1996, "if the Secretary determines that transfer of the permit is necessary to expedite the sale of the reserve in a manner that maximizes the value of the sale to the United States." At the beginning of the commercial sales process, DOE decided that transferring to the purchaser(s) of NPR–1 the Biological Opinion (and incidental take statement contained therein) issued to DOE by the FWS on November 8, 1995, should help maximize the proceeds from the sale of NPR–1. However, in the event that not all potential purchasers of NPR–1 would be willing to accept the transferred Biological Opinion and its terms and conditions, DOE determined to make the transfer optional on the part of the prospective operators in the draft Purchase and Sale Agreement distributed to potential purchasers during the sales process.

In its offer to purchase NPR–1, Occidental agreed to accept DOE's Biological Opinion and incidental take statement. Accordingly, under the terms of the Purchase and Sale Agreement, Occidental will assume and agree to be bound by and perform all of DOE's obligations (terms, conditions, and mitigation measures) under the Biological Opinion, including the on-going monitoring requirements and the obligation to establish a 7,075-acre conservation area.

NEPA Process

The continued operation of NPR–1 by DOE has been analyzed in two previously-issued environmental impact statements (EISs): the 1979 EIS titled "Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 (Elk Hills), Kern County, California" (DOE/EIS-0012) and a 1993 supplement to the 1979 EIS titled "Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 (Elk Hills), Kern County, California" (DOE/EIS–0158). However, neither of those documents addressed the possible divestiture of NPR–1. Therefore, subsequent to the enactment of the Elk Hills Sales Statute, DOE determined that the sale of NPR–1 would constitute a major Federal action that may have a significant impact upon the environment within the meaning of NEPA. Accordingly, on March 21, 1996, DOE published a notice in the **Federal Register** (61 FR 11617) announcing its intention to prepare a supplement to the 1993 Supplemental EIS to address foreseeable impacts from the sale of NPR–1 and reasonable alternatives. On April 16, 1996, DOE conducted two public scoping meetings in Bakersfield, California, to identify major issues and concerns that should be addressed in the SEIS.

After consultation with the Kern County (California) Planning Department, Kern County determined that the proposed sale was a project within the meaning of the California Environmental Quality Act of 1970 (CEQA) requiring the preparation of a environmental impact report (EIR). Kern County also determined that, because of the unknown future development decisions of the potential new owners, the EIR should be a program EIR (PEIR) with future additional analyses to be conducted under CEQA as required. Then the determination was made by DOE and Kern County to prepare a joint SEIS/PEIR as allowed by the NEPA and CEQA regulations.

In July 1997, the DOE and Kern County published a Draft SEIS/PEIR on the proposed divestiture of NPR–1 titled "Draft Supplemental Environmental Impact Statement/Program Environmental Impact Report for the Sale of NPR–1, Kern County, California (DOE/SEIS/PEIR–0158–S2). This document addressed the environmental impacts associated with the Proposed Action (sale of all right, title, and interest of the United States in NPR–1 as required by the Elk Hills Sales Statute) and two possible alternatives. DOE and Kern County distributed approximately 300 copies of the Draft SEIS/PEIR to members of Congress, Federal, state and local agencies, Native American organizations, environmental groups, businesses, and interested individuals. On July 25, 1997, the U.S. Environmental Protection Agency published a notice in the **Federal Register** (62 FR 40074) announcing the availability of the Draft SEIS/PEIR and the start of a 45-day public comment period, which ended on September 8, 1997. As part of the public comment process, DOE and Kern County held two public hearings on August 26, 1997, in Bakersfield, California.

In preparing the Final SEIS/PEIR, DOE and Kern County considered all public comments received, including comments received after the September 8, 1997, comment closing date as well as the oral comments made during the public hearings. Over 300 comments were received from 29 written comment letters and 7 oral statements made at the public hearings. The Final SEIS/PEIR was distributed on October 17, 1997. This Final SEIS/PEIR consisted of the Draft SEIS/PEIR and a comment-response document that included public comments received on the Draft SEIS/PEIR, responses to those comments, and changes in the Draft SEIS/PEIR in response to public comments. The Final SEIS/PEIR identified the Proposed Action as DOE's Preferred Alternative. DOE and Kern County distributed approximately 300 copies of the Final SEIS/PEIR to members of Congress, Federal, state and local agencies, Native American organizations, environmental groups, businesses, and interested individuals. On October 24, 1997, the U.S. Environmental Protection Agency published a notice in the **Federal Register** (62 FR 55399) announcing the availability of the Final SEIS/PEIR.

Sales Process

In order to meet the February 10, 1998, statutory deadline contained in the Elk Hills Sales Statute for the completion of the sale, DOE conducted its sales process concurrently with the NEPA and CEQA processes. On May 21, 1997, DOE announced the start of the sales process, which culminated on October 1, 1997, with the submission of bids for the purchase of NPR–1.

To comply with the provisions of the Act, DOE implemented a sales strategy designed to maximize the proceeds to the Federal government. To comply with DOE's further obligations under NEPA to identify all practicable means of mitigating adverse impacts, DOE structured the sales process to incorporate mitigation in a manner that would not impair the ability of DOE to maximize the proceeds from the sale of NPR–1. To meet DOE's obligations under the Elk Hills Sales Statute and NEPA, the Purchase and Sale Agreement provided to prospective offerors during the sales process (May 21, 1997, through October 1, 1997) contained three optional provisions designed to incorporate mitigation into the sale of NPR–1 in a manner that did not impair DOE's ability to maximize proceeds from the sale. These optional provisions were:

(1) Acceptance of the Biological Opinion (including incidental take statement) issued to DOE by the FWS;

(2) Identification of mitigation measures (contained in the SEIS/PEIR) that would be committed to, without reducing the offering price; and

(3) A guarantee that small and independent refiners in the region would have access to 25% of the new operator's NPR–1 oil production for three years following the sale.

During the sales process, prospective purchasers were notified that, even after offers were submitted and the "highest offer(s)" identified, DOE could not enter into a sales contract until:

(1) The NEPA process is completed and DOE publishes a Record of Decision;

(2) The Justice Department completes an antitrust review of the sale; and

(3) A 31-day Congressional review period expires with no adverse Congressional action.

On October 1, 1997, DOE received twenty-two (22) offers from fifteen (15) entities. After a preliminary evaluation of these offers, DOE requested submission of "best and final" offers from all offerors whose initial offer exceeded the minimum acceptable price. After review of the "best and final" offers, DOE identified Occidental as the firm submitting the highest offer for the purchase of NPR–1. In the final Purchase and Sale Agreement to purchase NPR–1, Occidental proposed to accept the transfer of DOE's Biological Opinion and to submit to DOE, within ten (10) business days following the publication of the Final SEIS/PEIR, a list of mitigation measures Occidental would implement after the closing date of the sale, which is scheduled to occur no later than February 10, 1998. This list of mitigation measures[4] is described in this Record of Decision.

Description of Alternatives

Three alternative actions were analyzed in the SEIS/PEIR: (1) Sale of all right, title, and interest of the Federal government in NPR–1 in accordance with the Act (the Proposed Action); (2) continued DOE ownership and operation of NPR–1 (the No-Action Alternative); and (3) withdrawal of DOE from direct petroleum production activities at NPR–1 but continued Federal ownership (Alternative to the Proposed Action).

Comments received during the scoping process suggested that, depending upon how NPR–1 was offered for sale and the type of entity(ies) to whom NPR–1 was sold, different types and levels of environmental impacts could result. Based on these scoping comments, DOE and Kern County developed and analyzed three different divestiture scenarios under the Proposed Action and two different divestiture scenarios under the Alternative to the Proposed Action. In each case, the analyses in the SEIS/PEIR were based upon either a government approach to field development or a commercial approach, depending upon the type of entity(ies) assumed to be the eventual owner(s) of NPR–1. The three alternatives, five divestiture scenarios, and the two field development approaches combine to produce varying types and levels of environmental impacts that are identified in the SEIS/PEIR. These differences in types and levels of impacts result from differences in the rate and level of intensity of oil field development among the three alternatives.

The No Action Alternative assumes continued government ownership and operation of NPR–1 and is based upon the lowest rate and level of intensity of field development activities among the three alternatives. Because the Proposed Action and the Alternative to the Proposed Action both assume operation of NPR–1 by a private entity, these two alternatives are based upon the same rate and level of intensity of field development activities, which is above that assumed in the No Action Alternative.

In order to provide a development baseline against which to analyze the environmental impacts resulting from each alternative, the SEIS/PEIR also included a Reference Case. The Reference Case is based on continued production of NPR–1 at maximum efficient rate (MER) in compliance with the Naval Petroleum Reserves Production Act of 1976, 10 U.S.C. 7420 *et seq.* The 1976 Production Act defines MER as "the maximum sustainable daily oil and gas rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to the ultimate recovery" (10 U.S.C. 7420). Such a case formed the basis of the Proposed Action in the 1993 SEIS. The Reference Case in the SEIS/PEIR is

[3] The authority for Federal agencies to incidentally "take" (i.e., kill, harm, hunt, wound, trap, etc.) endangered species is granted by the FWS through a consultation process. Such consultation results in the issuance of a Biological Opinion, which includes an incidental take statement. As used in this Record of Decision, the term "incidental take permit" or "permit" refers collectively to the Biological Opinion and the incidental take statement contained therein.

[4] The final Purchase and Sale Agreement negotiated with Occidental contained a provision in which Occidental agreed "to deliver a list of mitigation measures to be implemented by Buyer (Occidental) after Closing." In compliance with this provision, on November 7, 1997, Occidental submitted a list of thirty-three (33) mitigation measures that it intends to implement. In this letter, Occidental also identified the appropriate State, local, or Federal agency which is expected to monitor compliance with each of the measures.

based upon NPR–1's 1995 Long Range Plan.

Proposed Action

The Proposed Action and DOE's Preferred Alternative is the sale of all the Federal government's right, title, and interest in NPR–1 as directed by the Elk Hills Sales Statute. Under the Proposed Action, one or more private entities would purchase NPR–1 and continue to develop and operate it as a commercial oil and gas field for at least the next 40 years. This alternative would result in a higher rate and level of intensity of development for NPR–1 than would be the case under continued government ownership and operation (the No Action Alternative). This higher rate and level of intensity of development would result in the construction and operation of more oil field infrastructure (wells, pipelines, gas processing facilities) than under government operation with a resulting increase in the level of environmental impacts.

No Action Alternative

The No Action Alternative assumes continued Federal ownership of NPR–1 with ongoing responsibility for the field continuing to be assumed by DOE. This could occur if the Secretary exercises his authority under section 3414(b) of the Act to suspend the sale. If such a recommendation were made, new and separate Congressional action would be required before further action with respect to the disposition of NPR–1 could take place.

However, section 3412(h) of the Act specifies that, until sale, production at NPR–1 is to continue at "the maximum daily oil or gas rate from a reservoir, which will permit maximum economic development of the reservoir consistent with sound oil field engineering practices." Therefore, under the No Action Alternative, continued ownership and operation by DOE would result in a higher rate and level of intensity of development and associated environmental impacts than those that formed the basis of the Proposed Action in the 1993 SEIS and that are above those characterized by the Reference Case in the SEIS/PEIR.

Alternative to the Proposed Action

Under this alternative, the Federal government would take some action other than that required by the Act to sell part, but not all, of its interest in NPR–1, with the same objective of maximizing the value of the reserve to the government. Under this alternative, some level of Federal ownership and control over NPR–1 would be retained. Future oil and gas development of NPR–1 would be at the same rate and level of intensity as the Proposed Action but at a higher rate and level of intensity than under the No Action Alternative. However, the continued Federal role in the overall management of the property would result in a lower level of environmental impacts than under the Proposed Action. Implementation of this alternative would require additional legislation.

Environmentally Preferable Alternative

The Environmentally Preferable Alternative is the No Action Alternative: continued ownership and operation of NPR–1 by DOE. This alternative would result in a continuation of the present level of Federal protection for the threatened and endangered species that are found on NPR–1. Also, under this alternative, the Federal government would develop NPR–1 at a lower rate and level of intensity than would a private entity under the Proposed Action or the Alternative to the Proposed Action. This lower rate and level of intensity of development would produce proportionately lower levels of impacts across the full spectrum of environmental resources. Finally, under the No Action Alternative, NPR–1 likely would revert to some form of conservation area after the completion of oil and gas operations. The environmentally preferable alternative was not selected as DOE's preferred alternative because it would not permit DOE to comply with the Congressional direction contained in the Act of divesting the Federal government of all right, title, and interest in NPR–1.

Major Environmental Impacts and Mitigation Measures

NPR–1 is expected to remain exclusively an oil field for about the next half century. The differences in environmental impacts among alternatives are driven by the rate and level of intensity of development. Development by a private entity under the Proposed Action or the Alternative to the Proposed Action would occur at a higher rate and level of intensity than development by the Federal government under the No Action Alternative.

The two most import resource areas expected to be impacted by the Proposed Action (as well as the No Action Alternative and the Alternative to the Proposed Action) are biological and cultural resources. The SEIS/PEIR also identified two other potentially significant resource areas for the three alternatives. These include air resources and water resources. Other potential resource areas and impacts analyzed in the SEIS/PEIR include geology and soils, hazardous waste, land use, noise, socioeconomic, energy conservation, and environmental justice. However, none of the impacts occurring in these areas were considered likely to be significant. The SEIS/PEIR concludes that all of the impacts resulting from the three alternatives could be mitigated to levels that are less than significant.

Proposed Action

Because the proposed sale of NPR–1 to Occidental would involve the sale of all of the Federal government's right, title, and interest, implementation of mitigation measures under the Proposed Action would be accomplished, for the most part (except for the completion of certain mitigation measures related to cultural resources), by the proposed purchaser of NPR–1, Occidental, with enforcement by the Federal, state and local agencies that have regulatory responsibility for the activities occurring at NPR–1.

Biological Resources

Impacts: The most significant impacts from the Proposed Action and the attendant future development of NPR–1 would be on biological resources. NPR–1 serves as an important habitat for a number of threatened and endangered species, including the San Joaquin kit fox, the blunt nose leopard lizard, the giant kangaroo rat, the Tipton kangaroo rat, the antelope squirrel, and Hoover's woolly-star (a flowering plant).

Oil and gas development on NPR–1 would continue to alter habitat and destroy or injure individuals of threatened and endangered species under the Proposed Action. Development under private ownership of NPR–1 would be at a higher rate and level of intensity and, consequently, have a greater impact on plant and animal communities in general and on threatened and endangered species in particular. Under the Proposed Action, potentially significant impacts include: (1) loss of the affirmative Federal obligation under section 7(a)(1) of the ESA to protect, conserve and help recover threatened and endangered species and their habitats, because the degree of mitigation required of private entities by the ESA is lower than that required of the Federal government; (2) the potential lack of funds for protection and management of the habitat conservation area required to be created by the 1995 Biological Opinion; (3) reduced potential for recovery of listed species and increased potential for listing additional species; and (4) increase in habitat loss and mortality, injury or displacement of plant and animal communities, including threatened and endangered species.

The impacts under private ownership from future development following the depletion of the reserves and the end of oil and gas production are too speculative to be predicted with any specificity. However, it is possible that additional stress to biological resources could occur, depending on how the owners use the land.

Mitigation: The principal mitigation for the potentially significant impacts on biological resources is Occidental's decision to accept transfer of and agreement to be bound by all the terms and conditions of the Biological Opinion and incidental take statement issued to DOE by the FWS on November 8, 1995. Those terms and conditions, including the mitigation commitments made by DOE, will be in effect until Occidental applies for and receives a new incidental take permit from the FWS under section 10 of the ESA.[5] A new section 10 permit would contain appropriate terms and conditions agreed to by the FWS and Occidental. The principal mitigation measures contained in the 1995 Biological Opinion include:

(1) Creation of a 7,075-acre conservation area and habitat management program;

(2) Conducting research, monitoring, and biological survey programs;

(3) Incorporation of a variety of measures to limit disturbance or destruction of individuals of threatened and endangered species during operation and construction activities;

(4) Prohibitions of public access, hunting, and livestock grazing within NPR–1; and

(5) Restrictions on the use of pesticides, herbicides, and rodenticides.

In addition to accepting the terms and conditions of the 1995 Biological Opinion, Occidental will enter into and implement an Interim Memorandum of Understanding with the California Department of Fish and Game pursuant to Section 2081 of California's Endangered Species Act. The terms, conditions, and mitigation measures that would be contained in this Memorandum of Understanding will mitigate potentially significant impacts on those plant and animal species listed as threatened or endangered by the State of California.

Cultural Resources

Impacts: The second major resource area impacted by the Proposed Action is cultural resources. Approximately 60 percent of the area of NPR–1 has been subject to archaeological survey and inventory. There are two historic archaeological sites at NPR–1 that the California State Historic Preservation Officer (SHPO) has determined are eligible for inclusion on the National Register of Historic Places (discussed below). There are also four prehistoric sites that are eligible for the National Register. Additional inventory efforts are underway and more prehistoric sites are likely to be found (discussed below). The documented prehistoric sites are represented by accumulations of flaked and ground stone, shell and bone artifacts, features, faunal dietary remains and human remains (at two known sites), all of which may be relevant to the prehistory of the area.

Although many potentially significant individual historic archaeological sites or buildings at NPR–1 have been so disturbed that their archaeological values have been destroyed, DOE recommended to the SHPO that NPR–1 be eligible for inclusion on the National Register as an historic landscape. The SHPO concluded, however, that NPR–1 was not an historic landscape but found that three early production wells (the Hay No. 1 Discovery Well, the Hay No. 5 well, and the Hay No. 7 natural gas well) appear to be eligible for the National Register.

Discussions with the SHPO on prehistoric sites indicate that NPR–1 development may disturb the four individual prehistoric sites eligible for the National Register. In September 1997, DOE completed a survey of 3,000 acres previously unsurveyed but predicted to be sensitive for prehistoric archeological resources, and by the end of November 1997, archeological testing at the most promising sites within the 3,000-acre survey area had been completed. Data recovery on significant prehistoric archeological resources will be completed prior to the conclusion of the sales process which is presently scheduled for early February 1998.

Mitigation: Pursuant to sections 106 and 110 of the National Historic Preservation Act, DOE is in the process of finalizing a Programmatic Agreement with the California SHPO and the Advisory Council on Historic Preservation concerning surveys, research, data recordation, documentation and other preservation activities, as appropriate, to mitigate the impacts of the Proposed Action. A set of prehistoric resources representative of the types found on NPR–1 would be treated by a combination of surface mapping, collection, subsurface excavations and analysis to recover data and to address important scientific research questions. A Cultural Resources Management Plan (CRMP) will address the appropriate mitigation required to recover important data from these resources and preserve them through appropriate documentation and publication. The CRMP will be made a part of the Programmatic Agreement.

The Programmatic Agreement will also include mitigation measures specifically designed to address the impacts on resources of particular concern to Native Americans. The mitigation measures will be performed under appropriate archeological protection permits with notice to Native Americans in accordance with Native American Graves Protection and Repatriation Act (NAGPRA) and the Archeological Resources Protection Act. As one of the mitigation measures, DOE will inform Occidental and the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources that sites of this type are known to exist in particular areas of the Reserve, although without providing specific locations so as to protect Native American values.

The SHPO has indicated to DOE that the Programmatic Agreement must also address the concerns related to NAGPRA. As DOE develops the Programmatic Agreement with the SHPO, DOE will provide for involvement and comment by Native Americans, both from tribes on the NAGPRA list and from others with traditional ties to Elk Hills. In addition, DOE will work closely with the FWS and with Occidental in determining the location of the land to be included in the conservation set aside area required under the terms of the 1995 Biological Opinion, in order to maximize the inclusion of areas that archaeologists and Native Americans have identified as known or likely to contain human remains.

With respect to the two historic oil and gas wells that the SHPO has determined are eligible for the National Register, the Programmatic Agreement will provide for a treatment plan to describe the historic context of these wells, as well as to publish the descriptions and distribute the descriptions to public libraries.

In addition to DOE's mitigation, the mitigation measures Occidental intends to implement include:

(1) Evaluate inclusion of the two locations of suspected human remains identified by DOE within the conservation area to be established pursuant to the 1995 Biological Opinion;

(2) Implement a cultural resources training plan supervised by an archaeologist; and

[5] This is the section of the ESA which contains requirements applicable to private landowners.

(3) Implement a plan to address the discovery of suspected human remains, other than human remains addressed by the Programmatic Agreement between DOE and the SHPO, which may be unexpectedly encountered during construction activities. The plan may include consulting with the County Coroner, an archaeologist and/or a local Native American Representative to avoid disturbing suspected human remains.

Other Potentially Significant Impacts

Impacts: The two other potentially significant resource areas impacted by the Proposed Action are air quality and water resources. Future development of NPR–1 under the proposed action would likely result in higher levels of air emissions. Modeling of projected emissions for the year 2001, the highest expected emission year, shows the potential that the state ambient air quality standards for PM_{10} (particulate matter 10 microns or larger) could be exceeded off-site. In addition, on-site Federal ambient air quality standards for NO_2 (Nitrous Oxide) and state ambient air quality standards for PM_{10} and SO_2 (Sulfur Dioxide) might be exceeded. However, these results are conservatively based on maximum permitted emission rates rather than likely lower actual emission rates, so the actual future emissions are expected to be within the National and state standards.

The last potential significant impact area from the Proposed Action is the potential impact on water resources. The higher rate and level of intensity of development under the Proposed Action would increase water use in the enhanced oil recovery technique knows as "water flooding" and increase in treatment and disposal requirements for "produced waters."

Mitigation: The impacts to these resources would be roughly proportional to oil production levels and can be mitigated through compliance with applicable National and state air emission standards and a continuation of the ongoing NPR–1 program to use treated produced waters in "water flood" projects. Occidental intends to implement two mitigation measures with respect to air quality and fifteen (15) water resource mitigation measures. These mitigation measures by Occidental would continue existing DOE practices.

Other Resources

Impacts: Additional areas of potential concern are geology and soils, hazardous waste management and disposal, land use, noise, socioeconomic, energy conservation, and environmental justice. Impacts in these areas are not likely to be significant.

Comments received during scoping and comments received on the Draft SEIS/PEIR expressed concern that the possible loss of access to NPR–1 oil for use in local refineries and as a diluent for pipeline transmission could lead to a premature loss of local refinery production and/or the inability of local crude oil producers to deliver their products to market. Some local small and independent refiners and/or producers of heavy crude oil are dependent on continued access to the lighter NPR–1 oil, and concern was expressed that the proposed sale could limit their access to the oil. Although the proposed purchaser of NPR–1, Occidental, did not accept the optional *sales provision to guarantee access to* small and independent refiners, Occidental does not refine oil in California and is expected to put its share of the production from NPR–1 on the market. Therefore, small and independent refiners in the region should have access to NPR–1 crude oil under the Proposed Action (sale of NPR–1 to Occidental).

Mitigation: Occidental intends to implement 10 additional mitigation measures (see Footnote 4) with respect to these other impact areas. In addition, all known hazardous waste sites at NPR–1 have been or will be remediated by DOE using appropriate remediation technology. However, remediated sites have, as yet, not received determinations that no further actions are needed from the relevant regulatory agencies. DOE will continue to work with these agencies to achieve final closure on the sites, including any additional mitigation work if required. In the unlikely event that any previously undiscovered reportable hazardous waste sites are encountered prior to the sale, DOE will characterize the contamination and disclose it to Occidental.

No Action Alternative

Government development of NPR–1 under the No Action Alternative would likely be at a lower rate and level of intensity than under the Proposed Action or the Alternative to the Proposed Action. Further, DOE would retain the affirmative Federal obligation to mitigate the environmental consequences of its actions. However, the affected environment and the types of impacts to the affected environment would be the same under both the Proposed Action and the No Action Alternative. In addition, the SEIS/PEIR recognizes the possibility (although an unlikely one) of a higher rate and level of intensity of development under government operation than might occur under commercial operation.

For biological resources, there would be less destruction, disturbance and fragmentation of endangered species habitat under the No Action Alternative compared to the Proposed Action because it is expected that fewer wells would be drilled under the No Action Alternative. In addition, the level of mitigation required of Federal agencies under the ESA is greater than that for private industry. Furthermore, although future development cannot be predicted, at the end of NPR–1's useful life as an oil and gas field, it is more likely to be converted to wildlife habitat under government ownership than under private ownership.

For cultural resources, again there would be less disturbance of surface areas under the No Action Alternative than under the Proposed Action. Further, the requirements placed on Federal agencies by the National Historic Preservation Act to protect historic properties would continue under this alternative.

For air resources and water resources, the lower rate and level of intensity of development under the No Action Alternative would mean fewer impacts to these affected environments than under the Proposed Action or the Alternative to the Proposed Action. However, the difference in impacts between the No Action Alternative and the Proposed Action is not expected to be significant. The additional areas of potential concern of geology and soils, hazardous waste management and disposal, land use, noise, socioeconomic, energy conservation, and environmental justice would not involve significant differences in level of impacts between the No Action Alternative and the Proposed Action. However, the implementation of mitigation measures in each of the resource areas would reduce potential impacts to levels that are less than significant.

Alternative to the Proposed Action

Development of NPR–1 by a private entity under the Alternative to the Proposed Action would likely occur at the same rate and level of intensity as the Proposed Action. However, the continuing government interest in NPR–1, although not direct operation, would mean that development would continue to be subject to the affirmative Federal obligation to mitigate the environmental consequences of its actions, especially for biological and cultural resources. Again, the affected environment and the types of impacts to the affected environment would be the same under both the Proposed Action and the Alternative to the Proposed Action.

For biological resources, there would be the same destruction, disturbance and fragmentation of endangered species habitat under the Alternative to the Proposed Action as for the Proposed Action because it is expected that the same number of wells would be drilled. However, the higher levels of mitigation required of government agencies would continue to apply and although future development cannot be predicted, at the end of the field's life, it is more likely to be converted to wildlife habitat under this limited amount of government ownership than under complete private ownership.

For cultural resources, again there would be the same disturbance of surface under the Alternative to the Proposed Action as the Proposed Action. Further, the requirements placed on Federal agencies by the National Historic Preservation Act to protect historic properties would continue under this alternative.

For air resources and water resources, the similarity of the rate and level of intensity of development likely for this alternative compared to the Proposed Action would mean similar impacts to these affected environments as in the Proposed Action. The impacts to additional areas of potential concern of geology and soils, hazardous waste management and disposal, land use, noise, socioeconomic, energy conservation, and environmental justice would not be significantly different from the impacts in these areas under the Proposed Action. However, the implementation of mitigation measures in each of the resource areas would reduce potential impacts to levels that are less than significant.

Cumulative Impacts

Section 3416 of the Elk Hills Sales Statute directed the Secretary to study four options for the disposition of the other Naval Petroleum Reserves (other than NPR–1)[6] and to recommend to Congress which option or combination of options would maximize the value of the reserves to the United States. These options included:

(1) Retention and continued operation by DOE;

(2) Transfer to the Department of the Interior (DOI) for leasing;

(3) Transfer of all or part of the other reserves to another Federal agency; and

(4) Sale of the interest of the United States in the other reserves.

Included in these other reserves is NPR–2, which consists of approximately 30,181 acres located immediately adjacent to NPR–1. The Federal government owns approximately 35 percent of the acreage of NPR–2, with the mineral rights associated with 9,224 of these acres leased to seven oil companies under 15 active leases. DOE administers these leases but has no active role in the day-to-day operation of NPR–2.

The SEIS/PEIR examined the cumulative impacts of the Proposed Action for NPR–1 in conjunction with three possible actions for NPR–2: transfer to DOI; a No Action Alternative; and a sales alternative. The analysis in the SEIS/PEIR indicated that the sales alternative for NPR–2 coupled with the Proposed Action for NPR–1 could result in significant adverse impacts to biological and cultural resources because of the loss of the affirmative Federal obligation to protect sensitive environmental resources on the additional land comprising NPR–2. However, the SEIS/PEIR concluded that there would be no significant adverse impact resulting from either transfer to DOI or the No Action Alternative for NPR–2 because both actions would continue Federal ownership of the land and the attendant protections for critical environmental resources.

Based on the results of the study of options for the other Naval Petroleum Reserves directed by the Act, in March 1997 DOE recommended to Congress that NPR–2 be transferred to the Department of the Interior's Bureau of Land Management (BLM) for management of the surface rights under the Federal Land Policy and Management Act and for possible leasing of currently unleased acreage under the Mineral Leasing Act. As discussed in the SEIS/PEIR, the combination of the Proposed Action for NPR–1 and the recommended action for NPR–2 would produce no increased stresses on the critical biological and cultural resources in the region and result in no significant adverse cumulative impacts.

Congress has not yet authorized DOE to take any action with respect to the future disposition of NPR–2.

Response to Comments Received After the Final SEIS/PEIR

Following publication of the Final SEIS/PEIR, DOE received a letter dated November 26, 1997, from the Pacific Environmental Advocacy Center (PEAC) notifying DOE that the Southwest Center for Biological Diversity intends to file suit against DOE for failure to reinitiate consultation with the FWS under section 7(a)(2) of the ESA before selling NPR–1. PEAC asserted that DOE is required to reinitiate consultation with the FWS independent of the authority contained in the Elk Hills Sales Statute, to transfer DOE's incidental take permit to the purchaser of NPR–1.

The issue of reconsultation was discussed extensively in the Final SEIS/PEIR in response to several comments received (Final SEIS/PEIR, pages 1–5 and 1–6). DOE explained in that discussion the basis for concluding that a new consultation was not required. DOE's conclusion is supported by an interpretation of the pertinent provisions of the Elk Hills Sales Statute provided by the DOI Regional Solicitor. DOE believes that PEAC has not provided any new information that would change the conclusions contained in the Final SEIS/PEIR or in this Record of Decision.

Decision

DOE has decided to proceed with the sale of all right, title, and interest of the United States in the NPR–1 to Occidental, subject to other requirements of law, including completion of a 31-day Congressional review period with no adverse legislative action by Congress. This action will allow compliance with the Congressional direction contained in the Elk Hills Sales Statute of removing the Federal government from the inherently non-Federal role of operating a commercial oil and gas field and also maximizing the value of NPR–1 to the United States. This decision also is based in part on the offer submitted by Occidental being the highest offer received by DOE at the conclusion of the bidding process in 1997, and the fact that the Occidental offer exceeds the minimum acceptable sale price set by DOE in consultation with OMB consistent with the provisions of section 3412(d) of the Act.

DOE has considered the information contained within the SEIS/PEIR and comments received in response to the Draft SEIS/PEIR. In making this decision, DOE has considered in particular: any potential adverse impacts to threatened and endangered plant and animal species which are found within NPR–1, as analyzed in the SEIS/PEIR; the decision by Occidental to accept the transfer of and to be bound by the terms and conditions of the

[6] The other Naval Petroleum Reserves include NPR–2 located adjacent to NPR–1 in Kern County, California; NPR–3 located in Natrona County, Wyoming; Naval Oil Shale Reserve Nos. 1 and 3 located in Garfield County, Colorado; and Naval Oil Shale Reserve No. 2 located in Uintah and Carbon Counties, Utah.

Biological Opinion issued to DOE by the FWS on November 8, 1995; the intention of Occidental to implement thirty-three (33) mitigation measures identified in a letter submitted to DOE on November 7, 1997, and which are generally described above; and the mitigation of potential adverse impacts to cultural resources through the implementation of mitigation measures by DOE pursuant to a Programmatic Agreement to be executed among DOE, the California SHPO, and the Advisory Council on Historic Preservation.

Mitigation Action Plan

Section 1201.331(a) of the DOE regulations implementing NEPA (10 CFR Part 1021) states that DOE shall prepare a Mitigation Action Plan that addresses mitigation commitments expressed in the ROD. A Mitigation Action Plan regarding DOE's commitments for the divestiture of NPR–1 is being developed to ensure implementation of all mitigation commitments. Copies of the Plan may be obtained from Mr. Anthony Como at the above address.

Issued in Washington, D.C. this 12th day of December 1997.

Patricia Fry Godley,

Assistant Secretary for Fossil Energy.

[FR Doc. 97–33208 Filed 12–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Aluminum Partnerships Solicitation

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Solicitation for Financial Assistance Number DE–PS07–98ID13599 Aluminum Partnerships Solicitation.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office (ID) is seeking applications for cost-shared research and development of technologies which will enhance economic competitiveness, and reduce energy consumption and environmental impacts for the aluminum industry. The research is to address research priorities identified by the aluminum industry in the "Aluminum Industry Technology Roadmap" (November 1997) for the aluminum sector areas of Primary Aluminum Production, Semi-Fabricated Products, and Finished Products. Approximately $4,000,000 in federal funds ($2,000,000 in fiscal year 1998 funds and $2,000,000 in fiscal year 1999 funds) is available to totally fund the first year of selected research efforts. DOE anticipates making five to six cooperative agreement awards for projects with durations of four years or less. A minimum 30% non-federal cost share is required for research and development projects. Collaborations between industry, national laboratory, and university participants are encouraged.

FOR FURTHER INFORMATION CONTACT: T. Wade Hillebrant, Contract Specialist; Procurement Services Division; U.S. DOE, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, ID 83401–1563; telephone (208) 526–0547.

SUPPLEMENTARY INFORMATION: The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086. The solicitation text is expected to be posted on the ID Procurement Services Division home page on or about December 20, 1997, and may be accessed using Universal Resource Locator address http://www.inel.gov/doeid/solicit.html. Application package forms will not be included on the home page and should be requested from the contract specialist. Requests for application packages must be written. Include company name, mailing address, point of contact, telephone number, and fax number. Write to the contract specialist at the address above, via fax number (208) 526–5548, or via email to hillebtw@inel.gov.

Issued in Idaho Falls, Idaho, on December 5, 1997.

Michael Adams,

Acting Director, Procurement Services Division.

[FR Doc. 97–33206 Filed 12–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy.

ACTION: Solicitation of Applications for Grant Awards for High-Energy-Density and Laser-Matter Interaction Studies.

SUMMARY: Pursuant to 10 CFR 600.8, the Department of Energy (DOE) announces that it plans to conduct a technically competitive solicitation for basic research experiments in high-energy-density and laser-matter interaction studies at the National Laser Users' Facility (NLUF) located at the University of Rochester Laboratory for Laser Energetics (UR/LLE). Grant Solicitation No. DE–PS03–98SF21535. Universities or other higher education institutions, private sector not-for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding expected to be available for the Fiscal Year 1999 (FY99) program cycle is $700,000. Multiple awards are anticipated.

FOR FURTHER INFORMATION CONTACT: James Solomon, Contracting Officer, DOE Oakland Operations Office, 1301 Clay Street, Room 700N, Oakland, CA 94612–5208, Telephone No.: (510) 637–1865, Facsimile No.: (510) 637–2074, E Mail: james.solomon@oak.doe.gov.

SUPPLEMENTARY INFORMATION: The solicitation document contains all the information relative to this action for prospective applicants. The solicitation is targeted for release on or about January 9, 1998. The actual work to be accomplished will be determined by the experiments and diagnostic techniques that are selected for award. Proposed experiments and diagnostic techniques will be evaluated through scientific peer review against predetermined, published and available criteria. Final selection will be made by the DOE. It is anticipated that multiple grants will be awarded within the available funding. The unique resources of the NLUF are available, on a no-fee basis, to scientists for state-of-the art experiments primarily in the area of inertial confinement fusion (ICF) and related plasma physics. Other areas such as spectroscopy of high ionized atoms, laboratory astrophysics, fundamental physics, materials science and biology and chemistry will be considered on a secondary basis.

The LLE was established in 1970 to investigate the interaction of high-power lasers with matter. Available at the LLE for NLUF researchers is the upgraded Omega Laser, a 30–40 kJ UV, 60-beam laser system (at 0.35 um) suitable for direct-drive ICF implosions and other experimental configurations. This system is suitable for a variety of experiments including laser-plasma interactions and atomic spectroscopy. The NLUF program for FY99 will support experiments that can be done with the Omega Laser at the University of Rochester and development of diagnostic techniques suitable for the Omega Laser system. Measurements of the laser coupling, laser-plasma interactions, core temperature, and core density are needed to determine the characteristics of target implosions. Diagnostic techniques could include either new instrumentation, development of analysis tools, or development of targets that are applicable for 30–40 kJ implosions. Additional technical information about the available facilities and potential collaboration at the NLUF can be obtained from: Dr. John M. Soures, Manager, National Laser Users' Facility, University of Rochester/LLE, 250 East River Road, Rochester, NY 14623–1299.

Issued in Oakland, CA on December 9, 1997.

W.E. "Bill" O'Neal,

Acting Branch Chief, Financial Assistance Branch, Program Acquisition and Assistance Division.

[FR Doc. 97–33207 Filed 12–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of PRB Chair.

SUMMARY: This notice designates the Performance Review Board Chair for the Department of Energy.

EFFECTIVE DATE: The appointment is effective as of September 30,1997.

Performance Review Board Chair

David L. Hamer,
Department of Energy.

Issued in Washington, DC December 8, 1997.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

[FR Doc. 97–32740 Filed 12–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 1997.

Acharya, Sarbeswar NMN
Ackerly, Lawrence R.
Alcock, Robert M.
Alvarez, Robert NMN
Andersen, Arthur T.
Anderson, Brooke D.
Anderson, Phyllis L.
Angell, John C.
Armstrong, M. Brent
Arthur III, William John
Baca, Frank A.
Bajura, Rita A.
Baker, Kenneth E.
Bamberger, Craig S.
Barber, Robert W.
Barker Jr., William L.
Barnes, Wesley E.
Barrett, Lake H.
Bauer, Linda K.
Beckett, Thomas H.
Beecy, David J.
Benedict, George W.
Bergholz Jr., Warren E.
Berkovitz, Dan M.
Bernard, Peter A.
Berube, Raymond P.
Bielan, Douglas J.
Black, Richard L.
Blackwood, Edward B.
Borchardt, Charles A.
Borgstrom, Carol M.
Borgstrom, Howard G.
Bornhoft Jr., Budd B.
Bostock, Judith L.
Bowman, Gerald C.
Boyd, Gerald G.
Bradley Jr., Theron M.
Brechbill, Susan R.
Brendlinger, Terry L.
Brice, James F.
Brodman, John R.
Broido, Michelle S.
Brown, Richard W.
Brown, Frederick R.
Brown Jr., Charles H.
Brush, Peter N.
Burrows, Charles W.
Canter, Howard R.
Carabetta, Ralph A.
Cardinali, Henry A.
Carlson, Lynda T.
Carlson, Kathleen Ann
Carlson, John T.
Caruso, Guy F.
Castelli, Brian T.
Chappell, Gerald F.
Cheney, David W.
Christensen, William J.
Christopher, Robert K.
Chun, Sun W.
Claflin, Alan B.
Clark, John R.
Clausen, Max Jon
Combs, Marshall O.
Conley, Michael W.
Cook, John S.
Crandall, David H.
Crawford, Timothy S.
Cross, Claudia A.
Crowe, Richard C.
Cumesty, Edward G.
Curtis, James H.
Cygelman, Andre I.
Czajkowski, Anthony F.
Dalton, Henry F.
Darugh, David G.
Davies, Nelia A.
Davis, James T.
Decker, James F.
Degrasse Jr., Robert W.
Dehanas, Thomas W.
Dehmer, Patricia M.
Deihl, Michael A.
Dempsey, Robert D.
Dennison, William J.
Der, Victor K.
Deremer, Craig W.
Dials, George E.
Diaz Jr., Romulo L.
Diebold, Robert E.
Difiglio, Carmen NMN
Dirks, Timothy M.
Divone, Louis V.
Dixon, Robert K.
Doherty, Donald P.
Domagala, Martin J.
Dooley III, George J.
Durnan, Denis D.
Dyer, J. Russell
Edmondson, John J.
Egger, Mary H.
Engel, Walter P.
Esvelt, Terence G.
Evans, Thomas W.
Falle, J. Gary
Feibus, Howard NMN
Fiore, James J.
Fiore, Joseph N.
Fiori, Mario P.
Fitzgerald Jr., Joseph E.
Fitzgerald, Cheryl P.
Ford, James L.
Ford, John A.
Forrister, Derrick L.
Fowler, Jennifer Johnson
Frank, Clyde William
Franklin, John R.
Frazier, Marvin E.
Frei, Mark W.
Friedman, Gregory H.
Furiga, Richard D.
Fygi, Eric J.
Garson, Henry K.
Garvie, William H.
Gebus, George R.
Geidl, John C.
Gibson Jr., William C.
Gibson, Judith D.
Gilbertson, Mark A.
Ginsberg, Mark B.
Glass, Richard E.
Golan, Paul M.
Goldenberg, Neal NMN
Goldenberg, Ralph D.
Goldman, David Tobias
Goldsmith, Robert NMN
Gollomp, Lawrence A.
Goodrum, William S.
Gottlieb, Paul A.
Greenwood, Johnnie D.
Gross, Thomas J.
Gruenspecht, Howard K.
Guidice, Carl W.
Gunn Jr., Marvin E.
Gurule, David A.
Haberman, Norton NMN
Hacskaylo, Michael S.
Hall Jr., Spain W.
Hall, James C.
Hamer Jr., David L.
Hansen, Charles A.

Hardin, Michael G.
Hardwick Jr., Raymond J.
Hardy, Randall W.
Harris, Skila S.
Harris, Jessie J.
Hartman, James K.
Harvey, Gordon W.
Haspel, Abraham E.
Hawkins, Francis C.
Heath, Charles C.
Heenan, Thomas F.
Heinkel, Joan E.
Helms, K. Dean
Henderson, Lynwood H.
Hendrie, David L.
Hensley Jr., Willie F.
Heusser, Roger K.
Hickey, Sue F.
Hickok, Steven G.
Hirahara, James S.
Hoffman, Allan R.
Holbrook, Phillip L.
Holstein Jr., Elwood NMN
Hooper, Michael K.
Hopf, Richard H.
Hopkins, T.J.
Hughes, Jeffrey L.
Huizenga, David G.
Hunter, Ray A.
Hutzler, Mary Jean
Inge Jr., Edwin F.
Inlow, Rush O.
Izell, Kathy D.
Jaffe, Harold
Jhirad, David J.
Johnson, Frederick M.
Johnson, Owen B.
Johnson, Milton D.
Johnson, Gerald W.
Johnston, Marc
Jones, David A.
Jones, C. Rick
Joseph, Antoinette Grayso
Juckett, Donald A.
Judge, Geoffrey J.
Katz, Maurice J.
Kelly, Cynthia C.
Kenderdine, Melanie Anne
Kennedy, John P.
Kight, Gene H.
Kilgore, Webster C.
Kilpatrick, Michael A.
Kingsbury, Robert L.
Kinzer, Jackson E.
Klein, Keith A.
Klein, Susan Elaine
Konopnicki, Thad T.
Kripowicz, Robert S.
Landers, James C.
Lane, Anthony R.
Langenfeld, Cherri J.
Langenkamp, Robert D.
Lash, Terry R.
Leclaire, David B.
Lewis, Roger A.
Lewis Jr., Howard E.
Lewis, Lenora J.
Lewis Jr., William A.
Lien, Stephen C.T.
Lightner, Ralph G.
Livingston-Behan, Ellen
Lowe, Owen W.
Lowe, David C.
Lyle, Jerry L.
MacDougall, Carmen E.
MaHaley, Joseph S.
Mangeno, James J.
Mann, Thomas O.
Marchese, Andrew R.
Marianelli, Robert S.
Marlay, Robert C.
Mathamel, Martin S.
Maxey, Kenneth G.
Mazur, Mark J.
McCallum, Edward J.
McClary, Michael Vance
McCoy III, Frank R.
McCraney, Percy P.
Michelsen, Stephen J.
Miller, Clarence L.
Miller, Deborah C.
Millhone, John P.
Milner, Ronald A.
Monlyn, Sylvia McDonald
Montoya, Elizabeth A.
Moorer, Richard F.
Morris, Marcia L.
Mournighan, Stephen D.
Mravca, Andrew E.
Mulholland, Joseph W.
Murphy, Robert E.
Murphy, Alice Q.
Nealy, Carson L.
Neilsen, Finn K.
Nelson, David B.
Nelson, Rodney R.
Nettles Jr., John J.
Nichols, Clayton R.
Nolan, Elizabeth A.
Nulton, John D.
O'Fallon, John R.
Oliver, Lawrence R.
Olson, Gary C.
Owendoff, James M.
Patil, Pandit G.
Patrinos, Aristides A.
Patton, Gloria S.
Pelletier, Raymond F.
Penry, Judith M.
Perin, Stephen G.
Peters, Franklin G.
Pettengill, Harry J.
Pettis, Lawrence A.
Piper II, Lloyd L.
Podonsky, Glenn S.
Poe, Robert W.
Ponce, Victoria L.
Powers, James G.
Powers, Kenneth W.
Pray, Charles P.
Price Jr., Robert S.
Prudom, Gerald H.
Przybylek, Charles S.
Pumphrey, David L.
Pye, David B.
Rabben, Robert G.
Reicher, Dan W.
Reid, James E.
Rhoades, Daniel R.
Richardson, Herbert
Richardson, Steven D.
Roberson, Jessie M.
Roberts, Michael NMN
Robertson, John S.
Robison, Sally A.
Rodeheaver, Thomas N.
Rodekohr, Mark E.
Rohlfing, Joan B.
Rollow, Thomas A.
Romm, Joseph J.
Rooney, John M.
Rosen, Simon Peter
Rosselli, Robert M.
Rousso, Samuel NMN
Rudins, George NMN
Rudy, Gregory P.
Ryder, Thomas S.
Salm, Philip E.
San Martin, Robert L.
Sato, Walter N.
Scheetz, Karl G.
Schmitt, Carl H.
Schmitt, William A.
Schmitt, Eugene C.
Schnapp, Robert M.
Schneider, Sandra L.
Scott, Randal S.
Shelor, Dwight E.
Sherman, Helen O.
Siebert Jr., Arlie B.
Silbergleid, Steven A.
Simon, Robert M.
Simpson, Charles Kyle
Singer, Marvin I.
Sitzer, Scott B.
Sjostrom, Leonard C.
Skubel, Stephen C.
Smedley, Elizabeth E.
Smith, Alexandra B.
Smith, Alan C.
Smith, Douglas W.
Sohinki, Stephen M.
Spigal, Harvard P.
Stadler, Silas D.
Staffin, Robin NMN
Stallman, Robert M.
Stark, Richard M.
Stello Jr., Victor NMN
Stern, Gary M.
Stewart Jr., Frank M.
Stewart Jr., Jake W.
Strakey Jr., Joseph P.
Sulak, Stanley R.
Sullivan, Mary Anne
Swink, Denise F.
Sye, Linda G.
Taboas, Anibal L.
Tamura, Thomas T.
Tavares, Antonio F.
Tedrow, Richard T.
Thomas, Iran L.
Thompson, Jerry F.
Throckmorton, Ralph R.
Todd, G. Thomas
Torkos, Thomas M.
Tryon, Arthur E.
Tseng, John C.
Turi, James A.
Turner, James M.
Twining, Bruce G.
Veeth, Terry A.
Vagts, Kenneth A.
Vanzandt, Vickie R.
Vellenga, Thomas J.
Volpe, Frederick J.
Wagner, M. Patrice
Wagner, Mary Louise
Wagoner, John D.
Waisley, Sandra L.
Walgren, Douglas NMN
Walsh, Robert J.
Walton, Howard L.
Warnick, Walter L.
Watkins, Anthony Lee
Wegner, Gerald C.
Weigand, Gilbert G.
Werner, James D.
Whitaker Jr., Mark B.
White, James K.
Whiteman, Albert E.
Wieker, Thomas L.
Wilcynski, John M.
Wilken, Daniel H.
Williams, O. Jay
Williams, Mark H.
Willis, John W.
Wilmot, Edwin L.
Wisenbaker Jr., William
Wooley, John C.
Yuan-Soo Hoo, Camille C.

Issued in Washington, DC December 8, 1997.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

[FR Doc. 97–32741 Filed 12–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–725–000]

Chicago Energy Exchange of Chicago, Inc.; Notice of Filing

December 15, 1997.

Take notice that on November 17, 1997, Chicago Energy Exchange of Chicago, Inc., tendered for filing a notice of change of designation from Chicago Energy Exchange of Chicago, Inc., to Chicago Electric Trading, L.L.C.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33155 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4434–000]

Clean Air Capital Markets Corporation; Notice of Issuance of Order

December 15, 1997.

Clean Air Capital Markets Corporation (Clean Air) submitted for filing a rate schedule under which Clean Air will engage in wholesale electric power and energy transactions as a marketer. Clean Air also requested waiver of various Commission regulations. In particular, Clean Air requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Clean Air.

On December 3, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Clean Air should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Clean Air is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Clean Air's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 2, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33158 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–102–000]

Current Energy, Inc.; Notice of Issuance of Order

December 15, 1997.

Current Energy, Inc. (Current Energy) submitted for filing a rate schedule under which Current Energy will engage in wholesale electric power and energy transactions as a marketer. Current Energy also requested waiver of various Commission regulations. In particular, Current Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Current Energy.

On December 4, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Current Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Current Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the

applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Current Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 5, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33157 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4381–000]

Eastern Energy Marketing, Inc.; Notice of Issuance of Order

December 15, 1997.

Eastern Energy Marketing, Inc. (EEMI) submitted for filing a rate schedule under which EEMI will engage in wholesale electric power and energy transactions as a marketer. EEMI also requested waiver of various Commission regulations. In particular, EEMI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by EEMI.

On December 4, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within 30 days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EEMI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EEMI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EEMI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 5, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33160 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4427–000]

Electric Lite, Inc.; Notice of Issuance of Order

December 15, 1997.

Electric Lite, Inc. (Electric Lite) submitted for filing a rate schedule under which Electric Lite will engage in wholesale electric power and energy transactions as a marketer. Electric Lite also requested waiver of various Commission regulations. In particular, Electric Lite requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Electric Lite.

On December 8, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Electric Lite should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Electric Lite is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Electrical Lite's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 7, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33159 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–126–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

December 15, 1997.

Take notice that on December 11, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–126–000, a request pursuant to §§ 157.205 and 157.216(b) for approval to abandon an inactive 2-inch delivery tap and meter station and 2-inch delivery lateral, under the blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon by removal an inactive 2-inch tap and meter station and to abandon in place approximately 150 feet of 2-inch delivery lateral that formerly served the Shelbyville city gate on behalf of Entex Inc. (Entex), a local distribution company, in Shelby County, Texas. Koch Gateway states that Entex would continue to serve its customers from its existing distribution system. It is further stated that service to the end-users would not be affected. Koch Gateway verifies that Entex agrees to the proposed abandonment. Koch Gateway states that Entex has not used this point since 1988. Koch Gateway further states that it would plug and remove the tap, remove all above ground facilities and after cleaning the pipe and filling it with either water or nitrogen, would abandon the lateral in place.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33161 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–107–000]

Sithe Power Marketing, Inc.; Notice of Issuance of Order

December 15, 1997.

Sithe Power Marketing, Inc. (Sithe) submitted for filing a rate schedule under which Sithe will engage in wholesale electric power and energy transactions as a marketer. Sithe also requested waiver of various Commission regulations. In particular, Sithe requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Sithe.

On December 4, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Sithe should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Sithe is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purpose of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Sithe's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 5, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33156 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

December 15, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Action*: Proceeding Pursuant to Reserved Authority to Determine Whether Modifications to License are Appropriate.

b. *Project No*: 3021–048.

c. *License Issued*: March 27, 1985.

d. *Licensee:* Allegheny Hydro No. 8 and 9 Limited Partnership (LP) and Connecticut National Bank.

e. *Name of Project*: Allegheny River Lock and Dam 8 and 9 Hydroelectric Project.

f. *Location*: Allegheny River, Armstrong County, Pennsylvania.

g. *Authorization*: Section 10(a)(1) of the Federal Power Act and Article 17 of the License.

h. *License Contact*: Ms. Tania S. Aslan, Sithe Energies, Inc., 450 Lexington Avenue, 37th Floor, New York, NY 10017, (212) 450–9045

i. *FERC Contact*: Steve Hocking (202) 219–2656.

j. *Comment Date*: February 17, 1998.

k. *Description of Proceeding*: The Commission has begun a proceeding to determine if reserved authority in article 17 of the license should be used to require 15-inch flashboards on the top of Lock and Dam 9, part of the Allegheny River Lock and Dam 8 and 9 Project. The proceeding is in response to concerns raised by the Pennsylvania Fish and Boat Commission and private citizens about the impacts of project-induced lower water levels on recreational boating in the Lock 9 pool. Flashboards could be used to increase water levels in the Lock 9 pool to more closely resemble pre-hydroelectric project conditions. Flashboards have been authorized as an interim measure since 1994.

The Commission prepared a draft environmental assessment (EA) analyzing the environmental impacts of using 15-inch flashboards for public review and comment. A copy of the draft EA can be obtained by calling the Commission's public reference room at (202) 208–1371.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR Sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Motions to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33152 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

December 15, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 2103.

c. *Date filed:* June 19, 1997.

d. *Submitted By:* Cominco American Incorporated.

e. *Name of Project:* Cedar Creek.

f. *Location:* On Cedar Creek, Stevens County, Washington, adjacent to International Boundary.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's Regulations.

h. *Expiration date of original license:* July 31, 2002.

i. The facilities under this license consist of 2.32 acres of public lands, of which 2.276 acres are U.S. lands managed by the Bureau of Land Management. These facilities are a minor part of the 375–MW Waneta Project, located in British Columbia, Canada, operating under Provincial British Columbia Water Licenses and an International Joint Commission Order of Approval.

j. Pursuant to 18 CFR 16.7, information on the project is available by contacting: Nan Nalder, Acres International Corporation, 3254 11th Avenue West, Seattle, WA 98119, Phone: (206) 281–7079.

k. *FERC contact:* Héctor M. Pérez, (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2000.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33153 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

December 15, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Joint Application for Transfer of License.

b. *Project No.:* 1413–023.

c. *Date Filed:* October 29, 1997.

d. *Applicants:* Buffalo Hydro, L. C. and Fall River Rural Electric Cooperative, Inc.

e. *Name of Project:* Buffalo River Hydroelectric Project.

f. *Location:* On the Buffalo River, a tributary to the Henry's Fork of the Snake River, in Fremont County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791 (a)–825(r).

h. *Contact:* Dee M. Reynolds, General Manager, Fall River Rural Electric, Cooperative, Inc., 714 Main Street, P.O. Box 830, Ashton, Idaho 83420, (208) 652–7431, Fax: (208) 652–7825.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* January 29, 1998.

k. *Description of the Proposed Action:* The licensee, Buffalo Hydro, L.C., seeks to transfer the project license to Fall River Rural Electric Cooperative, Inc., a Idaho corporation.

The licensee has agreed to sell to the transferee all operating assets except its power purchase agreement with PacifiCorp.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Motions to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33154 Filed 12–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 17, 1997 (Approximately 10:30 a.m., following Regular Commission Meeting).

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *American Rivers, Inc.* v. *FERC*, No. 96–4110.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

The following Commissioners voted that agency business requires the holding of a closed meeting on less than the seven days' notice required by the Government in the Sunshine Act:

Chairman Hoecker
Commissioner Bailey
Commissioner Massey
Commissioner Breathitt
Commissioner Hebert

Lois D. Cashell,

Secretary.

[FR Doc. 97–33304 Filed 12–17–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00516; FRL–5760–7]

Pesticide Program Dialogue Committee; Committee and Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by of the Federal Advisory Committee Act, 5 U.S.C., App. 2 section 9(c), EPA's Office of Pesticide Programs (OPP) is giving notice of the renewal of the Pesticide Program Dialogue Committee (PPDC) and its Charter.

DATES: The PPDC Charter, which was filed with Congress on November 13, 1997, will be in effect for two years, until November 13, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach or Linda Murray, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Highway; Arlington, VA 22202; Phone: 703–305–7090; e-mail: fehrenbach.margie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The PPDC will be composed of approximately 25–30 members appointed by the EPA Deputy Administrator. Committee members will be selected from a balanced group of participants from the following sectors: pesticide industry and user, and commodity groups; Federal and State governments; consumer and environmental/public interest groups, including representatives from the general public; academia; and, public health organizations. The Committee may form subcommittees or establish workgroups for any purposes consistent with its Charter.

The Committee will provide a forum for a diverse group representing a broad range of interests to communicate with EPA's Office of Pesticide Programs regarding pesticide regulatory, policy and implementation issues.

PPDC meetings are open to the public. Specific dates, times and locations will be published in the **Federal Register** before each meeting. The PPDC Charter and other Committee materials are available for public review at the following address: U.S. Environmental Protection Agency, Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805 [PPDC Docket # 00439].

List of Subjects

Environmental protection.

Dated: December 5, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 97–33227 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5487–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed December 08, 1997 Through December 12, 1997, Pursuant to 40 CFR 1506.9.

EIS No. 970470, FINAL EIS, FHW, NC, Sunset Beach Bridge No. 198 on Secondary Road NC–1172 Replacement, Over the Atlantic Intracoastal Waterway, Funding, COE Section 10 and 404 Permit, Brunswick County, NC, Due: January 19, 1998, Contact: Nicholas L. Graf, P.E. (919) 856–4346.

EIS No. 970471, DRAFT EIS, FHW, NH, Manchester Airport Access Road Highway Improvement Project, Bedford-Manchester-Londonderry-Litchfield-Merrimack, Funding and NPDES Permit and COE Section 404 Permit, Hillsborough and Rockingham Counties, NH, Due: February 02, 1998, Contact: William F. O'Donnell, P.E. (603) 225–1608.

EIS No. 970472, DRAFT EIS, FHW, VT, Rutland Transportation Improvement Project, between US 4 and US 7 in the City of Rutland and the Towns of Rutland, Mendon, Clarendon and Shrewsbury, Funding, EPA Permit and COE Section 404 Permit, Rutland County, VT, Due: March 06, 1998, Contact: Frederick Downs (802) 828–4433.

EIS No. 970473, DRAFT EIS, UAF, FL, CA, Evolved Expendable Launch Vehicle (EELV) Program, Development, Operation and Deployment, Proposed Launch Locations are Cape Canaveral Air Station (AS), Florida and Vandenberg Air Force Base (AFB), California, Federal Permits and Licenses, FL and CA, Due: February 02, 1998, Contact: Jonathan D. Farthing (210) 536–3668.

EIS No. 970474, DRAFT EIS, USA, AL, Fort McClellen (Main Post) Disposal and Reuse, Implementation, Calhoun, Cleburne, Randolph, Clay, Talledega, St. Clair, Etowah and Cherokee Counties, AL, Due: February 02, 1998, Contact: Carla Coulson (703) 697–0225.

EIS No. 970475, DRAFT EIS, USN, CA, Long Beach Complex Disposal and Reuse, Implementation, COE Section 10 and 404 Permits, NPDES Permit, in the City of Long Beach and Los Angeles County, CA, Due: February 02, 1998, Contact: Melanie Ault (619) 532–4744.

EIS No. 970476, DRAFT EIS, DOE, SC, Accelerator for Production of Tritium at the Savannah River Site (DOE/EIS–0270D), Construction and Operation, Aiken and Barnwell Counties, SC, Due: February 02, 1998, Contact: Andrew R. Gainger 1–(800)–881–7292.

EIS No. 970477, FINAL EIS, AFS, MT, Jericho Salvage Timber Sale, Implementation, Salvage Treatments and Temporary Road Construction, Helena National Forest, Helena Ranger District, Powell County, MT, Due: January 19, 1998, Contact: Dan Mainwaring (406) 449–5490.

EIS No. 970478, DRAFT EIS; FHW, WI, WI–STH–11 Janesville Bypass (West) Transportation Improvements, between Dubuque, Iowa, and the Racine/Kenosha urban area, WI–STH–11 is the major link to IH–90, Funding and COE Section 404 Permit, Rock County, WI, Due: February 27, 1998, Contact: Richard Madrzak (608) 829–7510.

EIS No. 970479, FINAL EIS, USA, NJ, Evans Subpost Disposal and Reuse, Implementation, Fort Monmouth, Ocean and Monmouth Counties, NJ, Due: January 19, 1998, Contact: Ms. Susan H. Bauer (703) 697–0126.

EIS No. 970480, FINAL EIS, UMC, CA, Santa Margarita River Flood Control Project (MILCON P–010) and Basilone Road Bridge Replacement Project (MILCON P–030), Construction and Operation, COE Section 404 Permit, Camp Pendleton, CA, Due: January 19, 1998, Contact: Vicky K. Taylor (619) 532–3007.

EIS No. 970481, DRAFT EIS, STB, Conrail Acquisition (Finance Docket No. 33388) by CSX Corporation and CSX Transportation Inc., and Norfolk Southern Corporation and Norfolk Southern Railway Company (NS), Control and Operating Leases and Agreements, To serve portion of eastern United States, Due: February 02, 1998, Contact: Michael Dalton (202) 565–1530.

EIS No. 970482, DRAFT EIS, FTA, FL, Central Florida Light Rail Transit System Transportation Improvement to the North/South Corridor Project, Locally Preferred Alternative (LPA) and Minimum Operable Segment (MOS), Orange and Seminole Counties, FL, Due: February 09, 1998, Contact: J. Anthony Dittmeier (404) 562–3512.

Amended Notices

EIS No. 970433, FINAL EIS, FHW, PA, US 202 Section 700 Corridor, Improvements, from PA 63 in Montgomeryville to the PA–611 Bypass in Doylestown Township, COE Section 404 Permit and Right-of-Way, Montgomery and Bucks Counties, PA, Due: January 30, 1998, Contact: Ronald W. Carmichael (717) 221–3461. Published FR 11–14–97—Review Period extended.

Dated: December 16, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–33242 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5937–9]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for applications.

SUMMARY: This document provides information on the availability of the fiscal year 1998 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedule are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed in **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street SW, Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Regional Scale Analysis and Assessment, (2) Water and Watersheds (joint with the National Science Foundation and the U.S. Department of Agriculture, (3) Technology for a Sustainable Environment (joint with the National Science Foundation), (4) Bioremediation (joint with the Department of Energy, National Science Foundation, and Office of Naval Research), and (5) Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) (joint with the National Oceanographic and Atmospheric Administration, National Science Foundation, Office of Naval Research, U.S. Department of Agriculture, and National Aeronautics and Space Administration). Applications must be received as follows: February 12, 1998, for topic (1); February 17, 1998, for topic (3); February 23, 1998, for topic (5); February 27, 1998, for topic (4); and April 1, 1998 for topic (2).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact person for the Regional Scale Analysis and Assessment RFA and Water and Watersheds RFA is Barbara Levinson (levinson.barbara@epamail.epa.gov), telephone 202–564–6911; for Technology for a Sustainable Environment is Barbara Karn (karn.barbara@epamail.epa.gov), telephone 202–564–6824; for Bioremediation is Robert Menzer (menzer.robert@epamail.epa.gov), telephone 202–564–6849, and for Ecology and Oceanography of Harmful Algal Blooms is Sheila Rosenthal (rosenthal.sheila@epamail.epa.gov), telephone 202–564–6916.

Dated: December 10, 1997.

Stephen A. Lingle,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–33226 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50837; FRL–5761–4]

Receipt of a Notification to Conduct Small-Scale Field Testing of a Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt from U.S. Department of Agriculture, Agricultural Research Service (ARS), in cooperation with Washington State University (WSU), of a notification (71233-NMP-R) of intent to conduct small-scale field testings involving species of fluorescent *Pseudomonas* bacteria, which have been genetically engineered to express antimicrobial genes from similar *Pseudomonas* species inhabitating the rhizosphere of wheat. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Written comments must be received on or before January 20, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: William R. Schneider, PM 90, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor CS1 2800 Crystal Drive, Arlington, VA, (703) 308-8683, e-mail: schneider.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Notice of receipt of this notification does not imply a decision by the Agency on this notification.

These small-scale field tests are designed to evaluate fluorescent *Pseudomonas strains* that are able to control the plant pathogens that cause the following diseases in wheat: take-all, *Rhizoctonia* root rot, and *Pythium* root rot. The bacteria will be applied to the seeds prior to planting. In accordance with 40 CFR 172.3, these small-scale field tests will be conducted on a cumulative total of no more than 10 acres of land and any food or feed crops will be destroyed. Each test site will include a containment border such as a 20 foot wide unplanted area, fallow-field, or sod-berm, and will be direct-seeded in accordance with no-till practices to reduce or eliminate run-off of water from the site. The genetically-modified construct and the naturally-occuring wild type parental control strain will have been selected for a rifampicin-resistance marker gene to facilitate monitoring.

The object of the genetic manipulations is to combine: (1) The properties of *Pseudomonas* isolates that produce efficacious levels of antibiotics effective against the microorganisms that cause wheat diseases with (2) other *Pseudomonas* isolates that colonize wheat roots well. The antibiotic genes will be stably inserted into the chromosome of the recipient strain and both the recipient and the donor strains will be fluorescent pseudomonads. For example, in the proposed 1997 tests, the genes for phenazine-1-carboxylate from *Pseudomonas fluorescens* 2-79, isolated from wheat, were transfered into the chromosome of *Pseudomonas fluorescens* Q8R1-96, which is a better wheat root colonizer than strain 2-79. The plasmid used to introduce the *phzA, -B, -C, -D, -E, -F,* and *-G* genes is not maintained by the recipient strain and, thus, is eliminated, leaving the phenazine biosynthetic genes in the Q8R1-06 chromosome.

Following the review of the ARS/WSU notification and any comments received in response to this notice, EPA may approve the tests, ask for additional data, require additional modifications to the test protocols, or require EUP applications to be submitted. In accordance with 40 CFR 172.50, under no circumstances shall the proposed tests proceed until the submitters have received notice from EPA of its approval of such tests.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number "OPP–50857" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption: Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–50837." Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: December 15, 1997.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–33228 Filed 12–18–97; 9:30 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30444; FRL–5761–1]

Novartis Seeds, Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a plant pesticide containing an active ingredient involving a changed use pattern of the product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by January 20, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30444] and the file symbols to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Novartis Seeds, Inc., 3054 Cornwallis Road, P.O. Box 12257, Research Triangle Park, NC 27709–2257, to amend the plant pesticide *Bacillus thuringiensis* European Corn Borer Control Protein (EPA Registration Number 66736–1).

containing the active ingredient *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (pCIB4431 in corn) at 0.0001-0.0018 percent, which involves a changed use pattern of the product. This product is proposed for use on popcorn to be added to its presently registered use on field corn pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30444] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/8.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–30444]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the Public Information and Records Integrity Branch, Information Resources and Services Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805) to ensure that the file is availeble on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: December 8, 1997.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–33229 Filed 12–18–97; 9:30 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5937–3]

Lindsley Lumber Site/Tifton, Georgia; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Lindsley Lumber Site (Site) located in Dania, Florida, with Lone Star Industries, Inc./Lone Star Building Centers (Eastern), Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: December 5, 1997.

Jewell Harper,

Deputy Director.

[FR Doc. 97–33224 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42197B; FRL–5783–1]

Enforceable Consent Agreement Development for Ethylene Dichloride; Solicitation of Interested Parties and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting interested parties who want to monitor or participate in negotiations on an enforceable consent agreement (ECA) concerning the use of pharmacokinetics (PK) studies and mechanistic data to help meet testing requirements for ethylene dichloride (CAS No. 107–06–02) in the proposed hazardous air pollutants (HAPs) test rule. In addition, EPA invites all interested parties to attend a public meeting to initiate negotiations on the ECA for ethylene dichloride.

DATES: EPA must receive written notification requesting designation as an interested party for ethylene dichloride on or before January 9, 1998. Those persons who identify themselves as interested parties for ethylene dichloride may submit written comments to EPA on the PK proposal for this chemical, on EPA's preliminary technical analysis, and on other materials in the docket for the proposed HAPs test rule, that relate to the ECA process for this chemical by January 9, 1998.

The public meeting is scheduled from 10 a.m. to 2 p.m. on January 12, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42197B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

EPA will address these comments at the public meeting.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit VI. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document.

Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

The public meeting will be held at EPA Headquarters, 401 M St., SW., Washington, DC in the EPA Conference Center, North Conference Area in Room 1.

FOR FURTHER INFORMATION CONTACT: *For additional information:* Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1997/).

II. Background

EPA proposed health effects testing under section 4(a) of the Toxic Substances Control Act (TSCA) on June 26, 1996, for a number of HAPs chemicals (61 FR 33178) (FRL–4869–1). As indicated in the proposed HAPs test rule, EPA would use the data obtained from testing to implement several provisions of section 112 of the Clean Air Act (CAA), including the determination of residual risk, the estimation of the risks associated with accidental releases of chemicals, and determinations whether substances should be removed from the CAA section 112(b)(1) list of hazardous air pollutants (delisting). The data also would be used by other Federal agencies (e.g. Agency for Toxic Substances and Disease Registry (ATSDR), National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), and Consumer Product Safety Commission (CPSC)) in assessing chemical risks and in taking appropriate actions within their programs.

In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of ECAs. These PK studies would be used to inform EPA about the use of route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. EPA received a PK proposal for ethylene dichloride from the HAP Task Force on November 25, 1996. Based on the PK proposal received for ethylene dichloride, the Agency developed a preliminary technical analysis. A copy of this preliminary technical analysis was sent to the HAP Task Force on June 26, 1997. The HAP Task Force reviewed EPA's analysis and notified EPA on July 31, 1997, that it has a continued interest in pursuing the ECA process. A copy of the PK proposal, the EPA preliminary technical analysis and related materials is contained in the public record for this ECA process. These materials will be used during discussions at the negotiating meeting. EPA has decided to proceed with the ECA process for ethylene dichloride and is providing public notice that the Agency is hereby initiating the procedures for ECA negotiations for the HAP chemical, ethylene dichloride. The procedures for ECA negotiations are described at 40 CFR 790.22(b). EPA intends to publish, as appropriate, additional **Federal Register** documents to solicit interested parties and announce public meetings for other HAPs chemicals for which PK proposals were submitted.

The proposed HAPs test rule, and the ECA negotiations on chemicals included in the proposed rule are separate and parallel activities. While the Agency's objective of obtaining data could be accomplished by either activity, EPA recognizes that the final testing program performed by industry may differ depending on whether it is accomplished under the final HAPs test rule or via the ECA process. During the course of ECA negotiations, additional information may be brought forward that could cause the Agency to re-evaluate the nature of the testing requirements as stated in the proposed HAPs test rule. This could result in the development of an ECA that would fulfill the Agency's data needs in ways not stated in the proposed HAPs test rule. It is therefore essential for all interested parties to recognize these differences at the outset and respond accordingly within the framework of these two separate and parallel activities. Comments on the proposed HAPs test rule must be submitted under docket control number, OPPTS–42187A, as described in the proposed HAPs test rule published on June 26, 1996, and will be addressed by EPA via the rulemaking process, which is separate and distinct from the ECA process. Participation in the ECA process is described in Units II. through IV. of this preamble.

Negotiations on developing an ECA for the HAP chemical, ethylene dichloride, will focus on the use of PK studies and mechanistic data to help meet testing requirements for ethylene dichloride. In addition, discussion will include the adequacy of the available data base to be used for extrapolation to obtain the data needs identified for ethylene dichloride in the proposed HAPs test rule. The objective of the ECA process is to conclude an ECA that will set in place an industry-sponsored testing program that will adequately address EPA's data needs for ethylene dichloride.

III. Identification of Interested Parties

EPA is soliciting interested parties to monitor or participate in testing negotiations on an ECA for ethylene dichloride. The HAP Task Force, the submitter of the PK proposal for ethylene dichloride, and the member companies of the HAP Task Force are already considered interested parties and do not need to respond to this document. Additionally, any persons who respond to this document on or before January 9, 1998 will be given the status of interested parties. Interested parties must respond in writing to the address specified in the "ADDRESSES" at the beginning of this document. These interested parties will not incur any obligations by being so designated. Negotiations will be conducted in one or more meetings open to the public. The negotiation time schedule for ethylene dichloride will be established at the first negotiation meeting and will not exceed a period of 4 months from the initial meeting. If an ECA is not established in principle within this timeframe and EPA does not choose to extend the negotiation time period, negotiations will be terminated and testing will be required under the final HAPs test rule. If the testing from the ECA does not meet the Agency's needs,

EPA reserves the right to enter into rulemaking.

IV. Public Participation in Negotiations

Under EPA regulations, the Agency is required to provide the public with an opportunity to comment on and participate in the development of ECAs. The procedural rule for ECAs (40 CFR part 790) contains provisions to ensure that the views of interested parties are taken into account during the ECA process.

Individuals and groups who respond to this document will have the status of interested parties. All negotiating meetings for the development of this ECA for ethylene dichloride will be open to the public and minutes of each meeting will be prepared by EPA and placed in the public docket for this ECA process. The Agency will advise interested parties of meeting dates and make available meeting minutes, testing proposals, background documents, and other materials exchanged at or prepared for negotiating meetings. Where tentative agreement is reached on an acceptable testing program, a draft ECA will be made available for comment by interested parties and, if necessary, EPA will hold a public meeting to discuss any comments that have been received and determine whether revisions to the ECA are appropriate. EPA will not reimburse costs incurred by non-EPA participants in this ECA negotiation process.

ECAs will only be concluded where an agreement can be obtained which is satisfactory to the Agency, manufacturers or processors who are potential test sponsors, and other interested parties, concerning the need for and scope of testing. In the absence of an ECA, EPA reserves the right to proceed with rulemaking.

A. The Agency will not enter into an ECA if either:

1. EPA and affected manufacturers or processors cannot reach an agreement on the provisions of the ECA; or

2. The draft ECA is considered inadequate by other interested parties who have submitted timely written objections to the draft ECA.

B. EPA may reject these objections if the Agency concludes either that:

1. They are not made in good faith;

2. They are untimely;

3. They are not related to the adequacy of the proposed testing program or other features of the agreement that may affect EPA's ability to fulfill the goals and purposes of TSCA; or

4. They are not accompanied by a specific explanation of the grounds on which the draft agreement is considered objectionable.

EPA will prepare an explanation of the basis for each ECA. The explanatory document will summarize the agreement (including the required testing), explain the objectives of the testing, and outline the chemical's use and exposure characteristics. The document, which will also announce the availability of the ECA, will be published in the **Federal Register**.

V. Proposal of Export Notification Requirements for Ethylene Dichloride

EPA intends to publish a proposed rule in an upcoming **Federal Register** document to require export notification by all persons who export or intend to export ethylene dichloride under TSCA section 12(b) upon the successful conclusion of an ECA for ethylene dichloride.

VI. Public Record and Electronic Submissions

As described above, ethylene dichloride is listed as a chemical that would be subject to testing requirements under the proposed HAPs test rule. This ECA negotiation process and the proposed rule, are separate and parallel activities. The official record for this ECA action, including the public version, has been established under docket control number OPPTS–42197B (including comments and data submitted electronically as described below). The official record for this document also includes all material and submissions filed under docket control number OPPTS–42187A; FRL–4869–1, the record for the proposed HAPs test rule, and all materials and submissions filed under docket control number OPPTS–42187B; FRL–4869–1, the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals.

The official record for this document, including the public version, which does not include any information claimed as CBI, has been established for this document under docket control number OPPTS–42197B. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42197B. Electronic comments on this document may be filed online at many Federal Depository Libraries.

The record contains the following information:

A. **Federal Register** notices/EPA documents pertaining to this notice consisting of:

1. "Proposed Test Rule for Hazardous Air Pollutants; Proposed Rule" (61 FR 33178, June 26, 1996).

B. PK proposal materials consisting of:

1. HAP Task Force, "Proposal for Pharmacokinetics Study of Ethylene Dicholoride" (November 22, 1996) and cover letter (November 25, 1996).

2. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Ethylene Dichloride" and cover letter (June 26, 1997).

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 17, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–33328 Filed 12–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–421988; FRL–5763–2]

Enforceable Consent Agreement Development for 1,1,2-Trichloroethane; Solicitation of Interested Parties and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting interested parties who want to monitor or participate in negotiations on an enforceable consent agreement (ECA) concerning the use of pharmacokinetics (PK) studies and mechanistic data to help meet testing requirements for 1,1,2-trichloroethane (CAS No. 79–00–5) in the proposed hazardous air pollutants (HAPs) test rule. In addition, EPA invites all interested parties to attend a public meeting to initiate negotiations on the ECA for 1,1,2-trichloroethane.

DATES: EPA must receive written notification requesting designation as an interested party for 1,1,2-trichloroethane on or before January 9, 1998. Those persons who identify themselves as interested parties for 1,1,2-trichloroethane may submit written comments to EPA on the PK proposal for this chemical, on EPA's preliminary technical analysis, and on other materials in the docket for the proposed HAPs test rule, that relate to the ECA process for this chemical by January 9, 1998.

The public meeting is scheduled from 8 a.m. to 10 a.m. on January 12, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42198B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

EPA will address these comments at the public meeting.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit VI. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

The public meeting will be held at EPA Headquarters, 401 M St., SW., Washington, DC in the EPA Conference Center, North Conference Area in Room 1.

FOR FURTHER INFORMATION CONTACT: *For additional information:* Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr.; Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1997/).

II. Background

EPA proposed health effects testing under section 4(a) of the Toxic Substances Control Act (TSCA) on June 26, 1996, for a number of HAPs chemicals (61 FR 33178) (FRL–4869–1). As indicated in the proposed HAPs test rule, EPA would use the data obtained from testing to implement several provisions of section 112 of the Clean Air Act (CAA), including the determination of residual risk, the estimation of the risks associated with accidental releases of chemicals, and determinations whether substances should be removed from the CAA section 112(b)(1) list of hazardous air pollutants (delisting). The data also would be used by other Federal agencies (e.g. Agency for Toxic Substances and Disease Registry (ATSDR), National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), and Consumer Product Safety Commission (CPSC)) in assessing chemical risks and in taking appropriate actions within their programs.

In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of ECAs. These PK studies would be used to inform EPA about the use of route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. EPA received a PK proposal for 1,1,2-trichloroethane from the HAP Task Force on November 25, 1996. Based on the PK proposal received for 1,1,2-trichloroethane, the Agency developed a preliminary technical analysis. A copy of this preliminary technical analysis was sent to the HAP Task Force on June 26, 1997. The HAP Task Force reviewed EPA's analysis and notified EPA on July 31, 1997, that it has a continued interest in pursuing the ECA process. A copy of the PK proposal, the EPA preliminary technical analysis and related materials is contained in the public record for this ECA process. These materials will be used during discussions at the negotiating meeting. EPA has decided to proceed with the ECA process for 1,1,2-trichloroethane and is providing public notice that the Agency is hereby initiating the procedures for ECA negotiations for the HAP chemical, 1,1,2-trichloroethane. The procedures for ECA negotiations are described at 40 CFR 790.22(b). EPA intends to publish, as appropriate, additional **Federal Register** documents to solicit interested parties and announce public meetings for other HAPs chemicals for which PK proposals were submitted.

The proposed HAPs test rule, and the ECA negotiations on chemicals included in the proposed rule are separate and parallel activities. While the Agency's objective of obtaining data could be accomplished by either activity, EPA recognizes that the final testing program performed by industry may differ depending on whether it is accomplished under the final HAPs test rule or via the ECA process. During the course of ECA negotiations, additional information may be brought forward that could cause the Agency to re-evaluate the nature of the testing requirements as stated in the proposed HAPs test rule. This could result in the development of an ECA that would fulfill the Agency's data needs in ways not stated in the proposed HAPs test rule. It is therefore essential for all interested parties to recognize these differences at the outset and respond accordingly within the framework of these two separate and parallel activities. Comments on the proposed HAPs test rule must be submitted under docket control number, OPPTS–42187A, as described in the proposed HAPs test rule published on June 26, 1996, and will be addressed by EPA via the rulemaking process, which is separate and distinct from the ECA process. Participation in the ECA process is described in Units II. through IV. of this preamble.

Negotiations on developing an ECA for the HAP chemical, 1,1,2-trichloroethane, will focus on the use of PK studies and mechanistic data to help meet testing requirements for 1,1,2-trichloroethane. In addition, discussion will include the adequacy of the available data base to be used for extrapolation to obtain the data needs identified for 1,1,2-trichloroethane in

the proposed HAPs test rule. The objective of the ECA process is to conclude an ECA that will set in place an industry-sponsored testing program that will adequately address EPA's data needs for 1,1,2-trichloroethane.

III. Identification of Interested Parties

EPA is soliciting interested parties to monitor or participate in testing negotiations on an ECA for 1,1,2-trichloroethane. The HAP Task Force, the submitter of the PK proposal for 1,1,2-trichloroethane, and the member companies of the HAP Task Force are already considered interested parties and do not need to respond to this document. Additionally, any persons who respond to this document on or before January 9, 1998 will be given the status of interested parties. Interested parties must respond in writing to the address specified in the "ADDRESSES" at the beginning of this document. These interested parties will not incur any obligations by being so designated. Negotiations will be conducted in one or more meetings open to the public. The negotiation time schedule for 1,1,2-trichloroethane will be established at the first negotiation meeting and will not exceed a period of 4 months from the initial meeting. If an ECA is not established in principle within this timeframe and EPA does not choose to extend the negotiation time period, negotiations will be terminated and testing will be required under the final HAPs test rule. If the testing from the ECA does not meet the Agency's needs, EPA reserves the right to enter into rulemaking.

IV. Public Participation in Negotiations

Under EPA regulations, the Agency is required to provide the public with an opportunity to comment on and participate in the development of ECAs. The procedural rule for ECAs (40 CFR part 790) contains provisions to ensure that the views of interested parties are taken into account during the ECA process.

Individuals and groups who respond to this document will have the status of interested parties. All negotiating meetings for the development of this ECA for 1,1,2-trichloroethane will be open to the public and minutes of each meeting will be prepared by EPA and placed in the public docket for this ECA process. The Agency will advise interested parties of meeting dates and make available meeting minutes, testing proposals, background documents, and other materials exchanged at or prepared for negotiating meetings. Where tentative agreement is reached on an acceptable testing program, a draft ECA will be made available for comment by interested parties and, if necessary, EPA will hold a public meeting to discuss any comments that have been received and determine whether revisions to the ECA are appropriate. EPA will not reimburse costs incurred by non-EPA participants in this ECA negotiation process.

ECAs will only be concluded where an agreement can be obtained which is satisfactory to the Agency, manufacturers or processors who are potential test sponsors, and other interested parties, concerning the need for and scope of testing. In the absence of an ECA, EPA reserves the right to proceed with rulemaking.

A. The Agency will not enter into an ECA if either:

1. EPA and affected manufacturers or processors cannot reach an agreement on the provisions of the ECA; or
2. The draft ECA is considered inadequate by other interested parties who have submitted timely written objections to the draft ECA.

B. EPA may reject these objections if the Agency concludes either that:

1. They are not made in good faith;
2. They are untimely;
3. They are not related to the adequacy of the proposed testing program or other features of the agreement that may affect EPA's ability to fulfill the goals and purposes of TSCA; or
4. They are not accompanied by a specific explanation of the grounds on which the draft agreement is considered objectionable.

EPA will prepare an explanation of the basis for each ECA. The explanatory document will summarize the agreement (including the required testing), explain the objectives of the testing, and outline the chemical's use and exposure characteristics. The document, which will also announce the availability of the ECA, will be published in the **Federal Register**.

V. Proposal of Export Notification Requirements for 1,1,2-trichloroethane

EPA intends to publish a proposed rule in an upcoming **Federal Register** document to require export notification by all persons who export or intend to export 1,1,2-trichloroethane under TSCA section 12(b) upon the successful conclusion of an ECA for 1,1,2-trichloroethane.

VI. Public Record and Electronic Submissions

As described above, 1,1,2-trichloroethane is listed as a chemical that would be subject to testing requirements under the proposed HAPs test rule. This ECA negotiation process and the proposed rule, are separate and parallel activities. The official record for this ECA action, including the public version, has been established under docket control number OPPTS–42198B (including comments and data submitted electronically as described below). The official record for this document also includes all material and submissions filed under docket control number OPPTS–42187A; FRL–4869–1, the record for the proposed HAPs test rule, and all materials and submissions filed under docket control number OPPTS–42187B; FRL–4869–1, the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals.

The official record for this document, including the public version, which does not include any information claimed as CBI, has been established for this document under docket control number OPPTS–42198B. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42198B. Electronic comments on this document may be filed online at many Federal Depository Libraries.

The record contains the following information:

A. **Federal Register** notices/EPA documents pertaining to this notice consisting of:

1. "Proposed Test Rule for Hazardous Air Pollutants; Proposed Rule" (61 FR 33178, June 26, 1996).

B. PK proposal materials consisting of:

1. HAP Task Force, "Proposal for Pharmacokinetics Study of 1,1,2-Trichloroethane" (November 22, 1996) and cover letter (November 25, 1996).
2. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for 1,1,2-Trichloroethane" and cover letter (June 26, 1997).

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 17, 1997.

Charles M. Auer,
Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–33329 Filed 12–18–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Prem International, Inc., 7225 N.W. 25th Street, Suite 203, Miami, FL 33122, Officers: Hugo Pedro Kelly, President, Sergio Barci, Vice President

UT Freight Forwarders Ltd., 161–15 Rockaway Blvd., Jamaica, NY 11434, Officers: John Hwang, President, Lisa Cho, Secretary

Triton Forwarding, Inc., 3080 Bristol Street, Suite 610, Costa Mesa, CA 92626, Officers: Anthony G. Khamis, Director, Leonard Yanovsky, Director

Interamericas Consulting Import Export Inc., 22716 SW 65 Way, Boca Raton, FL 33428, Officer: Iracema V.S. Heidal, President.

Dated: December 15, 1997.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 97–33121 Filed 12–18–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 15, 1998.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Industry Bancshares, Inc., Industry, Texas; to acquire 100 percent of the voting shares of Citizens State Bank, Buffalo, Texas.

B. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. New Century Financial Corporation, Spokane, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of New Century Bank (in organization), Spokane, Washington.

Board of Governors of the Federal Reserve System, December 16, 1997.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 97–33201 Filed 12–18–97; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Information Line

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has changed its procedure for accessing the Advisory Committee Information Line (the information line) concerning those advisory committees under the purview of the Center for Biologics Evaluation and Research (CBER). CBER has assigned a separate 5-digit code to each of its advisory committees.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

SUPPLEMENTARY INFORMATION: The information line provides the public with access to the most current information available on upcoming FDA advisory committee meetings, guidance for making an oral presentation during the open public hearing portion of an advisory committee meeting, and procedures for obtaining copies of transcripts of advisory committee meetings. The information line can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee has been assigned a 5-digit code on the information line that enables the public to obtain information about a particular advisory committee by using that code. This 5-digit code appears in each individual notice of a meeting. Information provided is preliminary and may change before a meeting is held. The information line will be updated when such changes are made. The following is a list of CBER's advisory committees and the 5-digit code assigned to each advisory committee:

Committee name	Code
Allergenic Products Advisory Committee	12388
Biological Response Modifiers Advisory Committee	12389
Blood Products Advisory Committee	19516

Committee name	Code
Vaccines and Related Biological Products Advisory Committee	12391
Transmissible Spongiform Encephalopathies Advisory Committee	12392

Dated: December 11, 1997.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 97–33097 Filed 12–18–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0503]

Agency Information Collection Activities: Proposed Collection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for submission of a new animal drug application (NADA).

DATES: Submit written comments on the collection of information by February 17, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

New Animal Drug Application (NADA), Form FDA 356 V, 21 CFR Part 514, (OMB Control number 0910–0032—Reinstatement)

Description: FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act), for the approval of new animal drugs that are safe and effective. Section 512(b) of the act (21 U.S.C. 360b(b)) requires that a sponsor submit and receive approval of a NADA, before interstate marketing is allowed. The regulations implementing statutory requirements for NADA approval have been codified under 21 CFR part 514. NADA applicants generally use a single form, FDA 356 V. The NADA must contain, among other things, safety and effectiveness data for the drug, labeling, a list of components, manufacturing and controls information, and complete information on any methods used to determine residues of drug chemicals in edible tissues. While the NADA is pending, an amended application may be submitted for proposed changes. After an NADA has been approved, a supplemental application must be submitted for certain proposed changes, including changes beyond the variations provided for in the NADA and other labeling changes. An amended application and a supplemental application may omit statements concerning which no change is proposed. This information is reviewed by FDA scientific personnel to ensure that the intended use of an animal drug, whether as a pharmaceutical dosage form, in drinking water, or in medicated feed, is safe and effective. The respondents are pharmaceutical firms that produce veterinary products and commercial feed mills.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 356 V	514.1 and 514.6	190	6.76	1,824	211.6	271,694
	514.8 and 514.9				30	8,520
	514.11				1	1,824
Total burden hours						282,038

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the burden hours required for reporting are based on fiscal year 1996 data. The burden estimate includes original NADA's, supplemental NADA's and amendents to unapproved applications.

Dated: December 10, 1997.
William K. Hubbard,
Associate Commissioner for Policy Coordination.
[FR Doc. 97–33098 Filed 12–18–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0485]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by January 20, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Shipment of a Blood Product Prior to Completion of Testing for Hepatitis B Surface Antigen (HbsAg) (21 CFR 610.40(b)); and Shipment of Blood Products Known Reactive for HbsAg (21 CFR 610.40(d))—(OMB Control Number 0910–0168—Reinstatement)

Under sections 351 and 361 of the Public Health Service Act (42 U.S.C. 262 and 42 U.S.C. 264), FDA prescribes standards designed to ensure the safety, purity, potency, and effectiveness of biological products including blood and blood components and to prevent the transmission of communicable diseases. To accomplish this, FDA requires, among other things, that each unit of Whole Blood or Source Plasma be tested by a licensed serologic test for hepatitis B surface antigen (HbsAg). Section 610.40(b)(4) (21 CFR 610.40(b)(4)) permits preapproved or emergency shipments of blood products for further manufacturing before the test for HbsAg is completed. To obtain approval for such shipments, the collection facility must submit a description of the control procedures to be used by the collection facility and manufacturer. Proper control procedures are essential to ensure the safe shipment, handling, quarantine of untested or incompletely tested blood products, communication of test results, and appropriate use or disposal of the blood products based on the test results. Section 610.40(d)(1) and (d)(2) requires that a collection facility notify FDA of each shipment of HbsAg reactive source blood, plasma, or serum for manufacturing into hepatitis B vaccine and licensed or unlicensed in vitro diagnostic biological products, including clinical chemistry control reagents. The reporting requirements inform FDA of the shipment of potentially infectious biological products that may be capable of transmitting disease. The respondent's for this information collection are the blood collection facilities that are shipping hepatitis B reactive products. FDA's monitoring of such activity is essential should any deviations occur that may require immediate corrective action to protect public safety. The labeling helps ensure that product is safely and appropriately handled and used by the collection facility, shipper, and manufacturer.

Only a few firms are actually engaged in shipping hepatitis B reactive products and making the reports required by § 610.40. Also, there are very few to no emergency shipments per year related to further manufacturing and the only product currently shipped prior to completion of hepatitis B testing is a licensed product, Source Leukocytes. Shipments of Source Leukocytes are preapproved under the product license applications and do not require notification for each shipment. Currently, there have been no respondents reporting emergency or preapproved shipments (§ 610.40(b)). However, FDA is listing one report per year for emergency or preapproved shipments to account for the possibility of future emergency shipments.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.40(b)[2]	1	1	1	0.5	0.5
610.40(d)[3]	6	8.5	51	0.5	25.5
TOTAL					26

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] This notice involves a brief letter and an enclosure. The letter identifies who is making the shipment, to whom shipped, the nature of the emergency, the kind and quantity shipped, and date of shipment. The enclosure is a copy of the shippers written standard operating procedures for handling, labeling storage, and shipment of contaminated (contagious) product. The burden for development and maintenance of standard operating procedures is approved under OMB No. 0910–0116. Preparation of the notice and duplication of standard operating procedure documents is estimated at one half hour per notice.

[3] The notice of reactive product shipment is limited to information on: the identity of the kind and amount of source material shipped; the name and address of the consignee; the date of shipment; and the manner in which the source material is labeled.

FDA has calculated no additional burden in this information collection package for the labeling requirements in § 610.40(d) because the information and statements on the label necessary for public disclosure and safety are provided by FDA in these regulations. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally

supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: December 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33091 Filed 12–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0309]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by January 20, 1998.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St., NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Infant Formula Requirements (21 CFR 106.100, 21 CFR 106.120(b), 21 CFR 107.10(a), 21 CFR 107.20, 21 CFR 107.50(e)(2), 21 CFR 107.50(b)(3), 21 CFR 107.50(b)(4), 21 CFR 107.50(c)(3))—(OMB Control Number 0910–0256—Extension)

Statutory requirements for infant formula under the Federal Food, Drug, and Cosmetic Act (the act) are intended to protect the health of infants and include a number of reporting and recordkeeping requirements. Among other things, section 412 of the act (21 U.S.C. 350a) requires manufacturers of infant formula to establish and adhere to quality control procedures, notify FDA when a batch of infant formula that has left the manufacturer's control may be adulterated or misbranded, and keep records of distribution. FDA has issued regulations to implement the act's requirements for infant formula in 21 CFR parts 106 and 107.

FDA also regulates the labeling of infant formula under the authority of section 403 (21 U.S.C. 343). Under the labeling regulations for infant formula in 21 CFR part 107, the label of an infant formula must include nutrient information and directions for use. The purpose of these labeling requirements is to ensure that consumers have the information they need to prepare and use infant formula appropriately.

In a document published in the **Federal Register** of July 9, 1996 (61 FR 36154), FDA proposed changes in the infant formula regulations, including some of those listed below. The document included revised burden estimates for the proposed changes and solicited public comment. In the interim, however, FDA is seeking an extension of OMB approval for the current regulations so that it can continue to collect information while the proposal is pending.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
106.120(b)	4	7	28	0	0
107.10(a) 107.20	4	7	28	8	224
107.50(b)(3), (b)(4)	3	4	12	4	48
107.50(e)(2)	3	4	12	0	0
Total					272

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
106.100	4	10	40	4,000	16,000
107.50(c)(3)	4	10	40	0	0
Total					16,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, FDA consulted its records of the number of infant formula submissions received in the past. The figures for hours per response are based on estimates from experienced persons in the agency and in industry. Because these infant formula regulations implement statutory information collection requirements, only the additional burden attributable to the regulations has been included in the estimates.

Due to clerical error, the burden estimates that appeared in FDA's previous notice soliciting comments on this collection of information (62 FR 42256, August 6, 1997) were incorrect. The tables above contain the correct estimates.

Dated: December 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33092 Filed 12–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dental Products Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dental Products Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on January 12, 1998, 10:15 a.m. to 5 p.m., and January 13, 1998, 8 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Pamela D. Scott, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12518. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 12, 1998, the committee will discuss and vote on a premarket approval application for a bone filling and augmentation device for periodontal use. On January 13, 1998, the committee will discuss and make recommendations to FDA regarding the reclassification of subgroups of endosseous dental implant devices. The following subgroups of endosseous implants will be included: Coated and uncoated root form implants, coated and uncoated blade-type implants, temporary implants, and implants with special enhanced retention features.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 29, 1997. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. on January 12, 1998, and between approximately 8:10 a.m. and 9:10 a.m. on January 13, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 5, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 12, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–33096 Filed 12–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0317]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, "Interstate Shellfish Dealers Certificate," has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 7, 1997 (62 FR 42560), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection and has assigned OMB control number 0910–0021. The approval expires on September 30, 2000.

Dated: December 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33093 Filed 12–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 95N–0245 and 94P–0110]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Labeling; Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements; Compliance Policy Guide, Revocation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1997 (62 FR 49826), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0351. The approval expires on November 30, 2000.

Dated: December 11, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33094 Filed 12–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 94D–0422 and 93N–0005]

Revocation of Certain Guidance Documents on Positron Emission Tomography Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking two notices regarding guidance documents affecting positron emission tomography (PET) radiopharmaceutical drug products. The guidance documents address FDA's regulatory approach to PET drug products and current good manufacturing practice (CGMP) requirements for such products. FDA is revoking these notices along with the guidance documents to which the notices relate in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). Elsewhere in this issue of the **Federal Register**, FDA is announcing the revocation of a final rule.

EFFECTIVE DATE: December 21, 1997.

FOR FURTHER INFORMATION CONTACT: Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5649.

SUPPLEMENTARY INFORMATION: On November 21, 1997, President Clinton signed into law the Modernization Act (Pub. L. 105–115). Section 121(c)(1)(A) of the Modernization Act directs FDA to develop appropriate procedures for the approval of PET drugs as well as CGMP requirements for such drugs, taking into account any relevant differences between not-for-profit institutions that compound PET drugs and commercial manufacturers. FDA is to establish these procedures and requirements not later than 2 years after the date of enactment. In doing so, the agency must consult with patient advocacy groups, professional associations, manufacturers, and persons licensed to make or use PET drugs.

Under section 121(c)(2) of the Modernization Act, FDA cannot require the submission of new drug applications (NDA's) or abbreviated new drug applications (ANDA's) for compounded PET drugs that are not adulterated under section 501(a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(a)(2)(C)) for a period of 4 years after the date of enactment, or 2 years after the date that the agency adopts special approval procedures and CGMP requirements for PET drugs, whichever is longer.

Section 121(d) of the Modernization Act requires FDA, within 30 days of enactment, to terminate the application of two notices that were published in the **Federal Register** on February 27, 1995 (60 FR 10593 and 10594). One notice is entitled "Regulation of Positron Emission Tomography Radiopharmaceutical Drug Products; Guidance; Public Workshop" (60 FR 10594). The notice included a guidance document entitled "Regulation of PET Radiopharmaceuticals." This guidance document, among other things, stated that a manufacturer of a PET drug was required to obtain FDA approval of an NDA or ANDA in accordance with 21 CFR part 314.

In the other notice, FDA announced the availability of its "Draft Guideline on the Manufacture of Positron Emission Tomography Radiopharmaceutical Drug Products" (60 FR 10593). In the **Federal Register** of April 22, 1997 (62 FR 19580), FDA published a notice of availability of a final version of this guidance entitled "Guidance for Industry: Current Good Manufacturing Practices for Positron Emission Tomographic (PET) Drug Products; Availability." The agency is hereby revoking these notices as well as the draft and final guidance documents on CGMP's for PET drugs.

Section 121(d) of the Modernization Act also directs FDA to terminate the application of a final rule, published in the **Federal Register** of April 22, 1997 (62 FR 19493), permitting the agency to approve requests from manufacturers of PET drug products for exceptions or alternatives to provisions of FDA's CGMP regulations (21 CFR 211.1(d)). FDA is announcing the revocation of this rule in a final rule published elsewhere in this issue of the **Federal Register**.

The notices and corresponding guidance documents discussed previously are revoked effective December 21, 1997.

In accordance with section 121(c)(1)(A) of the Modernization Act, FDA intends to begin the development of new PET drug approval procedures and CGMP requirements immediately and will obtain appropriate public input during this process.

Dated: December 16, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–33188 Filed 12–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3482–N–04]

Office of Lead Hazard Control; Notice of Proposed Information Collection: Comment Request

AGENCY: Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 17, 1998.

ADDRESSES: Interesed persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Ms. Ruth Wright, Reports Liaison Officer, Office of Lead Hazard Control (L), Department of Housing & Urban Development, 451—7th Street, SW, Room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: David Levitt at (202) 755–1785, extension 156 (this is not a toll-free number), Office of Lead Hazard Control, HUD, for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requirements for Disclosure of Lead-Based Paint Hazards in Residential Housing.

OMB Control Number, if applicable: 2539–0007.

Description of the need for the information and proposed use: HUD is requesting approval of a continuation of current record keeping requirements to ensure compliance for persons selling, leasing or acting as agents in transactions to sell or lease target housing. This rule was issued on March 6, 1996 under the authority of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The records acknowledge that the sellers, lessors, and agents complied with the HUD/Environmental Protection Agency requirements. No changes to the current requirements are being requested.

Agency form numbers, if applicable: None.

Members of affected public: Individuals or Households, Businesses or Other For-Profit, Federal Agencies or Employees, Small Business or Organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	Number of recordkeepers	Annual hours per record-keeper	Burden hours
Real Estate Transaction Disclosures	15,441,000	15.4 min	3,957,210
Total Estimated Burden Hours: 3,957,210.			

Status of the proposed information collection: Continuation.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 10, 1997.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 97–33148 Filed 12–18–97; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–63]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Maurice Gulledge, telephone number (202) 708–6396 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Survey of Title I Borrowers.

OMB Control Number: 2502–xxxx.

Description of the need for the information and proposed use: This survey is intended to identify significant program abuses and develop a comprehensive database of borrower concerns. Reported instances of program abuse will be reviewed and followed up for complaint resolution, or, when warranted, referred for civil/criminal litigation.

Form numbers: None.

Members of affected public: Title I borrowers.

An estimation of the total numbers of hours needed to prepare the information collection is .0833,the number of respondents is 10,000, frequency of response is on occasion, and the hours of response is 833.

Status of the proposed information collection: new collection.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 15, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–33149 Filed 12–18–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4254–N–02]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer Shelia E. Jones, Department of Housing and Urban Development, 451–7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh St., SW., Washington, DC 20410; telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENT INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Disaster Recovery Initiative Data System (DRIDS).

OMB Control Number, if applicable: Not applicable. This is new data collection.

Description of the need for the information and proposed use: HUD requires that grantees submit quarterly reports to the Department on the use of HUD Disaster Recovery funds. This information must be submitted to HUD no later than 30 days following each calendar quarter. HUD will use the information to submit quarterly reports to Congress that are required by Public Law 105–18. The reports to Congress must cover the use of grant fund for or associated with buyouts.

In addition, cities and counties must submit a Performance Report for the HUD Disaster Recovery Initiative in accordance with 24 CFR 91.520 that must be submitted to HUD no later than 90 days following the end of each 12 month period. States are also required by 24 CFR 91.520 to submit a Performance Evaluation Report (PER) for the HUD Disaster Recovery Initiative no later than 90 days following the end of each 12 month period. HUD is considering modifying paragraphs II.A. 1. through 3. of the HUD Disaster Recovery Initiative Federal Register Notice dated September 8, 1997, at FR 47351, so that most of the requirements of paragraph 1 and 2 are met by the quarterly report in paragraph 3.

HUD will use the information from these submissions to report to Congress on the overall use of the Disaster Recovery Initiative Grant funds.

Agency form numbers, if applicable: Not applicable. This will be a computerized data system operating on the world-wide web.

Member of affected public: State and local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents—about 100;
Frequency of response—quarterly per grantee;
Hours of reponse—128 hours annually per grantee (116 hours for record keeping; 12 hours for reporting.)

Status of the proposed information collection: This is new information collection.

Authority: Section 3506 of the Paperwork Reduction Act 1995, 44 U.S.C. Chapter 35, as amended.

Date: December 12, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–33150 Filed 12–18–97; 8:45 am]

BILLING CODE 4210–39–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4187–N–02]

Announcement of Funding Awards for Fiscal Year 1997; Community Outreach Partnership Centers

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1997 Community Outreach Partnership Centers Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to establish and operate Community Outreach Partnership Centers that will: (1) Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and (2) facilitate partnerships and outreach activities between institutions of higher education, local communities, and local governments to address urban problems.

FOR FURTHER INFORMATION CONTACT: John Hartung, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8130, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708–3061, extension 261. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Community Outreach Partnership Centers Program was enacted in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Community Outreach Partnership Centers Program provides funds for: research activities which have practical application for solving specific problems in designated communities and neighborhoods; outreach, technical assistance and information exchange activities which are designed to address specific problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, and community organizing. On March 20, 1997 (62 FR 13506), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $7.4 million in Fiscal Year 1997 funds for the Community Outreach Partnership Centers Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the 16 applicants for New Grants and (9) applicants for Institutionalization Grants. These grants, with their grant amounts are identified below.

The Catalog Federal Domestic Assistance number for this program is 14.511.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 1997 Community Outreach Partnership Centers Funding Competition, by Name and Address

New Grants

New England

1. Fitchburg State College, Mr. David Newton, Fitchburg State College, 160 Pearl Street, Fitchburg, MA 01420, (508) 665–3368. Grant: $399,864.

2. University of Rhode Island, Mr. Angelo Mendello, University of Rhode Island, 70 Lower College Road, Kingston, RI 02881, (401) 874–5138. Grant: $391,918

3. New Hampshire College, Mr. Michael Swack, New Hampshire College, 2500 North River Road, Manchester, NH 03106, (603) 644–3103. Grant: $399,278.

New York/New Jersey

4. Brooklyn College, Ms. Nancy Romer, Brooklyn College, 2900 Bedford Avenue, Brooklyn, NY 11210, (718) 951–5766. Grant: $399,979.

5. Buffalo State College, Mr. Douglas Koritz, Buffalo State College, 1300 Elmwood Avenue, Cleveland Hall 517, Buffalo, NY 12222, (716) 878–4606. Grant: $391,596.

Mid-Atlantic

6. Virginia Commonwealth University, Ms. Catherine Howard, Virginia Commonwealth University, P.O. Box 980568, Richmond, VA 23298, (804) 828–1831. Grant: $399,358.

Southeast/Caribbean

7. University of North Carolina at Chapel Hill, Ms. Mary Beth Powell, University of North Carolina at Chapel Hill, CB#4100, Room 300, Bynum Hall, Chapel Hill, NC 27599–4100, (919) 962–3076. Grant: $399,985.

8. Clemson University, Mr. William Geer, Clemson University, 300 Brackett Hall, Box 345702, Clemson, SC 29634, (864) 656–2424. Grant: $399,686.

Midwest

9. Indiana University-Purdue University Indianapolis, Mr. William Plater, Indiana University-Purdue University Indianapolis, 620 Union Drive, Room 618, Indianapolis, IN 46202, (317) 274–4500. Grant: $400,000.

10. University of Wisconsin-Parkside, Ms. Esther Letven, University of Wisconsin-Parkside, 900 Wood Road, Box 2000, Kenosha, WI 53141, (414) 595–2208. Grant: $399,966.

Great Plains

11. University of Missouri-Kansas City, Mr. Ronald McQuarrie, University of Missouri-Kansas City, 5100 Rockhill Road, Kansas City, MO 64110, (816) 235–1301. Grant: $399,195.

12. University of Nebraska at Omaha, Ms. Mary Laura Farnham, University of Nebraska at Omaha, CPACS, Annex 24, Omaha, NE 68182, (402) 554–2286. Grant: $400,000.

Southwest

13. University of North Texas, Mr. Stan Ingman, University of North Texas, P.O. Box 305250, Denton, TX 767203, (940) 565–2298. Grant: $399,692.

Pacific/Hawaii

14. Rancho Santiago College, Mr. John Nixon, Rancho Santiago College, 1530 17th Street, Santa Ana, CA 92706, (714) 564–6082. Grant: $400,000.

15. San Jose State University, Mr. Jerome Bernstein, San Jose State University, P.O. Box 720130, San Jose, CA 95172, (408) 924–3531. Grant: $399,979.

16. University of California at San Diego, Ms. Martha Obermeier, University of California at San Diego, 9500 Gilman Drive, San Diego, CA 92093, (619) 534–0242. Grant: $400,000.

Institutionalization Grants

Mid-Atlantic

1. George Mason University, Dr. Hugh Sockett, George Mason University, 4400 University Drive, Fairfax, VA 22030, (703) 993–8320. Grant: $99,979.

2. Marshall University, Dr. Ron L. Schelling, Marshall University, 1050 4th Avenue, Huntington, WV 25755, (304) 696–6246. Grant: $99,958.

Southeast/Caribbean

3. University of Alabama at Birmingham, Dr. Craig T. Ramey, University of Alabama at Birmingham, 1719 Sixth Avenue South, Birmingham, AL 35294–0021, (205) 934–8900. Grant: $99,998.

4. Georgia State University, Dr. David J. Sjoquist, Georgia State University, University Plaza, Atlanta, GA 30303, (404) 651–3995. Grant: $100,000.

5. University of Memphis, Mr. Norman S. Trenk, University of Memphis, Clement Hall, Room 427, Memphis, TN 38152, (901) 678–2533. Grant: $99,959.

6. University of Tennessee-Knoxville, Ms. Madeline Rogero, University of Tennessee-Knoxville, 404 Andy Holt Tower, Knoxville, TN 37996, (423) 974–4542. Grant: $100,000.

Midwest

7. DePaul University, Ms. Clarice Hearn, DePaul University, 1 East Jackson Blvd., Chicago, IL 60604, (312) 362–6138. Grant: $100,000.

8. University of Illinois at Urbana, Dr. Kenneth M. Reardon, University of Illinois at Urbana, 801 South Wright Street, 109 Coble Hall, Champaign, IL 61802. Grant: $99,990.

Southwest

9. University of Texas at Austin, Dr. Robert Wilson, University of Texas at Austin, P.O. Box 7726, Austin, TX 78713, (512) 471–4962. Grant: $99,999.

Dated: December 12, 1997.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 97–33212 Filed 12–18–97; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4206–N–02]

Announcement of Funding Awards for Fiscal Year 1997; Hispanic Serving Institutions Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1997 Hispanic-Serving Institutions Work Study Program (HSI-WSP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to community college to be used to attract economically disadvantaged and minority students to pre-professional careers in community and economic development, community planning and community management, and to provide a cadre of well-qualified professionals to work in local community building programs.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University

Partnerships, U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1537, extension 218. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339, or 202–708–1455. (Telephone numbers, other than the "800" TTY number, are not toll free.)

SUPPLEMENTARY INFORMATION: The HSI-WSP is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. The Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education and creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Catalog of Federal Domestic Assistance number for this program is 14.512.

The HSI-WSP was created through an earmark of funds appropriated for the Community Development Work Study Program. Eligible applicants are private non-profit Hispanic-serving community colleges having qualifying academic degrees. Each participating institution of higher education can be funded for a minimum of three and a maximum of ten students. The HSI-WSP provides each participating student up to $12,200 per year for a work stipend (for internship-type work in community building) and tuition and additional support (for books and other expenses related to the academic program). Additionally, the HSI-WSP provides the participating institution of higher education with an administrative allowance of $1,000 per student per year. On April 9, 1997 (62 FR 17498), HUD published a Notice of Funding Availability (NOFA) of $3 million in FY 1997 funds for the Hispanic-Serving Institutions Work Study Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 1996 Hispanic-Serving Institutions Work Study Program Funding Competition, by Name, Address, Phone Number, Grant Amount, and Number of Students Funded

New York/New Jersey

1. Hudson County Community College, Dr. Estelle F. Greenberg, Hudson County Community College, 25 Journal Square, Jersey City, NJ 07306, (201) 714–2103. Grant: $91,400 to fund five students.

2. Hostos Community College, Dr. Salvatore Martino, Hostos Community College, 500 Grand Concourse B–447, Bronx, NY 10451, (718) 518–6673. Grant: $127,720 to fund five students.

3. Fiorello H. LaGuardia Community College, Dr. Harry N. Heineman, Fiorello H. LaGuardia Community College, 31–10 Thomson Avenue, Long Island, NY 11101, (718) 482–5203. Grant: $84,300 to fund five students.

Midwest

4. St. Augustine College, Dr. Joaquin Villegas, St. Augustine College, 1333 W. Argyle, Chicago, IL 60640, (773) 772–1760. Grant: $128,200 to fund five students.

Southwest

5. El Paso Community College, Mr. C. Alfred Lawrence, El Paso Community College, P.O. Box 20500, El Paso, TX 79998, (915) 594–2238. Grant: $121,470 to fund five students.

Pacific/Hawaii

6. Pasadena City College, Ms. Linda Stroud, Pasadena City College, 1570 E. Colorado Blvd., Pasadena, CA 91106, (818) 585–7404. Grant: $131,960 to fund five students.

7. Desert Community College District, Dr. Dan M. Baxley, Desert Community College District, 43–500 Monterey Avenue, Palm Desert, CA 92260, (760) 773–2506. Grant: $121,220 to fund five students.

8. Los Angeles Trade-Technical College, Dr. Denise G. Fairchild, Los Angeles Trade-Technical College, 400 West Washington Blvd., Los Angeles, CA 90015, (213) 744–9065. Grant: $132,000 to fund five students.

9. Compton Community College, Mr. Ron D. Chatman, Compton Community College, 111 E. Artesia Blvd., Compton, CA 90221, (310) 637–2660, Extension 2852. Grant: $106,500 to fund five students.

10. Los Angeles Harbor College, Ms. Clare Adams, Los Angeles Harbor College, 1111 Figueroa Place, Wilmington, CA 90744, (310) 522–8318. Grant: $128,700 to fund five students.

11. Fresno City College, Ms. Deborah J. Ikeda, Fresno City College, 1101 E. University Avenue, Fresno, CA 93741, (209) 442–6000, Extension 8641. Grant: $132,000 to fund five students.

12. Rancho Santiago College, Ms. Gloria Guzman, Rancho Santiago College, 1530 W. 17th Street, Santa Ana, CA 92706, (714) 564–6810. Grant: $132,000 to fund five students.

Dated: December 9, 1997.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 97–33211 Filed 12–18–97; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–4085–N–02, FR–4194–N–02, FR–4195–N–03, FR–4207–N–03, FR–4220–N–03, and FR–4224–02]

Announcement of Funding Awards for Fiscal Year 1997 for the Rental Voucher and Rental Certificate, Family Unification, and Family Self-Sufficiency Programs

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 1997 to housing agencies (HAs) under the Section 8 rental voucher and rental certificate programs. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide rental assistance to very low-income families.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Senior Program Advisor, Public and Assisted Housing Delivery, Room 4220, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TTY number (202) 708–4594. (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The regulations governing the rental certificate and rental voucher programs are published at 24 CFR parts 882 and 887, respectively, and 24 CFR part 982. The regulations for allocating housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, Subpart D.

The purpose of the rental voucher and rental certificate programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. The FY 97 awards announced in this notice were selected for funding consistent with the provisions in the Notice of Funding Availability (NOFAs) published in the **Federal Register** on October 30, 1996 (61 FR 56091), April 10, 1997 (62 FR 17666), April 10, 1997 (62 FR 17672), April 18, 1997 (62 FR 19208), May 1, 1997 (62 FR 23912) and August 1, 1997, (62 FR 41407), and June 23, 1997 (62 FR 33952).

The October 30, 1996 (61 FR 56091) NOFA made available rental certificates and rental vouchers for persons with disabilities in support of designated housing allocation plans.

The April 18, 1997 (62 FR 19208) NOFA made available rental certificates for the Family Unification Program to assist families for whom the lack of adequate housing is a primary factor in the separation, or imminent separation, of children from their families.

The April 10, 1997 NOFA (62 FR 17666) made available rental certificates and rental vouchers for persons with disabilities under the Mainstream Housing Program.

The April 10, 1997 NOFA (62 FR 17672) made available rental certificates and rental vouchers for non-elderly persons with disabilities in support of designated housing allocation plans. In addition, funds were also made available for non-elderly disabled families in connection with certain Section 8 project-based development where the owner has established a preference for the admission of elderly households.

The May 1, 1997 (62 FR 23912) NOFA made available Section 8 Family Self-Sufficiency (FSS) Coordinator funds to hire FSS program coordinators. The August 1, 1997 NOFA made a correction to the May 1 NOFA to extend the deadline date for submission of the required FSS certification.

The June 23, 1997 (62 FR 33952) document made available rental certificates and rental vouchers to HAs in connection with public housing demolition and disposition to provide relocation assistance and replacement housing.

A total of $441,500,299 of budget authority for rental vouchers and rental certificates (27,887 units) was awarded to recipients under all of the above mentioned categories.

The Catalog of Federal Domestic Assistance numbers for these programs are 14.855 and 14.857.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: December 15, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

SECTION 8 RENTAL ASSISTANCE PROGRAMS
ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1997

HOUSING AGENCY	ADDRESS	UNITS	AWARD
Section 811 Disabled Certificates			
CAMBRIDGE HA	270 GREEN STREET, CAMBRIDGE, MA, 02139	100	$3,191,800
QUINCY HA	80 CLAY STREET, QUINCY, MA, 02170	100	3,975,940
BARNSTABLE HA	146 SOUTH ST, HYANNIS, MA, 02601	200	6,145,680
BRUNSWICK HA	P O BOX A, BRUNSWICK, ME, 04011	15	355,740
HA HIGH POINT	P O BOX 1779, HIGH POINT, NC, 27261	50	933,380
HA GREENSBORO	P O BOX 21287, GREENSBORO, NC, 27420	50	960,800
DOVER HA	62 WHITTIER STREET, DOVER, NH, 03820	30	666,785
LAKEWOOD HA	P O BOX 1543, LAKEWOOD, NJ, 08701	68	2,231,075
ALBUQUERQUE HA	1840 UNIVERSITY BLVD. SE, ALBUQUERQUE, NM, 87106	50	1,364,295
HA OF ROCHESTER	140 WEST AVENUE, ROCHESTER, NY, 14611	20	473,970
SPRINGFIELD MET.HA	437 EAST JOHN STREET, SPRINGFIELD, OH, 45505	50	1,023,510
ASHTABULA MHA	P O BOX 2350, 3600 LAKE AVENUE, ASHTABULA, OH, 44005	60	1,420,630
BUTLER COUNTY HA	P O BOX 1917, BUTLER, PA, 16003	50	929,290
PAWTUCKET H A	214 ROOSEVELT AVE, PO BOX 1303, PAWTUCKET, RI, 02862	75	2,188,140
NORTH PROVIDENCE HA	945 CHARLES STREET, NORTH PROVIDENCE, RI, 02904	25	727,630
Totals for Section 811 Disabled Certificates		943	$26,589,345
Section 811 Disabled Vouchers			
CITY OF SANTA BARBARA H/A	808 LAGUNA ST, SANTA BARBARA, CA, 93101	100	$3,666,640
IMPERIAL VALLEY HA	1401 D STREET, BRAWLEY, CA, 92227	49	680,410
BOULDER CITY HA	3120 BROADWAY AVE, BOULDER, CO, 80304	50	1,315,210
WILMINGTON HA	400 WALNUT STREET, WILMINGTON, DE, 19801	50	1,254,000
LEXINGTON-FAYETTE UR CO H/A	635 BALLARD ST, LEXINGTON-FAYETTE U, KY, 40508	25	790,215
CAMBRIDGE HA	270 GREEN STREET, CAMBRIDGE, MA, 02139	100	3,154,940
HA GREENSBORO	P O BOX 21287, GREENSBORO, NC, 27420	50	926,380
HA WINSTON-SALEM	901 CLEVELAND AVENUE, WINSTON-SALEM, NC, 28101	73	1,413,105
OMAHA HA	540 SOUTH 27TH STREET, OMAHA, NE, 68105-1521	100	1,889,780
HA OF ROCHESTER	140 WEST AVENUE, ROCHESTER, NY, 14611	20	472,570
LUCAS MHA	P O BOX 477, 435 NEBRASKA AVENUE, TOLEDO, OH, 43697	150	3,453,040
HA CITY OF SALEM	PO BOX 808, SALEM, OR, 97308-0808	44	932,475
BURLINGTON HA	230 ST PAUL STREET, BURLINGTON, VT, 05401	100	2,236,840
Totals for Section 811 Disabled Vouchers		911	$22,145,685
Mainstream Certificates			
MOBILE HOUSING BOARD	P O BOX 1345, MOBILE, AL 36633	35	$757,855
COUNTY OF RIVERSIDE HA	5555 ARLINGTON AVE, RIVERSIDE, CA 92504	38	$1,095,195
CLEARWATER H/A	P O BOX 960, CLEARWATER, FL 34617	75	$1,619,050
NEW ORLEANS HA	918 CARONDELET STREET, NEW ORLEANS, LA 70130	25	$578,465
WESTBROOK HA	P.O. BOX 349, WESTBROOK, ME 04092	50	$1,714,970
HA OF KANSAS CITY, MO	712 BROADWAY, KANSAS CITY, MO 64105-4105	100	$2,074,250
JERSEY CITY HA	400 US HIGHWAY #1, JERSEY CITY, NJ 07306	100	$4,661,550
NEW YORK CITY HA	250 BROADWAY, NEW YORK, NY 10007	100	$4,527,550
BUTLER COUNTY HA	P.O. BOX 1917, BUTLER, PA 16003	50	$1,112,315
CLARION COUNTY HA	ONE NORTH SIXTH AVENUE, CLARION, PA 16214	50	$867,525
KNOXVILLE COMM DEV CORP	P O BOX 3629, KNOXVILLE, TN 37937-3629	50	679,585
CEDAR CITY HA	2390 W. HWY 56, SUITE 7, CEDAR CITY, UT 84720	25	$576,245
VIRGINIA HSG DEV. AUTH	601 S. BELVIDERE STREET, RICHMOND, VA 23225	100	$3,220,060
Totals for Mainstream Certificates		798	$23,483,815

HOUSING AGENCY	ADDRESS	UNITS	AWARD
Mainstream Vouchers			
MOBILE HOUSING BOARD	P O BOX 1345, MOBILE, AL 36633	65	$1,003,450
CITY OF MESA	415 N. PASADENA STREET, MESA, AZ 85201-5916	100	$2,621,155
ANAHEIM HA	201 S. ANAHEIM BLVD., 2ND FL, ANAHEIM, CA 92805	100	$3,733,920
WILMINGTON HA	400 WALNUT STREET, WILMINGTON; DE 19801	100	$3,323,785
ANNE ARUNDEL COUNTY HA	7885 GORDON COURT, GLEN BURNIE, MD 21061	100	$3,232,280
WESTBROOK HA	P.O. BOX 349, WESTBROOK, ME 04092	50	$1,568,220
MADISON HEIGHTS HSG COMM.	300 W. THIRTEEN MILE RD., MADISON HEIGHTS, MI 48071	50	$1,111,140
HA GREENSBORO	P O BOX 21287, GREENSBORO, NC 27420	50	$2,355,160
KEENE HA	105 CASTLE STREET, KEENE, NH 03431	50	$1,198,250
TRUTH OR CONSEQUENCES HA	108 S. CEDAR ST, TRUTH OR CONSEQUENCES, NM 87901	20	$425,325
HA CITY OF SALEM	PO BOX 808, SALEM, OR 97308-0808	50	$1,119,000
BLAIR COUNTY HA	P.O. BOX 167, HOLLIDAYSBURG, PA 16648	22	$534,570
CLARION COUNTY HA	ONE NORTH SIXTH AVENUE, CLARION, PA 16214	50	$941,375
KNOXVILLE COMM DEV CORP	P O BOX 3629, KNOXVILLE, TN 37937-3629	50	$930,900
HA CITY OF MORGANTOWN	517 FAIRMONT AVENUE, FAIRMONT, WV 26554	39	$629,700
Totals for Mainstream Vouchers		958	$25,812,460
Section 23 Conversions Certificates			
MANSFIELD MHA	PO BOX 1029, 150 PARK AVENUE WEST, MANSFIELD, OH, 44901	158	$253,644
Totals for Section 23 Conversion Certificates		158	$253,644
Litigation Vouchers			
DALLAS HA	3939 N HAMPTON, DALLAS, TX, 75212	320	$4,101,684
HSG AUTH CITY OF PARIS	P O BOX 688, PARIS, TX, 75461-0688	25	221,092
MARSHALL HA	P O BOX 609, MARSHALL, TX, 75671-0609	20	143,458
NACOGDOCHES HA	715 SUMMIT ST, NACOGDOCHES, TX, 75961	25	282,666
ARK-TEX COUNCIL OF GOVTS	P O BOX 5307, TEXARKANA, TX, 75505	60	409,104
DEEP EAST TX COUNCIL OF GOVTS	274 E LAMAR, JASPER, TX, 75951	50	399,736
Totals for Litigation Vouchers		500	$5,477,740
Litigation Certificates			
CITY OF BUFFALO	201 CITY HALL-65 NIAGARA SQUAR, BUFFALO, NY, 14202	50	$539,476
ALLEGHENY COUNTY HA	341 FOURTH AVENUE FIDELITY BL, PITTSBURGH, PA, 15222	50	647,668
HSG AUTH OF PITTSBURGH	P O BOX 435, PITTSBURGH, TX, 75686	20	163,394
Totals for Litigation Certificates		120	$1,350,538
Designated Housing Certificates			
BOSTON HA	52 CHAUNCY STREET, BOSTON, MA, 02111	160	$943,296
HA OF KANSAS CITY, MO	712 BROADWAY, KANSAS CITY, MO, 64105	200	714,120
Totals for Designated Housing Certificates		360	$1,657,416
Designated Housing Vouchers			
BOSTON HA	52 CHAUNCY STREET, BOSTON, MA, 02111	40	$217,584
HA OF GLOUCESTER COUNTY	223 S EVERGREEN AVE, WOODBURY, NJ, 08096	130	643,344
HA OF SYRACUSE	516 BURT STREET, SYRACUSE, NY, 13202-3999	35	122,548
THURSTON COUNTY	505 WEST FOURTH AVENUE, OLYMPIA, WA, 98501-	25	105,606
Totals for Designated Housing Vouchers		230	$1,089,082

HOUSING AGENCY	ADDRESS	UNITS	AWARD
Family Unification Certificates			
HA LEEDS	P O BOX 513, LEEDS, AL, 35094	50	$214,554
LITTLE ROCK HA	1000 WOLFE STREET, LITTLE ROCK, AR, 72202	100	689,748
CITY OF YUMA HA	1350 W. COLORADO STREET, YUMA, AZ, 85364	100	527,940
COUNTY OF LOS ANGELES HA	2 CORAL CIRCLE, MONTEREY PARK, CA 91754	150	1,353,126
CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD., LOS ANGELES, CA, 90057	50	545,983
HA of the COUNTY OF KERN	525 ROBERTS LANE, BAKERSFIELD, CA, 93308	50	287,736
COUNTY OF CONTRA COSTA HA	3133 ESTUDILLO ST, P O BOX 2759, MARTINEZ, CA, 94553	100	844,282
COUNTY OF SAN MATEO HA	456 PENINSULA AVE, SAN MATEO, CA, 94401	50	575,382
COUNTY OF MERCED HA	405 U STREET, MERCED, CA, 95340	120	747,384
COUNTY OF SAN JOAQUIN HA	P O BOX 447, STOCKTON, CA, 95201	50	305,058
COUNTY OF STANISLAUS HA	P O BOX 3958, MODESTO, CA, 95352	50	292,332
COUNTY OF FRESNO HA	P O BOX 11985, FRESNO, CA, 93776	59	335,833
CITY OF OXNARD HA	1470 COLONIA ROAD, OXNARD, CA, 93030	50	408,605
COUNTY OF MONTEREY HA	123 RICO STREET, SALINAS, CA, 93907	50	332,862
CITY OF SAN BUENAVENTURA HA	P O BOX 1648, VENTURA, CA, 93002	35	271,523
SANTA CLARA COUNTY HA	505 WEST JULIAN STREET, SAN JOSE, CA, 95110	50	551,982
COUNTY OF SANTA CLARA HA.	505 WEST JULIAN ST, SAN JOSE, CA, 95110	50	551,982
SAN DIEGO HOUSING COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA, 92113-1012	50	330,576
SANTA CRUZ COUNTY HA	2160 - 41ST AVE, CAPITOLA, CA, 95010	50	603,642
HA CITY OF NAPA	P. O. BOX 660, NAPA, CA, 94559	100	772,332
HA OF THE CITY OF SANTA PAULA	P O BOX 404, SANTA PAULA, CA, 93060	15	100,063
CITY OF SANTA BARBARA HA	808 LAGUNA ST, SANTA BARBARA, CA, 93101	50	381,954
COUNTY OF VENTURA AREA HA	99 SOUTH GLENN DRIVE, CAMARILLO, CA, 93010	50	471,823
CITY OF SANTA ANA HA	20 CIVIC CENTER PLAZA, SANTA ANA, CA, 92701	10	85,424
ORANGE COUNTY HA	2043 N BROADWAY, SANTA ANA, CA, 92706	120	893,909
ANAHEIM HA	201 S. ANAHEIM BLVD., 2ND FL, ANAHEIM, CA, 92805	150	1,191,390
COUNTY OF SAN DIEGO	5555 OVERLAND AVE., BLDG. 2, RM. 202, SAN DIEGO, CA, 92123	21	163,224
COMM SERV DEPT EL DORADO CO	360 FAIR LANE, PLACERVILLE, CA, 95667	25	217,596
COLORADO SPRINGS HA	P O BOX 1575, COLORADO SPRINGS, CO, 80903	30	193,718
CONN DEPT OF SOCIAL SERVICES	25 SIGOURNEY STREET, HARTFORD, CT, 06105-	100	714,180
D.C HA	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC, 20002	100	1,020,715
ORLANDO H/A	300 REEVES COURT, ORLANDO, FL, 32801	100	589,308
METRO DADE HA	2153 CORAL WAY, MIAMI, FL, 33145-3659	100	872,460
HA BREVARD COUNTY	P O BOX 338, MERRITT ISLAND, FL, 32952	100	581,568
HIALEAH H/A	70 EAST 7TH STREET, HIALEAH, FL, 33010	100	1,028,640
BROWARD COUNTY HA	1773 NORTH STATE ROAD 7, LAUDERHILL, FL, 33313	50	497,058
HA PALM BEACH COUNTY	3432 W 45TH STREET, WEST PALM BEACH, FL, 33407	100	924,516
HA PASCO COUNTY	522 AUTUMN DR, DADE CITY, FL, 33525-2703	50	345,660
HA ATLANTA GA	739 WEST PEACHTREE STREET NE, ATLANTA, GA, 30365	100	718,044
SIOUX CITY HOUSING SERVICES	BOX 447, 520 ORPHEUM BUILDING, SIOUX CITY, IA, 51102	50	196,459
CITY OF CEDAR RAPIDS	CITY HALL, CEDAR RAPIDS, IA, 52401	100	477,624
MTHORITYID IOWA REGIONAL HA	1814 CENTRAL AVENUE, FORT DODGE, IA, 50501	10	33,586
IDAHO HSG AND FINANCE ASSOC.	565 W MYRTLE STREET, POB 7899, BOISE, ID, 83707-1899	100	433,812
EAST ST LOUIS HA	683 N 20TH STREET, EAST ST LOUIS, IL, 62205	100	447,072
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL, 60602	100	896,711
HA ROCKFORD	330 15TH AVE., ROCKFORD, IL, 61108	100	438,828
HA OF THE COUNTY OF COOK	59 E VAN BUREN SUITE 1802, CHICAGO, IL, 60605	50	388,776
HA KANKAKEE	P O BOX 1289, KANKAKEE, IL, 60901	50	315,229
DUPAGE COUNTY ILLINOIS	128A S. COUNTY FARM ROAD, WHEATON, IL, 60187	50	427,536
CITY OF INDIANAPOLIS	FIVE INDIANA SQ., SECOND FLOOR, INDIANAPOLIS, IN, 46204	100	542,425
INDIANA DEPT OF HUMAN SERV	1251 N. ILLINOIS P O BOX 7083, INDIANAPOLIS, IN 46207	100	504,852
WICHITA HA	455 N MAIN CITY HALL 11TH FLO, WICHITA, KS, 67202-0004	100	573,156
HA OF LOUISVILLE	420 S. 8TH ST., LOUISVILLE, KY, 40203	100	595,500
HA OF JEFFERSON COUNTY	801 VINE STREET, LOUISVILLE, KY, 40204-1044	100	488,652
CITY OF LOUISVILLE	601 WEST JEFFERSON STREET, LOUISVILLE, KY, 40202-2728	100	488,652
NEW ORLEANS HA	918 CARONDELET STREET, NEW ORLEANS, LA, 70130	100	662,316
BOSTON HA	52 CHAUNCY STREET, BOSTON, MA, 02111	100	843,000
MA.,E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA, 02202	100	977,160
HA OF PRINCE GEORGES CO	9400 PEPPERCORN PLACE, LANDOVER, MD, 20785	100	900,444

HOUSING AGENCY	ADDRESS	UNITS	AWARD
BALTIMORE COUNTY, MD	400 WASHINGTON AVENUE, TOWSON, MD, 21204	100	497,724
MAINE STATE HA	353 WATER STREET, AUGUSTA, ME, 04330-4633	100	621,936
DETROIT HOUSING DEPARTMENT	2211 ORLEANS, DETROIT, MI, 48207	100	732,564
CITY OF PONTIAC	1600 WEST WIDE TRACK DRIVE, PONTIAC, WI, 48058	50	217,362
SAGINAW HSG COMM.	2811 DAVENPORT, BOX A, SAGINAW, MI, 48602	100	488,255
CITY OF PLYMOUTH HSG COMM.	1160 SHERIDAN, PLYMOUTH, MI, 48170	100	574,463
ST PAUL PHA	480 CEDAR STREET, SUITE 600, ST. PAUL, MN, 55101-2240	50	341,382
METROPOLITAN COUNCIL	230 E. FIFTH STREET, ST. PAUL, MN, 55101	100	613,176
HA OF KANSAS CITY, MO	712 BROADWAY, KANSAS CITY, MO, 64105	50	320,310
ST. LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST. LOUIS, MO, 63121	50	283,016
HA HIGH POINT	P O BOX 1779, HIGH POINT, NC, 27261	100	536,952
HA GREENSBORO	P O BOX 21287, GREENSBORO, NC, 27420	100	640,272
HA DURHAM	P O BOX 1726, DURHAM, NC, 27702	50	422,748
HA ROWAN COUNTY	121 WEST COUNCIL, SUITE 103, SALISBURY, NC, 28144-4347	50	243,786
EWARK HA	57 SUSSEX AVENUE, NEWARK, NJ, 07103	50	585,120
ELIZABETH HA	688 MAPLE AVENUE, ELIZABETH, NJ, 07202	50	348,978
JERSEY CITY HA	400 US HIGHWAY #1, JERSEY CITY, NJ, 07306	100	905,460
PATERSON HA	60 VAN HOUTEN STREET, PATERSON, NJ, 07509	25	253,401
CARTERET HA	96 ROOSEVELT AVENUE, CARTERET, NJ, 07008	100	777,276
LAKEWOOD HA	P O BOX 1543, LAKEWOOD, NJ, 08701	50	505,812
MONMOUTH COUNTY HA	PO BOX 3000, FREEHOLD, NJ, 07728	50	407,663
NJ DEPT. OF COMM. AFFAIRS	101 S. BROAD STREET CN800, TRENTON, NJ, 08625-0800	100	781,528
HA OF SYRACUSE	516 BURT STREET, SYRACUSE, NY, 13202-3999	25	146,634
NEW YORK CITY HA	250 BROADWAY, NEW YORK, NY, 10007	100	968,700
TOWN OF AMHERST	5583 MAIN ST., WILLIAMSVILLE, NY, 14221	100	522,576
CITY OF UTICA	ONE KENNEDY PLAZA, UTICA, NY, 13502	100	395,976
NY STATE HSG. FIN. AGENCY	ONE FORDHAM PLAZA, BRONX, NY, 10458	95	484,402
NY STATE HSG. FIN. AGENCY	ONE FORDHAM PLAZA, BRONX, NY, 10458	100	962,589
COLUMBUS METRO. HA	960 EAST FIFTH AVE., COLUMBUS, OH, 43201	100	498,306
CINCINNATI METROPOLITAN HA	16 WEST CENTRAL PARKWAY, CINCINNATI, OH, 45210	50	287,437
DAYTON METROPOLITAN HA	400 WAYNE AVE, DAYTON, OH, 45410	50	299,147
ZANESVILLE MET HA	2746 MAPLE AVENUE, ZANESVILLE, OH, 43701	50	183,573
LORAIN MHA	1600 KANSAS AVENUE, LORAIN, OH, 44052-3317	100	589,907
CHILLICOTHE MET HA	178 WEST FOURTH STREET, CHILLICOTHE, OH, 45601	45	226,514
HAMILTON COUNTY	138 EAST COURT ST RM 507, Cincinnati, OH 46202	100	581,156
TULSA HA	P O BOX 6369, TULSA, OK, 74148-0369	100	694,368
MUSKOGEE HA	200 N 40TH, MUSKOGEE, OK, 74401	50	173,598
PHILADELPHIA HA	2012-18 CHESTNUT STREET, PHILADELPHIA, PA, 19103	100	970,800
ALLEGHENY COUNTY HA	341 FOURTH AVENUE FIDELITY BL, PITTSBURGH, PA, 15222	50	229,848
WESTMORELAND COUNTY HA	R.D. #6, BOX 223 S GREENGATE R, GREENSBURG, PA, 15601	25	102,330
LANCASTER HA	333 CHURCH STREET, LANCASTER, PA, 17602-4253	30	168,488
LEHIGH COUNTY HA	333 RIDGE STREET, EMMAUS, PA, 18049	50	343,381
PUERTO RICO DEPT OF HOUSING	606 BARBOSA AVENUE, P O BOX 21365, RIO PIEDRAS, PR, 00928	100	520,536
METROPOLITAN DEV & HA	701 SIXTH STREET, NASHVILLE-DAVIDSON, TN, 37206	50	317,970
HA CROSSVILLE	202 IRWIN AVE, CROSSVILLE, TN, 38555	50	146,562
FORT WORTH HA	P O BOX 430, FORT WORTH, TX, 76101	100	702,720
SAN ANTONIO HA	P O DRAWER 1300, SAN ANTONIO, TX, 78295	100	639,984
DALLAS HA	3939 N HAMPTON, DALLAS, TX, 75212	50	259,224
TARRANT COUNTY	100 E WEATHERFORD STREET, FORT WORTH, TX, 76196-0103	100	635,820
ARLINGTON HA	401 W SANFORD SUITE 2600, ARLINGTON, TX, 76011	100	665,940
HA OF THE COUNTY OF SALT LAKE	3595 S. MAIN STREET, SALT LAKE CITY, UT, 84115	100	530,772
FAIRFAX CO RED AND HA	3700 PENDER DRIVE, FAIRFAX, VA, 22030	24	233,280
VIRGINIA HOUSING DEV AUTH	601 S. BELVIDERE STREET, RICHMOND, VA, 23220	5	48,275
BURLINGTON HA	230 ST PAUL STREET, BURLINGTON, VT, 05401	50	341,993
VERMONT STATE HA	P O BOX 397, MONTPELIER, VT, 05601-0397	100	540,480
HA COUNTY OF KING	15455 65TH AVE SO, TUKWILA, WA, 98188	100	67,352
HARTFORD HSG AUTH	109 NORTH MAIN STREET, HARTFORD, WI, 53027	20	50,794
CHARLESTON HA	P O BOX 86, CHARLESTON, WV, 25321	50	231,624
HUNTINGTON HA	P O BOS 2183, HUNTINGTON, WV, 25722	50	230,580
Totals for Family Unification Certificates		8,639	$58,799,822

HOUSING AGENCY	ADDRESS	UNITS	AWARD
Public Housing Relocation/Replacement Certificates			
DANBURY HA	2 MILL RIDGE ROAD P O BOX 86, DANBURY, CT, 06810	29	693,258
CITY OF JACKSONVILLE	1300 BROAD STREET, JACKSONVILLE, FL, 32202	45	516,026
HA TAMPA	1514 UNION ST, TAMPA, FL, 33607	137	1,961,180
HA OCALA	1415 N E 32ND TERRACE, OCALA, FL, 32670	68	905,134
HA ATLANTA GA	739 WEST PEACHTREE STREET NE, ATLANTA, GA, 30365	516	9,395,744
HA OF BALTIMORE CITY	417 E FAYETTE STREET, BALTIMORE, MD, 21202	20	283,908
DETROIT HOUSING DEPARTMENT	2211 ORLEANS, DETROIT, MI, 48207	1,432	16,049,394
JERSEY CITY HA	400 US HIGHWAY #1, JERSEY CITY, NJ, 07306	53	917,918
NEW YORK CITY HA	250 BROADWAY, NEW YORK, NY, 10007	19	409,032
WASHINGTON COUNTY HA	100 CRUMRINE TOWER FRANKLIN ST, WASHINGTON, PA, 15301	16	158,948
EL PASO HA	1600 MONTANA, EL PASO, TX, 79902	306	3,624,582
ORANGE (CITY) HA	P O BOX 3107, ORANGE, TX, 77631	36	414,512
Totals for Public Housing Relocation/Replacement Certificates		2,677	$35,249,636
Public Housing Relocation/Replacement Vouchers			
AK HSG FINANCE CORP	PO BOX 101020, ANCHORAGE, AK, 99510-1020	30	$406,836
WATERBURY HA	70 LAKEWOOD ROAD, WATERBURY, CT, 06704	19	199,942
MIDDLETOWN HA	40 BROAD STREET, MIDDLETOWN, CT, 06457	53	573,158
DANBURY HA	2 MILL RIDGE ROAD P O BOX 86, DANBURY, CT, 06810	26	461,520
HA OCALA	1415 N E 32ND TERRACE, OCALA, FL, 32670	62	882,000
HA ATLANTA GA	739 WEST PEACHTREE STREET NE, ATLANTA, GA, 30365	323	4,495,638
LYNN HA	174 SOUTH COMMON STREET, LYNN, MA, 01905	4	99,260
HA OF BALTIMORE CITY	417 E FAYETTE STREET, BALTIMORE, MD, 21202	142	1,584,312
ST. LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST. LOUIS, MO, 63121	40	383,466
CITY OF LAS VEGAS HA	P O BOX 1897, LAS VEGAS, NV, 89125-1897	141	1,892,784
COLUMBUS METRO. HA	960 EAST FIFTH AVE., COLUMBUS, OH, 43201	348	2,580,614
CHESTER HA	6 W. 6TH STREET P O BOX 380, CHESTER, PA, 19016	152	2,637,280
HA OF CITY OF SEATTLE	120 SIXTH AVENUE NORTH, SEATTLE, WA, 98109	46	854,312
Totals for Public Housing Relocation/Replacement Vouchers		1,396	$16,890,402
Preservation/Prepayment Certificates			
COUNTY OF LOS ANGELES HA	2 CORAL CIRCLE, MONTEREY PARK, CA, 91754	42	$191,066
CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD., LOS ANGELES, CA, 90057	35	165,304
CITY OF SACRAMENTO	P O BOX 1834, 630 I ST, SACRAMENTO, CA, 95812-1834	11	55,810
COUNTY OF SANTA CLARA HA	505 WEST JULIAN ST, SAN JOSE, CA, 95110	66	548,518
HA OF THE CITY OF LIVERMORE	3203 LEAHY WAY, LIVERMORE, CA, 94550	35	57,892
ANSONIA HA	75 CENTRAL STREET, ANSONIA, CT, 06401	76	181,630
GEORGIA RESIDENTIAL FIN. AUTH	60 EXECUTIVE PKWY SO, SUITE 250, ATLANTA, GA, 30329-000	63	249,466
BOSTON HA	52 CHAUNCY STREET, BOSTON, MA, 02111	83	532,164
MA.,E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA, 02202	14	90,960
HA OF BALTIMORE CITY	417 E FAYETTE STREET, BALTIMORE, MD 21202	64	118,467
ST. CLOUD HRA	619 MALL GERMAIN, SUITE 212, ST. CLOUD, MN, 56301-3689	11	36,903
HELENA HA	812 ABBEY ST, HELENA, MT, 59601	80	205,631
DALLAS COUNTY	411 ELM ST, DALLAS, TX, 75202	162	523,115
METROPOLITAN DEV & HA	701 SIXTH STREET, NASHVILLE-DAVIDSON, TN, 37206	132	612,904
HA OF THE COUNTY OF SALT LAKE	3595 S. MAIN STREET, SALT LAKE CITY, UT, 84115	25	75,189
NEWPORT NEWS REDEV & H/A	P O BOX 77, NEWPORT NEWS, VA, 23607-0077	41	135,884
FAIRFAX CO RED AND HA	3700 PENDER DRIVE, FAIRFAX, VA, 22030	43	238,476
RIVER FALLS HA	625 NORTH MAIN STREET, RIVER FALLS, WI, 54022	44	135,837
Totals for Preservation/Prepayment Certificates		1,032	$4,165,141

HOUSING AGENCY	ADDRESS	UNITS	AWARD
Preservation/Prepayment Vouchers			
AK HSG FINANCE CORP	PO BOX 101020, ANCHORAGE, AK, 99510-1020	4	$22,790
CITY OF MESA	415 N. PASADENA STREET, MESA, AZ, 85201-5916	5	29,958
CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD., LOS ANGELES, CA, 90057	142	650,608
CITY OF SACRAMENTO	P O BOX 1834, 630 I ST, SACRAMENTO, CA, 95812	16	36,917
COUNTY OF SAN MATEO HA	456 PENINSULA AVE, SAN MATEO, CA, 94401	6	54,139
COUNTY OF RIVERSIDE HA	5555 ARLINGTON AVE, RIVERSIDE, CA, 92504	80	197,197
CITY OF BERKELEY HA	3200 ADELINE STREET, BERKELEY, CA, 94703	16	98,719
COUNTY OF SANTA CLARA HA	505 WEST JULIAN ST, SAN JOSE, CA, 95110	116	527,859
SAN DIEGO HOUSING COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA, 92113-1012	214	836,336
CITY OF SANTA ANA HA	20 CIVIC CENTER PLAZA, SANTA ANA, CA, 92701	16	99,391
ORANGE COUNTY HA	2043 N BROADWAY, SANTA ANA, CA, 92706	323	2,032,503
COUNTY OF SAN DIEGO	5555 OVERLAND AVE., BLDG. 2, RM. 202, SAN DIEGO, CA, 92123	51	258,186
CITY OF OCEANSIDE	300 NORTH HILL ST, OCEANSIDE, CA, 92054	33	122,714
COMM SERVICE DEPT EL DORADO CO	360 FAIR LANE, PLACERVILLE, CA, 95667	78	300,107
COUNTY OF LOS ANGELES HA	2 CORAL CIRCLE, MONTEREY PARK, CA 91754	12	77,499
COUNTY OF SAN BERNARDINO HA	1053 NORTH D STREET, SAN BERNARDINO, CA, 92410	54	338,419
TULARE COUNTY HA	P O BOX 791, VISALIA, CA, 93279	7	19,094
COUNTY OF MONTEREY HA	123 RICO STREET, SALINAS, CA, 93907	8	26,386
CITY OF GARDEN GROVE	11391 ACACIA PARKWAY, GARDEN GROVE, CA, 92640	14	127,608
HAOF THE CITY AND CO OF DENVER	P O BOX 40305-MILE HI STN, DENVER, CO, 80204-0305	53	192,856
COLORADO SPRINGS HA	P O BOX 1575, COLORADO SPRINGS, CO, 80903	2	6,338
ADAMS COUNTY HA	7190 COLORADO BLVD, 6TH FL, COMMERCE CITY, CO, 80022	7	24,858
JEFFERSON COUNTY HA	6025 WEST 38TH AVENUE, WHEATRIDGE, CO, 80033	13	44,851
D.C HA	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC, 20002	58	217,600
HA TALLAHASSEE	2940 GRADY ROAD, TALLAHASSEE, FL, 32312	57	171,225
HA COLUMBUS, GA GEN FUND	P O BOX 630, COLUMBUS, GA, 31902-0630	0	124,300
HA SAVANNAH	P O BOX 1179, SAVANNAH, GA, 31402	0	1,222,238
HA MARIETTA	P O DRAWER K, MARIETTA, GA, 30061	0	173,992
CITY OF CLINTON, IOWA HOUSING	215 6TH AVENUE S. SUITE 33, CLINTON, IA, 52732	20	42,235
IDAHO HOUSING AND FIN. ASSOC.	565 W MYRTLE STREET, POB 7899, BOISE, ID, 83707-1899	1	22,828
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL, 60602	47	262,873
PEORIA HA	814 W BROTHERSON ST, PEORIA, IL, 61605	43	79,148
HA OF THE COUNTY OF COOK	59 E VAN BUREN SUITE 1902, CHICAGO, IL, 60605	257	795,489
ELGIN HA	120 SOUTH STATE STREET, ELGIN, IL, 60123	140	484,135
SOUTH BEND HA	PO BOX 11057, SOUTH BEND, IN, 46010-0057	81	240,397
HA OF THE CITY OF MISHAWAKA	P O BOX 1347, MISHAWAKA, IN, 46546-	87	229,227
BLOOMINGTON HA	1007 N SUMMIT, P O BOX 1815, BLOOMINGTON, IN, 47402	34	92,379
LEXINGTON-FAYETTE UR CO H/A	635 BALLARD ST, LEXINGTON-FAYETTE U, KY, 40508	7	18,978
COMMUNITY DEV SECTION 8	201 WEST WALNUT STREET, DANVILLE, KY, 40422	18	29,224
HA FRANKFORT	590 WALTER TODD DRIVE, FRANKFORT, KY, 40601	12	14,378
BOSTON HA	52 CHAUNCY STREET, BOSTON, MA, 02111	232	1,712,725
BROOKLINE HA	90 LONGWOOD AVE, BROOKLINE, MA, 02146	0	307,817
CAMBRIDGE HA	270 GREEN STREET, CAMBRIDGE, MA, 02139	136	1,061,237
MA.,E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA, 02202	1	8,172
ANNE ARUNDEL COUNTY HA	7885 GORDON COURT, GLEN BURNIE, MD, 21061	29	105,585
HOWARD CO. HSG.AND COMM. DEV.	10650 HICKORY RIDGE ROAD, COLUMBIA, MD, 21044	8	24,878
HARFORD COUNTY HSG.AGENCY	220S. MAIN STREET, BEL AIR, MD, 21014	34	150,827
BALTIMORE COUNTY, MD	400 WASHINGTON AVENUE, TOWSON, MD, 21204	24	78,850
HAGERSTOWN HA	P O BOX 2859, HAGERSTOWN, MD, 21741-2859	115	221,447
PORTLAND HA	14 BAXTER BOULEVARD, PORTLAND, ME, 04101	27	54,652
MINNEAPOLIS PHA	1001 WASHINGTON AVE NORTH, MINNEAPOLIS, MN, 55401	0	559,698
ST. LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST. LOUIS, MO, 63121	21	32,755
DOUGLAS COUNTY HA	5404 NORTH 107TH PLAZA, OMAHA, NE, 68134	81	220,953
ALBUQUERQUE HA	1840 UNIVERSITY BLVD. SE, ALBUQUERQUE, NM, 87106	46	213,056
CITY OF RENO HA	1525 EAST NINTH ST, RENO, NV 89512-3012	109	87,515
HSG AUTH OF PORTLAND	135 SW ASH STREET, PORTLAND, OR, 97204	30	160,675
HA WASHINGTON COUNTY	111 NE LINCOLN ST, SUITE 200-L, HILLSBORO, OR, 97124	9	23,129
NORTHWEST OREGON HSNG ASSOC	1508 EXCHANGE, ASTORIA, OR, 97103	11	24,283
CITY OF SPARTANBURG H/A	P O BOX 2828, SPARTANBURG, SC, 29304-2828	85	286,029

HOUSING AGENCY	ADDRESS	UNITS	AWARD
CITY OF ROCK HILL	P. O. BOX 11706, ROCK HILL, SC, 29730	85	245,172
HA SUMTER	P O BOX 1030, SUMTER, SC, 29150	62	174,358
HA CONWAY	2303 LEONARD AVENUE, CONWAY, SC, 29526	56	224,138
HA OF MYRTLE BEACH	P O BOX 2468, MYRTLE BEACH, SC, 29578	95	339,365
SAN ANTONIO HA	P O DRAWER 1300, SAN ANTONIO, TX, 78295	53	282,936
ARLINGTON HA	401 W SANFORD SUITE 2600, ARLINGTON, TX, 76011	74	203,815
DALLAS HA	3939 N HAMPTON, DALLAS, TX, 75212	167	498,301
MESQUITE (CITY OF)	P O BOX 850137, MESQUITE, TX, 75185-0137	91	235,878
TARRANT COUNTY	100 E WEATHERFORD STREET, FORT WORTH, TX, 76196	68	254,746
HA OF THE CITY OF OGDEN	127 24TH STREET STE 2, OGDEN, UT, 84401-1340	20	43,802
WEBER COUNTY HA	127 24TH STREET, #6, OGDEN, UT, 84401-1340	1	1,095
BEAR RIVER REGIONAL HA	170 NORTH MAIN, LOGAN, UT, 84321	2	3,038
HA OF THE COUNTY OF SALT LAKE	3595 S. MAIN STREET, SALT LAKE CITY, UT, 84115	0	58,312
ALEXANDRIA REDEV & H/A	600 N FAIRFAX STREET, ALEXANDRIA, VA, 22314	2	4,162
FAIRFAX CO RED AND HA	3700 PENDER DRIVE, FAIRFAX, VA, 22030	287	137,354
RICHMOND REDEV & H/A	P O BOX 26887, RICHMOND, VA, 23261-6887	306	945,642
HA OF TACOMA, WA	1728 E 44TH STREET, TACOMA, WA, 98404	7	15,873
HA CITY OF SPOKANE	W. 55TH MISSION, SUITE 104, SPOKANE, WA, 99201	11	18,652
HA OF THE CITY OF LACROSSE	PO BOX 1053, LA CROSSE, WI, 54602-1053	29	134,775
Totals for Preservation/Prepayment Vouchers		4,552	$20,756,157
Property Disposition Relocation Certificates			
LITTLE ROCK HA	1000 WOLFE STREET, LITTLE ROCK, AR, 72202	37	295,709
ROCKVILLE HA	114 FRANKLIN PARK WEST P O BO, ROCKVILLE, CT, 06066	27	183,915
D.C HA	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC, 20002	266	2,420,193
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL, 60602	179	1,241,291
HA OF THE COUNTY OF COOK	59 E VAN BUREN SUITE 1802, CHICAGO, IL, 60605	133	938,168
KENTUCKY HSG CORPORATION	1231 LOUISVILLE ROAD, FRANKFORT, KY, 40601	46	191,780
BOSTON HA	52 CHAUNCY STREET, BOSTON, MA, 02111	139	816,391
HA OF BALTIMORE CITY	417 E FAYETTE STREET, BALTIMORE, MD, 21202	94	547,708
FLINT HOUSING COMMISSION	3820 RICHFIELD ROAD, FLINT, MI, 48506	91	365,491
ST. LOUIS HA	4100 LINDELL BLVD, ST. LOUIS, MO, 63108	6	18,098
HA OF KANSAS CITY, MO	712 BROADWAY, KANSAS CITY, MO, 64105-	37	178,979
MISSOURI HSG DEV	3435 BROADWAY, KANSAS CITY, MO, 64111-	45	157,593
MISS REGIONAL H/A VIII	P O BOX 2347, GULFPORT, MS, 39505	120	580,651
MT DEPARTMENT OF COMMERCE	POB 200545, 836 FRONT STREET, HELENA, MT, 59620-0545	13	36,988
ATLANTIC CITY HA	227 NO VERMONT AVENUE, ATLANTIC CITY, NJ, 08404	38	154,311
NEW YORK CITY HA	250 BROADWAY, NEW YORK, NY, 10007	109	7,975,747
COLUMBUS METRO. HA	960 EAST FIFTH AVE., COLUMBUS, OH, 43201	17	44,938
TULSA HA	P O BOX 6369, TULSA, OK, 74148-0369	31	168,853
PUERTO RICO HSG FIN CORP	CALL BOX 71361-GPO, SAN JUAN, PR, 00936	167	896,369
HOUSTON HA	2640 FOUNTAIN VIEW, HOUSTON, TX, 77057-	74	383,848
TYLER (CITY OF)	P O BOX 2039, TYLER, TX, 75710	64	308,129
DEEP EAST TX COUNCIL OF GOVTS	274 E LAMAR, JASPER, TX, 75951	38	144,015
BENNINGTON HA	WILLOW ROAD, BENNINGTON, VT, 05201	72	368,405
JACKSON HA	WHISPERING WAY-TANGLEWOOD VILL, RIPLEY, WV, 25271	48	208,454
Totals for Property Disposition Certificates		1,874	$18,626,824
Property Disposition Relocation Vouchers			
COUNTY OF SAN BERNARDINO HA	1053 NORTH D STREET, SAN BERNARDINO, CA, 92410	53	$240,849
HA OF THE CITY AND CO OF DENVER	P O BOX 40305-MILE HI STN, DENVER, CO, 80204-0305	22	89,253
D.C HA	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC, 20002	0	2,480,508
CHAMPAIGN HA	P O BOX 183, URBANA, IL, 61801	69	362,031
HA OF THE COUNTY OF COOK	59 E VAN BUREN SUITE 1802, CHICAGO, IL, 60605	0	1,650,972
ST PAUL PHA	480 CEDAR STREET, SUITE 600, ST. PAUL, MN, 55101-2240	58	313,331

HOUSING AGENCY	ADDRESS	UNITS	AWARD
CUYAHOGA MHA	1441 WEST 25TH STREET, CLEVELAND, OH, 44113	166	$29,372
DALLAS HA	3939 N HAMPTON, DALLAS, TX, 75212	92	590,385
Totals for Property Disposition Vouchers		460	$6,535,821
Termination/Opt-Out Certificates			
HSG AUTH OF CITY OF NEW HAVEN	360 ORANGE STREET, NEW HAVEN, CT, 06511	22	$235,386
CINCINNATI METROPOLITAN HA	16 WEST CENTRAL PARKWAY, CINCINNATI, OH, 45210	90	550,938
HAMILTON COUNTY	138 EAST COURT ST RM 507, CINCINNATI, OH, 45202	44	239,994
HA OF CITY OF SEATTLE	120 SIXTH AVENUE NORTH, SEATTLE, WA, 98109	127	672,480
Totals for Termination/Opt-out Certificates		283	$1,698,798
Termination/Opt-Out Vouchers			
MOBILE COUNTY HA	P. O. BOX 303, CITRONELLE, AL, 36522	57	$236,545
LITTLE ROCK HA	1000 WOLFE STREET, LITTLE ROCK, AR, 72202	7	316,302
CITY OF PHOENIX	251 W. WASHINGTON ST., 4TH FLOOR, PHOENIX, AZ, 85034	65	362,576
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL, 60602	45	408,723
CITY OF INDIANAPOLIS	FIVE INDIANA SQ., SECOND FLOOR, INDIANAPOLIS, IN, 46204	247	1,209,344
LAFOURCHE PH. SEC.8 HA	P O DRAWER 5548, THIBODAUX, LA, 70302	157	951,160
HA OF KANSAS CITY, MO	712 BROADWAY, KANSAS CITY, MO, 64105-	15	71,331
HA WINSTON-SALEM	901 CLEVELAND AVENUE, WINSTON-SALEM, NC, 28101	20	71,299
HA DURHAM	P O BOX 1726, DURHAM, NC, 27702	13	65,376
HA STATESVILLE	433 S. MEETING STREET, STATESVILLE, NC, 28677-	29	127,134
NEW YORK CITY HA	250 BROADWAY, NEW YORK, NY, 10007	500	3,690,241
CINCINNATI METROPOLITAN HA	16 WEST CENTRAL PARKWAY, CINCINNATI, OH, 45210	24	134,998
METROPOLITAN DEV & HA	701 SIXTH STREET, NASHVILLE-DAVIDSON, TN, 37206	153	752,260
TENNESSEE HSG DEV AGENCY	404 J. ROBERTSON PKWY, NASHVILLE-DAVIDSON, TN, 37243	60	308,169
DALLAS COUNTY	411 ELM ST, DALLAS, TX, 75202	522	3,578,572
HA COUNTY OF KING	15455 65TH AVE SO, TUKWILA, WA, 98188	26	173,880
Totals for Termination/Opt-out Vouchers		2,806	$12,457,910
Section 8 Counseling Certificates			
CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD., LOS ANGELES, CA, 90057	0	$75,000
HA OF BALTIMORE CITY	417 E FAYETTE STREET, BALTIMORE, MD, 21202	0	29,500
Totals for Section 8 Counseling Certificates		0	$104,500
Section 8 Counseling Vouchers			
AK HSG FINANCE CORP	PO BOX 101020, ANCHORAGE, AK, 99510-1020	0	$30,000
WATERBURY HA	70 LAKEWOOD ROAD, WATERBURY, CT, 06704	0	19,000
MIDDLETOWN HA	40 BROAD STREET, MIDDLETOWN, CT, 06457	0	53,000
DANBURY HA	2 MILL RIDGE ROAD P O BOX 86, DANBURY, CT, 06810	0	26,000
HA ATLANTA GA	739 WEST PEACHTREE STREET NE, ATLANTA, GA, 30365	0	323,000
LYNN HA	174 SOUTH COMMON STREET, LYNN, MA, 01905	0	4,000
HA OF BALTIMORE CITY	417 E FAYETTE STREET, BALTIMORE, MD, 21202	0	142,000
CITY OF LAS VEGAS HA	P O BOX 1897, LAS VEGAS, NV, 89125-1897	0	141,000
COLUMBUS METRO. HA	960 EAST FIFTH AVE., COLUMBUS, OH, 43201	0	73,000
CHESTER HA	6 W. 6TH STREET P O BOX 300, CHESTER, PA, 19016	0	152,000
HA OF CITY OF SEATTLE	120 SIXTH AVENUE NORTH, SEATTLE, WA, 98109	0	46,000
Totals for Section 8 Counseling Vouchers		0	$1,009,000

HOUSING AGENCY	ADDRESS	UNITS	AWARD
FSS Coordinators Certificates			
DOTHAN H/A	P O BOX 1727, DOTHAN, AL, 36302	0	$14,445
FLORENCE H/A	303 NORTH PINE STREET, FLORENCE, AL, 35630	0	37,267
HA LEEDS	P O BOX 513, LEEDS, AL, 35094	0	25,289
HA OZARK	P O BOX 566, OZARK, AL, 36361	0	31,415
HA JEFFERSON COUNTY	3700 INDUSTRIAL PARKWAY, BIRMINGHAM, AL, 35217	0	29,628
HA ALBERTVILLE	P O BOX 1126, ALBERTVILLE, AL, 35950	0	32,607
HA BESSEMER	1100 5TH AVENUE NORTH, BESSEMER, AL, 35020	0	30,487
HA JACKSONVILLE	895 GARDNER DRIVE, JACKSONVILLE, AL, 36265	0	27,295
NORTH LITTLE ROCK HA	P O BOX 516, NORTH LITTLE ROCK, AR, 72115	0	25,750
CONWAY HA	360 C H A, CONWAY, AR, 72032	0	24,102
NW REGIONAL HA	P O BOX 699, HARRISON, AR, 72602-0699	0	33,475
HOPE HA	720 TEXAS STREET, HOPE, AR, 71801	0	15,979
SILOAM SPRINGS HA	P O BOX 280, SILOAM SPRINGS, AR, 72761	0	28,809
HARRISON HOUSING AGENCY	P O BOX 1715, HARRISON, AR, 72601	0	33,475
MISSISSIPPI COUNTY PFB	808 W KEISER, OSCEOLA, AR, 72370	0	29,355
CITY OF MESA	415 N. PASADENA STREET, MESA, AZ, 85201-5916	0	41,200
CITY OF CHANDLER	99 N. DELAWARE STREET, CHANDLER, AZ, 85225	0	37,026
CITY OF YUMA HA	1350 W. COLORADO STREET, YUMA, AZ, 85364	0	18,777
CITY OF BULLHEAD CITY	1255 MARINA BOULEVARD, BULLHEAD CITY, AZ, 86442	0	60,108
UPLAND CITY HA	1226 N CAMPUS AVE, UPLAND, CA, 91786	0	30,615
CITY OF BENICIA HA	28 RIVERHILL DRIVE, P O BOX 549, BENICIA, CA, 94510	0	43,775
KINGS COUNTY HA	P O BOX 355, HANFORD, CA, 93232-0355	0	39,311
CITY OF FAIRFIELD	MICHAEL LESS, 1000 WEBSTER, FAIRFIELD, CA, 94533	0	29,468
HA CITY OF NAPA	P. O. BOX 660, NAPA, CA, 94559	0	43,775
CITY OF CARLSBAD	1200 CARLSBAD VILLAGE DRIVE, CARLSBAD, CA, 92008	0	24,905
COUNTY OF SHASTA HA	1670 MARKET STREET STE 300, REDDING, CA, 96001	0	36,394
CITY OF REDDING HA	760 PARKVIEW AVE, REDDING, CA, 96001-3396	0	43,775
YUBA COUNTY HA	938 14TH STREET, MARYSVILLE, CA, 95901	0	41,304
CITY OF PICO RIVERA	6615 PASSONS BLVD, PICO RIVERA, CA, 90660	0	43,593
NORWALK HA	12700 NORWALK BLVD, NORWALK, CA, 90650	0	39,316
CITY OF POMONA	P O BOX 660, POMONA, CA, 91769	0	34,449
CITY OF VACAVILLE	650 MERCHANT STREET, VACAVILLE, CA, 95688	0	43,775
CITY OF ROSEVILLE	311 VERNON STREET, ROSEVILLE, CA, 95678	0	41,909
COUNTY OF SOLANO HA	COURTHOUSE ANNEX, FAIRFIELD, CA, 94533	0	42,580
CITY OF OCEANSIDE	300 NORTH HILL ST, OCEANSIDE, CA, 92054	0	44,000
CITY OF LAKEWOOD	5050 N CLARK AVE, LAKEWOOD, CA, 90712	0	41,186
LAKE COUNTY HSG COMMN	255 N FORBES STREET, LAKEPORT, CA, 95453	0	36,875
COMM SERV DEPT EL DORADO CO	360 FAIR LANE, PLACERVILLE, CA, 95667	0	37,232
CALIFORNIA DHCD	P. O. BOX 952050, SACRAMENTO, CA, 94252-2050	0	21,558
FORT COLLINS HA	1715 W. MOUNTAIN AVE., FORT COLLINS, CO, 80521	0	33,604
CITY OF ENGLEWOOD HA	3460 SOUTH SHERMAN ST. #101, ENGLEWOOD, CO, 80110	0	6,275
HA OF THE CITY OF LAKEWOOD	445 S. ALLISON PARKWAY, LAKEWOOD, CO, 80226-3105	0	65,772
ARVADA HA	8101 RALSTON ROAD, ARVADA, CO, 80002	0	33,372
BOULDER COUNTY HA	2040 14TH STREET, PO BOX 471, BOULDER, CO, 80306-0471	0	75,662
JEFFERSON COUNTY HA	6025 WEST 38TH AVENUE, WHEATRIDGE, CO, 80033	0	65,772
MONTROSE COUNTY HA	222 HAP COURT, OKATHE, CO, 81425-	0	29,675
GARFIELD COUNTY HA	400 7TH STREET SOUTH, SUITE 1000, RIFLE, CO, 80650-	0	79,008
COLORADO DEPT OF HUMAN SER.	4131 S. JULIAN WAY, DENVER, CO, 80236-	0	86,275
COLORADO DOH	1313 SHERMAN STREET ROOM 323, DENVER, CO, 80203	0	86,275
NORWALK HA	24 1/2 MONROE STREET, SOUTH NORWALK, CT, 06854	0	35,500
HARTFORD HA	475 FLATBUSH AVENUE, HARTFORD, CT, 06106	0	43,340
MIDDLETOWN HA	40 BROAD STREET, MIDDLETOWN, CT, 06457	0	43,434
MERIDEN HA	22 CHURCH STREET, MERIDEN, CT, 06450	0	43,672
ANSONIA HA	75 CENTRAL STREET, ANSONIA, CT, 06401	0	43,480
MILFORD HA	75 DEMAIO DRIVE, P O BOX 4123, MILFORD, CT, 06460	0	16,694
TORRINGTON HA	TORRINGTON TOWERS, TORRINGTON, CT, 06790	0	40,629
WILMINGTON HA	400 WALNUT STREET, WILMINGTON, DE, 19801	0	41,935
DOVER HA	1266-76 WHITE OAK ROAD, DOVER, DE, 19901	0	28,660
HA DAYTONA BEACH	118 CEDAR ST, DAYTONA BEACH, FL, 32114	0	35,942

HOUSING AGENCY	ADDRESS	UNITS	AWARD
PANAMA CITY HA	804 E 15TH STREET, PANAMA CITY, FL, 32405	0	24,090
HA DELAND	300 SUNFLOWER CIRCLE, DE LAND, FL, 32724	0	39,970
HA RIVIERA BEACH	2014 WEST 17TH COURT, RIVIERA BEACH, FL, 33404	0	34,823
GAINESVILLE H/A	P O BOX 1468, GAINESVILLE, FL, 32602	0	35,278
HA PASCO COUNTY	522 AUTUMN DR, DADE CITY, FL, 33525-2703	0	35,947
WALTON CO BD OF CO COMM	P O BOX 1258, DE FUNIAK SPRINGS, FL, 32433	0	34,909
COUNTY OF VOLUSIA	123 WEST INDIANA, DE LAND, FL, 32720	0	27,929
HA BOCA RATON	201 WEST PALMETTO PARK ROAD, BOCA RATON, FL, 33432	0	26,994
HERNANDO COUNTY HA	820 Kennedy Blvd., BROOKSVILLE, FL, 34601	0	35,894
COLLIER COUNTY HA	1800 FARM WORKER WAY, IMMOKALEE, FL, 33934	0	35,074
HA BRUNSWICK	P O BOX 1118, BRUNSWICK, GA, 31521	0	28,412
OTTUMWA HA	102 WEST FINLEY AVENUE, OTTUMWA, IA, 52501	0	32,836
SIOUX CITY HSG SERVICES DIV	BOX 447, 520 ORPHEUM BUILDING, SIOUX CITY, IA, 51102	0	36,050
MUNICIPAL HA	119 SOUTH MAIN ST, SUITE # 200, COUNCIL BLUFFS, IA, 51503	0	30,834
WATERLOO HA	SUITE 102, 620 MULBERRY STREET, WATERLOO, IA, 50703	0	26,821
DUBUQUE DEPT OF HUMAN RIGHTS	CITY HALL, DUBUQUE, IA, 52001	0	28,892
FORT DODGE HA	700 SOUTH 17TH STREET, FORT DODGE, IA, 50501	0	43,761
SOUTHERN IOWA REG HA	219 N PINE, CRESTON, IA, 50801-2413	0	30,915
EASTERN IOWA REGIONAL HA	330 NESLER CENTRE, P O BOX 1140, DUBUQUE, IA, 52001	0	40,458
NORTH IOWA REGIONAL HA	121 THIRD STREET NW, MASON CITY, IA, 50401	0	43,775
NORTHWEST IOWA REGIONAL HA	P O BOX 6207, SPENCER, IA, 51301	0	33,465
UPPER EXPLORERLAND REG. HA	134 W. GREENE ST., POSTVILLE, IA, 52162	0	37,389
CENTRAL IOWA REGIONAL HA	1111 NINTH STREET, SUITE 240, DES MOINES, IA, 50314	0	43,775
IOWA NORTHLAND REGIONAL HA	2530 UNIVERSITY AVE., SUITE #5, WATERLOO, IA, 50701	0	36,050
SW IDAHO COOPERATIVE HA	1108 WEST FINCH DRIVE, NAMPA, ID, 83651	0	27,291
IDAHO HOUSING AND FIN. ASSOC.	565 W MYRTLE STREET, POB 7899, BOISE, ID, 83707-1899	0	38,762
EAST ST LOUIS HA	683 N 20TH STREET, EAST ST LOUIS, IL, 62205	0	37,825
CHAMPAIGN HA	P O BOX 183, URBANA, IL, 61801	0	27,398
MADISON HA	1609 OLIVE STREET, COLLINSVILLE, IL, 62234	0	34,932
HA WAUKEGAN	215 SOUTH UTICA STREET, WAUKEGAN, IL, 60085	0	41,200
HA BLOOMINGTON	104 EAST WOOD, BLOOMINGTON, IL, 61701	0	38,634
KENDALL COUNTY HA	111 W. MADISON ST., YORKVILLE, IL, 60560	0	8,734
LEADERSHIP COUNCIL METRO	401 S STATE ST SUITE 860, CHICAGO, IL, 60605-1289	0	43,083
VINCENNES HA	501 HART ST P O BOX 1636, VINCENNES, IN, 47591	0	18,825
HA DELAWARE COUNTY	2401 S HADDIX AVENUE, MUNCIE, IN, 47302	0	28,916
HA KOKOMO	P O BOX 1207, KOKOMO, IN, 46901	0	18,701
HAMMOND HA	7329 COLUMBIA CIRCLE WEST, HAMMOND, IN, 46324	0	32,793
GARY HA	578 BROADWAY, GARY, IN, 46402	0	29,632
HA OF THE CITY OF SULLIVAN	200 NORTH COURT STREET, SULLIVAN, IN, 47882-	0	24,979
HA OF THE CITY OFMARION	601 SOUTH ADAMS STREET, MARION, IN, 46953	0	29,875
HA OF KNOX COUNTY	TILLY ESTATES-OFFICE, BICKNELL, IN, 47512	0	24,020
HA PERU	701 E MAIN ST, PERU, IN, 46970	0	26,006
THE HA OF THE CITY OF GOSHEN,	302 S 5TH STREET, GOSHEN, IN, 46526-	0	32,772
FORT SCOTT HA	315 SCOTT AVE P O BOX 269, FORT SCOTT, KS, 66701	0	11,536
MANHATTAN HA	P O BOX 1024 300 N 5TH, MANHATTAN, KS, 66502	0	30,849
ECKAN	P O BOX 110, OTTAWA, KS, 66067	0	27,354
FORD COUNTY HA	C/O SWKAAA, INC., P O BOX 1636, DODGE CITY, KS, 67801	0	28,428
H A SOMERSET	P O BOX 449, SOMERSET, KY, 42501	0	30,591
HA CYNTHIANA	P O BOX 351, CYNTHIANA, KY, 41031	0	27,785
HA GEORGETOWN	139 SCROGGIN PARK, GEORGETOWN, KY, 40324	0	22,660
PIKE COUNTY HA	P O BOX 1468, PIKEVILLE, KY, 41501	0	42,475
BOONE CT FISCAL CT AHD	P O BOX 577, FLORENCE, KY, 41005	0	32,102
CITY OF PADUCAH	P O BOX 2267, PADUCAH, KY, 42002-2267	0	30,739
HA FLOYD COUNTY	P O BOX 687, PRESTONSBURG, KY, 41653	0	25,367
CUMBERLAND VALLEY REGL HA	P O BOX 806, BARBOURVILLE, KY, 40906-0806	0	21,476
APPALACHIAN FOOTHILLS HA	1448 DIEDERICH BLVD, RUSSELL, KY, 41169	0	41,197
CITY OF BOWLING GREEN	P O BOX 430, BOWLING GREEN, KY, 42102-0430	0	36,596
KENTUCKY HOUSING CORP	1231 LOUISVILLE ROAD, FRANKFORT, KY, 40601	0	34,757
PORT ALLEN (CITY OF)	PO BOX 468, PORT ALLEN, LA, 70767	0	19,615
TERREBONNE PARISH COUNCIL	P O BOX 6097, HOUMA, LA, 70361	0	19,570
WEBSTER PARISH POLICE JURY	P O BOX 389, MINDEN, LA, 71055	0	22,423

HOUSING AGENCY	ADDRESS	UNITS	AWARD
WASHINGTON PARISH HA	P O BOX 167, VARNADO, LA, 70467	0	17,874
LOWELL HA	350 MOODY STREET, LOWELL, MA, 01854	0	43,775
WOBURN HA	59 CAMPBELL STREET, WOBURN, MA, 01801	0	43,775
LYNN HA	174 SOUTH COMMON STREET, LYNN, MA, 01905	0	43,260
GLOUCESTER HA	P. O. BOX 1599, GLOUCESTER, MA, 01931-1599	0	33,242
EVERETT HA	90 CHELSEA ST, EVERETT, MA, 02149	0	43,775
BROOKLINE HA	90 LONGWOOD AVE, BROOKLINE, MA, 02146	0	39,798
SHREWSBURY HA	36 NORTH QUINSIGAMOND AVENUE, SHREWSBURY, MA, 01545	0	24,732
ARLINGTON HA	4 WINSLOW ST, ARLINGTON, MA, 02174	0	27,292
PEABODY HA	75 - 81 CENTRAL ST, PEABODY, MA, 01960	0	33,709
SALEM HA	27 CHARTER STREET, SALEM, MA, 01970	0	42,488
ACTON HA	P O BOX 681, ACTON, MA, 01720	0	30,390
PLYMOUTH HA	P O BOX 3537, PLYMOUTH, MA, 02361	0	32,042
MELROSE HA	910 MAIN ST, MELROSE, MA, 02176	0	25,516
MILFORD HA	45 BIRMINGHAM COURT, MILFORD, MA, 01757	0	12,854
HOLBROOK HA	ONE HOLBROOK COURT, HOLBROOK, MA, 02343	0	27,677
WAKEFIELD H A	26 CRESCENT ST, WAKEFIELD, MA, 01880	0	23,459
READING HA	22 FRANK D TANNER DRIVE, READING, MA, 01867	0	25,724
ANDOVER HA	100 MORTON ST, ANDOVER, MA, 01810	0	43,775
LEOMINSTER HA	100 MAIN ST, LEOMINSTER, MA, 01453	0	39,248
GREENFIELD HA	ONE ELM TERRACE, GREENFIELD TOWN, MA, 01301	0	27,295
SAUGUS HA	19 TALBOT ST, SAUGUS, MA, 01906	0	32,612
WAYLAND HA	106 MAIN STREET, WAYLAND, MA, 01778	0	17,825
NORTH ANDOVER HA	P. O. BOX 373, NORTH ANDOVER, MA, 01845	0	23,981
NORWOOD HA	40 WILLIAM SHYNE CIRCLE, NORWOOD, MA, 02062	0	38,417
DANVERS HA	14 STONE STREET, DANVERS, MA, 01923	0	21,692
GARDNER HA	116 CHURCH ST, GARDNER, MA, 01440	0	12,992
MANSFIELD HA	22 BICENTENNIAL COURT, MANSFIELD TOWN, MA, 02048	0	23,419
DENNIS HA	167 CENTER ST, DENNIS TOWN, MA, 02660	0	32,337
HANSON HA	MEETINGHOUSE LANE, HANSON, MA, 02341	0	22,994
NORTH ATTLEBOROUGH HA	P O BOX 668, NORTH ATTLEBOROUGH, MA, 02761	0	28,208
HAGERSTOWN HA	P O BOX 2859, HAGERSTOWN, MD, 21741-2859	0	22,187
HA OF THE CITY OF ROCKVILLE	14 MOORE DRIVE, ROCKVILLE, MD, 20850	0	43,775
HAVRE DE GRACE HA	101 STANSBURY COURT, HAVRE DE GRACE, MD, 21904	0	27,126
ANNE ARUNDEL COUNTY HA	7885 GORDON COURT, GLEN BURNIE, MD, 21061	0	31,129
ST MARY'S COUNTY COMM.	P O BOX 653, GOVT CENTER, LEONARDTOWN, MD, 20650	0	43,775
CALVERT COUNTY HA	420 WEST DARES BEACH ROAD, PRINCE FREDERICK, MD, 20678	0	25,750
CITY OF WESTMINSTER	P O BOX 010 CITY HALL, WESTMINSTER, MD, 21157	0	25,398
WASHINGTON COUNTY HA	33 WEST WASHINGTON STREET, HAGERSTOWN, MD, 21740	0	22,187
CECIL COUNTY HA	COURT HOUSE ROOM 122, ELKTON, MD, 21921	0	40,213
CARROLL COU HSG & COMM DEV	125 NORTH COURT STREET, WESTMINSTER, MD, 21157	0	31,413
BANGOR HA	161 DAVIS ROAD, BANGOR, ME, 04401	0	33,930
WESTBROOK HA	P O BOX 349, WESTBROOK, ME, 04092	0	44,000
MOUNT DESERT HA	15 EAGLE LAKE ROAD, BAR HARBOR, ME, 04609	0	32,945
CARIBOU HA	25 HIGH ST, CARIBOU, ME, 04736	0	34,064
AUGUSTA HA	16 CONY ST, CITY CENTER PLAZA, AUGUSTA, ME, 04330	0	23,102
SAGINAW HSG COMM.	2811 DAVENPORT, BOX A, SAGINAW, MI, 48602	0	43,775
CITY OF JACKSON	161 WEST MICHIGAN AVENUE, JACKSON, MI,	0	22,567
CITY OF PLYMOUTH HSG COMM.	1160 SHERIDAN, PLYMOUTH, MI, 48170	0	39,489
LANSING HOUSING COMMISSION	310 SEYMOUR, LANSING, MI, 48933	0	33,125
CITY OF MUSKEGON	933 TERRACE STREET, PO BOX 536, MUSKEGON,, MI, 49443	0	38,551
CITY OF WYOMING	1155 28TH STREET, SW, WYOMING, MI	0	34,535
CITY OF WESTLAND	32175 DORSEY ROAD, WESTLAND, MI, 48185	0	28,840
TOWNSHIP OF REDFORD	12121 HEMINGWAY, REDFORD TWP, MI, 482390	0	27,810
DEARBORN HEIGHTS HSG COMM.	26155 RICHARDSON ST., DEARBORN HEIGHTS, MI, 48127	0	29,522
COUNTY OF KENT	4326 CASCADE ROAD, SE, GRAND RAPIDS, MI, 49546	0	39,768
WAYNE COUNTY	DETROIT, MI, 48226-29420	0	33,684
WINONA HRA	165 EAST FOURTH ST., WINONA, MN, 55987-3514	0	11,481
SOUTH ST PAUL HRA	125 SOUTH THIRD AVENUE, SOUTH ST. PAUL, MN, 55075	0	37,780
BRAINERD HRA	304 EAST RIVER ROAD, SUITE 2, BRAINERD, MN, 56401-3551	0	39,355
OLMSTED COUNTY HRA	2116 CAMPUS DRIVE SE, ROCHESTER, MN, 55904-4744	0	17,486

HOUSING AGENCY	ADDRESS	UNITS	AWARD
BLOOMINGTON HRA	2215 W. OLD SHAKOPEE RD., BLOOMINGTON, MN, 55431	0	26,828
NW MN MULTI-COUNTY HRA	P O BOX 128, MENTOR, MN, 56736-0128	0	30,900
KANDIYOHI COUNTY HRA	HEARTLAND CAA, BOX 1359, WILLMAR, MN, 56201	0	41,832
SCOTT COUNTY HRA	16049 FRANKLIN TRAIL S.E., PRIOR LAKE, MN, 55372	0	15,828
SE MN MULTI-COUNTY HRA	134 EAST SECOND STREET, WABASHA, MN, 55981	0	28,665
WASHINGTON COUNTY HRA	321 BROADWAY AVE., ST. PAUL PARK, MN, 55071	0	22,664
SOUTH CENTRAL MULTI COUNTY HRA	410 JACKSON STREET, MANKATO, MN, 56001	0	30,123
ST CHARLES HA	1014 OLIVE ST, ST CHARLES, MO, 63301	0	29,021
FRANKLIN COUNTY PUBLIC HA	P. O. BOX 920, HILLSBORO, MO, 63050	0	28,325
PHELPS COUNTY PHA	101 W. 10TH ST, ROLLA, MO, 65401	0	22,149
LIBERTY HA	P O BOX 159, 101 E. KANSAS, LIBERTY, MO, 64068	0	31,189
RIPLEY COUNTY PHA	3019 FAIR STREET, P O BOX 1183, POPLAR BLUFF, MO, 63901	0	24,425
PHA OF THE COUNTY OF RAY	302 NORTH CAMDEN, RICHMOND, MO, 64085	0	9,801
JASPER COUNTY PUBLIC HOUSING	P O BOX 207, JOPLIN, MO, 64802	0	22,172
MISSOURI HSG DEV COMM.	3435 BROADWAY, KANSAS CITY, MO, 64111	0	34,278
HA MISSISSIPPI REGIONAL NO 5	P O BOX 419, NEWTON, MS, 39345	0	26,471
MISS REGIONAL H/A VIII	P O BOX 2347, GULFPORT, MS, 39505	0	35,971
HA MISSISSIPPI REGIONAL NO 7	P O BOX 886, MC COMB, MS, 39648	0	23,234
HA OF BILLINGS	2415 1ST AVE NORTH, BILLINGS, MT, 59101	0	71,801
GREAT FALLS HA	1500 SIXTH AVE. SOUTH, GREAT FALLS, MT, 59405-2599	0	60,368
HELENA HA	812 ABBEY ST, HELENA, MT, 59601	0	85,451
HA HIGH POINT	P O BOX 1779, HIGH POINT, NC, 27261	0	28,830
CITY OF CONCORD	P O BOX 308, CONCORD, NC, 28026-0308	0	13,837
HA GREENSBORO	P O BOX 21287, GREENSBORO, NC, 27420	0	43,775
HA LAURINBURG	P O BOX 1437, LAURINBURG, NC, 28352	0	37,645
H/A CITY OF GREENVILLE	P O BOX 1426, GREENVILLE, NC, 27835	0	26,888
HA SANFORD	P O BOX 636, SANFORD, NC, 27331	0	30,639
H A GRAHAM	P O BOX 88, GRAHAM, NC, 27253	0	20,600
HA STATESVILLE	433 S. MEETING STREET, STATESVILLE, NC, 28677	0	39,042
HA ASHEBORO	P O BOX 689, ASHEBORO, NC, 27204-0689	0	30,699
HA MIDEAST REGIONAL	P O BOX 474, WASHINGTON, NC, 27889	0	21,941
TOWN OF EAST SPENCER	P O BOX 367, EAST SPENCER, NC, 28039	0	34,800
WESTERN CAROLINA COMM ACTION	P O BOX 685, HENDERSONVILLE, NC, 28793	0	27,588
SANDHILLS COMM ACTION PROG INC	P O BOX 937, CARTHAGE, NC, 28327	0	43,775
TWIN RIVERS OPPORTUNITIES INC	P O BOX 1482, NEW BERN, NC, 28563	0	33,475
MOUNTAIN PROJECTS, INC.	RT. 1 BOX 732, WAYNESVILLE, NC, 28786	0	27,382
MACON PROGRAM FOR PROGRESS	P O BOX 780, 38 1/2 E MAIN STREET, FRANKLIN, NC, 28734	0	19,582
STUTSMAN COUNTY HA	217 1ST AVENUE N., JAMESTOWN, ND, 58401	0	26,749
KEARNEY HA	2715 AVE I, KEARNEY, NE, 68847	0	27,388
NORFOLK HA	111 S. FIRST STREET, NORFOLK, NE, 68701	0	30,900
BELLEVUE HA	8214 ARMSTRONG CIRCLE, OMAHA, NE, 68147	0	25,766
NORTHEAST NEBRASKA JOINT HA	520 PIERCE STREET, SUITE 400, SIOUX CITY, IA, 51102	0	27,985
GOLDENROD JOINT HA	P O BOX 280, WISNER, NE, 68769	0	26,700
CENTRAL NEBRASKA JOINT HA	P O BOX 589, LOUP CITY, NE, 68853	0	23,962
LACONIA HOUSING & REDEV AUTH	25 UNION AVE, LACONIA, NH, 03246	0	4,610
KEENE HA	105 CASTLE STREET, KEENE, NH, 03431	0	34,268
LONG BRANCH HA	P O BOX 336, LONG BRANCH, NJ, 07740	0	43,775
WOODBRIDGE HA	10 BUNNS LANE, WOODBRIDGE, NJ, 07095	0	41,598
PLAINFIELD HA	510 EAST FRONT STREET, PLAINFIELD, NJ, 07060	0	41,715
NEPTUNE HA	BOX 726, NEPTUNE, NJ, 07753	0	35,820
EAST ORANGE HA	160 HALSTED STREET, EAST ORANGE, NJ, 07018	0	43,775
GLASSBORO HA	737 LINCOLN BLVD P O BOX 563, GLASSBORO, NJ, 08028	0	29,065
BOONTON HA	125 CHESTNUT STREET, BOONTON, NJ, 07005	0	43,260
LAKEWOOD HA	P O BOX 1543, LAKEWOOD, NJ, 08701	0	43,775
BERKELEY TOWNSHIP HA	44 FREDERICK DR., BAYVILLE, NJ, 08721	0	37,121
MILLVILLE HA	P O BOX 803 122 E MAIN STREET, MILLVILLE, NJ, 08332	0	37,254
BRICK HA	165 CHAMBERS BRIDGE ROAD, BRICK, NJ, 08723	0	43,454
DOVER HA	215 EAST BLACKWELL STREET, DOVER, NJ, 07801	0	42,799
FORT LEE HA	1403 TERESA DRIVE, FORT LEE, NJ, 07024	0	42,848
WEEHAWKEN HA	525 GREGORY AVENUE, WEEHAWKEN, NJ, 07087	0	43,176
HUNTERDON COUNTY HA	8 GAUNTT PL. RT. 31, FLEMINGTON, NJ, 08822	0	43,672

HOUSING AGENCY	ADDRESS	UNITS	AWARD
TOWNSHIP OF MONTCLAIR HA	205 CLAREMONT AVENUE, MONTCLAIR, NJ, 07042	0	43,672
PASSAIC COUNTY HA	317 PENNSYLVANIA AVE, PATERSON, NJ, 07503	0	34,454
WARREN COUNTY HA	WAYNE DUMONT JR ADMIN BLDG, BELVIDERE, NJ, 07823	0	43,775
WEST ORANGE, PHA	66 MAIN STREET, WEST ORANGE, NJ, 07052	0	41,200
LAKEWOOD TOWNSHIP	231 THIRD ST, LAKEWOOD, NJ, 08701	0	43,775
NJ DEPT. OF COMM. AFFAIRS	101 S. BROAD STREET CN800, TRENTON, NJ, 08625-0800	0	42,789
LAS CRUCES HA	926 S SAN PEDRO, LAS CRUCES, NM, 88001	0	27,885
ALAMOGORDO (CITY OF) HA	P O BOX 336, ALAMOGORDO, NM, 83311-0336	0	43,775
TRUTH OR CONSEQUENCES HA	108 S CEDAR STREET, TRUTH OR CONSEQUENCES, NM, 87901	0	43,775
SANTA FE COUNTY HA	PO BOX 276, SANTA FE, NM, 87504-0276	0	36,565
BERNALILLO COUNTY HSG DEPT	620 LOMAS BLVD NW, ALBUQUERQUE, NM, 87102	0	38,482
REGION 1V HA	104 WEST SECOND STREET, CLOVIS, NM, 88101	0	30,900
CLOVIS HA	P O BOX 1240, CLOVIS, NM, 88101	0	28,737
HA OF PLATTSBURGH	19 OAK STREET, PLATTSBURGH, NY, 12901	0	29,732
HA OF COHOES	DR JAY MCDONALD TOWERS REMSEN, COHES, NY, 12047	0	35,225
CITY OF OSWEGO	CITY HALL, OSWEGO, NY, 13126	0	26,203
HA OF GLOVERSVILLE	181 WEST STREET, GLOVERSVILLE, NY, 12078	0	25,821
HA OF HORNELL	71 CHURCH STREET, HORNELL, NY, 14843	0	37,021
HA OF MONTICELLO	76 EVERGREEN DRIVE, MONTICELLO, NY, 12701	0	43,672
HA OF NEW ROCHELLE	50 SICKLES AVENUE, NEW ROCHELLE, NY, 10801	0	33,846
TOWN OF BABYLON	200 EAST SUNRISE HIGHWAY, LINDENHURST, NY, 11757	0	43,518
TOWN OF YORKTOWN	363 UNDERHILL AVE, YORKTOWN HGTS, NY, 10598	0	34,938
PORT JERVIS	20 FRONT STREET, PORT JERVIS, NY, 12771	0	28,322
CITY OF POUGHKEEPSIE	MEMORIAL SQ, P O BOX 300, POUGHKEEPSIE, NY, 12602	0	35,484
NORTH FORK HSG ALLIANCE INC	110 SOUTH STREET, GREENPORT, NY, 11944	0	43,260
TOWN OF SMITHTOWN	99 WEST MAIN STREET, P O BOX 5, SMITHTOWN, NY, 11787	0	42,034
VILLAGE OF KIRYAS JOEL HA	500 FOREST ROAD, SUITE 202, MONROE, NY, 10950	0	43,775
TOWN OF COLONIE	MEMORIAL TOWN HALL, NEWTONVILLE, COLONIE, NY, 12128	0	41,901
CITY OF FULTON	MUNICIPAL BUILDING, FULTON, NY, 13069	0	27,038
TOWN OF UNION COM DEV	3111 EAST MAIN ST, ENDWELL, NY, 13760	0	24,571
JEFFERSON MHA	815 NORTH SIXTH AVENUE, STEUBENVILLE, OH, 43952	0	36,568
SPRINGFIELD MET.HA	437 EAST JOHN STREET, SPRINGFIELD, OH, 45505	0	43,775
MEDINA MHA	850 WALTER ROAD, MEDINA, OH, 44256-1593	0	29,385
PORTAGE MHA	2832 STATE ROUTE 59, RAVENNA, OH, 44266-2741	0	36,029
CAMBRIDGE METROPOLITAN HA	P O BOX 744, CAMBRIDGE, OH, 43725-0744	0	25,371
THE MEIGS MHA	237 RACE STREET, MIDDLEPORT, OH, 45760	0	10,951
WARREN MET.HA	P O BOX 63, LEBANON, OH, 45036	0	27,754
FAYETTE METRO HA	101 E. EAST STREET, WASHINGTON C.H., OH, 43160	0	25,260
PICKAWAY METROPOLITAN HA	176 RUSTIC DRIVE, CIRCLEVILLE, OH, 43113	0	22,709
PIKE METROPLITAN HA	2626 SHYVILLE ROAD, PIKETON, OH, 45661	0	36,916
TUSCARAWAS MHA	125 EAST HIGH, NEW PHILADELPHIA, OH, 44663	0	43,625
CITY OF MIDDLETOWN	ONE CITY CENTRE PLAZA, MIDDLETOWN, OH, 45042	0	20,888
LOGAN COUNTY MHA	105W HIGH ST, BELLEFONTAINE, OH, 43311	0	33,207
CITY OF MARIETTA	P O BOX 708, MARIETTA, OH, 45750	0	33,421
VINTON METROPOLITAN H. A.	P. O. BOX 487, MCARTHUR, OH, 45651	0	30,851
DELAWARE METRO HA	P O BOX 1292, DELAWARE, OH, 43015	0	37,080
MORROW METRO. HA	PO BOX 1029, MANSFIELD, OH, 44902	0	29,664
BOWLING GREEN HA	304 NORTH CHURCH STREET, BOWLING GREEN, OH, 43402	0	28,943
BROKEN BOW HA	P O BOX 177, BROKEN BOW, OK, 74728	0	16,781
NORMAN HA	700 NORTH BERRY RD, NORMAN, OK, 73069	0	34,589
STILLWATER HA	807 S. LOWRY, STILLWATER, OK, 74074	0	30,900
HA OF DOUGLAS COUNTY	P O BOX 966, ROSEBURG, OR, 97470	0	27,172
H.A. OF LINCOLN COUNTY	1039 NW NYE ST, NEWPORT, OR, 97365	0	27,310
H.A. OF YAMHILL COUNTY	414 N EVANS, MCMINNVILLE, OR, 97128	0	31,275
MID COLUMBIA HOUSING AGENCY	506 E 2ND, THE DALLES, OR, 97058	0	27,817
H.A. OF MALHEUR CO.	959 FORTNER ST, ONTARIO, OR, 97914	0	19,960
NORTHWEST OREGON HSG ASSOC.	1508 EXCHANGE, ASTORIA, OR, 97103	0	25,853
CENTRAL ORE REG HA	2445 SW CANAL BLVD, REDMOND, OR, 97756	0	28,675
HARRISBURG HA	P O BOX 3461, HARRISBURG, PA, 17101-3461	0	39,501
BUTLER COUNTY HA	P O BOX 1917, BUTLER, PA, 16003	0	43,775
ALTOONA HA	1100 11TH STREET, ALTOONA, PA, 16601	0	43,775

HOUSING AGENCY	ADDRESS	UNITS	AWARD
MONTOUR COUNTY HA	ONE BEAVER PLACE, DANVILLE, PA, 17821	0	43,775
DAUPHIN COUNTY HA	501 MOHN STREET, STEELTON, PA, 17113	0	36,628
LANCASTER HA	333 CHURCH STREET, LANCASTER, PA, 17602-4253	0	41,338
WILKES BARRE HA	LINCOLN PLAZA S. WILKES BARRE, WILKES BARRE, PA, 18702	0	40,355
INDIANA COUNTY HA	104 PHILADELPHIA STREET, INDIANA, PA, 15701	0	15,897
SUNBURY HA	705 MARKET STREET P O BOX 458, SUNBURY, PA, 17801	0	26,828
NORTHUMBERLAND COUNTY HA	50 MAHONING STREET, MILTON, PA, 17847	0	26,828
BERKS COUNTY HA	1903 BUTTER LANE, READING, PA, 19606	0	28,922
CUMBERLAND COUNTY HA	114 NORTH HANOVER STREET, CARLISLE, PA, 17013	0	13,905
NORTHAMPTON COUNTY HA	P O BOX 252, NAZARETH, PA, 18064	0	43,672
ADAMS COUNTY HA	139 CARLISLE STREET, GETTYSBURG, PA, 17325	0	35,329
PAWTUCKET H A	214 ROOSEVELT AVE, PO BOX 1303, PAWTUCKET, RI, 02862	0	35,063
CENTRAL FALLS H A	30 WASHINGTON ST, CENTRAL FALLS, RI, 02863	0	28,208
EAST PROVIDENCE H A	99 GOLDSMITH AVE, EAST PROVIDENCE, RI, 02914	0	43,126
SOUTH KINGSTON HA	P O BOX 6, PEACE DALE, RI, 02883	0	43,672
NORTH PROVIDENCE HA	945 CHARLES STREET, NORTH PROVIDENCE, RI, 02904	0	33,475
EAST GREENWICH H A	146 FIRST AVE, EAST GREENWICH, RI, 02818	0	24,960
NARRAGANSETT HA	P.O. BOX 308 25 FIFTH AVENUE, NARRAGANSETT, RI, 02882	0	26,422
RI HSG MORT FIN CORP	44 WASHINGTON STREET, PROVIDENCE, RI, 02903	0	39,608
MUNICIPALITY OF PONCE	P O BOX 1709, PONCE, PR, 00733-1709	0	22,751
MUNICIPALITY OF BAYAMON	P O BOX 2908, BAYAMON MUNICIPIO, RQ, 00620	0	17,850
MUNICIPALITY OF CAROLINA	P O BOX 8, CAROLINA, PR, 00985-0008	0	19,513
MUNICIPALITY OF HORMIGUEROS	P O BOX 97, HORMIGUEROS, PR, 00660	0	43,775
MUNICIPALITY OF ADJUNTAS	P O BOX 1089, ADJUNTAS, PR, 00601	0	19,325
MUNICIPALITY OF ISABELA	P O BOX 507, ISABELA, PR, 00662	0	11,660
MUNICIPALITY OF AGUAS BUENAS	BOX 128, AGUAS BUENAS MUNICI, RQ, 00687	0	16,977
HA CONWAY	2303 LEONARD AVENUE, CONWAY, SC, 29526	0	15,518
HA GREENWOOD	P O BOX 973, GREENWOOD, SC, 29646	0	30,900
HA OF MYRTLE BEACH	P O BOX 2468, MYRTLE BEACH, SC, 29578	0	37,692
HA ANDERSON	1335 E RIVER STREET, ANDERSON, SC, 29621	0	29,983
CHARLESTON COUNTY HRD	2106 MOUNT PLEASANT STREET, CHARLESTON, SC, 29403	0	22,517
PENNINGTON COUNTY HRD	1805 WEST FULTON ST, RAPID CITY, SD, 57702	0	15,393
BROOKINGS HRD	1310 MAIN AVE. SOUTH, BROOKINGS, SD, 57006	0	19,652
MOBRIDGE HSG & REDEV AUTH	111 SECOND STREET E, MOBRIDGE, SD, 57601	0	59,583
HA KINGSPORT	P O BOX 44, KINGSPORT, TN, 37662	0	36,457
HA JACKSON	P O BOX 3188, JACKSON, TN, 38303	0	36,699
HA CROSSVILLE	202 IRWIN AVE, CROSSVILLE, TN, 38555	0	30,900
SE TN HUMAN RESOURCE AGENCY	P O Box 805, DUNLAP, TN, 37327	0	41,925
CORPUS CHRISTY HA	P O BOX 7019, CORPUS CHRISTI, TX, 78467-7019	0	27,851
BAYTOWN HA	805 NAZRO STREET, BAYTOWN, TX, 77520	0	34,373
TEXARKANA HA	BOX 5766, TEXARKANA, TX, 75505-5766	0	33,765
LUBBOCK HA	P O BOX 2568, LUBBOCK, TX, 79408	0	23,859
BEAUMONT HA	P O BOX 1312, BEAUMONT, TX, 77704	0	31,184
CENTER HA	1600 SWEETGUM TRAIL, CENTER, TX, 75935	0	26,283
EDINBURG HA	P O BOX 295, EDINBURG, TX, 78540	0	32,960
HARLINGEN HA	P O BOX 1669, HARLINGEN, TX, 78551	0	30,400
PHARR HA	211 W AUDREY, PHARR, TX, 78577	0	38,831
KINGSVILLE HA	1000 W CORRAL, KINGSVILLE, TX, 78363	0	42,927
PLANO HA	1581 AVENUE K., PLANO, TX, 75074	0	30,387
HSG AUTH CITY OF TATUM	P O BOX 1066, TATUM, TX, 75691	0	9,258
GARLAND (CITY OF)	P O BOX 469002, GARLAND, TX, 75046-9002	0	34,064
ANTHONY HA	P O DRAWER 1740, ANTHONY, TX, 79821	0	23,578
SAN ANGELO PUBLIC HA	P O BOX 1751, SAN ANGELO, TX, 76902	0	29,052
TRAVIS COUNTY HA	P O BOX 1748, AUSTIN, TX, 78767	0	32,445
HIDALGO COUNTY HA	1800 N. TEXAS BLVD., WESLACO, TX, 78596	0	34,675
CAMERON COUNTY HA	P O BOX 5806, BROWNSVILLE, TX, 78520	0	35,319
MIDLAND COUNTY HA	218 WEST ILLINOIS ROOM 108, MIDLAND, TX, 79701	0	33,796
HA OF THE CITY OF PROVO	650 WEST 100 NORTH, PROVO, UT, 84601	0	71,606
DAVIS COUNTY HA	P O BOX 328, FARMINGTON, UT, 84025	0	56,590
UTAH PAIUTE HA	600 NORTH 100 EAST, CEDAR CITY, UT, 84720	0	39,768
GRAND COUNTY HA	302 EAST CENTER ST., MOAB, UT, 84532	0	11,791

HOUSING AGENCY	ADDRESS	UNITS	AWARD
WEST VALLEY CITY HA	3600 CONSTITUTION BLVD, WEST VALLEY CITY, UT, 84119	0	29,791
CEDAR CITY HA	2390 W. HWY 56, SUITE 7, CEDAR CITY, UT, 84720	0	74,948
PORTSMOUTH REDEV & H/A	339 HIGH STREET P O BOX 1098, PORTSMOUTH, VA, 23705	0	35,546
CUMBERLAND PLATEAU REG. HA	P O BOX 1328, MEMORIAL DRIVE, LEBANON, VA, 24266	0	31,276
LEE COUNTY HA	P O BOX 665, JONESVILLE, VA, 24263	0	29,882
COUNTY OF ALBEMARLE	401 MCINTIRE ROAD, CHARLOTTESVILLE, VA, 22902-4596	0	29,998
CITY OF VIRGINIA BEACH	MUNICIPAL CENTER, VIRGINIA BEACH, VA, 23456	0	31,219
VIRGINIA HSG DEV. AUTH.	601 S. BELVIDERE STREET, RICHMOND, VA, 23220	0	43,775
BURLINGTON HA	230 ST PAUL STREET, BURLINGTON, VT, 05401	0	33,015
BARRE HA	455 NORTH MAIN STREET, BARRE, VT, 05641	0	22,709
HA COUNTY OF CLALLAM	2603 SOUTH FRANCIS, PORT ANGELES, WA, 98362	0	37,692
HA CITY OF KENNEWICK	P. O. BOX 6737, KENNEWICK, WA, 99336	0	43,260
HA OF GRANT COUNTY	1139 LARSON BLVD, MOSES LAKE, WA, 98837	0	38,868
HA OF TACOMA, WA	1728 E 44TH STREET, TACOMA, WA, 98404	0	32,081
HA CITY OF PASCO	820 NORTH FIRST AVENUE, PASCO, WA, 99301	0	30,819
BELLINGHAM HSG AUTH	208 UNITY STREET LOWER LEVEL, BELLINGHAM, WA, 98225	0	33,840
KITSAP COUNTY CONSOLID. HA	9265 BAYSHORE DR NW, SILVERDALE, WA, 98383	0	41,351
THURSTON COUNTY	505 WEST FOURTH AVENUE, OLYMPIA, WA, 98501	0	38,237
HA CITY OF SPOKANE	W. 55TH MISSION, SUITE 104, SPOKANE, WA, 99201	0	43,775
WENATCHEE HA	1555 SOUTH METHOW, WENATCHEE, WA, 98801	0	32,169
HA CITY OF RICHLAND	650 GEORGE WASHINGTON WAY, RICHLAND, WA, 99352	0	20,085
HA OF JEFFERSON COUNTY	P O BOX 1540, PORT TOWNSEND, WA, 98368	0	26,353
GREEN BAY HA	1424 ADMIRAL ST., GREEN BAY, WI, 54303	0	40,796
DUNN COUNTY HA	525 2ND ST., GLENWOOD CITY, WI, 54013	0	31,955
CITY OF KENOSHA	625 52ND ST, KENOSHA, WI, 53140	0	37,494
HA OF THE CITY OF APPLETON	525 NORTH ONEIDA STREET, APPLETON, WI, 54911	0	31,182
CITY OF JANESVILLE	18 N. JACKSON ST. PO BOX 5005, JANESVILLE, WI, 53545	0	29,836
WALWORTH COUNTY HA	COURTHOUSE ANNEX HWY NW, BOX 1007, ELKHORN, WI, 53121	0	31,467
HUNTINGTON WV HA	P O BOS 2183, HUNTINGTON, WV, 25722	0	29,189
BENWOOD HA	13TH AND HIGH STREETS, BENWOOD, WV, 26031	0	30,314
WEIRTON HA	525 COVE ROAD, WEIRTON, WV, 26062	0	13,498
KANAWHA COUNTY HA	P O BOX 3826, CHARLESTON, WV, 25338	0	30,900
HA OF RALEIGH CO	P O BOX BD, BECKLEY, WV, 25802-2852	0	27,766
HA OF THE CITY OF CASPER	1607 CY AVENUE, #301, CASPER, WY, 82604	0	37,650
Totals for FSS Coordinators Certificates		0	$13,310,162
FSS Coordinators Vouchers			
NEK-CAP, INC	P O BOX 380, HIAWATHA, KS, 66434	0	29,724
WINN PARISH POLICE JURY	301 WEST MAIN ST., WINNFIELD, LA, 71483	0	28,484
ATTLEBORO HA	37 CARLON ST, ATTLEBORO, MA, 02703	0	23,674
BOYNE CITY HSG CM	829 SOUTH PARK STREET, BOYNE CITY, MI, 49712	0	30,999
MISSOULA HA	1319 E. BROADWAY, MISSOULA, MT, 59802	0	52,948
HA ROCKY MOUNT	P O BOX 4717, ROCKY MOUNT, NC, 27803	0	29,361
HA COUNTY OF WAKE	P O BOX 368, ZEBULON, NC, 27597-0368	0	23,572
BLAIR HA	758 SOUTH 16TH STREET, BLAIR, NE, 68008	0	14,412
WAYNESBORO REDEV. & HA	1700 NEW HOPE ROAD, WAYNESBORO, VA, 22980-2566	0	28,224
HA OF ISLAND COUNTY	7 NORTHWEST 6TH STREET, COUPEVILLE, WA, 98239	0	36,285
EAU CLAIRE COUNTY HA	721 OXFORD AVE., EAU CLAIRE, WI, 54703	0	30,958
WAUKESHA COUNTY	515 WEST MORELAND BLVD, WAUKESHA, WI, 53188-2428	0	34,932
Totals for FSS Coordinators Vouchers		0	$363,573
Amendments - Certificates			
HA OF SKAGIT COUNTY	2021 E COLLEGE WAY, SUITE 101, MOUNT VERNON, WA, 98273	0	384,000
Totals for Amendment - Certificates		0	$384,000

HOUSING AGENCY	ADDRESS	UNITS	AWARD
Amendments - Moderate Rehabilitation			
CITY OF LOS ANGELES HA	2600 WILSHIRE BLVD., LOS ANGELES, CA, 90057	0	$2,400,000
COUNTY OF SAN BERNARDINO HA	1053 NORTH D STREET, SAN BERNARDINO, CA, 92410	0	400,000
TULARE COUNTY HA	P O BOX 791, VISALIA, CA, 93279	0	115,000
SAN DIEGO HOUSING COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA, 92113-1012	0	200,000
ORANGE COUNTY HA	2043 N BROADWAY, SANTA ANA, CA, 92706	0	164,000
CITY OF HAWTHORNE	4455 W 126TH ST, HAWTHORNE, CA, 90250	0	30,000
SAN FRANCISCO HA	440 TURK STREET, SAN FRANCISCO, CA, 94102	0	3,960,296
MARIPOSA COUNTY HA	P. O. BOX 39, MARIPOSA, CA, 95338	0	170,000
GREENWICH HA	P O BOX 141, GREENWICH, CT, 06830	0	885,233
MANCHESTER HA	24 BLUEFIELD DR, MANCHESTER TOWN, CT, 06040	0	294,776
MANSFIELD HA	309 MAPLE RD, STORRS, CT, 06268	0	501,083
NORWALK HA	24 1/2 MONROE STREET, SOUTH NORWALK, CT, 06854	0	180,700
WATERBURY HA	70 LAKEWOOD ROAD, WATERBURY, CT, 06704	0	2,250,500
NAUGATUCK HA	16 IDA STREET, NAUGATUCK, CT, 06770	0	101,000
CITY OF HARTFORD	550 MAIN ST, HARTFORD, CT, 06103	0	2,886,218
CONNECTICUT DOH	505 HUDSON STREET, HARTFORD, CT, 06106-7106	0	297,214
D.C HA	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC, 20002	0	13,047,000
WILMINGTON HA	400 WALNUT STREET, WILMINGTON, DE, 19801	0	220,000
CITY OF JACKSONVILLE	1300 BROAD STREET, JACKSONVILLE, FL, 32202	0	346,920
HA COCOA	P O BOX 330, MERRITT ISLAND, FL, 32952	0	50,000
HA TALLAHASSEE	2940 GRADY ROAD, TALLAHASSEE, FL, 32312	0	1,550,000
HILLSBOROUGH COUNTY-BOCC	P O BOX 1110, TAMPA, FL, 33601	0	1,200,000
HA COLUMBUS GA GEN FUND	P O BOX 630, COLUMBUS, GA, 31902-0630	0	840,000
CITY OF MARIETTA	COMM DEV FUND, P. O. BOX 609, MARIETTA, GA, 30061	0	706,000
HA AUGUSTA	P O BOX 3246, AUGUSTA, GA, 30904-1246	0	7,000
HA MACON	P O BOX 4928, MACON, GA, 31208	0	55,000
H/A DEKALB COUNTY	P O BOX 1627, DECATUR, GA, 30031	0	886,641
GEORGIA RESIDENTIAL FIN AUTH	60 EXECUTIVE PKWY S, SUITE 250, ATLANTA, GA, 30329	0	350,000
DES MOINES AUTH MUNICIPAL HA	1101 CROCKER, DES MOINES, IA, 50309	0	130,000
AREA XV MULTI-COUNTY HA	417 NORTH COLLEGE, P O BOX 276, AGENCY, IA, 52530	0	5,000
CHICAGO HA	626 WEST JACKSON BLVD, CHICAGO, IL, 60602	0	3,353,599
PEORIA HA	814 W BROTHERSON ST, PEORIA, IL, 61605	0	630,000
HA ROCKFORD	330 15TH AVE., ROCKFORD, IL, 61108	0	1,795,000
JOLIET HA	P O BOX 2519, JOLIET, IL, 60434	0	908,000
LAKE COUNTY HA	33928 N ROUTE 45, GRAYSLAKE, IL, 60030	0	1,359,000
AURORA HA	1630 WEST PLUM STREET, AURORA, IL, 60506	0	723,000
CITY OF NORTH CHICAGO	1850 LEWIS AVE, NORTH CHICAGO, IL, 60064	0	483,000
CITY OF DANVILLE HA	P O BOX 312, DANVILLE, IL, 61834	0	995,000
MAYWOOD HA	1701 SOUTH 1ST AVENUE SUITE 5, MAYWOOD, IL, 60153	0	551,000
ELGIN HA	120 SOUTH STATE STREET, ELGIN, IL, 60123	0	13,000
CITY OF INDIANAPOLIS	FIVE INDIANA SQ., SECOND FLOOR, INDIANAPOLIS, IN, 46204	0	1,547,878
HA CITY OF TERRE HAUTE	P O BOX 3086, TERRE HAUTE, IN, 47803	0	55,001
EAST CHICAGO HA	4920 LARKSPUR DR PO BOX 498, EAST CHICAGO, IN, 46312	0	587,538
INDIANA DEPT OF HUMAN SERV	251 N. ILLINOIS P O BOX 7083, INDIANAPOLIS, IN, 46207-7083	0	1,684,639
VINCENNES HA	501 HART ST P O BOX 1636, VINCENNES, IN, 47591	0	1,600,967
HA DELAWARE COUNTY	2401 S HADDIX AVENUE, MUNCIE, IN, 47302	0	388,000
HA CITY OF EVANSVILLE	P O BOX 3685, EVANSVILLE, IN, 47735	0	2,000,000
HA CITY OFCRAWFORDSVILLE	P O BOX 421, CRAWFORDSVILLE, IN, 47933-0421	0	606,000
SHREVEPORT HA	623 JORDAN, SHREVEPORT, LA, 71101	0	441,914
MONROE HA	P O BOX 1194, MONROE, LA, 71201	0	142,086
WEST MONROE HA	2305 N 7TH STREET, WEST MONROE, LA, 71291	0	213,000
BOSTON HA	52 CHAUNCY STREET, BOSTON, MA, 02111	0	2,214,000
BROCKTON HA	45 GODDARD ROAD, P O BOX 340, BROCKTON, MA, 02403	0	150,000
HOLYOKE HA	475 MAPLE STREET, HOLYOKE, MA, 01040	0	432,000
WORCESTER HA	40 BELMONT STREET, WORCESTER, MA, 01605	0	876,000
WARREN HSG AUTHORITY	P. O. BOX 01083, WARREN, MA, 01083	0	120,000
HA OF BALTIMORE CITY	417 E FAYETTE STREET, BALTIMORE, MD, 21202	0	2,065,859
MONTGOMERY CO HA	10400 DETRICK AVENUE, KENSINGTON, MD, 20895	0	74,000
HA OF PRINCE GEORGES CO	9400 PEPPERCORN PLACE, LANDOVER, MD, 20785	0	4,181,816

HOUSING AGENCY	ADDRESS	UNITS	AWARD
BALTIMORE COUNTY, MD	400 WASHINGTON AVENUE, TOWSON, MD, 21204	0	7,977,044
DEPT. OF HSG & COMM DEVEL	100 COMMUNITY PL, ROOM #2.611, CROWNSVILLE, MD, 21032	0	30,000
CALVERT COUNTY HA	420 WEST DARES BEACH ROAD, PRINCE FREDERICK, MD, 20678	0	246,000
COUNTY COMM CHARLES CO.	P. O. BOX B, LA PLATA, MD, 20646	0	1,600,000
BREWER HA	ONE COLONIAL CIRCLE, BREWER, ME, 04412	0	600,000
BIDDEFORD HA	P O BOX 586, BIDDEFORD, ME, 04005	0	600,000
MAINE STATE HA	353 WATER STREET, AUGUSTA, ME, 04330-4633	0	2,622,604
WESTBROOK HA	P O BOX 349, WESTBROOK, ME, 04092	0	505,000
CITY OF GRAND RAPIDS	1420 FULLER AVE SE, GRAND RAPIDS, MI, 49507	0	250,000
CITY OF ANN ARBOR	100 NORTH FIFTH AVE, ANN ARBOR, MI, 48107	0	840,000
ST. LOUIS COUNTY HA	8865 NATURAL BRIDGE, ST. LOUIS, MO, 63121	0	120,000
MT DEPARTMENT OF COMMERCE	POB 200545, 836 FRONT STREET, HELENA, MT, 59620-0545	0	670,000
CHADRON HA	900 PINE, CHADRON, NE, 69337	0	30,000
SALEM HA	44 MILLVILLE STREET P O BOX 6, SALEM, NH, 03079	0	300,000
FRANKLIN H A	915 CENTRAL ST, FRANKLIN, NH, 03235	0	1,000,000
ASBURY PARK HA	1004 COMSTOCK STREET, ASBURY PARK, NJ, 07712	0	279,000
PLAINFIELD HA	510 EAST FRONT STREET, PLAINFIELD, NJ, 07060	0	460,000
HA OF GLOUCESTER COUNTY	223 S EVERGREEN AVE, WOODBURY, NJ, 08096	0	725,000
LAKEWOOD TOWNSHIP	231 THIRD ST, LAKEWOOD, NJ, 08701	0	110,000
ATLANTIC CITY HA	227 NO VERMONT AVENUE, ATLANTIC CITY, NJ, 08404	0	810,000
SOUTH AMBOY HA	BAYSHORE DRIVE, SOUTH AMBOY, NJ, 08879	0	565,000
CLIFFSIDE PARK HA	500 GORGE ROAD, CLIFSIDE PARK, NJ, 04010	0	100,000
TOWNSHIP OF MONTCLAIR HA	205 CLAREMONT AVENUE, MONTCLAIR, NJ, 07042	0	200,000
COUNTY OF UNION	UNION COUNTY ADMINISTRATION BL, ELIZABETH, NJ, 07207	0	100,000
NJ DEPT. OF COMM. AFFAIRS	101 S. BROAD STREET CN800, TRENTON, NJ, 08625-0800	0	20,500,000
ALBUQUERQUE HA	1840 UNIVERSITY BLVD. SE, ALBUQUERQUE, NM, 87106	0	112,387
CITY OF LAS VEGAS HA	P O BOX 1897, LAS VEGAS, NV, 89125-1897	0	560,000
NORTH LAS VEGAS HA	1632 YALE STREET, NORTH LAS VEGAS, NV, 89030	0	300,000
CITY OF NEW ROCHELLE	515 NORTH AVE, NEW ROCHELLE, NY, 10801	0	756,356
HA OF GLOVERSVILLE	181 WEST STREET, GLOVERSVILLE, NY, 12078	0	127,000
TOWN OF SOUTHAMPTON	116 HAMPTON RD, SOUTHAMPTON, NY, 11968	0	635,000
TOWN OF BABYLON	200 EAST SUNRISE HIGHWAY, LINDENHURST, NY, 11757	0	56,310
VILLAGE OF CORINTH	242 UNION STREET, SCHENECTADY, NY, 12305	0	18,000
VILLAGE OF BALLLSTON SPA	66 FRONT STREET, BALLSTON, NY, 12020	0	285,000
CUYAHOGA MHA	1441 WEST 25TH STREET, CLEVELAND, OH, 44113	0	430,000
CHEROKEE NATION HA	P O BOX 1007, TAHLEQUAH, OK, 74465	0	253,440
HA CITY OF PITTSBURGH	200 ROSS STREET, PITTSBURGH, PA, 15219	0	1,000,000
CHESTER HA	6 W. 6TH STREET P O BOX 380, CHESTER, PA, 19016	0	232,000
MONTGOMERY COUNTY HA	1875 NEW HOPE STREET, NORRISTOWN, PA, 19401-3146	0	516,591
BEAVER COUNTY HA	STATE AVENUE & TOY STREET, BEAVER, PA, 15009	0	100,000
WESTMORELAND COUNTY HA	R.D. #6, BOX 223 S GREENGATE R, GREENSBURG, PA, 15601	0	500,000
JOHNSTOWN HA	P O BOX 419, JOHNSTOWN, PA, 15907	0	100,000
ALTOONA HA	1100 11TH STREET, ALTOONA, PA, 16601	0	600,000
CUMBERLAND COUNTY HA	114 NORTH HANOVER STREET, CARLISLE, PA, 17013	0	550,000
NORTHAMPTON COUNTY HA	P O BOX 252, NAZARETH, PA, 18064	0	10,000
LEHIGH COUNTY HA	333 RIDGE STREET, EMMAUS, PA, 18049	0	86,000
ADAMS COUNTY HA	139 CARLISLE STREET, GETTYSBURG, PA, 17325	0	190,000
ALLEGHENY COUNTY HA	341 FOURTH AVENUE FIDELITY BL, PITTSBURGH, PA, 15222	0	400,000
MERCER COUNTY	800 LINDEN STREET, SHARON, PA, 16146	0	200,000
HA CO OF LAWRENCE	481 NESHANNOCK AVE, P O BOX 988, NEW CASTLE, PA, 16103	0	100,000
BRADFORD CITY HA	2 BUSHNELL STREET, BRADFORD, PA, 16701	0	100,000
FRANKLIN CITY HA	1212 CHESTNUT STREET, FRANKLIN, PA, 16323	0	75,000
JEFFERSON COUNTY HA	201 N JEFFERSON STREET, PUNXSUTAWNEY, PA, 15767	0	200,000
FULTON COUNTY HA	100 LWE, FULTON COUNTY, PA, 17233	0	200,000
WARREN COUNTY HA	108 OAK STREET, WARREN, PA, 16365	0	100,000
VENANGO COUNTY HA	P O BOX 988, OIL CITY, PA, 16001	0	100,000
ALLEGHENY COUNTY HA	341 FOURTH AVENUE FIDELITY BL, PITTSBURGH, PA, 15222	0	400,000
MERCER COUNTY	800 LINDEN STREET, SHARON, PA, 16146	0	200,000
HA CO OF LAWRENCE	481 NESHANNOCK AVE, P O BOX 988, NEW CASTLE, PA, 16103	0	100,000
BRADFORD CITY HA	2 BUSHNELL STREET, BRADFORD, PA, 16701	0	100,000
FRANKLIN CITY HA	1212 CHESTNUT STREET, FRANKLIN, PA, 16323	0	75,000

HOUSING AGENCY	ADDRESS	UNITS	AWARD
JEFFERSON COUNTY HA	201 N JEFFERSON STREET, PUNXSUTAWNEY, PA, 15767	0	200,000
FULTON COUNTY HA	100 LWE, FULTON COUNTY, PA, 17233	0	200,000
WARREN COUNTY HA	108 OAK STREET, WARREN, PA, 16365	0	100,000
VENANGO COUNTY HA	P O BOX 988, OIL CITY, PA, 16001	0	100,000
MUNICIPALITY OF TRUJILLO ALTO	BOX 1869, TRUJILLO ALTO, PR, 00760	0	161,000
MUNICIPALITY OF CAROLINA	P O BOX 8, CAROLINA, PR, 00985-0008	0	544,000
PUERTO RICO DOH	606 BARBOSA AVE, P O BOX 21365, RIO PIEDRAS, PR, 00928	0	1,236,164
MUNICIPALITY OF TOA ALTA	BOX 82, TOA ALTA, PR, 00758	0	530,000
PROVIDENCE H A	100 BROAD ST, PROVIDENCE, RI, 02903	0	368,000
WARWICK H A	25 EASTON AVE, WARWICK, RI, 02888	0	1,594,000
PROVIDENCE H A	100 BROAD ST, PROVIDENCE, RI, 02903	0	75,000
CENTRAL FALLS H A	30 WASHINGTON ST, CENTRAL FALLS, RI, 02863	0	55,700
RI HSG MORT FIN CORP	44 WASHINGTON STREET, PROVIDENCE, RI, 02903	0	123,000
CITY OF SPARTANBURG H/A	P O BOX 2828, SPARTANBURG, SC, 29304-2828	0	225,000
S C STATE HSG FIN & DEV	919 BLUFF ROAD, COLUMBIA, SC, 29201-3416	0	175,000
HA AIKEN	P O BOX 889, AIKEN, SC, 29802-0889	0	559,000
HA MURFREESBORO	318 EAST LOKEY AVENUE, MURFREESBORO, TN, 37130	0	271,000
HA MEMPHIS	700 ADAMS AVE, MEMPHIS, TN, 38105	0	162,000
KNOXVILLE COMM DEVEL CORP	P O BOX 3629, KNOXVILLE, TN, 37937-3629	0	116,770
METROPOLITAN DEV & HA	701 SIXTH STREET, NASHVILLE-DAVIDSON, TN, 37206	0	291,000
HOUSTON HA	2640 FOUNTAIN VIEW, HOUSTON, TX, 77057-	0	1,699,128
SAN ANTONIO HA	P O DRAWER 1300, SAN ANTONIO, TX, 78295	0	4,265,884
BEAUMONT HA	P O BOX 1312, BEAUMONT, TX, 77704	0	445,445
BROWNSVILLE HA	P O BOX 4420, BROWNSVILLE, TX, 78523-4420	0	1,062,018
LAREDO HA	2000 SAN FRANCISCO AVENUE, LAREDO, TX, 78040	0	78,000
EDINBURG HA	P O BOX 295, EDINBURG, TX, 78540	0	95,420
DEEP EAST TX COUNCIL OF GOVTS	274 E LAMAR, JASPER, TX, 75951	0	938,272
MC ALLEN HA	2301 JASMINE AVE, MC ALLEN, TX, 78501	0	1,556,855
MERCEDES HA	P O BOX 985, MERCEDES, TX, 78570	0	67,701
SEGUIN HA	516 JEFFERSON AVENUE, SEGUIN, TX, 78155	0	283,341
RUSK HA	1004A NORTH MAIN STREET, RUSK, TX, 75785	0	604,455
DILLEY HA	P O DRAWER 876, DILLEY, TX, 78017	0	29,855
LA JOYA HA	P O DRAWER H, LA JOYA, TX, 78560	0	161,000
TRAVIS COUNTY HA	P O BOX 1748, AUSTIN, TX, 78767	0	682,830
DAVIS COUNTY HA	P O BOX 328, FARMINGTON, UT, 84025	0	4,050,000
RICHMOND REDEV & H/A	P O BOX 26887, RICHMOND, VA, 23261-6887	0	1,309,000
FAIRFAX CO RED AND HA	3700 PENDER DRIVE, FAIRFAX, VA, 22030	0	318,000
ARLINGTON CO DHS	2100 CLARENDON BLVD, SUITE 709, ARLINGTON, VA, 22201	0	2,346,000
COUNTY OF LOUDOUN HSG SERV	102 HERITAGE WAY NE SUITE 100, LEESBURG, VA, 22075	0	54,000
HARTFORD HA	15 BRIDGE STREET, WHITE RIVER JUNCTIO, VT, 05001	0	600,000
HA COUNTY OF KING	15455 65TH AVE SO, TUKWILA, WA, 98188	0	1,200,000
HA CITY OF EAU CLAIRE	203 S. FARWELL ST. CALL BOX 51, EAU CLAIRE, WI, 54702	0	186,000
HARTFORD HA	109 NORTH MAIN STREET, HARTFORD, WI, 53027	0	20,000
GRANT COUNTY HA	P O BOX 125, PETERSBURG, WV, 26847	0	45,000
GREENBRIER CO HA	BOX 265, LEWISBURG, WV, 24901	0	200,000
Totals for Amendments - Moderate Rehabilitation		0	$144,870,428
	GRAND TOTAL	27,287	$441,580,299

[FR Doc. 97-33213 Filed 12-18-97; 8:45 am]
BILLING CODE 4210-33-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–34]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 11, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development

[FR Doc. 97–32789 Filed 12–18–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: University of Arizona, Tucson, AZ, PRT–837560.

The applicant requests a permit to import blood samples from captive-held chimpanzee (*Pan troglodytes*), pygmy chimpanzee (*Pan paniscus*), gorilla (*Gorilla gorilla*), and orangutan (*Pongo pygmaeus*) and to import fecal and hair samples taken from chimpanzee (*Pan troglodytes*), pygmy chimpanzee (*Pan paniscus*), gorilla (*Gorilla gorilla*), and orangutan (*Pongo pygmaeus*) in the wild for the purpose of scientific research.

Applicant: International Crane Foundation, Baraboo, WI, PRT–837403.

The applicant requests a permit to export captive-bred Siberian crane (*Grus leucogeranus*) eggs for reintroduction into the wild in Russia to enhance the survival of the species.

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE, PRT–837631.

The applicant requests a permit to export one captive-born Malayan tapir (*Tapirus indicus*) to the Adelaide Zoo, Adelaide, Australia, for captive breeding to enhance the survival of the species.

Applicant: St. Louis Zoological Park, St. Louis, MO, PRT–837553.

The applicant requests a permit to import one male and one female captive-held false gavial (*Tomistoma schlegelii*) from the Singapore Zoo for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

Applicant: Felson Bowman, Greenwood, Indiana, PRT–837701.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director on or before January 20, 1998.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Eugene Giscombe, Amityville, NY, PRT–837603.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: William Jury, Gilroy, CA, PRT–837379.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted, prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Jack R. Cook, Mondovi, WI, PRT–837437.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted, prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358-2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above address on or before January 20, 1998.

Dated: December 15, 1997.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–33089 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Management Plan for the Northern End of South Monomoy Island, Monomoy National Wildlife Refuge for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft management plan for the northern end of South Monomoy Island, Monomoy National Wildlife Refuge, Chatham, MA. The multi-year adaptive management plan, to be initiated in the 1998 season, focuses on management of wildlife competitor and predator species to encourage a diversity of nesting bird species. This plan is in keeping with the Service's efforts to restore avian diversity on the Refuge as outlined in the 1996 Final Environmental Assessment, "Restoration of Avian Diversity on Monomoy National Wildlife Refuge". The Service solicits review and comment from the public on the draft management plan.

DATES: Comments on the draft management plan must be received by January 16, 1998. The draft management plan will not be available until December 22, 1997, however, the Service is currently accepting requests for copies in order to expedite distribution once the document becomes available.

ADDRESSES: Persons wishing to review the draft plan can obtain a copy from the Monomoy National Wildlife Refuge, Wikis Way, Morris Island, Chatham, MA 02633, telephone 508–945–0594. Comments should be sent to this address, to the attention of Sharon Ware.

FOR FURTHER INFORMATION CONTACT: Sharon Ware (see **ADDRESSES**).

Dated: December 15, 1997.

Cathy Short,

Deputy Regional Director, Region 5.

[FR Doc. 97–33203 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–08–1220–00: GP8–0062]

Notice of Meeting of Southeast Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Meeting of Southeast Oregon Resource Advisory Council.

SUMMARY: A meeting of the Southeast Oregon Resource Advisory Council will be on January 27, 1998 from 8:00 a.m. to 5:00 p.m. (MDT) and January 28, 1998 from 8:00 a.m. to 12:00 noon. Public comments are scheduled from 12:00 noon to 12:15 p.m. January 27, 1998.

The meeting will be held at the National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho. The Council will recess at an appropriate time for a lunch break of approximately one and one-half hours.

The Council will discuss the Interior Columbia Basin Ecosystem Management Draft Environmental Impact Statement and such other matters as may reasonably come before the Council.

ADDRESSES: The Southeast Oregon Resource Advisory Council will meet at the National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, Oregon 97918, Telephone (541) 473–3144.

Dated: December 10, 1997.

Edwin J. Singleton,

District Manager.

[FR Doc. 97–33205 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–1288]

Public Land Order No. 7283; Partial Revocation of Executive Order No. 5327 and Public Land Order No. 4522; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects Public Land Order No. 7283, 62 FR 49024, FR Doc. 97–24834.

Page 49024 third column, paragraph 1, line which reads "T. 6 S., R. 94 E.", is hereby corrected to read "T. 6 S., R., 94 W.".

Jenny L. Saunders,

Realty Officer.

[FR Doc. 97–33136 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–065–08–1990–02; CACA–37875]

Notice of Realty Action; California

December 12, 1997.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management is offering the following lands in Kern County, California for competitive sale.

ADDRESSES: Written requests for information may be addressed to Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Road, Ridgecrest, California 93555, Attention: Linn Gum; Chief, Minerals.

FOR FURTHER INFORMATION CONTACT: Linn Gum, Ph: 760–384–5450 or Mike Hogan, Ph: 760–384–5423.

SUPPLEMENTARY INFORMATION: Under the Land Tenure Adjustment Element entitled "Needs of Desert Communities", the California Desert Conservation Area Plan of 1980 provides guidance allowing the Bureau of Land Management to consider the special needs of desert communities by the transfer of ownership of key public land parcels in and around these communities. The following public lands have been found suitable for competitive sale under Section 203 of the Federal Land Policy and Management Act of 1976 to any party that meets the eligibility requirements for qualified bidders as described herein. The fair market value appraisal was completed in accordance with the Federal Uniform Appraisal Standards of 1992 and the United States Professional Practices of 1997.

Mount Diablo Meridian, California

T. 29 S., R. 40 E., Section 35

Lot No.	Size in acres	Minimum acceptable bid	30 percent deposit required
24	13.07	$6,353	$1,960.50
30	12.21	6,105	1,831.50
31	2.89	1,445	433.50
33	0.04	500	150.00
40	1.21	1,000	300.00
45	6.23	3,115	934.50
103	0.45	500	150.00
105	8.03	4,015	1,204.50
106	14.79	7,395	2,218.50
107	1.39	695	208.50
E/2 NE/4 NW/4	20.00	10,000	3,000.00

Lot No.	Size in acres	Minimum acceptable bid	30 percent deposit required
W/2 NE/4 NW/4	20.00	10,000	3,000.00
Total	100.31	51,123	15,336.90

Bidder Qualifications

To become a qualified bidder, eligible to compete during the oral auction, the following applicable criteria must be met:

(1) You must provide proof that you are a citizen of the United States who is at least 18 years of age; or (2) you must provide proof that you are a corporation subject to the laws of the State of California or of the United States; or (3) you must provide proof that you are a State or State instrumentality or political subdivision authorized to hold property; or (4) you must provide proof that you are an entity legally capable of conveying and holding lands or interests therein under the laws of the State of California; and (5) you must provide a sealed bid and deposit of no less than 30% of the minimum fair market value shown in the above table, or 30% of the amount of your bid greater than the minimum fair market value.

This information must be provided to the Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Road, Ridgecrest, CA 93555 by 4:00 p.m. Pacific Daylight Time on or before March 2, 1998. Failure to timely provide the appropriate proof of qualification and the deposit for the proper value will result in immediate disqualification. No exceptions will be permitted. The Bureau of Land Management will return all disqualified bids and deposits.

Payments for the 30% deposit may be in the form of certified or cashiers check, money order, visa, mastercard, personal check or any combination thereof.

Bids must include the bidder's name, as it would appear on the patent, address, telephone number and social security number.

Bids must be submitted in a sealed legal-size envelope and marked on the front with the Lot Number and the printed name of the bidder. Sealed bids shall be considered only if received in accordance with the instructions of this Notice.

Procedures

Public Notice is provided that a competitive bid will be conducted on March 20, 1998, beginning at 1:30 p.m. Pacific Daylight Time at the Bureau of Land Management Conference Room located at 300 S. Richmond Road, Ridgecrest, CA 93555. Bidder registration will open at 12:45 p.m. and close at 1:25 p.m. Any qualified bidder who fails to register timely for the oral auction will be disqualified. All deposits from disqualified bidders will be returned.

Oral bids will only be conducted for those lots where two or more bids have been received. Bidding will begin at the highest bid greater than the minimum fair market value. Bidding will be in $50.00 increments. Bidding will be restricted to only qualified bidders identified by the Bureau of Land Management.

Upon the conclusion of bidding for each lot, the successful bidder will be declared. That bidder will be required to immediately submit a minimum payment of not less than 20% of the final bid for the lot. Payment must be made in the form described above. The successful bidder has 180 days from the date of the sale to submit full payment for the lot. Failure to submit the full payment by the 180th day shall result in cancellation of the sale of the specific lot and all deposits made, to date, shall be forfeited and disposed of as other receipts of sale.

The United States reserves the right to reject the highest qualified bid and release the bidder from his/her obligation and withdraw the lot from competitive sale if the Authorized Officer (AO) determines that consummation of the bidding process would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered, or restrained free and open bidding. Bidders are WARNED that any violations of this statute, Title 18 U.S.C. 1860, could result in fine or imprisonment, or both. No harassing, intimidating, vulgar, or other abusive behavior will be tolerated. Any bidder or other person who engages in such activity will be disqualified and expelled from the oral auction.

Terms and Conditions Applicable to the Sale Are

1. The subsurface estate and all minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.

2. A reservation for road rights-of-way will be incorporated into each affected patent in conjunction with the Kern County road network.

3. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890, 43 U.S.C. 945.

4. The patent will be subject to any rights-of-way for the purposes of utilities (Electric, Telephone, Water and Cable) as they affect the lots.

5. The purchaser, by accepting the land patent, will indemnify the United States against any current or future liability pertaining to Hazardous Materials and underlying mine shafts, tunnels or adits, known or unknown.

Grazing Issues

This land sale involves lands inside the Cantil Common Allotment. These lands are withdrawn under Section 3 of the Taylor Grazing Act. It has been determined that the lands contribute no forage for the Cantil Common Allotment and their sale will not result in the loss of grazing preference for any of the permittees.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Bureau of Land Management, Ridgecrest Resource Area office, 300 S. Richmond Road, Ridgecrest, CA 93555.

For a period of 45 days from the date of this Notice in the **Federal Register**, interested parties may submit comments to the Area Manager, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Lee Delaney,

Field Manager.

[FR Doc. 97–33182 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1430–00; GP8–0056]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification

AGENCY: Bureau of Land Management, Prineville District, Oregon.

ACTION: Notice to authorize the continued use of public lands for recreation purposes.

SUMMARY: The following public lands in Klamath County, Oregon have been examined and found suitable for classification for lease to the La Pine Rodeo Association under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The La Pine Rodeo Association proposes to use the lands for a community rodeo grounds. This proposal would allow for the continued use that has been occurring for ten years under a similar lease. The lands involve about 20 acres and are described as:

Willamette Meridian, Oregon

T. 23 S., R. 10 E.,
Sec. 3, SE¼SE¼; (that portion lying north of the county road),

The lands are not needed for Federal purposes. The renewal of this lease is consistent with current BLM land use planning and would be in the public interest.

The lease, when issued, will be subject to the following:

1. The provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. State and local planning and zoning ordinances.

3. The Management Plan approved by BLM.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Prineville District, 3050 NE Third, Prineville, Oregon, 97754.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Prineville District Office, P.O. Box 550, Prineville, Oregon 97754.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a community rodeo grounds. Comments on the classification are restricted to whether the use will maximize the future use of uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties my submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a community rodeo grounds.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective February 17, 1998.

Dated: December 10, 1997.

Donald L. Smith,

Acting District Manager.

[FR Doc. 97–33139 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

[Docket No. NM–052–07–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico States Office, Bureau of Land Management, Santa Fe, New Mexico, on January 10, 1998.

New Mexico Principal Meridian, New Mexico.

Tps. 30–31 N., R. 16 W., accepted October 30, 1997, for Group 922 NM; T. 31 N., R. 18 W., accepted October 30, 1997, for Group 922 NM; T. 23 N., Rs. 10 and 11 W., accepted November 7, 1997, for Group 909 NM; T. 25 S., R. 3E., accepted November 7, 1997, for Group 949 NM.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filled.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: December 9, 1997.

John P. Bennett,

Chief Cadastral Surveyor, For New Mexico.

[FR Doc. 97–33137 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4214–010; COC–61331]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 450 acres of National Forest System lands for 10 years to allow management alternatives for the Forest Service. This notice closes these lands to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before March 19, 1998.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On November 24, 1997, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

Uncompahgre National Forest New Mexico Principal Meridian

T. 44 N, R. 7 W.,
Sec. 31, W½.
T. 44 N, R. 8 W.,
Sec. 35, E½.

The areas described exclude any patented lands within the application and contain approximately 450 acres of National Forest System lands in Ouray County.

The purpose of this withdrawal is to protect the area and allow the Forest Service alternatives in managing the land.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, may present their views in writing to the Colorado State Director. If it is determined that a public meeting should be held, the public meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the meeting will be published in the **Federal Register**.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 97–33135 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Permits; Glacier Bay National Park, AK

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service (NPS) proposes to award concession permits authorizing the operation of cruise ship services for the public at Glacier Bay National Park, Alaska, for a period of five (5) years from January 1, 2000, through December 31, 2004. This solicitation offers sixty-eight (68) cruise ship entries from June 1 to August 31 and up to 546 cruise ship entries outside of the June-August regulatory period into Glacier Bay proper, subject to the scheduling limitation of two cruise ships per day, year round for all companies combined. This solicitation also serves as public notice that the NPS intends to discontinue the former practice of issuing Incidental Business Permits for park waters outside Glacier Bay proper, and instead require prospective operators to apply under a concession solicitation and prospectus to operate in these waters after January 1, 2000.

EFFECTIVE DATE: Within 30 days of January 15, 1998, a notice will be published in the Commerce Business Daily. The official release date of the Prospectus shall be the date of publication in the Commerce Business Daily. Anyone interested in making an offer for these permits must do so within 90 days of the date of publication of the Commerce Business Daily announcement.

ADDRESSES: Interested parties should contact the Superintendent, Glacier Bay National Park & Preserve, P.O. Box 140, Gustavus, AK 99826 for a copy of the prospectus.

SUPPLEMENTARY INFORMATION: An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the headquarters building of Glacier Bay National Park & Preserve, Gustavus, Alaska.

There are two types of preferences applicable to this solicitation, as follows:

1. The provisions of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3197), Section 1307(b) and 36 CFR 13.83 apply to this solicitation. Preference will be given to the Native Corporation(s) most directly affected by the creation of Glacier Bay National Park and Preserve and to persons who are determined to be local residents. The preferences established in ANILCA Section 1307 take precedence over the preferential right of renewal granted incumbent NPS concessioners (see item #2 below).

2. Thirty of the 68 cruise ship entries during the June 1-August 31 period referred to above are assigned to existing concessioners. These existing concessioners have operated satisfactorily during their current permits, and may apply and compete for new permits. As satisfactory operators, they have the rights to renewal provided for in PL 89–249, Section 5 and in 36 CFR 51.3(b) and 36 CFR 51.5.

For further details concerning these preferences, see the prospectus.

All interested parties are encouraged to apply and the Secretary will consider and evaluate all offers received as a result of this notice. Any offer, including that of the existing concessioner, must be received by the Superintendent, Glacier Bay National Park & Preserve, at the Bartlett Cove Administration Building, Gustavus, Alaska 99826–0140 or at P.O. Box 140, Gustavus, AK 99826, not later than 90 days following the date of publication of the Commerce Business Daily announcement.

Tom Ferranti,

Acting Regional Director, Alaska Region.

[FR Doc. 97–33189 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information on Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR Part 784.

DATES: Comments on the proposed information collection must be received by February 17, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783, or submit electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR Part 784.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR 784.

OMB Control Number: 1029–0039.

Summary: Sections 507(b), 508(a) and 516(b) of Public Law 95–87 require underground coal mine permit applicants to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards required by the law.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Underground coal mining permit applicants.

Total Annual Responses: 130.

Total Annual Burden Hours: 92,605.

Dated: December 15, 1997.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 97–33122 Filed 12–18–97; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–405]

Certain Automotive Scissors Jacks; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed on November 13, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Universal Tool & Stamping Company, Inc., 6544 U.S. Highway 6, Box 100, Butler, Indiana, 46721–0100. The complaint alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive scissors jacks by reason of infringement of claims 7, 8, 10, 11, and 13 of United States Patent Reexamination Certificate No. B1 5,110,091. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10.

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 12, 1997, *Ordered that*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain automotive scissors jacks by reason of infringement of claims 7, 8, 10, 11, or 13 of United States Patent Reexamination Certificate No. B1 5,110,091, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Universal Tool & Stamping Company, Inc., 6544 U.S. Highway 6, P.O. Box 100, Butler, IN 46721–0100.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Ventra Group, Inc., 1 Mitten Court, P.O. Box 126, Cambridge, Ontario, CANADA N1R 5S9.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–0, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to sections 201.16(d) and 210.13(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

Issued: December 15, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–33210 Filed 12–18–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 23, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 37077), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590)	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxy- amphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl) pyrrolidine (7458)	I
1-[1-(2-Thienyl) cyclohexyl]piperidine (7470)	I
Dihydromorphine (9145)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Applied Science Labs to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 28, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–33113 Filed 12–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 25, 1997, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal, which was received for processing on November 4, 1997, to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morhone (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the above listed controlled substances for isotope labeled standards for drug analysis.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 17, 1998.

Dated: November 28, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–33115 Filed 12–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 9, 1997, and published in **Federal Register** on June 17, 1997, (62 FR 32824), Damocles10, 3529 Lincoln Highway, Thorndale, Pennsylvania 19372, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Codeine (9050)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II

The firm plans to manufacture the listed controlled substances for the purpose of deuterium labeled internal standards for distribution to analytical laboratories.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Damocles10 to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 1, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–33116 Filed 12–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 9, 1997, and published in the **Federal Register** on June 17, 1997, (62 FR 32824), Dupont Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances to make finished products.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Dupont Pharmaceutical Company to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 28, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–33117 Filed 12–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 22, 1997, High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture analytical reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 17, 1998.

Dated: November 28, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–33118 Filed 12–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 30, 1997, Ansys Diagnostics, Inc., 2 Goodyear, Irvine, California 92718, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (PCC) (8603)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the listed controlled substances to produce standards and controls for in-vitro diagnostic drug testing systems.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 17, 1998.

Dated: December 3, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–33114 Filed 12–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office; National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Open Meeting by Teleconference

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open meeting by teleconference, January 22, 1998.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administration Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations,

business and industry, and educational institutions.

DATES: The Committee will meet on January 22, 1998 from 4:00 p.m. to 5:00 p.m. The meeting will be by teleconference.

ADDRESSES: U.S. Department of Labor, 200 Constitution Avenue N.W., Room C–5515 (Seminar Room 1A), Washington, D.C. 20210. The meeting is open to the public on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, designated Federal Officer, U.S. NATO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington D.C. on December 15, 1997.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 97–33191 Filed 12–18–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, DC 20210 .

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Virginia
VA970015 (Feb. 14, 1997)
VA970085 (Feb. 14, 1997)
West Virginia
WV970002 (Feb. 14, 1997)
WV970003 (Feb. 14, 1997)
WV970006 (Feb. 14, 1997)

Volume III

Kentucky
KY970001 (Feb. 14, 1997)
KY970002 (Feb. 14, 1997)
KY970003 (Feb. 14, 1997)
KY970007 (Feb. 14, 1997)
KY970027 (Feb. 14, 1997)
KY970029 (Feb. 14, 1997)
KY970035 (Feb. 14, 1997)

Volume IV

Michigan
MI970004 (Feb. 14, 1997)
MI970007 (Feb. 14, 1997)
MI970012 (Feb. 14, 1997)
MI970064 (Feb. 14, 1997)
Ohio
OH970001 (Feb. 14, 1997)
OH970002 (Feb. 14, 1997)
OH970028 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)
OH970034 (Feb. 14, 1997)

Volume V

Louisiana
LA970001 (Feb. 14, 1997)
LA970004 (Feb. 14, 1997)
LA970005 (Feb. 14, 1997)
LA970009 (Feb. 14, 1997)
LA970016 (Feb. 14, 1997)
LA970018 (Feb. 14, 1997)
LA970055 (Feb. 14, 1997)
Nebraska
NE970001 (Feb. 14, 1997)
NE970002 (Feb. 14, 1997)
NE970003 (Feb. 14, 1997)
NE970005 (Feb. 14, 1997)
NE970007 (Feb. 14, 1997)
NE970009 (Feb. 14, 1997)
NE970010 (Feb. 14, 1997)
NE970011 (Feb. 14, 1997)
NE970019 (Feb. 14, 1997)
NE970025 (Feb. 14, 1997)
NE970038 (Feb. 14, 1997)
NE970057 (Feb. 14, 1997)
NE970058 (Feb. 14, 1997)
Oklahoma
OK970013 (Feb. 14, 1997)
OK970014 (Feb. 14, 1997)
OK970015 (Feb. 14, 1997)
OK970016 (Feb. 14, 1997)

OK970017 (Feb. 14, 1997)
OK970018 (Feb. 14, 1997)
OK970028 (Feb. 14, 1997)
OK970030 (Feb. 14, 1997)
OK970031 (Feb. 14, 1997)
OK970032 (Feb. 14, 1997)
OK970034 (Feb. 14, 1997)
OK970035 (Feb. 14, 1997)
OK970036 (Feb. 14, 1997)
OK970037 (Feb. 14, 1997)
OK970038 (Feb. 14, 1997)
OK970043 (Feb. 14, 1997)

Volume VI

Colorado
CO970005 (Feb. 14, 1997)

Volume VII

Nevada
NV970001 (Feb. 14, 1997)
NV970003 (Feb. 14, 1997)
NV970004 (Feb. 14, 1997)
NV970005 (Feb. 14, 1997)
NV970007 (Feb. 14, 1997)

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions including an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 12th day of December 1997.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–32873 Filed 12–18–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10236, et al.]

Proposed Exemptions; Equitable Life Assurance Society of the United States

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York; Proposed Exemption

[Exemption Application No. D–10236]

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR, part 2570, subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) the leasing of 13,086 square feet of office space and 6,650 square feet of parking space by Equitable Real Estate Investment Management, Inc. (ERE) until June 30, 2002 (the Tower 1 Lease); and (2) the leasing of 5,821 square feet of office space and 3584 square feet of parking space by ERE's subsidiary, Compass Management and Leasing, Inc. (Compass) until August 31, 1999 (the Tower 2 Leases), in office buildings located in Orange County, California, that will be held by the Equitable Separate Account No. 8, also known as the Prime Property Fund (the PPF) and to the 1996 renewal of the original leases provided the following conditions are satisfied: (a) the renewal

of the leases and the terms of the leases were reviewed, negotiated and approved by a qualified independent fiduciary to PPF; (b) the qualified independent fiduciary determined that the terms of the transactions reflect fair market value and are at least as favorable to PPF as the terms would have been in arm's length transactions between unrelated parties; and (c) the independent fiduciary will continue to monitor the leases on behalf of the PPF.

EFFECTIVE DATE OF EXEMPTION: This exemption, if granted, will have an effective date of March 15, 1996. This exemption would expire for the Tower 2 Leases, on August 31, 1999 and for the Tower 1 Lease, on June 30, 2002.

Summary of Facts and Representations

1. Equitable (the Applicant) is a life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. Equitable is one of the largest insurance companies in the United States. Among the variety of insurance products and services it offers, Equitable provides funding, asset management and other services for several thousand employee benefit plans subject to the provisions of Title I of ERISA.

Equitable maintains several pooled separate accounts (including PPF) in which pension, profit-sharing, and thrift plans participate. Equitable also has several single customer separate accounts and investment management accounts pursuant to which Equitable manages all or a portion of the assets of a number of large plans.

2. The Applicant represents that PPF is an insurance company separate account as defined in section 3(17) of the Act. PPF was established on August 20, 1973. Equitable maintains PPF for the investment of corporate qualified and governmental pension plan assets in real estate and real estate related investments. As of December 31, 1995, PPF held 171 investments in wholly-owned properties or equity interests in real estate partnerships with an aggregate net value of $3.1 billion. In addition, as of December 31, 1995, PPF had eight investments in mortgage loans with an aggregate value of $311 million, or 9.2 percent of PPF's total net asset value. PPF's portfolio is diversified by property type and by geographic region.

As of December 31, 1995, approximately 206 plans participated in PPF (collectively, the Plans). No plan holds more than a 20 percent interest in PPF. The Equitable Retirement Plan for Employees, Managers and Agents (the Plan), a defined benefit plan, participates in PPF. As of December 31, 1995, 2.2 percent of the fair market value of the assets of PPF were represented by the Plan's investment, and the Plan had invested 4.36 percent of its assets in PPF.

3. ERE provides real estate investment advisory services to Equitable and, through its Compass and Compass Retail, Inc. subsidiaries, property management services with respect to certain properties held by Equitable accounts. ERE provides real estate investment advisory services with respect to the real property assets of PPF and the Compass companies manage numerous PPF properties.

The Applicant provides that until 1997, ERE was an indirect wholly-owned subsidiary of Equitable. All of the outstanding stock of ERE was held by Equitable Holding Corporation (EHC), a Delaware corporation wholly-owned by Equitable. However, Equitable has entered into a purchase agreement dated April 19, 1997 whereby EHC transferred all of its interests in ERE to Neptune Real Estate, Inc., a Delaware corporation wholly-owned by Lend Lease Corporation, an Australian corporation. As a result, ERE is no longer an affiliate of Equitable as of the sale closing date on June 10, 1997. However, the Applicant represents that the responsibilities of ERE with respect to Equitable's accounts remain substantially unchanged and that the exemptive relief requested is still required because ERE will continue to be a fiduciary of PPF.

Equitable and ERE have substantial experience in managing real estate investments. Of the more than $69 billion in total assets held by Equitable at year-end 1995, Equitable's general account held $6.5 billion in real estate mortgage loans and approximately $5.3 billion in equity investments in real property and interests in real estate joint ventures. Additionally, more than $11 billion of real property investments were held in Equitable's real estate separate accounts.

4. Equitable represents that the first of the transactions subject to this proposed exemption originated in 1985, when Equitable, on behalf of PPF, entered into a joint venture agreement with Brinderson Towers I (Brinderson), for the purpose of developing a parcel of real estate in Orange County, California. PPF provided construction financing and Brinderson, an entity unrelated to Equitable, was the developer and managing partner of the joint venture, Brin-Mar I, L.P., succeeded by Brin-Mar II, L.P. on December 24, 1991 (Brin-Mar).[1] One of the two buildings in the Newport Gateway complex in Orange County was completed in 1987 and is a 14 story office tower with a total of 286,132 square feet of rentable space (Tower 1). On August 24, 1988, after completion of Tower 1, Banque Paribas[2] provided permanent financing to fully repay the PPF construction loan for approximately $64 million.

In July, 1987, Brin-Mar leased office space in Tower 1 to ERE as its regional headquarters. The terms of the 10 year lease were negotiated between ERE and Brinderson, acting as managing partner on behalf of Brin-Mar, and reviewed by Cushman and Wakefield, to assure that the terms reflected then-market rates. The lease commenced on July 1, 1987 and terminated on June 30, 1997 and includes subleases by ERE for additional space. The Tower 1 Lease now covers a total of 13,086 square feet of office space at a monthly rental rate of $1.88 per square feet. The Applicant represents that the original ERE lease did not constitute a prohibited transaction because of Brin-Mar's status as a REOC.

5. The Applicant provides that the second transaction subject to the proposed exemption arose out of the development of a building adjacent to Tower 1 (Tower 2). On October 18, 1988, Equitable (on behalf of PPF) and Brinderson began development of Tower 2 under a second amendment to the Brin-Mar joint venture agreement. PPF provided the joint venture with construction financing in the amount of $61 million. However, deterioration of the rental market in Orange County led the parties to restructure ownership of Towers 1 and 2 on December 24, 1991.

[1] The Applicant represents that Brin-Mar is a real estate operating company (REOC) within the meaning of the Department's "plan asset" regulation 20 CFR 2510.3–101(e) and that the assets of the partnership are not plan assets for purposes of the prohibited transaction provisions of the Act and the Code. Further, as an entity predating the plan asset regulation, Brin-Mar achieved REOC status as of January 1, 1967. The Department expresses no opinion herein as to whether Brin-Mar is a REOC or whether the partnership's assets constitute plan assets.

[2] At the time of the transaction, Banque Paribas was unrelated to Equitable. As a result of a change in Equitable's structure in 1992, Banque Paribas is now related to Equitable but with respect to Plans invested in PPF, it is not a party in interest as defined under section 3(14) of the Act by virtue of any relationship to Equitable. Specifically, AXA Mutual Companies currently holds a 62.1 percent interest in Finaxa, an entity in which Banque Paribas holds a 26.5 percent interest. Finaxa owns 60 percent of Midi-Participations, which in turn owns 42.3 percent of AXA SA. AXA SA owns 60.46 percent of Equitable Companies, Inc., which in turn holds 100 percent ownership of Equitable. Equitable represents that Banque Paribas would be deemed to have, at most, a 4 percent interest in Equitable and that this *de minimis* interest in no way affected the terms of any of the transactions described in the Equitable application.

Equitable, on behalf of PPF, foreclosed on Tower 2 and took title to Tower 2 in fee simple absolute. As a result, PPF holds 100 percent of the ownership interest in Tower 2. With the improvement of the economy in Orange County, Tower 2 is now 98 percent leased, and is valued at approximately $38.5 million.

In 1992, Compass began leasing office space in Tower 2. The applicant states that the total square footage now occupied by Compass through the Tower 2 Leases is 5821 square feet of office space (including 1,500 square feet of space used as the Compass property management office) and 3584 square feet of parking space. The applicant represents that the original Tower 2 Leases complied with the requirements of Part III of PTE 84–14 which permits a qualified professional asset manager (QPAM) to lease not in excess of the greater of 7500 square feet or 1 percent of the rentable space of the office building in which the investment fund managed by the QPAM (or an affiliate) has the investment.[3]

Furthermore, the Applicant represents that in 1992, when the original Tower 2 Leases were entered, PPF had two different investments in the two buildings. First, PPF, through Equitable, owned 100 percent of Tower 2. Second, PPF held a limited partnership interest in Brin-Mar II, L.P., the successor to Brin-Mar the original joint venture, and the owner of Tower 1. The Applicant states that because of this difference in ownership, the leased spaces in Tower 1 and Tower 2 were treated separately for the purposes of determining compliance with the space limitations in Part III of PTE 84–14. The original Tower 2 Leases expired but continued on a month-to-month basis while the parties negotiated new lease terms.

6. Compass manages Towers 1 and 2 pursuant to PTE 91–8, granted to Equitable by the Department on January 14, 1991 (56 Fed. Reg. 1411). PTE 91–8 permits the provision of property management, leasing and other services by Equitable affiliates with respect to properties held by Equitable separate accounts in which plans invest. Such provision of services is fully disclosed to plans participating in the separate accounts and is approved by plan fiduciaries independent of Equitable. Management fees and leasing commissions payable to Compass are also reviewed and approved by an independent fiduciary and may not exceed those fees charged by comparable firms for similar services. The applicant states that, aside from the lease agreements provided to the Department and described in the exemption application and the Independent Fiduciary's reports, and the property management agreement discussed above, there are no other separate agreements between the parties governing the leased properties.

[3] The Applicant represents that Equitable is a QPAM as that term is defined in PTE 84–14. The Department expresses no opinion herein as to whether Equitable is a QPAM or whether the original Tower 2 Leases complied with the requirements of Part III of PTE 84–14.

7. The Applicant represents that with respect to Tower 1, Banque Paribas insisted on the December 24, 1991 restructuring of Brin-Mar so that Equitable, on behalf of PPF, would obtain a 70 percent partnership interest. As a result, Equitable became the managing partner of Brin-Mar. On September 1, 1995, Banque Paribas sold the note on Tower 1 to Equitable, on PPF's behalf, for $38.5 million. Equitable had first offered the opportunity to purchase the note to Brin-Mar but Brinderson refused. Thus, as of September 1, 1995, PPF held a 70 percent interest in the Brin-Mar partnership owning Tower 1, as well as a $65 million (par value) note secured by Tower 1 which was, at that time, technically in default. Equitable determined that it would be in PPF's best interests to foreclose on Tower 1 because the Brin-Mar partnership had negative equity in Tower 1 (the building was worth $41 million but was subject to a $65 million mortgage). In Equitable's view, any actions taken to revive the partnership would only have the net effect of providing an additional return to Brinderson without any additional benefit to PPF. The foreclosure would result in the termination of the Brin-Mar partnership and consolidation of ownership in PPF. It would also clear title to Tower 1 because the outstanding note encumbered title to Tower 1.

8. The applicant states that on March 15, 1996, Equitable, on behalf of PPF, foreclosed on the note secured by Tower 1. As a result, Tower 1 is now held 100 percent by PPF. Equitable states that the most immediate effect of a Tower 1 foreclosure was to terminate the status of Brin-Mar as a REOC because the foreclosure eliminated all of Brin-Mar's interest in Tower 1. A 100 percent ownership interest in Tower 1 was vested directly in Equitable, on behalf of PPF. The continuing Towers 1 and 2 Lease arrangements involving ERE and Compass were then subject to the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions of section 4975 of the Code.

Regulation 29 CFR 2510.3–101(h)(iii) provides that, notwithstanding any other provision of the plan asset regulation, assets held in an insurance company separate account (such as PPF) in which plans invest constitute plan assets. Tower 1 became a plan asset upon foreclosure and the Tower 1 Lease to ERE then constituted a lease between a plan and a party in interest prohibited by section 406(a)(1)(A) of the Act. Furthermore, because ERE is a fiduciary with respect to PPF and an affiliate of Equitable, the Tower 1 Lease may be a violation of sections 406(b)(1) and (b)(2). Thus, March 15, 1996 is the requested effective date of this proposed exemption for the Tower 1 Lease.

9. The Tower 2 Leases with Compass, an affiliate of ERE, were also affected by the foreclosure on Tower 1. Tower 1 and Tower 2 are now both owned by PPF. The Applicant represents that, while before the foreclosure it had relied upon Part III(a) of PTE 84–14 for relief from the lease of Tower 2 to Compass, following foreclosure the aggregate space leased by ERE and Compass in both Towers 1 and 2 exceeded the limitations in Part III of PTE 84–14. The Applicant interprets Part III(a) of PTE 84–14 to provide that the amount of leased space in different buildings in an integrated office park or commercial center in which the investment fund has the investment shall be aggregated for purposes of determining compliance with the space limitations in Part III. Therefore, the Applicant is also seeking relief for the Tower 2 leasing arrangements as of March 15, 1996.

10. Robert A. Alleborn Properties, Inc. (Alleborn) will act as Independent Fiduciary for PPF with regard to the transactions that are subject to the requested exemptions. Alleborn currently manages more than 10 million square feet of commercial, office, industrial and mixed-use property in the western United States. Alleborn is experienced in and familiar with the real estate market in Southern California. Alleborn is also directly familiar with the Newport Gateway Towers through the provision of consulting services to Banque Paribas during the bank's investment in these projects. The Applicant states that Alleborn currently receives no fee income from Equitable, and anticipates that in the future it will not receive more than 3 percent of its annual income from Equitable and its affiliates, including fees for its services as independent fiduciary.

The responsibilities of Alleborn with respect to the transactions are set forth in a letter agreement between Alleborn and Equitable signed on March 6, 1996 (the Agreement). Under the Agreement, Alleborn assumed responsibility as

independent fiduciary on behalf of PPF to: review the existing ERE and Compass leases; negotiate the ERE and Compass lease extensions, renewals or modifications and prepare for delivery to Equitable, one or more reports regarding these activities; and annually monitor the compliance of ERE and Compass with the terms of the leases.

The Agreement provides that Alleborn's fees may only be changed by written agreement among Alleborn and a majority in interest of the plans participating in PPF. Alleborn may resign as independent fiduciary at any time on no less than 90 days prior written notice to Equitable and will be deemed to have resigned in the event that it no longer meets the requirements for an independent fiduciary. In no event shall Equitable or any affiliate have the authority to terminate Alleborn's service as independent fiduciary. Alleborn may be removed only by a vote of a majority in interest of the plans participating in PPF.

Specifically, the Agreement provides that Alleborn has been authorized by Equitable to determine on behalf of PPF whether it was in the best interests of PPF to continue the Tower 1 and Tower 2 Leases after the foreclosure date of March 15, 1996 under the existing terms. This entailed a determination that the existing leases provides PPF with a market-level return or better. Further, Alleborn was authorized to represent PPF in negotiations regarding the extension, renewal or modification of the Tower 1 and Tower 2 Leases. Alleborn has the authority to determine whether and on what terms PPF will continue the transactions. Upon completion of the negotiations, Alleborn was required to determine whether the lease terms as negotiated were in the best interests of PPF and to submit a report summarizing Alleborn's activities.

Additionally, Alleborn will continue to monitor both the Tower 1 and Tower 2 Leases to assure compliance with the lease terms. Compliance with lease terms will be reviewed at least annually either directly by Alleborn or by an independent contractor reporting to Alleborn. Based on this review, Alleborn will have the authority to take any steps it deems necessary to assure lease compliance.

On March 12, 1996, Alleborn submitted an interim report to Equitable that stated that Alleborn had evaluated the Towers 1 and 2 current leases and preliminarily concluded that the leases provided PPF with above market returns. Alleborn submitted a more detailed review of the current lease terms in the Towers 1 and 2 Leases, and informed Equitable of its conclusion in the May 16, 1996 Independent Fiduciary Review and Opinion of Existing Leases (Review)[4] that the leases in both Tower 1 and Tower 2 provide PPF with above market returns and it was in the best interests of PPF to continue the existing leases pending renegotiation and extension of the leasing relationships. The Review, submitted by the Applicant, compared eight office complexes that would compete and compare favorably with Towers 1 and 2 for tenants and were used in comparing the existing tenancy for rate and term leases.

Alleborn has completed the renegotiation process for the leases to Compass in Tower 2. The application for exemption contained copies of the executed leases and the Independent Fiduciary's report dated September 2, 1996 (Report 1) approving the leases between Equitable and Compass for a three year term commencing September 1, 1996 and terminating August 31, 1999. Report 1 states that the Compass leases are market rates for comparable projects for Tower 1 and Tower 2 and concludes that it is in the best interests of PPF to consummate the Compass leases.

Alleborn has also completed the renegotiation process for the lease to ERE in Tower 1. The application for exemption contained the Independent Fiduciary's report dated October 1, 1996 (Report 2) approving the new lease term between Equitable and ERE for 69 months, commencing October 1, 1996 and terminating June 30, 2002. Report 2 states that concurrent with the execution of a new lease, a Termination and Surrender Agreement for the original lease, dated April 1, 1987, was executed by ERE. An unrelated tenant in Tower 1 has requested a lease extension and at the same time desires to relinquish 231 square feet of space. Effective January 1, 1997, ERE will incorporate the additional 231 square feet into their base lease, allowing their total occupancy for the remaining months on the lease to be 13,086 square feet. Additionally, Alleborn required ERE to pay in their new lease, the unamortized portion of the above market rate that remained in their old lease dated April 1, 1987. This allowed Tower 1 to recapture the potential of lost income between the new lease and the old lease. Report 2 concludes that the lease is a market rate lease comparable to buildings described in the Review and that it is in the best interests of PPF to enter the renegotiated lease.

11. In summary, the applicant represents that the requested exemption will satisfy the criteria of section 406(a) of the Act for the following reasons: (a) the Towers 1 and 2 Leases and the renewals of the original leases are for a limited term; (b) the terms of the Tower 1 and 2 Leases as of March 15, 1996, and the renewal of the leases have been reviewed, negotiated and approved by Alleborn, a qualified independent fiduciary to PPF, who has determined that the terms of the transactions reflect fair market value and are at least as favorable to PPF as the terms would have been in arm's length transactions between unrelated parties; and (c) Alleborn will continue to monitor the leases on behalf of PPF.

For Further Information Contact: Ms. Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

PNC Capital Markets, Inc. (PNC) Located in Pittsburgh, Pennsylvania; Proposed Exemption

[Application No. D–10521]

I. Transactions

A. Effective October 21, 1997, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[5]

B. Effective October 21, 1997, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[6] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective October 21, 1997, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[7]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective October 21, 1997, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/

[4] In a November 17, 1997 letter to the Department, Alleborn stated that between the dates of March 15, 1996 and May 16, 1996, there were no changes to the circumstances surrounding the transactions subject to the requested exemptions that in any way adversely affected Alleborn's May 16, 1996 conclusion.

[5] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[6] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[7] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans;

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act,

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. Certificate means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) above for which PNC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. Trust means an investment pool, the corpus of which is held in trust and consists solely of:

(1)(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) *guaranteed governmental mortgage pool certificates*, as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) (a) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) are credited to a capitalized interest account (as defined in section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificate holders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term *permitted investments* means investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency.

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term *trust* does not include any investment pool unless: (i) the investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) PNC;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with PNC; or

(3) any member of an underwriting syndicate or selling group of which PNC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *independent* of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) the trust owns or holds a security interest in the lease;

(2) the trust holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Rating Agency* means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch Investors Service, L.P. (Fitch);

X. *Capitalized Interest Account* means a trust account: (i) Which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. *Closing Date* means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. Pre-Funding Account means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. Pre-Funding Limit means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. Pre-Funding Period means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. PNC means PNC Capital Markets, Inc. and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at 35932.

Summary of Facts and Representations

1. PNC is an indirect, wholly-owned, separately capitalized investment banking and registered broker-dealer subsidiary of PNC Bank Corp. (the Corporation). As of September 30, 1997, PNC's capitalization was approximately $54.9 million. The Corporation is a diversified financial services company incorporated under the laws of the Commonwealth of Pennsylvania and a multi-bank holding company registered under the Bank Holding Act of 1956, as amended. As of September 30, 1997, the Corporation's consolidated assets were approximately $71.8 billion. The principal executive offices of the Corporation are located in Pittsburgh, Pennsylvania. As of September 30, 1997, the Corporation had indirectly-held subsidiary banks located in seven states. In addition, indirectly-held non-bank subsidiaries of the Corporation offer a wide range of insurance, securities brokerage, investment banking, venture capital investment, mortgage banking and consumer finance products and services.

PNC Mortgage Corp. of America (PNC Mortgage), an Ohio corporation having its principal place of business in Vernon Hills, Illinois, is one of the largest mortgage banking originators in the United States, with offices in all 50 states.

PNC Bank, National Association (the Bank), an indirect, wholly-owned subsidiary of the Corporation, is a national banking association engaged in banking and related activities and is the largest bank in the Corporation's banking group. The Bank is the sole shareholder of PNC Mortgage. As of September 30, 1997, the Bank had total assets of approximately $57.5 billion. The principal executive offices of the Bank are located in Pittsburgh, Pennsylvania. Six other commercial banks and one federal savings bank, located in six states, had aggregated assets slightly exceeding $13.2 billion as of September 30, 1997.

PNC was incorporated in 1984 as a Pennsylvania corporation. PNC maintains its principal place of business in Pittsburgh, Pennsylvania and has branch offices in Pennsylvania, New Jersey, Ohio, and Kentucky.

In 1987, PNC received Federal Reserve Board authorization to underwrite and deal in commercial paper, municipal revenue bonds, residential mortgage-related securities and consumer receivable-related securities. This order is currently subject to the condition that PNC does not derive more than 25% of its total gross revenues from such activities. In addition, PNC's affiliates have the power to sell interests in their own assets in the form of asset-backed securities.

PNC is a member of the National Association of Securities Dealers and the Securities Investor Protection Corporation and underwrites and deals in corporate debt securities, commercial paper, municipal securities, high-yield securities and asset-backed securities, provides private placement and corporate finance advisory services, including merger and acquisition advisory services, publishes research on a wide range of securities and issuers, and engages in the syndication and arranging and trading of bank loans.

PNC has significant experience in asset securitizations. PNC's participation in securitization transactions includes the underwriting of public offerings and serving as private placement agent or commercial paper conduit agent/dealer for transactions backed by retail auto receivables and bank and retail credit card receivables.

Trust Assets

2. PNC seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family residential or commercial mortgage investment trusts;[8] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[9]

[8] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. PNC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, PNC has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[10]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.[11] The sponsor or servicer of a trust selects assets to be included in the trust.[12] These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[13]

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

PNC, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by PNC on a firm commitment basis. In addition, PNC anticipates that it may privately place certificates on both a firm commitment and an agency basis. PNC may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. PNC requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/ slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[14]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class

[9] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[10] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. [55 FR 23147, June 6, 1990 at 23150).

[11] The Department is of the view that the term "trust" includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

[12] It is the Department's view that the definition of "trust" contained in III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[13] It is the view of the Department that section III.B.(4) includes within the definition of the term "trust" rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1). In accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreement or other notional principal contracts.

[14] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[15]

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust ("FASIT"), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure with Pre-Funding Account

Pre-Funding Accounts

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to PNC for cash or to the certificateholders directly if the certificates are sold through PNC as a placement agent. The cash received by the sponsor from the certificateholders (or PNC) from the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (i.e., servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the rating agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the rating agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility

[15] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, PNC and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home-owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

12. The *sponsor* will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to PNC, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). PNC represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis.

It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to PNC. In other cases, however, affiliates of PNC may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[16] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the

[16] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

22. The certificates will have received one of the three highest ratings available from a rating agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10-Q and Annual Reports on Form 10-K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10-Q and a modification of the disclosure requirements for annual reports on Form 10-K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8-K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

28. To date, no forward delivery commitments have been entered into by PNC in connection with the offering of any certificates, but PNC may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and PNC may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. It is PNC's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is PNC's intention to make a market for any certificates for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times PNC will facilitate sales by investors who purchase certificates if PNC has acted as agent or principal in the original private placement of the certificates and if such investors request PNC's assistance.

Retroactive Relief

30. PNC represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of their application. However, PNC requests the exemptive relief granted to be retroactive to October 21, 1997, the date of their application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

31. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the

proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision;

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which PNC seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) PNC anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Jeffrey R. Light, M.D., Inc. Profit Sharing Plan (the Plan) Located in Garden Grove, CA; Proposed Exemption

[Application No. D–10530]

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the individual, self-directed account of Jeffrey R. Light, M.D. within the Plan (the Account) of two parcels of real property (the Property) to Jeffrey R. Light, M.D. (Dr. Light), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan does not incur any expenses from the Sale; and

(D) The Plan receives as consideration from the Sale no less than the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser.

Summary of Facts and Representations

1. Jeffrey R. Light, M.D., Inc., located in Garden Grove, California, a California corporation for the practice of medicine, is sponsor of the Plan. Dr. Light is a medical physician and a pathologist, whose practice involves tissue analysis, sample reviews, and providing opinions regarding such analysis and review.

The Plan is a defined contribution plan that is intended to qualify under section 401(a) of the Code. The applicant represents that on December 31, 1996, the Plan had 26 participants and total assets of $523,077, and of the total assets $404,582 was in Dr. Light's Account. The applicant represents that the Plan permits its participants to self-direct their respective accounts into various investments. Dr. Light is represented by the applicant to be the fiduciary and trustee with respect to the Plan.

2. The Property consists of two lots of unimproved land. One of the lots is located at 370 Ranch Road in Mammoth Lakes, California, consists of 0.38 of an acre (16,553 square feet), and is designated as Ranch at Snowcreek Lot #14 (Lot #14). The second lot is located at Majestic Pines Drive in Mammoth, California, consists of 0.2 of an acre (8,750 square feet), and is designated as Mammoth Vista III Lot #34 (Lot #34). The applicant represents that Lot #14 was purchased on January 29, 1998, for the sum of $126,892 and Lot #34 was purchased on January 7, 1991, for the sum of $127,639.55.

The applicant also represents that the Property was purchased only for investment purposes and it has been held in the Account since the respective dates of purchase with no improvements made on or to the Property. Also, the applicant represents that the Property has not been used or leased by anyone since being acquired by the Account.

The Property was appraised on October 3, 1997, by Mitch Dunshee, MAI, AG002575 and Cheryl Bretton, Appraiser, AG023954, The Dunshee Appraisal Group, located in Frensno, California; and Lot #14 was determined to have a fair market value of $130,000 and Lot #34 was determined to have a fair market value of $120,000. Also the appraisal of the Property represented that the Property is zoned residential and located in an earthquake zone that is designated Zone 1: High Risk Damage; Reference: ISO Earthquake Zones, 1981.

3. Dr. Light proposes to purchase the Property from the Account for cash with no expenses incurred by the Plan in a one-time transaction, paying to the Account the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

Dr. Light is prompted to take this action by Mr. Douglas B. George, Financial Counsel, Newport Beach, California, whose services were recently employed by Dr. Light with respect to the Plan's finances. The applicant represents the need for the Account to diversify its investments, noting that the Property represents more than 62 percent of the total value of the assets in the Account. Also, Mr. George expressed concern about the lack of investment diversity in the Account and the location of the Property being in the high risk earthquake zone of California.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale is a one-time transaction for cash; (b) the Plan and the Account will receive the fair market value of the Property as determined by a qualified, independent appraiser on the date of the transaction; (c) the transaction will enable the Account to avoid any risk associated with the continued holding of the Property and enable the Dr. Light to direct Account assets to active and safer investments; (d) neither the Plan or the Account will incur any expenses from the transaction; and (e) other than Dr. Light, no other participant of the Plan will be affected by the transaction, and he desires that the transaction be consummated.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in the Account of Dr. Light and he is the only participant affected by the proposed transaction, there is no need to distribute the notice of the proposed transaction to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of December 1997.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 97–33179 Filed 12–18–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Nos. D–10461, D–10462 and D–10463]

Notice of Proposed Amendment to Prohibited Transaction Exemption (PTE) 93–8 Involving the Fortunoff Pension Plans (the Plans) Located in Westbury, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of proposed amendment to PTE 93–8.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend PTE 93–8 (58 FR 7258, February 5, 1993), a purchase, leaseback and license exemption involving Plans sponsored by Fortunoff Fine Jewelry and Silverware, Inc. (FFJ) and M. Fortunoff of Westbury Corporation (M. Fortunoff) and parties in interest. These transactions are described in a notice of pendency that was published in the **Federal Register** on May 8, 1992 at 57 FR 19951. The proposed exemption, if granted, would affect participants and beneficiaries of, and fiduciaries with respect to the Plans.

EFFECTIVE DATE: If granted, this proposed exemption would be effective as of the date the notice granting the exemption is published in the **Federal Register**.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 2, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application Nos. D–10461, D–10462 and D–10463. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed exemption that would amend PTE 93–8. PTE 93–8 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed on behalf of M. Fortunoff and FFJ (collectively), the Applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

PTE 93–8 provides prospective exemptive relief from the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code with respect to (1) the purchase by the Fortunoff Pension Plan—Employer Group A Plan (the Employer Group A Plan), the Fortunoff Pension Plan—Employer Group B Plan (the Employer Group B Plan) and the Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (the Profit Sharing Plan) of undivided interests in certain improved real property (the Property), for the total

cash consideration of $6 million, from M. Fortunoff, the sponsor of the Group B Plan and a retailer of rugs, furniture and household items; (2) the leasing of the Property by the Plans, under the provisions of an amended lease (the Amended Lease), to FFJ, the sponsor of the Group A Plan and the Profit Sharing Plan as well as retailer of fine jewelry, silverware, glassware and crystal; and (3) the use of space in the Property by Fortunoff Information Services (FIS), a partnership providing data processing services to FFJ and M. Fortunoff pursuant to the terms of a license agreement (the License) between FFJ and FIS.

As noted in the Summary of Facts and Representations underlying PTE 93–8, the subject Property, which is located at One MH Plaza, Axinn Avenue, Garden City East, Nassau County, New York has the following legal description:

All that certain plot, piece or parcel of land, situate, lying and being near Westbury, Town of Hempstead, County of Nassau and State of New York, being the northerly 367.04 feet more or less of Lot 44 Block 73 on the Nassau County land and tax map as same existed on the date hereof.

The Property consists of a one story office and warehouse building containing approximately 116,000 square feet of gross building area on a site of approximately 4.0663 acres of land. There is also a parking area. The Property was originally leased by M. Fortunoff to FFJ for its warehouse and data processing services under the provisions of a written, triple net lease (the Lease) that commenced on March 1, 1989. The annual rental under the Lease was $554,232 and was payable in monthly installments of $46,186. In addition to the Lease, FFJ granted its affiliate, FIS, an exclusive right to use, for $3,850 per month, approximately 8,041 square feet in the building area for FIS's information systems and data processing operations. The term of the License coincided with the term of the Lease.

Upon the granting of PTE 93–8, the Plans purchased the Property, which was unencumbered by a mortgage, from M. Fortunoff for the total cash consideration of $6 million. The purchase price was less than the independently appraised value of the Property. The Property was then allocated among the Plans such that the Group A Plan and the Group B each acquired 40 percent interests in the Property with each Plan paying $2.4 million. The Profit Sharing Plan acquired the remaining 20 percent interest in the Property for $1.2 million. At the time of acquisition, the Property represented approximately 19 percent of the Group A Plan's assets, 22 percent of the Group B Plan's assets and 13 percent of the assets of the Profit Sharing Plan. With the exception of mandatory title insurance charges, no Plan paid any real estate fees or commissions in connection with its acquisition of an interest in the Property.

Following the purchase transaction, the Lease and License were assigned to the Plans. As modified by the Lease Assignment and Assumption Agreement, the Amended Lease between the Plans and FFJ, has a twelve year term that will expire on February 29, 2004. The annual rental under the Amended Lease, which is the same as that paid under the Lease, is $554,232 (the Base Rent). The Base Rent is payable in monthly installments of $46,186. Commencing on March 1, 1993 and including the year ending February 29, 2004, FFJ is required to pay, in addition to the Base Rent, and annual Escalation Amount based upon the fair market rental value of the Property as determined by a qualified, independent appraiser. Effective October 1, 1997, FFJ has commenced paying an annual Escalation Amount of $35,048 on a monthly basis in equal installments of $2,920.67. Therefore, the total rental amount being paid is $589,280 annually of $49,107 monthly. In the event that the fair market rental value of the Property should decline to an amount which is less than the Base Rent, the Amended Lease provides that the Plans will be paid the Base Rent. As with the Lease, the Amended Lease is also a triple net lease.

The License between FFJ and FIS, which was similarly modified by the Lease Assignment and Assumption Agreement, required FIS to pay its proportionate share of utilities as well as repair and maintain that portion of apace that it occupied, also on triple net basis. Although the License had a term that was commensurate with that of the Amended Lease and required that FIS pay FFJ a base fee that was proportional to the amount that FFJ paid the Plans under the Amended Lease, it was terminated on or about January 1, 1995 after FIS vacated the Property. Currently, FFJ occupies that space.

To secure its obligations under the Amended Lease, FFJ obtained a one year, irrevocable letter of credit (the Letter of Credit) in favor of the Plans. The Letter of Credit, which was in the face amount of $550,000, provided that Sanford Browde, the independent fiduciary for the Plans with respect to the transactions, could draw upon amounts available thereunder the FFJ ever defaulted in its rental payments under the Amended Lease and the default continued for more than ten days after notice of the default had been given. On February 25, 1994, the Letter of Credit expired.

To further secure FFJ's obligations to the Plans under the Amended Lease, M. Fortunoff entered into an escrow agreement (the Escrow Agreement) with the Plans whereby at least one year's rental under the Amended Lease would be maintained through the sixth anniversary date of the Property's assignment to the Plans. In this regard, M. Fortunoff established a $1.65 million special escrow account (the Escrow Account) over which it would have no withdrawing power or authority. If, at any time the Escrow Account were depleted, M. Fortunoff would be required to make up the shortfall.

Funds in the Escrow Account would not be disbursed if there had been a default under the Amended Lease during the initial six year term of the Escrow Agreement. Instead, the Escrow Agreement would continue until the end of the term of the Amended Lease. Assuming there were no defaults after this period, the balance of the Escrow Account would be delivered to M. Fortunoff after 1999.

As noted above, the transactions described in PTE 93–8 are being monitored by Mr. Browde, the independent fiduciary for the Plans. Further, as additional safeguards, the exemption contains a number of specific conditions. For example, (1) the terms of the transactions must be at least as favorable to the Plans as those obtainable in arm's length transactions with an unrelated party; (2) the independent fiduciary must (a) determine that the transactions are in the best interests of the Plans, (b) monitor and enforce compliance with the terms and the conditions of the transactions and exemption at all times, and (c) appoint one or more independent fiduciaries to resolve any conflicts of interest which may develop between the Plans with respect to the Amended Lease, the Escrow Agreement, the Property, or each Plan's interest therein; (3) the value of the proportionate interests in the Property that are acquired by each Plan must not exceed 25 percent of each Plan's assets; and (4) the Base Rent must be adjusted annually by the independent fiduciary based upon an independent appraisal of the Property.

II. Proposed Modification to PTE 93–8

According to the Applicants, the subject Property is irregularly-shaped and resembles a flagpole or a flag lot. Corporate Property Investors (CPI), which is not affiliated with either the Applicants or Mr. Browde, is the owner of two neighboring lots to the immediate east and west of the "pole" area of the Property which has been designated by the Applicants for employee parking. The Property currently separates the two parcels owned by CPI.

By eliminating the pole portion of the Property, the Applicants represent that the Property will become regular in shape and more suitable for expansion. If reconfigured, the Property will also provide additional parking for employees of FFJ and for others using the warehouse facility.

Therefore, the applicants propose to modify PTE 93–8 by having the Plans exchange the pole portion of the Property (the Exchange Property) for nearly equivalent portions of the two lots that are owned by CPI (the Substitute Property).[1] The Substitute Property is contiguous with the existing northern border of the flag portion of the Property and is subject to a ground lease that is currently held by CPI as ground lessor. The Substitute Property is used by CPI for parking purposes and has the following legal description:

All that certain plot, piece or parcel of land, situate, lying and being near Westbury, Town of Hempstead, County of Nassau and State of New York, being the southerly 47.50 feet, more or less, of Lots 23 and 25 in section 44 Block 73 on the Nassau County Land and Tax Map as same existed on the date hereof.

The proposed exchange will be conducted on the basis of a tax free exchange of like-kind property under section 1031 of the Code. The Substitute Property will be acquired by the Plans in fee simple and will not be subject to the ground lease. At the time of closing, CPI will transfer the Substitute Property to the Plans free of the rights of any person or entity under the ground lease. After the land exchange, the total area of the Property will be essentially the same as at present but the land will be more regular in shape. As for CPI, the proposed exchange will allow it to own one continuous parcel of land, thus enhancing the utility of its land holdings.

The Plans propose to effect the real property exchange with CPI under the terms of a Real Estate Exchange Agreement. The proposed exchange is also contingent upon the Department's approval of the arrangement and requires that the parties warrant or adhere to environmental laws and regulations affecting the respective Properties. It is represented that the exchange will not affect the present use of the Property, the Amended Lease, or M. Fortunoff's obligations under the Escrow Agreement.

Because of the nature of the modification discussed above, the Department has determined that the exemptive relief provided under PTE 93–8 is no longer available. Therefore, the Department has decided to publish a new exemption which, if granted, would amend PTE 93–8 by allowing the Plans to lease the Substitute Property to FFJ along with the remaining Property under the provisions of the Amended Lease. In effect, the new proposed exemption will incorporate by reference many of the facts, representations and continuing conditions that are contained in PTE 93–8. However, the proposed exemption will not cover FIS's use of space in the Property pursuant to the terms of the License as such arrangement has been terminated.

[1] The Substitute Property that will be acquired by the Plans measures approximately 358 feet by 47 feet and 70 feet by 43 feet for a total of 19,836 square feet. The approximate dimensions of the Exchange Property are 50 feet by 367 feet or a total of 18,350 square feet.

III. Independent Appraisal

Bernard Goodman, MAI, CRE, and Matthew J. Guzowski, MAI, independent appraisers (the Appraiser), who are affiliated with the appraisal firm of Goodman-Marks Associates, Inc., located in Mineola, New York, have addressed the economic impact of the Exchange Property and the Substitute Property in an appraisal report dated September 9, 1997. The Appraisers note that the Exchange Property and the Substitute Property are currently part of larger parcels of real property that are zoned for industrial use. The Appraisers state that it is rare that parcels of such size are marketed in industrial-zoned areas and that their utility can only be realized by the adjoining land users. Further, because there are no comparable sales of similarly-sized parcels of real property in the area to formulate the basis for determining the fair market values of the Substitute Property and the Exchange Property, as "standalone parcels," the Appraisers state that neither parcel would have any marketable value and that to determine such values would be very speculative. However, because both parcels are of virtually the same size and are located in the same immediate area, the Appraisers conclude that they are of equal value.

In addition to opining on the respective fair market values of the Exchange Property and the Substitute Property, the Appraisers have determined that as of September 6, 1997, the Property would have a fair market value of $6.2 million. Moreover, as of that date, the Appraisers have estimated the fair market rental value of the Property at $8.50, gross, per square foot of building area, or $5.08 net rent per square foot of building area.

Thus, as a result of the unmarketability of the Substitute Property as a stand alone strip of real property and its size in relation to the Property, the Appraisers have determined that the acquisition by the Plans of the Substitute Property will have a minimal effect on the fair market value or the fair market rental value of the Property. The Appraisers note that the benefit to be derived by the Plans from the exchange will be the availability of additional parking spaces which will be in closer proximity to the warehouse facility. The squaring off of the Property will create a more convenient use for those accessing the warehouse.

IV. Views of the Independent Fiduciary

Mr. Browde represents that he has investigated real estate and economic considerations relating to the proposed exchange transaction and has concluded that it will benefit the Plans by enhancing the value of the Property. In this regard, Mr. Browde notes that the Substitute Property and the Exchange Property are of nearly the same size. After the land exchange, the total land area of the Property essentially will be the same but will result in a net increase of approximately 2,300 square feet of space. By eliminating the pole, the Property will become regular in shape and more suitable for use.

Mr. Browde also states that a regular-shaped parcel of real estate has more value than one that is oddly-shaped. In this regard, he states that the Substitute Property would allow two rows of parking in the same space which formerly accommodated only one row of parallel parking, thereby increasing the number of legal parking spaces at the Property by 26. This additional benefit would be a desirable consequence of the exchange.

Further, Mr. Browde represents that the warehouse on the Property could be expanded to a greater extent than at present because the land exchange would now provide a greater distance between the new property line and the exterior walls of the building's north side. He also notes that the land exchange would be without cost to the Plans, other than transaction costs which are not expected to exceed $3,000.

Finally, Mr. Browde notes that since the granting of PTE 93–8, all of the terms and conditions of the Amended Lease, the Letter of Credit and the Escrow Agreement have been complied with by the parties. Mr. Browde also

represents that there have been no defaults or delinquencies under the Amended Lease.

V. Other Modifications

A. Plan Information

In addition to the above, the Applicants have provided updated information concerning the Plans. In this regard, the Applicants note that the Group A Plan had 1,328 participants as of December 31, 1996 and total assets having a fair market value of $19,983,124 as of August 31, 1997. In addition, the Applicants represent that the Group B had 1,302 participants as of December 31, 1996 and total assets having a fair market value of $10,680,155 as of August 31, 1997. Further, the Applicants state that the Profit Sharing Plan had 1,098 participants as of January 31, 1997 and total assets having a fair market value of approximately $10,471,276 as of August 31, 1997.[2]

B. Stock Ownership

The Applicants state that subsequent to the granting of PTE 93–8, FFJ underwent a stock reclassification to create two classes of stock—Class A voting stock and Class B non-voting stock. On June 24, 1994, a stock dividend of 408 Class B shares was declared to holders of Class A shares. Mr. Fortunoff gifted 236 of these shares to the Alan Fortunoff Grantor Retained Annuity Trust and sold seven shares to each of his six children. Mrs. Fortunoff gifted 88 Class B shares to the Helene Fortunoff Grantor Retained Annuity Trust and sold seven shares to each of the Fortunoff children. The Fortunoff children are beneficiaries under both trusts.

At present, the Applicants note that all of the Class A voting shares are owned by Alan and Helene Fortunoff. The FFJ Class B non-voting shares are distributed as follows: Alan Fortunoff Grantor Retained Annuity Trust, 236 shares; Helene Fortunoff Grantor Retained Annuity Trust, 88 shares; and each of the Fortunoff children, 14 shares. Leonard Leibman is the sole trustee of each of the trusts.

Also since PTE 93–8 was granted, the Applicants point out that M. Fortunoff has had a change in stock ownership. Although Mr. Fortunoff does not hold any elective offices with M. Fortunoff and does not directly own any shares of its capital stock, the Applicants explain that he is one of three co-executors of the Estate of Marjorie Mayrock, which owns 49.6 percent of M. Fortunoff's capital stock. The Applicants further explain that both Mr. and Mrs. Fortunoff are co-trustees under three trusts which each hold 5⅔ shares of Mr. Fortunoff's capital stock for the benefit of the Mayrock children. On July 31, 1996, a distribution of 4.25 shares was made from the Estate of Marjorie Mayrock to each of the Mayrock children for a total distribution of 12.75 shares.

[2] Based upon these valuations, it should be noted that the property, valued at $6.2 million by the Appraisers as of September 6, 1997, represents 12.41 percent of the assets of the Group A Plan, 23.22 percent of the assets of the Group B Plan and 11.84 percent of the assets of the Profit Sharing Plan.

Notice to Interested Persons

Notice of the proposed exemption will be sent by first class mail to each participant in the Plans within 15 days of the publication of the pending exemption in the Federal Register. The notice will contain a copy of the proposed exemption as published in the Federal Register and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Comments and hearing requests regarding the proposed exemption will be due 45 days from the publication of the notice of proposed exemption in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notice of proposed exemption relating to PTE 93–8, as amended by this notice, accurately describe, where relevant, the material terms of the transactions consummated pursuant to that exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within 15 days after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 19, 1990).

If the proposed exemption is granted, restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the leasing by the Plans to FFJ, under the provisions of the Amended Lease described in PTE 93–8, of certain Substitute Property, acquired by the Plans through a third party exchange, as well as all remaining real estate which constitutes the Property, provided the following conditions are met:

(a) The terms of the Amended Lease remain at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

(b) The independent fiduciary—

(i) Determines that the acquisition and subsequent leasing of the Substitute Property by the Plans under the Amended Lease are in the best interest of the Plans and their participants and beneficiaries;

(ii) Monitors and enforces compliance with the terms and conditions of the Amended Lease, the Escrow Agreement and the new exemption, at all times; and

(iii) Appoints one or more independent fiduciaries to resolve any conflicts of interest which may develop among the Plans with respect to the Amended Lease, the Escrow Agreement, the Property, or the Plans' respective interests therein.

(c) The fair market value of the proportionate interests held by each Plan in the Property as a whole following the exchange transaction does not exceed 25 percent of each Plan's assets.

(d) The Property, the Exchange Property and the Substitute Property are all appraised by qualified, independent appraisers prior to the consummation of the exchange transaction.

(e) The Base Rent for the Property is adjusted annually by the independent fiduciary based upon an independent appraisal of such Property.

(f) FFJ incurs all real estate taxes and other costs which are incident to the Amended Lease.

(g) The Escrow Agreement is maintained by M. Fortunoff, in favor of the Plans, as security for FFJ's rental obligations under the Amended Lease.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 93–8, refer to the proposed exemption, grant notice and technical correction notice which are cited above.

Signed at Washington, D.C., this 16th day of December 1997.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–33180 Filed 12–18–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 97–63; Exemption Application No. D–10159, et al.; Grant of Individual Exemptions; State Street Bank

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have compiled with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975 of the Code, by reason of section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

State Street Bank and Trust Company Located in Boston, Massachusetts

[Prohibited Transaction Exemption 97–63; Application No. D–10159

Exemption

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply to the lending of securities to State Street Bank and Trust Company (State Street), acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or U.S. affiliate of State Street that is a successor to the activities of FMG; and shall not apply to the lending of securities to any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealers)[2] by employee benefit plans (the Client Plans or the Client Plan), including commingled investment funds holding plan assets for which State Street, through its Master Trust Services Division (the Trust Division) acts as directed trustee or custodian, and for which State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent); and shall not apply to the receipt of compensation by GSL in connection with the transactions; provided that the following conditions are met:

a. Neither State Street, the SSB Group, GSL, nor any other division or affiliate of State Street has or exercises

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] FMG, any division or U.S. affiliate of State Street that becomes a successor to the activities of FMG, and the Affiliated Broker Dealers are collectively referred to, herein, as the SSB Group.

discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received) or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan;

b. Before a Client Plan participates in a securities lending program and before any loan of securities to the SSB Group is effected, the fiduciary of such plan who is independent of State Street, GSL, the SSB Group, and any other division or affiliate of State Street must have:

(1) Authorized and approved the securities lending authorization agreement with GSL (the Agency Agreement), where GSL is acting as the direct securities lending agent; or

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where GSL is lending securities under a sub-agency arrangement with the primary lending agent [3]; and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and the borrower, the SSB Group, the specific terms of which are negotiated and entered into by GSL;

c. A Client Plan may terminate the Agency Agreement or the Primary Lending Agreement at any time, without penalty to such plan, on five (5) business days notice;

d. The Client Plan will receive from the SSB Group (either by physical delivery or by book entry in a securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the SSB Group, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than State Street or an affiliate thereof, or any combination thereof, or other collateral permitted under PTCE 81–6 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

e. The market value of the collateral must, as of the close of business on the preceding business day, initially equal at least 102 percent (102%) of the market value of the loaned securities. If the market value of the collateral falls below 100 percent (100%) (or such greater percentage agreed to by the parties) of the loaned securities, GSL will require the SSB Group to deliver additional collateral by the close of business on the following day such that the market value of the collateral will again equal at least 102 percent (102%). The Loan Agreement will give the Client Plans a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily;

f. All GSL's procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of PTCE 81–6 and PTCE 82–63;

g. State Street will agree to indemnify and hold harmless each lending Client Plan (including the sponsor and fiduciaries of such Client Plan) against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which the Client Plan may incur or suffer directly arising out of the lending of the securities of such Client Plan to the SSB Group;

h. The Client Plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of any loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

i. Prior to any Client Plan's approval of the lending of its securities to the SSB Group, a copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption will be provided to the Client Plan;

j. Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group;

k. The terms of each loan of securities by the Client Plans to the SSB Group will be at least as favorable to such plans as those of a comparable arm's-length transaction between unrelated parties;

l. Each Client Plan will receive monthly reports on the transactions, including but not limited to the information described in paragraph 26 of the Notice, so that an independent fiduciary of such plan may monitor the securities lending transactions with the SSB Group;

m. Before entering into the Loan Agreement and before a Client Plan lends any securities to the SSB Group, an independent fiduciary of such Client Plan will receive sufficient information, concerning the financial condition of State Street, including but not limited to audited and unaudited financial statements of State Street's parent corporation; and

n. The SSB Group will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in State Street's financial condition, since the date of the most recently furnished financial statements.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on October 2, 1997, 62 FR 51684.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Crown American Properties L.P., Retirement Savings Plan (the Plan), Located in Johnstown, PA

[Prohibited Transaction Exemption No. 97–64; Exemption Application No. D–10454]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2), and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase, holding or sale by participant-directed accounts in the Plan of shares of Crown American Realty Trust (the Crown REIT), an affiliate of Crown American Properties L.P. (Crown American), the Plan's sponsor and, as such, a party in interest with respect to the Plan, provided that the following conditions are met:

(A) Any purchase or sale of the Crown REIT shares by a participant account (an Account) is made solely in accordance with the directions of the participant whose account is making the purchase or sale;

(B) Immediately following any purchase of the Crown REIT shares by an Account, the percentage of the total value of the Account invested in the Crown REIT shares does not exceed 25 percent, as measured based on the value of the assets held by such Account as of the close of the prior business day;

[3] The Department, herein, is not providing relief for securities lending transactions engaged in by primary lending agents, other than GSL, beyond that provided, pursuant to Prohibited Transaction Class Exemption 81–6 (PTCE 81–6) and Prohibited Transaction Class Exemption 82–63 (PTCE 82–63). PTCE 81–6 was granted 46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987. The Notice of Proposed Exemption for application numbers D–5598 and D–5776 was published at 46 FR 10570, February 3, 1981. PTCE 82–63 was granted 47 FR 14804, April 6, 1982. The Notice of Proposed Class Exemption was published at 46 FR 7518, January 23, 1981, as amended at 46 FR 10570, February 3, 1981.

(C) Compliance with the terms and conditions of this exemption, including the 25 percent limit described in Paragraph (B) above, is monitored by PNC Bank, National Association, as the Plan's trustee, which is independent of the Crown REIT and Crown American or any affiliate thereof;

(D) With respect to any decisions made by a Plan participant for a purchase or sale of Crown REIT shares by an Account, neither Crown American, PNC, nor any of their affiliates has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, other than as required for PNC to monitor and enforce compliance with the 25 percent limit described in Paragraph (C) above, or renders any investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets;

(E) All purchases and sales of the Crown REIT shares by the Plan are executed:

(1) For cash;

(2) On the national exchange on which the Crown REIT shares are primarily traded (the Primary Exchange);[4] and

3) At the prevailing market price for the Crown REIT shares on the Primary Exchange at the time of the transaction;

(F) Notwithstanding the provisions contained in (E) above, purchases and sales of the Crown REIT shares may occur between the Accounts within the Plan in order to avoid brokerage commissions and other transaction costs, provided that the price received by each Account is equal to the closing price for the Crown REIT shares on the Primary Exchange on the date of the transaction;

(G) Crown American maintains for a period of six years the records necessary to enable the persons described below in paragraph (H) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Crown American, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Crown American or affiliate shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (H) below; and

(H)(1) Except as provided below in paragraph (H)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (G) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (H)(1) (ii) and (iii) shall be authorized to examine trade secrets of crown American, or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 2, 1997 at 62 FR 51693.

Written Comments: The applicant submitted a comment letter noting that Condition (F) in the notice of proposed exemption (the Proposal) refers to the NYSE, which is an undefined term in the text of the operative language of the Proposal. The term "NYSE" is defined in paragraph 3 of the summary of facts and representations for the Proposal (see 62 FR at 51694) as being the New York Stock Exchange, which is currently the Primary Exchange for purposes of the requirements contained in Condition (E)(2) and (E)(3) as well as Condition (F). Thus, the Department has deleted the reference to "NYSE" in Condition (F) and substituted the term "Primary Exchange" in order to be consistent with other references to that term in the exemption text (also see footnote).

The applicant's letter has also provided some minor clarifications for the record, as discussed in the summary of facts and representations for the Proposal, concerning the average daily trading volume of the Crown REIT shares, the current percentage ownership of Crown American, and the outstanding stock of the Crown REIT. Interested persons may obtain copies of this information from the exemption application file, which is available to the public in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

[4] The Primary Exchange is currently the New York Stock Exchange (NYSE).

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Valley Forge Consulting Corporation, Profit Sharing Trust (the Plan), Located in King of Prussia, PA

[Prohibited Transaction Exemption 97–65; Exemption Application No. D–10486]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of a first mortgage note (the Note) by the individually-directed account (the Account) in the Plan of Steven R. Eyer to Mr. Eyer, provided—

(a) The terms of the transaction are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

(b) The Account is not required to pay any fees, commissions or other expenses in connection with the sale.

(c) The sale of Note represents a one-time transaction for cash.

(d) The fair market value of the Note is determined by a qualified, independent appraiser.

(e) As consideration for the Note, the Account receives an amount that is no less than the fair market value of the Note as of the date of the sale.

For a more complete statement of the facts and representstions supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 20, 1997 at 62 FR 54478.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Profit Sharing Keogh Plan of Richard D. Wickerham, Esq. (the Plan), Located in Schenectady, New York

[Prohibited Transaction Exemption 97–66; Exemption Application No. D–10505]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) Two loans (the Loans) totaling $50,000 by the Plan to Mr. Richard D. Wickerham (Mr. Wickerham), a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loans by Mr. Wickerham, provided the following conditions are satisfied: (1) The terms of the Loans are at least as favorable to the

Plan as those obtainable in arm's-length transactions with an unrelated party; (b) the Loans do not exceed 25% of the assets of the Plan; (c) the first Loan (Loan 1) is secured by a second mortgage on certain real property which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of Loan 1 plus the balance of the first mortgage which it secures; (d) the second Loan (Loan 2) is secured by certain personal property which has a fair market value, as determined by a qualified independent appraiser, of not less than 200% of Loan 2; (e) the fair market value of the collateral remains at least equal to the percentages described in conditions (c) and (d), above, throughout the duration of the Loans; and (f) Mr. Wickerham is the only Plan participant to be affected by the Loan transactions.[5]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 4, 1997 at 62 FR 59742.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of December, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 97–33181 Filed 12–18–97; 8:45 am]

BILLING CODE 4510–29–M

[5] Since Mr. Wickerham is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting

TIME, DATE, AND PLACE: 29 January 1998, 9:00 a.m. to 4:00 p.m.; 30 January 1998, 9:00 a.m. to 3:00 p.m.; Central Arkansas Library System, 100 Rock Street, Little Rock, Arkansas.

MATTERS TO BE DISCUSSED: NCLIS Planning Meeting: Day 1: Focus on the Commissioners; Day 2: Focus on the Commission's Action Plan; NCLIS Business Meeting.

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: 15 December 1997

Jane Williams,

Acting Executive Director.

[FR Doc. 97–33293 Filed 12–17–97; 9:22 am]

BILLING CODE 7527–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets an commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 5, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research for Ancient Civilizations submitted to the Division of Research and Education, for projects at the September 1, 1997 deadline.

2. *Date:* January 6, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration for Interdisciplinary II, submitted to the Division of Research and Education, for projects at the October 1, 1997 deadline.

3. *Date:* January 6, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research for Non-Western Cultures, submitted to the Division of Research and Education, for projects at the September 1, 1997 deadline.

4. *Date:* January 7, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research for Literature and Related Studies, submitted to the Division of Research and Education, for projects at the September 1, 1997 deadline.

5. *Date:* January 8, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration for Philosophy and Religion, submitted to the Division of Research and Education, for projects at the October 1, 1997 deadline.

6. *Date:* January 12, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration for Interdisciplinary I, submitted to the Division of Research and Education, for projects at the October 1, 1997 deadline.

7. *Date:* January 12, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowship Programs at Independent Research Institutions, submitted to the Division of Research and Education, for projects at the September 1, 1997 deadline.

8. *Date:* January 14, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration for Anthropology, Archaeology, and Folklore, submitted to the Division of Research and Education, for projects at the October 1, 1997 deadline.

10. *Date:* January 21, 1998.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Education Development and Demonstration for Literature, submitted to the Division of Research and Education, for projects at the October 1, 1997 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 97–33215 Filed 12–18–97; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Publication of System of Records

AGENCY: National Labor Relations Board (NLRB).

ACTION: Revised publication of Notice of System of Records NLRB–1, Accounting Records—Financial.

SUMMARY: The Privacy Act of 1974, as amended, requires that each agency publish a notice of a proposed new system of records, as well as proposals to revise existing systems of records. This notice alters an existing Privacy Act system of records notice NLRB–1, Accounting Records—Financial, by deleting two routine uses; amending the language of five routine uses, adding one new routine use, updating the addresses of system locations; updating the citations referring to 29 CFR 102.117; as well as making several insignificant administrative language revisions.

EFFECTIVE DATE: The amended system of records notice will become effective without further notice January 20, 1998, unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Written responses should be sent to the Executive Secretary, National Labor Relations Board, Room 11600, 1099 14th Street, NW, Washington, DC 20570–0001. Copies of such communications will be available for examination by interested persons during business hours (8:30 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays), in the Office of the Executive Secretary, Room 11600, 1099 14th Street, NW, Washington, DC 20570–0001.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, Room 11600, 1099 14th Street, NW, Washington, DC 20570–0001.

SUPPLEMENTARY INFORMATION: The following changes have been made to the existing NLRB Notice of System of Records NLRB–1, Accounting Records—Financial

1. Routine uses Nos. 1 and 2 have been deleted because the specified "need to know" in them is authorized by 5 U.S.C. 552a(b)(1)(5). Routine uses Nos. 3, 4 and 5 were renumbered Nos. 1, 2 and 3.

2. Routine use No. 6 has been amended to specify more exactly the categories of users and the information that may be disclosed. Routine use No. 6 has been renumbered No. 4.

3. Routine use No. 7 has been renumbered No. 5.

4. The language of routine use No. 8 has been amended to specify that on disclosure to an inquiring congressional office, the subject individual must be a constituent about whom the records are maintained. Routine use No. 8 has been renumbered as No 6.

5. The language of routine use No. 9 has been amended to conform to the intent of routine use (e) in the Government-wide system of records OPM/GOVT–2, Employee Performance File System Records, to eliminate the NLRB requirement that the information that may be disclosed to a labor organization "shall be furnished in depersonalized form, i.e., without personal identifiers." Routine use (e) is a Government-wide system of records OPM/GOVT–2 which provides that the information will be "disclosed to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation." The NLRB is deleting the requirement that "wherever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers," a requirement not contained in OPM/GOVT–2 routine use (e). Routine use No. 9 has been renumbered as use No. 7.

6. Routine use No. 10 has been amended by changing reference from "Agency" to "NLRB" for more specificity. Routine use No. 10 has been renumbered as routine use No. 8.

7. Routine use No. 11 is amended to specify more exactly the information that may be disclosed to a court or an adjudicative body in the course of presenting evidence or argument including disclosure to opposing counsel of witnesses in the course of civil discovery. Routine use No. 11 has been renumbered as routine use No. 9.

8. Routine use No. 10 is new and has been added for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments, and are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the NLRB in order to collect the debts under the provisions of the Debt Collection Act of 1982 (PL 97–365), and the Debt Collection Improvement Act of 1996 (PL 104–134) by voluntary repayment, or by administrative or salary offset procedures.

9. The address of system locations and managers in NLRB–1 has been changed from "NLRB, 1717 Pennsylvania Avenue, NW, Washington, DC 20570–0001" to "NLRB, 1099 14th Street, NW, Washington, DC 20570–0001."

10. References to 29 CFR 102.117 citations in NLRB–1 have been changed to read as follows for the paragraphs in Notification Procedures, 29 CFR 102.117(f); Records Access Procedures, 29 CFR 102.117 (g) and (h); Contesting Records Procedures, 29 CFR 102.117(i).

11. The Appendix has been completely updated to show all current NLRB office listings.

A report of this notice to amend NLRB–1, Accounting Records—Financial, was filed pursuant to 5 U.S.C. 552a(r) and OMB Circular A–130, Revised, with the Office of Management and Budget and with Congress. The revised text of NLRB–1 being amended (53 FR 17263–4, May 16, 1988) is set forth below.

Dated: Washington, DC, November 18, 1997.

By direction of the Board.

John J. Toner,

Executive Secretary.

NLRB–1

SYSTEM NAME:

Accounting Records—Financial.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Current records are maintained in: Finance Branch, NLRB, 1099 14th Street, NW, Washington, DC 20570–0001. Each Washington and Field Office is authorized to maintain copies of records relating to reimbursements to employees of that office and other individuals covered within the system. See the attached appendix for addresses of these offices. Inactive records are stored in the Washington National Records Center in accordance with regulations issued by the National Archives and Records Administration (36 CFR 1228.152).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals reimbursed for expenses in connection with the official functions of the NLRB; i.e., travel on official business, witness fees, FOIA Request, and transportation expenses, and miscellaneous expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include name; home or office address; organizational unit number, purpose, duration, and cost for travel assignment of Agency employees; purpose, duration, points of travel, and cost for witnesses used by the Agency; and purpose, category, and cost of miscellaneous expenses incurred by Agency employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., 5701 et seq.; 29 U.S.C. 153, 155, 159, 106, and 161(4).

PURPOSE:

These records document financial transactions regarding reimbursement of expenses in connection with official NLRB functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information therefrom is disclosed to:

1. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint.

2. The U.S. General Accounting Office for audit purposes or determination of validity claims.

3. The U.S. Department of Treasury for issuance of checks, or direct deposit.

4. Other agencies, offices, establishments, and authorities, whether Federal, state, or local, authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute, or particular program statute, or by regulation, rule, or order issued pursuant thereto.

5. Another agency, whether Federal, State, or local, or private organization where reimbursable arrangements exits between this Agency and such other agency or private organization.

6. A Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

7. Officials of labor organizations recognized under 5 U.S.C. Chapter 71, when disclosure is not prohibited by law; and the data is normally maintained by the Agency in the regular course of business and is reasonably available and necessary for full and proper discussion. The foregoing shall have the identical meaning as 5 U.S.C. 7114(b)(4) as interpreted by the FLRA and the courts.

8. The Department of Justice for use in litigation, when either: (a) The NLRB or any component thereof; (b) any employee of the NLRB in his or her official capacity; (c) any employee of the NLRB in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or (d) the United States Government where the NLRB determines that litigation is likely to affect the NLRB or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

9. A court, magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, when: (a) The NLRB or any component thereof; or (b) any employee of the NLRB in his or her official capacity; or (c) any employee of the NLRB in his or her individual capacity where the NLRB has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has interest in such litigation, and determines that such disclosure is relevant and necessary to the litigation and that the use of such records is therefore deemed by the NLRB to be for a purpose that is compatible with the purpose for which the records were collected.

10. The Defense Manpower Data Center, Department of Defense, and to the U.S. Postal Service, to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the NLRB in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), and Debt Collection Act of 1996 (Pub. L. 104–134) by voluntary repayment, or by administrative or salary offset procedures, and

Any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by that agency or receiving or eligible to receive some benefit payments from the agency when NLRB as a creditor has a claim against that person.

Disclosure of information about persons who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by NLRB may be made to other Federal agencies, only to the extent of determining whether or not the person is employed by that agency and, if so, effecting administrative or salary offset procedures against that person.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

For the purpose of collecting delinquent debt, these records may be reported to a credit bureau to add to credit history.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on original source documents except travel summary cards, some of which are also maintained on microfilm, and electronic storage for computer matching programs.

RETRIEVABILITY:

Chronologically by year, and within each year alphabetically by name.

SAFEGUARDS:

Original source documents and microfiche are maintained in file cabinets. During duty hours cabinets and computers are under surveillance of personnel charged with custody of the records, and after duty hours are behind locked doors. Access is limited to personnel with a need for access in order to perform their official functions.

RETENTION AND DISPOSAL:

Maintained and disposed of in accordance with the provisions of applicable General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESSES:

Finance Officer, NLRB, 1099 14th Street, NW, Washington, DC 20570–0001.

See the attached appendix for the titles and addresses of officials at other locations responsible for this system at their locations.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

RECORDS ACCESS PROCEDURE:

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117 (g) and (h).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(i).

RECORD SOURCE CATEGORIES:

Travel vouchers, witness vouchers, and lodging and miscellaneous receipts submitted by the individual; travel orders submitted by Agency officials; subpoenas; claims for reimbursements; and miscellaneous correspondence and information related thereto.

APPENDIX

Names and Addresses of NLRB Offices referenced in Notice of Records System shown above.

NLRB Headquarters Offices

1099 14th Street, NW, Washington, DC 20570–0001

Offices of the Board

Members of the Board, Executive Secretary, Office of the Executive Secretary, Director, Office of Representation Appeals, Director, Division of Information, Solicitor, Inspector General, Office of Inspector General

Chief Administrative Law Judge, 1099 14th Street, NW, Washington, DC 20570–0001

Associate Chief Administrative Law Judge, San Francisco Judges, 901 Market Street, Suite 300, San Francisco, California 94103–1779

Associate Chief Administrative Law Judge, New York Judges, 120 West 45th Street, 11th Floor, New York, New York 10036–5503

Associate Chief Administrative Law Judge, Atlanta Judges, Peachtree Summit Building, 401 W. Peachtree Street, NE, Suite 1708, Atlanta, Georgia 30308–3510

Offices of the General Counsel

General Counsel, Associate General Counsel, Division of Operations Management, Associate General Counsel, Division of Advice, Associate General Counsel, Division of Enforcement Litigation, Director, Division of Administration, Director, Equal Employment Opportunity

NLRB Field Offices

Regional Director, Region 1
Thomas P. O'Neal, Jr. Federal Office Building, 10 Causeway Street—6th Floor, Boston, Massachusetts 02222–1072

Regional Director, Region 2
Jacob K. Javits Federal Office Building, 26 Federal Plaza, Room 3614, New York, New York 10278–0104

Regional Director, Region 3
Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202–2387

Resident Officer
Albany Resident Office, Leo W. O'Brien Federal Building, Clinton Avenue at N. Pearl Street—Room 342, Albany, New York 12207–2350

Regional Director, Region 4
One Independence Mall, 615 Chestnut Street—7th Floor, Philadelphia, Pennsylvania 19106–4404

Regional Director, Region 5
The Appraisers Store, 103 South Gay Street, 6th Floor, Baltimore, Maryland 21202–4026

Resident Officer
Washington Resident Office, 1099 14th Street, NW, Suite 5530, Washington, DC 20570–0001

Regional Director, Region 6
William S. Moorehead Federal Building, 1000 Liberty Avenue, Room 1501, Pittsburgh, Pennsylvania 15222–4173

Regional Director, Region 7
Patrick V. McNamara Federal Building, 477 Michigan Avenue—Room 300, Detroit, Michigan 48226–2569

Resident Officer
Grand Rapids Resident Office, The Furniture Company Building, 82 Ionia Northwest—Room 330, Grand Rapids, Michigan 49503–3022

Regional Director, Region 8
Anthony J. Celebrezze Federal Building, 1240 East 9th Street, Room 1695 Cleveland, Ohio 44199–2086

Regional Director, Region 9
John Weld Peck Federal Building, 550 Main Street, Room 3003, Cincinnati, Ohio 45202–3271

Regional Director, Region 10
Marietta Tower, Suite 2400, 101 Marietta Street NW., Atlanta, Georgia 30323–3301

Resident Officer
The Burger—Phillips Centre, 1900 Third Avenue North, Suite 311, Birmingham, Alabama 35203–3502

Regional Director, Region 11
Republic Square, Suite 200, 4035 University Parkway, Winston Salem, North Carolina 27106–3325

Regional Director, Region 12
First of America Plaza—Suite 530, 201 East Kennedy Boulevard, Tampa, Florida 33602–5824

Resident Officer
Miami Resident Office, Claude Pepper Federal Office Building–13th Floor, 51 Southwest 1st Avenue, Room 1320, Miami, Florida 33130–1608

Resident Officer
Jacksonville Resident Office, Federal Building, Room 214, 400 West Bay Street, Box 35091, Jacksonville, Florida 32202–4412

Regional Director, Region 13
Bank of America Building—Suite 800, 200 West Adams Street, Chicago, Illinois 60606–5208

Regional Director, Region 14
1222 Spruce Street, Room 8302, Saint Louis, Missouri 63103–2829

Regional Director, Region 15
1515 Poydras Street—Room 610, New Orleans, Louisiana 70112–3723

Regional Director, Region 16
Fritz G. Lanham Federal Office Building, 819 Taylor Street, Room 8A24, Fort Worth, Texas 76102–6178

Resident Officer

Houston Resident Office, Suite 550, Lyric Center, 440 Louisiana Street, Houston, Texas 77002–2649
Resident Officer
San Antonio Resident Office, U.S. Post Office/Courthouse Building—Room 565, 615 E. Houston Street, San Antonio, Texas 78205–2040
Resident Officer
El Paso Resident Office, P.O. Box 23159, El Paso, Texas 79923–3159
Regional Director, Region 17
8600 Farley Street, Suite 100, Overland Park, Kansas 66212–4677
Resident Officer
Tulsa Resident Office, Grantson Building—Suite 990, 111 West Fifth Street, Tulsa, Oklahoma 74103–4214
Regional Director, Region 18
Federal Building, 110 South 4th Street—Room 316, Minneapolis, Minnesota 55401–2291
Resident Officer
Des Moines Resident Office, Federal Building—Room 909, 210 Walnut Street, Des Moines, Iowa 50309–2116
Regional Director, Region 19
Henry Jackson Federal Building—Room 2948, 915 Second Avenue, Seattle, Washington 98174–1078
Resident Officer
Anchorage Resident Office, Federal Office Building, 222 West 7th Avenue, Room 510, Box 21, Anchorage, Alaska 99513–3546
Officer in Charge
Subregion 36, Koin Center—Room 401, 222 Southwest Columbia Street, Portland, Oregon 97201–6604
Regional Director, Region 20
901 Market Street—Suite 400, San Francisco, California 94103–1735
Officer in Charge
Subregion 37, Prince Kuhio Federal Building—Room 7318, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850–4980
Regional Director, Region 21
888 South Figueroa Street—9th Floor, Los Angeles, California 90017–5449
Resident Officer
San Diego Resident Office, Pacific Professional Center—Suite 302, 555 West Beech Street, San Diego, California 92101–2939
Regional Director, Region 22
20 Washington Place—5th Floor, Newark, New Jersey 07102–2570
Regional Director, Region 24
La Torre de Plaza—Suite 1002, 525 F.D. Roosevelt Avenue, San Juan, Puerto Rico 00918–1002
Regional Director, Region 25
Minton Capehart Federal Building—Room 238, 575 North Pennsylvania Street, Indianapolis, Indiana 46204–1577
Region Director, Region 26
Mid-Memphis Tower—Suite 800, 1407 Union Avenue, Memphis, Tennessee 38104–3627
Resident Officer
Little Rock Resident Office, TCBY Building—Suite 375, 425 West Capitol Avenue, Little Rock, Arkansas 72201–3489
Resident Officer
Nashville Resident Office, 8101 Broadway, 3rd Floor, Nashville, Tennessee 37203–3816
Regional Director, Region 27
Dominion Plaza, North Tower, 600 17th Street, 7th Floor, Denver, Colorado 80202–5433
Regional Director, Region 28
Security Building, Suite 440, 234 North Central Avenue, Phoenix, Arizona 85004–2212
Resident Officer
Albuquerque Resident Office, Western Bank Plaza—Room 1820, 505 Marquette Avenue, NW., Albuquerque, New Mexico 87102–2181
Resident Officer
Las Vegas Resident Office, Alan Bible Federal Building—Suite 400, 600 Las Vegas Boulevard, South, Las Vegas, Nevada 89101–6637
Regional Director, Region 29
One Metro Tech Center, Jay Street and Myrtle Avenue—10th Floor, Brooklyn, New York 11201–4201
Regional Director, Region 30
Henry S. Reuss Federal Plaza—Suite 700, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203–2211
Regional Director, Region 31
Federal Building/USPO—Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024–3682
Regional Director, Region 32
Breuner Building, 2nd Floor, 1301 Clay Street, Room 300N, Oakland, California 94612–5211
Regional Director, Region 33
Hamilton Square Building—Suite 200, 300 Hamilton Boulevard, Peoria, Illinois 61602–1104
Regional Director, Region 34
1 Commercial Plaza—21st Floor, Church and Trumbull Street, Hartford, Connecticut 06103–3599

[FR Doc. 97–33162 Filed 12–18–97; 8:45 am]
BILLING CODE 7545–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1996 and ending September 30, 1997.

Name and Title

Richard L. Ahearn—Regional Director, Region 9
Frank V. Battle—Deputy Director of Administration
Mary Joyce Carlson—Deputy General Counsel
Harold J. Datz—Chief Counsel to Board Member
Robert A. Giannasi—Chief Administrative Law Judge
Wayne R. Gold—Director, Office of Representation Appeals
Lester A. Heltzer—Deputy Chief Counsel to Board Member
John E. Higgins—Solicitor
Peter B. Hoffman—Regional Director, Region 34
Gloria Joseph—Director of Administration
Barry J. Kearney—Associate General Counsel, Advice
Linda R. Sher—Associate General Counsel, Enforcement Litigation
Richard A. Siegel—Acting Associate General Counsel, Operations-Management
Elinor H. Stillman—Chief Counsel to Board Member
John J. Toner—Executive Secretary
Dennis P. Walsh—Chief Counsel to Board Member
Alfred L. Wolff—Acting Chief Counsel to the Chairman

Dated: Washington, DC, December 15, 1997.

By Direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 97–33124 Filed 12–18–97; 8:45 am]
BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40–8027]

Notice of Consideration of Amendment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for decommissioning the Cabot Performance Materials Revere, Pennsylvania, site, and opportunity for a hearing.

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SMC–1562 to authorize decommissioning of Cabot Performance Materials (CABOT) Revere, Pennsylvania, site. This license is issued to CABOT to possess contaminated material at its Reading and Revere, Pennsylvania sites. NRC licenses this facility under 10 CFR part 40. Specifically, the license authorizes CABOT to possess 100 tons of elemental uranium and thorium total at both sites. The contaminated material at the Revere site is in the form of soil located at four discrete locations. The contamination is the result of processing ores which contained uranium and thorium.

On November 19, 1997, the licensee submitted a site decommissioning plan (SDP) to NRC for review that summarized previous decommissioning efforts at the Revere site. The SDP concludes that long-term doses from the contaminated material at current levels meet the requirements of the Radiological Criteria for License Termination rule (62FR39058). Therefore, the licensee proposes that no additional decommissioning is required.

Prior to the issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays; or

2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Services Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Cabot Performance Materials, P.O. Box 1608, Boyertown, Pennsylvania 19512, Attention: Mr. Anthony T. Campitelli, and;

2. NRC staff, by delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch.

For further details with respect to this action, the application for renewal is available for inspection at NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Timothy E. Harris, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6613. Fax.: (301) 415–5398.

Dated at Rockville, Maryland, this 12th day of December 1997.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–33219 Filed 12–18–97; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 AND STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77 issued to Commonwealth Edison Company (the licensee) for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The amendment would amend the Technical Specifications (TS) related to "Containment Vessel Structural Integrity," to incorporate the requirements of 10 CFR 50.55a(b)(2)(vi) and 10 CFR 50.55a(b)(2)(ix) and update the existing Containment Vessel Structural Integrity Programs to meet the requirements found in Subsection IWL of the 1992 Edition, 1992 Addenda of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Section XI. The proposed amendment would also incorporate Regulatory Guide 1.35.1, 1990, "Determination Prestressing Forces for Inspection of Prestressed Concrete Containment."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the surveillance requirements for containment reinforced concrete and unbonded post-tensioning systems inservice examinations as required by 10 CFR 50.55a(b)(2)(vi) and 10 CFR 50.55a(b)(2)(ix). The revised requirements affect the inservice inspection program designed to detect structural degradation of the containment reinforced concrete and unbonded post-tensioning systems program and do not affect the function of the containment reinforced concrete and the unbonded post-tensioning system components. The reinforced concrete and the unbonded post-tensioning system are passive components whose failure modes

could not act as accident initiators or precursors.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements or introduce a new accident initiator or precursor or malfunction mechanism. The proposed changes provide an NRC-approved ASME Code inspection/testing methodology to assure age-related degradation of the containment structure will not go undetected. The function of the containment reinforced concrete and the unbonded post-tentioning system components are not altered by this change. Additionally, there is no change in the types or increase in the amounts of any effluent that may be released offsite; and there is no increase in individual or cumulative occupational radiation exposure. Therefore, the possibility of a new or different kind of accident from any previously evaluated has not been created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes revise the surveillance requirements for containment reinforced concrete and unbonded post-tensioning systems inservice examinations and tests contained in the referenced TS as required by 10 CFR 50.55a(b)(2)(vi) and 10 CFR 50.55a(b)(2)(ix). The proposed changes do not affect the ability of containment to mitigate design basis accidents, and, therefore, do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 20, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at: for Byron, located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 17, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms: for Byron, located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 12th day of December, 1997.

For the Nuclear Regulatory Commission.

George Dick, Jr.,

Project Manager Project Directorate III–2 Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 97–33230 Filed 12–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456, and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing Byron Station, Units 1 and 2 and Braidwood Station, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77 issued to Commonwealth Edison Company (the licensee) for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendment would revise technical specification (TS) 1.0, "Definitions", TS 3/4.6.1, "Primary Containment" and associated Bases; and TS 5.4.2, "Reactor Coolant System Volume" for Byron and Braidwood to support the steam generator replacement for Unit 1 at each site. The replacement steam generators increase the reactor coolant system volume which results in a higher calculated peak containment pressure (Pa) value. The staff's proposed no significant hazards consideration determination for the requested change was published on April 23, 1997 (62 FR 19826).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Each of the RSGs has a larger RCS primary side volume than the original steam generators (OSGs). As a result of the RCS volume increase, the mass and energy release during the blowdown phase of the large break loss of coolant accident (LBLOCA) is increased. Additionally, the heat transfer rate of the RSGs is greater than the OSGs, and the RSGs will operate at a slightly higher pressure than that for the OSGs. Consequently, the steam enthalpy exiting the break during the reflood period, for the RSGs, will be greater than for the OSGs. This results in an increase in the containment building peak pressure, P_a.

The proposed revisions to the Technical Specifications involve the corrected value of the current Unit 1 and Unit 2 RCS volume and the incremental change in RCS volume for the RSGs. The proposed revisions also involve the defined value of Unit 1 P_a following installation of the RSGs. Several editorial changes are also being made to improve clarity and consistency of the TS.

RCS volume is not an initiator for any event and an increase in volume does not affect any operating margin or requirements. Therefore, increasing the primary volume does not increase the probability of any event previously analyzed.

The current value of P_a for Unit 2 is unchanged due to conservatism in the original analysis. The revised value of P_a for Unit 1 continues to be less than the design basis pressure for the containment structure. The change represents only a revision to the containment test pressure for containment leakage testing. Such testing is only performed with the affected unit in the shutdown condition. Therefore, the proposed change in P_a for Unit 1 does not involve a significant increase in the probability of an accident previously evaluated.

All accidents in the Updated Final Safety Analysis Report (UFSAR) were evaluated to determine the effect of an increase in primary volume on accident consequences. The events identified that may be impacted by an increase in primary volume are the Waste Gas System Leak or Failure and LBLOCA. For the Waste Gas System Leak or Failure, the activity of the decay tank is controlled to Technical Specification limits which are unaffected by RCS volume. Therefore, an increase in RCS volume would not increase the offsite dose.

The offsite dose calculation for the LBLOCA is unaffected by the proposed

change. The license basis offsite dose calculation is in accordance with NRC Reg Guide 1.4 "Assumptions Used for Evaluating The Potential Radiological Consequences of a Loss of Coolant Accident for Pressurized Water Reactors." This Regulatory Guide states, in part, "* * * a number of appropriately conservative assumptions, based on engineering judgment and on applicable experimental results from safety research programs conducted by the AEC." These conservatisms include (but are not limited to) the following assumptions:

Twenty five percent of the equilibrium full power radioactive iodine inventory is immediately available for leakage from the primary containment. 100% of the equilibrium full power radioactive noble gas inventory is immediately available for leakage from the primary containment. The primary containment should be assumed to leak at the (maximum) leak rate specified in the technical specifications for the first 24 hours and at 50% of this value for the remaining 29 days of the accident duration.

The design basis leakage corresponding to a peak containment pressure of 50 psig utilized in the design basis accident analysis is 0.10% per day of the containment free air mass. Therefore, the offsite dose calculation was performed with a leakage of .1% per day for day one and .05% per day for days 2 through 30. Isotopic inventories are unaffected by the increase in reactor coolant volume. Thus, the offsite dose is unaffected by the increase in the peak containment pressure. Therefore, this proposed change to P_a does not involve a significant increase in the consequences of an accident previously evaluated.

The editorial changes proposed are for clarity and consistency within the Technical Specifications and do not affect either the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change in RCS volume is a change in a plant parameter within the "Design Features" section of the Technical Specifications. Increasing the RCS volume does not create any new or different failure modes. The existing RCS design requirements continue to be met.

The revised value of P_a for Unit 1 following replacement of steam generators continues to be less than the design basis pressure for the containment building structure. The change represents only a revision to the test pressure for containment leakage testing. Such testing is only performed with the affected unit in the shutdown condition. Therefore, no new or different failure modes are being introduced by modification of the testing parameters.

The editorial changes proposed are for clarity and consistency within the Technical Specifications and do not result in any physical changes to the facility or how it is operated. No new or different failure modes are being introduced by these changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Changing the RCS volume in the Technical Specifications does not reduce the margin of safety. RCS volume is a design feature. An evaluation of all UFSAR accidents was performed to determine the effect of an increase in RCS volume. This evaluation is summarized as follows:

An evaluation of the Chemical and Volume Control System Malfunction was performed to determine the effect of the increased RCS volume. The larger RCS volume reduces the reactivity insertion for a given dilution flow rate. Therefore, the UFSAR analyses remain bounding for Byron and Braidwood and there is no reduction in the margin of safety.

An evaluation of the Inadvertent Actuation of the Emergency Core Cooling System During Power Operation Event was performed to determine the effect of the increased RCS volume due to the RSGs. For this event, the injection of borated water causes a negative reactivity insertion, which increases DNBR. For a given Refueling Water Storage Tank (RWST) boron concentration, the larger RCS volume will cause a reduction in the negative reactivity insertion rate as compared to the current UFSAR analysis. However, negative reactivity would still be inserted and no fuel pins would experience DNB. Additionally, the increased RCS volume was evaluated to determine the effect on pressurizer level following the inadvertent actuation of ECCS and was found to be acceptable. Therefore, there is no reduction in the margin of safety.

An evaluation of the Small Break LOCA was performed to determine the effect of increased RCS volume. The additional RCS volume will cause a delay in the loop seal clearing which in turn delays the core uncovery as compared with the UFSAR analysis. A delay in core uncovery reduces the amount of core heatup which results in a lower peak clad temperature (PCT) because the core decay heat would be less than in the UFSAR analysis. The benefit is considered small, but there is still a benefit. Therefore, the increased RCS volume does not result in a reduction in the margin of safety.

An evaluation of the Large Break LOCA was performed to determine the effect of increased RCS volume for the RSGs. For a LB LOCA, the increased RCS volume causes the blowdown phase of the event to be longer. Increased blowdown phase, alone, could potentially result in a higher PCT. However, the RSGs also have less resistance to flow due to increased primary side steam generator flow area, which results in a higher blowdown flow compared to the OSGs. The increased blowdown flow will compensate for the longer blowdown phase associated with the increased RCS volume. The net effect is that the blowdown time (end of bypass) for the RSG will be the same or decrease compared to the OSG. Reduced resistance to break flow for the RSG compared to the OSG will result in a lower PCT for the RSG compared to the OSG.

The increase in the current value of RCS volume in Unit 2 is significantly less than the increase associated with the replacement of the steam generators in Unit 1. The small increase in the RCS volume will likely result in a slight increase in the blowdown period. This slight increase in the blowdown period will have no significant impact on the peak clad temperature (PCT) calculation for Unit 2. Any small changes in the PCT due to this small increase in the RCS volume can be easily accommodated for Unit 2 because of the significant margin in the PCT (over 100 degrees) available to the Appendix K 10 CFR 50.46 acceptance criteria of 2200 °F. Therefore, there is no reduction in the margin of safety.

An evaluation of the Gas Waste System Leak or Failure was performed to determine the effect of the increased RCS volume. Because the activity of the decay tank is controlled within Technical Specification limits, an increase in RCS volume would not change the results of the event. Therefore, there is no reduction in the margin of safety.

An evaluation was performed to determine the effect of the increased RCS volume (associated with the RSGs) on the peak containment pressure following a LBLOCA. The increased RCS volume caused the peak containment pressure to increase to 47.8 psig. This is still below the containment design pressure of 50.0 psig. Therefore, there is no reduction in the margin of safety. The increase in RCS volume for the existing units (without RSGs) remains within the conservative volume used in the calculation of the current peak containment pressure value of 44.4 psig. Therefore, there is no reduction in the margin of safety.

This proposed change involves testing requirements designed to demonstrate acceptable leakage rates are maintained. If acceptable leakage rates are maintained as outlined in the Technical Specifications, there will be no reduction in the margin of safety. In the event of degradation of a containment seal that results in unacceptable leakage, plant shutdown will occur as required by Technical Specifications and administrative requirements in accordance with approved plant procedures. Therefore, this proposed change does not involve a significant reduction in a margin of safety. The editorial changes proposed are for clarity and consistency within the Technical Specifications and do not result in any physical changes to the facility or how it is operated. Therefore, the changes have no effect on the margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 20, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 30, 1997, as revised on December 9, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms: for Byron, located at the Byron Public Library District, 109 Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 15th day of December, 1997.

For the Nuclear Regulatory Commission.

George Dick, Jr.,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33231 Filed 12–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Policy Statement on Cooperation With States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities: Notice of Approval

On February 22, 1989 (54 FR 7530) as revised on February 25, 1992 (57 FR 6462), the NRC published a policy statement addressing cooperation between the NRC and States concerning commercial nuclear power plants and other utilization facilities. The NRC has received a renewal of the clearance from the Office of Management and Budget (OMB) for the information collection requirements under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35). The policy statement is approved under OMB control number 3150–0163.

Dated at Rockville, Maryland this 15th day of December, 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–33220 Filed 12–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of New Mexico Relinquishment of Sealed Source and Device Evaluation and Approval Authority and Reassumption by the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of reassumption of sealed source and device evaluation and approval authority from the State of New Mexico.

SUMMARY: Notice is hereby given that effective January 1, 1998, the Nuclear Regulatory Commission will reassume regulatory authority for sealed source and device evaluations and approvals in the Agreement State of New Mexico in response to a request from the Governor of the State of New Mexico to relinquish this authority.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Cardelia H. Maupin, Senior Project Manager, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–2312, Internet: CHM@NRC.GOV.

SUPPLEMENTARY INFORMATION: Currently, the State of New Mexico has an Agreement with the Nuclear Regulatory Commission (NRC) which grants the State authority to regulate specific categories of radioactive materials formerly regulated by the NRC. This Agreement was entered into on May 1, 1974, pursuant to Section 274b of the Atomic Energy Act of 1954, as amended.

Recently, the NRC received a letter from New Mexico Governor Gary E. Johnson (September 8, 1997) requesting relinquishment of the State's authority to evaluate and approve sealed source and devices, and assumption of this authority by NRC. The requested action would involve reassertion of regulatory authority by NRC over activities currently regulated by New Mexico pursuant to its Agreement with NRC.

The Governor of New Mexico noted there are two manufacturers in the State and there has been no sealed source and device evaluations conducted since 1988. Governor Johnson indicated that it would not be cost effective to fund and maintain staff to conduct sealed source and device evaluations.

The Commission has agreed to the request and has notified New Mexico that effective January 1, 1998, the NRC will reassume authority to evaluate and approve sealed source and device applications within the State of New Mexico. The State of New Mexico will retain authority to regulate the manufacture and use of sealed sources and devices within the State in accordance with its Section 274b Agreement with the NRC.

Dated at Rockville, Maryland this 12th day of December, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–33218 Filed 12–18–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974, Proposed Changes to System of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of a proposed routine use.

SUMMARY: The purpose of this document is to give notice of a proposed routine use to one of the RRB's Privacy Act systems of records.

DATES: The new routine use will be effective 30 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, (312) 751–4548.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Use

Pursuant to Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Railroad Retirement Board (RRB) will disclose data from its system of records RRB–19, Payroll Record System, to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services (HHS) for use in the National Database of New Hires, part of the Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individual are hired by the RRB, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We may also disclose to the FPLS names, social security numbers, and quarterly earnings of each RRB employee within one month of the end of the quarterly reporting period.

Information submitted by the RRB to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The dates disclosed by the RRB to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

II. Compatibility of Proposed Routine Use

We are proposing this routine use in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a "compatible" use is a use which is necessary and proper. Since the proposed uses of the data are required by Public Law 104–193, they are clearly necessary and proper uses, and therefore "compatible" uses which meet the requirement of the Privacy Act.

III. Altered System Report

On December 11, 1997, the Railroad Retirement Board filed an altered system report for this system with the chairman of the designated Senate and House committees and with the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circular No. A–130, Appendix I.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–19

SYSTEM NAME: PAYROLL RECORD SYSTEM—RRB

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Paragraph "j" is added to read as follows:

j. The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act, Pub. L. 104–193).

[FR Doc. 97–33202 Filed 12–18–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39444; File Nos. SR–DTC–97–16, SR–NSCC–97–08, SR–Philadep–97–04, SR–SCCP–97–04]

Self-Regulatory Organizations; The Depository Trust Company; National Securities Clearing Corporation; Philadelphia Depository Trust Company; Stock Clearing Corporation of Philadelphia; Order Granting Partial Permanent Approval and Partial Temporary Approval of Proposed Rule Changes Relating to a Decision by the Philadelphia Stock Exchange, Incorporated to Withdraw From The Securities Depository Business and to Restructure and Limit Its Clearance and Settlement Business

December 11, 1997.

In August and September, 1997, The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC"), Philadelphia Depository Trust Company ("Philadep"), and Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] concerning the decision by the Philadelphia Stock Exchange, Incorporated ("PHLX") to withdraw from the securities depository business and to restructure its clearance and settlement business.[2] Notices of the proposals were published in the **Federal Register** on October 15 and 16, 1997.[3] The Commission received one comment letter, which pertained to DTC and which expressed concern that PHLX's decision to withdraw from the clearance and settlement and securities depository businesses reduced competition in the market.[4] The Commission also received DTC's letter responding to the comment letter.[5] For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

PHLX is withdrawing from the securities depository business currently offered through its wholly owned subsidiary, Philadep, and is restructuring and limiting its clearance and settlement business currently offered through its wholly owned subsidiary, SCCP. DTC, NSCC, PHLX, Philadep, and SCCP have entered into an agreement dated as of June 18, 1997, governing arrangements relating to PHLX's decision ("Agreement"). Pursuant to the Agreement, as discussed below, most of the current day-to-day depository and clearance services of Philadep and SCCP will now be provided by DTC and NSCC.

A. Agreement

Under the Agreement, the parties are working to assure an orderly transition with respect to the cessation of Philadep's operations and the restructuring of SCCP's operations. Philadep and DTC have agreed to assist sole Philadep participants in becoming DTC participants to the extent that they meet DTC qualifications and desire to become DTC participants. Philadep and DTC also have agreed to cooperate in the transfer of securities from the custody of Philadep to the custody of DTC.

After the closing date of the Agreement, SCCP no longer will maintain its continuous net settlement ("CNS") system for conducting

[1] 15 U.S.C. 78s(b)(1).

[2] On August 5, 1997, DTC filed its proposed rule change with the Commission (File No. SR–DTC–97–16). On August 6, 1997, NSCC filed with the Commission and on August 28, 1997, amended its proposed rule change (File No. SR–NSCC–97–08). On September 25, 1997, Philadep filed its proposed rule change with the Commission (File No. SR–Philadep–97–04). On September 30, 1997, SCCP filed its proposed rule change with the Commission (File No. SR–Philadep–97–04).

PHLX submitted a rule filing on November 14, 1997 (File No. SR-PHLX–97–59) in connection with its withdrawal from the clearance and settlement and securities depository businesses. PHLX's rule filing is being addressed in a separate notice and order.

[3] Securities Exchange Act Release Nos. 39222 (October 8, 1997), 62 FR 53847 (DTC); 39220 (October 8, 1997), 62 FR 53848 (NSCC); 39223 (October 8, 1997), 62 FR 53681 (SCCP); 39221 (October 8, 1997), 62 FR 53681 (Philadep).

[4] Letter from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Financial Services, Inc., (November 4, 1997).

[5] Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC (November 14, 1997).

settlements between SCCP and its participants. As a result, SCCP will cease providing the cash settlement services attendant to Philadep's same-day funds settlement system and the Philadep settlement process. However, pursuant to the Agreement, SCCP may continue to offer limited clearing and settlement services to PHLX members. SCCP intends to provide trade confirmation and recording services for PHLX members that carry out transactions through regional interface operations ("RIO") accounts and ex-clearing accounts. Under the amended versions of SCCP Rules 10 and 11, SCCP will not provide clearing guarantees on such transactions.

SCCP will continue to offer margin services for certain participants in a special account established by SCCP at NSCC. Pursuant to the Agreement, SCCP will establish an omnibus account at NSCC and will abide by NSCC's rules and procedures as a participant of NSCC. Under the Agreement, SCCP may offer margin services only to: (i) PHLX equity specialists for their specialists and alternate specialists transactions, as well as for their proprietary transactions in securities for which they are not appointed as specialists or alternate specialists and (ii) PHLX members listed on a schedule that are not PHLX equity specialists for their proprietary transactions.[6]

Under the Agreement, PHLX, Philadep, and SCCP will not directly or indirectly engage in or compete in the business of providing securities depository services or clearance and settlement services for a period of five years. This prohibition does not apply to PHLX's equity ownership interest in The Options Clearing Corporation and does not apply to SCCP's providing of margin services.

B. SCCP Rule Changes[7]

A new definition of "margin member" is established in SCCP Rule 1 to reflect those PHLX floor firms entitled to clear through a SCCP margin account.[8] Pursuant to the amended version of SCCP Rule 9, SCCP may provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account. SCCP will margin such accounts based on its procedures and on Regulation T of the Board of Governors of the Federal Reserve System.[9]

At any time, SCCP may demand a margin member to provide additional margin based upon its review of the margin member's security positions held by SCCP. SCCP will retain its margin thresholds as currently specified in its procedures and may require adequate assurances or additional margin in addition to the minimum margin thresholds in order to protect SCCP in issues deemed by SCCP to warrant additional protection. SCCP may demand any such margin payments in federal funds in accordance with its procedures.

SCCP may issue margin calls to any margin member whose margin requirement exceeds the account equity of the margin member's margin account.[10] SCCP may waive any amount that would trigger a margin call not exceeding $500. A margin member that fails to meet a margin call will be subject to SCCP Rule 22 (formerly SCCP Rule 23) which governs disciplinary proceedings and penalties. SCCP may cease to act for delinquent margin members and will retain a lien on all delinquent margin members' accounts and securities therein.

SCCP will segregate and maintain records on each individual margin account and will maintain the omnibus account so as to reflect all positions in SCCP's margin accounts. SCCP also will guarantee the settlement obligations of the omnibus account to NSCC. Pursuant to the Agreement, PHLX will guarantee SCCP's obligations to NSCC.

SCCP's books and records for the omnibus clearance and settlement account will reflect all activity that occurs in the account at NSCC and DTC. At any time prior to midnight (Eastern Time) on the next business day after SCCP receives a margin member's trade, SCCP will be entitled to reverse such a trade from such margin member's account. SCCP will settle the omnibus clearance and settlement account with NSCC each business day in accordance with NSCC's rules and procedures. Accordingly, SCCP will be subject to NSCC's rules including, but not limited to, the following: (i) Daily mark-to-market requirements, (ii) allocations of long and short securities positions, (iii) dividend and reorganization settlement activities, and (iv) pledging of collateral and stock loans. Dividends, reorganizations, adjustments, and buy-ins will be passed through to margin members in accordance with SCCP's procedures. SCCP will continue to provide margin members with purchase and sales reports, bookkeeping reports, dividend and reorganization reports, and preliminary equity reports in accordance with SCCP's procedures.

SCCP will have one composite settlement per day with NSCC through the omnibus clearance and settlement account. SCCP will maintain line of credit ("LOC") arrangements with one or more commercial banks sufficient to support anticipated funding needs of the underlying margin accounts. In order to cover all such margin debits, SCCP anticipates obtaining an aggregate of $5 million in committed and $5 million in uncommitted LOCs from each of two separate lending institutions, totaling $20 million.

SCCP is amending its Rule 14 (formerly SCCP Rule 15) to provide that mark-to-market funds may not be used to finance margin members' account activity. SCCP also is amending Rule 14 to provide that any mark-to-market funds collected by SCCP will be segregated and invested in accordance with analogous procedures set forth in SCCP Rule 4. Under the amended version of SCCP Rule 13, SCCP will pass through any buy-ins submitted by NSCC to SCCP or by a SCCP participant to NSCC in accordance with NSCC's buy-in rules and procedures.

To ensure that margin members have an efficient way to obtain securities depository services after the closure of Philadep's depository service, NSCC will sponsor SCCP in opening a depository account at DTC to benefit margin members. If margin members carry out trades in securities that are not eligible for custodial services in DTC's book-entry system, SCCP will use NSCC's direct clearing service to settle the transactions. SCCP will continue to perform bookkeeping and reconciliation services for the omnibus clearance and settlement account and its related DTC custody account pursuant to SCCP procedures.

In accordance with NSCC's participants fund formulae, SCCP, as a NSCC participant and as a sponsored participant of DTC, will be required to provide NSCC and DTC with participants fund contributions. SCCP is deleting its participants fund formulae applicable to inactive accounts, full service CNS accounts, and layoff accounts. SCCP will establish a fixed $35,000 contribution for each of the following account categories: specialist margin and non-specialist margin. No changes will be made to the RIO account formula. Accordingly, RIO account participants will continue to be subject to a contribution of $10,000 to $75,000 depending upon monthly trading activity. SCCP will continue to use its current procedure under which a participant engaging in more than one account type activity will be subject only to the formula that would generate the highest participants fund contribution.

SCCP may allocate any portion of its participants fund to satisfy NSCC's and DTC's participants fund requirements with respect to the omnibus account. Any excess SCCP participants fund cash not used to fund SCCP's NSCC and DTC participants fund requirements will be segregated and invested by SCCP in accordance with SCCP Rule 4. If SCCP's participants fund formulae do not provide for contributions that equal those which would be required pursuant to the NSCC and DTC participants fund formulae, SCCP reserves the right to collect from each participant an additional pro rata charge to meet any such deficit.

SCCP is amending SCCP Rule 4 to specify that no participants fund contributions may be used in financing margin members' margin account activity.[11] In addition SCCP is amending Rule 4 to provide for the establishment by SCCP and Philadep of a reserve fund that will be used to provide a liquid fund to draw on as necessary to meet certain specified expenses. The reserve fund will be funded with deposits of $1,000,000 by August 11, 1998; $1,000,000 by August 11, 1999; and $1,000,000 by August 11, 2000. The reserve fund will be held and invested in accordance with the procedures set forth in SCCP Rule 4 for the holding and investment of the participants fund. Amounts drawn from the reserve fund must be replenished within sixty days following the date of each such withdrawal. SCCP Rule 4 also is being amended to provide that no portion of the reserve fund may be used in financing margin members' margin account activity.

SCCP is amending its schedule of fees to delete those fees associated with services no longer to be offered. SCCP will now charge RIO Accounts fees of $0.05 per $1,000 of contract value.

II. Comment Letters

The Commission received two comment letters in response to the notice of DTC's proposed rule change: one was a comment letter from Thomson Financial Services ("Thomson") pertaining to DTC and one was a response from DTC to Thomson's letter.[12] Thomson stated that it did not object to DTC's proposal to offer depository services to former sole Philadep participants; however, Thomson also stated its belief that the cessation of Philadep's services might adversely affect competition.

DTC stated in response that it is strongly committed to competition. DTC noted that the regional stock exchanges have decided independently that maintaining their own securities depositories was no longer in their members' best interests. In addition, DTC stated that when the regional stock exchanges have decided to close their securities depositories, DTC always has responded promptly by expending resources to ensure the safe transfer of funds and securities.

III. Discussion

Section 17A(b)(3)(F) of the Act[13] requires that the rules of a clearing agency be designed to promote prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule changes by DTC, NSCC, Philadep, and SCCP are consistent with the requirements of Section 17A(b)(3)(F) because they should facilitate prompt and accurate clearance and settlement of securities transactions by providing More efficient and less expensive clearing and depository services. Moreover, because the proposals provide for the orderly transfer of open positions and securities from SCCP to NSCC and from Philadep to DTC, the Commission believes the proposals are consistent with the obligations of DTC, NSCC, Philadep, and SCCP to safeguard securities and funds in their custody and control and to provide for the prompt and accurate clearance and settlement of securities transactions.

Section 19(b) of the Act[14] provides that the Commission shall approve proposed exchange and clearing agency rule changes if it finds that the proposals are consistent with the requirements of the Act and the rules and regulations thereunder that govern those organizations. Competition among clearing agencies is a factor that the Commission must consider in its examination of any proposal.[15] However, the Commission is not required to achieve its regulatory objectives in the least anticompetitive manner and is at most required to decide that any anticompetitive effects of its actions are necessary or appropriate to the achievement of its objectives.[16] Therefore, in assessing the anticompetitive effect, the Commission is required to balance the maintenance of fair competition along with a number of other equally important express purposes of the Act such as the protection of investors and the safeguarding of securities and funds.[17]

Despite the dominant market position of DTC and NSCC, the Commission believes the current regulatory scheme and the particular structure and nature of the clearing and depository industries provide ample means of avoiding the potential negative effects of a monopoly. Sections 17A and 19 of the Act and the rules thereunder provide the Commission appropriate and effective regulatory authority over DTC and NSCC. The Commission believes that after the consummation of the proposed arrangements, securities industry members will continue to have access to high quality, low cost depository and clearing services provided under the mandate of the Act. Accordingly, the Commission believes that the proposed transaction advances the objectives of the national clearance and settlement and system without an inappropriate or unnecessary burden upon competition.

Thus, the light of the above, the Commission finds that approval of the proposals is warranted. However, because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain PHLX members, the Commission finds that it is appropriate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-laws, Rules, or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends

[6] Under the Agreement, SCCP may add other PHLX members to this schedule subject to NSCC's approval. The Commission understands that at this time SCCP will be offering margin services only to PHLX members that are PHLX equity specialists.

[7] SCCP included the text of its revised rules as an exhibit which is available for inspection and copying at the Commission's public reference room and through SCCP.

[8] Under the rule change, the term "margin member" is defined to include participants that are PHLX specialists, alternate specialists, and other PHLX floor members specifically approved by NSCC to effect trading in a margin account.

[9] 12 CFR 220.

[10] Under the rule change, SCCP Rule 1 defines the term "account equity" as the total net current market value of security positions held in the margin account plus or minus cash balances in such account.

[11] As previously stated, SCCP is establishing separate sources of funding, including bank LOCs, to serve the operation of its margin members' margin accounts.

[12] *Supra* Notes 4 and 5.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78s(b).

[15] See Exchange Act Section 17A(b)(3)(I), 15 U.S.C. 78q–1(b)(I).

[16] 15 U.S.C. 78c(f). *Bradford National Clearing Corp.* v. *SEC*, 590 F.2d 1085, 1105 (D.C. Cir. 1978).

[17] *Id.* at 1106.

its By-laws, Rules, or Procedures through December 31, 1998.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes of Philadep (File No. SR–Philadep–97–04), of DTC (File No. SR–DTC–97–16), and of NSCC (File No. SR–NSCC–97–08) and the portion of SCCP's proposed rule change dealing with its entering into the Agreement (File No. SR–SCCP–97–04) be and hereby are approved.

It is further Ordered, pursuant to Section 19(b)(2) of the Act, that the portion of SCCP's proposed rule change that amends its By-laws, Rule, or Procedures (File No. SR–SCCP–97–04) be and hereby is approved through December 31, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33194 Filed 12–18–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39442; File No. SR–NASD–97–78]

Self-Regulatory Organizations; Order Granting Partial Approval on an Accelerated Basis of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amended Interpretation of IM–8310–2, Release of Disciplinary Information

December 11, 1997.

I. Introduction

On October 17, 1997, National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change which amends the Interpretation on the Release of Disciplinary Information, IM–8310–2 of Rule 8310 of the Procedural Rules of the NASD ("Interpretation" or "IM–8310–2"). A notice of the proposed rule change was published in the **Federal Register** on November 21, 1997.[3] The Commission, to date, has received no comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting partial accelerated approval of the proposed rule change.

In its notice, filed on October 17, 1997, the NASD Regulation, Inc. ("NASDR") proposed to amend IM–8310–2 to include the phrase "electronic inquiry" in the rule language so that it could respond to electronic inquiries, as well as written or telephonic inquiries. In the notice, the NASDR also proposed to amend the rule language to include the additional information required to be reported on the amended Forms U–4, U–5, and BD. The NASDR has requested that the Commission approve, on an accelerated basis, only that portion of the amended rule language that allows it to respond to electronic inquiries.[4] Hence, the Commission is partially approving, on an accelerated basis, that portion of the NASDR's request which will give the NASD the option of responding to the electronic inquiries of persons or entities requesting employment and disciplinary history of its members and their associated persons.

II. Description of Proposal

Under the NASD's Public Disclosure Program ("PDP"),[5] the NASD, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, releases certain information contained in the Central Registration Depository ("CRD") regarding the employment and disciplinary history of its members and their associated persons. When an inquiry is made, if the broker-dealer or associated person has a disciplinary history, the NASD responds by sending the inquirer a copy of the disclosable information (*e.g.*, information regarding past and present employment history with Association members).[6] If there is no history, the NASD responds by informing the caller of this and following up with a written record of same, if so requested.[7]

In past months, the NASD has undertaken a reassessment of the CRD to take advantage of developing technology and to improve its performance meeting the NASD's changing business needs. As a result of this reassessment, the NASD determined that the Internet should be a component of its PDP. In an effort to expand its PDP and make it more accessible and convenient for investors, the NASD's proposal amends the Interpretation to enable the NASD to receive electronic inquiries as well as written and telephonic inquiries.[8]

III. Discussion

NASDR has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act,[9] for approving, prior to the 30 day after publication in the **Federal Register**, that part of the proposed rule change that permits the NASD to respond to electronic inquiries.[10] The Commission has reviewed the NASDR's proposed rule change and believes, for reasons set forth below, that the proposal is consistent with the requirements of the Act[11] and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission believes the proposal is consistent with Sections 15A(b)(6) and 15A(i) of the Act. Section 15A(b)(6) provides in relevant part that the rules of the association be designed to foster cooperation and coordination with persons engaged in regulating and processing information with respect to securities and not to permit unfair discrimination among customers, issuers, brokers or dealers. Section 15A(i) of the Act requires the Association to promptly respond in writing to inquiries regarding disciplinary actions involving its members or associated persons.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. By amending IM–8310–2 to include the phrase "electronic inquiry," the NASD has made it easier and more convenient for interested persons to inquire about the employment and disciplinary history of its members and their associated persons. The Commission commends any effort made to improve investor access to information that could help investors determine whether to conduct or continue to conduct business with a particular broker-dealer or associated person. The Commission understands, however, that the NASD intends to disseminate responses to some inquiries electronically. As with developing and instituting information systems technology, the Commission expects the NASD, consistent with its statutory duties, to assure itself that security concerns (*i.e.*, the security of its systems and the immutability of the records after transmittal) have been addressed. Thus, in granting this partial accelerated approval, the Commission notes that it is approving only the NASD's ability to respond to electronic inquiries as if they were either written or telephonic inquiries.

Based on the foregoing, the Commission deems it appropriate to partially approve the proposed rule change on an accelerated basis, pursuant to Section 19(b) of the Act and the rules and regulations thereunder.[12]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the aforementioned portion of proposed rule change SR–NASD–97–78 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33128 Filed 12–18–97; 8:45 am]

BILLING CODE 8010–10–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39441; File No. SR–NASD–97–83]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Listing Fees for Nasdaq National Market Issuers

December 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend NASD Rule 4510 to revise the annual fees for Nasdaq National Market issuers and to make conforming changes to Rule 4520. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Rule 4510. The Nasdaq National Market

(a) Entry Fee

(1) When an issuer submits an application for inclusion of any class of its securities in the Nasdaq National Market, it shall pay to The Nasdaq Stock Market, Inc.:

(A) a one-time company listing fee of $5,000 (which shall include a $1,000 non-refundable processing fee); and

[(B) for each class of security listed, a fee calculated on a graduated rate of $.005 per share for the first 5 million shares, $.0025 per share for each share between 5,000,001 and 15 million, inclusive, and $.001 per share for each share over 15 million, based on the total number of shares outstanding. Entry fees paid by a company for all classes of securities listed on the Nasdaq National Market, regardless of the date those securities are listed, shall not exceed $50,000 (inclusive of the $5,000 company listing fee).[2]]

(B) a fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares—$29,525
1+ to 2 million shares—$33,750
2+ to 3 million shares—$43,750
3+ to 4 million shares—$48,750
4+ to 5 million shares—$55,000
5+ to 6 million shares—$58,725
6+ to 7 million shares—$61,875
7+ to 8 million shares—$64,375
8+ to 9 million shares—$67,875
9+ to 10 million shares—$70,625
10+ to 11 million shares—$73,875
11+ to 12 million shares—$76,625
12+ to 13 million shares—$79,875
13+ to 14 million shares—$82,000
14+ to 15 million shares—$83,500
15+ to 16 million shares—$85,500
Over to 16 million shares—$90,000

[The entry fee shall be based on the total number of] *Total shares* outstanding *means the aggregate of all classes of equity* securities [of the class] to be included in the Nasdaq National Market as shown in the issuer's most recent periodic report *or in more recent information held by Nasdaq* or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority. [and received by The Nasdaq Stock Market, Inc.]

(3) no change

(4) no change

(b) Additional Shares

(1) The issuer of each class of security, other than the American Depositary Receipts, which is listed in the Nasdaq National Market shall pay to The Nasdaq [National] Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security set forth in subparagraph (3) below.

(2) no change

(3) no change

(4) Payment of the fee to The Nasdaq Stock Market, Inc. shall be included with the issuer notification to [the Association] *Nasdaq* of the issuance of additional shares of securities as required under provisions of Rule 4310(c)(17) and Rule [4320(e)(16)] *4320(e)(15)*.

(c) Annual Fee—Domestic and Foreign Issues

(1) As of January 1, [1993] *1998*, the issuer of each class of securities that is a domestic or foreign issue listed in the Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee [(comprised of a base annual fee and a variable annual fee) to be computed as follows:] *calculated on total shares outstanding according to the following schedule:*

[(A) The base annual fee shall be calculated on total shares outstanding[3] according to the following schedule:

Up to 1 million shares—$5,250

---

[1] On December 3, 1997, the NASD, through Nasdaq, submitted Amendment No. 1 to the filing. See letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 3, 1997.

[2] [For purposes of the Rule 4500 Series, the term "shares" shall include common and preferred stock, American Depositary Receipts (ADRs), warrants, partnership interests, or any other security listed on the Nasdaq National Market.]

[3] Total shares outstanding shall be the aggregate of all classes of securities listed on the NNM calculated at year end.

---

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Rel. No. 39322 (Nov. 13, 1997), 62 FR 62391.

[4] Telephone conversation with Alden S. Adkins, General Counsel and Mary M. Dunbar, Assistant General Counsel, NASDR, and Belinda Blaine, Associate Director, Katherine A. England, Assistant Director, and Mignon McLemore, Staff Attorney, Division of Market Regulation, November 26, 1997.

[5] See Securities Exchange Act Rel. No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32566 (July 1, 1993), 58 FR 36723 (July 8, 1993).

[6] See *supra* note 3. The notice contains a complete list of disclosable disciplinary information.

[7] If the request is written and there is no disclosable history, a record indicating same is sent to the inquirer.

[8] See *supra* note 3.

[9] 15 U.S.C. 78s(b)(2).

[10] See *supra* note 4.

[11] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The ability to use electric media will most likely enhance efficiency by decreasing the time between when the request is made and when the response is received. Additionally, the ready accessibility of CRD information should positively affect competition in the marketplace; disciplinary histories will be more accessible to the public. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

1+ to 2 million shares—$5,750
2+ to 3 million shares—$6,250
3+ to 4 million shares—$6,750
4+ to 5 million shares—$7,250
5+ to 6 million shares—$7,750
6+ to 7 million shares—$8,250
7+ to 8 million shares—$8,750
8+ to 9 million shares—$9,250
9+ to 10 million shares—$9,750
10+ to 11 million shares—$10,250
11+ to 12 million shares—$10,750
12+ to 13 million shares—$11,250
13+ to 14 million shares—$11,750
14+ to 15 million shares—$12,250
15+ to 16 million shares—$12,750
Over 16 million shares—$13,250]
Up to 1 million shares—$10,710
1+ to 2 million shares—$10,960
2+ to 3 million shares—$11,210
3+ to 4 million shares—$11,460
4+ to 5 million shares—$11,710
5+ to 6 million shares—$11,960
6+ to 7 million shares—$12,210
7+ to 8 million shares—$12,460
8+ to 9 million shares—$12,710
9+ to 10 million shares—$12,960
10+ to 11 million shares—$17,255
11+ to 12 million shares—$17,505
12+ to 13 million shares—$17,755
13+ to 14 million shares—$18,005
14+ to 15 million shares—$18,255
15+ to 16 million shares—$18,505
16+ to 20 million shares—$18,755
20+ to 25 million shares—$22,795
25+ to 50 million shares—$26,625
50+ to 75 million shares—$32,625
75+ to 100 million shares—$43,125
Over 100 million shares—$50,000

[(B) The variable annual fee shall be calculated at the rate of $.025 per $1,000 of market capitalization,[4] but only for market capitalization above $100 million.

(C) The annual fee (comprised of the base and variable fee) shall be capped as follows:

For companies with 10 million shares or less—$10,000
For companies with 10+ to 20 million shares—$15,000
For companies with more than 20 million shares—$20,000

(2) no change
(3) no change.

(d) Annual Fee—American Depositary Receipts (ADRs)

(1) no change
(A) no change
(B) the sum of $500 or $.0005 per share outstanding, whichever is higher, up to a maximum of $6,000 of *each* class of securities listed in the Nasdaq National Market.

[4] Market capitalization is calculated by multiplying total shares outstanding at year end (except that convertible bonds, rights and warrants are not included) times the price at year end.

(2) The annual fee shall be based on the total [amount of] *shares* outstanding [securities] of the class included in the Nasdaq National Market as shown in the issuer's most recent periodic report required to be filed with *the* issuer's appropriate regulatory authority *or in more recent information held by Nasdaq*. [and received by the Nasdaq Stock Market, Inc.]

(3) no change
(4) no change

Rule 5420. The Nasdaq SmallCap Market

(a) Entry Fee

(1) no change
(A) no change
(B) no change
(i) Equity Securities
$1,000 or $.001 per share outstanding, whichever is higher. For purposes of this subparagraph, the term "equity securities" includes all securities eligible for inclusion in the Nasdaq SmallCap Market not covered by subparagraph (ii) hereof[5]

(2) no change
(3) The entry fee shall be based on the total *shares* [number of] outstanding [securities] of the class to be included in the Nasdaq SmallCap Market as shown in the issuer's most recent period report *or in more recent information held by Nasdaq* or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory [and received by The Nasdaq Stock Market, Inc].

(b) no change
(c) no change
(d) no change
(1) no change

(A) Equity Securities
$500 or $.0005 per share outstanding, whichever is higher. For purposes of this subparagraph, the term "equity securities" includes all securities eligible for inclusion in the Nasdaq SmallCap Market not covered by paragraph [(ii)] *(B)* of this section.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will adjust both the Entry Fee and the Annual Fee for Nasdaq National Market issuers, effective January 1, 1998. Nasdaq has determined that an increase in the Entry Fee and the Annual Fee for issuers included on the Nasdaq National Market is necessary. Nasdaq has not filed an adjustment to its fee rates since the fall of 1991. Since that time, Nasdaq has committed increased resources in efforts to strengthen market qualifications, to communicate with investors, and to prepare for closer integration of the world's equity markets. In particular, during the last eighteen months, substantial incremental annual expenses have been incurred in the development and operation of new information services for issuers and investors. These new information services include nasdaq.com and Nasdaq Online. Such additional services, while adding considerable value to a Nasdaq listing, were not envisioned when the 1991 fee filing was put in effect.

Through nasdaq.com, the market provides valuable information for investors and prospective investors at all levels. The Nasdaq website provides internet access to pricing from all markets. It also includes news, analyst information, tear sheets, hot links to EDGAR and other information which is important to all investors. With Nasdaq Online, companies now have access to the information they need to better serve their shareholders. Nasdaq Online provides companies with market and transaction data, analyst estimates, institutional ownership data, and fundamental financial information in an integrated system accessible through the internet. This service is important in helping issuers fulfill their responsibilities to shareholders.

The proposed fee increase will also be used to support the continued expansion and technological enhancements of Nasdaq's qualification and market surveillance systems and programs. Initiatives include the development of an automated issuer risk assessment system and an automated

[5] [See footnote to Rule 4510(a)(1(B) defining "shares."] *The term "shares" shall include common and preferred stock, American Depositary Receipts (ADRs), warrants, partnership interests, or any other security listed on the Nasdaq SmallCap Market.* In the case of units, each component, but not the unit itself, shall be considered separately as an "equity security" for fee purposes.

[6] See notes to Rule [4510(a)(1)(B) and] 4520(a)(1)(B)(i), above.

Internet surveillance system. Additional resources will be committed to additional listing qualifications staff to insure compliance with the recently approved increase in Nasdaq's listing requirements.[7] These initiatives, in concert with the additional services provided to companies and investors, will enhance the overall quality of companies listed on Nasdaq, foster the protection of investors and promote the integrity of The Nasdaq Stock Market.

The Nasdaq Stock Market expects to witness the continuing rapid growth and integration of the world's equity capital markets in the next few years. Nasdaq plans to be in the position to meet the growing demand of global investors for ownership of U.S. securities. This will require refinements to the market and further development of the global positioning of U.S. companies. The proposed fee increase will be used to cover costs that Nasdaq is incurring by providing these extra services to Nasdaq issuers, their shareholders and potential investors.

The proposed rule change also deletes references to filings received by Nasdaq because the receipt by Nasdaq is not the determinative test for which periodic report is most recent. Furthermore, it makes other conforming changes to clarify the text of the applicable rules.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) and (6) of the Act. The proposed rule change is consistent with Section 15A(b)(5) as it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using the Nasdaq system. The proposed rule change is consistent with section 15A(b)(6) as it is designed to promote just and equitable principles of trade and does not permit unfair discrimination between customers, issuers, brokers or dealers. As noted above, the fee increase reflects additional costs that Nasdaq incurs for services provided to issuers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[7] See Securities Exchange Act Release No. 38961 (Aug. 22, 1997), 62 FR 45895 (Aug. 29, 1997).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–83 and should be submitted by January 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–33193 Filed 12–18–97; 8:45 am]
BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–39445; File No. SR–PHLX–97–59

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated, Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Decision to Limit its Clearance and Settlement Business and to Withdraw From the Securities Depository Business

December 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 14, 1997, the Philadelphia Stock Exchange, Incorporated, ("PHLX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PHLX–97–59) as described in Items I and II below, which items have been primarily prepared by PHLX. The Commission is publishing this notice and order to solicit comments from interested parties and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal Rule Change

The proposed rule change will allow PHLX to limit its clearing services and to stop providing depository services that it currently operates through its wholly owned subsidiaries, Stock Clearing Corporation of Philadelphia ("SCCP") and Philadelphia Depository Trust Company ("Philadep"), respectively, in order to focus its resources on the operation of the exchange. PHLX has entered into an agreement with SCCP, Philadep, The Depository Trust Company ("DTC"), and the National Securities Clearing Corporation ("NSCC"), dated June 18, 1997, that set forth the arrangements relating to PHLX's decision ("Agreement").[2]

[1] 15 U.S.C. 78s(b)(1).

[2] SCCP, Philadep, DTC, and NSCC have submitted rule filings relating to the Agreement which are being addressed in a separate order. Securities Exchange Act Release Nos. 39220 (October 8, 1997, 62 FR 53848 (October 16, 1997) (File No. SR–NSCC–97–08); 39221 (October 8, 1997), 62 FR 53680 (October 15, 1997), [File No. SR–Philadep–97–04]; 39222 (October 8, 1997), 62 FR 53847 62 FR 53847 (October 16, 1997) (File No. SR–DTC–97–16]; and 39223; (October 8, 1997), 62 FR 53681 (October 15, 1997) [File No. SR–SCCP–97–04].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, PHLX included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements have been examined at the places specified in Item IV below. PHLX has prepared summaries, as set forth in sections A, B, and C below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

PHLX seeks to limit its clearance and settlement business and to close its securities depository business offered through its wholly owned subsidiaries, SCCP and Philadep, respectively, in order to focus its resources on the operations of the Exchange itself and to settle an administrative proceeding initiated against SCCP and Philadep by the Commission.[4] The purpose of the Agreement is to enable PHLX, SCCP, and Philadep to achieve this objective while affording participants of SCCP and Philadep the opportunity to become participants of NSCC or DTC, respectively, or to utilize the services of other clearing and depository service providers.

Under the Agreement, for a period of five years PHLX, Philadep, and SCCP may not engage in the clearance and settlement and securities depository businesses. However under the Agreement, SCCP will be permitted to offer certain clearing services to PHLX members. In this regard, SCCP has proposed in a separate filing to amend its rules to restrict participation in SCCP to PHLX members.[5] SCCP will provide margin accounts to certain PHLX floor members and will settle their transactions through a SCCP sponsored omnibus account at NSCC. The PHLX will guarantee to NSCC all liabilities and obligations arising in connection with the SCCP omnibus account, including any such liabilities which may arise as a result of NSCC sponsoring a SCCP account at DTC. Such guarantee shall be signed in a form satisfactory to NSCC.

PHLX, SCCP, and Philadep will cooperate with NSCC and DTC in assuring an orderly transition regarding PHLX's limiting its clearance and settlement services and withdrawal from the securities depository business. In this regard, NSCC will offer sole SCCP participants an opportunity to become NSCC participants if they meet NSCC's qualifications and desire to become NSCC members. Moreover, PHLX and Philadep will assist DTC and sole Philadep participants in having the latter become DTC participants if they meet DTC qualifications and desire to become a DTC participant. The parties will cooperate to effect the orderly transfer of securities positions and securities from SCCP to NSCC and from the custody of Philadep to the custody of DTC.

PHLX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] insofar as it will enable PHLX to concentrate its efforts on its core business, the exchange. Thus, PHLX believes that this proposal promotes just and equitable principles of trade, remove impediments to, and perfects the mechanism of a free and open market and a national market system, and, in general, protects the investors and public interest. In addition, PHLX believes that the proposal will foster cooperation and coordination with persons engaged in clearing and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX believes that the proposed rule change will not impose an impermissible burden on competition as contemplated by the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.[7]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 6(b)(5) of the Act[8] requires, among other things, that the rules of an exchange be designed to prevent further fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, setting, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Commission believes that PHLX's proposed rule change is consistent with Section 6(b)(5) of the Act in that it will enable PHLX to focus its resources and efforts on implementing a more viable and profitable long-term strategy for its core business, the exchange, and to settle the administrative proceeding initiated against SCCP and Philadep by the Commission.[9] The Commission anticipates that the proceeds of the proposed transaction also will help provide liquidity for the operations of the exchange and that the transaction will allow PHLX to avoid significant future capital expenditures for the businesses of SCCP and Philadep. Consequently, the Commission believes that the proposal should help promote just and equitable principles of trade, remove impediments and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest.[10] In addition, the Commission believes the proposal provides for an orderly closing of services by SCCP and Philadep and an orderly transition for participants to other clearing and depository service providers. Thus, the proposal fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

PHLX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because by so approving PHLX will be able to close on the Agreement and move forward on its plans to limit its clearance and settlement services and withdraw from the securities depository business.

[3] The Commission has modified the text of the summaries prepared by PHLX.

[4] Securities Exchange Act Release No. 38918 (August 11, 1997) (Administrative Proceeding File No. 3–9360).

[5] Securities Exchange Act Release No. 39223 (October 8, 1997), 62 FR 53681. Pursuant to the Agreement, SCCP shall no longer open or maintain Continuous Net Settlement ("CNS") account for its participants. SCCP may only continue to offer clearing and margin services to: (i) PHLX equity specialists for their specialist and alternate specialist transactions, and for their proprietary transactions in securities for which they are not appointed as specialists or alternate specialists and (ii) those PHLX members listed on schedule who are not PHLX equity specialists for their proprietary transactions. SCCP may add other PHLX members to such schedule subject to NSCC's approval.

[6] 15 U.S.C. 78f(b)(5).

[7] The Commission received one comment letter, which pertained to DTC and NSCC, expressing concern that PHLX's decision to withdraw from the clearance and settlement business reduced competition in the market. The comment letter was from P. Howard Edelstein, President, Electronic Settlement Group, Thomson Financial Services, Inc. (November 4, 1997). DTC responded to the Comment letter in a letter from Richard S. Nesson, Executive Vice President and General Counsel (November 14, 1997).

[8] 15 U.S.C. 78f(b)(5).

[9] Securities Exchange Act Release No. 38918 (August 11, 1997) (Administrative Proceeding File No. 3–9360).

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of PHLX. All submissions should refer to the File No. SR–PHLX–97–59 and should be submitted by January 9, 1998.

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PHLX–97–59) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33195 Filed 12–18–97; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3 (a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0337]

Pioneer Ventures Limited Partnership; Notice of Request for Exemption

On November 25, 1997, Pioneer Ventures Limited Partnership (the "Licensee"), a Massachusetts limited partnership and SBIC Licensee number 01/01–0337 filed a request to the SBA pursuant to Section 107.730(d) of the Regulations governing small business investment companies (13 CFR 107.730(d)(1997)) for an exemption allowing the Licensee to invest in Vibrint Corporation (Vibrint), of Bedford, Massachusetts. Vibrint received prior financial assistance from an Associate (as defined by Section 107.50 of the SBA Regulations) of the Licensee, and has itself become an Associate of the Licensee.

Vibrint is currently in need of additional capital, however, the Licensee can only offer this assistance to Vibrint upon receipt of a prior written exemption from SBA. The exemption requested is the basis for this notice, and is required pursuant to § 107.730(g) of the Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on this exemption request to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. A copy of this Notice will be published in a newspaper of general circulation in Bedford, Massachusetts.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: December 12, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–33123 Filed 12–18–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2996]

Commonwealth of the Northern Mariana Islands

As a result of the President's major disaster declaration on December 8, 1997, I find that the Islands of Saipan, Tinian, and Rota in the Commonwealth of the Northern Mariana Islands constitute a disaster area as a result of damages caused by Super Typhoon Keith which occurred November 2–3, 1997. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on February 6, 1998 and for economic injury until the close of business on September 8, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 299606 and for economic injury the number is 967600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 9, 1997.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 97–33163 Filed 12–18–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2997]

Commonwealth of Virginia (and Contiguous Counties in North Carolina)

Pittsylvania County and the contiguous Counties of Bedford, Campbell, Franklin, Halifax, and Henry in the Commonwealth of Virginia, and Caswell and Rockingham Counties in the State of North Carolina constitute a disaster area as a result of damages caused by a fire which occurred on November 27, 1997 in the Cabin Lake Condominium Complex in Danville, Virginia. Applications for loans for physical damage may be filed until the close of business on February 9, 1998 and for economic injury until the close of business on September 10, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812

	Percent
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damages are 299705 for Virginia and 299805 for North Carolina. For economic injury the numbers are 967700 for Virginia and 967800 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 10, 1997.

Ginger Lew,

Acting Administrator.

[FR Doc. 97–33164 Filed 12–18–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Report by Former Representative Payee—0960–0112. The Social Security Administration (SSA) collects the information on Form SSA–625 when a mental facility is terminating its payee services and a successor payee is to be named. The information is needed to determine the proper disposition of any conserved funds. The respondents are State institutions or agencies which are no longer serving as representative payee for beneficiaries who are incapable of managing benefits.

Number of Respondents: 8,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 2,000 hours.

2. Pre-1957 Military Service Federal Benefit Questionnaire—0960–0120. Form SSA–2512 is used by SSA to solicit sufficient information to make a determination of eligibility for military wage credits. Sections 217(a) and (e) of the Social Security Act provide for crediting military service to the wage earner's record and for using the data in the claims adjudication process to grant gratuitous military wage credits, when applicable. The respondents are individuals who are applying for Social Security benefits on a record where the wage earner has pre-1957 military service.

Number of Respondents: 56,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 9,333 hours.

3. Request for Earnings and Benefit Estimate Statement—0960–0466. Form SSA–7004 is used by members of the public to request information about their Social Security earnings records and to get an estimate of their potential benefits. SSA provides information, in response to the request, from the individual's personal Social Security record. The respondents are Social Security numberholders who have covered earnings on record.

Number of Respondents: 3,350,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 279,167 hours.

4. Certificate of Support—0960–0001. The information collected on Form SSA–760–F4 is used to determine whether the deceased worker provided one-half support required for entitlement to parent's or spouse's benefits. The information will also be used to determine whether the Government pension offset would apply to the applicant's benefit payment. The respondents are parents of deceased workers or spouses who may be subject to Government pension offset.

Number of Respondents: 18,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 4,500 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Request to Resolve Questionable Quarters of Coverage (SSA–512); Request for Quarters of Coverage History Based on Relationship (SSA–513)—0960–0575. The Personal Responsibility and Work Opportunity Reconciliation Act states that aliens admitted for lawful residence who have worked and earned 40 qualifying quarters of coverage (QCs) for Social Security purposes can generally receive State benefits. QCs can also be allocated to a spouse and/or to a child under age 18, if needed to obtain 40 qualifying QCs for the alien. Form SSA–512 is used by the States to request clarification from SSA on questionable QCs. Form SSA–513 is used by States to request QC information for an alien's spouse or parent in cases where the spouse or parent does not sign a consent form giving permission to access his/her social security records. The respondents are State agencies which require QC information in order to determine eligibility for benefits.

	SSA–512	SSA–513
Number of Responses	200,000	350,000.
Frequency of Response	1	1.
Average Burden Per Response	2 minutes	2 minutes.
Estimated Annual Burden	6,667 hours	11,667 hours.

2. Application for Retirement Insurance Benefits—0960–0007. The information on Form SSA–1 is used by SSA to determine an individual's entitlement to retirement insurance benefits. The respondents are applicants for retirement benefits.

Number of Respondents: 1,600,000.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 280,000 hours.

3. Physician's/Medical Officer's Statement, Patient's Capability to Manage Benefits—0960–0024. SSA uses the information on Form SSA–787 to determine whether an individual is capable of handling his/her benefits. The information is also used for leads in selecting a representative payee. The respondents are physicians of the beneficiaries or medical officers of institutions where beneficiaries reside.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 20,000 hours.

4. Claimant's Statement When Request for Hearing Is Filed and The Issue Is Disability—0960–0316. SSA requires that applicants for disability benefits provide the updated medical information requested on Form HA–4486, to facilitate processing their Old Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) claims. This information also enables the Administrative Law Judge hearing the case to fully inquire into the claimant's medical condition. The respondents are applicants for OASDI and SSI Benefits.

Number of Respondents: 283,460.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 70,865 hours.

5. Representative Payee Report of Benefits and Dedicated Account—0960–0576. Form SSA–6233 is used by SSA to ensure that payment of SSI benefits is made to a relative, another person, or an organization when the best interests of the beneficiary would be served. The form is also used to ensure that the representative payee is using the benefits received for the beneficiary's current maintenance and personal needs and that expenditures of funds from the dedicated account are in compliance with the law. The respondents are individual and organizational representative payees required by law to establish a separate ("dedicated") account in a financial institution for certain past-due SSI monthly benefits.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

6. Application for a Social Security Card—0960–0066. The information collected by SSA on Form SS–5 is used to assign a Social Security Number and issue a card. The Social Security Number is used to keep an accurate record of each individual's earnings for the payment of benefits and for administrative purposes as an identifier for health-maintenance and income-maintenance programs, such as the OASDI Programs, the SSI Program and other programs administered by the Federal government including Black Lung, Medicare and veterans compensation and pension programs. The Social Security Number is also used by the Internal Revenue Service as a taxpayer identification number for those individuals who are eligible to be assigned a Social Security Number. The respondents are applicants for a Social Security Card.

Number of Respondents: 16 million.

Frequency of Response: 1.

Average Burden Per Response: 8½ minutes-9 minutes.

Estimated Annual Burden: 2,275,000 hours.

7. Questionnaire for Children Claiming SSI Benefits—0960–0499. The information collected on form SSA–3881 is used by SSA to evaluate disability in children who apply for SSI payments. The respondents are individuals who apply for SSI benefits for a disabled child.

Number of Respondents: 978,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 489,000 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: December 11, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–32967 Filed 12–18–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2667]

Determination With Respect to Countries Providing Sanctuary to Indicted War Criminals

Pursuant to the authority vested in me by section 573(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118), I hereby determine that Serbia and Montenegro and the Republika Srpska Entity of Bosnia and Herzegovina and failed to take necessary and significant steps to apprehend and transfer to the International Criminal Tribunal for the Former Yugoslavia (the "Tribunal") all persons who have been publicly indicted by the Tribunal.

This determination shall be provided to the Congress and published in the **Federal Register**.

Dated: December 4, 1997.

Madeleine Albright,

Secretary of State.

[FR Doc. 97–33204 Filed 12–18–97; 8:45 am]

BILLING CODE 4710–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Orange County, New York

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT), New York State Thruway Authority (NYSTA).

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge/highway project in Orange County, New York.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone (518) 431–4127.

or

Philip J. Clark, Director, Design Division, New York State Department of

Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457–6452.
or
Duane L. Dodds, Director, Office of Facilities Design, New York State Thruway Authority, 200 Southern Boulevard, Albany, New York 12209, Telephone: (518) 436–2916.

SUPPLEMENTARY INFORMATION: The New York State Thruway Authority (NYSTA) and the New York State Department of Transportation (NYSDOT), in cooperation with the Federal Highway Administration (FHWA), will be preparing an Environmental Impact Statement (EIS) for a proposed intermodal project in the Towns of New Windsor, Montgomery and Newburgh, Orange County, New York. The project will involve the construction of an interchange on Interstate 84 with Drury Lane, the construction of an east/west connector road between Drury Lane and the Stewart Airport and the widening and reconstruction of Drury Lane between Route 207 and Route 17K. Improvements are necessary to develop a more direct access between Stewart Airport and the regional highway system and to stimulate the local and regional economy through the development of the Stewart Airport Properties in the vicinity of Drury Lane and the development of the airport in accordance with the Stewart Airport Master Plan.

Alternatives under consideration include (1) taking no action; (2) construction of an interchange on Interstate 84 with Drury Lane, construction of a four lane connector road between Drury Lane and the Stewart Airport and the widening and reconstruction of Drury Lane between its intersections with Route 207 and Route 17K, including the widening of Drury Lane to four lanes between the Stewart Airport connector road and I84. Incorporated into and studied with the build alternative will be variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A formal NEPA scoping meeting will be held for federal, state and local officials on January 14, 1998 at 2:00 P.M. at the New Windsor Town Hall and for the public on January 14, 1998 at 7:00 P.M. at the Little Britain Elementary School Auditorium in the Town of New Windsor. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS, when prepared, will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA, NYSDOT, or NYSTA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 10, 1997.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 97–33138 Filed 12–18–97; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal railroad safety regulations. The individuals petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being sought and the petitioner's arguments in favor of relief.

Northeast Illinois Railroad Corporation

[FRA Waiver Petition No. WPS 97–10]

Northeast Illinois Railroad Corporation, ("Metra,") seeks a permanent waiver of compliance from certain provisions of the Federal Roadway Worker Protection Standards, Subpart C of 49 CFR, part 214.

Metra requests relief of 49 CFR 214.337 to the extent that lone workers would be permitted to use individual train detection as a method of on-track safety while operating powered snow blowers on and near the tracks at station platforms and related crosswalks.

In support of the petition, Metra states that:

"Snowfalls which begin prior to or during the rush hours require extensive lone worker participation utilizing powered snow blowers to make the platforms and crosswalks safe for our customers * * *

During the times when lone workers utilize I.T.D. (Individual train detection) as their form of protection with powers tools being used the following procedure is required:

1. Will conduct a statement of on track safety. Will contact the train dispatcher and determine if any unscheduled trains are in the area.

2. Will determine that scheduled trains are on time.

3. When blowing snow from the platform within the 4 foot envelope will face the direction a train will approach from and keep a vigilant lookout for such trains.

4. Will blow snow from crosswalks only when safe to do so.

FRA should look at the safety risks to passengers as platforms where snow removal is not completed within the envelope of danger due to the constraints placed on lone workers when using power tools."

Interested parties are invited to participate in this proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number WPS–97–10) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on December 15, 1997.

Grady C. Cothen,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–33178 Filed 12–18–97; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20914]

Greyhound Lines, Inc.—Control—Gonzalez, Inc., d/b/a Golden State Transportation Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Greyhound Lines, Inc. (Greyhound or applicant) has filed an application under 49 U.S.C. 14303 to acquire control of Gonzalez, Inc., d/b/a Golden State Transportation Company (Golden State).[1] Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subpart B. The Surface Transportation Board (Board) has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by February 2, 1998. Applicants may reply by February 17, 1998. If no comments are received by February 2, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB No. MC–F–20914 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: Greyhound is a nationwide motor common carrier of passengers over regular routes that currently controls seven regional interstate motor carriers of passengers: Valley Transit Company, Inc.; Carolina Coach Company, Inc.; Texas, New Mexico & Oklahoma Coaches, Inc.; Continental Panhandle Lines, Inc.; Vermont Transit, Inc.; Los Rapidos, Inc.; and Grupo Centro, Inc. (Grupo). Golden State operates as a motor carrier of passengers in regular-route service primarily in California, Arizona, New Mexico, and Colorado.

Greyhound states that, as a result of this control transaction, Golden State will remain a separate corporation, controlled indirectly through Sistema Internacional de Transporte de Autobuses, Inc., Greyhound's wholly owned noncarrier holding company. Golden State will initiate trans-border service to passengers traveling between points in the United States and points in Mexico through Greyhound's interest in Autobuses Crucero S.A. de C.F., a large Mexican bus line, and Greyhound's subsidiary, Los Rapidos. By acquiring control of Golden State, Greyhound will be allied with a motor carrier of passengers with an established reputation for accommodating the travel requirements of Hispanic/Latino passengers traveling between points of entry along the United States/Mexican border and points in the United States.

Applicant asserts that the aggregate gross operating revenues of Greyhound and its affiliates exceeded $2 million during the 12 months preceding the filing of this application. Applicant also states that the proposed transaction will have no adverse competitive effects, and that the operations of the carriers involved will remain unchanged; that the total fixed charges associated with the proposed transaction are well within Greyhound's financial means; and that there will be no change in the status of any employees. Applicant certifies that: (1) Greyhound and its affiliates (except Grupo, which is not yet rated) hold "satisfactory" safety ratings from the U.S. Department of Transportation; (2) Golden State has a "conditional" rating and will procure and maintain sufficient liability insurance to meet the established fitness requirements; (3) neither Greyhound nor Golden State is domiciled in Mexico, and neither is owned or controlled by a citizen of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on February 2, 1998, unless timely opposing comments are filed.

4. A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: December 12, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–33281 Filed 12–18–97; 8:45 am]

BILLING CODE 4915-00-P

[1] Greyhound will acquire 51% of the stock of Golden State and will exercise control of Golden State through its wholly owned subsidiary, Sistema Internacional de Transporte de Autobuses, Inc. Mr. Gonzalez and members of his family will retain the remaining 49% stock interest through a trust, the Francisco & Josefa Gonzalez Family Limited Partnership.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (98–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board; DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the rebased first quarter 1998 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. As required by statute, the RCAF was rebased using the fourth quarter 1997 index value as the denominator and first quarter 1998 index value as the numerator (10/1/97=1:00). Rebasing is required every five years. The rebased first quarter 1998 RCAF (Unadjusted) is 0.996. The rebased first quarter 1998 RCAF (Adjusted) is 0.657. The rebased first quarter 1998 RCAF–5 is 0.640.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1549. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423, telephone (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 12, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–33235 Filed 12–18–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 556X)]

CSX Transportation, Inc.—Abandonment Exemption—in Raleigh County, WV

On December 1, 1997, CSX Transportation, Inc. filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon that portion of its C&O Business Unit, Jarrolds Valley Subdivision, between milepost CLP–15.3 at R.O. Junction and milepost CLP–18.3 at the end of track at Picard, a distance of 3.0 miles in Raleigh County, WV. The line traverses U.S. Postal Service Zip Codes 25008 and 25044.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 20, 1998.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 8, 1998. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 556X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW., Washington, DC 20423–0001, and (2) Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: December 10, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–33073 Filed 12–18–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 10, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0116.
Form Number: ATF F 2145 (5200.11).
Type of Review: Extension.
Title: Notice of Release/Return of Tobacco Products, Cigarette Papers and Tubes.
Description: Documents removal or release of tobacco products without payment of tax from U.S. Customs custody or return by a U.S. Government agency to bonded tobacco products factories and manufacturers of cigarette papers and tubes.
Respondents: Business or other for-profit, Federal Government.
Estimated Number of Respondents: 153.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 306 hours.

OMB Number: 1512–0118.
Form Number: ATF F 2148 (5200.17).
Type of Review: Extension.
Title: Bond—Drawback Tax on Tobacco Products, Cigarette Papers, or Tubes.
Description: ATF F 2148 (5200.17) is necessary to secure payment of tax on tobacco products or cigarette papers or tubes on which a drawback of tax has been claimed and paid.
Respondents: Not-for-profit institutions.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 50 hours.

OMB Number: 1512–0333.
Recordkeeping Requirement ID Number: ATF REC 5130/1.
Type of Review: Extension.
Title: Usual and Customary Business Records Maintained by Brewers.
Description: ATF audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax.
Respondents: Business of other for-profit.
Estimated Number of Recordkeepers: 1,400.
Estimated Burden Hours Per Recordkeeper: 0 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0390.
Form Number: ATF Form 5020.29.
Type of Review: Extension.
Title: Request for Disposition of Offense.
Description: The information provided on this form determines whether an applicant is eligible to receive a Federal license or permit. If an applicant applies for a license or permit and has an arrest record charged with a violation of Federal or State law and there is no record present of the disposition of the case(s), the form is sent to the custodian or records or to ascertain the disposition of the case.
Respondents: Individuals or households, business or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,500 hours.

OMB Number: 1512–0478.
Recordkeeping Requirement ID Numbers: ATF REC 5130/3 and ATF REC 5130/4.
Type of Review: Extension.
Title: Marks on Equipment and Structures (ATF REC 5130/3); and Marks and Labels on Containers of Beer (ATF REC 5130/4).
Description: Marks, signs and calibrations are necessary on equipment and structures for identifying major equipment for accurate determination of tank contents, and segregation of taxpaid and nontaxpaid beer. Marks and labels on containers of beer are necessary to inform consumers of container contents, and to identify the brewer and place of production.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,400.
Estimated Burden Hours Per Recordkeeper: 0 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0518.
Form Number: ATF F 7CR (5310.16).
Type of Review: Extension.
Title: Application for License, Collector of Curios and Relics.
Description: This form is used by the public when applying for a Federal firearms license to collect curios and relics in interstate and foreign commerce. The information requested on the form establishes eligibility for the license.
Respondents: Individuals or households.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Respondents: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1,500 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–33129 Filed 12–18–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

December 10, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1559.
Revenue Procedure Number: Revenue Procedure 97–44.
Type of Review: Extension.
Title: LIFO Conformity Requirement.
Description: Revenue Procedure 97-44 permits automobile dealers that comply with the terms of the revenue procedure to continue using the LIFO inventory method despite previous violations of the LIFO conformity requirements of section 472(c) or (e)(2).
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 20 hours.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 100,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–33130 Filed 12–18–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

December 12, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0390.
Form Number: IRS Form 5306.
Type of Review: Extension.
Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.
Description: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if plans may be approved.
Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 600.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	11 hr., 58 min.
Learning about the law or the form.	24 min.
Preparing and sending the form to the IRS.	37 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 7,782 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 97–33131 Filed 12–18–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 12, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in January 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by December 24, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–033–G.
Type of Review: Revision.
Title: Business Information Center Survey.
Description: The purpose of this survey is to help determine the efficiency of a pilot that is being undertaken by the Internal Revenue Service (IRS) and the Small Business Administration (SBA). In an effort to enhance the opportunity and ability for small business owners/opertors to obtain tax materials and understand tax requirements and responsibilities, eleven separate IRS small business edcuation products will be offered at selected SBA facilities known as Business Information Centers (BIC). Initially, five "high traffic" BICs will participate in the pilot program. Education materials will be stocked at each of these BICs and restocked as needed. The pilot will run for up to one year. During the one year period, a decision will be made to either expand or end the program. The IRS plans to conduct a survey to determine the effectiveness of this program.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100 (at 5 sites).
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 3,250 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 97–33132 Filed 12–18–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.
ACTION: Submission for OMB review; comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review an information collection titled Survey of Financial Activities and Attitudes.

DATES: Comments regarding this information collection are welcome and should be submitted to the OMB Reviewer and the OCC. Comments are due on or before January 20, 1998.

ADDRESSES: A copy of the submission may be obtained by calling the OCC Contact listed. Direct all written comments to the Communications Division, Attention: 1557–0209, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

SUPPLEMENTARY INFORMATION:

OMB Number: 1557–0209.
Form Number: Not applicable.
Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.
Title: Survey of Financial Activities and Attitudes.
Description: The OCC encourages national banks to provide fair access to financial services for all. Last fall, the OCC initiated a major project to learn more about why millions of households have no banking relationships (nonbanked), and whether some banks have found ways of profitably serving them.

As the first part of this initiative, the OCC prepared the Preliminary Survey of Nonbanked Status. The OCC now plans to conduct a Survey of Financial Activities and Attitudes (Final Survey) to learn more about how nonbanked households conduct their financial activities and what factors may keep them from using banking services.

The OCC will conduct the Final Survey through a contractor, in several urban locations, in English and Spanish. The Final Survey will involve both personal contacts and telephone surveys.

The Final Survey will provide the OCC, as well as national banks and the general public, with information on diversity within the nonbanked population; how nonbanked households currently conduct their financial activities; their experience with, and interest in, banking services; and the financial service costs they incur.

The OCC will use this information to better assess national bank efforts to serve nonbanked households. Further, the OCC and the industry will use this information to identify effective methods for better serving nonbanked households and to identify barriers to financial services they face. The OCC will also use the results of the Final Survey as background information in its policymaking process.

Respondents: Individuals or households.

Number of Respondents: 2,000.

Total Annual Responses: 2,000.

Frequency of Response: One time only.

Estimated Total Annual Burden: 833 burden hours.

OCC Contact: Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division, Control Number 1557–0209, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0209, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

The OCC may not conduct or sponsor, and respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Comments: Comments are invited on: (a) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility; (b) the accuracy of the OCC's estimate of the burden of the information collection as it is proposed to be revised, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 12, 1997.

Mark J. Tenhundfeld,
Assistant Director, Legislative and Regulatory Activities Division.
[FR Doc. 97–33192 Filed 12–18–97; 8:45 am]
BILLING CODE 4810–33–P]

DEPARTMENT OF THE TREASURY

Customs Service

Extension of National Customs Automation Program Test Regarding Presentation of Electronic Cargo Declarations

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: This notice announces Customs plan to extend the test program to allow the electronic submission of certain inward vessel manifest information with one modification and invites additional members of the vessel carrier community to apply for participation in the test. The test was originally announced in the **Federal Register** on September 10, 1996, and began on February 11, 1997. Public comments are invited on any aspect of the test as set forth in the September 10, 1996, announcement as modified by today's announcement.

DATES: To apply for participation in the test, parties must submit the necessary information as outlined in this notice to Customs by January 20, 1998. Comments concerning the test must be received on or before January 20, 1998.

ADDRESSES: Written comments regarding this notice and letters requesting participation in the test program should be addressed to Cargo Release Processing, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.2b, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: For operational or policy matters: William Scopa (202) 927–3112.

For systems or automation matters: Kim Santos (202) 927–0651.

For legal matters: Larry L. Burton (202) 927–1287.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1996, Customs published a document in the **Federal Register** (61 FR 47782) announcing a plan to conduct a test program to allow the electronic submission of certain inward vessel manifest information. The notice described the test, informed interested members of the public of the eligibility requirements for participation in the test and requested comments concerning any aspect of the test. The announcement stated that the test would commence no sooner than December 9, 1996, and would last for approximately one year; the actual commencement date of the test was February 11, 1997.

In today's document Customs is announcing that the test will be extended and that there is an additional opportunity for members of the vessel carrier community to request participation in the test. The test will be extended for at least another year.

Test Modification Regarding Manifesting of Empty Containers

The parameters of the original test are spelled out in the September 10, 1996, **Federal Register** notice. The extension of the test will operate under the same parameters with one modification. The manifesting of empty containers will be treated differently than the original test notice states.

Pursuant to the modified procedures, empty containers shall be manifested either by transmitting in the Automated Manifest System (AMS) a list of the empty containers on board the vessel by port of discharge, or by providing the same list on a CF 1302 Cargo Declaration. The manifesting of empty containers is subject to all other current regulatory requirements.

Foreign Freight Remaining on Board

Because many comments have been received concerning one of the test requirements set forth in the September 10 notice, Customs is reiterating in this document that requirement which reads as follows:

In the case of Foreign Freight Remaining On Board (FROB) a vessel entering the United States and not intended for discharge in this country, test participants are required to transmit all bill of lading cargo data pertaining to such shipments at the first U.S. port of arrival. Such bills of lading shall be automatically released in AMS upon transmission of the data unless placed on hold with the test participant by Customs through electronic or other means. FROB bill of lading cargo data is subject to all of the same requirements and standards set forth in this document (the September 10, 1996 notice) which apply to other bill of lading cargo data.

Comments have been received regarding this requirement requesting that FROB cargo on a vessel entering the United States from Canada not have to be transmitted electronically and not be subject to the same data element requirements as required for discharge cargo. Further, the commenters have requested that the data regarding FROB cargo not have to be transmitted in English. These changes are requested because the commenters contend that the voyage from Canada is too short to provide sufficient time for the data to be ready for submission at the first U.S. port of arrival and because foreign subsidiaries do not provide the required data.

Customs is maintaining the requirements for FROB cargo as set forth in the September 10, 1996, notice. Customs cannot accommodate the requested changes because Customs considers all cargo on board a vessel as potentially being used to facilitate the smuggling of narcotics and other contraband into the United States. Expressly stated, full bill of lading data is required for FROB cargo originating in Canada or from any other country and the data must be transmitted in English by the time of arrival.

Application Process

Parties desiring to participate in this test program must submit a written statement to the United States Customs Service, Cargo Release Processing, 1300 Pennsylvania Avenue, NW., Room 5.2b, Washington, DC 20229–0002, on or before 30 days from the date of publication of this notice in the **Federal Register**. The document, signed by an authorized official of the carrier, must state that the carrier wishes to voluntarily participate in the test and that the carrier meets all qualifications as outlined in the September 10, 1996, **Federal Register** notice as modified by today's document. The statement must acknowledge that all submissions made to Customs as part of the test are required to be accomplished electronically. The document must also designate a national point of contact and telephone number, and shall also identify local contacts and telephone numbers for the use of Customs personnel at individual ports.

Basis for Participant Selection

Eligible importing carriers will be considered for participation in the test. Customs is looking for a variety of circumstances and participants in the test. Customs stresses that those not selected for participation are invited to comment on the test and to participate in its evaluation.

Selection will be based on the depth of an applicant's electronic interface capabilities and the ability to meet all the user requirements in the CAMIR and in this notice. Participants selected will be notified by means of the Customs Electronic Bulletin Board.

Dated: December 11, 1997.

Robert S. Trotter,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 97–33172 Filed 12–18–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–1]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker license revocation.

Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and parts 111.52 and 111.74 of the Customs Regulations, as amended (19 CFR 111.52 and 111.74), the following Customs broker licenses are canceled without prejudice.

Port	Individual	License No.
San Francisco	Caliber Customs Brokers & Freight Forwarders, Inc	11460
Seattle	Azuma Multi-Trans U.S.A. Inc	13686
Seattle	Universal Freight Forwarders, Ltd	10429
Seattle	C.G. Staff International Inc	12817
New Orleans	Southern Cargo Logistics a Division of Barbara Chopin Enterprises, Inc	15487
New Orleans	Philbin, Cazalas & St. John, Inc	03759
Boston	D.E. Reardon & Co., Inc	09280
New York	Freight Express Int'l, Inc	04802
New York	United Freight Systems	12842
New York	Paul E. Dixon	07971
New York	M.C.B. Customhouse Brokers, Inc	09264
New York	James E. Fox	01208
New York	Steven M. Davis	07229
New York	John Louis Rossi	02759

Dated: December 15, 1997.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–33171 Filed 12–18–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–2]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker license revocation.

Amended

Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and §§ 111.52 and 111.74 of the Customs Regulations, as amended (19 CFR 111.52 and 111.74), the following Customs broker license is canceled with prejudice.

Port	Individual	License Number
Houston	Sam Martinez	6282

Dated: December 15, 1997.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–33170 Filed 12–18–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8861

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8861, Welfare-to-Work Credit.

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Welfare-to-Work Credit.

OMB Number: 1545–1569.

Form Number: Forms 8861.

Abstract: Section 51A of the Internal Revenue Code allows employers an income tax credit of 35% of the first $10,000 of first-year wages and 50% of the first $10,000 of second-year wages paid to long-term family assistance recipients. Form 8861 is used to compute the credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 9 hours, 2 minutes.

Estimated Total Annual Burden Hours: 4,520.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33100 Filed 12–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–8–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–8–90 (TD 8478), Consolidated Return Regulations—Deferred Gain or Loss (§ 1.1502–13).

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Return Regulations—Deferred Gain or Loss.

OMB Number: 1545–1161.

Regulation Project Number: CO–8–90.

Abstract: This regulation relates to deferred intercompany transactions and distributions of property among members of a consolidated group of corporations. The regulation requires a statement to be attached to a consolidated income tax return by those groups which entered into certain intercompany transactions before March 15, 1990, to ensure the appropriate tax consequences of the transactions.

Current Actions: There is no change in this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 20.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33101 Filed 12–18–97; 8:45 am]

BILLING CODE 4830–01–V

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–OID

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–OID, Original Issue Discount.

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Original Issue Discount.
OMB Number: 1545–0117.
Form Number: 1099–OID.
Abstract: The form is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.
Current Actions: There are no changes being made to the form at this time.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit organizations.
Estimated Number of Responses: 4,500,000.
Estimated Time Per Response: 10 min.
Estimated Total Annual Burden Hours: 765,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33102 Filed 12–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 976

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.
OMB Number: 1545–0045.
Form Number: 976.
Abstract: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to use the payment of dividends to reduce taxes imposed after the tax return is filed. The IRS uses Form 976 to determine if shareholders have included the dividend amounts in gross income.
Current Actions: There are no changes being made to the form at this time.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 500.
Estimated Time Per Respondent: 7 hr., 28 min.
Estimated Total Annual Burden Hours: 3,730

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33103 Filed 12–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form T, Forest Activities Schedules.

DATES: Written comments should be received on or before February 17, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Forest Activities Schedules.
OMB Number: 1545–0007.
Form Number: T.
Abstract: Form T is filed by individuals and corporations to report income and deductions from the operation of a timber business. The IRS uses Form T to determine if the correct amounts of income and deductions are claimed.
Current Actions: There are no changes being made to the form at this time.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 37,000.
Estimated Time Per Respondent: 38 hr., 53 min.
Estimated Total Annual Burden Hours: 1,438,930.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33104 Filed 12–18–97; 8:45 am]

BILLING CODE 4830–01–U

federal register

Friday
December 19, 1997

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 416, 482, 485, and 489 Medicare and Medicaid Programs; Hospital Conditions of Participation; Provider Agreements and Supplier Approval; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 416, 482, 485, and 489

[HCFA–3745–P]

RIN 0938–AG79

Medicare and Medicaid Programs; Hospital Conditions of Participation; Provider Agreements and Supplier Approval

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The revised requirements focus on patient care and the outcomes of that care, reflect a cross-functional view of patient treatment, encourage flexibility in meeting quality standards, and eliminate unnecessary procedural requirements. These changes are necessary to reflect advances in patient care delivery and quality assessment practices since the requirements were last revised in 1986. They are also an integral part of the Administration's efforts to achieve broad-based improvements in the quality of care furnished through Federal programs and in the measurement of that care, while at the same time reducing procedural burdens on providers. In addition, in an effort to increase the number of organ donations, we are proposing changes in the interaction between hospitals and organ procurement organizations. The proposed rule also would specify that HCFA may terminate the participation agreement of a hospital, skilled nursing facility, home health agency, or other provider if the provider refuses to allow access to its facilities, or examination of its operations or records, by or on behalf of HCFA, as necessary to verify that it is complying with the Medicare law and regulations and the terms of its provider agreement.

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on February 17, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3745–P, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3745–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1530 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Frank Emerson, (410) 786–4656, Doris Jackson, RN, (410) 786–0095, Rachael Weinstein, RN, (410) 786–6775.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of the President's and Vice President's regulatory reform initiative, the Health Care Financing Administration (HCFA) is committed to changing current regulations that focus largely on requirements for measuring procedural standards. One of HCFA's key initiatives in Reinventing Government (REGO) is to revise many of its conditions of participation (COPs) to focus on outcomes of care and to eliminate unnecessary procedural requirements. HCFA is working in partnership with the rest of the health care community to institute better, more commonsense ways of operating. On March 10, 1997 we published a proposed rule (62 FR 11004) that includes revisions for COPs for HHAs. Within the coming year, HCFA plans to propose revisions to the COPs for hospitals and end stage renal disease (ESRD) facilities and also to mount additional research in the area of ESRD to provide the basis for future changes.

What these efforts have in common is—

1. Reinventing Government (REGO) Initiative

To meet our REGO commitment, we are focusing on an approach for all sets of COPs that are:

- Transitional toward a patient outcome based system.
- Intended to stimulate improvements in processes, outcomes of care, and patient satisfaction.
- Patient centered.
- Supported by patient outcomes data.
- Interdisciplinary in the approach to care delivery, reflecting the team approach to health care delivery.

The COPs generally adhere to these basic requirements, varying in some degree due to the unique environment and patient case mix of the provider type.

2. Transitional Framework

The transitional framework for each set of COPs—

- Begins shifting the oversight focus toward patient health outcomes and away from burdensome and costly procedural requirements, restructures the traditional COPs along essential conditions centered on patient care, and reflects an interdisciplinary team approach to patient care.
- Prepares the foundation for provider adoption and use of more detailed patient outcome measures developed through private sector experience and research.
- Provides a flexible framework for incorporating better measures as they are developed and tested.

3. Structure

The basic structure of all of the COP follows the Joint Commission on Accreditation of Healthcare Organizations' (JCAHOs) "Agenda for Change." This structure involves reducing the number of conditions; focusing on comprehensive assessment and patient outcomes; and deleting, where possible, process requirements that are not specifically mandated by the statute or believed likely to produce outcomes vital to the protection of patient safety.

Each set of COPs has the same essential four conditions that reflect the cycle of patient-centered care. The essential four conditions are:

- Patient rights.
- Patient assessment.
- Care planning and coordination of services.
- Quality assessment and performance improvement.

Each of the sets of COP requirements are tailored to specific statutory requirements, the historical context of the provider type, and the unique form of care delivery and patient case mix.

4. Professional Input

For each set of COP, national meetings of provider and practitioner groups and beneficiary representatives were held. Our partners in State survey agencies were also consulted about our approach and provided comments. Each proposed set of COP reflects extensive consultation with these groups. We recognize the importance of collaboration and communication with the industry and invite further comment on the proposed COP and related rules.

II. Background

A. Statutory Basis

Sections 1861(e) (1) through (8) of the Social Security Act (the Act) provide that a hospital participating in the Medicare program must meet certain specified requirements. Section 1861(e)(9) of the Act specifies that a hospital also must meet such other requirements as the Secretary finds necessary in the interest of the health and safety of the hospital's patients. Under this authority, the Secretary has established the requirements that a hospital must meet to participate in Medicare in regulations at 42 CFR Part 482, Conditions of Participation for Hospitals.

Section 1905(a) of the Act provides that Medicaid payments may be applied to hospital services. Under regulations at 42 CFR 440.10(a)(3)(iii), hospitals generally are required to meet the Medicare conditions of participation in order to participate in Medicaid.

The purposes of these conditions are to protect patient health and safety and to ensure that quality care is furnished to all patients in Medicare-participating hospitals. Surveyors use the conditions to determine whether a hospital qualifies for a provider agreement under Medicare and Medicaid. Under section 1865 of the Act and 42 CFR 488.5 of the regulations, hospitals that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are not routinely surveyed for compliance with the conditions but are deemed to meet most of the requirements in the hospital conditions of participation based on their accreditation. (See 42 CFR part 488, Survey and Certification Procedures.)

B. Why Revise the Conditions of Participation

The current conditions of participation (COPs) were adopted in 1986 and for the most part have not been revised since that time. They are organized according to the types of services a hospital may offer, and include specific, process-oriented requirements for each hospital service or department. Since the current conditions were developed, however, significant innovations in hospital patient care delivery systems and quality assessment practices have emerged, as evidenced by the JCAHO's recent revision of its accreditation standards and redesign of its survey process.

Moreover, as discussed above, the revision of the hospital requirements is part of a larger effort by HCFA to bring about improvements in the quality of care furnished to Federal beneficiaries through a new approach to our quality of care responsibilities. The existing hospital COPs do not provide patient-centered, outcome-oriented standards, nor do they provide for the operation of a quality assessment and performance improvement program. Historically, we set requirements for participation in the Medicare program by establishing requirements that address the structures and processes of health care. These requirements are largely the result of professional consensus, since there are no data supporting the link between structure and process requirements and positive patient outcomes. The combination of process-oriented requirements with an enforcement approach that focuses on identifying providers that do not have the required structures and procedures in place no longer represents the best available method for assessing and improving hospital quality of care. Thus, we have concluded that significant revisions to the hospital conditions of participation are essential.

C. Transforming the Hospital Conditions of Participation

We are committed to working with affected parties to implement revised COPs that impose the minimum burden on hospitals and allow hospitals maximum flexibility in meeting the Federal requirements necessary to fulfill our quality of care responsibilities. Thus, in developing revised conditions, we have solicited suggestions from organizations representing hospitals, practitioners, patients, and States, including distributing an informal, preliminary draft of the proposed hospital COPs to approximately 70 groups for comment. We have used those comments in the development of the revised COPs contained in this proposed rule.

The fundamental principles that guided the development of the proposed COPs were the need to:

- Focus on the continuous, integrated care process that a patient experiences across all aspects of hospital services, centered around patient assessment, care planning, service delivery, and quality assessment and performance improvement.
- Adopt a patient-centered approach that recognizes the contributions of various skilled professionals and how they interact with each other to meet the patient's needs. Thus, we would eliminate requirements that encourage "stovepipe" administrative and enforcement structures.
- Stress quality improvements, incorporating to the greatest possible extent an outcome-oriented, data-driven quality assessment and performance improvement program. Thus, the new COPs would invest our principal expectations for performance in an overarching requirement that each hospital participate in its own quality assessment and performance improvement program.
- Facilitate flexibility in how a hospital meets our performance expectations, and eliminate process requirements unless there is consensus or evidence that they are predictive of desired outcomes for patients.
- Require that patient rights are assured.

Based on these principles, we are proposing new hospital conditions of participation that revise or eliminate many existing requirements and incorporate critical requirements into four "core conditions." These four COPs—Patient Rights; Patient Admission, Assessment, and Plan of Care; Patient Care; and Quality Assessment and Performance Improvement—would focus both

provider and surveyor efforts on the actual care delivered to the patient, the performance of the hospital as an organization, and the impact of the treatment furnished by the hospital on the health status of its patients. The first, Patient Rights, emphasizes a hospital's responsibility to respect and promote the rights of each hospital patient. The second proposed core COP, Patient Admission, Assessment, and Plan of Care, reflects the critical nature of a comprehensive assessment and a resulting plan of care in determining appropriate treatments and accomplishing desired health outcomes. It also would incorporate the need for a coordinated, team approach to planning care. The third proposed core COP, Patient Care, focuses on the actual delivery of care. Finally, the proposed Quality Assessment and Performance Improvement COP would charge each hospital with responsibility for carrying out a performance improvement program of its own design to effect continuing improvement in the quality of care furnished to its patients.

In the revised COPs, we are proposing to include process-oriented requirements only where we believe they remain highly predictive of ensuring desired outcomes or are necessary to deter or prevent fraud and abuse (for example, the requirement for error-free medication administration under the pharmaceutical services COP). Far more frequently, however, we have eliminated process details from the existing requirements and instead included the related area of concern as a component that must be evaluated as part of the hospital's overall quality assessment and performance improvement responsibilities. For example, we would no longer specify that a hospital must make available to medical staff a written description of its laboratory services. However, we would continue to require that a hospital provide laboratory services needed to meet its patients' needs and would specify under the proposed quality assessment and performance improvement condition that a hospital's assessment and performance improvement program must include evaluation of its diagnostic services. The practical effect of this approach would be to stimulate the hospital to find its own performance problems, fix them, and continuously strive to improve patient outcomes and satisfaction, as well as efficiency and economy.

We believe that the proposed COPs based on these principles reflect a fundamental change in HCFA's regulatory approach, a change that to a large extent establishes a shared commitment between HCFA and Medicare providers to achieve improvements in the quality of care furnished to their patients. The proposed COPs invest hospitals with internal responsibility for improving their performance, rather than relying on an externally-based approach in which prescriptive Federal requirements are enforced through the punitive aspects of the survey process. This change would enable HCFA and the States to focus more resources on joining with hospitals (in this case, principally non-accredited hospitals) in partnerships for improvement. It should result in fewer compliance surveys and the reduced need to threaten or take adverse actions that could jeopardize a hospital's reputation, financial viability, and participation in the Medicare and Medicaid programs.

Yet these requirements provide the Secretary and State Medicaid agencies with more than adequate regulatory basis for compelling improved performance or termination of participation based on failure to correct seriously deficient performance that can or does threaten the health and safety of patients, or seriously impairs the hospital's capacity to provide needed care and services to patients. Under the current regulations, termination actions are initiated based on the evidence found during the survey. We foresee no changes in that regard in applying the new COPs.

Thus, as with the current COPs, the enforceability of the proposed COPs will be rooted in the evidence found during the onsite survey when poor performance is identified and corrective action is not taken. We believe that if there is a need to seek a provider agreement termination based on the proposed COP, although a hospital may argue that its performance met the regulatory standards, HCFA will be successful at arguing that based on the evidence found during a survey the requirements of the regulation were not met. In fact, we believe the enforceability is strengthened by standards that establish outcome-oriented performance expectations. When poor performance is documented from the evidence found during a survey and compared to the performance expectations embodied in these patient-centered, outcome-oriented COPs, we believe the contrast between the poor performance identified and the performance expectation of the COP will be clear.

We recognize that an important part of the successful implementation of these proposed regulations will depend on how effectively State and Federal surveyors are able to learn and internalize this patient-centered, outcome-oriented approach and incorporate it into the survey process. The proposed approach embodied in these regulations, in fact, parallels the approach that we have taken in survey and certification, beginning as early as 1985 (for intermediate care facilities for the mentally retarded) and 1986 (for nursing homes). In concert with the States, we have trained surveyors to develop information from the survey process that leads to conclusions about how the provider's performance has impacted—positively and negatively—on patients, especially in terms of what the patients actually experience. For example, for nearly a decade, nursing home surveyors have been trained to interview residents and family members, seeking information that contributes to their assessment of how the nursing home's performance is experienced by the residents and their families. Before the use of outcome-oriented surveys, surveyors focused almost exclusively on record reviews and observing care processes and organizational structures.

These proposed regulations contain two critical improvements that support and extend the change to patient-centered, outcome-oriented surveys. First, the proposed regulations are designed to enable surveyors to focus explicitly on assessing outcomes of care, because the regulations would specify that each individual receive the care her or his assessed needs show is necessary, rather than requiring that certain services and processes be in place. Also, the addition of a strong, quality assessment and performance improvement requirement not only stimulates the provider to continuously monitor its performance and to find opportunities for improvement, it affords the surveyor the opportunity to assess how effectively the provider has pursued a continuous quality improvement agenda. All of these changes are directed toward improving outcomes of care and satisfaction for patients.

We have already begun the process of identifying the tasks necessary to train surveyors and their supervisors and managers effectively in this refined, expanded approach. In addition, HCFA is implementing a new State survey agency quality improvement program that is designed to help State survey agencies increase their focus on improvement strategies in the survey and certification process. As more sources of performance data become available, we will be helping State survey agencies to learn how to use these data effectively to target scarce survey resources and to identify and implement opportunities for improvement (e.g., reduction in falls or in nosocomial infection rates).

The proposed COPs are designed to decrease the regulatory burden on hospitals and provide them with greatly enhanced flexibility. At the same time, the proposed requirement for a program of continuous quality assessment and performance improvement would increase performance expectations for hospitals in terms of achieving needed and desired outcomes for patients and increasing patient satisfaction with services provided. We invite public comment on this fundamental shift in our regulatory approach. We are especially interested in comments that address how HCFA could improve this approach, what additional flexibility could be provided, what process requirements are critical to patient care and safety and how well HCFA's investment in the hospital's participation in a strong continuous quality assessment and performance improvement program of their own design will achieve our intended goal of improving the efficiency, effectiveness and quality of patient outcomes and satisfaction.

D. Development of National Outcome-Based Performance Measures for Hospitals

Before proceeding to a detailed discussion of the proposed requirements, we want to touch briefly on the prospects for standard outcome-based performance measures for hospital services. As mentioned above, HCFA is committed, through its Strategic Plan, to increasing the amount and quality of information about health care to beneficiaries, providers, plans, and the public at large. The purpose of this effort is to improve the ability of:

- Beneficiaries to make informed choices about their health care;
- Providers to improve the effectiveness and efficiency of their services, improve the outcomes of care they provide, and increase beneficiary satisfaction with their services;
- Organizations such as health maintenance organizations and insurance companies to choose providers, and evaluate and improve the performance of providers with which they contract; and
- The public to know more about the availability and quality of health care services in their communities.

Through various initiatives, such as the Consumer Information Program's mammography screening initiative, HCFA is implementing its broad-based information strategy. A strong quality assessment and performance improvement (QAPI) requirement in the proposed hospital conditions of participation, as well as similar requirements in proposed HHA, hospice, and ESRD conditions, is intended to stimulate providers to develop and use a wide variety of information and data, from internal and external sources, to inform their improvement efforts. We go into more detail on this and industry efforts to implement QAPI later in the discussion on the QAPI conditions in section II.B.5 of the preamble.

We have proposed requiring that HHAS and we are contemplating requiring that ESRD facilities report certain standard core data to HCFA to serve as the basis of a national performance measures data base, which could then be used for provider improvement, consumer information and other purposes. We are able to suggest this for HHAs and ESRD facilities because extensive work has been done on performance measures in both areas. However, with hospitals the challenge is greater and sufficient similar work has not been done on hospital measures, as described later in section II.B.5 of this preamble (§ 482.25), that could produce common agreement on measures that would be acceptable for use on a national basis.

Therefore, we have decided not to include in the hospital COPs any requirement for hospitals to collect and report certain standard data items (for example, nosocomial infection rates, medication errors, reports of falls and other injuries, restraint use, various patient characteristic data elements, etc.) that could produce quality of care predictors in the future. Although we eventually intend to move in that direction in hospitals, we do not believe it is reasonable to establish any related requirements at this time, in view of the lack of any current consensus or science that could establish a reliable and valid set of measures.

However, we invite comments from the public in response to the following questions:

1. Should HCFA (either separately or in a public/private partnership of some sort) assume a leadership role in developing and implementing hospital-based performance measures that would serve as the basis of a national quality assessment and performance improvement data base?
2. If so, how should HCFA proceed to develop and implement this system?
3. If HCFA does not assume a leadership role in this area, individual hospitals invest in the development of multiple systems, and those systems are later superseded by a single required system, would the overall burden be greater than if a single system had been imposed at the outset?
4. If HCFA does not assume a leadership role in this area and individual hospitals adopt multiple systems that produce nonstandardized data, to what extent would it be difficult or impossible to use these data to make comparisons between hospitals?
5. Should HCFA require or encourage hospitals to use the standardized measures that some accredited hospitals are using? The advantage would be that hospitals using such standardized choices would not have to develop their own measures and their results could be compared to other hospitals with similar characteristics. Examples include: (1) Number of days from initial surgery to discharge for patients undergoing isolated coronary artery bypass graft procedures; and (2) time from the emergency department arrival to procedure for trauma patients undergoing specified abdominal surgical procedures.
6. Would it be appropriate for HCFA to include any "placeholder" language in the revised COPs concerning the eventual need for hospitals to report relevant data, or is this premature?
7. If HCFA should include placeholder language, what changes should we make to these proposed requirements to set the stage for the development and implementation of such a system?

Even without a performance measure-based national system, we expect hospitals to develop and use their own measures and other available external information to inform their own quality assessment and improvement programs, and to participate in any external quality improvement programs (such as a national program to reduce the use of inappropriate psychoactive medications in hospitals) as the Secretary may direct.

II. Provisions of the Proposed Rule

A. Overview

Under our proposal, the hospital conditions of participation would continue to be set forth in regulations under 42 CFR part 482. However, since the majority of the existing requirements in part 482 would be revised, consolidated with other requirements, or eliminated, we are proposing a complete overhaul of the organizational scheme. The most significant change would be our proposal to group together all COPs directly related to patient care in Subpart B, Patient Care Activities. Then, in Subpart C, Organizational

Environment, we would group together those organizational activities the hospital must perform to support the delivery of patient care. We believe that this proposed format would embody the patient-centered focus of our proposed changes, emphasizing the continuous, integrated care processes that a patient experiences across all aspects of the hospital environment. Also, because functions and processes for delivering patient care often require interdisciplinary teamwork involving many hospital departments and services, the proposed regulations would incorporate a functional framework for the COPs rather than maintaining a stovepipe approach that gives the appearance that patient care activities can occur in isolation.

The complete proposed new organizational format for part 482 is as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

Subpart A—General Provisions

482.5 Basis and scope.
482.10 Condition of participation: Patient rights.

Subpart B—Patient Care Activities

482.15 Condition of participation: Patient admission, assessment, and plan of care.
482.20 Condition of participation: Patient care.
482.25 Condition of participation: Quality assessment and performance improvement.
482.30 Condition of participation: Diagnostic and therapeutic services or rehabilitative services.
482.35 Condition of participation: Pharmaceutical services.
482.40 Condition of participation: Nutritional services.
482.45 Condition of participation: Surgical and anesthesia services.
482.50 Condition of participation: Emergency services.
482.55 Condition of participation: Discharge planning.

Subpart C—Organizational Environment

482.110 Condition of participation: Administration of organizational environment.
482.115 Condition of participation: Infection control.
482.120 Condition of participation: Information management.
482.125 Condition of participation: Human resources.
482.130 Condition of participation: Physical environment.
482.135 Condition of participation: Life safety from fire.
482.140 Condition of participation: Blood and blood product transfusions.
482.145 Condition of participation: Potentially infectious blood and blood products.
482.150 Condition of participation: Utilization review.

Subpart D—Requirements for Specialty Hospitals

482.155 Special provisions applying to psychiatric hospitals.
482.160 Condition of participation: Special medical record requirement for psychiatric hospitals.
482.165 Condition of participation: Special staff requirements for psychiatric hospitals.
482.170 Special requirements for hospital providers of long-term care services ("swing-beds").

We note that although we are proposing no changes to the requirements for specialty hospitals, the existing requirements would be redesignated numerically to accommodate the proposed changes to the preceding COPs.

B. Discussion of Proposed Conditions

1. Basis and Scope (§ 482.1)

We are proposing to add a new paragraph (a)(6) to the statutory basis section for part 482 that sets forth, under section 1138 of the Act, requirements for hospital protocols for organ procurement and standards for organ procurement agencies' agreements with hospitals for organ procurements. This provision will further the authority governing organ procurements.

2. Patient Rights (§ 482.10)

Under section 1861(e)(9) of the Act, an institution may be recognized by Medicare as a hospital only if, in addition to meeting the specific requirements in the preceding sections of that provision, it meets such other requirements as the Secretary finds necessary in the interest of patient health and safety. In our view, patient health and safety cannot be protected simply by avoiding obvious risk factors such as poor infection control practices or inadequate nurse staffing (as documented in recent literature on the effects of Nursing on patient outcomes such as morbidity, mortality, length of stay, and cost—see Keeler, E., *et al.*, "Hospital Characteristics and Quality of Care," *JAMA* 268 (1992): 1709–1714.; and Krakauer, H., *et al.*, "Evaluation of the HCFA for the Analysis of Mortality Following Hospitalization," Health Services Research 27 (1992): 317–335). Patient rights dealing with freedom from physical or verbal abuse, harassment, or inappropriate restraints are examples of direct protections of patients' physical and emotional health and safety. In addition, patients' successful recoveries from illness or injury depend on many factors related to their psychological and emotional health, including their general feeling of well-being. Because of the importance of these psychological and emotional factors, we believe patient health and safety can be protected adequately only if patient care is delivered in an atmosphere of respect for the individual patient's comfort, dignity, and privacy.

This view is shared by other parties involved in the development of these conditions of participation, many of whom expressed strong support for the inclusion of specific provisions addressing patient rights. Therefore, we propose to set forth a new condition of participation that would recognize explicitly that a hospital must protect and promote certain patient rights.

The proposed condition is composed of five standards. The first proposed standard would require that a hospital inform each patient of his or her rights in advance of furnishing care. It also would require that a hospital have a grievance process and must indicate who a patient should contact if he or she desires to express a grievance. We are not proposing a specific method as to how a hospital should notify each patient of his or her rights, or establishing structural or procedural expectations about how a hospital's patient grievance process should be set up. Instead, we believe each hospital should implement a patient rights policy that reflects its specific manner of operations and minimizes administrative burden, as long as the hospital meets the underlying expectation that it informs patients about their rights and about whom to contact when patients believe these rights have been violated.

The remaining four proposed standards under the patient rights condition would establish a minimum set of required patient rights. In developing these provisions, we closely examined the regulations concerning patient rights for other provider types, such as nursing homes and HHAs. Because the nature of patient care varies among provider types, we are proposing only those patient rights that we believe are appropriate and necessary in the hospital setting. Based on the strong support from all parties involved in the development of these proposed hospital conditions, we are proposing that a patient should have the following rights:

- The right to be informed of his or her rights, to participate in the development and implementation of the individual's plan of care, and to make decisions regarding thet care.

- The right to formulate advance directives and to have those directives followed.
- The right to privacy and to receive care in a safe setting.
- The right to be free from verbal or physical abuse or harassment.
- The right to confidentiality of his or her clinical records.
- The right to access information contained in his or her clinical records within a reasonable time.
- The right to be free from the use of seclusion and restraints as a means of coercion, convenience, or retaliation by staff. If seclusion or restraints are used (including psychopharmacological drugs used as restraints) they must be used in accordance with a patient's plan of care and may be used only as a last resort and in the least restrictive manner possible, to protect the patient or others from harm. Restraints must be removed or seclusion ended at the earliest possible time.

We believe these proposed patient rights are clearly necessary in the interest of patient health and safety and are for the most part self-explanatory. We note that the rights concerning advance directives are tied directly to the statute (section 1866(f) of the Act), and the hospital's responsibilities in these areas are more fully described in other sections of the regulations (see existing § 489.102). However, we believe it is appropriate to reference advance directives in the proposed patient rights section, consistent with the reference to advance directives in the patient rights sections of the existing regulations for both nursing homes and HHAs.

We considered proposing a specific time period within which a hospital would be required to provide access to requested medical records under proposed § 482.10(d)(2), but concluded that the proposed requirement that a hospital provide access to such information within a "reasonable" time is more feasible. If a former patient requests access to 3-year-old closed medical records, which could be in storage, a "reasonable" time to retrieve them likely would be longer than if the spouse (with appropriate power of attorney) of an inpatient requests to see the medical records of her or his spouse who is still in the hospital. In the former case, a "reasonable" time might be measured in days, whereas it could be hours in the latter example. Thus, we believe that "reasonable" must be defined in terms of the individual circumstances. Most important, we believe that "reasonable" means that the hospital will not frustrate the legitimate efforts of individuals to gain access to their own medical records and will actively seek to meet those requests as quickly as its recordkeeping system permits. If a hospital receives complaints from patients or their legal representatives about delays in gaining access to properly requested records, we would expect that the hospital would both respond quickly to resolve the complaints and consider the complaints as an opportunity for improvement as part of its quality assessment and performance improvement program. In summary, we believe that the use of the word "reasonable" sets the proper performance standard for the hospital without imposing an arbitrary burden, while at the same time enabling surveyors to take action if a hospital is systematically frustrating legitimate efforts to gain access to medical records. We welcome comments on the appropriateness of our decision not to propose any specific timeframe for providing access to a patient's records.

We also strongly considered expanding the proposed patient rights provisions (or establishing separate requirements) to provide further detail related to a patient's right to be free from seclusion or restraints. We recognize that the use of restraints or seclusion has the potential to produce serious consequences for a patient's health and safety, such as physical and psychological harm, loss of dignity, violation of civil rights, and even death. Thus, our expectation is that a hospital would impose restraints or seclusion only when absolutely necessary to prevent immediate injury to the patient or others and when no alternative means are sufficient to accomplish this purpose. We also expect that when restraints or seclusion are used, the plan of care should address how and when such practices are to be employed, and patients placed under restraints or in seclusion would be released as soon as they no longer pose an immediate threat of injury to themselves or others. Although we have built these expectations into the proposed patient rights provisions, the question remains whether it would be advisable to add further, more prescriptive requirements concerning the use of seclusion or restraints. One possibility would be to incorporate into the regulations a series of specific requirements governing the use of restraints and seclusion, as detailed below:

- Seclusion or restraints may only be used to the extent authorized by the signed order of a physician. Written authorization must include the date and time of the order, and the reason for seclusion or restraint. For restraint, the order must include the type of restraint(s) and the number of restraint points.
- Each order for seclusion or restraints must be in writing, must be time-limited and specify start and end times. Implementing a time-limited order does not require applying the intervention for the entire period if the patient demonstrates a reduction or change in the behavior that led to being placed in restraint or seclusion.
- A renewal order may be issued if the physician clinically assesses the patient face to face and determines that seclusion or restraint continues to be necessary to prevent injury to self or others, and there is no less restrictive method of preventing the injurious behavior.
- Orders for seclusion or restraint must never be written on a standing or as needed basis.
- Written orders for restraint and seclusion for adults must be valid for no more than 6 hours; written orders for restraint and seclusion for children and adolescents must be valid for no more than 2 hours.
- A patient in seclusion or restraint must be checked by a person trained in the use of restraints and seclusion at least every 15 minutes for comfort, body alignment, circulation, hydration, feeding, and toilet needs. A patient in seclusion or restraint must have vital signs checked a minimum of every 2 hours. Written documentation of checks must include, at a minimum, the name of the person doing the check, the date and time of the check, and the patient's condition.

For purposes of this proposed rule, we have opted not to set forth these kinds of detailed requirements in the regulations but instead to require that a hospital achieve the intended outcome that restraints or seclusion are never imposed inappropriately, without limiting a hospital's flexibility in how it meets this requirement. However, we welcome comments on the prevalence of the use of restraints and seclusion in the hospital setting and whether the above standards, or alternative requirements, are needed to ensure patient health and safety.

Subpart B—Patient Care Activities

3. Patient Admission, Assessment, and Plan of Care (§ 482.15)

The first proposed condition under proposed Subpart B, Patient Care Activities, would combine the requirements for patient admission, assessment, and care plan development in a single condition, which would be followed by a separate condition on patient care. We believe this

organization is in keeping with the patient centered orientation of these regulations and would help illustrate our view that patient assessment and planning is a prerequisite for the delivery of high quality care.

The underlying requirements of this COP would be first that a hospital ensure that each patient receives a comprehensive assessment of his or her care needs, including an initial estimate of posthospital needs, if any, and then that the hospital establish a coordinated plan for how all relevant hospital disciplines will meet those needs. A comprehensive assessment of patient care needs is critical for planning patient care and achieving desired health care outcomes. Because patient assessment activities are performed by various disciplines within the hospital setting, coordination of the information obtained during patient assessment activities is vital to assuring a well-developed plan for meeting the patient's identified care needs. Moreover, a coordinated plan for care delivery is increasingly important in a health care environment where payment incentives encourage shorter hospital stays. We note for an assessment to be truly "comprehensive," it must address all of a patient's anticipated care needs; thus, we believe it is appropriate to include a reference to posthospital needs under the proposed assessment COP. The inclusion of posthospital needs in a comprehensive assessment does not constitute an added burden on hospitals but simply reflects current, accepted practice in patient assessment activities. For example, in conducting a comprehensive assessment on a 17-year-old male with no history of medical problems who will undergo surgery to repair a fractured femur resulting from a football injury, it would be appropriate to gather information on who will be available to assist the patient at home, who is available to take the patient to follow-up medical appointments, and necessary instructions for posthospital needs (e.g., crutch walking, body positioning, medication administration, etc). (We note that, in accordance with section 1861(ee) of the Act, the proposed COPs would continue to address separately the formal discharge planning procedures required to ensure that patients receive appropriate posthospital care and services. As explained in further detail later in this preamble, we are proposing to retain the existing discharge planning COP (now codified at § 482.43) and redesignate it as proposed § 482.55.)

Under the first proposed standard, "Admission and comprehensive assessment" (proposed § 482.15(a)), we propose to retain the current flexible requirement (at existing § 482.12(c)(2)) under which patients can be admitted to the hospital by any licensed practitioner allowed by the State to do so. Then, with respect to assessment, we would revise the requirement under existing § 482.22(c)(5) that a physical examination and medical history be done no more than 7 days before or 48 hours after an admission. Instead, we propose to require that each patient receive a comprehensive assessment that identifies the patient's condition and care needs as well as an initial estimate of posthospital needs, if any, at the time of admission and is placed in the patient's medical record within 24 hours of admission.

We propose to provide the hospital and medical staff the flexibility to define the content and activities of the comprehensive patient assessment. We recognize that to require, for example, that every patient have an evaluation of rehabilitation potential or nutritional status, is not necessarily appropriate. The information to be included in the comprehensive assessment would be determined by the hospital based on the characteristics and needs of the specific patient. For example, when the patient's condition or symptoms indicate possible alcohol or drug abuse, an alcohol or drug abuse assessment should be performed as part of a mental status assessment. Again, the performance expectation is that a hospital would ensure that each patient's assessment is comprehensive relative to the reason the patient is in the hospital. We do not believe it is appropriate to prescribe how a hospital meets this responsibility.

We are proposing that the comprehensive assessment must be completed in a timely manner consistent with the patient's immediate needs and placed into a patient's medical record within 24 hours of admission. We believe that this proposed requirement sets a clear expectation for a close, effective relationship between assessment and care planning, a relationship that is essential to achieving desired health care outcomes. We view the maximum 24-hour timeframe for completion of the assessment as essential for adequate patient care and safety, since by definition a patient being admitted to a hospital is at a point of immediate need. The 24-hour timeframe should pose no burden for the well-managed hospital, since in all likelihood it would already be performing assessments within this timeframe for initial care planning and decision making purposes.

We are also proposing a 12-hour timeframe for placement into the patient's medical record of any assessment information collected before admission to the hospital. For example, a patient may have had a health history and physical examination completed in the physician's office before admission. Allowing a copy of a previously completed health history and physical examination to be placed in the hospital records would eliminate duplication in the creation of these records, especially if the findings during the physician office visit were the basis of the admission to the hospital. Unlike under existing regulations, which permit use of a physical examination or medical history done within 7 days of a patient's admission, the proposed requirements would not establish an arbitrary limit on the use of such information. Instead, we would require that any comprehensive assessment information recorded before admission be updated to reflect the patient's condition on admission. That is, a hospital would be expected to reassess the necessity of the patient's admission to the hospital and document, as appropriate, any changes in the patient's condition at the time of admission. We believe this requirement would reduce the hospital's information collection burden without compromising patient health and safety. Because, in such a case, the history taking and physical examination activities essentially are completed before admission, we believe that 12 hours is a reasonable timeframe for placement of that assessment information into the medical record. That is, it should take the hospital less time to update the assessment information than the proposed 24-hour timeframe for a comprehensive assessment performed after admission.

The second standard under this COP, proposed § 482.15(b)(1), would require that each patient have an initial written plan of care that meets the needs identified in the comprehensive assessment and that the plan of care must be placed in the medical record within 24 hours of admission. Thus, each patient would be assured of having a comprehensive assessment and an initial care plan within 24 hours of admission to the hospital. We believe that this 24-hour timeframe for care planning is both reasonable and necessary, given the continuing decreases in average lengths of stay in hospitals.

Presently, responsibility for a patient's plan of care is addressed under various separate COPs, including governing body, medical staff, and nursing services. In place of this fragmented approach, we would focus on the need for coordination in care planning for hospital patients by requiring that the plan include care to be delivered by all disciplines. We would not specify which disciplines must be involved in care planning; instead, the hospital would have the flexibility to determine which disciplines should be involved based on the nature of a patient's illness or injury. Similarly, we are not proposing to require that a hospital have a single care plan that documents interdisciplinary care planning needs, but only that care planning by all relevant disciplines be included in the medical record using whatever organizational structure or format the hospital believes is appropriate.

Under proposed § 482.15(b)(2), we would require that the patient's plan of care be modified to meet any changes in the patient's condition that affects the patient's needs. We believe this requirement is preferable to a mandate that reassessments be conducted at specified time intervals on all patients. Instead, each practitioner involved in a patient's care may perform reassessments and modify the plan of care, as needed.

We welcome comments on whether the specific proposed timeframes in the regulation text are reasonable and consistent with current medical practice and whether the timeframes should be used as benchmarks to reflect patient health and safety concerns involving the timeliness of the assessment components.

4. Patient Care (§ 482.20)

Patient care activities occur in all areas and departments of a hospital. These activities are carried out by a variety of staff and licensed practitioners from the medical, nursing, pharmacy, dietetics, rehabilitation, and other departments and services. Rather than describing distinct patient care responsibilities for each service or department, we have organized these regulations to reflect the integrated way in which a patient experiences care, by establishing a single, unified patient care condition. Thus, by consolidating patient care activities into one COP, the proposed regulations would no longer support a "stovepipe" approach to patient care and instead foster a hospital's efforts to integrate, coordinate, and evaluate patient care in the same way as the patient experiences care in a contemporary hospital setting.

Overall, the proposed patient care COP would require that each Medicare patient be under the care of an appropriately qualified practitioner, and that the care provided to each patient be coordinated and based on the plan of care required under proposed § 482.15. The first standard under the proposed patient care COP (§ 482.20(a)) concerns the assignment of a practitioner responsible for each Medicare patient's care. Under this standard, we would retain, with only minor editorial changes and one substantive change (discussed below) the current requirements in § 482.12(c)(1), (3), and (4). These requirements, while specific and detailed, are needed to implement section 1861(e)(1) of the Act, which defines a hospital as an institution that provides services by or under the supervision of physicians, and section 1861(e)(4) of the Act, which requires that every Medicare patient be under the care of a physician. It is necessary to implement the latter requirement in a way that recognizes the many types of practitioners who are authorized by State scope of practice laws and hospital staff bylaws to treat patients in hospitals.

Within this standard, the only substantive change from current requirements appears at proposed § 482.20(a)(1)(vi), which would permit a clinical psychologist to admit and treat patients receiving qualified psychologist services (as defined in section 1861(ii) of the Act), to the extent this is permitted under State law. This change is needed to implement a change in section 1861(e)(4) of the Act that was made by section 104 of Public Law 103–432, the Social Security Act Amendments of 1994.

Proposed paragraphs (a)(2) and (3) of this standard restate current requirements under § 482.12(c)(3) and (4) concerning the presence of doctors and their responsibilities toward patients.

The second proposed standard, delivery of patient care (§ 482.20(b)), would require that each patient be provided care and treatment interventions that are coordinated by all relevant disciplines and conform to the plan of care. We then would require a hospital to evaluate the patient's progress and adjust care when appropriate progress is not being achieved. That is, in keeping with the requirement under proposed § 482.15(b)(2) that the plan of care be modified as needed, we believe it is essential to include under this COP the companion requirement that actual care provided also be changed as needed, thus establishing the essential linkage between evaluation of treatment results and care plan modification.

We also propose that patient care services are provided only on the order of qualified practitioners with delineated clinical privileges. This proposed provision is in keeping with the overall approach of the patient care COP, that is, the focus on the integration and coordination of hospital services rather than the former "stovepipe" approach. Thus, rather than specifying under the nutrition services COP that therapeutic diets must be prescribed by the responsible practitioner (now required under § 482.28(b)(1)), we intend that such department-specific requirements would be encompassed within the hospital's overall responsibility to ensure that all patient care services be provided in accordance with the orders of qualified practitioners. So, if a surveyor finds evidence that therapeutic diets were prescribed inappropriately, the hospital could then be cited for a deficiency under this standard and, if applicable, under proposed § 482.40 (Nutrition services) if the outcome of this problem was that patients' nutritional needs were not met.

Finally, if a hospital provides care to outpatients, it would be responsible for ensuring that outpatient care meets the same quality of care requirements as inpatient care and that inpatient and outpatient services are coordinated to promote continuity of care for patients who move between levels of care. Inpatient and outpatient care should be coordinated, so that a patient does not experience any disruption of care or duplication of services simply because of a change from inpatient to outpatient status, or vice versa. We recognize that some procedures can appropriately be done only on an inpatient basis, and we do not intend to require that every service be available on either an inpatient or outpatient basis. The intent of this proposed provision is to ensure that if a service is provided in both the inpatient and outpatient settings, the level of quality in each setting is the same, so that there is a uniform level of care throughout the hospital. For example, infection control procedures and practices should be followed uniformly throughout the hospital, not merely in inpatient areas, and we would expect a hospital to investigate adverse outcomes among outpatients as thoroughly as those among inpatients. Thus, as noted below, we would expect a hospital's quality assessment and performance improvement program to encompass outpatient services, if the hospital provides those services.

5. Quality Assessment and Performance Improvement (§ 482.25)

The current quality assurance condition of participation (§ 482.21)

relies on a problem-focused approach to identify and correct problems in patient care delivery. During the last decade, the health care industry has moved beyond the problem-focused approach of quality assurance in favor of focusing on systemic quality improvements, as evidenced by the JCAHO's overhaul of its accreditation standards over the last few years. We propose to follow suit by requiring a Medicare-participating hospital to participate in a continuous effort to improve its performance, incorporating to the greatest extent possible an approach that focuses on the hospital's performance in improving patient outcomes and satisfaction. Specifically, we are proposing a new COP that would require that each hospital develop, implement, maintain, and evaluate an effective data-driven quality assessment and performance improvement program.

We do not propose to prescribe specific methodologies to achieve this objective, with the exception of retaining the current rule on autopsies (see below). Instead, we would specify that a hospital's quality assessment and performance improvement program should reflect the complexity of the hospital's organization and services. Thus, each hospital would be free to pursue quality improvement in a manner best suited to its individual characteristics and resources. However, every hospital would be responsible for implementing actions that result in performance improvements across the full range of the hospital's services to patients. Also, we would require that a hospital's quality assessment and performance improvement program must use objective measures that make it possible to track performance to ensure that improvements are sustained over time.

The proposed quality assessment and performance improvement condition (§ 482.25) contains three standards, the first addressing the scope and direction of the performance improvement program, the second on responsibility for the program, and the third on autopsies. The first proposed standard would require that a hospital's quality assessment and performance improvement program include the use of objective measures to evaluate performance changes and would delineate the minimum items that must be included in the hospital's program. Specifically, we would require that a hospital objectively evaluate the following areas that we believe are critical to hospital performance: Access to care; patient satisfaction; staff, administrative, and practitioner performance; complaints and grievances; diagnostic and therapeutic services provided; medication error incidents, achievement of drug therapy goals, and incidents of adverse drug effects; nutritional services, including, if applicable, patient's responses to therapeutic diets and parenteral nutrition; surgery and anesthesia services; safety issues, including infection control and physical environment; emergency services (if provided); discharge planning activities; and the results of autopsies. We included the first 11 items as the minimum elements of the performance improvement program because we believe they comprise the fundamental building blocks of a well-managed hospital, whose primary business is achieving desired outcomes for patients and ensuring their satisfaction. We are proposing the twelfth item, "results of autopsies," because we believe that autopsies can be an important source of information to both individual practitioners and hospitals that can point to opportunities for improvement in both practitioner and hospital performance. We are asking for comments on the minimum content of the Quality Assessment and Improvement Program as well as the twelve elements that are part of the Whole Quality Assessment standard.

The next standard (proposed § 482.25(a)(2)) would then state that for each of the areas listed above, and any others the hospital includes, the hospital must measure, analyze, and track quality indicators or other aspects of performance that the hospital adopts or develops that reflect processes of care and hospital operations. These measures must be shown to be predictive of desired outcomes or be the outcomes themselves. As explained below, we also would require a hospital to use hospital-specific data, as well as Peer Review Organization (PRO) and other relevant data, in its quality assessment and performance improvement strategy.

Again, when we use the word "measure," we mean that the hospital must use objective means of tracking performance that enable a hospital (and a surveyor) to identify the differences in performance between two points in time. For example, we would not consider a hospital's subjective statement that it is "doing better" in a given performance area as a result of an improvement process to be an acceptable measure. There must be identifiable units of measure that any reasonably knowledgeable person would be able to distinguish as evidence of change. Not all objective measures must have been shown to be valid and reliable (that is, subjected to scientific development) to be useable in improvement projects, but they must at least identify a start point and end point stated in objective terms, most often, numbers, that actually relate directly to the objectives and expected/desired outcomes of the improvement project.

We do not believe it is feasible at this time to propose that a specific set of quality indicators or objective performance measures be used. However, systematic collection and analysis of quality indicators or performance measures that each hospital identifies should foster the eventual development of a data-driven system of hospital indicators. Many hospitals are already very active in this area. We recognize that collection and analysis of clinical outcome data may represent an increased burden on some hospitals, particularly on the subset of hospitals that are routinely subject to HCFA's survey process. These non-accredited hospitals typically are smaller than JCAHO-accredited hospitals, are located in more sparsely populated areas, and may not have the resources for extensive data gathering and reporting. However, rather than mandating specific performance measures, we would allow each hospital the flexibility to identify its own measures of performance for the activities it identifies as priorities in its quality assessment and performance improvement strategy. With this in mind, we believe the proposed quality assessment and performance improvement condition would lay the foundation for specific hospital quality indicators that might be developed by consensus in the future.

We anticipate that hospitals, both large and small, rural and urban, will or already use a variety of performance measures to inform their internal quality assessment and performance improvement programs. Some of these measures may be designed by the hospital itself, while others will be developed through research or by consensus groups or other sources outside the hospital. Regardless, HCFA intends, through its survey process, to assess the hospital's success in using performance measures principally in terms of whether the hospital can demonstrate with objective data that sustained improvements have taken place in: (1) Actual care outcomes, patient satisfaction levels, or other performance data, and/or (2) processes of care and hospital operations that are predictive of improved outcomes of care and satisfaction for patients. HCFA does not intend and would not be in a position to judge the measures themselves; instead, we would assess

their utility for the hospital in its own efforts to improve its performance.

While we recognize that there is no single system available for the measurement of a hospital performance, we are also aware of efforts in the hospital industry to find ways to increase the use of intra- and inter-hospital performance measurement systems. For example, under programs called ORYX and ORYX PLUS JCAHO plans to require hospitals to use a defined number of performance measures that evaluate care to a percentage of patients in an initiative to integrate performance measures with the accreditation process. Initially, we understand these programs set forth an initial framework for evaluating a wide range of performance measurement systems. The specific attributes of the measurement systems that will be evaluated include: the performance measures and data elements (how they focus on processes and/or outcomes related to patient care and organizational performance); the construction of the database; the quality of the database; the extent of risk adjustment/stratification for patient factors; performance-related feedback; and the relevance of the performance measurement system for accreditation.

Under this proposed rule, we would require a hospital to engage in a quality assessment and performance improvement program that uses objective measures, but we are not proposing that a hospital be required to participate in a system of performance measurement with other hospitals. However, we intend to develop such a requirement for inclusion in our final rule, and welcome public comments addressing the appropriateness of such a requirement or how it could best be structured. For example, one possibility is that the final rule would set forth the requirement as suggested above, and would include the evaluation criteria for the system or systems the hospitals might use. We do not envision that we would require the use of a specific system. Again, we are not proposing any specific provisions at this time, but we invite comment on whether HCFA should require non-accredited hospitals to participate in one or more performance measurement systems as part of their overall quality assessment and performance improvement program (both internally and externally).

Example of a quality improvement project. HCFA wants to assure hospitals, particularly smaller, more rural hospitals, that our expectations for the use of performance measures are commensurate with the size and resources available to the hospital. Powerful improvement programs can be and are often premised on simple, straightforward designs, using measures that are direct and uncomplicated. For example, a hospital might collect information on a routine, sampled basis about the rate of utilization of psychoactive medications that are initiated during a hospital stay, when none were used by the patient prior to hospitalization. This data collection could be a part of the hospital's quality assessment and performance improvement program associated with the proposed drug management requirements (proposed § 482.35(b)). The data could be collected manually or electronically and could be analyzed by case mix, age, physician specific prescribing patterns, the shift most likely to request medication orders, etc. This data would fulfill our requirement that it be an "objective measure" because the unit of measure in this example is the number of patients for whom psychoactive medications are prescribed after admission. If this data is taken for 1 month as a start period, and taken again 6 months later as an end period, the differences in the number of patients for whom psychoactive medications were prescribed after admission (both increase and decrease) would inform the hospital staff responsible for this project how well (or poorly) their intervention plan worked.

The hospital's quality assessment and performance improvement team could then use that data to design a specific improvement project, implement it, and continue to collect data to demonstrate, in a nonstatistical way change over time (for example, a steady reduction in orders for psychoactive medications during a hospital stay). The performance measures for a project like this are immediate and simple to collect, and well within the reach of any hospital. Hospitals that have more resources could be expected to produce more sophisticated measures that involve more complicated issues, but the key expectation of these requirements is that the hospital make an aggressive and continuous effort to improve its performance across the board. HCFA is more interested in the outcomes of such an effort than in the specific processes the hospital uses to achieve the performance improvements. We recognize that: (1) There is not yet a wide menu of available performance measures that have been shown to be reliable and valid that could be offered to a hospital to use to meet these requirements; (2) a hospital cannot control many related nonpatient care outcomes (such as substance abuse practices of the patient, or lack of adequate support systems to ensure lasting positive outcomes from the hospital stay, etc.); and (3) many hospitals will need more experience with data collection methods and in the design implementation and monitoring of improvement projects. However, experience in many hospitals, other health care providers, and business and industry in general has shown convincingly that creating an expectation for continuous improvement is a far more powerful performance incentive than maintaining a set of process and structural requirements.

Therefore, we want to stress that our emphasis at this time is on the improvement of processes. The process of improvement entails: (1) Identification of an organization's critical patient care and services components; (2) application of performance measures that are predictive of quality outcomes that would result from delivery of the patient care and services; and (3) continuous use of a method of data collection and evaluation that identifies or triggers further opportunities for improvement. We do not intend for hospitals to collect data from performance measures for the sake of meeting a regulatory requirement. The hospital must have the flexibility to identify the processes targeted for improvement based on the unique needs and priorities of the facility and its patients. Moreover, we would expect the processes targeted for improvement to change over time as the hospital makes the necessary improvement efforts.

As stated by W. Edwards Deming, the late quality management expert, "* * * quality comes from * * * improvement of process(es)" and the degree to which improvement occurs is measured through analysis of collected data. (Katz, Jacqueline, Managing Quality, St. Louis: Mosby Year Book, 1992, p. 122). Likewise, the intent of this requirement is that each hospital will engage in improvement activities, based on its own analysis of data, that improve care outcomes and patient satisfaction and lead to greater efficiency and economy of operation.

How to Measure Hospital Quality Improvement Efforts—Options for Establishing a Required Minimum Level of Improvement Projects Per Year. As the preceding discussion illustrates, even small, rural hospitals and those without sophisticated "research" capabilities can develop and manage effective quality assessment and

improvement programs that demonstrate sustained improvement over time. However, we are concerned that some hospitals may make token efforts to meet this requirement, efforts that are aimed primarily at avoiding adverse enforcement action resulting from a survey, rather than at improving processes and outcomes of care and satisfaction for patients. Thus, depending on the comments we receive, we intend to develop for the final regulation a requirement that a hospital engage in a minimum number of improvement projects that are based upon the hospital's own quality assessments of its performance and that show measured, sustained results that actually benefit patients.

We are not proposing specific language in the regulation text at this time because we recognize there are many ways in which a minimum level of effort can be set.

We are inviting comment not only on the advisability and necessity of such a requirement, but also on the best approaches to achieve this minimum level of effort. At a minimum, we would require under the quality assessment and performance improvement condition of participation that the number of distinct successful improvement activities to be conducted annually must be proportional to the scope and complexity of the hospital's program. The success of the activity would be measured in terms of demonstrated sustained improvement over time. We intend to then supplement this underlying requirement with a more precise explanation of what would be expected of each hospital. Among the possible alternatives that we are considering are the following:

(1) Require the hospital to engage in a specific number of improvement projects equal to not less than 1 project per 1,000 patient discharges.

(2) Require a minimum set number of projects (e.g., five) that are hospital-wide and most broadly affect patient outcomes and satisfaction.

(3) Require a minimum set number of projects (e.g., five) that are not hospital-wide, but that are developed and implemented in various areas of the hospital's range of care and services (e.g., one project might reduce waiting time in the emergency room, another might focus on improving the accuracy of medication administration, etc.).

(4) Require a minimum number of projects based on bed-size, rather than discharges (e.g., 8 projects in a 600-bed hospital, 2 in a 50-bed hospital).

(5) Rather than requiring a minimum number of projects, require the hospital to demonstrate (e.g., to the PRO and/or survey agency) what projects they are doing and what progress is being achieved.

(6) Again, rather than specifying minimum number of projects, establish a minimum set of types of projects that must be done (e.g., hospital operational processes that are predictive of positive outcomes, such as infection control measures, or condition-specific projects that improve certain clinical outcomes, such as emergency room responses to heart attack patients).

We are certain there are many other ways to approach the "minimum effort" discussion. The examples noted above illustrate some of the possible approaches to ensuring that hospitals invest substantial efforts in quality assessment and improvement. The purpose of these examples is to elicit comment and suggestions in this regard, and we welcome alternative approaches. We note that although our intention is to specify in the final rule a minimum level of effort, it is also possible that after reviewing all the comments we may conclude that it is neither feasible nor desirable to do so.

Other Elements of the Proposed Quality Assessment and Performance Improvement Condition. We propose a new requirement at § 482.25(a)(3) that a hospital must use hospital-specific as well as PRO data and any other available relevant data, as an integral part of its quality assessment and performance improvement strategy, to develop its improvement plans and projects. However, if a hospital elects not to participate in an improvement project with its PRO, we propose at § 482.25(a)(4) that it must be able to demonstrate a level of achievement through its own quality assessment and performance improvement strategy comparable to or better than that to be expected from such participation. Thus, we intend that each hospital have the responsibility to engage in improvement projects that are vigorous and needed to improve performance across the range of hospital activities that affect patient outcomes. For example, if a PRO proposes a cooperative project to improve the outcomes for Medicare patients with pneumonia, and the hospital chooses not to participate, HCFA surveyors would expect to find that projects that the hospital designed and implemented on its own (e.g., an improvement project to reduce the use of psychoactive medications and physical restraints as patient management tools) achieved improvements that were demonstrably as important as the expected outcomes that would have been expected from the pneumonia study had the hospital chosen to participate in that cooperative study. (In assessing the comparability of a hospital project with a PRO project, we would consider the number of patients affected, the projected magnitude of the benefit to individual patients, and the actual changes achieved by the project to the changes achieved by participants in the PRO project.)

We also would require that a hospital set priorities for performance improvement, based on the prevalence and severity of identified problems. Of course, we expect that a hospital will immediately correct problems that are identified through its quality assessment and performance improvement program that actually or potentially affect the health and safety of patients. For example, if a hospital's quality assessment and performance improvement process identifies problems with accuracy of medication administration, it is not enough for the hospital to consider this area a candidate for an improvement program that may or may not be chosen from a priority list of potential projects. Rather, since accuracy of medication administration is critical to the health and safety of patients, the hospital must intervene with a correction and improvement program immediately. Overall, a hospital would be expected to give priority to improvement activities that most affect clinical outcomes.

As noted above, perhaps the most fundamental change proposed in the new quality assessment and performance COP in comparison to the present condition on quality assurance is the focus on taking action to correct problems identified through the hospital's quality assessment and performance improvement program. This change is reemphasized in the proposed requirement at § 482.25(a)(6) that a hospital must take actions based on measurement and tracking that result in demonstrable, sustained improvements. We envision a hospital meeting this requirement by conducting a systems/process analysis when adverse outcomes are identified and then taking action to afford long-term correction and improvement of the identified problems, as illustrated in the above example concerning medication administration.

The second proposed standard under this COP, proposed § 482.25(b), basically builds on the current requirement under § 482.21 that the hospital's governing body ensures that there is an effective, hospital-wide quality assessment and performance improvement program, as well as on the current requirements concerning

medical staff responsibilities under § 482.22(b) and (c). Under the new proposed standard, we would state that the hospital governing body, medical staff, and administration officials are responsible for ensuring that the hospital-wide quality assessment and performance improvement efforts address identified priorities in the hospital and for implementing and evaluating improvement actions. We would, however, eliminate several procedural requirements under the current medical staffing provisions, such as those concerning the organization of the medical staff.

Finally, in keeping with the cross-cutting, hospital-wide approach to quality improvement that we believe represents current best practices, the standard includes a requirement that all programs, departments, and functions be involved in the hospital's quality assessment and performance improvement program. This would include services that are carried out under contract or by arrangement.

Under the third standard in this COP, we would retain the current requirement on autopsies (existing § 482.22(d)). Under this requirement a hospital's medical staff must attempt to secure autopsies in cases of unusual deaths or of medical, legal, or educational interest. Although this requirement is somewhat prescriptive, we believe it is necessary because autopsies are a valuable educational tool that contribute to the quality of care in a hospital and, as we stated above, can be used by the hospital to improve its performance.

6. Diagnostic and Therapeutic Services or Rehabilitative Services (§ 482.30)

We are proposing to restate and consolidate current standards from several COPs that relate to required and optional diagnostic and therapeutic services into one COP. The condition would have four standards. The first standard would require that a hospital be primarily engaged in providing, by or under the supervision of one of the practitioners described in 42 CFR 410.20(b) (which specifies by whom physician services must be furnished to be eligible for Medicare Part B payment), either diagnostic and therapeutic services to inpatients, or rehabilitative services to inpatients. This standard would implement the statutory requirement at section 1861(e)(1) of the Act. If a hospital does not meet this standard, it would be found out of compliance and would risk termination of its participation in the Medicare program.

The second standard of this condition at proposed § 482.30(b) would require that a hospital furnish diagnostic radiology services, as required under existing § 482.26. We would expect a patient's initial needs for radiology services would be identified in the comprehensive assessment performed at admission. In addition we are proposing that a hospital that furnishes emergency services on a full-time basis must provide diagnostic radiology services on a full-time basis.

Separate mention is not made in this condition of the personnel, safety, and record standards that are now found under § 482.26(b), (c), and (d). As discussed earlier in this preamble, under our proposed reorganization of these COPS, we try to deal with such common elements in one place instead of repeating them for each condition. Therefore, the personnel and safety standards accompanying these conditions are now encompassed in the proposed Human Resources and Physical Environment conditions, respectively.

In the next standard, proposed § 482.30(c), we would require hospitals to furnish laboratory services, including 24 hour-a-day emergency laboratory services, as presently required under existing regulations (see § 482.27). We are also proposing to retain the current requirement at § 482.27(a) that laboratory services provided to patients in the hospital must meet the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA), as codified in 42 CFR part 493. We propose to delete the requirements of existing § 482.27(b)(2), (3) and (4). Section 482.27(b)(3) requires the hospital laboratory to make provisions for the proper receipt and reporting of specimens the laboratory handles. Since this requirement is covered under CLIA provisions, it would be redundant to place it in the proposed hospital COP. We are requesting comment on our proposal to eliminate the current requirements at § 482.27(b)(2) which requires that a written description of laboratory services be available to the medical staff and at § 482.27(b)(4) which requires the medical staff and a pathologist to determine which tissue specimens require a microscopic and/or macroscopic examination. We recognize that it is essential for practitioners to know what laboratory services are available for diagnosing and delivering care. However, we believe that hospitals make their services known to their practitioners, and we are not convinced that a regulation is necessary to assure that this process occurs. In addition, although microscopic and macroscopic examination of tissue specimens may provide valuable information, we are requesting comment on whether it is necessary to have a regulation which states who can determine what tissue specimens require these examinations.

The fourth proposed standard at § 482.30(d) would state that a hospital may elect to offer services in addition to these required diagnostic and therapeutic services, such as nuclear medicine, ultra sound, rehabilitation medicine services, psychology services, respiratory care services, speech and language pathology services, audiology services, social work and vocational rehabilitation services, to name a few. This listing illustrates but does not limit the range of diagnostic and therapeutic services a hospital may provide. If the hospital elects to offer such additional optional services, those services must be delivered in accordance with the requirements of part 482.

7. Pharmaceutical Services (§ 482.35)

Overview. Under the proposed condition on pharmaceutical services, which would replace current § 482.25, we would require the hospital to provide needed medication therapy through a safe, accurate, and effective system that minimizes adverse drug events and evaluates the patient's response to the therapy.

In general, we propose to adopt requirements that integrate drug therapy services and support a coordination of services by the various disciplines that provide them (medicine, nursing, and pharmacy). This integration of services is intended to protect patients by establishing a four-layer "safety net" to prevent adverse drug events (including medication errors). It is intended also to detect system errors that result from the multiple nodes in the drug distribution process: Ordering, transcription, dispensing, and administration.

The first layer of this safety net is a peer review activity for the identification of events that are predictive of adverse drug events (see § 482.35(a)(1)). The second layer is the detection of medication errors (see § 482.35(a) (2) and (3)). This layer focuses on the more objective errors of transcription, dispensing, and administration, and leaves the more subjective drug error issues to peer review and nurse review mechanisms. The third layer of the net is the comprehensive drug information resource, which endeavors to provide vital drug and patient information at keys points in the drug distribution process (see § 482.35(b)(4)). The fourth layer of the net relies on nursing personnel to review drug orders for

accuracy of the entire system before drugs are administered (see § 482.35(b)(5)).

As a consequence, we are proposing to delete a number of narrowly focused, structure and process-oriented requirements, as follows:

In existing § 482.25(a)—

(1) Requiring a full-time, part-time or consultant pharmacist.

(2) Requiring the pharmaceutical service to have adequate personnel.

In existing § 482.25(b)—

(1) All compounding, packaging, and supervision of drugs must be under the supervision of a pharmacist.

(2) All drugs must be kept in a locked storage area. (Note: Locked storage of only controlled drugs is proposed at § 482.35(b)(1).)

(3) Outdated, mislabeled or otherwise unusable drugs are not available for patient use.

(4) When the pharmacist is not available, drugs and biologicals may only be removed from the pharmacy or drug storage area by a designated person.

(6) Drug administration errors, adverse drug reactions and incompatibilities are immediately reported to the attending physician and the quality assurance program.

(9) A drug formulary system must be established by the medical staff to assure quality pharmaceuticals at a reasonable cost.

A drug formulary is a system for determining the best quality and least expensive drugs, listing them in a formulary, and restricting the medical staff to the drugs listed in the formulary. This is a vastly different document than the "comprehensive drug information resource" referred to under § 482.25(b)(4) of this proposed rule. A drug formulary is a cost control and quality mechanism. We do not think it would be a wise investment of survey agency time to pursue this cost control mechanism through enforcement of the COPs, since current efforts at cost controls and an emphasis on managed care will probably be far more effective at constraining drug costs in hospitals.

Finally, we plan to eliminate the explicit, process-oriented requirements for administration of drugs, and acceptance of telephone and other oral orders for drugs, that are now set forth in our nursing services requirements at § 482.23(c)(2).

Description of Standards. The first proposed standard has to do with monitoring of adverse drug events (ADEs) and with eliminating or minimizing medication errors. We believe a separate standard covering ADE monitoring is needed because of its importance to patient care quality and patient health and safety. This standard is based on Journal of the American Medical Association (JAMA) papers on adverse drug events (see Bates, D. W., *et al.*, "Incidence of Adverse Drug Events and Potential Adverse Drug Events," *JAMA*, 274 (1995): 29–34, and Leape, L. L., *et al.*, "Systems Analysis of Adverse Drug Events," *JAMA*, 274 (1995): 35–43).

These papers make the following salient points:

- Forty-two percent of serious and life-threatening ADEs were preventable (Bates, page 33).
- Adverse drug events have multiple etiologies, but the lack of readily accessible and current drug information along with patient care information is a significant part of the problem with adverse drug events (Leape, page 40).
- Computerized detection programs that search for events likely to be associated with an ADE (e.g., naloxone, an opiate antagonist), supplemented by spontaneous reporting using the computerized information system and a dedicated person or group with responsibility for evaluating these events have been found to represent an effective, relatively inexpensive method for identifying ADEs and will probably be the strategy of the future (Bates, page 33).
- The most common defects were in systems to disseminate knowledge about drugs and to make drug and patient information readily accessible at the time it is needed. System changes to improve dissemination and display of drugs and patient data should make errors in the use of drugs less likely (Leape, page 35).

We have endeavored to implement the principles established in these papers in the first standard, "Adverse Drug Monitoring." First we propose that the facility must establish a system of evaluation of ADEs by searching current clinical records for events that are predictive of an ADE and reporting them to the quality assessment and performance program for action. We have not proposed to require that a computerized system be used by all hospitals since these regulations primarily will affect small, rural, nonaccredited hospitals who may not have the resources to develop such a computer system.

The second and third parts of the ADE standard deal with medication errors. A longstanding body of research exists concerning medication errors in hospitals. In a paper by Allan and Barker (Allan, Elizabeth L. and Barker, Kenneth N., "Fundamentals of Medication Error Research," American Journal of Hospital Pharmacy, 47 (1990): 555–71), the authors documented medication error studies in approximately 40 hospitals and nursing homes in the United States and Canada. These studies covered a period of time from 1962 to 1987. The hospitals' medication error rates ranged from a high of 20.6 percent to a low of 1.6 percent when wrong timing errors were excluded. When wrong timing errors were included, the range was 42.9 percent to 4.4 percent.

This proposal would permit an overall medication error rate in a hospital of no greater than 2 percent and require zero tolerance for significant medication errors. Significant medication errors are defined as errors that jeopardize or cause serious potential for jeopardizing the health and safety of the patient. HCFA has used this concept for many years in long-term care facilities, and has considerable experience at defining what would constitute a significant medication error. The overall error rate would include significant as well as nonsignificant (e.g., wrong timing) errors and would result in a deficiency citation. Setting an overall limit on medication errors, including significant errors, does not mean significant errors are tolerated if they remain below 2 percent. Rather, even though the regulation provides zero tolerance for significant errors, if significant errors do occur, and they are added to the nonsignificant errors, a deficiency occurs where the result is greater than 2 percent. This deficiency is in addition to the separate deficiency for the significant errors. We are proposing the 2-percent standard because research and expert opinion has determined that this is a reasonable medication error rate to achieve, given modern drug packaging and drug information systems. (See Barker, Kenneth N., *et al.*, "Consultant Evaluation of a Hospital Medication System: Analysis of the Existing System," American Journal of Hospital Pharmacy, 41 (1984): 2013).

In the Bates, et al, paper, adverse drug events are categorized as follows: Ordering, Transcription, Dispensing and Administration. It is important to point out that the medication error regulation proposal would examine all these categories except ADEs occurring from physician ordering questions. For this issue we would rely on the licensed nurse (that is, a registered nurse (RN), licensed practical nurse (LPN), or licensed vocational nurse (LVN)) review, as proposed under § 482.35(b)(5). This is necessary because physician ordering questions dealing with the drug, the dose, the route of administration, etc., frequently require consultation before a positive determination about the occurrence of an ADE.

The second standard, "Drug Management Procedures," has seven parts. The first one requires that drugs and biologicals be kept in secure areas; however, those drugs that are "controlled" must be stored in locked areas as required by the Comprehensive Drug Abuse Prevention and Control Act. (We are not requiring that biologicals be stored in locked areas because this Act does not include "biologicals" in its provisions.) We are not requiring that the areas where the controlled drugs are stored be double locked, since what is usually found in most facilities is an individual with a ring of keys containing both keys to the double locked compartment. In this case "double locked" is hardly an added security feature. The key to the locked compartment should be restricted strictly to individuals who have an identified need to access these drugs.

The requirement for the facility to maintain a record of receipt and disposition of controlled drugs may be met in ways other than the use of proof of use sheets for each controlled drug. For example, the facility may use existing patient records such as the medication administration record as a record of disposition of controlled drugs. If the facility wishes to maintain records of receipt and disposition of controlled drugs by using existing patient care records, it will reduce its paperwork burden considerably.

Proposed § 482.35(b)(3) requires that discrepancies in the record of controlled drugs be reported to the individual responsible for pharmaceutical services and to the hospital administrator. Discrepancies in these records indicate that controlled drugs are being used for unauthorized purposes. Proposed § 482.35(b)(3) would require that these discrepancies be reported to responsible individuals in the hospital, who will then decide whether the local police or the Drug Enforcement Agency should be involved.

The fourth part of the Drug Management Procedures standard would require the hospital to establish a computerized or hard copy ability to merge patient information with current comprehensive drug information at the points of drug ordering, dispensing, and administration. This system would promote the development of information systems that bring patient information and drug information together at critical junctures in the drug ordering and distribution process. Comprehensive drug information resources would include the United States Pharmacopoeia-Drug Information, American Medical Association Drug Evaluations, and the American Hospital Formulary Service—Drug Information. (These drug information resources are those used to establish Medicaid drug use review under the provisions of section 1927(g)(1)(B) of the Social Security Act. Drug information resources would not include the Physician Desk Reference since this reference is not considered comprehensive and was not listed in the statute.)

The fifth part of this standard would require that before medications are administered, a licensed nurse, or a physician if he or she is personally administering the drug, review the patient's information and the drug order. (The comprehensive drug information would also be available for review if there was a need for this information.) The purpose of this proposal is to support the established practice of nursing personnel questioning the drug order from the standpoint of the correctness of the order itself in relation to specific patient and drug information that must be readily available before or at the point of drug administration. In reviewing this information to prevent drug errors, a nurse would be acting only within the scope of her or his State licensure. The expectation is that the nurse would report any potential errors in drug prescribing to the physician, so the physician could determine whether the order needed to be changed. This proposed requirement is consistent with current research. Leape identified a total of 334 adverse drug events that were identified by review of all admissions in 11 medical and surgical units in 2 tertiary hospitals for a period of 6 months. Of the 334 adverse drug events, 91 or 27 percent were intercepted (prevented). Of these 91 prevented adverse drug events, 86 percent were prevented by nurses and 12 percent by pharmacists. This proposed regulation is intended to strengthen the potential for nurses and pharmacists to intercept adverse drug events of all kinds by providing them with readily available information necessary to prevent these events.

The sixth part of the Drug Management Procedures standard deals with positive identification of medication. The current regulations do not contain a requirement for positively identifying drugs brought to the facility by the patient and then obtaining physician orders before they can be administered. We are proposing such a requirement here because when an individual is hospitalized it indicates a considerable change in their status. "Positively identified" in the context of this proposed rule means that a pharmacist or someone with similar drug identification skills must make sure that the drugs brought to the facility are in fact the same drugs that the label represents. This is necessary because patients often mix drugs within one container, or they separate drugs from their proper labeling. The drugs that the individual was taking prior to this hospitalization should be reviewed by competent medical personnel to determine if these drugs are still necessary, or if they may interfere with other therapies that are underway in the hospital.

Unlike current regulations, this proposed rule would make it clear that self-administration of drugs is permitted, but only under orders and hospital policy. This proposed rule is important for patients being prepared for discharge. These patients should become familiar with self-administration of drugs (especially eye drops, inhalers, intramuscular injections), so they become well-practiced with this task while still under competent supervision.

Regarding our seventh proposal, existing § 482.25(b)(5) requires that orders for drugs and biologicals be automatically stopped after a reasonable period of time as predetermined by the medical staff. This proposed rule endeavors to achieve the same objective as the current rule, that is, the cessation of drug therapy when it is no longer necessary. However, our proposal would not limit the hospital to the option of automatic stop orders, which discontinue drug therapy (especially on holidays and weekends) by administrative fiat without any medical assessment as to whether the drug therapy has achieved its therapeutic objectives. The proposed rule allows the hospital to develop its own approaches for achieving this objective.

The last standard of the Pharmaceutical Services COP (proposed § 482.35(c)) deals with discharge orders for psychopharmacological drugs. Under this standard, we would require that orders for psychopharmacological drugs be discontinued upon the patient's discharge unless the patient has been diagnosed (using standard criteria for such diagnoses) with a mental illness. This will prevent the use of these drugs (which may be temporarily necessary during a hospitalization) from becoming routine after discharge unless a valid reason for their use is established. This is particularly necessary in patients

transferred to long-term care facilities, who can suffer considerable adverse effects from long-term use of antipsychotic and antianxiety drugs that may have been started in the hospital for very valid reasons but that may no longer be valid after discharge. A study by Garrard (Garrard, Judith, *et al.*, "Evaluation of neuroleptic drug use by nursing home elderly under proposed Medicare and Medicaid regulations," *JAMA*, 265 (1991): 463–467) showed that the rate of use of neuroleptic (antipsychotic) drugs among nursing home admissions was: 16 percent when admitted from hospitals, 18 percent from the community, and 21 percent from other nursing homes. Regulation of the use of these drugs (in the absence of proper differential diagnoses) in nursing homes have been in effect since 1990 (see 42 CFR 483.25), and we have been criticized because similar rules were not imposed on hospital and community practice (Thurston, Ronald G., Letters, *JAMA*, 265 (1991): 2962). We believe this proposed requirement represents a fair way to address this issue, but invite public comment on alternatives for achieving the same objective.

8. Nutritional Services (§ 482.40)

Currently, the food and dietetic services requirements that a hospital must meet are found at § 482.28. These requirements emphasize the organizational aspects of a hospital's food and dietetic services program, including provisions that specify allowable contractual arrangements, employee qualifications, and other process-oriented details.

We are proposing extensive revisions to these provisions under a new nutritional services condition of participation. In keeping with the principles discussed above, the new condition of participation would promote a patient-centered approach to nutrition. Thus, the introductory language for these proposed requirements states explicitly that each patient must receive adequate nutrition, including therapeutic diets or parenteral nutrition if needed.

The proposed condition includes only two standards. The first standard, "Sanitary conditions," requires that food provided to patients be obtained, stored, prepared, distributed and served under sanitary conditions. (Note that the term "food" is intended to include all forms of nutrition, liquid or solid, provided to patients.) Although this requirement is not contained in the current hospital conditions of participation, we believe that it clearly is an underlying necessity for any acceptable nutritional services program. Thus, we are proposing to include it explicitly under the nutritional services condition. The only other standard would require that menus be prepared in advance and meet the nutritional needs of patients based on the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. We believe the Board's guidelines can appropriately be used here because they represent accepted best practices and are already in widespread use among hospitals.

In developing the proposed requirements, we have attempted to incorporate straightforward statements of a hospital's responsibilities, while eliminating procedural requirements and avoiding unnecessary details of how the hospital should carry out its nutritional services function. We believe that the requirements largely incorporate current best practices in hospital nutrition services, while eliminating several burdensome process requirements that are not central to meeting the patient's dietary needs (such as the requirement under current § 482.28(b)(3) that a current therapeutic diet manual approved by the dietitian and medical staff be readily available to all medical, nursing, and food service personnel.) We considered supplementing the requirements with additional provisions concerning staffing requirements or qualifications. Instead, however, we decided that the staffing requirements set forth under the proposed human resources condition of participation are sufficiently broad to ensure that a hospital has adequate qualified staff to carry out its nutritional services function. Rather than prescribing how a hospital should organize itself to meet its nutritional services responsibilities, we prefer to allow each hospital as much flexibility as possible in this regard, so that it can focus on incorporating its nutritional services program into a cross-cutting approach toward achieving optimal patient outcomes. Finally, as discussed above in section II.B.4 of this preamble, we note that the existing requirement under § 482.28(b)(1) that a therapeutic diet be prescribed by the responsible practitioner would now be encompassed within the hospital's responsibility under proposed § 482.20(b) to ensure that all patient care services be provided in accordance with the orders of qualified practitioners.

9. Surgical and Anesthesia Services (§ 482.45)

The proposed condition on surgical and anesthesia services would replace the existing regulations at § 482.51 (Condition of participation: Surgical services) and § 482.52 (Condition of participation: Anesthesia services). We have decided to address both areas under a single condition in order to simplify the organization of part 482, and to emphasize the close relationship between surgery and anesthesia.

In the new condition, we would delete current process-oriented standards having to do with the organization and staffing of the hospital's surgical and anesthesia departments or services (existing § 482.51(a) and § 482.52(a)), and with hospital policies governing surgical and anesthesia care (existing § 482.51(b) and § 482.52(b)). In particular, we propose to delete the current specific requirements regarding the types of personnel who can serve as scrub nurses or perform circulating duties in the operating room. We also would eliminate current rules on which practitioners can administer anesthesia, and what level of supervision must be provided to them. We also propose to delete current prescriptive requirements specifying the types of equipment that must be maintained in operating suites (existing § 482.51(b)(3)). We believe those requirements should be eliminated in favor of those that focus more directly on outcomes.

In place of the current requirements, we propose two basic rules on staffing. We would require that surgical procedures be performed only by practitioners with appropriate clinical privileges, and that anesthesia be administered only by a licensed practitioner permitted by the State to administer anesthetics.

One effect of our proposed staffing and equipment requirement would be to allow more flexibility to certified registered nurse anesthetists (CRNAs) to practice without oversight by another practitioner. Currently, the anesthesia condition (§ 482.52(a)(4)) requires that a CRNA administer anesthesia only under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed. To allow greater flexibility to hospitals and practitioners and to give deference to State scope of practice law, we propose to delete this supervision requirement and allow the CRNA to function without supervision by another practitioner, where this is in accordance with State law. We emphasize that CRNAs are allowed to practice in this way only where doing so is consistent with State law. If State law establishes a more stringent rule, the hospitals (42 CFR 482.110) would be required to furnish care in a way that is consistent with that rule.

To ensure that our requirements are consistent across the settings in which surgery may be performed, we propose also to eliminate the supervision requirement for CRNAs in ambulatory surgical centers (ASCs) (42 CFR 416.42) and in critical access hospitals (CAHs) (formerly rural primary care hospitals) (RPCHs) (42 CFR 485.639) and allow the CRNA to function without supervision by another practitioner, where this is in accordance with State law. In addition, if State law establishes a more stringent rule, the ambulatory surgical centers (42 CFR 416.40) and critical access hospitals (42 CFR 485.608) would be required to furnish care in a way that is consistent with that rule.

We believe it is critical to the health and safety of surgical patients to have accurate information on each patient's condition before anesthesia is administered and a surgical procedure is undertaken. Therefore, we would require under proposed § 482.45(b) that a comprehensive assessment be performed before surgery (with a modified assessment being permitted in emergency cases) and that a preanesthesia evaluation be done by an individual qualified to administer anesthesia. We also would require that a postanesthesia evaluation for proper recovery be done by an individual qualified to administer anesthesia. We propose to delete the current prescriptive rule under which the postanesthesia evaluation must be done by the same individual who administered the anesthesia.

In the standard on documentation of care, we have included requirements for entry of specified information in the medical record. The information that would be required includes a report of the comprehensive or modified pre-surgical assessment, a properly executed informed consent form, an operative report describing complications, reactions, length of time, techniques, findings, tissues removed or altered, a record of intraoperative anesthesia, and a report of the postanesthesia evaluation. By "properly executed informed consent," we mean only that the patient understands the information the hospital wishes to convey. The pre-surgical assessment and informed consent form would have to be entered in the record before surgery except in emergency cases, while the operative report, intraoperative anesthesia record, and a report of the postanesthesia evaluation would have to be entered in the record promptly following surgery. (The postanesthesia evaluation report combines the current requirements for an inpatient postanesthesia followup report (§ 482.52(b)(3)), and for an outpatient postanesthesia evaluation (§ 482.52(b)(4)) into a single new requirement.) The hospital also would be required to maintain a complete, up-to-date operating room register. We recognize that our proposal for the documentation requirements for the surgical and anesthesia services COP is more extensive and specific than many other requirements in these proposals. However, such documentation is common to current practice and imposes no additional burden to hospitals as these documentation requirements are part of the existing COPs.

10. Emergency Services (§ 482.50)

We propose to delete the existing regulations at § 482.2 (Condition of participation: Provision of emergency services by nonparticipating hospitals), and to add a single new emergency services condition that would replace both current § 482.12(f) (Condition of participation: Governing body; Standard: Emergency services) and current § 482.55 (Condition of participation: Emergency services). We believe § 482.2 need not be retained since the regulations at 42 CFR 424.101 set forth a definition of "hospital" that is used for purposes of payment for services to Medicare patients that are furnished on an emergency basis by a hospital that does not participate in the program. By addressing the two latter areas under a single regulation, we hope to simplify the organization of the regulations and eliminate the need for the user of the regulations to refer to separate sections to review the rules on closely related services. For the reasons explained below, we also are proposing to add a separate standard for hospitals that offer emergency services on less than a full-time basis.

In the standard on hospitals providing full-time emergency services, we have emphasized requirements that most directly affect the safety of patients. These are the requirements regarding the personnel who furnish the services, the appropriateness of the services to patient needs, and the integration of emergency services with those of other hospital departments. Regarding the proposed requirement for sufficient numbers of personnel, we note that some hospitals may choose to meet patient needs by using a comparatively smaller, but more highly trained and skilled staff. In assessing compliance with this requirement, our primary concern will be to determine whether emergency service staffing is adequate to produce good treatment outcomes.

We are proposing the second standard, which is applicable only to hospitals providing part-time emergency services, in order to allow more flexibility to hospitals that find it necessary, because of staffing limitations, low emergency room volumes, or other factors, to limit the times during which emergency services can be offered. Because of the nature of emergency services, it clearly would be desirable to have them available on a 24-hour per day, 7-day per week basis. However, many hospitals, particularly those that are small and are located in remote rural areas, find it difficult to recruit and pay staff to furnish emergency services on this schedule. To avoid a situation in which these hospitals find it necessary to terminate emergency services altogether, we propose that hospitals that are located in rural areas and have fewer than 100 beds may offer emergency services on a part-time basis. We propose to use the definition of "rural area" now set forth in our regulations at 42 CFR 412.62(f)(1)(iii). Under that definition, an area is considered "rural" if it is located outside any Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), and outside specified New England counties.

We emphasize that this flexibility is not intended to foster development of dual standards of care—during its stated hours of operation, a hospital emergency department or service must meet exactly the same standards as full-time departments or services. However, at the times when it chooses not to offer emergency services, the hospital would be required to meet only the standard for hospitals that do not offer emergency care.

Section 1867 of the Act (Examination and Treatment of Emergency Medical Conditions and Women in Labor) imposes certain obligations on Medicare-participating hospitals that have emergency departments. If an individual comes to the hospital's emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide, within the capability of its emergency department, an appropriate medical screening examination and, if necessary, either stabilizing treatment or an appropriate transfer. Section 1867 of the Act does not deal explicitly with the situation of a hospital that opens its emergency department on only a part-time basis. However, it is our policy that a hospital that offers emergency services on a regular, part-time basis is not considered to have an emergency department under section 1867 at the scheduled times when emergency

services are not available. At those times only, the hospital is not subject to the requirements of section 1867 of the Act. The hospital would remain obligated at those times to meet the requirements of proposed § 482.50(c) for appraisals of emergency cases, initial treatment, and referral when appropriate. At all other times (that is, when emergency care is offered), the hospital is fully responsible for compliance with the statute (and with the implementing regulations at 42 CFR 489.24) and also would be obligated to meet the emergency services requirements set forth in proposed § 482.50(a) and (b).

We expect that a hospital offering part-time emergency services will do so in good faith, and not "open" and "close" its emergency department selectively, in an attempt to avoid meeting its statutory obligations to some patients based on their perceived inability to pay. We will continue to investigate all allegations we receive of violations of section 1867 of the Act and will not hesitate to initiate termination proceedings, or to refer cases to the Office of Inspector General, if it is clear that a violation has occurred. We welcome comments on this proposal.

The third proposed standard deals with hospitals not offering emergency services. We propose to continue to require such a hospital to provide for appraisal of emergencies, initial treatment, and referral of patients when appropriate. However, we propose to delete current process-oriented requirements having to do with the organization of the hospital's emergency services (§ 482.55(a)(1)) and with policies and procedures for the medical care provided in the emergency department (§ 482.55(a)(3)). We believe those requirements should be eliminated in favor of those that focus on activities more directly related to outcomes.

11. Discharge Planning (§ 482.55)

Section 1861(e)(6) of the Act requires that a hospital have in place a discharge planning process that meets the requirements of section 1861(ee) of the Act. Under section 1861(ee), a discharge planning process must apply to services furnished by the hospital to Medicare beneficiaries, and meet the guidelines and standards established by the Secretary of HHS to ensure a timely and smooth transition to the most appropriate type of setting for posthospital or rehabilitative care. Section 1861(ee)(2) further requires that the Secretary's standards and guidelines include seven specific elements, as listed in that provision. On December 13, 1994, we published a final rule to implement the requirements of sections 1861(e)(6) and 1861(ee) of the Act by adding new § 482.43 (Condition of participation: Discharge planning) (59 FR 64141). For the reasons explained in the preamble to that final rule, we elected under the authority in section 1861(e) of the Act to require a discharge planning process that applies to all patients, not just to Medicare beneficiaries.

On October 31, 1994, Congress enacted Public Law 103-432, the Social Security Act Amendments of 1994 (SSAA'94). Section 107 of that legislation amended section 1861(ee)(2) effective November 1, 1995, to require that a discharge planning evaluation for a Medicare patient include an evaluation of the need for hospice care as well as other posthospital care.

Congress included in the Balanced Budget Act of 1997 (BBA '97), Public Law 105–33, enacted August 5, 1997, several amendments to section 1861(ee)(2) to address concerns about reports of some hospitals referring patients only to HHAs with which they have financial ties. Subsection 4321(a) of that legislation, effective November 3, 1997, amended the discharge planning evaluation requirements in section 1861(ee)(2)(D) and added a subparagraph (H) to section 1861(ee)(2). These changes are consistent with patient rights, the first core condition of patient-centered care in this regulation. As a result of these changes a Medicare participating hospital now must: (1) Include in a patients's discharge planning evaluation the availability of home health services through Medicare participating HHAs which serve the patient's geographic area and which request the hospital to be listed; and (2) ensure that a patient's discharge plan does not specify or otherwise limit the qualified participating HHAs and identify any HHA with which the hospital has a "disclosable financial interest" if the patient is referred to such entities.

We propose to redesignate § 482.43 as new § 482.55, and to republish it with only the changes discussed below. In keeping with the shift in focus of these regulations from process to outcome, we propose to delete the requirement that a hospital's discharge planning policies and procedures be specified in writing, and to add the requirement that the discharge planning process assure that appropriate posthospital services are obtained for each patient, as necessary.

To implement section 107 of SSAA'94, we would specify under proposed § 482.55(b)(3) that hospitals must evaluate the need for hospice as well as other posthospital care. To implement section 4321(a) of the BBA '97 we would specify under proposed 482.55(b)(7) that the discharge planning evaluation must include a list of home health agencies that participate in the Medicare program and whose services are available to the patient, serve the area in which the patient resides, and request to be listed. Since, section 4321(a) requires listing the availability of individuals and entities, we have been questioned as to who those individuals and entities are. We have determined that since section 1861(m) of the Act identifies home health services as items or services furnished by a home health agency, or by others under arrangement with the agency, section 4321(a) is referring to Medicare participating home health agencies. Also in § 482.55(b)(7), we have proposed that the HHA should determine the geographic area in which the patient resides. We believe the HHA should determine the geographic area because the HHA is in the best position to know its service area and presumably, would not misrepresent its services by requesting to be listed for an area it does not serve. Discharge planning is effective if there are resources available to the patients at discharge. A hospital's ability to provide patients with outside resources for posthospital care are essential to allow many patients to stay at home which is a much less expensive alternative than institutionalization.

Under proposed 482.55(c)(6), we propose to require that the hospital tailor the plan, where possible, to the preferences of the patient and family. Specifically, we would state that the discharge plan must inform the patient (or patient's family) of their freedom to choose among available Medicare-participating providers that are capable of furnishing the needed services (such as SNF or HHA services) and must, if possible, respect the patient's or family expressed preference. Also, the discharge plan shall not specify or otherwise limit the qualified providers that are available to the patient. The intent of this change is to provide the patient with the freedom of choice to determine which HHA will provide care in accordance with Section 1802 of the Act, which states that beneficiaries may obtain health services from any Medicare participating provider. As written, section 1861 (ee) of the Act requires Medicare participating hospitals, as part of their discharge evaluation, to provide patients with a list of Medicare-certified home health agencies that serve a patient's geographic area and request to be listed by the hospital.

Hospitals and managed care organizations (MCO) have expressed concern as to whether the BBA'97 change was intended to apply to patients in managed care plans. MCO members are limited as to what services they may obtain from sources other than through the MCO. Therefore, providing members with a standardized list of all HHAs in the area can be misleading and potentially, financially harmful since MCO enrollees may be liable for services that they obtain from sources other than the MCO, and patients may interpret a list of HHAs that are not available to them under their health plan to mean that they are authorized by the MCO. This does not mean that Medicare MCO members in particular are denied the freedom of choice they are entitled to under section 1802 of the Act. Medicare beneficiaries exercise their freedom of choice when they voluntarily enrolle in the MCO and agree to adhere to the plans provisions on coverage.

To alleviate the confusion, hospitals can provide MCO patients with a list of available and accessible HHAs approved by the MCO. Another option is, when discussing discharge planning with patients, hospitals can determine whether the beneficiary has made any prior commitments through enrollment in a managed care organization. Where this is the case, the patient should be informed of the potential consequences of going outside the plan for services. The discharge planning process is initiated when a patient is admitted to the hospital. The collection of data includes verifying the patient's health insurance. At this time, the hospital personnel responsible for discharge planning activities can retrieve this information and initiate communication with the MCO to coordinate available and accessible posthospital care. We solicit the public for comments on this issue.

HCFA has received a number of questions concerning section 4321(a). These questions include: How does the hospital compile the list of agencies? What is the hospital's responsibility and liability for providing a list? Is there a form for home health agencies to complete to request placement on a hospital's list? We welcome public comments on these questions and we will take these comments into consideration when developing the final rule.

The process of making a choice includes being provided options to make an informed and confident decision. Hospital providing a list of available Medicare-certified home health agencies will assist patients in making such decisions. Although a hospital is free to design the list's format, the list is neither a recommendation nor endorsement by the hospital of any particular home health agency's quality of care. If HHAs do not meet all criteria, the hospitals are under no obligation to place that HHA on the list. The list should be legible and should not be used to specify or limit the choice of a HHA.

Under proposed § 482.55(c)(7), we would state that the discharge plan must identify those entities to whom the patient is referred in which the hospital has a disclosable financial interest or those entities which have a financial interest in the hospital. "Disclosable financial interest" will be defined in the rule-making process which implements section 1866(a)(1)(S) of the Act. In the interim, we suggest that hospitals reference the Disclosure of Ownership and Control provisions of 42 CFR 420 subpart C, which sets forth requirements for providers to disclose ownership and control information and identities of managing employees. If a hospital refers patients about to be discharged and in need of services, only to entities it owns or controls, then the hospital is infringing on the rights of the patient to choose the facility they would like to go to for services. The proposed disclosable financial interest requirement is an effort to increase the beneficiary's awareness of the actual or potential financial incentive a hospital may receive as a result of the referral. This regulation supports and extends our focus on patient-centered outcomes of care. We invite comments on this proposed requirement and other concerns hospitals may have regarding their ability both operationally and financially to undertake this approach.

In proposed § 482.55(e), we propose to add the requirement that the hospital's discharge planning process be an integral part of the hospital's quality assessment and performance improvement program. We believe this change is needed to enhance the effectiveness of the hospital's discharge planning program and to emphasize the important role of discharge planning in contributing to overall quality of care in a hospital.

We are not proposing any other changes in the current discharge planning COP. In view of the specificity of section 1861(ee) of the Act and the relatively recent implementation of that legislation through notice and comment rulemaking, we do not believe there is any further benefit to the public to be obtained by again requesting public comment on the parts of the regulation that we are republishing without change. Thus, with the exception discussed below, we are soliciting comments only on the proposed changes to the discharge planning requirements, rather than on the entire discharge planning COP.

Proposed § 482.55(b) (5) and (6) require that hospital personnel must complete the required discharge planning evaluation on a timely basis and include it in the medical record, thus ensuring that appropriate arrangements for posthospital care are made before discharge and avoiding unnecessary delays in discharge. We believe these requirements, which has been carried over without change from existing § 482.43(b) (5) and (6), are useful because they emphasize the need for prompt action to assess and act on the discharge planning needs of patients. We note that we considered including under proposed § 482.55(c) similar requirements about the discharge plan itself; however, we decided not to do so because we believe the existing requirements will ensure that a discharge plan is completed and available far enough in advance of discharge to allow it to be put into practice. Nevertheless, it is conceivable that some may interpret the absence of an explicit rule on the timing of the plan as an indication that it would be acceptable to have only a partial or incomplete plan at the time of discharge, or even to develop an after-the-fact "plan" that does not anticipate needs and try to meet them, but instead merely records and attempts to rationalize the postdischarge care already received. We welcome comments on whether the possibility of a misunderstanding of this point is strong enough to warrant adding, in the final rule, an explicit requirement that the discharge plan itself must be completed on a timely basis and entered into the medical record. We will consider the comments received on this issue, and may add an explicit requirement on this point to the final rule.

Possible Use of the Uniform Needs Assessment Instrument. In 1986, Congress directed the Secretary to develop a uniform needs assessment instrument (UNAI), or instruments, to serve primarily as a standardized means of evaluating an individual's needs for posthospital or supportive care. Congress also envisioned the possibility of the UNAI being used for determining whether individuals should receive services provided under publicly funded programs (that is, linking the individual's health status per the UNAI

to decisions regarding the scope and duration of services to be covered). In addition, the UNAI was envisioned as a vehicle for tracking individual patients across different Medicare service providers (primarily HHAs and SNFs). Although Congress directed the Secretary to produce the UNAI, there was no direction concerning its implementation. Thus, there is no statutory obligation to use the UNAI in practice.

The Secretary appointed a panel of experts, with HCFA providing the staff support services, to develop the UNAI. The expert panel was successful in devising a consensus tool that was brief, described the patient's functional status, nursing and other care requirements, and available family/care giver supports. The UNAI was seen as having content validity and clinical utility as judged by the comments of a group of experts and a stratified random sample of providers. The final UNAI and a comprehensive report about its development were submitted to the Congress in 1992. While the panel was enthusiastic about the potential for the UNAI as a posthospital discharge planning tool and a means of tracking a patient across provider types, the panel did not believe the UNAI could be used to evaluate an individual's eligibility for posthospital services under the current Medicare benefit structure.

The UNAI and the Report to Congress have been widely disseminated, and many hospitals have chosen to begin using the tool because it provides a useful method to organize their discharge planning processes. Currently, HCFA is preparing to field test the UNAI in hospitals, HHAs, and SNFs. The field test will rely on provider staff to complete the UNAI, and will provide information on the UNAI's reliability, validity, and administrative feasibility. HCFA's contractor for the field test, Research Triangle Institute, is also developing a "high risk screener," which will be used to identify those Medicare patients in need of an intensive discharge planning evaluation and thereby reduce the number of patients who would be subject to the UNAI. For example, a Medicare patient who has a minor operation and will return to the home with support from an able spouse and adult children nearby likely would pass the screener and not receive the UNAI as part of the hospital's discharge planning effort for that patient. However, an elderly beneficiary who suffers a severe stroke, and has a spouse in frail health and no children nearby would certainly fail the screener and would receive the UNAI as part of the hospital's discharge planning for that patient.

In the preamble to our December 13, 1994 final rule on discharge planning (59 FR 64141), we discussed our work on the UNAI, but we did not establish a requirement for its use. Now, with a comprehensive effort to change the hospital conditions of participation to a more patient-centered, outcome-oriented approach, and a strong emphasis on quality assessment and performance improvement, coupled with HCFA's intention to use data—particularly functional assessment data—more widely in care giving, quality improvement, and consumer information, we are considering requiring hospitals to use the UNAI to assess Medicare patients who are at-risk of needing posthospital services. The purposes of imposing the UNAI as a standard hospital discharge planning tool for Medicare patients would be to: (1) Ensure that all relevant factors are considered in evaluating an individual's needs for continuing care; (2) foster more uniform decisionmaking about the need for posthospital care services; (3) direct those patients to the most effective and efficient approach to posthospital care services; (4) provide posthospital care service providers with more complete and consistent baseline information about the patient in order to facilitate continuity of care and early assessment and care planning by the posthospital provider; and (5) enable managed care organizations and HCFA to track the course of outcomes of individual patients across provider types within the same health care episode. One primary benefit of standardizing the needs assessment process is that the use of common language and definitions enables the type of quality monitoring and improvement efforts that depend on consistent data and health status/outcome measures.

The establishment of common data elements will also allow the same types of measures to be used across care settings. Another advantage associated with using the UNAI across provider types is that we intend that it "map" to other assessment tools, such as the Minimum Data Set in SNFs and the standard core assessment data set we plan to propose shortly for use in HHAs. Thus, if a UNAI accompanies a patient to an HHA, the HHA can use most of the information on the UNAI to complete a number of items on the HHA standard assessment data set. This ultimately would decrease provider burden by streamlining the assessment processes and eliminating the need for assessing and reporting redundant information. It also would enable providers and managed care entities to track and understand care outcomes more fully.

The UNAI is not a comprehensive assessment tool, nor is it adequate for comprehensive care planning. Rather, it gives a snapshot view of the patient's functional status and support systems in the home and community to help caregivers direct the patient to the next source of care and to give the continuing care provider baseline information to make initial assessment, care planning, and service delivery more efficient and individualized.

Although we are not now formally proposing to require use of the UNAI, we invite comment from the hospital community, especially discharge planners, as well as from SNFs, HHAs, and others, about the desirability of having a standard approach to posthospital discharge planning for Medicare patients who fail the high-risk screener. We invite comment on the following questions, as well as any other related comments:

(1) Would the use of a standard posthospital discharge planning tool for Medicare patients be helpful to the hospital, the patients, and the posthospital care providers in their efforts to ensure the patient receives the most effective, efficient, and desirable posthospital services necessary to address the patients' continuing care needs? If so, why, and if not, why not?

(2) Would a proposal that limits the required use of the UNAI to Medicare patients only (the States could impose it separately if they wished for Medicaid patients) create duplicate or multiple systems within a hospital and create more problems than benefits? Should the UNAI be used for every patient over a certain age (e.g., 50) for whom discharge planning is necessary? How would other payers (e.g., fee-for-service or managed care plans) be affected by a Federal requirement to use the UNAI?

Subpart C—Organizational Environment

12. Administration of Organizational Environment (§ 482.110)

The proposed condition on administration of organizational environment would replace the existing regulations at § 482.11 (Condition of participation: Compliance with Federal, State, and local laws) and § 482.12 (Condition of participation: Governing body). Combining these provisions would simplify the structure of the regulations. In addition, it would emphasize that if State or local law provides for the licensing of hospitals, and an institution in the State wishes to participate in Medicare as a separate hospital (rather than as an organizational unit of another provider), that institution must also show that it is regarded as a separate entity by the State for licensure purposes.

In developing the proposed new condition, we have relocated three of the standards previously in the current governing body COP. These are the standard on medical staff (§ 482.12(a)), the standard on care of patients (§ 482.12(c)), and the standard on emergency services (§ 482.12(f)). Under the cross-functional approach we are following in these proposed rules, medical staff issues would be covered by the proposed new condition on human resources (§ 482.125), and patient care issues would be covered in the new COP that includes patient care (§ 482.20). As discussed above, we propose to create a new condition on emergency services which would include the rules now stated under § 482.12(f) with respect to appraisal, initial treatment, and referral of emergency patients by hospitals that do not provide emergency services.

The primary requirement under the proposed governing body COP is that a hospital's governing body, other organized group, or an individual (hereafter "governing body") is legally responsible for the management and provision of all care furnished to hospital patients, including the structure needed to administer the hospital effectively. Thus, the governing body must create an environment that helps ensure the provision of high quality care that is consistent with patient needs and the effective administration of the hospital. In the proposed new condition, we emphasize the responsibility of the hospital governing body for the entire operation of the hospital, including care furnished under contracts and arrangements, the appointment of an administrator, the appointment of the medical staff and its bylaws, and the implementation of effective budgeting, accounting, and quality control programs. Although these requirements necessitate the use of certain processes, they are essential to ensuring that the entity with which the Secretary has entered into a participation agreement is in fact able to ensure patient health and safety. To help ensure this accountability, we have specified the responsibility of the governing body for the hospital's compliance with all applicable conditions of participation and standards. In addition, performance of these basic organizational functions is, in our view, a minimum condition for the creation of an environment in which appropriate patient-centered activity can occur.

We are proposing that a hospital must notify HCFA or the State survey agency whenever the hospital adds a new service category to the list of services it offers (proposed § 482.110(b)(2)(i)). We believe this is necessary so that the State survey agency may determine whether an onsite survey of the new service is necessary and to ensure that the survey team may have the correct number and type of qualified members when it next visits the hospital. This should then improve the speed and efficiency with which the hospital's certification process can be accomplished.

In addition, we are proposing to require that a hospital notify HCFA (through its regional offices) whenever it adds a new service site (proposed § 482.110(b)(2)(ii)). For example, a hospital would need to notify us if it were to acquire a physician's office and consider it an offsite hospital outpatient clinic. We believe this is necessary so that we may decide whether an onsite survey is necessary to assure that the addition does not alter the previous certification decision regarding the hospital. Further, HCFA would need to review the new service site to assure that it meets the level of integration required for inclusion of the new site as a part of the provider. This will ensure that appropriate payment is made. We have issued instructions outlining the criteria that must be met in order to demonstrate integration inherent in classification of an offsite service as part of the hospital in Program Memorandum A–96–7.

Proposed § 482.110(b)(3) and (4) restate with only minor editorial changes current requirements concerning the governing body's responsibilities for an institutional plan and budget, as well as the medical staff's bylaws. We propose to retain these requirements, in accordance with section 1861(e) of the Act.

Under proposed § 482.110(c), we would redesignate, with changes, the requirements under existing § 482.12(c)(5) concerning a hospital's responsibility to identify potential organ donors. We recognize that these provisions, in particular the requirement that a hospital have written protocols addressing various aspects of its organ procurement responsibilities, are more prescriptive and process-oriented than other parts of these proposed rules. However, we believe it is necessary to retain these regulations in their existing form to implement section 1138 of the Act, which specifically requires written hospital protocols for organ procurement. The changes to this section are discussed below.

We are revising § 482.110(c)(ii) (formerly § 482.12(c)(5)(i)(A)) and adding new requirements under § 482.110(c)(1)(iv) concerning organ procurement organizations (OPOs) and hospitals. The development of these requirements is in response to issues raised during public hearings held by the Department on December 11 through 13, 1996, to examine the allocation policies for liver transplantation and to receive comments regarding methods to increase organ donation. During those hearings, it became abundantly clear that there is a critical shortage of organs available for lifesaving transplantation. While the science of transplantation has made progress over the last two decades, lives that could be saved continue to be lost because of an inadequate supply of donor organs. For example, an estimated 12,000 to 15,000 deaths occur in the United States each year that could yield suitable donor organs, yet in 1996 no more than 5,400 resulted in donations. In April 1997, approximately 52,000 Americans were waiting for organ transplants. Therefore, we believe it is appropriate to propose revisions to the current hospital conditions relating to organ donation because we expect these revisions will result in a significant number of lives being saved.

The existing regulations merely repeat the language in section 1138 of the Social Security Act which requires hospitals to assure that families are advised of the right to donate or not donate organs, encourage discretion and sensitivity to family values, and notify an OPO of potential donors. We are proposing to revise the hospital conditions of participation regarding organ donation to emphasize the role and relationship of the OPO in the process. Although the proposed changes increase the importance of the OPO, our aim is that they will result in a more collaborative organ donation process which achieves positive results. That is, we hope hospitals and OPOs will work together in dealing with their individual and unique circumstances and, using the best available practices, achieve significant increases in the rate of organ donations.

Specifically, we are proposing to specify that the hospital must ensure that the family is advised, in collaboration with the OPO with which the hospital has an agreement, of their right to donate or decline to donate (§ 482.110(c)(1)(ii)). This proposal is based on research in the field of organ donation that indicates that consent to donation is highest when the request is

made by the staff of the OPO rather than the hospital. OPO staff are specialty trained medical personnel. They have training in bereavement counseling and extensive experience in dealing with families undergoing the loss of a loved one. They have knowledge of brain death and are particularly skilled in making complicated medical terminology understandable to a grieving family. Most importantly, organ donation is their principal field, whereas hospital staff have numerous other responsibilities. Further, donor consent rates tend to be higher when there is a time lapse between the hospital notifying the family of a death and the request for organ donation.

In proposing this change, we considered the possibility that we might be viewed as holding hospitals responsible for ensuring that a function, such as advising a family of their organ donation rights, be performed without providing them with the ability to control the situation. That is, the hospital cannot control the OPO and may consider that it may be a victim of poor OPO performance. However, the conditions of coverage for OPOs include performance standards that hold OPOs accountable for achieving a specified number of donors and organs based on the size of the population it serves. We believe these performance standards will motivate OPOs to provide satisfactory service to hospitals. Moreover, we note that the proposed hospital conditions hold hospitals accountable for ensuring that they have written protocols and do the following:

- Identify potential organ donors as defined by the OPO with which the hospital has an agreement;
- Notify the OPO of such potential donors;
- Assure, in collaboration with the OPO with which the hospital has an agreement, that the family of each potential organ donor knows of its option either to donate organs or tissues or to decline to donate;
- Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of the families of potential donors; and
- Ensure that the hospital works cooperatively with the OPO with which the hospital has an agreement, in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of potential donated organs take place.

We expect that if the hospitals and OPOs are not achieving the desired results the hospitals would reevaluate and revise their protocols. Hospitals would not be cited for a deficiency of this standard if the hospital has appropriate protocols, regardless of the success of OPO staff in acquiring donors.

We also are proposing to revise an existing requirement that specifies that the hospital must notify OPOs of potential organ donors. There is a good deal of variability among hospitals in referral patterns. Some hospitals do not call the OPO unless they have determined that the patient is medically suited to be a donor and the family has consented. On the other hand, some hospitals refer all deaths to the OPO. Most hospitals have established criteria, such as age or absence of systemic disease, to determine if a potential donor should be referred to the OPO.

In evaluating the organ donor shortage and the actions that hospitals may take with regard to donor referral, we considered the following options:

- Maintain the current requirement which provides hospitals with the flexibility to determine appropriate referrals through their written protocols;
- Require mandatory reporting of all death of patients under age 75 to the OPOs; and
- Require mandatory reporting of deaths to OPOs using protocols defined by the OPOs.

During our analysis, we identified a number of advantages and disadvantages to each of these alternatives before we concluded with the proposal to require mandatory reporting of deaths to OPOs using protocols defined by the OPO as discussed below. However, we are specifically soliciting comments on the advantages and disadvantages of the various options, and inviting identification of additional alternatives and empirical data supporting various opinions, during the public comment period.

The advantages of the current requirement, which specifies that hospitals have a protocol for referring potential donors, are that it provides hospitals with desired flexibility and it reiterates the language of the statute. However, there are significant disadvantages to this approach. The primary concern is that many hospitals have never referred a potential donor. As noted above, we believe that there has been a large number of potential donors that have been missed; that is, we believe the number of potential donors is double to triple the number of current donors. We are concerned that this flexibility has resulted in a significant number of hospitals failing to refer all potential donors and some hospitals not referring any donors. Some hospitals view as potential donors only those in whom consent to donate has already been obtained and do not even attempt to ask other families about the possibility of donating; others refer only when they consider the deceased to be a good candidate or when they believe the family may consent to the donation. This leads to a loss of opportunity for families for whom the gift of a loved one's organ may be the first step in the healing process as well as the loss of a substantial number of life-saving organs.

We also considered the alternative of requiring referrals of all deaths to the OPO. The State of Pennsylvania has implemented this practice. The resulting increase in donation in Eastern Pennsylvania has been at least 10-percent. We believe telecommunication technology currently exists to permit low-cost and efficient implementation of a policy requiring referrals of all deaths. OPOs that have implemented such programs indicate that reporting of an individual's death and relevant medical information takes only 5 to 10 minutes of time by hospital staff. Under such a system of mandatory death reporting, it is reasonable to assume that no potential donor will go unidentified and few, if any, families of potential donors will go without being given the opportunity to donate. This system also has the advantage of relieving hospital staff of the burden of making any assessment of donor suitability or the families' willingness to donate. Finally, as more families are educated about organ donation, even if they decide not to donate, myths that inhibit organ donation may be dispelled.

Despite the major advantages to this alternative, there are potential problems. There is clearly a significant cost involved in providing and interpreting information on over 1 million deaths annually. Conservative implementation estimates of this alternative are about $4 million annually (1 million deaths times 5 minutes of hospital and OPO time at an assumed average salary cost of $50,000), and may be as great as $8 to $10 million. Arguably, the saving of even a single statistical life would justify such a cost, using standard benefit-cost analysis assumptions. Nonetheless, we recognize that these costs should not be imposed if less costly approaches can also achieve increased organ donation. In discussing this alternative with the OPO industry, we have been advised by some OPOs that they are concerned about implementing such a system because they would have to handle a large number of unproductive referrals. That is, of the approximately 1 million deaths annually, only about 12,000 to 15,000 are potential organ donors.

This proposed regulation includes the requirement that hospitals report all potential donors using protocols as defined by the OPO. This alternative has the advantage of providing support for OPOs in dealing with low referral hospitals, while providing a great deal of flexibility for OPOs to respond to local community situations and resource limitations. As noted above, we solicit comments on alternatives that could be more responsive to the national organ shortage. We are also considering whether to propose in the OPO conditions of coverage a performance standard that could be used to determine the extent of organ donations. In principle, procedural standards related to organ procurement could be replaced by an outcome standard related to organ recovery. However, since we are not clear as to how to design or implement the most cost-effective, low-cost standard we would welcome public comment.

We are aware that this proposal, by giving the OPO responsibility for defining potential organ donors and the protocol for referring such donors to the OPO, raises questions about the impact that it will have on the donation and retrieval of a variety of tissues that are also used in patient care. Tissue transplants also are important procedures that improve, and sometimes save, the lives of recipients. It is our expectation that hospitals, OPOs, eye, and tissue banks will work cooperatively and effectively to facilitate and enhance both organ and tissue donation. We recognize that there is considerable local variation in how these arrangements are currently carried out and how they might be done under our proposed changes. We will appreciate receiving comments on how these proposed changes are likely to impact on tissue donation, as well as suggestions on what measures we could appropriately take to maximize both tissue and organ donation.

Finally, we are proposing to add a new requirement that specifies that hospitals work cooperatively with the designated OPO in educating hospital staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining patients while necessary testing and placement of potential donor organs take place (proposed § 482.110(c)(1)(iv)). We do not believe this requirement is unduly burdensome on hospitals since all reasonable hospital costs incurred with respect to any organ procurement effort are paid. To further the cooperative efforts between hospitals and OPOs, we are also proposing to add a requirement that hospitals must provide requested data related to patients eligible for transplantation either directly to the Department or through the Organ Procurement or Transplantation Network. This requirement is explained further in § 482.120 "Information Management". We invite comments on the content of this new requirement.

13. Infection Control (§ 482.115)

The present requirements on infection control (§ 482.42) were promulgated as a separate COP largely due to the seriousness of the problem of Nosocomial infections. Nosocomial infections subject patients to significant additional pain and risk, prolong hospital stays, and lead to significant additional costs in health care spending.

We propose to maintain a separate COP on infection control because we believe it is vital for protecting patient health and safety. We propose to retain most of the standards under the current COP, but we would strengthen its focus by requiring hospitals to take appropriate actions that result in improvement when problems are identified in their infection control programs. This is in concert with the proposed quality assessment and performance improvement COP, of which infection control must be an integral part.

The proposed infection control condition places accountability on hospitals to prevent, control, and investigate infections and communicable diseases, and take actions that result in improvements. However, the proposed condition allows flexibility for hospitals to determine how to meet these objectives. This includes the flexibility to determine how much training in infection control is necessary for the hospital's personnel.

We propose to delete the present requirement that the hospital maintain a log of incidents related to infections and communicable diseases. In keeping with the outcome-oriented approach of this rule, we propose that the hospital must have a method of identifying problems in its infection control program and take appropriate actions that result in improvement. Although use of a log may be one method to identify problems, we do not intend to prescribe how a hospital should identify problems.

We considered requiring hospitals to meet Centers for Disease Control and Prevention (CDC) and Occupational Safety and Health Administration (OSHA) standards for providing an environment to avoid sources of infections and communicable diseases. However, such a requirement would raise questions as to which CDC or OSHA standards must be met. Moreover, where alternative sets of professionally recognized standards exist, we do not wish to restrict hospital flexibility by mandating compliance with a particular body of standards. Therefore, we are not mandating that hospitals follow any specific set of infection control guidelines; however, such guidelines are published by CDC, the Association of Practitioners in Infection Control (APIC), the American Hospital Association (AHA), and the JCAHO and are available as resources on infection control practices.

We also considered including specific requirements concerning employee health status issues. However, we believe the hospital's obligation to protect patients from employees with communicable diseases is covered in the proposed language that states that the hospital maintains an effective infection control program that protects patients and hospital staff by preventing and controlling infections and communicable diseases. Adequate assessments of employee health status fall under this language as part of the protective responsibilities of the hospital.

14. Information Management (§ 482.120)

We propose to consolidate current § 482.24 "Condition of participation: Medical record services", and record requirements in several other COPs into a new "Information management" COP which would reflect the increasing automation and integration of patient care data. This new COP would require that a hospital maintain an information system to record, communicate, and measure hospital performance in order to assure that patient needs are documented and met. The information system is also needed to support the hospital's quality assessment and performance improvement program.

The condition consists of two standards. In both standards, we have not retained many current process-oriented requirements concerning how a hospital must maintain its medical records; instead, we have kept only those requirements needed for accurate documentation of a patient stay and for quality assessment and performance improvement purposes. These requirements should help ensure that orders are communicated and documented accurately, thus reducing the risk of errors that could jeopardize patients' health and safety.

The first standard, "Health Information System", focuses on patient

care and outcomes. First, we would require the hospital to maintain clinical records on all patients. This requirement not only implements a specific statutory requirement (section 1861(e)(2) of the Act), but also provides a basis for the quality assessment and performance improvement activities that we expect will lead to a high standard of care for all patients. We have retained the current record retention requirement of 5 years because we believe access to records during this period is essential to protect the health and safety of current patients, since clinicians may well need the details of prior treatment to assess and treat current conditions. Five years has been the minimum requirement since 1986 and it has proved to be a clear, workable, and not overly burdensome standard.

One part of this standard on which we especially seek comment concerns the authentication of record entries. Under proposed § 482.120(a)(5), we would consolidate the present requirements at § 482.24(c)(1)(i) and (ii) regarding authentication of entries in the medical record to state that all entries must be legible, dated, and authenticated in written or electronic form by whomever is responsible for ordering or providing the service. We are proposing to delete the current requirement at § 482.23(c)(2)(ii) on verbal orders because we believe our proposed requirement at § 482.120(a)(5) would cover authentication of verbal orders. The present requirement at § 482.24(c)(1)(ii), which states that authentication may include signatures, written initials or computer entry, would also be deleted. Although these are accepted standards of practice, we do not believe it is necessary that the regulations include this level of prescriptive detail.

We are seeking comment from as broad a range of interests as possible on the issue of authentication of medical record entries. We recognize that there is a strong interest in the hospital industry in modifying, if not eliminating, the requirement for authentication, because of questions about whether authentication adds value to the quality of the medical record, especially when the countersignature comes after the service has been delivered to the patient. However, others believe that absence of authentication leads to questions of accountability. Therefore, we request comment and suggested language, as appropriate, on this issue.

Regarding the issue of verbal orders, the present requirement at § 482.23(c)(2)(ii) states that verbal orders must be signed or initialed by the prescribing practitioner as soon as possible. We invite comment on the issue of whether a timeframe should be specified for signing verbal orders. We believe that many States have laws governing timeframes in which verbal orders must be signed; therefore a Federal specification may not be necessary.

Currently, transplant centers report data to the Organ Procurement and Transplantation Network, the Scientific Registry, and organ procurement organizations regarding the disposition of organs made available for transplant. These data include information regarding patients waiting for transplants, information on those who have received a transplant, follow-up data on patients who have received a transplant, and information on those offered an organ for transplant but declining to use the organ at the time. Moreover, the information submission is voluntary on the part of the transplant centers.

For the most part, this system of information exchange has worked very well. However, from time to time, some concerns have arisen regarding the voluntary nature of the data submission, ownership of the data, and public access of the information. In an effort to overcome any confusion surrounding this information system and to assure that all facilities submit appropriate data timely, we are proposing to include a provision in section 482.120, information management, related to transplantation data.

Specifically, we are proposing to add a requirement that hospitals that perform transplants, whether they are approved by Medicare for coverage of the transplant or not, must provide requested data related to patients eligible for transplantation either directly to the Department or through the Organ Procurement and Transplantation Network. The proposal clarifies that data submission is no longer voluntary, but is a requirement for the hospital's participation in the Medicare program.

We believe there is authority in both section 1861(e)(9) and section 1138 of the Act for this requirement. First, section 1861(e)(9) provides that the Secretary may require hospitals participating in the Medicare program "to meet such other requirements that the Secretary finds necessary in the interests of the health and safety of individuals who are furnished services in the institution." When we determine whether hospitals are fit for inclusion (or continued inclusion) in the Medicare program, we have an interest in knowing how well the hospital is performing the full range of services it provides to its patients. A hospital's history with respect to the transplant services it provides is one area, among many, that helps tell us whether the institution is providing high quality services in the safe and healthful environment the statute requires, and we believe that reviewing data from this area of operation is no less useful for this purpose than evaluating other surgical or care areas of the hospital. Second, section 1138 requires hospitals to abide by the rules and requirements of the Organ Procurement and Transplantation Networks (OPTNs). Where OPTNs require hospitals to furnish the kind of data addressed in this proposed rule, hospitals would be obligated to provide it.

The second standard in the Information Management COP, "Management of the Information Systems", contains requirements on the integrity, effectiveness, confidentiality, and security of the hospital's data systems that are similar to current requirements shorn of their process-oriented details. We are also proposing in this standard to expand the current requirement in § 482.25(b)(8), which discusses the dissemination of a patient's drug profile to the hospital's professional staff. We propose building on this to require that all medical information on a patient be available to all authorized professional staff who provide medical care to the patient. This is consistent with the emphasis on an interdisciplinary plan of care for each patient, and an integrated approach towards a patient's needs, both of which depend on practitioners having accurate and current information to deliver appropriate and necessary care.

15. Human Resources (§ 482.125)

Current regulations, which are organized on a department-by-department basis, contain scattered requirements concerning the qualifications and numerical staffing standards for nursing and other hospital staff, and for doctors of medicine or osteopathy and other practitioners with privileges to treat hospital patients. For example, there is a separate condition on medical staff at § 482.22, and several COPs, including nursing services (§ 482.23), medical record services (§ 482.24), pharmaceutical services (§ 482.25), and others, contain requirements for screening and credentialling of medical staff members and for employment of (or contracting with) adequate numbers of qualified nursing and other nonphysician staff.

Under the integrated, interdisciplinary approach inherent to these proposed regulations, we are consolidating these scattered references into a single condition of participation on human resources. The overall goal of the new proposed COP would be to ensure that all hospital areas are staffed with sufficient qualified personnel to meet the needs of the hospital's patients. We also propose to eliminate many process-oriented requirements, in particular those currently set forth in §§ 482.12(a) and 482.22, relating to the composition, organization, and conduct of a hospital's medical staff. Although a process-oriented requirement, we have retained the current requirement that the medical staff operate under bylaws because section 1861(e)(3) of the Act explicitly requires them.

In proposing these changes to the current medical staff requirements, we do not intend to discount the value to a hospital of having a carefully selected and well-organized medical staff. On the contrary, we believe it is self-evident that the medical staff has a critical role in ensuring that high quality care is delivered consistently and that any hazards to patients are promptly detected and eliminated. However, individual hospitals, their employees or contractors, and the professionals who have been granted practice privileges may choose to have medical staff functions performed in a variety of appropriate ways, and we do not believe it is necessary to prescribe to a hospital what the composition or organization of its medical staff should be. For example, existing § 482.12(a)(7) has been interpreted by some to prohibit hospitals from requiring specialty board certification or eligibility as a necessary condition for medical staff membership. However, there is considerable disagreement between hospitals and physicians as to whether board certification or eligibility is an important indicator of professional competence. In view of this diversity of opinion and absent any indication that the quality of care would decline if the current requirement were deleted, we are proposing to eliminate the current requirement and to allow each hospital to determine, in consultation with its medical staff, whether requiring certification, fellowship, or membership in a specialty body or society would enhance the quality of care for the hospital's patients.

The proposed new condition consists of three standards that support the COP's aim that the hospital be staffed with sufficient qualified personnel. The first of these has to do with the qualifications of those individuals who furnish health care services to patients of the hospital. We wish to emphasize that the requirement would apply to all such persons, whether or not they are employed or compensated by the hospital and, if they are compensated, without regard to whether they are salaried employees or contractors. The standard also applies to those separately licensed practitioners, such as doctors of medicine or osteopathy, who typically practice independently and bill patients or their insurers, rather than the hospital, for their services.

This proposed standard reflects our view that the conditions of participation should not prescribe specific Federal personnel qualification requirements for nonphysician personnel, or attempt to limit or specify the functions they may perform, unless the Medicare statute requires us to do so. We believe this is the best course of action for several reasons. First, most States have in effect laws and regulations governing licensure and scope of practice for health care workers. We believe individual hospitals and their medical staffs, working within the context of applicable State law and regulations, are best able to determine which personnel to use and how to use them. Moreover, the emphasis of the proposed requirements in this area, as in other areas affected by these regulations, is not on whether staff have specific credentials or were selected under formalized procedures, but on whether the outcome of the hospital's staffing practices is the delivery of safe, high quality care.

We recognize that there may be some cases in which the absence of any State requirements for a category of hospital worker in a particular State may mean that no specific credential is required for performance of the function in that State. However, the hospital would remain obligated under proposed § 482.125(a) to ensure that personnel are qualified to provide or supervise services, and would be fully accountable under this section as well as under other relevant parts of the regulations (such as § 482.20, Patient Care) for the quality of care provided. Individual hospitals are free to develop their own specific credential requirements if they believe that doing so is in the best interest of their patients.

In addition, we note that among the resources a hospital has in acquiring and maintaining qualified staff is the National Practitioner Data Bank, which was authorized by the Health Care Quality Improvement Act (HCQIA) of 1986 (Pub. L. 99–660). The HCQIA requires that hospitals request information from the National Practitioner Data Bank at the time a physician, dentist, or other health care practitioner applies for a position on its medical staff (courtesy or otherwise) or for clinical privileges at the hospital; and every 2 years (biennially) on all physicians, dentists, and other health practitioners who are on its medical staff (courtesy or otherwise) who have clinical privileges at the hospital.

The HCQIA requires that hospitals report to the National Practitioner Data Bank all professional review actions, based on reasons related to professional competence or conduct, adversely affecting clinical privileges of physicians and dentists for a period longer than 30 days; or voluntary surrender or restriction of clinical privileges for physicians and dentists while under, or to avoid, investigation.

We recognize that some may ask whether the hospital's responsibility to use qualified personnel is sufficient to assure that qualified staff are used in States with weak licensure programs and, in such States, whether Medicare should impose additional requirements or undertake a larger role. Therefore, we specifically invite public comments on this issue especially with regards to specific examples where States have weak or no licensure requirements for hospital health professions. We hope that commenters who believe Medicare should issue additional requirements would offer specific suggestions and any available empirical data to support such suggestions.

The second proposed standard, "Staffing (§ 482.125(b)), retains all of the nurse staffing requirements in current regulations at § 482.23(b) that are essential to the professional role and importance of nurses in a hospital. Of the six requirements in this standard, the first two are general in nature and the remaining four deal with specific nursing needs. Under the first requirement a hospital's staffing must reflect the volume of patients, patient acuity, and intensity of the services provided to ensure desirable patient care outcomes. To enforce this requirement, and because we are concerned about an apparent trend in the country toward reductions in hospital nurse staffing, we also propose as a second requirement that a hospital must develop and use consistently an explicit process to determine on an ongoing basis the level of nursing staff (including registered nurses, licensed practical nurses, and nursing assistants) needed to effectively implement the general requirement for appropriate staffing. This methodology and evidence of its use in meeting the nursing staffing needs of the patients must be available

for public inspection. We are interested in receiving comments on this proposal, specifically:

(1) Is this process-oriented requirement needed and is it strongly predictive of the desired quality outcomes one would associate with the proposed staffing requirement at § 482.125(b)(1)?

(2) If not, are there other requirements (such as specific numerical ratios) that would better achieve the desired outcomes?

The third requirement under the staffing standard is that a hospital maintain 24-hour registered nurse coverage if it does not have a waiver in effect under 42 CFR 405.1910(c). Twenty-four hour nursing coverage is required under section 1861(e)(5) of the Act, and thus we are continuing to include this requirement. The remaining three requirements under this staffing standard discuss the availability of registered nurses for bedside care, the responsibility of a registered nurse for managing nursing care for patients, adherence of nurses to hospital policies and procedures, and hospital management of nonemployee nursing personnel. We recognize that some of the other nurse staffing requirements are prescriptive and process-oriented, but we believe that they help ensure adequate staffing levels in hospitals. We welcome comments on how these requirements could be revised or simplified without jeopardizing attainment of this goal.

The third proposed standard is "Education, Training and Performance Evaluation" (§ 482.125(d)). The education and training sections are intended to ensure that hospital staff are aware of their job responsibilities and capable of meeting them; and that reassigned personnel receive the orientation or training needed to help them adapt to new or additional job demands. We emphasize that under this standard the hospital would be responsible only for ensuring that the individual adequately knows the nature of his or her specific job duties in the hospital. The individual would continue to be responsible for his or her own basic professional education, and for any continuing education needed to retain licensure or professional certification, unless the hospital chooses to assume this responsibility as part of a compensation or incentive arrangement.

The second part of this standard requires that all personnel who furnish health care services in the hospital demonstrate in practice the skills and techniques necessary to perform their assigned duties and responsibilities. While we believe that process requirements that focus on providing training and education to those who provide care and services in the hospital are predictive of positive outcomes and satisfaction for patients (and protection from negative outcomes), we also believe that the real outcome expectation of the requirements is reflected in the demonstrated skills and techniques staff actually use on a routine basis. This is why we are proposing that all personnel furnishing health care services (which would include hospital employees, contractors, and individuals working under arrangements) demonstrate in routine practice the skills and techniques necessary to perform their jobs.

Such a requirement closes the training and education loop. It is not enough for the hospital to demonstrate that individuals have received training, or how much training has been offered and provided. For effective patient care, it is critical that when the staff perform their duties, they actually use the necessary skills and techniques they have been taught to do their jobs correctly. For example, every hospital employee who comes into contact with patients is taught infection control techniques, one of which is hand washing in between patient contacts. If a surveyor observes staff who do not wash their hands between patient contacts, it is of little value that the hospital can show that staff were taught to wash their hands. One of the tasks of the survey process will be to determine if a lapse in performance is simply an isolated failure of one employee (although that can be so serious as to pose a threat to patient health and safety) or if it represents a systemic failure posing a widespread danger. Regardless, this requirement poses no extraordinary burden on the hospital, since the performance expectation of all staff—especially those who directly or indirectly serve patient needs—is that they perform their duties competently and efficiently. This outcome-oriented requirement simply makes explicit this expectation.

16. Physical Environment (§ 482.130)

We propose to replace the requirements on physical environment now at § 482.41 with a new physical environment COP that would require in general that a hospital maintain a physical environment that is free of hazards for patients. The current requirements consist of three safety standards containing separate requirements for buildings, life safety from fire, and facilities. Each of these standards contains requirements on the process of implementing safety standards as well as the physical structures and property that must be available in the hospital.

Based on our experience with applying these current requirements and suggestions from the parties involved in the development of these proposed hospital conditions, we are proposing to reorganize these requirements into two physical environment standards and a separate COP for life safety issues, as discussed below. We believe this reorganization emphasizes the role of physical structures and property in ensuring the delivery of high quality care.

In the first proposed standard, "Safety management" (§ 482.130(a)), we have set forth four requirements that we believe are fundamental to effective management of a hospital's physical environment. These include preventing, reporting, and correcting threatening situations, equipment failures, and actual incidents that involve injury to patients or that involve damage to property. Also, we believe proper safety management should include a requirement that a hospital must have an emergency preparedness system to respond to power failures, natural disasters, or other emergencies that disrupt the hospital's ability to provide care. We have chosen not to prescribe the frequency of reporting safety initiatives, such as quarterly reports to the governing body, because we believe the wide range of hospital structures and property requires each hospital to define its own internal reporting practices. We considered specifying which personnel should be responsible for safety management initiatives, but we believe no staff should be exempt from ensuring that the hospital environment is free of hazards. We also believe hospitals commonly employ safety engineers and others who contact all types of personnel when designing and managing safety initiatives.

The second proposed standard, "Physical Plant and Equipment" (§ 482.130(b)), combines three current general requirements for a hospital's physical structures and property, but does not include the level of detail in current regulations. (For example, a requirement concerning the location of diagnostic and therapeutic facilities has been deleted.) The requirements simply state that there must be proper storage and disposal of trash and medical waste, proper temperature control, light and ventilation throughout the hospital, adequate power, light, gas and water for patient care during emergencies, and that equipment used for patient care services must be properly maintained.

The inclusion of medical waste and air exchanges is new. These items reflect health and safety concerns in recent years over unsafe medical waste disposal, the proper care of tuberculosis patients, and the prevention of airborne particles and bacteria in hospitals, concerns which led to the publication of CDC guidelines on the disposal of medical waste and the prevention of transmission of mycobacterium tuberculosis (see Occupational Exposure to Bloodborne Pathogens, 56 FR 64004, December 6, 1991 (Final Rule), and Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities, 59 FR 54242, October 28, 1994 (Notice). The requirement on maintaining equipment is a consolidation of several references in the current regulations.

17. Life Safety From Fire (§ 482.135)

The Life Safety Code (LSC) developed by the National Fire Protection Association serves as the basis for many Federal, State, and local fire safety regulations, including those contained in the Medicare conditions of participation for hospitals. The LSC is a nationally recognized standard that includes fire protection requirements necessary to protect patients and residents in health care facilities. Designed to provide a reasonable degree of safety from fire and similar emergencies, the LSC covers construction, fire protection, and occupancy features needed to minimize danger to life from fire, smoke, and fumes. The code may be applied to both new and existing buildings. The National Fire Protection Association revises the LSC periodically to reflect advancements in fire protection.

In the current hospital COPs, the physical environment COP includes a standard, "Life safety from fire," that requires that hospitals comply with the 1985 edition of the Life Safety Code (§ 482.41(b)(1)). Section 482.41(b)(1)(i) then sets forth a "grandfather" clause specifying that, under certain circumstances, a hospital that originally complied with the 1967 or 1981 edition of the LSC hospitals may be considered to be in compliance with the life safety standard. The existing regulations also provide that HCFA may waive specific provisions of the LSC that would result in unreasonable hardship upon a facility, as long as the waiver has no adverse effect on patient health and safety. In addition, the regulations permit a hospital to meet a fire and safety code imposed by State law if HCFA finds that the State-imposed code adequately protects patients in hospitals.

In the proposed hospital COPs, we would continue to incorporate the LSC by reference. However, in order to stress the importance of fire safety standards for patient health and safety, we propose to establish a separate condition, "Life safety from fire," at proposed § 482.135. We also propose to update this requirement to specify that hospitals must meet the 1994 edition of the LSC, with no "grandfathering" under any of the earlier codes. However, we are also currently considering adoption of the later 1997 edition of the LSC instead of the 1994 edition. We welcome comments on the proposed adoption of the 1997 edition also and will address this issue in the final rule for this proposed rule.

We consider compliance with the LSC to be essential to the safety of patients. As noted above, however, compliance with the LSC currently is a standard within the existing Physical Environment condition of participation. The surveyor that inspects a hospital for LSC purposes often works separately from the team that conducts the rest of the hospital survey, including those portions of the survey that involve other physical environment issues. When the LSC surveyor determines that the LSC is not met, the entire Physical Environment COP is found to be out of compliance. In practice then, the LSC standard essentially is treated as a condition level requirement. Therefore, we believe that establishing a separate COP for the Life Safety Code would accurately reflect its importance for patient health and safety.

We are proposing to adopt the 1994 edition of the LSC because we believe that it provides the highest available level of protection for patients and staff in hospitals, with little or no additional burden to providers in existing facilities and at a lower cost in new construction. The 1994 edition of the LSC contains distinct sets of requirements for new construction and existing facilities. Newly constructed health care facilities must have automatic sprinklers throughout, allowing them to meet somewhat less rigorous standards in other areas. For example, under the 1994 LSC, exits may be 150 feet apart rather than 100 feet, interior finish may be Class C rather than Class B. Thus, it may actually cost less to construct a new building in conformance with the 1994 LSC than under the 1985 LSC.

The 1994 LSC does not impose any additional requirements for existing buildings beyond those specified in the 1985 LSC. Thus, an existing hospital that is in compliance with the 1985 LSC would not have to make any changes to come into compliance with the 1994 LSC. Only hospitals that still comply only with the 1967 LSC may require some additional features to achieve compliance with the 1994 LSC. For such hospitals, we believe it is inappropriate to require compliance with a code that relies on outmoded fire protection methods. We note that we are proposing to retain both the waiver provision from the existing regulations and the provision permitting use of a State code if HCFA finds that it adequately protects patients, which should ensure that hospitals that can demonstrate an ability to protect patient health and safety are not faced with unreasonable burdens to comply with the LSC requirements.

18. Blood and Blood Product Transfusions (§ 482.140)

We propose establishing this requirement as a separate COP because of its importance for patient health and safety. The transfusion of blood and blood products requires a high degree of coordination between medical and nursing staff. Therefore, it is critical that a hospital demonstrate practices that ensure safe and accurate transfusions with a minimum of transfusion-related reactions.

Currently, specific, process-oriented requirements for pre-transfusion testing of blood and blood products are set forth at 42 CFR Part 493 (§§ 493.1271, 493.1273, 493.1275, 493.1277, 493.1279, 493.1283, and 493.1285). We considered proposing to include all these CLIA requirements in the hospital COPs as well as requirements for transfusions, maintaining the same degree of prescriptiveness. However, we believe that the transfusion COP should incorporate the same approach used in the rest of the proposed rule, that is, a balanced approach that combines HCFA's and the hospital's responsibility to ensure that essential health and safety standards are met. Moreover, many of the requirements set forth under part 493 are already stated broadly in the proposed hospital COPs. For example, the requirement that transfusion facilities are administered only by qualified personnel already appears in general terms in the proposed rule at § 482.125, Human Resources. Likewise, the requirement that blood and blood products be stored under appropriate conditions, including proper temperature, is implicit in § 482.130, Physical Environment.

Therefore, we are proposing under § 482.140 a new COP on blood transfusions that would require that hospitals—

(1) Have procedures for averting, responding promptly to, investigating, tracking, and reporting blood

transfusion reactions to the laboratory and, as appropriate, to Federal and State authorities; and

(2) Take appropriate measures to ensure the positive identification of the blood or blood product and the recipient, that blood and blood products are stored at the appropriate conditions, including temperature, to prevent deterioration, and that blood and blood products are readily accessible to the appropriate medical and nursing staff.

As noted above, we have included these requirements because they are essential to patient safety.

19. Infectious Blood and Blood Products (§ 482.145)

This condition specifies the steps hospitals must take when they become aware that they have administered potentially HIV (human immunodeficiency virus)-positive blood or blood products to a patient. These requirements restate without change the requirements in existing § 482.27(c), Potentially infectious blood and blood products, which were set forth in our September 9, 1996 final rule (61 FR 47423). Because these requirements were so recently established through notice and comment rulemaking, and would merely be redesignated under this proposed rule, we are not accepting comments on this section.

20. Utilization Review (§ 482.150)

We propose to maintain the present utilization review (UR) COP as presently set forth in § 482.30. We believe this is appropriate because when the current UR COP was revised in 1986 (51 FR 22010), we strove to delete overly burdensome requirements and reflect only the statutory obligations of hospitals for utilization review. These obligations have not changed since that time.

Since all Medicare-participating hospitals must have an agreement with the Utilization and Quality Control Peer Review Organization (PRO) in the State in which the hospital is located as a condition of payment in accordance with the regulations at § 466.86(b), PRO review activities fulfill the UR requirements for hospitals. Therefore, the UR COP has limited applicability in the survey process. However, in unusual cases where a PRO does not in fact perform review provided for in its contract with the hospital, these regulations would ensure that the provisions of sections 1861(e)(6) and (k) of the Act concerning utilization review can be applied.

21. Provider Agreement—Surveyor Access to Provider Records (§ 489.53)

In addition to the changes described elsewhere in this document, which would affect only hospitals, we propose to add a new provision that would apply to all providers participating in Medicare. Under this new provision, which would amend our provider agreement regulations at 42 CFR 489.53, HCFA would be authorized to terminate a provider's participation in Medicare if the provider refused to allow access to its facilities, or examination of its operations or records, by or on behalf of HCFA, as necessary to verify that it is complying with the provisions of title XVIII and the applicable regulations of Chapter IV of Title 42 of the Code of Federal Regulations, or with the provisions of its provider agreement.

Under Medicare, the surveys needed to verify compliance with health and safety requirements or other Medicare rules are not mere paperwork reviews, but instead require State surveyors or HCFA personnel to perform firsthand observations of facilities and operations as well as to review relevant records. The great majority of hospitals and other providers recognize the need for these surveys and cooperate willingly with them. However, in rare cases a provider may attempt to thwart the survey process by refusing to allow access to its facilities, operations, or medical or other records. Without this access, it may be difficult or impossible to document provider noncompliance with applicable conditions of participation or other requirements.

We believe that a provider that has agreed to participate in Medicare and accept payment for treating Medicare patients has an inherent obligation to allow access to its facilities, operations, and records to the extent that access is needed to verify that the provider is complying with all applicable Medicare requirements. If this access were denied, we would be unable to carry out our obligations to administer the Medicare program. In addition, the health and safety of both Medicare and other patients might be jeopardized, since we would not be able to detect unsafe practices and identify them for corrective action. However, our current regulations do not make this longstanding obligation explicit. The proposed rule would correct this problem by adding new § 489.53(a)(6) to specify that HCFA may terminate a provider agreement if the provider refuses to allow access to its facilities, or examination of its operations or records, to verify compliance with applicable Federal law and regulations.

The specific statutory basis for the proposed rule is section 1871(a)(1) of the Act, which authorizes the Secretary to prescribe such regulations as may be necessary to carry out the administration of the Medicare program. However, we emphasize that this provision does not create a new obligation for providers, but merely codifies an existing obligation. For this reason, the proposed rule would not increase the compliance burden for facilities. Existing limits on the types of information requested and the uses to which it can be put would be maintained. For example, as part of the review of the hospital's quality assessment and performance improvement program, we would expect to have access to hospital incident reports only as a nonpunitive review function to determine how the hospital analyzes and tracks these data and incorporates the data into its quality assessment and performance improvement program.

III. Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a proposed rule such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all non-profit hospitals and other hospitals with revenues of $5 million or less annually are considered small entities. States and individuals are not considered small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. Although the provisions proposed in this rule do not lend themselves to a quantitative impact estimate, we do not anticipate that they would have a substantial economic impact on most hospitals. However, to the extent that our proposals may have significant effects on providers or beneficiaries, or be viewed as controversial, we believe it is desirable to inform the public of our projections of the likely effects of the proposals.

As discussed in detail above, this proposed rule sets forth new hospital conditions of participation that revise or eliminate many existing requirements and incorporate critical requirements into four "core conditions." These four COPs—Patient Rights; Patient Admission, Assessment, and Plan of Care; Patient Care; and Quality Assessment and Performance Improvement—would focus both provider and surveyor efforts on the actual care delivered to the patient, the performance of the hospital as an organization, and the impact of the treatment furnished by the hospital on the health status of its patients. In developing these proposed COPs, we have retained structure and process-oriented requirements only where we believe they are essential to achieving desired patient outcomes or preventing harmful outcomes (for example, requiring error free medication administration). More often though, we have eliminated structural or process-oriented requirements that we no longer believe are necessary (such as the prescriptive details concerning bylaws, medical staff composition, medical record services, etc.), in favor of an approach that, through the proposed core COP on quality assessment and performance improvement, invests hospitals with internal responsibility for improving their performance. This approach is intended to incorporate into our regulations current best practices in well-managed hospitals, relying on the hospital to identify and resolve its performance problems in the most effective and efficient manner possible.

We believe that the proposed COPs would decrease the administrative burden on hospitals to comply with detailed Federal requirements, thus reducing the costs incurred by the typical hospital in meeting the Medicare conditions of participation. (See the information collection section below for examples of specific changes in the recordkeeping and paperwork burden of hospitals that would be associated with this proposed rule.) Instead, the proposed COPs would provide hospitals with much more flexibility to determine how best to pursue our shared quality of care objectives in the most cost-effective manner. We expect hospitals to develop different approaches to compliance based on their varying resources and patient populations, differences in laws in various localities (such as those concerning personnel standards), and other factors.

Given the uncertain readiness of some individual hospitals to comply with performance expectations under the proposed COPs, quantitative analysis of the effects of these proposed changes is not possible. Hospitals with quality assessment and performance improvement programs already in place that meet these proposed requirements may see a reduction in administrative burden because they would no longer have to comply with many of the process-oriented requirements of the current COPs. Other hospitals that do not currently meet the proposed requirements for quality assessment and performance improvement may encounter an increased burden in the short term because resources would have to be devoted to the development of a quality assessment and performance improvement program that covers the complexity and scope of the particular hospital's services. However, even in situations where the proposed requirements could result in some immediate costs to an individual hospital, we believe that the changes that the hospital would make would produce real but difficult to estimate long-term economic benefits to the hospital (such as cost-effective performance practices or higher patient satisfaction that could lead to increased business for the hospital).

We are considering strengthening organ procurement standards and we welcome suggestions for an outcome standard. However, with or without such a standard, we believe the resource implications of the proposed changes are minimal and may even reduce hospital costs. When hospitals use organ procurement organization staff to make the required requests to the families of potential donors, it is OPO staff rather than the hospital staff that must spend time with the family. As to the option of reporting all or most deaths to OPOs, this relieves the hospital of making the suitability decision. Fewer than 400 patients a year die in an average hospital. Assuming five minutes a telephone call, only a few person-days would be needed to report all such deaths.

For the reasons explained above, the Secretary certifies that this proposed rule will not have a significant economic impact on a substantial number of small providers, and that preparation of an Initial Regulatory Flexibility Analysis is not required.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

IV. Information Collection and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3505(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This proposed rule contains information collection requirements that are subject to OMB review under the Paperwork Reduction Act of 1995. These information collection requirements are discussed below.

This proposed rule revises the hospital conditions of participation contained in existing 42 CFR part 482 (§§ 482.1 through 482.66) that are applicable under the Medicare and Medicaid programs. The information collection requirements contained in these existing regulations are approved by OMB under approval number 0938–0328, which expires on July 31, 2000 (§§ 482.12, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60, and 482.62) and 0938–0698, which expires on January 31, 2000 (§ 482.27(c)). For the most part, these requirements have been in effect for over 9 years. In this proposed rule, we would delete some of these requirements, retain others, and add some new ones. On balance, the proposed regulations would result in a significantly smaller information collection burden on hospitals.

A. Proposed Deleted Requirements

The existing information collection requirements that we propose to delete are:

- § 482.12(e)(2)—The requirement that a hospital maintain a list of all contracted services.
- § 482.12(f)(2)—The requirement that the governing body ensure that the medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referrals when appropriate.
- § 482.22(c)—The requirement that a hospital must have written bylaws for medical staff.
- § 482.27(a)(2)—The requirement that a hospital must have written description of laboratory services.

• § 482.41(b)—The requirement that a hospital use the applicable provisions of the Life Safety Code of the National Fire Protection Association. (We are including application of a later edition of the Code in proposed § 482.140.)

• § 482.53(d)—The requirement that a hospital maintain signed and dated reports of nuclear medicine interpretations, consultations, and procedures. (We proposed to delete the requirement specific to nuclear medicine records, but expand recordkeeping requirements to apply to all services under a new information management requirement in proposed § 482.120.)

B. Proposed Retained Requirements

The existing information collection requirements that we propose to retain are:

• § 482.12(c)(5)(i)—The requirement that a hospital must have written protocols related to the identification of potential organ donors (proposed § 482.110(c)).

• § 482.12(d)(1), (2), and (4)—The requirement that a hospital must have an institutional plan and budget (proposed § 482.110(b)(3)).

• § 482.27—The requirement that a hospital undertake certain activities when it learns that it has received blood and blood products that are at increased risk of transmitting HIV, including the requirement that the hospital have specified notifications procedures in place and retain certain documentation in the medical record (proposed § 482.145).

• § 482.30(c)(1) and (d)(3)—The requirement that a hospital must have in effect a utilization review plan that provides for review of services furnished by the institution and by members of the medical staff to patients entitled to benefits under the Medicare and Medicaid programs (proposed § 482.150).

For those information collection requirements for which we have current OMB approvals that will expire sometime in the future (as specified earlier under this section), we are asking for public comments only as they pertain to the overall requirements under the new proposed structure of these regulations.

C. Standard Industry Practice

Under 5 CFR 1320.3(b)(2), the burden associated with the time, effort, and financial resources that would be necessary to comply with a collection of information that would be incurred by persons in the normal course of business will be excluded from an information collection that is subject to OMB approval. The burden in connection with these types of collection activities can be disregarded if an agency can demonstrate that the collection activities are usual and customary. The collection requirements referenced below are usual and customary in the conduct of hospital business. Thus, they fall under this exclusion:

• § 482.15(a)—The requirement that a hospital must ensure that each patient receives a comprehensive assessment that identifies the patient's condition and care needs at the time of admission as well as an initial estimate of posthospital needs, if any. Should the needs of a patient change, the assessment must be updated to reflect these changes.

• § 482.15(b)—The requirement that a hospital must create a plan of care for all newly admitted patients. The initial plan of care must be placed in the medical record within 24 hours of admission and must include, although not necessarily in one location in the medical record, care to be delivered by all relevant disciplines. This plan must be modified to meet any changes in the patient's condition that affect the patient's needs.

• § 482.43—The requirement that a hospital must have in effect a discharge planning process, with written policies and procedures (proposed § 482.55).

• § 482.110(c)(1)(ii)—The requirement that a hospital must assure, through the OPO with which the hospital has an agreement, that the family of each potential organ donor knows of its option either to donate organs or tissues or to decline to donate.

• § 482.120—The requirement that a hospital must maintain information systems to record, communicate, and measure hospital performance. The information systems may include manual systems, automated systems, or both, depending on the complexity of the hospital, to record and maintain the clinical and operations data necessary for patient care.

• § 482.140—The requirement that a hospital must administer blood and blood product transfusions according to approved medical staff and nursing policies and procedures, and ensure the safety of individuals being transfused within the facility.

D. New Information Collection Requirements

The proposed regulations allow hospitals greater flexibility in the utilization of their staff and resources while strengthening quality control requirements to assure patient health and safety. The new proposed information collection requirements that are subject to OMB approval represent minimal, if any, burden on hospitals.

As we have discussed earlier in this preamble, in order to participate in Medicare and Medicaid, hospitals must be certified as meeting the conditions of participation (and hence the information collection requirements contained in the conditions). There are approximately 6,700 hospitals that participate in Medicare or Medicaid. Approximately 5,200 of these hospitals are accredited by JCAHO or AOA. HCFA deems these JCAHO and AOA accredited hospitals to meet the conditions of participation, except for utilization review requirements. The remaining 1,500 non-accredited hospitals must be surveyed to ensure compliance with the conditions of participation. Therefore, only those hospitals that are not accredited by JCAHO or AOA would incur burden from the new information collection requirements listed below. The hospitals that would be subject to the information collection requirements would include new hospitals (approximately 2 per year) and current ones undergoing a recertification (currently a hospital is resurveyed approximately every 5 years, so an average of 20 percent of the 1,500 hospitals (300) are resurveyed each year). However, we believe that, of the 302 hospitals subject to a survey each year, the actual number surveyed would only be 250. We reached this conclusion because at least 52 of the hospitals are already implementing these three new requirements and would incur no additional burden.

Included in the estimate of burden for the new information requirements listed below is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

1. § 482.10(a)—Standard: Notice of Rights

a. Requirement: This section requires a hospital to have in effect a grievance process for patients to follow if they want to file a grievance. The hospital must also indicate who the patient should contact to express a grievance.

b. Burden: We believe the requirement for a grievance process will impose an estimated burden of 2 hours per hospital for a total of 500 annual burden hours.

2. § 482.25—Condition of Participation: Quality Assessment and Performance Improvement

a. Requirement: This section requires a hospital to have a quality assessment and performance improvement program that reflects the complexity of the hospital's organization and services (including those services provided under contract or arrangements) and implements actions that result in improvements across the full range of the hospital's services to patients.

b. Burden: We believe this requirement would impose an estimated burden of 3 hours per hospital for a total of 750 annual burden hours.

3. § 482.125(b)—Standard: Staffing

a. Requirement: This section requires a hospital to have an explicit process to determine on an ongoing basis the needed level of nurse staffing needs. This methodology and evidence of its use in meeting the nurse staffing needs of the patient must be available for public inspection.

b. Burden: We believe this requirement would impose an estimated burden of 3 hours per hospital for a total of 750 annual burden hours.

The total annual burden hours for implementation of the new proposed information collection requirements for hospitals is estimated to be 2,000 hours.

The paperwork burden for the proposed new information collection requirements would not be effective until it has been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments on this paperwork burden should direct them to the Office of Management and Budget, Human Resources and Housing Branch, Room 10235, New Executive Office Building, Washington, D.C., 20503; Attention: Allison Herron Eydt, HCFA Desk Officer.

V. Responses to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

A. Part 416 is amended as follows:

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Specific Conditions for Coverage

2. Section 416.42(b) is revised to read as follows:

§ 416.42 Condition for coverage—Surgical services.

* * * * *

(b) *Standard: Administration of anesthesia.* Anesthesia is administered only by a licensed practitioner permitted by the State to administer anesthetics.

* * * * *

B. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

§ 482.1 [Redesignated as § 482.5]

2. Section 482.1 is redesignated as § 482.5 in subpart A and is amended by adding a new paragraph (a)(6) to read as follows:

§ 482.5 Basis and scope.

(a) *Statutory Basis.*

* * * * *

(6) Section 1138 of the Act sets forth requirements for hospital protocols for organ procurement and standards for organ procurement agencies' agreements with hospitals for organ procurement.

§ 482.5 [Removed]

* * * * *

3. Section 482.2 is removed.

4. A new § 482.10 is added to subpart A to read as follows:

§ 482.10 Condition of participation: Patient rights.

A hospital must protect and promote each patient's rights.

(a) *Standard: Notice of rights.* A hospital must inform each patient of his or her rights in advance of furnishing patient care. The hospital must have a grievance process and must indicate who the patient can contact to express a grievance.

(b) *Standard: Exercise of rights.*

(1) The patient has the right to be informed of his or her rights and to participate in the development and implementation of his or her plan of care.

(2) The patient has the right to make decisions regarding his or her care.

(3) The patient has the right to formulate advance directives and to have hospital staff and practitioners who provide care in the hospital comply with those directives, in accordance with § 489.100, § 489.102, and § 489.104.

(c) *Standard: Privacy and safety.*

(1) The patient has the right to personal privacy and to receive care in a safe setting.

(2) The patient has the right to be free from verbal or physical abuse or harassment.

(d) *Standard: Confidentiality of patient records.*

(1) The patient has the right to confidentiality of his or her clinical records.

(2) The patient has the right to access information contained in his or her clinical records within a reasonable timeframe.

(e) *Standard: Seclusion and restraint.* The patient has the right to be free from the use of seclusion or restraint, of any form, as a means of coercion, convenience, or retaliation by staff. If seclusion or restraints are used (including psychopharmacological drugs used as restraints), they must be used in accordance with a patient's plan of care. Restraints or seclusion may be used only as a last resort and in the least restrictive manner possible, to protect the patient or others from harm, and must be removed or ended at the earliest possible time.

Subparts B and C [Removed]

5. Subparts B (§§ 482.11 and 482.12), C (§§ 482.21 through 482.43), and D (§§ 482.51 through 482.77) are removed.

6. New subparts B and C are added to read as follows:

Subpart B—Patient Care Activities

Sec.

482.15 Condition of participation: Patient admission, assessment, and plan of care.
482.20 Condition of participation: Patient care.
482.25 Condition of participation: Quality assessment and performance improvement.
482.30 Condition of participation: Diagnostic and therapeutic services or rehabilitative services.
482.35 Condition of participation: Pharmaceutical services.
482.40 Condition of participation: Nutritional services.
482.45 Condition of participation: Surgical and anesthesia services.
482.50 Condition of participation: Emergency services
482.55 Condition of participation: Discharge planning.

Subpart C—Organization Environment

482.110 Condition of participation: Administration of organizational environment.
482.115 Condition of participation: Infection control.
482.120 Condition of participation: Information management.
482.125 Condition of participation: Human resources.
482.130 Condition of participation: Physical environment.
482.135 Condition of participation: Life safety from fire.
482.140 Condition of participation: Blood and blood product transfusions.
482.145 Condition of participation: Potentially infectious blood and blood products.
482.150 Condition of participation: Utilization review.

§ 482.15 Condition of participation: Patient admission, assessment, and plan of care.

The hospital must conduct a comprehensive assessment of the care needs of each patient, including an initial assessment of posthospital needs, and must establish a coordinated plan for how all relevant hospital disciplines will meet those needs.

(a) *Standard: Admission and comprehensive assessment.*

(1) A patient is admitted to the hospital only on the recommendation of a licensed practitioner permitted by the State to admit patients to a hospital.

(2) The hospital must ensure that each patient receives a comprehensive assessment that identifies the patient's condition and care needs at the time of admission as well as an initial estimate of posthospital needs, if any. The assessment must be completed in a timely manner consistent with the patient's immediate needs and placed in the patient's medical record within 24 hours of admission. If an assessment is recorded before a scheduled admission, the hospital must document any changes in the patient's condition on admission and place the updated assessment in the medical record within 12 hours of admission. The comprehensive assessment must be updated when the patient's needs change.

(b) *Standard: Plan of care.*

(1) Each patient must have an initial written plan of care that meets the needs identified in the comprehensive assessment. The initial plan of care must be placed in the medical record within 24 hours of admission and must include, although not necessarily in one location in the medical record, care to be delivered by all relevant disciplines.

(2) The plan of care must be modified to meet any changes in the patient's condition that affect the patient's needs.

§ 482.20 Condition of participation: Patient care.

The hospital ensures that each Medicare patient is under the care of an appropriately qualified practitioner. The care provided to each patient is coordinated and based on the plan of care.

(a) *Standard: Assignment of responsible practitioner for Medicare patients.*

(1) Every Medicare patient is under the care of:

(i) A doctor of medicine or osteopathy who may delegate tasks to other qualified health care personnel to the extent recognized under State law or a State's regulatory mechanism;

(ii) A doctor of dental surgery or dental medicine who is legally authorized to practice dentistry by the State and who is acting within the scope of his or her license;

(iii) A doctor of podiatric medicine, but only with respect to functions which he or she is legally authorized by the State to perform;

(iv) A doctor of optometry, but only with respect to functions which he or she is legally authorized by the State to perform;

(v) A chiropractor who is licensed by the State or legally authorized to perform the services of a chiropractor, but only with respect to treatment by means of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist; or

(vi) In the case of a patient receiving qualified psychologist services as defined in section 1861(ii) of the Act, a clinical psychologist, but only with respect to such qualified psychologist services and only to the extent permitted by State law.

(2) A doctor of medicine or osteopathy is on duty or on call at all times.

(3) A doctor of medicine or osteopathy is responsible for the care of each Medicare patient with respect to any medical or psychiatric problem that is present on admission or develops during hospitalization and is not specifically within the scope of practice of one of the other practitioners listed in paragraph (a)(1) of this section, as that scope is defined by the medical staff, authorized by State law, and limited, under paragraphs (a)(1)(v) and (a)(1)(vi) of this section, with respect to chiropractors and clinical psychologists, respectively.

(b) *Standard: Delivery of patient care.*

(1) For each patient, the hospital provides care and treatment interventions that are coordinated by all relevant disciplines and conform to the plan of care.

(2) The hospital evaluates the patient's progress as appropriate to the patient's condition and adjusts care, as necessary, when progress is not being achieved.

(3) Patient care services are provided in accordance with the order of practitioners who are qualified and have delineated clinical privileges as specified under § 482.125(a).

(4) If the hospital provides care to outpatients, that care meets the same requirements that apply to inpatient care. Inpatient care and outpatient care are coordinated to ensure continuity of care for patients who move between levels of care.

§ 482.25 Condition of participation: Quality assessment and performance improvement.

The hospital must develop, implement, maintain, and evaluate an effective, data-driven, quality assessment and performance improvement program. The program must reflect the complexity of the hospital's organization and services (including those services provided under contract or arrangement). The hospital must implement actions that result in improvements across the full range of the hospital's services to patients.

(a) *Standard: Program scope.*

(1) The hospital's quality assessment and performance improvement program must include, but not be limited to, the use of objective measures to evaluate—

(i) Access to care;

(ii) Patient satisfaction;

(iii) Staff, administrative and practitioner performance;

(iv) Complaints and grievances;

(v) Diagnostic and therapeutic services;

(vi) Medication error incidents, achievement of drug therapy goals and incidents of adverse drug effects;

(vii) Nutritional services, including patient's responses to therapeutic diets and parenteral nutrition, if used;

(viii) Surgery and anesthesia services;

(ix) Emergency services, if provided;

(x) Discharge planning activities;

(xi) Safety issues, including infection control and physical environment; and

(xii) Results of autopsies.

(2) In each of the areas listed in paragraph (a)(1) of this section, and any others the hospital includes, the hospital must measure, analyze, and track quality indicators or other aspects of performance that the hospital adopts or develops that reflect processes of care and hospital operations. These performance measures must be shown to be predictive of desired outcomes or be the outcomes themselves.

(3) The hospital must use hospital-specific data, as well as PRO data and any other available relevant data, as an integral part of its quality assessment and performance improvement strategy.

(4) Although a hospital is not required to participate in a PRO cooperative project, the hospital must be able to demonstrate a level of achievement through its own quality assessment and performance improvement strategy comparable to or better than that to be expected from such participation.

(5) The hospital must set priorities for performance improvement, considering prevalence and severity of identified problems, and giving priority to improvement activities that affect clinical outcomes.

(6) The hospital must take actions that result in performance improvements and must track performance to assure that improvements are sustained.

(b) *Standard: Program responsibilities.*

(1) The hospital governing body (or organized group or individual who assumes full legal authority and responsibility for operations of the hospital), medical staff and administration officials are responsible for ensuring that the hospital-wide quality assessment and performance improvement efforts address identified priorities in the hospital and are responsible for the development, implementation, maintenance and evaluation of improvement actions.

(2) All hospital programs, departments and functions, including contracted services and services provided under arrangement, must be involved in developing, implementing, maintaining, and evaluating the hospital's program of quality assessment and performance improvement.

(c) *Standard: Autopsies.* The hospital must attempt to secure autopsies in all cases of unusual deaths and of medical-legal and educational interest. The mechanism for documenting permission to perform an autopsy must be defined. There must be a system for notifying the medical staff, and specifically the attending practitioner, when an autopsy is being performed.

§ 482.30 Condition of participation: Diagnostic and therapeutic services or rehabilitative services.

(a) The hospital is primarily engaged in providing, by or under the supervision of one of the practitioners described in § 410.20(b) of this chapter, either diagnostic and therapeutic services to inpatients, or rehabilitative services to inpatients.

(b) The hospital must provide diagnostic radiology services, including 24-hour emergency diagnostic radiology services, if the hospital provides full-time emergency services (see § 482.50(a)).

(c) The hospital must provide laboratory services, including 24-hour emergency laboratory services, to meet the needs of patients. The laboratory services must be furnished in accordance with part 493 of this chapter.

(d) If the hospital elects to offer other services in addition to the required services, they must be delivered in accordance with the requirements of this part.

§ 482.35 Condition of participation: Pharmaceutical services.

The hospital provides medication therapy, as needed, through a safe, accurate, effective system that minimizes adverse drug events and evaluates the patient's response to the medication therapy.

(a) *Standard: Adverse drug event monitoring.*

(1) The hospital develops and operates a system (manual or electronic) to search active clinical records for events that are likely to be associated with adverse drug events and refers these events to the hospital's quality assessment and performance program for action.

(2) The hospital must ensure that its overall medication error rate is no higher than 2.0 percent.

(3) The hospital must ensure that its patients experience no significant medication errors. For purposes of this section, medication errors are considered "significant" if they actually jeopardize or cause serious potential for jeopardizing the health and safety of the patient.

(b) *Standard: Drug management procedures.*

(1) All drugs and biologicals are stored in secure areas. In addition, all drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1976 must be stored in locked compartments within secure storage areas. Only authorized personnel may have access to keys.

(2) The hospital keeps current and accurate records of receipt and disposition of all controlled drugs.

(3) Discrepancies in controlled drugs are reported to the individual responsible for pharmaceutical services and to the administrator of the hospital.

(4) A comprehensive drug information resource (computerized or hard copy) is available to professional staff for ordering, dispensing, and administering of medications. This information resource is readily available at common points of drug ordering, dispensing and administration in the facility, and is merged with, or located in close proximity to, individual patient information at those common points.

(5) Before medications are administered, a licensed nurse (that is, a registered nurse, licensed practical nurse, or licensed vocational nurse) or a doctor of medicine or osteopathy must review the individual patient's information, and the orders of the practitioner who prescribed the medication.

(6) Medications brought into the hospital by the patient are administered only after positive identification of the medications, and only on the order of the practitioner responsible for the care of the patient under § 482.15(a)(1), in accordance with hospital policy.

(7) The hospital has policies for discontinuing medications that are not specifically limited as to time and/or number of doses to be administered.

(c) *Standard: Discharge orders for psychopharmacological drugs.* Orders for psychopharmacological drugs are discontinued upon discharge of the patient, unless the patient has a psychiatric diagnosis listed in the Third or Fourth Edition of the American Psychiatric Association's Diagnostic and Statistical Manual (DSM–III or DSM–IV), or in Chapter Five (Mental Disorders) of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) which is available through the Government Printing Office, Washington, DC, stock number 017–022–01392–4 (1977).

§ 482.40 Condition of participation: Nutritional services.

The hospital must provide each patient with adequate nutrition, including therapeutic diets or parenteral nutrition if needed.

(a) *Standard: Sanitary conditions.* The hospital must provide food to the patient that is obtained, stored, prepared, distributed and served under sanitary conditions.

(b) *Standard: Menus.* The hospital must prepare menus prepared in advance and meet the nutritional needs of the patients in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

§ 482.45 Condition of participation: Surgical and anesthesia services.

If the hospital provides surgical or anesthesia services, they are provided through the use of qualified staff. The patient receives appropriate pre- and post-procedure evaluations, and all care is accurately documented.

(a) *Standard: Staffing.*

(1) Surgical procedures are performed only by practitioners with appropriate clinical privileges.

(2) Anesthesia is administered only by a licensed practitioner permitted by the State to administer anesthetics.

(b) *Standard: Evaluations.*

(1) A comprehensive assessment of the patient's condition is performed before surgery, except in emergency cases where a modified assessment is acceptable.

(2) A preanesthesia evaluation by an individual qualified to administer anesthesia is performed prior to the administration of anesthesia.

(3) A postanesthesia evaluation for proper anesthesia recovery is performed by an individual qualified to administer anesthesia.

(c) *Standard: Documentation of care.*

(1) The comprehensive or modified presurgical assessment described in paragraph (b)(1) of this section is entered in the patient record before surgery, except in emergency cases, where the assessment may be entered following surgery.

(2) A properly executed informed consent form for the operation is entered in the patient's record by the hospital before surgery, except in emergency cases where the delay needed to obtain consent would place the health or safety of the patient in serious jeopardy.

(3) The hospital maintains a complete, up-to-date operating room register.

(4) The hospital writes or dictates an operative report describing complications, reactions, length of time, techniques, findings, and tissues removed or altered immediately following surgery enters it in the patient's record promptly following surgery.

(5) The hospital maintains an intraoperative anesthesia record enters it in the patient's record promptly following surgery or any other procedures requiring anesthesia.

(6) The hospital writes a report of the results of the postanesthesia evaluation described in paragraph (b)(3) of this section and enters it in the patient's record promptly following completion of the procedure for which anesthesia was required.

§ 482.50 Condition of participation: Emergency services.

The hospital provides, within its capabilities and its stated mission, services appropriate to the needs of persons seeking emergency care. If the hospital provides emergency services on a full-time or part-time basis, it meets the applicable standard in paragraph (a) or paragraph (b) of this section, respectively; if the hospital does not provide any emergency services, it meets the standard in paragraph (c) of this section.

(a) *Standard: Hospitals providing full-time emergency services.* If the hospital provides emergency services on a 24-hour-per-day, 7-day per week basis, the hospital meets the following requirements at all times:

(1) The hospital has sufficient numbers of personnel, including doctors of medicine or osteopathy, other practitioners and registered nurses, to meet patient needs for emergency care.

(2) The services are appropriate to patient needs.

(3) The emergency services provided are integrated with other departments of the hospital.

(b) *Standard: Hospitals providing part-time emergency services.* If the hospital provides emergency services, but not on a 24-hour per day, 7-day per week basis, the hospital meets the following requirements:

(1) The hospital has fewer than 100 beds and is located in a rural area as defined in § 412.62(f)(1)(iii) of this chapter.

(2) The hospital establishes regular hours and days when the emergency services are available, and actually has services available at all of those times.

(3) The hospital notifies local emergency services personnel, law enforcement agencies, physician offices, and other health facilities of when it does and does not offer emergency services, and provides those it has notified with at least 5 calendar days' advance notice of any changes in its emergency services schedule.

(4) The hospital posts its days and hours of operation of emergency services in a conspicuous place where the public most commonly is informed of the hospital's location.

(5) The hospital complies with the requirements of paragraphs (a)(1) through (a)(3) of this section at all times when it does offer emergency services.

(6) The hospital complies with the requirements of paragraph (c) of this section at all times when it does not offer emergency services.

(c) *Standard: Hospitals not providing emergency services.* If the hospital does not provide emergency services, the hospital must provide for appraisal of emergencies, initial treatment, and referral when appropriate.

§ 482.55 Condition of participation: Discharge planning.

The hospital must have in effect a discharge planning process that applies to all patients. This process assures that appropriate posthospital services are obtained for each patient, as necessary.

(a) *Standard: Identification of patients in need of discharge planning.* The hospital must identify, at an early stage of hospitalization, all patients who are likely to suffer adverse health consequences upon discharge if there is no adequate discharge planning.

(b) *Standard: Discharge planning evaluation.*

(1) The hospital must provide a discharge planning evaluation to the patients identified in paragraph (a) of this section, and to other patients upon the patient's request, the request of a person acting on the patient's behalf, or the request of the physician.

(2) A registered nurse, social worker, or other appropriately qualified personnel must develop, or supervise the development of the evaluation.

(3) The discharge planning evaluation must include an evaluation of the likelihood of a patient needing posthospital services, including hospice services, and of the availability of those services.

(4) The discharge planning evaluation must include an evaluation of the likelihood of a patient's capacity for self-care or of the possibility of the patient being cared for in the environment from which he or she entered the hospital.

(5) The hospital personnel must complete the evaluation on a timely basis so that appropriate arrangements for posthospital care are made before discharge, and to avoid unnecessary delays in discharge.

(6) The hospital must include the discharge planning evaluation in the patient's medical record for use in establishing an appropriate discharge plan and must discuss the results of the evaluation with the patient or individual acting on his or her behalf.

(7) The evaluation must include a list of HHAs that are available to the patient, that participate in the Medicare program, the geographic area (as defined by the HHA) in which the patient resides, and that request to be listed by the hospital as available to provide home health services to patients the hospital discharges.

(c) *Standard: Discharge plan.* (1) A registered nurse, social worker, or other appropriately qualified personnel must develop, or supervise the development of, a discharge plan if the discharge planning evaluation indicates a need for a discharge plan.

(2) In the absence of a finding by the hospital that a patient needs a discharge plan, the patient's physician may request a discharge plan. In such a case, the hospital must develop a discharge plan for the patient.

(3) The hospital must arrange for the initial implementation of the patient's discharge plan.

(4) The hospital must reassess the patient's discharge plan if there are factors that may affect continuing care needs or the appropriateness of the discharge plan.

(5) As needed, the patient and family members or interested persons must be counseled to prepare them for posthospital care.

(6) The discharge plan must inform the patient or patient's family as to their freedom to choose among participating Medicare providers of care when a variety of willing providers is available and must, when possible, respect patient and family preferences when they are expressed. However, the discharge plan must not specify or otherwise limit qualified providers that are available to the patient.

(7) The discharge plan must identify, in a form and manner specified by the Secretary, any home health agency to whom the patient is referred in which the hospital has a disclosable financial interest, as specified by the Secretary consistent with section 1866(a)(1)(S) of the Act, or those entities that have a financial interest in the hospital.

(d) *Standard: Transfer or referral.* The hospital must transfer or refer patients, along with necessary medical information, to appropriate facilities, agencies, or outpatient services, as needed, for followup or ancillary care.

(e) *Standard: Reassessment.* (1) The hospital must reassess its discharge planning process on an ongoing basis. The reassessment must include a review of discharge plans to ensure that they are responsive to discharge needs.

(2) The hospital's discharge planning process must be an integral part of the hospital's quality assessment and performance improvement program.

Subpart C—Organizational Environment

§ 482.110 Condition of participation: Administration of organizational environment.

A governing body, other organized group, or an individual has full legal authority and responsibility for the management and provision of all hospital services, and develops and implements policies and procedures necessary for the effective administration of the hospital. This includes care furnished under contracts or arrangements, fiscal operations, continuous quality assessment and performance improvement, and appointing a qualified administrator who is responsible for the day-to-day operations of the program.

(a) *Standard: Federal, State and local laws.* The hospital is in compliance with applicable Federal, State and local laws related to the health and safety of patients and licensure of hospitals.

(b) *Standard: Administrative responsibilities.* (1) The governing body, other organized group, or responsible individual is responsible for all services furnished to the hospital's patients, including outpatient services and those provided under contract or arrangements (including those for shared services and joint ventures), and ensures that the hospital is in compliance with all applicable conditions of participation and standards.

(2) The governing body, other organized group, or responsible individual must notify HCFA or the State survey agency when the hospital—

(i) Adds a new service category to the list of services it offers; or

(ii) Adds a new service site.

(3) The governing body, other organized group, or individual that assumes full legal authority and responsibility for the operation of the hospital is responsible for development, implementation, and administration of the institutional plan and budget. The institutional plan and budget must include, but are not limited to:

(i) An annual operating budget that includes all anticipated income and expenses related to items that would, under generally accepted accounting principles, be considered income and expense items. (This paragraph does not require the preparation, in connection with any budget, of an item-by-item identification of the components of each type of anticipated expenditure or income.)

(ii) A capital expenditures plan for at least a 3-year period (including the year to which the operating budget described is applicable) that includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000 (or such lesser amount as may be established by the State in which the hospital is located, in accordance with section 1122(g)(1) of the Act) related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment that would, under generally accepted accounting principles, be considered capital items.

(iii) A plan submitted to the agency designated under section 1122(b) of the Act, or if no such agency is designated, to the appropriate health planning agency in the State (but this shall not apply in the case of a facility exempt from review under section 1122 by reason of section 1122(j)).

(iv) Review and updating at least annually.

(v) Preparation, under the direction of the governing body, other organized group, or responsible individual, by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff of the institution or agency.

(4) The governing body, other organized group, or individual that assumes full legal authority and responsibility for the operation of the hospital appoints the medical staff's members and approves its bylaws.

(c) *Standard: Organ procurement responsibilities.* (1) The governing body, other organized group, or responsible individual must ensure that the hospital has written protocols that—

(i) Identify potential organ donors as defined by the OPO with which the hospital has an agreement;

(ii) Assure, in collaboration with the OPO with which the hospital has an agreement, that the family of each potential organ donor knows of its option either to donate organs or tissues or to decline to donate;

(iii) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of the families of potential donors; and

(iv) Ensure that the hospital works cooperatively with the OPO with which the hospital has an agreement, in

educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of potential donated organs take place;

(2) The hospital must notify the OPO designated by the Secretary under § 486.316(c) of this chapter of all potential organ donors using protocols defined by the OPO.

(3) A hospital in which organ transplants are performed must be a member of the Organ Procurement and Transplantation Network (OPTN) established and operated in accordance with section 372 of the Public Health Service (PHS) Act (42 U.S.C. 274) and abide by its rules. The term "rules of the OPTN" means those rules provided for in regulations issued by the Secretary in accordance with section 372 of the PHS Act. No hospital is considered to be out of compliance with section 1138(a)(1)(B) of the Act, or with the requirements of this paragraph, unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has notified the hospital in writing.

(4) For purposes of this standard, the term "organ" means a human kidney, liver, heart, lung, or pancreas.

§ 482.115 Condition of participation: Infection control.

The hospital maintains an effective infection control program that protects patients and hospital staff by preventing and controlling infections and communicable disease.

(a) *Standard: Sanitary environment.* The hospital must provide a sanitary environment by following acceptable standards of practice to avoid sources and transmission of infections and communicable diseases.

(b) *Standard: Infection control program.* The hospital must maintain an active program for the prevention, control, and investigation of infections and communicable diseases that—

(1) Is under the direction of a designated infection control officer;

(2) Is an integral part of the hospital's quality assessment and performance improvement program; and

(3) Includes a method of identifying problems and taking appropriate actions that result in improvement.

§ 482.120 Condition of participation: Information management.

The hospital maintains information systems to record, communicate, and measure hospital performance. The information systems may include manual systems, automated systems, or both, depending on the complexity of the hospital, to record and maintain the clinical and operations data necessary for patient care.

(a) *Standard: Health information system.* (1) The hospital maintains clinical records on all patients.

(2) The patient record must document the patient stay (whether inpatient or outpatient). This includes recording, to the extent they are performed or used, the diagnosis, comprehensive assessment and plan of care, evaluations, consent forms, notes on treatments, nursing, medications, reactions, a summary report with provisions for followup care, and any other relevant reports.

(3) The interdisciplinary plan of care is a part of the patient record, and any revisions to the plan of care are accurately documented by the hospital.

(4) The patient record must note, within 30 days of discharge, the final diagnosis and clinical outcomes of the patient stay.

(5) All patient record entries, including those made as a result of verbal orders, must be legible, dated, and authenticated in written or electronic form by whomever is responsible for ordering or providing the service.

(6) Patient records must be retained in a reproducible format for at least 5 years.

(7) The hospital must retain original films, scans, and other image records (or copies), as appropriate, for at least 5 years.

(8) If a hospital performs any type of transplants, it must provide requested transplant-related data to the Organ Procurement and Transplantation Network, the Scientific Registry, the organ procurement organizations, and the Department of Health and Human Services as requested by the Secretary.

(b) *Standard: Management of the information systems.*

(1) The information systems must be maintained to provide for the timely recording, integration, and retrieval of data as well as the transmission of data to authorized parties.

(2) The information systems must contain system standards and procedures to ensure the integrity, efficiency, confidentiality, and security of data.

(3) Medical information about the patient (inpatient or outpatient) must be available to all authorized professional personnel providing medical care to the patient.

§ 482.125 Condition of participation: Human resources.

All hospital areas are staffed with qualified personnel, who are present in sufficient numbers to meet the needs of the hospital's patients.

(a) *Standard: Credentials/qualifications.* (1) The hospital ensures that individuals who supervise and/or furnish services to hospital patients, including services furnished under contracts or arrangements, are qualified to provide or supervise the services, and that types of practitioners allowed to practice without direct supervision have delineated clinical privileges for these services.

(2) The hospital grants clinical privileges, and periodically reappraises and renews (or denies renewal of) those privileges. If State law requires that an employee, contractor, or a practitioner with practice privileges be licensed, the hospital verifies (and periodically reverifies) compliance with applicable licensure requirements, and documents that verification.

(3) The medical staff operates under bylaws that are approved by the governing body, establishes the criteria for selection of its members, examines the credentials of candidates and recommends eligible candidates to the governing body.

(b) *Standard: Staffing.* (1) Staffing for all services provided by the hospital reflects the volume of patients, patient acuity, and the level of intensity of the services provided to ensure that desired outcomes of care are achieved and negative outcomes are avoided.

(2) In implementing the requirements of paragraph (b) (1) of this section, the hospital must develop and use consistently an explicit process to determine on an ongoing basis the needed level of nursing staff (including registered nurses, licensed practical nurses, and nursing assistants). This methodology and evidence of its use in meeting the nursing staffing needs of the patients must be available for public inspection.

(3) The hospital must provide 24-hour nursing services furnished or supervised by a registered nurse, and have a licensed practical nurse or registered nurse on duty at all times, except for rural hospitals that have in effect a waiver of the 24-hour nursing service requirement granted under § 488.54(c) of this chapter.

(4) A registered nurse must be immediately available for bedside care of any patient, when needed.

(5) A registered nurse must be responsible for the provision and evaluation of nursing care for each patient and must assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(6) The hospital must ensure that all licensed nurses working in the hospital adhere to the policies and procedures of the hospital. The hospital must provide for the adequate supervision and evaluation of the clinical activities of nonemployee nursing personnel.

(c) *Standard: Education, training, and performance evaluation.* (1) The hospital must ensure that all personnel furnishing health care services in the hospital are provided with the necessary education and training on the nature of their duties so that they can furnish services effectively, efficiently, and competently. This education and training includes, but is not limited to, the individual job description, performance expectations, applicable organizational policies and procedures, safety responsibilities, infection control program, and quality assessment and performance improvement activities within the hospital.

(2) All personnel furnishing health care services in the hospital must demonstrate in practice the skills and techniques necessary to perform their duties and responsibilities.

§ 482.130 Condition of participation: Physical environment.

The hospital must maintain a safe physical environment free of hazards for patients.

(a) *Standard: Safety management.* (1) The hospital must prevent situations that pose a threat to health or property whenever possible; when they do occur, the hospital must report and correct them promptly.

(2) The hospital must prevent equipment failures whenever possible; when they do occur, the hospital must report and correct them promptly.

(3) The hospital must promptly report and investigate all incidents that involve injury to patients or that involve damage to property.

(4) The hospital must have an emergency preparedness system for managing the consequences of power failures, natural disasters or other emergencies that disrupt the hospital's ability to provide care.

(b) *Standard: Physical plant and equipment.* (1) There must be procedures for the proper routine storage and prompt disposal of trash and medical waste.

(2) There must be proper light, temperature, and ventilation controls throughout the hospital including appropriate air exchanges for patient care.

(3) There must be emergency power and lighting for life-support equipment, regardless of location, and for emergency exit areas and stairwells. The hospital must make available in all other areas not served by the emergency supply source, battery lamps and flashlights. The hospital must make available facilities for emergency gas and water supply.

(4) All equipment used to furnish patient care services must be properly maintained.

§ 482.135 Condition of participation: Life safety from fire.

Except as provided in paragraphs (a) and (b) of this section, the hospital must meet the applicable provisions of the 1994 edition of the Life Safety Code of the National Fire Protection Association (LSC), which is incorporated by reference. Incorporation by reference of the LSC, 1994 edition, was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.[1]

(a) *Waivers.* After consideration of State survey agency findings, HCFA may waive specific provisions of the Life Safety Code that, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of patients.

(b) *Exception.* The provisions of the Life Safety Code do not apply in a State where HCFA finds that a fire and safety code imposed by State law adequately protects patients in hospitals.

§ 482.140 Condition of participation: Blood and blood product transfusions.

The hospital must administer blood and blood product transfusions according to approved medical staff and nursing policies and procedures, and ensure the safety of individuals being transfused within the facility.

(a) *Standard: Transfusion reactions.* The hospital must have procedures for identifying, averting, responding promptly to, investigating, tracking, and reporting blood and blood product transfusion reactions to the laboratory and, as appropriate, to Federal and State authorities.

(b) *Standard: Safety and accessibility.* The hospital must take appropriate measures to ensure the positive identification of the blood or blood product and the recipient. Blood and blood product must be stored at the appropriate conditions, including temperature, to prevent deterioration. Blood and blood products must be readily accessible to the appropriate medical and nursing staff.

§ 482.145 Condition of participation: Potentially infectious blood and blood products.

(a) *Potentially HIV infectious blood and blood products.* Potentially HIV infectious blood and blood products are prior collections from a donor who tested negative at the time of donation but tests repeatedly reactive for the antibody to the human immunodeficiency virus (HIV) on a later donation, and the FDA-licensed, more specific test or other follow-up testing recommended or required by FDA is positive and the timing of seroconversion cannot be precisely estimated.

(b) *Services furnished by an outside blood bank.* If a hospital regularly uses the services of an outside blood bank, it must have an agreement with the blood bank that governs the procurement, transfer, and availability of blood and blood products. The agreement must require that the blood bank promptly notify the hospital of the following:

(1) If it supplied blood and blood products collected from a donor who tested negative at the time of donation but tests repeatedly reactive for the antibody to HIV on a later donation.

(2) The results of the FDA-licensed, more specific test or other follow-up testing recommended or required by FDA completed within 30 calendar days after the donor's repeatedly reactive screening test. (FDA regulations concerning HIV testing and lookback procedures are set forth at 21 CFR 610.45—et seq.)

(c) *Quarantine of blood and blood products pending completion of testing.* If the blood bank notifies the hospital of the repeatedly reactive HIV screening test results as required by paragraph (b)(1) of this section, the hospital must determine the disposition of the blood or blood product and quarantine all blood and blood products from previous donations in inventory.

(1) If the blood bank notifies the hospital that the result of the FDA-licensed, more specific test or other followup testing recommended or required by FDA is negative, absent other informative test results, the hospital may release the blood and blood products from quarantine.

(2) If the blood bank notifies the hospital that the result of the FDA-licensed, more specific test or other followup testing recommended or required by FDA is positive, the hospital

[1] When this proposed rule is adopted, the 1994 edition of the Life Safety Code will be available for inspection at the HCFA Information Resource Center, 7500 Security Boulevard, Central Building, Baltimore, MD, and at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC. Copies of this publication may be purchased from the National Fire Protection Association, Battermarch Park, Quincy, MA 02269.

must dispose of the blood and blood products in accordance with 21 CFR 606.40 and notify patients in accordance with paragraph (d) of this section.

(d) *Patient notification.* If the hospital has administered potentially HIV infectious blood or blood products (either directly through its own blood bank or under an agreement described in paragraph (b) of this section) or released such blood or blood products to another entity or appropriate individual, the hospital must take the following actions:

(1) Promptly make at least three attempts to notify the patient's attending physician (that is, the physician of record) or the physician who ordered the blood or blood product that potentially HIV infectious blood or blood products were transfused to the patient.

(2) Ask the physician to immediately notify the patient, or other individual as permitted under paragraph (h) of this section, of the need for HIV testing and counseling.

(3) If the physician is unavailable, declines to make the notification, or later informs the hospital that he or she was unable to notify the patient, promptly make at least three attempts to notify the patient, or other individual as permitted under paragraph (h) of this section, of the need for HIV testing and counseling.

(4) Document in the patient's medical record the notification or attempts to give the required notification.

(e) *Timeframe for notification.* The notification effort begins when the blood bank notifies the hospital that it received potentially HIV infectious blood and blood products and continues for 8 weeks unless—

(1) The patient is located and notified; or

(2) The hospital is unable to locate the patient and documents in the patient's medical record the extenuating circumstances beyond the hospital's control that caused the notification time frame to exceed 8 weeks.

(f) *Content of notification.* The notification given under paragraphs (d) of this section must include the following information:

(1) A basic explanation of the need for HIV testing and counseling.

(2) Enough oral or written information so that the transfused patient can make an informed decision about whether to obtain HIV testing and counseling.

(3) A list of programs or places where the patient can obtain HIV testing and counseling, including any requirements or restrictions the program may impose.

(g) *Policies and procedures.* The hospital must establish policies and procedures for notification and documentation that conform to Federal, State, and local laws, including requirements for confidentiality and medical records.

(h) *Notification to legal representative or relative.* If the patient has been adjudged incompetent by a State court, the physician or hospital must notify a legal representative designated in accordance with State law. If the patient is competent, but State law permits a legal representative or relative to receive the information on the patient's behalf, the physician or hospital must notify the patient or his or her legal representative or relative. If the patient is deceased, the physician or hospital must continue the notification process and inform the deceased patient's legal representative or relative.

§ 482.150 Condition of participation: Utilization review.

The hospital must have a utilization review (UR) plan that provides for review of services furnished by the institution and by members of the medical staff to patients entitled to benefits under the Medicare and Medicaid programs.

(a) *Standard: Applicability.* The provisions of this section apply except in either of the following circumstances—

(1) A Utilization and Quality Control Peer Review Organization (PRO) has assumed binding review for the hospitals.

(2) HCFA has determined that the UR procedures established by the State under title XIX of the Act are superior to the procedures required in this section, and has required hospitals in that State to meet the UR plan requirements under §§ 456.50 through 456.245 of this chapter.

(b) *Standard: Composition of utilization review committee.* A UR committee consisting of two or more practitioners must carry out the UR function. At least two members of the committee must be doctors of medicine or osteopathy. The other members may be any of the other types of practitioners specified in § 482.20(a).

(1) Except as specified in paragraphs (b)(2) and (3) of this section, the UR committee must be one of the following—

(i) A staff committee of the institution.

(ii) A group outside the institution that is established—

(A) By the local medical society and some or all of the hospitals in the locality; or

(B) In a manner approved by HCFA.

(2) If, because of the small size of the institution, it is impracticable to have a properly functioning staff committee, the UR committee must be established as specified in paragraph (b)(1)(ii) of this section.

(3) The committee's or group's reviews may not be conducted by any individual who—

(i) Has a direct financial interest (for example, an ownership interest) in that hospital; or

(ii) Has been professionally involved in the care of the patient whose case is being reviewed.

(c) *Standard: Scope and frequency of review.*

(1) The UR plan must provide for review for Medicare and Medicaid patients with respect to the medical necessity of each of the following—

(i) Admissions to the institution.

(ii) The duration of stays.

(iii) Professional services furnished, including drugs and biologicals.

(2) Review of admissions may be performed before, at, or after hospital admission.

(3) Except as specified in paragraph (e) of this section, reviews may be conducted on a sample basis.

(4) Hospitals that are paid for inpatient hospital services under the prospective payment system set forth in part 412 of this chapter must conduct review of duration of stays and review of professional services as follows:

(i) For duration of stays, these hospitals need review only cases that they reasonably assume to be outlier cases based on extended length of stay, as described in § 412.80(a)(1)(i) of this chapter; and

(ii) For professional services, these hospitals need review only cases that they reasonably assume to be outlier cases based on extraordinarily high costs, as described in § 412.80(a)(1)(ii) of this chapter.

(d) *Standard: Determination regarding admissions or continued stays.*

(1) The determination that an admission or continued stay is not medically necessary—

(i) May be made by one member of the UR committee if the practitioner or practitioners responsible for the care of the patient, as specified in § 482.20(a), concur with the determination or fail to present their views when afforded the opportunity; and

(ii) Must be made by at least two members of the UR committee in all other cases.

(2) Before making a determination that an admission or continued stay is not medically necessary, the UR committee must consult the practitioner or practitioners responsible for the care of the patient, as specified in § 482.20(a), and afford the practitioner or practitioners the opportunity to present their views.

(3) If the committee decides that admission to or continued stay in the hospital is not medically necessary, written notification must be given, not later than 2 days after the determination, to the hospital, the patient, and the practitioner or practitioners responsible for the care of the patient, as specified in § 482.20(a).

(e) *Standard: Extended stay review.*

(1) In hospitals that are not paid under the prospective payment system, the UR committee must make a periodic review, as specified in the UR plan, of each current inpatient receiving hospital services during a continuous period of extended duration. The scheduling of the periodic reviews may—

(i) Be the same for all cases; or

(ii) Differ for different classes of cases.

(2) In hospitals paid under the prospective payment system, the UR committee must review all cases reasonably assumed by the hospital to be outlier cases because the extended length of stay exceeds the threshold criteria for the diagnosis, as described in § 412.80(a)(1)(i). The hospital is not required to review an extended stay that does not exceed the outlier threshold for the diagnosis.

(3) The UR committee must make the periodic review no later than 7 days after the day required in the UR plan.

(f) *Standard: Review of professional services.* The committee must review professional services provided, to determine medical necessity and to promote the most efficient use of available health facilities and services.

Subpart E—[Redesignated as Subpart D]

Subpart E—Requirements for Specialty Hospitals is redesignated as Subpart D. Sections 482.60, 482.61, 482.62,and 482.66 are redesignated as §§ 482.155, 482.160, 482.165, and 482.170, respectively.

C. Part 485 is amended as follows:

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)

2. Section 485.639(c) is revised to read as follows:

§ 485.639 Condition of participation: Surgical services.

* * * * *

(c) *Administration of Anesthesia.* The CAH designates the person who is allowed to administer anesthesia to CAH patients in accordance with its approved policies and procedures and with State scope of practice laws. Anesthesia is administered only by a licensed practitioner permitted by the State to administer anesthetics.

* * * * *

D. Part 489 is amended as follows:

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 489.53 is amended by republishing paragraph (a) introductory text, redesignating paragraphs (a)(6) through (a)(14) as paragraphs (a)(7) through (a)(15), respectively, and adding a new paragraph (a)(6), to read as follows:

§ 489.53 Termination by HCFA.

(a) *Basis for termination of agreement with any provider.* HCFA may terminate the agreement with any provider if HCFA finds that any of the following failings is attributable to that provider:

* * * * *

(6) It refuses to allow access to its facilities, or examination of its operations or records, by or on behalf of HCFA, as necessary to verify that it is complying with the provisions of title XVIII and the applicable regulations of this chapter, or with the provisions of this agreement. (However, this paragraph is not to be construed to require the disclosure of the records of a skilled nursing facility quality assessment and assurance committee, if such disclosure would be inconsistent with § 483.75(o) of this chapter.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance; Program No. 93.778, Medical Assistance Program)

Dated: November 26, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 10, 1997.

Donna E. Shalala,

Secretary.

[ER Doc. 97–32793 Filed 12–15–97; 8:45 am]

BILLING CODE 4120–01–P

federal register

Friday
December 19, 1997

Part III

Library of Congress

Copyright Office

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office; Notice

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 97–3B]

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of Sixth List of Notices of Intent to Enforce Copyrights Restored Under the Uruguay Round Agreements Act.

SUMMARY: The Copyright Office is publishing its sixth list of restored copyrights for which it has received and processed Notices of Intent to Enforce a copyright restored under the Uruguay Round Agreements Act. Publication of the lists creates a record for the public to identify restored copyright owners and works for which Notices of Intent to Enforce have been filed with the Copyright Office. Copyright owners from countries eligible to file on January 1, 1996, must file Notices of Intent to Enforce copyright in their restored works in the Copyright Office by no later than December 31, 1997.

EFFECTIVE DATE: December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, or Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, Post Office Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Uruguay Round Agreements Act (URAA) (Pub.L.No. 103–465; 108 Stat. 4809 (1994)) provides for the restoration of copyright in certain works that were in the public domain in the United States. Under section 104A of title 17 [1] of the United States Code as provided by the URAA, copyright protection was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries of World Trade Organization (WTO) or Berne countries that were not protected in the United States for the reasons listed below. 17 U.S.C. 104A (1994). Specifically, to qualify for restoration, a work must be an original work of authorship that:

(1) is not in the public domain in its source country through expiration of term of protection;

(2) is in the public domain in the United States due to:

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure to renew, publishing the work without a proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility (e.g., the work is from a country with which the United States did not have copyright relations at the time of the work's publication); and

(3) has at least one author (or in the case of sound recordings, rightholder) who was, at the time the work was created, a national or domiciliary of an eligible country. If the work was published, it must have been first published in an eligible country and not published in the United States within 30-days of first publication. See 17 U.S.C. 104A(h)(6).

A work meeting these requirements is protected "for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States." 17 U.S.C. 104A(a)(1)(B).

Under the URAA, copyright in restored works vests automatically on the date of restoration. 17 U.S.C. 104A(a)(1)(A). That date is January 1, 1996, if the particular nation was already a member of the World Trade Organization (WTO) or the Berne Convention. Otherwise, the effective date of restoration is the date of a particular nation's adherence to the WTO or the Berne Convention or the date when the President issues a proclamation extending copyright restoration to that nation.

Although the copyright owner may immediately enforce the restored copyright against individuals who infringe his or her rights on or after the effective date of restoration, the copyright owner's right to enforce the restored copyright is delayed against reliance parties. Typically, a reliance party is one who was already using the work before December 8, 1994, the date the URAA was enacted. See 17 U.S.C. 104A(h)(4). Before a copyright owner can enforce a restored copyright against a reliance party, the copyright owner must first file or serve a Notice of Intent to Enforce (NIE) on such parties.

A copyright owner may file an NIE in the Copyright Office within 24 months of the date of restoration of copyright. Alternatively, an owner may serve an NIE on an individual reliance party at any time during the term of copyright; however, such notices are effective only against the party served and those who have actual knowledge of the notice and its contents. NIEs appropriately filed with the Copyright Office and published herein serve as constructive notice to all reliance parties.

II. Administrative Processing

Pursuant to the URAA, the Office is publishing its sixth four month list identifying restored works and the ownership for Notices of Intent to Enforce a restored copyright filed with the Office. 17 U.S.C. 104A(e)(1)(B). The earlier lists were published between May 1, 1996, and August 22, 1997. 61 FR 19372 (May 1, 1996), 61 FR 46134 (Aug. 30, 1996), 61 FR 68454 (Dec. 27, 1996), 62 FR 20211 (April 25, 1997) and 62 FR 44842 (August 22, 1997). To allow for processing NIE information, the Office closes the record for publication approximately two weeks before publication. Accordingly, the NIEs listed herein are those entered into the public records of the Office between August 8, 1997, and December 5, 1997. NIEs received after the current Office processing cutoff date, but on or before the cutoff date of December 31, 1997, will be published on January 30, 1998.[2]

NIEs for works restored to copyright on January 1, 1996, must be postmarked on or before December 31, 1997, to be accepted in the Copyright Office for publication in the **Federal Register**. See 17 U.S.C. 104A(d)(2). Owners of works that are still within their eligible filing period may continue to file such notice with the Copyright Office and receive constructive notice, and the Office will continue to publish a list of eligible NIEs in the **Federal Register**.

III. Correction of Previously Filed NIEs

Correction NIEs for major errors on any NIE filed must be submitted within the eligibility period. 37 CFR 201.34(d)(6)(i). Minor errors may be corrected at any time without regard to eligibility for filing, pursuant to the interim regulation on Correction NIEs, published at 62 FR 55736 (October 28, 1997).

[1] The URAA's amendment of 17 U.S.C. 104A replaces section 104A under the North American Free Trade Agreement Implementation Act (Pub.L.No. 103–182, 107 Stat. 2057, 2115 (1993)). The Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H.R. Doc. No. 316, 103d Cong., 2d Sess. 324 (1994). See 60 FR 50414 (Sept. 29, 1995).

[2] NIE's received in the Copyright Office after January 26, 1998, that were postmarked no later than December 31, 1997, will be published in the appropriate four month list.

IV. Online Availability of NIE Lists

NIEs are located in what is known as the Copyright Office History Documents (COHD) file which is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress NIE information through the Library of Congress Information System (LOCIS). The hours of availability are Monday through Friday 8:30 a.m.–5:00 p.m. U.S. Eastern Time (Copyright Office) or over the Internet Monday–Friday 6:30 a.m.–9:30 p.m. U.S. Eastern Time, Saturday 8:00 a.m.–5:00 p.m., and Sunday 1:00 p.m.–5:00 p.m. Alternative ways to connect through Internet are: (i) use the Copyright Office Home Page on the World Wide Web at: http://www.loc.gov/copyright; (ii) connect directly to LOCIS through the telnet address at locis.loc.gov or (iii) use the Library of Congress gopher LC MARVEL at: marvel.loc.gov port 70. LC MARVEL and WWW are available 24 hours a day. LOCIS is available 24 hours a day Monday through Friday, Eastern Time; Saturday, until 5 p.m.; and Sunday after 11 a.m.[3]

Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of one or more exclusive rights, the date of receipt of the NIE in the Copyright Office; the date of publication in the **Federal Register**; and the address, telephone and telefax number of the copyright owner. If given on the NIE, the online information will also include the author, the type of work, and the rights covered by the notice. See 37 CFR 201.33(f). For the purpose of researching the full Office record of NIEs on the Internet, the Office has made online searching instructions accessible through the Copyright Office Home Page. Researchers can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Select the menu item "Copyright Office Records" and/or "URAA, GATT Amends U.S. law." Finally, images of the complete NIEs as filed are on optical disc and available from the Copyright Office.

The following restored works are listed alphabetically by copyright owner; multiple works owned by a particular copyright owner are listed alphabetically by title. Works having more than one copyright proprietor are listed under the first owner and cross-referenced to the succeeding owner(s). A cross-reference to the composite owner (e.g., Title I owned by "A B & C") will state, "SEE A B & C" at the listing for each individual owner, (e.g., for Owner A, for Owner B and for Owner C).

[3] Not all files are available after 9:30 p.m. on weekdays. On Sundays, all files may not be available from 5 p.m.–8 p.m.

V. Sixth List of Notices of Intent To Enforce

Alameda Films, SA.
- Los amores de una viuda.
- El ataud del vampiro.
- El aviador fenomeno.
- Una bala es mi testigo.
- El Baron del Terror.
- La cabeza viviente.
- Cadena de mentiras.
- Casi casados.
- El caso de la mujer asesinadita.
- Chabelo y Pepito detectives.
- Chabelo y Pepito vs. los monstruos.
- Las cinco advertencias de satanas.
- Cinco asesinos esperan.
- Cinco mil dolares de recompensa.
- Comicos y canciones.
- Corona de lagrimas.
- El crepusculo de un Dios.
- Cuando acaba la noche.
- Cuando regrese mama.
- Cucurrucucu Paloma.
- Del suelo no paso.
- El diablo no es tan diablo.
- Los diablos del terror.
- Un dorado de Pancho Villa.
- La edad de la tentacion.
- El espejo de la bruja.
- La flecha envenenada.
- Futbol Mexico 70.
- Una Gringuita en Mexico.
- El grito de la muerte.
- Los hermanos Diablo.
- El hombre de la ametralladora.
- El hombre y el monstruo.
- Hora y media de balazos.
- El indomable.
- Jovenes y Bellas.
- Juego peligroso.
- La maldicion de la llorona.
- Manana seran hombres.
- Manos arriba.
- La marca del muerto.
- El Mariachi canta.
- Me ha besado un hombre.
- Mi desconocida esposa.
- Mi esposa y la otra.
- Mi vida es una cancion.
- Misterios de ultratumba.
- La muerte es puntual.
- El mundo de los vampiros.
- Nadie muere dos veces.
- Negra consentida.
- El pantano de las animas.
- El pecado de Laura.
- Pension de artistas.
- Pepito y la lampara maravillosa.
- Pistoleros del oeste.
- Policias y ladrones.
- El potro salvaje.
- Principio y fin.
- Punos de roca.
- Raffles Mexicano.
- Los recuerdos del porvenir.
- El renegado blanco.
- Rio hondo.
- El robo al tren correo.
- Rosario.
- Serenata en Mexico.
- Los sheriffs de la frontera.
- Soy un golfo.
- Te vi en television.
- Tiempo de morir.
- Los tres amores de Lola.
- Tres hermanos.
- Triangulo.
- Twist locura de juventud.
- Vacaciones en Acapulco.
- El vampiro.
- Venganza apache.
- Las visitaciones del diablo.
- Una viuda sin sosten.
- Yo quiero ser mala.
- Yo quiero ser torero.
- El Zorro vengador.

Argos Films S.A.R.L.
- Hiroshima, mon amour.

Ariane. SEE Cogelda & Ariane.

Ariane. SEE Cogelda, Ariane & Pretoria.

Authors Rights Restoration Corporation, Inc.
- 24 horas de placer.
- 800 leguas por el Amazonas.
- 96 horas de amor (en la vida de Guty Cardenas).
- A calzon quitado.
- A donde van nuestros hijos?
- A gozar, a gozar que el mundo se va a acabar.
- A la orilla de un palmar.
- A la prima se le arrima.
- A lo macho.
- A media luz los tres.
- A paso de cojo.
- A que le tiras cuando suenas, Mexicano.
- A ritmo de salsa.
- A ritmo de twist.
- A sablazo limpio.
- A tiro limpio.
- A volar, joven.
- Abajo el telon.
- Las abandonadas.
- El abanico de Lady Windermere.
- Abismos de pasion.
- Abnegacion.
- Los aboneros del amor.
- Abrigo de mink.
- La abuelita.
- Aca las tortas.
- Acapulco a go go.
- Acapulco gigolo.
- Acapulco.
- Acapulquena.
- Accion sobre ruedas.
- Acorralado.
- Acorralados.
- Acuerdate de vivir.
- Adan y Eva.
- Adan, Eva y el Diablo.

Adios, cunado.
Adios, juventud.
Adios, mi chaparrita.
Adios, Nicanor.
Adorables criminales.
Adriana Del Rio, actriz.
El aduanal.
La adultera.
Agapito no me las des.
Agarrando parejo.
El agente 00-sexy.
Agente viajero.
Agente secretisimo.
La agonia de ser madre.
La agonia de ser madre.
Aguila descalza.
El aguila descalza.
El aguila negra.
El aguila negra en la ley de los fuertes.
Aguila negra vs. enmascarados de la muerte.
El aguila negra vs. los diablos de la pradera.
El aguila real.
Aguilas de America.
Ahi esta el detalle.
Ahi viene Martin Corona.
Ahi viene Vidal Tenorio.
Ahi vienen los Argumedo.
Ahi vienen los gorrones.
El ahijado de la muerte.
Ahora es cuando chile verde.
Ahora mis pistolas hablan.
Ahora soy rico.
El ahorcado.
Al cabo que ni queria.
Al compas del rock'n roll.
Al diablo con la musica.
Al diablo las mujeres.
Al fin a solas.
Al fin solos.
Al margen de la ley.
Al rojo vivo.
Al son de la metralleta.
Al son del mambo (El rey del mambo).
Aladino y la lampara maravillosa.
Alarma.
Alas doradas.
El alazan y el rosillo.
Alazan y enamorado.
Los albaniles.
Albur de amor.
Los albureros.
Albures rancheros.
La alegre casada.
Los alegres aguilares.
La alegria de vivir.
Alejandra.
Algo flota sobre el agua.
Alguien tiene que morir.
Alias el rata.
Alicia en Idel el pais del dolar.
Alla en el Bajio.
Alla en el rancho grande (36).
Alla en el rancho grande (48).
Alla en el tropico.
Alla en la Plaza Garibaldi.
Alla en la Plaza Garibaldi II.
Alma de acero.
Alma grande en el desierto.
Alma grande, el Yaqui justiciero.
Alma jarocha.
Alma llanera.
Alma Nortena.
Amanda, levantate y anda.
Amanecí en tus brazos.
Un amante anda suelto.
La amante perfecta.
Los amantes.
Los amantes frios.
Amar fue su pecado.
La amargura de mi raza.
Ambicion mortal.
Ambicion sangrienta.
Ambicion sangrienta (67).
Ambiciosa.
Amigo.
Los amigos.
Las amiguitas de los ricos.
Amok.
Amor a balazo limpio.
Amor a la mexicana.
Amor a ritmo de go-go.
Amor con amor se paga.
Amor de adolescente.
Amor de la calle.
Amor de lejos.
Amor de locura.
El amor de los amores.
El amor de Maria Isabel.
El amor de mi vida.
Amor de mis amores.
Amor del bueno.
Amor en cuatro tiempos.
Amor en la sombra.
Amor en las nubes.
Un amor extrano.
El amor las vuelve locas.
El amor llego a Jalisco.
El amor loco.
El amor no es negocio.
El amor no es pecado.
Amor prohibdo.
El amor tiene cara de mujer.
Amor vendido.
El amor y esas cosas.
Amor y pecado.
Amor y sexo.
Amorcito corazon.
Amor entre nubes.
Amores de ayer.
Los amores de Chucho El Roto.
Los amores de Juan Charrasqueado.
Los amores de Marieta.
Amores de Satanas.
Los amores de una viuda.
Anacleto se divorcia.
El analfabeto.
Anatomia de una violacion.
Andante.
Ando volando bajo.
Andres de barba azul.
Angelitos negros.
Angel del barrio.
Angel del infierno.
El angel exterminador.
Angel negro.
Angel river.
El angel y yo.
Angeles de arrabal.
Los angeles de Puebla.
Angelica.
Angelitos del trapecio.
Angellitos negros.
Anillo de compromiso.
El anima de sayula.
El anima del ahorcado contra el latigo negro.
Animas trujano.
Anita De Montemar.
Anonimo mortal.
Los anos han pasado.
Anos verdes.
Los anos verdes.
Ansiedad.
Ante el cadaver de un lider.
Antesala de la silla electrica.
El apenitas.
Aprendiendo a vivir.
Apsionada.
Apuesta contra la muerte.
Los apuros de dos gallos.
Los apuros de mi ahijada.
Los apuros de un mafioso.
Aquel famoso Remington.
Aquella Rosita Alvirez.
Aqui esta Heraclio Bernal.
Aqui estan los Villalobo.
Aqui llego el valenton.
Aqui esta tu enamorado.
Aranas infernales (cerebros diabolicos).
Los arboles mueren de pie.
El ardiente deseo.
Arizona.
Arma infernal.
Arrabalera.
Arriba el norte.
Arriba el telon (los parperos).
Arriba las manos, Texano.
Arriba las mujers.
Arriba, Michoacan.
Arrullo de Dios.
Arruza.
El arte de enganar.
El as de oros.
El as negro.
Asalto en Tijuana.
El asalto.
Asesinato en la Plaza Garibaldi.
Asesinato en los estudios.
El asesino.
El asesino de metro.
Asesino de tontos.
El asesino enmascarado.
Asesino invisible.
Asesino por instinto.
El asesino se embarca.
El asesino X.
Los asesinos.
Asesinos de la lucha libre.
Asesinos de otros mundos.
Asesinos en la noche.
Asesion a sueldo.
Asi amaron nuestros padres.
Asi era Pancho Villa.
Asi es mi Mexico.

Asi se quiere en jalisco.
Asi son ellas.
Los astronautas.
Atacan las brujas (Santo en la casa de las brujas).
El ataud del vampiro.
Los atracadores.
Atras de las nubes.
Audaz bravero.
La ausente.
Los automatas de la muerte.
El automovil girls.
Autopsia de un fantasma.
Ave sin nido (Anita de Montemar).
Ave sin rumbo.
Aventura en el centro de la tierra.
Las aventuras de Carlos Lacroix.
Aventuras de chucho el roto.
Aventuras de Juliancito.
Aventuras de la pandilla.
Las aventuras de las hermanas X.
Las aventuras de Pito Perez.
Aventuras de un caballo blanco y un nino.
Aventuras de un nuevo rico.
Aventuras en Rio.
Aventureas de joselito y pulgarcito.
Aventurera.
Los aventureros.
El aviador fenomeno.
El aviso inoportuno.
Ay amor como me has puesto!
Ay chabela!
Ay chaparros como abundan!
Ay Jalisco no te rajes! (46).
Ay Jalisco no te rajes! (64).
Ay que tiempos, senor Don Simon.
Azahares para tu boda.
Azahares rojos.
Baila conmigo.
Baila mi amor.
Bailando cha-cha-cha.
Baile de graduacion.
Baile mi rey.
Baileras, palabras tristes.
Bajo el cielo de Mexico.
Bajo el imperio del hampa.
Bajo la influencia del miedo.
Bajo la mertralla.
Bala de plata en el pueblo maldito.
Bala de plata.
Una bala es mi testigo.
Bala perdida.
Balum canan.
Balun canan.
Baname mi amor.
Bancazo en los mochis.
La banda de la sotana negra.
Banda de los contrabandistas.
La banda del acordeon.
La banda del carro rojo.
Banda del polvo maldito.
Banda del terror.
La banda dela sotana negra.
Bandera rota.
La bandida.
Los bandidos (66).
Los bandidos (77).
Bandidos de Rio Frio.
Bang, bang...al hoyo.
El bano de afrodita.
El barba azul.
Los Barbaros del norte.
El barbero prodigioso.
La barca de oro.
El baron del terror.
Barrack's coup.
La barranca de la muerte.
Barranca sangrienta.
El barrendero.
Barridos y regados.
Barrio bajo.
Barrio de pasiones.
Barrio salvaje.
Baru, el hombre de la selva.
Bashful.
El bastardo (37).
Bastardo, el (65) (Rancho solo II).
Bataclan Mexicano.
La batalla de los pesteles.
Bellas de noche.
El bello durmiente.
Bendito entre las mujeres.
Benjamin Argumedo.
Besame mucho.
Besito a papa.
El beso de ultratumba.
Un beso en la noche.
El beso mortal.
Besos en la arena.
Besos prohibidos.
Besos, besos y mas besos.
La bestia negra.
Bestias jovenes.
Los Beverly de Peralvillo.
La bien amada.
Bikinis y rock.
Blanca Nieves y sus siete amantes.
Blessed among women.
Bloody Marlene.
Blue Demon contra el poder.
Blue Demon contra las diabolicas.
Blue Demon contra las invasoras.
Blue Demon contra los cerebros infernales.
Blue Demon el demonio azul (El demonio azul).
Blue Demon en pasaporte a la muerte.
Blue Demon y la mafia amarilla.
Blue Demon y Zovek.
Blue Demon, el destructor de espias.
Blue Demon, el destructor de.
Bodas de fuego.
Bodas de oro.
Bodas tragicas.
Bohemio de aficion.
El bolero de Raquel.
Bolero inmortal.
El Bombero atomico.
El Bombero atomico.
Bonitas las tapatias.
Las borrachas.
Borrasca en las almas.
Borrasca humana.
El boxeador.
Braceras y mojados.
Las braceras.
El bracero Delano.
Las bravuconas.
El brazo fuerte.
Bromas S.A.
El bronco.
El bronco reynosa.
The brothel.
La bruja.
El bruto.
El buen ladron.
El buena suerte.
La buena, la mala y la golfa.
Buenas noches, ano nuevo.
Buenas y con movidas.
Bueno para nada.
Buenos dias, Acapulco.
Bugambilia.
Burdel.
Burlada.
Burlesque.
El buscabullas.
Buscando un campeon.
Buscando una sonrisa.
Cabalgando a la luna.
El caballito volador.
Caballo a caballo.
Caballo alazan lucero.
El caballo bayo.
El caballo blanco.
El caballo del Diablo.
Caballo prieto afamado.
Caballo prieto azabache.
Caballo que canta.
Caballos de acero.
Caballos de acero (amor sobre ruedas).
El cabaretero y sus golfas.
Cabellera blanca.
Cabellero a la medida.
Cabeza de vaca.
La cabeza viviente.
Cabo de hornos.
Caceria de traficantes.
Caceria humana.
Caceria implacable.
El cachorro.
Los cachorros.
En cada feria un amor.
Cada hijo una cruz.
Cada loco con su tema.
Cada oveja con su pareja.
Cada quien su lucha.
Cada quien su musica.
Cada quien su vida.
Cada voz lleva su angustia.
Cadena de mentiras.
Las cadenas del mal.
Cadetes de la naval.
Cafe Colon.
Cafe Concordia.
El caifan del barrio.
El cain del bajio.
Cain y Abel.
Cain, Abel y el otro.
Calabacitas tiernas.
Las calaveras del terror.
Calibre 44.
Una calle entre tu y yo.
Callejera.
Callejon sin salida (38).
Callejon sin salida (64).

El calvario de una esposa.
Calzontzin inspector.
La calzonuda.
Cama de piedra.
La camara del terror.
Camelia.
Caminate solitario.
Un camino al cielo.
Camino al infierno.
Camino de Guanajuato.
Camino de infierno.
Camino de la horca.
El camino de la vida.
El camino de los espantos.
El camino de los gatos.
Camino del mal.
Caminos de michocan.
Campanas rojas.
El campeon ciclista.
Campeon del barrio.
Campeon olimpico.
Los campeones justicieros.
Canaima.
Los canallas.
Cananea.
Canasta Uruguaya.
Una cancion a la virgen.
Cancion de luna.
La cancion de Mexico.
Cancion del alma (37).
Cancion del alma (63).
La cancion del huerfano.
Candelaria.
El canta mariachi.
Canta mi corazon.
Cantaclaro.
Cantando nace el amor.
Canto chamo.
El canto de la sirena.
El canto de los humildes.
El cantor de la Mafia.
Caperucita y pulagarcito contra los monstruous.
Caperucita y sus tres amigos.
Capitan de rurales.
El capitan Mantaraya.
El capitan Mantarraya.
La captura de Chucho el Roto.
Captura de Gabino Barrera.
Capulina chisme caliente.
Capulina Speedy Gonzales.
Capulina vs. los monstruos.
Capulina vs. los vampiros.
Capulina, corazon de leon.
Cara de angel.
Una cara para escapar.
El cara parachada.
El cara parchada (79).
El cara parchada.
Carabina 30-30.
Las carareteras.
Caras nuevas.
La caravana de la muerte.
La carcachita.
La carcel de Cananea.
La carcel de Laredo.
Carcel de mujeres.
Carcel de mujeres.
El Cardenal.
El Cardenal.
Los cargadores.
Cargamento mortal.
Cargamento prohibido.
Cargamento prohibido (fuego infernal).
Cargando el muerto.
La carinosa motorizada.
Las carinosas.
El carinoso.
Carita de cielo.
Carnaval en mi barrio.
Carne de horca.
Carne de presido.
La carne manda.
Caperucita Roja.
La carrera del million.
Carreta sangrienta.
El carro de la muerte.
Carrona.
Una carta de amor.
Cartas de amor.
La casa chica.
La casa colorado.
Casa de citas.
La casa de las muchachas.
La casa de los espantos.
Casa de mujeres (66).
Casa de munecas para adultos.
Casa de munecas.
Casa de perdicion.
La casa de Troya.
Casa de vecindad.
La casa del farol rojo.
La casa del ogro.
La casa del rencor.
La casa del sur.
La casa del terro.
La casa del terror.
La casa embrujada.
La casa prohibida.
Las casadas enganan de 4 a 6.
Casadas infieles.
Cascabel.
Cascabelito.
La case del Pelicano.
Casi casados.
El caso de la mujer asesinadita.
Casos de alarma y, sida.
La casta divina.
El castillo de la pureza.
El castillo de los monstruos.
El Casto Susano.
Caundo habla el corazon.
Cayo de la gloria el diablo.
Cazadores de asesinos.
Cazadores de cabezas.
Cazadores de espias.
Celos.
El cementerio del terror.
El ceniciento.
Las cenizas del diputado.
El centauro del norte.
El centauro Pancho Villa.
Central camionera.
Chabelo y Pepito contra los monstruos.
Chabelo y Pepito detectives.
Los chacales.
El chacharas.
La chameca.
Chanco y el tesoro de los mayas.
El chanfle.
El chanfle II.
Chanoc.
Chanoc (adventuras de mar y selva).
Chanoc (adventureas de mar y selva).
Chanoc en el circo union.
Chanoc en el foso de serpientes.
Chanoc en la isla de la muerte.
Chanoc en las garras de las fieras.
Chanoc vs el tigre el vampiro.
Chanoc vs el tigre y el vampiro.
Chanoc vs. las tarantulas.
Chaparro se mete en todo.
Charro a la fuerza.
Charro de las calaveras.
Charro de levita.
El charro inmortal.
Charro negro contra le banda del cuervo.
Charro negro contra la banda.
El charro y la dama.
Chicano.
Chicano karateca.
Chicas casaderas.
Las chicas malas del Padre Mendez.
Chico Ramos (un hombre llamado muerte).
Un chico valiente.
Los Chifiados del rock'n roll.
Chilam balam.
El Chile.
Chile picante.
Chin-chin el Teporocho.
Chiquidracula.
Chismoso de la ventana.
Las chivas rayadas.
El chivo.
La choca.
Chto sluchilos' v militsiyi.
Chucho el remendado.
Chucho el roto.
Chucho el roto (34).
Chucho el roto (59).
El ciclon de Jalisco (yo soy charro donde).
El ciclon del Caribe.
El ciclon.
El cielito.
Cielito lindo.
Cielo rojo.
El cielo y la tierra.
El cielo y tu.
Cien gritos de terror.
Cien mujeres.
La ciguena dijo si.
Cinco asesinos esperan.
Cinco de chocolate y uno de fresa.
Cinco en la carcel.
Cinco fueron escogidos.
Los cinco halcones.
Cinco nacos asaltan Las Vegas.
Las cinco noches de Adan.
Cinco pollas en peligro.
Cinco rostros de mujer.
El cinico.
El circo.

El circo de Capulina.
El circo de Capulina.
El circo tragico.
Una cita de amor.
La ciudad de los ninos.
La ciudad de los ninos.
La ciudad perdida.
Click, fotografo de modelos.
El club de los suicidas.
El club de los suicidas.
Club de senoritas.
La cobarde.
El cofre del pirata.
El cofre del pirata.
Las colegialas.
La colina de la muerte.
Color de nuestra piel.
La comadrita.
El Comandante Furia.
Comezon a la mexicana.
Comezon a la mexicana.
La comezon del amor.
Los comicos de la legua.
Comicos y canciones.
Como atrapar marido.
Como burro sin mecate.
Como enfriar a mi marido.
Como gallos de pelea.
Como hay gente sinverguenza.
Como perros y gatos.
Como pescar marido.
Como te quedo el ojo.
Como todas las madres.
Como tu ninguna.
Como yo te queria.
El compadre mas padre.
El compadre mendoza.
El complot mongol.
Las computadoras.
Con amor de muerte.
Con el dedo en el gatillo (40).
Con el dedo en el gatillo (65).
Con el nino a travesado.
Con la misma moneda.
Con la muerte en ancas.
Con licencia para matar.
Con mas corazon que odio.
Con quien andan nuestros locos?
Con su amable permiso.
Concurso de bellaza.
El Conde de Montecristo.
En condominio.
Conexion criminal.
Confidencias de un ruletero.
Confidencias matrimoniales.
Conl el diablo en el cuerpo.
Conqueta.
La conquisita del dorado.
Conquistador de la luna.
Conserje en condominio.
Conspiracion bikini.
Contigo a la distancia.
Contra la ley de Dios.
Contra viento y marea.
Contrabando del paso.
Contrabando por amor.
Contrabando y traicion.
Coqueta.
La coralillo.
Corazon bandolero.
Corazon de fiera.
El corazon de la noche.
Corazon de nino (39).
Corazon de nino (62).
Corazon salvaje (55).
Corazon salvaje (67).
El corazon y la espada.
Corazones de Mexico.
Cornudo soy yo.
Corona de lagrimas.
Coronacion.
Las coronelas.
El correro del norte.
Corrido de Maria Pistolas.
Los corrompidos.
Corrupcion.
Corrupcion encadenada.
El corsario negro.
El cortado.
Las cosas prohibidas.
La cosecha de mujeres.
La coyota.
El coyote emplumado.
El coyote y la bronca.
Creo en dios (labios sellados).
El crepusculo de un Dios.
Crepusculo.
La criada bien criada.
La criada maravilla.
El criado malcriado.
Criados malcriados.
El crimen de la hacienda.
Crimen en el puerto.
Crimen y castigo.
El criminal.
Cristo setenta.
Cronica roja.
El crucifijo de piedra.
Cruz de amor.
Cruz de olvido.
Cruz Diablo.
Cuatro contra el crimen.
Cuando acaba la noche (50).
Cuando corrio el alazan.
Cuando el Diablo sopla.
Cuando la tierra temblo.
Cuando levanta la niebla.
Cuando lloran los valientes.
Cuando los hijos pecan.
Cuando los hijos se pierden.
Cuando los hijos se van.
Cuando los hijos se van (41).
Cuando los padres se quedan solos.
Cuando me enamoro.
Cuando me vaya.
Cuando Mexico canta.
Cuando quiere un mexicano.
Cuando regrese mama.
Cuando se quiere, se quiere.
Cuando se vuelve a Dios.
Cuando tejen las aranas.
Cuando tu me quieras.
Cuando viajan las estrellas.
Cuando viva villa! es la muerte.
Cuanto vale tu hijo.
Cuartelazo.
Cuarto cerrado.
El cuarto chino.
Los cuates de la rosenda.
Cuatrero.
El cuatrero.
Cuatro a la fuga.
Cuatro contra el imperio.
Cuatro contra el mundo.
Cuatro hembras y un macho menos.
Cuatro hombres marcados.
Cuatro horas antes de morir.
Los cuatro juanes.
Las cuatro milpas (37).
Cuatro milpas (58).
Cuatro noches contigo.
Cuatro pillos y un vivales.
La cucaracha.
Cuchillo.
Cucurrucucu paloma.
Cuentan de una mujer.
Cuentos colorados.
Cuernavaca en primavera.
Cuernos debajo de la cama.
El cuerpazo del delito.
Un cuerpo de mujer.
Cuide a su marido.
Cuido con el amor.
La culpa de los hombres.
La culta dama.
El cumpleanos del perro.
Cuna de valientes.
Un cura de locura.
Curados de espanto.
El curandero del pueblo.
La dama de las camelias.
La dama del alba.
La dama torera.
El Dandy y sus mujeres.
Los de abajo.
De bajo, los (con la division del norte).
De Benjamin Argumedo.
De cocula es el mariachi.
De color moreno.
De hombre a hombre.
Los de lios de barba azul.
De los EUA Mexico de mi corazon.
De los EUA Mexico de mi corazon.
De pecado en pecado.
De pulquero a millonario.
De que color es el viento?
De ranchero a empresario.
De sangre Chicana.
De tal palo tal astilla.
De tequila, su mezcal.
De todas todas.
Debieron ahorcarlos.
Del Brazo y por la calle.
Del can can al mambo.
Del diablo a caballo.
Del odio nacio el amor.
Del rancho a la television.
Del rancho a la televison.
Del suelo no paso.
Las del talon.
Delincuente.
Delincuentes de lujo.
El dengue del amor.
Departamento de soltero.
Deportados.
Derecho a la vida.

El Derecho de los pobres.
El derecho de nacer.
Los derechos de los hijos.
Desafio a muerte.
El desalmado.
Los desalmados.
Los desarraigados.
La desconocida.
Los desenfrenados.
Deseo en otono.
El deseo y pasion.
El deseo.
Los desheredados.
Deso en otono.
Despedia de soltera.
Despedida de casada.
Despedida de casadas.
Despedidad de soltera.
El despertar del lobo.
Destino de una mujer.
Desventura de un mafioso.
Detectives o ladrones.
Devastaciones de los piratas.
El dia comenzo.
Un dia con el diablo.
Un dia con el diablo.
Un dia de Diciembre.
El dia de la boda.
El dia de las madres.
Dia de madres.
Dia de martires.
Un dia de vida.
El diablo desaparece.
El diablo en persona.
El diablo no es tan diablo.
Los diablos del terror.
Diablos en el cielo.
El diabolico.
Diamantes, oro y amor.
Diams de leon.
La Diana cazadora.
El diario de mi madre, (promesa de matrimonio).
Diario intimo de una cabaretera.
Dias de otono.
Dias de violencia.
Dicen que soy comunista.
Dicen que soy hombre malo.
Dicen que soy mujeriego.
Difusion del arte.
Dile que la quiero.
La diligencia de la muerte.
Dimas de Leon.
La dinastia de la muerte.
Dios los cria (53).
Dios nos manda vivir.
Dios sabra juzgarnos.
La diosa del puerto.
La diosa impura.
Discotec fin de semana.
Discoteca es amor.
La disputa.
Distinto amanecer.
Distrito federal.
Una dita de amor.
La divina garza.
Division Narcoticos.
Divorciadas.
Las do galleras.
Los doce malditos.
El dolor de los hijo.
El dolor de pagar la renta.
Domingo salvaje.
Don Juan 67.
Don Juan tenorio.
Don quintin el amargado.
Dona diabla.
Dona macabra.
Dona Malinche.
Dona Mariquita de mi corazon.
Dona perfecta.
La doncella de piedra.
Donde el circulo termina.
Donde esta el presidente.
Donde estas corazon?
Donde estas corazon?
Un dorado de Pancho Villa.
Dormitorio para senoritas.
Dos almas en el mundo.
Los dos amigos.
Los dos apostoles.
Dos caballeros de espada.
Dos caballeros de espada.
Los dos carnales.
Dos charros y una gitana.
Dos comprades.
Dos corazones y un cielo.
Dos criados malcriados.
Dos cuates a todo dar.
Los dos cuatreros.
Dos de le vida airada.
Dos diablillos en apuros.
Dos fantasmas y una muchacha.
Dos gallos alborotados.
Dos gallos en palenque.
Dos gallos y dos galinas.
Dos hermanos murieron.
Los dos hermanos.
Dos hijos desobedientes.
Las dos huerfanitas (50).
Las dos huerfanitas (77).
Dos judiciales en aprietos.
Dos maridos baratos.
Dos meseros majaderos.
Dos monjes.
Dos mujeres y un hombre.
Dos mundos y un amor.
Las dos nacos en el planeta de.
Dos pesos dejada.
Los dos pilletes.
Dos pintores pintorescos.
Dos pistoleros violentos.
Los dos rivales (cuando los rivales se aman).
Dos tales por cuales.
Dos tipas de cuidado.
Dos tipos de cuidado.
Dos tontos y un loco.
Dos valientes.
Dos veces por semana.
Dr. Satan y la magia negra.
Dr. Satan.
La duda.
La duda (53).
Duelo de pistoleros.
Duelo de valientes.
Duelo en las montanas.
Duelo en las montanas.
Duena y senora.
El duende y yo.
La dulce enemiga.
La duquesa diabolica.
Durazo, la historia verdadera.
Duro pero seguro.
Duro y parejo en la casita.
Echenme al gato.
Echenme la vampiro.
La edad de la inocencia.
La edad de la tentacion.
La edad de la violencia.
Edad de menores.
La edad de piedra.
La edad peligrosa.
El.
Ella y yo.
Ellas tambien son rebeldes.
Ellos trajeron la violencia.
Emanuelo.
El embajador.
La emboscada mortal.
La emboscada.
El embustero.
Emilo Varela vs. Camelia la Texana.
En busca de la muerte.
En cada feria un amor.
En carne propia.
En el camino andamos (ATM2).
En el pais de los pies ligeros.
En el parque hondo.
En esta primavera.
En estas camas nadie duerme.
En la palma de tu mano.
En las garras de la ciudad.
En los altos de Jalisco.
En tiempos de Don Porfirio.
En tiempos de la inquicion.
En un burro tres baturros.
Enamorada.
El enamorado.
Los enamorados.
Encrucijada.
El encuentro de un hombre solo.
Encuentro.
La endemoniada.
Endemoniados del ring.
Enemigos (55).
El enmascarado de plata.
Los enmascarados del infierno.
Los enredos de papa.
Los enredos de una gallega.
Ensayo de un crimen.
Ensayo de una noche de bodas.
Entre bala y bala.
Entre balay, bala.
Entre compadres te veas.
Entre comudos te veas.
Entre dos amores.
Entre ficheras anda el Diablo.
Entre gitanos te veas.
Entre hermanos.
Entre pobretones y ricachones.
Entre tu amor y el cielo.
La entrega de chucho el roto.
Entrega inmediata.
La entrega.
Erotica.
Esa mi raza.

Escandalo de estrellas.
El escapulario.
Esclava del deseo.
La escondida.
Escuadron 201.
Escuadron salvaje.
Escuela de modelo.
Escuela de musica.
Escuela de placer.
Escuela de rateros.
Escuela de vagabundos.
Escuela de valientes.
Escuela de verano.
Escuela de verano.
Escuela para brujas.
Escuela para casadas.
Escuela para solteras.
Escuela para suegras.
Esos de penjamo.
Esos hombres.
El espadachin.
La espadachines de la reina.
Espaldas mojadas.
Especialista en chamacas.
Especialista en senoras.
El espectro de la novia.
Espejismo de la ciudad.
El espejo de la bruja.
El esperado amor desesperado.
Esperame en Siberia, vida mia.
La esperanza de los pobres.
Espionaje en el golfo.
Espiritismo.
Esposas infieles.
El esqueleto de la Senora Morales.
El esqueleto de la Sra. Morales.
La esquina de mi barrio.
Esta noche no.
Esta noche si.
Esta y la otra por un solo boleto.
Estafa de amor.
Estafa de amor (68).
Estampida.
Estas ruinas que ves.
La estatua de carne.
Este amor si es amor.
Este era un viaje.
Este mundo en que vivimos.
Estos anos violentos.
Estoy casado ja ja.
Estoy sentenciado a muerte.
Estrategia matrimonio.
Estrella sin luz.
La estrella vacia.
Una estrella y dos estrellados.
Eterna agonia.
Eva y Dario.
El extra.
Extrana cita.
Extrana pasajera.
Un extrano en la casa.
Un extrano en la escalera.
El extrano hijo del sheriff.
Las fabulosas del reventon.
Las fabulosas del reventon II.
Fallaste, corazon.
Falsificadores asesinos.
La falsos heroes.
Faltas a la moral.
Una familia de tantas.
La familia Perez.
Familiaridades.
Los fanfarrones.
El fantasma de la casa roja.
El fantasma de la opereta.
El fantasma de medianoche.
El fantasma del convento.
El fantasma del lago.
Fantastico mundo de los hippies.
El farol de la ventana.
Los farsantes.
El fayuquero.
La fe en Dios.
El federal de caminos.
Felicidad.
Feliz ano, amor mio.
Fenomenos del futbol.
La feria de las flores.
La feria de San Marco.
La feria de San Marcos.
Ferias de Mexico.
Los Fernandez de Peralvillo.
El festin de la loba.
Las ficheras.
Fiebre de juventud.
La fiera.
Las Fieras.
Fieras contra fieras.
Fierecilla.
La fierecilla del puerto.
Fiesta en el corazon.
Las figuras de arena.
Fijate que suave.
Fin de semana en Garibaldi.
El fin de un imperio.
El fiscal de hierro.
Fiscal de hierro III.
La flecha envenenada.
Flor de cana.
Flor de canela.
Flor de durazno.
Flor de durazno (45).
Flor de fango.
Flor de mayo.
Flor de sangre.
Flor marchita.
Flor silvestre.
Flores de papel.
Las flores del demonio.
Los forajidos.
Forajidos en la mira.
Foso de las serpientes.
Frankestein, el vampiro y cia.
Fray Don Juan.
Frente al destino.
Frente al pecado de ayer.
Frontera brava.
Frontera de fuego.
Frontera norte.
Frontera sin ley.
La frontera sin ley.
El fronterizo.
Fuego cruzado en el Rio Bravo.
Fuera de la ley.
Fuera de la ley (37).
Fuera de la ley (65).
Fuerte, audaz y valiente.
La fuerza bruta.
La fuerza de la sangre.
La fuerza de los humildes.
La fuerza del deseo.
La fuerza inutil.
La fuga.
La fuga (37).
La fuga (43).
La fuga de carrasco.
La fuga del rojo.
Fuga en la Noche.
Fugitivo de Sonora.
El fugitivo.
Fugitivos.
La fureza del deseo.
La furia de los Karatecas.
La furia del ring.
Furia en el Eden.
Furia roja.
Furias bajo el cielo.
El fusilamiento.
Futbol de alcoba.
Gabino Barrera.
Una Gallega baila mambo.
Una Gallega en la Habana.
Una Gallega en Mexico.
El gallero.
Los galleros.
La gallina clueca.
Una gallina muy ponedora.
Un gallo con espolones.
Gallo corriente, gallo valiente.
Un gallo de corral ajeno.
El gallo de oro.
Un gallo en corral ajeno.
El gangster.
El garanon.
El garanon II.
Gargamento prohibido.
La garra del Leopardo.
Gatilleros del Rio Bravo.
Gatillo Veloz.
La gatita.
El gato.
El gato con botas.
El gato negro.
El gato sin botas.
El gavilan.
El gavilan pollero.
El gavilan vengador.
Los gavilanes.
Los gavilanes negros.
La gaviota.
Gemma.
Gendarme de punto.
El gendarme desconocido.
La generala.
Genio y figura.
La Gitana blanca.
Una Gitana en Jalisco.
Gitana tenias que ser.
El globero.
El globo de Cantolla.
La golfa del barrio.
Las golfas.
Golfas del talon.
Golondrina presumida.
La gota de sangre.
Goza conmigo.
Gozar, gozar, que el mundo se va a

acabar.
La gran aventura del Zorro.
La gran aventura.
El gran calaver.
Gran casino.
El gran espectaculo.
Gran hotel.
El gran moyocoyo.
El gran perro muerto.
El gran pillo.
El gran premio.
El gran rabadan.
El gran relajo mexicano.
Las grandes aguas.
Gregorio y su angel.
Una Gringuita en Mexico.
Gritenme, piedras del campo.
El grito de la muerte.
Un grito en la noche.
Guadalajara en verano.
Guadalajara es Mexico.
Guadalupe la chinaca.
Guantes de oro.
Guardian de las hormigas.
Guardian el perro salvador.
La guarida del buitre.
La guerra de las monjas.
La guerra es un buen negocio.
La guerra santa.
La guerra Xochil.
La guerrera vengadora.
La guerrillera de Villa.
El guerrillero del norte.
La guguena distraida.
El guia de las turistas.
Guitarras de medianoche.
Guitarras, lloren guitarras.
Guitarras, lloren guitarras.
Gutierritos.
Ha entrado una mujer.
El hacha diabolica.
El halcon solitario.
Hallazgo sangriento.
El hambre nuestra de cada dia.
Han matado a tongolele.
Hasta el viento tiene miedo.
Hasta que el cuerpo aguante.
Hasta que perdio jalisco.
Hay angeles con espuelas.
Hay chihuahua no te rajes.
Hay lugar para dos.
Hay un nino en su futuro.
He matado un hombre.
El hechizo del pantano.
Hembras de tierra caliente.
La herencia de la llorona.
La herencia de la mafia.
Herencia de muerte.
La herencia maldita.
La hermana Blanca.
La hermana trinfquite.
Las hermanas Karambazo.
El hermano Capulina.
Hermanos chicanos.
Los hermanos de hierro.
Hermanos de sangre.
Los hermanos del viento.
Los hermanos diablo.
Los hermanos muerte.
Hermoso ideal.
Heroe a la fuerza.
El heroe de Nacozari.
El heroe desconocido.
La hija de la otra.
La hija de nadie.
La hija del engano (Don Quintin el amargado).
La hija del ministro.
La hija del odio.
La hija del payaso.
La hija del penal.
La hija sin padre.
Hijas casaderas.
Hijas casderas.
Las hijas de don laureano.
Las hijas del amapolo.
Las hijas del Zorro.
Hijazo de mi vidaza.
El hijo de Angela Maria.
El hijo de charro negro.
El hijo de cruz diablo.
El hijo de Gabino Barrera.
El hijo de Huracan Ramirez.
El hijo de la calavera.
El hijo de los pobres.
El Hijo de Pedro Navaja.
Los hijo de rancho grande.
El hijo del diablo.
El hijo del palenque.
Hijo del pistolero.
El hijo del viento.
El hijo desobendiente.
El hijo prodigo.
Los hijos ajenos.
Los hijos de la calle.
Hijos de la osbscuridad.
Los hijos de Maria Moreles.
Los hijos de peralvillo.
Los hijos de Satan.
Los hijos del condenado.
Hijos del criminal.
Los hijos del diablo.
Los hijos del divorcio.
Hijos del muerto.
Los hijos que yo sone.
El Hipnotizador.
Hipocrita.
Historia de un canalla.
Historia de un corazon.
Historia de un gran amor.
Historia de un marido infiel.
Historias violentas.
Hombre de aire.
El hombre de la ametralladora.
El hombre de la mandolina.
El hombre de los hongos.
El hombre de negro.
El hombre de papel.
El hombre del alazan.
Hombre del puente.
El hombre inquieto.
Hombre o demonio.
El hombre papel.
El hombre que logro ser invisible.
El hombre que logro ser invisible.
El hombre que me gusta.
El hombre sin rostro.
El hombre y el monstruo.
Hombres de accion.
Los hombres de Lupe Alvarez.
Hombres de mar.
Hombres de roca.
Hombres de tierra caliente.
Los hombres no deben llorar.
La honradez es un estorbo.
Honraras a tus padres.
La hora 24.
La hora de la verdad.
La hora desnuda.
Hora y media de balazos.
Horas de agonia.
Una horca para el Texano.
Horizontes de sangre.
La horripilante bestia humana.
El hotel del los chiflados.
Hoy he sonado con Dios.
La huella de unos labios.
La huella del chacal.
La huella macabra.
Huellas de un pasado.
Huevos rancheros.
Los humillados.
Huracan Ramirez vs. La monjita negra.
Huracan Ramirez.
El idolo.
El idolo del futbol.
Ilegales y mojados.
La ilegitima.
La ilusion viaja en tranvia.
Impaciencia del corazon.
El imperio de Dracula.
El impostor.
El impostor (36).
Las impuras.
El increible Profesor Zovek.
La India.
La India blanca.
India Maria.
Los indolentes.
El indomable.
La infame.
Las infieles.
Infierno de almas.
El infierno de todos tan temido.
La inflacion del sexo.
Inmaculada.
La inocente.
Las inocentes.
La insaciable.
Las interesadas.
La intrusa.
El intruso.
Invasion de los muertos.
La invasion de los vampiros.
Invasion siniestra.
Las invencibles.
Los invisibles.
Isla de la desesperacion.
La isla de los dinosaurios.
La isla de los hombres solos.
La isla encantada.
La isla maldita.
Isla para dos.
Las Islas Marias.
Las Islas Marias.
Itara, el guardian de la muerte.

Jacinto el tullido.
El jaguey de las ruinas.
Los Japoneses no esperan.
Jardin de la tia Isabel.
El jardin de los cerezos.
El jefe maximo.
Jesus, Nuestro Senor.
Jesus, el Nino Dios.
Jesus, Maria y Jose.
El jinete.
El jinete de la muerte.
Jinete enmascarado.
El jinete fantasma (67).
El jinete justiciero en retando a la muerte.
El jinete negro.
El jinete sin cabeza.
Los jinetes de la bruja.
Jinetes de la llanura.
Johnny Chicano.
La jornada del terror.
El jorobado.
Joselito vagabundo.
Una joven de 16 anos.
El joven Juarez.
La joven mancornadora.
Los jovenes amantes.
Jovenes de la zona rosa.
Jovenes y bellas.
Las Joyas del pecado.
Juan Charrasqueado/Gabino Barrera.
Juan Colorado.
Juan el desalmado.
Juan el enterrador.
Juan Guerrero.
Juan nadie.
Juan Pistolas (35).
Juan Pistolas.
Juan Polainas.
Juan Polanes.
Juan sin miedo (38).
Juan sin miedo (60).
Juan sin miedo (60).
Juana Gallo.
Juana la cantinera.
Juarez y Maximiliano.
Judas.
Judea.
El juego de la guitarra.
Juegos de alcoba.
El juez de la soga.
El juez de la soga.
El Jugador, (el rey de espadas).
Jugandose la vida (59).
El juicio de los hijos.
Juicio de Martin Cortes.
Juico de arcadio.
Juntos pero no revueltos.
La justicia del gavilan vengador.
La justicia del lobo.
La justicia tiene doce anos.
El justiciero vengador.
Juventud desenfrenada.
Juventud desnuda.
Juventud rebelde.
La juventud se impone.
Juventud sin ley.
Kaliman en el siniestro mundo.
Keiko en peligro.
Kermesse.
Kid Tabaco.
Laberinto de pasiones.
El ladron fenomeno.
Ladron que roba a ladron.
Ladrones de ninos.
Lagrimas de amor.
Lagrimas de mi barrio.
Lagrimas robadas.
Lagunilla mi barrio.
Lamberto Quintero.
Lanza tus penas al viento.
Un largo viaje hacia la muerte.
The last Mexican.
Lastima de ropa.
Latigo contra Satanas.
Latigo Negro contra los farsantes.
El latigo negro.
Latin lover en Acapulco.
Los laureles.
Lauro Punales.
Lazos de fuego.
Lazos de sangre.
Las Leandras.
Una leccion de amor.
Los legionarios.
Legitima defensa.
La leona desnuda.
Leones del ring vs. la Cosa Nostra.
Los leones del ring.
La ley de la sierra.
La ley de las pistolas.
La ley del gavilan.
La ley del mas rapido.
Ley fuga.
La ley Simpson me viene Wilson.
La leyenda del bandido.
La leyenda del bandido (65).
La leyenda del judicial.
El libro de piedra.
El libro de piedra.
El lider de las masas.
La liga de las canciones.
La liga de las muchachas.
Limosneros con garrote.
Lio de faldas.
La llaga.
Llamas contra el viento.
Llanto, risas y nocaut.
El llanto de la tortuga.
El llanto de los pobres.
Llegamos, los fregamos y nos fuimos.
Llegaron los gorrones.
Llevame en tus brazos.
La llorona (33).
Llovizna.
Lluvia de abuelos.
Lluvia roja.
Lo mejor de teresa.
Lo que el viento trajo.
Lo que le paso a sanson.
Lo que mas queremos.
Lo que no se puede perdonar.
Lo que solo el hombre puede sufrir.
Lo que va de ayer a hoy.
Lo veo y no lo creo.
La loba.
Las lobas del ring.
El lobo blanco.
El lobo solitario.
Loca academia de modelos.
La loca de la casa.
La loca de los milagros.
La loca.
Locos peligrosos.
Locos por la television.
La locura de Don Juan.
Locura de terror.
Locura musical.
Las locuras de tin tan.
Lodo y Armino.
Lola la trailera.
Longitud de guerra.
Luces de barriada.
La lucha con la pantera.
Las luchadoras v. la momia.
Las luchadoras va el robot asesino.
Las luchadoras vs el medico asesino.
Luciano Romero.
Lucio Vazquez.
El lugar sin limites.
Luna de miel para nueve.
La luna enamorada.
El lunar de la familia.
Lupe balazos.
Luponini de chicago.
Una luz en mi camino.
Macario.
Macho rebelde.
El macho.
Maclovia.
Madre a la fuerza.
Madre querida (35).
La madrecita.
Madres del mundo.
La madrina del Diablo.
La maestra inolvidable.
La Maffia.
La Mafia amarilla.
La Mafia de La frontera.
Mafia en Acapulco.
Mafia Mexicana.
La mafia no perdona.
La mafia tiembla.
La mafia tiembla II.
Magdalena.
Magnum 357.
El mago.
El mal.
Mala hembra.
El mala pata.
La malcasada.
La maldicion de la Llorona.
La maldicion de la Momia Azteca.
Maldicion de Nostradamus.
La maldicion del oro.
Malditas sean las mujeres.
Los malditos.
La malquerida.
El malvado caravel.
Malvado caravel.
Los malvados.
Mama Dolores.
Mama Ines.
Mama nos quita los novios.
Mama solita.
Mama, soy Paquito.
Manana seran hombres.

Las mananitas.
El manantial del amor.
La mancornadora.
Maniatico pasional.
Manicomio.
La mano de Dios.
Mano que aprieta.
Manos arriba.
La mansion del terror.
Los mantenidos.
Manuel Saldivar, the texano.
Las manzanas de Dorotea.
El mar (deseo y la pasion).
Mar sangriento.
El mar y tu.
Maraton de baile.
Maravillas del toreo.
La marca del muerto.
La marca del cuervo.
La marca del gavilan.
La marca del zorrillo.
Marcelo y Maria.
La marcha Zacatecas.
Marco Antionio y Cleopatra.
Marecelo y Maria.
Marejada.
Los margaritos.
Maria Candelaria.
Maria Cristina.
Maria de mi corazon.
Maria Elena.
Maria Eugenia.
Maria Isabel.
Maria le o.
Maria la voz.
Maria Magdalena.
Maria Montecristo.
Maria pistolas.
Maria pistolás.
Maria Sabina.
El mariachi canta.
El mariachi desconocido.
Mariachi.
Mariachis.
El marichi desconocido (tintan en la habana).
El Marido de mi novia.
Un marido infiel.
Los maridos enganan de 7 a 9.
Marihuana (el monstruo verde).
Marina.
La marquesa del barrio.
Martin Santos, el llanero.
La Martina.
EL martir del calvario.
Mas alla de la muerte.
Mas alla de la violencia.
Mas alla del amor.
Mas buenas quel el pan.
Mas negro que la noche.
Mas vale pajaro en mano.
El mas valiente del mundo.
Masajistas de senoras.
La mascara de carne.
Mascara de hierro.
La mascara de jade.
La mascara de la muerte.
Mascara vs. bikini.
Matar es facil.
Mataron a Camelia la Texana.
Maten al fugitivo.
Maten al leon.
Matenme porque me muero.
Mater nostra.
Maternidad imposible.
Matinee.
Maton de rancho.
El matrimonio es como el demond.
Matrimonios juveniles.
Me cai de la nube.
Me canse de rogarle.
Me dicen el asesino.
Me dicen el consentido.
Me gustan valentones.
Me ha besado un hombre.
Me ha gustado un hombre.
Me he de comer esa tuna (44).
Me he de comer esa tuna (70).
Me importa poco.
Me llaman el cantaclaro.
Me llaman la Chata Aguayo.
Me llaman violencia.
Me lleva el tren.
Me lleva la tristeza.
Me persigue una mujer.
Me quiero casar.
Me traes de un ala.
El medallon de crimen.
Medianoche.
El medico de las locas.
El medico modico.
El medio pelo.
Melodias involvidables.
Las memorias de mi general.
Memorias de un Mexicano.
Memorias de un visitador medico.
Menores de edad.
El mensaje de la muerte.
El mensaje de las estrellas.
Mercado de ninos.
Meridano 100.
Los meses y los dias.
El metiche.
El Mexicano.
El Mexicano feo.
Mexicanos al grito de guerra.
Mexico de mi corazon.
Mexico de mi corazon.
Mexico de mis recuerdos.
Mexico de noche.
Mexico lindo y querido.
Mexico nunca duerme.
Mi adorada Clementina.
Mi adorada Clementina.
Mi alma por un amor.
Mi aventura en Puerto Rico.
Mi caballo el cantador.
Mi caballo prieto rebelde.
Mi caballo.
Mi campeon.
Mi cancion eres tu.
Mi candidato.
Mi compadre Capulina.
Mi corazon canta.
Mi desconocida esposa.
Mi esposa busca novio.
Mi esposa me comprende.
Mi esposa y la otra.
Mi guitarra y mi caballo.
Mi heroe.
Mi influyente mujer.
Mi lupe y mi caballo.
Mi madre es culpable.
Mi mesera.
Mi mino Tizoc.
Mi mino, mi caballo y yo.
Mi mujer no es mia.
Mi mujer tiene amante.
Mi nino, mi caballo y yo.
Mi noche de bodas.
Mi nombre es gatillo.
Mi novio es un salvaje.
Mi padrino.
Mi papa tuvo la culpa.
Mi pistola y tus esposas.
Mi querido capitan.
Mi querido viejo.
Mi reino por un torero.
Mi revolver es la ley.
Mi vida es una cancion.
Mi viuda alegre.
El miedo llego a Jalisco.
Miedo no anda en burro.
El miedo no anda en burro.
El miedo no anda en burro.
La miel se fue de la luna.
Mientras el cuerpo aguante.
Mientras Mexico duerme.
Mientras Mexico duerme (38).
Mientras Mexico duerme (83).
Miercoles de Ceniza.
Miguel Strogoff.
El mil abusos.
El mil amores.
El mil hijos.
Mil mascaras.
Mil millas al sur.
Un milagro de amor.
Milagro en el barrio.
Milagros de San Martin de Porres.
Minifaldas con espuelas.
El ministro y yo.
Miradas que mantan.
Mis abuelitas... nomas.
Mis hijos.
Mis manos.
Mis padres se divorcian.
Mis secretarias privadas.
Mis tres viudas alegres.
Los miserables.
Mision cumplida.
Mision sangrienta.
Mision suicida.
Mister Barrio.
Misterio.
El misterio de Huracan Ramirez.
Misterio de la cobra.
Misterio de los hongos alucinantes.
El misterio de los Mayas.
El misterio del carro expresa.
El misterio del Latigo Negro.
Misterio en las Bermudas.
Misterios de la magia negra.
Misterios de ultratumba.
Los misterios del hampa.
El misterioso Senor Marquina.
Las modelos.

Modisto de senoras.
El Mofles en Acapulco.
Mofles y Canek en mascara vs. Cabellera.
El Mofles y los Mecanicos.
Mojado de nacimiento.
Mojados.
Mojados de corazon.
La Momia Azteca.
Momias de Guanajuato.
Las momias.
El monasterio de los buitres.
La moneda rota.
La Monja Alferez.
El monje blanco.
El monstruo.
El monstruo de la montana hueca.
El monstruo de los volcanes.
El monstruo en la sombra.
El monstruo resucitado.
Monte escondido.
Morenita clara.
Morir de madrugada.
Morir de pie.
Morir mil muertes.
Morir para vivir.
El moro de Cumpas.
Motin en la carcel.
Una movida chueca.
Las movidas del mofles.
Movidas del Mofles.
Mr. Doctor.
Muchachas de uniforme.
Muchachas, muchachas, muchachas.
Muchachas que trabajan.
Muelle rojo.
Muero de risa.
La muerte de un gallero.
La muerte del federal de caminos.
Muerte del Palomo.
La muerte en bikini.
Muerte en la feria.
Muerte en Tijuana.
La muerte enamorada.
La muerte es mi pareja.
La muerte es puntual.
La muerte llora de risa.
La muerte pasa lista.
Muertes anunciadas.
El muerto al hoyo.
El muerto murio.
Muertos de miedo.
Muertos de risa.
Los muertos hablan.
Los muertos no hablan.
La mugrosita.
La mujer carcada.
Una mujer con pasado.
Mujer contra mujer.
Mujer de a seis litros.
La mujer de dos caras.
La mujer de nadie.
La mujer de oro.
La mujer de todos.
Una mujer decente.
La mujer del Diablo.
La mujer del puerto.
La mujer del puerto (33).
La mujer desnuda.
La mujer do otro.
Mujer en condominio.
Una mujer en la calle.
La mujer marcada.
Mujer mexicana.
La mujer murcielago.
La mujer murcielago.
Mujer o fiera.
Una mujer para los sabados.
La mujer policia.
Una mujer que no miente.
La mujer que no tuvo infancia.
La mujer que se vendio.
La mujer que tu quieres.
La mujer que yo perdi.
La mujer sin alma.
La mujer sin cabeza.
Una mujer sin destino.
La mujer sin lagrimas.
Una mujer sin precio.
La mujer X.
La mujer y la bestia.
Mujeres de hoy.
Mujeres de medianoche.
Las mujeres de mi general.
Mujeres de teatro.
Mujeres en mi vida.
Mujeres enganadas.
Las mujeres panteras.
Mujeres que trabajan.
Mujeres sacrificadas.
Mujeres salvajes.
Mujeres sin alma.
Mujeres, mujeres, mujeres.
La mulata de Cordoba.
Mulata.
El mundo de los aviones.
El mundo de los vampiros.
Mundo loco de los jovenes.
El mundo salvaje de baru.
Mundo, demonio y carne.
La muneca perversa.
Munecas de medianoche.
Las munecas infernales.
Munecas peligrosas.
Murallas de pasion.
El museo del crimen.
El museo del horror.
Musica en la noche.
Musica y dinero.
Musica, espuelas y amor.
Musica, mujeres y amor.
Musico, poeta y loco.
Nacida para amar.
Nacidos para morir.
Nadie muere dos veces.
Nadie te querra como yo.
La nalgada de ora.
Nana.
El nano.
Napoleoncito.
Narcosecta satanica.
Narcoterror.
Narda o el verano.
Naufragio.
Los naufragos de liguria.
Nave de los dioses.
La nave de los monstruos.
Necesito dinero.
Necesito un marido.
El negocio del odio.
Negra consentida.
Lo negro del negro.
Negro es mi color.
Neutron contra el doctor Caronte.
Neutron contra los asesinos del karate.
Neutron el enmascarado negro.
Ni de aqui, ni de alla.
Ni hablar del Peluquin.
Ni modo, asi somos.
Ni pobres, ni ricos.
Ni sangre, ni arena.
Nido de aguilas.
Nido de fieras.
El Nieto del Zorro.
La nina de la mochila azul.
La nina de la mochila azul (2da. version).
La nina Popoff.
Nino pobre nino rico.
El nino fidencio.
El nino y la niebla.
No basta ser charro.
No desearas la mujer de tu hijo.
No hay cruces en el mar.
No jalen que descobijan.
No juzgaras a tus padres.
No mataras.
No me defiendas, compadre.
No me olvides nunca.
No me platiques mas.
No niego mi pasado.
No soy monedita de oro.
No te ofendas, Beatriz.
No tiene la culpa el Indio.
No vale nada la vida.
Nobleza ranchera.
Nobleza ranchera (38).
La noche avanza.
La noche avanza (yo soy el amo).
Una noche bajo la tormenta.
La noche del gavilan.
Noche de juerga.
La noche de los Mayas.
La noche de los mil gatos.
Noche de muerte.
Noche de perdicion.
Noche de ronda.
La noche del halcon.
La noche del jueves.
La noche del Ku Kux Klan.
La noche del pecado.
Una noche embarazosa.
La noche es nuestra.
La noche violenta.
Noche y tu, la (el caballero varona).
Noches de cabaret.
Las noches del blanquita.
Nomas las mujeres quedan.
La nortena de mi amores.
Nos dicen las intocables.
Nos lleva la tristeza.
Nos veremos en el Ceilo.
Nosotros.
Nosotros los feos.
Nosotros los jovenes.
Nosotros los pelados.

Nosotros los pobres.
Nosotros los rateros.
Nostradamus.
Nostradamus el genio de las tinieblas.
Nostradamus, el destructor de monstruos.
Nostradamus: el destructor.
Nostradamus: el genio de.
Nostradamus: la maldicion de.
Nostradamus: la sangre de.
La novia del mar.
Las novias del lechero.
Novias impacientes.
Un novio para dos hermanas.
Los novios de mis hijas.
Novios y amantes.
Los novios.
Nuestras vidas.
Nuestros odiosos maridos.
Nuetron contra el criminal sadico.
Nuevo amanecer.
Un nuevo modo de amar.
Nuevo mundo.
Los nuevos pistoleros famosos.
Nunca debieron amarse.
Nunca es tarde para amar.
Nunca me hagan eso.
La obligacion de asesinar.
Obsesion venganza.
La odalisca numero 13.
Odio.
Oficio mas antiguo del mundo.
El ojo de vidrio.
Ojo por ojo.
Ojos de juventud.
Ojos tapatios.
OK Cleopatra.
OK Mister Pancho.
OK Mister Pancho.
Okay, Mister Pancho.
Okay, Mister Pancho.
Olimpiada en Mexico.
Los olvidados de Dios.
Ondina.
Operacion 67.
Operacion carambola.
Operacion contraespionaje.
Ora Ponciano.
Oreja rajada.
El organillero.
Orgullo de mujer.
Orlak el infierno de Frankestein.
Orlak, el infierno de Frankestein.
Oro y plata.
Orquideas para mi esposa.
Otono y primavera.
La otra ciudad.
La otra mujer.
Otra primavera.
La otra virginidad.
La otra.
El otro.
La oveja negra.
Las ovejas descarriadas.
Oye, Salome.
Pa' que me sirve la vida.
Pablo y Carolina.
Pachucos y muy machos.
Pacto de sangre.
Pacto diabolico.
Padra nuestro que estas en la tierra.
Un padre a toda maquina.
Padre de mas de cuatro.
El Padre Diablo.
El Padre Pistolas.
El padrecito.
Palenque sangriento.
Paloma brava.
Paloma herida.
La palomilla al rescate.
la palomilla.
La panchita.
Pancho Lopez.
Pancho pistolas (episodio no. 4).
Pancho pistolas.
Pancho Tequila.
Pancho villa y la valentina.
Pandilla en accion.
Pandilla en el misterio del jaguar.
La pandilla se divierte.
El pandillero.
Pandilleros olor a muerte.
Pandilleros.
Panico.
El pantano de las animas.
La pantera negra.
Papa en onda.
Papacito lindo.
El papelerito.
Papito querido.
Los paquetes de paquita.
Un par de robachicos.
Un para a todo dar.
Para morir iguales.
Para siempre amor mio.
Para toda la vida.
Para todos hay.
Uno paro la horca.
Los parranderos.
El pasajero diez mil.
Pasaporte a la muerte.
Una pasion me domina.
Pasion oculta.
Pasion por el peligro.
La pasion segun Berenice.
Pasionaria.
Pasiones tormentosas.
Paso a la juventud.
Pata de palo.
Patched faced (79).
Patrulla de valientes.
Patrullero 777.
El patrullero 777.
Pax?
La paz.
Pecado.
Pecado (61).
El pecado de Adan y Eva.
Pecado de juventud.
El pecado de Laura.
El pecado de quererte.
El pecado de ser pobre.
El pecado de una madre.
Pecado mortal.
El pecador.
Pecadora.
Las pecadoras.
Pecados de amor.
Pedro Paramo (66).
Pegando con tubo.
Pegando con tubo.
En peligro de muerte (62).
En peligro de muerte (86).
Peligros de juventud.
Los pelotones de Juan Camaney II.
Peluquero de senoras.
Peluqueros.
El penal de la loma.
Penita pena.
El penon de las animas.
Pension de artistas.
Penthouse de la muerte.
Peor que las fieras.
Peor que los buitres.
Pepe el toro.
Pepita Jimenez.
Pepito as del volante.
Pepito y el monstruo.
Pepito y los robachicos.
La pequena enemiga.
La pequena senora de perez (70).
El pequeno Robin Hood.
Los pequenos privilegios.
Perdida.
El perdon de la hija de nadie.
Perdoname mi vida.
Peregrina.
Las perfumadas.
Perico el de los palotes.
La perla.
Los perros de dios.
Perros de presa.
La Persecucion y muerte de Pancho Villa.
La Persecucion y muerte de Pancho Villa.
Persiguelas y alcanzalas.
Los perturbadores.
La perversa.
Los perversos.
Pesadilla mortal.
La picara Susana.
Picaro con suerte.
El picaro.
El pichichi del barrio.
Una piedra en el zapato.
Piernas de oro.
Las piernas del millon.
Pies de gato.
Pilotos con alas.
Pilotos de combate.
Pilots de la muerte.
Pina madura.
La pintada.
Pintame angelitos blacos.
Las piranas aman en cuaresma.
El pirata a negro.
Un pirata de doce anos.
Pistolas invencibles.
La pistolera.
El pistolero del diablo.
El pistolero desconocido.
El pistolero fantasma.
Los pistoleros.
Pistoleros bajo el sol.
Pistoleros de la frontera.
Pistoleros del oeste.

Pistoleros famosos.
Pistoleros famosos II.
Pistoleros famosos III.
Pistoleros famosos III.
Los pistolocos.
Placeres divertidos.
Plagio del millonario.
Planeta de las mujeres invasoras.
Los platos voladores.
La plaza de Puerto Santo.
Plazos traicionero.
El plebeyo.
Pobre corazon.
Pobre del pobre.
Pobre diablo.
Pobre huerfanita.
Pobre . . . pero honrada.
Pobres millonarios.
Las podbres ilegales.
El poder Negro.
Poker de ases.
Poker de reinas.
Policia Aduanal Federal.
Policia de narcoticos.
Policia rural.
Policias y ladrones.
El polvo maldito.
Pompeyo el conquistador.
Por el mismo camino.
Por ellas, aunque mal paguen.
Por eso.
Por la puerta falsa.
Por mis pistolas.
Por que naci mujer?
Por que peca la mujer?
Por querer a una mujer.
Por ti aprendi a querer.
Por tu maldito amor.
Por un vestido de novia.
Porque naci mujer.
El porto salvaje.
La posesion.
El pozo (64).
El pozo (72).
El precio de la gloria (47).
El precio de la gloria (79).
El precio de una vida.
Preciosa.
Prefiero a tu papa.
El Premio Nobel del amor.
La presidenta municipal.
Presos sin culpa.
Prestame a tu mujer.
Prieto, chaparro y panzon.
Primavera en el corazon.
Primavera sangrienta.
El primer paso . . . de la mujer.
Primera comunion, la (mi primera comunio).
Primero el dolar.
Primero soy Mexicano.
El primo Basilio.
La princesa hippie.
Princesa y vagabundo.
El principe de la iglesia.
El principe del desierto.
Prisionera del pasado.
Los problemas de mama.
El proceso de Cristo.
El proceso de Las senoritas Vivanco.
Profanacion.
Profanadores de tumbas.
Profe no se mande.
El profe.
El profeta Mimi.
Programado para matar.
Prohibido.
Pueblerina.
Pueblito.
Pueblo de odios.
El pueblo del terror.
El pueblo fantasma.
Pueblo quieto.
Pueblo sin Dios.
Pueblo, canto y esperanza.
El puente del castigo.
La puerta.
Las puertas del presidio.
Puerto de tentacion.
Pulgarcito.
La pulqueria II.
La Pulqueria.
El puma.
El puno de la muerte.
Punos de roca.
Pura vida.
Que bonito amor.
Que bonito es querer.
Que bravas son las costenas.
El que con ninos se acuesta.
Que Dios me perdone.
Que familia tan cotorra.
Que haremos con papa?
Que haremos con papa?
Que hombre tan simpatico.
Que hombre tan sin embargo.
Que lindo cha-cha-cha.
Que lindo cha-cha-cha.
Que me entierren con la banda.
Que me maten en tus brazos.
Que me maten en tus brazos (los barbaros del no).
Que me siga la tambora.
El que murio de amor el.
El que no corre vuela.
Que noche aquella.
Que padre tan padre.
Que perra vida.
Que seas feliz.
Que te ha dado esa mujer?
Que viva Tepito!mi barrio.
El que no corre vuela.
Los que volvieron.
Quien mato al abuelo?
Quien mato a Eva?
Quien mato al abuelo?
Quien te quiere a ti?
Quiereme porque me muero.
Quiero ser artista.
Quiero vivir.
Quiero vivir (la muerte es mi pareja).
Quiero vivir mi vida!
Quietos todos.
Un Quijote sin mancha.
Quinceanera.
Rafaga de cuerno de chivo.
Rafaga de plomo.
Raffles.
Raices de sangre.
Raices.
Ramona.
Rancho solo (Rancho solo).
El rapido de las 9:15.
El rapido.
Rapina.
Rapto al sol.
El rapto de las Sabinas.
El Rapto.
El Rapto.
Rarotonga.
Rastro de la muerte.
Rastro de muerte.
El rata.
Ratas de vecindad.
Ratero.
Rateros ultimo modelo.
El raton.
El rayo de Sinaloa.
El rayo justiciero.
La razon de la culpa.
El rebelion.
Rebelde sin casa.
La Rebelion de los adolescentes.
La Rebelion de los colgados.
La Rebelion de los hijos.
Las recien casadas.
Recien casados, no molestar.
La recogida.
La recta final.
El recuerdo de aquella noche.
La red.
El redescubrimiento de Mexico.
Refifi entre las mujeres.
Refugiados en Madrid.
Regalo de reyes.
Regreso de los Hermanos Diablo.
El regreso del carro rojo.
Regreso del vampiro.
La reina del mambo.
El reino de los gangsters.
Reir llorando.
Relampago.
Remolino de pasiones.
Remolino.
El rencor de la tierra.
El rencor de los humildes.
El renegado blanco.
Renuncia por motivos de salud.
Repartidores de muerte.
Reportaje.
Reportera en peligro.
Requiem por un canalla.
Los resbalosos.
El rescate.
Resurreccion.
Retando a la muerte.
Reto a la vida.
Retorno a la juventud.
Revancha.
Reventa de esclavas.
Un reverendo trinquetero.
El revoltoso.
Revolver en guardia.
El Revolver sangriento.
El rey.
El rey de Acapulco.
El rey de la pistola.

El rey de los albures.
El rey de los caminos.
El rey de los ladrones.
El rey de los Tahures.
El rey de Mexico.
El rey del barrio.
Rey del los taxistas.
El rey del tomate.
El rey se divierte.
Los reyes del Palenque.
Los reyes del volante.
Los Reyes Magos.
La rielera.
El rifle implacable.
Rigo es amor.
Rincon brujo.
Un rincon cerca del cielo.
El rincon de las virgenes.
El rio de las animas.
Rio escondido.
Rio Grande.
Rio hondo.
Rio salvaje.
El rio y la muerte.
La risa de la ciudad.
Risa de la risa.
La rival.
Las rosas del milagro.
Robachicos.
Robinson Crusoe.
El robo al tren correro.
El robot humano.
Rocambole vs. la secta del escorpion.
Rogaciano el hupanguero.
Romance de fieras.
Romance sobre ruedas.
Romeo contra Julieta.
Romeo y Julieta.
Rondalla.
El ropavejero.
Rosa "la tequilera."
La rosa blanca.
La rosa blanca.
Rosa de la frontera.
Rosa de Xochimilco.
Rosa del Caribe.
El rosal bendito.
Rosalba.
Rosario.
Rosas blancas para mi hermana negra.
Rosauro Castro.
Rosenda.
Rostro de la muerte.
El rostro de la muerte.
Rostro infernal.
Rostros olvidados.
Rubi.
La ruletera.
Ruletero a toda marcha.
Rumba caliente.
Rumbera caliente.
Rumbo a Brasilia.
Rutilo el forastero.
S.A. Asesino.
Sablazo limpio.
Sabras que te quiero.
Sabado negro.
Sagrario.
Salon Mexico.
Salto al vacio.
La salvaje ardiente.
Los salvajes.
San Felipe de Jesus.
San Miguel el alto.
San Miguel el alto.
San Simon de los magueyes.
Los Sanchez deben morir.
Sangre de Nostradamus.
Sangre de nuestra raza.
La sangre derramada.
Sangre en el Rio Bravo.
Sangre en la barranca.
La sangre enemiga.
La sangre manda.
Sangre torera.
Santa (68).
Santa Claus.
La santa del barrio.
Santo contra la invasion de los.
Santo el enmascarado de plata vs.
Santo en el hotel de la muerte.
Santo en el misterio de la perla negra.
El Santo en el museo de cera.
Santo en el tesoro de Dracula.
Santo en la frontera del terror.
Santo en la venganza de la Momia.
Santo en la venganza de las mujeres vampiro.
El Santo la tigresa.
Santo Mantequilla Napoles en la venganza.
Santo mision suicida.
El santo oficio.
Santo vs. las momias de Guanajuato.
Santo vs. Capulina.
Santo vs. el asesino de la television.
El Santo vs. las mujeres vampiro.
El santo vs. los zombies.
Santo vs. Blue Demon en la Atlantida.
Santo vs. el cerebro diabolico.
Santo vs. el espectro.
Santo vs. el estrangulador.
Santo vs. el hotel de la muerte.
Santo vs. el rey del crimen.
Santo vs. la hija de Frankenstein.
Santo vs. la Mafia del vicio.
Santo vs. las lobas.
Santo vs. los asesinos de otros mundos.
Santo vs. los cazadores de cabezas.
Santo vs. los jinetes del terror.
Santo y Blue Demon contra los monstruos.
Santo y Blue Demon en el mundo...
Santo y Blue Demon en la Atlantida.
Santo y Blue Demon vs. Dracula y el hombre lo.
Santo y Blue Demon vs. doctor.
Santo y el aguila real.
Santo y la invasion.
Santo y los cazadores de cabezas.
Santo, Blue Demon y mil mascaras.
Los Santos Reyes.
Santos vs. el rey del crimen.
Santos vs. los zombies.
El Sargento Capulina.
La satanica.
Satanico pandemonium.
El satiro.
Se alquila marido.
Se la llevo el Remington.
Se los chupo la bruja.
Secreto de confesion.
El secreto de Juan Palomo.
El secreto de la monja.
El secreto de la solterona.
El secreto de Pancho Villa.
El secreto del Texano.
Secreto profesional.
Los secretos del sexo debil.
El secuestro de Camarena.
El secuestro de Lola.
El secuestro de un policia.
Secuestro en Acapulco (60).
Secuestro en Acapulco (83).
Sed de amor.
Seda, sangre y sol.
La seduccion.
El seductor.
Seguire tus pasos.
La segunda mujer.
Seis dias para morir.
La selva de fuego.
Semana Santa entre los coras.
El semental de Palo Alto.
El seminarista.
Senda prohibida.
Sendas del destino.
El Senor Alcalde.
El senor director.
El senor doctor.
El senor fotografo.
El Senor Gobernador.
El Senor Tormenta.
La senora de enfrente.
La Senora Muerte.
Senora Tentacion.
Senoritas.
Las Senoritas Vivanco.
Sensualidad.
La sentencia.
Sentenciado a muerte.
Sentenciado por la Mafia (nativas de la muerte).
Serenata en Acapulo.
Serenata en noche de luna.
Serenata macabra.
Servicio secreto.
Sexo contra sexo.
El sexo de los pobres.
Sexo me da risa.
El sexo me divierte.
Sexo sentido.
Sexo y crimen.
El sexologo.
The shadow.
Los sheriffs de la frontera.
Si Adelita se fuera con otro.
Si fuera una cualquiera.
Si me han de matar manana.
Si mi cama hablara.
Si quiero.
Si usted no puede, yo si.
Si volvieras a mi.
Si yo fuera diputado.
Si yo fuera millonario.
Siempre en domingo.

Siempre estare contigo.
Siempre hay un manana.
Siempre tuya.
Sierra de sangre.
La sierra del terro.
El siete copas.
Las siete Cucas.
Siete en la mira.
Siete Evas para Adan.
El siete leguas.
El siete machos.
Siete muertes para el Texano.
Siete muertes para el Texano.
Los siete ninos de Ecija.
Siete pecados.
Los siete proscritos.
El siete vidas.
Sigueme corazon.
Siguiendo pistas.
Silencio de muerte.
El silencioso.
The silvermasked saint.
Simbad, el mareado.
El simio blanco.
Simitrio.
Simon del desierto.
Simon del desierto.
Simon el estilista.
Simplemente un crimen.
Simplemente vivir.
Sin fortuna.
La sin ventura.
Sindicato de telemirones.
El sinverguenza.
Sinverguenza.
Sobre el muerto las coronas.
Sobre las olas.
Sobre las olas (32).
El socio.
Sol en llamas.
El sol sale para todos.
Sol y sombra.
Solamente una vez.
La soldadera.
Soledad.
El solitario indomable.
Solo de noche vienes.
Solo para ti.
Solo Veracruz es bello.
La sombra.
La sombra de Cruz Diablo.
La sombra de los hijos.
La sombra de un pasado.
La sombra del caudillo.
La sombra del murcielago.
La sombra del otro.
La sombra del sol.
La sombra en defensa de la juventud.
La sombra siniestra.
Sombra verde.
Sombra vs. La mano negra.
El sombrero de tres picos.
Somos del otro Laredo.
Son tus perjumenes mujer.
Sonata.
La sonrisa de la Virgen.
La sonrisa de los pobres.
Sor Alegria.
Sor Juana Ines de la Cruz.
Sor Tequila.
El sordo.
La sotana del reo.
Soy charro de rancho grande.
Soy Chicano y Mexicano.
Soy madre soltera.
The stone book.
Su excelencia.
Su gran ilusion.
Su precio unos dolares.
Su primer amor.
Su ultima aventura.
El suavecito.
Sube y baja.
Sublime melodia.
Sucedio en Garibaldi.
Sucedio en Garibaldi.
Sucedio en Jalisco.
Sucedio en Mexico.
Un sueno de amor.
Suenos de amor.
Suenos de oro.
Suerte de Dios.
Suicidate, mi amor.
El sultan descalzo.
Superpolicia ocho ochenta.
El superhombre.
El supermacho.
El superman...Dilon II.
El superman...Dilon.
Los supervivientes de los Andes.
Suprema ley.
Susana.
Tabare.
Tacos al carbon.
El tahur.
Tal para cual.
Los tales por cuales.
Tambien de dolor se canta.
Tampico.
Tan bueno el giro como el colorado.
Las tapatias nunca pierden.
Tarahumara.
Tarde de agosto.
Te besare en la boca.
Te odio y te quiero.
Te quiero.
Te sigo esperando.
Te solte la rienda.
Te vi en T.V.
Teatro del crimen.
Teatro follies.
Tehuantepec.
El temerario.
Los temibles.
Las tendatora.
La tercera palabra.
Teresa.
El terrible gigante de las nieves.
El terror de la frontera.
Terror en los barrios.
Terror, sexo y brujeria (cautivo del mas alla).
El tesoro de Chucho el Roto.
El tesoro de Chucho el Roto.
El tesoro de la muerte.
Tesoro de mentiras.
El tesoro de Moctezuma.
El tesoro de Pancho Villa.
El tesoro del indito.
El tesoro del Rey Salomon.
El testamento.
El testamento del vampiro.
Testigo silencioso.
El Texano.
Thaimi, la hija del pescador.
Thanatos.
La tia Alejandra.
La tia de las muchachas.
Tiburon.
Tiburon (33).
Tiburoneros.
Tiempo y destiempo.
Tierra baja.
La tierra de fuego se apaga.
Tierra de hombres.
Tierra de pasiones.
Tierra de rencores.
Tierra de sangre.
Tierra de valientes.
Tierra de violencia.
Tierra muerta.
La tierra prometida.
El tigre de Guanajuato.
El tigre de Jalisco.
El tigre de la frontera.
El tigre de Yautepec.
El tigre enmascarado.
El tigre negro.
Los tigres del desierto.
Tigres del ring.
Los tigres del ring.
Tigres del ring III.
La tigresa.
La tijera de oro.
Timoteo, el incomprendido.
Tin-Tan y las modelos.
Tinieblas.
Tintanson Cruzoe.
Tio de mi vida.
Un tipo a todo dar.
Un tipo dificil de matar.
Tirando a gol.
Tirando a matar.
Tizoc.
Tlayucan.
Toda maquina.
Todo el horizonte para morir.
Todo por nada.
Todo un caballero.
Todo un hombre (82).
Todos los Mexicanos somos mujeriegos.
Todos son mis hijos.
Torero por un dia.
Tormenta en el ring.
Tormenta en la cumbre.
Un toro me llama.
El toro negro.
La torre de los suplicios.
La tortola del Ajusco.
Traficantes de ninos.
El tragabalás.
Tragedia en Michoacan.
Traiganlos vivos o muertos.
Traigo mi 45.
Las traigo muertas.
La trampa mortal.

Trampa para un cadaver.
El trampa.
Trampas de amor.
Los tres huastecos.
Los tres salvajes.
Treinta segundos para morir.
Tren que corria.
La trenza.
Las tres alegres comadres.
Los tres alegres compadres.
Los tres amores de Lola.
Tres angelitos negros.
Tres balas perdidas.
Los tres bohemios.
Tres bribones.
Los tres calaveras.
Tres citas con el destino.
Los tres compadres.
Tres contra el destino.
Las tres coquetonas.
Tres de la vida airada.
Tres de presidio.
Los tres Garcia.
Tres hermanos.
Tres hombres malos.
Los tres Huastecos.
Tres lecciones de amor.
Las tres magnificas.
Tres melodias de amor.
Tres mil kilometros de amor.
Los tres mosqueteros de Dios.
Tres mosqueteros y medio.
Los tres mosqueteros.
Tres muchachas de Jalisco.
Tres mujeres en la hoguera.
Tres noches de locura.
Tres palomas alborotadas.
Las tres pelonas.
Las tres perfectas casadas.
Tres perfectas casadas.
Las tres perfectas casadas.
Tres Romeos y una Julieta.
Tres trinqueteros en Acapulco.
Tres tristes tigres.
Las tres tumbas.
Tres valientes camaradas.
Los tres Villalobos.
Las tres viudas alegres.
Los tres vivales.
Tribu.
Tribunal de justicia.
La trinchera.
El trinquetero.
Un trio de tres.
Trio y cuarteto.
Triste recuerdo.
Triunfa la pandilla.
Los triunfadores.
El triunfo del lobo.
Tropicana.
Trotacalles.
Tu hijo debe nacer.
Tu mujer es la mia.
Tu vida contra mi vida.
Tu vida entre mis manos (mi vida entre tus manos).
Tu vida entre mis manos.
Tu y las nubes.
La tumba.
La tumba de Matias.
La tumba del mojado.
Tumba para un narco.
El tunel seis.
Tuya para siempre.
Tuyo hasta que la migra nos separe.
Twist, locura de juventud.
La ultima aventura de Chaflan.
La ultima lucha.
La ultima noche.
El ultimo cartucho.
El ultimo disparo.
El ultimo disparo.
El ultimo Mexicano.
El ultimo pistolero.
El ultimo tunel.
Los ultimos dias de Pompeyo.
Ultraje al amor.
Un alma pura.
Un sabado mas.
Una cancion para recordar.
Uno para la horca.
Uno y medio contra el mundo.
Ustedes los ricos.
Vacaciones en Acapulco.
Vacaciones misteriosas.
Vagabunda.
Vagabundo.
El vagabundo.
Vagabundo en la lluvia.
Vagabundo y millonario.
Un vago sin oficio.
El vagon de la muerte.
Valente Quintero.
Valentin Armienta.
Valentin de la sierra.
La valentina.
El valiente vive hasta que el coberde quiere.
Los valientes no mueren.
El valle de los miserables.
El valor de vivir.
Valses venian de Viena y los ninos de Paris.
Vamonos con Pancho Villa.
Vamonos para la feria.
Las vampiras.
El vampiro.
El vampiro sangriento.
Vainilla bronce y morir.
Variedades de medianoche.
Vaya tipos.
Ven a cantar conmigo.
Veneno para las hadas.
La venenosa.
Venganza sangrienta.
El vengador de Sinaloa.
El vengador solitario.
Vengadoras enmascaradas.
Venganza apache.
Venganza de Gabino Barrera.
La venganza de Huracan Ramirez.
La venganza de la coyota.
La venganza de la sombra.
La venganza de los Villalobos.
La venganza de Ramona.
Venganza del Diablo.
Venganza del resucitado.
La venganza del rojo.
Venganza en el circo.
La Venus maldita.
Verano ardiente.
Verano salvaje.
Verano violento.
La verdad de la lucha.
La verdadera vocacion de Magdalena.
El verdugo de Sevilla.
Verdugo de traidores.
Los verduleros III.
El vergonzoso.
Vertigo.
Vestidas y alborotadas.
Vestido de novia.
El vestido de novia.
Una vez en la noche.
El viaje.
El viaje (L.S.D. viaje).
Un viaje a la luna.
Viaje al paraiso.
Viaje fantastico en globo.
Las viboras cambian de piel.
Victimas de la pobreza.
Victimas de un asesino.
Victimas del divorcio.
Victimas del pecado.
La vida cambia.
La vida de Agustin Lara.
Vida de Pedro Infante.
La vida intima de Marco Antonio y Cleopatra.
La vida no vale nada.
Vidita negra.
La viuda negra.
Los viejos somos asi.
Veinticuatro horas de vida.
Viento distante.
Viento negro.
Viento salvaje.
La vinida del Rey Olmos.
Vino el remolino y nos levanto.
El violadar infernal.
El violetero.
La Virgen de Guadalupe.
La Virgen de la calle.
La Virgen de la sierra.
Virgen de medianoche.
La Virgen del cielo.
La virgen desnuda.
Las virgenes locas.
Una virgen moderna.
La virtud desnuda.
La visita que no toco el timbre.
Las visitaciones del Diablo.
Vistete, Cristina.
Una viuda sin sosten.
Viuda sin sosten.
Viva Benito Canales!
Viva Chihuahua.
Viva Jalisco que es mi tierra.
Viva la juventud.
Viva la parranda.
Viva Mexico!
Viva mi desgracia.
Viva quien sabe querer.
Vive como sea.
El vividor.
Vivillo desde chiquillo.
Vivir a todo dar.

Vivir de suenos.
Vivir del cuento.
Vivire otra vez.
Vivo o muerto.
El Vizconde de Montecristo.
El Vizconde de Montecristo.
Voces de primavera.
Volver, volver.
La voragine.
Voy de gallo.
Voz de la sangre.
El vuelo 701.
El vuelo de la ciguena.
El vuelo de la muerte.
Vuelta al paraiso.
La vuelta del Mexicano.
Vuelva el sabado.
Vuelve el Dr. Satan.
Vuelve el lobo.
Vuelve el ojo de vidrio.
Vuelve el Texano.
Vuelve el norteno.
Vuelven los cinco halcones.
Vuelven los Garcia.
Vuelven los Garcia.
Vuelven los Argumedo.
Xoxontla.
Y Dios la llamo tierra.
Y la mujer hizo al hombre.
Y llego la paz.
Y manana seran mujeres.
Ya llegaron los gorrones.
Ya somos hombres.
Ya tengo a mi hijo.
Yanco.
Yegua colorada.
Yesenia.
Yo amo, tu amas, nosotros...
Yo baile con Don Porfirio.
Yo baile con Don Porfirio.
Yo dormi con un fantasma.
Yo fui una callejera.
Yo mate a Juan Charrasqueado.
Yo mate a Rosita Alvarez.
Yo no creo en los hombres.
Yo no me caso, compadre.
Yo, pecador.
Yo quiero ser mala.
Yo sabia demasiado.
Yo soy gallo dondequiera.
Yo soy la ley.
Yo soy muy macho.
Yo soy tu padre.
Yo soy usted.
Yo tambien soy de Jalisco.
Yo y mi mariachi.
Yo, el aventurero.
Yo, el mujeriego.
Yo, el valiente.
Zacazonapan.
La zandunga.
Zangano.
Zapata en Chinameca.
Las zapatillas verdes.
El zarco.
La zona del silencio.
Zona roja.
Zonga.
Zorina.
El zorro blanco.
El zorro vengador.
El zurdo.

Baron, Alexander. SEE Baron, Joseph Alexander a.k.a. Alexander Baron.

Baron, Joseph Alexander a.k.a. Alexander Baron.
- The victors.

Berger, Diamant. SEE Pathe, Diamant Berger & Rene Clair.

Carlton Film Distributors, Ltd.
- Band waggon.
- Ghost train (1931).
- Ghost train (1941).

Chilovkaia, Elena Evuenievna.
- Adam i Eva.
- Bagovys Ostrov.
- Bagrovys Ostrov.
- Beg.
- Belaia gvardiia.
- Benefis Lorda Kerzona.
- Bogena.
- Bulgakov: six plays.
- Cetyre portreta.
- D'Javoliada.
- Dana Zoyka.
- Diaboliad & other stories.
- Dni Turbinyh.
- The early days of Mikhail Bulgakov.
- The Elpit-Rabkommun building.
- Flight & bliss.
- Kabala sviatos.
- Kiev gorod.
- Kitaiskaia istoriia.
- The Komarov case.
- Krasnaia korona.
- Master i Margarita.
- Moskovskie sceny.
- Moskva Krasnokamnaia.
- The night of the third.
- Noskva krasnoka menaia.
- Noskva-zokh godov.
- Notes on the cuff & other stories.
- Pohozdenda cicikova.
- Povesti.
- Psalom.
- Pushkin.
- Ranniaia proza.
- Rokovye jajca.
- Sobac'e serdce.
- Traktat o zicisce.
- Travel notes.
- Zapiski na marzeta.
- Zizn gospodina de nolera.
- Zizn gospodinade nol era.
- Zoikina kvartira.

Cima Films, S.A. de C.V.
- Adios, amor.
- Alerta alta tension.
- Arrullo de Dios.
- El caballo del Diablo.
- La cama.
- Las cautivas.
- Confesiones de una adolescente.
- Los corrompidos.
- Cronica de un amor.
- Elena y Raquel.
- En estas camas nadie duerme.
- Los enamorados.
- La endemoniada.
- Fin de fiesta.
- La hermanita dinamita.
- Mujeres de media noche.
- Nadie te querra como yo.
- El oficio mas antiguo del mundo.
- Operacion 67.
- La otra mujer.
- Que hombre tan sin embargo.
- El quelite.
- Santo contra el estrangulador.
- El secuestro.
- El tesoro de Moctezuma.
- Verano ardiente.
- La viuda blanca.

Cine Phonic. SEE Cogelda, SGGC & Cine Phonic.

Cine Vision, SA.
- Anacleto se divorcia.
- La barraca.
- Cafe de chinos.
- Carriba.
- Con su amable permiso.
- Corazon de nino.
- La feria de las flores.
- La gatita.
- El gran mentiroso.
- La hija del panadero.
- Jalisco nunca pierde.
- Juan sin miedo.
- Juntos pero no revueltos.
- Maria del mar.
- Los Millones del Chaplan.
- La Mujer que quiere a dos.
- Pobre diablo.
- Y murio por nosotros.

Cinematgrafica RA, SA.
- El angel y yo.
- Asi amaron nuestros padres.
- Blue Demon vs. cerebros infernales.
- Blue Demon vs. las diabolicas.
- Blue Demon vs. las invasoras.
- Bonitas las tapatias.
- Chantaje al desnudo.
- El charro immortal.
- El Chicano vengador.
- Donde las dan, las toman.
- Historia de un hogar.
- Los derechos de los hijos.
- Los hijos de rancho grande.
- Los valses venian de Viena y los ninos de Paris.
- Marcelo y Maria.
- Mexico de mis recuerdos.
- Ramorp Sierra.
- Rutilo el forastero.
- El ultimo Mexicano.
- Una pasion me domina.

Cinematografica Filmex, S.A. de C.V.
- Los caciques.
- Los cacos.
- Los Caifanes.
- Diamantes, oro y amor.
- Los dos hermanos.
- La justicia tiene 12 anos.
- Mecanica nacional.
- La mentira.
- La Montana del Diablo.
- Para servir a usted.

Paraiso.
Patsy mi amor.
El payo.
Las puertas del paraiso.
El sabor de la venganza.
Siempre hay una primera vez.
Sin salida.
Tacos al carbon.
Trampas de amor.
Una vez un hombre.

Cinematografica Jalisco, S.A. de C.V. SEE Cineproducciones Internacionales, S.A. DE C.V., Productora Filmica Real, S.A.

Cinematografica Jalisco, S.A. de C.V. SEE Priego (Producciones Rosas), S.A. de C.V., Cineproducciones Internacionales.

Cineproducciones Internacionales, S.A. de C.V.
El arte de enganar.
El deseo en otono.
El hijo de Angela Maria.
El Sargento Perez.
El trinquetero.

Cineproducciones Internacionales, S.A. de C.V. SEE Priego (Producciones Rosas), SA de CV, Cineproducciones Internacionales.

Cineproducciones Internacionales, S.A. De C.V. & Productora Filmica Real, S.A. DE C.V.
Burlesque.

Cineproducciones Internacionales, S.A. De C.V., Oro Films, S.A. De C.V. & Cosmopolitan Films, S.A. DE C.V.
El preso no. 9.

Cineproducciones Internacionales, S.A. De C.V., Producciones Ega, S.A. DE C.V. & Gazcon Films, S.A. DE C.V.
Pancho el Sancho.

Cineproducciones Internacionales, S.A. De C.V., Productora Filmica Real, S.A. DE C.V. & Cinematografica Jalisco, S.A. DE.
Las computadoras.

Cite Films. SEE Pathe & Cite Films.

City Entertainment Corporation.
Green grow the rushes.
Mikres Aphrodites.
Pygmalion.
La vie conjugale: Jean-Marc.
La vie conjugale: Francoise.

Clair, Rene. SEE Pathe, Diamant Berger & Rene Clair.

Cogelda.
Le bateau d' Emile.
Les cin gentuemen maudits.
En effeuillant la Marguerite.
Huis clos.
Maxime.
Ombre et lumiere.
Retour de manivelle.
La tete d'un homme.

Cogelda. SEE Films Vendome (A.Osso & COGELDA) co-producers.

Cogelda. SEE Orphee & Cogelda.

Cogelda & Ariane.
Le Diable et les dix commandments.

Cogelda & Regina.
Marianne de ma jeunesse.

Cogelda & Vandal.
David Golder.

Cogelda & Vera.
Les espions.

Cogelda, Ariane & Pretoria.
Une parisienne.

Cogelda, Piazza & Victoria.
La loi du nord.

Cogelda, SGGC & Cine Phonic.
Rue de l'estrapade.

Cosmopolitan Films, S.A. De C.V. SEE Cineproducciones Internacionales, S.A. De C.V., Oro Films, S.A. De C.V. & Cosmopol.

Crystal Pictures, Inc.
Adventures de Gil Blas de Santillane.
Doctor des grandes.
The mongols.
One step to eternity.
Tamango.

D'Mauricio Walerstein.
Cronica de un subersivo latinoamericano.
Cuando quiero llorar no lloro.
La empresa perdona un momento de locura.
Eva, Julia y Perla.

Denver Film Productions, Inc.
Io sto con gli ippopotami.

E.M. Films, CA.
Con el corazon en la mano.
Macho y hembra.
La maxima felicidad.

Enoch & Cie.
Symphonie concertante, op. 8 pour violoncello et piano.

Estate of Barbara Pynn.
Excellent women.

Filmadora Mexicana, S.A.
La adultera.
Alejandra.
Alla en eu bajio.
As negro.
El bano afrodita.
Bel ami.
Club verde.
Un corazon burlado.
Cuando se quiere se quiere.
Dios nos manda vivir.
Las dos huerfanas.
Duena y senora.
El embajador.
Enredate y veras.
La esquina de mi barrio.
Infierno de almas.
El ladron.
Lagrimas de sangre.
Magdalena.
Maria Montecristo.
Medianoche.
La mujer que enganamos.
No soy monedita de oro.
Pecado.
La picara Susana.
Lo que el viento trajo.
El que murio de amor.
El secreto profesional.
Tinieblas.
Una piedra en el zapato.
La vida intima de Marco Antonio y Cleopatra.
Yo soy tu padre.

Films A2. SEE Pathe, Gefirex & Films A2.

Films Agiman. SEE Pathe & Films Agiman.

Films Du Losange.
La feme de l'aviateur.
La marquise d'o.
Perceval.

Films Vendome (A. Osso and UGC DA) co-producers.
La maison dans la dune.

Films Vendome (A.Osso & COGELDA) co-producers.
La table aux creves.

Films Vendome (Adolphe Osso) producer.
Les amours finissent a l'aube.
La demande en mariage.
Le grand rendez-vous.
Rue des Saussaies.

G. Schirmer, Inc.
Adagio.
Allegretto.
Allegro disperato.
Andante.
Five etudes.
Largo.

Gazcon Films, S.A. De C.V. SEE Cineproducciones Internacionales, S.A. De C.V., Producciones Ega, S.A. De C.V. & Gazcon.

Gefirex. SEE Pathe, Gefirex & Films A2.

Gendaieigasha.
Eros + gyakusatsu.

Gray Films. SEE Pathe, Gray Films & Progefi.

Greenwich Film Production.
Ave Maria.
Cent francs l'amour.
Une corde, un colt.
Les cousines.
Le dix septieme ciel.
Le dos an mur.
Le fil a la patte.
Le grand bidule.
Liebelei.
La loi du nord.
Les longues annees 39–45.
Les mal partis.
Un millard dans un billard.
Ouvert contre X.
La peau de torpedo.
Le reflux.
Les revoltes de Lomanach.
Le rideau rouge.
Sabra.
Le soleil des voyous.
Le tonnerre de Dieu.
Un veuve en or.
Vanina.
Le voie lactee.
Le voyage du pere.

Grupo Galindo, SA de CV.
El abandonado.

Aguilas de acero.
Al diablo las mujeres.
Amaneci en tus brazos.
Asesinos en la noche.
Ayl que rechula es Puebla.
El beisbolista fenomeno.
Bendito entre las mujeres.
Buscando una sonrisa.
Caceria de un criminal.
Cara sucia.
Carabina 30–30.
La carrera del millon.
Cascabelito.
Los cinco halcones.
La ciudad perdida.
Cuando los hijos se van.
Cuentos colorados.
Cuna de valientes.
De tal palo tal astilla.
Debieron ahorcarlos antes.
El desalmado.
Dicen que soy hombre malo.
La diligencia de la muerte.
Dos locos en aprietos.
Dos tontos y un loco.
En cada puerto un amor.
En la hacienda de la flor.
Espuelas de oro.
Estafa de amor.
El fantasma de la casa roja.
El fronterizo.
Gatilleros del Rio Bravo.
Los gavilanes negros.
Horas de agonia.
El ladron fenomeno.
Lanza tus penas al viento.
Limosnero con garrote.
El llanto de los pobres.
El mar y tu.
Mi revolver es la ley.
Mi ultimo fracaso.
No me platiques mas.
Nosotros los pelados.
Pancho Tequila.
Perdoname mi vida.
Pesadilla fatal.
Por que ya no me quieres?
Que padre tan padre.
Rayito de luna.
El regreso del carro rojo.
El rey de los albures.
El rey del tomate.
Romeo contra Julieta.
Ruletero a toda marcha.
Se los chupo la bruja.
Secreto de confesion.
Serenata en noche de luna.
La sexta carrera.
Siete en al mira II.
El terror de la frontera.
Traiganlos vivos o muertos.
Los tres salvajes.
Tu recuerdo y yo.
Vacaciones de terror II.
Vestidas y alborotadas.
Las viudas del cha cha cha.
Yo no me caso, compadre.
Yo y mi mariachi.
Zacazonapan.

Hani Productions/Art Theatre Guild for Japan Company, Ltd.
Hatsukoi: jigokuhen.

Ina, Masaharu.
No regrets for our youth.

Independent-International Pictures Corporation.
L' altra.
Un Americano a Roma.
Amor non ho. pero'...pero'!
Anema e core.
Arrivano i nostri.
Le avventure di Pinocchio.
Bella non piangere!
Bireghin.
La bisbetica domata.
I cadetti di Guascogna.
Il canto della vita.
Cavalleria rusticana.
Il Conte di Montecristo.
La corona di ferro.
Il Cristo proibito.
Davanti a lui tremava tutta Roma.
Il Diavolo va in collegio.
Domani e'un altro giorno.
La donna del fiume.
Dopo divorzieremo.
Due notti con Cleopatra.
I due orfanelli.
E'arrivato Il cavaliere!
Era lei che lo voleva!
Eugenia Grandet.
Fiacre no. 13 (1st episode: The crime).
Fiacre no. 13 (2nd episode: The punishment).
La fiammata.
Il fidanzato di mia moglie.
La figlia del Diavolo.
Finisce sempre cosi'.
Fratelli D'Italia.
Gelosia.
Giorni felici.
La grande speranza.
Le infedeli.
Knock-out.
Koenigsmark.
Lo sai che i papaveri...
Londra chiama polo nord.
M.A.S.
I maracoli non si repetono.
Miseria e nobilita.
Natale a campo 119.
La nave delle donne malledette.
Noi cannibali.
Peppino e Violetta.
La portatrice di pane.
La Presidentessa.
Ragazze Dooggi.
La resa di Titi'.
Rigoletto.
La risaia.
La rivincita di Montecristo.
Roma citta aperta.
La Romana.
Senza una donna.
Toto all'inferno.
La tratta delle bianche.
Gli ultimi cinque minuti.
Un giorno in Pretura.
Vendetta...Sarda.
La vispa Teresa.
La vita ricomincia.

Initial Groupe.
Roi blanc, dame rouge.

Lenfilm Studios.
(Blokada) Leningradsky metronom.
(Blokada) Operatsiya "iskra."
(Blokada) pulkovsky meridian.
20-e Dekabrya.
713-y prosit posadku.
72 gradusa nizhe nulya.
A krepost byla nepristupnaya.
A vy lyubily kogda-nibud?
Afrikanych.
Akademik Ivan Pavlov.
Aktyer Nikolay Cherkasov.
Aleko.
Alexander Popov.
Alyesha Ptitsyin vyirabatyivaet kharakter.
Anafema.
Andreika.
Anyuta.
Asya.
Avariya.
Baltiyskaya slava.
Baltiyskoe nebo.
Barbos v gostyakh u Bobika.
Baryer neizvesnosti.
Baryshnya i khuligan.
Beda.
Belinsky.
Belyi flyuger.
Bereg yunosti.
Bessmertnaya pesnya.
Bez semyi.
Biletik na vtoroy seans.
Blagochestivaya Marta.
Blokada, luzhsky rubezh.
Boba i slon.
Bolshaya semya.
Bolshaya igra.
Braslet-2.
Bratya Komarovyi.
Budni i prazdniki.
Chapliniana.
Chelovek amfibiya.
Chelovek, kotoromu vezlo.
Chelovek s budushim.
Cheryemushki.
Chesty tovarischa.
Chetyre stranitsky odnoy molodoy zhizni.
Chiornye sukhari.
Cholpin-utrennyaya zvezda.
Chto by ty vybral?
Chuzhaya beda.
Chuzhaya rodnya.
Chuzhaya zhena i muzh pod krovatyu.
Chuzhaya.
Chuzhiye pisma.
Chyernaya chayka.
Dauriya.
Dela davno minuvshikh dney.
Delo Rumyantseva.
Delo.
Den pervyi.

Den priyoma po lichnym voprosam.
Den schast'ya.
Den solntsa i dozhdya.
Deti kak deti.
Devochka i krokodil.
Devochka, khochesh snimatsya v kino?
Devochka, s kotoroyi ya druzhil.
Dikaya sobaka Dingo.
Dikiy Gavrila.
Dlinnoye, dlinnoye delo.
Dnevnik direktora shkoly.
Do buduschey vesny.
Doker.
Dolgaya schastlivaya zhizn.
Dom naprotiv.
Dom stroitsya.
Domoy.
Don Kikhot.
Don Sezar de Bazan.
Donskaya povest.
Doroga na ryubetsal.
Doroga pravdy.
Doroga ukhodit vdaly.
Dorogoy moy chelovek.
Dosledivie dni Pompei.
Dostigaev i drugie.
Doverie.
Dozhit do rassveta.
Dragotsennyie Ziorna.
Drama iz starinnoy zhizni.
Druzyya i gody.
Dusha zovyot.
Dva bileta na dnevnoyi seans.
Dva kapitana.
Dva voskreseniya.
Dvadisyatyi vek nachinaetsya.
Dvadtsat dney bez viony.
Dve v novom dome.
Dvennadtsataya noch.
Dvennadtsat mesyatsev.
Dver bez zamka.
Dzhek Vosymyerkin-Amerikanets.
Edinstvennaya.
Ego vremya pridiot.
Ego zvali Robert.
Eiyo imya-vesna.
Ekskursant.
Esli pozovyet tovarisch.
Esop.
Eti nevinnye zabavy.
Evgeniy Onegin.
Eshcho ne vecher.
Ezhir.
Fantazii Faryatieva.
Ferenc Liszt.
Filipp Traum.
Fro.
Gamlet.
Gde eto vidano, gde eto slykhano?
Gde ty, lyubov Dunyasheva?
Geroi Shipki.
Golos.
Goluboy liod.
Gonschiki.
Gori, gori yasno.
Gorizont.
Gorod shzhigaet ogni.
Gorod. Osen. Ritm.
Goryachaya dlisha.
Goryachee serdtse.
Gosudarstvennyi prestupnik.
Goya, ili tyazhky put poznaniya.
Greshny angel.
Grossmeyster.
Groza nad beloy.
Gryaduschemu veku.
Guschak iz Rio-De-Zhaneyro.
Gvozd programmiy.
I drugie ofitsianye litsa.
I snova utro.
Zapasnoy igrok.
Idu na grozu.
Igra.
Igrok.
Ihma s sobachkoy.
Iskaneli.
Ispolnyayuschii obyazannosti.
Istochnik.
Ivan i Kolombina.
Iz Nyu-Yorka v Yasnuyu Polyanu.
Izhorsky Batalion.
Sobache serdtse.
Kadkina vsyakiy znaet.
Kain XVIII.
Kak Ivanushka durachok za chudom khodil.
Kak veryovochka ni vyetsya.
Kapitan.
Kapronovaya yelochka.
Karpukhin.
Katerina Izmailova.
Khanuma.
Khleb-imya suschestvitelnoe.
Khod beloy korolevy.
Kholodno-goryacho.
Khoreograficheskie miniatyury.
Khoristka.
Khozyain.
Khronika pikiruyuschego bombardirovschika.
Kino i vremya.
Knyaz Igor.
Kochubey.
Kogda pesnya ne konchaetsya.
Kogda razvodyat mosty.
Kolovraschenie zhizni.
Kolye Sharlotty.
Komediya oshibok.
Komissiya po rassledovaniyu.
Konchina.
Kontsert masterov iskusstv.
Korol Lir.
Kortik.
Krakh inzhinera Garina.
Krasny diplomat.
Krasnye pchioly.
Krepostnaya aktrisa.
Krik o pomoschi.
Krotkaya.
Krug.
Krutye gorki.
Kseniya, lyubimaya zhena Fiodora.
Kto pridumal koleso.
Klyuch bez prava peredachi.
Za Vetlugoy rekoy.
Lavina.
Lebedinaya pesnya.
Lebedinoye ozero.
Lenfilm.
Les.
Letnyaya poesdka k moryu.
Letuchaya mysh.
Liberal.
Lichnaya zhizn direktora.
Lichnaya zhizn Kuzyaeva Valentina.
Lichnoe delo.
Lubov s pervogo vzglyada.
Lyalka-Ruslan i ego drug Sanka.
Lyublyu tebya zhizn!
Lyubov yarovaya.
Lyubov yarovaya.
Lyudi golubykh rek.
Makar-sledopyt.
Maksim perepelitsa.
Malchik i devochka.
Malchik s konkami.
Malchishki. Eto imenno ya.
Malchishki. Novenky.
Mama vyshla zamuzh.
Mandat.
Maritsa.
Mastera russkogo baleta.
Mat' i machekha.
Mechenyi atom.
Medovyi mesyats.
Menya eto ne kasaetsya.
Meschane.
Mesto deystviya.
Mesyats Avgust.
Mif.
Mikhayil Lomonosov.
Miortvyi sezon.
Mir Nickolaya Simonova.
Mishel i Mishutka.
Missiya v Kabule.
Mister Iks.
Mladshiyi nauchnyi sotrudnik.
Moabitskaya tetrad.
Moya zhizn.
Molodaya zhena.
Monolog.
Most pereyti nelzya.
Moy dobryi papa.
Musorgsky.
Musykanty odnogo polka.
Myatezhnaya zastava.
Na beregakh plenitelnoy Nevy.
Na dikom brege.
Na odnoyi planete.
Na ostrove dalnem.
Na perelome.
Na puti v Berlin.
Na voine kak na voine.
Nachalnik Chukotki.
Nachalo.
Nad Nemanom rassvet.
Naidi menya, Lyonya.
Nash korrespondent.
Navstrechu zhizni.
Ne bolit golova u dyatla.
Ne imey sto rubley.
Ne zabud. . .stantsiya Lugovaya.
Nebesnyie lastochki.
Neobyknovennoye leto.
Neobyknovennye priklyucheniya Khrikaivali.

Neokonchennaya povest.
Neoplachennyi dolg.
Neveroyatny leegudil Khlamida.
Nevesta.
Nevskie melodii.
Neznakomyi naslednik.
Nikkolo Paganini.
Nikudyshnaya.
Noch na 14-y paralleli.
Nochnaya smena.
Nochnoy gost.
Novogodniye priklyucheniya Mashi i Viti.
O tekh, kogo pomnyu i lyublyu.
Obyasnenie v lyubvi.
Obratnaya svyaz.
Obychny mesyats.
Obyknovennaya arktika.
Odinnadtsat nadezhd.
Odinozhdy odin.
Odna noch.
Ogni Baku.
Ona vas lyubit.
Opoznaniye.
Oshibki yunosti.
Ostorozhno, Babushka!
Ostrov pogibshikh korabley.
Ostrov sokrovisch.
Otkryitaya kniga.
Otkrytaya kniga.
Otpusk v Sentyabre.
Ottsy i deti.
Ovod.
Pamyat.
Pavlovsk.
Pekhota
Perod sudom istorii.
Perikola.
Perv yi posetitel.
Pervaya Bastilya.
Pervorossiyane.
Pervyi myach.
Pervyi reis.
Pervyie radosti.
Pyostryie rasskazy.
Phkhita.
Pikovaya dama.
Pirogov.
Plokhaya primeta.
Plokhov khoroshiy chelovek.
Plyvi, korablik.
Pobeditel.
Pod kamennym nebom.
Pod stuk kolyes.
Poddubenskiye chastushki.
Podnyataya tselina.
Podzornaya truba.
Poezd miloserdiya.
Poka front v oborone.
Poka stoyat gory.
Poka zhiv chelovek.
Polkovnik v otstavke.
Polosatya reyas.
Pomni, Kaspar.
Poputnogo vetra, "sinyaya ptitsa."
Porozhniy reys.
Posledniy dyuym.
Posledniy den zimy.
Povest o molodozhena.
Poymanny monakh.
Pozhar vo fligele.
Poznavaya belyi svet.
Praktikant.
Premiya.
Pri otkryitikh dveryakh.
Priklyucheniya Artyomki.
Priklyucheniya Printsa Florizelya.
Priklyucheniya Sherlocka Holmsa.
Prinimayu boy.
Prints i nizchiy.
Pristan na tom beregu.
Privatny syurpriz.
Prizvanie.
Proishestviyi, kotorogo nikto.
Proshlym letom.
Proshu slovo.
Prostranstvo dlya manevra.
Protivostoyanie.
Prozchaniye s Peterburgom.
Pryizhok s kryishyi.
Puchina.
Posle svadby.
Pyat dnei.
Pyataya chetvert.
Pyatero sneba.
Pyatiorka za leto.
Rabochiy posyelok.
Rafferti.
Razlom.
Rasskaz o prostoy veshchi.
Rasskazhi mne o sebe.
Razdumya.
Razreshite vzliot.
Razvyazka.
Rebyachiy patrul.
Rebyata s Kanonerskoga.
Respublika Shkid.
Rimsky-Korsakov.
Rodnaya krov.
Rokirovka v dlinnuyu storonu.
Rudolfio.
Rytsar iz knyazh-Gorodka.
Ryadom s drugom.
Ryadom s nami.
The salt of the Earth.
Salyut, Mariya!
Samye peystrye.
Schastie Anny.
Schastlivogo plavaniya.
Schastye Andrusa.
Seans odnovremennoy igry.
Sedmoy sputnik.
Segodnya ili nikogda.
Segodnya-novyi attraktsion.
Sekundomer.
Sem nevest Efreirona Zbrueva.
Sem not v tishine.
Sem schastlivykh not.
Sentimentalny roman.
Seryi volk.
Serzhant militsii.
Shag navstrechu.
Shapka Monomakha.
Shelmenko-denschik.
Sherlock Holms i Doktor Watson.
Shinel.
Shofyer ponevole.
Shopeniana.
Shtorm.
Shutite? 1. Shutite.
Shutite? 2. Vanderbulle brezzhit'sya gorizont.
Shutite? 3. Inache my propali.
Silva.
Siniye zaitsy.
Sinyaya ptitsa.
Skrepki.
Sladkaya zhenschina.
Sled na zemle.
Sled rosomakhi.
Sledy na snegu.
Slomannaya podkova.
Sluchaynyie passazhiryi.
Sluga dvukh gospod.
Smert Pazukhina.
Snegurochka.
Snegurochku vyzyvali?
Snezhnaya koroleva.
Sobaka Baskerviley.
Sobaka na sene.
Sobirayushchiyesya oblaka.
Sofia Kovalevskaya.
Sofya Kovalevskaya.
Sokrovizcha agry.
Sol zemli.
Soldaty.
Solionyi pios.
Solomennaya shiyapka.
Spyashchaya krasavitsa.
Ssora v Lukashakh.
Staraya, staraya skazka.
Starik Khottabych.
Starozhil.
Starshiy syn.
Staryie steny.
Stepan Kolchligin.
Stepanova pamyatka.
Stepen riska.
Strannyie vzroslye.
Strogaya muzhskaya zhizn.
Strogovy.
Sud.
Sumka inkassatora.
Svadba Krechinskogo.
Svadba v Malinovke.
Svet v kordi.
Svet v okne.
Syn Iristona.
Tabachny kapitan.
Talanty i poklonniki.
Tambu-Lambu.
Ten.
Tent.
Trassa.
Tretyya molodost.
Tri tolstyaka.
Trostinka na vetru.
Troye v lodke, ne shchitaya sobaki.
Truffaldino 12 Bergamo.
Tsarevich Prosha.
Tsement.
Tyetya Lusha.
U tebya est ya.
Ubit pri ispolnenii.
Uchitel peniya.
Udar! eshcho edar!
Udivitelnyi zaklad.

Ugol padeniya.
Ukhodya-ukhodi.
Ukrotitelnitsa tigrov.
Ulitsa Nyutona dom 1.
Ulitsa polna neozhidannostey.
Umnyie veshchi.
V chiornykh peskas.
V den svadby.
V dni Oktyabrya.
V gorde S.
V ogne broda net.
V to daliokoie leto.
V tvoikh rukakh zhizny.
Vasyka.
Vdovy.
Vedyma.
Velikaya sila.
Versiya.
Vesennie khlopoty.
Vesennie pereviortyshi.
Vesioloye snovideniye, ili smekh i sliozy.
Vesna v Moskve.
Vezuchiy chelovek.
Viktoriya.
Virineya.
Vodyanoyi.
Volnyi veter.
Volshebnaya sila.
Vozdukhoplavatel.
Vozvraschenie s pobedoy.
Vozvraschyennaya muzyka.
Vozvrazchionny god.
Vracha vyzyvali?
Vragi.
Vsadnik bez golovy.
Vsegda so mnoyu.
Vsego dorozhe.
Vsego odna zhizn.
Vsye ostayetsya lyudyam.
Vsye reshaet mgnovenie.
Vtoraya popytka Viktora Krokhina.
Vysokaya proba.
Vzryvniki.
Ya sluzhu na granitse.
Yaroslavna, Koroleva Frantsii.
Yavlenie Venery.
Zaichik.
Za tekh, kto v more.
Zagadka N.F.I.
Zalp Avrory.
Zavtra, tretiego aprelya.
Zavtrashnie zaboty.
Zdes nash dom.
Zdravstvui i proschai.
Zelionaya kareta.
Zelionye tsepochki.
Zelyeniy dol.
Zhavoronok.
Zhdite menya, ostrova.
Zhenitba.
Zhenit'ba Bal'zaminova.
Zhenya, Zhenechka i "Katyusha."
Zherebyenok.
Zhiteiskoye delo.
Zhivoy trup.
Zhizn Berlioza.
Zhizn v tsitadeli.
Zhizn Klima Samgina.
Zimnee utro.
Znak vechnosti.
Znakomtes, Baluev.
Znoyinyyi iyul.
Zolotaya mina.
Zolotaya pugovitsa.
Zoloushka.
Zvannyi uzhin.
Zveda plenitelnogo schastiya.
Zvezda.

Lindgren, Astrid.
Pippi Langstrump gar ombord.
Pippi Langstrump I soderhavet.
Pippi Langstrump.

LM Productions. SEE Pathe & LM Productions.

Lumiere & Teledis.
Signe Arsene Lupin.

Lumiere.
Amici piu di prima.
L' amour en douce.
L' antechrist.
Argoman.
Assaut sur la ville.
La bande a papa.
Un caprice de Caroline cherie.
Caroline cherie.
Un cave.
La chute d'un corps.
Conduite a gauche.
La coupe a dix francs.
Crazy capo.
Cyclo.
De l'enfer a la victoire.
La derniere bourree a Paris.
Les deux filleuls du parrain.
Dis bonjour a la dame.
Django tire le premier.
Due deputati.
Due mafiosi nel far west.
Due mafiosi.
Due sergenti del General Custer.
Et qu'ca saute.
Fais-moi mal mais couvre-moi de baisers.
Faut s'les faire . . . ces legionnaires.
Fernand clochard.
Fernand cow-boy.
La fille au fouet.
La fille au violoncelle.
Une fille nommee amour.
La fils de Caroline cherie.
Les fils du parrain.
Four marmittoni alle grandi manovre.
France, societe anonyme.
Fureur sur le Bosphore.
La gloire des canailles.
Le grand delire.
Les gros bras.
La grosse pagaille.
Hard sensation.
Un homme en or.
Les hommes ne pensent qu'a ca.
Lavie a l'envers.
Les aventures d'Arsene Lupin.
Les malabars sont au parfum.
Maman colibri.
La mort d'un tueur.
La mort de la belle.
Nous les femmes.
L' oeil ecarlate.
Operation jaguar.
Operation Lady Chaplin.
Operation Lotus bleu.
Pas de panique.
Paulina 1880.
Les petites alliees.
Pomme d'amour.
Poupees nazies.
Les predateurs du futur.
Pulsion cannibal.
Qui chauffe le lit de ma femme?
Qui etes-vous Inspecteur Chandler?
Les rangers defient les Karatekas.
Le roi des Mirmidous.
Le Roquevillard.
Salut Berthe.
Si elle dit oui . . . je dis non!
Un solo grande amore.
La soupe aux poulets.
La soupe froide.
Special magnum.
Una sull'altra.
Tabarin.
Themroc.
Tornavara.
Touche-a-tout.
La triple mort du troisieme personnage.
Trique, gamin de Paris.
Troika sur la piste blanche.
Trois pour cent.
Tuez-les tous et revenez seul.
Une affaire d'hommes.
Les vacationists.
Vices prives et vertus publiques.
Voila que le nonnes dansent le tango.
Y'a un os dans la moulinette.
Les zozos.

Metro-Goldwyn Mayer, Inc.
Appointment in London.
The betrayal.
Canasta de cuentos Mexicanos.
Captain blackjack.
Checkpoint.
Child and the killer.
Compelled.
Copacabana palace.
Crash drive.
Dangerous exile.
Depraved.
Doctor blood's coffin.
Feet of clay.
Gang war.
Innocent meeting.
It happened here.
It happened in Rome.
Large rope.
Lemon popsicle.
Man accused.
Mexican trio.
Middle course.
Moment of indiscretion.
Operation murder.
The possessed.
Rebellion of the hanged.
Revolt of the slaves.
The secret place.

Sentenced for life.
She always get their man.
Son of a stranger.
Spanish gardener.
Spanish sword.
Take it all.
Taste of money.
They who dare.
Three crooked men.
Three spare wives.
Three Sundays to live.
The trails of Oscar Wilde.
Transatlanic.
Triple deception.
Twist of fate.
Woman of mystery.
A woman possessed.
Your past is showing.

Mifune Productions.
Akage.

Mushi Productions Kabushiki Kaisha.
Janguru taitei (1965–1966).
Shin Janguru taitei susume leo (1966–1967).
Tetsuwan atom (1963–1968).

National Film Board of Canada.
A is for architecture.
Angotee: story of an Eskimo boy.
The discovery of insulin.
How to build an igloo.
An introduction of jet engines.
Sky.
The story of Cinderella.

Nikudan O-Tsukuru-Kai/Art Theatre Guild for Japan Company, Ltd.
Nikudan.

Orex Films.
Le septieme jure.

Oro Films, S.A. De C.V. SEE Cineproducciones Internacionales, S.A. De C.V., Oro Films, S.A. De C.V. & Cosmopolitan Film.

Orphee & Cogelda.
Le chant du monde.

Osso, A. SEE Films Vendome (A. Osso and UGC DA) co-producers.

Osso, A. SEE Films Vendome (A. Osso & COGELDA) co-producers.

Osso, Adolphe. SEE Films Vendome (Adolphe Osso) producer.

Pathe & Cite Films.
Parole de flic.
La vie conjugale.

Pathe & Films Agiman.
Voici le temps des assassins.

Pathe & LM Productions.
Le passage.

Pathe & UGC.
Flic story.

Pathe Televison & UGC DA.
Les trois mosquetaires.

Pathe, Diamant Berger & Rene Clair.
Paris qui dort.

Pathe, Gefirex & Films A2.
Le toubib.

Pathe, Gray Films & Progefi.
La femme et le pantin.

Pathe.
Bobosse.
Les cinq tulipes rouges.
L' equipage.
Faubourg montmartre.
Les femmes s'en balancent.
Fortune carree.
Les gaietes de l'escadron.
Le gang.
Gringalet.
L'impossible monsieur Pipelet.
Je suis a vec toi.
Justin de Marseille.
Lemmy pour les dames.
Ma femme est formidable.
Maison de danses.
La malibran.
Marie-octobre.
La mariee est trop belle.
Massacre en dentelles.
Mathias Sandorf.
Les mauvais coups.
Mefiez-vous des blondes.
Memoires d'un flic.
Milionnaires d'un jour.
Le miracle des loups.
Les miserables.
La mome vert-de-gris.
Mon mari est merveilleux.
Le monde tremblera.
Le monocle noir.
Monsieur taxi.
Mort d'un pourri.
Mort ou vif.
Nous les gosses.
Obsession.
L'oeil du monocle.
Opera musette.
Parade en sept nuits.
Paradis perdu.
Partir.
Le petit chose.
La petite lise.
Le poignard malis.
Pontcarral, colonel d'empire.
Port d'attache.
Les portees de la nuit.
Pour la peau d'un flic.
Premier de cordee.
Le revolte.
Romance de Paris.
Secrets.
Seul dans la nuit.
Si ca peut vous faire plaisir.
Suivez-moi jeune homme.
Tartarin de Tarascon.
Theodore et compagnie.
Tout ca ne vaut pas l'amour.
Les trois mosquetaires.
Une si jolie petite plage.

Pedraza, Salvador E. Celis.
El que espera en la oscuridad.

Plazza. SEE Cogelda, Plazza & Victoria.

Ploquin, Raoul.
L'entraineuse.
L'heritier de mon desir.

Pretoria. SEE Cogelda, Ariane & Pretoria.

Priego (Producciones Rosas), S.A. de C.V.
Los amigos maravilla.
Cada oveja con su pareja.
La casa de los espantos.
Dos alegres gavilanes.
Dos inocentes mujeriegos.
Echenme al vampiro.
Frontera sin ley.
La huella macabra.
Juramento de sangre.
Martin Romero, el rapido.
La mascara roja.
Matar o morir.
El mundo de la aventura.
Para todas hay.
Los parranderos.
Que bonito es querer.
El rayo de jalisco.
Rostro infernal.

Priego (Producciones Rosas), SA de CV, Cineproducciones Internacionales, SA de CV & Cinematografica Jalisco, SA de CV.
La pintada.

Priego (Producciones Rosas), SA de CV.
Pasion oculta.
Los problemas de mama.
Santo vs. la invasion de los marcianos.
Santo vs. los villanos del ring.
Seguire tus pasos.

Producciones Ega, S.A. DE C.V. SEE Cineproducciones Internacionales, S.A. DE C.V., Producciones Ega, S.A. DE C.V. & Gaz.

Producciones Galubi, S..
Como si fueramos novios.

Producciones Galubi, S.A.
Agarrando parejo.
El agente viajero.
Al son del mambo.
La alegria de vivir.
Los amores de Juan Charrasqueado.
La bandida.
Barridos y regados.
Caballos de acero.
Cafe colon.
Camino del mal.
Cantando nace el amor.
Cielito lindo.
Como perros y gatos.
El derecho de nacer.
Los desalmados.
Los desaraigados.
La doncella de piedra.
Los dos carnales.
La golfa del barrio.
El gran campeon.
Gritenme piedras del campo.
El halcon solitario.
El hijo de los pobres.
El hijo del palenque.
Impaciencia del corazon.
Los invisebles.
Juan charrasqueado.
Ladron que roba a ladron.
Ladrones de ninos.
El luchador fenomeno.
Magnum 357.
La malaguena.
Manos de seda.

Me quiero casar.
Mi preferida.
La muerte del soplon.
La muerte enamorada.
Muertos de miedo.
La mugrosita.
La mujer de dos caras.
Nido de fieras.
La nina de la mochila azul.
No me quieras tanto.
La noche del Ku Kux Klan.
Nostras las sirvientas.
Orgullo de mujer.
Un padre a toda maquina.
Un par a todo dar.
Pecado mortal.
Pegando con tubo.
Pilotos de combate.
El pistolero del diablo.
Pistoleros bajo el sol.
El plebeyo.
Pobre del pobre.
Que perra vida.
El rey de la selva.
Santo vs los asesionos de otros mundos.
Se solicitan modelos.
Serenata en Acapulco.
La sombra en defensa de la juventud.
El Sr. Gobernador.
Sucedio en Acapulco.
Un sueno de amor.
Los tales por cuales.
Ventarron.
Vuelven los cinco halcones.
Yo fui novio de Rosita Alvirez.
El zarco.

Producciones Galubi, SA.
Agarrando parejo.
La muerte enamorada.
Se solicitan modelos.
La sombra en defensa de la juventud.
El Sr. Gobernador.
Ventarron.
El zarco.

Producciones Matouk, SA.
La calle de los amores.
Crisol.
Cruces sobre el yermo.
Cuanto vale tu hijo.
Division narcoticos.
Encrucijada.
Guantes de oro.
El hombre del Alazan.
Luciano Romero.
Mi heroe.
El senor tormenta.
El toro Negro.
Tu vida entre mis manos.

Producciones Raul DeAnda, SA de CV.
24 horas de vida.
Acapulco a go go.
Alias el alacran.
Almas rebeldes.
Amanecer ranchero.
Amor a la Mexicana.
Angeles de arrabal.
Los apuros de mi shijada.
Aquiesta Juan Colorado.
Asi es mi Mexico.
Baila mi amor.
Bajo ielo de sonora.
La banda del cuervo.
Bataclan Mexicano.
El buscabullas.
Caminos de sangre.
Campeo sin corona.
La carcel de cananea.
Carrona.
El charro negro en el norte.
El charro negro.
Cielo rojo.
Con los dorados de villa.
Con todo el corazon.
Cosmisario en turno.
Los cristeros.
El cuarto mandaminente.
Cuatro noches contigo.
Del rancho a la capital.
El diablo a caballo.
El diablo desaparece.
Dos caballeros de espada.
Dos gallos de pelea.
Duelo en el desierto.
La duquesa diabolica.
Enemigos.
El espadachin.
Espionaje en el golfo.
Estampida.
La fe en Dios.
Frontera norte.
Fuera de la ley.
La gaviota.
Genio y figura.
Guadalajara pues.
La guerra de los sexos.
Hay angeles sin alas.
El hijo del bandido.
EL hijo del charro negro.
La hijs del ministro.
El hombre de negro.
Hombres de roca.
Juegos de alcoba.
Konga roja.
La leyenda del bandido II.
La leyenda del bandido.
El lunar de la familia.
Las manzanas de Dorotea.
La marcha zacatecas.
La mascara de carne.
La mascara de jade.
Matrimonío y mortaja.
El muchacho alegre.
El muchacho de durango.
La muerte en bikini.
La muerte en la feria.
La mula de Cullen Baker.
El negocio del odio.
El padrino es mi compadre.
El pozo.
Prohibido.
Qien mato al abuelo.
Rancho alegre.
La reina del tropico.
Remolino.
Rio escondido.
Rosalinda.
Sangre en el barrio.
Se la llevo el remington.
Senoritas.
Si quiero.
Siete evas para un adan.
El solitario.
La sombra de chucho el roto.
Sota caballo y rey.
Soy puro Mexicano.
Su precio .....unos dolares.
Tierra de violencia.
La tierra del Mariachi.
Tormenta en la cumbre.
Toros amor y gloria.
Tres de presidio.
Tres hombres malos.
El ultimo chinaco.
Un hombre peligroso.
Una aventura en la noche.
Una cancion a la virgen.
Una mujer decente.
Unidos por el eje.
Vagabundo en la lluvia.
El vengador.
La venganza del charro negro.
La venganza del diablo.
La vuelata del charro negro.
Vuelo 701.
Yo mate a Juan Charrasqueado.
Yo mate a rosita alvirez.
El zurdo.

Producciones Raul de Anda, SA de CV.
El Ardiente deseo.
La gran aventura del Zorro.
El hombre.
Jugandose la vida.
Servicio secreto.
Sucedio en Jalisco.

Producteurs associes.
Le vol du sphinx.

Productions J. Roitfeld.
Cause toujours mon lapin.
Nana.

Productora Filmica Real, S.A. DE C.V.
SEE Cineproducciones Internacionales, S.A. DE C.V. & Productora Filmica Real, S.A.

Productora Filmica Real, S.A. DE C.V.
SEE Cineproducciones Internacionales, S.A. DE C.V., Productora Filmica Real, S.A.

Progefi. SEE Pathe, Gray Films & Progefi.

Progress Film-Verleih GmbH.
Affaire Blum.
Berlin um die Ecke.
Dein unbekannter Bruder.
Ehe im Schatten.
Der fall Gleiwitz.
Der geteilte Himmel.
Goya.
Ich war neunzehn.
Jahrgang 45.
Jakob, der Lugner.
Das Kaninchen bin ich.
Die Legende von Paul und Paula.
Lissy.
Die Morder sind unter uns.
Der nackte Mann auf dem Sportplatz.
Rotation.

Die Schauspielerin.
Solo Sunny.
Sonnensucher.
Spur der Steine.
Sterne.
Der Untertan.
Die Verlobte.
Wenn du grob bist, lieber Adam.
Winter ade.

Regina. SEE Cogelda & Regina.

Rigma America Corporation.
"Poseidon" is rushing to the rescue.
"SOS" nad taigoy.
100 soldat i dve devushki.
20 dney bez voiny.
34-i skoriy.
40:0 v pol'zu BG.
713-iy prosit posadku.
A byl il Karotin?
A shto yesli eto lyubov.
A u nas byla tishina.
A-un!
Aborigen.
Adam i Yeva.
Adam zhenitsya na Yeve.
Admiral Nakhimov.
Admiral Ushakov.
Aelita.
Aelita, ne pristavay k muzhchinam.
Aerograd.
Aeroport so sluzhebnogo vkhoda.
Afonya.
Afrikanich.
Agoniya.
Ai-Gul'.
Aibolit—66.
Akademik iz Askaniyi.
Akseleratka.
Aktrisa.
Aktsiya.
Akvanavty.
Al'bidum.
Aleksandr Nevskiy.
Aleksandr Popov.
Alitet ukhodit v gory.
Aliy kamyen'.
Aliye parusa.
Almazy dlya Mariyi.
Alyonka.
Alyosha Ptytsin virabatyvayet kharakter.
Alyoshkina lyubov.
Alyoshkina okhota.
Amulanga.
Ana Karenina.
Andrey Rublyov.
Anna na sheye.
Anna Pavlova.
Annushka.
Anton Ivanovich serditsya.
Antosha Rybkin.
Antratsit.
Apassionata.
Aplodismenti, aplodismenti.
Aram Khachaturyan.
Arena smelykh.
Arena.
Artistka iz Gribova.
Asaf Messerer.
Assa.
Ataka.
Atlantida.
Attestat zrelosti.
Auktsion.
Avariya—couch menta.
Avtomobil, skripka i sobaka Klyaksa.
Babiye tsarstvo.
Babyi log.
Baby ryazanskiye.
Baby.
Baika.
Bal gospoden'.
Balamut.
Balerina (poema o tantse).
Ballad about old weapon.
Ballada o Beringye i yego druzyakh.
Ballada o doblestnom ritsare Aivengo.
Ballada o sokole i zvezde.
Ballada o soldate.
Ballada o sporte.
Ballady batki Knisha.
Baltiyskaya slava.
Baltiyskoye nebo.
Barkhatniy sezon.
Vash syn i brat.
Beg inokhodtsa.
Beg.
Begstvo Mistera McKinley.
Beguny.
Bei, baraban!
Bela.
Beleyet parus odinokiy.
Beliy bim chyornoye ukho.
Beliy oryol.
Beliy sneg Rossiyi.
Beliy voron.
Beliye golubi.
Beliye nochi.
Belorusskiy vokzal.
Beloye solntse pustyni.
Bez viny vinovatiye.
Bereg.
Berega v tumane.
Berega.
Beregis' avtomobilya.
Beregite muzhchin.
Bermen iz "Zolotogo yakorya."
Besheniye den'gi.
Beshenoye zoloto.
Beskriliy utyonok.
Bespokoinoye khozyaistvo.
Bespredel.
Bespridannitsa.
Besprizorniy sportsmen.
Bessmertniy garnizon.
Bessonnaya noch.
Besstrashniy ataman.
The best.
Bez prava na oshibku.
Bez semyi.
Bez solntsa.
Bez sroka davnosti.
Bez strakha i upryoka.
Bez svideteley.
Bez tryokh minut rovno.
Bez vidimikh prichin.
Bezhin lug.
Bezymyannaya vysota.
Bezottsovshchina.
Bezotvetnaya lyubov.
Bezumniy den.
Byl mesyats may.
Bystreye sobstvennoy teni.
Bitva v puti.
Bitva za Moskvu.
Vkus khleba.
Vlastelin mira.
Blistayushchiy mir.
Blizkaya dal'.
Bliznetsi.
Blokada.
Blondinka za uglom.
Voina i mir.
Bol'shaya semya.
Bol'shaya zizn'.
Bol'shiye li malen'kiye.
Bol'shoye kosmicheskoye puteshestviye.
Bolotniye soldaty.
Bolshaya doroga.
Bolshaya ruda.
Bolshaya zemlya.
Bolshoy attraktsion.
Bolshoy kontsert.
Bombist.
Bomzh.
Bor'ba prodolzhayetsya.
Borets i kloun.
Boris Godunov.
Boris Livanov.
Bortsy.
Boy pod sokolom.
Boy posle pobedy.
Boy s tenyu.
Boyevoy kinosbornik #1.
Boyevoy kinosbornik #3.
Boyevoy kinosbornik #4.
Boyevoy kinosbornik #5.
Boyevoy kinosbornik #6.
Boyevoy kinosbornik #10.
Boyevoy kinosbornik #12.
Brat geroya.
Bratya Karamazovy.
Bratya Vasilyevy.
Brelok s sekretom.
Brilliantovaya ruka.
Brizgi shampanskogo.
Brod.
Bronenosets Potyomkin.
Budni.
Budte moim muzhem.
Budyonovka.
Buket fialok.
Bukhta smerti.
Bulat-Batyr.
Bumazhniye glaza Prishvina.
Bursa.
Byelaya tsaplya.
Byez osobogo riska.
Byez prava na proval.
Byezbiletnaya passazhirka.
Captain's daughter.
Chaika.
Chapayev.
Chaplinina.
Charodeiy.
Chasha terpeniya.

Chastnaya zhizn' Petra Vinogradova.
Chastnaya zhizn'.
Chastniy detektiv ili operatsiya "Kooperatsiya."
Chegemskiy detektiv.
Chelovek iz restorana.
Chelovek rodilsya.
Chelovek s planeti Zemlya.
Chelovek s ruzhyom.
Chelovek v zelyonoy perchatke.
Chelovyek # 217.
Chelovyek byez pasporta.
Chelovyek chelovyeku.
Chelovyek na svoyom meste.
Chelovyek niotkuda.
Chelovyek rodilsya.
Chelovyek s akkordeonom.
Chelovyek s bul'vara Kaputsinov.
Chelovyek v shtatskom.
Chelovyek, kotoriy somnevayetsya.
Chelovyek, kotoriy zakril gorod.
Chelovyek, kotorogo ya lyublyu.
Chelovyek-nevidimka.
Chempion mira.
Cherez Gobi i Khingan.
Cherez ternlyi k zvyozdam.
Cherez vsye godi.
Chest tovarishcha.
Chest'.
Chestniy, umniy, nezhenatiy.
Chestnoye volshebnoye.
Chetyre vizita Samuelya Wolfa.
Chetyre i pyat'.
Chetvero.
Chetvyorka druzyei.
Chetvyortaya vysota.
Chetvyortiy.
Chiny i lyudi.
Chipollino.
Chistiye prudy.
Chistoye nyebo.
Chlen pravitel'stva.
Chornaya kuritsa.
Chto s toboy proiskhodit?
Chuchelo.
Chudak iz pyatogo "B."
Chudesnitsa.
Chudesniy kharakter.
Chudesnoye yabloko.
Chudo s kosichkami.
Chudootvornaya.
Chuk i Gek.
Chuzhaya belaya i ryaboy.
Chuzhaya kompaniya.
Chuzhaya rodnya.
Chuzhaya shuba.
Chuzhaya.
Chuzhiye pis'ma.
Chyormaya roza—emblema pechali, krasnaya roza—emblema lyubvi.
Chyornaya strela.
Chyorniy biznes.
Chyorniy koridor.
Chyorniy monakh.
Chyorniy prints.
Chyort s portfelyem.
Da zdravstvuyet Meksika!
Dacha.
Dachniki.
Dai lapu, drug!
Daite zhalobnuyu knigu.
Dal'niye strany.
Daleko na zapade.
Daleko ot Moskvy.
Dama s sobachkoy.
Damy priglashayut kavalerov.
Damskoye tango.
Dauriya.
Dav-bul'di'va.
David Oistrakh.
Dedushkina dudochka.
Deena-Dza-Dzu.
Dela i lyudi.
Dela serdechniye.
Delay-raz!
Delo #306.
Delo Artamonovikh.
Delo pyostrikh.
Delo Rumyantseva.
Deloviye lyudi.
Den' gneva.
Den' i vsya zhizn'.
Den' komandira diviziyi.
Den' molodogo cheloveka.
Den' priyoma po lichnim voprosam.
Den' rozhdeniya.
Den' svad'by pridyotsya utochnit'.
Deputat Baltiki.
Derevenskiy detektiv.
Dersu Uzala.
Desyat' tisyach mal'chikov.
Deti Don Kikhota.
Deti kapitana Granta.
Deti Vanyushina.
Detskiy mir.
Detskiy sad.
Detstvo Gor'kogo. V lyudyakh.
Detstvo Nikity.
Devchata.
Devichya vesna.
Deviy gory.
Devochka i del'fin.
Devochka na share.
Devushka bez adresa.
Devushka s guitaroy.
Devushka s Kamchatki.
Devushka s kharakterom.
Devushka s korobkoy.
Devyat' dney odnogo goda.
Dezertir.
Dikaya sobaka dingo.
Dikiy khmel'.
Dikiy myod.
Direktor.
Ditya gostsirka.
Dlinnoye, dlinnoye leto.
Dlja tekh kto svalilsja s luny.
Dnevnik direktora shkoli.
Dnevnik Karlosa Espinoli.
Dnevniye zvyozdy.
Dni i nochi.
Do budushchei vesni.
Do pervoy krovy.
Do svidaniya, malchiki.
Dobro pozhalovat', ili postoronnim vkhod vospreshchyon.
Dobrota.
Dobrovol'tsi.
Dobroye utro.
Dobryaki.
Doch isterzannoy Pol'shi.
Dochki-materi.
Dodumalsya, pozdravlyayu!
Dokot Vera.
Doktor Aibolit.
Dolgi nashi.
Dolgiy put'.
Dolina slyoz.
Doloy kommertsiyu na lyubovnom fronte.
Dom i khozyain.
Dom na Trubnoy.
Dom s privideniyami.
Dom, ktoriy postroyil Swift.
Dom, v kotorom ya zhivu.
Domovoy i khozyaika.
Domovyonok Kuzya.
Domoy!
Domoy.
Don Diego i Pelageya.
Donetskyiye shakhtyori.
Donskaya povest'.
Doroga.
Doroga domoy.
Doroga k moryu
Doroga k schastyu.
Dorogaya Yelena Sergeyevna.
Dorogoy malchik.
Dorogoy moy chelovyek.
Dorogoye udovolstviye.
Dostoyaniye respubliki.
Dosye cheloveka.v "Mersedesye."
Doveriye.
Dozhdi.
Dozhivyom do ponedel'nika.
Dragotsenniy podarok.
Drug.
Drug moy Kol'ka.
Druzhok.
Druzya iz tabora.
Druzya moyi.
Dublyor nachinayet deistvovat.
Dubrovskiy.
Duel.
Duenya.
Duma na Kavkazye.
Dusha.
Dva berega.
Dva bileta na dnevnoy seans.
Dva chasa s bardami.
Dva dnya trevogi.
Dva druga, model' i podruga.
Dva druga.
Dva dnya chudes.
Dva kapitana.
Dvadtsat' bakinskikh komissarov.
Dvadtstat' let spustya
Dvadtsat' shest' dney iz zhizni Dostoyevskogo.
Dvazhdy rozhdyonniy.
Dve glavy iz semeynoy khroniki.
Dve materi.
Dve sterli.
Dve zhizni.
Dvenadtsat' stulyev.
Dvenadtsataya noch.
Dvoryanskoye gnezdo.

Dvoye i odna.
Dvoye na goloy zemle.
Dvoye v stepi.
Dvoynoy obgon.
Dvye dorogi.
Dvye ulybki.
Dvye vstrechi.
Dvye zhizni.
Dyadya Vanya.
Dyadyushkin son.
Dzhamilya.
Dzhentl'meni udachi.
Dzhulbars.
Ego ne mozhet bit'.
Ei, na tom beregu.
Ekh, yablochko...
Ekho dalyokikh snegov.
Ekipazh.
Ekzamen na bessmertiye.
Emil Gilels.
Eskadron gusar letuchikh.
Eta trevozhnaya zima.
Eto bilo v Donbasse.
Eto bilo v razvedke.
Eto my ne prokhodili.
Eto nachinalos' tak.
Eto sil'neye myenya.
Eto sladkoye slovo svoboda.
Fakti minuvshego dnya.
Fantaziya na tyemu lyubvi.
Fantaziyi Faryatyeva.
Fantazhist.
Fantazyor.
Fantazyory.
Fashizm budyet razbit.
Fevral'skiy vetyer.
Filippok.
Fokusnik.
Foma Gordeyev.
Fontan.
Frak dlya shalopaya.
Frantsuz.
Frederick Shopin.
Front bez flangov.
Front v tylu vraga.
Front za liniyei fronta.
Furtuna.
Gaichy.
Gamlyet.
Garazh.
Garmon'.
Garry zanimayetsya politikoy.
Gavosh.
Gde nakhoditsya nofelet?
Gde ty teper', Maksim?
Gde-to plachet i Volga...
Gde vash syn?
Georgyi Sedov.
Georgyi Sviridov.
Geroy nashego vremeni.
Geroy yeyo romana.
Gibel "Orla."
Gibel' Marini Tsvetayevoy.
Gibel' sensatsiyi.
Giperboloyid inzhenera Grina.
Glavniy svidetel'.
Glinka.
Glush povolzhskaya.
Gobsek.
God, kak zhizn'.
Golos.
Golova Gorgoni.
Golubaya strela.
Goluboy myach.
Goluboy ogonyok.
Goluboy portret.
Gonka veka.
Gonki bez finisha.
Gonshchiki.
Gori, gori, moya zvezda.
Gorizont.
Gorod na zarye.
Gorod nevest.
Gorod pervoy lyubvi.
Gorod pod udarom.
Gorod prinyal.
Gorod zero.
Goroda i gody.
Gorodskiye podrobnosti.
Gorozhane.
Goryachaya dusha.
Goryachiy sneg.
Goryachiye denyochki.
Goryanka.
Gospoda skotininy.
Gospodin gimnazist.
Gospodin oformitel.
Gospodin velikiy Novgorod.
Gost's Kubani.
Gosudarstvenniy chinovnik.
Govorit Moskva.
Grafinya Sheremetyeva.
Granatoviy braslet.
Granitsa na zamke.
Grazhdane vselennoy.
Grazhdanin Llyoshka.
Grekh i iskupleniye.
Greshnitsa.
Grozniy vek.
Grunya Kornakova.
Guards.
Gulyashchiye luydi.
Gusarskaya ballada.
Guttapercheviy mal'chik.
Hodga Nasreddin.
I byl vecher, i bylo utro...
I drugiye ofitsial'niye litsa.
I na tikhom okeane...
I togda ya skazal—nyet!
I vsya lyubov'.
I vsyo-taki ya veryu.
I zhizn', i slyozy i lyubov'.
Ideal'noye prestupleniye.
Idealniy muzh.
Idi i smotri.
Idiot.
Idushchiy sledom.
Ilya Muromets.
Imenem revolyutsii.
Improvizatsiya na temu biografiyi.
Imya.
Inache nelzya.
Inkognito iz Peterburga.
Inoplanetyanka.
Inspektor GAYI.
Interdevochka.
Interventsiya.
Ischeznoveniye.
Ishchitye zhenshchinu.
Ishchu cheloveka.
Iskrenne vash...
Iskusheniye.
Ispaniya.
Ispolneniye zhelaniy.
Ispoved'. Khronika otchuzhdeniya.
Ispytaniye vernosti.
Ispytatel'.
Ispytatel'niy srok.
Istoki.
Istoriya Asi Klyachinoy kotoraya lyubila da ne vyshla zamuzh.
Istoriya odnoy bilyardnoy komandi.
Ivan Brovkin na tselinye.
Ivan Grosniy.
Ivan Nikulin—russkiy matros.
Ivan Rybakov.
Ivan Vasiliyevich menyayet professiyu.
Ivan Velikiy.
Ivanov.
Ivanov katyer.
Ivanov, Petrov, Sidorov.
Ivanovo detstvo.
Iz zhizni Fedora Kuz'kina.
Iz zhizni nachal'nika ugolovnogo rozisha.
Iz zhizni otdikhayushchikh.
Iz zhizni Potapoa.
Izbranniye.
Izbrannoe.
Izhorskiy batalyon.
Izmennik rodiny.
Izyashchnaya zhizn'.
Ja ne Rafael.
jubilejnyj kontsert.
K novomu beregu.
Kabare moyey zhizni.
Kadkina vsyakiy znayet.
Kafe "Izotop".
Kak doma, kak dela?
Kak Ivanushka-durachok za schastyem khodil.
Kak Petyun'ka yezdil k Ilyichu.
Kak possorilis' Ivan Ivanovich s Ivanom Nikiforovichem.
Kak starik korovu prodaval.
Kak stat' muzhchinoy.
Kak stat' schastlivim.
Kak stat' zvezdoy.
Kakoye ono, morye?
Kalina krasnaya.
Kaliostro.
Kalle i Buka.
Kamenniy gost'.
Kamenniy tsvetok.
Kamenniy tsvetok.
Kamyshoviy ray.
Kanon u-shu (video-trener 1–4).
Kanon u-shu (video-trener 5–8).
Kanon u-shu (video-trener 9–12).
Kapitan Pronin—vnuk mayora Pronina.
Kapitanskaya dochka.
Kaplya.
Kaplya v moye.
Kapronoviye seti.
Karantin.

Karatel'.
Karnaval.
Karnaval'naya noch.
Karusel' na bazarnoy ploshchadi.
Karyera Dimi Gorina.
Karyera Ruddy.
Kashchey bessmertniy.
Katala.
Katyenka.
Kayin 18.
Kazhdiy desyatiy.
Kazyonniy dom.
Kentavri.
Keshka i boroda.
Keshka i Freddy.
Keshka i frukty.
Keshka i gangstery.
Keshka i gumanoid.
Keshka i mag.
Keshka i spetsnaz.
Keshka i terroristy.
Khleb i rozy.
Khleb, zoloto, nagan.
Khmuroye utro.
Khochu bit' ministrom.
Khochu, chtob on prishol.
Khod konyom.
Khod slonom.
Khokkeyisti.
Kholodnoye leto pyat'desyat tretyego.
Khomut dlya Markiza.
Khorosho sidim!
Khotite ver'te—khotite—net...
Khovanshchina.
Khozhdeniye za tri morya.
Khozyain taigi.
Khozyayeva Geoni.
Khromoy barin.
Khronika pikiruyushchego bombardirovshchika.
Khroniki Svyatoslava Rikhter.
Khrozyaika gostinitsy.
Khrustal'niy bashmachok.
Khutorok v stepi.
Kin-Dza-Dza!
Kino za dvadtsat' lyet.
Kinoal'manakh "Molodost" (vypusk chetvyortiy).
Kinoal'manakh "Molodost" (vypusk tretiy).
Kinoal'manakh "Molodost" (vypusk vtoroy).
Kinokontsert k 25-letiyu Krasnoy Armiyi.
Kirk delfina.
Kirk dushi.
Kirpihiki.
Kish i dva portfelya.
Klad.
Kletka dlya kanareyek.
Klyatva Timura.
Kiyuch bez prava peredachi.
Knyaz' Udacha Andreyevich.
Knyazhna Mary.
Ko mnye, Mukhtar!
KOAPP.
Kogda derevya byli bol'shimi.
Kogda govorili pushki.
Kogda nastupayet sentyabr'.
Kogda raskhoditsya tuman.
Kogda ya stanu velikanom.
Kogda zyemlya drozhit.
Kol'chuga velikogo Davida.
Kolybel'naya dlya brata.
Kolybelnaya dlya muzhchin.
Kollegi.
Kollezhskiy registrator.
Kolokol svyashchennoy kuzni.
Koloniya Lanfier.
Koltso iz Amsterdama.
Kolumb i Leonardo
Kolye Sharlotti.
Komandir schastlivoy shchuki.
Komandirovka.
Komediya davno minuvshikh dney.
Komediya o Lisistrate.
Komendant ptichyego ostrova.
Kometa.
Komitet devyatnadtsati.
Kommentariy k prosheniyu o pomilovaniyi.
Kommunist.
Kompozitor Glinka.
Kompozitor Shostakovich.
Kompozitor Sviridov.
Komu na Rusi zhit'...
Konets Deryagina.
Konets i nachalo.
Konets imperatora taigy.
Konets Lyubavinikh.
Konets operatsiyi "Rezident."
Konets polustanka.
Konets Sankt-Peterburga.
Konets Saturna.
Konets Staroy Beryozovki'.
Konets sveta.
Konets vechnosti.
Koney na perepravye ne menyayut.
Kontsert.
Kontsert dlya dvukh skripok.
Kontsert S. Rikhtera.
Kontsert v Rossii
Kontsert-val's.
Konveiyer smerti.
Konyok-gorbunok.
Korabl'.
Korabl' prishel'tsev.
Korabli shturmuyut bastioni.
Korol' Leer.
Korol' Lir.
Korol' manezha.
Korolevskaya regata.
Korona rossiyskoy imperiyi ili sonova neulovimiye.
Korona rossiyskoy imperiyi.
Korotkoye leto v gorakh.
Korpus generala Shubnikova.
Kortik.
Koshka i Biznes.
Kosmicheskiy reis.
Kosolapiy drug.
Kostyor v beloy nochy.
Kot v meshkye.
Kotovskyi.
Krakh inzhenera Garina.
Krakh operatsiyi "Terror."
Krakh.
Krasavets-muzhchina.
Krasavitsa Kharita.
Krashniy galstuk.
Krasivo zhit' na zapretish.
Krasnaya palatka.
Krasnaya ploshchad'.
Krasniy chernozyom.
Krasniye kokokola.
Krasnoye i chornoye.
Krasnoye i chyornoye.
Kreiser "Veryag."
Kreitserova sonata.
Kremlyovskiye kuranti.
Krepkiy oreshek.
Krepostnaya Aktrisa.
Krest i mauzer.
Krestyanskiy syn.
Krilya kholoda.
Krilya.
Kriminalniy kvartet.
Krotkaya.
Krug.
Krusheniye emirata.
Krutoye polye.
Kruzheva.
Kto rasskazhet nebilitsu.
Kto silneye yego.
Kto stuchitsya v dver' ko mnye...
Kto tam?
Kto ty takoy?
Kto zaplatit za udachu.
Kubanskiye kazaki.
Kukla s millionami.
Kukolka.
Kurier.
Kutuzov.
Kuvirok cherez golovu.
Kuznechik.
Larets Mariyi Medichi.
Lavina s gor.
Lebedev protiv Lebedeva.
Lebedi.
Lebedinoye ozero.
Ledi Makbet Mtsenskogo uyezda.
Ledolom.
Ledyanoy dom.
Legenda.
Legenda o ledyanom serdtse.
Legenda o Tilye.
Lenin v 1918 godu.
Lenin v oktyabrye.
Lenin v Parizhe.
Lenin v Pol'she.
Leon Garros ishchet druga.
Lermontov.
Lermontow.
Leshiy.
Lestnitsa.
Letargiya.
Letniye sni.
Letyat zhuravli.
Lgushchiye bogu.
Lichnoye delo.
Lichnoye delo sudyi Ivanovoy.
Lider.
Liloviy shar.
Lisa.
Lishniy bilet.
Litso vraga.
Litsom k litsu.

Liven'.
Lichnoye delo Anny Akhmatovoy.
Loskutik i yabloko.
Lovkachi.
Lovtsy gubok.
Luch smerti.
Lunnaya raduga.
Lunniye nochi.
Lyana.
Lyogkaya zhizn'.
Lyotchiki.
Lyubimaya devushka.
Lyubimaya zhenschchina mekhanika Gavrilova.
Lyubit' cheloveka.
Lyublyu. Zhdu. Lena.
Lyubov yarovaya.
Lyubov' i golubi.
Lyubov' i nenavist'.
Lyubov' moya vechnaya.
Lyubov' moya, pechal' moya.
Lyubov' Orlova.
Lyubov' Serfima Frolova.
Lyubov' zemnaya.
Lyubov'- predvestiye pechali.
Lyubovyu za lyubov'.
Lyubushka.
Lyudi i manekeni.
Lyudi i zveri.
Lyudi na mostu.
Lyudi na Nile.
Lyudi v okeane.
Lyudmila.
M.
M. Glinka: romansy.
M. Musorgskyi: romansy i pesni.
Machekha.
Maiskaya noch ili Utoplennitsa.
Maiskiye zvyozdi.
Maksima perepelitsa.
Mal'chik i devochka.
Mal'chik i los'.
Mal'chik s okrayini.
Mal'chiki.
Mal'chiki.
Malen'kiy rizhik.
Malinovka i medved'.
Mama.
Mama vyshla zamuzh.
Maria Stewart.
Marionetki.
Marite.
Marka strani Gondelupi.
Mart-aprel'.
Marusina karusel'.
Mary Poppins, do svidanya.
Mashen'ka.
Masony.
Mat'.
Mat' Mariya.
Mat'i machekha.
Mater' chelovecheskaya.
Matros s "Kometi."
Matveyeva radost'.
Maya Plisetskaya—znakomaya i neznakomaya.
Mayakovskyi smeyotsya.
Mayor Vikhr.
Mechta.
Mechtateli.
Medniy angel.
Mednoy gory khozyaika.
Medoviy mesyats.
Medvezhya svad'ba.
Mekhanicheskiy predatel'.
Meksikanets.
Melodiyi beloy nochi.
Melodiyi Dunayevskogo.
Menyayu sobaku na parovoz.
Mesta tut tikhiye.
Metel'.
My iz dzhaza.
My iz Kronshtadta.
My russkiy narod.
My s Urala.
My s vami gde-to vstrechalis'.
My smerti smotreli v litso.
My vas lyubim.
My vesely, schastlivy, talantivy.
My za mir.
My zhili po sosedstvu.
Michman Panin.
Michurin.
Miliy, dorogoy, lyubimiy, yedinstvenniy.
Million priklyucheniy.
Mimino.
Mimo okon iddut poyezda.
Minin i Pozharskyi.
Minuta molchaniya.
Mir domu tvoyemu.
Mir Ulanovoy.
Mir Ulanovoy.
Mir v tryokh izmereniyakh.
Mir vkhodyashchemy.
Mishelovka.
Mishka na severye.
Mishka, Seryozha i ya.
Miss Mend.
Miss Millionersha.
Missiya v Kabule.
Mnimiy bol'noy.
Mnogo shuma iz nichego.
Molchaniye doktora Ivensa.
Molitva Sergiyu.
Molodaya gvardiya.
Molodiye.
Molodiye kapitany.
Molodiye lyudi.
Molodo-zeleno.
Molodost' s nami.
Moneta.
Monolog.
Monolog o Pushkine.
Moonzund.
More v ogne.
Moroka.
Morozko.
Morskiye rasskasy.
Morskoy kharakter.
Morskoy okhotnik.
Morye studyonoye.
Mosfilmu—50 let.
Moskva slezam ne verit.
Moskva v Oktyabrye.
Moskva—Cassiopeya.
Moskva—lyubov' moya.
Motilyok.
Moy dom—teatr.
Moy drug.
Moy izbrannik.
Moy laskoviy i nezhniy zver'.
Moy lyubimiy kloun.
Moy mladshiy brat.
Moy nezhno lyubimiy detektiv.
Moy papa—ideallist.
Moy papa—kapitan.
Moy perviy drug.
Moya Anfisa.
Moyi universitety.
Mramorniy dom.
Mumu.
Mushketyory dvadtsat' let spustya.
Muzh i doch Tamari Aleksandrovni.
Muzhiki!
Muzhskiye portreti.
Muzhskoy razgovor.
Muzika Nikolaya Metnera.
Muzika romantizma: v ansamble s Rikhterom.
Muzikal'naya istoriya.
Muzikal'naya smena.
Myatezhnaya barrikada.
Myortviy dom.
Myortviy sezon.
Myortviye dushi.
Na boikom mestye.
Na dal'nem vostoke.
Na dne.
Na dorogakh voiny.
Na gorye stoyit gora.
Na grafskikh razvalinakh.
Na granatovikh ostrovakh.
Na iskhode nochi.
Na krai sveta...
Na novom mestye.
Na okrayine, gde-to v gorode.
Na podmostkakh stseny.
Na pomoshch, bratsy!
Na puti k Leninu.
Na put v Berlin.
Na Rusi.
Na sem vetrakh.
Na severe, na yuge, na vostoke, na zapade.
Na uglu Arbata i ulitsi Bubulinas.
Na voine kak na voine.
Na yasniy ogon'.
Na zavtrashney ulitse.
Na zlatom kril'tse sideli.
Nabat na rassvetye.
Nachal'nik.
Nachalo.
Nachalo nevedomogo veka.
Nachalo.
Nachni s nachala.
Nad Tissoy.
Nadezhda.
Nadezhda i opora.
Nagradit' (posmertno).
Nakanunye.
Nakhalyonok.
Nakhlebnik.
Nakoval'nya ili molot.
Nam ne dano predugadat'.
Nam nekogda zhdat'.
Narodniye talanti.

Nas venchali ne v tserkvi.
Nash dom.
Nash obshchiy drug.
Nashe serdtse.
Nashestviye.
Nashi znakomiye.
Naslednitsa po pryamoy.
Nasledstvo.
Naston'ka Ustinova.
Nastoyashchiy muzhchina.
Navazhdeniye.
Ne bilo pechali.
Ne goryuy
Ne khochu bit' vzroslym.
Ne khoditye, dyevki, zamuzh.
Ne mozhet bit'!
Ne pokiday.
Ne stav'tye leshenu kapkany.
Ne strelyaite v belikh lebedey.
Ne uletay, zemlyanin.
Nebesniy tikhokhod.
Nebesniye lastochki.
Nebyval'schina.
Nebo i zemlja.
Nebo Moskvy.
Nebo so mnoy.
Nedonosok Napoleon tretiy.
Nedorosl.
Negasimoye plamya.
Neilson 100%.
Neispravimiy lgun.
Neitral'niye vody.
Neizvestniye stranitsi iz zhizni razvedchika.
Nemnogo ljubvi.
Neobichainiye priklyucheniya Mistera Vesta v strane bol'shevikov.
Neobiknovenniy gorod.
Neobiknovenniye priklyucheniya Karika i Vali.
Neobiknovennoye leto.
Neobiknovennoye priklyuheniye Mishki Strekatchova.
Neokonchennaya povest.
Neokonchennaya pyesa dlya mekhaniheskogo piaino.
Neoplachennoye pis'mo.
Neotpravlennoye pis'mo.
Nepobedimiy.
Nepoddayushchiyesya.
Nepodsuden.
Nepovtorimaya vesna.
Nepridumannaya istoriya.
Neprikayanniy.
Neproshennaya lyubov'.
Neskol'ko dnei iz zhini L. L. Oblomova.
Neskol'ko moyikh zhizney.
Nesovershennoletniye.
Net i da.
Neudobniy chelovek.
Neulovimiye mstiteli.
Neveroyatniye proklyucheniya italyantsev v Rossiyi.
Nevesta.
Nevezhi.
Nezabyvayemaya zhenshchina.
Nezabyvayemiy 1919 god.
Nezhdanniy gost'.
Nezhdanno-negadanno.
Nezhniy vozrast.
Nezvanniy drug.
Ni slova o futbolye.
Nicolo Paganini.
Nihei.
Nikolai Bauman.
Nikolai Podvoiskiy.
Nizami.
Noch bez miloserdiya.
Noch nad Chili.
Noch rozhdeniya.
Noch v sentyabre.
Nochnoy ekipazh.
Nochnoy gost'.
Nochnoy patrul'.
Nochnoye proyisshestviye.
Normandia—Neman.
Noven'kaya.
Noviy Guliver.
Noviye pokhozhdeniya Shveika.
Noviye priklyucheniya kapitana Vrungelya.
Noviye priklyucheniya kota v sapogakh.
Noviye priklyucheniya neulovimykh.
Novoselye u bratsa krolika.
Novoye platye korolya.
Nye samiy udachniy den'.
Nyurkina zhizn'.
O bednom gusare zamolvite slovo.
O chyom molchala taiga.
O chyom ne uznayut tribuny.
O druzyakh-tovarishchakh.
O lyubvi.
O sport, ty-mir!
O strannostyakh sud'by.
O, noche volshebnaya, polnaya negi...
Ob etom zabyvat' nel'zya.
Obelisk.
Obeshchayu byt'!
Obida.
Obiknovenniy chelovek.
Obiknovenniy fashizm.
Obiknovennoye chudo.
Obyasneniye v lyubvi.
Ochen' strashnaya istoriya.
Ochen' vazhnaya persona.
Ochnaya stavka.
Odin iz nas.
Odinnadtsatiy patriarkh.
Odinnadtsatiy patriarkh.
Odinochnoye plavaniye.
Odinokim predostavlyayetsya obshchezhitiye.
Odnazhdy letom.
Odnazhdy dvadtsat' let spustya.
Odnolyuby.
Ofitsery.
Ogaryova, 6.
Oglasheniyu ne podlezhit.
Oglyanis'.
Ognenniye vyorsty.
Ognennoye detstvo.
Ogni na rekye.
Ogon'kyi.
Okean.
Okh uzh eta Nastya!
Okhota na lis.
Okraina.
Oktyabr'.
Olenya okhota.
Ona s metloy, on v chyornoi shlyapye.
Ona vas lyubit.
Ona zaschishchayet rodinu.
Oni byli aktyorami.
Oni byli pervimi.
Oni ne poidut.
Oni shli na vostok.
Oni srazhalis' za rodinu.
Oni vstretilis' v puti.
Oni zhivut ryadom.
Opasniye druzya.
Opasniye tropy.
Opasno dlya zhizni!
Opekun.
Operatsiya "Yl" i drugiye priklyucheniya Shurika.
Optimisticheskaya tragediya.
Orfey spuskayetsya v ad.
Orlyata Chapaya.
Os'minozhki.
Osen'.
Osen', Chertanovo...
Osen' sinyaya boroda.
Osenniye kolokola.
Osenniye korabli.
Osenniye svad'by.
Oshibka inzhenera Kohina.
Oshibka rezidenta.
Oslinaya shkura.
Osobykh primet net.
Osobnyak Golobinykh.
Osobo vazhnoye zadaniye.
Osoboye podrazdeleniye.
Ossenniy marafon.
Ostanovilsya poyezd.
Ostavit' sled.
Ostayus' s vami.
Ostorozhno—Vasilyok!
Ostrov.
Ostrov sokrovishch.
Ostrov koldun.
Ostrov sokrovishch.
Osvobozhdeniye (film 1—Ognennaya duga).
Osvobozhdeniye (film 2—Proryv).
Osvobozhdeniye (film 3—Napravleniye glavnogo udara).
Osvobozhdeniye (film 4—Bitva za Berlin).
Osvobozhdeniye (film 5—Posledniy shturm).
Ot aimy do zimy.
Ot semi do dvenadtsati.
Ot tebya oni slyozi.
Ot zari do zari.
Ot zarplaty do zarplaty.
Otche nash.
Otchy dom.
Otello.
Otets i syn.
Otets Sergiy.
Otkloneniye—nol'.
Otkritoye okno.
Otkritoye serdtse.
Otpusk v sentyabre.
Otroki vo vselennoy.

Otryad Trubachyova srazhayetsya.
Otsi.
Otsi i dedy.
Otsi i deti.
Otstavnoy kozy barabanshchik.
Otvetniy khod.
Ovod.
Ozhidaniye.
Padal proshlogodniy sneg.
Padeniya Kondora.
Padeniye Berlina.
Padeniye dinastiyi Romanovykh.
Palata.
Palle—odin na svete.
Pamyat.
Pamyat' serdtsa.
Papirosnitsa ot Mossel'proma.
Parad planet.
Parashutisty.
Paren' iz nashego goroda.
Paren' iz taigi.
Parol' ne nuzhen.
Partiyniy bilet.
Passazhir s "Ekvatora."
Pastukh i tsar'.
Patsany.
Pavlukha.
Pena.
Peppy—dlinniy chulok.
Pervaya konnaya.
Perekhodniy vozrast.
Perekhvat.
Perestupi porog.
Pervaya devushka.
Pervaya perchatka.
Perviy den' mira.
Perviy eshelon.
Perviy kurier.
Perviy sneg.
Perviy trolleibus.
Perviy uchitel'.
Perviye radosti.
Perviye stranitsy.
Pervoklassnitsa.
Pervopechtnik Ivan Fyodorov.
Pervoye svidaniye.
Pesni molodosti.
Pesni morya.
Pesnya o Kol'tsove.
Pesnya rodnoy strany.
Pesnya tabunshchika.
Pesochniye chasy.
Peter Pan.
Peterburgskaya kunstkamera.
Petersburgskaya noch.
Petrovka, 38.
Petta.
Piloty.
Pingvinyonok.
Pis'mo iz yunosti.
Pyshka.
Plata za istinu.
Plenniki udachy.
Plikh i Plyukh.
Plokhoy khoroshiy chelovek.
Plyumbum ili opasnaya igra.
Po dannym ugolovnogo roziska.
Po doroge s oblakami.
Po glavnoi ulitse s orkestrom.
Po shchuchyemu veleniyu.
Po sledam fil'ma "Molodaya gvardiya."
Po sledam geroya.
Po sledu vlastelina.
Po sobstvennomu zhelaniyu.
Po tonkomu l'du.
Po trave bosikom.
Po zakonam voyennogo vremeni.
Po zakonu.
Pobeda.
Pobeda zhenshchiny.
Pobeditel'.
Pochti nevydumannaya istoriya.
Pochti rovesniki.
Pod kupolom tsirka.
Pod odnim nebom.
Pod severnim siyaniyem.
Pod znakom odnorogoi korovi.
Podarok dlya slona.
Podaryonka.
Podkidysh.
Podnyataya tselina.
Podranki.
Podrugi.
Podzhigateli.
Poema o more.
Poema o krilyakh.
Poet.
Pogranichniy pyos aily.
Poka bezumstvuyet mechta.
Pokazivayet Maya Plisetskaya.
Pokhishcheniye.
Pokhishcheniye veka.
Pokhititel vody.
Pokhozhdeniya zubnogo vracha.
Pokhozhdeniya grafa Nevzorova.
Pokoleniye pobediteley.
Pokrovskiye vorota.
Polevaya gvardiya Mozzhukhina.
Polikushka.
Polyn'—trava gor'kaya.
Polosa prepyatstviy.
Polosa vezeniya. Kinoalmanakh "Molodost."
Polosatiy reis.
Polovodye.
Polshchad' Vosstaniya.
Polustanok.
Polye pereiti.
Polyot s kosmonavtom.
Polyushko-polye.
Pomni imya svoyo.
Ponedel'nik—den' tyazholiy.
Poprigunya.
Poputchik.
Porokh.
Portret madmuazel' Tarzhi.
Portret s dozhdyom.
Portret zheni khudozhnika.
Poruchit' generalu Nesterovu.
Poshchyochina, kotoroi ne bylo.
Poshekhonskaya starina.
Posilayu vam pyesu.
Poslanniki vechnosti.
Posledniy attraktsion.
Posledniy dom.
Posledniy god.
Posiednij kontsert.
Posledniy shans.
Posledniy tabor.
Posledniy vystrel.
Posledniye kanikuli.
Posledniye zaipi.
Poslednyaya doroga.
Poslednyaya dvoika.
Poslednyaya noch.
Poslednyaya okhota.
Poslednyaya vstrecha.
Poslednyaya zhertva.
Poslesloviye.
Poslye dozhdichka v chetverg.
Poslye togo, kak...
Posmotri mne v glaza.
Posol Sovetskogo Soyuza.
Postaraisya ostat'sya zhivym.
Potomok Chingiz-Khana.
Potryasayushchiy Berendeyev.
Potseluy Mary Pikford.
Povest' o chelovecheskom serdtse.
Povest' o nastoyashchem cheloveke.
Povest' o neistovom.
Povest' o neizvestnom aktyore.
Povest' plamennykh let.
Rovorot.
Povtornaya svad'ba.
Poy pesnyu, poet..
Poyedinok.
Poyedinok v taige.
Poyezd idyot na vostok.
Poyezd v zavtrashniy den'.
Poyezdka v Visbaden.
Poyezdki na starom avtomobilye.
Pozdnyaya lyubov.
Pozdnyaya yagoda.
Pozovi myenya v dal' svetluyu.
Pravda leitenanta Klimova.
Pravo lyubit'.
Pravo na vystrel.
Pravo na prtzhok.
Pravo pervoy podpisi.
Prazdnik neposlushaniya.
Prazdnik Svyatogo Yirgena.
Prazdniki detstva.
Predatel'.
Predatel'nitsa.
Predchuvstviye lyubvi.
Predel zhelanniy.
Predisloviye k bitve.
Predsedatel'.
Predvaritel'noye rassledovaniye.
Preferans po pyatnitsam.
Premiya.
Prestupleniye.
Prestupleniye i nakazaniye.
Prestupleniye Ivana Karavayeva.
Prezhde, chem rasstat'sya.
Prezhdevremenniy chelovek.
Prezhevalskyi.
Prezumptsiya nevinnosti.
Pri ispolneniyi sluzhebnikh obyazannostey.
Prichali.
Prigovoryonniy.
Prikaz: ogon' ne otkrivat'.
Prikaz: pereiti granitsu.
Prikazano vzyat' zhivym.
Prikhod Luny.

Prikhodi svobodnym.
Priklyucheniya porosyonka Funtika.
Priklyucheniya Kventina Dorvarda, strelka korolevskoy armiyi.
Priklyucheniya elektronika.
Priklyucheniya Krosha.
Priklyucheniya malen'kikh druzey.
Priklyucheniya malen'kogo papy.
Priklyucheniya printsa florizelya.
Priklyucheniya Sherloka Holmes doktora Vatsona.
Priklyucheniya sorvantsa.
Priklyucheniya Toli Klyukvina.
Priklyuchaniya Travki.
Priklyucheniya zheltogo chemodanchika.
Priklyucheniye stingrey.
Priletal marsianin v osennyuyu noch.
Prinimayu na sebya.
Prints i nishchiy.
Prishla i govoryu.
Prishol soldat s fronta.
Pristupit' k likvidatsiyi.
Prisvoyit' zvaniye geroya.
Prival stannikov.
Privideniye, kotoroye ne vozvrashchayetsya.
Priyezhaite na Baikal.
Priyezzhaya.
Prizhok na zarye.
Priznat' vinovnym.
Prizvaniye.
Pro chudesa chelovecheskiye.
Pro Dzhirtdana-velikana.
Pro lyubov', druzhbu i sud'bu.
Probuzhdeniye.
Prodelki v starinnom dukhe.
Professiya—kinoaktyor.
Professiya—kompozer.
Proisshestviye v Utinoozyorske.
Prokhindiada ili beg na mestye.
Prolog.
Propal i nashelsya.
Propalo leto.
Propavshaya ekspeditsiya.
Propavshiye sredi zhivykh.
Propazha svidetelya.
Proschal'naya gastrol' "Artista."
Proshchai, shpana zamoskvoretskaya.
Proshchaniye.
Prosperity.
Prostaya istoriya.
Prosti.
Prosti menya, Alyosha.
Prosto devochka.
Prostoy sluchay.
Protsess.
Protsess o tryokh millionakh.
Proverka na dorogakh.
Pryamaya liniya.
Psevdonim "Lukach."
Ptitsi nad gorodom.
Publikatsiya.
Pugalo.
Pust' on ostanetsya s nami.
Pust' ya umru, Gospodi.
Put' k medalyam.
Put' k prichalu.
Put' slavy.
Put' v "Saturn."
Put' v Damask.
Puteshestvennik s bagazhom.
Puteshestviye.
Putyovka v zhizn'.
Puzyr'ki.
Pyad' semyi.
Pyadovoy Alexandr Matrosov.
Pyat' dney otdikha.
Pyat' dney, pyat' nochey.
Pyat' minut strakha.
Pyat' pokhishchennykh monakhov.
Pyat' vecherov.
Pyat'desyat na pyat'desyat.
Pyatnadtsatilentiy kapitan.
Pyatoye vremya goda.
Pygmalion.
Pyl pod solntsem.
Pylayushchiy Kontinent.
Pyotr Martynovich gody bolshoy zhizni.
Pyotr perviy.
Pyotr Ryabinkin.
Raba lyubvi.
Raiskiye yablochki.
Rano utrom.
Rasplata.
Rasskazhite skazku, doktor.
Rasskazy o Lenine.
Rassledovaniye.
Rasstavaniya.
Ravnopraviye.
Raz na raz ne prikhoditsya.
Raz, dva—gorye ne beda!
Razborchiviy zhenikh.
Razbuditye Mukhina.
Razdumya.
Razreshite bilet.
Razlom.
Razniye sud'by.
Razorvanniy krug.
Raznotsvetniye Kamushki.
Razvlecheniye dlya starichkov.
Rebro Adama.
Rel'si gudyat.
Reportazh s liniyi ognya.
Rerikh.
Respublika SHKID.
Retsept yeyo molodosti.
Revizor.
Ripkina lyubov'.
Risk—blagorodnoye delo.
Rishad—vnuk Zifi.
Rodina zovyot.
Rodiny soldat.
Roditeley ne vybirayut.
Rodnaya krov'.
Rodnik.
Rodniye polusa.
Rodnya.
Rokovaya oshybka.
Romans o vlyublyonnikh.
Romantiki.
Romeo i Julieta.
Romka, Fomka i Artos.
Rovesnik veka.
Rozhdyonniye burey.
Rozygrysh.
Rudin.
Ruf'.
Ruki vverkh!
Rus' iznachal'naya.
Ruslan i Lyudmila.
Russkiy dom.
Russkiy les.
Russkiy suvenir.
Russkiy vopros.
Russkoye polye.
Rvaniye bashmaki.
Ryadom s vami.
Rys' vozvrashchayetsya.
Ryzhik.
S lyubimymi ne rasstavaytes'.
S lyubovyu popolam.
S neba na zemlyu.
S toboy i bez tebya.
S veselyem i otvagoy.
S. Rikhter igrayet Shumana.
Sad zhelaniy.
Sadis' ryadom, Mishka!
Sadko.
Salamandra.
Salavat Yulayev.
Salon krasoti.
Saltanat.
Samaya obayatelnaya i privlekatelnaya.
Samiy krasiviy kon'.
Samiy posledniy den'.
Samiy zharkiy mesyats.
Samootverzhenniy zayats.
Sampo.
Santa-Esperansa.
Sasha vstupayet v zhizn'.
Sashka.
Schastlivaya, Zhen'ka!
Schastlivchik.
Schastliviy chervonets.
Schastliviy reis.
Schastye.
Schitaite menya vzroslim.
Schot chelovecheskiy.
Sdayotsya kvartira s rebyonkom.
Sdelka.
Sed'moye nebo.
Sekret uspekha.
Sekretar' obkoma.
Sekretar' raikoma.
Sekretnaya missiya.
Sekunda na podvig.
Sel'skaya uchitel'nitsa.
Sel'skiy vrach.
Sem' chasov do gibeli.
Sem' krikov v okeane.
Sem' nyanek.
Sem' stikhiy.
Sem' nevest yefreitora.
Semero smelikh.
Semero soldatikov.
Semeynoye schastye.
Semiklassniki.
Semnadtsat' mgnoveniy vesny.
Semya Ivanovikh.
Semya Oppengeim.
Semya Ulyanovikh.
SER (Svoboda eto ray).
Serafim Polubes i drugiye zhiteli zemli.

Seraya druga.
Serdtse chetiryokh.
Serdtse byotsya vnov'.
Serdtse Korvalana.
Serdtse materi.
Serdtse ne kamen.
Serdtse Rossiyi.
Serebristaya pyl'.
Serebryanniye Ozyora.
Serebryanniye truby.
Serebryannoye rivue.
Seryozha.
Sestra muzikanta.
Severnaya povest'.
Severnaya rapsodiya.
Shag.
Shakhmatnaya goryachka.
Shakhtyori.
Shaltai-boltai.
Shans.
Shapka.
Shchit i myech.
Shel chetvyortiy god voiny.
Sherlock Holmes i Dr. Watson.
Shestoy.
Shestoye iyulya.
Shestviye zolotikh koney.
Shivorot-navivorot.
Shkol'niy val's.
Shkola muzhestva.
Shkola zlosloviya.
Shli soldaty.
Shlyapa.
Shol soldat s fronta.
Sholkoveya kistochka.
Shtorm.
Shtorm na sushe.
Shtormovoye preduprezhdeniye.
Shtrafnoy udar.
Shla sobaka po royalyu.
Shumniy dyen'.
Shura i prosvirnyal.
Shurochka.
Shut.
Shutki v storonu.
Shvedskaya spichka.
Sibiriada.
Sibirskaya atamanasha.
Sibiryachka.
Sibiryaki.
Sil'neye vsekh inikh veleniy.
Sinegoriya.
Sinyaya ptitsa.
Sinyaya tetrad'.
Sirano De Berzherak.
Skakal kazak cherez dolinu.
Skal'pirovanniy trup.
Skaz pro to, kak tsar' Pyotr arapa zhenil.
Skazaniye o zemie sibirskoy.
Skazhi solntsu: Da!
Skazka o poteryannom vremeni.
Skazka o starom Ekho.
Skazka o tsare saltane.
Skazka o volshebnom granate.
Skazka starogo Usto.
Skazka stranstviy.
Skazka-nebylitsy deda Yegora.
Skazki Shekherezadi.
Skazki...skazki...skazki Starogo Arbata.
Skhvatka v Purge.
Skoriy poyezd.
Skorost.
Skverniy anekdot.
Skvorets i lira.
Skvoz' ogon'.
Sladkaya zhenshchina.
Slavniy master Vasilyi Bazhenov.
Sledopy.
Slepoy muzykant.
Slomannaya podkova.
Slon i veryovochka.
Slovo dlya zashchity.
Slovo o L've Tolstom.
Sluchai na mel'nitse.
Sluchai na shakhte 8.
Sluchai s Polininym.
Sluchai v kvadrate 36–80.
Sluchai v taige.
Sluchai v vulkane.
Sluchainaya vstrecha.
Sluga dvukh gospod.
Sluga.
Slushaite!
Slushaite, na toy storone.
Sluzhebniy roman.
Sluzhili dva tovarishcha.
Slyozi kapali.
Smeliye lyudi.
Smert' na vslyote.
Smertniy vrag.
Smeshniye lyudi.
Smotri v oba.
Smyateniye chuvstv.
Snezhnaya koroleva.
Snezhnaya skazka.
Sobaka Baskerviley.
Sobstvennoye mneniye.
Sofia Perovskaya.
Solntse svetit vsyem.
Sokhranit' gorod.
Sokolovo.
Sokrovishcha Agri.
Soldat Ivan Brovkin.
Soldaty.
Soldaty svobody.
Solnechniy veter.
Solnechnye dni.
Solntse v karmane.
Solntse, snova solntse.
Solo dlya chasov s boyem.
Solo dlya slona s orkestrom.
Solovey.
Solyaris.
Solyoniy pyos.
Sombrero.
Sonata.
Sonaty Motsarta igrayut O. Kogan i S. Rikhter.
Sopernitsy.
Sorok dney bez voyny.
Sorok perviy.
Soroka-vorovka.
Sotrudnik Chk.
Souchastiye v ubiystve.
Souchastniki.
Sovershenno seryozno.
Sovest'.
Sovsem propashchiy.
Spartak.
Spasatel'.
Spasitye nashi dushi.
Spasitye utopayushchego.
Spasyonnomu—ray.
Spasyonnoye pokoleniye.
Spokoiniy den' v kontse voiny.
Spokoistviye otmenyayetsya.
Sport, sport, sport.
Sportivnaya chest'.
Sportivniy prazdnik molodyozhi.
Sportloto—82.
Spyashchaya krasavitsa.
Spyashchiy lev.
Sred' byela dnya.
Srochniy vizov.
Srochno...sekretno...GUBChKa.
Srok davnosti.
SSSR glazami italyantsev.
SSSR s otkrytym serdtsem.
Ssuda na brak.
Stachka.
Stalingrad.
Stalingradskaya bitva.
Stalker.
Stanitsa dal'nyaya.
Staraya azbuka.
Staraya, staraya, skazka.
Starets Vasilyi Gryaznov.
Starik Khottabich.
Stariki-razboiniki.
Starinniy vodevil'.
Stariy dom.
Stariy kuvshin.
Stariy nayezdnik.
Stariy znakomiy.
Stariye dolgi.
Stariye steny.
Staromodnaya komediya.
Staroye i novoye.
Starshaya sestra.
Starshina.
Starshiy syn.
Stazhor.
Steklyaniy labirint.
Steklyanniy glaz.
Steklyanniye busy.
Step'.
Stepan Razin.
Stepnaya eskadrilya.
Stepniye zori.
Sto dnei posle detstva.
Sto gram dlya khrabrosti.
Stoyanka tri chasa.
Strakh vysoty.
Strannaya istoriya doktora Dzekila i mistera Haida.
Strannaya zhenshchina.
Strannik.
Stranniye lyudi.
Stroitsya most.
Stryapukha.
Stseni iz semeynoi zhizni.
Stuchis' v lyubuyu dver'.
Stuk v dver'.
Sud.
Stydno skazat'.

Sud chesti.
Sud sumasshedshikh.
Sud'ba.
Sud'ba barabanshchika.
Sud'ba cheloveka.
Sud'ba rezidenta.
Sumka inkassatora.
Sunduk.
Suprugi Orlovy.
Suvorov.
Suyeta suyet.
Svad'ba.
Svad'ba Krechinskogo.
Svad'ba s prianym.
Svad'ba v Malinovke.
Sverstnitsy.
Svet dalyokoy zvesdy.
Svetliy put'.
Svistat' vsekh naverkh.
Svidaniye s molodostyu.
Svinarka i pastukh.
Svobodnoye padeniye.
Svoy.
Svoy sredi chuzhikh, chuzhoy sredi svoyikh.
Svoya golova na plechakh.
Svoyimi rukami.
Syn.
Syn Polka.
Syostri.
Syshchik.
Syuda ne zalitali chaiki.
Syuzhet dlya dvukh rasskazov.
Syuzhet dlya nebol'shogo rasskaza.
Tabachniy kapitan.
Tabor ukhodit v nebo.
Taina "Chyornikh drozdov."
Taina gornogo podzemelya.
Taina smerti Gogolya.
Taina vechnoy nochi.
Taina villi "Greta."
Taina zapisnoy knizhki.
Taina zolotogo bregeta.
Tainaya progulka.
Tainy semyi de Granshan.
Tainstvennaya stena.
Tainstvenniy monakh.
Tak nachinalas' legenda.
Tak zhit' nel'zya.
Takaya zhestokaya igra—khokkei.
Takiye vysokiye gory.
Takiye zhe kak my!
Takoy bol'shoy mal'chik.
Taktika bega na dlinnuyu distantsiyu.
Talanty i poklonniki.
Talisman.
Talisman lyubvi.
Tam, gde dlinnaya zima.
Tam, gde nas nyet.
Tam, za gorizontom.
Tamozhnya.
Tan ka-traktirshchitsa.
Tanets dyavola.
Tankisti.
Tantsploshchadka.
Tantsi na kryshe.
Tatyanin den'.
Tayozhniy de[illegible]
Tchaikovskyi.
Tchitcherin.
Techyot Volga.
Tegeran—43.
Telegramma.
Ten'.
Territoriya.
Theatr.
Tikhiy Don.
Tikhiye vody gluboki.
Timur i yego komanda.
Tishina.
To leave a mark.
Tochka, tochka, zapyataya...
Tol'ko tri nochi.
Tommy.
Torgovka i poet.
Torgovtsi slavoy.
Torpedonostsi.
Tour Israel (Aguzarova meets Bravo).
Tovarishch general.
Tovarishch Arsenyi.
Tragediya.
Traktir na Pyatnitskoy.
Traktoristi.
Trener.
Tretiy taim.
Tretya meshchanskaya.
Tretye pokoleniye.
Trevozhniy bilet.
Trevozhnoye voskresenye.
Tri dnya Viktora Tchernyshova.
Tri plyus dva.
Tri sestry.
Tri sinikh ozera malinovogo tsveta.
Tri solntsa.
Tri topolya na plyushchikhe.
Tri tovarishcha,
Tri vremeni goda.
Tri vstrechi.
Tridtsat' tri.
Trin—Trava.
Trinadtsat'.
Trio.
Trizhdy voskresshiy.
Troitse-Sergiyeva lavra.
Troitse-Sergiyevskaya lavra.
Tropy Altaya.
Troye.
Troye na shosse.
Troye s odnoy ulitsi.
Troye v lodke ne schitaya sobaki.
Troye vyshli iz lesa.
Trudnoye schastye.
Tryam, zdravstvuyte!
Tryasina.
Tsarevich Prosha.
Tsel' yego zhizni.
Tseluyutsya zori.
Tsement.
Tsena bystrikh sekund.
Tsentrovoi iz podnebesya.
Tsepnaya reaktsiya.
Tsigan.
Tsiganskoye schastye.
Tsirk.
Tsirkachonok.
Tsvety zapozdaliye.
Tuchi nad Borskom.
Tuman iz Londona.
Tunnel.
Tvoy sovremennik.
Tvoya bol'shaya Sibir'.
Ty i ya.
Ty inogda vspominay.
Ty mnye—ya tyebye.
Ty moy vostorg, moyo muchenye...
Tye, kotoriye prozreli.
Tyema.
Tyeper' pust' ukhodit.
Tyoplaya kompaniya.
Tyuk.
U Krutogo Yara.
U Maksa v Koktebele.
U matrosov net voprosov.
U nas na zavode.
U nikh yest' rodina.
U opasnoy cherti.
U ozera.
U samogo sinego morya.
U tikhoi pristani.
U tvoyego poroga.
Ubit' drakona.
Ubiystovo na ulitse Dante.
Ubiytsi vykhodyat na dorogu.
Uchenik lekarya.
Uchitel'.
Uchitel' tantsev.
Udachi vam, gospoda.
Udivitel'naya bochka.
Uh ty, govoryashchaya ryba.
Ukhodya-ukhodi.
Ukradenniy poyezd.
Ukroshcheniye ognya.
Ukroshcheniye stroptivoy.
Ukrotitel'nitsa tigrov.
Ulybnis', rovesnik!
Umirat' ne strashno.
Umnaya sobachka Sonya.
Unikum.
Unizhenniye i oskorblyonniye.
Ura! U nas kanikuli.
Uragan prikhodit neozhidanno.
Urok istoriyi.
Urok literaturi.
Urok zhizni.
Usatiy nyan'.
Ushchelye Altamasov.
Uspekh.
Utoli moyi pechali.
Utomlyonoe solntse.
Utrenniy obkhod.
Utrenniye poyezda.
Utro bez otmetok.
Utro obrechonnogo priyiska.
Uvol'neniye na bereg.
Uzniki Yamagiri-Maru.
V ansamblye s Rikhterom.
V chetverg i bolshe nikogda.
V den' prazdnika.
V dobriy chas!
V gorakh Yugoslaviyi.
V gorod vkhodit' nel'zya.
V kvadrate 45.
V Lazorevoy stepi.
V lyudyakh.
V mire tantsa.
V Moskve proyezdom.
V moyey smerti proshu vinit Klavu K.

V nachale veka.
V nachale igri.
V nebye "nochniye teni."
V noch na novoluniye.
V odno prekrasnoye detstvo.
V ogne broda nyet.
V ozhidaniyi chuda.
V poiskakh kapitana Granta.
V poiskakh radosti.
V poslednyuyu ochered'.
V prazdnichniy vecher.
V rasputitsu.
V shest' chasov vechera posle voiny.
V stepnoy tishi.
V styepi.
V trudniy chas.
V tvoykh rukakh zhizn.
V tylu vraga.
V yedinom stroyu.
V zone osobogo vnimaniya.
Vakansiya.
Valentin i Valentina.
Valentina.
Valera.
Vam chto, nasha vlast' ne nravitsya?
Vam i nye snilos'.
Vampiri Geoni.
Van'ka-vstan'ka.
Vardevar—prazdnik roz.
Variant "Zombi."
Vas ozhidayet grazhdanka Nikanorova.
Vasilisa Prekrasnaya.
Vasilyi Buslayev.
Vasilyi i Vasilisa.
Vasilyi Surikow.
Vassas.
Vasyok Trubatchyov i yego tovarishchi.
Vchera, segodnya i vsegda.
Vechera na khutorye bliz Dikanki.
Vecherniy labirint.
Ved'ma.
Velikiy samoyed.
Velikiy uteshitel'.
Velikiye golorantsi.
Velikliy voyin Albaniyi Skanderbeg.
Velikly put'.
Velikolepniy gosha.
Ver'te mnye, lyudi.
Vera.
Vera i Anfisa znakomyatsya.
Vera, Nadezhda, Lyubov.
Verniye druzya.
Vernost' materi.
Vernymi ostanemsya.
Veroy i pravdoy.
Versiya polkovnika Zorina.
Veruyu v lyubov'.
Veruyu v radugu.
Vesenniy potok.
Vesenniy prizyv.
Vesenniye golosa.
Vesennya olimpiada, ili Nachal'nik khora.
Vesna.
Vesna na Odere.
Vesyolaya kanareika.
Vesyoliye istoriyi.
Vesyoliye rasplyuyevskyie dni.
Vesyoliye rebyata.
Vesyoliye zvyozdi.
Veter.
Veter "Nadezhdi."
Veter stranstviy.
Vezuchaya.
Vibor tseli.
Vkhri vrazhdebniye.
Victor Vasnetsov.Vospominaniya.
Vid na zhitelstvo.
Virineya.
Vishnyoviy omut.
Vitya Glushakov-drug apachey.
Vizit damy.
Vizit k minotavru.
Vizit verhivosti.
Vkus khalvy.
Vladivostok, god 1918.
Vlast' Solovetskaya.
Vlyublyon po sobstvennomu zhelaniyu.
Vnimaniye! Vsyem postam...
Vnimaniye: cherepakha.
Vo imya rodiny.
Volchonok sredi lyudei.
Vokzal dlya dvoikh.
Volga-Volga.
Volnitsa.
Volniy veter.
Volshebnaya laka.
Volshebnaya serna.
Volshebnoye zerno.
Vooruzhen i ochen' opasen.
Vorobey na l'du.
Vorota v nebo.
Vos'moye chudo sveta.
Vosemnadtsatiy god.
Voskhozhdeniye.
Voskreseniye.
Vospitaniye zhestokosti u zhenshchin i sobak.
Vosstaniye rybakov.
Vozdushnaya pochta.
Vozdushniy izvozchik.
Vozle etikh okon.
Vozmezdiye.
Vozneseniye.
Vozvrashcheniye Khadzhi Nasreddina.
Vozvrashcheniye "Svyatogo Luki."
Vozvrashcheniye Buculaya.
Vozvrashcheniye chuvstv.
Vozvrashcheniye k zhizni.
Vozvrashcheniye rezidenta.
Vozvrashcheniye Vasiliya Bortnikova.
Vozvrata net.
Vperedi dyen'.
Vperviye zamuzhem.
Vragi.
Vratar.
Vrazhyi tropi.
Vremya i semya Konvey.
Vremya letat.
Vremya letnikh otpuskov.
Vremya otdykha s subboti do ponedel'nika.
Vremya schastlivykh nakhodok.
Vremya synovey.
Vremya zhelaniy.
Vremya, vperyod!
Vsadnik bez golovy.
Vsadnik na zolotom konye.
Vsadnik nad gorodom.
Vsadnik s molniyei v ruke.
sem spasibo.
Vspominaya Ranevskuyu.
Vstrecha na Elbe.
Vstrechi na rassvete.
Vstrechi s Igorem Ilyinskim.
Vstupleniye.
Vsyo delo v bratye.
Vsyo dlya vas.
Vsyo nachinayetsya s dorogi.
Vsyo naoborot.
Vsyo ostayotsya lyudyam.
Vtoroy raz v Krimu.
Vy mne pisali...
Vybor.
Vybor tseli.
Vyi.
Vyigrish odnogo Kommersanta.
Vykup.
Vyruta zastupom yama gluboraya.
Vysokaya nagrada.
Vysokosniy god.
Vysokoyne zvaniye.
Vysota.
Vystral v tmane.
Vystrel.
Vystrel v spinu.
Vzbesivshiysya avtobus.
Vzlyot.
Vzorvanniy ad.
Vzrosliy syn.
Vzrosliye deti.
XX vyek zakanchivayetsya.
Ya kupil papu.
Ya nauchu vas mechtat'.
Ya ne utratil prezhniy svet. A. Blok.
Ya sdelal vsyo, chto mog.
Ya shagayu po Moskve.
Ya slyzhil v okhrane Stalina ili opit dok. mifologiyi.
Ya soldat, mama.
Ya tebya nikogda ne zabudu.
Ya v polnom poryadke.
Ya vas dozhdus'.
Ya vas lyubil...
Ya yego nevesta.
Ya za tebya otvechayu.
Ya—Kuba.
Ya—Tyanshan.
Yabloko razdora.
Yad.
Yaguar.
Yakov Sverdlov.
Yaroslav Dombrovskyi.
Yaroslavna, the Queen of France.
Yedinstvennaya.
Yedinstvennaya doroga.
Yegor Bulychev i drugiye.
Yegorka.
Yekaterina Voronina.
Yel'.
Yelovoye yabloko.
Yemelyan Pugachev.
Yeshcho lyublyu, yeshcho nadeyus'...

Yeshcho moshno uspet'.
Yeshcho raz pro lyubov'.
Yesli by ya byl nachal'nikom.
Yesli eto sluchitsya s toboy.
Yesli khochesh by*' schastlivym.
Yesli ty muzhchina.
Yesli ty prav...
Yesli zavtra byla voina.
Yest' ideya!
Yevdokiya.
Yevdokiya Rozhnovskaya.
Yevgeniy Onegin.
Yevgeniy Urbansky.
Yevgeniya Grande.
Yevreyskoye schastye.
Yevropeyskaya istoriya.
Yeyo put'.
Yim pokoryayetsya nebo.
Yolki-Palki.
Yubiley.
Yuliya Vrovskaya.
Yunga severnogo flota.
Yuniye kommunari.
Yunost'.
Yunost' komandirov.
Yunost' Maksima.
Yunost' nashikh ottsov.
Za devyat' let do kontsa voiny.
Za oblakami—nebo.
Za spichkami.
Za vitrinoy univermaga.
Za vlast' Sovyetov.
Za vsyo v otvete.
Za yavnim preimushchestyom.
Zabavy molodikh.
Zabytaya melodiya dlya fleity.
Zacharovannaya desna.
Zacharovannaya vesna.
Zachem cheloveku krilya.
Zagadka Endhauza.
Zagadka Kal'mana.
Zagadochniy naslednik.
Zagon.
Zagovor obrechyonnikh.
Zaklyuchyonniye.
Zakon.
Zakon zhizni.
Zakonniy brak.
Zakritiye sezona.
Zakroishchik iz Torzhka.
Zamurovanniye v steklye.
Zapasnoy aerodrom.
Zapasnoy igrok.
Zapiski pirata.
Zapomnitye ikh litsa.
Zapretnaya zona.
Zarye navstrechyu.
Zasekrechenniy gorod.
Zashchitnik Sedov.
Zastava Ilyitcha.
Zastava v gorakh.
Zatyanuvshiysya ekzamen.
Zaveshchaniye.
Zaveshchaniye doktora Douelya.
Zavtra byla voyna.
Zavtrak u predvoditelya.
Zdes' mogut vodit'sya tigry.
Zdes', na moyey zemle.
Zdravstvuitye, ya vasha tyotya.
Zdravstvuy i proshchai.
Zdravstvuy, Moskva.
Zdravstvuy, ryka.
Zdravstvuytye, deti!
Zeena, Zinulya.
Zelyoniy ostrov.
Zelyoniy furgon.
Zelyoniy ogonyok.
Zelyoniye tsepochki.
Zemlya i luydi.
Zemlya Sannikova.
Zemlya v plenu.
Zemlya, do vostrebovaniya.
Zemlyaki.
Zemlyanichniy dozhdik.
Zerkalo.
Zharkoye leto v Kabule.
Zhazhda nad ruchyom.
Zhdi menya.
Zhelayu uspekha.
Zhelezniy potok.
Zhena.
Zhena kerosinshchika.
Zhena predrevkoma.
Zhena ushla.
Zhenatiy kholostyak.
Zhenikh s togo sveta.
Zhenit'ba.
Zhenit'ba Bal'zaminova.
Zhenit'ba Balzaminova.
Zhenshchina.
Zhenshchina, kotoraya poyot.
Zhenskaya astrologiya.
Zhenskiye radosti.
Zhenya, Zhenechka, and Katyusha.
Zhestokiy romans.
Zhestokost'.
Zhil otvazhniy kapitan.
Zhila-byla devochka.
Zhili-byli starik so starukhoy.
Zhit' po-svoyemu.
Zhiteyskoye delo.
Zhivaya glina.
Zhivaya raduga.
Zhivite v radosti.
Zhiviye i myortviye.
Zhivoy trup.
Zhivoy trup.
Zhivyot takoy paren'.
Zhizn' i smert' Ferdinanda Lyusa.
Zhizn' moya—armiya.
Zhizn' na gresnnoy zemlye.
Zhizn' po limitu.
Zhizn' posle smerti.
Zhizn' prekrasna.
Zhizn' proshla mimo.
Zhizn' s nachala.
Zhizn' odna...
Zhrebiy.
Zhukovskyi.
Zhuravl' v nebe.
Zhuravushka.
Zhurnalist.
Zigzag udachi.
Zimnyaya skazka.
Zimnyaya vishnaya.
Zimniy vecher v Gagrakh.
Zlovrednoye voskresenye.
Zloy dukh Yambuya.
Zmeyelov.
Znamenitiy i iskusneishiy Matvey Kazakov.
Zodchiy Moskvy Osip Bove.
Zolotaya rechka.
Zolotiye vorota.
Zolotiye yabloki.
Zoloto.
Zolotoy dom.
Zolotoy eshelon.
Zolotoy klyuchik.
Zolotoy telyonok.
Zolotoye ozero.
Zolushka.
Zontik dlya novobrachnykh.
Zori Parizha.
Zoya.
Zudov, vy uvoleni!
Zvezda ekrana.
Zvezda i smert' Khoakina Murieti.
Zvezda nadezhdy.
Zvezda plenitel'nogo schastya.
Zvezdopad.
Zvonyat, otkroite dver'!
Zvyozdniy inspektor.
Zvyozdniy mal.
Zvyozdy i soldaty.
Zvyozdy ne gasnut.
Zvyozdy vstrechayutsya v Moskve.

Rolnikaite, Maria.
  Ya dolzhna rasskazat.

Schirmer (G.), Inc.
  24 preludes and fugues for piano in 4 volumes (Vol.1).
  24 preludes and fugues for piano in 4 volumes (Vol. 2).
  24 preludes and fugues for piano in 4 volumes (Vol. 3).
  24 preludes and fugues for piano in 4 volumes (Vol. 4).
  Colas breugnon.
  Concerto for violin and orchestra.
  Fifteen years, young pioneer song for the 15th anniversary of the.
  First cello concerto in G minor, op. 49.
  Requiem, op. 72 for soloists, mixed chorus, children's chorus and symphony orchestra.
  Rhapsodie romaine op. 11, no. 1 en la majeur (chamber music - strings and piano).
  Rhapsodie romaine op. 11, no. 1 en la majeur.
  Second cello concerto in C major, op. 77.
  Sonata for solo violin, op. 115 (1947).
  Sonate en fa diese mineur, op. 24, no. 1.
  Suite, for symphony orchestra from the ballet golden wheat-ears, op. 28a.
  Symphony no. 3 for chamber orchestra.
  Taras' family, op. 47.
  Ten sonnets by Shakespeare for voice and piano, op. 52.
  Third symphony (requiem) in b-flat minor, for symphony orchestra and

  chorus, op. 22.
  Three songs of revolutionary Cuba, op. 73, for voice and piano.
  Trio pour clarinette, violon et piano.

Serraillier, Anne.
  Ahmet the woodseller.
  The ballad of Saint Simeon.
  Beowulf the warrior.
  The Bishop and the Devil.
  The challenge of the Green Knight.
  Chaucer and his world.
  The clashing rocks.
  Creatures.
  The crooked man.
  The enchanted island.
  A fall from the sky: the story of Daedalus.
  First foot.
  Flight to adventure.
  Florina and the wild bird.
  The Franklin's tale.
  Going steady.
  The Gorgon's head.
  Havelok the Dane.
  Heracles the strong.
  The ivory horn.
  Marko's wedding.
  The mouse in the wainscot.
  My kitten (Miss Tibbles).
  A pride of lions.
  A puffin quartet of poets.
  Robin and his merry men.
  Robin in the greenwood.
  Suppose you met a witch.
  The tale of the three landlubbers.
  There's no escape.
  The turtle drum.
  Two rhymes.
  The way of danger.

SGGC. SEE Cogelda, SGGC & Cine Phonic.

Succession Picasso.
  "Pour toi", poeme pour Maya.
  Les amants de la rue.
  Animal form jug with handle and four feet 35 × 1 × 30 cm.
  Animal form vase with handling and height 36 cm.
  Another version of above.
  The architect's table.
  L' arene (etude pour le rideu du ballet "Le tricorne").
  Arlequin assis (le peintre Jacinto Salvado).
  Arrastre. Black decoration on ochre earthenware, diameter 42 cm.
  Arrastre. Polychrome decoration on white earthenware, diameter 42 cm.
  L' arrosoir fleuri.
  At work.
  L' atelier de "La Californie" a Cannes.
  L' atelier.
  Au "Lapin Agile" (arlequin au verre).
  L' aubade (nu allonge avec musicienne).
  L' aubade.
  Aubergine and knife on a tartan ground, 31 × 38.5 cm.
  Autoportrait "yo Picasso."
  Autoportrait (tete).
  Autoportrait a la palette.
  Autoportrait aux cheveux courts.
  Autoportrait en gentilhomme du XVIIIe siecle.
  Autoportrait mal coiffe.
  Autoportrait.
  Autour de chef-d'oeuvre inconnu: peintre, modele, couple et deux peintres, I(e) etat.
  Autour de chef-d'oeuvre inconnu: peintre, modele, couple et deux peintres, IV(e) etat.
  Baboon and young.
  Bacchanale.
  La baie de Cannes.
  Les baigneurs (la plongeuse, l'homme aux mains jointes, l'homme fontain, l'enfant, la femme aux bras ecartes, le j.
  Baigneurs sur la plage de la Garoupe.
  Baigneuse assise au bord de la mer.
  Baigneuse debout.
  Baigneuse.
  Baigneuses au ballon III.
  Baigneuses au ballon.
  Baigneuses ouvrant une cabine.
  Baigneuses sur la plage.
  Les baigneuses.
  Le baiser.
  Banderillas. Black decoration on ochre earthenware, diameter 42 cm.
  Banderillas. Polychrome decoration on white earthenware, diameter 42 cm.
  Bather and cabin.
  Bather with beach ball.
  Bathers in a forest.
  Bearded face. White earthenware, diameter 24 cm.
  Bearded faun.
  Bethsabee (d'apres Rembrandt).
  Bird and flowers, 32 × 38 cm.
  Bird. White earthenware, 20 × 28 cm.
  Black mask, diameter 31 cm.
  Black owl roosting, diameter 42.5 cm.
  Black pudding and eggs, 31 × 37 cm.
  El Bobo (d'apres Velazquez et Murillo).
  Bouquet with apple. White earthenware, diameter 24 cm.
  Bouteille d'Anis del Mondo et compotier avec grappe de raisin.
  Bouteille de Bass, verre et journal.
  Bouteille de Pernod et verre.
  Bouteille de Vieux Marc, verre et journal.
  Bouteille sur une table.
  Brooding woman.
  Brown bird on a green ground, 32 × 38.5 cm.
  Le buffet du Catalan.
  Buii on beige ground 31 × 38.5 cm.
  Bull on pink earth ground, 37 × 23 × 37 cm.
  Bull's head. White earthenware, diameter 42 cm.
  Bull.
  Bullfight scene. Banderilleros on light colored ground, 31 × 38.5 cm.
  Bullfight scene. Picador on blue ground, 31 × 38.5 cm.
  Bullfight scene. Picador on beige ground, 31 × 38.5 cm.
  Bullfight scene. Picador on grey ground, 31 × 38.5 cm.
  Bullfight scene. Picador on green ground, 31 × 38.5 cm.
  Bullfight, diameter 15.5 cm.
  Bullfighting scenes, 20 × 39 × 4 cm.
  Bust of a woman, 26.5 × 22.5 cm.
  Buste (etude pour "Les demoiselles d'Avignon").
  Buste de femme a la chaise, II(e) etat.
  Buste de femme a la chaise, IX(e) etat.
  Buste de femme a la chaise, VII(e) etat.
  Buste de femme au bouquet (Fernande).
  Buste de femme ou de marin, etude pour "Les demoiselles d'Avignon."
  Buste de femme.
  Busts of women in matt paint, 25 × 14 cm.
  Cafe a Royan (Le cafe).
  Card player.
  Carnet de Cannes.
  Carnet no 3, chienne allaitant ses petits (Fricka).
  Carnet no 3, etude d'ensemble a deux personnages: l'etudiant en medecine.
  Carnet no 3, etude d'ensemble a sept personnages: cinq demoiselles, l'etudiant en medecine et la marin.
  Carnet no 3, etude d'ensemble a six personnages: quatre demoiselles, l'etudiant en medecine et la marin.
  Carnet no 3, etude d'ensemble a un personnage: la demoiselles accroupie de dos a droite et la nature morte.
  Carnet no 3, etude pour l'etudiant en medecine: homme de profil au bras leve, tenant un crane.
  Carnet no 3, etude pour la demoiselle accroupie de dos, a droite: nu assis, jambes ecartees.
  Carnet no 3, etude pour la demoiselle assise de face: nu assis, jambes croisees.
  Carnet no 3, etude pour la demoiselle aux bras leves: buste de nu aux bras leves.
  Carnet no 3, etude pour la demoiselle debout a droite: nu de profvil ecartant un rideau (a l'envers).
  Carnet no 3, etude pour la demoiselle debout a droite (?) tete de profil (a l'envers).
  Carnet no 3, etude pour la demoiselle debout derriere.
  Carnet no 3, etude pour la demoiselle accroupie de dos, a droite: nu assis.
  Carnet no 3, etude pour la nature morte: bouquet de fleurs dans un vase et tranche de pasteque.
  Carnet no 3, etude pour la nature

morte: fleurs.
Carnet no 3, etude pour la nature morte: fruits dans une coupe.
Carnet no 3, etude pour la nature morte: vase.
Carnet no 3, etude pour la nature morte: tranches de pasteque sur un plat.
Carnet no 4, etude pour "Les demoiselles d'Avignon."
Carnet no 86, dessin d'apres le chef-d'oeuvre inconnu: quatre etudes de guitare.
Le celestine.
Centaurs fighting and faun playing pipes, 59 × 33 cm.
Centaurs fighting, on a cream ground, 31 × 38.5 cm.
La chaise.
Le chandail jaune (Dora Maar).
The Charnel house.
Le charnier.
Chat saisissant un oiseau.
Chevre.
La chouette.
Circus scene, height 35 cm., diameter at base 10 cm.
Circus scenes, 35 × 18 cm.
Claude a la balle.
Claude dessinant, Francoise et Paloma.
Claude ecrivant.
Cliche Kahnweiler, guitare, clarinette et bouteille de Bass, VII(e) etat.
Cogida. Black decoration on ochre earthenware, diameter 42 cm.
La coiffure.
Coloured variant on no. 62.
Combat de taureaux et chevaux.
Composition au papillon.
Composition.
Compotier aux fruits et au pain sur une table.
Corrida: la mort de la femme torero.
Couple a l'oiseau.
Couple dans un pre.
Couple.
Le couple.
Course de taureaux (corrida).
Course de taureaux et pigeons.
Course de taureaux: la mort du torero.
Crane de chevre, bouteille et bougie.
Crane, oursins et lampe sur une table.
Crowned female head. Ochre earthenware, 33 × 25 cm.
La crucifixion.
Cubist face. White earthenware, diameter 42 cm.
La cuisine, II(e) version.
La cuisine.
Danae, IV(e) etat.
La danse aux voiles (nu a la draperie).
La danse villageoise.
La danse.
Danseuse naine (la nana).
Dark Neptune. Ochre earthenware 21.5 × 21.5 cm.
David et Bethsabee (d'apres Lucas Cranach) II(e) stat.
Decorated with faces. Height 61 cm., diameter at base 16 cm.
Decoration based on bullfighting themes, done in April of 1953. Diameter: 16 cm. (min.) and 17.6 cm. (max.).
Decoration painted on patinated ground, 29.5 × 24 cm.
Decoration painted on patinated ground, 40 × 23.5 cm.
Le dejeuner sur l'herbe (d'apres Manet).
Le dejeuner sur l'herbe: femme assise.
Le dejeuner sur l'herbe: femme assise (verso).
Le dejeuner sur l'herbe: femme au bain.
Le dejeuner sur l'herbe: homme assis accoude.
Les demoiselles au bord de la sein (d'apre Courbet).
Les demoiselles d'Avignon.
Les deux amies.
Deux femmes courant sur la plage (La course).
Deux femmes nues.
Deux figures sur la plage.
Deux nus (le dejeuner sur l'herbe).
Le divan japonais.
Dove on bed of straw, 32.5 × 38.5 cm.
La dryade (nu dans la foret).
En pensant a Goya: femmes en prison.
L' enfant aux Colomes.
Enfant jouant avec un camion.
L' enlevement des Sabines (d'apres David).
L' Enterrement du Comte d'Orgaz d'apres Picasso, III(e) etat b.
Erotic scene, 16.5 × 19 cm.
Erotic scene.
Estocada. Black decoration on ochre earthenware, diameter 42 cm.
Estocada. Polychrome decoration on white earthenware, diameter 42 cm.
Etreinte II.
Etude d'apres un model en platre (torse de Belvedere).
Etude pour "Autoportrait a la palette."
Etude pour "Carnaval au bistrot."
Etude pour "Guernica": main de guerrier avec epee brisee.
Etude pour "Guernica": mere avec enfant mort.
Etude pour "Guernica": tete de cheval.
Etude pour "Guernica": tete de femme en pleurs.
Etude pour "L'homme au mouton."
Etude pour "La joie de vivre" (triptyque).
Etude pour "Le dejeuner sur l'herbe" d'apres Manet.
Etude pour "Le demoiselles d'Avignon."
Etude pour "Les demoiselles d'Avignon."
Etude pour "Tete de femme" (Fernande).
Etude pour le rideau de scene du "14 Juillet" de Romain Rolland.
Etude pour une sculpture ceremique.
Etudes.
Evocation (enterrement de Casagemas).
Face framed in a square. White earthenware, diameter 42 cm.
Face in thick relief. White earthenware, diameter 42 cm.
Face on grid. White earthenware, diameter 42 cm.
Face painted in relief on blue ground, 31 × 38.5 cm.
Face surrounded by ringlets. Ochre earthenware, 21.5 × 21.5 cm.
Face surrounded by ringlets. Ochre earthenware, 31 × 31 cm.
Face with green nose. Ochre earthenware, 21.5 × 21.5 cm.
Face with leaves. White earthenware, diameter 42 cm.
Face with lowered eyes. Decoration decoration in relief, 31 × 38.5 cm.
Face with round nose and four potter's marks on ochre earthenware, 31.5 × 27 cm.
Face with slanting features. Ochre earthenware 21.5 × 21.5 cm.
Face with slanting features. Ochre earthenware, 21.5 × 21.5 cm.
Face with tie. White earthenware, diameter 25 cm.
Face, 14 × 13 cm.
Face, 15 × 15 cm.
Face, height 13 cm.
Face, height 19 cm.
Face.
Famille d'acrobates avec singe.
La famille de saltimbanques (les bateleurs).
La famille.
Faun's head 38 × 34 cm.
Faun's head with broad strokes on a beige ground, 38.5 × 31 cm.
Faun's head, 38 × 38 cm.
Faun's head, 39 × 32 cm.
Faun. White earthenware, diameter 42 cm.
Faune devoilant une femme, VI(e) etat.
Faune, cheval et oiseau.
Fauns dancing on an ivory ground, 37 × 38.5 cm.
Female nude, height 35.5 cm.
Femme a l'artichaut.
Femme a l'enfant.
Femme a l'eventail.
Le femme a l'orange ou le femme a la pomme.
Femme a la bougie, combat entre taureau et cheval.
Femme a la corneille.
Femme a la voiture d'enfant (La femme a la poussette).
Femme assise (Marie-Theresa Walter).
Femme assise dans un fauteuil rouge.
Femme assise dans un fauteuil.
Femme assise.

Femme au corsage bleu (Dora Maar).
Femme au costume ture dans un fauteuil.
Femme au drape.
Femme au fauteuil rouge.
Femme au feuillage.
Le femme au jardin.
Le femme au stylet.
Femme aux bras ecartes.
Femme avec eventail (apres le bal).
Femme debout.
Femme en pleurs.
Femme enceinte.
Femme lancant une pierre.
Femme nue a la chaise a bascule.
Femme nue au bonnet turc.
Femme nue couchee sur un divan bleu.
Femme nue couchee.
Femme nue dans un jardin.
Femme nue sous un pin.
Femme nue, etude pour "Les demoiselles d'Avignon."
Femme portant un enfant.
Le femme qui pleure, I(er) etat.
Le femme qui pleure, VII(e) etat.
Le femme qui pleure.
Femme se coiffant.
Femme se lavant le pied.
La femme-fleur.
Femme-vase.
Femme.
Femmes a leur toilette.
Les femmes d'Alger (d'apres Delacroix).
Femmes d'Alger (d'apres Delacroix), I(er) etat.
La fenetre d'atelier.
Figure (maquette pour un monument d'Apollinaire).
Figure et profil.
Figure with curves and eight potter's marks on ochre earthenware, 31.5 × 27 cm.
Figure.
Figures and heads in relief on pink earthenware. Four different sides.
Figures au bord de la mer.
Fillette a la boule.
La fillette aux pieds nus.
Fish and birds. White earthenware, height 51 cm., diameter at bulge 50 cm.
Fish in profile. White earthenware, 25 × 33 cm. Original print. Edition.
Fish in relief, 31 × 31 cm.
Floral decoration in black and ivory on patinated ground, 60 × 30 cm.
La flute de Pan.
Footballeur.
Forme feminine.
Le fou.
Four elements in the form of a bird, 71 × 18 × 35 cm.
Francoise au bandeau.
Fruit dish.
Fumee a Vallauris.
Le geunon et son petit.
Girl before a mirror.
Girl with a mandolin.
Glass of absinth.
Glass under lamp. Ochre earthenware, height 33 cm.
Glass, guitar and bottle.
Goat skull and bottle.
Goat's head in profile, 31 × 51 cm.
Goat's head in profile, diameter 40.5 cm.
Goat, diameter 26.2 cm.
Grand nature morte au gueridon.
Grand nu au fauteuil rouge.
Grand nu.
Grand plat rond en terre cuite, decor: un poisson en relief.
Grand profil.
Grand vase a col etrangle en terre cuite, faune, musiciens et femmes.
Grand vase a col etrangle en terre cuite, decor: bikini jaune.
La grande corrida, avec femme torero.
Green floral motifs and white enamel, 24 × 10 cm.
Green still life.
La grue.
La guenon et son petit.
Guernica.
La guerre.
Guillaume Apollinaire en artilleur.
Guillaume Apollinaire et Max Jacob.
Guitar.
Guitare "J'aime Eva."
Guitare, bouteille, compotier et verre sur une table.
Guitare.
La guitare.
Hands on fish. Pink earthenware, diameter 31.5 cm.
Harlequin.
Head of a faun.
Head of a sleeping woman.
Head of a warrior.
Head of a woman.
Head of Marie Therese.
Head of the medical student.
Head.
Hibou sculpte.
Hollandaise a la coiffe (la belle hollandaise).
Homme a la guitare.
Homme a la pipe (Le fumeur).
Homme accoude sur une table.
Homme assis a l'epee et a la fleur.
Homme au chapeau.
L' homme au mouton.
Homme debout.
Houses on the hill, Horta de Ebro.
Incised bird, 32 × 38 cm.
Interior with a girl drawing.
Jacqueline a l'echarpe noire.
Jacqueline assise avec son chat.
Jacqueline au chat assise dans un fauteuil.
Jacqueline dans l'atelier.
Jacqueline en costume ture.
Jacqueline in a hat, 26.5 × 22.5 cm.
Jacqueline in a pink dress, 26.5 × 22.5 cm.
Jacqueline on russet background, 26.5 × 22.5 cm.
Jacqueline with a grey bandeau 26.5 × 22.5 cm.
Jacqueline with long neck, 26.5 × 22.5 cm.
Jagged fragment of brick.
Jeanne.
Jeune fille assise dans un fauteuil.
Jeune fille devant un miroir.
Jeune garcon a la langouste.
Le jeune peintre.
La joie de vivre (pastorale).
Jose Ruiz Blasco, pere de l'artiste.
Joueur de guitare.
Joueurs de ballon sur la plage.
Jug decorated with a goat and a piper in matt patina, 25 × 13 cm.
Jug decorated with figures dancing the sardana, height 22.9 cm., diameter at base 11 cm.
Jug with handle height 31.5 cm., diameter at base 12 cm.
Kid, decoration painted in engobe, 32 × 15 × 28 cm.
The kitchen.
Lady wearing mantilla, 47 × 11.5 × 7 cm.
Lampe aux perroquets bleus.
Lance-thrust, diameter 38 cm.
Landscape decoration height 31.5 cm., diameter at base 12.5.
Landscape, height 31 cm.
Landscape.
Large bird with two handles decorated with superimposed faces, 49 × 30 × 33 cm.
Le lecture de la tettre.
Le lecture.
Ma jolie.
Ma jolie: guitare, bouteille de bass, grappe de raisin et verre.
Mademoiselle Leonie sur une chaise longue, IV(e) etat.
Maisonnette dans un jardin (maisonnette et arbres).
Maisons sur la colline (Horta de Ebro).
Man with a guitar.
Man with a hat.
Man with long hair, 26.5 × 22.5 cm.
Man's head incised on black ground, 38.5 × 32 cm.
Man's head with long hair. White earthenware, 31 × 31 cm.
Mandoline et clarinette.
Mandoline et guitare.
Maquette pour la couverture de "Minotaure."
Marie-Therese accoudee.
Marie-Therese Walter revant de metamorphoses: ellememe et le sculpteur buvant avee un jeune acteur jouant le r.
Marmite a deux anses en terre cuite, decor: personnages antiques.
Marmite-poelon en terre cuite, decor: visage-masque.
Masque de femme.
Masque.
Massacre en Coree.

Matador.
Maternite.
Maya in a sailor suit.
Melon on a blue tartan ground, 32 × 38.5 cm.
Les menines (d'apres Velazquez).
Mere et enfant.
Metamorphose I.
The mill at Horta.
Minotaure aveugle conduit dans la nuite par une fillette tenant une colombe aux ailes deployees.
Minotaure blesse, cheval et personnage.
Minotaure caressant du mufle la main d'une dormeuse, II(e) etat.
Minotaure et jument morte devant une grotte face a une jeune fille au voile.
Minotaure.
La minotauromachie, I(er) etat.
La minotauromachie, II(e) etat.
La minotauromachie, III(e) etat.
La minotauromachie, IV(e) etat.
La minotauromachie, V(e) etat.
La minotauromachie, VI(e) etat.
La minotauromachie, VII(e) etat.
Le miroir.
Mirror and cherries.
La misereise accroupie.
Les modistes.
Monument aux Espagnols.
Monument.
La mort de Casagemas.
Mottled, fish. White earthenware, 34 × 41.5 cm. Several versions. Original print. Edition.
Le moulin de la Galette.
Mousquetaire a l'epee assis.
Mousquetaire et amour.
Musicien assis (trompettiste).
Musiciens aus masques.
Musiciens aux masques.
La nageuse.
Nature morte a la chaise cannee.
Nature morte a la tete de taureau.
Nature morte au pichet et aux pommes.
Nature morte au verre et couteau sur une table.
Nature morte avec crane de boeuf.
Nature morte devant une fenetre a Saint-Raphael.
Nature morte sous la lampe.
Nature morte sur un piano (Cort).
Night fishing at Antibes.
Nocturne bacelonais.
Nu couche au collier.
Nu couche et homme jouant de la guitare.
Nu couche.
Nu dans l'atelier, I(er) etat.
Nu dans l'atelier, III(e) etat.
Nu debout.
Nude seated on a rock.
L' ombre.
One handle and two sprouts.
One handle with two spouts 21 × 24 × 15 cm.
Ouvrieres au travail.
Owl incised on a beige ground, 32 × 38.5 cm.
Owl incised on a brown ground, 31 × 38.5 cm.
Owl's head. Ochre earthenware, 21.5 × 21.5 cm.
Owl, with eyes in relief, in yellow sulphide glazing, 22 × 12 × 25 cm.
Painted face, 32 × 38 cm.
Painted nudes, height 34 cm.
Painter and model.
The painter and two models, 27 × 33 cm.
La paix.
Paloma endormie.
Palome et les tetards.
Pase de muleta. Polychrome decoration on white earthenware, diameter 42 cm.
Pase de capa. Polychrome decoration on white earthenware, diameter 42 cm.
Pase de Muleta. Black decoration on ochre earthenware, diameter 42 cm.
Paseo. Black decoration on ochre earthenware, diameter 42 cm.
Paseo. Polychrome decoration on white earthenware, diameter 42 cm.
Paul dessinant.
Paul en arlequin.
Paysage aux deux figures.
Paysage de Juan-les-Pins.
Paysage.
Paysages aux affiches.
Peche de miot a Antibes.
Le peintre et son modele, etat final.
Le peintre et son modele.
Le peintre et le sculpteur et leurs modeles.
Le petit picador.
Petite chouette.
Petite femme enceinte.
Petite fille a la corde.
Picador in bullring, 32 × 38 cm.
Picador incised in thick relief, diameter 24 cm.
Picador returning on a blue ground, 31 × 38.5 cm.
Picador with brown-white decoration, diameter 22 cm.
Picador, diameter 18 cm.
Picador, diameter 42 cm.
Picador, incised and painted, diameter 42 cm.
Picador. Black decoration on ochre earthenware, diameter 42 cm.
Picador. Polychrome decoration on white earthenware, diameter 42 cm.
Picasso, son oeuvre et son public, I(er) etat.
Picasso, son oeuvre et son public, VII(er) etat.
Pichet de forme zoomorphe avec anse, pied, bec et forme de tete d'oiseau et trous perces sur le dos, decor: de.
Pichet en terre cuite de taille moyenne.
Pichet en terre cuite de taille moyenne, decor: fleuri et nu.
Pichet, bougeoir et caserole emaillee.
Pierreuse, la main sur l'epaule.
Pierrot et arlequin.
Pierrot.
Pigeon, incised and painted, 13 × 23 cm.
The pigeon.
Pipe, glass, bottle of rum.
Pipe, verre et bouteille de rhum.
La pisseuse.
Plat en terre cuite, decor: scene tauromachique.
Plate with still life.
Polychrome bird, 32 × 38 cm.
Polychrome decoration with woman and flowers.
Polychrome face, 32× 38 cm.
Polychrome picador, diameter 24 cm.
Portrait d'Ambroise Vollard.
Portrait d'Andre Derain.
Portrait d'Erik Satie.
Portrait d'Igor Stravinsky (d'apre une photographie).
Portrait d'Olga (Olga pensive).
Portrait d'Olga dans un fauteuil.
Portrait d'un peintre (d'apres Le Greco).
Portrait de Daniel-Henry Kahnweiler.
Portrait de Dora Maar.
Portrait de Francoise au corsage raye, X(e) etat.
Portrait de Francoise.
Portrait de Gertrude Stein.
Portrait de Jacqueline Roque aux mains croisees.
Portrait de la mere de l'artiste.
Portrait de Leo Stein.
Portrait de Marie-Therese Walter.
Portrait de Marie-Therese a la guirlande.
Portrait de Maya avec sa poupee.
Portrait de Pedro Manach.
Portrait de Serge Diaghilev et d'Alfred Selisberg (d'apres une photographie).
Portrait du pere de l'artuste.
Pregnant woman.
La Premiere Communion.
Priape.
Profil au chignon fleuri.
Profile of Jacqueline on a light ground. White earthenware, diameter 18.5 cm.
Profile of Jacqueline. White earthenware, 41.5×41 cm.
Project for a monument to Guillaume Apollinaire.
Projet de costumes pour le ballet "Le Tricorne": un negre.
The rape.
Repose.
Le reve.
Reverie d'opium: fumeur en calotte papale decouvrant le mystere de la trinite dans les seins et la colombe d'u.
Le rideau de "parade."
Russet and brown condor, 39 × 15 × 41 cm.
La salle a manger a Vauvenargues.
Le salon de Picasso rue La Boetie.
Le sauvetage de la noyee, III.
Le sauvetage.
Science et charite.
Le sculpteur et sa statue.
La sculpteur.
Sculpture de Marie-Therese, XX(e) etat.
Seated bather.
Seated woman.
Sept danseuses (d'apres une photographie: Olga au premier plan).
She-goat.
The sigh.
Sleeping peasants.
Small incised face, 32 × 38 cm.
Songs et mensonges de Franco I (Sueno y mentira de Franco I), I(er) etat.
Songs et mensonges de Franco I (Sueno y mentira de Franco I), II(er) etat.
Songs et mensonges de Franco I (Sueno y mentira de Franco II), I(er) etat.
Songs et mensonges de Franco I (Sueno y mentira de Franco II), IV(er) etat.
Songs et mensonges de Franco II (Sueno y mentira de Franco II), V(er) etat.
Spotted face, 32 × 38 cm.
Still life "job."
Still life with candlestick on black and white ground, 32 × 38.5 cm.
Still life with fruit and glass.
Still life with glass and apple, 32 × 38.5 cm.
Still life with grapes and scissors on a beige and brown ground, 32 × 38.5 cm.
Still life with grapes on a reddish-brown ground, 32 × 38.5 cm.
Still life with liqueur bottle.
Still life with red bull's head.
Still life with spoon. White earthenware, 33 × 33 cm. Original print. Edition.
Still life with tomatoes on a reddish-brown ground, 32 × 38.5 cm.
The striped bodice.
Student with pipe.
Studio in a painted frame.
Studio with plaster head.
The studio.
Study for two nudes.
Sun (in pastel crayon), 33 × 26 cm.
La table.
Le taureau, I(er) etat.
Le taureau, II(er) etat.
Le taureau, III(er) etat.
Le taureau, IV(er) etat.
Le taureau, IX(er) etat.
Le taureau, V(er) etat.
Le taureau, VI(er) etat.
Le taureau, VII(er) etat.
Le taureau, VIII(er) etat.
Le taureau, X(er) etat.
Le taureau, XI(er) etat.
Terrine: pigeon aux petits pois.
Tete d'animal a cornes.
Tete d'homme.
Tete de femme (Fernande).
Tete de femme (projet pour un monument).
Tete de femme a la resille.
Tete de femme et tete de chouette.
Tete de femme.
Tete de Guillaume Apollinaire (frontispice de la premiere edition d'Alcools).
Tete de taureau (minotaure).
Tete de taureau.
Tete et bras de platre.
Tete.
Theatre: autour de Rembrandt.
Three black fish, diameter 43 cm.
Three fish in black and blue, diameter 41 cm.
Three musicians.
Three women at the spring.
La toilette.
Les toits bleus.
Tomette en terre cuite rose, decor: hibou (double face).
Tomette hexagonale en terre cuite rose, decor: chouette (recto-verso).
Tortured face, surrounded by palm leaves. White earthenware, diameter 42 cm.
Tortured faun's face. White earthenware, diameter 42 cm.
Trois femmes a la fontaine (la source).
Trois femmes.
Les trois hollandaises.
Two acrobats with a dog.
Two fish, incised, ivory with green accents, 31 × 38.5 cm.
Two fish, one blue and one beige, on an ivory ground, 31 × 38.5 cm.
Two fish, one reddish-brown and one blue, in relief, 31 × 38.5 cm.
Two fried eggs and a piece of black pudding on a grey ground, 31 × 38.5 cm.
Two nudes.
Two-handled vase height 19.5 cm., diameter at base 16 cm.
Une anatomie: trois femmes, VIII.
Une anatomie: trois femmes, X.
L' usine a Horta de Ebro.
Variation d'apres "Les Menines" de Velazquez: Isabel de Velasco, Maria Barbola, Nicolasico Pertusato et le chi.
Variation d'apres "Les Menines" de Velazquez: Isabel de Velasco.
Variation d'apres "Les Menines" de Velazquez: l'infante Margarita Maria.
Variation d'apres "Les Menines" de Velazques: les pigeons.
Variation d'apres "Les Menines" de Velazquez: vue d'ensemble.
Variation sur "Le dejeuner sur l'herbe" de Manet, plateau du fond tire en bleu gris.
Variation sur "Le dejeuner sur l'herbe" de Manet, superposition des plateaux.
Vase a pieds et deux anses en terre cuite: homme a col casse peint sur un cote.
Vase decorated with brushstrokes, 24 × 28 cm.
Vase ventru en terre cuite a pans coupes avec deux anses.
Vase with goats height 23 cm., diameter at top 12 cm., diameter at bulge 20 cm.
Vase with three masks 24.5 × 28 cm.
Vase-femme.
Le verre d'absinthe.
Verre et des.
Verre et journal.
Verre, pipe, as de trefle et de.
La verre.
La vie.
La vieux guitariste aveugle.
Violin and grapes.
Violon "Jolie Eva."
Violon, verre, pipe et encrier.
Violon.
Visage aux deux profils.
Visage de Marie-Therese Walter.
Vive la France.
Vue sur le monument de Colomb.
Watermelon with knife and fork, 30 × 37 cm.
White earthenware, 32 × 38.5 cm.
White earthenware, diameter 42 cm.
White earthenware, height 38 cm., diameter at the top 10 cm., diameter at the bulge 45 cm.
Woman by a window.
Woman in a chair.
Woman in ivory and brown under glaze, 35 × 11 × 11 cm.
Woman with a flowered hat.
Woman with a long neck in pink and black clay, 28 × 9 cm.
Woman with a mandolin.
Woman with amphora, emgobe decoration on natural ground, 45 × 32 × 14 cm.
Woman with flowered hat. Ochre earthenware, 33 × 25 cm.
Woman's face and five potter's marks on ochre earthenware, 31.5 × 27 cm.
Woman's face, 22 × 12 × 8 cm.
Woman's head 32 × 38 cm.
Woman's head painted. Variation on No. 190.
Woman's head, painted, height 24 cm., total width 19 cm.
Woman's head.
Woman, 29 × 9 × 7 cm.
Woman, engobe decoration under beige-brown glaze, 30 × 13 × 13 cm.

Tamaris, Cine.
Les parapluies de Cherbourg.

TaurusFilm, GmbH & Company (a Kirch Gruppe Company).
Die Abenteuer des Grafen Bobby.

Ach Egon.
Der Adler vom Velsatal.
Adolphe ou l'age tendre.
Les adventures de Rabbi Jacob.
Agent 505-Todesfalle Beirut.
Alle Menschen werden Brueder.
Alle Tage ist kein Sonntag.
Allotria.
Alraune (1930).
Alraune (1952).
Als ich noch ein Waldbauernbub war.
Alt Heidelberg.
Der alte und der junge Koenig.
Alter Kahn und junge Liebe.
Am Brunnen vor dem Tore.
Amici per la pelle.
An einem Freitag in Las Vegas.
Der Angriff.
Anna.
Ansichten eines Clowns.
Die Antwort kennt nur der Wind.
Assassino made in Italy.
Auf der Reeperbahn nachts um halb eins (1954).
Auf der Reeperbahn nachts um halb eins (1969).
Aus einem deutschen Leben.
Banktresor 713.
Baraka sur X 13.
Die Beine von Dolores.
Das Bekenntnis der Ina Kahr.
Bekenntnisse des Hochstaplers Felix Krull.
Bel Ami.
Bellissima.
Berlin-Alexanderplatz.
Der Bettelstudent.
Bie der blonden Kathrein.
Bis zum Ende aller Tage.
Bis zur bitteren Neige.
Blaue Jungs.
Bobby Dodd greift ein.
The Bolshoi ballet.
Die Bruecke.
Buddenbrooks, Teil 1.
Buddenbrooks, Teil 2.
Buddenbrooks.
Canaris.
La carroza d'oro.
Il castello dei morti vivi.
Charley's Tante (1955).
Charley's Tante (1963).
Die Christel von der Post.
Die Czardasfuerstin.
Die Deutschmeister.
Die Diamantenhoelle am Mekong.
Doktor Faustus.
Das Donkosakenlied.
Das doppelte Lottchen.
Dort oben, wo die Alpen glueh'n.
Dr. med. Hiob Praetorius.
Drei Mann in einem Boot.
Die drei von der Tankstelle.
Die Dreigroschenoper.
Das Dreimaederlhaus.
Duell vor Sonnenuntergang.
Dynamit in gruener Seide.
Echappement libre.
Echo der Berge.
Der Edelweisskoenig.
Eheinstitut Aurora.
Einer von uns beiden.
Einmal noch die Heimat seh'n.
Der eiserne Gustav.
Die Elixiere des Teufels.
Emil und die Detektive (1931).
Emil und die Detektive (1954).
Ein Engel auf Erden.
Das Erbe von Bjoerndal.
Ercole al centro della terra.
Ercole alla conquista di Atlantide.
Erinnerungen an die Zukunft.
Eroica.
Erotica.
Erotik im Buero—Was jeder Personalchef gern verschweigt.
Es.
Faust.
Ferien vom ich.
Il figlio dello sceicco.
Die Fischerin vom Bodensee.
Die Fledermaus.
Das fliegende Klassenzimmer.
Flotte Biester auf der Schulbank.
Der Fluch des schwarzen Rubin.
Fluchtweg St. Pauli—Grossalarm fuer die Davidswache.
Die Flusspiraten vom Mississippi.
Foehn.
Die Foersterchristel.
Foersterliesel.
Freddy und der Millionaer.
Freddy unter fremden Sternen.
Der froehliche Wanderer.
Der Fruehreifen-Report.
Der Fuchs von Paris.
Fuenf vor 12 in Caracas.
Gewitter im Mai.
Gitarren klingen leise durch die Nacht.
Die glaeserne Zelle.
Der Glockengiesser von Tirol.
Gluecklich Reise.
Die Goldsucher von Arkansas.
Gott schuetzt die Liebenden.
Graefin Mariza.
Graf Bobby, der Schrecken des wilden Westens.
Le grain de sable.
La grande sauterelle.
Il grande silenzio.
Gruen ist die Heidi (1951).
Gruen ist die Heidi (1972).
Gruss und Kuss vom Tegernsee.
Guardie e ladri.
Guerre secrete.
Gustav Adolf's page.
Das haben die Maedchen gern.
El Hakim.
Der Hauptmann von Koepenick (1931).
Der Hauptmann von Koepenick (1956).
Das Haus in Montevideo.
Heidelberger Romanze.
Heidi.
Heimat-Deine Lieder.
Heimatland.
Heimatlos.
Heintje—Ein Herz geht auf Reisen.
Heintje—Einmal wird Sonne wieder scheinen.
Heintje—Mein bester Freund.
Heisse Braeute auf der Schulbank.
Heisser Hafen Hongkong.
Herrenpartie.
Herrliche Zeiten im Spessart.
Im weissen Roessl (1960).
Das indische Grabmal (1938).
Das indische Grabmal (1959).
Die jungen Tiger von Hongkong.
Kaept'n Bay-Bay.
Kaiserjaeger.
Wie einst Lili Marleen (1956).

Teledis Company, Ltd.
A mirage de Rome.
A Venise une nuit.
Accroche coeur.
L' affaire des poisons.
L' alibi.
Allemagne annee zero.
Andalousie.
Annette et la dame blonde.
Aux deux colombes.
Bataille de France (1939–1940).
Belle de Cadix.
Belles mais pauvres.
Le ble en herbe.
Bonsoir Paris, Bonjour l'amour.
Un calner de bal.
Caprices.
La cavalcade des heures.
Cecile est morte.
Cette vieille canaille.
Cinderella.
Comme un cheveu sur la soupe.
Crime et chatiment.
Un dejeuner de soleil.
Le dernier des size.
Le dernier sou.
Les derniers jours ete Pompei.
Destinees.
Les deu orphelines.
Deux hommes dans Manhattan.
Diabolique Docteur Z.
Le dialogue des Carmelites.
Dossier noir.
Douce.
Du mouron pour les petits oiseaux.
Fabiola (2 epoques).
Fausse maitresse.
La ferme au loups.
Francois Villon.
Gibraltar.
Le grand jeu.
Guerre secrete.
Les guerriers.
L' habit vert.
Hercule.
L' homme du jour.
J'accuse.
J'etais une aventuriere.
Jaloux comme un tigre.
Je chante.
Jeanne ace bucher.
Jenny.
Le Joueur.

Katia.
Lady Paname.
Les lions sont laches.
Le magot de Josefa.
La main du Diable.
La maison du maltais.
La maison du silence.
Mam'zelle Bonaparte.
Le mariage de chiffon.
Les maudits.
La millieme fenetre.
La minute de verite.
Moi et les hommes de 40 ans.
Mollenard.
Mysteres d'Angkor.
La neige etait sale.
Neuf garcons, un coeur.
Ni vu ni connu.
Normandie niemen.
La nuit est mon royaume.
Oh que mambo.
Papa, maman, la bonne, et moe.
Papa, maman, ma femme, et moi.
Paris Palace Hotel.
La part de l'ombre.
Peche de jeunesse.
Pieges.
Pirates du rail.
Piste du sud.
Port Arthur.
Le sang de martyrs.
Sept hommes et une garce.
Sept peches capitaux.
Tous les chemins mennent a Rome.
Les yeux de l'amour.

Teledis Company, SA.
Adhemar.
Le beau Serge.
Les cousins.
Desire.
Destin fabuleux de Desiree Clary.
Faisons un reve.
Mon pere avait raison.
Le mot de Cambronne.
Nouveau Testament.
Les perles de la couronne.
Quadrille.
Remontons les Champs Elysees.
Le tresor de Cantensc.

Teledis. SEE Lumiere & Teledis.
Teledis. SEE UGC DA International (UGC DAI) & Teledis.

Tezuka Productions Company, Ltd.
Janguru taitei (1950–1954).
Tetsuwan atom (1952–1968).

Toho/Mifune Productions.
Furinkazan.

Tovey, Doreen.
Cats in the belfry.

UGC DA International (UGC DAI).
A nous les petites Anglaises.
Accroche-tol, y'a du vent!
Adorables demons.
Ainsi finit la nuit.
Alerte au deuxieme bureau.
Alerte en Mediterranee.
Un aller simple.
Allo . . . je t'aime.
L' ambitieuse.
Un ami viendra ce sour.
Un amour de pluie.
L' animal.
L' appel du silence.
Apres l'orage.
Apres vous Duchesse.
L' Auberge rouge (black and white version).
L' Auberge tragique.
Les aventures de Gil Blas de Santillane.
L' aventurier de Seville.
Bal de nuit.
Une balle suffit.
Les bleus de la marine.
Une blonde comme ca.
Le bon dieu sans confession.
Le bossu.
Le bourgeois gentilhomme.
Les branches a Saint-Tropez.
Brelan d'as.
Les bresiliennes du bois de Boulogne.
Breves amours.
C'est la faute d'Adam.
La cage.
Canal grande.
Canet rock.
Cargaison clandestine.
Cargo pour la reunion.
Carrefour des passions.
Le carrousel fanstastique.
Casse tete chinois pour un judoka.
Catherine, il suffit d'un amour.
Un certain Monsieur Jo.
Cet homme est dangereux.
Chantage.
Chaque jour a son secret.
Chaste et pure.
Chateaux en Espagne.
Le cheik blanc.
Cheri fais-moi peur.
Un clair de lune a Maubeuge.
Les clandestines.
Les clandestins.
Coincidences.
Les compagnes de la nuit.
Compartiment de dames seules.
Le coq de regiment.
Coup de bambou.
Coup dur chez les mous.
Le couteau sous la gorge.
Crainquebille.
Le crime de David Levinstein.
Croisieres siderales.
La cuisine au beurre (black & white version).
La cuisine au beurre.
La danseuse nue.
La danseuse rouge.
Demain l'Afrique.
Le dernier tournant.
Derniere aventure.
Les dernieres vacances.
Des garcons et des filles.
Des quintuples au pensionnat.
Le desir mene les hommes.
Desnuda inquietud.
Deux de l'escadrille.
Les deux gamines.
Deuxieme bureau contre inconnu.
Le diable souffle.
Le dindon.
Les distractions.
Un divorce heureux.
Domenica.
Don Pasquale.
Une drole de bourrique.
Dupont-Barbes.
Les duraton.
L' ecole des cocottes.
L' ecole des journalistes.
L' ecole est finie.
L' eden et apres.
Embraye . . . bidasse ca fume.
L' emigrante.
Les enfants du soleil.
Les enfants ne sont pas a vendre.
L' escadron blanc.
L' escapade.
Et dix de fer.
Et ta soeur.
Eternel conflit.
La faile.
La famille pont-biquet.
Les fausses confidences.
La femme fatale.
La femme nue.
Une fille cousue de blanc.
Fils de France.
La foire aux femmes.
Fortune de Marseille.
Franco DePort.
Fumee blonde.
Funny boy.
Le garcon sauvage.
Georges braque ou le temps different.
Gisele.
La grande marniere.
Les grands moyens.
Le guerisseur.
Guinguette.
Hallucinations sadiques.
Histoires interdites.
Hitler . . . connais pas.
L' homme a femmes.
L' homme de Mykonos.
L' homme qui cherche la verite.
L' homme qui ment.
L' homme qui revient de loin.
L' homme qui valait des milliards.
L' homme sans nom.
Ils ont tue Jaures.
L' increvable.
Jamais deux sans trois.
Je prends la chose du bon cote.
Le jeu avec le feu.
Les jeunes maris.
Un jour avec vous.
Le journal d'un fou.
Les joyeuses colonies de vacances.
Le Judoka, agent secret.
King and country.
La lecon particuliere.
Leguignon guerisseur.
Il letto in piazza.
Lettre ouverte.
La loi.
La louve solitaire.

Lucrece.
Lucrece Borgia.
Les lumieres du soir.
Ma femme, ma vache, et moi.
Ma femme, mon gosse, et moi.
Ma petite folie.
Ma tante dictateur.
Macao, l'enfer du jeu.
Mademoiselle Josette, ma femme.
La main a couper.
La main chaude.
La maison dans la dune.
Les maitres nageurs.
Le mandai d'amener.
Mannon 70.
Le marchand de filles.
Les marchandes d'illusions.
Match contre la mort.
Mayerling 1.
Mefiez-vous fillettes.
La megere apprivoisee.
Mensonges.
Mermoz.
Message chiffre.
Mieux vautetre riche et bien portant que pauvre et mal fichu.
Mission speciale a Caracas.
Le mome.
Mon ami le cambrioleur.
Le monde est comme ca.
Monsieur De Pourceaugnac.
Monsieur Leguignon lampiste.
Monsieur personne.
Mont-dragon.
Les mordus de Paris.
Les mordus.
La morte saison des amours.
La moucharde.
Moumou.
N'a pris les des.
Napoleon Bonaparte, empereur des Francais.
Les naufrageurs.
Neige.
Nick Carter is breaking everything.
Nina.
Une nuit aux Baleares.
Une nuit de folies.
La nuit des suspectes.
La nuit obscure.
Les nuits blanches de Saint-Petersbourg.
Obsession.
Ou est passe Tom?
Le pain des Jules.
Les parias de la gloire.
La parte du feu.
Pas de pitie pur les caves.
Pas de vacances pour monsieur le maire.
Pas si bete.
Le passager clandestin.
Le passe muraille (black and white version).
Passion.
Le peleton d'execution.
Pension Jonas.
Le pere lampion.
Les petits chats.
Picasso.
Plus de vacances pour le bon Dieu.
Le plus heureux des hommes.
La plus joli peche du monde.
Poker.
Police judiciaire.
La porteuse de pain.
Portrait robot.
Pouic-pouic (black and white vesion).
Pour une nuit d'amour.
Pour une poignee de diamants.
Pourvu qu'on ait l'ivresse.
La prisonniere.
Proces du Vatican.
Promesse a l'inconnue.
La provocation.
La punition.
Quai de Grenelle.
Quai du point du jour.
Quand sonnera midi.
Que les gros salaires levent le doigt.
Quelques pas dans la vie.
Quitte ou double.
Raft au deuxieme bureau.
Rak.
Rendez-vous avec la chance.
Requiem pour un caid.
Rien be va plus.
Rires de Paris.
Robinson Crusoe.
Robinson et le triporteur.
Le roi des camelots.
RPZ ... appelle Berlin.
Le route de Salina.
Le route napoleon.
Sacre leonce.
Le Saint mene la danse.
Salut les frangines.
San Antonio ne pense plus qu'a ca.
Le sang des tropiques.
La saut de l'ange.
La seconde verite.
Le secret de Madame Clapain.
Senso.
Serenade au Texas.
Service de nuit.
Sidi-Birahim.
Signe Charlotte.
Simplet.
Un soir a Marseille.
Un soir sur la plage.
Soldat Duroc, ca va etre ta fete.
Le solitaire passe a l'attaque.
La sonnette d'alarme.
La sorciere.
Sortileges.
Le souffle du desir.
Souis la griffe.
Soupcons.
Soyez les bienvenus.
Stella.
Stress.
Il suffit d'aimer.
Il suffit d'une fois.
Sur un arbre perche.
Surprise party.
Tamango.
Tapage nocturne.
La taverne du Poisson Couronne.
Telephone public.
Tempo di Roma.
Le temps des loups.
La tete dans le sac.
La tete du client.
Therese Martin.
Le toubib prend du galon.
Touchez pas aux blondes.
Tourbillon.
Trans-europ-express.
Un tresor de femme.
Les tricheurs.
Tricoche et cacolet.
Le triomphe de Michel Strogoff.
Les trois cousines.
Trois dans un moulin.
Trois de Saint-Cyr.
Trois femmes.
Ursule et Grelu.
Vacances Portugaises.
La vache et le prisonnier.
La valse de Paris.
Les veinards.
La vengeance du Doge.
Veronique ou l'ete de mes 13 ans.
Veronique.
Le Vicomite de Bragelonne.
Une vie de garcon.
La vie en rose.
La vie est belle.
La vie normale.
La vierge du Rhin.
Les vilaines manieres.
Le village magique.
Violence Charnelle.
Violettes imperiales.
Virginie.
Le visage des dieux.
Vive la liberte.
Vive la sociale.
Voir Venise et crever.
Le voleur de crime.
Voleur malgre lui.
Les voraces.
Vous interessez-vous a la chose?
Vous pigez?
Le voyage de noces.
Le voyage en douce.
Le vrai coupable.

UGC DA International (UGC DAI) & Teledis.
Lordinateur des pompes funebres.
Les Parisiennes.
Le pays d'ou je viens.
Le plus vieux metier du monde.
Quand minuit sonnera.
La rendez-vous.
Les sept peches capitaux.
La tour prend garde.

UGC DA. SEE Films Vendome (A. Osso and UGC DA) co-producers.
UGC DA. SEE Pathe Televison & UGC DA.
UGC DAI. SEE UGC DA International (UGC DAI) & Teledis.
UGC DAI. SEE UGC DA International (UGC DAI).
UGC. SEE Pathe & UGC.
Vandal. SEE Cogelda & Vandal.

Varda, Agnes.
Le bonheur.
Cleo de 5 a 7.
Les creatures.
Daguerreotypes.
La pointe courte.

Vera. SEE Cogelda & Vera.

Very.
Goupi mains rouges.

Victoria. SEE Cogelda, Plazza & Victoria.

Video Universal, S.A. de C.V.
El amor de mi bohio.
Amor salvaje.
Antesala de la silla electrica.
Bajo el manto de la noche.
Cabaret Shanghai.
El calvario de una esposa.
El charro del arrabal.
Contrabandistas del Caribe.
Crimen en la hacienda.
Cruel destino.
El derecho y el deber.
La Diosa de Thaiti.
Duelo en la Canada.
Embrujo antillano.
Eterna martir.
El fantastico mundo de los hippies.
El farol en la ventana.
Gangsters contra charros.
Historia de un gangster.
Hombres sin alma (serie percal).
Honraras a tus padres.
El infierno de los pobres.
Madre querida (2da version).
Madre querida (Ira version).
La maldicion de mi raza.
La mesera del cafe del Puerto.
Los mister ios del hampa.
Mujeres sin alma.
Organizacion criminal.
Pasiones infernales.
Pasiones tormentosas.
Perdicion de mujeres (serie percal).
Plazos traisioneros.
Que idiotas son los hombres!
Quiereme con musica.
El reino de los gangsters.
Sagrario.
Sandra.
Secretaria peligrosa.
Siboney.
El sindicato del crimen.
Tania la bella salvaje.
Te odio y te quiero.
Thaimi, la hija del pescador.
La tortola del Ajusco.
Una mujer de Oriente.
La virgen de la calle.
Zonga, el angel diabolico.

Walerstein, Gregorio.
A media luz los tres.
Acuerdate de vivir.
Aladino y la lampara maravillosa.
Amar fue su pecado.
Amor de adolescente.
Amor de la calle.
Amor de locura.
Amor en cuatro tiempos.
Amor vend ido.
Apasionada.
Arrabalera.
Los baarbaros del norte.
El caballo bayo.
Callejera.
El carinoso.
Casa de munecas.
Como pescar marido.
El corrido de Maria Pistolas.
La emboscada mortal.
El enmascarado de plata.
La entrega.
Especialista en chamacas.
La estatua de carne.
Los fenomenos de futbol.
Las figuras de arena.
Gutierritos.
He matado a un hombre.
Los hermanos del hierro.
El hijo de Gabino Barrera.
El joven del carrito.
Los jovenes.
El justiciero vengador.
Lupe Balazos.
El medio pelo.
El mensaje de la muerte.
El Mexicano.
Mi madre es culpable.
Mi papa tuvo la culpa.
El misterio del carro express.
La mujer desnuda.
La mujer que yo ame.
Napoleoncito.
No se mande profe.
Orquideas para mi esposa.
Pasionaria.
El picaro.
Piernas de oro.
Reventa de esclavas.
Si fuera una cualquiera.
Si volvieras a mi.
Sobre el muerto las coronas.
Te sigo esperando.
Las tres pelonas.
La ultima lucha.
Una movida chueca.
Vuelve el Norteno.
Vuelven los Argumedo.
Yo soy muy macho.

Weisweiller, Canale.
Les enfants-terribles.

Dated: December 16, 1997.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 97–33232 Filed 12–18–97; 8:45 am]
BILLING CODE 1410–30–P

Reader Aids

Federal Register

Vol. 62, No. 244

Friday, December 19, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids — 202–523–5227

E-mail — info@fedreg.nara.gov

Laws

For additional information — 523–5227

Presidential Documents

Executive orders and proclamations — 523–5227

The United States Government Manual — 523–5227

Other Services

Electronic and on-line services (voice) — 523–4534

Privacy Act Compilation — 523–3187

TDD for the hearing impaired — 523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626 1
63627–63824 2
63825–64130 3
64131–64262 4
64263–64510 5
64511–64676 8
64677–65004 9
65005–65196 10
65197–65308 11
65309–65592 12
65593–65740 15
65741–65990 16
65991–66250 17
66251–66494 18
66495–66812 19

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987
7061 66251

Executive Orders:
13069 65989
13070 66493

Administrative Orders:
Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005
No. 96–7 of December 5, 1997 66253
No. 96–8 of December 5, 1997 66255

5 CFR

213 63627
315 63627
410 63630
531 65311
591 63630

7 CFR

2 65593
17 63606
58 66257
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741, 65991
927 66495
948 66497
1412 63441

Proposed Rules:
51 66033
70 63471
205 65850
610 64174
729 63678
800 66036
810 66036
966 66312
980 66312
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

50 66259
78 ..... 64134, 65596
91 64265
93 64265
94 ..... 65747, 65999

Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 63825
70 63825
73 63640

Proposed Rules:
40 65039
50 ..... 63892, 63911, 66038
70 63911

11 CFR

Proposed Rules:
114 65040

12 CFR

8 64135
202 66412
203 66259
226 ..... 63441, 66179
265 64996
506 66260
516 64138
543 64138
544 66260
545 ..... 64138, 66260
552 ..... 64138, 66260
556 64138
559 66260
560 66260
561 66260
563 ..... 64138, 66260
565 66260
567 66260
575 66260
614 63644
703 64146
704 64148
790 65197
791 64266
934 65197
1806 64440

Proposed Rules:
225 64997
226 64769

404.....64177
405.....64177
708a.....64185
708b.....64187

14 CFR

39.....63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65196, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750, 66001, 66264, 66266, 66268, 66269, 66271, 66498, 66500, 66502, 66506, 66508, 66511, 66512
71.....64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606, 66179
73.....65359, 65360, 66002
91.....66248
93.....66248
95.....65016, 65361, 65363
97.....63447, 63449, 63451
121.....65202, 66248
135.....66248
255.....63837, 66272
1260.....63452

Proposed Rules:

39.....63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65768, 66315, 66317, 66560, 66561, 66562, 66563, 66565, 66567
71.....63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631

15 CFR

295.....64682
922.....66003

Proposed Rules:

806.....65043
960.....65384

17 CFR

15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

Proposed Rules:

1.....66569
33.....66569

18 CFR

35.....64688
37.....64715
401.....64154

19 CFR

4.....66521

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:

211.....64186
422.....63681

21 CFR

101.....63647, 63653, 64634, 66275
179.....64102, 64107
211.....66522
520.....65020
524.....65752
558.....66522
866.....66003

Proposed Rules:

200.....64048
808.....65384, 66179
878.....65770
1020.....65235
1308.....64526

22 CFR

Proposed Rules:

22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:

655.....64324

24 CFR

100.....66424
103.....66424
201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

Proposed Rules:

180.....66488

25 CFR

Proposed Rules:

514.....65775

26 CFR

Proposed Rules:

1.....64190, 66575

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203, 66275
4011.....65607
4022.....65607
4044.....65609, 65610

Proposed Rules:

1910.....65388
4022.....66319

30 CFR

206.....65753

Proposed Rules:

56.....65777
57.....64789, 65777
62.....65777
70.....65777
71.....65777
75.....64789
917.....63684, 65044
926.....63685, 64327
936.....65632

31 CFR

500.....64720

Proposed Rules:

356.....64528

32 CFR

175.....66523
320.....65020

Proposed Rules:

199.....64191
901.....63485

33 CFR

100.....65021
117.....63847, 66005, 66006
160.....65203
165.....65022

Proposed Rules:

117.....66039

36 CFR

701.....64279

Proposed Rules:

1.....63488
14.....63488
242.....66216
327.....64192

37 CFR

202.....63657

Proposed Rules:

253.....63502, 65777
255.....63506, 65778

38 CFR

4.....65207
17.....64722
21.....63847, 63848, 66277
36.....63454

Proposed Rules:

21.....66320
20.....64790

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

9.....66278
52.....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613, 66007, 66279
62.....65616
63.....64736, 65022
64.....63662
70.....63662
71.....63662
72.....66278
73.....66278
74.....66278
75.....66278
77.....66278
78.....66278
80.....63853
81.....64284, 64725, 65025
180.....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369, 66008, 66014, 66020
185.....64048, 64284, 64287, 66020
186.....64048, 66020
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738

Proposed Rules:

51.....64532
52.....63687, 64329, 64543, 647389, 65046, 65634, 66040, 66042, 66043, 66046, 66576
62.....65635
63.....65049, 66049
80.....63918
81.....63687, 66578
112.....63812
194.....64327
441.....66182
721.....64738

41 CFR

51–2.....66527
51–4.....66527
51–6.....66527
105–60.....64740
301.....63798

42 CFR

416.....66726
417.....63669
482.....66726
485.....66726
489.....66726

Proposed Rules:

1001.....63689, 65049

43 CFR

418.....66442
3740.....65376
3810.....65376
3820.....65376

Proposed Rules:

4.....64544

44 CFR

61.....66026

45 CFR

205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301
Ch. XI.....66529

Proposed Rules:

1302.....65778

46 CFR

114.....64303
116.....64303
117.....64303
118.....64303
121.....64303

122.....64303
175.....64903, 65739
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
69.....65619, 66029
73.....63674, 65392, 65764, 65765, 65766, 66030, 66031, 66294, 66295, 66530
74.....65392

Proposed Rules:

1.....65780, 66321
21.....65780
32.....65053
73.....63690, 65781, 65782, 66323, 66324
74.....65780

48 CFR

Ch. 1.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19.....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31.....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42.....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52.....64914, 64915, 64916
53.....64914, 64916, 64934, 64936, 64940

Proposed Rules:

204.....65782
1843.....64545
1852.....64545

49 CFR

171.....65188
219.....63464, 63675
225.....63675
240.....63464
1241.....65378

Proposed Rules:

Ch. X.....64193
195.....65635
213.....65401
243.....65479
572.....64546

50 CFR

17.....64306, 66295
20.....63608
222.....63467
600.....66531
622.....63677, 66304
648.....63872, 64765, 66304
660.....63876
679.....63877, 63878, 63880, 64760, 65379, 65622, 65626, 66031, 66311

Proposed Rules:

14.....64335
17.....64337, 64340, 64799, 64800, 65237, 65783, 65787, 66325, 66583
23.....64347
100.....66216
226.....66584
227.....66325
229.....65402
425.....66325
600.....65055
622.....65056
648.....65055
660.....66049
679.....63690, 65402, 65635, 65638, 65644

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 19, 1997

DEFENSE DEPARTMENT
Closures and realignment:
Revitalizing base closure communities and community assistance—
Lease back of property transferred to local redevelopment authorities; published 12-19-97

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; published 11-19-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arizona et al.; published 12-19-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Decoquinate and bacitracin zinc; published 12-19-97

INTERIOR DEPARTMENT
National Park Service
National Park System:
Safety belts; required use by all motor vehicle occupants; published 11-19-97

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Affidavits of support on behalf of immigrants; published 10-20-97

ARTS AND HUMANITIES, NATIONAL FOUNDATION
National Foundation on the Arts and the Humanities
Organization, functions, and authority delegations:
Institute of Museum Services; name changed to Institute of Museum and Library Services; published 12-19-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
General Electric Co.; published 10-20-97

TREASURY DEPARTMENT
Customs Service
Vessels in foreign and domestic trades:
Nations entitled to special tonnage tax exemptions; list additions—
Hong Kong; published 12-19-97¶

RULES GOING INTO EFFECT DECEMBER 21, 1997

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Current good manufacturing practice—
Positron emission tomography radiopharmaceutical products; revocation; published 12-19-97¶

RULES GOING INTO EFFECT DECEMBER 22, 1997

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Peas; published 11-20-97

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Heavy-duty engines, highway-operated; emissions control; published 10-21-97
Air programs:
Ambient air quality surveillance—
Lead ambient air quality monitoring; shift of focus from mobile sources to stationary point sources; published 11-5-97
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Mexico et al.; published 10-21-97
Air quality implementation plans; approval and promulgation; various States:
Minnesota; published 10-23-97
Virginia; published 10-21-97
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Kentucky et al.; published 10-23-97

INTERIOR DEPARTMENT
Land Management Bureau
Land resource management:
Disposition; sales—
Townsites; land disposal for school purposes; CFR part removed; published 11-21-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Suisun thistle, etc.; published 11-20-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
de Havilland; published 11-10-97
Boeing; published 11-17-97

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Radioactive materials transportation; radiation protection program requirements; published 12-22-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (tart) grown in—
Michigan et al.; comments due by 12-22-97; published 10-23-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Karnal bunt disease—
Texas et al.; comments due by 12-24-97; published 11-24-97
Mediterranean fruit fly; comments due by 12-22-97; published 10-21-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic surf clam and ocean quahog; comments due by 12-24-97; published 11-24-97

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Nonroad diesel engines; emission standards; comments due by 12-22-97; published 11-18-97
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 12-22-97; published 11-20-97
New Jersey; comments due by 12-22-97; published 11-20-97
Hazardous waste program authorizations:
Alabama; comments due by 12-22-97; published 11-21-97
Georgia; comments due by 12-24-97; published 11-24-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyromazine; comments due by 12-22-97; published 10-22-97
Pyrithiobac sodium salt; comments due by 12-22-97; published 10-22-97

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Private land mobile services—
Public safety communications in 746-806 MHz band; technical and spectrum requirements development; comments due by 12-22-97; published 11-7-97
Radio stations; table of assignments:
Alaska; comments due by 12-22-97; published 11-19-97
Oregon; comments due by 12-22-97; published 11-19-97
Texas; comments due by 12-22-97; published 11-19-97
Utah; comments due by 12-22-97; published 11-19-97
Television broadcasting:
Cable television systems—
Inside wiring; comments due by 12-23-97; published 11-14-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Biological products:
Manufacturing errors and accidents reporting; comments due by 12-22-97; published 9-23-97
Human drugs:
Inhalation solution products; sterility requirements; comments due by 12-22-97; published 9-23-97
New drug applications—
Products for life-threatening diseases; clinical hold; comments due by 12-23-97; published 9-24-97

INTERIOR DEPARTMENT
Indian Affairs Bureau
Fish and wildlife:
Columbia River Indian in-lieu fishing sites; use; comments due by 12-23-97; published 10-28-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Topeka shiner; comments due by 12-23-97; published 10-24-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Maryland; comments due by 12-22-97; published 11-21-97
Montana; comments due by 12-22-97; published 12-5-97

INTERNATIONAL TRADE COMMISSION
Practice and procedure:
Import investigations; antidumping and countervailing duties; comments due by 12-22-97; published 10-23-97

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Permanent residence status eligibility restrictions; temporary removal; comments due by 12-22-97; published 10-23-97

POSTAL SERVICE
Domestic mail Manual:
Commercial mail receiving agency; delivery of mail; procedure clarification; comments due by 12-24-97; published 11-24-97

RAILROAD RETIREMENT BOARD
Railroad Retirement Act:
Annuity eligibility; comments due by 12-22-97; published 10-23-97

TRANSPORTATION DEPARTMENT
Coast Guard
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW):
Licensing and documentation of personnel serving on U.S. seagoing vessels; comments due by 12-23-97; published 6-26-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airmen certification:
Robinson model R-22 or R-44 helicopters; pilots and certified instructors special training and experience requirements; comments due by 12-22-97; published 11-21-97
Airworthiness directives:
Pratt & Whitney Canada; comments due by 12-23-97; published 10-24-97
Airworthiness standards:
Special conditions—
Cessna model 525 Citation Jet airplane; comments due by 12-22-97; published 11-20-97
EXTRA Flugzeugbau GmbH EA-400 airplane design; comments due by 12-22-97; published 11-20-97
Class E airspace; comments due by 12-22-97; published 11-10-97

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Traffic operations:
Traffic control devices; national standards—
Uniform traffic control devices manual; railroad-highway grade crossings; comments due by 12-22-97; published 10-21-97

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Track safety standards:
Miscellaneous amendments
Comment request; comments due by 12-22-97; published 12-12-97

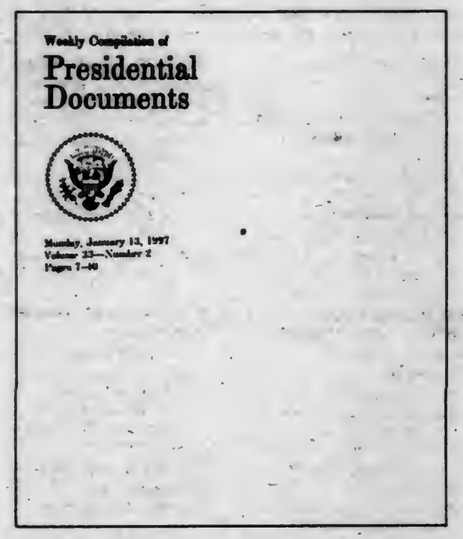
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Hazardous liquid and carbon dioxide—
Pressure testing older pipelines; comments due by 12-22-97; published 10-21-97

TREASURY DEPARTMENT
Fiscal Service
Financial management services:
Administrative wage garnishment; comments due by 12-22-97; published 11-21-97

VETERANS AFFAIRS DEPARTMENT
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Continuation of representation following claimant's death; comments due by 12-22-97; published 10-23-97

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5420

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

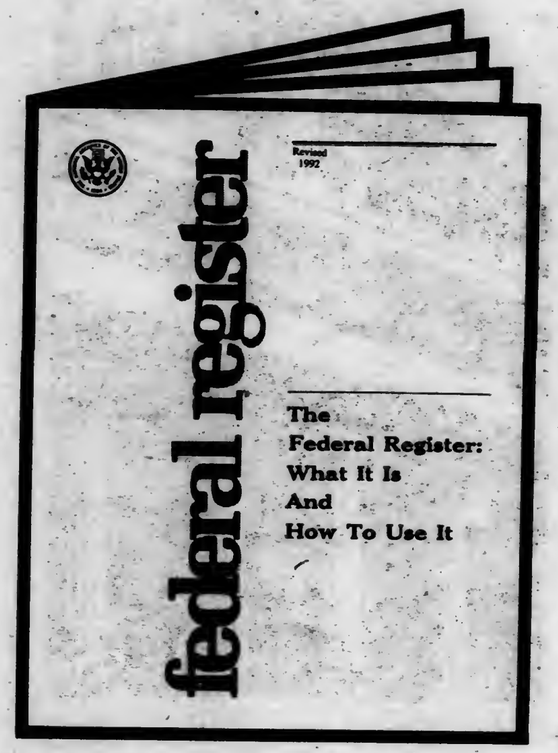
(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers
Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

Charge your order. It's Easy!
To fax your orders (202)-512-2250

☐ **YES,** please send me the following:

_____ copies of **The Federal Register - What it is and How To Use it,** at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) ***Thank you for your order!***

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5421

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions for one year:

___ **LSA (List of CFR Sections Affected),** (LCS) for $27 per year.
___ **Federal Register Index** (FRSU) $25 per year.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers
Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFR  SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
AFRDO  SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code:
* 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐**YES,** please enter my subscriptions as follows:

___ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

___ subscriptions to **Federal Register,** *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. (Price includes regular domestic postage and handling, and is subject to change.) International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
❑ Do not make my name available to other mailers
Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

105th Congress, 2nd Session, 1998

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 105th Congress, 2nd Session, 1998.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

S3

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **PUBLIC LAWS** for the 105th Congress, 2nd Session, 1998 for $190 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) 12/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–22–97
Vol. 62 No. 245

federal register

Monday
December 22, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106
133

12–22–97
Vol. 62 No. 245
Pages 66813–66972

federal register

Monday
December 22, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 245
Monday, December 22, 1997

Agency for Health Care Policy and Research
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66870–66871
Medical technology assessments:
Prostate-specific antigen testing in patients with benign prostatic hyperplasia, 66871

Agricultural Marketing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66845

Agriculture Department
See Agricultural Marketing Service
See Cooperative State Research, Education, and Extension Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Air Force Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66850

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Injury prevention and control research program, 66871–66876

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66877–66878

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Cooperative State Research, Education, and Extension Service
NOTICES
Meetings:
Forestry Research Advisory Council, 66845–66846

Copyright Office, Library of Congress
RULES
Copyright office and procedures:
Copyright claims; group registration of serials, 66822

Customs Service
NOTICES
Textile costumes; tariff classification, 66891–66893

Defense Department
See Air Force Department
See Navy Department

Defense Nuclear Facilities Safety Board
RULES
Freedom of Information Act; implementation, 66815–66816

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66852–66853
Grants and cooperative agreements; availability, etc.:
Centers for independent living program, 66853–66854
National Institute on Disability and Rehabilitation Research—
Rehabilitation research and training centers and disability and rehabilitation research projects, 66922–66929
Vocational rehabilitation service projects for American Indians with disabilities, 66854–66855

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Fernald Site, 66855
Oak Ridge Reservation, 66855–66856

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
New York, 66822–66825
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Inspection/maintenance program requirements; on-board diagnostic checks, 66841–66843
Air quality implementation plans; approval and promulgation; various States:
New York, 66843–66844
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66862–66864

Farm Credit Administration
RULES
Farm credit system:
Loan policies and operations—
Interest rates and charges, 66816–66818

Federal Aviation Administration
RULES
Class E airspace, 66818–66819
PROPOSED RULES
Class D and Class E airspace, 66838–66840
Class E airspace, 66840–66841
NOTICES
Environmental statements; availability, etc.:
Miami International Airport, FL, 66886

Passenger facility charges; applications, etc.:
Philadelphia International Airport, PA, 66886–66887

Federal Communications Commission
RULES
Radio stations; table of assignments:
Texas, 66826

Federal Contract Compliance Programs Office
RULES
Government contractors; affirmative action requirements; EO 11246 implementation
Reporting and recordkeeping requirements and correction, 66970–66971

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 66864

Federal Election Commission
PROPOSED RULES
Contribution and expenditure limitations and prohibitions:
Corporate and labor organizations—
Association member; definition, 66832–66838

Federal Energy Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Colorado Interstate Gas Co., 66859–66860
KN Wattenberg Transmission L.L.C., 66860–66862
Hydroelectric applications, 66862
Applications, hearings, determinations, etc.:
Florida Gas Transmission Co., 66856
Florida Power Corp., 66856
Iroquois Gas Transmission System, L.P., 66856
Liberty Power, Ltd., 66856–66857
Nautilus Pipeline Co., L.L.C., 66857
Ouachita River Gas Storage Co., L.L.C., 66857–66858
Panhandle Eastern Pipe Line Co., 66858
Shell Gas Pipeline Co., 66858
Williston Basin Interstate Pipeline Co., 66859

Federal Housing Finance Board
NOTICES
Privacy Act:
Systems of records, 66865

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 66865–66866
Formations, acquisitions, and mergers, 66866
Permissible nonbanking activities, 66866–66867

Federal Trade Commission
NOTICES
Prohibited trade practices:
Guinness plc et al., 66867–66868

Forest Service
NOTICES
Environmental statements; notice of intent:
Idaho Panhandle National Forests, ID, 66846–66848

Geological Survey
NOTICES
Federal Geographic Data Committee:
Data content standard for facility location and identification, 66878–66880

Grain Inspection, Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Troy Sales, PA, 66848

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Children and Families Administration
See Health Care Financing Administration
See Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66868
Submission for OMB review; comment request, 66869
Meetings:
Vital and Health Statistics National Committee, 66869

Health Care Financing Administration
RULES
Group health plans; mental health parity requirements, 66932–66966

Health Resources and Services Administration
NOTICES
Meetings:
Childhood Vaccines Advisory Commission, 66878

Interior Department
See Geological Survey
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Excise taxes:
Group health plans; mental health parity requirements, 66932–66966
PROPOSED RULES
Excise taxes:
Group health plans; mental health parity requirements; cross reference, 66967–66968
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66893–66896

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Japan, 66848–66849
Stainless steel wire rod from—
Germany et al., 66849–66850

Justice Department
See Justice Programs Office
NOTICES
Pollution control; consent judgments:
Exeter Properties, Inc., et al., 66882
Haviland Properties et al., 66882–66883

Justice Programs Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66883

Labor Department
See Federal Contract Compliance Programs Office
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Management framework plans, etc.:
California, 66880
Recreation management restrictions, etc.:
Burns District, OR; overnight camping restriction, 66880

Library of Congress
See Copyright Office, Library of Congress

Merit Systems Protection Board
RULES
Practices and procedures:
Uniformed Services Employment and Reemployment Rights Act; implementation—
Personnel actions involving noncompliance of agency employers or Personnel Management Office, 66813–66815

National Foundation on the Arts and the Humanities
RULES
Nondiscrimination in Federally assisted programs; technical amendment, 66825–66826

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Defect and noncompliance decisions; annual list, 66887–66891

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 66829–66831
Tuna, Atlantic bluefin fisheries, 66828–66829
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Experimental fishing permit applications, 66844

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 66880–66881
Native American human remains and associated funerary objects:
University of Arkansas, Feyetteville, AR; inventory, 66881–66882

National Science Foundation
NOTICES
Meetings:
Human Resource Development Special Emphasis Panel, 66883

Navy Department
RULES
Acquisition regulations:
Shipbuilding capability preservation agreements, 66826–66828
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Long Beach Naval Station and Naval Shipyard, CA, 66850–66852
Meetings:
Naval Research Advisory Committee, 66852

Pension and Welfare Benefits Administration
RULES
Employee Retirement Income Security Act:
Group health plans; mental health parity requirements, 66932–66966
PROPOSED RULES
Employee Retirement Income Secutiry Act:
Insurance company general accounts; guidance, 66908–66920

Postal Service
NOTICES
Meetings; Sunshine Act, 66883–66884

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Health Resources and Services Administration

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous materials transportation—
Radioactive materials transportation; radiation protection program requirement, 66898–66902
PROPOSED RULES
Hazardous materials:
Hazardous materials transportation—
Radioactive materials transportation; radiation protection program requirement, 66903–66906

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Ackerley Group, Inc., 66884

State Department
NOTICES
Meetings:
Overseas Schools Advisory Council, 66884–66885
Shipping Coordinating Committee, 66885

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 66819–66822

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Connecticut Central Railroad Co., Inc., 66891

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 66885
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 66885–66886

Treasury Department
See Customs Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Transportation, Research and Special Programs Administration, 66898–66906

Part III
Department of Labor, Public Welfare and Benefits Administration, 66908–66920

Part IV
Department of Education, 66922–66929

Part V
Department of Health and Human Services, Health Care Financing Administration, and Department of Treasury, Internal Revenue Service, and Department of Labor, Pension and Welfare Benefits Administration, 66932–66968

Part VI
Department of Labor, Federal Contract Compliance Programs Office, 66970–66971

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
1201 66813

10 CFR
1703 66815

11 CFR
Proposed Rules:
100 66832
114 66832

12 CFR
614 66816

14 CFR
71 66818
Proposed Rules:
71 (2 documents) 66838, 66840

26 CFR
54 66932
Proposed Rules:
54 66967

29 CFR
2590 66932
Proposed Rules:
2550 66908

30 CFR
901 66819

37 CFR
202 66822

40 CFR
52 66822
Proposed Rules:
51 66841
52 66843
85 66841

41 CFR
60–1 66970
60–999 66970

45 CFR
146 66932
1110 66825

47 CFR
73 66826

48 CFR
5231 66826

49 CFR
172 (2 documents) 66898, 66900
174 66898
175 66898
176 66898
177 66898
Proposed Rules:
172 66903
174 66903
175 66903
176 66903
177 66903

50 CFR
285 66828
679 66829
Proposed Rules:
600 66844
648 66844

Rules and Regulations

Federal Register
Vol. 62, No. 245
Monday, December 22, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to implement provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The purpose of these amendments is to provide guidance to the parties to MSPB cases, and their representatives, on how to proceed in cases raising claims that an agency employer or the Office of Personnel Management (OPM) has not complied with a USERRA provision governing the employment and reemployment rights to which a person is entitled after service in the uniformed services.

DATES: Effective date December 22, 1997. Submit written comments on or before February 20, 1998.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353 (108 Stat. 3149), consists principally of a revision of chapter 43 of title 38 of the United States Code, "Employment and Reemployment Rights of Members of the Uniformed Services."

Under USERRA, Federal employees have expanded employment and reemployment rights and benefits after service in the uniformed services, including a new statutory right to appeal USERRA violations to MSPB. Previously, a Federal employee had the right to appeal only an alleged failure to restore to duty, or improper restoration to duty, after military service, a right provided under OPM regulations (5 CFR part 353).

USERRA provides new mechanisms for Federal employees to enforce their employment or reemployment rights. In addition to the right to appeal to MSPB, a Federal employee has the right to seek assistance from the Secretary of Labor, to file a complaint with the Secretary of Labor, and to request representation before MSPB by the Special Counsel if the Secretary of Labor is unable to resolve the complaint. 38 U.S.C. 4321, 4322, and 4324.

USERRA authorizes OPM and the agencies involved in enforcement of USERRA rights for Federal employees—the Department of Labor (DOL), Office of Special Counsel (OSC), and the Board—to promulgate regulations to carry out their functions under the Act. 38 U.S.C. 4331(b)(2)(A).

OPM has issued interim regulations, in the form of amendments to 5 CFR parts 353, 870, and 890, to implement USERRA (60 FR 45650, September 1, 1995). As amended, part 353 includes separate MSPB appeal right provisions for USERRA appeals at 5 CFR 353.211 and for appeals involving restoration to duty after recovery from a compensable injury at 5 CFR 353.304.

The Board is amending its regulation at 5 CFR 1201.3(a), describing appealable actions, to conform to this change by OPM. Section 1201.3(a)(12) is amended to describe only restoration after recovery from a compensable injury and to conform the language to that in OPM's regulation at 5 CFR 353.304. USERRA actions are described in a new section 1201.3(a)(22), which includes citations to both the applicable enforcement provision of USERRA (38 U.S.C. 4324) and the OPM regulation at 5 CFR 353.211.

In describing appealable USERRA actions in new section 1201.3(a)(22), the Board has relied on the following provisions of the Act. The enforcement mechanisms for Federal employees under 38 U.S.C. 4324 apply to an agency employer's or OPM's failure or refusal to comply with the provisions of chapter 43 of title 38. 38 U.S.C. 4322(a)(2)(B). The Act prohibits discrimination against an employee on the basis of service in the uniformed services and prohibits acts of reprisal for exercising a right or seeking to enforce a protection under chapter 43 of title 38. 38 U.S.C. 4311. One kind of action related to the rights and benefits afforded by USERRA is specifically excluded from the enforcement mechanism—an "action relating to benefits to be provided under the Thrift Savings Plan under title 5." 38 U.S.C. 4322(f).

USERRA does not prescribe specific procedures that the Board must apply to appeals brought under chapter 43 of title 38. The Board has determined that all USERRA cases should be processed under its appellate jurisdiction procedures and that its original jurisdiction procedures, contained in subpart D of part 1201, should not be applied to those USERRA appeals filed by the Special Counsel. Appeals involving restoration after military service that were authorized by OPM regulation have traditonally fallen under the Board's appellate jurisdiction. Congress was presumably aware of that practice, and nothing in USERRA or its legislative history suggests an intent that this practice be changed.

Subpart B of part 1201 is amended at section 1201.2(a) to exclude USERRA appeals from the Special Counsel actions included under the Board's "original jurisdiction," at section 1201.3(a) to add USERRA actions to the list of appealable actions as new paragraph (a)(22), and at section 1201.31 to add a specific provision in new paragraph (e) for representation of a person in a USERRA appeal by the Special Counsel. Subpart D of part 1201 is amended at sections 1201.121 and 1201.131 to exclude USERRA appeals specifically from the original jurisdiction procedures applying to corrective actions brought by the Special Counsel.

USERRA does not establish a time limit for appealing to the Board, nor does it specifically prohibit the establishment of a time limit. *Petersen* v. *Department of the Interior*, 71 M.S.P.R. 227 (1996); *Duncan* v. *U.S. Postal Service*, 73 M.S.P.R. 86 (1997); *Jasper* v. *U.S. Postal Service*, 73 M.S.P.R. 367 (1997); *Wright* v.

Department of Veterans Affairs, 73 M.S.P.R. 453 (1997). The Board is authorized by 5 U.S.C. 1204(h) to promulgate regulations to carry out its functions and has used this authority since its inception to prescribe time limits for filing appeals with the Board. The Board is also authorized by 38 U.S.C. 4331(b)(2)(A) to promulgate regulations to carry out its functions under USERRA.

The Act provides a person three opportunities to file an appeal with MSPB: (1) after the alleged violation, if the person does not file a complaint with DOL; (2) after DOL notifies the person that it cannot resolve the matter with the agency, if the person chooses not to have the matter referred to the Special Counsel; and (3) after being advised that the Special Counsel chooses not to represent the person in an appeal to MSPB. 38 U.S.C. 4324(b). If a matter is referred to the Special Counsel, the Special Counsel may file an appeal with MSPB. 38 U.S.C. 4324(a)(2).

Any filing time limit established by the Board by regulation must allow sufficient time for a person to explore his or her options, including possibly pursuing the matter with DOL and OSC, while not allowing the matter to become stale. The Board has ruled that if a person files a formal complaint with DOL, the DOL procedure must be exhausted before an appeal may be filed with MSPB. *Petersen*, 71 M.S.P.R. at 233; *Jasper*, 73 M.S.P.R. at 370.

The Board is amending its regulation at 5 CFR 1201.22(b), prescribing time limits for filing, to provide that a USERRA appeal may be filed directly with MSPB within 180 days of the alleged violation. If a person seeks assistance from DOL under 38 U.S.C. 4321 but does not file a formal complaint under 38 U.S.C. 4322(a), he or she may subsequently file an appeal with MSPB at any time during the 180-day period. If a person files a formal complaint with DOL under 38 U.S.C. 4322(a) and receives notification from DOL that it has been unable to resolve the matter, he or she may subsequently file an appeal with MSPB within 30 days after receipt of the notification from DOL or within 180 days of the alleged violation, whichever is later. If DOL refers a person's complaint to OSC under 38 U.S.C. 4322(a) and the person receives notification from the Special Counsel that OSC will not represent the person before MSPB, he or she may subsequently file an appeal with MSPB within 30 days after receipt of the notification from the Special Counsel or within 180 days of the alleged violation, whichever is later.

This guarantees that a person will have at least six months from the time of an alleged violation of USERRA to file an appeal with MSPB. If a person files a formal complaint with DOL or seeks OSC representation, the time limit for filing with MSPB may be greater than six months.

Where the Special Counsel chooses to represent a person in a USERRA appeal before MSPB, the Board has not set a time limit for filing. The intent is to allow the Special Counsel time to secure voluntary compliance before filing an appeal with MSPB. Because DOL will have already tried, and failed, to secure compliance by the agency, the Board expects that the Special Counsel will file an appeal with MSPB expeditiously where a matter cannot be resolved with the agency.

In addition to the amendments with respect to USERRA discussed above, the Board is making several technical amendments to its regulation at 5 CFR 1201.3(a).

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h) and 38 U.S.C. 4331.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Section 1201.2 is amended by revising paragraph (a) to read as follows:

§ 1201.2 Original jurisdiction.

* * * * *

(a) Actions brought by the Special Counsel under 5 U.S.C. 1214, 1215, and 1216;

* * * * *

3. Section 1201.3 is amended by revising paragraph (a)(12), by removing "and" at the end of paragraph (a)(19), by removing the period at the end of paragraph (a)(20) and adding a semi-colon in its place, by revising the citation in the parenthetical at the end of paragraph (a)(21) to read "(22 U.S.C. 4011)", by deleting the period at the end of paragraph (a)(21) and substituting "; and", and by adding a new paragraph (a)(22) to read as follows:

§ 1201.3 Appelate jurisdiction

(a)* * *

(12) Failure to restore, improper restoration of, or failure to return following a leave of absence an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and the Postal Rate Commission) following partial or full recovery from a compensable injury (5 CFR 353.304);

* * * * *

(22) Non-compliance by a Federal executive agency employer or the Office of Personnel Management with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services (38 U.S.C. 4324, 5 CFR 353.211), excluding any action related to benefits to be provided under the Thrift Savings Plan under title 5 of the United States Code (38 U.S.C. 4322(f)).

* * * * *

4. Section 1201.22 is amended by redesignating the text of paragraph (b) as paragraph (b)(1), by revising the first sentence of paragraph (b)(1) and by adding a new paragraph (b)(2) to read as follows:

§ 1201.22 Filing an appeal and responses to appeals.

* * * * *

(b) * * * (1) Except as provided in paragraph (b)(2) of this section, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the agency's decision, whichever is later. * * *

(2) (i) Where a person alleges non-compliance with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services (see paragraph (a)(22) of § 1201.3 of this part), he or she may file an appeal directly with the Board within 180 days after the alleged act or incidence of non-compliance.

(ii) Where a person seeks assistance from the Secretary of Labor under 38 U.S.C. 4321 but does not file a complaint under 38 U.S.C. 4322(a), he or she may file an appeal directly with the Board within 180 days after the alleged act or incidence of non-compliance.

(iii) Where a person files a complaint with the Secretary of Labor under 38 U.S.C. 4322(a) and receives notification under 38 U.S.C. 4322(e) that the Secretary has been unable to resolve the matter, he or she may subsequently file an appeal with the Board within 30 days after the date of receipt of the Secretary's notification or within 180 days after the alleged act or incidence of non-compliance, whichever is later. A copy of the Secretary's notification must be submitted with the appeal.

(iv) Where the Secretary of Labor refers a person's complaint to the Special Counsel under 38 U.S.C. 4322(a) and the person receives notification that the Special Counsel declines to represent the person in an appeal to the Board, he or she may subsequently file an appeal with the Board within 30 days after the date of receipt of the Special Counsel's notification or within 180 days after the alleged act or incidence of non-compliance, whichever is later. A copy of the Special Counsel's notification must be submitted with the appeal.

(v) Where the Secretary of Labor refers a person's complaint to the Special Counsel under 38 U.S.C. 4322(a) and the Special Counsel agrees to represent the person in an appeal to the Board, the Special Counsel may file an appeal with the Board at any time thereafter.

* * * * *

5. Section 1201.31 is amended by adding a new paragraph (d) to read as follows:

§ 1201.31 Representatives.

* * * * *

(e) The Special Counsel may represent a person in an appeal alleging non-compliance with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services (see paragraph (a)(22) of § 1201.3 of this part and 38 U.S.C. 4324). In such an appeal, a copy of any written request by the person to the Secretary of Labor that the matter be referred to the Special Counsel for litigation before the Board will be accepted as the written designation of representative required by paragraph (a) of this section.

6. Section 1201.121 is amended by adding a new paragraph (c) to read as follows:

§ 1201.121 Scope of jurisdiction; application of subparts B, F, and H.

* * * * *

(c) The provisions of this subpart do not apply to appeals alleging non-compliance with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services, in which the Special Counsel appears as the designated representative of the appellant. Such appeals are governed by subpart B of this part.

§ 1201.131 [Amended]

7. Section 1201.131 is amended at paragraph (a) by adding after "Special Counsel" the phrase, "under this subpart".

Dated: December 17, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97–33353 Filed 12–19–97; 8:45 am]

BILLING CODE 7400–01–U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

Rules Implementing the Freedom of Information Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Final rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) is amending its Freedom of Information Act (FOIA) rules to provide for expedited processing of certain requests, to conform response deadlines with those now provided in the statute, and to add a category of documents to be made available in the Public Reading Room. These changes result from new statutory provisions in the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231. A minor change is also made in the Board's fee provision.

EFFECTIVE DATE: January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Ave. NW, Suite 700, Washington, D.C. 20004, (202) 208–6387.

SUPPLEMENTARY INFORMATION: On October 21, 1997, the Board published proposed changes to its Freedom of Information Act rule (62 FR 54594) in response to the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231. One additional change was proposed to the Board's FOIA fee provision. No public comments were received on the proposed changes. Therefore, the amendments are being made final without change.

Executive Order No. 12866

These amendments do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to Office of Management and Budget review.

Regulatory Flexibility Act

These amendments will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations will impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

List of Subjects in 10 CFR Part 1703

Freedom of information.

For the reasons stated in the preamble, the Board amends 10 CFR part 1703 as follows:

PART 1703—PUBLIC INFORMATION AND REQUESTS

1. The authority citation for part 1703 continues to read as follows:

Authority: 5 U.S.C. 552 as amended; 42 U.S.C. 2286b(c).

2. Section 1703.103 is amended by adding paragraph (b)(12) to read as follows:

§ 1703.103 Requests for Board records available through the public reading room.

* * * * *

(b) * * *

(12) Copies of records released pursuant to FOIA requests, along with an index to these records. The format will generally be the same as the format of the released records.

3. Section 1703.105 is amended by adding a new paragraph (e) to read as follows:

§ 1703.105 Requests for Board records not available through the public reading room (FOIA requests).

* * * * *

(e)(1) *Expedited processing.* A person may request expedited processing of an FOIA request when a compelling need for the requested records has been shown. "Compelling need" means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information; or

(iii) The records pertain to an immediate source of risk to the public health and safety or worker safety at a defense nuclear facility under the Board's jurisdiction.

(2) A requester seeking expedited processing should so indicate in the

initial request, and should state all facts supporting the need to obtain the requested records rapidly. The requester must also state that these facts are true and correct to the best of the requester's knowledge and belief.

(3) When a request for expedited processing is received, the Board will respond within ten calendar days from the date of receipt of the request, stating whether or not the request has been granted. If the request for expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

4. Section 1703.107(b)(2)(iv) is removed and reserved.

5. Section 1703.108(b) is revised to read as follows:

§ 1703.108 Processing of FOIA requests.

* * * * *

(b) Action pursuant to this section to provide access to requested records shall be taken within twenty working days. This time period may be extended up to ten additional working days, in unusual circumstances, by written notice to the requester. If the Board will be unable to satisfy the request in this additional period of time, the requester will be so notified and given the opportunity to—

(1) Limit the scope of the request so that it can be processed within the time limit, or

(2) Arrange with the Designated FOIA Officer an alternative time frame for processing the original request or a modified request.

* * * * *

Dated: December 15, 1997.

John T. Conway,

Chairman.

[FR Doc. 97–33298 Filed 12–19–97; 8:45 am]

BILLING CODE 3670–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB81

Loan Policies and Operations; Interest Rates and Charges

AGENCY: Farm Credit Administration.

ACTION: Direct final rule with opportunity for comment.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board (Board), issues a direct final rule amending its regulations concerning interest rates and charges. This action is consistent with the FCA's continuing efforts to reduce regulatory burden and unnecessary prior approval requirements whenever possible. The amendments eliminate the prior approval requirement for changes in interest rate policies at banks for cooperatives (BCs), eliminate unnecessary or duplicative regulatory requirements, clarify existing requirements that are retained.

The effect of the amendments is to enable BCs to revise rate policies for discounting negotiable paper without prior FCA approval, to eliminate the requirement that fees charged by an association are subject to bank approval, and to clarify that, in all Farm Credit System (FCS or System) banks and direct lender institutions, the board of directors is responsible for setting interest rates and annually reviewing interest rate plans in conjunction with the review and approval of the institution's annual business plan.

DATES: If no significant adverse comment is received on or before January 21, 1998, these regulations shall be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**. If significant adverse comment is received, the FCA will publish a notice of withdrawal of the regulations and indicate how the Agency expects to proceed with further rulemaking.

ADDRESSES: Comments may be submitted via electronic mail to "reg-comm@fca.gov" or facsimile transmission to (703) 734–5784. Comments also may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for review by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, (703) 883–4498, TDD (703) 883–4444; or Rebecca S. Orlich, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The regulations in 12 CFR part 614—subpart G pertain to interest rates and charges by FCS institutions. Most of the regulations in subpart G were originally promulgated by the FCA in 1972 following Congress' modernization and consolidation of existing farm credit law in the Farm Credit Act of 1971. The structure of the System has changed considerably in the past 25 years, and the regulatory relationship between FCS institutions and the FCA has become an arm's-length relationship. The amendments set forth below reflect those changes, as well as the FCA's current regulatory philosophy of removing prior approval requirements not mandated by the current Farm Credit Act of 1971, as amended (Act), and unnecessary to the safe and sound operation of an institution. The FCA will continue to hold FCS institution boards and management accountable for their internal operations through the examination process. Likewise, regulatory language that merely restates statutory provisions is eliminated.

Five sections in 12 CFR part 614—subpart G are eliminated, and the two remaining sections are renumbered and moved to 12 CFR part 614—subpart D. Because the changes conform existing regulations to the statute and make only minor changes to the regulatory language, the FCA believes the rule to be noncontroversial and anticipates no significant adverse comment from the public.

II. Description of Amendments

1. Section 614.4270—Policy

The provisions in this section are nearly identical to provisions in sections 1.8(b), 2.4(c), and 3.10(a) of the Act and are therefore removed, as they are duplicative and unnecessary.

2. Section 614.4280—Interest Rates

The FCA is amending existing § 614.4280, which concerns interest rate plans and policy, to make it applicable to direct lender associations as well as to banks. This change will clarify that the board of directors of every System direct lender is responsible for establishing interest rates or interest rate plans. This change is consistent with the underwriting regulation adopted earlier this year, § 614.4150, which requires the boards of directors of both banks and associations to adopt written policies and procedures that, at a minimum, prescribe prudent loan pricing practices.

Although no other substantive changes are made to existing § 614.4280, the FCA makes two technical changes to the final sentence. The first clause, which states that the board "may not delegate its ultimate responsibilities for setting interest rates," is deleted as unnecessary. Because the boards of

System institutions cannot delegate their "ultimate responsibility" for any policy decision, the FCA believes that the deleted clause adds nothing to the regulation. At the end of the final sentence, the FCA has replaced the reference to "fiscal plan and long-range financial plan" with the words "operational and strategic business plan," to conform with the terms used in § 618.8440 and elsewhere in FCA regulations. The revised regulation is redesignated as § 614.4155.

3. Section 614.4281—Discounts and Related Fees

The FCA is deleting § 614.4281, which authorizes BCs to "discount or rediscount notes, drafts, acceptances, and other negotiable paper at such rates as may be determined by bank management under policies of the bank board as approved by the Farm Credit Administration." The FCA has concluded that the language in § 614.4281 is not necessary to authorize BCs to engage in any of the activities listed, as they are already authorized pursuant to section 3.7(a) of the Act. The prior approval is not required by the Act or necessary to the safe and sound operations of the institution.

4. Section 614.4290—Interest on Past Due Loans

Section 614.4290, which allows banks and production credit associations (PCAs) to provide for the collection of interest at a higher rate after maturity, is deleted as unnecessary. This deletion will not affect the ability of a System direct lender to provide for a default interest rate in its loan documents, nor will it diminish the rights of borrowers. Section 4.13(a)(4) of the Act, § 614.4376(c) of the regulations, and the provisions of Regulation Z (Truth-in-Lending) require that any change in the interest rate applicable to an individual borrower's loan be disclosed to the borrower within certain stated periods of time. These requirements would apply to interest rate changes after maturity and, therefore, provide sufficient protection for individual borrowers.

5. Section 614.4300—Other Charges and Fees

The FCA is deleting § 614.4300, which states that banks and associations may impose reasonable charges or fees on members, borrowers, or applicants in connection with loans or other services rendered. It also provides that the fees charged by an association are subject to bank prior approval. Regulatory authority to charge fees is unnecessary because such authority is provided expressly in sections 1.5(6), 2.2(13), and 3.10(a) of the Act.

Consistent with the FCA Board's regulatory philosophy of repealing regulations that prescribe needlessly detailed management and operational practices, the FCA is deleting the requirement that banks give prior approval to affiliated associations' fees. Bank approvals that are appropriate to the debtor-creditor relationship of a bank and an association may be set forth in the general financing agreement between the institutions. Therefore, the prior approval provision is unnecessary.

6. Section 614.4320—Production Credit Associations

The FCA is deleting § 614.4320, which states that "the rate of interest charged by an association shall be the rate authorized by the bank, within programs prescribed by the bank board" and allows for different computations of interest payments authorized under such programs. This regulation in part restates section 2.4(c) of the Act, which provides for PCAs to charge interest rates "under standards prescribed by the board of the bank" and is thus unnecessary. The regulatory direction on the computation of interest payments was driven by limitations in computer accounting systems that no longer exist; thus, it is now obsolete.

7. Section 614.4321—Differential Interest Rate Programs

Section 614.4321 describes the types of interest rate programs that System banks and associations may adopt under policies of their boards of directors. This section was recently updated by amending outdated language and removing an unnecessary prior approval. *See* 61 FR 67186 (December 20, 1996). The FCA continues to believe that it is important to set forth the principle of nondiscrimination among similarly situated borrowers in setting differential interest rates. Therefore, the language in this section is retained, and the regulation is redesignated as § 614.4160 and moved to part 614, subpart D.

III. Direct Final Rulemaking

The FCA is using a "direct final" procedure for this rulemaking. In a direct final rulemaking, an agency gives notice that a rule will become final at a specified future date unless the agency receives significant adverse comment on the rule during the comment period established in the rulemaking notice. Direct final rulemaking is justified under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 551–59, *et seq.* (APA). Section 553(b)(B) is the APA's "good cause" exemption for omitting notice and comment on a rule where an agency finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." However, rather than eliminating public comment altogether, as would be permissible under section 553(b)(B), in a direct final rule the FCA gives the public adequate opportunity to comment on or object to a rule. For a full explanation of direct final rulemaking, *see* 62 FR 63644 (December 3, 1997).

The FCA believes that the changes to 12 CFR part 614—subpart G fit the category of rules appropriate for direct final rulemaking. These changes delete unnecessary approvals, remove duplicative language, and incorporate prudent oversight standards that the FCA already applies to all institutions. As such, the amendments are straightforward and noncontroversial. For these reasons, the FCA does not anticipate that there will be significant adverse comment on this rulemaking.

This rule has a 30-day comment period. If, during that period, the FCA receives a significant adverse comment on the rule, the FCA will withdraw the rule and may either issue another direct final rule or promulgate the rule in proposed form. A significant adverse comment is defined as one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the FCA in a notice-and-comment proceeding.

If no significant adverse comment is received, the FCA will publish its customary notice of the effective date of the rule following the required Congressional waiting period under section 5.17(c)(1) of the Act.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9,

1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.3A, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5, 8.9 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5, 2279aa–9); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart D—General Loan Policies for Banks and Associations

2. Sections 614.4280 and 614.4321 in subpart G are redesignated as §§ 614.4155 and 614.4160 in subpart D, and § 614.4155 is revised to read as follows:

§ 614.4155 Interest rates.

Loans made by each bank and direct lender association shall bear interest at a rate or rates as may be determined by the institution board. The board shall set interest rates or approve individual interest rate changes either on a case-by-case basis or pursuant to an interest rate plan within which management may establish rates. Any interest rate plan shall set loan-pricing policies and objectives, provide guidance regarding the circumstances under which management may adjust rates, and provide the upper and lower limits on management authority. Any interest rate plan adopted shall be reviewed on a continuing basis by the board, as well as in conjunction with its review and approval of the institution's operational and strategic business plan.

Subpart G—Interest Rates and Charges

Subpart G [Removed and Reserved]

3. Subpart G, consisting of §§ 614.4270, 614.4281, 614.4290, 614.4300 and 614.4320, is removed and reserved.

Dated: December 16, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–33260 Filed 12–19–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–44]

Modification of Class E Airspace; Grand Rapids, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Grand Rapids, MI. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 35 has been developed for Kent County International Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing Class E airspace.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, September 19, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Grand Rapids, MI (62 FR 49182). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Grand Rapids, MI, to accommodate aircraft executing the ILS Runway 35 SIAP at Kent County International Airport by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565; 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth

* * * * *

AGL MI E5 Grand Rapids, MI [Revised]

Kent County International Airport, MI
(Lat. 42°52'58"N, long. 85°31'26" W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Kent County International Airport.

* * * * *

Issued in Des Plaines, Illinois on November 24, 1997.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 97–33284 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–067–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Alabama regulatory program (hereinafter referred to as the "Alabama program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposed revisions to the Alabama Surface Mining Commission Rules pertaining to hearing orders and decisions, license application requirements, procedures for permit application review, determination of bond forfeiture amount, surface and ground water monitoring, disposal of excess spoil, and coal mine waste. The amendment is intended to revise the Alabama program to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Arthur Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 901.15 and 901.16.

II. Submission of the Proposed Amendment

By letter dated March 28, 1997 (Administrative Record No. AL–0562), Alabama submitted a proposed amendment to its program pursuant to SMCRA. Alabama submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the April 25, 1997, **Federal Register** (62 FR 20138), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 27, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to hearing orders and decisions (Rule 880–X–5A–.22), and placement of coal mine waste on refuse piles (Rules 880–X–10C–.40 and 880–X–10D–.36). OSM notified Alabama of these concerns by telephone and fax on June 16, 1997 (Administrative Record No. AL–0570).

By letter dated July 9, 1997 (Administrative Record No. AL–0560), Alabama responded to OSM's concerns regarding placement of coal mine waste on refuse piles by submitting additional explanatory information to its proposed program amendment. Regarding OSM's concerns on hearing orders and decisions, Alabama submitted an emergency rule, on July 30, 1997 (Administrative Record No. AL–0572), that changed the number of days in which hearing officers are to furnish written decisions on hearings from 60 days to 30 days. Based upon the additional explanatory information and/or revisions to the proposed program amendment submitted by Alabama, OSM reopened the public comment period in the October 17, 1997, **Federal Register** (62 FR 53996). The public comment period closed on November 3, 1997.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

A. Nonsubstantive Revisions to the Alabama Program

Alabama proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes:

Topic	State regulations	Federal counterpart regulations
Procedures for Permit Application Review	880–X–7B–.07(5)	30 CFR 761.12(e)(1)–(e)(3).
Determination of Forfeiture Amount	880–X–9E–.05(2) and (3)	30 CFR 800.50(d)(1) and (d)(2).
Hydrologic Ground Water Monitoring	880–X–10C–.23(2)(a)	30 CFR 816.41(e)(1).
Disposal of Excess Spoil	880–X–10C–.36(13)(b) and (b)(1) and (15)(B)(3).	30 CFR 816.71(j) and 816.74(h)(4).
Disposal of Excess Spoil and Underground Development Waste.	880–X–10D–.33(13)(b) and (b)(1) and (15)(b)(3).	30 CFR 817.71(j) and 817.74(h)(4).

Because Alabama's proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that the proposed revisions do not render Alabama's rules less effective than the Federal regulations.

B. Revisions to Alabama's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations Rules 880–X–10C–.40 and 880–X–10D–.36 Cost Mine Waste: Refuse Piles

At paragraphs (3)(a), Alabama proposed an exception to the requirement that limits coal mine operators from spreading coal mine waste in layers thicker than 24 inches. If engineering data substantiates a minimum safety factor of 1.5 for the refuse pile, the State regulatory authority may approve layers exceeding 24 inches in thickness. The Federal

regulations at 30 CFR 816.83 and 817.83 require refuse piles to meet the requirements of 816.81 and 817.81, respectively. At 30 CFR 816.81(c)(2) and 817.81(c)(2), respectively, a disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The Director is approving Alabama's proposed exception because it is no less effective than the Federal regulations.

C. Revisions to Alabama's Regulations With No Corresponding Federal Regulations

1. Rule 880–X–5A–.22 Orders and Decisions

Alabama proposed to replace the existing requirements with the following new requirements. At paragraph (1)(a), the hearing officer is to make a written decision within 30 days after the close of "any" hearing. OSM has regulations for hearings that provide time frames of 30 or 60 days in which written decisions must be furnished to the participants of the hearing based upon the reason the hearing is being held. For example, the Federal regulation at 30 CFR 775.11(b)(4) regarding administrative review of decisions on permits require that decisions be made, in writing, within 30 days after these hearings. As another example, the Federal regulation at 30 CFR 769.18 regarding decisions on petitions for designating lands unsuitable for mining requires that a written decision be made within 60 days of the completion of the hearing. The Director finds that Alabama's proposal for requiring decisions to be made within 30 days after the close of "any" hearing is no less effective than the Federal regulations and is approving it.

At paragraph (1)(b), Alabama proposed that the Division of Hearings and Appeals (DHA) provide copies of all orders of the hearing officer to all parties. Parties other than the regulatory authority will receive copies of the orders by the first class mail. The Federal regulations at 30 CFR 789.18(b) regarding decisions on petitions for designating lands unsuitable for mining and 30 CFR 775.11(b)(4) regarding administrative review of decisions on permits, require written hearing decisions to be sent to each person who participated in the hearing. The Director finds that Alabama's proposed amendment is not inconsistent with the Federal regulations and is approving it.

At paragraph (2), Alabama proposed that any party may petition the Commission for an expedited review of any pending appeal if the hearing officer fails to render a decision within the time specified in paragraph (1)(a). OSM does not have a counterpart Federal regulation that provides for an expedited review of any pending appeal if the hearing officer fails to render a decision within specified time frames. The Director finds that Alabama's proposed regulation is not inconsistent with the Federal regulations and is approving it.

2. Rule 880–X–6A–.06 License Application Requirements

At paragraph (k), Alabama proposed to replace the reference to "Chapter 880–X–7" with the corrected reference to "Chapter 880–X–8." The Director is approving this correction.

3. Rule 880–X–10C–.36 Disposal of Excess Spoil and 880–X–10D–.33 Disposal of Excess Spoil and Underground Development Waste

At paragraphs (16)(a) in the first sentence, Alabama proposed to remove the language "in natural ground along the periphery of the fill." The Director is approving the removal of this language because there is no Federal counterpart and because the removal of this language will not render the Alabama program less effective than the Federal regulations.

4. Rules 880–X–10C–.38 and 880–X–10D–.34 Coal Mine Waste: General Requirements

Alabama proposed to remove existing paragraphs (1)(d) for its regulations and to redesignate existing paragraphs (1)(e) and (1)(f) as paragraph (1)(d) and (1)(e), respectively. The Director is approving theses revisions because there is no Federal counterpart regulation to existing paragraph (d) that the State proposed to remove and because its removal will not render the Alabama program less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment. No public comments were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal Agencies with an actual or potential interest in the Alabama program. OSM received comments from the U.S. Fish and Wildlife Service dated April 24, 1997 (Administrative Record No. AL–0564), and the U.S. Department of Labor Mine Safety and Health Administration dated May 5, 1997 (Administrative Record No. AL–0565). The agencies stated that they either had no comments or no concerns regarding the amendment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. AL–0563). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. AL–0563). The ACHP did not respond to OSM's request. OSM received a comment dated June 3, 1997, from the Alabama Historical Commission (Administrative Record No. AL–0567). The Alabama Historical Commission felt that properties eligible for inclusion on the National Register along with properties listed on the National Register should be included in the Alabama Surface Mining Commission Rules regarding procedures for areas unsuitable for mining at 880–X–7B–.07(6)(a). The Alabama Historical Commission felt that this inclusion of properties would be appropriate because it would conform with the Advisory Council on Historic Properties' regulations at 36 CFR Part 800. In response to these comments, Alabama did not propose to amend its regulation at 880–X–7B–.07(6)(a) which is substantially identical to the Federal regulation at 30 CFR 761.12(f)(1), and, therefore, is not inconsistent with the Federal requirement. Also, in acting on State program amendments, the Directory only addresses those sections of a State's laws and regulations where revisions are proposed by the State.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Alabama on March 28, 1997, and as revised on July 9 and 30, 1997.

The Director approves the rules as proposed by Alabama with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Director is also taking this opportunity to correct editorial errors in the required regulatory program amendments section at 30 CFR 901.16.

The Federal regulations at 30 CFR Part 901, codifying decisions concerning the Alabama program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 25, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 901.15 Appoval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
March 28, 1997	December 22, 1997	880–X–5A–.22(1)(a), (1)(b) and (2); 880–X–6A–.06(k); 880–X–7B–.07(5); 880–X–9E–.05(2) and (3); 880–X–10C–.23(2)(a), .36(13)(b) and (b)(1), (15)(b)(3), and (16)(a), .38(1)(d) through (1)(f), .40(3)(a); 880–X–10D–.33(13)(b) and (b)(1), (15)(b)(3), and (16)(a), .34(1)(d) through (1)(f), and .36(3)(a)

§ 901.16 Removed and [Reserved]

3. The text of § 901.16 is removed and the section and section heading are reserved.

[FR Doc. 97–33335 Filed 12–19–97; 8:45 am]
BILLING CODE 4310–05–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 97–8]

Registration of Claims to Copyright: Group Registration of Serials

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; technical amendment.

SUMMARY: The Copyright Office is making a technical amendment to one of the addresses designated in the group registration procedures.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Kent Dunlap, Principal Legal Advisor to the General Counsel, Copyright GC/I&R P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In 1990, the Copyright Office adopted a new registration procedure which permitted group registration of serial publications under certain conditions. 55 FR 50556 (1990). This procedure is part of the regulations of the Copyright Office at 37 CFR Chap. II, §§ 202.3(b)(5) and 202.20(c)(2)(xvii). This document amends the address to which the complimentary subscriptions must be mailed.

List of Subjects in 37 CFR Part 202

Claims, Copyright, Registration.

Technical Amendment

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 202.3 [Amended]

2. Section 202.3(b)(5)(iii) is amended to add "–4161," after "20540".

Dated: December 17, 1997.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 97–33313 Filed 12–19–97; 8:45 am]
BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY 26–2–176a; FRL–5936–8]

Determination of Attainment of the One-Hour Ozone Standard for the Poughkeepsie, New York Ozone Nonattainment Area and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is determining, through direct final procedure, that the Poughkeepsie moderate ozone nonattainment area in New York has attained the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality assured ambient air monitoring data for the years 1995–97. This data demonstrates that the one-hour ozone NAAQS has been attained in this area. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to this area.

In the proposed rules section of this **Federal Register**, EPA is proposing this determination and soliciting public comment on it. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective February 5, 1998 unless adverse or critical comments are received by January 21, 1998. If the effective date is delayed, a timely document will be published in the **Federal Register**.

ADDRESSES: Written comments should be mailed to Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866. Copies of the relevant material for this notice are available for inspection during normal business hours at: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, at the above address. Phone: 212–637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (CAA) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. EPA has interpreted provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the one-hour ozone standard (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John Seitz to the Regional Air Division Directors, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," EPA has interpreted the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the one-hour standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area needs to submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498, April 16, 1992), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR at 13564.)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1) an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act." As with the RFP requirements, if an area has in fact monitored attainment of the one-hour standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment of the one-hour standard. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to the contingency measure requirements of section 172(c)(9). EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the one-hour standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6.) As the section 172(c)(9) contingency measures are linked with the RFP requirements of section 182(b)(1), the requirement no longer applies once an area has attained the one-hour standard.

This action is only a suspension of the requirements to submit the SIP revisions discussed above. If the area were to violate the one-hour ozone NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the state of that determination and would also provide notification to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a period of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue.

However, EPA recently promulgated a new eight-hour ozone standard. The President's Directive of July 16, 1997 outlines how EPA will make the transition from the old one-hour standard to the new SIP requirements for the eight-hour standard. The Directive states that EPA will revoke the one-hour standard once an area has air monitoring data showing attainment of the one-hour standard. If EPA revokes the one-hour standard for an area, the requirement for the area to submit RFP requirements and an attainment demonstration for the one-hour standard will be permanently ended.

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determination that is being made with this **Federal Register** document that air quality data shows attainment of the one-hour standard is not equivalent to the redesignation of the area to attainment. Using monitoring data to show attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

Furthermore, the determination made in this notice does not shield an area from future EPA action. EPA can require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under section 110(a)(2) to require such emission reductions if necessary and appropriate to deal with transport situations. Also, EPA can require SIPs from this area if EPA or the state proposes, in future actions, that the area is in violation of the eight-hour standard.

II. Analysis of Air Quality Data

On November 17, 1997, New York requested that EPA find that air monitoring data from New York State for the Poughkeepsie ozone nonattainment area shows that the area is attaining the one-hour ozone standard. New York State, also on November 17, 1997, submitted quality assured data (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) through the end of the 1997 ozone season and certified that these data met EPA's requirements. The EPA has reviewed the ambient air monitoring data for ozone from 1995 through 1997 for the Poughkeepsie ozone nonattainment area, which includes Dutchess, Putnam and northern Orange Counties in New York. The data were taken from the

[1] EPA notes that paragraph (1) of subsection 182(b) is entitled "PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS" and that subparagraph (B) of paragraph 182(c)(2) is entitled "REASONABLE FURTHER PROGRESS DEMONSTRATION," thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard") (hereinafter referred to as "September 1992 Calcagni memorandum").

EPA-approved New York State air quality monitoring network. It should be noted that New York expanded air monitoring in the Poughkeepsie area from one to three monitors during the 1990s. The monitors in these locations were sited to measure ozone concentrations typical of concentrations across the area. New York did this to better define the extent of ozone nonattainment in the area. Expanding the network increased the opportunity for finding violations of the ozone standard in the Poughkeepsie area. EPA believes that these data are representative of the Poughkeepsie ozone nonattainment area. This is especially true since ozone is not emitted directly from sources, but is formed from pollutants that react in sunshine over a period of time. The ozone air quality data for the Poughkeepsie ozone nonattainment area, summarized in Table I, shows that the area has met the one-hour NAAQS.

TABLE I.—EXCEEDANCES OF THE ONE-HOUR OZONE STANDARD FOR MONITORING SITES IN THE POUGHKEEPSIE OZONE NONATTAINMENT AREA

[From EPA AIRS]

Site	Number of exceedances (in parentheses) Number of expected exceedances in bold			Total number of expected exceedances 1995–7	Average number of expected exceedances 1995–7	Attainment status 1995–7
	1995	1996	1997			
Millbrook	(0)	(0)	(0)	0.0	0.0	Attain.
	0.0	0.0	0.0			
Mt. Ninham	(2)	(1)	(0)	3.1	1.0	Attain.
	2.0	1.1	0.0			
Valley Central	(0)	(1)	(0)	1.0	0.3	Attain.
	0.0	1.0	0.0			

Note: Expected exceedances are calculated from the actual number of exceedances ( ), adjusted for missing data as required by Appendix H. The 0.12 ppm one-hour average ozone standard is attained when the three year average of expected exceedances is 1.0 or less. The expected and average number of exceedances are rounded to the nearest tenth. [See CFR Part 51, Appendix H.]

As noted in Table I, attainment of the one-hour ozone standard is achieved when an area's monitoring sites have 1.0 or less exceedances per year, averaged over a three year period from 1995 through 1997. Since all of the monitors in the Poughkeepsie ozone nonattainment area average 1.0 or less exceedances per year, the Poughkeepsie area is attaining the one-hour NAAQS for ozone. Attaining the ozone standard would relieve New York from submitting a reasonable further progress plan whose purpose was to bring the area into attainment. Likewise, New York would not have to submit an attainment demonstration since the area has attained the one-hour ozone standard.

III. Final Action

EPA determines that the Poughkeepsie ozone nonattainment area has attained the one-hour ozone standard based on three years of quality-assured monitoring data at all three sites in the area. As a consequence of EPA's determination that the Poughkeepsie area has attained the one-hour ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures shall not be applicable to the area. This is effective as long as the area continues to attain the one-hour ozone standard, or until EPA revokes the one-hour standard.

EPA emphasizes that as long as the one-hour standard applies to the Poughkeepsie area, these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the one-hour ozone NAAQS in this affected area. If while the one-hour standard is still in effect, a violation of the one-hour ozone NAAQS is monitored in the Poughkeepsie area (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Then EPA would reinstate the requirements of section 182(b)(1) and section 172(c)(9) for the Poughkeepsie area since the basis for the determination that they are not needed would not exist.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. EPA is strictly acting on the basis of real data, without modification or interpretation that impels EPA to make the determination in this document. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve this action in case adverse or critical comments be filed. This action will be effective February 5, 1998 unless, by January 21, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 5, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revisions to any SIP. Each request for revision of the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify

that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action removes a requirement that the Clean Air Act required the State to address. Therefore, because this action does not impose any new requirements, I certify that it does not have an impact on any small entities.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action imposes no new requirements, and accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 4, 1997.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart HH—New York

2. Section 52.1683 is amended by adding new paragraph (f) to read as follows:

52.1683 Control strategy: Ozone.

* * * * *

(f) Attainment Determination—EPA has determined that, as of February 5, 1998, the Poughkeepsie ozone nonattainment area (consisting of Dutchess and Putnam Counties and northern Orange County) has air monitoring data that attains the one-hour ozone standard and that the requirements of section 182(b)(1) (reasonable further progress and attainment demonstration) and related requirements of section 172(c)(9) (contingency measures) of the Clean Air Act do not apply to the area.

[FR Doc. 97–33080 Filed 12–19–97; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1110

Nondiscrimination in Federally Assisted Programs; Technical Amendment

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Final rule; technical amendment.

SUMMARY: This final rule incorporates the new name of the Institute of Museum and Library Services (the "Institute"), established by the Museum and Library Services Act of 1996, into the regulations promulgated by the National Foundation on the Arts and the Humanities regulations regarding nondiscrimination in federally assisted programs. These regulations implement Title VI of the Civil Rights Act of 1964, thereby prohibiting discrimination on the grounds of race, color, or national origin, in federally funded programs.

DATES: This final rule is effective December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Ann Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20405. Telephone: (202) 606–8536.

SUPPLEMENTARY INFORMATION: The Museum and Library Services Act of 1996, set forth as 20 U.S.C. 961 *et seq.*, expanded the functions of the Institute of Museum Services to create a new agency, The Institute of Museum and Library Services. The Institute, like its sister agencies The National Foundation on the Arts and the Humanities, is a subdivision of the National Foundation on the Arts and the Humanities.

The National Foundation on the Arts and the Humanities regulations governing nondiscrimination in federally assisted programs and implementing Title VI of the Civil Rights Act of 1964, are set forth in 45 CFR Part 1110. This rule conforms these regulations to the Museum and Library Services Act of 1996, by incorporating the new name of the agency into the regulations' provisions.

The National Foundation on the Arts and the Humanities considers this rule to be a technical amendment which is exempt from notice-and-comment under 5 U.S.C. 553(b)(3)(A). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, The Foundation certifies that these regulatory amendments will not have a significant impact on small business entities.

List of Subjects in 45 CFR Part 1110

Civil rights.

For the reasons stated in the summary and pursuant to 20 U.S.C. 961 *et seq.*, 45 CFR, Chapter XI, Part 1110 is amended as follows:

PART 1110—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

1. The authorities citation continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 and sec. 10(a)(1), 79 Stat. 852.

2. Revise § 1110.1 to read as follows:

§ 1110.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act"), 42 U.S.C. 2000d *et seq.*, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Endowment for the Arts, the National Endowment for the Humanities, or the Institute of Museum and Library Services.

3. Revise the first sentence of § 1110.2 to read as follows:

§ 1110.2 Application of part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the National Endowment for the Arts, the National Endowment for Humanities, or the Institute of Museum and Library Services, including the federally assisted programs and activities listed in appendix A of this part. * * *

4. Amend § 1110.13 by revising paragraphs (a), (b), and (c) to read as follows:

§ 1110.13 Definitions.

* * * * *

(a) The term *Foundation* means the National Foundations for the Arts and the Humanities, and includes the National Endowment for the Arts, the National Endowment for the Humanities, the Institute of Museum and Library Services, and each of their organizational units.

(b) The term *Endowment* means the National Endowment for the Arts, the National Endowment for the Humanities, or the Institute of Museum and Library Services.

(c) The term *Chairman* means the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, or the Director of the Institute of Museum and Library Services.

* * * * *

Dated: December 16, 1997.

Michael S. Shapiro,

General Counsel, National Endowment for the Humanities.

Karen Christensen,

General Counsel, National Endowment for the Arts.

[FR Doc. 97–33303 Filed 12–19–97; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–145; RM–9091]

Radio Broadcasting Services; Glen Rose and Stamford, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Cleburne Radio, Inc, substitutes Channel 221C1 for Channel 221C2 at Glen Rose and modifies the license of Station KCLE–FM to specify operation on the higher powered channel. To accommodate the upgrade at Glen Rose, the Commission also substitutes Channel 295A for Channel 221C2 at Stamford, Texas, and modifies the construction permit of M & M Broadcasting Company to specify the Class A channel. *See* 62 FR 36250, July 7, 1997. Channel 221C1 and Channel 295A can be allotted to Glen Rose and Stamford, respectively, in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 221C1 at Glen Rose are 32–16–30 and 98–08–30. The coordinates for Channel 295A at Stamford are 32–58–21 and 99–48–32. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–145, adopted November 26, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 221C2 and adding Channel 221C1 at Glen Rose; by removing Channel 221A and adding Channel 295A at Stamford.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–33185 Filed 12–19–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Part 5231

Department of the Navy Acquisition Regulations; Shipbuilding Capability Preservation Agreements

AGENCY: Department of the Navy, DoD

ACTION: Interim rule with request for comments.

SUMMARY: The Deputy for Acquisition and Business Management, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition), has issued an interim rule amending the Navy Acquisition Regulations to permit the Department of the Navy (DoN) to enter into a shipbuilding capability preservation agreement with a shipbuilder where it would facilitate the achievement of the policy objectives set forth in section 2501(b) of title 10, United States Code.

DATES: *Effective Date:* December 22, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before February 20, 1998, in order to be considered in formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to Department of the Navy, Office of the Assistant Secretary of the Navy, Acquisition and Business Management, Attn: Mr. Clarence Belton, ABM–P&R, 2211 South Clark Place, Arlington, VA 22244–5104. Telefax number (703) 602–2117. Please cite "Shipbuilding Capability Preservation Agreements" in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Belton, (703) 602–2807.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds part 5231 to the Department of the Navy Acquisition Regulations (48 CFR Chapter 52), to implement section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85). Section 1027 permits the DoN to enter into a shipbuilding capability preservation agreement with a shipbuilder where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). Such an agreement would permit the contractor to claim certain indirect costs, attributable to its private sector work, on its Navy shipbuilding contracts.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of the Navy that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule implements section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85), which became effective upon enactment on November 18, 1997. Congress specifically directed DoN to establish application procedures and procedures for expeditious consideration of shipbuilding capability preservation agreements within 30 days of enactment and to submit a report on applications for such agreements to Congress not later than February 15, 1998. Given these statutory-imposed deadlines, opportunity for public comment prior to promulgation of this rule is not possible. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and do not require application of the cost principle contained in this rule. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected Navy Acquisition Regulations subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (Shipbuilding Capability Preservation Agreement), in correspondence.

D. Paperwork Reduction Act

It is anticipated that collection of information requirements will not be imposed on ten or more persons within any 12-month period. Therefore, this rule contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and 5 CFR part 1320.

List of Subjects in 48 CFR Part 5231

Government procurement.

For the reasons set forth in the preamble, add 48 CFR part 5231 to read as follows:

PART 5231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 5231.2—Contracts with Commercial Organizations

Sec.

5231.205 Selected costs.

5231.205–90 Shipbuilding capability preservation agreements.

Authority: 5 U.S.C. 301, 10 U.S.C. 2501, 10 U.S.C. 7315, DoD Directive 5000.35.

Subpart 5231.2—Contracts With Commercial Organizations

§ 5231.205 Selected costs.

§ 5231.205–90 Shipbuilding capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b), the Navy may enter into a shipbuilding capability preservation agreement with a contractor. As authorized by section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85), such an agreement permits the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on Navy shipbuilding contracts.

(b) *Definition. Incremental indirect cost,* as used in this subsection, means an additional indirect cost that results from performing private sector work described in a shipbuilding capability preservation agreement.

(c) *Purpose and guidelines.* The purpose of a shipbuilding capability preservation agreement is to broaden and strengthen the shipbuilding industrial base by providing an incentive for a shipbuilder to obtain new private sector work, thereby reducing the Navy's cost of doing business. The Navy will use the following guidelines to evaluate requests for shipbuilding capability preservation agreements:

(1) The Assistant Secretary of the Navy for Research, Development and Acquisition must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a shipbuilder is able to obtain.

(2) An agreement generally will be considered only for a shipbuilder with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to the Navy, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by the Navy.

(d) *Cost-reimbursement rules.* If the Navy enters into a shipbuilding capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; and

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) The Navy may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, the Navy may agree to the allocation of a smaller or larger portion of the amount calculated in accordance

with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, the Navy will consider factors such as the impact of pre-existing firm-fixed-price Navy contracts on the amount of costs that would be reimbursed by the Navy, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a shipbuilding capability preservation agreement, together with appropriate justification, through the Deputy Assistant Secretary of the Navy for Ships, to the Assistant Secretary of the Navy for Research, Development and Acquisition, who has approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

Dated: December 16, 1997.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Officer.

[FR Doc. 97–33221 Filed 12–19–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 121597C]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; catch limit adjustment.

SUMMARY: NMFS closes the fishery for large medium and giant Atlantic bluefin tuna (ABT) conducted by Angling category fishermen in the southern area (the waters off Delaware and states south). Closure of this fishery is necessary because the 4 metric tons (mt) of large medium and giant ABT allocated for this subcategory is projected to be attained by December 17, 1997. The intent of this action is to prevent overharvest of this subcategory. In addition, effective January 1, 1998, the daily catch limit for ABT is adjusted to one fish per vessel, which may be from the school, large school, or small medium size class. This action is being taken to lengthen the fishing season and ensure reasonable fishing opportunities in all geographic areas without risking overharvest of the Angling category.

DATES: The closure is effective 11:30 p.m., local time, December 17, 1997, through December 31, 1997. The daily catch limit adjustment is effective 12:30 a.m., local time, January 1, 1998, until the end of the 1998 winter fishery. NMFS will publish a subsequent document specifying a closure or any additional adjustment.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Pat Scida, 978–281–9208.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Closure

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a total annual quota of 4 mt of large medium and giant ABT (measuring greater than 73 inches (185 cm)) to be harvested in the southern area (south of 38°47' N. lat.) by vessels permitted in the Angling category or the Charter/Headboat category. NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota applicable to any period.

As of December 15, 1997, reported recreational fishery landings of large medium and giant ABT in the southern area totaled approximately 3.8 mt. Information on fishing effort and catch rates available to NMFS indicates that the remaining quota is likely to be taken by the closure date. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT in the southern area by vessels in the Angling category or Charter/Headboat category must cease at 11:30 p.m., local time, December 17, 1997. This action is to prevent overharvest of the quota established for this subcategory. Recreational anglers may continue to fish for large medium and giant ABT under the NMFS tag and release program (50 CFR 285.27). The Angling category trophy fishery for large medium and giant ABT remains open in the northern area until further notice.

Catch Limit Adjustment

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to lengthen the fishing season and ensure reasonable fishing opportunities for all geographic areas. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

The 1997 Angling category fishery closed effective October 19, 1997 (62 FR 53247, October 14, 1997). The 1998 Angling category fishery for ABT measuring 27 inches and greater will open January 1, 1998. NMFS adjusts the daily catch limit, effective January 1, 1998 as follows: No more than one bluefin tuna may be retained each day per Angling category vessel, which may be from the school, large school, or small medium size class. Based on the high catch rates and large average size of ABT landed during the first few months of 1997, this action is being taken to lengthen the fishing season and ensure reasonable fishing opportunities in all geographic areas without risking overharvest.

Charter/Headboat vessels, when engaged in recreational fishing for school, large school, and small medium ABT, are subject to the same rules as Angling category vessels. The trophy fish catch limit of one-per-vessel-per-year will remain in effect for 1998.

Subsequent adjustments to the daily catch limit, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at 301–713–1279 or 978–281–9305 for updates on quota monitoring and catch limit adjustments.

Classification

This action is taken under 50 CFR 285.20(b)(1) and 285.24(d)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: December 16, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33300 Filed 12–17–97; 3:35 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970801188–7288–02; I.D. 070797C]

RIN 0648–AJ45

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limit for Chionoecetes opilio

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations implementing Amendment 40 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) as recommended by the North Pacific Fishery Management Council (Council). The implementing regulations establish a prohibited species catch (PSC) limit for *Chionoecetes opilio*, a crab species, in a new *C. opilio* Bycatch Limitation Zone (COBLZ) of the Bering Sea. Upon attainment of a *C. opilio* bycatch allowance apportioned to a particular trawl fishery category, the COBLZ will be closed to directed fishing for species in that trawl fishery category. This measure is necessary to further protect the stocks of Bering Sea *C. opilio* by limiting the incidental take of this species thereby mitigating the potential adverse effects of trawl fishing activities on the *C. opilio* stock. This measure is intended to accomplish the objectives of the FMP with respect to the management of the Bering Sea and Aleutian Islands management area (BSAI) groundfish fishery.

DATES: Effective January 21, 1998.

ADDRESSES: Comments should be sent to Chief, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the amendment may be obtained from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the BSAI in the exclusive economic zone are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is implemented by regulations for the fisheries off Alaska at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Anticipated recruitment of male *C. opilio* crab is at a relatively low level, based on recent NMFS bottom trawl survey data. The 1996 *C. opilio* season produced only 64.6 million lb (29,302 metric tons) for the 235 vessels participating. This is the lowest catch since 1984. Survey data from 1996 indicate that adult males are abundant, but females and pre-recruits (males that have not reached legal commercial size) are becoming less abundant. This was corroborated by the 1997 survey which showed a 78 percent increase in the large male (greater than 102 mm, legal size) population, 45 percent decrease in the pre-recruit (less than 102 mm) male population, and a 22 percent decrease in the small (less than 50 mm) female population. Although the increase in the large male population should lead to a stable abundance of large males, the lack of very small crabs may indicate declining abundance over a longer term.

The groundfish fisheries incidentally catch crab. An objective of the FMP is to minimize the impact of groundfish fisheries on crab and other prohibited species, while providing for rational and optimal use of the region's fishery resources. All gear types used to catch groundfish have some potential to incidentally catch crab, but the large majority of crab bycatch occurs in trawl fisheries for flatfish.

In view of this FMP objective, the Council initiated an assessment in January 1995 of potential measures to further limit crab bycatch in the groundfish fisheries. This Council initiative was also responsive to increasing concern about the potential impact of crab bycatch on declining stocks and future harvests in the commercial crab fisheries. Proposed alternatives included the establishment of bycatch limits for *C. opilio*.

In June 1996, the Council formed an industry work group to review proposed PSC limits for *C. opilio*. This work group consisted of three crab fishery representatives, three trawl fishery representatives, and one shoreside processing representative. The group met November 6–7, 1996, and came to a consensus on a PSC limit for *C. opilio*, based on the best available scientific information on the abundance and distribution of the specified crab species and its rate of bycatch in fisheries for certain species of groundfish. The affected industry groups proposed the following: (1) Establishment of a COBLZ, (2) an annual specification of a PSC limit for *C. opilio* in the COBLZ based on the total abundance of *C. opilio* as indicated by the most recent NMFS bottom trawl survey, and (3) establishment of upper and lower bounds within which the annual *C. opilio* PSC limit must be specified.

At its December 1996 meeting, the Council endorsed the industry work group agreement and adopted it as Amendment 40 to the FMP. The Council recommended that NMFS initiate a rulemaking to implement the amendment. A notice of availability of Amendment 40 was published in the **Federal Register** on July 15, 1997 (62 FR 37860), and invited comment on the amendment through September 15, 1997. One letter containing 3 comments was received during the comment period on the amendment. A proposed rule to implement Amendment 40 was published in the **Federal Register** on August 13, 1997 (62 FR 43307). Comments on the proposed rule were invited through September 29, 1997. No additional comments were received by the end of the comment period on the proposed rule. The comments supported approval of Amendment 40 and the proposed rule with various suggestions for modifications. Comments on the proposed rule are summarized and responded to in the Response to Comments section.

The proposed rule included measures for a *C. opilio* PSC limit in 1997. However, after publication of the proposed rule, it became apparent that the proposed 1997 *C. opilio* PSC limit would not be approached. Consequently, those proposed measures have been removed from this final rule. NMFS anticipates that the Council will specify a 1998 PSC limit (4,654,000 *C. opilio* crab) and the fishery apportionment thereof as part of the 1998 groundfish specification process. *C. opilio* bycatch accrued from January 1, 1998, until the effective date of the final rule would apply to all fisheries that take *C. opilio* in 1998.

NMFS clarifies an erroneous statement made in the preamble to the proposed rule (62 FR 43307 August 13, 1997) which indicated that upon attainment of a *C. opilio* bycatch allowance apportioned to a particular trawl fishery category, the COBLZ would be closed to directed fishing for species in that trawl fishery category, except for pollock with nonpelagic trawl gear, according to § 679.21(e)(7)(i). That statement is corrected to indicate that the COBLZ would be closed to directed fishing for species in that trawl fishery category, except for pollock with pelagic trawl gear. As indicated by the existing exception at § 679.21(e)(7)(i), the bycatch concern is for the nonpelagic trawl gear, not for the pelagic trawl gear. This erroneous statement was not repeated in the text of the proposed regulations published at 62 FR 43307. Therefore, no change from the proposed rule to the final rule is necessary.

NMFS has determined that this action is necessary for the conservation and management of the groundfish fishery of the BSAI and for the resource allocation issue between the groundfish and crab industries. NMFS approved Amendment 40 on October 15, 1997, under section 304(a) of the Magnuson-Stevens Act. Additional information on this action may be found in the preamble to the proposed rule (62 FR 43307) and in the EA/RIR/FRFA.

Response to Comments

Comment 1. NMFS should modify the stated rationale for Amendment 40 from one that focuses on a conservation problem to one that acknowledges the health of the *C. opilio* resource and the allocation issue between groundfish and crab industries. The trawl industry, in general, believes that the establishment of a *C. opilio* PSC limit is simply a distributive decision. The rationale for Amendment 40 should focus on the allocation aspect of the industry agreement and should plainly state that the groundfish and crab industries have agreed to limit the trawl industry's take of *C. opilio* in the COBLZ to 0.1133 percent of abundance as determined by the annual NMFS bottom trawl survey.

Response. NMFS acknowledges that Amendment 40 addresses an allocation issue between groundfish and crab industries. However, NMFS also recognizes that this measure provides protection to stocks of Bering Sea *C. opilio* by limiting the incidental take of this species, thereby mitigating the potentially adverse effects of trawl fishing activities on the *C. opilio* stock. Historically, bycatch management measures instituted for groundfish fisheries in the eastern Bering Sea have focused on reducing the incidental capture and injury of species traditionally harvested by other fisheries. The total abundance estimates for *C. opilio*, as determined by the NMFS annual trawl survey, have declined steadily since 1993. Although certain segments of the population may have increased (large male segment by 78 percent in 1997), others have declined (pre-recruit male segment by 45 percent and small female segment by 22 percent in 1997). Therefore, a conservative management approach is warranted.

Comment 2. If NMFS chooses to retain the current emphasis on addressing a "conservation problem," NMFS should concentrate on the significant level of *C. opilio* discards in the directed *C. opilio* fishery. Between the years 1992 and 1994, according to Alaska Department of Fish and Game (ADF&G) data, an average of 59,267,279 *C. opilio* crab were discarded annually in the directed crab fishery. Assuming a mortality rate of only 20 percent (which is reasonable for a crab fishery that takes place in the winter months), the impact of approximately 12 million dead crab from the directed fishery is far greater than the impact of the *C. opilio* PSC limit of 0.1133 percent of abundance (4.6 million crab for 1998), even assuming the entire PSC limit is taken and all trawl-caught *C. opilio* are killed, which is improbable.

Response. NMFS is aware that *C. opilio* discards in the directed *C. opilio* fishery contribute to the overall crab bycatch issue. NMFS also agrees that all sources of mortality are of concern for a resource, such as *C. opilio*, that experiences a reduction in biomass. NMFS and ADF&G are engaged in research initiatives on crab handling mortality and bycatch reduction in the directed crab fisheries. Various crab bycatch proposals for FMP amendments and regulatory amendments were submitted by industry groups to the Council in 1997.

Comment 3. Due to the current NMFS catch monitoring programs it may be difficult initially to monitor the *C. opilio* PSC limit in the COBLZ. We accept this unfortunate situation for 1998 alone. Trawl industry support for the *C. opilio* bycatch restrictions was based on tracking the PSC limit against the area specified as the COBLZ. The accord between the industries was landmark and involved a great deal of analysis and negotiation on the part of industry. Implementation of Amendment 40 after 1998 should proceed without modification of the PSC limit or the COBLZ area.

Response. Implementation of Amendment 40 in 1998 will proceed without modification of the PSC limit or the area monitored, the COBLZ. The proposed regulations at § 679.21(e)(1)(iii) indicated that through December 31, 1997, the areas to account for *C. opilio* bycatch PSC limit would be accounted for from Federal reporting areas 513, 514, 521, 523, and 524 until changes to recordkeeping and reporting requirements could be made. Due to unanticipated delays in implementing Amendment 40, however, the *C. opilio* PSC limit and the COBLZ will not be effective until January 1, 1998. At that time, the *C. opilio* PSC limit will be monitored in the COBLZ. This will be possible pending changes to the 1998 recordkeeping and reporting requirements that will require fishermen and processors to indicate by citing logbooks and production reports respectively, when fishing occurs in the COBLZ.

Changes From the Proposed Rule

For reasons stated above, the regulatory provisions for 1997 implementation of the *C. opilio* PSC limit and the establishment of the COBLZ in 1997 have been deleted.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 40 is necessary for the conservation and management of the groundfish fishery of the BSAI and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an FRFA as part of the RIR, which describes the impact this rule would have on small entities. Many trawl vessels and processors participating in the BSAI groundfish fishery could be affected by this action. Catcher vessels harvesting groundfish in the BSAI are considered small entities and would be affected by the new *C. opilio* PSC limits. In 1995, 122 trawl catcher vessels harvested BSAI groundfish. Based on the best available information, NMFS anticipates that this rule could result in a greater than 5–percent reduction in gross revenues for any one of these vessels. Therefore, this rule could have a significant economic impact on a substantial number of small entities.

A number of alternatives to the rule which would have lessened the economic impact on small entities were considered and rejected. The no action alternative, that is not establishing a PSC limit for *C. opilio*, was rejected because it would not accomplish the Council's objective of limiting bycatch, especially if the BSAI allocations of flatfish are increased in the future. The alternative of establishing a fixed limit of *C. opilio* that, upon attainment, would close affected trawl fisheries in Zone 2 (Federal reporting areas 508, 509, 512, and 516) unless the optimum limit was specified prior to the fishing season, was rejected because if the optimum limit was not correctly specified in advance, certain trawl fisheries (e.g., yellowfin sole fishery) could be adversely impacted. Another alternative was to set a fixed limit for Zone 2 of *C. opilio* within a specific percentage of the NMFS bottom trawl index. This alternative was rejected because Zone 2 does not correspond to crab distribution as does the preferred COBLZ, which was proposed specifically for *C. opilio* bycatch management. Alternatives that addressed modifying reporting requirements for small entities or the use of performance rather than design standards for small entities were not considered. Such alternatives were not relevant to this action. Exemptions for small entities from this action would not be appropriate in that the objective of the action to further limit *C. opilo* bycatch in the BSAI groundfish fisheries would not be adequately addressed. No steps to minimize the potential significant economic impacts on small entities have been taken. No comments on the IRFA were received during the public comment period for the proposed rule. A copy of the EA/RIR/FR is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 16, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of "*C. Opilio* Bycatch Limitation Zone" and "U.S.-Russian Boundary" are added in alphabetical order to read as follows:

§ 679.2 Definitions

* * * * *

C. Opilio Bycatch Limitation Zone (COBLZ) (see § 679.21(e)(7)(iv)(B)).

* * * * *

U.S.-Russian Boundary means the seaward boundary of Russian waters as defined in Figure 1 of this part.

* * * * *

3. In § 679.21, paragraphs (e)(1)(iii) through (vi) are redesignated as paragraphs (e)(1)(iv) through (vii), respectively, a new paragraph (e)(1)(iii) is added, paragraphs (e)(3)(ii)(A) and (C) and (e)(6) are revised, paragraphs (e)(7)(iv) through (vii) are redesignated as paragraphs (e)(7)(v) through (viii), and a new paragraph (e)(7)(iv) is added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(iii) *C. opilio.* The PSC limit of *C. opilio* caught by trawl vessels while engaged in directed fishing for groundfish in the COBLZ will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. opilio* as indicated by the NMFS annual bottom trawl survey using the following criteria:

(A) *PSC Limit.* The PSC limit will be 0.1133 percent of the total abundance, unless;

(B) *Minimum PSC Limit.* If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.5 million animals; or

(C) *Maximum PSC Limit.* If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 13 million animals.

* * * * *

(3) * * *

(ii) *Red king crab, C. bairdi, C. opilio, and halibut*—(A) *General.* For vessels engaged in directed fishing for groundfish in the GOA or BSAI, the PSC limits for red king crab, *C. bairdi*, *C. opilio*, and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

* * * * *

(C) *Incidental catch in midwater pollock fishery.* Any amount of red king crab, *C. bairdi*, *C. opilio*, or halibut that is incidentally taken in the midwater pollock fishery as defined in paragraph (e)(3)(iv)(A) of this section will be counted against the bycatch allowances specified for the pollock/Atka mackerel/ "other species" category defined in paragraph (e)(3)(iv)(F) of this section.

* * * * *

(6) *Notification*—(i) *General.* NMFS will publish annually in the **Federal Register** the annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under this paragraph (e).

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed. for a period of 30 days from the date of publication in the **Federal Register.**

(7) * * *

(iv) *C. opilio, C. Opilio Bycatch Limitation Zone (COBLZ), closure*—(A) *C. opilio Bycatch Allowance.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the COBLZ bycatch allowance, or seasonal apportionment thereof, of *C. opilio* specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the **Federal Register** the closure of the COBLZ, as defined in paragraph (e)(7)(iv)(B) of this section, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(B) *C. Opilio Bycatch Limitation Zone.* The *C. Opilio* Bycatch Limitation Zone is an area defined as that portion of the Bering Sea Subarea north of 56°30' N. lat. that is west of a line connecting the following coordinates in the order listed:

56°30' N. lat., 165°00' W. long.
58°00' N. lat., 165°00' W. long.
59°30' N. lat., 170°00' W. long.
and north along 170°00' W. long. to its intersection with the U.S.-Russian Boundary.

* * * * *

[FR Doc. 97–33302 Filed 12–19–97; 8:45 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 245
Monday, December 22, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1997–20]

Definition of "Member" of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to its rules governing who qualifies as a "member" of a membership association to reflect the decision of the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States* v. *Federal Election Commission*. A membership association can solicit contributions from its members to a separate segregated fund established by the association, and can include express electoral advocacy in communications to its members. The proposed rules would describe a range of financial and organizational attachments that would be sufficient to confer this status.

DATES: Comments must be received on or before January 21, 1998. If the Commission receives sufficient requests to testify, it will hold a hearing in early 1998. The precise date and time of the hearing will be announced in the **Federal Register**. Persons wishing to testify should so indicate in their comments.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to members@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street N.W., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Although the Federal Election Campaign Act of 1971 as amended ("FECA" or "Act"), 2 U.S.C. 431 *et seq.*, prohibits direct corporate contributions in connection with federal campaigns, 2 U.S.C. 441b(a), it permits corporations, including incorporated membership associations, to solicit contributions from their restricted class to a separate segregated fund ("SSF"). In the case of membership associations, the restricted class consists of the members of each association, their executive and administrative personnel, and their families. These contributions can be used for federal political purposes. The Act also allows membership associations to communicate with their members on any subject, including communications that include express electoral advocacy. 2 U.S.C. 441b(b)(2)(A), 441b(b)(4)(C). The Commission's implementing regulations defining who is a "member" of a membership association are found at 11 CFR 100.8(b)(4)(iv) and 11 CFR 114.1(e).

The Commission's original "member" rules, which had been adopted in 1977, were the subject of a 1982 United States Supreme Court decision, *FEC* v. *National Right to Work Committee* ("*NRWC*"), 459 U.S. 196 (1982). In 1993, following a series of advisory opinions in this area, the Commission revised the text of the rules to reflect that decision. 58 FR 45770 (Aug. 30, 1993), effective Nov. 10, 1993. 58 FR 59640. The revised rules were held to be unduly restrictive by the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States ("Chamber")* v. *FEC*, 69 F.3d 600 (D.C.Cir. 1995), *amended on denial of rehearing*, 76 F.3d 1234 (D.C. Cir. 1996).

On February 24, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the National Right to Life Committee, Inc. The Petition urged the Commission to revise its member rules to reflect the *Chamber* decision. The Commission published a Notice of Availability ("NOA") in the **Federal Register** on March 29, 1997. 62 FR 13355. The Commission received two comments in response to the NOA.

On July 31, 1997, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking ("ANPRM") addressing these rules. 62 FR 40982. Because the *Chamber* decision, the petition for rulemaking, and the comments received in response to the NOA provided few specific suggestions as to how the rules should be amended to comport with the decision, the Commission did not propose specific amendments to the rules. Rather, it sought general guidance on the factors to be considered in determining the existence of this relationship.

The Commission received 14 comments in response to the ANPRM. Commenters included the American Association of Meat Processors ("AAMP"); the American Dental Association ("ADA"); the American Federation of State, County and Municipal Employees, AFL–CIO ("AFSCME"); the American Society of Association Executives ("ASAE"); the Chicago Board of Trade; the Chicago Mercantile Exchange; the Connecticut Veterinary Medical Association; the Metropolitan Kansas City Board of Realtors; the National Association of Realtors; the National Citizens Legal Network; the National Right to Life Committee, Inc.; Michael A. Schoenfield; the United States Chamber of Commerce; and the Wholesaler-Distributor Political Action Committee ("WDPAC"). After reviewing these comments, the Commission is now seeking further comment on the specific amendments to the member rules described below.

Background

In its *NRWC* decision, the Supreme Court rejected an argument by a nonprofit, noncapital stock corporation, whose articles of incorporation stated that it had no members, that it should be able to treat as members individuals who had at one time responded, not necessarily financially, to an NRWC advertisement, mailing, or personal contact. The Supreme Court rejected this definition of "member," saying that to accept it "would virtually excise from

the statute the restriction of solicitation to 'members.'" *Id.* at 203. The Court determined that "members" of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. Viewing the question from this perspective meant that "some relatively enduring and independently significant financial or organizational attachment is required to be a 'member'" for these purposes. *Id.* at 204. The NRWC's asserted members did not qualify under this standard because they played no part in the operation or administration of the corporation, elected no corporate officials, attended no membership meetings, and exercised no control over the expenditure of their contributions. *Id.* at 206. The 1993 revisions to the Commission's rules were intended to incorporate this standard.

The current rules provide that either a significant financial attachment to the membership association (not merely the payment of dues) or the right to vote directly for all members of the association's highest governing body is sufficient in and of itself to confer membership rights. However, in most instances a combination of regularly-assessed dues and the right to vote directly or indirectly for at least one member of the association's highest governing body is required. The term "membership association" includes membership organizations, trade associations, cooperatives, corporations without capital stock, and local, national and international labor organizations that meet the requirements set forth in these rules.

The United States District Court for the District of Columbia held that the current rules were not arbitrary, capricious or manifestly contrary to the statutory language, and therefore deferred to what the court found to be a valid exercise of the Commission's regulatory authority. *Chamber of Commerce of the United States* v. *FEC*, Civil Action No. 94–2184 (D.D.C. Oct. 28, 1994)(1994 WL 615786). However, the D.C. Circuit Court of Appeals reversed this ruling.

The case was jointly brought by the Chamber of Commerce and the American Medical Association ("AMA"), two associations that do not provide their asserted "members" with the voting rights necessary to confer this status under the current rules. The circuit court held that the ties between these members and the Chamber and the AMA are nonetheless sufficient to comply with the Supreme Court's *NRWC* criteria, and therefore concluded that the Commission's rules are invalid because they define the term "member" in an unduly restrictive fashion. 69 F.3d at 604.

The Chamber is a nonprofit corporation whose members include 3,000 state and local chambers of commerce, 1,250 trade and professional groups, and 215,000 "direct business members." The members pay annual dues ranging from $65 to $100,000 and may participate on any of 59 policy committees that determine the Chamber's position on various issues. However, the Chamber's Board of Directors is self-perpetuating (that is, Board members elect their successors); so no member entities have either direct or indirect voting rights for any members of the Board.

The AMA challenged the exclusion from the definition of member 44,500 "direct" members, those who do not belong to a state medical association. Direct members pay annual dues ranging from $20 to $420; receive various AMA publications; and participate in professional programs put on by the AMA. They are also bound by and subject to discipline under the AMA's Principles of Medical Ethics. However, since state medical associations elect members of the AMA's House of Delegates, that organization's highest governing body, direct members do not satisfy the voting criteria set forth in the current rules.

The *Chamber* court, in an Addendum to the original decision, noted that the Commission "still has a good deal of latitude in interpreting" the term "member." 76 F.3d at 1235. However, in its original decision, the court held the rules to be arbitrary and capricious as applied to the Chamber, since under the current rules even those paying $100,000 in annual dues cannot qualify as members. As for the AMA, the rule excludes members who pay up to $420 in annual dues and, among other organizational attachments, are subject to sanctions under the Principles of Medical Ethics. The court explained that this latter attachment "might be thought, [] for a professional, [to be] the *most* significant organizational attachment." 69 F.3d at 605 (emphasis in original).

The current rules provide a "safe harbor" for membership associations, since those who meet the requirements set forth in these rules clearly enjoy "member" status. Associations can also seek advisory opinions pursuant to 2 U.S.C. 437f to determine how the rules, as interpreted in the *Chamber of Commerce* decision, apply to their particular situations. In addition, the Commission believes it is appropriate to include in the text of the rules more guidance consistent with the *Chamber* decision. The effect of the proposed rules should be to expand the class of persons considered as "members."

Proposed Revisions

General Considerations

One commenter argued that, since the *NRWC* decision involved an entity whose by-laws specifically stated that it had no members, the Supreme Court's reasoning in that decision applies only to similar entities. That commenter urged the Commission to reinstate its original definition of "member," which included "all persons who are currently satisfying the requirements for membership in a membership organization."

However, the Court's discussion makes clear that the NRWC's failure to provide for members in its by-laws was not the main focus of its reasoning. It was not until *after* the Court noted that the NRWC's asserted "members" had no governance rights or significant other attachments to the organization, *supra*, that it reiterated an earlier statement that the "NRWC's own articles of incorporation and other publicly filed documents explicitly disclaimed the existence of members." 459 U.S. at 558–59. The Commission believes that the lack of financial or organizational attachments, as well as the failure to provide for members in its bylaws, led to the Court's conclusion that the asserted members did not so qualify.

One commenter, noting that it is possible to buy a single share of stock over the telephone, and sell it later that same day, argued that the analogy to stock ownership did not necessarily imply a strong bond. However, ownership of even a single share of stock permits the owner to attend stockholder meetings and thereby participate in the governance of the corporation during whatever time period the stock is held.

Some commenters argued that the Commission should look to the laws of the individual states where membership associations are incorporated to determine who qualifies as their members. The *NRWC* Court assumed, "since there is no body of federal law of corporations, [] Congress intended at least some reference to the laws of the various states dealing with nonprofit corporations." *Id.* at 558 (citation omitted). However, that statement was in response to the argument that the Commission should have acted without reference to state law. The Court explained that, "[g]iven the wide variety of treatment of the subject of membership in state incorporation laws,

and the focus of the Commission's regulation on the corporation's own standards, we think it was entirely permissible for the Commission in this case to look to NRWC's corporate charter under the laws of Virginia and the bylaws adopted in accordance with that charter." *Id.* Far from requiring the Commission to take that action, the Court merely said this was a permissible option under the former "member" definition.

The Commission is now proposing to revise this definition, to provide greater guidance to the regulated community in light of the *NRWC* decision. While under that decision the Commission may choose to examine state law in connection with a particular situation, it does not believe this is an appropriate standard to include in the regulatory language.

Overview

The current rules set out three preliminary requirements that an entity must meet before it qualifies as a "membership association" for purposes of these rules: It must expressly provide for "members" in its articles and by-laws; it must expressly solicit members; and it must expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list. 11 CFR 100.8(b)(4)(iv)(A), 114.1(e)(1). These three requirements were not challenged in the litigation and the Commission is not proposing any changes to this language.

The current rules also recognize as members those who have a stronger financial interest in an association than paying dues (for example, the ownership of a stock exchange seat). 11 CFR 100.8(b)(4)(iv)(B)(*1*), 114.1(e)(2)(i). The Commission is not proposing that these rules be changed. However, it is proposing three alternatives (*Alternatives A, B, and C*) to the other requirements contained in the current rules.

Preliminary Requirements

The Chamber of Commerce and some of the commenters argued that the three general requirements should in and of themselves be sufficient to confer membership status. However, the Commission questions whether these attachments, standing alone, are sufficient to meet the "relatively enduring and independently significant financial or organizational attachment" standard articulated by the *NRWC* Court. While that Court did not discuss what it considered to be a significant financial attachment, these three requirements contain *no* financial attachment. With reference to organizational attachments, the Court cited such attachments as the right to play some part in the operation or administration of the corporation; the right to elect corporate officers; and the right of members to exercise control over the expenditure of their contributions. 459 U.S. at 558. The three requirements fall far short of any such attachments. For this reason none of the alternatives would provide that these three requirements, standing alone, be sufficient to confer membership status.

Financial Attachments

All three alternatives would also retain the current rule recognizing as members persons who have a stronger financial interest in an association than the payment of annual dues, such as those owning seats on stock exchanges or boards of trade. 11 CFR 100.8(b)(4)(iv)(B)(*1*); 114.1(e)(2)(i). While in most instances such persons would qualify under the other proposed requirements, the Commission believes it is appropriate to retain this separate category.

On May 16, 1997, the Commission determined in Advisory Opinion ("AO") 1997–5 that, based on the facts presented, both owners and lessees of seats on the Chicago Mercantile Exchange could be considered "members" of the CME for purposes of these rules. The member-owners, by virtue of their ownership stake, qualify as members under 11 CFR 100.8(b)(4)(iv)(B)(1) and 114.1(e)(2)(i). In addition, the Commission found, member-lessees have sufficient rights and obligations to also qualify as members. These attachments include substantial financial obligations to the CME, the right to serve on policy-formulating committees, and the possibility of sanctions by the CME that would impact on their professional status. AO 1997–5 overruled AO 1988–39 and 1987–31 (in part), which had concluded that, because only one seat was involved, only one membership in the Exchange existed with respect to each leased membership.

The Commission sought comments in the ANPRM on whether to include the holding of AO 1997–5 in the regulatory text. While both the Chicago Board of Trade and the Chicago Mercantile Exchange urged the Commission to do this, the Commission has determined that this is unnecessary, since the proposed rules would so clearly cover both owned and leased memberships. Further, AO 1997–5 remains in effect, should the regulated community require additional guidance on this point. Therefore, the Commission has not included language to this effect in the text of the proposed rules.

Dues

The ANPRM suggested that a certain level of annual dues might be considered in and of itself sufficient to establish membership. Those who paid this amount would be considered members regardless of whether they had any organizational attachments to the association. The ANPRM suggested that any amount of annual dues set by an association might be a sufficient financial attachment, regardless of amount; or, alternatively, that $200 per year might be an appropriate cut-off point, since $200 is the amount that Congress has decided is such a significant attachment to a political committee that itemized disclosure is required for contributions to a political committee.

Some commenters supported the proposal that any amount of dues set by an association would be sufficient to confer membership; while others suggested that a nominal amount, such as $5 per year, should be sufficient. No commenter who addressed this part of the ANPRM agreed with the proposed $200 per year figure.

The Chamber of Commerce stated that a $200 cut-off would exclude approximately 58% of its members, who pay annual dues ranging from $65 through tens of thousands of dollars. ASAE pointed out that an association may charge an initial rate for the first person who joins from an organization, and a reduced rate for subsequent joiners. AAMP noted that membership associations sometimes offer a reduced rate for the first year of membership, in hopes of attracting members who will continue their membership notwithstanding the higher dues for subsequent years.

The three alternatives take different approaches to this question. *Alternative A* would set this level at $50 per year; *Alternative B* would retain the $200 level proposed in the ANPRM for those entities not formed to further business or economic interests; while under *Alternative C* any amount of annual dues set by the association would be sufficient.

Alternative A, which proposes that $50 in annual dues be sufficient to confer membership status, if no organizational attachments exist other than the three preliminary requirements, reflects the Supreme Court's language in the *NRWC* decision making it clear that more than a token commitment is required to qualify as a significant financial attachment. The Commission notes that it is also likely that many persons with lesser dues obligations would qualify as members through the organizational attachments discussed below.

Alternative B would distinguish between the types of organizations addressed by the Chamber of Commerce decision and ideological, social welfare, and political organizations. The first category would include organizations formed to further business or economic interests or to implement a system of self-discipline or self-regulation within a line of commerce, such as business leagues, trade associations, labor organizations, and self-regulating professional associations. These types of organizations clearly provide, as enunciated by the Supreme Court in the *NRWC* case, "some relatively enduring and independently significant financial or organizational attachment." 459 U.S. at 204. Persons paying regular dues of any amount could be treated as members of these organizations without doing violence to the intent of the statute. Such persons join to foster their business or economic interests and, thus, create an attachment that is independent of any political attachment. This is in contrast to persons who join ideological, social welfare, or political organizations. In the latter case, there is a far greater risk that "dues" are nothing more than political support indistinguishable from such support from the general public. In other words, there is a far greater risk that the Commission would "open the door to all but unlimited corporate solicitation and thereby render meaningless the statutory limitation to members." *NRWC*, 459 U.S. at 204.

For organizations that do not fall in the categories of "business leagues, trade associations, labor organizations, or self-regulating professional associations," this alternative would provide that a dues payment obligation by itself would suffice as an indication of "relatively enduring and independently significant financial or organizational attachment" if it exceeds $200 per year. This is the amount Congress chose as the associational level of significance for donor disclosure. Also, although this "$200 dues alone" provision for organizations other than business leagues, trade associations, labor organizations, and self-regulating professional associations would be more restrictive than *Alternative A*, it still would be more forgiving than the current rule whereunder there is no allowance for "member" status based solely on a dues obligation.

Alternative C would provide that an organization that qualified as a membership association could consider as "members" all persons who paid the amount of annual dues set by the association, regardless of amount. This alternative would not distinguish between economic and ideological associations, reasoning that, for example, an emotional commitment to an organization such as Mothers Against Drunk Driving ("MADD") is as significant to their members as the economic attachments discussed with regard to *Alternative B, supra*. Also, a number of organizations that clearly qualify as membership associations, including the American Association of Retired Persons ("AARP"), have annual dues of less than $50 and provide none of the organizational attachments discussed below.

Organizational Attachments

The ANPRM proposed that, for a lesser dues obligation than that which would automatically confer membership, the rules might specify other factors the Commission would consider *per se* sufficient to provide the required organizational attachment, provided that some level of dues was also required. Suggested factors included such attachments as the voting rights contained in the current rule; the right to serve on policy-making boards and/or vote on policy issues; eligibility to be elected to governing positions in the organization; and whether the member could be subject to disciplinary action by the association. The right to vote directly for all members of the highest governing body, contained in current 11 CFR 100.8(b)(4)(A)(3) and 114(e)(1)(iii), was not included in this listing because the other proposed attachments would cover this situation. No commenter suggested additional attachments for inclusion in this list.

Alternative A proposes that, consistent with the *NRWC* decision, certain organizational attachments be considered *per se* sufficient for membership, even where the association charges no dues. Of the above listing, this alternative would provide that the right to vote on policy matters, taken alone, does not provide the significant attachment envisioned by the *NRWC* Court. However, each of the other organizational attachments would be sufficient to confer membership status even where no dues are required. As noted, under this alternative, payment of less than $50 per year in predetermined annual dues, coupled with a lesser organizational attachment, such as the right to vote on policy issues of interest to the membership association, also would be sufficient to confer membership status.

Under *Alternative B*, persons affiliated with ideological, social welfare, or political organizations who paid less than $200 per year in annual dues would be considered members for purposes of these rules if they had some right to participate in the governance of the organization. Such rights would include a right to vote for at least one individual on the highest governing body or for the officers of the organization: a right to vote on policy questions where the highest governing body is obligated to abide by the results (a binding referendum, for example, rather than a mere informational survey) or to approve or disapprove the results (a resolution that must be acted upon, for example); a right to join (not just the opportunity to be selected for) a committee, board, or section within the organization that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or (if the opportunity to be selected for such a committee, board, or section is involved) the right to participate on such committee, board or section because of being selected. To round out the rules, this alternative would provide that even without any dues obligation, persons could be considered "members" if they have the right to vote for at least a majority of the individuals on the highest governing body.

These "dues plus governance rights" provisions, although not as loose as *Alternative A*, would be more forgiving than the current rule because several options other than voting for at least one member of the highest governing body would suffice. The "vote for a majority alone" rule would be more forgiving than the current rule because voting for all persons on the highest governing body would not be required.

The standards proposed in *Alternative B* would permit virtually all the organizations represented by the commenters to treat those they consider members as "members" under federal election law. At the same time, they would screen out ideological/social welfare/political organizations that are not willing to provide for a dues requirement and minimal governance rights. These organizations must be held to a standard that clearly demonstrates that members have a "relatively enduring and independently significant financial or organizational attachment."

Alternative C does not address the situation where persons pay no dues but have significant organizational attachments to an association.

Case by Case Determinations

The current rules at 11 CFR 100.8(b)(4)(iv)(C) and 114.1(e)(3) provide that persons who do not meet the precise membership requirements set out elsewhere in the rules may nevertheless be considered members on a case by case basis. The examples given include student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation. However, the current rules require that such persons may qualify as members only if they retain voting rights in the association. Consistent with the *Chamber* decision, the Commission is proposing that this voting requirement be dropped. The language would also be modified to refer to an organizational or financial attachment, rather than an organizational and financial attachment. This approach is included only in *Alternatives A* and *B*, as it would not be needed if *Alternative C* were adopted.

Multi-tiered Associations

The current rules at 11 CFR 100.8(b)(4)(iv)(B) and 114.1(e)(2) that require both a financial and an organizational attachment for members of most membership associations clearly include two-tiered associations, such as those in which members vote for delegates to a convention, and those delegates elect those who serve on the association's highest governing body. At the time of the 1993 amendment, the Commission explained that multi-tiered associations could solicit across all tiers, as long as the various tiers met the same criteria that govern solicitations by two-tiered associations. *Explanation and Justification for Regulations on the Definition of "Member" of a Membership Association*, 58 FR 45770 (1993). In addition, the Commission authorized farm cooperatives as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141j) and those entities eligible for assistance under the Rural Electrical Act of 1936 as amended (7 U.S.C. 901–950aa–1) to solicit across all tiers even though the precise attachments set forth at 11 CFR 100.8(b)(4)(iv)(B) and 114.1(e)(2) might not always be present. 11 CFR 114.7(k)(1). Federations of trade associations had earlier been given this same right, 11 CFR 114.8(g), as had labor organizations, 11 CFR 114.1(e)(4). The *Chamber of Commerce* court, in discussing the AMA's organizational attachments, cited these exceptions as another basis for its ruling that the AMA should be able to cross-solicit across multiple tiers even where no voting rights were present. 69 F.3d at 606.

If the Commission expands the membership definition, many multi-tiered associations that do not presently qualify for cross-tier solicitation would likely be able to do so. In addition, all three alternatives would provide that direct membership in any level of a multi-tiered association be construed as membership in all tiers of the association for purposes of these rules. ASAE, in recommending this approach, noted that a person who joins one tier of a multi-tiered association clearly demonstrates an intention to associate with the entire organization. This approach would also make enforcement easier and prevent what could otherwise be a large number of requests for advisory opinions from multi-tiered associations.

The Commission is therefore proposing that new general language for this purpose replace that currently found at 11 CFR 100.8(b)(4)(iv)(D) and 114.1(e)(4). Current 11 CFR 114.7(k) and 114.8(g) would be repealed. However, *Alternative B* would in addition retain the Commission's long-standing regulations regarding federations of labor organizations. See 11 CFR 100.8(b)(4)(iv)(D) and 114.1(e)(4). Those rules relate to a situation where the federation is not affiliated with the member organizations (i.e., according to explicit legislative history, the PACs of the federation do not have to share contribution limits with the PACs of the member unions, just as the PACs of a business league or trade association do not have to share limits with the PACs of member corporations, yet the federation is allowed to solicit the members of the member organizations). See, e.g., H.R. Rep. 917, 94th Cong., 2d Sess. 8 (1976); *FEC* v. *Sailors' Union of the Pacific Political Fund*, 624 F.Supp. 492, 495 (N.D. Cal. 1986), *aff'd* 828 F.2d 502 (9th Cir. 1987). This rule for labor federations is needed to preserve a balance with trade associations which are given explicit allowances to solicit persons associated with member corporations.

AO 1991–24 addressed the efforts of the Credit Union National Association, Inc. ("CUNA") and the Wisconsin Credit Union League to make partisan communications across multiple tiers of the organization. While the Commission approved the proposed procedures, these draft rules would increase the options available to these and comparably-situated multi-tiered organizations. In AO 1993–24, the Commission determined that certain persons were not members of the National Rifle Association for purposes of the current rules because they did not have the required voting rights. The draft rules, if approved, would supersede that portion of the AO that requires voting rights to establish membership.

The Commission also welcomes comments on any related topic.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the rules would broaden the current definition of who qualifies as a member of a membership association, thus expanding the opportunity for such associations to send electoral advocacy communications and solicit contributions to their separate segregated funds, but do not require any expenditure of funds. Therefore, no significant impact would result for purposes of this requirement.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 would be amended by revising paragraph (b)(4)(iv) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9))

* * * * *

(b) * * *

(4) * * *

(iv) (A) For purposes of paragraph (b)(4) of this section *membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(*1*) Expressly provides for "members" in its articles and by-laws;

(*2*) Expressly solicits members; and

(*3*) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(B) For purposes of paragraph (b)(4) of this section, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(*1*) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);

Alternative A for paragraphs (b)(4)(iv)(B)(*2*)–(*4*).

(*2*) Are required to pay on a regular basis a specific amount of dues of at least $50 per year that are predetermined by the association;

(*3*) Have a significant organizational attachment to the membership association. Such attachments include the right to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; the right to serve on policy-making boards of the membership association; eligibility to be elected to governing positions in the membership association; and the possibility of disciplinary action against the member by the membership association; or

(*4*) Are required to pay on a regular basis a specific amount of dues of less than $50 per year that are predetermined by the association and who have a lesser organizational attachment to the membership association than those set forth in paragraph (b)(iv)(B)(3) of this section, such as the right to vote on policy issues of interest to the association.

Alternative B for paragraphs (b)(4)(iv)(B)(*2*)–(*4*).

(*2*) Are required to pay on a regular basis a specific amount of dues of at least $200 per year that are predetermined by the membership association;

(*3*) Are required to pay on a regular basis a specific amount of dues less than $200 per year that are predetermined by the membership association and either the association is a business league, trade association, labor organization, or self-regulating professional association or such persons also have:

(*a*) A right to vote for at least one individual on the highest governing body of, or for the officers of, the membership association;

(*b*) A right to vote on policy questions where the highest governing body of the membership association is obligated to abide by the results (a binding referendum, for example, rather than a mere informational survey) or to approve or disapprove the results (a resolution that must be acted upon, for example);

(*c*) A right to join (not just the opportunity to be selected for) a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(*d*) A right to participate by virtue of being selected to serve on a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(*4*) Have the right to vote for at least a majority of the individuals on the highest governing body.

Alternative C for paragraph (b)(4)(iv)(B)(*2*).

(*2*) Are required to pay on a regular basis a specific amount of annual dues that are predetermined by the association.

Alternatives A and B for paragraph (b)(4)(iv)(C).

(C) Notwithstanding the requirements of paragraph (b)(4)(iv)(B) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational or financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members.

Alternatives A, B and C for paragraph (b)(4)(iv)(D).

(D) In the case of a membership association which has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (b)(4)(iv)(B)(*1*), (*2*), (*3*) or (*4*) of this section shall also qualify as a member of all affiliates for purposes of paragraph (b)(4)(iv) of this section. The factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

* * * * *

Alternative B for paragraph (b)(4)(iv)(E).

(E) Notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(*1*) through (*4*) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

* * * * *

PART 114—CORPORATE AND LABOR UNION ACTIVITY

3. The authority citation for Part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

4. Section 114.1 would be amended by revising paragraph 114.7(e) to read as follows:

§ 114.1 Definitions.

* * * * *

(e) (1) *Membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(i) Expressly provides for "members" in its articles and by-laws;

(ii) Expressly solicits members; and

(iii) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(2) The term *members* includes all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);

Alternative A for paragraphs (e)(2)(ii)–(iv).

(ii) Are required to pay on a regular basis a specific amount of dues of at least $50 per year that are predetermined by the association;

(iii) Have a significant organizational attachment to the membership association. Such attachments include the right to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those

who select at least one member of those on the highest governing body of the membership association; the right to serve on policy-making boards or vote on policy issues of interest to the membership association; eligibility to be elected to governing positions in the membership association; and the possibility of disciplinary action against the member by the membership association; or

(iv) Are required to pay on a regular basis a specific amount of dues of less than $50 per year that are predetermined by the association and who have a lesser organizational attachment to the membership association than those set forth in paragraph (e)(2)(iii) of this section, such as the right to vote on policy issues of interest to the association.

Alternative B for paragraphs (e)(2)(ii)–(iv).

(ii) Are required to pay on a regular basis a specific amount of dues of at least $200 per year that are predetermined by the membership association;

(iii) Are required to pay on a regular basis a specific amount of dues less than $200 per year that are predetermined by the membership association and either the association is a business league, trade association, labor organization, or self-regulating professional association or such persons also have:

(A) A right to vote for at least one individual on the highest governing body of, or for the officers of, the membership association;

(B) A right to vote on policy questions where the highest governing body of the membership association is obligated to abide by the results (a binding referendum, for example, rather than a mere informational survey) or to approve or disapprove the results (a resolution that must be acted upon, for example);

(C) A right to join (not just the opportunity to be selected for) a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(D) A right to participate by virtue of being selected to serve on a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(iv) Have the right to vote for at least a majority of the members on the highest governing body.

Alternatives A and B for paragraph (e)(3).

(3) Notwithstanding the requirements of paragraph (e)(2) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational or financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members.

Alternatives A, B and C for paragraph (e)(4).

(4) In the case of a membership association which has a national federation structure or has several affiliated levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (e)(2)(i), (ii), (iii) or (iv) of this section shall qualify as a member of all affiliates for purposes of paragraph (e)(1) of this section. The factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

* * * * *

Alternative B for paragraph (e)(5).

(5) Notwithstanding the requirements of paragraphs (e)(2)(i) through (iv) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national or international union is affiliated.

* * * * *

§ 114.7 [Amended]

5. In Section 114.7, paragraph (k) would be removed.

§ 114.8 [Amended]

6. In section 114.8, paragraph (g) would be removed and reserved.

Dated: December 17, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97–33305 Filed 12–19–97; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–61]

Proposed Modification of Class D Airspace; Minot AFB, ND; and Class E Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D airspace at Minot Air Force Base (AFB), ND, and Class E airspace at Minot, ND. A review of the Instrument Landing System (ILS) 1 or Tactical Air Navigation (TACAN) Runway 29 Standard Instrument Approach Procedure (SIAP), the Instrument Landing System/Distance Measuring Equipment (ILS/DME) 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP for Minot AFB necessitates these modifications. Controlled airspace extending upward from the surface, controlled airspace extending upward from 700 feet above ground level (AGL), and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing these approaches. This proposal would increase the radius and remove the extensions to the Class D airspace for Minot AFB, ND, and would increase the radius and add a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND.

DATES: Comments must be received on or before January 26, 1998.

ADDRESSES: *Comments:* Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–61, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Docket: The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–61." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Minot AFB, ND, and Class E airspace at Minot, ND. A recent joint FAA/Air Force review of the controlled airspace for Minot AFB revealed a need to reinstate controlled airspace inadvertently dropped during the 1993 United States airspace reclassification. This action was completed by Final Rule on November 5, 1997 (97–AGL–59, 62 FR 59783). Further review of the current instrument approach procedures for Minot AFB, including the ILS 1 or TACAN Runway 29 SIAP, the ILS/DME 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP, has indicated a need to modify the existing controlled airspace by increasing the radius and removing the extensions to the Class D airspace for Minot AFB, ND, and increasing the radius and adding a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND. Controlled airspace extending upward from the surface, controlled airspace extending upward from 700 feet AGL, and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing these approaches. The areas would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AGL ND D Minot AFB, ND [Revised]

Minot AFB, ND

(Lat. 48°25'56"N, long. 101°21'29"W)

That airspace extending upward from the surface to and including 4,200 feet MSL and within a 5.3-mile radius of Minot AFB. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL ND E5 Minot, ND [Revised]

Minot, AFB, ND

(Lat. 48°25'56"N, long. 101°21'29"W)

Deering TACAN

(Lat. 48°24'55"N, long. 101°21'58"W)

Minot International Airport, ND

(Lat. 48°15'34"N, long. 101°16'52"W)

Minot VORTAC

(Lat. 48°15'37"N, long. 101°17'14"W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Minot AFB and within 1.5 miles each side of the Deering TACAN 292° radial extending from the 7.1-mile radius to 9.3 miles northwest of the airport and that airspace within a 7.0-mile radius of Minot International Airport and within 4.8 miles each side of the Minot VORTAC 138° radial extending from the 7.0-mile radius to 12.1 miles southeast of the VORTAC and that airspace extending upward from 1,200 feet above the surface within a 47-mile radius of Minot AFB, excluding the area north of latitude 49°00'00"N.

* * * * *

Issued in Des Plaines, Illinois on November 26, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–33282 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–50]

Proposed Establishment of Class E Airspace; Cooperstown, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Cooperstown, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 13 and a GPS SIAP to Runway 31 have been developed for Cooperstown Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing the approaches. This proposal would create controlled airspace both at Cooperstown Municipal Airport and include previously uncontrolled airspace nearby the airport.

DATES: Comments must be received on or before January 23, 1998.

ADDRESSES: *Comments:* Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–50, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Docket: The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AGL–50." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Cooperstown, ND, to accommodate aircraft executing the GPS Runway 13 and GPS Runway 31 SIAPs at Cooperstown Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL within a 6.3-mile radius of Cooperstown Municipal Airport, and controlled airspace extending upward from 1,200 feet AGL in three previously uncontrolled Class G airspace areas is needed to contain aircraft executing the instrument flight rules arrival routing from the northwest and southeast and the proposed approaches. This proposal would create Class E airspace at Cooperstown Municipal Airport and in three Class G airspace areas: the entire existing Class G airspace area above Cooperstown, ND; the entire existing Class G airspace area approximately halfway between Cooperstown, ND, and Devils Lake, ND, and which overlies Johnson Lake National Wildlife Refuge, ND; and that portion of the existing Class G airspace area between Cooperstown, ND, and Valley City, ND, which lies west of longitude 97°49'30"W. The areas would be depicted on appropriate aeronautical charts. Class E airspace designations extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL ND E5 Cooperstown, ND [New]

Cooperstown Municipal Airport, ND
(Lat. 47°25'22"N, long. 98°06'21"W)
Devils Lake VORTAC
(Lat. 48°06'48"N, long. 98°54'29"W)
Grand Forks Air Force Base, ND
(Lat. 47°57'40"N, long. 97°24'04"W)
Valley City Barnes County Municipal Airport, ND
(Lat. 46°56'28"N, long. 98°01'03"W)
Jamestown VOR/DME
(Lat. 46°55'58"N, long. 98°40'44"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cooperstown Municipal Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded on the east by longitude 97°49'30"W, on the south by the 7.9-mile radius of the Valley City Barnes County Municipal Airport and by V2–520, on the southwest by the 16.5-mile radius of the Jamestown VOR/DME and on the west by V561; that airspace bounded on the northwest by the 34-mile arc of the Grand Forks Air Force Base, on the east by V561, on the southwest by the 16.5-mile radius of the Jamestown VOR/DME and V170, and on the west by V55; and that airspace bounded on the north by V430, on the east by the 34-mile arc of the Grand Forks Air Force Base, on the south by V55, on the west by V170, and on the northwest by the 22-mile radius of the Devils Lake VORTAC.

* * * * *

Issued in Des Plaines, Illinois on November 24, 1997.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 97–33263 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 85

[AMS–FRL–5938–7]

RIN 2060–AH62

I/M Program Requirement—On-Board Diagnostic Checks; Amendment to the Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to change a provision of the federal vehicle inspection and maintenance (I/M) rules relating to the implementation deadline by which states are required to begin On-Board Diagnostic (OBD) checks as a routine part of basic and enhanced I/M programs. The current rule requires Ozone Transport Region (OTR) areas with low enhanced programs to implement OBD checks by January 1, 1999, and all other areas to implement OBD checks by January 1, 1998. This notice proposes to delay for a period of up to three years the required implementation deadline for OBD in those areas. This proposed amendment will set a new implementation date for OBD checks as January 1, 2001 for all areas with basic and enhanced I/M programs. During this time extension the Agency will generate, collect and analyze the data necessary to accord OBD checks the appropriate level of emission reduction credits. Additionally, certain clarifying amendments are being proposed to allow for updates to the Code of Federal Regulations which are cross-referenced in the OBD rule.

DATES: Written comments on this proposal must be received no later than January 6, 1998.

ADDRESSES: Materials relevant to this proposed rulemaking are contained in the Public Docket No. A–94–21. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 5:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material. The preamble, regulatory language and regulatory support document are also available electronically from the EPA internet Web site. This service is free of charge, except for any cost one may already incur for internet connectivity. The official **Federal Register** version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

http://www.epa.gov/EPA-AIR/ (either select desired date or use Search feature)

http://www.epa.gov/OMSWWW/ (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, minor changes in format, pagination, etc. may occur.

FOR FURTHER INFORMATION CONTACT: Leila Cook, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 741–7820.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by the minor amendment to the I/M rule are those which adopt, approve, or fund I/M programs. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Local air quality agencies.
State government	State air quality agencies responsible for I/M programs.
Federal government	DOT.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities of which EPA is now aware that could potentially be regulated by this proposed I/M amendment. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria of 40 CFR 51.350 of the I/M rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Summary of Rule

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 et. seq., the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992 (40 CFR part 51, subpart S) rules relating to motor vehicle inspection and maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR

52950). Subsequent to that rule, the EPA published in the **Federal Register** on August 6, 1996, (40 CFR parts 51 and 85) rules relating to the implementation of On-board Diagnostic (OBD) checks as a routine part of I/M programs (hereafter referred to as the I/M OBD rule; see 61 FR 40940).

The statutory requirement for OBD checks as an I/M program requirement is found in sections 182(c)(3)(C)(vii) and 202(m)(3) of the Act. Section 182(c)(3)(C)(vii) requires the inspection of emission control diagnostic systems. In the I/M OBD rule, EPA interpreted the statutory requirement to include OBD checks in addition to otherwise required emission testing, and thus promulgated a rule which required both tests as part of the regular I/M test procedure. Per the I/M OBD rule, until January 1, 2000, both OBD and evaporative system tests, where applicable, were to be required on each subject vehicle of model year 1996 and newer. During this period vehicles which fail the OBD check would not automatically fail the I/M test. Only after January 1, 2000, would failure of the OBD test require mandatory repair and retest. The two-year period from when OBD checks were to be started, until they could generate I/M failures, was to be a period during which the Agency would evaluate the relative effectiveness of OBD.

The Agency believes that sufficient data must be generated on which to base an appropriate level of emission reduction credits for OBD. It would be premature at this time, therefore, to require the states to perform OBD checks in addition to the regular exhaust and evaporative testing and attendant costs. EPA now believes that the data needed must be generated by a separate study that compares OBD's emission reduction potential to the Federal Test Procedure, the same procedure used to certify all new automobiles today. The Agency is currently conducting such a study which began October 1, 1997. Two years are needed to ensure ample time for fleet penetration of OBD-equipped vehicles, so that enough vehicles can be recruited for the study. The third year will be needed to allow sufficient time to analyze the data generated by the study and to develop and assign appropriate credits.

Today, EPA is proposing to amend 40 CFR section 51.373 to delay to January 1, 2001 the implementation deadline for OBD checks in OTR low enhanced areas and in all other areas. While these dates were different in the I/M OBD rule, i.e., January 1, 1999 and January 1, 1998, respectively, today's rule delays both to the same deadline of January 1, 2001. This amounts to a two-year delay for those OTR low enhanced areas and a three year delay for all other areas.

Additionally, EPA is proposing to reserve 40 CFR 85.2207 (a) and (e) which address failure of the OBD test as a basis for failure of the I/M test. EPA proposes to reserve these subsections pending resolution of the appropriate level of emission reduction credits for OBD.

Additionally, certain clarifying amendments are being proposed to allow for updates to the Code of Federal Regulations which are cross-referenced in the OBD rule. Part 86 of the CFR, which includes the technical specifications for OBD systems, is periodically updated to include new requirements for these systems. The current rule requires compliance with certain I/M program requirements pursuant to section 86.094–17. As this section has now been amended to include new subsections which also apply to OBD systems, this action proposes to amend the sections of the OBD rule where that subsection is referenced to obviate the need for future amendments in this regard. Where section 86.094–17 was referenced before, this action proposes to amend such language to refer simply to certain vehicles with "certified OBD systems".

The requirement shall remain that states revise their I/M SIPs by August 6, 1998, to implement OBD. This is due to the Act's requirement in section 202(m)(3) that states revise their SIPs within two years after promulgation of the regulations to provide for OBD inspections. As the I/M OBD rule was promulgated on August 6, 1996, states must adopt rules, by two years from that date, which require OBD checks. Only the date for the start of testing is proposed for delay here.

Also unchanged, are the sections that allow for states to implement OBD inspections before December 31, 1999, and to allow failure of OBD to result in failure of the I/M test, thereby requiring repair. Both efforts shall remain optional to the states. States which choose to add OBD checks to their regular tailpipe and evaporative tests should be able to do so without regulatory hindrance. Those states should benefit from increased consumer acceptance of the technology and the resolution of implementation problems commonly associated with the startup of a new testing technology. However, states which choose to conduct OBD checks, on vehicles so equipped, before the proposed new deadline, cannot earn emission reduction credits for doing so unless they also perform the exhaust and (where applicable) evaporative tests. Only after the Agency has accorded OBD a defined level of emissions reduction credit can states potentially drop the exhaust and evaporative tests and still earn emission reduction credits for performing OBD checks on those vehicles. Should EPA and states complete testing and review of OBD systems sooner than expected, the Agency may be able to make credits available to states who choose to implement OBD I/M checks prior to the proposed deadline.

These proposed amendments are consistent with the relevant requirements of the Clean Air Act. These changes will not result in any change in health and environmental benefits. The only Act-required deadline with regards to OBD testing is that described above, such that states must revise their SIPs by the date certain and that requirement has been retained in this amendment. The Act does not include a specific deadline for implementation of OBD testing. EPA believes it is reasonable to extend that deadline for the reasons stated above.

EPA here solicits comments on this proposal. Anyone wishing to comment on the proposal should do so at this time. Because the current deadline for implementation of OBD is January 1, 1998, and because time is needed to accept and respond to comment, time is of the essence in the promulgation of this rule. For the reasons stated above it will be necessary to limit the comment period for this proposal to fifteen days. A thirty day comment period would not allow the Agency to promulgate a final rulemaking action until after the January 1, 1998 deadline. The agency will make every effort to ensure that this proposed rule is distributed by every available mechanism so that concerned stakeholders will have ample time to comment.

Administrative Requirements

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. A small government jurisdiction is defined as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. This certification is based on the fact that the I/M areas impacted by this rulemaking do not meet the definition of a small government jurisdiction, that is, governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. The I/M rule applies only to urbanized areas with populations in excess of 100,000 or 200,000 depending upon location.

Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the requirements in this action would impose any mandate at all as defined in Section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this rule is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

Paperwork Reduction Act

This regulatory action does not contain any information collection requirements requiring approval by the office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12866

It has been determined that this proposed amendment to the I/M OBD rule is not a significant regulatory action under the terms of Executive Order 12866 and has been waived from Office of Management and Budget (OMB) review.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfer oxides, Volatile organic compounds.

40 CFR Part 85

Confidential business information, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: December 16, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 51 and 85 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 51.351 is amended by revising paragraph (c) to read as follows:

§ 51.351 Enhanced I/M performance standard.

* * * * *

(c) On-Board Diagnostics (OBD). The performance standard shall include inspection of all 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

* * * * *

3. Section 51.352 is amended by revising paragraph (c) to read as follows:

§ 51.352 Basic I/M performance standard.

* * * * *

(c) On-Board Diagnostics (OBD). The performance standard shall include inspection of all 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

* * * * *

4. Section 51.373 is amended by revising paragraph (g) to read as follows:

§ 51.373 Implementation deadlines.

* * * * *

(g) On-Board Diagnostic checks shall be implemented in all basic, low enhanced and high enhanced areas as part of the I/M program by January 1, 2001.

PART 85—[AMENDED]

5. The authority citation for Part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

6. Section 85.2207 is amended by removing and reserving paragraphs (a) and (e).

7. Section 85.2231 is amended by revising paragraph (b) to read as follows:

§ 85.2231 On-board diagnostic test equipment requirements.

* * * * *

(b) The test system shall be capable of communicating with the standard data link connector of vehicles with certified OBD systems.

* * * * *

[FR Doc. 97–33315 Filed 12–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY 26–2–176b, FRL–5936–7]

Determination of Attainment of the One-Hour Ozone Standard for the Poughkeepsie, New York Nonattainment Area and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to find that the Poughkeepsie ozone nonattainment area in New York has attained the one-hour National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements of Part D of Title I of the Clean Air Act are not applicable for as long as the area continues to attain the one-hour ozone standard. In the Final Rules section of this **Federal Register**, EPA is making these determinations without prior proposal because the Agency views this as a noncontroversial activity and anticipates no adverse comments. A detailed rationale for this activity is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties

interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before January 21, 1998.

ADDRESSES: All comments should be mailed to Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866. Copies of the air quality data cited in the notice are available for inspection during normal business hours at: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, at the above address. Phone: 212–637–4249.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this **Federal Register**.

Dated: December 4, 1997.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 97–33079 Filed 12–19–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 120997A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of experimental fishery proposals; request for comments.

SUMMARY: NMFS issues this notice to announce that the Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of an experimental fishing proposal that would permit vessels to conduct operations otherwise restricted by regulations governing the Fisheries of the Northeastern United States. The experimental fishery would involve fishing for, retention, and limited landing of dogfish using gillnets in the Nantucket Shoal Dogfish Exemption Area. Regulations under the Magnuson-Stevens Act Provisions require publication of this notice to provide interested parties the opportunity to comment on the proposed experimental fisheries.

DATES: Comments must be received by January 6, 1998.

ADDRESSES: Comments should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Experimental Fisheries."

FOR FURTHER INFORMATION CONTACT: Mary M. Tokarcik, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: The New England Fisheries Management Council requested an experiment to fish for dogfish using gillnets in the Nantucket Shoal Dogfish Exemption Area. An application for an experimental fishing permit (EFP) was received by the Regional Administrator on November 6, 1997.

Fishing would be conducted in the Nantucket Shoal Dogfish Exemption Area, as described in § 648.80(a)(9). This exemption area currently allows for the harvest of dogfish using 6–inch (15.24–cm) minimum mesh trawl gear from June 1 through October 15. The experimental fishing activity would be conducted by vessels using 6–inch (15.24–cm) minimum mesh gillnet gear. A maximum of 15 vessels would participate in the fishery for the season May 1 through November 30. Participants would be limited to 60 nets, no overnight sets of gear, and no simultaneous fishing for regulated New England groundfish. EFPs would be issued to participating vessels to exempt them from the gear and days-at-sea restrictions of the Northeast Multispecies Fishery Management Plan.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 15, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33301 Filed 12–19–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 245

Monday, December 22, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. CN–98–001]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Cotton Classification and Market News Service.

DATES: Comments on this notice must be received on or before February 20, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Ronald K. Cole, U.S. Department of Agriculture, Agricultural Marketing Service, Cotton Programs, Market News Branch, 3275 Appling Road, Memphis, Tennessee, 38133; (901) 384–3016 telephone and (901) 384–3036 fax.

SUPPLEMENTARY INFORMATION:

Title: Cotton Classification and Market News Service.

OMB Number: 0581–0009.

Expiration Date of Approval: 06/30/98.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Cotton Classification and Market News Service program provides market information on Cotton prices, quality, stocks, demand and supply to growers, ginners, merchandisers, textile mills and the public for their use in making sound business decisions. The Cotton Statistics and Estimates Act, 7 U.S.C. 471–476, authorizes and directs the Secretary of Agriculture to: (a) Collect and publish annually, statistics or estimates concerning the grades and staple lengths of stocks of cotton, known as the carryover, on hand on the 1st of August each year in warehouses and other establishments of every character in the continental U.S., and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the then current crop (7 U.S.C. 471); (b) Collect, authenticate, publish and distribute by telegraph, radio, mail, or otherwise, timely information of the market supply, demand, location, and market prices of cotton (7 U.S.C. 473b). The Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1627, authorizes and directs the Secretary of Agriculture to collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

The information collection requirements in this request are essential to carry out the intent of the Act and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies. This includes information on cotton, cottonseed and cotton linters.

The information collected is used only by authorized employees of the USDA, AMS. The Cotton Industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0902 hours per response (218 hours divided by 2,217 responses).

Respondents: Cotton Merchandisers, Textile Mills, Ginners.

Estimated Number of Respondents: 495.

Estimated Number of Responses per Respondent: 4.883 (2,417 responses divided by 495 respondents).

Estimated Total Annual Burden on Respondents: 218 hours.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Ronald K. Cole, U.S. Department of Agriculture, Agricultural Marketing Service, Cotton Programs, Market News Branch, 3275 Appling Road, Memphis, Tennessee, 38133. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 16, 1997.

Mary E. Atienza,

Deputy Administrator, Cotton Programs.

[FR Doc. 97–33290 Filed 12–19–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Forestry Research Advisory Council

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of meeting.

SUMMARY: According to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776) the United States Department of Agriculture announces a meeting of the Forestry Research Advisory Council.

DATES: January 12–13, 1998, 8:00 a.m.–5:00 p.m.

PLACE: ANA Hotel, 2401 M Street, NW, Washington, D.C.

TYPE OF MEETING: Open to the public. Persons may participate in the meeting if time and space permit.

COMMENTS: The public may file written comments before or after the meeting by contacting the person below.

PURPOSE: The Council agenda will include: Discussion of implications of new Research and Education Title of Farm Bill; Government Performance and Results Act; science planning as it relates to forestry and natural resources; review of the Cooperative Forestry Research Program (McIntire-Stennis); and other current research issues.

FOR INFORMATION CONTACT: Dr. Ralph A. Otto, Natural Resources and Environment, Aerospace Center, Suite 816, Stop 2210, Washington, D.C. 20250–2210; Telephone (202) 401–4555.

Done at Washington, DC. this 16th day of December 1997.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–33339 Filed 12–19–97; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Fork St. Joe River Project; Idaho Panhandle National Forests, Shoshone County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The St. Joe Ranger District of the Idaho Panhandle National Forest, USDA Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of vegetation, road and trail, and watershed restoration activities on National Forest lands within the North Fork St. Joe River drainage. The project area is located immediately north of the town of Avery, Idaho. Based on an interdisciplinary assessment of resource conditions within the area, the purpose and need for this proposal is summarized as:

1. Maintain or improve long term water quality within the project area. Where water quality is currently limited, work towards restoring properly functioning hydrologic condition. 2. Maintain or improve habitat for native fish. 3. Maintain or develop habitat conditions (including forest structure, habitat connectivity, security habitat and limited road densities) to contribute to the conservation of forest dwelling species. 4. Forest structure: Where conditions permit, maintain or begin restoration of large diameter trees and forest structures once more common within the North Fork St. Joe area. 5. Forest composition: Where conditions permit, maintain or begin restoration of large, potentially long lived seral species (western white pine, western larch, ponderosa pine, white bark pine) which once dominated the forested landscape of the St. Joe River basin. 6. Promote fire use and control strategies for safety and efficiency of suppression and protection and maintenance of resource values. Trend toward allowing fire to play its natural role as a forest disturbance mechanism. Reduce the risk of very large stand replacing fires through vegetation management and restore beneficial fire effects. 7. Maintain or improve the unique and diverse recreational opportunities available within the area. Provide dispersed and developed campsites for the increasing recreational use. Mitigate, where feasible and necessary, effects of the increasing recreational use and supporting infrastructure (trails, campsites, access routes) on other resource values. 8. Reduce the risk of blending genetic material from the poorly adapted, non-local ponderosa pine trees planted earlier this century with that of the native ponderosa pine. Replace the poorly adapted trees with more sustainable native species. 9. Timber harvest, when feasible and cost effective, will be used when it can help achieve the other landscape objectives so as to also contribute wood to the local timber supply. In as much as it is compatible with other objectives, harvest activities will maintain or improve the long term growth and production of commercially valuable wood products from the sites.

DATES: Comments should be postmarked on or before January 21, 1998. Please include your name and address and the name of the project you are commenting on.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or requests to be placed on project mailing list to Brad Gilbert, District Ranger, St. Joe Ranger District, P.O. Box 407, St. Maries, ID 83861. Brad Gilbert is the Responsible Official.

FOR FURTHER INFORMATION CONTACT: Pete Zimmerman, Project Team Leader, St. Joe Ranger District, (208) 245–2531.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

SUPPLEMENTARY INFORMATION: The decision area contains approximately 75,000 acres within the Idaho Panhandle National Forests in Shoshone County, Idaho. All the proposed projects would occur on National Forest lands in the N. Fork St. Joe River drainage immediately north of Avery, Idaho. The legal location of the decision area is as follows: all or portions of

Township 45 North, Range 5 East; Township 45 North, Range 6 East;
Township 46 North, Range 5 East; Township 46 North, Range 6 East;
Township 46 North, Range 7 East; Township 47 North, Range 5 East;
Township 47 North, Range 6 East; Township 47 North, Range 7 East;

The proposed action is designed to achieve the purpose and need for action as described above. The proposed activities would be initiated over the next ten years. While many of the proposed management activities may work towards achieving more than one of the project objectives, they have been grouped here into four basic categories to simplify the description.

Vegetation

The St. Joe District proposes to use prescribed fire, timber harvest, planting, and other methods to achieve the desired vegetation conditions described above in the purpose and need. Proposed individual treatments by method are as follows (please note that acreage values are gross and would generally include 10 to 25 percent untreated area within the gross area).

Prescribed burning would be the primary treatment on approximately 3,420 acres. (1) Approximately 310 acres of decadent shrubfields within primary big game winter range would be burned to stimulate fresh browse production.

(2) Approximately 2720 acres would be burned to reintroduce the beneficial effects of fire into this ecosystem, reduce fuel loads, and create fuel breaks to reduce the risk of larger, more destructive conflagrations within the landscape. About 1,140 of these acres consist of decadent shrubfields outside of primary big game winter range. Another 740 acres consist of subalpine balds along the northern divide where conifers have begun encroaching after seventy plus years of successful fire suppression. The remaining 840 acres consist of lodge-pole pine stands within the unroaded portions of the North Fork St. Joe River landscape. (3) Approximately 270 acres of poorly adapted ponderosa pine planted early in this century would be burned to kill these "off-site" trees. The purpose is to prevent these trees from cross pollinating with the native ponderosa pine (genetic contamination). These acres would be replanted with better adapted local stock of ponderosa pine, western white pine, and/or western larch. An additional 970 acres of similar non-local ponderosa pine would be treated in this manner if the trees prove uneconomical to harvest prior to burning (see harvest of non-local ponderosa pine below). (4) Approximately 34 acres in and around white bark pine stands would be burned and/or treated mechanically to limit encroachment by other tree species and facilitate natural and planted regeneration.

Timber harvest, in combination with prescribed fire and tree planting, would be the primary treatment on approximately 2,580 acres. (1) Regeneration harvest treatments (harvest methods designed to establish a new stand of more desirable tree species) would occur on approximately 2,030 acres. Prescribed fire would be used to reduce fuels and prepare the sites for planting. About 1,060 of these acres consist primarily of lodgepole pine, a short lived seral tree specie. The remaining 970 acres consist of poorly adapted ponderosa pine planted early in this century. The purpose of removing these ponderosa pine is to prevent these trees from cross pollinating with the better adapted native ponderosa pine (genetic contamination). As noted above, if any or all of these "off-site" ponderosa pine stands prove uneconomical to harvest (they occur primarily in unroaded areas and would require the more expensive helicopter logging) they would still be burned to kill the trees prior to planting to better adapted species.

(2) Commercial thinning (harvesting excess and less desirable trees from a stand to provide more growing room for the remaining trees) would occur on approximately 550 acres.

Access

The St. Joe District proposes to manage the transportation network (roads and trails) in the following ways: (1) Maintain existing access (motorized and non-motorized) on approximately 145 miles of road and 72 miles of trail within the area. (2) Approximately 5.7 miles of new road would be constructed to provide access for timber harvest activities noted above. All but 0.3 miles of these new roads would be either obliterated or stabilized for long term storage following use. The 0.3 miles that would be kept drivable would provide new access for an existing mining claim, thereby allowing obliteration of an additional mile of existing road currently accessing the claim. (3) Approximately 36 miles of existing road would be either obliterated or stabilized for long term storage. (4) Approximately 1 mile of new trail would be constructed to replace trail access currently served by one of these roads which are proposed to be obliterated.

Recreation

The St. Joe District proposes to make improvements to several campsites as follows: (1) Additional campsites and facilities would be constructed at the Squaw Creek Campground. (2) Several dispersed camp sites would be hardened within the Loop Creek meadows and toilet facilities added to protect adjacent resources.

Aquatic Restoration

The St. Joe District proposes the following aquatic restoration activities in addition to those identified above (e.g. road stabilization, etc.). (1) Complete exploratory core drilling on three old railroad grade through-fills to determine and evaluate their condition and structural integrity. Based on the results, develop an action plan to mitigate potential risks. (2) Plant trees within 140 acres of riparian areas adjacent to the North Fork St. Joe River and Clear Creek. (3) Develop and implement a stream restoration plan for Loop Creek downstream from the mouth of Moss Creek. (4) Construct baffles to facilitate fish passage through the Loop Creek water bypass tunnel.

Preliminary Issues

We expect issues and concerns with this project to include the effects on wildlife, fish, water quality, roadless, visual quality/aesthetics and recreation as well as the effects of road construction, clearcutting, size of openings, and economic feasibility. Final issues will be developed and analyzed based on your comments and the interdisciplinary team's analysis of potential effects of the proposed action on the various resource values. These issues will be used to develop alternatives to the proposed action and guide the type and detail of analysis conducted.

Additionally, some of the vegetation treatment may result in openings of over 60 acres. While we would like comments that would affect alternatives early, comments on the size of openings and their effects will be accepted for 60 days after publication of this notice. This 60 day public review period and approval of the Regional Forester for exceeding the 40 acre limitation for regeneration harvest would be required prior to the signing of the Record of Decision.

The Forest Service will consider a range of alternatives to this proposed action. One of these will be the "No Action" alternative. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purpose, as well as to respond to the issues and other resource values.

Public participation is an important part of the analysis and will play an important role in developing the alternatives. The mailing list for public scoping will be developed from responses to this NOI and responses to the Forest's "Quarterly Schedule of Proposed Actions." In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service will also be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. Comments from the public and other agencies will be used in preparation of the Draft EIS.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March 1998. The final environmental impact statement is expected to be completed in May 1998.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First,

reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concern on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternatives means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center ad (202) 720–2600 (voice and TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1–800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

Dated: December 11, 1997.

Bradley Burmark,

Deputy District Ranger.

[FR Doc. 97–33346 Filed 12–19–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock market named below is a stockyard as defined by Section 302 (a). Notice was given to the stockyard owner and to the public as required by Section 302 (b), by posting notices at the stockyard on the date specified below, that the stockyard is subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
PA–159, Troy Sales, Troy, Pennsylvania.	September 17, 1997.

Done at Washington, D.C. this 12th day of December 1997.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 97–33331 Filed 12–19–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, and revocation in part of antidumping duty order.

SUMMARY: On November 10, 1997, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances antidumping duty administrative review and preliminary results of review with intent to revoke, in part, the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. We are now revoking this order in part, with respect to corrosion-resistant steel flat products with certain dimensions and coatings, based on the fact that domestic parties have expressed no interest in the importation or sale of this product, imported from Japan.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Maureen Flannery, AD/CVD Enforcement, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5255 and (202) 482–3020, respectively.

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as codified at 19 CFR by Part 351, 62 FR 27295 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1997, Sudo Corporation (Sudo) requested that the Department conduct a changed circumstances administrative review to determine whether to partially revoke the order with regard to imports of certain corrosion-resistant carbon steel flat products from Japan. The order with regard to imports of other types of corrosion-resistant carbon steel flat products is not affected by this request. On October 28, 1997, domestic producers AK Steel Corporation, Bethlehem Steel Corporation, Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation, informed the Department in writing that they did not object to the changed circumstances review and had no interest in the importation or sale of electrolytic zinc-coated steel coiled rolls produced in Japan as described in detail in Sudo's letter.

We preliminarily determined that domestic producers' affirmative statement of no interest constituted changed circumstances sufficient to warrant a partial revocation of this order. Consequently, on November 10, 1997, the Department published a notice of initiation and preliminary results of changed circumstances antidumping duty administrative review and intent to revoke this order in part (62 FR 60470). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received a comment from domestic producers and a rebuttal comment from Sudo.

Comment: Domestic producers claim that the Department's description of the merchandise to be excluded from the order is overly broad. They state that the Department, in its preliminary results, described the product to be excluded from the order only by width and thickness, ignoring the chemical composition and thickness of the coating. Domestic producers claim that their statement of no interest was based on a description of the product using all of the above criteria. Sudo agrees that the product to be excluded should be defined by all criteria.

Department's Position: We agree with domestic producers and with Sudo, and have added the chemical composition of each of the three coating layers and the thickness of the total coating to the characteristics of the product to be excluded from the antidumping order.

Scope of Review

The merchandise covered by this changed circumstances review is certain corrosion-resistant carbon steel flat products from Japan. This changed circumstances administrative review covers all manufacturers/exporters of certain corrosion-resistant carbon steel flat products meeting the following specifications: widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners in certain corrosion-resistant carbon steel flat products, as described above, produced in Japan, constitutes changed circumstances sufficient to warrant partial revocation of this order. Therefore, the Department is partially revoking the order on certain corrosion-resistant carbon steel flat products from Japan with regard to products which meet the specifications detailed above, in accordance with sections 751 (b) and (d) and 782(h) of the Act and 19 CFR 351.216(d)(1). This partial revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 27, 1995.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of certain corrosion-resistant carbon steel flat products with the dimensions and coatings described above from Japan, entered, or withdrawn from warehouse, for consumption on or after October 27, 1995. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of this product from Japan entered, or withdrawn from warehouse, for consumption on or after October 27, 1995, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1997). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751 (b) and (d) and 782(h) of the Act and sections 351.216 and 351.222(g) of the Department's regulations.

Dated: December 16, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–33351 Filed 12–19–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–824, A–475–820, A–588–843, A–580–829, A–469–807, A–401–806, and A–583–828]

Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta, James Maeder, or Erik Warga, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–6320, (202) 482–3330, or (202) 482–0922, respectively.

Postponement of Preliminary Determinations

On August 19, 1997, the Department initiated antidumping duty investigations of imports of stainless steel wire rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan. The notice of initiation stated that we would issue our preliminary determinations on or before January 6, 1998 (62 FR 45224, August 26, 1997).

On December 11, 1997, petitioners made a timely request pursuant to 19 CFR 351.205(e) of the Department's regulations for 50-day postponements of the preliminary determinations, until February 25, 1998, pursuant to section 733(c)(1) of the Tariff Act of 1930, as amended (the Act). Petitioners requested postponements because the Department is either (a) in the process of conducting below-cost investigations (in the Spain and Taiwan cases) or (b) evaluating petitioners' requests to initiate below-cost investigations (in the Italy, Japan, Korea and Sweden investigations), and it is the petitioners' intention that, by requesting postponements, the additional time will allow the Department to include data from any cost investigations in its preliminary determinations.

In the investigation of stainless steel wire rod from Germany, the respondents have informed the Department that they are not cooperating in the investigation; as a result, the Department will have no choice but to use the most adverse facts available in its determination. Although no additional time is likely to be needed for the Department to prepare its preliminary determination in the Germany investigation, petitioners are

requesting postponement in this case as well so that all of the antidumping cases will remain on the same schedule and, thus, permit the International Trade Commission to cumulate the cases if it deems appropriate to do so. For these same reasons, petitioners also ask the Department to postpone all of the above-referenced cases by the same number of days in order to ensure that they remain on identical time schedules.

For the reasons identified by petitioners, we are postponing the preliminary determinations under Section 733(c)(1) of the Act. We will make our preliminary determinations no later than February 25, 1998.

This notice is published pursuant section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: December 16, 1997.

Holly Kuga,

Acting Deputy Assistant Secretary.AD/CVD Enforcement, Group II.

[FR Doc. 97–33350 Filed 12–19–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection: Comment Request

AGENCY: Air Force Junior Reserve Officer Training Corps, Operations Section.

ACTION: Notice.

In compliance with Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Air Force Junior Reserve Officer Training Corps, Operations Section, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 20, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to AFROTC/DOJ, 551 East Maxwell Blvd, Maxwell Air Force Base, AL 36112–6106.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call AFROTC/DOJO at (334) 953–5116.

Title, Associated Form, and OMB Number: Application for Establishment of Air Force Junior ROTC Unit, AFROTC Form 59, OMB Number 0701–0114.

Needs and Uses: The information collection requirement is necessary to obtain information about schools which would like to host an Air Force Junior ROTC unit.

Affected Public: Schools which desire to establish an Air Force Junior ROTC unit.

Annual Burden Hours: 20.

Number of Respondents: 40.

Average Burden Per Respondent: 30 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are high school officials who provide information about their school which is interested in hosting an Air Force JROTC unit. The completed form is used to determine the eligibility of the school to host an Air Force JROTC unit. If the form is not included in the file, a school cannot be offered the opportunity to host an AFJROTC unit.

Barbara A. Carmichael,

Alternate Air Force, Federal Register Liaison Officer.

[FR Doc. 97–33347 Filed 12–19–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Environmental Impact; Statement/ Environmental Impact Report (DEIS/EIR) for the Disposal of the Long Beach Naval Station (NAVSTA) and the Long Beach Naval Shipyard (NSY)

AGENCY: Department of the Navy, DoD.

ACTION: Announcement of public hearing.

SUMMARY: The Department of the Navy and the City of Long Beach have prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/EIR) for the disposal of NAVSTA and NSY and the subsequent reuse of those properties and other adjacent properties. A public hearing will be held for the purpose to receive oral and written comments on the DEIS/EIR. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing.

DATES: Hearing date is as follows:

1. January 14, 1998, 7:00 p.m., Long Beach, CA.

ADDRESSES: Hearing location is:

1. Long Beach—the City of Long Beach Council Chambers, 333 West Ocean Boulevard, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Ault, (619) 532–4744.

SUPPLEMENTARY INFORMATION: Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of National Environmental Policy Act (NEPA), California Public Resources Code 21000 *et seq.*, and 14 California Code of Regulation 15000 *et seq.*, implementing the procedural provisions of the California Environmental Quality Act (CEQA), the Department of the Navy and the City of Long Beach have prepared and filed with the U.S. Environmental Protection Agency a DEIS/EIR for the disposal of NAVSTA and NSY and the subsequent reuse of those properties and other adjacent properties. The DEIS/EIR has also been prepared in accordance with the Defense Base Closure and Realignment Act of 1990 (DBCRA) (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission approved by the President and accepted by Congress in 1991 and 1995.

The purpose of the proposed federal action is to dispose of NAVSTA and NSY for reuse in accordance with DBCRA established procedures for closing and realigning military installations. The portion of NAVSTA addressed in this action includes the main station, the Navy Mole, and Site 6A–LB. The Navy Fuel Depot, located on the Navy Mole, was not declared to be surplus to the needs of the federal government and will remain the property of the Navy. Of the 250 acres NSY site, 84 acres are subject to reversion under the terms of the final judgment in United States of America v. 1039 Acres of Land etc. *et. al.* The Navy has no discretion regarding the reversion of this property. There are also 602 acres of submerged land that will revert to the City under the terms of that judgment. The remaining land at NSY will be disposed of by the Navy under BRAC and federal property transfer laws. Therefore, the federal action is the disposal of a total of 454 acres.

The purpose and need for the proposed local action is to reuse Navy property (NAVSTA and NSY) in order to offset the negative socioeconomic effects caused by the base closures. A high priority of reuse of the Navy property is job creation and economic redevelopment in accordance with President Clinton's Five Point Program and Governor Wilson's Executive Order W–81–94. The City of Long Beach, as the Local Redevelopment Authority (LRA), proposes to reuse the NAVSTA and NSY property to meet the projected demand for marine terminal expansion and to satisfy the need for new police facilities. In order to meet these needs, the LRA expanded its plan to include 89 acres of Port of Long Beach (POLB) lands adjacent to the Navy property. A ten-acre parcel (included within the 89 acres) north of Ocean Boulevard, which is owned by POLB, was added to the project in response to comments received on another EIR which addressed the POLB Pier T. The term Long Beach Complex (LBC) will be used to define the Navy property and the surrounding Port of Long Beach properties in the DEIS/EIR. Therefore, the local action includes 1,229 acres of property and submerged lands.

Under NEPA and DBCRA, the Navy has two disposal options for the 454 acres: no action, or disposal of the non-reversionary Navy properties.

Under the No Action Alternative, the Navy would retain ownership of the 454 acres of nonreversionary federal property, while current use of the adjacent POLB would continue. The Navy properties have been closed, all mission-related activities have ceased, and all buildings are vacant. This caretaker condition would remain indefinitely under the No Action Alternative. Site environmental cleanup would continue until completed. The existing lease of the property on the Navy Mole to POLB would remain through its term. The 84 acres on NSY and the 602 acres of submerged land reverting to the City of Long Beach could be transferred, but it is assumed that existing uses would remain unchanged.

Federal disposal would precede implementation of the reuse alternatives. Three reuse alternatives are evaluated in detail in the DEIS/EIR:

—LRA Reuse Alternative;
—Auto Terminal Alternative; and
—Institutional Campus Alternative.

A brief summary of the three reuse alternatives is presented below.

The LRA Reuse Alternative would include development of marine container terminal facilities, including container staging areas; loading and unloading facilities; trucking facilities; on-dock railyard and tracks, administration and maintenance facilities; access roadway and entry gates; and other related facilities on NAVSTA and portions of NSY. A ship repair and/or breaking facility of approximately 18 acres would be centered around and include Drydock 1. Vessels would be staged along the west side of Navy Pier E. This component would primarily use existing facilities and structures within the designated area. The Navy Pier E area would be used for development of a mixture of marine cargo facilities, including a deepwater liquid bulk terminal on the southern end of POLB Pier T, reconfiguration of existing lumber and scrap metal terminals, relocation of the City of Long Beach police headquarters and training academy to the former NSY Building 300, relocation and consolidation of oil operations on Port of Long Beach Pier T, and reconstruction of roadways and utilities to serve the facilities. The southern one-half of the Navy Mole (excluding the Fuel Depot) would be used for the development of a neobulk/breakbulk terminal, facilities for ancillary and water-dependent uses, and Sea Launch, a satellite assembly and transfer facility. The police headquarters component may require a public subsidy. This alternative would require demolition of the Roosevelt Base Historic District, an historic resource eligible for listing in the National Register of Historic Places.

The Auto Terminal Alternative would retain the majority of the Historic District, which would provide facilities for an auto terminal operator, port terminal operators, and a naval museum, which may require public subsidy. The remainder of LBC would support the same uses as the LRA Reuse Alternative, including marine container terminal facilities, intermodal rail facilities, neobulk/breakbulk facilities, ship repair facility, a liquid bulk facility, and port ancillary uses as described above. The auto terminal would use roll-on/roll-off (Ro/Ro) transfer of wheeled cargos such as automobiles and light trucks. Access to the auto terminal, port terminal facilities, and museum would be provided by a proposed grade-separated crossing from Reeves Avenue. This would provide uninterrupted access to the site over the proposed intermodal rail operations.

The Institutional Campus Alternative would include a police academy and police administrative offices, POLB administration, fire department, and naval museum within the Historic District. Unlike the other reuse alternatives, all of the Historic District recreational facilities would be retained in a campus setting under this alternative. A public subsidy may be required to support this component. The remainder of LBC would include marine container terminal facilities, intermodal rail facilities, neobulk/breakbulk facilities, a 91-acre ship repair facility, a liquid bulk facility, and port ancillary uses. This alternative would consolidate several of the existing City of Long Beach Police Department functions, which are currently being performed at several different locations throughout the City, into the Historic District buildings. Similar to the Auto Terminal Alternative, access to the proposed institutional uses would be provided via a grade-separated crossing from Reeves Avenue.

In accordance with NEPA requirements, a Notice of Intent (NOI) to prepare a joint EIS/EIR and to reopen scoping for the disposal and reuse of NAVSTA and NSY was published in the **Federal Register** on July 21, 1997. On July 18, 1997, the NOI was mailed directly to regulatory agencies, local jurisdictions, elected officials, public service providers, organizations, and special interest members of the public. In accordance with requirements under CEQA, a Notice of Preparation (NOP) to prepare a joint EIS/EIR and to reopen scoping for the disposal and reuse of NAVSTA and NSY was distributed on July 18, 1997, to regulatory agencies, local jurisdictions, elected officials, and public service providers, among others.

As part of the EIS/EIR scoping process, the Navy and the City held a public scoping meeting on August 20, 1997, in the City of Long Beach Council Chambers. The meeting was advertised in the Long Beach Press Telegram on August 4, 11, and 18, 1997, as well as in the **Federal Register**.

This DEIS/EIR analyzes potential environmental impacts relating to land use; socioeconomics; utilities; historic and archaeological resources; aesthetics; biological resources; topography, soils, and geology; hydrology and water quality; hazardous materials and environmental contamination; public health and safety; traffic and transportation; air quality; and noise. Potentially significant and mitigable environmental impacts include impacts to land use; biological resources; and noise. Potentially significant and not mitigable impacts are related to disturbance and/or demolition of the Historic District and public health and

safety impacts from potential increase for oil spills and risks posed from the liquid bulk facilities explosion hazard arcs. Remediation of contaminated areas will continue to be the responsibility of the Navy.

No decision on the proposed action will be made until the NEPA and CEQA processes have been completed.

The DEIS/EIR has been distributed to various federal, state, and local agencies, local groups, elected officials, special interest groups, and individuals. The DEIS/EIR is also available for review at the following libraries:

—Long Beach Public Library, 101 Pacific Avenue, Long Beach, CA.
—Alamitos Public Library, 1836 E. Third Street, Long Beach, CA.
—Bach Public Library, 4055 Bellflower Blvd., Long Beach, CA.
—Bay Shore Public Library, 195 Bay Shore, Long Beach, CA.
—Brewitt Public Library, 4036 E. Anaheim Street, Long Beach, CA.
—Burnett Public Library, 560 E. Hill Street, Long Beach, CA.
—Dana Public Library, 3680 Atlantic Avenue, Long Beach, CA.
—El Dorado Public Library, 2900 Studebaker Road, Long Beach, CA.
—Harte Public Library, 1595 W. Willow Street, Long Beach, CA.
—Los Altos Public Library, 5614 Britton, Long Beach, CA.
—Mark Twain Public Library, 1325 E. Anaheim Street, Long Beach, CA.
—San Pedro Regional Branch Library, 931 S. Gaffey Street, Los Angeles, CA.
—Wilmington Branch Library, 1300 N. Avalon Blvd., Los Angeles, CA.
—Bell Library, 4411 E. Gage Avenue, Bell, CA.
—Carson Library, 151 E. Carson Street, Carson, CA.
—City of Commerce Central Library, 5655 Jillson Street, City of Commerce, CA.
—Compton Library, 240 W. Compton Blvd., Compton, CA.
—Cudahy Library, 5218 Santa Ana Street, Cudahy, CA.
—El Segundo Public Library, 111 W. Mariposa Avenue, El Segundo, CA.
—Hawthorne Library, 12700 S. Grevillea Avenue, Hawthorne, CA.
—Inglewood Public Library, 101 W. Manchester Blvd., Inglewood, CA.
—Lawndale Library, 14615 Burin Avenue, Lawndale, CA.
—Lynwood Library, 11320 Bullis Road, Lynwood, CA.
—Maywood Library, 4323 E. Slauson, Maywood, CA.
—Paramount Library, 16254 Colorado Avenue, Paramount, CA.
—Redondo Beach Main Library, 303 North Pacific Coast Highway, Redondo Beach, CA.
—Leland R. Weaver Library, 4035 Tweedy Blvd., South Gate, CA.
—Diane Gayton Library, 707 Electric Avenue, Seal Beach, CA.
—Torrance Public Library, 3301 Torrance Blvd., Torrance, CA.
—Vernon Public Library, 4504 S. Central Avenue, Vernon, CA.

The Navy and the City will conduct a public hearing to receive oral and written comments concerning the DEIS/EIR on Wednesday, January 14, 1998, at 7:00 p.m. in the City of Long Beach Council Chambers. A brief presentation will precede a request for public information and comments. Navy and City representatives will be available at the hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies, and interested individuals are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Ms. Melanie Ault, BRAC Program Office, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Boulevard, Suite 501, San Diego, California 92101–2404, telephone (619) 532–4744, fax (619) 532–4743. Written comments are requested not later than February 2, 1998.

Dated: December 17, 1997.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 97–33349 Filed 12–19–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy.

ACTION: Notice of meeting.

SUMMARY: The Naval Research Advisory Committee will meet to acquaint Committee members with technology issues related to aircraft systems development, F/A–18E/F and V–22 operations, and aircraft tracking and testing operations. All sessions of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, January 12, 1998 from 2:00 p.m. to 4:00 p.m., and on Tuesday, January 13, 1998 from 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Office of Naval Research, Arlington, Virginia and at Naval Air Systems Command and Naval Air Warfare Center, Aircraft Division, Patuxent River, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Mason-Muir, Office of Naval Research, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, Telephone Number: (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the Federal Advisory Committee Act (Appendix 2 of title 5, United States Code). All sessions of the meeting will be devoted to briefings, demonstrations, tours and discussions involving technical examination of information related to aircraft technologies and aircraft operations. These briefings, demonstrations, tours and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. app. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Dated: December 10, 1997.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 97–33294 Filed 12–19–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 20, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 16, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.
Title: Consolidation Loan Rebate Fee Report.
Frequency: Monthly.
Affected Public: Business or other for-profit; State, local or Tribal Gov't; SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 400.
Burden Hours: 5,200.
Abstract: The Consolidation Loan Rebate Fee Report for payment by check for Electronic Funds Transfer (EFT) will be used by approximately 400 lenders participating in the Title IV, Part B loan programs. The information collected is used to transmit interest payment rebate fees to the Secretary of Education.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Alcohol and Other Drug (AOD) and Violence Prevention Survey.
Frequency: On occasion.
Affected Public: Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 250.
Burden Hours: 63.
Abstract: The Department of Education requires that a formal assessment be conducted to determine the status of AOD and violence prevention efforts and the current and emerging needs of institutions of higher education. The Department will utilize findings in planning and policy development and the contractor will use the findings to help it better meet the needs of its clients.

[FR Doc. 97–33261 Filed 12–19–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A–3]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants: To be eligible to apply, an applicant must—(a) be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4(b); (b) have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); (c) be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725(b) and (c) of the Act and Subparts F and G of 34 CFR Part 366; and (d) either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under *Available Funds.*

Deadline for Transmittal of Applications: March 6, 1998.
Deadline for Intergovernmental Review: May 6, 1998.
Applications Available: January 9, 1998.
Available Funds: $1,352,041 as distributed in the following manner:

Arizona	$53,407
California	244,181
Delaware	50,970
Florida	118,792
Georgia	66,114
Illinois	57,577
Indiana	43,025
Louisiana	29,835
New Jersey	57,811
North Carolina	63,162
Ohio	76,485
Pennsylvania	77,288
Texas	152,128
Guam	53,610
American Samoa	154,046
Northern Mariana Islands	53,610

Estimated Range of Awards: $29,835–$154,046.

Estimated Number of Awards: 1–2 per eligible State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for the program in 34 CFR parts 364 and 366.

For Further Information Contact: Merri Pearson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3316, Switzer Building, Washington, D.C. 20202–2741. Telephone: (202) 205–8484 (voice) and (202) 205–8243 (TDD).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

For Applications Contact: The Grants and Contracts Services Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at any of the following sites:

http://www.ed.gov/offices/OSERS/RSA/rsakits.html
http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at any of the previous sites. If you have questions about using the pdf, please call the U.S. Government Printing Office toll free at 1–888–293–6498. Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. These documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 721(c) and (e) and 796(f).

Dated: December 16, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–33244 Filed 12–19–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.250G]

Vocational Rehabilitation Service Projects for American Indians with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: To provide vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

Eligible Applicants: Applications may be submitted only by the governing bodies of Indian Tribes and consortia of those governing bodies located on Federal or State reservations.

Deadline for Transmittal of Applications: May 19, 1998.

Applications Available: December 22, 1997.

Available Funds: $6,200,000.

Estimated Range of Awards: $250,000–$350,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, and 82; and (b) The regulations for this program in 34 CFR parts 369 and 371.

Priority

Under 34 CFR 75.105(c)(2)(i) and section 130(b)(4) of the Rehabilitation Act of 1973, as amended, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority—Continuation of Previously Funded Tribal Programs

Section 130(b)(4) of the Rehabilitation Act of 1973, as amended, provides that in making new awards under this program the Secretary gives priority consideration to applications for the continuation of tribal programs that have been funded under this program. For this competition in fiscal year 1998, the Secretary implements this priority by giving a competitive preference of 10 bonus points, in accordance with 34 CFR 75.105(c)(2)(i), to applications that meet this priority.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in § 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: The Grants and Contracts Services Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Pamela Martin, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3314, Switzer Building, Washington, D.C., 20202–2650. Telephone: (202) 205–8494.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov./fedreg/htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 711(c) and 750.

Dated: December 16, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–33245 Filed 12–19–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, January 17, 1998 8:30 a.m.–12:00 p.m. (public comment session: 11:45 a.m.–12:00 p.m.).

ADDRESS: Alpha Building, 10967 Hamilton-Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens' Advisory Board, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens' Advisory Board office (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda:

8:30 a.m. Call to Order
8:30–8:45 Opening Remarks
8:45–9:00 Recommendations on
Copper Recycling
—Waste Retrieval
—Off-Site Disposal
—Critical Analysis Team
10:30–10:45 Break
10:45–11:00 Committee Reports
11:00–11:45 1998 Citizens' Advisory Board Planning
11:45–12:00 Public Comment
12:00 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, January 17, 1998.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens' Advisory Board, P.O. Box 544, Ross, Ohio 45061 or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on December 16, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–33308 Filed 12–19–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, January 7, 1998—6:00 p.m.–9:30 p.m.

ADDRESS: Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Provided the announcement of a new management and integration contract has been made by the January meeting, a presentation will be made by the manager of that selected contractor. If the announced winner of the management and integration contract has not been made, a business meeting will be conducted with no technical presentation provided.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and

9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–0314.

Issued at Washington, DC on December 17, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–33309 Filed 12–19–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–29–001]

Florida Gas Transmission Company; Notice of Compliance Filing

December 16, 1997.

Take notice that on December 11, 1997, Florida Gas Transmission Company (FGT) tendered for filing to become park of its FERC Gas Tariff, Third Revised Volume No. 1, effective December 1, 1997, the following tariff sheets:

Substitute Fourth Revised Sheet No. 39
Substitute Fourth Revised Sheet No. 40
Substitute Seventh Revised Sheet No. 120
Substitute Fourth Revised Sheet No. 121
Substitute Fifth Revised Sheet No. 143

FGT states that on October 31, 1997, FGT filed tariff sheets proposing to offer a new interruptible Part 'N Ride (PNR) service under Rate Schedule PNR. Subsequently, on November 26, 1997, the Commission issued an order (Order) accepting FGT's proposal subject to FGT's filing revised tariff sheets clarifying the term "total cost commitment." FGT states that the instant filing is being made in compliance with such Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33276 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC98–6–000]

Florida Power Corporation; Notice of Filing

December 16, 1997.

Take notice that on November 3, 1997, Florida Power Corporation, tendered for filing a letter seeking approval to begin accruing the increase amount of $1,213,656 on a wholesale basis, retroactive to January 1, 1995. FPC states that it is only seeking approval for an increase in the accrual amount, not in rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 26, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33266 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–123–000]

Iroquois Gas Transmission System, L.P.; Notice of Request Under Blanket Authorization

December 16, 1997.

Take notice that on December 8, 1997, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed in Docket No. CP98–123–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a sales tap on behalf of Duke Energy Trading & Marketing, LLC (DETM) for the Bridgeport Power Station repowering project, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Iroquois proposes to construct and operate a sales tap at the request of DETM and both Iroquois and DETM expect Iroquois to deliver up to 83,000 Mcf/d to DETM at the proposed sales tap.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33271 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–93–000]

Liberty Power, Ltd., Notice of Surrender of Exempt Wholesale Generator Status

December 16, 1997.

Take notice that on December 2, 1997, pursuant to section 365.7 of the Commission's regulations, 18 CFR 365.7, Liberty Power, Ltd. filed notification that it surrenders its status as an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33273 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–88–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1997.

Take notice that on December 11, 1997, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet No. 198, to become effective January 1, 1998.

Nautilus states that the purpose of this filing is to comply with Order 636–C issued on February 27, 1997, whereby the matching term on the right-of-first-refusal to retain existing capacity was shortened from twenty years to five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33279 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–89–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1997.

Take notice that on December 12, 1997, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet No. 279 proposed to become effective January 11, 1998.

Nautilus states that the purpose of this filing is to change the Form of Service Agreement for Rate Schedule IT–1 to reflect interruptible service and not firm service in the second *Whereas* statement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33280 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–38–002]

Ouachita River Gas Storage Company L.L.C.; Notice of Petition to Amend

December 16, 1997.

Take notice that on November 17, 1997, Ouachita River Gas Storage Company, L.L.C. (Ouachita) 9801 Westheimer, Suite 602, Houston, Texas 77042, filed in Docket No. CP94–38–002 a petition to amend the existing authorizations issued in Docket Nos. CP94–38–000 and CP94–38–001, pursuant to Section 7(c) of the Natural Gas Act, to expand the working gas capacity of the South Downsville Storage Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On August 1, 1996, the Commission authorized Ouachita to construct and operate the South Downsville Storage Project, an underground gas storage field with related pipeline and header facilities in Union and Lincoln Parishes, Louisiana. The August 1, 1996, order approved market-based rates for Ouachita's storage services but denied market-based rates for hub services. On February 26, 1997, the Commission approved cost-based rates for Ouachita's hub services and issued Ouachita a Subpart G blanket certificate to render firm and interruptible gas storage services and interruptible hub transportation services.

Ouachita states that the project was originally designed with a working gas storage capacity of 27 Bcf. Ouachita explains that as result of additional analysis, it has determined that the working capacity of the project can be efficiently increased. Based on the results of a recent open season, Ouachita believes it can subscribe all of the expanded capacity. Accordingly, Ouachita proposes to increase the working gas storage capacity from 27 Bcf to 37.5 Bcf. Ouachita asserts that the increase will permit it to spread the fixed costs of the project over more units of storaged capacity and thereby decrease the unit cost of storage.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before January 6, 1998, file with the Federal Energy Regulatory Commission, 888 First St., NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list

maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Ouachita to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33267 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–124–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

December 16, 1997.

Take notice that on December 9, 1997, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP98–124–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, own and operate a new delivery point to be located in Pittsboro, Hendriks County Indiana, under Panhandle's blanket certificate issued in Docket No. CP83–83–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically Panhandle proposes to install two 8-inch hot taps and check valves on Panhandle's mainline facilities, approximately 1,200 feet of 8-inch connecting pipe, and install electronic gas measurement equipment on the proposed metering facilities. Panhandle states that the proposed interconnection will be utilized to provide transportation service to Indiana Gas Company (Indiana Gas) for redelivery to Qualitech Corporation, a steel plant near Pittsboro, Indiana. Panhandle states that Indiana Gas will also construct facilities to accommodate receipt of the gas from Panhandle. The estimated cost of the proposed facilities is approximately $85,000, which Panhandle states will be reimbursed by Indiana Gas. Panhandle states that the new interconnection will be designed to deliver up to 36,000 Dt/d of natural gas.

Panhandle states that the construction of the proposed facilities will have no effect on its peak day and annual delivery requirement, and that Panhandle has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33272 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–57–000]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1997.

Take notice that on December 11, 1997, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet Nos. 101 and 102 to become effective November 1, 1997.

SGPC states that the purpose of this filing is to comply with Order 636–C issued on February 27, 1997, whereby the matching term on the right-of-first-refusal to retain existing capacity was shortened from twenty years to five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33278 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–7–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

December 16, 1997.

Take notice that on December 12, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective December 12, 1997:

Eighth Revised Sheet No. 775
Eighth Revised Sheet No. 776
Tenth Revised Sheet No. 777
Eleventh Revised Sheet No. 825
Eighteenth Revised Sheet No. 829
Sixteenth Revised Sheet No. 830
Nineteenth Revised Sheet No. 831
Twenty-first Revised Sheet No. 832
Twenty-first Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33274 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–31–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

December 16, 1997.

Take notice that on December 12, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective December 1, 1997:

Substitute Original Sheet No. 283A
Substitute Original Sheet No. 283B
Substitute Original Sheet No. 283C

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's "Order Accepting Tariff Sheets Subject to Conditions" issued November 28, 1997 in the above referenced docket as more fully detailed in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33277 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–769–000]

Colorado Interstate Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Campo Lateral Project and Request for Comments on Environmental Issues

December 16, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 115 miles of 16-inch-diameter pipeline, proposed in the Campo Lateral Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Colorado Interstate Gas Company (CIG) wants to transport Raton Basin Area gas directly from its existing Picketwire Lateral through its Campo Regulator Station through the proposed new Camp Lateral to existing delivery points (south of the Campo Meter Station) for increased service to three interstate pipelines (Transwestern Pipeline Company, Northern Natural Gas Company, and El Paso Natural Gas Company). The proposed Campo Lateral would bypass upstream bottlenecks on CIG's system and increase the capacity of the Picketwire Lateral from 43 MMcf per day to about 110.5 MMcf per day. CIG seeks authority to:

- Construct and operate 115.53 miles of 16-inch-diameter pipeline (to be known as the Campo Lateral§ in Las Animas and Baca Counties, Colorado;
- Increase the MAOP of the Picketwire Lateral from 1233 psia to 1308 psig.

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, or procedural information please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require the disturbance of about 1,475 acres of land. Following construction, about 700 acres would be maintained as new permanent right-of-way. A total of about 0.05 acre will be maintained for five (20 feet by 20 feet each) permanent aboveground block valve sites. Except for the five permanent block valve sites, all land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important

[1] Colorado Interstate Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Land use;
- Cultural resources;
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern. This preliminary list of issues may be changed based on your comments and our analysis.

- Nine federally listed endangered or threatened species may occur in the proposed project area.
- The Granada Branch or the Cimarron Cutoff of the Santa Fe Trail would be crossed.
- About 14 miles of the Comanche National Grass Lands would be crossed.
- Five perennial, streams would be crossed: Frijole, San Francisco, Salt, Trinchera, and Chacuaco Creeks.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2)
- Reference Docket No. CP97–769–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 15, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "Intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenors must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules or Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33268 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–49–000]

K N Wattenberg Transmission Limited Liability Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Front Runner Pipeline Project and Request for Comments on Environmental Issues

December 17, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed by K N Wattenberg Transmission Limited Liability Company (KNW) as the Front Runner Pipeline Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether the project is in the public convenience and necessity.

Summary of the Proposed Project

KNW proposes to construct, acquire, and operate new and existing pipeline facilities to establish a new natural gas transportation system along the Front Range of the Rocky Mountains in north central Colorado. KNW would interconnect three segments (about 75 miles) of new pipeline with two segments (about 33.5 miles) of existing pipeline, providing new capacity for transporting gas between the Rockport "gas hub" in northern Weld County and natural gas processors, users, and transporters in southern Weld and northern Adams County (northern Denver). The new pipeline would have the capacity to provide users at the southern end with 250 million cubic feet (MMcf) of natural gas per day, and gas producers at the southern end with the ability to transport 80 MMcf per day to new markets accessible via several existing interstate carriers whose facilities converge at Rockport.[2] Specifically, KNW seeks authority to construct and operate:

- About 45.2 miles of new 24-inch-diameter pipeline extending from Rockport (in northern Weld County) south to northern Johnstown;
- About 10.6 miles of new 16-inch-diameter pipeline extending from the Pan Energy-Mark Mewbourne Gas Processing Plant westward towards an area northwest of Platteville; and
- About 19.3 miles of new 6- and 12-inch-diameter pipeline extending eastward from the Erie area in southern Weld County.

To complete the new system, KNW would also acquire existing gathering and related facilities from its affiliate K N Gas Gathering Company (KNGG). These facilities, which KNGG no longer needs to meet its current level of service requirements in Colorado, include:

- About 9.5 miles of 16-inch-diameter unprocessed gas pipeline extending from northern Johnstown to an area northwest of Platteville; and
- About 24 miles of 12-, 10-, and 8-inch-diameter processed gas pipeline extending south from the Amoco gas processing plant near Platteville to an area southeast of Brighton in northern Adams County. (This segment is essentially 21 miles of 12-inch-diameter mainline with three short, small-diameter laterals extending to nearby customers.)

KNW would need to clean and dry the 9.5-mile-long segment of unprocessed gas pipeline before converting it to processed gas service. KNW also plans to construct/install mainline valves, interconnects, metering and valving at gas delivery/receipt points, and pigging facilities along the system.

The location of the project facilities is shown in appendix 1.[3] If you are interested in obtaining more detailed maps of a specific portion of the project, or procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 698 acres of land overall, based on a typical 75-foot-wide pipeline construction right-of-way and including extra work spaces needed temporarily at waterbody, road, and railroad crossings. Following construction, about 458 acres would be maintained as new permanent pipeline rights-of-way (typically 50-feet-wide) or aboveground facility sites. (This figure excludes existing easements associated with the pipeline segments that KNW would acquire from KNGG.) The remaining 240 acres of land disturbed during construction would be restored and allowed to revert to its former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received will be considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Land use;
- Cultural resources;
- Air quality and noise;
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impact on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by KNW. This preliminary list may be changed based on your comments and our analysis.

- Eleven federally listed endangered or threatened species may occur in the proposed project area.
- The proposed facilities would require at least three waterbody crossings which would impact associated wetland and riparian vegetation which are considered sensitive resources in the project area.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes/locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP98–49–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 16, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

[1] KNW's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] Pipeline carriers having facilities at Rockport include K N Interstate Gas Transmission Company, Colorado Interstate Gas Company, Trailblazer Pipeline Company, Williams Natural Gas Company, and Wyoming Interstate Company.

[3] The appendices referred in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33270 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of As-Built Exhibits

December 16, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* As-Built Exhibits.

b. *Project No.:* 8914–012.

c. *Dates Filed:* July 7, 1993 and December 5, 1997.

d. *Applicant:* Rio Blanco Water Conservancy District.

e. *Name of Project:* Taylor Draw Project.

f. *Location:* On the White River in Rio Blanco County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Ms. Ann Brady 2252 East Main Street Rangely, CO 81648 (970) 675–5055.

i. *FERC Contact:* Paul Shannon, (202) 219–2866.

j. *Comment Date:* January 28, 1997.

k. *Description of Filings:* Rio Blanco Water Conservancy District (Rio Blanco) filed as-built exhibit drawings showing changes to the projects transmission line and boundary. Rio Blanco was authorized to construct a 7.5-mile-long transmission line from the project to the Southwest Rangely Substation. During construction, Rio Blanco instead tied into an existing transmission line 1,000 feet from the project's powerhouse. The as-built exhibits revise the project boundary to include the 1,000-foot-long new transmission line.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. in determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33275 Filed 12–19–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5938–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Hazardous Waste Generator Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Hazardous Waste Generator Standards, OMB Control Number 2050–0035, expiring on 2/28/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 0820.07.

SUPPLEMENTARY INFORMATION:

Title: Hazardous Waste Generator Standards (OMB Control Number 2050–0035; EPA ICR No. 0820.07.) expiring 2/28/98. This is a request for extension of a currently approved collection.

Abstract: In the Resource Conservation and Recovery Act (RCRA), as amended, Congress directed the U.S. Environmental Protection Agency (EPA) to implement a comprehensive program for the safe management of hazardous waste. The core of the national waste management program is the regulation of hazardous waste from generation to transport to treatment and eventual disposal, or from "cradle to grave." Section 3001(d) of RCRA requires EPA to develop standards for small quantity generators. Section 3002 of RCRA among other things states that EPA shall establish requirements for hazardous waste generators regarding recordkeeping practices. Section 3002 also requires EPA to establish standards on appropriate use of containers by generators.

Finally, section 3017 of RCRA specifies requirements for individuals exporting hazardous waste from the United States, including a notification of the intent to export, and an annual report summarizing the types, quantities, frequency, and ultimate destination of all exported hazardous waste (additional reporting requirements for exporters and importers of recyclable materials are covered under ICR Number 1647.01).

This ICR targets four categories of informational requirements in part 262: pre-transport requirements for both large (LQG) and small (SQG) quantity generators (including the generator pre-transport requirements referenced in 40 CFR part 265), air emission standards requirements for LQGs (referenced in 40 CFR part 265, subparts I and J), recordkeeping and reporting requirements for LQGs and SQGs, and export requirements for LQGs and SQGs (i.e., notification of intent to export and annual reporting).

This collection of information is necessary to help generators and EPA (1) identify and understand the waste streams being generated and the hazards associated with them, (2) determine whether employees have acquired the necessary expertise to perform their jobs, and (3) determine whether LQGs have developed adequate procedures to respond to unplanned sudden or non-sudden releases of hazardous waste or hazardous constituents to air, soil, or surface water. This information is also needed to help EPA determine whether tank systems are operated in a manner that is fully protective of human health and the environment and to ensure that releases to the environment are managed quickly and efficiently.

Additionally, this information contributes to EPA's goal of preventing contamination of the environment from hazardous waste accumulation practices, including contamination from equipment leaks and process vents. Export information is needed to ensure that (1) foreign governments consent to U.S. exported wastes, (2) exported waste is actually managed at facilities listed in the original notifications, and (3) documents are available for compliance audits and enforcement actions. In general, these requirements contribute to EPA's goal of preventing contamination of the environment. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/3/97 (62 FR 46491); no comments were received.

Burden Statement: The average annual public reporting burden per response for LQGs under this collection of information is estimated to range from 21 minutes to 32 hours, and the average annual public reporting burden per response for SQGs is estimated to range from 21 minutes to 7 hours. The average annual recordkeeping burden per response for LQGs under this collection of information is estimated to range from 27 minutes to 1 hour, and the average annual recordkeeping burden per response for SQGs is estimated to range from 18 minutes to 45 minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hazardous Waste Generators, Hazardous Waste Transporters who commingle waste with different Department of Transportation descriptions; and Importers or Exporters of Hazardous Waste.

Estimated Number of Respondents: 244,932.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 282,696 hours.

Estimated Total Annualized Cost Burden: $1,867,304.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0820.07 and OMB Control No. 2050–0035—in any correspondence:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov) and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 16, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–33326 Filed 12–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5938–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Application for Preauthorization of a CERCLA Response Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application for Preauthorization of a CERCLA Response; OMB Control No. 2050–0106; expiring on January 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at http://www.epa.gov/icr/icr.htm. Refer to EPA ICR No. 1304.05.

SUPPLEMENTARY INFORMATION:

Title: "Application for Preauthorization of a CERCLA Response (OMB Control No. 2050–0106; EPA ICR No. 1304.05) expiring 1/31/98. This is a renewal of a previously approved collection.

Abstract: This statement supports the request for renewal of the information collection requirements contained in EPA's final rule "Response Claims Procedures for the Hazardous Substance Superfund" (40 CFR part 307), hereinafter referred to as the RCP. The RCP was promulgated on January 21, 1993, and the ICR for this rule needs to be renewed. The information collection requirements under the RCP will provide the information necessary to fulfill the statutory requirements of section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Under section 111(a)(2) of CERCLA, claimants are authorized to be reimbursed from the Hazardous Substance Superfund (the Fund) for necessary response costs incurred as a result of carrying out the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR Part 300). In addition, section 122(b)(1) of CERCLA provides the President (EPA, by delegation under Executive Order (E.O.) 12580) with the discretionary authority to enter into agreements with potentially responsible parties (PRPs), whereby the PRPs will perform a preauthorized phase of a response action in return for reimbursement of an agreed-on portion of response costs from the Fund (i.e., a "mixed-funding" agreement).

Section 112(b)(1) of CERCLA authorizes EPA (as delegated by E.O. 12580) to prescribe the appropriate

forms and procedures for filing response claims against the Fund, including a provision requiring the claimant to make a sworn verification of the claim to the best of his/her knowledge. EPA has promulgated the RCP pursuant to the section 112 authority.

Under the RCP and pursuant to sections 111(a)(2) and 122(b)(1) of CERCLA, individuals, private entities, and potentially responsible parties (PRPs) (including States and political subdivisions) are eligible to submit claims against the Fund for reimbursement of response costs. As specified by section 111(a)(2) of CERCLA and section 300.700(d) of the NCP, all proposed response actions must be approved in advance by EPA through the preauthorization process in order for a subsequent claim to be awarded. Applicants may obtain preauthorization from EPA for proposed response actions by completing and submitting the "Application for Preauthorization of a CERCLA Response Action" (EPA Form 2075–3). EPA will review and evaluate such applications and will respond in writing to applicants within approximately 45 days of receipt of a completed application. After completing this review, EPA will develop a Preauthorization Decision Document (PDD). The PDD will establish a record of the Agency's preauthorization decision and will contain the terms and conditions that must be satisfied for the applicant to be reimbursed from the Fund.

After an applicant has obtained preauthorization from EPA and has completed the preauthorized response action (or a preauthorized phase of a response action), he/she may submit a claim for reimbursement of the resultant response costs. In order to file a claim, the claimant must complete and submit to EPA the "Claim for CERCLA Response Action" (EPA Form 2075–41). EPA will review and evaluate the information contained on the completed claim form and will make a determination on whether to award or deny the claim, in whole or in part.

The application for preauthorization and the claim form may be obtained from any of the EPA Regional Offices, and shall be submitted to the appropriate EPA Regional Office for review. The EPA Regional Office will review and evaluate the application for preauthorization and the claim form in coordination with the Office of Emergency and Remedial Response, the Office of the General Counsel, the Office of Enforcement and Compliance Assurance, and other offices, as necessary. Both forms will be evaluated according to the criteria set forth in the RCP. The information contained on the application and the claim form will be retained in the EPA Regional Office for three years after the completion of a project and will be available (if not deemed confidential), upon request, to the public through the public docket in accordance with the Freedom of Information Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/4/97 (62 FR 41962); no comments were received.

Burden Statement: EPA estimates that five preauthorization requests will be submitted annually with an average of 258 work hours per request. It is estimated that 12 claim applications will be submitted annually with an average of 42 work hours per claim. Once claims are awarded, claimants will have to maintain records for 10 years. Record maintenance will be performed by 10 claimants annually at an average of 15 hours per activity. The total annual costs will be $107,650.

The total burden hours for completing the preauthorization application, the claim form, and maintaining necessary records is an average of 317 hours. Total annual average burden for all respondents is 1,968 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1304.05 and OMB Control No.2050–0106 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or email Farmer.Sandy@epamail.epa.gov).

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 16, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–33327 Filed 12–19–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:10 a.m. on Tuesday, December 16, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's personnel and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 16, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–33419 Filed 12–18–97; 1034 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 97–N–11]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Board.

ACTION: Notice with request for comments.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the Federal Housing Finance Board (Finance Board) is providing notice of its intent to amend the system of records entitled FHFB–1 Employee Attendance Records, to include payroll records and a new routine use required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Reconciliation Act).

DATES: This amendment will become effective as proposed without further notice on January 21, 1998 unless comments dictate otherwise. The Finance Board will accept comments in writing on or before January 21, 1998.

ADDRESSES: Mail comments to Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: E. Alan Simpson, Personnel Officer, Office of Resource Management, 202/408–2585, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements of the Privacy Act, the Finance Board is publishing a notice of an amendment to its system of records entitled FHFB–1 Employee Attendance Records, to expressly include payroll records and a new routine use required by the Reconciliation Act. *See* 5 U.S.C. 552a(e)(4) and (11); Pub. L. 104–193, sec. 316(f), 110 Stat. 2175 (Aug. 22, 1996), *codified at* 42 U.S.C. 653.

Under the Reconciliation Act, the Finance Board is required to disclose data from the system of records entitled FHFB–1 Employee Payroll and Attendance Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for use in the National Database of New Hires, which is part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. *See* 62 FR 61663 (Oct. 2, 1997) (describing FPLS).

FPLS is a computerized network through which states may request location information from federal and state agencies to find non-custodial parents and their employees for purposes of establishing and enforcing child support obligations. On October 1, 1997, FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, FPLS will be expanded further to include a Federal Case Registry that will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. The appropriate state will be notified if FPLS identifies a person as a participant in a child support case. State requests to FPLS for location information also will continue to be processed after October 1, 1998.

When the Finance Board hires a person, it may disclose to FPLS his or her name, social security number, home address, date of birth, date of hire, and information identifying the Finance Board as the employer. The Finance Board also may disclose to FPLS the names, social security numbers, and quarterly earnings of each Finance Board employee, within one month of the end of the quarterly reporting period.

Information the Finance Board submits to FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. It also will be disclosed to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the Finance Board hereby amends the system of records entitled FHFB–1 Employee Attendance Records, originally published in the **Federal Register** in September 1995, *see* 60 FR 46120 (Sept. 5, 1995), as follows:

FHFB–1

SYSTEM NAME:

Employee Attendance and Payroll Records.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Finance Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of salary and payroll data, including time and attendance information.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

2. The Department of Agriculture's National Finance Center for payroll purposes.

* * * * *

7. OPM or the General Accounting Office (GAO) when the information is required for evaluation of payroll or leave administration.

10. The Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, upon its request and as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, *see* Pub. L. 104–193, sec. 316(f), 110 Stat. 2175 (Aug. 22, 1996), *codified at* 42 U.S.C. 653, for the purposes of establishing and enforcing child support obligations.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Office of Resource Management, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

* * * * *

By the Federal Housing Finance Board.

Dated: December 12, 1997.

William W. Ginsberg,

Managing Director.

[FR Doc. 97–33255 Filed 12–19–97; 8:45 am]

BILLING CODE 6725–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors.

Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 6, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Lee Allen Novak, Rebecca Sue Novak, and Nicholas Lee Novak, all of Urichsville, Ohio; to acquire voting shares of FNB, Inc., Dennison, Ohio, and thereby indirectly acquire First National Bank of Dennison, Dennison, Ohio.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Joseph Rohlen Kondisko, and Allana Minerva Kondisko, both of Venice, Florida, and William Graham McKelvey, and Jeanne Wolford McKelvey, both of Salix, Pennsylvania; to collectively control outstanding voting shares of Community National Bank Corporation, Venice, Florida, and thereby indirectly acquire Community National Bank of Sarasota County, Venice, Florida.

2. Rachel J. Reeves, Miami, Florida; to retain 31.63 percent, and acquire an additional 19.37 percent, for a total of 51 percent, of the voting shares of NGLC, Inc., Miami, Florida, and thereby indirectly acquire Peoples National Bank of Commerce, Miami, Florida.

Board of Governors of the Federal Reserve System, December 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–33334 Filed 12–19–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community National Bank Corporation, ESOP, Venice, Florida; to become a bank holding Company by acquiring 30 percent of the voting shares of Community National Bank Corporation, Venice, Florida, and thereby indirectly acquire Community National Bank of Sarasota County, Venice, Florida.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. State National Bancshares, Inc., Lubbock, Texas; to acquire 100 percent of the voting shares of First Sierra, Bancshares, Inc., Truth or Consequences, New Mexico, and thereby indirectly acquire Sierra Bank, Las Cruces, New Mexico.

2. State National Bancshares, Inc., Lubbock, Texas, and State National Bancshares of Delaware, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of First National Bank of Denver City, Denver City, Texas.

Board of Governors of the Federal Reserve System, December 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–33332 Filed 12–19–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Franklin Financial Services Corporation, Chambersburg, Pennsylvania; to engage *de novo* through its subsidiary, Farmers and Merchants Trust Company of Chambersburg, Chambersburg, Pennsylvania, in community development activities, pursuant to § 225.28(b)(12) of the Board's Regulation Y. **Comments on this application must be received by January 6, 1998.**

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation and BB&T Financial Corporation of Virginia, both of Winston-Salem, North Carolina; to acquire Life Bancorp, Inc., Norfolk, Virginia, and thereby indirectly acquire Life Savings Bank, F.S.B., Norfolk, Virginia, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y; engaging in real estate appraisal activities, pursuant to § 225.28(b)(2)(i) of the Board's Regulation Y; engaging in the sale of credit related insurance, pursuant to § 225.28(b)(11)(i) of the Board's Regulation Y; and engaging in discount brokerage activities, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–33333 Filed 12–19–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 971–0081]

Guinness Plc; Grand Metropolitan Plc; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 20, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H–374, Washington, DC 20580. (202) 326–2932. George S. Cary, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H–374, Washington, DC 20580. (202) 326–3741.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 15, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Guinness plc ("Guinness") and Grand Metropolitan plc ("Grand Met") an Agreement Containing Consent Order ("Proposed Consent Order"). The Proposed Consent Order remedies the likely anticompetitive effects arising from the proposed merger of Guinness and Grand Met in two relevant product markets. This agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the consent order in the agreement.

According to the draft of complaint that the Commission intends to issue, Guinness and Grand Met are competitors in the sale and distribution in the United States of premium Scotch and premium gin. The premium Scotch products of Guinness include Johnnie Walker Red and Dewar's White Label and the premium Scotch brands of Grand Met include J&B Rare, J&B Select, and The Famous Grouse. The premium gin brands of Guinness include Tanqueray gin and the premium gin brands of Grand Met are Bombay Original and Bombay Sapphire.

The Commission's draft of complaint states that Guinness and Grand Met entered into an agreement to merge their companies on May 11, 1997. The size of the transaction, measured in terms of the market capitalization of both parties, is about $36 billion.

The Commission is concerned that the proposed merger would eliminate substantial competition between Guinness and Grand Met, and increase concentration substantially, in the very highly concentrated premium Scotch and premium gin markets, resulting in higher prices. The Commission stated it has reason to believe that the proposed merger would have anticompetitive effects and violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

In the United States premium Scotch market, Guinness is the largest competitor with about 68% of all sales and Grand Met is the second largest competitor, with about 24% of sales. Together, the merged firm will control approximately 92% of all United States premium Scotch sales. The proposed merger would increase the Herfindahl-Hirschman Index ("HHI"), the customary measure of industry concentration, by over 3000 points and produce a market concentration of over 8000 points. In the United States premium gin market, Guinness is the largest competitor with about 58% of all sales and Grand Met is the third largest, and about 15% of sales. Together, the merged firm will control approximately 73% of all United States premium gin sales. The proposed merger would increase the HHI by over 1700 points and produce a market concentration of over 6000 points.

The Proposed Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's complaint. Under the terms of the Proposed Consent Order, Guinness and Grand Met will be required to divest their Dewar's Scotch, Bombay Original gin, and Bombay Sapphire gin brands, worldwide, to one or two acquirers acceptable to the Commission. To insure an uninterrupted supply of Dewar's Scotch after the brand divestiture, Guinness will be required to divest additional assets, including Scotch distilling capacity, if the Commission should determine that these additional assets are necessary for the acquirer effectively to compete. Also, to insure an uninterrupted supply of Bombay Original and Bombay Sapphire gins, Guinness and Grand Met may be required to produce these gins for the acquirer, in England, should the independent third party that has been producing Bombay Original and Bombay Sapphire for Grand Met not wish to continue to do so for the acquirer.

Guinness and Grand Met will be required to complete the required divestitures within six (6) months from the date of the Commission's acceptance of the consent order for public comment. In the event Guinness and Grand Met do not divest Dewar's, Bombay Original, and Bombay Sapphire to an acquirer or acquirers acceptable to the Commission in the requisite time, procedures for the appointment of a trustee to sell the assets have been agreed to and will be triggered.

Accompanying the Proposed Consent Order is an Asset Maintenance Agreement. Under its terms, Guinness and Grand Met are required to preserve and maintain the competitive viability of all of the assets to be divested in order to insure that the competitive value of these assets will be maintained after the merger but before the assets are actually divested.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the compliant will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Consent Order. It is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms in any way.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Guinness PLC, File No. 971–0081

Today, the Commission accepts for public comment a consent order settling allegations that the merger of Guinness PLC and Grand Metropolitan PLC would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint alleges as antitrust product markets: (1) "premium Scotch," which is defined as "blended Scotch whisky that is made and bottled in Scotland, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of the Johnnie Walker Red, Dewar's White Label, and J&B Rare brands," and (2) "premium gin," which is defined as "gin that is made and bottled in England, generally advertised, promoted, and available throughout the United States, and sold at retail at prices comparable to the prices of Tanqueray, Bombay Original, and Bombay Sapphire brands." I cannot support the complaint as written.

Although at first glance the markets may sound wacky (to use the vernacular), the complaint merits our careful attention. For reasons that are not apparent, the proposed product markets exclude brands not marketed throughout the United States, if there are any, that compete head to head with the national brands. By definition, the "premium gin" product market also excludes domestically bottled gin brands, if any, that are sold at prices comparable to Tanqueray and Bombay. I see no reason for these seemingly arbitrary exclusions.

More importantly, the price limitations in the product markets do not seem justifiable. As recognized in Commission precedent, competition occurs along a continuum of prices as brands compete with products above and below their prices. In Heublein, Inc., 96 F.T.C. 385 (1980), for example, the Commission dismissed the complaint based on findings in an "all wine" market and the table, dessert and sparkling wine submarkets. As then Commissioner Pitofsky stated in the Heublein opinion, although the competitive offerings of the wine industry were not altogether homogeneous, "those diverse products nevertheless may 'appropriately be designated as a market' for antitrust analysis," 96 F.T.C. at 576 *quoting* Coca Cola Bottling Co. of New York, Inc., 93 F.T.C. 110 (1979).

Despite my disagreement with the allegations in the complaint, I find reason to believe that the merger of Guinness PLC and Grand Metropolitan PLC would violate the law on the basis of a broader market and that an order to remedy the lessening of competition in the broader market would be appropriate. The divestiture of the Dewar's Scotch and Bombay gin brands will have some remedial effect in the broader market, and for that reason, I have voted to accept the order for public comment. After the public comment period, I will revisit the question whether the order is sufficient or whether the Commission should reject the order and seek additional divestitures in an administrative proceeding.

[FR Doc. 97–33306 Filed 12–19–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1

Evaluation of the Proposed Cash and Counseling Demonstration—New—Cash and Counseling is a consumer directed care model for individuals with physical or developmental disabilities. A demonstration project utilizing this model has been proposed. The Office of the Assistant Secretary for Planning and Evaluation is planning to engage in an information collection for the purpose of evaluating this demonstration. Respondents: Individuals or Households; *Burden Information for Baseline Interview*—Number of Respondents: 15,250; Burden per Response: .62 hours; Total Burden for Baseline: 9,455 hours—*Burden Information for Four-Month Treatment Group Interview*— Number of Respondents: 7,245; Burden per Response: .5 hours; Total Burden for Four-Month Treatment Group Interview: 3,622 hours—*Burden Information for Eight-Month Treatment Group Interview*—Number of Respondents: 6,900; Burden per Response: .58 hours; Total Burden for Eight-Month Treatment Group Interview: 4,002 hours—*Burden Information for Nine-Month Followup Interview*—Number of Respondents: 13,800; Burden per Response: .75 hours; Total Burden for Nine-Month Followup: 10,350 hours—Total Burden for Project: 27,429 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: December 4, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–33355 Filed 12–19–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Office of the Secretary

Information Collection Activity Under Emergency Review by the Office of Management and Budget (OMB)

Title: Survey of Biomedical Equipment Manufacturers for Year 2000 Compliance

Paperwork Reduction Act Requirements

We are required to solicit public comments under section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. Specifically, comments are invited on (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. We are seeking emergency OMB approval for this collection of information.

Description

The Deputy Secretary of the Department of Health and Human Services, on behalf of the government-wide Biomedical Equipment Subgroup of the CIO Council's Year 2000 Subcommittee, is surveying manufacturers of biomedical equipment about the Year 2000 compliance of their products. The existence of a Year 2000 date problem in biomedical equipment could pose potentially serious health and safety consequences.

Manufacturers are requested to post information about noncompliance products on a web site and link this to a government web site on biomedical equipment. If all of a manufacturer's products are compliant, they are requested to provide notice of total product compliance. Manufacturers have the option to mail the information to the Department of Health and Human Services for posting on the government web site. All information collected will be available to the public through the government web site.

To be Year 2000 compliant, a product must be able to accurately process date information in the Year 2000 and between the twentieth and twenty-first centuries, including leap year calculations. Medical devices and scientific laboratory equipment may experience problems beginning January 1, 2000 if the computer systems, software applications, or embedded chips used in these devices and equipment contain two-digit fields for year representation.

The Food and Drug Administration (FDA) regulates medical devices and needs information regarding the Year 2000 compliance of these products. Under a previous Good Manufacturing Practices regulation and the current Quality System Regulation, effective June 1, 1997, manufacturers must investigate and correct problems with medical devices that present a significant risk to public health. This includes devices that fail to operate according to their specifications because of inaccurate date recording and/or calculations. Also, section 518 of the Food, Drug and Cosmetic Act requires notification of users or purchasers when a device presents a reasonable risk of substantial harm to public health. These regulations, however, do not apply to all biomedical equipment, such as scientific laboratory equipment, but only to medical devices. Therefore, a proactive collection of Year 2000 compliance information of all biomedical equipment is necessary to prevent a Year 2000 date problem from causing any public health risk in the patient care services and health research initiatives of the next century.

Burden Information

Respondents: Biomedical Equipment Manufacturers.

Estimated Number of Potentially Noncompliant Products: 20,500.

Estimated Percentage of Responses Collected Electronically: 75%.

Estimated Response Time to Post One Noncompliant Product: 5 minutes.

Estimated Percentage of Written Responses: 25%.

Estimated Written Response Time for One Noncompliant Product: 20 minutes.

Estimated Total Annual Burden: 2989 hours.

Additional Information

HHS is requesting that OMB grant a seven day approval under procedures for emergency processing.

Questions about this information collection can be directed to the Project Coordinator, Gayle Finch, Director, Office of Information Technology Planning and Investment, Humphrey Building, 200 Independent Avenue, S.W., Washington, D.C. 20201, phone 202–690–5515 or fax 202–690–8715.

Written comments about the information collection described above can be directed to Wendy Taylor, OMB Desk Officer, Office of Management and Budget, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, or fax 202–395–6974.

Dated: December 15, 1997.

Tom Joyce,

Reports Clearance Officer.

[FR Doc. 97–33310 Filed 12–19–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Population-Specific Issues.

Times and Dates: 10:00 a.m.–5:00 p.m., January 12, 1998; 10:00 a.m.–4:00 p.m., January 13, 1998.

Place: Room 303A, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington D.C. 20201.

Status: Open.

Purpose: The Subcommittee will discuss data needs and issues associated with Medicaid managed care. Presentations will be made by representatives of federal, State and local agencies, providers, plans, and patient advocacy groups who will describe their data needs and issues relating to Medicaid managed care. The Subcommittee also will plan site visits to selected States to assess data issues in Medicaid managed care.

Contact Person for More Information: Substantive program information as well as a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue S.W., Washington D.C. 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050. Additional information about the full Committee is available on the NCVHS website, where the tentative agenda for the Subcommittee meeting will also be posted when available: http://aspe.os.dhhs.gov/ncvhs

Dated: December 17, 1997.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 97–33354 Filed 12–19–97; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces that the Agency for Health Care Policy and Research (AHCPR) is planning to request the Office of Management and Budget (OMB) to allow a proposed information collection project of "Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) for 1998 and 1999." In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 6, 1997 and allowed 60 days for public comment. As a result, public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 21, 1998.

ADDRESSES: Written comments should be submitted to the OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB; New Executive Office Building, Room 10235; Washington, 20503.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) for 1998 and 1999."

The AHCPR plans to continue collection of the MEPS–IC. This survey collects information from employers (including public and private sectors) and other health insurance providers. The survey was first conducted in 1997.

The MEPS–IC is the integration of two previous surveys which collected similar information from two different samples. The two surveys were:

1. The 1994 National Employer Health Insurance Survey (NEHIS) sponsored by AHCPR, the National Center for Health Statistics (NCHS) and the Health Care Financing Administration (HCFA). The NEHIS had a sample drawn from (1) a list of private sector establishments, the Dunn Market Identifiers, provided by Dunn and Bradstreet, a major supplier of business information, (2) a list of all government entities, Federal, State and local, provided by the Census Bureau, and (3) a list of self-employed individuals provided by the NCHS; and

2. The 1987 Health Insurance Plans Survey (HIPS) sponsored by AHCPR's predecessor, the National Center for Health Statistics Research. The HIPS sample was a sample of employers and other health insurance providers generated from the 1987 National Medical Expenditure Survey, a household survey similar to the MEPS–HC.

As a result, the sample for the MEPS–IC is made up of two components:

1. A list sample of employers selected from three sample frames, private sector, government entities and self-employed individuals, available from the Bureau of the Census; and

2. a sample of employers and other health insurance providers identified by respondents to the MEPS-Household Component (MEPS–HC). The MEPS–HC is an annual household survey designed to collect medical expenditures and ancillary information for individuals.

Data will be produced in two forms: (1) Files containing employer information from the list sample of selected employers; and (2) files containing calendar years 1997 and 1998 insurance data collected in 1998 and 1999 from employers and linked to information from the household respondents of the 1997 and 1998 MEPS–HC surveys.

The data are intended to be used for purposes such as:

- Generatng national and State estimates of employer health care offerings;
- Producing aggregate data on national and State estimates of spending on employer-sponsored health insurance for analyzing results of national and State health care policy and providing information to guide future policy;
- Supplying data to model the demand for health insurance; and
- Providing a valuable source of information concerning household responses regarding choices of health plans and costs and benefits of these plans, when pooled with data from the MEPS–HC.

These data provide the basis for researchers to address significant questions for employers and policymakers alike.

Method of Collection

The data will be collected using a combination of modes. AHCPR intends to first contact the employers by telephone. This contact will provide information on the availability of health insurance from the employer and essential persons to contact. Based upon this information, AHCPR will send a mail questionnaire to employers and others identified by employers. In order to assure high response rates, AHCPR will follow-up with a second mailing at an acceptable time interval, followed by a telephone call to collect data from those who have not responded by mail.

Data collected from each employer will include a description of the business (e.g., size, industry) and descriptions of health insurance plans available, plan enrollments, total plan costs and costs to employees.

For employers that can be matched to the MEPS–HC respondents, data will also be collected indicating the actual plan selected by the MEPS–HC respondent and the plan costs.

As part of the process, for larger employers with high burdens, such as State employers and large firms, AHCPR will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats. Annual burden estimates follow:

Initial Number of Respondents: 40,000.

Number of Surveys Per Respondent: 1.

Average Burden Per Respondent: .5 hour.

Estimated Annual Total Burden: 20,000 hours.

Request for Comments

Comments are invited on: (a) The necessity of the proposed collection; (b) the accuracy of the Agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: December 15, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–33253 Filed 12–19–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Assessment of Medical Technology

The Agency for Health Care Policy and Research (AHCPR), through the Center for Practice and Technology Assessment (CPTA), announces that it is initiating an assessment of the effectiveness of Prostate-specific antigen (PSA) testing in patients with benign prostatic hyperplasia (BPH).

The AHCPR is requesting information on the utility, and costs associated with the use of PSA testing and the specific indications for which this testing is appropriate. The AHCPR also requests information on patient selection criteria.

The assessment consists of a synthesis of information found in published literature and obtained from appropriate organizations in the private sector, Public Health Service (PHS) agencies and others in the Federal Government. AHCPR assessments are conducted in accordance with sections 904(b) and (d) of the PHS Act (42 U.S.C. 299a–2(b) and (d)). The assessment is based on the most current knowledge concerning the clinical effectiveness and appropriate uses of the technology being evaluated. The information being sought by this notice is a review and evaluation of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characteristics of the patient population most likely to benefit from PSA testing as well as information on the clinical acceptability, effectiveness, and the extent of use of this technology, is also being sought. Following completion of the assessment, a recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy.

The AHCPR is interested in receiving information which would help in the evaluation or review of the technology as described above. To enable the interested scientific community to evaluate the information and analysis included in the assessment, AHCPR will discuss in the assessment only those data and analyses for which a source(s) can be cited. Respondents are therefore encouraged to include with their submissions a written consent permitting AHCPR "to cite and make public the sources of the data and the comments provided". Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a–1(c), no information received will be published or disclosed which could identify an entity or individual supplying the information or any individual or entity described in the information. In addition, clearly market proprietary information may be kept confidential in accordance with the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

Any person or group wishing to provide AHCPR with information relevant to this assessment should do so in writing no later than March 23, 1998 to: Douglas B. Kamerow, M.D., M.P.H., Director, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Suite 310, Rockville, MD 20852, Phone: (301) 594–4015.

Dated: December 15, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–33252 Filed 12–19–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Number 816]

Individual Grants for Extramural Injury Research for Primary Prevention of Unintentional Injuries, Acute Care, Disability Prevention, and Biomechanics; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for Injury Prevention and Control Research Grants for fiscal year (FY) 1998.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Unintentional Injuries. (To order a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301, 391–394 of the Public Health Service Act (42 USC 241, 280b–280b–3), as amended. Program regulations are set forth in Title 42 CFR Part 52.

Smoke-Free Workplace

CDC strongly encourages all grant and cooperative agreement recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include all nonprofit and for-profit organizations. Thus State and local health departments and State and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, a grant, contract, loan, or any other form.

Availability of Funds

Approximately $2.7 million is available for FY 1998 injury research grants that include funding for projects that address primary prevention of unintentional injuries (home and leisure, and motor vehicle related-injuries), acute care, the prevention of secondary conditions in persons with disabilities, and biomechanics.

Approximately $1,800,000 is available to support 6–8 projects that address primary prevention of unintentional injuries (home and leisure, and motor vehicle related-injuries), acute care, and the prevention of secondary conditions in persons with disabilities. Awards will be made for a 12-month budget period within a project period not to exceed three years. The maximum funding level per year will not exceed $300,000 (including both direct and indirect costs). Applications that exceed the funding cap of $300,000 will be excluded from the competition and returned to the applicant.

Approximately $900,000 is available to support 3–5 projects that address

biomechanics. Awards will be made for a 12-month budget period within a project period not to exceed three years. The maximum funding level per year will not exceed $300,000 (including both direct and indirect costs). Applications that exceed the funding cap will be excluded from the competition and returned to the applicant.

The specific program priorities for these funding opportunities are outlined with examples in this announcement under the subheading, "Programmatic Priorities."

Continuation awards within the project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, if funds are available, continuation awards may be eligible for increased funding to offset inflationary costs.

Use of Funds-Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the current HHS Appropriations Act expressly prohibits the use of appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before State legislatures. Section 503 of the law provides as follows:

Section 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Prohibition on Use of CDC Funds for Certain Gun Control Activities

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998, specifies that: "none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control."

Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a Member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence Members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the language in the CDC's Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Background and Definitions

A. Background

By nearly every measure, injury ranks as one of the nation's most pressing health problems. More than 150,000 people die each year as a result of motor vehicle crashes, falls, fires, drownings, poisonings, suicides, homicides, and other types of injuries. Each year, 56 million people sustain injuries severe enough to require medical treatment, and for every 100 people injured, the effects are serious enough to require 162 days of restricted activity. Thirty-four million injured persons visit emergency departments and another 2.7 million are hospitalized.

Injury is the leading cause of death for Americans between the ages of one and 44 years, and the leading cause of potential years of life lost. Young children are at the greatest risk from car crashes (both as occupants and pedestrians), drownings, and fires. Adolescents and young adults, especially males, are at highest risk of death from motor-vehicle crashes and gunshot wounds. For people older than 75, falls are the leading cause of death.

Although the greatest cost of injury is in human suffering and loss, the financial cost of injury is estimated at more than $224 billion, an increase of 42 percent in the last decade. These costs include direct medical care and rehabilitation costs as well as lost wages of the individual and productivity losses to the nation.

Opportunities to understand and prevent unintentional injuries and reduce their effects are available. Maximizing these opportunities for prevention and control requires a broad approach which will incorporate many disciplines that previously have not been an integral part of public health efforts. Many of these opportunities and research priorities are identified in Healthy People 2000; Injury in America (National Academy Press, 2101 Constitution Avenue, NW, Washington, D.C. 20418—ISBN0–309–03545–7); Injury Prevention: Meeting the Challenge (supplement to the American Journal of Preventive Medicine, (Vol. 5, no. 3, 1989); and Cost of Injury (Dorothy P. Rice, Ellen J. MacKenzie, and Associates, Cost of Injury: A Report to the Congress, San Francisco, California: Institute for Health and Aging, University of California and Injury Prevention Research Center, The Johns Hopkins University, 1989).

B. Definitions

1. Injury is defined as physical damage to an individual that occurs over a short period of time as a result of acute exposure to one of the forms of physical energy in the environment or to chemical agents or the acute lack of oxygen. The three phases of injury control are defined as prevention, acute care, and rehabilitation. Within these phases the major categories of injury are intentional, unintentional, and occupational. Intentional injuries result from interpersonal or self-inflicted violence, and include homicide, assaults, suicide and suicide attempts, elder and child abuse, violence against women, and sexual assault. Unintentional or unintended injuries include those that result from motor vehicle collisions, falls, fires, poisonings, and drownings. Occupational injuries occur at the worksite and include unintentional trauma such as work-related motor-vehicle injuries, drownings, electrocutions, and intentional injuries in the workplace such as homicide. Not included in this definition of occupational injuries are cumulative trauma disorders, back injuries not caused by acute trauma, and effects of repeated exposures to chemical or physical agents.

2. Individual injury control research projects (R01) are defined as research designed to:

a. Elucidate the chain of causation—the etiology and mechanisms—of injuries and subsequent disabilities; or

b. Yield results directly applicable to identifying interventions to prevent injury occurrence or minimize disability; or

c. Evaluate the effect of known interventions on injury morbidity, mortality, disability, and costs.

Purpose

The purposes of this program are to:

A. Support injury prevention and control research on priority issues as delineated in Healthy People 2000; Injury in America; Injury Prevention: Meeting the Challenge; and Cost of Injury.

B. Encourage professionals from a wide spectrum of disciplines such as engineering, medicine, health care, public health, behavioral and social sciences, and others, to undertake research to prevent and control injuries.

C. Expand the development and evaluation of current or new intervention methods and strategies for preventing unintentional injuries.

D. Build the scientific base for the prevention of unintentional injuries and deaths.

Program Requirements

The following are applicant requirements:

A. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

B. Demonstrated experience (on the applicant's project team) in conducting, evaluating, and publishing in peer-reviewed journals injury control research (as previously defined).

C. Effective and well-defined working relationships within the performing organization and with outside entities that will ensure implementation of the proposed activities.

D. The ability to carry out an injury control research project as previously defined under Background and Definitions, (B.2.a-c).

E. The overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading "Programmatic Priorities."

Note: Grant funds will not be made available to support the provision of direct care services. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Priorities

Grant applications for research projects that address primary prevention of unintentional injuries (home and leisure, and motor vehicle related-injuries), acute care, the prevention of secondary conditions in persons with injury-related disabilities, and biomechanics are sought. The focus of grants should reflect the broad-based need to control injury morbidity, mortality, disability, and costs.

Applications must address a programmatic priority area as noted below. Examples of possible projects listed under the priority areas below are not exhaustive. Innovative alternative approaches are encouraged.

For *primary prevention of unintentional injuries*, there is programmatic interest in the areas of home and leisure, and motor vehicle injuries:

(1) Specifically, there is special programmatic interest in the development and evaluation of unintentional injury prevention strategies that can be applied in inpatient and outpatient clinical and/or managed care settings (e.g., HMOs, PPOs, clinics, clinicians' offices, academic health centers, etc.). For example, health care-based programs that reduce the injury risk to elderly drivers with medical conditions, fall prevention programs among the elderly, and other methods of delivering injury prevention through clinical practice or managed care settings, are acceptable.

(2) There is interest in applying behavioral research to injury prevention science. That is, the application of behavior change strategies to injury problems. For example, applying "stages-of-change" or the transtheoretical model to modify behaviors that will increase the protection of motor vehicle occupants, testing peer-to-peer and cross-generational counseling approaches, applying elements of social learning theory or social cognitive theory to changing unintentional injury risk behaviors, or implementing interventions that take advantage of several theoretical approaches simultaneously are acceptable.

(3) There is programmatic interest in research that evaluates the effects of making low-cost safety devices more available and or accessible to special and general populations. There is interest, as well, in the use of economic incentive systems, such as discounts and rebates, or through insurance programs (health, automobile or life). For example, these approaches could be studied as methods for increasing the use and maintenance of residential smoke detectors or sprinkler systems in high risk or rural neighborhoods, or to promote bicycle helmet ownership and use at the community level.

Community based research is particularly relevant, and studies that replicate successful programs in new settings or with other populations are eligible.

Unintentional injury prevention proposals primarily addressing the epidemiology of unintentional injuries will not be funded under this announcement.

A more thorough discussion of methodologies for conducting prevention effectiveness research is presented in "A Framework for Assessing the Effectiveness of Disease and Injury Prevention," (CDC Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR–3, pp. 5–11) and in "Assessing the Effectiveness of Disease and Injury Prevention Programs: Costs and Consequences"5 (CDC Morbidity and Mortality Weekly Report, August 18, 1995, Vol. 44, No. RR10). To receive information on these reports see the section Where to Obtain Additional Information.

In *acute care* there is programmatic interest in intensifying the role of the hospital emergency department and inpatient hospital trauma services in public health surveillance (e.g., emergency department surveillance systems, inpatient trauma registries), clinical prevention services (e.g., protocols, interventions, and referrals for patients injured in interpersonal violence or identified as alcohol drinkers who drink at a hazardous level), evaluation of acute care effectiveness and costs (e.g., studies of trauma care systems in terms of their impact on morbidity and disability, assessments of treatment modalities that are used conventionally or are emerging rapidly in mainstream clinical practice).

(1) There is interest in establishing electronic linkages and common data elements across clinical information and public health surveillance systems (e.g., incorporating NCIPC's Data Elements for Emergency Department Systems, Release 1.0 in distributed record systems) to facilitate reporting of injury incidence and outcome data. There is interest in developing or further refining measures of injury severity (e.g., indices that stratify injuries by anatomic severity to facilitate evaluation of

trauma care processes and outcomes. Acute care-based, public health surveillance systems are most valuable where they provide comprehensive coverage of defined populations, are used to identify injury causes, risk factors, treatments and outcomes, and lend themselves to developing or refining clinical and epidemiologic measures of injuries including their severity and costs. Information on obtaining Data Elements for Emergency Department Systems, Release 1.0, can be found under the section Where to Obtain Additional Information.

(2) There is interest in evaluating the effectiveness and costs of programs that identify patients at high risk for subsequent injury and provide on-site interventions or referrals to further define the role of clinical prevention services in acute care settings. There is interest in research that evaluates ways to overcome barriers to service provision in emergency departments and inpatient trauma services to encourage greater use of clinical prevention services shown to be effective and economical. Acute care practitioners are uniquely positioned to help reduce or eliminate injury risk factors in the patient populations they serve. In emergency departments and inpatient trauma services there are opportunities to introduce or extend clinical prevention services (e.g., screening and brief intervention for patients with mild to moderate alcohol problems and identification and referral of patients with severe alcohol problems to specialized alcohol treatment services).

(3) There is interest in comprehensive evaluations of the effectiveness of trauma care systems (e.g., baseline and follow-up study of State or regional trauma care systems that identifies the system's impact on special populations such as children and the elderly as well as overall system effectiveness). There is interest in systematic studies in people of standard ways of delivering acute care as well as new interventions, particularly where key questions persist about benefits, risks, and costs (e.g., clinical trials of procedures, medications, or protocols used in trauma care). Systematic, empirically-based studies of effectiveness and costs are needed to evaluate poison control systems, trauma care systems, and specific diagnostic and therapeutic interventions currently used or rapidly emerging in acute care of injured persons.

In *disability prevention*, there is programmatic interest in community-based research to prevent the occurrence and reduce the severity of disabilities or other adverse outcomes among persons with traumatic brain injury (TBI) and spinal cord injury (SCI). Adverse outcomes include secondary conditions such as pressure ulcers and contractures; cognitive, behavioral, or psychological disorders; and other definable conditions associated with TBI or SCI. Research topics relating to TBI or SCI must include any of the following:

(1) Identifying risk factors associated with adverse outcomes following rehabilitation.

(2) Developing or evaluating interventions that are delivered in the community setting or as part of outpatient rehabilitation care to prevent or minimize the impact of adverse outcomes or secondary conditions.

(3) Defining the incidence of and adverse outcomes associated with mild TBI (i.e., nonfatal TBI not resulting in hospitalization) in a defined geopolitical population. Research proposals may address all age groups or may be limited to children and adolescents. Alcohol and drug use or dependence can be among a range of outcomes considered, but should not be the primary focus of the project.

(4) Defining patterns of post acute care among persons with SCI or TBI resulting in hospitalization, using population-based data. The evolving nature of health care delivery may have changed the availability of rehabilitation, the location where rehabilitative services are delivered, the timing of services received, and the length of the rehabilitation period. Research in this area should define the type of facility where rehabilitation services are received, timing of rehabilitation service delivery, length of rehabilitation period, and payment source for services.

Disability prevention proposals primarily addressing alcohol and other drug use or dependence will not be funded under this announcement.

In *biomechanics*, there is programmatic interest in traumatic brain and spinal cord injury (TBI/SCI). This interest includes the biomechanical evaluation of intervention concepts and strategies (e.g., multi-use recreational helmets, mouth and face protection devices for athletes, energy-absorbing playground surfaces, hip pads, motor vehicle side impact and rollover countermeasures, etc.). There is special interest in defining human tolerance limits for injury among very young children, women, and older persons; the development of biofidelic models to elucidate injury physiology and pharmacologic, surgical, rehabilitation, and other interventions; improvements in injury assessment technology; understanding impact injury mechanisms; and quantifying injury-related biomechanical responses for critical areas of the human body (e.g., brain and vertebral injury with spinal cord involvement). Consideration will also be given to the biomechanics of thoracic and abdominal viscera, musculature and joints including the articular cartilage, tendons and ligaments.

Reporting Requirements

An original and two copies of the financial status and progress reports are due 90 days after the end of each budget period. Final financial status and progress reports are due 90 days after the end of the project period.

Application Content

Applications for injury control research grants should include:

A. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in Healthy People 2000; Injury In America; Injury Prevention: Meeting the Challenge; and Cost of Injury and should seek creative approaches that will contribute to a national program for injury control.

B. Specific, measurable, and time-framed objectives.

C. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

D. A description of the grant's principal investigator's role and responsibilities.

E. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

F. A description of those activities related to, but not supported by the grant.

G. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

H. A detailed first year's budget for the grant with future annual projections, if relevant. Awards will be made for project periods of up to three years.

I. Applicants must identify the principal injury phase (prevention, acute care, rehabilitation) discipline (biomechanics, epidemiology) or type of injury (intentional, unintentional) upon which their project focuses.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the salary and fringe amounts shown. This budget page will be reserved for internal staff use only.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading, Program Requirements (A–E). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications that are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority score ranking by the Injury Research Grants Review Committee (IRGRC), programmatic priorities and needs as determined by the Advisory Committee for Injury Prevention and Control, and the availability of funds.

A. The first review will be a peer review conducted by the IRGRC on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested.

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill.

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

4. For competitive renewal applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.

6. The extent to which the research findings will lead to feasible, cost-effective injury interventions.

7. The extent to which the evaluation plan will allow the measurement of progress toward the achievement of the stated objectives.

8. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

9. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

10. The reasonableness of the proposed budget to the proposed research and demonstration program.

11. Adequacy of existing and proposed facilities and resources.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review.

2. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2000; Injury in America; Injury Prevention; Meeting the Challenge; and Cost of Injury.

3. National needs.

4. Program balance among the three phases of injury control: prevention, acute care, and rehabilitation; the major disciplines of injury control: biomechanics and epidemiology; target populations (e.g., adolescents, children, racial and ethnic minorities, rural residents, farm families, and people with low incomes); and

5. Budgetary considerations.

C. Continued Funding:

Continuation awards made after FY 1998, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

2. The objectives for the new budget period are realistic, specific, and measurable.

3. The methods described will clearly lead to achievement of these objectives.

4. The evaluation plan will allow management to monitor whether the methods are effective.

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.136.

Other Requirements

A. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

B. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

C. Women, Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC

supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

D. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this grant program will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Specialist (whose address is reflected in section B, "Applications"). It should be postmarked no later than two months prior to the planned submission deadline, (e.g., January 26 for February 25 submission). The letter should identify the announcement number, name the principal investigator, and specify the injury phase or discipline addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies on or before February 25, 1998 to: Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting the deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and are received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications that do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

Application Packet

To receive additional written information call 1–888–GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to Announcement #816. CDC will not send application kits by facsimile or express mail. Please refer to Announcement #816 when requesting information and submitting an application.

Internet

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is [http://www.cdc.gov). For your convenience, you may be able to retrieve a copy of the PHS Form 398 from [http://www.nih.gov80/grants/funding].

Business Management Technical Information

If you need further assistance after reviewing the contents of the documents business management information may be obtained from Lisa Tamaroff, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796 or Internet:lgt1@cdc.gov.

Programmatic Technical Assistance

If you have programmatic question you may obtain information from Ted Jones, Program Manager, Extramural Research Grants Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K–58, 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone (770) 488–4824, Internet: tmj1@cdc.gov.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

The document, "Data Elements for Emergency Department System, Release 1.0", and subsequent revisions can be found at the National Center for Injury Prevention and Control Web site: http://www.cdc.gov/ncipc/pub-res/deedspage.htm.

Information for obtaining copies of Injury in America (National Academy Press, 2101 Constitution Avenue, NW, Washington, DC 20418—ISBN0–309–03545–7); Injury Prevention: Meeting the Challenge (supplement to the American Journal of Preventive Medicine, (Vol. 5, no. 3, 1989); Cost of Injury (Dorothy P. Rice, Ellen J. MacKenzie, and Associates, Cost of Injury: A Report to the Congress, San Francisco, California: Institute for Health and Aging, University of California and Injury Prevention Research Center, The Johns Hopkins University, 1989); A Framework for Assessing the Effectiveness of Disease and Injury Prevention," (CDC Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR–3, pp. 5–11); and in "Assessing the Effectiveness of Disease and Injury Prevention Programs: Costs and Consequences" (CDC Morbidity and Mortality Weekly Report, August 18, 1995, Vol. 44, No. RR10) is included on a separate sheet with the application kit.

Dated: December 16, 1997.

Joseph R. Carter,

Acting Associate Director, Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–33297 Filed 12–19–97; 8:45 am]

BILLING CODE 4160–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: The Office of Child Support Enforcement OCSE–156, Child Support Enforcement Program Quarterly Report and OCSE–158, Child Support Enforcement Program Annual Data Summary Report.

OMB No.: 0970–0057.

Description: The authority to collect and report the information requested on these forms is found in sections 452(a)(4), 452(a)(5), 452(a)(10), 469 of the Social Security Act. These data are highly aggregated and used in a management function to establish the effectiveness and efficiency of State child support programs. The Federal Office of Child Support Enforcement will used the data to carry out its oversight role and submit the Annual Report to Congress.

Respondents: State governments, District of Columbia, Guam, Virgin Islands and Puerto Rico.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–156	54	4	3.7	799.2
OCSE–158	54	1	1.2	64.8

Estimated Total Annual Burden Hours: 864.0.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: December 15, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–33311 Filed 12–19–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: The OCSE–157 Child Support Enforcement Annual Data Report.

OMB No.: 0970–0057.

Description: The information obtained from this form will be used to report child Support Enforcement activities to the Congress as required by law, to complete performance indicators utilized in the program, and to assist the Office of Child Support Enforcement in monitoring and evaluation State Child Support Enforcement programs. As of October 1, 1988 this information collection will replace the OCSE–156 and OCSE–158.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–157	54	1	4	216

Estimated Total Annual Burden Hours: 216.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: December 16, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–33312 Filed 12–19–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Statewide Automated Child Welfare Information System (SACWIS) Assessment Review Guide.

OMB No.: 0970–0159.

Description: HHS cannot fulfill its obligation to effectively serve the nation's Adoption and Foster Care populations, nor report meaningful and reliable information to Congress

(Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act, or CAPTA reporting requirements) about the extent of the problems facing these children or the effectiveness of various methodologies designed to provide assistance to this population, without access to timely and accurate information. Forty-six States and the District of Columbia have developed or have committed to develop a SACWIS system with enhanced (75 percent) Federal financial participation (FFP). The purpose of these reviews is to ensure that all aspects of the project, as described in the approved Advance Planning Document (APD), have been adequately completed, and conform with applicable regulations and policies.

States will submit the completed SACWIS Assessment Review Questionnaire and other documentation. The additional documents should all be readily available to the State as a result good project management.

The information collected in the Assessment Review Guide will allow State and Federal officials to determine if the State's SACWIS system meets the requirements for enhanced title IV–E Federal financial participation defined at 45 CFR 1355.50. Additionally, other States will be able to use the documentation provided as part of this review process, in their own system development efforts.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Review	10	1	60	600

Estimated Total Annual Burden Hours: 600.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: December 17, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–33330 Filed 12–19–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of February, 1998.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: February 12, 1998; 9:00 a.m.–5:00 p.m.; February 13, 1998; 8:30 a.m.–4:00 p.m.

Place: The Westin City Center, 1400 M Street, N.W., Washington, D.C. 20005, (202) 429–1700.

The meeting is open to the public.

The Committee provides advice and recommendations to the Secretary of HHS on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; factors determining the length of hospital stay following childbirth; strategies to coordinate the variety of Federal, State, and local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2000; National Health Promotion and Disease Prevention Objectives.*

Agenda: Topics that will be discussed include: updates on the Children's Health Initiative and the Children's Health Insurance Program; Discrepancies in Infant Mortality; the Healthy Start Program; Early Postpartum Discharge; Unintended Pregnancies; and Breastfeeding Issues.

Contact: Anyone requiring information regarding the Committee should contact Dr. Peter C. van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–31, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Kerry P. Nesseler, Health Resources and Services Administration, Maternal and Child Health Bureau, Telephone (301) 443–2204.

Agenda items are subject to change as priorities indicate.

Dated: December 16, 1997.

Jane M. Harrison,

Committee Management Officer, HRSA.

[FR Doc. 97–33295 Filed 12–19–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of Data Content Standard for Facility Location and Identification

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is conducting a public review of the Data Content Standard for Facility Location and Identification. The purpose of this public review is to provide data users and producers with an opportunity to comment on this standard in order to ensure that it meets their needs. Specifically, the FGDC requests responses in three areas: (1) identify any "ad hoc" or "defacto" standards being used that address data content for facility location and identification; (2) identify additional data requirements or concepts not contained in this standard that are necessary to meet a user's requirements; (3) identify any issues that a user may have in implementing the standard in the users information systems.

Participants in the public review are encouraged to provide comments that address specific issues/changes/additions that may result in revisions to the draft facility location and identification standard. All participants who make comments during the public review period will receive an acknowledgment of the receipt of their comment. After comments have been considered, participants will receive notification of how their comments were addressed. After the formal adoption of the standard by the FGDC, the revised standard and a summary analysis of the changes will be made available.

DATES: Comments must be received on or before April 10, 1998.

CONTACT AND ADDRESSES: The complete proposal is included in this notice. It is also posted at Internet address: http://www.fgdc.gov/Standards/Documents/Standards/Facility_ID/.

Requests for written copies of the standard should be addressed to "Data Content Standard for Facility Location and Identification", FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; or telephone 703–648–5514; facsimile 703–648–5755; or Internet at gdc@usgs.gov.

Reviewer's comments may be sent to the FGDC via Internet mail to: gdc-fid@www.fgdc.gov.

Reviewer comments may also be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5x3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format.

For answers to general questions related to this standard, please contact the Federal Geographic Data Committee (FGDC) Facilities Working Group, U.S. Army Corps of Engineers, General Engineering Branch, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; voice telephone numbers: Kevin Backe (703) 428–6505, Nancy Blyler (202) 761–8893; facsimile telephone number: (703) 428–6991.

For answer to questions related to the content of this standard, please contact Bruce Bargmeyer, Facility Identification Working Group Chairman, U.S. Environmental Protection Agency (EPA), Office of Information Resources Management (OIRM), Enterprise Information Management Division (EIMD), 401 M Street, S.W., Washington, DC 20460; voice telephone numbers: Bruce Bargmeyer (202) 260–5306, Dave Catlin (202) 260–3069; facsimile telephone number: (202) 401–8390.

SUPPLEMENTARY INFORMATION: Following is the complete proposal for the "Data Content Standard for Facility Location and Identification"

Project Title

Development of a Federal Geographic Data Committee (FGDC) Facility ID Data Standard

Submitting Organization

Facilities Working Group (FWG)

Objective

To develop a Facility Identification data standard that supports identification of place-based objects that are generally known as facilities.

Scope

This geospatial standard will consist of a set of standardized data elements which identify and locate place-based facilities. This includes a core set of identifying information such as a standard identifier, latitude longitude, name, and facility type.

The effort will develop a set of "type" categories to classify the type of facility identified and to assist in linking related place-based facility objects such as parts of a facility (e.g., smokestack) to a whole facility. Part of the effort will be to establish what is included within "facility" types and to establish how extensions can be made. The work on a facility typing scheme will consider relationships to typing schemes developed in related standards.

Justification/Benefits

Currently, many organizations maintain facility data utilizing a wide variety of identifiers. The lack of a standard data elements for facility identification and the lack of a core set of locational and identifying information makes sharing data very cumbersome (expensive) and imposes a large reporting burden on regulated/managed facilities.

There is considerable interest, among organizations that share information about facilities, in developing a data standard that supports sharing, reporting, managing, linking and using data about facilities. Development of this standard through the FGDC will ensure broad participation including national, state, and local government and private industry. Several organizations, inside and outside the federal government have indicated an interest in this standard, including EPA, DOD, USACE, FEMA, GSA, Applied Geographics, ASCE, and the New York City Transit Authority.

The Facility Identification Standard will benefit Federal, state and local governments, and companies that use or report facilities information. This Facility Identification Standard may also be used to support the FGDC's integrated standard database project. This standard will provide new data sharing opportunities for the National Spatial Data Infrastructure.

Approach

The FWG will establish a Facility Identification project team to develop a draft of this Standard. Relevant standards such as ISO/IEC 11179 will serve as input to this work. The FWG or participating agencies may establish and test this data standard based on existing systems and proof of concept efforts. The FWG will package the standard data element definitions as an FGDC standard. The standard may be established to operate in a centralized (automated registration authority), a decentralized or a hybrid fashion.

Related Standards

Related standards, such as ISO/IEC 11179 and the FGDC Utility (and potentially Hazardous Waste) standards, will be identified and reviewed. Many organizations have developed systems that record facility identifiers. There will serve as input to this effort. It is intended for this standard to be compatible with the use of existing facility identifiers. This work is also related to the FGDC framework concept.

Schedule

The FWG will form a Facility Identification project team and begin work on the development of this standard as soon as this project is approved by the FGDC Standards Working Group (SWG). The development of a working draft Facility Identification Standard is expected to take 3–6 months. A proof of concept demonstration may also be conducted in a period of nine months. Once the FWG is satisfied with the content of this Standard it will be forwarded to the SWG for consideration to go out for public review. The FWG expects to accomplish the development of this standard in 18 months.

Resources

The FWG has resources to work on the content development of this Facility Identification Standard. We expect to pursue acquisition of additional resources from the FGDC for coordination of this effort.

Potential Participants

The primary participants will be the members of the FWG which includes representatives from federal agencies, municipalities, private industry, and professional associations.

Target Authorization Body

The FWG proposes pursing the development of this Facility Identification Standard as an FGDC standard. The FWG may consider pursuing (at a later date) the development of the Integrated Standard as an ANSI (American National Standards Institute) Standard within an ANSI's technical committee. FGDC would serve as the Target Authorization Body until this Facility Identification Standard becomes an ANSI Standard.

Dated: December 15, 1997.

John Fischer,

Acting Chief, National Mapping Division, U.S. Geological Survey.

[FR Doc. 97–33342 Filed 12–19–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–7123–00–6019]

Notice of Public Scoping Meetings South Cow Mountain Recreation Area

AGENCY: Bureau of Land Management, Interior.

ACTIONS: Notice of intent and scoping period.

SUMMARY: The South Cow Mountain Recreation Area is currently managed under the Management Framework Plan of 1971 (MFP) and the ORV plan of 1982. Due to changing public values and the acquisition of additional parcels, it is necessary to amend the MFP. No major shift in management strategy is anticipated. The aim of the plan amendment is to refine the existing successful policies and address social, economic and environmental issues resulting from the success of the present management strategy. The objectives are to better serve the recreating public in an environmentally sound, socially acceptable manner. A series of scoping meetings will be held to accept public comment on issues that should be addressed in this plan amendment. Written comments will also be accepted.

MEETING DATES:

January 6, 1998:
BLM Clear Lake Field Office, 2550 North State St., Ukiah, CA
January 7, 1998:
Lark Hall, Room 2004, Santa Rosa Junior College, Santa Rosa, CA
January 8, 1998:
Golden Gate Club, East Ballroom, Presidio of San Francisco, San Francisco, CA
Jan. 14, 1998:
Supervisors Chambers, Lake County Courthouse, 255 North Forbes, Lakeport, CA

All meetings will be from 7 to 10 p.m.

Written comments can be sent to: Bureau of Land Management, Clear Lake Field Office, 2550 North State St., Ukiah CA 95482, Attention: Rich Burns, Field Manager.

Comments will be accepted until January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Cooper, Outdoor Recreation Planner at the Clear Lake Field Office, or telephone (707) 468–4000.

Philip L. Damon,

Acting Field Manager.

[FR Doc. 97–33341 Filed 12–19–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–03–1220–00: G8–0063]

Oregon: Camping Stay Limits

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Establish an overnight camping restriction order for areas on BLM land within the BLM, Burns District, Hines, OR.

SUMMARY: Person(s) may camp within designated campgrounds, developed recreation sites or on public land not closed or otherwise restricted to camping within the Burns District for a period of not more than 14 days within any period of 28 consecutive days. The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation on public land. After the 14th day of camping, person(s) must move outside of a 25-mile radius of the previous location. When the camping limit has been reached, use of a site shall not occur again until at least 14 days have elapsed from the last day of use.

Under special circumstances and upon written request, the authorized officer may give written permission for extensions to the 14-day camping limit. Persons exempt from this restriction order include agency and emergency personnel in the performance of official duties.

Definitions

As used in this restriction order, the term:

a. *Camping* is defined as preparing a sleeping bag or other bedding material for use, or the erecting of a tent or shelter of natural or synthetic material, or parking a motor vehicle, motor home, or trailer for overnight occupancy.

b. *Occupation* means the taking or holding possession of a camp or residence on public land.

c. *Public land* means any land or interest in land owned by the United States and administered by the BLM.

d. *Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43 Code of Federal Regulations.

e. *Developed Site* means sites that contain structures or capital improvements primarily used by the public for recreation purposes.

EFFECTIVE DATE: This restriction order will go into effect January 1, 1998, and shall remain in effect unless revised, revoked or amended.

FOR FURTHER INFORMATION CONTACT: District Law Enforcement Ranger, Burns District, Bureau of Land Management, HC 74–12533 Hwy 20 West, Hines, Oregon 97738, Telephone (541) 573–4400.

SUPPLEMENTARY INFORMATION: This restriction order is necessary to:

a. Preclude any individual or group from camping for an excessively long period, thereby denying others recreation opportunities;

b. Prevent or reduce the incidence of unauthorized, long-term occupancy of areas from occurring under the guise of recreational use;

c. Prevent unacceptable sanitary and solid waste disposal conditions;

d. Preserve and protect the natural, cultural, and scenic values of areas that are typically being used for camping purposes; and

e. Provide consistency to visitors moving from one BLM district to another.

Authority for this restriction order is contained in 43 CFR 8364.1. Violations of this restriction order may be punishable as listed in 43 CFR 8360.0–7.

Dated: December 12, 1997.

Michael T. Green,

District Manager.

[FR Doc. 97–33258 Filed 12–19–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing

in the National Register were received by the National Park Service before December 13, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 6, 1998.

Carol D. Shull,

Keeper of the National Register, Chief of Registration, National Register.

ALASKA

Matanuska-Susitna Borough-Census Area

Kirsch's Place, Mi. 1.5 Sunshine Rd., or mi. 215.3 Alaska Railroad, Talkeetna vicinity, 97001631

CALIFORNIA

Monterey County

Parmelee, Lou Ellen, House, 570 Archer St., Monterey, 97001633

San Bernardino County

San Bernardino County Court House, 351 N. Arrowhead Ave., San Bernardino, 97001632

San Luis Obispo County

Robles, Paso, Carnegie Library (Carnegie Library MPS), City Park, 800 12th St., Paso Robles, 97001635

Santa Cruz County

Robinson, Elias H., House, 363 Ocean St., Santa Cruz, 97001634

FLORIDA

Indian River County

McKee Jungle Gardens, 350 US 1, Vero Beach, 97001636

Pasco County

St Leo Abbey Historic District, 33701 FL 52, St. Leo, 97001637

GEORGIA

De Kalb County

University Park—Emory Highlands—Emory Estates Historic District, Roughly bounded by N. Decatur Rd., Durand Dr., Peavine Cr., and the Druid Hills Historic District, Decatur vicinity, 97001638

MAINE

Sagadahoc County

Manley, Joseph and Susan, Summer Cottage, E side of Club Rd., 0.1 mi. S of jct. of ME 216 and Club Rd., Small Point, 97001642

York County

Badger, Samuel, Monument, Address Restricted, Kittery Foreside, 97001640
Jones, John Paul, Memorial Park, Bounded by Newmarch St. and Hunter Ave., Kittery Foreside, 97001639
Traip, Robert and Louisa, House, 2 Wentworth St., Kittery Foreside, 97001641
Wentworth, Mark F. and Eliza J., House, 9 Wentworth St., Kittery Foreside, 97001643

WISCONSIN

Outagamie County

Osprey Site, Address Restricted, Kaukauna vicinity, 97001644

Vernon County

Lord, Charles, House, 113 South St., Ontario, 97001645

Proposed Move

A move has been proposed for the following:

FLORIDA

Jackson County

Norton, Robert Lee, House 2045 Lee St., Cypress, 96000914

[FR Doc. 97–33296 Filed 12–19–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the University Museum, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the University Museum, University Arkansas which meets the definition of "unassociated funerary objects" under Section 2 of the Act.

The 981 cultural items were recovered from 37 archeological sites located in the Ouachita Mountains and the West Gulf Coastal Plan of southwestern Arkansas, including the counties of Clark, Dallas, Garland, Howard, Hot Springs, Lafayette, Little River, Logan, Miller, Mississippi, Montgomery, Perry, Scott, Sevier, and Yell. These objects include: animal bones, antlers, antler tools, arrowpoints, an awl, axes, a basket, beads, blades, boatstones, bone tools, celts, clay balls and fragments, corn, earplugs, earspools, knives, leather, lithics, mano, modified stones, pigments, pipes and pipe fragments, projectile points and fragments, quartz crystals, seeds, shell (conch, mussel, terrapin, beads, disks, gorget, fragments), sherds, a skewer, stone artifacts, vessels (bottles, bowls, jars, vases, fragments), and mixed wood and copper pieces.

In 1929, 29 cultural items from sites in Garland, Hot Springs, and Yell counties were accessioned into the University Museum collections. The donors are unknown.

In 1931, four cultural items from Garland County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1931, 85 cultural items from Montgomery, Logan, and Garland counties were accessioned into the University Museum collections. The donors are unknown.

In 1933, 117 cultural items from Yell and Scott counties were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1934, nine cultural items from Clark County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1940, 135 cultural items from Hot Springs, Garland, and Lafayette counties were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1947, four cultural items from Perry and Garland counties were purchased from Fain White King by the University Museum.

In 1951, two cultural items from Dallas County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1955, 317 cultural items from Garland, Miller, Lafayette, and Little River counties were purchased from Pete Miroir by the University Museum.

In 1960, one cultural item from Scott County was donated by Mrs. J.W. Parks to the University Museum.

In 1961, 113 cultural items from Howard County were donated by Dr. Clarence Webb to the University Museum.

In 1962, 40 cultural items from Miller County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1962, nine cultural items from Little River County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1964, 16 cultural items from Sevier County were recovered during University Museum-sponsored excavations and accessioned into University Museum collections.

In 1970, three cultural items from Scott County were recovered during a University field school and accessioned into University Museum collections.

In 1981, 1982, 1986, 1988, and 1991, 111 cultural items from Miller, Howard,

Sevier, and Mississippi Counties were donated to the University Museum by unknown persons.

The 37 sites from which the cultural items were recovered are associated with the Fourche Maline culture (500 BC—800 AD) and the Caddoan Culture (800—1600 AD) based on material culture and site organization. Based on tools, ceramics, and manner of interments, these sites show continuity of occupations through these periods. Accession information indicates all 981 cultural items were recovered from burial contexts. Archeological, ethnohistoric, and historical document evidence indicates Caddoan affiliation through tools, ceramics, manner of interments, and recorded language terms and cultural characteristics (1542–1543 AD) are correlated to the sites included in the above counties.

Officials of the University of Arkansas have determined that, pursuant to 25 U.S.C. 3001(3)(B), these 981 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the University of Arkansas have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and the Caddo Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Michael P. Hoffman, Curator of Anthropology, University Museum, University of Arkansas, Fayetteville, AR 72701, telephone (501) 575–3855 before January 21, 1998. Repatriation of these objects to the Caddo Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: December 15, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–33292 Filed 12–19–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that proposed consent decrees in *United States* v. *Exeter Properties, Inc., et al.*, Civil Action No. 3:97CV141, were lodged on December 2, 1997 with the United States Court for the Eastern District of Virginia.

In February 1997, the United States on behalf of EPA sued Exeter Properties, Inc., Bridgestone/Firestone, inc. ("BFS"), Perry Realty Investments ("Perry Realty"), and Perry Machinery Corporation ("Perry Machinery") under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607, to recover $1.7 million in past response costs, alleging that the defendants were liable as past owners/operators and arrangers for disposal under Section 107(a) of CERCLA in connection with a removal action performed at the Exeter Site located in Hopewell, Virginia. These consent decrees represent settlements with three defendants, BFS, Perry Realty, and Perry. The proposed settlements provide for payments of $495,000 by BFS and $485,000 by Perry Realty and Perry Machinery for response costs in connection with the removal action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Exeter Properties, Inc., et al.*, DOJ Ref. # 90–11–2–1218.

The proposed consent decrees may be examined at the office of the United States Attorney, Eastern District of Virginia, Main Street Centre, Suite 1800, 600 East Main Street, Richmond, VA 23219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.00, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–33344 Filed 12–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR § 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Haviland Properties, Steven Roberts, Myung Chung, Byung Chung, Raymond Sison, and Ines Sison*, 97 Civ 8164 (BSJ) (S.D.N.Y), was lodged on November 4, 1997, with the United States District Court for the Southern District of New York. The consent decree provides for payment by the settling defendants toward reimbursement of response costs incurred in connection with the remediation of hazardous waste contamination at the Haviland Complex Superfund Site ("the Site"), which is located in the Town of Hyde Park, Dutchess County, New York. The Consent Decree requires the defendants to pay to total of $450,000 of the United States and $50,000 to the State of New York over a three year period. In addition, the defendants have agreed to pay to the United States and the State 15% of the net proceeds upon any sale of the property in exchange for the transfer to the purchaser of the property of all rights, benefits and obligations under the consent decree. In the alternative, if the property is not sold within five years of the date of the entry of the consent decree, the United States, at its option; may elect to require the Defendants to pay the sum $30,000 in lieu of 15% of the net proceeds.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Haviland Properties, Steven Roberts, Myung Chung, Byung Chung, Raymond Sison, and Ines Sison*, DOJ Ref. No. 90–11–2–309.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of New York, 100 Church Street, New York, New York 10007 (contact Assistant United States Attorney Kathy S. Marks); the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel Michael Mintzer); and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.25 (25 cents per page reproduction costs) for the consent decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–33345 Filed 12–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval of a new collection: Drug court grantee data collection survey

The Department of Justice, Office of Justice Programs (OJP), has submitted the following information collection request utilizing emergency review procedures, to OMB for review and clearance in accordance with sections 1320.13(a)(1)(ii) and (a)((2)(iii) of the Paperwork Reduction Act of 1995. The OJP has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by December 31, 1997. If granted the emergency approval is only valid for 180 days. All comments and questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (Ms. Victoria Wassmer), Washington DC, 20503. Comments regarding the emergency submission of this information collection may also be submitted to OMB via facsimile at 202–395–7285.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to: Office of Justice Programs, Attention: Marilyn Roberts, Director, Drug Courts Program Office, 6th Floor, 810 7th Street NW, Washington, DC, 20531. Comments are encouraged and will be accepted until February 20, 1998. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

12. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected, and

4. Evaluate whether the data collection instrument will minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection.

1. *Type of Information Collection:* New collection.

2. *Title of the Form/Collection:* Drug Court Grantee Data Collection Survey.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Drug Courts Program Office, Office of Justice Programs, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, and Tribal drug courts. Other: None. This survey will assist in the national evaluation of drug courts. The data to be collected will assist in determining the effectiveness of these grants and the information will be shared with the drug court field personnel to improve program quality.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 respondents at one hour per response twice a year.

6. *An estimate of the total public burden (in hours) associated with the collection:* 600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Cle4arance Officer, Information management and Security Staff, Justice Management Division, United States Department of Justice, Suite 850, Washington Center Building, 1001 G Street, NW, Washington, DC, 20530.

Dated: December 16, 1997.

Robert B. Briggs,

Clearance Officer, United States Department of Justice.

[FR Doc. 97–33246 Filed 12–19–97 8:45 am]

BILLING CODE 4410–18–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: January 7–9, 1998: 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 614, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Margrete Klein, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review preliminary proposals for the Women and Girls program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 16, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–33264 Filed 12–19–97; 8:45 am]

BILLING CODE 7555–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Items Added to Meeting Agenda

DATE OF MEETING: December 8, 1997.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 62 FR 63567, December 1, 1997.

CHANGE: At its meeting on December 8, 1997, the Board of Governors of the

United States Postal Service voted unanimously to add two items to the agenda of its closed meeting held on that date:

1. Revisions to Guidelines on Governors' Official Expenses.
2. Compensation Issues.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–33407 Filed 12–17–97; 4:29 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE

Sunshine Act Meeting

TIME AND DATES: 1:00 p.m., Monday, January 5, 1998; 8:30 a.m., Tuesday, January 6, 1998.

PLACE: Washington, D.C., at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: January 5 (Closed); January 6 (Open).

MATTERS TO BE CONSIDERED:

Monday, January 5—1:00 p.m. (Closed)

1. Update on Rate Case, Docket No. R97–1.
2. Inspector General's Strategic Plan.
3. Diversity Study.
4. Government Performance and Results Act.

Tuesday, January 6—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 8–9, 1997.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Board Resolution on Capital Funding.
4. Annual Report on Government in the Sunshine Act Compliance.
5. Diversity Study Report.
6. Capital Investments.
   a. Informational Briefing on Corporate Call Management Prototype.
   b. Tulsa, Oklahoma, Processing & Distribution Center.
   c. Inspector General Office Space.
7. Election of Chairman and Vice Chairman of the Board of Governors.
8. Tentative Agenda for the February 2–3, 1998, meeting in Ft. Lauderdale, Florida.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–33479 Filed 12–18–97; 3:06 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Ackerley Group, Inc., Common Stock, $.01 Par Value) File No. 1–10321

December 15, 1997.

The Ackerley Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

Pursuant to a Registration Statement on Form 8–A that became effective on December 3, 1997, the Company's Security will be listed for trading on the New York Stock Exchange ("NYSE"). The Company has represented that trading in its Security is scheduled to commence on the NYSE at the opening of business on December 15, 1997.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail the reasons and facts supporting the proposed withdrawal.

In making the decision to withdraw its Security from listing and registration on the Amex, the Company sought to facilitate and promote trading in its Security, and to enhance the Company's visibility and profile in the capital markets. The Company believes this action is consistent with other changes effected by the Company in recent months, including the changing of the Company's name and the corporate and trade names of various of its subsidiaries, as well as the realignment of its internal operating subdivisions.

By letter dated November 22, 1997, the Amex informed the Company that it had no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports with the Commission and the NYSE under Section 13 of the Act.

Any interested person may, on or before January 9, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–33265 Filed 12–19–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2662]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, January 29, 1998, at 9:30 a.m. in Conference Room 1406, Department of State Building, 2201 C Street, N.W., Washington, D.C. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, SA–29, Room 245, Washington, D.C. 20522–2902, telephone 703–875–7800, prior to January 7, 1998. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 8, 1997.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 97–33343 Filed 12–19–97; 8:45 am]

BILLING CODE 4710–21–M

DEPARTMENT OF STATE

[Public Notice No. 2663]

Shipping Coordinating Committee Subcommittee on Ship Design and Equipment; Meeting Notice

The Shipping Coordinating Committee will conduct an open meeting at 9:30 am on Thursday, January 8, 1998, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to prepare for the forty-first session of the Subcommittee on Ship Design and Equipment of the International Maritime Organization (IMO) which is scheduled for March 9–13, 1998, at IMO Headquarters in London, England.

Among other things, items of particular interest are: role of the human element in maritime casualties—guidelines for computer applications; revision of the High Speed Craft Code; matters relating to lifesaving; safety of passenger submersible craft; safe ocean towing guidelines; development of a code on polar navigation; and ship structures matters.

IMO works to develop international agreements, guidelines, and standards for the marine industry. In most cases, these form the basis for class society rules and national standards/regulations. Such an open meeting supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. This open meeting serves as an excellent forum for the U.S. maritime industry to express their ideas and participate in the international rulemaking process. All members of the maritime industry are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Wayne Lundy, U.S. Coast Guard Headquarters, Commandant (G–MSE–3), 2100 2nd Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: December 8, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–33367 Filed 12–19–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending December 12, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–3211.
Date Filed: December 9, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 AFR–TC3 0027 dated December 2, 1997
Expedited Africa-TC3 Reso 0027
Intended effective date: January 1, 1998

Docket Number: OST–97–3212.
Date Filed: December 9, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 ME–TC3 0023 dated December 30, 1997 r1–4
PTC23 ME–TC3 0024 dated December 2, 1997 r5–14
Middle East-TC3 Expedited Resos
Intended effective date: December 30, 1997

Docket Number: OST–97–3213.
Date Filed: December 9, 1997.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Reso 024f—Zimbabwe Local Currency Fare Changes
Intended effective date: January 1, 1998

Docket Number: OST–97–3214.
Date Filed: December 9, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 Telex Mail Vote 899
Fares from Algeria to Western Africa r1–4
Correction—Telex dated December 5, 1997
Intended effective date: December 18, 1997

Docket Number: OST–97–3215.
Date Filed: December 9, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0128 dated December 5, 1997 r1–2
PTC2 EUR 0129 dated December 5, 1997 r3–21
PTC2 EUR 0130 dated December 5, 1997 r22–36
PTC2 EUR 0131 dated December 5, 1997 r37–40
PTC2 EUR 0132 dated December 5, 1997 r41–43
PTC2 EUR 0133 dated December 5, 1997 r44–46
PTC2 EUR 0134 dated December 5, 1997 r47–49
PTC2 EUR 0135 dated December 5, 1997 r50–51
PTC2 EUR 0136 dated December 5, 1997 r52
PTC2 EUR 0137 dated December 5, 1997 r53
PTC2 EUR 0138 dated December 5, 1997 r54
Minutes—PTC2 EUR 0125 dated December 5, 1997
PTC2 EUR 0126 dated December 5, 1997
Tables—PTC2 EUR Fares 0021 Part I dated December 5,1997
PTC2 EUR Fares 0021 Part II dated December 5, 1997
PTC2 EUR Fares 00021 Part III dated December 5, 1997
Intended effective date: as early as March 1, 1998

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–33287 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 12, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following

the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3217.

Date Filed: December 10, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 7, 1998.

Description: Application of JHM Cargo Expresso, S.A., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in nonscheduled, including charter, foreign air transportation of property and mail between points in Costa Rica and Miami, Florida and Los Angeles, California, with all such flights originating or terminating in Costa Rica.

Docket Number: OST–97–3218.

Date Filed: December 10, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 7, 1998.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102, 41108, and Subpart Q of the Regulations, applies for a new or amended Certificate of Public Convenience and Necessity authorizing Delta to engage in scheduled foreign air transportation of persons, property and mail as follows: (i) between Atlanta, Georgia and New York, New York, on the one hand, and—(1) Buenos Aires, Argentina; (2) La Paz, Bolivia; (3) Santiago, Chile; (4) Bogota, Colombia; (5) Guayaquil and Quito, Ecuador; (6) Asuncion, Paraguay; (7) Lima, Peru; (8) Montevideo, Uruguay; and (9) Caracas, Venezuela—on the other hand. (ii) Between a point or points in the United States and a point or points in Belize. Delta further requests route integration authority to permit Delta to combine the authority conferred by the grant of this application with all of Delta's existing certificate and exemption authority, to the extent permitted by applicable international agreements. Finally, Delta requests that the certificate authority requested herein be granted for a term of at least five years.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–33288 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Environmental Impact Statement, Miami International Airport, Miami, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is making available the Draft Environmental Impact Statement (DEIS) for the proposed new 8600 feet Runway 8–26 at Miami International Airport, Miami, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, extension 27.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is making available for review and comment to governmental agencies and the public the DEIS for the proposed new 8600 feet Runway 8–26 at Miami International Airport, Miami, Florida. Any person may review the DEIS at the location listed above under the heading, **FOR FURTHER INFORMATION CONTACT.** A public hearing is scheduled for February 4, 1998 in Miami, Florida. Location and time for the public hearing will be announced at a later date.

Comments may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.** Comment period expires on February 20, 1998.

Issued in Orlando, Florida, December 12, 1997.

John W. Reynolds, Jr.,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 97–33285 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98–05–C–00–PHL) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Philadelphia International Airport, Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 21, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Oscar Sanchez, Project Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dennis Bousey, Director of Aviation for the City of Philadelphia at the following address: Philadelphia International Airport, Terminal E, Philadelphia, Pennsylvania 19153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Philadelphia Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Oscar Sanchez, Project Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011. 717–782–4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 10, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Philadelphia was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 9, 1998.

The following is a brief overview of the application.

Application number: 98–05–C–00–PHL.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: January 1, 1999.

Total estimated PFC revenue: $26,150,000.

Brief description of proposed projects:

—Install Security Controlled Access—Phase III
—Airport Roadway System Modifications
—Rehabilitate Aircraft Parking Apron on East Side of Terminal E
—Construct Airport High Speed Line Platforms
—Install Taxiway Edge Lights
—Terminal A International Passenger Capacity Enhancements
—Reconstruct Taxiway J
—Purchase Passenger Transfer Vehicle

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Philadelphia Department of Aviation.

Issued in Jamaica, New York on December 10, 1997.

Thomas Felix,

Manager, Planning & Programming Branch, Airports Division, Eastern Region.

[FR Doc. 97–33286 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Annual List of Defect and Noncompliance Decisions Affecting Nonconforming Imported Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Annual list of defect and noncompliance decisions affecting nonconforming imported vehicles.

SUMMARY: This document contains a list of vehicles recalled by their manufacturers during Fiscal Year 1997 (October 1, 1996 through September 30, 1997) to correct a safety-related defect or a noncompliance with an applicable Federal motor vehicle safety standard (FMVSS). The listed vehicles are those that have been decided by NHTSA to be substantially similar to vehicles imported into the United States that were not originally manufactured to conform to all applicable FMVSS. The registered importers of those nonconforming vehicles are obligated to provide their owners with notification of, and a remedy for, the defects or noncompliances for which the listed vehicles were recalled.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115. Once NHTSA decides that a nonconforming vehicle is eligible for importation, it may be imported by a person who is registered with the agency pursuant to 49 U.S.C. § 30141(c). Before releasing the vehicle for use on public streets, roads, or highways, the registered importer must certify to NHTSA, pursuant to 49 U.S.C. § 30146(a), that the vehicle has been brought into conformity with all applicable FMVSS.

If a vehicle originally manufactured for importation into and sale in the United States is decided to contain a defect related to motor vehicle safety, or not to comply with an applicable FMVSS, 49 U.S.C. § 30147(a)(1)(A) provides that the same defect or noncompliance is deemed to exist in any nonconforming vehicle that NHTSA has decided to be substantially similar and for which a registered importer has submitted a certificate of conformity to the agency. Under 49 U.S.C. § 30147(a)(1)(B), the registered importer is deemed to be the nonconforming vehicle's manufacturer for the purpose of providing notification of, and a remedy for, the defect or noncompliance.

To apprise registered importers of the vehicles for which they must conduct a notification and remedy (i.e., "recall") campaign, 49 U.S.C. § 30147(a)(2) requires NHTSA to publish in the **Federal Register** notice of any defect or noncompliance decision that is made with respect to substantially similar U.S. certified vehicles. Annex A contains a list of all such decisions that were made during Fiscal Year 1997, which ran from October 1, 1996 through September 30, 1997. The list identifies the Recall Number that was assigned to the recall by NHTSA after the agency received the manufacturer's notification of the defect or noncompliance under 49 CFR part 573. After September 30, 1998, NHTSA will publish a comparable list of all defect and noncompliance decisions affecting nonconforming imported vehicles that are made during the current fiscal year.

Authority: 49 U.S.C. § 30147(a)(2); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 16, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS

Make	Model	Model year	Recall No.
BENTLEY	AZURE	1996	97V122000
BENTLEY	CONTINENTAL	1994	97V122000
BMW	318TI	1995	97V131000
BMW	325I	1992	97V131000
BMW	525I	1989	97V131000
BMW	525I	1990	97V131000
BMW	540I	1994	97V131000
BMW	540I	1995	97V131000
BMW	Z3	1996	97V131000
BUICK	PARK AVENUE	1997	97V036000
BUICK	PARK AVENUE	1997	97V064000
BUICK	REGAL	1990	97V058000
BUICK	REGAL	1994	97V017000
CHEVROLET	BLAZER	1995	96V234000

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	Recall No.
CHEVROLET	BLAZER	1995	97V066000
CHEVROLET	BLAZER	1996	96V234000
CHEVROLET	BLAZER	1996	97V066000
CHEVROLET	BLAZER	1996	97V096000
CHEVROLET	BLAZER	1996	97V096001
CHEVROLET	BLAZER	1997	97V066000
CHEVROLET	BLAZER	1997	97V096000
CHEVROLET	BLAZER	1997	97V096001
CHEVROLET	C30	1995	97V037000
CHEVROLET	CAVALIER	1995	96V250000
CHEVROLET	CAVALIER	1996	96V250000
CHEVROLET	CAVALIER	1996	96V257000
CHEVROLET	CORVETTE	1997	97V044000
CHEVROLET	CORVETTE	1997	97V104000
CHEVROLET	CORVETTE	1997	97V105000
CHEVROLET	CORVETTE	1997	97V108000
CHEVROLET	G30	1996	96V186000
CHEVROLET	LUMINA	1990	97V058000
CHEVROLET	LUMINA	1995	97V017000
CHEVROLET	LUMINA	1995	97V065000
CHEVROLET	MALIBU	1997	97V107000
CHEVROLET	MONTE CARLO	1995	97V017000
CHEVROLET	MONTE CARLO	1995	97V065000
CHEVROLET	S10	1989	96V195000
CHEVROLET	S10	1991	96V195000
CHEVROLET	S10	1992	96V195000
CHEVROLET	S10	1993	96V195000
CHEVROLET	S10	1994	96V195000
CHEVROLET	S10	1994	97V096000
CHEVROLET	S10	1994	97V096001
CHEVROLET	S10	1995	96V195000
CHEVROLET	S10	1995	97V096000
CHEVROLET	S10	1995	97V096001
CHEVROLET	S10	1996	97V008000
CHEVROLET	S10	1996	97V008001
CHEVROLET	S10	1996	97V096000
CHEVROLET	S10	1996	97V096001
CHEVROLET	S10	1996	97V146000
CHEVROLET	S10	1996	97V146001
CHEVROLET	SUBURBAN	1991	96V226000
CHEVROLET	SUBURBAN	1995	97V066000
CHEVROLET	SUBURBAN	1996	97V066000
CHEVROLET	SUBURBAN	1997	97V066000
CHRYSLER	TOWN AND COUNTRY	1997	96V215000
DODGE	B250	1996	97V066000
DODGE	CARAVAN	1991	96V229000
DODGE	CARAVAN	1991	97V148000
DODGE	CARAVAN	1991	97V149000
DODGE	CARAVAN	1992	96V229000
DODGE	CARAVAN	1992	97V079000
DODGE	CARAVAN	1992	97V148000
DODGE	CARAVAN	1992	97V149000
DODGE	CARAVAN	1993	97V148000
DODGE	CARAVAN	1993	97V149000
DODGE	CARAVAN	1997	96V215000
DODGE	D250	1996	97V066000
DODGE	DAKOTA	1997	97V080000
DODGE	GRAND CARAVAN	1992	96V229000
DODGE	GRAND CARAVAN	1992	97V079000
DODGE	GRAND CARAVAN	1992	97V148000
DODGE	GRAND CARAVAN	1992	97V149000
DODGE	GRAND CARAVAN	1993	97V148000
DODGE	GRAND CARAVAN	1993	97V149000
DODGE	GRAND CARAVAN	1997	96V215000
DODGE	NEON	1995	96V228000
DODGE	NEON	1997	97V080000
DODGE	RAM	1994	96V230000
DODGE	RAM	1994	97V084000
DODGE	RAM	1995	96V230000
DODGE	RAM	1995	97V068000
DODGE	RAM	1995	97V084000
DODGE	RAM	1996	97V068000

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	Recall No.
DODGE	RAM	1996	97V084000
DODGE	RAM	1997	97V084000
DODGE	RAM	1997	97V126000
DODGE	SHADOW	1992	96V229000
DODGE	SHADOW	1992	97V078000
DODGE	STRATUS	1996	97V095000
DODGE	STRATUS	1997	97V095000
FORD	CONTOUR	1996	97V067000
FORD	CROWN VICTORIA	1992	97V024000
FORD	CROWN VICTORIA	1994	97V024000
FORD	CROWN VICTORIA	1995	97V024000
FORD	CROWN VICTORIA	1996	97V024000
FORD	E150	1995	97V066000
FORD	E150	1996	97V066000
FORD	E150	1997	97V066000
FORD	EXPEDITION	1997	96V252000
FORD	EXPLORER	1993	97V083000
FORD	EXPLORER	1994	97V083000
FORD	EXPLORER	1995	97V136000
FORD	EXPLORER	1996	97V074000
FORD	EXPLORER	1996	97V136000
FORD	EXPLORER	1997	97V074000
FORD	EXPLORER	1997	97V136000
FORD	F150	1995	97V066000
FORD	F150	1996	97V066000
FORD	F150	1997	96V251000
FORD	F150	1997	96V256000
FORD	F150	1997	97V066000
FORD	F150	1997	97V147000
FORD	TAURUS	1992	97V019000
FORD	TAURUS	1992	97V025000
FORD	TAURUS	1993	97V019000
FORD	TAURUS	1993	97V025000
FORD	TAURUS	1994	97V019000
FORD	TAURUS	1994	97V025000
FORD	TAURUS	1995	97V019000
FORD	TAURUS	1995	97V025000
FORD	TAURUS	1996	96V166000
FORD	TAURUS	1996	96V176000
FORD	TAURUS	1997	96V166000
FORD	TAURUS	1997	97V097000
FORD	TEMPO	1992	97V019000
FORD	TEMPO	1993	97V019000
FORD	TEMPO	1994	97V019000
FORD	WINDSTAR	1996	96V166000
FORD	WINDSTAR	1997	97V097000
FORD	WINDSTAR	1998	97V097000
FREIGHTLINER	FL80	1994	97V114001
GMC	JIMMY	1995	96V234000
GMC	JIMMY	1996	96V234000
GMC	JIMMY	1996	97V096000
GMC	JIMMY	1996	97V096001
GMC	JIMMY	1997	97V096000
GMC	JIMMY	1997	97V096001
GMC	S15	1994	97V096000
GMC	S15	1995	97V096000
GMC	SAFARI	1996	97V057000
GMC	SONOMA	1994	97V096001
GMC	SONOMA	1995	97V096001
GMC	SONOMA	1996	97V008000
GMC	SONOMA	1996	97V008001
GMC	SONOMA	1996	97V096001
GMC	SONOMA	1996	97V146000
GMC	SONOMA	1996	97V146001
GMC	SUBURBAN	1991	96V226000
GMC	SUBURBAN	1995	97V066000
GMC	SUBURBAN	1996	97V066000
GMC	SUBURBAN	1997	97V066000
HARLEY DAVIDSON	SOFTAIL	1995	96V204000
HARLEY DAVIDSON	SOFTAIL	1996	96V204000
HONDA	ACCORD	1995	96V217000
ISUZU	RODEO	1994	96V170002

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	Recall No.
ISUZU	RODEO	1995	97V034000
ISUZU	RODEO	1995	97V034001
JEEP	CHEROKEE	1989	96V260000
JEEP	CHEROKEE	1990	96V260000
JEEP	CHEROKEE	1991	96V260000
JEEP	CHEROKEE	1993	97V069000
JEEP	CHEROKEE	1994	97V069000
JEEP	CHEROKEE	1995	97V069000
JEEP	CHEROKEE	1996	97V069000
JEEP	CHEROKEE	1996	97V089000
JEEP	GRAND CHEROKEE	1996	97V039000
JEEP	GRAND CHEROKEE	1997	97V080000
JEEP	WRANGLER	1997	97V080000
KENWORTH	T800	1997	97V139000
LINCOLN	CONTINENTAL	1992	97V019000
LINCOLN	CONTINENTAL	1992	97V025000
LINCOLN	CONTINENTAL	1993	97V019000
LINCOLN	CONTINENTAL	1993	97V025000
LINCOLN	CONTINENTAL	1994	97V019000
LINCOLN	CONTINENTAL	1994	97V025000
MCI	102D3	1997	97V053000
MERCURY	SABLE	1992	97V019000
MERCURY	SABLE	1992	97V025000
MERCURY	SABLE	1993	97V019000
MERCURY	SABLE	1993	97V025000
MERCURY	SABLE	1994	97V019000
MERCURY	SABLE	1994	97V025000
MERCURY	SABLE	1995	97V019000
MERCURY	SABLE	1995	97V025000
MERCURY	SABLE	1996	96V166000
MERCURY	SABLE	1996	96V176000
MERCURY	SABLE	1997	96V166000
MERCURY	TOPAZ	1993	97V019000
MERCURY	TOPAZ	1994	97V019000
MERCURY	VILLAGER	1995	96V253000
MERCURY	VILLAGER	1995	96V253001
NISSAN	PATHFINDER	1994	96V170001
OLDSMOBILE	CUTLASS	1990	97V058000
OLDSMOBILE	CUTLASS	1994	97V017000
PLYMOUTH	BREEZE	1996	97V085000
PLYMOUTH	BREEZE	1997	97V085000
PLYMOUTH	GRAND VOYAGER	1991	96V229000
PLYMOUTH	GRAND VOYAGER	1991	97V148000
PLYMOUTH	GRAND VOYAGER	1991	97V149000
PLYMOUTH	GRAND VOYAGER	1992	96V229000
PLYMOUTH	GRAND VOYAGER	1992	96V229000
PLYMOUTH	GRAND VOYAGER	1992	97V079000
PLYMOUTH	GRAND VOYAGER	1992	97V148000
PLYMOUTH	GRAND VOYAGER	1992	97V149000
PLYMOUTH	GRAND VOYAGER	1993	97V148000
PLYMOUTH	GRAND VOYAGER	1993	97V149000
PLYMOUTH	NEON	1995	96V228000
PLYMOUTH	VOYAGER	1991	96V229000
PLYMOUTH	VOYAGER	1991	97V148000
PLYMOUTH	VOYAGER	1991	97V149000
PLYMOUTH	VOYAGER	1992	96V229000
PLYMOUTH	VOYAGER	1992	97V079000
PLYMOUTH	VOYAGER	1992	97V148000
PLYMOUTH	VOYAGER	1992	97V149000
PLYMOUTH	VOYAGER	1993	97V148000
PLYMOUTH	VOYAGER	1993	97V149000
PONTIAC	GRAND PRIX	1994	97V017000
PONTIAC	GRAND PRIX	1995	97V065000
PONTIAC	GRAND AM	1996	96V250000
PONTIAC	GRAND AM	1996	96V257000
PONTIAC	GRAND AM	1997	97V059000
PONTIAC	SUNFIRE	1995	96V250000
PONTIAC	SUNFIRE	1996	96V250000
PONTIAC	SUNFIRE	1996	96V257000
ROLLS ROYCE	FLYING SPUR	1995	97V122000
ROLLS ROYCE	SILVER SPUR	1996	97V122000

FISCAL YEAR 97 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Model year	Recall No.
TOYOTA	CAMRY	1997	97V156000

[FR Doc. 97–33251 Filed 12–19–97; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33515]

Connecticut Central Railroad Company, Inc.—Modified Rail Certificate

On November 14, 1997, Connecticut Central Railroad Company, Inc. (CCCL), a class III shortline railroad, filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C—*Modified Certificate of Public Convenience and Necessity* to operate approximately 4.0 miles of abandoned rail line between milepost 3.0 in Hartford, CT, and milepost 7.0 in Wethersfield, CT (the Wethersfield Secondary Track), owned by the Connecticut Department of Transportation (C–DOT).

The involved rail line was abandoned by Boston and Maine Corporation pursuant to Board authorization granted in *Boston and Maine Corporation—Abandonment Exemption—in Hartford County, CT*, STB Docket No. AB–32 (Sub-No. 80X) (STB served Sept. 17, 1997). C–DOT acquired the rail line on October 28, 1997.

Pursuant to a supplement to the agreement dated March 28, 1996, between C–DOT and CCCL,[1] which is scheduled to terminate on May 17, 2017, operations over the 4-mile segment of the Wethersfield Secondary Track were scheduled to commence no sooner than November 17, 1997.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

No subsidy is involved. There may be preconditions for shippers to meet in order to receive rail service. CCCL indicates that in order for potential shippers to receive service, they may be required to enter into a contractual agreement with it, and may be subject to a special train charge as set forth in CCCL's tariff.

[1] The original notice of lease/operating agreement, dated June 24, 1987, governs CCCL's operations over other rail lines owned by C–DOT.

The segment represents a connecting piece of trackage linking lines over which CCCL has already obtained a modified rail certificate. Northerly, the line will form a link with other CCCL-operated trackage, and will connect with Consolidated Rail Corporation (Conrail) at Hartford, at or near milepost 2.6. Southerly, the line will connect with other CCCL-operated trackage and with a larger portion of CCCL's system. By this southerly connection, the line will enjoy interline connections already established by CCCL with the Providence and Worcester Railroad Company at Middlefield, CT, and with Conrail at Cedar Hill Yard in New Haven, CT.

This notice must be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F St., NW, Washington, DC 20001; and on the American Short Line Railroad Association: American Short Line Railroad Association, 1120 G St., NW, Suite 520, Washington, DC 20005.

Decided: December 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–33337 Filed 12–19–97; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Textile Costumes

AGENCY: Customs Service, Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party requesting the reclassification of certain imported textile costumes. The petitioner contends that Customs is incorrect in classifying textile costumes which are flimsy, not durable, and not normal articles of wearing apparel, under subheading 9505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), as "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other: Other." The provision is duty free under the general column one rate and costumes classifiable under this provision are not subject to quota or visa restraints. The petitioner contends that all imported textile costumes should be classified in Chapters 61 or 62, HTSUS, asserting that textile costumes are excluded from classification under subheading 9505.90.6090, HTSUS, pursuant to Note 1(e), Chapter 95, which states that the chapter does not cover sports clothing or fancy dress, of textiles, of chapter 61 or 62. If classified under Chapter 61 or 62 of the HTSUS, the costumes would be dutiable and may be subject to quota and visa restraints. This document invites comments with regard to the correctness of the current classification.

DATES: Comments must be received on or before February 20, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at 1300 Pennsylvania Avenue., NW., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch, (202–927–1368).

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of an American manufacturer of textile costumes. The petitioner contends that virtually identical costumes to those manufactured by petitioner are being imported into the U.S. and some of these textile costumes are being erroneously classified by Customs under subheading 9505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), as "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other: Other." The provision is duty free under the general column one rate and costumes classified under this provision are not subject to quota or visa

restraints. The petitioner claims that all imported textile costumes should be classified in Chapters 61 or 62, HTSUS, asserting that textile costumes are excluded from classification under subheading 9505.90.6090, HTSUS, pursuant to Note 1(e), Chapter 95. If classified under Chapters 61 or 62, the costumes would be dutiable and may be subject to quota and visa restraints.

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505, HTSUS, includes articles which are for "Festive, carnival, or other entertainment." However, Note 1(e), chapter 95, HTSUS, excludes articles of "fancy dress, of textiles, of chapter 61 or 62" from chapter 95. The ENs to 9505, state, among other things, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

* * * * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche-heading 67.04), and paper hats. However, the heading excludes fancy dress of textile materials, of chapter 61 or 62.

In interpreting the phrase "fancy dress, of textiles, of chapter 61 or 62," Customs initially took the view that fancy dress included "all" costumes regardless of quality, durability, or nature of the item. However, Customs has reexamined its view regarding the scope of the term "fancy dress" as it relates to costumes. On November 15, 1994, Customs issued Headquarters Ruling Letter (HQ) 957318, which referred to the settlement agreement of October 18, 1994, reached by the United States and Traveler Trading in the case of *Traveler Trading Co.* v. *United States*, Civil Action, #91–02–00084. In HQ 957318, Customs stated that it had agreed to classify as festive articles in subheading 9505.90.6090, HTSUS, costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel.

Description of Merchandise

The imported costumes which are the subject of HQ 957318 are of the same class or kind of merchandise as the costumes manufactured by petitioner. Costumes, whether imported or domestically manufactured, are traditionally worn in conjunction with the celebration of the Halloween festival or to costume parties. The costumes at issue are constructed of fabric comprised of man-made or natural fibers, but not of paper. The costumes usually depict a character, creature, or professional person, and often include accessories.

Issues Raised

Petitioner asserts that Customs interpretation of the term "fancy dress" is incorrect since the term "fancy dress" is synonymous with the word "costume." In support of this assertion, petitioner cites the "Cambridge International Dictionary of English" (1995) as stating that the word "costume" is American for the British and Australian term "fancy dress." In addition, petitioner cites the "Oxford English Dictionary" (2d ed. 1989) as stating that the definition of the term "fancy dress" is "[a] costume arranged according to the wearer's fancy, usually representing some fictitious or historical character."

The petitioner states that the Nomenclature Committee of the Customs Cooperation Council (predecessor to the World Customs Organization) considered the scope of the term "fancy dress" and determined that the proper classification for costumes was in Section XI. Further, a recent decision by the Canadian International Trade Tribunal held that the language of Note 1(e) regarding "fancy dress, of textiles" included the inexpensive costumes before the Tribunal because the costumes were "arranged or made to suit the wearer's fancy to represent fictitious characters" and that subheading 9505, HTSUS, covered "goods [that] are more indicative of face disguises than of actual clothing."

In citing the ENs to Chapter 95, petitioner argues that the examples set forth as "articles of fancy dress" in the ENs include only items that act as accessories to the fancy dress but are not themselves "fancy dress" because they do not clothe the body. Further, petitioner claims that the phrase in the ENs, "articles of fancy dress", does not include those articles made of textile material and that an item of "fancy dress" is the actual costume, not the accessories.

Petitioner states that the durability of the costume is irrelevant to the determination of whether a costume is an item of apparel. Petitioner cites the case of *Admiral Craft Equip Corp.* v. *United States*, 82 Cust. Ct. 162, 164, C.D. 4796 (1979), in support of their position that Customs should apply a "use" test in classifying textile costumes and the case of *Dynamics Classics, Ltd.* v. *United States*, 10 CIT 666 (1986), as setting forth factors to be considered in applying the "use" test. In the *Dynamics* case the court cited *United States* v. *Carborundum Co.*, 63 CCPA 98, 102, C.A.D. 1172, 536 F.2d 373 (1976), for stating the elements used to establish the chief use of a class or kind of merchandise: "(1) the general physical characteristics of the merchandise; (2) the expectations of the ultimate purchaser, (3) the channels of trade, and (4) how it is advertised and used." According to the petitioner, application of these factors would require that a Halloween costume be classified as an article of apparel in Chapter 61 or 62.

Finally , petitioner states that Court of International Trade (CIT) decisions interpreting the Tariff Schedules of the United States (TSUS), are inapplicable when classifying costumes under the HTSUS. Petitioner argues that Customs should not consider the CIT's decisions in *Traveler Trading Co.* v. *United States*, 713 F.Supp. 409 (CIT 1989), and *I.C.I. Worldwide, Inc.* v. *United States*, 14 CIT 201 (1990), because both were decided under the TSUS. Specifically, it is petitioner's contention that the courts' decisions in those cases rested on the " * * * very broad and preclusive nature of the TSUS's definition of 'toys'." Petitioner further asserts that the classification of costumes under the HTSUS is very different from the TSUS because costumes are never classifiable as toys under the HTSUS and costumes are specifically excluded from classification as articles of fancy dress of textiles pursuant to Note 1(e) to Chapter 95.

Comments

Pursuant to Section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on the matter, Customs invites written comments on the petition from interested parties.

The domestic party petition, as well as all comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), 1.4, Treasury Department Regulations (31 CFR 1.4), and Section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on regular business days, at the: U.S. Customs Service, Office of Regulations and Rulings, Commercial Rulings Division, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Authority

This notice is published in accordance with Section 175.21(a), Customs Regulations (19 CFR 175.21(a)), 19 U.S.C. 1516.

Drafting information: The principal author of this document was Ann Segura Minardi, Textiles Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: December 5, 1997.

William F. Riley,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–33291 Filed 12–19–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2758

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2758, Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns.

DATES: Written comments should be received on or before February 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns.

OMB Number: 1545–0148.

Form Number: 2758.

Abstract: Internal Revenue Code section 6081 allows a reasonable extension of time for filing any return, declaration, statement, or other document. Form 2758 is used by fiduciaries, trustees, and certain tax-exempt organizations to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 300,000.

Estimated Time Per Respondent: 3 hr., 51 min.

Estimated Total Annual Burden Hours: 1,155,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 16, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33358 Filed 12–19–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8038–T, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

DATES: Written comments should be received on or before February 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

OMB Number: 1545–1219.

Form Number: 8038–T.

Abstract: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 24 hr., 22 min.

Estimated Total Annual Burden Hours: 60,925.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33359 Filed 12–19–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5306–SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5306–SEP, Application for Approval of Prototype Simplified Employee Pension-SEP.

DATES: Written comments should be received on or before February 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of Prototype Simplified Employee Pension-SEP.

OMB Number: 1545–0199.

Form Number: 5306–SEP.

Abstract: This form is used by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a simplified employee pension plan (SEP) to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.

Current Actions: The following changes are being made:

Line 2 has been re-aligned on the revised form, eliminating line 2b(1), Latest letter serial number. This information is no longer needed to process an application.

Line 3 has been revised to eliminate the concept of "long" and "short" amendments because this information is no longer important in processing the application.

Lines 6 and 7 have been added to the revised form. This information is important in helping the person reviewing the application to know the type of submission and the name of the mass submitter, if applicable.

Line 8d has been deleted because this item is no longer appropriate.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 650.

Estimated Time Per Respondent: 11 hr., 38 min.

Estimated Total Annual Burden Hours: 7,566.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 16, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33360 Filed 12–19–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Forms 4804 and 4802

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4804, Transmittal of Information Returns Reported Magnetically/Electronically, and Form 4802, Transmittal of Information Returns Reported Magnetically/Electronically (Continuation of Form 4804).

DATES: Written comments should be received on or before February 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 4804, Transmittal of Information Returns Reported Magnetically/Electronically, and Form 4802, Transmittal of Information Returns Reported Magnetically/Electronically (Continuation of Form 4804).

OMB Number: 1545–0367.

Form Number: Forms 4804 and 4802.

Abstract: Under Internal Revenue Code sections 6041 and 6042, all persons engaged in a trade or business and making payments of taxable income must file reports of this income with the IRS. In certain cases, this information must be filed on magnetic media. Forms 4804 and 4802 are transmittal forms for the magnetic media and indicate the payer, type of document, and total payee records.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 138,343.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 45,406.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33361 Filed 12–19–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8716

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8716, Election To Have a Tax Year Other Than a Required Tax Year.

DATES: Written comments should be received on or before February 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Have a Tax Year Other Than a Required Tax Year.

OMB Number: 1545–1036.

Form Number: 8716.

Abstract: Form 8716 is filed by partnerships, S corporations, and personal service corporations under Internal Revenue Code section 444(a) to elect to retain or to adopt a tax year that is not a required tax year. The form provides IRS with information to determine that the section 444(a) election is properly made and identifies the tax year to be retained, changed, or adopted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 40,000.

Estimated Time Per Respondent: 4 hr., 54 min.

Estimated Total Annual Burden Hours: 196,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 16, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–33362 Filed 12–19–97; 8:45 am]

BILLING CODE 4830–01–U

federal register

Monday
December 22, 1997

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172 et al.

Hazardous Materials: Radiation Protection Program Requirement; Final Rules

49 CFR Part 172 et al.

Hazardous Materials: Withdrawal of Radiation Protection Program; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 174, 175, 176, and 177

[Docket No. RSPA–97–2850 (HM–169B)]

RIN 2137–AD14

Hazardous Materials: Radiation Protection Program Requirement

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Revocation of direct final rule; Reinstatement of regulations.

SUMMARY: This action restores regulatory text that was removed by a September 2, 1997 direct final rule because interested parties submitted adverse comments on it. In the direct final rule, RSPA removed regulations that require persons who offer, accept for transportation, or transport radioactive materials to develop and maintain written radiation protection programs. The effect of this action is that the radiation protection program requirements issued on September 28, 1995 remain in effect. RSPA is publishing a notice of proposed rulemaking elsewhere in this issue of the Federal Register inviting further comments on the need to withdraw or revise the radiation protection program requirements.

DATES: The direct final rule published at 62 FR 46214 is revoked and the text of affected provisions in Subpart I of Part 172 and §§ 174.705, 175.706, 176.703 and 177.827 are reinstated as of September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366–4545 or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On September 28, 1995, RSPA published a final rule in the Federal Register under Docket No. HM–169A (60 FR 50292). The changes made in Docket HM–169A were part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR; 49 CFR 171–180) with international standards and to improve radiation safety for workers and the public during the transportation of radioactive materials.

One of the substantive regulatory changes under Docket HM-169A is a requirement to develop and maintain a written radiation protection program (RPP). The RPP requirements are found in Subpart I of Part 172 of the HMR. Implementation provisions for rail, air, vessel and highway are found in §§ 174.705, 175.706, 176.703, and 177.827, respectively. The RPP requirements apply, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. Compliance with the RPP requirements was required after October 1, 1997.

Following publication of the September 28, 1995 final rule, many comments were received concerning technical difficulties in implementing the RPP requirements. Subsequently, on April 19, 1996, RSPA published in the Federal Register a request for comments on the implementation of the RPP requirements (Notice 96–7; 61 FR 17349). In Notice 96–7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements.

RSPA received 23 comments in response to Notice 96–7. After considering these comments, RSPA decided that the concerns expressed could not all be resolved through guidance; new rulemaking was required in order to adequately address many of the issues raised in the comments. RSPA determined that the current RPP requirements in Subpart I of Part 172, and §§ 174.705, 175.706, 176.703 and 177.827 should be withdrawn, because they could not be corrected through rulemaking action prior to the October 1, 1997 compliance date. Accordingly, RSPA published a direct final rule on September 2, 1997 [62 FR 46214], withdrawing the RPP requirements effective September 30, 1997, unless an adverse comment or notice of intent to file an adverse comment was received by September 30, 1997. The preamble to the direct final rule discussed the concerns expressed in response to Notice 96–7.

II. Revocation of Direct Final Rule

The procedures governing issuance of direct final rules are in 49 CFR 106.39. These procedures provide for public notice and opportunity for comment subsequent to publication of a direct final rule. They also provide that if an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely document in the Federal Register to confirm that fact and withdraw the direct final rule in whole or in part. Under the procedures, RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

Two persons submitted adverse comments on the direct final rule: Caliber System, Inc. and Davis Transport Inc. In summary, these parties asserted that RSPA did not adequately consider worker safety, but had overemphasized the comments on economic ability to comply and overstated the inconsistency and compliance assurance issues associated with the rule.

In this document, RSPA is providing notice that the provisions removed by the September 2, 1997 direct final rule are reinstated because two adverse comments were submitted.

RSPA is publishing a notice of proposed rulemaking (NPRM) elsewhere in this issue of the Federal Register to address the merits of the adverse comments and to request additional comments concerning the need to revoke or revise the RPP requirements.

III. Paperwork Reduction Act of 1995

Under regulations implementing the Paperwork Reduction Act of 1995, "* * * an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number." 5 CFR 1320.8(b)(iii)(6). RSPA has reviewed the HM–169A final rule and the information collection approval for radioactive materials transportation requirements. (OMB control number 2137–0510 was issued in January 1995 in anticipation of the final rule to be issued under Docket HM–169A. That approval expires on January 31, 1998, unless renewed.) Based on that review, RSPA concludes that the OMB approval is limited to information collection requirements other than the RPP requirements contained in Subpart I of Part 172.

In the NPRM, which RSPA is publishing concerning the need to withdraw or revise the RPP requirements, RSPA is requesting comments concerning the annual information collection burden attributable to those requirements, and RSPA will seek OMB approval if the RPP requirements are retained.

IV. 1997 Edition of 49 CFR Parts 100–185

Title 49 of the Code of Federal Regulations (CFR) was revised effective October 1, 1997. Because of the lateness of this document, Subpart I of Part 172 and §§ 174.705, 175.706, 176.703 and 177.827, do not appear in the 1997

edition of the CFR. RSPA is publishing the full text of the affected regulations in this document, as follows.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, the following provisions in 49 CFR parts 172, 174, 175, 176, and 177 are reinstated to read as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In Part 172, Subpart I is reinstated to read as follows:

Subpart I—Radiation Protection Program

Sec.

172.801 Applicability of the radiation protection program.
172.803 Radiation protection program.
172.805 Recordkeeping and notifications.
172.807 Transitional provisions.

Subpart I—Radiation Protection Program

§ 172.801 Applicability of the radiation protection program.

(a) *Scope.* This subpart prescribes requirements for developing and maintaining a radiation protection program.

(b) *Applicability.* This subpart applies to persons who offer for transportation, accept for transportation, or transports Class 7 (radioactive) materials.

§ 172.803 Radiation protection program.

Each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials must develop, implement and maintain a written radiation protection program in accordance with the following:

(a) Radiation exposures must be kept as low as reasonably achievable (ALARA), with economic and social factors being taken into account.

(b) Radiation exposures must be controlled such that:

(1) An occupationally exposed hazmat employee's annual effective dose equivalent for occupational radiation exposure will not exceed 12.5 mSv (1.25 rem) in any 3 month period or 50 mSv (5 rem) in any 12 month period. For workers under the age of eighteen, the radiation dose will not exceed 1.250 mSv (0.125 rem) in any 3 month period or 5.0 mSv (0.5 rem) in any 12 month period;

(2) Radiation exposures to members of the general public must be less than 0.02 mSv (2 mrem) per hour. This level will be measured as if an individual were present for an hour in any area where the general public could be exposed to radiation during the course of transportation, except that, if there is an occurrence where the dose to a member of the general public equals or exceeds 0.02 mSv (2 mrem) in one hour, the program must provide limits that will prevent an individual from receiving cumulative doses totaling 1.0 mSv (100 mrem) in any week or 5.0 mSv (500 mrem) in any twelve-month period;

(3) The radiation dose to an embryo-fetus in a pregnant female occupationally exposed hazmat employee, who has declared her pregnancy to her employer, must not exceed 5.0 mSv (500 mrem) during the pregnancy. This limit is to be achieved by limiting the radiation dose of the declared pregnant worker to not more than 5.0 mSv (500 mrem) during the nine months and not greater than 0.5 mSv (50 mrem) in any one month; and

(4) The radiation doses received by occupationally exposed hazmat employees must be monitored by radiation dosimetry devices.

(c) The Environmental Protection Agency report entitled "Radiation Protection Guidance to Federal Agencies for Occupational Exposure (January 1967)". This document is available from the U.S. Environmental Protection Agency, Washington, DC 20460.

(d) *Exceptions.* (1) The requirements of this subpart do not apply to:

(i) Persons who offer for transportation or transport less than 200 TI, not including TI calculated for criticality control purposes, of packages in a 12-month period; or

(ii) Those persons whose operations will not result in a hazmat employee receiving an exposure of 5 mSv (500 mrem) or more per year. This evaluation must consider the hazmat employers Class 7 (radioactive) materials transportation activities for a period of at least 12 months. An evaluation must be conducted by a person experienced with radiation protection programs and transportation regulations and programs. The evaluator's competency may be evidenced by being certified by the American Board of Health Physics, or by a letter of recommendation from a State Radiation Official listed in the most current issue of the "Directory of Personnel Responsible For Radiological Health Programs" published annually by the Conference of Radiation Control Program Directors, Frankfort, KY.

(2) The requirements of this subpart may be satisfied by any radiation protection program that has been approved by an appropriate federal or state agency.

(e) *Guidance.* (1) Each hazmat employer should review and follow the guidance provided in the following documents when establishing and maintaining their radiation protection program:

(i) National Council on Radiation Protection and Measurements (NCRP) Report No. 59, "Operational Radiation Safety Program (1978)". The guidance in this report should be tailored to the practical needs and operations of the hazmat employer and their occupationally exposed hazmat employees.

(ii) NCRP Report No. 116, "Limitation of Exposure to Ionizing Radiation (1993)".

(2) The reports referenced in paragraph (e)(1) of this section are available from NCRP Publications, 7910 Woodmont Avenue, Bethesda, MD 20814.

§ 172.805 Recordkeeping and notifications.

(a) A hazmat employer must document their radiation protection program and maintain written records of the radiation protection program activities, including dosimetry records, described in this subpart. These records must be made available to the Associate Administrator for Hazardous Materials

Safety or other authorized officials in written form within seven days of a written request.

(b) A hazmat employer must keep a record of the radiation dose that each hazmat employee has received and provide it to the employee in reasonable time following a request during employment and no more than three months after end of employment.

(c) Each hazmat employer must notify the Associate Administrator for Hazardous Materials Safety, in writing, if a hazmat employee receives a dose exceeding 12.5 mSv (1250 mrem) in any calendar quarter or 50 mSv (5,000 mrem) in one year, or if a member of the general public is likely to receive a dose exceeding 5 mSv (500 mrem) in one year as a result of the hazmat employer's transportation activities. Such a notification must be made as soon as practicable following awareness of the occurrence.

(d) If an offeror or carrier of Class 7 (radioactive) materials is not required to establish a radiation protection program, they must develop and keep records which demonstrate why a program is not required (i.e., either the total TI of packages transported in any 12 month period is less than 200, or that the current Class 7 (radioactive) materials transport activities are the same as the activities that were reviewed by a competent radiation protection specialist whose evaluation demonstrated that no worker will receive a dose exceeding 5 mSv (500 mrem) in one year).

§ 172.807 Transitional provisions.

Compliance with the requirements of this subpart is required after October 1, 1997.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. Section 174.705 is reinstated to read as follows:

§ 174.705 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by rail unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. Section 175.706 is reinstated to read as follows:

§ 175.706 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by aircraft unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 176—CARRIAGE BY VESSEL

7. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. Section 176.703 is reinstated to read as follows:

§ 176.703 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by vessel unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

9. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

10. Section 177.827 is reinstated to read as follows:

§ 177.827 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by motor vehicle unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

Issued in Washington, DC on December 12, 1997, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–33031 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–97–2850 (HM–169B)]

RIN 2137–AD14

Hazardous Materials: Radiation Protection Program Requirement

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule; extension of compliance date.

SUMMARY: RSPA is extending until October 1, 1999, the date for mandatory compliance with the Radiation Protection Program (RPP) requirements adopted in the final rule issued September 28, 1995. During this period, RSPA intends to consider in a separate rulemaking whether the RPP requirements should be withdrawn or revised because of the difficulties and complexities concerning implementation of and compliance with the RPP requirements. RSPA believes that compliance should not be required with requirements that may be withdrawn or substantially revised, and that overall safety in the transportation of radioactive materials will be advanced by reexamining the RPP requirements before requiring compliance with the current requirements.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Ferate II, Office of Hazardous Materials Technology, 202–366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, 202–366–8553, RSPA, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On September 28, 1995, RSPA published a final rule in the **Federal Register** in this docket as part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, with international standards and to improve safety for workers and the public during the transportation of radioactive materials. (60 FR 50292). One of the substantive regulatory changes in the September 28, 1995 final rule is the requirement to develop and *maintain a written radiation protection program* (RPP).

The RPP requirements apply, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. The RPP requirements are set forth in Subpart I of Part 172 of the HMR. Implementation provisions for rail, air, vessel, and highway are contained in §§ 174.705, 175.706, 176.703, and 177.827, respectively. Compliance with the RPP requirements has been required since October 1, 1997.

RSPA's regulatory evaluation prepared in support of the September 28, 1995 final rule considered that carriers would be primarily affected by the RPP requirements. (Some carriers of radioactive materials are already covered by monitoring requirements contained in exemptions from quantity limitations in the HMR.) Many shippers of radioactive material, especially those who are Department of Energy contractors, or Nuclear Regulatory Commission or Agreement State licensees, are already subject to RPP requirements, and the September 28, 1995 final rule provides that the RPP requirements are satisfied by any radiation protection program that has been approved by an appropriate Federal or State agency. 49 CFR 172.803(d)(2).

On May 8, 1996, RSPA published in the **Federal Register** editorial corrections to the September 28, 1995 final rule and a denial of the one petition for reconsideration (from the Radiopharmaceutical Shippers and Carriers Conference [RSCC]) that had been timely filed. [61 FR 20747]. The editorial corrections included changes to § 172.803.

In addition, on April 19, 1996, RSPA published in the **Federal Register** a request for comments on the implementation of the RPP requirements, in response to questions or comments expressing difficulties in implementing or complying with the RPP requirements. Notice 96–7 (61 FR 17349). In Notice 96–7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements.

In response to Notice 96–7, RSPA received numerous comments, a new petition for rulemaking from RSCC (that expanded upon its denied petition for reconsideration), and three additional documents purporting to be "petitions for reconsideration" of the September 28, 1995 final rule (which were treated as comments in response to Notice 96–7, rather than petitions for reconsideration, because they were not submitted within 30 days after publication of the September 28, 1995 final rule). After considering these comments and petitions, RSPA decided that the concerns expressed could not all be resolved through guidance. The concerns were significant enough that RSPA determined it would be preferable to withdraw the RPP requirements completely, and reconsider this matter from the beginning, rather than try to amend Subpart I before the upcoming October 1, 1997 compliance date.

For this reason, RSPA published a direct final rule on September 2, 1997, withdrawing the RPP requirements effective September 30, 1997, unless (in accordance with RSPA's procedural rules at 49 CFR 106.39) an adverse comment or notice of intent to file an adverse comment was received by September 30, 1997. [62 FR 46214]. Because two persons submitted adverse comments on the direct final rule, RSPA is publishing a separate document, revoking the direct final rule and leaving the RPP requirements in effect.

As noted above and in the direct final rule, many shippers of radioactive materials are already subject to an RPP requirement. RSPA considers that it may also be appropriate to establish in the HMR some form of RPP requirement for carriers and any shippers not already covered by other existing requirements, to provide a formal and structured framework for ensuring safety during radioactive material transportation activities. However, RSPA has also concluded that the problems with the current RPP requirements in Subpart I of 49 CFR Part 172 are sufficiently great that compliance with them should not be required while RSPA reconsiders this entire matter.

As a first step, RSPA intends to publish a notice of proposed rulemaking (NPRM) in the near future to address the merits of all the comments and petitions directed to the RPP requirements and to request additional comments concerning the need to withdraw or revise the RPP requirements. To allow this separate rulemaking to proceed in an orderly fashion, without the threat of enforcement or liability based on noncompliance, and in response to a request for a stay of the compliance date from RSCC, RSPA is extending the date for mandatory compliance with the RPP requirements until October 1, 1999. As also discussed below, RSPA has concluded that a lack of approval by the Office of Management and Budget (OMB) for information collection requirements precludes Federal enforcement of the RPP requirements at this time.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule provides relief to persons who offer for transportation, accept for transportation, or transport Class 7 (radioactive) materials by extending until October 1, 1999, the requirement to develop and maintain a radiation protection program. The effect of this rule is not considered a significant regulatory action under Section 3(f) of Executive Order 12866, and this rule was not reviewed by the Office of Management and Budget. This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation. [44 FR 11034 (February 26, 1979)].

RSPA has not prepared a regulatory evaluation that specifically addresses the issue of extending the date for developing and maintaining a radiation protection program. The regulatory evaluation prepared in support of the September 28, 1995 final rule considered that the health benefits to the transportation community of limiting radiation exposures, through a radiation protection program, would be significant. That regulatory evaluation also estimated that the benefits of making U.S. regulations for the transportation of radioactive materials consistent with international standards would exceed the total estimated costs of the September 28, 1995 final rule involved in converting to the international system of units (SI) and meeting the RPP requirements. However, the costs of implementing the RPP requirements will be greatly increased (and overall safety will likely be reduced) if compliance with the current regulations is required, then if these requirements are withdrawn or significantly revised. RSPA, in support of the NPRM, will be preparing a regulatory evaluation to address the issue of removing the radiation protection program requirement from the HMR.

B. Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous material transportation law contains express preemption provisions at 49 U.S.C. 5125 that preempt State, local, and Indian tribe requirements if

(1) Complying with a requirement of the State, political subdivision, or Indian tribe and Federal hazardous material transportation law or regulations is not possible;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous material transportation law or regulations; or

(3) The requirement of the State, political subdivision, or Indian tribe concerns any of the following "covered subjects" and is not substantially the same as a provision of Federal hazardous material transportation law or regulations:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) The design, manufacture, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Federal law (49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance.

RSPA is not aware of any State, local, or Indian tribe requirement that would be preempted by an extension of the date for compliance with the RPP requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. In the regulatory evaluation originally prepared to consider RPP requirements, RSPA estimated a total of 497 carriers (primarily motor carriers) would be subject to these requirements. All but a few of these carriers are thought to meet criteria of the Small Business Administration as "small business," *e.g.*, motor freight carriers with annual revenue less than $18.5 million.

Extending the date for compliance with the RPP requirements will allow those carriers to continue to transport radioactive materials, until October 1, 1999, without having to develop and implement a written plan (or for those carriers transporting radioactive materials under an exemption, a plan that goes beyond what is now required). Based on the above, I certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

This rule does not impose any information collection burdens. RSPA has concluded that the information collection approval under OMB control number 2137–0510 (which expires January 31, 1998, unless renewed) does not cover the information collection requirements in the RPP requirements. Because Subpart I of 49 CFR Part 172 does not display a valid OMB control number, no person is required to respond to its RPP requirements.

If RSPA decides to retain the RPP requirements, in the form of Subpart I of 49 CFR Part 172 or otherwise, RSPA will submit this information collection and recordkeeping requirement to OMB for approval. As part of that process, RSPA will provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests, as provided in OMB's regulations.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda. The September 28, 1995 final rule and the May 8, 1996 final rule were published under RIN 2037–AB60.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, the following provisions in 49 CFR part 172 is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

2. Section 172.807 is revised to read as follows:

§ 172.807 Transitional provisions.

Compliance with the requirements of this subpart is required after October 1, 1999.

Issued in Washington, DC on December 12, 1997, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–33030 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 174, 175, 176, and 177

[Docket No. RSPA–97–2850 (HM–169B)]

RIN 2137–AD14

Hazardous Materials: Withdrawal of Radiation Protection Program Requirement

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing to amend the Hazardous Materials Regulations (HMR) to remove Subpart I of 49 CFR Part 172, "Radiation Protection Program" and related modal provisions that require persons who offer, accept for transportation, or transport radioactive materials to develop and maintain a written radiation protection program. This action is necessary to address difficulties and complexities concerning implementation of and compliance with the requirements for a radiation protection program, as evidenced by comments received from the radioactive material transportation industry and other interested parties.

DATES: Comments must be received on or before February 13, 1998.

ADDRESSES: Address comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should identify the Docket No. [RSPA–97–2850 (HM–169B)] and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Management System is located on the Plaza level of the Nassif Building at the above address. Public dockets may be reviewed between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Comments may also be submitted by E-mail to "rules@rspa.dot.gov." In every case, the comment should refer to the Docket Number set forth above.

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366–4545 or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On September 28, 1995, RSPA published a final rule in the **Federal Register** under Docket No. HM–169A (60 FR 50292). The changes made in Docket No. HM–169A were part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR; 49 CFR 171–180) with international standards and to improve radiation safety for workers and the public during the transportation of radioactive materials.

One of the substantive regulatory changes under Docket No. HM–169A is a requirement to develop and maintain a written radiation protection program (RPP). The RPP requirements are found in Subpart I of Part 172 of the HMR. Implementation provisions for rail, air, vessel and highway are found in §§ 174.705, 175.706, 176.703, and 177.827, respectively. The RPP requirements apply, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. Compliance with the RPP requirements was required after October 1, 1997.

Following publication of the September 28, 1995 final rule, many comments were received concerning technical difficulties in implementing the RPP requirements. Subsequently, on April 19, 1996, RSPA published in the **Federal Register** a request for comments on the implementation of the RPP requirements (Notice 96–7; 61 FR 17349). In Notice 96–7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements.

RSPA received 23 comments in response to Notice 96–7. After considering these comments, RSPA decided that the concerns expressed could not all be resolved through guidance; new rulemaking was required in order to adequately address many of the issues raised in the comments. RSPA determined that the current RPP requirements in Subpart I of Part 172, and §§ 174.705, 175.706, 176.703, and 177.827 should be withdrawn, because it did not believe they could be corrected without significant review and a further rulemaking action. Accordingly, RSPA published a direct final rule on September 2, 1997 (62 FR 46214), withdrawing the RPP requirements effective September 30, 1997, unless an adverse comment or notice of intent to file an adverse comment was received by September 30, 1997. Because RSPA received two adverse comments it is revoking the direct final rule in a separate document. In a final rule published in Docket No. HM–169B, RSPA is also extending until October 1, 1999, the date for compliance with the RPP requirements, because it does not believe it would be appropriate to require compliance with requirements which it is proposing to withdraw in this NPRM.

Several commenters to Notice 96–7 cited modal differences as a factor which makes application of the RPP requirements difficult. Examples given include difficulties in tracking doses to workers involved in shipping radioactive material by rail because of multiple transfers from one company to another of rail cars during transport, or to ship crews because of ships being registered under foreign flags, or because often their operations are carried out in foreign ports. Several commenters stated that dose to personnel involved in bulk or containerized transport of radioactive material by highway, rail, or vessel is usually much lower than for non-bulk shipments.

Additional comments pointed to ambiguities in the regulations. Some of the ambiguities cited are that the regulations do not make clear whether the 200 transport index (TI) threshold to qualify for an exception is to be applied over an entire company or at each site; that concepts such as "approved by a Federal or state agency" and "occupationally exposed hazmat worker" are vague; and that the requirement to monitor occupationally exposed hazmat workers appears to be too inclusive and may be interpreted to extend even to those workers whose doses would be expected to be below the limit of detection of the dosimeters. Most commenters noted the practical impossibility of being able to assure compliance with the requirements cited in the regulations for dose and dose rate limits for members of the general public, and the uncertainty as to which persons are included in the category of "general public."

Several commenters cited inconsistencies with other regulations. For example, in contrast to the HMR, the Nuclear Regulatory Commission (NRC) regulations and Environmental Protection Agency (EPA) guidelines do not include a quarterly occupational dose limit, or a weekly dose or a dose rate limit for members of the public; the HMR criteria for determining whether monitoring is required differ appreciably from those in the International Atomic Energy Agency (IAEA) regulations; the HMR annual limit for members of the public is different from that of the NRC and the IAEA regulations; the HMR recordkeeping requirements are

different from the NRC's; and the HMR require monitoring of occupationally exposed hazmat workers, while the NRC requires monitoring adult workers with personal dosimetry only if their annual dose is likely to exceed 5 mSv.

Commenters stated that there are also internal inconsistencies in the present RPP requirements. For example, one commenter noted that entities with an RPP are required to comply with the stated limits for dose to members of the general public, while entities which qualify for an exception are not. Another commenter indicated that the monthly limit of 0.5 mSv for a declared pregnant worker renders irrelevant the additional stated limit of 5 mSv during the term of pregnancy. Commenters also stated that implementation of the RPP requirements would force affected shippers and carriers to adopt the most conservative approach, leading to unnecessarily high costs and potentially serious disruption of the market.

In addition to the comments received, RSPA also received six petitions. The first was a petition for reconsideration received from the Radiopharmaceutical Shippers and Carriers Conference (RSCC) in response to publication of Docket No. HM–169A as a final rule. This petition was considered and denied in a May 8, 1996 **Federal Register** notice (61 FR 20748). Three documents purporting to be "petitions for reconsideration" of the September 28, 1995 final rule received during the comment period established in Notice 96–7, were treated as comments rather than petitions for reconsideration because they were received after the thirty day period in the September 28, 1995 final rule. Petitions for rulemaking were received from the RSCC and the Nuclear Energy Institute (NEI). A discussion of these remaining five petitions follows.

Lockheed Martin (Energy Research Corporation and Energy Systems, Inc.), Los Alamos National Laboratories, and the Oak Ridge Operations Office of the Department of Energy requested that implementation of the RPP requirements be postponed, and that an exception to the RPP requirements be allowed for less-than-truckload (LTL) non-exclusive use shipments of radioactive material.

RSCC requested amendments to various paragraphs of the RPP requirements. These included restricting the 0.02 mSv/hour (2 mrem/hour) limit to members of the public and other non-occupationally exposed individuals to those radioactive material transportation activities which occur at fixed facilities; changing the threshold to qualify for an exception from 200 TI to 1000 TI; and applying the 1000 TI threshold exception for each fixed facility. It was requested, also, that regulations be clarified by specifically stating that certification by the American Board of Health Physics is not the only acceptable criterion as evidence of competency of the evaluator referred to in 49 CFR 172.803(d)(ii). Finally, it was requested that the wording "200 TI" be changed to "1000 TI" and "worker" changed to "occupationally exposed hazmat employee" in 49 CFR 172.805(d); and that the effective date of October 1, 1997 be postponed until appropriate guidance is available.

The NEI petitioned RSPA to rescind the public radiation measurement requirement in 49 CFR 172.803(b)(2).

The arguments presented in these petitions have been considered along with the other comments received. However, the disposition of the petitions for rulemaking will be decided at a later date.

Two persons submitted adverse comments on the direct final rule: Caliber System, Inc. and Davis Transport Inc. Caliber System, Inc., believes that the concerns raised through public comments can be addressed through guidance and other means. It contends that all shippers and consignees of radioactive materials already have formal, approved, written procedures for the handling of radioactive material and exposure monitoring for their personnel and as a result, all shippers and consignees are already in compliance with HM–169A. In addition, it argues that carriers who regularly engage in transporting radioactive materials in the course of their main business also have formal, written and approved programs. Davis Transport, Inc., argues that RSPA did not adequately consider worker safety, overemphasized the comments on economic ability to comply, and overstated the inconsistency and compliance assurance issues associated with the rule.

Before the September 28, 1995 final rule under Docket No. HM–169A, the HMR had not contained a performance standard requiring hazmat employers to minimize radiation exposure to the lowest level possible through a RPP. In the past, the HMR have sought to minimize radiation hazards to workers and the public by including requirements on: (1) packagings designed and tested to contain Type A quantities of RAM under normal conditions, and Type B quantities of radioactive materials under both normal and accident conditions during transportation; (2) hazard communication, such as shipping paper information, labels, and markings; (3) limitations on permissible rates of external radiation and package contamination; and (4) segregation and separation of packages from passengers and hazmat employees. This system has worked well, but it can be improved.

RSPA believes that some form of an RPP requirement may be appropriate in the HMR, to provide a formal and structured framework for ensuring radiation safety during radioactive material transportation activities. RSPA notes that many shippers of radioactive material, specifically those who are Department of Energy contractors or NRC or Agreement State licensees, are already subject to RPP requirements. RSPA will continue to review criteria, such as those adopted by the IAEA Safety Series Standards Series No. ST–1, that could form the basis of revised RPP requirements in the HMR. As a result, RSPA may propose in a future rulemaking the establishment of revised RPP requirements, to provide such a formal and structured framework.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule provides relief to persons who offer for transportation, accept for transportation, or transport Class 7 (radioactive) materials by eliminating the need to develop and maintain a radiation protection program. The effect of this rule, as proposed, is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

RSPA has prepared a regulatory evaluation that specifically addresses the issue of withdrawing requirements for a radiation protection program. The regulatory evaluation prepared in support of the final rule issued under Docket No. HM–169A (60 FR 50292; September 28, 1995) estimated annual costs attributed to radiation protection program requirements in the amount of $6.6 million. At that time, RSPA did not have sufficient data to quantitatively assess benefits to be derived from the radiation protection program requirements. However, the regulatory evaluation considered the health benefits to the transportation community of limiting radiation exposures to be significant.

The benefits of removing the radiation protection program are, at a minimum, the $6.6 million RSPA estimated that the RPP requirements would cost to implement. However, RSPA believes that the RPP requirements are so overly restrictive, ambiguous, and inconsistent with the requirements of other Federal agencies that they would tend to cause affected parties to adopt the most conservative approach, leading to unnecessarily high costs in order to assure compliance. Therefore, RSPA believes that the health benefits in implementing these requirements would be much lower than originally anticipated. Also, because of the problems with the RPP requirements which have been identified, RSPA believes that any improvements to safety through implementation of the current RPP requirements would be much less than anticipated and their value would be less than the costs of implementation. Therefore, RSPA believe that the costs of implementation of RPP requirements will exceed their benefits and that withdrawing the requirements is cost-effective.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous material transportation law contains express preemption provisions at 49 U.S.C. 5125 that premempt State, local, and Indian tribe requirements if

(1) Complying with a requirement of the State, political subdivision, or Indian tribe and Federal hazardous material transportation law or regulations is not possible;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous material transportation law or regulations; or

(3) The requirement of the State, political subdivision, or Indian tribe concerns any of the following "covered subjects" and is not substantially the same as a provision of Federal hazardous material transportation law or regulations:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) The design, manufacture, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Federal law (49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by a withdrawal of the RPP requirements, as proposed herein. RSPA invites comments on this subject and, if any person believes that this proposed rule concerns a covered subject, what the effective date of Federal preemption should be.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. In the regulatory evaluation originally prepared to consider requirements for a radiation protection program, RSPA estimated a total of 497 carriers (primarily motor carriers) would be subject to those requirements. All but a certain few of those carriers are thought to meet criteria of the Small Business Administration as "small business," e.g., motor freight carriers with annual revenue of less than $16.5 million. The effect of withdrawing requirements for a radiation protection program is to allow those carriers to continue to transport radioactive materials without having to develop and implement a written plan that goes beyond what is now required of them by the HMR, by a RSPA exemption, or by other Federal departments and agencies.

Based upon the above, I certify that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

Under regulations implementing the Paperwork Reduction Act of 1995, "* * * an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number." 5 CFR 1320.8(b)(iii)(6). RSPA has reviewed the HM–169A final rule and the information collection approval for radioactive materials transportation requirements. (OMB control number 2137–0510 was issued in January 1995 in anticipation of the final rule to be issued under Docket No. HM–169A. That approval expires on January 31, 1998, unless renewed.) Based on that review, RSPA concludes that the OMB approval is limited to information collection requirements for radioactive materials transportation other than the RPP requirements contained in Subpart I of Part 172.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. RSPA estimates that the total information collection and recordkeeping burden for a Radiation Protection Program is:

Number of Respondents: 497.
Total Annual Responses: 497.
Total Annual Burden Hours: 94,286.
Total Annual Burden Cost: $6.6 million.

These figures are based on RSPA's estimates from the regulatory evaluation under HM–169A. As previously indicated, the estimate of total annual burden cost may be higher than this estimate. However, RSPA estimates that approximately 497 (50%) of these carriers will be required to implement and maintain a full radiation protection program. The cost of a radiation protection program was considered in two parts. First, RSPA considered the cost of monitoring those workers who are not currently required to be monitored by the existing regulations of the Occupational Safety and Health Administration or the Nuclear Regulatory Commission. The second cost considered was that of the hourly wages of technical and managerial workers to implement the radiation protection program. Other costs of a radiation protection program are already accounted for in the requirements of the HMR for a HAZMAT employer to give their HAZMAT employees safety training relative to the risks associated with the material a person transports.

Requests for a copy of this information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001. Telephone (202) 366–8553.

RSPA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing and maintaining a radiation protection program. Written comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. Comments should be received prior to the close of comment period identified in the **DATES** section of this rulemaking. If a decision is made to retain the RPP requirements, RSPA will submit this information collection and recordkeeping requirement to the Office of Management and Budget for approval.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172, 174, 175, 176, and 177 is proposed to be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

Subpart I—[Removed]

2. In Part 172, Subpart I would be removed.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 174.705 [Removed]

4. Section 174.705 would be removed.

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.706 [Removed]

6. Section 175.706 would be removed.

PART 176—CARRIAGE BY VESSEL

7. The authority citation for part 176 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 176.703 [Removed]

8. Section 176.703 would be removed.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

9. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 177.827 [Removed]

10. Section 177.827 would be removed.

Issued in Washington, DC on December 12, 1997 under authority delegated in 49 CFR Part 1.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–33029 Filed 12–19–97; 8:45 am]

BILLING CODE 4910–60–P

federal register

Monday
December 22, 1997

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2550

Insurance Company General Accounts; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

RIN 1210–AA58

Insurance Company General Accounts

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation which clarifies the application of the Employee Retirement Income Security Act of 1974 as amended (ERISA or the Act) to insurance company general accounts. Pursuant to section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188), section 401 of ERISA has been amended. Section 401 now provides that the Department must issue proposed regulations to: Provide guidance for the purpose of determining, where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of the insurer's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute assets of the plan for purposes of part 4 of Title I of ERISA and section 4975 of the Internal Revenue Code of 1986 (the Code); and provide guidance with respect to the application of Title I to the general account assets of insurers. If adopted, the regulation will affect participants and beneficiaries of employee benefit plans, plan fiduciaries and insurance company general accounts.

DATES: Written comments and requests for a hearing (preferably at least three copies) concerning the proposed regulation must be received by March 23, 1998.

ADDRESSES: Interested persons are invited to submit written comments (preferably, at least three copies) concerning the proposed rule to: Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, 200 Constitution Ave., N.W., Washington, DC 20210. Attention: "General Account Contracts". Written comments may also be sent by the Internet to the following address: cmpad@jpwba.dol.gov.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219–8194, or Timothy Hauser, Plan Benefits Security Division, Office of the Solicitor, (202) 219–8637. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

Life insurance companies issue a variety of group contracts for use in connection with employee pension benefit plans, some of which provide benefits the amount of which is guaranteed, some of which provide benefits that may fluctuate with the investment performance of the insurance company, and some of which offer elements of both. Under section 401(b)(2) of ERISA, if an insurance company issues a "guaranteed benefit policy" to a plan, the assets of the plan are deemed to include the policy, but do not, solely by reason of the issuance of the policy, include any of the assets of the insurance company. Section 401(b)(2)(B) defines the term "guaranteed benefit policy" to mean an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. In addition, in paragraph (b) of ERISA Interpretive Bulletin 75–2, 29 CFR 2509.75–2 (1975), the Department stated that if an insurance company issues a contract or policy of insurance to a plan and places the consideration for such contract or policy in its general asset account, the assets in such account shall not be considered to be plan assets.[1]

On December 13, 1993, the Supreme Court rendered its decision in *John Hancock Mutual Life Insurance Co.* v. *Harris Trust & Savings Bank*, 510 U.S. 86 (1993) (Harris Trust) which interpreted the meaning of "guaranteed benefit policy". In its decision, the Court held that a contract qualifies as a guaranteed benefit policy only to the extent it allocates investment risk to the insurer:

> [w]e hold that to determine whether a contract qualifies as a guaranteed benefit policy, each component of the contract bears examination. A component fits within the guaranteed benefit policy exclusion only if it allocates investment risk to the insurer. Such an allocation is present when the insurer provides a genuine guarantee of an aggregate amount of benefits payable to retirement plan participants and their beneficiaries.

Therefore, under the Supreme Court's decision, an insurer's general account includes plan assets to the extent it contains funds which are attributable to any nonguaranteed components of contracts with employee benefit plans. Because John Hancock's contract provided for a return that varied with the insurer's investment performance, the Court concluded that John Hancock held plan assets, and was, therefore, a fiduciary with respect to the management and disposition of those assets. Under the Court's reasoning, a broad range of activities involving insurance company general accounts are subject to ERISA's fiduciary standards.

Because of the retroactive effect of the Supreme Court decision, numerous transactions engaged in by insurance company general accounts may have violated ERISA's prohibited transaction and general fiduciary responsibility provisions. If the underlying assets of a general account include plan assets, persons who have engaged in transactions with such general account may be viewed as parties in interest under section 3(14) of ERISA and disqualified persons under section 4975 of the Code, including fiduciaries with respect to plans which have interests as policyholders in the general account. For example, insurance companies are a source of loans for smaller and mid-sized companies. Many of these companies have party in interest relationships with plans that have purchased general account contracts. Application of the prohibited transaction rules to the general account of an insurance company as a result of the Harris Trust decision could call such loans into question under ERISA. Lastly, the underlying assets of an entity in which a general account acquired an equity interest may include plan assets as a result of the Harris Trust decision.

The insurance industry believed that, absent legislative or administrative action, it would be subject to significant additional litigation and potential liability with respect to the operation of its general accounts. On March 25, 1994, the American Council of Life Insurance (ACLI) submitted an application for a class exemption from certain of the restrictions of sections 406 and 407 of ERISA and from certain excise taxes imposed by section 4975(a) and (b) of the Code. The ACLI requested broad exemptive relief for transactions which included the following: all internal operations of general accounts, all investment transactions involving general account assets, including transactions with parties in interest with respect to plans that have purchased general account contracts, and the purchase by the general account of securities issued by, and real property leased to, employers of employees covered by plans that have purchased general account contracts.

[1] Paragraph (b) of 29 CFR 2509.75–2 was removed effective July 1, 1996, 61 FR 33847, 33849 (July 1, 1996).

On August 22, 1994, the Department published a notice of proposed Class Exemption for Certain Transactions Involving Insurance Company General Accounts. (59 FR 43134). Although the ACLI requested exemptive relief for activities in connection with the internal operation of general accounts, the Department determined that it did not have sufficient information regarding the operation of such accounts to make the findings required by section 408(a) of ERISA. Accordingly, the proposed class exemption did not provide relief for transactions involving the internal operation of an insurance company general account. The final exemption (Prohibited Transaction Exemption (PTE) 95–60, 60 FR 35925), was published in the **Federal Register** on July 12, 1995.

B. Public Law 104–188

In response to the Supreme Court decision in Harris Trust, Congress amended section 401 of ERISA by adding a new subsection 401(c) which clarifies the application of ERISA to insurance company general accounts. Pub. L. 104–188, § 1460. This statutory provision provides that the Secretary shall issue proposed regulations to provide guidance for the purpose of determining, in cases where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by the assets of such insurer's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute assets of the plan for purposes of part 4 of Title I and section 4975 of the Code and to provide guidance with respect to the application of Title I to an insurer's general account assets. The final regulations shall be issued not later than December 31, 1997.

The regulations will only apply to those general account policies which are issued by an insurer on or before December 31, 1998. In the case of such policies, the regulations will take effect at the end of the 18 month period following the date on which the regulations become final. Pub. L. 104–188, however, authorizes the Secretary to issue additional regulations designed to prevent avoidance of the regulations described above. These additional regulations, if issued, may have an earlier effective date.

The Department must ensure that the regulations issued under Pub. L. 104–188 are administratively feasible, and protect the interests and rights of the plan and of its participants and beneficiaries. In addition, the regulations must require, in connection with any policy (other than a guaranteed benefit policy) issued by an insurer to or for the benefit of an employee benefit plan, that: (1) An independent plan fiduciary authorize the purchase of the policy (unless the purchase is exempt under ERISA section 408(b)(5)); (2) the insurer provide information in policies issued and on an annual basis to policyholders (as prescribed in such regulations) disclosing the methods by which any income and expenses of the insurer's general account are allocated to the policy and the actual return to the plan under the policy and such other financial information as the Department determines is appropriate; (3) the insurer disclose to the plan fiduciary the extent to which alternative arrangements supported by the assets of the insurer's separate accounts are available, whether there is a right under the policy to transfer funds to a separate account and the terms governing any such right, and the extent to which support by assets of the insurer's general account and support by assets of the insurer's separate accounts might pose differing risks to the plan; and (4) the insurer manage general account assets prudently, taking into account all obligations supported by such general account.

Compliance with the regulations issued by the Department will be deemed compliance by such insurer with sections 404, 406 and 407 of ERISA. In addition, under this statutory provision, no person will be liable under part 4 of Title I or Code section 4975 for conduct which occurred before the date which is 18 months following the issuance of the final regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. The limitation on liability is subject to three exceptions: (1) The Department may circumscribe this limitation on liability in regulations intended to prevent avoidance of the regulations which it is required to issue under the statutory amendment; (2) the Department may bring actions pursuant to paragraph (2) or (5) of section 502(a) of ERISA for breaches of fiduciary responsibility which also constitute violations of Federal or State criminal law; and (3) civil actions commenced before November 7, 1995 are exempt from the amendment's coverage.

On November 25, 1996, the Department published a Request for Information (RFI) to solicit information and comments from the public to be considered by the Department in developing the regulations mandated by Pub. L. 104–188. The RFI contained a list of questions designed to elicit information that would be helpful to the Department in developing this notice of proposed rulemaking.

Discussion of the Comments

The questions asked by the Department in the RFI requested information regarding disclosures to contractholders, market value adjustments, unilateral contract amendments, state regulatory requirements and guaranteed benefit policies.

A total of eight substantive responses to the RFI were received: one was from the ACLI itself; the remaining comments were from a law firm representing a group of major life insurance companies, an organization representing insurance regulators, two law firms representing plans which have invested in insurance company general account contracts, an insurance company, an association representing senior financial executives and an advocacy organization representing senior citizens.

Disclosures

Many of the comments addressed the need for insurance companies to provide adequate and meaningful disclosure regarding the financial soundness of the insurance company, the nature of the insurer's general account assets, transactions with affiliates and the investment policies/objectives of the insurer as well as contract specific information regarding fees, commissions, expenses, termination requirements, and allocation methodologies.

Several of the commenters stressed that such information must be presented in "plain English" using a format which would be understood by lay persons. Two commenters suggested that the Department require that information be supplied in standardized form. Another commenter stated that the information in the Statutory Annual Statement could be adapted to provide appropriate disclosures.

A commenter noted that, in order for a plan fiduciary to make a prudent decision regarding the investment of plan assets in an insurance company general account contract, the insurance company must provide the fiduciary with sufficient information. In this regard, another commenter stated that many general account investments are tantamount to an illiquid investment in a corporate bond; thus, the general level of disclosure required should be comparable to that made available to investors of other illiquid investments. A number of commenters agreed that

the items of information identified in the RFI should be disclosed to plan investors on an annual basis. In addition to those items, a commenter suggested that the disclosure requirements should recognize the fact that the general account supports products not covered by ERISA. Another stated that information regarding the current value of the investment compared to the purchase price of the contract should be provided annually. Finally, a commenter noted that gross and net returns on the contract before and after adjustments should be reported.

With respect to the effective date of the disclosure provisions in the regulation, one commenter stated that the disclosure provisions should become effective prior to the end of the 18th month following publication of the final regulation.

Market Value Adjustments (MVAs)

Two commenters expressed concern that MVAs may operate as penalties imposed on plans which terminate or withdraw funds from general account contracts. They represent that MVAs should not be used to enrich the insurer, but should be fair to terminating contractholders as well as remaining contractholders. One commenter suggested that MVAs should "cut both ways," i.e., if market value is above book value, the terminating policyholders should receive the difference between book and market value as the adjustment. This commenter stated that MVAs should be based on regularly published indices that reflect the categories of investments in the insurer's general account. To the extent that such adjustments represent lost opportunity costs, the insurer should be required to articulate a justification for its estimate of the lost opportunity.

Finally, one commenter stated that MVAs should not be circumscribed by the Department since they protect remaining contractholders.

Unilateral Contract Amendments

Three commenters either opposed an insurer's ability to unilaterally amend contract terms or believed that the Department should impose limits on such amendments. In the alternative, two commenters suggested that if unilateral amendments are made and the parties cannot agree on such changes, the matter should be referred to binding arbitration. Another commenter suggested that the account holder be permitted to exit the arrangement if the unilateral change was not satisfactory.

State Regulatory Requirements

Two commenters stated that the Department should not take state insurance requirements into account in drafting the regulation either because ERISA should govern employee benefit plans or consideration of state regulatory requirements would dilute the strength of ERISA. Another commenter noted that state regulatory requirements either overlap or address each of the requirements imposed by section 1460 of Pub. L. 104–188.

Guaranteed Benefit Policies

Two commenters urged the Department to issue a regulation defining guaranteed benefit policy under section 401(b)(2) of the Act concurrently with the regulations the Department is required to issue under section 401(c).[2]

Description of Proposal

The proposal amends 29 CFR Part 2550 by adding a new section, 2550.401c–1. This new section is divided into ten major parts. Paragraph (a) of the proposal describes the scope of the regulation and the general rule. Proposed paragraphs (b) through (f) contain conditions which must be met in order for the general rule to apply. Specifically, paragraph (b) addresses the requirement that an independent fiduciary expressly authorize the acquisition or purchase of a Transition Policy. Paragraph (c) describes the disclosures that an insurer must make both prior to the issuance of a Transition Policy to a plan and on an annual basis. Paragraph (d) provides for additional disclosures regarding separate account contracts. Paragraph (e) contains the procedures that apply to the termination or discontinuance of a Transition Policy by a policyholder. Paragraph (f) contains notice provisions regarding contract terminations and withdrawals in connection with insurer-initiated amendments. Proposed paragraph (g) sets forth a prudence standard for the management of general account assets by insurers. The definitions of certain terms used in the proposed regulation are contained in paragraph (h). Proposed paragraph (i) describes the effect of compliance with the regulation and proposed paragraph (j) contains the effective dates of the regulation.

1. Scope and General Rule

Proposed § 2550.401c–1(a) and (b) essentially follow the language of section 401(c) of ERISA. Paragraph (a) describes, in cases where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of an insurance company's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute plan assets for purposes of Subtitle A, and Parts 1 and 4 of Subtitle B, of Title I of the Act and section 4975 of the Internal Revenue Code, and provides guidance with respect to the application of Title I and section 4975 of the Code to the general account assets of insurers.

Proposed paragraph (a)(2) states the general rule that when a plan acquires a policy issued by an insurer on or before December 31, 1998 (Transition Policy), which is supported by assets of the insurer's general account, the plan's assets include the policy, but do not include any of the underlying assets of the insurer's general account if the insurer satisfies the requirements of paragraphs (b) through (f) of the regulation. The term Transition Policy is defined in paragraph (h)(6) as a policy or contract of insurance (other than a guaranteed benefit policy) that is issued by an insurer to, or on behalf of, an employee benefit plan on or before December 31, 1998, and which is supported by the assets of the insurer's general account. A policy will not fail to be a Transition Policy if it is amended solely for the purposes of complying with the provisions of this regulation.

2. Authorization by an Independent Fiduciary

Proposed paragraph (b)(1) states the general requirement that an independent fiduciary who has the authority to manage and control the assets of the plan must expressly authorize the acquisition or purchase of the Transition Policy. In order to be independent, the fiduciary may not be an affiliate of the insurer issuing the policy.

Paragraph (b)(2) of the proposed regulation contains an exception to the requirement of independent plan fiduciary authorization if the insurer is the employer maintaining the plan, or a party in interest which is wholly-owned by the employer maintaining the plan, and the requirements of section 408(b)(5) of ERISA are met.[3]

3. Disclosure

Section 401(c)(3)(B) of the Act, as added by Pub. L. 104–188, provides that the regulations prescribed by the Secretary shall require in connection with any policy issued by an insurer to or for the benefit of an employee benefit plan to the extent the policy is not a guaranteed benefit policy * * * (B) that the insurer describe (in such form and manner as shall be prescribed in such regulations), in annual reports and in policies issued to the policyholder after the date on which such regulations are issued in final form * * * (i) a description of the method by which any income and expenses of the insurer's general account are allocated to the policy during the term of the policy and upon termination of the policy, and (ii) for each report, the actual return to the plan under the policy and such other financial information as the Secretary may deem appropriate for the period covered by each such annual report.

Proposed paragraph (c)(1) similarly imposes a duty on the insurer to disclose specific information to plan fiduciaries prior to the issuance of a Transition Policy and at least annually for as long as the policy is outstanding. Proposed paragraph (c)(2) requires that the disclosures be clear and concise and written in a manner calculated to be understood by a plan fiduciary. Although the Department has not mandated a specific format, the information should be presented in a manner which facilitates the fiduciary's understanding of the operation of the policy. The Department expects that, following disclosure of the required information and any other information requested by the fiduciary pursuant to paragraph (c)(4)(xii), the plan fiduciary, with independent professional assistance, if necessary, will be able to ascertain how various values or amounts relevant to the plan's policy such as, the actual return to be credited to any accumulation fund under the policy, will be determined.

Paragraph (c)(3) sets forth the content requirement for the information which must be provided to the plan either as part of the Transition Policy, or as a separate written document which accompanies the Transition Policy. For Transition Policies issued before the date which is 90 days after the date of publication of the final regulation, the insurer must provide the information identified in paragraph (c)(3)(i) through (iv) no later than 90 days after publication of the final regulation. For Transition Policies issued 90 days after the date of publication of the final regulation, the insurer must provide the information to a plan before the plan makes a binding commitment to acquire the policy.

Under paragraph (c)(3), an insurer must provide a description of the method by which any income and expenses of the insurer's general account are allocated to the policy during the term of the policy and upon its termination. The initial disclosure under this paragraph must include, among other things, a statement of the method used to determine ongoing fees and expenses that may be assessed against the policy or deducted from any accumulation fund under the policy. The term "accumulation fund" is defined in paragraph (h)(5) as the aggregate net consideration (i.e., gross considerations less all deductions from such considerations) credited to the Transition Policy plus all additional amounts, including interest and dividends, credited to the contract, less partial withdrawals and benefit payments and less charges and fees imposed against this accumulated amount under the Transition Policy other than surrender charges and market value adjustments.[4]

The insurer must also include, in its description of the method used to allocate income and expenses to the Transition Policy, an explanation of the method used to determine the return to be credited to any accumulation fund under the policy, a description of the policyholder's rights to transfer or withdraw all or a portion of any fund under the policy, or to apply such amounts to the purchase of benefits, and a statement of the precise method used to calculate the charges, fees or market value adjustments that may be imposed in connection with the policyholder's right to withdraw or transfer amounts under any accumulation fund. Upon request, the insurer must provide the information necessary to independently calculate the exact dollar amounts of charges, fees or market value adjustments.

In developing the proposed regulation, the Department reviewed the disclosure requirements imposed by New York insurance regulations, and incorporated several provisions which we believe would be helpful to plan fiduciaries prior to their commitment to purchase a Transition Policy. The information disclosed pursuant to this paragraph will address many of the concerns expressed by the commenters in response to the RFI regarding the lack of contract-level disclosure by insurers. The information disclosed pursuant to this paragraph should enable plan fiduciaries to adequately evaluate the suitability of a particular policy for a plan.

Proposed paragraph (c)(4) describes the information which must be provided at least annually to each plan to which a Transition Policy has been issued. In general, the information is intended to provide the policyholder with an overview of all the activity that has occurred in the accumulation fund during the applicable period. These disclosures should enable the policyholder to evaluate the insurer's performance under the policy. In this regard, the insurer must provide the following information to each plan regarding the applicable reporting period: the balance in the accumulation fund on the first and last day of the period; any deposits made to the accumulation fund; all income attributed to the policy or added to the accumulation fund; the actual rate of return credited to the accumulation fund; any other additions to the accumulation fund; a statement of all fees, charges or expenses assessed against the policy or deducted from the accumulation fund; and the dates on which the additions or subtractions were credited to, or deleted from, the accumulation fund.

In addition, insurers must annually disclose all transactions with affiliates which exceed 1 percent of group annuity reserves of the general account for the prior reporting year. The annual disclosure must also include a description of any guarantees under the policy and the amount that would be payable in a lump sum pursuant to the request of a policyholder for payment of amounts in the accumulation fund under the policy after deduction of any charges and any deductions or additions resulting from market value adjustments.

As part of the annual disclosure, an insurer must inform policyholders that it will make available upon request certain publicly-available financial information relating to the financial condition of the insurer. Such

[2] The Department notes that the statute requires the promulgation of regulations under section 401(c) but does not require the Department to promulgate regulations defining guaranteed benefit policies. At this time, the Department has not made a decision regarding whether to initiate a regulatory project on this matter. Therefore, this proposed regulation does not address the definition of guaranteed benefit policy.

[3] This exception for in-house plans of the insurer under section 401(c)(3) of ERISA is similar to the statutory exemption contained in section 408(b)(5) of ERISA which provides relief from the prohibitions of section 406 for purchases of life insurance, health insurance or annuities from an insurer if the plan pays no more than adequate consideration and if the insurer is the employer maintaining the plan.

[4] This definition is substantially similar to the definition contained in New York insurance regulations. In this regard, see 11 NYCRR 40.2 (1996).

information would include rating agency reports on the insurer's financial strength, the risk adjusted capital ratio, an actuarial opinion certifying to the adequacy of the insurer's reserves and the insurer's most recent SEC Form 10K and Form 10Q (if a stock company).

The Department believes that the annual disclosures required under paragraph (c)(4) will provide sufficient information to the plan fiduciaries to enable them to assess the appropriateness of continuing the plan's investment in the Transition Policy. The Department's primary intent in mandating the disclosures under paragraphs (c)(3) and (4) is to ensure that plan fiduciaries are provided with relevant information, including the financial strength of the insurer, in an understandable form in order to make a meaningful, informed decision regarding both the initial investment in a Transition Policy, and the advisability of leaving the accumulation fund with the insurer. Lastly, the information provided by the insurance company with respect to its allocation methodologies must be in sufficient detail to enable the policyholder to calculate the expenses charged against the Transition Policy as well as the income credited to the policy. This information will allow plan fiduciaries to monitor the actions of the insurer with respect to the Transition Policy.

The Department solicits comments on the proposed disclosure requirements and procedures, both as to their usefulness for plans and the impact on plans and insurers.

It was Congressional intent under section 401(c) of ERISA to require substantive disclosure from insurance companies in order to enable plans to effectively monitor the performance of insurance company general account contracts. In this regard, the Department does not intend to promulgate regulations which require the disclosure of proprietary information if Congressional intent for meaningful disclosure can otherwise be effectuated. Accordingly, the Department requests comments from interested persons on whether any of the items of disclosure specified in the proposed regulation would place an insurer at a competitive disadvantage by giving other insurance companies access to their proprietary information. In responding to this request, please specify which items of information would be considered proprietary and the rationale for that conclusion.

Proposed paragraph (d)(1) contains an additional disclosure requirement regarding the availability of separate account contracts. Under this paragraph, the insurer must explain the extent to which alternative contract arrangements supported by assets of separate accounts of the insurer are available to plans; whether there is a right under the policy to transfer funds to a separate account; and the terms governing any such right. An insurer also must disclose the extent to which general account contracts and separate account contracts pose differing risks to the plan. Proposed paragraph (d)(2) contains a standardized statement describing the relative risks of separate accounts and general account contracts which, if provided to policyholders, will be deemed to comply with paragraph (d)(1)(iii) of the regulation.

4. Termination Procedures

Paragraph (e)(1) of the proposed regulation provides that a policyholder must be able to terminate or discontinue a policy upon 90 days notice to an insurer. The policyholder must have the option to select one of two payout alternatives, both of which must be made available by the insurer.

Under the first alternative, an insurer must permit the policyholder to receive, without penalty, a lump sum payment representing all unallocated amounts in the accumulation fund after deduction of unrecovered expenses and adjustment of the book value of the policy to its market value equivalency. The Department notes that for purposes of paragraph (e), the term penalty does not include a market value adjustment (as defined in proposed paragraph (h)(7)) or the recovery of costs actually incurred including unliquidated acquisition expenses, to the extent not previously recovered by the insurer.

In response to the concerns expressed by some commenters regarding an insurer's use of market value adjustments as a penalty to a withdrawing policyholder, the Department has defined the term market value adjustment to reflect the economic effect on a Transition Policy of an early termination or withdrawal in the current market. Since the purpose of the adjustment is to protect the remaining policyholders, it should represent the economic effect on the policy of a termination under current economic conditions and not penalize the withdrawing policyholder.

Under the second alternative, proposed paragraph (e)(2), an insurer must permit the policyholder to receive a book value payment of all unallocated amounts in the accumulation fund under the policy in approximately equal annual installments, over a period of no longer than five years, with interest.

These termination provisions are designed, in part, "to protect the interests and rights of plan[s] * * *" (See ERISA § 401(c)(2)(B)) by ensuring that plans are not locked into economically disadvantageous relationships.[5] Under the terms of the proposed regulation, plan fiduciaries will receive full disclosure of the general account contract's investment performance, and have the ability to transfer plan assets from the general account to other investments. In this manner, the regulation enables plans to rationally protect their own economic interests without imposing detailed federal regulations on the day-to-day operation of general accounts.

The Department recognizes, however, that insurers have a legitimate interest in avoiding adverse selection and excessive liquidity demands by plan contractholders. Accordingly, the regulation permits insurers to impose a market value adjustment on lump sum withdrawals, and authorizes insurers to spread book value withdrawals over a five-year period at a rate of interest as much as one percentage point below the rate credited to the contract's accumulation fund on the date of termination. Many general account contracts already permit a ten-year book value withdrawal in accordance with provisions of state law. *See, e.g.*, 11 NYCRR § 40.5 (1997) (giving contractholders the right to a ten-year book value withdrawal under specified contracts with interest at a rate not less than 1.5 percent below the rate credited at the time of termination). In proposing a five-year period and a one percent interest adjustment for book value withdrawals, the Department has sought to balance plans' interest in a meaningful right to book value withdrawals with insurers' interest in maintaining balanced and stable portfolios of investments with varying maturities. Neither the book value option nor the market value option should require any fundamental changes in current investment practices or strain the cash flows of well-managed insurers.

The Department solicits comments from interested persons on: (1) The effect on insurers and non-terminating plan policyholders of allowing terminating plans to choose either a book value payment or market value adjustment on termination of the contract; (2) the benefit to plans of the proposed termination option and; (3) the accuracy and burden of the proposed market value adjustment.

[5] The proposal is similar to the Department's rule governing contracts between plans and service providers. *See* 29 CFR § 2550.408b–2(c) (providing that "[a]o contract or arrangement is reasonable within the meaning of section 406(b)(2) of the Act * * * if it does not permit termination by the plan without penalty to the plan on reasonably short notice under the circumstances to prevent the plan from becoming locked into an arrangement that has become disadvantageous").

5. Insurer Initiated Amendments

Paragraph (f) describes the notice requirements and payout provisions governing insurer-initiated amendments. Under paragraph (f), if an insurer makes an insurer-initiated amendment, the insurer must provide written notice to the plan at least 60 days prior to the effective date of the amendment. The notice must contain a complete description of the amendment and must inform the policyholder of its right to terminate or discontinue the policy and withdraw all unallocated funds in accordance with paragraph (e)(1) or (e)(2) by sending a written request to the name and address contained in the notice. Proposed paragraph (f), unlike the more general termination provisions set forth in paragraph (e), is effective upon publication of the final regulation in the **Federal Register**.

An insurer-initiated amendment is defined in paragraph (h)(8) as: (1) An amendment to a policy made by an insurer pursuant to a unilateral right to amend the policy terms that would have a material adverse effect on the policyholder; or (2) certain unilateral enumerated changes that result in a reduction of existing or future benefits under the policy, a reduction in the value of the policy or an increase in the cost of financing the plan or plan benefits, if such change has more than a *de minimis* effect.

It is the Department's view that section 401(c) is similar to a statutory exemption to the general fiduciary responsibility provisions of ERISA and, accordingly, an insurer will have the burden of proving that such changes will not have more than a *de minimis* effect on the policy. The regulation's insurer-initiated amendment provisions ensure that a plan fiduciary can terminate or discontinue a contract that has become disadvantageous as a result of unilateral action on the part of the insurer.

The Department solicits comments on the effect of the insurer-initiated amendment provisions in the proposed regulation.

6. Prudence

Proposed paragraph (g) sets forth the prudence standard applicable to insurance company general accounts. Unlike the prudence standard provided in section 404(a)(1)(B) of ERISA, prudence for purposes of section 401(c)(3)(D) of ERISA is determined by reference to all of the obligations supported by the general account, not just the obligations owed to plan policyholders. In this regard, the Department notes that nothing contained in the proposal modifies the application of the more stringent standard of prudence set forth in section 404(a)(1)(B) of ERISA as applicable to fiduciaries, including insurers, who manage plan assets maintained in separate accounts, as well as to assets of the general account which support policies issued after December 31, 1998.

7. Definitions

Proposed paragraph (h) contains definitions of certain terms used in the proposed regulation.

8. Limitation on Liability

Proposed paragraph (i)(1) provides that no person shall be liable under parts 1 and 4 of Title I of the Act or section 4975 of the Code for conduct which occurred prior to the effective dates of the regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. Paragraph (i)(1) further provides that the above limitation on liability does not apply in the following three circumstances: (1) An action brought by the Secretary of Labor pursuant to paragraph (2) or (5) of section 502(a) of the Act for a breach of fiduciary responsibility which would also constitute a violation of Federal or State criminal law; (2) the application of any Federal criminal law; or (3) any civil action commenced before November 7, 1995.

Proposed paragraph (i)(2) states that the regulation does not relieve any person from any State law regulating insurance which imposes additional obligations upon insurers to the extent not inconsistent with this regulation. Thus, for example, nothing in this regulation would preclude a state from requiring an insurer to make additional disclosures to policyholders, including plans.

Proposed paragraph (i)(3) of the regulation makes clear that neither ERISA nor the regulations promulgated thereunder precludes a claim against an insurer or others for a violation of the Act which is not contingent upon the assertion that the insurer's general account assets are plan assets, regardless of whether the violation relates to a Transition Policy. Thus, for example, a Transition Policy may give rise to fiduciary status on the part of the insurer based upon the insurer's discretionary authority over the administration or management of the plan, rather than its authority over the management of general account assets. *See* section 3(21) of the Act. Nothing in ERISA or this regulation would preclude a finding that an insurer is liable under ERISA for breaches of its fiduciary responsibility in connection with plan management or administration prior to the effective dates of the regulation. Similarly, neither ERISA nor the regulation precludes a finding that an insurer is a fiduciary by reason of its discretionary authority or control over plan assets other than the insurer's general account assets. If the insurer breaches its fiduciary responsibility with respect to plan assets, it may be liable under ERISA regardless of whether the insurer has issued a Transition Policy to a plan or ultimately placed the plan's assets in its general account.

Paragraph (i)(4) of the proposed regulation provides that if an insurer fails to meet the requirements of paragraphs (b) through (f) of the regulation with respect to a specific plan policyholder the result of such failure would be that the general account would be subject to ERISA's fiduciary responsibility provisions with respect to the specific plan for that period of time during which the requirement of the regulation was not met. Once back in compliance with the regulation, the insurer would no longer be subject to ERISA or have potential liability for subsequent periods of time when the requirements of the regulation are met. In addition, the regulation makes clear that the underlying assets of the general account would not constitute plan assets for other Transition Policies to the extent that the insurer was in compliance with the requirements of the regulation.

9. Effective Date

Proposed paragraph (j)(1) states the general rule that the regulation is effective 18 months after its publication in the **Federal Register**.

Paragraph (j)(2), (3) and (4) of the proposed regulation provide earlier effective dates for paragraph (b) relating to independent fiduciary approval, paragraphs (c) and (d) relating to disclosures, and paragraph (f) relating to insurer initiated amendments.

Paragraph (j)(2) of the proposed regulation states that if a Transition Policy is issued before the date which is 90 days after the date of publication of the final regulation, the disclosure provisions in paragraphs (c) and (d) shall take effect 90 days after the publication of the final regulation.

Paragraph (j)(3) of the proposed regulation provides that paragraphs (c) and (d) are effective 90 days after the date of publication of the regulation for a Transition Policy issued after such date. In this regard, the Department believes that the earlier effective dates are consistent with section 401(c)(3)(B) of the Act, as added by Pub. L. 104–188, which states that the disclosures required by the regulation be provided after the date that the regulations are issued in final form.

Proposed paragraph (j)(4) provides that the effective date for paragraphs (b) and (f) of the proposed regulation is the date of publication of the final regulation in the **Federal Register**. In addition, this paragraph provides special rules for insurer-initiated amendments which become effective during the period between the dates of publication of the proposed and final regulations. For example, assume that an insurer makes an insurer-initiated amendment to a Transition Policy after publication of the proposed regulations in the **Federal Register** but prior to the issuance of the final regulations. If adopted as proposed, the insurer would have 30 days to notify the plan of the amendment. The notice must contain a complete description of the amendment and must inform the plan of its right to terminate the contract and withdraw all unallocated funds. If the plan elects to receive a lump sum payment, the insurer must calculate such amount using the more favorable (to the plan) of the market value adjustments determined as of: (1) The effective date of the amendment; or (2) the date upon which the insurer received written notice from the plan requesting a lump sum payment. Specifically, the insurer must provide notice of the amendment to the plan within 30 days of publication of the final regulation. The notice must contain, among other things, a complete description of the amendment and must inform the plan of its right to terminate or discontinue the policy and withdraw all unallocated funds in accordance with the requirements of paragraph (e) and this paragraph. If the policyholder elects to receive a lump sum payment on termination or discontinuance of the policy, the insurer must use the more favorable (to the plan) of the market value adjustments determined on either the effective date of the amendment or determined upon receipt of the written request from the plan.

Section 401(c)(5)(B)(i) of the Act, as added by Pub. L. 104–188, provides an exception to the general 18-month effective date for regulations intended to prevent the avoidance of the regulations set forth herein. The Department is proposing an earlier effective date for the provisions relating to the independent fiduciary approval, disclosures and insurer-initiated amendments. The Department believes that the earlier effective dates protect the interests and rights of a plan and its participants and beneficiaries by minimizing the potential for insurers to change their conduct in ways which are disadvantageous to plan policyholders without compliance with the terms and conditions of the regulation. The Department notes that compliance with the specific requirements of the regulation must occur as of the date that such requirement becomes effective. Failure to comply with any of the requirements listed in paragraphs (b) through (f) of this regulation after the effective date of such paragraphs will result in the general account of the insurer holding plan assets as provided in paragraph (i)(4).

Economic Analysis Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) under the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in, among other things, a rule raising novel policy issues arising out of the President's priorities. Pursuant to the terms of the Executive Order, the Department has determined that this regulatory action is a "significant regulatory action" as that term is used in Executive Order 12866 because the action would raise novel policy issues arising out of the President's priorities. Thus, the Department believes this notice is "significant," and subject to OMB review on that basis.

The Office of Management and Budget has determined that this regulatory action is economically significant because it may adversely effect in a material way a sector of the economy. The Department therefore solicits additional information from the interested public regarding the economic impact of the proposed regulation. Specifically, the Department requests current data on the number and characteristics of potentially affected insurance contracts that would provide the basis for a more extensive analysis of the costs and benefits of the proposed regulation.

These regulations mitigate the constraints imposed by ERISA on the operation of insurance company general accounts. The Department believes that insurers are likely in nearly all circumstances to avail themselves of the relief provided under the proposed regulation. The consequences for an insurer, of not complying with the safe harbor afforded by the regulation, would subject the insurer's general account to potential liability under part 4 of Title I of ERISA. Because the statute simply directs the Department to issue a regulation and specifies much of the regulation's content, its costs and benefits may be estimated simply by analyzing the regulation. The Department is not aware of any published analysis of the nature or level of the costs the statute will not impose.

The Department has endeavored to control the compliance costs associated with the regulation by providing model language, by requiring disclosures at the outset of the contract or no more than annually, and by allowing disclosure materials to be based on materials prepared for other reasons. The Department's analysis of the impact of the regulation has concluded that it will provide greater protections for 130,000 pension plans holding contracts with 110 insurers. The net cost of these protections is estimated to be no more than $2 to $5 million per year. This estimate of the potential impact of the proposed regulation is based on the Department's estimates of assets held in life insurers' general accounts and the proportion of these that might be deemed to be holding ERISA plan assets. The total of all assets held by life insurers in their general accounts amounts to approximately $1.7 trillion. Based on data reported on Schedule A available from Form 5500 series reports, the Department estimates that the assets of contracts potentially directly affected by the regulation have a current value of approximately $40 billion or slightly less than 3 percent of general account assets. This estimate of $40 billion represents the amount reported by plans to be held in contracts categorized as unallocated general account contracts whose performance is linked with that of the general accounts in the annual financial reports filed by plans. As such it represents an upper bound of the value of the contracts potentially affected by the regulation because some portion of these contracts may in fact already meet the conditions specified in the regulation. The Department solicits additional data which would permit a further delineation of the affected assets.

It is estimated that the costs of this regulation will primarily arise from the cost of compliance with its disclosure requirements. The benefits to plans, participants and beneficiaries arise from the improved understanding of their investment that comes from the disclosure, and from the limits on the calculation of the market value adjustment by the insurer at the time of termination of the contract.

The insurance contracts affected by this regulation have a wide range of characteristics that cannot in a comprehensive way be precisely defined. They may differ widely, in particular with respect to the conditions associated with their termination provisions. However, the regulation's disclosure and termination provisions establish minimum standards, which may be more favorable to plans than their terms absent the regulation. As a result, some plans that have been unable to terminate, or might not have terminated, their contractual arrangements may now terminate those arrangements. The Department does not believe, however, that the regulation will have a significant adverse financial impact on other general account policyholders or insurers. As the American Council of Life Insurance has noted in various submissions, the relevant contracts typically already permit the termination and withdrawal of plan assets in a lump sum (subject to a market value adjustment) or in installments over a period of years at book value with interest. Although the regulation protects plans by permitting them to withdraw plan assets in a lump sum without penalty, it also protects the legitimate interests of insurers by permitting them to recover incurred costs and to impose a market value adjustment designed to "accurately reflect the effect on the value of the accumulation fund of its liquidation in the prevailing market for fixed income obligations." Similarly, the regulation mitigates any adverse economic impact by permitting insurers to spread book value withdrawals over a five-year period at a reduced rate of interest (assuming the relevant contract does not give the plan more favorable termination and withdrawal rights). The Department believes that these provisions adequately protect the insurers from the risks of "adverse selection" or disintermediation, while providing significant protection to plan policyholders. In many respects, the regulation simply parallels the pre-existing rule under ERISA that a contract between a plan and party in interest is impermissible unless it permits termination without penalty so as to "prevent the plan from becoming locked into an arrangement that has become disadvantageous." 29 CFR 2550.408b–2(c).

A portion of the estimated costs of the regulation is attributed to the termination of some contracts which, absent the regulation, would have remained in force. Some of the costs that the insurers may incur are offset, however, by commensurate benefits to plans. The only net costs of the regulation therefore, are the cost of supplying the disclosure information and transaction costs for plans terminating their insurance contracts. In the view of the Department, these costs must be weighed against the benefits that accrue to plans and the economy in general from the enhanced transparency of general account products, and the resulting increased ability plans will have to rationally manage their portfolios and allocate assets more efficiently. The regulation is designed to ensure that a plan fiduciary will have access to all the information necessary to assess the potential and actual performance of a general account contract both before and after entering into the initial agreement with the insurer. The regulation's termination and withdrawal provisions additionally ensure that the plan fiduciary can act on the information disclosed by withdrawing the plan's assets in favor of other investment vehicles or expenditures if it is prudent or economically advantageous to do so. The net result is to safeguard plans' ability to allocate their resources in the most economically rational manner possible.

The analysis of the impact of the regulation does not attribute any cost to the possible effect of the regulation on the management or composition of insurers' general account portfolios. This is because the total value of the contracts potentially affected represent less than 3 percent of general account assets. According to data published by the American Council of Life Insurance, general account reserves are primarily invested in fixed income securities of relatively short maturities. The maximum liquidity requirement imposed by the regulation in the highly unlikely event that all of the affected plans chose to terminate the contracts would be less than 6-tenths percent of the general accounts (this reflects the distribution of 3 percent of general assets over 5 years). This should be readily available from the cash flow derived from the current distribution of investments. The Department therefore has not assigned any cost of the regulation to other general account policyholders.

The insurance industry has not provided the Department with any information regarding the magnitude of their costs. Accordingly, the Department solicits additional information from the interested public regarding the economic analysis in the proposed regulation. Specifically, the Department requests comments and supporting data on the costs and benefits of the proposed regulation, as well as information on whether more frequent contract terminations which may result from enhanced opportunities provided by the proposed regulation will result in an increase in brokerage, appraisal and/or other transactions costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform an Initial Regulatory Flexibility Analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. The Pension and Welfare Benefits Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities. A summary for the basis of that conclusion follows:

(1) PWBA is promulgating this regulation because it is required to do so under section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188).

(2) The objective of the proposed regulation is to provide guidance on the application of ERISA to policies held in insurance company general accounts. The legal basis for the proposed regulation is found in new ERISA section 401(c); an extensive list of authorities may be found in the Statutory Authority section, below.

(3) The direct cost of compliance will be born by insurance companies; the Department estimates that no "small" insurance companies (as defined by the Small Business Administration at 61 FR 3280, Jan 31, 1996) offer the type of policies regulated here. No small governmental jurisdictions will be affected. It is estimated that 121,000 small employee benefit plans (those with fewer than 100 participants) purchase the regulated policies, and will therefore receive the benefit of the enhanced disclosure provided by the regulation. Some of the costs of disclosure may be passed on to the plans by the insurers.

(4) No federal reporting is required under the proposed rule. It is anticipated that the majority of the disclosure requirements may be handled by clerical staff; however, there will be

a need for professional staff involvement.

(5) No federal rules have been identified that duplicate, overlap or conflict with the proposed rule. To the extent possible, the overlap in disclosures between this rule and state and SEC reporting requirements have been designed to allow the same materials to meet both requirements while providing the necessary protections for employee benefit plans.

(6) No significant alternatives which would minimize the impact on small entities have been identified. It would be inappropriate to create an alternative with lower compliance criteria, or an exemption under the proposed regulation, for small plans because those are the entities that have the greatest need for the disclosures and other protections offered by the regulation.

Paperwork Reduction Act

The proposed regulation contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, summary, description of need, respondents description, and estimated reporting and recordkeeping burden are shown below.

Title: Disclosure Regarding Plan Assets in Insurance Company General Accounts.

Summary/Description of Need: Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) amended ERISA by adding new Section 401(c), which requires that certain steps be taken by insurance companies which offer and maintain policies for private sector employee benefit plans where the assets are held in the insurer's general account. Pursuant to the authority given to the Secretary under the statute, the regulation requires certain disclosures be provided at the outset of the contract and annually, and other disclosures be provided upon request.

Respondents Description: Individuals or households; Business or other for-profit institutions; Not-for-profit institutions.

Estimated Reporting and Recordkeeping Burden: Based upon Form 5500 filing data, an estimated 134,000 plans, primarily pension plans, have invested in 138,000 policies offered by approximately 110 insurance companies. Because insurers must already assemble much of the information to be disclosed for purposes of state disclosure requirements and their own administration of the contracts, the Department does not believe the additional disclosure obligations imposed by the regulation will be unduly burdensome. The additional costs can be divided into start-up expenses incurred immediately after the regulation takes effect, and a yearly expense thereafter. Initially insurers will be required to modify disclosure forms and computer programs to comply with the new obligations imposed by the regulation. In total, the Department estimates that this initial expense will cost no more than $2 to $5 million. Thereafter, the Department estimates that insurers will generally incur disclosure and reproduction expenses of between $100 and $200 for each contract to which the regulation applies.

The Department of Labor has submitted a copy of the proposed information collection to the Office of Management and Budget in accordance with 44 U.S.C. § 3507(d) of the Paperwork Reduction Act of 1995 for its review of its information collections. Interested persons are invited to submit comments regarding this proposed new collection of information.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking.

Statutory Authority

The proposed regulation set forth herein is issued pursuant to the authority contained in sections 401(c) and 505 of ERISA (Pub. L. 93–406, Pub. L. 104–188, 88 Stat. 894; 29 U.S.C. 1101(c), 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–87, 52 FR 13139 (April 21, 1987).

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Insurance Companies, Investments, Investment foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and trustees.

For the reasons discussed in the preamble, it is proposed to amend 29 CFR part 2550 as follows:

PART 2550—[AMENDED]

1. The authority for Part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135. Section 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332. Section 2550.401c–1 also issued under 29 U.S.C. 1101. Section 2550.404c–1 also issued under 29 U.S.C. 1104. Section 2550.407c–3 also issued under 29 U.S.C. 1107. Section 2550.408b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332, and 29 U.S.C. 1108(b)(1). Section 2550.412–1 also issued under 29 U.S.C. 1112. Secretary of Labor's Order No. 1–87 (52 FR 13139).

2. New section 2550.401c–1 is added to read as follows:

§ 2550.401c–1 Definition of "plan assets"—insurance company general accounts.

(a) *In general.* (1) This section describes, in the case where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of an insurance company's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute plan assets for purposes of Subtitle A, and Parts 1 and 4 of Subtitle B, of Title I of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975 of the Internal Revenue Code (the Code), and provides guidance with respect to the application of Title I of the Act and section 4975 of the Code to the general account assets of insurers.

(2) Generally, when a plan acquires a policy issued by an insurer on or before December 31, 1998 (Transition Policy), which is supported by assets of the insurer's general account, the plan's assets include the policy, but do not include any of the underlying assets of the insurer's general account if the insurer satisfies the requirements of paragraphs (b) through (f) of this section.

(b) *Approval by fiduciary independent of the issuer.*—(1) In general. An independent plan fiduciary who has the authority to manage and control the assets of the plan must expressly authorize the acquisition or purchase of the Transition Policy. For purposes of this subparagraph, a fiduciary is not independent if the fiduciary is an affiliate of the insurer issuing the policy.

(2) Notwithstanding paragraph (b)(1) of this section, the authorization by an independent plan fiduciary is not required if:

(i) The insurer is the employer maintaining the plan, or a party in interest which is wholly owned by the employer maintaining the plan; and

(ii) The requirements of section 408(b)(5) of the Act are met.

(c) *Duty of Disclosure.*—(1) *In general.* An insurer shall furnish the following information to a plan fiduciary acting on behalf of a plan to which a Transition Policy has been issued. Paragraph (c)(2) of this section describes the style and format of such disclosure. Paragraph (c)(3) of this section describes the content of the initial disclosure. Paragraph (c)(4) of this section describes the information that must be disclosed by the insurer at least once per year for as long as the

Transition Policy remains outstanding.

(2) *Style and format.* The disclosure required by this paragraph should be clear and concise and written in a manner calculated to be understood by a plan fiduciary, without relinquishing any of the substantive detail required by paragraphs (c)(3) and (c)(4) of this section. The information does not have to be organized in any particular order but should be presented in a manner which makes it easy to understand the operation of the policy. To the extent paragraphs (c)(3) and (c)(4) of this section require the disclosure of the insurer's methods or methodologies for determining various values or amounts relevant to the plan's policy, the disclosure must be made in sufficient detail and with such clarity that the plan fiduciary, with relevant data from the insurer and appropriate professional assistance, can determine the values or amounts applicable to the plan's policy. The insurer must disclose any data necessary for application of the methods or methodologies without unreasonable delay upon the request of the plan fiduciary.

(3) *Initial Disclosure.* Prior to obtaining a binding commitment from a plan to acquire a Transition Policy, the insurer must provide to the plan, either as part of the policy, or as a separate written document which accompanies the policy, the disclosure information set forth in paragraph (c)(3)(i) through (iv) of this section. In the case of a Transition Policy that has been issued before the date which is 90 days after the date of publication of the final regulation, the insurer must provide the disclosure information no later than 90 days after publication. The disclosure must include all of the following information which is applicable to the Transition Policy:

(i) A description of the method by which any income and expenses of the insurer's general account are allocated to the policy during the term of the policy and upon its termination, including:

(A) A statement of the method used by the insurer to determine the fees, charges, expenses or other amounts that are or may be assessed against the policyholder or deducted by the insurer from any accumulation fund under the policy, including the extent and frequency with which such fees, charges, expenses or other amounts may be modified by the insurance company;

(B) A statement of the method by which the insurer determines the return to be credited to any accumulation fund under the policy, including a statement of the method used to allocate income and expenses to lines of business, business segments, and policies within such lines of business and business segments, and a description of how any withdrawals, transfers, or payments will affect the amount of the return credited;

(C) A description of the rights which the policyholder or plan participant has to withdraw or transfer all or a portion of any fund under the policy, or to apply the amount of a withdrawal to the purchase of or payment of benefits, and the terms on which such withdrawals or other use of funds may be made, including a description of any expense charges, fees, experience rating charges or credits, market value adjustments, or any other charges or adjustments, both positive and negative;

(D) A statement of the method used to calculate the charges, fees, credits or market value adjustments described in paragraph (i)(C) of this section, and, upon the request of a plan fiduciary, the information necessary to independently calculate the exact dollar amounts of the charges, fees or adjustments. The initial disclosure provided to the plan must set forth and describe each of the provisions and elements of the formula for making the market value adjustment in sufficient detail and with such clarity that the plan fiduciary, with relevant data from the insurer and with professional assistance, if necessary, can replicate any adjustment proposed by the insurer. If the formula is based on interest rate guarantees applicable to new contracts of the same class or classes, and the duration of the assets underlying the accumulation fund, the contract must describe the process by which those components are ascertained or obtained. If the formula is based on an interest rate implicit in an index of publicly traded obligations, the identity of the index, the manner in which it is used, and identification of the source or publication where any data used in the formula can be found, must be disclosed;

(ii) A statement describing the expense, income and benefit guarantees under the policy, including a description of the length of such guarantees, and of the insurer's right, if any, to modify or eliminate such guarantees; and

(iii) A description of the rights of the parties to make or discontinue contributions under the policy, and of any restrictions (such as timing, minimum or maximum amounts, and penalties and grace periods for late payments) on the making of contributions under the policy, and the consequences of the discontinuance of contributions under the policy.

(iv) A statement of how any policyholder or participant-initiated withdrawals are to be made: first-in, first-out (FIFO) basis, last-in, first-out (LIFO) basis, pro rata or another basis.

(4) *Annual disclosure.* At least annually and not later than 90 days following the period to which it relates, an insurer shall provide the following information to each plan to which a Transition Policy has been issued:

(i) The balance of any accumulation fund on the first day and last day of the period covered by the annual report;

(ii) Any deposits made to the accumulation fund during such annual period;

(iii) An itemized statement of all income attributed to the policy or added to the accumulation fund during the period, and a description of the method used by the insurer to determine the precise amount of income;

(iv) The actual rate of return credited to the accumulation fund under the policy during such period, stating whether the rate of return was calculated before or after deduction of

expenses charged to the accumulation fund;

(v) Any other additions to the accumulation fund during such period;

(vi) An itemized statement of all fees, charges, expenses or other amounts assessed against the policy or deducted from the accumulation fund during the reporting year, and a description of the method used by the insurer to determine the precise amount of the fees, charges and other expenses;

(vii) An itemized statement of all benefits paid, including annuity purchases, to participants and beneficiaries from the accumulation fund;

(viii) The dates on which the additions or subtractions were credited to, or deleted from, the accumulation fund during such period;

(ix) A description, if applicable, of all transactions with affiliates which exceed 1 percent of group annuity reserves of the general account for the prior reporting year;

(x) A statement describing any expense, income and benefit guarantees under the policy, including a description of the length of such guarantees, and of the insurer's right, if any, to modify or eliminate such guarantees;

(xi) The amount that would be payable in a lump sum at the end of such period pursuant to the request of a policyholder for payment or transfer of amounts in the accumulation fund under the policy after the insurer deducts any applicable charges and makes any appropriate market value adjustments, upward or downward, under the terms of the policy; and

(xii) An explanation that the insurer promptly will make available upon request of a plan, copies of the following publicly-available financial data or other publicly available reports relating to the financial condition of the insurer:

(A) National Association of Insurance Commissioners (NAIC) Statutory Annual Statement, with Exhibits, General Interrogatories, and Schedule D, Part 1A, Secs 1 and 2 and Schedule S-Part 3E;

(B) Rating agency reports on the financial strength and claims-paying ability of the insurer;

(C) Risk adjusted capital ratio, with a brief description of its derivation and significance, referring to the risk characteristics of both the assets and the liabilities of the insurer;

(D) Actuarial opinion (with supporting documents) of the insurer's Appointed Actuary certifying the adequacy of the insurer's reserves as required by New York State Insurance Department Regulation 126 and comparable regulations of other states; and

(E) The insurer's most recent SEC Form 10K and Form 10Q (stock companies only).

(d) Alternative separate account arrangements.—(1) *In general.* An insurer must provide the plan fiduciary with the following additional information at the same time as the disclosure required under paragraph (c) of this section:

(i) A statement explaining the extent to which alternative contract arrangements supported by assets of separate accounts of insurers are available to plans;

(ii) A statement as to whether there is a right under the policy to transfer funds to a separate account and the terms governing any such right; and

(iii) A statement explaining the extent to which general account contracts and separate account contracts of the insurer may pose differing risks to the plan.

(2) An insurer will be deemed to comply with the requirements of paragraph (d)(1)(iii) of this section if the disclosure provided to the plan includes the following statement:

a. Contractual arrangements supported by assets of separate accounts may pose differing risks to plans from contractual arrangements supported by assets of general accounts. Under a general account contract, the plan's contributions or premiums are placed in the insurer's general account and commingled with the insurer's corporate funds and assets (excluding separate accounts and special deposit funds). The insurance company combines in its general account premiums received from all its lines of business. These premiums are pooled and invested by the insurer. General account assets in the aggregate support the insurer's obligations under all of its insurance contracts, including (but not limited to) its individual and group life, health, disability, and annuity contracts. Experience rated general account policies may share in the experience of the general account through interest credits, dividends, or rate adjustments, but assets in the general account are not segregated for the exclusive benefit of any particular policy or obligation. General account assets are also available to the insurer for the conduct of its routine business activities, such as the payment of salaries, rent, other ordinary business expenses and dividends.

b. An insurance company separate account is a segregated fund which is not commingled with the insurer's general assets. Depending on the particular terms of the separate account contract, income, expenses, gains and losses associated with the assets allocated to a separate account may be credited to or charged against the separate account without regard to other income, expenses, gains, or losses of the insurance company, and the investment results passed through directly to the policyholders. While most, if not all, general account investments are maintained at book value, separate account investments are normally maintained at market value, which can fluctuate according to market conditions. In large measure, the risks associated with a separate account contract depend on the particular assets in the separate account.

c. The plan's legal rights vary under general and separate account contracts. In general, an insurer is subject to ERISA's fiduciary responsibility provisions with respect to the assets of a separate account (other than a separate account registered under the Investment Company Act of 1940) to the extent that the investment performance of such assets is passed directly through to the plan policyholders. ERISA requires insurers, in administering separate account assets, to act solely in the interest of the plan's participants and beneficiaries; precludes self-dealing and conflicts of interest; and requires insurers to adhere to a prudent standard of care. In contrast, ERISA generally imposes less stringent standards in the administration of general account contracts which were issued on or before December 31, 1998.

d. On the other hand, state insurance regulation is typically more restrictive with respect to general accounts than separate accounts. In addition, insurance company general account policies often include various guarantees under which the insurer assumes risks relating to the funding and distribution of benefits. Insurers do not usually provide any guarantees with respect to the investment returns on assets held in separate accounts. Of course, the extent of any guarantees from any general account or separate account contract will depend upon the specific policy terms.

e. Finally, separate accounts and general accounts pose differing risks in the event of the insurer's insolvency. In the event of insolvency, funds in the general account are available to meet the claims of the insurer's general creditors, after payment of amounts due under certain priority claims, including amounts owed to its policyholders. Funds held in a separate account as reserves for its policy obligations, however, may be protected from the claims of creditors other than the policyholders participating in the separate account. Whether separate account funds will be granted this protection will depend upon the terms of the applicable policies and the provisions of any applicable laws in effect at the time of insolvency.

(e) *Termination procedures.* Within 90 days of written notice by a policyholder to an insurer, the insurer must permit the policyholder to exercise the right to terminate or discontinue the policy and to receive without penalty either:

(1) a lump sum payment representing all unallocated amounts in the accumulation fund. For purposes of this paragraph (e), the term penalty does not include a market value adjustment (as defined in paragraph (h)(7) of this section) or the recovery of costs actually incurred which would have been recovered by the insurer but for the termination or discontinuance of the policy, including any unliquidated acquisition expenses, to the extent not previously recovered by the insurer; or

(2) a book value payment of all unallocated amounts in the accumulation fund under the policy in approximately equal annual installments, over a period of no longer than five years, together with interest computed at an annual rate which is no less than the annual rate which was credited to the accumulation fund under the policy as of the date of the contract termination or discontinuance, minus 1 percentage point.

(f) *Insurer-initiated amendments.* In the event the insurer makes an insurer-initiated amendment (as defined in paragraph (h)(8) of this section), the insurer must provide written notice to the plan at least sixty days prior to the effective date of the insurer-initiated amendment. The notice must contain a complete description of the amendment and must inform the plan of its right to terminate or discontinue the policy and withdraw all unallocated funds without penalty by sending a written request within such sixty day period to the name and address contained in the notice. The plan must be offered the right to receive a lump sum or installment payment described in paragraph (e)(1) or (e)(2) of this section. An insurer-initiated amendment shall not apply to a contract if the plan fiduciary exercises its right to terminate or discontinue the contract within such sixty day period and to receive a lump sum or installment payment.

(g) *Prudence.* An insurer shall manage those assets of the insurer which are assets of such insurer's general account (irrespective of whether any such assets are plan assets) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, taking into account all obligations supported by such enterprise. This prudence standard applies to the conduct of all insurers with respect to policies issued to plans on or before December 31, 1998, and differs from the prudence standard set forth in section 404(a)(1)(B) of ERISA. Under the prudence standard provided in this paragraph, prudence must be determined by reference to all of the obligations supported by the general account, not just the obligations owed to plan policyholders. The more stringent standard of prudence set forth in section 404(a)(1)(B) of ERISA continues to apply to any obligations which insurers may have as fiduciaries which do not arise from the management of general account assets, as well as to insurers' management of plan assets maintained in separate accounts. The terms of the regulation do not modify or reduce the fiduciary obligations applicable to insurers in connection with policies issued after December 31, 1998, which are supported by general account assets, including the standard of prudence under section 404(a)(1)(B) of the Act.

(h) *Definitions.* For purposes of this section:

(1) an *affiliate* of an insurer means:

(i) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the insurer,

(ii) Any officer, director, partner or employee of such insurer or of a person described in paragraph (i) of this definition including in the case of an insurer, an insurance agent or broker thereof, whether or not such person is a common law employee, and

(iii) Any corporation, partnership, or unincorporated enterprise of which a person described in paragraph (ii) of this definition is an officer, director, partner or employee.

(2) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(3) The term *guaranteed benefit policy* means a policy described in section 401(b)(2)(B) of the Act and any regulations promulgated thereunder.

(4) The term *insurer* means an insurer as described in section 401(b)(2)(A) of the Act.

(5) The term *accumulation fund* means the aggregate net consideration (i.e., gross considerations less all deductions from such considerations) credited to the Transition Policy plus all additional amounts, including interest and dividends, credited to such Transition Policy less partial withdrawals, benefit payments and less all charges and fees imposed against this accumulated amount under the Transition Policy other than surrender charges and market value adjustments.

(6) The term *Transition Policy* means:

(i) a policy or contract of insurance (other than a guaranteed benefit policy) that is issued by an insurer to, or on behalf of, an employee benefit plan on or before December 31, 1998, and which is supported by the assets of the insurer's general account.

(ii) A policy will not fail to be a Transition Policy merely because the policy is amended or modified to comply with the requirements of section 401(c) of the Act and this section.

(7) For purposes of this regulation, the term *market value adjustment* means an adjustment to the book value of the accumulation fund to accurately reflect the effect on the value of the accumulation fund of its liquidation in the prevailing market for fixed income obligations, taking into account the future cash flows that were anticipated under the policy. An adjustment is a *market value adjustment* within the meaning of this definition only if the insurer has determined the amount of the adjustment pursuant to a method which was previously disclosed to the policyholder in accordance with paragraph (c)(3)(i)(D) of this section, and the method permits both upward and downward adjustments to the book value of the accumulation fund.

(8) The term *insurer-initiated amendment* is defined in paragraphs (h)(8) (i) and (ii) of this section:

(i) An amendment to a policy made by an insurer pursuant to a unilateral right to amend the policy terms that would have a material adverse effect on the policyholder; or

(ii) Any of the following unilateral changes in the insurer's conduct or practices with respect to the policyholder or the accumulation fund under the policy that result in a reduction of existing or future benefits under the policy, a reduction in the value of the policy or an increase in the cost of financing the plan or plan benefits, if such changes have more than a *de minimis* effect on the policy:

(A) A change in the methodology for assessing fees, expenses, or other charges against the accumulation fund or the policyholder;

(B) A change in the methodology used for allocating income between lines of business, or product classes within a line of business;

(C) A change in the methodology used for determining the rate of return to be credited to the accumulation fund under the policy;

(D) A change in the methodology used for determining the amount of any fees, charges, or market value adjustments applicable to the accumulation fund under the policy in connection with the termination of the contract or withdrawal from the accumulation fund;

(E) A change in the dividend class to which the policy or contract is assigned;

(F) A change in the policyholder's rights in connection with the termination of the contract, withdrawal of funds or the purchase of annuities for plan participants; and

(G) A change in the annuity purchase rates.

(iii) For purposes of this definition, any amendment or change which is made with the affirmative consent of the policyholder is not an insurer-initiated amendment.

(i) *Limitation on liability.* (1) No person shall be subject to liability under Parts 1 and 4 of Title I of the Act or section 4975 of the Code for conduct which occurred prior to the effective dates of the regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. Notwithstanding the foregoing, this section shall not:

(i) Apply to an action brought by the Secretary of Labor pursuant to paragraphs (2) or (5) of section 502(a) of ERISA for a breach of fiduciary responsibility which would also constitute a violation of Federal or State criminal law;

(ii) Preclude the application of any Federal criminal law; or

(iii) Apply to any civil action commenced before November 7, 1995.

(2) Nothing in this section relieves any person from any State law regulating insurance which imposes additional obligations or duties upon insurers to the extent not inconsistent with the provisions of this section. Therefore, nothing in this section should be construed to preclude a State from requiring insurers to make additional disclosures to policyholders, including plans. Nor does this section prohibit a State from imposing additional substantive requirements with respect to the management of general accounts or from otherwise regulating the relationship between the policyholder and the insurer to the extent not inconsistent with the provisions of this section;

(3) Nothing in this section precludes any claim against an insurer or other person for violations of the Act which do not require a finding that the underlying assets of a general account constitute plan assets, regardless of whether the violation relates to a Transition Policy; and

(4) If the requirements in paragraphs (b) through (f) of this section of the regulation are not met with respect to a plan that has purchased or acquired a Transition Policy, the plan's assets include an undivided interest in the underlying assets of the insurer's general account for that period of time for which the requirements are not met. However, an insurer's failure to comply with the requirements of this section with respect to any particular Transition Policy will not result in the underlying assets of the general account constituting plan assets with respect to other Transition Policies if the insurer is otherwise in compliance with the requirements contained in the section.

(j) *Effective date.* (1) *In general.* Except as provided below, this section is effective from the date which is 18 months after its publication in the **Federal Register**.

(2) With respect to a Transition Policy issued before the date which is 90 days after the date of publication of the final regulation, paragraphs (c) and (d) of this section shall apply to the policy 90 days after the date of such publication.

(3) With respect to a Transition Policy issued 90 days after the date of publication of the final regulation, paragraphs (c) and (d) of this section shall apply to the policy as of the date of such publication.

(4) Paragraph (b) of this section, relating to independent fiduciary approval, and paragraph (f) of this section, relating to insurer-initiated amendments, are effective on the date of publication of the final regulation in the **Federal Register**. In the event an insurer makes an insurer-initiated amendment to a Transition Policy during the period between the dates of publication of the proposed and final regulations, the insurer must provide written notice to the plan within 30 days of publication of the final regulation. The document must contain a complete description of the amendment; inform the plan of its right to terminate or discontinue the policy and withdraw all unallocated funds without penalty in accordance with the requirements of paragraph (e) of this section and this paragraph; and provide that the plan may exercise its right by sending a written request to the name and address contained in the notice within sixty days of its receipt of the notice from the insurer. In the event that the plan exercises its right to terminate or discontinue the policy, the insurer must disregard the effect of any insurer-initiated amendment which would have the effect of decreasing the amount distributed to the plan. In the case of a plan electing a lump sum payment, the insurer must use the more favorable (to the plan) of the market value adjustments determined on either the effective date of the amendment or determined upon receipt of the written request from the plan in calculating the lump sum representing the unallocated funds in the accumulation fund.

Signed at Washington, DC this 15th day of December, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–33088 Filed 12–19–97; 8:45 am]

BILLING CODE 4510–29–P

federal register

Monday
December 22, 1997

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for Fiscal Years 1998–1999 for Certain Centers and Projects; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years 1998–1999 for Certain Centers and Projects

SUMMARY: The Secretary proposes funding priorities for four Rehabilitation Research and Training Centers (RRTCs) and two Disability and Rehabilitation Research Projects (DRRPs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before January 21, 1998.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Comments may also be sent through the Internet: comment@ed.gov

You must include the term Disability and Rehabilitation Research Projects and Centers in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna_Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the Disability and Rehabilitation Research Projects and Centers Program for four RRTCs related to: secondary conditions of spinal cord injuries (SCI); neuromuscular diseases (NMD); multiple sclerosis (MS); and community integration for persons with traumatic brain injury (TBI). The notice also contains proposed priorities for two Disability and Rehabilitation Research Projects related to: dissemination and utilization of research information to promote independent living; and supported living and choice for persons with mental retardation.

These proposed priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Proposed General Requirements

The Secretary proposes that the following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process. The Secretary is interested in receiving comments on these proposed requirements:

Each RRTC must provide: (1) Training on research methodology and applied research experience; and (2) training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties.

Each RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

Each RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities.

Proposed Priority 1: Secondary Conditions of Spinal Cord Injuries

Background

There are approximately 10,000 new cases of SCI each year and the prevalence of SCI is estimated between 183,000 and 230,000 persons (University of Alabama-Birmingham, "Facts and Figures at a Glance," *Spinal Cord Injury Factsheet*, August, 1997). The etiology of SCI has been very well documented and the medical characterization of this condition is well established (Maynard, F. M., et al., "International Standards for Neurological and Functional Classification of Spinal Cord Injury—American Spinal Cord Injury Association" *Spinal Cord*, 35(5), pgs. 266–274, May, 1997). Past medical advances have improved the probability of surviving SCI, and ongoing developments and improvements in clinical care have increased the life expectancy and quality of life of persons with SCI (Ditunno, J. F. and Formal, C. S., "Chronic Spinal Cord Injury," *New England Journal of Medicine*, 330(8), pgs. 550–556, February, 1994). However, the life expectancy of individuals with SCI is still lower than the general population, and people who are living with SCI continue to be at higher risk than the general population for a number of secondary conditions. For the purposes of this priority, a secondary condition is a condition that is causally related to a disabling condition (i.e., occurs as a result of the primary disabling condition) and that can be pathological, an impairment, a functional limitation, or an additional disability (Pope, A. M. and Tarlov, A. R., "Prevention of Secondary Conditions," *Disability in America*, pgs. 214–241, 1991).

Pressure ulcers, respiratory complications, urinary tract infections (UTIs), pain, and obesity are commonly reported secondary conditions of SCI (Lemons, V.R. and Wagner, F.C., Jr., "Respiratory Complications After Cervical Spinal Cord Injury," *Spine*, 9(20), pgs. 2315–2320, 1994; Anson, C. A. and Shepherd, C., "Incidence of Secondary Complication in Spinal Cord Injury," *International Journal of Rehabilitation Research*, 19(1), pgs. 55–66, March, 1996). Depression in SCI is also often identified as a secondary condition (Elliott, T. R. and Frank, R. G., "Depression Following Spinal Cord Injury," *Archives of Physical Medicine and Rehabilitation*, Vol. 77, pgs. 816–823, 1996). Continued research efforts directed toward the prevention and treatment of secondary conditions of persons with SCI will improve their health and well-being.

Despite past efforts, pressure ulcers remain a daunting problem with respect to both prevention and treatment. Most approaches to pressure ulcer management emphasize prevention (Ditunno, J. F., op. cit.). There is little systematic evidence on how individuals with SCI manage a pressure ulcer once one develops (Fuhrer, M. J., et al., "Pressure Ulcers in Community-Resident Persons with Spinal Cord Injury: Prevalence and Risk Factors," *Archives of Physical Medicine and Rehabilitation*, 74, pgs. 1172–1177, 1993).

Respiratory-related conditions have now replaced UTIs as the major cause of death in the SCI population, particularly among individuals with cervical level injuries (University of Alabama-Birmingham, op. cit.). Pneumonia continues to be one of the most common secondary conditions. Secretion management is often problematic due to impaired cough (Ditunno, J. F. and Formal, C. S., op. cit.). The effectiveness of current therapeutic interventions to reduce the incidence of respiratory conditions appears to be marginal (Lemons, V. R. and Wagner, F. C., Jr., op. cit.).

Urinary tract infections are a common secondary condition in SCI. Antibiotic prophylaxis is not generally recommended. Other possible strategies, such as vaccination, immunotherapy, and the use of receptor analogs have been suggested, but there is not yet sufficient data on the effectiveness (Galloway, A., "Prevention of Urinary Tract Infection in Patients with Spinal Cord Injury—A Microbiological Review," *Spinal Cord*, 35(4), pgs. 196–204, April, 1997). There are possible psycho-social-vocational factors that impact bladder management programs (NIDRR 1992 Consensus Statement, "The Prevention and Management of Urinary Tract Infections Among People with Spinal Cord Injuries," *Journal of American Paraplegia Society*, 15(3), pgs. 194–204, July, 1992).

Pain is a secondary condition that affects a significant number of persons with SCI (Yezierski, R. P., "Pain Following Spinal Cord Injury: the Clinical Problem and Experimental Studies," *Pain*, 68(2–3), pgs. 185–194, 1996). Previous research has resulted in a number of classification schemes for SCI pain; however, there is no standardized classification system, limiting comparability of findings from the literature. The numerous individual variations in pain as a secondary condition accompanying SCI impede research progress in the alleviation of pain (Stover, S. L., et al., "Management of Neuromusculoskeletal System," *Spinal Cord Injury: Clinical Outcomes from Model Systems*, Chapter 8, pgs. 154–155, 1995).

Obesity can contribute to health-related problems in the general population. Obesity in SCI, particularly morbid obesity, is more likely to contribute to health-related problems. This condition is closely tied to nutritional status and the ability to engage in physical activity or exercise. Limitations on the latter are likely to contribute significantly to the problems stemming from this secondary condition (Blackmer, J. and Marshall, S., "Obesity and Spinal Cord Injury: An Observational Study," *Spinal Cord*, 35(4), pgs. 245–247, April, 1997).

Depression is more common among persons with SCI than among the general population. There is some evidence that depression is higher among persons whose SCI is of relatively short duration compared to others who have had a longer time to

adjust (Steins, S. A., et al., "Spinal Cord Injury Rehabilitation: Individual Experience, Personal Adaptation, and Social Perspectives," *Archives of Physical Medicine and Rehabilitation*, Vol. 78, March, 1997). Proper diagnosis and treatment of depression in persons with SCI has not yet been well established (Elliott, T. R. and Frank, R. G., op. cit.). Prevention and treatment for depression and other psychosocial adjustment problems may include increasing opportunities for social interactions through community participation (Rintala, D. H., et al., "The Relationship Between the Extent of Reciprocity with Social Supporters and Measures of Depressive Symptomatology, Impairment, Disability, and Handicap in Persons with Spinal Cord Injury," *Rehabilitation Psychology*, 39(1), pgs. 15–27, 1994).

There is a linkage between maintaining the health of persons with SCI and the prevention of secondary conditions. Health maintenance activities may include, but are not limited to, following accepted medical protocols, proper diet, weight control, and exercise. Persons with SCI are increasingly realizing the importance of and seeking access to health maintenance activities (Edwards, P., "Health Promotion Through Fitness for Adolescents and Young Adults Following Spinal Cord Injury," *SCI Nursing*, 13(3), pgs. 69–73, September, 1996).

Because of the differences in exercise tolerance among different levels of SCI, one uniform exercise protocol can not be applied to all individuals. Exercise options for persons with SCI will be expanded when appropriate exercise protocols are developed for the different levels of injury (Rimmer, J. H., "Fitness and Rehabilitation Programs for Special Populations," Brown & Benchmark, Madison, WI, Chapter 7, 1994). Little is known about the synergistic effects of exercise, diet, and nutrition. Questions remain as to whether and how these lifestyle factors work together to promote health and prevent secondary conditions.

The availability and dissemination of information about this injury tends to be concentrated in speciality areas. This problem can be frustrating to newly-injured individuals and their family members. Rapidly accessing the most up-to-date clinical information can also be problematic for non-specialty health professionals.

Proposed Priority 1

The Secretary proposes to establish an RRTC on Secondary Conditions of Spinal Cord Injuries to improve general health, well-being, and community integration of persons with spinal cord injury. The RRTC shall:

(1) Investigate and evaluate interventions to prevent and treat secondary medical conditions, including but not necessarily limited to pressure ulcers, respiratory complications, UTIs, pain, and obesity;

(2) Investigate and evaluate interventions to prevent and treat depression; and

(3) Develop and evaluate exercise protocols, stress management techniques and diet and nutrition regiments.

In carrying out the purposes of the priority, the RRTC must coordinate with all other relevant SCI research activities, including the NIDRR-sponsored Model SCI Systems, those sponsored by the National Center for Medical Rehabilitation Research, the Centers for Disease Control, and NIDRR's RRTCs on Aging with A Disability, Personal Assistance Services, and Managed Care.

Proposed Priority 2: Neuromuscular Diseases

Background

Neuromuscular disease is a taxonomic category that describes diseases of the peripheral neuromuscular system, both acquired and hereditary. This category encompasses diseases such as amyotrophic lateral sclerosis, post-polio, Guillan-Barre, muscular dystrophy, myasthenia gravis, and other muscular atrophies and myopathies. NMDs affect approximately 400,000 children and adults in the United States (LaPlante, M., et al., *Disability in the United States: Prevalence and Causes*, 1992). Conditions associated with these disorders include progressive weakness, limb contractures, spine deformity, and impaired pulmonary function. Cardiac involvement and intellectual impairment occur with some NMDs. The progression of these degenerative diseases takes three stages: ambulatory, wheelchair, and prolonged survival (Bach, J. R. and Lieberman, J. S., "Rehabilitation of the Patient with Disease Affecting the Motor Unit," *Rehabilitation Medicine: Principles and Practice*, pg. 1099, 1993). Past research efforts have focused on documenting the impairment and disability profiles of neuromuscular disease as well as on mitigating the functional consequences of NMD. Functional independence and community integration continue to challenge persons with NMDs.

Among the functional independence issues that affect persons with NMD are preserving respiratory function, maintaining muscle strength, assuring good nutrition, and combating muscle fatigue. Respiratory insufficiency due to progressive muscle wasting is one of the leading causes of illness and death among persons with NMDs (Bates, D., *Respiratory Function in Disease*, pgs. 371–379, 1989). For persons with NMDs, maintaining or improving muscle strength is a major functional concern. The relationships among conditioning exercise, functional strength, and fatigue is not well understood in this population. For example, exercise has been shown to be effective in improving strength and endurance at particular points in the disease progress, but many questions remain and the optimal use of exercise across different NMD categories is not known (Brinkmann, J. R., and Ringel, S. P., "Effectiveness of Exercise in Progressive Neuromuscular Disease," *Journal of Neurological Rehabilitation*, Vol. 5, pgs. 195–199, 1991). Finally, feeding problems in patients with NMDs are frequently underestimated and poorly analyzed (Willig, T. N., et al., "Swallowing Problems in Neuromuscular Disorders," *Archives of Physical Medicine and Rehabilitation*, Vol. 75, No. 11, pgs. 1175–1181, 1994).

Persons with NMDs must maintain functional independence to maximize their ability to participate in home, work, educational, recreational, and other community activities. For instance, respiratory problems often require mechanical ventilation. Home ventilation has been shown to be useful for a growing number of patients with NMDs (Winterholler, M., et al., "Recommendation of Bavarian Muscle Centers of the German Neuromuscular Disease Society for Home Ventilation of Neuromuscular Diseases of Adult Patients," *Nervenarzt*, Vol. 68, No. 4, pgs. 351–357, 1997). Despite its technical simplicity, home ventilation leads to a number of social, medical and infrastructural problems (*Paraplegia*, Vol. 31, pgs. 93–101, 1993).

Many persons with NMDs have had limited opportunity for educational and work experiences. Research has demonstrated the "alteration of cognitive functions" in some NMD diagnoses, creating special challenges to pursuing education (Fardeau-Gautier, M. and Fardeau, M., "Socioeconomic Aspects of Neuromuscular Diseases," *Myology: Basic and Clinical*, 1994). Previous research found a significant relationship between psychosocial adjustment and unemployment for some persons with NMD (Fowler, W. M., Jr., "Employment Profiles in Neuromuscular Diseases," *American Journal of Physical Medicine & Rehabilitation*, Vol. 76, No. 1, pgs. 26–37, 1997).

In addition to issues of functional capacity and community integration, there is an emerging policy issue related to diagnosis of NMDs. Rapid development in genetic knowledge and technologies has increased the ability to test asymptomatic NMD individuals for late-onset diseases, disease susceptibilities, and carrier status. Genetic criteria may be replacing diagnostic and clinical classification systems as a method of identifying NMDs (Fowler, W. M., Jr., "Impairment and Disability Profiles of Neuromuscular Diseases," *American Journal of Physical Medicine & Rehabilitation*, Vol. 74, No. 5, pg. S61, 1995). These developments raise ethical, legal and financial issues related to appropriate timing for tests and communication of results ("American Society of Human Genetics and American College of Medical Genetics Report—Points to Consider: Ethical, Legal, and Psychosocial Implications of Genetic Testing in Children and Adolescents," *American Journal of Human Genetics*, Vol. 57, pgs. 1233–1241, 1995).

Because of the number of very rare diseases that are included in the proposed World Federation of Neurology Classifications of NMD and the low incidence and prevalence of the more well-known NMDs, the availability and dissemination of information about these diseases is problematic. This difficulty is characteristic of cases where there is both a limited amount of information and a very small audience. This problem can be frustrating to newly-diagnosed individuals and their family members. Rapidly accessing the most up-to-date clinical information can also be problematic for the non-specialist physicians, as evidenced by the well-known difficulty in diagnosing these diseases (Swash, M. and Schwartz, M. S., *Neuromuscular Diseases: A Practical Approach to Diagnosis and Management*, pg. 3, 1988).

Proposed Priority 2

The Secretary proposes to establish an RRTC on NMDs to promote the functional independence and community integration of persons with NMDs. The RRTC shall:

(1) Investigate and evaluate interventions to preserve functional capacity;

(2) Investigate and evaluate techniques for enhancing community integration;

(3) Examine the risks and benefits related to the use of genetic testing; and

(4) Establish and maintain a clearinghouse on NMDs.

In carrying out the purposes of the priority, the RRTC shall coordinate with research activities by the National Institute on Neurological Disorders and Stroke, and other related NIDRR-funded projects relevant to the priority.

Proposed Priority 3: Multiple Sclerosis

Background

Multiple sclerosis is a disease capable of producing significant disability, particularly in the young adult population. The most frequent age of onset is between 20 and 45 years, with a mean onset age of 33. The female to male ratio is nearly 2:1 and the white to non-white ratio is also nearly 2:1. The total population of individuals with MS in the United States is estimated at 250,000–350,000. The causes of MS are unknown, although autoimmune, viral, genetic, and environmental factors are considered to have potential causal significance (Smith, C. & Schapiro, R., "Neurology," *Multiple Sclerosis*, pg. 7, 1996).

Multiple Sclerosis randomly attacks the central nervous system and may manifest itself over several decades in a wide range of disabilities including, but not limited to, inability to walk, loss of bowel and bladder control, blindness, mild alteration of sensation, paralysis of limbs, impaired speech, sexual dysfunction, extreme fatigue, poor coordination, spasticity, and cognitive dysfunction. The course of MS is unpredictable. The disease may wax and wane. Significant manifestation can be brought on by heat, overwork, or a common cold and followed by return to a state with little evidence of active disease. Sometimes there are manifestations with no apparent trigger. A small group of those with the disease experience continued evolving neurological deficits. Generally, progression, severity and specific symptoms cannot be foreseen.

Various interventions may alleviate some of the manifestations. While medications may slow the disease course, there is no cure for MS. Coping and planning can be difficult and exhausting for those who make continual adjustments in daily activity. Work schedules or family plans may be disrupted by the sudden onset of fatigue. Driving and independent activity may be difficult due to MS-related impairments. Bladder difficulties may cause a person to avoid activities.

Maintaining healthy lifestyle habits can assist persons with MS to maintain maximum function despite the disease. Exercise can strengthen muscles when possible or can help maintain muscle tone for those that are affected, although the potential for overexercise must be understood. Adequate rest is critical for persons with MS and relaxation techniques can be aids as well (Chan, A., "Physical Therapy," *Multiple Sclerosis*, pg. 87, 1996). Various diets have been suggested, as have vitamin and nutritional supplements. However, the evidence supporting the value of those measures is inconclusive. Alcohol or substance abuse can be problems for persons with the disease whose neurological deficits have caused decreased tolerance. Any substance that places extra strain on the already-impaired nervous system must be used with extreme caution. Drug interactions can be a danger if the person is on prescribed medication (Lechtenberg, R., *Multiple Sclerosis Fact Book*, pg. 171, 1989).

It is difficult to assess the employment status of persons with MS. This is due in part to the nature of the disease and its variable impact on individuals' ability to work. Information on the employment status of persons with MS may be available through a secondary analysis of databases such as the 1994–95 National Health Interview Survey Disability Supplement. Persons with MS may require unique work accommodations such as sustained cooler environments, rest breaks, and flexible work schedules.

Rehabilitation techniques are available to assist the person with MS in daily life, including at the workplace. Medications can be effective for treating fatigue, bladder, bowel, or sexual difficulties. Physical therapists commonly recommend mobility aids and devices to help with visual impairments or difficulties using the hands. At times, as when mobility impairments occur, there may be hesitation or unwillingness on the part of the person with MS, physicians, or health care coverage providers, to use assistive technologies, believing that the problem will go away (Iezzoni, L., "When Walking Fails," *The Journal of the American Medical Association*, Vol. 276, No. 19, pg. 1609, 1996).

While the life expectancy for persons with MS is nearly identical to that of healthy individuals, various manifestations of MS can be expected over the course of decades. As a person with MS ages, depression, cognitive dysfunction, and other emotional or physical health problems may play increasingly larger roles. Treatment and rehabilitation modalities may be different if a manifestation is caused by aging, as opposed to MS.

NIDRR is particularly interested in receiving public comments on whether this RRTC should pursue two research questions related to rehabilitation interventions: (1) the extent to which women with MS require unique rehabilitation interventions, and (2) whether alternative models of providing rehabilitation interventions may be needed for persons of different cultural, economic, minority, ethnic or geographic backgrounds.

Proposed Priority 3

The Secretary proposes to establish an RRTC on MS to promote the health and wellness, and improve the functioning and employment status of persons with MS. The RRTC shall:

(1) Identify, develop, and evaluate health promotion and wellness activities, including those that address substance abuse.

(2) Identify, develop, and evaluate rehabilitation techniques to manage and improve functioning, including those that address coping with the uncertain course of MS and depression, stress, and cognitive dysfunction;

(3) Investigate the employment status of persons with MS;

(4) Identify, develop, and evaluate workplace accommodations; and

(5) Investigate the interaction between aging and MS.

In carrying out the purposes of the priority, the RRTC shall collaborate with the Consortium of MS Centers and the RRTC on Substance Abuse.

Proposed Priority 4: Community Integration for Persons with Traumatic Brain Injury

Background

Each year approximately 1.9 million Americans experience traumatic brain injuries (Collins, J. F., "Types of Injuries by Selected Characteristics: US 1985–1987," National Center for Health Statistics, *Vital Health Stat*, 10 (175), 1990). Brain injury is frequently a childhood injury, and incidence is highest among youth and young adults, particularly males (NIDRR Rehabilitation Research and Training Center, University of California, San Francisco, *Disability Statistics Abstract*, No. 14, November, 1995). The number of people surviving brain injuries has increased significantly over the last 25 years due to improved emergency medical services and advances in acute care.

Community integration is the primary aim of rehabilitation after serious trauma. For the purposes of this priority, community integration is defined as integration into home-like settings, social networks, and productive activities such as employment, school, or volunteer work (Willer, B., et al., "Assessment of Community Integration for Traumatic Brain Injury," *Journal of Head Trauma Rehabilitation*, Vol. 8, No. 2, pgs. 75–87, June, 1993). Living independently, pursuing avocational activities, volunteering, educational endeavors, employment, and participation in social activities outside the home are important community integration outcomes.

Sequelae to TBI include problems of cognition resulting in memory and learning difficulties and personality and behavior problems, including irritability and impulsivity, that impact on community integration outcomes. In addition, individuals with severe TBI often experience fatigue, limited attention span, information processing problems, visual perception difficulties, and depression. Furthermore, alcohol use at the time of injury, as well as pre- or post-injury heavy drinking, has been related to worse post-injury outcomes (Kreutzer, J. S., "A Prospective Longitudinal Multi-center Analysis of Alcohol Use Patterns Among Persons with TBI," *The Journal of Head Trauma Rehabilitation*, Vol. 11, No. 5, pg. 58, October, 1996).

Persons who experience the physical and mental consequences of TBI require a variety of programs and services to be successfully reintegrated in the community. These resources may include schools, libraries, recreation centers, health facilities, drug treatment programs, housing, transportation, and police and law enforcement services. Often these programs and services are not fully accessible to this population because their needs are not known or recognized.

The sequelae of TBI contribute to significant difficulties obtaining and retaining employment post-injury. Because of the demographics of head injury, some of the survivors may not have worked prior to the injury. Those who were employed face challenges in seeking to return to work. Despite increasing emphasis on vocational rehabilitation, investigation of long-term outcomes has indicated unemployment rates ranging from 34 percent to 75 percent at two to 15 years after injury. A recent longitudinal investigation revealed unemployment rates for rehabilitation patients as high as 76 percent during the first four years after injury (Sander, A. M., "Neurobehavioral Functioning, Substance Abuse, and Employment after Brain Injury: Implications for Vocational Rehabilitation," *Journal of Head Trauma Rehabilitation*, 12 (5), pgs. 28–41, 1997). Past research has examined the efficacy of supported employment and other strategies for improving employment outcomes for individuals with TBI. Successful strategies consider the structure and culture of the workplace in linking these to the needs of individuals with TBI to succeed in employment settings (Wehman, P. H., et al., "Return to Work for Persons with Severe Traumatic Brain Injury: A Data-based Approach to Program Development," *Journal of Head Trauma Rehabilitation*, 10 (1), pgs. 27–39, 1995).

The prevalence of TBI in children is documented by the National Pediatric Trauma Registry located at the RRTC on Rehabilitation and Childhood Trauma. Most injured children are one to 14 years of age. Children with disabilities face numerous problems transitioning from rehabilitation to educational settings. Educators may be unaware of the impact of TBIs on school performance and uncertain of effective educational programming. Establishing a stronger link between hospitals and school professionals is an essential step toward improving educational and functional outcomes (Farmer, J. E., et al., "Educational Outcomes in Children with Disabilities; Linking Hospitals and Schools," *NeuroRehabilitation*, Vol. 5, No. 1, pgs. 49–56, 1995).

Families of people with TBI exhibit high levels of distress, depression and anxiety. As a result, they may experience isolation and diminished social interaction and diminished ability to make decisions regarding medical, ethical, and financial issues. Even 15 years post-injury, family members of persons with TBI report tension, friction, and distress (Gervasio, A. H., "Kinship and Family Members" Psychological Distress after TBI: A Large Sample Study," *The Journal of Head Trauma Rehabilitation*, 12(3), pgs. 14–16, 1997).

Because of improved treatment and increased survival rates, many more people with TBI are living to middle age and beyond. For people with TBI who live with their families, both their aging and that of the caregivers may create problems. This is especially true for those people who live with their parents following head injury. Shortages of affordable and accessible housing, personal assistance services, and respite care may pose threats to community integration and require additional community resources.

Proposed Priority 4

The Secretary proposes to establish an RRTC on Community Integration of Persons with TBI to assist families to cope, and to improve community resources, employment outcomes, and educational programming. The RRTC shall:

(1) Identify and evaluate model programs and services that support community integration;

(2) Identify, develop, and evaluate strategies to improve employment outcomes, including obtaining initial employment and successful return-to-work;

(3) Identify and evaluate effective practices that link rehabilitation and education professionals to facilitate identification and appropriate educational programming for children;

(4) Identify and evaluate techniques to assist families to cope; and

(5) Investigate the impact of aging on community integration;

In carrying out the purposes of the priority, the RRTC must:

- Coordinate research efforts with the TBI Model Systems projects, other NIDRR TBI projects and centers, and the RRTC on Substance Abuse; and
- Address the needs of persons with TBI who are substance abusers.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 202 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13—350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Proposed Priority 5: Improving Research Information Dissemination and Utilization to Promote Independent Living

Background

One of the persistent concerns in the area of knowledge dissemination and utilization is the gap between information generated from disability and rehabilitation research and its utilization by persons with disabilities in their efforts to live independently in the community. Persons with disabilities can draw from a wealth of information derived from research, such as universal design concepts, consumer-directed personal assistance strategies, the availability of assistive technology, peer counseling techniques, housing options, and self-care techniques. This information can help provide persons with disabilities with the knowledge to exercise control over their lives, reduce their reliance on others in making decisions, perform everyday activities, and participate more fully in community life.

To generate baseline data on information dissemination related to independent living, the National Center for the Dissemination of Disability Research (NCDDR) conducted a nationwide survey asking persons with disabilities about their perceptions of the usefulness of research-based disability information, their knowledge of where to obtain that information, and their current modes of receiving information. Seventy-two percent of survey respondents affirmed that disability research information is useful to them. Twenty percent reported that they do not know if it is useful to them, and eight percent responded that the information is not useful. The survey also asked the respondents if they knew how to find information from disability research. Forty-eight percent responded they did, and 32 percent responded that they did not know how to find the information (NCDDR, "Research Exchange," Vol. 2, No. 4, 1997).

Even if research information is in the public domain, it may not be accessible to persons with disabilities. Highly technical language, obscure journal articles, and under-publicized or prohibitively expensive conference presentations exemplify some of the barriers that persons with disabilities face in their efforts to access research information. There may also be physical barriers when research information is not available in alternate formats (e.g., braille, large print, tape recording) for persons with sensory disabilities.

NIDRR has funded information dissemination and utilization efforts related to living independently in the community, using a variety of techniques, media, and dissemination strategies. NIDRR also disseminates information through national information databases and dissemination programs, such as the National Rehabilitation Information Center (NARIC) and ABLEDATA, a database that contains information on more than 22,000 assistive devices. Many Centers for Independent Living (CILs) provide information and referral activities both in person, in print, and electronically. In addition, there are fully established consumer-run publications, television networks, electronic bulletin boards, and world wide web pages that provide independent living information.

The Internet is a primary medium for the dissemination of disability information. The Internet allows this information to be available to persons with disabilities in daily life settings, rather than requiring travel to workshops and conferences. The NCDDR survey showed that over 50 percent of the persons with disabilities living independently indicated that they have never used the Internet to obtain information, 25 percent reported using it often or very often.

Although many persons with disabilities do not currently own computers or contract with Internet provider services themselves, many institutions, such as public libraries, churches, or places other than employment or educational sites are increasingly providing alternate points of free access. Also, the decreasing costs of web TV and other accessing equipment are expected to make this resource more universally available in the future.

Proposed Priority 5

The Secretary proposes to establish a DRRP on Improving Research Information Dissemination and Utilization to Promote Independent Living. The DRRP shall:

(1) Using the NCDDR survey results as baseline information, further assess the use of research information to promote independent living;

(2) Identify the barriers to increased use of research information by persons with disabilities;

(3) Based on the input of persons with disabilities, identify research that promotes independent living;

(4) Develop and implement strategies to disseminate research information to promote independent living, using a variety of innovative methods and media;

(5) Develop and disseminate strategies that other information providers, such as CILs, NIDRR-funded grantees, and consumer publications, can use to increase the utilization of research to promote independent living, and provide technical assistance to those entities to increase the dissemination and utilization of this information; and

(6) Develop and implement strategies to assist persons with disabilities to increase their use of existing and future information technologies such as the Internet.

In carrying out the purposes of the priority, the DRRP must:

- Include information and activities that feature concepts of consumer choice, independence, personal autonomy and self-direction; and
- Coordinate activities with the NCDDR.

Proposed Priority 6: Supported Living and Choice for Persons With Mental Retardation

Background

Personal autonomy and choice are primary rehabilitation goals for persons with mental retardation. Supported living has emerged as a viable approach toward achieving these goals. In order for the potential impact of supported living to be realized, information on supported living must be provided to a wide array of parties involved with promoting choice and community living for persons with mental retardation.

Based on the National Health Interview Survey on adults living in the general household population and surveys of people in formal residential support programs, about .78 percent or 1,250,000 of the adult population of the U.S. can be identified as being limited in a major life activity and having a primary or secondary condition of mental retardation.

NIDRR has supported research and demonstrations in the area of mental retardation and developmental disabilities since 1965. Throughout this time, researchers have addressed issues involving deinstitutionalization, mainstreaming, transition from school to work, supported employment and the overall supports persons with mental retardation and developmental disabilities need to live as independently as possible in the community.

Supported living refers to the development and provision of assistance, including natural supports, to enable persons with mental retardation to live in settings and participate in activities that contribute to their personal goals and quality of life (Abery, B. H., et al., "Research on Community Integration of Persons with Mental Retardation and Related Conditions: Current Knowledge, Emerging Challenges and Recommended Future Directions," Prepared for the NIDRR Long Range Planning Process, pg. 4, May, 1996). Supported living intends to increase control and choice of services and supports that persons with mental retardation receive.

Access to community services and community supports varies greatly by State. Information on trends in supported community living and innovative models of successful community living can assist States to initiate and improve effective services. In addition to parents and family members, direct service personnel such as group home staff, foster family members and job coaches, are primary sources of support and services for persons with mental retardation living in the community.

In the past decade, there has been growing concern about recruitment and retention of direct service personnel. Research has shown high turnover rates of between 55 percent and 73 percent annually (Braddock, D., & Mitchell, D., "Residential Services and Developmental Disabilities in the United States: A National Survey of Staff Compensation, Turnover, and Related Issues," American Association on Mental Retardation, Washington, DC, 1992). In order to attract and retain competent direct service personnel, service providers must provide staff with information and training on effective and innovative approaches to promote independence. Agency trainers and managers require information about effective training techniques that teach support providers how to encourage self advocacy and choice making to persons with mental retardation. In addition, public awareness activities that educate both the public and policymakers on the importance of direct service workers can enhance the image of community workers and the individuals with developmental disabilities they assist (Larson, S. A., et al., "Residential Services Personnel: Recruitment, Training and Retention," *Challenges for a Service System in Transition*, pg. 321, 1994).

Recent developments in two major Federal programs significantly affect the nature and extent of community-based services for persons with mental retardation: the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (welfare reform) and Medicaid. Recent welfare reforms provide States with increased flexibility in the delivery of community-based public services. The Medicaid program is the primary source of payment for both health care and community-based long term care services for persons with mental retardation and their families. Providing training and technical assistance on supported living to policymakers and services providers involved in the administration of welfare and Medicaid programs will enable them to take advantage of new opportunities to shape integrated and flexible programs for persons with mental retardation.

Proposed Priority 6

The Secretary proposes to establish a Dissemination, Training, and Technical Assistance Project to promote supported living and choice for persons with mental retardation. The Project shall:

(1) Identify and synthesize research findings on state-of-the-art models of supported living;

(2) Develop and disseminate materials based on the synthesis and provide training and technical assistance to consumers, families, service providers, State policy makers and State agencies; and

(3) Develop and disseminate training materials for direct service staff with input from consumers and family members.

In carrying out the purposes of the priority, the Project shall disseminate materials and coordinate training activities with relevant units of the Department of Health and Human Services, State public and private managed care representatives, individuals with disabilities and other NIDRR Centers addressing related issues.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR parts 350 and 353.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects, and 84.133B, Rehabilitation Research and Training Centers)

Dated: December 16, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–33259 Filed 12–19–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
December 22, 1997

Part V

Department of the Treasury
Internal Revenue Service
26 CFR Part 54

Department of Labor
Pension Welfare Benefits Administration
29 CFR Part 2590

Department of Health and Human Services
Health Care Financing Administration
45 CFR Part 146

Mental Health Parity; Interim Rules
HIPAA Mental Health Parity Act; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[T.D. 8741]

RIN 1545–AV53

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2590

RIN 1210–AA62

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

45 CFR Part 146

RIN 0938–AI05

Interim Rules for Mental Health Parity

AGENCIES: Internal Revenue Service, Department of the Treasury; Pension and Welfare Benefits Administration, Department of Labor; Health Care Financing Administration, Department of Health and Human Services.

ACTION: Interim rules with request for comments.

SUMMARY: This document contains interim rules governing parity between medical/surgical benefits and mental health benefits in group health plans and health insurance coverage offered by issuers in connection with a group health plan. The rules contained in this document implement changes made to certain provisions of the Internal Revenue Code of 1986 (Code), the Employee Retirement Income Security Act of 1974 (ERISA or Act), and the Public Health Service Act (PHS Act) enacted as part of the Mental Health Parity Act of 1996 (MHPA) and the Taxpayer Relief Act of 1997. Interested persons are invited to submit comments on the interim rules for consideration by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (Departments) in developing final rules. The rules contained in this document are being adopted on an interim basis to ensure that sponsors and administrators of group health plans, participants and beneficiaries, States, and issuers of group health insurance coverage have timely guidance concerning compliance with the requirements of MHPA.

DATES: *Effective date.* The interim rules are effective January 1, 1998.

Applicability dates. The requirements of MHPA and the interim rules apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan for plan years beginning on or after January 1, 1998. MHPA includes a sunset provision under which the MHPA requirements do not apply to benefits for services furnished on or after September 30, 2001.

Information collection. Affected parties are not required to comply with the information collection requirements in these interim rules until the Departments publish in the **Federal Register** the control numbers assigned to these information collection requirements by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995. The Departments have submitted a copy of this rule to OMB for its review of the information collections. Interested persons are invited to send comments regarding these burdens or any other aspect of these collections of information on or before February 20, 1998.

Comments. Written comments on these interim rules are invited and must be received by the Departments on or before March 23, 1998.

ADDRESSES: Comments on the information collection requirements should be sent directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: HCFA Desk Officer.

Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850; Attention: John Burke

Written comments on other aspects of the interim rules should be submitted with a signed original and three copies (except for electronic submissions sent to the Internal Revenue Service (IRS)) to any of the addresses specified below. For convenience, comments may be addressed to any of the Departments. Comments addressed to any Department will be shared with the other Departments.

Comments to the IRS can be addressed to: CC:DOM:CORP:R (REG–109704–97), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

In the alternative, comments may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–109704–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Alternatively, taxpayers may transmit comments electronically via the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

Comments to the Department of Labor can be addressed to: U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5669, Washington, DC 20210; *Attention:* MHPA Comments.

Alternatively, comments may be hand-delivered between the hours of 9 a.m. and 5 p.m. to the same address.

Comments to the Department of Health and Human Services can be addressed to: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2891–IFC, P.O. Box 26688, Baltimore, MD 21207.

In the alternative, comments may be hand-delivered between the hours of 8:30 a.m. and 5:00 p.m. to either:

Room 309–G, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850

All submissions to the Internal Revenue Service will be open to public inspection and copying in Room 1621, 1111 Constitution Avenue, NW, Washington, DC from 9:00 a.m. to 4:00 p.m.

All submissions to the Department of Labor will be open to public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m.

All submissions to the Department of Health and Human Services will be open to public inspection and copying in Room 309–G of the Department of Health and Human Services offices at 200 Independence Avenue, SW, Washington, DC from 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Terese Klitenic, Health Care Financing Administration, Department of Health and Human Services, at (410) 786–1565; Mark Connor, Pension and Welfare Benefits Administration, Department of Labor, at (202) 219–4377; or Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622–4695.

Customer service information. Individuals interested in obtaining a copy of the Department of Labor's booklet entitled "Questions and Answers: Recent Changes in Health Care Law," which includes information on MHPA, may call the following toll-free number: 1–800–998–7542.

SUPPLEMENTARY INFORMATION:

A. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104–204, 110 Stat. 2944). MHPA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide for parity in the application of certain dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105–34).

1. Regulatory Responsibility

The provisions of MHPA are set forth in Chapter 100 of Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Title XXVII of the PHS Act.[1] The Secretaries of the Treasury, Labor, and Health and Human Services share jurisdiction over the MHPA provisions. These provisions are substantially similar, except as follows:

- The MHPA provisions in the Code generally apply to all group health plans other than governmental plans, but they do not apply to health insurance issuers. A taxpayer that fails to comply with these provisions may be subject to an excise tax under section 4980D of the Code.
- The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with such group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under State law.
- The MHPA provisions in the PHS Act generally apply to health insurance issuers that offer health insurance coverage in connection with group health plans and to certain State and local governmental plans. States, in the first instance, enforce the PHS Act with respect to issuers. Only if a State does not substantially enforce any provisions under its insurance laws will the Department of Health and Human Services enforce the provisions, through the imposition of civil money penalties. Moreover, no enforcement action may be taken by the Secretary of Health and Human Services against any group health plan except certain State and local governmental plans.

The interim rules being issued today by the Secretaries of the Treasury, Labor, and Health and Human Services have been developed on a coordinated basis by the Departments. In addition, these interim rules take into account comments received by the Departments in response to the request for public comments on MHPA published in the **Federal Register** on June 26, 1997 (62 FR 34604). Except to the extent needed to reflect the statutory differences described above, the interim rules of each Department are substantively identical. However, there are certain non-substantive differences. The interim rules reflect certain stylistic differences in language and structure to conform to conventions used by a particular Department. These differences have been minimized and any differences in wording are not intended to create any substantive difference.

2. Preemption of State Laws

The McCarran-Ferguson Act of 1945 (Pub. L. 79–15) exempts the business of insurance from federal antitrust regulation to the extent that it is regulated by the States and indicates that no federal law should be interpreted as overriding State insurance regulation unless it does so explicitly. Section 514(a) of ERISA preempts State laws relating to employee benefit plans (including group health plans). Section 731 of ERISA and section 2723 of the PHS Act provide that Part 7 of Subtitle B of Title I of ERISA and Part A of Title XXVII of the PHS Act (including the MHPA provisions) do not in any way affect or modify section 514 of ERISA with respect to group health plans.

Section 514(b)(2) of ERISA saves from preemption any State law that regulates insurance. However, section 731(a) of ERISA and section 2723(a) of the PHS Act preempt State insurance laws relating to health insurance issuers in connection with group health insurance coverage to the extent such laws "prevent the application of" Part 7 of Subtitle B of Title I of ERISA or Part A of Title XXVII of the PHS Act, including the MHPA provisions. (There is no corresponding provision in the Code.) In this regard, the conference report to HIPAA states that the conferees generally intended the narrowest preemption of State laws with regard to health insurance issuers (not group health plans) with respect to the provisions of Part 7 of Subtitle B of Title I of ERISA and Part A of Title XXVII of the PHS Act.[2] Consequently, the conference report to HIPAA states that State laws with regard to health insurance issuers that are broader than federal requirements in certain areas would not "prevent the application of" the provisions of Part 7 of Subtitle B of Title I of ERISA or Part A of Title XXVII of the PHS Act. Further, the conference report to MHPA states that the application of these preemption provisions should permit the operation of any State law or provision that requires more favorable treatment of mental health benefits under health insurance coverage than that required under the MHPA provisions.

Thus, generally, a State law that requires more favorable treatment of mental health benefits under health insurance coverage offered by issuers would not be preempted by the provisions of MHPA and the interim rules.

B. Overview of MHPA and the Interim Rules

The MHPA provisions are set forth in section 9812 of the Code, section 712 of ERISA, and section 2705 of the PHS Act. MHPA and the interim rules apply to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits.

The MHPA provisions provide for parity in the application of aggregate lifetime dollar limits, and annual dollar limits, between mental health benefits and medical/surgical benefits. If a group health plan offers two or more benefit packages under the plan, the

[1] Chapter 100 of Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Title XXVII of the PHS Act were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191.

[2] However, the preemption is broader for the statutory requirements of section 701 of ERISA and section 2701 of the PHS Act that limit the application of preexisting condition exclusions. Under these broader provisions, State laws cannot "differ" from the preexisting condition exclusion requirements of section 701 of ERISA or section 2701 of the PHS Act except as specifically permitted by section 731(b)(2) of ERISA and section 2723(b)(2) of the PHS Act. These provisions permit a State to impose on health insurance issuers certain stricter limitations relating to preexisting condition exclusions.

requirements of MHPA and the interim rules apply separately to each package. The interim rules make clear that the MHPA requirements apply regardless of whether the mental health benefits are administered separately under the plan. In addition, the interim rules make clear that the MHPA requirements in ERISA and the PHS Act apply both to group health plans and to health insurance issuers offering coverage in connection with a group health plan.

MHPA and the interim rules do not require a group health plan (or health insurance coverage offered in connection with a group health plan) to provide mental health benefits. In addition, MHPA and the interim rules do not affect the terms and conditions (including cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requirements that patients or providers obtain prior authorization for treatment, and requirements relating to primary care physicians' referrals for treatment) relating to the amount, duration, or scope of mental health benefits under a plan (or coverage) except as specifically provided in regard to parity of aggregate lifetime dollar limits and annual dollar limits.[3]

1. Aggregate Lifetime Limits and Annual Limits

Under MHPA and the interim rules, a group health plan (or health insurance coverage offered in connection with a group health plan) providing both medical/surgical benefits and mental health benefits may comply with the MHPA parity requirements in any of the following general ways:

- The plan (or coverage) may comply by not including any aggregate lifetime dollar limit or annual dollar limit on mental health benefits.
- The plan (or coverage) may comply by imposing a single aggregate lifetime or annual dollar limit on both medical/surgical benefits and mental health benefits in a way that does not distinguish between the two.
- The plan (or coverage) may comply by imposing an aggregate lifetime dollar limit or annual dollar limit on mental health benefits that is not less than the aggregate lifetime dollar limit or annual dollar limit on medical/surgical benefits.
- In the case of a plan (or coverage) under which aggregate lifetime dollar limits or annual dollar limits differ for categories of medical/surgical benefits, the plan (or coverage) may comply by calculating a weighted average aggregate lifetime dollar limit or weighted average annual dollar limit for mental health benefits. The weighted average must be based on a formula in the interim rules that takes into account the limits on different categories of medical/surgical benefits.

In addition, under MHPA and the interim rules, benefits for treatment of substance abuse or chemical dependency may not be counted in applying an aggregate lifetime or annual dollar limit that applies separately to mental health benefits.

2. Exemptions from the Requirements of MHPA

(a) Small Employer Exemption

The parity requirements under MHPA and the interim rules do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term "small employer" is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.[4]

For purposes of the small employer exemption, all persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Code (26 U.S.C. 414) are treated as one employer. In addition, if an employer was not in existence throughout the preceding calendar year, whether the employer is a small employer is determined on the average number of employees the employer reasonably expects to employ on business days during the current calendar year. Finally, any reference to an employer in the small employer exemption includes a reference to a predecessor of the employer.

(b) Increased Cost Exemption

The second exemption from the MHPA requirements applies to group health plans (or health insurance coverage offered in connection with a group health plan) if the application of the MHPA parity requirements described in paragraph (b)(1)(i)[5] results in an increase in the cost under the plan (or coverage) of at least one percent. This exemption is available only if the requirements of paragraph (f) are met. If a plan offers more than one benefit package, the exemption is applied separately to each benefit package. Except as provided in the transition period described in paragraph (h), a plan must implement the parity requirements for the first plan year beginning on or after January 1, 1998, and must continue to comply with the parity requirements until September 30, 2001 (the sunset date in paragraph (i)) unless the plan satisfies the exemption described in paragraph (f). However, the exemption is not effective until 30 days after the notice requirements in paragraph (f)(3) are satisfied.

The interim rules, in paragraph (f)(2), describe the ratio of two terms used to determine if a plan (or coverage) has experienced a cost increase of one percent or more. The first term is the total cost incurred under parity (including both mental health costs and medical/surgical costs). The second term is the total cost incurred under parity reduced by the costs required solely to comply with parity. Costs required solely to comply with parity include mental health claims that would have been denied absent amendments required to comply with parity, the administrative costs related to those claims, and other administrative costs attributable to complying with the parity requirements. Premium payments are not considered in this calculation. The ratio is expressed by the following formula:

$$\frac{IE}{IE-(CE+AE)} \geq 1.01000$$

IE represents the incurred expenditures during the base period. *CE* represents the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with the parity requirements of paragraph (b)(1)(i). *AE* represents administrative costs related to claims in *CE* and other administrative costs attributable to complying with the parity requirements of paragraph (b)(1)(i).

Examples illustrate how the rule is applied in the case of a self-funded plan, a fully insured plan, and a partially insured plan. Moreover, in the case of a partially insured plan in which the partially insured portion is pooled for rating purposes, the costs of the pool should be allocated proportionally among the pool members by reasonable methods, including proportional enrollment. Additional provisions in paragraph (f) describe the baseline for determining those costs that are attributable solely to compliance with the parity requirements, the base period used to calculate whether a plan may claim the exemption, and how long the exemption applies once it is claimed. The base period must begin on the first day in any plan year that the plan complies with the requirements of paragraph (b)(1)(i) of this section and must extend for a period of at least six consecutive calendar months. However, in no event may the base period begin prior to September 26, 1996 (the date of enactment of the Mental Health Parity Act (Pub. L. 104–204, 110 Stat. 2944)).

Before a group health plan may claim the one-percent increased cost exemption, it must furnish participants and beneficiaries with a notice of the plan's exemption from the parity requirements that includes the information described in paragraph (f)(3)(i). A plan may satisfy this requirement by providing participants and beneficiaries with a summary of material reductions in covered services or benefits, under 29 CFR 2520.104b–3(d), if it includes all the information required by paragraph (f)(3)(i). However, this exemption under MHPA is not effective until at least 30 days after the notice is sent to the participants and beneficiaries and the appropriate federal agency even if the notice is incorporated into a summary of material reductions in covered services or benefits.

A group health plan that is not subject to Part 7 of Subtitle B of Title I of ERISA, and a plan subject to Part 7 of Subtitle B of Title I of ERISA that chooses not to incorporate the information in paragraph (f)(3)(i) into a summary of material reductions in covered services or benefits (which must be furnished to participants and beneficiaries and the appropriate federal agency), may use the following model to satisfy the notice requirement under paragraph (f)(3) of the interim rules:

BILLING CODE 4830-01-P; 4510-29-P; 4120-01-P

[3] In response to the Departments' request for public comments on MHPA published in the Federal Register (62 FR 34604), the Equal Employment Opportunity Commission (EEOC) noted that the Americans with Disabilities Act (ADA) prohibits disability-based distinctions (including such distinctions relating to the provision of mental health benefits) in employer-provided health insurance plans unless the plan otherwise falls within the protections of section 501(c) of the ADA. The ADA is within the regulatory jurisdiction of the EEOC.

[4] Section 9831(a) of the Code, section 732(a) of ERISA, and section 2721(a) of the PHS Act provide an exception that applies under the MHPA provisions as well as under provisions added by HIPAA and the Newborns' and Mothers' Health Protection Act of 1996. The exception applies to any group health plan (and health insurance coverage offered in connection with a group health plan) for any plan year if, on the first day of the plan year, the plan has fewer than 2 participants who are current employees.

[5] Any reference to a particular paragraph in this preamble to the interim rules is a reference to the corresponding paragraphs in each of the Departments' interim rules.

NOTICE OF GROUP HEALTH PLAN'S EXEMPTION FROM THE MENTAL HEALTH PARITY ACT

• DESCRIPTION OF THE ONE PERCENT INCREASED COST EXEMPTION — This notice is required to be provided to you under the requirements of the Mental Health Parity Act of 1996 (MHPA) because the group health plan identified in Line 1 below is claiming the one percent increased cost exemption from the requirements of MHPA. Under MHPA, a group health plan offering both medical/surgical and mental health benefits generally can no longer set annual or aggregate lifetime dollar limits on mental health benefits that are lower than any such dollar limits for medical/surgical benefits. In addition, a plan that does not impose an annual or aggregate lifetime dollar limit on medical/surgical benefits generally may not impose such a limit on mental health benefits. However, a group health plan can claim an exemption from these requirements if the plan's costs increase one percent or more due to the application of MHPA's requirements.

This notice is to inform you that the group health plan identified in Line 1 below is claiming the exemption from the requirements of MHPA. The exemption is effective as of the date identified in Line 4 below. Since benefits under your group health plan may change as of the date identified in Line 4 it is important that you contact your plan administrator or the plan representative identified in Line 5 below to see how your benefits may be affected as a result of your group health plan's election of this exemption from the requirements of MHPA.

Upon submission of this notice by you (or your representative) to the plan administrator or the person identified in Line 5 below, the plan will provide you or your representative, free of charge, a summary of the information upon which the plan's exemption is based.

1. Name of the group health plan and the plan number (PN): _____

2. Name, address, and telephone number of plan administrator responsible for providing this notice:

_____

_____

_____

3. For single-employer plans, the name, address, telephone number, (if different from Line 2) and employer identification number (EIN) of the employer sponsoring the group health plan:

_____

_____

_____

4. Effective date of the exemption (at least 30 days after the notices are sent): _____

5. For further information, call: _____

BILLING CODE 4830-01-C; 4510-29-C; 4120-01-C

To claim the one-percent increased cost exemption, a group health plan that is a church plan (as defined in section 414(e) of the Code) also must furnish to the Department of the Treasury a copy of the notice sent to participants and beneficiaries that satisfies the requirements of paragraph (f)(3)(i). To claim the one percent increased cost exemption, a group health plan subject to Part 7 of Subtitle B of Title I of ERISA also must furnish to the Department of Labor a copy of the notice sent to participants and beneficiaries that satisfies the requirements of paragraph (f)(3)(i). To claim the one percent increased cost exemption, a group health plan that is a nonfederal governmental plan also must furnish to the Department of Health and Human Services a copy of the notice sent to participants and beneficiaries that satisfies the requirements of paragraph (f)(3)(i). In all cases, the exemption is not effective until 30 days after notice has been sent both to participants and beneficiaries and to the appropriate federal agency. Any notice submitted to the Department of Labor or Health and Human Services will be available for public inspection.

The Secretaries have designated the following addresses for delivery of these notices:

For notices to the Department of the Treasury, church plans should mail the notice to: Office of the Assistant Commissioner, Examination, Examination Programs CP:EX:E, 1111 Constitution Avenue, NW., Washington, DC 20224; Attention: MHPA one-percent cost exemption notice.

For notices to the Department of Labor, plans should mail the notice to: Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: MHPA one-percent cost exemption notice.

For notices to the Department of Health and Human Services, plans should mail the notice to: Health Care Financing Administration, 7500 Security Boulevard, Baltimore, MD 21244–1850; Attention: Insurance Standards: Exemptions.

Finally, to claim the one percent increased cost exemption, a plan (or issuer) must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information described in paragraph (f)(4). An individual who is not a participant or beneficiary and who presents a notice described in paragraph (f)(3)(i) is considered to be a representative. For this purpose, individually identifiable information in the notice may be redacted. The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with parity, and the administrative expenses attributable to complying with the parity requirements. In no event should a summary of information include individually identifiable information.

Civil money penalties as described in regulations at 45 CFR 146.184(d) apply to an issuer or nonfederal governmental plan that fails to satisfy the requirements of paragraph (f).

3. MHPA's Effective Date and Sunset Provision

The MHPA provisions are generally effective for group health plans (and health insurance issuers offering health insurance coverage in connection with a group health plan) for plan years beginning on or after January 1, 1998. MHPA includes a sunset provision under which the MHPA requirements do not apply to benefits for services furnished on or after September 30, 2001.

However, for requirements of this section other than the one-percent increased cost exemption, the interim rules provide a limitation on enforcement actions in paragraph (h)(2). Under that paragraph, no enforcement action can be taken by any of the Secretaries against a group health plan (or issuer) that has sought to comply in good faith with the requirements of section 9812 of the Code, section 712 of ERISA, and section 2705 of the PHS Act with respect to a violation that occurs before the earlier of the first day of the first plan year beginning on or after April 1, 1998, or January 1, 1999. Compliance with the requirements of the interim rules is deemed to be good faith compliance with the requirements of section 9812 of the Code, section 712 of ERISA, and section 2705 of the PHS Act.

With respect to the increased cost exemption, the interim rules provide in paragraph (h)(3) a transition period for compliance with the requirements of paragraph (f). Under paragraph (h)(3), no enforcement action will be taken against a group health plan (or issuer) that is subject to the MHPA requirements prior to April 1, 1998 solely because the plan has claimed the increased cost exemption under section 9812(c)(2) of the Code, section 712(c)(2) of ERISA, or section 2705(c)(2) of the PHS Act based on assumptions inconsistent with the rules under paragraph (f) of the interim rules, provided that the plan is amended to comply with the parity requirements no later than March 31, 1998 and the plan complies with the notice requirements in paragraph (h)(3)(ii).

A group health plan satisfies this transition period notice requirement only if the plan provides notice to the applicable federal agency and posts such notice at the location(s) where documents must be made available for examination under section 104(b)(2) of ERISA and the regulations thereunder (§ 2520.104b–1(b)(3)). The notice must indicate the plan's intent to use the transition period by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event later than March 31, 1998. For a group health plan that is a church plan, the applicable federal agency is the Department of the Treasury. For a group health plan that is subject to Part 7 of Subtitle B of Title I of ERISA, the applicable federal agency is the Department of Labor. For a group health plan that is a nonfederal governmental plan, the applicable federal agency is the Department of Health and Human Services. In all cases, the notice must include the date; the name of the plan and the plan number; the name, address, and telephone number of the plan sponsor or plan administrator; the employer identification number (in the case of single-employer plans only); the individual to contact for further information; the signature of the plan administrator; and the date signed. In addition, the notice must be provided at no charge to participants and beneficiaries (or their representatives) within 15 days after receipt of a written or oral request for such notification, but in no event does the notice have to be provided before it has been sent to the applicable federal agency. For this purpose, plans may use the following model:

BILLING CODE 4830–01–P; 4510–29–P; 4210–01–P

NOTICE OF GROUP HEALTH PLAN'S USE OF TRANSITION PERIOD

*** IMPORTANT — This notice is required to be provided if a group health plan uses the transition period under the requirements of the Mental Health Parity Act (MHPA). Under MHPA, a group health plan offering both medical/surgical and mental health benefits generally can no longer set annual or aggregate lifetime dollar limits on mental health benefits that are lower than any such dollar limits for medical/surgical benefits. In addition, a plan that does not impose an annual or aggregate lifetime dollar limit on medical/surgical benefits generally may not impose such a limit on mental health benefits. However, a group health plan can claim an exemption from these requirements if the plan's costs increase one percent or more due to the application of MHPA's requirements. Under MHPA, a plan that claims the one percent increased cost exemption prior to the issuance of the MHPA interim regulations based on assumptions inconsistent with the MHPA interim regulations may delay compliance with the parity requirements of MHPA until a date no later than March 31, 1998.**

This notice is to inform you that the plan is utilizing the MHPA transition period and that the plan is delaying compliance with the parity requirements of MHPA until a time no later than March 31, 1998.

1. Name of the group health plan and the plan number (PN): _____

2. Name, address, and telephone number of plan administrator responsible for providing this notice:

_____

_____

_____

3. For single-employer plans, the name, address, telephone number, (if different from Line 2), and employer identification number (EIN) of the employer sponsoring the group health plan:

_____

_____

_____

4. For further information, call: _____

5. Signature of plan administrator: _____ Date: _____

BILLING CODE 4830–01–C; 4510–29–C; 4120–01–C

The Secretaries have designated the following addresses for delivery of the notices: For notices to the Department of the Treasury, plans should mail the notice to: Office of the Assistant Commissioner, Examination, Examination Programs CP:EX:E, 1111 Constitution Avenue, NW., Washington, DC 20224; Attention: MHPA transition period notice.

For notices to the Department of Labor, plans should mail the notice to: Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: MHPA transition period notice.

For notices to the Department of Health and Human Services, plans should mail the notice to: Health Care Financing Administration, 7500 Security Boulevard, Baltimore, MD 21244–1850; Attention: Insurance Standards: Exemptions.

C. Interim Rules and Request for Comments

Section 9833 of the Code (formerly section 9806), section 734 of ERISA (formerly section 707), and section 2792 of the PHS Act provide, in part, that the Secretaries of the Treasury, Labor, and Health and Human Services may promulgate any interim final rules as they determine are appropriate to carry out the provisions of Chapter 100 of Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Part A of Title XXVII of the PHS Act, including the MHPA provisions.

Under Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

These rules are being adopted on an interim final basis because the Secretaries have determined that without prompt guidance some members of the regulated community may not know what steps to take to comply with the MHPA requirements, which may result in an adverse impact on participants and beneficiaries with regard to their mental health benefits under group health plans and the protections provided under MHPA. Moreover, MHPA's requirements will affect the regulated community in the immediate future.

MHPA's requirements are effective for all group health plans and for health insurance issuers offering coverage in connection with such plans for plan years beginning on or after January 1, 1998. Plan administrators and sponsors, issuers, and participants and beneficiaries, will need guidance on the new statutory provisions before MHPA's effective date. As noted earlier, these interim rules take into account comments received by the Departments in response to the request for public comments on MHPA published in the **Federal Register** on June 26, 1997 (62 FR 34604). For the foregoing reasons, the Departments find that the publication of a proposed regulation, for the purpose of notice and public comment thereon, would be impracticable, unnecessary, and contrary to the public interest.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) (RFA) requires an agency to publish a regulatory flexibility analysis describing the impact of a proposed rule which the agency determines would have a significant impact on a substantial number of small entities. The RFA requires that the agency present an initial regulatory flexibility analysis and seek public comment on its analysis when the agency publishes a general notice of proposed rulemaking (NPRM) under section 553 of the Administrative Procedures Act (5 U.S.C. 553 *et seq.*) (APA). Under the RFA, small entities include small businesses, non-profit organizations and governmental agencies. For our purposes, under the RFA, States and individuals are not considered small entities. However, small employers and small group health plans are considered small entities.

Since these rules are issued as interim final rules, and not as an NPRM, a formal regulatory flexibility analysis has not been prepared. Nonetheless, in the discussion below on the rule's impact on the regulated community, the Departments present an analysis addressing many of the same issues otherwise required by the RFA, including the likely impact of the interim rule on small entities, and a discussion of regulatory alternatives considered in crafting the rule. The Departments invite interested persons to submit comments for consideration in the development of the final rules implementing the MHPA. Consistent with the RFA, the Departments encourage the public to submit comments that accomplish the stated purpose of the MHPA and minimize the impact on small entities. Specifically, we welcome comments addressing the impact of the MHPA's 1 percent cost exemption for plans and issuers that can demonstrate that implementation of the parity rules would raise their expenditures by more than one percent. We also welcome comments addressing the operation of the MHPA provision requiring that plans using differential aggregate lifetime or annual limits for various categories of benefits use a weighted average of such differential limits to calculate the overall aggregate lifetime and annual limits for the plan.

E. Executive Order 12866—Departments of Labor and Health and Human Services

The Office of Management and Budget has determined this rule to be a major rule, as well as an economically significant regulatory action under Section 3(f) of Executive Order 12866. The following analysis fulfills the requirement under the Executive Order to assess the economic impact of major and economically significant regulatory actions.

Executive Order 12866 requires agencies to assess the costs and benefits of available regulatory alternatives, and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Section 3(f) of the Executive Order 12866 requires agencies to prepare a regulatory impact analysis for any rule which is deemed a "significant regulatory action" according to specified criteria, including whether the rule may have an annual effect on the economy of $100 million or more or certain other specified effects; or whether the rules raise novel legal or policy issues arising out of the President's priorities.

This analysis was conducted by the Departments of Labor and Health and Human Services. It discusses the economic impact of the MHPA, which this rule implements, with special emphasis on the one percent cost exemption. It quantifies the number of plans and individuals who might be affected by the exemption rule, illustrating the exemption's effect in the context of other statutory MHPA provisions. It separately considers the impact of regulatory discretion exercised by the Departments in connection with this rule.

a. Overall Impact of the MHPA

In general, the MHPA may have both direct and indirect effects on group health plans, plan sponsors, and plan participants. Direct effects may include broader coverage of mental health treatments and associated increases in mental health benefit payments. Indirect effects may include the steps employers who sponsor plans may take to reduce

or offset their expenditures attributable to compliance with the MHPA, such as amending, curtailing or dropping mental health benefits or other components of compensation, as well as participants' responses to any expenditure increases that are passed to them.

Direct Effects

The most direct effect of the MHPA is broader health insurance coverage for mental health treatment. In many health plans, mental health coverage is more restrictive than medical/surgical coverage due to lower annual and/or lifetime dollar limits, more restrictive limits on visits and stays, and other plan provisions. For example, a recent survey of employee benefit plans by Hay/Huggins illustrates the differences in plan terms and lower dollar limits of mental health services and medical/surgical services. The survey reported that indemnity plans typically impose a lifetime limit of $50,000 for mental health benefits. On the other hand, medical/surgical benefits of a typical indemnity plan provide a lifetime limit of $1,000,000.

Requiring fuller coverage of mental health treatment will increase mental health benefit payments and associated plan expenditures. Some of this increase will be paid by plan sponsors, and some will be paid by participants in the form of increased premiums and/or reductions in other compensation. Aside from any increased administrative costs involved, these plan expenditure increases generally represent one side of transfer payments rather than erosion in overall social welfare. In other words, additional plan expenditures arising from the MHPA are balanced by additional benefits paid for mental health services. One result will be that some money that would have been spent on other goods or services will be spent instead on mental health services.

The direct effects of the MHPA will in turn cause other effects due to subsequent responses by affected employers (in their capacity as plans sponsors) and participants.

Indirect Effects of the MHPA

There are numerous ways in which plan sponsors affected by the MHPA might react. Some might take no action other than to remove or increase dollar limits on mental health benefits. Others might make other changes to their mental health benefits in order to reduce or offset expenditure increases from compliance with MHPA. The statute explicitly preserves plan sponsors' right to provide no mental health benefits, or to set the "terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits," except with respect to annual or lifetime dollar limits. Some plan design options would be associated with lower plan expenditure increases from compliance with the MHPA. The statute also provides an "increased cost exemption" under which the statute "shall not apply" if its application "results in an increase in the cost . . . of at least 1 percent" (ERISA Section 712(c)(2)). Plan sponsors' responses to the MHPA may lessen their expenditures associated with compliance; that is, their responses may reduce the amount of transfers arising from the MHPA.

For example, many mental health plans currently have non-dollar limits. According to the U.S. Bureau of Labor Statistics, among full-time participants at private establishments with 100 or more employees in 1993, 55 percent were subject to separate day limits for inpatient mental health treatment, and 43 percent were subject to separate visit limits for outpatient mental health treatment (U.S. Bureau of Labor Statistics, Employee Benefits in Medium and Large Private Establishments, 1993). Plans that impose non-dollar limits on mental health benefits may face smaller expenditures increases from the MHPA.

Many plans currently subject mental health benefits to separate cost sharing provisions. Among full-time participants in medium and large private establishments in 1993, 15 percent were subject to separate coinsurance rates and 4 percent were subject to separate copayment rates for inpatient mental health care, while 53 percent and 18 percent were respectively subject to separate coinsurance and copayment rates for outpatient mental health care. Cost sharing generally affects plan expenditures in two ways. First, by shifting some payments for services to participants, cost sharing directly reduces the expenditures borne by plans. Second, by increasing the price of services faced by participants, cost sharing reduces the quantity of services that participants demand. Because of both of these mechanisms, plans that have more cost sharing for mental health benefits will not be impacted as much by the MHPA as plans that have parity in cost sharing.

Many plans use HMO-style management techniques to control mental health benefit expenditures. Plans that have HMO-style mental health "carve-outs" but no mental health limits are likely to pay less for mental health benefits than fee-for-service plans with low dollar limits that are impermissible under the MHPA. For example, a FFS plan with utilization review and an annual mental health limit of $10,000 averages $6.51 per member per month, while an unlimited "carve out" plan pays $6.12, according to a Price Waterhouse LLP actuarial model developed for the Departments based on the same data as above.

There are a number of reasons why the permissible plan designs outlined here should have little negative effect on existing mental health coverage. First, the modest expenditure increases necessitated by the MHPA would be unlikely to prompt many major design changes. As noted below, approximately 10 percent of affected plans will face increased expenditures under the MHPA of at least one percent, according to the Price Waterhouse, LLP analysis conducted for the Departments. Only 4 percent of affected plans are expected to be faced with increases from the MHPA of 1.5 percent or more, according to the same analysis. Second, the largest expenditure increases and therefore the most aggressive responses will be associated with plans that have the tightest dollar caps today—that is, with plans that would have provided the most restrictive coverage anyway.

Other effects resulting from the MHPA may include plan sponsors dropping mental health coverage altogether, or dropping or curtailing other health benefits or components of compensation. Such curtailments could include shifting some of the cost of benefits to employees, for example in the form of increased participant premium contributions for health benefits. Participants, in turn, might respond to premium increases by dropping their health benefits or electing less expensive plans. As with plan sponsor amendments to mental health benefits, such responses by plan sponsors and participants are expected to be modest and/or rare, given the generally small direct effects of the MHPA on plan expenditures.

b. Review of Quantitative Estimates

The Congressional Budget Office (CBO) estimated that the MHPA's direct effect would be to increase health plan expenditures by 0.4 percent on aggregate. (See Congressional Budget Office, "CBOs Estimates of the Mental Health Parity Amendments to the VA/HUD Appropriation Bill, as Passed in the Senate," September 10, 1996.) This assumes that plan sponsors make no changes to their plans other than to raise or eliminate dollar limits on mental health benefits consistent with the MHPA's parity requirements. However, some plan sponsors may make other changes to their plans in order to reduce or offset the impact of the MHPA on their expenditures. For example, some plan sponsors might amend, curtail, or drop mental health benefits or health benefits in general. Taking into account the likely incidence of such plan sponsor responses to the MHPA, CBO estimated that the true aggregate increase in health plan expenditures attributable to the MHPA would only be 0.16 percent.

Combining these figures with those from an earlier CBO analysis, the Departments calculate that, in dollar terms, the total annual direct impact of the MHPA would be to increase aggregate health plan expenditures by $1.16 billion, not accounting for plan sponsor responses to reduce that impact. Accounting for those responses, the actual increase in annual aggregate health plan expenditures would be $464 million. It should be noted that these figures do not account for the MHPA's increased cost exemption, its exemption of firms with 50 or fewer employees, the incidence of managed care plans whose added cost under the MHPA would be smaller than those of managed fee for service plans, or for plans that are separately subject to state requirements equal or greater than the MHPA's. The Departments' estimates, reported below, incorporate these adjustments.

CBO also reports the Joint Committee on Taxation's estimate that the MHPA will reduce federal revenues by $560 million over six years. CBO explains that most of the 0.16 percent increase in plan expenditures would be shifted back to employees as lower pay, thus eroding the income and payroll tax bases. On an annual basis, the MHPA would increase expenditures for federal annuitants' health benefits by $30 million, CBO reports. Finally, the MHPA's impact on nonfederal governmental entities would amount to $50 million, while its impact on the private sector would probably exceed $100 million, according to CBO.

The CBO estimates were based on a typical fee-for-service indemnity plan with customary management techniques to control expenditures, and not on plans with other types of delivery systems, such as Health Maintenance Organizations (HMOs), Preferred Provider Organizations (PPOs), or Point-of-Service (POS) plans. In fact, plans using different delivery systems will face different expenditure increases under the MHPA. For example, HMOs, which typically contract with health care providers at discounted rates and tightly manage utilization, will face smaller increases under the MHPA.

Coopers & Lybrand (C&L) also estimated the impact of the MHPA (Ronald E. Bachman, "An Actuarial Analysis of S. 2031, The Mental Health Parity Act of 1996," prepared for the American Psychological Association. Coopers & Lybrand LLP, September 1996). C&L estimated that the MHPA would increase plan expenditures by 0.12 percent per plan on average before taking into account any responses by plan sponsors. Taking plans sponsors' responses into account and using the same response assumption as CBO, C&L estimated that plan expenditures would increase by less than 0.05 percent. In dollar terms, these increases would amount to $348 million and $139 million respectively.

Unlike CBO, C&L considered four different delivery systems: fee-for-service with standard utilization review on typical medical services, fee-for-service with specialized mental health utilization review, PPO and POS plans with specialized mental health utilization review, and HMO and carve-out mental health plans. Under each delivery system, C&L also considered a variety of annual dollar limits ranging from $10,000 to unlimited amounts, rather than assuming that all plans in the delivery system provided the same level of benefits.

The Departments performed additional quantitative analysis, generally analogous to CBO's, in the course of assessing the impact of the regulatory discretion reflected in this rule. The additional analysis suggests that the direct impact of the MHPA, not accounting for plan sponsors' responses, would be to increase annual aggregate health plans expenditures by 0.29 percent or $653 million. Under CBO's assumption regarding plan sponsor responses to reduce the added expenditure, actual added expenditures would amount to $261 million. The Departments did not attempt to independently quantify such responses. However, the Departments estimate that if all plans eligible for the one percent cost exemption exercise it, the increase in plan expenditures would be reduced from 0.29 percent to 0.14 percent or $310 million. The Departments' analysis is detailed below.

c. Exercise of Regulatory Discretion

One Percent Cost Exemption

The main area in which the agencies exercised regulatory discretion is in connection with the one percent cost increase exemption. Alternative regulatory interpretations can impact the outcome of the number of plans, firms, policyholders, and covered lives that would be exempted from the MHPA.

The Departments considered options concerning the interpretation of the one-percent cost exemption and how it should be implemented. In general, they considered (1) whether the eligibility for the exemption should be determined retrospectively or prospectively, and what, if any, rules should be established with respect to how eligibility should be determined, (2) whether eligibility should be contingent on affirmative approval from an enforcement agency or simply subject to possible review by such an agency, and (3) whether plan sponsors electing exemptions should be required to notify participants and/or enforcement agencies of this action and/or to disclose to these parties evidence documenting eligibility for the exemption. They also considered the administrability of each option, seeking to balance the costs and benefits to plans and participants, as well as the benefits and burdens of the regulatory scheme on the federal government.

Retro/prospective Determination

The options considered ranged from a purely retrospective interpretation to a purely prospective one, and included intermediate interpretations that blend these two approaches.

Under a purely retrospective interpretation, the one percent increased cost exemption would be based on actually incurred expenditures increases, measured retrospectively after implementation of the statute. In other words, all plans must comply and provide parity of annual and/or lifetime dollar limits of mental health and medical services for the first year beginning with the start of a plan year on or after January 1, 1998. If during the first year, a plan experiences increases in expenditures equal to one percent or more as a result of complying with the statute, that plan would then be eligible to exercise an exemption from the MHPA for subsequent plan years.

The calculation for determining the percent increase would be based on the ratio of the increase in plan expenditures to the total plan expenditures, that is, both medical and mental health expenditures. For self-insured plans, the numerator would be the actual value of mental health claims paid in excess of the previous plan limits. For example, if the annual mental health limit were $10,000 and the medical/surgical were $1,000,000, then the sum of all mental health claims paid in excess of $10,000 would be included in the numerator of the ratio

used for that plan in calculations related to the one percent exemption. The denominator for self-insured plans would be the total value of medical and mental health claims excluding mental health claims in excess of $10,000. If the result is an increase of one or more percent, the plan would be exempt from complying with the statute in any other year until the statute sunsets in 2001. Because there is a lag between the time that claims are incurred and the time they are reported, complete data needed for the calculation might not be available until three or six months after the end of the first plan year under the MHPA. With respect to fully insured plans, the calculation would be slightly different. To the extent that different plans' experiences are pooled for purposes of setting premiums, their eligibility for the exemption would depend on their pooled experience under MHPA, rather than on each plan's individual experience.

The purely retrospective interpretation would minimize the availability of the exemption, and therefore might result in both the greatest incidence of parity in lifetime and annual dollar limits and the greatest incidence of other plan actions to reduce or offset the increase in expenditures arising from the MHPA. It would also assure that all plan elections to exercise the one percent increased cost exemption are based on actual experience under the MHPA's parity requirements and not on projections or estimates of such experience.

Under a purely prospective interpretation, a plan would be eligible for the exemption prospectively if its expected additional expenditures from the MHPA act equaled or exceeded one percent of its expected total expenditures absent the MHPA. A self-insured plan would project these figures, relying on available data and actuarial projection methods. A fully insured plan would compare legitimate premium quotes with and without the exemption to determine if the difference equals or exceeds one percent. The purely prospective interpretation would maximize the availability of the exemption, and therefore might result in both the least incidence of parity in lifetime and annual dollar limits and the least incidence of other plan actions to reduce or offset expenditure increases arising from the MHPA.

Other interpretations were also considered, some closer to a purely retrospective interpretation and others closer to a purely prospective one. For example, one interpretation might allow plans to prospectively determine their eligibility and exercise the exemption, but only based upon a narrowly constrained analysis of their own prior experience, taking into account only the potential added expenditure from the MHPA associated with participants whose past mental health claims reached or nearly reached MHPA-prohibited dollar limits. Interpretations closer to the purely retrospective view would lessen the availability of the exemption, and therefore might result in both greater incidence of parity in lifetime and annual dollar limits and lesser incidence of other plan actions to reduce or offset expenditure increases arising from the MHPA; those closer to the purely prospective view would do the opposite.

The approach adopted under this rule, referenced above, can be characterized as modified retrospective approach, based on a relatively brief base period. It is intended to assure the accurate measurement of increased costs while minimizing the burden on plan sponsors who wish to exercise the exemption as soon as accurate measurements can be made. It also assures that all plan elections to exercise the one percent increased cost exemption are based on actual experience under the MHPA's parity requirements and not on projections or estimates of such experience. The rule eases compliance burdens by providing a transition period under which certain plans whose plan years begin during the first quarter of 1998 can exercise the exemption until April 1, 1998.

Exemption Authority

This rule provides that plans may determine their own eligibility for the exemption and, if eligible, exercise the exemption, without affirmative approval from any enforcement agency.

Notification and Disclosure

The Departments also exercised discretion in requiring notice and disclosure in connection with the one percent increased cost exemption. The rule requires plans exercising the one percent increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions to notify the federal government, and to post a copy of this notice at the workplace. It further requires plans otherwise exercising the exemption to notify participants and the federal government, and to disclose on request to these parties summary documentation of the plans' eligibility for the exemption.

Notifications and disclosures will be of benefit to participants. They will help assure plans' compliance with the MHPA, and will promote participants' understanding of their and their plans' status under the MHPA. Moreover, by promoting participants' understanding, notifications and disclosures will inform participants' choices among plans and their feedback to plan sponsors, thereby fostering more vigorous competition among plan sponsors and issuers to provide benefits attractive to participants at competitive prices. The cost of these notifications and disclosures is outlined below.

Weighted Average Limits

The Departments also exercised discretion in developing rules that specify when plans may impose separate dollar limits on mental health benefits equal to the weighted average of limits imposed on other benefit categories, and in how this weighted average may be calculated. In general, the rules provide that such mental health limits may be imposed if the benefit categories to which separate limits apply account for at least one-third of total plan expenditures and are comparable in scope to mental health benefits. The average is calculated by weighting each applicable limit to reflect its share of total plan expenditures. Any unlimited categories are figured into the average by using in place of a limit a reasonable estimate of the maximum plan expenditure that could possibly be incurred in connection with all such categories, and weighting this estimate to reflect the proportion of total plan expenditures attributable to all such categories.

Alternative rules might have permitted more, fewer, or different plans to impose such limits on mental health benefits, and/or resulted in calculated averages that were higher or lower. For example, if unlimited categories were treated as having infinite limits, then the weighted average of category limits would equal infinity and the option of imposing a weighted average limit on mental health benefits effectively would be foreclosed. In contrast, if limits applicable to benefit categories narrower in scope than mental health benefits could be averaged to arrive at the permissible mental health limit, plans might be able to impose very low limits on very narrow benefit categories, with little effect on coverage of these categories but with the result of a lower permissible mental health benefit limit.

d. Impact of Regulatory Discretion

Because the Departments exercised regulatory discretion in connection with the one percent cost exemption, it is necessary to quantify the number of plans eligible for the exemption. This requires both estimates of the affected universe and estimates of the distribution of impacts within that universe. CBO reported universe estimates but did not estimate the distribution of impacts. C&L provided a distribution but not universe estimates. Thus, neither source provides the necessary basis for estimating the reach of the one percent cost exemption. To address this gap, the Departments, assisted by Price Waterhouse LLP, combined the CBO and C&L analyses with other data to produce relevant national estimates, as follows.

First, the Departments estimated the relevant universe at 3.0 million plans sponsored by 2.8 million employers covering 145 million individuals. To derive these estimates, we tallied the number of group health plan policyholders and dependents by firm size from the Census Bureau's March 1996 Current Population Survey. Census enterprise data provided average firm sizes in each size category, allowing us to estimate the number of employers covering these individuals. KPMG Peat Marwick's 1997 survey provided the average number of plans per firm in each size group, supporting estimates of the number of plans. Data from the Bureau of Labor Statistics' Employee Benefits Survey and the Health and Retirement Study provided a proportionate breakdown of plans and individuals in each firm size group across plan types (HMO, PPO, and fee for service). Likewise, data from KPMG and Foster Higgins surveys were used to divide insured from self-insured plans.

Second, the Departments narrowed the focus to plans affected by the MHPA. Approximately 296,000 plans, sponsored by 136,000 employers and covering 113 million individuals, would be directly affected by the MHPA. This excludes firms with fewer than 50 employees (which are exempt under ERISA Section 712 (c)(1)), plans already covered by state mandates to provide parity in annual and lifetime dollar limits (based on C&L and Hay Huggins reports of the incidence of differential limits—roughly 29,000 plans were excluded here), and insured plans in 13 states that, independent of the MHPA, as of January 1, 1998 will require parity equivalent to or surpassing that required by the MHPA. (Those 13 states are: Indiana, Maryland, Minnesota, Montana, Arkansas, Colorado, Connecticut, Maine, Missouri, New Hampshire, North Carolina, Rhode Island, and Texas.) Some of the plans identified here as affected may not be affected. The MHPA permits self-insured nonfederal governmental plans to opt out of compliance. This includes roughly 22,000 plans covering about 18 million individuals. It also exempts plans whose costs increase by one percent or more, as enumerated below.

Third, the Departments estimated the overall impact of the MHPA as follows: affected plans' potential increases in mental health expenditures under the MHPA equal $653 million, or 0.29 percent of affected plans' $226 billion in total expenditures. (The 0.29 percent figure is benchmarked to CBO's estimate that the average cost increase for indemnity plans would be 0.4 percent, but it is adjusted to reflect C&L's assessment of the relative magnitude of cost increases for different plan types. The $226 billion figure is benchmarked to CBO's $290 billion universe, but reduced proportionately to reflect the Department's estimate of the proportion of the total universe that is affected by the MHPA.) Under CBO's assumption regarding plan sponsor actions to reduce the added expenditure, actual added expenditures would amount to $261 million. Expenditures could be smaller still as a result of self-insured nonfederal governmental plans' right to opt out of compliance and the MHPA's one percent increased cost exemption, which are not accounted for in the foregoing estimates. Recall also that these expenditures represent transfer payments and not social costs.

One Percent Cost Exemption

The effect of this rule will be to prohibit all covered plans from imposing annual or lifetime dollar limits on mental health benefits that are lower than limits imposed on medical and surgical benefits during at least seven months of the first plan year beginning on or after January 1, 1998. Specifically, after six months, the rule permits plans to exercise an exemption as soon as they document a cost increase of one percent or more and provide 30 days notice to participants and the federal government.

Exactly when a given plan will become eligible to elect the one percent increased cost exemption will depend on the timing of its increased costs and its documentation of those costs. In many cases, plans' increased costs under the MHPA will not equal or exceed one percent until more than the initial six months have elapsed. For example, added costs from the MHPA's provision restricting the use of annual dollar limits on mental health benefits would likely be concentrated late in the plans year, when some participants would otherwise have reached these limits. In addition, plans that utilize this rule' transition period may not be affected by the MHPA's provisions until after the first three months of the plan year have elapsed. Therefore, these may be less likely to incur added costs of one percent or more until later in the plan year, or until a subsequent plan year (in which they would be affected by the MHPA beginning on the first day of the plan year).

Whether eligible plans wishing to reduce the direct impact of the MHPA will opt to pursue the exemption or opt for alternative responses will depend on each plan's particular circumstances and priorities.

The Departments estimated the number of affected plans with potential increases of at least one percent. Roughly 30,000 plans, or about 10 percent of a plans affected by MHPA, potentially would be eligible for the one-percent increased cost exemption. That is, all else being equal, complying with the MHPA would increase 30,000 plans' expenditures by at least one percent. These plans cover about 5 million policyholders and 11 million individuals. This is the universe potentially affected by the provisions of this rule that address the one percent increased cost exemption.

In assessing the impact of this rule, the Departments considered the economic consequences of its provisions implementing the one percent cost exemption. Several factors are likely to affect the magnitude of those consequences.

First, under any interpretation, only 10 percent of MHPA-affected plans (or 30,000 plans) could become eligible for the exemption, and only some of those would elect to exercise it. The estimated 30,000 plans that would become eligible for the one-percent cost exemption represents the upper limit of the number of plans that would actually exercise the exemption. Many of the potentially eligible plans are likely to forego the exemption in favor of other permitted actions. A survey of 300 large firms conducted by William M. Mercer, Inc., found that fewer than 2 percent intended to pursue the one percent increased cost exemption. Extrapolated to the Departments' estimated plan universe, this suggests that 6,000 plans, or 22 percent of the 30,000 that are potentially eligible, would pursue the exemption.

Second, expenditure increases from the MHPA will generally be modest, even for plans potentially eligible for the one percent cost exemption. Their potential expenditure increase would be $332 million on a base of $23 billion in total expenditures, or 1.47 percent overall.

Third, as noted above, plans can be designed in ways that lessen these expenditure increases.

Fourth, the 2,215 self-insured nonfederal governmental plans that might become eligible for the one percent cost exemption are separately permitted to opt out of the MHPA entirely, thereby exercising an alternative exemption with equivalent effect. These plans cover 1.8 million individuals, or 16 percent of individuals in potentially eligible plans.

Fifth, the estimates presented in this analysis are conservative; actual expenditures arising from compliance with the MHPA are likely to be less than reported here. In particular, the estimates may understate the reach and cost-effectiveness of managed mental health programs that will exist during the years that the MHPA is in effect (See Roland Sturm, "How Expensive is Unlimited Mental Health Care Coverage Under Managed Care?" JAMA, Nov. 12, 1997—Vol. 278 No. 18).

Sixth, because plan expenditure increases under the MHPA (aside from increases in administrative expenses) are transfers, the availability and use of the exemption does not change aggregate social welfare. However, the availability and use of the exemption does affect the size and incidence of transfers across affected parties.

Finally, this rule preserves the availability of most of this savings under the one percent exemption—certain eligible plans are permitted to exercise the exemption after seven months, thereby operating under the exemption for up to 38 of the 45 months during which the MHPA is in effect.

This rule also requires certain notices and disclosures by plans exercising the one percent increased cost exemption. The Departments undertook to estimate the paperwork burdens associated with these provisions, as well as the burden associated with determining whether a plan is eligible for the exemption. These estimates are summarized below.

The estimates reported immediately below are for all plans affected by the notice and disclosure provisions of this rule. The Paperwork Reduction Act (PRA) analysis that follows is presented separately for affected private-sector plans and for plans sponsored by nonfederal governmental employers, which are under the jurisdictions of the Departments of Labor and of Health and Human Services, respectively.

With respect to the notice to participants and beneficiaries and to the federal government by plans exercising the one percent cost exemption, the maximum possible number of such notices is approximately 5.0 million (reflecting all plans potentially eligible to elect the exemption), while a more likely figure is 1.1 million (reflecting the Mercer survey cited above). Assuming each notice requires 2 minutes of labor at $11 per hour, plus $0.50 for postage and materials, total costs would amount to up to $4.3 million or more probably $931,000. (These assumptions reflect plans' ability to satisfy this notice requirement through the provisions of a separately required summary of material modifications, as well as availability of a model notice to the government, which together essentially eliminate separate preparation burdens under this requirement and help minimize ongoing burdens.)

With respect to requirement for group health plans to notify the federal government of use of the transition period, and to post these notices in the workplace, only those plans whose plan years begin during the first three months on 1998 and who are potentially eligible for the one percent cost exemption are potentially affected by this provision. These notices would be filed and posted within 30 days or less of the beginning of the plan year, so all would be filed in 1998. Based on annual reports filed with the Department of Labor, the Departments estimate that 60 percent of all eligible plans, accounting for 72 percent of participants in such plans, begin their plan years during these months. This amounts to 18,000 plans, representing the maximum number of notices that would be filed. Extrapolating from the Mercer survey cited above, about 4,000 of these plans might intend to pursue the exemption, representing a more probable number of notices to be filed. Applying the same per unit cost assumptions as above to the filing and posting of these notices, the cost of these notices would be no more than $8,000 and more likely $2,000. These assumptions reflect the availability of a model notice, the use of which eliminates preparation costs and helps minimize ongoing burdens.

With respect to the requirement for plans to disclose on request summary information documenting the plan's eligibility for the one percent increased cost exemption, the number of such disclosures will depend on the volume of requests. One might expect requests to arise most commonly when participants are at or near plans' dollar limits. Hay Huggins estimates for the Congressional Research Service (See Roland Sturm, "How Expensive is Unlimited Mental Health Care Coverage Under Managed Care?" *JAMA*, Nov. 12, 1997—Vol. 278 No. 18) suggest that 0.73 percent of participants on average incur mental health claims of more than $10,000—a typical annual limit—in a given year. The Departments adjusted this figure to reflect the estimated relationship between increased expenditures under the MHPA for plans eligible for the one percent increased cost exemption and increased expenditures under the MHPA for all affected plans, concluding that 3.74 percent of participants in plans eligible for the one percent increased cost exemption incur claims of more than $10,000 in a given year. Assuming that this proportion of participants in plans electing the exemption request disclosures, the maximum number of such disclosure requests would be 186,000, while a more probable figure would be 40,000. Given the same per unit cost assumptions as above, the associated costs would be $161,000 and $35,000, respectively.

Finally, with respect to plan determinations of eligibility for the one percent increased cost exemption, the Departments expect that plans wishing to exercise the one percent increased cost exemption or their service providers will revise their automated claim record systems to facilitate calculation of the plans' increased costs attributable to the MHPA. The number of plans performing such functions in-house that might wish to exercise the exemption is estimated to be no more than 5,346 and more probably 1,142. The number of service providers (including health insurance issuers and third party administrators) that will perform this function for plans that wish to exercise the exemption is estimated to be 1,770 (including 400 third party administrators, 650 health insurers, 645 HMOs, and 75 Blue Cross Blue Shield organizations). Assuming a start up cost of $5,000 per affected entity, the total start-up cost associated with determining plans' eligibility to exercise the exemption amounts to $14.6 million to $35.6 million, to be amortized over 10 years beginning in 1998.

The estimates of the numbers and costs of notices, disclosures and calculations reported above, and below in connection with the Paperwork Reduction Act, may be high with respect to nonfederal governmental plans. An estimated 2,215 self-insured nonfederal governmental plans might become eligible for the one percent cost exemption. These plans are separately permitted to opt out of the MHPA entirely, thereby exercising an alternative exemption with equivalent effect, and without becoming subject to the calculation, notice, and disclosure requirements. These plans cover 1.8 million individuals, or 16 percent of individuals in potentially eligible plans.

Weighted Average

The economic impact of the Departments' exercise of discretion in the weighted average rule is also expected to be modest.

First, separate limits for benefit categories other than mental health are not very common. For example, among full-time employees at establishments with 100 or more employees participating in non-HMO group health plans in 1993, only a fraction were subject to separate limits for many major benefit categories. For example, just 14 percent were subject to separate limits for inpatient surgery, just 13 percent were subject to such limits for outpatient surgery, and only about one in four were subject to separate limits for both inpatient and office physician visits (U.S. Bureau of Labor Statistics, Employee Benefits in Medium and Large Private Establishments, 1993). "Separate limits" in this context include not only dollar limits, but also non-dollar limits, such as inpatient day or outpatient visit limits, as well as differential coinsurance rates, copayments, or deductibles. Therefore, the proportion with separate dollar limits that would permit imposition of a weighted average limit on mental health benefits would be even smaller. In addition, such separate limits are even less common in HMOs.

Second, discretion exercised in the weighted average rule affects plans' ability to impose weighted average limits on mental health benefits only at the margin. In other words, compared with the approach set forth in the rule, alternative approaches would have increased or decreased the proportion of plans that are able to impose weighted average limits and the dollar level of calculated averages by only a small amount.

Third, not all plans that are permitted to impose weighted average limits on mental health benefits will elect to do so.

Fourth, some plans that under the rule are not permitted to impose weighted average limits on mental health benefits, under an alternative approach, might have been permitted to impose only a relatively high limit. As such, their expenditure increases from the MHPA might have been nearly the same with a weighted average limit on mental health benefits as with no separate limit on such benefits. Consider a plan with a $500,000 annual cap on all inpatient care and a $250,000 annual cap on all outpatient care, and a $25,000 annual cap on mental health benefits. Under the interim rules, such a plan could not impose a weighted average limit on mental health benefits. Any separate limit on mental health care would have to be at least $750,000, or at least $500,000 for inpatient care and at least $250,000 for outpatient care. Had the plan been permitted to impose a weighted average cap, however, it still would have been required to increase its mental health cap from $25,000 to some amount between $250,000 and $500,000, depending on the weights.

Finally, as with the one percent cost exemption and with the MHPA generally, the impact of regulatory discretion in the weighted average rule will be reduced because self-insured nonfederal governmental plans can opt out, the MHPA's added expenditure is modest, plans can be designed in ways that lessen the MHPA's added expenditure, and the estimates presented here are conservative.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4) requires agencies to prepare several analytic statements before proposing any rules that may result in annual expenditures of $100 million by state, local and tribal governments or the private sector. These rules are not subject to the Unfunded Mandates Reform Act because they are interim final rules. However, consistent with the policy embodied in the Unfunded Mandates Reform Act, the regulation has been designed to be the least burdensome alternative for state, local and tribal governments, and the private sector, while achieving the objectives of the MHPA.

G. Small Business Regulatory Enforcement and Fairness Act of 1995

The Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this is a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Section 801 *et. seq.*) (SBREFA).

The Secretaries have determined that the effective date of these interim final rules is January 1, 1998. Pursuant to Section 808(2) of SBREFA, the Secretaries find, for good cause, that notice and public procedure thereon are impracticable, unnecessary and contrary to the public interest.

These rules are adopted on an interim final basis because the Secretaries have determined that without prompt guidance some members of the regulated community may have difficulty complying with the MHPA requirements, which may result in an adverse impact on participants and beneficiaries with regard to their mental health benefits under group health plans and the protections provided under MHPA. Moreover, MHPA's requirements will affect the regulated community in the immediate future.

MHPA's requirements are effective for all group health plans, and for health insurance issuers offering coverage in connection with such plans for plan years beginning on or after January 1, 1998. Plan administrators and sponsors, issuers and participants and beneficiaries will need guidance on the new statutory provisions before MHPA's effective date. As noted earlier, these interim rules take into account comments received by the Departments, in response to the request for public comments on MHPA published in the **Federal Register** on June 26, 1997. 62 FR 34604. For the foregoing reasons, the Departments find that notice and public comment would be impracticable, unnecessary and contrary to the public interest.

H. Paperwork Reduction Act—The Department of Labor and the Department of the Treasury

The Department of Labor and the Department of the Treasury have submitted this emergency processing public information collection request (ICR), consisting of three distinct ICRs to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Departments have asked for OMB clearance as soon as possible, and OMB approval is anticipated by the applicable effective date.

These regulations contain three distinct ICRs. The first ICR is a notice to participants and beneficiaries and to the federal government of the plan's election of the exemption from the MHPA's provisions due to an increase in cost under the plan of at least one percent attributable to compliance with these provisions. A plan may satisfy this requirement by providing participants and beneficiaries with a notice of material reductions in covered service or benefits, under the Department of Labor's regulations at 29 CFR section 2520.104b–3(d), that includes the information in paragraph (f)(3)(i) of this interim final rule regarding issuing a notice to participants and beneficiaries of the plan's exemption from these parity requirements. Before the one percent increased cost exemption is effective, the plan must also notify the federal government. For this purpose, the group health plan may either send

the Department of Labor a copy of the summary of material reductions in covered services or benefits sent to participants and beneficiaries, containing the plan number and the plan sponsor's employer identification number, or the plan (or coverage) may use the Departments' model notice in this interim final rule which has been developed for this purpose.

The second ICR is a summary of the information used to calculate the plan's increased costs under the MHPA for purposes of electing the one percent increased cost exemption, which the plan must make available to participants and beneficiaries, on request at no charge.

The third ICR is a notice of a group health plan's use of the transition period. The rule requires plans exercising the one percent increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions to notify the federal government, and to post a copy of this notice at the workplace.

1. Notice to Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption

i. Department of Labor

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.11. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed collection of information, Notice to Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption. A copy of the proposed ICR can be obtained by contacting the employee listed below in the contact section of the notice.

Information collection: affected parties are not required to comply with the ICRs in these rules until the Department of Labor publishes in the **Federal Register** the control numbers assigned to these ICRs by OMB. The publication of the control numbers notifies the public that OMB has approved these ICRs under the Paperwork Reduction Act of 1995. The Department has asked for OMB clearance as soon as possible, and OMB approval is anticipated by the applicable effective date.

Dates: Written comments must be submitted to the office listed in the addressee section below on or before February 20, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Addressee: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, Room N–5647, Washington, D.C. 20210. Telephone: 202–219–4782 (this is not a toll-free number). Fax: 202–219–4745.

ii. Department of the Treasury

The collection of information is in 54.9812–1T. This information is required by the interim final rules so that participants will be informed about their rights under MHPA, and so that participants and beneficiaries, and the federal government, will receive notice of a plan's election of the one percent increased cost exemption. The likely respondents are business or other for-profit institutions, non-profit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required to obtain the benefit of the exemption.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received on or before February 20, 1998. In light of the request for OMB clearance by the effective date of the MHPA, submission of comments within the first 30 days is encouraged to ensure their consideration. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

I. Background

MHPA generally requires that group health plans provide parity in the application of dollar limits to mental health and medical/surgical benefits. The statute exempts plans from this requirement if its application results in an increase in the cost under the plan or coverage of at least one percent. This regulation requires a plan electing this exemption to notify participants and beneficiaries and the federal government of the plan's election of the exemption. This ICR covers this notification requirement.

II. Current Actions

Under 29 CFR 2590.712(f)(3) (i) and (ii), and 26 CFR 54.9812–1T a group health plan electing the one percent exemption is obligated to provide a written notice of that election to participants and beneficiaries and to the federal government of the plan's election of the exemption. A plan may satisfy this requirement by providing participants and beneficiaries with a notice of material reductions in covered service or benefits, under the Department of Labor's regulations at 29 CFR section 2520.104b–3(d), that includes the information in paragraph (f)(3)(i) of this interim final rule regarding issuing a notice to participants and beneficiaries of the plan's exemption from these parity requirements. To satisfy the requirement to notify the federal government, a group health plan may either send the Department a copy of the summary of material reductions in covered services or benefits sent to participants and beneficiaries, containing the plan number and the plan sponsor's employer identification number, or the plan may use the Department's model notice in this interim final rule which has been developed for this purpose. Based on past experience, the staff believes that most of the materials required to be issued under this notice procedure will be prepared by contract service providers such as insurance companies and third-party administrators.

Type of Review: New.

Agencies: U.S. Department of Labor, Pension and Welfare Benefits Administration; U.S. Department of the Treasury, Internal Revenue Service.

Title: Notice to Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption.

OMB Number: XXXXXXX

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Group health plans.

Frequency: On occasion.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response (range) (minutes)	Burden hours (range)	Cost (range)
1998					
1999	5,612 to 25,446.	813,505 to 3.8MM.	2	6,324 to 29,605.	$705,037 to $3.3MM
2000					
Totals	5,612 to 25,446.	813,505 to 3.8MM.	2	6,324 to 29,605.	$705,037 to $3.3MM

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICRs; they will also become a matter of public record.

2. Calculation and Disclosure of Documentation of Eligibility for Exemption

i. Department of Labor

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.11. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed collection of information, Disclosure of Documentation of Eligibility for Exemption. A copy of the proposed ICR can be obtained by contacting the employee listed below in the contact section of the notice.

Information collection: Affected parties are not required to comply with the ICRs in these rules until the Department of Labor publishes in the **Federal Register** the control numbers assigned to these ICRs by OMB. The publication of the control numbers notifies the public that OMB has approved these ICRs under the Paperwork Reduction Act of 1995. The Department has asked for OMB clearance as soon as possible, and OMB approval is anticipated by the applicable effective date.

Dates: Written comments must be submitted to the office listed in the addressee section below on or before February 20, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Addressee: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, Room N–5647, Washington, D.C. 20210. Telephone: 202–219–4782 (this is not a toll-free number). Fax: 202–219–4745.

ii. Department of the Treasury

The collection of information is in Section 54.9812–1T. This information is required by the interim final rules so that participants will be informed about their rights under MHPA, and so that participants and beneficiaries may receive a summary of the information upon which the plan based its election of the one percent increased cost exemption. The likely respondents are business or other for-profit institutions, non-profit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required to obtain the benefit of the exemption.

Books or records relating to a collection of information must be

retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received on or before February 20, 1998. In light of the request for OMB clearance by the effective date of the MHPA, submission of comments within the first 30 days is encouraged to ensure their consideration. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

I. Background

MHPA generally requires that group health plans provide parity in the application of dollar limits to mental health and medical/surgical benefits. The statute exempts plans from this requirement if its application results in an increase in the cost under the plan or coverage of at least one percent. This regulation requires plans wishing to elect this exemption to calculate their increased costs according to certain rules. It further requires plans electing this exemption to disclose to participants and beneficiaries (or their representatives), on request, and at no charge, a summary of the information upon which the exemption was based. This ICR covers this disclosure requirement.

II. Current Actions:

Under 29 CFR 2590.712(f)(2) and 26 CFR 54.9812–1T, a group health plan wishing to elect the one percent exemption must calculate their increased costs according to certain rules. Under 29 CFR 2590.712(f)(4) and 26 CFR 54.9812–1T, a group health plan electing the one percent exemption is obligated to disclose to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based.

Type of Review: New.

Agencies: U.S. Department of Labor, Pension and Welfare Benefits Administration; U.S. Department of the Treasury, Internal Revenue Service.

Title: Calculation and Disclosure of Documentation of Eligibility for Exemption.

OMB Number: XXXXXXX.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Group Health Plans.

Frequency: On occasion.

Calculation burden: It is expected that plans wishing to exercise the one percent increased cost exemption or their service providers will revise their automated claim record systems to facilitate calculation of the plans' increased costs attributable to the MHPA. The number of plans performing such functions in-house that might wish to exercise the exemption is estimated to be no more than 4,489 and probably 958. The number of service providers (including health insurance issuers and third party administrators) that will perform this function for plans using service providers that wish to exercise the exemption is estimated to be 1,770. Assuming a cost of $5,000 per affected entity, the total cost associated with determining plans' eligibility to exercise the exemption amounts to $12.5 million to $30.1 million, to be amortized over 10 years beginning in 1998.

Disclosure burden: In addition to the calculation burden, plans wishing to elect the one percent increased cost exemption will incur a burden in connection with disclosure requests from participants, as detailed below.

Year	Total respondents (range)	Total responses (range)	Average time per response (minutes)	Burden hours (range)	Cost (range)
1998	.....	.....	.....	.....	
1999	5,612 to 25,466.	30,188 to 140,412.	2	235 to 1,101.	$26,163 to $121,690
2000	5,612 to 25,466.	30,188 to 140,412.	2	235 to 1,101.	$26,163 to $121,690
Totals	5,612 to 25,466.	60,377 to 280,824.	2	470 to 2,201.	$52,326 to $243,381

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICRs; they will also become a matter of public record.

3. Notice of Group Health Plan's Use of Transition Period, and Posting Thereof

i. Department of Labor

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.11. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed collection of information, Notice of Group Health Plan's Use of Transition Period. A copy of the proposed ICR can be obtained by contacting the employee listed below in the contact section of the notice.

Information collection: affected parties are not required to comply with the ICRs in these rules until the Department of Labor publishes in the **Federal Register** the control numbers assigned to these ICRs by OMB. The publication of the control numbers notifies the public that OMB has approved these ICRs under the Paperwork Reduction Act of 1995. The Department has asked for OMB clearance as soon as possible, and OMB approval is anticipated by the applicable effective date.

Dates: Written comments must be submitted to the office listed in the addressee section below on or before February 20, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Addressee: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, Room N–5647, Washington, D.C. 20210. Telephone: 202–219–4782 (this is not a toll-free number). Fax: 202–219–4745.

ii. Department of the Treasury

The collection of information is in Section 54.9812–1T. This information is required by the interim final rules so that participants will be informed about their rights under MHPA, and so that plans electing the one percent increased cost exemption during all or part of the first quarter of 1998 under the rules' transition provisions will notify the federal government and post the notice in the workplace. The likely respondents are business or other for-profit institutions, non-profit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required to obtain the benefit of the exemption.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received on or before February 20, 1998. In light of the request for OMB clearance by the effective date of the MHPA, submission of comments within the first 30 days is encouraged to ensure their consideration. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

I. Background

MHPA generally requires that group health plans provide parity in the application of dollar limits to mental health and medical/surgical benefits. The statute exempts plans from this requirement if its application results in an increase in the cost under the plan or coverage of at least one percent. This regulation requires a notice of group health plan's use of transition period, under which plans electing the one percent increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions must notify the federal government and to post a copy of the notice in the workplace. This ICR covers this notification requirement.

II. Current Actions

Under 29 CFR 2590.712(h)(3)(ii) and 26 CFR 54.9812–1T, group health plans electing the one percent increased cost exemption during all or part of the first quarter of 1998 under the rule's transition provisions must notify the federal government. Based on past experience, the staff believes that most of the materials required to be issued under this notice procedure will be prepared by contract service providers such as insurance companies and third-party administrators.

Type of Review: New.

Agencies: U.S. Department of Labor, Pension and Welfare Benefits Administration; U.S. Department of the Treasury, Internal Revenue Service.

Title: Notice of Group Health Plan's Use of Transition Period.

OMB Number:

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Group Health Plans.

Frequency: On occasion.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response (minutes)	Burden hours (range)	Cost (range)
1998	3,348 to 15,193.	3,348 to 15,193.	2	19 to 89 ...	$1,514 to $6,910
1999	.....	.....	.....	.....	
2000	.....	.....	.....	.....	

Year	Total respondents (range)	Total responses (range)	Average time per response (minutes)	Burden hours (range)	Cost (range)
Totals	3,348 to 15,193.	3,348 to 15,193.	2	19 to 89	$1,514 to $6,910

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICRs; they will also become a matter of public record.

I. Paperwork Reduction Act—Department of Health and Human Services

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 146.136 of this document contains three distinct information collection requirements, as summarized below:

Type of Information Request: New collection.

Title of Information Collection: Mental Health Parity Act of 1996; Information Collection Requirements Contained in 45 CFR 146.136; HCFA–2891–IFC.

Form Number: HCFA–R–223 (OMB approval #: 0938–XXXX).

Use: The information collection requirements contained in this interim final rule will help ensure that sponsors and administrators of group health plans notify the required individuals/entities of a plan's exemption from the MHPA parity requirements and make the data used to calculate the exemption available to affected individuals and entities.

Frequency: On occasion.

Affected Public: States, businesses or other for profit, not-for-profit institutions, Federal Government, individuals or households.

Notification Requirements: Nonfederal governmental plans, not exempt from the parity requirements by reason of an opt out under regulations at 45 CFR 146.180, must furnish participants and beneficiaries with a notice of the plan's exemption from the parity requirements based on increased costs. A plan may satisfy this requirement by providing participants and beneficiaries with a notice of material reductions in covered services or benefits, under 29 CFR 2520.104b–3(d), that includes the information in paragraph (f)(3)(i). Even though a plan generally is not required to furnish a material reduction in covered services or benefits for 60 days, in no case will the exemption be effective until 30 days after the notice is sent to participants and beneficiaries. For this purpose, a plan that does not furnish the summary of material reductions in covered services or benefits may satisfy its notice requirements by using the model exemption notice described above in this preamble.

In addition, the nonfederal governmental plan (or issuer providing coverage to such a plan) must also furnish to the Department of Health and Human Services a notice similar to the notice sent to participants and beneficiaries before the exemption is effective. For this purpose, the plan may either send the Department the summary of material reductions in covered services or benefits sent to participants and beneficiaries, or the plan (or issuer) may use the model described above. In all cases, the exemption is not effective until 30 days after notice has been sent.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response range (minutes)	Burden hours (range)	Cost (range)
1998					
1999	890 to 4,092.	261,000 to 1.2 MM.	2	2,133 to 9,975.	$226,000 to $1.1 MM
2000					
Total	890 to 4,092.	261,000 to 1.2 MM.	2	2,133 to 9,975.	$226,000 to $1.1 MM

Availability of documentation: Nonfederal governmental plans that take the exemption, or issuers that provide coverage for such plans, must make available to participants and beneficiaries, on request and at no charge, a summary of the data used to calculate the exemption of this section. The summary of data must include the incurred expenditures (including identification of the portion of the total representing claims and the portion of the total representing administrative expenses), the base period, the claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with parity, and the administrative expenses attributable to complying with the parity requirements.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response (range) (minutes)	Burden hours (range)	Cost (range)
1998					
1999	890 to 4,092.	9,700 to 45,300.	2	79 to 372	$8,400 to $39,300
2000	890 to 4,092.	9,700 to 45,300.	2	79 to 372	$8,400 to $39,300
Total	890 to 4,092.	19,400 to 90,600.	2	158 to 744	$16,800 to $78,600

Plans that take the exemption will incur start up costs for preparing to issue the information they must disclose. We estimate the start up costs for nonfederal governmental plans that take this exemption to range from $2.1 million to $5.5 million.

Notice of Use of Transition Period: With respect to the increased cost exemption, the interim rules provide in paragraph (g)(3) a transition period for compliance with the requirements of paragraph (f). Under paragraph (g)(3), no enforcement action shall be taken against a nonfederal governmental plan that is subject to the MHPA requirements prior to April 1, 1998 solely because the plan claims the increased cost exemption under section 2705(c)(2) of the PHS Act based on assumptions inconsistent with the rules under paragraph (f), provided that the plan is amended to comply with the parity requirements no later than March 31, 1998 and the plan complies with certain notice requirements. A nonfederal governmental plan satisfies the notice requirements only if such plan provides notice to the Department of Health and Human Services of the plan's intent to use the transition period by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event can the notice be provided later than March 31, 1998. Such notice shall include the name of the plan; the name, address, and telephone number of the plan sponsor or plan administrator; the employer identification number; and the plan number. In addition, such notice must be provided at no charge to participants within 30 days after receipt of a written request for such notification.

Burden:

Year	Total respondents (range)	Total responses (range)	Average time per response (range) (minutes)	Burden hours (range)	Cost (range)
1998	531 to 2,441.	531 to 2,441.	2	4 to 17	$250 to $1,151
1999	—	—	—	—	—
2000	—	—	—	—	—
Total	531 to 2,441.	531 to 2,441.	2	4 to 17	$250 to $1,151

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in § 146.136. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following: Health Care Financing Administration, Office of Information Services, information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: John Burke HCFA–2891–IFC.

We have submitted a copy of this rule to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained. Interested persons are invited to send comments regarding this burden or any other aspect of these collections of information. If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following addresses:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20530, Attn: Allison Herron Eydt, HCFA Desk Officer. DATED:

Gerald B. Lindrew, Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research

Statutory Authority

The Department of the Treasury temporary rule is adopted pursuant to the authority contained in sections 7805 and 9833 of the Code (26 U.S.C. 7805, 9833), as amended by HIPAA (Pub. L. 104–191, 110 Stat. 1936) and the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 788).

The Department of Labor interim final rule is adopted pursuant to the authority contained in sections 107, 209, 505, 701–703, 711, 712, and 731–734 of ERISA (29 U.S.C. 1027, 1059, 1135, 1171–1173, 1181, 1182, and 1191–1194), as amended by HIPAA (Pub. L. 104–191, 110 Stat. 1936) and MHPA (Pub. L. 104–204, 110 Stat. 2944), and Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

The Department of Health and Human Services interim final rule is adopted pursuant to the authority contained in sections 2701, 2702, 2705, 2711, 2712, 2713, 2721, 2722, 2723, and 2792 of the PHS Act (42 U.S.C. 300gg, 300gg–1, 300gg–5, 300gg–11, 300gg–12, 300gg–13, 300gg–21, 300gg–22, 300gg–23, and 300gg–92), as established by HIPAA (Pub. L. 104–191, 110 Stat. 1936) and MHPA (Pub. L. 104–204, 110 Stat. 2944).

List of Subjects

26 CFR Part 54

Excise taxes, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance.

Adoption of Amendments to the Regulations

Internal Revenue Service

26 CFR Chapter I

Accordingly, 26 CFR Part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by revising the entries for sections 54.9801–1T through 54.9801–6T and 54.9802–1T, by removing the entries for sections 54.9804–1T, and 54.9806–1T, and by adding entries for sections 54.9812–1T, 54.9831–1T, and 54.9833–1T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.9801–1T also issued under 26 U.S.C. 9833.
Section 54.9801–2T also issued under 26 U.S.C. 9833.
Section 54.9801–3T also issued under 26 U.S.C. 9833.
Section 54.9801–4T also issued under 26 U.S.C. 9833.
Section 54.9801–5T also issued under 26 U.S.C. 9801(c)(4), 9801(e)(3), and 9833.
Section 54.9801–6T also issued under 26 U.S.C. 9833.
Section 54.9802–1T also issued under 26 U.S.C. 9833.
Section 54.9812–1T also issued under 26 U.S.C. 9833.
Section 54.9831–1T also issued under 26 U.S.C. 9833.
Section 54.9833–1T also issued under 26 U.S.C. 9833.

Par. 2. In § 54.9801–1T, paragraph (a) is revised to read as follows:

§ 54.9801–1T Basis and scope (temporary).

(a) *Statutory basis.* Sections 54.9801–1T through 54.9801–6T, 54.9802–1T, 54.9812–1T, 54.9831–1T and 54.9833–1T (portability sections) implement Chapter 100 of Subtitle K of the Internal Revenue Code of 1986.

* * * * *

Par. 3. Section 54.9801–2T is amended by:

1. Revising the introductory text.
2. Revising the definition of *excepted benefits*.
3. Revising the definition of *health insurance coverage*.

The revisions read as follows:

§ 54.9801–2T Definitions (temporary).

Unless otherwise provided, the definitions in this section govern in applying the provisions of §§ 54.9801–1T through 54.9801–6T, 54.9802–1T, 54.9812–1T, 54.9831–1T, and 54.9833–1T.

* * * * *

Excepted benefits means the benefits described as excepted in § 54.9831–1T(b).

* * * * *

Health insurance coverage means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract offered by a health insurance issuer. However, benefits described in § 54.9831–1T(b)(2) are not treated as benefits consisting of medical care.

* * * * *

Par. 4. In § 54.9801–4T, paragraph (a)(2) is revised to read as follows:

§ 54.9801–4T Rules relating to creditable coverage (temporary).

(a) * * *

(2) *Excluded coverage.* Creditable coverage does not include coverage consisting solely of coverage of excepted benefits (described in § 54.9831–1T).

* * * * *

Par. 5. In § 54.9801–5T, the first sentence of paragraph (a)(3)(vi) is revised to read as follows:

§ 54.9801–5T Certification and disclosure of previous coverage (temporary).

(a) * * *

(3) * * *

(vi) *Excepted benefits; categories of benefits.* No certificate is required to be furnished with respect to excepted benefits described in § 54.9831–1T. * * *

* * * * *

§ 54.9804–1T [Redesignated as § 54.9831–1T]

Par. 6. Section 54.9804–1T is redesignated as § 54.9831–1T and amended by revising paragraph (b)(1) to read as follows:

§ 54.9831–1T Special rules relating to group health plans (temporary).

* * * * *

(b) *Excepted benefits*—(1) *In general.* The requirements of §§ 54.9801–1T through 54.9801–6T, 54.9802–1T, and 54.9812–1T do not apply to any group health plan in relation to its provision of the benefits described in paragraph (b) (2), (3), (4), or (5) of this section (or any combination of these benefits).

* * * * *

§ 54.9806–1T [Redesignated as § 54.9833–1T]

Par. 7. Section 54.9806–1T is redesignated as § 54.9833–1T and amended by:

1. Revising paragraph (a)(1).
2. Revising the first sentence of paragraph (a)(2).

The revisions read as follows:

§ 54.9833–1T Effective dates (temporary).

(a) *General effective dates*—(1) *Non-collectively-bargained plans.* Except as otherwise provided in this section, Chapter 100 of Subtitle K and §§ 54.9801–1T through 54.9806–1T, 54.9802–1T, and 54.9831–1T apply with respect to group health plans for plan years beginning after June 30, 1997.

(2) *Collectively bargained plans.* Except as otherwise provided in this section (other than paragraph (a)(1) of this section), in the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before August 21, 1996, Chapter 100 of Subtitle K and §§ 54.9801–1T through 54.9801–6T, 54.9802–1T, and 54.9831–1T do not apply to plan years beginning before the later of July 1, 1997, or the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after August 21, 1996).* * *

* * * * *

Par. 8. Section 54.9812–1T is added to read as follows:

§ 54.9812–1T Parity in the application of certain limits to mental health benefits (temporary).

(a) *Definitions.* For purposes of this section, except where the context clearly indicates otherwise, the following definitions apply:

Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Annual limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a plan for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Medical/surgical benefits means benefits for medical or surgical services, as defined under the terms of the plan, but does not include mental health benefits.

Mental health benefits means benefits for mental health services, as defined under the terms of the plan, but does not include benefits for treatment of substance abuse or chemical dependency.

(b) *Requirements regarding limits on benefits*—(1) *In general*—(i) *General parity requirement.* A group health plan that provides both medical/surgical benefits and mental health benefits must comply with paragraph (b) (2), (3), or (6) of this section.

(ii) Exception. The rule in paragraph (b)(1)(i) of this section does not apply if a plan satisfies the requirements of paragraph (e) or (f) of this section.

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan does not include an aggregate lifetime or annual limit on any medical/surgical benefits or includes aggregate lifetime or annual limits that apply to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual limit, respectively, on mental health benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan includes an aggregate lifetime or annual limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health benefits in a manner that does not distinguish between the medical/surgical and mental health benefits; or

(ii) Not include an aggregate lifetime or annual limit on mental health benefits that is less than the aggregate lifetime or annual limit, respectively, on the medical/surgical benefits.

(4) *Examples.* The rules of paragraphs (b)(2) and (3) of this section are illustrated by the following examples:

Example 1. (i) Prior to the effective date of the mental health parity provisions, a group health plan had no annual limit on medical/surgical benefits and had a $10,000 annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Making no change in the plan so that claims paid for treatment of substance abuse and chemical dependency continue to count in applying the annual limit on mental health benefits;

(B) Replacing the plan's annual limit on mental health benefits with a $500,000 annual limit on all benefits (including medical/surgical and mental health benefits); and

(C) Replacing the plan's previous annual limit on mental health benefits with a $250,000 annual limit on medical/surgical benefits and a $250,000 annual limit on mental health benefits.

(ii) In this *Example 1*, each of the three options being considered by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 2. (i) Prior to the effective date of the mental health parity provisions, a group health plan had a $100,000 annual limit on medical/surgical inpatient benefits; a $50,000 annual limit on medical/surgical outpatient benefits, and a $100,000 annual limit on all mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Replacing the plan's previous annual limit on mental health benefits with a $150,000 annual limit on mental health benefits; and

(B) Replacing the plan's previous annual limit on mental health benefits with a $100,000 annual limit on mental health inpatient benefits and a $50,000 annual limit on mental health outpatient benefits.

(ii) In this *Example 2*, each option under consideration by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 3. (i) A group health plan that is subject to the requirements of this section has no aggregate lifetime or annual limit for either medical/surgical benefits or mental health benefits. While the plan provides medical/surgical benefits with respect to both network and out-of-network providers, it does not provide mental health benefits with respect to out-of-network providers.

(ii) In this *Example 3*, the plan complies with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 4. (i) Prior to the effective date of the mental health parity provisions, a group health plan had an annual limit on medical/surgical benefits and a separate but identical annual limit on mental health benefits. The plan included benefits for treatment of substance abuse and chemical dependency in its definition of mental health benefits. Accordingly, claims paid for treatment of substance abuse and chemical dependency were counted in applying the annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Making no change in the plan so that claims paid for treatment of substance abuse and chemical dependency continue to count in applying the annual limit on mental health benefits;

(B) Amending the plan to count claims paid for treatment of substance abuse and chemical dependency in applying the annual limit on medical/surgical benefits (rather than counting those claims in applying the annual limit on mental health benefits);

(C) Amending the plan to provide a new category of benefits for treatment of chemical dependency and substance abuse that is subject to a separate, lower limit and under which claims paid for treatment of substance abuse and chemical dependency are counted only in applying the annual limit on this separate category; and

(D) Amending the plan to eliminate distinctions between medical/surgical benefits and mental health benefits and establishing an overall limit on benefits offered under the plan under which claims paid for treatment of substance abuse and chemical dependency are counted with medical/surgical benefits and mental health benefits in applying the overall limit.

(ii) In this *Example 4*, the group health plan is described in paragraph (b)(3) of this section. Because mental health benefits are defined in paragraph (a) of this section as excluding benefits for treatment of substance abuse and chemical dependency, the inclusion of benefits for treatment of substance abuse and chemical dependency in applying an aggregate lifetime limit or annual limit on mental health benefits under option (A) of this *Example 4* would not comply with the requirements of paragraph (b)(3) of this section. However, options (B), (C), and (D) of this *Example 4* would comply with the requirements of paragraph (b)(3) of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

(5) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to a limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual limits). Any reasonable method may be used to

determine whether the dollar amounts expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(6) *Plan not described in paragraph (b)(2) or (3) of this section*—(i) *In general.* A group health plan that is not described in paragraph (b)(2) or (3) of this section, must either—

(A) Impose no aggregate lifetime or annual limit, as appropriate, on mental health benefits; or

(B) Impose an aggregate lifetime or annual limit on mental health benefits that is no less than an average limit for medical/surgical benefits calculated in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(6)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(6), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(5) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(iii) *Example.* The rules of this paragraph (b)(6) are illustrated by the following example:

Example. (i) A group health plan that is subject to the requirements of this section includes a $100,000 annual limit on medical/surgical benefits related to cardio-pulmonary diseases. The plan does not include an annual limit on any other category of medical/surgical benefits. The plan determines that 40% of the dollar amount of plan payments for medical/surgical benefits are related to cardio-pulmonary diseases. The plan determines that $1,000,000 is a reasonable estimate of the upper limit on the dollar amount that the plan may incur with respect to the other 60% of payments for medical/surgical benefits.

(ii) In this *Example*, the plan is not described in paragraph (b)(3) of this section because there is not one annual limit that applies to at least two-thirds of all medical/surgical benefits. Further, the plan is not described in paragraph (b)(2) of this section because more than one-third of all medical/surgical benefits are subject to an annual limit. Under this paragraph (b)(6), the plan sponsor can choose either to include no annual limit on mental health benefits, or to include an annual limit on mental health benefits that is not less than the weighted average of the annual limits applicable to each category of medical/surgical benefits. In this example, the minimum weighted average annual limit that can be applied to mental health benefits is $640,000 (40% x $100,000 + 60% x $1,000,000 = $640,000).

(c) *Rule in the case of separate benefit packages.* If a group health plan offers two or more benefit packages, the requirements of this section, including the exemption provisions in paragraph (f) of this section, apply separately to each benefit package. Examples of a group health plan that offers two or more benefit packages include a group health plan that offers employees a choice between indemnity coverage or HMO coverage, and a group health plan that provides one benefit package for retirees and a different benefit package for current employees.

(d) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering both medical/surgical benefits and mental health benefits regardless of whether the mental health benefits are administered separately under the plan.

(2) *Health insurance issuers.* See 29 CFR 2590.712(d)(2) and 45 CFR 146.136(d)(2), which provide that health insurance issuers offering health insurance coverage for both medical/surgical benefits and mental health benefits in connection with a group health plan are subject to rules similar to those applicable to group health plans under this section.

(3) *Scope.* This section does not—

(i) Require a group health plan to provide any mental health benefits; or

(ii) Affect the terms and conditions (including cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requiring prior authorization for treatment, or requiring primary care physicians' referrals for treatment) relating to the amount, duration, or scope of the mental health benefits under the plan except as specifically provided in paragraph (b) of this section.

(e) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan for a plan year of a small employer. For purposes of this paragraph (e), the term *small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. See section 9831(a) and § 54.9831–1T(a), which provide that this section (and certain other sections) does not apply to any group health plan for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (e)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(f) *Increased cost exemption*—(1) *In general.* A group health plan is not subject to the requirements of this section if the requirements of this paragraph (f) are satisfied. If a plan offers more than one benefit package, this paragraph (f) applies separately to each benefit package. Except as provided in paragraph (h) of this section, a plan must comply with the requirements of paragraph (b)(1)(i) of this section for the first plan year beginning on or after January 1, 1998, and must continue to comply with the requirements of paragraph (b)(1)(i) of this section until the plan satisfies the requirements in this paragraph (f). In no event is the exemption of this paragraph (f) effective until 30 days after the notice requirements in paragraph (f)(3) of this section are satisfied. If the requirements of this paragraph (f) are satisfied with respect to a plan, the exemption continues in effect (at the plan's discretion) until September 30, 2001, even if the plan subsequently purchases a different policy from the same or a different issuer and regardless of any other changes to the plan's benefit structure.

(2) *Calculation of the one-percent increase*—(i) *Ratio.* A group health plan satisfies the requirements of this paragraph (f)(2) if the application of paragraph (b)(1)(i) of this section to the plan results in an increase in the cost under the plan of at least one percent.

The application of paragraph (b)(1)(i) of this section results in an increased cost of at least one percent under a group health plan only if the ratio below equals or exceeds 1.01000. The ratio is determined as follows:

(A) The incurred expenditures during the base period, divided by,

(B) The incurred expenditures during the base period, reduced by——

(*1*) The claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section; and

(*2*) Administrative expenses attributable to complying with the requirements of this section.

(ii) *Formula.* The ratio of paragraph (f)(2)(i) of this section is expressed mathematically as follows:

$$\frac{IE}{IE-(CE+AE)} \geq 1.01000$$

(A) *IE* means the incurred expenditures during the base period.

(B) *CE* means the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section

(C) *AE* means administrative costs related to claims in *CE* and other administrative costs attributable to complying with the requirements of this section.

(iii) *Incurred expenditures. Incurred expenditures* means actual claims incurred during the base period and reported within two months following the base period, and administrative costs for all benefits under the group health plan, including mental health benefits and medical/surgical benefits, during the base period. Incurred expenditures do not include premiums.

(iv) *Base period. Base period* means the period used to calculate whether the plan may claim the one-percent increased cost exemption in this paragraph (f). The base period must begin on the first day in any plan year that the plan complies with the requirements of paragraph (b)(1)(i) of this section and must extend for a period of at least six consecutive calendar months. However, in no event may the base period begin prior to September 26, 1996 (the date of enactment of the Mental Health Parity Act (Pub. L. 104–204, 110 Stat. 2944)).

(v) *Rating pools.* For plans that are combined in a pool for rating purposes, the calculation under this paragraph (f)(2) for each plan in the pool for the base period is based on the incurred expenditures of the pool, whether or not all the plans in the pool have participated in the pool for the entire base period. (However, only the plans that have complied with paragraph (b)(1)(i) of this section for at least six months as a member of the pool satisfy the requirements of this paragraph (f)(2).) Otherwise, the calculation under this paragraph (f)(2) for each plan is calculated by the plan administrator based on the incurred expenditures of the plan.

(vi) *Examples.* The rules of this paragraph (f)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan satisfies the requirements of paragraph (b)(1)(i) of this section as of January 1, 1998. On September 15, 1998, the plan determines that $1,000,000 in claims have been incurred during the period between January 1, 1998 and June 30, 1998 and reported by August 30, 1998. The plan also determines that $100,000 in administrative costs have been incurred for all benefits under the group health plan, including mental health benefits. Thus, the plan determines that its incurred expenditures for the base period are $1,100,000. The plan also determines that the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section are $40,000 and that administrative expenses attributable to complying with the requirements of this section are $10,000. Thus, the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are $1,050,000 ($1,100,000—($40,000 + $10,000) = $1,050,000).

(ii) In this *Example 1*, the plan satisfies the requirements of this paragraph (f)(2) because the application of this section results in an increased cost of at least one percent under the terms of the plan ($1,100,000/$1,050,000 = 1.04762).

Example 2. (i) A health insurance issuer sells a group health insurance policy that is rated on a pooled basis and is sold to 30 group health plans. One of the group health plans inquires whether it qualifies for the one-percent increased cost exemption. The issuer performs the calculation for the pool as a whole and determines that the application of this section results in an increased cost of 0.500 percent (for a ratio under this paragraph (f)(2) of 1.00500) for the pool. The issuer informs the requesting plan and the other plans in the pool of the calculation.

(ii) In this *Example 2*, none of the plans satisfy the requirements of this paragraph (f)(2) and a plan that purchases a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section.

Example 3. (i) A partially insured plan is collecting the information to determine whether it qualifies for the exemption. The plan administrator determines the incurred expenses for the base period for the self-funded portion of the plan to be $2,000,000 and the administrative expenses for the base period for the self-funded portion to be $200,000. For the insured portion of the plan, the plan administrator requests data from the insurer. For the insured portion of the plan, the plan's own incurred expenses for the base period are $1,000,000 and the administrative expenses for the base period are $100,000. The plan administrator determines that under the self-funded portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are $0 because the self-funded portion does not cover mental health benefits and the plan's administrative costs attributable to complying with the requirements of this section are $1,000. The issuer determines that under the insured portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are $25,000 and the administrative costs attributable to complying with the requirements of this section are $1,000. Thus, the total incurred expenditures for the plan for the base period are $3,300,000 ($2,000,000 + $200,000 + $1,000,000 + $100,000 = $3,300,000) and the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are $3,273,000 [$3,300,000 − ($0 + $1,000 + $25,000 + $1,000) = $3,273,000].

(ii) In this *Example 3*, the plan does not satisfy the requirements of this paragraph (f)(2) because the application of this section does not result in an increased cost of at least one percent under the terms of the plan ($3,300,000/$3,273,000 = 1.00825).

(3) *Notice of exemption*—(i) *Participants and beneficiaries*—(A) *In general.* A group health plan must notify participants and beneficiaries of the plan's decision to claim the one-percent increased cost exemption. The notice must include the following information:

(*1*) A statement that the plan is exempt from the requirements of this section and a description of the basis for the exemption;

(*2*) The name and telephone number of the individual to contact for further information;

(*3*) The plan name and plan number (PN);

(*4*) The plan administrator's name, address, and telephone number;

(*5*) For single-employer plans, the plan sponsor's name, address, and telephone number (if different from paragraph (f)(3)(i)(A)(*3*) of this section) and the plan sponsor's employer identification number (EIN);

(*6*) The effective date of the exemption;

(*7*) The ability of participants and beneficiaries to contact the plan administrator to see how benefits may be affected as a result of the plan's claim of the exemption; and

(*8*) The availability, upon request and free of charge, of a summary of the

information required under paragraph (f)(4) of this section.

(B) *Use of summary of material reductions in covered services or benefits.* A plan may satisfy the requirements of paragraph (f)(3)(i)(A) of this section by providing participants and beneficiaries (in accordance with paragraph (f)(3)(i)(C) of this section) with a summary of material reductions in covered services or benefits required under 29 CFR 2520.104b–3(d) that also includes the information of this paragraph (f)(3)(i). However, in all cases, the exemption is not effective until 30 days after notice has been sent.

(C) *Delivery.* The notice described in this paragraph (f)(3)(i) is required to be provided to all participants and beneficiaries. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(1)) (e.g., first-class mail). If the notice is provided to the participant at the participant's last known address, then the requirements of this paragraph (f)(3)(i) are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

(D) *Example.* The rules of this paragraph (f)(3)(i) are illustrated by the following example:

Example. (i) A group health plan has a plan year that is the calendar year and has an open enrollment period every November 1 through November 30. The plan determines on September 15 that it satisfies the requirements of paragraph (f)(2) of this section. As part of its open enrollment materials, the plan mails, on October 15, to all participants and beneficiaries a notice satisfying the requirements of this paragraph (f)(3)(i).

(ii) In this *Example*, the plan has sent the notice in a manner that complies with this paragraph (f)(3)(i).

(ii) *Federal agencies.* A group health plan that is a church plan (as defined in section 414(e)) claiming the exemption of this paragraph (f) for any benefit package must provide notice in accordance with the requirement of this paragraph (f)(3)(ii). This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies. For any other group health plan, see 29 CFR 2590.712(f)(3)(ii)(B).

(4) *Availability of documentation.* The plan must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. An individual who is not a participant or beneficiary and who presents a notice described in paragraph (f)(3)(i) of this section is considered to be a representative. A representative may request the summary of information by providing the plan a copy of the notice provided to the participant under paragraph (f)(3)(i) of this section with any individually identifiable information redacted. The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with paragraph (b)(1)(i) of this section, the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements of this section. In no event should the summary of information include any individually identifiable information.

(g) *Special rules for group health insurance coverage*—(1) *Sale of nonparity policies.* See 29 CFR 2590.712(g)(1) and 45 CFR 146.136(g)(1) for rules limiting the right of an issuer to sell a policy without parity (as described in 29 CFR 2590.712(b) and 45 CFR 146.136(b)) to a plan that meets the requirements of 29 CFR 2590.712 (e) or (f) and 45 CFR 146.136 (e) or (f)).

(2) *Duration of exemption.* After a plan meets the requirements of paragraph (f) of this section, the plan may change issuers without having to meet the requirements of paragraph (f) of this section again before September 30, 2001.

(h) *Effective dates*—(1) *In general.* The requirements of this section are applicable for plan years beginning on or after January 1, 1998.

(2) *Limitation on actions.* (i) Except as provided in paragraph (h)(3) of this section, no enforcement action is to be taken by the Secretary against a group health plan that has sought to comply in good faith with the requirements of section 9812, with respect to a violation that occurs before the earlier of—

(A) The first day of the first plan year beginning on or after April 1, 1998; or

(B) January 1, 1999.

(ii) Compliance with the requirements of this section is deemed to be good faith compliance with the requirements of section 9812.

(iii) The rules of this paragraph (h)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan complies with section 9812 in good faith using assumptions inconsistent with paragraph (b)(6) of this section relating to weighted averages for categories of benefits.

(ii) In this *Example 1*, no enforcement action may be taken against the plan with respect to a violation resulting solely from those assumptions and occurring before January 1, 1999.

Example 2. (i) A group health plan has a plan year that is the calendar year. For the entire 1998 plan year, the plan applies a $1,000,000 annual limit on medical/surgical benefits and a $100,000 annual limit on mental health benefits.

(ii) In this *Example 2*, the plan has not sought to comply with the requirements of section 9812 in good faith, and this paragraph (h)(2) does not apply.

(3) *Transition period for increased cost exemption*—(i) *In general.* No enforcement action will be taken against a group health plan that is subject to the requirements of this section based on a violation of this section that occurs before April 1, 1998 solely because the plan claims the increased cost exemption under section 9812(c)(2) based on assumptions inconsistent with the rules under paragraph (f) of this section, provided that a plan amendment that complies with the requirements of paragraph (b)(1)(i) of this section is adopted and effective no later than March 31, 1998 and the plan complies with the notice requirements in paragraph (h)(3)(ii) of this section.

(ii) *Notice of plan's use of transition period.* (A) A group health plan satisfies the requirements of this paragraph (h)(3)(ii) only if the plan provides notice to the applicable federal agency and posts the notice at the location(s) where documents must be made available for examination by participants and beneficiaries under section 104(b)(2) of the Employee Retirement Income Security Act of 1974, and the regulations thereunder (29 CFR 2520.104b–1(b)(3)). The notice must indicate the plan's decision to use the transition period in paragraph (h)(3)(i) of this section by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event later than March 31, 1998. For a group health plan that is a church plan (as defined in section 414(e)), the applicable federal agency is the Department of the Treasury. For a group health plan that is not a church plan, see 29 CFR 2590.712(h)(3)(ii). The notice must include—

(*1*) The name of the plan and the plan number (PN);

(*2*) The name, address, and telephone number of the plan administrator;

(*3*) For single-employer plans, the name, address, and telephone number of the plan sponsor (if different from the plan administrator) and the plan sponsor's employer identification number (EIN);

(*4*) The name and telephone number of the individual to contact for further information; and

(*5*) The signature of the plan administrator and the date of the signature.

(B) The notice must be provided at no charge to participants or their representative within 15 days after receipt of a written or oral request for such notification, but in no event before the notice has been sent to the applicable federal agency.

(i) *Sunset.* This section does not apply to benefits for services furnished on or after September 30, 2001.

Dated: December 16, 1997.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: December 16, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

Pension and Welfare Benefits Administration

29 CFR Chapter XXV

29 CFR Part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

1. The authority citation for Part 2590 is revised to read as follows:

Authority: Secs. 107, 209, 505, 701–703, 711, 712, and 731–734 of ERISA (29 U.S.C. 1027, 1059, 1135, 1171–1173, 1181, 1182, and 1191–1194), as amended by Pub. L. 104–191, 110 Stat. 1936 and Pub. L. 104–204, 110 Stat. 2944; and Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

Subpart B—Other Requirements

2. Section 2590.712 is revised to read as follows:

§ 2590.712 Parity in the application of certain limits to mental health benefits.

(a) *Definitions.* For purposes of this section, except where the context clearly indicates otherwise, the following definitions apply:

Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan (or group health insurance coverage offered in connection with such a plan) for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Annual limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a plan (or group health insurance coverage offered in connection with such a plan) for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Medical/surgical benefits means benefits for medical or surgical services, as defined under the terms of the plan or group health insurance coverage, but does not include mental health benefits.

Mental health benefits means benefits for mental health services, as defined under the terms of the plan or group health insurance coverage, but does not include benefits for treatment of substance abuse or chemical dependency.

(b) *Requirements regarding limits on benefits—(1)—general—(i) General parity requirement.* A group health plan (or health insurance coverage offered by an issuer in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits must comply with paragraph (b)(2), (3), or (6) of this section.

(ii) *Exception.* The rule in paragraph (b)(1)(i) of this section does not apply if a plan, or coverage, satisfies the requirements of paragraph (e) or (f) of this section.

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan (or group health insurance coverage) does not include an aggregate lifetime or annual limit on any medical/surgical benefits or includes aggregate lifetime or annual limits that apply to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual limit, respectively, on mental health benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan (or group health insurance coverage) includes an aggregate lifetime or annual limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health benefits in a manner that does not distinguish between the medical/surgical and mental health benefits; or

(ii) Not include an aggregate lifetime or annual limit on mental health benefits that is less than the aggregate lifetime or annual limit, respectively, on the medical/surgical benefits.

(4) *Examples.* The rules of paragraphs (b)(2) and (3) of this section are illustrated by the following examples:

Example 1. (i) Prior to the effective date of the mental health parity provisions, a group health plan had no annual limit on medical/surgical benefits and had a $10,000 annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Eliminating the plan's annual limit on mental health benefits;

(B) Replacing the plan's previous annual limit on mental health benefits with a $500,000 annual limit on all benefits (including medical/surgical and mental health benefits); and

(C) Replacing the plan's previous annual limit on mental health benefits with a $250,000 annual limit on medical/surgical benefits and a $250,000 annual limit on mental health benefits.

(ii) In this *Example 1*, each of the three options being considered by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 2. (i) Prior to the effective date of the mental health parity provisions, a group health plan had a $100,000 annual limit on medical/surgical inpatient benefits, a $50,000 annual limit on medical/surgical outpatient benefits, and a $100,000 annual limit on all mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Replacing the plan's previous annual limit on mental health benefits with a $150,000 annual limit on mental health benefits; and

(B) Replacing the plan's previous annual limit on mental health benefits with a $100,000 annual limit on mental health inpatient benefits and a $50,000 annual limit on mental health outpatient benefits.

(ii) In this *Example 2*, each option under consideration by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 3. (i) A group health plan that is subject to the requirements of this section has no aggregate lifetime or annual limit for either medical/surgical benefits or mental health benefits. While the plan provides medical/surgical benefits with respect to both network and out-of-network providers, it does not provide mental health benefits with respect to out-of-network providers.

(ii) In this *Example 3*, the plan complies with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 4. (i) Prior to the effective date of the mental health parity provisions, a group health plan had an annual limit on medical/surgical benefits and a separate but identical

annual limit on mental health benefits. The plan included benefits for treatment of substance abuse and chemical dependency in its definition of mental health benefits. Accordingly, claims paid for treatment of substance abuse and chemical dependency were counted in applying the annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Making no change in the plan so that claims paid for treatment of substance abuse and chemical dependency continue to count in applying the annual limit on mental health benefits;

(B) Amending the plan to count claims paid for treatment of substance abuse and chemical dependency in applying the annual limit on medical/surgical benefits (rather than counting those claims in applying the annual limit on mental health benefits);

(C) Amending the plan to provide a new category of benefits for treatment of chemical dependency and substance abuse that is subject to a separate, lower limit and under which claims paid for treatment of substance abuse and chemical dependency are counted only in applying the annual limit on this separate category; and

(D) Amending the plan to eliminate distinctions between medical/surgical benefits and mental health benefits and establishing an overall limit on benefits offered under the plan under which claims paid for treatment of substance abuse and chemical dependency are counted with medical/surgical benefits and mental health benefits in applying the overall limit.

(ii) In this *Example 4*, the group health plan is described in paragraph (b)(3) of this section. Because mental health benefits are defined in paragraph (a) of this section as excluding benefits for treatment of substance abuse and chemical dependency, the inclusion of benefits for treatment of substance abuse and chemical dependency in applying an aggregate lifetime limit or annual limit on mental health benefits under option (A) of this *Example 4* would not comply with the requirements of paragraph (b)(3) of this section. However, options (B), (C), and (D) of this *Example 4* would comply with the requirements of paragraph (b)(3) of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

(5) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to a limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual limits). Any reasonable method may be used to determine whether the dollar amounts expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(6) *Plan not described in paragraph (b)(2) or (3) of this section*—(i) *In general.* A group health plan (or group health insurance coverage) that is not described in paragraph (b)(2) or (3) of this section, must either—

(A) Impose no aggregate lifetime or annual limit, as appropriate, on mental health benefits; or

(B) Impose an aggregate lifetime or annual limit on mental health benefits that is no less than an average limit calculated for medical/surgical benefits in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(6)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(6), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(5) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(iii) *Example.* The rules of this paragraph (b)(6) are illustrated by the following example:

Example. (i) A group health plan that is subject to the requirements of this section includes a $100,000 annual limit on medical/surgical benefits related to cardio-pulmonary diseases. The plan does not include an annual limit on any other category of medical/surgical benefits. The plan determines that 40% of the dollar amount of plan payments for medical/surgical benefits are related to cardio-pulmonary diseases. The plan determines that $1,000,000 is a reasonable estimate of the upper limit on the dollar amount that the plan may incur with respect to the other 60% of payments for medical/surgical benefits.

(ii) In this *Example*, the plan is not described in paragraph (b)(3) of this section because there is not one annual limit that applies to at least two-thirds of all medical/surgical benefits. Further, the plan is not described in paragraph (b)(2) of this section because more than one-third of all medical/surgical benefits are subject to an annual limit. Under this paragraph (b)(6), the plan sponsor can choose either to include no annual limit on mental health benefits, or to include an annual limit on mental health benefits that is not less than the weighted average of the annual limits applicable to each category of medical/surgical benefits. In this example, the minimum weighted average annual limit that can be applied to mental health benefits is $640,000 (40% x $100,000 + 60% x $1,000,000 = $640,000).

(c) *Rule in the case of separate benefit packages.* If a group health plan offers two or more benefit packages, the requirements of this section, including the exemption provisions in paragraph (f) of this section, apply separately to each benefit package. Examples of a group health plan that offers two or more benefit packages include a group health plan that offers employees a choice between indemnity coverage or HMO coverage, and a group health plan that provides one benefit package for retirees and a different benefit package for current employees.

(d) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering both medical/surgical benefits and mental health benefits regardless of whether the mental health benefits are administered separately under the plan.

(2) *Health insurance issuers.* The requirements of this section apply to a health insurance issuer offering health insurance coverage for both medical/surgical benefits and mental health benefits in connection with a group health plan.

(3) *Scope.* This section does not—

(i) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) to provide any mental health benefits; or

(ii) Affect the terms and conditions (including cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requiring prior authorization for treatment, or requiring primary care physicians' referrals for treatment) relating to the amount, duration, or scope of the mental health benefits under the plan (or coverage) except as specifically provided in paragraph (b) of this section.

(e) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. For purposes of this paragraph (e), the term *small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. See section 732(a) of the Act and § 2590.732(a), which provide that this section (and certain other sections) does not apply to any group health plan (and health insurance issuer offering coverage in connection with a group health plan) for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (e)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. 414) are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(f) *Increased cost exemption*—(1) *In general.* A group health plan (or health insurance coverage offered in connection with a group health plan) is not subject to the requirements of this section if the requirements of this paragraph (f) are satisfied. If a plan offers more than one benefit package, this paragraph (f) applies separately to each benefit package. Except as provided in paragraph (h) of this section, a plan must comply with the requirements of paragraph (b)(1)(i) of this section for the first plan year beginning on or after January 1, 1998, and must continue to comply with the requirements of paragraph (b)(1)(i) of this section until the plan satisfies the requirements in this paragraph (f). In no event is the exemption of this paragraph (f) effective until 30 days after the notice requirements in paragraph (f)(3) of this section are satisfied. If the requirements of this paragraph (f) are satisfied with respect to a plan, the exemption continues in effect (at the plan's discretion) until September 30, 2001, even if the plan subsequently purchases a different policy from the same or a different issuer and regardless of any other changes to the plan's benefit structure.

(2) *Calculation of the one-percent increase*—(i) *Ratio.* A group health plan (or group health insurance coverage) satisfies the requirements of this paragraph (f)(2) if the application of paragraph (b)(1)(i) of this section to the plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least one percent. The application of paragraph (b)(1)(i) of this section results in an increased cost of at least one percent under a group health plan (or for such coverage) only if the ratio below equals or exceeds 1.01000. The ratio is determined as follows:

(A) The incurred expenditures during the base period, divided by,

(B) The incurred expenditures during the base period, reduced by—

(*1*) The claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section; and

(*2*) Administrative expenses attributable to complying with the requirements of this section.

(ii) *Formula.* The ratio of paragraph (f)(2)(i) of this section is expressed mathematically as follows:

$$\frac{IE}{IE-(CE+AE)} \geq 1.01000$$

(A) *IE* means the incurred expenditures during the base period.

(B) *CE* means the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section

(C) *AE* means administrative costs related to claims in *CE* and other administrative costs attributable to complying with the requirements of this section.

(iii) *Incurred expenditures. Incurred expenditures* means actual claims incurred during the base period and reported within two months following the base period, and administrative costs for all benefits under the group health plan, including mental health benefits and medical/surgical benefits, during the base period. Incurred expenditures do not include premiums.

(iv) *Base period. Base period* means the period used to calculate whether the plan may claim the one-percent increased cost exemption in this paragraph (f). The base period must begin on the first day in any plan year that the plan complies with the requirements of paragraph (b)(1)(i) of this section and must extend for a period of at least six consecutive calendar months. However, in no event may the base period begin prior to September 26, 1996 (the date of enactment of the Mental Health Parity Act (Pub. L. 104–204, 110 Stat. 2944)).

(v) *Rating pools.* For plans that are combined in a pool for rating purposes, the calculation under this paragraph (f)(2) for each plan in the pool for the base period is based on the incurred expenditures of the pool, whether or not all the plans in the pool have participated in the pool for the entire base period. (However, only the plans that have complied with paragraph (b)(1)(i) of this section for at least six months as a member of the pool satisfy the requirements of this paragraph (f)(2).) Otherwise, the calculation under this paragraph (f)(2) for each plan is calculated by the plan administrator (or issuer) based on the incurred expenditures of the plan.

(vi) *Examples.* The rules of this paragraph (f)(2) are illustrated by the following examples:

EXAMPLE 1. (i) A group health plan has a plan year that is the calendar year. The plan satisfies the requirements of paragraph (b)(1)(i) of this section as of January 1, 1998. On September 15, 1998, the plan determines that $1,000,000 in claims have been incurred during the period between January 1, 1998 and June 30, 1998 and reported by August 30, 1998. The plan also determines that $100,000 in administrative costs have been incurred for all benefits under the group health plan, including mental health benefits. Thus, the plan determines that its incurred expenditures for the base period are $1,100,000. The plan also determines that the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section are $40,000 and that administrative expenses attributable to complying with the requirements of this section are $10,000. Thus, the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are $1,050,000 ($1,100,000 − ($40,000 + $10,000) = $1,050,000).

(ii) In this *Example 1*, the plan satisfies the requirements of this paragraph (f)(2) because the application of this section results in an increased cost of at least one percent under the terms of the plan ($1,100,000/$1,050,000 = 1.04762).

EXAMPLE 2. (i) A health insurance issuer sells a group health insurance policy that is rated on a pooled basis and is sold to 30 group health plans. One of the group health plans inquires whether it qualifies for the one-percent increased cost exemption. The issuer performs the calculation for the pool as a whole and determines that the application of this section results in an increased cost of 0.500 percent (for a ratio under this paragraph (f)(2) of 1.00500) for the pool. The issuer informs the requesting plan and the other plans in the pool of the calculation.

(ii) In this *Example 2*, none of the plans satisfy the requirements of this paragraph

(f)(2) and a plan that purchases a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section. In addition, an issuer that issues to any of the plans in the pool a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section.

EXAMPLE 3. (i) A partially insured plan is collecting the information to determine whether it qualifies for the exemption. The plan administrator determines the incurred expenses for the base period for the self-funded portion of the plan to be $2,000,000 and the administrative expenses for the base period for the self-funded portion to be $200,000. For the insured portion of the plan, the plan administrator requests data from the insurer. For the insured portion of the plan, the plan's own incurred expenses for the base period are $1,000,000 and the administrative expenses for the base period are $100,000. The plan administrator determines that under the self-funded portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are $0 because the self-funded portion does not cover mental health benefits and the plan's administrative costs attributable to complying with the requirements of this section are $1,000. The issuer determines that under the insured portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are $25,000 and the administrative costs attributable to complying with the requirements of this section are $1,000. Thus, the total incurred expenditures for the plan for the base period are $3,300,000 ($2,000,000 + $200,000 + $1,000,000 + $100,000 = $3,300,000) and the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are $3,273,000 ($3,300,000 − ($0 + $1,000 + $25,000 + $1,000) = $3,273,000).

(ii) In this *Example 3*, the plan does not satisfy the requirements of this paragraph (f)(2) because the application of this section does not result in an increased cost of at least one percent under the terms of the plan ($3,300,000/$3,273,000 = 1.00825).

(3) *Notice of exemption*—(i) *Participants and beneficiaries*—(A) *In general.* A group health plan must notify participants and beneficiaries of the plan's decision to claim the one-percent increased cost exemption. The notice must include the following information:

(*1*) A statement that the plan is exempt from the requirements of this section and a description of the basis for the exemption;

(*2*) The name and telephone number of the individual to contact for further information;

(*3*) The plan name and plan number (PN);

(*4*) The plan administrator's name, address, and telephone number;

(*5*) For single-employer plans, the plan sponsor's name, address, and telephone number (if different from paragraph (f)(3)(i)(A)(*3*) of this section) and the plan sponsor's employer identification number (EIN);

(*6*) The effective date of the exemption;

(*7*) The ability of participants and beneficiaries to contact the plan administrator to see how benefits may be affected as a result of the plan's claim of the exemption; and

(*8*) The availability, upon request and free of charge, of a summary of the information required under paragraph (f)(4) of this section.

(B) *Use of summary of material reductions in covered services or benefits.* A plan may satisfy the requirements of paragraph (f)(3)(i)(A) of this section by providing participants and beneficiaries (in accordance with paragraph (f)(3)(i)(C) of this section) with a summary of material reductions in covered services or benefits required under § 2520.104b–3(d) that also includes the information of this paragraph (f)(3)(i). However, in all cases, the exemption is not effective until 30 days after notice has been sent.

(C) *Delivery.* The notice described in this paragraph (f)(3)(i) is required to be provided to all participants and beneficiaries. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of ERISA (e.g., first-class mail). If the notice is provided to the participant at the participant's last known address, then the requirements of this paragraph (f)(3)(i) are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

(D) *Example.* The rules of this paragraph (f)(3)(i) are illustrated by the following example:

Example. (i) A group health plan has a plan year that is the calendar year and has an open enrollment period every November 1 through November 30. The plan determines on September 15 that it satisfies the requirements of paragraph (f)(2) of this section. As part of its open enrollment materials, the plan mails, on October 15, to all participants and beneficiaries a notice satisfying the requirements of this paragraph (f)(3)(i).

(ii) In this *Example*, the plan has sent the notice in a manner that complies with this paragraph (f)(3)(i).

(ii) *Federal agencies*—(A) *Church plans.* A church plan (as defined in section 414(e) of the Internal Revenue Code) claiming the exemption of this paragraph (f) for any benefit package must provide notice to the Department of the Treasury. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(B) *Group health plans subject to Part 7 of Subtitle B of Title I of ERISA.* A group health plan subject to Part 7 of Subtitle B of Title I of ERISA, and claiming the exemption of this paragraph (f) for any benefit package, must provide notice to the Department of Labor. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(C) *Nonfederal governmental plans.* A group health plan that is a nonfederal governmental plan claiming the exemption of this paragraph (f) for any benefit package must provide notice to the Department of Health and Human Services (HHS). This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(4) *Availability of documentation.* The plan (or issuer) must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. An individual who is not a participant or beneficiary and who presents a notice described in paragraph (f)(3)(i) of this section is considered to be a representative. A representative may request the summary of information by providing the plan a copy of the notice provided to the participant under paragraph (f)(3)(i) of this section with any individually identifiable information redacted. The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with paragraph (b)(1)(i) of this section, the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements of this section. In no event should the summary of information include any individually identifiable information.

(g) *Special rules for group health insurance coverage*—(1) *Sale of nonparity policies.* An issuer may sell a policy without parity (as described in paragraph (b) of this section) only to a plan that meets the requirements of paragraphs (e) or (f) of this section.

(2) *Duration of exemption.* After a plan meets the requirements of paragraph (f) of this section, the plan may change issuers without having to meet the requirements of paragraph (f) of this section again before September 30, 2001.

(h) *Effective dates*—(1) *In general.* The requirements of this section are applicable for plan years beginning on or after January 1, 1998.

(2) *Limitation on actions.* (i) Except as provided in paragraph (h)(3) of this section, no enforcement action is to be taken by the Secretary against a group health plan that has sought to comply in good faith with the requirements of section 712 of the Act, with respect to a violation that occurs before the earlier of—

(A) The first day of the first plan year beginning on or after April 1, 1998; or

(B) January 1, 1999.

(ii) Compliance with the requirements of this section is deemed to be good faith compliance with the requirements of section 712 of Part 7 of Subtitle B of Title I of ERISA.

(iii) The rules of this paragraph (h)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan complies with section 712 of Part 7 of Subtitle B of Title I of ERISA in good faith using assumptions inconsistent with paragraph (b)(6) of this section relating to weighted averages for categories of benefits.

(ii) In this *Example 1*, no enforcement action may be taken against the plan with respect to a violation resulting solely from those assumptions and occurring before January 1, 1999.

Example 2. (i) A group health plan has a plan year that is the calendar year. For the entire 1998 plan year, the plan applies a $1,000,000 annual limit on medical/surgical benefits and a $100,000 annual limit on mental health benefits.

(ii) In this *Example 2*, the plan has not sought to comply with the requirements of section 712 of the Act in good faith and this paragraph (h)(2) does not apply.

(3) *Transition period for increased cost exemption*—(i) *In general.* No enforcement action will be taken against a group health plan that is subject to the requirements of this section based on a violation of this section that occurs before April 1, 1998 solely because the plan claims the increased cost exemption under section 712(c)(2) of Part 7 of Subtitle B of Title I of ERISA based on assumptions inconsistent with the rules under paragraph (f) of this section, provided that a plan amendment that complies with the requirements of paragraph (b)(1)(i) of this section is adopted and effective no later than March 31, 1998 and the plan complies with the notice requirements in paragraph (h)(3)(ii) of this section.

(ii) *Notice of plan's use of transition period.* (A) A group health plan satisfies the requirements of this paragraph (h)(3)(ii) only if the plan provides notice to the applicable federal agency and posts such notice at the location(s) where documents must be made available for examination by participants and beneficiaries under section 104(b)(2) of ERISA and the regulations thereunder (29 CFR 2520.104b–1(b)(3)). The notice must indicate the plan's decision to use the transition period in paragraph (h)(3)(i) of this section by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event later than March 31, 1998. For a group health plan that is a church plan, the applicable federal agency is the Department of the Treasury. For a group health plan that is subject to Part 7 of Subtitle B of Title I of ERISA, the applicable federal agency is the Department of Labor. For a group health plan that is a nonfederal governmental plan, the applicable federal agency is the Department of Health and Human Services. The notice must include—

(*1*) The name of the plan and the plan number (PN);

(*2*) The name, address, and telephone number of the plan administrator;

(*3*) For single-employer plans, the name, address, and telephone number of the plan sponsor (if different from the plan administrator) and the plan sponsor's employer identification number (EIN);

(*4*) The name and telephone number of the individual to contact for further information; and

(*5*) The signature of the plan administrator and the date of the signature.

(B) The notice must be provided at no charge to participants or their representative within 15 days after receipt of a written or oral request for such notification, but in no event before the notice has been sent to the applicable federal agency.

(i) *Sunset.* This section does not apply to benefits for services furnished on or after September 30, 2001.

Signed at Washington, DC, this 16th day of December, 1997.

Olena Berg,

Assistant Secretary, Pension Welfare Benefits Administration, U.S. Department of Labor.

Health Care Financing Administration

45 CFR Subtitle A, Subchapter B

45 CFR Part 146 is amended as follows:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

1. The authority citation for Part 146 is revised to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92).

2. A new Subpart C is added to Part 146 to read as follows:

Subpart C—Requirements Related to Benefits

§ 146.136 Parity in the application of certain limits to mental health benefits.

(a) *Definitions.* For purposes of this section, except where the context clearly indicates otherwise, the following definitions apply:

Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a group health plan (or group health insurance coverage offered in connection with such plan) for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Annual limit means a dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a plan (or group health insurance coverage offered in connection with such plan) for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

Medical/surgical benefits means benefits for medical or surgical services, as defined under the terms of the plan or group health insurance coverage, but does not include mental health benefits.

Mental health benefits means benefits for mental health services, as defined under the terms of the plan or group health insurance coverage, but does not include benefits for treatment of substance abuse or chemical dependency.

(b) *Requirements regarding limits on benefits*—(1) *In general*—(i) *General parity requirement.* A group health plan (or health insurance coverage offered by an issuer in connection with a group

health plan) that provides both medical/surgical benefits and mental health benefits must comply with paragraph (b)(2), paragraph (b)(3), or paragraph (b)(6) of this section.

(ii) *Exception.* The rule in paragraph (b)(1)(i) of this section does not apply if a plan, or coverage, satisfies the requirements of paragraph (e) or paragraph (f) of this section.

(2) *Plan with no limit or limits on less than one-third of all medical/surgical benefits.* If a plan (or group health insurance coverage) does not include an aggregate lifetime or annual limit on any medical/surgical benefits or includes aggregate lifetime or annual limits that apply to less than one-third of all medical/surgical benefits, it may not impose an aggregate lifetime or annual limit, respectively, on mental health benefits.

(3) *Plan with a limit on at least two-thirds of all medical/surgical benefits.* If a plan (or group health insurance coverage) includes an aggregate lifetime or annual limit on at least two-thirds of all medical/surgical benefits, it must either—

(i) Apply the aggregate lifetime or annual limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health benefits in a manner that does not distinguish between the medical/surgical and mental health benefits; or

(ii) Not include an aggregate lifetime or annual limit on mental health benefits that is less than the aggregate lifetime or annual limit, respectively, on the medical/surgical benefits.

(4) *Examples.* The rules of paragraphs (b) (2) and (3) of this section are illustrated by the following examples:

Example 1. (i) Prior to the effective date of the mental health parity provisions, a group health plan had no annual limit on medical/surgical benefits and had a $10,000 annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Eliminating the plan's annual limit on mental health benefits;

(B) Replacing the plan's previous annual limit on mental health benefits with a $500,000 annual limit on all benefits (including medical/surgical and mental health benefits); and

(C) Replacing the plan's previous annual limit on mental health benefits with a $250,000 annual limit on medical/surgical benefits and a $250,000 annual limit on mental health benefits.

(ii) In this *Example 1*, each of the three options being considered by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 2. (i) Prior to the effective date of the mental health parity provisions, a group health plan had a $100,000 annual limit on medical/surgical inpatient benefits, a $50,000 annual limit on medical/surgical outpatient benefits, and a $100,000 annual limit on all mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Replacing the plan's previous annual limit on mental health benefits with a $150,000 annual limit on mental health benefits; and

(B) Replacing the plan's previous annual limit on mental health benefits with a $100,000 annual limit on mental health inpatient benefits and a $50,000 annual limit on mental health outpatient benefits.

(ii) In this *Example 2*, each option under consideration by the plan sponsor would comply with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 3. (i) A group health plan that is subject to the requirements of this section has no aggregate lifetime or annual limit for either medical/surgical benefits or mental health benefits. While the plan provides medical/surgical benefits with respect to both network and out-of-network providers, it does not provide mental health benefits with respect to out-of-network providers.

(ii) In this *Example 3*, the plan complies with the requirements of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 4. (i) Prior to the effective date of the mental health parity provisions, a group health plan had an annual limit on medical/surgical benefits and a separate but identical annual limit on mental health benefits. The plan included benefits for treatment of substance abuse and chemical dependency in its definition of mental health benefits. Accordingly, claims paid for treatment of substance abuse and chemical dependency were counted in applying the annual limit on mental health benefits. To comply with the parity requirements of this paragraph (b), the plan sponsor is considering each of the following options:

(A) Making no change in the plan so that claims paid for treatment of substance abuse and chemical dependency continue to count in applying the annual limit on mental health benefits;

(B) Amending the plan to count claims paid for treatment of substance abuse and chemical dependency in applying the annual limit on medical/surgical benefits (rather than counting those claims in applying the annual limit on mental health benefits);

(C) Amending the plan to provide a new category of benefits for treatment of chemical dependency and substance abuse that is subject to a separate, lower limit and under which claims paid for treatment of substance abuse and chemical dependency are counted only in applying the annual limit on this separate category; and

(D) Amending the plan to eliminate distinctions between medical/surgical benefits and mental health benefits and establishing an overall limit on benefits offered under the plan under which claims paid for treatment of substance abuse and chemical dependency are counted with medical/surgical benefits and mental health benefits in applying the overall limit.

(ii) In this *Example 4*, the group health plan is described in paragraph (b)(3) of this section. Because mental health benefits are defined in paragraph (a) of this section as excluding benefits for treatment of substance abuse and chemical dependency, the inclusion of benefits for treatment of substance abuse and chemical dependency in applying an aggregate lifetime limit or annual limit on mental health benefits under option (A) of this *Example 4* would not comply with the requirements of paragraph (b)(3) of this section. However, options (B), (C), and (D) of this *Example 4* would comply with the requirements of paragraph (b)(3) of this section because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

(5) *Determining one-third and two-thirds of all medical/surgical benefits.* For purposes of this paragraph (b), the determination of whether the portion of medical/surgical benefits subject to a limit represents one-third or two-thirds of all medical/surgical benefits is based on the dollar amount of all plan payments for medical/surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime or annual limits). Any reasonable method may be used to determine whether the dollar amounts expected to be paid under the plan will constitute one-third or two-thirds of the dollar amount of all plan payments for medical/surgical benefits.

(6) *Plan not described in paragraph (b)(2) or paragraph (b)(3) of this section*—(i) *In general.* A group health plan (or group health insurance coverage) that is not described in paragraph (b)(2) or paragraph (b)(3) of this section, must either impose—

(A) No aggregate lifetime or annual limit, as appropriate, on mental health benefits; or

(B) An aggregate lifetime or annual limit on mental health benefits that is no less than an average limit for medical/surgical benefits calculated in the following manner. The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual limits, as appropriate, that are applicable to the categories of medical/surgical benefits. Limits based on delivery systems, such as inpatient/outpatient treatment, or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this paragraph (b)(6)(i)(B). In addition, for purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated limit under the plan are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a plan may reasonably be expected to incur with respect to such benefits, taking into account any other applicable restrictions under the plan.

(ii) *Weighting.* For purposes of this paragraph (b)(6), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (b)(5) of this section for determining one-third or two-thirds of all medical/surgical benefits.

(iii) *Examples.* The rules of this paragraph (b)(6) are illustrated by the following example:

Example. (i) A group health plan that is subject to the requirements of this section includes a $100,000 annual limit on medical/surgical benefits related to cardio-pulmonary diseases. The plan does not include an annual limit on any other category of medical/surgical benefits. The plan determines that 40% of the dollar amount of plan payments for medical/surgical benefits are related to cardio-pulmonary diseases. The plan determines that $1,000,000 is a reasonable estimate of the upper limit on the dollar amount that the plan may incur with respect to the other 60% of payments for medical/surgical benefits.

(ii) In this *Example*, the plan is not described in paragraph (b)(3) of this section because there is not one annual limit that applies to at least two-thirds of all medical/surgical benefits. Further, the plan is not described in paragraph (b)(2) of this section because more than one-third of all medical/surgical benefits are subject to an annual limit. Under this paragraph (b)(6), the plan sponsor can choose either to include no annual limit on mental health benefits, or to include an annual limit on mental health benefits that is not less than the weighted average of the annual limits applicable to each category of medical/surgical benefits. In this example, the minimum weighted average annual limit that can be applied to mental health benefits is $640,000 (40% " $100,000 + 60% " $1,000,000 = $640,000).

(c) *Rule in the case of separate benefit packages.* If a group health plan offers two or more benefit packages, the requirements of this section, including the exemption provisions in paragraph (f) of this section, apply separately to each benefit package. Examples of a group health plan that offers two or more benefit packages include a group health plan that offers employees a choice between indemnity coverage or HMO coverage, and a group health plan that provides one benefit package for retirees and a different benefit package for current employees.

(d) *Applicability*—(1) *Group health plans.* The requirements of this section apply to a group health plan offering both medical/surgical benefits and mental health benefits regardless of whether the mental health benefits are administered separately under the plan.

(2) *Health insurance issuers.* The requirements of this section apply to a health insurance issuer offering health insurance coverage for both medical/surgical benefits and mental health benefits in connection with a group health plan.

(3) *Scope.* This section does not—

(i) Require a group health plan (or health insurance issuer offering coverage in connection with a group health plan) to provide any mental health benefits; or

(ii) Affect the terms and conditions (including cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requiring prior authorization for treatment, or requiring primary care physicians' referrals for treatment) relating to the amount, duration, or scope of the mental health benefits under the plan (or coverage) except as specifically provided in paragraph (b) of this section.

(e) *Small employer exemption*—(1) *In general.* The requirements of this section do not apply to a group health plan (or health insurance issuer offering coverage in connection with a group health plan) for a plan year of a small employer. For purposes of this paragraph (e), the term *small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. See regulations at § 146.145(a), which provide that this section (and certain other sections) does not apply to any group health plan (and health insurance issuer offering coverage in connection with a group health plan) for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) *Rules in determining employer size.* For purposes of paragraph (e)(1) of this section—

(i) All persons treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. 414) are treated as one employer;

(ii) If an employer was not in existence throughout the preceding calendar year, whether it is a small employer is determined based on the average number of employees the employer reasonably expects to employ on business days during the current calendar year; and

(iii) Any reference to an employer for purposes of the small employer exemption includes a reference to a predecessor of the employer.

(f) *Increased cost exemption*—(1) *In general.* A group health plan (or health insurance coverage offered in connection with a group health plan) is not subject to the requirements of this section if the requirements of this paragraph (f) are satisfied. If a plan offers more than one benefit package, this paragraph (f) applies separately to each benefit package. Except as provided in paragraph (h) of this section, a plan must comply with the requirements of paragraph (b)(1)(i) of this section for the first plan year beginning on or after January 1, 1998, and must continue to comply with the requirements of paragraph (b)(1)(i) of this section until the plan satisfies the requirements in this paragraph (f). In no event is the exemption of this paragraph (f) effective until 30 days after the notice requirements in paragraph (f)(3) of this section are satisfied. If the requirements of this paragraph (f) are satisfied with respect to a plan, the exemption continues in effect (at the plan's discretion) until September 30, 2001, even if the plan subsequently purchases a different policy from the same or a different issuer and regardless of any other changes to the plan's benefit structure.

(2) *Calculation of the one-percent increase*—(i) *Ratio.* A group health plan (or group health insurance coverage) satisfies the requirements of this paragraph (f)(2) if the application of paragraph (b)(1)(i) of this section to the plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least one percent. The application of paragraph (b)(1)(i) of this section results in an increased cost of at least one percent under a group health plan (or for such coverage) only if the ratio below equals or exceeds 1.01000. The ratio is determined as follows:

(A) The incurred expenditures during the base period, divided by,

(B) The incurred expenditures during the base period, reduced by—

(*1*) The claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section, and

(*2*) Administrative expenses attributable to complying with the requirements of this section.

(ii) *Formula.* The ratio of paragraph (f)(2)(i) is expressed mathematically as follows:

$$\frac{IE}{IE-(CE+AE)} \geq 1.01000$$

(A) *IE* means the incurred expenditures during the base period.

(B) *CE* means the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section.

(C) *AE* means administrative costs related to claims in *CE* and other administrative costs attributable to complying with the requirements of this section.

(iii) *Incurred expenditures. Incurred expenditures* means actual claims incurred during the base period and reported within two months following the base period, and administrative costs for all benefits under the group health plan, including mental health benefits and medical/surgical benefits, during the base period. Incurred expenditures do not include premiums.

(iv) *Base period. Base period* means the period used to calculate whether the plan may claim the one-percent increased cost exemption in this paragraph (f). The base period must begin on the first day in any plan year that the plan complies with the requirements of paragraph (b)(1)(i) of this section and must extend for a period of at least six consecutive calendar months. However, in no event may the base period begin prior to September 26, 1996 (the date of enactment of the Mental Health Parity Act (Pub. L. 104–204, 110 Stat. 2944)).

(v) *Rating pools.* For plans that are combined in a pool for rating purposes, the calculation under this paragraph (f)(2) for each plan in the pool for the base period is based on the incurred expenditures of the pool, whether or not all the plans in the pool have participated in the pool for the entire base period. (However, only the plans that have complied with paragraph (b)(1)(i) of this section for at least six months as a member of the pool satisfy the requirements of this paragraph (f)(2).) Otherwise, the calculation under this paragraph (f)(2) for each plan is calculated by the plan administrator (or issuer) based on the incurred expenditures of the plan.

(vi) *Examples.* The rules of this paragraph (f)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan satisfies the requirements of paragraph (b)(1)(i) of this section as of January 1, 1998. On September 15, 1998, the plan determines that $1,000,000 in claims have been incurred during the period between January 1, 1998 and June 30, 1998 and reported by August 30, 1998. The plan also determines that $100,000 in administrative costs have been incurred for all benefits under the group health plan, including mental health benefits. Thus, the plan determines that its incurred expenditures for the base period are $1,100,000. The plan also determines that the claims incurred during the base period that would have been denied under the terms of the plan absent plan amendments required to comply with this section are $40,000 and that administrative expenses attributable to complying with the requirements of this section are $10,000. Thus, the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are $1,050,000 ($1,100,000—($40,000 + $10,000) = $1,050,000).

(ii) In this *Example 1*, the plan satisfies the requirements of this paragraph (f)(2) because the application of this section results in an increased cost of at least one percent under the terms of the plan ($1,100,000/$1,050,000 = 1.04762).

Example 2. (i) A health insurance issuer sells a group health insurance policy that is rated on a pooled-basis and is sold to 30 group health plans. One of the group health plans inquires whether it qualifies for the one percent increased cost exemption. The issuer performs the calculation for the pool as a whole and determines that the application of this section results in an increased cost of 0.500 percent (for a ratio under this paragraph (f)(2) of 1.00500) for the pool. The issuer informs the requesting plan and the other plans in the pool of the calculation.

(ii) In this *Example 2*, none of the plans satisfy the requirements of this paragraph (f)(2) and a plan that purchases a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section. In addition, an issuer that issues to any of the plans in the pool a policy not complying with the requirements of paragraph (b)(1)(i) of this section violates the requirements of this section.

Example 3. (i) A partially-insured plan is collecting the information to determine whether it qualifies for the exemption. The plan administrator determines the incurred expenses for the base period for the self-funded portion of the plan to be $2,000,000 and the administrative expenses for the base period for the self-funded portion to be $200,000. For the insured portion of the plan, the plan administrator requests data from the insurer. For the insured portion of the plan, the plan's own incurred expenses for the base period are $1,000,000 and the administrative expenses for the base period are $100,000. The plan administrator determines that under the self-funded portion of the plan, the claims incurred for the base period that would have been denied under the terms of the plan absent the amendment are $25,000 and the administrative costs attributable to complying with the requirements of this section are $1,000. Thus, the total incurred expenditures for the plan for the base period are $3,300,000 ($2,000,000 + $200,000 + $1,000,000 + $100,000 = $3,300,000) and the total amount of expenditures for the base period had the plan not been amended to comply with the requirements of paragraph (b)(1)(i) of this section are $3,273,000 ($3,300,000 − ($0 + $1,000 + $25,000 + $1,000) = $3,273,000).

(ii) In this *Example 3*, the plan does not satisfy the requirements of this paragraph (f)(2) because the application of this section does not result in an increased cost of at least one percent under the terms of the plan ($3,300,000/$3,273,000 = 1.00825).

(3) *Notice of exemption*—(i) *Participants and beneficiaries*—(A) *In general.* A group health plan must notify participants and beneficiaries of the plan's decision to claim the one percent increased cost exemption. The notice must include the following information:

(*1*) A statement that the plan is exempt from the requirements of this section and a description of the basis for the exemption.

(*2*) The name and telephone number of the individual to contact for further information.

(*3*) The plan name and plan number (PN).

(*4*) The plan administrator's name, address, and telephone number.

(*5*) For single-employer plans, the plan sponsor's name, address, and telephone number (if different from paragraph (f)(3)(i)(A)(*3* of this section) and the plan sponsor's employer identification number (EIN).

(*6*) The effective date of such exemption.

(*7*) The ability of participants and beneficiaries to contact the plan administrator to see how benefits may be affected as a result of the plan's election of the exemption.

(*8*) The availability, upon request and free of charge, of a summary of the information required under paragraph (f)(4) of this section.

(B) *Use of summary of material reductions in covered services or benefits.* A plan may satisfy the requirements of paragraph (f)(3)(i)(A) by providing participants and beneficiaries (in accordance with paragraph (f)(3)(i)(C)) with a summary of material reductions in covered services or benefits consistent with Department of Labor regulations at 29 CFR 2520.104b–3(d) that also includes the information of this paragraph (f)(3)(i). However, in all cases, the exemption is not effective until 30 days after notice has been sent.

(C) *Delivery.* The notice described in this paragraph (f)(3)(i) is required to be provided to all participants and beneficiaries. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of ERISA (29 U.S.C. 1024(b)(1)) (e.g., first-class mail). If the notice is provided to the participant at the participant's last known address, then the requirements of this paragraph (f)(3)(i) are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

(D) *Example.* The rules of this paragraph (f)(3)(i) are illustrated by the following example:

Example. (i) A group health plan has a plan year that is the calendar year and has an open enrollment period every November 1 through November 30. The plan determines on September 15 that it satisfies the requirements of paragraph (f)(2) of this section. As part of its open enrollment materials, the plan mails, on October 15, to all participants and beneficiaries a notice satisfying the requirements of this paragraph (f)(3)(i).

(ii) In this *Example*, the plan has sent the notice in a manner that complies with this paragraph (f)(3)(i).

(ii) *Federal agencies*—(A) *Church plans.* A church plan (as defined in section 414(e) of the Internal Revenue Code) claiming the exemption of this paragraph (f) for any benefit package must provide notice to the Department of the Treasury. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(B) *Group health plans subject to Part 7 of Subtitle B of Title I of ERISA.* A group health plan subject to Part 7 of Subtitle B of Title I of ERISA, and claiming the exemption of this paragraph (f) for any benefit package, must provide notice to the Department of Labor. This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(C) *Non-Federal governmental plans.* A group health plan that is a non-Federal governmental plan claiming the exemption of this paragraph (f) for any benefit package must provide notice to the Department of Health and Human Services (HHS). This requirement is satisfied if the plan sends a copy, to the address designated by the Secretary in generally applicable guidance, of the notice described in paragraph (f)(3)(i) of this section identifying the benefit package to which the exemption applies.

(4) *Availability of documentation.* The plan (or issuer) must make available to participants and beneficiaries (or their representatives), on request and at no charge, a summary of the information on which the exemption was based. An individual who is not a participant or beneficiary and who presents a notice described in paragraph (f)(3)(i) of this section is considered to be a representative. A representative may request the summary of information by providing the plan a copy of the notice provided to the participant under paragraph (f)(3)(i) of this section with any individually identifiable information redacted. The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with paragraph (b)(1)(i) of this section, the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements for the exemption. In no event should the summary of information include any individually identifiable information.

(g) *Special rules for group health insurance coverage*—(1) *Sale of nonparity policies.* An issuer may sell a policy without parity (as described in paragraph (b) of this section) only to a plan that meets the requirements of paragraph (e) or paragraph (f) of this section.

(2) *Duration of exemption.* After a plan meets the requirements of paragraph (f) of this section, the plan may change issuers without having to meet the requirements of paragraph (f) of this section again before September 30, 2001.

(h) *Effective dates*—(1) *In general.* The requirements of this section are applicable for plan years beginning on or after January 1, 1998.

(2) *Limitation on actions.* (i) Except as provided in paragraph (h)(3) of this section, no enforcement action is to be taken by the Secretary against a group health plan that has sought to comply in good faith with the requirements of section 2705 of the PHS Act, with respect to a violation that occurs before the earlier of—

(A) The first day of the first plan year beginning on or after April 1, 1998; or

(B) January 1, 1999.

(ii) Compliance with the requirements of this section is deemed to be good faith compliance with the requirements of section 2705 of the PHS Act.

(iii) The rules of this paragraph (h)(2) are illustrated by the following examples:

Example 1. (i) A group health plan has a plan year that is the calendar year. The plan complies with section 2705 of the PHS Act in good faith using assumptions inconsistent with paragraph (b)(6) of this section relating to weighted averages for categories of benefits.

(ii) In this *Example 1*, no enforcement action may be taken against the plan with respect to a violation resulting solely from those assumptions and occurring before January 1, 1999.

Example 2. (i) A group health plan has a plan year that is the calendar year. For the entire 1998 plan year, the plan applies a $1,000,000 annual limit on medical/surgical benefits and a $100,000 annual limit on mental health benefits.

(ii) In this *Example 2*, the plan has not sought to comply with the requirements of section 2705 of the PHS Act in good faith and this paragraph (h)(2) does not apply.

(3) *Transition period for increased cost exemption*—(i) *In general.* No enforcement action will be taken against a group health plan that is subject to the requirements of this section based on a violation of this section that occurs before April 1, 1998 solely because the plan claims the increased cost exemption under section 2705(c)(2) of the PHS Act based on assumptions inconsistent with the rules under paragraph (f) of this section, provided that a plan amendment that complies with the requirements of paragraph (b)(1)(i) of this section is adopted and effective no later than March 31, 1998 and the plan complies with the notice requirements in paragraph (h)(3)(ii) of this section.

(ii) *Notice of plan's use of transition period.* (A) A group health plan satisfies the requirements of this paragraph (h)(3)(ii) only if the plan provides notice to the applicable federal agency and posts the notice at the location(s) where documents must be made available for examination by participants and beneficiaries under section 104(b)(2) of ERISA and the regulations thereunder (29 CFR 2520.104b–1(b)(3)). The notice must indicate the plan's decision to use the transition period in paragraph (h)(3)(i) of this section by 30 days after the first day of the plan year beginning on or after January 1, 1998, but in no event later than March 31, 1998. For a group health plan that is a church plan, the applicable federal agency is the Department of the Treasury. For a group

health plan that is subject to Part 7 of Subtitle B of Title I of ERISA, the applicable federal agency is the Department of Labor. For a group health plan that is a nonfederal governmental plan, the applicable federal agency is the Department of Health and Human Services. The notice must include—

(*1*) The name of the plan and the plan number (PN);

(*2*) The name, address, and telephone number of the plan administrator;

(*3*) For single-employer plans, the name, address, and telephone number of the plan sponsor (if different from the plan administrator) and the plan sponsor's employer identification number (EIN);

(*4*) The name and telephone number of the individual to contact for further information; and

(*5*) The signature of the plan administrator and the date of the signature.

(B) The notice must be provided at no charge to participants or their representative within 15 days after receipt of a written or oral request for such notification, but in no event before the notice has been sent to the applicable federal agency.

(i) *Sunset.* This section does not apply to benefits for services furnished on or after September 30, 2001.

Dated: December 16, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 16, 1997.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 97–33262 Filed 12–19–97; 8:45 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[Reg–109704–97]

RIN 1545–AV12

HIPAA Mental Health Parity Act

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to mental health parity requirements imposed on group health plans. These requirements were added to the Internal Revenue Code by section 1532 of the Taxpayer Relief Act of 1997. The IRS is issuing the temporary regulations at the same time that the Pension and Welfare Benefits Administration of the U.S. Department of Labor and the Health Care Financing Administration of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations relating to mental health parity requirements added by the Mental Health Parity Act of 1996 to the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers and group health plans relating to the new mental health parity requirements. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by March 23, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–109704–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–109704–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer, (202) 622–4695; concerning submissions or to request a hearing, Mike Slaughter, 202–622–7180. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information referenced in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information is in § 54.9812-1T (see the temporary regulations published elsewhere in this issue of the **Federal Register**). The collection of information is required if a plan wishes to avail itself of an exemption provided under the statute. The likely respondents are business or other for-profit institutions, nonprofit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required in order to obtain the benefit of being exempt from the mental health parity requirement.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 20, 1998. Comments are specifically requested concerning:

—How to enhance the quality, utility, and clarity of the information to be collected;

—How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

—Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Background

The temporary regulations published elsewhere in this issue of the **Federal Register** add § 54.9812–1T to the Miscellaneous Excise Tax Regulations. These regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is hereby certified that the collection of information referenced in this notice of proposed rulemaking (see § 54.9812–1T of the temporary regulations published elsewhere in this issue of the **Federal Register**) will not have a significant economic impact on a substantial number of small entities. Employers with 50 or fewer employees are not subject to the law. Moreover, even for employers that are subject to the mental health parity requirements, no collection of information is required unless they qualify for and claim the 1% increased cost exemption. Even for employers subject to the law who claim the exemption, the estimated time for each response is 2 minutes. Thus, for example, an employer with 100 employees in its group health plan that claimed the 1% increased cost exemption, that took advantage of the three-month transitional period provided in the temporary regulations and that received 10 requests to examine the assumptions used in claiming the exemption would incur a total one-time burden of less than 4 hours. At an estimated cost of $11 per hour, this would result in a one-time cost of less than $44. This is not a significant economic impact.

This regulation is not subject to the Unfunded Mandates Reform Act of 1995 because the regulation is an interpretive regulation. For further information and

for analyses relating to the joint rulemaking, see the preamble to the joint rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Russ Weinheimer, Office of the Chief Counsel, Employee Benefits and Exempt Organizations. However, other personnel from the IRS and Treasury Department participated in their development. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and U.S. Department of Health and Human Services.

List of Subjects in 26 CFR Part 54

Excise taxes, Health insurance, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.9812–1 is also issued under 26 U.S.C. 9833. * * *

Par. 2. Section 54.9812–1 is added to read as follows:

§ 54.9812–1 Parity in the application of certain limits to mental health benefits.

[The text of this proposed section is the same as the text of § 54.9812–1T published elsewhere in this issue of the **Federal Register**].

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 97–33263 Filed 12–19–97; 8:45 am]

BILLING CODE 4830–01–U

federal register

Monday
December 22, 1997

Part VI

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1 and 60–999
Government Contractors; Affirmative Action Requirements, Executive Order 11246; Approval of Information Collection Requirements and OMB Control Numbers; Final Rule; Correction

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1 and 60–999

RIN 1215–AA01

Government Contractors, Affirmative Action Requirements, Executive Order 11246; Approval of Information Collection Requirements and OMB Control Numbers; Correction

AGENCY: Office of Federal Contract Compliance Programs (OFCCP), Labor.

ACTION: Final rule; technical amendments.

SUMMARY: This document informs the public that the Office of Management and Budget (OMB) has approved, under the Paperwork Reduction Act of 1995 (PRA), the collection of information requirements contained in the OFCCP rule published on August 19, 1997, which revised a limited number of regulations implementing Executive Order 11246 (62 FR 44174). OMB has approved of these revisions under existing PRA control numbers and this document makes a ministerial, technical amendment to the OFCCP table displaying all control numbers for collections of information in OFCCP rules. Today's publication also makes other minor typographical and technical corrections to the regulations implementing Executive Order 11246.

EFFECTIVE DATE: This document is effective December 22, 1997. Information collection requirements contained in the final rule published at 62 FR 44174 are effective December 22, 1997.

FOR FURTHER INFORMATION CONTACT: James I. Melvin. Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room N–3424, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 219–9430 (voice), 1–800–326–2577 (TDD). Copies of this document in alternate formats may be obtained by calling OFCCP at (202) 219–9368 (voice) or 1–800–326–2577 (TDD). The alternate formats available are large print, electronic file on computer disk and audio-tape. This document also is available on the Internet at http://www.dol.gov/dol/esa.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Approval

On August 19, 1997, OFCCP published a final rule revising its regulations implementing Executive Order 11246, as amended, which prohibits all nonexempt Government contractors and subcontractors, and federally assisted construction contractors and subcontractors, from discriminating in employment. The Executive Order also requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, and national origin.

OFCCP reviewed the collection of information aspects of the rule in accordance with the PRA and OMB implementing regulations published at 5 CFR part 1320 (62 FR 44187–88). OFCCP believes that the rule will not result in an increase in paperwork burdens from what was previously required by the OFCCP regulations. In accordance with the PRA, OFCCP submitted to OMB the information collection requirements contained in the rule. On October 16, 1997, OMB approved the information collection requirements in the rule as revisions to existing PRA control numbers 1215–0072 (Supply and Service) and 1215–0163 (Construction).

In accordance with OMB recommendations, 5 CFR 1320.3(f)(3), OFCCP publishes a single table in 41 CFR part 60–999 that lists the OMB-assigned control numbers for information collection requirements contained in OFCCP rules. This document makes a ministerial, technical amendment to the table published at 41 CFR 60–999.2. The table is updated to reflect the deletion of 41 CFR part 60–60 from the regulations.

Corrections to Part 60–1

This document makes a technical correction to 41 CFR 60–1.7(a)(1) regarding the deadline for filing Standard Form 100 ("EEO–1"), which is published jointly by OFCCP and the Equal Employment Opportunity Commission (EEOC). Certain larger contractors are required to file an EEO–1 annually. Currently, § 60–1.7(a)(1) states that the EEO–1 filing deadline is on or before March 31 of each year. In 1991, however, the EEO–1 filing deadline was changed to September 30 of each year. EEOC amended its regulations to change the EEO–1 filing deadline to September 30. 29 CFR 1602.7; 56 FR 35753, 35754–55 (July 26, 1991). The instructional materials accompanying the forms, which have been approved by OMB under the PRA (control number 3046–0007), state that the filing deadline is September 30. Accordingly, a ministerial correction is made to § 60–1.7(a)(1) to reflect the September 30 EEO–1 annual filing deadline.

This document also makes a ministerial correction to 41 CFR 60–1.12(d) to reflect the appropriate effective date for the record retention requirements in § 60–1.12 that were issued on August 19, 1997, at 62 FR 44189. Section 60–1.12(d) listed September 18, 1997, as the effective date of the § 60–1.12 record retention rules. September 18, 1997, was the general effective date for the rules issued by OFCCP on August 19, 1997. However, as OFCCP stated in the preamble to those rules at 62 FR 44187, the new § 60–1.12 record retention provisions were not to be effective until approved by OMB under the PRA and until OFCCP displayed valid OMB control numbers. Consequently, because today's document announces the OMB approval of the record retention provisions under the PRA and displays the valid control numbers, § 60–1.12(d) is corrected to state that today's date is the effective date of § 60–1.12.

Today's publication also replaces the word "Director" throughout Part 60–1 with the words "Deputy Assistant Secretary" to reflect the current title of the head of OFCCP. The Part 60–1 final rule substituted the title of "Deputy Assistant Secretary" for the title "Director" in the definition section of the rule and in the regulatory sections amended on August 19, 1997. Today's document makes this non-substantive nomenclature change uniform throughout Part 60–1.

In addition, today's publication makes a number of other minor, typographical corrections to 41 CFR 60–1.3, 1.12, 1.26, and 1.42. These changes correct spelling, capitalization and punctuation errors.

Regulatory Analyses and Procedures

Administrative Procedure Act (APA)

This final rule makes minor technical and correcting amendments to 41 CFR parts 60–1 and 60–999. Because the amendments in this document are ministerial and non-substantive, the APA requirements that rule changes be published in proposed form and have a delayed effective date are unnecessary and would serve no useful purpose. Therefore, in accordance with the APA, 5 U.S.C. 553 (b)(3)(B) and (d)(3), good cause exists to waive notice of proposed rulemaking and the delayed effective date.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866, and therefore a regulatory impact analysis is not required.

Regulatory Flexibility Act (RFA)

This final rule will not change existing obligations for Federal contractors. Consequently, under the RFA, as amended, 5 U.S.C. 605(b), it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This final rule does not include any Federal mandate that may result in the expenditure by state, local and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year.

List of Subjects

41 CFR Part 60–1

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Reporting and recordkeeping requirements.

41 CFR Part 60–999

Reporting and recordkeeping requirements, Paperwork Reduction Act, OMB control numbers.

Signed at Washington, D.C. this 15th day of December 1997.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

For the reasons stated above, 41 CFR parts 60–1 and 60–999 are revised to read as follows:

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. The authority citation for part 60–1 continues to read as follows:

Authority: Sec. 201, E.O. 11246 (30 FR 12319), as amended by E.O. 11375 (32 14303) and E.O. 12086 (43 FR 46501).

2. In part 60–1 remove the word "Director" and add, in its place, the words "Deputy Assistant Secretary" in the following sections:

(a) Section 60–1.2 (in two places);
(b) Section 60–1.4(d);
(c) Section 60–1.5 (b)(1) (in two places), (b)(2), (c), and (d);
(d) Section 60–1.7 (a)(2) (in two places), (a)(3) (in two places), (a)(4), (b)(1), and (b)(2) (in two places);
(e) Section 60–1.9. (a), (b), (c), and (d) (in two places);
(f) Section 60–1.10;
(g) Section 60–1.21;
(h) Section 60–1.23(b);
(i) Section 60–1.24 (c)(3), (c)(4), (c)(5), (d) heading, (d)(1), and (d)(2);
(j) Section 60–1.25 heading, and in the text (in four places);
(k) Section 60–1.28;
(l) Section 60–1.29(a) (in three places), and (b) (in two places);
(m) Section 60–1.40(c);
(n) Section 60–1.41(b); and
(o) Section 60–1.46 heading, and in the text (in two places).

§ 60–1.3 [Amended]

3. In § 60–1.3, under the definition of the term "Minority group", the word "perspective" is revised to read "prospective"; under the definition of "Subcontract", in paragraph (2), the second "of" is revised to read "or"; and under the definition of "Subcontractor", the work "Firsttier" is revised to read "first-tier".

§ 60–1.7 [Amended]

4. In § 60–1.7(a)(1), the date "the 31st day of March" is revised to read "September 30".

§ 60–1.12 [Amended]

5. In § 60–1.12, in paragraph (a), in the fifth sentence, the word "compliant" is revised to read "complaint"; and in paragraph (d), the date "September 18, 1997" is revised to read "December 22, 1997".

§ 60–1.26 [Amended]

6. In § 60–1.26(a)(1)(vii), (c)(1) and (c)(3), all references to "Chapter" are revised to read "chapter".

§ 60–1.42 [Amended]

7. In § 60–1.42(a), remove the comma after the zip code "20507" and add, in its place, a double-spaced blank line before the remaining text of the paragraph.

PART 60–999—OMB CONTROL NUMBERS FOR OFCCP INFORMATION COLLECTION REQUIREMENTS

8. The authority citation for 41 CFR part 60–999 continues to read as follows:

Authority: 44 U.S.C. Ch. 35.

9. The table in § 60–999.2 is revised to read as follows:

§ 60–992.2 Display.

41 CFR Part where the information collection requirement is located	Current OMB control No.
Part 60–1	1215–0072, 1215–0131, 1215–0163.
Part 60–2	1215–0072.
Part 60–3	3046–0017.
Part 60–4	1215–0163.
Part 60–20	1215–0072, 1215–0163.
Part 60–30	1215–0072, 1215–0163.
Part 60–40	1215–0072, 1215–0163.
Part 60–50	1215–0072, 1215–0163.
Part 60–250	1215–0072, 1215–0131, 1215–0163.
Part 60–741	1215–0072, 1215–0131, 1215–0163.

[FR Doc. 97–33352 Filed 12–19–97; 8:45 am]

BILLING CODE 4510–27–M

Reader Aids

Federal Register

Vol. 62, No. 245

Monday, December 22, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10
65197–65308	11
65309–65592	12
65593–65740	15
65741–65990	16
65991–66250	17
66251–66494	18
66495–66812	19
66813–66972	22

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987
7061 66251

Executive Orders:
13069 65989
13070 66493

Administrative Orders:

Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005
No. 96–7 of December 5, 1997 66253
No. 96–8 of December 5, 1997 66255

5 CFR

213 63627
315 63627
410 63630
531 65311
591 63630
1201 66813

7 CFR

2 65593
17 63606
58 66257
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741, 65991
927 66495
948 66497
1412 63441

Proposed Rules:
51 66033
70 63471
205 65850
610 64174
729 63678
800 66036
810 66036
966 66312
980 66312
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

50 66259
78 ..... 64134, 65596
91 64265
93 64265
94 ..... 65747, 65999

Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 63825
70 63825
73 63640
1703 66815

Proposed Rules:
40 65039
50 ..... 63892, 63911, 66038
70 63911

11 CFR

Proposed Rules:
100 66832
114 ..... 65040, 66832

12 CFR

8 64135
202 66412
203 66259
226 ..... 63441, 66179
265 64996
506 66260
516 64138
543 64138
544 66260
545 ..... 64138, 66260
552 ..... 64138, 66260
556 64138
559 66260
560 66260
561 66260
563 ..... 64138, 66260
565 66260
567 66260
575 66260
614 ..... 63644, 66816
703 64146
704 64148
790 65197
791 64266
934 65197
1806 64440

Proposed Rules:
225 64997

226.....64769
404.....64177
405.....64177
708a.....64185
708b.....64187

14 CFR

39.....63622, 63626, 63630, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750, 66001, 66264, 66266, 66268, 66269, 66271, 66498, 66500, 66502, 66506, 66508, 66511, 66512
71.....64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606, 66179, 66818
73.....65359, 65360, 66002
91.....66248
93.....66248
95.....65016, 65361, 65363
97.....63447, 63449, 63451
121.....65202, 66248
135.....66248
255.....63837, 66272
1260.....63452

Proposed Rules:

39.....63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65768, 66315, 66317, 66560, 66561, 66562, 66563, 66565, 66567
71.....63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631, 66838, 66840

15 CFR

295.....64682
922.....66003

Proposed Rules:

806.....65043
960.....65384

17 CFR

15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

Proposed Rules:

1.....66569
33.....66569

18 CFR

35.....64688
37.....64715
401.....64154

19 CFR

4.....66521

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:

211.....64188
422.....63681

21 CFR

101.....63647, 63653, 64634, 66275
179.....64102, 64107
211.....66522
520.....65020
524.....65752
558.....66522
866.....66003

Proposed Rules:

200.....64048
806.....65384, 66179
876.....65770
1020.....65235
1308.....64526

22 CFR

Proposed Rules:

22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:

655.....64324

24 CFR

100.....66424
103.....66424
201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

Proposed Rules:

180.....66488

25 CFR

Proposed Rules:

514.....65775

26 CFR

54.....66932

Proposed Rules:

1.....64190, 66575
54.....66967

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203, 66275
2590.....66932
4011.....65607
4022.....65607
4044.....65609, 65610

Proposed Rules:

1910.....65388
2550.....66908
4022.....66319

30 CFR

206.....65753
901.....66819

Proposed Rules:

56.....65777
57.....64789, 65777
62.....65777
70.....65777
71.....65777
75.....64789
917.....63684, 65044
926.....63685, 64327
936.....65632

31 CFR

500.....64720

Proposed Rules:

356.....64528

32 CFR

175.....66523
320.....65020

Proposed Rules:

199.....64191
901.....63485

33 CFR

100.....65021
117.....63847, 66005, 66006
160.....65203
165.....65022

Proposed Rules:

117.....66039

36 CFR

701.....64279

Proposed Rules:

1.....63488
14.....63488
242.....66216
327.....64192

37 CFR

202.....63657, 66822

Proposed Rules:

253.....63502, 65777
255.....63506, 65778

38 CFR

4.....65207
17.....64722
21.....63847, 63848, 66277
36.....63454

Proposed Rules:

21.....66320
20.....64790

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

9.....66278
52.....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613, 66007, 66279, 66822
62.....65616
63.....64736, 65022
64.....63662
70.....63662
71.....63662
72.....66278
73.....66278
74.....66278
75.....66278
77.....66278
78.....66278
80.....63853
81.....64284, 64725, 65025
180.....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369, 66008, 66014, 66020
185.....64048, 64284, 64287, 66020
186.....64048, 66020
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738

Proposed Rules:

51.....64532, 66841
52.....63687, 64329, 64543, 647389, 65046, 65634, 66040, 66042, 66043, 66046, 66576, 66843
62.....65635
63.....65049, 66049
80.....63918
81.....63687, 66578
85.....66841
112.....63812
194.....64327
441.....66182
721.....64738

41 CFR

51–2.....66527
51–4.....66527
51–6.....66527
60–1.....66970
60–999.....66970
105–60.....64740
301.....63798

42 CFR

416.....66726
417.....63669
482.....66726
485.....66726
489.....66726

Proposed Rules:

1001.....63689, 65049

43 CFR

418.....66442
3740.....65376
3810.....65376
3820.....65378

Proposed Rules:

4.....64544

44 CFR

61.....66026

45 CFR

Ch. XI.....66529
146.....66932
205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301

1110.....66825

Proposed Rules:

1302.....65778

46 CFR

114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303, 65739
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
69.....65619, 66029
73.....63674, 65392, 65764, 65765, 65766, 66030, 66031, 66294, 66295, 66530, 66826
74.....65392

Proposed Rules:

1.....65780, 66321
21.....65780
32.....65053
73.....63690, 65781, 65782, 66323, 66324
74.....65780

48 CFR

Ch. 1.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19.....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31.....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42.....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52.....64914, 64915, 64916
53.....64914, 64916, 64934, 64936, 64940
5231.....66826

Proposed Rules:

204.....65782
1843.....64545
1852.....64545

49 CFR

171.....65188, 66900
172.....66898
174.....66898
175.....66898
176.....66898
177.....66898
219.....63464, 63675
225.....63675
240.....63464
1241.....65378

Proposed Rules:

Ch. X.....64193
172.....66903
174.....66903
175.....66903
176.....66903
177.....66903
195.....65635
213.....65401
243.....65479
572.....64546

50 CFR

17.....64306, 66295
20.....63608
222.....63467
285.....66828
600.....66531
622.....63677, 66304
648.....63872, 64765, 66304
660.....63876
679.....63877, 63878, 63880, 64760, 65379, 65622, 65626, 66031, 66311, 66829

Proposed Rules:

14.....64335
17.....64337, 64340, 64799, 64800, 65237, 65783, 65787, 66325, 66583
23.....64347
100.....66216
226.....66584
227.....66325
229.....65402
425.....66325
600.....65055, 66844
622.....65056
648.....65055, 66844
660.....66049
679.....63690, 65402, 65635, 65638, 65644

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 22, 1997

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Peas; published 11-20-97
DEFENSE DEPARTMENT
Navy Department
Acquisition regulations:
Shipbuilding capability preservation agreements; published 12-22-97
ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Heavy-duty engines, highway-operated; emissions control; published 10-21-97
Air programs:
Ambient air quality surveillance—
Lead ambient air quality monitoring; shift of focus from mobile sources to stationary point sources; published 11-5-97
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Mexico et al.; published 10-21-97
Air quality implementation plans; approval and promulgation; various States:
Minnesota; published 10-23-97
Virginia; published 10-21-97
Air quality implementation plans; √Avapproval and promulgation; various States; air quality planning purposes; designation of areas:
Kentucky et al.; published 10-23-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
New drug applications—
Semduramicin and roxarsone; published 12-23-97
INTERIOR DEPARTMENT
Land Management Bureau
Land resource management:
Disposition; sales—
Townsites; land disposal for school purposes; CFR part removed; published 11-21-97
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Suisun thistle, etc.; published 11-20-97
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Alabama; published 12-22-97
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright office and procedures:
Copyright claims; group registration of serials; published 12-22-97
MERIT SYSTEMS PROTECTION BOARD
Practice and procedure:
Uniformed Services Employment and Reemployment Rights Act; implementation—
Personnel actions involving noncompliance of employers or Office of Personnel Management; published 12-22-97
ARTS AND HUMANITIES, NATIONAL FOUNDATION
National Foundation on the Arts and the Humanities
Nondiscrimination in Federally assisted programs; technical amendment; published 12-22-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
de Havilland; published 11-10-97
Boeing; published 11-17-97
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Radioactive materials transportation; radiation protection program requirement; published 12-22-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Walnuts grown in California; comments due by 12-29-97; published 10-30-97
AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Fresh market tomatoes, etc.; comments due by 12-29-97; published 12-2-97
COMMERCE DEPARTMENT
Export Administration Bureau
Export licensing:
Commerce control list—
Specialty designed; definition; comments due by 12-29-97; published 10-29-97
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 12-29-97; published 12-10-97
Carribbean, Gulf, and South Atlantic fisheries—
Snapper grouper fishery; comments due by 12-29-97; published 10-30-97
Magnuson Act provisions; comments due by 12-29-97; published 12-10-97
ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile; comments due by 12-29-97; published 10-29-97
Avermectin; comments due by 12-29-97; published 10-29-97
Lambda-cyhalothrin; comments due by 12-29-97; published 10-29-97
Tebuconazole; comments due by 12-29-97; published 10-29-97
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arizona; comments due by 12-29-97; published 11-19-97
Mississippi; comments due by 12-29-97; published 11-19-97
North Carolina et al.; comments due by 12-29-97; published 11-19-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Physician fee schedule (1998 CY); payment policies and relative value unit adjustments and clinical psychologist fee schedule; establishment; comments due by 12-30-97; published 10-31-97
Physician fee schedule (1998 CY); payment policies and relative value unit adjustments
Practice expense relative value units adjustments; implementation delay; comments due by 12-30-97; published 10-31-97
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Northern goshawk; comments due by 12-29-97; published 9-29-97
PERSONNEL MANAGEMENT OFFICE
Health benefits, Federal employees:
Disenrollment; comments due by 12-29-97; published 11-28-97
SECURITIES AND EXCHANGE COMMISSION
Securities:
Small entities; penalty-reduction policy statement; comments due by 12-31-97; published 4-4-97
STATE DEPARTMENT
Consular services; fee schedule:
Adjustments; comments due by 12-31-97; published 12-1-97
TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Mississippi River, LA; regulated navigation area; comments due by 12-29-97; published 10-30-97
TRANSPORTATION DEPARTMENT
Privacy Act; implementation; comments due by 12-29-97; published 11-28-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Air tour operators; Hawaii; comments due by 12-29-97; published 10-30-97
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2)—
Noise limitations; comments due by 12-30-97; published 10-31-97
Airworthiness directives:
Airbus; comments due by 12-29-97; published 11-28-97
Airbus Industrie; comments due by 12-31-97; published 12-1-97
Boeing; comments due by 12-29-97; published 10-28-97
Dornier; comments due by 12-29-97; published 11-28-97
Empresa Brasileira de Aeronautica S.A.; comments due by 12-29-97; published 11-28-97
Extra Flugzeugbau GmbH; comments due by 12-29-97; published 10-23-97
Fokker; comments due by 12-29-97; published 11-28-97
General Electric Co.; comments due by 12-30-97; published 10-31-97
Airworthiness standards:
Special conditions—
Learjet Inc. model 55 airplane; comments due by 12-29-97; published 11-12-97
Class E airspace; comments due by 12-29-97; published 11-20-97
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Leak detection industry standard; incorporation by reference; comments due by 12-29-97; published 10-29-97
TREASURY DEPARTMENT
Customs Service
Export control:
Used motor vehicles; exportation requirements; comments due by 12-29-97; published 10-28-97

LIST OF PUBLIC LAWS

This completes the listing of Public Laws enacted during the 1st session of the 105th Congress. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

The list will resume when bills are enacted into Public Law during the 2d session of the 105th Congress, which convenes on January 27, 1998. A cumulative list of Public Laws will be published in the **Federal Register** on December 31, 1997.

H.R. 1658/P.L. 105–146
Atlantic Striped Bass Conservation Act Amendments of 1997 (Dec. 16, 1997; 111 Stat. 2672)

H.R. 2265/P.L. 105–147
No Electronic Theft (NET) Act (Dec. 16, 1997; 111 Stat. 2678)

H.R. 2476/P.L. 105–148
To amend title 49, United States Code, to require the National Transportation Safety Board and individual foreign air carriers to address the needs of families of passengers involved in aircraft accidents involving foreign air carriers. (Dec. 16, 1997; 111 Stat. 2681)

H.R. 3025/P.L. 105–149
To amend the Federal charter for Group Hospitalization and Medical Services, Inc., and for other purposes. (Dec. 16, 1997; 111 Stat. 2684)

H.R. 3034/P.L. 105–150
To amend section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, relating to customs user fees, to allow the use of such fees to provide for customs inspectional personnel in connection with the arrival of passengers in Florida, and for other purposes. (Dec. 16, 1997; 111 Stat. 2685)

H.J. Res. 96/P.L. 105–151
Granting the consent and approval of Congress for the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to amend the Washington Metropolitan Area Transit Regulation Compact. (Dec. 16, 1997; 111 Stat. 2686)

H.R. 2796/P.L. 105–152
Army Reserve-National Guard Equity Reimbursement Act (Dec. 17, 1997; 111 Stat. 2688)

H.R. 2977/P.L. 105–153
Federal Advisory Committee Act Amendments of 1997 (Dec. 17, 1997; 111 Stat. 2689)

Last List December 17, 1997

Public Laws Electronic Notification Service (PENS)

Note: In order to provide better and faster service, PENS will begin using a new mailing-list management software. Effective January 5, 1997, if you wish to continue or begin receiving notification of newly enacted Public Laws, you will need to resubscribe or subscribe to PENS by sending E-mail to **LISTPROC@ETC.FED.GOV** with the message:

SUBSCRIBE PUBLAWS-L FIRSTNAME LASTNAME

The text of laws is not available through this service and we cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A "●" precedes each entry that is now available on-line through the Government Printing Office's *GPO Access* service at http://www.access.gpo.gov/nara/cfr. For information about *GPO Access* call 1-888-293-6498 (toll free).

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512-1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2250.

Title	Stock Number	Price	Revision Date
●1, 2 (2 Reserved)	(869-032-00001-8)	$5.00	Feb. 1, 1997
●3 (1996 Compilation and Parts 100 and 101)	(869-032-00002-6)	20.00	[1] Jan. 1, 1997
●4	(869-032-00003-4)	7.00	Jan. 1, 1997
5 Parts:			
●1-699	(869-032-00004-2)	34.00	Jan. 1, 1997
●700-1199	(869-032-00005-1)	26.00	Jan. 1, 1997
●1200-End, 6 (6 Reserved)	(869-032-00006-9)	33.00	Jan. 1, 1997
7 Parts:			
●0-26	(869-032-00007-7)	26.00	Jan. 1, 1997
●27-52	(869-032-00008-5)	30.00	Jan. 1, 1997
●53-209	(869-032-00009-3)	22.00	Jan. 1, 1997
●210-299	(869-032-00010-7)	44.00	Jan. 1, 1997
●300-399	(869-032-00011-5)	22.00	Jan. 1, 1997
●400-699	(869-032-00012-3)	28.00	Jan. 1, 1997
●700-899	(869-032-00013-1)	31.00	Jan. 1, 1997
●900-999	(869-032-00014-0)	40.00	Jan. 1, 1997
●1000-1199	(869-032-00015-8)	45.00	Jan. 1, 1997
●1200-1499	(869-032-00016-6)	33.00	Jan. 1, 1997
●1500-1899	(869-032-00017-4)	53.00	Jan. 1, 1997
●1900-1939	(869-032-00018-2)	19.00	Jan. 1, 1997
●1940-1949	(869-032-00019-1)	40.00	Jan. 1, 1997
●1950-1999	(869-032-00020-4)	42.00	Jan. 1, 1997
●2000-End	(869-032-00021-2)	20.00	Jan. 1, 1997
●8	(869-032-00022-1)	30.00	Jan. 1, 1997
9 Parts:			
●1-199	(869-032-00023-9)	39.00	Jan. 1, 1997
●200-End	(869-032-00024-7)	33.00	Jan. 1, 1997
10 Parts:			
●0-50	(869-032-00025-5)	39.00	Jan. 1, 1997
●51-199	(869-032-00026-3)	31.00	Jan. 1, 1997
●200-499	(869-032-00027-1)	30.00	Jan. 1, 1997
●500-End	(869-032-00028-0)	42.00	Jan. 1, 1997
●11	(869-032-00029-8)	20.00	Jan. 1, 1997
12 Parts:			
●1-199	(869-032-00030-1)	16.00	Jan. 1, 1997
●200-219	(869-032-00031-0)	20.00	Jan. 1, 1997
●220-299	(869-032-00032-8)	34.00	Jan. 1, 1997
●300-499	(869-032-00033-6)	27.00	Jan. 1, 1997
●500-599	(869-032-00034-4)	24.00	Jan. 1, 1997
●600-End	(869-032-00035-2)	40.00	Jan. 1, 1997
●13	(869-032-00036-1)	23.00	Jan. 1, 1997
14 Parts:			
●1-59	(869-032-00037-9)	44.00	Jan. 1, 1997
●60-139	(869-032-00038-7)	38.00	Jan. 1, 1997
●140-199	(869-032-00039-5)	16.00	Jan. 1, 1997
●200-1199	(869-032-00040-9)	30.00	Jan. 1, 1997
●1200-End	(869-032-00041-7)	21.00	Jan. 1, 1997
15 Parts:			
●0-299	(869-032-00042-5)	21.00	Jan. 1, 1997
●300-799	(869-032-00043-3)	32.00	Jan. 1, 1997
●800-End	(869-032-00044-1)	22.00	Jan. 1, 1997
16 Parts:			
●0-999	(869-032-00045-0)	30.00	Jan. 1, 1997
●1000-End	(869-032-00046-8)	34.00	Jan. 1, 1997
17 Parts:			
●1-199	(869-032-00048-4)	21.00	Apr. 1, 1997
●200-239	(869-032-00049-2)	32.00	Apr. 1, 1997
●240-End	(869-032-00050-6)	40.00	Apr. 1, 1997
18 Parts:			
●1-399	(869-032-00051-4)	46.00	Apr. 1, 1997
●400-End	(869-032-00052-2)	14.00	Apr. 1, 1997
19 Parts:			
●1-140	(869-032-00053-1)	33.00	Apr. 1, 1997
●141-199	(869-032-00054-9)	30.00	Apr. 1, 1997
●200-End	(869-032-00055-7)	16.00	Apr. 1, 1997
20 Parts:			
●1-399	(869-032-00056-5)	26.00	Apr. 1, 1997
●400-499	(869-032-00057-3)	46.00	Apr. 1, 1997
●500-End	(869-032-00058-1)	42.00	Apr. 1, 1997
21 Parts:			
●1-99	(869-032-00059-0)	21.00	Apr. 1, 1997
●100-169	(869-032-00060-3)	27.00	Apr. 1, 1997
●170-199	(869-032-00061-1)	28.00	Apr. 1, 1997
●200-299	(869-032-00062-0)	9.00	Apr. 1, 1997
●300-499	(869-032-00063-8)	50.00	Apr. 1, 1997
●500-599	(869-032-00064-6)	28.00	Apr. 1, 1997
●600-799	(869-032-00065-4)	9.00	Apr. 1, 1997
●800-1299	(869-032-00066-2)	31.00	Apr. 1, 1997
●1300-End	(869-032-00067-1)	13.00	Apr. 1, 1997
22 Parts:			
●1-299	(869-032-00068-9)	42.00	Apr. 1, 1997
●300-End	(869-032-00069-7)	31.00	Apr. 1, 1997
●23	(869-032-00070-1)	26.00	Apr. 1, 1997
24 Parts:			
●0-199	(869-032-00071-9)	32.00	Apr. 1, 1997
●200-499	(869-032-00072-7)	29.00	Apr. 1, 1997
●500-699	(869-032-00073-5)	18.00	Apr. 1, 1997
●700-1699	(869-032-00074-3)	42.00	Apr. 1, 1997
●1700-End	(869-032-00075-1)	18.00	Apr. 1, 1997
●25	(869-032-00076-0)	42.00	Apr. 1, 1997
26 Parts:			
●§§ 1.0-1-1.60	(869-032-00077-8)	21.00	Apr. 1, 1997
●§§ 1.61-1.169	(869-032-00078-6)	44.00	Apr. 1, 1997
●§§ 1.170-1.300	(869-032-00079-4)	31.00	Apr. 1, 1997
●§§ 1.301-1.400	(869-032-00080-8)	22.00	Apr. 1, 1997
●§§ 1.401-1.440	(869-032-00081-6)	39.00	Apr. 1, 1997
●§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
●§§ 1.501-1.640	(869-032-00083-2)	28.00	Apr. 1, 1997
●§§ 1.641-1.850	(869-032-00084-1)	33.00	Apr. 1, 1997
●§§ 1.851-1.907	(869-032-00085-9)	34.00	Apr. 1, 1997
●§§ 1.908-1.1000	(869-032-00086-7)	34.00	Apr. 1, 1997
●§§ 1.1001-1.1400	(869-032-00087-5)	35.00	Apr. 1, 1997
●§§ 1.1401-End	(869-032-00088-3)	45.00	Apr. 1, 1997
●2-29	(869-032-00089-1)	36.00	Apr. 1, 1997
30-39	(869-032-00090-5)	25.00	Apr. 1, 1997
●40-49	(869-032-00091-3)	17.00	Apr. 1, 1997
●50-299	(869-032-00092-1)	18.00	Apr. 1, 1997
●300-499	(869-032-00093-0)	33.00	Apr. 1, 1997
500-599	(869-032-00094-8)	6.00	[4] Apr. 1, 1990
●600-End	(869-032-00095-3)	9.50	Apr. 1, 1997
27 Parts:			
●1-199	(869-032-00096-4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
●200-End	(869-032-00097-2)	17.00	Apr. 1, 1997
28 Parts:			
●1-42	(869-032-00098-1)	36.00	July 1, 1997
●43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
●0-99	(869-032-00100-5)	27.00	July 1, 1997
●100-499	(869-032-00101-4)	12.00	July 1, 1997
●500-899	(869-032-00102-2)	41.00	July 1, 1997
●900-1899	(869-032-00103-1)	21.00	July 1, 1997
●1900-1910 (§§ 1900 to 1910.999)	(869-032-00104-9)	43.00	July 1, 1997
●1910 (§§ 1910.1000 to end)	(869-032-00105-7)	29.00	July 1, 1997
●1911-1925	(869-032-00106-5)	19.00	July 1, 1997
●1926	(869-032-00107-3)	31.00	July 1, 1997
●1927-End	(869-032-00108-1)	40.00	July 1, 1997
30 Parts:			
●1-199	(869-032-00109-0)	33.00	July 1, 1997
●200-699	(869-032-00110-3)	28.00	July 1, 1997
●700-End	(869-032-00111-1)	32.00	July 1, 1997
31 Parts:			
●0-199	(869-032-00112-0)	20.00	July 1, 1997
●200-End	(869-032-00113-8)	42.00	July 1, 1997
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
●1-190	(869-032-00114-6)	42.00	July 1, 1997
●191-399	(869-032-00115-4)	51.00	July 1, 1997
●400-629	(869-032-00116-2)	33.00	July 1, 1997
●630-699	(869-032-00117-1)	22.00	July 1, 1997
●700-799	(869-032-00118-9)	28.00	July 1, 1997
●800-End	(869-032-00119-7)	27.00	July 1, 1997
33 Parts:			
●1-124	(869-032-00120-1)	27.00	July 1, 1997
●125-199	(869-032-00121-9)	36.00	July 1, 1997
●200-End	(869-032-00122-7)	31.00	July 1, 1997
34 Parts:			
●1-299	(869-032-00123-5)	28.00	July 1, 1997
●300-399	(869-032-00124-3)	27.00	July 1, 1997
●400-End	(869-032-00125-1)	44.00	July 1, 1997
●35	(869-032-00126-0)	15.00	July 1, 1997
36 Parts			
●1-199	(869-032-00127-8)	20.00	July 1, 1997
●200-299	(869-032-00128-6)	21.00	July 1, 1997
300-End	(869-032-00129-4)	34.00	July 1, 1997
●37	(869-032-00130-8)	27.00	July 1, 1997
38 Parts:			
●0-17	(869-032-00131-6)	34.00	July 1, 1997
●18-End	(869-032-00132-4)	38.00	July 1, 1997
●39	(869-032-00133-2)	23.00	July 1, 1997
40 Parts:			
●1-49	(869-032-00134-1)	31.00	July 1, 1997
●50-51	(869-032-00135-9)	23.00	July 1, 1997
52 (52.01-52.1018)	(869-032-00136-7)	27.00	July 1, 1997
52 (52.1019-End)	(869-032-00137-5)	32.00	July 1, 1997
●53-59	(869-032-00138-3)	14.00	July 1, 1997
60	(869-032-00139-1)	52.00	July 1, 1997
●61-62	(869-032-00140-5)	19.00	July 1, 1997
●63-71	(869-032-00141-3)	57.00	July 1, 1997
●72-80	(869-032-00142-1)	35.00	July 1, 1997
●81-85	(869-032-00143-0)	32.00	July 1, 1997
86	(869-032-00144-8)	50.00	July 1, 1997
●87-135	(869-032-00145-6)	40.00	July 1, 1997
●136-149	(869-032-00146-4)	35.00	July 1, 1997
●150-189	(869-032-00147-2)	32.00	July 1, 1997
●190-259	(869-032-00148-1)	22.00	July 1, 1997
●260-265	(869-032-00149-9)	29.00	July 1, 1997
●266-299	(869-032-00150-2)	24.00	July 1, 1997
●300-399	(869-032-00151-1)	27.00	July 1, 1997
●400-424	(869-032-00152-9)	33.00	[5] July 1, 1996
●425-699	(869-032-00153-7)	40.00	July 1, 1997
●700-789	(869-032-00154-5)	38.00	July 1, 1997
●790-End	(869-032-00155-3)	19.00	July 1, 1997
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
●1-100	(869-032-00156-1)	14.00	July 1, 1997
101	(869-032-00157-0)	36.00	July 1, 1997
●102-200	(869-032-00158-8)	17.00	July 1, 1997
201-End	(869-032-00159-6)	15.00	July 1, 1997
42 Parts:			
●1-399	(869-028-00163-7)	32.00	Oct. 1, 1996
*●400-429	(869-032-00161-8)	35.00	Oct. 1, 1997
●430-End	(869-028-00165-3)	44.00	Oct. 1, 1996
43 Parts:			
●1-999	(869-028-00166-1)	30.00	Oct. 1, 1996
●1000-end	(869-028-00167-0)	45.00	Oct. 1, 1996
●44	(869-028-00168-8)	31.00	Oct. 1, 1996
45 Parts:			
*●1-199	(869-032-00166-9)	30.00	Oct. 1, 1997
*●200-499	(869-032-00167-7)	18.00	Oct. 1, 1997
●500-1199	(869-032-00168-5)	29.00	Oct. 1, 1997
●1200-End	(869-028-00172-6)	36.00	Oct. 1, 1996
46 Parts:			
●1-40	(869-028-00173-4)	26.00	Oct. 1, 1996
●41-69	(869-028-00174-2)	21.00	Oct. 1, 1996
●70-89	(869-032-00172-3)	11.00	Oct. 1, 1997
●90-139	(869-028-00176-9)	26.00	Oct. 1, 1996
●140-155	(869-028-00177-7)	15.00	Oct. 1, 1996
●156-165	(869-028-00178-5)	20.00	Oct. 1, 1996
●166-199	(869-028-00179-3)	22.00	Oct. 1, 1996
●200-499	(869-032-00177-4)	21.00	Oct. 1, 1997
●500-End	(869-032-00178-2)	17.00	Oct. 1, 1997
47 Parts:			
●0-19	(869-028-00182-3)	35.00	Oct. 1, 1996
*●20-39	(869-032-00180-4)	27.00	Oct. 1, 1997
●40-69	(869-028-00184-0)	18.00	Oct. 1, 1996
●70-79	(869-028-00185-8)	33.00	Oct. 1, 1996
●80-End	(869-028-00186-6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1-51)	(869-028-00187-4)	45.00	Oct. 1, 1996
●1 (Parts 52-99)	(869-028-00188-2)	29.00	Oct. 1, 1996
●2 (Parts 201-251)	(869-028-00189-1)	22.00	Oct. 1, 1996
●2 (Parts 252-299)	(869-028-00190-4)	16.00	Oct. 1, 1996
●3-6	(869-028-00191-2)	30.00	Oct. 1, 1996
●7-14	(869-028-00192-1)	29.00	Oct. 1, 1996
●15-28	(869-028-00193-9)	38.00	Oct. 1, 1996
●29-End	(869-028-00194-7)	25.00	Oct. 1, 1996
49 Parts:			
●1-99	(869-032-00191-0)	31.00	Oct. 1, 1997
●100-185	(869-028-00196-3)	50.00	Oct. 1, 1996
186-199	(869-032-00193-6)	11.00	Oct. 1, 1997
●200-399	(869-028-00198-0)	39.00	Oct. 1, 1996
●400-999	(869-028-00199-8)	49.00	Oct. 1, 1996
●1000-1199	(869-028-00200-5)	23.00	Oct. 1, 1996
●1200-End	(869-028-00201-3)	15.00	Oct. 1, 1996
50 Parts:			
●1-199	(869-028-00202-1)	34.00	Oct. 1, 1996
●200-599	(869-028-00203-0)	22.00	Oct. 1, 1996
●600-End	(869-028-00204-8)	26.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–032–00047–6)	45.00	Jan. 1, 1997
Complete 1997 CFR set		951.00	1997
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
Complete set (one-time mailing)		264.00	1996
Complete set (one-time mailing)		264.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12-23-97
Vol. 62 No. 246

federal register

Tuesday
December 23, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–23–97
Vol. 62 No. 246
Pages 66973–67256

federal register

Tuesday
December 23, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 246
Tuesday, December 23, 1997

Agricultural Marketing Service
RULES
Mushroom promotion, research, and consumer information order; referendum procedures, 66973–66977

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Federal Crop Insurance Corporation
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Army Department
NOTICES
Privacy Act:
Systems of records, 67055–67067

Centers for Disease Control and Prevention
NOTICES
Meetings:
Safety and Occupational Health Study Section; NIOSH meetings, 67076

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 67042

Coast Guard
RULES
Regattas and marine parades:
First Coast Guard District fireworks displays, 66995–66996
PROPOSED RULES
Uniform State Waterways Marking System and U.S. Aids to Navigation System; merger, 67031–67034
NOTICES
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 67106–67107

Commerce Department
See Economic Development Administration
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67042

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 67053–67054

Defense Department
See Army Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Retiree dental program, 66992–66995
Selected Reserve dental program, 66989–66992
PROPOSED RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Eligibility requirements, 67018–67031
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67054–67055

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Springel, Ronald D., M.D., 67092–67095

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
May Corp. et al., 67042–67043

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67067
Grants and cooperative agreements; availability, etc.:
Women's Educational Equity Act program; correction, 67256

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 67067–67068
Electricity export and import authorizations, permits, etc.:
Duke Energy Trading & Marketing, L.L.C., 67068
Enron Power Marketing, Inc., 67068–67069

Environmental Protection Agency
RULES
Air programs:
Ambient air quality surveillance—
Lead ambient air quality monitoring; shift of focus from mobile sources to stationary point sources; withdrawn, 67009–67010
Air quality implementation plans; approval and promulgation; various States:
California, 66998–67000, 67002–67004
Colorado, 67006–67009
Illinois, 67000–67002
New York, 67004–67006
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 67034–67035
Colorado, 67035
Illinois, 67034
Toxic substances:
Testing requirements—
1,1,2-trichloroethane, 67036–67038
Ethylene dichloride, 67038–67041
Water programs:
Underground injection control program; Class V injection wells; stakeholders meeting, 67035–67036

NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67070–67071
Meetings:
Environmental Laboratory Advisory Board, 67071
Pesticide registration, cancellation, etc.:
Methamidophos, 67071–67072

Farm Service Agency
RULES
Program regulations:
Rural rental housing assistance, 67216–67224

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 66980–66982
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67107
Meetings:
RTCA, Inc., 67107

Federal Communications Commission
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 67072–67073

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Hybrid seed corn
Correction, 67117

Federal Emergency Management Agency
NOTICES
Offsite radiological emergency preparedness program; services fees:
Fee assessment and collection; hourly rate (1998 FY), 67073

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Central Maine Power Co., 67070
Applications, hearings, determinations, etc.:
Cinergy Services, Inc., 67069
Louisville Gas & Electric Co., 67069
Warren Transportation, Inc., 67070

Federal Highway Administration
NOTICES
Intelligent Transportation Systems program:
Intelligent Vehicle Initiative; establishment; information request, 67107–67113

Federal Housing Finance Board
RULES
Affordable housing program operation:
Questions and answers; staff interpretation, 66977–66980

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Pacat International-Pacific Atlantic International et al., 67073

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 67073
Formations, acquisitions, and mergers, 67073–67074

Federal Trade Commission
NOTICES
Fair Credit Reporting Act:
Disclosure charges, 67074
Prohibited trade practices:
CUC International, Inc. et al., 67074–67076

Federal Transit Administration
NOTICES
Intelligent Transportation Systems program:
Intelligent Vehicle Initiative; establishment; information request, 67107–67113

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Preble's meadow jumping mouse, 67041
NOTICES
Endangered and threatened species permit applications, 67089–67090

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Carcinogenicity testing of compounds used in food-producing animals, 66982–66983
New drug applications—
Amprolium plus ethopabate with bacitracin zinc and roxarsone, 66986–66987
Imidocarb dipropionate, 66983–66984
Robenidine and bacitracin zinc, 66986
Salinomycin, bacitracin zinc, and roxarsone, 66984–66985
Semduramicin and roxarsone, 66985
PROPOSED RULES
Medical devices:
Used medical devices and persons who refurbish, recondition, rebuild, service or remarket such devices; compliance policy guides review and revision, 67011–67013
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67076–67078
Biological product licenses:
Anderson Plasma Center, 67078–67081
Grant and cooperative agreement awards:
AOAC International, 67081–67083
Reporting and recordkeeping requirements, 67083–67085

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Alabama
JVC America, Inc.; videotape and videocassette manufacturing plant, 67043
California, 67043–67044
Kentucky, 67044
Ohio
Cincinnati Milacron, Inc.; horizontal turning/grinding machinery manufacturing plant, 67044

General Services Administration
NOTICES
Acquisition regulations:
Standard forms revision, 67076

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Care Financing Administration
RULES
Medicare and Medicaid:
Long term care facilities; resident assessment, 67174–67213
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67085

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67085–67086
Submission for OMB review; comment request, 67086
Meetings:
Migrant Health National Advisory Council, 67086–67087

Interior Department
See Fish and Wildlife Service
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Estate and gift taxes:
Qualified personal residence trust; sale of residence, 66987–66989
PROPOSED RULES
Excise taxes:
Petroleum tax on natural gasoline; withdrawn, 67013

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 67044–67045

Justice Department
See Drug Enforcement Administration

Labor Department
See Labor Statistics Bureau
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Workers' Compensation Programs Office

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67095–67096

Minerals Management Service
NOTICES
Meetings:
Minerals Management Advisory Board, 67090–67091

Mine Safety and Health Administration
PROPOSED RULES
Coal and metal and nonmetal mine safety and health:
Occupational noise exposure
Report availability, 67013–67014

National Archives and Records Administration
NOTICES
Electronic records work group; materials for review and comment; availability, 67098

National Highway Traffic Safety Administration
NOTICES
Intelligent Transportation Systems program:
Intelligent Vehicle Initiative; establishment; information request, 67107–67113

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67087
Meetings:
National Center for Research Resources, 67087–67088
Scientific Review Center special emphasis panels, 67088
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Nascent Pharmaceuticals, L.L.C., 67088–67089

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Snowy grouper, 67010
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; correction, 67041
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
California Transportation Department; seismic retrofit construction of Richmond-San Rafael Bridge; Pacific harbor seals and California sea lions, 67045–67051
Meetings:
National Marine Fisheries Service; coordination of activities with Fish and Wildlife Service to support Atlantic coastal fisheries management plans, 67051
Permits:
Foreign fishing, 67051–67052
Marine mammals, 67052–67053

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 67091
Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission, 67091–67092
National Wild and Scenic Rivers System:
Big and Little Darby Creeks, OH, 67092

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domestic licensing:
Nuclear power plants—
IEEE national consensus standard; safety systems; power, instrumentation, and control portions; incorporation by reference; withdrawn, 66977
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67098–67099
Generic letters:
Steam generator tube inspection techniques, 67099
Meetings; Sunshine Act, 67099–67100
Reports and guidance documents; availability, etc.:
Fixed gauge licenses; program-specific guidance, 67100
Self-shielded irradiator licenses; program-specific guidance, 67100–67101

Occupational Safety and Health Administration
NOTICES
State plans; standards approval, etc.:
Washington, 67096–67098

Personnel Management Office
RULES
Pay administration:
Fair Labor Standards Act—
Standardization and compliance, 67238–67253
Prevailing rate systems, 66973

Postal Service
RULES
Organization and administration:
Handicapped persons; access to postal services, programs, facilities, and employment; discrimination complaint filing and processing, 66996–66997
Practice and procedure:
Second-class mail privileges; denial, suspension, or revocation, 66997–66998

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 67114–67115

Rural Business-Cooperative Service
RULES
Program regulations:
Rural rental housing assistance, 67216–67224

Rural Housing Service
RULES
Program regulations:
Rural rental housing assistance, 67216–67224
NOTICES
Grants and cooperative agreements; availability, etc.:
Multi-family and single family housing, 67225–67233
Section 515 rural rental housing program, 67234–67236

Rural Utilities Service
RULES
Program regulations:
Rural rental housing assistance, 67216–67224

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 67101–67103
Chicago Stock Exchange, Inc., 67103–67104
National Association of Securities Dealers, Inc., 67104–67106

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Illinois, 67014–67016
Virginia, 67016–67018

Surface Transportation Board
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 67115–67116

Thrift Supervision Office
RULES
Federal regulatory reform:
Capital, charter and bylaw, conversion, etc., regulations; technical amendments
Correction, 67117

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office

Workers' Compensation Programs Office
PROPOSED RULES
Federal Employees Compensation Act:
Disability and death of noncitizen Federal employees outside U.S.; compensation, 67120–67172

Separate Parts in This Issue

Part II
Department of Labor, Worker's Compensation Programs Office, 67120–67172

Part III
Department of Health and Human Services, Health Care Financing Office, 67174–67213

Part IV
Department of Agriculture, Rural Housing Service, 67216–67236

Part V
Office of Personnel Management, 67238–67253

Part VI
Department of Education, 67256

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
532.....66973
551.....67238

7 CFR
457.....67117
1209.....66973
1944.....67216

10 CFR
50.....66977

12 CFR
506.....67117
544.....67117
545.....67117
552.....67117
559.....67117
560.....67117
561.....67117
563.....67117
565.....67117
567.....67117
575.....67117
960.....66977

14 CFR
39.....66980

20 CFR
Proposed Rules:
10.....67120
25.....67120

21 CFR
500.....66982
522.....66983
558 (4 documents).....66984, 66985, 66986
Proposed Rules:
801.....67011
803.....67011
804.....67011
806.....67011
807.....67011
810.....67011
820.....67011
821.....67011
1002.....67011
1020.....67011

26 CFR
25.....66987
602.....66987
Proposed Rules:
52.....67013

30 CFR
Proposed Rules:
56.....67013
57.....67013
62.....67013
70.....67013
71.....67013
913.....67014
946.....67016

32 CFR
199 (2 documents).....66989, 66992
Proposed Rules:
199.....67018

33 CFR
100.....66995
Proposed Rules:
62.....67031
66.....67031

39 CFR
255.....66996
954.....66997

40 CFR
52 (5 documents).....66998, 67000, 67002, 67004, 67006
58.....67009
Proposed Rules:
52 (3 documents).....67034, 67035
144.....67035
146.....67035
799 (2 documents).....67036, 67038

42 CFR
483.....67174

50 CFR
622.....67010
Proposed Rules:
17.....67041
679.....67041

Rules and Regulations

Federal Register
Vol. 62, No. 246
Tuesday, December 23, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI10

Prevailing Rate Systems; Removal of Umatilla County, OR, From Spokane, WA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule to remove Umatilla County, OR, from the area of application of the Spokane, WA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area.

DATES: This interim rule becomes effective on January 1, 1998. Comments must be received by January 22, 1998.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Mark Allen at (202) 606–2848, or send an e-mail message to maallen@opm.gov.

SUPPLEMENTARY INFORMATION: The Spokane wage area is presently composed of one survey area county (Spokane, WA) and three area of application counties (Adams County, WA; Walla Walla County, WA; and Umatilla County, OR). The removal of Umatilla County from the area of application of the Spokane wage area is appropriate because there are no NAF FWS employees stationed in Umatilla County and no Federal agency anticipates future employment in the county. Under section 5343(a)(1)(B)(I) of title 5, United States Code, NAF wage areas "shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed."

The Federal Prevailing Rate Advisory Committee, the statutory national-level labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with this change.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because it is not in the public interest for Umatilla County to remain in the Spokane wage area after December 31, 1997. Under section 532.205 of title 5, Code of Federal Regulations, the highest minimum wage applicable within a wage area must be applied to the entire wage area. The current Federal minimum wage is $5.15 an hour, and the minimum wage in the State of Oregon will increase to $6.00 an hour on January 1, 1998. If Umatilla County is not removed from the Spokane wage area by January 1, 1998, the pending increase in the minimum wage for the State of Oregon would require that pay rates for NAF FWS employees who are stationed in Adams, Spokane, and Walla Walla Counties, WA, be increased to account for the higher minimum wage in the State of Oregon even though none of the NAF FWS employees who are stationed in the Spokane wage area work in Oregon.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.
Janice R. Lachance,
Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix D to subpart B of part 532 is amended by revising the wage area listing for the Spokane, Washington, nonappropriated fund Federal Wage System wage area to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Washington

* * * * *

Spokane

Survey Area

Washington:
Spokane

Area of Application. Survey Area Plus

Washington:
Adams
Walla Walla

* * * * *

[FR Doc. 97–33435 Filed 12–22–97; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[FV–97–705IFR]

Mushroom Promotion, Research, and Consumer Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule provides procedures which the Department of Agriculture (Department) will use in conducting the referendum to determine whether

mushroom producers and importers favor continuance of the Mushroom Promotion, Research, and Consumer Information Order (Order). In order to continue, the Order must be approved by a simple majority of producers and importers voting in the referendum and that majority must represent more than 50 percent of the mushrooms produced and imported by those voting in the referendum. These procedures will also apply to any subsequent referenda to amend, continue, or terminate the order.

EFFECTIVE DATE: December 24, 1997. Comments must be received by January 22, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), 1400 Independence Avenue, Room 2535–S, Stop Code 0244, Washington, DC 20250–0244, fax: (202) 205–2800. Three copies of all materials should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stacey L. Bryson, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Room 2535–S, Stop Code 0244, Washington, DC 20250–0244, telephone (202) 720–6930 or (888) 720–9917.

SUPPLEMENTARY INFORMATION: This rule is issued under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6107–6112), hereinafter referred to as the Act.

This rule provides the procedures under which the referendum will be conducted.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1927 of the Act, after an Order is implemented, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

Paperwork Reduction Act

This rule has been determined not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency has examined the impact of this rule on small entities.

The Act became effective on November 20, 1990. The Order, which is authorized under the Act, became effective on January 8, 1993.

Section 1926 of the Act provides that the Secretary shall conduct a referendum effective 5 years after the date on which the Order became effective. The referendum must be conducted among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the Order. Paragraph (b)(2) of § 1926 of the Act requires that the Order be approved by a majority of producers and importers voting in the referendum which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those persons voting in the referendum.

There are approximately 134 producers and 4 importers of fresh mushrooms covered by the program. Small agricultural service firms, which will include the importers who will vote in the referendum, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5 million and small agricultural producers as those having annual receipts of $500,000. Only one importer has been identified to have $5 million in annual sales. In addition, there are 134 producers at or over the $500,000 annual sales receipts threshold. Therefore, it could be concluded that a majority of producers and importers are not considered small businesses.

The total volume of mushroom sales in the United States during the 1996–97 production year (July 1, 1996, through June 30, 1997) was 776.7 million pounds (553.8 million pounds for the fresh market and 222.9 million pounds for the processed market). The value of sales for the crop was $765.8 million. Historically, Pennsylvania produced 45 percent of total volume of sales, followed by California with 17 percent, Florida with 5 percent, Ohio with 2 percent, and Michigan with 2 percent. Eighteen other States account for the remainder.

U.S. fresh market exports of mushrooms totaled 5.3 million pounds from July 1996 through June 1997, with a value of $20 million. Canada was the principal destination, accounting for about 74 percent of the poundage and about 38 percent of the value of U.S. exports. Japan accounted for 14 percent of the quantity exported, and 40 percent of the value of exports.

Fresh mushroom imports into the United States for the same period were about 5.1 million pounds, with a value of about $12.1 million. About 82 percent of that poundage and 86 percent of the value came from Canada, and about 10 percent of the poundage and about 5 percent of the value came from the People's Republic of China.

This rule provides the procedures under which mushroom producers and importers may vote on whether they want the mushroom promotion and research program to continue. Such a referendum is required by the Act. There are approximately 138 eligible voters. In addition, these procedures will apply to any subsequent referenda to amend, continue, or terminate the order.

The Department will keep all of these individuals informed throughout the referendum process to ensure that they are aware of and are able to participate. In addition, trade associations and related industry media will receive news releases and other information regarding the referendum.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting will be offset by the benefits of having the opportunity to vote on whether they want the program to continue or not.

The Department considered requiring eligible voters to vote in person at various Department offices across the country. However, conducting the referendum from one central location is more cost effective for this program. In addition, the Department will accept ballots sent by fax as well as by mail. The fax number to be used will be published soon in the referendum order. The Department will provide easy access to information for potential voters through a toll free telephone line.

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 0581–0093. It is estimated that there are 138 producers and importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 34.5 hours.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Background

The Act authorized the Secretary to establish a national mushroom promotion, research, and consumer information program. The program is funded by an assessment levied on producers and importers of more than 500,000 pounds annually. Each producers and importer covered by the program pays an assessment of 0.45 cents per pound of fresh mushrooms.

Assessments are used to pay for: research, promotion, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 1926 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum effective 5 years after the date on which the Order became effective. The Order became effective on January 8, 1993. The referendum must be conducted among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the Order. Paragraph (b)(2) of § 1926 of the Act requires that the Order be approved by a majority of producers and importers voting in the referendum which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those persons voting in the referendum. Only mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in the referendum. Producers and importers will be required to certify the pounds of mushrooms they either produced or imported during the representative period.

In accordance with § 1923 of the Act, a producer is defined in the Order as any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year. Importer is defined as any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

This rule provides the procedures under which mushroom producers and importers may vote on whether they want the mushroom promotion and research program to continue. There are approximately 138 eligible voters. These procedures are similar to those published (57 FR 31948) prior to the mushroom order going into effect. This interim final rule, however, provides that ballots are to be cast only by mail or fax and not at polling places.

Persons voting in a referendum will certify their eligibility to vote and will designate their status as either a mushroom producer or importer. Producers and importers will be required to certify the pounds of mushrooms they either produced or imported during the representative period. The representative period will be announced in a referendum order at a later date.

This rule will add a new subpart which establishes procedures to be used in a referendum. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified herein will be considered prior to finalizing this action.

After consideration of all relevant material, it is found that the order provisions subject to this action tend to effectuate the declared policy of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this action into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**, because: (1) This action provides procedures to be used in connection with the referendum which will take place in early 1998; (2) the Act requires that a referendum be conducted 5 years after the date on which an order became effective; (3) these procedures are very similar to procedures used in other programs and to the procedures used for the initial referendum on the mushroom program; and (4) the 30-day comment period will provide interested persons sufficient time to comment prior to the issuance of a final rule.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, chapter XI of the Code of Federal Regulations is amended as follows:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

1. The authority citation for part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112.

2. In part 1209, subpart C is added to read as follows:

Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order

Sec.

1209.300 General.
1209.301 Definitions.
1209.302 Voting.
1209.303 Instructions.
1209.304 Subagents.
1209.305 Ballots.
1209.306 Referendum report.
1209.307 Confidential information.

§ 1209.300 General.

A referendum to determine whether eligible producers and importers favor continuation of the Mushroom Promotion, Research, and Consumer Information Order shall be conducted in accordance with these procedures.

§ 1209.301 Definitions.

Unless otherwise defined below, the definition of terms used in these procedures shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of

the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Mushroom Promotion, Research, and Consumer Information Order, including an amendment to the Order.

(c) *Referendum agent* or agent means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, mushroom production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called "joint ventures", wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of fresh mushrooms and the authority to transfer title to the mushrooms so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who produces, on average, over 500,000 pounds annually of fresh mushrooms during the representative period and who:

(1) Owns or shares in the ownership of mushroom production facilities and equipment resulting in the ownership of the mushrooms produced;

(2) Rents mushroom production facilities and equipment resulting in the ownership of all or a portion of the mushrooms produced;

(3) Owns mushroom production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the mushrooms produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms who share the risk of loss and receive a share of the mushrooms produced. No other acquisition of legal title to mushrooms shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imports, on average, over 500,000 pounds annually of fresh mushrooms during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced mushrooms immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mushrooms from the U.S. Customs Service when such mushrooms are entered or withdrawn for consumption in the United States.

§ 1209.302 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Ballots are to be cast by mail or fax.

§ 1209.303 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The total volume of mushrooms produced by the voting producer during the representative period; and

(3) The total volume of mushrooms imported by the voting importer during the representative period.

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) Collect and safeguard ballots received by fax.

(f) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results.

(g) Prepare a report on the referendum.

(h) Prepare an announcement of the results for the public.

§ 1209.304 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1209.305 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1209.306 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1209.307 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any person covered under the Act shall be held confidential and shall not be disclosed.

Dated: December 11, 1997.

Sharon Bomer Lauritsen,

Associate Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–32812 Filed 12–22–97; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF73

Codes and Standards; IEEE National Consensus Standard, Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing a direct final rule that would have amended Commission's regulations to incorporate by reference the most recent published version of IEEE Std. 603–1991, a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published in **the Federal Register**.

FOR FURTHER INFORMATION CONTACT: Satish K. Aggarwal, Senior Program Manager, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6005, Fax (301) 415–5074 (e-mail: SKA@NRC.GOV).

SUPPLEMENTARY INFORMATION: On October 17, 1997 (62 FR 53933), the Nuclear Regulatory Commission published in the **Federal Register** a direct final rule amending its regulations at 10 CFR 50.55a(h) to incorporate by reference the most recently published version of a national consensus standard. The direct final rule was to become effective on January 1, 1998. The NRC also concurrently published an identical proposed rule on October 17, 1997 (62 FR 53975). In these documents, the NRC indicated that if it received significant adverse comments in response to this action, the NRC would withdraw the direct final rule and would consider the comments received as in response to the proposed rule and address these comments in a subsequent final rule. The NRC has received significant adverse comments on the direct final rule. Therefore, the Commission is withdrawing the October 17, 1997, direct final rule. The public comments received will be addressed in a subsequent final rule issued in either a notice of final rulemaking or in a notice of withdrawal of the proposed rule.

Dated at Rockville, Maryland, this 16th day of December, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–33424 Filed 12–22–97; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 97–N–10]

Questions and Answers Regarding The Affordable Housing Program

AGENCY: Federal Housing Finance Board.

ACTION: Staff interpretation of affordable housing regulations.

SUMMARY: The Federal Housing Finance Board (Finance Board) is publishing Questions and Answers regarding the Affordable Housing Program (AHP). The Questions and Answers have been prepared by staff of the Finance Board in response to questions about changes in the Finance Board's regulation governing the AHP that will go into effect on January 1, 1998. The Questions and Answers constitute informal staff guidance for Finance Board personnel, the Federal Home Loan Banks (Bank), Bank members, and program participants. The Answers are intended to be interpretive of the Finance Board's regulation governing the AHP, and are not statements of agency policy. The Questions and Answers have not been considered or approved by the Board of Directors of the Finance Board.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Compliance Assistance Division, (202) 408–2848, or Janet M. Fronckowiak, Program Analyst, Compliance Assistance Division, (202) 408–2575, or Diane E. Dorius, Associate Director, Program Development Division, (202) 408–2576, Office of Policy, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: On August 4, 1997, the Finance Board published a final rule amending its existing regulation governing the AHP. *See* 62 FR 41812 (Aug. 4, 1997). The final rule will become effective on January 1, 1998. In the months following publication of the final rule, the Finance Board has provided training to the staffs of the Banks to assist them in making a smooth transition to operation under the amended AHP regulation. A number of questions of regulatory interpretation were raised by Bank staff as a result of the Finance Board's training sessions. The staff of the Finance Board has prepared answers to the most frequently asked questions. The Questions and Answers constitute informal interpretive guidance for Finance Board personnel, the Banks, Bank members, and program participants. The Answers are intended to be interpretative of the AHP regulation, not statements of agency policy, and they have not been considered or approved by the Board of Directors of the Finance Board.

The Questions and Answers are grouped by the provision of the AHP regulation that they discuss and are presented in the same order as the regulatory provisions. The text of the Questions and Answers follows:

Text of the Questions and Answers

Questions and Answers Regarding the AHP

Definitions (§ 960.1)

Low- and Moderate-Income and Very Low-Income Household Eligibility for Current Occupants:

Q1. When a rental project involves both purchase and rehabilitation, which point in time should be used for purposes of determining household eligibility?

A1. The regulation permits a choice of determining income eligibility either at the time of completion of the purchase or at the time of completion of the rehabilitation.

Q2. In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, can an occupying household that is a very low-income or a low- or moderate-income household at the time the AHP application is submitted to the Bank be deemed to be a very low-income or a low- or moderate-income household at

the time the purchase or rehabilitation of the housing is completed?

A2. Yes.

Median Income for the Area:

Q3. How can median income standards published by the U.S. Department of Agriculture (USDA) be available for all projects in a Bank's District if USDA publishes median income standards only for rural areas?

A3. USDA income standards would be applicable only to the rural areas identified in the USDA standards. A Bank selecting this median income standard would have to select another income standard to be used in non-rural areas.

Sponsor:

Q4. Does the definition of "sponsor" include a not-for-profit organization that owns a for-profit entity that is the general partner in the partnership that owns an AHP-eligible rental project?

A4. Yes.

Advisory Councils (§ 960.4)

Terms (section 960.4(d)):

Q1. Is each Advisory Council member required to be appointed for a three-year term?

A1. Yes.

Q2. Do terms already served or which currently are being served by Advisory Council members who are in office on January 1, 1998, count toward the limit of three consecutive terms?

A2. No. Only terms that begin on or after January 1, 1998, the effective date of the revised AHP regulation, count toward the limit of three consecutive terms.

Minimum Eligibility Standards for AHP Projects (§ 960.5)

Experienced Counseling Organization (section 960.5(a)(2)(ii)):

Q1. What is a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling?

A1. A program such as one that is provided by a counseling organization approved by HUD or a state or local agency would qualify. Programs that are based on counseling guides such as those provided by the American Homeowners Education and Counseling Institute also would meet this requirement.

Homeownership Set-Aside Incentives (section 960.5(a)(6)):

Q2. What are financial or other incentives to a household that are required of a member that provides mortgage financing?

A2. A Bank may determine what it considers to be financial or other incentives. For example, financial incentives could include lower (or foregone) origination fees, other discounted fees, reduced interest rates, lower downpayment requirements, or reductions in other closing costs. Two examples of other non-financial incentives are using underwriting standards that are more flexible than the member's usual practice, and making loans with longer terms than the member usually makes.

Counseling Costs (§ 960.5(a)(7)):

Q3. Under what circumstances can counseling costs be paid by AHP subsidies?

A3. For the competitive application program, counseling costs may be paid with AHP subsidies if the costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit and the cost of the counseling has not been covered by another funding source, including the member.

For the homeownership set-aside program, counseling costs may be paid with AHP subsidies if the costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; the cost of the counseling has not been covered by another funding source, including the member; and the AHP subsidies are used to pay only for the amount of such reasonable and customary costs that exceed the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years. A member may certify to the amount it spent, including in-house costs, over the preceding three years. If a member is not covering the cost of counseling and has not paid for counseling costs in the previous three years, AHP subsidies may be used to pay for reasonable and customary counseling costs incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit.

Direct Subsidy Processing Fees (§ 960.5(b)(4)(iii)):

Q4. Does the prohibition on using AHP funds to pay for direct subsidy processing fees cover fees for costs incurred by a member in order to pass on the subsidy, such as legal and underwriting costs?

A4. Yes.

Member Subsidy Limits (§ 960.5(b)(10)):

Q5. A Bank may establish certain eligibility requirements for its AHP. May the limitation on the amount of AHP subsidy available per member be based on a percentage of a member's assets or a percentage of the total available AHP funds?

A5. District eligibility requirements must apply equally to all members. A limitation based on a percentage of a member's assets would result in larger members being eligible to compete for more AHP funds than smaller members; therefore, such a limitation would not be permitted. However, since limiting each member to no more than a certain percentage of total available AHP funds would apply equally to each member, such a limitation would be permitted.

Procedure for Approval of AHP Applications for Funding (§ 960.6)

Scheduled Funding Periods (§ 960.6(b)(1)):

Q1. If a Bank schedules one funding period per year, but is unable to allocate its entire annual AHP contribution in that period, may the Bank hold a second funding period to allocate the remaining subsidies, even if the second funding period does not have a comparable amount of funds?

A1. Yes. The concept of allocating comparable amounts in each funding period is based on the premise that a Bank schedules more than one funding period a year. If a Bank plans one funding period and an insufficient number of qualifying applications are approved in that period, a Bank may hold a second funding period to allocate the unused subsidies and that period does not have to be comparable in amount to the first period.

Nominal Price (§ 960.6(b)(4)(iv)(A)):

Q2. Regarding the conveyance of government-owned or other properties for a "nominal" price, what is a "nominal" price?

A2. A small, negligible amount, most often one dollar, is a nominal price. Modest expenses related to the conveyance of the property may also be paid.

Not-for-profit Organization/ Government Entity Sponsor Scoring Criterion (§ 960.6(b)(4)(iv)(B)):

Q3. Does the definition of "sponsor" in § 960.1 apply to the not-for-profit organization/government entity sponsor scoring criterion such that a not-for-profit or government entity sponsor of a rental project must have an ownership interest in the project in order for the project to get any points under that criterion?

A3. Yes.

First District Priority (§ 960.6(b)(4)(iv)(F)):

Q4. If a Bank chooses more than one criterion for which an AHP application may receive points under the First District Priority scoring category, how are points to be allocated among those criteria?

A4. If a Bank permits applications to receive points for meeting more than one criterion under the First District Priority scoring category, the Bank must split the total number of points for the First District Priority among those criteria. The sum of the points allocated to each of the criteria must equal the total number of points allocated to the First District Priority. Each application must be scored according to the extent to which it meets each of the criteria. An application cannot receive more than the total number of points allocated to a particular criterion if the application meets that criterion. If an application meets all the criteria under the First District Priority, the application cannot receive more than the total number of points allocated to the First District Priority.

Subsidy-Per-Unit (§ 960.6(b)(4)(iv)(H)):

Q5. Is subsidy-per-unit based on AHP-targeted units only?

A5. Yes. The project is scored based on the extent to which the project proposes to use the least amount of AHP subsidy per AHP-targeted unit. AHP-targeted units are any units that will be purchased by, or reserved for occupancy by and affordable for, households with incomes of 80 percent or less of area median income.

Funding Alternates (§ 960.6(b)(5)(i)):

Q6. If sufficient AHP funds are recovered or repaid from previously committed AHP awards, must they be used to fund projects approved as alternates in a previous funding period?

A6. No. Recovered and repaid AHP subsidies must be returned to a Bank's AHP fund. A Bank may, but is not required to, fund alternate projects from recovered or repaid AHP funds.

Board of Directors Approval (§ 960.6(b)(5)(ii)):

Q7. May responsibility to approve or disapprove AHP applications be delegated by the board of directors of a Bank to a committee of the board?

A7. Yes. Such delegation should be done on an annual basis.

Modification of AHP Applications Prior to Project Completion (§ 960.7)

Material Change (§ 960.7(a)):

Q1. For purposes of modifications to AHP applications prior to project completion, what constitutes a change in a project that "materially" affects the facts under which the project's application was originally scored and approved for AHP funding?

A1. A change that materially affects the facts under which an AHP application was originally scored and approved is any change that has the potential for rendering the project ineligible or for changing the score that the project received in the funding period in which it was originally scored, had the changed facts been operative at that time. Examples include changes in the level of income targeting or the number of targeted units in a project.

Procedures for Funding (§ 960.8)

Direct Subsidy Changes (§ 960.8(c)(3)(i)):

Q1. When a Bank has approved a direct subsidy for an interest rate or principal write-down, is the Bank required to reduce the amount of the direct subsidy when interest rates decrease?

A1. Yes. The Bank must reduce the amount of AHP subsidy when interest rates have decreased from the time of the approval of the AHP application to the time of funding. However, the Bank does have the discretion to process a project modification under § 960.7 to cover additional amounts of subsidy required due to increased project costs or the loss or reduction of other funding sources. The modification could be approved by the Bank's staff, rather than the Bank's board of directors, if the amount of AHP subsidy required does not exceed the amount of the originally approved subsidy.

Modification of AHP Applications After Project Completion (§ 960.9)

Material Change (§ 960.9):

Q1. For purposes of modifications to AHP applications after project completion, what constitutes a change in a project that "materially" affects the facts under which the project's application was originally scored and approved for AHP funding?

A1. A change that materially affects the facts under which an AHP application was originally scored and approved is any change that has the potential for rendering the project ineligible or for changing the score that the project received in the funding period in which it was originally scored, had the changed facts been operative at that time. Examples include changes in the level of income targeting or the number of targeted units in a project.

Financial Distress (§ 960.9(a)):

Q2. May a completed project qualify for a modification if it is at risk of falling into financial distress?

A2. Yes. A project must provide sufficient information for the Bank to determine that it either is in financial distress or is at substantial risk of falling into financial distress. This section is intended to provide flexibility to modify the commitments made in the approved AHP application if those modifications will help to avert the potential financial distress. However, if a completed project needs additional AHP funds, it must compete for those additional funds.

Initial Monitoring Requirements (§ 960.10)

Verification of Reasonable and Customary Costs (§§ 960.10(c)(1)(ii) and (c)(2)(ii)):

Q1. What types of documentation may a Bank rely on in order to establish that a project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines?

A1. If a project is funded by other funding sources (such as Federal Low-Income Housing Tax Credits, FHA) that require a cost certification upon completion of construction or rehabilitation, the Bank may rely upon that cost certification to make its own determination whether the costs are reasonable and customary. If a cost certification is unavailable, the Bank shall review the final statement of sources and uses of funds to make that determination.

Verification of Provision of Activities and Services (§ 960.10(c)(2)(i)):

Q2. Is a site visit necessary to confirm that the services and activities committed to in an AHP rental housing application have been provided?

A2. A site visit is not necessary if the Bank has a certification and sufficient documentation to provide the Bank with reasonable assurance that the services and activities have been provided.

Long-Term Monitoring (§ 960.11)

Reasonable Sampling Plan (§ 960.11(a)(3)(iii)(C)):

Q1. What would be considered a reasonable sampling plan for the selection of projects to be monitored by a Bank each year?

A1. A Bank, working with its internal auditors, may develop a sampling methodology that is designed to assure that all projects are monitored according to the schedule established in § 960.11(a)(3)(iii) of the revised AHP regulation.

Remedial Action for Noncompliance (§ 960.12)

Reasonable Collection Efforts (§ 960.12(a)(2)(ii)):

Q1. What are reasonable collection efforts in the recovery of AHP subsidy by a member from the project sponsor or owner?

A1. Reasonable collection efforts will depend on the facts and circumstances of a given situation, including, but not limited to, the expected cost of recovery of the AHP subsidy and the amount of subsidy to be recovered. Reasonable

collection efforts may involve negotiation and pursuit of legal remedies against a project sponsor or owner, in addition to the enforcement of a member's rights under a mortgage or other lien on the project.

Use of Recovered Interest for AHP-Eligible Projects (§ 960.12(c)(1)(i)):

Q2. If AHP subsidy and interest are recovered by a Bank from a member, does the interest, as well as the AHP subsidy, have to be made available for other AHP-eligible projects under § 960.12(e)?

A2. Yes.

Other Issues

Project Completion (§ § 960.1, 960.10 and 960.11):

Q1. When is "project completion" to be determined for monitoring purposes?

A1. The date on which a certificate of occupancy is issued is one way to determine project completion. In areas that do not require certificates of occupancy, a Bank should identify in its monitoring procedures alternative ways that it will use to determine that a project is completed.

Use of AHP Funds for Otherwise Eligible Costs (§ 960.5):

Q2. May a Bank prohibit the use of AHP funds for certain types of costs that are otherwise eligible under the statute and revised AHP regulation?

A2. No.

Retention and Monitoring Requirements Applicable to Projects Approved Prior to January 1, 1998 (§ § 960.1, 960.11, and 960.16):

Q3. What are the retention and monitoring periods for projects approved prior to January 1, 1998?

A3. The retention and monitoring periods for projects approved prior to January 1, 1998, are 5 years from project completion for owner-occupied housing and 15 years from project completion for rental housing.

Dated: December 12, 1997.

William W. Ginsberg,

Managing Director.

[FR Doc. 97–33254 Filed 12–22–97; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–283–AD; Amendment 39–10262; AD 97–26–19]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, that currently requires repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of the main landing gear (MLG); and replacement of cracked lower lugs with new or serviceable parts, and a follow-on inspection. This amendment expands the applicability of the existing AD. This action also provides for an optional terminating action, which, if accomplished, terminates the repetitive inspection requirement. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct fatigue cracking of the lower lugs of the barrel of the MLG, which could lead to the collapse of the MLG.

DATES: Effective January 7, 1998.

The incorporation by reference of Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Messier-Dowty Service Bulletin Change Notice No. 1, dated March 18, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of January 7, 1998.

The incorporation by reference of Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 7, 1997 (62 FR 7665, February 20, 1997).

Comments for inclusion in the Rules Docket must be received on or before January 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On February 10, 1997, the FAA issued AD 97–04–09, amendment 39–9933 (62 FR 7665, February 20, 1997), which is applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes. That AD requires repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of the main landing gear (MLG), for airplanes on which the barrel assembly has been overhauled or repaired. If any lower lug is found to be cracked, the AD further requires replacement of the MLG barrel assembly with new or serviceable parts, and a follow-on inspection. That action was prompted by reports indicating that, due to fatigue cracking in the lower lugs of the barrel, the MLG collapsed. The actions required by that AD are intended to detect and correct such fatigue cracking, which could lead to the collapse of the MLG.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that further investigation has revealed that the fatigue cracking is the result of a design flaw that may also affect new barrel assemblies that have never been overhauled or repaired. In addition, the DGAC advises that the interval for the repetitive inspections may be extended from 700 landings to 900 landings.

Relevant Service Information

Messier-Dowty has issued Service Bulletin 631–32–133, dated February 24, 1997, which describes procedures to modify the lower lugs of the barrel of the MLG. The modification entails reconditioning the lower lugs and installing new bushings on the swinging lever. Accomplishment of this modification will prevent failure of the lugs due to fatigue cracking. Accomplishment of the modification eliminates the need for the repetitive visual inspections. The DGAC classified this service bulletin as mandatory, and issued French airworthiness directive 96–294(B)R1, dated September 10, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 97–04–09 to continue to require repetitive ultrasonic inspections to detect fatigue cracks of the lower lugs of the barrel of the main landing gear (MLG); and replacement of cracked lower lugs with new or serviceable parts, and a follow-on inspection. This AD expands the applicability of the existing AD to include all Model ATR42–300 and -320 series airplanes, regardless of whether the MLG barrel assemblies installed on those airplanes are new, overhauled, or repaired. Additionally, this AD extends the repetitive inspection interval from 700 to 900 landings.

This AD also provides for optional modification of the lower lugs of the barrel of the MLG, which, if accomplished, constitutes terminating action for the repetitive inspection requirements of this AD. The modification is required to be accomplished in accordance with the service bulletin described previously.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring the modification of the lower lugs of the barrel of the MLG. However, the planned compliance time for the installation of the modification is sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–283–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9933 (62 FR 7665, February 20, 1997), and by adding a new airworthiness directive (AD), amendment 39-, to read as follows:

97–26–19 Aerospatiale: Amendment 39–10262. Docket 97–NM–283–AD. Supersedes AD 97–04–09, Amendment 39–9933.

Applicability: All Model ATR42–300 and ATR42–320 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the lower lugs of the barrel of the main landing gear (MLG), and consequent collapse of the MLG, accomplish the following:

(a) Perform an ultrasonic inspection to detect fatigue cracks of the lower lugs of the barrel of the MLG, in accordance with Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) Within 2 years after the last overhaul or repair of the lower lugs of the barrel of the MLG, or within 60 days after March 7, 1997 (the effective date of AD 97–04–09, amendment 39–9933), whichever occurs later; or

(2) Within 5 years after the installation of a new MLG barrel assembly, or within 60 days after the effective date of this AD, whichever occurs later.

(b) If, during any inspection required by this AD, no echo is detected, or if the echo is less than 20%, repeat the ultrasonic inspection thereafter at intervals not to exceed 900 landings.

(c) If, during any inspection required by this AD, the echo is greater than or equal to 20%, prior to further flight, replace the MLG barrel assembly with a new or serviceable MLG barrel assembly, in accordance with the service bulletin.

(1) If the damaged barrel assembly is replaced with an overhauled or repaired assembly, within 2 years after installation of that overhauled or repaired part, accomplish the actions specified in paragraph (a) of this AD.

(2) If the damaged barrel assembly is replaced with a new barrel assembly, within 5 years after installation of that new part, accomplish the actions specified in paragraph (a) of this AD.

(d) Modification of the lower lugs of the barrel of the MLG in accordance with Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Messier-Dowty Service Bulletin Change Notice No. 1, dated March 18, 1997, constitutes terminating action for the repetitive inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Messier-Dowty Service Bulletin Change Notice No. 1, dated March 18, 1997; and Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997.

(1) The incorporation by reference of Messier-Dowty Service Bulletin 631–32–133, dated February 24, 1997, as revised by Messier-Dowty Service Bulletin Change Notice No. 1, dated March 18, 1997, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Messier-Dowty Service Bulletin 631–32–132, dated January 21, 1997, was approved previously by the Director of the Federal Register as of March 7, 1997 (62 FR 7665, February 20, 1997).

(3) Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–294(B)R1, dated September 10, 1997.

(h) This amendment becomes effective on January 7, 1996.

Issued in Renton, Washington, on December 15, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33509 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 95N–0417]

Carcinogenicity Testing of Compounds Used in Food-Producing Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations that set forth the requirements for the carcinogenicity testing of compounds used in food-producing animals. The amended regulations will eliminate the specific requirement that a sponsor must conduct oral, chronic, dose-response studies. This action is intended to allow FDA and sponsors greater flexibility in choosing the types of studies used for testing the carcinogenicity of compounds used in food-producing animals. The increased flexibility will make it easier and more economical for sponsors to complete required testing. These actions are part of FDA's continuing effort to achieve the objectives set forth in the President's "National Performance Review" initiative, which is intended to provide a comprehensive review of all rules in order to identify those that are obsolete and burdensome and to delete or revise them.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Margaret A. Miller, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0205.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 20, 1996 (61 FR 31468), FDA proposed to revise the requirements for the carcinogenicity testing of compounds used in food-producing animals as set forth in § 500.80(b) (21 CFR 500.80(b)) of the new animal drug approval regulations. The second sentence of § 500.80(b) of the existing regulation states, "The bioassays that a sponsor conducts must be oral, chronic, dose-response studies and must be designed to assess carcinogenicity and to determine the quantitative aspects of any carcinogenic response." The proposed rule would revise the existing language to eliminate the words "must be oral, chronic, dose-response studies and" * * *.

When the existing regulation was issued, a chronic study was the standard test for carcinogenicity. However, advances in models used to assess carcinogenicity have been made in recent years. For example, scientists now agree that a chronic study, as required under current regulations, may not measure the appropriate time point necessary to assess carcinogenicity for some compounds. Study designs other than a chronic study may result in a better evaluation of the compound in a number of cases.

FDA recognized these scientific advances by proposing to remove the requirement for oral, chronic, dose-response studies so that sponsors would have the option of using other study designs when assessing the carcinogenicity of compounds used for food-producing animals. This proposed change would allow FDA and sponsors greater flexibility in choosing types of studies for testing the carcinogenicity of compounds used in food-producing animals, making it more economical and easier for sponsors. No comments were received on the proposed rule.

II. Conclusion

Because the agency has determined that the underlying rationale in support of the amendment remains sound and because no comments or other information were received suggesting any modification, the revisions set forth in the proposed rule have not been modified in the final rule. Accordingly, the final rule deletes the specific requirement that required a sponsor to conduct oral, chronic, dose-response studies.

As stated in the proposal, this revision is consistent with the goals of the President's National Performance Review. The agency's actions are part of its continuing effort to achieve the objectives set forth in that initiative, which is intended to provide a comprehensive review of all rules in order to identify those that are obsolete and burdensome and to delete or revise them.

III. Environmental Impact

FDA has carefully considered the potential environmental effects of this action and has determined that this action is categorically excluded under 21 CFR 25.30(h). This action revises the requirements for testing the carcinogenicity of compounds used for food-producing animals, but will not cause an increase in the existing level of use or cause a change in the intended uses of the product or its substitutes. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, and distributive impacts and equity). The Regulatory Flexibility Act requires agencies to examine the economic impact of a rule on small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation).

This amendment to the regulations setting forth the requirements for the carcinogenicity testing of compounds used in food-producing animals will eliminate the specific requirement that a sponsor must conduct oral, chronic, dose-response studies, giving the agency and sponsors greater flexibility in choosing the types of studies used for testing the carcinogenicity of compounds used in food-producing animals. The resultant expanded flexibility will make it easier and less costly for sponsors to complete required testing.

FDA concludes that this final rule is consistent with the principles set forth in the Executive order and in these two statutes. In addition, the agency has determined that this rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. Because the final rule does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year, a written statement and economic analysis are not required as prescribed under section 202(a) of the Unfunded Mandates Reform Act of 1995.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the rule will clarify FDA policy and simplify the process for submitting certain applications, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

FDA has determined that this rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

VI. Federalism

FDA has analyzed the final rule in accordance with the principles set forth in Executive Order 12612 and has determined that this final rule does not warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 500 is amended as follows:

PART 500—GENERAL

1. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371.

§ 500.80 [Amended]

2. Section 500.80 *Scope of this subpart* is amended in paragraph (b) in the second sentence by removing the phrase "must be oral, chronic, dose-response studies and".

Dated: December 17, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–33483 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation and Injectable Dosage Form New Animal Drugs; Imidocarb Dipropionate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for subcutaneous or intramuscular use of imidocarb dipropionate solution for dogs for treatment of babesiosis.

EFFECTIVE DATE: December 23, 1997

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1618.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, has filed NADA 141–071 Imizol® (imidocarb dipropionate) solution for subcutaneous or intramuscular use for treatment of dogs with clinical signs of babesiosis and/or demonstrated *Babesia* organisms in the blood. The drug is limited to use by or on the order of a licensed veterinarian. The NADA is approved as of November 7, 1997, and the regulations are amended by adding new

21 CFR 522.1156 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act, this approval for use in nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning November 7, 1997, because the application contains substantial evidence of the effectiveness of the drug involved and any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. New § 522.1156 is added to read as follows:

§ 522.1156 Imidocarb dipropionate solution.

(a) *Specifications.* Each milliliter of injectable solution contains 120 milligrams of imidocarb.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 6.6 milligrams imidocarb per kilogram (3 milligrams per pound) of body weight.

(ii) *Indications for use.* Treatment of clinical signs of babesiosis and/or demonstrated *Babesia* organisms in the blood.

(iii) *Limitations.* Use subcutaneously or intramuscularly. Not for intravenous use. Repeat the dose after 2 weeks for a total of two treatments. Imidocarb is a cholinesterase inhibitor. Do not use simultaneously with or a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: December 15, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–33486 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Bacitracin Zinc, and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two abbreviated new animal drug applications (ANADA's) filed by Alpharma Inc. The ANADA's provide for using approved salinomycin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA's 200–209 and 200–215 that provide for combining approved salinomycin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler feeds containing salinomycin 40 to 60 grams per ton (g/t), bacitracin zinc 10 to 50 g/t, and roxarsone 34.1 g/t. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* increased rate of weight gain, and improved feed efficiency.

Alpharma Inc.'s ANADA 200–209 provides for using approved SACOX® (Hoechst-Roussel Vet's salinomycin ANADA 200–075), ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223), and 3–NITRO® (Alpharma Inc.'s roxarsone NADA 7–891) Type A medicated articles to make the combination drug Type C medicated feeds. Alpharma Inc.'s ANADA 200–215 provides for using approved BIO-COX® (Hoffmann-LaRoche, Inc.'s salinomycin NADA 128–686), ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223), and 3–NITRO® (Alpharma Inc.'s roxarsone NADA 7–891) Type A medicated articles to make the combination drug Type C medicated feeds.

Alpharma Inc.'s ANADA 200–209 is approved as a generic copy of Hoechst-Roussel Vet's ANADA 200–143. Alpharma Inc.'s ANADA 200–215 is approved as a generic copy of Hoffmann-LaRoche, Inc.'s NADA 139–190. The ANADA's are approved as of December 23, 1997, and the regulations are amended in 21 CFR 558.550(b)(1)(ix)(c) to reflect the approvals. The basis for approval is discussed in the freedom of information summaries.

This approval is for use of three single ingredient Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make Type C medicated feed from a Category II drug. Under section 512(m) of the act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of salinomycin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated feeds as provided in ANADA's 200–209 and 200–215 is limited to manufacture in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of each of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.550 [Amended]

2. Section 558.550 *Salinomycin* is amended in paragraph (b)(1)(ix)(*c*) by removing "No. 000004" and adding in its place "Nos. 000004 and 046573".

Dated: October 30, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–33370 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Semduramicin and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for using approved single ingredient Type A medicated articles to make combination drug Type C medicated broiler chicken feeds containing semduramicin and roxarsone used for prevention of coccidiosis.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–066, which provides for combining approved Type A medicated articles containing Aviax™ (semduramicin sodium) (22.7 grams per pound (g/lb.)) and 3-Nitro (roxarsone) (45.4, 90, and 227 g/lb.) to make combination drug Type C medicated broiler chicken feeds containing 22.7 grams per ton of semduramicin and 45.4 grams per ton of roxarsone. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/ E. mitis, E. necatrix,* and *E. tenella* including some field strains of *E. tenella* that are more susceptible to semduramicin combined with roxarsone than semduramicin alone. The NADA is approved as of December 23, 1997, and the regulations are amended by adding 21 CFR 558.555(b)(4) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act the act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for food-producing animals qualifies for 3 years marketing exclusivity beginning December 23, 1997, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

This approval is for use of approved Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3 (b)(1)(ii). As provided in 21 CFR 558.4(b), an approved FDA form 1900 is required for making a Type B or Type C medicated feed as in this application. Under section 512(m) of the act, as amended by the Animal Drug Availability Act of 1996 (Pub L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of semduramicin and roxarsone Type A medicated articles to make Type C medicated feeds as provided in NADA 141–066 requires a feed mill license rather than an approved FDA Form 1900.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.555 is amended by adding paragraph (b)(4) to read as follows:

§ 558.555 Semduramicin.

* * * * *

(b) * * *

(4) *Amount.* Semduramicin 22.7 grams with roxarsone 45.4 grams per ton.

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E. mivati/E. mitis, E. necatrix,* and *E. tenella,* including some field strains of *E. tenella* that are more susceptible to semduramicin combined with roxarsone than semduramicin alone.

(ii) *Limitations.* Feed continuously as sole ration. Withdraw 5 days before slaughter. For broiler chickens only. Do not feed to laying hens. Use as sole source of organic arsenic. Roxarsone as provided by 046573, semduramicin as provided by 000069 in § 510.600(c) of this chapter.

Dated: December 15, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–33376 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Robenidine and Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved robenidine and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis and increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–28), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is the sponsor of ANADA 200–212 which provides for combining approved robenidine and bacitracin zinc Type A medicated articles to make Type C medicated broiler feeds containing robenidine hydrochloride 30 grams per ton (g/t) and bacitracin zinc 4 to 50 g/t for prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, and with bacitracin zinc 4 to 30 g/t, for increased rate of weight gain, and with bacitracin zinc 27 to 50 g/t, for improved feed efficiency.

Alpharma Inc.'s ANADA 200–212 is approved as a generic copy of Hoffmann-La Roche, Inc.'s NADA 96–933. The ANADA is approved as of December 23, 1997, and the regulations are amended in 21 CFR 558.515(d)(1)(vi)(*b*) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

This approval is for use of two single ingredient Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, robenidine, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make Type C medicated feed from a Category II drug. Under section 512(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of robenidine and bacitracin zinc Type A medicated articles to make Type C medicated feeds as provided in NADA 200–212 is limited to manufacture in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.515 [Amended]

2. Section 558.515 *Robenidine hydrochloride* is amended in paragraph (d)(1)(vi)(*b*) by removing "000004 and 000061" and adding in its place "000004, 000061, and 046573".

Dated: October 30, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–33489 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Amprolium Plus Ethopabate With Bacitracin Zinc and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved amprolium plus ethopabate with bacitracin zinc and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used as an aid in the prevention of coccidiosis and increased rate of weight gain in broiler chickens raised in floor pens.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed ANADA 200–217 that provides for combining approved amprolium plus ethopabate with bacitracin zinc and roxarsone Type A medicated articles to make Type C medicated broiler feeds. The Type C medicated feed containing amprolium 113.5 grams per ton (g/t) plus ethopabate 36.3 g/t with bacitracin zinc 5 to 35 g/t and roxarsone 34 g/t, is used as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina*, *E. maxima*, and *E. brunetti* is likely to occur, and for increased rate of weight gain in broiler chickens raised in floor pens.

Alpharma Inc.'s ANADA 200–217 provides for using approved AMPROL HI–E® (Merck's amprolium and ethopabate NADA 13–461), ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223), and 3–NITRO® (Alpharma Inc.'s roxarsone NADA 7–891) Type A medicated articles to make the combination drug Type C medicated feeds.

Alpharma Inc.'s ANADA 200–217 is approved as a generic copy of Swisher Feed Div.'s NADA 39–284. The ANADA is approved as of December 23, 1997, and the regulations are amended in 21 CFR 558.58(d)(1)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

This approval is for use of three Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make Type C medicated feed from a Category II drug. Under section 512(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of amprolium plus ethopabate, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated feeds as provided in ANADA 200–217 is limited to manufacture in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.58 [Amended]

2. Section 558.58 *Amprolium and ethopabate* is amended in paragraph (d)(1)(iii) in the table in the entry for "Bacitracin 5 to 35 plus roxarsone 34 (0.00375%)" in the column "Limitations" by removing "No. 000004" and adding in its place "Nos. 000004 and 046573".

Dated: October 30, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–33488 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 25 and 602

[TD 8743]

RIN 1545–AU12

Sale of Residence From Qualified Personal Residence Trust

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations permitting the reformation of a personal residence trust or a qualified personal residence trust in order to comply with the applicable requirements for such trusts. The final regulations also provide that the governing instruments of such trusts must prohibit the sale of a residence held in the trust to the grantor of the trust, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse.

DATES: The regulations are effective December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Lane Damazo (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1485. Responses to this collection of information are required in order to ensure the proper collection of the gift tax.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper varies from 3 hours to 3.25 hours, depending on individual circumstances, with an estimated average of 3.1 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On April 16, 1996, the IRS published in the **Federal Register** a notice of proposed rulemaking (formerly PS–004–96) at 61 FR 16623. The IRS received written and oral comments on the proposed regulations and held a public hearing on July 24, 1996. This document adopts final regulations with respect to this notice of proposed rulemaking.

Comments with respect to § 25.2702–5(a)(2) indicated that the procedure permitting reformation of trust instruments will be helpful to taxpayers and practitioners. It was suggested that an additional reformation period be made available for trusts for which the gift tax return due date had passed before the regulations became effective. Accordingly, under the final regulations, the trustees of trusts created before January 1, 1997, are granted a 90-day period after these regulations become final in which to reform the trust.

Some of the comments concerning the amendments to § 25.2702–5(b) and (c) agreed that the restrictions in the proposed regulations on the sale of the personal residence after the termination of the grantor's retained interest in a personal residence trust or a qualified personal residence trust further the intent of Congress in enacting section 2702(a)(3)(A)(ii). Other comments stated that the restrictions were not supported by the statute. Treasury and the IRS continue to believe that these regulations are consistent with the intent of Congress and carry out the purpose of the personal residence exception to section 2702.

Other comments suggested that the final regulations should contain an exception permitting the sale of the residence to the grantor if the need arises. Treasury and the IRS believe, however, that a rule of this nature is not necessary, since a grantor may lease the residence after the retained term from a trust or individual to which the

residence passes after the expiration of the initial term. The right to lease the residence may be expressly set forth in the trust document creating the personal residence trust. If the residence is leased for its fair market value rental, the grantor will not retain the economic benefit of the property for purposes of section 2036(a), since the grantor will be paying adequate consideration for the use of the property. However, if the residence is leased from a trust that is a grantor trust with respect to the grantor, the IRS under some circumstances may contend that the grantor has retained the economic benefit of the property.

Commentators raised a concern that because the regulations prohibit the transfer of the residence to the grantor, or the grantor's spouse, etc., the trust could not provide for a reversionary interest or a testamentary power of disposition, taking effect at the grantor's death prior to the expiration of the trust term, nor could the trust provide for a remainder interest in fee for the grantor's spouse (e.g., remainder outright to spouse, or remainder to child, but if child predeceases termination of the trust, then to spouse.) The final regulations permit dispositions to the spouse.

Finally, commentators objected to the statement in the preamble to the proposed regulations to the effect that if the IRS finds a pre-effective date trust to be inconsistent with the purposes of section 2702, the IRS, by established legal doctrines, may treat the trust as non-qualifying. Treasury and the IRS wish to clarify that the IRS will apply these regulations only to post-effective date trusts. Nevertheless, Treasury and the IRS have the authority to apply established legal doctrines to disqualify a pre-effective date trust in cases where the statutory purpose has clearly been violated.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose on small entities, a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6), does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the Notice of Proposed Rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Dale Carlton, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 25 is amended as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Paragraph 1. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 25.2702–5 is amended as follows:

1. Paragraph (a) heading and text are redesignated as paragraph (a)(1) heading and text and paragraph (a)(2) is added.
2. In paragraph (b)(1), five sentences are added after the third sentence.
3. Paragraph (c)(5)(ii)(C) is revised.
4. Paragraph (c)(9) is added.

The additions and revisions read as follows:

§ 25.2702–5 Personal residence trusts.

(a) * * *

(2) *Modification of trust.* A trust that does not comply with one or more of the regulatory requirements under paragraph (b) or (c) of this section will, nonetheless, be treated as satisfying these requirements if the trust is modified, by judicial reformation (or nonjudicial reformation if effective under state law), to comply with the requirements. In the case of a trust created after December 31, 1996, the reformation must be commenced within 90 days after the due date (including extensions) for the filing of the gift tax return reporting the transfer of the residence under section 6075 and must be completed within a reasonable time after commencement. If the reformation is not completed by the due date (including extensions) for filing the gift tax return, the grantor or grantor's spouse must attach a statement to the gift tax return stating that the reformation has been commenced or will be commenced within the 90-day period. In the case of a trust created before January 1, 1997, the reformation must be commenced within 90 days after December 23, 1997 and must be completed within a reasonable time after commencement.

(b) * * * (1) * * * In addition, the trust does not meet the requirements of this section unless the governing instrument prohibits the trust from selling or transferring the residence, directly or indirectly, to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse, at any time after the original duration of the term interest during which the trust is a grantor trust. For purposes of the preceding sentence, a sale or transfer to another grantor trust of the grantor or the grantor's spouse is considered a sale or transfer to the grantor or the grantor's spouse; however, a distribution (for no consideration) upon or after the expiration of the original duration of the term interest to another grantor trust of the grantor or the grantor's spouse pursuant to the express terms of the trust will not be considered a sale or transfer to the grantor or the grantor's spouse if such other grantor trust prohibits the sale or transfer of the property to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse. In the event the grantor dies prior to the expiration of the original duration of the term interest, this paragraph (b)(1) does not apply to the distribution (for no consideration) of the residence to any person (including the grantor's estate) pursuant to the express terms of the trust or pursuant to the exercise of a power retained by the grantor under the terms of the trust. Further, this paragraph (b)(1) does not apply to any outright distribution (for no consideration) of the residence to the grantor's spouse after the expiration of the original duration of the term interest pursuant to the express terms of the trust. For purposes of this paragraph (b)(1), a *grantor trust* is a trust treated as owned in whole or in part by the grantor or the grantor's spouse pursuant to sections 671 through 678, and *control* is defined in § 25.2701–2(b)(5)(ii) and (iii).

* * *

* * * * * *

(c) * * *

(5) * * *

(ii) * * *

(C) *Sale proceeds.* The governing instrument may permit the sale of the residence (except as set forth in paragraph (c)(9) of this section) and may permit the trust to hold proceeds from the sale of the residence, in a separate account.

* * * * *

(9) *Sale of residence to grantor, grantor's spouse, or entity controlled by grantor or grantor's spouse.* The governing instrument must prohibit the trust from selling or transferring the residence, directly or indirectly, to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse during the retained term interest of the trust, or at any time after the retained term interest that the trust is a grantor trust. For purposes of the preceding sentence, a sale or transfer to another grantor trust of the grantor or the grantor's spouse is considered a sale or transfer to the grantor or the grantor's spouse; however, a distribution (for no consideration) upon or after the expiration of the retained term interest to another grantor trust of the grantor or the grantor's spouse pursuant to the express terms of the trust will not be considered a sale or transfer to the grantor or the grantor's spouse if such other grantor trust prohibits the sale or transfer of the property to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse. In the event the grantor dies prior to the expiration of the retained term interest, this paragraph (c)(9) does not apply to the distribution (for no consideration) of the residence to any person (including the grantor's estate) pursuant to the express terms of the trust or pursuant to the exercise of a power retained by the grantor under the terms of the trust. Further, this paragraph (c)(9) does not apply to an outright distribution (for no consideration) of the residence to the grantor's spouse after the expiration of the retained trust term pursuant to the express terms of the trust. For purposes of this paragraph (c)(9), a *grantor trust* is a trust treated as owned in whole or in part by the grantor or the grantor's spouse pursuant to sections 671 through 678, and *control* is defined in § 25.2701–2(b)(5)(ii) and (iii).

* * * * *

Par. 3. Section 25.2702–7 is amended as follows:

1. The first sentence is revised,
2. A sentence is added at the end of the section.

The revision and addition read as follows:

§ 25.2702–7 Effective dates.

Except as provided in this section, §§ 25.2702–1 through 25.2702–6 apply as of January 28, 1992. * * * The fourth through eighth sentences of § 25.2702–5(b)(1) and § 25.2702–5(c)(9) apply with respect to trusts created after May 16, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
25.2702–5	1545–1485
* * * * *	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: December 4, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–33356 Filed 12–22–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR 199

[DoD 6010.8–R]

RIN 0720–AA40

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Selected Reserve Dental Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes the TRICARE Selected Reserve Dental Program (TSRDP) to provide dental care to members of the Selected Reserves of the Ready Reserve. The final rule details operation of the program.

EFFECTIVE DATE: This final rule is effective January 22, 1998.

ADDRESSES: Office of Health Services Financing, Department of Defense, Room 1B657, Pentagon, Washington, DC 20301–1200.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Speight, Office of the Assistant Secretary of Defense (Health Affairs), (703) 697–8975.

SUPPLEMENTARY INFORMATION:

I. Overview of the Final Rule

Implementation of the TRICARE Selected Reserve Dental Program (TSRDP) was directed by Congress in section 705 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, which amended title 10, United States Code, by adding section 1076b. This law directed the implementation of a dental program for members of the Selected Reserve of the Ready Reserve, providing for voluntary enrollment and premium sharing between DoD and the enrollee. Section 702 of the 1997 National Defense Authorization Act, Pub. L. 104–201 amended 10 U.S.C. 1076b, by revising the program's start date and also changing several operational requirements.

Included in the program are the 50 United States and the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. Enrollment in the TSRDP will be voluntary and accomplished via an enrollment application submitted to the contractor. Initial enrollment shall be for a period of 12 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment. The costs of the program will be shared between the government and the enrollee. The premium payment shall be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs).

Dental coverage under the TSRDP will consist of basic dental care, to include diagnostic services, preventive services, basic restorative services, and emergency oral examinations. Enrollees will be limited to an annual maximum of $1,000 of paid allowable charges per year. Minor administrative changes have been made in the benefits plan section in order to correct outdated codes.

Under this final rule, where possible, Reservists may make use of participating dental providers in their areas and may benefit from reduced out of pocket costs and provider submission of claims and acceptance of contractor allowances and arrangements. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. Dental claims under the TSRDP will be paid at the lower of the billed charges or the Usual, Customary and Reasonable (UCR) level, in which the customary rate is calculated at the 85th percentile or higher of billed charges.

TSRDP eligible beneficiaries will obtain information concerning the program and the enrollment process from the dental contractor. In the event an issue arises regarding the level of dental care received or the quality of care, all appeals and grievances should first be directed to the contractor for resolution. Only those issues that cannot be amicably resolved by the contractor should be forwarded to the TRICARE Support Office for review.

This final rule adopts the statutory preemption authority of 10 U.S.C. section 1103. This statute broadly authorizes preemption of state laws in connection with DoD contracts for medical and dental care. The Assistant Secretary of Defense (Health Affairs) has made the judgment that preemption is necessary and appropriate to assure the operation of a consistent, effective, and efficient federal program. Absent preemption of certain State and local laws on insurance regulation and other matters, competition would be severely limited and the process substantially delayed. The final rule incorporates language to clarify that the preemption of State laws section includes preemption of State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities.

As directed in the enacting legislation, the Department of Defense utilized a full and open competition to obtain a dental contractor to provide dental insurance coverage.

II. Public Comments

The interim final rule was published on May 16, 1997 (62 FR 26939). We received one public comment. We thank the commenter; significant items raised by the commenter and our analysis of the comments are summarized below in the appropriate sections of the preamble.

1. *Benefits.* The commenter recommended expanding the benefits under the program to include periodontics.

Response. Under the law, 10 U.S.C. 1076b, the TRICARE Selected Reserve Dental Program shall provide benefits for basic dental care and treatment, including diagnostic services, preventive services, basic restorative services and emergency oral examinations; periodontics was not included.

2. *Benefits.* We received a comment suggesting the addition of crowns as a benefit under the program.

Response. Under the law, 10 U.S.C. 1076b, the TRICARE Selected Reserve Dental Program shall provide benefits for basic dental care and treatment, including diagnostic services, preventive services, basic restorative services and emergency oral examinations. Crowns are not covered under the program as they are not considered to be a basic restorative service.

3. *Benefits.* Another comment we received pointed out that code 00130 had been changed to 00140.

Response. We concur with the comment and procedure code 00130 has been changed to 00140.

III. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Part 199 is amended by revising § 199.21 to read as follows:

§ 199.21 TRICARE Selected Reserve Dental Program (TSRDP).

(a) *Purpose.* The TSRDP is a premium based indemnity dental insurance coverage program that will be available to members of the Selected Reserve of the Ready Reserve. Dental coverage will be available only to members of the Selected Reserve, no family coverage will be offered. The TSRDP is authorized by 10 U.S.C. 1076b.

(b) *General provisions.* (1) Benefits are limited to diagnostic services, preventive services, basic restorative services, and emergency oral examinations.

(2) Premium costs for this coverage will be shared by the enrollee and the government.

(3) The program is applicable to authorized providers in the 50 United States and the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(4) Except as otherwise provided in this section or by the Assistant Secretary of Defense (Health Affairs) or designee, the TSRDP is administered in a manner similar to the Active Duty Dependents Dental Plan under § 199.13 of this part.

(5) The TSRDP shall be administered through a contract.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in §§ 199.2 and 199.13(b) of this part are relevant to the administration of the TRICARE Selected Reserve Dental Program, the definitions contained in §§ 199.2 and 199.13(b) of this part shall apply to the TSRDP as they do to CHAMPUS and the Active Duty Dependents Dental Plan.

(d) *Eligibility and enrollment.*(1) *Eligibility.* Enrollment in the TRICARE Selected Reserve Dental Program is open to members of the Selected Reserve of the Ready Reserve.

(2) *Notification of eligibility.* The contractor will notify persons eligible to receive dental benefits under the TRICARE Selected Reserve Dental Program.

(3) *Election of coverage.* Following this notification, interested Reservists may elect to enroll. In order to obtain dental coverage, written election by eligible beneficiary must be made.

(4) *Enrollment.* Enrollment in the TRICARE Selected Reserve Dental Program is voluntary and will be accomplished by submission of an application to the TSRDP contractor. Initial enrollment shall be for a period of 12 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

(5) *Period of coverage.* TRICARE Selected Reserve Dental Program coverage is terminated on the last day of the month in which the member is discharged, transferred to the Individual Ready Reserve, Standby Reserve, or Retired Reserve, or ordered to active duty for a period of more than 30 days.

(e) *Premium sharing.* The Government and the enrollee will share in the monthly premium cost.

(f) *Premium payments.* The enrollee will be responsible for a monthly premium payment in order to obtain the dental insurance.

(1) *Premium payment method.* The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs).

(2) *Effects of failure to make premium payments.* Failure to make monthly renewal premium payments will result in the enrollee being disenrolled from the TSRDP and subject to a lock-out period of 12 months. Following this period of time, eligible Reservists will be able to reenroll if they so choose.

(3) *Member's share of premiums.* The cost of the TSRDP monthly premium will be shared between the Government and the enrollee. Interested eligible Reservists may contact the dental contactor to obtain the enrollee premium cost. The member's share may not exceed $25 per month.

(g) *Plan benefits.* (1) The TSRDP will provide basic dental coverage, to include diagnostic services, preventive services, basic restorative services, and emergency oral examinations. The following is the TSRDP covered dental benefit (using the American Dental Association, The Council on Dental Care Program's Code On Dental Procedures and Nomenclature):

(i) Diagnostic: Comprehensive oral evaluation (00150), and Periodic oral evaluation (00120), Intraoral-complete series (including bitewings) (00210); Intraoral-periapical-first film (00220); Intraoral-periapical-each additional film (00230); Bitewings-single film (00272); Bitewings-two films (00272); Bitewings-four films (00274); Panoramic film (00330); Pulp Vitality Tests (00460).

(ii) Preventive: Prophylaxis-adult (limit-two per year) (01110); Tropical application of fluoride (excluding prophylaxis)-adult (01204).

(iii) Restorative: Amalgam-one surface, permanent (02140); Amalgam-two surfaces, permanent (02150); Amalgam-three surfaces; permanent (02160); Amalgam-four or more surfaces, permanent (02161); Resin-one surface, anterior (02330); Resin-two surfaces, anterior (02331); Resin-three surfaces, anterior (02332); Resin-four or more surfaces or involving incisal angle (anterior) (02335); Pin retention-per tooth, in addition to restoration (02951).

(iv) Oral Surgery: Single tooth (07110); Each additional tooth (07120); Root removal-exposed roots (07130); Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth (07210); Surgical removal of residual tooth roots (cutting procedure) (07250).

(v) Emergency: Limited oral evaluation—problem focused (00140); Palliative (emergency) treatment of dental pain-minor procedures (09110).

(2) Codes listed in paragraph (g)(1) of this section may be modified by the Director, OCHAMPUS, to the extent determined appropriate based on developments in common dental care practices and standard dental insurance programs.

(h) *Maximum annual cap.* TSRDP enrollees will be subject to a maximum $1,000.00 of paid allowable charges per year.

(i) *Annual notification of rates.* TSRDP premiums will be determined as part of the competitive contracting process. Information on the premium rates will be widely distributed.

(j) *Authorized providers.* The TSRDP enrollee may seek covered services from any provider who is fully licensed and approved to provide dental care in the state where the provider is located.

(k) *Benefit payment.* Enrollees are not required to utilize the special network of dental providers established by the TSRDP contractor. For enrollees who do use this network, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TSRDP. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. The maximum payment allowable by the TSRDP (minus the appropriate cost-share) will be the lesser of:

(1) Billed charges; or

(2) Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 85th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code).

(l) *Appeal and hearing procedures.* All levels of appeals and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to OCHAMPUS for a final review. Procedures comparable to those established under § 199.13(h) of this part shall apply.

(m) *Preemption of State laws.* (1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to the dental services contracts that implement this section.

(2) Based on the determination set forth in paragraph (m)(1) of this section, any State or local law or regulation pertaining to health or dental insurance, prepaid health or dental plans, or other health or dental care delivery, administration, and financing methods is preempted and does not apply in connection with the TRICARE Selected Reserve Dental Program contract. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE Selected Reserve Dental Program contract. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE Selected Reserve Dental Program contractor to conform with requirements similar to or identical to requirements of State or local laws or regulations).

(3) The preemption of State and local laws set forth in paragraph (m)(2) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of section 1103. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(n) *Administration.* The Assistant Secretary of Defense (Health Affairs) or designee may establish other rules and procedures for the administration of the TRICARE Selected Reserve Dental Program.

Dated: December 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33108 Filed 12–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR 199

[DoD 6010.8–R]

RIN 0720–AA44

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Retiree Dental Program (TRDP)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes the TRICARE Retiree Dental Program (TRDP), a premium based indemnity dental insurance coverage program, that will be available to retired members of the Uniformed Services, their dependents, and certain other beneficiaries.

EFFECTIVE DATE: This final rule is effective January 22, 1998.

ADDRESSES: Office of Health Services Financing Policy, Department of Defense, Room 1B657 Pentagon, Washington, DC 20301–1200.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Speight, Office of the Assistant Secretary of Defense (Health Affairs), (703) 697–8975.

SUPPLEMENTARY INFORMATION:

I. Overview of the Final Rule

Implementation of the TRICARE Retiree Dental Program (TRDP) was directed by Congress in section 703 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, which amended title 10, United States Code, by adding section 1076c. This final rule also incorporates the minor changes in the National Defense Authorization Act for Fiscal Year 1998 which expand eligibility to retirees of the Public Health Service and the National Oceanic and Atmospheric Administration, and active duty survivors and their dependents. The law directs the implementation of a dental program for: (1) Members of the Uniformed Services who are entitled to retired pay, (2) Members of the Retired Reserve under the age of 60, (3) Eligible dependents of (1) or (2) who are covered by the enrollment of the member, and (4) The unremarried surviving spouse and eligible child dependents of a deceased member who died while in status described in (1) or (2); the unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unremarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the Active Duty Dependents Dental Plan.

Included in the program are the 50 United States and the District of Columbia, Canada, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. The final rule expands the coverage of the program to include all U.S. Territories. Enrollment in the program is voluntary and members enrolled in the dental plan will be responsible for paying the full cost of the premiums. Under the final rule, the initial enrollment period has been extended from 12 months to 24 months (similar to the Active Duty Dependents Dental Program) in order to reduce the risk of adverse selection. The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs). Dental coverage under the TRDP will provide basic dental care, to include diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations. Minor administrative changes have been made in the plan benefits section in order to correct outdated codes and to include codes that were inadvertently excluded from the list.

Under this rule, where possible, members entitled to retired pay and eligible family members and their dependents may make use of participating dental providers in their areas and may benefit from reduced out-of-pocket and provider submission of claims and acceptance of contractor allowances and arrangements. Enrollees using non-network providers may be balance billed amounts in excess of allowable charges. Under the final rule, the maximum payment allowable by the TRDP (minus the appropriate cost-share) will be the lesser of the billed charges or the Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 50th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code). TRDP eligibles will obtain information concerning the program and the application process from the contractor.

This final rule adopts the statutory preemption authority of 10 U.S.C., section 1103. This statute broadly authorizes preemption of state laws in connection with DoD contracts for medical and dental care. The Assistant Secretary of Defense (Health Affairs) has made the judgment that preemption is necessary and appropriate to assure the operation of a consistent, effective, and efficient federal program. Absent preemption of certain State and local laws on insurance regulation and other matters, competition would be severely limited and the process substantially delayed. The final rule incorporates language to clarify that the preemption of State laws section includes preemption of State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities.

II. Public Comments

The proposed rule was published on June 24, 1997 (62 FR 34032–34035). We received one public comment. We thank the commenter; significant items raised by the commenter and our analysis of the comments are summarized below in the appropriate sections of the preamble.

1. *Benefits:* We received a comment that an error exists in the description of procedure code 00120, 00140, and 00150.

Response: We appreciate the comment and we have replaced "examination" with "evaluation" in the description of the procedure codes 00120, 00140, and 00150.

2. *Benefits:* The commenter pointed out an oversight in that two procedures, Amalgam-one surface, permanent (02140) and Amalgam (two-surface), permanent (02150) were not included in the benefits of the program.

Response: We concur with the comment and procedures codes 02140 and 02150 have been added under the restorative benefits under the program.

3. *Benefits:* Another comment we received pointed out that several periodontic (04261, 04262, 04268) codes are outdated and have been changed.

Response: We appreciate the comment. These periodontic codes have been changed in the final rule as follows: code 04261 has been replaced by Bone replacement graft-first site in quadrant (04263); code 04262 has been replaced by Bone replacement-each additional site in quadrant; code 04268 has been replaced by Guided tissue regeneration-resorbable barrier, per site, per tooth (04268) and Guided tissue regeneration-nonresorbable barrier, per site, per tooth (includes membrane removal) (04267).

4. *Benefits:* We received a comment that the benefits need to be expanded to include prosthetic services.

Response: Under the law, 10 U.S.C. 1076c, the TRICARE Retiree Dental Program shall provide benefits for basic dental care and treatment, including diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency services; prosthetic services are not included.

5. *Maximum Annual Cap:* The commenter expressed concern about the $1,000 maximum annual cap and recommended a higher annual maximum benefit.

Response: As the government does not share in the cost of the premium, the maximum annual cap is necessary to ensure that the monthly premium is a reasonable/affordable amount for the enrollee. It is important to note that the maximum annual cap does not apply to all of the diagnostic services and some of the preventive services covered under the program.

6. *Benefit Payment:* The commenter pointed out a mistake in the Benefit payment section. The section states, "For enrollees who do not use these network providers, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TRDP."

Response: The commenter is correct and the sentence has been corrected to state, "For enrollees who do use these network providers, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TRDP."

7. *Balance Billing:* A commenter asked if balance billing is limited to 115% of the CHAMPUS allowable charge for a service.

Response: As this is not a CHAMPUS program, DoD's statutory authority to limit balance billing to 115% of the CHAMPUS allowable charge does not apply. Non-network providers are not limited in the amount they may balance bill an enrollee.

III. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule will impose additional information collection requirements on the public, associated with beneficiary enrollment, under the Paperwork Reduction Act of 1995. OMB approval number 0720–0015 pending a development of a contractor-designed enrollment form which has now been accomplished. The form will be submitted to OMB concurrently with publication of this notice. The collection instrument serves as an application form for military members entitled to retired pay and eligible dependents to enroll in the TRICARE Retiree Dental Program. The application will allow the Department of Defense to identify enrollment applicants, evaluate their eligibility for the enrollment, and determine other health insurance coverage which an applicant may have.

Affected Public: Eligible family members and their dependents.

Annual Burden Hours: 71,640.

Number of Respondents: 286,570.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: Once, at time of initial application.

Respondents are retirees of the Uniformed Services entitled to retired pay and eligible family members and their dependents who are seeking enrollment in the TRICARE Retiree Dental Program. The enrollment application will allow the Department to collect the information necessary to properly identify the program's applicants and to determine their eligibility for enrollment in the TRICARE Retiree Dental Program. In completing and signing a TRICARE Retiree Dental Program enrollment form, applicants will acknowledge that they understand the benefits offered under the program and the rules they must follow to continue their participation in the program. Further, applicants will acknowledge that the premium will be withheld from retired pay when such pay is available. Initial enrollment will be for a period of 24 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 199 amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Part 199 is amended by adding § 199.22 to read as follows:

§ 199.22 TRICARE Retiree Dental Program (TRDP).

(a) *Purpose.* The TRDP is a premium based indemnity dental insurance coverage program that will be available to retired members of the Uniformed Services, their dependents, and certain other beneficiaries, as specified in paragraph (d) of this section. The TRDP is authorized by 10 U.S.C. 1076c.

(b) *General provisions.* (1) Benefits are limited to diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations, as specified in paragraph (f) of this section.

(2) Premium costs for this coverage will be paid by the enrollee.

(3) The program is applicable to authorized providers in the 50 United States and the District of Columbia, Canada, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(4) Except as otherwise provided in this section or by the Assistant Secretary of Defense (Human Affairs) or designee, the TRDP is administered in a manner similar to the Active Duty Dependents Dental Plan under § 199.13 of this part.

(5) The TRDP shall be administered through a contract.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in §§ 199.2 and 199.13(b) of this part are relevant to the administration of the TRICARE Retiree Dental Program, the definitions contained in §§ 199.2 and 199.13(b) of this part shall apply to the TRDP as they do to CHAMPUS and the TRICARE Active Duty Dependents Dental Plan.

(d) *Eligibility and enrollment.*—(1) *Eligibility.* Enrollment in the TRICARE Retiree Dental Program is open to:

(i) Members of the Uniformed Services who are entitled to retired pay;

(ii) Members of the Retired Reserve under the age of 60;

(iii) Eligible dependents of paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section who are covered by the enrollment of the member; and

(iv) The unremarried surviving spouse and eligible child dependents of a deceased member who died while in status described in paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section; the

unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unremarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the Active Duty Dependents Dental Plan.

(2) *Notification of eligibility.* The contractor will notify persons eligible to receive dental benefits under the TRICARE Retiree Dental Program.

(3) *Election of coverage.* Following this notification, interested members entitled to retired pay and eligible family members and their dependents may elect to enroll. In order to obtain dental coverage, written election by the eligible beneficiary must be made.

(4) *Enrollment.* Enrollment in the TRICARE Retiree Dental Program is voluntary and will be accomplished by submission of an application to the TRDP contractor. Initial enrollment shall be for a period of 24 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment.

(5) *Period of coverage.* TRICARE Retiree Dental Program coverage is terminated when the member's entitlement to retired pay is terminated, the member's status as a member of the Retired Reserve is terminated, a dependent child loses eligible child dependent status, or in the case of remarriage of the surviving spouse.

(6) *Continuation of dependents' enrollment upon death of enrollee.* Coverage of a dependent in the TRDP under an enrollment of a member or surviving spouse who dies during the period of enrollment shall continue until the end of that period and may be renewed by (or for) the dependent, so long as the premium paid is sufficient to cover continuation of the dependent's enrollment. Coverage may be terminated when the premiums paid are no longer sufficient to cover continuation of the enrollment.

(e) *Premium payments.* Persons enrolled in the dental plan will be responsible for paying the full cost of the premiums in order to obtain the dental insurance.

(1) *Premium payment method.* The premium payment may be collected pursuant to procedures established by the Assistant Secretary of Defense (Health Affairs) or designee.

(2) *Effects of failure to make premium payments.* Failure to make monthly renewal premium payments will result in the enrollee's disenrollment from the TRDP and subject to a lock-out period of 12 months. Following this period of time, persons eligible will be able to reenroll if they so choose.

(3) *Member's payment of premiums.* The cost of the TRDP monthly premium will be paid by the enrollee. Interested beneficiaries may contact the dental contractor-insurer to obtain the enrollee premium cost.

(f) *Plan benefits.* (1) The TRDP will provide basic dental care, to include diagnostic services, preventive services, basic restorative services (including endodontics), surgical services, and emergency oral examinations. The following is the TRDP covered dental benefit (using the American Dental Association, The Council on Dental Care Program's Code On Dental Procedures and Nomenclature):

(i) Diagnostic Periodic oral evaluation (00120); Comprehensive oral evaluation (limited to one exam per year in the same dental office) (00150), Intraoral-complete series (including bitewings) (00210); Intraoral-periapical-first film (00220); Intraoral-periapical-each additional film (00230); Intraoral-occlusal film (00240); Bitewings-single film (00270); Bitewings-two films (00272); Bitewings-four films (00274); Panoramic film (00330); Caries susceptibility tests, by report (00425); Pulp vitality tests (00460).

(ii) Preventive: Prophaylaxis-adult (limit-once per year) (01110); Prophylaxis-child (01120); Topical application of fluoride (excluding prophylaxis)-child (01203); Topical application of fluoride (excluding prophylaxis)-adult, by report, once per year (01204); Sealant-per tooth (01351); Space maintainer-fixed-unilateral (01510); Space maintainer-fixed-bilateral (01515); Space maintainer-removable-unilateral (01520); Space maintainer-removable-bilateral (01525); Recementation of space maintainer (01550).

(iii) Restorative: Amalgam-one surface, primary (02110); Amalgam-two surfaces, primary (02120); Amalgam-three surfaces, primary (02130); Amalgam-four or more surfaces, primary (02131); Amalgam-one surface, permanent (02140); Amalgam-two surfaces, permanent (02150); Amalgam-three surfaces, permanent (02160); Amalgam-four or more surfaces, permanent (02161); Resin-one surface, anterior (02330); Resin-two surfaces, anterior (02331); Resin-three surfaces, anterior (02332); Resin-four or more surfaces or involving incisal angle (anterior) (02335); Recement inlay (02910); Recement crown (02920); Prefabricated stainless steel crown-primary tooth (02930); Prefabricated stainless crown-permanent tooth (02931); Prefabricated resin crown (02932); Prefabricated stainless steel crown with resin window (02933); Pin retention-per tooth, in addition to restoration (02951); Temporary crown (fractured tooth) (02970).

(iv) Endodontic: Pulp cap-indirect (excluding final restoration) (03120); Therapeutic pulpotomy (excluding final restoration) (03220); Pulpal therapy (resorbable filling)-anterior, primary tooth (excluded final restoration) (03230); Pulpal therapy (resorbable filling)-posterior, primary tooth (excluded final restoration) (03240); Anterior root canal (excluding final restoration) (03310); Bicuspid root canal (excluding final restoration) (03320); Molar root canal (excluding final restoration) (03330); Retreatment-anterior, by report (03346); Retreatment-bicuspid, by report (03347); Retreatment-molar, by report (03348); Apexification/recalcification-initial visit (apical closure/calcific repair of perforations, root resorption, etc.) (03351); Apexification/recalcification-interim medication replacement (apical closure/calcific repair of perforations, root resorption, etc.) (03352); Apexification/recalcification-final visit (includes completed root canal therapy-apical closure/calcific repair of perforations, root resorption, etc.) (03353); Apicoectomy/Periradicular surgery-anterior (03410); Apicoectomy/Periradicular surgery-bicuspid (first root) (03421); Apicoectomy/Periradicular surgery-molar (first root) (03425); Apicoectomy/Periradicular surgery (each additional root) (03426); Retrograde filling-per root (03430); Root amputation-per root (03450); Hemisection (including any root removal), not including root canal therapy (03920).

(v) Periodontic: Gingivectomy or gingivoplasty-per quadrant (04210); Gingivectomy or gingivoplasty-per tooth (04211); Gingival curettage, surgical, per quadrant, by report (04220); Gingival flap procedure, including root planing-per quadrant (04240); Mucogingival surgery-per quadrant (04250); Osseous surgery (including flap entry and closure)-per quadrant (04260); Bone replacement graft-single site (including flap entry and closure) (04263); Bone replacement graft-multiple sites (including flap entry and closure) (04264); Guided tissue regeneration—resorbable barrier (04266); Guided tissue regeneration—nonresorbable barrier (04267); Pedicle soft tissue graft procedure (04270); Free soft tissue graft procedure (including donor site) (04271); Periodontal scaling and root planing-per quadrant (04341); Periodontal maintenance procedures (following active therapy) (04910); Unscheduled dressing change (by someone other than treating dentist) (04920).

(vi) Oral Surgery: Single tooth (07110); Each additional tooth (07120); Root removal-exposed roots (07130) Surgical removal or erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth (07210); Removal of impacted tooth-soft tissue (07220); Removal of impacted tooth-partially bony (07230); Removal of impacted tooth-completely bony (07240); Surgical removal of residual tooth roots (cutting procudure) (07250); Oral antral fistula closure (07260); Tooth reimplantation and/or stabilization of accidentially evulsed or displaced tooth and/or alveolus (07270); Surgical exposure of impacted or unerupted tooth to aid eruption (07281); Biopsy of oral tissue-hard (07285); Biopsy of oral tissue-soft (07286); Surgical repositioning of teeth (074290); Alveoloplasty in conjunction with extractions-per quadrant (07310); Suture of recent small wounds up to 5 cm (07910); Complicated suture-up to 5 cm (07911); Complicated suture-greater than 5 cm (07912); Excision of pericoronal gingiva (07971).

(vii) Emergency: Limited oral evaluation—problem focused (00140); Palliative (emergency) treatment of dental pain-minor procedures (09110).

(viii) Drugs: Therapeutic drug injection, by report (09610); Other drugs and/or medications, by report (09630).

(ix) Postsurgical: Treatment of complications (post-surgical) unusual circumstances, by report (09930).

(2) Codes listed in paragraph (f)(1) of this section may be modified by the Director, OCHAMPUS, to the extent determined appropriate based on developments in common dental care practices and standard dental insurance programs.

(g) *Maximum annual cap.* TRDP enrollees will be subject to a maximum cap of $1,000.00 of paid allowable charges per enrollee per year.

(h) *Annual notification of rates.* TRDP premiums will be determined as part of the competitive contracting process. Information on the premium rates will be widely distributed.

(i) *Authorized providers.* The TRDP enrollee may seek covered services from any provider who is fully licensed and approved to provide dental care in the state where the provider is located.

(j) *Benefit payment.* Enrollees are not required to utilize the special network of dental providers established by the TRDP contractor. For enrollees who do use these network providers, however, providers shall not balance bill any amount in excess of the maximum payment allowable by the TRDP. Enrollees using non-network providers may balance billed amounts in excess of allowable charges. The maximum payment allowable by the TRDP (minus the appropriate cost-share) will be the lesser of:

(1) Billed charges; or

(2) Usual, Customary and Reasonable rates, in which the customary rate is calculated at the 50th percentile of billed charges in that geographic area, as measured in an undiscounted charge profile in 1995 or later for that geographic area (as defined by three-digit zip code).

(k) *Appeal and hearing procedures.* All levels of appeals and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to OCHAMPUS for a final review. Procedures comparable to those established under § 199.13(h) of this part shall apply.

(l) *Preemption of State laws.* (1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to the dental services contracts that implement this section.

(2) Based on the determination set forth in paragraph (l)(1) of this section, any State or local law or regulation pertaining to health or dental insurance, prepaid health or dental plans, or other health or dental care delivery, administration, and financing methods is preempted and does not apply in connection with the TRICARE Retiree Dental Program contract. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE Retiree Dental Program contract. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE Retiree Dental Program contractor to conform with requirements similar to or identical to requirements of State or local laws or regulations).

(3) The preemption of State and local laws set forth in paragraph (l)(2) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of section 1103. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(m) *Administration.* The Assistant Secretary of Defense (Health Affairs) or designee may establish other rules and procedures for the administration of the TRICARE Retiree Dental Program.

Dated: December 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33110 Filed 12–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–97–120]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document provides notice of the dates and times of the special local regulations contained in 33 CFR 100.114, Fireworks Displays within the First Coast Guard District. All vessels will be restricted from entering the area of navigable water within a 500 yard radius of the fireworks launch platform for each event listed in the table below. Implementation of these regulations is necessary to control vessel traffic within the regulated area to ensure the safety of spectators.

EFFECTIVE DATE: The regulations in 33 CFR 100.114 are effective from one hour

before the scheduled start of the event until thirty minutes after the last firework is exploded for each event listed in the table below in

SUPPLEMENTARY INFORMATION. The events are listed chronologically by month with their corresponding number listed in the special local regulation, 33 CFR 100.114.

ADDRESSES: Comments should be mailed to Commander (osr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 734 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Guy A. McArdle, Office of Search and Rescue branch, First Coast Guard District at (617) 223–8460.

SUPPLEMENTARY INFORMATION: This document implements the special local regulations in 33 CFR 100.114 (62 FR 30988; June 6, 1997). All vessels are prohibited from entering a 500 yard radius of navigable water surrounding the launch platform used in each fireworks display listed below.

Table 1—Fireworks Displays

December

1. First Night Fireworks

Date: December 31, 1997.
Time: 12:00 a.m. (midnight) to 12:15 a.m.
Location: Off Waterfront Park, between Commercial and Long Wharf's.
Lat: 42°21.7N, Long: 071°02.8′W (NAD 1983).

2. First Night Martha's Vineyard

Date: December 31, 1997.
Time: 9:30 p.m. to 11:00 p.m.
Location: Vineyard Haven Harbor.
Lat: 41–27N, Long: 070–35W (NAD 1983).

4. City of New Bedford First Night

Date: December 31, 1997.
Time: 12:00 a.m. (midnight) to 12: 30 a.m.
Location: New Bedford Harbor, vicinity of state pier.
Lat: 41–38N, Long: 070–55W (NAD 1983).

Dated: December 2, 1997.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 97–33464 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 255

Access of Handicapped Persons to Postal Services, Programs, Facilities, and Employment

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of these changes is to clarify Postal Service regulations concerning the filing and processing of complaints of discrimination by handicapped persons in obtaining access to postal programs and services. References to Postal Service offices and publications have also been updated.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Rodger Carter, Coordinator, ABC Program, Facilities HQ, 4301 Wilson Blvd., Suite 300, Arlington VA 22203–1861; telephone (703) 526–2867.

SUPPLEMENTARY INFORMATION: The Postal Service is amending its regulations in order to clarify procedures to ensure, in accordance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, that its programs and services are provided in a non-discriminatory fashion to handicapped persons. All changes are designed to make the regulations easier for both postal customers and employees to understand and follow.

The Postal Service has not previously amended its Part 255 regulations. References to particular postal offices and publications, may of which were no longer in existence or had been restructured, have been revised. Certain other provisions were revised or deleted because they were redundant, such as repetitive provisions concerning responding to a complaint, or were duplicative of other postal regulations. For instance, Part 255 had contained postal regulations implementing the Rehabilitation Act in Sections 255.1 and 255.2, and also a few provisions concerning the Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.*, in Section 255.3. Since ABA requirements and compliance are set forth comprehensively in other regulations, see *e.g.* 49 FR 31528 (August 7, 1984) and Postal Service handbook RE–4, Standards for Facility Accessibility by the Physically Handicapped, they have been removed from Part 255. Similarly, provisions have been deleted that relate to actions taken for employees in accordance with procedures under Section 501 of the Rehabilitation Act.

Accordingly, part 255 now contains postal regulations that implement Section 504 of the Rehabilitation Act only, which regulations are set forth in a clearer and more comprehensive fashion. Part 255.1 sets forth procedural provisions, including how to file a complaint and time-frames for responses by postal officials. Corrective actions that may be appropriate are described in Parts 255.2 and 255.3, which concern special service arrangements and discretionary retrofits to facilities, respectively. Part 255.4, which relates to internal agency procedures and levels of authority, remains unchanged.

The Postal Service expects that these amendments will make its Rehabilitation Act procedures easier to use, so that the agency can provide timely and appropriate responses to requests and complaints thereunder.

List of Subjects in 39 CFR Part 255

Administrative practice and procedure, Individuals with disabilities.

Accordingly, for the reasons set forth in the preamble, 39 CFR Part 255 is amended as follows;

PART 225—[AMENDED]

1. The authority citation for Part 255 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 1001, 1003, 3403, 3404; 29 U.S.C. 791, 794.

2. Section 255.1(c)(1) is amended by revising the first sentence to read as follows: "Handicapped customers who believe that they have been discriminated against in the provision of postal services or programs should file a written complaint with their local postmasters or other local postal official responsible for such services or programs."

3. Section 255.1(c)(2) is removed, and paragraphs (c)(3) through (6) are redesignated as paragraphs (c)(2) through (5), respectively.

4. In § 255.1, newly redesignated paragraph (c)(2) is revised to read as follows:

§ 255.1 Discrimination against handicapped person prohibited.

* * * * *

(c) * * *

(2) *Resolution.* A local official receiving a complaint by a handicapped customer about access to postal programs and services must process it in accordance with this part. The official should review the complaint, and consult with the district office as needed, to determine if corrective action is necessary. Corrective action can include a special arrangement for postal services under § 255.2, or a discretionary retrofit to the facility under § 255.3. The decision about which corrective action to take, if any, should be made within the time limits set forth in paragraph (c)(3), or sooner if possible.

* * * * *

5. In § 255.1, newly redesignated paragraph (c)(3) is amended by revising the third sentence to read as follows: "Whenever it appears that a complaint cannot be resolved within 60 days of its receipt, a written report and explanation must be submitted to the appropriate district manager."

6. In § 255.1, newly redesignated paragraph (c)(4) is revised to read as follows:

* * * * *

(c) * * *

(4) *Automatic review.* If the local official proposes to deny a request or complaint by a handicapped customer for a special arrangement or the alteration of a facility, the proposed decision shall be submitted to the appropriate district manager. The customer must be notified in writing of the approved decision.

* * * * *

7. In § 255.1, newly redesignated paragraph (c)(5) is revised to read as follows:

* * * * *

(c) * * *

(5) *Exhaustion of administrative remedies.* If a customer service complaint filed under this paragraph (c) is not resolved within 60 days of its receipt, the customer may seek relief in any other appropriate forum, including the right to appeal to the Customer Advocate in accordance with Postal Operations Manual 166. The Postal Service may continue to consider the complaint after the expiration of the 60 day period.

* * * * *

8. Section 255.2(a)(1) is amended by revising "Domestic Mail Manual 155.262" to read "Postal Operations Manual 631.42".

9. Section 255.2(a)(2)(i) is revised to read as follows:

§ 255.2 Special arrangements for postal services.

(a) * * *

(2) * * *

(i) *Stamps by mail, phone, or on consignment.* See Postal Operations Manual 151–153.

* * * * *

10. Section 255.2(a)(2)(ii) is amended by revising "Domestic Mail Manual 156.41" to read "Postal Operations Manual 652–653".

11. Section 255.2(a)(2)(iii) is amended by revising "Postal Operations Manual 154" to read "Postal Operations Manual 145.6".

12. Section 255.2(a)(2)(iv) is revised to read as follows:

(a) * * *

(2) * * *

(iv) *Postage-free mailing for certain mailings.* See Domestic Mail Manual E040, Administrative Support Manual 274.24, and International Mail Manual 250.

* * * * *

13. Section 255.2(b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2) *Response to Customer Request or Complaint for a Special Arrangement.* A local official receiving a request or complaint seeking a special arrangement must provide the customers with any such arrangement as may be required by postal regulations. If no special arrangements are required, the postal official, in consultation with the district office as needed, may provide a special arrangement or take any action that will accommodate the customer, including, among others, performing a discretionary retrofit, providing curb or home delivery, or directing the customer to a nearby accessible facility, if he or she determines the arrangement or action would be reasonable, practical, and consistent with the economical and proper operation of the particular program or activity.

* * * * *

14. Section 255.2(c) is removed.

15. Section 255.3(a)(1) is to read as follows:

§ 255.3 Access to postal facilities.

(a) * * *

(1) *Legal and policy requirements.* Where the design standards of the Architectural Barriers Act (ABA) of 1968 do not apply, the Postal Service may perform a retrofit to the facility for a handicapped customer in accordance with this part.

* * * * *

16. Section 255.3(a)(2) introductory text is amended by removing "also" and revising the phrase "the Barrier Act's" to read "ABA" in the first sentence, and by removing the second sentence.

17. Sections 255.3(a), (a)(4), and (a)(5) are removed.

18. Section 255.3(b)(2) is revised to read:

* * * * *

(b) * * *

(2) *Response to customer request or complaint for an alteration to a facility.* If a local official determines, in consultation with the district office as needed, that modification to meet ABA standards is not required, discretionary alteration may be made on a case-by-case basis in accordance with the criteria listed in paragraph (a)(2) of this section. If a discretionary alteration is not made, the local official should determine if the customer can be provided a special arrangement under § 255.2.

* * *

19. Section 255.3(c) is removed.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–33478 Filed 12–22–97; 8:45 am]

BILLING CODE 7710–12–M

POSTAL SERVICE

39 CFR Part 954

Rules of Practice in Proceedings Relative to the Denial, Suspension, or Revocation of Second-Class Mail Privileges

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is making several technical amendments to reflect new terminology adopted in connection with Periodicals, formerly second-class mail, and to update titles and make other technical and grammatical changes.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Diane M. Mego, (202) 268–5438.

SUPPLEMENTARY INFORMATION: As a part of Classification Reform proceedings, second-class mail was renamed Periodicals. As of July 1, 1996, second-class mail privileges have been referred to as Periodicals mailing privileges (Domestic Mail Manual § E211.1.1). Administrative decisions determined under that section now refer to Periodicals mail privileges. Procedural rules for the denial, suspension, and revocation of these privileges are found at 39 CFR 954.

Amendment to part 954 is needed to substitute references to Periodicals mail privileges for second-class mail privileges. Additional amendment is needed to reflect the revision and renumbering of the Domestic Mail Manual on July 1, 1993 (54 Fed. Reg. 34887 (1993)), and to update and correct the titles of the Docket Clerk, Director, Law Librarian, and Law Library to the Recorder, authorized official, Librarian, and Library, respectively. Also, several grammatical amendments reflecting gender neutrality are being made.

These revisions are changes in agency rules of procedure before the Judicial Officer and do not substantially affect

any rights or obligations of private parties. Therefore, it is appropriate for their adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 954

Administrative practice and procedure, Periodicals, Postal Service.

Accordingly, the Postal Service adopts amendments to 39 CFR part 954 as specifically set forth below:

PART 954—[AMENDED]

1. The authority citation for part 954 continues to read as follows:

Authority: 39 U.S.C. 204, 401.

2. The title of part 954 is amended by substituting "Periodicals" for "Second-Class."

§ 954.2 [Amended]

3. Section 954.2 is amended by substituting "Periodicals" for "second-class."

§ 954.3 [Amended]

4. Section 954.3 is amended by substituting "Periodicals" for "second-class."

§ 954.5 [Amended]

5. Section 954.5 is amended by substituting "Periodicals" for "second-class."

6. Section 954.5 is amended by substituting "§ E213 of the Domestic Mail Manual" for "Part 132 of this chapter."

7. Section 954.5 is amended by adding "or she" after "he" and "or her" after "his" wherever it appears.

§ 954.6 [Amended]

8. Section 954.6 is amended by substituting "Periodicals" for "second-class."

9. Section 954.6 is amended by adding "or she" after "he."

§ 954.8 [Amended]

10. Section 954.8 is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

11. Section 954.8(b) is amended by substituting "Periodicals" for "second-class" wherever it appears.

12. Section 954.8(b) is amended by adding "or her" after "his."

13. Section 954.8(e) is amended by adding "or she" after "he" wherever it appears.

§ 954.10 [Amended]

14. Section 954.10 is amended by adding "or her" after "his" and "or she" after "he."

§ 954.12 [Amended]

15. Section 954.12 is amended by adding "or her" after "his" and "or she" after "he" wherever it appears.

§ 954.13 [Amended]

16. Section 954.13(a) is amended by substituting "authorized official" for "Director."

17. Section 954.13(a) is amended by adding "or her" after "his" and "him."

18. Section 954.13(c) is amended by adding "or she" after "he."

§ 954.14 [Amended]

19. Section 954.14(b)(6) is amended by adding "or she" after "he."

20. Section 954.14(b)(8) is amended by adding "or her" after "his."

§ 954.16 [Amended]

21. Section 954.16(d)(1) is amended by substituting "the authorized official's" for "Director's."

§ 954.17 [Amended]

22. Section 954.17(b) is amended by adding "or her" after "his" and "or she" after "he" wherever it appears.

§ 954.18 [Amended]

23. Section 954.18(a) is amended by substituting "Recorder" for "Docket Clerk" wherever it appears.

§ 954.19 [Amended]

24. Section 954.19(a) is amended by adding "or she" after "he."

§ 954.25 [Amended]

25. Section 954.25 is amended by substituting "Librarian" for "Law Librarian."

26. Section 954.25 is amended by substituting "Library" for "Law Library."

27. Section 954.25 is amended by substituting "Recorder" for "Docket Clerk."

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97-33480 Filed 12-22-97; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179-0057 FRL-5934-8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on August 4, 1997. The revisions concern rules from the Bay Area Air Quality District (BAAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to incorporate BAAQMD rules with updated definitions which include a revised definition of volatile organic compound (VOC) into the federally approved SIP.

EFFECTIVE DATE: This action is effective on January 22, 1998.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include the following BAAQMD rules: Rule 8-4, General Solvent and Surface Coating Operations; Rule 8-11, Metal Container, Closure and Coil Coating; Rule 8-12, Paper, Fabric, and Film Coating; Rule 8-13, Light and Medium Duty Motor Vehicle Assembly Plants; Rule 8-14, Surface Coating of Large Appliance and Metal Furniture; Rule 8-19, Surface Coating of Miscellaneous Metal Parts and Products; Rule 8-20, Graphic Arts Printing and Coating; Rule 8-23, Coating of Flat Wood Paneling and Wood Flat Stock; Rule 8-29, Aerospace Assembly and Component Coating Operations; Rule 8-31, Surface Coating of Plastic Parts and Products; Rule 8-32, Wood Products; Rule 8-38, Flexible and Rigid Disc Manufacturing; Rule 8-43, Surface Coating of Marine Vessels; Rule 8-45, Motor Vehicle and Mobile Equipment Coating Operations; Rule 8-50, Polyester Resin Operations.

II. Background

On August 4,1997 in 62 FR 41905, EPA proposed to approve the following BAAQMD rules into the California SIP: Rule 8-4, General Solvent and Surface Coating Operations; Rule 8-11, Metal Container, Closure and Coil Coating; Rule 8-12, Paper, Fabric, and Film Coating; Rule 8-13, Light and Medium Duty Motor Vehicle Assembly Plants; Rule 8-14, Surface Coating of Large Appliance and Metal Furniture; Rule 8-19, Surface Coating of Miscellaneous Metal Parts and Products; Rule 8-20, Graphic Arts Printing and Coating; Rule 8-23, Coating of Flat Wood Paneling and Wood Flat Stock; Rule 8-29, Aerospace Assembly and Component Coating Operations; Rule 8-31, Surface Coating of Plastic Parts and Products; Rule 8-32, Wood Products; Rule 8-38, Flexible and Rigid Disc Manufacturing; Rule 8-43, Surface Coating of Marine Vessels; Rule 8-45, Motor Vehicle and Mobile Equipment Coating Operations; Rule 8-50, Polyester Resin Operations. These rules were adopted by BAAQMD on December 20, 1995 and were submitted by the CARB to EPA on July 23, 1996.

EPA has evaluated the revised definitions in the above rules for consistency with federal and state definitions. This action will result in a more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist States in avoiding exceedences of the ozone health standard by focusing control efforts on compounds which are actual ozone procursors. A detailed discussion of the rule provisions and evaluations has been provided in 62 FR 41865 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated April 10, 1997).

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 41865. EPA received one comment from the BAAQMD on the direct final rule. BAAQMD commented that clarification was needed in EPA's approval to reflect the exact compounds being exempted. EPA stated that the district rules' definition of VOC and exempt compounds are consistent with EPA's definitions because the rules were revised to exempt three compounds (acetone, parachlorobenzotrifluoride (PCBTF) and cyclic, branched, or linear, completely methylated siloxanes (VMS)) exempted by EPA. By the time these rules were submitted to EPA by CARB on July 23, 1996, EPA had made additional revisions to the definition of VOC and exempt compounds. BAAQMD want the final rule to reflect that the submitted rules to not exempt compounds exempted by EPA after December 20, 1995 (the date the rules were adopted). EPA has evaluated BAAQMD's comment and agrees that clarification is needed. The comment does not effect the EPA's approval of Rules 8-4, 8-11, 8-12, 8-13, 8-14, 8-19, 8-20, 8-23, 8-29, 8-31, 8-32, 8-38, 8-43, 8-45, and 8-50 into the SIP, it clarifies the compounds exempted. Therefore, EPA is now approving the submitted BAAQMD rules.

IV. EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally-approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: December 2, 1997.

Harry Seraydarian,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (239)(i)(E)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(E) * * *

(*2*) Rule 8–4, Rule 8–11, Rule 8–12, Rule 8–13, Rule 8–14, Rule 8–19, Rule 8–20, Rule 8–23, Rule 8–29, Rule 8–31, Rule 8–32, Rule 8–38, Rule 8–43, Rule 8–45, Rule 8–50 amended on December 20, 1995.

* * * * *

[FR Doc. 97–33324 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL158a; FRL–5800–3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: In this action, USEPA approves a State Implementation Plan (SIP) revision, submitted by the State of Illinois on April 25, 1997, for the general conformity rules. The general conformity SIP revision enables the State of Illinois to implement the Federal general conformity requirements in the nonattainment and maintenance areas at the State level. General Conformity assures that Federal actions conform to the State plan to attain and maintain the public health based air quality standards. In this action, USEPA is approving the Illinois General Conformity rules through a "direct final" rulemaking; the rationale for this "direct final" approval and other information is set forth below.

DATES: This action is effective February 23, 1998 unless adverse written comments are received by January 22, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision are available for inspection at the following address: (it is recommended that you telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–8656.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the Clean Air Act (CAA) amendments of 1977 (Public Law 95–95). Although these provisions did not define the term conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP that has been approved or promulgated for the nonattainment areas.

The CAA Amendments of 1990 expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in Section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA requires USEPA to promulgate criteria and procedures for determining conformity of all other Federal actions in the nonattainment or maintenance areas (actions other than those under Title 23 U.S.C. or the Federal Transit Act) to a SIP. The criteria and procedures developed for this purpose are called "general conformity" rules. The actions under Title 23 U.S.C. or the Federal Transit Act (referred to as transportation conformity) will be addressed in a separate **Federal Register** notice. The USEPA published the final general conformity rules in the November 30, 1993, **Federal Register** and codified them at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the USEPA not later than November 30, 1994.

II. Evaluation of State Submittal

Pursuant to the requirements under Section 176(c)(4)(C) of the CAA, as amended November 15, 1990, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision to the USEPA on April 25, 1997. The submittal was found complete in a letter dated July 8, 1997. In its submittal, the State adopted rules (35 Illinois Administrative Code Part 255) which repeat verbatim the USEPA general conformity rule (40 CFR part 93, subpart B) with only minor clarifications. General conformity is required for all areas which are designated nonattainment or maintenance for any of the six National Ambient Air Quality Standard (NAAQS) criteria pollutants (ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, lead, and particulate matter).

The IEPA held a public hearing on the general conformity submittal on October 25, 1996. Several comments were received on the rules and responded to by the IEPA.

III. USEPA Action

The USEPA is approving the general conformity SIP revision for the State of Illinois. The USEPA has evaluated this SIP revision and has determined that the State has fully adopted regulations which meet the provisions of the Federal general conformity rules in accordance with 40 CFR part 93, subpart B. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this rule by the IEPA.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse written comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should adverse or critical written comments be filed. This action will be effective on February 23, 1998 unless, by January 22, 1998, adverse or critical written comments on the approval are received.

If USEPA receives adverse written comments, the approval will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public written comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If the effective date is delayed, timely notice will be published in the **Federal Register.**

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register.** This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, General conformity, Intergovernmental relations.

Dated: December 5, 1997.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C 7401 et seq.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(137) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(137) Approval—On April 25, 1997, the Illinois Environmental Protection Agency submitted a revision to the State Implementation Plan for general conformity rules. The general conformity rules enable the State of Illinois to implement the general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR Part 93, Subpart B—Determining Conformity of General

Federal Actions to State or Federal Implementations Plans.

(i) *Incorporation by reference.*

(A) Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 2: Environmental Protection Agency, Part 255 General Conformity: Criteria and Procedures. Adopted at 21 Ill. Reg. effective March 6, 1997.

[FR Doc. 97–33322 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA179–0052a] [FRL–5911–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan (SIP). The revision concerns Rule 1115 from the Mojave Desert Air Quality Management District (MDAQMD). This approval action will incorporate Rule 1115 into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from metal parts and products coating operations. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP *submittals, SIPs for national* primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on February 23, 1998, unless adverse or critical comments are received by January 22, 1998. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is Rule 1115, Metal Parts and Products Coating Operations. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 23, 1996.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Mojave Desert portion of San Bernardino County, California (see 43 FR 8964, 40 CFR 81.305). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Mojave Desert portion of San Bernardino County is classified as "severe".[2] Therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on July 23, 1996, including the rule being acted on in this document. This document addresses EPA's direct-final action for MDAQMD Rule 1115, Metal Parts and Products Coating Operations. MDAQMD revised and adopted Rule 1115 on April 22, 1996. This submitted rule was found to be complete on October 30, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

MDAQMD Rule 1115 is a prohibitory rule governing the use and application of coating compounds containing photochemically reactive volatile organic compounds (VOCs) in the metal parts and products coating industry. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of the MDAQMD effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement.

Formerly, on January 5, 1993, EPA proposed a limited approval/disapproval of MDAQMD's Rule 1115 (see 58 FR 322). This version of Rule 1115 was adopted by MDAQMD on March 2, 1992 and submitted by the CARB to EPA on June 19, 1992 as a revision to the California SIP. EPA has not taken final action on the January 5, 1993 proposal.

In response to EPA's January 5, 1993 proposal, the MDAQMD Board amended Rule 1115 and adopted these revisions on April 22, 1996. The CARB submitted the revised rule to EPA on July 23, 1996. This revision of Rule 1115 is the subject of today's approval action. EPA's evaluation and final action for this rule follows below.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Mojave Desert retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provided for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to this rule is entitled, "Control of Volatile Organic Emissions from Exist Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products," USEPA, June 1978, EPA–450/2–78–015. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote one. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Currently, there is no version of MDAQMD Rule 1115, Miscellaneous Metal Parts and Products Coating Operations, in the SIP. The submitted rule includes the following provisions: rule applicability; definitions, coating requirements; add-on emission control device requirements; exceptions from the rule; administrative requirements; monitoring and records; and test methods for determining compliance with the rule.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD Rule 1115, Miscellaneous Metal Parts and Products Coating Operations, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. For further information, EPA's review of the April 22, 1996 version of Rule 1115 can be found in the "Technical Support Document" for today's rulemaking action.

As discussed earlier, in response to EPA's January 5, 1993 proposed limited approval/disapproval action, the MDAQMD Board amended Rule 1115 on April 22, 1996. The MDAQMD Board responded to EPA's comments within the proposed limited approval/disapproval and subsequent correspondence by correcting the listed rule deficiencies and providing a rule consistent with EPA regulations and policy. Therefore, given today's approval action, EPA does not intend to finalize the January 5, 1993 proposal.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 23, 1998, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 23, 1998.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to

the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 27, 1997.

Felicia Marcus,

Regional Administrotor, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(A) * * *

(*2*) Rule 1115, adopted on March 2, 1992 and amended on April 22, 1996.

* * * * *

[FR Doc. 97–33321 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY10–2–174; FRL–5934–7]

Approval and Promulgation of Implementation Plans; Revisions to the New York State Implementation Plan for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving a revision to the New York State Implementation Plan (SIP) related to the control of volatile organic compounds. The SIP revision consists of amendments to Part 200, "General Provisions," Part 201, "Permits and Certificates," Part 228, "Surface Coating Processes," Part 229, "Petroleum and Volatile Organic Liquid Storage," Part 233, "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234, "Graphic Arts." The amendments extend reasonably available control technology rules to enlarged nonattainment areas and to all of New York State which is part of the Northeast Ozone Transport Region as required by the Clean Air Act. In addition, the amendments to Part 228 correct deficiencies in New York's existing SIP, as required by the Clean Air Act.

EFFECTIVE DATE: This rule is effective January 22, 1998.

ADDRESSES: Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION: On May 24, 1995, the Environmental Protection Agency (EPA) published in the **Federal Register** (60 FR 27464) a Notice of Proposed Rulemaking (NPR) concerning a revision to the New York State Implementation Plan (SIP) for ozone. The State requested the SIP be revised to incorporate revised regulations contained in Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 200, "General Provisions," Part 201 "Permits and Certificates," Part 228, "Surface Coating Processes," Part 229 "Petroleum and Volatile Organic Liquid Storage and Transfer," Part 233, "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234, "Graphic Arts." These regulations were adopted on February 26, 1993, and became effective on April 4, 1993.

Final Action

The revisions and the rationale for EPA's action were explained in EPA's May 24, 1995 NPR and will not be restated here since EPA's final action does not differ from that proposed in the NPR. No comments were received on EPA's proposed action. EPA is approving Parts 200, 201, 228, 229, 233 and 234 because they are consistent with EPA policy and guidance and also meet the requirements of sections 110, 182(a)(2)(A), 182(b)(2) and 184(b) of the Clean Air Act.

It should be noted that sections 228.3(e), 229.3(g) and (h), 233.3(h), and 234.3(f) permit the Commissioner of the New York State Department of Environmental Conservation (NYSDEC) to accept a lesser degree of control (alternative requirements) upon submission of satisfactory technical and/or economic evidence that the source has applied reasonably available control technology. These provisions also require that any lesser degree of control must be submitted to the EPA as a revision to the SIP. EPA views these provisions as giving the Commissioner the authority to permit alternative requirements once they have been submitted and approved by EPA as SIP revisions. EPA will not recognize any variance or alternate requirement as being federally enforceable until it is submitted to EPA by the State and is approved by EPA as a source specific SIP revision.

Sections 229.4(a)(4), 233.4(b)(4) and 234.4(b)(1)(iv) permits the Commissioner and EPA to accept

alternative analytical methods for determining compliance with emission limits, contained in these Parts, when approved test methods are not applicable. These provisions require that any alternate test method must be approved in advance by the NYSDEC and EPA before they can be used.

Section 228.5(c) permits the Commissioner to accept alternative analytical methods for determining compliance with emission limits, contained in part 228, when approved test methods are not applicable. In such a case, EPA reserves its right to demonstrate the applicability of Test Method 24 (40 CFR part 60, appendix A).

It should be noted that Part 201 contains the requirements for the State's permit to construct and certificate to operate program. These provisions are not intended to meet the Title V Permits Program required by the Clean Air Act. New York has made a subsequent submittal to EPA which addresses the Title V Permits Program. Also, Part 201 contains a previously adopted odor provision which EPA will act on in a separate rulemaking.

SIP Deficiencies

The revisions to Parts 200 and 228 addressed several deficiencies which EPA identified in a May 26, 1988 letter to former Governor Cuomo and a January 30, 1991 letter to the NYSDEC Commissioner which found the SIP substantially inadequate to attain the ozone and carbon monoxide standards. With EPA's approval of these regulations, EPA is making a finding that New York has now corrected all but one deficiency which involves the test methods for determining capture efficiency for VOC emission control systems.

EPA originally provided guidance on such test methods, but states and industry inquired whether less costly and less time consuming alternatives were possible. EPA began a study of capture efficiency test methods and issued a moratorium on the need to correct any deficient regulations until the study was complete. On February 7, 1995, EPA announced the completion of this study, "Guidelines For Determining Capture Efficiency," and required any states with this deficiency to correct their VOC regulations. On March 20, 1995, EPA notified New York that such corrections were now required. Because the regulations which are the subject of this **Federal Register** notice were proposed and adopted prior to March 20, 1995, EPA is approving the regulations which are the subject of this rulemaking. However, submission and approval of the capture efficiency test methods is still necessary for full approval of New York's SIP. New York is in the process of developing the necessary revisions to address capture efficiency test methods. The next time the State submits a SIP revision containing these regulations, EPA will require that they contain these test methods.

As of February 27, 1995, EPA's moratorium on the use of such methods ended and the methods in the February 27, 1995 guidance document are considered by EPA to be accurate and credible. Should a situation arise which involves capture efficiency, EPA will require confirmation of capture efficiency values using the appropriate test method.

Conclusion

EPA is approving Parts 200, 201, 228, 229, 233 and 234 as part of the SIP. Sections 228.3(e)(1), 229.3(g)(1), 233.3(h)(1), and 234.3(f)(1) allow for alternative requirements provided they are submitted to the EPA for approval as a source specific SIP revision. EPA will not recognize any variance or alternate requirement as being federally enforceable until it is submitted to EPA by the State and is approved by EPA as a source specific SIP revision. Alternate analytical methods for determining compliance with surface coating emission limits pursuant to Section 228.5(c) are approved based on NYSDEC's agreement that, for purposes of being federally enforceable, New York will submit these alternate test methods to EPA for approval.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller

General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 1997.

Jeanne M. Fox,

Regional Administrator, Region II.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(93) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

* * * * *

(93) Revisions to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds from petroleum and volatile organic compound storage and transfer, surface coating and graphic arts sources, dated March 8, 1993 submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference:

(A) Amendments to Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 200 "General Provisions," Part 201 "Permits and Certificates," Part 228 "Surface Coating Processes," and Part 229 "Petroleum and Volatile Organic Liquid Storage and Transfer," Part 233 "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234 "Graphic Arts," effective April 4, 1993.

3. Section 52.1679 is amended by revising the six entries for Parts 200, 201, 228, 229, 233 and 234 to the table in numerical order to read as follows:

§ 52.1679 EPA—approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Part 200, General Provisions.	4/4/93	December 23, 1997, FR 67006.	Redesignation of nonattainment areas to attainment areas (200.1(mm)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC.
Part 201, Permits and Certificates.	4/4/93	December 23, 1997, FR 67006.	
Part 228, Surface Coating Processes: 228.1–228.10	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 228.3(e)(1) are effective only if approved by EPA.
Part 229, Petroleum and Volatile Organic Liquid Storage and Transfer.	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 229.3(g)(1) are effective only if approved by EPA.
Part 233, Pharmaceutical and Cosmetic Processes.	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 223.3(h)(1) are effective only if approved by EPA.
Part 234, Graphic Arts	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 234.3(f)(1) are effective only if approved by EPA.

[FR Doc. 97–33317 Filed 12–22–97; 8:45 am]
BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–44–1–6866(a); FRL–5630–1]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Contingency Measures for Colorado Springs and Fort Collins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the State of Colorado with a letter dated February 18, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for carbon monoxide (CO) for the Colorado Springs and Fort Collins areas designated as nonattainment for the CO National Ambient Air Quality Standards (NAAQS). The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

DATES: This action is effective on February 23, 1998 unless adverse or critical comments are received by January 22, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be submitted to Jeff Houk at the Region VIII address. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs, 999 18th Street, Third Floor, South Terrace, Denver, Colorado 80202–2405; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Jeff Houk, State Program Support Unit, EPA Region VIII, telephone (303) 312–6446.

SUPPLEMENTARY INFORMATION:

I. Background

The Colorado Springs and Fort Collins, Colorado areas were designated nonattainment for CO and classified as moderate under Sections 107(d)(4)(A) and 186(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.306 (Colorado Springs Area and Fort Collins Area). The air quality planning requirements for moderate CO nonattainment areas are set out in Subparts 1 and 3 of Part D, Title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate CO nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

Moderate CO areas with a design value of less than or equal to 12.7 parts per million (including Colorado Springs and Fort Collins) are not required by the Act to submit a SIP demonstrating attainment of the NAAQS. Rather, these areas are required to submit certain SIP elements, including an oxygenated fuels program, an emissions inventory, and contingency measures.

Those States containing moderate CO nonattainment areas such as Colorado Springs and Fort Collins were required to submit contingency measures by November 15, 1993 (see 57 FR 13532). These measures must become effective, without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress (RFP) or to attain the CO National Ambient Air Quality Standards (NAAQS) by the applicable statutory deadline (December 31, 1995). See Section 172(c)(9) and 57 FR 13532–13533.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13568). The Governor of Colorado submitted revisions to the SIP for Colorado Springs and Fort Collins with a letter dated February 18, 1994. The revisions address contingency measures for CO. EPA is now approving the Colorado Springs and Fort Collins contingency measures as adopted by the State of Colorado on November 12, 1993 and submitted to EPA by Colorado's Governor on February 18, 1994.

A. Analysis of State Submission

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the State of Colorado, after providing adequate notice, held a public hearing on November 12, 1993 to address the Colorado Springs and Fort Collins contingency measures. Following the public hearing, the Colorado Springs and Fort Collins contingency measures were adopted by the State.

The contingency measures were submitted as a proposed revision to the SIP by the Governor with a letter dated February 18, 1994. The submittal was received on February 22, 1994, and was deemed complete by operation of law on August 22, 1994.

B. Contingency Measures

The Clean Air Act requires States containing certain CO nonattainment areas to adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make reasonable further progress or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13532–13533. Pursuant to section 172(b), the Administrator has established a schedule providing that states containing moderate CO nonattainment areas with a design value of less than or equal to 12.7 parts per million (ppm) shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13532.) ("Not Classified" areas, that is, areas that had a design value less than the 9.0 ppm CO NAAQS at the time of designation, are not required to submit contingency measures.)

EPA guidance ("Technical Support Document to Aid States with the Development of Carbon Monoxide State Implementation Plans," EPA–452/R–92–003, July 1992) recommends that implementation of the contingency measures provide vehicle miles travelled (VMT) reductions or emission reductions sufficient to counteract the effect of one year's growth in VMT. However, the Act does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. EPA believes that contingency measures must provide for continued progress toward the attainment goal. This would be the minimum requirement and is consistent with the statutory scheme.

Section 172(c)(9) of the Act specifies that contingency measures shall "take effect * * * without further action by the State, or the [EPA] Administrator." EPA has interpreted this requirement (in

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 3 contains provisions specifically applicable to CO nonattainment areas. At times, Subpart 1 and Subpart 3 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's document and supporting information.

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

the General Preamble at 57 FR 13533) to mean that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. In general, EPA expects all actions needed to affect full implementation of CO contingency measures to occur within 12 months after EPA notifies the State of its failure to attain the standard or make RFP.

EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures could be implemented. However, States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking action such as public hearing or legislative review.

The CO contingency measures for Colorado Springs and Fort Collins were developed by the Air Pollution Control Division (APCD) of the Colorado Department of Health (CDH), now the Colorado Department of Public Health and Environment (CDPHE). After a public hearing on November 12, 1993, the Colorado Air Quality Control Commission (AQCC) adopted the measures. The Governor submitted the contingency measures to EPA with a letter dated February 18, 1994.

Within 12 months of notification by EPA that either the Colorado Springs or Fort Collins CO nonattainment area has failed to attain the CO NAAQS by December 31, 1995, the APCD will implement the contingency measure, the Enhanced Vehicle Inspection and Maintenance (I/M) Program, codified in Colorado Regulation No. 11. The enhanced I/M program produces substantial additional emission reductions over the "Basic" I/M program currently in operation in the Colorado Springs and Fort Collins areas. The enhanced I/M program is currently in operation in the Denver/Boulder and Longmont CO nonattainment areas. EPA conditionally approved the Colorado Enhanced I/M program in the **Federal Register** on November 8, 1994 (59 FR 55584).

The program would apply in those portions of El Paso County (Colorado Springs) and Larimar County (Fort Collins) in which the Basic I/M program is currently in operation. These areas, known as the "AIR Program Area" within each County, are described in the authorizing legislation for the enhanced I/M program.

C. Effectiveness of the Contingency Measures

In Colorado Springs, emissions from one year's growth in VMT were estimated by the Pikes Peak Area Council of Governments (the Metropolitan Planning Organization for the area) at 14.4 tons per day. Reductions from the enhanced I/M program were estimated at approximately 34 tons per day. EPA's emissions reduction requirements are adequately met with the implementation of this contingency measure for Colorado Springs.

In Fort Collins, APCD estimates that mobile source emissions would be lowered by 13.95% with the implementation of the enhanced I/M program. Since the estimated one year growth of VMT is 3% in Fort Collins, and the CO emissions inventory for this area reports that approximately 80% of the CO emissions in the nonattainment area are attributable to mobile sources, the reductions from the enhanced I/M program provide more than a sufficient amount of reduction as a contingency measure. Therefore, EPA's emissions reduction requirements are adequately met with the implementation of this contingency measure for Fort Collins.

D. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP [see Section 110(a)(2)(C)].

The specific measures contained in the Colorado Springs and Fort Collins contingency plan are addressed above in Section II.B. Regulation No. 11, which implements this contingency measure, is legally enforceable by APCD. There are civil penalties, which increase with each violation, for noncompliance with the regulation, as well as a prohibition on the registration of any vehicle which has not complied with the enhanced I/M program and substantial penalties for nonregistration of vehicles. The enforceability of Regulation No. 11 is addressed in more detail in EPA's November 8, 1994 **Federal Register** document conditionally approving the program. The State of Colorado has a program that will ensure that the contingency measures are adequately enforced. EPA believes that the State's existing air enforcement program will be adequate.

III. Final Action

EPA is approving Colorado's SIP revisions, submitted by the Governor with a letter dated February 18, 1994, for the Colorado Springs and Fort Collins, Colorado nonattainment areas. This submittal addressed CO contingency measure plans that were due on November 15, 1993. These plans involve the implementation of the Colorado Enhanced Vehicle I/M Program in the Colorado Springs and Fort Collins CO nonattainment areas in the event that EPA makes a determination that either area has failed to attain the CO NAAQS by the statutory attainment date of December 31, 1995. A copy of the State's SIP revision is available at the address listed in the **ADDRESSES** section above.

The EPA is publishing the action on the contingency measure submittal without prior proposal because the Agency views this as e noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the contingency measure SIP revision should adverse or critical comments be filed. Thus, under the procedures established in the May 10, 1994 **Federal Register**, today's direct final action will be effective February 23, 1998 unless, by January 22, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 23, 1998.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the CAA. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations that are less than 50,000.

SIP revision approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the EPA certifies that this proposed rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State actions. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Motor vehicle pollution, Carbon monoxide, Reporting and recordkeeping requirements.

Dated: September 28, 1995.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Editorial note: This document was received at the Office of the Federal Register December 17, 1997.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(71) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c)* * *

(71) The Governor of Colorado submitted carbon monoxide contingency measures for Colorado Springs and Fort Collins with a letter dated February 18, 1994. This submittal was intended to satisfy the requirements of section 172(c)(9) of the Clean Air Act for contingency measures which were due on November 15, 1993.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission Nonattainment Areas regulation, 5 CCR 1001–20, Section VI, City of Fort Collins Nonattainment Area, and Section VII, Colorado Springs Nonattainment Area, adopted on November 12, 1993, effective on December 30, 1993.

* * * * *

[FR Doc. 97–33320 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD–FRL–5939–8]

RIN 2060–AF71

Withdrawal of Direct Final Rule for Ambient Air Quality Surveillance for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule for Ambient Air Quality Surveillance for Lead. EPA published the direct final rule on November 5, 1997 at 62 FR 59813. As stated in that **Federal Register** document, if adverse or critical comments were received by December 5, 1997, the effective date would be delayed and notice would be published in the **Federal Register**. EPA subsequently received adverse

comments on that final rule. EPA will address the comments received in a subsequent final action in the near future. EPA will not institute a second comment period on this document.

DATES: The direct final rule published at 62 FR 59813 is withdrawn as of December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Brenda Millar, Emissions, Monitoring, and Analysis Division (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: (919)541–4036, e-mail: millar.brenda@emai.epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the November 5, 1997 **Federal Register** and in the informational document located in the proposed rule section of the November 5, 1997 **Federal Register**.

List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Ambient air quality monitoring network.

Dated: December 18, 1997.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–33452 Filed 12–18–97; 4:30 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 940246–4137; I.D. 121697D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Snowy Grouper; Commercial Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit for snowy grouper in the exclusive economic zone (EEZ) off the southern Atlantic states to 300 lb (136 kg). This trip limit reduction is necessary to protect the snowy grouper resource.

DATES: Effective 12:01 a.m., local time, December 20, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial quota for snowy grouper, one of the species in the snapper-grouper complex, is 344,508 lb (156,266 kg), gutted weight, each fishing year. The fishing year is January 1 through December 31. In accordance with 50 CFR 622.44(c)(2), a commercial trip limit of 2,500 lb (1,134 kg) applies until the quota is reached. When the quota is reached, or is projected to be reached, NMFS is required to reduce the commercial trip limit to 300 lb (136 kg), through the end of the fishing year.

Based on current statistics, NMFS has projected that the commercial quota for snowy grouper will be reached on December 19, 1997. Accordingly, the commercial trip limit for snowy grouper in or from the EEZ off the southern Atlantic states is reduced to 300 lb (136 kg) effective 12:01 a.m., local time, December 20, 1997, through December 31, 1997. During this period, no more than 300 lb (136 kg), round weight or gutted weight, of snowy grouper may be possessed on board or landed, purchased, or sold from a vessel that has a valid commercial permit for snapper-grouper per day. The possession of a valid commercial permit notwithstanding, the bag and possession limits apply when a vessel is operating as a charter vessel or headboat.

Classification

This action is taken under 50 CFR 622.43(a) and 622.44(c) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 16, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33385 Filed 12–18–97; 11:43 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 246

Tuesday, December 23, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 804, 806, 807, 810, 820, 821, 1002, and 1020

[Docket No. 97N–0477]

RIN 0910–ZA09

Medical Devices; Refurbishers, Rebuilders, Reconditioners, Servicers, and "As Is" Remarketers of Medical Devices; Review and Revision of Compliance Policy Guides and Regulatory Requirements; Request for Comments and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to review and, as necessary, to revise or to amend its compliance policy guides and regulatory requirements relating to the remarketing of used medical devices and the persons who refurbish, recondition, rebuild, service, or remarket such devices. The agency is considering these actions because it believes evolving industry practices warrant reevaluation of current policy and the application of certain regulatory requirements in order to ensure that particular remarketed devices meet suitable performance requirements for their intended uses, and are as safe as the originally marketed finished device. FDA is soliciting comments, proposals for alternative regulatory approaches, and information on these issues. In a future issue of the **Federal Register**, FDA will announce an open meeting of the Good Manufacturing Practices (GMP) Advisory Committee concerning these matters.

DATES: Written comments by March 23, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4692.

SUPPLEMENTARY INFORMATION:

I. Background

Medical device marketing has always involved a certain amount of remarketing of used medical devices that were refurbished, rebuilt, serviced, reconditioned, cosmetically enhanced or marketed "as is" for further use. Under regulations issued by FDA for medical devices, including radiation emitting electronic products, at parts 801, 803, 804, 806, 807, 810, 820, 821, 1002, and 1020 (21 CFR parts 801, 803, 804, 806, 807, 810, 820, 821, 1002, and 1020), most such processing of used devices falls within the definition of manufacturing or is identified among activities performed by manufacturers, thereby subjecting remarketers to the same regulatory requirements as other manufacturers. These requirements include: labeling (part 801); medical device reporting (parts 803 and 804); corrections and removals (part 806); registration, listing and premarket notification (part 807); physician, patient notification and recall remedies (part 810); current good manufacturing practices (part 820); device tracking (part 821); and for electronic devices, electronic product reports (part 1002); and electronic product performance standards (part 1020).

Remarketing used devices may consist of activities that significantly change the finished device's performance or safety specifications, or intended use. These types of activities constitute "remanufacturing" as defined in the Quality System regulation (QS) (also known as the current good manufacturing practice (CGMP) regulation) (§ 820.3(w)). Remarketing used devices can also consist of activities that do not significantly change the finished device's performance or safety specifications, or intended use. These activities may consist of refurbishing, reconditioning, rebuilding, servicing the device, or merely selling the device "as is." Current guidance, discussed further in section II of this document, describes whom FDA considers a reconditioner or rebuilder of a device. FDA has not issued regulations or guidance defining what activities are considered "servicing" or "refurbishing."

II. Current Compliance Policy Guides Relating to Remarketers Who Are Considered Reconditioners, Rebuilders, and X-Ray Tube Reloaders

FDA has issued two compliance policy guides (CPG's) that relate to persons who remarket devices, but do not change the finished device's intended use. On November 1, 1981, FDA issued CPG 7133.20, which set forth the agency's position that "adequate enforcement can be effectively accomplished" by considering reloaders of x-ray tube housing assemblies to be assemblers of x-ray components if a reloaded x-ray tube housing assembly is the only finished device produced by the firms. This CPG further stated reloaders must retain complaint files, injury reports, and failure analysis records that must be available for inspection by the agency. FDA has exercised its enforcement discretion with respect to establishment registration and device listing requirements under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) for such firms.

On December 29, 1987, FDA issued CPG 7124.28 to address the application of certain requirements of the act and its implementing regulations to firms that acquire and process used devices for remarketing purposes. The agency identified the reconditioner/rebuilder of a medical device as "a person or firm that acquires ownership of used medical devices and restores and/or refurbishes these (devices) to the device manufacturer's original or current specifications, or new specifications, for purposes of resale or commercial distribution."

In CPG 7124.28, the agency stated that reconditioners/rebuilders of medical devices must comply with: The registration, and premarket notification requirements of the act (section 510) and implementing regulatory requirements (part 807); the labeling requirements of the act (section 502) and applicable regulatory requirements (part 801); the CGMP requirements of the act (section 520) and implementing regulatory requirements (part 820); and, the medical device reporting

requirements of the act (section 519) and implementing regulatory requirements (part 803). FDA intends to revise this CPG based on FDA's experience in this area and the comments received to this advance notice of proposed rulemaking (ANPR).

III. Reasons for Review

In the **Federal Register** of October 7, 1996 (61 FR 52602), FDA issued a revised QS regulation which set forth CGMP requirements for medical devices (part 820). The preamble of the October 7, 1996, QS regulation acknowledged that:

> [CPG] 7124.28 contains the agency's policy regarding the provisions of the act and regulations with which persons who recondition or rebuild used devices are expected to comply. This CPG is in the process of being revised in light of FDA's experience in this area. FDA is not including the terms "servicer" or "refurbisher," as they relate to entities outside the control of the original equipment manufacturer, in this [QS] final regulation, even though it believes that persons who perform such functions meet the definition of manufacturer. (61 FR 52602 at 52610)

FDA further advised that, "[b]ecause of a number of competitive and other issues, including sharply divided views among members the GMP Advisory Committee at the September 1995 meeting, FDA has elected to address application of the GMP requirements to persons who perform servicing and refurbishing functions outside the control of the original manufacturer in a separate rulemaking later this year" *Id.*

In addition to the concerns raised in the QS/CGMP rulemaking process relating to the applicability of CGMP's to remarketers, issues have been raised relating to the applicability of other regulatory requirements to remarketers. In response to these concerns, FDA has attempted to learn more about the concerns relating to remarketers. In 1994, FDA began discussing issues related to remarketers with the International Association of Medical Equipment Remarketers (IAMER). Beginning in 1994 and continuing through IAMER's April 10 to 12, 1997, meeting, representatives of the FDA's Center for Devices and Radiological Health have attended, and on occasion made presentations at, various meetings and conferences of IAMER membership firms.

Through exchanges at these meetings and correspondence with IAMER's Regulatory Affairs Committee, FDA has preliminarily noted that rising costs and health care expenses have apparently contributed to expanded sales of a growing variety of remarketed devices. Much of this activity is occurring outside the control of the original equipment manufacturer. FDA also tentatively concluded that a significant number of firms that have been refurbishing or otherwise remarketing electronic radiation emitting medical devices are unaware of FDA's compliance policy, and the applicable regulations and statutory requirements, such as the filing of initial and other reports under parts 1002 and 1020, with respect to their activities.

IV. Proposed Definitions of Remarketing Activities That Constitute Refurbishing, "As Is" Remarketing, and Servicing

As stated in section II of this document, FDA has issued guidance, which is being considered for revision, that describes who FDA considers to be "reconditioners" and "rebuilders." FDA has not issued regulations or guidance defining what persons are considered to be "refurbishers," "as is" remarketers, or "servicers." These terms have been difficult to define and at times have been used interchangeably. Compliance Policy Guide 7124.28 states only that FDA considers rebuilders or reconditioners to be persons who have acquired ownership of the devices and conduct refurbishing activities.

FDA is soliciting comments on whether to propose definitions, as described in the following three paragraphs, of types of remarketers, either in guidance or in a regulation, that may or may not relate to the ownership of the devices. Accordingly, FDA is soliciting comments on whether it should propose by regulation, or issue by guidance, the following definitions or a variation of these definitions to describe remarketing activities that do not significantly change a finished device's performance or safety specifications or intended use.

Refurbishers: persons who, for the purpose of resale or redistribution, visually inspect, functionally test and service devices, as may be required, to demonstrate that the device is in good repair and performing all the functions for which it is designed. The device may or may not be cosmetically enhanced. Preventive maintenance procedures may or may not be performed. Refurbishers do not significantly change a finished device's performance or safety specifications, or intended use.

"As Is" Remarketers: for the purpose of resale or redistribution, the operational condition of the device is unknown. The extent to which the device meets the operational requirements must be determined by the user prior to patient exposure. The device may or may not be cosmetically enhanced. "As Is" remarketers do not change a finished device's performance or safety specifications, or intended use.

Servicers: persons who repair a device to return it to the manufacturer's fitness for use specifications, and perform the manufacturer's recommended scheduled preventive maintenance. Servicers do not significantly change a finished device's performance or safety specifications, or intended use.

FDA believes that these definitions encompass activities that do not significantly change the finished device's performance or safety specifications or intended use.

V. Revisions Under Consideration

In light of evolving industry practices, and the concerns raised by the GMP Advisory Committee, industry, and others described previously, FDA is reevaluating the application of various regulatory controls to remarketers who do not significantly change a finished device's performance or safety specifications, or intended use, and is reassessing the degree of regulatory control necessary to ensure the protection of the public health. FDA intends to evaluate the current regulatory approach with respect to remarketers who are refurbishers, "as is" remarketers, and servicers, as defined in this document, and is soliciting comments on whether FDA should retain the current regulatory approach, or whether the agency should use alternative approaches to regulate these types of remarketers.

The agency believes that any regulatory approach for these types of remarketers should, at a minimum, include compliance with requirements concerning: Representations of quality under section 501(c) of the act (21 U.S.C. 351(c)); false or misleading labeling under section 502 of the act (21 U.S.C. 352), and part 801; notification and recall provisions under section 518 of the act (21 U.S.C. 360h), and part 810; corrections and removal reporting requirements under section 519(f) of the act (21 U.S.C. 360i(f)), and part 806; medical device reporting under section 519(a) of the act, and parts 803 and 804; tracking requirements under section 519(e) of the act, and part 821; and radiological health requirements under sections 532 through 542 of the act (21 U.S.C. 360ii through 360ss), including records and initial reporting requirements under part 1002, and standard requirements under part 1020.

Accordingly, FDA requests information on the following issues relating to remarketing activities that do not significantly change the finished device's performance or safety specifications or intended uses.

(1) Has FDA appropriately defined the terms, "refurbisher," "as is" remarketers, and "servicers"? If not, what changes to these definitions should be made?

(2) What evidence exists regarding actual problems with the safety and/or performance of remarketed devices that are the result of the remarketing? Specific examples should be submitted.

(3) What is the appropriate level of regulatory controls that should be applied to persons who remarket devices?

(4) Should refurbishers, "as is" remarketers, and servicers be subject to the same or different regulatory requirements?

In addition, FDA is specifically considering whether to propose rulemaking regarding modified registration, listing, and CGMP requirements for these types of remarketers, or whether to make some or all of the these three controls voluntary. For example, the agency could propose that refurbishers and/or servicers be required to register and list with FDA (part 807), and comply with certain CGMP requirements, such as quality system requirements (part 820, subpart B), production and process controls (part 820, subpart G), acceptance activities (part 820, subpart H), corrective and preventive action (part 820, subpart J), labeling and packaging control (part 820, subpart K), and records (part 820, subpart M). Alternatively, the agency could propose that refurbishers and/or servicers be required to register and list, but comply only with CGMP requirements for maintaining complaint files (§ 820.198(a)) and conducting failure analyses (§ 820.198(b) and (c)). In making comments relating to the regulatory approaches, comments should indicate whether their comments relate to refurbishers, "as is" remarketers, and/or servicers, as described in section IV of this document. Other regulatory approaches may be proposed by the agency or by the comments which, if implemented, would require the issuance of new guidance documents, or consist of changes to current regulations or changes to existing guidances CPG 7124.28 and CPG 7133.20.

VI. Comments

The agency will consider any comments submitted in response to this ANPR, or comments relating to the reevaluation of agency guidances, including CPG's 7124.28 and 7133.20. FDA will consider the record of any public meetings or any advisory committee meetings, along with comments, proposals and other information received, when deciding whether to issue or revise agency guidance or modify any existing regulations.

Interested persons may, on or before March 23, 1998 submit to Dockets Management Branch (address above) written comments regarding this ANPR. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA does not anticipate granting requests for extension to this 90-day comment period.

Dated: December 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33372 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[PS–158–86]

RIN 1545–AJ23

Petroleum Tax Imposed on Natural Gasoline

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a proposed regulation relating to the petroleum tax imposed on natural gasoline. The withdrawal affects persons that produce natural gasoline at fractionation facilities or receive natural gasoline produced at those facilities.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4611 imposed a tax on crude oil (including natural gasoline) received at a United States refinery. On April 26, 1993, a notice of proposed rulemaking (PS–158–86) relating to this tax was published in the **Federal Register** (58 FR 21963). The proposed regulation treats any facility that produces natural gasoline by fractionation or similar operation as a United States refinery. Under this rule, tax would be imposed on natural gasoline when it is produced from natural gas liquids at a fractionation facility.

Since the publication of the proposed regulation, the tax imposed by section 4611 has expired. Because tax is not currently imposed under section 4611, the proposed regulation is being withdrawn. For purposes of section 4611 prior to its expiration, the IRS will follow the result in *Enron Gas Processing Co.* v. *United States*, 96–1 USTC ¶ 70,058 (S.D. Tex. 1996), in all cases involving substantially similar facts. In *Enron*, the U.S. District Court for the Southern District of Texas held that fractionation facilities are not United States refineries.

List of Subjects in 26 CFR Part 52

Chemicals, Excise taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on April 26, 1993 (58 FR 21963) is withdrawn.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 97–33250 Filed 12–22–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71

RIN AA53

Health Standards for Occupational Noise Exposure in Coal, Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; availability; request for comments.

SUMMARY: On December 16, 1997, MSHA published a notice in the **Federal Register** (62 FR 65777) announcing the availability of a report from the National Institute for Occupational Safety and Health (NIOSH) entitled "Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners." The Agency further stated its intent to supplement the rulemaking record with this report and to make it available to interested parties upon request.

MSHA received several requests from the mining community that they be provided an opportunity to comment on

the report. The Agency has determined that it is in the public interest to allow interested parties an opportunity to comment. MSHA is reopening the rulemaking record for limited comment on the report.

DATES: Submit written comments on the report on or before January 22, 1998.

ADDRESSES: Comments on the report may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to: psilvey@msha.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, MSHA, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION: On December 17, 1996, MSHA published a proposed rule in the **Federal Register** (61 FR 66348) revising its health standards for occupational noise exposure in coal and metal and nonmetal mines.

To confirm the magnitude of the risks of NIHL among miners, MSHA examined evidence of reported hearing loss among miners from a variety of sources—audiometric data bases tracking hearing acuity among coal miners, individual commenter data, hearing loss data reported to MSHA, and workers' compensation data. MSHA also asked NIOSH to examine a body of audiometric data which tracked hearing acuity among coal miners and one which tracked hearing acuity among metal and nonmetal miners. NIOSH completed its analysis of the audiometric data on coal miners and issued a report to MSHA entitled "Analysis of Audiograms for a Large Cohort of Noise-Exposed Miners," (Franks, 1996) which is a part of the existing rulemaking record.

On December 16, 1997, MSHA published a notice in the **Federal Register** (62 FR 65777) announcing the availability of a report from the National Institute for Occupational Safety and Health (NIOSH) entitled "Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners." The Agency further stated its intent to supplement the rulemaking record with this report and to make it available to interested parties upon request.

MSHA received several requests from the mining community that they be provided an opportunity to comment on the report. MSHA has evaluated these requests and believes that a 30 day comment period will provide sufficient time for all interested parties to review the report and comment. All interested members of the mining community are encouraged to submit comments prior to January 22, 1998.

Dated: December 17, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–33447 Filed 12–22–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL 089–FOR]

Illinois Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of a request and additional explanatory information for its reconsideration of two regulations disapproved in a previously proposed amendment to the Illinois regulatory program (hereinafter referred to as the "Illinois program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The disapproved regulations concern the determination of revegetation success for non-contiguous surface disturbance areas less than or equal to four acres. The additional explanatory information is intended to clarify the regulations by specifying procedures and evaluation criteria that would be used in the implementation of the regulations.

DATES: Written comments must be received by 4:00 p.m., e.s.t., January 7, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Andrew R. Gilmore, Director, Indianapolis Field Office at the address listed below.

Copies of the Illinois program, the proposed amendment, the additional explanatory information, and all written comments received in response to this document will be available for public review at the at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana, 46204–1521, Telephone: (317) 226–6700. Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, Illinois, 62701–1787, Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Discussion of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

By letter dated February 3, 1995 (Administrative Record No. IL–1615), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to an August 5, 1993, letter (Administrative Record No. IL–1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to required program amendments at 30 CFR 913.16 and at its own initiative. OSM announced receipt of the proposed amendment in the February 27, 1995, **Federal Register** (60 FR 19522), and invited public comment on its adequacy. The public comment period ended March 29, 1995. A public hearing was requested, and it was held on March 24, 1995, as scheduled. OSM identified concerns relating to the proposed amendment, and notified Illinois of these concerns by letters dated April 28 and August 3, 1995 (Administrative Record Nos. IL–1649 and IL–1660, respectively). By letter dated November 1, 1995 (Administrative Record No. IL–1663), Illinois responded to OSM's concerns by submitting additional explanatory information and revisions to its proposed amendment. OSM reopened the public comment period in the December 5, 1995, **Federal Register** (60 FR 62229). The public comment period closed on January 4, 1996. OSM approved the proposed amendment with certain exceptions and additional requirements on May 29, 1996 (61 FR 26801).

II. Discussion of the Proposed Amendment

By letter dated August 5, 1997 (Administrative Record No. IL–1670), Illinois requested that OSM reconsider its May 29, 1996, disapproval of the following regulatory language at 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F).

> Non-contiguous areas less than or equal to four acres which were disturbed from activities such as, but not limited to, signs, boreholes, power poles, stockpiles and substations shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, i.e., the majority of the subsoil remains in place, the soil has been returned to its original capability and the area is supporting its approved post-mining land use at the end of the responsibility period.

In its letter of August 5, 1997, Illinois provided explanatory information to clarify the regulatory language by specifying the procedures and evaluation criteria that would be used in the implementation of the regulations. By letters dated September 26 and November 3, 1997 (Administrative Record Nos. IL–1671 and IL–1672), Illinois provided additional explanatory information. Following is a summary of these procedures and evaluation criteria:

1. Illinois proposed to interpret the regulatory language of 62 IAC 1816.116(a)(3)(F) and 1817.117(a)(3)(F) as follows:

> Non-contiguous, surface disturbance areas, with an approved land use of cropland or pasture/hayland, less than or equal to four acres which have:
>
> 1. Minor soil disturbances from activities such as signs, boreholes, power poles, stockpiles and substations;
> 2. The majority of the subsoil remains in place; and
> 3. Were not affected by coal or toxic material handling, may use the following procedures for determination of revegetation success, in lieu of Section (a)(4).
>
> (i) The operator must document the required three criteria of (F) above have been met.
>
> (ii) The effected area is successfully supporting its approved post mining land use when compared to the similar, adjacent unaffected areas at the end of the responsibility period.
>
> The Department will evaluate areas requested by the operator, using qualified individuals, and determine them successfully revegetated, if it finds subsection (i) and (ii) have been met.

2. Illinois would differentiate the minor disturbances into three main types: (1) Areas where topsoil was left in place, usually less than .25 areas, (2) areas where topsoil was removed and stockpiled and the subsoil was left in place, usually less than one acre, and (3) areas where the topsoil was removed and stockpiled and portions of the area were excavated for foundations or for shaft construction, usually four acres or less.

3. Illinois would ensure all non-toxic contaminants are either prevented from mixing with the subsoil or are adequately removed without significant loss of the in-place subsoil.

4. Illinois would require at a minimum the area to be tilled with an agricultural subsoiler, preferably before topsoil replacement. In the event of poor crop performance on areas being evaluated, Illinois will require tillage to greater depths as deemed appropriate, based on timing, soil handling techniques, and equipment used for reclamation.

5. Illinois would assess the success of the area by the determination the area is supporting is postmining use and there were no observable differences between these areas and adjacent unaffected areas. All determinations of the success of these small areas would be done by qualified individuals experienced in the field of agronomy and soils. The evaluation of the crop would be done near the time of the harvest of the crop grown. The observation would be done for a minimum of two years of the responsibility period, excluding the first year. No phase III bonds would be released before the fifth year of the responsibility period.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Illinois program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*)

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 12, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–33430 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–112–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment revises numerous provisions of the Virginia program for surface coal mining and reclamation operations. The amendment is intended to revise the State program to be consistent with the Federal regulations.

DATES: Written comments must be received by 4:00 p.m., on January 22, 1998. If requested, a public hearing on the proposed amendment will be held on January 20, 1998. Requests to speak at the hearing must be received by 4:00 p.m., on January 7, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, *Telephone:* (703) 523–4303

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, *Telephone:* (703) 523–8100

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record VA–938), the Virginia Department of Mines, Minerals and Energy (DMME) submitted numerous amendments to the Virginia program. The DMME stated that the purpose of the amendments is to address issues identified by OSM pursuant to 30 CFR 732.17(d). The DMME stated that the proposed amendments are intended to be materially consistent with the corresponding Federal standards.

The proposed amendments are as follows:

4VAC 25–130–701.5 Definitions. Two definitions are amended: "Previously mined area" and "other treatment facilities."

4VAC 25–130–779.22 Land use information. This provision is proposed for deletion.

4VAC 25–130–779.25 Cross sections, maps, and plans. Subsections (a) and (b) are amended.

4VAC 25–130–780.23 Reclamation Plan; Land Use Information. Subsections (a), (b), and (c) are amended.

4VAC 25–130–780.25 Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams and Embankments. Subsections (a), (b), (c), and (f) are amended.

4VAC 25–130–780.35 Disposal of excess spoil. Subsection (b) is amended.

4VAC 25–130–783.25 Cross sections, maps and plans. Subsection (a) is amended and renumbered.

4VAC 25–130–784.15 Reclamation Plan: Land Use Information. The existing language is deleted and replaced with new language.

4VAC 25–130–784.16 Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments. Subsections (a), (b), (c), and (f) are amended.

4VAC 25–130–784.23 Operation plan; maps and plans. Subsections (b) and (c) are amended.

4VAC 25–130–800.40 Requirements for release of performance bond. New subsection (a)(3) is added.

4VAC 25–130–816.46 Hydrologic balance; siltation structures. Subsections (a), (b), and (c) are amended.

4VAC 25–130–816.49 Impoundments. Subsections (a) and (c) are amended.

4VAC 25–130–816.74 Disposal of excess spoil; preexisting benches. Subsections (a) through (g) are amended.

4VAC 25–130–816.81 Coal mine waste; general requirements. Subsections (a) and (c) are amended.

4VAC 25–130–816.89 Disposal of noncoal mine wastes. Subsection (d) is deleted.

4VAC 25–130–816.104 Backfilling and grading; thin overburden. The existing introductory paragraph is deleted and replaced by new language, and existing paragraph (a) is revised and renumbered.

4VAC 25–130–816.105 Backfilling and grading; thick overburden. The existing introductory paragraph is deleted and replaced by new language, and existing paragraph (a) is revised and renumbered.

4VAC 25–130–817.46 Hydrologic balance; siltation structures. Subsections (a), (b), and (c) are amended.

4VAC 25–130–817.49 Impoundments. Subsections (a) and (c) are amended.

4 VAC 25–130–817.74 Disposal of excess spoil; preexisting benches. Subsections (a) through (g) are amended.

4 VAC 25–130–817.81 Coal mine waste; general requirements. Subsections (a) and (c) are amended.

4 VAC 25–130–817.89 Disposal of noncoal mine Wastes. Subsection (d) is deleted.

4 VAC 25–130–823.11 Applicability. Subsection (a) is amended.

4 VAC 25–130–840.11 Inspections by the division. Subsections (f), (g), and (h) are amended.

4 VAC 25–130–843.14 Service of notices of violation, cessation orders, and show cause orders. Subsection (a)(2) is amended.

4 VAC 25–130–845.17 Procedures for assessment of civil penalties. Subsection (b) is amended.

4 VAC 25–130–845.18 Procedures for assessment conference. Subsections (a) and (b), and new subsection (d) is added.

4 VAC 25–130–845.19 Request for hearing. Subsection (a) is amended.

4 VAC 25–130–846.17 Assessment of an individual civil penalty. Subsection (b)(3) is deleted and replaced by a new subsection (c).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on January 7, 1998. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 10, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–33431 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA39

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revisions to the Eligibility Requirements

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the comprehensive CHAMPUS regulation pertaining to basic CHAMPUS benefits in accordance with several statutory changes. This proposed rule: sets forth the requirements for reinstatement of CHAMPUS eligibility for beneficiaries under age 65 who would otherwise have lost eligibility for CHAMPUS due to eligibility for Medicare as a result of disability or end-stage renal disease (ESRD); establishes new classes of CHAMPUS eligibles; establishes the Transitional Assistance Management Program which provides transitional health care for members (and their dependents) who served on active duty in support of a contingency operation and for members (and their dependents) who are involuntarily separated from active duty; allows former spouses who buy a conversion health policy to keep CHAMPUS eligibility for twenty-four (24) months for preexisting conditions that are not covered by the conversion policy; and makes minor technical revisions to the double coverage provisions. This proposed rule also adds a new category of eligible beneficiary under the Continued Health Care Benefit Program.

DATES: Comments must be received by February 23, 1998.

ADDRESSES: Send comments to the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Program Development Branch, OCHAMPUS, telephone (303) 361–1172.

SUPPLEMENTARY INFORMATION:

I. Eligibility Requirements

This proposed rule adds or revises a number of eligibility provisions. Following is a brief summary of the classes of beneficiaries affected by this proposed rule. Generally, each class is eligible for CHAMPUS as a result of the change, and we have included the other salient points regarding each, but the reader should refer to the subsequent discussion for details regarding the specific conditions and requirements for each class.

CHAMPUS/Medicare dual eligibles.

- Must be under age 65, eligible for Medicare due to disability or end-stage renal disease, and enrolled in Medicare Part B.
- Applies to all categories of CHAMPUS beneficiaries except dependents of active-duty members.
- Effective October 1, 1991.

Dependents of a person who dies of an injury, illness, or disease incurred on the way to or from training with a duration of 30 days or less.

- Retiree cost-sharing.
- Effective November 14, 1986.

Victims of abuse.

- By a member who was discharged or dismissed as a result of a court-martial conviction for the abuse.
- Eligibility limited to one year from member's separation.
- Coverage limited to treatment of conditions resulting from abuse.
- Effective November 14, 1986.
- By a member of former member who loses eligibility to retired pay as a result of the abuse.
- Effective October 23, 1992.

Students who become incapable of self-support.

- Must be full-time student.
- The incapacitating condition must occur between the ages of 21 and 23.
- Effective October 23, 1992.

Dependents of an active duty member who dies while on active duty.

- These individuals have always been eligible for CHAMPUS with retiree cost-sharing.
- The most recent change provides that all care is to be cost-shared as active duty.
- Special cost-sharing is limited to one year.
- Effective October 1, 1993.
- For dependents of active-duty members who die while on active duty between January 1, 1993, and October 1, 1993, only care for pre-existing conditions is to be cost-shared as active duty.

Dependents placed in the custody of a member or former member by a court or a recognized placement agency.

- Effective July 1, 1994, if placed by a court.
- Effective October 5, 1994, if placed by a recognized placement agency.
- This category of beneficiary is also added to the Continued Health Care Benefit Program effective October 5, 1994.

Transitional Assistance Management Program (TAMP)

- Claims for all individuals eligible under TAMP are cost-shared as active-duty dependents.
- Members released from active duty in connection with contingency operations.
- Eligible up to thirty (30) days.
- Effective April 6, 1991.
- Members involuntarily separated with less than six (6) years of service.
- Eligible up to sixty (60) days.
- Effective October 1, 1990.
- Members involuntarily separated with six (6) or more years of service.
- Eligible up to 120 days.
- Effective October 1, 1990.

II. Reinstatement of CHAMPUS Eligibility for Certain Medicare Beneficiaries

A. Regulation Amendment

The regulation is being amended to implement a series of laws enacted to reinstate CHAMPUS eligibility for certain individuals who, under previous laws, would have lost their CHAMPUS eligibility due to their eligibility for Medicare. This section briefly describes the amendment. A discussion of the legislative enactments will then follow, providing further explanation of the amendment and the various interim actions taken for implementation.

The amendment provides that CHAMPUS eligibility will be reinstated for beneficiaries:

1. Under age 65;
2. Who would otherwise have lost eligibility for CHAMPUS due to eligibility for Medicare as a result of disability (as defined in 42 U.S.C. 426(b)(2)) or as a result of end stage renal disease (ESRD) (as defined in 42 U.S.C. 426–1(a)); *and,*
3. Who are enrolled in the supplementary medical insurance program under Medicare Part B.

Under this amendment, CHAMPUS eligibility will be reinstated effective upon the date the individual meets all three requirements cited above *except* that eligibility cannot be reinstated for care received prior to October 1, 1991.

Initially, a special coordination of benefits procedure was established by law under which CHAMPUS benefits were paid for care received by these reinstated eligible beneficiaries. Under that special procedure, Medicare benefits would have to be paid first; then CHAMPUS, generally, would pay only the amount of the remaining bill which exceeded the beneficiaries; CHAMPUS deductible, copayment, and balance billing charge. Therefore, the beneficiary usually had to pay a portion of the bill even if the amount remaining after Medicare payment did not exceed the payment CHAMPUS would have made *if* the patient had not been eligible for Medicare.

However, under the most recent legislation, the special coordination of benefits procedure has been suspended and the normal coordination of benefits procedure used by CHAMPUS has been authorized for reinstated eligible beneficiaries. Under that procedure, after Medicare benefits have been paid, CHAMPUS, generally, will pay the amount of the remaining bill up to the amount CHAMPUS would have paid *if* the patient had not been eligible for Medicare. Because some claims were processed under the special coordination of benefits procedure prior to enactment of this recent legislation, the regulation amendment permits beneficiaries to resubmit such claims for reprocessing and payment under the normal coordination of benefits procedure.

Use of the normal coordination of benefits procedure was first authorized by the Department of Defense Appropriations Act for FY 1993. It was repeated in subsequent appropriations acts and was incorporated into the CHAMPUS law by the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337)

B. Background

Both section 704 of the National Defense Authorization Act for fiscal years 1992 and 1993 (P.L. 102–190) and section 8097 of the Department of Defense Appropriations Act, 1002. (P.L. 102–172) contained provisions which reinstate CHAMPUS eligibility for certain individuals who would otherwise have lost their CHAMPUS eligibility. As the Senate Armed Services Committee report stated, "Under current law, a CHAMPUS beneficiary who is classified as fully disabled for two years under Social Security standards automatically becomes eligible for Medicare and loses CHAMPUS eligibility. This provision would authorize CHAMPUS to be a secondary payer to Medicare * * *." This action, according to the report, "provides a needed, equitable safely net to CHAMPUS beneficiaries who currently lose their CHAMPUS coverage through no fault of their own before the normal point of conversion to Medicare at age 65."

The goal of this provision was to limit the out-of-pocket expenses of these individuals. By restoring CHAMPUS eligibility for these individuals, the coordination of benefits process will ensure that the Medicare payment is at least as much as the CHAMPUS payment would have been in the absence of Medicare, and, if it is not, CHAMPUS will pay the difference. Individuals will benefit, not only in cases where the CHAMPUS cost-share or deductible is less than Medicare's, but by being included in the more generous CHAMPUS coverage of certain services, notably prescription drugs and mental health services. For example, Medicare does not cover prescription drugs, but CHAMPUS does.

These laws set forth special procedures for determining CHAMPUS payment in these dual eligibility cases, and these were distinct from the normal coordination of benefits procedures followed by CHAMPUS in double coverage situations. These procedures are explained in greater detail in Section D of this Section II. In addition, the laws established two effective dates depending upon the beneficiary class, and they limited application of these provisions to certain beneficiary classes. Specifically, only those beneficiaries whose eligibility for Medicare was based on disability were able to have their CHAMPUS eligibility restored, while those beneficiaries whose Medicare eligibility was based on end-stage renal disease (ESRD) were not affected by those provision and remained ineligible for CHAMPUS.

In an attempt to rectify some of the inconsistencies above, further statutory changes were made for FY 1993. Section 705 of the National Defense Authorization Act for FY 1993 (P.L. 102–484, enacted October 23, 1992) and Section 9084 of the Department of Defense Appropriations Act, 1993 (P.L. 102–396, enacted October 6, 1992) contain provisions which affect these procedures. The Authorization Act extended the dual eligibility provisions to individuals with ESRD, although the Appropriations Act continued to recognize only disabled former members and their dependents as eligible for reinstatement of CHAMPUS eligibility. On the other hand, the Appropriations Act required use of normal coordination of benefits procedures for disabled former members and their dependents while the Authorization Act continued to require use of the special payment procedures for all beneficiaries whose CHAMPUS eligibility was reinstated. The laws also changed the effective date of the provisions, making them retroactive to October 1, 1991, and eliminating the two effective dates. Lastly, the Appropriations Act contained a $20 million limitation on the total CHAMPUS payments which could be made under some of the provisions. This limitation is further described in Section F. of this Section II.

Section 302 of the Supplemental Appropriations Act of 1993 (P.L. 103–50, enacted on July 2, 1993) made additional changes to eliminate some of the remaining inconsistencies. It restored CHAMPUS eligibility for individuals who would have lost their CHAMPUS eligibility due to Medicare eligibility based on ESRD, and thus brought the Appropriations Act into agreement with the Authorization Act with regard to the individuals affected. It also required that the normal coordination of benefits procedures be used for *all* beneficiaries whose CHAMPUS eligibility has been reinstated under these provisions and made this retroactive to October 1, 1991. This also affects the application of the $20 million limitation on payments as described in Section F. below.

The limitation on payments was not included in the FY 1994 Appropriation Act, but the procedural differences from the authorization act continued. As of FY 1995 the differences were resolved by inclusion in the Authorization Act for FY 1995 language which specified use of normal double coverage procedures for these beneficiaries.

C. Eligibility

We are applying this provision to all individuals eligible for CHAMPUS under title 10, U.S.C., section 1086(c). Initially the Appropriations Acts (both P.L. 102–172 and P.L. 102–396) included only former members of the Uniformed Services (those who are entitled to retired or retainer pay or equivalent pay) and the dependents of such former members. However, the Authorization Acts (P.L. 102–190 and P.L. 102–484) and the Supplemental Appropriations Act of 1993 (as well as subsequent authorization and appropriations acts) included these beneficiaries as well as former spouses, dependents of deceased active duty members, and dependents of deceased former members.

In addition to meeting the requirements of title 10, U.S.C., section 1086(c), individuals also must meet the following requirements in order to have their CHAMPUS eligibility restored.

1. They must be under age 65, the age at which the beneficiary would normally be required to switch from CHAMPUS to Medicare coverage.

2. They would otherwise have lost their CHAMPUS eligibility due to eligibility for Medicare Part A as a result of disability as defined in 42 U.S.C. 426(b)(2) or ESRD as defined in 42 U.S.C. 426–1(a). Under the provisions of the 1992 Authorization and Appropriations Acts, only those individuals who are disabled may have their CHAMPUS eligibility restored. Individuals under age 65 who have lost their CHAMPUS eligibility based on entitlement to Medicare due to ESRD were excluded from both Acts. However, the Defense Authorization Act for 1993 and the Supplemental Appropriations Act of 1993 (and subsequent acts) included ESRD as a basis for reinstating CHAMPUS eligibility for all beneficiaries included in title 10, U.S.C. section 1086(c).

3. The individual must be enrolled in Part B of Medicare. If an individual who is enrolled in Part B subsequently disenrolls, CHAMPUS eligibility will end effective with the date of termination of Part B enrollment. Likewise, CHAMPUS eligibility cannot begin prior to enrollment in Part B of Medicare.

Any individual who meets these eligibility requirements must enroll under the Defense Enrollment Eligibility Reporting System (DEERS). Enrollment is available through the individual's Uniformed Service at the nearest military personnel office. As with all CHAMPUS eligibility, it is solely the individual's responsibility to enroll under DEERS, and, except as described in Section G. below, no attempt will be made by the Office of CHAMPUS (OCHAMPUS), by the CHAMPUS contractors, or by any other entity to identify or enroll eligible individuals. In enrolling under DEERS, the individual will be required to provide the necessary documentation of age, disability or ESRD, and Medicare enrollment in Parts A and B.

D. Coordination of Benefits

These provisions do not affect in any way the CHAMPUS benefits available. They only extend CHAMPUS eligibility to the affected individuals and provide for payment procedures for CHAMPUS as secondary payer to Medicare. These provisions also do not affect the statutory limitations regarding CHAMPUS' status as secondary payer to all other coverage except Medicaid and CHAMPUS supplemental plans. Therefore, before a claim is submitted to CHAMPUS, it first must be submitted to all other coverages including Medicare supplemental plans.

The FY 1992 Authorization and Appropriations Acts required special payment procedures for all beneficiaries affected by this provision. These procedures were intended to ensure that a beneficiary's out-of-pocket expenses were no greater than they would have been if CHAMPUS were the primary payer. While this ensured that beneficiaries were not financially penalized for becoming eligible for Medicare due to disability, these procedures often resulted in less CHAMPUS payment (and a commensurate increase in beneficiary liability) than would have occurred under the normal coordination of benefits procedures. As a result of this, the FY 1993 Appropriations Act required normal coordination of benefits procedures to be used, but it only applied to claims for disabled former members and their dependents. The special payment procedures still were to be applied to former members and their dependents who are eligible for Medicare based on ESRD as well as to all affected dependents of deceased active duty members, dependents of deceased former members, and former spouses whether their eligibility for Medicare is based upon disability or ESRD. As a result of the Supplemental Appropriations Act of 1993 and subsequent authorization and appropriations acts, normal coordination of benefits procedures are to be applied to all beneficiaries whose CHAMPUS eligibility has been reinstated under these provisions.

Under normal coordination of benefits procedures, CHAMPUS will reimburse the difference between the billed amount (or the amount the provider is required to accept as full payment) and what the other insurance coverage paid, if that difference is less than what CHAMPUS would have paid in the absence of other coverage. In most cases, this results in no remaining out-of-pocket expense for the beneficiary.

Under the special payment procedures, CHAMPUS payment was limited to the amount by which the patient's Medicare deductible, cost-share, and appropriate balance billing costs exceed the patient's CHAMPUS deductible, cost-share, and balance billing costs. Since the CHAMPUS cost-share for these beneficiaries is often greater than the Medicare cost-share or deductible, in many cases this resulted in no CHAMPUS payment, and the beneficiary always had out-of-pocket expenses (unless the beneficiary also was covered by a Medicare or CHAMPUS supplemental plan).

Even if CHAMPUS makes no payment it is still advantageous to the beneficiary for the claim to be submitted to CHAMPUS. On all such claims the CHAMPUS cost-sharing and deductible amounts which are paid by other health insurance, including Medicare, will be credited toward meeting the CHAMPUS deductible and the catastrophic cap. Only by submitting these claims to CHAMPUS can the deductible and catastrophic cap entries be made, and this can have a significant impact on CHAMPUS payments on subsequent claims, especially once the catastrophic cap has been met.

If the care received by a beneficiary is not a benefit under Medicare but is under CHAMPUS (e.g. prescription drugs), CHAMPUS will process the claim as a routine claim. If the care is a benefit under both Medicare and CHAMPUS, the procedures explained above will be followed.

In all cases, claims must first be processed by Medicare, and it will be necessary for a Medicare explanation of benefits to be forwarded to the CHAMPUS claims processing contractor with the claim. The Medicare explanation of benefits must reflect the Medicare payment and the patient's Medicare deductible and cost-share.

This change will be applied on a claim by claim basis. In other words, if a beneficiary has an episode of care which involves an inpatient hospital stay and care by several professional providers, each claim submitted for the care will be processed independently, and there will be no attempt made to consolidate the claims.

The following examples are provided to demonstrate the normal CHAMPUS coordination of benefits procedures and the special procedures and the impact of each on CHAMPUS payments. Although the special procedures are no longer used, we are including them in the examples, since the laws required them to be used for a period of time and a large number of claims were processed using them.

1. EXAMPLE 1—NORMAL COORDINATION OF BENEFITS

Hospital bills for inpatient care	$5,722.00
Medicare DRG-based amount	5,368.95
Medicare inpatient hospital deductible	652.00
Medicare payment	4,716.95
CHAMPUS DRG-based amount	4,949.59
CHAMPUS beneficiary cost-share	[1] 1,430.50

[1] For claims paid under the CHAMPUS DRG-based payment system, the cost-share is the lesser of a per diem amount ($360 for FY 1997) or 25 percent of the billed charge. For this example we assumed a length-of-stay of five days.

Step 1. Determine CHAMPUS payment in the absence of any other coverage. This amount is $3,519.09.

Step 2. Subtract the Medicare primary payment from the CHAMPUS DRG-based amount. This leaves $232.64.

Step 3. Subtract the Medicare primary payment from the hospital's charges (or the amount the hospital is obligated to accept as payment in full, if that is less than the charges). The hospital must accept the Medicare DRG-based amount as payment in full, so this step results in $652.00.

Step 4. Subtract any applicable beneficiary cost-sharing amounts from the provider's charges (or the amount the hospital is obligated to accept as payment in full, if that is less than the charges). This results in $4,043.95.

Step 5. CHAMPUS payment is the least of Steps 1 through 4. CHAMPUS pays $232.64. The beneficiary's liability is zero, since the hospital has been paid the full CHAMPUS DRG-based amount, and it must accept this as payment in full.

2. EXAMPLE 2—SPECIAL PAYMENT PROCEDURES

Hospital bills for inpatient care	$5,722.00
Patient liability under medicare:	
Medicare DRG-based amount	5,368.95
Inpatient hospital Medicare deductible	652.00
Medicare pays	4,716.95
Patient liability under CHAMPUS:	
CHAMPUS DRG-based amount	4,949.59
Beneficiary cost-share	[1] 1,430.50

[1] For claims paid under the CHAMPUS DRG-based payment system, the cost-share is the lesser of a per diem amount ($360 for FY 1997) or 25 percent of the billed charge. For this example we assumed a length-of-stay of five days.

Since the beneficiary's liability under Medicare is less than it is under CHAMPUS, CHAMPUS makes no payment.

There are several other ramifications which are pertinent here. Since the beneficiary is eligible for CHAMPUS, the claim must be submitted to CHAMPUS *before* the beneficiary can be billed for any amounts. CHAMPUS must be billed if there is any remaining beneficiary liability after Medicare processes the claim—even if the provider is certain that no payment will be made by CHAMPUS. Any attempt to bill the beneficiary without first billing CHAMPUS can be considered a violation of the statutory-based participation requirement and can result in exclusion of the provider by CHAMPUS and possibly by Medicare. In the above example, once the claim is submitted to CHAMPUS, the CHAMPUS DRG-based allowance ($4,949.59) becomes the full payment amount for the claim. Even though CHAMPUS makes no payment, the beneficiary liability is decreased from $652 (the Medicare inpatient deductible) to $232.64 (the difference between the CHAMPUS DRG-based allowance and the amount Medicare paid).

3. EXAMPLE 3.—NORMAL COORDINATION OF BENEFITS

Physician bills for surgery	$1,200.00
Medicare allows	925.000
Medicare cost-share	185.00
Medicare payment (Assumes the deductible has been met)	740.00
CHAMPUS allows	975.00
CHAMPUS cost-share (Assumes the deductible has been met)	243.75

Step 1: Determine CHAMPUS payment in the absence of any other coverage. This amount is $731.25.

Step 2: Subtract the primary payment from the billed charge. This results in $460.00.

Step 3: CHAMPUS payment is the lesser of Steps 1 and 2. CHAMPUS pays $460.00, and the beneficiary's liability is zero.

4. EXAMPLE 4.—SPECIAL PAYMENT PROCEDURES

Physician bills for surgery	$1,200.00
Patient liability under Medicare:	
Medicare allows	925.00
Medicare cost-share	185.00
Medicare payment (Assumes the deductible has been met)	740.00
Patient liability under CHAMPUS:	
CHAMPUS allows	975.00
CHAMPUS cost-share (Assumes the deductible has been met)	243.75

Since the beneficiary's liability under Medicare is less than it is under CHAMPUS, CHAMPUS makes no payment, and the beneficiary's liability is $185 if the provider participates or $460 is the provider does not participate.

5. EXAMPLE 5.—SPECIAL PAYMENT PROCEDURES

Mental illness outpatient care bill (This is a benefit where Medicare pays only 50 percent of the allowed charges.)	$450.00
Patient liability under Medicare: 50% of allowed charges (Assumes the full billed charge was allowed and the $100 deductible has been met.)	225.00
Patient liability under CHAMPUS: 25% of allowed charge (Assumes the full billed charge was allowed and the $150 deductible has been met)	112.50

Since Medicare liability is greater than CHAMPUS liability, CHAMPUS pays the difference of $112.50, and the beneficiary is liable for the remaining $112.50.

E. Effective Date

According to the FY 1993 Authorization Act and subsequent authorization and appropriations acts, the effective date of this change is October 1, 1991. This effective date applies only if the individual lost CHAMPUS eligibility prior to the effective date. If CHAMPUS eligibility was lost after the effective date, CHAMPUS eligibility, and use of the payment procedures required by this change, will begin on the date the individual first meets the eligibility requirements in Section C. above. In this case, effective means that the individual's eligibility will begin on the effective date and claims will be processed accordingly.

The above effective date is changed from the effective date contained in the FY 1992 Authorization and Appropriation Acts. The procedures required by those acts were effective for former members and their dependents as of October 1, 1991, and for all other beneficiaries in title 10, U.S.C., section 1086(c) as of December 5, 1991.

As noted in Section C. above, it is the individual's responsibility to establish eligibility through DEERS in order to have claims processed by CHAMPUS. In many cases this will result in retroactive implementation of this change for claims for services incurred between the effective date and implementation of the change pursuant to the final rule for this change. In order to provide for some closure to this retroactive implementation, we propose that beneficiaries will be given 180 days

from the date of publication of the final rule to apply to DEERS for reinstatement of their eligibility. After that period, we will begin eligibility effective with the date of application to DEERS. In addition, these beneficiaries will have 180 days from the date of publication of the final rule to submit claims pursuant to their reinstated eligibility which are outside of the normal CHAMPUS claims filing deadlines.

F. Limitation on Total Payments

The FY 1993 Appropriations Act provided that "$20,000,000 shall be available * * * to continue Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, until age 65, * * * for a former member of the uniformed service who is entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, who becomes eligible for hospital insurance benefits under part A of title XVIII of the Social Security Act * * * solely on the grounds of physical disability: * * * ." We treated this as a maximum limitation on the amount that could be spent for these beneficiaries.

The Supplemental Appropriations Act of 1993 did not directly alter this provision. However, as a result of the changes made by the Supplemental Appropriations Act of 1993, the limitation applied to all beneficiaries "described by section 1086(c) of title 10, United States Code," and ESRD in addition to physical disability was included as a qualifying condition. As a result, all payments made for reinstated beneficiaries were subject to the limitation. This limit was not reached in FY 1993, and it was not included in subsequent appropriations acts.

III. Establishment of New Classes of CHAMPUS Eligibles

Several new classes of CHAMPUS eligibles have been added by changes to the Department of Defense Authorization Acts for recent years. These new classes are:

- Eligible spouses (including former spouses) or children of a reservist who died after September 30, 1985, from an injury or illness incurred or aggravated while on active duty for a period of 30 days or less, on active duty for training, or on inactive duty training, or while traveling to or from the place at which the reservist was to perform, or performed, such active duty, active duty for training, or inactive duty training. These beneficiaries are eligible for services or supplies provided on or after October 1, 1985, and were added by Section 652(c) of the Department of Defense Authorization Act, 1986 (P.L. 99–145).
- Eligible spouses (including former spouses) or children of a reservist who died from a disease incurred or aggravated after November 14, 1986, while on active duty for a period of 30 days or less, on active duty for training, or on inactive duty training, or while traveling to or from the place at which the reservist was to perform, or performed, such active duty, active duty for training, or inactive duty training. These beneficiaries are eligible for services or supplies provided on or after November 14, 1986, and were added by Section 604(a)(1) of the National Defense Authorization Act for Fiscal Year 1987 (P.L. 99–661).
- Eligible spouses (including former spouses) and children of a member who are victims of abuse by the member and the member receives a dishonorable or bad-conduct discharge or is dismissed from a Uniformed Service as a result of a court-martial conviction for abuse of the dependent, or was administratively discharged as a result of such an offense. Medical benefits are limited to treatment of injuries resulting from the abuse for one year from the date of the person's separation from the Uniformed Service. These beneficiaries are eligible for services or supplies provided on or after November 14, 1986, and were added by the National Defense Authorization Act for Fiscal Year 1987 (P.L. 99–661).
- Eligible spouses (including former spouses) and children who are victims of abuse by a member or former member of a Uniformed Service who, while a member and as a result of misconduct involving abuse of a dependent, has eligibility to receive retired pay on the basis of years of service terminated. These beneficiaries are eligible for services or supplies provided on or after October 23, 1992, and were added by Section 653 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484).
- Otherwise eligible dependent children who are not married and are incapable of self-support because of a mental or physical disability that occurred between the ages of twenty-one (21) and twenty-three (23) while the child was enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education, and is or was at the time of the member's or former member's death dependent on the member or former member for over one-half of his or her support. The incapacity must be continuous. If the incapacity significantly improves or ceases at any time, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity unless the incapacity recurs and the beneficiary is under age twenty-one (21) or is under age twenty-three (23) and is enrolled as a full-time student. If the child was not incapacitated on his or her twenty-third (23rd) birthday, but becomes incapacitated after that date, no CHAMPUS eligibility exists on the basis of the incapacity. These beneficiaries are eligible for services or supplies provided on or after October 23, 1992, and were added by Section 653 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102–484).
- Dependents of active-duty members who die while on active duty. These individuals were previously eligible, but now all care is to be cost-shared as active duty for one year. These special cost-sharing provisions apply to services or supplies provided on or after October 1, 1993. For dependents of activity-duty members who dies while on active duty between January 1, 1993, and October 1, 1993, only care for pre-existing conditions is to be cost-shared as active duty. In both situations it is important to note that this provision does not preclude loss of eligibility during the one-year period as a result of any condition which routinely results in loss of CHAMPUS eligibility such as reaching age limits, remarriage, etc. These provisions were added by Section 707(c) of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337).
- Dependents who are placed in the custody of a member or former member by a court for a period of twelve (12) consecutive months or more. These beneficiaries are eligible for services or supplies provided on or after July 1, 1994, and were added by Section 701 of the National Defense Authorization Act for Fiscal Year 1994 (P.L. 103–160).
- Dependents who are placed in the home of a member or former member by a placement agency which is recognized by the Secretary of Defense in anticipation of the legal adoption of the child. These beneficiaries are eligible for services or supplies provided on or after October 5, 1994, and were added by Section 701 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337).

IV. Transitional Assistance Management Program

Based upon the provision of the National Defense Authorization Act, FY 1991 (P.L. 101–510), the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (P.L. 102–25), and the National Defense Authorization Act, FY 1995, transitional health care benefits under CHAMPUS have been authorized for certain service members and their families under limited circumstances. The categories affected include members and their dependents who served in connection with contingency operations and those members otherwise subject to involuntary separations from active duty. The program that implements these provisions is known as the Transitional Assistance Management Program (TAMP). All individuals eligible under TAMP will be subject to the same cost-sharing requirements applicable to dependents of active-duty members.

Under TAMP, members who are released from active duty in connection with contingency operations are eligible for CHAMPUS for up to thirty (30) days or until covered by an employer-sponsored health plan, whichever occurs first. The earliest effective date of eligibility for these beneficiaries is April 6, 1991.

UnderTAMP, members who are involuntarily separated with less than six (6) years of active service are eligible for CHAMPUS for sixty (60) days. Members who are involuntarily separated with six (6) or more years of active service are eligible for CHAMPUS for 120 days. The TAMP provisions applicable to involuntary separations are effective for nine years beginning October 1, 1990.

TAMP also provided for extended CHAMPUS coverage for certain individuals on a premium basis. Previously, these individuals, upon losing CHAMPUS eligibility, were eligible to purchase temporary coverage under a plan arranged by the Department of Defense with Mutual of Omaha Insurance Company. This plan was known as Uniformed Services Voluntary Insurance Policy (US VIP). Section 4408 of P.L. 102–484 significantly revised this program. The program is now required to provide coverage with premiums and benefits comparable to the Federal Employees Health Benefits Program (FEHBP) and for 18 to 36 months depending on the eligibility category. The program is known as the Continued Health Care Benefit Program (CHCBP) and is described in detail in 32 CFR Part 199.20. Eligibility under the CHCBP is extended to certain members who are discharged or released from active duty, whether voluntarily, or involuntarily, under other than adverse condition, to certain former spouses of members or former members, and to certain children of a member or former member who otherwise would not meet the requirements for eligibility as a dependent. Although technically these individuals are not CHAMPUS beneficiaries, this program is mentioned here because it will enable these individuals to purchase coverage similar to CHAMPUS. The program began October 1, 1994, and specific implementation procedures have been published.

V. Extension of Eligibility Period for Former Spouses Who Buy a Conversion Health Policy

Subsections 4407(b) and (c) of the National Defense Authorization Act for Fiscal Year 1993 amended Section 1086a of title 10 U.S.C. to allow otherwise eligible former spouses who buy a conversion health policy to keep CHAMPUS eligibility for twenty-four (24) months for preexisting conditions that are not covered by the conversion policy. The previous limit on such extended CHAMPUS benefits was one year. This provision applied only to the USVIP policies, and the CHCBP does not have an exclusion for preexisting conditions. Since the USVIP expired on September 30, 1994, this two-year extension of CHAMPUS benefits was effective only until September 30, 1996. Therefore, we re not including any change to the regulation to incorporate this provision, since this provision has already expired.

VI. Eligibility Determinations

Although OCHAMPUS is tasked with publishing legislatively mandated eligibility changes to Title 10 U.S.C., determination of dependent eligibility for CHAMPUS is the primary responsibility of the Uniformed Services. CHAMPUS relies primarily on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification. However, a determination by the Uniformed Services that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Before any CHAMPUS benefits may be extended, additional requirements of CFR Part 199 must be met. Disputes regarding eligibility as a dependent or dates of beginning eligibility for benefits under CHAMPUS can only be resolved by the appropriate Uniformed Service Secretary.

VII. Technical Revisions to the Double Coverage Provisions

We are also making several wording changes to Paragraph (a) of Section 199.8, Double Coverage, in order to make it conform to the latest version of 10 U.S.C. 1079(j)(1) as revised by Section 713, P.L. 102–190. These changes merely revise some of the wording and have no affect on the actual double coverage procedures under CHAMPUS. We are making them at this time, since Section 199.8 is being revised by this rule.

VIII. Addition of New Category of Eligible Beneficiary Under the Continued Health Care Benefit Program (CHCBP)

Section 702 of the 1995 National Defense Authorization Act (P.L. 103–337) expanded the eligibility for health care coverage under the CHCBP to a fourth group of beneficiaries from the group originally authorized in the CHCBP Final Rule, published in the **Federal Register** on September 30, 1994, (59 FR 49817). Eligibility to enroll in the CHCBP has been expanded to now include unmarried persons placed in the legal custody of a member or former member as the result of a court order or by a placement agency recognized by the Secretary of Defense.

Health care coverage in the CHCBP is for a specific time period. For the new group of eligible beneficiaries—unmarried persons placed in the legal custody of a member or former member (age 21 if not in college or up to age 23 if in college)—coverage can be up to a total of 36 months. These individuals will have 60 days to enroll beginning the date they become eligible.

This change is effective October 5, 1994.

IX. Regulatory Procedures

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This proposed rule is not a significant regulatory action under Executive Order 12866. The changes set forth in this proposed rule are minor revisions to the existing regulation. Since this proposed rule does not impose information collection requirements, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is amended by adding new definitions for *Abused dependent, Deceased reservist, Deceased retiree, Former member, Member, Reservist* in alphabetical order, by removing the definition for *Deceased service member* and adding in alphabetical order a new definition for *Deceased member*, and by revising the definitions for *Child, Defense Enrollment Eligibility Reporting System (DEERS), Dependent, Sponsor, Spouse, Widow or Widower* to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Abused dependent. An eligible spouse or child, who meets the criteria in § 199.3 of this part, of a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense, or of a member or former member who has had their entitlement to receive retired pay terminated because of misconduct involving physical or emotional abuse.

* * * * *

Child. An unmarried child of a member or former member, who meets the criteria (including age requirements) in § 199.3 of this part.

* * * * *

Deceased member. A person who, at the time of his or her death, was an active duty member of a Uniformed Service under a call or order that did not specify a period of 30 days or less.

Deceased reservist. A reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training and dies as a result of that specific injury, illness or disease.

Deceased retiree. A person who, at the time of his or her death, was entitled to retired or retainer pay or equivalent pay based on duty in a Uniformed Service. For purposes of this part, it also includes a person who died before attaining age 60 and at the time of his or her death:

(1) Would have been eligible for retired pay as a reservist but for the fact that he or she was not 60 years of age; and

(2) Had elected to participate in the Survivor Benefit Plan established under chapter 73 of tile 10 U.S.C.

* * * * *

Defense Enrollment Eligibility Reporting System (DEERS). An automated system maintained by the Department of Defense for the purpose of:

(1) Enrolling members, former members and their dependents; and

(2) Verifying members', former members' and their dependents' eligibility for health care benefits in the direct care facilities and for CHAMPUS.

* * * * *

Dependent. Individuals whose relationship to the sponsor (including NATO members who are stationed in or passing through the United States on official business when authorized) leads to entitlement to benefits under this part. (See § 199.3 of this part for specific categories of dependents).

* * * * *

Former member. A retiree, deceased member, deceased retiree, or deceased reservist in certain circumstances (see § 199.3 of this part for additional information related to certain deceased reservists' dependents' eligibility). Under conditions specified under § 199.3 of this part, former member may also include a member of the Uniformed Services who has been discharged from active duty (or, in some cases, full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions and qualifies for CHAMPUS benefits under the Transitional Assistance Management Program or the Continued Health Care Benefits Program.

* * * * *

Member. A person on active duty in a Uniformed Service under a call or order that does not specify a period of 30 days or less. (For CHAMPUS cost-sharing purposes only, a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense is considered a member).

* * * * *

Reservist. A person who is under an active duty call or order to one of the Uniformed Services for a period of 30 days or less or is on inactive training.

* * * * *

Sponsor. A member or former member of a Uniformed Service upon whose status his or her dependents' eligibility for CHAMPUS is based. A sponsor also includes a person who, while a member of the Uniformed Services and after becoming eligible to be retired on the basis of years of service, has his or her eligibility to receive retired pay terminated as a result of misconduct involving abuse of a spouse or dependent child. It also includes NATO members who are stationed in or passing through the United States on official business when authorized. It also includes individuals eligible for CHAMPUS under the Transitional Assistance Management Program.

Spouse. A lawful husband or wife, who meets the criteria in § 199.3 of this part, regardless of whether or not dependent upon the member or former member for his or her own support.

* * * * *

Widow or Widower. A person who was a spouse at the time of death of a member or former member and who has not remarried.

* * * * *

3. Section 199.3 is revised to read as follows:

§ 199.3 Eligibility.

(a) *General.* This section sets forth those persons who, by the provisions of 10 U.S.C. chapter 55, and the NATO Status of Forces Agreement, are eligible for CHAMPUS benefits. A determination that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Before any CHAMPUS benefits may be extended, additional requirements, as set forth in other sections of this Part, must be met. Additionally, the use of CHAMPUS may be denied if a Uniformed Service medical treatment facility capable of providing the needed care is available. CHAMPUS relies primarily on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification.

(b) *CHAMPUS eligibles*—(1) *Retiree.* A member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniform Service.

(2) *Dependent.* Individuals whose relationship to the sponsor leads to entitlement to benefits. CHAMPUS eligible dependent include the following:

(i) *Spouse.* A lawful husband or wife of a member or former member. The spouse of a deceased member or retiree must not be remarried. A former spouse also may qualify for benefits as a dependent spouse. A former spouse is a spouse who was married to a military member, or former member, but whose marriage has been terminated by a final decree of divorce, dissolution or annulment. To be eligible for CHAMPUS benefits, a former spouse must meet the criteria described in paragraph (b)(2)(i)(A) through (b)(2)(i)(E) of this section and must qualify under the group defined in paragraph (b)(2)(i)(F)(*1*) or (b)(2)(i)(F)(*2*):

(A) Must be unremarried; and

(B) Must not be covered by an employer-sponsored health plan; and

(C) Must have been married to a member or former member who performed at least 20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay; and

(D) Must not be eligible for Part A of Title XVII of the Social Security Act (Medicare) except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section; and

(E) Must not be the dependent of a NATO member; and

(F) Must meet the requirements of paragraph (b)(2)(i)(F)(*1*) or (b)(2)(i)(F)(*2*) of this section:

(*1*) The former spouse must have been married to the same member or former member for at least 20 years, at least 20 of which were creditable in determining the member's or former member's eligibility for retired or retainer pay. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E).

(*i*) If the date of the final decree of divorce, dissolution, or annulment was before February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care received on or after January 1, 1985.

(*ii*) If the date of the final decree of the divorce, dissolution, or annulment was on or after February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care which is received on or after the date of the divorce, dissolution, or annulment.

(*2*) The former spouse must have been married to the same member or former member for at least 20 years, and at least 15, but less than 20 of those married years were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(*i*) If the date of the final decree of divorce, dissolution, or annulment is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985, or the date of the divorce, dissolution, or annulment, whichever is later. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E).

(*ii*) If the date of the final decree of divorce, dissolution or annulment is on or after April 1, 1985, but before September 29, 1988, the former spouse is eligible only for care received from the date of the decree of divorce, dissolution, or annulment until December 31, 1988, or for two years from the date of the divorce, dissolution, or annulment, whichever is later.

(*iii*) If the date of the final decree of divorce, dissolution, or annulment is on or after September 29, 1988, the former spouse is eligible only for care received within the 365 days (366 days in the case of a leap year) immediately following the date of the divorce, dissolution, or annulment.

(ii) *Child.* A dependent child is an unmarried child of a member or former member who has not reached his or her twenty-first (21st) birthday, except an incapacitated adopted child meeting the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section, and who bears one of the following relationships to a member or former member of one of the Uniformed Services:

(A) A legitimate child; or

(B) An adopted child whose adoption has been legally completed on or before the child's twenty-first (21st) birthday; or

(C) A legitimate stepchild; or

(D) An illegitimate child of a member or former member whose paternity/maternity has been determined judicially, and the member or former member directed to support the child; or

(E) An illegitimate child of a member or former member whose paternity/maternity has not been determined judicially, who resides with or in the home provided by the member or former member, and is or continues to be dependent upon the member or former member for over one-half of his or her support, or who was so dependent on the former member at the time of the former member's death; or

(F) An illegitimate child of a spouse of a member who resides with or in a home provided by the member and is, and continues to be dependent upon the member for over one-half of his or her support; or

(G) An illegitimate child of a spouse of a former member who resides with or in a home provided by a former member or the former member's spouse at the time of death of the former member, and is, or continues to be, or was, dependent upon the former member for more than one-half of his or her support at the time of death; or

(H) An individual who falls into one of following classes:

(*1*) *A student.* A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married, has passed his or her 21st birthday but has not passed his or her 23rd birthday, is dependent upon the member or former member for over 50 percent of his or her support or was dependent upon the member or former member for over 50 percent of his or her support on the date of the member's or former member's death, and is pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C., Chapters 34 and 35.

Note to paragraph (b)(2)(ii)(H)(*1*): Courses of education offered by institutions listed in the "Education Directory, "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to 38 U.S.C. chapters 34 and 35, a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(*2*) *An incapacitated child.* A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married, has not attained the age of 21, and is incapable of self-support because of a mental or physical disability that:

(*i*) Existed before the child's twenty-first (21st) birthday; or

(*ii*) Occurred between the ages of 21 and 23 while the child was enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education (see Note to paragraph (b)(2)(ii)(H)(*2*)), and is or was at the time of the member's or former member's death dependent on the member or former member for over one-half of his or her support; and

(*iii*) The incapacity is continuous. (If the incapacity significantly improves or ceases at any time, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity, unless the incapacity recurs and the beneficiary is under age 21, or is under age 23 and is enrolled as a full-time student under paragraph (b)(2)(ii)(H)(*2*)(*ii*) of this section. If the child was not incapacitated after that date, no CHAMPUS eligibility exists on the basis of the incapacity. However, incapacitated children who marry and who subsequently become unmarried through divorce, annulment, or death of spouse, may be reinstated as long as they still meet all other requirements).

Note to paragraph (b)(2)(ii)(H)(*2*): An institution of higher learning is e college, university, or similar institution, including a technical or business school, offering post-

secondary level academic instruction that leads to an associate or higher degree, if the school is empowered by the appropriate State education authority under State law to grant an associate, or higher, degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. The term also shall include a hospital offering educational programs at the post-secondary level regardless of whether the hospital grants a post-secondary degree. The term also shall include an educational institution that is not located in a State, that offers a course leading to a standard college degree, or the equivalent, and that is recognized as such by the Secretary of Education (or comparable official) of the country, or other jurisdiction, in which the institution is located (38 U.S.C. chapter 34, section 1661, and chapter 35, section 1701). Courses of education offered by institutions listed in the "Education Directory", "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to 38 U.S.C. chapters 34 and 35, a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(*3*) *A child of a deceased reservist.* A child, who is determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, of a reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training, and the reservist dies as a result of that specific injury, illness or disease.

(*4*) *A child placed in legal custody of a member or former member.* A child who is placed in legal custody of a member or former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child.

(iii) *Abused dependents.*—(A) *Categories of abused dependents.* An abused dependent may be either a spouse or a child. Eligibility for either class of abused dependent results from being either:

(*1*) The spouse (including a former spouse) or child of a member who has received a dishonorable or bad-conduct discharge, or dismissal from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse of the spouse or child, or was administratively discharged as a result of such an offense. Medical benefits are limited to care related to the physical or emotional abuse and for a period of 12 months following the member's separation from the Uniformed Service.

(*2*) The spouse (including a former spouse) or child of a member or former member who while a member and as a result of misconduct involving abuse of the spouse or child has eligibility to receive retired pay on the basis of years of service terminated.

(B) *Requirements for categories of abused dependents.* (*1*) *Abused spouse.* As long as the spouse is receiving payments from the Dod Military Retirement Fund under court order, the spouse is eligible for health care under the same conditions as any spouse of a retired member. The abused spouse must:.

(*i*) Under paragraph (b)(2)(iii)(A)(*1*) of this section, be a lawful husband or wife or a former spouse of the member; or

(*ii*) Under paragraph (b)(2)(iii)(A)(*2*) of this section, be a lawful husband or wife or a former spouse of the member or former member, and the spouse is receiving payments from the Department of Defense Military Retirement Fund under 10 U.S.C. 1408(h) pursuant to a court order; and—

(*A*) Be a victim of the abuse; and

(*B*) Have been married to the member or former member at the time of the abuse; or

(*C*) Be the natural or adoptive parent of a dependent child of the member or former member who was the victim of the abuse.

(*2*) *Abused child.* The abused child must:

(*i*) Under paragraph (b)(2)(iii)(A)(*1*) of this section, be a dependent child of the member or former member.

(*ii*) Under paragraph (b)(2)(iii)(A)(*2*) of this section—

(*A*) Have been a member of the household where the abuse occurred; and

(*B*) Be an unmarried legitimate child, including an adopted child or stepchild of the member or former member; and

(*C*) Be under the age of 18; or

(*D*) Be incapable of self support because of a mental or physical incapacity that existed before becoming 18 years of age and be dependent on the member or former member for over one-half of his or her support; or

(*E*) If enrolled in a full-time course of study in an institution of higher learning recognized by the Secretary of Defense (for the purpose of 10 U.S.C. 1408(h)), be under 23 years of age and be dependent on the member or former member for over one-half of his or her support.

(*iii*) The dependent child is eligible for health care, regardless of whether any court order exists, under the same conditions as any dependent of a retired member.

(3) *TAMP eligibles.* A former member, including his or her dependents, who is eligible under the provisions of the Transitional Assistance Management Program as described in paragraph (e) of this section.

(c) *Beginning dates of eligibility.* (1) Beginning dates of eligibility dependent on the class to which the individual belongs and the date the individual became a member of the class. Those who join after the class became eligible attain individual eligibility on the date they join.

(2) Beginning dates of eligibility for each class of spouse (excluding spouses who are victims of abuse and eligible spouses of certain deceased reservists) are as follows:

(i) A spouse of a member for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956;

(B) Outpatient medical benefits under the Basic Program, October 1, 1966;

(C) Inpatient medical benefits under the Basic Program *and* benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped), January 1, 1967;

(ii) A spouse of a former member:

(A) For medical benefits under the Basic Program, January 1, 1967;

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped);

(iii) A former spouse:

(A) For medical benefits under the Basic Program, dates of beginning eligibility are as indicated for each category of eligible former spouse identified in paragraph (b)(2)(i) of this section;

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(3) Beginning dates of eligibility for spouses who are victims of abuse (excluding spouses who are victims of abuse of certain deceased reservists) are as follows:

(i) An abused spouse meeting the requirements of paragraph (b)(2)(iii) of this section, including an eligible former spouse:

(A) For medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(B) For medical and dental care for problems associated with the physical or emotional abuse under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped) for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(ii) An abused spouse meeting the requirements of paragraph (b)(2)(iii) of this section, including an eligible former spouse:

(A) For all benefits under the CHAMPUS Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(4) Beginning dates of eligibility for spouses of certain deceased reservists, including spouses who are victims of abuse of certain deceased reservists, are as follows:

(i) A spouse meeting the requirements of paragraph (b)(2)(i) of this section, including an eligible former spouse:

(A) For benefits under the Basic Program, November 14, 1986.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(ii) An abused spouse of certain deceased reservists, meeting the requirements of paragraph (b)(2)(iii) of this section, including an eligible former spouse, for the limited benefits and period of eligibility described in paragraph (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, November 14, 1986.

(B) For benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped), November 14, 1986.

(iii) An abused spouse of certain deceased reservists, including an eligible former spouse, meeting the requirements of paragraph (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(5) Beginning dates of eligibility for each class of dependent children, (excluding dependent children of certain deceased reservists, abused children and incapacitated children whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning), are as follows:

(i) Legitimate child, adopted child, or legitimate stepchild of a member, for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956.

(B) Outpatient medical benefits under the Basic Program, October 1, 1966.

(C) Inpatient medical benefits under the Basic Program and benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped), January 1, 1967.

(ii) Legitimate child, adopted child or legitimate stepchild of former members:

(A) For medical benefits under the Basic Program, January 1, 1967.

(B) Ineligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(iii) Illegitimate child of a male or female member or former member whose paternity/maternity has been determined judicially and the member or former member has been directed to support the child, for:

(A) All benefits for which otherwise entitled, August 31, 1972.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to dependent children of members only, August 31, 1972.

(iv) Illegitimate child of:

(A) A male member or former member whose paternity has not been determined judicially;

(B) A female member or former member who resides with, or in a home provided by the member or former member, or who was residing in a home provided by the member or former member at the time of the member's or former member's death, and who is or continues to be dependent on the member for over one-half of his or her support, or was so dependent on the member or former member at the time of death;

(C) A spouse of a member or former member who resides with or in a home provided by the member or former member, or the parent who is the spouse of the member or former member or was the spouse of a member or former member at the time of death, and who is and continues to be dependent upon the member or former member for over one-half or his or her support, or was so dependent on the member or former member at the time of death; for:

(*1*) All benefits for which otherwise eligible, January 1, 1969.

(*2*) Program for Persons with Disabilities (formerly known as the Program for the handicapped) limited to dependent children of members only, January 1, 1969.

(v) An adopted child, 21 years or older, with an incapacitating condition that existed before the age of 21, who was adopted after the age of 21, who has been residing with a member or former member for at least 12 months prior to the date of the adoption and is, or continues to be, dependent upon the member or former member for over one-half of his or her support, or was so dependent upon the former member at the time of the former member's death; for:

(A) All benefits for which otherwise entitled, October 23, 1992.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to dependents of members only, October 23, 1992.

(6) Beginning dates of eligibility for children of certain deceased reservists who meet the requirements of paragraph (b)(2)(ii)(H)(*3*) of this section, excluding incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section, for:

(i) Benefits under the Basic program, November 14, 1986.

(ii) Not eligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(7) Beginning dates of eligibility for children who are victims of abuse who meet the requirements of paragraph (b)(2)(iii) of this section, including incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section for:

(i) Medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(ii) Medical and dental care for problems associated with the physical or emotional abuse under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped) for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(8) Beginning dates of eligibility for incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(*2*) of this section, whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education, and, are or were at the time of the member's or former member's death, dependent on the member or former member for over one-half of their support for:

(i) All benefits for which otherwise entitled; October 23, 1992.

(ii) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to children of members only, October 23, 1992.

(9) Beginning dates of eligibility for a child who meets the requirements of paragraph (b)(2)(ii)(H)(*4*) and:

(i) Has been placed in custody by a court:

(A) All benefits for which entitled, July 1, 1994.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to children of members only, July 1, 1994.

(ii) Has been placed in custody by a recognizing adoption agency:

(A) All benefits for which entitled, October 5, 1994.

(B) Program for Persons with Disabilities (formerly known as the Program for the Handicapped) benefits limited to children of members only, October 5, 1994.

(10) Beginning dates of eligibility for a retiree for:

(i) Medical benefits under the Basic Program January 1, 1967.

(ii) Retirees and their dependents are not eligible for benefits under the Program for Persons with Disabilities (formerly known as the Program for the Handicapped).

(d) *Dual eligibility.* Dual eligibility occurs when a person is entitled to benefits from two sources. For example, when an active duty member is also the dependent of another active duty member, a retiree, or a deceased active duty member or retiree, dual eligibility, that is, entitlement to direct care from the Uniformed Services medical care system and CHAMPUS is the result. Since the active duty status is primary, and it is the intent that all medical care be provided an active duty member through the Uniformed Services medical care system, CHAMPUS eligibility is terminated as of 12:01 a.m. on the day following the day the dual eligibility begins. However, any dependent children in a marriage of two active duty persons or of an active duty member and a retiree, are CHAMPUS eligible in the same manner as dependent children of a marriage involving only one CHAMPUS sponsor. Should a spouse or dependent who has dual eligibility leave active duty status, that person's CHAMPUS eligibility is reinstated as of 12:01 a.m. of the day active duty ends, if he or she otherwise is eligible as a dependent of a CHAMPUS sponsors.

Note to paragraph (d): No CHAMPUS eligibility arises as the result of the marriage of two active duty members.

(e) *Eligibility under the Transitional Assistance Management Program (TAMP).* Transitional health care benefits under CHAMPUS are authorized for the applicable time period described as follows for:

(1) Up to thirty (30) days or until again covered by an employer-sponsored health plan, whichever occurs earlier, following release from active duty for:

(i) Activated Guard/Reserve and their dependents;

(ii) Involuntary stop-loss and their dependents; and

(iii) Voluntary stop-loss and their dependents; and

(iv) Members who accepted Voluntary Separation Incentives (VSI).

(2) Sixty (60) days for regular DoD military and their dependents when the sponsor is involuntarily separated with less than six years of active service. Involuntary separation must occur during the five year period beginning October 1, 1990.

(3) One hundred twenty (120) days for regular military and their dependents when the sponsor is involuntarily separated with six or more years of active service. Involuntary separation must occur during the five year period beginning October 1, 1990. Each branch of service will determine eligibility, including dates, for its members and their dependents and provide data to DEERS.

(f) *Changes in status which result in termination of CHAMPUS eligibility.* Changes in status which result in a loss of CHAMPUS eligibility as of 12:01 a.m. of the day following the day the event occurred, unless otherwise indicated, are as follows:

(1) *Changes in the status of a member.* (i) When an active duty member's period of active duty ends, excluding retirement or death.

(ii) When an active duty member is placed on desertion status (eligibility is reinstated when the active duty member is removed from desertion status and returned to military control).

Note to paragraph (f)(1): A member serving a sentence of confinement in conjunction with a sentence of punitive discharge is still considered on active duty until such time as the discharge is executed.

(2) *Changes in the status of a retiree.* (i) When a retiree ceases to be entitled to retired, retainer, or equivalent pay for any reason, the retiree's dependents lose their eligibility unless the dependent is otherwise eligible (e.g., some former spouses, some dependents who are victims of abuse and some incapacitated children as outlined in paragraph (b)(2)(ii)(H)(*2*) of this section).

(ii) A retiree also loses eligibility when no longer entitled to retired, retainer, or equivalent pay.

Note to paragraph (f)(2): A retiree who waives his or her retired, retainer or equivalent pay is still considered a retiree for the purposes of CHAMPUS eligiblity.

(3) *Changes in the status of a dependent.* (i) Divorce, except for certain classes of former spouses as provided in paragraph (b)(2)(i) of this section and the member or former member's own children (i.e., legitimate, adopted, and judicially determined illegitimate children).

Note to paragraph (f)(3)(i): An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the divorce becomes final.

(ii) Annulment, except for certain classes of former spouse as provided in paragraph (b)(2)(i) of this section and the member or former member's own children (i.e., legitimate, adopted, and judicially determined illegitimate children).

Note to paragraph (f)(3)(ii): An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the annulment becomes final.

(iii) Adoption, except for adoptions occurring after the death of a member or former member.

(iv) Marriage of a child, except when the marriage is terminated by death, divorce, or annulment before the child is 21 or 23 if an incapacitated child as provided in paragraph (b)(2)(ii)(H)(*2*) of this section.

(v) Marriage of a widow or widower, except for the child of the widow or widower who was the stepchild of the deceased member or former member at the time of death. The stepchild continues CHAMPUS eligibility as other classes of dependent children.

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not available).

(vii) Attainment of age 65, except for dependents of active duty member's and beneficiaries not eligible for Part A Medicare. CHAMPUS eligibility is lost at 12:01 a.m. on the last day of the month preceding the month of attainment of age 65.

Note to paragraph (f)(3)(vii): If the person is not eligible for Part A of Medicare, he or she must file a Social Security Administration "Notice of Disallowance" certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued. Individuals who lose their CHAMPUS eligibility because they have reached the age limitation or were eligible for Part A, Medicare cannot be reinstated under CHAMPUS. Additionally, individuals entitled only to supplementary medical insurance (Part B) of Medicare, but not Part A, or Part A through the Premium HI provisions (provided for under the 1972 Amendments to the Social Security Act, retain eligibility under CHAMPUS (refer to § 199.8 of this part for additional information when a double coverage situation is involved).

(vii) *End stage renal disease.* Medicare coverage begins with the third month after the month a course of maintenance dialysis begins, or with the first month of dialysis if the individual participates in a self-dialysis training program during the 3-month waiting period, or with the month in which a patient enters the hospital to prepare to receive a transplant (providing the transplant is performed within the following 2 months). If a transplant is delayed more than 2 months after the preparatory hospitalization, Medicare coverage will begin with the second month prior to the month of transplant. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a person because of chronic renal disease unless the following conditions have been met. CHAMPUS eligibility will continue if:

(A) The individual is under 65 years old;

(B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426–1(a);

(C) The individual is enrolled in Part B of Medicare; and

(D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Eligibility Enrollment System (DEERS).

(ix) *Individuals with certain disabilities.* Each case relating to Medicare eligibility resulting from being disabled requires individual investigation. All beneficiaries except dependents of active duty members lose their CHAMPUS eligibility when Medicare coverage becomes available to a disabled person unless the following conditions have been met. CHAMPUS eligibility will continue if:

(A) The individual is under 65 years old;

(B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426(b)(2);

(C) The individual is enrolled in Part B of Medicare; and

(D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Eligibility Enrollment System (DEERS).

(x) Disabled students, that is children age 21 or 22, who are pursuing a full-time course of higher education and who, either during the school year or between semesters, suffer a disabling illness or injury with resultant inability to resume attendance at the institution remain eligibility for CHAMPUS medical benefits for 6 months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, CHAMPUS benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in a full time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status does not have eligibility and may not qualify for eligibility under the requirements related to mental or physical incapacity as described in paragraph (b)(2)(ii)(H)(*2*) of this section.

(g) *Reinstatement of CHAMPUS eligibility.* Circumstances which result in reinstatement of CHAMPUS eligibility are as follows:

(1) *End stage renal disease.* Medicare coverage ceases for end stage renal disease patients with the 36th month after the month in which a successful kidney transplant takes place or with the 12th month after the month in which the course of maintenance dialysis ends. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(viii) of the section, at this point CHAMPUS eligibility resumes if the person is otherwise still eligible. He or she is required to take action to be reinstated as a CHAMPUS beneficiary and to obtain a new identification card.

(2) *Disability.* Some disabilities are permanent, others temporary. Each case must be reviewed individually. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(ix) of this section, when disability ends and Medicare eligibility ceases, CHAMPUS eligibility resumes if the person is otherwise still eligible. Again, he or she is required to take action to obtain a new CHAMPUS identification card.

(h) *Determination of eligibility status.* Determination of an individual's eligibility as a CHAMPUS beneficiary is the primary responsibility of the Uniformed Service in which the member or former member is, or was, a member, or in the case of dependents of a NATO military member, the Service that sponsors the NATO member. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the results of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(i) *Procedures for determination of eligibility.* Procedures for the determination of eligibility are prescribed within the Department of Defense Instruction 1000.13 available at local military facilities personnel offices.

(j) *CHAMPUS procedures for verification of eligibility.* (1) Eligibility for CHAMPUS benefits will be verified through the Defense Enrollment Eligibility Reporting System (DEERS) maintained by the Uniformed Services, except for abused dependents as set forth in paragraph (b)(2)(iii) of this section. It is the responsibility of the CHAMPUS beneficiary, or parent, or legal representative, when appropriate, to provide the necessary evidence required for entry into the DEERS file to establish CHAMPUS eligibility and to ensure that all changes in status that may affect eligibility be reported immediately to the appropriate Uniformed Service for action.

(2) Ineligibility for CHAMPUS benefits may be presumed in the absence of prescribed eligibility evidence in the DEERS file.

(3) The Director, OCHAMPUS, shall issue guidelines as necessary to implement the provisions of this section.

4. Section 199.4 is amended by revising paragraphs (e)(5)(iii)(B), (f)(1), (f)(2) heading and introductory text, (f)(2)(ii), (f)(2)(iii), (f)(2)(iv), (f)(3) heading and introductory text, (f)(3)(i), (f)(3)(iii), (f)(4) introductory text and (f)(4)(ii) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) In most instances, for costs related to kidney transplants, Medicare (not CHAMPUS) benefits will be applicable. If a CHAMPUS beneficiary participates as a kidney donor for a Medicare beneficiary, Medicare will pay for expenses in connection with the kidney transplant to include all reasonable

preparatory, operation and postoperation recovery expenses associated with the donation (postoperative recovery expenses are limited to the actual period of recovery). (See § 199.3 of this part for additional information on end stage renal disease.)

* * * * *

(f) * * *

(1) *General.* As stated in paragraph (a) of this section, the Basic Program is essentially a supplemental program to the Uniformed Services direct medical care system. To encourage use of the Uniformed Services direct medical care system wherever its facilities are available and appropriate, the Basic Program benefits are designed so that it is to the financial advantage of a CHAMPUS beneficiary or sponsor to use the direct medical care system. When medical care is received from civilian sources, a CHAMPUS beneficiary is responsible for payment of certain deductible and cost-sharing amounts in connection with otherwise covered services and supplies. By statute, this joint financial responsibility between the beneficiary or sponsor and CHAMPUS is more favorable for dependents of members than for other classes of beneficiaries.

(2) *Dependents of members of the Uniformed Services.* CHAMPUS beneficiary or sponsor liability set forth for dependents of members is as follows:

* * * * *

(ii) *Inpatient cost-sharing.* Dependents of members of the Uniformed Services are responsible for the payment of the first $25 of the allowable institutional costs incurred with each covered inpatient admission to a hospital or other authorized institutional provider (refer to § 199.6 of this part), or the amount the beneficiary or sponsor would have been charged had the inpatient care been provided in a Uniformed Service hospital, whichever is greater.

(iii) *Outpatient cost-sharing.* Dependents of members of the Uniformed Services are responsible for payment of 20 percent of the CHAMPUS-determined allowable cost or charge beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

(iv) *Ambulatory surgery.* Notwithstanding the above positions pertaining to outpatient cost-sharing, dependents of members of the Uniformed Services are responsible for payment of $25 for surgical care that is authorized and received while in an outpatient status and that has been designated in guidelines issued by the Director, OCHAMPUS, or a designee.

* * * * *

(3) *Former members and dependents of former members.* CHAMPUS beneficiary liability set forth for former members and dependents of former members is as follows:

(i) *Annual fiscal year deductible for outpatient services or supplies.* The annual fiscal year deductible for otherwise covered outpatient services or supplies provided former members and dependents of former members is the same as the annual fiscal year outpatient deductible applicable to dependents of active duty members of rank E–5 or above (refer to paragraph (f)(2)(i) (A) or (B) of this section).

* * * * *

(iii) *Outpatient cost-sharing.* Former members and dependents of former members are responsible for payment of 25 percent of the CHAMPUS-determined allowable costs or charges beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

* * * * *

(4) *Former spouses.* CHAMPUS beneficiary liability for former spouses eligible under the provisions set forth in § 199.3 of this part is as follows:

* * * * *

(ii) *Inpatient cost-sharing.* Eligible former spouses are responsible for payment of cost-sharing amounts the same as those required for former members and dependents of former members.

* * * * *

6. Section 199.8 is amended by revising paragraphs (a) and (d)(1) to read as follows.

§ 199.8 Double coverage.

(a) *Introduction.* (1) In enacting CHAMPUS legislation, Congress clearly has intended that CHAMPUS be the secondary payer to all health benefit and insurance plans. 10 U.S.C. 1079(j)(1) specifically provides:

> A benefit may not be paid under a plan [CHAMPUS] covered by this section in the case of a person enrolled in or covered by any other insurance, medical service, or health plan to the extent that the benefit also is a benefit under the other plan, except in the case of a plan [Medicaid] administered under title 19 of the Social Security Act (42 U.S.C. 1396, *et seq.*).

(2) The provision in paragraph (a)(1) of this section is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(d). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges.

* * * * *

(d) * * *

(1) *CHAMPUS and Medicare.* Under certain circumstances a CHAMPUS beneficiary can also be eligible for Medicare. In any double coverage situation involving Medicare, Medicare is always the primary payer. When Part A, "Hospital Insurance," of Medicare is involved, the Medicare "lifetime reserve" benefit must be used before CHAMPUS benefits may be used. The procedures to be followed for these circumstances are as follows.

(i) *Dependents of active duty members.* For dependents of active duty members, payment will be determined in accordance with paragraph (c) of this section.

(ii) *Medicare end stage renal disease beneficiaries.* In any case involving a Medicare end stage renal disease beneficiary as provided in § 199.3(f)(3)(viii), CHAMPUS secondary payments will be determined in accordance with paragraph (c) of this section.

(iii) *Medicare disabled beneficiaries.* In any case involving a Medicare disabled beneficiary as provided in § 199.3(f)(3)(ix), CHAMPUS payment is determined in accordance with paragraph (c) of this section.

* * * * *

7. Section 199.20 is amended by adding paragraph (d)(1)(iv) to read as follows.

§ 199.20 Continued Health Care Benefit Program (CHCBP).

* * * * *

(d) * * *

(1) * * *

(iv) An unmarried person who:

(A) is placed in the legal custody of a member of former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child; and

(B) Either:

(*1*) Has not attained the age of 21 if not in school or age 23 if enrolled in a full time course of study at an institution of higher learning; or

(*2*) Is incapable of self-support because of a mental or physical incapacity which occurred while the person was considered a dependent of the member or former member; and

(C) Is dependent on the member or former member for over one-half of the person's support; and

(D) Resides with the members or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation; and

(E) Is not a dependent of a member or former member as described in § 199.3 (b)(2).

Dated: December 15, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33111 Filed 12–22–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 62 and 66

[USCG 97 3112, CGD 97–018]

RIN 2115–AF45

Merger of the Uniform State Waterways Marking System With the United States Aids to Navigation System

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a five year phased-in merger of the Uniform State Waterway Marking System with the United States Aids to Navigation System. This proposed merger would eliminate distinctions between these two systems and create safer, less confusing waterways.

DATES: Comments are requested by February 23, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–97–3112], U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone (202) 366–9329 or Dan Andrusiak, Short Range Aids to Navigation Division, USCG Headquarters, Telephone: (202) 267–0327.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages your participation in this rulemaking by the submission of written data, views, or arguments. Your comments should include your name and address, and identify this rulemaking [USCG–97–3112] and the specific section of this notice of proposed rulemaking to which each comment applies, along with the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. You may request a public hearing by submitting a request to the address under **ADDRESSES**. The request should include the reasons a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Uniform State Waterways Marking System (USWMS), 33 CFR 66.10, prescribes regulatory markers and aids to navigation that may mark navigable waters that the Commandant designates as state waters in accordance with 33 CFR 66.05–5. The USWMS may also mark the non-navigable internal waters of a state.

The United States Aids to Navigation System (USATONS), 33 CFR 62, prescribes regulatory markers and aids to navigation that mark navigable waters of the United States. Navigable waters, defined by 33 CFR 2.02–25, include territorial seas and internal waters that have been or can be used for interstate commerce, either by themselves or in connection with other waterways.

Section 66.10–1(b), allows the use of USATONS on state and non-navigable internal waters, and many states already use the USATONS instead of the USWMS.

In 1992, the National Association of State Boating Law Administrators (NASBLA) passed a resolution requesting that the Coast Guard:

1. Change the meaning of the red and white striped buoy from the USWMS meaning of obstruction to the USATONS meaning of safewater;
2. Change the black USWMS buoy to the green USATONS buoy, and
3. Use a phased-in implementation period for these changes.

NASBLA requested these changes because they believe the current USWMS markings, which are different from the USATONS markings, confuse boaters and could cause casualties.

In 1993, NASBLA's Law Enforcement & Uniform Boating Laws Committee conducted a survey concerning the differences between the USWMS and the USATONS. The survey focused on the red and white striped buoy and the green versus black buoy. Of the 42 states that responded to the survey, 11 states indicated that they use the red and white striped buoy as defined by the USWMS, 15 states indicated that they use the USWMS's black buoy, and 35 states indicated that the USWMS should reflect the same characteristics as the USATONS.

On December 29, 1995, the Coast Guard published an advanced notice of proposed rulemaking (CGD 94–091) (60 FR 67345) to gauge public opinion toward conforming the USWMS with the USATONS. On March 27, 1996, a notice of proposed rulemaking was published (61 FR 13472) that, among other things, proposed eliminating the USWMS. The Coast Guard received adverse comments from ten states. Many of the comments stated concerns that elimination of the USWMS would eliminate regulatory markers and would cause the states to bear the costs of purchasing aids and revising boating manuals. As a result of these comments, the Coast Guard removed the proposal to eliminate the USWMS from the final rule. The Coast Guard then contacted the NASBLA and each state that commented and discussed their concerns.

Apart from the two distinctions explained above, a Coast Guard comparison of the USWMS and the USATONS showed that almost all of the requirements of the USWMS are contained in the USATONS. The differences between the two systems are:

1. The USMWS has the additional requirement of orange bands on regulatory buoys;

2. The USWMS allows for lights on mooring buoys whereas the USATONS is silent; and,

3. The USWMS uses the cardinal system of marking obstructions and the USATONS uses the lateral system of marking obstructions.

By adding to the USATONS the requirement for orange bands on regulatory buoys, by allowing lights on mooring buoys, and by allowing a phased-in implementation period for the marking of obstructions with the USATONS lateral system, the two systems could be merged. The Coast Guard proposes to make these changes to the USATONS, provide a five year phased-in implementation period, and merge the USWMS into the USATONS.

If, however, you think that a different phase-in period is necessary, please submit a comment (see **ADDRESSES**) explaining why a different phase-in period is necessary and a proposed length for this phase-in period.

Discussion of Proposed Rule

Regulatory and Information Markers

The USATONS provides a system for regulatory markers nearly identical to the USWMS. The only USWMS requirement not prescribed by the USATONS is that buoys have two horizontal orange bands, one just above the water line and one at the top of the buoy. The Coast Guard proposes to amend 33 CFR 62.33 to add the USWMS requirement of two horizontal orange bands to the USATONS.

Channel Markers

The USWMS black buoy would be replaced, via a phased-in process, with the green buoy required by the USATONS. The phase-in process would be linked to the aid's lifecycle to avoid unnecessary replacement costs to the states.

Red-and-White Striped Buoy

The meaning of the red-and-white striped buoy would change from the USWMS "do not pass between the buoy and the nearest shore" to the USATONS "safewater all around." Obstructions now marked with the USWMS red-and-white striped buoy could be marked, via a phase-in process, with the USATONS' sidemark prescribed in 33 CFR 62.25(b), or with an isolated danger mark prescribed in 33 CFR 62.29.

Cardinal Marks

In the USWMS, white buoys with a red top band mean that the mariner can pass safely south or west of the buoy, and white buoys with a black top band mean that the mariner can pass safely north or east of the buoy. The USATONS does not contain cardinal marks, and areas presently marked with these USWMS aids could be replaced with the USATONS isolated danger mark prescribed in 33 CFR 62.29, or a side mark prescribed in 33 CFR 62.25(b).

Mooring Buoys

Unlike the USWMS, the USATONS is silent on prescribing lights on mooring buoys. The Coast Guard proposes to amend 33 CFR 62.35 to allow for slow flashing, white lights on mooring buoys.

Numbers, Letters, or Words on Markers

The guidance in the USATONS, 33 CFR 62.43 (a) & (b), is similar to that in the USWMS 33 CFR 66.10–25, so the merging of the two systems would not affect numbers, letters, or words on markers.

Reflectors and Retroreflective Materials

The USATONS guidance for the uses of retroreflective material, 33 CFR 62.43(c), is less restrictive than the USWMS guidance found in 33 CFR 66.10–30, so the merger would not require a change in the use of reflectors or retroflective material.

Navigation Lights

The USATONS requirements for the use of navigation lights, 33 CFR 62.45, is similar to that of the USWMS found in 33 CFR 66.10–35, so the merger would not affect the use of navigation lights.

Size, Shape, Material, and Construction of Markers

No specific guidance for size, shape, material and construction of markers exists in the USATONS. The USWMS wording on these items, found in 33 CFR 66.10–20, is not necessary and is not proposed for insertion into the USATONS.

Ownership Identification

The USWMS, in 33 CFR 66.10–40, allows for the discretionary use of ownership identification on aids to navigation. The USATONS does not prohibit use of ownership identification. Ownership identification, however, should not be placed on an aid in a way that would change the meaning of the aid to navigation. The Coast Guard proposes to add a section to the USATONS starting language to this effect.

Changes to 33 CFR Subpart 66.05

The merging of the USWMS with the USATONS would also require conforming editorial corrections to Subpart 66.05 entitled, "State Aids to Navigation," to reflect the proposed changes.

Changes to 33 CFR Subpart 66.10

Sections 66.10–5, 66.10–10, 66.10–20, 66.10–25, 66.10–30, 66.10–40, and 66.10–45 are proposed for removal because the provisions of these sections are contained in the USATONS, or are proposed for insertion into the USATONS.

The only sections that will remain in subpart 66.10 will be the general section, the aids to navigation section, and that portion of the navigation lights section which refers to lights on cardinal marks. These sections may be used until the end of the five year implementation period.

General, Section 66.10–1

This section will be revised to reflect the merger of the two systems, the five year implementation period, and to remove references to deleted sections.

Aids to Navigation, Section 66.10–15

This section provides information concerning the marking of channels and the cardinal system of marking, and as such will remain until the end of the phase-in period.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Merging the USWMS with the USATONS, via a phased-in implementation period, will not impose an increased monetary burden on the States currently using the USWMS. There is currently no price difference between aids with the USWMS markings and aids with USATONS markings. Further, because the replacement of the aid is linked to its lifecycle, purchase of a USATON aid is not required until the end of the USWMS aid's lifecycle, any additional costs are eliminated.

Consequently, the Coast Guard believes that this rulemaking will not impose any additional costs on the states. If, however, you believe that this proposal will have an economic impact, please submit a comment (see **ADDRESSES**) explaining why you think this proposal will have economic impact, and explain any alternatives you believe would eliminate the economic impact of this proposal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considers whether this proposal, if adopted, will have a significant impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The USWMS is a system that regulates state aids to navigation. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal would have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal would economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Mr. Dan Andrusiak, Short Range Aids to Navigation Division, USCG Headquarters, Telephone: (202) 267–0327.

Collection of Information

This proposal contains no increase in collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Pursuant to 14 U.S.C. 85, the Coast Guard, as delegated by the Secretary, Department of Transportation, has responsibility to create all regulations concerning aids to navigation for all waters subject to the jurisdiction of the United States. This proposal does not affect the states ability to prescribe regulations for its own internal non-navigable waters.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2.e(23), (34)(a), and (34)(i) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Merging the USWMS with the USATONS would have no environmental implications. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 62

Navigation (water).

33 CFR part 66

Intergovernmental relations, Navigation (water). For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR parts 62 and 66 as follows:

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for part 62 continues to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

§ 62.1 [Amended]

2. In § 62.1, redesignate paragraph (b) as paragraph (b)(1), and add a paragraph (b)(2) to read as follows:

§ 62.1 Purpose.

* * * * *

(b) * * *

(2) The regulations found in 33 CFR subpart 66.10 expire on [Insert date five years from the date of publication in the **Federal Register** of the final rule.], at which time the provisions of this part will apply.

* * * * *

§ 62.21 [Amended]

3. In § 62.21(a), add after the words "The navigable waters of the United States", the words ", and non-navigable state waters after [Insert date 5 years from publication in the **Federal Register** of the final rule.],"

4. In § 62.33, redesignate the introductory text as paragraph (a), redesignate existing paragraphs (a) through (d) as (a)(1) to (a)(4), and add a new paragraph (b) to read as follows:

§ 62.33 Information and regulatory marks.

* * * * *

(b) When a buoy is used as an information or regulatory mark it shall be white with two horizontal orange bands of international orange placed completely around the buoy circumference. One band shall be at the top of the buoy body, with a second band placed just above the waterline of the buoy so that both bands are clearly visible.

§ 62.35 [Amended]

5. In § 62.35 add the following words to the end of the text: "Lighted mooring buoys may display a slow flashing white light."

6. Add § 62.54 to Supart B to read as follows:

§ 62.54 Ownership identification.

Ownership identification on private or state aids to navigation is permitted so long as it does not change or hinder an understanding of the meaning of the aid to navigation.

PART 66—PRIVATE AIDS TO NAVIGATION

7. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

§ 66.01–10 [Amended]

8. In § 66.01–10 delete paragraph (b) and remove the paragraph designation (a).

9. Revise § 66,05–1 to read as follows:

§ 66.05–1 Purpose.

The purpose of the regulations in this subpart is to prescribe the conditions under which state governments may regulate aids to navigation owned by state or local governments, or private parties. With the exception of the provisions of subpart 66.10, which are valid until [Insert date five years from date of publication in the **Federal Register** of the final rule.], aids to navigation must be in accordance with the United States Aids to Navigation System in part 62 of this subchapter.

10. In § 66.05–5, revise the section heading and paragraph (b) to read as follows:

§ 66.05–5 Definitions.

* * * * *

(b) The term *Uniform State Waterway Marking System* (USWMS) means the system of private aids to navigation which may be operated in State waters.

Subpart 66.10, which describes the USWMS, expires on [Insert date five years from the date of publication in the **Federal Register** of the final rule.].

* * * * *

§ 66.05–20(c)(3) [Amended]

11. In § 66.05–20(c)(3) add to the beginning of the paragraph the words "If prior to [Insert date five years from the date of publication in the **Federal Register** of the final rule.]," and uncapitalized the word "Specification".

12. Revise § 66.10–1 to read as follows:

§ 66.10–1 General.

(a) Until [Insert date five years from date of publication in the **Federal Register** of the final rule.], the Uniform State Waterway Marking System's (USWMS) aids to navigation provisions for marking channels and obstructions may be used in those navigable waters of the U.S. that have been designated as state waters for private aids to navigation and in those internal waters that are non-navigable waters of the U.S. All other provisions for the use of regulatory markers and other aids to navigation shall be in accordance with the United States Aid to Navigation System, described in part 62 of this subchapter.

(b) The USATONS may be used in all U.S. waters under state jurisdiction, including non-navigable state waters.

§ 66.10–5 [Removed]

13. Remove § 66.10–5.

§ 66.10–10 [Removed]

14. Remove § 66.10–10.

§ 66.10–20 [Removed]

15. Remove § 66.10–20.

§ 66.10–25 [Removed]

16. Remove § 66.10–25.

§ 66.10–30 [Removed]

17. Remove § 66.10–30.

18. Revise § 66.10–35 to read as follows:

§ 66.10–35 Navigation lights.

(a) A red light shall only be used on a solid colored red buoy. A green light shall only be used on a solid colored black or a solid colored green buoy. White lights shall be used for all system buoy other buoys. When a light is used on a cardinal or a vertically stripped white and red buoy it shall always to quick flashing.

(b) [Reserved]

§ 66.10–40 [Removed]

18. Remove § 66.10–40.

§ 66.10–45 [Removed]

19. Remove § 66.10–45.

Dated: December 17, 1997.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 97–33466 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL158b; FRL–5900–4]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve a revision to the Illinois State Implementation Plan (SIP) for the general conformity rules. The general conformity SIP revisions enable the State of Illinois to implement the Federal general conformity requirements in the nonattainment and maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

DATES: Written comments on this proposed action must be received by January 22, 1998.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the request and the USEPA's analysis are available for inspection at the following address: (Please telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 office.) USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Patricia Morris (312) 353–8656.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 5, 1997.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

[FR Doc. 97–33323 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA179–0052b; FRL–5911–3]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from miscellaneous metal parts and products coating industry. The intended effect of proposing approval of Mojave Desert Air Quality Management District Rule 1115 is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 22, 1998.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revision is also available for inspection at the following locations:

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (Air-4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION: This document concerns Mojave Desert Air Quality Management District Rule 1115, Miscellaneous, Metal Part and Products Coating Operations, submitted to EPA on July 23, 1996 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 27, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–33318 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–44–1–6866(b); FRL–5930–2]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Contingency Measures for Colorado Springs and Fort Collins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Colorado with a letter dated February 18, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for carbon monoxide (CO) for the Colorado Springs and Fort Collins areas in Colorado designated as nonattainment for the CO National Ambient Air Quality Standards (NAAQS).

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 22, 1998.

ADDRESSES: Written comments on this action should be addressed to Jeff Houk at the EPA Regional Office listed below. Copies of the State's submittal and documents relevant to this proposed rule are available for inspection during normal business hours at the following location: Air Programs, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Jeff Houk at (303) 312–6446.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: September 28, 1995.

Editorial note: This document was received at the Office of the Federal Register December 17, 1997.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 97–33319 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–5939–1]

Federal Register Notice of Stakeholders Meeting on Revisions to the Underground Injection Control Regulations for Class V Injection Wells

AGENCY: Environmental Protection Agency.

ACTION: Announcement of stakeholders meetings.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold public meetings on January 20, 1998 in Washington, DC and January 27 in Chicago, IL. The purpose of these meetings will be to gather information and collect opinions from parties who will be affected by or are otherwise interested in the Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells. Typically, Class V wells are shallow wells which inject a variety of fluids directly below the land surface. The Class V wells under consideration for new requirements include motor vehicle waste disposal wells, cesspools, and industrial waste disposal wells in ground water-based source water protection areas. EPA will consider the comments and views expressed in these meetings in developing the proposed regulation. EPA is especially interested in seeking input from small entities and small entity representatives. EPA encourages the full participation of all stakeholders throughout this process.

DATES: The stakeholder meetings regarding the Revisions to the Underground Injection Control Regulations for Class V Injection Wells will be held on:

1. January 20, 1998, 9:30 a.m. to 3:30 p.m. EST in Washington, DC
2. January 27, 1998, 9:30 am to 3:30 pm EST in Chicago, IL

ADDRESSES: To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Jennifer Greenamoyer of EPA's Office of Ground Water and Drinking Water at (202) 260–7829. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines will be allocated on the basis of first-reserved, first served. Members of the public who cannot participate via conference call or in person may submit comments in writing by January 30, 1998 to Jennifer Greenamoyer, U.S. Environmental Protection Agency, 401 M Street, S.W. (4606), Washington, DC 20460 or E-mail to greenamoyer.jennifer@epamail.epa.gov. The stakeholder meetings will be held in the following locations:

1. Washington Information Center, 401 M Street, S.W., Room 3, Washington, DC 20460
2. EPA, Region V, Ralph Metcalfe Federal Building, Lake Michigan Room (12th Floor), 77 West Jackson Blvd., Chicago, IL 60604

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to this rulemaking, contact: Jennifer Greenamoyer, U.S. EPA at (202) 260–7829.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is developing revisions to the Underground Injection Control

Regulations for Class V Injection Wells (40 CFR parts 144 and 146) to address the risk posed by Class V injection wells to drinking water supplies. EPA is considering changes to the Class V Underground Injection Control regulations that would add new requirements for relatively high-risk Class V wells in areas near drinking water supplies. Under consideration is a ban on Class V motor vehicle waste disposal wells and large-capacity cesspools located in ground water-based source water protection areas being delineated by States under the 1996 Amendments to the Safe Drinking Water Act. In addition, fluids released in Class V industrial waste disposal wells in ground water-based source water protection areas could be required to meet certain standards of quality.

EPA is considering proposing these new requirements because available information shows that Class V motor vehicle waste disposal wells, cesspools, and industrial waste disposal wells pose a high risk of ground water contamination. Targeting the requirements to those wells near ground water-based drinking water supplies would achieve substantial protection of underground sources of drinking water. The rule addressed in this notification is being developed in response to a January 28, 1997 consent decree with the Sierra Club Legal Defense Fund and has a court deadline of June 18, 1997 for proposal and July 31, 1999 for final.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–33325 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42198A; FRL–5762–9]

RIN 2070–AC76

Testing Consent Order and Export Notification Requirements for 1,1,2-Trichloroethane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 26, 1996, EPA proposed a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. Included as one of these chemical substances was 1,1,2-trichloroethane (CAS No. 79–00–5). EPA invited the submission of proposals for enforceable consent agreements (ECAs) for pharmacokinetics testing of the HAPs chemicals and received a proposal for testing 1,1,2-trichloroethane from the HAP Task Force. In a previous document EPA solicited interested parties to monitor or participate in negotiations on an ECA for 1,1,2-trichloroethane. EPA is proposing that if an ECA is successfully concluded for 1,1,2-trichloroethane, then the subsequent publication of the TSCA section 4 testing consent order (Order) in the **Federal Register** would add 1,1,2-trichloroethane to the table of testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers. As a result of the proposed addition of 1,1,2-trichloroethane, all exporters of 1,1,2-trichloroethane, including persons who do not sign the ECA, would be subject to export notification requirements under section 12(b) of TSCA.

DATES: Written comments on this proposed rule must be received by EPA on or before January 27, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42198A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For additional information:* Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Information and Testing Branch (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1997/).

II. Development of Enforceable Consent Agreement for 1,1,2-Trichloroethane

1,1,2-Trichloroethane was one of the chemicals proposed for health effects testing in a proposed HAPs test rule under section 4(a) of TSCA in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1). In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) testing for the chemicals included in the proposed HAPs test rule. These proposals could provide the basis for negotiation of ECAs, which, if successfully concluded, would be incorporated into Orders. The PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. A proposal for PK testing for 1,1,2-trichloroethane was submitted by the HAP Task Force to EPA on November 25, 1996. The Agency reviewed this alternative testing proposal and prepared a preliminary technical analysis of the proposal which it sent to the HAP Task Force on June 26, 1997. The HAP Task Force responded on July 31, 1997, that it has a continued interest in pursuing the ECA process for 1,1,2-trichloroethane. EPA has decided to proceed with the ECA process for 1,1,2-trichloroethane. EPA has published a document soliciting interested parties to monitor or participate in negotiations on an ECA for PK testing of 1,1,2-trichloroethane in the **Federal Register** of December 19, 1997. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

If the ECA for 1,1,2-trichloroethane is successfully concluded, and an Order is published in the **Federal Register**, testing to develop needed data would be required of those persons that have signed the agreement. Section 12(b) of TSCA provides that if any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 of TSCA, that person shall notify EPA of this export or intent to export. This requirement applies to data obtained from either a test rule or an ECA and Order under the authority of section 4 of TSCA. EPA intends the ECA to include the export notification requirements of section 12(b) of TSCA, codified at 40 CFR part 707, subpart D.

III. Publication of Testing Consent Order

EPA is proposing that if an ECA is successfully concluded for 1,1,2-trichloroethane, the publication of the Order in the **Federal Register** would add 1,1,2-trichloroethane to the table in 40 CFR 799.5000, Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

Exporters of chemicals listed at 40 CFR 799.5000 are required under 40 CFR 799.19, Chemical imports and exports, to comply with the export notification requirements of 40 CFR part 707, subpart D. This proposed rule, when finalized, would amend § 799.5000, and, in accordance with 40 CFR 799.19, all exporters of 1,1,2-trichloroethane, including persons who do not sign the ECA, would be subject to export notification requirements under 40 CFR part 707, subpart D.

Under 40 CFR 707.65(a)(2)(ii), a person who exports or intends to export for the first time to a particular foreign country a chemical subject to TSCA section 4 data requirements must submit a one-time notice to EPA identifying the chemical and country of import. A single notice can cover multiple chemicals and multiple countries. If additional importing countries are subsequently added, additional export notices must be submitted to EPA. Other procedures for submitting export notifications to EPA are described in 40 CFR 707.65.

Under 40 CFR 707.67, the contents of the export notification from the exporter or intended exporter to EPA shall include:

1. The name of the chemical (i.e., in this case, 1,1,2-trichloroethane).
2. The name and address of the exporter.
3. The country(ies) of import.
4. The date(s) of export or intended export.
5. The section of TSCA under which EPA has taken action (i.e., in this case, section 4 of TSCA).

Following receipt of the 12(b) notification from the exporter or intended exporter, under 40 CFR 707.70, EPA will provide notice of the export or intended export to the affected foreign government(s).

IV. Public Record and Electronic Submissions

The official record for this rulemaking, including the public version, that does not include any information claimed as CBI, has been established for this rulemaking under docket control number OPPTS–42198A. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42198A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

V. Regulatory Assessment Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA does not believe that the impacts of this proposed rule constitute a significant economic impact on small entities.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification was $62.60. See U.S. EPA, "Economic Analysis in Support of the Final Rule to Amend Rule Promulgated Under TSCA Section 12(b)," OPPT/ETD/RIB, June 1992, contained in the record for the HAPs rulemaking (OPPTS–42187). Inflated through the last quarter of 1996 using the Consumer Price Index, the current cost is estimated to be $69.56. Although data available to EPA regarding export shipments of the HAPs chemicals are limited, a small exporter would have to have annual revenues below $6,956 per chemical/country combination in order to be impacted at a 1% or greater level. For example, a small exporter filing 3 notifications per year would have to have annual sales revenues below $20,868 (3 x $6,956) in order to be classified as impacted at the greater than 1% level. EPA believes that it is reasonable to assume that few, if any, small exporters would file sufficient export notifications to be impacted at or above the 1% level. Based on this, the export notification requirements triggered by the ECA for 1,1,2-trichloroethane would be unlikely to have a significant economic impact on small exporters. Because EPA has concluded that there is no significant impact on small exporters, the Agency does not need to determine the number or size of the entities that would be impacted at a 1% or greater level.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities.

B. Executive Order 12866; Executive Order 12898; Executive Order 13045

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). It does not involve special considerations of environmental-justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), nor raise any issues regarding children's environmental-health risks under Executive Order 13045 (62 FR 1985, April 23, 1997) because the Executive order does not apply to actions expected to have an economic impact of less than $100 million.

C. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The information collection requirements related to this action have already been

approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for the collection of information is estimated to average 0.55 hours per response.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, this action is not subject to the requirements of sections 202 and 205 of UMRA. The requirements of sections 203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental mandate, respectively, also do not apply to this proposed rule because the rule would only affect the private sector, i.e., those companies that test chemicals.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: December 16, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding 1,1,2-trichloroethane to the table in CAS number order to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS Number	Substance or mixture name	Testing	FR Publication Date
79–00–5	1,1,2-Trichloroethane	Health effects	[Insert date of final rule].

* * * * *

[FR Doc. 97–33449 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42197A; FRL–5762–8]

RIN 2070–AC76

Testing Consent Order and Export Notification Requirements for Ethylene Dichloride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 26, 1996, EPA proposed a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. Included as one of these chemical substances was ethylene dichloride (CAS No. 107–06–2). EPA invited the submission of proposals for enforceable consent agreements (ECAs) for pharmacokinetics testing of the HAPs chemicals and received a proposal for testing ethylene dichloride from the HAP Task Force. In a previous document published EPA has solicited interested parties to monitor or participate in negotiations on an ECA for ethylene dichloride. EPA is proposing that if an ECA is successfully concluded for ethylene dichloride, then the subsequent publication of the TSCA section 4 testing consent order (Order) in the **Federal Register** would add ethylene dichloride to the table of testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers. As a result of the proposed addition of ethylene dichloride, all exporters of ethylene dichloride, including persons who do not sign the ECA, would be subject to export notification requirements under section 12(b) of TSCA.

DATES: Written comments on this proposed rule must be received by EPA on or before January 27, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42197A. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. following the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information : Richard W. Leukroth, Jr., Project Manager, Chemical Information and Testing Branch (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; e-mail address: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register** —Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1997/).

II. Development of Enforceable Consent Agreement for Ethylene Dichloride

Ethylene dichloride was one of the chemicals proposed for health effects testing in a proposed HAPs test rule under section 4(a) of TSCA in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1). In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) testing for the chemicals included in the proposed HAPs test rule. These proposals could provide the basis for negotiation of ECAs, which, if successfully concluded, would be incorporated into Orders. The PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs test rule. A proposal for PK testing for ethylene dichloride was submitted by the HAP Task Force to EPA on November 25, 1996. The Agency reviewed this alternative testing proposal and prepared a preliminary technical analysis of the proposal which it sent to the HAP Task Force on June 26, 1997. The HAP Task Force responded on July 31, 1997, that it has a continued interest in pursuing the ECA process for ethylene dichloride. EPA has decided to proceed with the ECA process for ethylene dichloride. EPA has published a document soliciting interested parties to monitor or participate in negotiations on an ECA for PK testing of ethylene dichloride in the **Federal Register** of December 19, 1997. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

If the ECA for ethylene dichloride is successfully concluded, and an Order is published in the **Federal Register**, testing to develop needed data would be required of those persons that have signed the agreement. Section 12(b) of TSCA provides that if any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 of TSCA, that person shall notify EPA of this export or intent to export. This requirement applies to data obtained from either a test rule or an ECA and Order under the authority of section 4 of TSCA. EPA intends the ECA to include the export notification requirements of section 12(b) of TSCA, codified at 40 CFR part 707, subpart D.

III. Publication of Testing Consent Order

EPA is proposing that if an ECA is successfully concluded for ethylene dichloride, the publication of the Order in the **Federal Register** would add ethylene dichloride to the table in 40 CFR 799.5000, Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

Exporters of chemicals listed at 40 CFR 799.5000 are required under 40 CFR 799.19, Chemical imports and exports, to comply with the export notification requirements of 40 CFR part 707, subpart D. This proposed rule, when finalized, would amend § 799.5000, and, in accordance with 40 CFR 799.19, all exporters of ethylene dichloride, including persons who do not sign the ECA, would be subject to export notification requirements under 40 CFR part 707, subpart D.

Under 40 CFR 707.65(a)(2)(ii), a person who exports or intends to export for the first time to a particular foreign country a chemical subject to TSCA section 4 data requirements must submit a one-time notice to EPA identifying the chemical and country of import. A single notice can cover multiple chemicals and multiple countries. If additional importing countries are subsequently added, additional export notices must be submitted to EPA. Other procedures for submitting export notifications to EPA are described in 40 CFR 707.65.

Under 40 CFR 707.67, the contents of the export notification from the exporter or intended exporter to EPA shall include:

1. The name of the chemical (i.e., in this case, ethylene dichloride).
2. The name and address of the exporter.
3. The country(ies) of import.
4. The date(s) of export or intended export.
5. The section of TSCA under which EPA has taken action (i.e., in this case, section 4 of TSCA).

Following receipt of the 12(b) notification from the exporter or intended exporter, under 40 CFR 707.70, EPA will provide notice of the export or intended export to the affected foreign government(s).

IV. Public Record and Electronic Submissions

The official record for this rulemaking, including the public version, that does not include any information claimed as CBI, has been established for this rulemaking under docket control number OPPTS–42197A. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at: oppt.ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42197A. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

V. Regulatory Assessment Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA does not believe that the impacts of this proposed rule constitute a significant economic impact on small entities.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification was $62.60. See U.S. EPA, "Economic Analysis in Support of the Final Rule to Amend Rule Promulgated Under TSCA Section 12(b)," OPPT/ETD/RIB, June 1992, contained in the record for the HAPs

rulemaking (OPPTS–42187). Inflated through the last quarter of 1996 using the Consumer Price Index, the current cost is estimated to be $69.56. Although data available to EPA regarding export shipments of the HAPs chemicals are limited, a small exporter would have to have annual revenues below $6,956 per chemical/country combination in order to be impacted at a 1% or greater level. For example, a small exporter filing 3 notifications per year would have to have annual sales revenues below $20,868 (3 x $6,956) in order to be classified as impacted at the greater than 1% level. EPA believes that it is reasonable to assume that few, if any, small exporters would file sufficient export notifications to be impacted at or above the 1% level. Based on this, the export notification requirements triggered by the ECA for ethylene dichloride would be unlikely to have a significant economic impact on small exporters. Because EPA has concluded that there is no significant impact on small exporters, the Agency does not need to determine the number or size of the entities that would be impacted at a 1% or greater level.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities.

B. Executive Order 12866; Executive Order 12898; Executive Order 13045

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). It does not involve special considerations of environmental-justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), nor raise any issues regarding children's environmental-health risks under Executive Order 13045 (62 FR 1985, April 23, 1997) because the Executive order does not apply to actions expected to have an economic impact of less than $100 million.

C. Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for the collection of information is estimated to average 0.55 hours per response.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector, and to seek input from State, local, and tribal governments on certain regulatory actions. EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, this action is not subject to the requirements of sections 202 and 205 of UMRA. The requirements of sections 203 and 204 of UMRA which relate to regulatory requirements that might significantly or uniquely affect small governments and to regulatory proposals that contain a significant Federal intergovernmental mandate, respectively, also do not apply to this proposed rule because the rule would only affect the private sector, i.e., those companies that test chemicals.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: December 16, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding ethylene dichloride to the table in CAS number order to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS Number	Substance or mixture name	Testing	FR Publication Date
107–06–2	Ethylene dichloride	Health effects	[Insert date of final rule].

* * * * *

[FR Doc. 97–33448 Filed 12–22–97; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE06

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period on the Service's proposal to list the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) as endangered throughout its range (62 FR 14093, March 25, 1997) is reopened as of December 23, 1997. The Service is soliciting any new information or comments on the proposed listing of the Preble's meadow jumping mouse. The Service notes that information and data collected since the publication of the proposed rule has been or will be provided to the Service, and will become part of the record for the Service's evaluation of the proposed listing. This information includes surveys that evaluate the status of the mouse at various locations and a report on habitat requirements.

DATES: The public comment period is reopened for 30 days. All comments should be received on or before January 22, 1998.

ADDRESSES: Written comments and materials should be sent to the Colorado Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for inspection, by appointment, during normal business hours, at the Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson, Colorado Field Supervisor, telephone 303/275–2370 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse, a small rodent in the family Zapodidae, is known to occur only in eastern Colorado and southeastern Wyoming. It lives primarily in heavily vegetated riparian habitats. Habitat loss and degradation caused by agricultural, residential, commercial, and industrial development have resulted in concern over its continued existence.

On March 25, 1997, the Service published a proposed rule (62 FR 14093) to list the Preble's meadow jumping mouse as an endangered species without critical habitat. On May 5, 1997, the Service extended the comment period through July 28, 1997, and announced three public hearings, which were held on May 19, 21, and 22, 1997 (62 FR 24387). The Service received additional written comments during that comment period, which are being reviewed by the Service in making its final determination whether to list the Preble's meadow jumping mouse as endangered. The Service's conclusion must include an evaluation of the best scientific and commercial data available, i.e., species abundance, new data received during the comment period, re-evaluation of existing data, and efforts being taken to protect the species.

To assist in its analysis of species status, the Service requests any comments that have not already been submitted, which provide new information or data, and/or reflect the information and data that has become available since the publication of the proposed rule. The Service (see **ADDRESSES**) can provide guidance on the availability of additional information.

Written comments may be submitted on or before January 22, 1998, to the Service office identified in the **ADDRESSES** section above. All comments must be received before the close of the comment period to be considered.

Legal notices announcing reopening of the comment period are being published in newspapers concurrently with this **Federal Register** notice.

Author: The author of this notice is Peter Plage, Colorado Field Office (see **ADDRESSES** above), telephone 303/275–2370.

Authority: Authority for this action is the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 17, 1997.

Terry T. Terrell,

Deputy Regional Director, Fish and Wildlife Service, Region 6, Denver, Colorado.

[FR Doc. 97–33408 Filed 12–22–97; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–7298–01; I.D. 112097B]

Groundfish Fishery of the Bering Sea and Aleutian Islands; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; correction.

SUMMARY: NMFS is correcting the date by which comments must be received about the proposed 1998 harvest specifications for the Groundfish Fishery of the Bering Sea and Aleutian Islands. The correct date is January 14, 1998.

DATES: Comments must be received by January 14, 1998.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule was published in the **Federal Register** on December 15, 1997 (62 FR 65638), that set forth the proposed annual TACs, prohibited species catch allowances, seasonal allowances of the pollock TAC, and amounts for the pollock and sablefish Community Development Quota reserve.

Need for Correction

As published, the proposed rule invited comments and contained the date by which comments must be received. The date is in error and NMFS is hereby correcting that error.

Correction of Publication

In the December 15, 1997, issue of the **Federal Register** (62 FR 65638), in the third column under the **DATES** heading, the wording should be corrected to read as follows:

DATES: Comments must be received by January 14, 1998.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 17, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33436 Filed 12–22–97; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 246
Tuesday, December 23, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, January 9, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of December 5, 1997 Meeting
III. Announcements
IV. Staff Director's Report
V. Project Planning
VI. Future Agenda Items.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,
General Counsel.

[FR Doc. 97–33531 Filed 12–19–97; 9:23 am]
BILLING CODE 6335–00–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: NOAA's Teacher At Sea Program.
Agency Form Number: None.
Type of Request: Reinstatement of a previously approved collection.
Burden: 309 hours.
Number of Respondents: 375.
Avg. Hours per Response: Ranges between 15 minutes and 2 hours depending on the requirement.
Needs and Uses: The Teacher At Sea Program provides educators with the opportunity to participate in research projects aboard NOAA vessels. The respondents are educators and must provide information about themselves and their teaching situation, provide 2 recommendations, medical history, and submit a follow-up report with ideas for classroom applications.
Affected Public: Individuals.
Frequency: On occasion.
Respondent's Obligation: Required to obtain a benefit.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information should be sent within 30 days of this Notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, DC 20503.

Dated: December 18, 1997.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–33440; Filed 12–22–97; 8:45 am]
BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/18/97–12/17/97

Firm name	Address	Date petition accepted	Product
MAY CORPORATION	250 PRAIRIE CENTER DRIVE, MINNEAPOLIS, MN 55344.	11/24/97	WHEELED RECLINERS.
GENERAL SWITCHGEAR, INC	14729 SPRING AVENUE, SANTA FE SPRINGS, CA 90670.	12/02/97	SWITCHGEAR ELECTRICAL POWER DISTRIBUTION UNITS.
CHILD CRAFT INDUSTRIES, INC.	501 EAST MARKET STREET, SALEM, IN 47167.	12/03/97	HARDWOOD TWIN BUNK BEDS, CHESTS, HUTCHES, NIGHTSTANDS AND CHANGING TABLES FOR BEDROOMS.
PRECO MANUFACTURING, INC.	8837 BREWERTON ROAD, BREWERTON, NY 13029.	12/04/97	STERLING SILVER JEWELRY.
B & L PLASTICS, INC	99 HARTFORD AVENUE, PROVIDENCE, RI 02909.	12/04/97	PLASTIC BLOW MOLDED BOTTLES, CARBOYS AND BELLOWS.
EDGEWOOD FINE LOG STRUCTURES, LTD.	11365 NORTH GOVERNMENT WAY, HAYDEN, ID 83835.	12/10/97	PREFABRICATED LOG HOMES.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/18/97–12/17/97—Continued

Firm name	Address	Date petition accepted	Product
PRECISION DIE CUTTING, INC.	27595 S.W. 95TH AVENUE, WILSONVILLE, OR 97070.	12/11/97	COMPUTER PARTS.
CORSAIR NECKWEAR COMPANY, INC.	2900–A ELYSIAN FIELDS, AVENUE, NEW ORLEANS, LA 70122.	12/11/97	NECKTIES.
TRI-CITIES MANUFACTURING, INC.	P.O. BOX 558, HIGHWAY 43 SOUTH, TUSCUMBIA, AL 35674.	12/11/97	ELECTRONIC ASSEMBLIES FOR MOTOR VEHICLES REQUIRING A FAN—HEATERS, AIR CONDITIONERS, RADIATORS.
DEPENDABLE GLASS WORKS, INC.	509 EAST GIBSON STREET, COVINGTON, LA 70434.	12/12/97	GLASS TABLE TOPS, CERAMIC PEDESTALS AND CUT GLASS PANES.
J & M INDUSTRIES, INC	300 PONCHATOULA PARKWAY, PONCHATOULA, LA 70454.	12/17/97	TEXTILE BAGS.
GREENWOOD MOP & BROOM, INC.	119 GRENOLA AVENUE, GREENWOOD, SC 29648.	12/17/97	BROOMS MADE OF BROOMCORN.
CIRCUIT MASTER ASSEMBLY, INC.	5443 115TH AVENUE, NORTH, CLEARWATER, FL 33760.	12/17/97	PRINTED CIRCUIT BOARDS.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance)

Dated: December 16, 1997.

Anthony J. Meyer,
Coordianator, Trade Adjustment and Technical Assistance.

[FR Doc. 97–33410 Filed 12–22–97; 8:45 am]
BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 942]

Grant of Authority for Subzone Status, JVC America, Inc. (Videotape Products), Tuscaloosa County, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Birmingham, Alabama, grantee of Foreign-Trade Zone 98, for authority to establish special-purpose subzone status at the videotape and videocassette manufacturing plant of JVC America, Inc., in Tuscaloosa County, Alabama, was filed by the Board on March 25, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 23–97, 62 FR 17146, 4–9–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the videotape and videocassette manufacturing plant of JVC America, Inc., located in Tuscaloosa County, Alabama (Subzone 98C), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of December 1997.

Robert S. LaRussa,
Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 97–33468 Filed 12–22–97; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 944]

Expansion of Foreign-Trade Zone 143, Sacramento, California Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Sacramento-Yolo Port District, grantee

of Foreign-Trade Zone 143, for authority to expand FTZ 143-Site 1 (to 686 acres) and Site 2 (to 1,280 acres) in the Sacramento, California, area, was filed by the Board on March 19, 1997 (FTZ Docket 17–97, 62 FR 15459, 4/1/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 143 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of December 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–33470 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 941]

Expansion of Foreign-Trade Zone 29 (Louisville, Kentucky) and Approval for Manufacturing Authority (Military Ordnance)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, Louisville, Kentucky, for authority to expand FTZ 29 to include additional sites and for authority to manufacture/refurbish military ordnance under FTZ procedures within FTZ 29, was filed by the Board on September 26, 1996 (FTZ Docket 71–96, 61 FR 52909, 10/9/96);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 29 and for authority to manufacture military ordnance under FTZ procedures is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of December 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–33467 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 943]

Expansion of Foreign-Trade Zone 46, Cincinnati, Ohio, Area, Approval of Manufacturing Activity Within FTZ 46, Cincinnati Milacron, Inc. (Horizontal Turning/Grinding Machinery)

Pursuant to its authority under the Foreign-Trade Zones Act (the Act) of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Greater Cincinnati Foreign Trade Zone, Inc. (GCFTZ), grantee of FTZ 46, for authority to expand its general-purpose zone in the Cincinnati, Ohio, area, to include a second site located in Cincinnati, Ohio, owned by Cincinnati Milacron, Inc. (CM), and for authority, on behalf of CM, to manufacture horizontal turning and grinding machinery and metalworking consumable products under FTZ procedures within FTZ 46 (filed 5–23–97, FTZ Doc. 42–97, 62 FR 30567, 6–4–97);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby authorizes the grantee to expand its zone as requested in the application, and approves the request for manufacturing authority, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of December, 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–33469 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

Initiaiton of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 1998.

	Period to be reviewed
Antidumping Duty Proceedings	
South Korea: Circular Welded Non-Alloy Steel Pipe A–580–809	11/1/96–10/31/97
Hyundai Pipe Co., Ltd.	
Korea Iron & Steel Co., Ltd.	
SeAH Steel Corporation, Ltd.	
Shinbo Steel Co., Ltd.	
The People's Republic of China: Fresh Garlic A–570–831	11/1/96–10/31/97
Fook Huat Tong Kee Pte. Ltd.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
Singapore: Certain Refrigeration Compressors C–559–001	4/1/96–3/31/97

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 17, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97–33471 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080697A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of Pacific harbor seals and possibly California sea lions by harassment incidental to seismic retrofit construction of the Richmond-San Rafael Bridge, San Francisco Bay, CA (the Bridge) has been issued to the California Department of Transportation (Caltrans) for a period of 1 year.

DATES: This authorization is effective from December 16, 1997, through December 15, 1998.

ADDRESSES: The application, authorization, and environmental assessment (EA), and a list of references used in this document are available by writing to the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or the Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802, or by telephoning one of the following contacts.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, (562) 980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as " ...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA provides an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as: ≥...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine

mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) provides a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue, or deny issuance of, the authorization.

Summary of Request

On July 7, 1997, NMFS received an application from Caltrans, requesting an authorization for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge. Accordingly, NMFS published a notice in the **Federal Register** on September 3, 1997 (62 FR 46480), requesting comments on NMFS' proposal to authorize Caltrans, under section 101(a)(5)(D) of the MMPA, to take, by harassment, small numbers of marine mammals incidental to seismic retrofit construction of the Bridge.

The Bridge will be seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to begin in December 1997 and extend through December 2001. A detailed description of the work planned is contained in Caltrans' 1996 Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project. Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. The construction duration for the seismic retrofit of foundation and towers on Piers 52 through 57 will be approximately 7 to 8 months. Because of work restrictions and mitigation measures, the seismic retrofit construction in this area is expected to be completed within two authorized work periods.

As the seismic retrofit construction between Piers 52 and 57 may potentially result in disturbance of pinnipeds at Castro Rocks, an MMPA authorization is warranted.

Comments and responses

A notice of receipt of the application and proposed authorization was published on September 3, 1997 (62 FR 46480), and a 30-day public comment period was provided on the application and proposed authorization. In addition a press release was issued on September 10, 1997, and a public notice was published in a newspaper of general circulation in the San Francisco Bay area. During the comment period, comments were received from the Marine Mammal Commission (MMC), Caltrans, and the California Law Project (CLP). Information on the activity and authorization request that are not subject to reviewer comments can be found in the proposed authorization notice and is not repeated here.

Comments on MMPA Authorizations

Comment 1: CLP was of the opinion that the purpose and intent of the IHA provision in section 101(a)(5)(D) of the MMPA is to allow incidental marine mammal taking when the harassment will be "short-term and non-lethal." Because neither the Caltrans application nor the EA made clear that the seismic retrofit project would have "short-term and non-lethal" impacts to harbor seals, a section 101(a)(5)(D) authorization under the MMPA would be inappropriate. CLP notes that the project would extend beyond the 1-year time limit specified in section 101(a)(5)(D) and that subsequent renewals would be necessary. CLP notes that Congress intended that projects of this length (up to 5 consecutive years) be permitted under the more protective provisions of section 101(a)(5)(A).

Response: NMFS does not agree. When implementing section 101(a)(5)(D) in 1994, the House of Representatives noted: "It is not the Committee's intent to weaken any of the existing standards which protect marine mammals and their habitats from incidental takes under this section. However, the Committee recognizes that the regulatory agencies must be afforded some procedural flexibility in order to streamline the review of authorizations under this section." (H. Rept. 103-439, 103rd Congress, 2nd Sess., pp. 29, 30.) Provided the taking is not expected to result in the serious injury or mortality of marine mammals, a section 101(a)(5)(D) authorization is appropriate. That issue is addressed below.

The U.S. Congress did not intend to limit incidental harassment authorizations to activities that would take place in a single year or less, only that the authorization would be valid for no more than 1 year. After that period, the activity participants could reapply. This interpretation of the statute is supported by the statement "The Committee notes that, in some instances, a request will be made for an authorization identical to one issued in the previous year. In such circumstances, the Committee expects the Secretary to act expeditiously in complying with the notice and comment requirements." (H. Rept. 103-439, 103rd Congress, 2nd Sess., p. 29.)

Comment 2: CLP believes that without more protective mitigation, injury or mortality of harbor seals could occur, and, therefore, the use of an IHA may be inappropriate because no serious injury or death would be authorized.

Response: NMFS disagrees that the issuance of an IHA under section 101(a)(5)(D) is inappropriate for this project. In the IHA, NMFS is requiring Caltrans to expand several of its mitigation measures to further decrease the potential for serious injury or mortality of harbor seals during construction activities (see Comments on Mitigation and Mitigation Measures). Moreover, the monitoring and reporting programs have been greatly expanded (see Monitoring and Reporting sections). NMFS expects the mitigation requirements of the IHA to preclude harbor seals from serious injury or mortality and will result in the least practicable impact to harbor seals from construction activities. *Comment 3*: CLP recommends that NMFS require that Bridge retrofit construction be halted if any "harmful disturbance" occurs during the pupping or molting season.

Response: NMFS will not be requiring Caltrans to stop work if certain threshold seal disturbances are observed because certain construction operations cannot be stopped in progress without jeopardizing the structural integrity of the Bridge and NMFS does not expect incidental harassment of harbor seals from construction activities to have more than a negligible impact on the harbor seal population. Nevertheless, if any unauthorized marine mammal taking (serious injury or mortality) occurs as a result of seismic retrofit construction activities, Caltrans will be subject to the penalties of the MMPA. NMFS will, however, reevaluate the appropriateness of the IHA before Caltrans reapplies for a new IHA next year, based on required reports (see Reporting section).

Comment 4: CLP concludes that harbor seals that inhabit San Francisco Bay (SFB) are a "population stock" under the MMPA and believes NMFS should consider the impacts of the retrofit construction relative to the SFB population stock.

Response: NMFS disagrees that the best available information indicates that harbor seals that inhabit SFB are a "population stock" under the MMPA. Studies have shown that adult harbor seals in SFB have a high degree of site fidelity as indicated by (1) high occurrence of red pelaged seals in SFB; (2) organochlorine containment levels are higher in harbor seals that haul-out in SFB; and (3) limited movement of adult harbor seals tagged in SFB to nearby coastal areas. Nevertheless, data are not available that demonstrate that harbor seal pups born at haul-out sites in SFB return to breed and pup at the same site where they were born. Thus, at this time, scientists do not know whether pups born in SFB show the same degree of site fidelity as adults or whether they utilize other haul-outs either within SFB or in nearby coastal areas when they mature. Studies of adult harbor seals tagged in SFB indicate that the level of movement to nearby coastal areas (20 percent) (Kopec and Harvey 1995, Harvey and Torok 1994) would be sufficient to preclude isolation if those seals were breeding with seals found along the coast (Harvey, J., Moss Landing Marine Laboratory, pers. commun., November 1997). Moreover, genetic studies have not been conducted to determine whether seals in SFB have unique genetic variation or genotypes. In contrast, NMFS has separated harbor seals within inland waters of Washington as a population stock under the MMPA based on (1) extremely low mixing with coastal harbor seals, (2) pollutant loads, (3) fishery interactions, (4) existence of unique haplotypes in inland Washington harbor seals, and (5) differences in mean pupping dates. The best available information does not demonstrate that harbor seals in SFB are a unique biological population (Harvey, J., pers. commun., 1997; Allen, S., NPS, pers. commun., November 1997; Hanan, D., CDFG, pers. commun., November 1997). For these reasons, NMFS does not consider harbor seals in SFB to be a population stock under the MMPA.

Under section 117 of the MMPA, NMFS is required to prepare stock assessment reports (SARs) for every marine mammal stock that occurs in U.S. waters. NMFS has convened two expert working groups (NMFS and Non-NMFS scientists/managers) to draft guidelines for preparing SARs (Barlow *et al.* 1995, Wade and Angliss 1997). Furthermore, SARs are available for public review and comment and are reviewed by regional scientific review groups (all non-NMFS scientists). Using these guidelines and in consultation with the Pacific Scientific Review Group, NMFS published a SAR that considers harbor seals that occur in California as a separate population stock (Barlow *et al.* 1995). This SAR reports a population abundance estimate of 34,554 harbor seals. This stock of harbor seals is not considered "depleted" or "strategic" under the MMPA or listed as an endangered or threatened species under the Endangered Species Act. For these reasons, NMFS is considering the impact of seismic retrofit construction of the Bridge on the California harbor seal stock.

Harbor Seal Concerns

Comment 5: CLP believes the **Federal Register** notice's statement "evidence to date has not indicated that anthropogenic disturbances have resulted in increased mortality to harbor seals" in 62 FR 46480 (September 3, 1997), is incorrect as several studies document this. The Boles and Stewart (1980) study merely describes behavior patterns consistent with one found with Bay harbor seals and does not support a finding that human disturbance does not result in serious harm or mortality.

Response: In retrospect, NMFS believes the statement made was too broad and it should reflect that, to date, studies have not indicated that airborne anthropogenic noise has resulted in increased harbor seal mortality. NMFS would be interested in specific harbor seal studies that indicate otherwise. It should be recognized that most of this information is from studies on the impact of noise from rocket launches and sonic booms on harbor seals and sea lions in the California Channel Islands and, in the past, has been mostly qualitative. Upcoming studies have been redesigned to be more quantitative.

Comment 6: CLP states that there is no evidence that seals will adapt to construction, and harbor seals have abandoned sites in SFB. Harbor seals hauling-out in areas of frequent but non-threatening disturbances show a relatively higher tolerance for such events when compared with more isolated areas where disturbance is rare. Observations of harbor seals at Castro Rocks found that seals flush easily in response to human disturbance.

Response: NMFS agrees that there is no scientific evidence that demonstrates harbor seals will acclimate to disturbance from construction activities. NMFS also believes that seals are likely to acclimate to activities they perceive as non-threatening. Although harbor seal colonies have abandoned haul-out sites in SFB, colonies also have acclimated to various levels of human activity. In particular, despite the regular exposure to traffic noises from the Bridge, vessel traffic from commercial activities at the Chevron Long Wharf, and vessel traffic from recreational boating and commercial shipping in the area, harbor seals continue to haul-out, pup, breed, and molt at Castro Rocks. For these reasons, NMFS believes that harbor seals at Castro Rocks may acclimate to certain seismic retrofit construction activities if they perceive these activities as non-threatening.

Comment 7: CLP believes that seal counts by Caltrans personnel during June 1994/1996 misrepresent the number of pups using Castro Rocks.

Response: Presentation of the seal counts by Caltrans personnel during June 1994 and 1996 was not intended to establish the period in which pups are born at Castro Rocks. The best available information indicates that in SFB harbor seal pups are first observed in mid-March, peak numbers of pups are observed in early May, and by the first week of June, the majority of the pups are weaned (Kopec, D., Romberg Tiburon Centers, pers. commun., November 1997; (i.e., Kopec 1997)).

Comment 8: The statement in the **Federal Register** notice (62 FR 46480, September 3, 1997) that "haul-out groups are temporary, unstable aggregations" does not accurately represent the current knowledge of harbor seal population dynamics. Seals in SFB show strong site fidelity.

Response: The statement is from Sullivan (1982) and is not refuted by Kopec and Harvey (1995). However, because harbor seals show strong site fidelity (Kopec and Harvey 1995, Stewart and Yochem 1994), the statement may be misleading.

Comment 9: The finding of Bowles and Stewart (1980) referenced in the **Federal Register** notice (62 FR 46480) that "harbor seals tendency to flee...decreased during the pupping season," does not support the claim that young seals are protected from " ...the startle response of the herd."

Response: Reviewing the referenced source, NMFS has determined that there is no evidence that harbor seals are less sensitive to disturbance during the pupping season than at other times. This agrees with Kopec's observations (Kopec 1997). See Mitigation Measures.

Comments on Mitigation Measures

Comment 10: CLP had several concerns regarding NMFS' conclusions on the impact of disturbance on molting harbor seals and the appropriateness of Caltrans' proposed work closure period

(February 1–June 30). For example, CLP believes there is no scientific evidence to support the conclusion in the **Federal Register** notice (62 FR 46480, September 3, 1997) that harbor seals have evolved adaptive mechanisms to deal with natural disturbance from predators and seabirds during the molt. CLP states this is supported by the behavior of harbor seals to haul out in very isolated locations precisely to avoid disturbance, and it is not factual to suggest that seabirds cause seals to flush into the water. Existing as they do at the top of the food web, CLP states, harbor seals using Castro Rocks have no natural predators. CLP states that the very sensitive molting season of seals using Castro Rocks extends to at least early or mid-August. Caltrans' application and the EA failed to adequately assess the project's impacts to molting seals during July and August. For these reasons, CLP recommended that the Closure Period be extended to include the entire molt.

Response: The process of molting is an important and energetically demanding part of a seal's annual cycle (Leatherwood *et al.* 1992). While on land, harbor seals bask in the sun to warm their body surface and promote flow of blood to the skin which is essential for new hair growth. While little is known about the effect of disturbance on molting harbor seals, energetic costs are probably higher for seals that spend more time in the water during the molt since a seal's metabolic rate increases in the water (DeLong, R., NMFS, pers. commun., November 1997). Nevertheless, NMFS believes that it is likely that harbor seals have evolved adaptive mechanisms to deal with exposure to the water during the molt for the following reasons. First, on some harbor seal haul-outs during the molting season seals must enter the water once or even twice a day due to tidal fluctuations limiting access to the haul-out. Second, since harbor seals lose hair in patches during the molt, they are never completely hairless and would not be as vulnerable to heat loss in the water during this period compared to other seals (e.g., elephant seals) that lose their all their hair at one time. Finally, due to the large amount of time hauled-out harbor seals allocate to scanning their environment, it is likely that terrestrial predation was an important selection pressure during the early evolution of harbor seal behavior (Da Silva and Terhune 1988) and could be the reason why hauled-out harbor seals appear to be so sensitive to disturbance. Disturbance would not have been isolated to only non-molting seasons and thus, harbor seals most likely evolved mechanisms to tolerate exposure to water during the molt. Some harbor seal colonies in California continue to be subject to disturbance from wildlife such as seabirds (Hanan, D. pers. commun., 1997) and human activities. If the levels of harbor seal disturbance during the molt are relatively high, seals are likely to utilize other local haul-out sites during the molt (DeLong, R., pers. commun. 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Hanan (1996) found that although harbor seals tagged at an isolated southern California haul-out tended to exhibit site-fidelity during the molt, some seals were observed molting at other nearby haul-outs.

The primary objectives of the Kopec and Harvey (1995) study was to determine the population dynamic and movements, investigate the concentration of pollutants, and assess the health of harbor seals within and near SFB. Although the number of molting seals was recorded during most field observations, molt observations were incidental to Kopec and Harvey's (1995) primary census counts (Kopec 1997). Thus, although Kopec and Harvey (1995) refer to the "reproductive/molting" period at Castro Rocks as occurring between March-July, no data are presented to support this conclusion. Moreover, they report that "In San Francisco Bay, pupping occurs from March to May, and molt in June. This corresponds with the greatest number of harbor seals counted in * * *Castro Rocks." For these reasons, NMFS concluded that the proposed Closure Period (February 1-June 30) would encompass all of the pupping and breeding season, and nearly the entire harbor seal molting season at Castro Rocks.

Recently available unpublished information indicates that the peak number of actively molting harbor seals occurs in early July at Castro Rocks (Kopec 1997), which coincides with the peak of the molt for harbor seals near and within SFB (S. Allen, pers. commun., 1997). By early August, only five to seven percent of the seals are actively molting at Castro Rocks (Kopec 1997).

Based on new information on harbor seals molting at Castro Rocks, NMFS has expanded the Closure Period to include the entire month of July (see Mitigation Measures). The modified Closure Period (February 15 - July 31) is designed to encompass the entire harbor seal pupping and breeding seasons and nearly the entire molting season at Castro Rocks (see Mitigation Measures). This represents a period of five and one-half months in which no work may be conducted on the substructure, towers, or superstructure between Piers 52 and 57, inclusive (please see related comment 11 below). Any harbor seals that are still molting when work begins after the Closure Period are likely to utilize other SFB haul-out sites if they are substantially disturbed by construction activities in the area (DeLong, R., pers. commun., 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Expanding the Closure Period further would result in another season of work near Castro Rocks and in prolonged disturbance to seals utilizing Castro Rocks. The Closure Period could be expanded during the second year of the project if monitoring results indicate that impacts may be greater than negligible.

Comment 11: CLP believes that the proposed seasonal restrictions are not sufficient to protect seals during the earlier pupping and nursing season because work will be allowed to continue on the superstructure and could negatively impact seals during the spring pupping and summer molting seasons. Furthermore, CLP notes that the IHA notice contradicts the EA's superstructure seasonal closure period. For these reasons, CLP recommends that the work closure area include a prohibition on superstructure work between Piers 52 and 57.

Response: NMFS agrees and, as mentioned in comment 10 above, has modified the Closure Period to include all retrofit construction activities on the substructure (e.g., piers), towers, and superstructure between Pier's 52 and 57, inclusive (see Mitigation Measures). Since the Closure Period has been expanded to include nearly the entire molting season (see above), NMFS has modified the Closure Period to begin on February 15, instead of February 1. In SFB, harbor seal pups are first observed in mid-March, peak numbers of pups are observed in early May, and, by the first week of June, all pups are weaned (Kopec and Harvey 1995). Thus, the Closure Period will include the entire pupping season at Castro Rocks and a substantial pre-pupping period when females are moving into pupping areas. As mentioned previously, imposing a 6-month Work Closure Period (i.e., February 1–July 31) would likely result in another season of work near Castro Rocks and in prolonged disturbance to seals at Castro Rocks.

Comment 12: The CLP believes that the size of Caltrans' proposed exclusion zone around Castro Rocks is arbitrary and inconsistent with both the existing scientific literature or reported reactions and actual observations of disturbance behavior at Castro Rocks. For these reasons, CLP recommends that the exclusion zone be expanded to a minimum of 200 m (656 ft) on all sides of Castro Rocks and that the zone be expanded if monitoring indicates seals are adversely effected by boats traveling outside the zone boundaries.

Response: The purpose of the exclusion zone is to establish an area around Castro Rocks in which retrofit construction activity will be prohibited during the pupping, breeding, and the majority of the molting season (the Work Closure Period) to minimize the impacts to seals during the sensitive periods of their life cycle. Caltrans originally proposed that the exclusion zone be located between the Bridge center line, between Piers 52 and 57, and extend to 200 ft (61 m) south of the most southwestern portion of Castro Rocks.

Reactions of harbor seals to disturbance depends upon the distance of the activity to the seal, type of the activity (e.g., boat traffic, aircraft overflights, loud sounds, etc.), phase of seal life cycle (e.g., pupping season, non-pupping season), and the history of disturbance the colony has previously experienced. Depending on the activity, a wide range of seal "reaction distances" have been reported in the literature (e.g., 30–1,800 m (98–5900 ft)). In an adjacent SFB estuary, Bolinas Lagoon, 81 percent of disturbances (boats, hikers, dogs) were within 100 and 200 m (328 and 656 ft) of a harbor seal haul-out (Swift and Morgan 1993). Although seals at Castro Rocks have habituated to background traffic noise from the Bridge, they respond to unusual noises, such as hammering, truck horns, back-up signal beeps, work boats, and other human activity on the Bridge (Kopec, D., letter to CLP, dated October 3, 1997).

NMFS agrees that the exclusion zone should be expanded to further minimize the impact of seismic retrofit construction activities during the Closure Period. For this reason, NMFS is requiring Caltrans to greatly expand the northern boundary of the exclusion zone. For example, the northern boundary has been extended from the Bridge center line to 250 ft (76.2 m) north of the most northern tip of Castro Rocks (approximately 200 ft (61 m)) north of the Bridge center line). An expansion of this boundary further north is impractical due to the need for a safe navigation corridor north of the Bridge for work vessel access to construction staging areas near the east end of the Bridge. The southern boundary of the exclusion zone will be 250 ft (76.2 m) south of the southern tip of Castro Rocks. Due to the location of this boundary relative to the Bridge (600 ft/183 m), it is unlikely that the unrestricted area further south would be practicable for use during construction (e.g., corridor to a staging area on the south side of the Bridge). Any further expansion of the southern boundary would encroach onto waters outside Caltran's control (e.g., right-of-way) and could affect Chevron's oil pier operations further south. The eastern boundary will be 300 ft (91.4 m) east of the eastern tip of Castro Rocks, and the western boundary will be 300 ft (91.4 m) west of the western tip of Castro Rocks. Similarly, any further expansion of these boundaries would encroach onto waters outside Caltrans' control. Caltrans will minimize vessel traffic in the exclusion zone when conducting construction activities during the Work Period. For these reasons, NMFS believes these boundaries will have the least practicable impact on the California harbor seal population.

Comment 13: Caltrans recommends that the prohibition on pile installation and the limitation on maximum noise levels to 86 DBA re 20 uPa at 50 m between 7 p.m. and 7 a.m. be modified to the hours between 9 p.m. and 7 a.m.. Caltrans states that this is necessary to allow for the Bridge retrofit contractor to use two working shifts instead of one shift. Caltrans also recommends removing the 24-hr construction noise limitation near Castro Rocks during the pupping/molting restriction period because no work will be conducted between Piers 52 and 57, inclusive on the substructure, towers, or superstructure during this period.

Response: NMFS agrees. Although the night time restriction for pile installation and maximum noise levels was originally developed by Caltrans to minimize human residential noise disturbance, NMFS is also requiring night time restrictions because it believes that it could protect seals at Castro Rocks if they change their hauling-out-patterns from daytime to night time. NMFS has modified the time period for this requirement from 7 p.m.-7 a.m. to 9 p.m.-7 a.m. because restricting this mitigation measure further would allow only one work shift, would likely result in another season of work near Castro Rocks, and thus, would result in prolonged disturbance to seals utilizing Castro Rocks (see Mitigation Measures). NMFS also agrees that the 24-hr. noise limitation near Castro Rocks is no longer necessary due to all work ceasing on the substructure, towers, and superstructure on Pier's 52–57, inclusive, during the pupping, breeding, and majority of the molting season.

Comment 14: CLP recommends that NMFS require Caltrans to conduct certain offsite mitigation that will enhance the protection of alternative haul-out sites, many of which are under pressure from human disturbance. Such mitigation might take the form of education signs or posters at haul-outs and other locations to reduce potential for human disturbance.

Response: NMFS believes that the mitigation measures imposed under the IHA will effectively mitigate the activity to the lowest level practicable and still allow the project to continue near to schedule. As a result, additional off-site mitigation measures are unwarranted. NMFS believes that mitigation banking is appropriate only under those circumstances when the impact cannot be mitigated onsite.

Monitoring and Reporting Concerns

Comment 15: CLP believes that the proposed monitoring plan is inadequate and should be replaced by a comprehensive, quantitative monitoring program. CLP recommends that the IHA establish upper limits of disturbance beyond which the source construction activity is curtailed. CLP believes the IHA should require continuous site monitoring and immediate reporting that, when triggered, will temporarily halt construction activity near Castro Rocks and will impose additional mitigation.

Response: NMFS has significantly expanded the requirements of the monitoring program that must be implemented by Caltrans under its IHA (see Monitoring). For example, the monitoring program includes pre-construction monitoring of Castro Rocks (e.g., baseline information) and frequent monitoring each week within the Work Period to document the effects of construction activities on harbor seals at Castro Rocks. The monitoring of at least one alternative haul-out site in SFB is also required to evaluate whether harbor seals at Castro Rocks could be hauling out at other sites in SFB as a result of construction. Monitoring will also occur during the Closure Period to evaluate whether construction activities are disturbing the seals during their pupping, breeding and molting periods. Moreover, night time censussing of harbor seals will occur during the Closure Period and Work Period at Castro Rocks to evaluate whether harbor seal haul-out behavior may be affected by construction activities during these periods. NMFS believes this improved monitoring program will be sufficient to collect appropriate data to adequately evaluate the biological impact of

construction activities on Castro Rocks harbor seals.

Comment 16: CLP suggested that enhanced protection and monitoring of other, limited, haul-out sites in SFB are critical to monitoring measures and must be implemented under National Environmental Policy Act (NEPA) and MMPA.

Response: In the IHA, NMFS is requiring Caltrans to simultaneously monitor at least one other harbor seal haul-out site in SFB to document potential changes in harbor seal population dynamics in SFB from seismic retrofit construction disturbance of seals at Castro Rocks.

NEPA Concerns

Comment 17: CLP states that NMFS must comply with NEPA, which is the statute requires the preparation of an environmental impact statement (EIS) where a Federal project may have a significant adverse impact on the environment.

Response: NMFS is issuing the IHA in compliance with NEPA. After assessing the effects of the Bridge project (undertaken with the mitigation measures) on marine mammals in an EA, NMFS found that issuance of the IHA will not have a significant effect on the human environment. Accordingly, an EIS was not prepared.

For the Bridge project as a whole, the lead Federal agency is the Federal Highway Administration (FHA). On August 15, 1997, the FHA determined that the retrofit project is categorically excluded from NEPA. In that determination, the FHA stated that the retrofit project does not have a significant effect on the human environment.

In addition, Caltrans determined that the retrofit project is statutorily exempt from the California Environmental Quality Act (CEQA) under section 180.2 of the Streets and Highways Code and section 2180(b)(4) of the Public Resources Code.

Comment 18: CLP states that CLP believes that an EIS must be prepared, unless the project is "fully mitigated," to avoid "devastating impacts" (e.g., abandonment) on the future viability of Castro Rocks as a harbor seal haul-out site and adversely affecting the population stock that relies on Castro Rocks.

Response: NMFS does not agree that abandonment of Castro Rocks as a haul-out site is likely from the seismic retrofit construction of the Bridge, provided Caltrans undertakes the mitigation measures required in the IHA. NMFS expects that the short-term impact of construction to have a temporary modification in behavior by harbor seals at Castro Rocks and possibly by some California sea lions. At worst, disturbance from construction activities is expected to cause the harbor seals to haul-out at night at Castro Rocks (Kopec, D., letter to CLP, dated October 3, 1997), or to utilize alternative haul-out sites in the SFB for a short period (Harvey, J., 1997, pers. commun.). Therefore, NMFS expects the impacts from the seismic retrofit construction of the Bridge to have no more than a negligible impact on the California harbor seal population and does not expect harbor seals to permanently abandon Castro Rocks as a rookery or haul-out. With the mitigation measures NMFS is requiring, the Bridge project is expected to result in minimal disturbance to harbor seals at Castro Rocks.

Mitigation Measures

To limit incidental harassment to the lowest practicable level, NMFS will require Caltrans to implement the following mitigation measures. First, Caltrans must cease seismic retrofit construction work from February 15 to July 31 on the Bridge substructure, towers, and superstructure between Pier's 52 and 57, inclusive (Closure Period). Seismic retrofit work may occur from August 1 to February 14 on the Bridge substructure, towers, and superstructure between Pier's 52 and 57, inclusive (Work Period). Second, no water craft associated with construction activities will be deployed during the year within the "exclusion zone" except when construction equipment is required for seismic retrofit construction between Piers 52 and 57, inclusive, and within the Work Period. Vessel traffic will be minimized in the exclusion zone when construction activities are occurring during the Work Period. The boundary of the exclusion zone is rectangular in shape (1700 ft by 800 ft (518.2 m by 244 m)) and completely encloses Castro Rocks and Pier's 52-57, inclusive. The northern boundary of exclusion zone will be located 250 ft (76.2 m) from the most northern tip of Castro Rocks, and the southern boundary will be located 250 ft (76.2 m) from the most southern tip of Castro Rocks. The eastern boundary will be located 300 ft (91.4 m) from the most eastern tip of Castro Rocks, and the western boundary will be located 300 ft (91.4 m) from the most western tip of Castro Rocks. This exclusion zone will be restricted as a controlled access area and will be marked off with buoys and warning signs for the entire year. Lastly, between 9 p.m. and 7 a.m., no piles may be installed on the Bridge, and construction noise may not exceed 86 DBA re 20 uPa at 50 ft (15 m).

Summary of Monitoring

NMFS will require Caltrans to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. Caltrans will monitor at least one additional harbor seal haul-out within SFB to evaluate whether harbor seals use alternative hauling-out areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (August 1 - February 14) and the Closure Period Phase (February 15 - July 31). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between Pier's 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior once a day for a period of five consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior at the alternative San Francisco Bay harbor seal haul-out at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS proposes to require under a second authorization that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week, the monitor will conduct an additional harbor seal census after midnight.

Reporting

Caltrans will provide weekly reports to the Southwest Regional Administer, NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults and sub-adults, number of females/males, number of redcoats, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure level measurements made at the haulout will also be provided.

A draft interim report must be submitted to the Southwest Regional Administrator on August 1, 1998. A draft final report must be submitted to the Southwest Regional Administrator within 90 days after the expiration of Caltrans Incidental Harassment Authorization. A final report must be submitted to the Southwest Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report.

NEPA

NMFS has prepared an EA that concludes that the impacts of Caltrans' seismic retrofit construction of the Bridge will not have a significant impact on the human environment. A copy of the EA is available upon request (see **ADDRESSES**).

Conclusions

NMFS has determined that the short-term impact of the seismic retrofit construction of the Bridge, as described above, will result, at worst, in the temporary modification in behavior by harbor seals and possibly by some California sea lions. While behavioral modifications, including temporarily vacating the haul-out, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above.

Since NMFS is assured that the taking will not result in more than the incidental harassment (as defined by the MMPA) of small numbers of Pacific harbor seals and possibly of California sea lions; would not have an unmitigatable adverse impact on the availability of these stocks for subsistence uses; and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued. For the above reasons, NMFS has issued an IHA for a 1-year period beginning on the date noted above (see EFFECTIVE DATES) for the incidental harassment of harbor seals and California sea lions by the seismic retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, California, provided the above mentioned monitoring and reporting requirements are incorporated.

Dated: December 16, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–33387 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121797A]

Atlantic Coastal Fisheries Cooperative Management Act; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Coordination meeting.

SUMMARY: NMFS and the U.S. Fish and Wildlife Service (USFWS) will hold a joint meeting to discuss coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Management Act (Pub. L. 103–206) and the Atlantic Striped Bass Conservation Act (Pub. L. 102–103).

DATES: The meeting will convene on Thursday, January 15, 1998, at 10:00 a.m. and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESSES: National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Anne Lange, Intergovernmental and Recreational Fisheries, NMFS 8484 Georgia Avenue, Silver Spring, MD 20910. Telephone: (301) 427–2014.

SUPPLEMENTARY INFORMATION: NMFS-USFWS hold semi-annual coordination meetings established under a Memorandum of Understanding to develop and implement a program to support interstate fishery management efforts associated with the Atlantic Coastal Fisheries Cooperative Management Act. The main agenda items for this meeting are discussion of the 1996–1997 Workplan; an update on implementation of the Atlantic Coast Cooperative Statistics Program; status of cooperative coastal/citizen tagging efforts; distribution of FY1998 Atlantic Coastal Act funds; a 1998 striped bass workshop; Striped Bass Act reauthorization; and ASMFC Fishery Management Plan work for 1998.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Lange (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting date.

Dated: December 17, 1997.

Richard Schaefer,

Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33473 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121597B]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of foreign fishing applications.

SUMMARY: NMFS publishes for public review and comment summaries of applications submitted by the Government of Estonia and the Government of Lithuania requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 1998 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed below:

Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, (617) 231–0422;

David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790, (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2337.

SUPPLEMENTARY INFORMATION: In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes for public review and comment summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (18 U.S.C. 1801 *et seq.*).

This notice concerns the receipt of an application from the Government of Estonia and the receipt of an application from the Government of Lithuania requesting authorization to conduct joint venture (JV) operations in 1998 in the Northwest Atlantic Ocean for Atlantic mackerel and Atlantic herring. The large stern trawler/processors JACOB HURT and SOELA are identified as the Estonian vessels that would receive Atlantic mackerel and Atlantic herring from U.S. vessels in JV operations, and the large stern/trawler processors MAIRONIS and UTENA are identified as the Lithuanian vessels that would receive Atlantic mackerel and Atlantic herring from U.S. vessels in JV operations.

While both applications also request authorization for the named vessels to directly harvest Atlantic mackerel and Atlantic herring, since no "Total Allowable Level of Foreign Fishing" (TALFF) is available for either of these species, no foreign vessels can be permitted to directly harvest Atlantic mackerel or Atlantic herring.

Dated: December 16, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33386 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120597A]

Marine Mammals; Scientific Research Permit No. 473–1433

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Ms. Janice M. Straley, P.O. Box 273, Sitka, Alaska 99835 has been issued a permit to take humpback whales (*Megaptera novaeangliae*), killer whales (*Orcinus orca*), minke whales (*Balaenoptera acutorostrata*), gray whales (*Eschrichtius robustus*), and fin whales (*B. physalus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Regional Office, NMFS, NOAA, 709 West 9th Street, Federal Building, Juneau, Alaska 99802 (907–586–7221).

SUPPLEMENTARY INFORMATION: On October 31, 1997, notice was published in the **Federal Register** (62 FR 58943) that the above-named applicant had submitted a request for a scientific research permit to inadvertently harass humpback whales (*Megaptera novaeangliae*) during the course of photo-identification research from December 1, 1997, to November 30, 2002 in Alaska waters, and to opportunistically photo-identify killer whales (*Orcinus orca*), minke whales (*Balaenoptera acutorostrata*), gray whales (*Eschrichtius robustus*), and fin whales (*B, physalus*) during the course of the humpback whale studies. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 12, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–33437 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121797C]

Marine Mammals; Scientific Research Permit No. 875–1401

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Christopher W. Clark, Cornell University, Ithaca, New York 14850, has requested an amendment to permit No. 875–1401.

DATES: Written comments must be received on or before January 22, 1998.

ADDRESSES: The application for amendment and related documents, including a draft environmental assessment (EA) that examines the environmental consequences of issuing the requested amended permit, are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application for amendment to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit No. 875–1401 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

Permit No. 875–1401 currently authorizes the harassment of several species of marine mammals during the conduct of research to study the effects of low-frequency sound produced by the Navy's Surface Towed Array Surveillance System Low Frequency Active (SURTASS LFA) system on the behavior of blue whales (*Balaenoptera musculus*) and fin whales (*Balaenoptera physalus*) feeding in the Southern California Bight during September/October of 1997 and/or 1998. An amendment to the Permit to conduct playback experiments on gray whales (*Eschrichtius robustus*) migrating along the central California coast during January 1998 is in final review.

Dr. Clark is now requesting that the Permit be amended to provide for the conduct of playback experiments using the SURTASS LFA sound source to study behavioral responses of breeding and nursing humpback whales (*Megaptera novaeangliae*) and foraging sperm whales (*Physeter macrocephalus*) in Hawaii during February-April of 1998. Individuals of several other cetacean, pinniped, and sea turtle species may be taken (*i.e.*, by harassment or auditory temporary threshold shift) during the proposed experiments.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a draft EA examining the environmental consequences of issuing the requested amended permit has been prepared. Based upon this draft EA, NMFS has preliminarily concluded that issuance of the requested permit will not have a significant effect on the human environment.

Dated: December 18, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–33474 Filed 12-22-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121797D]

Marine Mammals; Permit No. 965 (P66J)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Alaska Department of Fish and Game, P.O. Box 25526, Juneau, AK 99802–5526, has requested an amendment to permit no. 965.

DATES: Written or telefaxed comments must be received on or before January 22, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit no. 965, issued on June 19, 1995 (60 FR 34233) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Permit no. 965 authorizes the permit holder to: to take a maximum of 125 Steller sea lions (*Eumetopias jubatus*) by trapping, darting, sampling, and gas anesthesia (including a maximum of 20 by recapture for follow-up blood sampling and removal of instruments); a maximum of 400 Steller pups over 6 months old by hand capture, gas anesthesia, and marking; a maximum of 10,000 Stellers by harassment during the course of capturing suitable animals; a maximum of 15 Stellers by unintentional mortality during the course of capture and chemical immobilization and salvaged specimens of stranded animals, premature pups, and mortalities associated with this and other research activities. The holder is also authorized to take up to 30 rehabilitated California sea lions (*Zalophus californianus*) by injection with experimental immobilization drugs and a maximum of 3 for unintentional mortality. All takes will be over a 5-year period.

The permit holder requests amendment to the permit for: Underwater capture of 10 additional (25 total) juvenile Steller sea lions through use of a leash around their necks, with the opposite end of the leash attached to a buoy at the surface; and use of diazepam, xylazine, or medetomidine as a sedative with either flumazenil, tolazoline, or atipamezole as the reversal agent.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 18, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–33475 Filed 12–22–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, January 30, 1998.

PLACE: 1155 21st St., N.W., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–33628 Filed 12–19–97; 2:36 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 11:00 a.m., Friday, January 23, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 97–33629 Filed 12–19–97; 2:36 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 11:00 a.m., Friday, January 2, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 97–33632 Filed 12–19–97; 2:36 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 2:00 p.m., Monday, January 5, 1998.
PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Adjudicatory Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 97–33635 Filed 12–19–97; 2:36 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 11:00 a.m., Friday, January 16, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 97–33630 Filed 12–19–97; 2:36 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 2:00 p.m., Monday, January 26, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Adjudicatory Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 97–33633 Filed 12–19–97; 2:36 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 2:00 p.m., Wednesday, January 21, 1998.
PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Adjudicatory Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 97–33636 Filed 12–19–97; 2:36 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 11:00 a.m., Friday, January 9, 1998.
PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 97–33631 Filed 12–19–97; 2:36 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 2:00 p.m., Monday, January 12, 1998.
PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Adjudicatory Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 97–33634 Filed 12–19–97; 2:36 pm]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS).
ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed reinstatement of customer service data collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 23, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Finance and Accounting Service, Customer Service, ATTN: Mr. Darren Gomez, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: To request information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call DFAS Customer Service at (703) 607–3930. Title; Associated Form; and OMB Number: Customer Satisfaction Surveys-Generic Clearance, OMB Number 0730–0003.

Needs and Uses: The information collection requirement is necessary to determine the kind and quality of services DFAS customers want and expect, as well as their satisfaction with DFAS's existing services.

Affected Public: Individuals or Households, Business or other for profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Annual Burden Hours: Estimated 2,958.

Number of Respondents: Estimated 20, 150.

Responses per Respondent: 1.

Average Burden per Response: 6 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: Summary of Information Collection

DFAS will conduct a variety of activities to include, but not necessarily limited to customer satisfaction surveys, transaction based comment cards, transaction based telephone interviews, Interactive Voice Response Systems (IVRS) telephonic surveys, etc. If the customer feedback activities were not conducted, DFAS would not only in violation of E.O. 12862, but would also not have the knowledge necessary to provide the best service possible and provide unfiltered feedback from the customer for our process improvement activities. The information collected provides information about customer perceptions and can help identify agency operations that need quality improvement, provide early detection of process or systems problems, and focus attention on areas where customer service and functional training or changes in existing operations will improve service delivery.

Dated: December 17, 1997.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 97–33365 Filed 12–22–97; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.
ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on January 22, 1998 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered systems reports.

Dated: December 17, 1997.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351aTRADOC

SYSTEM NAME:
Army School Student Files *(February 2, 1996, 61 FR 3916).*

CHANGES:
* * * * *

SYSTEM MANAGER(S) AND ADDRESS:
Delete entry and replace with 'Commander, U.S. Army Combined Arms Command, ATTN: ATZL-IMS-AR (Privacy Act Officer), Fort Leavenworth, KS 66027–2309.'
* * * * *

A0351aTRADOC

SYSTEM NAME:
Army School Student Files.

SYSTEM LOCATION:
All Army schools, colleges, and training centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Students who attend formal and/or non-resident courses of instruction at Army schools, colleges and training centers.

CATEGORIES OF RECORDS IN THE SYSTEM:
Individual academic records consisting of courses attended, length of each, extent of completion and results; aptitudes and personal qualities, including corporate fitness results; grade and rating attained; and related information; collateral individual training records comprising information posted to the basic individual academic training record or other long term records; faculty board files pertaining to the class standing/rating/classification/proficiency of students; class academic records maintained by training instructors indicating attendance and progress of class members instructors indicating attendance and progress of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):
To determine eligibility of students for attendance, monitor progress, record completion of academic requirements, and document courses which may be prerequisites for attendance/participation in other courses of instruction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, cards, computer magnetic tapes/disks; printouts.

RETRIEVABILITY:

By individual's name, Social Security Number/military service number.

SAFEGUARDS:

Information is stored in locked cabinets or rooms, accessed only by authorized individuals having official need thereof.

User identification passwords are assigned each person with authorized access to the records. Each sign-on is authenticated by system software. Identification passwords are change every six months, additions and deletions occur at any time a new person is assigned or someone leaves. The above meets Army Information System Security Regulation requirements.

RETENTION AND DISPOSAL:

Individual and class academic records are destroyed after 40 years; collateral individual training records and faculty board files are destroyed after 1 year.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Combined Arms Command, ATTN: ATZL-IMS-AR (Privacy Act Officer), Fort Leavenworth, KS 66027–2309.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Academic Record Office of the Army school, college, or training center attended.

Individual should provide full name, student number, course title and class number, or description of type training received and dates of attendance/ enrollment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Academic Record Office of the Army School, college, or training center attended.

Individual should provide full name, student number, course title and class number, or description of type training received and dates of attendance/ enrollment.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents; and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the staff and faculty of appropriate school, college, or training center responsible for the instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351bTRADOC

SYSTEM NAME:

Army Correspondence Course Program (ACCP) *(February 2, 1996, 61 FR 3917).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Transportation Center, ATTN: ATZS-IMO-RM (Privacy Act Officer), Fort Eustis, VA 23604–5000.'

* * * * *

A0351bTRADOC

SYSTEM NAME:

Army Correspondence Course Program (ACCP).

SYSTEM LOCATION:

Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army, Navy, Marine Corps, and Air Force, Reserve Officer Training Corps and National Defense Cadet Corps students, Department of Defense civilian employees, and approved foreign military personnel enrolled in a non-resident course administered by the Army Institute for Professional Development.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain name, grade/rank, Social Security Number, address, service component, branch, personnel classification, military occupational specialty, credit hours accumulated, examination and lesson grades, student academic status, curricula, course description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and E.O. 9397 (SSN).

PURPOSE(S):

To record lessons and/or exam grades; maintain student academic status; course and subcourse descriptions; produce course completion certificates and reflect credit hours earned; and produce management summary reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, discs, paper printouts, and microfiche.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Random number sign-on authentication for each inquiry made to the system is required. Sign-on decks to enable such access are updated weekly, safeguarded under Army Regulation 380–19, Information Systems Security, and are unique to one terminal only. Access is granted only to designated personnel at the Army Institute for Professional Development responsible for the administration and processing of non-resident students.

RETENTION AND DISPOSAL:

Machine records are retained during student's enrollment, after which student's records are transferred to the Academic Records System History File for indefinite retention. Non-resident students are assigned a 12 month enrollment period. A hard copy transcript reflecting the student's personal and academic data is produced; this is retained by the Army Institute of Professional Development for 3 years, then transferred to the National Personnel Records Center, St. Louis, MO, where it is retained for 37 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Transportation Center, ATTN: ATZS-IMO-RM (Privacy Act Officer), Fort Eustis, VA 23604–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide full name, Social Security Number, and signature for identification.

Individual making request in person must provide acceptable identification such as driver's license and military identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide full name, Social Security Number, and signature for identification.

Individual making request in person must provide acceptable identification such as driver's license and military identification.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting content, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individual upon enrollment, from class records and instructors, and from graded examinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600DARP

SYSTEM NAME:

Career Management Files of Dual Component Personnel *(February 22, 1993, 58 FR 10132).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600ARPC'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.'

* * * * *

A0600ARPC

SYSTEM NAME:

Career Management Files of Dual Component Personnel.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any reserve or warrant officer on active duty as a Regular Army enlisted man; any reserve officer on active duty as a Regular Army warrant officer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, Social Security Number, basic pay entry date, promotion eligibility date, mandatory removal date, military education, copies of officer evaluation reports, academic reports, qualification records, letters of appreciation and commendation, general orders, concerning awards; and similar documents, records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

To advise reserve officers when they will be considered for promotion, military education that needs to be completed for eligibility; to determine if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer or enlisted person; to apprise individuals of changes in the reserve program affecting them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tape/disc.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

All records are restricted to officially designated individuals having need therefor in assigned duties. Records are maintained in secured buildings; automated data are stored in vaults.

RETENTION AND DISPOSAL:

Records in this system are combined with Army personnel records. Dual Component officer and enlisted Official Military Personnel Files are retained at the U.S. Army Enlisted Records and Evaluation Center, if serving as an enlisted person and the U.S. Total Army Personnel Command, if a warrant officer. Officer Military Personnel Records Jackets are to be maintained at the dual component individual's current unit of assignment. Dual Component's Career Management Individual Files are maintained at the U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army

Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number and signature.

CONTESTING RECORD PROCEDURES:

The Army's rule for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600USAREUR

SYSTEM NAME:

USAREUR Community Automation System (UCAS) *(February 22, 1993, 58 FR 10133).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander-in-Chief, United States Army, Europe, and Seventh Army, ATTN: AEACC, CMR 420, APO AE 09014–0100.'

* * * * *

A0600USAREUR

SYSTEM NAME:

USAREUR Community Automation System (UCAS).

SYSTEM LOCATION:

Each United States Army Europe community. United States Army Europe and Seventh Army, APO AE 09014–0100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Army Europe (USAREUR) and Seventh Army military and civilian members and their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, command and unit of assignment, military occupational skill, sex, date of birth, date eligible to return from overseas, basic active service date, pay entry basic date, expiration term of service, date of rank, rank/grade, promotion status, citizenship, marital status, spouse's Social Security Number (for military spouse), insurance and beneficiary data for Department of Defense Form 93 (Record of Emergency Data) and Department of Veterans Affairs Form 29–8286 (Serviceman's Group Life Insurance Election) completion in an automated format (DD Form 93–E and SGLV Form 8286–E), address, work and home telephone numbers, type of tour, dependent status and relationships, marriage data, type and date of cost of living allowance, port call date, departure date and order number, exceptional family member status, household goods/hold baggage, vehicle-shipment dates/destinations/weights.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 9397 (SSN); and Army Regulation 600-8, Military Personnel Operations.

PURPOSE(S):

The primary purpose of UCAS is to provide a central database containing all information required to in-process or out-process individuals within a USAREUR community. This data base is shared among five community work centers that need information on arriving and departing personnel. These work centers, the Central Processing Facility, Personnel Services Company, Finance Office, Housing Office and the Transportation Office, have access to certain portions of the UCAS data base. Data base information updates made by each work center are shared by all work centers that need the information. The centralized data base reduces in-processing and out-processing time since individuals no longer need to furnish the same information at each work centers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and discs; computer printouts.

RETRIEVABILITY:

By Social Security Number, name, or other individual or group identifier.

SAFEGUARDS:

Physical security devices, computer hardware and software security features, and personnel clearances for individuals working with the system. Automated media and equipment are protected by controlled access to computer rooms.

RETENTION AND DISPOSAL:

Information is destroyed 30 days after individual's tour of duty with that community ends.

SYSTEM MANAGER(S) AND ADDRESS:

Commander-in-Chief, United States Army, Europe, and Seventh Army, ATTN: AEACC, CMR 420, APO AE 09014–0100.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander-in-Chief, United States Army, Europe, and Seventh Army, ATTN: AEACC, CMR 420, APO AE 09014–0100.

Individuals should provide sufficient details to permit locating pertinent records, such as full name, Social Security Number, and current address. Request must be signed by individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records themselves contained in this record about system should address written inquiries to the Commander-in-Chief, United States Army, Europe, and Seventh Army, ATTN: AEACC, CMR 420, APO AE 09014–0100.

Individual should provide sufficient details to permit locating pertinent records, such as full name, Social Security Number, and current address. Request must be signed by individual.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records, reports and other official documents; Army Standard Automated Management Information Systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8DARP

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System *(February 22, 1993, 58 FR 10134).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8ARPC'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.'

* * * * *

A0600–8ARPC

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army Reserve and assigned to a Reserve unit and not serving on extended active duty in an entitled reserve status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and military status and qualifications data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain personnel data on members assigned to individual ready, standby, and retired Army Reserves; to select and order individuals to military active duty training, to identify personnel for promotion; to determine those not qualified for retention in the reserve forces; to issue annual statement of retirement credits; to select qualified members for potential assignment to active Army units and reserve component units in the event of mobilization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and discs.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Records are located in secured building; access requires an ID badge and is limited to individuals having official need therefor.

RETENTION AND DISPOSAL:

Records are maintained for 7 months after individual completes statutory or contractual reserve commitment.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the Official Military Personnel File and the Military Personnel Records Jacket.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8NGB

SYSTEM NAME:

Standard Installation/Division Personnel System Army National Guard (SIDPERS–ARNG) *(February 22, 1993, 58 FR 10135).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Data on all members of the Army National Guard is archived to magnetic media monthly and destroyed after two (2) years.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.'

* * * * *

A0600–8NGB

SYSTEM NAME:

Standard Installation/Division Personnel System Army National Guard (SIDPERS–ARNG).

SYSTEM LOCATION:

The system operates at two levels. Each state ARNG headquarters has primary responsibility for editing and updating the database; the National Guard Bureau (NGB) centrally collects and controls data flows to/from the states thereby creating the database for reports preparation to Headquarters, Department of the Army, Department of Defense, and other agencies. Addresses for each state headquarters may be obtained from the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army National Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Soldier's name, Social Security Number, grade/rank, sex, race, ethnic group, current military assignment, military qualifications, dates relevant to military service, civilian occupation, and other similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

The principal purposes are to report accessions and losses to ARNG strength; to provide information for personnel management; and to support automated interfaces with authorized information systems for pay, mobilization, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/discs.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

Access to data storage area and distribution of printouts is controlled. Approval of functional manager must be obtained before data may be retrieved or distributed.

RETENTION AND DISPOSAL:

Data on all members of the Army National Guard isarchived to magnetic media monthly and destroyed after two (2) years.

SYSTEM MANAGER(S) AND ADDRESS:

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individual should provide full name, service identification number, present address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CS, 111 South George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individual should provide full name, service identification number, present address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, individual's personnel and pay files, other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–1cTAPC

SYSTEM NAME:

Casualty Information System (CIS) *(February 22, 1993, 58 FR 10139).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Army Casualty Information Processing System (ACIPS)'.

* * * * *

A0600–8–1cTAPC

SYSTEM NAME:

Army Casualty Information Processing System (ACIPS).

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel who are reported as casualties in accordance with Army Regulation 600–8–1, Army Casualty Operations, Assistance, Insurance and Line of Duty Administrative Procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, date of birth, branch of service, organization, duty, military occupational specialty (MOS), rank, sex, race, religion, home of record, and other pertinent information; Military Personnel Records Jacket (MPRJ), health/dental records, all correspondence between Department of the Army and soldier, soldier's primary next of kin/secondary next of kin, inquiries from other agencies and individuals, DD Form 1300 (Report of Casualty).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Pub. L. 93–289; and E.O. 9397 (SSN).

PURPOSE(S):

To respond to inquiries; to provide statistical data comprising type, number, place and cause of incident to Army members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, computer printouts, punch cards, paper records in file cabinets.

RETRIEVABILITY:

By individual's name and/or Social Security Number or any other data element.

SAFEGUARDS:

All information is restricted to a secure area in buildings which employ security guards.

Computer printouts and magnetic tapes and files are protected by password known only to properly screened personnel possessing special authorization for access.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

Individual should provide full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

Individual should provide full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From casualty reports received from Army commanders and from investigations conducted by Army commanders under AR 15–6, Procedures for Investigating Officers and Boards of Officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–141 DASG

SYSTEM NAME:

Army Medical Procurement Applicant Files *(February 22, 1993, 58 FR 10144).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.'

* * * * *

A0601–141 DASG

SYSTEM NAME:

Army Medical Procurement Applicant Files.

SYSTEM LOCATION:

Primary location: Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.

Secondary location: Army Medical Department Procurement Counselor field offices. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential applicants for the Army Medical Department procurement programs, to include applicants for appointment in the Regular Army and U.S. Army Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Interview sheets, counselor evaluations, resume, Curriculum Vitae, autobiography, letters of recommendation, selection/non-selection letters, Special Orders, correspondence to, from, and about applicant; Selection Board/Committee results, Statement of Interests, Objectives and Motivation, Letter of Appointment, service agreement, Application for Appointment (DA Form 61), professional degrees, license certifications, quality assurance documents, prior service records, physical, and birth certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 4301.

PURPOSE(S):

To evaluate an applicant's acceptability and potential for appointment in a component of the Army Medical Department; to evaluate qualifications for assignment to various career areas; to determine educational and experience background for award of constructive service credit; to determine dates of service and seniority; to document service agreement with the U.S. Army; to provide, statistical information for effective management of the Army Medical Department Personnel Procurement Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By applicant's surname.

SAFEGUARDS:

Records are restricted to designated officials having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Records of selected applicants are held for 10 years before being destroyed by shredding; those for applicants not selected are held 2 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full names, Social Security Number, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Recruiting Command, ATTN: Health Services Division, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full name, Social Security Number, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; academic transcripts; faculty evaluations; employer evaluations; military supervisor evaluations; American Testing Program; Educational Testing Service; selection board/committee records; prior military service records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5),

but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0608a CFSC

SYSTEM NAME:

Family Life Communications Information and Referral Service *(February 22, 1993, 58 FR 10154).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301. Segments of the system are located at Family Assistance/Quality of Life Offices at major commands and installations, Army-wide.'

* * * * *

A0608a CFSC

SYSTEM NAME:

Family Life Communications Information and Referral Service.

SYSTEM LOCATION:

U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301. Segments of the system are located at Family Assistance/Quality of Life Offices at major commands and installations, Army-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army service members, civilian employees, their families, social service organizations (Federal, State, local) acting on behalf of the member, employee, or family member. Other military service personnel and civilian employees may be included when such individuals are stationed with Army elements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, mailing address and telephone number of the individual; documentation reflecting nature or basis of service desired or required in the following typical matters, but only to the extent or degree required to determine the proper office, command, or installation that should handle details, resolve problems, or provide responses: Pay, medical, education, housing, voting, commissary/exchange privileges and practices, community service programs provided by chaplains, alcohol/drug abuse, Equal Employment Opportunity; related processing papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To provide assistance to service members (active duty, reserve/ retired), civilian employees and their families in programs that affect family life. Statistical data may be provided commanders or managers at all levels of the Army in support of their functions or programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to bonafide Federal, State, or local social service or welfare organizations.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tape, disc, cassette.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in buildings guarded by security personnel and rooms are secured by locked doors when not in use. All records are restricted to individuals having official need therefor in the performance of their assigned duties. Information in automated media is further protected by an authorized password system for access terminals, controlled access to operation rooms, and controlled output distribution.

RETENTION AND DISPOSAL:

Information is retained for 2 years following resolution of the problem or provision of information, after which it is destroyed by shredding or erasing. Information in automated media used to provide statistical data is retained indefinitely; however, individually identifiable data are purged within 2 years following resolution of problem.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact either the Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301, or the Major Army Command or installation to which initial inquiry was directed.

Individual should provide his/her full name, Social Security Number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should write the Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301 or the Major Army Command or installation to which initial inquiry was directed.

Individual should provide his/her full name, Social Security Number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; his/her family; social or welfare organizations under Federal, State, or local jurisdiction; official military or civilian records; other components of the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640 DARP

SYSTEM NAME:

Personnel Management/Action Officer Files *(February 22, 1993, 58 FR 10162).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0640 ARPC'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

* * * * *

A0640 ARPC

SYSTEM NAME:

Personnel Management/Action Officer Files.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Individual Ready Reserve (IRR), Standby Reserve, Retired Reserve, unit personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence; orders; pay vouchers; efficiency reports; assignment instructions; medical evaluations; request for waiver of disqualifications; grade determinations; flagging actions which preclude completion of favorable personnel actions; transcripts; requests for transfer to another Branch, status, or service; claims for pay; assignment instructions for Active Duty or Active Duty for Training; applications for delay or exemption from Active Duty/Active Duty for Training; nominations for decorations or awards; notification of removal from active Reserve status for physical disqualification, non-participation, being passed over twice for promotion, or elimination action; application for waiver of disqualifications for enlistment in U.S. Army Reserves; request for discharge or voiding of enlistments; requests for transfer to or from the Ready Reserve, Standby Reserve, or Retired Reserve; claims for pay not received while on active duty; request for assignment/ attachment to Army National Guard units, mobilization designation positions or detachments, reinforcement training units, and U.S. Army Reserve school student detachments; applications for participation in Army Reserve Logistics Career Program and Foreign Area Officer Program; decisions pertaining to the career management of officers and senior enlisted personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

To respond to inquiries from an individual or other government agencies concerning reserve status of Army personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets; card files.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are maintained for a period of 6 months to 3 years depending on the type of action involved, after which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, and current and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10 DARP

SYSTEM NAME:

Philippine Army Files *(February 22, 1993, 58 FR 10163).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0640–10 ARPC'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.'

* * * * *

A0640–10 ARPC

SYSTEM NAME:

Philippine Army Files.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Philippine Commonwealth Army who were inducted for service with the U.S. Armed Forces Far East under the Military Order of the President of the United States dated July 26, 1941; Philippines who served in Guerrilla units officially recognized and listed in the Recognized Philippine Guerrilla Rosters.

CATEGORIES OF RECORDS IN THE SYSTEM:

World War II claim folders which contain enlistment papers, orders inducting individual into U.S. Armed Forces Far East service, soldier's qualification card, unit orders of assignment, efficiency rating sheets, pay vouchers or receipts, affidavits and certificates, service records, determination of status under the Missing Persons Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; 37 U.S.C. 556; and 38 U.S.C. 107.

PURPOSE(S):

To answer inquiries regarding individuals who served, or allegedly served, with the Philippine Commonwealth Army including recognized Guerrilla Forces, during World War II, in the Philippines.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs to verify or certify service with the U.S. Armed Forces Far East or recognized guerrilla units; provide available medical records or other documents to assist in determining benefits.

To the Department of Justice to certify or verify service regarding application of individual for citizenship.

To the Department of Health and Human Services to verify type of service that is used to assist in determining eligibility for benefits.

To the Department of State to provide statement of service or verification of type of service performed.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name, service number, VA claim number, units assigned to during period of service in question, names of parents, birth date and place, name of spouse and children if applicable. (Due to similarity of names complete file must be screened to determine proper individual.)

SAFEGUARDS:

Records are maintained in area accessible only to designated personnel having official need therefor.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service number, VA claim number, if applicable, and name and/or number of the unit to which assigned during the period of service.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service number, VA claim number, if applicable, and name and/or number of the unit to which assigned during the period of service.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From records of military service compiled during period of individual's service with the Philippine Commonwealth Army and/or the U.S. Armed Forces Far East prior to December 7, 1941 up to August 1945.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10b NGB

SYSTEM NAME:

Military Personnel Records Jacket (NGB) *(February 22, 1993, 58 FR 10164).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-C, 111 George Mason Drive, Arlington, VA 22204–1382.'

* * * * *

A0640–10b NGB

SYSTEM NAME:

Military Personnel Records Jacket (NGB).

SYSTEM LOCATION:

The custodian of the Military Personnel Record will either be the State Personnel Service Center (PSC) located in conjunction with the Office of the Adjutant General or each National Guard Armory in those non-PSC states: Guam, Puerto Rico, the Virgin Islands, and the District of Columbia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the Army National Guard not on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records are outlined in AR 640–10. Examples of the type of document included in the Military Personnel Records Jacket (DA Form 201) are the individual's service agreement, record of emergency data, certificates of release or discharge from active duty (DD Form 214) and other service computation documents, active duty orders, military occupational specialty orders, Servicemen's Group Life Insurance election, security questionnaire and clearance, transfer requests and orders, promotions, reductions, personnel qualification record (DD Form 2091), oath of extensions of enlistment, selective reserve incentive program agreements, notice of basic eligibility (NOBE) for GI Bill, and discharge documents and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

These records are created and maintained to: Manage the member's National Guard Service effectively; Historically document the member's military service; and Safeguard the rights of members and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Central Intelligence Agency; Department of Agriculture; Department of Commerce; Department of Health and Human Services; Department of Education; Department of Labor; Department of State; Department of the Treasury; Department of Transportation; Federal Aviation Agency; National Transportation Safety Board; American Battle Monuments Commission; Department of Veterans Affairs; Federal Communications Commission; U.S. Postal Service; Office of Personnel Management; Selective Service System; Social Security Administration; state, county and city welfare organizations when information is required to consider applications for benefits; penal institutions when the individual is a patient or an inmate; state, county and city law enforcement authorities.

NOTE: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, as amended, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket Routine Uses do not apply to these records.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records maintained in areas accessible only to authorized personnel having need therefor in the performance of official business. The Military Personnel Records Jacket is transferred from station to station in the personal possession of the individual whose record it is, or by U.S. Postal Service.

RETENTION AND DISPOSAL:

Military personnel records are retained until updated or service of individual is terminated. Following separation, the disposition of the records is to the U.S. Army Reserve Personnel Center or to the National Personnel Records Center in accordance with 640–10.

SYSTEM MANAGER(S) AND ADDRESS:

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-C, 111 George Mason Drive, Arlington, VA 22204–1382.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned.

For separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service identification number, current military status, and current address.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned.

For separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service identification number, current military status, and current address.

For personal visits, the requester should provide acceptable identification, i.e., military identification card or other identification normally acceptable in the transaction of business.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10c NGB

SYSTEM NAME:

Official Military Personnel File (Army National Guard) *(February 22, 1993, 58 FR 10165).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–104c NGB'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.'

* * * * *

STORAGE:

Delete entry and replace with 'Microfiche are stored on (PERMS/ODI) Personnel Electronic Record Management System/Optical Digital Imagery. Temporary files purged and scanned on ODI, selected data automated for management purposes on disks, and (COM) Computer Output Microfiche.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.'

* * * * *

A0640–8–104c NGB

SYSTEM NAME:

Official Military Personnel File (Army National Guard) *(February 22, 1993, 58 FR 10165).*

SYSTEM LOCATION:

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each commissioned or warrant officer in the Army National Guard not on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract, physical evaluation board proceedings; statement of service; group life insurance election; emergency data form; application for appointment; qualification/evaluation report; oath of office; medical examination; security clearance; application for retired pay;

application for correction of military records; application for active duty; transfer or discharge; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks; consent/declaration of parent/guardian; award recommendations; academic reports; casualty reports; field medical card; retirement points; deferment; pre-induction processing and commissioning data; transcripts of military records; survivor benefit plans; efficiency reports; records of proceedings, 10 U.S.C. 815 and appellate actions; determination of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; retired benefits; application for review by physical evaluation board; birth certificate; citizenship statements and status; educational transcripts; flight status board reviews; efficiency appeals; promotion/reduction/recommendations approvals/declinations announcements/notifications and reconsiderations; notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and orders relating to military service including information pertaining to dependents, inter or intraservice details, determinations, reliefs; pay entitlements, releases, transfers; and other relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

These records are created and maintained to manage the member's Army National Guard service effectively; document the member's military service history; and, safeguard the rights of the member and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Justice to file fingerprint cards; to perform intelligence function.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical and health functions authorized by 10 U.S.C. 1074–1079.

To the Atomic Energy Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and complete service functions including blood donor programs and emergency investigative support and notifications.

To the Federal Aviation Agency to obtain flight certification and licenses.

To the General Services Administration for records storage, archival services, and for printing of directories and related material requiring personal data.

To the U.S. Postal Service to accomplish postal service authorization.

To the Department of Veterans Affairs to provide information relating to benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with statutes relating to in-service alien registration, and annual residence information.

To the Office of the President of the United States of America: To exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, made, and harbor master for duty as Transportation Corps warrant officer.

To each state and U.S. possession to support state bonus applications; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard Affairs.

To civilian educational, and training institutions to accomplish student registration, tuition support, Graduate Record Examination tests requirement, and related school requirements incident to in-service education programs in compliance with 10 U.S.C., Chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Numbers; to transmit Federal Insurance Compensation Act deductions made from in-service members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard and Army National Guard when service members perform duty with the U.S. Coast Guard elements or training activities.

To Civil Authorities for Compliance with 10 U.S.C. 814.

NOTE: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket Routine Uses do not apply to these records.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche are stored on (PERMS/ODI) Personnel Electronic Record Management System/Optical Digital Imagery. Temporary files purged and scanned on ODI, selected data automated for management purposes on disks, and (COM) Computer Output Microfiche.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized personnel; automated media protected by authorized password system for access terminals, controlled access to operation rooms, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent: retained in active file until termination of service following which they are retired to the custody of the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS:

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individual should provide full name, service identification number, current or former military status, current home address, and signature.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB-ARP-CO, 111 George Mason Drive, Arlington, VA 22204–1382.

For verification purposes, individual should provide full name, service identification number, current or former military status, current home address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the Service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–33364 Filed 12–22–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 17, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Case Studies of the Implementation of the Crossroads Cafe Project.

Frequency: Weekly.

Affected Public: Individuals or households; Businesses or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 316.

Burden Hours: 1,458.

Abstract: This study is designed to provide the U.S. Department of Education with information on the implementation of the Crossroads Cafe Project, a distance education model for delivering English-as-a-Second Language (ESL) services to adult ESL learners. The study will also provide a pilot test of a design for an impact evaluation of the Crossroads Cafe Project. Data will be gathered from approximately 200 adult ESL learners and teachers at 3 state sites, as well as state implementation team members and technical assistance providers.

[FR Doc. 97–33395 Filed 12–22–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subseqent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning the Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/AR(CA)–1 for the transfer of 2 kilograms of zirconium alloy metal doped with 9.6 grams of unirradiated enriched uranium containing 8.9 grams of the isotope U–

235 (93.04 percent enrichment) from Canada to Argentina for use in experiments of irradiation growth of zirconium alloy at low temperatures.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: December 17, 1997.
For the Department of Energy.
Cherie P. Fitzgerald,
Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–33441 Filed 12–22–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.
ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/IE(EU)–12 for the transfer of 35,000 grams of uranium in the form of metal and oxide containing less than 7,000 grams of the isotope U–235 (19.75 percent enrichment) from UKAEA, Dounreay, United Kingdom to Indonesia for manufacturing fuel elements to be used at the MPR–30 and/or RPI–10 Research Reactor(s) in Sepong, Indonesia.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: December 17, 1997.
For the Department of Energy.
Cherie P. Fitzgerald,
Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–33442 Filed 12–22–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–166]

Application To Export Electric Energy; Duke Energy Trading and Marketing, L.L.C.

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of application.

SUMMARY: Duke Energy Trading and Marketing, L.L.C. (Duke Energy) has applied for authorization to transmit electric energy from the United States to Mexico.

DATES: Comments, protests or requests to intervene must be submitted on or before January 22, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 11, 1997, Duke Energy applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico, as a power marketer, pursuant to section 202(e) of the FPA. Specifically, Duke Energy has proposed to transmit to Mexico electric energy purchased from electric utilities and other suppliers within the U.S.

The exported energy would be delivered to Mexico over transmission facilities owned by San Diego Gas & Electric Company, The El Paso Electric Company, Central Power and Light Company, and Comission Federal de Electricidad, the national electric utility of Mexico. Each of the transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Comments on Duke Energy's request to export electric energy to Mexico should be clearly marked with Docket EA–166. Additional copies are to be filed with Kris Errickson, Legal/Regulatory Coordinator, Duke Energy Trading and Marketing, L.L.C., One Westchase Center, 10777 Westheimer Street, Suite 650, Houston, TX 77042; Christine M. Pallenik, Managing Counsel, Duke Energy Trading and Marketing, 4 Triad Center, Suite 1000, Salt Lake City, UT 84180, *AND* Gordon J. Smith, Esq., John & Hengerer, 1200 17th Street, NW, Suite 600, Washington, DC 20036.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. Further information may also be obtained on the program through the World Wide Web by accessing the Fossil Energy Home Page at http://www.fe.doe.gov then selecting "Regulatory" from the options menu.

In Washington, DC on December 12, 1997.
Anthony J. Como,
Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–33444 Filed 12–22–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–102–B]

Application To Export Electric Energy; Enron Power Marketing, Inc.

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of application.

SUMMARY: Enron Power Marketing, Inc. (Enron) has applied for renewal of its authority to transmit electric energy from the United States to Mexico.

DATES: Comments, protests or requests to intervene must be submitted on or before January 22, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 6, 1996, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Enron, a power marketer, to transmit electric energy from the United States to Mexico. The term of the authorization was for a period of two years. On December 5, 1997, Enron filed an application with FE for renewal of this authority which expires on February 6, 1998.

The exported energy would be delivered to Mexico over transmission facilities owned by San Diego Gas & Electric Company, The El Paso Electric Company, Central Power and Light Company, and Comission Federal de Electricidad, the national electric utility of Mexico. Each of the transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Comments on Enron's request to renew its export authorization to Mexico should be clearly marked with Docket EA–102–B. Additional copies are to be filed directly with Christi L. Nicolay, Enron Power Marketing, Inc., Post Office Box 1188, EB641–C, Houston, TX 77251 and David B. Ward, Ward & Anderson, 1000 Thomas Jefferson Street, NW, Suite 503, Washington, DC 20007. Jesse A. Dillon, Senior Counsel, PP&L, Inc., Two North Ninth Street, Allentown, PA 18101 and Douglas H. Rosenberg, Preston Gates & Ellis, LLP, 5000 Columbia Center, 701 Fifth Avenue, Seattle, WA 98104–7078.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. Further information may also be obtained on the program through the World Wide Web by accessing the Fossil Energy Home Page at http://www.fe.doe.gov then selecting "Regulatory" from the options menu.

In Washington, DC on December 12, 1997.
Anthony J. Como,
Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–33443 Filed 12–22–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–421–000]

Cinergy Services, Inc., Notice of Filing

December 17, 1997.

Take notice that on December 15, 1997, Cinergy Services, Inc., on behalf of CinCap IV, LLC, filed an amendment to its October 31, 1997 and December 9, 1997, filings in the above-captioned docket. This amendment would allow CinCap IV, to enter into transactions with affiliated power marketers and EWGs. Cinergy Services, Inc., has requested a January 15, 1998, effective date for the amendment to Rate Schedule FERC No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–33390 Filed 12–22–97; 8:45 am]
BILLING CODE 6010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER92–533–003]

Louisville Gas and Electric Company; Notice of Filing

December 17, 1997.

Take notice that on September 17, 1997, Louisville Gas and Electric Company (LG&E) filed a notification of a change in status describing a proposed transaction between certain affiliates of LG&E and Big Rivers Electric Corporation (Transaction). LG&E's only role in the Transaction is to cede a portion of its retail service territory to an affiliate, LG&E Station Two Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 97–33391 Filed 12–22–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–279–003]

Warren Transportation, Inc.; Notice of Tariff Filing

December 17, 1997.

Take notice that on December 10, 1997, Warren Transportation, Inc. (WTI), 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed for inclusion as part of its FERC Gas Tariff, Original Volume No. 1, to be effective on December 15, 1997:

First Revised Sheet No. 1.

WTI states that it is filing this sheet to reflect a change in the designated contact person for communications regarding its FERC Tariff. WTI states that because this sheet has no substantive effect to its tariff, it is requesting waiver of the 30-day notice requirement of Section 154.207. WTI also states that it is submitting at Appendix A to its filing, its intended usage of the Version 1.1 GISB data elements for the implementation of the electronic GISB standards on December 15, 1997, as required by a November 6, 1997 Letter Order in Docket Nos. CP97–279–000, *et al.*

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33389 Filed 12–22–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2612–005 Maine]

Central Maine Power Company; Notice of Availability of Draft Environmental Assessment

December 17, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for relicensing of the Flagstaff Project, located in Somerset and Franklin Counties, Maine, and has prepared a draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 2–A, Washington, D.C. 20426. Please affix "Flagstaff Project No. 2512" to all comments. For further information, please contact Edward R. Meyer at (202) 208–7998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33392 Filed 12–22–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5939–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Final Standards for Hazardous Air Pollutants From Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 40 CFR part 63, subpart JJ, Final Standards for Hazardous Air Pollutants From Wood Furniture Manufacturing Operations, OMB number 2060–0324, Expiration Date February 28, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1716.02.

SUPPLEMENTARY INFORMATION:

Title: 40 CFR part 63, subpart JJ, Final Standards for Hazardous Air Pollutants From Wood Furniture Manufacturing Operations, OMB number 2060–0324, EPA ICR number 1716.02, Expiring February 28, 1998. The Agency is requesting an extension of a currently approved collection.

Abstract: Respondents to this information collection request are the owners and operators of both new and existing wood furniture manufacturing operations that are major sources of hazardous air pollutants. Respondents are required to submit both initial and regular semiannual compliance reports and to perform recordkeeping activities. The information is used to determine that all sources subject to the rule are complying with the standards. The information to be collected is mandatory under the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 19, 1997 (FR 44122); two comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.67 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Respondents/Affected Entities: Wood Furniture Manufacturers.

Estimated Number of Respondents: 750.

Frequency of Response: On occasion, quarterly, semi-annually and annual reports are required.

Estimated Total Annual Hour Burden: 91,430 hours.

Estimated Total Annualized Cost Burden: $34,830.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1716.02 and OMB Control No. 2060–0324 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: December 17, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–33454 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5939–3]

Environmental Laboratory Advisory Board; Nominees, Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Protection Agency (EPA) will convene an open meeting of the Environmental Laboratory Advisory Board (ELAB) on January 16, 1998, from 1 pm to 5 pm. This meeting immediately follows the National Environmental Laboratory Accreditation Conference (NELAC) Third Interim Meeting and will be held in the Sheraton National Hotel at 900 South Orme Street in Arlington, VA. Directions can be obtained from the hotel by calling 703/521–2122.

The agenda will include discussions on (1) the fact findings of the Good Laboratory Practices subcommittee, which will present its final report; (2) consideration of a request to establish a separate fact finding subcommittee on third party assessors; and (3) a report from NELAC on issues regarding implementation. Comments on the NELAC standards, as discussed during the Third Interim Meeting, will be solicited. Standards are scheduled to be posted on the electronic bulletin board on December 13, 1997. The Internet site address for the standards is: http://ttnwww.rtpnc.epa.gov/html/nelac/nelac.htm.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are most valuable and should be directed to Ms. Jeanne Mourrain; Designated Federal Officer; USEPA; NERL (MD–75A); Research Triangle Park, NC 27711. If questions arise, please contact Ms. Mourrain at 919/541–1120, fax 919/541–4261, or E-mail mourrain.jeanne@epamail.epa.gov.

Dated: December 10, 1997.

Nancy W. Wentworth,

Director, Quality Assurance Division.

[FR Doc. 97–33453 Filed 12–22–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64036; FRL 5764–2]

Notice of Termination of the Use of Methamidophos on All Crops Except Cotton and Potatoes, and Cancellation of All Methamidophos 24(c) Food-Use Registration Not Labeled for Use on Tomatoes Only

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of its response to requests for amendment by Bayer Corporation and Valent USA, the sole U.S. registrants of the insecticide methamidophos, to terminate the use of methamidophos on all agricultural crops except cotton and potatoes by deleting all other uses from all methamidophos FIFRA section 3 registrations, and to cancel all section 24(c) food-use registrations not labeled for use on tomatoes only.

DATES: These terminations and cancellations are effective on December 31, 1997, subject to the existing stocks provision specified herein.

FOR FURTHER INFORMATION CONTACT: By mail: Philip Poli, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8038; e-mail: poli.philip@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide for a 30–day public comment period. Thereafter, the Administrator of EPA may approve such a request, unless the Administrator determines, in the case of a pesticide that is registered for a minor agricultural use, that the cancellation or termination of uses would adversely affect the availability of the pesticide for use. If such a determination is made, unless certain exceptions apply, the Administrator may not approve or reject a request until 180 days have passed from the date of publication in the **Federal Register** of the notice of receipt.

Methamidophos is registered for minor agricultural uses that would be affected by a termination of uses and cancellation of registrations. Accordingly, in a July 2, 1997 **Federal Register** notice announcing receipt of these requests for termination/cancellation, the Administrator set forth a 180–day effective schedule for approval of the requests.

II. Background

EPA conducted an occupational risk assessment that estimated risks associated with short-and intermediate-term exposures of agricultural workers to methamidophos. The assessment indicated that the risks to workers of

acute exposure exceeded EPA's level of concern. In addition to the risk assessment, EPA had California and nationwide human incident data indicating acute worker exposure incidents associated with methamidophos use. EPA met with Bayer and Valent, the sole U.S. methamidophos registrants, on August 1, 1996, to present EPA's concerns and discuss voluntary measures to reduce risk. At the meeting, the registrants proposed the use terminations and product cancellations announced in this notice, as well as other measures including additional spray drift language, a phase-in of closed mixing and loading systems, and participation in industry-wide education efforts.

In the **Federal Register** of July 2, 1997 (62 FR 35812) (FRL 5724-7), EPA issued a notice announcing receipt of the methamidophos registrants' requests to terminate uses and cancel registrations under sections 3 and 24(c) of FIFRA, and provided notice of EPA's intent to accept those requests. In letters dated November 12, 1996, and February 21, 1997 respectively, Bayer and Valent requested that FIFRA section 3 registrations be amended to terminate (by use deletion) the use of methamidophos on broccoli, Brussels sprouts, cabbage, cauliflower, celery, and sugar beets, and that section 24(c) registrations labeled for melons, cucumbers, lettuce, alfalfa, bermuda grass, peppers, clover, and eggplant be canceled, leaving tomatoes as the only remaining food use with methamidophos 24(c) registrations.

The following comments were received by the Agency in response to the notice published in the **Federal Register** of July 2, 1997:

1. *Comment from Bayer Corporation.* A comment was received by the Agency from Bayer Corporation concerning the existing stocks provision as stated in the notice of July 2, 1997. Bayer Corporation requested that the Agency amend the existing stocks provision to allow the existing stocks already in possession of the dealers as of December 31, 1997, to be distributed, sold, or used legally until they are exhausted.

Agency response. The Agency after reviewing the existing stocks provision as listed in the notice published in the **Federal Register** of July 2, 1997, concurs with the company request. The Agency believes that the amount of methamidophos in inventory is relatively small and will decrease rapidly after the December 31, 1997 effective date for these voluntary terminations/cancellations. Therefore, the existing stocks provision listed in the notice of July 2, 1997 is amended to read:

> After December 31, 1997, methamidophos registrants may not sell or distribute any stocks of canceled methamidophos products or methamidophos products containing any terminated uses. Persons other than the registrant will be permitted to sell, distribute, and use the product until their supplies are exhausted.

2. *Comment from Bayer Corporation.* A comment was received by the Agency from Bayer Corporation inquiring about several 24(c) registrations that currently exist for cotton use only. Bayer Corporation questioned that since cotton is one of the crops being maintained on the section 3 label language would it be allowable to maintain these existing 24(c) labels as well. These 24(c)'s were not listed in the July 2, 1997 **Federal Register** notice as cancellations. The 24(c)'s in question are: CA790188, AR810044, AR870007, MS810014 and MS810055.

Agency response. The Agency agrees that since these 24(c) registrations are only for the agricultural crop cotton, and this crop has been retained under a FIFRA section 3 registration they may be maintained.

3. *Comment from Tomen Agro, Incorporated.* A comment was received by the Agency from Tomen Agro, Inc. requesting that the tolerances for the canceled crop uses be retained in 40 CFR 180.315 because these commodities are being legally treated in other countries and imported into the United States. Withdrawal of these tolerances would be disruptive to international trade associated with these commodities.

Agency response. As an administrative matter, the Agency normally proposes to revoke the existing tolerance for a crop shortly after the agricultural use has been terminated. However, as commenters have expressed an interest in leaving the tolerances in place and as these cancellations were a voluntary measure by the registrants and were not due to any dietary risk to humans posed by methamidophos residues on these food crops, the Agency will not propose to revoke, at this time, the tolerances for the terminated or canceled crop uses listed in 40 CFR 180.315.

Under section 408(l)(5) as amended by The Food Quality Protection Act of 1996 (FQPA), food lawfully treated, prior to the cancellation notice and crops treated with existing stocks, will not be rendered adulterated despite the lack of a tolerance, so long as the residue on the food complies with the tolerance in place at the time of treatment. These tolerances will be modified or revoked at the time that the Reregistration Eligibility Decision (RED) document is published (presently scheduled for 1998), and the results of the tolerance reassessment will be published in a **Federal Register** notice.

III. Final Actions and Existing Stocks Provision

This notice terminates (by use deletion from section 3 registrations) the use of methamidophos on broccoli, Brussels sprouts, cabbage, cauliflower, celery, and sugar beets, and the section 24(c) registrations labeled for melons, cucumbers, lettuce, alfalfa, bermuda grass, peppers, clover, and eggplant are canceled. These terminations and cancellations are effective December 31, 1997. The Agency has determined that after December 31, 1997, methamidophos registrants may not sell or distribute any stocks of canceled methamidophos products or methamidophos products containing any terminated uses. Persons other than the registrant will be permitted to sell, distribute, and use the product until their supplies are exhausted.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: December 17, 1997.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 97-33456 Filed 12-22-97; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2244]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 17, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857-3800. Oppositions to these petitions must be filed January 7, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended (CC Docket No. 96-61).

Number of Petitions Filed: 5.

Subject: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications act of 1996 (CC Docket No. 96-128).

Number of Petitions Filed: 11.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97-33425 Filed 12-22-97; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee for Services to Support FEMA's Offsite Radiological Emergency Preparedness (REP) Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: In accordance with FEMA Rule 44 CFR Part 354, published in the **Federal Register** on March 24, 1995, (60 FR 15628), FEMA has established a fiscal year (FY) 1998 hourly rate of $31.46 for assessing and collecting fees from Nuclear Regulatory Commission (NRC) licensees for services provided by FEMA personnel for FEMA's REP Program.

DATES: This user fee hourly rate is effective for FY 1998 (October 1, 1997, to September 30, 1998).

FOR FURTHER INFORMATION CONTACT: Mr. O. Megs Hepler, III, Division Director, Exercises Division, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2867.

SUPPLEMENTARY INFORMATION: As authorized by Public Law 105-65 (111 Stat. 1377), an hourly user fee rate of $31.46 will be charged to NRC licensees of commercial nuclear power plants for all site-specific biennial exercise related services provided by FEMA personnel for the REP Program. This hourly user fee rate will be charged in accordance with the provisions of 44 CFR 354, published in the **Federal Register** on March 24, 1995, (60 FR 15628). All funds collected under this rule will be deposited in the U.S. Department of the Treasury to offset appropriated funds obligated by FEMA for the REP Program.

The hourly rate is established on the basis of the methodology set forth in FEMA Rule 44 CFR 354.4(b), "Determination of site-specific biennial exercise-related component for FEMA personnel," and will be used to assess and collect fees for site-specific biennial exercise related services rendered by FEMA personnel.

The hourly rate is intended only to be applied to charges to NRC licensees for services provided by FEMA personnel for the site-specific biennial exercise-relate component referenced above, not for charges for services provided by FEMA personnel under the flat fee component referenced at 44 CFR 354.4(d) nor for services provided by FEMA contractors. Services provided by FEMA contractors will be charged in accordance with 44 CFR 354.4 (c) and (d) for the recovery of appropriated funds obligated for the Emergency Management Planning and Assistance (EMPA) portion of FEMA's REP Program budget.

Dated: December 18, 1997.

Kay C. Goss,

Associate Director for Preparedness, Training, and Exercises.

[FR Doc. 97-33433 Filed 12-22-97; 8:45 am]

BILLING CODE 6718-06-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight fowarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Pacat International-Pacific Atlantic International, 1019 Fairway Valley Drive, Woodstock, GA 30189, Gunter Wegner, Sole Proprietor

Trafik Services, Inc., 300 Wapanoag Trial, East Providence, RI 02915, Officers: Robert A. Mega, President, William Mega, Vice President.

Dated: December 17, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97-33366 Filed 12-22-97; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 7, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Marlen E. Bents, Ceylon, Minnesota; to retain 24.3 percent, and acquire an additional .8 percent of the voting shares of Ceylon Bancorporation, Inc., Ceylon, Minnesota, and thereby indirectly acquire State Bank of Ceylon, Ceylon, Minnesota.

Board of Governors of the Federal Reserve System, December 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-33459 Filed 12-22-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Buckhead Community Bancorp, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Buckhead Community Bank, N.A., Atlanta, Georgia (in organization).

Board of Governors of the Federal Reserve System, December 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–33460 Filed 12–22–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice regarding charges for certain disclosures.

SUMMARY: The Federal Trade Commission announces that the current ceiling on allowable charges under Section 612(a) of the Fair Credit Reporting Act (FCRA) will remain unchanged for 1998. Under recent amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents. Since the FCRA amendments only took effect on September 30, 1997, the modified amount shows no increase based on the Consumer Price Index for the period in question, and remains at $8.00.

EFFECTIVE DATE: January 1, 1998.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lisa Marie Daniel, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3394.

SUPPLEMENTARY INFORMATION: The Fair Credit Reporting Act, originally enacted in 1970,[1] was extensively amended in 1996. Most of the amendments to the law, including that which is discussed in this notice, went into effect on September 30, 1997. Section 612(a)(1)(A) states that, except as provided in certain subsections, a consumer reporting agency may impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609, which charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(a)(2) goes on to state that the Federal Trade Commission ("the Commission") shall increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index (CPI), with fractional changes rounded to the nearest fifty cents.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of Section 612(a) to be the baseline for the effective ceiling on reasonable charges dating from the time the amended FCRA took effect, i.e., September 30, 1997. In November of each year, the Commission will calculate the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) for the twelve months dating from September 30th of the previous year to September 30th of the current year The Commission will then determine what modification, if any, from the original base of $8 should be made effective on January 1 of each subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

The Commission determines that there will be no modification from the base of $8.00 for January 1, 1998, as the Act only went into effect on September 30, 1997.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–33438 Filed 12–22–97; 8:45 am]

BILLING CODE 6750–01–M

[1] 15 U.S.C. Sections 1681–1681u; Title VI of the Consumer Credit Protection Act.

FEDERAL TRADE COMMISSION

[File No. 971–0067]

CUC International Inc.; HFS Incorporated; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, Federal Trade Commission, 6th & Pennsylvania Ave., NW, H–374, Washington, DC 20580. (202) 326–2932. Jacqueline K. Mendel, Federal Trade Commission, 6th & Pennsylvania Ave., NW, S–2308, Washington, DC 20580. (202) 326–2603.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the about-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 17, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its

principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from CUC International Inc. ("CUC") and HFS Incorporated ("HFS") (collectively, "the Parties") under which the Parties would be required to divest Interval International Inc. ("Interval"), one of two worldwide full-service timeshare exchange service companies, to Interval Acquisition Corporation ("IAC"). IAC is controlled by a venture capital firm, Willis Stein & Partners, L.P., and includes Interval's current management. The buying group also includes Marriott Ownership Resorts, Inc., a subsidiary of Marriott International, Inc., Hyatt Vacation Ownership Resorts, Inc., and Carlson Companies, Inc. If the sale of Interval is not made to the Willis Stein buying group, the Parties are required to divest Resort Condominiums International, Inc. ("RCI"), the other worldwide full-service timeshare exchange service company, currently owned by HFS. The agreement is designed to remedy the anticompetitive efforts resulting from CUC's acquisition of HFS.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Public comment is invited regarding all aspects of the agreement including the proposed divestiture of Interval to IAC. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order. If the Commission decides after the public comment period that IAC is not an acceptable acquirer, the Parties have 120 days to divest either Interval or RCI to another Commission-approved buyer.

The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the market for the worldwide sale of timeshare exchanges services.

The relevant market in which to analyze the effects of the proposed transaction is the sale of timeshare exchange services on a worldwide basis. An important benefit of timeshare ownership (also known as vacation ownership) is the right to exchange the use of that unit for another comparable unit at a different resort property (or at the same resort for another time period). The owner of a particular resort unit relies on the timeshare exchange company to provide the exchange properties and to process the exchange. Exchange companies grade and rate time periods as well as property quality.

CUC's acquisition of HFS will result in a virtual monopoly in the market for full-service timeshare exchanges. As a result, timeshare resort developers and owners would not have the same exchange opportunities if they did not use the services of the merged company. Therefore, after the acquisition, CUC would have the ability to increase prices for the sale of timeshare exchange services to both groups of customers, as well as decrease the level of services provided.

Further, timely entry in the market for the sale of timeshare exchange services on the scale necessary to offset the competitive harm resulting from the combination of CUC and HFS is highly unlikely because there are significant network externalities that lead to high entry barriers. Like telephones, fax machines and automated teller machines, membership in a timeshare exchange requires other people with whom to interact. The owner of an interest in a timeshare resort would have no reason to join a timeshare exchange that had no other members. And the more members (i.e., potential exchange partners) that belong to an exchange, the more attractive the exchange becomes to other potential market participants. Attaining the critical mass required to be a viable competitor would take many years because timeshare developers consider joining a timeshare exchange only if it includes other quality resorts. Timeshare owners, in turn, want to affiliate with exchanges that give them the broadest timeshare vacation choices. Thus, a new timeshare exchange would not enter effectively unless it could provide consumers a level of timeshare vacation choices comparable to those offered by RCI or Interval.

Developing a timeshare exchange comparable to RCI and Interval would be a difficult endeavor. First, most resorts sign exclusive, multi-year contracts with one timeshare exchange. The lengthy terms of these contracts effectively prevent new entrants from securing a sufficient base of resorts to become competitive. Second, individual resorts would be reluctant to leave the established exchanges and affiliate with a new exchange that did not offer a catalog of opportunities comparable to that of the existing exchanges. Timeshare exchange affiliation is an important sales tool for timeshare resort developers, who must offer an array of exchange opportunities that is competitive with those offered by other developers. Finally, there are significant supply side economies of scale associated with the sophisticated computer systems necessary to operate the exchanges.

No significant efficiencies would result from the merger of RCI and Interval. Although consumers might receive some marginal benefit from dealing with an exchange with additional properties listed, that benefit does not outweigh the substantial loss of competition between the two exchanges. Customers did not perceive any additional benefit from the merger of the two exchanges. Moreover, the fact that Interval is a strong competitor even though it is smaller than RCI suggests that both firms have already achieved the requisite network externalities and that a merger would not provide any significant incremental benefit.

The proposed Consent Order would remedy the alleged violations by replacing the lost competition that would result from the acquisition. Under the proposed Consent Order, the Parties are required to divest Interval to IAC within ten days CUC's acquisition of HFS. In the event that the Parties do not satisfy that requirement, they must divest RCI, the larger timeshare exchange service, within six months of signing the consent agreement. The Commission may appoint a trustee to divest RCI if the Parties do not do so. In the event that the Commission decides to reject IAC as the acquirer of Interval when making the order final after the public comment period, the Parties must rescind the divestiture to IAC, and would have 120 days to divest either Interval or RCI to a Commission-approved acquirer.

The Commission has not required a hold separate agreement in this case because: (1) The proposed Order contemplates a short divestiture time period and (2) the Order contains crown jewel provisions that would substitute a larger asset package if the Parties fail to accomplish the divestiture required under the Order.

Under the provisions of the proposed Order, the Parties are required to provide the Commission with a report of compliance with the divestiture provisions of the Order within thirty (30) days following the date this Order becomes final, and every thirty (30) days

thereafter until the required divestiture is completed.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–33439 Filed 12–22–97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Policy Division, FAR Secretariat Revision of Standard Forms

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/FAR Secretariat has revised SF 1423, Inventory Verification Survey, SF 1426, Inventory Schedule A-Metals in Mill Product Form; SF 1428, Inventory Schedule B; SF 1430, Inventory Schedule C—(Work-In-Process); SF 1432, Inventory Schedule D—(Special Tooling and Special Test Equipment); SF 1434, Termination Inventory Schedule E (Short Form for Use With SF 1438 Only) to remove the need for particular certification requirements, and update the burden statement.

Since these forms are authorized for local reproduction, you can obtain new camera copy in three ways:

On the U.S. Government Management Policy CD–ROM;

On the internet. Address: http://www.gsa.gov/forms, or;

From CARM, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT:

FAR Secretariat, (202) 501–4755. This contact is for information on completing the form and interpreting the FAR only.

DATES: Effective December 23, 1997.

Dated: December 16, 1997.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 97–33472 Filed 12–22–97; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section; NIOSH Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5:30 p.m., February 12, 1998. 8 a.m.–5:30 p.m., February 13, 1998.

Place: Old Town Alexandria Holiday Inn, 480 King Street, Alexandria, Virginia, 22314.

Status: Open business session, 8 a.m.–8:30 a.m., February 12, 1998; Closed evaluation sessions 8:30 a.m.–5:30 p.m., February 12, 1998; and 8 a.m.–5:30 p.m., February 13, 1998.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas. It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be discussed: The meeting will convene in open session from 8 a.m.–8:30 a.m. on February 12, 1998, to address matters related to the conduct of Study Section business. The meeting will proceed in closed session from 8:30 a.m. until scheduled adjournment (5:30 p.m.) on February 12, 1998. The meeting will continue in closed session from 8 a.m. until scheduled adjournment (5:30 p.m.) or earlier on February 13, 1998. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c) (4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

Dated: December 17, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–33412 Filed 12–22–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0510]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements for manufacturers of medicated animal feeds.

DATES: Submit written comments on the collection of information by February 23, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Current Good Manufacturing Practice Regulations for Medicated Feeds—(21 CFR Part 225)—(OMB Control Number 0910–0152—Reinstatement)

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (CGMP) regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation or treatment of disease, or growth promotion and feed efficiency. Statutory requirements for CGMP's have been codified under part 225 (21 CFR 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to ensure that proper quality control is maintained. Such records would, e.g., contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e., batch and stability testing), labels, and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of medicated feeds, to investigate violative drug residues in products from treated animals, and to investigate product defects when a drug is recalled. In addition, FDA will use the CGMP criteria in part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to ensure that their feeds meet the requirements of the act as to safety and also meet their claimed identity, strength, quality, and purity as required by section 501(a)(2)(B) of the act.

A license is required when the manufacturer of a medicated feed involves the use of a drug or drugs which FDA has determined requires more control because of the need for a withdrawal period before slaughter or carcinogenic concerns. Conversely, for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control, a license is not required and the recordkeeping requirements are less demanding. Respondents to this collection of information are commercial feed mills and mixer-feeders.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSE HOLDERS)[1] [2]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	1,600	24	38,400	0.41	16,000
225.58(c) and (d)	1,600	24	38,400	0.25	9,600
225.80(b)(2)	1,600	24	38,400	0.16	6,400
225.102(b)(1) through (b)(5)	1,600	24	38,400	1.0	38,400
225.110(b)(1) and (b)(2)	1,600	24	38,400	0.25	9,600
225.115(b)(1) and (b)(2)	1,600	24	38,400	0.25	9,600
Total					89,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Commercial feed mills.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSE HOLDERS)[1] [2]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	200	3	600	0.16	100
225.58(c) and (d)	200	3	600	0.16	100
225.80(b)(2)	200	3	600	0.083	50
225.102(b)(1) through (b)(5)	200	3	600	0.5	300
225.110(b)(1) and (b)(2)				[3]	
225.115(b)(1) and (b)(2)				[3]	
Total					550

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Mixer-feeders.
[3] There is no burden because medicated feeds are consumed on site (225.110 Distribution Records; 225.115—Complaint files).

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED)[1] [2]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	13,000	24	316,800	0.41	132,000
225.158	13,000	24	316,800	0.25	79,200
225.180	13,000	24	316,800	0.16	52,800
225.202	13,000	24	316,800	1.5	475,200
Total					739,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Commercial feed mills.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED)[1] [2]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	45,000	3	135,000	0.16	22,500
225.158	45,000	3	135,000	0.16	22,500
225.180	45,000	3	135,000	0.083	11,250
225.202	45,000	3	135,800	0.5	67,500
Total					123,750

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Mixer-feeders.

The estimate of the times required for record preparation and maintenance is based on agency communications with industry. Other information needed to finally calculate the total burden hours (i.e., number of recordkeepers, number of medicated feeds being manufactured, etc.) is derived from agency records and experience.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33487 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0376]

Plascon, Inc., dba Anderson Plasma Center; Denial of Request for a Hearing and Revocation of U.S. License No. 572–003

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying the request for a hearing and revokes the establishment license (U.S. license number 572–003) and product license issued to Plascon, Inc., doing business as Anderson Plasma Center, for the manufacture of Source Plasma. The agency finds that there is no genuine and substantial issue of fact justifying a hearing on the revocation of Plascon's licenses. The licenses are revoked due to the firm's failure to comply with the applicable biologics regulations and license standards designed to ensure the safety, purity, and potency of the manufactured products.

DATES: The revocation of the establishment license (U.S. License No. 572–003) and product license is effective December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 17, 1995 (60 FR 57719), FDA announced an opportunity for a hearing on its proposal to revoke the establishment license (U.S. License No. 572–003) and product license issued to Plascon, Inc., doing business as Anderson Plasma Center, for the manufacture of Source Plasma (60 FR 57719). By letter dated December 12, 1995, Plascon requested a hearing on the proposed revocation. The agency is denying the request for a hearing and is revoking U.S. License No. 572–003, which includes the establishment license and product license, because the agency finds there is no genuine and substantial issue of fact regarding the basis for the proposed revocation for the firm's failure to comply with applicable Federal regulations and license standards. FDA has documented Plascon's failure to conform to such standards during inspections of Plascon in 1989, 1991, 1992, and 1993.

During a December 1989 inspection of Plascon, FDA investigators documented numerous deviations from the current good manufacturing practice (CGMP) regulations. The deviations included, but were not limited to, the following: (1) Failure to adequately determine donor suitability (part 606 (21 CFR part 606)) (§ 606.100(b)(1)) and (part 640 (21 CFR part 640)) (§ 640.63(c)); (2) failure to maintain accurate donor records (§ 606.160(b)(1)); (3) failure to ensure that personnel were competent in the performance of their duties (§ 606.20(b)); and (4) poor record keeping practices related to quality control, equipment calibration, and maintenance (§ 606.160(b)(5) and (b)(7)).

An FDA inspection of Plascon in September 1991 revealed similar CGMP deficiencies, as well as additional violations, including: (1) Failure to follow the standard operating procedures (SOP's) for documenting donor weight loss of 10 or more pounds or referring these donors to the physician on call (§ 606.100); (2) failure to record donor blood losses (§ 606.160(b)); (3) failure to maintain adequate facilities (§ 606.40); and (4) failure to properly maintain equipment (§ 606.60).

During an inspection of Plascon from August through October 1992, FDA inspectors found CGMP deviations similar to those documented during the previous two inspections, despite Plascon's assurances that the firm was in compliance with Federal regulations. The violations observed during this inspection included: (1) Failure to adequately investigate donor adverse reactions (§§ 606.170(a), 606.100(b)(9), and 606.160(b)(1)(iii)); (2) failure to maintain complete and accurate records of donors (§ 606.160(b)(1)); (3) failure to maintain the plasma at a proper storage temperature (§§ 606.100(b)(10) and 640.76(a)(1)); (4) failure to adequately observe, standardize, or calibrate equipment (§§ 606.100(b)(15) and 606.60); (5) failure to maintain adequate facilities (§ 606.40); and (6) failure to follow SOP's (§ 606.100). FDA issued a warning letter to Plascon on November 12, 1992. In the warning letter, FDA stated that Plascon was responsible for ensuring that operations at all of its centers were in full compliance with the Federal Food, Drug, and Cosmetic Act (the act), 21 U.S.C. 301 *et seq.*, and its implementing regulations, and requested that Plascon take prompt action to correct the deviations noted. The warning letter notified Plascon that failure to take prompt corrective action could result in regulatory action without further notice, including license suspension and/or revocation. On January 6, 1993, Plascon sent a letter to FDA promising corrective action.

FDA conducted another inspection of Plascon in July 1993 and documented continued deficiencies, including: (1) Failure to adequately determine donor suitability (§§ 606.100(b)(1) and 640.63(c)); (2) failure to maintain adequate facilities (§ 606.40); and (3) failure to provide adequate equipment maintenance (§ 606.60).

At the conclusion of each of these inspections, FDA issued to Plascon a list of observations from the inspection (Form FDA–483), which detailed Plascon's continuing noncompliance with the applicable regulations and license standards. After each inspection, Plascon promised corrective action.

Subsequently, FDA conducted an inspection of Plascon on December 11 through December 17, 1993, and FDA again documented numerous CGMP deviations. The CGMP violations observed included the following, among others: (1) Failure to adequately determine donor suitability (§§ 606.100(b)(1) and 640.63(c)); (2) failure to investigate adverse donor reactions (§ 606.170(a)); (3) failure to perform adequate physical examinations on donors (§ 640.63(b) and (c)); (4) failure to perform and maintain records of quality control for equipment and reagents (§§ 606.60(a), 606.160(b)(5) and (b)(7)); and (5) failure to maintain complete and accurate records and to follow SOP's (§§ 606.160(b) and 640.65(b)(3)).

Due to the serious nature of the deviations from the applicable regulations and the standards in Plascon's licenses, which the agency determined to constitute a danger to health, on January 11, 1994, FDA suspended Plascon's licenses and denied the firm's pending license supplements for automated collection of Source Plasma. FDA's suspension letter noted that the basis for the suspension was Plascon's serious noncompliance with donor protection standards that are designed to assure a continuous and healthy donor population, and the firm's noncompliance with standards designed to assure the continued safety, purity, potency, and quality of the manufactured products. (Letter from FDA to Plascon, January 11, 1994, at p. 4.) The suspension letter stated that "[t]he nature of the deficiencies * * * leads us to conclude that they are a direct consequence of [Plascon's] disregard for the applicable regulations and standards in [Plascon's] license application." (*Id.*) The suspension letter notified Plascon that its licenses were suspended and that FDA would proceed to revoke Plascon's licenses unless the firm requested that revocation be held in abeyance pending resolution of the matters involved and provided FDA with a written description of the "specific actions taken to correct all deficiencies noted" in the suspension letter.

By letter dated January 20, 1994, Plascon requested that FDA hold the proposed revocation of its licenses in abeyance and extend until January 31, 1994, the time for Plascon to prepare and submit a corrective action plan. On January 27, 1994, FDA granted the request for a time extension to submit the corrective action plan. By letter dated January 28, 1994, Plascon requested that FDA extend until February 21, 1994, the time for Plascon to submit a corrective action plan. On February 10, 1994, FDA granted the second-time extension request. By letter dated February 21, 1994, Plascon submitted its corrective action plan to FDA.

After considering Plascon's corrective action plan, FDA, by letter dated May 5, 1994, denied the firm's request that the license revocation be held in abeyance. FDA explained that the

> "current and previous inspections of [Plascon] have revealed continuing significant deviations from applicable regulations and standards specified in [Plascon's] license and establish[] a pattern of failure to implement appropriate and lasting corrections of these deviations."

(Letter from FDA to Plascon dated May 5, 1994, at p. 1.) FDA advised Plascon that its corrective action plan was incomplete and inadequate and detailed some of the plan's inadequacies. In addition, FDA explained that the "nature of the deficiencies and continued noncompliance * * * demonstrates careless disregard for the applicable regulations and the standards of [Plascon's] license." (*Id.* at p. 2.) FDA's letter notified Plascon that "[i]n cases involving willfulness, the agency need not provide an opportunity for the licensee to demonstrate or achieve compliance," and that FDA was "initiating proceedings to revoke" Plascon's licenses. (*Id.*)

Subsequently, in the **Federal Register** of November 17, 1995, FDA announced a notice of opportunity for a hearing (NOOH) on the proposed revocation of the establishment license and product license issued to Plascon. In the NOOH, FDA advised Plascon that a request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing (60 FR 57719 at 57720). The NOOH further stated that if it appeared conclusively from the face of the data, information, and factual analyses submitted in support of the request for a hearing that there was no genuine and substantial issue of fact for resolution at a hearing, the Commissioner of Food and Drugs (the Commissioner) would deny the hearing request (60 FR 57719 at 57720).

In a letter dated December 12, 1995, Plascon requested a hearing on the proposed license revocation. On January 12, 1996, Plascon submitted "data and information" in support of its request. (See § 12.24 (21 CFR 12.24).) In its letter, Plascon stated that the firm "does not deny that during a series of inspections between 1989 and 1993 by FDA inspectors, a variety of deviations from the applicable federal regulations were observed." (Letter from Plascon to FDA, January 12, 1996, at p. 1–2.) However, Plascon argued that FDA's determination that Plascon's continued operation posed a danger to health was not supported by an adequate factual basis. Plascon argued that a "reasonable and valid connection must be established between the deviations noted [by FDA] and the 'danger to health' alleged." (*Id.* at p. 1.) Plascon further argued that a hearing was necessary so that the "largely unsupported conclusion of a public health danger can be set forth, explored, and tested during the course of a hearing." (*Id.*)

Plascon's letter of January 12, 1996, also referred to and enclosed a letter that Plascon sent to FDA on June 29, 1994, regarding the disposition of inventory of Source Plasma on hand at Plascon when FDA suspended Plascon's licenses. In its June 29, 1994, letter, the firm stated that it did not seek to "justify or minimize the deviations from regulatory requirements that were observed during the various FDA inspections" (letter from Plascon to FDA, June 29, 1994, at p. 2), and conceded that the conditions at Plascon's facilities during the December 1993 inspection were "deplorable." (*Id.* at p. 3.) Nevertheless, Plascon argued that "the safety, purity, potency, and quality of much of the Source Plasma collected during that time period can indeed be assured." (*Id.* at p. 2.)

II. Applicable Regulations

In accordance to § 601.6 (21 CFR 601.6), whenever the Commissioner has reasonable grounds to believe that any of the grounds for revocation of a license exist, and that by reason thereof there is a danger to health, he may notify the licensee that his license is suspended (§ 601.6(a).) Upon suspension of a license, the Commissioner shall either: (1) Proceed in accordance to the provisions of § 601.5(b) (21 CFR 601.5(b)) to revoke the license; or (2) if the licensee agrees, hold revocation in abeyance pending resolution of the matters involved (§ 601.6(b).)

The grounds for revocation are set forth at § 601.5(b). In accordance to § 601.5(b)(4), if the Commissioner finds that the establishment or the product for which a license has been issued fails to conform to the applicable standards established in the license and the regulations designed to ensure the continued safety, purity, and potency of the manufactured product, he shall notify the licensee of his intention to revoke the license, setting forth the grounds for, and offering an opportunity for a hearing on, the proposed revocation. Except as provided in § 601.6 or in cases involving willfulness, the notification of intent to revoke shall provide a reasonable period for the licensee to demonstrate or achieve compliance with the applicable requirements before proceedings will be instituted for revocation of the license (§ 601.5(b).)

The procedures for hearings on the revocation of biologics licenses are set forth in part 12 (21 CFR part 12). (See § 601.7.) The criteria for deciding whether to grant or deny a hearing are stated in § 12.24(b). These regulations provide that a request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing (§ 12.24(b)(1)(2).) If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that requires a hearing on the revocation of the license, the Commissioner will deny the hearing request and enter summary judgment against the licensee. (§ 12.24(b)(1); see also *Costle* v. *Pacific Legal Found.*, 445 U.S. 198, 214–15 (1980); *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–21 (1973).) Moreover, where the issues raised in the hearing request are, even if true, legally insufficient to alter the decision, the Commissioner need not grant a hearing. (§ 12.24(b)(4) (hearing request will not be granted "if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought").) Therefore, to warrant a hearing, Plascon must set forth a genuine and substantial issue of fact concerning the grounds for revocation of its licenses.

III. Plascon's Hearing Request and the Commissioner's Findings

Plascon's challenge to the proposed revocation of its establishment and product licenses is a narrow one. Plascon's hearing request and the data and information the firm submitted in support of its hearing request do not challenge whether Plascon failed to comply with applicable regulations and the standards set forth in the firm's licenses; instead, Plascon only disputes whether Plascon's deviations from FDA's regulations constitute a "danger to health." (See, e.g., Letter from Plascon to FDA, January 12, 1996, p. 3 ("The fact that there were deviations from regulatory requirements * * * does not automatically establish that a 'danger to health' was present. Danger to who? The employees? The donors? * * * These are factual issues that require exploration at the requested hearing * * *").) For the reasons set forth below, the agency finds that there is no genuine and substantial issue of fact justifying a hearing and therefore denies Plascon's request for a hearing.

Before proceeding to the basis for Plascon's request for a hearing, the agency notes that FDA's decision to initiate revocation proceedings without providing Plascon with a further opportunity to demonstrate or achieve compliance was appropriate. As noted above, FDA's regulations provide:

> Except as provided in [21 CFR] 601.6 or in cases involving willfulness, the notification [of intent to revoke] shall provide a reasonable period for the licensee to demonstrate or achieve compliance with the requirements of this chapter, before proceedings will be instituted for revocation of the license.

(§ 601.5(b).)

After FDA suspended Plascon's licenses in January 1994, in response to Plascon's request, FDA held revocation of the firm's licenses in abeyance pending resolution of the matters involved. (See § 601.6(b).) FDA's January 11, 1994, suspension letter notified Plascon that FDA would proceed with revocation unless, *inter alia*, the firm notified FDA in writing of the:

> specific actions taken to correct all deficiencies noted in this letter including a detailed explanation of all retraining of all personnel as well as the means by which such training is to be evaluated.

(Letter from FDA to Plascon, January 11, 1994, at p. 6.)

FDA granted both of the extensions that Plascon requested for submission of a corrective action plan. Subsequently, after considering Plascon's February 21, 1994, submission, FDA advised Plascon by letter that the firm's corrective action plan was incomplete and inadequate and that the firm's claim that sufficient corrective actions would be implemented and sustained was not credible in light of the firm's careless disregard of the applicable regulations and standards. In this letter, FDA also notified Plascon that it no longer would hold the license revocation in abeyance and that the agency would initiate revocation proceedings. (Letter from FDA to Plascon, May 5, 1994, at p. 2.) Citing the May 5, 1994, letter, the November 17, 1995, NOOH also noted Plascon's "careless disregard of the applicable regulations and standards" and stated that FDA had advised Plascon "that no additional time would be provided in which to demonstrate compliance" before FDA would initiate revocation proceedings (60 FR 57710 at 57720).

The agency notes that Plascon's hearing request and the data and information it submitted in accordance to that request do not challenge the May 5, 1994, letter's assertion that Plascon had acted in careless disregard of the applicable regulations and standards. Similarly, the firm has not objected to FDA's decision to institute revocation proceedings without providing Plascon further opportunity to demonstrate or achieve compliance. (Letter from Plascon to FDA, December 12, 1995; Letter from Plascon to FDA, January 12, 1996.)

While the Commissioner does not need to reach the issue of whether FDA's decision not to provide further opportunity to demonstrate or achieve compliance was proper under § 601.5, he notes that § 601.5 requirements have been satisfied because Plascon's conduct was willful within the meaning of § 601.5. Courts that have considered the meaning of willfulness in the context of license revocation proceedings have noted that willful conduct can be found when a person acts with careless disregard of statutory requirements. (See, e.g., *Potato Sales Co., Inc.* v. *United States Dept. of Agric.*, 92 F.3d 800, 805 (9th Cir. 1996); *Cox* v. *United States Dept. of Agric.*, 925 F.2d 1102, 1105 (8th Cir. 1991), *cert. denied*, 502 U.S. 860 (1991); *Lawrence* v. *Commodity Futures Trading Corp.*, 759 F.2d 767, 773 (9th Cir. 1985); *Finer Food Sales Co.* v. *Block*, 708 F.2d 774, 778 (D.C. Cir. 1983); *American Fruit Purveyors Inc.* v. *United States*, 630 F.2d 370, 374 (5th Cir. 1980), *cert. denied*, 450 U.S. 997 (1981).) Plascon's pattern of continued noncompliance with the applicable license standards and regulations, despite ample notice from the FDA of the firm's noncompliance and repeated assurances from Plascon that the firm would come into compliance, demonstrates careless disregard of the applicable requirements. Thus, the agency finds that Plascon's conduct was willful within the meaning of § 601.5, and thus it was not necessary to provide Plascon with further opportunity to demonstrate or achieve compliance.

The next issue for consideration is whether the data and information Plascon submitted raise a genuine and substantial issue of fact for resolution at a hearing (§ 12.24(b)(1).) FDA's proposed revocation of Plascon's establishment and product licenses is based on Plascon's failure to adhere to the applicable regulations and the standards in Plascon's license application, not on a finding that these failures constitute a "danger to health." (Letter from FDA to Plascon, May 5, 1994, at p. 1–3; 60 FR 57719.) FDA's focus on Plascon's failure to comply with the applicable regulations and standards conforms to the applicable regulations. (See § 601.5(b)(4).)

The grounds for revocation set forth in § 601.5(b)(4) have been established in this case. As described above, FDA's inspections documented Plascon's deviations from the applicable regulations and standards during four inspections between 1989 and 1993. Plascon has not only failed to submit any data and information challenging FDA's inspectional findings, but also has admitted that the firm failed to comply with the applicable regulations. Indeed, by the firm's own characterization, the conditions observed during the 1993 inspection, which led to the suspension and proposed revocation of Plascon's licenses, were "deplorable." (See Letter from Plascon to FDA, June 29, 1994, at p. 3 ("[I]t is a source of great regret" that the:

> conditions observed by FDA investigators * * * during the[] December 13–17, 1993 inspection of [Plascon] were so deplorable, resulting in the issuance of a Form FDA–483 with 66 inspectional observations.* * * [T]he facility was not operating in an acceptable manner, and [Plascon] accepts full responsibility for that extremely unfortunate situation.);

see also *id.* at p. 2 ("Without for a moment seeking to justify or minimize the deviations from regulatory requirements that were observed during the various FDA inspections over the more than four year period of time * * *"); *id.* at p. 25 ("The final inspection, in December of 1993, was by far the 'worst' of these inspections * * *"); *id.* at 28 ("*if* the December 1993 inspection had been a completely successful one, instead of the disaster that it obviously was * * *"); Letter from Plascon to FDA dated February 21, 1994, Corrective Action Plan, at p. 2 ("Plascon, Inc. has terminated employees who were not following proper protocol during the most recent FDA inspection.").)

Having conceded the existence of the "deplorable" conditions at Plascon, the firm confines its challenge to the proposed revocation of its licenses to whether FDA established the existence of a danger to health when the agency suspended Plascon's licenses on May 5, 1994. More specifically, Plascon argues that the regulatory deficiencies observed did not affect the quality of the Source Plasma manufactured by the firm and that FDA has not established the existence of a "danger to health." (Letter from Plascon to FDA dated January 12, 1996, at p. 1.) However, while the issue of whether the Commissioner had reasonable grounds to believe that by reason of the existence of the grounds for revocation of Plascon's licenses there was "a danger to health" was relevant to the decision to *suspend* the firm's licenses, it has no bearing on the *revocation* of those licenses under § 601.5(b).

Plascon's hearing request will be granted only if the material submitted shows that there is a genuine and substantial issue of fact for resolution at a hearing (§ 12.24(b)(1)). A hearing will not be granted on factual issues that are not determinative with respect to the action requested (§ 12.24(b)(4)). As the District of Columbia Circuit Court of Appeals observed, "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Copanos & Sons* v. *FDA*, 854 F.2d 510, 523 (D.C. Cir. 1988). Plascon's hearing request raises only an irrelevant factual dispute, the resolution of which, even if in Plascon's favor, would have no bearing on the merits of the revocation of its licenses.

For the reasons set forth above, the agency finds that Plascon, Inc., doing business as Anderson Plasma Center, has failed to show that there is a genuine and substantial issue of fact justifying a hearing on the revocation of its establishment and product licenses. The agency also finds that significant deviations from the biologics regulations and the standards set forth in the firm's licenses existed which warrant revocation of Plascon's licenses. Therefore, under section 351 of the Public Health Service Act (42 U.S.C. 262) and under §§ 12.28, 601.5, and 601.7, the Commissioner denies the request for a hearing and revokes the establishment (U.S. License No. 572–003) and product licenses issued to Plascon, Inc., doing business as Anderson Plasma Center, for the manufacture of Source Plasma.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33373 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Program Announcement Number FDA–CFSAN–98–1 Cooperative Agreement for Validation of Analytical Methods, Standards, and Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), is announcing its intention to accept and consider a single source application for award of a cooperative agreement to support AOAC International in the amount of $100,000. The cooperative agreement will provide support for the Validation of Analytical Methods, Standards, and Procedures.

DATES: Submit applications by January 6, 1998.

ADDRESSES: An application is available from and should be submitted to Robert L. Robins (address below). Applications hand carried or commercially delivered should be addressed to the Park Bldg., 12420 Parklawn Dr., rm. 3–40, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Robert L. Robins, Grants Management Officer, or Rosemary T. Springer, Grants Management Specialist, Office of Regulatory Affairs Support and Assistance Management Branch, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Bldg., 5600 Fishers Lane, rm. 3–40, Rockville, MD 20857, 301–443–6170.

Regarding the programmatic aspects of this program: Bernadette McMahon, Office of Plant and Dairy Foods and Beverages (HFS–337), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4038.

SUPPLEMENTARY INFORMATION: FDA is announcing its intention to accept and consider a single source application from AOAC International for supporting the Validation of Analytical Methods, Standards, and Procedures. FDA's authority to enter into grants and cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance at section 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public.

I. Background

Until 1979, AOAC International operated as part of the U.S. FDA, whose employees performed as Executive Director and Journal Editor, among other positions. At that time, on the recommendation of an independent panel, AOAC International became independent of FDA and was established as a nonprofit association.

Since the separation of FDA and AOAC International, FDA has continued to provide financial support to AOAC International through a cooperative agreement. In the beginning, FDA was motivated to ensure that AOAC International would have funds needed to continue publishing new editions (every 5 years) of *Official Methods of Analysis of AOAC (OMA)*, the compilation of all methods validated through the collaborative process, which is of interest to regulated industry. AOAC International no longer requires FDA's support to underwrite the publication of OMA, which is now AOAC International's main source of revenue. FDA's current support for AOAC International, both financially and with activities of its employees, is motivated by its recognition of AOAC International's critical role in organizing, operating, and maintaining an internationally recognized system for establishing collaborated methods of analysis. It is imperative to FDA that an organization such as AOAC International continue to function efficiently, especially in scientific areas in which internationally recognized analytical methods are required to support regulatory decisions.

AOAC International consists of the following members: A governing board (Board of Directors, including officers) concerned with administration and policy making; Official Methods Board; Editorial Board; special and standing committees which serve in advisory and liaison capacities; other groups concerned with development of methods, publication, and general activities; and the headquarters staff which conducts the day-to-day business.

In recent years, AOAC International has initiated additional activities aimed at the improvement of the analytical sciences, including training programs on critical subjects such as modern analytical technologies, application of quality assurance principles, and statistical principles and applications. The association established a Research Foundation to assess and certify commercial test kits, defined an additional level of validated methods (the "peer verified" methods), and is investigating the potential for developing analytical standard reference materials. AOAC International has embraced opportunities to use electronic media to distribute its validated methods and other supporting materials through use of the World Wide Web and CD-ROM formats.

II. Purpose of Agreement

The primary purpose is to provide financial and scientific support for AOAC International cooperative volunteer system of scientific analytical methods development and approval. This system produces methods that meet predetermined levels of quality for analysis of foods, animal feeds, drugs and cosmetics; such methods are critical to the acceptability of regulatory analytical results performed by FDA and by the regulated industry. AOAC International has excelled in planning, coordinating, and managing the activities essential to developing tested analytical procedures applicable to a wide range of sample types of interest to industry, government, and academia. This is one of very few programs which provide methodology validated through a formal interlaboratory collaborative study process.

To accomplish this overall goal, AOAC International will:

1. Develop standards and criteria for evaluation of results in analytical methods validation, balancing the needs for statistical acceptability, international harmonization, and practicality in an era of shrinking fiscal resources.
2. Identify needs for new and improved analytical methods for food composition and safety, vitamins and nutrients, food additives, pesticide and industrial chemical residues, drug formulations, animal drug residues, cosmetics chemistry and microbiology, color additives and any other products or substances affecting the public health and safety.
3. Recruit and support logistically the volunteer experts necessary to the successful development, review, and testing of needed methods.
4. Apply quality assurance principles to validation studies.
5. Encourage FDA and regulated industry to do more related research in analytical sciences.
6. Sponsor and participate in international forums.
7. Promote wider use of validated methods.
8. Increase opportunities for interaction of FDA-related science in international activities.

AOAC International maintains no laboratories itself, conducts no research, performs no tests. The actual work of developing and testing methods is done by scientists of Federal, State, provincial and municipal regulatory agencies, colleges and universities, commercial firms, and other private laboratories.

AOAC International provides the framework within which the collaborative study process occurs. With AOAC International as a focal point of analytical expertise, sufficient cooperating volunteer members can be found to effect the complex process of testing a method simultaneously in multiple laboratories. AOAC International staff members facilitate logistics required for operations, including the necessary meetings, recruitment of volunteers and collaborating laboratories, the voting process, and eventual publication in both the *Journal of AOAC International* and OMA. AOAC International's existence as an internationally recognized organization means that AOAC International official methods are internationally acceptable based on the association's prior efforts to "harmonize" standards of acceptability.Methods are developed and subjected to interlaboratory collaborative study by Associate Referees, under the guidance of General Referees and the Official Methods Board and its Committees. AOAC International staff and methods committee members assist in recruiting laboratories with appropriate expertise to participate in approved collaborative studies. Volunteer statisticians assigned to the Committee by AOAC International assist the Associate Referee in evaluating study results. If the statistical evaluation of analytical results demonstrates that the method is capable of producing accurate and precise results in multiple laboratories, it is recommended for official status. After assenting mail vote by the association, the description of the newly approved official method is incorporated by the editorial staff into the next annual revision of OMA; details of the collaborative study are published in the *Journal of AOAC International*.

AOAC International conducts an annual international meeting, which includes presentation of symposia, reports methods and collaborative studies, and deliberation decisions by the Official Methods Board and its Committees.

III. Substantive Involvement by the FDA

FDA supports AOAC International under this cooperative agreement because the existence of AOAC Interantional and its programs benefits both FDA and other regulators monitoring regulated products; regulated industries benefit equally from these activities. The availability of validated methods also benefits FDA-regulated industry which needs validated analytical methods to comply with regulatory requirements under the Federal Food, Drug, and Cosmetic Act. Beyond the financial support, this agreement also commits FDA's personnel to participation in the scientific and administrative operations of AOAC International.

Members of AOAC International are chemists, microbiologists, toxicologists and others engaged in the analysis of foods, animal feeds, drugs, agricultural commodities and environmental matrixes. Members identify and develop methods to be tested and organize the interlaboratory validation studies. Members receive and review the results of validation studies. Members receive and review methods recommendations, and members study, devise and recommend policies and protocols addressing methods, validation studies, quality assurance, safety and statistical analysis.

FDA involvement in AOAC International activities continues at a high level, with a significant percentage of Associate and General Referee and Committee positions filled by FDA personnel. Any laboratory or individual may participate in the development, testing, and collaborative study of new or improved methods. The international voluntary participation among scientists in government, academic, and industry laboratories enhances the credibility and acceptability of methods and saves time and money through shared efforts and costs.

IV. Review Procedure

This application will undergo dual peer review. An ad hoc review panel of experts will review and evaluate the application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Sciences Council.

V. Mechanism of Support

A. Award Instrument

Support for this program, if granted, will be in the form of a cooperative agreement. In 1998, FDA is providing approximately $100,000 for this award. The award will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR part 74, and the PHS Grants Policy Statement.

B. Length of Support

The length of support will be one (1) year with the possibility of an additional four (4) years of noncompetitive support. Continuation, beyond the first year, will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations.

C. Memorandum of Understanding (MOU)

FDA and AOAC International will develop a MOU to cover and clarify AOAC International's publication of FDA manuals.

VI. Reporting Requirement

Program progress reports and financial status reports will be required annually, based on date of award. These reports will be due within 30 days after the end of the budget period. A final program progress report and financial status report will be due 90 days after expiration of the project period of the cooperative agreement.

VII. Application Due Date

Applications should be submitted to Robert L. Robins (address above) by January 6, 1998.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33371 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0160]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Labeling: Nutrient Content Claims and Health Claims; Restaurant Foods" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: On September 17, 1997, the agency submitted the proposed information collection to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0349. The approval expires on November 30, 2000.

Dated: December 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33374 Filed 12-22-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0182]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Requests for Samples and Protocols: Official Release" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 19, 1997 (62 FR 49244), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0206. The approval expires on November 30, 2000.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33375 Filed 12-22-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0495]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Devices, Investigational Device Exemptions, Treatment Use" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: On August 25, 1997, the agency submitted the proposed information collection to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0348. The approval expires on October 31, 2000.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33481 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0264]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Information Required in a Premarket Notification Submission (21 CFR 807.87, 807.92, and 807.93) (OMB Control Number 0910–0281—Reinstatement)" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 1997 (62 FR 38098), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0281. The approval expires on September 30, 2000.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33484 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0022]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Notice of Availability of Sample Electronic Product" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 17, 1997 (62 FR 48870), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0048. The approval expires on November 30, 2000.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33485 Filed 12-22-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–6401]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Negative Case Action Review Process (NCA)/Annual Report and Supporting Regulations 42 CFR 431.800; *Form No.:* HCF–6401 OMB #0938–0300; *Use:* HCFA uses the NCA reviews to assure that beneficiaries are not being denied medical assistance that they are eligible for and that recipients are being given adequate and timely notice of termination. The results of NCA reviews are used by states and the Federal Government to identify problem areas and plan corrective action initiatives. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 6,770.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, *Attention:* Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 6, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33399 Filed 12–22–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Title IV (OMB No. 0915–0206)—Extension, No Change—The HRSA HIV-AIDS Bureau proposes to continue to collect aggregated data from 44 grantees and their 90 local service providers that are funded under Section 2671 of the Public Health Service Act (42 USC 300ff–71). Data are collected from grantees and providers on the organizational structures, service delivery approaches, numbers and demographic characteristics of clients served, service utilization, and activities related to outreach, prevention, and education. The data collection strategy includes six tables that the grantees and their local service providers use to submit information annually about program and client characteristics. The data collected are used within and outside the HIV-AIDS Bureau and HRSA to inform the administration and Congress about the Title IV program and are used by grantees and the HIV-AIDS Bureau for other planning and policy efforts. No changes to the data tables are planned. Burden estimates are as follows:

Type of form	Number of Respondents	Responses per respondent	Average hours per response	Total burden hours
Designation of Local Reporting Entities	44	1	.25	11
Local Network Profile	134	1	.5	67
Service Mix Profile	134	1	2.8	375
Demographic and Clinical Status	134	1	33.0	4,422
Service Utilization Summary	134	1	20.0	2,680
Prevention and Education Activities	134	1	4.0	536
Total	134			8,091

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before February 23, 1998.

Dated: December 17, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–33414 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Performance Outcome Demonstration Study—New

Through Titles VII and VIII programs, the Bureau of Health Professions provides both policy leadership and support for health professions workforce enhancement and educational infrastructure development. An outcome-based performance measurement system is central to the ability of the Bureau to determine whether program support is meeting its national health workforce objectives, and to signal where program course correction is necessary.

In addition, the Government Performance and Results Act (GPRA) requires each agency to develop comprehensive strategic plans, to submit annual performance plans that set specific performance goals for each program activity, and to report annually on the actual performance achieved compared to the performance goals.

The Bureau of Health Professions has developed a comprehensive performance monitoring system (CPMS) which consists of cross-cutting indicators designed to capture the common activities across programs, cluster level indicators designed to capture common activities for programs with a similar focus, and program specific indicators designed to capture activities which are specific to selected individual programs. At the core of the Bureau's performance monitoring system are four cross-cutting goals with respect to workforce quality, supply, diversity and distribution. External customer input was utilized to validate the Bureau's proposed outcomes and indicators, and to assist with a preliminary assessment of the suitability of data sources. A pilot study of nine program sites within the Washington metropolitan area was completed to determine the availability of the data along with the clarity of the definitions and instructions. The results of the pilot indicate that these data can be collected from grantees.

A wider demonstration will be done to assess the ability of current grantees, in the second year of the project period or later, to supply the data without the benefit of a site visit and to further refine the definitions and instructions. Since data are collected by discipline, the estimate of burden hours per response is different for projects that involve a single discipline and projects that involve multiple disciplines.

As part of the demonstration study, grantees will be sent a Data System Questionnaire that asks for information on grantee capacity for using information technology to store and transmit data. This information will be used to determine the best way to use information technology when the CPMS is fully implemented. It is expected that the distribution and submission of the CPMS data forms will eventually be fully automated and that the data collection tool will be an interactive program which prompts respondents to report only those data relevant to their programs. Burden estimates are as follows:

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Data System Questionnaire	644	1	644	.17	107
CPMS Tables: Projects involving a single discipline	511	1	511	8	4,088
CPMS Tables: Projects involving multiple disciplines	64	1	64	40	2,560
Total	644		1219		6,755

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 17, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–33417 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1998.

Name: National Advisory Council on Migrant Health (NACMH).

Date and Time: Starts: Thursday, January 22, 1998 at 9:00 am; Ends: Saturday, January 24, 1998 at 5:00 pm.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA, 206/382–6991.

The meeting is open to the public.

Agenda: This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include a report on the current status of Welfare and Immigration Reform legislation, 1998 Recommendations, and nominations for new members to the Council.

The Council meeting is being held in conjunction with the Seventh Annual Western Migrant Stream Forum, January 23–25, 1998. The Stream Forum will take place at the Madison Renaissance Hotel, 515 Madison Street, Seattle, WA, 800/278–4159.

Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Room 7–5A1, Bethesda, Maryland 20814, Telephone 301/594–4302. Agenda Items are subject to change as priorities dictate.

Dated: December 17, 1997.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–33416 Filed 12–22–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed collection; comment request; Evaluation of PHS Small Business Innovation Research and NIH Small Business Technology Transfer Research Programs

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the PHS and National Institutes of Health will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: Title: The Small Business Innovation Research Grant Applications Phase I and Phase II, Small Business Technology Transfer Grant Applications Phase I and Phase II. *Type of Information Collection Request.* Revision of OMB No. 0925–0195, expiration 4/30/98. *Need and Use of Information Collection:* This study will assess the PHS Small Business Innovation Research and NIH Small Business Technology Transfer Research Program Application Forms. *Frequency of Response:* Annually. *Affected Public:* Business or for other for-profit organizations. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3400. *Estimated Number of Responses per Respondent:* 1. *Averoge Burden per Response:* 32. *Estimated Total Annual:* 108,000. *Burden Hours Requested:* 108,000. The annualized cost to respondents is estimated at: 0. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points. (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automate, electronic, mechanical or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Sonny Kreitman, NIH SBIR/STTR Program Coordinator, Rockledge II, Rm. 0186, Bethesda, Maryland 20892–7910 or call non-toll free number 301–435–2770 or Fax 301–480–0146 or e-mail your request to sk13n@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: December 10, 1997.

Geoffrey E. Grant,

Director, Office of Policy for Extramural Research Administration.

[FR Doc. 97–33383 Filed 12–22–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institution of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Science Education Partnership Award.

Date: February 3, 1998.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, Montgomery Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, 301–652–2000.

Contact Person: Dr. Jill Carrington, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

Purpose/Agenda: To evaluate and review grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.306, National Institutes of Health, HHS)

Dated: December 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33381 Filed 12–22–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; National Advisory Research Resources Council and its Planning Subcommittee Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR). This meeting will be open to the public as indicated below. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Katherine Kaplan, Public Affairs Specialist, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5144, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301)

435–0868, will provide a summary of the meeting and a roster of the members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Individuals who plan to attend and need special assistance, such as sign language, interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Name of Committee: The Subcommittee on Planning of the National Advisory Research Resources Council

Date of Meeting: January 29, 1998

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room 3B31, Building 31, Bethesda, Maryland 20892.

Open: January 29, 7:30 a.m.–8:45 a.m.

Purpose/Agenda: To discuss policy issues.

Name of Committee: National Advisory Research Resources Council

Date of Meeting: January 29–30, 1998

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, Maryland 20892.

Open: January 29, 9 a.m. until recess

Closed: January 30, 8:30 a.m. until 9:30 a.m.

Open: January 30, 10:00 a.m. until adjournment

Purpose/Agenda: Report of Center Director and other issues related to Council business.

Executive Secretary: Louise Ramm, Ph.D. Deputy Director, National Center for Research Resources, Building 31, Room 3B11, Bethesda, MD 20892, Telephone: (301) 496–6023.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health)

Dated: December 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33382 Filed 12–22–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: January 5, 1998.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

Name of SEP: Biological and Physiological Sciences.

Date: January 8, 1998

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda, Maryland 20892, (301) 435–1720.

Name of SEP: Multidisciplinary Sciences.

Date: March 9–10, 1998.

Time: 8:00 a.m.

Place: Woodfin Suites, Rockville, Maryland.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 19–20, 1998.

Time: 8:30 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33380 Filed 12–22–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Pharmaceutical Compositions And Methods For Treatment of Hyperproliferative Epithelial Skin Diseases and Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. § 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the inventions embodied in the U.S. Patent Application SN 07/677,429 "Pharmaceutical Compositions And Methods For Preventing Skin Tumor Formation And Causing Regression Of Existing Tumors" filed 3/29/91 and U.S. Patent Application SN 08/389,845 "Method For The Treatment Of Hyperproliferative Epithelial Skin Disease By Topical Application Of Hydroxylated Aromatic Protein * * *" filed 2/2/95 now U.S. Patent 5,610,185 issued 3/11/97 to Nascent Pharmaceuticals, L.L.C. of San Francisco, CA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license field of use may be limited to: Therapeutics for treatment and prevention of various hyperproliferative skin diseases in humans.

DATE: Only written comments and/or applications for a license which are received by NIH on or before March 23, 1998 will be considered.

ADDRESS: Requests for copies of the patent or patent application, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Joseph G. Contrera, M.S., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056 ext. 244; Facsimile (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The 07/677,429 ('429) invention describes the use of Staurosporine and closely related compounds in treating precancerous conditions of the skin by topical application. Staurosporine has been known for at least a decade as an inhibitor of protein kinase C, a major cellular enzyme involved in cell signalling and second messenger systems.

The 08/389,845 ('845) invention is directed towards a method of treating hyperproliferative epithelial cell lesions by topical application of hydroxylated aromatic protein cross-linking compounds which are derived from cinnamic acid. These compounds utilize dual methods of action, that is, growth inhibition and protein cross linking. Both the '429 and '845 inventions may be applied towards a wide range of skin disorders, including warts, cervical tumors, pre-malignant lesions, basal carcinomas and squamous carcinomas.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. § 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within ninety (90) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. § 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. § 552.

Dated: December 9, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–33384 Filed 12–22–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 777965

Applicant: LSA, Irvine, California

The applicant requests a permit to take (harass by survey) the Delhi Sands flower-loving fly *(Rhaphiomidas terminatus abdominalis)* in San Bernardino and Riverside Counties, California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 837010

Applicant: Bruce Koebele, Pearl City, Hawaii

The applicant requests a permit to reduce and remove to possession specimens of plants *Achyranthes splendens* var. *rotundata* and *Chamaesyce skottsbergii* var. *kalaeloana* from the Naval Air Station, Barbers Point, Hawaii, in conjunction with scientific studies and the augmentation of existing populations for the purpose of enhancing their survival.

Permit No. 818627

Applicant: Oregon Department of Fish and Wildlife, Corvallis, Oregon

The applicant requests an amendment of his permit to take (capture, otolith mark, captively rear, sacrifice, and release) the Oregon chub *(Oregonichthys crameri)* in Lane and Linn Counties, Oregon, in conjunction with ecological research and growth rate studies for the purpose of enhancing its survival.

Permit No. 837434

Applicant: Dawn Lawson, Carlsbad, California

The applicant requests a permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp *(Branchinecta conservatio)*, longhorn fairy shrimp *(Branchinecta longiantenna)*, and vernal pool tadpole shrimp *(Lepidurus packardi)* in conjunction with presence or absence surveys in vernal pools located in Sacramento County, California for the purpose of enhancing their survival.

Permit No.'s 837303, 782703, 813545, 837306, 781084, 837580, 837447

Applicants: David M.H. Goodward, Grand Terrace, California; Michael Couffer, Corona Del Mar, California; Brock Ortega, Encinitas, California; Robert K. Lauri, Tustin, California; Anita M. Hayworth, Encinitas, California; Robert A. Weppler, Riverside, California; Larisa A. Roznowski, Tustin, California

These applicants request a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species range in California, for the purpose of enhancing its survival.

Permit No. 837307

Applicant: Holly Boessow, El Cajon, California

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in Riverside, Orange, and San Diego Counties, California, and take (harass by survey) the Laguna Mountain skipper (*Pyrgus ruralis lagunae*) in San Diego County, California, in conjunction with presence or absence surveys for the purpose of enhancing their survival.

Permit No. 827493

Applicant: Brian M. Leatherman, Costa Mesa, California

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*), southwestern willow flycatcher (*Empidonax trailii extimus*), and the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with presence or absence surveys throughout the species range in California and Nevada for the purpose of enhancing their survival.

Permit No. 837326

Applicant: Jimmy W. Meyer, Cantonment, Florida.

The applicant requests a permit to purchase in interstate commerce three pairs of captive bred Hawaiian (=nene) geese (*Nesochen* [=*Branta*] *sandvicensis*) for the purpose of enhancing its propagation and survival.

Permit No. 795938

Applicant: EIP Associates, Sacramento, California.

The applicant requests an amendment to his permit to take (harass by survey, capture and release, collect voucher specimens) the Riverside fairy shrimp (*Streptocephalus wootoni*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing its survival.

Permit No. 837308

Applicant: John K. Konecny, Escondido, California.

The applicant requests a permit to take (locate, mark, and monitor nests; and capture, band, and release) the California least tern (*Sterna antillorum browni*), take (harass by survey; locate and monitor nests; capture, band, and release) the least Bell's vireo (*Vireo bellii pusillus*) and the southwestern willow flycatcher (*Empidonax trallii extimus*) and take (harass by survey) the light-footed clapper rail (*Rollus longirostris levipes*) in conjunction with population monitoring and presence or absence surveys in southern California for the purpose of enhancing their survival.

Permit No. 778195

Applicant: Helix Environmental, La Mesa, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 834488

Applicant: Gregg Miller, Tustin, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 837439

Applicant: Guy P. Bruyea, Hemet, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*), Laguna Mountain skipper (*Pyrgus ruralis lagunae*), El Segundo blue butterfly (*Euphilotes battoides allyni*), Palos Verdes blue butterfly (*Glucopsyche lygdamus palosverdesensis*), and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) throughout each species' range in California in conjunction with presence or absence surveys for the purpose of enhancing their survival.

Permit No. 788133

Applicant: Vincent Scheidt, San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit Nos. 837760, 837581, 837579

Applicants: Kendall H. Osborne, Riverside, California; David C. Hawks, Riverside, California; Michael W. Gates, Riverside, California

The applicants request permits to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*), Laguna Mountain skipper (*Pyrgus ruralis lagunae*), El Segundo blue butterfly (*Euphilotes battoides allyni*), Palos Verdes blue butterfly (*Glucopsyche lygdamus palosverdesensis*), and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) throughout each species' range in California in conjunction with presence or absence surveys for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before January 22, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: December 16, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–33413 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Royalty Policy Committee, on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies.

Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and Federal Departments.

At this next meeting, the Minerals Management Service (MMS) will be prepared to respond to questions concerning plans to implement previously approved reports.

The Committee will hear status reports from subcommittees as well as some of the current efforts being undertaken by the Royalty Management Program.

DATES: The meeting will be held on Monday, January 26, 1998, 8:30 a.m.–4:00 p.m. Mountain time.

ADDRESSES: The meeting will be held at the Embassy Suites, Denver Southeast, 7525 East Hampden Avenue, Denver, Colorado 80231, telephone number (303) 696–6644.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Miller, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3060, Denver, Colorado 80225–0165, telephone number (303) 231–3413, fax number (303) 231–3362.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register.**

The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available.

Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to Mr. Michael A. Miller, at the address listed above. Minutes of Committee meetings will be available 10 days following each meeting for public inspection and copying at the Royalty Management Program, Building No. 85, Denver Federal Center, Denver, Colorado.

These meetings are being held by the authority of the Federal Advisory Committee Act, Pub. L. No. 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: December 17, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–33377 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting; South Wellfleet, Massachusetts

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 23, 1998.

The Commission was reestablished pursuant to Pub. L. 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, South Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting 11/21/97
3. Reports of Officers
4. Report of Nickerson Subcommittee
5. Lower Cape water study update: Cape Cod Commission
6. Superintendent's Report
   Budget
   Highlands Center for Arts & Environment
   General Management Plan
   News from Washington
7. Old Business
8. New Business
9. Agenda for next meeting
10. Date for next meeting
11. Public comment
12. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Maria Burks,

Superintendent.

[FR Doc. 97–33426 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for the remainder of calendar year 1998 to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following dates at San Francisco, San Mateo, and at Point Reyes Station, California:

Wednesday, January 14: San Francisco, CA
Wednesday, February 11: San Mateo, CA
Wednesday, March 11: San Francisco, CA
Saturday, March 28: Point Reyes, CA
Wednesday, April 8: San Francisco, CA
Wednesday, May 13: San Francisco, CA
Saturday, May 16: Point Reyes, CA
Wednesday, June 10: San Francisco, CA
Wednesday, July 8: San Francisco, CA
Wednesday, August 13: San Francisco, CA
Wednesday, September 9: San Francisco, CA
Saturday, October 14: San Francisco, CA
Saturday, October 17: Point Reyes, CA
Wednesday, November 18: San Francisco, CA

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco or at 10:30 a.m. at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California, unless otherwise publicly noticed. The March 28th meeting will begin at 1:30 p.m. Meetings in San Mateo County will be held at the San Mateo City Council Chambers, San Mateo City Hall, 330 West 20th Avenue, San Mateo, California. Some meetings now scheduled to be held in San Francisco may be held at public facilities in San Mateo County or Marin County. Information confirming the time and location of each of these Advisory Commission meetings can be received by calling the Office of the Staff Assistant at (415) 561–4633. Information confirming the time and location of all Advisory Commission meetings can be received by calling the Office of the Staff Assistant at (415) 556–4633.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Naomi T. Gray
Dr. Howard Cogswell
Mr. Michael Alexander
Mr. Jerry Friedman
Ms. Lennie Roberts
Ms. Yvonne Lee
Ms. Sonia Bolaños
Mr. Trent Orr
Mr. Redmond Kernan
Ms. Jacqueline Young
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

Anticipated agenda items at meetings this year will include but be limited to the following:

- Redwood Creek restoration projects
- report and public comment on Fort Baker Comprehensive Plan and EIS
- Muir Woods Transportation Study
- Alcatraz historic structure stabilization and natural resource management public access projects
- review of Fort Mason historic building uses
- reports and review of the Cliff House Restoration Plan and other elements of the Sutro Design Plan
- San Mateo issues and SF Watershed issues
- Presidio Lobos Creek plans
- update report on the Presidio Trust activities
- Presidio Vegetation Management Plan
- update presentations on the GGNRA Presidio Natural Resource Stewardship Program

- Crissy Field projects design briefing
- updates on Army environmental remediation at the Presidio
- updates on Presidio transportation planning
- report on National Historic Landmark designation for the Golden Gate Bridge
- reports on work of the Golden Gate National Parks Association
- reports on programs and projects of GGNRA "Park Partners"
- updates on issues concerning management and planning at Point Reyes NS

These meetings will also contain Superintendent's and Presidio General Manager's Reports.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4633.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 15, 1997.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 97–33428 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Wildlife and Scenic River System: Ohio; Big and Little Darby Creeks

AGENCY: National Park Service, Interior.

ACTION: Notice of Approval.

SUMMARY: The Secretary of the Interior hereby announces approval of an application by the Governor of Ohio to include additional segments of the Big and Little Darby Creeks, Ohio, as state administered components of the National Wild and Scenic Rivers System.

FOR FURTHER INFORMATION CONTACT: Angie Tornes, Rivers, Trails and Conservation Assistance Program, National Park Service, Midwest Regional Office, 310 West Wisconsin Street, Suite 100E, Milwaukee, Wisconsin 53202; or telephone 414–297–3605.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted the Secretary of the Interior by section 2 of the Wild and Scenic Rivers Act (Pub. L. 90–542, as amended; 16 U.S.C. 1273, *et seq.*) and upon proper application of the Governor of the State of Ohio, an additional 3.4 miles of the Big and Little Darby Creeks are hereby designated and are added to the existing segments of the Big and Little Darby Creeks, a state-administered component of the National Wild and Scenic Rivers System.

On March 25, 1996, the Governor of Ohio petitioned the Secretary of the Interior to add an additional 3.4 miles to the 85.9 miles of the Big and Little Darby Creeks, designated as components of the National Wild and Scenic Rivers System March 10, 1996. The evaluation report for that designation, prepared by the National Park Service in September 1993, states that the additional segments now under consideration were eligible and would be suitable for national wild and scenic river designation once they were added to the State Scenic River System. The evaluation also concluded that these segments of the Big and Little Darby Creeks meet the criteria for scenic classification under the Act.

These additional segments were added to the Ohio Scenic River System October 3, 1994. Public comment regarding national designation of the additional segments was solicited in Ohio and the required 90-day review for Federal Agencies was provided. Public and Federal Agency comments support national designation of the additional Big and Little Darby Creek segments. The State of Ohio has fulfilled the requirements of the Act by including these additional segments in the Ohio Scenic River System. The State's program to permanently protect the river is adequate. Current State and local management of the river is proceeding according to the Big and Little Darby Creek Plan and Environmental Assessment submitted with the original application.

As a result, the Secretary has determined that the additional 3.4 miles of the Big and Little Darby Creeks should be added to the existing designation of Big and Little Darby Creeks as a state-administered component of the National Wild and Scenic Rivers System, as provided for in section 2(a)(ii) of the Wild and Scenic Rivers Act.

Accordingly, the following additional river segments are classified as scenic pursuant to section 2(b) of the Act to be administered by State and local government:

Big Darby Creek: Scenic—From its confluence with Little Darby Creek (RM 34.1) upstream to the northern boundary of Battelle-Darby Creek Metro Park (RM 35.9) (1.8 miles).

Big Darby Creek: Scenic—From the U.S. Route 40 bridge (RM 38.9) upstream to the Conrail Railroad trestle crossing (RM 39.7) (0.8 miles).

Little Darby Creek: Scenic—From it confluence with Big Darby Creek (RM 0.0) to a point eight-tenths of a mile upstream (RM 0.8) (0.8 miles).

This action is taken following public involvement and consultation with the Departments of Agriculture, Army, Energy, and Transportation, the Federal Energy Regulatory Commission, and the U.S. Environmental Protection Agency as required by section 4(c) of the Wild and Scenic Rivers Act. All comments received have been supportive.

Notice is hereby given that effective upon this date, the above-described additional river segments are approved for inclusion in the National Wild and Scenic Rivers System to be administered by the State of Ohio.

Dated: December 8, 1997.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 97–33427 Filed 12–22–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–11]

Ronald D. Springel, M.D., Grant of Restricted Registration

On January 28, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ronald D. Springel, M.D., (Respondent) of Spokane, Washington, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated February 24, 1997, Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Seattle, Washington on July 15 and 16, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both sides submitted proposed fundings of fact, conclusions of law and argument. On October 6, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent be granted a DEA Certificate of Registration subject to several restrictions that would remain in effect for three years from the effective date of the final order. On October 28, 1997, Respondent's counsel filed exceptions to the Administrative Law Judge's Opinion and Recommended Ruling, and on November 6, 1997, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as specifically noted below, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent graduated from medical school in 1978, and is currently licensed to practice medicine in the State of Washington. In 1981 or 1982, while practicing in Pennsylvania, Respondent became addicted to drugs. Respondent obtained controlled substances for his own use, by having prescriptions filled that he had issued in names of other than his own. On August 17, 1983, Respondent entered a plea of nolo contendere in the Lehigh County Court, to three misdemeanor counts of possession of a controlled substance and three felony counts of prescribing a controlled substance outside the course of his medical practice in violation of the laws of the Commonwealth of Pennsylvania. Respondent was placed on probation without verdict and was ordered to surrender his DEA Certificate of Registration. Consequently, Respondent surrendered his previous DEA Certificate of Registration on August 26, 1983.

On July 25, 1984, Respondent was convicted in the United States District Court for the District of Alaska, following his plea of guilty to two felony counts of attempting to knowingly acquire possession of a controlled substance by fraud in violation of 21 U.S.C. 843 and 846, and three counts of acquiring possession of a controlled substance by fraud in violation of 21 U.S.C. 843. The court sentenced Respondent to two years imprisonment with all but 75 days suspended, and then placed Respondent on probation for five years.

On August 31, 1984, Respondent was convicted in the Superior Court for the State of Alaska of four felony counts related to the unlawful handling of controlled substances and one misdemeanor count of making an unsworn falsification of an application for a temporary permit to practice medicine in Alaska. Respondent was sentenced to five years probation. Thereafter, on September 5, 1984, Respondent's application for a medical license was denied by the Alaska State Medical Board.

In 1984, Respondent underwent approximately 42 days of inpatient treatment for chemical dependency. Respondent then moved to the State of Washington, and in 1987, he suffered a relapse of his drug addiction, using drugs including heroin. During his relapse, Respondent was employed at a narcotic treatment program, where he unlawfully acquired approximately 35 milliliters of methadone, a Schedule II controlled substance. As a result, on August 26, 1988, Respondent was convicted in the United States District Court for the Eastern District of Washington of one count of unlawful acquisition of a controlled substance in violation of 21 U.S.C. 843(a)(3), and was sentenced to one year imprisonment to be followed by two years of supervised release. In light of this conviction, on August 28, 1988, Respondent's probation based upon his conviction in the United States District Court for the District of Alaska was revoked and he was sentenced to three years imprisonment.

As a result of his relapse Respondent's license to practice medicine in the State of Washington was summarily suspended on March 4, 1988, by the Washington Board of Medical examiners (Washington Board). Thereafter, on August 1, 1988, the Washington Board revoked Respondent's Washington medical license and ordered that Respondent not petition for reinstatement of his license any earlier than 36 months from the effective date of the summary suspension order; that he successfully complete an inpatient treatment program; and that he remain drug and alcohol free for at least 12 months prior to his reinstatement. In addition, on September 27, 1988, Respondent's license to practice medicine in the Commonwealth of Pennsylvania was automatically suspended by the State Board of Medical Examiners due to his drug related convictions.

Respondent went to two different treatment facilities, entering the second facility on March 17, 1988. He has remained drug-free and in recovery since that date. Respondent testified at the hearing in this matter that he has developed a strong support system, and that he continues to regularly attend 12-step self-help group meetings. In addition, Respondent completed a five year contract with the Washington Physicians Health Program (WPHP) in 1994, which consisted of five elements: total abstinence from alcohol and any other addicting chemical; attendance at Alcoholics Anonymous and/or Narcotics Anonymous meetings; behavioral monitoring; chemical monitoring; and work site monitoring for the first five years under contract. After successfully completing his contract, Respondent has remained in the program on a voluntary basis, and was asked by the WPHP board to serve on the advisory committee, representing the rest of the participants in the program before the board.

In December of 1989, Respondent started a business which provided services to employers and employees to facilitate, among other things, compliance with drug-free workplace regulations. Over the years, this business endeavor has grown into six related enterprises which offer various services, to include employee assistance programs, occupational health services, drug-screen collection services, qualified medical review officers' services, and educational services to train employees and supervisors about the drug-free workplace regulatory requirements. The companies currently have approximately 2,000 clients in the Western United States, including the State of Washington.

On April 18, 1991, the Washington Board reinstated Respondent's license to practice medicine in the State of Washington with restrictions, including that he shall not obtain a DEA registration to handle controlled substances. On November 4, 1994, Respondent was granted an unrestricted license in the State of Washington, following the Washington Board's finding that Respondent "is not a risk to the public in his practice as a physician. . . ."

At the hearing in this matter, numerous professional and/or personal associates and clients of Respondent either testified or submitted affidavits attesting to the high quality of services performed by Respondent and his companies; to Respondent's

distinguished reputation and character; and to their belief that the registration of Respondent to handle controlled substances poses no risk to the public or his patients. The Director of the WPHP testified that the chance of Respondent suffering another relapse is "quite unlikely" given that he had been drug-free and in recovery for over nine years at the time of the hearing.

Respondent testified that he is now seeking a DEA registration because he cannot fully perform the occupational health aspect of his businesses without being able to prescribe controlled substances. In addition, he wants to volunteer as the back-up physician at a local narcotic treatment program, and would need to be able to handle controlled substances to effectively perform his duties. Finally, he believes that being granted a DEA Certificate of Registration would make him a complete physician and would recognize the fact that he is a "repaired" physician.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, it is undisputed that Respondent's application for a license to practice medicine in Alaska was denied in 1984, and his medical license in Pennsylvania was suspended in 1988. It is also undisputed that while Respondent's license to practice medicine in the State of Washington was revoked in 1988, and then reinstated subject to restrictions in 1991, Respondent has possessed an unrestricted medical license in that state since 1994.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, are relevant in this proceeding. Respondent became addicted to drugs in the early 1980's. Respondent repeatedly violated both state and Federal laws by fraudulently obtaining controlled substances for his own use. In the early 1980's, he prescribed controlled substances using his previous DEA registration to acquire the drugs. While Respondent did receive extensive treatment in 1984 for his admitted chemical dependency, he suffered a relapse in 1987, abusing various drugs including heroin. In late 1987, Respondent unlawfully acquired methadone from a narcotic treatment program where he was working. Therefore, as Judge Randall concluded, "the Government has proven by a preponderance of the evidence that in the 1980's, the Respondent unlawfully acquired, prescribed, and possessed controlled substances, as well as unlawfully consumed them." The Acting Deputy Administrator notes that there is no evidence in the record that Respondent ever unlawfully prescribed and/or dispensed controlled substances for anyone other than himself.

As to factor three, it is undisputed that Respondent has been convicted on several occasions of controlled substances related offenses. In August 1983, he pled nolo contendere in the Commonwealth of Pennsylvania to three misdemeanor counts of illegal possession of a controlled substance, and to three felony counts of prescribing controlled substances outside the course of medical practice. In July 1984, Respondent was convicted in the United States Court for the District of Alaska of five felony counts of obtaining a controlled substance by fraud, and in August 1984, Respondent was convicted in an Alaska state court of four felony counts relating to the unlawful handling of controlled substances and one misdemeanor count relating to the falsification of an application for a license to practice medicine in Alaska. Further, in August 1988, Respondent was convicted in the United States District Court for the Eastern District of Washington of one count of the unlawful acquisition of a controlled substance. As a result of these convictions, Respondent was incarcerated for a period of time.

Finally, regarding factor five, Respondent has admitted to a long history of substance abuse in the 1980's. He abused his privilege as a DEA registrant to obtain the drugs, he stole methadone from his employer, and he abused heroin. Clearly, this conduct posed a threat to the public safety.

The Acting Deputy Administrator concludes that based upon the foregoing, the Government has established a prima facie case for the denial of Respondent's application for a DEA Certificate of Registration. However, all of Respondent's unlawful conduct and his convictions stemmed from his drug addiction. Respondent testified that he has been drug-free since March 1988, and there is no evidence in the record of the contrary. In fact, the evidence presented by Respondent shows a strong commitment to continued recovery. Respondent continues to voluntarily participate in the WPHP, and the Director of the program testified that after over nine years of being drug-free, it is unlikely that Respondent will suffer a relapse of his drug abuse. Like Judge Randall, the Acting Deputy Administrator also finds it noteworthy that Respondent's business enterprises are centered around the detection and preventing of drug abuse in the workplace. Finally, the Acting Deputy Administrator finds significant the witness testimony and affidavits, offered on behalf of Respondent, attesting to his personal and professional integrity, and to his continued commitment to sobriety.

The Administrative Law Judge recommended granting Respondent's application for a DEA Certificate of Registration, but also found persuasive the Government's argument that "these multiple offenses are significant [enough] to warrant an extremely close look at any future registration for Respondent." Therefore, Judge Randall recommended that the following conditions and restrictions be placed upon Respondent's registration:

"1. That the Respondent maintain a log of all controlled substance prescriptions he issues. At a minimum, the log should indicate the date that the prescription was written, the name of the patient for whom it was written, and the name and dosage of the controlled substance(s) prescribed. The Respondent should maintain this log for a period of three years from the effective date of the final order. Upon request by the Special Agent in Charge of the DEA Field office in Seattle, or his designee, the Respondent shall submit or otherwise make reasonably available his prescription log for inspection.

2. For three years after the effective date of the final order, the Respondent should continue his association with the WPHP, and, if for any reason the WPHP no longer requires random urine screens, the Respondent shall continue these monthly screens at his own expense. The Respondent shall provide copies of the reports of the results of the screens upon reasonable request by DEA personnel.

3. For three years after the effective date of the final order, regardless of the applicable Washington state law, the Respondent may not prescribe or dispense controlled substances to himself or to any members of his family. The only exception to this limitation is that the Respondent may possess and consume controlled substances which are medically necessary for his own use, and which he has obtained lawfully from another duly authorized physician."

The Acting Deputy Administrator agrees with the Administrative Law Judge that Respondent should be issued a DEA Certificate of Registration, but that some restrictions on his registration are warranted in light of his past substance abuse, and his use of his previous DEA registration to fraudulently obtain controlled substances.

In his exceptions to Judge Randall's recommended ruling, Respondent contends that the proposed language of the second condition to be imposed on Respondent's registration, if granted, is ambiguous, since it requires that Respondent "continue these monthly screens" and he is not currently undergoing "monthly" urine screens. Respondent argues that he is currently participating in Phase III of the WPHP, which provides for random toxicology testing, but does not provide for monthly testing. Consequently, Respondent purposes that the restriction be rewritten to require that he continue his participation in Phase III of the WPHP, which includes random urine screens, for three years after the effective date of the final order. The Acting Deputy Administrator agrees with Respondent since the record does not indicate that Respondent is currently required to undergo monthly urine screens.

Therefore, the Acting Deputy Administrator concludes that Respondent should be granted a DEA Certificate of Registration subject to the conditions as recommended by Judge Randall with slight modifications. Respondent's registration shall be subject to the following conditions for three years from the date of issuance of the registration:

(1) Respondent shall maintain a log of all controlled substances that he prescribes. At a minimum, the log shall include the name of the patient, the date that the controlled substance was prescribed, and the name, dosage and quantity of the controlled substance prescribed. Upon request by the Special Agent in Charge of the Seattle DEA office, or his designee, Respondent shall submit or otherwise make available this prescription log for inspection.

(2) Respondent shall continue his participation in Phase III of the Washington Physicians Health Program, including such random urine screens, meetings, and other requirements as mandated by the program. Respondent shall immediately notify the Special Agent in Charge of the Seattle DEA office, or his designee, of any urine screens found to be positive for the presence of controlled substances.

(3) Respondent shall not prescribe or dispense any controlled substances to himself or to any members of his family, and shall only administer to himself those controlled substances legitimately dispensed or prescribed to him by another duly authorized practitioner.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Ronald D. Springel, M.D., be, and it hereby is granted, subject to the above described restrictions. This order is effective January 22, 1998.

Dated: December 15, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–33363 Filed 12–22–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "International Price Program—U.S. Import Price Indexes."

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 23, 1998.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7268 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The U.S. Import Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1971, measure price change over time for all categories of imported products, as well as many services. The Office of Management and Budget has listed the Import Price Indexes as a major economic indicator since 1982.

The indexes are widely used in both the public and private sectors. The primary public sector use is deflation of the U.S. Trade statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy

and in trade negotiations with other countries. In the private sector, uses of the Import Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The International Price Program indexes are viewed as a sensitive indicator of the economic environment. The Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policy-makers in the Department of the Treasury, the Council of Economic Advisors, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy, and evaluation of the general business environment.

Current Actions

The IPP continues to modernize data collection and processing to permit more timely release of its indexes and to reduce reporter burden. The IPP is using the telephone rather than personal visits for new item initiation in limited situations. We believe that initiation by telephone reduces reporting burden with no loss in response. Other potential initiation techniques to reduce burden being reviewed include less frequent sampling of more stable item areas, use of broader item areas in certain cases, and retention of items initiated in previous samples. To reduce the time required for processing new items, direct entry of initiation data from the field will be tested. Also, for repricing, the use of fax telephone lines to permit direct collection and entry into our database is being considered. In addition, use of the Internet for monthly repricing is being reviewed, contingent upon the resolution of questions relating to the security of the data.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: International Price Program/U.S. Import Product Information.

OMB Number: 1220–0026.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total annual responses	Average time per response (hours)	Estimated total burden (hours)
Form 2894B	1725	Annually	1725	1	1725
Form 3008	1725	Annually	1725	.334	576.15
Form 3007D	3235	Monthly, quarterly	38540	.56	21582.4
Total	4960		41,990		23884

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 18th day of December, 1997.

W. Stuart Rust, Jr.

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 97–33445 Filed 12–22–97; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Washington State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of subpart F to part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standard changes, the State has submitted by letter dated November 6, 1986, from Richard A. Davis, Director, to James W. Lake, Regional Administrator, a State standard at WAC 296–56 comparable to the Federal Marine Terminal standard 29 CFR 1917, as published in the **Federal Register** (48 FR 30886) on July 5, 1983. The State's submission was adopted on December 11, 1984, effective January 10, 1985, under Washington Administrative Order 84–24. National Office review revealed discrepancies and the submission was returned to the State for correction. On November 23, 1992, the State resubmitted its Marine Terminal standard, consolidating all action taken on the standard to date and including the changes necessary to correct the discrepancies previously identified. The State's consolidated standard was adopted on October 30, 1992, effective December 8, 1992, under Washington Administrative Order 92–06. Significant differences are: The scope of the standard is expanded to include all waterfront operations; the definition of confined spaces is broader; the railroad facilities standard, WAC 296–56–60019, only applies to standard gauge railroad operations since there are no other gauge railroads in the State and the State referenced its multipiece and single piece rim standards which are as effective as OSHA's. The State also included the following standards and additions not contained in the federal standard: requirements for an accident prevention program; additional slinging requirements; additional line handling requirements; additional railroad operation requirements; additional log handling requirements; inclusion of explosive requirements; specific first aid and first aid kit requirements; additional machinery operator requirements; additional auxiliary gear requirements; additional cargo handling gear tables; cargo board and other type pallet board requirements; additional industrial truck requirements; safety latches for hooks requirements; crane control requirements; additional crane requirements; additional requirements for communication for the crane operator; additional chute and conveyor requirements; additional material handling equipment certification requirements; additional requirements while working near water; additional terminal facility maintenance requirements; fall protection requirements; requirements for docks and dock facilities; requirements for access to vessels; requirements for electric and hand powered manlifts; Jacob's ladder requirements; additional employee exif requirements; additional illumination requirements; requirements for petroleum docks, boat marinas and canneries and cold storage docks and standard signals for longshore crane signals.

In response to Federal standard changes, the State has submitted by letter dated February 17, 1995, from Mark O. Brown, Director, to Richard Terrill, Acting Regional Administrator, a State standard comparable to the Federal standard, 1915.7, 1915.11, 1915.12, 1915.13, 1915.14, 1915.15, 1915.16 and Appendix A & B, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, published in the **Federal Register** (59 FR 37815) on July 25, 1994. The State standard was adopted on January 18, 1995, effective March 10, 1995, under Administrative Order 94–22. In a letter dated November 17, 1995, from Mark O. Brown, Director, to Richard Terrill, Acting Regional Administrator, and incorporated as part of the plan, the state submitted an amendment identical to 1915.12, 1915.14 and 1915.15 corrections to the Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, published in the **Federal Register** (60 FR 14218) on March 16, 1995. In the same letter, the State transmitted a State initiated change to its standard WAC 296–304–010, which is the scope and application section of the Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, to make it identical to the federal standard. The State standard amendments were adopted on October 20, 1995, effective January 16, 1996, under Administrative Order 94–19.

On its own initiative, the State of Washington has submitted by letter dated August 19, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, amendments to WAC 296–32, Telecommunications. The changes consist of correcting a reference to a section or parts, alternatives to sign wording, elimination of male gender terms, repealing the term "Division of Industrial Safety and Health", and renumbering or lettering of paragraphs to comply with the state code reviser's requirements. The State's submission was adopted on July 20, 1994, with an effective date of September 20, 1994, under Washington Administrative Order 94–07. The original State standard received approval on May 4, 1976 (41 FR 18484).

On its own initiative, the State of Washington has submitted by letter dated November 17, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, a state standard change to WAC 296–24–13501(2), Color Identification, to be identical to 29 CFR 1910.144(a)(3). The State's submission was adopted on October 20, 1995, with an effective date of January 16, 1996, under Washington Administrative Order 94–16. The original state standard received approval on January 30, 1976 (41 FR 4689) and the revocation of 29 CFR 1910.144(b), received approval on May 21, 1991 (56 FR 23305).

On its own initiative, the State of Washington has submitted by letter dated October 6, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, an addition of state standard WAC 296–24–19514, Reporting of Injuries to Employees Operating Machanical Power Presses, to be identical to 29 CFR 1910.217(g). This state standard was inadvertently repealed by Administrative Order 88–11 on July 6, 1988. The State's submission was adopted on August 9, 1995, effective September 25, 1995, under Washington Administrative Order 95–04. The original state standard received approval on May 4, 1976 (41 FR 18484).

On its own initiative, the State of Washington has submitted by letter dated February 12, 1991, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, an addition of State standard WAC 296.24–76555, Alternating Tread-type Stairs. This amendment incorporated guidelines from WISHA Regional Directive 85–3 for the evaluation and inspection of alternating tread-type fixed industrial stairs, and was adopted in response to OSHA Instruction STD 1–1.11. (The Federal standard does not include alternating tread-type stairs.) The State's submission was adopted January 10, 1991, effective February 12, 1991, under Washington Administrative Order 90–18. In a letter dated September 8, 1992, from Joseph A. Dear, Director to James W. Lake, Regional Administrator, minor changes to the standard were made. The State's submission was adopted on August 10, 1992, effective September 10, 1992, under Washington Administrative Order 92–06.

The administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. The changes were incorporated as part of the State plan.

2. Decision

OSHA has determined that the State standards for Marine Terminals, Confined Spaces for Shipyards, and Alternating Tread-type Stairs are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. The State's Marine Terminals standard, as amended, has been in effect since January 10, 1985 and December 8, 1992; the Confined Spaces for Shipyards standard has been in effect since March 10, 1995; and the Alternating Tread-type Stair standard has been in effect since February 12, 1991. During this time OSHA has received no indication of significant objection to these different State standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

OSHA has also determined that the differences between the State and Federal amendments for Telecommunications are minimal and thus are substantially identical. OSHA therefore approves this amendment; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. OSHA has further determined that the State's amendments for Confined Spaces in Shipyards, Mechanical Power Presses, and Color

Identification are identical to the comparable Federal amendments, and therefore approves the amendments.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, WISHA Services Division, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW, Washington, D.C. 20210. For electronic copies of this **Federal Register** notice, contact OSHA's WebPage at http://www.osha.gov/.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason: The standards and amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective December 23, 1997.

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667])

Signed at Seattle, Washington, this 27th day of October 1997.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 97–33388 Filed 12–22–97; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Work Group; Availability of Materials for Review and Comment; Request for Comment

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of materials for public review and comment; request for comment.

SUMMARY: This notice provides information on where the public may obtain copies of materials prepared for and by the Electronic Records Work Group and summaries of the Work Group meetings. It also describes how to provide comments to the Work Group, and solicits comments on issues that the Work Group should address. The Electronic Records Work Group is charged with identifying workable alternatives to the disposition practices currently authorized under NARA's General Records Schedule 20 for Electronic Records.

All materials prepared for the Electronic Records Work Group and related information on their activities will be posted on NARA's GRS 20 Internet Web page at <http://www.nara.gov/records/grs20/>. Individuals who do not have Internet access may call the person indicated in the **FOR FURTHER INFORMATION CONTACT** section to request paper copies of these materials.

DATES: Comments on the preliminary list of issues must be received by January 9, 1998.

ADDRESSES: Comments should be sent electronically to the e-mail address <grs20@arch2.nara.gov>. If you do not have access to e-mail, comments may be mailed to Electronic Records Work Group (NWR), Room 2100, 8601 Adelphi Rd., College Park, MD 20740–6001, or faxed to 301–713–6850.

FOR FURTHER INFORMATION CONTACT: To request paper copies of materials posted on the GRS 20 Internet Web page, contact Jean Cooke at 301–713–7110, extension 228.

SUPPLEMENTARY INFORMATION: The initial meeting of the Electronic Records Work Group was held on December 19, 1997. At that meeting, the Work Group received a list of issues to be discussed by the Work Group and a list of resources on which the Group should draw in dealing with records disposition issues. Members of the Work Group, consultants to the project, and interested members of the public are asked to recommend additions to, or other changes in the issues to be discussed and the list of resources by January 9, 1998. Following is the list of issues:

Preliminary List of Issues To Be Addressed by the Electronic Records Work Group

The Electronic Records Work Group is charged with developing a practical, implementable approach to replacing the disposition authorities currently provided by GRS 20. This issues list is a "first cut" at identifying those issues which need to be addressed as part of the project. The list is meant to stimulate discussion and lead to the identification of other issues. Comments on the list and suggestions for additions should be sent to the NARA through its web page at <www.nara.gov/records/grs20> or by fax to Michael Miller at 301–713–6850.

Scope of the GRS

1. The GRS, including GRS–20, should cover only administrative records. How should administrative records be defined and how should the programmatic records excluded from GRS-20 be scheduled?

2. How should the GRS fit into the overall spectrum of disposition guidance and authorization? What other approaches are there for developing disposition authorities for records common to several agencies?

3. Is there a role for a specific GRS covering records used to operate and manage central computer facilities and local area networks? If so what should that GRS include?

4. Is there a rationale for not applying the GRS to electronic records of some agencies?

Implementation Issues

5. What implementation options are available to agencies now and for the next 5–7 years and into the future?

6. If records in an application system such as email or word processing are not arranged according to the agency filing system, how does one go about implementing a disposition schedule?

7. Is it possible to schedule the disposition of individual records (documents) in word processing and e-mail applications? If not, what are the alternatives?

8. What approaches are there for replacing the disposition "delete (or destroy) when no longer needed?"

9. Do agency staff have a difficult time understanding and applying GRS 20? If so, what lessons should be applied to developing the replacement?

Dated: December 19, 1997.

Lewis J. Bellardo,

Deputy Archivist of the United States.

[FR Doc. 97–33651 Filed 12–22–97; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 25—Access Authorization for Licensee Personnel.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* NRC regulated facilities and other organizations requiring access to NRC classified information.

6. *An estimate of the number of responses:* 522.

7. *The estimated number of annual respondents:* 20.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 257 hours (197 hours reporting and 60 hours recordkeeping) or 3.8 hours/response.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by January 22, 1998. Norma Gonzales, Office of Information and Regulatory Affairs (3150–0046), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of December 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–33421 Filed 12–22–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Steam Generator Tube Inspection Techniques; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 97–05 to all holders of operating licenses for pressurized-water reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, to emphasize the importance of performing steam generator tube inservice inspections using qualified techniques in accordance with the requirements of Appendix B to 10 CFR Part 50, and to require certain information from addressees to determine whether they are in compliance with the current licensing basis for their respective facilities given their steam generator tube inservice inspection practices. This generic letter only requests information from the addressees under the provisions of Section 182a of the Atomic Energy Act, as amended, and 10 CFR 50.54(f).

The generic letter is available in the NRC Public Document Room under accession number 9712120014.

DATES: The generic letter was issued on December 17, 1997.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Phillip J. Rush, at (301) 415–2790.

SUPPLEMENTARY INFORMATION: This generic letter does not constitute a backfit as defined in 10 CFR 50.109(a)(1) since it does not impose modifications of or additions to structures, systems or components or to design or operation of an addressee's facility. It also does not impose an interpretation of the Commission's rules that is either new or different from a previous staff position. The staff, therefore, has not performed a backfit analysis.

Dated at Rockville, Maryland, this 17th day of December 1997.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33423 Filed 12–22–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 22, 29, 1997, January 5, and 12, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 22

There are no meetings the week of December 22.

Week of December 29—Tentative

There are no meetings the week of December 29.

Week of January 5—Tentative

There are no meetings the week of January 5.

Week of January 12—Tentative

Wednesday, January 14

9:30 a.m. Briefing by Executive Branch (closed—Ex.1)

Thursday, January 15

9:00 a.m. Affirmation Session (public meeting) (if needed)

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 18, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–33550 Filed 12–19–97; 11:55 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance about Materials Licenses: Program-Specific Guidance About Fixed Gauge Licenses; Availability of Draft NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of and requesting comment on draft NUREG–1556, Volume 4, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Fixed Gauge Licenses," dated October 1997.

NRC is using Business Process Redesign (BPR) techniques to redesign its materials licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the fourth program-specific guidance developed to support an improved materials licensing process.

It is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel. It combines and updates the guidance for applicants and licensees previously found in Draft Regulatory Guide and Value/Impact Statement, FC 404–4, "Guide for the Preparation of Applications for Licenses for the Use of Sealed Sources in Nonportable Gauging Devices," dated January 1985, and the guidance for licensing staff previously found in Policy and Guidance Directive, FC 85–4, "Standard Review Plan for Applications for the Use of Sealed Sources in Nonportable Gauging Devices," dated February 6, 1985, and Policy and Guidance Directive, FC 85–8, Revision 1, "Licensing of Fixed Gauges and Similar Devices," dated June 29, 1988. In addition, this draft report also contains pertinent information found in Technical Assistance Requests and Information Notices.

This draft report takes a risk-informed, performance-based approach to licensing fixed gauges, i.e., it reduces the amount of information needed from an applicant seeking to possess and use a relatively safe device. These fixed gauges contain sealed sources of radioactive material and incorporate features engineered to enhance their safety. NRC's considerable experience with these licensees indicates that radiation exposures to workers are generally low, if the gauges are operated as designed and workers follow basic safety procedures.

This draft report is strictly for public comment and is NOT for use in preparing or reviewing applications for fixed gauges until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends March 23, 1998. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 4, by writing to the U.S. Nuclear Regulatory Commission, *Attn:* Sally L. Merchant, Mail Stop TWFN 8F5, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to SLM2@NRC.GOV. A copy of draft NUREG–1556, Volume 4, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Sally Merchant, Mail Stop TWFN 8–F5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: slm2@NRC.GOV.

Dated at Rockville, Maryland, this 16th day of December, 1997.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–33422 Filed 12–22–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Self-Shielded Irradiator Licenses; Availability of Draft NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of and requesting comment on draft NUREG–1556, Volume 5, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Self-Shielded Irradiator Licenses," dated October 1997.

NRC is using Business Process Redesign (BPR) techniques to redesign its materials licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the fifth program-specific guidance developed to support an improved materials licensing process.

It is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel. It combines and updates the guidance for applicants and licensees previously found in Regulatory Guide 10.9, "Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Gamma Irradiators," dated December 1988, and the guidance for licensing staff previously found in Policy and Guidance Directive, FC 84–16, Revision 1, "Standard Review Plan for Applications for Use of Self-Contained Dry Source-Storage Gamma Irradiators," dated January 26, 1989. In addition, this draft report also contains information found in pertinent Technical Assistance Requests and information Notices.

This draft report takes a risk-informed, performance-based approach to licensing self-shielded irradiators, i.e., it reduces the amount of information needed from an applicant seeking to possess and use a relatively safe device. These self-shielded irradiators contain sealed sources of radioactive material and incorporate features engineered to enhance their safety. NRC's considerable experience with these licensees indicates that radiation exposures to workers are generally low, if the irradiators operate as designed and workers follow basic safety procedures.

This draft report is strictly for public comment and is NOT for use in preparing or reviewing applications for self-shielded irradiators until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends March 23, 1998. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 5, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Patricia C. Vacca, Mail Stop TWFN 8F5, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to PCV@NRC.GOV. A copy of draft NUREG–1556, Volume 5, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia C. Vacca, Mail Stop TWFN 8–F5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7908; electronic mail address: PCV@NRC.GOV.

Dated at Rockville, Maryland, this 16th day of December 1997.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 97–33420 Filed 12–22–97; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39453; File No. SR–CBOE–97–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Listing and Trading of Options on the Dow Jones High Yield Select 10 Index

December 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 8, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 24.1, 24.6, and 24.9 to provide for the listing and trading of options on the Dow Jones High Yield Select (10 Index ("Index"), a narrow-based index comprised of the ten highest yielding stocks from the Dow Jones Industrial Average ("DJIA"). Options on the Index will be cash-settled and will have European-style exercise provisions.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to list and trade cash-settled, European-style stock index options on the Index. The Index is an equal-dollar weighted index comprised of the ten highest yielding stocks from the DJIA.[2] The Index was designed to replicate a popular contrarian strategy which assumes that the ten highest-yielding stocks in the DJIA are oversold and, therefore, underpriced relative to the other DJIA stocks. Because a number of mutual funds and unit investment trusts employ this strategy, the Exchange believes that options based on the same general strategy would provide a valuable hedging and investment tool.

According to the Exchange, the Index satisfies the generic criteria for listing options on narrow-based indexes set forth in Exchange Rule 24.2, "Designation of the Index," as well as the generic criteria appearing in the Commission's order that approved Exchange Rule 24.2 ("Generic Index Approval Order").[3] Because the Exchange submitted this proposed rule change in accordance with the expedited approval procedures set forth in Exchange Rule 24.2 and the Generic Index Approval Order, the Exchange may list and trade options on the Index as soon as 30 days from December 8, 1997, the filing date of the proposed rule change.

(a) *Index Design.* The Index will be constituted at the end of the calendar year, and will be comprised of the ten highest-yielding stocks from the DJIA, determined as of the close of trading on

[2] The DJIA is comprised of 30 of the largest companies traded on the New York Stock Exchange. The DJIA currently consists of the following companies: Allied Signal, Incorporated; Aluminum Company of America; American Express Company; AT&T Corporation; Boeing Company; Caterpillar, Incorporated; Chevron Corporation; Coca Cola Company; Du Pont E.I. de Nemours; Eastman Kodak Company, Exxon Corporation; General Electric Company; General Motors Corporation; Goodyear Tire and Rubber Company; Hewlett Packard Company; International Business Machines; International Paper Company; Johnson and Johnson; JP Morgan and Company, Incorporated; McDonald's Corporation; Merck and Company, Incorporated; Minnesota Mining and Manufacturing; Philip Morris Companies, Incorporated; Procter and Gamble Company; Sears Roebuck and Company; Traveler's Group Incorporated; Union Carbide Corporation; United Technologies Corporation; Wal Mart Stores, Incorporated; and Walt Disney Company. Earlier this year, the Commission approved the Exchange's proposed rule change to list and trade options on the DJIA. *See* Securities Exchange Act Release No. 39011 (Sept. 3, 1997), 62 FR 47840 (Sept. 11, 1997).

[3] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

the third business day prior to the last business day of the calendar year. The Exchange provided information in its proposed rule change filing that identified the ten DJIA stocks that would make up the Index if it were constituted as of November 20, 1997 ("Sample Index")[4] All of the stocks in the Sample Index are "reported securities" as defined in Rule 11Aa3–1 under the Act.[5] In addition, all of the stocks in the Sample Index meet the Exchange's listing criteria for equity options as set forth in Exchange Rule 5.3. Accordingly, 100% of the stocks in the Sample Index, by number and weight, are eligible to serve as underlying securities pursuant to Exchange rules.

In its proposed rule change filing, the Exchange also provided statistical information indicating that each of the stocks in the Sample Index has a market capitalization well in excess of $75 million. As of November 20, 1997, the stocks comprising the Sample Index ranged in market capitalization from $9.55 billion (Goodyear Tire and Rubber Company) to $154.58 billion (Exxon Corporation). The total market capitalization of the Sample Index as of that date was $598.77 billion. The mean market capitalization was $59.88 billion, and the median market capitalization was $49.43 billion.

Additional information provided by the Exchange demonstrates that each of the component stocks in the Sample Index has experienced monthly trading volume well in excess of 1 million shares over the six month period through October, 1997. During that period, monthly trading volumes for the Sample Index stocks ranged from a low of 6.1 million shares (Goodyear Tire and Rubber Company—August, 1997), to a high of 174 million shares (Philip Morris—June, 1997). Because the Index will be equal-dollar weighted at the outset, each component stock will comprise 10% of the Index. As described below, the Index will be rebalanced once each calendar quarter at which time each stock will be adjusted so that each component will once again have equal dollar weight within the Index.

(b) *Calculation of the Index.* The Index will be calculated by the Exchange or its designee on a real-time basis using last-sale price information, and will be disseminated by the Exchange every 15 seconds. If a component stock is not being traded currently, the Exchange will use the most recent price at which the stock traded to calculate the Index. The initial value of the Index will be set to equal the value of the DJX as of December 31, 1997.[6]

The Index is equal-dollar weighted and reflects changes in the prices of the component stocks relative to the Index base date, January 1, 1998, when the Index will be set to equal the value of the DJX. Initially, each of the component stocks is represented in equal dollar amounts; the level of the Index is equal to the combined market value of the assigned number of shares for each of the Index components, divided by the current Index divisor. The Index divisor is adjusted to reflect non-market related changes in the prices of the component securities and changes in the composition of the Index. Changes which result in divisor adjustments include, but are not limited to, quarterly rebalancings, special dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

(c) *Maintenance of the Index.* The Exchange will maintain the Index. Exchange staff will rebalance the Index quarterly on expiration Fridays in March, June, September, and on the last business day in December. If it becomes necessary to remove a stock from the Index (for example, because of a takeover, merger, or component change in the DJIA), it will be replaced by the stock from the DJIA which has the highest yield of those stocks not already included in the Index. As of the third business day before the last business day of the calendar year, the Exchange will determine the ten highest yielding stocks from the DJIA. The Exchange will disseminate notice of these ten stocks on that day. The reconstituted Index, as determined three business days before the last business day of the calendar year, will become effective as of January 1 of the next calendar year. The following table prepared by the Exchange shows the stocks eligible for inclusion in the Index from 1987 through 1996. The table illustrates that turnover from one year to the next generally involves two or three stocks.[7]

1987	GM	UK	CHV	WX	XON	S	T	ALD	GT	DD
1988	GM	UK	CHV	WX	XON	S	T	ALD	*UTX*	*BA*
1989	GM	UK	CHV	*EK*	XON	S	T	ALD	UTX	*DD*
1990	GM	UK	CHV	EK	XON	S	*MMM*	ALD	*GT*	DD
1991	GM	UK	*AXP*	EK	XON	S	*T*	ALD	GT	DD
1992	GM	UK	AXP	EK	XON	S	*WX*	CHV	*TX*	*IBM*
1993	GM	*UTX*	AXP	EK	XON	S	WX	CHV	TX	IBM
1994	*JPM*	*UK*	AXP	EK	XON	*MO*	Z	CHV	TX	*DD*
1995	JPM	*S*	*MMM*	EK	XON	MO	Z	CHV	TX	DD
1996	JPM	*GM*	MMM	EK	XON	MO	*IP*	CHV	TX	DD

If the Index fails at any time to satisfy one or more of the required maintenance criteria, the Exchange will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless the Exchange determines that such failure is insignificant and the Commission concurs in that determination, or unless the Commission approves the continued listing of options on the Index under Section 19(b)(2) of the Act.[8]

(d) *Trading of Option Contracts Based on the Index.* The Exchange proposes to base trading in Index options on the full value of the Index. The Exchange may elect to list full-value, long-term index option series ("LEAPS℠"), as provided in Exchange Rule 24.9, "Terms of Index Option Contracts." The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the Index. The current and closing Index value for any such reduced-value LEAP will be rounded to the nearest one-hundredth.

(e) *Exercise and Settlement of Option Contracts Based on the Index.* Options listed and traded on the Index will have European-style exercise features and will be "A.M.-Settled Index Options" within the meaning of the Exchange Rules in Chapter XXIV, "Index Options," including Exchange Rule 24.9, which is being amended to reference options based on the Index. Option contracts based on the Index will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day preceding the expiration date, typically a Thursday.

(f) *Exchange Rules Applicable to the Trading of Index Option Contracts.* Except as modified in this proposed rule change, the Exchange Rules in Chapter XXIV will apply to options listed and traded on the Index. In addition, option contracts based on the Index will be subject to the position limit requirements of Exchange Rule 24.4A, "Position Limits for Industry Index Options."

The Exchange has represented that it possesses the necessary systems capacity to support new series that would result from the introduction of option contracts based on the Index. In addition, the Options Price Reporting Authority ("OPR") informed the Exchange that additional traffic generated by options on the Index is within OPRA's capacity.[9]

2. *Statutory Basis*

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it will permit trading in option contracts based on the Index in accordance with rules designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change complies with the requirements set forth in the Generic Index Approval Order,[12] it constitutes a stated policy, practice, or interpretation with respect to the administration of an existing Exchange rule, and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (e) of Rule 19b-4 thereunder.[14] Pursuant to the Generic Index Approval Order, the Exchange may not list Index options for trading prior to 30 days after December 8, 1997, the date the proposed rule change was filed with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–63 and should be submitted by January 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33404 Filed 12–22–97; 8:45 am]

BILLING CODE 8010–01–M

---

[4] The ten stocks are: AT&T Corporation, Chevron Corporation, Du Pont E.I. de Nemours, Exxon Corporation, General Motors Corporation, Goodyear Tire and Rubber Company, International Paper Company, JP Morgan and Company, Minnesota Mining and Manufacturing, and Philip Morris Companies.

[5] 17 CFR 240.11Aa3–1.

[6] The DJX is the index upon which options on the DJIA are based. The value of the DJX is equal to the level of the DJIA divided by 100. As of November 20, 1997, the value of the DJX was 78.27.

[7] In the table above, the symbols represent the following DJIA stocks: GM—General Motors; UK—Union Carbide, CHV—Chevron; EK—Eastman Kodak; XON—Exxon Corporation; S—Sears Roebuck & Company; T—AT&T Corporation; ALD—Allied Signal Inc.; GT—Goodyear Tire and Rubber Company; DD—El du Pont de Nemours and Company; WX—Westinghouse Electric Corporation; AXP—American Express; TX—Texaco Inc.; IBM—International Business Machines; JPM—JP Morgan; Z—Woolworth Corporation; MO—Philip Morris Companies, Inc.; UTX—United Technologies Corporation; BA—Boeing Company; MMM—Minnesota Mining and Manufacturing; and IP—International Paper Company. An italicized ticker symbol represents a new component stock.

[8] 15 U.S.C. § 78s(b)(2).

[9] See Letter from Joseph P. Corrigan, Executive Director, OPRA, to William Speth, Exchange, dated November 20, 1997.

[10] 15 U.S.C. § 78f.

[11] 15 U.S.C. § 78f(b)(5).

[12] See note 3, *supra*.

[13] 15 U.S.C. § 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(e).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39450; File No. SR–CHX–97–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to a Rebate to Members of Dues and Certain Fees

December 15, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 11, 1997, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rebate to members (1) an amount equal to six months of membership dues and (2) an amount equal to twelve months of floor telephone booth and/or post space charges applicable to them, as set forth in the Exchange's Membership Dues and Fees Schedule.

---

[1] 15 U.S.C. 78s(b)(1).

[2] See letter from J. Craig Long, Attorney, Foley & Lardner, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 10, 1997 ("Amendment No. 1"). The Exchange initially submitted the proposal on December 8, 1997. However, at the Commission's request, the Exchange filed Amendment No. 1 to the proposed rule change on December 11, 1997 to provide the reasoning for rebating the dues and fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rebate to members an amount equal to six months of membership dues and an amount equal to twelve months of floor telephone booth and/or post space charges applicable to them because the Exchange has already adequately covered its costs for the year.

The Exchange's Finance Committee has determined that the proposed rebates would be consistent with the general guidelines adopted by the Committee with respect to the appropriate level of capital and retained earnings that the Exchange should possess at any given time. Furthermore, the Committee has focused on the Exchange's capitalization and determined that even after the proposed rebate, the Exchange will have ample capital and resources to continue to fulfill its proscribed duties in its capacity as a self-regulator and as a registered national securities exchange.[3]

2. Statutory Basis

The Exchange represents that proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4)[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Chicago Stock Exchange, Inc. All submissions should refer to File No. SR–CHX–97–31 and should be submitted by January 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[FR Doc. 97–33403 Filed 12–22–97; 8:45 am]

BILLING CODE 8010–01–M

[3] See Amendment No. 1.
[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(4).
[6] 15 U.S.C. 78s(b)(3)(A).
[7] 17 CFR 240.19b–4.
[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39451; File No. SR–NASD–97–88]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Incorporated Relating to Process Fees on Members That Are Parties to Arbitration Proceedings

December 15, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the National Association of Securities Dealers, Incorporated "NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10333 of the NASD's Code of Arbitration Procedure ("Code") to add a process fee on members that are parties to arbitration proceedings. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

10333. Member Surcharge *and Process Fees*

(a) Each member [who is named as] *that is* a party to an arbitration proceeding, whether in a Claim, Counterclaim, Cross-claim or Third-Party Claim, shall be assessed a non-refundable surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be [subject to reimbursement] *chargeable to any other party* under Rules 10332(c) and 10205(c) of the Code.

Amount in Dispute	Surcharge
$.01–$2,500	$150
$2,500.01–$5,000	200
$5,000.01–$10,000	300
$10,000.01–$25,000	400
$25,000.01–$30,000	600
$30,000.01–$50,000	800
$50,000.01–$100,000	1,000
$100,000.01–$500,000	1,500
$500,000.01–$1,000,000	2,000
$1,000,000.01–$5,000,000	2,500
$5,000,000.01–$10,000,000	3,000
Over $10,000,000	3,600

(b) For purposes of this Rule, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Rule 10314 of the Code.

(c) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable surcharge shall be $1,200 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule.

(d) Each member that is a party to an arbitration proceeding will pay a non-refundable process fee as set forth in the schedule below for each stage of a proceeding. The process fee shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code. If an associated person of a member is a party, the member that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the process fees. The prehearing process fee will accrue according to the schedule set forth below, but will be due and payable when the prehearing conference is held, or, if no prehearing conference is held, when the parties are notified of the date and location of the first hearing session. The hearing fee will accrue and be due and payable when the parties are notified of the date and location of the first hearing session. All accrued but unpaid fees will be due and payable at the conclusion of the member's or associated person's involvement in the proceeding. No member will pay more than one prehearing and hearing process fee for any case. The process fees will stop accruing when either the member enters into a settlement of the dispute or the member is dismissed from the proceeding or, if the member is paying a process fee as a result of an associated person being named as a party, when the associated person enters into a settlement or is dismissed from the proceeding, whichever is later.

Prehearing Process Fee Schedule (proceedings where more than $25,000 is in dispute)

Service of Claim (accrues when the claim has been submitted and is ready to be served on the respondents)	*$50*
Case Preparation (accrues when the first answer to the claim is received or due and discovery and motions proceedings commence	*150*
Prehearing Activities (accrues when the parties are first notified of the names of any of the arbitrators selected to hear the motter or are given the names of arbitrators to select)	*400*
Total	*$600*

Hearing Process Fee Schedule (accrues and becomes due and payable when the parties are notified of the date and location of the first hearing session)

Damages requested	Hearing process fee
$1–$30,000	$0
$30,000.01–$50,000	1,000
$50,000.01–$100,000	1,500
$100,000.01–$500,000	2,500
$500,000.01–$1,000,000	3,500
$1,000,000.01–$5,000,000	4,500
More than $5,000,000	5,000
Unspecified	2,000

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation is proposing to amend Rule 10333 of the Code to add a process fee to be charged to members at several stages of arbitration proceedings. The proposed rule change is the last stage of a three stage effort to make the NASD's dispute resolution program self-funding by charging fees to participants in arbitration proceedings.[1]

The previously approved surcharge and the other pending fee increases will add approximately $12 million to the revenue stream of the Office of Dispute Resolution ("Office"). In addition, they will shift much of the direct cost of operating the dispute resolution forum to the users of the forum. The final 1998 Budget for the Office, however, which includes transfer pricing of services provided by other NASD departments to the Office, projects total expenses of approximately $35.2 million versus projected revenue of approximately $29.1 million, leaving a revenue shortfall of approximately $6.1 million. The proposed fees are designed to recover all of the Office's costs that are not recovered through filing fees, hearing session deposits, forum fees,[2] and member surcharges and to make the Office's activities self-funding in a manner that generally reflects the extent of the use of resources in a given case.

The process fees will be assessed in two parts: (1) The Prehearing Process Fee for the activities in the case from the filing of the claim up to and including the Prehearing Conference; and (2) the Hearing Process Fee for the activities relating to the evidentiary hearing, award and case closing. If the member concludes its involvement in a case through dismissal or settlement, the process fees accrued to that point will be assessed. In addition, if an associated person of a member is named in a proceeding, but the member is not named, the member employing the associated person at the time of the events that gave rise to the dispute will be assessed the process fees when the associated person's involvement in the case is concluded.

The Prehearing Process Fee will accrue in three cumulative stages. When a claim is filed, a $50 fee will accrue against each member named in the claim.[3] When the first answer to the

[1] The first two stages involved increasing the surcharge on members named in arbitration proceedings and increasing filing fees and hearing session deposits. The increase in the member surcharge was submitted to the SEC for approval in rule filing SR–NASD–97–40 and was approved by the SEC. It was implemented on July 1, 1997. The proposed increases in filing fees and hearing session deposits were originally submitted to the SEC for approval in rule filing SR–NASD–97–39, resubmitted in rule filing SR–NASD–97–79, and are currently pending SEC approval.

[2] Forum fees are the charges for hearing sessions assessed at the end of a proceeding. Forum fees are calculated by multiplying the number of hearing sessions by the applicable hearing session deposit.

[3] As discussed above, if an associated person of a member is named, but the member employing the associated person is not named, the process fee will

Continued

claim is received or due, an additional $150 fee will accrue. Finally, when the arbitrators are selected, a fee of $400 will accrue against each member in the case, for a maximum assessment against each member of $600. The Prehearing Process fee will be due and payable when the prehearing conference is held, or, if no prehearing conference is held, when the parties are notified of the date and location of the first hearing. These fees will not be dependent on the amount of the claim.

The Hearing Process Fee will accrue and become due and payable when the parties are notified of the date and location of the first hearing session. The Hearing Process Fee will be a graduated fee ranging from $1000 to $5000, based on the amount in dispute.

If an associated person is named, the member firm that employed the associated person at the time the claim arose will be assessed fees; however, a member will only be assessed once for each case even if both the member and an associated person (or more than one associated person) of the member are named as respondents. [4]

NASD Regulation believes that, by structuring the process fees in the manner proposed, the Office's costs will be recovered even if there are significant variations in the number of cases that proceed all the way through a hearing. Moreover, NASD Regulation believes that the proposed process fees may encourage settlements because significantly greater fees will be incurred by members once the matter proceeds to hearing.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act [5] in that the proposed rule change provides for the equitable allocation of reasonable charges among members and other persons using the Association's arbitration facility and requires member firm users to absorb a reasonable share of the costs of operating the arbitration program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited on received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (e) of Rule 19b–4 thereunder, [7] in that the proposal constitutes a fee which the NASD imposes on its members. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–88 and should be submitted by January 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33405 Filed 12–22–97; 8:45 am]

BILLING CODE 8010–01–M

accrue against the member employing the associated person at the time of the events which gave rise to the dispute. References in this rule filing to fees assessed against members named in the proceeding will also refer to the circumstance where the member is not named in the proceeding, but is assessed the fee because a present or, where applicable, former associated person of the member is named in the proceeding.

[4] As with the member surcharge, the proposed process fees will be assessed only against members. They will not be assessed against associated persons. In addition, because the process fee will be assessed against a member if an associated person of the member is named in a proceeding, members would be required to pay the process fee, for example: (1) Where a member brings an arbitration case against an associated person to recover on an promissory note; (2) where an associated person brings an arbitration case against a member for defamation or wrongful discharge; or (3) where a customer brings an arbitration case against an associated person but does not name the member that employed the associated person at the time of the events that are the subject of the claim.

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–97–045]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 9 a.m. to approximately 11 a.m. on Wednesday, January 28, 1998.

ADDRESSES: The meeting will be held in the basement conference room of the Hale Boggs Federal Building located at 501 Magazine Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: M. Monty Ledet, USCG, c/o Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

Election of Committee Chairman.
Election of Committee Vice Chairman.
Approval of the September 10, 1997 minutes.
Subcommittee Reports.
Old Business.
New Business.
Adjournment.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact M. Monty Ledet, Marine Safety Division, Eighth Coast Guard District, at the number listed in **FOR FURTHER INFORMATION** above, as soon as possible.

Dated: December 15, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–33463 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, Federal Aviation Administration (DOT/FAA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting a clearance in accordance with 5 CFR #1320.10. The following information describes the nature of the information collection and its expected burden.

DATES: Submit any comments to OMB and FAA by February 23, 1998.

SUPPLEMENTARY INFORMATION:

Title: Flight Standards Customer Satisfaction Survey #2.

Need: The need is for the Flight Standards Service to survey customers in keeping with our strategic initiative to improve the quality of our service by anticipating customer needs and responding to the public interest. The action of conducting customer satisfaction surveys is consistent with, and mandated by, such executive and federal level issuances as the September 1993 Presidential Executive Order, Vice President Gore's Report of the National Performance Review, and the FAA's Strategic Plan.

The completion of this survey is voluntary. No assurance of confidentiality is provided as the respondents are not asked to reveal information about themselves, except if they wish to do so voluntarily in the comments section. Additionally, we are stating in the questionnaires themselves that any names or identifying information will be redacted by the contractor before a list of comments is turned over to the FAA.

Respondents: A combination of approximately 53,625 airmen, air operators, or air agencies are expected to respond.

Frequency: Every 18 months.

Burden: The Federal burden is approximately $205,500; the respondent burden is approximately 10,725 hours and $375,000.

FOR FURTHER INFORMATION: or to obtain a copy of the request for clearance submitted to OMB, you may contact Ms. Judith Street at the Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may be submitted to the agency at the address above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, Attention FAA Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Issued in Washington, DC, on December 17, 1997.

Steve Hopkins,

Manager, Corporate Information Division, ABC–100.

[FR Doc. 97–33462 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–165 meeting to be held January 7, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

This plenary meeting will be preceded by a meeting of SC–165 Working Group (WG)–3, AMSS System/Service Criteria, on January 5–6.

The plenary agenda will be as follows:

(1) Welcome and Introductions;
(2) Review and Approval of the Summary of the Previous Meeting;
(3) Chairman's Remarks;
(4) Overview of New Developments Relevant to AMSS and SC–165:
a. Required Communications Performance (SC–169/WG–2);
b. AMCP WG–A on AMSS; c. AMS (R)S Spectrum Issues;
d. AEEC 741 and 761 Characteristics;
e. Industry, Users, Government Comments;
(5) Review of Working Group Activities:
a. WG–1 (AMSS Avionics Equipment MOPS); b. WG–3 (System/Service Performance Criteria); c. WG–5 (AMS(R)S Satcom Voice);
(6) Other Business;
(7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www/rtca/org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 17, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–33461 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

National Highway Traffic Safety Administration

Intelligent Vehicle Initiative; Request for Information

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; request for information.

SUMMARY: The USDOT is seeking comments from all sources (public, private, governmental, academic, professional, public interest groups, and other interested parties) on the Intelligent Vehicle Initiative (IVI). The IVI is being established as a major new component of the Intelligent Transportation Systems (ITS) Program. The intent of the IVI is to improve significantly the safety and efficiency of motor vehicle operations by reducing the probability of motor vehicle crashes. To accomplish this, the IVI will accelerate the development, availability, and use of driving assistance and control intervention systems to reduce deaths, injuries, property damage, and the societal loss that result from motor vehicle crashes. These systems would help drivers process information, make decisions, and operate vehicles more effectively. These systems would

include provisions for warning drivers, recommending control actions, intervening with driver control, and introducing temporary or partial automated control of the vehicle in hazardous situations. The IVI systems also would improve mobility and highway efficiency through the application of selected motorist information services. Sensing, processing, and communications technologies would be installed in passenger vehicles, trucks, and buses, and may be complemented by highway infrastructure technology. These integrated technologies would be linked to automated actuators and controls as well as in-vehicle driver interfaces that adhere to well-founded human factors requirements. The purpose of this document is to solicit comments on the approach, to obtain expressions of interest in the participation, and to request responses to specific questions provided in this document. This is neither a request for proposals nor an invitation for bids.

DATES: Comments on this announcement should be submitted on or before January 30, 1998.

ADDRESSES: Responses to this announcement must be mailed directly to the Federal Highway Administration, Intelligent Transportation Systems Joint Program Office, HVH–1, Room 3400, Washington D.C. 20590. See Supplementary Information section for electronic access and filing addresses.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Ray Resendes, ITS Joint Program Office, (202) 366–2182; Mr. George Ostensen, (703) 285–2021; or Ms. Rose McMurray, (202) 366-2742. For NHTSA: Dr. Joseph Kanianthra, (202) 366–5662. For FTA: Mr. Walter Kulyk, (202) 366–5991. All are located at the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing Addresses

You may submit comments and data by sending electronic mail (E-mail) to: raymond.resendes@fhwa.dot.gov.

E-mail responses are encouraged. Your comments on these important issues are greatly appreciated, but the USDOT will not be able to acknowledge responses.

Background

Within the ITS Program, the USDOT has conducted research and development to improve driving safety and efficiency. These include the Driver Vehicle Interface, Collision Avoidance, Automated Highway Systems, and Motor Carrier Research Programs. The IVI will take advantage of these maturing USDOT programs and the synergism inherent in their close coordination. The IVI will unite these programs into a common framework focusing on multi-functional integration of proven systems using autonomous vehicle-based technology complemented by highway-based technologies. The mix of desirable and cost-effective technologies may vary among passenger vehicles, trucks, and buses.

During the past few months, the staffs of the FHWA, the NHTSA, and the FTA have met to review the ongoing and planned research and development programs of these three agencies that may contribute to the IVI. These agencies have identified areas of common interest, synergies among ongoing projects, compatibilities among passenger vehicles, trucks, and buses, and opportunities for joint participation. Following these interagency discussions, the USDOT decided that this progress should be shared with all interested public and private sector stakeholders and comment should be sought.

Given the differing interests and priorities of various stakeholders, the USDOT recognizes that to formulate and develop an IVI program, it is desirable to have the joint participation of these groups for information purposes. Therefore, the USDOT proposes the establishment of a working group that would provide information to the USDOT so that the agency can adequately define and implement the IVI program. The working group would be administered by, and report findings to, the Intelligent Transportation Society of America (ITS America).

Motor vehicle crashes and other incidents exact high penalties in fatalities, injuries, and economic costs resulting from emergency and health care, property damage, and highway congestion. The NHTSA estimates that the financial burden of these crashes exceeds $150 billion per year. If highway safety is to be improved significantly, the number of highway crashes must be cut.

The objectives of the IVI program are to advance the state of availability of in-vehicle systems to: (1) Improve highway safety by reducing the number and severity of crashes, and (2) improve highway efficiency, mobility, and productivity, and environmental quality by increasing traffic throughput, lowering vehicle operating costs, and achieving more predictable travel times. These objectives would be realized by facilitating and accelerating the early availability, use, and acceptance of effective driving assistance, control intervention, and motorist information capabilities. Achievement of the safety-related benefits is the highest IVI program priority.

It is envisioned that the IVI program would include cooperative efforts with partners from the motor vehicle industry to develop advanced systems, integrate them into vehicles and appropriate infrastructure, and evaluate performance in real-world conditions. The IVI program would also develop and validate performance specifications and design guidelines for systems that would improve significantly the safety of motor vehicle operations.

Jointly with industry and other stakeholders, the USDOT would establish measurable objectives and milestones for IVI systems applicable to passenger vehicles, commercial trucks, and both intercity and transit buses.

The IVI is a multi-agency USDOT research, development, and evaluation program. It is intended that the IVI program would extend and expand current partnerships with the private sector and other stakeholders. It would merge all vehicle-focused ITS activities under one program. The IVI would emphasize the significant and continuing role of the driver in highway safety. It would cover applications for passenger vehicles, light trucks, vans, sport and utility vehicles, commercial trucks, transit and intercity buses, and specialized vehicles, such as, emergency and enforcement vehicles, highway maintenance vehicles and snow plows, on all types of highways.

The IVI safety features would include capabilities to warn drivers of hazardous situations, recommend safe remedial vehicle control actions, assist drivers in avoiding highway collisions, and in some cases, intervene with partial or temporary control. Hazardous situations may arise due to any combination of driver, vehicle, or highway-related problems. The IVI safety features would rely heavily on advanced electronic and communication capability and would supplement the capabilities of motor vehicle drivers to operate vehicles safely. Also, the IVI may include vehicles with selected motorist information, navigation, adverse weather information and traveler assistance features to reduce the complexity of driving and to improve travel mobility. It is expected that the IVI system capabilities would be tailored to specific types of vehicles, such as passenger vehicles, trucks, and buses.

An effort has been initiated within the USDOT to define and coordinate the Department's ongoing vehicle-related safety research. This effort includes the identification of areas of common interest, synergies among ongoing projects, compatibilities among vehicle types, and opportunities for joint participation. The work associated with the initial effort is nearing completion. During the course of this work, it has become clear that suggestions from the public and private sectors on program content and direction would be helpful. In recognition of this opportunity, the USDOT proposes the establishment of a working group that would offer information so that the agency can adequately define the IVI program.

In order to fulfill the program requirements, the IVI must identify and conduct the necessary research to ensure that the driver warning, driver assistance, driver intervention, and travel information systems work effectively and reliably in both independent and integrated modes, that they operate in a consistent and efficient manner and are easily understood by drivers, and that drivers accept and use the systems.

Ongoing and recently completed work on crash avoidance, in-vehicle information systems, automated highway systems, and motor carrier issues would provide a strong foundation for the IVI research. Research would continue throughout the IVI program. This research would address areas such as human factors, sensor performance, conditions where warnings are needed and conditions where warnings would be a nuisance, modeling, evaluation methods, and other in-vehicle and highway-based technologies. The IVI would include assessment of driver acceptance. A mix of analytic, test track, and on-road research, and testing is anticipated. Following testing in an experimental environment, fleets of equipped vehicles would be evaluated in on-road operational settings at various stages of the program. The USDOT would aggressively pursue partnerships and other cooperative arrangements with the motor vehicle, trucking, and bus industries and their suppliers, States and other government organizations, academic institutions, and other interested parties to fulfill the program requirements.

The USDOT developed a roadmap of how the IVI program would proceed. A diagram of the roadmap is shown at the end of this document.

This roadmap represents an attempt to illustrate the broad IVI program elements and the sequence in which these program elements would be accomplished. The duration of the IVI program runs from left to right and it is not drawn to scale. The major boxes in the roadmap include the following:

1. Crosscutting activities represent groups of actions that influence and guide all the major program elements. They include such topics as: Architecture and standards development; research, development, and testing in human factors, communications, and technology; acquisition, expansion, and validation of evaluation tools such as simulation models; development and execution of an outreach plan to ensure joint participation of industry and other stakeholders; development and implementation of field operation evaluation plans; and, program planning and administration covering IVI program definition and oversight, and any other crosscutting functions and responsibilities not covered elsewhere. The technical issues for many individual services are expected to be independent of the vehicle platforms and when this occurs such issues would be studied together.

2. Development of services would cover the research, development, testing, and evaluation of individual crash avoidance and efficiency-enhancing systems, such as those listed under the caption "Candidate Services" in this document.

3. Selection of services for integration represents the activities necessary to select specific IVI services (and systems to fulfill those services) and the mix of services that should be included in integrated packages of multiple IVI services. Selection involves extensive work on estimating the benefits and costs, as well as anticipated user acceptance of integrated systems that provide a combination of services.

4. The integrated system design and development step covers the research, development, and prototype testing necessary to fulfill the requirements for fully describing IVI capabilities, as well as system and subsystem specifications for the construction of the vehicles and the infrastructure modifications necessary for field operational tests of integrated systems.

5. The operational tests and evaluations activity, as expected, implements the plans for field tests in real-world settings on actual highways, executes a complete evaluation of the integrated IVI services subjected to the operational tests, develops deployment plans, establishes performance thresholds based on objective test performance, and develops recommendations.

6. Product deployment refers to the actions by motor vehicle manufacturers and their suppliers to make and offer IVI systems to highway users in production motor vehicles. It is anticipated that the IVI systems, after operational tests demonstrate the benefits of their integrated services, would be adopted by the manufacturers as part of their standard product line. Product development also includes actions by State, regional, and local governments to install infrastructure-based IVI system components on their highway systems. This activity is indicated as the final step and the ultimate objective of the IVI program.

Candidate Services

The USDOT has concluded that the following services are prime candidates for improvement through application of advanced in-vehicle technology. It is expected that during the course of the IVI program, the mix of individual IVI services selected for integration may vary among passenger vehicles, trucks, and buses. Please note that these services include some existing or slightly modified ITS user services. The following categories of advanced technologies are identified as candidate IVI services because they: (1) Improve safety; (2) may impact safety; (3) provide platform-specific functions; or (4) provide supporting capabilities for other future services.

Safety Services

1. Rear End Collision Avoidance

This feature would sense the presence and speed of vehicles and objects in front of the equipped vehicle and would provide warnings and limited control of the vehicle speed (coasting, downshifting, or braking) to minimize risk of collisions with vehicles and objects in the vehicle's lane of travel. It is expected that the first implementation of this service would be through autonomous in-vehicle systems. These systems would monitor the motion and location of vehicles and other objects in front of the vehicle and would advise the driver, through an appropriate driver-vehicle interface, of imminent rear-end crashes. These systems may share some elements of, and are expected to complement the performance of, adaptive cruise control systems which are expected to precede collision avoidance systems as a commercial product. Later versions of these systems may include automatic braking in the event of an impending

crash. The performance of these systems may be enhanced through future combination with other systems, such as other collision avoidance systems, route guidance-navigation systems with enhanced map data bases, and cooperative communication with the highway infrastructure to set adaptive cruise control systems at safe speeds.

2. Road Departure Collision Avoidance

This feature would provide warning and control assistance to the driver through lane or road edge tracking and by determining the safe speed for road geometry in front of the vehicle. It is expected that the first implementation of this service would be through autonomous in-vehicle systems. These systems would monitor the lane position, motion relative to the road edge, and vehicle speed relative to road geometry and road conditions and would advise the driver, through an appropriate driver-vehicle interface, of imminent unintentional road departure. Later versions of these systems may include cooperative communication with the highway infrastructure to automatically provide safe speeds for upcoming road geometry and conditions. The performance of these systems may be enhanced through future combination with other systems; such as other collision avoidance systems, drowsy driver advisory systems, and route guidance-navigation systems with enhanced map data bases.

3. Lane Change and Merge Collision Avoidance

It is expected that the first implementation of this service would be through in-vehicle systems which may be augmented with vehicle-to-vehicle communications. These systems would monitor the lane position, relative speed and position of vehicles, including motorcycles, beside and to the rear of the vehicle and would advise the driver during the decision-phase of a lane-change maneuver, through an appropriate driver-vehicle interface, of the potential for a collision. Later versions of these systems may provide additional advice of an imminent crash to the driver during the action-phase of the lane change or entry-exit maneuver. The performance of these systems may be enhanced through future combination with other systems; such as other collision avoidance systems and roadside communication and sensing systems.

4. Intersection Collision Avoidance

It is expected that the first implementation of this service would be through in-vehicle systems which are augmented by information from enhanced map data bases or from cooperative communication with the highway infrastructure. These systems would monitor position relative to intersection geometry, relative speed and position of other vehicles in the vicinity of the intersection and would advise the driver, through an appropriate driver-vehicle interface, of appropriate action to avoid a violation of right-of-way or to avoid an impending collision. Complexities of providing this service include the need to sense the position and motion of vehicles and determining the intent of these vehicles to turn, slow down, stop, or violate right-of-way. A fully autonomous in-vehicle system would probably not be capable of providing this service.

5. Railroad Crossing Collision Avoidance

This feature would provide in vehicle warnings to drivers when they approach a railroad crossing that is unsafe to enter due to approaching or present rail traffic. Initial implementation of this feature is anticipated for buses and trucks carrying hazardous cargo. This service, which would share many onboard vehicle components with intersection collision avoidance systems, is dependent on communications and the deployment of infrastructure components.

6. Vision Enhancement

It is expected that the first implementation of this service would be through autonomous in-vehicle systems. These systems would use infrared radiation from pedestrians and roadside features to provide the driver with an enhanced view of the road-ahead. Later versions of these systems may include additional information from improvements in the highway infrastructure, such as infrared reflective lane edge markings.

7. Location-Specific Alert and Warning

This feature would provide intelligent in-vehicle warning information by integrating vehicle speed and pertinent vehicle dynamics information with knowledge of road geometry (from a map database or beacon input). Later versions would include information about environmental and road surface conditions to provide the driver with warnings, such as excessive speed for curves or alerts on upcoming traffic signs and signalized intersections. This feature may include the ability, at unusually complex and hazardous highway locations, to provide in-vehicle warnings which replicate one or more types of roadside signs. These capabilities would be integrated with other in-vehicle navigation and route guidance features with collision avoidance warning.

8. Automatic Collision Notification

It is expected that the first implementation of this service would be through in-vehicle systems which are augmented by communication links to Public Safety Answering Points (PSAP). These systems would monitor position of the vehicle and severity of the crash. This information would be transmitted automatically to the appropriate PSAP for the location of the crash. These systems may also be combined with manually activated systems for requesting roadside assistance.

9. Smart Restraints and Occupant Protection Systems

This feature would provide advance warning of impending (forward or side) crashes and would pre-deploy the appropriate occupant protection systems in a vehicle prior to the impact to obtain maximum protection for the vehicle occupants. If reliable under all potential impact situations, this might permit slower deployment speeds for the air bags, allow pre-tensioned or load limited belt systems or smart head protection systems and ultimately more protection for the vehicle occupants.

Safety Impacting Services

10. Navigation/Routing

This feature would provide location and route guidance input to the driver and would support the various collision avoidance capabilities with road geometry and location data. It would also provide the necessary capability to filter traffic information to select those messages that are applicable to the vehicle location and route of travel. It would also offer the capability to recommend optimal routing based on driver preferences. More advanced versions of this service may integrate real-time traffic conditions into the calculations of optimal routes. For paratransit applications this would assist passenger demand and record keeping.

11. Real Time Traffic and Traveler Information

These IVI systems would have capabilities to access in-vehicle databases and receive travel-related information from the infrastructure (roadside or wide-area transmissions). Information categories would include items, such as vehicle location and route guidance instructions, motorist and traveler services information, safety and advisory information, and other real-time updates on conditions, such as congestion, work zones, environmental, and road surface conditions. This feature would provide an integrated approach to the presentation of information to the driver for safety warnings and other advisories related to the driving task. More advanced system capabilities would include the ability to react to dynamic information on environmental and road condition thereby augmenting information contained in the static map databases.

12. Driver Comfort and Convenience

This service is included in the IVI program to ensure that the increasing number of comfort and convenience features in vehicles, such as cellular telephones and fax machines, do not distract the driver or increase the complexity of the driving task. This service would integrate these features into the driver vehicle interface to permit prioritization of information sources and reduce distractions. Real-time dispatching for fleet operations is included in this category.

Platform Specific Services—Commercial Vehicle

13. Vehicle Stability Warning and Assistance

An early version of this service would assist drivers in maintaining safe speeds on curves by measuring the follover stability properties of a typical heavy vehicle as it is operated on the roadway, and by providing the driver with a graphical depiction of the vehicle's loading condition relative to its rollover propensity. More advanced services would employ an active brake control system coupled with electronic brake system technology and infrastructure provided information to selectively apply brakes to stabilize the vehicle and, thus, reduce the incidence of rear trailer rollover in double- and triple-trailer combination vehicles during crash avoidance or other emergency steering maneuvers.

14. Driver Condition Warning

This service would provide a driver monitoring and warning capability to alert the driver to problems, such as drowsiness or other types of impairments. It is expected that the first implementation of this service would be on commercial and transit vehicles.

15. Vehicle Diagnostics

The vehicle diagnostic information service would be an extension of current vehicle monitoring and self-diagnostic capabilities, such as oil pressure and coolant temperature gauges. This service would monitor vehicle safety-related functions. Examples of conditions monitored include braking system integrity, tire pressure, sensor and actuator performance, and the communication system. This information is intended to be useful to the driver, as well as to assist and support fleet maintenance and management functions.

16. Cargo Identification

This service would focus on heavy vehicle operations, especially hazardous material transportation. This feature would identify and monitor key safety parameters of the cargo, such as temperature, and pressure. The driver would be warned if any unsafe conditions existed.

17. Automated Transactions

This feature would implement capabilities for electronic transactions, such as electronic toll collection, parking fee payment, transit fare payment and additional commercial vehicle-related functions, such as credentials and permit verification, using such technology as transponders and "smart cards."

18. Safety Event Recorder

This feature would record selected driver and vehicle parameters to support the reconstruction of conditions leading to a critical safety event. Data from this recorder could provide input to the crash notification subsystem for transmission of collision data to the emergency service provider.

Platform Specific Services—Transit Vehicles

19. Obstacle/Pedestrian Detection

This service would warn the driver when pedestrians, vehicles, or obstacles are in close proximity to the driver's intended path. This could be accomplished with on-board sensors or infrastructure-based sensors communicating to vehicles.

20. Tight Maneuver/Precision Docking

This service would position the bus or commercial vehicle very precisely relative to the curb or loading platform. The driver would maneuver the bus into the loading area and then turn it over to automation. Sensors would continually determine the lateral distance to the curb, front and rear, and the longitudinal distance to the end of the vehicle loading area. The driver would be able to override at any time by operating brakes or steering, and would be expected to monitor the situation and take emergency action if necessary (for example, if a pedestrian steps in front of the vehicle). When the vehicle is properly docked, it would stop and revert to manual control. In freight or bus terminals this service could increase facility throughput as well as safety.

21. Transit Passenger Monitoring

This service would assist the driver in detecting any passenger activities that may affect the safety or security of the vehicle's operation.

22. Transit Passenger Information

This service would provide transit passengers with real-time transit network information during travel. The emphasis within the IVI program would be to reduce the non-driving task workload of the driver by providing alternative means for passengers to access location and transit service information.

Platform Specific Services—Special Vehicle

23. Fully Automated Control at Certain Facilities

This service would enhance efficiency and productivity by providing automated movement of vehicles in dedicated facilities. Initial applications may include automated bus movement in maintenance areas and automated container movement within a terminal area. The transit bus application could be a preliminary use of automation in a low-speed, controlled environment. The automated container movement application would consist of using vehicle automation technologies to move containers within rail-, truck-, or ship-yards or other centralized facilities.

Supporting Services

24. Low Friction Warning and Control Assist

This service would initially warn the driver of reduced traction, but in advanced configuration, would also provide control assist capabilities to assist the driver in regaining control of the vehicle. Sensors on-board the vehicle would detect when the tire-to-road surface coefficient of friction is reduced due to water, ice, or road surface condition.

25. Longitudinal Control

Longitudinal control would range from normal cruise control to advanced cooperative cruise control and applications which permit full automatic braking. Intelligent cruise control senses the presence and relative velocity of moving vehicles ahead of the equipped vehicle, and adjusts the speed of travel to maintain a safe separation between vehicles. Vehicle speed is adjusted either by allowing the vehicle

to coast or by transmission downshifting. More advanced longitudinal control systems would be capable of detecting a vehicle ahead in the same lane, which may be traveling at any speed or may be fully stopped. A full range of braking capability and operating speeds would be available to the equipped vehicle, including stop-and-go traffic operations. This service can be provided by autonomous in-vehicle systems or with assistance from vehicle-to-vehicle and vehicle-infrastructure cooperation.

26. Lateral Control

This service would sense the center of the lane and continually actuate the steering to keep the vehicle in the center of its lane. For the service to dependably detect the lane boundaries, some infrastructure cooperation may be required, such as accurately painted lane marker stripes, embedded magnetic nails, or radar-reflective stripes. The driver would be able to assume control at any time.

Purpose of Comment Solicitation

This document solicits comments on the IVI, expressions of interest to participate with a proposed working group to provide the USDOT with information so that the agency can adequately define and implement the IVI program, and comments on other questions or issues regarding this topic. It must be emphasized that the working group is being established for the purpose of providing information to ITS America so the USDOT can formulate the IVI program. The USDOT could potentially enter into partnerships with members of the working group.

IVI Issues

Important issues related to the IVI are facing the USDOT and others, in both the public and private sectors. Responses to the following questions are requested to help the DOT as it finalizes the organization of the IVI program. As appropriate, please reference experiences you may have had that address the issues.

1. Would you or your organization be interested in participating in the working group, or in cooperative research and development for the IVI program? If yes, in what way? If not, what would encourage you to participate?

2. (a) Does the sequence of steps outlined in the roadmap provide a meaningful description of the system integration process? Are there other elements that need to be added to the roadmap? What criteria should be used in the selection of systems to be integrated? What steps need to be taken to ensure compatible deployment timetables for the infrastructure and in-vehicle parts of cooperative systems?

(b) Each of the listed services is currently the subject of a development program within the USDOT, or is already a fully developed service. Are there services that should be added or deleted from this list?

(c) The USDOT believes that it is feasible to develop systems to provide the listed services in the near term. Are there other longer-term services that the USDOT should be considering?

3. What new areas of research and development would be required to support the IVI program?

4. What are the critical issues that need to be addressed and the activities that should be initiated to hasten the deployment of advanced technology systems for providing each of the listed services?

5. What data are currently available to quantify the expected benefits, user acceptance, and costs of systems that can provide the listed services? What approaches can be used to obtain new estimates of those benefits, user acceptance, and costs?

(23 U.S.C. 307 note and 315; secs. 6051–6059, Pub. L. 102–240, 105 Stat. 1914, 2189 as amended by sec. 404, Pub. L. 102–388, 106 Stat. 1564, and sec. 338, Pub. L. 104–59, 109 Stat. 603, 604; and 49 CFR 1.48)

Issued: December 11, 1997.

Ricardo Martinez,

Administrator for National Highway Traffic Safety Administration.

Issued: December 11, 1997.

Gordon J. Linton,

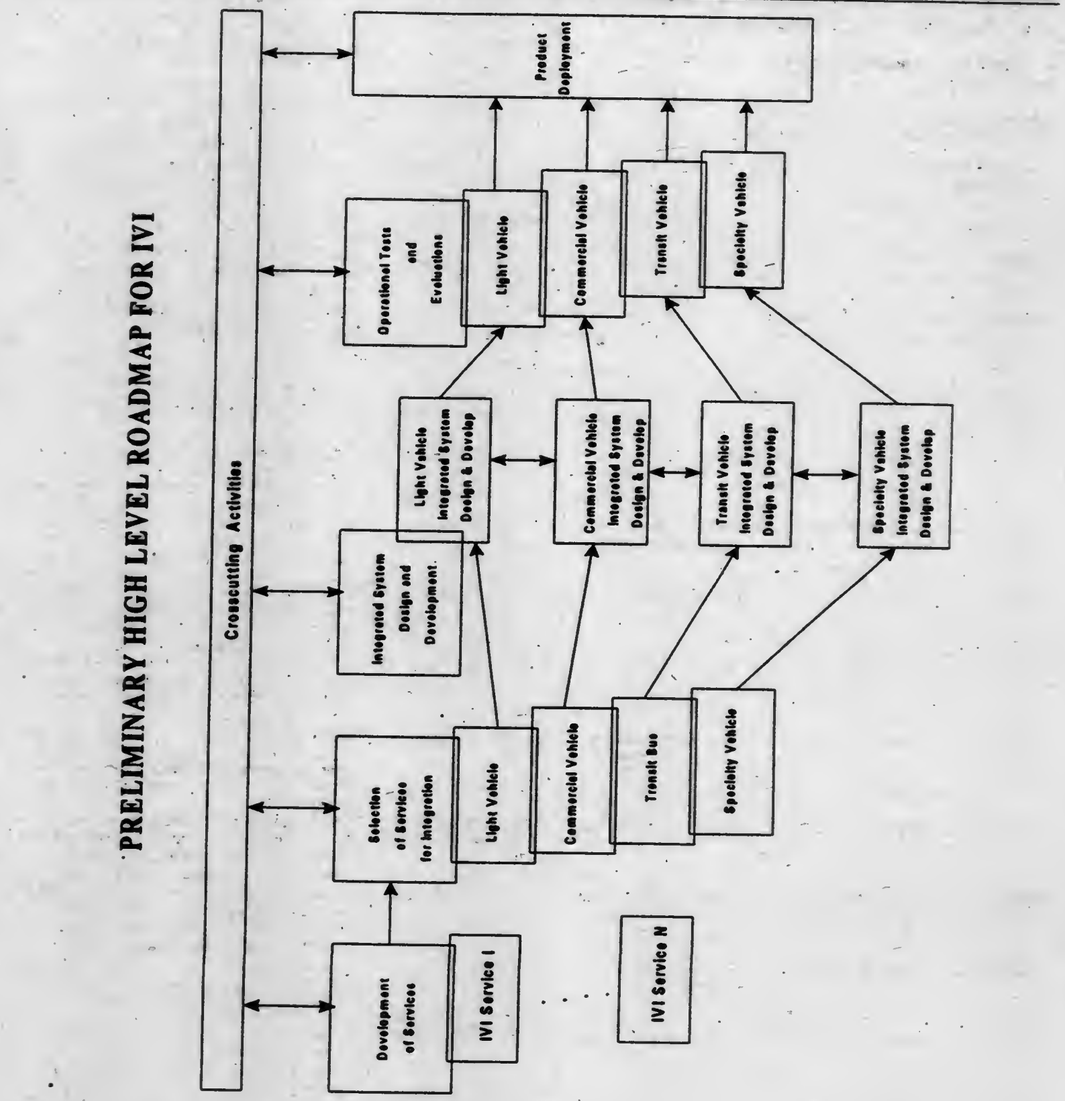
Federal Transit Administrator.

Issued: December 11, 1997.

Kenneth R. Wykle,

Federal Highway Administrator.

BILLING CODE 4910-24-P



[FR Doc. 97–33348 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–22–C

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications For Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 22, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

NEW EXEMPTIONS

Application number	Docket number	Applicant	Regulation(s) affected	Nature of exemption thereof
11999–N	RSPA–97–3227	Rhone-Poulenc, Shelton, CT.	49 CFR 174.67(i)&(j)	To authorize rail cars to remain connected during unloading operation of Class 3 and 8 material without the physical presence of an unloader. (mode 2).
12000–N	RSPA–97–3228	Primex Technologies, St. Petersburg, FL.	49 CFR 172.400	To authorize the transportation in commerce of Division 1.3C material in M13A2 metal containers without required labelling. (modes 1, 3).
12001–N	RSPA–97–3229	Albemarle Corporation, Baton Rouge, LA.	49 CFR 172.101, B14	To authorize the transportation in commerce of toxic liquid, corrosive, inorganic, n.o.s., Division 6.1, PIH Zone B, in uninsulated MC 330 or MC 331 tank trailers. (mode 1).
12002–N	RSPA–97–3230	Yellowstone Pipe Line Co., Thompson Falls, MT.	49 CFR 174.67(g)	To authorize the use of pressure as an alterative method of removing frozen liquid from tank car bottom outlets instead of steam and hot water. (mode 2).
12003–N	RSPA–97–3231	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 172.102, T–15, T–37.	To authorize the transportation in commerce of hydrogen peroxide, stabilized, Division 5.1, that exceed the 72% maximum concentration allowed in IM 101 tank cars and cargo tanks. (modes 1, 3).
12004–N	RSPA–97–3232	Alfa SA, Portugal	49 CFR 173.304, 173.34(e)(9), 175.3, 178.51.	To authorize the manufacture, mark and sale of non-specification cylinders comparable to DOT-Specification 4BA for use in transporting certain Class 2 material. (modes 1, 2, 4).
12005–N	RSPA–97–3233	Boeing North American, Inc., Canoga Park, CA.	49 CFR 173.302	To authorize the transportation in commerce of a specially designed unit equipped with a cylinder charged with xenon gas, Division 2.2, as part of a space station project. (mode 1).
12011–N	RSPA–97–3234	Compagnie des Containers Reservoirs, France.	49 CFR 173.32b(b)	To authorize alternative internal inspection period of IMO Type 1 portable tanks used in dedicated service for the transportation of Division 6.1 material. (modes 1, 2, 3).
12014–N	RSPA–97–3235	The Trane Co., TEN–E Packaging Services, Newport, MN.	49 CFR 173.306(e)(1)	To authorize the transportation in commerce of used refrigerating machines containing no more than 1000 pounds of Class A refrigerants classed in Division 2.2. (mode 1).
12015–N	RSPA–97–3236	Elf Atochem North America, Inc., Philadelphia, PA.	49 CFR 174.67(i)&(j)	To authorize tank cars containing various hazardous materials to remain standing with unloading connections attached when unloading has been temporarily discontinued or unloading incomplete without the physical presence of an unloader. (mode 2).

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 17, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 97–33378 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before January 7, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
10798–M		Olin Corporation, Norwalk, CT[1]	10798
11458–M		Reckitt & Colman, Montvale, NJ[2]	11458
11962–M	RSPA–97–3061	Bayer Corp., Pittsburgh, PA[3]	11962
12007–M	RSPA–97–3225	SCC Products, Hollister, CA[4]	12007
12009–M	RSPA–97–3226	U.S. Department of Justice, Washington, DC[5]	12009

[1] To modify the exemption to provide for Class 9 as an additional class of material contained in tanks cars which remain standing with unloading connections attached when no product is being transferred.

[2] To modify the exemption to provide for cargo vessel as an additional mode.

[3] To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of sodium, Division 4.3 in accumulators.

[4] To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of chloropicrin, Division 6.1, in reusable DOT4BA260 cylinders equipped with alternative plug.

[5] To reissue exemption originally issued on an emergency basis to authorize the transportation in commerce of anhydrous ammonia in non-specification cylinders.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 17, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 97–33379 Filed 12–22–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 552X); STB Docket No. AB–290 (Sub-No. 201X)]

CSX Transportation, Inc.—Abandonment Exemption—in Raleigh County, WV; Norfolk and Western Railway Company—Discontinuance of Trackage Rights Exemption—in Raleigh County, WV

On December 3, 1997, CSX Transportation, Inc. (CSXT), and Norfolk and Western Railway Company (N&W)[1] filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for CSXT to abandon and N&W to discontinue trackage rights over approximately 6.24 miles of line between milepost CAR–0.58 at Beckley Junction, WV, and milepost CAR–6.82 at the end of the track at Cranberry, WV, which traverses U.S. Postal Service ZIP Codes 25801, 25813, 25827, 25832, 25919, and 25920, in Raleigh County, WV. The line includes the stations of Beckley, located at milepost CAR–1, Sprague, located at milepost CAR–4, Skelton, located at milepost CAR–5, and Cranberry, located at milepost CAR–6.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

[1] N&W is a wholly owned subsidiary of Norfolk Southern Railway Company.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.— Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 23, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 12, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–55 (Sub-No. 552X) and AB–290 (Sub-No. 201X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street—J150, Jacksonville, FL 32202; and James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: December 12, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–33336 Filed 12–22–97; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 62, No. 246

Tuesday, December 23, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AA78

Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Hybrid Seed Corn Crop Insurance Provisions

Correction

In rule document 97–32498 beginning on page 65344, in the issue of Friday, December 12, 1997, make the following corrections:

§ 457.152 [Corrected]

1. On page 65351, in the third column, in § 457.152 paragraph designated 11(a), in the fifth line, "and" should read "that".

2. On page 65352, in the first column, in § 457.152 paragraph designated 12(c)(6), in the last line, "result of 1or variety; and" should read "result of 12(c)(5) from the result of section 12(c)(2) if there are more than one type or variety; and".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 544, 545, 552, 559, 560, 561, 563, 565, 567, 575

[No. 97-126]

Technical Amendments

Correction

In rule document 97–32829 beginning on page 66260 in the issue of Thursday, December 18, 1997, in the **EFFECTIVE DATE** section "December 18, 1998" should read "December 18, 1997".

BILLING CODE 1505-01-D

federal register

Tuesday
December 23, 1997

Part II

Department of Labor

Office of Workers Compensation Programs

20 CFR Parts 10 and 25

Claims for Compensation Under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States; Proposed Rule

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 10 and 25

RIN Number 1215–AB07

Claims for Compensation under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor proposes to revise the regulations governing the administration of the Federal Employees' Compensation Act (FECA), which provides benefits to all civilian Federal employees and certain other groups of employees and individuals who are injured or killed while performing their jobs. The Office of Workers' Compensation Programs (OWCP) administers the FECA.

The existing rules have been entirely rewritten using plain English and have also been reorganized into a more accessible format. A number of significant changes are made in the proposed regulations, including new sections implementing amendments to the law which provide for suspension of benefits during incarceration and termination of benefits for conviction of fraud against the program; changes to the continuation of pay (COP) provisions, including reducing to 30 days the time within which COP may be used where there is a recurrence of disability; paying for an attendant as a medical expense instead of as a supplemental payment to the claimant; inclusion of OWCP nurse services in the definition of vocational rehabilitation services; clarifying the review process by distinguishing between modification on the Director's own motion (in which case no new evidence or argument is needed to reopen claim) and reconsideration at the request of the claimant (which will require the claimant to provide new evidence or argument to reopen the claim); restricting opportunities to postpone oral hearings; clarification of subpoena authority; streamlining the standards for review of attorney fees; provision of more detailed guidance in regard to claims involving the liability of a third party; and clarification of procedures with respect to claims filed by non-Federal law enforcement officers. Also included in the proposed regulations is a major revision of the medical fee schedule to include, for the first time, pharmacy and inpatient hospital bills.

DATES: Written comments must be submitted on or before February 23, 1998.

ADDRESSES: Send written comments to Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S–3229, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 219–7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Telephone (202) 219–7552.

SUPPLEMENTARY INFORMATION: The FECA provides compensation for wage loss, medical care, and vocational rehabilitation to Federal employees and certain other individuals who are injured in the performance of their duties, or who develop illness as a result of factors of their Federal employment. It also provides monetary benefits to the survivors of employees who are killed in the performance of duty or die as the result of factors of their Federal employment.

The program's regulations were last substantially revised in 1987. Since then, new provisions have been added to the statute, and experience has shown that certain parts of the regulations need clarification or revision to improve and streamline the claims process. In addition, there has been a significant increase in the number and complexity of OWCP issues requiring adjudication, which has strained the administrative resources available to fulfill OWCP's statutory mandate to adjudicate and administer claims. In addition, several developments have enabled OWCP to devise a fee schedule applicable to hospital inpatient and pharmacy bills. For all of these reasons, the rules have been comprehensively rewritten.

The proposed rules look significantly different than the existing rules. This is both because they have been completely reorganized into a format reflecting the organization of the claims process itself and because they are presented in a question-and-answer format instead of the narrative form used in the existing rules. We believe that the new organization and style of the regulations presents the information in a way consistent with the needs of the user, and will help the reader more easily find information. In addition, unnecessary information has been eliminated and material which simply repeats the language of the statute itself has been removed from various portions of the regulations.

The regulations have been re-numbered and substantially re-worded. The sections have been grouped by type of claims, where appropriate, so that the reader who wants to know about filing death claims, for example, need only turn to one section to get essentially all the basic information about how such claims are filed.

A description of other significant changes made by these regulations follows. Cross references from new sections to the existing ones are made to allow the reader to better follow the changes.

Subpart A, General Provisions

This subpart is substantially the same as current subpart A (§§ 10.1 through 10.23), with the addition of material describing the penalties imposed as a result of the amendments to the FECA that added 5 U.S.C. 8148.

Introduction

Section 10.2 has been revised to reflect two changes: employees of the Alaska Railroad are no longer covered under the FECA; and administration of the FECA for Panama Canal Commission employees was returned to OWCP in 1989.

Definitions and Forms

Section 10.5 now includes definitions that used to appear in several later subparts. Definitions of terms defined in the FECA itself, such as *injury, organ* and United States Medical Officers and Hospitals, no longer appear in the regulations, because it is felt to be unnecessary to repeat these statutory provisions.

Section 10.5(a) revises the definition of *Benefits* or *Compensation* to clarify that those terms include the amounts paid out of the Employees' Compensation Fund for medical examinations conducted at the request of OWCP as part of the claims adjudication process, consistent with OWCP's longstanding practice.

Section 10.5(g) moves the definition for *Earnings From Employment Or Self-Employment* from its existing location in Section 10.125(c) and revises it to clarify that earnings from self-employment include a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. This revision is consistent with several decisions by the Employees' Compensation Appeals Board (ECAB) in this area. See, e.g., Edward O. Hamilton, 39 ECAB 1131 (1988); William C. Austin, 39 ECAB 357 (1988).

Section 10.5(h) replaces the lengthy and cumbersome list which constituted the old definition for Employee with a shorter list that omits references to coverage afforded pursuant to other specific statutes, since the material omitted merely referenced other statutory provisions.

Section 10.5(i) simplifies and updates the definition of *Employer* or *Agency* by broadening it to make clear that it encompasses the various titles now used by different agencies for persons designated to perform the employer's tasks in the FECA claims process. This streamlining is not intended to in any way change existing practice.

The definition of *Knowingly* in section 10.5(n) is new. It adopts the definition for this term, consistently used by the ECAB in numerous forfeiture cases construing section 8106(b)(2). See, e.g., Garry Don Young, 45 ECAB 621 (1994); Lewis George, 45 ECAB 144 (1993).

Section 10.5(x) replaces the existing discussion of Recurrence Of Disability found in § 10.121, which merely provides that a recurrence occurs when the original injury causes the employee to stop work again. The definition of recurrence being added to the regulations reflects OWCP's understanding of the term recurrence as explained by the ECAB in numerous cases which have thoroughly examined both the medical and non-medical aspects of this issue. The new definition will also enable OWCP to recognize the changes that have occurred in the nature of federal employment in this era of continued government downsizing by specifically addressing some situations that arise as agencies close work sites. See, e.g., Terry R. Hedman, 38 ECAB 222 (1986); John W. Normand, 39 ECAB 1378 (1988); Don J. Mazurek (Docket No. 93–2063, January 23, 1995).

The definitions of *Occupational Disease* or *Illness*, *Physician* and *Student* have been shortened, with no intent to make a substantive change, by deleting (or simply referring to) definitional material which already appears in the FECA.

In § 10.6, current § 10.5(b) is updated to include a new category of "dependents" for purposes of implementing new section 8148 of the FECA. That amendment requires a suspension of benefits when a claimant is incarcerated for a felony, but allows instead payments of a portion of those benefits to eligible dependents.

Rights and Penalties

Sections which merely repeat provisions of the statute (such as the reference to the FECA as the exclusive remedy for employees and their families) have been removed. Proposed § 10.16 provides information about various provisions of criminal law relating to the FECA claims process. In addition to the description of the penalties, a statement has been added explaining that enforcement of the criminal laws applicable to FECA activities is solely within the jurisdiction of the Department of Justice. This is intended to eliminate confusion on the part of some individuals who ask that OWCP enforce these criminal law provisions.

Section 10.17 implements a recent addition to the FECA, section 8148(a). Pursuant to section 8148(a), any beneficiary convicted of defrauding the federal government in connection with a FECA claim forfeits his or her right to further compensation "as of the date of such conviction." To implement this provision in a uniform manner consistent with the intent of the statute, the term "conviction" is interpreted in this section as occurring either on the date that a guilty plea is made in open court or the date that a verdict of guilty is returned after trial.

This interpretation, which is consistent with opinions issued by the Comptroller General and instructions issued by that office, ensures consistency among various government agencies and permits uniform application of these procedures despite variations among jurisdictions with respect to how the term "conviction" has been defined for other purposes. In addition, choice of the date a guilty plea is made in open court or a verdict of guilty is returned after trial facilitates implementation of the statutory provisions because the date is easy to ascertain following the submission of pertinent factual evidence, such as a copy of a plea agreement or a judgment order that has been filed in a criminal case.

Section 10.18 implements another recent addition to the FECA, section 8148(b). Pursuant to section 8148(b), which is similar to provisions of several state workers' compensation statutes and a provision in the Social Security Act, any beneficiary incarcerated for either a state or federal felony conviction forfeits his or her right to compensation during the period of such incarceration. However, this section also provides the OWCP with the discretionary authority to allocate "a percentage of the benefits that would have been payable" to an incarcerated beneficiary among his or her dependents using the percentages stated in section 8133(a)(1) through (5).

In exercise of this discretion, OWCP has selected the gross current entitlement of an incarcerated beneficiary as a "percentage" of such beneficiary's "monthly pay" under section 8101(4), and the proposed regulation provides that the resulting amount will be divided, using the percentages of section 8133(a)(1) through (5), among his or her dependents during the period of any such incarceration.

Subpart B, Filing Notices and Claims; Submitting Evidence

This subpart contains most of the information in current §§ 10.100 through 10.122, 10.130, and 10.140. The material in current § 10.102(e), which addresses the employer's authority to provide copies of forms and other records pertaining to a claim, is now addressed generally in subpart A, § 10.12. Current § 10.104, regarding physicians' reports, has been moved to subpart D (Medical and Related Benefits). Current § 10.109(e) (concerning the payment of the balance of schedule awards) has been moved to subpart E (Compensation and Related Benefits).

The discussion of development of claims by OWCP found in current § 10.110(b) has been omitted from the proposed regulations. This discussion has proven to be misleading, and was mistakenly assumed to be a commitment by OWCP to undertake development, despite the fact that it only describes what OWCP may, on an ad hoc basis, do even though the burden of proof to establish the elements of the claim is on the claimant at all times. The statements in current § 10.120 and § 10.121(d) requiring the employer to report termination of disability on Form CA–3 have been removed, as this procedure is no longer required. Current § 10.150, which describes OWCP's function within the sphere of workers' compensation law generally, has been entirely removed as unnecessary.

Notices and Claims for Injury, Disease, and Death—Employee or Survivor's Actions

In § 10.100 and 10.102, which discuss notices of injury and occupational disease, the statements that the employer (or another person) may file a notice of injury on the employee's behalf are new, although the practice it describes is a longstanding one. This provision is being added to the regulations to encourage prompt filing of claims. OWCP cannot provide case management services, which assist in a rapid return to work in the crucial early days of disability, without prompt notice. An informational statement that a claimant may withdraw a claim before

it has been adjudicated has also been added to these sections as well as to § 10.106.

Section 10.101 highlights the need for the employee to file a wage loss claim (form CA–7 or CA–8) in order to receive wage-loss benefits (compensation); this is in addition to the initial notice of injury (form CA–1 or CA–2) which must be filed for every injury, whether or not the injury results in lost wages. The need to file a separate claim for wage loss has in the past sometimes been a point of confusion among claimants, who do not realize that even though they filed the form notifying OWCP of an injury, OWCP has no way of knowing that the person has stopped work and lost wages unless the CA–7 or CA–8 claims for wage loss are also filed. In addition, the 10-day time frame within which the employee must file the wage-loss claim has been changed to 14 days to conform to the two-week pay cycle observed by most federal agencies and by OWCP. The longstanding practice that an employee may file a claim for permanent impairment (that is, for a schedule award) by letter if Form CA–7 has already been filed is specified in § 10.104.

Section 10.105 clarifies the circumstances under which a notice of recurrence (Form CA–2a) is required, rather than a new notice of injury (Form CA–1 or CA–2). The statement in (a) concerning the need to file a new notice of injury or episode of occupational disease is being added as a clarification that reflects current OWCP practice.

The statement in § 10.106 that the employer may file the claim on the survivor's behalf is new. It is added to encourage prompt filing of claims. The regulations also explain that the claim may be withdrawn before adjudication in order to conserve resources.

Notices and Claims for Injury, Disease, and Death—Employer's Actions

Proposed §10.110, which discusses the employer's responsibilities when a notice of traumatic injury or occupational disease has been received, shortens the time frame for submission of notices of injury and occupational disease from 10 to five work days, and the regulations now make clear that the employer should not wait for any supporting evidence before sending the form to OWCP. These changes reflect OWCP's increasing emphasis on early receipt of notices of injury and claims for compensation, which enables rapid initiation of adjudication and case management procedures, as well as payment of benefits, and an earlier return to work.

Proposed §10.111 discusses the employer's responsibilities when a claim for compensation due to disability or permanent impairment has been received. It also changes the time frames for submittal of a claim for initial disability when the employee is receiving continuation of pay. Similarly, a statement emphasizing that the employer should provide the employee with a Form CA–8 to claim continuing disability has been added to § 10.112. Both changes represent long-standing practice on the part of OWCP and most federal employers.

The statement that the employer may not charge for assisting survivors in filing claims, which is found in current §10.108, has been removed as unnecessary from §10.113, which discusses the employer's responsibilities when an employee dies from a work-related injury or disease.

Evidence and Burden of Proof

Section 10.115 describes, in a more comprehensive and specific manner than the existing regulations, the five basic requirements which have long been required of a claimant. It supplants the description in the existing § 10.110(a), which is more procedural and technical, and which contains information (such as what medical evidence is required) that is already in development letters and occupational disease checklists provided directly to the claimant. The need to submit supporting medical evidence when wage loss benefits are claimed is emphasized, as this requirement is not always clear to employees.

Section 10.116 includes a reference to OWCP's use of checklists to assist the claimant and employer in determining what information needs to be submitted for certain occupational disease cases. While these checklists have been in use for many years, and provide specific guidance on what information is required for different types of claims, they have not previously been mentioned in the regulations.

Decisions on Entitlement to Benefits

New §10.125 revises the language in existing §10.130 to include, in the list of authorities used to adjudicate claims, decisions of the Employees' Compensation Appeals Board interpreting the FECA itself. This statement is added to provide claimants and employers with a general idea of the precedents used in making determinations.

Sections 10.160–10.166 of the existing regulations authorize OWCP to appoint a representative and to supervise the management of the claimant's funds by the representative payee. Section 10.424 of the new regulations regarding representative payees provides that a representative payee will be appointed only in situations in which no court or administrative body authorized to do so has appointed a guardian or other party to manage the financial affairs of the claimant, since such an appointment constitutes sufficient authorization for payment of FECA benefits by OWCP to the party so appointed. Furthermore, OWCP no longer will attempt to supervise a representative payee's activities, but will instead rely upon appointment of a guardian under applicable state law and supervision in accordance with those procedures as necessary.

Subpart C, Continuation of Pay

This subpart covers the same material as current subpart C (§§10.200 through 10.209). The general rules found in current §10.201 have been rearranged and placed in different sections. The criteria for eligibility in current §10.201(a) are now found in § 10.205. Current §10.201(b) is now found at §10.215; current § 10.201(d) is now found at § 10.200; and current §§10.201(e) and (f) are now found at § 10.223.

Eligibility for COP

Sections 10.205 (d) and 10.207 address the time frames applicable for paying continuation of pay (COP) when there is a recurrence of injury. Under the current rule, COP is payable only when the disability begins within 90 days of the date of injury (see current §10.201). Similarly, when an injured employee returns to work but stops again, any remaining COP is payable for the additional time lost (see current §10.208(b)(3)). The proposed rules shorten the 90-day period to a 30-day period in both situations.

The 90-day period presently set forth in § 10.202(a) and (b) was initially adopted to ensure that injured workers (who filed claims for COP within 30 days) would receive the full 45 days of COP, while at the same time affording employers and OWCP sufficient time to develop and adjudicate claims. Such a grace period is no longer necessary since the employing agencies are referring Form CA–7s and CA–8s (claims for compensation) to OWCP in a timely manner and OWCP is adjudicating about 93 percent of these claims and, where appropriate, authorizing the payment of claims for disability compensation (CA–7s and CA–8s) within 14 days of receipt.

OWCP has focused on minimizing or eliminating lost work time entirely, which requires early intervention in the case. When the employer pays COP, OWCP may not necessarily even know about lost work time. The artificial extension of the COP period under the 90-day rules makes it difficult to intervene in cases where lost time is continuing at the point when early intervention is crucial. It is no longer necessary to forego the opportunity for this early intervention to ensure that income is not disrupted. Indeed, since COP was first introduced, payment performance has improved measurably, and the time frames were reduced in 1987 from six months to the current 90 days. OWCP's early intervention efforts now support an additional reduction of the period to 30 days, which is the period chosen by Congress as the time frame within which the initial claim has to be filed.

Calculation of COP

Proposed §10.217 reworks material found in current § 10.201(b), which contains a lengthy discussion of when COP is payable. Among other things, the discussion addresses situations where an employee continues to work in a different position because he or she is unable to work in the job held on the date of injury. The existing rule has been re-written to remove excess verbiage and to make clear that COP is chargeable where the employee who continues to work, but in a different job, would otherwise incur a reduction in pay because of the injury, but for COP. There is no intention to change the substance of the current rule. Since the methods of computing pay differ among agencies, it is difficult to capture all the variables, so we invite comments particularly from agencies on whose practices these new rules could inadvertently have an unintended adverse effect.

Controversion and Termination of COP

Section 10.222(b) allows an employer to terminate COP when a preliminary notice of a disciplinary action issued before the injury becomes final or otherwise effective during the COP period. Current §10.201 states that the final written notice of termination of employment for cause must have been issued before the date of injury. The proposed change corrects an overly rigid rule and better reflects the disciplinary process itself. It simply ensures that the employee and the employer are put in the same position as that which would have existed but for the injury; the salary would not have continued because of the disciplinary action and therefore COP should not be paid.

Subpart D, Medical and Related Benefits

This subpart contains most of the information found in current subpart E (§§10.401 through 10.413), except that some of the material about medical reports and payments (§§10.410 through 10.413) has been moved to new subpart I. The definitions contained in current §10.400 have been shortened and moved to subpart A. This subpart also addresses the subjects of current §§10.104(a) and 10.305. Current §10.401(d), which addresses the status of federal health units, has been removed as superfluous. Current §10.406, which concerns dental benefits, has been removed entirely as dental care is just one of many specialized forms of treatment authorized under the FECA, and it presents no special issues which need to be addressed.

Emergency Medical Care

In §10.300, the statement that the employer need not issue a Form CA–16 more than one week after the occurrence of the claimed injury has been added. This statement reflects long-standing practice, consistent with a purpose behind the issuance of this form, which is designed to ensure that necessary immediate medical care is not hindered through uncertainty by the provider of who is responsible for payment. Section 10.301 addresses often-asked questions and reflects long-standing policy, by making clear that the physician designated on the CA–16 may refer a claimant for additional treatment and OWCP will pay the appropriate associated costs.

Section 10.303 is new and is intended to provide uniform guidance to employers who have questions about whether it is proper to use a Form CA–16 to authorize medical testing at OWCP expense when their employees experience an exposure to a workplace hazard. It has been a matter of longstanding practice for OWCP to discourage the use of Form CA–16 in this kind of situation and to remind employers that they may be under an obligation independent of the FECA to provide their employees with medical testing and/or other services. This regulation reflects this practice, as well as OWCP's policy regarding payment for preventive treatment.

Medical Treatment and Related Issues

In § 10.310, the references to cost-effectiveness with respect to appliances and supplies and to generic equivalents of prescribed medications are new. They reflect the need for OWCP to control costs wherever possible in the current medical environment. OWCP will not approve an elaborate appliance or service where a more basic one is suitable, and full reimbursement for the appliance or service may not be made without prior approval by OWCP.

OWCP receives many questions from employees and chiropractors concerning the parameters of chiropractic care, and § 10.311 provides more specific guidance. Two changes to current practice are made for administrative convenience: the definition of "subluxation" which appears in current § 10.400(e) has been moved to new § 10.5(aa), and a statement that OWCP will not necessarily require the x-ray or a report of the x-ray before adjudication has been added.

Section 10.312, which concerns the services of clinical psychologists, is also new. Treatment of FECA claimants by clinical psychologists has become much more common. Cases where a claimant exhibits or alleges both physiological and psychological conditions have presented problems concerning the proper scope of practice and the needs of OWCP for comprehensive medical reports addressing both conditions. Section 10.312 specifies that a clinical psychologist may treat a FECA claimant as a physician within the scope of practice allowed by applicable state law.

Section 10.313 has been added to address frequently asked questions concerning preventive measures. It reflects OWCP policy as stated in its internal procedures. What distinguishes situations where preventive treatment may be authorized from those where it may not be authorized is the presence of a verifiable work-related injury. Without such an injury, preventive treatment cannot be authorized.

Attendants

Section 10.314, which concerns the services of attendants, represents a significant departure from current practice. At present, an allowance may be paid directly to a claimant for the services of an attendant (limited by statute to a maximum of $1,500 per month). Because the payment is made directly to the claimant, OWCP has no opportunity to properly account for the expenditures, nor to monitor the quality of the services provided.

The payment is a tax-free augmentation of compensation, and as the proposed rule makes clear, the Director has determined that requests for this augmentation will no longer be considered. Individuals who have been awarded an attendant allowance before the effective date of the final rule, however, would continue to receive it as

long as the service is otherwise necessary. Although the augmentation payment will no longer be considered, and no new awards made, any necessary services will still be payable (up to $1500 per month) but by direct payments to the provider, as is generally the case for all other services.

There are several reasons for this change. Foremost among these is that it offers OWCP greater fiscal control and quality review, while continuing to ensure that any necessary personal care services will continue to be available to the claimant. First, augmentation itself is paid very rarely. The attendant services for which the supplemental income provided for under 5 U.S.C. 8111(a) is intended, is not often necessary without the concurrent need for medical services. Under these circumstances, the trained medical personnel necessary to perform the medical functions also take care of the personal care needs, and both are, and can continue to be paid for as a medical service.

Second, even when only personal care services are necessary, OWCP may pay for them directly under 5 U.S.C. 8103. The administrative resources expended in considering applications for this augmentation of compensation under section 8111(a) are excessive, and most are denied because there is no showing that the services are necessary. It is expected that fewer requests for these services will be received when the payments are made directly to the provider like almost all other services. Where the claimant can show that the services are necessary (by providing sufficient medical documentation), however, they will still be provided for.

Another reason for this change is that by paying the providers of such service, OWCP will gain both increased financial accountability and better quality control than now exists. Currently, the allowance is paid directly to the claimant resulting in OWCP having no effective administrative control; we are unable to determine whether the provider is charging too much for the services, for example, or even in some cases whether the allowance is actually being spent for the services. By paying for any necessary services directly, under section 8103, instead of providing an allowance to the claimant, under section 8111(a), these costs will be subject to the same administrative controls to which most other bills for services and supplies are subject. Bills will be submitted to OWCP directly by the provider; they will be subject through the OWCP fee schedule to a maximum monthly charge of $1,500; bills for services will be scrutinized to ensure the charges are correct; it will be OWCP, not the claimant, who will be responsible for resolving any problems with the payments; and a record of payments to the provider will be reported to the Internal Revenue Service on form 1099 at the end of each year.

In addition to financial accountability, the quality of services can better be monitored. Providing supplemental compensation to the injured employee under section 8111 has in many instances encouraged family members to take on the personal care services, even though they may not be trained or well-suited to this task. Paying the provider directly will give OWCP an added degree of review to ensure that the necessary services are being provided by a home health aide, licensed practical nurse or similarly trained individual better able to provide the care needed. Where a family member can show he or she has the appropriate qualifications and training, there will be nothing to prevent them from providing the service and receiving payment.

Section 10.316, which concerns an employee's request to change his or her primary treating physician, clarifies that an employee need not consult OWCP for approval when the physician initially selected refers the employee to a specialist appropriate to the nature of the injury. Examples of frequently-approved requests for a change of physician are also provided to illustrate the decision-making process.

Directed Medical Examinations

Sections 10.320 and 10.321 concern second opinion and referee examinations. A statement has been added to make clear that the claimant is not entitled to have anyone attend such examinations (except for a physician of his or her choice, at a second opinion examination) unless OWCP finds that exceptional circumstances, such as the need for having an interpreter for a hearing-impaired claimant, exist. This statement was added to address situations where representatives and other parties wished to sit in on examinations, even though this action can be disruptive. The statement that a case file may be sent for second opinion or referee review where an actual examination is not needed, or where the employee is deceased, reflects long-standing practice and is consistent with ECAB precedent on this issue.

In § 10.323, which addresses failure to report for or obstruction of a second opinion or referee examination, a sentence has been added providing that actions of an employee's representative will be considered the actions of the employee for the purposes of this section. This statement was added to address situations where representatives prevent or disrupt examinations, thereby hindering OWCP from obtaining information needed to adjudicate and manage claims and is consistent with ECAB precedent on this issue.

Medical Reports

In § 10.330, the list of contents for medical reports has been expanded to include the extent of disability and prognosis for recovery, as these items are especially useful in managing disability cases. Inclusion of these items reflects OWCP practice, and should help medical providers and employees provide OWCP the information it requires to reach a decision in the case.

To reduce confusion about submission of medical reports, the statement that use of form reports is not required has been added to § 10.331. Also, this section makes clear that reports must have signatures, although recognizing that many medical providers use signature stamps in lieu of actual signatures. OWCP reserves the right to request an original signature on any medical report. The use of Form CA–17 to obtain interim medical reports is expressly confined to employees with disabling traumatic injuries, as this form is not properly used with occupational disease cases.

Subpart E, Compensation and Related Benefits

This subpart contains most of the information found in current subpart D (§§ 10.300 through 10.324), and it addresses the subjects of current §§ 10.109, 10.126 through 10.128, and §§ 10.160 through 10.166. The very detailed guidance currently given with respect to the appointment and responsibilities of representative payees has been condensed into one paragraph, new § 10.424, as most of the current material is procedural rather than regulatory in nature.

No counterpart to current § 10.310, which provided for buy-back of annual or sick leave, is included in the new regulations. This process is not authorized or required by the FECA, nor is it controlled by OWCP. It is controlled by each employing agency, in accordance with its general rules regarding leave repurchase. The only relationship between those rules and FECA is the general prohibition against paying wage-loss compensation benefits for any specific period where leave has been used. OWCP needs to know, therefore, whether leave has been taken in order to determine whether compensation is payable for the same period. By including a reference in the regulations to the repurchase of leave, however, OWCP has inadvertently given the impression that OWCP controls or supervises leave buy-back for injured workers, and disputes concerning leave buy-back have often been incorrectly submitted to OWCP for resolution. To avoid this confusion, the reference to leave buy-back has been removed. Individuals who wish to repurchase leave should consult with their employing agency. Compensation will not be paid where leave has been used. Once restoration of leave has been authorized, however, OWCP will entertain a claim for benefits for that period of time.

Compensation for Disability and Impairment; Compensation for Death

In § 10.400, which defines total disability, a statement explicitly recognizing OWCP's view that most employees will eventually return to work has been added. This statement represents long-standing policy as reflected in OWCP's case management procedures.

In § 10.404, which concerns payment of compensation for schedule impairment, a statement that OWCP uses the American Medical Association's *Guides to the Evaluation of Permanent Impairment* as its frame of reference for calculating such awards has been added. OWCP has used this publication in calculating schedule awards for many years, and the ECAB has approved its use. Since the publication is periodically updated, OWCP generally uses the newest edition in effect at the time of the decision in calculating loss of use.

OWCP has received a number of petitions over the years to add various internal organs to the list of schedule members. We have considered each organ suggested and, after much deliberation, decided against any additions. This decision is consistent with most state workers' compensation systems, which generally do not provide schedule awards for internal organs.

In § 10.406 and § 10.411, which concern maximum and minimum rates of compensation, the word "basic" has been prefixed to "monthly pay" to indicate that locality adjustments are not included in determinations of maximum and minimum rates of compensation. Also, statements have been added to recognize that compensation paid due to an assault which occurred during an attempted or actual assassination of a federal official in the performance of duty is exempted from the maximum rates.

In § 10.413, the provisions of current § 10.109 have been shortened so as not to repeat those appearing in the FECA itself.

In § 10.417, the second and third paragraphs provide that OWCP may, at least twice each year, request reports to verify student status or the inability of a child over 18 years of age to support himself or herself. This reporting schedule is consistent with most school enrollment schedules, and helps avoid situations where overpayments occur, by reminding recipients that individuals over the age of 18 who are not enrolled in school for any particular semester are not eligible for survivor benefits.

Adjustments to Compensation

Section 10.421(c) is new and reflects long-standing practice regarding the concurrent receipt of compensation from OWCP and severance or separation pay from the employer. With the increasing use of such benefits as the government downsizes, the frequency with which this is an issue has increased, and so a provision addressing this issue was included in the regulation. This provision is consistent with ECAB precedent on this issue.

Section 10.421(d) is also new and implements the changes made to the FECA when the Federal Employees' Retirement System (FERS) was instituted. Federal employees whose retirement benefits are provided by the FERS receive benefits under the Social Security (SSA) retirement system as part of their package of retirement benefits. Federal employees eligible to receive retirement benefits under the Civil Service Retirement Act (CSRA) must elect between FECA benefits and CSRS retirement benefits and cannot receive both at the same time. With the enactment of the FERS, Congress amended the dual benefit provisions of the FECA (section 8116(d)). A FECA beneficiary may receive FECA benefits and SSA benefits, except that OWCP is required to reduce FECA benefits by the amount of any SSA retirement benefits attributable to the individual's Federal employment.

In § 10.423, which concerns assignment of compensation payments to creditors, a statement concerning garnishment of benefits for alimony and child support has been added. The language reflects changes to various federal laws, making clear that FECA as well as other Federal benefits may be attached to fulfill alimony and child support obligations.

Overpayments

The regulations concerning overpayments have been extensively rewritten to highlight and clarify a FECA beneficiary's obligation to be aware of the period for which benefits are paid, and the manner in which overpayments are declared, contested, and collected.

The language in § 10.430 has been added to describe how OWCP notifies a recipient of compensation that a payment has been made, whether by paper check or electronically. This language was added to clarify that a recipient is required to be aware of the time period for which each payment of compensation for wage loss or schedule award is received and to advise OWCP of any discrepancies noted. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

Sections 10.436 and 10.437 discuss the two circumstances under which an overpayment can be waived pursuant to section 8129(b). Section 10.436 discusses the criteria to be used in determining whether recovery would "defeat the purpose" of the FECA. Section 10.437 discusses the criteria to be used in determining whether recovery would "be against equity and good conscience." Waiver under § 10.436 because recovery would defeat the purposes of FECA is available only to currently or formerly entitled beneficiaries, which continues the application of that provision in the existing regulations. In § 10.437, the manner in which OWCP applies the "against equity and good conscience" test for waiver of an overpayment is revised to provide that this particular test applies to all individuals who are "without fault" and have received compensation because of an error of fact or law, regardless of whether or not they are present or former beneficiaries under the Act. This change restores the statutory distinction between the application of the two tests for waiver contained in section 8129(b), which was unintentionally removed as a result of the 1987 revision of the regulations.

In new section 10.441, language has been added to clarify that an overpayment is a debt that is subject to the Debt Collection Act of 1982 and that if such a debt is not repaid OWCP will attempt to recover the debt by any available means including offset of salary, annuity benefits or referral for collection to a collection agency or to the Department of Justice.

Subpart F, Continuing Entitlement to Benefits

This subpart contains most of the information found in current §§ 10.123 through 10.128. It also includes some

material from current §§ 10.107 and 10.110.

Claims for Continuing Disability

The regulation concerning continuing receipt of compensation benefits, new § 10.500, has been written to include a specific statement that OWCP's goal is to return each disabled employee to work as soon as medically able. The definition of "suitable work" has also been revised to clarify the criteria by which it is determined that work is "suitable". These changes were made because these concepts are important to the program and important for both employees and employers to understand.

The language in § 10.500(a) has been added to inform claimants, employing agencies and others of OWCP's long-standing practice of requiring claimants to periodically submit medical evidence in support of continuing disability. It also includes a description, based on a consistent line of ECAB precedent, of the type of medical evidence necessary to support a claim for continuing compensation.

The language in new § 10.500(b) has been added to clarify that OWCP can require non-invasive testing and functional capacity evaluations and that failure to undergo such testing may result in suspension of benefits.

The discussion of weighing medical evidence in § 10.500(c) has been added to describe OWCP's long-standing method of evaluating medical evidence. It explains that the conclusions reached in medical reports are not necessarily accepted at face value. Instead, OWCP considers the entire report and determines the weight to be accorded it based on a number of factors, including the extent to which the report shows a familiarity with the history of the case, whether it contains objective findings (as opposed, for example, to unsubstantiated complaints), and the strength of the reasoning supporting any opinion rendered.

Return to Work—Employer's Responsibilities

The discussion of an employer's responsibilities to return an employee to work in § 10.505 has been revised to specifically reference the provisions of section 8151, which grants reinstatement rights to injured employees and requires employers to take steps to reemploy them. Language has also been added to inform employees, employers and others that the Office of Personnel Management (not OWCP) administers this provision. In the past, employees and former employees have sought OWCP intervention in disputes concerning reemployment rights based upon the mistaken belief that OWCP had jurisdiction over such matters and authority over agency decisions concerning employment decisions. This provision of the regulations is being added to correct that misunderstanding of OWCP's role in regard to reemployment.

Section 10.506 includes a new provision allowing employers to contact employees at reasonable intervals to request periodic medical reports addressing their ability to return to work. This statement is consistent with OWCP's case management procedures, which are designed to include the employing agency in the effort to return the injured employee to work. The provision is not intended to allow employers to obtain medical reports for any reason other than evaluation of an employee's ability to return to work.

The discussion of payment of relocation expenses, in § 10.508, has been revised to include a provision that OWCP may pay relocation expenses when the new employer is other than a federal employer, a situation which the current § 10.123(f) does not address. Requests for reimbursement in this context do not arise frequently, and the expenses claimed are usually modest.

Section 10.509 adds a discussion, not contained in the current regulations, of OWCP's practice with respect to injured employees who have returned to light-duty work and are separated when their employers eliminate their light-duty positions in a subsequent reduction-in-force (RIF) as part of a general egency downsizing at a particular work site. Consistent with established ECAB precedent, OWCP does not consider such a termination of employment to be a recurrence of employment-related disability, since it is not caused by a change in the nature or extent of the employee's accepted medical condition or a change in the duties of the light-duty position, which clearly would have continued to be available in the absence of the RIF.

In such cases, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in the former light-duty position, if such a determination is appropriate and has not already been made. Unless the employee has been working in a position for which the employer has prepared a written position description, OWCP will assume that the employee was engaged in non-competitive employment that does not represent the employee's wage-earning capacity. This requirement is consistent with ECAB precedent concerning wage-earning capacity determinations, which provides that OWCP may not use an unclassified or "odd-lot" position that has been specifically tailored to fit the work limitations of a particular injured employee to determine the wage-earning capacity of that employee.

Return to Work—Employee's Responsibilities

Section 10.516 incorporates into the regulations the procedures followed when OWCP rejects an employee's reasons for refusing a position that OWCP has found suitable. OWCP adopted these procedures several years ago in accordance with the decision of the ECAB in *Maggie Moore*, 42 ECAB 484 (1991). The proposed regulation provides for a 15-day period during which an employee may accept the offered job without penalty after OWCP has determined that his or her proffered reasons for declining to accept an offer of suitable work are not reasonable.

Section 10.518 adds a discussion of "vocational rehabilitation services" to the regulations. This definition is intended to clarify that such services include the services of registered nurses working at the direction of OWCP to assist employees in returning to work. These nursing services, which generally take place in the weeks immediately following the injury, are an integral part of OWCP's efforts to return injured employees to work. Vocational rehabilitation includes a variety of services, all of which are designed to assist an injured employee's return to work. Including this definition of vocational rehabilitation services clarifies that OWCP considers nursing services to be such services and that the benefits and sanctions set forth in section 8104 and section 8113(b), which apply to other vocational services, will also apply to nurse services. This discussion also states that OWCP considers vocational evaluation, testing, training and placement services, and functional capacity evaluations to be vocational rehabilitation services.

Section 10.520 incorporates into the regulations an explanation of how OWCP determines an employee's wage-earning capacity after completion of a vocational rehabilitation program. This discussion is intended to inform employees and others of OWCP's long-standing practice in this area and is consistent with ECAB precedent concerning determination of wage-earning capacity.

Reports of Earnings From Employment and Self-Employment

The FECA authorizes OWCP to require FECA claimants to report earnings from employment or self-employment. The "earnings" from employment or self-employment that must be reported by any employee who is receiving compensation for either partial or total disability are defined in § 10.5(g). The language in § 10.525(b) has been added to clarify the distinction between the effects of having earnings, which may or may not result in a reduction of FECA compensation, and the effects of failing to report earnings, which can result in the forfeiture of all compensation paid or found to be payable during the reporting period.

The discussion of volunteer activity in § 10.526 has been added to clarify that employees receiving compensation for partial or total disability are required to report volunteer activity as part of their report of earnings from employment and self-employment. Volunteer service can be a valuable indicator of the kind of gainful employment that the employee may be able to undertake, and thus OWCP may be able to use this information to help determine the employee's wage-earning capacity.

The language in § 10.527 has been added to the regulations to inform employees and others of the fact that OWCP attempts to verify reports of earnings in a number of ways, including computer matches with the Office of Personnel Management and state workers' compensation agencies.

Reduction and Termination of Compensation

Sections 10.540 and 10.541 are new and reflect OWCP's long-standing practices with respect to how and under what circumstances it will provide beneficiaries with written notice that it intends to either reduce or terminate their compensation in the next 30 days, as well as the administrative steps it will take after it provides such notice. These provisions are to inform employees and others when and how OWCP notifies beneficiaries of its intention to terminate compensation and to clarify that, in situations when the beneficiary has no reasonable expectation that compensation will continue, OWCP will not provide this pre-termination notice.

Subpart G, Disallowances and Appeals

This subpart contains most of the information found in current §§ 10.130 through 10.145, except for the material found in current § 10.142, which is moved to subpart H.

Reconsiderations and Reviews by the Director

Review of a decision on application of the claimant is addressed in current § 10.138(b), and review of a decision on the Director's own motion is addressed in current § 10.138(a). Sections 10.605 through 10.610 revise and expand the description of reviewing a decision on application of the claimant and on the Director's own motion in order to clarify the difference between these two separate procedures. These provisions state that the Director's authority is not subject to a request or application. Further, these provisions adopt OWCP's long-standing position that the Director does not need new evidence or argument to review a decision and that the decision by the Director to review a decision is not a proper subject for review or appeal.

In many cases, claimants appear not to have understood the distinction between the two distinct review procedures authorized by section 8128(a). Some individuals, who remain dissatisfied with an OWCP decision after exhausting all their review and appeal rights, have asked the Director to review the decision with which they disagree pursuant to the Secretary's authority under section 8128(a), delegated to the Director, to review a decision on his or her own motion. The distinction between the Director's authority to review a decision on his or her own motion and a claimant's application for review is not new in practice. Claimants have never been entitled to "apply" for review outside the process described as a "reconsideration" in the review and appeal options accompanying all adverse decisions. When a request to the Director to review a decision on his or her own motion is received, it has been OWCP's long-standing practice to treat it as a reconsideration request rather than an additional avenue for claimants to seek review.

To alleviate the confusion that has been demonstrated in regard to this issue, § 10.610 specifically states that OWCP will not consider a request for review on the Director's own motion. The statutory provision authorizing a claimant to request review of a decision "upon application" is fulfilled by the application for reconsideration. Since no other mechanism for a claimant dissatisfied with a decision to obtain a review "upon application" is available, OWCP will continue to treat requests that the Director review a decision on his or her own motion as requests for reconsideration.

A number of ECAB cases have addressed the question of whether the Director is required to have new evidence or argument to review a decision under section 8128(a). In Eli Jacobs, 32 ECAB 1147 (1981), the ECAB held that the Director may reopen a claim at any time without specifying what standard, if any, applied to that decision. In a later decision, Daniel E. Phillips, 40 ECAB 1111, petition for reconsideration denied, 41 ECAB 201 (1989), however, over the dissent of one member of the panel, the ECAB held that to reopen and rescind acceptance of a claim, the Director must establish that the original decision was erroneous through the use of "new or different evidence." The ECAB reached this conclusion without specifying any statutory or regulatory basis for this limitation. Its only rationale was its opinion that reopening a decision should not become a surreptitious route for OWCP to readjudicate a claim. In later cases that formulation was expanded to include allowing reopening and rescission of a prior decision through new or different evidence, legal argument or rationale. See, e.g., Beth A. Quimby, 41 ECAB 683 (1990); Billie C. Rae, 43 ECAB 192 (1991); Shelby J. Rycroft, 44 ECAB 795 (1993); Laura H. Hoexter (Nicholas P. Hoexter), 44 ECAB 987 (1993).

Section 10.610 adopts the long-standing position of the Director that the plain language of section 8128(a) authorizes the Director, without pre-condition, to review a decision "at any time." The existing regulations contain a provision, carried over in § 10.608, limiting the right of a claimant to obtain a merit review and a new decision from OWCP to those situations in which the claimant meets one of the requirements set out in § 10.138(b). Without this limitation, the effective administration of the program could be undermined by taxing the limited resources available to administer the program through frivolous requests for review. Allowing the claimant to reopen the claim just to have the same evidence reviewed again would both waste the claims staff time and slow down the appellate process.

In view of the fact that the statute imposes no limitation upon the right of the Director to review a decision "at any time," § 10.610 grants the Director an unconditional right to review any decision without requiring new evidence or argument. Effective administration of the program requires that the Director be able to review decisions at any time without having to supply new evidence or argument.

This does not mean, however, that the claimant has no recourse when the

Director reviews a decision and issues a new decision with which he or she disagrees. Any adverse decision is subject to the full range of review and appeal options which protects the claimant from arbitrary action. Congress clearly did not contemplate restricting the Director's ability to reopen a claim when it gave the Director authority to review a decision "at any time".

Consistent with this broad authority, § 10.610 provides that the determination whether or not to review a decision on his or her own motion is not subject to reconsideration, review or appeal. Since the Director has unfettered discretion in deciding whether or not to review a decision, and any claimant unhappy with a new decision issued after such a review by the Director is provided the same rights to seek reconsideration, review or appeal associated with any OWCP decision, no purpose would be served by allowing further review of the Director's decision to review a previous decision.

Hearings

In § 10.615 a provision has been added granting hearing representatives discretion to conduct an oral hearing by telephone or teleconference. Section 10.616(b) revises the time period in which a claimant can request a change in the format of a hearing. A request received by the Branch of Hearings and Review before the date OWCP issues a notice that the record is closed for written review, or has set a date for an oral hearing, will be granted. Later requests will be subject to OWCP's discretion.

Section 10.617(g) makes clear that the hearing representative may terminate a hearing at any time that he or she deems the actions of the claimant and his or her representative to be disruptive. This provision reflects current practice.

The discussion of issuing subpoenas, § 10.619, has been revised to set forth the criteria for issuing a subpoena. To alleviate confusion that has been demonstrated concerning the circumstances under which subpoenas can be issued, § 10.619(a) specifically provides, consistent with practice based upon ECAB precedent, that subpoenas will be issued at the request of a claimant only in connection with hearings. Moreover, it makes clear that this method of gathering evidence is to be used as a last resort. Because the hearing is an informal procedure, not bound by rules of evidence or formal rules of procedure, the need for subpoenas is limited and is sufficiently accommodated by providing that a subpoena can be issued for documents when the information is not available by other means and for witnesses when oral testimony is the best way to ascertain the facts. To avoid disruptions of the hearing process and encourage early and active development of the evidence, § 10.619(a)(1) provides that a subpoena must be requested within 60 days after the date of the original hearing request.

To clarify the role of a representative of the employer at a hearing, the discussion of this subject, in § 10.621(b), has been revised to specifically note that a hearing representative may deny a request by the claimant that the agency representative testify where the claimant cannot establish that such testimony would be relevant or because the representative does not have the appropriate level of knowledge.

Section 10.622 revises the rules concerning postponement of oral hearings to address problems that have arisen since the institution of the current rules concerning postponements in 1987. Oral hearings are scheduled at locations within a reasonable proximity to claimants' places of residence. As a result, hearings are scheduled throughout the country, several times a year in some locations and only once a year in other locations. For each trip, one hearing representative is assigned a number of cases as the "docket". Before the trip, the hearing representative must review each file, research the issues, and prepare the record, all of which requires many hours of work.

Scheduling and workload constraints prevent OWCP from sending the same hearing representative to the same city each time. Thus, when a hearing is postponed, it often requires that another hearing representative repeat the preparation for the hearing undertaken by the previous representative. Furthermore, in many cases it is too late to schedule another case for that slot on the docket, thus needlessly delaying hearings for other claimants.

The current rule, found at § 10.137, which allows a postponement for "good cause" if the request is received at least three days prior to the date of the hearing, has proven completely ineffective at controlling the waste of resources caused by postponements. Disputes over what constitutes "good cause" sometimes take longer and require more resources than rescheduling the hearing itself. The result is delay, not only for the claimant whose hearing was scheduled and postponed, but for other claimants adversely affected by the inefficiency of the current process.

Thus, new procedures are being adopted which provide that, once the oral hearing is scheduled, it cannot be postponed unless the hearing can be rescheduled on that same trip. In the event that an oral hearing cannot be rescheduled on that same trip, the claimant will be provided a review of the written record instead. The proposed limitation is a reasonable compromise which will improve the administration of the program. The program's resources must be preserved to ensure the best service to all those seeking a hearing. Constant and repeated postponement of oral hearings constitute a serious drain on those resources. The review of the written record by a hearing representative as a substitute for an oral hearing has served as an effective way to provide the review contemplated by the FECA on a more timely basis than resources otherwise would permit.

In most cases, the issues relate to written evidence (particularly medical evidence). A face-to-face hearing does little to clarify medical issues, since the determination, in most cases, must be made on the basis of written medical evidence in the file. A review of the written record has been selected, therefore, as an effective way to provide the review of the decision by a hearing representative where the claimant must postpone the hearing.

Another change to the oral hearing procedure is to allow a claimant to express a preference for scheduling an oral hearing. OWCP will attempt to comply with any scheduling preferences of which it is advised at the time of the original request. Once the notice of hearing is sent, the claimant can request a change in the day and the time of the hearing within the same docket.

Review by the Employees' Compensation Appeals Board (ECAB)

Claims on appeal often have continuing issues, such as payments of bills or actions on collateral issues such as recurrences, requiring actions by OWCP. Sometimes, because the case is under the jurisdiction of the ECAB, there are questions as to what can and cannot be done by OWCP when cases are before the ECAB. To clarify this issue, language has been added to the regulations, in § 10.626, which explains the circumstances under which OWCP still has jurisdiction over issues in cases pending before the ECAB.

Subpart H, Specialized Topics

This subpart contains most of the information found in current subparts G and H (§§ 10.500 through 10.624), as well as the material found in § 10.142.

Representation

Current § 10.143 states, with no elaboration, that a claimant may authorize any individual as a representative in a claim before OWCP. Section 10.700 more fully describes who may act as a representative, what authority a representative has, and specifies that there can be only one representative in a claim at a time. These provisions essentially incorporate current practice.

The FECA gives to the Director, as the Secretary's delegate, the authority to approve fees associated with representation of a claim under the FECA. In the past, OWCP claims personnel have reviewed all bills for representatives' services, even if the claimant did not disagree with the amount billed. To reduce the workload imposed by extensive review of bills with which claimants do not disagree, § 10.702 implements a new procedure by which OWCP would automatically approve all fees unless the represented party objects to the amount billed. In that case, OWCP will give that party an opportunity to submit further information. OWCP will then adjudicate the request according to the criteria set forth in § 10.703(c). This section adopts the criteria in the existing regulations at § 10.145(b), after removing items that are essentially duplicative.

Third-Party Liability

Current § 10.501 through § 10.507 essentially restate provisions of sections 8131 and 8132 of the FECA. Much of that material has, therefore, been removed as redundant. Sections 10.704 to 10.719 explain, interpret and clarify duties of FECA claimants and their counsel pursuant to sections 8131 and 8132 of the FECA. Section 10.705(b) incorporates into the regulations a specific reference to the fact that the Office of the Solicitor (SOL) administers the subrogation aspects of certain FECA claims for OWCP. (This does not, however, preclude an employing agency from participating in administering the subrogation aspect of its employees' cases under a specific agreement with OWCP.) Section 10.706 explains how a FECA beneficiary is informed of the obligation to pursue a claim against a third party. Section 10.707 provides a list of all actions that must be taken by a FECA beneficiary in order to comply with the requirement in section 8131 of the FECA that a claimant prosecute an action against a third party when required to do so by OWCP. The purpose of this section is to inform claimants that failure to comply with any of the requirements in this section could result in forfeiture of all FECA benefits arising out of the injury at issue. Section 10.708 further details the penalties that can be applied to a FECA beneficiary who fails to prosecute a claim or to assign it to the United States when requested to do so by indicating that OWCP may order forfeiture of such benefits or alternatively could suspend such benefits until the request to assign or prosecute is complied with. In many instances, review of the information available to OWCP indicates that there is a possibility of third party liability, which, upon further investigation by private counsel consulted by the FECA beneficiaries, is either not economical to pursue or simply not meritorious. Section 10.709 sets forth the procedure to be followed by a FECA beneficiary to be released from the obligation to prosecute an action against a third party.

Section 10.710 is being added to the regulations to clarify that any person who has filed a FECA claim that has been accepted or who has received FECA benefits in connection with a claim filed by another person must report any receipt of money or other property as a result of the liability arising out of that injury to OWCP or SOL within 30 days of receipt. Section 10.711 is being added to the regulations in order to provide a step by step explanation of the calculation of the refund to be paid to the United States and any credit against future benefits calculated in accordance with the formula contained in section 8132 of the FECA. The only change contemplated from existing practice by this formula is elimination of the opportunity to offset payment of medical expenses to federal facilities or other parties from any recovery. This practice has been allowed as an administrative accommodation, but rarely occurs and is no longer considered necessary. Any medical expenses paid directly by the FECA beneficiary should be submitted directly to OWCP for reimbursement as appropriate.

Section 10.712 incorporates into the regulations OWCP's longstanding practices in regard to what amounts are included in the gross recovery reported in connection with third party liability for an injury covered by the FECA. Section 10.713 is being incorporated into the regulations to require that a FECA beneficiary who receives a structured settlement (one which provides for payment of funds over a specified period of time rather than immediately) report as the gross recovery the present value of the right to receive all of the payments called for in the settlement. This requirement is in keeping with the plain language of section 8132 of the FECA, which covers the receipt of "money or other property" and the recognition that the right to receive a stream of payments in the future is clearly a valuable property right. This definition is intended to overrule the holding of the ECAB in Benjamin S. Purser, Jr., 42 ECAB 204 (1990).

Section 10.714 sets forth the manner in which OWCP calculates disbursements which it makes in connection with a FECA claim to be refunded in accordance with the formula set out in section 8132 and § 10.711 of these regulations. The only change from existing practice is to allow for subtraction from the total of refundable disbursements of the cost of any medical examination that the FECA beneficiary establishes that the employing agency should have made available at no charge to the employee under a statute other than the FECA. This change is being made to ensure that employees who sustain injuries covered by the FECA are not treated less favorably than those who receive such treatment but have not sustained injuries covered by the FECA.

OWCP has decided to impose interest charges on refunds due to the United States pursuant to section 8132 of the FECA as set forth in § 10.715. This is a change in current policy and is consistent with the Debt Collection Act of 1982. In view of the fact that certain FECA beneficiaries currently receiving compensation payments owe refunds and have refused to pay, a provision is being added to the regulations at § 10.716 allowing collection of such refund by withholding from payments currently payable under FECA. Section 10.717 is being added to the regulations to clarify OWCP's longstanding interpretation that, since an injury caused by medical malpractice in treating a FECA-covered injury is itself an injury covered by FECA, any recovery received in a negligence suit arising out of such malpractice is a recovery subject to section 8132 of the FECA. Similarly, § 10.718 is being added to the regulations to make clear another longstanding OWCP interpretation: that insurance payments to a beneficiary pursuant to a policy the beneficiary has purchased do not constitute a recovery pursuant to section 8132.

Section 10.719 is being added to the regulations to interpret the phrase "same injury" for the purposes of implementing section 8132 of the FECA. While an argument can be made that the statute intended that each recovery for a medical condition or wound should be

treated separately for the purpose of calculating any required refund or credit against future benefits (an argument which has been accepted by one district court, in *Benjamin S. Purser, Jr.* v. *United States Department of Labor*, 943 F.Supp. 898 (M.D. Tenn. 1996), the approach being adopted by these regulations is more consistent with the intent of section 8132 and the administration of the FECA. Attempting to separate out each different "injury" incurred in, for example, an automobile accident as a result of which an injured employee may have multiple medical conditions affecting numerous body parts in order to allocate a single settlement from the other driver into pieces appears to be an artificial exercise that serves no purpose set forth by the statute. Such an interpretation invites artful drafting of settlement agreements designed to negate the intended effect of the statute to, in part, shift the costs of FECA onto parties who have caused injuries covered under the FECA. Since each claim for FECA benefits arising out of a single incident is administered as one file, regardless of the number of wounds or medical conditions involved, attempting to separately account for the recovery attributable to each wound and to offset any credit against future benefits only to medical payments attributable to that wound would be nearly impossible, except in the most arbitrary manner and even then would be time-consuming, cumbersome and a source of immense delay and confusion.

Federal Grand and Petit Jurors

Current § 10.620 on the definition of jurors has been moved to the list of definitions at § 10.5(h), while current § 10.621 on the applicability of the other subparts of the regulations has been removed as unnecessary.

Peace Corps Volunteers

Current § 10.600 on the definition of Peace Corps volunteers, § 10.601 on the applicability of the FECA, § 10.602 on when disability compensation commences, § 10.603(a) through (c) on special pay rate considerations, and § 10.604 on the period of service of volunteers essentially restated provisions of the FECA and other relevant statutes and have therefore been removed as redundant.

Non-Federal Law Enforcement Officers

Current § 10.612(d) on the eligibility of non-federal law enforcement officers, § 10.617(c) on the adjudication of these claims, § 10.618 regarding consultation with the Attorney General and other agencies, and § 10.619 on cooperation with state and local agencies essentially restated provisions of the FECA and have therefore been removed as redundant.

Subsections (a) and (c) of § 10.735 combine current §§ 10.611 and 10.612, which have been rewritten to accommodate the question and answer format and to delete material that simply restated provisions of the FECA, without any attempt to make a substantive change. Subsection (b) is new and restates other parts of the FECA for use as a general rule. The last sentence of subsection (b) reflects OWCP's longstanding practice with respect to the issue of coverage under this subpart for individuals who only perform administrative functions in support of eligible officers.

The last sentence of § 10.736 is new and reflects a recent ECAB decision which construed the time limitation provision of 5 U.S.C. 8193(c)(3).

Section 10.738 has been rewritten with minor changes throughout to address a growing body of ECAB precedent regarding the nature and extent of coverage for officers who are injured in situations that involve potential federal crimes (as distinguished from actual crimes that have resulted in a criminal prosecution).

Section 10.739 is new and describes the type of objective evidence necessary to establish the existence of a potential federal crime for purposes of coverage consistent with several ECAB decisions on this point. An enumeration of the various methods for making this type of showing is necessary to assist OWCP in its adjudication of a growing number of these sorts of claims.

Section 10.741 is new and substantially rewrites the existing regulation at § 10.616 to reflect longstanding administrative practices regarding the interpretation of what constitutes "comparable" benefits consistent with ECAB precedent. Section 10.741(c) is added to the regulations to explain how these benefits are calculated in certain circumstances where the officer contributes to the fund which is the source of the benefit. These provisions are needed to provide OWCP with guidance in adjudicating these matters, which have generated a number of inquiries from officers and their representatives. This interpretation is consistent with OWCP's current practice in calculating how much of the eligible officer's FECA benefit must be offset as a result of the receipt of comparable benefits.

Subpart I, Information for Medical Providers

This subpart is designed to gather in one section all of the information needed by medical providers. It combines some of current §§ 10.410 through 10.413 with §§ 10.450 through 10.457.

It also contains proposed revisions in the rules establishing procedures for submission and reimbursement of inpatient hospital services and pharmaceutical bills under the FECA. These revisions would supplement rules in effect since 1986, which provide for a fee schedule for reimbursement of medical procedures and services. This fee schedule currently applies to all physician services as defined under the FECA, and to outpatient professional services.

Medical Bills

In § 10.801, references to National Drug Codes and Revenue Center Codes have been added to the list of codes which the medical provider must specify. References to UB–82 have been changed to UB–92, as the latter has become the standard billing form for hospitals. A statement that pharmacy bills are to be submitted on the Universal Claim Form has also been added.

Medical Fee Schedule

Sections 10.809 and 10.810 are new. OWCP believes that expanding its ability to control and monitor medical costs is a critical element in ongoing efforts to enhance the management of injuries under FECA. Under these rules, both pharmacy bills and inpatient hospital bills will be subject to cost containment methods.

Under the FECA, OWCP authorizes payment for medical services and establishes limits for fees for such services (March 10, 1986, 51 FR 8276–82, as amended). Since 1994, the schedule for payment of professional services has been based on the relative value units (RVU's) devised by the Department of Health and Human Services, Health Care Financing Administration (HCFA). When appropriate for the schedule, OWCP devises its own RVU's for procedures not covered under the HCFA schedule, for procedures without an assigned RVU under the HCFA schedule, for services HCFA covers under other schedules, and for services unique to OWCP, such as second opinion and impartial medical evaluations. In addition, OWCP devises its own conversion factors to meet program needs.

The Department recognizes the worth of using a schedule to reimburse

covered medical services in that it provides an equitable method to implement cost control measures, and it enhances the ability to manage injury claims, especially the appropriateness of the medical services provided and their relatedness to the compensable injury. These same principles underlie the extension of cost controls to pharmacy and hospital bills.

Pharmacy bills: At present, pharmacy payments, which constitute nearly 6% of the total medical outlays of the program, are not controlled by the fee schedule. These rules would reimburse pharmacies under a set schedule. To standardize payments for medicinal drugs, the program has devised a fee schedule based on the Average Wholesale Price (AWP) of each individual drug plus a dispensing fee established by the Director. AWP prices will be obtained from a file provided by a nationally recognized vendor containing medicinal drugs listed by their unique National Drug Codes (NDCs). AWP prices will be updated on a regular basis.

The AWP is set by the industry, and represents what pharmacies are expected to pay for the drug. The dispensing fee will be twenty percent of the cost of the drug up to a maximum of $12.50. Thus, if the AWP of a drug is $20.00, there would be a dispensing fee of $4.00, and the maximum allowable charge for the drug would be $24.00. If the AWP of the drug was $500.00, however, the dispensing fee would be limited to $12.50, and the maximum allowable charge would be $512.50.

The basic methodology is widely practiced. In all, 23 state workers' compensation programs have some form of control over drug costs through the use of a maximum allowable schedule; 17 of these states have a set schedule for prescription drugs and six more have reimbursement formulas based on average wholesale price similar to that proposed for the FECA program or comparable data. OWCP's Division of Coal Mine Workers' Compensation uses this formula for reimbursement of drugs under the Black Lung Benefits Act.

Hospital bills: Proposed § 10.810 concerns hospital bills. Currently, only hospital outpatient services are subject to a fee schedule. The OWCP now proposes to reimburse hospital inpatient services under a prospective payment system (PPS) that is based on the systems used by the Health Care Financing Administration's Medicare program (42 CFR parts 412 et al).

The OWCP now proposes to use the HCFA prospective payment system (PPS) using Diagnostic Related Groups (DRGs) (42 CFR part 412, et al.) as the foundation of a PPS for determining the allowable reimbursement for inpatient services covered under FECA. OWCP has already successfully converted the foundation of its professional medical fee schedule to the HCFA RVUs, and the use of the HCFA PPS will establish a common base for payment of medical services under both agencies. OWCP's proposal to use the HCFA PPS is compatible with hospital inpatient cost control measures used by other federal agencies such as the Department of Veterans Affairs (VA) and the Department of Defense, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), who are also using DRG-based reimbursement systems. In addition, several state workers' compensation programs are using DRG-based systems to control the cost of inpatient services for work-related injuries.

The HCFA PPS is based on the premise that similar medical conditions and surgeries require similar inpatient services and resources, and that those conditions and surgeries can be categorized into DRGs according to the primary diagnoses and major surgical procedures performed, as coded under the International Classification of Diseases, 9th Revision (ICD–9–CM). Under the HCFA PPS, hospitals receive a fixed, predetermined reimbursement for each beneficiary's inpatient stay according to the assigned DRG and whether or not the length of stay is considered to be an outlier (the number of inpatient days is not within the nationally calculated range for the assigned DRG).

Under the HCFA PPS, the reimbursement rate is hospital-specific and is determined through a complex formula that considers national average costs for all inpatient services, geographic wage and overhead indices, medical education costs, patient mix, indigent care costs, and capital investments. The HHS PPS DRG rates are updated each year and are described in detail in the **Federal Register** (42 CFR part 412, et al.)

OWCP's decision to use the HCFA PPS as the foundation of its reimbursement system is based on research that explored available options, and on a study of FECA inpatient bills. OWCP reviewed a representative sample of inpatient services reimbursed under FECA, assigned DRGs in accordance with the HCFA DRG grouper rules, and used the HCFA pricer program to determine allowable amounts under Medicare.

In the study, fourteen DRGs accounted for 61% of the dollars billed and 64% of the inpatient stays. A wide range of diagnostic conditions and medical procedures were represented in the study, nevertheless, and they comprised a diverse list of DRGs. It is evident from the study analyses that there is considerable variation in the amounts different hospitals bill FECA for similar services. These billed amounts are greater by a mean of 45% than the amounts that would be allowed if the inpatient stay were paid under the HCFA PPS.

In instances of musculoskeletal soft tissue injuries, however, the OWCP study indicated that the injured worker under FECA may at times require a very short stay compared to that common for a patient under HCFA's Medicare program. For that reason, the billed amounts under FECA were in some cases actually less than that allowed under the HCFA PPS for the same DRG. Short inpatient stays, however, are not uncommon for work-related injuries and often are considered appropriate for post-trauma observation and for diagnostic procedures. Services at psychiatric and rehabilitation hospitals were excluded from this portion of the analysis because they are not currently subject to the HHS PPS for acute care.

Although there are differences in the medical conditions treated under the HCFA and the FECA beneficiary populations, the study indicated that the HCFA PPS using DRGs is well-suited to OWCP's efforts to expand its ability to monitor and control inpatient costs covered under FECA. Other federal agencies have reached similar conclusions, such as CHAMPUS (32 CFR part 199) and the VA (38 CFR 17.55).

HCFA currently collects comprehensive hospital-specific fiscal data, and has considerable experience in this regard. They have been paying for inpatient services under a PPS since October 1983. OWCP does not have the resources to collect such data now or in the foreseeable future. In addition, the Department believes that duplicate collection of data is not an efficient use of staff and resources.

It is proposed, therefore, that OWCP base reimbursement of inpatient services covered under FECA on the HCFA PPS as described below:

a. Hospitals must submit bills for inpatient services covered under FECA on the Standard Form UB–92, or its equivalent, with all common information completed. This information includes the hospital's Medicare number, the patient's Social Security number, the FECA claim number when available, the billed amount, and the primary conditions

treated and procedures performed coded under the current edition of the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM), Volumes I, II, and III, and/or in accordance with that specified in the yearly update of the HCFA regulations (42 CFR part 412, et. al.)

b. OWCP's adaptation of the HCFA PPS includes use of the HCFA grouper and pricer programs, and an adjustment factor (AF) to the HCFA DRG maximum allowable, which considers the uniqueness of work-related injuries. For example, the median age of the FECA patient is about 42 years, rather than over 65, as is the case under the Medicare program. Secondly, a low volume of FECA patients is expected at any one hospital compared to the number of patients covered under the Medicare program. Thirdly, at times there will be a need for more comprehensive diagnostic and test procedures to determine the work-relatedness of conditions, and/or conditions that may delay return to work. Finally, FECA patients may have nationally common length of stays (LOSs) different than those for Medicare patients, and FECA's goal to return injured employees to work as soon as possible is not a Medicare goal for a retired population.

OWCP believes, however, that the HCFA PPS is well-suited to be the foundation of an OWCP PPS for inpatient services, and that it provides a comprehensive data resource not otherwise available to the Department. OWCP's proposal to use an adjustment factor (AF) to adapt the HCFA PPS to individual program needs is consistent with similar methods used by other federal and state agencies. The AFs used under the OWCP PPS are based on the results of comprehensive studies of inpatient services conducted by OWCP in 1996 and 1990, and on ongoing analyses of medical costs and services provided under FECA.

c. Under OWCP's proposed PPS, the HCFA allowable for a specific DRG at a particular facility constitutes OWCP's Threshold Amount (TA) for the DRG. The OWCP AF to each TA considers: (1) Lengths of stay (LOS) that are outside the HCFA LOS parameters; (2) LOS that are within the HCFA LOS parameters but under OWCP are consistently on the short or long end of the parameter for particular DRGs; and (3) cost outliers that are the result of unique care requirements, particularly expensive hardware such as that frequently used in joint replacements, or are attributable to inflated charges.

In addition: (1) The proposed OWCP PPS per diem rate will not be less than that allowable under the HCFA DRG program when based on the 50th percentile LOS as reported in the **Federal Register** by HCFA for the Medicare program; and (2) the total dollar amounts reduced from billed amounts will be consistent with reduction rates under other portions of the OWCP medical fee schedule and with cost to charge ratios for inpatient services reported by HCFA.

The following abbreviations are used in OWCP's formulae for setting the AF:

TA—Threshold Amount—the HCFA Medicare program maximum allowable for a specific DRG at a particular facility.

TA/H50—Threshold Amount Per Diem rate—the daily rate when the TA is divided by the HCFA national 50th percentile LOS days.

HCFA LOS—The length of stay days as defined under the HCFA national data sets reported in the **Federal Register** yearly; three sets are used for these formulae:

H25 = 25th percentile
H50 = 50th percentile
H75 = 75th percentile

OWCP LOS—The actual number of inpatient days billed for covered services provided a claimant under FECA.

OWCP's formulae for setting the AF are:

(1) The OWCP DRG standard maximum allowable (MA)

The OWCP LOS is within the HCFA LOS parameters, the 25th (H25) to the 75th (H75) percentiles, and the billed amount is not greater than twice the OWCP TA.

(TA × 1.24)—[(TA/H50*0.12) * (H75–LOS)] = MA

(2) The OWCP Short Stay Maximum Allowable (MASS)

The OWCP LOS is less than the HCFA 25th percentile (H25). Short stays regardless of billed amounts are covered under this formula.

[(TA/H50) * (1.72*LOS)] + [(TA/H50*0.33) * (H50–LOS)] = MASS

This formula allows for higher costs typically associated with the first days of an inpatient stay, and an incentive allowance for IP days less than the H25.

(3) The OWCP Long Stay and/or Cost Outlier Maximum Allowable (MACO)

The OWCP LOS is (a) greater than the HCFA 75th (H75) percentile LOS, considered a long stay, or (b) the billed amount is considered a cost outlier (greater than twice the TA) but the LOS is within the HCFA LOS parameters (H25 to H75).

(TA × 1.24) + [(Billed Amount − (TA × 1.24)) × 0.50] = MACO

This formula adjusts for the outlier length of stay, or confinements with documented outlier costs when the length of stay is within the H25–H75. The costs beyond the OWCP MA, however, are only paid at 50% of the billed amount. There is no additional adjustment for number of inpatient days. If the long stay billed amount is less than the TA × 1.24, then no charges are paid at the 50% rate.

These formulae always result in a payment greater than the HCFA Medicare program allowable per diem rate (TA/H50). They are consistent with reimbursement principles used by CHAMPUS, the VA, and state workers' compensation programs for short and long stays, and for cost outliers.

d. OWCP proposes to use a separate schedule to reimburse facilities not covered (FNCs) under the HCFA PPS, such as those that only provide rehabilitation or psychiatric services. The information required on each bill will be the same as that required of acute care facilities, including ICD–9–CM coding of diagnostic conditions being treated and any major procedures performed. During a two-year phase-in period, this FNC schedule is to be based on HCFA-calculated cost to charge ratio (CCR) data for acute care inpatient services, currently set at about 55%, on data shared by CHAMPUS and state workers' compensation programs, and on the 1996 OWCP inpatient hospital services study.

The FNC schedule will be applied to inpatient services provided at FNCs when CCR data is available to OWCP. When CCR data is not available, reimbursements will be negotiated prior to services based on locality FNC estimated CCR and available cost data.

FNC Per diem rate * CCR * 1.24 = FNC MA

Outlier costs will be negotiated based on the FNC formula.

20 CFR Part 25

Subpart A—General Provisions

Former § 25.3 regarding the use of local workers' compensation law and the Special Schedule has been deleted as unnecessary.

Subpart C—Extensions of the Special Schedule of Compensation

Section 25.200(a) now includes a specific statement that direct-hire employees of the U.S. Military Forces covered by the Philippine Medical Care Program and the Employees' Compensation Program pursuant to the agreement signed by the United States and the Republic of the Philippines on March 10, 1982 who are also members of the Philippine Social Security System are not covered by the modified Special Schedule that is otherwise applicable in the Republic of the Philippines.

In addition, old reserved §§ 25.23 and 25.24 have been deleted as unnecessary. Furthermore, old § 25.25 has also been deleted to reflect OWCP's prior policy determination (and concomitant administrative practice) to apply the lesser of the provisions of local law in the Republic of Korea or FECA (not the special schedule).

Statutory Authority

Section 8149 of the Federal Employees' Compensation Act, (5 U.S.C. 8101, *et seq.*), provides the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Act. Section 5 U.S.C. 8103 provides specific authority regarding medical treatment and care, including determining the appropriateness of charges. The Debt Collection Act of 1982, as amended authorizes imposition of interest charges and collection of debts by withholding funds due the debtor.

Executive Order 12866

This proposed regulatory action constitutes a "significant" rule within the meaning of Executive Order 12866. The Department believes, however, that this regulatory action will not have a significant economic impact on the economy, or any person or organization subject to the proposed changes. The proposed changes will have little or no effect on the level of benefits paid (which in any case involve payments almost exclusively to Federal employees from funds appropriated by Congress); nor will there be a significant economic impact upon the hospitals and pharmacies which, for the first time, will be subject to the fee schedules established by these rules. The total dollar amount paid for inpatient hospital services in fiscal year 1996 was $81,955,562.00, and subjecting these charges to the DRG schedule is expected to result in a 20 percent decrease in the amount paid, or about $16.4 million. The total dollar amount paid for pharmacy costs in fiscal year 1996 was $31.9 million, and subjecting these charges to the fee schedule is expected to result in a 10 to 15 percent decrease in the amount paid, or about $3–4.5 million. Insofar as the proposed amendments make it easier to seek benefits under the FECA and streamline the administration of the program, they would decrease administrative costs. The proposed changes have been reviewed by the Office of Management and Budget for consistency with the President's priorities and the principles set forth in Executive Order 12866.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by state, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

Paperwork Reduction Act

The new collection of information contained in this rulemaking has been submitted for review to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information request unless the collection of information displays a valid OMB control number.

The new information collection requirements contained in this proposed rule are set forth in §§ 10.801 and 10.802, and they relate to information required to be submitted by pharmacies and hospitals covering certain in-patient bills. The Department is proposing to create a new form (Universal Pharmacy Billing Form) which will be used by pharmacies in submitting claims for payment. Another form (the claimant reimbursement form) will be used by claimants seeking reimbursement for medical expenses for which they have paid the providers directly. The public reporting burden for these collections of information is estimated to average as follows: Universal Pharmacy Billing Form—It will take five (5) minutes to complete the form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information; Claimant Reimbursement Form—we estimate it will take an average of ten (10) minutes to complete this form, including reviewing instructions, searching for existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Department would like to solicit comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: New Collection.
Agency: Employment Standards Administration.
Title: Claimant Medical Reimbursement Form (CA–915).
OMB Number: None.
Affected Public: Individuals or households, Federal Government.
Total Respondents: 40,500.
Frequency: On occasion.
Total Responses: 40,500.
Average Time per Response: 10 minutes.
Total Hours: 6,723.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): 0.
Type of Review: New Collection.
Agency: Employment Standards Administration.
Title: NCPDP Universal Pharmacy Billing Form (79–1A).
OMB Number: None.
Affected Public: Businesses or other for-profit; Not-for-profit Institutions; Individuals or households; Federal Government; State, Local or Tribal Government.
Total Respondents: 406,198.
Frequency: On occasion.
Total Responses: 406,198.
Average Time per Response: 5 minutes.
Total Hours: 33,714.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): 0.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of information Management, U.S. Department of Labor, Room N–1301, 200 Constitution Avenue, Washington, DC, 20210; and to the Office of Information and Regulatory Affairs, Attn: ESA Desk Officer, OMB New Executive Office Bldg., 725 17th Street NW., Room 10235, Washington, DC 20003.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of

section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The provisions of the proposed rules extending cost control measures to hospital inpatient services and pharmacies is the only provision of the regulations which may have a monetary effect on small businesses. That effect will not be significant on a substantial number of those businesses, however, for no one business bills a significant amount to OWCP for FECA-related services, and the effect on those bills which are submitted, while a worthwhile savings for the government in the aggregate, will not be significant for individual businesses affected.

The two new cost containment provisions are: (1) a set schedule for payment of pharmacy bills; and (2) a prospective payment system for hospital inpatient services. The two methodologies are fully explained in the text of the preamble, including the fact that the use of Diagnostic Related Groups (DRGs) for setting payment for in-patient hospital charges essentially is an adaptation of a system used by the Health Care Finance Agency (HCFA) in payment of Medicare bills. The use of Average Wholesale Prices (AWP) in setting the maximum reimbursable amount for pharmacy bills is also commonplace in the industry.

The method selected by OWCP is therefore one which contains efficiencies both for the government and providers. The government benefits because OWCP did not reinvent the wheel, but minimized resources by adopting existing and well-recognized systems already in place. The providers benefit because submitting a bill to OWCP and receiving payment will be almost the same process as submitting it to Medicare, a program with which hospitals are already familiar and have in place for billing, so they will not have to learn a new process and the FECA bills will not represent an unnecessary administrative cost because the FECA bill process will not be essentially distinguished from that for Medicare. Similarly, the pharmacies are used to billing through clearing houses and having charges subject to limits by private insurers. By adopting the uniform billing statement and a familiar cost control methodology, OWCP has kept close to the environment with which the pharmacies are already familiar. The methods chosen, therefore, represent a familiar environment to the providers.

The costs savings resulting from the implementation of these cost containment methods are significant only in the aggregate and will have no significant effect on any individual businesses. First, the need for cost containment in the FECA program is self evident and these methods are already utilized by Medicare, CHAMPUS and Veterans Administration among government entities, and for the private insurance carriers which cover Federal employees as part of the Federal employees' health benefit insurance programs. The costs to providers whose charges may be reduced are relatively small, both in incremental and in actual terms.

Incrementally, FECA bills simply do not represent a large share of any one provider's total business. Since Federal employees are spread throughout the United States and this system covers only those Federal employees who are injured on the job and require either prescription drugs or inpatient hospital care (a tiny subset of all employees), the number of bills submitted by any one provider which may be subject to these provisions is likely to be very small.

Second, in actual terms, the amount by which these bills might be reduced will not have a significant impact on any business. As noted earlier in this preamble, in fiscal year (FY) 1996, the program paid $81.9 million dollars on about 15,700 bills received for in-patient hospital services (an average charge of $5,225.00 per stay). The total number of hospitals on our provider files is about 5,000, for an average patient load of slightly over three FECA-claimant patients per hospital. If we assume that no hospital had more than three patients, then the average annual billings subject to these rules for any hospital would be about $15,775 (3x$5,225). As also noted earlier in the preamble, the DRG method will reduce the $81.9 million by about 20 percent, or $16.4 million. Thus, the average dollar amount of the reduction in bills submitted by any one hospital resulting from these rules would be about $3,150.00.

A similarly small actual dollar reduction applies to pharmacy charges. OWCP paid about $32,000,000 for pharmacy charges, although we cannot identify exactly what portion of this amount was paid to institutions, since much of this dollar figure represents reimbursements directly to claimants. We cannot identify with certainty the number of pharmacies who provided supplies, for the same reason, but there are about 4,000 pharmacies in our provider files. Similarly, we cannot determine the exact number of bills paid, since we capture only those submitted by a provider for direct payment and not those submitted by a claimant for reimbursement. Assuming for purposes of this analysis that the reimbursements were evenly divided among pharmacies already part of our provider files, we divide 4,000 providers in to the total number of dollars paid to get an average annual aggregate of charges paid to a provider of about $8,000.00. It is estimated that the schedule would result in an average reduction of five percent in pharmacy charges; based on these figures, the average pharmacy would see a reduction in the total amount of charges submitted of about $400.

These figures illustrate that the "cost" of these rules to any one provider is negligible. On the other hand, OWCP will see substantial aggregate cost savings as a result (estimated at $18,000,000). These savings benefit OWCP (by strengthening the integrity of the program), the employing agencies (which ultimately foot the bill for FECA through the chargeback system), and taxpayer and rate payers to whom the ultimate costs of the program are eventually charged through appropriations.

The Assistant Secretary for Employment Standards has certified to the Chief Counsel for Advocacy of the Small Business Administration that these rules will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory impact analysis is required.

List of Subjects for 20 CFR Parts 10 and 25

Administrative practice and procedures, Claims, Government employees, Labor, Workers' compensation.

For the reasons set forth in the preamble, it is proposed that 20 CFR Chapter I be amended as follows:

1. It is proposed that part 10 be revised to read as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

Subpart A—General Provisions

Sec.

Introduction

10.0 What are the provisions of the FECA, in general?
10.1 What rules govern the administration of the FECA and this chapter?
10.2 What do these regulations contain?
10.3 Have the collection of information requirements of this part been approved by OMB?

Definitions and Forms

10.5 What definitions apply to these regulations?
10.6 What special statutory definitions apply to dependents and survivors?
10.7 What forms are needed to process claims under the FECA?

Information in Program Records

10.10 Are all documents relating to claims filed under the FECA considered confidential?
10.11 Who maintains custody and control of FECA records?
10.12 How may a FECA claimant or beneficiary obtain copies of protected records?
10.13 What process is used by a person who wants to correct FECA-related documents?

Rights and Penalties

10.15 May compensation rights be waived?
10.16 What are the criminal law penalties for making a false report in connection with a claim under the FECA?
10.17 Is a beneficiary who defrauds the government in connection with a claim for benefits still entitled to those benefits?
10.18 Can a beneficiary who is incarcerated based on a felony conviction still receive benefits?

Subpart B—Filing Notices and Claims; Submitting Evidence

Notices and Claims for Injury, Disease and Death—Employee or Survivor's Actions

10.100 How and when is a notice of traumatic injury filed?
10.101 How and when is a claim for wage loss compensation on account of traumatic injury filed?
10.102 How and when is a notice of occupational disease filed?
10.103 How and when is a claim for wage loss compensation on account of occupational disease filed?
10.104 How and when is a claim for permanent impairment filed?
10.105 How and when is a claim for recurrence filed?
10.106 How and when is a notice of death and claim for benefits filed?

Notices and Claims for Injury, Disease and Death—Employer's Actions

10.110 What should the employer do when an employee files a notice of traumatic injury or occupational disease?
10.111 What should the employer do when an employee files an initial claim for compensation due to disability or permanent impairment?
10.112 What should the employer do when an employee files a claim for continuing compensation due to disability?
10.113 What should the employer do when an employee dies from a work-related injury or disease?

Evidence and Burden of Proof

10.115 What evidence is needed to establish a claim?
10.116 What additional evidence is needed in cases based on occupational disease?
10.117 What happens if the employer contests any of the facts as stated by the claimant?
10.118 Does the employer participate in the claims process in any other way?
10.119 What action will OWCP take with respect to information submitted by the employer?
10.120 May a claimant submit additional evidence?
10.121 What happens if OWCP needs more evidence from the claimant?

Decisions on Entitlement to Benefits

10.125 How does OWCP determine entitlement to benefits?
10.126 What does the decision contain?
10.127 To whom is the decision sent?

Subpart C—Continuation of Pay

10.200 What is continuation of pay?

Eligibility for COP

10.205 What other conditions must be met to receive COP?
10.206 May an employee who uses leave after an injury later decide to use COP instead?
10.207 May an employee who returns to work, then stops work again due to the effects of the injury, receive COP?

Responsibilities

10.210 What are the employee's responsibilities in COP cases?
10.211 What are the employer's responsibilities in COP cases?

Calculation of COP

10.215 How does OWCP compute the number of days of COP used?
10.216 How is the pay rate for COP calculated?
10.217 Is COP charged if the employee continues to work, but in a different job that pays less?

Controversion and Termination of COP

10.220 When is an employer not required to pay COP?
10.221 How is a claim for COP controverted?
10.222 When may an employer terminate COP which has already begun?
10.223 Are there other circumstances under which OWCP will not authorize payment of COP?
10.224 What happens if OWCP finds that the employee is not entitled to COP after it has been paid?

Subpart D—Medical and Related Benefits

Emergency Medical Care

10.300 What are the basic rules for authorizing emergency medical care?
10.301 May the physician designated on Form CA–16 refer the employee to another medical specialist or medical facility?
10.302 Should the employer authorize medical care if he or she doubts that the injury occurred, or that it is work-related?
10.303 Should the employer use a Form CA–16 to authorize medical testing when an employee is exposed to a workplace hazard just once?
10.304 Are there any exceptions to these procedures?

Medical Treatment and Related Issues

10.310 What are the basic rules for obtaining medical care?
10.311 What are the special rules for the services of chiropractors?
10.312 What are the special rules for the services of clinical psychologists?
10.313 Will OWCP pay for preventive treatment?
10.314 Will OWCP pay for the services of an attendant?
10.315 Will OWCP pay for transportation to obtain medical treatment?
10.316 After selecting a treating physician, may an employee choose to be treated by another physician instead?

Directed Medical Examinations

10.320 Can OWCP require an employee to be examined by another doctor?
10.321 What happens if the physician selected by OWCP does not agree with the physician selected by the employee?
10.322 Who pays for second opinion and referee examinations?
10.323 What are the consequences of failing to report for or obstructing a second opinion or referee examination?
10.324 May an employer require an employee to undergo a physical examination in connection with a work-related injury?

Medical Reports

10.330 What are the requirements for medical reports?
10.331 How and when should the medical report be submitted?
10.332 What additional medical information will OWCP require to support continuing payment of benefits?
10.333 What additional medical information will OWCP require to support a claim for a schedule award?

Medical Bills

10.335 How are medical bills submitted?
10.336 What are the time frames for submitting bills?
10.337 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?

Subpart E—Compensation and Related Benefits

Compensation for Disability and Impairment

10.400 What is total disability?
10.401 When and how is compensation for total disability paid?
10.402 What is partial disability?
10.403 When and how is compensation for partial disability paid?
10.404 When and how is compensation for a schedule impairment paid?
10.405 Who is considered a dependent in a claim based on disability or impairment?
10.406 What are the maximum and minimum rates of compensation in disability cases?

Compensation for Death

10.410 What are the rates of compensation payable in death cases?
10.411 What are the maximum and minimum rates of compensation in death cases?
10.412 Will OWCP pay the costs of burial and transportation of the remains?
10.413 If a person dies while receiving a schedule award, to whom is the balance of the schedule award payable?
10.414 What reports of dependents are needed in death cases?
10.415 What must a beneficiary do if the number of beneficiaries decreases?
10.416 How does a change in the number of beneficiaries affect the amount of compensation paid to the other beneficiaries?
10.417 What reports are needed when compensation payments continue for children over age 18?

Adjustments to Compensation

10.420 How are cost-of-living adjustments applied?
10.421 May a beneficiary receive other kinds of payments from the federal government concurrently with compensation?
10.422 May compensation payments be issued in a lump sum?
10.423 May compensation payments be assigned to, or attached by, creditors?
10.424 May someone other than the beneficiary be designated to receive compensation payments?

Overpayments

10.430 How does OWCP notify an individual of a payment made?
10.431 What does OWCP do when an overpayment is identified?
10.432 How can an individual present evidence to OWCP in response to a preliminary notice of an overpayment?
10.433 Under what circumstances can OWCP waive recovery of an overpayment?
10.434 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?
10.435 Is an individual responsible for an overpayment that resulted from an error by OWCP or another government agency?
10.436 Under what circumstances would recovery of an overpayment defeat the purpose of the FECA?
10.437 Under what circumstances would recovery of an overpayment be against equity and good conscience?
10.438 Can OWCP require the individual who received the overpayment to submit additional financial information?
10.439 May other issues be addressed at the pre-recoupment hearing?
10.440 How does OWCP communicate its final decision concerning recovery of an overpayment, and what appeal right accompanies it?
10.441 How are overpayments collected?

Subpart F—Continuing Entitlement to Benefits

10.500 What are the basic rules governing continuing receipt of compensation benefits?

Return to Work—Employer's Responsibilities

10.505 What actions must the employer take?
10.506 May the employer monitor the employee's medical care?
10.507 How should the employer make an offer of suitable work?
10.508 May relocation expenses be paid for an employee who would need to move to accept an offer of reemployment?
10.509 If an employee's light-duty job is eliminated due to downsizing, what is the effect on compensation?

Return to Work—Employee's Responsibilities

10.515 What actions must the employee take?
10.516 How will an employee know if OWCP considers a job to be suitable?
10.517 What are the penalties for refusing to accept a suitable job offer?
10.518 Does OWCP provide services to help employees return to work?
10.519 What action will OWCP take if an employee refuses to undergo vocational rehabilitation?
10.520 How does OWCP determine compensation after an employee completes a vocational rehabilitation program?

Reports of Earnings From Employment and Self-Employment

10.525 What information must the employee report?
10.526 Must the employee report self-employment?
10.527 Does OWCP verify reports of earnings?
10.528 What action will OWCP take if the employee fails to file a report of activity indicating an ability to work?
10.529 What action will OWCP take if the employee files an incomplete report?

Reports of Dependents

10.535 How are dependents defined, and what information must the employee report?
10.536 What is the penalty for failing to submit a report of dependents?
10.537 What reports are needed when compensation payments continue for children over age 18?

Reduction and Termination of Compensation

10.540 When and how is compensation reduced or terminated?
10.541 What action will OWCP take after issuing written notice of its intention to reduce or terminate compensation?

Subpart G—Appeals Process

10.600 How can final decisions of OWCP be reviewed?

Reconsiderations and Reviews by the Director

10.605 What is reconsideration?
10.606 How does a claimant request reconsideration?
10.607 What is the deadline for requesting reconsideration?
10.608 How does OWCP decide whether to grant or deny the request for reconsideration?
10.609 How does OWCP decide whether new evidence requires modification of the prior decision?
10.610 What is a review by the Director?

Hearings

10.615 What is a hearing?
10.616 How does a claimant obtain a hearing?
10.617 How is an oral hearing conducted?
10.618 How is a review of the written record conducted?
10.619 May subpoenas be issued for witnesses and documents?
10.620 Who pays the costs associated with subpoenas?
10.621 What is the employer's role when an oral hearing has been requested?
10.622 May a claimant withdraw a request for or postpone a hearing?

Reviews by the Employees' Compensation Appeals Board (ECAB)

10.625 What kinds of decisions may be appealed?
10.626 Who has jurisdiction of cases on appeal to the ECAB?

Subpart H—Special Provisions

Representation

10.700 May a claimant designate a representative?
10.701 Who may serve as a representative?
10.702 How are fees for services paid?
10.703 How are fee applications approved?

Third Party Liability

10.705 When must an employee or other FECA beneficiary take action against a third party?
10.706 How will a beneficiary know if OWCP or SOL has determined that action against a third party is required?
10.707 What must a FECA beneficiary who is required to take action against a third party do to satisfy the requirement that the claim be "prosecuted"?
10.708 Can a FECA beneficiary who refuses to comply with a request to assign a claim to the United States or to prosecute the claim in his or her own name be penalized?
10.709 What happens if a beneficiary directed by OWCP or SOL to take action against a third party does not believe that a claim can be successfully prosecuted at a reasonable cost?
10.710 Under what circumstances must a recovery of money or other property in connection with an injury or death for which benefits are payable under the FECA be reported to OWCP or SOL?
10.711 How much of any settlement or judgment must be paid to the United States?
10.712 What amounts are included in the gross recovery?

10.713 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the gross recovery?
10.714 What amounts are included in the refundable disbursements?
10.715 Is a beneficiary required to pay interest on the amount of the refund due to the United States?
10.716 If the required refund is not paid within 30 days of the request for repayment, can it be collected from payments due under the FECA?
10.717 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an injury covered by the FECA a gross recovery that must be reported to OWCP or SOL?
10.718 Are payments to a beneficiary as a result of an insurance policy which the beneficiary has purchased a gross recovery that must be reported to OWCP or SOL?
10.719 If a settlement or judgment is received for more than one wound or medical condition, can the refundable disbursements paid on a single FECA claim be attributed to different conditions for purposes of calculating the refund or credit owed to the United States?

Federal Grand and Petit Jurors

10.725 When is a federal grand or petit juror covered under the FECA?
10.726 When does a juror's entitlement to disability compensation begin?
10.727 What is the pay rate of jurors for compensation purposes?

Peace Corps Volunteers

10.730 What are the conditions of coverage for Peace Corps volunteers and volunteer leaders injured while serving outside the United States?
10.731 What is the pay rate of Peace Corps volunteers and volunteer leaders for compensation purposes?

Non-Federal Law Enforcement Officers

10.735 When is a non-federal law enforcement officer covered under the FECA?
10.736 What are the time limits for filing a claim?
10.737 How is a claim filed, and who can file a claim?
10.738 Under what circumstances are benefits payable?
10.739 What kind of objective evidence of a potential federal crime must exist for coverage to be extended?
10.740 In what situations will OWCP automatically presume that a law enforcement officer is covered by the FECA?
10.741 How are benefits calculated?

Subpart I—Information for Medical Providers

Medical Records and Bills

10.800 What kind of medical records must providers keep?
10.801 How are medical bills to be submitted?
10.802 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?
10.803 What are the time limitations on OWCP's payment of bills?

Medical Fee Schedule

10.805 What services are covered by the OWCP fee schedule?
10.806 How are the maximum fees defined?
10.807 How are payments for particular services calculated?
10.808 Does the fee schedule apply to every kind of procedure?
10.809 How are payments for medicinal drugs determined?
10.810 How are payments for inpatient medical services determined?
10.811 When and how are fees reduced?
10.812 If OWCP reduces a fee, may a provider request reconsideration of the reduction?
10.813 If OWCP reduces a fee, may a provider bill the claimant for the balance?

Exclusion of Providers

10.815 What are the grounds for excluding a provider from payment under the FECA?
10.816 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?
10.817 When are OWCP's exclusion procedures initiated?
10.818 How is a provider notified of OWCP's intent to exclude him or her?
10.819 What requirements must the provider's reply and OWCP's decision meet?
10.820 How can an excluded provider request a hearing?
10.821 How are hearings assigned and scheduled?
10.822 How are subpoenas or advisory opinions obtained?
10.823 How will the administrative law judge conduct the hearing and issue the recommended decision?
10.824 How can a party request review by the Director of the administrative law judge's recommended decision?
10.825 What are the effects of exclusion?
10.826 How can an excluded provider be reinstated?

Authority: 5 U.S.C. 301, 8103, 8145 and 8149; 31 U.S.C. 3716 and 3717; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 5–96, 62 FR 107.

Subpart A—General Provisions

Introduction

§ 10.0 What are the provisions of the FECA, in general?

The Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 8101 *et seq.*) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. The regulations in this part describe the rules for filing, processing, and paying claims for benefits under the FECA.

(a) The FECA has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air Patrol (5 U.S.C. 8141), members of the Reserve Officers' Training Corps (5 U.S.C. 8140), Peace Corps Volunteers (5 U.S.C. 8142), Job Corps enrollees and Volunteers In Service to America (5 U.S.C. 8143), members of the National Teachers Corps (5 U.S.C. 8143a), certain student employees (5 U.S.C. 5351 and 8144), certain law enforcement officers not employed by the United States (5 U.S.C. 8191–8193), and various other classes of persons who provide or have provided services to the Government of the United States.

(b) The FECA provides for payment of several types of benefits, including compensation for wage loss, schedule awards, medical and related benefits, and vocational rehabilitation services for conditions resulting from injuries sustained in performance of duty while in service to the United States.

(c) The FECA also provides for payment of monetary compensation to specified survivors of an employee whose death resulted from a work-related injury and for payment of certain burial expenses subject to the provisions of 5 U.S.C. 8134.

(d) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of the FECA and of this part. This section shall not be construed to modify or enlarge upon the provisions of the FECA.

§ 10.1 What rules govern the administration of the FECA and this chapter?

In accordance with 5 U.S.C. 8145 and Secretary's Order 5–96, the responsibility for administering the FECA, except for 5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board, has been delegated to the Assistant Secretary for Employment Standards. The Assistant Secretary, in turn, delegated the authority and responsibility for administering the FECA to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director, OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

§ 10.2 What do these regulations contain?

Part 10 of this chapter sets forth the regulations governing administration of all claims filed under the FECA, except to the extent specified in certain particular provisions. Its provisions are intended to assist persons seeking compensation benefits under the FECA, as well as personnel in the various federal agencies and the Department of Labor who process claims filed under the FECA or who perform administrative functions with respect to the FECA. Part 10 applies to part 25 of this chapter except as modified by part 25. The various subparts of this part contain the following:

(a) Subpart A: The general statutory and administrative framework for processing claims under the FECA. It contains a statement of purpose and scope, together with definitions of terms, descriptions of basic forms, information about the disclosure of OWCP records, and a description of rights and penalties under the FECA, including convictions for fraud.

(b) Subpart B: The rules for filing notices of injury and claims for benefits under the FECA. It also addresses evidence and burden of proof, as well as the process of making decisions concerning eligibility for benefits.

(c) Subpart C: The rules governing claims for and payment of continuation of pay.

(d) Subpart D: The rules governing emergency and routine medical care, second opinion and referee medical examinations directed by OWCP, and medical reports and records in general. It also addresses the kinds of treatment which may be authorized and how medical bills are paid.

(e) Subpart E: The rules relating to the payment of monetary compensation benefits for disability, impairment and death. It includes the provisions for identifying and processing overpayments of compensation.

(f) Subpart F: The rules governing the payment of continuing compensation benefits. It includes provisions concerning the employee's and the employer's responsibilities in returning the employee to work. It also contains provisions governing reports of earnings and dependents, recurrences, and reduction and termination of compensation benefits.

(g) Subpart G: The rules governing the appeals of decisions under the FECA. It includes provisions relating to hearings, reconsiderations, and appeals before the Employees' Compensation Appeals Board.

(h) Subpart H: The rules concerning legal representation and for adjustment and recovery from a third party. It also contains provisions relevant to three groups of employees whose status requires special application of the provisions of the FECA: federal grand and petit jurors, Peace Corps volunteers, and non-federal law enforcement officers.

(i) Subpart I: Information for medical providers. It includes rules for medical reports, medical bills, and the OWCP medical fee schedule, as well as the provisions for exclusion of medical providers.

§ 10.3 Have the collection of information requirements of this part been approved by OMB?

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control numbers 1215–0055, 1215–0067, 1215–0103, 1215–0115, 1215–0154, 1215–0155, 1215–0167, 1215–0176 and 1215–0182.

Definitions and Forms

§ 10.5 What definitions apply to these regulations?

Certain words and phrases found in this part are defined in this section or in the FECA statute. Some other words and phrases that are used only in limited situations are defined in the later subparts of these regulations.

(a) *Benefits* or *Compensation* means the money OWCP pays to or on behalf of a beneficiary from the Employees' Compensation Fund for lost wages, a loss of wage-earning capacity or a permanent physical impairment, as well as the money paid to beneficiaries for an employee's death. These two terms also include any other amounts paid out of the Employees' Compensation Fund for such things as medical treatment, medical examinations conducted at the request of OWCP as part of the claims adjudication process, vocational rehabilitation services, services of an attendant and funeral expenses, but does not include continuation of pay.

(b) *Beneficiary* means an individual who is entitled to a benefit under the FECA and this part.

(c) *Claim* means a written assertion of an individual's entitlement to benefits under the FECA, submitted in a manner authorized by this part.

(d) *Claimant* means an individual whose claim has been filed.

(e) *Director* means the Director of OWCP or a person designated to carry out his or her functions.

(f) *Disability* means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.

(g) *Earnings from employment or self-employment* means:

(1) Gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration; or

(2) A reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. Neither lack of profits, nor the characterization of the duties as a hobby, removes an unremunerated individual's responsibility to report the estimated cost to have someone else perform his or her duties.

(h) *Employee* means, but is not limited to, an individual who fits within one of the following listed groups:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(3) An individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(4) An individual appointed to a position on the office staff of a former President; or

(5) An individual selected and serving as a federal petit or grand juror.

(i) *Employer* or *Agency* means any civil agency or instrumentality of the United States Government, or any other organization, group or institution employing an individual defined as an "employee" by this section. These terms also refer to officers and employees of an employer having responsibility for the supervision, direction or control of employees of that employer as an "immediate superior," and to other employees designated by the employer to carry out the functions vested in the employer under the FECA and this part, including officers or employees delegated responsibility by an employer for authorizing medical treatment for injured employees.

(j) *Entitlement* means entitlement to benefits as determined by OWCP under the FECA and the procedures described in this part.

(k) *FECA* means the Federal Employees' Compensation Act, as amended.

(l) *Hospital services* means services and supplies provided by hospitals within the scope of their practice as defined by State law.

(m) *Impairment* means any anatomic or functional abnormality or loss. A permanent impairment is any such abnormality or loss after maximum medical improvement has been achieved.

(n) *Knowingly* means with knowledge, consciously, willfully or intentionally.

(o) *Medical services* means services and supplies provided by or under the supervision of a physician. Reimbursable chiropractic services are limited to physical examinations (and related laboratory tests), x-rays performed to diagnose a subluxation of the spine and treatment consisting of manual manipulation of the spine to correct a subluxation.

(p) *Medical support services* means services, drugs, supplies and appliances provided by a person other than a physician or hospital.

(q) *Occupational disease or illness* means a condition produced by the work environment over a period longer than a single workday or shift.

(r) *OWCP* means the Office of Workers' Compensation Programs.

(s) *Pay rate for compensation purposes* means the employee's pay, as determined under 5 U.S.C. 8114, at the time of injury, the time disability begins or the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except as otherwise determined under 5 U.S.C. 8113 with respect to any period.

(t) *Physician* means an individual defined as such in 5 U.S.C. 8101(2), except during the period for which his or her license to practice medicine has been suspended or revoked by a State licensing or regulatory authority.

(u) *Qualified hospital* means any hospital licensed as such under State law which has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified hospital shall be deemed to be designated or approved by OWCP.

(v) *Qualified physician* means any physician who has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified physician shall be deemed to be designated or approved by OWCP.

(w) *Qualified provider of medical support services or supplies* means any person, other than a physician or a hospital, who provides services, drugs, supplies and appliances for which OWCP makes payment, who possesses any applicable licenses required under State law and who has not been excluded under the provisions of subpart I of this part.

(x) *Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous and material change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical restrictions due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, non-performance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical restrictions.

(y) *Representative* means an individual properly authorized by a claimant in writing to act for the claimant in connection with a claim or proceeding under the FECA or this part.

(z) *Student* means an individual defined at 5 U.S.C. 8101(17). Two terms used in that particular definition are further defined as follows:

(1) "Additional type of educational or training institution" means a technical, trade, vocational, business or professional school accredited or licensed by the United States Government or a state government or any political subdivision thereof providing courses of not less than three months' duration, that prepares the individual for a livelihood in a trade, industry, vocation or profession.

(2) "Year beyond the high school level" means:

(i) The 12-month period beginning the month after the individual graduates from high school, provided he or she had indicated an intention to continue schooling within four months of high school graduation, and each successive 12-month period in which there is school attendance or the payment of compensation based on student attendance; or

(ii) If the individual has indicated that he or she will not continue schooling within four months of high school graduation, the 12-month period beginning with the month that the individual enters school to continue his or her education, and each successive 12-month period in which there is school attendance or the payment of compensation based on student status.

(aa) *Subluxation* means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.

(bb) *Surviving spouse* means the husband or wife living with or dependent for support upon a deceased employee at the time of his or her death, or living apart for reasonable cause or because of the deceased employee's desertion.

(cc) *Temporary aggravation* of a pre-existing condition means that factors of employment have directly caused that condition to be more severe for a limited period of time and have left no greater impairment than existed prior to the employment injury.

(dd) *Traumatic injury* means a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

§ 10.6 What special statutory definitions apply to dependents and survivors?

(a) 5 U.S.C. 8133 provides that certain benefits are payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty.

(b) 5 U.S.C. 8148 also provides that certain other benefits are payable to certain family members of employees who have been incarcerated due to a felony conviction.

(c) 5 U.S.C. 8110(b) further provides that any employee who is found to be eligible for a basic benefit shall be entitled to have such basic benefit augmented at a specified rate for certain persons who live in the beneficiary's household or who are dependent upon the beneficiary for support.

(d) 5 U.S.C. 8101, 8110, 8133 and 8148, which define the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or an augmented benefit, apply to the provisions of this part.

§ 10.7 What forms are needed to process claims under the FECA?

(a) Notice of injury, claims and certain specified reports shall be made on forms prescribed by OWCP. Employers are expected to maintain an adequate

supply of the basic forms needed for the proper recording and reporting of injuries.

Form No.	Title
(1) CA–1	Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.
(2) CA–2	Notice of Occupational Disease and Claim for Compensation.
(3) CA–2a	Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation.
(4) CA–3	Report of Termination of Disability and/or Payment.
(5) CA–5	Claim for Compensation by Widow, Widower and/or Children.
(6) CA–5b	Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren.
(7) CA–6	Official Superior's Report of Employee's Death.
(8) CA–7	Claim for Compensation Due to Traumatic Injury or Occupational Disease.
(9) CA–8	Claim for Continuing Compensation on Account of Disability.
(10) CA–12	Claim for Continuance of Compensation.
(11) CA–16	Authorization of Examination and/or Treatment.
(12) CA–17	Duty Status Report.
(13) CA–20	Attending Physician's Report.
(14) CA–20a	Attending Physician's Supplemental Report.

(b) Copies of the forms listed in this paragraph are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. They may also be obtained from district offices, employers (i.e., safety and health offices, supervisors), and the Internet.

Information in Program Records

§ 10.10 Are all documents relating to claims filed under the FECA considered confidential?

All records relating to claims for benefits, including copies of such records maintained by an employer, are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974. All FECA-related records are covered by the government-wide Privacy Act system of records entitled DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File). The routine uses to which such records may be put are set forth in the Notice published in the **Federal Register** by the Department of Labor. The regulations and routine uses promulgated by the Department of Labor control decisions regarding access to all FECA-related records.

§ 10.11 Who maintains custody and control of FECA records?

All documents covered by DOL/GOVT–1 are official records of OWCP and, as such, are maintained by and under the control of OWCP. While an employer may establish procedures an injured employee or FECA beneficiary should follow in requesting access to documents it maintains, any decision issued in response to such a request must comply with the rules and regulations of the Department of Labor.

§ 10.12 How may a FECA claimant or beneficiary obtain copies of protected records?

(a) A claimant seeking copies of his or her official FECA file should address a request to the District Director of the OWCP office having custody of the file. A claimant seeking copies of FECA-related documents in the custody of the employer should follow the procedures established by that agency. In responding to a claimant's request, the employer must comply with the rules and regulations of the Department of Labor which govern all aspects of safeguarding the records.

(b) Any appeal from a decision denying access to the FECA-related documents must be filed with the Solicitor of Labor as provided in 29 CFR part 71.

§ 10.13 What process is used by a person who wants to correct FECA-related documents?

Any request to amend a record covered by DOL/GOVT–1 should be directed to the district office having custody of the official file. No employer has the authority to issue determinations with regard to requests for the correction of records contained in or covered by DOL/GOVT–1. Any request for correction received by an employer must be referred to OWCP for review and decision.

Rights and Penalties

§ 10.15 May compensation rights be waived?

No employer or other person may require an employee or other claimant to enter into any agreement, either before or after an injury or death, to waive his or her right to claim compensation under the FECA. No waiver of compensation rights shall be valid.

§ 10.16 What are the criminal law penalties for making a false report in connection with a claim under the FECA?

(a) A number of statutory provisions make it a crime to file a false or fraudulent claim or statement with the government in connection with a claim under the FECA. Included among these provisions are sections 287, 1001, 1920, and 1922 of title 18, United States Code. Enforcement of these and other criminal provisions that may apply to claims under the FECA are within the jurisdiction of the Department of Justice.

(b) In addition, administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801–12, to impose civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under the FECA. The Department of Labor's regulations implementing the PFRCA are found at 29 CFR part 22.

§ 10.17 Is a beneficiary who defrauds the government in connection with a claim for benefits still entitled to those benefits?

When a beneficiary either pleads guilty to or is found guilty on charges of defrauding the federal government in connection with a claim for benefits, the beneficiary's entitlement to any further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any injury occurring on or before the date of such guilty plea or verdict. Termination of entitlement under this section is not affected by any subsequent change in or recurrence of the beneficiary's medical condition.

§ 10.18 Can a beneficiary who is incarcerated based on a felony conviction still receive benefits?

(a) Whenever a beneficiary is incarcerated in a state or federal jail, prison, penal institution or other correctional facility due to a state or federal felony conviction, he or she forfeits all rights to compensation benefits during the period of incarceration. A beneficiary's right to compensation benefits for the period of his or her incarceration is not restored after such incarceration ends, even though payment of compensation benefits may resume.

(b) If the beneficiary has eligible dependents, OWCP will pay compensation to such dependents at a reduced rate during the period of his or her incarceration, by applying the percentages of 5 U.S.C. 8133(a)(1) through (5) to the beneficiary's gross current entitlement.

(c) If OWCP's decision on entitlement is pending when the period of incarceration begins, and compensation is due for a period of time prior to such incarceration, payment for that period will only be made to the beneficiary following his or her release.

Subpart B—Filing Notices and Claims; Submitting Evidence

Notices and Claims for Injury, Disease, and Death—Employee or Survivor's Actions

§ 10.100 How and when is a notice of traumatic injury filed?

(a) To claim benefits under the FECA, an employee who sustains a work-related traumatic injury must give notice of the injury in writing on Form CA–1, which may be obtained from the employer. The employee must forward this notice to the employer. Another person, including the employer, may give notice of injury on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee.

(b) For injuries sustained on or after September 7, 1974, a notice of injury must be filed within three years of the injury. (The form contains the necessary words of claim.) The requirements for filing notice are further described in 5 U.S.C. 8119. Also see § 10.205 concerning time requirements for filing claims for continuation of pay.

(1) If the claim is not filed within three years, compensation may still be allowed if notice of injury was given within 30 days or the employer had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written records or verbal notification. An entry into an employee's medical record may also satisfy this requirement if it is sufficient to place the employer on notice of a possible work-related injury or disease.

(2) OWCP may excuse failure to comply with the three-year time requirement because of truly exceptional circumstances (for example, being held prisoner of war).

(3) The claimant may withdraw his or her claim (but not the notice of injury) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

§ 10.101 How and when is a claim for wage loss compensation on account of traumatic injury filed?

(a) Form CA–7 is used to claim compensation for initial periods of disability.

(1) An employee who is disabled with loss of pay for more than three calendar days due to an injury, or someone acting on his or her behalf, must file Form CA–7 before compensation can be paid.

(2) The employee shall complete the front of Form CA–7 and submit the form to the employer for completion and transmission to OWCP. The form should be completed as soon as possible, but no more than 14 calendar days after the date pay stops due to the injury or disease.

(3) The requirements for filing claims are further described in 5 U.S.C. 8121.

(b) Form CA–8 is used to claim compensation for additional periods of disability after Form CA–7 is submitted to OWCP.

(1) It is the employee's responsibility to submit Form CA–8. Without receipt of such claim, OWCP has no knowledge of continuing wage loss. Therefore, while disability continues, the employee should submit a claim on Form CA–8 each two weeks until otherwise instructed by OWCP.

(2) The employee shall complete the front of Form CA–8 and submit the form to the employer for completion and transmission to OWCP.

(3) The employee is responsible for submitting, or arranging for the submittal of, medical evidence which establishes both that disability continues and that the disability is due to the work-related injury. Form CA–20a is attached to Form CA–8 for this purpose.

§ 10.102 How and when is a notice of occupational disease filed?

(a) To claim benefits under the FECA, an employee who has a disease which he or she believes to be work-related must give notice of the condition in writing on Form CA–2, which may be obtained from the employer. The employee must forward this notice to the employer. Another person, including the employer, may do so on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee. The claimant may withdraw his or her claim (but not the Notice of Injury) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For occupational diseases sustained as a result of exposure to injurious work factors that occurs on or after September 7, 1974, a notice of occupational disease must be filed within three years of the onset of the condition. (The form contains the necessary words of claim.) The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, of the causal relationship between the disability and the employment (see 5 U.S.C. 8122(b)).

§ 10.103 How and when is a claim for wage loss compensation on account of occupational disease filed?

Compensation for the initial period of disability, additional periods of disability, and impairment of a body part is claimed as described in §§ 10.101 and 10.104.

§ 10.104 How and when is a claim for permanent impairment filed?

Form CA–7 is used to claim compensation for impairment to a body part covered under the schedule established by 5 U.S.C. 8107. If Form CA–7 has already been filed to claim disability compensation, an employee may file a claim for impairment compensated according to the schedule by sending a letter to OWCP which specifies the nature of the benefit claimed.

§ 10.105 How and when is a claim for recurrence filed?

(a) A recurrence should be reported on Form CA–2a if it causes the employee to lose time from work and incur a wage loss. However, a notice of recurrence should not be filed for time loss due to traumatic injury during the period covered by continuation of pay. Also, a notice of recurrence should not be filed when a new injury or event contributing to an occupational disease has occurred. In these instances, the employee should file Form CA–1 or CA–2.

(b) The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

(1) The employee must include a statement with Form CA–2a describing his or her duties upon return to work after the original injury, stating whether there were any other injuries or illness, and giving a general description of his or her physical condition during the intervening period. The employer may submit comments concerning the employee's statement.

(2) The employee should arrange for the submittal of a detailed medical report from the attending physician as described on Form CA–2a. The employee should also submit, or arrange for the submittal of, similar medical reports for any examination and/or treatment received after returning to work following the original injury.

§ 10.106 How and when is a notice of death and claim for benefits filed?

(a) If an employee dies from a work-related traumatic injury or an occupational disease, any survivor may file a claim for death benefits using Form CA–5 or CA–5b, which may be obtained from the employer. The survivor must provide this notice in writing and forward it to the employer. Another person, including the employer, may do so on the survivor's behalf. The claimant may also submit the completed Form CA–5 or CA–5b directly to OWCP. The claimant shall disclose the SSNs of the survivors in addition to the SSN of the deceased employee. The claimant may withdraw his or her claim (but not the notice of death) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For deaths that occur on or after September 7, 1974, a notice of death must be filed within three years of the death. The form contains the necessary words of claim. The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of death due to latent disability, the time for filing the claim does not begin to run until the claimant is aware, or reasonably should have been aware, of the causal relationship between the death and the employment (see 5 U.S.C. 8122(b)).

(d) The filing of a notice of injury will satisfy the time requirements for a death claim based on the same injury. If an injured employee or someone acting on the employee's behalf does not file a claim before the employee's death, the right to claim compensation for disability other than medical expenses ceases and does not survive.

(e) A survivor must be alive to receive any payment; there is no vested right to such payment. A report as described in § 10.414 of this part must be filed once each year to support continuing payments of compensation.

Notices and Claims for Injury, Disease, and Death—Employer's Actions

§ 10.110 What should the employer do when an employee files a notice of traumatic injury or occupational disease?

(a) The employer shall complete the agency portion of Form CA–1 (for traumatic injury) or CA–2 (for occupational disease) no more than five calendar days after receipt of notice from the employee. The employer shall also complete the Receipt of Notice and give it to the employee.

(b) The employer must transmit the form to OWCP within five calendar days if the injury or disease will likely result in:

(1) A medical charge against OWCP;

(2) Disability for work beyond the day or shift of injury;

(3) The need for more than two appointments for medical examination and/or treatment on separate days, leading to time loss from work;

(4) Future disability;

(5) Permanent impairment; or

(6) Continuation of pay pursuant to 5 U.S.C. 8118.

(c) The employer should not wait for submittal of supporting evidence before sending the form to OWCP.

(d) If none of the conditions in paragraph (b) of this section applies, the Form CA–1 or CA–2 shall be retained as a permanent record in the Employee Medical Folder in accordance with the guidelines established by the Office of Personnel Management.

§ 10.111 What should the employer do when an employee files an initial claim for compensation due to disability or permanent impairment?

(a) When an employee is disabled by a work-related injury and loses pay for more than three calendar days, or has a permanent impairment or serious disfigurement as described in 5 U.S.C. 8107, the employer shall furnish the employee with Form CA–7 for the purpose of claiming compensation.

(b) If the employee is receiving continuation of pay (COP), the employer should give Form CA–7 to the employee by the 30th day of the COP period and submit the form to OWCP by the 40th day of the COP period. If the employee has not returned the form to the employer by the 40th day of the COP period, the employer should ask him or her to submit it as soon as possible.

(c) Upon receipt of Form CA–7 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–7 and any accompanying medical report to OWCP.

§ 10.112 What should the employer do when an employee files a claim for continuing compensation due to disability?

(a) If the employee continues in a leave-without-pay status due to a work-related injury after the period of compensation initially claimed on Form CA–7, the employer shall furnish the employee with Form CA–8 for the purpose of claiming continuing compensation.

(b) Upon receipt of Form CA–8 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–8 and any accompanying medical report to OWCP.

§ 10.113 What should the employer do when an employee dies from a work-related injury or disease?

(a) The employer shall immediately report a death due to a work-related traumatic injury or occupational disease to OWCP by telephone, telegram, or telefax. No more than 10 working days after notification of the death, the employer shall complete and send Form CA–6 to OWCP.

(b) When possible, the employer shall furnish a Form CA–5 or CA–5b to all persons likely to be entitled to compensation for death of an employee. The employer should also supply information about completing and filing the form.

(c) The employer shall promptly transmit Form CA–5 or CA–5b to OWCP. The employer shall also promptly transmit to OWCP any other claim or paper submitted which appears to claim compensation on account of death.

Evidence and Burden of Proof

§ 10.115 What evidence is needed to establish a claim?

Forms CA–1, CA–2, CA–5 and CA–5b describe the basic evidence required. OWCP may send any request for additional evidence to the claimant and to his or her representative, if any. Evidence should be submitted in writing. The evidence submitted must be reliable, probative and substantial. Each claim for compensation must meet five requirements before OWCP can accept it. These requirements are as follows:

(a) The claim was filed within the time limits specified by the FECA;

(b) The injured person was, at the time of injury, an employee of the U.S. as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part;

(c) The fact that an injury, disease or death occurred;

(d) The injury, disease or death occurred while the employee was in the performance of duty; and

(e) The medical condition for which compensation or medical benefits is claimed is causally related to the claimed injury, disease or death. For wage loss benefits, the claimant must also submit medical evidence showing that the condition claimed is disabling. The rules for submitting medical reports are found in §§ 10.330 through 10.333.

§ 10.116 What additional evidence is needed in cases based on occupational disease?

(a) The employee must submit the specific detailed information described on Form CA–2 and on any checklist (Form CA–35, A–H) provided by the employer. OWCP has developed these checklists to address particular occupational diseases. The medical report should also include the information specified on the checklist for the particular disease claimed.

(b) The employer should submit the specific detailed information described on Form CA–2 and on any checklist pertaining to the claimed disease.

§ 10.117 What happens if the employer contests any of the facts as stated by the claimant?

(a) An employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.

(b) Any such statement shall be submitted to OWCP with the notice of traumatic injury or death, or within 30 calendar days from the date notice of occupational disease or death is received from the claimant. If the employer does not submit a written explanation to support the disagreement, OWCP may accept the claimant's report of injury as established. The employer may not use a disagreement with an aspect of the claimant's report to delay forwarding the claim to OWCP or to compel or induce the claimant to change the claim.

§ 10.118 Does the employer participate in the claims process in any other way?

(a) The employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time.

(b) The employer may ascertain the events surrounding an injury and the extent of disability where it appears that an employee who alleges total disability may be performing other work, or may be engaging in activities which would indicate less than total disability. This authority is in addition to that given in § 10.118(a). However, the provisions of the Privacy Act apply to any endeavor by the employer to ascertain the facts of the case (see §§ 10.10 and 10.11).

(c) The employer does not have the right, except as provided in subpart C of this part, to actively participate in the claims adjudication process.

§ 10.119 What action will OWCP take with respect to information submitted by the employer?

OWCP will consider all evidence submitted appropriately, and OWCP will inform the employee, the employee's representative, if any, and the employer of any action taken. Where an employer contests a claim at time of the initial submittal and the claim is later approved, OWCP will notify the employer of the rationale for approving the claim.

§ 10.120 May a claimant submit additional evidence?

A claimant or a person acting on his or her behalf may submit to OWCP at any time any other evidence relevant to the claim.

§ 10.121 What happens if OWCP needs more evidence from the claimant?

If the claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, OWCP will inform the employee of the additional evidence needed. The claimant will be allowed up to 30 calendar days to submit the evidence required. OWCP is not required to notify the claimant a second time if the evidence submitted in response to its first request is not sufficient to meet the burden of proof.

Decisions on Entitlement to Benefits

§ 10.125 How does OWCP determine entitlement to benefits?

(a) In reaching any decision with respect to FECA coverage or entitlement, OWCP considers the claim presented by the claimant, the report by the employer, and the results of such investigation as OWCP may deem necessary.

(b) OWCP claims staff apply the law, the regulations, and its procedures to the facts as reported or obtained upon investigation. They also apply decisions of the Employees' Compensation Appeals Board and administrative decisions of OWCP as set forth in FECA Program Memoranda.

§ 10.126 What does the decision contain?

The decision shall contain findings of fact and a statement of reasons. It is accompanied by information about the claimant's appeal rights, which may include the right to a hearing, a reconsideration, and/or a review by the Employees' Compensation Appeals Board. (See subpart G of this part.)

§ 10.127 To whom is the decision sent?

A copy of the decision shall be mailed to the employee's last known address. If the employee has a designated representative before OWCP, a copy of the decision should also be mailed to the representative. Notification to either the employee or the representative will be considered notification to both. A copy of the decision will also be sent to the employer.

Subpart C—Continuation of Pay

§ 10.200 What is continuation of pay?

(a) For most employees who sustain a traumatic injury, the FECA provides that the employer must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days. This is called continuation of pay, or COP. The employer, not OWCP, pays COP. Unlike workers' compensation benefits, COP is subject to taxes and all other payroll deductions that are made from regular income.

(b) While the employer must generally continue the pay of an employee entitled to COP, the employer may make certain preliminary determinations regarding an employee's entitlement to COP (including not paying salary under § 10.220 or terminating COP under § 10.221), and may in all circumstances controvert the payment. OWCP has the exclusive authority to finally determine questions of entitlement and all other issues relating to COP.

(c) The FECA excludes certain persons from eligibility for COP. COP cannot be authorized for members of these excluded groups, which include but are not limited to: persons rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay; volunteers (for instance, in the Civil Air Patrol and Peace Corps); Job Corps and Youth Conservation Corps enrollees; individuals in work-study programs, and grand or petit jurors (unless otherwise federal employees).

Eligibility for COP

§ 10.205 What other conditions must be met to receive COP?

(a) To be eligible for COP, a person must:

(1) Have a "traumatic injury" as defined at § 10.5(dd) which is job-related and the cause of the disability;

(2) File Form CA–1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and

(3) Begin losing time from work due to the traumatic injury within 30 days of the injury.

(b) OWCP may find that the employee is not entitled to COP for other reasons consistent with the statute (see § 10.220).

§ 10.206 May an employee who uses leave after an injury later decide to use COP instead?

On Form CA–1, an employee may elect to use accumulated sick or annual leave, or leave advanced by the agency, instead of electing COP. The employee can change the election between leave and COP for prospective periods at any point while eligibility for COP remains. The employee may also change the election for past periods and request COP in lieu of leave already taken for the same period. In either situation, the following provisions apply:

(a) The request must be made to the employer within one year of the date the leave was used or the date of the written approval of the claim by OWCP, whichever is later.

(b) Where the employee is otherwise eligible, the agency shall restore leave taken in lieu of any of the 45 COP days. Where any of the 45 COP days remain unused, the agency shall continue pay prospectively.

(c) The use of leave may not be used to delay or extend the 45-day COP period or to otherwise affect the time limitation as provided by 5 U.S.C. 8117. Therefore, any leave used during the period of eligibility counts towards the 45 day maximum entitlement to COP.

§ 10.207 May an employee who returns to work, then stops work again due to the effects of the injury, receive COP?

If the employee recovers from disability and returns to work, then becomes disabled again and stops work, the employer shall pay any of the 45 days of entitlement to COP not used during the initial period of disability where:

(a) The employee completes Form CA–2a and elects to receive regular pay;

(b) OWCP did not deny the original claim for disability;

(c) The disability recurs and the employee stops work within 30 days of the time the employee first returned to work following the initial period of disability; and

(d) Pay has not been continued for the entire 45 days.

Responsibilities

§ 10.210 What are the employee's responsibilities in COP cases?

An employee who sustains a traumatic injury which he or she considers disabling, or someone authorized to act on his or her behalf, must take the following actions to ensure continuing eligibility for COP. The employee must:

(a) Complete and submit Form CA–1 to the employing agency as soon as possible, but no later than 30 days from the date the traumatic injury occurred.

(b) Ensure that medical evidence supporting disability resulting from the claimed traumatic injury, including a statement as to when the employee can return to his or her date of injury job, is provided to the employer within 10 calendar days after filing the claim for COP.

(c) Ensure that relevant medical evidence is submitted to OWCP, and cooperate with OWCP in developing the claim.

(d) Ensure that the treating physician specifies work restrictions and provides them to the employer and/or representatives of OWCP.

(e) Provide to the treating physician a description of any specific alternative positions offered the employee, and ensure that the treating physician responds promptly to the employer and/or OWCP, with an opinion as to whether and how soon the employer could perform that or any other specific position.

§ 10.211 What are the employer's responsibilities in COP cases?

Once the employer learns of a traumatic injury sustained by an employee, it shall:

(a) Provide a Form CA–1 and Form CA–16 to authorize medical care in accordance with § 10.300. Failure to do so may mean that OWCP will not uphold any termination of COP by the employer.

(b) Advise the employee of the right to receive COP, and the need to elect among COP, annual or sick leave or leave without pay, for any period of disability.

(c) Inform the employee of any decision to controvert COP and/or terminate pay, and the basis for doing so.

(d) Complete Form CA–1 (or other form approved by the Secretary) and return it, along with all other available pertinent information, (including the basis for any controversion), to OWCP within five calendar days after receiving the completed form from the employee.

Calculation of COP

§ 10.215 How does OWCP compute the number of days of COP used?

COP is payable for a maximum of 45 calendar days, and every day used is counted toward this maximum. The following rules apply:

(a) Time lost on the day or shift of the injury does not count toward COP. (Instead, the agency must keep the employee in a pay status for that period);

(b) The first COP day is the first day disability begins following the date of injury (providing it is within the 30 days following the date of injury), except where the injury occurs before the beginning of the work day or shift, in which case the date of injury is charged to COP;

(c) Any part of a day or shift (except for the day of the injury) counts as a full day toward the 45 calendar day total;

(d) Regular days off are included if COP has been used on the regular work days immediately preceding and following the regular day(s) off; and

(e) Leave used during a period when COP is otherwise payable is counted toward the 45 day COP maximum as if the employee had been in a COP status.

§ 10.216 How is the pay rate for COP calculated?

The employer shall calculate COP using the period of time and the weekly pay rate.

(a) The pay rate for COP purposes is equal to the employee's regular "weekly" pay (the average of the weekly pay over the preceding 52 weeks).

(1) The pay rate excludes overtime, but includes applicable premium, Sunday and holiday pay, night and shift differential or other extra pay.

(2) Changes in pay or salary (for example, promotion, demotion, within-grade increases, termination of a temporary detail, etc.) which would have otherwise occurred during the 45-day period are to be reflected in the weekly pay determination.

(b) The weekly pay for COP purposes is determined according to the following formulas:

(1) For full or part-time workers (permanent or temporary) who work the same number of hours each week of the year (or of the appointment), the weekly pay rate is the hourly pay rate (A) in effect on the date of injury multiplied by (×) the number of hours worked each week (B): A × B = Weekly Pay Rate.

(2) For part-time workers (permanent or temporary) who do not work the same number of hours each week, but who do work each week of the year (or period of appointment), the weekly pay rate is an average of the weekly earnings, established by dividing (÷) the total earnings (excluding overtime) from the year immediately preceding the injury (A) by the number of weeks (or part of a week) worked in that year (B): A÷B = Weekly Pay Rate.

(3) For intermittent, seasonal and on-call workers, whether permanent or temporary, who do not work either the same number of hours or every week of the year (or period of appointment), the weekly pay rate is the average weekly earnings established by dividing (÷) the total earnings during the full 12-month period immediately preceding the date of injury (excluding overtime) (A), by the number of weeks (or part of a week) worked during that year (B) (that is, A÷B); or 150 times the average daily wage earned in the employment during the days employed within the full year immediately preceding the date of injury divided by 52 weeks, whichever is greater.

§ 10.217 Is COP charged if the employee continues to work, but in a different job that pays less?

If the employee cannot perform the duties of his or her regular position, but instead works in another job with different duties with no loss in pay, then COP is not chargeable. COP must be paid and the days counted against the 45 days authorized by law whenever an actual reduction of pay results from the injury. This includes work which results in loss of salary or premium (that is, Sunday or night differential) pay authorized for the employee's normal administrative workweek.

Controversion and Termination of COP

§ 10.220 When is an employer not required to pay COP?

An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when:

(a) The disability was not caused by a traumatic injury;

(b) The employee is not a citizen of the United States or Canada;

(c) No written claim was filed within 30 days from the date of injury;

(d) The injury was not reported until after employment has been terminated;

(e) The injury occurred off the premises and was otherwise not within the performance of official duties;

(f) The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or

(g) Work did not stop until more than 30 days following the injury.

§ 10.221 How is a claim for COP controverted?

When the employer stops an employee's pay for one of the reasons in § 10.220, the employer must controvert the claim for COP on Form CA–1, explaining in detail the basis for the refusal. The final determination on entitlement to COP always rests with OWCP.

§ 10.222 When may an employer terminate COP which has already begun?

(a) Where the employer has continued the pay of the employee, it may be stopped only when at least one of the following circumstances is present:

(1) Medical evidence which on its face supports disability due to a work-related injury, is not received within 10 calendar days after the claim is submitted (unless the employer's own investigation shows disability to exist);

(2) The medical evidence from the treating physician shows the individual is not disabled from his or her regular position;

(3) Medical evidence from the treating physician shows that the employee is not totally disabled and the employee refuses a written offer of a suitable alternative position as determined by OWCP;

(4) The employee returns to work with no loss of pay;

(5) The employee's period of employment expires or employment is otherwise terminated (as established prior to the date of injury);

(6) OWCP directs the employer to stop COP; and/or

(7) COP has been paid for 45 calendar days.

(b) An employer may not interrupt or stop COP to which the employee is otherwise entitled because of a disciplinary action, unless a preliminary notice was issued to the employee before the date of injury and the action becomes final or otherwise takes effect during the COP period.

(c) An employer must file a controversion with OWCP, setting forth the basis on which it terminated COP, no later than the effective date of the termination.

§ 10.223 Are there other circumstances under which OWCP will not authorize payment of COP?

When OWCP finds that an employee refuses or obstructs a required medical examination, the right to COP is suspended until the refusal or obstruction ceases. COP already paid or payable for the period of suspension is forfeited. If already paid, the COP may be charged to annual or sick leave or considered an overpayment of pay consistent with 5 U.S.C. 5584.

§ 10.224 What happens if OWCP finds that the employee is not entitled to COP after it has been paid?

Where OWCP finds that the employee is not entitled to COP after it has been paid, the employee may chose to have the time charged to annual or sick leave, or considered an overpayment of pay under 5 U.S.C. 5584. The employer must correct any deficiencies in COP as directed by OWCP.

Subpart D—Medical and Related Benefits

Emergency Medical Care

§ 10.300 What are the basic rules for authorizing emergency medical care?

(a) When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment, or both, the employer shall authorize such examination and/or treatment by issuing a Form CA–16. This form may be used for occupational disease or illness only if the employer has obtained prior permission from OWCP.

(b) The employer shall issue Form CA–16 within four hours of the claimed injury. If the employer gives verbal authorization for such care, he or she should issue a Form CA–16 within 48 hours. The employer is not required to issue a Form CA–16 more than one week after the occurrence of the claimed injury. The employer may not authorize examination or medical or other treatment in any case that OWCP has disallowed.

(c) Form CA–16 must contain the full name and address of the qualified physician or qualified medical facility authorized to provide service. The authorizing official must sign and date

the form and must state his or her title. Form CA–16 authorizes treatment for 60 days from the date of issuance, unless OWCP terminates the authorization sooner.

(d) The employee has an initial choice of physician. The employer shall allow the employee to select a qualified physician, after advising him or her of those physicians excluded under subpart I of this part. The physician may be in private practice, including a health maintenance organization (HMO), or employed by a federal agency such as the Department of the Army, Navy, Air Force, or Veterans Affairs. Any qualified physician may provide initial treatment of a work-related injury in an emergency. See also § 10.825(b).

§ 10.301 May the physician designated on Form CA–16 refer the employee to another medical specialist or medical facility?

The physician designated on Form CA–16 may refer the employee for further examination, testing, or medical care. OWCP will pay this physician or facility's bill on the authority of Form CA–16. The employer should not issue a second Form CA–16.

§ 10.302 Should the employer authorize medical care if he or she doubts that the injury occurred, or that it is work-related?

If the employer doubts that the injury occurred, or that it is work-related, he or she should authorize medical care by completing Form CA–16 and checking block 6B of the form. If the medical and factual evidence sent to OWCP shows that the condition treated is not work-related, OWCP will notify the employee, the employer, and the physician or hospital that OWCP will not authorize payment for any further treatment.

§ 10.303 Should the employer use a Form CA–16 to authorize medical testing when an employee is exposed to a workplace hazard just once?

(a) Simple exposure to a workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under the FECA. The employer therefore should not use a Form CA–16 to authorize medical testing for an employee who has merely been exposed to a workplace hazard, unless the employee has sustained an identifiable injury or medical condition as a result of that exposure. OWCP will authorize preventive treatment only under certain well-defined circumstances (see § 10.313).

(b) Employers may be required under other statutes or regulations to provide their employees with medical testing and/or other services in situations described in paragraph (a) of this section. For example, regulations issued by the Occupational Safety and Health Administration at Chapter XVII of Title 29 of the Code of Federal Regulations require employers to provide their employees with medical consultations and/or examinations when they either exhibit symptoms consistent with exposure to a workplace hazard, or when an identifiable event such as a spill, leak or explosion occurs and results in the likelihood of exposure to a workplace hazard. In addition, 5 U.S.C. 7901 authorizes employers to establish health programs whose staff can perform tests for workplace hazards, counsel employees for exposure or feared exposure to such hazards, and provide health care screening and other associated services.

§ 10.304 Are there any exceptions to these procedures?

In cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

Medical Treatment and Related Issues

§ 10.310 What are the basic rules for obtaining medical care?

(a) The employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury. The employee need not be disabled to receive such treatment. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the work-related injury, the employee should consult OWCP prior to obtaining it.

(b) Any qualified physician or qualified hospital may provide such services, appliances and supplies. A qualified provider of medical support services may also furnish appropriate services, appliances, and supplies. OWCP may apply a test of cost-effectiveness to appliances and supplies. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.

§ 10.311 What are the special rules for the services of chiropractors?

(a) The services of chiropractors that may be reimbursed are limited by the FECA to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.

(b) In accordance with 5 U.S.C. 8101(3), a diagnosis of spinal "subluxation as demonstrated by X-ray to exist" must appear in the chiropractor's report before OWCP can consider payment of a chiropractor's bill.

(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request.

(d) A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.

§ 10.312 What are the special rules for the services of clinical psychologists?

A clinical psychologist may serve as a physician only within the scope of his or her practice as defined by state law. Therefore, a clinical psychologist may not serve as a physician for conditions that include an organic component unless the applicable state law allows clinical psychologists to treat organic conditions. A clinical psychologist may also perform testing, evaluation and other services under the direction of a qualified physician.

§ 10.313 Will OWCP pay for preventive treatment?

The FECA does not authorize payment for preventive measures such as vaccines and inoculations, and in general, preventive treatment may be a responsibility of the employing agency under the provisions of 5 U.S.C. 7901 (see § 10.303). However, OWCP can authorize treatment for the following conditions, even though such treatment is designed, in part, to prevent further injury:

(a) Complications of preventive measures which are provided or sponsored by the agency, such as an adverse reaction to prophylactic immunization.

(b) Actual or probable exposure to a known contaminant due to an injury, thereby requiring disease-specific measures against infection. Examples include the provision of tetanus antitoxin or booster toxoid injections for puncture wounds; administration of rabies vaccine for a bite from a rabid or potentially rabid animal; or appropriate measures where exposure to human immunodeficiency virus (HIV) has occurred.

(c) Conversion of tuberculin reaction from negative to positive following exposure to tuberculosis in the performance of duty. In this situation, the appropriate therapy may be authorized.

(d) Where injury to one eye has resulted in loss of vision, periodic examination of the uninjured eye to detect possible sympathetic involvement of the uninjured eye at an early stage.

§ 10.314 Will OWCP pay for the services of an attendant?

Yes, the OWCP will pay for the services of an attendant up to a maximum of $1,500 per month, where the need for such services has been medically documented. In the exercise of the discretion afforded by 5 U.S.C. 8111(a), the Director has determined that, except where payments were being made prior to [insert the effective date of the final rule], direct payments to the claimant to cover such services will no longer be made. Rather, the cost of providing attendant services will be paid under section 8103 of the Act. This decision is based on the following factors:

(a) The additional payments authorized under section 8111(a) should not be necessary since OWCP will authorize payment for personal care services under 5 U.S.C. 8103, whether or not such care includes medical services, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual.

(b) A home health aide, licensed practical nurse, or similarly trained individual is better able to provide quality personal care including assistance in feeding, bathing, and using the toilet. In the past, provision of supplemental compensation directly to injured employees may have encouraged family members to take on these responsibilities even though they may not have been trained to provide such services. By paying for the services under section 8103, OWCP can better determine whether the services provided are necessary and/or adequate to meet the needs of the injured employee. In addition, a system requiring the personal care provider to submit a bill to OWCP will result in greater fiscal accountability as the amount billed will be subject to OWCP's fee schedule.

§ 10.315 Will OWCP pay for transportation to obtain medical treatment?

The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, 25 miles from the place of injury, the work site, or the employee's home, is considered a reasonable distance to travel. The standard form designated for federal employees to claim travel expenses should be used to seek reimbursement under this section.

§ 10.316 After selecting a treating physician, may an employee choose to be treated by another physician instead?

(a) When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work-related one, or the need for a new physician when an employee has moved. The employer may not authorize a change of physicians.

Directed Medical Examinations

§ 10.320 Can OWCP require an employee to be examined by another doctor?

OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. The employee may have a qualified physician, paid by him or her, present at such examination. However, the employee is not entitled to have anyone else present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, OWCP may send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

§ 10.321 What happens if the physician selected by OWCP does not agree with the physician selected by the employee?

If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination (see 5 U.S.C. 8123(a)). This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. The employee is not entitled to have anyone present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, a case file may be sent for referee medical review where there is no need for an actual examination, or where the employee is deceased.

§ 10.322 Who pays for second opinion and referee examinations?

OWCP will pay second opinion and referee medical specialists directly. OWCP will reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages lost for the time needed to submit to an examination required by OWCP.

§ 10.323 What are the consequences of failing to report for or obstructing a second opinion or referee examination?

If an employee refuses to submit to or in any way obstructs an examination required by OWCP, his or her right to compensation under the FECA is suspended until such refusal or obstruction stops. The action of the employee's representative is considered to be the action of the employee for purposes of this section. The employee will forfeit compensation otherwise paid or payable under the FECA for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. 8129.

§ 10.324 May an employer require an employee to undergo a physical examination in connection with a work-related injury?

The employer may have authority independent of the FECA to require the employee to undergo a medical examination to determine whether he or she meets the medical requirements of the position held or can perform the duties of that position. Nothing in the FECA or in this part affects such authority. However, no agency-required examination or related activity shall interfere with the employee's initial choice of physician or the provision of any authorized examination or treatment, including the issuance of Form CA–16.

Medical Reports

§ 10.330 What are the requirements for medical reports?

In all cases reported to OWCP, a medical report from the attending physician is required. This report should include:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found but not due to the claimed injury;

(h) The treatment given or recommended for the claimed injury;

(i) The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;

(j) The extent of disability affecting the employee's ability to work due to the injury;

(k) The prognosis for recovery; and

(l) All other material findings.

§ 10.331 How and when should the medical report be submitted?

(a) Form CA–16 may be used for the initial medical report; Form CA–20 may be used for the initial report and for subsequent reports; and Form CA–20a may be used where continued compensation is claimed. Use of medical report forms is not required, however. The report may also be made in narrative form on the physician's letterhead stationery. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician. (See also § 10.210.) The employer may request a copy of the report from OWCP. The employer should use Form CA–17 to obtain interim reports concerning the duty status of an employee with a disabling traumatic injury.

§ 10.332 What additional medical information will OWCP require to support continuing payment of benefits?

In all cases of serious injury or disease, especially those requiring hospital treatment or prolonged care, OWCP will request detailed narrative reports from the attending physician at periodic intervals. The physician will be asked to describe continuing medical treatment for the condition accepted by OWCP, a prognosis, a description of work limitations, if any, and the physician's opinion as to the continuing causal relationship between the employee's condition and factors of his or her federal employment.

§ 10.333 What additional medical information will OWCP require to support a claim for a schedule award?

To support a claim for a schedule award, a medical report must contain accurate measurements of the function of the organ or member. These measurements may include: the actual degree of loss of active or passive motion or deformity; the amount of atrophy; the decrease, if any, in strength; the disturbance of sensation; and pain due to nerve impairment.

Medical Bills

§ 10.335 How are medical bills submitted?

Usually, medical providers submit bills directly to OWCP. The rules for submitting and paying bills are stated in subpart I of this part. An employee claiming reimbursement of medical expenses should submit an itemized bill as described in § 10.802.

§ 10.336 What are the time frames for submitting bills?

To be considered for payment, bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when OWCP first accepted the claim as compensable, whichever is later.

§ 10.337 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?

(a) The OWCP fee schedule sets maximum limits on the amounts payable for many services (see § 10.805). The employee may be only partially reimbursed for medical expenses because the amount he or she paid to the medical provider for a service exceeds the maximum allowable charge set by the OWCP fee schedule.

(b) If this happens, OWCP shall advise the provider of the maximum allowable charge for the service in question and ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as provided by § 10.812.

(c) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge which OWCP allows, OWCP may make reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

Subpart E—Compensation and Related Benefits

Compensation for Disability and Impairment

§ 10.400 What is total disability?

(a) Permanent total disability is presumed to result from the loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes. However, the presumption of permanent total disability as a result of such loss may be rebutted by evidence to the contrary, such as evidence of continued ability to work and to earn wages despite the loss.

(b) Temporary total disability is defined as the inability to return to the position held at the time of injury or earn equivalent wages, or to perform other gainful employment, due to the work-related injury. Except as presumed under paragraph (a) of this section, an employee's disability status is always considered temporary pending return to work.

§ 10.401 When and how is compensation for total disability payable?

(a) Compensation is payable when the employee starts to lose pay if the injury causes permanent disability or if pay loss continues for more than 14 days. Otherwise, compensation is payable on the fourth day after pay stops. Compensation may not be paid while an injured employee is in a continuation of pay status or receives pay for leave.

(b) Compensation for total disability is payable at the rate of 66⅔ percent of the pay rate if the employee has no dependents, or 75 percent of the pay rate if the employee has at least one dependent.

§ 10.402 What is partial disability?

An injured employee who cannot return to the position held at the time of injury (or earn equivalent wages) due to the work-related injury, but who is not totally disabled for all gainful employment, is considered to be partially disabled.

§ 10.403 When and how is compensation for partial disability paid?

(a) 5 U.S.C. 8115 outlines how compensation for partial disability is determined. If the employee has actual earnings which fairly and reasonably represent his or her wage-earning capacity, those earnings may form the basis for payment of compensation for partial disability. If the employee's actual earnings do not fairly and reasonably represent his or her wage-earning capacity, or if the employee has no actual earnings, OWCP uses the factors stated in 5 U.S.C. 8115 to select a position which represents his or her wage-earning capacity. However, OWCP will not secure employment for the employee in the position selected for establishing a wage-earning capacity.

(b) Compensation for partial disability is payable as a percentage of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. The percentage is 66⅔ percent of this difference if the employee has no dependents, or 75 percent of this difference if the employee has at least one dependent.

(c) The formula which OWCP uses to compute the compensation payable for partial disability employs the following terms: pay rate for compensation purposes, which is defined in § 10.5(s) of this part; current pay rate, which means the salary or wages for the job held at the time of injury at the time of the determination; and earnings, which means the employee's actual earnings, or the salary or pay rate of the position selected by OWCP as representing the employee's wage-earning capacity.

(d) The employee's wage-earning capacity in terms of percentage is computed by dividing the employee's earnings by the current pay rate. The comparison of earnings and "current" pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. OWCP may use any convenient date for making the comparison as long as both wage rates are in effect on the date used for comparison.

(e) The employee's wage-earning capacity in terms of dollars is computed by first multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity.

§ 10.404 When and how is compensation for a schedule impairment paid?

Compensation is provided for specified periods of time for the permanent loss or loss of use of certain members, organs and functions of the body. Such loss or loss of use is known as permanent impairment. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. OWCP evaluates the degree of impairment to schedule members, organs and functions as defined in 5 U.S.C. 8107 according to the standards set forth in the specified (by OWCP) edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* available from the Order Department, OP–025493, American Medical Association, P.O. Box 109050, Chicago, Illinois, 60610.

(a) 5 U.S.C. 8107(c) provides a list of schedule members. Pursuant to the authority provided by 5 U.S.C. 8107(c)(22), the Secretary has added the following organs to the compensation schedule for injuries that were sustained on or after September 7, 1974:

Member	Weeks
Breast (one)	52
Kidney (one)	156
Larynx	160
Lung (one)	156
Penis	205
Testicle (one)	52
Tongue	160
Ovary (one)	52
Uterus/cervix and vulva/vagina	205

(b) Compensation for schedule awards is payable at 66⅔ percent of the employee's pay, or 75 percent of the pay when the employee has at least one dependent.

(c) The period of compensation payable under 5 U.S.C. 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if:

(1) Compensation in both cases is for impairment of the same member or function or different parts of the same member or function, or for disfigurement; and

(2) OWCP finds that compensation payable for the later impairment in whole or in part would duplicate the compensation payable for the pre-existing impairment.

(d) Compensation not to exceed $3,500 may be paid for serious disfigurement of the face, head or neck which is likely to handicap a person in securing or maintaining employment.

§ 10.405 Who is considered a dependent in a claim based on disability or impairment?

(a) Dependents include a wife or husband; an unmarried child under 18 years of age; an unmarried child over 18 who is incapable of self-support; a student, until he or she reaches 23 years of age or completes four years of school beyond the high school level; or a wholly dependent parent.

(b) Augmented compensation payable for an unmarried child, which would otherwise terminate when the child reached the age of 18, may be continued while the child is a student as defined in 5 U.S.C. 8101(17).

§ 10.406 What are the maximum and minimum rates of compensation in disability cases?

(a) Compensation for total or partial disability may not exceed 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule. (Basic monthly pay does not include locality adjustments.) However, this limit does not apply to disability sustained in the performance of duty which was due to an assault which occurred during an attempted assassination of a federal official described under 10 U.S.C. 351(a) or 1751(a).

(b) Compensation for total disability may not be less than 75 percent of the basic monthly pay of the first step of grade 2 of the General Schedule or actual pay, whichever is less. (Basic monthly pay does not include locality adjustments.)

Compensation for Death

§ 10.410 What are the rates of compensation payable in death cases?

The rates of compensation payable in death cases are stated in 5 U.S.C. 8133.

§ 10.411 What are the maximum and minimum rates of compensation in death cases?

(a) Compensation for death may not exceed the employee's pay or 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule, except that compensation may exceed the employee's basic monthly pay if such excess is created by authorized cost-of-living increases. (Basic monthly pay does not include locality adjustments.) However, the maximum limit does not apply when the death occurred during an assassination of a federal official described under 18 U.S.C. 351(a) or 18 U.S.C. 1751(a).

(b) Compensation for death is computed on a minimum pay rate equal to the basic monthly pay of an employee at the first step of grade 2 of the General Schedule. (Basic monthly pay does not include locality adjustments.)

§ 10.412 Will OWCP pay the costs of burial and transportation of the remains?

In a case accepted for death benefits, OWCP will pay up to $800 for funeral and burial expenses. When an employee's home is within the U.S. and the employee dies outside the U.S., or away from home or the official duty station, an additional amount may be paid for transporting the remains to the employee's home. An additional amount of $200 is paid to the personal representative of the decedent for reimbursement of the costs of

terminating the decedent's status as an employee of the United States.

§ 10.413 If a person dies while receiving a schedule award, to whom is the balance of the schedule award payable?

The circumstances under which the balance of a schedule award may be paid to an employee's survivors are described in 5 U.S.C. 8109. Therefore, if there is no surviving spouse or child, OWCP will pay benefits as follows:

(a) To the parent, or parents, wholly dependent for support on the decedent in equal shares with any wholly dependent brother, sister, grandparent or grandchild;

(b) To the parent, or parents, partially dependent for support on the decedent in equal shares when there are no wholly dependent brothers, sisters, grandparents or grandchildren (or other wholly dependent parent); and

(c) To the parent, or parents, partially dependent upon the decedent, 25 percent of the amount payable, shared equally, and the remaining 75 percent to any wholly dependent brother, sister, grandparent or grandchild (or wholly dependent parent), share and share alike.

§ 10.414 What reports of dependents are needed in death cases?

If a beneficiary is receiving compensation benefits on account of an employee's death, OWCP will ask him or her to complete a report once each year on Form CA–12. The report requires the beneficiary to note changes in marital status and dependents. If the beneficiary fails to submit the form (or an equivalent written statement) within 30 days of the date of request, OWCP shall suspend compensation until the requested form or equivalent written statement is received. The suspension will include compensation payable for or on behalf of another person (for example, compensation payable to a widow on behalf of a child). When the form or statement is received, compensation will be reinstated at the appropriate rate retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

§ 10.415 What must a beneficiary do if the number of beneficiaries decreases?

The circumstances under which compensation on account of death shall be terminated are described in 5 U.S.C. 8133(b). A beneficiary in a claim for death benefits should promptly notify OWCP of any event which would affect his or her entitlement to continued compensation. The terms "marriage" and "remarriage" include common-law marriage as recognized and defined by state law in the state where the beneficiary resides. If a beneficiary, or someone acting on his or her behalf, receives a check which includes payment of compensation for any period after the date when entitlement ended, he or she must promptly return the check to OWCP.

§ 10.416 How does a change in the number of beneficiaries affect the amount of compensation paid to the other beneficiaries?

If compensation to a beneficiary is terminated, the amount of compensation payable to one or more of the remaining beneficiaries may be reapportioned. Similarly, the birth of a posthumous child may result in a reapportionment of the amount of compensation payable to other beneficiaries. The parent, or someone acting on the child's behalf, shall promptly notify OWCP of the birth and submit a copy of the birth certificate.

§ 10.417 What reports are needed when compensation payments continue for children over age 18?

(a) Compensation payable on behalf of a child, brother, sister, or grandchild, which would otherwise end when the person reaches 18 years of age, shall be continued if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least twice each year, OWCP will ask a beneficiary receiving compensation based on the student status of a dependent to provide proof of continuing entitlement to such compensation, including certification of school enrollment.

(c) Likewise, at least twice each year, OWCP will ask a beneficiary or legal guardian receiving compensation based on a dependent's physical or mental inability to support himself or herself to submit a medical report verifying that the dependent's medical condition persists and that it continues to preclude self-support.

Adjustments to Compensation

§ 10.420 How are cost-of-living adjustments applied?

(a) In cases of disability, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146(a) where injury-related disability began more than one year prior to the date the cost-of-living adjustment took effect. The employee's use of continuation of pay as provided by 5 U.S.C. 8118, or of sick or annual leave, during any part of the period of disability does not affect the computation of the one-year period.

(b) Where an injury does not result in disability but compensation is payable for permanent impairment of a covered member, organ or function of the body, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146(a) where the award for such impairment began more than one year prior to the date the cost-of-living adjustment took effect.

(c) In cases of recurrence of disability, where the pay rate for compensation purposes is the pay rate at the time disability recurs, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146(a) where the effective date of that pay rate began more than one year prior to the date the cost-of living adjustment took effect.

(d) In cases of death, entitlement to cost-of-living adjustments under 5 U.S.C. 8146(a) begins with the first such adjustment occurring more than one year after the date of death. However, if the death was preceded by a period of injury-related disability, compensation payable to the survivors will be increased by the same percentages as the cost-of-living adjustments paid or payable to the deceased employee for the period of disability, as well as by subsequent cost-of-living adjustments to which the survivors would otherwise be entitled.

§ 10.421 May a beneficiary receive other kinds of payments from the federal government concurrently with compensation?

(a) 5 U.S.C. 8116(a) provides that a beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity. The beneficiary must elect the benefit that he or she wishes to receive, and the election, once made, is revocable.

(b) An employee may receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with 5 U.S.C. 5532(b).

(c) An employee may not receive compensation for total disability concurrently with severance pay or separation pay. However, an employee may concurrently receive compensation for partial disability or permanent impairment to a schedule member with severance pay or separation pay.

(d) Pursuant to 5 U.S.C. 8116(d), a beneficiary may receive compensation under the FECA for either the death or disability of an employee concurrently with benefits under title II of the Social Security Act on account of the age or death of such employee. However, this provision of the FECA also requires OWCP to reduce the amount of any such compensation by the amount of any Social Security Act benefits that are attributable to the federal service of the employee.

(e) To determine the employee's entitlement to compensation, OWCP may require an employee to submit an affidavit or statement as to the receipt of any federally funded or federally assisted benefits. If an employee fails to submit such affidavit or statement within 30 days of the date of the request, his or her right to compensation shall be suspended until such time as the requested affidavit or report is received. At that time compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such compensation.

§ 10.422 May compensation payments be issued in a lump sum?

(a) In exercise of the discretion afforded under 5 U.S.C. 8135(a), OWCP has determined that lump-sum payments will not be made to persons entitled to wage-loss benefits (that is, those payable under 5 U.S.C. 8105 and 8106). Therefore, when OWCP receives requests for lump-sum payments for wage-loss benefits, OWCP will not exercise further discretion in the matter. This determination is based on several factors, including:

(1) The purpose of the FECA, which is to replace lost wages;

(2) The prudence of providing wage-loss benefits on a regular, recurring basis; and

(3) The high cost of the long-term borrowing that is needed to pay out large lump sums.

(b) However, a lump sum payment may be made to an employee entitled to a schedule award under 5 U.S.C. 8107 where OWCP determines that such a payment is in the employee's best interest. Lump-sum payments of schedule awards generally will be considered in the employee's best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or is receiving annuity payments). An employee possesses no absolute right to a lump-sum payment of benefits payable under 5 U.S.C. 8107.

(c) Lump-sum payments to surviving spouses are addressed in 5 U.S.C. 8135(b).

§ 10.423 May compensation payments be assigned to, or attached by, creditors?

(a) As a general rule, compensation and claims for compensation are exempt from the claims of private creditors. This rule does not apply to claims submitted by federal agencies. Further, any attempt by a FECA beneficiary to assign his or her claim is null and void. However, pursuant to provisions of the Social Security Act, 42 U.S.C. 659, and regulations issued by the Office of Personnel Management (OPM) at 5 CFR part 581, FECA benefits, including survivor's benefits, may be garnished to collect overdue alimony and child support payments.

(b) Garnishment for child support and alimony may be requested by providing a copy of the state agency or court order to the district office handling the FECA claim.

§ 10.424 May someone other than the beneficiary be designated to receive compensation payments?

A beneficiary may be incapable of managing or directing the management of his or her benefits because of a mental or physical disability, or because of legal incompetence, or because he or she is under 18 years of age. In this situation, absent the appointment of a guardian or other party to manage the financial affairs of the claimant by a court or administrative body authorized to do so, OWCP in its sole discretion may approve a person to serve as the representative payee for funds due the beneficiary.

Overpayments

§ 10.430 How does OWCP notify an individual of a payment made?

(a) In addition to providing narrative descriptions to recipients of benefits paid or payable, OWCP includes on each periodic check an indication of the period for which payment is being made. A form is sent to the recipient with each supplemental check which states the date and amount of the payment and the period for which payment is being made. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

§ 10.431 What does OWCP do when an overpayment is identified?

Before seeking to recover an overpayment or adjust benefits, OWCP will advise the beneficiary in writing that:

(a) The overpayment exists, and the amount of overpayment;

(b) A preliminary finding shows either that the individual was or was not at fault in the creation of the overpayment;

(c) He or she has the right to inspect and copy Government records relating to the overpayment; and

(d) He or she has the right to present evidence which challenges the fact or amount of the overpayment, and/or challenges the preliminary finding that he or she was at fault in the creation of the overpayment. He or she may also request that recovery of the overpayment be waived.

§ 10.432 How can an individual present evidence to OWCP in response to a preliminary notice of an overpayment?

The individual may present this evidence to OWCP in writing or at a pre-recoupment hearing. The evidence must be presented or the hearing requested within 30 days of the date of the written notice of overpayment. Failure to request the hearing within this 30-day time period shall constitute a waiver of that right.

§ 10.433 Under what circumstances can OWCP waive recovery of an overpayment?

(a) OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

(2) Failed to provide information which he or she knew or should have known to be material; or

(3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual.)

(b) Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the

individual's capacity to realize that he or she is being overpaid.

§ 10.434 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the FECA (see § 10.436), or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience (see § 10.437).

§ 10.435 Is an individual responsible for an overpayment that resulted from an error by OWCP or another government agency?

(a) The fact that OWCP may have erred in making the overpayment, or that the overpayment may have resulted from an error by another Government agency, does not by itself relieve the individual who received the overpayment from liability for repayment if the individual also was at fault in accepting the overpayment.

(b) However, OWCP may find that the individual was not at fault if failure to report an event affecting compensation benefits, or acceptance of an incorrect payment, occurred because:

(1) The individual relied on misinformation given in writing by OWCP (or by another governmental agency which he or she had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the FECA or its regulations; or

(2) OWCP erred in calculating cost-of-living increases, schedule award length and/or percentage of impairment, or loss of wage-earning capacity.

§ 10.436 Under what circumstances would recovery of an overpayment defeat the purpose of the FECA?

Recovery of an overpayment will defeat the purpose of the FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because:

(a) The beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

(b) The beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.

§ 10.437 Under what circumstances would recovery of an overpayment be against equity and good conscience?

(a) Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

(b) Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. In making such a decision, OWCP does not consider the individual's current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss.

§ 10.438 Can OWCP require the individual who received the overpayment to submit additional financial information?

(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the FECA, or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.

§ 10.439 May other issues be addressed at the pre-recoupment hearing?

At the pre-recoupment hearing, the OWCP representative will consider all issues in the claim on which a formal decision has been issued. The hearing will thus fulfill OWCP's obligation to provide pre-recoupment rights and a hearing under 5 U.S.C. 8124(b). Pre-recoupment hearings shall be conducted in exactly the same manner as provided in § 10.615 through § 10.622.

§ 10.440 How does OWCP communicate its final decision concerning recovery of an overpayment, and what appeal right accompanies it?

(a) OWCP will send a copy of the final decision to the individual from whom recovery is sought; his or her representative, if any; and the employing agency.

(b) The only review of a final decision concerning an overpayment is to the Employees' Compensation Appeals Board. The provisions of 5 U.S.C. 8124(b) (concerning hearings) and 5 U.S.C. 8128(a) (concerning reconsiderations) do not apply to such a decision.

§ 10.441 How are overpayments collected?

(a) When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship. Should the individual die before collection has been completed, collection shall be made by decreasing later payments, if any, payable under the FECA with respect to the individual's death.

(b) When an overpayment has been made to an individual who is not entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. The overpayment is subject to the provisions of the Debt Collection Act of 1982 and may be reported to the Internal Revenue Service as income. If the individual fails to make such refund, OWCP may recover the same through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

Subpart F—Continuing Entitlement to Benefits

§ 10.500 What are the basic rules governing continuing receipt of compensation benefits?

OWCP's goal is to return each disabled employee to suitable work as soon as medically able. "Suitable work" is defined as employment which is: appropriate to the nature of the injury; the degree of physical impairment; the employee's usual work; the employee's age; the employee's qualifications for other work; and the availability of the work.

(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. Payment of medical benefits is available for all treatment necessary due to a work-related medical condition. The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.

(1) To support payment of continuing compensation, narrative medical evidence must be submitted whenever OWCP requests it but not less than once a year. It must contain a physician's rationalized opinion as to whether the specific period of alleged disability is causally related to the employee's accepted injury or illness.

(2) The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty and must include objective findings in support of its conclusions. Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation. Likewise, medical restrictions based solely on the fear of a possible future injury are also not sufficient to support payment of continuing compensation. See § 10.330 for a fuller discussion of medical evidence.

(b) OWCP may require any kind of non-invasive testing to determine the employee's functional capacity. In addition, OWCP may direct the employee to undergo a second opinion or referee examination in any case it deems appropriate (see §§ 10.320 and 10.321).

(c) In considering the medical and factual evidence, OWCP will weigh the probative value of the attending physician's report, any second opinion physician's report, any other medical reports, or any other evidence in the file. If OWCP determines that the medical evidence supporting one conclusion is more consistent, logical, and well-reasoned than evidence supporting a contrary conclusion, OWCP will use the conclusion that is supported by the weight of the medical evidence as the basis for awarding or denying further benefits. If medical reports that are equally well-reasoned support inconsistent determinations of an issue under consideration, OWCP will direct the employee to undergo a referee examination to resolve the issue. The results of the referee examination will be given special weight in determining the issue.

(d) Once OWCP has advised the employee that it has accepted a claim and has either approved continuation of pay or paid medical benefits or compensation, benefits will not be terminated or reduced unless the weight of the evidence establishes that:

(1) The disability for which compensation was paid has ceased;

(2) The disabling condition is no longer causally related to the employment;

(3) The employee is only partially disabled;

(4) The employee has returned to work;

(5) The beneficiary was convicted of fraud in connection with a claim under the FECA, or the beneficiary was incarcerated based on any felony conviction; or

(6) OWCP's initial decision was in error.

Return to Work—Employer's Responsibilities

§ 10.505 What actions must the employer take?

Upon authorizing medical care, the employer should advise the employee in writing as soon as possible of his or her obligation to return to work under § 10.210 and as defined in this subpart. The term "return to work" as used in this subpart is not limited to returning to work at the employee's normal worksite or usual position, but may include returning to work at other locations and in other positions. In general, the employer should make all reasonable efforts to place the employee in his or her former or an equivalent position, in accordance with 5 U.S.C. 8151(b)(2), if the employee has fully recovered within one year. The Office of Personnel Management (not OWCP) administers this provision.

(a) Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee of the specific duties and physical requirements of those positions.

(b) Where the employer has no specific alternative positions available for an employee who can perform restricted or limited duties, the employer should advise the employee of any accommodations the agency can make to accommodate the employee's limitations due to the injury.

(c) The employer must make any job offer in writing. The offer must include a description of the duties of the position, the physical requirements of those duties, and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer. The employer must send a complete copy of any job offer to OWCP when it is sent to the employee.

§ 10.506 May the employer monitor the employee's medical care?

The employer may monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA–17 is provided for this purpose. To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

§ 10.507 How should the employer make an offer of suitable work?

Where the attending physician or OWCP notifies the employer in writing that the employee is partially disabled (that is, the employee can perform some work but not return to the position held at date of injury), the employer should act as follows:

(a) If the employee can perform in a specific alternative position available in the agency, and the employer has advised the employee of the specific duties and physical requirements, the employer should notify the employee immediately of the date of availability.

(b) If the employee can perform restricted or limited duties, the employer should determine whether such duties are available or whether an existing job can be modified. If so, the employer shall advise the employee of the duties, their physical requirements and availability.

§ 10.508 May relocation expenses be paid for an employee who would need to move to accept an offer of reemployment?

If possible, the employer should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may

offer suitable reemployment at the employee's former duty station or other location. Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, OWCP may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the agency's employment rolls and would incur relocation expenses by accepting the offered reemployment. OWCP may also pay such relocation expenses when the new employer is other than a federal employer. To determine whether a relocation expense is reasonable and necessary, OWCP shall use as a guide the federal travel regulations for permanent changes of duty station.

§ 10.509 If an employee's light-duty job is eliminated due to downsizing, what is the effect on compensation?

(a) In general, an employee will not be considered to have experienced a compensable recurrence of disability as defined in § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing. When this occurs, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in such light-duty position if this determination is appropriate on the basis that such earnings fairly and reasonably represent the employee's wage-earning capacity and such a determination has not already been made.

(b) For the purposes of this section only, a "light-duty position" means a classified position that conforms to the established physical restrictions of the injured employee and for which the employer has already prepared a written position description such that the position constitutes "regular" federal employment. In the absence of a "light duty position" as described in this paragraph, OWCP will assume that the employee was instead engaged in non-competitive employment which does not represent the employee's wage-earning capacity, i.e., work of the type provided to injured employees who cannot otherwise be employed by the federal government or in any well-known branch of the general labor market.

Return to Work—Employee's Responsibilities

§ 10.515 What actions must the employee take?

(a) If an employee can resume regular federal employment because total disability has ceased, he or she must do so. No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) If an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury, but has recovered enough to perform some type of work, he or she must accept suitable work. (See § 10.500 for a definition of "suitable work".) This work may be with the original employer or through job placement efforts made by or on behalf of OWCP.

(c) If the employer has advised an employee in writing that specific alternative positions exist within the agency, the employee shall provide the description and physical requirements of such alternate positions to the attending physician and ask whether and when he or she will be able to perform such duties.

(d) If the employer has advised an employee that it is willing to accommodate his or her work limitations, the employee shall so advise the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations.

(e) From time to time, OWCP may require the employee to report his or her efforts to obtain suitable employment, whether with the federal government, state and local governments, or in the private sector.

§ 10.516 How will an employee know if OWCP considers a job to be suitable?

OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability. If the employee presents such reasons, and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in time, OWCP's notification need not state the reasons for finding that the employee's reasons are not acceptable.

§ 10.517 What are the penalties for refusing to accept a suitable job offer?

(a) 5 U.S.C. 8106(c) provides that a partially disabled employee who refuses to seek suitable work, or refuses to or neglects to work after suitable work is offered to or arranged for him or her, is not entitled to compensation. An employee who refuses or neglects to work after suitable work has been offered or secured for him or her has the burden to show that this refusal or failure to work was reasonable or justified.

(b) After providing the two notices described in § 10.516, OWCP will terminate the employee's entitlement to further compensation under 5 U.S.C. 8105, 8106, and 8107, as provided by 5 U.S.C. 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. 8103.

§ 10.518 Does OWCP provide services to help employees return to work?

(a) OWCP may, in its discretion, provide vocational rehabilitation services as authorized by 5 U.S.C. 8104. These services include assistance from registered nurses working under the direction of OWCP. Among other things, these nurses visit the worksite, ensure that the duties of the position do not exceed the medical limitations as represented by the weight of medical evidence established by OWCP, and address any problems the employee may have in adjusting to the work setting. The nurses do not evaluate medical evidence; OWCP claims staff perform this function.

(b) Vocational rehabilitation services may also include vocational evaluation, testing, training, and placement services with either the original employer or a new employer, when the injured employee cannot return to the job held at the time of injury. These services also include functional capacity evaluations, which help to tailor individual rehabilitation programs to employees' physical reconditioning and behavioral modification needs, and help employees to meet the demands of current or potential jobs.

§ 10.519 What action will OWCP take if an employee refuses to undergo vocational rehabilitation?

Under 5 U.S.C. 8104(a), OWCP may direct a permanently disabled employee to undergo vocational rehabilitation. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, OWCP will act as follows:

(a) Where a suitable job has been identified, OWCP will reduce the employee's future monetary compensation based on the amount which would likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation. OWCP will determine this amount in accordance with the job identified through the vocational rehabilitation planning process, which includes meetings with the OWCP nurse and the employer. The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early but necessary stages of a vocational rehabilitation effort (that is, meetings with the OWCP nurse, interviews, testing, counseling, functional capacity evaluations, and work evaluations), OWCP cannot determine what would have been the employee's wage-earning capacity.

(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, OWCP will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and OWCP will reduce the employee's monetary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

§ 10.520 How does OWCP determine compensation after an employee completes a vocational rehabilitation program?

After completion of a vocational rehabilitation program, OWCP may adjust compensation to reflect the injured worker's wage-earning capacity. Actual earnings will be used if they fairly and reasonably reflect the earning capacity. The position determined to be the goal of a training plan is assumed to represent the employee's earning capacity if it is suitable and performed in sufficient numbers so as to be reasonably available, whether or not the employee is placed in such a position.

Reports of Earnings From Employment and Self-Employment

§ 10.525 What information must the employee report?

(a) An employee who is receiving compensation for partial or total disability must advise OWCP immediately of any return to work, either part-time or full-time. In addition, an employee who is receiving compensation for partial or total disability will periodically be required to submit a report of earnings from employment or self-employment, either part-time or full-time. (See § 10.5(g) for a definition of "earnings".)

(b) The employee must report even those earnings which do not seem likely to affect his or her level of benefits. Many kinds of income, though not all, will result in reduction of compensation benefits. While earning income will not necessarily result in a reduction of compensation, failure to report income may result in forfeiture of all benefits paid during the reporting period.

§ 10.526 Must the employee report self-employment?

The employee is required to report self-employment, including volunteer work or any other kind of activity which shows that the employee is no longer totally disabled for work.

§ 10.527 Does OWCP verify reports of earnings?

To make proper determinations of an employee's entitlement to benefits, OWCP may attempt to verify the earnings reported by the employee through a variety of means, including but not limited to computer matches with the Office of Personnel Management and inquiries to the Social Security Administration. Also, OWCP may perform computer matches with records of state workers' compensation administrations to determine whether private employers are paying workers' compensation insurance premiums for recipients of benefits under the FECA.

§ 10.528 What action will OWCP take if the employee fails to file a report of activity indicating an ability to work?

OWCP periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months. If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss under 5 U.S.C. 8105 or 8106 is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.

§ 10.529 What action will OWCP take if the employee files an incomplete report?

(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. 8129 and other relevant statutes.

Reports of Dependents

§ 10.535 How are dependents defined, and what information must the employee report?

(a) Dependents are defined in § 10.405. While the employee has one or more dependents, the employee's basic compensation for wage loss or for permanent impairment shall be augmented as provided in 5 U.S.C. 8110. (The rules for death claims are found in § 10.414.)

(b) An employee who is receiving augmented compensation on account of dependents must advise OWCP immediately of any change in the number or status of dependents. The employee should also promptly refund to OWCP any amounts received on account of augmented compensation after the right to receive augmented compensation has ceased. Any difference between actual entitlement and the amount already paid beyond the date entitlement ended is an overpayment of compensation and may be recovered pursuant to 5 U.S.C. 8129 and other relevant statutes.

(c) An employee who is receiving augmented compensation shall be periodically required to submit a statement as to any dependents, or to submit supporting documents such as birth or marriage certificates or court orders, to determine if he or she is still entitled to augmented compensation.

§ 10.536 What is the penalty for failing to submit a report of dependents?

If an employee fails to submit a requested statement or supporting document within 30 days of the date of the request, OWCP will suspend his or her right to augmented compensation until OWCP receives the requested statement or supporting document. At that time, OWCP will reinstate augmented compensation retroactive to the date of suspension, provided that the employee is entitled to receive augmented compensation.

§ 10.537 What reports are needed when compensation payments continue for children over age 18?

(a) Compensation payable on behalf of a child that would otherwise end when the child reaches 18 years of age will continue if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least twice each year, OWCP will ask an employee who receives compensation based on the student status of a child to provide proof of continuing entitlement to such

compensation, including certification of school enrollment.

(c) Likewise, at least twice each year, OWCP will ask an employee who receives compensation based on a child's physical or mental inability to support himself or herself to submit a medical report verifying that the child's medical condition persists and that it continues to preclude self-support.

(d) If an employee fails to submit proof within 30 days of the date of the request, OWCP will suspend the employee's right to compensation until the requested information is received. At that time OWCP will reinstate compensation retroactive to the date of suspension, provided the employee is entitled to such compensation.

Reduction and Termination of Compensation

§ 10.540 When and how is compensation reduced or terminated?

(a) Except as provided in paragraphs (b) and (c) of this section, where the evidence establishes that compensation should be either reduced or terminated, OWCP will provide the beneficiary with written notice of the proposed action and give him or her 30 days to submit relevant evidence or argument to support entitlement to continued payment of compensation. This notice will include a description of the reasons for the proposed action and a copy of the evidence upon which OWCP is basing its determination. Payment of compensation will continue until any evidence or argument submitted has been reviewed and an appropriate decision has been issued, or until 30 days have elapsed if no additional evidence or argument is submitted.

(b) OWCP will not provide such written notice when the beneficiary has no reasonable basis to expect that payment of compensation will continue. For example, when a claim has been made for a specific period of time and that specific period expires, no written notice will be given. Written notice will also not be given when a beneficiary dies, when OWCP either reduces or terminates compensation when an employee returns to work, when OWCP terminates medical benefits only after a physician indicates that further medical treatment is not necessary or has ended, or when OWCP denies payment for a particular medical expense.

(c) OWCP will also not provide such written notice when compensation is suspended or forfeited due to one of the following: a beneficiary's conviction for fraud in connection with a claim under the FECA, a beneficiary's incarceration based on any felony conviction, an employee's failure to report earnings from employment or self-employment, an employee's failure or refusal to either continue performing suitable work or to accept an offer of suitable work, or an employee's refusal to undergo or obstruction of a directed medical examination or treatment for substance abuse.

§ 10.541 What action will OWCP take after issuing written notice of its intention to reduce or terminate compensation?

(a) If the beneficiary submits evidence or argument prior to the issuance of the decision, OWCP will evaluate it in light of the proposed action and undertake such further development as it may deem appropriate, if any. Evidence or argument which is repetitious, cumulative, or irrelevant will not require any further development. If the beneficiary does not respond within 30 days of the written notice, OWCP will issue a decision consistent with its prior notice. OWCP will not grant any request for an extension of this 30-day period.

(b) Evidence or argument which refutes the evidence upon which the proposed action was based will result in the continued payment of compensation. If the beneficiary submits evidence or argument which fails to refute the evidence upon which the proposed action was based but which requires further development, OWCP will not provide the beneficiary with another notice of its proposed action upon completion of such development. Once any further development of the evidence is completed, OWCP will either continue payment or issue a decision consistent with its prior notice.

Subpart G—Review Process

§ 10.600 How can final decisions of OWCP be reviewed?

There are three methods for reviewing an initial final decision of the OWCP (§§ 10.125–10.127 discuss how decisions are made). These methods are: reconsideration by the district office; a hearing before an OWCP hearing representative; and appeal to the Employees' Compensation Appeals Board (ECAB). For each method there are time limitations and other restrictions which may apply, and not all options are available for all decisions, so the employee should consult the requirements set forth below. Further rules governing appeals to ECAB are found at part 501 of this title.

Reconsiderations and Reviews by the Director

§ 10.605 What is reconsideration?

The FECA provides that the Director may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."

§ 10.606 How does a claimant request reconsideration?

(a) An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by OWCP in the final decision.

(b) The application for reconsideration, including all supporting documents, must:

(1) Be submitted in writing;

(2) Set forth arguments and contain evidence that either:

(i) Shows that OWCP erroneously applied or interpreted a specific point of law;

(ii) Advances a relevant legal argument not previously considered by OWCP; or

(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.

§ 10.607 What is the deadline for requesting reconsideration?

(a) An application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought. If submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date.

(b) OWCP will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.

§ 10.608 How does OWCP decide whether to grant or deny the request for reconsideration?

(a) A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in § 10.606(b)(2). If reconsideration is granted, the case is reopened and the case is reviewed on its merits (see § 10.609).

(b) Where the request is timely but fails to meet at least one of the standards described in § 10.606(b)(2), or where the request is untimely and fails to present any clear evidence of error, OWCP will deny the application for reconsideration without reopening the case for a review on the merits. A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of non-merit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration.

§ 10.609 How does OWCP decide whether new evidence requires modification of the prior decision?

When application for reconsideration is granted, OWCP will review the decision for which reconsideration is sought on the merits and determine whether the new evidence or argument requires modification of the prior decision.

(a) After OWCP decides to grant reconsideration, but before undertaking the review, OWCP will send a copy of the reconsideration application to the employer, which will have 15 days from the date sent to comment or submit relevant documents. OWCP will provide any such comments to the employee, who will have 15 days from the date the comments are sent to him or her within which to comment. If no comments are received from the employer, OWCP will proceed with the merit review of the case.

(b) A claims examiner who did not participate in making the contested decision will conduct the merit review of the claim. When all evidence has been reviewed, OWCP will issue a new merit decision, based on all the evidence in the record. A copy of the decision will be provided to the agency.

(c) An employee dissatisfied with this new merit decision may again request reconsideration under this subpart or appeal to the ECAB. An employee may not request a hearing on this decision.

§ 10.610 What is a review by the Director?

The FECA specifies that an award for or against payment of compensation may be reviewed at any time on the Director's own motion. Such review may be made without regard to whether there is new evidence or information. If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded, or award compensation previously denied. A review on the Director's own motion is not subject to a request or petition and none shall be entertained.

(a) The decision whether or not to review an award under this section is solely within the discretion of the Director. The Director's exercise of this discretion is not subject to review by the ECAB, nor can it be the subject of a reconsideration or hearing request.

(b) Where the Director reviews an award on his or her own motion, any resulting decision is subject as appropriate to reconsideration, a hearing and/or appeal to the ECAB. Jurisdiction on review or on appeal to ECAB is limited to a review of the merits of the resulting decision. The Director's determination to review the award is not reviewable.

Hearings

§ 10.615 What is a hearing?

A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. At the discretion of the hearing representative, an oral hearing may be conducted by telephone or teleconference. In addition to the evidence of record, the employee may submit new evidence to the hearing representative.

§ 10.616 How does a claimant obtain a hearing?

(a) A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.

(b) The claimant may specify the type of hearing desired when making the original hearing request. If the request does not specify a format, OWCP will schedule an oral hearing. The claimant can request a change in the format of the hearing by making a written request to the Branch of Hearings and Review. A request received by the Branch of Hearings and Review before either the date OWCP issues notice that the record is closed for written review, or the date OWCP issues a notice that OWCP has set a date for an oral hearing, will be granted. A request received after that date will be subject to OWCP's discretion. The decision to grant or deny a change of format is not reviewable.

§ 10.617 How is an oral hearing conducted?

(a) The hearing representative retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved.

(b) Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the oral hearing to the claimant and any representative at least 30 days before the scheduled date. The employer will also be notified at least 30 days before the scheduled date.

(c) The hearing is an informal process, and the hearing representative is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure or by section 5 of the Administrative Procedure Act. During the hearing process, the claimant may state his or her arguments and present new written evidence in support of the claim.

(d) Testimony at oral hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

(e) OWCP will furnish a transcript of the oral hearing to the claimant and the employer, who have 15 days from the date it is sent to comment. Any comments received from the employer shall be sent to the claimant, who will be given an additional 15 days to comment from the date OWCP sends any agency comments.

(f) The hearing remains open for the submittal of additional evidence until the date the decision is mailed to the claimant's last known address and to any representative. A copy of the decision will also be mailed to the employer.

(g) The hearing representative determines the conduct of the oral hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative at or near the place of the oral presentation.

§ 10.618 How is a review of the written record conducted?

(a) The hearing representative will review the official record and any additional evidence submitted by the claimant and by the agency. The hearing representative may also conduct whatever investigation is deemed necessary. New evidence and arguments may be submitted at any time up to the

time the hearing is closed, but it should be submitted as soon as possible to avoid delaying the hearing process.

(b) The claimant should submit, with his or her application for review, all evidence or argument that he or she wants to present to the hearing representative. A copy of all pertinent material will be sent to the employer, which will have 15 days from the date it is sent to comment. (Medical evidence is not considered "pertinent" for review and comment by the agency, and it will therefore not be furnished to the agency. OWCP has sole responsibility for evaluating medical evidence.) Any comments received from the employer shall be sent to the claimant, who will be given an additional 15 days to comment from the date OWCP sends any agency comments.

§ 10.619 May subpoenas be issued for witnesses and documents?

A claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative. The hearing representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(a) A claimant may request a subpoena only as part of the hearings process, and no subpoena will be issued under any other part of the claims process. To request a subpoena, the requestor must:

(1) Submit the request in writing and send it to the hearing representative as early as possible but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.

(2) Explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(b) No subpoena will be issued for attendance of employees of OWCP acting in their official capacities as decision-makers or policy administrators. For hearings taking the form of a review of the written record, no subpoena for the appearance of witnesses will be considered.

(c) The hearing representative issues the subpoena under his or her own name. It may be served in person or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. A decision to deny a subpoena can only be appealed as part of an appeal of any adverse decision which results from the hearing.

§ 10.620 Who pays the costs associated with subpoenas?

(a) Witnesses who are not employees or former employees of the federal government shall be paid the same fees and mileage as paid for like services in the District Court of the United States where the subpoena is returnable, except that expert witnesses shall be paid a fee not to exceed the local customary fee for such services.

(b) Where OWCP asked that the witness submit evidence into the case record or asked that the witness attend, OWCP shall pay the fees and mileage. Where the claimant requested the subpoena, and where the witness submitted evidence into the record at the request of the claimant, the claimant shall pay the fees and mileage.

§ 10.621 What is the employer's role when an oral hearing has been requested?

(a) The employer may send a representative to observe the proceeding, but the agency representative cannot give testimony or argument or otherwise participate in the hearing, except where the claimant or the hearing representative specifically asks the agency representative to testify.

(b) The hearing representative may deny a request by the claimant that the agency representative testify where the claimant cannot show that the testimony would be relevant or where the agency representative does not have the appropriate level of knowledge to provide such evidence at the hearing. The employer may also comment on the hearing transcript, as described in § 10.618(b).

§ 10.622 May a claimant withdraw a request for or postpone a hearing?

(a) The claimant and/or representative may withdraw the hearing request at any time up to and including the day the hearing is held, or the decision issued. Withdrawing the hearing request means the record is returned to the jurisdiction of the district office and no further requests for a hearing on the underlying decision will be considered.

(b) OWCP will entertain any reasonable request for scheduling the oral hearing, but such requests should be made at the time of the original request; scheduling is at the sole discretion of the hearing representative, and is not reviewable. Once the oral hearing is scheduled and OWCP has mailed appropriate written notice to the claimant, the oral hearing cannot be postponed at the claimant's request for any reason, unless the hearing representative can reschedule the hearing on the same docket (that is, during the same hearing trip). When the request to postpone a scheduled hearing cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. Instead, the hearing will take the form of a review of the written record and a decision issued accordingly. In the alternative, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative.

Review by the Employees' Compensation Appeals Board (ECAB)

§ 10.625 What kinds of decisions may be appealed?

Only final decisions of OWCP may be appealed to the ECAB. However, certain types of final decisions, described in this part as not subject to further review, cannot be appealed to the ECAB. Decisions that are not appealable to the ECAB include: decisions concerning the amounts payable for medical services, decisions concerning exclusion and reinstatement of medical providers, decisions by the Director to review an award on his or her own motion, and denials of subpoenas independent of the appeal of the underlying decision. In appeals before the ECAB, attorneys from the Office of the Solicitor of Labor shall represent OWCP.

§ 10.626 Who has jurisdiction of cases on appeal to the ECAB?

While a case is on appeal to the ECAB, OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. The OWCP continues to administer the claim and retains jurisdiction over issues unrelated to the issue or issues on appeal and issues which arise after the appeal as a result of ongoing administration of the case. Such issues would include, for example, the ability to terminate benefits where an individual returns to work while an appeal is pending at the ECAB.

Subpart H—Special Provisions

Representation

§ 10.700 May a claimant designate a representative?

(a) The claims process under the FECA is informal. Unlike many workers' compensation laws, the employer is not a party to the claim, and OWCP acts as an impartial evaluator of the evidence. Nevertheless, a claimant may appoint one individual to represent his or her interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 10.701).

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant. Any notice requirement contained in this subpart or the FECA is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.

§ 10.701 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under the FECA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, provided such representation would not conflict with any other provision of law, and no fee or gratuity is charged.

§ 10.702 How are fees for services paid?

A representative may charge the claimant a fee and other costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other charges. The claimant will not be reimbursed by OWCP, nor is OWCP in any way liable for the amount of the fee. Administrative costs (mailing, copying, messenger services, travel and the like, but not including secretarial services, paralegal and other activities) need not be approved before the representative collects them. Before any fee for services can be collected, however, the fee must be approved by the Secretary. (Collecting a fee without this approval may constitute a misdemeanor under 18 U.S.C. 292.)

§ 10.703 How are fee applications approved?

(a) *Fee application.* (1) The representative must submit the fee application to the district office and/or the Branch of Hearings and Review, according to where the work for which the fee is charged was performed. The application shall contain the following:

(i) An itemized statement showing the representative's hourly rate, the number of hours worked and specifically identifying the work performed and a total amount charged for the representation (excluding administrative costs).

(ii) A statement of agreement or disagreement with the amount charged, signed by the claimant. The statement must also acknowledge that the claimant is aware that he or she must pay the fees and that OWCP is not responsible for paying the fee or other costs.

(2) An incomplete application will be returned with no further comment.

(b) *Approval where there is no dispute.* Where a fee application is accompanied by a signed statement indicating the claimant's agreement with the fee as described in paragraph (a)(2) of this section, the application is deemed approved.

(c) *Disputed requests.* (1) Where the claimant disagrees with the amount of the fee, as indicated in the statement accompanying the submission, OWCP will evaluate the objection and decide whether or not to approve the request. OWCP will provide a copy of the request to the claimant and ask him or her to submit any further information in support of the objection within 15 days from the date the request is forwarded. After that period has passed, OWCP will evaluate the information received to determine whether the amount of the fee is substantially in excess of the value of services received by looking at the following factors:

(i) Usefulness of the attorney's services;

(ii) The nature and complexity of the claim;

(iii) The actual time spent on development and presentation of the claim; and

(iv) Customary local charges for similar services.

(2) Where the claimant disputes the attorney's request and files an objection with OWCP, an appealable decision will be issued.

Third Party Liability

§ 10.705 When must an employee or other FECA beneficiary take action against a third party?

(a) If an injury or death for which benefits are payable under the FECA is caused, wholly or partially, by someone other than a federal employee acting within the scope of his or her employment, the claimant can be required to take action against that third party.

(b) The Office of the Solicitor of Labor (SOL) is hereby delegated authority to administer the subrogation aspects of certain FECA claims for OWCP. Either OWCP or SOL can require a FECA beneficiary to assign his or her claim for damages to the United States or to prosecute the claim in his or her own name.

§ 10.706 How will a beneficiary know if OWCP or SOL has determined that action against a third party is required?

When OWCP determines that an employee or other FECA beneficiary must take action against a third party, it will notify the employee or beneficiary in writing. If the case is transferred to SOL, a second notification may be issued.

§ 10.707 What must a FECA beneficiary who is required to take action against a third party do to satisfy the requirement that the claim be "prosecuted"?

At a minimum, a FECA beneficiary must do the following:

(a) Seek damages for the injury or death from the third party, either through an attorney or on his or her own behalf;

(b) Either initiate a lawsuit within the appropriate statute of limitations period or obtain a written release of this obligation from OWCP or SOL unless recovery is possible through a negotiated settlement prior to filing suit;

(c) Refuse to settle or dismiss the case for any amount less than the amount necessary to repay OWCP's refundable disbursements, as defined in § 10.714, without receiving permission from OWCP or SOL;

(d) Provide periodic status updates and other relevant information in response to requests from OWCP or SOL;

(e) Submit detailed information about the amount recovered and the costs of the suit on a "Statement of Recovery" form approved by OWCP; and

(f) Pay any required refund.

§ 10.708 Can a FECA beneficiary who refuses to comply with a request to assign a claim to the United States or to prosecute the claim in his or her own name be penalized?

When a FECA beneficiary refuses a request to either assign a claim or prosecute a claim in his or her own name, OWCP may determine that he or she has forfeited his or her right to all past or future compensation for the injury with respect to which the request is made. Alternatively, OWCP may also suspend the FECA beneficiary's compensation payments until he or she complies with the request.

§ 10.709 What happens if a beneficiary directed by OWCP or SOL to take action against a third party does not believe that a claim can be successfully prosecuted at a reasonable cost?

If a beneficiary consults an attorney and is informed that a suit for damages against a third party for the injury or death for which benefits are payable is unlikely to prevail or that the costs of such a suit are not justified by the potential recovery, he or she should request that OWCP or SOL release him or her from the obligation to proceed. This request should be in writing and provide evidence of the attorney's opinion. If OWCP or SOL agrees, the beneficiary will not be required to take further action against the third party.

§ 10.710 Under what circumstances must a recovery of money or other property in connection with an injury or death for which benefits are payable under the FECA be reported to OWCP or SOL?

Any person who has filed a FECA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received FECA benefits in connection with a claim filed by another, is required to notify OWCP or SOL of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim. This includes an injured employee, and in the case of a claim involving the death of an employee, a spouse, children or other dependents entitled to receive survivor's benefits. OWCP or SOL should be notified in writing within 30 days of the receipt of such money or other property or the acceptance of the FECA claim, whichever occurs later.

§ 10.711 How much of any settlement or judgment must be paid to the United States?

The statute permits a FECA beneficiary to retain, as a minimum, one-fifth of the net amount of money or property remaining after a reasonable attorney's fee and the costs of litigation have been deducted from the third-party recovery. The U.S. shares in the litigation expense by allowing the beneficiary to retain, at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund due the United States. After the refund owed to the United States is calculated, the FECA beneficiary retains any surplus remaining, and this amount is credited, dollar for dollar, against future compensation for the same injury, as defined in § 10.719. OWCP will resume the payment of compensation only after the FECA beneficiary has been awarded compensation which exceeds the amount of the surplus.

(a) The refund to the United States is calculated as follows, using the Statement of Recovery form approved by OWCP:

(1) Determine the gross recovery as set forth in § 10.712;

(2) Subtract the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, from the gross recovery (Subtotal A);

(3) Subtract the costs of litigation, as allowed by OWCP or SOL (Subtotal B);

(4) Subtract one fifth of Subtotal B from Subtotal B (Subtotal C);

(5) Compare Subtotal C and the refundable disbursements as defined in § 10.714. Subtotal D is the lower of the two amounts.

(6) Multiply Subtotal D by a percentage that is determined by dividing the gross recovery into the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, to determine the government's allowance for attorney's fees, and subtract this amount from Subtotal D.

(b) The credit against future benefits (also referred to as the surplus) is calculated as follows:

(1) If Subtotal C, as calculated according to paragraph (a)(4) of this section, is less than the refundable disbursements, as defined in § 10.714, there is no credit to be applied against future benefits;

(2) If Subtotal C is greater than the refundable disbursements, the credit against future benefits (or surplus) amount is determined by subtracting the refundable disbursements from Subtotal C.

(c) An example of how these calculations are made follows. In this example, a federal employee sues another party for causing injuries for which the employee has received $22,000 in benefits under the FECA, subject to refund. The suit is settled and the injured employee receives $100,000, all of which was for his injury. The injured worker paid attorney's fees of $25,000 and costs for the litigation of $3,000.

(1) Gross recovery	$100,000
Attorney's fees	−25,000
(2) Subtotal A	75,000
(3) Costs of suit	−3,000
Subtotal B	−72,000
One-fifth of Subtotal B	−14,400
(4) Subtotal C	57,600
Refundable Disbursement	22,000
(5) Subtotal D (lower of Subtotal C or refundable disbursements)	22,000
(6) Government's allowance for attorney's fees [25,000/100,000×22,000]	−5,500
(Attorney's fees divided by gross recovery then multiplied by Subtotal D) Refund to the United States	16,500
(7) Credit against future benefits [57,600−22,000] (Subtotal C minus refundable disbursements)	35,600

§ 10.712 What amounts are included in the gross recovery?

(a) When a settlement or judgment is paid to, or for, one individual, the entire amount, except for the portion representing damage to real or personal property, is reported as the gross recovery. If a settlement or judgment is paid to or for more than one individual or in more than one capacity, such as a joint payment to a husband and wife for personal injury and loss of consortium or a payment to a spouse representing both loss of consortium and wrongful death, the gross recovery to be reported is the amount allocated to the injured employee. If a judge or jury specifies the percentage of a contested verdict attributable to each of several plaintiffs, OWCP or SOL will accept that division.

(b) In any other case, where a judgment or settlement is paid to or on behalf of more than one individual, OWCP or SOL will determine the appropriate amount of the FECA beneficiary's gross recovery and advise the beneficiary of its determination. FECA beneficiaries may accept OWCP's or SOL's determination or demonstrate good cause for a different allocation. Whether to accept a specific allocation is at the discretion of SOL or OWCP.

§ 10.713 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the gross recovery?

In this situation, the gross recovery to be reported is the present value of the right to receive all of the payments included in the structured settlement, allocated in the case of multiple recipients in the same manner as single payment recoveries.

§ 10.714 What amounts are included in the refundable disbursements?

The refundable disbursements of a specific claim consist of the total money paid by OWCP from the Employees' Compensation Fund with respect to that claim to or on behalf of a FECA beneficiary, less charges for any medical file review (i.e., the physician does not examine the employee) done at the request of OWCP. Charges for medical examinations also may be subtracted if the FECA beneficiary establishes that the examinations were required to be made available to the employee under a statute other than the FECA by the employing agency or at the employing agency's cost.

§ 10.715 Is a beneficiary required to pay interest on the amount of the refund due to the United States?

If the refund due to the United States is not submitted within 30 days of receiving a request for payment from SOL or OWCP, interest shall accrue on the refund due to the United States from the date of the request. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury as published in the **Federal Register** (as of the date the request for payment is sent). Waiver of the collection of interest shall be in accordance with the provisions of the Department of Labor regulations on Federal Claims Collection governing waiver of interest, 29 CFR 20.61.

§ 10.716 If the required refund is not paid within 30 days of the request for repayment, can it be collected from payments due under the FECA?

If the required refund is not paid within 30 days of the request for payment, OWCP can, in its discretion, collect the refund by withholding all or part of any payments currently payable to the beneficiary under the FECA with respect to any injury. The waiver provisions of §§ 10.432 through 10.440 do not apply to such determinations.

§ 10.717 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an injury covered by the FECA a gross recovery that must be reported to OWCP or SOL?

Since an injury caused by medical malpractice in treating an injury covered by the FECA is also an injury covered under the FECA, any recovery in a suit alleging such an injury is treated as a gross recovery that must be reported to OWCP or SOL.

§ 10.718 Are payments to a beneficiary as a result of an insurance policy which the beneficiary has purchased a gross recovery that must be reported to OWCP or SOL?

Since payments received by a FECA beneficiary pursuant to an insurance policy purchased by someone other than a liable third party are not payments in satisfaction of liability for causing an injury covered by the FECA, they are not considered a gross recovery covered by section 8132 that requires filing a Statement of Recovery and paying any required refund.

§ 10.719 If a settlement or judgment is received for more than one wound or medical condition, can the refundable disbursements paid on a single FECA claim be attributed to different conditions for purposes of calculating the refund or credit owed to the United States?

(a) All wounds, diseases or other medical conditions accepted by OWCP in connection with a single claim are treated as the same injury for the purpose of computing any required refund and any credit against future benefits in connection with the receipt of a recovery from a third party, except that an injury caused by medical malpractice in treating an injury covered under the FECA will be treated as a separate injury for purposes of section 8132.

(b) If an injury covered under the FECA is caused under circumstances creating a legal liability in more than one person, other than the United States, to pay damages, OWCP or SOL will determine whether recoveries received from one or more third parties should be attributed to separate conditions for which compensation is payable in connection with a single FECA claim. If such an attribution is both practicable and equitable, as determined by OWCP or SOL, in its discretion, the conditions will be treated as separate injuries for purposes of calculating the refund and credit owed to the United States under section 8132.

Federal Grand and Petit Jurors

§ 10.725 When is a federal grand or petit juror covered under the FECA?

(a) Federal grand and petit jurors are covered under the FECA when they are in performance of duty as a juror, which includes that time when a juror is:

(1) In attendance at court pursuant to a summons;

(2) In deliberation;

(3) Sequestered by order of a judge; or

(4) At a site, by order of the court, for the taking of a view.

(b) A juror is not considered to be in the performance of duty while traveling to or from home in connection with the activities enumerated in paragraphs (a)(1) through (4) of this section.

§ 10.726 When does a juror's entitlement to disability compensation begin?

Pursuant to 28 U.S.C. 1877, entitlement to disability compensation does not commence until the day after the date of termination of service as a juror.

§ 10.727 What is the pay rate of jurors for compensation purposes?

For the purpose of computing compensation payable for disability or death, a juror is deemed to receive pay at the minimum rate for Grade GS–2 of the General Schedule unless his or her actual pay as an "employee" of the United States while serving on court leave is higher, in which case the pay rate for compensation purposes is determined in accordance with 5 U.S.C. 8114.

Peace Corps Volunteers

§ 10.730 What are the conditions of coverage for Peace Corps volunteers and volunteer leaders injured while serving outside the United States?

(a) Any injury sustained by a volunteer or volunteer leader while he or she is located abroad shall be presumed to have been sustained in the performance of duty, and any illness contracted during such time shall be presumed to be proximately caused by the employment. However, this presumption will be rebutted by evidence that:

(1) The injury or illness was caused by the claimant's willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured claimant; or

(2) The illness is shown to have preexisted the period of service abroad; or

(3) The injury or illness claimed is a manifestation of symptoms of, or consequent to, a preexisting congenital defect or abnormality.

(b) If the presumption that an injury or illness was sustained in the performance of duty is rebutted as provided by paragraph (a) of this section, the claimant has the burden of proving by the submittal of substantial and probative evidence that such injury or illness was sustained in the performance of duty with the Peace Corps.

(c) If an injury or illness, or episode thereof, comes within one of the exceptions described in paragraph (a)(2) or (3) of this section, the claimant may nonetheless be entitled to compensation. This will be so provided he or she meets the burden of proving by the submittal of substantial, probative and rationalized medical evidence that the illness or injury was proximately caused by factors or conditions of Peace Corps service, or that it was materially aggravated, accelerated or precipitated by factors of Peace Corps service.

§ 10.731 What is the pay rate of Peace Corps volunteers and volunteer leaders for compensation purposes?

The pay rate for these claimants is defined as the pay rate in effect on the date following separation, provided that the rate equals or exceeds the pay rate on the date of injury. It is defined in accordance with 5 U.S.C. 8142(a), not 8101(4).

Non-Federal Law Enforcement Officers

§ 10.735 When is a non-federal law enforcement officer covered under the FECA?

(a) A law enforcement officer (officer) includes an employee of a state or local government, the governments of U.S. possessions and territories, or an employee of the United States pensioned or pensionable under sections 521–535 of Title 4, D.C. Code, whose functions include the activities listed in 5 U.S.C. 8191.

(b) Benefits are available to officers who are not "employees" under 5 U.S.C. 8101, and who are determined in the discretion of OWCP to have been engaged in the activities listed in 5 U.S.C. 8191 with respect to the enforcement of crimes against the United States. Individuals who only perform administrative functions in support of officers are not considered officers.

(c) Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this part, the provisions of the FECA and of subparts A, B, and D through I of this part apply to officers.

§ 10.736 What are the time limits for filing a claim?

OWCP must receive a claim for benefits under 5 U.S.C. 8191 within five years after the injury or death. This five-year limitation is not subject to waiver. The tolling provisions of 5 U.S.C. 8122(d) do not apply to these claims.

§ 10.737 How is a claim filed, and who can file a claim?

A claim for injury or occupational disease should be filed on Form CA–721; a death claim should be filed on Form CA–722. All claims should be submitted to the officer's employer for completion and forwarding to OWCP. A claim may be filed by the officer, the officer's survivor, or any person or association authorized to act on behalf of an officer or an officer's survivors.

§ 10.738 Under what circumstances are benefits payable?

(a) Benefits are payable when an officer is injured while apprehending, or attempting to apprehend, an individual for the commission of a federal crime. However, either an actual federal crime must be in progress or have been committed, or objective evidence (of which the officer is aware at the time of injury) must exist that a potential federal crime was in progress or had already been committed. The actual or potential federal crime must be an integral part of the criminal activity toward which the officer's actions are directed. The fact that an injury to an officer is related in some way to the commission of a federal crime does not necessarily bring the injury within the coverage of the FECA. The FECA is not intended to cover officers who are merely enforcing local laws.

(b) For benefits to be payable when an officer is injured preventing, or attempting to prevent, a federal crime, there must be objective evidence that a federal crime is about to be committed. An officer's belief, unsupported by objective evidence, that he or she is acting to prevent the commission of a federal crime will not result in coverage. Moreover, the officer's subjective intent, as measured by all available evidence (including the officer's own statements and testimony, if available), must have been directed toward the prevention of a federal crime. In this context, an officer's own statements and testimony are relevant to, but do not control, the determination of coverage.

§ 10.739 What kind of objective evidence of a potential federal crime must exist for coverage to be extended?

Based on the facts available at the time of the event, the officer must have an awareness of sufficient information which would lead a reasonable officer, under the circumstances, to conclude that a federal crime was in progress, or was about to occur. This awareness need not extend to the precise particulars of the crime (the section of Title 18, United States Code, for example), but there must be sufficient evidence that the officer was in fact engaged in actual or attempted apprehension of a federal criminal or prevention of a federal crime.

§ 10.740 In what situations will OWCP automatically presume that a law enforcement officer is covered by the FECA?

(a) Where an officer is detailed by a competent state or local authority to assist a federal law enforcement authority in the protection of the President of the United States, or any other person actually provided or entitled to U.S. Secret Service protection, coverage will be extended.

(b) Coverage for officers of the U.S. Park Police and those officers of the Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System is adjudicated under the principles set forth in paragraph (a) of this section, and does not extend to numerous tangential activities of law enforcement (for example, reporting to work, changing clothes). However, officers of the Non-Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System are covered under the FECA during the performance of all official duties.

§ 10.741 How are benefits calculated?

(a) Except for continuation of pay, eligible officers and survivors are entitled to the same benefits as if the officer had been an employee under 5 U.S.C. 8101. However, such benefits may be reduced or adjusted as OWCP in its discretion may deem appropriate to reflect comparable benefits which the officer or survivor received or would have been entitled to receive by virtue of the officer's employment.

(b) For the purpose of this section, a comparable benefit includes any benefit that the officer or survivor is entitled to receive because of the officer's employment, including pension and disability funds, state workers' compensation payments, Public Safety Officers' Benefits Act payments, and state and local lump sum payments. Health benefits coverage and proceeds of life insurance policies purchased by the employer are not considered to be comparable benefits.

(c) The FECA provides that, where an officer receives comparable benefits, compensation benefits are to be reduced proportionally in a manner that reflects the relative percentage contribution of the officer and the officer's employer to the fund which is the source of the comparable benefit. Where the source of the comparable benefit is a retirement or other system which is not fully funded, the calculation of the amount of the reduction will be based on a per capita comparison between the contribution by the employer and the contribution by all covered officers during the year prior to the officer's injury or death.

(d) The non-receipt of compensation during a period where a dual benefit (such as a lump sum payment on the death of an officer) is being offset against compensation entitlement does not result in an adjustment of the respective benefit percentages of remaining beneficiaries because of a cessation of compensation under 5 U.S.C. 8133(c).

Subpart I—Information for Medical Providers

Medical Records and Bills

§ 10.800 What kind of medical records must providers keep?

Agency medical officers, private physicians and hospitals are required to keep records of all cases treated by them under the FECA so they can supply OWCP with a history of the injury, a description of the nature and extent of injury, the results of any diagnostic studies performed, the nature of the treatment rendered and the degree of any impairment arising from the injury.

§ 10.801 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to injured employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 10.800. The physician or provider shall itemize the charges on the standard Health Insurance Claim Form, HCFA 1500 or OWCP 1500, (for professional charges), the UB–92 (for hospitals), the Universal Claim Form (for pharmacies), or other form as warranted, and submit the form promptly to OWCP.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Health Care Financing Administration Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC), or the Revenue Center Code (RCC), with a brief narrative description. Where no code is applicable, a detailed description of services performed should be provided.

(c) The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the "International Classification of Disease, 9th Edition, Clinical Modification" (ICD–9–CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the work-related condition is necessary for more than 30 days.

(1)(i) Hospitals shall submit charges for medical and surgical treatment or supplies promptly to OWCP on the Uniform Bill (UB–92). The provider shall identify each outpatient radiology service, outpatient pathology service and physical therapy service performed, using HCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services, should also appear in the UB–92.

(ii) Other outpatient hospital services for which HCPCS/CPT codes exist shall also be coded individually using the coding scheme noted in this paragraph. Services for which there are no HCPCS/CPT codes available can be presented using the RCCs described in the "National Uniform Billing Data Elements Specifications", current edition. The provider shall also furnish the diagnostic code using the ICD–9-CM. If the outpatient hospital services include surgical and/or invasive procedures, the provider shall code each procedure using the proper CPT/HCPCS codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on the Universal Claim Form and submit them promptly to OWCP. Bills for prescription medications must include the NDC assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead stationery and submit them promptly to OWCP.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

(e) Bills submitted by providers must: be itemized on the Health Insurance Claim Form (for physicians), the UB–92 (for hospitals), or the Universal Claim Form (for pharmacies); contain the signature or signature stamp of the provider; and identify the procedures using HCPCS/CPT codes, RCCs, or NDCs. Otherwise, OWCP may return the bill to the provider for correction and resubmission.

§ 10.802 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?

(a) If an employee has paid bills for medical, surgical or dental services, supplies or appliances due to an injury sustained in the performance of duty, he or she may submit an itemized bill on the Health Insurance Claim Form, HCFA 1500 or OWCP 1500, together with a medical report as provided in § 10.800, to OWCP for consideration.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code and identify each service performed using the applicable HCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service.

(2) The bill must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back) or a copy of the employee's credit card receipt.

(b) If services were provided by a hospital, pharmacy or nursing home, the employee should submit the bill in accordance with the provisions of § 10.801(a). Any request for reimbursement must be accompanied by evidence, as described in paragraph (a) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) OWCP may waive the requirements of paragraphs (a) and (b) of this section if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) OWCP will not accept copies of bills for reimbursement unless they bear the original signature of the provider,

with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by the Director, as set forth in § 10.805.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by the Director's schedule. In this instance, OWCP shall advise the provider of the maximum allowable charge for the service in question and allow the provider the opportunity to refund to the employee, or credit to the employee's account the amount paid by the employee which exceeds the maximum allowable charge, or request reconsideration of the fee determination as provided by § 10.812.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the date of this notification by OWCP, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the appealed amount, OWCP shall initiate exclusion procedures as provided by § 10.815.

(g) After notification as provided in paragraph (e) of this section, OWCP may make reasonable reimbursement to the employee, based on a review of the facts and circumstances of the case, if the provider does not refund or credit to the employee's account the amount of money paid in excess of the charge allowed by OWCP.

§ 10.803 What are the time limitations on OWCP's payment of bills?

OWCP will pay providers and reimburse employees promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.

Medical Fee Schedule

§ 10.805 What services are covered by the OWCP fee schedule?

(a) Payment for medical and other health services furnished by physicians, hospitals and other providers for work-related injuries shall not exceed a maximum allowable charge for such service as determined by the Director, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing homes, but it does apply to charges for treatment furnished in a nursing home by a physician or other medical professional.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

§ 10.806 How are the maximum fees defined?

For professional medical services, the Director shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: an assignment of a value to procedures identified by Health Care Financing Administration Common Procedure Coding System/ Current Procedural Terminology (HCPCS/CPT) code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an index based on a relative value scale that considers skill, labor, overhead, malpractice insurance and other related costs; and a monetary value assignment (conversion factor) for one unit of value in each of the categories of service.

§ 10.807 How are payments for particular services calculated?

Payment for a procedure identified by a HCPCS/CPT code shall not exceed the amount derived by multiplying the relative values for that procedure by the geographic indices for services in that area and by the dollar amount assigned to one unit in that category of service.

(a) The "locality" which serves as a basis for the determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. The Director shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Health Care Financing Administration (HCFA).

(b) The Director shall assign the relative value units (RVUs) published by HCFA to all services for which HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may develop and assign any RVUs that he or she considers appropriate. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA and as updated or revised by HCFA from time to time. The Director will devise conversion factors for each category of service, and in doing so may adapt HCFA conversion factors as appropriate using OWCP's processing experience and internal data.

(c) For example, if the unit values for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (M), and the dollar value assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding geographical indices for the locality times the conversion factor. If the geographic indices for the locality are 0.988 (W), 0.948 (PE), and 1.174 (M), then the maximum payment calculation is:

$[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] \times \$61.20$

$[2.45 + 3.44 + .56] \times \$61.20$

$6.45 \times \$61.20 = \$394.74$

§ 10.808 Does the fee schedule apply to every kind of procedure?

Where the time, effort and skill required to perform a particular procedure varies widely from one occasion to the next, the Director may choose not to assign a relative value to that procedure. In this case the allowable charge for the procedure will be set individually based on consideration of a detailed medical report and other evidence. At its discretion, OWCP may set fees without regard to schedule limits for specially authorized consultant examinations, for examinations performed under 5 U.S.C. 8123, and for other specially authorized services.

§ 10.809 How are payments for medicinal drugs determined?

Payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee.

(a) All prescription medications identified by National Drug Code (NDC) will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. The Director will establish the dispensing fee.

(b) The NDCs, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

§ 10.810 How are payments for inpatient medical services determined?

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Prospective Payment System (PPS) devised by HCFA (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All hospital discharges will be classified according to the DRGs prescribed by the HCFA in the form of the DRG Grouper software program. On this list, each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by HCFA in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location (MSA) of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by HCFA to determine the specific rate for a hospital discharge under their PPS. The Director may devise pricer adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from HCFA's PPS on consideration of detailed medical reports and other evidence.

(4) The Director shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when he or she deems it necessary or appropriate.

(b) The Director shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when he or she deems it necessary or appropriate.

§ 10.811 When and how are fees reduced?

(a) OWCP shall accept a provider's designation of the code to identify a billed procedure or service if the code is consistent with medical reports and other evidence. Where no code is supplied, OWCP may determine the code based on the narrative description of the procedure on the billing form and in associated medical reports. OWCP will pay no more than the maximum allowable fee for that procedure.

(b) If the charge submitted for a service supplied to an injured employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge.

§ 10.812 If OWCP reduces a fee, may a provider request reconsideration of the reduction?

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by the Director may, within 30 days, request reconsideration of the fee determination.

(1) The provider should make such a request to the OWCP district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was incorrectly identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board-certification in a specialty is not sufficient evidence of unusual qualifications to justify an exception. These are the only three circumstances which will justify reevaluation of the paid amount.

(2) A list of OWCP district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, D. C. 20210. Within 30 days of receiving the request for reconsideration, the OWCP district office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(b) If the OWCP district office issues a decision which continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the OWCP district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted. This decision shall be final, and shall not be subject to further review.

§ 10.813 If OWCP reduces a fee, may a provider bill the claimant for the balance?

A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with this subpart shall not request reimbursement from the employee for additional amounts.

(a) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at the lower rate. A fee for a particular service or procedure which is higher than the provider's fee to the general public for that same service or procedure will be considered a charge "substantially in excess of such provider's customary charges" for the purposes of § 10.815(d).

(b) A provider whose fee for service is partially paid by OWCP as the result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision of OWCP, shall be subject to the exclusion procedures provided by § 10.815(h).

Exclusion of Providers

§ 10.815 What are the grounds for excluding a provider from payment under the FECA?

A physician, hospital, or provider of medical services or supplies shall be excluded from payment under the FECA if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any federal or state program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any federal or state program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under the FECA, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a twelve-month period under this subpart containing charges which the Director finds to be substantially in excess of such provider's customary charges, unless the Director finds there is good

cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart paid by OWCP;

(f) Failed, neglected or refused on three or more occasions during a twelve-month period, to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by the FECA and § 10.800 of this subpart;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards; or

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

§ 10.816 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who has been convicted of a crime described in § 10.815(a), or has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in § 10.815(b).

(b) The exclusion applies to participating in the program and to seeking payment under the FECA for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may be by a copy thereof authenticated by the seal of the court or agency concerned.

§ 10.817 When are OWCP's exclusion procedures initiated?

Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 10.815, the Regional Director, after completion of inquiries he or she deems appropriate, may initiate procedures to exclude the provider from participation in the FECA program. For the purposes of this section, "Regional Director" may include any officer designated to act on his or her behalf.

§ 10.818 How is a provider notified of OWCP's intent to exclude him or her?

The Regional Director shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested, which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which the Regional Director has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the FECA program without admitting or denying the allegations presented in the letter; or

(2) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to provide;

(d) A notice of the provider's right, in the event of an adverse ruling by the Regional Director, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 10.819) the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The name and address of the OWCP representative who shall be responsible for receiving the answer from the provider.

§ 10.819 What requirements must the provider's reply and OWCP's decision meet?

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider.

(c) By arrangement with the official representative, the provider may inspect or request copies of information in the record at any time prior to the Regional Director's decision.

(d) The Regional Director shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in § 10.820. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

§ 10.820 How can an excluded provider request a hearing?

A request for a hearing shall be sent to the official representative named under § 10.818(f) and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for a more definite statement by OWCP;

(c) Any request for the presentation of oral argument or evidence; and

(d) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or federal, state or local regulatory body.

§ 10.821 How are hearings assigned and scheduled?

(a) If the designated OWCP representative receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for more definite statements and for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate "all issues" for purposes of hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses, or request the issuance of subpoenas or the certification of questions for an advisory opinion.

§ 10.822 How are subpoenas or advisory opinions obtained?

(a) The provider may apply to the administrative law judge for the issuance of subpoenas upon a showing of good cause therefor.

(b) A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or federal, state or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By OWCP on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

§ 10.823 How will the administrative law judge conduct the hearing and issue the recommended decision?

(a) To the extent appropriate, proceedings before the administrative law judge shall be governed by 29 CFR part 18.

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) Pursuant to 5 U.S.C. 8126, the administrative law judge may:

(1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Require the production of books, papers, documents, and other evidence with respect to the proceedings.

(e) At the conclusion of the hearing, the administrative law judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and the Director.

§ 10.824 How can a party request review by the Director of the administrative law judge's recommended decision?

(a) Any party adversely affected or aggrieved by the decision of the administrative law judge may file a petition for discretionary review with the Director within 30 days after issuance of such decision. The administrative law judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) Review by the Director shall not be a matter of right but of the sound discretion of the Director.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Director;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) If a petition is granted, review shall be limited to the questions raised by the petition.

(g) A petition not granted within 20 days after receipt of the petition is deemed denied.

(h) The decision of the Director shall be final with respect to the provider's participation in the program, and shall not be subject to further review by any court or agency.

§ 10.825 What are the effects of exclusion?

(a) OWCP shall give notice of the exclusion of a physician, hospital or provider of medical services or supplies to:

(1) All OWCP district offices;

(2) All federal employers;

(3) The HCFA;

(4) The State or Local authority responsible for licensing or certifying the excluded party; and

(5) All employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical services or supplies under this subpart, OWCP shall not refuse an employee reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) The employee could not reasonably have been expected to have known of such exclusion.

(c) An employee who is notified that his or her attending physician has been excluded shall have a new right to select a qualified physician.

§ 10.826 How can an excluded provider be reinstated?

(a) If a physician, hospital, or provider of medical services or supplies has been automatically excluded pursuant to § 10.816, the provider excluded will automatically be reinstated upon notice to OWCP that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude OWCP from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Director for Federal Employees' Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director for Federal Employees' Compensation shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the FECA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

2. It is proposed that part 25 be revised to read as follows:

PART 25—COMPENSATION FOR DISABILITY AND DEATH OF NONCITIZEN FEDERAL EMPLOYEES OUTSIDE THE UNITED STATES

Subpart A—General Provisions

25.1 How are claims of federal employees who are neither citizens nor residents adjudicated?
25.2 In general, what is the Director's policy regarding such claims?
25.3 What is the authority to settle and pay such claims?
25.4 What type of evidence is required to establish a claim under this part?
25.5 What special rules does OWCP apply to claims of third and fourth country nationals?
25.6 How does OWCP adjudicate claims of non-citizen residents of possessions?

Subpart B—The Special Schedule of Compensation

25.100 How is compensation for disability paid?
25.101 How is compensation for death paid?
25.102 What general provisions does OWCP apply to the Special Schedule?

Subpart C—Extensions of the Special Schedule of Compensation

25.200 How is the Special Schedule applied in the Republic of the Philippines?
25.201 How is the Special Schedule applied in Australia?
25.202 How is the Special Schedule applied for Japanese seamen?
25.203 How is the Special Schedule applied to non-resident aliens in the Territory of Guam?

Authority: 5 U.S.C. 301, 8137, 8145 and 8149; 1946 Reorganization Plan No. 2, sec. 3, 3 CFR 1943–1948 Comp., p. 1064; 60 Stat. 1095; Reorganization Plan No. 19 of 1950, sec. 1, 3 CFR 1943–1953 Comp., p. 1010; 64 Stat. 1271; Secretary's Order 5–96, 62 FR 107.

Subpart A—General Provisions

§ 25.1 How are claims of federal employees who are neither citizens nor residents adjudicated?

This part describes how OWCP pays compensation under the FECA to employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, as well as to any dependents of such employees. It has been determined that the compensation provided under the FECA is substantially disproportionate to the compensation for disability or death which is payable in similar cases under local law, regulation, custom or otherwise, in areas outside the United States, any territory or Canada. Therefore, with respect to the claims of such employees whose injury (or injury resulting in death) has occurred subsequent to December 7, 1941, or may occur, the regulations in this part shall apply.

§ 25.2 In general, what is the Director's policy regarding such claims?

(a) Pursuant to 5 U.S.C. 8137, the benefit features of local workers' compensation laws, or provisions in the nature of workers' compensation, in effect in areas outside the United States, any territory or Canada shall, effective as of December 7, 1941 and as recognized by the Director, be adopted and apply in the cases of employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, unless a special schedule of compensation for injury or death has been established under this part for the particular locality, or for a class of employees in the particular locality.

(b) The benefit provisions adopted under paragraph (a) of this section are those dealing with money payments for injury and death (including medical benefits), as well as those dealing with services and purposes forming an integral part of the local plan, provided they are of a kind or character similar to services and purposes authorized by the FECA.

(1) Procedural provisions, designations of classes of beneficiaries in death cases, limitations (except those affecting amounts of benefit payments), and any other provisions not directly affecting the amounts of the benefit payments, in such local plans, shall not apply, but in lieu thereof the pertinent provisions of the FECA shall apply, unless modified in this section.

(2) However, the Director may at any time modify, limit or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(c) Compensation in all cases of such employees paid and closed prior to [insert the effective date of the final rule] shall be deemed compromised and paid under 5 U.S.C. 8137. In all other cases, compensation may be adjusted to conform with the regulations in this part, or the beneficiary may by compromise or agreement with the Director have compensation continued on the basis of a previous adjustment of the claim.

(d) Persons employed in a country or area having no well-defined workers' compensation benefits structure shall be accorded the benefits provided—either by local law or special schedule—in a nearby country as determined by the Director. In selecting the benefit structure to be applied, equity and administrative ease will be given consideration, as well as local custom.

(e) Compensation for disability and death of non-citizens outside the United States under this part, whether paid under local law or special schedule, shall in no event exceed that generally payable under the FECA.

§ 25.3 What is the authority to settle and pay such claims?

In addition to the authority to receive, process and pay claims, when delegated such representative or agency receiving delegation of authority shall, in respect to cases adjudicated under this part, and when so authorized by the Director, have authority to make lump sum awards (in the manner prescribed by 5 U.S.C. 8135) whenever such authorized representative shall deem such settlement to be for the best interest of the United States, and to compromise and pay claims for any benefits provided for under this part, including claims in which there is a dispute as to questions of fact or law. The Director shall, in instructions to the particular representative concerned, establish such procedures in respect to action under this section as he or she may deem necessary, and may specify the scope of any administrative review of such action.

§ 25.4 What type of evidence is required to establish a claim under this part?

Claims of employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, if otherwise compensable, shall be approved only upon evidence of the following nature without regard to the date of injury or death for which claim is made:

(a) Appropriate certification by the Federal employing establishment; or

(b) An armed service's casualty or medical record; or

(c) Verification of the employment and casualty by military personnel; or

(d) Recommendation of an armed service's "Claim Service" based on investigations conducted by it.

§ 25.5 What special rules does OWCP apply to claims of third and fourth country nationals?

(a) *Definitions.* A "third country national" is a person who is neither a citizen nor resident of the United States who is hired by the United States in the person's country of citizenship or residence for employment in another foreign country, or in a possession or territory of the United States. A "fourth country national" is a person who is neither a citizen nor resident of either the country of hire or the place of employment, but who otherwise meets the definition of third country national. "Benefits applicable to local hires" are the benefits provided in this part by local law or special schedule, as determined by the Director. With respect to a United States territory or possession, "local law" means only the law of the particular territory or possession.

(b) *Benefits payable.* Third and fourth country nationals shall be paid the benefits applicable to local hires in the country of hire or the place of employment, whichever benefits are greater, provided that all benefits payable on account of one injury must be paid under the same benefit structure.

(1) Where no well-defined workers' compensation benefits structure is provided in either the country of hire or the place of employment, the provisions of § 25.2(d) shall apply.

(2) Where equitable considerations as determined by the Director so warrant, a fourth country national may be awarded benefits applicable to local hires in his or her home country.

§ 25.6 How does OWCP adjudicate claims of non-citizen residents of possessions?

An employee who is a bona fide permanent resident of any United States possession, territory, commonwealth or trust territory will receive the full benefits of the FECA, as amended, except that the application of the minimum benefit provisions provided therein shall be governed by the restrictions set forth in 5 U.S.C. 8138.

Subpart B—The Special Schedule of Compensation

§ 25.100 How is compensation for disability paid?

Compensation for disability shall be paid to the employee as follows:

(a) *Permanent total disability.* In cases of permanent total disability, 66⅔ percent of the monthly pay during the period of such disability.

(b) *Temporary total disability.* In cases of temporary total disability, 66⅔ percent of the monthly pay during the period of such disability.

(c) *Permanent partial disability.* In cases of permanent partial disability, 66⅔ percent of the monthly pay, for the following losses and periods:

(1) Arm lost: 280 weeks' compensation.

(2) Leg lost: 248 weeks' compensation.

(3) Hand lost: 212 weeks' compensation.

(4) Foot lost: 173 weeks' compensation.

(5) Eye lost: 140 weeks' compensation.

(6) Thumb lost: 51 weeks' compensation.

(7) First finger lost: 28 weeks' compensation.

(8) Great toe lost: 26 weeks' compensation.

(9) Second finger lost: 18 weeks' compensation.

(10) Third finger lost: 17 weeks' compensation.

(11) Toe, other than great toe, lost: 8 weeks' compensation.

(12) Fourth finger lost: 7 weeks' compensation.

(13) Loss of hearing: One ear, 52 weeks' compensation; both ears, 200 weeks' compensation.

(14) Phalanges: Compensation for loss of more than one phalanx of a digit shall be the same as for the loss of the entire digit. Compensation for loss of the first phalanx shall be one-half of the compensation for the loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for the loss of the arm or leg; but, if amputated between the elbow and the wrist, or between the knee and the ankle, the compensation shall be the same as for the loss of the hand or the foot.

(16) Binocular vision or percent of vision: Compensation for loss of binocular vision, or for 80 percent or more of the vision of an eye shall be the same as for the loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, one or more phalanges of two or more digits of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for the loss of a hand or a foot.

(18) Total loss of use: Compensation for a permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss of use of the member.

(20) Consecutive awards: In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth in paragraphs (c)(1) through (19) of this section, but not amounting to permanent total disability, the award of compensation shall be for the loss or loss of use of each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (c)(17) of this section shall apply.

(21) Other cases: In all other cases within this class of disability the compensation during the continuance of disability shall be that proportion of compensation for permanent total disability, as determined under paragraph (a) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

(22) Compensation under paragraphs (c)(1) through (21) of this section for permanent partial disability shall be in addition to any compensation for temporary total or temporary partial disability under this section, and awards for temporary total, temporary partial, and permanent partial disability shall run consecutively.

(d) *Temporary partial disability.* In cases of temporary partial disability, during the period of disability that proportion of compensation for temporary total disability, as determined under paragraph (b) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

§ 25.101 How is compensation for death paid?

If the disability causes death, the compensation shall be payable in the amount and to or for the benefit of the persons, determined as follows:

(a) To the undertaker or person entitled to reimbursement, reasonable funeral expenses not exceeding $200.

(b) To the surviving spouse, if there is no child, 35 percent of the monthly pay until his or her death or remarriage.

(c) To the surviving spouse, if there is a child, the compensation payable under paragraph (b) of this section, and in addition thereto 10 percent of the monthly wage for each child, not to exceed a total of 66⅔ percent for such surviving spouse and children. If a child has a guardian other than the surviving spouse, the compensation payable on account of such child shall be paid to such guardian. The compensation of any child shall cease when he or she dies, marries or reaches the age of 18 years, or if over such age and incapable of self-

support, becomes capable of self-support.

(d) To the children, if there is no surviving spouse, 25 percent of the monthly pay for one child and 10 percent thereof for each additional child, not to exceed a total of 66⅔ percent thereof, divided among such children share and share alike. The compensation of each child shall be paid until he or she dies, marries or reaches the age of 18, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian, if there is one, otherwise to the person having the custody or care of such child, for such child, as the Director in his or her discretion shall determine.

(e) To the parents, if one is wholly dependent for support upon the deceased employee at the time of his or her death and the other is not dependent to any extent, 25 percent of the monthly pay; if both are wholly dependent, 20 percent thereof to each; if one is or both are partly dependent, a proportionate amount in the discretion of the Director. The compensation to a parent or parents in the percentages specified shall be paid if there is no surviving spouse or child, but if there is a surviving spouse or child, there shall be paid so much of such percentages for a parent or parents as, when added to the total of the percentages of the surviving spouse and children, will not exceed a total of 66⅔ percent of the monthly pay.

(f) To the brothers, sisters, grandparents and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his or her death, 20 percent of the monthly pay to such dependent; if more than one are wholly dependent, 30 percent of such pay, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more are partly dependent, 10 percent of such pay divided among such dependents share and share alike. The compensation to such beneficiaries shall be paid if there is no surviving spouse, child or dependent parent. If there is a surviving spouse, child or dependent parent, there shall be paid so much of the above percentages as, when added to the total of the percentages payable to the surviving spouse, children and dependent parents, will not exceed a total of 66⅔ percent of such pay.

(g) The compensation of each beneficiary under paragraphs (e) and (f) of this section shall be paid until he or she, if a parent or grandparent, dies, marries or ceases to be dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of 18 years, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister or grandchild under legal age shall be paid to his or her guardian, if there is one, otherwise to the person having the custody or care of such person, for such person, as the Director in his or her discretion shall determine.

(h) Upon the cessation of any person's compensation for death under this subpart, the compensation of any remaining person entitled to continuing compensation in the same case shall be adjusted, so that the continuing compensation shall be at the same rate such person would have received had no award been made to the person whose compensation ceased.

(i) In cases where there are two or more classes of persons entitled to compensation for death under this subpart, and the apportionment of such compensation as provided in this section would result in injustice, the Director may in his or her discretion modify the apportionments to meet the requirements of the case.

§ 25.102 What general provisions does OWCP apply to the Special Schedule?

(a) The definitions of terms in the FECA, as amended, shall apply to terms used in this subpart.

(b) The provisions of the FECA, unless modified by this subpart or otherwise inapplicable, shall be applied whenever possible in the application of this subpart.

(c) The provisions of the regulations for the administration of the FECA, as amended or supplemented from time to time by instructions applicable to this subpart, shall apply in the administration of compensation under this subpart, whenever they can reasonably be applied.

Subpart C—Extensions of the Special Schedule of Compensation

§ 25.200 How is the Special Schedule applied in the Republic of the Philippines?

(a) *Modified special schedule of compensation.* Except for injury or death of direct-hire employees of the U.S. Military Forces covered by the Philippine Medical Care Program and the Employees' Compensation Program pursuant to the agreement signed by the United States and the Republic of the Philippines on March 10, 1982 who are also members of the Philippine Social Security System, the special schedule of compensation established in subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, in the Republic of the Philippines, to injury or death occurring on or after July 1, 1968, with the following limitations:

(1) *Temporary disability.* Benefits for payments accruing on and after July 1, 1969, for injuries causing temporary disability and which occurred on and after July 1, 1968, shall be payable at the rates in the special schedule as modified in this section.

(2) *Permanent disability and death.* Benefits for injuries occurring on and after July 1, 1968, which cause permanent disability or death, shall be payable at the rates specified in the special schedule as modified in this section for

(i) All awards not paid in full before July 1, 1969, and

(ii) Any award paid in full prior to July 1, 1969: Provided, that application for adjustment is made, and the adjustment will result in additional benefits of at least $10. In the case of injuries or death occurring on or after December 8, 1941 and prior to July 1, 1968, the special schedule as modified in this section may be applied to prospective awards for permanent disability or death, provided that the monthly and aggregate maximum provisions in effect at the time of injury or death shall prevail. These maxima are $50 and $4,000, respectively.

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Benefits are payable to the survivors in the following order of priority (all beneficiaries in the highest applicable classes are entitled to share equally):

(1) Surviving spouse and unmarried children under 18, or over 18 and totally incapable of self-support.

(2) Dependent parents.

(3) Dependent grandparents.

(4) Dependent grandchildren, brothers and sisters who are unmarried and under 18, or over 18 and totally incapable of self-support.

(d) *Burial allowance.* 14 weeks' wages or $400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial exponses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in paragraphs (c)(1) through (19) of § 25.100, subject to an aggregate limitation of 400 weeks' compensation. In all other cases, provided for permanent total disability that proportion of the compensation (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 60 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed $8,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed $35.

(j) *Method of payment.* Only compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time the extent of entitlement is established.

(k) *Exceptions.* The Director in his or her discretion may make exceptions to regulations in this section by:

(1) Reapportioning death benefits, for the sake of equity.

(2) Excluding from consideration potential death beneficiaries who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the beneficiary.

§ 25.201 How is the Special Schedule applied in Australia?

(a) The special schedule of compensation established by subpart B of this part shall apply in Australia with the modifications or additions specified in paragraph (b) of this section, as of December 8, 1941, in all cases of injury (or death from injury) which occurred between December 8, 1941 and December 31, 1961, inclusive, and shall be applied retrospectively in all such cases of injury (or death from injury). Compensation in all such cases pending as of July 15, 1946, shall be readjusted accordingly, with credit taken in the amount of compensation paid prior to such date. Refund of compensation shall not be required if the amount of compensation paid in any such case, otherwise than through fraud, misrepresentation or mistake, and prior to July 15, 1946, exceeds the amount provided for under this paragraph, and such case shall be deemed compromised and paid under 5 U.S.C. 8137.

(b) The total aggregate compensation payable in any case under paragraph (a) of this section, for injury or death or both, shall not exceed the sum of $4,000, exclusive of medical costs. The maximum monthly rate of compensation in any such case shall not exceed the sum of $50.

(c) The benefit amounts payable under the provisions of the Commonwealth Employees' Compensation Act of 1930–1964, Australia, shall apply as of January 1, 1962, in Australia, as the exclusive measure of compensation in cases of injury (or death from injury) according on and after January 1, 1962, and shall be applied retrospectively in all such cases, occurring on and after such date: Provided, that the compensation payable under the provisions of this paragraph shall in no event exceed that payable under the FECA.

§ 25.202 How is the Special Schedule applied for Japanese seamen?

(a) The special schedule of compensation established by subpart B of this part shall apply as of November 1, 1971, with the modifications or additions specified in paragraphs (b) through (i) of this section, to injuries sustained outside the continental United States or Canada by direct-hire Japanese seamen who are neither citizens nor residents of the United States or Canada and who are employed by the Military Sealift Command in Japan.

(b) *Temporary total disability.* Weekly compensation shall be paid at 75 percent of the weekly wage rate.

(c) *Temporary partial disability.* Weekly compensation shall be paid at 75 percent of the weekly loss of wage-earning capacity.

(d) *Permanent total disability.* Compensation shall be paid in a lump sum equivalent to 360 weeks' wages.

(e) *Permanent partial disability.* (1) The provisions of § 25.100 shall apply to the types of permanent partial disability listed in paragraphs (c)(1) through (19) of that section: Provided that weekly compensation shall be paid at 75 percent of the weekly wage rate and that the number of weeks allowed for specified losses shall be changed as follows:

(i) Arm lost: 312 weeks.
(ii) Leg lost: 288 weeks.
(iii) Hand lost: 244 weeks.
(iv) Foot lost: 205 weeks.
(v) Eye lost: 160 weeks.
(vi) Thumb lost: 75 weeks.
(vii) First finger lost: 46 weeks.
(viii) Second finger lost: 30 weeks.
(ix) Third finger lost: 25 weeks.
(x) Fourth finger lost: 15 weeks.
(xi) Great toe lost: 38 weeks.
(xii) Toe, other than great toe lost: 16 weeks.

(2) In all other cases, that proportion of the compensation provided for permanent total disability in paragraph (d) of this section which is equivalent to the degree or percentage of physical impairment caused by the injury.

(f) *Death.* If there are two or more eligible survivors, compensation equivalent to 360 weeks' wages shall be paid to the survivors, share and share alike. If there is only one eligible survivor, compensation equivalent to 300 weeks' wages shall be paid. The following survivors are eligible for death benefits:

(1) Spouse who lived with or was dependent upon the employee.

(2) Unmarried children under 21 who lived with or were dependent upon the employee.

(3) Adult children who were dependent upon the employee by reason of physical or mental disability.

(4) Dependent parents, grandparents and grandchildren.

(g) *Burial allowance.* $1,000 payable to the eligible survivor(s), regardless of actual expenses. If there are no eligible survivors, actual expenses may be paid or reimbursed, up to $1,000.

(h) *Method of payment.* Only compensation for temporary disability shall be payable periodically, as entitlement accrues. Compensation for permanent disability and death shall be payable in a lump sum.

(i) *Maxima.* In all cases, the maximum weekly benefit shall be $130. Also, except in cases of permanent total disability and death, the aggregate maximum compensation payable for any injury shall be $40,000.

(j) *Prior injury.* In cases where injury or death occurred prior to November 1, 1971, benefits will be paid in accordance with regulations previously promulgated, contained in the 20 CFR, parts 1 to 399, edition revised as of January 1, 1971.

§ 25.203 How is the Special Schedule applied to non-resident aliens in the Territory of Guam?

(a) The special schedule of compensation established by subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, to injury or death occurring on or after July 1, 1971 in the Territory of Guam to non-resident alien employees recruited in foreign countries for employment by the military departments in the Territory of Guam. However, the Director may, in his or her discretion, adopt the benefit features

and provisions of local workers' compensation law as provided in subpart A of this part, or substitute the special schedule in subpart B of this part or other modifications of the special schedule in this subpart C, if such adoption or substitution would be to the advantage of the employee or his beneficiary. This schedule shall not apply to any employee who becomes a permanent resident in the Territory of Guam prior to the date of his or her injury or death.

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Beneficiaries of death benefits shall be determined in accordance with the laws or customs of the country of recruitment.

(d) *Burial allowance.* 14 weeks' wages or $400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in paragraphs (c)(1) through (19) of § 25.100, subject to an aggregate limitation of 400 weeks' compensation. In all other cases, that proportion of the compensation provided for permanent total disability (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed $24,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed $70.

(j) *Method of payment.* Compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time the extent of entitlement is established.

(k) *Exceptions.* The Director may in his or her discretion make exception to the regulations in this section by:

(1) Reapportioning death benefits for the sake of equity.

(2) Excluding from consideration potential beneficiaries of a deceased employee who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the employee or his or her beneficiary(ies).

Signed at Washington, D.C., this 28th day of November, 1997.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards Administration.

[FR Doc. 97–32511 Filed 12–22–97; 8:45 am]

BILLING CODE 4510–27–P

federal register

Tuesday
December 23, 1997

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 483

Medicare and Medicaid; Resident Assessment in Long Term Care Facilities; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 483

[HCFA–2180–F]

RIN 0938–AE61

Medicare and Medicaid; Resident Assessment in Long Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes a resident assessment instrument for use by long term care facilities participating in the Medicare and Medicaid programs when conducting a periodic assessment of a resident's functional capacity. The resident assessment instrument (RAI) consists of a minimum data set (MDS) of elements, common definitions, and coding categories needed to perform a comprehensive assessment of a long term care facility resident. A State may choose to use the Federally established resident assessment instrument or an alternate instrument that is designed by the State and approved by us. These regulations establish guidelines for use of the data set and designation of the assessment instrument.

The provisions contained in these regulations implement statutory requirements. The resident assessment instrument is intended to produce a comprehensive, accurate, standardized, reproducible assessment of each long term care facility resident's functional capacity.

EFFECTIVE DATE: Except for §§ 483.20(f) and 483.315(h), these regulations are effective March 23, 1998. Sections 483.20(f) Facility computerization requirements and 483.315(h) State computerization requirements are effective June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Cindy Hake, (410) 786–3404.

SUPPLEMENTARY INFORMATION:

I. Background

On December 28, 1992, we published in the **Federal Register**, at 57 FR 61614, a proposed rule with an opportunity for public comment, "Resident Assessment in Long Term Care Facilities," which established a resident assessment instrument that all long term care facilities participating in the Medicare and Medicaid programs must use when conducting an assessment of a resident's functional capacity. We proposed that a State may choose to use the Federally established resident assessment instrument or an alternate instrument that is designed by the State and approved by us. We proposed that a facility must enter information from the resident assessment into a computer, in accordance with HCFA-specified formats. At least monthly, the facility must transmit electronically the information contained in each resident assessment to the State.

The resident assessment instrument would consist of a minimum data set (MDS) of screening and assessment elements, including common definitions and coding categories for use by a facility in performing a comprehensive assessment of a long term care facility resident. In addition to containing identifying information such as name, birthdate, and occupation, the MDS consists of standardized items that assess, for example, a resident's communication patterns, cognitive patterns, physical functioning and structural problems, health conditions, and medications. The proposed rule established guidelines for use of the data set, and designated one or more assessment instruments that a State may require a facility to use.

We proposed to add a new § 483.315, which would require a State to specify for use in long term care facilities within the State either the HCFA-designated resident assessment instrument or an alternate instrument. The State would request and receive approval from us before implementing or modifying an alternate instrument. The uniform MDS was included in § 483.315(b). We also provided as attachments to the regulations the utilization guidelines for the resident assessment instrument, MDS common definitions, and resident assessment protocols (RAPs).

II. Analysis of and Responses to Public Comments

We received 146 timely letters in response to our December 28, 1992, proposed regulation. Most were from provider organizations and nursing home staff. We also heard from consumer organizations, professional organizations, nursing home residents and their families, and State and Federal agencies.

Prior to addressing comments on specific regulatory sections, we will provide a summary of public comments on major topics, and discuss some of the general issues raised by these regulations (in the order in which those issues appeared in the preamble to the proposed rule).

Summary of Public Comments

Summary of Public Comments on MDS

During the public comment period, respondents suggested over 70 different additions to the MDS. Many commenters suggested modifying items to increase clarity. For example, the item "wheeled self" was divided into two items, "wheeled self on unit" and "wheeled self off unit" to further differentiate a resident's capabilities. Commenters also suggested the addition of items that provided information needed by clinical staff caring for residents. Data suggest that nursing home residents experience pain on a regular basis, but the MDS items associated with pain did not differentiate the intensity and location of pain (chest, joint, other). We expanded MDS items associated with pain to assist clinicians in determining the nature and scope of pain for care planning purposes.

There was a concern expressed by commenters that the MDS, as originally designed, could not be used for determining nursing home payment or monitoring quality of care, either at the resident and or the facility level. To address this concern, we added items to the MDS that are needed to support a case-mix classification system for long term care facility payment known as, Resource Utilization Groups III, which is a mechanism for determining the level of resources necessary to care for an individual based upon his clinical characteristics as measured by the MDS. This classification system was developed under the auspices of the HCFA-funded Multistate Nursing Home Case-mix and Quality demonstration, whose purpose is to develop, implement and evaluate a case-mix payment system for SNF services under Medicare. The original four States participating in the demonstration began using the MDS+ (an alternate RAI that consists of the original MDS, plus additional assessment items specified by the State for use in all Medicare and Medicaid-certified nursing homes in the State), based on the Resource Utilization Groups III classification system in their Medicaid programs in 1994, as have several other States subsequently.

Section 4432 of the Balanced Budget Act of 1997 (Public Law 105–33), amends section 1888 of the Social Security Act (the Act), by adding a new subsection (e). The Balanced Budget Act and the Prospective Payment System (PPS) will require national implementation in Fiscal Year 1998 of a casemix payment system for Medicare that is based on MDS data. The Secretary determines the manner and time frames within which resident assessment data are collected at the State and national levels to develop and implement casemix payment rates. The resident assessment data submitted to the State is a resource upon which the Secretary can draw for development and implementation of the PPS system.

We added other items to the original MDS to ensure that key indicators of quality of care, (known as quality measures) could be derived from the MDS and monitored longitudinally at the resident and facility level. The addition of items needed to support payment and quality monitoring programs will also strengthen the clinical relevancy of the MDS by providing important information to facility staff about the resident's potential for achieving the highest level of functioning. One example of such items are nursing care interventions related to rehabilitation and restorative care for the resident, such as range of motion, training and skill practice in walking, transferring, eating, dressing/grooming, and communication.

Commenters were particularly concerned with the ability of the MDS to assist in assessing the quality of life for nursing home residents. Revisions we made within the section on mood and behavior, in particular, have the potential for providing important information regarding the resident's risk for depression, as well as the presence of depression. Nursing home residents have a high risk of developing depression, with clinical experts estimating that at least 60 percent of current nursing home residents have some level of depression. However, analysis of MDS records for a large group of residents showed that the mood and behavior items were checked for only 16 percent of the residents. We found that nursing homes that have clinical staff with expertise in this area identify more residents with mood and behavior problems. Concerned that residents with, or at risk of, depression may not be identified, we have modified the mood and behavior items to help facility staff identify objective behaviors frequently associated with depression. We also added a scale to measure the frequency with which these symptoms occur. An item indicating the use of a behavior management program was modified to allow the assessor to identify specific strategies that were being used with the resident to deal with mood and behavior symptoms.

Finally, commenters expressed concern that the MDS was not appropriate to use with some groups of nursing home residents, such as the non-elderly or short term stay populations. To better understand the changing nursing home population, we have added an item in Section P that identifies different populations often served by nursing homes (for example, pediatric resident, hospice care resident). To address commenters' concerns, we also added items focusing more on short-term nursing and therapy needs, and issues important to terminal residents, such as pain. We also expanded the item on discharge planning to assess the resident's potential for discharge, including the resident's desire to return to the community and the presence of a support person who is positive towards discharge. This item will also be useful in developing a RAP on discharge planning that was suggested by a number of commenters.

Summary of Public Comments on Triggers

Commenters believed that the trigger legend was too complex and needed to be simplified or eliminated. It is substantially revised, and we have reduced the number of triggers for particular RAPs. We have also eliminated the categories of automatic and potential triggers as this had not been well understood and sometimes led to unnecessary work by nursing home staff.

Summary of Public Comments on the RAP Summary Form

We revised the RAP Summary Form and accompanying instructions to reduce confusion regarding their use that was noted by commenters. Specifically, the revised form provides a column for indicating if the RAP was triggered. It provides more specific instruction and direction on the type of information that we would expect a facility to document for each triggered RAP, including rationale to support decision-making regarding whether to proceed with a care plan for a triggered RAP. Additionally, because we consider the RAPs part of the utilization guidelines for the MDS, we designated the RAP Summary form as Section V of the MDS. This will provide nursing home staff and surveyors with more complete information on resident care problems and outcomes. This will also permit surveyors to monitor the completion of the RAPs.

Summary of Public Comments on RAPs

Most of the commenters valued the RAPs as part of the RAI for improving the quality of care. A number of commenters indicated the need for the addition of new RAPs. Specifically, we received comments suggesting the creation of RAPs on discharge planning, pain, terminal care/imminent death, resident rights, bowel incontinence/constipation, abnormal lab values, and foot care. A new RAP on discharge planning is already developed and we expect to develop other RAPs during 1997.

There was also concern that many of the current RAPs do not address the needs of short-stay residents. Work is currently in progress and we expect to publish revised RAP Guidelines that address the needs of this population in 1997.

Comments on MDS and RAPS

Comment: Most commenters asserted that the original MDS did not provide enough information in some areas. These commenters noted that the areas of nursing diagnosis and medical needs, and certain information needed for care planning, were lacking. Some commenters stated that professional nurses are knowledgeable regarding areas that are not addressed on the MDS and automatically incorporate them into the assessment and care plan. Another commenter pointed out that the MDS+ includes additional information that is helpful in care planning.

Response: As discussed elsewhere, we have added a number of items that nursing home staff have identified as useful in assessing a resident's functional capability and medical problems. We have also clarified items that had been confusing for facility staff in the past. Some of the items added to the MDS were previously on the MDS+. We believe that the MDS captures information on most of the areas of concern in assessing nursing home residents. While we agree that there are additional items that would provide necessary information for nursing home staffs' use in care planning, it is not possible for us to design an instrument that covers every potential item that a nursing home needs to know to provide care to residents. The RAI is not intended to replace or substitute for a resident's full clinical record. The facility should document in those clinical records pertinent information whether or not required by the RAI. A facility is responsible for providing care that is necessary to assist a resident in attaining or maintaining his or her highest practicable well-being, regardless of whether the care areas are captured on the MDS. A facility may document additional information regarding the resident's status wherever it chooses in the resident's clinical records.

Comment: One commenter urged that we move cautiously in adding any other

data elements to the MDS, explaining that some States with a non-MDS based case-mix system are having difficulty merging the MDS and their reimbursement system. Other commenters disagreed regarding the need to add items to the MDS at this time. They thought that we should maintain the status quo until the industry and surveyors have more fully understood and integrated the current instrument into their way of doing business. Commenters mentioned that the MDS is a screening tool that already contains most of the relevant items. One commenter stated that the original MDS underwent extensive scrutiny and testing during its development and should be kept as is for at least 10 years in order to maintain consistency for providers, computer companies, research, and case-mix reimbursement.

Response: We disagree regarding the need to maintain the MDS for the next several years in the form it was originally issued in 1990 (not as revised in 1995 in version 2.0). Many of the changes in version 2.0 of the MDS were made to address areas that had been particularly troublesome or poorly understood by clinicians responsible for completing the RAI. Moreover, changes in the MDS have not been frequent enough to cause significant disruption for facilities. Nearly all States began to require use of the original RAI in late 1990 or early 1991, and most did not require facilities to use the new RAI until January 1996 (with some States deferring that requirement to 1997). This means that the original RAI was in place for nearly 5 years before facilities were expected to change to the new instrument. Additionally, it is less burdensome and confusing to incorporate necessary improvements in the RAI at this time than it will be after implementation of requirements in this regulation for facility computerization of MDS information. Overall, the advantages of implementing version 2.0 of the RAI in 1996 far outweigh maintenance of the original assessment system.

If clinically warranted and supported by affected parties, we anticipate reviewing the MDS every 3 to 5 years to determine whether it needs to be revised, and sponsoring the development of a new version of the RAI approximately every 5 years. For all RAI refinement activities, we will seek the input of interested and affected parties.

Comment: Several other commenters expressed the belief that we should conduct more RAI training on a national level and institute a facility support effort, rather than making major changes to the instrument.

Response: We support the need for more RAI training at all levels and have numerous activities underway to strengthen the knowledge of facility staff and surveyors about comprehensive assessment and its linkage to resident care planning and quality of care. The need for additional RAI training has been consistently supported by the States, provider, consumer and professional associations with which we have worked to develop version 2.0 of the RAI. In 1995, we published a new edition of the Resident Assessment Instrument User's Manual for version 2.0 of the RAI that contains new information on the use of the RAPs and linking the RAI to care plans. We have developed "train the trainer" materials for use in both provider and surveyor training, and have begun a multi-year effort to develop educational materials for both providers and surveyors at both basic and advanced levels. We train all long term care facility surveyors on the RAI as part of our basic health surveyor course and have offered specialty courses on advanced resident assessment issues for surveyors as well as other State staff on a routine basis. We also offered a full-day program on resident assessment for all long term care facility surveyors during each of the HCFA regional conferences held during 1994. We are committed to working in partnership with providers and States to identify training needs and develop methods to facilitate the dissemination of consistent information and improve providers' use of the RAI in order to improve care outcomes for nursing home residents.

We believe that the industry also shares a responsibility to promote understanding of the RAI within facilities. Provider and professional organizations should offer sessions on resident assessment during their annual meetings or as special continuing education programs held throughout the course of the year. Our staff have participated in a number of national meetings and will continue to do so, as warranted. However, we believe that providers can best learn how to integrate RAI requirements into their daily practice from other providers who have implemented successful programs. We encourage the use of "peer teaching" programs in a variety of forms.

Beneficiary organizations have also played an important role in getting information on the RAI out to their members. The organizations have educated residents, families and ombudsmen regarding the role of resident assessment in quality care and how to use the RAI in care planning and conflict resolution. They also provided invaluable input in modifying the RAI.

As part of a contract with us, the Research Triangle Institute evaluated the extent to which facilities had implemented the RAI as well as the accuracy of the assessments being conducted. The Research Triangle Institute compared available assessment information for 23 specific assessment items in facilities both before and after the implementation of the RAI. Their sample consisted of over 260 facilities in 10 States. The Research Triangle Institute's results showed that:

- The percent of residents with no assessment information available for particular health status issues decreased on average by 81 percent;
- The percent of residents with accurate information documented on assessment items increased on average by 24 percent;
- The percent of residents with available information on all 23 items increased by 53 percent.

The Research Triangle Institute's study asserts that facilities are using the RAI, and that the RAI has resulted in the presence of more accurate information on which a facility can base its individualized care plans.

Comment: Commenters addressed the usefulness of the RAPs. Of those who responded to this request for comment, some said that the RAPs are useful and provide a structured framework for making sense of the MDS data through analysis, interpretation, and synthesis, believing that the RAPs tie the assessment process together. A consumer advocacy organization believed that the RAPs assist facility staff in learning causes of problems and identifying potential risks of decline that require further staff attention. A few said that the RAPs have improved the quality of care in nursing homes, or could with the appropriate training and administrative support.

Response: The RAPs are structured decision frameworks which contain guidelines for additional assessment of relevant resident attributes, risk factors, clinical history and other factors. They assist with clinical decision-making and help nursing home staff gather and analyze necessary information to develop an appropriate and individualized care plan.

The Guidelines section of each RAP assists staff to determine whether a problem exists and to identify relevant causal factors that affect the resident's condition. The RAPs also offer suggestions regarding how a facility can eliminate or minimize factors contributing to the resident's problem, or how a facility can maximize a resident's strengths to achieve the highest practicable well-being. In this way, the RAPs help facility staff to develop an individualized care plan that meets the needs of the resident.

According to the report of the Research Triangle Institute's study, directors of nursing indicated the RAP triggers and guidelines were used routinely in over 90 percent of the facilities participating in the survey. Three-quarters of the directors of nursing stated that they believed that use of the RAP triggers had increased their facility's ability to identify residents' clinical problems, and two-thirds believed that using the RAPs had increased their facility's ability to identify residents' potential for rehabilitation improvement.

Among the 160 directors of nursing who thought the RAP triggers had increased identification of clinical problems, 45 percent were able to identify, without prompting, specific RAPs for which this increase was most pronounced. They most frequently cited cognitive loss/dementia (21 percent), ADL/functional rehabilitation potential (17 percent), delirium (16 percent), and communication (15 percent). Seventy-two percent of the directors of nursing interviewed stated that they did not believe it had been at all difficult for staff to provide necessary care in response to the newly identified clinical problems.

Comment: Some commenters believed that the RAPs are too prescriptive, and that we are "legislating a cookbook approach."

Response: RAPs function as resident-care related assessment tools rather than as clinical standards. RAPs do not contain prescriptive mandates to perform particular diagnostic tests or specialized assessments. Rather, RAPs lead facility staff through a process that enables them to gain a better understanding of the resident's status in a particular area.

For each resident, facility staff are required to make decisions regarding whether each RAP that triggered for that resident identifies a problem that requires care planning and intervention. Staff are required to proceed with a care plan only if clinically appropriate. As part of the RAP review process, facilities are required to document key information regarding a particular area or condition that includes objective findings and subjective complaints of the resident. Irrespective of RAI requirements, this type of information should be routinely assessed and documented by a facility as a part of good clinical practice. We do not require that a facility provide documentation that addresses each issue or question raised in a particular RAP guideline. We disagree that the RAPs represent a cookbook approach. The RAPs are tested assessment protocols that lead facility staff through a focused, logically progressive, clinical evaluation of the resident, relative to the particular area addressed by the RAP. The RAPs are not intended to prescribe courses of action for a facility. Rather, they provide a structured, problem-oriented framework for organizing MDS information and additional clinically relevant information that identifies medical problems. Upon completion of the RAPs, the facility staff will have:

- Identified clinical issues unique to the resident that may adversely affect his or her highest practicable level of well-being;
- Identified factors that place the resident's highest practicable functioning at risk;
- Considered whether the identified potential problems could be prevented or reversed, or risk factors minimized, and evaluated the extent to which the resident is able to attain a higher level of well-being and functional independence; and
- Evaluated ongoing care practices for the individual resident.

Comment: One commenter asked that we not mandate standards for care planning until there is better understanding of how the assessment process works. The commenter stated that a great deal of work needs to be done in setting up appropriate standards for care planning.

Response: Neither the RAPs, nor any other component of the RAI contains required standards of care or standards regarding the specific interventions and time frames for evaluation that must be present in care plans. As noted in the responses above, the RAPs are a structured framework that lead the facility through more in-depth assessment; they do not mandate a course of action for care planning. A facility has a great deal of flexibility in developing a care plan to meet a resident's individual needs.

Comment: Some who commented thought that the RAPs are too complex and difficult to use. One expressed the belief that the RAPs are not the only correct criteria for providing good care. Another pointed out that it has been a difficult learning process for facilities to understand that the MDS provides only raw data about a resident. Commenters recommended that some of the RAP items be included in the MDS as core assessment items.

Response: We agree that there has been a steep learning curve in terms of facilities' understanding of the RAPs and their ability to integrate them into day-to-day clinical process. Anecdotally, and more recently supported in the Research Triangle Institute study, facilities report that understanding and use of the RAPs has lagged well behind that of the MDS. Recognizing that the system required a major learning process, we have tried to address the RAPs in newer versions of our train-the-trainer courses offered annually for State RAI coordinators. Initially, our courses and materials focused on use of the MDS, then use of the RAPs, then integration of the RAI in care planning. Many States are still in the process of conducting training sessions for providers on use of the RAPs and care planning.

We also have made revisions to the RAP Summary form and our instructions regarding use of the RAPs in order to make them easier to understand and use. We will continue to refine our training products as well as evaluate facility staffs' ability to use the RAPs. If problems are identified, we are open to exploring ways to revise the RAP format or content in order to make the comprehensive assessment process more meaningful and productive for both facility staff and residents. We have incorporated some additional RAP triggers into the MDS and integrated assessment procedures contained in the RAP Guidelines throughout the instructions contained in the October 1995 edition of the RAI User's Manual.

Comment: A few commenters suggested that we make the RAPs available to facilities on request. Commenters asserted that often there is not a copy at the nurse's station.

Response: We agree that it is important for the RAPs to be available for staff use. In 1990, we sent information to each nursing home administrator regarding the RAI, and this information included a copy of the RAPs. Additionally, in 1990, we provided each State with a camera-ready copy of the original version of the RAI, and in 1995, we provided each State with a camera-ready copy of the new RAI, version 2.0. States were then responsible for providing facilities with a copy of the revised RAI including the RAPs.

We do not believe it is our responsibility to ensure that each nursing home currently has a copy of the RAPs. Facilities could request a copy from States, provider organizations or from other sources. However, we are exploring strategies to improve consistent distribution of RAI

information to nursing homes and ensure that clinical staff have access to the RAI User's Manual. We believe that for the RAPs to be used as intended, a copy of the RAPs should be available at each nursing station. States are responsible for communicating with facilities regarding the State-specified instrument and should, therefore, ensure that the facilities have the most current RAPs.

Comment: Some commenters wanted more flexibility in using the RAPs. They thought the RAPs should be adaptable, and, as professionals, facility staff should be able to pick and choose appropriate interventions from those suggested in the RAPs. Commenters also suggested that we make the RAPs optional. One commenter believed that the final product and process forces health care professionals into a format that stifles flexibility and interferes with the assessment and care planning process. Another suggestion was to allow a facility to use the RAPs as a flexible assistive device in care planning.

Response: We agree that facility staff are capable professionals and, as such, should be able to use the RAPs as is appropriate for each individual resident. This has always been our intent regarding their use. A facility may supplement the RAP assessment.

We believe that negative feelings regarding the utility of the RAPs are associated with lack of understanding of their use. As aforementioned, our training in the past did not focus on the RAPs. It has been our experience that facility staff who have been properly trained on the RAPs and integrated them into their clinical practice are convinced of their utility and positive effects on resident outcomes.

We do not believe that use of the RAPs should be optional, as they reflect necessary components of a comprehensive assessment. The RAPs represent a standard methodology for assessing and analyzing certain aspects of resident status. As part of the utilization guidelines for the RAI, the RAPs ensure consistent identification of medical problems and description of functional capabilities. They supplement the MDS to provide a standardized comprehensive assessment as is required by the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

Comment: A few commenters suggested that we collaborate with the Department's Agency for Health Care Policy and Research and the industry to make the RAPs more germane to current industry practice, knowledge, and standards. One commenter wanted us to provide actual assessment tools and decision trees. A State provider association recommended that the RAI contain fewer RAPs, and furthermore, that we encourage facilities to develop their own triggers consistent with their care planning system.

Response: We collaborated extensively with the industry in developing the original 18 RAPs. The Department's Agency for Health Care Policy and Research was not yet in existence when we developed the original RAPs. In revising the RAPs, we will seek the input of interested and affected parties. Regarding the comment to develop assessment tools and decision trees, it would be difficult for us to develop decision trees that cover all possible scenarios. We do not wish to require such a methodology for completing the RAPs, as it would limit the flexibility of facilities. Most providers have tended to request that we develop more RAPs, rather than fewer. We have an ongoing process for developing new RAPs by clinical experts and validating the RAPs through testing. Also, we will review the content of the current RAPs to ensure that they contain information pertinent to the changing nursing home population. We do not anticipate issuing changes to the RAPs more frequently than once a year. States may, with our approval, revise their instruments as frequently as they deem necessary.

Triggers are risk factors or strengths that are indicative of a need for additional assessment. They do not automatically flag all problems worthy of care planning. The original triggers were developed using an expert consensus process and have been empirically validated. As such, it is inappropriate to suggest that a facility identify its own triggers based on their care planning systems. A facility may choose to add additional triggers, but must use at least the triggers identified in the State RAI. Facility staff may choose to assess residents using the RAPs even if the RAPs are not triggered.

Comment: Commenters suggested that we emphasize that the RAP process is not limited to the completion of the RAP Summary form. It includes the need to understand why the resident's condition triggered the RAP. The commenter also recommended that the RAI Training Manual contain a set of examples concerning how to use the information in the RAPs as part of the assessment process.

Response: We agree that the RAP process is not merely filling out the RAP Summary form, but is an important link between gathering assessment information and developing the appropriate care plan. In April 1992, we issued guidance to our regional offices and the States regarding the RAP process and other policy issues. We also shared this information with provider and consumer organizations. We have revised the RAI User's Manual to include this guidance and more specific instructions and examples, including RAP documentation and linkages to care planning. In October 1995, we distributed to States and associations "train the trainer" materials that included special course content for RAI surveyors and trainers. This included instructions on using the RAPs.

Comment: A commenter urged that we structure the RAPs so that they identify resident problems, complicating conditions and risk factors. The individual stated that some RAPs are currently in this structure and that this would make the RAPs easier to use.

Response: We believe that all RAPs presently contain this information. However, we are open to reviewing the RAPs to ensure that their format is consistent as a part of our ongoing RAP review and refinement process that we began in 1995.

Comments on the Development of a Computerized National Data Base of Assessment Information

Comment: Generally, commenters that supported the proposed requirement to computerize the MDS included State governments and national and State provider organizations. One State expressed the belief that computerization should be optional; they thought that States should determine when and whether participation is feasible given the States' prevailing conditions.

Response: We intend to implement a Federal process for assuring and improving quality in this country's nursing homes which relies on resident-level MDS assessment data reported by nursing homes participating in Medicaid and Medicare. Furthermore, our intention is to improve the Federal long term care survey process by using information derived from MDS data to identify potential quality problems within nursing facilities. The goals of this approach are twofold: to improve care received by beneficiaries by enhancing the timeliness and effectiveness of facility monitoring; and to better utilize survey agency resources by targeting potential problem facilities and by focusing onsite survey activities on specific problem areas within a facility.

We view the collection of MDS data and its use within a standardized survey process, as defined under our State

Operations Manual as being consistent with our current practices. Under the present survey process, the facility must submit specific information to the State survey agency, including data on resident census, facility staffing and ownership status. These facility-specific data, along with other information gathered by the survey team (for example, facility deficiency information) are currently maintained both at State agencies and within a national data base maintained by HCFA. In addition, survey teams review residents' clinical records and other resident-specific information. The submission and use of MDS data within the context of facility regulation is entirely consistent with existing practices and our obligation to collect the information necessary to ensure the quality of care provided to residents of Medicare and Medicaid certified long term care facilities.

Automated data collection is essential to meaningful analysis of the quantity of data collected. The MDS data system would allow us to expand our existing system for gathering data related to quality, and provide us with objective and detailed measures of the health status and care outcomes for residents of a facility. Coupled with facility characteristic and deficiency history data, we expect the MDS system will be more reliable and effective in supporting early identification of potential care problems and directing the survey process towards these identified problem areas.

In their roles as our agents for conducting regulatory survey and quality assurance activities, States will be required to process and analyze MDS data reported by facilities to meet the objectives stated above. MDS information collected by States will also be used to construct a national repository of MDS assessments. The national data base will be used to serve numerous functions: to study and refine the quality measures used to direct survey activities of State agencies (for example, to enhance the ability of these indicators to support survey targeting); to understand the characteristics of the nation's nursing home residents and the services they receive; to measure the impact of regulation and assist in the formulation of national health care policy; and to provide researchers with information needed to evaluate the outcomes of various types of care and to improve standards of clinical practice.

Our authority to require computerization of MDS information is based on our general authority to set health and safety standards for providers under sections 1819(f)(1) and 1919(f)(1) of the Act. We will use the computerized data to establish standards, evaluate a facility's compliance with these standards, and review the standards' effectiveness and their continued appropriateness. For example, analysis of MDS assessments within a national repository might indicate an increase in the number of residents suffering from depression. We may then develop standards to assist facility staff in detecting and treating the disease. Such a standard could then be evaluated and its effectiveness assessed by a process of continually re-analyzing the MDS data base for changes in the prevalence of this characteristic over time.

Computerization of RAI data is also consistent with our authority under sections 1819(h)(3) and 1919(h)(3) of the Act to perform, review and validate facility surveys. As is discussed above, we intend to revise the survey process to utilize computerized assessment data. The new process will be an information-based approach, oriented around quality measures derived from computerized MDS data, as well as other sources of information. Furthermore, sections 1819(g)(2)(A)(I) and 1919(g)(2)(A)(I) of the Act mandate that we subject facilities to a "standard" survey. The availability of computerized assessment data will improve our ability to make the survey process more standard and consistently implemented within the across the States.

Currently, part of the standard survey includes an assessment of the status of a sample of residents over time to determine whether the facility has assisted the residents to attain or maintain their highest practicable level of well-being. Computerized assessment data will be instrumental in that it will allow a complete monitoring of characteristics of "all" residents, including changes in their functional status over time. Furthermore, under the current survey process, we can only determine changes in resident status and a facility's relative success in maintaining resident well-being cross-sectionally during an annual onsite survey. MDS computerization, on the other hand, provides the ability to monitor resident functional status and other characteristics through a longitudinal process of continuous measurement.

These uses of computerized RAI data also provide justification for requiring computerization under our overall program supervision responsibilities and general rulemaking authority under section 1102 of the Act, to the extent that the information will be used for general monitoring of care and beneficiary needs. This computerized information will ensure that program standards set forth in sections 1819(b) and 1919(b) of the Act are met, that the program is being properly administered, and that beneficiaries are being served, as contemplated generally by the Act. We address elsewhere the further uses of the data for monitoring the Medicaid and Medicare programs.

In addition to the authority cited above, to the extent that the RAI data are collected solely for Medicaid purposes, section 1906(a)(6) of the Act requires State agencies to make reports as required by the Secretary. As discussed above, the RAI data are essential for the Secretary's evaluation and monitoring responsibilities under the Act.

We disagree with suggestions to offer States a choice to participate in the proposed national MDS data base for a number of reasons. First, the processes being regulated by Federal authority via State agencies (healthcare delivery and associated standards of care) do not have varying criteria from one State to the next. In other words, standards of medical care and health service delivery do not vary across States; health standards in New York are the same as those in Alaska. This commonality has reasonably led to the formulation of one national set of regulations to evaluate provider performance with respect to these common health standards. It is our belief that this standard regulatory approach is in the best interest of the nation's healthcare consumers with respect to both ensuring consistent delivery of services across States and with respect to the healthcare industry's reasonable expectation to operate under a single set of rules and requirements. Thus, as this standard approach to facility regulation evolves over time, with its specific objectives for continuous improvement and refinement, it is appropriate for us to require our agents (in other words, States) to adopt the standard processes and mechanisms required to consistently implement these new approaches.

Specifically, allowing States to choose not to adopt a standard system for MDS information will adversely affect our ability to meet the objectives for these data. The following goals cannot be met without consistent implementation of the MDS system and process standards across all States:

- The ability to construct a modern regulatory model provides a reliable and objective means of measuring facility performance. MDS information gathered and maintained by a standard system in each State provides an information structure capable of providing this

alternate approach to measuring quality and creates the foundation for an information-based regulatory model. The ability to successfully implement such an approach is directly tied to process standardization across States.

• If States are allowed to choose not to operate this standard system, then we would not be capable of developing and implementing a facility targeting system or, information-based survey process consistently across States; thus, at best, an environment would exist in which facilities in one State would be subject to different quality monitoring and survey approaches than facilities in a neighboring State.

• Our ability to build a centralized national repository to support our various objectives with respect to quality monitoring, policy, program and regulatory development and evaluation, and to facilitate healthcare research, is dependent on our ability to receive reliable and timely MDS information from each State. Without a standardized MDS collection system in each State, the development of this MDS repository will be severely limited if not entirely impossible due to the prohibitive costs associated with interacting with varying system implementations in each State. Furthermore, without full participation of each State in this program, the general representativeness and usefulness of the information in the data base will likely be skewed or biased, depending on which States choose to participate. This would affect the validity of the information and could seriously limit its application for health resource planning and research of value to State and Federal governments, providers and consumers.

• Finally, States will play a critical role in informing consumers in that States will make aggregate MDS information available. This information will allow potential residents or their family members to select a facility that may best suit their needs. Without a standard approach and system for developing these public information resources, consumers and advocacy groups will not have reliable, consistent and comparable information healthcare providers across States.

Comment: In commenting on what specific uses States would have for the computerized data, commenters discussed using the data in the nursing home survey process. One State believed that the data would assist State survey agencies to focus the survey process and set norms. A consumer advocacy organization pointed out that, based on the strengths and weaknesses of a facility, a State could individualize the composition of the survey team sent to evaluate the facility's regulatory compliance. In other words, the number and type of surveyors sent onsite would be based on the types of potential care problems identified at the facility. For example, if a facility had a high prevalence of antipsychotic drug use, the survey team would include a pharmacist. This approach has the dual benefits of maximizing limited survey agency resources by better targeting them against the most likely problem areas, and for minimizing the general invasiveness of the survey process within the facility by focusing the process on key problem areas.

The MDS data set provides objective and consistent measures of a number of facility care and outcome parameters. By comparing individual providers to "gold standards" and other peer group-based norms on each of these parameters, States can identify high and low facility performance outliers on measures associated with the quality of care and the quality of life for residents of these facilities. Commenters also suggested that the data could be used to replace some resident-level information currently collected during the survey process on a form called the Resident Census and Conditions of Residents (HCFA–672), as well as other reporting forms for State and Federal needs, which would reduce facility burden. The MDS assessment contains detailed resident characteristics that can be used to eliminate all other forms and resident-level data collected by facilities to meet State and Federal requirements. One commenter, however, believed that the information should not be collected by the survey agency and used for investigations or enforcement.

Response: As described in prior responses, MDS data will assist State survey agencies in a plethora of ways to achieve greater efficiencies in monitoring quality of care and ensuring the highest levels of quality of care and quality of life for residents of nursing facilities. These examples include:

• *Problem identification:* the capability to reliably target areas for investigation of potential resident care problems prior to and in support of the onsite survey process;

• *Survey targeting and scheduling:* the ability to determine survey frequency and scope based on specific indicators of potential care problems;

• Tailoring survey team composition to specific problem potentials in facilities to most efficiently use limited staff and resources. It is important to note that States currently are not prohibited from considering nursing home characteristics when determining survey team composition, provided that the team includes a registered nurse. The State Operations Manual notes in section 2801 that to the extent practical, the team's composition should reflect the type of facility surveyed; and

• Conducting cost/benefit analysis of care approaches, based on resident outcome data adjusted for case-mix classification categories. This is consistent with the Department's medical treatment effectiveness initiative.

Many software programs currently used by nursing homes to enter MDS information already have the capacity to generate timely resident census information such as that found on the HCFA form 672. Several States are also developing systems to facilitate this activity for providers. The availability of the MDS standard system will provide significantly more detail on resident characteristics than general census information, and will make use of definitions that have been clinically developed and refined to maximize both reliability and validity. As such, the MDS will create a whole new model for understanding and communicating about resident characteristics. This new model will far outperform the limited view of residents that can be derived from information from current sources, such as the Form 672.

We further believe that automated resident status information has much more potential to further decrease the amount of paper work associated with the survey process. We have recently completed an evaluation of the survey process and intend to make ongoing refinements to incorporate new technologies and increase the efficiency of the survey process.

Comment: One commenter stated that using computerized data to target surveys would resemble a "big brother" environment and not one conducive to accurate assessments for fear of investigations based upon minimal data.

Response: We disagree that using assessment data to target the survey process would resemble a "big brother" environment or that fear of investigations would affect the accuracy of assessments. Facilities already submit significant resident-level information to support both survey agency functions and for claims processing under Medicaid and Medicare. These data have been collected for years without the adverse effects suggested by a "big brother" analogy; instead, to the extent that facility information has been made public (for example, release of survey and complaint results and findings), this release has served to provide valuable information to those interested in promoting the quality of life in nursing facilities. There is no reason to believe that collection and analysis of MDS information will not similarly be used in the interests of the general public with respect to their right to know the quality of healthcare services delivered by Medicaid and Medicare providers.

The MDS simply provides a better, more powerful mechanism than is currently available to observe and report resident condition or to monitor facility quality and safeguard the rights of residents of these facilities. The MDS is a tool for measuring healthcare facility performance, which also creates a foundation for improving the effectiveness of regulatory agencies as well as their operational efficiency.

Having a standard MDS repository available within State and Federal agencies provides a rich information resource to serve many objectives: it will provide access to reliable information and standard measures of resident characteristics for the many groups interested in improving care and quality of life in nursing homes, including consumer advocates and researchers; and, the MDS will support many other programs within States including providing the basis for Medicaid payments as is currently in effect in a number of States.

Clearly, the availability of MDS information within standardized Federal systems maintained by States directly benefits the general public as consumers of healthcare services and generally enhances the public knowledge of the quality of these services.

Furthermore, we expect that the MDS repository will enable HCFA or its State agent, or both, to provide facilities with analytic reports based on aggregated resident characteristics. This is consistent with a quality improvement model, as it allows facilities to compare themselves to other homes that are similar in terms of size and resident demographics. This directly promotes facilities as they seek to develop their own in-house quality assurance programs. Ultimately, facilities may use the data in ways that would analyze allocation of resources, and demonstrate efficiencies in caring for certain types of residents, and in turn, negotiate with managed care organizations for admission of certain types of residents.

We recognize that information contained within the MDS assessment is sensitive and must be safeguarded, and that protecting the privacy of residents is essential. In establishing a system of records for storage of MDS data, both HCFA and the States (as HCFA's contractors in performing survey functions) must comply with the Privacy Act, which applies to Federal systems of records containing individually-identifiable information. While we can make public aggregate summaries of the data, there are strict Federal guidelines for the release of individually-identifiable information by Federal agencies to any individual or organization. We can only release individually-identifiable information if a disclosure provision exists in the Privacy Act System of Records that is published in the **Federal Register**. We review requests on an individual basis, according to the provisions of the Privacy Act. Refer to the more detailed discussion later in this preamble concerning protection of privacy.

In summary, it is clear that the availability of structured analyses derived from MDS information will empower those working with a variety of approaches to improve the lives of residents of nursing homes. Whereas the big brother term suggests a scenario in which the interests of the individual are sacrificed to promote the interests of the State, this is clearly not the case with respect to the objectives for MDS information. Instead, MDS information will be used to directly support the interests of individual nursing home residents by substantially enhancing our understanding of healthcare delivery in nursing homes and by creating a standard framework for monitoring the quality of this care.

Comment: A few commenters noted that computerized assessment data would support a case-mix reimbursement system, and that it would be helpful to be able to compare facilities with similar case-mix levels.

Response: Our Office of Research and Demonstrations began the Nursing Home Case-mix and Quality Demonstration in 1989. One goal of the demonstration is to design, implement and evaluate a nursing home payment and quality monitoring system for Medicare skilled nursing facilities based on resident-level information contained in an expanded set of MDS data. States participating in the demonstration are also using MDS data to calculate reimbursement under Medicaid. Computerized information from the demonstration's data base will provide information on outcomes and processes of care, stratified by case-mix and other characteristics in the six participating States. This will also provide a mechanism by which to evaluate the effect of reimbursement on quality issues.

Several other Medicaid agencies in States not participating in the demonstration have chosen to independently implement an MDS-based case-mix system for setting payment rates for facilities and for determining coverage. Numerous other States are currently studying moving toward a case-mix payment system based on the MDS. Furthermore, States have identified a plethora of other functions to be supported by information contained on the MDS assessment form, these functions include: utilization review, service placement, and improvement in the States' ability to monitor and evaluate the cost-effectiveness and quality of care and services provided under the Medicaid program.

At least two States have already incorporated, or plan to incorporate, MDS information into their Medicaid management information system. West Virginia notes that to do so will allow the State to fine-tune its long term care rate setting and payment methodology. West Virginia integrated its stand-alone long term care payment process into the Medicaid management information system. The system captures monthly data to calculate the resident-specific case-mix index. An electronic billing system was implemented through the Medicaid management information system, which calculates the base rate reimbursement for all Medicaid beneficiaries, as well as the additional payment due based on the case-mix acuity determined from an expanded set of MDS data. The MDS reporting system not only enables the Medicaid agency to conduct utilization review, but also allows the survey agency to use the reports for quality of care issues.

Another State has a legislative mandate to integrate to the fullest extent possible, its MDS system, preadmission screening and annual resident review system, and treatment authorization request system. The State points out that, because it uses a composite per diem rate, the State agency has little ability to comprehensively review and adjust approval or reimbursement systems in order to improve the quality of care, increase efficiency, or control costs in long term care. We believe that integration of the MDS and the Medicaid management information system will support the objectives of its Medicaid program, including provision of the highest practical level of care and management of available funds in a fiscally prudent manner to maximize purchasing power. The State maintains that its system will provide information to facilities, State and Federal agencies, and to the public that will improve the quality and cost effectiveness of care delivered in the State.

Comment: Another use of computerized resident data that

commenters addressed was to support policy analysis and monitoring of trends. One State noted that the data could be used to inform and improve general Medicare and Medicaid policies. Another State gave the example of using the data as a tracking system for prevalence of pressure sores, restraints, and drug therapy. A commenter stated that data could be used by the appropriate quality monitoring personnel in the State to increase the probability of detecting and analyzing State-wide health care problems. Another State commenter suggested using the data at the resident-specific level to determine an individual's needs for assistance with activities of daily living and other required services. The commenter also discussed analyzing aggregate information for residents by facility.

Response: We agree that these data will benefit both the policy and operational components of States and the Federal Government as well as provide valuable information to the consumers of long term care services.

Potential benefits in policy development and evaluation expected from this information include the following:

- Foremost is the added operational efficiency derived from the MDS' ability to support a multitude of applications and programmatic objectives. As a single form designed to capture a comprehensive view of residents and related facility care practices, when submitted within the context of a standardized data management system, it greatly reduces the operational costs of data gathering as compared to current program requirements involving multiple forms and submissions from the facility. For example, many States receive three different categories of resident information from facilities, each requiring separate forms and submission rules: placement determination forms (for example, preadmission screening and resident review), payment-oriented clinical information to support case-mix adjustment (for example, Minnesota's or West Virginia's case-mix assessments), and survey-oriented forms describing resident characteristics. With the breadth of data collected on the MDS, the requirements in each of these examples can easily be met via a single submission of MDS data; thus, the operational overhead and associated costs for both facility and State are reduced.
- At the national level, policy decision-making, development, and evaluation are supported through the creation of a standard means to analyze State differences in the quality of services and resident care outcomes in the nation's 17,000 certified long term care facilities.
- By deriving both payment and quality functions from a single instrument, a framework is developed to closely monitor the relationship between payment and corresponding service delivery, and to provide an objective basis upon which incentives to promote and reward outstanding care patterns and outcomes can be built.

With respect to support for survey agency operations, creation of a standardized MDS repository in State agencies provides the framework for the development of an information-driven survey process by which the frequency and scope of facility review are based on objective measures of a facility's performance in comparison to established standards. This information-based survey concept and its benefits are discussed in prior sections of this regulation.

Comment: We also received other suggestions and examples of ways that States are currently using computerized MDS data. A few States indicated that they are using or could use the data for resident review requirements under the preadmission screening and resident review program (PASRR). Other ideas included:

- Relating to research support, MDS information will support both basic clinical research activities as well as practical applications such as identifying issues for "best practice" conferences.
- Using the resident data to identify strengths of each facility, staffing patterns, common diagnoses, and resident characteristics (suggested by a professional organization).
- Using the data for health planning related to long term care services, certificate of need decision-support, projecting nursing home bed need, and determining characteristics and care needs of current residents.
- Identifying industry and surveyor training needs with respect to changing demographics and industry structural delivery mechanisms (for example, as service delivery blends across multiple traditional care settings).

One State commenter expressed the belief that the paperwork burden in that State would be reduced by having MDS data available for a variety of purposes.

Response: We agree that potential benefits exist for all of the above listed uses of automated assessment information. A standardized system for MDS data collection and analysis that we will be providing to States will facilitate States' and facilities' ability to make use of these data by creating an infrastructure for managing, analyzing and distributing information to meet these varying program objectives.

Comment: A commenter did not think that a facility could determine staffing patterns from the MDS data set, which would negate its ability to be used in determining differential rates of payment.

Response: The commenter is partially correct, in that the RAI does not explicitly collect information on staffing. However, staffing standards, staffing mix, and minimum staffing requirements are already well understood with respect to the intensity of care required for a given resident and his or her clinical characteristics. There are, in fact, several commercially available systems that currently use MDS data and derived resident characteristics information to assist facility administrators in setting appropriate staffing levels according to the mix of resident care requirements in their facility.

Furthermore, with respect to State payment and rate setting, States that currently use an MDS-based case-mix payment approach have adopted the resource utilization group methodology for the payment determination. This methodology is based on resource groupings that are created through time studies of facility staff as they carry out their daily care tasks. These time study data are then linked to corresponding resident characteristics data to determine levels of care resource utilization (staff time, supplies, etc.) for given sets of care needs.

Thus, in this approach, staff requirements are implicit in the determination of each distinct care grouping, each of which is then associated with a specific reimbursement rate. Residents with complex care characteristics fall into a higher reimbursement group which directly reflects the additional staff resources required to care for that resident. In more sophisticated States, these models have been extended to allow for staffing pay rate differences across various regions within the State (for example, urban vs. rural staff pay differentials).

The current MDS 2.0 assessment form includes calculations for several of the most common variations of the resource utilization group's scoring in the standard specification for MDS data. Therefore, States that do not currently use case-mix-based reimbursement will still have an implicit and proven method of measuring the relative care and staffing requirements of residents according to widely accepted norms for such comparisons.

Again, the ability to support this functionality is created by the deployment of the standardized system for managing State MDS data repositories, upon which such resource utilization groups-oriented analyses will be derived.

Comment: We requested public comment on whether to collect a sample or 100 percent of MDS data. Of those who commented, most believed it would be preferable to collect 100 percent of facility data. One State thought that collecting only a sample of data would not produce the necessary level of detail required for a multipurpose data base system. The commenter further stated that operational activities generally focus on specific individuals, which would usually require information on all residents from all facilities. Another noted that 100 percent would be advantageous for rate setting and quality assurance, recognizing that the intended use of the data influences the collection requirements. The commenter said that an aggregate of 100 percent of facility data would serve well for the Federal level data set. A third State believed that having facilities submit data for all residents would make the State survey agency's sampling procedure in the long term care survey process more effective, as well as result in a comprehensive national data base. One State thought that sampled data would be disadvantageous in that it would provide incomplete or inaccurate representation and would be influenced by factors such as population density.

Those opposing collection of 100 percent of the data listed the associated cost, the size of the data base, and the man hours involved in collecting and maintaining the data. Prpponents of collecting a sample of facility data noted that current survey protocols determine compliance with State and Federal requirements based on a sample, and that MDS data set required for submission should be no different. A national provider organization said that collecting 100 percent of the data would not meet the underlying intent of the law pertaining to the implementation of comprehensive assessments, the resultant care plans, and improved quality of care. A national provider organization believed that if 100 percent of the data is collected at the facility level, the State should send us a stratified sample on a quarterly basis, while if a sample is gathered at the facility level, the State should send us the entire sample on a quarterly basis.

Response: There are many drawbacks associated with sampling. An incomplete representation or smaller number of records would make estimates of trends more difficult. Problems with resampling would prevent the development of longitudinal measures. Such problems include:

- The retention of any bias in the initial sample that would increase over time and would affect the reliability of the data.
- The unequal burden on facilities in the sample to correct errors, respond to inquiries and provide data.
- The need to develop complex instructions that would direct facilities how to replenish the sample when subjects drop out. We would require other instructions to handle changes of ownership in facilities, facilities that leave the Medicare and Medicaid programs, and facilities that go out of business.

In short, it would be difficult and expensive to construct and maintain a statistically significant sample of residents for whom we would require a facility to transmit its MDS records to the State.

Furthermore, since the facility must obtain the information required by the MDS on each resident for clinical care planning, and given that most facilities today have already automated this process, the added requirement of submission of data adds comparatively little overhead and associated costs to this process. Certainly, there is some fixed cost associated with developing and supporting transmission of a single resident's record to the State, but the marginal cost of transmitting all residents' records is negligible. Therefore, there is no cost saving to the facility to transmit MDS assessments for a sample versus the entire population of residents.

We agree with the comments that support requiring facilities to transmit 100 percent of all required MDS assessments. We are requiring that a facility submit all initial, annual, and quarterly reviews, as well as partial assessments completed upon discharge, transfer, death, or reentry to the facility, for all residents, and that a State submit those assessments to us.

Generally, selection of a statistically representative sample of MDS assessments adds another complicated, costly and unnecessary layer to producing useful, valid data that can be used to inform States, nursing homes, and us about the quality of care and the status of residents in nursing homes.

One hundred percent of the data is necessary for the following reasons:

- It is necessary for longitudinal tracking of residents across time and facility admissions. This will allow us to track special subpopulations of residents such as those with pressure sores or Alzheimer's disease. It will allow the detection of certain trends, such as characteristics of new admissions to nursing facilities, and it will allow the detection of rare but significant events, such as hospitalizations for pneumonia, fractures or other conditions.
- The universe of data is also necessary to link to facility level data bases, such as ASPEN deficiency data in State agencies and the Online Survey, Certification and Reporting System, and to link to Medicare and Medicaid claims files at the national or State level to determine patterns of utilization and resource use pre- and post-admission to nursing homes, and to determine resource utilization in nursing homes.
- It allows for targeting individual and aggregate resident outcomes for use in an information-driven survey process that would be impossible without a universal data base.

The universe of MDS assessments makes possible the analysis of data at any level (for example, resident, unit within a facility, facility, State, regional, national, or for specific resident populations). An incomplete representation or smaller number of MDS assessments, as well as issues associated with resampling that were mentioned above, would limit trend analyses.

Working with the universal population of resident assessments will eliminate the technical difficulty and expense of selecting and maintaining a representative sample such as will be necessary to support longitudinal analyses. Creating and implementing a complex sampling process would be burdensome to facilities and States, and the burden could fall unequally on selected States or selected facilities. If facilities were required to perform sampling, there would be additional cost to upgrade their software and training for this capability. Additionally, some sampling methodologies would require complicated survey analyses to adjust sampling design. This would also be expensive.

In conclusion, the marginal additional cost of obtaining the full universe of assessments will, in fact, be exceeded by the cost and difficulty of maintaining a representative sample of assessments large enough to provide the necessary information for all the uses proposed for the data base.

Comment: A State suggested submitting 100 percent of data to the State, which would then submit only a sample to us. The State contended that it needed the most complete data set possible. The State also noted that its data base would be manageable and would not warrant sampling.

Response: We disagree with the concept of sending a sample of data to us. Our regional offices have many of the same needs as State survey agencies for 100 percent of resident-level data for certified long term care facilities within their States as one method to target and conduct Federal monitoring surveys in nursing homes. Furthermore, we need 100 percent of the data to develop and refine quality measures, which will be an integral part of the data-driven survey process.

All the factors enumerated in the above comment regarding the negative aspects of sampled submissions between facilities and States apply equally to the submission between States and the national data base: there is no advantage in terms of cost saving by using a sampling approach as it is no more costly or complex to transmit assessments for the full population. In fact, managing sampled data sets is actually more costly; and, the ability to meet the objectives for these data at the national level in terms of support for policy decision-making, development and evaluation, as well as for support for research initiatives, requires access to a complete population-based repository of assessments.

Comment: Commenters discussed whether a national data base would provide useful information to States for making comparisons for management, performance, measurement, and research purposes. Of those who addressed this, all agreed that such information would be valuable. One State said that it would be helpful for them to be able to compare their State with others regarding length of stay for residents with certain diagnoses and for utilization rates of special treatments and procedures.

Response: As discussed previously, we agree that there are many useful purposes for information from this proposed national MDS data base. One example of this submitted by a commenter is that the data base could provide information for interstate comparisons of resident lengths of stay according to diagnoses or outcomes.

Fundamentally, the MDS data, represented within the context of a standardized information system, provides the foundation for organizing complex clinical and facility information in ways that can be easily generalized to support numerous current and future objectives at the facility, State, and Federal levels. It provides a common framework for communicating about resident clinical characteristics, care outcomes, and quality, as well as facilities' service delivery and quality. Many of these specific objectives have been identified throughout this regulation.

Finally, the RAI has been translated into at least seven languages and is being used in several European and Asian countries for care planning to improve clinical care and for research purposes. The international development of comparable data sets would facilitate performance of cross-national research studies to examine the effects of differences in care patterns on long term care resident outcomes. These studies may provide a great deal of information on the geriatric long term care population across all countries.

Comment: Of those who addressed how data should flow, the majority of commenters, including a national provider organization, stated that data should flow through the States to us. Some expressed the belief that States should also maintain their own data base. One commenter recommended that data be transmitted to us by the States on an annual basis. A few commenters believed that the States should send summary information to us. One commenter said that initially, facilities will need a great deal of technical assistance, and it would be easiest for that to come from the States. A national provider organization wanted States mandated to devise methods for disseminating computerization information to facilities and for providing technical assistance. One State noted, however, that States should not be required to collect and store information, if there are no expectations about how the data will be used.

Response: We agree that States should have the responsibility to provide some level of general and technical assistance to facilities as relates to our and States' requirements for encoding and transmission of MDS data. We understand that States have varying levels of experience with the use of computerized information systems and data bases. However, several States have already established an MDS data base for case-mix, quality assurance or survey and certification purposes, or both, and have provided necessary training and assistance to facilities which enabled them to successfully implement automated systems.

We have established technical and user groups as part of the systems design process. These groups consist of States, provider and consumer representatives and experts in systems design. Their expertise and knowledge will be used to facilitate provider and State automation. We will also work with States to ensure that personnel have the necessary technical expertise and training to fulfill State automation responsibilities. Also, system specifications and other relevant materials are already available via an internet web-site, initially established to support MDS software vendors, and otherwise available from HCFA.

The pilot testing of the MDS standard system and associated procedures is another step currently undertaken by us to ensure that all aspects of this standard MDS system are fully understood with respect to technical operational requirements, State and facility user support needs, and general issues associated with deployment and system acceptance. Information from this test phase will directly support our ability to assist States in successfully installing and operating this system and ensure that facilities can easily accomplish their assessment submission requirements.

We fully appreciate the magnitude of support and effort that will be necessary to ensure that appropriate training is developed and disseminated to all who will be involved in implementing this data base, and are in the process of developing additional procedures and communication strategies to address this need.

Finally, a central requirement for the MDS standard system design is to ensure that maximum attention is given to understanding and assessing current technologies employed by facilities and States so that the MDS system will best integrate and accommodate these existing systems. We intend that this will both facilitate system acceptance across all user levels, and minimize support and other implementation costs. Also, we will emphasize technologies that lend themselves to ease of use and user-friendliness in the selection process for each level of the standard systems, but especially as this relates to systems used by facilities to submit MDS assessments to their State agency. Also, one of the implicit benefits of the decision to develop a standard system for MDS data management is that this provides the greatest ability to centralize support efforts, and also reduces costs for multi-state facility chains and software vendors by reducing the variation of systems with which they will interface, in that they need only support access to a single standard system across States.

Comment: A few commenters thought that the data should be sent directly to us without being sent to the State first. One said that it would be costly and duplicative if States maintained their own data base. One State agreed that State data bases would be duplicative and suggested that States have access to a HCFA data base through the Online Survey, Certification and Reporting System. The State commenter noted that this could be difficult for States that have adopted an alternate Resident Assessment Instrument, since it would be necessary to remove extraneous data collected by the alternate instrument. A State put forth the idea of creating a single national entity for the centralized collection of MDS data. The commenter suggested that States could then arrange for periodic digital communications with the entity, believing that this method would be more efficient than each State having to develop the capacity to receive facility data.

Response: We support having each facility initially submit 100 percent of the MDS data to the State. This would enable States to maintain a data base for use in Medicare and Medicaid activities that are primarily State responsibilities: quality assurance, longitudinal tracking of care outcomes for survey, certification and licensing, and in some States, case-mix reimbursement classification systems. Several States are already using computerized MDS information for this purpose, having decided that the derived benefits outweigh the costs of establishing and maintaining such a system. Our experience has been that States realize even more programmatic uses for the data once it is available to them.

While we could develop a central mechanism for collecting information from providers, there are significant disadvantages associated with this approach: (1) It would impose an additional layer between facilities and States with associated impact on timeliness and accuracy of information; (2) With so many of the objectives for MDS data being at the State level, direct submission of information to us creates an unnatural information flow which will have an impact on the ability of States to meet these objectives, especially as many of the objectives, such as the information-based survey process, are so dependent on timely access to MDS assessment information; (3) With the many State-specific uses for MDS information, such as case-mix payment, many of which require specialized elements recorded in the State-unique S Section of the MDS, we could not possibly centralize support for these functions or even accommodate all these variations in a central repository; thus, direct submission to us would defeat the goal of supporting unique State objectives; and, (4) States are in a much more appropriate position to support their individual facilities with respect to the MDS assessment, submission and data validation processes.

The information provided by a State-maintained MDS data base is not duplicative of a national data base. States vary with regard to their demographics, licensing policies, quality assurance and reimbursement systems. States are a logical level for maintenance of MDS information since each State performs and must manage its own survey and regulation processes. Information provided by MDS assessments cannot be obtained from our Online Survey, Certification and Reporting System. The Online Survey, Certification and Reporting System itself is not designed to provide the quantity and specificity of the information in the proposed MDS data base. Furthermore, a central MDS repository is necessary to support objectives such as policy and regulation development, but would not be as readily available for State functions as State-specific data. Since specific functions (for example, information-based survey process) are performed from this data base at the State level, it would be inefficient to require States to support these functions via access to a central repository.

We disagree that it will be significantly more expensive for States with alternate instruments to collect MDS data. The design of every aspect of the standard MDS system, from the record transmission format to the State data base repository, is intended to support the customizations required by individual States. Thus, although there will be some additional costs during the initial system implementation in States requiring custom formats, the system design makes these costs insignificant. At this time, there is no State variant of the MDS that cannot be accommodated within the context of the standard system architecture.

With respect to transmissions between the State and national repositories, we are requiring that a facility transmit only the core MDS items on the HCFA-designated RAI, the State will only maintain the State-specific elements at the State level.

Comment: A State noted that it currently collects computerized data from only Medicaid-certified nursing facilities because the State can reimburse them. The State asked if computer requirements apply to Medicare-certified facilities, and whether Medicare facilities would submit directly to us.

Response: The requirement to place the MDS in machine readable format applies to all Medicare and Medicaid certified nursing homes. There are no plans to have Medicare-only facilities submit MDS information directly to us. In the impact statement, we address how certified facilities will be reimbursed for information systems equipment and supplies, as well as data encoding and transmission. Long term care facilities certified to participate in Medicare are required under section 1819(b)(3) of the Act to use the State-specified RAI. The State's authority to collect computerized data from Medicare facilities springs from its role as an agent for us in performing Medicare surveys under section 1864 of the Act.

Comment: Commenters discussed auditing procedures that would ensure the accuracy of the data entered into the national data base. Some, including State commenters, believed that the accuracy of the data should be verified through the survey and certification process. A State commenter believed that it would take surveyors approximately 5 minutes to compare a resident's actual records with a computer printout. One commenter pointed out that if the accuracy is checked during the survey, a facility will take the assessment seriously and the assessment would not be viewed as "paperwork." Another supported using surveyors to audit the match between a resident, his or her MDS and a computer editing software system.

Response: We agree that auditing the accuracy of MDS data on an on-going basis is very important in validating the ability of the data to support key operational and policy decisions. Indeed, the establishment of mechanisms to ensure acceptable reliability levels is critical to our ability to move forward with using MDS data for quality assessment and improvement activities, as well as other programmatic purposes. Currently, the survey process includes evaluation of the accuracy of assessments, as required by sections 1819(g)(2)(A)(II) and 1919 (g)(2)(A)(II) of the Act. Surveyors compare information from the most recently completed RAI with the current status of a sample of residents found onsite at the time of survey. We may modify and enhance the methods for accomplishing this task to reflect access to more longitudinal resident status information.

Several States, particularly those with case-mix reimbursement systems, have a separate auditing system in which nurse reviewers conduct an onsite assessment

using the MDS and compare it to that completed by the facility in order to verify the accuracy of the facility's assessment. We have recently completed a study of such methods and will be considering how to most efficiently assure the quality of MDS data. The methods under consideration could involve onsite review by surveyors or others, as designated by us, or offsite data analysis and evaluation, or both. We are also considering whether auditing would be carried out in conjunction with the survey process, as well as the timing and frequency of audits.

Comment: Commenters discussed methods for data verification. A few commenters stated that we should not require auditing and we should accept data as submitted. One State noted that any auditing process will result in cost increases. Another commenter pointed out that the data should be error free before the facility submits it. A commenter suggested that we not require auditing unless the MDS data is used for reimbursement purposes. A few commenters, including a national provider organization, disagreed with the idea of double entering data as a means of ensuring data integrity. They stated that it would be too costly, resulting in an unnecessary expenditure of time, cost, and effort.

Response: We strongly disagree with the comments that verifying accuracy of the data is not necessary. Foremost, it is imperative that the data be accurate and reliable for it to be used in any policy making, planning or resource utilization capacity. Accurate resident status information is necessary not only for reimbursement systems but for the health planning at the State and Federal level. Secondly, accurate assessments are necessary for quality care at the facility level, given that care planning should be based on the resident's assessment.

While data verification may be costly in the short run, we believe that it is cost efficient in the long run, in that accurate data will help prevent unnecessary expenditures or poor policy or reimbursement decisions that might result from erroneous information.

Several States that have computerized MDS data bases have encountered significant inaccuracies in the data originally received from facilities. This problem was rectified by establishing a process for ongoing validation of the accuracy of the data through on-line electronic systems feedback to facilities, or other systems for frequent cross checks and communication.

On-line data editing systems can facilitate timely detection and correction of inaccuracies. Virtually all the States that have computerized MDS data bases have developed built-in edit checks for obvious inaccuracies which would disallow entry of conflicting or invalid data, for example, for a resident coded simultaneously as comatose yet, inconsistently, enjoying playing cards.

We agree that double entering data to ensure validity would be expensive and we are not requiring it. We emphasize, however, the important role that validation plays in the establishment of a data base. To this end, we published standardized range and relational edits in May 1995 that MDS data will have to pass in order to be accepted at the State level.

Comment: Some commenters placed responsibility for the accuracy of the data on the facility. According to a commenter, having the edit checking process occur at the facility is critical, otherwise the State system would quickly become overburdened with rejecting records back to the facility for correction. One recommendation was for a facility to have a system for visually checking MDS information prior to submitting the data. Commenters noted that computer software can validate that the MDS is complete and that responses are within an acceptable range, and can also generate a condensed MDS with the responses, and staff can compare this to the MDS to verify accuracy. A State commenter proposed that we require a facility to maintain an accuracy rate of 95 percent for its data to be accepted by the State. Commenters suggested that a facility only transmit updates and changes to the data base once the original assessment is on file. Another proposal was for us to require a facility to incorporate surveillance and correction procedures as part of its quality assurance program.

Response: We concur that a facility has a responsibility to submit assessment data that is accurate, and there are many ways to accomplish this. A facility is required by section 1919(b)(3) of the Act to conduct a comprehensive, accurate, standardized and reproducible assessment of each resident's functional capacity. We are adding to § 483.20(g) the facility's responsibility to accurately assess residents, as well as § 483.20(f)(3), which notes the facility's responsibility to transmit accurate data to the State. We believe, however, that the State also has a role in verifying the accuracy of the data and systematically monitoring and evaluating the quality and accuracy of the assessment data which will be submitted from facilities.

States will monitor completeness and accuracy of MDS data submissions from the facility. A facility will be in compliance unless an unacceptable percentage of the records completed by the facility during a target period are either not submitted to the State or not accepted by the State because of data errors. We will determine compliance based on a review of missing records for the target period, allowing sufficient time after the close of the specified period for relevant records to be submitted from the facility to the State.

Our initial plan is to have States accept required records submitted by the facility, except when specific data errors occur. Currently, plans are for States to reject records only if:

- A submission file has a missing or misplaced header record or trailer record;
- Any record in the file does not have the correct record length with the last data character being the "end of record" delimiter required by the standard data specifications;
- The submission file contains an invalid facility ID code (Fac__Id in the data specifications) in the header record or data record; or
- The total number of records in the submission file does not correspond to the record count given in the trailer record.

We will evaluate this process and make necessary changes based on experience.

A facility is in compliance unless there is an unacceptable error rate for the set of records completed by the facility during a specified period. Determination of compliance is based on a review of records accepted by the State, allowing sufficient time after the close of the specified period for relevant records to be submitted from the facility to the State. The error rate in question is the total number of fields in error, due to either range or consistency errors as identified in the MDS 2.0 data specifications in effect, divided by the total number of required fields across all records for the specified period. The fields that we require for each type of record (for example, admission assessment, quarterly assessment, discharge tracking form, etc.) are detailed in the MDS 2.0 data specifications.

Further, States have a role in training facility personnel in methods of preventing and correcting data errors. The suggestion by a commenter that we require a facility to incorporate surveillance and correction procedures as part of its quality assurance program may be a viable option.

Comment: Other commenters believed that States should bear primary responsibility for the accuracy of the RAI data. One State suggested that the States should provide facilities with report formats that cross check interrelated data. Another commenter proposed that a State keep verification requirements for transmitting data separate from verification of clinical consistency of the data. A commenter pointed out that it was unclear whether we intended that States notify a facility of errant data before transmitting the data to us. One suggestion was for the State to check data for completeness, accuracy and compliance with processing instructions. Another was that the State specify a standardized format for transmitting data that would require compliance with edits. A few commenters thought that the States should be responsible for the quality of the data transmitted to us.

Response: The responsibility for data accuracy must reside with the facility, the source of the data, and a facility should ensure that MDS data pass all standard accuracy edits before transmission to the State. The State does have a responsibility to monitor accuracy of data submitted by a facility and aid the facility in achieving accuracy. The State will perform standard accuracy edits on data files as they are received and report any errors found to the facility. A State will also be able to monitor the error rate for a facility over time and produce an error summary report to share with the facility. The State will also have the ability to monitor the error rates for any MDS software vendor. When systematic problems are found for a vendor, the State will have the opportunity to work with that vendor to correct the problems. We may also develop procedures for onsite data accuracy visits to the facility when error rates are high. We will determine the frequency of such visits during our formal systems design process. MDS data submitted to the State will be transmitted to us at least monthly. We will again edit the data for accuracy. Accuracy edits will be performed at the facility, State, and HCFA levels.

Comment: We received a number of other suggestions to ensure the accuracy of data. One was to allow the registered nurse assessment coordinator to validate the data. A few suggested a computer system that has a basic set of edit checks, like high-low checks, completeness checks, clinical inconsistencies, and incorrect data checks. A consumer advocacy organization pointed out that some States currently have special nurse auditors who validate the match between a resident and his or her MDS. A State suggested that the reliability of MDS data be verified by periodic, random, onsite review of individual records performed by either State program agency staff or by a contracting organization. Another noted that if validity becomes an issue, we could consider a regulatory mechanism for appointing independent assessors.

Response: We agree that the computer systems should have basic edit checks, which ought to be in place both at the facility level and at the State level. The standard data specifications we have developed include valid ranges and required formatting for MDS items and consistency between MDS items. Detailed information concerning these data specifications is available on our MDS World Wide Web site (at http://www.hcfa.gov/Medicare/hsqb/mds20/) and is otherwise available from us and the State survey agency. We anticipate that facilities will be able to select commercially available software packages that use these data specifications. We note that the current regulation grants States the authority to take over the assessment process if a facility knowingly and willfully certifies false assessment statements. Section 483.20(c)(4) allows the State to require that assessments be conducted and certified by individuals who are independent of the facility and who are approved by the State. New York, for example, contracts with their peer review organization to conduct onsite audits of the Patient Review Instrument, used to calculate Medicaid reimbursement. Nurses sample a certain number of resident records. If the records do not pass standards based on resource utilization group, the facility loses its "delegated status" to conduct assessments and must hire an independent assessor for 1 year.

Comment: Many of the comments we received regarding privacy and confidentiality issues demonstrated concern regarding privacy issues and indicated that residents' identities need to be protected. Some of the commenters believed that MDS information should be available or reported in the aggregate format. A few commenters wanted identifying data available at the State level but not in any public data sets created. One commenter questioned why we should have access to assessment information of private pay residents. A national provider organization stated that the need for information in planning and quality assurance should not be met at the expense of the resident's and facility's right to confidentiality. Commenters suggested that we develop ways to block resident identifiers or develop an alternate system of identification like numerical coding.

Response: We agree that protecting the privacy of the resident is essential. In establishing this system of records, both we and the State (as HCFA's contractor in performing survey functions) must comply with the Privacy Act (5 U.S.C. 552a), which applies to Federal systems of records containing individually identifiable information. While aggregate summaries of the data can be made public, there are strict Federal guidelines for the release of individually identifiable information by Federal agencies to any individual or organization. A release of personal identifiable information can only be made in limited circumstances described in the Privacy Act. Disclosure may be made under the Privacy Act for "routine uses," which are compatible with the purpose for which the information was collected. These routine uses are described in the Privacy Act System of Records, which is published in the **Federal Register**. Requirements associated with routine uses are also set forth in the System of Records. In most cases, a "data use agreement" is required with the recipient being bound, in turn, by the Privacy Act. Some States have additional laws strengthening the protection of privacy of the resident.

We would have difficulty assuring the quality of care in facilities if we only had access to periodic aggregate data. While allowing evaluation of prevalence rates (percent of residents who have a particular condition at a given point in time) over time, such data would largely preclude any quality of care indicators based on incidence rates (percent of residents who aequire a given condition in a facility between two points in time). For example, periodic aggregate data might show the prevalence of decubitus ulcers in the resident population, but we could not review it to determine the incidence of such ulcers while residents are in the care of the facility. A high prevalence of ulcers may indicate that the facility accepts residents with existing ulcers from the hospital, but a high incidence may indicate substandard care. If access were limited to aggregate data, it would also be impossible to evaluate other important outcome measures potentially indicative of quality of care.

Our quality assurance activities in Medicare and Medicaid certified facilities are not limited to selected residents (for example, Medicare or Medicaid residents, or both). Our long term care survey process directs State

survey agencies to review the care provided to all residents of certified facilities, regardless of payor source. For example, quality assurance survey teams review a random sample of residents without respect to payor. We would often have difficulties evaluating the quality of care in Medicare and Medicaid certified facilities if access to data is limited to residents who are Medicare or Medicaid funded. This is especially true in a facility in which Medicare or Medicaid residents, or both, are a minority. This requirement is, therefore, in keeping with the quality protections that are afforded to all residents in certified long term care facilities. We will not give out identifying information unless there is a demonstrated need for it; the routine use permits disclosure only if we determine that the research cannot be reasonably accomplished unless the record is provided in individually identifiable form.

Comment: One commenter was unclear why confidentiality is an issue, since we already have systems in place to guard confidentiality, and these systems could carry over into the MDS system. A professional organization recommended developing a software program that could block identifying information except when needed by designated persons.

Some commenters addressed the question of who should have access to the data base. Several suggestions were submitted, including:

- The State survey and certification agency;
- The reimbursement agency (without resident identifiers);
- The ombudsman (one commenter suggested without resident identifiers while another said consistent with current access rights for resident records);
- The submitting facility (with no access to other facilities); and
- Aggregate data should be available to the public. Commenters proposed that a State have access to facility data in its own State with resident identifiers and to other States and the national data without identifiers.

Response: As aforementioned, under the Privacy Act, when personal information in the possession of the Federal Government on an individual is accessed by name, Social Security number or any other identifying symbol, we must publish a system of records notice. This notifies the public that we are collecting the information and will be accessing it in an individually identifiable way.

The notice lists routine uses for the information, including a list of entities to which we may release information upon request, the uses for which we may release information, and conditions under which we may release individually identifiable information. The Privacy Act requires that the routine uses be consistent with the purpose for which the information is collected. The Privacy Act does not mandate us to release the information. The system of records notice will support research as a routine use, but will require safeguards to ensure the maximum protection of individually identified information. It requires that persons or entities requesting the information sign an agreement to not re-release the data. The system of records notice also permits release to government agencies for purposes of monitoring nursing home care. We already have a routine use disclosure provision in place for handling data requests by those conducting health services or other appropriate research for most of our systems. We evaluate each request on an individual basis, including whether it is appropriate to release any data with identifying information.

Comment: A few commenters recommended that we not release resident-specific information unless the resident has directly consented. One State suggested that we and States issue "designator" numbers that would allow resident-specific information to be released. A commenter suggested that we build fines and penalties into the system for breach of confidentiality.

Response: As aforementioned, we will follow all provisions of the Privacy Act, as well as the Freedom of Information Act in managing the information from this proposed data base. Our Freedom of Information Act officer decides whether to release the records if a request is made at the Federal level. Under the Freedom of Information Act, individually identified RAI data generally would be exempt from disclosure as medical (and similar) files, the disclosure of which would constitute a clearly unwarranted invasion of privacy (5 USC 522(b)(6)). Under the Privacy Act, individually identified records may not be disclosed, except for good cause, including routine uses consistent with the purposes for which the information was collected (5 USC 522a(b)). (Aggregate data, not individually identifiable, could be released under either law.)

For records collected under the authority of our RAI requirements, States are bound by the Privacy act as our agent. In addition, most States have their own rules governing protection of privacy for records maintained at the State level. We expect each State to take the appropriate steps to ensure that resident-identifiable information is protected.

We are adding language to § 483.20(f)(5) that prohibits a State from releasing resident-identifiable information to the public, and provides that a facility may release resident-identifiable information to an agent only in accordance with a contract under which the agent agrees not to use or disclose the information except to the extent the facility itself is permitted to do so. We note that the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) provides stiff penalties for persons who wrongfully disclose individually identifiable health information. Such penalties can include fines or imprisonment, or both.

RAI data would be part of a resident's clinical record, and as such, would be protected from improper disclosure by facilities under current law. Facilities are required by sections 1819(c)(1)(A)(iv) and 1919(c)(1)(A)(iv) of the Act and § 483.75 (l)(3) and (l)(4), to keep confidential all information contained in the resident's record and to maintain safeguards against the unauthorized use of a resident's clinical record information, regardless of the form or storage method of the records. We recognize that there are circumstances that may necessitate the release of information from the resident's clinical record. However, these instances are limited by regulation to circumstances required by (1) transfer to another health care institution, (2) law, (3) third party payment contract, or (4) the resident (§ 483.75(l)(4)).

The transmission is limited to (1) using a private dial-up network based on a direct telephone connection from the facility or (2) mailing a diskette from the facility. In the case of either telephone communications or the mail, the information transmitted is secure, with interception of information being prohibited by Federal and State law, and strong penalties apply. We and the States both receive large volumes of unencrypted voice phone calls, unencrypted data telecommunications (for example, claims data), and unencrypted mailings, all including resident-specific information.

Section 1902(a)(7) of the Act requires Medicaid agencies to provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. Moreover, under the agreement between the Secretary and the State survey agency pertaining to

section 1864 of the Act, the State is required to adopt policies and procedures to ensure that information contained in its records from the Secretary or from any provider will be disclosed only as provided in the Act or regulations.

States may allow other agencies within the State to have access to MDS data to the extent that it is related to the operation of the Medicaid programs. All agencies must adhere to the confidentiality requirements of the Medicare and Medicaid programs relative to this information. We are also providing in § 483.315(j) that a State may not release resident-identifiable information to the public. Further, the State may not release resident-identifiable RAI data to a contractor without a written agreement under which the contractor agrees to restrict access to the data.

We believe that adherence to § 483.10(b)(1), Notice of rights and services, adequately addresses the commenter's suggestion that residents be notified. We believe that using designator numbers as a vehicle to permit release of resident-specific information is not feasible. Because such a system would require that all providers use the same number for the same resident, (in other words, to enable tracking of residents across different providers), implementation would be extremely burdensome.

Comment: Commenters addressed other issues pertaining to privacy and confidentiality. We received a recommendation to contact specific individuals who could assist in developing the security of a data base. Another recommendation was to carefully control computer access (in other words who can get to the data via computer at the facility and at the State).

Response: Both at the facility and the State, access to the MDS records for residents, whether those records are hard copy or electronic, must be secured and controlled in compliance with our requirements for safeguarding the confidentiality of clinical records. The facility must take precautions to ensure that only authorized staff have access to confidential information. Electronic MDS data should reside on stand-alone computers in secured physical locations, or access to those data should incorporate standard user ID and password techniques.

Comment: A few commenters thought that only the facility in which a resident resides should be able to make changes in the data entered. One commenter proposed that the data system require the facility to "close-out" a resident's information upon discharge or transfer, which would prevent the facility from changing that information. It would also prevent "a receiving facility" from entering new data on a transferred resident until the information base is closed by the transferring facility.

Response: We are in agreement that no other facility may make changes in the MDS data. A facility may only change MDS hard copy and electronic data as allowed by our policy. This policy requires that after the facility performs the assessment, it is "sealed," and electronic records are "locked." HCFA policy also require facilities to complete tracking forms indicating resident discharge from and reentry to the facility. The facility must complete and submit these forms and corresponding electronic records to the State within specified time frames. It would not be appropriate to require one facility to "wait for" a discharge record from another facility before entering and submitting data for Medicaid payment. This could result in payment delays for the one facility when another facility is delinquent on submitting MDS records.

MDS data bases at the State will be used for a variety of purposes, including quality monitoring, Medicaid and Medicare payment, and policy analysis. It would prove quite cumbersome and, at times unworkable, for all data changes to always be made by the facility of residence and then updated in the State data bases after resubmission from the facility.

Comment: Commenters discussed the schedule for submission of data by facilities, for example on an annual or quarterly basis. A national advocacy organization supported continuous data flow, pointing out that States need up-to-date information due to the survey cycle and their need to be able to respond to complaints when they are received. One commenter said that most facilities in their State routinely transmit on a weekly basis. Other commenters questioned how current would be the data that are to be maintained. The few who responded agreed that the data do need to be up-to-date and agreed with others who said that transmission should coincide with the RAI requirements. Others addressed the need for a transaction log to document transmission.

Some commenters noted that reimbursement agencies may require data on a more frequent basis for the purpose of rate setting. It was also mentioned that requiring transmission on a more frequent basis would be an administrative burden. A few commenters wanted the quarterly reviews to be transmitted also. A national provider group suggested quarterly submission, staggered in order to facilitate managing the large volume of data. For example, at the end of each month, 1/12 of the facilities would submit data for the preceding 3 months.

One commenter recommended that States transmit data to us on an annual basis. There was some support for collecting data on a quarterly basis. A few commenters believed that the States should send us summary information. A few States suggested submitting data on the same schedule as the MDS is completed—that is, upon admission, within 14 days of a significant change, and annually. Others agreed that annual submission would be adequate. A few proposed that data be transmitted twice a year. One commenter believed that all States should submit data on the same date.

Response: In order for MDS information to be timely enough for use in ongoing quality assurance programs, a facility must submit MDS data at least monthly to States. This would entail submitting all full MDS assessments (initial, annual and significant change), and any partial assessments (quarterly, discharge, and reentry) completed since the facility last transmitted data to the States.

States will also submit data to us at least monthly. The regional offices also need timely information in order to perform Federal monitoring surveys. To a certain extent, the role of the regional office mirrors that of State survey agencies. Hence, the regional offices need timely, complete information. Furthermore, this is necessary to enable us to timely evaluate State trends or regional problems. For example, linking resident status information with SNF cost report data could identify potential Medicare utilization problems in relation to certain outcomes or resident status changes.

Analysis regarding the timeliness of MDS data and frequency of transmission requirements has shown that the MDS data base must contain quarterly review information if it is to be used for quality monitoring purposes by State survey agencies. Much of the work being done to develop quality measures relies on quarterly assessment data for each resident. Leading researchers and survey experts agree that the quarterly review data are needed for the timely and reliable identification of resident outcomes for this purpose. There is under development, discussion and testing, a case-mix demonstration payment system using MDS data in calculating appropriate payment rates.

Comment: Commenters made suggestions regarding what edits should

be allowed without requiring the facility to produce a new electronic record or hard copy. One State wanted any change in MDS information to result in a new hard copy. Another State proposed that we allow a typographical error to be corrected at any time. A consumer advocacy organization proposed that if a facility makes changes to a computerized copy, it should be held to the same standard as written records. Another commenter believed that MDS software should create an audit trail of changes made to an assessment that would include the name of the person making the change, the date, the old value, and the new value. The commenter suggested that we permit a facility to keep the most current copy in a hard copy format. A State commenter believed that the computer program should have the ability to update the assessment information without changing the original version. Another State did not want to make changes if the data had been transmitted after the 21st day after admission. Another State proposed using those things that meet the criteria for significant change with regard to edits.

Response: According to current policy, a facility may correct typographical or factual errors within required time frames. To make revisions on paper records, a facility enters the correct response, draws a line through the previous response without obliterating it, and initials and dates the corrected entry. Computer-based systems must have a way to indicate and differentiate between the original and corrected entries on the printout of the corrected form, and to ensure that the correct information is transmitted to the State. Again, we note that the assessment must be accurate. A significant correction of prior assessment is completed at the facility's prerogative, because the previous assessment was inaccurate or completed incorrectly. Version 2.0 of the MDS contains an item response that, when checked, indicates that the assessment is a significant correction of a prior comprehensive assessment. A number of providers have called to our attention that the wording of this item precludes its use when the prior assessment that is being corrected was a Quarterly Review Assessment. We will add code to the MDS version 2.0 that will provide a mechanism for this.

A significant correction of prior assessment differs from a significant change in status assessment, in which there has been an actual change in resident's health status. If there has been a significant change in health status, the facility cannot merely correct the affected items on the MDS. The facility must complete a full new assessment. Any subsequent changes should be noted elsewhere in the resident's record (for example, in the progress notes). As stated previously, however, the procedures and policy governing issues of data storage, retrieval, validation and maintenance in facilities will also be addressed more fully in a forthcoming HCFA publication, such as a State Operations Manual.

Comment: Some commenters requested that the requirements we issue allow electronic signatures. This would avoid duplication by not requiring that the facility keep on file a hard copy with signatures.

Response: In the development of the system, we will consider requirements for electronic signatures.

Comment: Commenters addressed how and to what extent we should standardize electronic formats and how to revise the format to be consistent with technological changes. One State did not think that a standardized electronic format is necessary, and proposed that we request summary reports, findings and group data instead of individualized data, which would obviate the need for a standard format. Several others expressed the belief that we should specify a format. A national provider organization pointed out that a standardized format would facilitate collecting, merging, and analyzing national data. Another commenter noted that it would also decrease software development costs. A State provider organization pointed out that nothing would be more frustrating and costly than software that is not well thought out and requires several revisions. The commenter suggested that we already have experience in formatting because of the case-mix demonstration project.

A State expressed the belief that it would be easier to maintain a single format than have to deal with different software languages and media types. The commenter further said that we or the States should be responsible for making formatting changes and sharing them with those affected. Another recommendation was to use Online Survey, Certification and Reporting System and create a subsystem for MDS data. By accessing an "enhancement log," the system would be under constant review and revision.

Response: We concur that many of these suggestions have merit. In the spring of 1995, we developed and issued a standard record layout and data dictionary. These were made available to facilities and software vendors as well as the States. When these regulations go into effect, the assessment records that facilities transmit to States must conform to the standard layout. Hence, software vendors have been strongly encouraged to use the layout and data dictionary when developing software products for MDS version 2.0. We believe that this will ensure uniformity in format but still allow facility flexibility and choice in terms of the software products they use to encode MDS records.

Comment: A national provider group proposed that we require States to develop and make available a software package that would transmit data in the appropriate format. A few commenters expressed the belief that as long as they meet Federal standards, States and facilities should be able to develop additional standards.

Response: We have developed, and are in the process of testing, a national system for MDS data transmission that will be made available to all States that includes commercially available standard transmission software. We are mandating that the facility transmit MDS data to the State according to minimum data validity specifications and using standard communication and transmission protocols. The State may choose to impose additional data validity specifications, exceeding our mandated minimum specifications.

Comment: We received a few suggestions regarding specific organizations with whom we could consult in developing a standardized format. One suggestion was to form a technical advisory board that would consist of Federal and State personnel, providers, hardware and software vendors, and resident advocacy groups. Another was to contact a specific standards committee to obtain their input on developing a format.

Response: We sought technical assistance from those parties as part of a technical advisory group that we organized as part of the systems design process. We met with several of the groups mentioned above early in the design process to get input on a number of systems development issues. We will continue to seek input throughout the development. We are committed to working closely with interested and affected parties in the design process.

Comment: Commenters suggested that the standardized format should be in either ASCII or EBCDIC, and should include data item description, data item beginning and ending column, data item length, and whether the data is right or left justified. One State noted that some States have already begun to computerize and that the format should be receptive to those programs,

particularly for States utilizing our RAI. A State commenter believed that a data dictionary should be provided for each data submission, which would provide a vehicle for documenting problems with the data submission.

Response: As previously stated, we have been working closely with States that are computerized. Several States were instrumental in developing the data dictionary and record layout. With their expertise, we constructed a standard layout that still allows flexibility for States which have added MDS items. Facilities and States must conform to the standard record layout, which is currently constructed in ASCII.

Comment: Several commenters wondered how facility noncompliance with the requirement to transmit the MDS data would be enforced.

Response: As stated earlier in this preamble, facility noncompliance with the reporting requirement established by this final rule will be subject to the full range of enforcement remedies set forth in part 488, subpart F, "Enforcement of compliance for long-term care facilities with deficiencies." We will treat a facility's failure to comply with MDS reporting requirements as noncompliance under the definition in § 488.301. At a minimum, we will require a plan of correction, and will impose the mandatory denial of payment for new admissions sanction if the facility has not achieved substantial compliance within 3 months from the date of the finding of noncompliance. In such a case, if the facility is still not in compliance with requirements within 6 months from the date of the finding, we will terminate its provider agreement. Also, we may impose one or more other remedies, as determined by us or the State, in accordance with part 488, subpart F.

Facility failure to meet acceptable standards of performance, including failure to transmit the MDS data, or failure to otherwise improve upon its past poor performance, or failure to transmit or to maintain compliance relative to this reporting requirement could be considered by us to be indicative of the facility's inability or unwillingness to perform the resident assessment itself. We believe that this is a reasonable conclusion because if the requirement to conduct a resident assessment has been satisfied and completed, then the administrative reporting requirement would simply and logically follow. Noncompliance that is repeated or which recurs intermittently becomes part of the facility's noncompliance history which is a factor when we or the State selects the appropriate enforcement response. We will sanction, accordingly, a facility that demonstrates little or no commitment to continual, rather than cyclical, compliance. A State will be easily able to ascertain whether a facility is transmitting the required information timely and in the manner that we prescribe, those facilities that fail to meet the standard may be subject to the full range of available remedies, including denial of payment for new admissions and civil money penalties. We do not expect perfection relative to compliance with this reporting requirement; we will incorporate limited tolerance into the compliance assessment process, whereby good faith efforts made by facilities will be considered. An additional level of tolerance will exist during early phases of implementation of the requirement.

Comment: A number of commenters addressed a wide variety of issues relating to the computerization of MDS information. A State commenter stressed that we should emphasize the benefits to facility staff and residents. A consumer advocacy group expressed the belief that we should address how computerization will affect utilization of the RAPs and the individualization of the care planning process.

Response: As mentioned in the previous discussion of data uses, we believe that the automation of this information will be extremely helpful to facilities. We note that computerization of resident assessment information does not relieve facilities of their responsibility to develop, by an interdisciplinary team, a comprehensive, individualized care plan. While software packages exist that will automatically print a plan of care based on responses to MDS items that trigger a RAP, an individual must still exercise professional clinical judgment in customizing the care plan to suit each resident's individual needs.

Comment: Commenters proposed that we develop regulations and manual instructions relating to transmitting data. A State wanted a telecommunications program to be mandated. Another State expressed the belief that we should penalize facilities which do not comply with submission requirements.

Response: Once we develop key specifications for data transmission, we will issue clarifying policy and give instructions to States and providers in a State Operations Manual transmittal. We will require that a facility comply with the policy and regulations covering this data base in order to participate in the Medicare and Medicaid programs. As mentioned above, we are requiring that a facility electronically transmit its data via telecommunications infrastructure to the State. Penalties for not complying with submission requirements are addressed with the comments on proposed § 483.20(b)(6), Automated data processing requirement.

Comment: Some commenters discussed software vendors who have developed RAI packages. Commenters suggested that we develop a program to test vendor software for minimal acceptability.

Response: We are developing several aids to promote the accuracy of RAI software packages developed by commercial vendors. These efforts include the following documents and data files, being published on our World Wide Web site (at http://www.hcfa.gov/Medicare/hsqb/mds20/) and otherwise available from us.

- Detailed specifications for data validity (valid ranges and consistency requirements for MDS items).
- Detailed logic and a test data base for RAP determination.
- Detailed specifications for the file structure, record layout, and field formatting for MDS files submitted by facilities.
- Detailed logic, a test data base, and a test program for Resource Utilization Group calculation.

We are also developing a standard State-level MDS processing system to be distributed to each State. One feature of this system allows RAI software developers to transmit test files of MDS data to the State and receive a detailed log of all data validity errors encountered in the test file.

We will continue to promote processes for assuring the accuracy of software packages developed by vendors even though the approaches to this effort will change over time.

Comment: In the preamble to the proposed rule, we encouraged comment on developing a mechanism for advising us on the need and method to update the MDS and RAPs. Commenters agreed that we do need a method to update the RAI. Several suggested that we establish a clinical advisory panel or commission similar to the project team, clinical panel and advisory committee that developed the RAI. Other ideas included an annual update schedule, including any changes in the MDS as an addendum; sending periodic questionnaires to providers, State agencies and organizations; and a yearly comment period.

Response: We have always recognized that the RAI will need to reflect advances in clinical practice and assessment technology. We will be making periodic revisions to the RAI. In 1994, we awarded a contract to the

Hebrew Rehabilitation Center for Aged, under which we will revise the RAI over a few years. The contractor will convene representatives of States, provider organizations, professional associations, and consumer organizations. These groups will advise us regarding the need to add or refine items or definitions, and regarding areas that are less well understood, and require clarification. As in the past, the revision process will be one in which we seek input from the many interested and affected groups.

Comment: We solicited comment on how to coordinate the assessment process with other assessment protocols such as home health assessments and the uniform needs assessment instrument (comments on coordinating with PASRR are discussed with the comments on proposed § 483.20(b)(5), Coordination). Some who commented merely agreed that it is necessary to coordinate assessments. Others gave suggestions, for example, that we issue a stronger directive that a facility provide a copy of the MDS as part of their post-discharge care, use the RAI in all long-term care settings, and coordinate with the home and community based waiver MDS of OBRA '90.

Response: We recognize the need to coordinate an individual's health care across various health care settings and the importance of assessments in this process. Currently, we have no statutory authority to require this coordination except in the case of coordination of the RAI with preadmission screening programs for individuals who are mentally ill and mentally retarded. However, there is great interest in the development of clinical data sets like the MDS for several provider types, including end-stage renal disease facilities and home health agencies. Work is well underway to develop screening tools in some of these areas.

§ 483.20(b)(1) Resident Assessment Instrument

Comment: Commenters addressed the proposed requirement that the assessment process must include direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care staff on all shifts. Most supported the requirement. A few commenters were concerned with enforcement of the requirement. Some wanted us to require that the facility communicate with the resident only when clinically feasible, since the resident may not have the cognitive skills to verbally communicate.

Response: The resident is a primary source of information when completing the assessment and may be the only source of information for many items. In the RAI User's Manual and in the State Operations Manual, Transmittal No. 272, we have instructed facility staff to talk with and observe the resident. It is still possible to interact with a resident, even if he or she is unable to communicate verbally. Staff can closely observe the resident and respond to many MDS items based on observation. We acknowledge that evaluating facility compliance may be difficult but we believe that this requirement is too important to delete. However, we do not want to require a specific process for documenting collection of data across shifts. This would burden facilities and limit their flexibility to implement a process that is most appropriate for each facility's specific situation and practices.

Comment: A few commenters believed that only the direct care staff responsible for providing care to the resident on all shifts should be included in the assessment process. Others wanted us to require that the facility talk to other people, such as a resident's family members/guardians, the attending physician, and other licensed personnel.

Response: We did not limit the assessment process to only those staff members responsible for actually providing hands-on care because we believe that facility staff who are not the primary care-givers often have valuable, first-hand information about a resident. For example, housekeeping staff who routinely talk with residents may be aware that a resident prefers extra pillows on her bed because it alleviates her back pain. In the State Operations Manual Transmittal No. 272 and in the RAI User's Manual we suggest that information sources for the assessment should include, but are not limited to, discussion with the resident's attending physician, appropriate licensed health professionals and family members. Family members are a valuable source of information regarding the resident, particularly for cognitively impaired residents, for whom family is often the only source of information regarding the resident. For example; a resident's spouse may be the only person who knows what the resident was like prior to admission to the nursing home, and is able to provide background information that is necessary for staff to complete the Customary Routine section of the MDS.

We require that a physician be a part of the interdisciplinary team that prepares the care plan. We acknowledge that a doctor's schedule may not allow consistent participation in the assessment process. While we encourage facilities to discuss the resident's status with the attending physician to gain and validate information, we are not requiring it. The statute is silent regarding the participation of individuals other than health professionals.

Comment: Some commenters wanted us to clarify that communication with all shifts can be both verbal and written. For example, information could be exchanged at pre-shift meetings, through progress notes or other documentation in the clinical record, or by other means.

Response: We agree that information can be exchanged in a number of ways, and discuss possible mechanisms in the RAI User's Manual. At this time we do not wish to mandate a communication process; rather, each facility should determine how to best exchange information about the resident.

While we did not receive comments regarding the facility assessing the resident using the RAI specified by the State, we are adding to § 483.315(c) that the State must obtain our approval of a State-specified instrument. This is more consistent with sections 1819(e)(5) and 1919(e)(5) of the Act. Furthermore, we are specifying those domains or areas that the facility must assess. We listed these domains in the assessment requirement previously, and inadvertently omitted them at former paragraph (b)(2); a State suggested that removing the domains weakened the requirement. Additionally, surveyors use the regulatory tags for particular domains to cite deficiencies when a facility has problems only in certain assessment areas. The State is responsible for obtaining approval from us for its instrument and to specify its approved instrument to facilities. Facilities must therefore rely upon the State's assertion that the instrument is approved by the Secretary.

Proposed § 483.20(b)(2) When Required

Comment: Several commenters addressed our proposed requirement that a facility complete the comprehensive assessment within 14 days after a resident's admission. Some commenters agreed with the 14-day time period, and wanted us to emphasize that the RAI and quarterly review are a minimum, stressing that all the resident's needs must be identified and care planned as necessary. A commenter requested clarification regarding completion "within 14 days after admission," stating that it could be interpreted differently. For example, the facility could construe the requirement to mean "14 days after admission" or "the fourteenth day of admission."

Response: Completion of the RAI specified by the State does not necessarily fulfill a facility's obligation to perform a comprehensive assessment. As previously stated, § 483.25 requires that a facility ensure that each resident attains or maintains his or her highest practicable well-being. A facility is responsible for assessing areas that are relevant for individual residents, regardless of whether they are included in the RAI. For example, in completing the MDS, the assessor simply indicates whether or not a factor is present. If the MDS indicates the presence of a potential resident problem, need, or strength, the assessor should then investigate the resident's condition in more detail. The RAPs may assist in this investigation.

Other problems that are relevant for an individual resident may not be addressed by the RAI at all. For example, the MDS includes a listing of those diagnoses that affect the resident's functioning or needs in the past 7 days. While the MDS may indicate the presence of medical problems such as unstable diabetes or orthostatic hypotension, there should be evidence of additional assessment of these factors if relevant to the development of a care plan for an individual resident. Another example of resident concerns not addressed by the MDS is sexual patterns. Some facilities have responded by creating additional assessment tools which they complete for all residents in addition to the State RAI. This is not a Federal requirement. Additional assessment is necessary only for factors that are relevant for an individual resident. Facility staff have stated that many of the items added to version 2.0 of the MDS may eliminate the need for supplementation of items in facility specific assessments and will hopefully contribute to a more comprehensive assessment for each resident.

A facility is also responsible for assessing and intervening in response to acute or emergent problems such as respiratory distress or fever. While this may seem obvious, surveyors have reported numerous instances in which this has not occurred.

A facility must complete the initial assessment no later than 14 days after a resident's admission. For example, if a resident is admitted on July 1, the assessment must be completed by July 15. Although Federal requirements dictate the completion of RAI assessments according to certain time frames, standards of good clinical practice dictate that the assessment process is more fluid, and should be ongoing.

Comment: A few commenters recommended that we require the assessment within the month that the annual is due and not a narrowly defined "every 365 days."

Response: The statute requires that a facility conduct an assessment no less often than once every 12 months. The facility should use the completion date of the last assessment (in other words, the date the registered nurse coordinator has certified the completion of the assessment on the RAP Summary form in section V) to calculate when the annual assessment is due. Current policy is that the next assessment is due within 365 days. As we are not aware of any problems regarding this policy, it will remain unchanged.

Comment: Commenters proposed alternatives to the requirement that a facility complete an initial assessment within 14 days of a resident's admission. A commenter suggested that a facility complete the MDS within 14 days of admission, and the RAPs and care plan within 7 days of completing the MDS (instead of completing the MDS and the RAP process in 14 days). This would allow adequate time to complete and document the in-depth assessment. Others believed that 21 days to complete the assessment and 30 days to complete the care plan is necessary.

Response: As mentioned above, the statute currently specifies the time frame for the initial assessment, which does not allow us any latitude. We have defined the RAI to include the MDS, triggers and utilization guidelines, including the RAPs. Since the RAPs are part of the comprehensive assessment, they too must be completed within 14 days after admission or detection of a significant change. Current care planning requirements allow 7 days after completion of the RAI for completion of the plan of care.

Comment: A consumer advocacy group suggested that we require an assessment similar to the quarterly review upon the resident's return from a hospitalization, since some change in the resident's condition had necessitated the hospital visit. Another commenter recommended that we require an assessment when the use of restraints for an individual increased over a prescribed threshold.

Response: We agree that it may be beneficial for the facility to complete another assessment upon return from hospitalization or upon an increase in restraint usage. An increase in restraint use is an example of a situation in which a significant change reassessment is probably necessary. If it becomes necessary to restrain a resident or increase restraint usage, it is likely that the resident's condition has deteriorated and there are behaviors of new onset or increased frequency. In this case, the facility must revise the care plan. If a resident's condition has significantly changed prior to or after hospitalization, the facility must complete a comprehensive, significant change assessment on the resident's return to the facility. Some facilities have instituted a policy requiring a comprehensive RAI assessment each time a resident is readmitted after hospitalization. We prefer, however, to leave our requirement so that it is based on what is clinically warranted (in other words, whether the resident's condition meets the definition of a significant change).

Comment: Several commenters, including some State and national provider organizations, were concerned with the impact that the 14-day requirement would have on facilities whose residents are typically short-stay, such as residents in hospital-based SNFs. A few wanted us to exempt facilities which have an average length of stay less than 30 days from having to complete the assessment. Others wanted all facilities to have 30 days in which to complete the assessment. Some commenters suggested that we develop an alternate instrument that pertains to the specific care needs of short-stay residents. For example, they maintained that the MDS does not contain enough detail on the rehabilitative aspects of care, nor does it capture important information about a post-acute resident's health conditions. Others proposed that we allow a facility to complete only those MDS items that are appropriate for short-stay residents and skip the rest. A few commenters wanted us to convene a clinical advisory panel that would assist in identifying the clinical characteristics of short-stay populations and determining which MDS elements are critical for them.

Response: From the comments received, it is evident that there are a variety of strategies that people believe would be useful in dealing with the assessment of short-stay residents. We cannot, under the law, extend the time frame for completion of the RAI. Nor can we currently exempt any facility certified under the long term care facility requirements, even though it may provide care exclusively or primarily for individuals needing a short period of rehabilitation prior to return to the community. While we are aware that this has long been a concern voiced by some providers, various

clinical experts have long believed that the majority of the RAI gathers useful information for short-stay individuals as well as long-term residents. In 1992 and 1993, we consulted with several panels of expert clinicians and health professional, provider, and consumer groups to identify MDS items that were not pertinent for short-stay individuals. Of the few items that the panels proposed as not being relevant for short-stay individuals, there was no consensus on eliminating items, with all groups in agreement that all individuals in certified facilities would benefit from the RAI assessment process.

We agree that the original MDS did not contain enough relevant information pertinent to short-stay populations. We have added some items to version 2.0 related to special therapies and care needs (previously included in the MDS+, an alternate RAI used by some States) that are very relevant for short-stay populations. A national association representing hospital-based skilled nursing facilities reported finding these MDS+ items useful in identifying nursing and therapy needs for short term stay residents and for determining Medicare coverage and subsequent reimbursement.

We have also added an item to collect information on pain that will assist facilities in providing more focused care for short-stay residents. Furthermore, we will clarify and add material to several of the RAPs specific to short-stay populations as part of our contract with the Hebrew Rehabilitation Center for Aged to refine the RAI, in an effort to facilitate a more effective and efficient assessment for these residents.

Moreover, as this concern has continued to be voiced by providers and as the number of individuals undergoing a short-term, generally rehabilitative stay in certified skilled nursing facilities has continued to increase, we have begun to revisit this issue. We are currently consulting with providers, consumer groups and professional associations for the purpose of informing them about our work on developing a module of assessment items that would be completed as an alternative to many of the core MDS items. In this way, probably through the use of the "skip pattern" logic in the MDS, facilities providing care for "short term stay" individuals could perform a standardized, reproducible assessment that is more relevant to the resident population, while still adhering to the statutory requirement to perform a comprehensive assessment based on the MDS.

Comment: Several commenters expressed the belief that the MDS is not appropriate or does not collect enough information for special care populations, like pediatrics, individuals with AIDS, individuals with head injuries, individuals who are terminal and are receiving hospice care, and properly placed residents who have mental illness or mental retardation. The concerns were similar to those who addressed short stay residents. A State provider organization asserted that the MDS is designed for a homogeneous, chronic long term care resident and suggested that we develop a variety of assessment parameters. Another State organization stated that 70 percent of the MDS+ elements do not apply to children. The commenter went on to say that about one-fifth of those that do apply are demographic in nature. Commenters noted that facility staff need to know what kinds of behavior usually heralded the onset of a psychiatric crisis for a resident with mental illness, and that the MDS does not sufficiently capture behavioral disorders, mood disturbances, activity potential, and cognitive functioning for individuals with mental illness or mental retardation. To address these concerns, commenters recommended that we:

- Waive special care populations from the RAI requirement;
- Develop additional RAPs to address specific needs;
- Develop additional MDS elements in modules for "special care" residents;
- Have skip patterns; or
- Develop a new instrument.

Response: We acknowledge that the MDS may not be completely responsive to the needs of special populations in nursing homes today. We expect to use MDS data to gain a better sense of the clinical characteristics and care needs of the diverse population of long term care facilities, and to refine the RAI as it appears warranted over time. In the meantime, some of the items that were added to the MDS are more responsive to the needs of these residents. For example, items that assess the presence, type, intensity, and treatment of pain were added to version 2.0; this is particularly important for residents in a hospice program. We have expanded significantly the MDS items associated with mood and behavior, and also included the use of programs for treatment of mood and behavior problems. Again, we note that the statute does not allow us to exempt certain populations.

Comment: A State commenter requested that we exempt terminal/hospice residents from RAI requirements since the philosophy of hospice care is vastly different from the rehabilitative approach of the typical nursing facility. Another State commenter noted that SNF/NF residents who are residents of a certified hospice will have two assessments and two care plans because of two sets of requirements; it is possible that the care plans may be conflicting.

Response: When a resident of a Medicare participating SNF/NF elects the Medicare hospice benefit, the hospice and the SNF/NF must coordinate, establish, and agree upon a plan of care for both providers which reflects the hospice philosophy and is based on an assessment of the individual's needs and unique living situation in the SNF/NF. This coordinated plan of care must identify the care and services that the SNF/NF and hospice will provide in order to be responsive to the unique needs of the individual and his or her expressed desire for hospice care. The plan of care must include directives for managing pain and other distressing symptoms and be revised and updated by the SNF/NF and hospice, as necessary, to reflect the individual's current status.

Our policy is that when a resident of a SNF/NF elects to receive Medicare coverage of services under the hospice benefit, both the Medicare hospice conditions of participation and the SNF/NF requirements apply. This means that the facility must assess a resident using RAI. Some confusion arose among the SNF/NF providers concerning the completion of RAPs that were not clinically appropriate. We have issued a clarification memorandum reminding providers that the RAPs are guidelines for assessment. They are not meant as prescriptive courses of actions. Rather, they are intended as frameworks for assessment that are clinically indicated depending on the needs of each individual resident. For example, some of the RAP guidelines may include content suggestive of an aggressive work-up to determine causal factors that may not be appropriate for individuals who are terminally ill (for example, an aggressive work-up to determine the cause of weight loss would generally not be appropriate or expected for a resident receiving hospice care.) Many of the RAPs, however, such as "Activities" or maintenance of the resident's "Activities of Daily Living" should lead to more aggressive assessment if they are useful in helping facility staff increase the resident's comfort level and ability to attain or maintain his or her highest practicable well-being and create an atmosphere in which the resident will be able to die with dignity.

It is important to remember that RAP documentation and the plan of care may also reflect a resident's right to refuse treatment or services.

In summary, we developed the RAPs to assist facilities in planning appropriate and individualized care for residents. As we revise the RAP guidelines over the next few years, we intend to incorporate material specifically related to terminal care to better address the needs of the hospice residents residing in SNF and NFs.

Comment: Some commenters wanted changes in the proposed definition of "readmission." One asked for clarification of what a "temporary" absence meant, asserting that a 5-month absence could be temporary for someone who has lived in the facility for 10 years. A State provider organization thought that "temporary absence" should not be defined only as a hospitalization, but should allow for other absences like doctor's visits.

Response: We do not consider it to be a temporary absence when a resident leaves a facility for a doctor's visit; we do not require that a facility conduct a new assessment merely because of such a visit. Readmission is defined as a resident returning to a facility from the hospital or therapeutic leave. We consider an absence to be temporary when the facility fully expects the resident to return. For example, if a resident leaves the facility for a few days during a holiday season, the nursing home would not need to complete a new assessment (unless there has been a significant change). If the resident is absent for an extended period of time, however, it may be difficult for the facility to determine if a significant change has occurred, and the facility may wish to conduct an assessment. Furthermore, if the resident is absent for a year or more, the facility must conduct its annual reassessment upon the resident's return. However, we are not attaching a time frame to temporary absence. This holds regardless of where the resident went and how long he or she was absent from the facility. This policy recognizes that there is variation in bed hold and discharge policies in the States.

Comment: A few commenters expressed concern with the proposed provision in § 483.20(b)(2)(i) that would allow a facility to amend assessment information up to 21 days after admission in some situations. One commenter thought the entire MDS was amendable. A national provider organization recommended that we permit a facility to correct "technical" items on the MDS beyond the 21st day because these items would not alter the triggers or RAP process.

Response: In the past, we had not allowed a facility to correct non-factual errors once the assessment was completed. Rather, these non-factual errors were to be noted elsewhere in the resident's clinical record (for example progress notes). A facility corrected non-factual errors on the next assessment (in other words quarterly, annual, significant change). A facility needs to complete a new MDS when the non-factual error would have an impact on the resident's care plan. In this case, a facility should perform another comprehensive assessment (in other words the MDS and RAPs) within 14 days of noting the error. We would note that non-factual errors associated with a resident's assessment and significant change associated with the resident are two different concepts; however, both can result in completing a new comprehensive assessment. As discussed below, we are deleting the 21-day provision.

Comment: A State provider group disagreed with our proposed delineation in § 483.20(b)(2)(i)(B) of categories within the MDS that can be amended, because the commenter did not believe that facilities and surveyors would be able to consistently differentiate which items on the MDS could be changed. The commenter proposed changing the requirement to read "Further resident observation and interaction indicates a need to alter the initial assessment."

Response: The provision to amend certain sections within 21 days has been confusing for facilities. We are deleting the 21-day provision. We require that a facility complete the MDS and RAPs within 14 days of a resident's admission, within 14 days of a significant change in a resident's status, and at least annually. By the fourteenth day, the registered nurse must sign and date the RAP Summary form to signify that the assessment is complete, within regulatory time frames. Within 7 days of completing the assessment, the facility must:

- Encode the MDS and RAP summary in a machine readable format;
- Run the encoded MDS through edits specified by us. The facility must correct any information on the encoded MDS that does not pass HCFA-specified edits.

Within 7 days of completing the assessment, the facility must be able to transmit the edited MDS and RAP Summary form to the State according to State or Federal time frames. Therefore, the facility must:

- "Lock" the edited MDS record;
- Certify that the MDS meets HCFA-specified edits; and
- Print the edited MDS and RAP Summary form and place them in the resident's record. The hard copy of the assessment must match the assessment that the facility transmits to the State. A facility must, therefore, correct the hard copy to reflect changes associated with the edit correction process.

We believe that this change eliminates the confusion for facilities as to what sections could be changed. It will also decrease the number of corrections the facility will have to make and subsequently transmit to the State due to changed assessment information.

In § 483.20 (b)(2)(ii) and (b)(2)(iii), we proposed that a facility must assess current residents of a nursing facility by October 1, 1991 and residents of a skilled nursing facility by January 1, 1991. We are deleting paragraphs (b)(2)(ii) and (b)(2)(iii) because these requirements are no longer necessary. They were necessary when the proposed regulation was written to make sure that individuals already residing in long term care facilities were comprehensively assessed according to the new requirements.

Comment: There were many comments related to the definition of significant change at proposed § 483.20(b)(2)(iv). Commenters proposed amendments to the definition, deletions to the definition, and additions to the definition. These comments follow.

Several commenters were concerned that the definition leaves too much room for interpretation and were particularly concerned about how this would be evaluated during the survey process. One commenter pointed out that the definition for significant change leaves much to the professional judgment of the surveyor to decide what constitutes a significant change. A few suggested that we delete "or should have determined" from the criterion for significant change because it invites surveyor second-guessing of facility multi-disciplinary staff judgment long after the fact.

Other comments related to the notion of permanency in the definition. Commenters asserted that the distinction between acute and chronic changes is often difficult to determine, and that the emphasis on permanency of the change is too exclusive. Some commenters preferred the language in the State Operations Manual at Appendix R or in the original RAI Training Manual. They believed that there is inconsistency between the proposed regulation and the State Operations Manual training manual, for example, the definition of "permanent."

Commenters wanted us to clarify what permanent means. Another requested that we delete "permanent" and "apparently permanent" from the criterion, and that we add "is significant (major) or likely to be permanent." The commenter believes that this will be more consistent with the State Operations Manual Transmittal No. 250, which contains surveyor guidelines and protocols.

A commenter was concerned about whether the examples of significant change in the proposed regulation were intended to be all-inclusive, and believed they should be expanded and clarified. For example, the commenter believed that the regulation should clarify what a "sudden improvement in resident status" means.

A few commenters, including a national and a State provider organization, recommended that we change proposed paragraph (b)(2)(iv) to read "within 14 calendar days after the facility determines * * * that there has been a significant decline or improvement in the resident's physical or mental condition such that in the clinical judgment of the assessor the change in condition appears to be major or permanent." They believed that this wording would be more consistent with the original training manual.

A few commenters believed that proposed paragraphs (b)(2)(iv) (A) and (G) are redundant. One commenter was confused as to which elements of the MDS the facility reviews in determining if a significant change has occurred according to the criterion at paragraph (b)(2)(iv)(A). A consumer advocacy organization wanted paragraph (b)(2)(iv)(A) to read "Apparent permanent deterioration or improvement in two or more activities of daily living or apparent deterioration or improvement in any combination of two or more activities of daily living, communication or cognitive abilities."

A few provider organizations wanted the criterion revised to read "Deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic." This wording would be more consistent with the original training manual.

A few recommended that we delete "requires staff intervention" or else clearly define the phrase. Commenters suggested that we change the wording to "benefits from staff intervention." One believed that the criterion should not be limited to situations requiring staff interventions because there may be instances in which deterioration is not perceived by staff as disruptive or detrimental, and staff would, therefore, not intervene. For example, staff would not intervene, in the commenter's scenario, in a case in which a resident is depressed and whose behavioral presentation is passive.

One suggestion was to reword paragraph (b)(2)(iv)(D) to read "A marked or sudden deterioration in a resident's health status * * *". This would clarify that this criterion does not include the expected clinical progression of a given diagnosis or condition.

A few commenters suggested that we delete paragraph (b)(2)(iv)(D) because it is too subjective. One commenter stated that this criterion would have surveyors citing facilities for everything; for example, just the fact that the resident is old means that their life may be in danger of ending.

A commenter suggested deleting "a factor associated with" at paragraph (b)(2)(iv)(E) because it does not add anything to the definition. Others offered suggestions for clarifying the criterion at paragraph (b)(2)(iv)(E). A few commenters proposed adding "* * * that has not responded to treatment in the last 14 days," which would give the clinician a time frame in which to evaluate the effectiveness of an intervention. Another commenter proposed adding "* * * that has not responded to treatment within clinically accepted time period standards."

A national provider group proposed that we delete the criterion at paragraph (b)(2)(iv)(F) and replace it with "improved behavior, mood, or functional health status to the extent that the established plan of care no longer matches what is needed by the resident." The commenter believed that this would confine the definition of change to a functional measure and focus the criteria on a positive outcome.

A commenter suggested that we add two criteria to paragraph (b)(2)(iv): "(iv)(H) Potentially reversible deterioration in mental functioning due to suspected delirium. (iv)(I) Deterioration in a resident's family or social circumstances which places the resident's psychosocial well being in danger." The commenter believed that the criteria, as published in the proposed rule, do not identify changes that may be temporary, but which could be noteworthy. Furthermore, the commenter does not believe that enough attention has been paid to the psychosocial aspects of change.

One State commented that the definition should not be in the regulation text, but should remain in interpretive guidelines, asserting that it will affect the objectivity of the assessors in determining significant changes since these guidelines will become more concrete.

Response: These substantial comments regarding significant change assessments warranted extensive evaluation of the definition for significant change assessment. Over the past several years, we have been providing clarification regarding the significant change reassessment requirement in surveyor training and other training that we have conducted, as well as through verbal and written communication to States and providers. We believe that it is necessary to include the definition of significant change in the regulation text. However, the definition contained in this final regulation is dramatically altered from that which appeared in our proposed rule, largely in response to the comments we received and the collective experience of providers and States since implementing the RAI process in 1990. This changed definition will remain in the regulation text to reinforce a facility's responsibility to conduct significant change reassessments.

A key to determining whether a significant change has occurred is whether the resident's status has changed to the extent that the plan of care no longer reflects the resident's needs and the facility's plan to address them.

We are revising the definition of significant change, as follows: A significant change means a decline or improvement in a resident's status that will not normally resolve itself without intervention by staff or by implementing standard disease-related clinical interventions, that has an impact on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan, or both. An example of a condition that will normally resolve itself without intervention by staff is a resident's 5 pound weight loss, which would trigger a significant change reassessment under the old definition. However, if a resident had the flu and experienced nausea and diarrhea for a week, a 5 pound weight loss may be an expected outcome. If the resident did not become dehydrated and started to regain weight after the symptoms subsided, a comprehensive assessment would not be required. Generally, if the condition has not resolved at the end of approximately 2 weeks, staff should begin a comprehensive assessment.

A significant change reassessment is probably indicated if decline or improvement are consistently noted in two or more areas of decline, or two or more areas of improvement:

Decline

- Any decline in activities of daily living physical functioning in which a resident is newly coded as 3, 4 or 8 (Extensive assistance, Total dependency, Activity did not occur);
- Increase in the number of areas where Behavioral Symptoms are coded as "not easily altered" (for example, an increase in the use of code 1 for E4B);
- Resident's decision-making changes from 0 or 1 to 2 or 3;
- Resident's incontinence pattern changes from 0 or 1 to 2, 3 or 4, or placement of an indwelling catheter;
- Emergence of sad or anxious mood as a problem that is not easily altered;
- Emergence of an unplanned weight loss problem (5 percent change in 30 days or 10 percent change in 180 days);
- Begin to use trunk restraint or a chair that prevents rising for resident when it was not used before;
- Emergence of a condition or disease in which a facility judges a resident to be unstable;
- Emergence of a pressure ulcer at Stage II or higher, when no ulcers were previously present at Stage II or higher; or
- Overall deterioration of resident's condition; resident receives more support (for example, in activities of daily living or decision-making).

Improvement

- Any improvement in activities of daily living physical functioning where a resident is newly coded as 0, 1 or 2, when previously scored as a 3, 4 or 8;
- Decrease in the number of areas where Behavioral Symptoms or Sad or Anxious Mood are coded as "not easily altered;"
- Resident's decision-making changes from 2 or 3 to 0 or 1;
- Resident's incontinence pattern changes from 2, 3 or 4 to 0 or 1; or
- Overall improvement of resident's condition; resident receives fewer supports.

We may revise this list over time, eliminating or adding items as well as other situations that meet the significant change definition. In an end-stage disease status, a full reassessment is optional, depending on a clinical determination of whether the resident would benefit from it.

We believe that this definition is clearer than the proposed definition. It also addresses many of the commenters' concerns, including noting that the change can be for improvement or deterioration, and eliminates the need to interpret whether a change is permanent.

A self-limited condition is a condition that will run its course without intervention. It is of limited duration. Because this implies a decline in status, we are retaining the phrase, "a sudden or marked improvement."

Comment: Commenters requested that we specify that the time limits for reassessments begin once the assessor makes a clinical determination that the change in resident status is permanent, major, or both (in other words, within 14 days). This would prevent an inconsistent outcome.

Response: In paragraph (b)(2)(iv), we proposed that the facility must conduct the reassessment within 14 days after the facility determines that a significant change has occurred. We are retaining this provision (in § 483.20(b)(2)(ii)).

Comment: Some commenters addressed the overall goal of reassessments due to significant change. One commenter stated that the clinical goal should be to identify functional changes and evaluate their source. Early identification of illness, injury, etc., may allow intervention to reverse and prevent permanent loss of function. The commenter cautioned that the evaluations can be expensive and counter-productive. Others maintained that some changes are the natural result of the aging process or of disease processes like Alzheimer's disease. Some believed that these changes can be anticipated and care planned without conducting a new assessment. A commenter wanted us to add a new criterion to the definition for potentially reversible deterioration in mental functioning due to suspected delirium.

Response: We believe the commenter's suggestion for a new criterion is included under the new definition. The primary role of the RAPs, which a facility also must complete for a significant change reassessment, is to help the facility to identify causal or risk factors that can be eliminated or minimized. Completing the RAP process helps the facility determine what services the resident needs. It would be more costly if the facility does not detect a significant change and the resident is allowed to decline. The resident could develop complications from the onset of a health problem or require hospitalization. Furthermore, significant change reassessments will help the staff to determine if a change is the expected result of a disease process or could be reversed. Such would be the case in a drug-induced delirium.

Comment: A few commenters thought that the final regulation should allow for consultation with a physician (the medical director, for example) to determine the significance or permanence of a resident's change. Therefore, they maintained, the facility staff would not have the responsibility to make the determination and would not be cited for it.

Response: We encourage consultation with physicians, but it is not our intent to absolve facilities from their responsibility to monitor resident status. The statute requires that a registered nurse conduct or coordinate the assessment. The registered nurse, by virtue of licensure requirements and State practice acts, has responsibility for assessing and monitoring an individual's status, and notifying a physician, as is warranted by changes in the individual's status.

Proposed § 483.20(b)(3), Quarterly Review (Redesignated as § 483.20(c))

Comment: Several commenters discussed the proposed quarterly review requirements. Most agreed that a facility should assess a resident at least quarterly. A few, including a State, wanted us to mandate the use of a standard form. They believe that this would provide consistency.

Response: OBRA '87 required that a long term care facility examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's care plan. We are accepting the recommendation to mandate a standard instrument. Not only will this provide consistency across the nation, but it will facilitate computerization of the quarterly review assessment items. In keeping with the Federal requirement for a uniform resident assessment instrument, the Quarterly Review form is considered part of the RAI. States may modify this form or use an alternate instrument by submitting a request to us. However, each State's Quarterly Review form must include at least those items on the HCFA Quarterly Review form.

Comment: One commenter said that the requirement for a quarterly assessment should be taken in the spirit of four times a year and not a rigid every 90 days. This would allow the facility to be flexible so that a resident's health status or the facility schedule could be taken into account.

Response: If a resident is experiencing a transient condition or is out of the facility when his or her quarterly review is due, the facility can wait until the resident's condition stabilizes or the resident returns to the facility. The facility should document the circumstances associated with the delay in conducting the quarterly review. Regarding timing of the quarterly review, we draw from the statutory language, which states that the facility must examine each resident no less

frequently than once every 3 months. This is also consistent with the regulations in effect prior to the publication of the proposed regulation. We would also point out that the calculation of when the quarterly review is due based on when the last assessment or quarterly review completed by the facility. For example, if a facility completed a quarterly review March 1, and completed a significant change reassessment April 15, the facility must complete the next quarterly assessment no later than July 15. If there had not been a significant change, the next quarterly assessment would have been due no later than June 1.

Comment: A few commenters wanted us to provide that the quarterly review determines if a comprehensive reassessment is necessary. Furthermore, they stated that the care plan may need to be revised as a result of the quarterly assessment. One commenter proposed that quarterly reviews must also review any section of the MDS relevant to problems triggering or found in the assessment.

Response: The purpose of the quarterly review is to ensure that the resident assessment data is accurate, and that the facility continues to have an accurate picture of the resident, in order to monitor and plan care. If the quarterly review indicates that a significant change has occurred, the facility needs to conduct a comprehensive reassessment. This also applies to the comment proposing a requirement to review other areas in the MDS if the quarterly review finds a problem. The facility is not limited to only reviewing the required portions of the MDS that comprise the quarterly review. While we encourage facilities to review any section that might be relevant to an individual resident, we are not requiring at this time that a facility review particular sections. We are providing in § 483.20(d) that the facility must revise the plan of care when indicated by the assessment.

Comment: Several commenters wanted additional MDS items or sections required as part of the quarterly review. One commenter thought that the quarterly review should include the entire MDS, providing additional longitudinal information for an outcome-based quality assessment system. Some commenters wanted all or a portion of Section N, Skin Condition, from the MDS+, added. One commenter noted that skin condition is a vital part of nursing care and the resident's psychosocial well-being. Others wanted at least one item added from former Sections B, Cognitive Patterns, C, Communication/Hearing Patterns, E, Physical Functioning and Structural Problems, F, Continence in Last 14 Days, H, Mood and Behavior Patterns, K, Health Conditions, L, Oral/Nutritional Status, and P, Special Treatments and Procedures.

Response: We are not requiring that a facility complete the entire MDS on a quarterly basis, as we thought the additional burden this would impose was not warranted clinically. Based heavily upon suggestions submitted by commenters, we have added several items to the quarterly review, including an item on skin condition. The primary use of the quarterly assessments is to regularly ensure that the care plan is responsive to the needs of the resident. A secondary use of the information collected through quarterly assessments is that of quality monitoring at the resident and facility level. Some of the items on the quarterly review form have been identified as quality measures. An example of a quality indicator is urinary incontinence. The MDS item H.1 is one of the items that we use to monitor quality of care associated with urinary incontinence. A mandated quarterly review assessment will provide for the consistent collection and use of such data.

We are also requiring that a facility transmit its quarterly review assessment records to the State. There are several reasons for this. Analysis of resident-level data over time is necessary to generate quality measures (in other words, a quality indicator system requires quarterly assessment data for each resident). As noted in the discussion on establishment of the national data base, a facility can identify opportunities to improve its own outcome and care practices through the quality measures. Quarterly data will also help a facility in its quality assurance program. Furthermore, if MDS data is to be used for quality monitoring purposes by surveyors, it must be timely. This means that we must require facilities to transmit their quarterly review records, in addition to admission, annual and significant change assessments, in order to use MDS data in the long term care survey process. Leading researchers and survey experts in this area believe that quarterly data is absolutely necessary for the timely and reliable identification of resident outcomes, both at the facility level and the resident level.

Proposed § 483.20(b)(4) Use (Redesignated as § 483.20(d))

Comment: A few commenters requested a definition of maintaining "all resident assessments." They were confused as to whether this meant just the MDS, or also the Identification Face Sheet, documentation of the quarterly reviews, the RAP Summary sheet, and information pertaining to the decision to proceed to care planning.

Response: "All resident assessments" includes all the documents mentioned by the commenters—all MDS forms (Sections AA through R, and V—the RAP Summary Form), the Quarterly Review forms, and Discharge and Reentry forms. The RAP Summary form indicates which RAPs were triggered, whether care planning was done for each of the RAP conditions, and where data from the RAP assessment process is documented.

We also require that a facility complete a subset of items when a resident is discharged, which includes identifying information about the resident, the type of discharge and the destination upon discharge. As mentioned in the discussion on the national data base, we are also requiring that the facility transmit this information to the State and to us. This will allow for the closure of a resident's current stay at the facility. Furthermore, we are requiring that a facility complete a subset of MDS items upon a resident's reentry to the facility (§ 483.20(f)). This will allow the facility to "reopen" the resident's record in the facility system as well as at the State and national levels.

Comment: We requested that the public advise us on what the requirements should be for facilities to keep a hard copy of the MDS on a resident's file if the assessment is computerized. A few commenters urged us to allow flexibility. One pointed out that society is making large strides toward paperless environments, and a Federal regulation should not inhibit such progress. Other commenters thought that a hard copy should remain in the resident's record even if the assessment is computerized. Commenters recommended that hard copies stay in the record for 2 years, as the proposed regulation discussed. Another commenter suggested 1 year. A consumer advocacy group noted that hard copies should always be accurate because it is the copy most likely to be used by direct care staff. A State said that a hard copy on the record is essential because appropriate staff may not always be available to retrieve data from the computer. A few commenters did not want us to require that a facility keep a hard copy of the MDS in a resident's active record. Commenters believed that paper records are expensive to maintain, and it should be acceptable if a hard copy were readily accessible to staff, residents, and surveyors. A State commenter thought that a coding system would need to be created to handle old assessments and reassessments. Commenters submitted other ideas. One suggestion was to keep the original MDS on the chart and not require a computerized copy. Another was to allow either the original or a computerized version. A State suggested printing a hard copy at the time of survey, and that all electronic assessment records should be created according to the intervals called for under the MDS. The commenter believed that the computerized system should be able to save or change information as needed. Another State said that we should require no further storage of a hard copy version once the facility produces and transmits a computer version.

Response: In order to be used as intended, by clinical staff at all levels, we believe that it is necessary for the facility to keep a hard copy in the resident's record of all assessments for the past 15 months. This issue is also discussed in responses to comments on § 483.20(b)(5). We agree that direct care staff would be most likely to use a hard copy of the assessment, and believe that it would be problematic for clinical staff to be expected to retrieve assessments from the computer, both in terms of their ability and willingness to do so and also having the necessary equipment available on all clinical units. Unless all charting is computerized, we believe that a facility should maintain RAI assessments as a part of the resident's clinical record. However, if a facility has a "paperless" system in which each resident's clinical record is entirely electronic, the facility does not need to maintain a hard copy of the MDS. To qualify for this exception, the facility's MDS system must meet the following minimum criteria:

- The system must maintain 15 months' worth of assessment data (as required in § 483.20(d)) and must be able to print all assessments for that period upon request;
- The facility must have a back-up system to prevent data loss or damage;
- The information must always be readily available and accessible to staff and surveyors; and
- The system must comply with requirements for safeguarding the confidentiality of clinical records.

Furthermore, the facility must maintain evidence that identifies the Registered Nurse Assessment Coordinator and other staff members that completed a portion of the assessment.

Comment: Commenters expressed concern with the proposed requirement to maintain assessments from the previous 2 years on the resident's clinical record. One stated that the intent of this requirement is unclear, as it does not appear to serve any purpose for facility staff in care planning, in that facility staff will be using the most recent assessment information they have to aid them in the development of the care plans. According to commenters, maintaining 2 years' worth of assessment data in the resident's active record would be too bulky and cumbersome. It could even add to facility costs associated with purchasing large chart binders and chart racks. One commenter stated that the full 2-year cycle of a resident would have approximately 42 pages of assessment documentation in the chart. If the resident had two episodes of "significant change" in that time period, this would add an additional 18 pages. Commenters maintained that a thick record would be prohibitive and intimidating, adding that quantity does not always translate into quality.

Several commenters maintained that surveyors look at only the previous year's assessment information. Also, the MDS does not require that the assessor look back over more than 180 days, so 1 year's worth of data would be sufficient. They stated that earlier assessment information would be easily retrievable from the record if needed. Commenters asserted that medical information that is more than 12 months old is likely irrelevant and outdated. A commenter believed that the regulation's intent could be met if historic materials were retrievable and available to the assessor during the reassessment and course of care. A commenter suggested that we require that the facility maintain all full comprehensive resident assessments completed within a 12-month period in a resident record. One commenter wanted the 2-year requirement to be effective on the date of the final rule.

Response: The original intent of the proposed requirement was to enable a facility to better monitor a resident's decline and progress over time. We are not able to determine if requiring that a facility maintain assessment information for a 2-year period has facilitated the analysis of this longitudinal data. We believe that the information is necessary to evaluate the resident's plan of care, but have decreased the required time period to 15 months of assessment records, since the survey cycle allows for up to 15 months between surveys. Additionally, computerizing MDS records will allow a facility to access prior assessments in a timely and more efficient manner.

Comment: A professional organization did not believe that 2 years of assessment data was enough to capture a decline in the resident's status and thought that we should require a facility to maintain 3 years of assessment data. Another suggestion was that we require a facility to maintain at least two comprehensive assessments in the record with the appropriate quarterly review and RAP summary forms.

Response: Requiring that a facility maintain assessment data on a resident's record for 3 years would be too cumbersome for most facilities; however, a facility can maintain as many years of assessment information as it likes. It is possible that having this amount of longitudinal data would be helpful for a facility in tracking resident progress. However, we are only requiring that a facility keep 15 months of the documentation associated with the RAI in the resident's active record.

Comment: Commenters requested that we permit a facility to keep prior assessment data in a "thinned" chart or another appropriate location as opposed to on the active chart. A few commenters did not feel that we should mandate where the facility keeps documentation. Commenters suggested that we revise the requirement to provide that the facility must maintain in active status all resident assessments completed within the previous 2 years and use the results of the assessments to develop, review and revise the resident's comprehensive plan of care.

Response: As stated above, we are revising the regulation to require that a facility maintain 15 months of assessment records. We would note, however, that a facility need not store assessment data in one binder to meet this requirement. A facility may choose to maintain the data in a separate binder or kardex system, as long as the information is kept in a centralized location and is accessible to all professional staff members (including consultants) who need to review the information to provide care to the residents. It is not acceptable for the assessment data to be stored where staff cannot easily use it.

Comment: Another suggestion was we require the facility make available the 2 years of data within 1 hour of request.

Response: We emphasize that the primary purpose of maintaining the assessment data is so that a facility can monitor resident progress over time. The information should be readily available at all times.

Proposed § 483.20(b)(5) Coordination (Redesignated as § 483.20(e))

Comment: Commenters addressed the proposed requirement that the facility coordinate the assessment with any State-required preadmission screening program. Most who addressed this issue agreed that coordination was needed to prevent duplicative efforts, particularly as part of the Level II PASRR. Some, including States and provider organizations, stated that the responsibility for coordination should be a State function and not the facility's responsibility, noting that a facility has little or no control over the screenings. One commenter noted that the facility should not be penalized during a survey because the State mental health authorities are unable to do appropriate plans of care. A commenter requested that we not mandate this coordination because, in most States, coordination will be extremely difficult to accomplish. A commenter suggested that we provide, instead, that the facility coordinate assessments to the maximum extent possible.

Response: We agree that coordinating the MDS with Federal PASRR requirements, to the extent practicable, will prevent duplicative efforts and the unnecessary expenditure of resources. The proposed regulation required that the facility coordinate "to the maximum extent practicable" with the PASRR program and we are retaining this language as is.

With respect to the responsibilities under the PASRR program, the State is responsible for conducting the screens, preparing the PASRR report, and providing or arranging the specialized services that are needed as a result of conducting the screens. The State is required to provide a copy of the PASRR report to the facility. This report must list the specialized services that the individual requires and that are the responsibility of the State to provide. All other needed services are the responsibility of the facility to provide. The PASRR report also lists some nursing facility services the State PASRR evaluator recommends for the facility to consider including in the plan of care. We note that the survey agency should not cite a facility when the State fails to fulfill its responsibility. However, if a facility fails to fulfill its responsibilities to, for example, prepare fully developed care plans, then the survey agency may cite it.

We would also like to point out that the requirements relating to the preadmission screening and annual resident review program were amended on October 19, 1996 by Public Law 104–315. In summary, the legislation amended section 1919(e)(7) of the Act by removing the Federal requirement for the annual resident review. Section 1919(b)(3)(E) of the Act was also amended by the addition of a requirement that a nursing facility notify the State mental health authority, mental retardation, or developmental disability authority, as applicable, promptly after there is a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded. Finally, the legislation amended section 1919(e)(7)(B) of the Act to require that the State mental health or mental retardation authorities conduct a review and determination after the nursing facility has informed them that there has been a significant change in the resident's physical or mental condition. In developing regulations to implement the new provisions of the law, we will try to ensure that States and facilities are not be subjected to duplicative requirements or the unnecessary expenditure of resources.

Comment: Commenters were concerned that the condition of a resident may necessitate a new comprehensive assessment done earlier than annually, which would be administratively problematic for State mental health authorities trying to coordinate their reviews.

Response: From the beginning of the PASRR program, a significant change in the condition of a resident with mental illness or mental retardation has required a judgement call to be made concerning whether an annual resident review was necessary. While this requirement may initially have caused some difficulty in scheduling, these procedures should already be in place.

Comment: A few commenters submitted suggestions as to specific ways that the RAI and PASRR could be coordinated. One suggested that we expand items 11 and 12 in the former Section I, Identification Information, which pertain to mental health history and conditions related to mental illness or mental retardation. Another suggested that we grant psychologists the same status under these regulations to practice to the full extent of their licensure as has been recognized under the PASRR regulations. One commenter believed that Level II screening could serve as part of the cognitive, psychosocial, mood, and behavior RAPs. A State commenter recommended that the mental health authority use the MDS for nursing decisions to refer someone into the community mental health system for further review. Another commenter proposed that the facility forward a copy of the MDS to the State mental health authority, and that relevant information from hospital admissions be incorporated into the MDS.

Response: There are several elements of the MDS that could assist in determining if the resident has mental illness or mental retardation and whether nursing home level of care or specialized services, or both, are necessary. We have changed the language in the Section AB, Demographic Information of the MDS to be consistent with PASRR language and definition regarding mental illness and developmental disabilities. We will further consider the coordination of the RAI and PASRR in the development of the regulations to implement the new legislation.

Comment: A commenter suggested that we add paragraph (b)(5)(i), which would provide that State mental health and mental retardation authorities may determine for those residents whose mental status and/or intellectual functioning has remained stable over a 2-year period, based on annual resident review criteria, as defined under subpart C, § 483.100 *et seq.*, and on-site evaluation and record review, whether the data contained in the annual RAI/MDS is sufficient to make a determination of continued need for NF services and/or specialized services, or whether further evaluation is required. The commenter believed that much of the information needed for Level II screening can be obtained from the RAI, especially for long-standing nursing home residents with mental illness or mental retardation. The State mental health authority would still be making the determination of level of services as required under the PASRR requirements.

Response: We agree, as noted above, that the RAI data may serve as the basis for State mental health and mental retardation authorities to evaluate and make determinations about the need for NF care and for specialized services. However, section 1919(e)(7) of the Act prohibits a State mental retardation authority and a State from delegating their responsibilities to a nursing facility or to an entity that has a direct or indirect affiliation or relationship with a facility. However, those responsible for conducting the evaluations should use applicable up-to-date data from the MDS.

Comment: A State commenter suggested including results of the PASRR reviews on the MDS, for example the dates of the reviews, special needs, dates of recent

hospitalizations, and whether the resident needs specialized services.

Response: We encourage facilities to keep the results of a resident's PASRR with his or her MDS. We are not mandating that a facility record PASRR information on the MDS. The decision about how much information to share with a facility is up to the State's discretion, as is the choice of assessment instrument and the coordination of the various assessments. We believe that a State should have the flexibility to determine what a facility must retain.

Comment: A State commenter submitted several MDS elements that help them identify residents who have mental illness or mental retardation (including a list of ICD–9 codes recorded in the former Section J that would indicate a developmental disability). The commenter noted that RAI software exists that enables them to make this determination. Other MDS items are useful in deciding if someone is exempt from PASRR because of terminal illness, dementia, or a severe medical condition.

Response: We concur that several MDS items would be helpful in identifying residents with mental illness or mental retardation. We encourage States to develop or refine PASRR programs, or individuals performing surveys of the facilities, as well as those conducting preadmission screening under Public Law 104–315, to use the information to the maximum extent possible. We disagree with the commenter who suggested that an individual with a terminal illness, dementia or a severe medical condition is exempt from the screening requirements. We believe the commenter misconstrued the current requirement at § 483.130, which permits a State to make advance group determinations when included in an approved State plan. Categorical determinations are categories for which the State mental health or mental retardation authorities may make an advance determination that nursing home services or specialized services are needed for an individual with mental illness or mental retardation. These categories may include cases in which the resident has received convalescent care after an acute physical illness that required hospitalization and do not meet the criteria for an exempt hospital discharge. Dementia is not considered a serious mental illness for the purposes of PASRR. Therefore, a person with a primary diagnosis of dementia would not be considered to have mental illness and would not be subject to PASRR screening (unless he or she is also mentally retarded).

Proposed § 483.20(b)(6) Automated Data Processing Requirement (Redesignated as § 483.20(f))

Comment: Several commenters believed that the proposed October 1, 1994 date for capability of computerization was unrealistic. A national provider organization stated that, based on the regulation process and time frames, it was possible that we would require that the systems be in place before the final rule was published, and this would be unfair. Commenters offered alternative dates, which included an implementation date of October 1, 1995; at least 2 years from the effective date of the final rule; and postponing implementation until a reimbursement mechanism is in place. Another suggestion was that we publish a rule specifically on computerization.

Response: We agree that an implementation date for facility computerization of October 1, 1994 should be deferred until June 22, 1998.

To redesignated § 483.20(f), we are adding the requirement that a facility transmit at least monthly to the State all assessments completed in the previous month. This includes admission assessments, significant change reassessments, annual reassessments, quarterly reviews, and information captured upon reentry to the facility, transfer, discharge and death. We are requiring the latter information for a number of reasons. States that are already computerized have noted that this information is required to close out the resident's record at the State level for the facility from which the resident was discharged. We are aware that there are some States which, for Medicaid payment purposes, must know where Medicaid recipients are every 24 hours. Information upon reentry, transfer, discharge and death will allow State and Federal agencies to analyze long term trends in resource utilization, particularly in regards to movement across various types of care providers. Additionally, discharge information will permit facilities to close out residents' records on their system. In the State Operations Manual, we will provide facilities with instructions on which MDS items must be completed to document this information. Furthermore, as discussed elsewhere, we believe that the information will provide facilities with invaluable data they can use in a variety of ways.

Comment: A State commenter asserted that we should develop penalties for non-compliance regarding the computerization requirement. The commenter questioned whether the penalties would fall on individual facilities, States, or both. The State suggested that, as an alternate to penalties, we could provide monetary incentives for timely and accurate submission.

Response: The requirements to encode the assessments in a machine readable format and transmit the information to the State are like all other requirements that a facility must meet to participate in the Medicare and Medicaid programs. We believe that computer-aided data analysis facilitates a more efficient, comprehensive and sophisticated review of health data. Manual record reviews, on the other hand, are labor intensive and more time consuming, and may, therefore, tend to be more occasional or anecdotal. Additionally, utilization of the quality measures and other types of quality monitoring, such as observation of trends and patterns, is enhanced through computer aided data analysis.

Facility noncompliance with requirements established by this final rule will be subject to the full range of enforcement remedies set forth in part 488, subpart F, Enforcement of Compliance for Long-Term Care Facilities with Deficiencies. However, at a minimum, we will require that a facility complete a plan of correction and we will impose the mandatory denial of payment for new admissions sanction if the facility has not achieved substantial compliance within 3 months from the date of the finding of noncompliance. Further, if the facility is still not in compliance within 6 months from the date of the finding, we will terminate its provider agreement. We may impose one or more other remedies, as determined by us or the State in accordance with part 488. Additionally, noncompliance that is repeated or that recurs intermittently becomes part of the facility's noncompliance history, which is a factor when we or the State selects the appropriate enforcement response. A facility that demonstrates little or no commitment to continual, rather than cyclical, compliance will be sanctioned by us accordingly. We are not offering incentives for timely and accurate submission at this time, but may consider such a concept as we revise the survey process.

Proposed § 483.20(c) Accuracy of Assessments (Redesignated as § 483.20(g))

Proposed paragraph (c) described the requirements regarding who conducts and coordinates the assessment, certifying its completion and accuracy,

and penalties for knowingly and willfully falsifying the assessment. In this final rule, we are redesignating content of proposed paragraph (c) related to accuracy of assessments as paragraph (g), coordination, as paragraph (h), certification, as paragraph (i), and penalties for falsification, as paragraph (j).

Proposed § 483.20(c)(1) Coordination (Redesignated as § 483.20(h))

Comment: Commenters requested clarification on the definition of "health professionals." Some, including a State commenter, wanted to know if nurse aides who are on the State's nurse aide registry could complete and document portions of the assessment.

Response: A licensed health professional, as defined at § 483.75(e), includes a physician, physician assistant, nurse practitioner, physical, speech or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker. Furthermore, the definition of nurse aide, at § 483.75(e), specifically excludes licensed health professionals.

A facility may assign responsibility for completing the RAI to a number of qualified staff members. It is the facility's responsibility to ensure that all participants in the assessment process have the requisite knowledge to complete an accurate and comprehensive assessment. In most cases, participants in the assessment process are licensed health professionals. Some State licensure and practice acts specifically prohibit nursing assistants, and in some cases licensed practical nurses, from conducting assessments. While nurse aides certainly can and should contribute their knowledge of the resident to the assessment process, nurse aides typically are not trained in specific assessment skills, some of which require a significant amount of knowledge.

Comment: A commenter stated that staff that are mandated to complete certain sections of the assessment, like gait and movement, behavior, and aspects of incontinence, do not have the appropriate skills, clinical experience, or training to understand and assess the issues involved. The commenter stated that surveyors lack this expertise and training also.

Response: We are not requiring that specialized professionals complete any sections of the MDS. As stated in the previous response, a facility must ensure that staff conducting the assessment have the requisite knowledge to accurately complete the assessment. We disagree with the generalization that facility staff and surveyors do not have the skills and training necessary to accurately assess residents. We conduct a significant amount of training for surveyors on how to gauge the accuracy of assessments. Provider groups and facilities also conduct training in these areas.

Comment: A commenter expressed concern that requiring the participation of professionals other than registered nurses could place a burden on a facility that does not employ staff in certain disciplines. The commenter recommended that the we combine the requirements for coordination and certification to provide that each assessment must be conducted or coordinated by a health professional, in cooperation with other health professionals, as desired, and that a registered nurse must review, sign and certify the completion of the assessment.

Response: See previous responses. We do not require the participation of specialized professionals other than registered nurses. The personnel participating in an assessment are determined by the needs of the individual resident. For someone who has significant rehabilitation potential, for example, it would be reasonable for a physical therapist to conduct part of the assessment. It is acceptable, though, for a registered nurse to conduct the entire assessment as long as it is accurate.

Comment: A consumer advocacy organization suggested that we prohibit the use of assessment nurses hired solely for the purpose of completing the MDS and who have no relationship to care provided. This suggestion was based on a reference in the preamble to the proposed rule (p. 61633) to staff who have clinical knowledge about the resident, such as staff nurses.

Response: The requirements for care planning state that a registered nurse with responsibility for the resident be a part of the interdisciplinary team that prepares the care plan. This implies that the registered nurse is directly involved in the resident's care and is fully knowledgeable about the resident. We believe that the assessment is conducted most accurately and efficiently in conjunction with the registered nurse who has primary responsibility for the resident's care. We believe that this is in line with the intent of Congress. However, it would be beyond our purview to prohibit "assessment nurses." A facility is required by the statute to complete an accurate assessment.

An evaluation of the RAI process, conducted by the Research Triangle Institute in 1993, under contract with us, indicates that it is rare for a facility to designate a sole staff member to conduct the entire assessment. Registered nurses, who are often the primary assessors get substantial contribution from others in at least some MDS domains, even in facilities which designate an "assessment specialist nurse." We cannot necessarily state that a nurse hired solely to conduct assessments does not have the necessary clinical knowledge. Additionally, the survey process would detect inaccuracies in the assessment if an assessor did not have the necessary clinical knowledge to accurately complete resident assessments.

Proposed § 483.20(c)(2) Certification (Redesignated as § 483.20(i))

Comment: Commenters suggested that we require that an individual who completes portions of the assessment date his or her signature. This would also apply to the assessment coordinator when he or she signs and certifies the completion of the assessment.

Response: We agree with this suggestion and have changed the form to reflect this.

Proposed § 483.20(c)(3) Penalty for Falsification (Redesignated as § 483.20(j))

Comment: Commenters, including a national provider organization, supported the distinction between clinical disagreement and false statements. A commenter requested a definition of clinical disagreement. One commenter expressed concern regarding guidelines for surveyors and protections to ensure hard copy validity. For example, if there is oversight in completing a section of the MDS, but the registered nurse signs to certify completion, we could cite the facility for falsification. A commenter also suggested that clinical disagreement on the RAP Summary form does not constitute a material or false statement.

Response: It is the responsibility of the nurse coordinating the assessment to make sure that the MDS is complete before he or she certifies completion. Failure to do so could result in a deficiency, based upon information gathered by the surveyor.

For purposes of this regulation, clinical disagreement pertains to coding an item based on observation of the resident over time and on clinical judgment. If, based on observation, one nurse codes a resident as needing supervision for locomotion while another nurse codes the same resident as needing limited assistance based on her observation, we would consider that to be clinical disagreement and not falsification. However, if an assessor were to complete the assessment without observing the resident and gathering data, we would consider that to be a material and false statement. Clinical disagreement applies to the entire RAI, including the RAP Summary form, and care planning decision making process. The survey process is not intended to usurp clinical decisions from the facility.

§ 483.315 Specification of Resident Assessment Instrument

This section describes requirements for the States in specifying a resident assessment instrument. It also lists the components an instrument must contain if a State wishes to specify an instrument other than the Federally designated RAI.

Our December 28, 1992 proposed rule placed the entire MDS and instructions for its use in the regulation text. The proposed rule also required that a facility encode the MDS in a machine-readable format, in accordance with HCFA-specified formats. We are removing the MDS from the regulation text. Because the law requires a standard assessment, the regulation mandates that a State instrument contain, in its exact form, the contents of our designated instrument, as set forth in the State Operations Manual. This instrument is comprised of the MDS and common definitions, the triggers and utilization guidelines (including resident assessment protocols (RAPs)). We will ordinarily not approve an instrument that does not contain the HCFA-designated resident assessment instrument (RAI). The States may add items to the Federal instrument, but may not change the MDS items, definitions or triggers, delete any items, or alter the utilization guidelines pertaining to the RAPs. This is necessary for the standardization and consistency required by law. We believe that removing the MDS from the regulations text is advantageous. It will allow us to easily modify the MDS so that it requires collection of information that is clinically relevant and meets evaluative needs as clinical practice evolves. By directly discussing and negotiating with affected parties, it will be possible to maintain a resident assessment process that reflects current standards of clinical practice while obtaining public comment.

It has always been our intent that we would revise the RAI on an ongoing basis to reflect changes in clinical practice and advances in assessment technology. The first revision of the MDS and RAPs, known as version 2.0, was published in Transmittal No. 272 of the State Operations Manual in April, 1995, and is contained in the preamble of this rule. For the purpose of this rule, State and provider requirements related to the RAI pertain to the most current version of the RAI that has been published by us (that is, presently dated 10/18/94H, but subject to future revision). We expect to publish revisions to the RAI, such as new or revised RAPs, in the State Operations Manual no more frequently than annually, in order to minimize the burden on providers of transitioning to a revised RAI.

We believe that the regulatory provisions that we are including in the final rule adequately describe the fundamental MDS requirements and that the form and details of the MDS are best set forth in interpretive issuances. This will permit us to easily modify details such as the measurement scales for a particular condition, or the symptoms that may be relevant to that condition, and to respond to advances in clinical standards.

We relied heavily on public comments received on the proposed rule in modifying the MDS and RAPs contained in version 2.0 of the RAI. We also drew on the expertise of a small work group comprised of representatives of three States that had extensive experience in working with the industry to successfully implement the RAI requirements. In this way, we were able to address "real world" concerns as well as misinterpretations regarding individual MDS items. We also received comments on a draft of the revised RAI during a public meeting with national associations representing nursing home providers, professional disciplines and consumers on December 10, 1993. Under HCFA contract, Dr. John Morris of the Hebrew Rehabilitation Center for Aged led the RAI revision effort from 1993 to 1994 and oversaw field testing.

Proposed § 483.315(a) State Responsibilities (Redesignated as § 483.315(c))

Comment: A State commenter noted that 30 days to specify an instrument after we designate or change its instrument is not enough time. The commenter stated that the survey agency would need to coordinate with the State Medicaid agency. Furthermore, any change to the HCFA-designated RAI would require the State to study the benefits and costs of modifying the State-specified RAI vs. the revised HCFA-designated RAI, notifying and training facilities, modifying computer systems, etc. The commenter suggested 180 days. For the aforementioned reasons, a commenter recommended that providers have advance notice of changes to the RAI. Another commenter asked if we would extend the time without specifying the number of days.

Response: We agree that 30 days may not be enough time for a State to decide whether to adopt our changes or seek approval for an alternate instrument. However, we believe that the commenter's recommendation of 180 days is too long. Therefore, we are changing the requirement to give States 90 days to decide whether they accept our changes or wish to specify an alternate.

Comment: Commenters questioned whether the State would be required to seek approval from us to re-adopt our forms every time we make a revision to the forms. One commenter asked if a State that has already specified the HCFA-designated RAI will now have to respecify it. Commenters suggested that a State that has specified our instrument should be expected to automatically adopt any revisions without additional paper work.

Response: Our State Operations Manual Transmittal No. 272 contains information on a State's responsibilities related to respecification of its RAI. We require that a State notify us of its intent to use our revised RAI or alternate instrument and specify the effective date for its use. A State will continue to respecify its instrument whenever we change the Federally-designated RAI. This enables us to monitor when a State decides that it no longer wishes to use our instrument. As the quarterly review form is now part of the Federally-designated RAI, we require a State to specify the form to their facilities or to include an alternative form in the package that it submits to us.

Comment: Commenters suggested revisions to paragraph (a)(2). A commenter wanted to change "* * * State must assure implementation" to read "must assist with implementation of RAI through training and technical assistance." The commenter stated that training and technical assistance does not ensure implementation, and proposed that we add paragraph (a)(2)(i), which would provide that States must assure implementation of RAI through the survey process. Another suggested that we require that the State ensure facility implementation by providing the necessary technical direction and education and training to facilities at least annually. This would accommodate changes in facility and surveyor staff, facilitate proficiency and maintenance of assessment skills.

Response: We accept an amended version of the first two suggestions. We are providing in § 483.315(c)(3) that, after specifying an instrument, the State must also provide periodic educational programs for facility staff to assist with implementation of the RAI. This parallels sections 1819(g)(1)(B) and 1919(g)(1)(B) of the Act. We acknowledge that training does not necessarily mean implementation. We do not wish to specify intervals at which training must be conducted. Training should be based on provider needs and should be targeted to focus on identified facility weaknesses. We do not wish to take away State discretion in this area. We are also providing in § 483.315(c)(4) that a State must audit implementation of the RAI through the survey process. Furthermore, we are reordering the text to be more sequential in regard to the action the State must take.

Comment: A commenter stated that the proposed requirement at § 483.315(a)(3) could have a negative impact on facility assessment and care planning schedules. The commenter suggested that we permit a facility to use its current RAI until we approve an alternative. Another commenter requested that we allow States 180 days to secure approval for an alternative instead of the proposed 4 months.

Response: It appears that the commenter misunderstood when we would require a facility to implement a newly specified RAI. A facility does not have to use a newly specified RAI or State alternate RAI until the date that the State requires it, which would be well after the State receives approval from us. Once the State receives our approval for an alternate instrument, the State must specify the instrument for use in all Medicare and Medicaid certified long term care facilities. The State would need a realistic implementation time frame which would not unreasonably have an impact on facilities. This time frame should accommodate training and the absorption of change.

With respect to the proposed requirement that States have 4 months to obtain our approval, we are eliminating the time frame entirely. The time frame was necessary initially when States were specifying instruments for the October, 1990 implementation of OBRA '87. Furthermore, our experience working with States that are developing alternate instruments is that a State may require more than 4 months.

In § 483.315(a)(4), we proposed that, within 30 days of receiving our approval of an alternate RAI, the State must specify the RAI for use by all Medicare and Medicaid facilities. We are changing the requirement to allow States 60 days to specify the instrument to their long term care facilities (redesignated § 483.315(c)(2)). This will give the State time to contact each of their certified facilities as well as reproduce the form for distribution to them. Additionally, we are deleting the provision that says that HCFA approval of an alternate RAI continues for 2 years. Our experience shows that many States make changes to their instrument on a more frequent basis.

Comment: A few commenters questioned whether a State would need to notify us if it redesigns the RAP Summary sheet.

Response: Since the RAP Summary sheet is part of the State-specified and HCFA-approved RAI, the State would need to obtain our approval to alter the sheet. Since we are removing the MDS from the regulations text, we are making substantial changes to § 483.315, which addresses the contents of the HCFA-designated RAI. We are adding to the regulations text the major domains contained on the revised MDS. This reemphasizes the statutory mandate that alternate instruments contain at least all the MDS elements. For the same reason, we are also listing the assessment domains addressed in our RAPs.

Proposed § 483.315(c) Secretarial Approval (Redesignated as § 483.315(g))

Comment: Commenters suggested that we delete this paragraph. According to commenters, if States are allowed to reorder sections of the MDS, use other RAPs, etc. it would be difficult to have consistency in data collection and submission to us. The commenter suggested that we require a State that wants an alternate instrument to include a HCFA section that would incorporate our system.

Response: We agree with the commenters' suggestion to delete most of the content of proposed paragraph (c). We are replacing it with a provision that requires the State's alternate instrument to comply with the standard format, vocabulary and organization requirements set forth in the State Operations Manual (redesignated paragraph (g)). There are a number of factors that warrant consistent ordering of data and assessment items across all States. First, nursing home chains that operate facilities in a number of States would benefit from some consistency in the ordering of the MDS items, if not simply to facilitate effective use of their training and education resources. Second, software vendors would also welcome standardization of the ordering of the MDS items in all States, as many of them market their software to facilities throughout the country and to nursing home chains that operate in a number of States. It also would minimize the effort in revising their software. Third, we could also achieve consistency in training State surveyors on use of the RAI. Fourth, educational materials, resources, and education programs for nursing homes and schools that prepare health care professionals could be developed more cost-effectively and distributed more widely with some consistency in how the MDS is ordered. Finally, data submission to us and States will require standardization in the ordering of the MDS items. Therefore, to facilitate standardization across States, we are requiring consistent ordering of MDS sections. We will require that States desiring to add additional data and assessment items, add those items in section S of the MDS, which has been designated as the section for State-specific items.

Comment: A few commenters thought that we should convene a clinical advisory panel to evaluate any alternate RAPs that States submit. They were concerned that the proposed supporting documentation could merely be the consensus of the same experts who designed the alternates. This would not protect the scientific integrity of the assessment system.

Response: We will convene a clinical panel periodically to evaluate the need to modify the RAI, and to review and evaluate newly developed RAPs, including those developed both by us and States. The process by which State-developed RAPs are submitted for our approval is also described in the State Operations Manual. We intend to have an open, inclusive revision process.

Comment: Commenters suggested that we require that any alternate instrument be cross-validated with the MDS on a large sample of residents. States should submit the data from the cross-validation to us for comparison of outcomes between States who use the HCFA-designated RAI and those that do not.

Response: Alternate instruments must contain all MDS items. This negates the need to cross-validate with the MDS. We have reviewed the revised items and new items added to the MDS for face validity, and we tested the individual items in early 1994. We encourage States to field test and validate the new items, as well as allow review by other qualified individuals prior to including the additional items on their instrument and submitting it for approval.

State Requirement to Establish a Data Base of Resident Assessment Information

Consistent with the purpose of the proposed rule and, after considering the comments submitted, we are adding a new paragraph (h) to § 483.315, which delineates State requirements in establishing a data base of resident assessment information. In the proposed rule, we posed questions about the State's role in collecting and maintaining the RAI data base, and we concluded that specific requirements are necessary to ensure uniformity. Furthermore, we believe these requirements are necessary to successfully design and implement a national data base of resident assessment information. Paragraph (h) includes provisions for specifying a transmission method for a facility to send information to the State, specifying edits that the data must pass, and provisions to transmit the data to us. A State will also be responsible for resolving incorrect data submitted by a facility. While the facility will edit the data before transmission to the State, the State, which has already computerized assessment information, may note that the data transmitted is not entirely complete or accurate, and must send it back to the facility for correction. Additional edits at the State level will help identify incorrect assessment information.

A State must edit the data it receives from a facility according to formats we specify, but may add State-specific edits that do not cancel or interfere with HCFA-specified edits. This will help ensure that the data we receive is uniform, complete and accurate. Furthermore, we are requiring that a State generate reports and analyze data, as specified by us. For example, we could require States to run a profile of each facility, which would allow the facility to analyze the prevalence of a certain medical diagnosis amongst its residents.

For a number of reasons, as discussed below, we are requiring each State to use a complete system that is developed or approved by us. We will develop a single, open system by which States will manage and analyze data. We believe that there are a number of advantages to standardizing both the data analysis and the data management functions which outweigh potential disadvantages.

Cost

Initial system costs will be substantially reduced by producing a single system versus funding the development of 50 different systems.

Ongoing maintenance costs will be substantially higher if States implement their own proprietary MDS systems. The costs associated with modifying individual State systems to incorporate changes in the MDS or HCFA specifications, formats or edits would be 50 times those associated with modification of a standardized system and distribution of new software or other specifications to each State.

Additional cost savings for data analysis activities will be realized by us. Given that we envision standardizing the State data analysis function, system standardization at the data management level will ensure that the necessary infrastructure to support data analysis is already in place. If States develop proprietary data management systems, we would probably have to fund additional system/structural costs when our proposed data analysis requirement becomes effective.

Data Reliability

It would be difficult to maintain quality controls and ensure adequate data reliability across 50 State systems. For example, each time we issue a change in transmission specifications or data fields, each of 50 States would have to modify their proprietary systems to accommodate the requirement. Past experience with MDS software vendors, as well as other Federal systems, demonstrates that there is a great degree of variation in the ability of vendors or agencies to consistently implement system changes. This would pose a serious threat to the long term integrity of the national MDS data repository. Standardization would ensure that changes are implemented completely, reliably, timely and in a coordinated manner across all States.

Programmatic Needs

Our desire to implement an MDS data-driven long term care survey process based on quality measures cannot be efficiently realized without standardization at the initial "data management" level. Assuming that we are redesigning our provider survey model as an automated, data-driven system, each survey agency will have to be able to integrate directly with the State MDS repository. If each State has a unique design for this repository, this integration will not be possible in a cost-effective manner. Each State would have to use HCFA-developed MDS data format specifications to extract MDS data into the standardized survey system. Allowing the development of 50 State proprietary systems would also result in long term inefficiencies in that each State would be required to rewrite their data extraction procedures each time we want to make a change to the survey process, quality measures or in the MDS itself. Even if we had unlimited resources for State customization, this would have a serious impact on our ability to introduce changes in a timely and consistent manner.

HCFA Initiatives to Implement Standardized Clinical Data Sets

These changes are an integral part of the Administration's efforts to achieve broad-based improvements in the quality of care furnished through Federal programs and in the measurement of that care, while at the same time, reducing procedural burdens on providers. Quality assessment and performance improvement rests on the assumption that a provider's own quality management system is the key to improved performance. Our objective is to achieve a balanced approach combining our responsibility to ensure that essential health and quality standards are achieved and maintained with a provider's responsibility to monitor and improve its own performance. To achieve this objective, we are now developing revised requirements for several major health care provider types. All of these proposals are directed at (1) improving outcomes of care and satisfaction for patients, (2) reducing burden on providers while increasing flexibility and expectations for continuous improvement, and (3) increasing the amount of, and quality of, information available to everyone on which to base health care choices and efforts to improve quality. We note that our revised approach to quality assurance responsibilities is closely linked both to the Administration's commitment to reinventing health care regulations and to our own strategic plan. These initiatives have three common themes. First, they promote a partnership between us and the rest of the health care community, including the provider industry, practitioners, health care consumers, and the States. Second, they are based on the belief that we should retain only those regulations that represent the most cost-effective, least intrusive, and most flexible means of meeting our quality of care responsibilities. Finally, they rely on the principle that making powerful data available to consumers and providers can produce a strong nonregulatory force to improve quality of care.

The MDS is the first of several clinical data sets we envision creating and implementing in various care settings. Standardized information on clinical

status and health care outcomes is necessary for more objective and focused quality monitoring. Consequently, interest in standardized clinical data sets has skyrocketed, with much activity occurring in this arena in both the public and private sectors. We view our efforts with the MDS as a prototype for the next several years, during which we propose to build and implement clinical data sets across several provider types. These data sets will feed into quality indicator systems, which will supplement our traditional survey processes. At this point, we are beginning work on designing a comprehensive standardized assessment tool for home health agencies as well as field testing the uniform needs assessment instrument, which we are evaluating for use by all providers and view as forming the "core" of all care-setting specific data sets. Additionally, we propose development of standardized patient process and outcome measures for the End Stage Renal Disease program and a standardized instrument for the Intermediate Care Facility for the Mentally Retarded program in fiscal years 1996–97. In view of these initiatives, it would be much more economical and efficient to put in place now, within each State, standardized system designs and structures to support increased clinical data management and analysis. Otherwise, we will be responsible for funding and coordinating State efforts to implement data systems for each provider type as we implement new requirements.

In the system design process we explored several options, particularly regarding State systems and gathered a significant amount of information about current status of State systems. For example, we sent two questionnaires to the States to determine whether they had developed an MDS system, what the configuration might be, and what sort of direction and assistance non-computerized States would want from us. We convened several meetings across the country which were attended by more than 45 States. At these meetings we presented the concept of standardization. Reaction was quite supportive. We are aware that States which already have systems will have to make significant adjustments and will provide assistance in the process.

III. Provisions of the Final Rule

In summary, in this final rule, we are adopting, without change, the provisions of the proposed rule with the exception of the following.

- We are adding greater specificity to the proposed requirement that each facility establish a data base of resident assessment information and transmit MDS data to the State at least monthly (§ 483.20(f)).
- We are adding a new requirement that each State establish a data base of resident assessment information received from facilities, using a system to manage and analyze data that is developed or approved by us, and transmit that information to us at least monthly (§ 483.315(h)).
- We are adding a definition of "significant change" in a resident's physical or mental condition to clarify when a facility must conduct a comprehensive assessment of a resident (§ 483.20(b)(2)).
- Instead of including the entire content of the MDS, the utilization guidelines for resident assessment instruments, common definitions, resident assessment protocols and instructions in the regulations text or in an appendix to the text, we are providing descriptions of the RAI, the MDS, and RAPs. We are providing a description of the assessment areas included in the MDS (§ 483.315(e)), and a description of the domains addressed in the RAPs (§ 483.315(f)), both of which must be included in the RAI specified by a State (§ 483.20(b)(1)).
- To address concerns about confidentiality of resident data, we are providing that a facility and a State may not release resident-identifiable information to the public, and may not release the information to an agent or contractor without certain safeguards (§§ 483.120(f)(5) and 483.315(j)).
- In this final rule, we are not adopting the proposed technical revisions to part 456 concerning inspection of care reviews of SNFs and ICFs. We will include these revisions in another document.

IV. Regulatory Impact Statement

A. General

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all nursing homes are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

B. Affected Entities

We require that all certified nursing homes assess residents using a standardized data set known as the MDS. Nursing homes have been collecting this information manually since October 1990. Most States implemented a second generation assessment instrument, known as MDS 2.0, on January 1, 1996. The use of the MDS as the core of the comprehensive assessment requirement has improved the quality of nursing home services by ensuring that the assessment is consistently based on all information that is necessary to evaluate a resident's needs. Accurate and comprehensive resident assessments have improved the accuracy of the care planning process and, ultimately, the care provided by the nursing home. The myriad benefits associated with the MDS have been well documented in a study we commissioned to evaluate the outcomes of using the MDS. One of the more striking changes documented by the study was an association of the use of the MDS with a significant reduction in hospitalization among more cognitively impaired nursing home residents, without a concomitant increase in mortality. The study also identified major reductions in rates of decline (especially among various types of residents) in important areas such as nutritional status, vision, and urinary incontinence. However, in order to realize the full benefits of the MDS, the information needs to be computerized, and configurable as an analytical tool. Publication of this rule will allow this goal to be realized.

The automation and transmission of MDS data by nursing homes and States to us will improve the delivery of quality care in the nation's nursing homes in several ways. An automated MDS data base will provide information that will benefit both the policy and operational components of State and Federal governments, as well as furnish valuable information to long term care providers. The MDS system will also establish a means of providing consumers with quality-related information to make health care decisions.

More specifically, the MDS data base will enable us and the States to provide nursing homes with aggregated State and national resident status information and trends. This will allow nursing homes to compare themselves to similar homes and is consistent with a quality improvement model. Furthermore, by establishing their own in-house quality assurance analyses from these computerized data, nursing homes will be able to evaluate the effectiveness of treatment modalities given a certain outcome. This type of information will assist nursing homes in making better use of their staff and other resources, and also eliminate the allocation of resources that do not achieve desired outcomes. In short, the MDS data base will provide nursing homes with the information to identify and correct their own problems.

States will have access to timely MDS data that will improve their ability to focus on-site inspection activities associated with the long term care survey process. Since we require MDS data for all residents regardless of payor source in nursing homes, these data elements can be configured into quality measures. The quality measures flag individual residents and facilities when there may be a problem with the quality of care provided. For example, the indicators may identify those residents who were admitted to a nursing home without pressure sores, but who developed sores in the nursing home. Similarly, a nursing home that has a relatively high percentage of residents with pressure sores may indicate a problem when compared to other facilities. This resource will significantly improve States' ability to identify areas of potential quality concerns in an effective and efficient manner, and facilitate the partnership of States and industry in identifying opportunities to improve care. At both the Federal and State level, information from the MDS data base will provide a valid and reliable tool for evaluating and improving the efficacy and effectiveness of survey and certification activities.

States have also identified a myriad of other intended uses for MDS data that include Medicaid payment, utilization review, preadmission screening and resident review, Medicaid coverage authorization, and State policy analysis and trending. It is our intention that a standardized MDS data system will support States' unique needs and should not necessitate the creation of distinct and duplicative data bases at the State level.

C. Costs Associated With Automating the MDS

We anticipate that both nursing homes and States will incur some incremental costs from computerizing and transmitting the MDS. We estimate total start-up costs of $20.3 million, which represents costs incurred by nursing homes (we will be supplying the MDS systems directly to the States). We also estimate total ongoing annual costs of about $34.7 million, which includes $27 million in costs for nursing homes and $7.7 million in costs for States. Total costs include Medicare benefit costs of $9.5 million. Total costs also include an annual administrative cost of $3.5 million that will be absorbed within HCFA's program management appropriation. However, the benefits associated with computerizing the MDS far outweigh the additional costs of automating the data. The following represents our estimates of the individual costs associated with this effort.

Nursing Homes

Upon publication of this rule, all nursing homes must computerize the MDS. Most costs associated with computerizing the MDS will be related to hardware and software. At the current time, we estimate that approximately 70 percent of the nation's 17,000 Medicare, Medicaid or dually certified nursing homes have already computerized the MDS or have the capability to do so. Another 16 percent of nursing homes already have some kind of computer system that will require upgrading to meet the requirements for MDS, and only 14 percent have no computer system at all. Additionally, some facilities with currently operating MDS systems may require hardware and software upgrades to support aspects of the national MDS system (for example, a faster modem or installation of the Windows operating system).

Under the Balanced Budget Act of 1997, nursing homes will be reimbursed for Medicare under a prospective payment system for cost reporting periods beginning on or after July 1, 1998. Prior to July 1, 1998, costs incurred by nursing homes associated with computerizing the MDS will be paid on a reasonable cost basis. Generally, these costs are considered capital costs and are subject to the applicable Medicare rules. Additionally, it is likely that nursing homes will also incur certain routine services costs which will also be paid on a reasonable cost basis. These costs are subject to cost limits. In the past, the routine cost limits have included an add-on to account for the costs associated with the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987), including the cost of conducting resident assessment. When a provider incurs cost related to OBRA 1987 that exceed its limit (including the add-on), we have allowed the fiscal intermediary to make an adjustment to the costs limits. This policy is described in a notice published in the **Federal Register** on October 7, 1992 (57 FR 46177).

The Balanced Budget Act of 1997 also prescribes a public process for the determination of rates for payment under Medicaid State Plans for nursing home services in which the proposed rates, the methodologies underlying the establishment of such rates, and the justifications for the proposed rates are published, thereby giving providers, beneficiaries and their representatives, and other concerned State residents an opportunity for review and comment. States have flexibility in designing the details of their payment systems for NF care, and to the extent that NFs incur costs in computerizing the MDS (such as the acquisition of hardware or software, staff training, or additional staffing), the State may take these costs into account in setting its rates.

- *Hardware:* We estimate total hardware costs associated with automating the MDS to be approximately $2,500 for a typical nursing home, which includes the computer and communications components capable of running MDS software and transmitting MDS assessments, and a laser printer. This estimate is based on the most recent cost data available for a system that includes an Intel Pentium processor. As noted earlier in this rule, we expect that only 14 percent of all nursing homes will need to buy an entirely new system. Seventy percent of all nursing homes are already using an automated MDS collection tool (although some may require upgrading in order to transmit the MDS data), and the remaining 16 percent already have some sort of computer system that simply requires upgrading.

The aforementioned cost estimate is based on the type of system that we anticipate many nursing homes will choose to purchase. At a minimum, a nursing home should have at least a 486 personal computer, either connected to a network or as a stand-alone, with 8 megabytes of RAM, at least 100 megabytes of available hard disk space, a 14 inch color monitor, keyboard, mouse, a 3.5 floppy drive and a laser printer. To operate the transmission software, this machine must run the Windows operating system, version 3.1 or higher. All nursing homes will also need a 28.8 Kbps modem for telecommunication of data, as well as a common data communications software package to transmit MDS assessments to the State. This communications package must meet our specifications related to

transmission of MDS data and represents current technology.

Ongoing hardware maintenance costs for nursing homes are expected to average about $100 annually.

• *Software:* Nursing homes desiring to meet only the requirement for data submission can use a less costly software package to accomplish the basic encoding and formatting functions. A nursing home must submit MDS records to the State that conform to a specific ASCII layout and incorporate them into files with header and trailer records that conform to required formatting standards. However, we anticipate that most nursing homes, seeking to gain efficiency in general operations, will choose more capable programs, some of which could be used to meet (1) other clinical or operational needs (for example, care planning, order entry, quality assurance, billing) or, (2) other regulatory requirements for reporting resident information. The standardized record formatting specifications and additional policies on MDS automation that we developed should be used by individual nursing homes, multi-facility chains, and software vendors to develop products for encoding and transmission of MDS 2.0 data. This information has been available to the public for about two years through the Internet, and is located on the HCFA Web site.

There are currently over 100 vendors marketing MDS software products. While we are not requiring record specifications and automation policies until this rule is published, we developed them earlier to provide guidance to the industry and to minimize the need for a facility to modify and replace systems once this regulation is published. At this time, we estimate that such software packages will be available on the market for approximately $1,250 for those nursing homes that have not yet become MDS automated. We expect that a nursing home's private sector software vendor will provide primary support to the facility in terms of MDS encoding and transmission to the State. State personnel, however, will work with facilities and software vendors in educating them about this process.

• *Supplies:* Supplies necessary for collection and transmission of data including diskettes, computer paper, and toner, will vary according to the size of the nursing home in terms of residents served and assessments required. Dividing the nursing homes into groups, supply costs are estimated at the following three levels: small facilities (with less than 145 residents), $175/year; medium facilities (with 145 to 345 residents), $225/year; and large facilities (with greater than 345 residents), $275/year.

• *Maintenance:* There are costs associated with normal maintenance of computer equipment, such as the replacement of disk drives or memory chips. Typically, such maintenance is provided via extended warranty agreements with the original equipment manufacturer, system reseller, or a general computer support firm. These maintenance costs are estimated to average no more than $100 per year.

• *Training:* Nursing home staff will need training on automating the MDS. Since many nursing homes will choose to have their staff input MDS data at the time of the resident assessment, we estimate that a typical nursing home will train two nurses for about 3 hours each. We expect that this training will be supplied by the vendor supplying the MDS encoding software, and estimates that the training will cost an average nursing home about $144 based on an average hourly rate for nurses of $24.

Other nursing home staff will need training in transmitting the data to the State and interpreting messages of record errors. We expect that this training will require about 3 hours of staff time, and will cost an average nursing home about $66, based on an average hourly rate of $12 for technical staff. This cost also includes travel expenses and travel time, since facility staff may need to travel to a centralized training site within the State (we anticipate that training will be provided in multiple sites in the State once the system is implemented). We expect that the State survey agencies will supply this training.

• *Data entry:* Nursing homes will have flexibility in the method used to enter data, but the method must comply with our requirements for safeguarding the confidentiality of clinical records. Data can be entered directly by a clinical staff member (that is, the nurse responsible for coordinating or completing the assessment), from a hard copy of a completed MDS by a clerical staff member, or by a data entry operator with whom the nursing home may contract to key in the data. We estimate that data entry staff could require approximately 15 minutes to enter each MDS. Nursing homes must collect and transmit MDS data, which for the admission assessment, annual updates, as well as significant changes in the resident's status, significant correction assessments, quarterly review assessments, which include a subset of the MDS items, discharge records, and reentry records. Additionally, nursing homes must allow time for data validation and preparation of data for transmission, as well as for correction of returned records that failed checks at the State data-editing level. We estimate that a 100 bed facility will incur an annual data entry cost of $1,250, (or $12.50 per resident per year), based on an estimate of five MDSs per bed (annual plus "significant changes") and an hourly rate of $10.

• *Data Transmission:* The State agencies will fund the costs of transmitting data from the nursing homes to their respective States. However, nursing home staff time must manage the data transmission function, correct communications problems, and manage reports logs transmitted from the State agency. We estimate that it will take an additional hour of staff time to perform data transmission related tasks each month. This staff time will cost an average size nursing home about $144 per year.

States

We expect that overall responsibility for fulfilling requirements to operate the State MDS system will rest with the survey agency. However, the State may enter into an agreement with the State Medicaid agency, another State component, or a private contractor to perform day-to-day operations of the system. If the State MDS system is operated by an entity other than the survey agency, the State must ensure that the survey agency has suitable access to this system to fully support all MDS-driven functions that the State will require of the survey agency (for example, quality indicator reporting, survey targeting). The State is also responsible for reporting MDS data to a central repository to be established by us.

States will primarily use the MDS data to focus the long term care survey process and to provide nursing homes and consumers with MDS-derived information. A State's MDS system includes the following components: computing hardware that includes data base, communication, supporting file, and print servers for client workstations; local and wide-area data networks; and application software for performing all aspects of MDS-related functions and tasks. As such, the MDS system will be designed and developed within a broad class of systems known as Client/Server architecture.

We plan to provide each State with a standardized hardware environment scaled to meet each State's anticipated processing volumes. Additionally, a standardized suite of software applications will be provided to each State to perform all MDS-related functions, including receipt and validation of MDS records, posting of records to the master repository, and analytical applications to be used to inform and support the long term care survey process. A HCFA contractor will work closely with each State to customize the "turn-key" MDS system to integrate it into a State's current computer and network structure. The contractor will visit each State to install and test equipment, and ensure that the MDS system is fully operational. We currently plan to phase in State deployment of the system, roughly from August through December 1997.

We will place this system in each State and it will be operated by personnel within the designated State agency. We are requiring that the State systems do the following: receive MDS records from nursing homes; authenticate and validate the records received from nursing homes; provide feedback to the nursing homes by indicating acknowledgment of the transmission of the data and specifying the status of record validation; store the MDS records in a permanent data base within the State; create system management reports and logs; generate provider performance reports including quality indicator reports designed to support a future data-driven survey process and provider survey targeting functions; perform other analytical functions, as defined by us; create ad-hoc reports; and retransmit validated MDS records from each State agency to a national MDS data repository developed and maintained by us.

Just as in nursing homes, some States are already using some sort of an automated MDS collection tool. At least 12 States have already developed MDS data bases. In nearly all cases, the State Medicaid agency has been the driving force in getting MDS data to the State level. System designs and approaches have varied considerably (that is, while two States have recently moved to modem transmission, other States still perform data entry at the State level from hard copies forwarded by nursing homes).

We are providing the MDS system to States primarily for use in the Survey and Certification program. As such, most Federally reimbursable costs incurred by the States for automating the MDS will be funded through that program. However, we anticipate that many States will also choose to use MDS data in administering their Medicaid programs. When that is the case, Federal reimbursement is applicable to the extent a State uses the MDS for administering its Medicaid program. As a result, it may be appropriate for a State to allocate some MDS costs to its Medicaid administrative cost claims.

When a State does use MDS in administering its Medicaid programs, it should apportion Federal costs associated with automating the MDS and operating the data system between the Medicare and Medicaid Survey and Certification program, and the Medicaid program (as administrative costs, when applicable). The State should apportion MDS costs to these programs based on the State's determination of each program's utilization of the MDS system. Costs charged to the Medicare and Medicaid Survey and Certification program will be prorated in terms of the proportion of SNFs and NFs in the State that participate in the Medicare and Medicaid programs. Costs for SNFs and NFs are split equally between the two programs. The Federal financial participation rate for the Medicaid Survey and Certification Program is 75 percent. The Federal financial participation rate for costs apportioned as Medicaid administrative costs is 50 percent. When the State licensure program benefits from the automation of the MDS, the State should also share in the MDS automation costs.

Several States asked if we could reimburse Medicaid administrative costs associated with the development of MDS at Federal financial participation rates greater than 50 percent, the rate used in computing Medicaid reimbursement for general administration of the program. Specifically, they asked if we will reimburse these costs at the same rates used to reimburse the costs of designing, developing, implementing and operating a Medicaid Management Information Systems (MMIS).

Section 1903(a)(3) of the Act and implementing regulations at § 433.111 describe the MMIS as a mechanized claims processing and information retrieval system. Federal financial participation is available at 90 percent in expenditures for design, development, installation or enhancement of the system, while 75 percent is available for costs relating to its operations (namely, processing claims and producing related management information). The MDS is not a Medicaid claims processing and information retrieval system. We reimburse other systems not directly related to performing MMIS functions, such as the MDS, at the 50 percent level of Federal financial participation.

Commenters asked whether automated systems to collect and analyze data for rate setting purposes meet the MMIS definition. Because rate setting is outside the claims payment and information retrieval processes required by section 1903(a)(3) of the Act, those costs are not eligible for enhanced Medicaid reimbursement under the MMIS definition. However, in those instances when specific data elements from a separate system like MDS must be transferred to the MMIS in order to calculate individual provider payments, the cost of modifying and operating the MMIS to accept and use the data from the outside source qualifies for enhanced Federal financial participation if the State follows the regulations and guidance found in §§ 433.110 through 433.112, 433.116 and in Part 11 of the State Medicaid Manual.

For example, a major function of the MMIS is to produce both beneficiary and provider profiles for program management and utilization review purposes. NF resident and provider profiles are required by § 433.116(g). However, both NF resident and NF provider profiles historically have been very limited because the data elements on a nursing facility claim provide few details of services provided. A State may wish to improve the MMIS profiling capability by importing MDS data to prepare augmented profiles of nursing facility and nursing facility residents. If the State does that, the enhanced Federal financial participation will be available for the costs of modifying and operating the MMIS to accept and use the data from MDS if the State acts in accordance with the regulations in §§ 433.110 through 433.112, 433.116 and the guidance in Part 11 of the State Medicaid Manual. Please note that we currently encourage States to modify their MMIS to accept encounter documents from Medicaid managed care organizations to extend the MMIS profiling capability to cover both managed care and fee-for-service providers and patients. Therefore, it seems appropriate that we would reimburse the cost of modifying MMIS to accommodate MDS usage also at the enhanced MMIS rates, if the State meets the conditions in the aforementioned regulations and State Medicaid Manual.

The following is our estimate of State costs for automating the MDS:

• *Hardware:* We will hire a contractor to purchase, deliver, and install the MDS equipment in each State. Since we will be providing the equipment to the States, the States will not incur any cost for hardware. This equipment will include both a communications server and a data base server. The number of nursing homes within each State will be the driving factor in determining each State's computer needs. We will scale

system requirements to meet the data storage and transmission needs of the individual State.

• *Software:* Since we are developing the software for each State's MDS system, we will pay the costs associated with this system and supply the system directly to the States. Software that we will supply to the States will include communications software and data base software, as well as customized analytical software to generate reports. When a State develops its own customized MDS applications, the costs of developing and maintaining these additional software applications (and any related hardware components) will not be Federally funded.

• *Operational Staff Time:* States may plan to reassign existing staff or hire additional full-time equivalents to manage the automation project and perform day-to-day operation of the standardized MDS system. The staff members assigned to MDS automation tasks will need to have skills in a variety of areas: technical computer, network, and telecommunication skills; data processing operations; and, user support and training (including support for both State and facility users). In hiring or reassigning staff, we encourage States to recruit generalists who can perform a wide range of the above tasks.

Each State's actual staffing requirements will vary depending on the State's size (that is, as measured by the number of nursing homes regulated). To assist in determining staffing requirements within particular States, we assigned States to one of three categories based on the number of certified nursing homes in their jurisdiction: less than 144, 144 to 356, and those greater than 356 facilities. We estimate that 1.5 full-time equivalents will be required to manage all MDS-related operations for each of the three categories; for instance, States in the smallest group should budget for 1.5 full-time equivalents, 3 full-time equivalents in the second group, and 4.5 full-time equivalents in the largest group. This includes an MDS Automation Project Coordinator.

Specifically, an average sized State regulating about 300 nursing homes will require about three full-time equivalents to fulfill the following MDS-related tasks: MDS project coordination (oversight of daily operations); technical operations (systems management, configuration and troubleshooting); training and support operations (facility and MDS software vendor startup training); and operations (functions associated with transmission logging and error tracking and resolution). We estimate that MDS-related staffing costs for an average size State will be about $133,000 per year.

• *Supplies and Maintenance of Equipment:* States can expect about $600 per year in additional costs for products that are consumed, such as printer toner and paper. The MDS data management and analysis equipment to be installed within each State is comprised of standard "off-the-shelf" hardware and software components that are generally covered under typical service agreements that the States may already have in place. We will ask States to extend these agreements to cover hardware components delivered as part of the MDS project. These costs will again vary according to the size of the State requirements, but on average, the typical State will incur about $750 per year in additional cost for systems maintenance. We will maintain and upgrade centrally the standardized MDS software components that we develop and distribute to States.

• *Training:* We plan to centralize training of State personnel who will be responsible for administrative and technical aspects of system operations. Additionally, we will provide separate training on the technical aspects of the system including its communications, networking, data base and software application functions, daily operations and on-going systems management.

In order to promote national consistency in MDS system operations and troubleshooting, we request that each State designate one individual as the MDS Automation Project Coordinator. This person will be our key contact within each State for managing MDS system issues. We are planning to convene at least one national meeting of the MDS Automation Project Coordinators each year. We will use this forum to present new information, gather suggestions for system improvements, exchange ideas on MDS system operations, administration and troubleshooting issues, and to discuss objectives for future system development and refinement.

With our technical support and guidance, States will work closely with the provider community in providing information on specific requirements related to the submission of MDS assessments to a repository maintained by the State. The standardization of the State MDS system extends back to the provider communications function, in that nursing homes will use a common data communications software package to transmit MDS assessments to the State. State personnel will work with the nursing homes and software vendors in educating them about this process. We expect that the commitment of staff resources to this task will be most intensive during the first 6 months of this process. However, States should also expect some ongoing allocation of full-time equivalents to support this process on an ongoing basis.

We anticipate annual travel costs associated with training for an average size State to be about $2,700 per year.

• *Data Transmission:* States will incur data communication costs for transmission of MDS assessments from nursing homes. These costs have two basic elements:

(1) Fixed monthly line fees of approximately $32.50 per line per month. The number of lines required varies from 4 to 16 according to the number of nursing homes supported by a State. On average, a State's fixed line cost will be $3,806 per year.

(2) Line connect and long distance charges of approximately $.27 per minute. We estimate that the typical nursing home will require, on average, 5 minutes ($1.35) of connection time per month for MDS submissions. This translates into an average connection cost of $5,376 per year per State.

We will fund the cost of the States transmitting their MDS data to our central repository. Therefore, we do not expect that States will incur data transmission costs to us.

D. Conclusion

While we acknowledge that nursing homes and States will bear some incremental costs associated with this proposal, these costs are well justified when considered within the context of the anticipated increased quality of care for nursing home residents, as well as the potential uses of the automated data by the facilities, States, and us. The foregoing estimates may actually overstate anticipated costs because they do not take into account cost-savings achieved by improving nursing homes' management information systems, as well as potential improvements in resident's overall health status. Nor do they represent the savings inherent in a more focused, uniform approach by both the States and us in assessing quality of care in the nation's nursing homes.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Information Collection Requirements

Sections 4204(b) and 4214(d) of OBRA '87 provide a waiver of Office of Management and Budget review of information collection requirements for the purpose of implementing the nursing home reform amendments. Therefore, the information collection requirements referenced in this rule are exempt from the Paperwork Reduction Act of 1995.

List of Subjects in 42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR chapter IV is amended as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 483.20, paragraphs (d) through (f) are redesignated as (k) through (m), respectively, paragraphs (b) and (c) are revised and new paragraphs (d) through (j) are added to read as follows:

§ 483.20 Resident assessment.

* * * * *

(b) *Comprehensive assessments.*

(1) *Resident assessment instrument.* A facility must make a comprehensive assessment of a resident's needs, using the resident assessment instrument (RAI) specified by the State. The assessment must include at least the following:

(i) Identification and demographic information.

(ii) Customary routine.

(iii) Cognitive patterns.

(iv) Communication.

(v) Vision.

(vi) Mood and behavior patterns.

(vii) Psychosocial well-being.

(viii) Physical functioning and structural problems.

(ix) Continence.

(x) Disease diagnoses and health conditions.

(xi) Dental and nutritional status.

(xii) Skin condition.

(xiii) Activity pursuit.

(xiv) Medications.

(xv) Special treatments and procedures.

(xvi) Discharge potential.

(xvii) Documentation of summary information regarding the additional assessment performed through the resident assessment protocols.

(xviii) Documentation of participation in assessment.

The assessment process must include direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care staff members on all shifts.

(2) *When required.* A facility must conduct a comprehensive assessment of a resident as follows:

(i) Within 14 calendar days after admission, excluding readmissions in which there is no significant change in the resident's physical or mental condition. (For purposes of this section, "readmission" means a return to the facility following a temporary absence for hospitalization or for therapeutic leave.)

(ii) Within 14 calendar days after the facility determines, or should have determined, that there has been a significant change in the resident's physical or mental condition. (For purposes of this section, a "significant change" means a major decline or improvement in the resident's status that will not normally resolve itself without further intervention by staff or by implementing standard disease-related clinical interventions, that has an impact on more than one area of the resident's health status, and requires interdisciplinary review or revision of the care plan, or both.)

(iii) Not less often than once every 12 months.

(c) *Quarterly review assessment.* A facility must assess a resident using the quarterly review instrument specified by the State and approved by HCFA not less frequently than once every 3 months.

(d) *Use.* A facility must maintain all resident assessments completed within the previous 15 months in the resident's active record and use the results of the assessments to develop, review, and revise the resident's comprehensive plan of care.

(e) *Coordination.* A facility must coordinate assessments with the preadmission screening and resident review program under Medicaid in part 483, subpart C to the maximum extent practicable to avoid duplicative testing and effort.

(f) *Automated data processing requirement.* (1) *Encoding data.* Within 7 days after a facility completes a resident's assessment, a facility must encode the following information for each resident in the facility:

(i) Admission assessment.

(ii) Annual assessment updates.

(iii) Significant change in status assessments.

(iv) Quarterly review assessments.

(v) A subset of items upon a resident's transfer, reentry, discharge, and death.

(vi) Background (face-sheet) information, if there is no admission assessment.

(2) *Transmitting data.* Within 7 days after a facility completes a resident's assessment, a facility must be capable of transmitting to the State information for each resident contained in the MDS in a format that conforms to standard record layouts and data dictionaries, and that passes standardized edits defined by HCFA and the State.

(3) *Monthly transmittal requirements.* A facility must electronically transmit, at least monthly, encoded, accurate, complete MDS data to the State for all assessments conducted during the previous month, including the following:

(i) Admission assessment.

(ii) Annual assessment.

(iii) Significant change in status assessment.

(iv) Significant correction of prior full assessment.

(v) Significant correction of prior quarterly assessment.

(vi) Quarterly review.

(vii) A subset of items upon a resident's transfer, reentry, discharge, and death.

(viii) Background (face-sheet) information, for an initial transmission of MDS data on a resident that does not have an admission assessment.

(4) *Data format.* The facility must transmit data in the format specified by HCFA or, for a State which has an alternate RAI approved by HCFA, in the format specified by the State and approved by HCFA.

(5) *Resident-identifiable information.* (i) A facility may not release information that is resident-identifiable to the public.

(ii) The facility may release information that is resident-identifiable to an agent only in accordance with a contract under which the agent agrees not to use or disclose the information except to the extent the facility itself is permitted to do so.

(g) *Accuracy of assessments.* The assessment must accurately reflect the resident's status.

(h) *Coordination.* A registered nurse must conduct or coordinate each assessment with the appropriate participation of health professionals.

(i) *Certification.* (1) A registered nurse must sign and certify that the assessment is completed.

(2) Each individual who completes a portion of the assessment must sign and

certify the accuracy of that portion of the assessment.

(j) *Penalty for falsification.* (1) Under Medicare and Medicaid, an individual who willfully and knowingly—

(i) Certifies a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 for each assessment; or

(ii) Causes another individual to certify a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 for each assessment.

(2) Clinical disagreement does not constitute a material and false statement.

* * * * *

3. Subpart F consisting of § 483.315 is added to read as follows:

Subpart F—Requirements That Must be Met by States and State Agencies, Resident Assessment

§ 483.315 Specification of resident assessment instrument.

(a) *Statutory basis.* Sections 1819(e)(5) and 1919(e)(5) of the Act require that a State specify the resident assessment instrument (RAI) to be used by long term care facilities in the State when conducting initial and periodic assessments of each resident's functional capacity, in accordance with § 483.20.

(b) *State options in specifying an RAI.* The RAI that the State specifies must be one of the following:

(1) The instrument designated by HCFA.

(2) An alternate instrument specified by the State and approved by HCFA, using the criteria specified in the State Operations Manual issued by HCFA (HCFA Pub. 7) which is available for purchase through the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22151.

(c) *State requirements in specifying an RAI.*

(1) Within 30 days after HCFA notifies the State of the HCFA-designated RAI or changes to it, the State must do one of the following:

(i) Specify the HCFA-designated RAI.

(ii) Notify HCFA of its intent to specify an alternate instrument.

(2) Within 60 days after receiving HCFA approval of an alternate RAI, the State must specify the RAI for use by all long term care facilities participating in the Medicare and Medicaid programs.

(3) After specifying an instrument, the State must provide periodic educational programs for facility staff to assist with implementation of the RAI.

(4) A State must audit implementation of the RAI through the survey process.

(5) A State must obtain approval from HCFA before making any modifications to its RAI.

(6) A State must adopt revisions to the RAI that are specified by HCFA.

(d) *HCFA-designated RAI.* The HCFA-designated RAI is published in the State Operations Manual issued by HCFA (HCFA Pub. 7), as updated periodically, and consists of the following:

(1) The minimum data set (MDS) and common definitions.

(2) The resident assessment protocols (RAPs) and triggers that are necessary to accurately assess residents, established by HCFA.

(3) The quarterly review, based on a subset of the MDS specified by HCFA.

(4) The requirements for use of the RAI that appear at § 483.20.

(e) *Minimum data set (MDS).* The MDS includes assessment in the following areas:

(1) Identification and demographic information, which includes information to identify the resident and facility, the resident's residential history, education, the reason for the assessment, guardianship status and information regarding advance directives, and information regarding mental health history.

(2) Customary routine, which includes the resident's lifestyle prior to admission to the facility.

(3) Cognitive patterns, which include memory, decision making, consciousness, behavioral measures of delirium, and stability of condition.

(4) Communication, which includes scales for measuring hearing and communication skills, information on how the resident expresses himself or herself, and stability of communicative ability.

(5) Vision pattern, which includes a scale for measuring vision and vision problems.

(6) Mood and behavior patterns, which include scales for measuring behavioral indicators and symptoms, and stability of condition.

(7) Psychosocial well-being, which includes the resident's interpersonal relationships and adjustment factors.

(8) Physical functioning and structural problems, which contains scales for measuring activities of daily living, mobility, potential for improvement, and stability of functioning.

(9) Continence, which includes assessment scales for bowel and bladder incontinence, continence patterns, interventions, and stability of continence status.

(10) Disease diagnoses and health conditions, which includes active medical diagnoses, physical problems, pain assessment, and stability of condition.

(11) Dental and nutritional status, which includes information on height and weight, nutritional problems and accommodations, oral care and problems, and measure of nutritional intake.

(12) Skin condition, which includes current and historical assessment of skin problems, treatments, and information regarding foot care.

(13) Activity pursuit, which gathers information on the resident's activity preferences and the amount of time spent participating in activities.

(14) Medications, which contains information on the types and numbers of medications the resident receives.

(15) Special treatments and procedures, which includes measurements of therapies, assessment of rehabilitation/restorative care, special programs and interventions, and information on hospital visits and physician involvement.

(16) Discharge potential, which assesses the possibility of discharging the resident and discharge status.

(17) Documentation of summary information regarding the additional assessment performed through the resident assessment protocols.

(18) Documentation of participation in assessment.

(f) *Resident assessment protocols (RAPs).* At a minimum, the RAPs address the following domains:

(1) Delirium.
(2) Cognitive loss.
(3) Visual function.
(4) Communication.
(5) ADL functional/rehabilitation potential.
(6) Urinary incontinence and indwelling catheter.
(7) Psychosocial well-being.
(8) Mood state.
(9) Behavioral symptoms.
(10) Activities.
(11) Falls.
(12) Nutritional status.
(13) Feeding tubes.
(14) Dehydration/fluid maintenance.
(15) Dental care.
(16) Pressure ulcers.
(17) Psychotropic drug use.
(18) Physical restraints.

(g) *Criteria for HCFA approval of alternate instrument.* To receive HCFA approval, a State's alternate instrument must use the standardized format, organization, item labels and definitions, and instructions specified by HCFA in the latest issuance of the State Operations Manual issued by HCFA (HCFA Pub. 7).

(h) *State MDS collection and data base requirements.* (1) As part of facility survey responsibilities, the State must establish and maintain an MDS Database, and must do the following:

(i) Use a system to collect, store, and analyze data that is developed or approved by HCFA.

(ii) Obtain HCFA approval before modifying any parts of the HCFA standard system other than those listed in paragraph (h)(2) of this section (which may not be modified).

(iii) Specify to a facility the method of transmission of data to the State, and instruct the facility on this method.

(iv) Upon receipt of data from a facility, edit the data, as specified by HCFA, and ensure that a facility resolves errors.

(v) At least monthly, transmit to HCFA all edited MDS records received during that period, according to formats specified by HCFA, and correct and retransmit rejected data as needed.

(vi) Analyze data and generate reports, as specified by HCFA.

(2) The State may not modify any aspect of the standard system that pertains to the following:

(i) Standard approvable RAI criteria specified in the State Operations Manual issued by HCFA (HCFA Pub. 7) (MDS item labels and definitions, RAPs and utilization guidelines).

(ii) Standardized record formats and validation edits specified in the State Operations Manual issued by HCFA (HCFA Pub. 7).

(iii) Standard facility encoding and transmission methods specified in the State Operations Manual issued by HCFA (HCFA Pub. 7).

(i) *State identification of agency that collects RAI data.* The State must identify the component agency that collects RAI data, and ensure that this agency restricts access to the data except for the following:

(1) Reports that contain no resident-identifiable data.

(2) Transmission of data and reports to HCFA.

(3) Transmission of data and reports to the State agency that conducts surveys to ensure compliance with Medicare and Medicaid participation requirements, for purposes related to this function.

(4) Transmission of data and reports to the State Medicaid agency for purposes directly related to the administration of the State Medicaid plan.

(5) Transmission of data and reports to other entities only when authorized as a routine use by HCFA.

(j) *Resident-identifiable data.* (1) The State may not release information that is resident-identifiable to the public.

(2) The State may not release RAI data that is resident-identifiable except in accordance with a written agreement under which the recipient agrees to be bound by the restrictions described in paragraph (i) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; and No. 93.773, Medicare—Hospital Insurance)

Dated: December 3, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 9, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–32828 Filed 12–22–97; 8:45 am]

BILLING CODE 4120–01–P

federal register

Tuesday
December 23, 1997

Part IV

Department of Agriculture

Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service
Farm Services Agency

7 CFR Part 1944

Rural Rental Housing (RRH) Assistance; Final Rule

Notice of Availability of Funds; Multi-Family Housing, Single Family Housing and Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1944

RIN 0575–AC15

Rural Rental Housing (RRH) Assistance

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), amends its regulations for the Rural Rental Housing (RRH) program. This action is taken to implement legislative reforms mandated by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Pub. L. 104–180, enacted August 6, 1996, and to implement Pub. L. 105–86, enacted November 18, 1997, which amends the maximum loan term for Section 515 loans from 50 years to 30 years. The intended effect of these reforms is to improve the effectiveness and efficiency of the Section 515 RRH program.

DATES: The effective date of this final rule is January 22, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Armour or Carl Wagner, Senior Loan Specialists, Multi-Family Housing Processing Division, RHS, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, 1400 Independence Ave., S.W., Washington, D.C. 20250–0781, telephone (202) 720–1608.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0047, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulation. This rule does not impose any new information collection requirements from those approved by OMB.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform.

In accordance with this rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Background

On August 6, 1996, Congress enacted the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Pub. L. 104–180 (herein referred to as the Act). The Act included six reforms to the multifamily housing (MFH) program, which the Agency was directed to implement without delay. Four of the six reforms were directive and could be implemented as enacted without the need for public comment. However, public comment was needed for the other two reforms, which provided for substantive changes in the manner in which MFH loan requests are processed and gave the Secretary administrative discretion in their implementation. Because of the mandate to implement the reforms immediately, the rule was published as an interim final rule on May 7, 1997 (62 FR 25062), effective upon publication. The rule included a 60-day comment period, which ended on July 7, 1997.

Discussion of Comments

A total of seventeen written comments were received from developers, nonprofit groups, Rural Development staff, members of Congress, and state housing agencies. The Agency appreciates the time and effort that went into these comments, many of which offered detailed and constructive suggestions.

Several commentors expressed their support for the four directive reforms, which have been adopted without change in this final rulemaking document:

(1) Assurance That Project Transfers Are in the Best Interest of the Tenants and the Government

Two commentors indicated support for the provisions pertaining to project transfers. One stressed the importance of maintaining the Agency's inventory in good condition to avoid health and safety problems.

(2) Elimination of the Occupancy Surcharge

Two commentors indicated their support of this legislative change. One suggested that the monies collected prior to the elimination of the surcharge be used for other program opportunities such as funding the Section 538 program or for servicing rental assistance (RA), if not returned to the properties. The Agency will consider these recommendations on this issue.

(3) Changes to the Equity Loan Program

Two comments were received on the equity loan program. One indicated support for the legislative changes and noted that the Agency has not yet established an office of rental housing preservation which would make decisions relative to prepayment and incentives, as authorized by section 537 of the Housing Act of 1949. The second commentor expressed the opinion that the preservation of low income housing stock could not be accomplished without significant financial incentives for borrowers and predicted that new approaches to the prepayment issue would be forthcoming from the courts or Congress in the near future.

(4) Implementation of Penalties for Equity Skimming by Project Owners and Managers

Two commentors indicated their support for this legislation. One urged the Agency to act quickly in pursuing parties who abuse the program to the detriment of residents and other borrowers.

The majority of the comments on the interim final rule addressed the two reforms that included administrative discretion in their implementation: (1) Prioritization of assistance and (2) assurances that the amount of assistance provided is no more than necessary. Based on comments received, several minor changes have been made in the final rule.

(1) Prioritization of Assistance

Sections 1944.228, "Ranking of rural places based on greatest need for Section 515 housing," and 1944.229, "Establishing the list of designated places for which Section 515 applications will be invited," were added to 7 CFR part 1944 to implement the statutory requirements pertaining to prioritization of Section 515 assistance. The statute directs the Secretary to identify and designate rural areas with the greatest need for Section 515 housing, taking into consideration the incidence of poverty, the lack of affordable housing and existence of substandard housing, the lack of mortgage credit, the rural characteristics of the location, and other factors determined by the Secretary that demonstrate the need for affordable housing.

Section 1944.228 of the interim rule provides that places will be ranked as follows: Places must qualify as rural areas in accordance with 7 CFR 3550.10, lack mortgage credit for borrowers in accordance with § 1944.211(a)(2), and demonstrate a need for multifamily housing based on the following factors, with equal weight given to each: the incidence of poverty, measured by determining households below 60 percent of the county rural median income; the incidence of substandard housing, measured by determining the number of occupied housing units lacking complete plumbing or having more than one occupant per room; and the lack of affordable housing, measured by determining households below 60 percent of rural median income who are paying more than 30 percent of income in rent.

Twelve commentors addressed the provisions of § 1944.228 and offered thoughtful suggestions for modifying the ranking system. Specific areas addressed were:

Ranking Factors

Several commentors felt the ranking factors should be expanded. One commentor suggested using additional factors such as the availability of existing subsidized housing, the number of vacancies in existing subsidized housing, demand, the availability of services, the anticipated growth of the area, and the availability of adequate utilities. We agree that these factors need to be considered and, in fact, they are taken into consideration, either in the selection of ranked places for the designated place list or in the market feasibility determination. For example, after places have been ranked using the Census data, the list is reviewed to determine if any of the "build and fill" conditions exist, one of which is a high vacancy rate in existing RHS or similar assisted rental units. Places with any "build and fill" condition may not be included on the designated place list; they are deferred until the condition no longer exists. The other recommended factors (demand, anticipated growth, availability of housing, services, and utilities) are part of the market feasibility determination. The Agency believes this is the most effective way to take these factors into consideration. It would not be feasible to obtain and maintain current market data on all rural communities for inclusion in the initial ranking process.

Weights of the Ranking Factors

Three commentors felt the formula provided an advantage to larger rural communities and two of these expressed the opinion that the Agency should consider percentages instead of raw numbers to give smaller rural communities a better opportunity to compete. In fact, the formula used by the Agency, which was not published in the **Federal Register**, considered both raw numbers and percentages. A ranking score was assigned to each place for the three factors (income, rent overburden, and substandard housing) based on the percentage of its total households and on the actual number of households or substandard units. Each score for these six rankings was totaled to reach a final ranking score. This method targets communities that demonstrate a high potential need for housing assistance both by raw numbers and high percentages of their total households. This has resulted in a good mix of small to mid-size rural communities, and we plan to continue with this methodology.

One commentor suggested giving less weight to substandard housing; another suggested giving more weight to rent overburden. We considered these suggestions and ran data for several States with the adjusted factors. The results were inconclusive and we feel that, in the absence of supporting data or documentation, it would be premature to make changes in the formula. We intend to leave the weights unchanged for the remainder of the 3-year designated place cycle but will continue to evaluate the benefits of modifying the formula for future cycles.

Use of 60 Percent of County Rural Median Income

Two commentors disagreed with the Agency's use of 60 percent of county rural median income to determine households in poverty. One commentor suggested using 80 percent; the other felt strongly that 30 percent more closely represented households in poverty, and thus areas of greatest need,

as required by the statute. The Agency has compared the various percentages of county rural median income in several states to the National poverty figure. Based on our review, we agree that 30 percent more closely approximates the National poverty figure. As a result, ranking will be based on households at or below 30 percent of county rural median income. The ranking data has been calculated for all States based on this figure and will be used to select any additional designated places. Places that are currently on the designated place list will remain on the list for the remainder of their 3-year designation period, or until removed or deferred in accordance with § 1944.229(d). The revised ranking data and list of designated places are discussed further in the "Implementation Proposal".

Adding Counties to the Ranking List

Two commentors suggested the Agency rank counties as well as communities. This is an issue that was considered at length in the development of the interim final rule. Because the statute mandates the Secretary to identify and target areas of greatest need, we felt that a county-wide designation was too broad, since the needs of the communities within a county can vary widely. If an entire county were designated, an applicant might well choose areas that have higher incomes and less substandard housing, even though the true need for housing may be greater in another community. We believe it is necessary to identify and designate specific communities to ensure that funds are directed to areas of greatest need and, therefore, we have not revised this provision.

Flexibility in the Ranking Factors

Eight commentors felt the ranking factors should allow more flexibility for state and local conditions. This is another issue that was discussed at length in the development of the interim final rule. We recognize that conditions and goals vary from state to state; however, we believe it is critical to maintain National standards for program consistency. In addition, it would be difficult for States to obtain objective data that could be added to the ranking formula. Instead of providing flexibility in the ranking factors, we provided flexibility in the selection of designated places. This was accomplished in the regulation by allowing States to select places from further down the ranking list, but still within the top ranked, that have been identified as high need areas in the state Consolidated Plan or state needs assessment. To provide further flexibility, we have included provisions in the final rule for States with an active state leveraging program. Details are given below under the heading "Designated places for States with an active state leveraging program".

As published in the interim final rule, § 1944.229, "Establishing the list of designated places for which Section 515 applications will be invited", provides that the number of designated places may equal up to 5 percent of the State's total eligible rural places but must equal, in all cases, at least 10 places. To be included on the list of designated places, a place must have 250 or more households as a minimum feasibility threshold for multifamily housing and may not have any of the "build and fill" conditions specified in § 1944.213(f)(2). Places that meet the minimum size threshold and do not have any "build and fill" conditions are then selected in rank order to form the list of designated places. This section provides the flexibility for States, with National Office concurrence, to select up to 10 percent of their designated places to provide geographic diversity or to reach high need areas, provided such places are within the top-ranked 10 percent of the state's total rural places.

Nine commentors addressed the provisions of § 1944.229 in the following areas:

Establishing the Number of Designated Places

Five commentors felt that the limit of 5 percent of the state's total eligible rural places was too restrictive and did not provide sufficient diversity. Recommended percentages ranged from 10 to 20 percent. One commentor recommended a percentage of places equal to 25 percent of the state's total rural households. An analysis of several states showed that the latter suggestion was equivalent to approximately 10 percent of the states' total rural places. We reviewed the ranking data for several States and found that there was little difference in the ranking scores between places that rank in the top 5 percent compared to those within the top 10 to 20 percent, simply because of the volume of places being ranked. Therefore, a small increase in the percentage of designated places will still target the neediest communities. Accordingly, the 5 percent limit has been modified in the final rule to allow States to designate up to 10 percent of their total eligible rural places. In addition, based on comments that expressed concern that Indian reservations, colonias, Empowerment Zone and Enterprise Communities (EZ/ECs), and Rural Economic Area Partnership (REAP) communities were frequently not included on the list of designated places, the final rule provides that States may designate these special high-need areas in addition to their 10 percent or minimum 10 places.

Build and Fill Conditions

Three commentors mentioned their support for "build and fill", which is widely understood to mean that no additional Section 515 housing will be approved if other Section 515 or similar assisted units have been approved, are under construction, or not yet filled. However, the "build and fill" provisions include other conditions which indicate that the market does not currently need additional rental housing: existing Section 515 or similar assisted housing units are experiencing high vacancies; a request for a Servicing Market Rate Rent (SMR) is pending or in effect and still needed; or the need in the market area is for additional rental subsidies and not for additional housing units. Places with any of these conditions may not be included on the designated place list. States are responsible for reviewing their ranking list, consulting with HUD and other housing agencies, and deferring places with "build and fill" conditions. In response to the comments we received recommending that the Agency consider these or similar market factors in the ranking data, we believe the provision which defers places with "build and fill" conditions accomplishes just that. One commentor noted that places were listed on the designated place list with high vacancies in assisted housing complexes. Any such instances should be brought to the attention of the RHS State office staff for their review. The Agency will continue to stress the importance of reviewing the designated place list annually for "build and fill" conditions. Another commentor recommended including low income housing tax credit (LIHTC) units in the definition of assisted housing complexes for purposes of "build and fill". We agree and have added a specific reference to LIHTC units in the "build and fill" provisions in § 1944.213(f)(2).

Minimum Number of Households for Designated Places

Four commentors objected to the requirement that designated places have a minimum of 250 households and noted that market demand should be the determining factor, not an arbitrary size requirement. We agree that market demand should determine project feasibility; however, we feel that places with fewer than 250 households rarely have sufficient demand or the support services necessary for multifamily complexes. We believe it is prudent to maintain a National feasibility standard and, therefore, have retained this provision. We have also retained the ability for States that have been successful in developing and operating multifamily units in very small communities to request an exception from the National Office to establish a lower state-wide feasibility threshold. In addition, based on concerns that Indian reservations are sometimes excluded because households are frequently split between two or more communities within the same reservation, we have modified this provision to specify that, for Indian reservations, there must be 250 or more households on the reservation.

Designated Places for States With an Active State Leveraging Program

Eight comments were received from Rural Development State staff, state housing agencies, members of Congress, and applicants, urging the Agency to provide more flexibility for States with an active state leveraging program. It was noted that, in many cases, the areas targeted by the state agencies did not correspond to the RHS designated places. As a result, funds that had been set aside by state agencies for leveraging with RHS funds were not able to be fully used. The Agency is committed to partnering with other providers of resources; however, at the same time, we have a legislative mandate to designate rural areas of greatest need and to direct RHS funds to those areas. To accomplish both priorities, we have added provisions in the final rule to allow States with a formal state leveraging program and agreement with their state agency to develop a partnership designated place list with the state agency, which must be approved by the National Office. Places selected for the list must be high-need areas based on criteria consistent with the Agency's statutory requirements as well as the state's authorizing requirements. All loan requests (including those for places on the partnership designated place list) will be scored together as one group. In order of point score or, where there are point score ties, in order of point score and number assigned in accordance with § 1944.231(b)(3), two ranking lists will be formed: the RHS ranking list will include loan requests for places on the RHS place list, and the partnership ranking list will include loan requests for places on the partnership place list. Selection for further processing will be as follows: Loan requests must first be selected from the RHS ranking list that, based on total development cost (TDC), are proportionate to the State's RHS allocation. Loan requests will then be selected in order of highest point score (or point score and tie-breaker number), regardless of whether the loan requests are on the RHS ranking list or the partnership ranking list. For example, a State with a Section 515 allocation of $2 million has three loan requests on the RHS ranking list with point scores of 20, 9, and 5 respectively; and two loan requests on the partnership ranking list with point scores of 18 and 15. The first loan request that will be processed is the highest ranked proposal on the RHS list, with a point score of 20. This request has a TDC of $1.2 million, of which the RHS loan request is $500,000. The next request that will be processed is the second ranked proposal on the RHS list, with a point score of 9. This loan request has a TDC of $1 million, of which the RHS loan request is $750,000. The total amount of RHS funds requested for these two proposals ($1,250,000) is less than the RHS allocation of $2 million; however, the total TDC for the two requests equals $2.2 million, which exceeds the State's allocation. This satisfies the provision that loans must be funded in places on the RHS designated place list proportionate to the RHS allocation. Having satisfied this provision, the next loan requests will be selected in order of highest point score, regardless of whether they are on the RHS list or the partnership list. In this example, assuming there are sufficient funds remaining, the next loan request to be processed would be the 18-point request on the partnership list, followed by the 15-point request on the partnership list, and then by the 5-point request on the RHS list.

Section 1944.230 was added in the interim final rule to establish provisions on loan application submission deadlines and the availability of funds. This section specifies that the Agency will publish annually in the **Federal Register** a Notice of Funds Availability (NOFA), any limits on the amount of individual loan requests, the dates for the funding cycles, and the deadline for submission of loan applications.

Five commentors addressed this section. Two commentors expressed their support for the NOFA system; one commentor was opposed; the other two offered suggestions but did not indicate strong feelings one way or the other. One of the supporters felt the NOFA system was a very cost effective way for developers to participate in the program without having development money tied up for several years waiting for funds to become available. We agree, and would like to add that the decision to move to a NOFA system was reached with extensive input from the Section 515 stakeholders who participated in the development of the reform regulations.

The commentor who opposed the NOFA system felt that it: (1) Encouraged applicants to expend funds for proposals that might not materialize; (2) eliminated nonprofit applicants because they lack the time and money to put together an application; and (3) nearly eliminated leveraging because of the problems coordinating with partners. On the first issue, we believe the NOFA system will be more cost effective, not less, since applicants do not have to incur costs over a period of time waiting for funds to become available. The submission requirements for applicants are the same under the NOFA system as under the previous regulations, so the cost of submitting a loan request has not changed; the difference is that, under the previous system, applicants were required to maintain the site option and update the market and financial information annually and still were not guaranteed of funding because of the backlog of requests and limited availability of funds. Under the NOFA system, applicants know within a short timeframe whether their loan request has been selected. No further costs are incurred unless or until the applicant reapplies in the next funding cycle. As a point of interest, the Agency is reviewing the Section 515 submission requirements to determine if the initial cost to applicants can be reduced, for example, by modifying the initial market analysis requirements. These changes are being considered as part of the Agency's "reinvention" regulation, which is scheduled to be published for comment early in 1998. On the second issue, we do not believe the NOFA system precludes nonprofits from applying. In fiscal year 1997, the period of time for submitting applications was shortened because of the time involved in writing and publishing the regulations. However, in future years, the Agency will publish NOFA as early as possible in the fiscal year and provide a longer application period. In addition, places are designated for 3 years, so applicants can continue to develop applications prior to publication of NOFA. On the third issue of coordinating NOFA with other funding cycles, we believe this issue will also be alleviated by the publication of NOFA early in the fiscal year. The earlier publication of NOFA

will enable States to coordinate the RHS funding cycle with the state agency's funding cycle. Three other commentors on this section also mentioned the importance of coordinating with other funding cycles and publishing the NOFA as early as possible.

One commentor suggested adding a provision that a project must have full funding committed by the end of the fiscal year and must start construction within a specified number of days (270 was suggested) or lose its obligation. We agree that it is necessary to establish and enforce processing deadlines or timeframes and we are addressing this issue in the reinvention of the multifamily regulations.

Section 1944.231, processing loan requests, was revised in the interim final rule to incorporate processing procedures for the NOFA system and to add provisions for scoring and ranking loan requests under the new system. Six commentors addressed this section in the following areas:

Application Requirements

Two commentors discussed the application process and requirements. One suggested that the Agency develop a uniform application package and checklist to ensure that all applications are received in the same format and judged by compliance to that format. We think this is an excellent idea and are developing a checklist and administrative guidance on determining a complete application that will be provided to States concurrently with the publication of this rule. The other commentor objected to the elimination of the term "preapplication", believing this served no useful purpose and was changed merely for the sake of change. We adopted the term "initial loan request" (or "initial application") because we believe it to be more appropriate for the NOFA process, which is a one-step annual selection process instead of the two-step process previously used, in which preapplications were kept on hand until funds became available. We also feel the terms are more consistent with those used by other lenders.

Scoring Loan Requests

The interim regulation provides that loan requests will be scored based on five factors:

(1) The presence and extent of leveraged assistance (including services, abatement of taxes, etc.) for the units that will serve RHS income-eligible tenants, not including tax credits or donated land. (0 to 20 points)

Five commentors addressed this loan scoring factor. One commentor felt the Agency needed to quantify amounts for services and tax abatements; another felt the 0–20 point range was too subjective. The same commentor recommended that the Agency reexamine its decision to give points for leveraged assistance because the benefits of the leveraged funds might be offset by an increase in demand for rental assistance. Another commentor felt that leveraging should not dominate the scoring and suggested that the Agency consider several additional factors, which are discussed below in "Other scoring factors". One commentor said it was unclear whether tax credit funds were eligible to receive points for leveraging, and three commentors recommended that tax credit funds that are dedicated back to the project's development or operation or to tenant subsidies be eligible to receive points.

In response to the comment that the range of 0 to 20 points is too subjective, the Agency provided separate administrative guidance to RHS staff at the time the regulation was published to ensure that all loan requests were scored consistently. We also provided guidance on establishing a value for services and tax abatements. On the issue of whether tax credit funds may be considered leveraged assistance for purposes of awarding points, we agree that any funds the applicant contributes to the proposal in excess of his or her required contribution, including tax credit proceeds, should be eligible for consideration for points as long as there is an equal or positive impact on basic rents. We have modified this provision accordingly in the final rule. Regarding the demand for rental assistance (RA), we do not foresee a major impact on RA usage, especially with the increased interest in developing mixed-income complexes that require only partial RA.

(2) The loan request is for units to be developed in a colonia, tribal land, or EZ/EC community, or in a place identified in the state Consolidated Plan or state needs assessment as a high need community for multifamily housing. (20 points)

No comments were received on this loan selection factor; however, the Agency inadvertently omitted REAP (Rural Economic Area Partnership) communities in the list of high need areas in the interim final rule. This omission has been corrected in the final rule.

(3) The loan request is in support of a National Office initiative announced in NOFA. (20 points)

One commentor addressed this factor, expressing a concern that, without specific parameters, the factor could be used for politically motivated initiatives.

This factor was developed to ensure there is flexibility in the regulation for initiatives that are consistent with the statute that would enable the Secretary to direct funds to specific areas or for specific purposes in the event of unforeseen circumstances or events. We feel it is important to maintain this flexibility and, in the absence of other opposing comments, we have retained this provision.

(4) The loan request is in support of an optional factor developed by the State that promotes compatibility with special housing initiatives in conjunction with state-administered housing programs such as HOME funds or low income housing tax credits (LIHTC). A factor thus developed cannot duplicate factors already included in this paragraph and must be provided to the National Office prior to the funding cycle for concurrence and inclusion in the NOFA. (20 points)

One comment was received on this provision. The commentor felt that the factor needed further description and expressed a concern that it could be used to give preference to LIHTC loan requests, effectively excluding other loan requests.

This provision was included to give Rural Development State Directors more flexibility in working with their states to accomplish common housing goals, which we believe is critical to the Agency's partnership efforts. Factors developed under this provision require National Office concurrence, and we have retained this provision in the final rule.

(5) The loan request includes donated land meeting the provisions of § 1944.215(r)(4). (5 points)

One commentor felt that the Agency needed to redefine its provisions pertaining to preference for donated land in § 1944.215(r)(4), stating that the 1-year ownership requirement was too restrictive. The same commentor expressed the opinion that the value of land provided at no cost to the project should be included as leveraging or factored into the evaluation of costs.

On the first issue, the provisions for donated land preference are based on statute, and pertain to land donated by States, units of local government, public bodies, and nonprofit organizations. The 1-year ownership restriction was added to prevent abuse of this preference and may be waived by the State Director if it is clearly documented that there was no intent to circumvent the provisions.

On the issue of including donated land as leveraged assistance or factoring the value into the evaluation of costs, the regulations do provide for this. Section 1944.211(a)(4) provides that the borrower's contribution may be in the form of cash, land, or a combination thereof. Any land value (as determined by the appraisal) that exceeds the borrower's required contribution may be considered leveraged assistance up to the amount which, when added to the loan and grant amounts from all sources, does not exceed the security value of the project. This applies to all donated land; therefore, donated land meeting the provisions of § 1944.211(a)(4) may receive 5 points under the donated land scoring factor and may also be eligible for points for leveraged assistance under the leveraged assistance factor. We have revised the point score factor for leveraged assistance to remove the exclusion of donated land.

Other Scoring Factors

Several commentors suggested additional factors for scoring loan requests. One commentor recommended awarding points for proposals in communities with RUS financed water or sewer systems to encourage total rural development. We agree there is merit in encouraging total rural development; however, awarding points for RUS financed facilities would penalize other communities with adequate systems that were not developed through RUS, or communities whose residents are unable to support the cost of these systems. In developing the interim final rule, we considered a similar provision whereby communities would be required to have water and sewer systems to qualify as a designated place; however, for the same reason, i.e., that communities that could not support the cost would be penalized, we did not adopt this provision. Another commentor noted that leveraged assistance should not dominate the scoring, and suggested other factors to consider such as design, construction quality, experience of the development team, resident services, ease of maintenance, and compatibility with the community. We agree these factors are critical to a successful proposal and, in developing the interim final rule, we considered awarding points for many of these same factors. However, we felt it would not be possible to develop standards for factors that require subjective judgments, such as an assessment of quality or experience, that could be equally applied to all proposals. With our competitive selection process, we believe it is essential to maintain an objective scoring process and, therefore, we have not adopted these factors.

Nonprofit Preference

One commentor supported the preference for nonprofit applicants but asked for clarification on how the preference was given; another commentor stated that loan requests from nonprofit applicants should be selected by merit and not by lottery. In response to the first comment, preference is given to loan requests from nonprofit or public body applicants meeting the provisions of § 1944.231(e) by giving preference in the event of point score ties. If there are point score ties for loan requests from two or more applicants meeting the provisions of § 1944.231(e), selection is made by lottery. In response to the suggestion that applicants be selected by merit and not by lottery, we feel it would not be possible to develop objective standards for judging the quality or experience of applicants that could be uniformly applied; therefore, we have retained the lottery provisions for point score ties.

Conditional Commitments

Two commentors recommended that the Agency issue a conditional or "soft" commitment when funding from other sources is contingent upon RHS funding. We recognize that this has been a problem in many instances, with both parties wanting the other to make the first commitment. The following policy will be followed: The Agency will publish NOFA as early in the year as possible to coordinate with other funding cycles. Loan proposals that include secondary funds from other sources that have been requested but have not yet been committed will be scored and ranked based on the requested funds: *Provided,* That (1) the applicant includes evidence of a filed application for funds, and (2) the funding date of the requested funds will permit processing of the loan request in the current year, or, in the event the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. States will issue a conditional commitment letter to the applicant with a specific deadline for providing a commitment of funds from the other lender. If the deadline is not met, the application will be returned as incomplete. The next highest ranked proposal will then be selected for further processing.

(2) Assurances That the Amount of Assistance Provided is No More Than Necessary

Section 1944.213 was revised in the interim final rule to implement the statutory reforms pertaining to necessary assistance. Four commentors expressed their support for these provisions and recommended minor revisions as follows:

Developer's Fees

One commentor noted that the section on developer's fees was included twice, once in § 1944.213(a)(1)(iv) and again in § 1944.213(a)(2). This error has been corrected in the final rule.

Fee Norms

One commentor expressed support for the fee norms in § 1944.213(a)(1) but suggested that the rule clarify that the fee norms are to be used only in cases where an executed Memorandum of Understanding (MOU) with the state agency is not in effect.

The regulation pages provided to RHS staff included a provision to this effect, as well as other administrative guidance, that was not published in the **Federal Register**. Interested parties may obtain a copy of the regulation pages from any Rural Development office.

Loan Request Analysis

The same commentor expressed support for the requirement that RHS consult with the applicant and the state allocating agency in cases of potential excess assistance to strive to reach an agreement for reducing any excess, and asked that the phrase "and state agency" be added after the words, "In the event that excess assistance is not reduced through an agreement with the applicant," in § 1944.213(a)(3)(iii). This revision has been made in the final rule.

Excess Assistance

Two commentors suggested that if excess assistance is determined, the funds be put into project reserves or otherwise used to benefit the project, instead of reducing the amount of assistance. One of the commentors noted that current mandated reserve levels are minimal and it would make good sense to increase the reserve level.

We agree that additional funds could be used to benefit the project; however, we do not believe this would be consistent with our statutory mandate to provide only the amount of assistance necessary for the development of the project. As a point of interest, the project reserve requirements are being revised as part of the reinvention effort, which should alleviate the problems we

have experienced because of underfunded reserves.

In addition to the reforms discussed above, this rule includes a change in the maximum loan term for Section 515 loans from 50 years to 30 years. This change is mandated by Pub. L. 105–86, enacted November 18, 1997.

Implementation Proposal

The provisions of this rule become effective 30 days from the date of publication and all loans will be processed in accordance with the revised regulations. The final rule changes the income basis for the ranking data from 60 percent of county rural median income to 30 percent and increases the number of designated places that may be selected. This, in turn, may affect loan requests on hand that were issued an AD–622, "Notice of Preapplication Review Action," inviting a formal application prior to November 7, 1996 (the date Agency staff were advised not to issue additional AD–622s pending the implementation of the new statutory requirements). For purposes of this discussion, these loan requests will be referred to as "AD–622s".

The interim final rule announced the Agency's intent to fund AD–622s on hand, in date order received, provided they met the new statutory requirements and were in designated places. Agency staff were directed to return AD–622s that were not in designated places. This was later amended by a Notice published in the **Federal Register** (62 FR 32752) on June 17, 1997, which directed Agency staff to hold the AD–622s until after the publication of the final rule because of anticipated changes in the designated place requirements.

Based on the large number of comments supporting an increase in the number of designated places, the final rule has been modified to allow States to select designated places up to 10 percent of their total rural places. Places currently on the designated place list will remain on the list for the duration of their 3-year designation period or until removed or deferred in accordance with § 1944.229(d). States may add places from the new ranking list up to the maximum 10 percent.

Using the revised place list, States may process AD–622s in designated places, in date order the complete application was received, up to the amount of the State's allocation. Existing AD–622s may be processed in this manner until the beginning of FY 2000. As in FY 1997, NOFA for FY 1998 will list those States that have AD–622s on hand that will use their direct allocation.

List of Subjects in 7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.205 is amended in the definition of "Eligible tenants or cooperative members" by revising the words "exhibit C of subpart A of this part 1944 (available in any FmHA or its successor agency under Pub. L. 103–354 office)" to read "7 CFR 3550.53", and by adding in alphabetical order definitions to read as follows:

§ 1944.205 Definitions.

* * * * *

EZ/EC. Empowerment Zone or Enterprise Community.

* * * * *

REAP. Rural Economic Area Partnership.

* * * * *

3. Section 1944.213 is amended by removing paragraph (a)(1)(iv), in paragraph (a)(3)(iii) by adding the words "and state agency" following the words "In the event that excess assistance is not reduced through an agreement with the applicant"; and by adding the word ", LIHTC" following the word "HUD" in the introductory text of paragraph (f)(2) and in the first sentence of paragraphs (f)(2)(ii) and (f)(2)(iii).

4. Section 1944.214 is amended by revising paragraph (b) to read as follows:

§ 1944.214 Rates and terms.

* * * * *

(b) *Amortization period.* Each loan will be scheduled for payment within a period that is necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 30 years; however, if necessary to ensure affordability, the loan may be amortized for a period not to exceed 50 years.

5. Section 1944.228 is amended in paragraphs (c)(1) and (c)(3) by revising the words "60 percent" to read "30 percent".

6. Section 1944.229 is amended by revising paragraphs (a), (b)(1), (c), and (d), and by adding a new paragraph (f) to read as follows:

§ 1944.229 Establishing the list of designated places for which Section 515 applications will be invited.

* * * * *

(a) *Establishing the number of designated places.* Initially, the number of designated places may equal up to 10 percent of the state's total eligible rural places ranked in accordance with § 1944.228, but must equal, in all cases, at least 10 places. For example, in a state with 1,000 total rural places, the State may designate up to 10 percent, or 100 places. However, in a state with 60 total rural places, the State would use the minimum number of 10 places, since 10 percent of 60 equals 6. In states where 10 percent equals more than the minimum number of 10, consideration in determining the number of places to include on the list should be given to the size and population of the state, funding levels, and the potential for leveraging. If warranted by funding levels, the Administrator may authorize in NOFA the selection of designated places up to 20 percent of the States' total rural places.

(1) States may designate a higher number of places than 10 percent or the minimum 10 places to reach high-need areas in accordance with paragraph (c)(3) of this section.

(2) States that anticipate high loan activity because of leveraging may designate a number of places higher than 10 percent or the minimum 10 places with the concurrence of the National Office.

(b) * * *

(1) Must have 250 or more households as a minimum feasibility threshold for multi-family housing, or, for Indian reservations, must have 250 or more households within the boundaries of the reservation; and

* * * * *

(c) *Selection of designated places.* Places meeting the requirements of paragraph (b) of this section will be selected from the ranking list as follows:

(1) At least 80 percent of the State's total designated places must be selected in rank order from the list.

(2) With concurrence from the National Office, up to 20 percent of the State's designated places may be selected for geographic diversity. For example, in a state with 1,000 total rural places, the State has elected to select designated places equal to the maximum 10 percent, or 100 places. Of the 100 places, at least 80 percent, or 80 places, must be selected from the places that meet the requirements of paragraph (b) of this section in order of their ranking; up to 20 percent, or 20 places, may be selected for geographic diversity. Places selected for geographic diversity must be the highest ranked place in each geographic division designated by the State, which must correspond with established State divisions, such as districts, regions, or servicing areas.

(3) In addition to the designated places selected in accordance with paragraphs (c)(1) and (c)(2) of this section, States may designate the following high need areas for multi-family housing:

(i) Places identified in the state Consolidated Plan or similar state plan or needs assessment report.

(ii) EZ/ECs, Indian reservations or communities located within the boundaries of tribal allotted or trust land, colonias, or REAP communities.

(d) *Length of designation.* Places will remain on the list of designated places for 3 years or until a loan request is selected for funding or the community is otherwise deferred for other "build and fill" conditions, whichever occurs first. Places that are deferred before the end of the 3-year designation period will be reviewed annually for potential inclusion on the next year's list of designated places. A place may be removed from the list prior to the end of the 3-year designation period because of a substantial loss of income-eligible population or an increase in the affordable rental housing supply, for example, a place that experiences the closing of a military base or other major employer.

* * * * *

(f) *Partnership designated place list.* States with an active leveraging program and formal partnership agreement with the state agency may establish a partnership designated place list consisting of places identified by the partnership as high need areas based on criteria consistent with the Agency's and the state's authorizing statutes. The partnership agreement and partnership designated place list must have the concurrence of the Administrator. Ranking and selection of loan requests for places on the partnership designated place list will be in accordance with § 1944.231(b)(3)(iii) and § 1944.231 (b)(6) of this subpart.

7. Section 1944.231 is amended by revising paragraphs (b)(2)(iii)(A) and (b)(2)(iii)(B), and by adding paragraphs (b)(3)(iii) and (b)(6) to read as follows:

§ 1944.231 Processing loan requests.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents comparable to those if RHS provided full financing. Eligible types of leveraged assistance include loans and grants from other sources, contributions from the borrower above the required contribution indicated by the Sources and Uses Comprehensive Evaluation, and tax abatements or other savings in operating costs provided that, at the end of the abatement period when the benefit is no longer available, the basic rents are comparable to or lower than the basic rents if RHS provided full financing. Scoring will be based on the presence and extent of leveraged assistance for each loan request compared to the other loan requests being reviewed, computed as a percentage of the total development cost of the units that will serve RHS income-eligible tenants. A total monetary value will be determined for leveraged assistance such as tax abatements or services in order to compare such items equitably with leveraged funds. As part of the loan application, the applicant must include specific information on the source and value of the services for this purpose. Proposals will then be ranked in order of the percent of leveraged funds and assigned a point score accordingly. Loan proposals that include secondary funds from other sources that have been requested but have not yet been committed will be processed as follows: the proposal will be scored based on the requested funds: *Provided*, that the applicant includes evidence of a filed application for the funds; *and* the funding date of the requested funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. The Agency will issue a conditional commitment to the applicant with a specific deadline for providing a commitment of funds from the other source. If the deadline is not met, the application will be returned as incomplete and the next ranked proposal will be processed. (0 to 20 points)

(B) The loan request is for units to be developed in a colonia, tribal land, EZ/EC, or REAP community, or in a place identified in the state Consolidate Plan or state needs assessment as a high need community for multi-family housing. (20 points)

* * * * *

(3) * * *

(iii) States with a partnership designated place list developed in accordance with § 1944.229(f) of this subpart, will score and rank loan requests as follows:

(A) All loan requests (including those for places on the partnership designated place list) will be reviewed and scored together as one group, following the process described in paragraph (b)(2) of this section.

(B) Using the point score and rank order established in accordance with paragraphs (b)(3)(i) and (b)(3)(ii) of this section, two separate ranking lists will be formed: the RHS ranking list will consist of loan requests for places on the State's designated place list; the partnership ranking list will consist of loan requests for places on the partnership designated place list. Selection of loan requests for further processing will be in accordance with paragraph (b)(6) of this section.

* * * * *

(6) *Selection of loan requests for further processing for States with a partnership ranking list.* States with a partnership ranking list developed in accordance with paragraph (b)(3)(iii) of this section, will use the following process:

(i) Loan requests must first be selected in rank order from the RHS ranking list that, based on total development cost (TDC), are proportionate to the State's RHS allocation amount.

(ii) After loan requests have been selected in accordance with paragraph (b)(6)(i) of this section, remaining RHS funds must be used for the next highest scoring loan requests (or point score and tie-breaker number assigned in accordance with paragraph (b)(3) of this section), regardless of whether they are on the RHS ranking list or the partnership ranking list.

* * * * *

8. Section 1944.233 is amended in paragraph (a)(3) by revising both occurrences of the words "debt service" to read "basic rent", and in paragraph (b)(5) by revising the words "a debt service" to read "basic rents".

9. Exhibit A of subpart E is amended in section IV.B.2.c. in the second sentence by revising the words "50 years" to read "30 years, with an amortization period not to exceed 50 years."

10. Exhibit A–7 of subpart E is amended by removing paragraph VII and by redesignating paragraphs VIII and IX as paragraphs VII and VIII respectively.

11. Exhibit A–9 off subpart E is amended by adding a new paragraph 17 to read as follows:

Exhibit A–9—Additional Information To be Submitted for Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loan Requests

* * * * *

17 Comments must be submitted in accordance with 7 CFR, part 3015, subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See RD Instruction 1940–J (available in any Rural Development office).

12. Exhibit H of subpart E is amended in the fourth sentence by revising the words "50-year maximum life of the loan" to read "30-year maximum life of the loan".

Dated: December 18, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–33396 Filed 12–22–97; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funds; Multi-Family Housing, Single Family Housing

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for fiscal year 1998 (FY 1998). This action is taken to comply with 42 U.S.C. 1490p which requires that RHS publish in the **Federal Register** notice of the availability of any housing assistance.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Reese-Foxworth, Senior Loan Officer, Multi-Family Housing Processing Division, Room 5337 (STOP 0781), or Gloria Denson, Senior Loan Officer, Single Family Housing Processing Division, Room 5334, (STOP 0783), U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, D.C., 20250, telephones (202) 720–1604, and (202) 720–1474, respectively. (These are not toll free numbers).

SUPPLEMENTARY INFORMATION:

Programs Affected

The following programs are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos.

10.405 Farm Labor Housing (LH) Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.442 Housing Application Packaging Grants

Discussion of Notice

7 CFR chapter XVIII, part 1940, subpart L contains the "Methodology and Formulas for Allocation of Loan and Grant Program Funds." The following guidance has been provided to our State Offices on FY 1998 appropriations and access to funds. Separate guidance has been provided to our State Offices for assistance available in our Multi- and Single-Family Housing Programs as follows:

Multi-Family Housing

I. General

A. This provides MFH allocations for the Rural Rental Housing Program (RRH) to individual States for FY 1998. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. For FY 1998, State Directors, under the Rural Housing Assistance Grants (RHAG), will have the flexibility to transfer their initial allocations of budget authority between the Single Family Housing (SFH) section 504 Rural Housing Grants, and section 533 Housing Preservation Grant (HPG) programs.

B. MFH loan levels for FY 1998 are as follows:

MFH Loan Programs Credit Sales	$4,000,000
Section 514 Farm Labor Housing (LH) Loans	15,000,000
Section 515 Rural Rental Housing (RRH):	
New Construction & Equity Loans	105,000,000
Section 515 Rural Rental Housing (RRH):	
Rehabilitation/Repair Loans	45,000,000
Section 516 LH Grants (RHAG)	10,000,000
Section 521 Rental Assistance (RA):	
RRH New Construction	27,167,208
Labor Housing	4,511,160
Section 525 or 509 Housing Application:	
Packaging Grants (RHAG)	1,000,000
Section 533 Housing Preservation:	
Grants (HPG) (RHAG)	10,820,000
Section 538 Guaranteed Rural Rental:	
Housing Program *	[1]

* The program has been authorized for FY 1998. The Agency is currently working toward the completion of the regulations and establishing the program level for this fiscal year. It is anticipated that a Notice of Funding Availability (NOFA) will be issued at a date to be announced later.

[1] To be determined.

II. Funds not Allocated to States

A. *Credit Sales Authority.* For FY 1998, $4,000,000 will be set aside for credit sales to program and nonprogram buyers. Credit sale funding will not be allocated by State. When this loan authority is expended, States will resume the use of the appropriate loan funds to finance sales to program eligible buyers.

B. *Section 514 Farm LH Loans.*

1. These loans are funded in accordance with 7 CFR 1940.579(a).

FY 1998 appropriation	$15,000,000
Available for off-farm loans	8,000,000
Available for on-farm loans	1,000,000
Available for Rehab/Repair	3,000,000
National Office reserve	3,000,000

2. *Section 516 LH Grants.* The grants are funded in accordance with 7 CFR 1940.579(b). Unobligated prior year balances and cancellations will be added to the amount shown.

FY 1998 Appropriation	$10,000,000
Available for LH Grants	7,000,000
National Office Reserve	3,000,000

III. Section 515 RRH and Section 521 RA Funds (Allocated to the States)

State allocations have been developed with the methodology and formulas stated in 7 CFR part 1940, subpart L.

A. *Section 515 RRH Loan Funds (for New Construction Loans):*

Amount Available for Allocation. See the end of this Notice for State allocations.

Total available	$105,000,000
Less set-aside for nonprofits	9,450,000
Less set-aside for underserved counties and colonias	5,250,000
Less general reserve	11,550,000
Less designated reserve	7,500,000
Total Available for Allocation	71,250,000

1. *National Office Reserves.* These reserves are broken down as follows:

General reserve	$11,550,000
Designated reserves:	
State RA	2,500,000
Equity	5,000,000
Total National Office Reserve	19,050,000

2. *National Office Set-asides.* The following legislatively mandated set-asides of funds are part of the National Office Set-aside:

Nonprofit set-aside	$9,450,000
Underserved counties and colonias	5,250,000

B. *Rental Assistance (RA).* A total of $31,678,368 will be available for RRH new construction RA, of which $4,511,160 is available for LH new construction RA. This amount equates to an estimated 2,528 units for the new construction RRH loan program.

Estimated total new construction:	
RA units available	2,528
Less Labor Housing (LH)	360
Subtotal Available for allocation to States	2,168
Less Set-aside	275
Less National Office Reserve	200
Total state allocated new construction RA units	1,693

IV. State Allocations for Rehabilitation/ Repair Loans

A. *Repairs and Rehabilitation.* States with repair and or rehabilitation loans will have a separate Section 515 allocation for repair and rehabilitation loans. These funds may not be used for the purpose of new construction. Tenant health and safety continues to be a priority. Allocated repair and rehabilitation funds must be FIRST targeted to RRH facilities that have physical conditions that effect the health and safety of tenants and then made available to facilities that have deferred maintenance. See the end of this Notice for State repairs and rehabilitation allocations.

B. *Section 515 RRH Loan Funds (for Repairs and Rehabilitation):*

Amount Available for Allocation:	
Rehab and repair appropriation	$45,000,000
General reserve	5,000,000
Total Available for Distribution	40,000,000

V. Section 533 Housing Preservation Grants (HPG)

Amount Available for Allocation. See end of this Notice for HPG State allocations.

Total available	$10,820,000
Less reserve	541,000
Less Designated Set-Aside EZ/EC	600,000
Total Available for Distribution	9,679,000

VI. Useful dates to remember

Mar. 15, 1998: Last day to submit documentation to participate in State RA reserve.

February 23, 1998: Last day to submit applications to the National Office for the Nonprofit and Underserved/ Colonias Set-Asides.

May 18, 1998: Estimated last day for applicants to file HPG preapplications. Estimated date for pooling of Section 515 Rehab/repair loans funds and RA.

August 14, 1998: Estimated date for new construction RRH and RA to be pooled.

Single Family Housing (SFH)

I. General

A. This provides SFH allocations for programs available to individual States for Fiscal Year (FY) 1998. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568 of this instruction. For FY 1998, State Directors will have the flexibility to transfer up to 25 percent of their initial allocations of budget authority between the section 504 Rural Housing Grant program and the section 533 Housing Preservation Grant program.

B. The SFH levels authorized (including carry-over balances) for FY 1998 are as follows:

Section 502 Guaranteed Rural Housing (RH) Loans:	
Nonsubsidized Guarantees	$3,000,000,000
Refinancing Guarantees**	100,000,000
Section 502 Direct RH Loans:	
Very Low-Income Subsidized Loans	400,000,000
Low-Income Subsidized Loans	600,000,000
Nonsubsidized Loans	0
Credit Sales (Program and Non Program)	20,996,420
Section 504 Housing Repair Loans	29,977,000
Section 504 Grants	24,900,000
Section 509 Compensation for Construction Defects*	495,000
Section 523 Mutual and Self Help Housing	26,000,000
Section 523 Self-Help Site Loans	587,000
Section 525 Supervisory and Technical Assistance Grants*	231,000
Section 524 RH Site Loans	600,000
Section 306C WWD Grants—(Carryover)	1,508,313
Sections 525/509 Housing Application:	
Packaging Grants (HAPG)—(Carryover)*	808,000
Natural Disaster Funds	(1)

* Unobligated or canceled funds from prior FY have been added to the amount shown.

** $100 million for loans to refinance section 502 Direct loans with guaranteed funds. These funds will be held until July 1, 1998, pending passage of a statutory provision to permit using guaranteed funds for refinancing 502 direct loans. If the statutory provision is not passed by July 1, 1998, these funds will be used for nonsubsidized guarantees. This $100 million is included in the $3 billion for nonsubsidized guarantees.

[1] To be determined.

C. SFH Funding not allocated to States:

1. *Section 502 direct nonsubsidized funds (loan making and servicing).* There were no FY 1998 funds designated for loans for nonsubsidized loan making or servicing. Subsidized funds will continue to be used for qualified very low- and low-income applicants when the payment subsidy formula shows there is no need for the subsidy.

2. *Credit sale authority.* For FY 1998, $20,996,420 is available for Real Estate Owned (REO) credit sales to SFH program and nonprogram buyers. Credit sale authority will not be allocated by State.

3. *Section 509 Compensation for Construction Defects.* The approval official must determine that the construction is defective, in accordance with 7 CFR 1924.265. All claims for compensation for construction defects must be submitted to the National Office for authorization of funds prior to approval.

4. *Section 523 Mutual and Self-Help Site Loans.* The State Director must request funding authority prior to obligating loan funds for the project.

5. *Section 523 Mutual and Self-Help Technical Assistance Grants.* A technical review and analysis must be completed by the Technical and Management Assistance (T&MA) Contractor on all predevelopment, new, and existing (refunding) grant applications. This analysis is a prerequisite for approval for all grant requests with the exception of those grants that were funded at 75 percent of the total grant authorized for the grantee in Fiscal Year (FY) 1997.

6. *Section 524 RH Site Loans.* The State Director must request funding authority prior to obligating loan funds for the project.

7. *Sections 525/509 Housing Application Packaging Grants (HAPG).* To be determined.

8. *Deferred Mortgage Payment Demonstration.* There is no funding provided for deferred mortgage authority or loans for deferred mortgage assumptions.

II. State Allocations

A. *Section 502 nonsubsidized guaranteed RH loans.*

Amount Available for Allocation:	
Total Available	$3,000,000,000
Less National Office Reserve	450,000,000
Less Base Allocation	0
Less Refinancing Section 502 Direct	100,000,000
Basic Formula—Administrative	
Allocation	2,450,000,000

B. *Section 502 Direct RH Loans.*

Amount Available for Allocation:	
Total Available	$1,000,000,000
Less required set aside for Underserved counties/colonias	$50,000,000
Less General Reserve	38,500,000
Administrator's Reserve	15,000,000
Hardships	2,000,000
Homelessness	1,500,000
Homeownership Partnerships	15,000,000
Rural Housing Demonstration Program	5,000,000
Less Designated Reserves	165,000,000
Self-Help	150,000,000
Targeted	15,000,000
Basic Formula Administrative Allocation	747,000,000

C. Section 504 Housing Loans/Grants

Section 504 Grant funds are included in the Rural Housing Assistance Grant Program (RHAG) in the FY 1998 Appropriation. Funds included in RHAG may be transferred in accordance with Public Law 105–86.

Amount available for allocation:	
Section 504 Loans:	
Total Available	$29,977,000
Less 5% for Underserved Counties and Colonias	1,500,000
Less General Reserve	2,000,000
Less Designated Targeted Reserve	2,000,000
Basic Formula—Administrative Allocation	24,477,000
Section 504 Grants:	
Total Available	24,900,000
Less 5% for 100 Underserved Counties or Colonias	1,245,000
Less General Reserve	1,494,000
Less Targeted Reserve	1,494,000
Basic Formula-Administrative Allocation	20,667,000

Dated: December 16, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

BILLING CODE 3410–XV–U

RURAL HOUSING SERVICE
SECTION 515 RURAL RENTAL HOUSING PROGRAM

FY 1998 NEW CONSTRUCTION STATE ALLOCATIONS

STATE	FORMULA FACTOR	STATE FORMULA ALLOC.	BASE ALLOC.	TOTAL NEW CONSTRUCT. ALLOC.	NEW CONSTRUCT. RA UNITS	FY 1998 NEW CONSTR. RA VALUES	RA DOLLAR VALUE
AL	0.02957	$ 1,819,156		$ 1,819,156	35	$ 11,706	$ 444,828
AK	0.00587	$ 321,422	$ 678,578	$ 1,000,000	24	$ 17,844	$ 428,256
AZ	0.01780	$ 974,870		$ 974,870	23	$ 14,862	$ 341,826
AR	0.02310	$ 1,264,880		$ 1,264,880	30	$ 10,766	$ 322,980
CA	0.04663	$ 2,547,830		$ 2,547,830	61	$ 11,429	$ 697,169
CO	0.00840	$ 459,956	$ 540,044	$ 1,000,000	24	$ 11,280	$ 270,720
DE	0.00190	$ 104,038	$ 895,962	$ 1,000,000	24	$ 15,143	$ 363,432
MD	0.00880	$ 481,859	$ 518,141	$ 1,000,000	24	$ 15,074	$ 361,776
FL	0.02890	$ 1,582,469		$ 1,582,469	38	$ 10,460	$ 397,100
VI	0.00273	$ 149,486	$ 850,514	$ 1,000,000	24	$ 22,792	$ 547,008
GA	0.03867	$ 2,117,442		$ 2,117,442	50	$ 8,556	$ 427,800
HI	0.00790	$ 432,578	$ 567,422	$ 1,000,000	24	$ 13,344	$ 320,256
WPA	0.00000	$ -	$ 1,000,000	$ 1,000,000	24	$ 11,190	$ 268,560
ID	0.00743	$ 406,842	$ 593,158	$ 1,000,000	24	$ 10,865	$ 260,760
IL	0.02250	$ 1,232,026		$ 1,232,026	29	$ 10,441	$ 302,789
IN	0.02167	$ 1,181,102		$ 1,181,102	28	$ 9,181	$ 257,068
IA	0.01340	$ 733,740	$ 266,260	$ 1,000,000	24	$ 9,584	$ 230,016
KS	0.01130	$ 618,751	$ 381,249	$ 1,000,000	24	$ 8,551	$ 205,224
KY	0.03483	$ 1,907,177		$ 1,907,177	46	$ 11,363	$ 510,886
LA	0.03170	$ 1,735,788		$ 1,735,788	41	$ 12,495	$ 512,295
ME	0.00913	$ 499,929	$ 500,071	$ 1,000,000	24	$ 19,311	$ 463,464
MA	0.00793	$ 434,221	$ 565,779	$ 1,000,000	24	$ 16,831	$ 403,944
CT	0.00463	$ 248,048	$ 751,952	$ 1,000,000	24	$ 13,940	$ 334,560
RI	0.00100	$ 54,757	$ 945,243	$ 1,000,000	24	$ 16,229	$ 389,496
MI	0.02977	$ 1,630,106		$ 1,630,106	39	$ 8,239	$ 321,321
MN	0.01673	$ 916,060		$ 916,060	22	$ 10,062	$ 221,364
MS	0.03180	$ 1,741,264		$ 1,741,264	41	$ 11,586	$ 475,026
MO	0.02466	$ 1,347,016		$ 1,347,016	32	$ 8,673	$ 288,336
MT	0.00620	$ 339,492	$ 660,508	$ 1,000,000	24	$ 10,007	$ 240,168
NE	0.00713	$ 390,416	$ 609,584	$ 1,000,000	24	$ 8,347	$ 200,328
NV	0.00263	$ 144,010	$ 855,990	$ 1,000,000	24	$ 13,598	$ 326,352
NJ	0.00667	$ 359,752	$ 640,248	$ 1,000,000	24	$ 20,645	$ 493,560
NM	0.01437	$ 786,864	$ 213,146	$ 1,000,000	24	$ 13,643	$ 327,432
NY	0.02763	$ 1,507,463		$ 1,507,463	36	$ 13,255	$ 477,180
NC	0.04497	$ 2,462,410		$ 2,462,410	68	$ 13,224	$ 780,216
ND	0.00415	$ 226,145	$ 773,855	$ 1,000,000	24	$ 9,159	$ 219,816
OH	0.03460	$ 1,889,107		$ 1,889,107	46	$ 10,001	$ 460,046
OK	0.01917	$ 1,049,686		$ 1,049,686	28	$ 10,128	$ 283,200
OR	0.01423	$ 779,188	$ 220,812	$ 1,000,000	24	$ 10,958	$ 263,016
PA	0.03687	$ 2,018,880		$ 2,018,880	48	$ 11,538	$ 553,824
PR	0.04923	$ 2,696,673		$ 2,696,673	64	$ 16,902	$ 1,017,728
SC	0.02686	$ 1,472,966		$ 1,472,966	36	$ 12,316	$ 431,025
SD	0.00697	$ 326,898	$ 673,102	$ 1,000,000	24	$ 12,365	$ 296,760
TN	0.02973	$ 1,627,917		$ 1,627,917	39	$ 10,044	$ 391,716
TX	0.07548	$ 4,186,151		$ 4,186,151	99	$ 10,503	$ 1,039,797
UT	0.00430	$ 235,454	$ 764,546	$ 1,000,000	24	$ 13,163	$ 315,912
VT	0.00403	$ 220,670	$ 779,330	$ 1,000,000	24	$ 16,304	$ 391,296
NH	0.00503	$ 275,426	$ 724,574	$ 1,000,000	24	$ 15,561	$ 373,944
VA	0.02660	$ 1,456,529		$ 1,456,529	36	$ 10,867	$ 390,348
WA	0.01743	$ 954,410	$ 45,590	$ 1,000,000	24	$ 9,925	$ 238,200
WV	0.01937	$ 1,060,638		$ 1,060,638	25	$ 9,875	$ 246,875
WI	0.01873	$ 1,025,593		$ 1,025,593	24	$ 8,245	$ 197,880
WY	0.00367	$ 168,103	$ 831,897	$ 1,000,000	24	$ 10,883	$ 261,192
DISTR.	0.99363	$ 54,402,444	$ 18,847,556	$ 71,250,000	1693		$ 20,506,068
N/O RESV.				$ 33,750,000	478		
TTL. AVAIL.				$ 105,000,000	2168		

RURAL HOUSING SERVICE
Section 515 - Repair/Rehabilitation Allocations
Multi-Family Housing

STATE	% OF PORT-FOLIO	RHS LOAN AMT. REQ. FROM 9/97 SURVEY	UNITS	PORTFOLIO % ALLOC.	ADMIN. ALLOC.	TOTAL PORTFOLIO ALLOC.
AL	3.49%	$ 2,083,000	15,952	$ 1,544,662	$ -	$ 1,544,662
AK	0.19%		847			
AZ	0.79%	$ 520,000	3,597	$ 348,304	$ -	$ 348,304
AR	2.19%	$ 6,564,742	9,991	$ 967,447	$ -	$ 967,447
CA	4.74%	$ 8,035,381	21,642	$ 2,096,636	$ -	$ 2,096,636
CO	0.74%	$ 675,000	3,373	$ 326,614	$ -	$ 326,614
DE	0.28%	$ 570,000	1,300	$ 125,881	$ -	$ 125,881
MD	1.14%	$ 1,389,736	5,187	$ 502,267	$ -	$ 502,267
FL	4.25%	$ 2,959,868	19,405	$ 1,879,023	$ -	$ 1,879,023
VI	0.08%	$ 242,500	375	$ 36,312	$ 63,688	$ 100,000
GA	3.53%	$ 1,592,200	16,108	$ 1,559,768	$ -	$ 1,559,768
HI	0.18%		841			
WPA	0.00%					
ID	1.08%		4,950			
IL	2.51%	$ 4,888,605	11,468	$ 1,110,468	$ -	$ 1,110,468
IN	3.22%	$ 1,538,976	14,710	$ 1,424,397	$ -	$ 1,424,397
IA	3.09%	$ 392,000	14,104			$ 392,000
KS	1.43%	$ 3,287,100	6,516	$ 630,957	$ -	$ 630,957
KY	2.58%	$ 1,011,750	11,809			$ 1,011,750
LA	2.54%	$ 2,834,400	11,598			$ 1,469,064
ME	1.73%	$ 4,275,000	7,885	$ 763,520	$ -	$ 763,520
MA	0.53%	$ 100,000	2,407			$ 100,000
CT	0.53%		2,399			
RI	0.09%		421			
MI	4.22%	$ 4,021,584	19,280	$ 1,866,919	$ -	$ 1,866,919
MN	2.88%	$ 2,552,890	13,169	$ 1,276,179	$ -	$ 1,276,179
MS	3.38%	$ 3,580,923	15,462	$ 1,497,215	$ -	$ 1,497,215
MO	4.34%	$ 870,000	19,826			$ 870,000
MT	0.53%	$ 500,000	2,407	$ 233,074	$ -	$ 233,074
NE	0.84%	$ 360,500	3,854			$ 360,500
NV	0.43%	$ 200,000	1,950	$ 188,822	$ -	$ 188,822
NJ	0.74%		3,395			
NM	0.80%	$ 710,000	3,660	$ 354,405	$ -	$ 354,405
NY	2.79%	$ 1,693,610	12,752	$ 1,234,800	$ -	$ 1,234,800
NC	4.63%	$ 7,224,327	21,151	$ 2,048,091	$ -	$ 2,048,090
ND	0.78%	$ 320,000	3,551			$ 320,000
OH	3.34%	$ 3,096,700	15,245	$ 1,476,202	$ -	$ 1,476,202
OK	1.73%	$ 8,695,001	7,909	$ 765,843	$ -	$ 765,843
OR	1.30%	$ 2,300,000	5,935	$ 574,697	$ -	$ 574,697
PA	2.33%	$ 2,090,980	10,651	$ 1,031,357	$ -	$ 1,031,357
PR	1.10%		5,040			
SC	2.77%	$ 4,294,250	12,638	$ 1,223,762	$ -	$ 1,223,762
SD	1.43%	$ 1,162,500	6,552	$ 634,443	$ -	$ 634,443
TN	2.87%	$ 4,165,036	13,112	$ 1,269,660	$ -	$ 1,269,660
TX	5.92%	$ 3,892,300	27,035	$ 2,617,850	$ -	$ 2,617,850
UT	0.46%	$ 1,760,000	2,124	$ 205,671	$ -	$ 205,671
VT	0.28%	$ 405,000	1,269	$ 122,880	$ -	$ 122,880
NH	0.68%	$ 1,950,000	3,097	$ 299,888	$ -	$ 299,888
VA	2.15%	$ 3,871,300	9,801	$ 949,049	$ -	$ 949,049
WA	2.04%	$ 822,000	9,322			$ 822,000
WV	1.60%	$ 1,776,790	7,333	$ 710,068	$ -	$ 710,068
WI	2.32%	$ 511,500	10,597			$ 511,500
WY	0.42%	$ 717,500	1,904	$ 184,368	$ -	$ 184,368
DISTR.	100.00%	$ 106,395,949	456,906	$ 34,079,499	$ 63,688	$ 40,000,000
N/O RESV.						$ 5,000,000
TTL. AVAIL.						$ 45,000,000

RURAL HOUSING SERVICE
FY 1998 Section 533 - Housing Preservation Grant Program Under RHAG
Multi-Family Housing

STATE	BASE ALLOCATION	FORMULA FACTOR	STATE FORMULA ALLOCATION	TOTAL ALLOCATION
AL	$100,000	0.02957	$129,487	$229,487
AK	$100,000	0.00587	$25,706	$125,706
AZ	$100,000	0.01780	$77,946	$177,946
AR	$100,000	0.02310	$101,188	$201,188
CA	$100,000	0.04653	$203,766	$303,766
CO	$100,000	0.00840	$36,784	$136,784
DE	$100,000	0.00190	$8,320	$108,320
MO	$100,000	0.00990	$38,535	$138,535
FL	$100,000	0.02890	$126,563	$226,563
GA	$100,000	0.03867	$169,336	$269,336
HI	$100,000	0.00790	$34,594	$134,594
WPA	$100,000	0.00947	$29,332	$129,332
ID	$100,000	0.00743	$32,536	$132,536
IL	$100,000	0.02250	$98,528	$198,528
IN	$100,000	0.02157	$94,455	$194,455
IA	$100,000	0.01340	$58,679	$158,679
KS	$100,000	0.01130	$49,483	$149,483
KY	$100,000	0.03483	$152,521	$252,521
LA	$100,000	0.03170	$138,814	$238,814
ME	$100,000	0.00913	$39,990	$139,990
MA	$100,000	0.00793	$34,725	$134,725
CT	$100,000	0.00483	$19,837	$119,837
RI	$100,000	0.00100	$4,379	$104,379
MI	$100,000	0.02977	$130,383	$230,383
MN	$100,000	0.01873	$73,261	$173,261
MS	$100,000	0.03190	$139,252	$239,252
MO	$100,000	0.02460	$107,723	$207,723
MT	$100,000	0.00820	$27,150	$127,150
NE	$100,000	0.00713	$31,222	$131,222
NV	$100,000	0.00263	$11,517	$111,517
NJ	$100,000	0.00897	$28,770	$128,770
NM	$100,000	0.01437	$62,926	$162,926
NY	$100,000	0.02753	$120,554	$220,554
NC	$100,000	0.04497	$196,924	$296,924
ND	$100,000	0.00413	$18,095	$118,095
OH	$100,000	0.03480	$151,076	$251,076
OK	$100,000	0.01917	$83,946	$183,946
OR	$100,000	0.01423	$62,313	$162,313
PA	$100,000	0.03887	$161,464	$261,464
PR	$100,000	0.04923	$215,578	$315,578
SC	$100,000	0.02690	$117,795	$217,795
SD	$100,000	0.00697	$26,143	$126,143
TN	$100,000	0.02973	$130,188	$230,188
TX	$100,000	0.07646	$334,775	$434,775
UT	$100,000	0.00430	$18,830	$118,830
VT	$100,000	0.00403	$17,847	$117,847
NH	$100,000	0.00503	$22,026	$122,026
VI	$100,000	0.00273	$11,956	$111,956
VA	$100,000	0.02660	$116,481	$216,481
WA	$100,000	0.01743	$76,328	$176,328
WV	$100,000	0.01837	$84,821	$184,821
WI	$100,000	0.01873	$82,019	$182,019
WY	$100,000	0.00307	$13,444	$113,444
DISTR.	$5,300,000	1.00000	$4,379,000	$9,679,000
N/D RES.				$541,000
EZ SET ASIDE				$600,000
TTL AVAIL.				$10,820,000

RURAL HOUSING SERVICE
FISCAL YEAR 1998 ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

STATES	STATE BASIC FORMULA FACTOR	STATE BASIC FORMULA / ADMINISTATIVE	TOTAL FY1998 ALLOCATION
ALABAMA	0.0267275	$19,923	$19,923
ALASKA	0.0055160	$4,112	$4,112
ARIZONA	0.0145422	$10,840	$10,840
ARKANSAS	0.0208104	$15,512	$15,512
CALIFORNIA	0.0454819	$33,902	$33,902
COLORADO	0.0091766	$6,840	$6,840
DELAWARE	0.0024571	$1,832	$1,832
MARYLAND	0.0115334	$8,597	$8,597
FLORIDA	0.0312406	$23,287	$23,287
GEORGIA	0.0374586	$27,922	$27,922
HAWAII	0.0067195	$5,009	$5,009
W PAC ISLANDS	N/A	$1,100	$1,100
IDAHO	0.0096722	$5,719	$5,719
ILLINOIS	0.0266774	$19,885	$19,885
INDIANA	0.0270785	$20,184	$20,184
IOWA	0.0163474	$12,185	$12,185
KANSAS	0.0127389	$9,494	$9,494
KENTUCKY	0.0288838	$21,530	$21,530
LOUISIANA	0.0246715	$18,390	$18,390
MAINE	0.0108314	$8,074	$8,074
MASSACHUSETTS	0.0109818	$8,186	$8,186
CONNECTICUT	0.0066893	$4,971	$4,971
RHODE ISLAND	0.0015545	$1,159	$1,159
MICHIGAN	0.0353525	$26,352	$26,352
MINNESOTA	0.0199077	$14,839	$14,839
MISSISSIPPI	0.0250226	$18,652	$18,652
MISSOURI	0.0252733	$18,839	$18,839
MONTANA	0.0063685	$4,747	$4,747
NEBRASKA	0.0086752	$6,466	$6,466
NEVADA	0.0028583	$2,131	$2,131
NEW JERSEY	0.0097784	$7,289	$7,289
NEW MEXICO	0.0110320	$8,223	$8,223
NEW YORK	0.0359041	$26,763	$26,763
NORTH CAROLINA	0.0484405	$36,108	$36,108
NORTH DAKOTA	0.0045131	$3,364	$3,364
OHIO	0.0390131	$29,080	$29,080
OKLAHOMA	0.0174005	$12,970	$12,970
OREGON	0.0154949	$11,550	$11,550
PENNSYLVANIA	0.0467857	$34,874	$34,874
PUERTO RICO	0.0239985	$17,867	$17,867
SOUTH CAROLINA	0.0258249	$19,250	$19,250
SOUTH DAKOTA	0.0062682	$4,672	$4,672
TENNESSEE	0.0291846	$21,754	$21,754
TEXAS	0.0660415	$49,226	$49,226
UTAH	0.0040618	$3,028	$3,028
VERMONT	0.0052653	$3,925	$3,925
NEW HAMPSHIRE	0.0072711	$5,420	$5,420
VIRGIN ISLANDS	0.0020058	$1,495	$1,495
VIRGINIA	0.0289841	$21,605	$21,605
WASHINGTON	0.0187042	$13,942	$13,942
WEST VIRGINIA	0.0175008	$13,045	$13,045
WISCONSIN	0.0237188	$17,680	$17,680
WYOMING	0.0036105	$2,691	$2,691
STATE TOTALS	1.0000000	$746,500	$746,500
GENERAL RESERVE			$38,500
100 UNDERSERVED COUNTIES/COLONIAS			$50,000
SELF HELP			$150,000
TARGETED			$15,000
TOTAL			$1,000,000

RURAL HOUSING SERVICE
FISCAL YEAR 1998 ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

STATES	TOTAL FY1998 ALLOCATION	VERY LOW-INCOME ALLOCATION 40 PERCENT	LOW-INCOME ALLOCATION 60 PERCENT
ALABAMA	$19,923	$7,969	$11,954
ALASKA	$4,112	$1,645	$2,467
ARIZONA	$10,840	$4,336	$6,504
ARKANSAS	$15,512	$6,205	$9,307
CALIFORNIA	$33,902	$13,561	$20,341
COLORADO	$6,840	$2,736	$4,104
DELAWARE	$1,832	$733	$1,099
MARYLAND	$8,597	$3,439	$5,158
FLORIDA	$23,287	$9,315	$13,972
GEORGIA	$27,922	$11,169	$16,753
HAWAII	$5,009	$2,004	$3,005
W PAC ISLANDS	$1,100	$440	$660
IDAHO	$5,719	$2,288	$3,431
ILLINOIS	$19,885	$7,954	$11,931
INDIANA	$20,184	$8,074	$12,110
IOWA	$12,185	$4,874	$7,311
KANSAS	$9,494	$3,798	$5,696
KENTUCKY	$21,530	$8,612	$12,918
LOUISIANA	$18,390	$7,356	$11,034
MAINE	$8,074	$3,230	$4,844
MASSACHUSETTS	$8,186	$3,274	$4,912
CONNECTICUT	$4,971	$1,988	$2,983
RHODE ISLAND	$1,159	$464	$695
MICHIGAN	$26,352	$10,541	$15,811
MINNESOTA	$14,839	$5,936	$8,903
MISSISSIPPI	$18,652	$7,461	$11,191
MISSOURI	$18,839	$7,536	$11,303
MONTANA	$4,747	$1,899	$2,848
NEBRASKA	$6,466	$2,586	$3,880
NEVADA	$2,131	$852	$1,279
NEW JERSEY	$7,289	$2,916	$4,373
NEW MEXICO	$8,223	$3,289	$4,934
NEW YORK	$26,763	$10,705	$16,058
NORTH CAROLINA	$36,108	$14,443	$21,665
NORTH DAKOTA	$3,364	$1,346	$2,018
OHIO	$29,080	$11,632	$17,448
OKLAHOMA	$12,970	$5,188	$7,782
OREGON	$11,550	$4,620	$6,930
PENNSYLVANIA	$34,874	$13,950	$20,924
PUERTO RICO	$17,867	$7,147	$10,720
SOUTH CAROLINA	$19,250	$7,700	$11,550
SOUTH DAKOTA	$4,672	$1,869	$2,803
TENNESSEE	$23,754	$9,502	$13,952
TEXAS	$49,226	$19,690	$29,536
UTAH	$3,028	$1,211	$1,817
VERMONT	$3,925	$1,570	$2,355
NEW HAMPSHIRE	$5,420	$2,168	$3,252
VIRGIN ISLANDS	$1,495	$598	$897
VIRGINIA	$21,606	$8,642	$12,963
WASHINGTON	$13,942	$5,577	$8,365
WEST VIRGINIA	$13,045	$5,218	$7,827
WISCONSIN	$17,680	$7,072	$10,608
WYOMING	$2,694	$1,078	$1,615
STATE TOTALS	$746,500	$298,600	$447,900
GENERAL RESERVE	$38,500	$15,400	$23,100
100 COUNTIES/COLONIAS	$50,000	$20,000	$30,000
SELF HELP	$150,000	$60,000	$90,000
TARGETED	$15,000	$6,000	$9,000
TOTAL	$1,000,000	$400,000	$600,000

RURAL HOUSING SERVICE
FISCAL YEAR 1998 ALLOCATION IN THOUSANDS
SECTION 502 GUARANTEED LOANS (NONSUBSIDIZED)

STATES	STATE BASIC FORMULA FACTOR	STATE BASIC FORMULA / ADMINISTATIVE ALLOCATION	TOTAL FY1998 ALLOCATION
ALABAMA	0.0253847	$62,167	$62,167
ALASKA	0.0061561	$15,076	$15,076
ARIZONA	0.0155290	$38,030	$38,030
ARKANSAS	0.0213661	$52,326	$52,326
CALIFORNIA	0.0524861	$128,538	$128,539
COLORADO	0.0100701	$24,662	$24,662
DELAWARE	0.0024043	$5,888	$5,888
MARYLAND	0.0104750	$25,653	$25,653
FLORIDA	0.0308357	$75,517	$75,517
GEORGIA	0.0385293	$94,358	$94,358
HAWAII	0.0083323	$20,406	$20,406
W PAC ISLANDS	N/A	$1,000	$1,000
IDAHO	0.0077774	$19,047	$19,047
ILLINOIS	0.0256395	$62,791	$62,791
INDIANA	0.0236023	$57,802	$57,802
IOWA	0.0151422	$37,083	$37,083
KANSAS	0.0123032	$30,131	$30,131
KENTUCKY	0.0286790	$70,235	$70,235
LOUISIANA	0.0256223	$62,749	$62,749
MAINE	0.0113916	$27,898	$27,898
MASSACHUSETTS	0.0117468	$28,768	$28,768
CONNECTICUT	0.0065708	$16,092	$16,092
RHODE ISLAND	0.0017216	$4,216	$4,216
MICHIGAN	0.0337181	$82,576	$82,576
MINNESOTA	0.0184738	$45,242	$45,242
MISSISSIPPI	0.0259670	$63,593	$63,593
MISSOURI	0.0253687	$62,128	$62,128
MONTANA	0.0067138	$16,442	$16,442
NEBRASKA	0.0083216	$20,380	$20,380
NEVADA	0.0029735	$7,282	$7,282
NEW JERSEY	0.0091825	$22,488	$22,488
NEW MEXICO	0.0117200	$28,702	$28,702
NEW YORK	0.0369739	$90,549	$90,549
NORTH CAROLINA	0.0471742	$115,530	$115,530
NORTH DAKOTA	0.0040847	$10,003	$10,003
OHIO	0.0378081	$92,592	$92,592
OKLAHOMA	0.0175713	$43,032	$43,032
OREGON	0.0166212	$40,705	$40,705
PENNSYLVANIA	0.0438367	$107,356	$107,356
PUERTO RICO	0.0250931	$61,453	$61,453
SOUTH CAROLINA	0.0249510	$61,105	$61,105
SOUTH DAKOTA	0.0065435	$16,025	$16,025
TENNESSEE	0.0276859	$67,803	$67,803
TEXAS	0.0665018	$162,863	$162,863
UTAH	0.0039861	$9,762	$9,762
VERMONT	0.0057475	$14,076	$14,076
NEW HAMPSHIRE	0.0075234	$18,425	$18,425
VIRGIN ISLANDS	0.0027236	$6,670	$6,670
VIRGINIA	0.0278404	$68,181	$68,181
WASHINGTON	0.0200905	$49,202	$49,202
WEST VIRGINIA	0.0172518	$42,250	$42,250
WISCONSIN	0.0222367	$54,580	$54,580
WYOMING	0.0035006	$8,573	$8,573
STATE TOTALS	1.0000000	$2,450,000	$2,450,000
GENERAL RESERVE			$450,000
SET ASIDE FOR 502 REFINANCING			$100,000
TOTAL			$3,000,000

[FR Doc. 97–33397 Filed 12–22–97; 8:45 am]
BILLING CODE 3410–XV–C

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for Section 515 Rural Rental Housing loan funds and Section 521 Rental Assistance (RA) for new construction. This document also describes the allocation of loan funds and new construction rental assistance (RA), application process, submission requirements, and areas of special emphasis or consideration.

DATES: The closing deadline for receipt of applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State Office on March 23, 1998, except as noted. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State Office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact can be found elsewhere in this Notice.

FOR FURTHER INFORMATION CONTACT: Most States will have a loan limit; therefore, applicants must contact the appropriate Rural Development State Office listed elsewhere in this Notice for funding availability. For general information, applicants may contact Linda Armour, Cynthia L. Reese-Foxworth, or Carl Wegner, Senior Loan Officers, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Rural Development State Offices With 90-Day Application Deadlines

Note: Telephone numbers listed are not toll-free.

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8755, Steve Langstaff

California State Office, 194 West Main Street, Suite F, Woodland, CA 95695–2915, (916) 668–2090, Robert P. Anderson

Connecticut—Served by Massachusetts State Office

Delaware/Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4314, W. Arthur Greenwood

Florida and Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii, Guam, and Western Pacific Areas State Office, Room 341, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3005, Abraham Kubo

Idaho State Office, 3232 Elder Street, Boise, ID 83705, (208) 378–5627, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3115, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (913) 271–2720, Gary Shumaker

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7950, Yvonne R. Emerson

Maryland—Served by Delaware State Office

Massachusetts, Connecticut, and Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4327, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (515) 337–6635 (ext. 1609), Julie Putnam

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (612) 290–3912 Mary Ann Erickson

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, Marylou Falconer

Nebraska State Office, Federal Building, room 308, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5557, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–5405, (702) 887–1222, Jackie J. Goodnough

New Hampshire—Served by Vermont State Office

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3630, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, Carmen N. Lopez

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 250–4771, Kathy David

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 9724–2333, (503) 414–3350, Jillene Davis

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 782–4574, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (809) 766–5095 Ext. 256, Lourdes Colon

Rhode Island—Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5890, Frances S. Kelley

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 5438, Salt Lake City, UT 84138, (801) 524–3242, Robert L. Milianta

Vermont and New Hampshire State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6020, Russell Higgins

Virgin Islands—Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, Gayle Calhoun

Washington State Office,1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512–5717, (360) 704–7707, Deborah Davis

Western Pacific Territories—Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, Sue Snodgrass

Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620, Sherry Engel

Wyoming State Office,100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, Charles E. Huff

Rural Development State Offices With 60-Day Deadlines

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, Ron Abbott

Arkansas State Office, 700 W. Capitol Ave., Rm. 5411, Little Rock, AR 72201–3225, (501) 324–6701, Cathy Jones

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), "Sam" Mitchell

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, George N. Von Pless

Oklahoma State Office,100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, Patsy Graumann

South Dakota State Office, Federal Building, Room 308, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, Dwight Wullweber

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9760, Eugene G. Pavlat

Explanation of 60-Day NOFA Application Deadline

Customers in the above listed States will benefit from having a 60-day application period so that the Agency's NOFA process will coincide with the time restraints placed upon them by participating lenders and State Housing Finance Agencies (SHFA). Participating lenders such as commercial banks leverage their funds with RHS funds. State organizations can provide Community Development Block Grants (CDBG) and HOME funds as another means of leveraging RHS funds. State Housing Finance Agencies have certain timeframes whereby applicants can apply for tax credits. Therefore, to assist our customers in obtaining leveraged funds and participate with other funding sources, a 60-day application period is provided.

Discussion of Notice

I. Authority and Allocation

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS the authority to make loans to any individual, corporation, association, trust, Indian tribe, public and private nonprofit organizations, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families of low or moderate income as well as other persons and families of low income in rural areas. Rental assistance is a tenant subsidy available to very-low and low-income families residing in rural rental housing facilities with RHS financing, and is requested with application for such facilities.

B. Allocation Methodology

Based on the allocation formula contained in 7 CFR part 1940, subpart L "Methodology and Formulas for Allocation of Loan and Grant Program Funds," RHS has allocated available funds directly to each Rural Development State Office.

The Rural Housing Service has published regulations outlining its application and review process for the Section 515 Rural Rental Housing new construction program. These regulations can be found at 7 CFR part 1944, subpart E, and provide that some prior year applicants who filed acceptable loan requests in prior years may proceed with their loan requests provided they comply with the aforementioned regulations. Additionally, in fiscal year 1998, some States have requested authorization to transfer all or a portion of their new construction allocation to their rehabilitation and repair allocation. States in this category need not wait until the NOFA deadline to obligate funds. Applicants are strongly advised to contact their State Office to ascertain its funding status. The following States have applications on hand from prior years in designated places that, if obligated, will use all of their direct allocations or may be transferring their new construction allocation to their rehabilitation and repair allocations:

Alabama, Colorado, Idaho, Illinois, Kentucky, Maine, Mississippi, North Dakota, Ohio, Tennessee, and Texas.

Other States also have applications on hand that may use part of their allocation for new construction or will use a portion of their new construction allocation for rehabilitation and repair purposes. Therefore, potential applicants are encouraged to apply in those States during the NOFA period; however, there is no guarantee that funds will be available. The Agency is not responsible for any costs associated with the applicant's decision to submit an application package. If funds are not available, those applications will not be reviewed and will be returned to the applicant.

Limited funds are available, at the National Office, to all States for eligible nonprofit organizations and to some States for the 100 most Underserved Counties and Colonias Set-asides. Accordingly, all potential applicants and interested parties must contact the appropriate Rural Development State Office to ascertain funding availability from the State's allocation and potential availability of funds from the set-asides for nonprofit organizations and underserved areas. Since funds are so limited, every effort must be made to ensure that RHS funds are leveraged with other financing sources to reach the most underserved areas. Available funds should be utilized in communities where economic growth can be stimulated via the construction of Multi-Family Housing complexes.

II. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State Office and must meet the requirements of 7 CFR part 1944, subpart E and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadlines previously mentioned, unless that date and time is extended by a Notice published in the **Federal Register**.

III. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State Office serving the place in which they desire to submit an application for the following:

1. Application information;

2. Any restrictions on funding availability (applications that do not conform to or exceed the State's limit on size of project or dollar amount will be returned to the applicant); and

3. List of designated places for funding new section 515 facilities.

IV. Areas of Special Emphasis or Consideration

A. The selection criteria contained in 7 CFR part 1944, subpart E includes two optional criteria, one set by the National Office and one by the State Office, to support special initiatives at the National and State Office level. These initiatives will not be used this fiscal year. However, States are strongly encouraged to develop special initiatives for fiscal year 1999, as this criteria will be used.

B. The Agency has published elsewhere in this **Federal Register** a Notice which provides the availability of funds set-aside for Nonprofit entities and the 100 most Underserved Counties and Colonias (Cranston-Gonzalez Act). That Notice indicates that $9.45 million is available nationwide in a set-aside for eligible Nonprofit organizations and $5.25 million is available in a set-aside for the 100 most Underserved Counties and Colonias. That Notice also gives a deadline of February 23, 1998 as the last day for submission of applications for participation in the Nonprofit and Underserved Counties and Colonias Set-Asides.

C. The Agency has published elsewhere in this **Federal Register**, a Notice which provides the availability of funds set-aside for the State Rental Assistance Program. That Notice indicates that $2.5 million is available for States with viable State Rental Assistance Programs. In order to participate, States are to submit a written request with specific information about the State RA program, i.e., memorandum of understanding, documentation from the provider, etc., to the National Office no later than March 15, 1998.

D. In accordance with the Welfare and Immigrations Reform Act, States are reminded to inform potential applicants that modest community rooms in section 515 complexes are highly encouraged to provide a place for special activities and services that will aid residents in improving job skills, education, or their understanding of the impact of changes in Government programs as well as to provide a space for resident and community meetings.

E. Loan requests filed in response to this NOFA are subject to the regulatory provisions with respect to the Final Rule entitled "Rural Rental Housing (RRH) Assistance," which is published elsewhere in this issue of the **Federal Register**.

Dated: December 16, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–33398 Filed 12–22–97; 8:45 am]

BILLING CODE 3410–XV–U

federal register

Tuesday
December 23, 1997

Part V

Office of Personnel Management

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

RIN 3206–AG70

Pay Administration Under the Fair Labor Standards Act

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) amends the pay administration under the Fair Labor Standards Act (referred to as "the Act" or "FLSA") rules. We made text clearer, standardized terms, changed to the active voice, reorganized material for added clarity, inserted or revised headings to reflect content accurately, reduced internal cross-referencing, corrected typographical, punctuation, and grammatical errors, and used "plain English." We included guidance published in the sunsetted Federal Personnel Manual, added certain work in the computer software field to the professional exemption criteria, added an exemption for certain pilots, added the statutory exclusion of customs officers, and included regulations on child labor and claims and compliance.

DATES: Effective December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Miller, Director, Classification Appeals and FLSA Programs, by telephone on 202–606–2990; by fax on 202–606–2663; or by e-mail at ADOMSOE@opm.gov.

SUPPLEMENTARY INFORMATION: We received 15 submissions:

1 was from an individual and was not a comment;
4 were from individuals;
5 were from 3 agencies (3 were from 1 agency);
4 were from 5 labor organizations (1 was submitted jointly by 2 labor organizations); and
1 was from the Office of Compliance in the Legislative Branch.

General Comments

We inserted the word "comparable" after the word "other" in the phrase "other white collar" throughout the text to make the wording consistent.

An individual commended the clarity of the supplementary information introducing the proposed regulations as particularly intelligible.

Another individual suggested that the modified or added portions of the regulation published in the Code of Federal Regulations be shown in bold face. This cannot be done in the Federal Register. However, we will post on the OPM web site (www.opm.gov) a version of the final regulations in which changed or added material is shown in bold face. Individuals who do not have Internet access may request a copy by calling 202–606–2990 or by sending a request by e-mail to ADOMSOE@OPM.GOV.

One labor organization commented that it was not clear which portions of part 551 of title 5, Code of Federal Regulations, the proposed regulations amended. Subparts A and B are amended and subparts F and G are added. This final rule does not amend subparts C, D, or E.

The same labor organization pointed out that, in its opinion, many Federal employees are wrongfully denied FLSA overtime pay and recommended three guiding principles to address this problem.

First, an agency should not declare an employee to be exempt if there is reasonable doubt about whether an employee meets any exemption criteria.

Second, OPM's regulations should be designed to reduce ambiguity, thereby reducing the chances that agencies will incorrectly determine an employee to be FLSA exempt.

Third, OPM's regulations pertaining to exemptions should be consistent with the Department of Labor's administration of the Act and should not be susceptible to a more expansive interpretation than comparable Department of Labor regulations.

We believe the proposed regulations published on August 25, 1997, adequately addressed these concerns. Nonetheless, we kept these suggested principles in mind as we made revisions. For example, sections 551.201 and 551.202 in particular emphasize that an employee is presumed to be nonexempt unless the agency correctly determines that the work the employee performs clearly meets one or more of the exemption criteria.

Another labor organization asserted that the "salary basis test" that is included in the Department of Labor's FLSA regulations is applicable to Federal employees for whom OPM administers the Act.

The Department of Labor has determined that such tests do not apply to public employees (see section 541.5d of title 29, Code of Federal Regulations).

1. Section 551.102—Authority and Administration

The Office of Compliance in the Legislative Branch stated that OPM's description of its responsibilities was inaccurate in three respects.

First, the proposed regulations imply that the nine listed employing entities and their employees are covered by the FLSA. However, the employees of these entities are not included in the definition of "employee" under section 3(e)(2) of the Act. The Congressional Accountability Act of 1995 *extends the rights and protections* of the FLSA to the employees of these entities, so it is the Accountability Act, not the FLSA, that actually applies.

Second, the proposed regulations state that the Office of Compliance administers the law for the listed entities. However, while the Office of Compliance is assigned certain administrative responsibilities under the Accountability Act, that Act does not authorize the Office of Compliance to administer the law, as section 4(f) of the FLSA authorizes OPM to administer the FLSA.

Third, the proposed regulations refer to the Office of Technology Assessment. While it is included in the Accountability Act, the Office of Technology Assessment no longer exists and therefore should not be included in a description of the responsibilities of the Office of Compliance.

In response to these comments, we deleted the introductory language of proposed paragraph (d) and substituted in its place the language provided by the Office of Compliance to describe its responsibilities. We deleted proposed paragraph (d)(9) to omit mention of the Office of Technology Assessment.

2. Section 551.103—Coverage

An agency requested that the proposed regulations be amended to reflect that members of the Uniformed Services are not covered by the FLSA and ensuing regulations.

There are seven Uniformed Services. The four Uniformed Services that comprise the Military Departments include the United States Army, United States Navy, United States Marines, and the United States Air Force. Additionally, three of the Uniformed Services are in Executive Departments. The United States Coast Guard is in the Department of Transportation. The Commissioned Corps of the National Oceanic and Atmospheric Administration is in the Department of Commerce. The Commissioned Corps of the Public Health Service is in the Department of Health and Human Services.

Members of the Uniformed Services are not considered employees as defined in section 2105 of title 5, United States Code, or other statutes that address the pay, benefits, and duties of Federal employees. Further, officers of the Uniformed Services are appointed by the President and, in many cases, by and with the consent of the Senate. The pay and benefits of members of the Uniformed Services are controlled by the provisions of title 37, United States Code.

Officers of the Uniformed Services are appointed to serve when and where needed to meet the needs of their respective Services. Therefore, rules regarding workweek requirements in the current and proposed regulations are inapplicable to members of all Uniformed Services.

We adopted the agency's recommendation. In proposed paragraph (a)(2), we inserted the words "a civilian employee" before the word "appointed." To proposed paragraph (b), we added members of the Uniformed Services to the list of persons not covered by the Act. We revised proposed paragraph (b)(2) by deleting the "or" after the semicolon. We revised proposed paragraph (b)(3) by deleting the period and substituting a semicolon followed by "or."

3. Section 551.104—Definition of Agency

The Office of Compliance in the Legislative Branch suggested a revision of the definition of "agency" if OPM's final definition of "agency" includes a specific exclusion of the entities in the legislative branch whose employees are not covered under the FLSA.

The language is in keeping with the explanation of the responsibilities of the Office of Compliance discussed in item 1 and added to section 551.102(d), therefore, we adopted the revision.

4. Section 551.104—Definition of Claim

We added a sentence explaining that the term "claim" is used generically in subpart G to include complaints under the child labor provisions of the Act.

5. Section 551.104—Definition of De Minimis Activity or Worktime

One agency pointed out that section 785.47 of title 29, Code of Federal Regulations, requires an employer to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable period of time the employee is regularly required to spend on assigned duties.

The two labor organizations pointed out that the actual amount of time involved is only one of three factors to be considered. The other two factors are the administrative difficulty of recording small amounts of time and whether the work is performed on a regular basis. In addition, one labor organization suggested that the definition be clarified to mean fewer than a total of ten minutes in the entire workday. The same labor organization stated that some agencies have argued that if an employee performs a work activity for a period of fewer than 10 minutes at the beginning of a workday and fewer than 10 minutes at the end of a workday, the *de minimis* doctrine can be applied even though the total combined time for the employee exceeds 10 minutes for the day. This labor organization outlined the three factors discussed by the court in *Lindow v. U.S.*, 738 F.2d 1057 (9th Cir. 1984).

In view of these comments, we deleted the proposed definition of *de minimis activity or worktime*. We may address the term at a later time.

6. Section 551.104—Definition of Discretion and Independent Judgment

One labor organization stated that the proposed definition appears to require less than is required under the Department of Labor's regulations and suggested that the definition be made more similar to the Department of Labor regulation at section 541.207(a) of title 29, Code of Federal Regulations. The labor organization also suggested that we add to proposed paragraph (3) the following sentence: "The discretion and independent judgment exercised must be real and substantial, that is, they must be exercised with respect to matters of consequence."

After carefully weighing this comment against the need for OPM to apply the letter and spirit of the Act in a public sector context, we decided not to revise the proposed definition. Our proposed definition acknowledges that in the public sector, with its responsibility and accountability to the general public, levels of review are frequently required. We believe that paragraph (3) of the definition, which states that decisions made independently must be significant and then amplifies what "significant" includes versus what it does not extend to, adequately addresses the commentor's concerns.

7. Section 551.104—Definition of Employee

The agency which in item 2 pointed out that members of the Uniformed Services are not covered by the FLSA recommended a change to the definition of employee to reflect this.

We adopted the recommendation. In proposed paragraph (1) of the definition of employee, we inserted the phrase "as a civilian" before the phrase "in an executive agency."

One individual and one agency pointed out that the definition of employee should include the Government Printing Office. The Congressional Accountability Act of 1995, Pub. L. 104–1, amended the FLSA at section 203(e)(2)(A) of title 29, United States Code, by deleting the reference to "unit[s]" in the legislative branch in clause (iii) and by adding a new clause (vi) identifying the Government Printing Office as a public agency whose employees are covered by the FLSA.

OPM's proposed regulations tracked the law's deletion, but not the addition. This omission was unintentional. We revised the definition of employee by deleting the "or" following proposed paragraph (3), substituting a semicolon and the word "or" for the period following proposed paragraph (4), and adding paragraph (5) naming the Government Printing Office.

8. Section 551.104—Definition of Hours of Work

One labor organization suggested that the definition of hours of work should state that all interpretations of the FLSA, including Comptroller General decisions, OPM guidance, and agency policy and regulations, must be consistent with the Act and Department of Labor regulations in order to be valid.

OPM is tasked with administering the Act consistent with the Department of Labor. Our regulations accomplish this. Therefore, we did not find it necessary to adopt this suggestion.

9. Section 551.104—Definition of Management or General Business Function or Supporting Service

We revised the first sentence of proposed paragraph (2) of the definition by deleting the words "general management, business, or servicing functions" and substituting in their place the words "management or general business functions or supporting services" to be consistent with wording elsewhere.

Two labor organizations contended that the proposed definition fails to clearly explain the type of work which falls under the administrative exemption.

One labor organization pointed out that the Department of Labor regulation at § 541.205(a) of title 29, Code of Federal Regulations, clearly distinguishes between work involving the administrative operations of an employer—which is exempt work—and "production" work which involves performing activities that carry out the day-to-day functions of the employer—which is nonexempt work.

The other labor organization suggested that to clarify the definition of *management or general business function or supporting service* and make it consistent with law, the following statement should be added: "Employees who perform the day-to-day activities necessary for an agency to accomplish its mission do not qualify as performing 'management or general business functions or supporting services.'

We believe the proposed definition is legally correct.

10. Section 551.104—Definition of Supervisory and Closely Related Work

One labor organization stated that the paragraph (2) of the proposed definition of *supervisory and closely related work* is far more expansive than the Department of Labor regulation and perhaps more expansive than OPM intended. The labor organization suggested that we add the phrase "closely related work" to the definitions and adopt the definition used by the Department of Labor in § 541.108 of title 29, Code of Federal Regulations.

We believe the proposed definition is legally correct.

11. Section 551.104—Definition of Temporary Work or Duties

We had an inquiry from an agency personnelist who explained that the agency in question has a number of exempt employees whose official position descriptions include minor, nonexempt duties. The agency has correctly determined that the employees are exempt. The employees, however, are being required to perform the nonexempt work included in the official position description for a greater percentage of the time and on a long-term, but temporary, basis. Under our proposed regulations, the agency could argue that the work is not "not consistent with the employee's official position description."

We revised the definition by inserting the words "the primary or grade-controlling duty of" before the words "the employee's official position description." We made conforming changes throughout § 551.208.

12. Section 551.201—Agency Authority

Two labor organizations commented on this section.

One labor organization suggested replacing the phrase "makes a determination" with "properly determines" to make it clear that the presumption of FLSA coverage can be rebutted only by a proper or correct determination that the exemption criteria have been met.

We adopted the suggestion. We revised the first sentence of proposed paragraph 551.201 by deleting "All employees are" and substituting "Each employee is," deleting "makes a determination" and substituting "correctly determines," deleting "position" and substituting "employee clearly," and adding "and such supplemental interpretations or instructions issued by OPM" after "subpart." The word "clearly" is used to make this principle consistent with those expressed in proposed paragraphs 551.202 (a) and (b). The sentence was then moved to § 551.202 as new paragraph (a).

The other labor organization stated that agencies do not need to be told to exempt employees because they already do so more often than is justified. The labor organization recommended that the second sentence in this section be deleted, or modified by inserting the word "clearly" in the phrase "any employee who meets * * *" to be consistent with proposed paragraphs (a) and (c) of § 551.202 which already use the word.

In this instance, we did not adopt the suggestion to use the word "clearly." Instead, we modified the sentence to better reflect an agency's authority to designate an employee FLSA exempt. We revised the second sentence in proposed § 551.201 by deleting "must exempt from the overtime provisions of the Act any employee who" and substituting "may designate an employee FLSA exempt only when the agency correctly determines that the employee," and inserting "one or more of" after "meets."

13. Section 551.202—General Principles Governing Exemptions

As mentioned in item 12, we revised the first sentence of proposed § 551.201 and added it as the first general principle under § 551.202. Accordingly, we redesignated proposed paragraphs (a) through (h) as paragraphs (b) through (i).

We revised the first sentence of proposed paragraph (c) (redesignated paragraph (d)) by deleting the words "All employees who clearly meet" and substituting "An employee who clearly meets."

One labor organization commented on proposed paragraph (d)(2) (redesignated paragraph (e)(2)). It is the labor organization's opinion that all nonsupervisory employees performing technician work who are not performing predominantly administrative functions are nonexempt, regardless of their grade level. The labor organization suggests that this paragraph be revised to state that all employees performing technician work are nonexempt.

Another labor organization commented on proposed paragraph (f) (redesignated paragraph (g)). The labor organization suggested that the example in the second sentence be changed because it has led agencies to incorrectly designate technicians as FLSA exempt when they should be FLSA nonexempt.

We did not adopt either suggestion. OPM has found that many higher-graded technical employees perform work fully comparable to work performed by professional engineers, particularly in the area of difficult, demanding, and original equipment and facilities design. Such employees are correctly determined to be FLSA exempt.

One individual stated that proposed paragraph (d)(3) (redesignated (e)(3)) concerning FLSA nonexempt status of employees in the Aircraft Operation, GS–2181, series is inconsistent with other OPM guidance in the "Classifier's Handbook," "Introduction to the Position Classification Standards," and the "Guide to Personnel Data Standards." The individual pointed out that Appendix 1 of the "Introduction to the Position Classification Standards" lists the GS–2181 series as a series for which a two-grade interval pattern is normal and the GS–2181 classification standard indicates that this series is two-grade interval in a footnote. The individual expressed the opinion that if a position is considered to be technical and its occupational category is designated as technical, the position should not be identified as a two-grade interval series. The individual suggested that the GS–2181 position classification standard and Appendix 1 of "The Introduction to the Position Classification Standards" be revised to delete references to the GS–2181 series as two-grade interval.

Because this comment addressed classification, rather than FLSA, issues, we referred this comment to OPM's Office of Classification.

We revised the third sentence of proposed paragraph (g) (redesignated paragraph (h)) by deleting the phrase "exempting the employee" and substituting "designating an employee FLSA exempt" to be consistent with wording elsewhere.

14. Section 551.204(a)—Exemption of Federal Wage System Employees

We revised proposed paragraphs (a) and (b) by deleting the word "under" and substituting "in" to be consistent with § 551.203.

15. Section 551.205—Executive Exemption Criteria

Two labor organizations stated that it is a mistake to eliminate the requirement that in order to qualify under the executive exemption an employee must customarily and regularly direct the work of at least three subordinate employees. The labor organizations argued that agencies frequently classify employees who serve as lead workers as exempt under the executive exemption criteria and that the numerical requirement helps to clarify that employees who perform minimal supervisory duties do not fall under this exemption. They predict that agencies will claim the individual employees who work with other employees and who make recommendations regarding their work will qualify for the executive exemption simply if the employees exercise some independence in their own work. They state that this may arise if employees work in teams and have no direct supervisory authority over team members but instead one of the team members acts as a team leader. Even if the team leader assignment is rotated among members of the team, an agency may, under the proposed regulation, claim that the employee meets the executive exemption criteria. The labor organizations also stated that the numerical requirement is consistent with the Department of Labor regulations.

We did not adopt this suggestion. The original numerical requirement of at least three subordinate employees was based on the Supervisory Grade Evaluation Guide. That guide was replaced by the General Schedule Supervisory Guide which does not have a numerical requirement. We also recognized that OPM's requirement of three or more subordinate employees was inconsistent with Department of Labor's regulations. Instead of changing to an arbitrary number, we chose to use the plural "employees" which implies "two or more."

16. Section 551.206—Administrative Exemption Criteria

One agency commented that the criterion in proposed paragraph (a)(1) under the primary duty test could lead to an incorrect and overly broad application of the exemption and be inconsistent with Department of Labor's application of the Act to the private sector.

This comment addresses a well-established provision in the currently published regulations. Our experience is that the provision as currently published is sufficient.

We revised proposed paragraph (a)(2) by deleting the phrase "general management or business functions" and substituting in its place "management or general business functions" to be consistent with wording elsewhere.

We revised the headings of proposed paragraphs (b) and (c) by inserting the word "test" before the periods.

17. Section 551.207—Professional Exemption Criteria

Several commentors pointed out that proposed paragraph(a)(3) is more expansive than the law pertaining to employees in the computer software field (Public Law 101–583, 104 Stat. 2871, November 15, 1990).

One labor organization suggested that in order to clarify the limited scope of the exemption for work in computer-related occupations, OPM's proposed regulations should include a provision similar to § 541.303(c) of title 29, Code of Federal Regulations which provides that the professional exemption only applies to highly skilled employees who have achieved a level of proficiency in the theoretical and practical application of a body of highly-specialized knowledge in computer systems analysis, programming, and software engineering.

The same labor organization also suggested that the proposed regulation should also include a provision analogous to § 541.303(d) of title 29, Code of Federal Regulations, which provides that the exemption does not include "employees engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment" or employees whose work is dependent on computers but who do not work in computer systems analysis or computer programming occupations.

The labor organization further suggested that the exemption does not include employees engaged in the operation of computers or in the manufacture of computer hardware and related equipment, or employees whose work is dependent on computers but who do not work in computer systems analysis or computer programming occupations.

Public Law 101–583 (104 Stat. 2871, November 15, 1990) provides that employees performing such work may be designated FLSA exempt as executive, administrative, or professional employees. The law also states that "if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage . . . ." Section 13(a) of the Act was amended to read "in the case of an employee who is compensated on an hourly basis, is compensated at a rate not less than $27.63 an hour." Proposed paragraph (a)(3) essentially restates the criteria in section 213(a)(17) of title 29, United States Code, for exempting from the FLSA certain employees who work with computers. The regulation does not include a salary-based test because the Department of Labor has determined that such tests do not apply to public employees (see § 541.5d of title 29, Code of Federal Regulations).

Commentors suggested that we further explain the scope of this exemption. We considered this suggestion, but concluded that the language in the proposed regulation is sufficient.

The citation in proposed paragraph (a)(3)(iv) was published as "(a)(3)(i), (3)(ii), and (3)(iii)." We revised the citation to read "(a)(3)(i), (a)(3)(ii), and (a)(3)(iii)" to be consistent with the citation in proposed paragraph 551.208(d)(2) which reads "(d)(2)(i) and (d)(2)(ii).

We revised the heading of proposed paragraph (b) by deleting the words "in nature" and substituting in their place the words "work test."

We revised the heading of proposed paragraph (c) by inserting the word "test" before the period.

18. Section 551.208—Effect of Performing Temporary Work or Duties on FLSA Exemption Status

As explained in item 11, we inserted the words "the primary or grade-controlling duty of" in proposed paragraphs (a)(1), (b)(1), (c)(1), and (c)(3).

To avoid any possible confusion on the part of agencies or employees, we inserted the word "calendar" before the word "days" in proposed paragraphs (b)(1)(i), (b)(2)(ii), (c)(1)(i) and (c)(2)(ii).

One labor organization took issue with proposed paragraphs (b)(1)(i) and (b)(2)(i) which state that the period of temporary work or duties must exceed 30 days (now referred to as the "30-day test"). The labor organization incorrectly believed the OPM was ignoring the workweek basis of the FLSA and suggested that OPM should provide that exemption determinations be made on a workweek basis for temporary assignments of 5 workdays or more. We did not adopt the suggestion.

We believe that this suggestion, if adopted, would place an extreme administrative burden on agencies. The Act takes a single workweek as its standard, that is, a workweek is the unit of time used as the basis for applying

overtime standards under the Act. It would be administratively burdensome for Federal agencies to have to make this determination each week. OPM adopted the 30-day test to ease this administrative burden on agencies but the weekly standard still applies for pay purposes. The 30-day test is well established and has been unchanged in regulation since January 1988. The revision of this section makes clear to agencies and employees agencies' responsibilities regarding an employee who must temporarily perform work or duties that are not consistent with the *primary or grade-controlling duty* of the employee's official position description.

In the heading of proposed paragraph (b)(1)(iii), we made the word "situations" singular to parallel proposed paragraph (c)(1)(iii).

In proposed paragraph (c)(1)(ii), we added the words "or duty" to the paragraph heading to parallel paragraph (b)(1)(ii).

We italicized the heading of proposed paragraph (c)(3).

19. Section 551.209—Foreign Exemption Criteria

In proposed paragraph (a), we italicized the words "all" and "any."

We changed the period at the end of the introductory language of proposed paragraph (b) to a colon.

20. Section 551.211—Statutory Exclusion

One labor organization pointed out that the statutory exclusion in proposed § 551.211 goes beyond the statutory provision on which it is based. The Customs Officers Pay Reform Act (Customs Pay Act), codified at section 267 of title 19, United States Code (U.S.C.), provides that "a customs officer who receives overtime pay under subsection (a) of this section or premium pay under subsection (b) of this section for time worked may not receive pay or other compensation *for that work* under any other provision of law." (Emphasis added.) Under the statute, a customs officer cannot receive FLSA overtime pay for the same work for which the officer received overtime pay or premium pay under the Customs Pay Act. Proposed section 551.211 goes beyond the statute because it completely excludes customs officers from the overtime pay and hours of work provisions of the FLSA. The labor organization stated that there are a number of circumstances in which the Customs Pay Act does not provide overtime pay for particular work but the FLSA does. For example, under section 267(a)(1) of the Customs Pay Reform Act, an employee is entitled to overtime pay only when he or she is "officially assigned to perform work." Unlike the FLSA, the Customs Pay Act does not provide overtime pay for work that an employee is suffered or permitted to perform. The labor organization further stated that the United States Customs Service has taken the position that the Customs Pay Act does not authorize overtime pay for training, even when such training is required by the agency. It is Customs' position that training is not "work" under section 267(a)(1). According to Customs, training time is compensable only for employees who are FLSA covered. Customs has also taken the position that certain travel time is not compensable under the Customs Pay Act. The FLSA, however, provides compensation for some travel time and for time spent in training when required by the agency (see section 410.402(d) of title 5, Code of Federal Regulations). The labor organization pointed out that the Customs Pay Act does not exclude customs officers from compensation for these hours under the FLSA.

We revised proposed § 551.211 by quoting the Customs Pay Act. We deleted the first sentence and in its place is substituted "A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) of section 267 of title 19, United States Code, for time worked may not receive pay or other compensation for that work under any other provision of law." We revised the second sentence by deleting "a customs inspector," inserting "a United States Customs Service" before "supervisory," inserting "or nonsupervisory" after supervisory, deleting "a canine enforcement officer" before "supervisory," and inserting "or nonsupervisory" after "supervisory."

21. Section 551.601—Minimum Age Standards

One agency suggested that the reference to section 3(l) in proposed paragraphs (a) and (b) be corrected to substitute a lower-case letter L for the Arabic numeral one inside the parentheses. We made this correction.

22. Section 551.602—Responsibilities

One agency suggested that it would be helpful to Federal agencies to provide a citation to the Department of Labor's child labor regulations.

We agree. We revised the first sentence of proposed paragraph (a) by inserting "in part 570 of title 29, Code of Federal Regulations," before the phrase "by the Secretary of Labor."

One agency noted the reference to "claims" in subpart F and the inclusion of child labor "claims" in subpart G. The agency stated that this seems somewhat anomalous in that the enforcement mechanism for the child labor provisions of the FLSA is the assessment of civil money penalties pursuant to section 261(e) of title 29, United States Code, payable to the Federal Government by violating employers. This is in contrast to the assertion of wage claims under sections 16(b) and 16(c) of the FLSA by the Administrator or by an employee, resulting in the possible payment of back wages and liquidated damages to the employee.

We revised proposed paragraph (b) by deleting the word "claims" and substituting in its place the word "complaints" and we made conforming changes in §§ 551.701(a) and 551.702(a).

23. Section 551.701—Applicability

We revised proposed paragraph (a) by deleting the word "claims" from the phrase "claims arising under the child labor provision" and substituting the word "complaints" in its place. As explained in item 4, the term "claim" is used generically in subpart G to include complaints under the child labor provisions of the Act.

24. Section 551.702—Time Limits

We revised the first sentence of proposed paragraph (a) by deleting the words "may file an FLSA claim at any time" and substituting in their place the words "may at any time file a complaint" and inserting the words "an FLSA claim" before the word "challenging."

One labor organization argued that the applicable statute of limitations continues to be 6 years under the Barring Act (section 3702(b)(1) of title 31, United States Code), notwithstanding the enactment of Pub. L. 104–52 (109 Stat. 468–69 (1995)) and the decision in *Adams* v. *Bowsher*, 946 F.Supp. 37 (D.C.D.C. 1996).

It is OPM's position that the law and court decision established a 2-year statute of limitations (3-year for willful violations).

Another labor organization noted that proposed paragraph (c) permits a claimant to file a claim either with the agency employing the claimant during the claim period or with OPM. The labor organization stated that there should be a provision allowing the claimant the option to file the claim with OPM to resolve the claim if the agency fails to issue a decision on a claim filed with it within six months. This would preclude an agency from preventing an employee from receiving compensation by simply refusing to process the claim.

We did not adopt this suggestion. Nothing in OPM's regulations precludes an employee from withdrawing a claim submitted to an agency and submitting the claim to OPM, if the employee believes the agency is taking too long to decide the claim.

25. Section 551.703—Avenues of Review

Two labor organizations noted that proposed paragraph (a) means that a claimant who is covered by a collective bargaining agreement that does not exclude FLSA matters for only part of a claim period, the claimant would be precluded from filing a claim with OPM for the period of time that the claimant was not covered by the agreement. The labor organizations suggested that the paragraph be rewritten to state that a claimant is limited to using the negotiated grievance procedure as the exclusive administrative remedy for only time periods in which he or she was a member of a bargaining unit and covered by a collective bargaining agreement which did not exclude FLSA matters.

We did not adopt the suggestion for two reasons. First, *Carter* v. *Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990), *cert. denied*, 111 S.Ct. 46 (1990), established the principle that the negotiated grievance procedure is the only administrative avenue open to an employee covered by a collective bargaining agreement that does not exclude FLSA matters. Second, if a claimant were permitted to split the claim period between two avenues of review, different and conflicting decisions might be reached, neither binding on the other.

We revised the introductory language of proposed paragraph (b) by inserting the phrase "but not both simultaneously" before the word "regarding" to make it clear that an employee may not file the same claim with the agency and OPM simultaneously.

One labor organization stated that the regulations should make it clear that employees have a right to proceed to court with FLSA claims independently of their right to file a claim with OPM.

Proposed paragraph (c) states that nothing in subpart G limits the right of a claimant to bring an action in an appropriate United States court, and that OPM will not decide an FLSA claim that is in litigation. We believe the proposed paragraph is sufficient.

The same labor organization suggested that employees should be advised that the filing of a claim with OPM or an agency will not toll the statute of limitations governing FLSA claims filed in court.

We agree that this would be helpful to employees and added such language as the second sentence of proposed paragraph (c).

26. Section 551.704—Claimant's Representative.

Two labor organizations interpreted the third sentence of the introductory language to proposed § 551.704 (which states "A representative has no right to participate in OPM fact-finding") to mean that a claimant would be limited to self-representation and pointed out that this conflicts with the first sentence which permits the designation of a representative to assist in preparing or presenting a claim.

We intended to make the point that an employee representative may not be present or listen in on fact-finding interviews conducted by OPM as a matter of right. Rather OPM, at its discretion, may invite the employee representative to participate. We revised the sentence in question to make this clear.

27. Section 551.705—Form and Content of an FLSA Claim.

We deleted the heading of proposed section 551.705 and substituted in its place the heading "Filing an FLSA claim."

One individual remarked that according to proposed paragraph (a) "a non-unit employee can file an FLSA claim with the agency, and the agency can either adjudicate it or forward it to OPM without taking any action."

This is not what we intended. Therefore, we have revised the second sentence by deleting the phrase "At the discretion of the agency" and substituting "At the request of the claimant."

The individual also asked whether an employee may appeal to OPM if the agency adjudicates the claim.

We redesignated proposed paragraphs (a) and (b) as (b) and (c) and added new paragraph (a) which states that an employee may file a claim with either the agency or with OPM, but may not pursue the same claim simultaneously with the agency and OPM. We encourage, but do not require, claimants to obtain decisions on claims from their agency before filing a claim with OPM. We also explain that a claimant may file a claim with OPM after receiving an unfavorable decision from the agency but may not file a claim with the agency after getting an unfavorable decision from OPM.

Regarding the requirement in proposed paragraph (b)(7) (redesignated as paragraph(c)(7)) that a claim must include evidence that the claim period was preserved, one labor organization pointed out that claimants may not realize the importance of retaining such documentation. The labor organization recommended that the regulation include a statement that if the claimant does not have evidence showing the claim was filed, proof may be provided by documents in agency records.

We did not adopt this recommendation. Proposed paragraph 551.702(c) states clearly that the claimant is responsible for proving when the claim was received by the agency or OPM and that the claimant should retain documentation to establish when the claim was received by the agency or OPM, such as by filing the claim using certified, return receipt mail, or by requesting that the agency or OPM provide written acknowledgment of receipt of the claim. The last sentence in proposed paragraph 551.702(c) explains why such documentation is important, that is, if a claim for back pay is established, the claimant will be entitled to pay for a period of up to 2 years (3 years for a willful violation) back from the date the claim was received. Further, proposed paragraphs 551.709(a) and (b) provide for the release of information from an FLSA claim file to the parties concerned, that is, the claimant, any representative designated in writing by the claimant, and any representative of the agency or OPM involved in the proceeding. Thus, the claimant or the claimant's representative can obtain documents regarding the claim, including documentation of when the claim was received by the agency or OPM.

One labor organization suggested that in cases where the employee filed with an agency but withdrew the claim and submitted it to OPM, the date the claim was filed with the agency should be the relevant date for determining back pay.

This provision already exists in proposed paragraph (b)(7) (redesignated as paragraph (c)(7)).

28. Sections 551.706—Responsibilities

Two labor organizations argued that the time limit of 15 workdays in proposed paragraph (a)(1) is too restrictive. One of the labor organizations objected to the claimant being subject to a penalty (denial of the claim) if requested information is not received by OPM within 15 workdays without a corresponding penalty for the agency should the agency not provide requested information to OPM within 15 workdays. The labor organization pointed out that claimants may not realize that they need to request an

extension if they need more time to provide requested information.

We revised the first sentence of proposed paragraph (a)(1) by inserting "the claimant or the claimant's representative requests additional time and" after "unless." We made corresponding changes in proposed § 551.707.

We revised the fourth sentence of proposed paragraph (a)(1) and the last sentence of proposed paragraph (b) by deleting the word "denied" and substituting in its place the word "cancelled" to be consistent with changes we made to proposed § 551.707.

One labor organization reasoned that much of the information necessary to support a claim is in the exclusive control of the agency. The labor organization suggested that OPM add a statement that upon request, and subject to any Privacy Act restrictions, agencies will provide a claimant with information relevant to the claimant's claim.

We agree that this would further impress upon agencies their responsibilities in FLSA claims and have added a such a statement as a new paragraph (b)(3). We redesignated proposed paragraph (b)(3) as paragraph (b)(4).

We revised proposed paragraph (b)(3) (redesignated as paragraph (b)(4)) by inserting the words "the agency requests additional time and" after the word "unless" to be consistent with wording elsewhere.

29. Section 551.707—Withdrawal or Denial of an FLSA Claim

We revised the section heading by deleting "denial" and substituting "cancellation" and revised proposed paragraph (b) by deleting "denied" and "deny" and substituting "cancelled" and "cancel" and inserting "the claimant or the claimant's representative requests additional time and" before "OPM." With these changes, we believe the regulation states clearly enough that a claimant or claimant's representative can avoid cancellation of a claim by requesting and receiving an extension. Proposed paragraph (b) also states that a cancelled claim may be reconsidered by OPM if the claim shows that circumstances beyond the claimant's control prevented pursuit of the claim.

30. Section 551.708—Finality and Effect of OPM FLSA Claim Decision

One labor organization stated that the proposed regulations do not address the right of appeal from OPM FLSA claim determinations and suggests that the regulations should do so.

Proposed § 551.708 states that OPM may reconsider a decision upon a showing that material information was not considered or there was a material error of law, regulation, or fact in the original decision.

31. Section 551.709—Availability of Information

We added the words "before disclosing the information contained in an FLSA claim file to the parties concerned" to the end of the second sentence in proposed paragraph (b) to make clear that this sanitized information being released only to the parties concerned with the claim.

32. Section 551.710

Under the address of the OPM Washington, DC Oversight Division, the District of Columbia is indented.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 551

Government employees, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 551 as follows:

1. The title and authority citation for part 551 continues to read as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the *Fair Labor Standards Act of 1938*, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f).

2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

551.101 General.
551.102 Authority and administration.
551.103 Coverage.
551.104 Definitions.

§ 551.101 General.

(a) The Fair Labor Standards Act of 1938, as amended (referred to as "the Act" or "FLSA"), provides for minimum standards for both wages and overtime entitlement, and delineates administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions. It prescribes penalties for the commission of specifically prohibited acts.

(b) This part contains the regulations, criteria, and conditions that the Office of Personnel Management has prescribed for the administration of the Act. This part supplements and implements the Act, and must be read in conjunction with it.

§ 551.102 Authority and administration.

(a) *Office of Personnel Management.* Section 3(e)(2) of the Act authorizes the application of the provisions of the Act to any person employed by the Government of the United States, as specified in that section. Section 4(f) of the Act authorizes the Office of Personnel Management (OPM) to administer the provisions of the Act. OPM is the administrator of the provisions of the Act with respect to any person employed by an agency, except as specified in paragraphs (b), (c), and (d) of this section.

(b) The *Equal Employment Opportunity Commission* administers the equal pay provisions contained in section 6(d) of the Act.

(c) The *Department of Labor* administers the Act for the following United States Government entities:

(1) The Library of Congress;
(2) The United States Postal Service;
(3) The Postal Rate Commission; and
(4) The Tennessee Valley Authority.

(d) *Office of Compliance.* The Congressional Accountability Act of 1995, as amended, sections 1301 *et seq.* of title 2, United States Code, extends rights and protections of the FLSA to employees of the following United States Government entities, and assigns certain administrative responsibilities to the Office of Compliance:

(1) The United States House of Representatives;
(2) The United States Senate;
(3) The Capitol Guide Service;
(4) The Capitol Police;
(5) The Congressional Budget Office;
(6) The Office of the Architect of the Capitol;
(7) The Office of the Attending Physician; and
(8) The Office of Compliance.

§ 551.103 Coverage.

(a) *Covered.* Any employee of an agency who is not specifically excluded by another statute is covered by the Act. This includes any person who is—

(1) Defined as an employee in section 2105 of title 5, United States Code;

(2) A civilian employee appointed under other appropriate authority; or

(3) Suffered or permitted to work by an agency whether or not formally appointed.

(b) *Not covered.* The following persons are not covered under the Act:

(1) A person appointed under appropriate authority without compensation;
(2) A trainee;
(3) A volunteer; or
(4) A member of the Uniformed Services.

§ 551.104 Definitions.

In this part—

Act or *FLSA* means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 *et seq.*).

Administrative employee means an employee who meets the criteria in § 551.206.

Agency, for purposes of OPM's administration of the Act, means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act and in this section, but does not include the entities of the United States Government listed in § 551.102(c) for which the Department of Labor administers the Act or § 551.102(d)(1) through (8), whose employees are covered by the Congressional Accountability Act of 1995, as amended, which makes applicable the rights and protections of the FLSA and assigns certain administrative responsibilities to the Office of Compliance.

Claim means a written allegation from a current or former employee concerning his or her FLSA exemption status determination or entitlement to minimum wage or overtime pay for work performed under the Act. The term "claim" is used generically in subpart G of this part to include complaints under the child labor provisions of the Act.

Claim period means the time during which the cause or basis of the claim occurred.

Claimant means a current or former employee who files an FLSA claim.

Customarily and regularly means a frequency which must be greater than occasional but which may be less than constant. For example, the requirement in § 551.205(a)(2) will be met by an employee who normally and recurrently exercises discretion and independent judgment in the day-to-day performance of duties.

Discretion and independent judgment means work that involves comparing and evaluating possible courses of conduct, interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. However, firm commitments or final decisions are not necessary to support exemption. The "decisions" made as a result of the exercise of independent judgment may consist of *recommendations for action* rather than the actual taking of action. The fact that an employee's decisions are subject to review, and that on occasion the decisions are revised or reversed after review, does not mean that the employee is not exercising discretion and independent judgment of the level required for exemption. Work reflective of discretion and independent judgment must meet the three following criteria:

(1) The work must be sufficiently complex and varied so as to customarily and regularly require discretion and independent judgment in determining the approaches and techniques to be used, and in evaluating results. This precludes exempting an employee who performs work primarily requiring skill in applying standardized techniques or knowledge of established procedures, precedents, or other guidelines which specifically govern the employee's action.

(2) The employee must have the authority to make such determinations during the course of assignments. This precludes exempting trainees who are in a line of work which requires discretion but who have not been given authority to decide discretionary matters independently.

(3) The decisions made independently must be significant. The term "significant" is not so restrictive as to include only the kinds of decisions made by employees who formulate policies or exercise broad commitment authority. However, the term does not extend to the kinds of decisions that affect only the procedural details of the employee's own work, or to such matters as deciding whether a situation does or does not conform to clearly applicable criteria.

Emergency means a temporary condition that poses a direct threat to human life or safety, serious damage to property, or serious disruption to the operations of an activity, as determined by the employing agency.

Employ means to engage a person in an activity that is for the benefit of an agency, and includes any hours of work that are suffered or permitted.

Employee means a person who is employed—

(1) As a civilian in an executive agency as defined in section 105 of title 5, United States Code;

(2) As a civilian in a military department as defined in section 102 of title 5, United States Code;

(3) In a nonappropriated fund instrumentality of an executive agency or a military department;

(4) In a unit of the judicial branch of the Government that has positions in the competitive service; or

(5) The Government Printing Office.

Employer, as defined in section 3(d) of the Act, means any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

Essential part of administrative or professional functions means work that is included as an integral part of administrative or professional exempt work. This work is identified by examining the processes involved in performing the exempt function. For example, the processes involved in evaluating a body of information include collecting and organizing information; analyzing, evaluating, and developing conclusions; and frequently, preparing a record of findings and conclusions. Often collecting or compiling information and preparing reports or other records, if divorced from the evaluative function, are nonexempt tasks. When an employee who performs the evaluative functions also performs some or all of these related steps, all such work (for example, collecting background information, recording test results, tabulating data, or typing reports) is included in the employee's exempt duties.

Executive employee means an employee who meets the criteria in § 551.205.

Exempt area means any foreign country, or any territory under the jurisdiction of the United States other than the following locations:

(1) A State of the United States;
(2) The District of Columbia;
(3) Puerto Rico;
(4) The U.S. Virgin Islands;
(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
(6) American Samoa;
(7) Guam;
(8) Midway Atoll;
(9) Wake Island;
(10) Johnston Island; and
(11) Palmyra.

FLSA exempt means not covered by the minimum wage and overtime provisions of the Act.

FLSA exemption status means an employee's designation by the employing agency as either FLSA exempt or FLSA nonexempt from the minimum wage and overtime provisions of the Act.

FLSA exemption status determination claim means a claim from a current or former employee challenging the correctness of his or her FLSA exemption status determination.

FLSA nonexempt means covered by the minimum wage and overtime provisions of the Act.

FLSA overtime pay, for the purpose of § 551.208, means overtime pay under this part.

FLSA pay claim means a claim from a current or former employee concerning his or her entitlement to minimum wage or overtime pay for work performed under the Act.

Foreign exemption means a provision of the Act under which the minimum wage, overtime, and child labor provisions of the Act do not apply to any employee who spends all hours of work in a given workweek in an exempt area.

Formulation or execution of management programs or policies means work that involves management programs and policies which range from broad national goals expressed in statutes or Executive orders to specific objectives of a small field office. Employees make policy decisions or participate indirectly, through developing or recommending proposals that are acted on by others. Employees significantly affect the execution of management programs or policies typically when the work involves obtaining compliance with such policies by other individuals or organizations, within or outside of the Federal Government, or making significant determinations furthering the operation of programs and accomplishment of program objectives. Administrative employees engaged in such work typically perform one or more phases of program management (that is, planning, developing, promoting, coordinating, controlling, or evaluating operating programs of the employing organization or of other organizations subject to regulation or other controls).

Hours of work means all time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency. Hours of work are creditable for the purposes of determining overtime pay under subpart D of this subpart. Section 551.401 of subpart D further explains this term. However, whether time is credited as hours of work is determined by considering many factors, such as the rules in subparts D and E of this subpart, provisions of law, Comptroller General decisions, OPM policy guidance, agency policy and regulations, negotiated agreements, the rules in part 550 of this chapter (for hours of work for travel), and the rules in part 410 of this chapter (for hours of work for training).

Management or general business function or supporting service, as distinguished from production functions, means the work of employees who provide support to line managers.

(1) These employees furnish such support by—

(i) Providing expert advice in specialized subject matter fields, such as that provided by management consultants or systems analysts;

(ii) Assuming facets of the overall management function, such as safety management, personnel management, or budgeting and financial management;

(iii) Representing management in such business functions as negotiating and administering contracts, determining acceptability of goods or services, or authorizing payments; or

(iv) Providing supporting services, such as automated data processing, communications, or procurement and distribution of supplies.

(2) Neither the organizational location nor the number of employees performing identical or similar work changes management or general business functions or supporting services into production functions. The work, however, must involve substantial discretion on matters of enough importance that the employee's actions and decisions have a noticeable impact on the effectiveness of the organization advised, represented, or serviced.

Nonexempt area means any of the following locations:

(1) A State of the United States;
(2) The District of Columbia;
(3) Puerto Rico;
(4) The U.S. Virgin Islands;
(5) Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
(6) American Samoa;
(7) Guam;
(8) Midway Atoll;
(9) Wake Island;
(10) Johnston Island; and
(11) Palmyra.

Participation in the executive or administrative functions of a management official means the participation of employees, variously identified as secretaries, administrative or executive assistants, aides, etc., in portions of the managerial or administrative functions of a supervisor whose scope of responsibility precludes personally attending to all aspects of the work. To support exemption, such employees must be delegated and exercise substantial authority to act for the supervisor in the absence of specific instructions or procedures, and take actions which significantly affect the supervisor's effectiveness.

Perform work in connection with an emergency means to perform work that is directly related to resolving or coping with an emergency, or its immediate aftermath, as determined by the employing agency.

Preserve the claim period means to establish the period of possible entitlement to back pay by filing a written claim with either the agency employing the claimant during the claim period or with OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay.

Primary duty typically means the duty that constitutes the major part (over 50 percent) of an employee's work. A duty constituting less than 50 percent of the work may be credited as the primary duty for exemption purposes provided that duty—

(1) Constitutes a substantial, regular part of a position;

(2) Governs the classification and qualification requirements of the position; and

(3) Is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made.

Professional employee means an employee who meets the criteria in § 551.207.

Reckless disregard of the requirements of the Act means failure to make adequate inquiry into whether conduct is in compliance with the Act.

Recognized organizational unit means an established and defined organizational entity which has regularly assigned employees and for which a supervisor is responsible for planning and accomplishing a continuing workload. This distinguishes supervisors from leaders who head temporary groups formed to perform assignments of limited duration.

Situations 1 through 4 means the four basic situations described under Factor I, Nature of Supervisory Responsibility, in the *Federal Wage System Job Grading Standard for Supervisors*. The situations depict successively higher levels of supervisory responsibility and authority for scheduling work operations, planning use of resources to accomplish work, directing subordinates in

performing work assignments, and carrying out administrative duties.

Statute of limitations means the time frame within which an FLSA pay claim must be filed, starting from the date the right accrued. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations, except in cases of willful violation where the statute of limitations is 3 years.

Suffered or permitted work means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

Supervisory and closely related work means work that is included in the calculation of exempt work for supervisory positions.

(1) Work is considered closely related to exempt supervisory work if it contributes to the effective supervision of subordinate workers, or the smooth functioning of the unit supervised, or both. Examples of closely related work include the following:

(i) Maintaining various records pertaining to workload or employee performance;

(ii) Performing setup work that requires special skills, typically is not performed by production employees in the occupation, and does not approach the volume that would justify hiring a specially trained employee to perform; and

(iii) Performing infrequently recurring or one-time tasks which are impractical to delegate because they would disrupt normal operations or take longer to explain than to perform.

(2) Activities in which both workers and supervisors are required to engage themselves are considered to be closely related to the primary duty of the position, for example, physical training during tours of duty for firefighting and law enforcement personnel.

Temporary work or duties means work or duties an employee must temporarily perform that are not consistent with the primary or grade-controlling duty of the employee's official position description. The period of temporary work or duties may or may not involve a different geographic duty location.

Title 5 overtime pay, for the purpose of § 551.208, means overtime pay under part 550 of this chapter.

Trainee means a person who does not meet the definition of employee in this section and who is assigned or attached to a Federal activity primarily for training. A person who attends a training program under the following conditions is considered a trainee and, therefore, is not an employee of the Government of the United States for purposes of the Act:

(1) The training, even though it includes actual operation of the facilities of the Federal activity, is similar to that given in a vocational school or other institution of learning;

(2) The training is for the benefit of the individual;

(3) The trainee does not displace regular employees, but, rather, is supervised by them;

(4) The Federal activity which provides the training derives no immediate advantage from the activities of the trainee; on occasion its operations may actually be impeded;

(5) The trainee is not necessarily entitled to a job with the Federal activity at the completion of the training period; and

(6) The agency and the trainee understand that the trainee is not entitled to the payment of wages from the agency for the time spent in training.

Volunteer means a person who does not meet the definition of employee in this section and who volunteers or donates his or her service, the primary benefit of which accrues to the performer of the service or to someone other than the agency. Under such circumstances there is neither an expressed nor an implied compensation agreement. Services performed by such a volunteer include personal services that, if left unperformed, would not necessitate the assignment of an employee to perform them.

Willful violation means a violation in circumstances where the agency knew that its conduct was prohibited by the Act or showed reckless disregard of the requirements of the Act. All of the facts and circumstances surrounding the violation are taken into account in determining whether a violation was willful.

Work of an intellectual nature means work requiring general intellectual abilities, such as perceptiveness, analytical reasoning, perspective, and judgment applied to a variety of subject matter fields, or work requiring mental processes which involve substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot rely on standardized application of established procedures or precedents, but must recognize and evaluate the effect of a continual variety of conditions or requirements in selecting, adapting, or innovating techniques and procedures, interpreting findings, and selecting and recommending the best alternative from among a broad range of possible actions.

Work of a specialized or technical nature means work which requires substantial specialized knowledge of a complex subject matter and of the principles, techniques, practices, and procedures associated with that subject matter field. This knowledge characteristically is acquired through considerable on-the-job training and experience in the specialized subject matter field, as distinguished from professional knowledge characteristically acquired through specialized academic education.

Workday means the period between the commencement of the principal activities that an employee is engaged to perform on a given day and the cessation of the principal activities for that day. The term is further explained in § 551.411.

Worktime, for the purpose of determining FLSA exemption status, means time spent actually performing work. This excludes periods of time during which an employee performs no work, such as standby time, sleep time, meal periods, and paid leave.

Worktime in a representative workweek means the average percentages of worktime over a period long enough to even out normal fluctuations in workloads and be representative of the job as a whole.

Workweek means a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in § 610.102 of this chapter.

Workweek basis means the unit of time used as the basis for applying overtime standards under the Act and, for employees under flexible or compressed work schedules, under 5 U.S.C. 6121(6) or (7). The Act takes a single workweek as its standard and does not permit averaging of hours over two or more weeks, except for employees engaged in fire protection or law enforcement activities under section 7(k) of the Act.

3. Subpart B is revised to read as follows:

Subpart B—Exemptions and Exclusions

Sec.

551.201 Agency authority.
551.202 General principles governing exemptions.
551.203 Exemption of General Schedule employees.

551.204 Exemption of Federal Wage System employees.
551.205 Executive exemption criteria.
551.206 Administrative exemption criteria.
551.207 Professional exemption criteria.
551.208 Effect of performing temporary work or duties on FLSA exemption status.
551.209 Foreign exemption criteria.
551.210 Exemption of employees receiving availability pay.
551.211 Statutory exclusion.

§ 551.201 Agency authority.

The employing agency may designate an employee FLSA exempt only when the agency correctly determines that the employee meets one or more of the exemption criteria of this subpart and such supplemental interpretations or instructions issued by OPM.

§ 551.202 General principles governing exemptions.

In all exemption determinations, the agency must observe the following principles:

(a) Each employee is presumed to be FLSA nonexempt unless the employing agency correctly determines that the employee clearly meets one or more of the exemption criteria of this subpart and such supplemental interpretations or instructions issued by OPM.

(b) Exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(c) The burden of proof rests with the agency that asserts the exemption.

(d) An employee who clearly meets the criteria for exemption must be designated FLSA exempt. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be designated FLSA nonexempt.

(e) There are groups of General Schedule employees who are FLSA nonexempt because they do not fit any of the exemption categories. These groups include the following:

(1) Nonsupervisory General Schedule employees in equipment operating and protective occupations, and most clerical occupations (see the definition of *participation in the executive or administrative functions of a management official* in subpart A of this part);

(2) Nonsupervisory General Schedule employees performing technician work in positions properly classified below GS–9 (or the equivalent level in other comparable white-collar pay systems) and many, but not all, of those positions properly classified at GS–9 or above (or the equivalent level in other comparable white-collar pay systems); and

(3) Nonsupervisory General Schedule employees at any grade level in occupations requiring highly specialized technical skills and knowledges that can be acquired only through prolonged job training and experience, such as the Air Traffic Control series, GS–2152, or the Aircraft Operations series, GS–2181, unless such employees are performing predominantly administrative functions rather than the technical work of the occupation.

(f) Although separate criteria are provided for the exemption of executive, administrative, and professional employees, those categories are not mutually exclusive. All exempt work, regardless of category, must be considered. The only restriction is that, when the requirements of one category are more stringent, the combination of exempt work must meet the more stringent requirements.

(g) Failure to meet the criteria for exemption under what might appear to be the most appropriate criteria does not preclude exemption under another category. For example, an engineering technician who fails to meet the professional exemption criteria may be performing exempt administrative work, or an administrative officer who fails to meet the administrative criteria may be performing exempt executive work.

(h) Although it is normally feasible and more convenient to identify the exemption category, this is not essential. An exemption may be based on a combination of functions, no one of which constitutes the primary duty, or the employee's primary duty may involve two categories which are intermingled and difficult to segregate. This does not preclude designating an employee FLSA exempt, provided the work as a whole clearly meets the other exemption criteria.

(i) The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee.

§ 551.203 Exemption of General Schedule employees.

(a) *GS–4 or below.* Any employee in a position properly classified at GS–4 or below (or the equivalent level in other comparable white-collar pay systems) is nonexempt, unless the employee is subject to the foreign exemption in § 551.209.

(b) *GS–5 or above.* Any employee in a position properly classified at GS–5 or above (or the equivalent level in other comparable white-collar pay systems) is exempt only if the employee is an executive, administrative, or professional employee as defined in this subpart, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

§ 551.204 Exemption of Federal Wage System employees.

(a) *Nonsupervisory.* A nonsupervisory employee in the Federal Wage System or in other comparable wage systems is nonexempt, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

(b) *Supervisory.* A supervisory employee in the Federal Wage System or in other comparable wage systems is exempt only if the employee is an executive employee as defined in § 551.205, unless the employee is subject to § 551.208 (the effect of performing temporary work or duties on FLSA exemption status) or § 551.209 (the foreign exemption).

§ 551.205 Executive exemption criteria.

An *executive employee* is a supervisor or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and customarily and regularly directs the work of subordinate employees and meets both of the following criteria:

(a) *Primary duty test.* The primary duty test is met if the employee—

(1) Has authority to make personnel changes that include, but are not limited to, selecting, removing, advancing in pay, or promoting subordinate employees, or has authority to suggest or recommend such actions with particular consideration given to these suggestions and recommendations; and

(2) Customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of management of subordinates, including personnel administration.

(b) *80-percent test.* In addition to the primary duty test that applies to all employees, the following employees must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work to meet the 80-percent test:

(1) Employees in positions properly classified in the General Schedule at GS–5 or GS–6 (or the equivalent level in other comparable white-collar pay systems);

(2) Firefighting or law enforcement employees in positions properly classified in the General Schedule at GS–7, GS–8, or GS–9 who are subject to section 207(k) of title 29, United States Code; and

(3) Supervisors in positions properly classified in the Federal Wage System below situation 3 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

§ 551.206 Administrative exemption criteria.

An administrative employee is an advisor or assistant to management, a representative of management, or a specialist in a management or general business function or supporting service and meets all four of the following criteria:

(a) *Primary duty test.* The primary duty test is met if the employee's work—

(1) Significantly affects the formulation or execution of management programs or policies; or

(2) Involves management or general business functions or supporting services of substantial importance to the organization serviced; or

(3) Involves substantial participation in the executive or administrative functions of a management official.

(b) *Nonmanual work test.* The employee performs office or other predominantly nonmanual work which is—

(1) Intellectual and varied in nature; or

(2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

(c) *Discretion and independent judgment test.* The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) *80-percent test.* In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS–5 or GS–6 (or the equivalent level in other comparable white-collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions to meet the 80-percent test.

§ 551.207 Professional exemption criteria.

A *professional employee* is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

(a) *Primary duty test.* The primary duty test is met if the employee's work consists of—

(1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee; or

(3) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering or other similar work in the computer software field. The work must consist of one or more of the following:

(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; or

(ii) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or

(iii) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(iv) A combination of the duties described in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section, the performance of which requires the same level of skills.

(b) *Intellectual and varied work test.* The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought processes for satisfactory performance.

(c) *Discretion and independent judgment test.* The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) *80-percent test.* In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS–5 or GS–6 (or the equivalent level in other comparable white-collar pay systems), must spend 80 percent or more of the worktime in a representative workweek on professional functions and work that is an essential part of those functions to meet the 80-percent test.

§ 551.208 Effect of performing temporary work or duties on FLSA exemption status.

(a) *Applicability.*

(1) *When applicable.* This section applies only when an employee must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description. The period of temporary work or duties may or may not involve a different geographic duty location. The FLSA exemption status of employees during a period of temporary work or duties must be determined as described in this section.

(2) *When not applicable.* This section does not apply when an employee is detailed to an identical additional position as the employee's position or to a position of the same grade, series code, basic duties, and FLSA exemption status as the employee's position.

(b) *Effect on nonexempt employees.*

(1) A nonexempt employee who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description remains nonexempt for the entire period of temporary work or duties unless all three of the following conditions are met:

(i) *30-day test.* The period of temporary work or duties exceeds 30 calendar days; and

(ii) *Exempt work or duty.* The employee's primary duty for the period of temporary work or duties is exempt work or duty as defined in this part; and

(iii) *Positions at GS–7 or above, or at situation 3 or 4.* The employee's position (including a position to which the employee is temporarily promoted) is properly classified in the General Schedule at GS–7 or above (or the equivalent level in other comparable white-collar pay systems) or properly classified in the Federal Wage System as a supervisor at situation 3 or 4 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

(2) If a nonexempt employee becomes exempt under the criteria in paragraph (b)(1) of this section—

(i) The employee must be considered exempt for the entire period of temporary work or duties; and

(ii) If the employee received FLSA overtime pay for work performed during the first 30 calendar days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee is now not entitled to the FLSA overtime pay received but may be owed title 5 overtime pay.

(c) Effect on exempt employees.

(1) An exempt employee not covered by the special provision of paragraph (c)(3) of this section who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of the employee's official position description remains exempt for the entire period of temporary work or duties unless all three of the following conditions are met:

(i) *30-day test.* The period of temporary work or duties exceeds 30 calendar days; and

(ii) *Not exempt work or duty.* The employee's primary duty for the period of temporary work or duties is *not* exempt work or duty as defined in this part; and

(iii) *Positions at GS–7 or above, or at situation 3 or 4.* The employee's position (including a position to which the employee is temporarily promoted) is properly classified in the General Schedule at GS–7 or above (or the equivalent level in other comparable white-collar pay systems) or properly classified in the Federal Wage System as a supervisor at situation 3 or 4 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems).

(2) If an exempt employee becomes nonexempt under the criteria in paragraph (c)(1) of this section—

(i) The employee must be considered nonexempt for the entire period of temporary work or duties; and

(ii) If the employee received title 5 overtime pay for work performed during the first 30 calendar days of the temporary work or duties, the agency must recalculate the employee's total pay retroactive to the beginning of that period because the employee may now not be entitled to some or all of the title 5 overtime pay received but may be owed FLSA overtime pay.

(3) *Special provision for exempt employees at GS–5 or GS–6, or below situation 3.* The exemption status of certain exempt employees who must temporarily perform work or duties that are not consistent with the primary or grade-controlling duty of their official position description must be determined on a workweek basis for the period of temporary work or duties. Such employees are exempt employees whose positions (including a position to which the employee is temporarily promoted) are properly classified in the General Schedule at GS–5 or GS–6 (or the equivalent level in other comparable white-collar pay systems), or are properly classified in the Federal Wage System below situation 3 of Factor I of the *Federal Wage System Job Grading Standard for Supervisors* (or the equivalent level in other comparable wage systems). The exemption status determination of these employees will result in the employee either remaining exempt or becoming nonexempt for that workweek, as described in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) *Remain exempt.* An exempt employee remains exempt for a given workweek *only* if the employee performs exempt work or duties for 80 percent or more of the worktime in that workweek.

(ii) *Become nonexempt.* An exempt employee becomes nonexempt for a given workweek *only* if the employee performs nonexempt work or duties for more than 20 percent of the worktime in that workweek.

(d) *Emergency situation.* Notwithstanding any other provisions of this section, and regardless of an employee's grade level, the agency may determine that an emergency situation exists that directly threatens human life or safety, serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to temporarily perform work or duties in connection with the emergency. In such a designated emergency—

(1) *Nonexempt employee.* The exemption status of a nonexempt employee remains nonexempt whether the employee performs nonexempt work or exempt work during the emergency; and

(2) *Exempt employee.* The exemption status of an exempt employee must be determined on a workweek basis. The exemption status determination of exempt employees will result in the employee either remaining exempt or becoming nonexempt for that workweek, as described in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) *Remain exempt.* An exempt employee remains exempt for any workweek in which the employee performs exempt work or duties for 80 percent or more of the worktime in a given workweek.

(ii) *Become nonexempt.* An exempt employee becomes nonexempt for any workweek in which the employee performs nonexempt work or duties for more than 20 percent of the worktime in a given workweek.

§ 551.209 Foreign exemption criteria.

(a) *Application.* When the *foreign exemption* applies, the minimum wage, overtime, and child labor provisions of the Act do not apply to *any* employee who spends *all* hours of work in a given workweek in an exempt area. When an employee meets one of the two criteria in paragraph (b) of this section, the foreign exemption applies until the employee spends *any* hours of work in any nonexempt area as defined in § 551.102.

(b) *Foreign exemption applies.* If an employee meets one of the two following criteria, the employee is subject to the foreign exemption of the Act and the minimum wage, overtime, and child labor provisions of the Act do not apply:

(1) The employee is permanently stationed in an exempt area and spends *all* hours of work in a given workweek in one or more exempt areas; or

(2) The employee is not permanently stationed in an exempt area, but spends *all* hours of work in a given workweek in one or more exempt areas.

(c) *Foreign exemption does not apply.* For any given workweek, the minimum wage, overtime, and child labor provisions of the Act apply to an employee permanently stationed in an exempt area who spends *any* hours of work in any nonexempt area. For that workweek, the employee is not subject to the foreign exemption, and the agency must determine the exemption status of such an employee as described paragraphs (c)(1) and (c)(2) of this section. The foreign exemption does not resume until the employee again meets one of the criteria in paragraph (b) of this section.

(1) *Same duties.* If the duties performed during that workweek are consistent with the primary or grade-controlling duties of the employee's official position description, the agency must designate the employee the same FLSA exemption status as if the employee were permanently stationed in any nonexempt area.

(2) *Different duties.* If the duties performed during that workweek are not consistent with the primary or grade-controlling duties of the employee's official position description—

(i) The agency must first designate the employee the same FLSA exemption status as the employee would have been designated based on the duties included in the employee's official position description if the employee were permanently stationed in any nonexempt area; and

(ii) The agency must determine the employee's exemption status for that workweek by applying § 551.208.

(d) *Resumption of foreign exemption.* When an employee returns to any exempt area from performing any hours of work in any nonexempt area, the employee is not subject to the foreign exemption until the employee meets one of the criteria in paragraph (b) of this section.

§ 551.210 Exemption of employees receiving availability pay.

The following employees are exempt from the hours of work and overtime pay provisions of the Act:

(a) A criminal investigator receiving availability pay under § 550.181 of this chapter; and

(b) A pilot employed by the United States Customs Service who is a law enforcement officer as defined in section 5541(3) of title 5, United States Code, and who receives availability pay under section 5545a(i) of title 5, United States Code.

§ 551.211 Statutory exclusion.

A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) of section 267 of title 19, United States Code, for time worked may not receive pay or other compensation for that work under any other provision of law. As used in section 5, the term "customs officer" means a United States Customs Service supervisory or nonsupervisory customs inspector or a supervisory or nonsupervisory canine enforcement officer.

4. Subpart F is added to read as follows:

Subpart F—Child Labor

Sec.

551.601 Minimum age standards.
551.602 Responsibilities.

§ 551.601 Minimum age standards.

(a) *16-year minimum age.* The Act, in section 3(l), sets a general 16-year minimum age, which applies to all employment subject to its child labor provisions, with certain exceptions not applicable here.

(b) *18-year minimum age.* The Act, in section 3(l), also sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being.

§ 551.602 Responsibilities.

(a) *Agencies* must remain cognizant of and abide by regulations and orders published in part 570 of title 29, Code of Federal Regulations, by the Secretary of Labor regarding the employment of individuals under the age of 18 years. These regulations and orders govern the minimum age at which persons under the age of 18 years may be employed and the occupations in which they may be employed. Persons under the age of 18 years must not be employed in occupations or engage in work deemed hazardous by the Secretary of Labor.

(b) *OPM* will decide complaints concerning the employment of persons under the age of 18 years. Complaints must be filed following the procedures set forth in subpart G of this part.

5. Subpart G is added to read as follows:

Subpart G—FLSA Claims and Compliance

Sec.

551.701 Applicability.
551.702 Time limits.
551.703 Avenues of review.
551.704 Claimant's representative.
551.705 Filing an FLSA claim.
551.706 Responsibilities.
551.707 Withdrawal or cancellation of an FLSA claim.
551.708 Finality and effect of OPM FLSA claim decision.
551.709 Availability of information.
551.710 Where to file an FLSA claim with OPM.

§ 551.701 Applicability.

(a) *Applicable.* This subpart applies to FLSA exemption status determination claims, FLSA pay claims for minimum wage or overtime pay for work performed under the Act, and complaints arising under the child labor provisions of the Act.

(b) *Not applicable.* This subpart does not apply to claims or complaints arising under the equal pay provisions of the Act. The equal pay provisions of the Act are administered by the Equal Employment Opportunity Commission.

§ 551.702 Time limits.

(a) *Claims.* A claimant may at any time file a complaint under the child labor provisions of the Act or an FLSA claim challenging the correctness of his or her FLSA exemption status determination. A claimant may also file an FLSA claim concerning his or her entitlement to minimum wage or overtime pay for work performed under the Act; however, time limits apply to FLSA pay claims. All FLSA pay claims filed on or after June 30, 1994, are subject to a 2-year statute of limitations (3 years for willful violations).

(b) *Statute of limitations.* An FLSA pay claim filed on or after June 30, 1994, is subject to the statute of limitations contained in the Portal-to-Portal Act of 1947, as amended (section 255a of title 29, United States Code), which imposes a 2-year statute of limitations, except in cases of a willful violation where the statute of limitations is 3 years. In deciding a claim, a determination must be made as to whether the cause or basis of the claim was the result of a willful violation on the part of the agency.

(c) *Preserving the claim period.* A claimant or a claimant's designated representative may preserve the claim period by submitting a written claim either to the agency employing the claimant during the claim period or to OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay. The claimant is responsible for proving when the claim was received by the agency or OPM. The claimant should retain documentation to establish when the claim was received by the agency or OPM, such as by filing the claim using certified, return receipt mail, or by requesting that the agency or OPM provide written acknowledgment of receipt of the claim. If a claim for back pay is established, the claimant will be entitled to pay for a period of up to 2 years (3 years for a willful violation) back *from the date the claim was received.*

§ 551.703 Avenues of review.

(a) *Negotiated grievance procedure (NGP) as exclusive administrative remedy.* If at any time during the claim period, a claimant was a member of a bargaining unit covered by a collective bargaining agreement that did not specifically exclude matters under the Act from the scope of the negotiated grievance procedure, the claimant must use that negotiated grievance procedure as the exclusive *administrative* remedy for all claims under the Act. There is no right to further administrative review by the agency or by OPM. The remaining sections in this subpart (that is, §§ 551.704 through 551.710) do not apply to such employees.

(b) *Non-NGP administrative review by agency or OPM.* A claimant may file a claim with the agency employing the claimant during the claim period or with OPM, but not both simultaneously, regarding matters arising under the Act if, during the entire claim period, the claimant—

(1) Was not a member of a bargaining unit, or

(2) Was a member of a bargaining unit not covered by a collective bargaining agreement, or

(3) Was a member of a bargaining unit covered by a collective bargaining agreement that specifically excluded matters under the Act from the scope of the negotiated grievance procedure.

(c) *Judicial review.* Nothing in this subpart limits the right of a claimant to bring an action in an appropriate United States court. Filing a claim with an agency or with OPM does not satisfy the statute of limitations governing FLSA claims filed in court. OPM will not decide an FLSA claim that is in litigation.

§ 551.704 Claimant's representative.

A claimant may designate a representative to assist in preparing or presenting a claim. The claimant must designate the representative in writing. A representative may not participate in OPM interviews unless specifically requested to do so by OPM. An agency may disallow a claimant's representative who is a Federal employee in any of the following circumstances:

(a) When the individual's activities as a representative would cause a conflict of interest or position;

(b) When the designated representative cannot be released from his or her official duties because of the priority needs of the Government; or

(c) When the release of the designated representative would give rise to unreasonable costs to the Government.

§ 551.705 Filing an FLSA claim.

(a) *Filing an FLSA claim.* A claimant may file an FLSA claim with either the agency employing the claimant during the claim period or with OPM, but a claimant cannot pursue the same claim with both at the same time. OPM encourages a claimant to obtain a decision on the claim from the agency before filing the claim with OPM. However, a claimant is not required to do this. This a matter of personal discretion and a claimant may use either avenue. A claimant who receives an unfavorable decision on a claim from the agency may still file the claim with OPM. However, a claimant may not file the claim with the agency after receiving an unfavorable decision from OPM. An OPM decision on a claim is final and is not subject to further administrative review.

(b) *FLSA claim filed with agency.* An FLSA claim filed with an agency should be made according to appropriate agency procedures. At the request of the claimant, the agency may forward the claim to OPM on the claimant's behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (b) of this section.

(c) *FLSA claim filed with OPM.* An FLSA claim filed with OPM must be made in writing and must be signed by the claimant or the claimant's representative. Relevant information may be submitted to OPM at any time following the initial submission of a claim to OPM and prior to OPM's decision on the claim. The claim must include the following:

(1) The identity of the claimant (see § 551.706(a)(2) regarding requesting confidentiality) and any designated representative, the agency employing the claimant during the claim period, the position (job title, series, and grade) occupied by the claimant during the claim period, and the current mailing address, commercial telephone number, and facsimile machine number, if available, of the claimant and any designated representative;

(2) A description of the nature of the claim and the specific issues or incidents giving rise to the claim, including the time period covered by the claim;

(3) A description of actions taken by the claimant to resolve the claim within the agency and the results of any actions taken;

(4) A copy of any relevant decision or written response by the agency;

(5) Evidence available to the claimant or the claimant's designated representative which supports the claim, including the identity, commercial telephone number, and location of other individuals who may be able to provide information relating to the claim;

(6) The remedy sought by the claimant;

(7) Evidence, if available, that the claim period was preserved in accordance with § 551.702. The date the claim is received by the agency or OPM becomes the date on which the claim period is preserved;

(8) A statement from the claimant that he or she was or was not a member of a collective bargaining unit at any time during the claim period;

(9) If the claimant was a member of a bargaining unit, a statement from the claimant that he or she was or was not covered by a negotiated grievance procedure at any time during the claim period, and if covered, whether that procedure specifically excluded the claim from the scope of the negotiated grievance procedure;

(10) A statement from the claimant that he or she has or has not filed an action in an appropriate United States court; and

(11) Any other information that the claimant believes OPM should consider.

§ 551.706 Responsibilities.

(a) *Claimant.*

(1) *Providing information to OPM.* For all FLSA claims, the claimant or claimant's designated representative must provide any additional information requested by OPM within 15 workdays after the date of the request, unless the claimant or the claimant's representative requests additional time and OPM grants a longer period of time in which to provide the requested information. The disclosure of information by a claimant is voluntary. However, OPM may be unable to render a decision on a claim without the information requested. In such a case, the claim will be cancelled without further action being taken by OPM. In the case of an FLSA pay claim, it is the claimant's responsibility to provide evidence that the claim period was preserved in accordance with § 551.702 and of the liability of the agency and the claimant's right to payment.

(2) *Requesting confidentiality.* If the claimant wishes the claim to be treated confidentially, the claim must specifically request that the identity of the claimant not be revealed to the agency. Witnesses or other sources may also request confidentiality. OPM will make every effort to conduct its investigation in a way to maintain confidentiality. If OPM is unable to obtain sufficient information to render a decision and preserve the requested confidentiality, OPM will notify the claimant that the claim will be cancelled with no further action by OPM unless the claimant *voluntarily* provides written authorization for his or her name to be revealed.

(b) *Agency.*

(1) In FLSA exemption status determination claims, the burden of proof rests with the agency that asserts the FLSA exemption.

(2) The agency must provide the claimant with a written acknowledgment of the date the claim was received.

(3) Upon a claimant's request, and subject to any Privacy Act requirements, an agency must provide a claimant with information relevant to the claim.

(4) The agency must provide any information requested by OPM within 15 workdays after the date of the request, unless the agency requests additional time and OPM grants a longer period of time in which to provide the requested information.

§ 551.707 Withdrawal or cancellation of an FLSA claim.

(a) *Withdrawal.* A claimant or the claimant's representative may withdraw a claim at any time prior to the issuance of an OPM FLSA claim decision by providing written notice to the OPM office where the claim was filed.

(b) *Cancellation.* OPM may, at its discretion, cancel an FLSA claim if the claimant or the claimant's designated representative fails to provide requested information within 15 workdays after the date of the request, unless the claimant or the claimant's representative requests additional time and OPM grants a longer period of time in which to provide the requested information. OPM may, at its discretion, reconsider a cancelled claim on a showing that circumstances beyond the claimant's control prevented pursuit of the claim.

§ 551.708 Finality and effect of OPM FLSA claim decision.

OPM will send an FLSA claim decision to the claimant or the claimant's representative and the agency. An FLSA claim decision made by OPM is final. There is no further right of administrative appeal. At its discretion, OPM may reconsider a decision upon a showing that material information was not considered or there was a material error of law, regulation, or fact in the original decision. A decision by OPM under the Act is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers the Act. Upon receipt of a decision, the agency employing the claimant during the claim period must take all necessary steps to comply with the decision, including adherence with compliance instructions provided with the decision. All compliance actions must be completed within the time specified in the decision, unless an extension of time is requested by the agency and granted by OPM. The agency should identify all similarly situated current and, to the extent possible, former employees, ensure that they are treated in a manner consistent with the decision, and inform them in writing of their right to file an FLSA claim with the agency or OPM.

§ 551.709 Availability of information.

(a) Except when the claimant has requested confidentiality, the agency and the claimant must provide to each other a copy of all information submitted with respect to the claim.

(b) When a claimant has not requested confidentiality, OPM will disclose to the parties concerned the information contained in an FLSA claim file. When a claimant has requested confidentiality, OPM will delete any information identifying the claimant before disclosing the information in an FLSA claim file to the parties concerned. For the purposes of this subpart, *the parties concerned* means the claimant, any representative designated in writing, and any representative of the agency or OPM involved in the proceeding.

(c) Except when the claimant has requested confidentiality or the disclosure would constitute a clearly unwarranted invasion of personal privacy, OPM, upon a request which identifies the individual from whose file the information is sought, will disclose the following information from a claim file to a member of the public:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The remedy sought;

(3) The status of the claim;

(4) The decision on the claim; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

§ 551.710 Where to file an FLSA claim with OPM.

An FLSA claim must be filed with the OPM office serving the area where the cause or basis of the claim occurred. Following are OPM addresses and service areas.

OPM Atlanta Oversight Division

75 Spring Street SW., Suite 972, Atlanta, GA 30303–3109

Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia (except the Virginia locations listed under the Washington, DC Oversight Division)

OPM Chicago Oversight Division

230 S. Dearborn Street, DPN 30–6, Chicago, IL 60604–1687

Ilinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia, Wisconsin

OPM Dallas Oversight Division

1100 Commerce Street, Room 4C22, Dallas, TX 75242–9968

Arizona, Arkansas, Colorado, Louisiana, Montana, New Mexico, Oklahoma, Texas, Utah, Wyoming

OPM Philadelphia Oversight Division

600 Arch Street, Room 3400, Philadelphia, PA 19106–1596

Connecticut, Delaware, Maine, Maryland (except the Maryland locations listed under the Washington, DC Oversight Division), Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Puerto Rico, Virgin Islands

OPM San Francisco Oversight Division

120 Howard Street, Room 760, San Francisco, CA 94105–0001

Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, Pacific Ocean Area

OPM Washington, DC Oversight Division

1900 E Street NW., Room 7675, Washington, DC 20415–0001

The District of Columbia

In Maryland: the counties of Charles, Montgomery, and Prince George's.

In Virginia: the counties of Arlington, Fairfax, King George, Loudoun, Prince William, and Stafford; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and any overseas area not listed in the service area of another Oversight division.

[FR Doc. 97–33429 Filed 12–22–97; 8:45 am]

BILLING CODE 6325–01–P

federal register

Tuesday
December 23,1997

Part VI

Department of Education

School Improvement Programs—Women's Educational Equity Act; Notice

DEPARTMENT OF EDUCATION

School Improvement Programs—Women's Educational Equity Act

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On October 9, 1997, the Department published a notice inviting applications for new awards for fiscal year 1998 for the Women's Educational Equity Act (WEEA) program (62 FR 52916). The deadline for receipt of applications under that notice was November 24, 1997. That notice indicated that an estimated $1,500,000 would be available for new awards. Because the Department received an appropriation for the program that was less than anticipated, it considered canceling the competition and notified applicants and potential applicants. However, upon further consideration, the Department has decided to run a competition for the limited funds that are available.

To allow potential applicants time to respond, the Department is establishing a new deadline for transmittal of applications and is changing the estimated number of awards for the WEEA implementation and research and development grants. Applications that have already been submitted will be considered under this competition. However, if an applicant wishes to amend its application, amendments must be submitted by the new deadline established by this notice.

Deadline for Transmittal of Applications: January 21, 1998.

Deadline for Intergovernmental Review: March 31, 1998.

Estimated Available Funds: $500,000.

Estimated Number of Awards: Implementation Grants: 2; Research and Development Grants: 1–2.

Note: The Department is not bound by any estimates in this notice.

FOR FURTHER INFORMATION CONTACT: Beth Baggett, U.S. Department of Education, Room 4500, the Portals Building, 600 Independence Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.* Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Note: The official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ww.edgov/news.html.

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 7231–7238.

Dated: December 18, 1997.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–33446 Filed 12–12–97; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 62, No. 246

Tuesday, December 23, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10
65197–65308	11
65309–65592	12
65593–65740	15
65741–65990	16
65991–66250	17
66251–66494	18
66495–66812	19
66813–66972	22
66973–67256	23

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987
7061 66251

Executive Orders:
13069 65989
13070 66493

Administrative Orders:

Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005
No. 96–7 of December 5, 1997 66253
No. 96–8 of December 5, 1997 66255

5 CFR

213 63627
315 63627
410 63630
531 65311
532 66973
551 67238
591 63630
1201 66813

7 CFR

2 65593
17 63606
58 66257
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741, 65991, 67117
927 66495
1209 66973
1412 63441
1944 67216

Proposed Rules:
51 66033
70 63471
205 65850
610 64174
729 63678
800 66036
810 66036
966 66312
980 66312
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

50 66259
78 ..... 64134, 65596
91 64265
93 64265
94 ..... 65747, 65999

Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 ..... 63825, 66977
70 63825
73 63640
1703 66815

Proposed Rules:
40 65039
50 ..... 63892, 63911, 66038
70 63911

11 CFR

Proposed Rules:
100 66832
114 ..... 65040, 66832

12 CFR

8 64135
202 66412
203 66259
226 ..... 63441, 66179
265 64996
506 ..... 66260, 67117
516 64138
543 64138
544 ..... 66260, 67117
545 ..... 64138, 66260, 67117
552 ..... 64138, 66260, 67117
556 64138
559 ..... 66260, 67117
560 ..... 66260, 67117
561 ..... 66260, 67117
563 ..... 64138, 66260, 67117
565 ..... 66260, 67117
567 ..... 66260, 67117
575 ..... 66260, 67117
614 ..... 63644, 66816
703 64146
704 64148
790 65197
791 64266

934.....65197
960.....66977
1806.....64440

Proposed Rules:
225.....64997
226.....64769
404.....64177
405.....64177
708a.....64185
708b.....64187

14 CFR
39 .....63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750, 66001, 66264, 66266, 66268, 66269, 66271, 66498, 66500, 66502, 66506, 66508, 66511, 66512, 66980
71 .....64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606, 66179, 66818
73 .....65359, 65360, 66002
91.....66248
93.....66248
95 .....65016, 65361, 65363
97 .....63447, 63449, 63451
121.....65202, 66248
135.....66248
255.....63837, 66272
1260.....63452

Proposed Rules:
39 .....63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65768, 66315, 66317, 66560, 66561, 66562, 66563, 66565, 66567
71 .....63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631, 66838, 66840

15 CFR
295.....64682
922.....66003

Proposed Rules:
806.....65043
960.....65384

17 CFR
15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

Proposed Rules:
1.....66569
33.....66569

18 CFR
35.....64688
37.....64715
401.....64154

19 CFR
4.....66521

20 CFR
255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:
10.....67120
25.....67120
211.....64188
422.....63681

21 CFR
101 .....63647, 63653, 64634, 66275
179.....64102, 64107
211.....66522
500.....66982
520.....65020
522.....66983
524.....65752
558 .....66522, 66984, 66985, 66986
866.....66003

Proposed Rules:
200.....64048
801.....67011
803.....67011
804.....67011
806.....67011
807.....67011
808.....65384, 66179
810.....67011
820.....67011
821.....67011
878.....65770
1002.....67011
1020.....65235, 67011
1308.....64526

22 CFR

Proposed Rules:
22.....63478
51.....63478
53.....63478

23 CFR
1327.....63655

Proposed Rules:
655.....64324

24 CFR
100.....66424
103.....66424
201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

Proposed Rules:
180.....66488

25 CFR

Proposed Rules:
514.....65775

26 CFR
25.....66987
54.....66932
602.....66987

Proposed Rules:
1.....64190, 66575
52.....67013
54.....66967

28 CFR
0.....63453
540.....65184, 65196

29 CFR
520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203, 66275
2590.....66932
4011.....65607
4022.....65607
4044.....65609, 65610

Proposed Rules:
1910.....65388
2550.....66908
4022.....66319

30 CFR
206.....65753
901.....66819

Proposed Rules:
56.....65777, 67013
57 .....64789, 65777, 67013
62.....65777, 67013
70.....65777, 67013
71.....65777, 67013
75.....64789
913.....67014
917.....63684, 65044
926.....63685, 64327
936.....65632
946.....67016

31 CFR
500.....64720

Proposed Rules:
356.....64528

32 CFR
175.....66523
199.....66969, 66992
320.....65020

Proposed Rules:
199.....64191, 67018
901.....63485

33 CFR
100.....65021, 66995
117 .....63847, 66005, 66006
160.....65203
165.....65022

Proposed Rules:
62.....67031
66.....67031
117.....66039

36 CFR
701.....64279

Proposed Rules:
1.....63488
14.....63488
242.....66216
327.....64192

37 CFR
202.....63657, 66822

Proposed Rules:
253.....63502, 65777
255.....63506, 65778

38 CFR
4.....65207
17.....64722
21 .....63847, 63848, 66277
36.....63454

Proposed Rules:
21.....66320
20.....64790

39 CFR
111.....63850
255.....66996
262.....64280
265.....64280
954.....66997

40 CFR
9.....66278
52 .....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613, 66007, 66279, 66822, 66998, 67000, 67002, 67004, 67006
58.....67009
62.....65616
63.....64736, 65022
64.....63662
70.....63662
71.....63662
72.....66278
73.....66278
74.....66278
75.....66278
77.....66278
78.....66278
80.....63853
81 .....64284, 64725, 65025
180 .....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369, 66008, 66014, 66020
185 .....64048, 64284, 64287, 66020
186.....64048, 66020
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738

Proposed Rules:
51.....64532, 66841
52 .....63687, 64329, 64543, 647389, 65046, 65634, 66040, 66042, 66043, 66046, 66576, 66843, 67034, 67035
62.....65635
63.....65049, 66049
80.....63918
81.....63687, 66578
85.....66841
112.....63812
144.....67035
146.....67035
194.....64327
441.....66182
721.....64738
799.....67036, 67038

41 CFR
51–2.....66527
51–4.....66527
51–6.....66527
60–1.....66970
60–999.....66970
105–60.....64740
301.....63798

42 CFR
416.....66726
417.....63669
482.....66726
483.....67174
485.....66726
489.....66726

Proposed Rules:
1001.....63689, 65049

43 CFR
418.....66442
3740.....65376
3810.....65376
3820.....65376

Proposed Rules:
4.....64544

44 CFR
61.....66026

45 CFR
Ch. XI.....66529
146.....66932
205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301
1110.....66825

Proposed Rules:
1302.....65778

46 CFR
114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303, 65739
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR
20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
69.....65619, 66029
73 .....63674, 65392, 65764, 65765, 65766, 66030, 66031, 66294, 66295, 66530, 66826
74.....65392

Proposed Rules:
1.....65780, 66321
21.....65780
32.....65053
73 .....63690, 65781, 65782, 66323, 66324
74.....65780

48 CFR
Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19 .....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31 .....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42 .....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52 .....64914, 64915, 64916
53 .....64914, 64916, 64934, 64936, 64940
5231.....66826

Proposed Rules:
204.....65782
1843.....64545
1852.....64545

49 CFR
171.....65186, 66900
172.....66898
174.....66898
175.....66898
176.....66898
177.....66898
219.....63464, 63675
225.....63675
240.....63464
1241.....65378

Proposed Rules:
Ch. X.....64193
172.....66903
174.....66903
175.....66903
176.....66903
177.....66903
195.....65635
213.....65401
243.....65479
572.....64546

50 CFR
17.....64306, 66295
20.....63608
222.....63467
285.....66828
600.....66531
622 .....63677, 66304, 67010
648 .....63872, 64765, 66304
660.....63876
679 .....63877, 63878, 63880, 64760, 65379, 65622, 65626, 66031, 66311, 66829

Proposed Rules:
14.....64335
17 .....64337, 64340, 64799, 64800, 65237, 65783, 65787, 66325, 66583, 67041
23.....64347
100.....66216
226.....66584
227.....66325
229.....65402
425.....66325
600.....65055, 66844
622.....65056
648.....65055, 66844
660.....66049
679 .....63690, 65402, 65635, 65638, 65644, 67041

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 23, 1997

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Mushroom promotion, research, and consumer information order; referendum procedures; published 12-23-97

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Connecticut; published 10-24-97

FEDERAL COMMUNICATIONS COMMISSION
Personal communications services:
Licenses in C block (broadband PCS)—
Installment payment financing; published 10-24-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
New drug applications—
Amprolium plus ethopabate with bacitracin zinc and roxarsone; published 12-23-97
Imidocarb dipropionate; published 12-23-97
Robenidine and bacitracin zinc; published 12-23-97
Salinomycin, bacitracin zinc, and roxarsone; published 12-23-97

POSTAL SERVICE
Organization and administration:
Handicapped persons; access to postal services, programs, facilities, and employment; discrimination complaint filing and processing; published 12-23-97
Practice and procedure:
Second-class mail privileges; denial, suspension, or revocation; published 12-23-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Allison Engine Co.; published 12-8-97
Bombardier; published 12-8-97

TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Qualified personal residence trust; sale of residence; published 12-23-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Walnuts grown in California; comments due by 12-29-97; published 10-30-97

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Fresh market tomatoes, etc.; comments due by 12-29-97; published 12-2-97

COMMERCE DEPARTMENT
Export Administration Bureau
Export licensing:
Commerce control list—
Specially designed; definition; comments due by 12-29-97; published 10-29-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering sea and Aleutian Islands groundfish; comments due by 1-2-98; published 12-17-97
Caribbean, Gulf and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 12-29-97; published 12-10-97
Carribbean, Gulf, and South Atlantic fisheries—
Snapper grouper fishery; comments due by 12-29-97; published 10-30-97
Magnuson Act provisions; comments due by 12-29-97; published 12-10-97
Land Remote Sensing Policy Act of 1992:
Private land remote-sensing space systems; licensing provisions; comments due by 1-2-98; published 11-3-97

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Fuels and fuel additives—
Northern Mariana Islands; anti-dumping and detergent additization requirements for conventional gasoline; exemption petition; comments due by 1-2-98; published 12-3-97
Northern Mariana Islands; anti-dumping and detergent additization requirements for conventional gasoline; exemption petition; comments due by 1-2-98; published 12-3-97
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 1-2-98; published 12-2-97
Air quality planning purposes; designation of areas:
Alaska; comments due by 1-2-98; published 12-2-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile; comments due by 12-29-97; published 10-29-97
Avermectin; comments due by 12-29-97; published 10-29-97
Lambda-cyhalothrin; comments due by 12-29-97; published 10-29-97
Tebuconazole; comments due by 12-29-97; published 10-29-97
Water programs:
Oil pollution prevention and response; non-transportation related onhore and offshore facilities; comments due by 1-2-98; published 12-2-97

FARM CREDIT ADMINISTRATION
Farm credit system:
Loan policies and operations—
Loan sales into secondary markets; relief from minimum stock purchase and borrower rights requirements; comments due by 1-2-98; published 12-2-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arizona; comments due by 12-29-97; published 11-19-97
Mississippi; comments due by 12-29-97; published 11-19-97
North Carolina et al.; comments due by 12-29-97; published 11-19-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Salt, salt substitutes, seasoning salt (e.g., garlic salt); serving sizes; reference amount; comments due by 1-2-98; published 12-2-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Physician fee schedule (1998 CY); payment policies and relative value unit adjustments and clinical psychologist fee schedule; establishment; comments due by 12-30-97; published 10-31-97
Physician fee schedule (1998 CY); payment policies and relative value unit adjustments
Practice expense relative value units adjustments; implementation delay; comments due by 12-30-97; published 10-31-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Northern goshawk; comments due by 12-29-97; published 9-29-97

NUCLEAR REGULATORY COMMISSION
Production and utilization facilities; domestic licensing:
Light-water power reactors; criticality accident requirements; comments due by 1-2-98; published 12-3-97
Production ahd utilization facitilities; domestic licensing:
Light-water power reactors; criticality accident requirements; comments due by 1-2-98; published 12-3-97

PERSONNEL MANAGEMENT OFFICE
Absence and leave:
Emergency leave transfer program; comments due by 1-2-98; published 11-3-97
Excepted service:
Student educational employment program; comments due by 1-2-98; published 12-2-97
Health benefits, Federal employees:
Disenrollment; comments due by 12-29-97; published 11-28-97

SECURITIES AND EXCHANGE COMMISSION
Securities:
Shareholder proposals; comments due by 1-2-98; published 11-25-97
Small entities; penalty-reduction policy statement; comments due by 12-31-97; published 4-4-97

STATE DEPARTMENT
Consular services; fee schedule:
Adjustments; comments due by 12-31-97; published 12-1-97

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Mississippi River, LA; regulated navigation area; comments due by 12-29-97; published 10-30-97

TRANSPORTATION DEPARTMENT
Privacy Act; implementation; comments due by 12-29-97; published 11-28-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Air tour operators; Hawaii; comments due by 12-29-97; published 10-30-97
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2)—
Noise limitations; comments due by 12-30-97; published 10-31-97
Airworthiness directives:
Airbus; comments due by 12-29-97; published 11-28-97
Airbus Industrie; comments due by 12-31-97; published 12-1-97
Boeing; comments due by 12-29-97; published 10-28-97
Dornier; comments due by 12-29-97; published 11-28-97
Empresa Brasileira de Aeronautica S.A.; comments due by 12-29-97; published 11-28-97
Extra Flugzeugbau GmbH; comments due by 12-29-97; published 10-23-97
Fairchild; comments due by 1-2-98; published 11-3-97
Fokker; comments due by 12-29-97; published 11-28-97
General Electric Co.; comments due by 12-30-97; published 10-31-97
Airworthiness standards:
Special conditions—
Learjet Inc. model 55 airplane; comments due by 12-29-97; published 11-12-97
Atlantic high offshore airspace area; comments due by 1-2-98; published 11-18-97
Class E airspace; comments due by 12-29-97; published 11-20-97

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Leak detection industry standard; incorporation by reference; comments due by 12-29-97; published 10-29-97

TREASURY DEPARTMENT
Customs Service
Export control:
Used motor vehicles; exportation requirements; comments due by 12-29-97; published 10-28-97

LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws will be published in the **Federal Register** on December 31, 1997.

Public Laws Electronic Notification Service (PENS)

Note: In order to provide better and faster service, PENS will begin using a new mailing-list management software. Effective January 5, 1997, if you wish to continue or begin receiving notification of newly enacted Public Laws, you will need to resubscribe or subscribe to PENS by sending E-mail to **LISTPROC@ETC.FED.GOV** with the message:

SUBSCRIBE PUBLAWS-L FIRSTNAME LASTNAME

The text of laws is not available through this service and we cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before the shown date.

```
AFR SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before the shown date.

```
AFRDO SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter my subscriptions as follows:

___ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

___ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. (Price includes regular domestic postage and handling, and is subject to change.) International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

105th Congress, 2nd Session, 1998

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 105th Congress, 2nd Session, 1998.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html .

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code: * 6216

S3

Charge your order. It's Easy!

☐ **YES,** enter my subscription(s) as follows:

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 105th Congress, 2nd Session, 1998 for $190 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) 12/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5419

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions in 24x microfiche format:

___ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

___ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

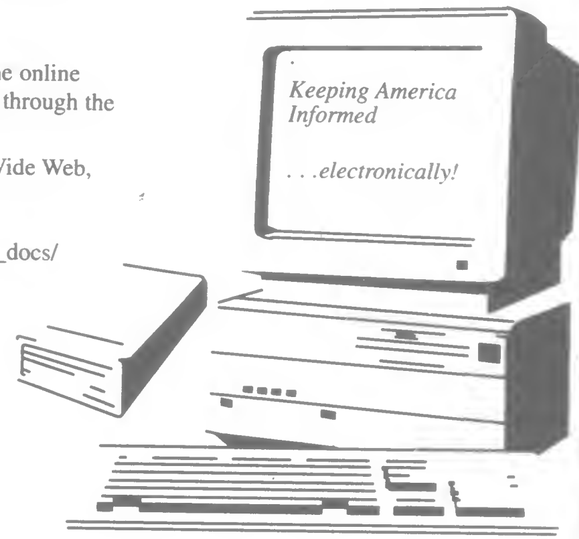
Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.access.gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

Order Now!

The United States Government Manual 1997/1998

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.



$40 per copy

United States Government INFORMATION
PUBLICATIONS • PERIODICALS • ELECTRONIC PRODUCTS

Charge your order. It's easy!

Order Processing Code
*7917

❑ **YES,** please send me _____ copies of **The United States Government Manual** 1997/98, S/N 069–000–00072–0 at $40 ($50 foreign) each.

Total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

Photocopies of this form are acceptable.
Please include complete order form with your payment.

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (expiration date) *Thank you for your order!*

Authorizing signature 9/97

Mail orders to: Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250–7954

Fax orders to: (202) 512–2250

Phone orders to: (202) 512–1800

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register



Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5421

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

❑ **YES,** enter the following indicated subscriptions for one year:

___ **LSA (List of CFR Sections Affected),** (LCS) for $27 per year.
___ **Federal Register Index** (FRSU) $25 per year.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

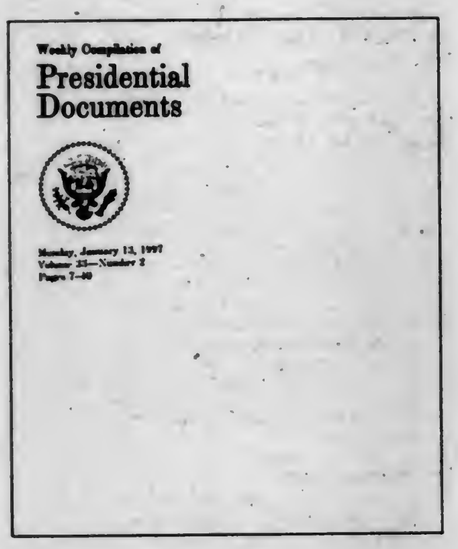
(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5420

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter ____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–24–97
Vol. 62 No. 247

federal register

Wednesday
December 24, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–24–97
Vol. 62 No. 247
Pages 67257–67548

federal register

Wednesday
December 24, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on *GPO Access* products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530; 1–888–293–6498
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 247
Wednesday, December 24, 1997

Agency for International Development
NOTICES
Meetings:
International Food and Agricultural Development Board, 67405–67406

Agency for Toxic Substances and Disease Registry
NOTICES
Superfund program:
Hazardous substances priority list (toxicological profiles), 67375–67377

Agricultural Marketing Service
PROPOSED RULES
Spearmint oil produced in Far West, 67297–67300
NOTICES
Apples, canned; grade standards, 67326–67327
Grants and cooperative agreements; availability, etc.:
Federal-State marketing improvement program, 67327

Agricultural Research Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Biotechnology risk assessment research program, 67488–67490

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Cooperative State Research, Education, and Extension Service
See Farm Service Agency
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67325–67326

Air Force Department
PROPOSED RULES
Environmental impact analysis process, 67305–67320
NOTICES
Commercial activities performance (OMB A-76); cost comparison studies, 67348–67350

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
Americans with Disabilities Act; implementation:
Outdoor Developed Areas Accessibility Guidelines Regulatory Negotiation Committee—
Meetings, 67320
NOTICES
Meetings:
Access Board, 67332

Assassination Records Review Board
NOTICES
Formal determinations on records release, 67332–67344

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Vaccine Advisory Committee, 67377

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
New York, 67344
Pennsylvania, 67344
Wyoming, 67344–67345

Coast Guard
RULES
Coast Guard Authorization Act of 1996; implementation:
International management code for safe operation of ships and pollution prevention, 67492–67515
Vessel inspection alternatives:
Classification procedures, 67526–67537

Commerce Department
See International Trade Administration

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Biotechnology risk assessment research program, 67488–67490

Defense Department
See Air Force Department
See Defense Special Weapons Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67347–67348

Defense Special Weapons Agency
RULES
Privacy Act; implementation, 67291–67292

Drug Enforcement Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67407–67409

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
International research and studies program; annual report publication, 67540–67541
Meetings:
Indian Education National Advisory Council, 67350–67351
National Institute on Disability and Rehabilitation Research, 67544

Energy Department
See Federal Energy Regulatory Commission
RULES
Privacy Act: implementation, 67518–67519

NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Paducah Gaseous Diffusion Plant, KY, 67351
Secretary of Energy Advisory Board, 67351–67352
Privacy Act:
Systems of records, 67520–67523

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 67320–67323
Toxic substances:
Testing requirements—
Biphenyl, etc., 67466–67485
Water pollution; effluent guidelines for point source categories:
Industrial laundries industry; hearing, 67323–67324
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67358–67360
Clean Air Act:
Citizens suits; proposed settlements—
Chemical Manufacturers Association et al., 67360–67361
Environmental statements; availability, etc.:
Agency statements—
Weekly receipts, 67361
Meetings:
Aquatic life and wildlife; 2,3,7,8-TCDD toxicity equivalency factors application potential; technical workshop, 67361–67362
Drake Chemical Superfund Site Incinerator, PA; risk issues; technical workshop, 67362
Environmental Financial Advisory Board, 67362–67363
National Drinking Water Advisory Council, 67363
Science Advisory Board, 67363–67365
Pesticide registration, cancellation, etc.:
Triforine Technical, etc., 67365–67366

Executive Office of the President
See Presidential Documents

Farm Service Agency
RULES
Organization, functions, and authority delegations:
Rural Development Mission Area, 67258–67265

Federal Aviation Administration
RULES
Class D airspace, 67265–67266
Class E airspace, 67266–67268
Restricted areas, 67268–67269
PROPOSED RULES
Airworthiness directives:
British Aerospace, 67304
SOCATA-Groupe AEROSPATIALE, 67300–67302
NOTICES
Exemption petitions; summary and disposition, 67428

Federal Communications Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67366
Common carrier services:
Telecommunications relay services; State certification; applications accepted, 67366–67367
Meetings:
Emergency Alert System National Advisory Committee, 67367

Federal Election Commission
PROPOSED RULES
Reports by political committees:
Campaign-related receipts and disbursements; recording, reporting, and report filing
Hearing, 67300

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
National Gas & Electric L.P. et al., 67355–67356
Ogden Energy China (Alpha) Ltd. et al., 67356–67358
Environmental statements; availability, etc.:
Allegheny Hydro No. 8 & 9 LP et al., 67358
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 67352
KN Interstate Gas Transmission Co., 67352–67353
Koch Gateway Pipeline Co., 67353
Mississippi River Transmission Corp., 67353–67354
Panhandle Eastern Pipe Line Co., 67354
Power Authority of State of New York; correction, 67354
Tennessee Gas Pipeline Co., 67354
Trailblazer Pipeline Co., 67355

Federal Maritime Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67367–67368
Agreements filed, etc., 67368–67369
Complaints filed:
Trade Net, Inc., 67369
Small Business Regulatory Enforcement Fairness Act; implementation, 67369–67372

Federal Railroad Administration
NOTICES
Traffic control systems; discontinuance or modification:
SOO Line Railroad Co. et al., 67429–67430

Federal Trade Commission
NOTICES
Prohibited trade practices:
Honeywell Inc., 67372–67373

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67431

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Topeka shiner, 67324
NOTICES
Endangered and threatened species:
Conservation agreements—
Spotted frog in Utah, 67398

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Decoquinate and bacitracin zinc with roxarsone, 67273
Medical devices:
Medical device corrections and removals; reporting and recordkeeping requirements
Effective date stay, 67274
Organization, functions, and authority delegations:
Center for Devices and Radiological Health, 67270–67273
NOTICES
Harmonisation International Conference; guidelines availability:
Pharmaceuticals—
Q3C impurities; residual solvents, 67377–67388

Forest Service
NOTICES
Appealable decisions; legal notice:
Intermountain region, 67327–67329

General Accounting Office
NOTICES
Standards for internal control in Federal government; document availability, 67373–67374

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
NOTICES
Grant and cooperative agreement awards:
National Academy of Sciences, 67374
Reports and guidance documents; availability, etc.:
Dietary supplement labeling policy, 67374–67375

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67388–67389
Reporting and recordkeeping requirements, 67389–67392

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 67397–67398

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
Mobile-Washington County Band of Choctaw Indians of South Alabama, 67398–67400

Inspector General Office, Health and Human Services Department
NOTICES
Social Security Act:
Permissive exclusion authority; implementation criteria, 67392–67394

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
PROPOSED RULES
Employment taxes and collection of income taxes at source:
FICA and FUTA taxation of amounts under employee benefit plans, 67304–67305

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Cut-to-length carbon steel plate from—
Brazil, 67345
Roller chain, other than bicycle, from—
Japan, 67345–67347

International Trade Commission
NOTICES
Import investigations:
Extruded rubber thread from—
Malaysia, 67406–67407

Justice Department
See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67409–67410

Labor Department
See Labor Statistics Bureau
See Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67410

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67410–67411

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Ward Valley, San Bernardino County, CA; tritium and related materials testing, 67400
Meetings:
Resource advisory councils—
Arizona, 67400–67401
Opening of public lands:
Wyoming, 67401
Recreation management restrictions, etc.:
Forks of Butte Creek Special Area, CA; recreational mineral collection; fee adjustment, 67401
Resource management plans, etc.:
Arizona Strip District, AZ, 67401–67402
Farmington District, NM, 67402–67405

Minerals Management Service
RULES
Outer Continental Shelf; geological and geophysical explorations, 67278–67291

Mine Safety and Health Administration
NOTICES
Mining products; testing, evaluation, and approval; user adjustment fees, 67411–67413

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 67430–67431

National Institutes of Health
NOTICES
Meetings:
National Institute of Allergy and Infectious Diseases, 67394–67395
National Institute of Environmental Health Sciences, 67394
National Institute on Aging, 67394
National Institute on Deafness and Other Communication Disorders, 67395–67396
Scientific Review Center special emphasis panels, 67396

National Park Service
NOTICES
Meetings:
Glacier Bay National Park and Preserve, AK; commercial fishing proposal; workshops, 67405

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 67416
Safety analysis and evaluation reports; availability, etc.:
Hydro Resources, Inc., 67416–67417
Applications, hearings, determinations, etc.:
Atlantic City Electric Co., 67413–67414
Atlantic City Electric Co. et al., 67414–67415
Conam Inspection, Inc., 67416

Nuclear Waste Technical Review Board
NOTICES
Meetings, 67417–67418

Pension Benefit Guaranty Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67418–67420

Personnel Management Office
RULES
Prevailing rate systems, 67257–67258
PROPOSED RULES
Retirement, health benefits, and life insurance, Federal employees:
Decennial census employees with dual appointments; continuity of coverage requirements; exemption, 67295–67296
NOTICES
Personnel management demonstration projects:
Commerce Department—
Alternative personnel management system, 67434–67463

Presidential Documents
PROCLAMATIONS
Government agencies and employees:
Secretary of Commerce; delegation of authority (Memorandum of December 19, 1997), 67547

Public Debt Bureau
See Fiscal Service

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Research and Special Programs Administration
RULES
Pipeline safety:
Drug use and alcohol misuse control in natural gas, liquefied natural gas, and hazardous pipeline operations, 67293–67294
Facility response plan submissions; reporting cycle changes, 67292–67293

Rural Business-Cooperative Service
RULES
Organization, functions, and authority delegations:
Rural Development Mission Area, 67258–67265

Rural Housing Service
RULES
Organization, functions, and authority delegations:
Rural Development Mission Area, 67258–67265
NOTICES
Grants and cooperative agreements; availability, etc.:
Housing preservation program, 67329–67330

Rural Utilities Service
RULES
Organization, functions, and authority delegations:
Rural Development Mission Area, 67258–67265
NOTICES
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1998; implementation:
Interest rates for 1998 FY RUS cost-of-money loans, etc., 67330–67331
Grant and cooperative agreement awards:
Bristol Bay Area Health Corp. et al., 67331–67332

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67419–67420
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 67422
MBS Clearing Corp., 67422–67423
National Association of Securities Dealers, Inc., 67423–67425
Philadelphia Stock Exchange, Inc., 67425–67426
Applications, hearings, determinations, etc.:
Merrill Lynch & Co., Inc., et al., 67420–67422

Small Business Administration
NOTICES
Meetings; district and regional advisory councils:
Florida, 67427
Massachusetts, 67427

Social Security Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67427

State Department
RULES
International traffic in arms regulations:
Miscellaneous amendments, 67274–67278
NOTICES
Meetings:
Private International Law Advisory Committee, 67427–67428

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
See Fiscal Service
See Internal Revenue Service

United States Information Agency
NOTICES
Exchange visitor program:
Skills list
Czech Republic; removal, 67431–67432
Voice of America programs and program services; private sector partners, joint ventures, and corporate underwriting, 67432

Separate Parts In This Issue

Part II
Office of Personnel Management, 67434–67463

Part III
Environmental Protection Agency, 67466–67485

Part IV
Department of Agriculture, Agricultural Research Service, 67488–67490

Part V
Department of Transportation, Coast Guard, 67492–67515

Part VI
Department of Energy, 67518–67519, 67520–67523

Part VII
Department of Transportation, Coast Guard, 67526–67537

Part VIII
Department of Education, 67540–67541

Part IX
Department of Education, 67544

Part X
The President, 67547.

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandum:
December 19, 1997.....67548

5 CFR
532 (2 documents).....67257, 67258

Proposed Rules:
831.....67295
842.....67295
870.....67295
890.....67295

7 CFR
2003.....67258

Proposed Rules:
985.....67297

10 CFR
1008.....67518

11 CFR
Proposed Rules:
102.....67300
104.....67300
108.....67300

14 CFR
71 (3 documents).....67265, 67266, 67267
73 (2 documents).....67268, 67269

Proposed Rules:
39 (2 documents).....67300, 67303

21 CFR
5.....67270
558.....67273
806.....67274

22 CFR
120.....67274
123.....67274
124.....67274
126.....67274
127.....67274
129.....67274

26 CFR
Proposed Rules:
31.....67304

30 CFR
250.....67278
251.....67278

32 CFR
318.....67291

Proposed Rules:
989.....67305

33 CFR
96.....67492
151.....67526

36 CFR
Proposed Rules:
1190.....67320
1191.....67320

40 CFR
Proposed Rules:
52.....67320
441.....67323
799.....67466

46 CFR
1.....67526
2.....67492
8.....67526

31 (2 documents).....67492, 67526
69.....67526
71 (2 documents).....67526
91 (2 documents).....67526
107 (2 documents).....67526, 67526
115.....67492
126.....67492
153.....67526
154.....67526
171.....67526
175.....67492
176.....67492
189.....67492

49 CFR
194.....67292
199.....67293

50 CFR
Proposed Rules:
17.....67324

Rules and Regulations

Federal Register
Vol. 62, No. 247
Wednesday, December 24, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI06

Prevailing Rate Systems; Removal of Putnam, Richmond, and Rockland Counties, NY, and Monmouth County, NJ, from the New York, NY, Appropriated Fund Survey Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to remove Putnam, Richmond, and Rockland Counties, NY, and Monmouth County, NJ, from the survey area of the New York, NY, appropriated fund Federal Wage System wage area. The four counties will remain in the area of application of the New York, NY, wage area.

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Allen at (202) 606–2848, or send an email message to maallen@opm.gov.

SUPPLEMENTARY INFORMATION: On November 3, 1997, OPM published a proposed rule to remove Putnam, Richmond, and Rockland Counties, NY, and Monmouth County, NJ, from the survey area of the New York, NY, appropriated fund Federal Wage System (FWS) wage area (62 FR 59300). The proposed rule provided a 30-day period for public comment, during which OPM received one comment. The comment was related to the definition of the Newburgh, NY, wage area—a matter previously decided by OPM following lengthy discussions at meetings of the Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national-level labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees. The proposed rule is therefore being adopted as a final rule.

When the FWS was established in 1972, the New York, NY, survey area was composed of Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester Counties, NY; and Essex, Hudson, Morris, and Union Counties, NJ. In 1975, FPRAC agreed by consensus to recommend that the New York, NY, survey area be expanded to include Putnam County, NY; and Bergen, Middlesex, Monmouth, Passaic, and Somerset Counties, NJ. This change was made so as to include 100 percent of the New York wage area's FWS employment in the New York, NY, survey area and to provide for a larger number of surveyable private industrial establishments.

As the largest FWS survey—with a sample of more than 900 industrial establishments—the New York, NY, FWS wage survey has become increasingly difficult to conduct because its logistical demands create unusual burdens on local agency activities already strained by downsizing and budget constraints. To reduce the logistical burdens of the New York, NY, FWS wage survey, OPM is removing Putnam, Richmond, and Rockland Counties, NY, and Monmouth County, NJ, from the New York, NY, survey area. Of the 19 counties in the New York, NY, survey area, OPM is removing these four counties from the survey area because their removal appears to offer the best means of reducing the logistical burdens of surveys in the New York, NY, wage area while least affecting the determination of prevailing rates for FWS employees in that wage area.

The removal of these four counties from the New York, NY, FWS survey area leaves about 90 percent of the wage area's FWS employment in the New York, NY, survey area, and reduces the number of surveyable private industrial establishments in the New York, NY, survey universe by only about 4 percent. OPM also considered the possible removal of other counties from the New York survey area, but none appeared to offer as convincing a rationale for removal as do Putnam, Richmond, Rockland, or Monmouth Counties. FPRAC reviewed and concurred by consensus with this change.

Because of a typographical error in appendix C to subpart B of 5 CFR part 532, the wage area listing for the New York, NY, wage area follows immediately after the wage area listing for the Newburgh, NY, wage area without showing the title of the New York, NY, wage area. This final rule also corrects that inadvertent omission.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.
Janice R. Lachance,
Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix C to Subpart B of Part 532 [Amended]

2. Appendix C to subpart B is amended by revising the wage area listings for the Newburgh, New York, and New York, New York, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

New York

* * * * *

Newburgh

Survey Area
New York:
Dutchess
Orange
Ulster

Area of Application. Survey Area Plus
New York:
Delaware
Sullivan

New York

Survey Area

New York:
Bronx
Kings
Nassau
New York
Queens
Suffolk
Westchester
New Jersey:
Bergen
Essex
Hudson
Middlesex
Morris
Passaic
Somerset
Union

Area of Application. Survey Area Plus

New York:
Putnam
Richmond
Rockland
New Jersey:
Monmouth
Sussex

* * * * *

[FR Doc. 97–33581 Filed 12–23–97; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI11

Prevailing Rate Systems; Abolishment of Kansas City, MO, Special Wage Schedule for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule to abolish the Federal Wage System (FWS) special wage schedule for printing positions in the Kansas City, Missouri, wage area. Printing and lithographic employees in Kansas City will now be paid rates from the regular Kansas City wage schedule.

DATES: This interim rule becomes effective on January 4, 1998. Comments must be received by January 23, 1998.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Mark Allen at (202) 606–2848, or send an email message to maallen@opm.gov.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to OPM that the Kansas City, MO, special wage schedule for printing positions be abolished and that the regular Kansas City wage schedule apply to printing employees in the Kansas City wage area. This recommendation was based on the fact that the number of employees paid from the special schedule has declined in recent years from a total of about 70 employees in 1985 to a current total of about 30 employees. With the reduced number of employees, it has become increasingly difficult to comply with the requirement that workers paid from the special printing schedule participate in the local wage survey process. A full-scale special wage survey in the Kansas City wage area would require the substantial work effort of contacting about 70 printing establishments spread over 8 counties and would require the participation of about 10 percent of the employees who are paid from the special printing schedule.

Upon abolishment of the Kansas City special printing schedule, the printing and lithographic employees will be converted to the regular schedule for the Kansas City wage area on a grade-for-grade basis. An employee's new rate of pay will be set at the rate for the step of the applicable grade of the regular schedule that equals the employee's existing scheduled rate of pay. When the existing rate falls between two steps, an employee's new rate will be set at the rate for the higher of those two steps. Pay retention provisions will apply for the few employees not receiving increases upon conversion. This conversion does not constitute an equivalent increase for within-grade increase purposes.

The Federal Prevailing Rate Advisory Committee, the statutory national-level labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with this change.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because a new regular wage schedule will go into effect in the Kansas City wage area on January 4, 1998, and employees currently paid from the special printing schedule for the wage area would have received a wage adjustment on that date had the Department of Defense been able to conduct a special wage survey in the wage area in 1997.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. In § 532.279, paragraph (j)(3) is removed, and paragraph (j)(4) is redesignated as paragraph (j)(3).

[FR Doc. 97–33583 Filed 12–23–97; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 2003

Functional Organization of the Rural Development Mission Area

AGENCIES: Rural Housing Service; Rural Business-Cooperative Service; Rural Utilities Service; Farm Service Agency; USDA.

ACTION: Final rule.

SUMMARY: The issuing agencies amend their regulations to reflect the reorganization of the Department of Agriculture. The intended effect of this action is to provide efficient utilization of Department personnel resources. This publication provides the function statements for organizational units within the Rural Development mission area, the Rural Housing Service, Rural Business-Cooperative Service, and the Rural Utilities Service.

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Timothy J. Ryan, Assistant Administrator for Human Resources, Rural Development, STOP 0730, 1400 Independence Avenue, SW., Washington, DC 20250–0730; Telephone: (202) 690–9860.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management and has no impact on borrowers or other members of the public. This action is not published for proposed rulemaking because it involves only internal Agency management and publication for comment is unnecessary and contrary to the public interest.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments, or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Intergovernmental Consultation

These programs and activities are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This final action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this final action does not constitute a major Federal action significantly affecting the quality of human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Background

The Farmers Home Administration (FmHA) was abolished by the Department of Agriculture Reorganization Act of 1994 (1994 Act). The Office of the Assistant Administrator, Farmer Programs, and all its subordinate organizational units have been transferred to the Farm Service Agency (FSA). The remainder of the FmHA organizational units have been transferred in accordance with the 1994 Act to one of the following newly created agencies which make up the Rural Development mission area (Rural Development): the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service. The Rural Utilities Service also includes the organizational units of the former Rural Electrification Administration.

This rule adopts the organizational structure put into place following enactment of the 1994 Act on October 13, 1994. The rule only covers the Rural Development agencies. The functions and responsibilities delegated by the Under Secretary, Rural Development, to the Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, are published in 7 CFR part 2, subpart G, §§ 2.47 through 2.49.

List of Subjects in 7 CFR Part 2003

Organizations and functions (government agencies).

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for part 2003 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1989, 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 1480, *et seq.*

2. Subpart A of part 2003 is revised to read as follows:

Subpart A—Functional Organization of the Rural Development Mission Area

Sec.

2003.1 Definitions.
2003.2 General.
2003.3 [Reserved]
2003.4 [Reserved]
2003.5 Headquarters organization.
2003.6 Office of the Under Secretary.
2003.7–2003.9 [Reserved]
2003.10 Rural Development State Offices.
2003.11–2003.13 [Reserved]
2003.14 Field Offices.
2003.15–2003.16 [Reserved]
2003.17 Availability of information.
2003.18 Functional organization of RHS.
2003.19–2003.21 [Reserved]
2003.22 Functional organization of RUS.
2003.23–2003.25 [Reserved]
2003.26 Functional organization of the RBS.
2003.27–2003.50 [Reserved]

§ 2003.1 Definitions.

EEO—the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e *et seq.*

O&M—Operations and Management.

P&P—Policy and Planning.

RBS—Rural Business-Cooperative Development Service, USDA, or any successor agency.

RHS—Rural Housing Service, USDA, or any successor agency.

RTB—Rural Telephone Bank authorized by 7 U.S.C. 944.

Rural Development—Rural Development mission area of USDA.

RUS—Rural Utilities Service, USDA, or any successor agency.

Secretary—the Secretary of USDA.

USDA—the United States Department of Agriculture.

§ 2003.2 General.

The Rural Development mission area of the Department of Agriculture was established as a result of the Department of Agriculture Reorganization Act of 1994, Title II of Pub.L. 103–354. Rural Development's basic organization consists of Headquarters in Washington, D.C. and 47 State Offices. Headquarters maintains overall planning, coordination, and control of Rural Development agency programs. Administrators head RHS, RBS, and RUS under the direction of the Under Secretary for Rural Development. State Directors head the State Offices and are directly responsible to the Under Secretary for the execution of all Rural Development agency programs within the boundaries of their states.

§ 2003.3–2003.4 [Reserved]

§ 2003.5 Headquarters organization.

(a) The Rural Development Headquarters is comprised of:

(1) The Office of the Under Secretary;

(2) Two Deputy Under Secretaries; and,

3) Three Administrators and their staffs.

(b) The Rural Development Headquarters is located at 1400 Independence Avenue, SW., Washington, DC. 20250–0700

§ 2003.6 Office of the Under Secretary.

In accordance with 7 CFR § 2.17 the Secretary has delegated to the Under Secretary, Rural Development, authority

to manage and administer programs and support functions of the Rural Development mission area.

(a) *Office of the Deputy Under Secretary for P&P.* This office is headed by the Deputy Under Secretary for P&P. The Under Secretary, Rural Development, has delegated to the Deputy Under Secretary for P&P, responsibility for formulation and development of short-and long-range rural development policies of the Department in accordance with 7 CFR § 2.45. The Deputy Under Secretary for P&P reports directly to the Under Secretary, Rural Development, and provides guidance and supervision for research, policy analysis and development, strategic planning, partnerships and special initiatives. For budget and accounting purposes, all of the staff offices under the Deputy Under Secretary for P&P are housed in RBS.

(1) The Budget Analysis Division assesses potential impacts of alternative policies on the mission area's programs and operations and develops recommendations for change. The units are headed by the Chief Budget Officer, who individually serves as the top policy advisor to the Under Secretary and Deputy Under Secretary on all matters relating to mission area budget policy.

(2) The Research, Analysis and Information Division analyzes information on rural conditions and the strategies and techniques for promoting rural development. The division performs, or arranges to have conducted, short-term and major research studies needed to formulate policy.

(3) The Reinvention and Capacity Building Division coordinates the mission area's strategic planning initiatives, both at the National level and in the State Offices. The division assists the Rural Development agencies in their implementation of the Government Performance and Results Act (GPRA) and special initiatives of the Administration, USDA, and the Office of the Under Secretary.

(4) The Rural Initiatives and Partnership Division manages the mission area's involvement and coordination with other Federal and state departments and agencies to assess rural issues and develop model partnerships and initiatives to achieve shared rural development goals. The division is responsible for managing the National Rural Development Partnership and providing support and oversight of 37 State Rural Development Councils.

(b) *Office of the Deputy Under Secretary for O&M.* In accordance with 7 CFR 2.45, the Under Secretary, Rural Development, has delegated to the Deputy Under Secretary for O&M responsibility for providing leadership in planning, developing, and administering overall administrative management program policies and operational activities of the Rural Development mission area. The Deputy Under Secretary for O&M reports directly to the Under Secretary, Rural Development.

(1) *Office of the Deputy Administrator for O&M.* Headed by the Deputy Administrator for O&M, this office reports directly to the Deputy Under Secretary for O&M, and is responsible for directing and coordinating the consolidated administrative and financial management functions for Rural Development. This office provides overall guidance and supervision for budget and financial management, human resources management and personnel services, administrative and procurement services, information resources management and automated data systems. For budget and accounting purposes, all of the staff offices under the Deputy Administrator for O&M are housed in RHS.

(i) *Office of the Controller.* Headed by the Chief Financial Officer, this office supports the Deputy Administrator for O&M in executing Rural Development requirements related to compliance with the Chief Financial Officers Act of 1990 and provides leadership, coordination, and oversight of all financial management matters and financial execution of the budget for the Rural Development agencies. This office also has full responsibility for Rural Development agencies' accounting, financial, reporting, and internal controls. The office provides direct oversight to the Headquarters Budget Division, Financial Management Division, and the Office of the Assistant Controller, located in St. Louis, Missouri.

(ii) *Office of Assistant Administrator for Procurement and Administrative Services.* Headed by the Assistant Administrator for Procurement and Administrative Services, this office is responsible to the Deputy Administrator for O&M for overseeing the Procurement Management Division, the Property and Supply Management Division, and the Support Services Division:

(A) The Procurement Management Division is responsible for developing, implementing, and interpreting procurement and contracting policies for the Rural Development mission area. Major functions include planning outreach efforts and goals for small and disadvantaged businesses, providing staff assistance reviews in State and Local Offices, administering the Contracting Officer Professionalism Warrant program for Rural Development agencies, and coordinating the development of Rural Development's acquisition plans.

(B) The Property and Supply Management Division is responsible for developing office space acquisition and utilization policies, providing training to field office leasing officers, administering the Leasing Officer Warrant program, assuring accessibility compliance in Rural Development's work sites, administering Rural Development's Physical Security program, and establishing and providing oversight to the worksite Energy Conservation program. This office operates a nationwide supply warehousing and distribution program, and oversees a nationwide Personal Property Management and Utilization Program, manages the U.S. Department of Agriculture (USDA) Excess Personal Property Program for field level activities, and provides direct support services to Rural Development's St. Louis facilities.

(C) The Support Services Division has responsibility for designing, developing, administering, and controlling Rural Development's directives management and issuance system, coordinating Rural Development's Regulatory Agenda and Regulatory Program submissions to USDA and OMB, serving as **Federal Register** liaison, and analyzing and coordinating regulatory work plans for the Under Secretary. This office submits Paperwork Reduction Act public burden clearances to OMB, administers all printing programs, manages Rural Development travel policies and programs, and manages Freedom of Information Act, Privacy Act and Tort Claims programs.

(iii) *Office of Information Resources Management (IRM).* Headed by the Chief Information Officer, this office is responsible to the Deputy Administrator for O&M for developing Rural Development's IRM policies, regulations, standards and guidelines. This office provides overall leadership and direction to activities assigned to the following four major divisions:

(A) The Customer Services Division is responsible for direct customer and technical support (hardware and software).

(B) The Management Services Division coordinates all IRM acquisition, budget, and policy and planning activities in support of Rural Development automation.

(C) The Information Technology Division provides support technical services in the areas of data administration, system integrity management, research and development, and telecommunications.

(D) The Systems Services Division is responsible for planning, directing, and controlling activities related to Rural Development's Automated Information Systems.

(iv) *Office of the Assistant Administrator for Human Resources.* Headed by the Assistant Administrator for Human Resources, this office is responsible to the Deputy Administrator for O&M for the overall development, implementation, and management, of personnel and human resources support services for Rural Development. The office provides direction to the Headquarters Personnel Services, Human Resources Training and Mission Area Personnel Services Division, and Labor Relations Staff offices. The office is also responsible for the establishment of recruitment, retention, and development policies and programs supporting workforce diversity and affirmative action.

(2) *Office of Civil Rights Staff.* Headed by a staff director, this staff has primary responsibility for providing leadership and administration of the Civil Rights Program for the Rural Development mission area. The staff conducts on-site reviews of borrowers and beneficiaries of Federal financial assistance to ensure compliance with Titles VI and VII of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and prepares compliance reports. The staff conducts and evaluates Title VII compliance visits to insure that EEO programs are adequately implemented. In addition, the office develops, monitors, and evaluates Affirmative Employment programs for minorities, women and persons with disabilities, and coordinates and conducts community outreach activities at historically black colleges and universities. It also has oversight of special emphasis programs such as the Federal Women's Program, Hispanic Emphasis Program, and Black Emphasis Program. The staff director reports directly to the Deputy Under Secretary for O&M.

(3) *Office of Communications.* Headed by a director who reports directly to the Deputy Under Secretary for O&M, this office has primary responsibility for tracking legislation and development and institution of policies to provide public communication and information services related to the Rural Development. The office maintains a constituent data base and conducts minority outreach efforts and administers a public information and media center responsible for media inquiries, news releases, program announcements, media advisories, and information retrieval. This office also serves as a liaison with Office of Congressional Relations (OCR), Office of the General Counsel (OGC), and other Departmental units involved in Congressional relations and public information. This office drafts testimony, prepares witnesses, and provides staff for hearings and markups. In addition, the office briefs Congressional members and staff on the Rural Development matters, coordinates Rural Development's legislative activities with other USDA agencies and OMB and develops and implements legislative strategy. The staff also coordinates development and production of brochures, press releases, and other public information materials.

§§ 2003.7—2003.9 [Reserved]

§ 2003.10 Rural Development State Offices.

(a) Headed by State Directors, State Offices report directly to the Under Secretary, Rural Development, and are responsible to the three Rural Development agency Administrators for carrying out agency program operations at the State level, ensuring adherence to program plans approved for the State by the Under Secretary, and rendering staff advisory and manpower support to Area and Local offices. The Rural Development State Directors, for budget and accounting purposes, are housed in the RHS agency.

(b) Program Directors within the State Office provide oversight and leadership on major program functions. Major program functions include: Single Family and Multi-Family Housing loans and grants, Community Facility, Water and Waste Disposal, Business and Cooperative, and the Empowerment Zones and Enterprise Communities (EZ/EC) programs.

(c) The USDA Rural Development State Office locations are as follows:

State	Location
Alabama	Montgomery, AL
Alaska	Palmer, AK
Arizona	Phoenix, AZ
Arkansas	Little Rock, AR
California	Woodland, CA
Colorado	Lakewood, CO
Delaware	Camden, DE
Florida	Gainesville, FL
Georgia	Athens, GA
Hawaii	Hilo, HI
Idaho	Boise, ID
Illinois	Champaign, IL
Indiana	Indianapolis, IN
Iowa	Des Moines, IA
Kansas	Topeka, KS
Kentucky	Lexington, KY
Louisiana	Alexandria, LA
Maine	Bangor, ME
Massachusetts	Amherst, MA
Michigan	East Lansing, MI
Minnesota	St. Paul, MN
Mississippi	Jackson, MS
Missouri	Columbia, MO
Montana	Bozeman, MT
Nebraska	Lincoln, NE
Nevada	Carson City, NV
New Jersey	Mt. Holly, NJ
New Mexico	Albuquerque, NM
New York	Syracuse, NY
North Carolina	Raleigh, NC
North Dakota	Bismarck, ND
Ohio	Columbus, OH
Oklahoma	Stillwater, OK
Oregon	Portland, OR
Pennsylvania	Harrisburg, PA
Puerto Rico	Hato Rey, PR
South Carolina	Columbia, SC
South Dakota	Huron, SD
Tennessee	Nashville, TN
Texas	Austin, TX
Vermont	Montpelier, VT
Virginia	Richmond, VA
Washington	Olympia, WA
West Virginia	Charleston, WV
Wisconsin	Stevens Point, WI
Wyoming	Casper, WY

§§ 2003.11–2003.13 [Reserved]

§ 2003.14 Field Offices.

Rural Development field offices report to their respective State Director and State Office Program Directors. State Directors may organizationally structure their offices based on the program workloads within their respective State. Field offices generally are patterned in a three or two tier program delivery structure. In a three tier system, Local offices report to an Area office, that reports to the State Office. In a two tier system, a "Local" or "Area" office reports to the State Office. Locations and telephone numbers of Area and Local Offices may be obtained from the appropriate Rural Development State Office.

§§ 2003.15—2003.16 [Reserved]

§ 2003.17 Availability of information.

Information concerning Rural Development programs and agencies may be obtained from the Office of Communications, Rural Development, U. S. Department of Agriculture, STOP 0705, 1400 Independence Avenue SW., Washington, DC 20250–0705.

§ 2003.18 Functional organization of RHS.

(a) *General.* The Secretary established RHS pursuant to § 233 of the Department of Agriculture

Reorganization Act of 1994 (7 U.S.C. 6943).

(b) *Office of the Administrator.* According to 7 CFR 2.49, the Administrator has responsibility for implementing programs aimed at delivering loans and grant assistance to rural Americans and their communities in obtaining adequate and affordable housing and community facilities, in accordance with Title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) and the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

(1) *Legislative Affairs Staff.* The duties and responsibilities of this staff have now been aligned under the Office of Communication, headed by a director who reports directly to the Under Secretary for O&M. The Office of Communication is responsible for providing and carrying out legislative, public communication, and information services for the Rural Development mission area.

(2) *Office of Program Support Staff.* The Program Support Staff is headed by a staff director who is responsible to the Administrator for monitoring managerial and technical effectiveness of RHS programs. The staff coordinates review and analysis of legislation, Executive Orders, OMB circulars, and Department regulations for their impact on Agency programs. The staff develops, implements, and reports on architectural and environmental policies, in cooperation with the Department. Staff responsibilities also include managing RHS's Hazardous Waste Management Fund, coordinating the Debarment and Suspension process for RHS, tracking the use of Program Loan Cost Expense funds, and maintaining the RHS Internet "Home Page."

(3) *Office of Deputy Administrator, Single Family Housing.* Headed by the Deputy Administrator, Single Family Housing, this office is responsible to the Administrator for the development and implementation of RHS's Single Family Housing programs, which extend supervised housing credit to rural people of limited resources, for adequate, modest, decent, safe, and sanitary homes. The office is responsible for administering and managing sections 502 and 504 Rural Housing direct and guaranteed loan and grant programs, Rural Housing and Self-Help Site loans, the Self-Help Technical Assistance grant program, Housing Application Packaging and Technical and Supervisory Assistance grants, and Home Improvement and Repaid loans and grants. The office directs the following three divisions: Single Family Housing Processing Division, Single Family Housing Servicing and Property Management Division, and Single Family Housing Centralized Servicing Center in St. Louis, Mo.

(i) *Office of Single Family Housing Processing Division.* Headed by a division director, this division is responsible for development and nationwide implementation of policies on processing Single Family Housing direct and guaranteed program loans. In addition, the division provides direction on the following: the Rural Housing Targeted Area Set-Aside program, debarments, payment assistance, title clearance and loan closing, site/subdivision development, Deferred Mortgage Payment Program; construction defects, credit reports, appraisals, Manufactured Housing, coordinated assessment reviews, Home Buyer's Counseling/Education Program, and allocation of loan and grant program funds.

(ii) *Office of Single Family Housing Servicing and Property Management Division.* Headed by a division director, this division is responsible for the development and implementation of nationwide policies for servicing RHS's multi-billion dollar portfolio of Single Family Housing loans, and managing and selling Single Family Housing inventory properties. The division also conducts state program evaluations, identifies program weaknesses, makes recommendations for improvements, and identifies corrective actions.

(iii) *Office of Single Family Housing Centralized Servicing Center (CSC)—St. Louis, Missouri.* Headed by a director, CSC is responsible for centrally servicing RHS's multi-billion dollar portfolio of Single Family Housing loans. CSC provides interest credit or payment assistance renewals, performs escrow activities for real estate taxes and property hazard insurance, oversees collection of loan payments, and grants interest credit, payment assistance, and moratoria.

(4) *Office of the Deputy Administrator, Multi-Family Housing Division.* Headed by the Deputy Administrator, Multi-Family Housing, this office is responsible for the development and nationwide implementation of RHS's Multi-Family Housing programs, which extend supervised housing credit to rural residents an opportunity to have decent, safe, and sanitary rental housing. The following programs are administered and managed by this office: Section 515 Rural Rental Housing, Rural Cooperative and Congregate Housing Programs, Section 521 Rental Assistance, Farm Labor Housing loan and grant programs, Housing Preservation Grants, rural housing vouchers, and Housing Application Packaging Grants. This office directs the following two divisions:

(i) *Multi-Family Housing Processing Division.* Headed by a division director, this division is responsible for the development and nationwide implementation of policies on processing Multi-Family Housing program loans. The division manages the following program areas: elderly and family rental housing, Farm Labor Housing loans and grants, outreach contacts, congregate facilities, Housing Preservation Grants, cooperative housing, rural housing vouchers, appraisals, Congregate Housing Services Grants, Rental Assistance, Housing Application Packaging Grants, targeted area and nonprofit set asides, Multi-Family Housing suspensions and debarments, title clearance and loan closing, allocation and monitoring of loan and grant funds, adverse decisions and appeals, commercial credit reports, individual credit reports, and, site development.

(ii) *Multi-Family Housing Portfolio Management Division.* Headed by a division director, this division is responsible for the development and institution of policies on the management and servicing of the nationwide Multi-Family Housing programs. The Division implements current and long range plans for servicing Rural Rental Housing loans, Labor Housing loans and grants, and Rental Assistance or similar tenant subsidies.

(5) *Office of the Deputy Administrator, Community Programs.* Headed by the Deputy Administrator, Community Programs, this office is responsible for overseeing the administration and management of Community Facilities loans and grants to hospitals and nursing homes, police and fire stations, libraries, schools, adult and child care centers, etc. The office monitors and evaluates the administration of loan and grant programs on a nationwide basis and provides guidance and direction for community programs through two divisions, Community Programs Loan Processing Division and Servicing and Special Authorities Division.

(i) *Community Programs Loan Processing Division.* Headed by a director, this division is responsible for the overall administration, policy development, fund distribution, and processing of Community Facilities loans and other loan and grant programs assigned to the Division.

(ii) *Servicing and Special Authorities Division.* Headed by a division director, this division is responsible for the overall administration, policy development, and servicing of the Community Facilities loan and grant programs. The division conducts program evaluations, identifies program weaknesses, makes recommendations for improvements, and identifies corrective actions. The division also administers and services Nonprofit National Corporation loans and grants.

§§ 2003.19—2003.21 [Reserved]

§ 2003.22 Functional organization of RUS.

(a) *General.* The Secretary established RUS pursuant to § 232 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6942).

(b) *Office of the Administrator.* According to 7 CFR 2.47, the Administrator has responsibility for managing and administering the programs and support functions of RUS to provide financial and technical support for rural infrastructure to include electrification, clean drinking water, telecommunications, and water disposal systems, pursuant to the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 *et seq.*), and the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*). The office develops and implements strategic plans concerning the Rural Electrification Act of 1936, as amended. The Administrator serves as Governor of the Rural Telephone Bank (RTB) with a 13-member board of directors, and exercises and performs all functions, powers, and duties of the RTB in accordance with 7 U.S.C. 944.

(1) *Borrower and Program Support Services.* Borrower and Program Support Services consist of the three following staffs which are responsible to the Administrator for planning and carrying out a variety of program and administrative services in support of all RUS programs, and providing expert advice and coordination for the Administrator:

(i) *Administrative Liaison Staff.* Headed by a staff director, this staff advises the Administrator on management issues and policies relating to human resources, EEO, labor-management partnership, administrative services, travel management, automated information systems, and administrative budgeting and funds control.

(ii) *Program Accounting Services Division.* Headed by a division director, this division develops and evaluates the accounting systems and procedures of Electric, Telecommunications, and Water and Wastewater borrowers; assures that accounting policies, systems, and procedures meet regulatory, Departmental, General Accounting Office, OMB, and Treasury Department requirements; examines borrowers' records and operations, and reviews expenditures of loans and other funds; develops audit requirements; and approves Certified Public Accountants to perform audits of borrowers.

(iii) *Program and Financial Services Staff.* Headed by a staff director, this staff evaluates the financial conditions of troubled borrowers, negotiates settlements of delinquent loans, and makes recommendations to program Assistant Administrators on ways to improve the financial health of borrowers.

(2) *Office of Assistant Administrator—Electric Program.* Headed by the Assistant Administrator—Electric Program, this office is responsible to the Administrator for directing and coordinating the Rural Electrification program of RUS nationwide. This office develops, maintains, and implements regulations and program procedures on processing and approving loans and loan-related activities for rural electric borrowers. The office directs the following three divisions:

(i) *Electric Regional Divisions.* Headed by division directors, these two divisions are responsible for administering the Rural Electrification program in specific geographic areas and serving as the single point of contact for all distribution borrowers. The divisions provide guidance to borrowers on RUS loan policies and procedures, maintain oversight of borrower rate actions, and make recommendations to the Administrator on borrower applications for RUS financing. The divisions also assure that power plant, distribution, and transmission systems and facilities are designed and constructed in accordance with the terms of the loan and proper engineering practices and specifications.

(ii) *Power Supply Division.* Headed by a division director, this division is responsible for administering the Rural Electrification program responsibilities with regard to power supply borrowers nationwide and serves as primary point of contact between RUS and all such borrowers. The division develops and maintains a loan processing program for Rural Electrification Act purposes, and develops and administers engineering and construction policies related to planning, design, construction, operation, and maintenance for power supply borrowers.

(iii) *Electric Staff Division.* Headed by a division director, this division is responsible for engineering activities related to the design, construction, and technical operations and maintenance of power plants; distribution of power; and transmission systems and facilities, including load management and communications. The division develops criteria and techniques for evaluating the financing and performance of electric borrowers and forecasting borrowers' future power needs; and maintains financial expertise on the distribution and power supply loan program, and retail and wholesale rates.

(3) *Office of Assistant Administrator—Telecommunications Program.* Headed by the Assistant Administrator—Telecommunications Program, this office is responsible to the Administrator for directing and coordinating the National Rural Telecommunications, Distance Learning, and Telemedicine programs of RUS. The Assistant Administrator, Telecommunications Program, serves as Assistant Governor of the RTB and is responsible for the day-to-day activities of the RTB. The office develops, maintains, and implements regulations and program procedures on the processing and approval of grants, loans, and loan-related activities for all rural telecommunications borrowers and grant recipients. The office directs the following three divisions:

(i) *Telecommunications Standards Division.* Headed by a division director, this division is responsible for engineering staff activities related to the design, construction, and technical operation and maintenance of rural telecommunications systems and facilities. The office develops engineering practices, policies, and technical data related to borrowers' telecommunications systems; and evaluates the application of new communications network technology, including distance learning and telemedicine, to rural telecommunications systems.

(ii) *Advanced Telecommunications Services Staff.* Headed by a staff director, this staff primarily serves the Assistant Administrator, Telecommunications Program in the role of the Assistant Governor of the RTB. The office performs analyses and makes recommendations to the AAT on issues raised by the RTB Governor, Board of Directors, or RTB borrowers. This staff maintains official records for the RTB Board and prepares minutes of RTB Board meetings. The staff director serves as the Assistant Secretary to the RTB. The staff performs the calculations necessary to determine the cost of money rate to RTB borrowers and recommends and develops program-

wide procedures for loan and grant programs. The office is responsible for the Telecommunications Program's home page on the Internet.

(iii) *Telecommunications Area Offices.* Headed by area directors, these four offices are responsible for administering the Telecommunications, Distance Learning, and Telemedicine programs for specific geographic areas, and serving as the single point of contact for all program applicants and borrowers within their respective areas. The offices provide guidance to applicants and borrowers on RUS and RTB loan policies and procedures, and make recommendations to the Administrator on applications for loans, guarantees, and grants. The offices assure that borrower systems and facilities are designed and constructed in accordance with the terms of the loan, acceptable engineering practices and specifications, and acceptable loan security standards.

(4) *Office of the Assistant Administrator—Water and Environmental Programs.* Headed by the Assistant Administrator, Water and Environmental Programs, this office is responsible to the Administrator for directing and coordinating a nationwide Water and Waste Disposal Program for RUS as authorized under Section 306 of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1926). The office oversees administration of RUS policies on making and servicing loans and grants for water and waste facilities in rural America, and the development of engineering policies, and practices related to the construction and operation of community water and waste disposal systems. This office is responsible for development and coordination of environmental programs with regard to the Water and Waste Disposal Program and directs the following two divisions:

(i) *Water Programs Division.* Headed by the division director, this division is responsible for administering the Water and Waste Disposal loan and grant making and servicing and special authorities activities nationwide. This office also makes allocation of loan and grant funds to field offices and manages National Office reserves.

(ii) *Engineering and Environmental Staff.* Headed by a staff director, this staff is responsible for engineering activities at all stages of program implementation, including: review of preliminary engineering plans and specifications, procurement practices, contract awards, construction monitoring, and system operation and maintenance. The staff also develops Agency engineering practices, policies, and technical data related to the construction and operation of community water and waste disposal systems. The staff is responsible for coordinating environmental policy and providing technical support in areas such as: hazardous waste, debarment and suspension, flood insurance, drug free workplace requirements, and computer program software.

§§ 2003.23—2003.25 [Reserved]

§ 2003.26 Functional organization of RBS.

(a) *General.* The Secretary established RBS pursuant to § 234 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6944).

(b) *Office of the Administrator.* According to 7 CFR 2.48, the Administrator is responsible for managing and administering the programs and support functions of RBS to provide assistance to disadvantaged communities through grants and loans and technical assistance to businesses and communities for rural citizens and cooperatives, pursuant to the following authorities: the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c and 950aa *et seq.*), the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457), the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), and the Food Security Act of 1985 (7 U.S.C. 1932). These grants, loans, and technical assistance improve community welfare by enhancing organizational and management skills, developing effective economic strategies, and expanding markets for a wide range of rural products and services.

(1) *Resources Coordination Staff.* Headed by the staff director, this staff is responsible to the Administrator for preparing legislative initiatives and modifications for program enhancement. The staff monitors legislative and regulatory proposals that potentially impact RBS functions. The staff serves as liaison on budgetary and financial management matters between RBS staff and the Office of the Controller, and assists the Administrator in presenting and supporting RBS's budget and program plans. The staff also advises the Administrator and RBS officials on management issues and policies related to: human resources, labor relations, civil rights, EEO, space, equipment, travel, Senior Executive Service and Schedule C activities, contracting, automated information systems, and accounting. The staff provides analysis and recommendations on the effectiveness of administrative and management activities, and performs liaison functions between RBS and the Office of the Deputy Under Secretary for O&M on a wide variety of administrative functions.

(2) *Office of the Deputy Administrator, Business Programs.* Headed by the Deputy Administrator, Business Programs, this office is responsible to the Administrator for overseeing and coordinating the Business and Industry Guaranteed and Direct Loan programs, Intermediary Relending Program loans, Rural Business Enterprise grants, Rural Business Opportunity grants, Rural Economic Development loan and grant programs, and the Rural Venture Capital Demonstration Program. The office participates in policy planning, and program development and evaluation. It also directs the following three divisions:

(i) *Processing Division.* Headed by the division director, this division is responsible for developing and maintaining loan processing regulations, and directs the processing and approval of guaranteed and direct business and industry loans, and the Rural Venture Capital Demonstration Program. It provides technical assistance to field employees and borrowers on loan processing and develops approval criteria and performance standards for loans. The division recommends plans, programs, and activities related to business loan programs and provides environmental guidance and support.

(ii) *Servicing Division.* Headed by the division director, this office is responsible for developing and maintaining servicing regulations. It directs and provides technical assistance to field employees and borrowers on servicing business loans and grants. The division reviews large, complex, or potentially controversial loan and grant dockets related to loan servicing and recommends servicing plans, programs, and activities related to business loan and grant programs.

(iii) *Specialty Lenders Division.* Headed by the division director, this office is responsible for directing and developing and maintaining regulations concerning the processing and approval of Intermediary Relending loans, Rural Business Enterprise grants, Rural Business Opportunity grants, and Rural Economic Development loan and grant programs. The division provides technical assistance to field employees and borrowers on loan and grant processing and other activities. It also develops approval criteria and performance standards and recommends

plans, programs, and activities related to business loan and grant programs.

(3) *Office of the Deputy Administrator, Cooperative Services Programs.* Headed by the Deputy Administrator, Cooperative Services Programs, this office is responsible to the Administrator for providing service to cooperative associations by administering a program of research and analysis of economic, social, legal, financial, and other related issues concerning cooperatives. The office administers programs to assist cooperatives in the organization and management of their associations and a program for economic research and analysis of the marketing aspects of cooperatives. The division administers and monitors activities of the National Sheep Industry Improvement Center and the Appropriate Technology Transfer to Rural Areas Program, and the Rural Cooperative Development Grant Program. The office directs the following three divisions:

(i) *Cooperative Marketing Division.* Headed by the division director, this division is responsible for participating in the formulation of National policies and procedures on cooperative marketing. The division conducts research and analysis and gives technical assistance to farmer cooperatives on cooperative marketing of certain crops, livestock, aquaculture, forestry, poultry, semen, milk, and dairy products to improve their market performance and economic position.

(ii) *Cooperative Development Division.* Headed by the division director, this division is responsible for participating in the formulation of National policies and procedures on cooperative development. The office conducts evaluations and analysis of proposed new cooperatives to develop plans for implementing feasible operations, and advises and assists rural resident groups and developing cooperatives in implementing sound business plans for new cooperatives. It provides research, analysis, and technical assistance to rural residents on cooperative development initiatives and strategies to improve economic conditions through cooperative efforts.

(iii) *Cooperative Resource Management Division.* Headed by the division director, this division is responsible for participating in the formulating of National policies and procedures on cooperative resource management. The division conducts research and analysis and gives technical assistance to cooperatives on their overall structure, strategic management and planning, financial issues, and operational characteristics to improve their use of resources, financial policies, and ability to adapt to market conditions. The division conducts research and analysis of policy, taxation, Federal laws, State statutes, and common laws that apply to cooperative incorporation, structure, and operation to assist cooperatives in meeting legal requirements.

(4) *Office of the Deputy Administrator, Community Development.* Headed by the Deputy Administrator, Community Development, this office is responsible to the Under Secretary, Rural Development, for coordinating and overseeing all functions in the Community Outreach and Empowerment Program areas. The office assists in providing leadership and coordination to National and local rural economic and community development efforts. For appropriation and accounting purposes, this office is located under RBS. The office directs the following two divisions:

(i) *Empowerment Program Division.* Headed by the division director, this division is responsible for formulating policies and developing plans, standards, procedures, and schedules for accomplishing RBS activities related to "community empowerment programs", including EZ/EC, AmeriCorps, and other initiatives. The office develops informational materials and provides technical advice and services to support States on community empowerment programs. It also generates information about rural conditions and strategies and techniques for promoting rural economic development for community empowerment programs.

(ii) *Community Outreach Division.* Headed by the division director, this division is responsible for designing and overseeing overall systems and developing resources to support State and community level implementation activities for RBS programs. The office designs program delivery systems and tools, removes impediments to effective community-level action, supports field offices with specialized skills, and establishes partnerships with National organizations with grass-roots membership to assure that programs and initiatives are designed and implemented in a way that empowers communities. It develops methods for working with rural business intermediaries to assist them in providing technical assistance to new, small business, and provides Internet-based services to 1890 Land-grant universities, EZ/EC, and AmeriCorps volunteers, linking RBS information support to communities with high levels of need.

(5) *Alternative Agricultural Research and Commercialization Corporation.* Headed by a director, this Corporation is responsible for providing and monitoring financial assistance for the development and commercialization of new nonfood and nonfeed products from agricultural and forestry commodities in accordance with 7 U.S.C. 5901 *et seq.* The Corporation acts as a catalyst in forming private and public partnerships and promotes new uses of agricultural materials. It expands market opportunities for U.S. farmers through development of value-added industrial products and promotes environmentally friendly products. For budget and accounting purposes, this office is assigned to RBS. The director of the Corporation is responsible to the Office of the Secretary.

§§ 2003.27—2003.50 [Reserved]

Dated: November 26, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–33588 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–XT–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–22]

Establishment of a Class D Airspace; Hickory, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class D airspace area at Hickory, NC. A non-federal control tower has opened at Hickory Regional Airport, Hickory, NC. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT:

Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, the FAA proposed to amend 14 CFR part 71 by establishing Class D airspace at Hickory, NC (62 FR 53979). This action would provide Class D airspace for IFR operations at Hickory Regional Airport. Class D surface area airspace designations are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 establishes Class D airspace at Hickory, NC. A non-federal control tower has opened at Hickory Regional Airport, Hickory, NC. Class D surface area airspace is required when the control tower is open to accommodate current SIAPs and for IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO NC D Hickory, NC [New]

Hickory Regional Airport, NC
(Lat. 35°44'28" N, long. 81°23'22" W)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4.1-mile radius of Hickory Regional Airport. This Class D airspace is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on December 1, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–33619 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–20]

Amendment of Class E Airspace; Covington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E Airspace area at Covington, KY A Global Positioning System (GPS) Runway (RWY) 24 Standard Instrument Approach Procedure (SIAP) has been developed for Cincinnati-Blue Ash Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Cincinnati-Blue Ash Airport.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On October 23, 1997, the FAA proposed to amend 14 CFR part 71 by amending the Class E airspace at Covington, KY (62 FR 55814). This action would provide adequate Class E airspace for IFR operations at Cincinnati-Blue Ash Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will published subsequently in the Order.

Interested parties were invited to participate in this rulemking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Covington, KY. A GPS RWY 24 SIAP has been developed for Cincinnati-Blue Ash Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at Cincinnati-Blue Ash Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS.

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Covington, KY [Revised]

Covington, Cincinnati/Northern Kentucky International Airport, KY
(Lat. 39°02'46" N, long. 84°39'44" W)
Cincinnati Municipal Airport-Lunken Field
(Lat. 39°06'12" N, long. 84°25'07" W)
Cincinnati NDB
(Lat. 39°09'33" N, long. 84°20'32" W)
Clermont County Airport, Batavia, OH
(Lat. 39°04'42" N, long. 84°12'37" W)
Cincinnati-Blue Ash Airport, OH
(Lat. 39°14'48" N, long. 84°23'20" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Cincinnati/Northern Kentucky International Airport, and within a 10.5-mile radius of Cincinnati Airport-Lunken Field and within 2.6 miles each side of the 044° bearing from Cincinnati NDB and extending from the 105-mile radius to 7.4 miles northeast of the NDB, and within a 6.8-mile radius of Clermont County Airport, Batavia, OH, and within a 6.3-mile radius of Cincinnati-Blue Ash Airport, OH.

* * * * *

Issued in College Park, Georgia, on December 2, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–33618 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–15]

Amendment of Class E Airspace; Birmingham, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Birmingham, AL. A Global Positioning System (GPS) Runway (RWY) 23 Standard Instrument Approach Procedure (SIAP) has been developed for Birmingham International Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Birmingham International Airport.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, the FAA proposed to amend 14 CFR part 71 by amending the Class E airspace at Birmingham, AL (62 FR 53984). This action would provide adequate Class E airspace for IFR operations at Birmingham International Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Birmingham, AL. A GPS RWY 23 SIAP has been developed for Birmingham International Airport. Additional controlled airspace extending upward from 700 fee AGL is needed to accommodate this SIAP and for IFR operations at Birmingham International Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Birmingham, AL [Revised]

Birmingham International Airport, AL
Lat. 33°33'47" N, long. 86°45'24" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Birmingham International Airport.

* * * * *

Issued in College Park, Georgia, on December 2, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–33620 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 96–ASO–5]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Areas; GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for Restricted Areas R–3008A, R–3008B, R–3008C, and R–3008D, Grand Bay Weapons Range, GA, by expanding the time frame during which the areas may be activated without prior issuance of a Notice to Airmen (NOTAM). The United States Air Force (USAF) requested this amendment to reflect its actual night flying requirements.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1996, the FAA proposed to amend 14 CFR part 73 (part 73) to change the core hours of designation for Restricted Areas R–3008A, R–3008B, R–3008C, and R–3008D, Grand Bay Weapons Range, GA, from 0700–1900 local time, Monday–Friday to 0700–2200 local time, Monday–Friday (61 FR 45920).

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received by the FAA, both objecting to the proposal on the grounds that the change would constitute an expansion of military operations and a reduction of access for civil airspace users. Currently, the using agency has the option of activating the restricted areas at any time outside the existing "core hours" of 0700–1900 local time, provided a NOTAM is issued the required 6 hours in advance. The current published times, however, do not adequately reflect the actual night flying mission of the USAF 347th Wing. This change is intended to better accommodate the Wing's actual night flying requirements. No increase in the use of the range is anticipated. Therefore, the purpose of this rule is to amend the time of designation to more accurately indicate to the flying public the actual use of the restricted areas. A NOTAM will still be required in order to activate the restricted areas between the hours of 2200 and 0700 local time.

Despite this change, the restricted areas will continue to be operated on a real-time, joint-use basis with the airspace being returned to the controlling agency (Valdosta Approach Control) and available for access by nonparticipating aircraft during periods when the restricted areas are not needed by the using agency.

The Rule

This amendment to part 73 changes the core hours of designation for Restricted Areas R–3008A, R–3008B, R–3008C, and R–3008D from 0700–1900 local time, Monday–Friday to 0700–2200 local time, Monday–Friday. The action expands, by three hours daily, the "core hours" during which the restricted areas may be activated without prior issuance of a NOTAM. As amended, a NOTAM will no longer be required for activation of the restricted areas between 1900 and 2200 local time. The using agency currently has the option of activating the restricted areas between 1900 and 0700 local time provided a NOTAM is issued the required 6 hours in advance. However, the 347th Wing's night flying missions using R–3008 routinely extend past 1900 local time, but are normally terminated by 2200 local time. This requires the daily issuance of NOTAM's to permit activation of the areas between 1900 and 2200. This amendment of the time of designation will provide better notice to the flying public of the routine times of use of the restricted areas. A NOTAM will still be required prior to any usage between 2200 and 0700 local time.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Section 73.30 of 14 CFR part 73 was republished in FAA Order 7400.8E, dated November 7, 1997.

Environmental Review

The USAF prepared an Environmental Assessment (EA) and an Environmental Impact Statement (EIS) of the composite wing beddown at Moody AFB, Georgia. The EA and EIS studied the impact of aircraft operations during both day (0700–2200) and night (2200–0700) time frames, including the use of R–3008A, R–3008B, R–3008C, and R–3008D. The USAF's record of decision to base the composite wing at Moody AFB took into account the use of R–3008 between 1900 and 2200, and concluded that use of the restricted areas during this time frame did not constitute a significant impact. The utilization figures for this amendment are the same as those used in the EIS for the beddown. Based on the results of the EA and EIS accomplished for the composite wing beddown, the USAF determined that this amendment to the restricted area time of designation qualifies for a categorical exclusion. The FAA has reviewed the USAF's environmental documentation and concludes that this action is categorically excluded in accordance with FAA Order 1050.1D and the FAA/DOD Memorandum of Understanding of 1989 regarding Special Use Airspace actions.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.30 [Amended]

2. § 73.30 is amended as follows:

* * * * *

R–3008A Grand Bay Weapons Range, GA [Amended]

By removing "Time of designation. 0700–1900 local time, Monday–Friday; other times by NOTAM 6 hours in advance," and inserting "Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM 6 hours in advance."

R–3008B Grand Bay Weapons Range, GA [Amended]

By removing "Time of designation. 0700–1900 local time, Monday–Friday; other times by NOTAM 6 hours in advance," and inserting "Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM 6 hours in advance."

R–3008C Grand Bay Weapons Range, GA [Amended]

By removing "Time of designation. 0700–1900 local time, Monday–Friday; other times by NOTAM 6 hours in advance," and inserting "Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM 6 hours in advance."

R–3008D Grand Bay Weapons Range, GA [Amended]

By removing "Time of designation. 0700–1900 local time, Monday–Friday; other times by NOTAM 6 hours in advance," and inserting "Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM 6 hours in advance."

* * * * *

Issued in Washington, DC, on December 4, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–33617 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 97–ASO–6]

RIN 2120–AA66

Revocation and Modification of Restricted Areas; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Restricted Area R–2931, Cape Canaveral, FL, and modifies Restricted Areas R–2932 and R–2933 to absorb R–2931. The FAA is taking this action in response to a written notification from the U.S. Air Force that R–2931 is no longer necessary to support an Air Force mission requirement.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Restricted Area R–2931 was established on January 19, 1984, to contain a tethered aerostat balloon which was installed to enhance air defense surveillance and warning. In order to lessen the burden to the flying public, R–2931 was established entirely within two existing restricted areas, R–2924 and R–2925. Effective May 5, 1988, Restricted Areas R–2924 and R–2925 were redesignated as R–2932 and R–2933 as part of an effort to reconfigure and simplify the Cape Canaveral restricted airspace complex (53 FR 6796; March 3, 1988). The U.S. Air Force has notified the FAA that the aerostat operation has now been terminated at this location and that, consequently, R–2931 is no longer required for that purpose. The airspace of R–2931 will be reincorporated into the existing Restricted Areas R–2932 and R–2933.

The Rule

This amendment to 14 CFR part 73 (part 73) revokes Restricted Area R–2931, and modifies R–2932 and R–2933 to absorb R–2931. In addition, this amendment corrects a minor error in one of the R–2932 boundary coordinates. Although R–2932 and R–2933 were established with coincident boundaries, one coordinate in the R–2932 description differs by one second of longitude from the same coordinate in R–2933. This error occurred when the FAA converted all positional data used in the National Airspace System from North American Datum (NAD) 27 to NAD 83 (57 FR 201). During the conversion process, the required correction factor was inadvertently not applied to that one position.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this action simply redefines existing restricted area airspace, and does not involve a change in the overall dimensions or operating requirements of that airspace, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.29 of 14 CFR part 73 was republished in FAA Order 7400.8E, dated November 7, 1997.

Environmental Review

This action is a minor administrative change that redefines existing restricted airspace. Since R–2931 is totally imbedded within airspace already designated as restricted, there is no change to either the amount of restricted airspace or to any air traffic control procedures or routes as a result of this action.

Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.29 [Amended]

2. § 73.29 is amended as follows:

* * * * *

R–2931 Cape Canaveral, FL [Removed]

R–2932 Cape Canaveral, FL [Amended]

By removing "long. 80°35'00"W.;" and adding "long. 80°34'59"W.;" in its place; and by removing the words, "excluding the area within a 2-statute-mile radius circle centered at lat. 28°27'55"N., long. 80°32'06"W."

R–2933 Cape Canaveral, FL [Amended]

By removing the words, "excluding the area within a 2-statute-mile radius circle centered at lat. 28°27'55"N., long. 80°32'06"W."

* * * * *

Issued in Washington, DC, on December 9, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–33622 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to functions performed by the Center for Devices and Radiological Health (CDRH). This amendment updates the titles of CDRH delegates and organizational components to reflect the organizational restructuring and also publishes delegations of authority to additional positions within CDRH. This action is intended to ensure the accuracy and consistency of the regulations.

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT:
Debra A. Baclawski, Center for Devices and Radiological Health (HFZ–026), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–1060, or
Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: CDRH has undergone an organizational restructuring (58 FR 35959, July 2, 1993), which was approved by the Commissioner of Food and Drugs. The authorities delegated to the CDRH officials are amended in this document to reflect new titles and organization placement under the restructuring and also it publishes delegations of authority to additional positions within the center.

The most significant changes are: (1) The establishment of a second Deputy Director in the Office of the Director, CDRH, and in the Office of Device Evaluation; (2) the reorganization and retitling of the Office of Compliance and Surveillance to the Office of Compliance; and (3) the redelegation of authority to each of the Division Directors in the Office of Compliance.

Further redelegation of the authorities delegated is not authorized at this time. Authority delegated to a position may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1262, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223

2. Section 5.22 is amended by revising paragraphs (a)(10)(i), (a)(10)(ii), (a)(10)(iv), and (a)(10)(v) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(10)(i) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(ii) The Associate Director and Deputy Associate Director for Management and Systems, CDRH.

* * * * *

(iv) For medical devices assigned to their respective divisions, the Division Directors, Office of Compliance, CDRH.

(v) Freedom of Information Officers, CDRH.

* * * * *

3. Section 5.23 is amended by revising paragraphs (c)(1) through (c)(4) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(c) * * *

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(2) The Director and Deputy Director, Office of Compliance, CDRH.

(3) The Director and Deputy, Division of Program Operations, Office of Compliance, CDRH.

(4) The Chief, Information Processing and Automation Branch, Division of Program Operations, Office of Compliance, CDRH.

* * * * *

4. Section 5.25 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 5.25 Research, investigation, and testing programs and health information and health promotion programs.

(a) * * *

(2) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

* * * * *

(b) The Director and Deputy Directors, CDRH, are authorized to establish an electronic product radiation control program and to approve grants for conducting the program under section 356 of the act.

* * * * *

5. Section 5.26 is amended by revising paragraph (c) to read as follows:

§ 5.26 Service fellowships.

* * * * *

(c) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director, Office of Systems and Management, CDRH.

* * * * *

6. Section 5.28 is revised to read as follows:

§ 5.28 Cardiac pacemaker devices and pacemaker leads.

The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to a registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under the Social Security Act (42 U.S.C. 1395y(h)(1),(2)(A), and (3)), as amended.

7. Section 5.30 is amended by revising paragraphs (b) and (c)(4) to read as follows:

§ 5.30 Hearings.

* * * * *

(b) The Director and Deputy Directors, CDRH, are authorized to hold hearings, and to designate other officials to hold informal hearings, under section 360(a) of the Public Health Service Act.

(c) * * *

(4) The Director and Deputy Directors, CDRH.

* * * * *

8. Section 5.31 is amended by revising paragraphs (c)(3) and (e)(5) to read as follows:

§ 5.31 Petitions under part 10.

* * * * *

(c) * * *

(3) The Director and Deputy Directors, Center for Devices and Radiological Health.

* * * * *

(e) * * *

(5) The Director and Deputy Directors, CDRH, are authorized to issue 180-day tentative responses to citizen petitions on medical device matters under § 10.30(e)(2)(iii) of this chapter that relate to the assigned functions of that Center.

* * * * *

9. Section 5.33 is amended by revising paragraph (b) to read as follows:

§ 5.33 Premarket approval of a product that is or contains a biologic, a device, or a drug.

* * * * *

(b) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director, Office of Device Evaluation, CDRH.

* * * * *

10. Section 5.37 is amended by revising paragraphs (a)(2)(i) through (a)(2)(iii) and (b)(1) through (b)(3), and by removing paragraph (a)(2)(iv) and removing and reserving (b)(4) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(2)(i) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(ii) The Director and Deputy Director, Office of Compliance, CDRH.

(iii) For medical devices assigned to their respective divisions, the Division Directors, Office of Compliance, CDRH.

* * * * *

(b) * * *

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(2) The Director and Deputy Director, Office of Compliance, CDRH.

(3) For medical devices assigned to their respective divisions, the Division Directors, Office of Compliance, CDRH.

* * * * *

11. Section 5.45 is amended by revising paragraphs (b) introductory text, (c)(1) and (c)(2), and (e)(1)(i) through (e)(1)(iii) to read as follows:

§ 5.45 Imports and exports.

* * * * *

(b) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH); the Director and Deputy Director, Office of Compliance, CDRH; Regional Food and Drug Directors; District Directors; and the Director, St. Louis Branch, are authorized, under section 360 of the Public Health Service Act (PHSA), to perform the following functions or to designate officials to:

* * * * *

(c) * * *

(1) The Director and Deputy Directors, CDRH.

(2) The Director and Deputy Director, Office of Compliance, CDRH.

* * * * *

(e) * * *

(1) * * *

(i) The Director and Deputy Directors, CDRH.

(ii) The Director and Deputy Director, Office of Compliance, CDRH.

(iii) The Director and Deputy Director, Division of Program Operations, Office of Compliance, CDRH.

* * * * *

12. Section 5.46 is revised to read as follows:

§ 5.46 Manufacturer's resident import agents.

The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH) and the Director and Deputy Director, Office of Compliance, CDRH, are authorized to reject manufacturer's designation of import agents under § 1005.25(b) of this chapter.

13. Section 5.47 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 5.47 Detention of adulterated or misbranded medical devices.

* * * * *

(a) * * *

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(2) The Director and Deputy Director, Office of Compliance, CDRH.

* * * * *

14. Section 5.49 is amended by revising paragraph (a) to read as follows:

§ 5.49 Authorization to use alternative evidence for determination of the effectiveness of medical devices.

* * * * *

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Directors, Office of Device Evaluation, CDRH.

* * * * *

15. Section 5.50 is amended by revising paragraph (a) to read as follows:

§ 5.50 Notification to petitioners of determinations made on petitions for reclassification of medical devices.

* * * * *

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH) and the Director and Deputy Directors, Office of Device Evaluation.

* * * * *

16. Section 5.51 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 5.51 Determination of classification of devices.

(a) * * *

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH) and the Director and Deputy Directors, Office of Device Evaluation, CDRH.

* * * * *

(b) * * *

(1) The Director and Deputy Directors, CDRH, and the Director, Deputy Directors, Chief of the Premarket Notification Section, Division and Deputy Division Directors, Associate Division Directors, and Branch Chiefs, Office of Device Evaluation, CDRH.

* * * * *

17. Section 5.52 is amended by revising paragraph (a) to read as follows:

§ 5.52 Notification to sponsors of deficiencies in petitions for reclassification of medical devices.

* * * * *

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH) and the Director and Deputy Directors, Office of Device Evaluation, CDRH.

* * * * *

18. Section 5.53 is amended by revising paragraphs (a)(1), (b)(1)(i), and (c) to read as follows:

§ 5.53 Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices.

(a) * * *

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Directors, Office of Device Evaluation, CDRH.

* * * * *

(b)(1) * * *

(i) The Director and Deputy Directors, CDRH, and the Director and Deputy Directors, Office of Device Evaluation, CDRH.

* * * * *

(c) The Director and Deputy Directors, CDRH, for medical devices assigned to

their organization, are authorized to issue notices to announce the approval, disapproval, or withdrawal of approval of a device, and to make publicly available a detailed summary of the information on which the decision was based, under sections 515(d), (e), and (g) and 520(h)(1) of the act.

19. Section 5.54 is amended by revising paragraph (a) to read as follows:

§ 5.54 Determinations that medical devices present unreasonable risk of substantial harm.

* * * * *

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance, CDRH.

* * * * *

20. Section 5.55 is amended by revising paragraph (a) to read as follows:

§ 5.55 Orders to repair or replace, or make refunds for, medical devices.

* * * * *

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance, CDRH.

* * * * *

21. Section 5.56 is amended by revising paragraphs (a) and (b) to read as follows:

§ 5.56 Recall authority.

* * * * *

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

* * * * *

22. Section 5.57 is amended by revising paragraphs (a) through (c) to read as follows:

§ 5.57 Temporary suspension of a medical device application.

* * * * *

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

(c) The Director and Deputy Directors, Office of Device Evaluation, CDRH.

* * * * *

23. Section 5.59 is amended by revising paragraph (a)(1) to read as follows:

§ 5.59 Approval, disapproval, or withdrawal of approval of applications for investigational device exemptions.

(a) * * *

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), the Director and Deputy Directors, Office of Device Evaluation, CDRH, and the Director and Deputy Director, Office of Compliance, CDRH.

* * * * *

24. Section 5.60 is amended by revising paragraphs (a)(1) through (a)(4), (a)(6), and (b)(1) through (b)(5) to read as follows:

§ 5.60 Required and discretionary postmarket surveillance.

(a) * * *

(1) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(2) The Director and Deputy Director, Office of Surveillance and Biometrics, CDRH.

(3) The Director and Deputy Director, Division of Postmarket Surveillance, Office of Surveillance and Biometrics, CDRH.

(4) The Director and Deputy Directors, Division Directors and Associate Division Directors, Office of Device Evaluation, CDRH.

* * * * *

(6) The Director and Deputy Director, Office of Compliance, CDRH.

* * * * *

(b) * * *

(1) The Director and Deputy Directors, CDRH.

(2) The Director and Deputy Director, Office of Surveillance and Biometrics, CDRH.

(3) The Director and Deputy Director, Division of Postmarket Surveillance, Office of Surveillance and Biometrics, CDRH.

(4) The Director and Deputy Directors, Office of Device Evaluation, CDRH.

(5) The Director and Deputy Director, Office of Compliance, CDRH.

* * * * *

25. Section 5.78 is amended by revising paragraph (b) to read as follows:

§ 5.78 Issuance, amendment, or repeal of regulations pertaining to antibiotic drugs.

* * * * *

(b) The Director and Deputy Directors, Center for Devices and Radiological Health, are authorized to perform all the functions of the Commissioner of Food and Drugs under section 507 of the act regarding the issuance, amendment, or repeal of regulations pertaining to antibiotic drugs for human use contained in medical devices.

26. Section 5.86 is amended by revising paragraphs (a) and (b), and by removing paragraph (c) to read as follows:

§ 5.86 Variances from performance standards for electronic products.

* * * * *

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

27. Section 5.87 is amended by revising paragraphs (a) and (b), and by removing paragraph (c) to read as follows:

§ 5.87 Exemption of electronic products from performance standards and prohibited acts.

* * * * *

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

28. Section 5.88 is revised to read as follows:

§ 5.88 Testing programs and methods of certification and identification for electronic products.

The Director and Deputy Directors, Center for Devices and Radiological Health, (CDRH), and the Director and Deputy Director, Office of Compliance, CDRH, are authorized to review and evaluate industry testing programs under section 358(g) of the Public Health Service Act (the act), and to approve or disapprove alternate methods of certification and identification and to disapprove testing programs upon which certification is based under section 358(h) of the act.

29. Section 5.89 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 5.89 Notification of defects in, and repair or replacement of, electronic products.

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance, CDRH, are authorized to perform all functions of the Commissioner of Food and Drugs, relating to notification of defects in, noncompliance of, and repair or replacement of or refund for, electronic products under section 359 of the Public Health Service Act (the act) and under §§ 1003.11, 1003.22, 1003.31, 1004.2, 1004.3, 1004.4, and 1004.6 of this chapter; and Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized to perform all such functions relating to:

* * * * *

(b) The Director and Deputy Director, Office of Compliance, CDRH, and the Division Directors, Office of Compliance, CDRH, are authorized to notify manufacturers of defects in, and noncompliance of, electronic products under section 359(e) of the act and under § 1003.11(a) of this chapter; and the chiefs of District Compliance Branches are authorized to perform all such functions relating to:

* * * * *

30. Section 5.90 is revised to read as follows:

§ 5.90 Manufacturers requirement to provide data to ultimate purchasers of electronic products.

The Director and Deputy Directors, Center for Devices and Radiological Health, are authorized to require manufacturers to provide performance and technical data to the ultimate purchaser of electronic products under section 360A(c) of the Public Health Service Act.

31. Section 5.91 is revised to read as follows:

§ 5.91 Dealer and distributor direction to provide data to manufacturers of electronic products.

The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), the Director and Deputy Director, Office of Compliance, CDRH, and the Division Directors, Office of Compliance, CDRH, are authorized to direct dealers and distributors of electronic products to furnish information on first purchasers of such products to the manufacturer of the product under section 360A(f) of the Public Health Service Act.

32. Section 5.92 is revised to read as follows:

§ 5.92 Acceptance of assistance from State and local authorities for enforcement of radiation control legislation and regulations.

The Director and Deputy Directors, Center for Devices and Radiological Health, are authorized to accept assistance from State and local authorities engaged in activities related to health or safety or consumer protection on a reimbursable basis or otherwise, under section 360E of the Public Health Service Act.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33482 Filed 12–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate and Bacitracin Zinc With Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by ALPHARMA INC. The ANADA provides for using approved decoquinate, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, increased rate of weight gain, and improved feed efficiency.

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: ALPHARMA INC., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–206 that provides for combining approved decoquinate, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated feeds for broilers containing decoquinate 27.2 grams per ton (g/t) and bacitracin zinc 12 to 50 g/t with roxarsone 11 to 45 g/t. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. mivati*, *E. maxima*, and *E. brunetti*, and for increased rate of weight gain and improved feed efficiency.

ALPHARMA INC.'s, ANADA 200–206 is approved as a generic copy of Rhone Poulenc Inc.'s NADA 91–326. The ANADA is approved as of December 24, 1997 and the regulations are amended in 21 CFR 558.195(d) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

This approval is for use of three single ingredient Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make a Type C medicated feed from a Category II drug. Under section 512(m) of the act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of decoquinate, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated feeds as provided in NADA 200–206 is limited to manufacture in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.195 [Amended]

2. Section 558.195 *Decoquinate* is amended in the table in paragraph (d) in the entry for "27.2 (0.003 pct), Roxarsone 11 to 45 (0.0012–0.005 pct.) plus Bacitracin 12 to 50" under "Limitations" by removing "No. 011716" and adding in its place "Nos. 011716 and 046573".

Dated: October 30, 1997.

Stephen F. Sundlof,

Director, Center for Veterinor Medicine.

[FR Doc. 97–33638 Filed 12–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 806

[Docket No. 91N–0396]

Medical Devices; Reports of Corrections and Removals; Stay of Effective Date of Information Collection Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Stay of effective date of a final regulation.

SUMMARY: The Food and Drug Administration (FDA) is staying the effective date of the information collection requirements of a final rule to implement the provisions of the Safe Medical Devices Act of 1990 (the SMDA) regarding reports of corrections and removals of medical devices. FDA is taking this action because the information collection requirements in the final rule have not yet been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). In the **Federal Register** of November 26, 1997, FDA announced that it sent the proposed information collection to OMB for review and clearance.

DATES: Effective November 17, 1997, sections 806.10 and 806.20, which contain information collection requirements published at 62 FR 27183, May 19, 1997, are stayed pending OMB clearance of the information collection requirements. FDA will announce the effective date of these sections in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 19, 1997 (62 FR 27183), FDA issued a final rule implementing the provisions of the SMDA concerning reports of corrections and removals of medical devices. The rule was scheduled to become effective on November 17, 1997. In the preamble to the final rule, FDA provided for a 60-day comment period on the information collection requirements of the rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), which was enacted after the publication of the proposed rule on reports of corrections and removals of medical devices.

In the preamble to the final rule, FDA announced that it would review the comments received, make revisions as necessary to the information collection requirements, and submit the requirements to OMB for approval. FDA received four comments and has reviewed and responded to them and has submitted the information collection requirements to OMB for approval. A notice published in the **Federal Register** of November 26, 1997 (62 FR 63182), informs the public how to address comments on the information collection provisions to OMB.

The Administrative Procedure Act and FDA regulations provide that the agency may issue a regulation without notice and comment procedures when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(3)(B); 21 CFR 10.40(e)(1)). FDA finds there is good cause for dispensing with notice and comment procedures on this amendment to stay the effective date of the information collection requirements of the final rule on reports of corrections and removals until such time as OMB approves these requirements. Engaging in notice and comment rulemaking is unnecessary because the information collection provisions cannot become effective until such time as FDA obtains OMB approval of them. Moreover, notice and comment rulemaking is impracticable and contrary to the public interest in this case. There is not enough time to solicit a new round of notice and comment on the issue of establishing a delayed effective date for these information collection requirements without further delaying the implementation of this provision of the SMDA. Dispensing with notice and comment rulemaking provides that the information collection requirements of the reports of corrections and removals rule will go into effect at the earliest possible date after OMB review and clearance. FDA will announce the effective date of the information collection requirements of the final rule in a future issue of the **Federal Register**.

List of Subjects in 21 CFR Part 806

Corrections and removals, Medical devices, Reporting and recordkeeping requirements.

Therefore, under sections 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393) and under authority delegated to the Commissioner of Food and Drugs, §§ 806.10 and 806.20, published in the **Federal Register** of May 19, 1997 (62 FR 27183), are stayed until further notice.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33418 Filed 12–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Parts 120, 123, 124, 126, 127, and 129

[Public Notice 2602]

Bureau of Political-Military Affairs; Amendments to the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends certain provisions of the International Traffic in Arms Regulations (ITAR) in order to reflect recent changes to the Arms Export Control Act (AECA).

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mary F. Sweeney, Compliance and Enforcement Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: Section 1045(a) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) added a new paragraph 12 to section 36(a) of the AECA requiring a report on all concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin.

Section 141 of the Defense and Security Assistance Improvements Act of 1996 (Public Law 104–164) amended and restated the requirements in section 36(c) and (d) of the AECA for certification to Congress of certain proposed exports and technical assistance or manufacturing license agreements, generally reducing the time for transfers involving member countries of the North Atlantic Treaty Organization, Australia, Japan and New Zealand.

Section 151 of Public Law 104–164 added a new clause (ii) to Subsection (b)(1)(A) of section 38 of the AECA requiring the registration and licensing of persons who engage in the business of brokering activities of defense articles and defense services.

Section 156 of Public Law 104–164 amended section 38(e) of the AECA, providing that certain types of information shall not be withheld from public disclosure unless the President determines that the release of such information would be contrary to the national interest.

Section 144 of Public Law 104–164 amended and restated certain definitions contained in Section 47 of the AECA.

The civil penalty amount is in accordance with 22 U.S.C. 2778, 2779a and 2780.

In order to ensure consistent application of the ITAR as provided in law, Parts 120, 123, 124, 126, and 127 are being amended and a new Part 129 is being established.

Part 129 contains guidance concerning persons required to register as brokers and the types of brokering activities that require prior approval of the Department of State. As a general matter, any person in the United States or otherwise subject to U.S. jurisdiction who is in the business of brokering transfers of defense articles or services is required to register and pay a fee. This would include for example, persons who act as agents for others in arranging arms deals, as well as so-called finders and other persons who facilitate such deals. Certain exemptions to this requirement are also established, however, such as persons exclusively in the business of financing or transporting defense articles whose business activities do not include brokering arms deals. Certain prohibitions are also established in Part 129 concerning brokering activities associated with defense articles and defense services involving ineligible countries or persons, such as those countries for which the United States maintains an arms embargo and those persons debarred from receiving U.S. munitions licenses owing to previous violations of U.S. law. Part 129 identifies those circumstances or defense articles for which either prior written approval by, or prior notification to, the Department of State is necessary, and also specifies exemptions to these requirements. Further, Part 129 provides a procedure by which persons may seek guidance from the Department of State in respect to the possible application of these requirements to their activities.

These amendments involve a foreign affairs function of the United States. They are excluded from review under Executive Order 12866 (69 FR 51735) and 9 U.S.C. 553 and 554, but have been reviewed internally by the Department to ensure consistency with the purposes thereof.

In accordance with 5 U.S.C. 808, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (the "Act"), the Department of State has found for foreign policy reasons that notice and public procedure under section 251 of the Act is impracticable and contrary to the public interest. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Room 200, SA–6, Washington, D.C. 20520–0602.

List of Subjects

22 CFR Part 120

Arms and munitions, Exports, Technical assistance.

22 CFR Part 123

Arms and munitions, Exports, Technical assistance.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 126

Arms and munitions, Exports.

22 CFR Part 127

Arms and munitions, Exports.

22 CFR Part 129

Arms and munitions, Exports, Technical assistance.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Parts 120, 123, 124, 126 and 127 are amended and Part 129 is established as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658.

2. In § 120.7 paragraph (a) is revised to read as follows:

§ 120.7 Significant military equipment.

(a) *Significant military equipment* means articles for which special export controls are warranted because of their capacity for substantial military utility or capability.

* * * * *

3. Section 120.9 is revised to read as follows:

§ 120.9 Defense service.

(a) *Defense service* means:

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;

(2) The furnishing to foreign persons of any technical data controlled under this subchapter (see § 120.10), whether in the United States or abroad; or

(3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. (See also § 124.1.)

(b) [Reserved]

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

4. The authority citation for part 123 is revised to read as follows:

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. 79; 22 U.S.C. 2658.

5. Section 123.15 is revised to read as follows:

§ 123.15 Congressional notification for licenses.

(a) All exports of major defense equipment, as defined in § 120.8 of this subchapter, sold under a contract in the amount of $14,000,000 or more, or exports of defense articles and defense services sold under a contract in the amount of $50,000,000 or more, may take place only after the Office of Defense Trade Controls notifies the exporter through issuance of a license or other approval that Congress has not enacted a joint resolution prohibiting the export and:

(1) In the case of a license for an export to the North Atlantic Treaty Organization, any member country of that Organization, or Australia, Japan or New Zealand, 15 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1); or

(2) In the case of a license for an export to any other destination, 30 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1).

(b) Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter (e.g., § 126.5 of this subchapter) under the circumstances described in the first sentence of paragraph (a) of this section must notify the Office of Defense Trade Controls by letter of the intended export and, prior to transmittal to Congress, provide a

signed contract and a DSP–83 signed by the applicant, the foreign consignee and end-user.

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

6. The authority citation for Part 124 continues to read as follows:

Authority: Secs. 2, 38 and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658.

7. Section 124.4 is revised to read as follows:

§ 124.4 Deposit of signed agreements with the Office of Defense Trade Controls.

(a) The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Office of Defense Trade Controls not later than 30 days after it enters into force. If the agreement is not concluded within one year of the date of approval, the Office of Defense Trade Controls must be notified in writing and be kept informed of the status of the agreement until the requirements of this paragraph or the requirements of (124.5 are satisfied.

(b) In the case of concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin, a written statement must accompany filing of the concluded agreement with the Office of Defense Trade Controls, which shall include:

(1) The identity of the foreign countries, international organization, or foreign firms involved;

(2) A description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced;

(3) A description of any restrictions on third-party transfers of the foreign-manufactured articles; and

(4) If any such agreement does not provide for United States access to and verification of quantities of articles produced overseas and their disposition in the foreign country, a description of alternative measures and controls to ensure compliance with restrictions in the agreement on production quantities and third-party transfers.

8. Section 124.11 is revised to read as follows:

§ 124.11 Certification to Congress for agreements.

Regardless of dollar value, a Technical Assistance Agreement or a Manufacturing License Agreement that involves the manufacture abroad of any item of significant military equipment (as defined in § 120.7 of this subchapter) shall be certified to Congress by the Department as required by 22 U.S.C. 2776(d). Additionally, any technical assistance agreement or manufacturing license agreement providing for the export of major defense equipment, as defined in § 120.8, sold under a contract in the amount of $14 million or more, or of defense articles or defense services sold under a contract in the amount of $50 million or more, shall be certified to Congress by the Department as required by 22 U.S.C. 2776(c)(1). The Office of Defense Trade Controls will not approve agreements requiring Congressional notification unless Congress has not enacted a joint resolution prohibiting the agreement and:

(a) In the case of an agreement for or in a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand, at least 15 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(d); or

(b) In the case of an agreement for or in any other country, at least 30 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(d).

PART 126—GENERAL POLICIES AND PROVISIONS

9. The authority citation for Part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

10. In § 126.10 paragraph (b) is revised to read as follows:

§ 126.10 Disclosure of information.

* * * * *

(b) *Determinations required by law.* Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778) provides by reference to certain procedures of the Export Administrative Act that certain information required by the Department of State in connection with the licensing process may generally not be disclosed to the public unless certain determinations relating to the national interest are made in accordance with the procedures specified in that provision, except that the names of the countries and the types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that release of such information would be contrary to the national interest. Determinations required by section 38(e) shall be made by the Assistant Secretary for Political-Military Affairs.

* * * * *

PART 127—VIOLATIONS AND PENALTIES

11. The authority citation for part 127 is revised to read as follows:

Authority: Secs. 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 401; 22 U.S.C. 2658; 22 U.S.C. 2779a; 22 U.S.C. 2780.

12. In § 127.10 paragraph (a) is revised to read as follows:

§ 127.10 Civil penalty.

(a) The Assistant Secretary of State for Political-Military Affairs, Department of State, is authorized to impose a civil penalty in an amount not to exceed that authorized by 22 U.S.C. 2778, 2779a and 2780 for each violation of 22 U.S.C. 2778, 2779a and 2780, or any regulation, order, license or approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

* * * * *

13. Part 129 is added to read as follows:

PART 129—REGISTRATION AND LICENSING OF BROKERS

Sec.
129.1 Purpose.
129.2 Definitions.
129.3 Requirement to register.
129.4 Registration statement and fees.
129.5 Policy on embargoes and other proscriptions.
129.6 Requirement for license/approval.
129.7 Prior approval (license).
129.8 Prior notification.
129.9 Reports.
129.10 Guidance.

Authority: Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

§ 129.1 Purpose.

Section 38(b)(1)(A)(ii) of the Arms Export Control Act (22 U.S.C. 2778) provides that persons engaged in the business of brokering activities shall register and pay a registration fee as prescribed in regulations, and that no person may engage in the business of brokering activities without a license issued in accordance with the Act.

§ 129.2 Definitions.

(a) *Broker* means any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee, commission, or other consideration.

(b) *Brokering activities* means acting as a broker as defined in § 129.2(a), and includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service, irrespective of its origin. For example, this includes, but is not limited to, activities by U.S. persons who are located inside or outside of the United States or foreign persons subject to U.S. jurisdiction involving defense articles or defense services of U.S. or foreign origin which are located inside or outside of the United States. But, this does not include activities by U.S. persons that are limited exclusively to U.S. domestic sales or transfers (e.g., not for export or re-transfer in the United States or a foreign person).

(c) The term "foreign defense article or defense service" includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.

§ 129.3 Requirement to Register.

(a) Any U.S. person, wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States (notwithstanding § 120.1(c)), who engages in the business of brokering activities (as defined in this part) with respect to the manufacture, export, import, or transfer of any defense article or defense service subject to the controls of this subchapter (see § 121) or any "foreign defense article or defense service" (as defined in § 129.2) is required to register with the Office of Defense Trade Controls.

(b) Exemptions. Registration under this section is not required for:

(1) Employees of the United States Government acting in official capacity.

(2) Employees of foreign governments or international organizations acting in official capacity.

(3) Persons exclusively in the business of financing, transporting, or freight forwarding, whose business activities do not also include brokering defense articles or defense services. For example, air carriers and freight forwarders who merely transport or arrange transportation for licensed United States Munitions List items are not required to register, nor are banks or credit companies who merely provide commercially available lines or letters of credit to persons registered in accordance with Part 122 of this subchapter required to register. However, banks, firms, or other persons providing financing for defense articles or defense services would be required to register under certain circumstances, such as where the bank or its employees are directly involved in arranging arms deals as defined in § 129.2(a) or hold title to defense articles, even when no physical custody of defense articles is involved.

§ 129.4 Registration statement and fees.

(a) *General.* The Department of State Form DSP–9 (Registration Statement) and a transmittal letter meeting the requirements of § 122.2(b) of this subchapter must be submitted by an intended registrant with a payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. The Registration Statement and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States.

(b) A person required to register under this part who is already registered as a manufacturer or exporter in accordance with part 122 of this subchapter must also provide notification of this additional activity by submitting to the Office of Defense Trade Controls by registered mail a transmittal letter meeting the requirements of § 122.2(b) and citing the existing registration, and must pay an additional fee according to the schedule prescribed in § 122.3(a). Any person who registers coincidentally as a broker as defined in § 129.2 of this subchapter and as a manufacturer or exporter must submit a Registration Statement that reflects the brokering activities, the § 122.2(b) transmittal letter, as well as the additional fee for registration as a broker.

(c) Other provisions of part 122, in particular, § 122.4 concerning notification of changes in information furnished by registrants and § 122.5 concerning maintenance of records by registrants, apply equally to registration under this part (part 129).

§ 129.5 Policy on embargoes and other proscriptions.

(a) The policy and procedures set forth in this subparagraph apply to brokering activities defined in § 129.2 of this subchapter, regardless of whether the persons involved in such activities have registered or are required to register under § 129.3 of this subchapter.

(b) No brokering activities or brokering proposals involving any country referred to in § 126.1 of this subchapter may be carried out by any person without first obtaining the written approval of the Office of Defense Trade Controls.

(c) No brokering activities or proposal to engage in brokering activities may be carried out or pursued by any person without the prior written approval of the Office of Defense Trade Controls in the case of other countries or persons identified from time to time by the Department of State through notice in the **Federal Register**, with respect to which certain limitations on defense articles or defense services are imposed for reasons of U.S. national security or foreign policy (e.g., Cyprus, Guatemala, Yemen) or law enforcement interests (e.g., an individual subject to debarment pursuant to § 127.7 of this subchapter).

(d) No brokering activities or brokering proposal may be carried out with respect to countries which are subject to United Nations Security Council arms embargo (see also § 121.1(c)).

(e) In cases involving countries or persons subject to paragraph (b), (c), or (d), above, it is the policy of the Department of State to deny requests for approval, and exceptions may be granted only rarely, if ever. Any person who knows or has reason to know of brokering activities involving such countries or persons must immediately inform the Office of Defense Trade Controls.

§ 129.6 Requirement for License/Approval.

(a) No person may engage in the business of brokering activities without the prior written approval (license) of, or prior notification to, the Office of Defense Trade Controls, except as follows:

(b) A license will not be required for:

(1) Brokering activities undertaken by or for an agency of the United States Government—

(i) for use by an agency of the United States Government; or

(ii) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(2) Brokering activities that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Japan, Australia, or New Zealand, except in the case of the defense articles or defense services specified in § 129.7(a) of this

subchapter, for which prior approval is always required.

§ 129.7 Prior Approval (License).

(a) The following brokering activities require the prior written approval of the Office of Defense Trade Controls:

(1) Brokering activities pertaining to certain defense articles (or associated defense services) covered by or of a nature described by Part 121, to or from any country, as follows:

(i) Fully automatic firearms and components and parts therefor;

(ii) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(iii) Nuclear weapons design and test equipment of a nature described by Category XVI of Part 121;

(iv) Naval nuclear propulsion equipment of a nature described by Category VI(e);

(v) Missile Technology Control Regime Category I items (§ 121.16);

(vi) Classified defense articles, services and technical data;

(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, Japan, Australia, or New Zealand (see §§ 129.6(b)(2) and 129.7(a)).

(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by, Part 121, in addition to those specified in § 129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan whenever any of the following factors are present:

(i) The value of the significant military equipment is $1,000,000 or more;

(ii) The identical significant military equipment has not been previously licensed for export to the armed forces of the country concerned under this subchapter or approved for sale under the Foreign Military Sales Program of the Department of Defense;

(iii) Significant military equipment would be manufactured abroad as a result of the articles or services being brokered; or

(iv) The recipient or end user is not a foreign government or international organization.

(b) The requirements of this section for prior written approval are met by any of the following:

(1) A license or other written approval issued under parts 123, 124, or 125 of this subchapter for the permanent or temporary export or temporary import of the particular defense article, defense service or technical data subject to prior approval under this section, provided the names of all brokers have been identified in an attachment accompanying submission of the initial application; or

(2) A written statement from the Office of Defense Trade Controls approving the proposed activity or the making of a proposal or presentation.

(c) Requests for approval of brokering activities shall be submitted in writing to the Office of Defense Trade Controls by an empowered official of the registered broker; the letter shall also meet the requirements of § 126.13 of this subchapter.

(d) The request shall identify all parties involved in the proposed transaction and their roles, as well as outline in detail the defense article and related technical data (including manufacturer, military designation and model number), quantity and value, the security classification, if any, of the articles and related technical data, the country or countries involved, and the specific end use and end user(s).

(e) The procedures outlined in § 126.8(c) through (g) are equally applicable with respect to this section.

§ 129.8 Prior Notification.

(a) Prior notification to the Office of Defense Trade Controls is required for brokering activities with respect to significant military equipment valued at less than $1,000,000, except for sharing of basic marketing information (e.g., information that does not include performance characteristics, price and probable availability for delivery) by U.S. persons registered as exporters under Part 122.

(b) The requirement of this section for prior notification is met by informing the Office of Defense Trade Controls by letter at least 30 days before making a brokering proposal or presentation. The Office of Defense Trade Controls will provide written acknowledgment of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(c) The procedures outlined in § 126.8(c) through (g) are equally applicable with respect to this section.

§ 129.9 Reports.

(a) Any person required to register under this part shall provide annually a report to the Office of Defense Trade Controls enumerating and describing its brokering activities by quantity, type, U.S. dollar value, and purchaser(s) and recipient(s), license(s) numbers for approved activities and any exemptions utilized for other covered activities.

§ 129.10 Guidance.

(a) Any person desiring guidance on issues related to this part, such as whether an activity is a brokering activity within the scope of this Part, or whether a prior approval or notification requirement applies, may seek guidance in writing from the Office of Defense Trade Controls. The procedures and conditions stated in § 126.9 apply equally to requests under this section.

Dated: November 24, 1997.

Strobe Talbott,

Acting Secretary of State.

[FR Doc. 97–33649 Filed 12–23–97; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 251

RIN 1010–AC10

Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule revises MMS' regulations and expands the Notice requirement to include all oil, gas, and sulphur related G&G scientific research not conducted under a permit. The revisions also update the addresses for applying for a permit or filing a Notice, standardize definitions, describe the procedures for protecting archaeological resources, reflect changes in technology, and clarify the obligations of third parties who obtain G&G data and information collected under a permit. These revisions are being made because there have been instances of commercial G&G exploration being conducted by academia without a permit, the addresses for all the MMS regions have changed, changes in technology need to be incorporated, and permittees and third parties have questioned MMS access to certain G&G data and information that were collected under a permit and further processed by third parties. The modifications will enable MMS to better ensure safe use and environmental protection of the outer continental shelf (OCS) for all G&G related operations, expedite permit applications and Notices to MMS, and make the regulatory language clearer and more understandable. MMS also believes that it is necessary to more clearly assert its authority to acquire G&G data and information.

Access to these data and information is needed to ensure that the U.S. Government receives fair market value on leases, especially in areas of complex geology, and for the Government to conduct analyses or assessments for royalty relief and other purposes.

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Zinzer, Resource Evaluation Division, (703) 787–1515 or Kumkum Ray, Rules Processing Team, 703) 787–1600.

SUPPLEMENTARY INFORMATION: This final rule implements changes put forward by our notice of proposed rulemaking (NPR) that was published February 11, 1997 (62 FR 6149) and which solicited public comments. The comment period was extended twice, the last extension ending July 29, 1997. We met with industry twice during the comment period, May 15 in Washington, D.C., and July 10 in New Orleans, LA. We received 22 sets of written comments and recommendations in response to the NPR. Ten of these comments and recommendations were from industry associations, and twelve were from permittees and third party users of G&G data and information collected on the OCS. We have carefully considered each of these comments and recommendations. We did not adopt recommendations that did not appear to be in the public's best interest.

In order to assist industry in understanding how MMS will implement the final rule, MMS will conduct a meeting with industry and other interested parties in the Gulf of Mexico Region following publication of a meeting time in the **Federal Register**.

Discussion and Analysis of Comments

Some commenters requested that MMS withdraw the final rule in its entirety and/or conduct a negotiated rulemaking, citing adverse effects on the oil and gas industry, including oil and gas producers, independent oil and gas companies, and geophysical service companies, accompanied by a significant reduction in the amount of data collection and exploration by industry.

MMS has decided to proceed with the final rule after carefully considering all written comments on the proposed rulemaking and after lengthy discussions with industry at the meetings in Washington, D.C., and New Orleans, Louisiana. MMS appreciates the candor and scope of the many comments that were put forth and the concerns of the industry. However, we believe that specific concerns with the proposed rulemaking have been addressed properly, and that where MMS and industry disagree, MMS is acting appropriately as the Federal agency required by the OCS Lands Act (OSCLA) to manage the oil and natural gas resources of the OCS in an environmentally responsible and safe manner. MMS must oversee G&G explorations on the OCS in an orderly and fair manner, balancing the needs of industry and the public interest.

Some commenters questioned whether MMS had performed the analysis required under the Regulatory Flexibility Act, or made an estimate of how much it would cost the exploration and production industry to comply with the proposed revisions to part 251. These comments cited the potential administrative burdens of the proposed changes and their significant impact on the ability of smaller companies to compete in the Gulf of Mexico. MMS has addressed these concerns under the section of the preamble titled, "Regulatory Flexibility Act."

Section-by-Section Analysis

Section 251.1 Definitions

The definition of *exploration* was expanded to include marine and airborne surveys. Although MMS proposed changing the definition of *human environment*, several comments criticized the proposed wording as broad and ambiguous. MMS agrees to retain the existing definition.

The definitions of *lease* and *lessee* were changed to read the same as the definitions in part 250.

The definitions of *archaeological interest*, *material remains*, and *significant archaeological resource* were added to explain archaeological protection requirements in part 251. The language adopted in this rule is the same as that used in part 250.

The definition of *third party* was clarified to include all persons who, by whatever means, obtained from permittees or other third parties G&G data or information collected under a permit.

The definition of *you* was changed in response to comments that the definition in the proposed rule was too vague and broad and should not include persons who only inquire about a permit or Notice. *You* also applies to third parties who assume certain responsibilities under §§ 251.11 and 251.12.

Section 251.2 Purpose of This Part

Paragraph (d) was added to this section to clarify the U.S. Government's right to certain data and information, explain MMS' obligation to pay certain reimbursements, and set out MMS' procedures for safeguarding proprietary and privileged data and information acquired from industry and other sources.

Section 251.3 Authority and Applicability of This Part

One commenter questioned whether, under the OCSLA, the Secretary of the Interior (Secretary) could allow G&G exploration under a Notice, instead of requiring a permit. Section 11 of the OCSLA (43 U.S.C. 1340) gives the Secretary the authority to allow geological and geophysical exploration. Because of the commercial nature of the activity, MMS believes that it is preferable to require that G&G exploration be conducted only under the auspices of a permit. G&G scientific research can be conducted either under a permit or by filing a Notice, depending on the activity being conducted.

The commenter also asked under what authority the Secretary applies MMS regulations to ships or vessels, and exempts Federal agencies from the permit procedures. The OCSLA definition of *exploration* includes geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals. Ships and vessels are commonly used in, and are an integral part of, geophysical surveys. Therefore, it is necessary to apply MMS" regulations to them. The definition of *person* in the OCSLA does not include Federal agencies. Thus, Federal agencies are not authorized as *persons* by the Secretary to conduct G&G explorations in the OCS and thus are not subject to part 251.

Finally, the same commenter found no regulatory language dealing with the Secretary's review or approval of permit applications or time limits to take action on applications. While section 11 of the OCSLA authorizes the Secretary to issue permits for exploration, it does not require the Secretary to set forth time limits to issue permits. The authority to review and approve permit applications is delegated to the appropriate MMS Regional Director who exercises this authority under §§ 251.5 and 251.7, and sets the administrative time limits to review and approve permit applications. Time limits may vary in each OCS Region. Response times to permit applications have not been an issue in the past.

Section 251.4 Types of G&G Activities That Require Permits or Notices

Several commenters asked whether commercial G&G research related to developing or testing new equipment or techniques would require a permit or could be conducted under a Notice. As mentioned earlier, MMS believes that a Notice is not appropriate for commercial G&G activities. Basically, whether the G&G company calls the activity "research" or "exploration" is not important. A permit is required if the data collected from the "research" activity can be used in exploration for oil, gas, or sulphur, or if the "research" activity involves solid or liquid explosives, or deep stratigraphic tests. Other research activities that only involve developing or testing new equipment or techniques do not require a permit.

The underlying concern of the commenters, however, seemed to be whether they were required to give MMS the testing and development work they perform when a permit is required. Generally, descriptions of new equipment, techniques, computer hardware/software, or the results of tests on those items do not need to be given to MMS. However, if these items were used to produce G&G data and information which must be submitted to MMS, it may be necessary to provide some explanatory information to MMS in order to allow the agency to properly evaluate the data and information.

Section 251.5 Applying for Permits or Filing Notices

One commenter, addressing § 251.5(c)(7), noted that collaboration on research between industry and universities may make it difficult to estimate the "earliest time" that data will be available to the public. MMS recognizes this difficulty and only requires a good faith estimate of the time that scientific research data and information will be released to the public. To alleviate these concerns, MMS has inserted the word "practicable" between "earliest" and "time" to conform with the wording used in part 251 since 1976.

Section 251.6 Obligations and Rights Under a Permit or a Notice.

One commenter objected to the use of "human environment" in § 251.6(a)(2), citing subjective judgments regarding the term "quality of life", which was part of the proposed definition of "human environment." The definition of "human environment" was not changed in response to this and other comments. However, the word "property" is added to § 251.6(a)(2) to make the obligation under this part conform with the standards in part 250 which apply to operations under a lease, right of use or easement, or right-of-way. Several commenters objected to the wording of § 251.6(a)(7) which removed the word "unreasonably" from the requirement to not interfere with or cause harm to other users of an area. We agree, and "unreasonably" will be re-inserted before the word "interfere'.

Several commenters objected to new wording in § 251.6(c) that requires entities conducting G&G operations to consult with and coordinate their operational activities with specific users of an area. The commenters argued that consultation is not always practicable and that, in certain cases, proprietary information regarding the timing and location of planned surveys would be unfairly revealed to competitors. The wording has been changed to reflect that MMS's intent is for companies to consult and coordinate their G&G activities solely for navigational and safety purposes. MMS also recognizes that the International Association of Geophysical Contractors acts on behalf of the geophysical survey companies to coordinate its members' activities through a time sharing system to promote safe operations and protect members' proprietary survey designs and plans.

Several commenters objected to proposed language which expands the use of the best available and safest technologies (*BAST*) beyond the area of test drilling requirements. The wording in § 251.6(d) is changed to make clear that the BAST requirement only applies to shallow test drilling and deep stratigraphic test drilling conducted under a permit.

Section 251.7 Test Drilling Activities Under a Permit

One commenter suggested deleting § 251.7(a)(2), stating that MMS cannot mandate compliance of shallow test drilling activities with requirements of the Coastal Zone Management Act (CZMA). We agree that MMS cannot establish requirements under the auspices of the CZMA. However, we disagree that the proposed language creates a new mandate. Section 251.7(a)(2) simply advises permit applicants that MMS may require submittal of consistency certification when a federally approved coastal management program requires consistency review.

Section 251.7(b)(5), "Protecting archaeological resources," is revised in the final rule to make the wording conform with similar requirements in part 250. Also, as mentioned previously, new definitions related to archaeological resources were added in the definitions section to better explain the requirements of this section.

Section 251.8 Inspection and Reporting Requirements for Activities Under a Permit

One commenter questioned our proposed removal of the word "actual" from the term "actual costs" in determining the amount of reimbursement to a permittee when MMS inspectors are required to be accommodated during activities authorized under part 251. The point of the proposed change was to impose a 90-day time limit for reimbursement requests so that MMS can quickly clear such expenses. Permittees will be reimbursed for actual expenses incurred as long as their request for reimbursement is made within the 90-day period.

Some commenters noted that there was no provision in § 251.8(b) for permittees to make oral requests to MMS for modifications to their programs with a followup in writing, although § 251.4(b)(2) allows a person to file a Notice orally with a followup in writing if circumstances preclude a 30-day advance written Notice. MMS recognizes that there are circumstances when written requests to modify programs are not practicable, and that an oral request with a written followup could be acceptable in such cases. The wording in § 251.8(b) is changed to allow for such oral requests, but we want to emphasize that oral requests for modifications should only be made when necessary.

One commenter sought clarification as to the beginning date of the 30-day period to submit a final report under § 251.8(c)(2). The revised wording indicates that a final report of exploration or scientific research activities under a permit is due within 30 days after completion of "acquisition activities."

Section 251.9 Temporarily Stopping, Canceling, or Relinquishing Activities Approved Under a Permit

This section sets out the situation under which MMS will halt ongoing permit activities. Section 251.9(a)(2) was changed to include G&G data and information in the examples of items required by MMS which, if not submitted, could constitute a failure to comply with applicable law, regulation, order, or provision of a permit and result in MMS halting the permit activities.

Section 251.10 Penalties and Appeals

No comments were received regarding § 251.10.

Section 251.11 Inspection, Selection, and Submission of Geological Data and Information Collected Under a Permit and Processed by Permittees or Third Parties

Several commenters objected to the proposed requirement in § 251.11(a)(1) that a permittee notify the Regional Director "immediately" after acquiring, analyzing, processing, or interpreting geological data and information, citing excessive paperwork and other burdens. MMS agrees. The wording has been changed to require the permittee to notify the Regional Director after completion of the initial analysis, processing, and interpretation of geological data and information collected under a permit. MMS does not require continual notification of every analysis, processing, and interpretation.

Furthermore, the reference in § 251.11(a)(1) to acquisition of geological data is redundant and was therefore removed, since the requirement for reporting acquisition of geological data resides in § 251.8(c)(2).

Some commenters objected to the proposed wording in § 251.11(c)(1) which requires a record of all geological data and information, "describing each operation of analysis, processing, and interpretation." The commenters considered this a shift of MMS focus from geological information, as defined in part 251, to descriptions of the technologies and techniques used to arrive at processed, analyzed, or interpreted information. It is not the intent of MMS to acquire from industry these types of proprietary or confidential technical information. Therefore, MMS will require only a description of each "type" of analysis, processing, or interpretation, as specified in a G&G permit.

Several commenters objected to the provisions in § 251.11(d), relating to the obligations of permittees and third parties who obtain geological data and information. Since the requirements of this section are similar to § 251.12(d), we have combined our discussion of those two sections. Please see the section titled "Third Party Issues" for a complete discussion of obligations when G&G data and information collected under a permit are obtained by a third party.

Section 251.12 Inspection, Selection, and Submission of Geophysical Data and Information Collected Under a Permit and Processed by Permittees or Third Parties

Similar to the comments on § 251.11(a)(1), many commenters objected to the requirement in § 251.12(a)(1) that a permittee notify the Regional Director "immediately" after initially acquiring, processing, and interpreting any geophysical data and information collected under a permit, again citing excessive costs and other burdens. MMS agrees. The wording is changed to require the permittee to notify the Regional Director after completion of the initial processing and interpretation of geophysical data and information collected under a permit. MMS does not intend to require continual notification of every step of initial processing and interpretation. In addition, the reference in § 251.12(a)(1) to acquisition of geophysical data is redundant and removed, since the requirement for reporting acquisition of geophysical data also resides in § 251.8(c)(2).

Some commenters questioned the provisions in §§ 251.12(c)(2) and 251.12(c)(3) which require that processed geophysical information be submitted to MMS in a "quality" format suitable for processing or interpretive evaluation. There was a misunderstanding as to what was meant by "quality" format. Here "quality" means the same level of format used by a permittee or third party in the normal course of their business.

Some commenters questioned whether MMS was seeking "black box" technologies that are privileged and proprietary to the person submitting the G&G data and information. MMS requires only the information, including a detailed format, necessary to load digital data and information. MMS does not request nor seek proprietary software or procedures used to prepare the data and information.

Third Party Issues

Several commenters strongly objected to §§ 251.11(d) and 251.12(d), which clarify the permit obligations placed on both the permittee and the third party when geological and geophysical data and information are transferred by any means to a third party. Most commenters argued that the provisions of §§ 251.11 and 251.12 should not apply to third parties who obtain G&G data and information from permittees through a license agreement since no "transfer" of data and information takes place. We disagree. The obligation to notify the Regional Supervisor when a permittee provides geophysical data or processed information to a third party, or a third party provides data and information received from a permittee to another third party, has been in place since part 251 was added to Title 30 of the Code of Federal Regulations, effective June 11, 1976.

MMS has always considered a license agreement a form of transfer or exchange, as are a sale, trade, or other agreement between a permittee and a third party. In order to clarify any confusion resulting from industry's interpretation of what constitutes a transfer, MMS has revised the language of the regulation to make clear that the obligations under §§ 251.11 and 251.12 are triggered whenever a third party obtains by any means data and information collected under a permit. However, in an effort to alleviate industry concerns over the burden and cost of reporting all license agreements, MMS will require identification of third parties who obtain data and information under licensing agreements only in response to a written request by MMS to the permittee, or to the third party which licensed the data to another third party.

The commenters also questioned the statutory authority of MMS to acquire G&G data and information from third parties who obtain the data and information under a license agreement. The authority for obtaining data and information that were collected under a permit and further processed by a third party is at section 11 of the OCSLA (43 U.S.C. 1340 (a)(1)). This section provides that only persons "authorized" by the Secretary may conduct G&G activities on the OCS. In the absence of a lease, MMS "authorization" is the "permit."

One of the terms of the permit is the permittee's agreement to provide MMS with all of the data and information collected, interpretations, etc., and to identify third parties. The regulations in turn, at former §§ 251.11(c) and 251.12 (c) required the recipients of those data and information or interpretation to accept those same permit obligations as a condition of receipt. Third party recipients are still subject to the regulatory requirements of a permittee in the revised §§ 251.11 and 251.12, including the obligation to submit G&G data and information for inspection and possible retention by MMS.

Several commenters stated that there would be an additional administrative burden on third parties who would be required to submit such data and information to MMS for inspection and possible retention, than is the case

under the current regulations. We acknowledge an increase in administrative work and costs to third parties. However, MMS does not consider the extra burden under the revised rule to be significant. Furthermore, the requirement for third parties to submit data and information is not new relative to the requirement of the existing regulations. MMS does anticipate a larger percentage of its data needs coming from third parties. However, we anticipate that most of MMS' future data needs will continue to come directly from permittees, who have provided over 95 percent of processed seismic information that MMS has acquired on the OCS.

Some commenters also claimed that the proposed language would require that third parties assume all responsibilities of permittees, including operational and environmental requirements. That is not the intent of MMS. The responsibilities of third parties to whom data and information were transferred from permittees have always been limited to the data submittal sections of part 251, specifically §§ 251.11 and 251.12. The final rule has been modified so that third parties who obtained data and information are exempt from the §§ 251.11(a)(1) and 251.12(a)(1) requirement of automatic notification to MMS. This exemption is a change from the proposed rulemaking and from previous final rulemakings and will ease the potential administrative burdens on third parties.

Several commenters objected to the provisions that required third parties to submit data and information obtained from permittees to MMS, arguing that the terms of license agreements will be violated and/or license agreements will have to be rewritten to accommodate submittal to MMS, resulting in a large paperwork burden. MMS has always required that third parties assume all the data submittal obligations of a permittee if data and information are transferred to the third party by a permittee. License agreements should therefore have always reflected the possibility of submittal of data and information to MMS by third parties.

Some commenters stated that the acquisition of G&G data and information by MMS from third parties who obtained the data under license agreements is a taking of private property. MMS disagrees. Applicants for a permit accept, as part of the permit terms, an obligation to provide data obtained under the permit to MMS. In addition, applicants agree to require that any third party who obtains the data accept those same obligations. If an applicant is unwilling to agree, they have the choice of not obtaining the permit. Third parties who agree to the requirements can obtain the data from the permittees. Those who choose not to agree also have an option. They simply cannot accept the data without also accepting the obligation imposed by the permit.

Several commenters expressed concern about revealing to MMS the identity of third parties who obtained data and information from permittees. The commenters noted that public disclosure of a third party's identity, or the areas on the OCS for which the third party obtained data, could jeopardize a third party's competitive position and reveal business strategies of operating and obtaining leases on the OCS. MMS agrees that public disclosure of a third party's business interests and strategies, or of other privileged and proprietary information, would have a deleterious effect on third parties. Such information has been protected in the past by MMS, and we are reaffirming through these regulations that such information would continue to be protected by MMS as trade secrets or confidential business information which are exempt from the Freedom of Information Act and not subject to release under regulations which come under the purview of MMS. A new provision in § 251.14(a)(3) provides further protection for third party recipients of data and information collected under permits. Under this provision, MMS will keep confidential the identities of third party recipients and will not release these identities unless both the permittee and the third parties agree to the disclosure.

Several commenters suggested that MMS continue using the "trial procedures" set up in 1995 between MMS and industry as a mechanism for leases in the Gulf of Mexico. Under these procedures, bidders on a particular tract were required to submit to MMS specific seismic information collected under a permit and processed by the bidder (a third party). While some of the commenters acknowledged problems with implementation of the "trial procedures," they encouraged MMS to pursue improvements instead of proceeding with this final rule.

MMS has always considered the "trial procedures" to be temporary and has indicated such to industry. In the two meetings with industry, MMS cited instances of noncompliance, in some cases perhaps deliberate, with the provisions of the "trial procedures." It is now also becoming apparent that there are data necessary for a thorough assessment of tracts receiving bids that are not available under the "trial procedures." Furthermore, MMS now needs to clarify and finalize the process of obtaining G&G data and information collected under permits for all of the OCS, not only the Gulf of Mexico.

Section 251.14 Protecting and Disclosing Data and Information Submitted to MMS Under a Permit

Some commenters recommended that the Director, MMS, rather than the appropriate Regional Director, be responsible for the provisions of § 251.14(c), the procedure that MMS follows to disclose acquired data and information to a contractor for reproduction, processing, and interpretation. The commenters argued that wrongful disclosure of data could have disastrous consequences from a competitive standpoint, and that ensuring that the top official of MMS is bound by all applicable laws and regulations regarding dissemination of the data would better protect data. We feel that it is unnecessary to specify that only the Director be responsible for disclosure of data or that only the Director can notify the proper party of disclosure of data to contractors for authorized purposes. The Director is still responsible for actions of subordinates acting in an official capacity.

Section 251.14(c) was changed to clarify that the person, whether a permittee or third party, who submitted the data and information under §§ 251.11 or 251.12 will be advised by MMS of any contemplated disclosure to a contractor for reproduction, processing, and interpretation.

In this rulemaking, MMS is also making two corrections in 30 CFR part 250.

The first correction is to § 250.209(c). This technical amendment amends the citation in (c) from "43 CFR part 62 subpart D" to "43 CFR part 12 subpart D." The second correction is to subpart O. The numbering of subpart O will be moved down one. The subpart will begin at § 250.210 and end at § 250.234.

Authors: David R. Zinzer, Resource Evaluation Division, and Kumkum Ray, Rules Processing Team.

Executive Order (E.O.) 12866

This rule is not significant under E.O. 12866, "Regulatory Planning and Review," and does not require a review by the Office of Management and Budget (OMB). Most revisions to the rule are generally nonsubstantive changes and will have a negligible economic effect on the oil, gas, sulphur, and mining industries or scientific researchers. Bonding requirements in the rule affect G&G exploration costs as outlined below. MMS estimated the economic effects by assuming that one deep stratigraphic well will be drilled per year, based on past history of frequency of wells drilled. Bonding requirements for single deep stratigraphic wells recently increased from $50,000 to $200,000; at a 2-percent maximum rate, the bonding cost recently increased from $1,000 to $4,000.

MMS does not expect that any company will drill enough deep stratigraphic wells to warrant an area bond. If a company did want an area bond, then the bonding requirement would increase from $300,000 to $1,000,000; at a 2-percent maximum rate, the bonding cost would increase from $6,000 to $20,000. Since this increase in bonding cost will not have a major economic effect (less than $100 million), the proposed rule is not considered an economically significant rule. Additionally, the proposed revisions will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or raise novel legal or policy issues.

Regulatory Flexibility Act

The changes to 30 CFR part 251 will not have a significant economic effect on the oil and gas industry or small business entities. The final rulemaking may involve small businesses or other small entities if they desire to perform geological or geophysical exploration or scientific research on the OCS. The Small Business Administration defines *a small business* as having:

- Annual revenues of $5 million or less for exploration service and field service companies;
- Less than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

However, a typical exploratory well in the shallow waters of the Gulf of Mexico costs more than $2.7 million to drill; and the acquisition and processing of a single block (9 sq. mi) of exclusive 3D seismic data could cost as much as $1 million. Because of the technical and financial resources needed to perform these activities offshore, the majority of entities conducting these activities are not considered small.

The primary economic effect on small businesses is the cost associated with information collection activities. The final rulemaking contains virtually all of the same reporting requirements and attendant costs as the existing regulations. There is only one change in reporting requirements which represents a small increase. The increased burden is not on the oil and gas industry, but for entities involved in scientific research.

The increased reporting requirement contained in these regulations relates to the filing of a Notice for all scientific research involving geological and geophysical activities. Previously, the requirement for a Notice existed solely for certain geological scientific research activities, namely shallow test drilling. We estimate that the new requirement will result in the filing of an additional two to four Notices annually, all from small entities: 24 to 36 hours; $840 to $1,260.

Several commenters on the proposed regulations commented on the extreme burden that would be imposed on the oil and gas industry if they were made to comply with our clarification of "transfer." They alluded to the need to modify the large number of existing data licenses. MMS does not agree with the contention that there is a material change in the definition. We maintain that the requirement is unchanged from the existing regulations. To the extent existing licenses need to be revised we believe the burden and cost of this revision will not be incurred directly by small business entities. MMS will, however, be making requests directly to small business entities. These new requests will be offset in part by elimination of the current procedures.

MMS concludes that complying with these regulations will not have a substantial or significant effect on small business entities operating on the OCS. MMS in its existing approved information collection budget estimated the total burden in complying with these regulations is 10,604 hours for a total of $371,140. Our estimate of the annual burden to small business entities is approximately 1,060 hours at a cost of $37,100. This represents about 10 percent of the total compliance burden. These costs are insignificant given the fiscal resources required to perform exploration and development activities on the OCS. Furthermore, virtually all of this burden existed under the old rule.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted the collection of information contained in the proposed rule to OMB. The OMB approved the information collection requirements in proposed 30 CFR part 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf and assigned OMB control number 1010–0048. We have examined the information collection requirements in this final rule and have determined that there is no significant change from the currently approved collection of information for the proposed rule. The estimated annual burden for this collection of information is 10,604 hours, an average of 7.7 hour per response.

Takings Implication Assessment

The rule does not represent a government action capable of interference with constitutionally protected property rights. A new requirement in the rule is a Notice for scientific research in the OCS. Since MMS is not requiring the researcher to submit data and information or analyses resulting from the research activity, there is no direct or indirect taking.

The rule also clarifies the obligations of a third party. When a permittee transfers data and information to a third party, there is a transfer of the obligation to provide access to MMS as well. Further, the recipient of the data and information is subject to the same penalty provisions as the original permittee—if a third party fails to provide access. These clarifications better define existing requirements and add no new requirements.

Other changes are not substantive or were made to put the regulation into plain English. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights."

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, and State governments, or the private sector.

E.O. 12988

DOI has certified to OMB that the rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988, "Civil Justice Reform."

National Environmental Policy Act

DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands— mineral resources, Reporting and recordkeeping requirements, Research.

Dated: December 16, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) amends 30 CFR parts 250 and 251 to read as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

Subpart N—Outer Continental Shelf (OCS) Civil Penalties

2. Section 250.209 paragraph (c) is revised as follows:

§ 250.209 What are my rights?

* * * * *

(c) * * * The Department of Interior's regulations implementing these authorities are found at 43 CFR part 12 subpart D.

Subpart O—Training

3. In subpart O, §§ 250.209 through 250.233 are redesignated as §§ 250.210 through 250.234, respectively.

4. 30 CFR part 251 is revised to read as follows:

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

Sec.

251.1 Definitions.
251.2 Purpose of this part.
251.3 Authority and applicability of this part.
251.4 Types of G&G activities that require permits or Notices.
251.5 Applying for permits or filing Notices.
251.6 Obligations and rights under a permit or a Notice.
251.7 Test drilling activities under a permit.
251.8 Inspection and reporting requirements for activities under a permit.
251.9 Temporarily stopping, canceling, or relinquishing activities approved under a permit.
251.10 Penalties and appeals.
251.11 Submission, inspection, and selection of geological data and information collected under a permit and processed by permittees or third parties.
251.12 Submission, inspection, and selection of geophysical data and information collected under a permit and processed by permittees or third parties.
251.13 Reimbursement for the cost of reproducing data and information and certain processing costs.
251.14 Protecting and disclosing data and information submitted to MMS under a permit.
251.15 Authority for information collection.

Authority: 43 U.S.C. 1331 *et seq.*

§ 251.1 Definitions.

Terms used in this part have the following meaning:

Act means the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1331 *et seq.*).

Analyzed geological information means data collected under a permit or a lease that have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

Archaeological interest means capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurements, controlled collection, analysis, interpretation, and explanation.

Archaeological resources means any material remains of human life or activities that are at least 50 years of age and of archaeological interest.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal Zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States and extends seaward to the outer limit of the U.S. territorial sea.

Coastal Zone Management Act means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

Data means facts, statistics, measurements, or samples that have not been analyzed, processed, or interpreted.

Deep stratigraphic test means drilling that involves the penetration into the sea bottom of more than 500 feet (152 meters).

Director means the Director of the Minerals Management Service, U.S. Department of the Interior, or a subordinate authorized to act on the Director's behalf.

Exploration means the commercial search for oil, gas, and sulphur. Activities classified as exploration include, but are not limited to:

(1) Geological and geophysical marine and airborne surveys where magnetic, gravity, seismic reflection, seismic refraction, gas sniffers, coring, or other systems are used to detect or imply the presence of oil, gas, or sulphur; and

(2) Any drilling, whether on or off a geological structure.

Geological and geophysical scientific research means any oil, gas, or sulphur related investigation conducted in the OCS for scientific and/or research purposes. Geological, geophysical, and geochemical data and information gathered and analyzed are made available to the public for inspection and reproduction at the earliest practicable time. The term does not include commercial geological or geophysical exploration or research.

Geological exploration means exploration that uses geological and geochemical techniques (e.g., coring and test drilling, well logging, and bottom sampling) to produce data and information on oil, gas, and sulphur resources in support of possible exploration and development activities. The term does not include geological scientific research.

Geophysical exploration means exploration that utilizes geophysical techniques (e.g., gravity, magnetic, or seismic) to produce data and information on oil, gas, and sulphur resources in support of possible exploration and development activities. The term does not include geophysical scientific research.

Governor means the Governor of a State or the person or entity lawfully designated to exercise the powers granted to a Governor pursuant to the Act.

Human environment means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Hydrocarbon occurrence means the direct or indirect detection during drilling operations of any liquid or gaseous hydrocarbons by examination of well cuttings, cores, gas detector readings, formation fluid tests, wireline logs, or by any other means. The term does not include background gas, minor accumulations of gas, or heavy oil residues on cuttings and cores.

Information means geological and geophysical data that have been analyzed, processed, or interpreted.

Interpreted geological information means knowledge, often in the form of schematic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geological data and analyzed and processed geologic information.

Interpreted geophysical information means knowledge, often in the form of seismic cross sections, 3-dimensional representations, and maps, developed by determining the geological significance of geophysical data and processed geophysical information.

Lease means an agreement which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals or the area covered by that authorization, whichever is required by the context.

Lessee means a person who has entered into, or is the MMS approved assignee of, a lease with the United States to explore for, develop, and produce the leased minerals. The term "lessee" also includes an owner of operating rights.

Marine environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the quality of the marine ecosystem in the coastal zone and in the OCS.

Material remains mean physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

Minerals mean oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from public lands as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

Notice means a written statement of intent to conduct geological or geophysical scientific research related to oil, gas, and sulphur in the OCS other than under a permit.

Oil, gas, and sulphur mean oil, gas, sulphur, geopressured-geothermal, and associated resources.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Permit means the contract or agreement, other than a lease, issued pursuant to this part, under which a person acquires the right to conduct on the OCS, in accordance with appropriate statutes, regulations, and stipulations:

(1) Geological exploration for mineral resources;

(2) Geophysical exploration for mineral resources;

(3) Geological scientific research; or

(4) Geophysical scientific research.

Permittee means the person authorized by a permit issued pursuant to this part to conduct activities on the OCS.

Person means a citizen or national of the United States; an alien lawfully admitted for permanent residence in the United States as defined in section 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; and associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal agencies.

Processed geological or geophysical information means data collected under a permit and later processed or reprocessed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements. Reprocessing is the additional processing other than ordinary processing used in the general course of evaluation. Reprocessing operations may include varying identified parameters for the detailed study of a specific problem area.

Secretary means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

Shallow test drilling means drilling into the sea bottom to depths less than those specified in the definition of a deep stratigraphic test.

Significant archaeological resource means those archaeological resources that meet the criteria of significance for eligibility to the National Register of Historic Places as defined in 36 CFR 60.4.

Third Party means any person other than the permittee or a representative of the United States, including all persons who obtain data or information acquired under a permit from the permittee, or from another third party, by sale, trade, license agreement, or other means.

Violation means a failure to comply with any provision of the Act, or a provision of a regulation or order issued under the Act, or any provision of a lease, license, or permit issued under the Act.

You means a person who applies for and/or obtains a permit, or files a Notice to conduct geological or geophysical exploration or scientific research related to oil, gas, and sulphur in the OCS.

§ 251.2 Purpose of this part.

(a) To allow you to conduct G&G activities in the OCS related to oil, gas, and sulphur on unleased lands or on lands under lease to a third party.

(b) To ensure that you carry out G&G activities in a safe and environmentally sound manner so as to prevent harm or damage to, or waste of, any natural resources (including any mineral deposit in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(c) To inform you and third parties of your legal and contractual obligations.

(d) To inform you and third parties of the U.S. Government's rights to access G&G data and information collected under permit in the OCS, reimbursement for submittal of data and information, and the proprietary terms of data and information submitted to, and retained by, MMS.

§ 251.3 Authority and applicability of this part.

MMS authorizes you to conduct exploration or scientific research activities under this part in accordance with the Act, the regulations in this part, orders of the Director/Regional Director, and other applicable statutes, regulations, and amendments.

(a) This part does not apply to G&G exploration conducted by or on behalf

of the lessee on a lease in the OCS. Refer to 30 CFR part 250 if you plan to conduct G&G activities related to oil, gas, or sulphur under terms of a lease.

(b) Federal agencies are exempt from the regulations in this part.

(c) G&G exploration or G&G scientific research related to minerals other than oil, gas, and sulphur is covered by regulations at 30 CFR part 280.

§ 251.4 Types of G&G activities that require permits or Notices.

(a) *Exploration.* You must have an MMS-approved permit to conduct G&G exploration, including deep stratigraphic tests, for oil, gas, or sulphur resources. If you conduct both geological and geophysical exploration, you must have a separate permit for each.

(b) *Scientific research.* You may only conduct G&G scientific research related to oil, gas, and sulphur in the OCS after you obtain an MMS-approved permit or file a Notice.

(1) *Permit.* You must obtain a permit if the research activities you propose to conduct involve:

(i) Using solid or liquid explosives;

(ii) Drilling a deep stratigraphic test; or

(iii) Developing data and information for proprietary use or sale.

(2) *Notice.* Any other G&G scientific research that you conduct related to oil, gas, and sulphur in the OCS requires you to file a Notice with the Regional Director at least 30 days before you begin. If circumstances preclude a 30-day Notice, you must provide oral notification and followup in writing. You must also inform MMS in writing when you conclude your work.

§ 251.5 Applying for permits or filing Notices.

(a) *Permits.* You must submit a signed original and three copies of the MMS permit application form (Form MMS–327). The form includes names of persons, type, location, purpose, and dates of activity, and environmental and other information.

(b) *Disapproval of permit application.* If MMS disapproves your application for a permit, the Regional Director will state the reasons for the denial and will advise you of the changes needed to obtain approval.

(c) *Notices.* You must sign and date a Notice and state:

(1) The name(s) of the person(s) who will conduct the proposed research;

(2) The name(s) of any other person(s) participating in the proposed research, including the sponsor;

(3) The type of research and a brief description of how you will conduct it;

(4) The location in the OCS, indicated on a map, plat, or chart, where you will conduct research;

(5) The proposed dates you project for your research activity to start and end;

(6) The name, registry number, registered owner, and port of registry of vessels used in the operation;

(7) The earliest practicable time you expect to make the data and information resulting from your research activity available to the public;

(8) Your plan of how you will make the data and information you collected available to the public;

(9) That you and others involved will not sell or withhold for exclusive use the data and information resulting from your research; and

(10) At your option, you may submit (as a substitute for the material required in paragraphs (c)(7), (c)(8), and (c)(9) of this section) the nonexclusive use agreement for scientific research attachment to Form 327.

(d) *Filing locations.* You must apply for a permit or file a Notice at one of the following locations:

(1) For the OCS off the State of Alaska—the Regional Supervisor for Resource Evaluation, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

(2) For the OCS off the Atlantic Coast and in the Gulf of Mexico—the Regional Supervisor for Resource Evaluation, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

(3) For the OCS off the coast of the States of California, Oregon, Washington, or Hawaii—the Regional Supervisor for Resource Evaluation, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, California 93010–6064.

§ 251.6 Obligations and rights under a permit or a Notice.

While conducting G&G exploration or scientific research activities under MMS permit or Notice:

(a) You must not:

(1) Interfere with or endanger operations under any lease, right-of-way, easement, right-of-use, Notice, or permit issued or maintained under the Act;

(2) Cause harm or damage to life (including fish and other aquatic life), property, or to the marine, coastal, or human environment;

(3) Cause harm or damage to any mineral resource (in areas leased or not leased);

(4) Cause pollution;

(5) Disturb archaeological resources;

(6) Create hazardous or unsafe conditions; or

(7) Unreasonably interfere with or cause harm to other uses of the area.

(b) You must immediately report to the Regional Director if you:

(1) Detect hydrocarbon occurrences;

(2) Detect environmental hazards which imminently threaten life and property; or

(3) Adversely affect the environment, aquatic life, archaeological resources, or other uses of the area where you are conducting exploration or scientific research activities.

(c) You must also consult and coordinate your G&G activities with other users of the area for navigation and safety purposes.

(d) Any persons conducting shallow test drilling or deep stratigraphic test drilling activities under a permit must use the best available and safest technologies that the Regional Director determines to be economically feasible.

(e) You may not claim any oil, gas, sulphur, or other minerals you discover while conducting operations under a permit or Notice.

§ 251.7 Test drilling activities under a permit.

(a) *Shallow test drilling.* Before you begin shallow test drilling under a permit, the Regional Director may require you to:

(1) Gather and submit seismic, bathymetric, sidescan sonar, magnetometer, or other geophysical data and information to determine shallow structural detail across and in the vicinity of the proposed test.

(2) Submit information for coastal zone consistency certification according to paragraphs (b)(3) and (b)(4) of this section, and for protecting archaeological resources according to paragraph (b)(5) of this section.

(3) Allow all interested parties the opportunity to participate in the shallow test according to paragraph (c) of this section, and meet bonding requirements according to paragraph (d) of this section.

(b) *Deep stratigraphic tests.* You must submit to the appropriate Regional Director, at the address given in § 251.5, a drilling plan, an environmental report, and an application for permit to drill (Form MMS–123) as follows:

(1) *Drilling plan.* The drilling plan must include:

(i) The proposed type, sequence, and timetable of drilling activities;

(ii) A description of your drilling rig, indicating the important features with special attention to safety, pollution prevention, oil-spill containment and cleanup plans, and onshore disposal procedures;

(iii) The location of each deep stratigraphic test you will conduct, including the location of the surface and projected bottomhole of the borehole;

(iv) The types of geological and geophysical survey instruments you will use before and during drilling;

(v) Seismic, bathymetric, sidescan sonar, magnetometer, or other geophysical data and information sufficient to evaluate seafloor characteristics, shallow geologic hazards, and structural detail across and in the vicinity of the proposed test to the total depth of the proposed test well; and

(vi) Other relevant data and information that the Regional Director requires.

(2) *Environmental report.* The environmental report must include all of the following material:

(i) A summary with data and information available at the time you submitted the related drilling plan. MMS will consider site-specific data and information developed since the most recent environmental impact statement or other environmental impact analysis in the immediate area. The summary must meet the following requirements:

(A) You must concentrate on the issues specific to the site(s) of drilling activity. However, you only need to summarize data and information discussed in any environmental reports, analyses, or impact statements prepared for the geographic area of the drilling activity.

(B) You must list referenced material. Include brief descriptions and a statement of where the material is available for inspection.

(C) You must refer only to data that are available to MMS.

(ii) Details about your project such as:

(A) A list and description of new or unusual technologies;

(B) The location of travel routes for supplies and personnel;

(C) The kinds and approximate levels of energy sources;

(D) The environmental monitoring systems; and

(E) Suitable maps and diagrams showing details of the proposed project layout.

(iii) A description of the existing environment. For this section, you must include the following information on the area:

(A) Geology;

(B) Physical oceanography;

(C) Other uses of the area;

(D) Flora and fauna;

(E) Existing environmental monitoring systems; and

(F) Other unusual or unique characteristics that may affect or be affected by the drilling activities.

(iv) A description of the probable impacts of the proposed action on the environment and the measures you propose for mitigating these impacts.

(v) A description of any unavoidable or irreversible adverse effects on the environment that could occur.

(vi) Other relevant data that the Regional Director requires.

(3) *Copies for coastal States.* You must submit copies of the drilling plan and environmental report to the Regional Director for transmittal to the Governor of each affected coastal State and the coastal zone management agency of each affected coastal State that has an approved program under the Coastal Zone Management Act. (The Regional Director will make the drilling plan and environmental report available to appropriate Federal agencies and the public according to the Department of the Interior's policies and procedures).

(4) *Certification of coastal zone management program consistency and State concurrence.* When required under an approved coastal zone management program of an affected State, your drilling plan must include a certification that the proposed activities described in the plan comply with enforceable policies of, and will be conducted in a manner consistent with such State's program. The Regional Director may not approve any of the activities described in the drilling plan unless the State concurs with the consistency certification or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of the Coastal Zone Management Act.

(5) *Protecting archaeological resources.* If the Regional Director believes that an archaeological resource may exist in the area that may be affected by drilling, the Regional Director will notify you of the need to prepare an archaeological report.

(i) If the evidence suggests that an archaeological resource may be present, you must:

(A) Locate the site of the drilling so as to not adversely affect the area where the archaeological resources may be, or

(B) Establish to the satisfaction of the Regional Director that an archaeological resource does not exist or will not be adversely affected by drilling. This must be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the Regional Director. A report on the investigation must be submitted to the Regional Director for review.

(ii) If the Regional Director determines that an archaeological resource is likely to be present in the area that may be affected by drilling, and may be adversely affected by drilling, the Regional Director will notify you immediately. You must take no action that may adversely affect the archaeological resource unless further investigations determine that the resource is not archaeologically significant.

(iii) If you discover any archaeological resource while drilling, you must immediately halt drilling and report the discovery to the Regional Director. If investigations determine that the resource is significant, the Regional Director will inform you how to protect it.

(6) *Application for permit to drill (APD).* Before commencing deep stratigraphic test drilling activities under an approved drilling plan, you must submit an APD (Form MMS–123) and receive approval. You must comply with all regulations relating to drilling operations in 30 CFR part 250.

(7) *Revising an approved drilling plan.* Before you revise an approved drilling plan, you must obtain the Regional Director's approval.

(8) *After drilling.* When you complete the test activities, you must permanently plug and abandon the boreholes of all deep stratigraphic tests in compliance with 30 CFR part 250. If the tract on which you conducted a deep stratigraphic test is leased to another party for exploration and development, and if the lessee has not disturbed the borehole, MMS will hold you and not the lessee responsible for problems associated with the test hole.

(9) *Deadline for completing a deep stratigraphic test.* If your deep stratigraphic test well is within 50 geographic miles of a tract that MMS has identified for a future lease sale, as listed on the currently approved OCS leasing schedule, you must complete all drilling activities and submit the data and information to the Regional Director at least 60 days before the first day of the month in which MMS schedules the lease sale. However, the Regional Director may extend your permit duration to allow you to complete drilling activities and submit data and information if the extension is in the national interest.

(c) *Group participation in test drilling.* MMS encourages group participation for deep stratigraphic tests.

(1) *Purpose of group participation.* The purpose is to minimize duplicative

G&G activities involving drilling into the seabed of the OCS.

(2) *Providing opportunity for participation in a deep stratigraphic test.* When you propose to drill a deep stratigraphic test, you must give all interested persons an opportunity to participate in the test drilling through a signed agreement on a cost-sharing basis. You may include a penalty for late participation of not more than 100 percent of the cost to each original participant in addition to the original share cost.

(i) The participants must assess and distribute late participation penalties in accordance with the terms of the agreement.

(ii) For a significant hydrocarbon occurrence that the Regional Director announces to the public, the penalty for subsequent late participants may be raised to not more than 300 percent of the cost of each original participant in addition to the original share cost.

(3) *Providing opportunity for participation in a shallow test drilling project.* When you apply to conduct shallow test drilling activities, you must, if ordered by the Regional Director or required by the permit, give all interested persons an opportunity to participate in the test activity on a cost-sharing basis. You may include a penalty provision for late participation of not more than 50 percent of the cost to each original participant in addition to the original share cost.

(4) *Procedures for group participation in drilling activities.* You must:

(i) Publish a summary statement that describes the approved activity in a relevant trade publication;

(ii) Forward a copy of the published statement to the Regional Director;

(iii) Allow at least 30 days from the summary statement publication date for other persons to join as original participants;

(iv) Compute the estimated cost by dividing the estimated total cost of the program by the number of original participants; and

(v) Furnish the Regional Director with a complete list of all participants before starting operations, or at the end of the advertising period if you begin operations before the advertising period is over. The names of any subsequent or late participants must also be furnished to the Regional Director.

(5) *Changes to the original application for test drilling.* If you propose changes to the original application and the Regional Director determines that the changes are significant, the Regional Director will require you to publish the changes for an additional 30 days to give other persons a chance to join as original participants.

(d) *Bonding requirements.* You must submit a bond under this part before you may start a deep stratigraphic test.

(1) Before MMS issues a permit authorizing the drilling of a deep stratigraphic test, you must either:

(i) Furnish to MMS a bond of not less than $200,000 that guarantees compliance with all the terms and conditions of the permit; or

(ii) Maintain a $1 million bond that guarantees compliance with all the terms and conditions of the permit you hold for the OCS area where you propose to drill.

(2) You must provide additional security to MMS if the Regional Director determines that it is necessary for the permit or area.

(3) The Regional Director may require you to provide a bond, in an amount the Regional Director prescribes, before authorizing you to drill a shallow test well.

(4) Your bond must be on a form approved by the Associate Director for Offshore Minerals Management.

§ 251.8 Inspection and reporting requirements for activities under a permit.

(a) *Inspection of permit activities.* You must allow MMS representatives to inspect your exploration or scientific research activities under a permit. They will determine whether operations are adversely affecting the environment, aquatic life, archaeological resources, or other uses of the area. MMS will reimburse you for food, quarters, and transportation that you provide for MMS representatives if you send in your reimbursement request to the Region that issued the permit within 90 days of the inspection.

(b) *Approval for modifications.* Before you begin modified operations, you must submit a written request describing the modifications and receive the Regional Director's oral or written approval. If circumstances preclude a written request, you must make an oral request and follow up in writing.

(c) *Reports.* (1) You must submit status reports on a schedule specified in the permit and include a daily log of operations.

(2) You must submit a final report of exploration or scientific research activities under a permit within 30 days after the completion of acquisition activities under the permit. You may combine the final report with the last status report and must include each of the following:

(i) A description of the work performed.

(ii) Charts, maps, plats, and digital navigational data in a format specified by the Regional Director, showing the areas and blocks in which any exploration or permitted scientific research activities were conducted. Identify the lines of geophysical traverses and their locations including a reference sufficient to identify the data produced during each activity.

(iii) The dates on which you conducted the actual exploration or scientific research activities.

(iv) A summary of any:

(A) Hydrocarbon or sulphur occurrences encountered;

(B) Environmental hazards; and

(C) Adverse effects of the exploration or scientific research activities on the environment, aquatic life, archaeological resources, or other uses of the area in which the activities were conducted.

(v) Other descriptions of the activities conducted as specified by the Regional Director.

§ 251.9 Temporarily stopping, canceling, or relinquishing activities approved under a permit.

(a) MMS may temporarily stop exploration or scientific research activities under a permit when the Regional Director determines that:

(1) Activities pose a threat of serious, irreparable, or immediate harm. This includes damage to life (including fish and other aquatic life), property, any mineral deposit (in areas leased or not leased), to the marine, coastal, or human environment, or to an archaeological resource;

(2) You failed to comply with any applicable law, regulation, order, or provision of the permit. This would include MMS' required submission of reports, well records or logs, and G&G data and information within the time specified; or

(3) Stopping the activities is in the interest of national security or defense.

(b) *Procedures to temporarily stop activities.* (1) The Regional Director will advise you either orally or in writing. MMS will confirm an oral notification in writing and deliver all written notifications by courier or certified or registered mail. You must halt all activities under a permit as soon as you receive an oral or written notification.

(2) The Regional Director will advise you when you may start your permit activities again.

(c) *Procedure to cancel or relinquish a permit.* The Regional Director may cancel, or a permittee may relinquish, a permit at any time.

(1) If MMS cancels your permit, the Regional Director will advise you by certified or registered mail 30 days before the cancellation date and will state the reason.

(2) You may relinquish the permit by advising the Regional Director by certified or registered mail 30 days in advance.

(3) After MMS cancels your permit or you relinquish it, you are still responsible for proper abandonment of any drill sites in accordance with the requirements of § 251.7(b)(8). You must also comply with all other obligations specified in this part or in the permit.

§ 251.10 Penalties and appeals.

(a) *Penalties for noncompliance under a permit issued by MMS.* You are subject to the penalty provisions of: (1) Section 24 of the Act (43 U.S.C. 1350); and (2) The procedures contained in 30 CFR part 250, subpart N, for noncompliance with: (i) Any provision of the Act; (ii) Any provision of a G&G or drilling permit; or (iii) Any regulation or order issued under the Act.

(b) *Penalties under other laws and regulations.* The penalties prescribed in this section are in addition to any other penalty imposed by any other law or regulation.

(c) *Procedures to appeal orders or decisions MMS issues.* You may appeal any orders or decisions that MMS issues under the regulations in this part by referring to 30 CFR part 290. When you file an appeal with the Director, you must continue to follow all requirements for compliance with an order or decision other than payment of a civil penalty.

§ 251.11 Submission, inspection, and selection of geological data and information collected under a permit and processed by permittees or third parties.

(a) *Availability of geological data and information collected under a permit.* (1) You must notify the Regional Director, in writing, when you complete the initial analysis, processing, or interpretation of any geological data and information. Initial analysis and processing are the stages of analysis or processing where the data and information first become available for in-house interpretation by the permittee, or become available commercially to third parties via sale, trade, license agreement, or other means.

(2) The Regional Director may ask if you have further analyzed, processed, or interpreted any geological data and information. When so asked, you must respond to MMS in writing within 30 days.

(b) *Submission, inspection, and selection of geological data and information.* The Regional Director may request the permittee or third party to submit the analyzed, processed, and interpreted geologic data and information for inspection and/or permanent retention by MMS. The data and information must be submitted within 30 days after such request.

(c) *Requirements for submission of geological data and information collected under a permit.* Unless the Regional Director specifies otherwise, geological data and information must include:

(1) An accurate and complete record of all geological (including geochemical) data and information describing each operation of analysis, processing, and interpretation;

(2) Paleontological reports identifying microscopic fossils by depth, including the reference datum to which paleontological sample depths are related and, if the Regional Director requests, washed samples that you maintain for paleontological determinations;

(3) Copies of well logs or charts in a digital format, if available;

(4) Results and data obtained from formation fluid tests;

(5) Analyses of core or bottom samples and/or a representative cut or split of the core or bottom sample;

(6) Detailed descriptions of any hydrocarbons or hazardous conditions encountered during operations, including near losses of well control, abnormal geopressures, and losses of circulation; and

(7) Other geological data and information that the Regional Director may specify.

(d) *Obligations when geological data and information collected under permit are obtained by a third party.* A third party may obtain geological data and information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(1) The third party recipient of the data and information assumes the obligations under this section, except for the notification provisions of paragraph (a)(1), and is subject to the penalty provisions of 30 CFR part 250, subpart N; and

(2) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(3) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the Regional Director, in writing and within 30 days, of the sale, trade, or other agreement, including the identity of the recipient of the data and information; or

(4) For license agreements a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the Regional Director, advise the Regional Director, in writing, of the license agreement, including the identity of the recipient of the data and information.

§ 251.12 Submission, inspection, and selection of geophysical data and information collected under a permit and processed by permittees or third parties.

(a) *Availability of geophysical data and information collected under a permit.* (1) You must notify the Regional Director, in writing, when you complete the initial processing and interpretation of any geophysical data and information. Initial processing is the stage of processing where the data and information become available for in-house interpretation by the permittee, or become available commercially to third parties via sale, trade, license agreement, or other means.

(2) The Regional Director may ask if you have further processed or interpreted any geophysical data and information. When so asked, you must respond to MMS in writing within 30 days.

(b) *Submission, inspection and selection of geophysical data and information collected under a permit.* The Regional Director may request that the permittee or third party submit geophysical data and information before making a final selection for retention. MMS representatives may inspect and select the data and information on your premises, or the Regional Director can request delivery of the data and information to the appropriate MMS regional office for review.

(1) You must submit the geophysical data and information within 30 days of receiving the request, unless the Regional Director extends the delivery time.

(2) At any time before final selection, the Regional Director may return any or all geophysical data and information following review. You will be notified in writing of all or portions of those data the Regional Director decides to retain.

(c) *Requirements for submission of geophysical data and information collected under a permit.* Unless the Regional Director specifies otherwise, you must include:

(1) An accurate and complete record of each geophysical survey conducted under the permit, including digital navigational data and final location maps;

(2) All seismic data collected under a permit presented in a format and of a quality suitable for processing;

(3) Processed geophysical information derived from seismic data with extraneous signals and interference removed, presented in a quality format suitable for interpretive evaluation, reflecting state-of-the-art processing techniques; and

(4) Other geophysical data, processed geophysical information, and interpreted geophysical information including, but not limited to, shallow and deep subbottom profiles, bathymetry, sidescan sonar, gravity and magnetic surveys, and special studies such as refraction and velocity surveys.

(d) *Obligations when geophysical data and information collected under a permit are obtained by a third party.* A third party may obtain geophysical data, processed geophysical information, or interpreted geophysical information from a permittee, or from another third party, by sale, trade, license agreement, or other means. If this happens:

(1) The third party recipient of the data and information assumes the obligations under this section, except for the notification provisions of paragraph (a)(1), and is subject to the penalty provisions of 30 CFR part 250, subpart N; and

(2) A permittee or third party that sells, trades, licenses, or otherwise provides data and information to a third party must advise the recipient, in writing, that accepting these obligations is a condition precedent of the sale, trade, license, or other agreement; and

(3) Except for license agreements, a permittee or third party that sells, trades, or otherwise provides data and information to a third party must advise the Regional Director, in writing and within 30 days, of the sale, trade, or other agreement, including the identity of the recipient of the data and information; or

(4) For license agreements, a permittee or third party that licenses data and information to a third party must, within 30 days of a request by the Regional Director, advise the Regional Director, in writing, of the license agreement, including the identity of the recipient of the data and information.

§ 251.13 Reimbursement for the costs of reproducing data and information and certain processing costs.

(a) MMS will reimburse you or a third party for reasonable costs of reproducing data and information that the Regional Director requests if:

(1) You deliver G&G data and information to MMS for the Regional Director to inspect or select and retain (according to §§ 251.11 or 251.12);

(2) MMS receives your request for reimbursement and the Regional Director determines that the requested reimbursement is proper; and

(3) The cost is at your lowest rate (or a third party's) or at the lowest commercial rate established in the area, whichever is less.

(b) MMS will reimburse you or the third party for the reasonable costs of processing geophysical information (which does not include cost of data acquisition):

(1) If, at the request of the Regional Director, you processed the geophysical data or information in a form or manner other than that used in the normal conduct of business; or

(2) If you collected the information under a permit that MMS issued to you before October 1, 1985, and the Regional Director requests and retains the information.

(c) When you request reimbursement, you must identify reproduction and processing costs separately from acquisition costs.

(d) MMS will not reimburse you or a third party for data acquisition costs or for the costs of analyzing or processing geological information or interpreting geological or geophysical information.

§ 251.14 Protecting and disclosing data and information submitted to MMS under a permit.

(a) *Disclosure of data and information to the public by MMS.* (1) In making data and information available to the public, the Regional Director will follow the applicable requirements of:

(i) The Freedom of Information Act (5 U.S.C. 552);

(ii) The implementing regulations at 43 CFR part 2;

(iii) The Act; and

(iv) The regulations at 30 CFR parts 250 and 252.

(2) Except as specified in this section or in 30 CFR parts 250 and 252, if the Regional Director determines any data or information is exempt from public disclosure under paragraph (a) of this section, MMS will not provide the data and information to any State or to the executive of any local government or to the public, unless you and all third parties agree to the disclosure.

(3) MMS will keep confidential the identity of third party recipients of data and information collected under a permit. MMS will not release the identity unless you and the third parties agree to the disclosure.

(4) When you detect any significant hydrocarbon occurrences or environmental hazards on unleased lands during drilling operations, the Regional Director will immediately issue a public announcement. The announcement must further the national interest, but without unduly damaging your competitive position.

(b) *Timetable for release of G&G data and information that MMS acquires.* MMS will release data and information that you or a third party submits and MMS retains, in accordance with paragraphs (b)(1) and (b)(2) of this section.

(1) If the data and information are not related to a deep stratigraphic test, MMS will release them to the public in accordance with the following table:

If you or a third party submit and MMS retains	The Regional Director will disclose them to the public
Geological data and information.	10 years after issuing the permit.
Geophysical data	50 years after you or a third party submit the data.
Geophysical information.	25 years after you or a third party submit the information.

(2) If the data and information are related to a deep stratigraphic test, MMS will release them to the public at the earlier of the following times:

(i) Twenty-five years after you complete the test; or

(ii) If a lease sale is held after you complete a test well, 60 calendar days after MMS issues the first lease, any portion of which is located within 50 geographic miles (92.7 kilometers) of the test.

(c) *Procedure that MMS follows to disclose acquired data and information to a contractor for reproduction, processing, and interpretation.*

(1) When practical, the Regional Director will advise the person who submitted data and information under §§ 251.11 or 251.12 of the intent to disclose the data or information to an independent contractor or agent.

(2) The person so notified will have at least 5 working days to comment on the action.

(3) When the Regional Director advises the person who submitted the data and information, all other owners of the data or information will be considered to have been so notified.

(4) Before disclosure, the contractor or agent must sign a written commitment not to sell, trade, license, or disclose data or information to anyone without the Regional Director's consent.

(d) *Sharing data and information with coastal States.* (1) When MMS solicits nominations for leasing lands located within 3 geographic miles (5.6 kilometers) of the seaward boundary of any coastal State, the Regional Director, in accordance with 30 CFR 252.7 (a)(4) and (b) and subsections 8(g) and 26(e) of the Act (43 U.S.C. 1337(g) and 1352(e)), will provide the Governor with:

(i) All information on the geographical, geological, and ecological characteristics of the areas and regions MMS proposes to offer for lease;

(ii) An estimate of the oil and gas reserves in the areas proposed for leasing; and

(iii) An identification of any field, geological structure, or trap on the OCS within 3 geographic miles (5.6 kilometers) of the seaward boundary of the State.

(2) After receiving nominations for leasing an area of the OCS within 3 geographic miles of the seaward boundary of any coastal State, MMS will carry out a tentative area identification according to 30 CFR part 256, subparts D and E. At that time, the Regional Director will consult with the Governor to determine whether any tracts further considered for leasing may contain any oil or gas reservoirs that underlie both the OCS and lands subject to the jurisdiction of the State.

(3) Before a sale, if a Governor requests, the Regional Director, in accordance with 30 CFR 252.7(a)(4) and (b) and sections 8(g) and 26(e) of the Act (43 U.S.C. 1337(g) and 1352(e)), will share with the Governor information that identifies potential and/or proven common hydrocarbon bearing areas within 3 geographic miles of the seaward boundary of that State.

(4) Information received and knowledge gained by a State official under paragraph (d) of this section is subject to applicable confidentiality requirements of:

(i) The Act; and

(ii) The regulations at 30 CFR parts 250, 251, and 252.

§ 251.15 Authority for information collection.

(a) The Office of Management and Budget has approved the information collection requirements in this part under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–0048. The title of this information collection is "30 CFR Part 251, Geological and Geophysical (G&G) Explorations of the OCS."

(b) We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(c) We use the information collected under this part to:

(1) Evaluate permit applications and monitor scientific research activities for environmental and safety reasons.

(2) Determine that explorations do not harm resources, result in pollution, create hazardous or unsafe conditions, or interfere with other users in the area.

(3) Approve reimbursement of certain expenses.

(4) Monitor the progress and activities carried out under an OCS G&G permit.

(5) Inspect and select G&G data and information collected under an OCS G&G permit.

(d) Respondents are Federal OCS permittees and Notice filers. Responses are mandatory or are required to obtain or retain a benefit. We will protect information considered proprietary under applicable law and under regulations at § 251.14 and part 250 of this chapter.

(e) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, N.W., Washington, D.C. 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1010–0048), 725 17th Street, N.W., Washington, D.C. 20503.

[FR Doc. 97–33530 Filed 12–23–97; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Defense Special Weapons Agency

32 CFR Part 318

[DSWA Instruction 5400.11B]

Defense Special Weapons Agency Privacy Program

AGENCY: Defense Special Weapons Agency, DOD.

ACTION: Final rule.

SUMMARY: The Defense Special Weapons Agency (DSWA) is adding two sections to its procedural rule for the DSWA Privacy Program. The two sections are entitled Disclosure of record to persons other than the individual to whom it pertains and Fees. The addition of these two sections helps an individual to better understand the DSWA Privacy Program.

EFFECTIVE DATE: December 3, 1997.

ADDRESSES: General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

FOR FURTHER INFORMATION CONTACT: Mrs. Sandy Berker at (703) 325–7681.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that the Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Defense Special Weapons Agency is adopting the changes previously published as a proposed rule on October 3, 1997, at 62 FR 51821. No comments were received, therefore, the Defense Special Weapons Agency is adopting the rule as previously published.

List of Subjects in 32 CFR Part 318

Privacy.

Accordingly, the Defense Special Weapons Agency amends 32 CFR part 318 as follows:

PART 318–DEFENSE SPECIAL WEAPONS AGENCY PRIVACY PROGRAM-[AMENDED]

1. The authority citation for 32 CFR part 318 continues to read as follows:

AUTHORITY: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 318.9 is redesignated as 318.11.

3. Sections 318.9 and 318.10 are added as follows:

§ 318.9 Disclosure of record to persons other than the individual to whom it pertains.

(a) *General.* No record contained in a system of records maintained by DSWA shall be disclosed by any means to any person or agency within or outside the Department of Defense without the request or consent of the subject of the record, except as described in 32 CFR part 310.41, Appendix C to part 310, and/or a Defense Special Weapons Agency system of records notice.

(b) *Accounting of disclosures.* Except for disclosures made to members of the DoD in connection with their official duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DSWA system of records:

(1) Accounting entries will normally be kept on a DSWA form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(3) Accounting records will be maintained for at least 5 years after the last disclosure, of for the life of the record, whichever is longer.

(4) Subjects of DSWA records will be given access to associated accounting records upon request, except for those disclosures made to law enforcement activities when the law enforcement activity has requested that the disclosure not be made, and/or as exempted under section 318.11 of this part.

§ 318.10 Fees.

Individuals may request copies for retention of any documents to which they are granted access in DSWA records pertaining to them. Requesters will not be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with DoD 5400.11–R.

Dated: December 18, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33542 Filed 12-23-97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 194

[Docket No. PS–130; Amdt. 194–1]

RIN 2137–AD12

Pipeline Safety: Change in Response Plan Review Cycle

AGENCY: Research and Special Program Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule changes the reporting cycle for facility response plan submissions to 5 years for operators who are required to submit facility response plans to RSPA. Pipeline operators were previously required to submit facility response plans every 3 years.

OPS is undertaking this change to improve safety by ensuring consistency between OPS requirements and those of the other federal agencies under the Oil Pollution Act of 1990, and encouraging the use of integrated plans, while easing the burden on the regulated community. The comments to the docket have fully supported this change.

EFFECTIVE DATES: This direct final rule takes effect February 23, 1998. If RSPA does not receive adverse comment or notice of intent to file an adverse comment by January 23, 1998, the rule will become effective on the date specified. RSPA will issue a subsequent notice in the **Federal Register** by February 9, 1998 after the close of the comment period to confirm that fact and reiterate the effective date. If an adverse comment or a notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and RSPA would withdraw direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

ADDRESSES: Send comments in duplicate to the Dockets Unit, room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590. Identify the docket number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Jim Taylor, (202) 366–8860, or by e-mail (jim.taylor@rspa.dot.gov), regarding the subject matter of this Notice; or the RSPA Dockets Unit, (202) 366–5046, for copies of this final rule or other material in the docket. General information about OPS programs can be obtained by accessing OPS'' Internet home page at ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In recent years, several catastrophic oil spills have damaged the marine environment of the United States. These spills have resulted in extensive environmental impact, including the loss of fish and wildlife. In response to these catastrophic spills, Congress passed the Oil Pollution Act of 1990, 33 U.S.C. 2701–2761 (OPA 90). OPA 90 amended section 1321(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251–1387), and established a new national planning and response system, including a requirement for the development of facility response plans.

The FWPCA requires the President to issue regulations that require the operator of a tank vessel, an onshore facility, and certain offshore facilities, to prepare and submit to the President, a plan for responding, to the maximum extent practicable, to a worst case oil discharge and to a substantial threat of such a discharge. 33 U.S.C. 1321(j)(5). The FWPCA also requires the President to review and approve facility response plans and periodic reviews of each plan. 33 U.S.C. 1321(j)(5)(D).

To be consistent with OPA 90 and FWPCA plan submission requirements of the Environmental Protection Agency and U.S. Coast Guard, RSPA is revising 49 CFR § 194.121(b) to require a response plan to be resubmitted every 5 years for review and approval. For significant and substantial harm facilities, the plan shall be resubmitted 5 years after the latest approval date by RSPA. For substantial harm facilities, operators must resubmit the plan to RSPA 5 years after the date of initial submission and every 5 years thereafter.

In the event there are no changes in the plan, the operator must submit a written certification to RSPA stating that there are no changes to the plan previously submitted to RSPA. Upon receipt of the certification, RSPA will review the existing plan and, for significant and substantial harm facilities, RSPA will re-approve the plan. Substantial harm facility plans will be reviewed only. Although the current 3-year cycle for all plans is ending, when this rule becomes effective there will be no requirement to resubmit existing response plans until 2 years from now.

Regulatory History

RSPA published an interim final rule (IFR) on January 5, 1993 (58 FR 244). This interim final rule implemented provisions of OPA 90. With limited exceptions, this direct final rule applies to all onshore transportation-related oil pipelines whether or not such pipelines are exempt from existing Federal pipeline safety regulations or statutes. RSPA conducted a public meeting in New Orleans, Louisiana on January 27, 1997, to solicit feedback from interested parties on implementation of the regulation and revisions to the IFR. A copy of the transcript of the public meeting is available in the docket. This direct final rule modifies the interim final rule, 49 CFR Part 194 (58 FR 244, January 5, 1993). RSPA intends to issue a final rule for 49 CFR Part 194 at a later date.

Rulemaking Notices and Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget (OMB). The direct final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 12612

The direct final rule has been analyzed with the principles and criteria in Executive Order 12612 ("Federalism") (52 FR 41685), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

Based on the facts available, I certify that this direct final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements in this direct final rule. In fact, this rulemaking eases the paperwork burden on pipeline operators by reducing the reporting frequency from three to five years.

Unfunded Mandates Reform Act of 1995

This direct final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the direct final rule.

List of Subjects in 49 CFR Part 194

Oil pollution, Facility Response Plan, Pipeline safety.

In consideration of the foregoing, RSPA amends part 194 of title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 194 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5) and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

2. Section 194.121(a) is revised to read as follows:

§ 194.121 Response plan review and update procedures.

(a) Each operator shall review its response plan at least every 5 years from the date of submission and modify the plan to address new or different operating conditions or information included in the plan.

* * * * *

Issued in Washington, DC on December 16, 1997.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–33289 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS–102; Amendment 199–16]

RIN 2137–AC67

Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the "Scope and Compliance" section of the Drug Testing Rules to revise the applicability requirement with respect to any operator whose employees are located outside the territory of the United States.

DATES: This direct final rule is effective on April 15, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by February 23, 1998, the rule will become effective on the date specified. RSPA will issue a subsequent notice in the **Federal Register** by March 16, 1998 to confirm that fact and reiterate the effective date. If an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact, and RSPA may withdraw the direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Please identify the docket and amendment number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Catrina Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–6199, Fax: (202) 366–4566, e-mail: catrina.pavlik@RSPA.dot.gov. Information is also available on the Office of Pipeline Safety's internet home page at OPS.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1988, RSPA, along with other operating administrations of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause, and random drug testing (53 FR 47084).

The drug testing required by these rules applies to some persons located outside of the United States. However, the rule provided that drug testing would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rule provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rule raises questions of compatibility with the country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the U.S. Government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. If as a result of those discussions an amendment to the rules

was necessary, we committed to issue an amendment by December 1, 1989.

On April 13, 1989, RSPA published an amendment to part 199 (Amdt. No. 199–1; 54 FR 14922) which provided that the rules would not be effective until January 1, 1991, with respect to persons with a foreign law conflict. Similar amendments were published on December 27, 1989, extending the effective date to January 2, 1992 (Amdt. No. 199–3; 54 FR 53290), April 24, 1991, extending the date to January 2, 1993 (Amdt. No. 199–5; 56 FR 18986), and July 14, 1992, extending the date to January 2, 1995 (Amdt. No. 199–7; 57 FR 31279). These amendments provided additional time for government-to-government discussions to reach a permanent resolution of this issue.

RSPA has revisited the issue of requiring foreign operators to drug test persons located outside of the United States who are performing covered functions. Due to the complexity of the legal issues, RSPA has determined that it would be a better use of agency resources to concentrate its enforcement efforts on operators whose employees are located within U.S. territory including the outer continental shelf. There are few pipeline employees who would be excepted by this rule. Because of the legal issues, these employees have never been subject to drug or alcohol testing by RSPA.

II. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This amendment will alleviate the burden for pipeline operators whose employees are located outside the territory of the United States to comply with the requirement to subject those employees who perform a covered function (such as, SCADA system operators) to the drug testing regulations. Currently, there are approximately 50 covered employees performing a covered function who are located in Canada. Most pipelines that run from Canada to the United States have either a metering facility or valves located at the border. This delineates a separation of entities at the border. At that point, a U.S. operator becomes responsible for the pipeline (i.e., operations, maintenance, and emergency-response functions). At this time, there are no SCADA systems located in Mexico. There are pipelines that run from Mexico to the U.S., but the SCADA control system is located in the U.S. Because of the minimal number of operators with employees who perform covered functions outside of the United States, RSPA concludes that it would not be cost effective for those pipeline operators to comply with this regulation. In addition, RSPA does not have sufficient resources to inspect these operators to ensure that they are complying with part 199. Therefore, this part of the regulation is being revised to exclude pipeline operators with employees located outside United States' territory, including the outer continental shelf.

This amendment is non-major under Executive Order 12866, and is not considered significant under DOT Regulatory Policy and Procedures (44 FR 22034; February 26, 1979). There is no additional cost to the pipeline operators to delete this portion of the rule. This change does not warrant the preparation of a Regulatory Evaluation.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"), and RSPA has determined that preparation of a federalism assessement is not warranted.

Regulatory Flexibility Act

Based on the above facts, I certify under Section 606 of the Regulatory Flexibility Act that this amendment does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety.

In consideration of the foregoing, RSPA is amending 49 CFR as follows:

PART 199—DRUG AND ALCOHOL TESTING

1. The authority citation for part 199 is amended to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

§ 199.1 [Amended]

2. Paragraph (d) of § 199.1 is revised to read as follows:

§ 199.1 Scope and compliance.

* * * * *

(d) This part applies to pipeline operators, only with respect to pipeline employees located within the territory of the United States, including those employees located within the limits of the outer continental shelf as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

Issued in Washington, D.C. on December 10, 1997.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–33119 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register

Vol. 62, No. 247

Wednesday, December 24, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 842, 870, and 890

RIN 3206–AI12

Retirement and Insurance—Exemption From Continuity of Coverage Requirements for Certain Decennial Census Employees With Dual Appointments

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to provide an exemption from continuity of coverage requirements for Federal retirement, health insurance, and life insurance benefits, for certain Federal employees who accept a second appointment to perform intermittent decennial census duties. The purpose of this exemption is to facilitate hiring Federal employees for the decennial census by eliminating administrative complexities that would otherwise result under current regulations. Employees will retain the retirement and insurance benefits to which they are entitled under their primary Federal jobs, while earning additional wages in their second jobs with the Census Bureau.

DATES: Comments must be received on or before January 23, 1998.

ADDRESSES: Send comments to Mary Ellen Wilson, Retirement Policy Division, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington DC. Comments may also be submitted by electronic mail to *combox@opm.gov*.

FOR FURTHER INFORMATION CONTACT: For Parts 831 and 842: Robert Girouard, (202) 606–0299; and for Parts 870 and 890: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION:

An individual who is hired into a Federal position from outside Government under a temporary, intermittent appointment is excluded from retirement and insurance coverage under the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), the Federal Employees' Group Life Insurance Program (FEGLI), and the Federal Employees Health Benefits Program (FEHB). However, by regulation, Federal employees in positions covered by retirement, health insurance, and life insurance, who move to Federal positions not covered by these benefits, can generally continue their benefit coverage if they have no break in Federal service. This continuity of coverage rule also applies when a Federal employee accepts a second, concurrent Federal job that would otherwise be excluded from coverage.

The Bureau of the Census, U.S. Department of Commerce ("Census Bureau") has asked OPM for an exemption from this continuity of coverage requirement, when a Federal employee is hired by the Census Bureau for a second job performing intermittent decennial census duties.

The Census Bureau anticipates evaluating 2.6 million applicants and hiring 260 thousand workers for peak operations of the year 2000 decennial census. The Census Bureau is placing a special emphasis on hiring current Federal employees for decennial census operations, because of the scale of hiring that must be carried out by the Census Bureau beginning in 1998; the special skills of Federal employees; and the low unemployment rate, which reduces the supply of labor readily available for temporary hiring.

It is anticipated that 95 to 98 percent of Federal employees hired for second jobs by the Census Bureau will be hired as intermittent, excepted-service appointees, under temporary appointments not to exceed one year. These appointments will generally be made under section 23(b) of title 13, United States Code, which allows Federal employees to be compensated for second positions conducting census field work, without regard to the restrictions on dual compensation found in section 5533 of title 5, United States Code.

Continuity of coverage rules for retirement and insurance make it difficult for the Census Bureau to hire Federal employees for second appointments. While each Federal employee retains benefit coverage under his or her primary position with little or no additional benefits accruing from the intermittent Census employment, the Census Bureau would be required to coordinate closely with each employee's agency to determine the amount of additional retirement deductions and insurance premiums that would have to be withheld as a result of continuity of coverage. The administrative complexities resulting from week by week coordination with the employee's primary agency would be highly susceptible to error and would make large-scale hiring from the pool of Federal employees administratively prohibitive. Placing Federal employees hired to perform short term decennial census service on the same benefit footing as persons hired from outside the Government will significantly reduce the coordination burden, and assist the Census Bureau in meeting its unique staffing requirements.

For these reasons, the Office of Personnel Management is proposing to amend the continuity of coverage rules to exempt Federal employees hired by the Census Bureau under temporary, intermittent appointments to perform decennial census duties. OPM's authority to make this exemption is in sections 8347(g), 8402(c)(1), 8716(b), and 8913(b) of title 5, United States Code.

In order for these regulations to meet their stated purpose of providing timely relief, they must take effect by the Spring of 1998, when the Census Bureau will begin hiring Federal employees for decennial census rehearsal activities. Therefore, the Office of Personnel Management is issuing the proposed regulations with a 30-day comment period.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement and insurance benefits of retired Government employees and their survivors.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM proposed to amend Parts 831, 842, 870, and 890 of Title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(1) also issued under 5 U.S.C. 8347(g); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of title XI of Pub. L. 105–33, 111 Stat. 251; § 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. p. 317; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under Pub. L. 103–66, 107 Stat. 412; § 831.682 also issued under section 201(d) of the Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart B—Coverage

2. In § 831.201, paragraph (b)(1) is revised to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(b) * * *

(1) Employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, except in the case of:

(i) An alien employee whose duty station is located in a foreign country; or

(ii) An employee hired by the Census Bureau under a temporary, intermittent appointment to perform decennial census duties.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

3. The authority citation for section 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33, 111 Stat. 251; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

Subpart A—Coverage

4. In § 842.105, paragraph (b) is revised to read as follows:

§ 842.105 Regulatory exclusions.

* * * * *

(b) When an employee who is covered by FERS moves to a position listed in paragraph (a) of this section without a break in service or after a separation of 3 days or less, his or her FERS coverage will continue, except in the case of an employee hired by the Census Bureau under a temporary, intermittent appointment to perform decennial census duties.

* * * * *

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

5. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

6. In § 870.301, add paragraph (d) to read as follows:

§ 870.301 Eligibility for life insurance.

* * * * *

(d) Notwithstanding any other provision in this part, the hiring of a Federal employee, whether in pay status or nonpay status, for a temporary, intermittent position with the decennial census has no effect on the amount of his/her Basic or Option B insurance, the withholdings or Government contribution for his/her insurance, or the determination of when 12 months in nonpay status ends.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

7. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat.251.

8. In § 890.102, paragraph (g) is added to read as follows:

§ 890.102 Coverage

* * * * *

(g) Notwithstanding any other provision in this part, the hiring of a Federal employee, whether in pay status or nonpay status, for a temporary, intermittent position with the decennial census has no effect on the withholding or Government contribution for his/her coverage or the determination of when 365 days in nonpay status ends.

[FR Doc. 97–33732 Filed 12–23–97; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–98–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1998–99 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1998–99 marketing year. The Spearmint Oil Administrative Committee (Committee), the egency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by January 23, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2043; Fax: (503) 326–7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 205–6632.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1998–99 marketing year, which begins on June 1, 1998. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1998–99 marketing year at its October 8, 1997, meeting. With 6 members favoring the recommendation and 1 member opposed, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,187,077 pounds and 65 percent, respectively. The member in opposition favored the establishment of a higher salable quantity and allotment percentage. In a unanimous vote, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,155,217 pounds and 57 percent, respectively.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1998–99 marketing year, which begins on June 1, 1998. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 65 percent of the annual U.S. production of Scotch spearmint oil and approximately 90 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 80 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 41 percent of the world total. Therefore, the Committee's recommendation for Scotch spearmint oil could maintain market stability by avoiding extreme fluctuations in supplies and prices, and would help the industry remain competitive on an international level by hopefully regaining some of the Far West's historical share of the global market. The Committee's recommendation is intended to foster market stability so that the Far West's Scotch spearmint oil market share will not only be retained, but expanded as well.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the

price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. With approximately 90 percent of the U.S. production located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1998–99 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1998—456,994 pounds. This figure is derived by subtracting the estimated 1997–98 marketing year trade demand of 853,987 pounds from the revised 1997–98 marketing year total available supply of 1,310,981 pounds.

(B) Estimated world production for the 1997–98 marketing year—2,186,128 pounds.

(C) Estimated Far West production for the 1997–98 marketing year—892,628 pounds.

(D) Far West percentage of total world production in 1997–98—41 percent. This is down from the 1980 level of approximately 80 percent.

(E) Total estimated allotment base for the 1998–99 marketing year—1,826,272 pounds. This figure represents a one percent increase over the revised 1997–98 allotment base.

(F) Recommended 1998–99 allotment percentage—65 percent. This figure is based upon recommendations made at the October 8, 1997, meeting, as well as at the five production area meetings held during September.

(G) The Committee's computed 1998–99 salable quantity—1,187,077 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 1998–99 marketing year—1,644,071 pounds. This figure is derived by adding the computed salable quantity to the June 1, 1998, carry-in volume, and represents the total amount of Scotch spearmint oil that could be available to the market during the 1998–99 marketing year.

(I) Estimated trade demand for Far West Scotch spearmint oil during the 1998–99 marketing year—900,000 pounds. This figure is based upon estimates provided to the Committee by buyers of spearmint oil.

(J) Estimated carry-out on June 1, 1999—744,071 pounds. This figure is the difference between the 1998–99 estimated trade demand and the 1998–99 estimated available supply.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1998—34,756 pounds. This figure is the difference between the estimated 1997–98 marketing year trade demand of 1,150,000 pounds and the revised 1997–98 marketing year total available supply of 1,184,756 pounds.

(B) Estimated trade demand (domestic and export) for the 1998–99 marketing year—1,178,401 pounds. This figure is based on the average of the three most recent years' sales figures and input from spearmint oil buyers.

(C) Salable quantity required from 1998 production—1,143,645 pounds. This figure is the difference between the estimated 1998–99 marketing year trade demand and the estimated carry-in on June 1, 1998.

(D) Total estimated allotment base for the 1998–99 marketing year—2,026,696 pounds. This figure represents a one percent increase over the revised 1997–98 allotment base.

(E) Computed allotment percentage—56.4 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—57 percent. This is the Committee's recommendation based on the computed allotment percentage.

(G) The Committee's recommended salable quantity—1,155,217 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 1,187,077 pounds and allotment percentage of 65 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 1,155,217 pounds and allotment percentage of 57 percent are based on anticipated supply and trade demand during the 1998–99 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1998–99 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this proposed rule, the Committee's marketing policy statement for the 1998–99 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 1998–99 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 9 spearmint oil handlers subject to regulation under the order, and approximately 124 producers of Class 1 (Scotch) spearmint oil and approximately 110 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the nine handlers regulated by the order would be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 29 of the 124 Scotch spearmint oil producers and 14 of the 110 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint production, most spearmint oil producing farms would fall into the SBA category of large businesses in order to remain economically viable due to added costs associated with the production of spearmint oil.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1998–99 marketing year. The committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years.

Alternatives to the proposal included not regulating the handling of spearmint oil during the 1998–99 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1.2 million pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible to provide producers sufficient time prior to the beginning of the 1998–99 marketing year to adjust their cultural and marketing plans accordingly. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.217 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.217 Salable quantities and allotment percentages—1998–99 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1998, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,187,077 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,155,217 pounds and an allotment percentage of 57 percent.

Dated: December 18, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33592 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 104 and 108

[Notice 1997–21]

Recordkeeping and Reporting

AGENCY: Federal Election Commission.

ACTION: Notice of Public Hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on proposed changes to its regulations that govern recordkeeping, reporting, and filing with State officers under the Federal Election Campaign Act of 1971, as amended.

DATES: The hearing will be held at 10:00 a.m. on February 11, 1998. Requests to testify must be received on or before January 23, 1998. Persons requesting to testify also must submit written comments by January 23, 1998, if they have not previously filed written comments on the proposed rules.

ADDRESSES: Requests to testify, and any accompanying comments, should be addressed to Ms. Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written requests and comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed requests and comments should be sent to (202) 219–3923. Commenters submitting faxed documents also should submit a printed copy to the Commission's postal service address to ensure legibility. Requests to testify and comments also may be sent by electronic mail to "reprec@fec.gov". Persons sending requests and comments by electronic mail should include their full name, electronic mail address and postal service address within the text of the request and comments. Commission hearings are held in the Commission's ninth floor meeting room, 999 E Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Teresa A. Hennessy, Attorney, 999 E Street, N.W., D.C. 20463, (202) 219–3690 or (800)424–9530.

SUPPLEMENTARY INFORMATION: On September 26, 1997, the Commission published in the **Federal Register** a Notice of Proposed Rulemaking ['NPRM'] on multiple amendments to the requirements for recordkeeping, reporting, and filing with State officers at 11 CFR 102.9, 104.3 and part 108. 62 FR 50708. The NPRM announced that a hearing on the proposed rules would be held on November 5, 1997 if the Commission received sufficient requests to testify.

The comment period on the NPRM ended on October 27, 1997. The Commission received comments from four sources; three of these did not request to testify at a hearing. A fourth expressed interest in testifying but was unable to appear on the scheduled hearing date. After further considering this comment, as well as the other comments received in response to the NPRM, the Commission believes a public hearing would be beneficial in considering the issues raised in the rulemaking. The hearing will be held at 10:00 a.m. on February 11, 1998.

Dated: December 18, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97–33561 Filed 12–23–97; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–70–AD]

RIN 2120–AA64

Airworthiness Directives; Socata—Groupe Aerospatiale Models TB9, TB10, and TB200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE (Socata) Models TB9, TB10, and TB200 airplanes. The proposed AD would require inspecting the main landing gear (MLG) support ribs for cracks, replacing MLG support ribs that have cracks beyond a certain level, and incorporating a certain MLG support rib reinforcement kit. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent MLG failure caused by cracks in the support ribs, which could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before January 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–70–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 62.41.74.26; facsimile: 62.41.74.32; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1668. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–70–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–70–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Socata Models TB9, TB10, and TB200 airplanes. The DGAC reports several incidents of the main landing gear (MLG) support ribs cracking on the above-referenced airplanes. These conditions, if not detected and corrected, could result in MLG failure with consequent loss of control of the airplane during landing operations.

Relevant Service Information

Socata has issued Service Bulletin No. SB 10–085, Amdt. 2, dated April 1996, which specifies procedures for inspecting the MLG support ribs for cracks. Also included in this service bulletin is reference to certain MLG support rib reinforcement kits that should be incorporated on the Socata Models TB9, TB10, and TB200 airplanes, depending on the inspection results. The procedures for incorporating the modification kits are either in the technical instructions included with the kit or the maintenance manual.

The DGAC classified this service bulletin as mandatory and issued DGAC AD 94–265(A)R4, dated June 19, 1996, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Socata Models TB9, TB10, and TB200 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the MLG support ribs for cracks, replacing any MLG support ribs that have cracks beyond a certain level, and incorporating a certain MLG support rib reinforcement kit if cracks beyond a certain level are not found. Accomplishment of the proposed inspections would be in accordance with Socata Service Bulletin No. SB 10–085, Amdt. 2, dated April 1996. Accomplishment of the proposed kit modifications, as applicable, would be in accordance with either the technical instructions included with the kit or the maintenance manual.

Differences Between the French AD, the Service Bulletin, and This Proposed AD

French AD 94–265(A)R4, dated June 19, 1996, and Socata Service Bulletin No. SB 10–085, Amdt. 2, dated April 1996, both give the owners/operators of certain Models TB10 and TB200 airplanes the option of incorporating a MLG support rib reinforcement kit or repetitively inspecting if no cracks are found in the MLG support ribs during the initial inspection.

The FAA's policy is to provide corrective action that will eliminate the need for repetitive inspections. The FAA has determined that long-term operational safety will be better assured by design changes that remove the source of the problem, rather than by repetitive inspections or other special procedures.

Because the incorporation of the applicable MLG support rib reinforcement kit on the affected airplanes eliminates the need for repetitive inspections, the proposed AD differs from the service bulletin and French AD in that it would mandate eventual incorporation of the applicable MLG support rib reinforcement kit.

Cost Impact

The FAA estimates that 146 airplanes in the U.S. registry would be affected by the proposed AD.

Accomplishing the proposed inspection would take approximately 1 workhour per airplane, at an average labor rate of approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $8,760, or $60 per airplane.

The proposed modification would take approximately 1 workhour to incorporate the applicable kits on each wing (total of 2 workhours), at an average labor rate of $60 per hour. Parts cost approximately $1,200 per airplane ($300 per kit; 2 kits per wing × 2 wings per airplane). Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $192,720 or $1,320 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Socata—Groupe Aerospatiale: Docket No. 95–CE–70–AD.

Applicability: Models TB9, TB10, and TB200 airplanes, serial numbers 1 through 9999, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent main landing gear (MLG) failure caused by cracks in the support ribs, which could result in loss of control of the airplane during landing operations, accomplish the following:

Note 2: The compliance times of this AD are presented in landings instead of hours time-in-service (TIS). If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 0.67.

Note 3: The paragraph structure of this AD is as follows: Level 1: (a), (b), (c), etc.; Level 2: (1), (2), (3), etc.; Level 3: (i), (ii), (iii), etc. Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) For TB9, serial numbers (S/N) 1 through 1442 and 1444 through 1574; and TB10, S/N 1 through 803; 805; 806; 809 through 815; 820; 821; and 822, airplanes that are not equipped with either wing rib reinforcement kit No. OPT10910800 (TB9 and TB10 airplanes) or do not have reinforced ribs (TB10 airplanes), part number (P/N) TB10 11008001 and P/N TB10 11008002, accomplish the following:

(1) Upon accumulating 1,500 landings on the MLG support ribs or within the next 75 landings after the effective date of this AD, whichever occurs later, inspect the MLG support ribs for cracks at all four locations (two per wing) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Socata Service Bulletin No. SB 10–085, Amdt. 2, dated April 1996.

(2) If any cracks are found that are out of the tolerances specified in the maintenance manual, prior to further flight, replace the ribs with reinforced ribs, P/N TB10 11008001 and P/N TB10 11008002. Accomplish the replacement in accordance with the maintenance manual.

(3) If any cracks are found that are within the tolerances specified in the maintenance manual, prior to further flight, incorporate wing rib reinforcement kit No. OPT10910800 in accordance with the maintenance manual.

(4) If no cracks are found, upon accumulating 3,000 landings on the MLG support ribs or within the next 100 landings after the effective date of this AD, whichever occurs later, incorporate wing rib reinforcement kit No. OPT10910800 in accordance with the maintenance manual.

(b) For Models TB10 and TB200 airplanes, S/N 804; 807; 808; 816 through 819; 823 through 1701; 1707 through 1733; and 1737 to 1761, accomplish the following:

(1) Upon accumulating 6,000 landings on the MLG support ribs or within the next 75 landings after the effective date of this AD, whichever occurs later, inspect the MLG support ribs for cracks at all four locations (two per wing) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Socata Service Bulletin No. SB 10–085, Amdt. 2, dated April 1996.

(2) At the applicable compliance time presented below, incorporate wing rib reinforcement kit No. OPT10 920100 in accordance with the Technical Instruction of Modification, OPT10 9201–57, Reinforcement of the Main Landing Gear Support Ribs, which incorporates the following pages:

Pages	Revision level	Date
1 and 2	Amendment 1	April 1996.
3 through 27	Original issue ..	November 1995.

(i) Prior to further flight if any cracks are found.

(ii) Upon accumulating 7,500 landings on the MLG support ribs or within the next 100 landings after the effective date of this AD, whichever occurs later, if no cracks are found.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to the service information referenced in this AD should be directed to the SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 62.41.74.26; facsimile: 62.41.74.32; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1668. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

Note 5: The subject of this AD is addressed in French AD 94–265(A)R4, dated June 19, 1996.

Issued in Kansas City, Missouri, on December 16, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33511 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model 4100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model 4100 series airplanes. This proposal would require replacement of the stringer joint pieces at the left side of the fuselage with new, improved parts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the fuselage structure at the stringer joint at station 130 on the left side of the airplane from cracking, which could result in rapid decompression of the airplane at the forward fuselage area.

DATES: Comments must be received by January 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–143–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Model 4100 series airplanes. The CAA advises that a batch of fuselage stringer joint pieces were incorrectly formed during manufacturing. This condition, if not corrected, could cause reduced fatigue strength properties of the joint piece, cracking, and failure of the fuselage structure on the stringer joint at four positions at station 130 on the left side of the airplane, which could result in rapid decompression of the aircraft at the forward fuselage area.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin J41–53–039, dated August 22, 1996, which describes procedures for replacement of certain stringer joint pieces with new, improved parts. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–08–96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 10 Model 4100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 70 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $42,000, or $4,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 97–NM–143–AD.

Applicability: Model 4100 series airplanes, constructors numbers 41061 through 41091 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the fuselage structure at the stringer joint at station 130 on the left side of the airplane from cracking, which could result in rapid decompression of the airplane at the forward fuselage area, accomplish the following:

(a) Within 6,000 flight hours after the effective date of this AD, replace the stringer joint pieces at four positions at station 130 on the left side of the airplane with new, improved parts in accordance with the Accomplishment Instructions of Jetstream Service Bulletin J41–53–039, dated August 22, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in the British airworthiness directive 005–08–96.

Issued in Renton, Washington, on December 16, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33510 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–209484–87 and REG–209807–95]

RIN 1545–AF97; 1545–AT99

FICA and FUTA Taxation of Amounts Under Employee Benefit Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a revision to the proposed regulations under section 3121(v)(2) of the Internal Revenue Code of 1986, relating to when amounts deferred under or paid from certain nonqualified deferred compensation plans are taken into account as "wages" for purposes of the taxes imposed by the Federal Insurance Contributions Act (FICA). This document extends the proposed general effective date of the regulations to January 1, 1998. The extension also applies to the proposed regulations under section 3306(r)(2), relating to when amounts deferred under or paid from certain nonqualified deferred compensation plans are taken into account as "wages" for purposes of the taxes imposed by the Federal Unemployment Tax Act (FUTA), due to the cross-reference therein to the provisions of the proposed regulations under section 3121(v)(2).

DATES: Written comments and requests for a public hearing must be received by March 24, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (EE–142–87), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209484–87), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW. Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax—regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Janine Cook, (202) 622–6040 (not a toll-free number), concerning the regulations, and Michael Slaughter, (202) 622–7190 (not a toll-free number), concerning submissions.

SUPPLEMENTARY INFORMATION:

Background

This document contains a revision to the proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 3121(v)(2) of the Internal Revenue Code of 1986 (Code), relating to the Federal Insurance Contributions Act (FICA) tax treatment of amounts deferred under or paid from certain nonqualified deferred compensation plans. The proposed regulations were published in the **Federal Register** on January 25, 1996 (61 FR 2194), with a proposed general effective date of January 1, 1997. This document extends the proposed general effective date to January 1, 1998. The same issue of the **Federal Register** contained proposed amendments to the Employment Tax Regulations under section 3306(r)(2) of the Code, relating to the Federal Unemployment Tax Act (FUTA) tax treatment of amounts deferred under or paid from certain nonqualified deferred compensation plans (61 FR 2214). The proposed regulations under section 3306(r)(2) cross-reference the provisions of the proposed regulations under section 3121(v)(2), including the proposed general effective date. Consequently, the extension of the effective date under the proposed regulations under section 3121(v)(2) automatically applies to the proposed regulations under section 3306(r)(2).

The project numbers assigned to the notices of proposed rulemaking setting forth the proposed regulations under section 3121(v)(2) and section 3306(r)(2) were EE–142–87 and EE–55–95, respectively. Due to changes in the Internal Revenue Service's regulations numbering system, the project numbers for this notice of proposed rulemaking have been changed to REG–209484–87 and REG–209807–95, respectively, as reflected at the beginning of this document.

Explanation of Provisions

Section 31.3121(v)(2)–1(g)(1)(i) of the proposed regulations provides that the proposed general effective date of the regulations is January 1, 1997. Because the final regulations have not been issued, this document contains an amendment to the proposed regulations to extend the proposed general effective date to January 1, 1998. This extension of the proposed general effective date also applies to § 31.3306(r)(2)–1 of the proposed regulations due to the cross-reference therein to the provisions in the proposed regulations under section 3121(v)(2).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before this revision to the proposed regulations is adopted as part of the final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this revision to the proposed regulations is Janine Cook, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment tax, Withholding.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.3121(v)(2)–1 as proposed to be added at 61 FR 2199, January 25, 1996, is amended by revising paragraph (g)(1)(i) to read as follows:

§ 31.3121(v)(2)–1 Treatment of amounts deferred under certain nonqualified deferred compensation plans.

* * * * *

(g) Effective date and transition rules—(1) *General effective date*—(i) *Effective date.* Except as otherwise provided in this paragraph (g) or in § 31.3121(v)–2, this section is effective for amounts deferred and benefits paid on or after January 1, 1998.

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 97–33247 Filed 12–23–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 989

RIN 0701–AA56

Environmental Impact Analysis Process (EIAP)

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force proposes to revise its instruction to improve the Air Force process for compliance with the National Environmental Policy Act (NEPA) and Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. The revisions integrate environmental analysis and align environmental document approval levels with the Air Force decision-making process. It also expands Air Force environmental participants and responsibilities of the Environmental Planning Function (EPF) and the proponent of an action. The public is invited to submit comments on these changes to the point of contact listed below.

DATES: Comments must be received no later than February 23, 1998.

ADDRESSES: Comments should be submitted to HQ USAF/ILEVP, 1260 Air Force Pentagon, Washington, DC 20330–1260.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Reinertson or Mr. Jack C. Bush, (703) 695–8942.

SUPPLEMENTARY INFORMATION:

Discussion of Major Issues

a. References to procurement publications that provide separate procedures for application of NEPA in the acquisition area are updated.

b. References to office symbols are updated.

c. Specific guidance is provided in section 989.3(c)(3) for application of NEPA to single manager acquisition programs, specifying, among other things, that the Air Force Acquisition Executive Office is the final approval authority for all system-related NEPA documents.

d. More specific reference is provided in section 989.3(c)(4) as to who are key Air Force participants and to the need for an integrated team effort involving other federal agencies, state, Tribal, and local governments, and interested members of the public.

e. More specific guidance is provided in section 989.3(d)(1) to ensure the EIAP is integrated early in the planning stages of an action.

f. Specific guidance is provided in section 989.3(d)(4) to promote early internal scoping in order to determine what level of environmental analysis is performed.

g. In section 989.3(e), the environmental planning function (EPF) is designated as the primary support to the proponent in EIAP actions. The EPF's responsibilities are specifically explained.

h. Section 989.3(h) provides for increased participation of the public affairs office in the EIAP process.

i. Throughout the instruction, whenever participation of state and local governments is provided for, Tribal governments have been added.

j. In section 989.5(b), certain continuing internal reporting requirements regarding aircraft beddown and unit realignment actions are eliminated.

k. In section 989.8(c), additional language notes that only in rare instances is the no-action alternative excused by law from analysis.

l. In section 989.13(c), additional language notes the distinction, in cases of analysis abroad, between exemptions under DoDD 6050.7 and categorical exclusions (CATEXs). The exemptions are provided by Executive Order 12114. CATEXs are provided by the implementing agency.

m. In section 989.14(d), additional guidance is provided to promote substantive but brief EIAP analyses so as to avoid unnecessary data and keep documents to a usable length.

n. In section 989.14(k), hazardous waste disposal sites have been deleted from the list of actions normally requiring an EA.

o. The provision for abbreviated EAs has been deleted. As noted above, analyses should be as lengthy as necessary but no more so; no provision for a special type of EA is necessary.

p. In section 989.14(l), the proponent is now required to involve other interested federal agencies, state, Tribal, and local governments, and the public in preparing an EA.

q. In section 989.15(e), requirements regarding public review of EAs and findings of no significant impact (FONSIs) are clarified to ensure the public understands that the FONSI has not been signed prior to public review.

r. In section 989.15(e)(2), the list of instances when mandatory 30 day public review of an EA and FONSI is required now includes those that would have a disproportionately high and adverse environmental effect on minority and low-income populations.

s. In section 989.18(a), more detailed guidance is provided to improve the scoping process for environmental impact statements (EISs). The guidance provides for an early, continuing, iterative process involving other governmental entities, Congress, and the public in a more meaningful manner. It also provides for scoping to continue through preparation of the draft EIS.

t. In section 989.18(b), specific provision is made to include minority and low-income populations in the scoping process.

u. In section 989.19(c)(3), specific provision is made to include minority and low-income populations in the public review process of EISs.

v. In section 989.27, the statement that compliance with OSHA standards will mitigate hazards has been deleted.

w. A new Section 989.32 addresses aircraft noise data used in EIAP analysis.

x. A new Section 989.33 requires compliance with E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

y. In section 989.34(b), guidance is clarified regarding emergency situations and the need to still comply with NEPA. Compliance is still required, but emergency responses may take place while completing the EIAP.

z. In section 989.35(b), authority is provided to utilize the internet to distribute documents and notices.

aa. A new Section 989.36 is included to address waivers for unusual circumstances and to allow experimentation to help the EIAP process grow. These waivers can only be approved by the Air Force Secretariat.

ab. The definition of "scoping" is changed to include affirmative efforts to communicate with other federal agencies, state, Tribal, and local governments, and the public.

ac. In section A2.2.8, an additional example dealing with proposals having a significant adverse effect on minority and low-income populations is included in the list of examples where use of a categorical exclusion is likely to require additional analysis.

ad. In section A2.3, categorical exclusion A2.3.10 is changed to include lead-based paint as an additional example.

ae. In section A2.3, categorical exclusion A2.3.18 is changed to clarify that it does not apply in the case of a transfer to GSA.

af. In section A2.3, categorical exclusion A2.3.26 is changed to refer to the Defense Environmental Restoration Program and RCRA Corrective Action sites in place of a generic reference. Additionally, the reference to the categorical exclusion not applying to the selection of a remedial action is eliminated.

ag. In section A2.3, categorical exclusion A2.3.30 is changed by deleting the reference to separate evaluation for long term cleanup and remediation activities.

ah. In section A2.3, categorical exclusion A2.3.31 is changed by restricting its use to non-repetitive situations. It also requires documentation of its use.

ai. In section A2.3, categorical exclusion A2.3.36 is changed by adding an additional limitation of 3000 feet above ground level.

aj. In section A3.1.3, flexibility is provided to public hearing formats by allowing experimentation with different formats than normally used, depending on the circumstances. Approval for deviations must be approved by the Air Force Secretariat.

ak. In section A3.2.1.3, the public affairs office will now always purchase a public advertisement to advise public hearings.

al. In section A3.6, responsibility for preparing and checking the transcript of a public hearing is shifted from the military trial judge to the EIS preparation team.

am. The provision for organizing speakers by subject at a public hearing has been deleted.

an. In addition to the above specific items, there have been numerous grammatical changes and minor clarifications made to the instruction.

The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more. The Secretary of the Air Force has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use.

List of Subjects in 32 CFR Part 989

Environmental protection, Environmental impact statements.

For the reasons stated in the preamble, the United States Air Force proposes to revise 32 CFR part 989 as follows:

PART 989—ENVIRONMENTAL IMPACT ANALYSIS PROCESS (EIAP)

Sec.

989.1 Purpose.
989.2 Concept.
989.3 Responsibilities.
989.4 Initial considerations.
989.5 Organizational relationships.
989.6 Budgeting and funding.
989.7 Requests from non-Air Force agencies or entities.
989.8 Analysis of alternatives.
989.9 Cooperation and adoption.
989.10 Tiering.
989.11 Combining EIAP with other documentation.
989.12 Air Force Form 813 Request for Environmental Impact Analysis.
989.13 Categorical exclusion.
989.14 Environmental assessment.
989.15 Finding of no significant impact.
989.16 Environmental impact statement.
989.17 Notice of intent.
989.18 Scoping.
989.19 Draft EIS.
989.20 Final EIS.
989.21 Record of decision (ROD).
989.22 Mitigation.
989.23 Contractor prepared documents.
989.24 Public notification.
989.25 Base closure and realignment.
989.26 Classifed actions (40 CFR 1507.3(c)).
989.27 Occupational safety and health.
989.28 Airspace and range proposals.
989.29 Force structure and unit move proposals.
989.30 Air quality.
989.31 Pollution prevention.
989.32 Noise.
989.33 Environmental justice.
989.34 Special and emergency procedures.
989.35 Reporting requirements.
989.36 Waivers.
989.37 Procedures for analysis abroad
989.38 Requirements for analysis abroad.
Attachment 1 to Part 989—Gloassary of References, Abbreviations, Acronyms, and Terms.
Attachment 2 to Part 989—Categorical Exclusions.
Attachment 3 to Part 989—Procedures for Holding Public Hearings on Draft Environmental Impact Statements (EIS).

Authority: 10 U.S.C. 8013.

§ 989.1 Purpose.

(a) This part implements the Air Force Environmental Impact Analysis Process (EIAP) and provides procedures for environmental impact analysis both within the United States and abroad. Because the authority for, and rules governing, each aspect of the EIAP differ depending on whether the action takes place in the United States or outside the United States, this part provides largely separate procedures for each type of action. Consequently, the main body of this part deals primarily with environmental impact analysis under the authority of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190, 42 United States Code (U.S.C.) 4321–4347), while the primary procedures for environmental impact analysis of actions outside the United States in accordance with Executive Order (E.O.) 12114, Environmental Effects Abroad of Major Federal Actions, are contained in §§ 989.32 and 989.33.

(b) The procedures in this part are essential to achieve and maintain compliance with NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA (40 Code of Federal Regulations (CFR) Parts 1500–1508, referred to as the "CEQ Regulations"). Further requirements are contained in the Department of Defense Directive (DoDD) 4715.1, Environmental Security, Department of Defense Instruction (DoDI) 4715.9, Environmental Planning and Analysis, DoDD 5000.1, Defense Acquisition, and Department of Defense 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information Systems (MAIS) Acquisition Programs with Change 1.[1] To comply with NEPA and complete the EIAP, the CEQ Regulations and this part must be used together.

(c) Air Force activities abroad will comply with this part, Executive Order 12114, and 32 CFR Part 187 (DoDD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March 31, 1979). To comply with E.O. 12114 and complete the EIAP, the Executive Order, 32 CFR part 187, and this part must be used together.

(d) Attachment 1 is a glossary of references, abbreviations, acronyms, and terms. Refer to 40 CFR part 1508 for definitions of other terminology used in this part.

§ 989.2 Concept.

(a) This part provides a framework on how to comply with NEPA and Executive Order 12114 according to Air Force Policy Directive (AFPD) 32–70.[2] The Air Force specific procedures and requirements in this part are intended to be used by Air Force decision makers to fully comply with NEPA and the EIAP.

(b) Major Commands (MAJCOM) provide additional implementing guidance in their supplemental publications to this part. MAJCOM supplements must identify the specific offices that have implementation responsibility and include any guidance needed to comply with this part. All references to MAJCOMs in this part include the Air National Guard Readiness Center (ANGRC) and other agencies designated as "MAJCOM equivalent" by HQ USAF.

§ 989.3 Responsibilities.

(a) Office of the Secretary of the Air Force.

(1) The Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health (SAF/MIQ):

(i) Develops environmental planning policy and provides oversight of the EIAP program.

(ii) Determines the level of environmental analysis required for especially important, visible, or controversial Air Force proposals and approves selected Environmental Assessments (EAs) and all Environmental Impact Statements (EISs) prepared for Air Force actions, whether classified or unclassified, except as specified in (c)(3) of this section.

(iii) Is the liaison on environmental matters with Federal agencies and national-level public interest organizations.

(iv) Ensures appropriate offices in the Office of the Secretary of Defense are kept informed on EIAP matters of Defense-wide interest.

(2) The General Counsel (SAF/GC). Provides final legal advice to SAF/MI, HQ USAF, and HQ USAF Environment, Safety and Occupational Health Committee (ESOHC) on EIAP issues.

(3) Office of Legislative Liaison (SAF/LL):

(i) Assists with narrowing and defining key issues by arranging consultations with congressional delegations on potentially sensitive actions.

(ii) Distributes draft and final EISs to congressional delegations.

(iii) Reviews and provides the Office of the Secretary of Defense (OSD) with analyses of the Air Force position on proposed and enrolled legislation and executive department testimony dealing with EIAP issues.

(4) Office of Public Affairs (SAF/PA):

(i) Reviews and clears environmental documents in accordance with Air Force Instruction 35–205, Air Force Security and Policy Review,[3] prior to public release.

(ii) Assists the environmental planning function and the Air Force Legal Services Agency, Trial Judiciary

[1] Copies of the publications are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 989.1.

[3] See footnote 1 to § 989.1.

Division (AFLSA/JAJT), in planning and conducting public scoping meetings and hearings.

(iii) Ensures that public affairs aspects of all EIAP actions are conducted in accordance with this part and Air Force Instruction (AFI) 35–202, Environmental Community Involvement[4].

(iv) The National Guard Bureau, Office of Public Affairs (NGB–PA), will assume the responsibilities of SAF/PA for the EIAP involving the National Guard Bureau, Air Directorate.

(b) Headquarters US Air Force (HQ USAF). The Civil Engineer (HQ USAF/ILE) is responsible for execution of the EIAP program. The National Guard Bureau Air Directorate (NGB–CF) oversees the EIAP for Air National Guard actions.

(c) MAJCOMs, the Air National Guard, Field Operating Agencies (FOAs), and Single Manager Programs. These organizations establish procedures that comply with this part wherever they are the host unit for preparing and using required environmental documentation in making decisions about proposed actions and programs within their commands or areas of responsibility.

(1) Air Force Center for Environmental Excellence (AFCEE). The AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC) is available to provide technical assistance and has the capability to provide contract support to the proponent, EPF, and MAJCOMs in developing EIAP documents.

(2) Air Force Regional Environmental Offices (REOs). REOs review non-Air Force environmental documents that may have an impact on the Air Force. Requests for review of such documents should be directed to the proper REO (Atlanta, Dallas, or San Francisco) along with any relevant comments. The REO:

(i) Notifies the proponent, after receipt, that the REO is the single point of contact for the Air Force review of the document.

(ii) Requests comments from potentially affected installations, MAJCOMs, the ANG, and HQ USAF, as appropriate.

(iii) Consolidates comments into the Air Force official response and submits the final response to the proponent.

(iv) Provides to HQ USAF/ILEVP and the appropriate MAJCOMs and installations a copy of the final response and a complete set of all review comments.

(3) Single Manager Acquisition Programs (system-related NEPA). The proponent Single Manager (i.e., System Program Director, Materiel Group Managers, and Product Group Managers) for all programs, regardless of acquisition category, shall comply with DoD 5000.2–R.[5] SAF/AQR, as the Air Force Acquisition Executive Office, is the final approval authority for all system-related NEPA documents. SAF/AQR is responsible for accomplishing appropriate Headquarters EPC/ESOHC review. The Single Manager will obtain appropriate Product Center EPC approval prior to forwarding necessary EIAP documents (i.e., NOIs and preliminary draft and final EAs and EISs) to SAF/AQR. The Single Manager will allow for concurrent review of EIAP documents by HQ AFMC/ILEV and the Operational Command (HQ ACC, HQ AMC, HQ AFSPC, etc.). The Single Manager is responsible for budgeting and funding EIAP efforts, including EIAP for research, development, testing, and evaluation activities.

(4) Key Air Force Environmental Participants. The EIAP must be approached as an integrated team effort including key participants within the Air Force and also involving outside federal agencies, state, Tribal, and local governments, interested outside parties, citizens groups, and the general public. Key Air Force participants may include the following functional areas, as well as others:

Proponent
Civil Engineers/Environmental Planning Function
Staff Judge Advocate
Public Affairs
Medical Service (Bioenvironmental Engineer)
Safety Office
Range and Airspace Managers
Bases and Units
Plans and Programs
Logistics
Personnel
Legislative Liaison

(d) Proponent. Each office, unit, or activity at any level that initiates Air Force actions is responsible for:

(1) The EIAP and shall ensure integration of the EIAP during the initial planning stages of proposed actions so that planning and decisions reflect environmental values, delays are avoided later in the process, and potential conflicts are precluded.

(2) Notifying the EPF of a pending action and completion Section I of AF Form 813. Prepare the Description Of Proposed Action and Alternatives (DOPAA) through an interdisciplinary team approach including the EPF and other key Air Force participants.

(3) Identifying key decision points and coordinating with the EPF on EIAP phasing to ensure that environment documents are available to the decision-maker before the final decision is made and ensuring that, until the EIAP is complete, resources are not committed prejudicing the selection of alternatives nor actions taken having an adverse environmental impact or limiting the choice of reasonable alternatives.

(4) Determining, with the EPF, as early as possible whether to prepare an EIS. The proponent and the EPF will conduct an early internal scoping process as part of the EIAP process. The internal scoping process should involve key Air Force environmental participants (See § 989.3(c)(4)) and other Air Force offices as needed and conclude with preparation of a DOPAA. For complex or detailed EAs or EISs, an outside facilitator trained in EIAP may be used to focus and guide the discussion. Department of the Air Force personnel, rather than contractors, should generally be used to prepare the DOPAA.

(5) Presenting the DOPAA to the EPC for review and comment.

(6) Coordinating with the EPF, Public Affairs, and Staff Judge Advocate prior to organizing public or interagency meetings which deal with EIAP elements of a proposed action and involving persons or agencies outside the Air Force.

(7) Subsequent to the decision to prepare an EIS, assisting the EPF and Public Affairs Office in preparing a draft Notice of Intent (NOI) to prepare an EIS. All NOIs must be forwarded through the MAJCOM EPF to HQ USAF/ILEV for review and publication in the **Federal Register.** Publication in the **Federal Register** is accomplished in accordance with AFI 37–120, **Federal Register.**[6] (See § 989.17.)

(8) Ensuring that proposed actions are implemented as described in the final EIAP decision documents.

(e) Environmental Planning Function (EPF). At every level of command, the EPF is one of the key Air Force participants responsible for the EIAP. The EPF can be the environmental flight within a civil engineer squadron, a separate environmental management office at an installation, the ILEV at MAJCOMs, or an equivalent environmental function located with a program office. The EPF:

(1) Supports the EIAP by bringing key participants in at the beginning of a proposed action and involving them throughout the EIAP. Key participants play an important role in defining and focusing key issues at the initial stage.

(2) At the request of the proponent, prepares environmental documents using an interdisciplinary approach, or obtains technical assistance through Air Force channels on contract support. Assists the proponent in obtaining review of environmental documents.

(3) Assists the proponent in preparing a (DOPAA) and actively supports the proponent during all phases of the EIAP.

(4) Evaluates proposed actions and completes Section II and III of AF Form 813, Request for Environmental Impact Analysis, subsequent to submission by the proponent and determines whether a Categorical Exclusion (CATEX) applies. The responsible EPF member signs the AF Form 813 certification.

(5) Identifies and documents, with technical advice from the Bioenvironmental Engineer and other staff members, environmental quality standards that relate to the action under evaluation.

(6) Supports the proponent in preparing environmental documents, or obtains technical assistance through Air Force channels or contract support and adopts the documents as official Air Force papers when completed and approved.

(7) Ensures the EIAP is conducted on base-level and MAJCOM-level plans, including contingency plans for the training, movement, and operations of Air Force personnel and equipment.

(8) Prepares the Notice of Intent (NOI) to prepare an EIS with assistance from the proponent and the Public Affairs Office.

(9) Prepares applicable portions of the Certificate of Compliance for each military construction project according to AFI 32–1021, Planning and Programming of Facility Construction Projects.[7]

(10) Submits one hard copy and one electronic copy of the final EA/Finding Of No Significant Impact (FONSI) and EIS/Record of Decision (ROD) to the Defense Technical Information Center.

(f) Environmental Protection Committee (EPC). The EPC helps commanders assess, review and approve EIAP documents in accordance with AFI 32–7005, Environmental Protection Committee.[8]

(g) Staff Judge Advocate (SJA). The Staff Judge Advocate:

(1) Advises the proponent, EPF, and EPC on CATEX determinations and the legal sufficiency of environmental documents.

(2) Advises the EPF during the scoping process of issues that should be addressed in EIS's and on procedures for the conduct of public hearings.

(3) Coordinates the appointment of the independent hearing officer with AFLSA/JAJT and provides support for the hearing officer in cases of public hearings on the draft EIS. The proponent pays administrative and Temporary Duty (TDY) costs. The hearing officer presides at hearings and makes final decisions regarding hearing procedures.

(4) Promptly refers all matters causing or likely to cause substantial public controversy or litigation through channels to AFLSA/JACE (or NGB-JA).

(h) Public Affairs Officer. This officer:

(1) Advises the EPF, the EPC, and the proponent on public affairs activities on proposed actions and reviews environmental documents for public involvement issues;

(2) Advises the EPF of issues and competing interests that should be addressed in the EIS or EA.

(3) Assists in preparation of and attends public meetings or media sessions on environmental issues.

(4) Prepares, coordinates, and distributes news releases and other public information materials related to the proposal and associated EIAP documents.

(5) Notifies the media (television, radio, newspaper) and purchases advertisements when newspapers will not run notices free of charge. The EPF will fund the required advertisements.

(6) Determines and ensures Security Review requirements are met for all information proposed for public release.

(7) For more comprehensive instructions about public affairs activities in environmental matters, see AFI 35–202.[9]

(i) Medical Service. The Medical Service, represented by the Bioenvironmental Engineer, provides technical assistance to EPF's in the areas of environmental health standards, environmental effects, and environmental monitoring capabilities. The Air Force Armstrong Laboratory, Occupational and Environmental Health Directorate, provides additional technical support.

(j) Safety Office. The Safety Office provides technical review and assistance to EPFs to ensure consideration of safety standards and requirements.

§ 989.4 Initial considerations.

Air Force personnel will:

(a) Consider and document environmental effects on proposed Air Force actions through AF Forms 813, EAs, FONSIs, EISs, EIS (RODs), and documents prepared according to E.O. 12114.

(b) Evaluate proposed actions for possible CATEX from environmental impact analysis (attachment 2).

(c) Make environmental documents, comments, and responses, including those of other federal agencies, state, Tribal, and local governments, and the public, part of the record available for review and use at all levels of decision making.

(d) Review the specific alternatives analyzed in the EIAP when evaluating the proposal prior to decision making.

(e) Ensure that alternatives to be considered by the decision-maker are both reasonable and within the range of alternatives analyzed in the environmental documents.

(f) Pursue the objective of furthering foreign policy and national security interests while at the same time considering important environmental factors.

(g) Consider the environmental effects of actions that affect the global commons.

(h) Determine whether any foreign government should be informed of the availability of environmental documents. Formal arrangements with foreign governments concerning environmental matters and communications with foreign governments concerning environmental agreements will be coordinated with the Department of State by the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health (SAF/MIQ) through the Assistant Secretary of Defense. This coordination requirement does not apply to informal working-level communications and arrangements.

§ 989.5 Organizational relationships.

The host EPF manages the EIAP using an interdisciplinary team approach. This is especially important for tenant-proposed actions, because the host command is responsible for the EIAP for actions related to the host command's installations.

(a) The host command prepares environmental documents internally or directs the host base to prepare the environmental documents. Environmental document preparation may be by contract (requiring the tenant to fund the EIAP), by the tenant unit, or by the host. Regardless of the preparation method, the host command will ensure the required environmental analysis is accomplished before a decision is made on the proposal and an action is undertaken. Support

[4] See footnote 1 to § 989.1.

[5] See footnote 1 to § 989.1.

[6] See footnote 1 of § 989.1.

[7] See footnote 1 to § 989.1.

[8] See footnote 1 to § 989.1.

[9] See footnote 1 to § 989.1.

agreements should provide specific procedures to ensure host oversight of tenant compliance, tenant funding or reimbursement of host EIAP costs, and tenant compliance with the EIAP regardless of the tenant not being an Air Force organization.

(b) For aircraft beddown and unit realignment actions, program elements are identified in the Program Objective Memorandum. Subsequent Programs Change Requests must include AF Form 813.

(c) To ensure timely initiation of the EIAP, SAF/AQ forwards information copies of all Mission Need Statements and System Operational Requirements Documents to SAF/MIQ, HQ USAF/ILEV (or ANGRC/CEV), the Air Force Medical Operations Agency, Aerospace Medicine Office (AFMOA/SG), and the affected MAJCOM EPFs.

(d) The MAJCOM of the scheduling unit managing affected airspace is responsible for preparing and approving environmental analyses.

§ 989.6 Budgeting and funding.

Contract EIAP efforts are proponent MAJCOM responsibilities. Each year, the EPF programs for anticipated out-year EIAP workloads based on inputs from command proponents. If proponent offices exceed the budget in a given year or identify unforeseen requirements, the proponent offices must provide the remaining funding.

§ 989.7 Requests from Non-Air Force agencies or entities.

Non-Air Force agencies or entities may request the Air Force to undertake an action, such as issuing a permit or outleasing Air Force property, that may primarily benefit the requester or an agency other than the Air Force. The EPF and other Air Force staff elements must identify such requests and coordinate with the proponent of the non-Air Force proposal, as well as with concerned state, Tribal, and local governments.

(a) Air Force decisions on such proposals must take into consideration the potential environmental impacts of the applicant's proposed activity (as described in an Air Force environmental document), insofar as the proposed action involves Air Force property or programs, or requires Air Force approval.

(b) The Air Force may require the requester to prepare, at the requester's expense, an analysis of environmental impacts (40 CFR 1506.5), or the requester may be required to pay for an EA or EIS to be prepared by a contractor selected and supervised by the Air Force. The EPF may permit requesters to submit draft EAs for their proposed actions, except for actions described in § 989.16(a) and (b), or for actions the EPF has reason to believe will ultimately require an EIS. For EISs the EPF has the responsibility to prepare the environmental document, although responsibility for funding remains with the requester. The fact that the requester has prepared environmental documents at its own expense does not commit the Air Force to allow or undertake the proposed action or its alternatives. The requester is not entitled to any preference over other potential parties with whom the Air Force might contract or make similar arrangements.

(c) In no event is the requester who prepares or funds an environmental analysis entitled to reimbursement from the Air Force. When requesters prepare environmental documents outside the Air Force, the Air Force must independently evaluate and approve the scope and content of the environmental analyses before using the analyses to fulfill EIAP requirements. Any outside environmental analysis must evaluate reasonable alternatives as defined in § 989.8.

§ 989.8 Analysis of alternatives.

The Air Force must analyze reasonable alternatives to the proposed action and the "no action" alternative in all EAs and EISs, as fully as the proposed action alternative.

(a) "Reasonable" alternatives are those that meet the underlying purpose and need for the proposed action and that would cause a reasonable person to inquire further before choosing a particular course of action. Reasonable alternatives are not limited to those directly within the power of the Air Force to implement. They may involve another government agency or military service to assist in the project or even to become the lead agency. The Air Force must also consider reasonable alternatives raised during the scoping process (see § 989.18) or suggested by others, as well as combinations of alternatives. The Air Force need not analyze highly speculative alternatives, such as those requiring a major, unlikely change in law or governmental policy. If the Air Force identifies a large number of reasonable alternatives, it may limit alternatives selected for detailed environmental analysis to a reasonable range or to a reasonable number of examples covering the full spectrum of alternatives.

(b) The Air Force may expressly eliminate alternatives from detailed analysis, based on reasonable selection standards (for example, operational, technical, or environmental standards suitable to a particular project). In consultation with the EPF, proponents may develop written selection standards to firmly establish what is a "reasonable" alternative for a particular project, but they must not so narrowly define these standards that they unnecessarily limit consideration to the proposal initially favored by proponents. This discussion of reasonable alternatives applies equally to EAs and EISs.

(c) Except in those rare instances where excused by law, the Air Force must always consider and assess the environmental impacts of the "no action" alternative. "No action" may mean either that current management practice will not change or that the proposed action will not take place. If no action would result in other predictable actions, those actions should be discussed within the no action alternative section. The discussion of the no action alternative and the alternatives should be comparable in detail to that of the proposed action.

§ 989.9 Cooperation and adoption.

(a) Lead and Cooperating Agency (40 CFR 1501.5–1501.6). When the Air Force is a cooperating agency in the preparation of an EIS, the Air Force reviews and approves principal environmental documents within the EIAP as if they were prepared by the Air Force. The Air Force executes a ROD for its program decisions that are based on an EIS for which the Air Force is a cooperating agency. The Air Force may also be a lead or cooperating agency on an EA using similar procedures, but the MAJCOM EPC retains approval authority unless otherwise directed by HQ USAF. Before invoking provisions of 40 CFR 1501.5(e), the lowest authority level possible resolves disputes concerning which agency is the lead or cooperating agency.

(b) Adoption of EA or EIS. The Air Force, even though not a cooperating agency, may adopt an EA or EIS prepared by another entity where the proposed action is substantially the same as the action described in the EA or EIS. In this case, the EA or EIS must be recirculated as a final EA or EIS but the Air Force must independently review the EA or EIS and determine that it is current and that it satisfies the requirements of this part. The Air Force then prepares its own FONSI or ROD, as the case may be. In the situation where the proposed action is not substantially the same as that described in the EA or the EIS, the Air Force may adopt the EA or EIS, or a portion thereof, by

circulating the EA or EIS as a draft and then preparing the final EA or EIS.

§ 989.10 Tiering.

The Air Force should use tiered (40 CFR 1502.20) environmental documents, and environmental documents prepared by other agencies, to eliminate repetitive discussions of the same issues and to focus on the issues relating to specific actions. If the Air Force adopts another Federal agency's environmental document, subsequent Air Force environmental documents may also be tiered.

§ 989.11 Combining EIAP with other documentation.

(a) The EPF combines environmental analysis with other related documentation when practicable (40 CFR 1506.4) following the procedures prescribed by the CEQ regulations and this part.

(b) The EPF must integrate comprehensive planning (AFI 32–7062, Air Force Comprehensive Planning [10]) with the requirements of the EIAP. Prior to making a decision to proceed, the EPF must analyze the environmental impacts that could result from implementation of a proposal identified in the comprehensive plan.

§ 989.12 Air Form 813, Request for Environmental Impact Analysis.

The Air Force uses AF Form 813 to document the need for environmental analysis or for certain CATEX determinations for proposed actions. The form helps narrow and focus the issues to potential environmental impacts. AF Form 813 must be retained with the EA or EIS to record the focusing of environmental issues. The rationale for not addressing environmental issues must also be recorded in the EA or EIS.

§ 989.13 Categorical exclusion.

(a) CATEXs define those categories of actions that do not individually or cumulatively have potential for significant effect on the environment and do not, therefore, require further environmental analysis in an EA or an EIS. The list of Air Force-approved CATEXs is in attachment 2. Supplements to this part may not add CATEXs or expand the scope of the CATEXs in attachment 2.

(b) Characteristics of categories of actions that usually do not require either an EIS or an EA (in the absence of extraordinary circumstances) include:

(1) Minimal adverse effect on environmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Socioeconomic effects only.

(5) Similarity to actions previously assessed and found to have no significant environmental impacts.

(c) CATEXs apply to actions in the United States and abroad. General exemptions specific to actions abroad are in 32 CFR part 187. The EPF or other decision-maker forwards requests for additional exemption determinations for actions abroad to HQ USAF/ILEV with a justification letter.

(d) Normally, any decision-making level may determine the applicability of a CATEX and need not formally record the determination on AF Form 813 or elsewhere, except as noted in the CATEX list.

(e) Application of a CATEX to an action does not eliminate the need to meet air conformity requirements (see § 989.28).

§ 989.14 Environmental assessment.

(a) When a proposed action is one not usually requiring an EIS but is not categorically excluded, the EPF supports the proponent in preparing an EA (40 CFR 1508.9). Every EA must lead to either a FONSI, a decision to prepare an EIS, or no decision on the proposal.

(b) Whenever a proposed action usually requires an EIS, the EPF responsible for the EIAP may prepare an EA to definitively determine if an EIS is required based on the analysis of environmental impacts. Alternatively, the EPF may choose to bypass the EA and proceed with preparation of an EIS.

(c) An EA is a written analysis that:

(1) Provides analysis sufficient to determine whether to prepare an EIS or a FONSI.

(2) Aids the Air Force in complying with the NEPA when no EIS is required.

(d) The length of an EA should be as short and concise as possible, while matching the magnitude of the proposal. An EA briefly discusses the need for the proposed action, reasonable alternatives to the proposed action, the affected environment, the environmental impacts of the proposed action and alternatives (including the "no action" alternative), and a listing of agencies and persons consulted during preparation. The EA should not contain long descriptions or lengthy, detailed data. Rather, incorporate by reference background data to support the concise discussion of the proposal and relevant issues.

(e) The format for the EA may be the same as the EIS. The alternatives section of an EA and an EIS are similar and should follow the alternatives analysis guidance outlined in § 989.8.

(f) The EPF should design the EA to facilitate rapidly transforming the document into an EIS if the environmental analysis reveals a significant impact.

(g) EAs for actions where the Air Force has wetlands or floodplains compliance responsibilities (E.O. 11988 and E.O. 11990) require SAF/MIQ approval. As a finding contained in the draft FONSI, a Finding of No Practicable Alternative (FONPA) must be submitted (five hard copies and an electronic version) through the MAJCOM EPF to HQ USAF/ILEVP when the alternative selected is located in wetlands or floodplains, and must discuss why no other practicable alternative exists to avoid impacts. See AFI 32–7064, *Integrated Natural Resources Management* [11].

(h) EAs and accompanying FONSIs that require the Air Force to make Clean Air Act General Conformity Determinations shall be submitted (five hard copies and an electronic version) through the MAJCOM EPF to HQ USAF/ILEVP for SAF/MIQ approval. SAF/MIQ signs all General Conformity Determinations and will also sign the companion FONSIs, when requested by the MAJCOM (see § 989.30).

(i) In cases potentially involving a high degree of controversy or Air force-wide concern, the MAJCOM, after consultation with HQ USAF/ILEVP, may request HQ USAF ESOHC review and approval of an EA, or HQ USAF may direct the MAJCOM to forward an EA (five hard copies and an electronic version) for HQ USAF ESOHC review and approval.

(j) As a minimum, the following EAs require MAJCOM approval because they involve topics of special importance or interest. Unless directed otherwise by HQ USAF/ILEVP, the installation EPF must forward the following types of EAs to the MAJCOM EPF, along with an unsigned draft FONSI: (MAJCOMs can require other EAs receive MAJCOM approval in addition to those types specified here.)

(1) All EAs on non-Air Force proposals that require an Air Force decision, such as use of Air Force property for highways, space ports and joint-use proposals.

(2) EAs where mitigation to insignificance is accomplished in lieu of initiating an EIS (§ 989.22(c)).

(k) A few examples of actions that normally require preparation of an EA (except as indicated in the CATEX list) include:

[10] See footnote 1 to § 989.1.

[11] See footnote 1 to § 989.1

(1) Public land withdrawals of less than 5,000 acres.

(2) Minor mission realignments and aircraft beddowns.

(3) New building construction on base within developed areas.

(4) Minor modifications to Military Operating Areas (MOAs), air-to-ground weapons ranges, and military training routes.

(l) The Air Force proponent will involve other federal agencies, state, Tribal, and local governments, and the public in the preparation of EAs (40 CFR 1501.4(b) and 1506.6). The extent of involvement usually coincides with the magnitude and complexity of the proposed action and its potential environmental effect on the area. For proposed actions described in § 989.15(e)(2), use either the scoping process described in § 989.18 or the public notice process in § 989.24.

§ 989.15 Finding of no significant impact.

(a) The FONSI (40 CFR § 1508.13) briefly describes why an action would not have a significant effect on the environment and thus will not be the subject of an EIS. The FONSI must summarize the EA or, preferably, have it attached and incorporated by reference, and must note any other environmental documents related to the action.

(b) If the EA is not incorporated by reference, the FONSI must include:

(1) Name of the action.

(2) Brief description of the action (including alternatives considered and the chosen alternative).

(3) Brief discussion of anticipated environmental effects.

(4) Conclusions leading to the FONSI.

(5) All mitigation actions that will be *adopted with implementation of the* proposal (see § 989.22).

(c) Keep FONSIs as brief as possible. Only rarely should FONSIs exceed two typewritten pages. Stand-alone FONSIs without an attached EA may be longer.

(d) For actions of regional or local interest, disseminate the FONSI according to § 989.23. The MAJCOM and NGB are responsible for release of FONSIs to regional offices of Federal agencies, the state single point of contact (SPOC), and state agencies concurrent with local release by the installations.

(e) The EPF must make the EA and unsigned FONSI available to the affected public and provide the EA and unsigned FONSI to organizations and individuals requesting them and to whomever the proponent or the EPF has reason to believe is interested in the action, unless disclosure is precluded for security classification reasons. Draft EAs and unsigned draft FONSIs will be clearly identified as drafts and distributed via cover letter which will explain their purpose and need. The EPF provides a copy of the documents without cost to organizations and individuals requesting them. the FONSI transmittal date (date of letter of transmittal) to the state SPOC or other equivalent agency is the official notification date.

(1) Before the FONSI is signed and the action is implemented, the EPF should allow sufficient time to receive comments from the public. The time period will reflect the magnitude of the proposed action and its potential for controversy. The greater the magnitude of the proposed action or its potential for controversy, the longer the time that must be allowed for public review. Mandatory review periods for certain defined actions are contained in § 989.15(e)(2). These are not all inclusive but merely specific examples. In every case where an EA and FONSI are prepared, the proponent and EPF must determine how much time will be allowed for public review. In all cases, other than classified actions, a public review period should be the norm unless clearly unnecessary due to the lack of potential controversy.

(2) In the following circumstances, the EA and unsigned FONSI are made available for public review for at least 30 days before FONSI approval and implementing the action (40 CFR 1501.4(e)(2)):

(i) When the proposed action is, or is closely similar to, one that usually requires preparation of an EIS (see § 989.16).

(ii) If it is an unusual case, a new kind of action, or a precedent-setting case in terms of its potential environmental impacts.

(iii) If the proposed action would be located in a floodplain or wetland.

(iv) If the action is mitigated to insignificance in the FONSI, in lieu of an EIS § 989.22(c)).

(v) If the proposed action is a change to airspace use of designation.

(vi) If the proposed action would have a disproportionately high and adverse environmental effect on minority and low-income populations.

(f) As a general rule, the same organizational level that prepares the EA also reviews and recommends the FONSI for approval by the EPC. MAJCOMs may decide the level of EA approval and FONSI signature, except as provided in § 989.14(g).

§ 989.16 Environmental impact statement.

(a) Certain classes of environmental impacts normally require preparation of an EIS (40 CFR part 1501.4). These include, but are not limited to:

(1) Potential for significant degradation of the environment.

(2) Potential for significant threat or hazard to public health or safety.

(3) Substantial environmental controversy concerning the significance or nature of the environmental impact of a proposed action.

(b) Certain other action normally, but not always, require and EIS. These include, but are not limited to:

(1) Public land withdrawals of over 5,000 acres (Engle Act, 43 U.S.C. 155–158).

(2) Establishment of new air-to-ground weapons ranges.

(3) Site selection of new airfields.

(4) Site selection of major installations.

(5) Development of major new weapons systems (at decision points that involve demonstration, validation, production, deployment, and area or site selection for deployment).

(6) Establishing or expanding supersonic training areas overland below 30,000 feet MSL (mean sea level).

(7) Disposal and reuse of closing installations.

§ 989.17 Notice of intent.

The EPF must furnish, through the MAJCOM, to HQ USAF/ILEV the NOI (40 CFR 1508.22) describing the proposed action for congressional notification and publication in the **Federal Register**. The EPF, through the *host base public affairs office, will also* provide the approved NOI to newspapers and other media in the area potentially affected by the proposed action. The EPF must provide copies of the notice to the SPOC and must also distribute it to requesting agencies, organizations, and individuals. Along with the draft NOI, the EPF must also forward the completed DOPPA, through the MAJCOM, to HQ USAF for information.

§ 989.18 Scoping.

(a) After publication of the NOI for an EIS, the EPF must initiate the public scoping process (40 CFR 1501.7) to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Methods of scoping range from soliciting written comments

to conducting pubic scoping meetings (see 40 CFR 1501.7 and 1506.6(e)). The scoping process is an iterative, pro-active process of communicating with individual citizens, neighborhood, community, and local leaders, public interest groups, congressional delegations, state, Tribal, and local governments, and federal agencies. The scoping process must start prior to official public scoping meetings and continue through to preparation of the draft EIS. The purpose of this process is to de-emphasize insignificant issues and focus the scope of the environmental analysis on significant issues (40 CFR 1500.4(g)). Additionally, scoping allows early and more meaningful participation by the public. The result of scoping is that the proponent and EPF determine the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.125). The EPF must send plans for scoping meetings to AF/ILEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days before the first scoping meeting. Scoping meeting plans are similar in content to public hearing plans (see attachment 3). Public scoping meetings should generally be held at locations not on the installation.

(b) Where it is anticipated the proposed action and its alternatives will affect minority and low-income populations, special efforts shall be made to reach these populations. This might include special informational meetings or notices in minority and low-income areas concerning the regular scoping process.

§ 989.19 Draft EIS.

(a) Preliminary draft. The EPF supports the proponent in preparation of a Preliminary draft EIS (PDEIS) (40 CFR 1502.9) based on the scope of issues decided on during the scoping process. The format of the EIS must be in accordance with the format recommended in the CEQ regulations (40 CFR 1502.10 and 1502.11). The CEQ regulations indicate that EISs normally contain fewer than 150 pages (300 pages for proposals of unusual complexity). The EPF provides a sufficient number of copies of the PDEIS to HQ USAF/ILEV for HQ USAF ESOHC security and policy review in each member's area of responsibility and to AFCEE/EC for technical review.

(b) Review of draft EIS. After the HQ USAF ESOHC review, the EPF assists the proponent in making any necessary revisions to the PDEIS and forwards it to HQ USAF/ILEV as a draft EIS to ensure completion of all security and policy reviews and to certify releasability. Once the draft EIS is approved, HQ USAF/ILEV notifies the EPF to print sufficient copies of the draft EIS for distribution to congressional delegations and interested agencies at least seven calendar days prior to publication of the Notice of Availability (NOA) in the Federal Register. After congressional distribution, the EPF sends the draft EIS to all others on the distribution list. HQ USAF/ILEV then files the document with the U.S. Environmental Protection Agency (USEPA) and provides a copy to the Deputy Under Secretary of Defense for Environmental Security.

(c) Public review of draft EIS (40 CFR 1502.19 and 1506.6):

(1) The public comment period for the draft EIS is at least 45 days starting from the publication date of the NOA of the draft EIS in the **Federal Register**. USEPA publishes in the **Federal Register** NOAs of EISs filed during the preceding week. This public comment period may be extended by the EPF. If the draft EIS is unusually long, the EPF may distribute a summary to the public with an attached list of locations (such as public libraries) where the entire draft EIS may be reviewed. The EPF must distribute the full draft EIS to certain entities, for example agencies with jurisdiction by law or agencies with special expertise in evaluating the environmental impacts, and anyone else requesting the entire draft EIS (40 CFR 1502.19 and 1506.6).

(2) The EPF sponsors public hearings on the draft EIS according to the procedures in attachment 3. Hearings take place no sooner than 15 days after the **Federal Register** publication of the NOA and at least 15 days before the end of the comment period. Scheduling hearings toward the end of the comment period is encouraged to allow the public to obtain and more thoroughly review the draft EIS. The EPF must provide hearing plans to HQ USAF/ILEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days prior to the first public hearing. Public hearings should generally be held at off-base locations. Submit requests to deviate from procedures in attachment 3 to HQ USAF/ILEVP for SAF/MIQ approval.

(3) Where analyses indicate that a proposed action will potentially have a disproportionate impact on minority or low-income populations, the EPF should make special efforts to ensure that these potentially impacted populations are brought into the review process.

(d) Response to comments (40 CFR 1503.4). The EPF must incorporate in the Final EIS its responses to comments on the Draft EIS by modifying the text and referring in the appendix to where the comment is addressed or providing a written explanation in the comments section, or both. The EPF may group comments of a similar nature together to allow a common response and may also respond to individuals separately.

(e) Seeking additional comments. The EPF may, at any time during the EIS process, seek additional public comments, such as when there has been a significant change in circumstances, development of significant new information of a relevant nature, or where there is substantial environmental controversy concerning the proposed action. Significant new information leading to public controversy regarding the scope after the scoping process is such a changed circumstance. An additional public comment period may also be necessary after the publication of the draft EIS due to public controversy or changes made as the result of previous public comments. Such periods when additional public comments are sought shall last for at least 30 days.

§ 989.20 Final EIS.

(a) If changes in the draft EIS are minor or limited to factual corrections and responses to comments, the proponent and EPF may, with the prior approval of SAF/MIQ, prepare a document containing only comments on the Draft EIS, Air Force responses, and errata sheets of changes staffed to the HQ USAF ESOHC for coordination. However, the EPF must submit the draft EIS and all of the above documents, with a new cover sheet indicating that it is a final EIS (40 CFR 1503.4(c)), to HQ USAF/ILEV for filing with the EPA (40 CFR 1506.9). If more extensive modifications are required, the EPF must prepare a preliminary final EIS incorporating these modifications for coordination within the Air Force. Regardless of which procedure is followed, the final EIS must be processed in the same way as the draft EIS, including receipt of copies of the EIS by SAF/LLP, except that the public need not be invited to comment during the 30-day post-filing waiting period. The Final EIS should be furnished to every person, organization, or agency that made substantive comments on the Draft EIS or requested a copy. Although the EPF is not required to respond to public comments received during this period, comments received must be considered in determining final decisions such as identifying the preferred alternative, appropriate mitigations, or if a supplemental analysis is required.

(b) The EPF processes all necessary supplements to EISs (40 CFR 1502.9) in

the same way as the original Draft and Final EIS, except that a new scoping process is not required.

(c) If major steps to advance the proposal have not occurred within 5 years from the date of the Final EIS approval, reevaluation of the documentation should be accomplished to ensure its continued validity.

§ 989.21 Record of decision (ROD).

(a) The proponent and the EPF prepare a draft ROD, formally staff it through the MAJCOM EPC, to HQ USAF/ILEV for verification of adequacy, and forwards it to the final decision-maker for signature. A ROD (40 CFR 1505.2) is a concise public document stating what an agency's decision is on a specific action. The ROD may be integrated into any other document required to implement the agency's decision. A decision on a course of action may not be made until 30 days after publication of the NOA of the final EIS in the **Federal Register**.

(b) The Air Force must announce the ROD to the affected public as specified in § 989.23, except for classified portions. The ROD should be concise and should explain the conclusion, the reason for the selection, and the alternatives considered. The ROD must identify the course of action, whether it is the proposed action or an alternative, that is considered environmentally preferable regardless of whether it is the alternative selected for implementation. The ROD should summarize all the major factors the agency weighed in making its decision, including essential considerations of national policy.

(c) The ROD must state whether the selected alternative employs all practicable means to avoid, minimize, or mitigate environmental impacts and, if not, explain why.

§ 989.22 Mitigation.

(a) When preparing EIAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. Discuss mitigation measures in terms of "will" and "would" when such measures have already been incorporated into the proposal. Use terms like "may" and "could" when proposing or suggesting mitigation measures. Both the public and the Air Force community need to know what commitments are being considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) The proponent funds and implements mitigation measures in the mitigation plan that is approved by the decision-maker. Where possible and appropriate because of amount, the proponent should include the cost of mitigation as a line item in the budget for a proposed project. The proponent must keep the EPF informed of the status of mitigation measures when the proponent implements the action. The EPF monitors the progress of mitigation implementation and reports its status, through the MAJCOM, to HQ USAF/ILEV when requested. Upon request, the EPF must also provide the results of relevant mitigation monitoring to the public.

(c) The proponent may "mitigate to insignificance" potentially significant environmental impacts found during preparation of an EA, in lieu of preparing an EIS. The FONSI for the EA must include these mitigation measures. Such mitigations are legally binding and must be carried out as the proponent implements the project. If, for any reason, the project proponent later abandons or revises in environmentally-adverse ways the mitigation commitments made in the FONSI, the proponent must prepare a supplemental EIAP document before continuing the project. If potentially significant environmental impacts would result from any project revisions, the proponent must prepare an EIS.

(d) For each FONSI or ROD containing mitigation measures, the proponent prepares a plan specifically identifying each mitigation, discussing how the proponent will execute the mitigations, identifying who will fund and implement the mitigations, and stating when the proponent will complete the mitigation. The mitigation plan will be forwarded, through the MAJCOM EPF to HQ USAF/ILEV for review within 90 days from the date of signature of the FONSI or ROD.

§ 989.23 Contractor prepared documents.

All Air Force EIAP documents belong to and are the responsibility of the Air Force. EIAP correspondence and documents distributed outside of the Air Force should generally be signed out by Air Force personnel and documents should reflect on the cover sheet they are an Air Force document. Contractor preparation information should be contained within the document's list of preparers.

§ 989.24 Public notification.

Except as provided in § 989.26, public notification is required for various aspects of the EIAP.

(a) Activities that require public notification include:

(1) An EA and FONSI.

(2) An EIS NOI.

(3) Public scoping meetings.

(4) Availability of the draft EIS.

(5) Public hearings on the draft EIS (which should be included in the NOA for the draft EIS).

(6) Availability of the final EIS.

(7) The ROD for an EIS.

(b) For actions of local concern, the list of possible notification methods in 40 CFR 1506.6(b)(3) is only illustrative. The EPF may use other equally effective means of notification as a substitute for any of the methods listed. Because many Air Force actions are of limited interest to persons or organizations outside the Air Force, the EPF may limit local notification to the SPOC, local government representatives, and local news media. For all actions covered under § 989.15(e)(2), and for EIS notices, the public affairs office must purchase with EPF funds an advertisement in a prominent section of the local newspaper(s) of general circulation (not "legal" newspapers or "legal section" of general newspapers).

(c) For the purpose of EIAP, the EPF begins the time period of local notification when it sends written notification to the state SPOC or other equivalent agency (date of letter of notification).

§ 989.25 Base closure and realignment.

Base closure or realignment may entail special requirements for environmental analysis. The permanent base closure and realignment law, 10 U.S.C. 2687, requires a report to the Congress when an installation where at least 300 DoD civilian personnel are authorized to be employed is closed, or when a realignment reduces such an installation by at least 50 percent or 1,000 of such personnel, whichever is less. In addition, other base closure laws may be in effect during particular periods. Such non-permanent closure laws frequently contain provisions limiting the extent of environmental analysis required for actions taken under them. Such provisions may also add requirements for studies not necessarily required by NEPA.

§ 989.26 Classified actions (40 CFR 1507.3(c)).

(a) Classification of an action for national defense or foreign policy purposes does not relieve the requirement of complying with NEPA. In classified matters, the Air Force must prepare and make available normal NEPA environmental analysis documents to aid in the decision making process; however, Air Force staff must prepare, safeguard and disseminate these documents according to established procedures for protecting classified documents. IF an EIAP document must be classified, the Air Force may modify or eliminate associated requirements for public notice (including publication in the **Federal Register**) or public involvement in the EIAP. However, the Air Force should obtain comments on classified proposed actions or classified aspects of generally unclassified actions, from public agencies having jurisdiction by law or special expertise, to the extent that such review and comment is consistent with security requirements. Where feasible, the EPF may need to help appropriate personnel from those agencies obtain necessary security clearances to gain access to documents so they can comment on scoping or review the documents.

(b) Where the proposed action is classified and unavailable to the public, the Air Force may keep the entire NEPA process classified and protected under the applicable procedures for the classification level pertinent to the particular information. At times (for example, during weapons system development and base closures and realignments), certain but not all aspects of NEPA documents may later be declassified. In those cases, the EPF should organize the EIAP documents, to the extent practicable, in a way that keeps the most sensitive classified information (which is not expected to be released at any early date) in a separate annex that can remain classified; the rest of the EIAP documents, when declassified, will then be comprehensible as a unit and suitable for release to the public. Thus, the documents will reflect, as much as possible, the nature of the action and its environmental impacts, as well as Air Force compliance with NEPA requirements.

(c) Where the proposed action is not classified, but certain aspects of it need to be protected by security classification, the EPF should tailor the EIAP for a proposed action to permit as normal a level of public involvement as possible, but also fully protect the classified part of the action and environmental analysis. In some instances, the EPF can do this by keeping the classified sections of the EIAP documents in a separate, classified annex.

(d) For § 989.26(b) actions, and NOI or NOA will not be published in the **Federal Register** until the proposed action is declassified. For § 989.26(c) actions, the **Federal Register** will run an unclassified NOA which will advise the public that at some time in the future the Air Force may or will publicly release a declassified document.

(e) The EPF similarly protects classified aspects of FONSIs, RODs, or other environmental documents that are part of the EIAP for a proposed action, such as by preparing separate classified annexes to unclassified documents, as necessary.

(f) Whenever a proponent believes that EIAP documents should be kept classified, the EPF must make a report of the matter to SAF/MIQ, including proposed modifications of the normal EIAP to protect classified information. The EPF may make such submissions at whatever level of security classification is needed to provide a comprehensive understanding of the issues. SAF/MIQ, with support from SAF/GC and other staff elements as necessary, makes final decisions on EIAP procedures for classified actions.

§ 989.27 Occupational safety and health.

Assess direct and indirect impacts of proposed actions on the safety and health of Air Force employees and others at a work site. The EIAP document does not need to specify compliance procedures. However, the EIAP documents should discuss impacts that require a change in work practices to achieve an adequate level of health and safety.

§ 989.28 Airspace and range proposals.

(a) EIAP Review. Airspace and range proposals require review by HQ USAF/XOO prior to public announcement and implementation by a proponent. Unless directed otherwise, the airspace proponent will forward the DOPAA as an attachment to the proposal sent to HQ USAF/XOO. EAs and EISs prepared as part of airspace and range proposals will be forwarded to HQ USAF/XOO for review at the preliminary draft and preliminary final stages. AF/XOO will be responsible for appropriate HQ USAF ESOHC review.

(b) Federal Aviation Administration. The DoD and the Federal Aviation Administration (FAA) have entered into a Memorandum of Understanding (MOU) that outlines various airspace responsibilities. For purposes of compliance with NEPA, the DoD is the "lead agency" for all proposals initiated by DoD, with the FAA acting as the "cooperating agency." Where airspace proposals initiated by the FAA affect military use, the roles are reversed. The proponent's action officers (civil engineering and local airspace management) must ensure that the FAA is fully integrated into the airspace proposals and related EIAP from the very beginning and that the action officers review the FAA's responsibilities as a cooperating agency. The proponent's airspace manager develops the preliminary airspace proposal per appropriate FAA handbooks and the FAA–DoD MOU. The preliminary airspace proposal is the basis for initial dialogue between DoD and the FAA on the proposed action. A close working relationship between DoD and the FAA, through the FAA regional Air Force representative, greatly facilitates the airspace proposal process and helps resolve many NEPA issues during the EIAP.

§ 989.29 Force structure and unit move proposals.

Unless directed otherwise, the MAJCOM plans and programs proponent will forward a copy of all EAs for force structure and unit moves to HQ USAF/ILXB for information only at the preliminary draft and preliminary final stages.

§ 989.30 Air quality.

Section 176(c) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7506(c), establishes a conformity requirement for Federal agencies which has been implemented by regulation, 40 CFR part 93, subpart B. All EIAP documents must address applicable conformity requirements and the status of compliance. Conformity applicability analyses and determinations are developed in parallel with EIAP documents, but are separate and distinct requirements and should be documented separately. To increase the utility of a conformity determination in performing the EIAP, the conformity determination should be completed prior to the completion of the EIAP so as to allow incorporation of the information from the conformity determination into the EIAP. See AFI 32–7040, Air Quality Compliance.[12]

§ 989.31 Pollution prevention.

The Pollution Prevention Act of 1990, 42 U.S.C. 13101(b), established a national policy to prevent or reduce pollution at the source, whenever feasible. Pollution prevention approaches should be applied to all pollution-generating activities. The environmental document should analyze potential pollution that may result from the proposed action and alternatives and must discuss potential pollution prevention measures when such measures are feasible for incorporation into the proposal or alternatives. Where pollution cannot be prevented, the environmental analysis and proposed mitigation measures should include, wherever possible,

[12] See footnote 1 to § 989.1.

recycling, energy recovery, treatment, and environmentally safe disposal actions (see AFI 32–7080, Pollution Prevention Program [13]).

§ 989.32 Noise.

Aircraft noise data files used for analysis during EIAP will be submitted to HQ AFCEE for review and validation prior to public release, and upon completion of the EIAP for database entry. Utilize the current NOISEMAP computer program for air installations and the Assessment System for Aircraft Noise for military training routes and military operating areas. Guidance on standardized Air Force noise data development and analysis procedures is available from HQ AFCEE/EC. Develop EIAP land use analysis relating to aircraft noise impacts originating from air installations following procedures in AFI 32–70653, Air Installation Compatible Use Zone.[14] Draft EIAP aircraft noise/land use analysis associated with air installations will be coordinated with the MAJCOM AICUZ program manager.

§ 989.33 Environmental justice.

During the preparation of environmental analyses under this instruction, the EPF should ensure compliance with the provisions of E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Memorandum of February 11, 1994, regarding E.O. 12898.

§ 989.34 Special and emergency procedures.

(a) Special procedures. During the EIAP, unique situations may arise that require EIAP strategies different than those set forth in this part. These situations may warrant modification of the procedures in this part. EPFs should only consider procedural deviations when the resulting process would benefit the Air Force and still comply with NEPA and CEQ regulations. EPFs must forward all requests for procedural deviations to HQ USAF/ILEV (or ANGRC/CEV) for review and approval by SAF/MIQ.

(b) Emergency procedures (40 CFR 1506.11). Emergency situations do not exempt the Air Force from complying with NEPA, but do allow emergency response while completing the EIAP. Certain emergency situations may make it necessary to take immediate action having significant environmental impact, without observing all the provisions of the CEQ regulations or this part. If possible, promptly notify HQ USAF/ILEV, for SAF/MIQ coordination and CEQ consultation, before undertaking emergency actions that would otherwise not comply with NEPA or this part. The immediate notification requirement does not apply where emergency action must be taken without delay. Coordination in this instance must take place as soon as practicable.

§ 989.35 Reporting requirements.

(a) EAs, EISs, and mitigation measures will be tracked at bases and MAJCOMs through an appropriate environmental management system.

(b) Proponents, EPFs, and public affairs offices may utilize the world wide web, in addition to more traditional means, to notify the public of availability of EAs and EISs. When possible, allow distribution of documents electronically. Public review comments should be required in writing, rather than by electronic mail.

(c) All documentation will be disposed of according to AFMAN 37–139, Records Disposition—Standards.[15]

§ 989.36 Waivers.

In order to deal with unusual circumstances and to allow growth in the NEPA process, SAF/MIQ may grant waivers to those procedures contained in this instruction not required by NEPA or the CEQ Regulations. Such waivers shall not be used to limit compliance with NEPA or the CEQ Regulations but only to substitute other, more suitable procedures relative to the context of the particular action. Such waivers may also be granted on occasion to allow experimentation in procedures in order to allow growth in the EIAP. This authority may not be delegated.

§ 989.37 Procedures for analysis abroad.

Procedures for analysis of environmental actions abroad are contained in 32 CFR part 187. That directive provides comprehensive policies, definitions, and procedures for implementing E.O. 12114. For analysis of Air Force actions abroad, 32 CFR part 187 will be followed.

§ 989.38 Requirements for analysis abroad.

The EPF will generally perform the same functions for analysis of actions abroad that it performs in the United States. In addition to the requirements of 32 CFR part 187, the following Air Force specific rules apply.

(a) For EAs dealing with global commons (geographic areas beyond the jurisdiction of the United States or any foreign nation) HQ USAF/ILEV will review actions that are above the MAJCOM approval authority. In this instance, approval authority refers to the same approval authority that would apply to an EA in the United States. The EPF documents a decision not to do an EIS.

(b) For EISs dealing with the global commons, the EPF provides sufficient copies to HQ USAF/ILEV for the HQ USAF ESOHC review and AFCEE/EC technical review. After ESOHC review, the EPF makes a recommendation as to whether the proposed draft EIS will be released as a draft EIS.

(c) For environmental studies and environmental reviews, forward, when appropriate, environmental studies and reviews to HQ USAF/ILEV for coordination among appropriate federal agencies. HQ USAF/ILEV makes environmental studies and reviews available to the Department of State and other interested federal agencies, and, on request, to the United States public, in accordance with 32 CFR part 187. HQ USAF/ILEV also may inform interested foreign governments or furnish copies of studies, in accordance with 32 CFR part 187.

Attachment 1 to Part 989—Glossary of References, Abbreviations, Acronyms, and Terms

References—Legislative

10 U.S.C. 2687, Base Closures and Realignments
42 U.S.C. 4321–4347, National Environmental Policy Act of 1969
42 U.S.C. 7506(c), Clean Air Act Amendments of 1990
42 U.S.C. 13101(b), Pollution Prevention Act of 1990
43 U.S.C. 155–158, Engle Act

Executive Orders

Executive Order 11988, Floodplain Management, May 24, 1977
Executive Order 11990, Protection of Wetlands, May 24, 1977
Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979
Executive Order 12372, Intergovernmental Review of Federal Programs, July 14, 1982
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994

U.S. Government Agency Publications

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508
Department of Defense Directive (DoDD) 4715.1, Environmental Security
Department of Defense Directive (DoDD) 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March 31, 1979 (32 CFR part 187)
Department of Defense Instruction (DoDI) 4715.9, Environmental Planning and Analysis
DoDD 5000.1, Defense Acquisition
Department of Defense 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information Systems (MAIS) Acquisition Programs, with Change 1

Air Force Publications

AFPD 32–70, Environmental Quality
AFI 32–1021, Planning and Programming of Facility Construction Projects
AFI 32–7002, Environmental Information Management System
AFI 32–7005, Environmental Protection Committees
AFI 32–7040, Air Quality Compliance
AFI 32–7062, Air Force Comprehensive Planning
AFI 32–7063, Air Installation Compatible Use Zone Program
AFI 32–7064, Integrated Natural Resources Management
AFI 32–7080, Pollution Prevention Program
AFI 35–202, Environmental Community Involvement
AFI 35–205, Air Force Security and Policy Review Program
AFMAN 37–139, Records Disposition—Standards

Abbreviations and Acronyms

Abbreviation or acronym, and definition:

AFCEE Air Force Center for Environmental Excellence
AFCEE/EC Air Force Center for Environmental Excellence/Environmental Conservation and Planning Directorate
AFI Air Force Instruction
AFLSA/JACE Air Force Legal Services Agency/Environmental Law and Litigation Division
AFLSA/JAJT Air Force Legal Services Agency/Trial Judiciary Division
AFMAN Air Force Manual
AFMOA/SG Air Force Medical Operations Agency/Aerospace Medicine Office
AFPD Air Force Policy Directive
AFRES Air Force Reserve
ANG Air National Guard
ANGRC Air National Guard Readiness Center
CATEX Ctegorical Exclusion
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
DoD Department of Defense
DoDD Department of Defense Directive
DoDI Department of Defense Instruction
DOPAA Description of Proposed Action and Alternatives
EA Environmental Assessment
EIAP Environmental Impact Analysis Process
EIS Environmental Impact Statement
E.O. Executive Order
EPA Environmental Protection Agency
EPC Environmental Protection Committee
EPF Environmental Planning Function
ESOHC Environmental Safety and Occupational Health Committee
FAA Federal Aviation Administration
FEIS Final Environmental Impact Statement
FOA Field Operating Agency
FONPA Finding of No Practicable Alternative
FONSI Finding of No Significant Impact
GSA General Services Administration
HG AFMC Headquarters, Air Force Materiel Command
HQ USAF Headquarters, United States Air Force
HQ USAF/ILE The Air Force Civil Engineer
MAJCOM Major Command
MGM Materiel Group Manager
MOA Military Operating Area
MOU Memorandum of Understanding
MSL Mean Sea Level
NEPA National Environmental Policy Act of 1969
NGB–CF National Guard Bureau Air Directorate
NGB–JA National Guard Bureau Office of the Staff Judge Advocate
NGB–PA National Guard Bureau Office of Public Affairs
NOA Notice of Availability
NOI Notice of Intent
OSD Office of the Secretary of Defense
OSHA Occupational Safety and Health Administration
PDEIS Preliminary Draft Environmental Impact Statement
PGM Product Group Manager
REO Air Force Regional Environmental Office
ROD Record of Decision
SAF/AQR Deputy Assistant Secretary of the Air Force (Science, Technology, and Engineering)
SAF/GC Air Force General Counsel
SAF/LL Air Force Office of Legislative Liaison
SAF/MI Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment
SAF/MIQ Deputy Assistant Secretary of the Air Force (Environment, Safety, and Occupational Health)
SAF/PA Air Force Office of Public Affairs
SJA Staff Judge Advocate
SM Single Manager
SPD Single Program Director
SPOC Single Point of Contact
TDY Temporary Duty
U.S.C. United States Code

Terms

Note: All definitions in the CEQ Regulations, 40 CFR part 1508, apply to this part. In addition, the following definitions apply:

Description of Proposed Action and Alternatives (DOPAA)—An Air Force document that is the framework for assessing the environmental impact of a proposal. It describes the purpose and need for the action, the alternatives to be considered, and the rationale used to arrive at the proposed action. The DOPAA often unfolds as writing progresses. The DOPAA can change during the internal scoping and public scoping process, especially as ideas and issues become clearer, and as new information makes changes necessary.

Environmental Impact Analysis Process (EIAP)—The Air Force program that implements the requirements of NEPA and requirements for analysis of environmental effects abroad under E.O. 12114.

Finding of No Practicable Alternative (FONPA)—Finding contained in a FONSI or ROD, according to Executive Orders 11988 and 11990, that explains why there are no practicable alternatives to an action affecting a wetland or floodplain, based on appropriate EIAP analysis or other documentation.

Interdisciplinary—An approach to environmental analysis involving more than one discipline or branch of learning.

Pollution Prevention—"Source reduction", as defined under the Pollution Prevention Act, and other practices that reduce or eliminate pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or in the protection of natural resources by conservation.

Proponent—Any office, unit, or activity that proposes to initiate an action.

Scoping—A process for proposing alternatives to be addressed and for identifying the significant issues related to a proposed action. Scoping includes affirmative efforts to communicate with other federal agencies, state, Tribal, and local governments, and the public.

Single Manager—Any one of the Air Force designated weapon system program managers, that include System Program Directors (SPDs), Product Group Managers (PGMs), and Materiel Group Managers (MGM).

United States—All states, commonwealths, the District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include American Samoa, Guam, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, Palmyra Island, the Virgin Islands, and Wake Island.

Attachment 2 to Part 989—Categorical Exclusions

A2.1. Proponent/EPF Responsibility. Although a proposed action may qualify for a categorical exclusion from the requirements for environmental impact analysis under NEPA, this exclusion does not relieve the EPF or the proponent of responsibility for complying with all other environmental requirements related to the proposal, including requirements for permits, state regulatory agency review of plans, and so on.

A2.2. Additional Analysis. Circumstances may arise in which usually categorically excluded actions may have a significant environmental impact and, therefore, may generate a requirement for further environmental analysis. Examples of situations where such unique circumstances may be present include:

A2.2.1. Actions of greater scope or size than generally experienced for a particularly category of action.

A2.2.2. Potential for degradation (even though slight) of already marginal or poor environmental conditions.

A2.2.3. Initiating a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

A2.2.4. Use of unproved technology.

A2.2.5. Use of hazardous or toxic substances that may come in contact with the surrounding environment.

[13] See footnote 1 to § 989.1.
[14] See footnote 1 to § 989.1.
[15] See footnote 1 to § 989.1.

A2.2.6. Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

A2.2.7. Proposals adversely affecting areas of critical environmental concern, such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

A2.2.8. Proposals with significant and adverse environmental effects on minority and low-income populations.

A2.3. CATEX List. Actions that are categorically excluded in the absence of unique circumstances are:

A2.3.1. Routine procurement of goods and services.

A2.3.2. Routine Commissary and Exchange operations.

A2.3.3. Routine recreational and welfare activities.

A2.3.4. Normal personnel, fiscal or budgeting, and administrative activities and decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and records keeping).

A2.3.5. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that do not, themselves, result in an action being taken.

A2.3.6. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that implement (without substantial change) the regulations, instructions, directives, or guidance documents from higher headquarters or other Federal agencies with superior subject matter jurisdiction.

A2.3.7. Continuation or resumption of pre-existing actions, where there is no substantial change in existing conditions or existing land uses and where the actions were originally evaluated in accordance with applicable law and regulations, and surrounding circumstances have not changed.

A2.3.8. Performing interior and exterior construction within the 5-foot line of a building without changing the land use of the existing building.

A2.3.9. Repairing and replacing real property installed equipment.

A2.3.10. Routine facility maintenance and repair that does not involve disturbing significant quantities of hazardous materials such as asbestos and lead-based paint.

A2.3.11. Actions similar to other actions which have been determined to have an insignificant impact in a similar setting as established in an EIS or an EA resulting in a FONSI. The EPF must document application of this CATEX on AF Form 813, specifically identifying the previous Air Force approved environmental document which provides the basis for this determination.

A2.3.12. Installing, operating, modifying, and routinely repairing and replacing utility and communications systems, data processing cable, and similar electronic equipment that use existing rights of way, easements, distribution systems, or facilities.

A2.3.13. Installing or modifying airfield operational equipment (such as runway visual range equipment, visual glide path systems, and remote transmitter or receiver facilities) on airfield property and usually accessible only to maintenance personnel.

A2.3.14. Installing on previously developed land, equipment that does not substantially alter land use (i.e., land use of more than one acre). This includes outgrants to private lessees for similar construction. The EPF must document application of this CATEX on AF Form 813.

A2.3.15. Laying-away or mothballing a production facility or adopting a reduced maintenance level at a closing installation when (1) agreement on any required historic preservation effort has been reached with the state historic preservation officer and the Advisory Council on Historic Preservation, and (2) no degradation in the environmental restoration program will occur.

A2.3.16. Acquiring land and ingrants (50 acres or less) for activities otherwise subject to CATEX. The EPF must document application of this CATEX on AF Form 813.

A2.3.17. Transferring land, facilities, and personal property for which the General Services Administration (GSA) is the action agency. Such transfers are excluded only if there is no change in land use and GSA complies with its NEPA requirements.

A2.3.18. Transferring administrative control of real property within the Air Force or to another military department or to another Federal agency, not including GSA, including returning public domain lands to the Department of the Interior.

A2.3.19. Granting easements, leases, licenses, rights of entry, and permits to use Air Force controlled property for activities that, if conducted by the Air Force, could be categorically excluded in accordance with this attachment. The EPF must document application of this CATEX on AF Form 813.

A2.3.20. Converting in-house services to contract services.

A2.3.21. Routine personnel decreases and increases, including work force conversion to either on-base contractor operation or to military operation from contractor operation (excluding base closure and realignment actions which are subject to congressional reporting under 10 U.S.C. 2687).

A2.3.22. Routine, temporary movement of personnel, including deployments of personnel on a temporary duty (TDY) basis where existing facilities are used.

A2.3.23. Personnel reductions resulting from workload adjustments, reduced personnel funding levels, skill imbalances, or other similar causes.

A2.3.24. Study efforts that involve no commitment of resources other than personnel and funding allocations.

A2.3.25. The analysis and assessment of the natural environment without altering it (inspections, audits, surveys, investigations). This CATEX includes the granting of any permits necessary for such surveys, provided that the technology or procedure involved is well understood and there are no adverse environmental impacts anticipated from it. The EPF must document application of this CATEX on AF Form 813.

A2.3.26. Undertaking specific investigatory activities to support remedial action activities for purposes of cleanup of Defense Environmental Restoration Program (DERP) and Resource Conservation and Recovery Act (RCRA) corrective action sites. These activities include soil borings and sampling, installation, and operation of test or monitoring wells. This CATEX applies to studies that assist in determining final cleanup actions when they are conducted in accordance with legal agreements, administrative orders, or work plans previously agreed to by EPA or state regulators.

A2.3.27. Normal or routine basic and applied scientific research confined to the laboratory and in compliance with all applicable safety, environmental, and natural resource conservation laws.

A2.3.28. Routine transporting of hazardous materials and wastes in accordance with applicable Federal, state, interstate, and local laws.

A2.3.29. Emergency handling and transporting of small quantities of chemical surety material or suspected chemical surety material, whether or not classified as hazardous or toxic waste, from a discovery site to a permitted storage, treatment, or disposal facility.

A2.3.30. Immediate responses to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention and Response Plan or Spill Contingency Plan or that are otherwise consistent with the requirements of the National Contingency Plan.

A2.3.31. Relocating a small number of aircraft to an installation with similar aircraft that does not result in a significant increase of total flying hours or the total number of aircraft operations, a change in flight tracks, or an increase in permanent personnel or logistics support requirements at the receiving installation. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts. The EPF must document application of this CATEX on AF Form 813.

A2.3.32. Temporary (for less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate or increases of 50 operations a day, whichever is greater. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts.

A2.3.33. Flying activities that comply with the Federal aviation regulations, that are dispersed over a wide area and that do not frequently (more than once a day) pass near the same ground points. This CATEX does not cover regular activity on established routes or within special use airspace.

A2.3.34. Supersonic flying operations over land and above 30,000 feet MSL, or over water and above 10,000 feet MSL and more than 15 nautical miles from land.

A2.3.35. Formal requests to the FAA, or host-nation equivalent agency, to establish or modify special use airspace (for example, restricted areas, warning areas, military operating areas) and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level or higher. The EPF must document application of this CATEX on AF Form 813, which must accompany the request to the FAA.

A2.3.36. Adopting airfield approach, departure, and en route procedures that are less than 3,000 feet above ground level, and that also do not route air traffic over noise-sensitive areas, including residential neighborhoods or cultural, historical, and outdoor recreational areas. The EPF may categorically exclude such air traffic patterns at or greater than 3,000 feet above ground level regardless of underlying land use.

A2.3.37. Participating in "air shows" and fly-overs by Air Force aircraft at non-Air Force public events after obtaining FAA coordination and approval.

A2.3.38. Conducting Air Force "open houses" and similar events, including air shows, golf tournaments, home shows, and the like, where crowds gather at an Air Force installation, so long as crowd and traffic control, etc., have not in the past presented significant safety or environmental impacts.

Attachment 3 to Part 989—Procedures for Holding Public Hearings on Draft Environmental Impact Statements (EIS)

A.3.1. General Information:

A3.1.1. The Office of the Judge Advocate General, through the Air Force Legal Services Agency/Trial Judiciary Division (AFLSA/JAJT) and its field organization, is responsible for conducting public hearings and assuring verbatim transcripts are accomplished.

A3.1.2. The EPF, with proponent, AFLSA/JAJT, and Public Affairs support, establishes the date and location, arranges for hiring the court reporter, funds temporary duty costs for the hearing officer, makes logistical arrangements (for example, publishing notices, arranging for press coverage, obtaining tables and chairs, etc.).

A3.1.3. The procedures outlined below have proven themselves through many prior applications. However, there may be rare instances when circumstances warrant conducting public hearings under a different format, e.g., public/town meeting, information booths, third party moderator, etc. In these cases, forward a request with justification to deviate from these procedures to USAF/ILEVP for SAF/MIQ approval.

A3.2. Notice of Hearing (40 CFR 1506.6):

A3.2.1. Public Affairs officers:

A3.2.1.1. Announce public hearings and assemble a mailing list of individuals to be invited.

A3.2.1.2. Distribute announcements of a hearing to all interested individuals and agencies, including the print and electronic media.

A3.2.1.3. Place a newspaper display advertisement announcing the time and place of the hearing as well as other pertinent particulars.

A3.2.1.4. Distribute the notice in a timely manner so it will reach recipients or be published at least 15 days before the hearing date. Distribute notices fewer than 15 days before the hearing date when you have substantial justification and if the justification for a shortened notice period appears in the notice.

A3.2.1.5. Develop and distribute news release.

A3.2.2. If an action has effects of national concern, publish notices in the **Federal Register** and mail notices to national organizations that have an interest in the matter.

A3.2.2.1. Because of the longer lead time required by the **Federal Register**, send out notices for publication in the **Federal Register** to arrive at HQ USAF/CEV no later than 30 days before the hearing date.

A3.2.3. The notice should include:

A3.2.3.1. Date, time, place, and subject of the hearing.

A3.2.3.2. A description of the general format of the hearing.

A3.2.3.3. The name and telephone number of a person to contact for more information.

A3.2.3.4. A suggestion that speakers submit (in writing or by return call) their intention to participate, with an indication of which environmental impact (or impacts) they wish to address.

A3.2.3.5. Any limitation on the length of oral statements.

A3.2.3.6. A suggestion that speakers submit statements of considerable length in writing.

A3.2.3.7. A summary of the proposed action.

A3.2.3.8. The location where the Draft EIS and any appendices are available for examination.

A.3.3. Availability of the Draft EIS to the Public. The EPF makes copies of the Draft EIS available to the public at an Air Force installation and other reasonably accessible place in the vicinity of the proposed action and public hearing (e.g., public library).

A3.4. Place of the Hearing. The EPF arranges to hold the hearing at a time and place and in an area readily accessible to military and civilian organizations and individuals interested in the proposed action. Generally, the EPF should arrange to hold the hearing in an off-base civilian facility, which is more accessible to the public.

A3.5. Hearing Officer:

A3.5.1. The AFLSA/JAJT selects a military trial judge to preside over hearings. The hearing officer does not need to have personal knowledge of the project, other than familiarity with the Draft EIS. In no event should the hearing officer be a judge advocate from the proponent or subordinate command, be assigned to the same installation with which the hearing is concerned, or have participated personally in the development of the project, or have rendered legal advice or assistance with respect to it (or be expected to do so in the future). The principal qualification of the hearing officer should be the ability to conduct a hearing as an impartial participant.

A3.5.2. The primary duties of the hearing officer are to make sure that the hearing is orderly, is recorded, and that interested parties have a reasonable opportunity to speak. The presiding officer should direct the speakers' attention to the purpose of the hearing, which is to consider the environmental impacts of the proposed project. Speakers should have a time limit to ensure maximum public input to the decision-maker.

A3.6. Record of the Hearing. The EIS preparation team must make sure a verbatim transcribed record of the hearing is prepared, including all stated positions, all questions, and all responses. The EIS preparation team should append all written submissions that parties provide to the hearing officer during the hearing to the record as attachments. The EIS preparation team should also append a list of persons who spoke at the hearing and submitted written comments and a list of the organizations or interests they represent with addresses. The EIS preparation team must make sure a verbatim transcript of the hearing is provided to the EPF for inclusion as an appendix to the Final EIS. The officer should also ensure that all persons who request a copy of the transcript get a copy when it is completed. Copying charges are determined according to 40 CFR 1506.6(f).

A3.7. Hearing Format. Use the format outlined below as a general guideline for conducting a hearing. Hearing officers should tailor the format to meet the hearing objectives. These objectives provide information to the public, record opinions of interested persons on environmental impacts of the proposed action, and set out alternatives for improving the EIS and for later consideration.

A3.7.1. Record of Attendees. The hearing officer should make a list of all persons who wish to speak at the hearing to help the hearing officer in calling on these individuals, to ensure an accurate transcript of the hearing, and to enable the officer to send a copy of the Final EIS (40 CFR 1502.19) to any person, organization, or agency that provided substantive comments at the hearing. The hearing officer should assign assistants to the entrance of the hearing room to provide cards on which individuals can voluntarily write their names, addresses, telephone numbers, organizations they represent, and titles; whether they desire to make a statement at the hearing; and what environmental area(s) they wish to address. The hearing officer can then use the cards to call on individuals who desire to make statements. However, the hearing officer will not deny entry to the hearing or the right to speak to people who decline to submit this information on cards.

A3.7.2. Introductory Remarks. The hearing officer should first introduce himself or herself and the EIS preparation team. Then the hearing officer should make a brief statement on the purpose of the hearing and give the general ground rules on how it will be conducted. This is the proper time to welcome any dignitaries who are present. The hearing officer should explain that he or she does not make any recommendation or decision on whether the proposed project should be continued, modified, or abandoned or how the EIS should be prepared.

A3.7.3. Explanation of the Proposed Action. The Air Force EIS preparation team representative should next explain the proposed action, the alternatives, the potential environmental consequences, and the EIAP.

A3.7.4. Questions by Attendees. After the EIS team representative explains the proposed action, alternatives, and consequences, the hearing officer should give attendees a chance to ask questions to clarify points they may not have understood. The EIS preparation team may have to reply in writing, at a later date, to some of the questions. While the Air Force EIS preparation team should be as responsive as possible in answering questions about the proposal, they should not become involved

in debate the questioners over the merits of the proposed action. Cross-examination of speakers, either those of the Air Force or the public, is not the purpose of an informal hearing. If necessary, the hearing officer may limit questioning or conduct portions of the hearing to ensure proper lines of inquiry. However, the hearing officer should include all questions in the hearing record.

A3.7.5. Statement of Attendees. The hearing officer must give the persons attending the hearing a chance to present oral or written statements. The hearing officer should be sure the recorder has the name and address of each person who submits an oral or written statement. The officer should also permit the attendees to submit written statements within a reasonable time, usually two weeks, following the hearing. The officer should allot a reasonable length of time at the hearing for receiving oral statements. The officer may waive any announced time limit at his or her discretion. The hearing officer may allow those who have not previously indicated a desire to speak to identify themselves and be recognized only after those who have previously indicated their intentions to speak have spoken.

A3.7.6 Ending or Extending a Hearing. The hearing officer has the power to end the hearing if the hearing becomes disorderly, if the speakers become repetitive, or for other good cause. In any such case, the hearing officer must make a statement for the record on the reasons for terminating the hearing. The hearing officer may also extend the hearing beyond the originally announced date and time. The officer should announce the extension to a later date or time during the hearing and prior to the hearing if possible.

A3.8. Adjourning the Hearing. After all persons have had a chance to speak, when the hearing has culled a representative view of public opinion, or when the time set for the hearing and any reasonable extension of time has ended, the hearing officer adjourns the hearing. In certain circumstances (for example, if the hearing officer believes it is likely that some participants will introduce new and relevant information), the hearing officer may justify scheduling an additional, separate hearing session. If the hearing officer makes the decision to hold another hearing while presiding over the original hearing he or she should announce that another public hearing will be scheduled or is under consideration. The officer gives notice of a decision to continue these hearings in essentially the same way he or she announced the original hearing, time permitting. The Public Affairs officer provides the required public notices and directs notices to interested parties in coordination with the hearing officer. Because of lead time constraints, SAF/MIQ may waive **Federal Register** notice requirements or advertisements in local publications. At the conclusion of the hearing, the hearing officer should inform the attendees of the deadline (usually 2 weeks) to submit additional written remarks in the hearing record. The officer should also notify attendees of the deadline for the commenting period of the Draft EIS.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–33457 Filed 12–23–97; 8:45 am]

BILLING CODE 3910–01–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Outdoor Developed Areas; Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Regulatory negotiation committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates, times, and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet on: Saturday, January 31, 1998, 2:00 p.m. to 6:00 p.m.; Sunday, February 1, 1998, 8:30 a.m. to 5:00 p.m.; and Monday, February 2, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: The committee will meet at the Princess Hotel, 1404 West Vacation Road, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request. This document is also available on the Board's web site (http://www.access-board.gov/rules/outdoor.htm).

SUPPLEMENTARY INFORMATION: In June 1997, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. (62 FR 30546, June 4, 1997). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by January 15, 1998, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 97–33625 Filed 12–23–97; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–203–0062; FRL–5940–7]

Approval and Promulgation of State Implementation Plans; California; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the State of California relating to control measures for attaining the ozone national ambient air quality standards (NAAQS) in the Ventura County nonattainment area. The submittal revises control measure adoption schedules in the 1994 ozone SIP for Ventura County. EPA is proposing to approve the SIP revision under provisions of the Clean Air Act (CAA or the Act) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Written comments on this proposal must be received by January 23, 1998.

ADDRESSES: Comments should be addressed to the USEPA contact listed below.

The rulemaking docket for this notice may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office 75 Hawthorne Street, San Francisco, CA 94105–3901

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, California

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California

FOR FURTHER INFORMATION CONTACT: Dave Jesson (415) 744–1288, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

The Federal CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. Under section 107(d)(1)(C) of the Act, areas designated nonattainment prior to enactment of the 1990 amendments, including Ventura, were designated nonattainment by operation of law. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law, depending on the area's air quality problem. Ventura County was classified as severe, with an attainment date of November 15, 2005.[1]

Section 172 of the Act contains general requirements applicable to SIPs for nonattainment areas. Section 182 of the Act sets out additional air quality planning requirements for ozone nonattainment areas.

The most fundamental of these provisions is the requirement that ozone nonattainment areas classified as serious, severe, or extreme, submit by November 15, 1994, a SIP demonstrating attainment of the ozone NAAQS as expeditiously as practicable but no later than the deadline applicable to the area's classification. CAA section 182(c)(2)(A). Such a demonstration must provide enforceable measures to achieve emission reductions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area. Sections 182(b)(1) and 182(c)(2)(B) also require the SIPs to achieve specific rates of progress (ROP) in milestone years leading to the attainment year.

EPA has issued a "General Preamble" describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this proposed rulemaking action, EPA is applying these policies to the Ventura ozone SIP submittal, taking into consideration the specific factual issues presented.

B. EPA Actions on Prior Ventura Ozone SIP Revisions

The Ventura County Air Pollution Control District (VCAPCD) adopted an ozone attainment plan on November 8, 1994. This plan was forwarded to the California Air Resources Board (CARB), which submitted the plan as a proposed revision to the California SIP on November 15, 1994. On December 19, 1995, VCAPCD adopted an updated plan, making minor revisions to adoption and implementation schedules and estimates of emissions reductions for some of the control measures. On July 12, 1996, CARB submitted this updated plan, with a request that EPA approve the corrected version of the control measures.

On January 8, 1997 (62 FR 1150), EPA issued final approval of the Ventura 1994 ozone SIP, as amended by the submittal of July 12, 1996. Specifically, EPA approved the Ventura 1994 ozone SIP with respect to the Act's requirements for emission inventories, control measures, modeling, and demonstrations of 15% ROP and post-1996 ROP and attainment. As part of this action, EPA approved, under sections 110(k)(3) and 301(a) of the Act, VCAPCD's enforceable commitments to adopt and implement 18 control measures by express dates to achieve specific emission reductions for the ROP milestone years 1999, 2002, and 2005.

EPA's approval noted that VCAPCD had adopted on January 9, 1996, minor further changes to the adoption schedule and emission reductions for many of the control measures. Because the further changes had not yet been submitted by CARB, however, EPA explained that the Agency must act on the adoption schedule as revised by Ventura on December 19, 1995. EPA noted that if the January 1996 changes were to be submitted as a further revision to the SIP's rule adoption schedule, EPA intended to approve them since the changes did not adversely affect ROP or attainment (62 FR 1175).

C. Current SIP Revision

On October 21, 1997, the VCAPCD Board adopted, after proper public notice and involvement, a 1997 revision to the ozone plan, updating the adoption and implementation dates for 8 measures in the 1994 ozone SIP.[2]

On November 5, 1997, CARB adopted and submitted this update as a SIP revision. The docket to this proposed rulemaking includes CARB Executive Order G–125–227, dated November 5, 1997, and a SIP transmittal letter from Michael P. Kenny, CARB Executive Officer, to Felicia Marcus, EPA Regional Administrator, Region 9, dated November 5, 1997. On November 19, 1997, EPA found the revision to be complete, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.[3] A technical clarification regarding emission reductions for each measure is also part of the docket to this action. The clarification is in a November 20, 1997 letter from Richard H. Baldwin, VCAPCD Air Pollution Control Officer, to Michael Kenny. CARB submitted this letter to EPA on December 5, 1997 (letter from Michael P. Kenny to David Howekamp, EPA) as a technical clarification to the SIP.

The table entitled "Revised Adoption and Implementation Dates for Ventura Measures" displays the adoption and implementation dates for each rule in the existing SIP and the proposed revision.

REVISED ADOPTION AND IMPLEMENTATION DATES FOR VENTURA MEASURES

Rule No.	Control measure	Adoption		Implementation	
		SIP	Rev	SIP	Rev
R–303	AIM Architectural Coatings Phase 1	12/96	12/99	12/97	2000

[1] The designation and classification of Ventura County for ozone are codified at 40 CFR 81.305.

[2] VCAPCD Board Resolution is part of the docket for this proposed rulemaking. The VCAPCD plan update also extends the adoption date for one additional measure, R–705/N–705 Low Emission Vehicle Fleets, which was not approved as part of the 1994 ozone SIP. CARB did not include this measure in the 1997 SIP submittal. VCAPCD assigns no emission reduction credit to the measure and does not propose a specific implementation date.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

REVISED ADOPTION AND IMPLEMENTATION DATES FOR VENTURA MEASURES—Continued

Rule No.	Control measure	Adoption		Implementation	
		SIP	Rev	SIP	Rev
	Phase 2				2001
	Phase 3				2003
R–322	Painter Certification Program	6/97	12/00		
	Phase 1			12/97	12/01
	Phase 2			12/98	12/02
R–327	Electronic Component Manufacturing	6/96	12/99	7/97	12/01
R–410	Marine Tanker Loading	9/96	12/01	7/97	12/02
R–420	Pleasure Craft Fuel Transfer	6/97	12/01	7/98	12/02
R–421	Utility Engine Refueling Operations	12/96	12/01	9/97	12/02
R–425	Enhanced Fugitive I/M Program	9/96	12/98	5/97	12/99
N–102	Boilers, Steam Generators, Heaters <1 MMBtu	12/96	12/99	1/97	12/00

In a technical clarification to the SIP submittal, VCAPCD also provided a table of revised emission reductions for each measure and ROP milestone, reflecting improved information on the measures (primarily corrections to calculation errors) and the impact of changes to the adoption schedule. VCAPCD adopted many of these revised emission reductions as part of the 1995 AQMP revision adopted December 19, 1995. The revised 2005 emission reductions proposed for approval in this action were used in the modeling in the Ventura attainment demonstration, which was approved by EPA as part of the Ventura 1994 ozone SIP.

The revised estimates of emission reductions based upon the December 19, 1995 reanalysis and the revised implementation schedule appear below in the table entitled "Revised Emission Reductions for Ventura Measures."

REVISED EMISSION REDUCTIONS FOR VENTURA MEASURES

Rule No.	Control measure	1999		2002		2005	
		SIP	Rev	SIP	Rev	SIP	Rev
R–303	AIM Architectural Coatings	0.00	0.00	0.00	0.73	0.89	0.89
R–322	Painter Certification Program	0.48	0.00	0.51	0.11	0.53	0.59
R–327	Electronic Component Manufacturing	0.07	0.00	0.07	0.07	0.08	0.08
R–410	Marine Tanker Loading	0.00	0.00	0.00	0.00	0.00	0.00
R–420	Pleasure Craft Fuel Transfer	0.08	0.00	0.08	0.00	0.08	0.08
R–421	Utility Engine Refueling Operations	0.19	0.00	0.20	0.00	0.20	0.20
R–425	Enhanced Fugitive I/M Program	1.21	0.00	1.07	1.16	0.95	1.03
N–102	Boilers, Steam Generators, Heaters <1 MMBtu	0.05	0.00	0.06	0.04	0.06	0.04
	Total						
	VOC	2.03	0.00	1.93	2.07	2.73	2.87
	NO_x	0.05	0.00	0.06	0.04	0.06	0.04

Sources: The 1994 SIP emission reductions for each control measure for each ROP milestone year are shown in a table entitled "Ventura Local Control Measures" in EPA's final approval of the Ventura 1994 ozone SIP. 62 FR 1176. The revised emissions reductions are taken from a letter from Richard H. Baldwin to Michael Kenny, dated November 20, 1997, table entitled "Ventura Local Control Measures (tons per day)." All emission reductions are in tons per day of volatile organic compounds (VOC), except for measure N–102, which is tons per day of oxides of nitrogen (NO_x).

The SIP revision included documentation explaining for each measure why the projected adoption and implementation dates were not realistic, considering the level of analysis required or, for some new-technology measures, the relatively small market for control equipment and devices in Ventura County.[4] VCAPCD's documentation demonstrated that postponement of the adoption and implementation dates for the measures will not jeopardize ROP because the area, relying only on regulations that are now fully adopted, will achieve VOC and NO_X emissions reductions significantly in excess of the ROP reductions required under the CAA. Finally, VCAPCD noted that all measures would continue to be fully implemented by the attainment date, and that the revised estimate of emission reductions from the measures in 2005 was used in the ozone modeling analysis in the 1994 ozone SIP.

[4] A copy of the documentation, "October 21, 1997 Ventura County Air Pollution Control Board Packet," is included in the docket for this proposed rulemaking.

II. EPA Action

A. Analysis

Two sections of the CAA constrain EPA's authority to approve relaxations to the SIP. Section 110(l) prohibits EPA from approving a revision if it would "interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act." Section 193 prevents modification of control requirements "in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990 in any area which is a nonattainment area for any air pollutant * * * unless the modification insures equivalent or greater emission reductions of such air pollutant."

The Ventura 1994 ozone SIP, including its control measures and demonstrations of ROP and attainment, was not required by an order, settlement agreement, or plan in effect before November 15, 1990. Therefore, the provisions of section 193 of the Act do not apply to this proposed revision.

Section 110(l) does not authorize EPA approval of a revised SIP if the revision would interfere with attainment and reasonable further progress, or any other applicable CAA requirement.

The cumulative effect of the proposed extensions of implementation dates is a decrease in 1999 emission reductions of 2.03 tpd VOC and 0.05 tpd NO_X. The net effect of the revision is considerably less in 2002 and 2005. For these ROP milestone years, the delayed NO_x reductions amount to only 0.02 tpd, and VOC reductions are actually increased by 0.14 tpd, due to recalculated benefits from measures R–303 and R–425.

The Ventura 1994 ozone SIP meets the minimum Federal ROP requirements without reliance on any local measures that were not fully adopted in regulatory form.[5] Therefore, the proposed revision would not interfere with reasonable further progress, which for ozone areas is equivalent to the minimum CAA ROP requirements applicable to the area.

Because the proposed revision simply delays rather than relaxes or withdraws control measures in the approved SIP, because the total amount of postponed emission reductions is small, because there is a net increase in the total of ozone precursor emission reductions in the attainment year, and because the VOC/NO_X emission reductions reflected in this submittal were used in the modeled attainment demonstration in the Ventura 1994 ozone SIP, EPA concludes that the proposed revision would not interfere with any requirement of the CAA relating to the 1-hour ozone NAAQS, or any other NAAQS, or any other State obligation under the Act.

B. Summary of Proposed Action

In this document, EPA is proposing to approve the 1997 update to the 1994 ozone SIP for Ventura under sections 110(k)(3) and 301(a) of the Act. The effect of this approval, if finalized, would be to amend the federally enforceable adoption and implementation dates and emission reductions for 8 measures in the Ventura 1994 ozone SIP as shown in the tables above entitled "Revised Adoption and Implementation Dates for Ventura Measures" and "Revised Emission Reductions for Ventura Measures."

[5] EPA's final approval of the Ventura 1994 ozone SIP at one point states that "the Ventura control measures are relied upon in meeting the post-1996 ROP and attainment requirements of the Act." 62 FR 1176. This statement is true with respect to attainment but is in error with respect to ROP requirements. VCAPCD's 1994 ozone SIP includes a Post-96 ROP schedule that meets the minimum CAA requirement for each milestone year (9% reduction in emissions for each 3-year period through the attainment year, *i.e.*, 1999, 2002, 2005), relying only on fully adopted regulations, with no credit taken from local control measures. The 1994 ozone SIP uses creditable NO_X reductions to substitute for VOC shortfalls in 2002 and 2005, as allowed by section 182(c)(2)(C) of the Act.

III. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA, do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

IV. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 and 182(b) of the CAA. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved or disapproved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: U.S.C. 7401 *et seq.*

Dated: December 16, 1997.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 97–33609 Filed 12–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 441

[FRL–5940–8]

A Public Hearing on the Proposed Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries (IL) Industry

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: The Environmental Protection Agency is conducting a second public hearing, in addition to the public hearing being conducted in Washington, D.C. to inform the public of the proposed effluent limitations guidelines and standards for the industrial laundries industry. The hearing is intended for interested parties to provide comments to the Agency on disputed technical, scientific, economic, or other issues.

DATES: The public hearing will be held on Wednesday, January 21, 1998, from 9:00 a.m. to 12:00 noon.

ADDRESSES: The hearing will be held at the Henry M. Jackson Federal Building, South Auditorium, Seattle, Washington. The building is located at 915 2nd Avenue. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

A limited number of rooms are available at the Westin Seattle Hotel.

Hotel reservations may be made by calling (206) 727–5888 and refer to the EPA Public Hearing to obtain a group rate of $99.00. The Westin Hotel at 1900 5th Avenue is approximately 10 blocks from the Henry M. Jackson Federal Building.

FOR FURTHER INFORMATION CONTACT: Marta Jordan, Engineering and Analysis Division (4303), U.S. EPA, 401 M Street SW., Washington DC 20460. Telephone (202) 260–0817, fax (202) 260–7185 or E-Mail Jordan.Marta@epamail.epa.gov

SUPPLEMENTARY INFORMATION: EPA proposed effluent limitations guidelines and pretreatment standards for the Industrial Laundries Category under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) (62 FR 66182, December 17, 1997). The Industrial Laundries Category includes facilities that launder industrial textile items such as, industrial: garments and uniforms, shop towels, printer towels, mops, mats, and dust control items from off-site as a business activity. The items that are laundered are owned either by the laundry facilities or their customers. Often these facilities wash other items that are not classified as industrial textile items, such as linen supply garments, linen flatwork, health-care items, and miscellaneous other items.

The public hearing will include a brief discussion of the proposed rule which includes scope, technology-based regulatory options, and other general industrial laundries industry issues. The hearing will be recorded or transcribed by a reporter for inclusion in the record for the Industrial Laundries Category rulemaking.

Documents relating to the topics mentioned above and a more detailed agenda will be available at the meeting.

Dated: December 18, 1997.

Tudor Davies,

Director, Office of Science and Technology.

[FR Doc. 97–33608 Filed 12–23–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Public Hearings on the Proposed Rule To List the Topeka Shiner as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that four public hearings will be held on its proposal to list the Topeka shiner (*Notropis topeka*) as an endangered species. The Service proposed endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for the Topeka shiner on October 24, 1997 (62 FR 55381). These hearings will allow additional comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened from January 12, 1998 through February 9, 1998. The public hearings will be held from 7 to 9:30 p.m. on each of the following evenings: January 26, 1998, in Manhattan, Kansas; January 27, 1998, in Bethany, Missouri; January 28, 1998, in Ft. Dodge, Iowa; and January 29, 1998, in Sioux Falls, South Dakota. An informal open forum will precede each hearing from 5 to 6:30 p.m. each evening.

ADDRESSES: The January 26 hearing will be held at the Kansas State University Student Union, Main Ballroom, 17th Street and Anderson Avenue, Manhattan, Kansas; the January 27 hearing will be held at the Bethany Community Center, 103 N. 25th Street, Bethany, Missouri; the January 28 hearing will be held at Iowa Central Community College, Vo-Tech Building, Conference Rooms 1 and 2, 330 Avenue M, Fort Dodge, Iowa; and the January 29 hearing will be at the University of Sioux Falls, Chapel Auditorium-Jeschke Fine Arts Center, 1101 West 22nd Street, Sioux Falls, South Dakota. Written comments and materials should be sent to: Field Supervisor, U.S. Fish and Wildlife Service, 315 Houston St., Suite E, Manhattan, Kansas 66502. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Vernon Tabor at the above address (785/539–3474).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(5)(E) of the Act requires that a public hearing be held on the proposal to list the Topeka shiner as an endangered species, if requested within 45 days of the proposal's publication in the **Federal Register**. Public requests were received in the allotted time period from parties in Iowa, Kansas, Missouri, and South Dakota.

Anyone expecting to make an oral presentation at these hearings is encouraged to provide a written copy of their statement to the hearing officer prior to the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at these hearings or mailed to the Service.

In order to accommodate the scheduled public hearings, the Service extends the public comment period. Written comments may be submitted from January 12, 1998 through February 9, 1998, to: Field Supervisor (see **ADDRESSES** section).

Author

The primary author of this document is Vernon Tabor (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531).

Dated: December 18, 1997.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 97–33537 Filed 12–23–97; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 62, No. 247

Wednesday, December 24, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 19, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Dairy Options Pilot Program.
OMB Control Number: 0563–New.
Summary of Collection: Information collection for the Dairy Options Pilot Program will take place through the use of two forms, one on-going process of electronic data transmission, and voluntary surveys.
Need and Use of The Information: The information is to be used by RMA in verifying compliance of participating producers and brokers, and evaluating the effectiveness of options as a risk management tool for dairy farmers.
Description of Respondents: Farms; Individuals or households; Business or other for-profit; Federal Government.
Number of Respondents: 35,329.
Frequency of Responses: Recordkeeping; Reporting: Semi-annually.
Total Burden Hours: 16,951.

Food, Nutrition and Consumer Services

Title: Adapting the Food Guide Pyramid for Young Children.
OMB Control Number: 0584–New.
Summary of Collection: Information will be collected through focus groups and prototype testing sessions concerning nutrition education.
Need and Use of the Information: Information will help USDA develop food guidance materials for parents of young children.
Description of Respondents: Individuals or households.
Number of Respondents: 180.
Frequency of Responses: Reporting: One-time.
Total Burden Hours: 360.

Office of Civil Rights

Title: Program Discrimination Complaints.
OMB Control Number: 0508–New.
Summary of Collection: Information is collected from respondents who wish to file discrimination complaints.
Need and Use of The Information: The information will be used by the staff of the USDA Office of Civil Rights to investigate, attempt resolution and settle the case.
Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local, or Tribal government.
Number of Respondents: 600.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 600.
Emergency Processing of This Submission Has Been Requested by January 15, 1998.

Farm Service Agency

Title: Assignments of Payments and Joint Payment Authorizations.
OMB Control Number: 0560–New.
Summary of Collection: Information is collected from respondents who want to assign agricultural payments to a third party.
Need and Use of The Information: The information allows USDA to pay the proper party when payments become due.
Description of Respondents: Farms.
Number of Respondents: 70,900.
Frequency of Respondent's: Reporting: On occasion.
Total Burden Hours: 11,778.

Farm Service Agency

Title: Tobacco Marketing Quota Referenda—7 CFR 717.
OMB Control Number: 0560–New.
Summary of Collection: A referendum is conducted of eligible farmers to determine whether they favor or oppose marketing quotas for the next three years.
Need and Use of The Informotion: The referendum is necessary to determine whether the producers do or do not favor national marketing quotas for tobacco.
Description of Respondents: Individuals or households; Farms.
Number of Respondents: 155,000.
Frequency of Responses: Reporting: Every 3 years.
Total Burden Hours: 4,300.

Farm Service Agency

Title: Assignments of Payments and Joint Payment Authorizations.
OMB Control Number: 0560–New.
Summary of Collection: Information is collected from respondents who want to assign agricultural payments to a third party.
Need and Use of The Information: The information allows USDA to pay the proper party when payments become due.
Description of Respondents: Farms.
Number of Respondents: 70,900.
Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 11,778.

Agricultural Marketing Service

Title: The National Organic Program.
OMB Control Number: 0581–New.
Summary of Collection: Information is required to accredit agents who will serve as inspectors of organically produced agricultural products and will document adherence to the established standards.
Need and Use of The Information: Information will be used by the Agricultural Marketing Service to certify inspection agents on an annual basis.
Description of Respondents: Farms; Individuals or households; Business or other for-profit; State, Local or Tribal Government.
Number of Respondents: 187,651.
Frequency of Responses: Recordkeeping; Reporting: Annually.
Total Burden Hours: 377,171.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–33589 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–96–327]

United States Standards for Grades of Canned Apples

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to change the United States Standard for Grades of Canned Apples. Specifically, AMS is proposing to lower the recommended drained weight for canned apples packed in No. 10 cans. This change would allow more equitable utilization of processed apples across domestic growing regions and will help the apple industry to meet it market needs.

DATES: Comments must be submitted on or before February 23, 1998.

ADDRESSES: Written comments may be submitted to Randle A. Macon, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agricultural, Room 0709, South Building; STOP 0247, P.O. Box 96456; Washington, D.C. 20090–6456; faxed to (202) 690–1087; or e-mailed to Randle_A_Macon@usda. gov.

Comments should reference the date and page number of this issue of the **Federal Register.** All comments received will be made available for public inspection at the address listed above during regular business hours.

The current United States Standards for Grades of Canned Apples, along with the proposed changes, are available either through the afore-mentioned address or by accessing AMS's Home Page on the Internet at the following address: www.ams.usda.gov/standards/frutcan.htm.

FOR FURTHER INFORMATION CONTACT: Contact Randle A. Macon at (202) 720–4693.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1622 (c)) directs and authorizes the Secretary of Agriculture "To develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *". AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and make copies of official standards available upon request. The United States Standards for Grades of Canned Apples no longer appear in the Code of Federal Regulations but are maintained by the Department of Agriculture (USDA).

AMS is proposing to change the United States Standards for Grades of Canned Apples using the procedures it published in the August 13, 1997, **Federal Register** and that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

AMS received petitions from Independent Food Processors Company of Sunnyside, Washington; and Snokist Growers of Yakima, Washington, requesting the revision of the United States Standards for Grades of Canned Apples. The two petitioners represent a significant part of the Pacific Northwest apple industry. The Pacific Northwest apple industry provides almost half of the apples produced domestically.[1]

The petitions request that the recommend drained weight of 96 ounces for apples packed in No. 10 size cans, in the U.S. Standards for Grades of Canned Apples, is difficult to obtain and puts Pacific Northwest processors at an economic disadvantage in bidding for government and non-government contracts. The reasons given for this disparity are that the varietal types of apples and the growing conditions in the Northwest region are different from other apple producing regions around the country. The petitioners state that to meet the standard when packing certain varieties of apples, the cans are over-filled.

This condition may cause damage to the sliced apples which may cause the slices to be graded as less than "Grade A." To meet USDA requirements for drained weight, some processors may be required to put more product into the can, causing economic hardship, damage to the product, and sometimes loss of the integrity of the can seal. If the seal's integrity is lost during processing, the product's wholesomeness is jeopardized.

The remedies recommended by the petitioners, though similar in purpose, are different. Snokist Growers of Yakima, Washington, recommends a reduction in the recommended drained weight for apples packed in No. 10 size cans, from 96 ounces to 92 ounces. Independent Food Processors Company of Sunnyside, Washington, recommends the elimination of the recommended drained weight for apples packed in No. 10 size cans, from the U.S. Standards for Grades of Canned Apples. If that is not possible the petitioner recommends the incorporation of a "fill weight program" in the U.S. Standards for Grades of Canned Apples to ensure that the "recommended fill of container" requirement is met with a reduction in the recommended drained weight for apples packed in No. 10 size cans, from 96 ounces to 85 ounces.

USDA has reviewed the petitions and data submitted, and has gathered additional information from relevant government agencies and industry sources including growers, processors, and buyers. Based on this information, USDA has found that there may be a disparity between the drained weights for canned apples from Pacific Northwest processors and those from other sections of the country. Though a variation in drained weights may exist, our review has shown that the difference is not great enough to warrant the changes to the Standards recommended by Independent Food Processors Company of Sunnyside, Washington.

Based on these findings, the USDA has agreed with the recommendation from Snokist Growers of Yakima, Washington, and is proposing to lower the recommended drained weight for apples packed No. 10 size cans, from 96 ounces to 92 ounces in the U.S. Standards for Grades of Canned Apples. This change would allow a more equitable marketing environment for the domestic canned apple industry.

[1] Source—USDA, NASS, ASB.

A 60-day comment period is provided for interested persons to comment on this change to the Standards.

Authority: 7 U.S.C. 1621–1627.

Dated: December 18, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–33590 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–97–00–200]

Notice of Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice inviting applications for Fiscal Year 1998 Grant Funds under the Federal-State Marketing Improvement Program.

SUMMARY: Notice is hereby given that the Federal-State Marketing Improvement Program (FSMIP) was allocated $1,200,000 in the Federal budget for fiscal year 1998. Funds remain available for this program. States interested in obtaining funds under the program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry organizations in the development of proposals and the conduct of projects.

DATES: Applications will be accepted through June 19, 1998.

ADDRESSES: Proposals may be sent to Dr. Larry V. Summers, FSMIP, Staff Officer, Transportation and Marketing, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 4006 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Larry V. Summers, 202) 720–2704.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The program is a matching fund program designed to assist State Departments of Agriculture or other appropriate State Agencies in conducting studies or developing innovative approaches related to the marketing of agricultural products. Other organizations interested in participating in this program should contact their State Department of Agriculture's Marketing Division to discuss their proposal.

Mutually acceptable proposals are submitted by the State Agency and must be accompanied by a completed Standard Form (SF)–424 with SF–424A and SF–424B attached. FSMIP funds may not be used for advertising or, with limited exceptions, for the purchase of equipment or facilities. Guidelines may be obtained from your State Department of Agriculture or the above AMS contact.

States are encouraged to submit proposals for projects which will:

(1) Assist in identifying and expanding market opportunities for U.S. agricultural products, both domestically and internationally, through the development and market testing of new or improved products and value-adding services;

(2) Address agricultural marketing issues and concerns of particular importance to relatively small, limited-resource farms and rural enterprises; and,

(3) Encourage the development of marketing practices and technologies aimed at improving the quality of agricultural products or the sustainability of natural resources and the environment.

Proposals addressing other marketing objectives or issues also will receive consideration.

FSMIP is listed in the "Catalog of Federal Domestic Assistance" under number 10.156 and subject Agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Authority: 7 U.S.C. 1621–1627.

Dated: December 18, 1997.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 97–33591 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermoutain Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after March 1, 1996. The list of newspapers will remain in effect until October 1996 when another notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Donald W. Murphy, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625–5274.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR parts 215 and 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:

The Idaho Statesman, Boise, Idaho

For decisions made by the Regional Forester affecting National Forests in Nevada:

The Reno Gazette-Journal, Reno, Nevada

For decisions made by the Regional Forester affecting National Forests in Wyoming:

Casper Star-Tribube, Casper, Wyoming

For decisions made by the Regional Forester affecting National Forests in Utah:

Standard-Examiner, Ogden, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Standard-Examiner, Ogden, Utah

Ashley National Forest

Ashley Forest Supervisors decisions:
Vernal Express, Vernal, Utah
Vernal District Ranger decisions:
Vernal Express, Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
Casper Star Tribune, Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
Vernal Express, Vernal, Utah
Roosevelt and Duchesne District Ranger decisions:
Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions:
The Idaho Statesman, Boise, Idaho
Mountain Home District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Boise District Ranger decisions:
The Idaho Statement, Boise, Idaho
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho
Cascade District Ranger decisions:
The Advocate, Cascade, Idaho
Lowman District Ranger decisions:
The Idaho City World, Idaho City, Idaho
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Buffalo District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Big Piney District Ranger decisions:
Casper Star-Tribune, Jackson, Wyoming
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming

Caribou National Forest

Caribou Forest Supervisor decisions:
Idaho State Journal, Pocatello, Idaho
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Montpelier District The President. Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Malad District Ranger decisions:
Idaho State Journal, Pocatello, Idaho
Pocatello District Ranger decisions:
Idaho State Journal, Pocatello, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
Beaver District Ranger decisions:
Richfield Reaper, Beaver, Utah
Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah

Humboldt-Toiyabe National Forests

Humboldt Forest Supervisor decisions:
Elko Daily Free Press, Elko, Nevada
Toiyabe Forest Supervisor decisions:
Reno Gazette-Journal, Reno, Nevada
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California
Spring Mountains National Recreation Area Ecosystem (SMNRAE):
Spring Mountain National Recreational Area District Ranger decisions;
Las Vegas Review Journal, Las Vegas, Nevada
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
Tonopah District Ranger decisions:
Tonopah Times Bonaanza-Goldfield News, Tonopah, Nevada
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Jarbidge District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada

Manti-Lasal National Forest

Manti-Lasal Supervisor decisions:
Sun Advocate, Price, Utah
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
Price District Ranger decisions:
Sun Advocate, Price, Utah
Moab District Ranger decisions:
The Times Independent, Moab, Utah
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
Weiser District Ranger decisions:
Signal American, Weiser, Idaho
Council District Ranger decisions:
Council Record, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon and Challis National Forests

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Challis Forest Supervisor decisions:
The Challis Messenger, Challis, Idaho
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Targhee National Forest

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
Heber District Ranger decisions:
The Daily Herald, Provo, Utah, and *Wasatch Wave*, Heber City, Utah
Spanish Fork Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:
Salt Lake Tribune, Salt Lake City, Utah
Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah
Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming
Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah
Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah

Dated: December 11, 1997.

Jack G. Troyer,

Deputy Regional Forester.

[FR Doc. 97–33594 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Housing Preservation Grants

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations and other eligible entities grant funds to assist very low- and low-income homeowners repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: RHS hereby announces that it will begin receiving preapplications on December 24, 1997. The closing date for acceptance by RHS of preapplications is March 24, 1998. This period will be the only time during the current fiscal year that RHS accepts preapplications. Preapplications must be received by or postmarked on or before the closing date.

ADDRESSES: Submit preapplications to Rural Development servicing offices for the HPG program; applicants must contact their Rural Development State Office for this information. A listing of Rural Development State Offices, their addresses, and telephone numbers follows:

Rural Development State Offices

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Sterling Center Office Building, 4121 Carmichael Road, Suite 601, Montgomery, AL 36106–3683, (334) 279–3455
Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176
Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8755
Arkansas State Office, 700 W. Capitol Ave., Rm. 5411, Little Rock, AR 72201–3225, (501) 324–6701
California State Office, 194 West Main Street, Suite F, Woodland, CA 95695–2915, (916) 668–2090
Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122)
Connecticut (Served by Massachusetts State Office)
Delaware/Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4314
Florida State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465
Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164
Guam (Served by Hawaii State Office)
Hawaii State Office, Room 311, Federal Building 154, Waianuenue Avenue, Hilo, HI 96720, (808) 933–3005
Idaho State Office, 3232 Elder Street, Boise, ID 83705, (208) 378–5627
Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256)
Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3115
Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493
Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (913) 271–2720
Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7325
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7950
Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110
Maryland (Served by Delaware State Office)
Massachusetts State Office, 451 West Street, Amherst, MA 01002, (413) 253–4327

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (515) 337–6635 (ext. 1608)
Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (612) 290–3912
Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325
Missouri State Office, 601 Business Loop, 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990
Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT, 59715, (406) 585–2515
Nebraska State Office, Federal Building, room 308, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5557.
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–5405, (702) 887–1222.
New Hampshire (Served by Vermont State Office)
New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3630.
New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944.
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419.
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062.
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 250–4771.
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165.
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070.
Oregon State Office 101 SW Main, Suite 1410, Portland, OR 97204–2333, (503) 414–3350.
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 782–4574.
Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (809) 766–5095 Ext. 256.
Rhode Island (Served by Massachusetts State Office)
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5690.
South Dakota State Office, Federal Building, Room 308, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132.
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1071, (615) 783–1375.
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (817) 774–1305.
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 5438, Salt Lake City, UT 84138, (801) 524–3242.
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6020.
Virgin Islands (Served by Vermont State Office)
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582.
Washington State Office, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512–5717, (360) 704–7707.
Western Pacific Territories (Served by Hawaii State Office)
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793.
Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620.
Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris-Green, Senior Loan Officer, Multi-Family Housing Processing Division, RHS, USDA, Stop 0781, Room 5337, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 720–1606. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: 7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication packages. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information and copies of the preapplication package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.433, Rural Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V). Applicants are referred to 7 CFR §§ 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established; although, based on fiscal year (FY) 1998 funding availability, the Agency anticipates that the average grant will be $75,000 for a 1-year proposal. For FY 98, $10,820,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Program Funds." Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

December 15, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–33501 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Interest Rate for FY 1998 RUS Cost-of-Money Loans and Maximum Amount of an RUS Cost-of-Money or Rural Telephone Bank Loan for FY 1998

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) announces that interest rates on cost-of-money loans approved during fiscal year (FY) 1998 may exceed the 7 percent per year statutory limit, and also announces the maximum loan amount that may be made available to a single borrower in FY 1998.

FOR FURTHER INFORMATION CONTACT: Ken B. Chandler, Acting Assistant Administrator-Telecommunications Program, Rural Utilities Service, STOP 1590, Room 4056, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–1590. Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: Notice is hereby given that under Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 1998 (Appropriations Act of 1998) (Pub. L. 105–86, November 18, 1997), the interest rate for RUS cost-of-money loans approved during FY 1998 may exceed the 7 percent per year ceiling established by Pub. L. 103–129 (see 7 CFR 1735.31(c)(1)). The Appropriations Act of 1998 removes the 7 percent interest rate ceiling for loans made during FY 1998 only (October 1, 1997 to September 30, 1998).

Further, in accordance with 7 CFR 1610.6(d) and 1735.31(d), RUS has determined the maximum amount of an application for an RUS cost-of-money or Rural Telephone Bank loan that will be considered for funding during FY 1998 as $30,000,000 and $17,500,000, respectively.

Dated: December 16, 1997.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 97–33566 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: FY 1997 DLT applications receiving financial assistance.

SUMMARY: On June 13, 1997, in the **Federal Register** (62 FR 32434) the Rural Utilities Service (RUS) announced availability of fiscal year 1997 funds for the Distance Learning and Telemedicine (DLT) Loan and Grant Program to promote modern telecommunication interconnectivity to educational and medical facilities in rural areas. By providing matching grants and loans for information infrastructure projects, this program will help develop a nationally integrated public network accessible to rural as well as urban areas. This Notice announces the applications receiving financial assistance in response to the June 13, 1997, solicitation (7 CFR 1703.113).

FOR FURTHER INFORMATION CONTACT: Jonathan Claffey, Acting Director, Advanced Telecommunications Services Staff, Rural Utilities Service, Telephone: (202) 720–0530. Fax: (202) 720–2734.

SUPPLEMENTARY INFORMATION: A total of 50 applications from 26 states will receive financial assistance for distance learning and telemedicine projects. The total financial assistance provided by the DLT program for these projects in fiscal year 1997 is $10.2 million in grants and loans.

DISTANCE LEARNING AND TELEMEDICINE PROGRAM—1997 RECIPIENTS

State	Type*	Project name
		100% Grant
AK	M	Bristol Bay Area Health Corporation.
AZ	E	Tohono O'odham Nation.
CA	E	School of Public Health, UCLA.
CA	E	Visible Light, Inc. d/b/a Rain Network.
HI	M	Kauai Veterans Memorial Hospital.
KS	M	Horton Health Foundation.
LA	M	Tri-Ward General Hospital.
LA	M	Lower Cameron Hospital Service District.
LA	E	Northwestern State University of Louisiana.
LA	E	South Central Planning and Development Commission.
MN	E	Board of Regents of the U. & C.C. of Minnesota.
MO	M	Boone Hospital Center.
MS	M	Delta Rural Health Network of Mississippi.
MS	E	Mid-Mississippi Delta Consortium.
NC	E	North Carolina Technological Development Authority.
NC	E	University of North Carolina at Wilmington.
NM	E	Northern New Mexico Community College.
NY	E	Cattaragus-Allegany-Erie-Wyoming BOCES.
OK	M	Choctaw Nation Indian Hospital.
OK	M	Holdenville General Hospital.
OK	E	Kiamichi Valley Distance Learning.
OR	E	Kalamath Community Development Corporation.
SD	M	Fund for the Advancement of Med. Education & Research.
TX	E	Austwell-Tivoli Independent School District.
TX	M	Chaparral Health Clinic.
TX	E	Fort Hancock Independent School District.
TX	E	Morton Independent School District.
TX	E	Panola College.
TX	E	Southwest Texas Junior College.
		Combination Grant/Loan
CA	E	State Center Community College District.
IL	M	Mason Hospital District.
IN	M	The Midwest Center for Rural Health (MCRH).
KY	M	Appalachian Regional Healthcare, Inc.
KY	M	Murray-Calloway County Hospital.
LA	E	Ascension Parish Library.
MI	E	Cheboygan Area Schools.
MI	M	Scheurer Hospital.
MN	M	First Care Medical Services.
NC	E	Mountain Area Health Education Foundation, Inc.
NC	E	Piedmont Community College.
NE	M	Bergan Mercy Foundation.
NM	E	Des Moines Municipal School.
NV	E	Nye County School District.

DISTANCE LEARNING AND TELEMEDICINE PROGRAM—1997 RECIPIENTS—Continued

State	Type*	Project name
OK	E	Burlington Public School.
PA	E	Line Mountain School District.
TN	M	The University of Tennessee, Memphis.**
WA	E	Grays Harbor College.
WA	M	Lincoln County Public Hospital District #3.
WV	M	Prestera Center for Mental Health Services, Inc.
WV	M	Princeton Community Hospital Association.

*E–Educational, M—Medical.
**Non-Federal funding for loan portion—loan amount not included in totals.

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*; Pub. L. 103–354, 108 Stat 3178 (7 U.S.C. 6941 *et seq.*).

Dated: December 16, 1997.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 97–33567 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Access Board Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Monday, Tuesday, and Wednesday, January 12–14, 1998 at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, January 12, 1998

9:00 a.m.–Noon and 1:30–3:30 p.m. Committee of the Whole—ABA Guidelines (Closed Meeting).
3:45 p.m.–5:30 p.m. Committee of the Whole—ADAAG Revision NPRM (Closed Meeting).

Tuesday, January 13, 1998

9:00 a.m.–Noon. Committee of the Whole—Recreation Guidelines NPRM (Closed Meeting).
1:30 p.m.–3:00 p.m. Planning and Budget Committee.
3:15 p.m.–5:00 p.m. Technical Programs Committee.

Wednesday, January 14, 1998

9:00 a.m.–Noon. Committee of the Whole—Detectable Warnings NPRM and Over-the-Road Buses NPRM (Closed Meeting).
1:30 a.m.–2:30 p.m. Executive Committee.
2:45 p.m.–4:00 p.m. Board Meeting.

ADDRESSES: The meetings will be held at: Grand Hyatt Washington, 1000 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items. Specific voting items are noted next to each committee report.

Open Meeting

- Executive Director's Report.
- Approval of the Minutes of the September 10, 1997 Board Meeting.
- Planning and Budget Committee Report—Fiscal Year 1998 Spending Plan, Fiscal Year 1999 Budget Status, and Agency Goals—Progress Report.
- Technical Programs Committee Report—Status Reports on Fiscal Years 1996 and 1997 Research Projects, Report on the Review of Anthropometrics Research Project, and Status of Technical Assistance Materials.
- Executive Committee Report—Committee and Board Calendars, Nominating Committee Charter, Public Hearing on Play Areas NPRM, and Annual Public Event.

Closed Meeting

- Committee of the Whole Report—ABA Guidelines.
- Committee of the Whole Report—ADAAG Revision NPRM.
- Committee of the Whole Report—Recreation Guidelines NPRM.
- Committee of the Whole Report—Detectable Warnings NPRM (voting).
- Committee of the Whole Report—Over-the-Road Buses NPRM.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 97–33624 Filed 12–23–97; 8:45 am]

BILLING CODE 8150–01–P

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, and Additional Releases

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on December 15, 1997, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Kevin G. Tiernan, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107.9(c)(4)(A) (1992). On December 15, 1997, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of postponements sustained immediately follows the record identification number, followed, where appropriate, by the date the document is scheduled to be released or re-reviewed.

FBI Documents: Postponed in Part

124–10194–10222; 3; 10/2017
124–10194–10235; 2; 10/2017
124–10194–10238; 6; 10/2017
124–10194–10251; 6; 10/2017
124–10194–10255; 1; 10/2017
124–10194–10257; 3; 10/2017
124–10194–10264; 2; 10/2017
124–10194–10266; 1; 10/2017
124–10194–10267; 1; 10/2017
124–10194–10303; 3; 10/2017
124–10194–10342; 3; 10/2017
124–10194–10425; 1; 10/2017
124–10194–10426; 2; 10/2017
124–10194–10428; 2; 10/2017
124–10194–10429; 1; 10/2017
124–10194–10430; 2; 10/2017
124–10194–10432; 4; 10/2017
124–10194–10433; 1; 10/2017
124–10194–10434; 4; 10/2017
124–10194–10439; 2; 10/2017
124–10194–10440; 6; 10/2017
124–10194–10441; 1; 10/2017
124–10194–10442; 8; 10/2017
124–10194–10443; 1; 10/2017
124–10194–10444; 12; 10/2017
124–10194–10446; 6; 10/2017
124–10194–10447; 2; 10/2017
124–10194–10448; 4; 10/2017
124–10195–10001; 1; 10/2017
124–10195–10004; 1; 10/2017
124–10195–10009; 18; 10/2017
124–10195–10015; 1; 10/2017
124–10195–10017; 1; 10/2017
124–10195–10018; 1; 10/2017
124–10195–10019; 3; 10/2017
124–10195–10022; 2; 10/2017
124–10195–10025; 1; 10/2017
124–10195–10029; 21; 10/2017
124–10195–10033; 1; 10/2017
124–10195–10048; 1; 10/2017
124–10195–10057; 1; 10/2017
124–10195–10060; 1; 10/2017
124–10195–40067; 1; 10/2017
124–10195–10070; 1; 10/2017
124–10195–10072; 1; 10/2017
124–10195–10077; 1; 10/2017
124–10195–10078; 1; 10/2017
124–10195–10079; 1; 10/2017
124–10195–10092; 1; 10/2017
124–10195–10095; 1; 10/2017
124–10195–10096; 1; 10/2017
124–10195–10100; 9; 10/2017
124–10195–10101; 1; 10/2017
124–10195–10322; 6; 10/2017
124–10195–10323; 12; 10/2017
124–10195–10324; 7; 10/2017
124–10195–10328; 3; 10/2017
124–10196–10396; 2; 10/2017
124–10196–10397; 1; 10/2017
124–10196–10403; 1; 10/2017
124–10196–10404; 2; 10/2017
124–10196–10407; 9; 10/2017
124–10196–10411; 4; 10/2017
124–10196–10416; 1; 10/2017
124–10196–10418; 9; 10/2017
124–10196–10421; 1; 10/2017
124–10196–10423; 1; 10/2017
124–10196–10424; 3; 10/2017
124–10196–10425; 1; 10/2017
124–10196–10430; 17; 10/2017
124–10196–10432; 7; 10/2017
124–10196–10435; 12; 10/2017
124–10196–10439; 19; 10/2017
124–10196–10441; 10; 10/2017
124–10196–10444; 1; 10/2017
124–10196–10447; 2; 10/2017
124–10196–10449; 1; 10/2017
124–10196–10450; 5; 10/2017
124–10197–10155; 13; 10/2017
124–10197–10198; 2; 10/2017
124–10197–10205; 1; 10/2017
124–10197–10208; 1; 10/2017
124–10197–10209; 2; 10/2017
124–10197–10211; 1; 10/2017
124–10197–10214; 1; 10/2017
124–10197–10221; 5; 10/2017
124–10197–10224; 2; 10/2017
124–10197–10225; 1; 10/2017
124–10197–10233; 4; 10/2017
124–10197–10237; 1; 10/2017
124–10197–10239; 1; 10/2017
124–10197–10240; 7; 10/2017
124–10197–10241; 4; 10/2017
124–10197–10242; 1; 10/2017
124–10197–10243; 1; 10/2017
124–10197–10244; 1; 10/2017
124–10197–10245; 2; 10/2017
124–10197–10246; 1; 10/2017
124–10197–10250; 1; 10/2017
124–10197–10254; 1; 10/2017
124–10197–10260; 1; 10/2017
124–10197–10261; 2; 10/2017
124–10197–10263; 3; 10/2017
124–10197–10265; 6; 10/2017
124–10197–10267; 11; 10/2017
124–10198–10008; 1; 10/2017
124–10198–10010; 1; 10/2017
124–10198–10013; 15; 10/2017
124–10198–10025; 1; 10/2017
124–10198–10048; 1; 10/2017
124–10198–10056; 4; 10/2017
124–10198–10065; 1; 10/2017
124–10198–10271; 3; 10/2017
124–10199–10291; 11; 10/2017
124–10200–10014; 1; 10/2017
124–10200–10021; 1; 10/2017
124–10200–10034; 1; 10/2017
124–10200–10035; 1; 10/2017
124–10200–10037; 1; 10/2017
124–10200–10040; 13; 10/2017
124–10200–10042; 1; 10/2017
124–10200–10043; 1; 10/2017
124–10200–10048; 2; 10/2017
124–10200–10049; 1; 10/2017
124–10200–10050; 3; 10/2017
124–10200–10052; 1; 10/2017
124–10200–10053; 3; 10/2017
124–10200–10065; 1; 10/2017
124–10200–10066; 1; 10/2017
124–10200–10067; 2; 10/2017
124–10200–10068; 2; 10/2017
124–10200–10069; 1; 10/2017
124–10200–10070; 2; 10/2017
124–10200–10071; 1; 10/2017
124–10201–10421; 1; 10/2017
124–10201–10425; 17; 10/2017
124–10201–10426; 6; 10/2017
124–10202–10141; 7; 10/2017
124–10202–10142; 3; 10/2017
124–10202–10143; 2; 10/2017
124–10202–10148; 3; 10/2017
124–10202–10149; 1; 10/2017
124–10202–10150; 1; 10/2017
124–10202–10152; 13; 10/2017
124–10202–10157; 1; 10/2017
124–10202–10161; 1; 10/2017
124–10202–10162; 2; 10/2017
124–10202–10164; 5; 10/2017
124–10202–10168; 1; 10/2017
124–10202–10169; 6; 10/2017
124–10202–10170; 1; 10/2017
124–10202–10176; 3; 10/2017
124–10202–10205; 1; 10/2017
124–10202–10226; 1; 10/2017
124–10202–10233; .3; 10/2017
124–10202–10247; 5; 10/2017
124–10202–10258; 1; 10/2017
124–10202–10283; 1; 10/2017
124–10202–10291; 3; 10/2017
124–10202–10300; 3; 10/2017
124–10202–10310; 1; 10/2017
124–10202–10320; 4; 10/2017
124–10202–10325; 1; 10/2017
124–10203–10135; 31; 10/2017
124–10203–10137; 22; 10/2017
124–10203–10141; 4; 10/2017
124–10203–10142; 20; 10/2017
124–10203–10143; 6; 10/2017
124–10203–10144; 4; 10/2017
124–10203–10145; 2; 10/2017
124–10203–10149; 14; 10/2017
124–10203–10153; 3; 10/2017
124–10203–10155; 9; 10/2017
124–10203–10158; 1; 10/2017
124–10203–10159; 23; 10/2017
124–10203–10162; 1; 10/2017
124–10203–10164; 2; 10/2017
124–10203–10165; 4; 10/2017
124–10203–10166; 4; 10/2017
124–10203–10169; 1; 10/2017
124–10203–10170; 1; 10/2017
124–10203–10173; 3; 10/2017
124–10203–10174; 1; 10/2017
124–10203–10175; 2; 10/2017
124–10203–10177; 2; 10/2017
124–10203–10464; 9; 10/2017
124–10203–10465; 1; 10/2017
124–10203–10466; 1; 10/2017
124–10203–10468; 1; 10/2017
124–10203–10469; 5; 10/2017
124–10203–10471; 8; 10/2017
124–10203–10472; 6; 10/2017
124–10203–10473; 10; 10/2017
124–10203–10474; 12; 10/2017
124–10203–10475; 13; 10/2017
124–10203–10476; 3; 10/2017
124–10203–10477; 9; 10/2017
124–10203–10478; 3; 10/2017
124–10203–10480; 5; 10/2017
124–10203–10482; 1; 10/2017
124–10203–10484; 2; 10/2017
124–10203–10485; 1; 10/2017
124–10203–10489; 2; 10/2017
124–10203–10494; 1; 10/2017
124–10203–10497; 1; 10/2017
124–10204–10038; 2; 10/2017
124–10204–10070; 2; 10/2017
124–10204–10083; 5; 10/2017
124–10204–10084; 1; 10/2017
124–10204–10092; 1; 10/2017
124–10204–10105; 1; 10/2017
124–10204–10108; 1; 10/2017
124–10204–10110; 1; 10/2017
124–10204–10114; 1; 10/2017
124–10204–10123; 1; 10/2017
124–10204–10129; 1; 10/2017
124–10204–10166; 26; 10/2017
124–10204–10170; 25; 10/2017

124–10204–10175; 1; 10/2017
124–10204–10177; 8; 10/2017
124–10204–10179; 1; 10/2017
124–10204–10182; 11; 10/2017
124–10204–10183; 19; 10/2017
124–10204–10184; 29; 10/2017
124–10204–10186; 11; 10/2017
124–10204–10187; 12; 10/2017
124–10204–10189; 11; 10/2017
124–10204–10191; 12; 10/2017
124–10204–10193; 18; 10/2017
124–10204–10195; 1; 10/2017
124–10204–10197; 1; 10/2017
124–10204–10196; 6; 10/2017
124–10204–10264; 1; 10/2017
124–10204–10272; 3; 10/2017
124–10204–10278; 4; 10/2017
124–10204–10286; 9; 10/2017
124–10204–10291; 3; 10/2017
124–10205–10003; 1; 10/2017
124–10205–10005; 1; 10/2017
124–10205–10006; 1; 10/2017
124–10205–10007; 4; 10/2017
124–10205–10008; 1; 10/2017
124–10205–10011; 3; 10/2017
124–10205–10014; 1; 10/2017
124–10205–10017; 11; 10/2017
124–10205–10020; 1; 10/2017
124–10205–10024; 2; 10/2017
124–10205–10025; 1; 10/2017
124–10205–10027; 2; 10/2017
124–10205–10030; 1; 10/2017
124–10205–10031; 1; 10/2017
124–10205–10034; 1; 10/2017
124–10205–10038; 1; 10/2017
124–10205–10040; 2; 10/2017
124–10205–10041; 2; 10/2017
124–10205–10042; 7; 10/2017
124–10205–10043; 1; 10/2017
124–10205–10048; 2; 10/2017
124–10205–10051; 1; 10/2017
124–10205–10052; 9; 10/2017
124–10205–10055; 6; 10/2017
124–10205–10057; 2; 10/2017
124–10205–10060; 1; 10/2017
124–10205–10070; 6; 10/2017
124–10205–10073; 1; 10/2017
124–10205–10446; 1; 10/2017
124–10205–10447; 3; 10/2017
124–10206–10004; 1; 10/2017
124–10206–10009; 7; 10/2017
124–10206–10016; 1; 10/2017
124–10206–10023; 1; 10/2017
124–10206–10027; 1; 10/2017
124–10206–10033; 2; 10/2017
124–10206–10035; 1; 10/2017
124–10206–10037; 1; 10/2017
124–10206–10041; 1; 10/2017
124–10206–10042; 2; 10/2017
124–10206–10043; 12; 10/2017
124–10206–10051; 8; 10/2017
124–10206–10053; 1; 10/2017
124–10206–10058; 1; 10/2017
124–10206–10062; 2; 10/2017
124–10206–10067; 3; 10/2017
124–10206–10068; 1; 10/2017
124–10206–10077; 4; 10/2017
124–10206–10081; 3; 10/2017
124–10206–10084; 1; 10/2017
124–10206–10087; 1; 10/2017
124–10206–10092; 7; 10/2017
124–10206–10096; 1; 10/2017
124–10206–10098; 5; 10/2017
124–10206–10101; 2; 10/2017
124–10206–10102; 2; 10/2017
124–10206–10388; 4; 10/2017
124–10206–10392; 2; 10/2017
124–10206–10394; 3; 10/2017
124–10206–10395; 2; 10/2017
124–10206–10396; 1; 10/2017
124–10207–10261; 7; 10/2017
124–10207–10267; 12; 10/2017
124–10207–10277; 3; 10/2017
124–10207–10280; 8; 10/2017
124–10207–10284; 1; 10/2017
124–10207–10288; 5; 10/2017
124–10207–10290; 6; 10/2017
124–10207–10297; 1; 10/2017
124–10207–10315; 16; 10/2017
124–10207–10317; 1; 10/2017
124–10207–10318; 20; 10/2017
124–10209–10000; 2; 10/2017
124–10209–10002; 1; 10/2017
124–10209–10003; 2; 10/2017
124–10209–10007; 1; 10/2017
124–10209–10008; 1; 10/2017
124–10209–10010; 12; 10/2017
124–10209–10014; 1; 10/2017
124–10209–10015; 1; 10/2017
124–10209–10020; 2; 10/2017
124–10209–10021; 1; 10/2017
124–10209–10022; 1; 10/2017
124–10209–10023; 1; 10/2017
124–10209–10025; 1; 10/2017
124–10209–10026; 1; 10/2017
124–10209–10029; 3; 10/2017
124–10209–10032; 2; 10/2017
124–10209–10033; 1; 10/2017
124–10209–10036; 1; 10/2017
124–10209–10041; 3; 10/2017
124–10209–10045; 1; 10/2017
124–10209–10048; 1; 10/2017
124–10209–10058; 3; 10/2017
124–10209–10059; 15; 10/2017
124–10209–10062; 1; 10/2017
124–10209–10063; 1; 10/2017
124–10209–10067; 1; 10/2017
124–10209–10068; 1; 10/2017
124–10209–10069; 2; 10/2017
124–10209–10070; 2; 10/2017
124–10209–10074; 2; 10/2017
124–10209–10078; 2; 10/2017
124–10209–10079; 2; 10/2017
124–10209–10084; 28; 10/2017
124–10209–10087; 3; 10/2017
124–10209–10090; 2; 10/2017
124–10209–10100; 1; 10/2017
124–10209–10104; 1; 10/2017
124–10209–10136; 7; 10/2017
124–10209–10138; 2; 10/2017
124–10209–10147; 1; 10/2017
124–10209–10149; 1; 10/2017
124–10209–10151; 1; 10/2017
124–10209–10152; 5; 10/2017
124–10209–10171; 1; 10/2017
124–10209–10189; 1; 10/2017
124–10209–10190; 2; 10/2017
124–10209–10191; 2; 10/2017
124–10209–10196; 1; 10/2017
124–10209–10204; 1; 10/2017
124–10209–10210; 1; 10/2017
124–10209–10217; 16; 10/2017
124–10209–10224; 2; 10/2017
124–10209–10229; 7; 10/2017
124–10209–10249; 3; 10/2017
124–10209–10254; 1; 10/2017
124–10209–10256; 1; 10/2017
124–10209–10258; 1; 10/2017
124–10209–10261; 1; 10/2017
124–10209–10262; 1; 10/2017
124–10209–10317; 1; 10/2017
124–10209–10322; 6; 10/2017
124–10209–10324; 1; 10/2017
124–10209–10325; 1; 10/2017
124–10209–10326; 1; 10/2017
124–10209–10327; 1; 10/2017
124–10209–10328; 1; 10/2017
124–10209–10329; 2; 10/2017
124–10209–10330; 5; 10/2017
124–10209–10333; 1; 10/2017
124–10209–10334; 3; 10/2017
124–10209–10335; 1; 10/2017
124–10209–10336; 3; 10/2017
124–10209–10337; 4; 10/2017
124–10209–10338; 1; 10/2017
124–10209–10339; 1; 10/2017
124–10209–10342; 1; 10/2017
124–10209–10352; 1; 10/2017
124–10209–10354; 2; 10/2017
124–10209–10362; 2; 10/2017
124–10209–10365; 3; 10/2017
124–10209–10368; 4; 10/2017
124–10209–10369; 1; 10/2017
124–10209–10370; 2; 10/2017
124–10209–10372; 2; 10/2017
124–10209–10374; 2; 10/2017
124–10209–10377; 1; 10/2017
124–10210–10039; 4; 10/2017
124–10210–10210; 3; 10/2017
124–10210–10213; 25; 10/2017
124–10210–10216; 2; 10/2017
124–10210–10219; 1; 10/2017
124–10210–10220; 2; 10/2017
124–10210–10224; 23; 10/2017
124–10210–10225; 1; 10/2017
124–10210–10226; 43; 10/2017
124–10210–10354; 32; 10/2017
124–10210–10356; 4; 10/2017
124–10210–10357; 5; 10/2017
124–10210–10358; 1; 10/2017
124–10210–10361; 3; 10/2017
124–10210–10362; 5; 10/2017
124–10210–10365; 4; 10/2017
124–10210–10368; 1; 10/2017
124–10210–10370; 2; 10/2017
124–10210–10377; 1; 10/2017
124–10210–10378; 8; 10/2017
124–10210–10380; 6; 10/2017
124–10210–10381; 2; 10/2017
124–10210–10383; 4; 10/2017
124–10210–10386; 1; 10/2017
124–10210–10389; 3; 10/2017
124–10210–10390; 77; 10/2017
124–10210–10391; 3; 10/2017
124–10210–10392; 3; 10/2017
124–10210–10393; 3; 10/2017
124–10210–10394; 4; 10/2017
124–10210–10395; 13; 10/2017
124–10210–10396; 3; 10/2017
124–10210–10397; 4; 10/2017
124–10210–10398; 4; 10/2017
124–10210–10400; 4; 10/2017
124–10210–10401; 4; 10/2017
124–10210–10402; 4; 10/2017
124–10210–10403; 5; 10/2017
124–10210–10404; 4; 10/2017
124–10210–10405; 4; 10/2017
124–10210–10406; 4; 10/2017
124–10210–10407; 2; 10/2017
124–10210–10408; 7; 10/2017
124–10210–10409; 5; 10/2017
124–10210–10425; 5; 10/2017
124–10210–10426; 1; 10/2017
124–10210–10433; 28; 10/2017
124–10210–10435; 6; 10/2017
124–10210–10436; 13; 10/2017
124–10211–10058; 21; 10/2017
124–10212–10132; 4; 10/2017

124–10212–10135; 3; 10/2017
124–10212–10137; 8; 10/2017
124–10212–10139; 11; 10/2017
124–10212–10141; 1; 10/2017
124–10212–10143; 1; 10/2017
124–10212–10147; 6; 10/2017
124–10212–10148; 7; 10/2017
124–10212–10150; 5; 10/2017
124–10212–10154; 3; 10/2017
124–10212–10160; 6; 10/2017
124–10212–10162; 4; 10/2017
124–10213–10284; 14; 10/2017
124–10213–10293; 10; 10/2017
124–10213–10302; 12; 10/2017
124–10214–10210; 13; 10/2017
124–10214–10214; 2; 10/2017
124–10214–10217; 2; 10/2017
124–10214–10222; 1; 10/2017
124–10216–10342; 12; 10/2017
124–10216–10343; 2; 10/2017
124–10216–10346; 3; 10/2017
124–10216–10347; 5; 10/2017
124–10216–10353; 11; 10/2017
124–10216–10355; 1; 10/2017
124–10216–10362; 1; 10/2017
124–10217–10029; 4; 10/2017
124–10217–10036; 18; 10/2017
124–10219–10447; 28; 10/2017
124–10219–10449; 1; 10/2017
124–10219–10452; 12; 10/2017
124–10219–10454; 29; 10/2017
124–10219–10456; 94; 10/2017
124–10219–10457; 20; 10/2017
124–10219–10458; 21; 10/2017
124–10219–10459; 5; 10/2017
124–10219–10462; 51; 10/2017
124–10219–10465; 49; 10/2017
124–10219–10467; 2; 10/2017
124–10219–10474; 8; 10/2017
124–10219–10476; 7; 10/2017
124–10219–10481; 2; 10/2017
124–10219–10483; 10; 10/2017
124–10219–10492; 2; 10/2017
124–10220–10050; 1; 10/2017
124–10220–10320; 2; 10/2017
124–10220–10450; 1; 10/2017
124–10221–10048; 1; 10/2017
124–10221–10053; 2; 10/2017
124–10221–10057; 7; 10/2017
124–10221–10059; 2; 10/2017
124–10221–10060; 1; 10/2017
124–10221–10061; 2; 10/2017
124–10222–10195; 35; 10/2017
124–10222–10196; 27; 10/2017
124–10222–10206; 9; 10/2017
124–10222–10213; 4; 10/2017
124–10222–10217; 8; 10/2017
124–10222–10469; 5; 10/2017
124–10222–10471; 2; 10/2017
124–10222–10472; 1; 10/2017
124–10222–10475; 9; 10/2017
124–10223–10032; 29; 10/2017
124–10223–10033; 2; 10/2017
124–10223–10034; 2; 10/2017
124–10223–10040; 23; 10/2017
124–10223–10041; 2; 10/2017
124–10223–10044; 3; 10/2017
124–10223–10046; 14; 10/2017
124–10223–10049; 12; 10/2017
124–10224–10088; 5; 10/2017
124–10224–10089; 29; 10/2017
124–10225–10310; 8; 10/2017
124–10225–10311; 10; 10/2017
124–10225–10335; 12; 10/2017
124–10225–10338; 1; 10/2017
124–10225–10343; 4; 10/2017
124–10225–10348; 33; 10/2017
124–10226–10321; 21; 10/2017
124–10226–10328; 1; 10/2017
124–10226–10336; 1; 10/2017
124–10226–10337; 6; 10/2017
124–10226–10341; 1; 10/2017
124–10226–10358; 1; 10/2017
124–10226–10360; 2; 10/2017
124–10226–10361; 1; 10/2017
124–10226–10362; 15; 10/2017
124–10226–10363; 2; 10/2017
124–10226–10366; 5; 10/2017
124–10226–10370; 2; 10/2017
124–10226–10371; 3; 10/2017
124–10226–10374; 2; 10/2017
124–10226–10379; 1; 10/2017
124–10226–10384; 1; 10/2017
124–10226–10389; 2; 10/2017
124–10226–10391; 2; 10/2017
124–10226–10392; 3; 10/2017
124–10226–10395; 1; 10/2017
124–10226–10399; 1; 10/2017
124–10226–10400; 1; 10/2017
124–10277–10007; 19; 10/2017
124–10277–10010; 5; 10/2017
124–10277–10012; 25; 10/2017
124–10277–10013; 27; 10/2017
124–10277–10015; 7; 10/2017
124–10277–10022; 7; 10/2017
124–10277–10030; 3; 10/2017
124–10277–10033; 10; 10/2017
124–10277–10038; 4; 10/2017
124–10277–10042; 9; 10/2017
124–10278–10000; 1; 10/2017
124–10278–10001; 22; 10/2017
124–10278–10004; 1; 10/2017
124–10278–10005; 48; 10/2017
124–10278–10006; 1; 10/2017
124–10278–10007; 1; 10/2017
124–10278–10010; 1; 10/2017
124–10278–10014; 2; 10/2017
124–10278–10017; 2; 10/2017
124–10278–10022; 6; 10/2017
124–10278–10024; 2; 10/2017
124–10278–10026; 26; 10/2017
124–10278–10027; 1; 10/2017
124–10278–10030; 2; 10/2017
124–10278–10035; 2; 10/2017
124–10278–10036; 4; 10/2017
124–10278–10038; 24; 10/2017
124–10278–10040; 20; 10/2017
124–10278–10041; 6; 10/2017
124–10278–10043; 5; 10/2017
124–10278–10046; 9; 10/2017
124–10278–10052; 3; 10/2017
124–10280–10166; 2; 10/2017
124–10283–10016; 2; 10/2017
124–10283–10020; 2; 10/2017
124–10283–10025; 1; 10/2017
124–10283–10041; 31; 10/2017
124–10283–10262; 1; 10/2017
124–10283–10265; 7; 10/2017
124–10283–10272; 3; 10/2017
124–10283–10277; 15; 10/2017
124–10283–10280; 4; 10/2017
124–10283–10282; 5; 10/2017
124–10283–10283; 12; 10/2017
124–10283–10284; 1; 10/2017
124–10283–10285; 2; 10/2017
124–10283–10286; 1; 10/2017
124–10283–10287; 1; 10/2017
124–10283–10297; 3; 10/2017
124–10283–10298; 3; 10/2017
124–10283–10302; 18; 10/2017
124–10284–10043; 3; 10/2017
124–10284–10048; 2; 10/2017
124–10284–10051; 9; 10/2017
124–10284–10054; 12; 10/2017
124–10284–10058; 4; 10/2017
124–10284–10059; 2; 10/2017
124–10284–10061; 3; 10/2017
124–10284–10093; 2; 10/2017
124–10284–10094; 2; 10/2017
124–10284–10106; 5; 10/2017
124–10284–10108; 5; 10/2017
124–10284–10110; 1; 10/2017
124–10284–10112; 1; 10/2017
124–10284–10113; 3; 10/2017
124–10284–10114; 7; 10/2017
124–10284–10115; 1; 10/2017
124–10284–10118; 3; 10/2017
124–10284–10121; 13; 10/2017
124–10284–10124; 1; 10/2017
124–10284–10130; 9; 10/2017
124–10285–10004; 3; 10/2017
124–10288–10110; 3; 10/2017
124–10286–10118; 2; 10/2017
124–10287–10249; 1; 10/2017
124–10288–10321; 399; 10/2017
124–10288–10331; 7; 10/2017
124–10288–10351; 2; 10/2017
124–10288–10354; 1; 10/2017
124–10290–10152; 4; 10/2017
124–10290–10197; 2; 10/2017
124–10290–10198; 1; 10/2017
124–10290–10208; 1; 10/2017
124–10290–10211; 18; 10/2017
124–10290–10219; 2; 10/2017
124–10290–10223; 11; 10/2017
124–10290–10226; 2; 10/2017
124–10290–10227; 2; 10/2017
124–10290–10230; 8; 10/2017
124–10290–10234; 2; 10/2017
124–10290–10235; 1; 10/2017
124–10290–10243; 2; 10/2017
124–10290–10246; 11; 10/2017
124–10290–10250; 23; 10/2017
124–10290–10251; 2; 10/2017
124–10290–10253; 1; 10/2017
124–10290–10257; 2; 10/2017
124–10290–10262; 13; 10/2017
124–10290–10264; 2; 10/2017
124–10290–10267; 6; 10/2017
124–10292–10173; 2; 10/2017
124–10292–10177; 1; 10/2017
124–10292–10178; 4; 10/2017
124–10292–10183; 2; 10/2017
124–10292–10186; 1; 10/2017
124–10292–10187; 5; 10/2017
124–10292–10195; 1; 10/2017
124–10292–10200; 1; 10/2017
124–10292–10201; 1; 10/2017
124–10292–10210; 9; 10/2017
124–10292–10212; 17; 10/2017
124–10292–10221; 1; 10/2017
124–10292–10236; 5; 10/2017
124–10292–10239; 1; 10/2017
124–10292–10240; 1; 10/2017
124–10292–10247; 2; 10/2017
124–10292–10259; 1; 10/2017
124–10292–10266; 1; 10/2017
124–10293–10170; 15; 10/2017
124–10293–10171; 4; 10/2017
124–10293–10174; 1; 10/2017
124–10293–10178; 7; 10/2017
124–10293–10182; 4; 10/2017
124–10293–10184; 1; 10/2017
124–10293–10185; 5; 10/2017
124–10293–10187; 1; 10/2017
124–10293–10191; 1; 10/2017
124–10293–10194; 4; 10/2017
124–10293–10197; 5; 10/2017

124–10293–10206; 8; 10/2017
124–10293–10207; 5; 10/2017
124–10293–10208; 2; 10/2017
124–10293–10209; 1; 10/2017
124–10293–10210; 2; 10/2017
124–10293–10214; 1; 10/2017
124–10293–10459; 1; 10/2017
124–10293–10460; 2; 10/2017
124–10293–10468; 1; 10/2017
124–10293–10472; 1; 10/2017
124–10293–10474; 1; 10/2017
124–10293–10475; 5; 10/2017
124–10293–10476; 1; 10/2017
124–10293–10487; 1; 10/2017
124–10293–10488; 1; 10/2017
124–10293–10491; 1; 10/2017
124–10293–10495; 1; 10/2017
124–10293–10499; 1; 10/2017
124–10294–10414; 2; 10/2017
124–10294–10421; 2; 10/2017
124–10294–10426; 3; 10/2017
124–10294–10429; 2; 10/2017
124–10294–10431; 4; 10/2017
124–10294–10433; 4; 10/2017
124–10294–10436; 1; 10/2017
124–10294–10440; 1; 10/2017
124–10294–10442; 1; 10/2017
124–10294–10446; 1; 10/2017
124–10294–10469; 3; 10/2017
124–10294–10485; 1; 10/2017
124–10294–10489; 1; 10/2017
124–10294–10492; 1; 10/2017
124–10296–10009; 28; 10/2017
124–10297–10193; 4; 10/2017
124–10297–10199; 1; 10/2017
124–10297–10206; 1; 10/2017
124–10297–10209; 1; 10/2017
124–10297–10211; 2; 10/2017
124–10297–10213; 1; 10/2017
124–10297–10217; 4; 10/2017
124–10298–10170; 10; 10/2017
124–10298–10175; 1; 10/2017
124–10298–10178; 2; 10/2017
124–10298–10193; 1; 10/2017
124–10298–10195; 30; 10/2017
124–10298–10199; 1; 10/2017
124–10298–10200; 1; 10/2017
124–10298–10201; 1; 10/2017
124–10298–10202; 2; 10/2017
124–10298–10205; 1; 10/2017
124–10298–10209; 1; 10/2017
124–10298–10212; 1; 10/2017
124–10298–10213; 3; 10/2017
124–10298–10220; 1; 10/2017
124–10307–10004; 6; 10/2017
124–10307–10007; 1; 10/2017
124–10307–10008; 3; 10/2017
124–10307–10017; 1; 10/2017
124–10307–10019; 1; 10/2017
124–10307–10022; 1; 10/2017
124–10307–10025; 4; 10/2017
124–10307–10026; 4; 10/2017
124–10307–10027; 1; 10/2017
124–10307–10028; 1; 10/2017
124–10307–10029; 1; 10/2017
124–10307–10030; 1; 10/2017
124–10307–10033; 3; 10/2017
124–10307–10034; 16; 10/2017
124–10307–10036; 1; 10/2017
124–10307–10037; 1; 10/2017
124–10307–10042; 1; 10/2017
124–10307–10044; 8; 10/2017
124–10307–10045; 2; 10/2017
124–10307–10046; 1; 10/2017
124–10307–10047; 1; 10/2017
124–10308–10002; 2; 10/2017
124–10308–10004; 1; 10/2017
124–10308–10008; 1; 10/2017
124–10308–10017; 3; 10/2017
124–10308–10019; 1; 10/2017
124–10308–10022; 1; 10/2017
124–10308–10024; 1; 10/2017
124–10308–10025; 4; 10/2017
124–10308–10026; 2; 10/2017
124–10308–10032; 2; 10/2017
124–10308–10035; 7; 10/2017
124–10308–10042; 2; 10/2017
124–10308–10046; 2; 10/2017
124–10308–10048; 2; 10/2017
124–10308–10059; 6; 10/2017
124–10308–10062; 1; 10/2017
124–10308–10063; 1; 10/2017
124–10308–10068; 1; 10/2017
124–10308–10074; 1; 10/2017
124–10308–10086; 3; 10/2017
124–10308–10087; 1; 10/2017
124–10308–10088; 1; 10/2017
124–10308–10089; 1; 10/2017
124–10308–10094; 4; 10/2017
124–10308–10096; 1; 10/2017
124–10308–10097; 3; 10/2017
124–10308–10102; 2; 10/2017
124–10308–10103; 1; 10/2017
124–10308–10104; 1; 10/2017
124–10308–10105; 5; 10/2017
124–10308–10106; 2; 10/2017
124–10308–10110; 2; 10/2017
124–10308–10118; 7; 10/2017
124–10308–10119; 1; 10/2017
124–10308–10123; 16; 10/2017
124–10308–10127; 2; 10/2017
124–10308–10131; 12; 10/2017
124–10308–10133; 4; 10/2017
124–10308–10136; 2; 10/2017
124–10308–10139; 1; 10/2017
124–10308–10141; 1; 10/2017
124–10308–10149; 1; 10/2017
124–10308–10150; 17; 10/2017
124–10308–10153; 2; 10/2017
124–10308–10156; 1; 10/2017
124–10308–10159; 1; 10/2017
124–10308–10162; 1; 10/2017
124–90021–10001; 1; 10/2017
124–90021–10003; 4; 10/2017
124–90021–10004; 9; 10/2017
124–90021–10006; 8; 10/2017
124–90021–10007; 4; 10/2017
124–90021–10008; 4; 10/2017
124–90021–10009; 21; 10/2017
124–90021–10010; 1; 10/2017
124–90021–10012; 3; 10/2017
124–90021–10013; 4; 10/2017
124–90021–10014; 2; 10/2017
124–90021–10015; 4; 10/2017
124–90021–10019; 1; 10/2017
124–90021–10021; 17; 10/2017
124–90021–10023; 1; 10/2017
124–90021–10025; 2; 10/2017
124–90021–10026; 5; 10/2017
124–90021–10027; 2; 10/2017
124–90021–10028; 2; 10/2017
124–90021–10031; 2; 10/2017
124–90021–10033; 8; 10/2017
124–90021–10034; 2; 10/2017
124–90021–10041; 1; 10/2017
124–90021–10047; 1; 10/2017
124–90021–10068; 1; 10/2017
124–90021–10069; 3; 10/2017

CIA Documents: Postponed in Part

104–10052–10172; 4; 10/2017
104–10066–10226; 3; 10/2017
104–10067–10237; 16; 10/2017
104–10067–10357; 6; 10/2017
104–10079–10026; 3; 10/2017
104–10079–10040; 1; 10/2017
104–10079–10059; 4; 10/2017
104–10079–10070; 4; 10/2017
104–10079–10301; 2; 10/2017
104–10092–10086; 7; 10/2017
104–10095–10062; 1; 10/2017
104–10101–10021; 5; 10/2017
104–10103–10360; 42; 05/2001
104–10104–10269; 1; 10/2017
104–10105–10295; 1; 10/2017
104–10106–10716; 4; 10/2017
104–10106–10788; 1; 10/2017
104–10110–10026; 1; 10/2017
104–10110–10027; 1; 10/2017
104–10110–10036; 1; 10/2017
104–10110–10037; 2; 10/2017
104–10110–10113; 1; 10/2017
104–10110–10135; 3; 10/2017
104–10110–10300; 1; 10/2017
104–10110–10303; 2; 10/2017
104–10110–10305; 13; 10/2017
104–10110–10311; 1; 10/2017
104–10110–10312; 1; 10/2017
104–10110–10319; 2; 10/2017
104–10110–10348; 12; 10/2017
104–10113–10322; 14; 10/2017
104–10115–10074; 3; 10/2017
104–10115–10248; 5; 10/2017
104–10116–10402; 2; 10/2017
104–10119–10198; 9; 10/2017
104–10119–10244; 2; 10/2017
104–10120–10428; 1; 10/2017
104–10121–10001; 3; 10/2017
104–10121–10002; 2; 10/2017
104–10121–10003; 1; 10/2017
104–10121–10007; 2; 10/2017
104–10121–10009; 1; 10/2017
104–10121–10010; 1; 10/2017
104–10121–10012; 2; 10/2017
104–10121–10014; 1; 10/2017
104–10121–10021; 1; 10/2017
104–10121–10022; 1; 10/2017
104–10121–10024; 1; 10/2017
104–10121–10029; 1; 10/2017
104–10121–10040; 2; 10/2017
104–10121–10055; 1; 10/2017
104–10121–10067; 1; 10/2017
104–10121–10069; 1; 10/2017
104–10121–10072; 1; 10/2017
104–10121–10082; 1; 10/2017
104–10122–10144; 1; 10/2017
104–10122–10155; 1; 10/2017
104–10122–10167; 1; 10/2017
104–10122–10274; 10; 10/2017
104–10122–10311; 4; 10/2017
104–10122–10316; 1; 10/2017
104–10122–10317; 1; 10/2017
104–10122–10445; 2; 10/2017
104–10123–10017; 2; 10/2017
104–10123–10018; 5; 10/2017
104–10123–10019; 7; 10/2017
104–10123–10020; 6; 10/2017
104–10123–10022; 3; 10/2017
104–10123–10029; 12; 10/2017
104–10123–10097; 2; 10/2017
104–10123–10098; 2; 10/2017
104–10123–10127; 1; 10/2017
104–10123–10131; 1; 10/2017
104–10124–10218; 2; 10/2017
104–10124–10239; 2; 10/2017
104–10124–10243; 1; 10/2017
104–10124–10247; 3; 10/2017
104–10124–10258; 9; 10/2017
104–10124–10259; 1; 10/2017

104–10124–10263; 1; 10/2017
104–10124–10266; 3; 10/2017
104–10124–10267; 1; 10/2017
104–10124–10275; 11; 10/2017
104–10124–10280; 3; 10/2017
104–10124–10283; 1; 10/2017
104–10124–10284; 1; 10/2017
104–10124–10293; 3; 10/2017
104–10124–10295; 2; 10/2017
104–10124–10304; 1; 10/2017
104–10124–10324; 2; 10/2017
104–10124–10337; 4; 10/2017
104–10124–10342; 5; 10/2017
104–10124–10343; 1; 10/2017
104–10126–10034; 1; 10/2017
104–10128–10042; 1; 10/2017
104–10126–10059; 1; 10/2017
104–10126–10078; 7; 10/2017
104–10127–10033; 1; 10/2017
104–10127–10039; 21; 10/2017
104–10127–10052; 4; 10/2017
104–10127–10101; 1; 10/2017
104–10127–10280; 2; 10/2017
104–10127–10287; 1; 10/2017
104–10128–10027; 1; 10/2017
104–10128–10044; 2; 10/2017
104–10128–10046; 1; 10/2017
104–10128–10047; 1; 10/2017
104–10128–10049; 1; 10/2017
104–10128–10053; 1; 10/2017
104–10128–10055; 1; 10/2017
104–10128–10069; 1; 10/2017
104–10128–10070; 1; 10/2017
104–10128–10072; 1; 10/2017
104–10128–10086; 2; 10/2017
104–10128–10111; 1; 10/2017
104–10128–10112; 6; 10/2017
104–10128–10113; 3; 10/2017
104–10128–10114; 2; 10/2017
104–10128–10115; 2; 10/2017
104–10128–10116; 1; 10/2017
104–10128–10117; 1; 10/2017
104–10128–10118; 1; 10/2017
104–10128–10154; 9; 10/2017
104–10128–10156; 2; 10/2017
104–10128–10157; 4; 10/2017
104–10128–10212; 1; 10/2017
104–10128–10213; 7; 10/2017
104–10128–10223; 4; 10/2017
104–10128–10224; 2; 10/2017
104–10128–10229; 6; 10/2017
104–10128–10235; 2; 10/2017
104–10128–10240; 2; 10/2017
104–10128–10244; 2; 10/2017
104–10128–10249; 4; 10/2017
104–10128–10251; 2; 10/2017
104–10128–10254; 1; 10/2017
104–10128–10256; 1; 10/2017
104–10128–10257; 2; 10/2017
104–10128–10258; 2; 10/2017
104–10128–10259; 1; 10/2017
104–10128–10260; 2; 10/2017
104–10128–10265; 4; 10/2017
104–10128–10272; 1; 10/2017
104–10128–10279; 1; 10/2017
104–10128–10285; 4; 10/2017
104–10128–10286; 3; 10/2017
104–10128–10287; 2; 10/2017
104–10128–10288; 3; 10/2017
104–10128–10289; 6; 10/2017
104–10128–10291; 5; 10/2017
104–10128–10292; 1; 10/2017
104–10128–10298; 1; 10/2017
104–10128–10299; 3; 10/2017
104–10128–10300; 2; 10/2017
104–10128–10302; 3; 10/2017
104–10128–10303; 5; 10/2017
104–10128–10304; 4; 10/2017
104–10128–10305; 14; 10/2017
104–10128–10315; 1; 10/2017
104–10128–10316; 2; 10/2017
104–10128–10317; 1; 10/2017
104–10128–10319; 1; 10/2017
104–10128–10320; 1; 10/2017
104–10128–10334; 3; 10/2017
104–10128–10346; 1; 10/2017
104–10128–10349; 1; 10/2017
104–10128–10350; 1; 10/2017
104–10128–10353; 4; 10/2017
104–10128–10354; 1; 10/2017
104–10128–10361; 2; 10/2017
104–10128–10363; 34; 10/2017
104–10128–10364; 2; 10/2017
104–10128–10367; 1; 10/2017
104–10128–10372; 2; 10/2017
104–10128–10374; 1; 10/2017
104–10128–10377; 1; 10/2017
104–10128–10379; 1; 10/2017
104–10128–10380; 2; 10/2017
104–10128–10381; 1; 10/2017
104–10128–10382; 1; 10/2017
104–10128–10399; 1; 10/2017
104–10128–10401; 1; 10/2017
104–10129–10095; 1; 10/2017
104–10129–10097; 2; 10/2017
104–10129–10101; 17; 08/2008
104–10129–10117; 21; 10/2017
104–10129–10157; 5; 10/2017
104–10129–10168; 6; 10/2017
104–10130–10039; 3; 10/2017
104–10130–10043; 6; 10/2017
104–10130–10161; 1; 10/2017
104–10130–10188; 1; 10/2017
104–10130–10192; 4; 10/2017
104–10130–10219; 1; 10/2017
104–10130–10238; 2; 10/2017
104–10130–10243; 1; 10/2017
104–10130–10255; 4; 10/2017
104–10130–10260; 1; 10/2017
104–10130–10261; 2; 10/2017
104–10130–10262; 2; 10/2017
104–10130–10263; 2; 10/2017
104–10130–10264; 1; 10/2017
104–10130–10265; 2; 10/2017
104–10130–10266; 1; 10/2017
104–10130–10267; 2; 10/2017
104–10130–10269; 1; 10/2017
104–10130–10282; 84; 10/2017
104–10130–10284; 1; 10/2017
104–10130–10287; 7; 10/2017
104–10130–10291; 2; 10/2017
104–10130–10293; 1; 10/2017
104–10130–10305; 1; 10/2017
104–10130–10307; 1; 10/2017
104–10130–10310; 5; 10/2017
104–10130–10311; 2; 10/2017
104–10130–10312; 10; 10/2017
104–10130–10313; 6; 10/2017
104–10130–10317; 1; 10/2017
104–10130–10331; 2; 10/2017
104–10130–10335; 1; 10/2017
104–10130–10346; 1; 10/2017
104–10130–10352; 3; 10/2017
104–10130–10355; 2; 10/2017
104–10130–10356; 1; 10/2017
104–10130–10358; 1; 10/2017
104–10130–10361; 7; 10/2017
104–10130–10365; 2; 10/2017
104–10130–10366; 1; 10/2017
104–10130–10370; 1; 10/2017
104–10130–10371; 1; 10/2017
104–10130–10421; 1; 10/2017
104–10131–10021; 3; 10/2017
104–10131–10023; 2; 10/2017
104–10131–10026; 9; 10/2017
104–10131–10027; 1; 10/2017
104–10131–10031; 42; 10/2017
104–10131–10032; 2; 10/2017
104–10131–10033; 6; 10/2017
104–10131–10035; 41; 10/2017
104–10131–10037; 16; 10/2017
104–10131–10041; 3; 10/2017
104–10131–10048; 3; 10/2017
104–10131–10049; 3; 10/2017
104–10135–10393; 9; 10/2017
104–10136–10346; 1; 10/2017
104–10136–10347; 1; 10/2017
104–10136–10360; 2; 10/2017
104–10136–10362; 1; 10/2017
104–10136–10370; 1; 10/2017
104–10136–10374; 1; 10/2017
104–10145–10114; 1; 10/2017
104–10145–10175; 4; 10/2017
104–10145–10190; 3; 10/2017
104–10145–10229; 2; 10/2017
104–10145–10332; 2; 10/2017
104–10145–10402; 1; 10/2017
104–10145–10418; 2; 10/2017
104–10146–10021; 1; 10/2017
104–10146–10076; 3; 10/2017
104–10146–10077; 3; 10/2017
104–10146–10093; 5; 10/2017
104–10146–10099; 1; 10/2017
104–10146–10120; 10; 10/2017
104–10146–10128; 2; 10/2017
104–10146–10160; 1; 10/2017
104–10146–10255; 6; 10/2017
104–10146–10266; 3; 10/2017
104–10146–10299; 12; 10/2017
104–10146–10327; 1; 10/2017
104–10147–10271; 2; 10/2017
104–10147–10325; 1; 10/2017
104–10147–10327; 3; 10/2017
104–10147–10329; 1; 10/2017
104–10147–10331; 1; 10/2017
104–10147–10402; 1; 10/2017
104–10147–10404; 1; 10/2017
104–10147–10416; 1; 10/2017
104–10147–10436; 13; 10/2017
104–10149–10024; 1; 10/2017
104–10149–10028; 1; 10/2017
104–10149–10033; 1; 10/2017
104–10149–10051; 1; 10/2017
104–10150–10001; 3; 10/2017
104–10150–10008; 4; 10/2017
104–10150–10021; 3; 10/2017
104–10150–10030; 1; 10/2017
104–10161–10093; 4; 10/2017
104–10161–10096; 10; 10/2017
104–10161–10097; 12; 10/2017
104–10161–10100; 1; 10/2017

CIA Documents: Postponed in Full

104–10063–10229; 1; 10/2017
104–10063–10261; 1; 10/2017
104–10063–10299; 1; 10/2017
104–10063–10300; 1; 10/2017
104–10063–10314; 1; 10/2017
104–10063–10315; 1; 10/2017
104–10063–10407; 1; 10/2017

HSCA Documents: Postponed in Part

180–10078–10006; 1; 10/2017
180–10103–10336; 0; 10/2017
180–10110–10083; 6; 10/2017
180–10110–10144; 37; 10/2017
180–10113–10416; 2; 10/2017
180–10131–10334; 596; 10/2017
180–10143–10467; 4; 10/2017

180–10144–10174; 32; 10/2017
180–10145–10202; 1; 10/2017
180–10147–10040; 4; 10/2017
180–10147–10185; 32; 10/2017

State Department Documents: Postponed in Part

119–10003–10122; 37; 10/2017
119–10021–10357; 1; 10/2017
119–10022–10000; 1; 10/2017
119–10022–10074; 1; 10/2017
119–10022–10246; 3; 10/2017
119–10022–10248; 2; 10/2017

Ford Library Documents: Postponed in Part

178–10002–10089; 1; 10/2017
178–10002–10090; 1; 10/2017
178–10002–10158; 2; 10/2017
178–10002–10159; 1; 10/2017
178–10002–10166 1; 10/2017
178–10002–10229; 2; 10/2017
178–10002–10265; 8; 10/2017
178–10002–10268; 1; 10/2017
178–10002–10330; 2; 10/2017
178–10002–10335; 4; 10/2017
178–10002–10369; 1; 10/2017
178–10002–10401; 1; 10/2017
178–10002–10482; 3; 10/2017
178–10002–10490; 3; 10/2017
178–10003–10047; 1; 10/2017
178–10003–10188; 5; 10/2017
178–10003–10296; 2; 10/2017
178–10003–10297; 4; 10/2017
178–10003–10319; 2; 10/2017
178–10003–10320; 4; 10/2017
178–10003–10334; 2; 10/2017
178–10003–10335; 4; 10/2017
178–10003–10414; 1; 10/2017
178–10003–10439; 1; 10/2017
178–10004–10216; 2; 10/2017
178–10004–10217; 4; 10/2017

Notice of Additional Releases

After consultation with appropriate Federal agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full:

124–10194–10212; 124–10194–10214; 124–10194–10215; 124–10194–10216; 124–10194–10217; 124–10194–10218; 124–10194–10219; 124–10194–10220; 124–10194–10221; 124–10194–10223; 124–10194–10224; 124–10194–10225; 124–10194–10226; 124–10194–10227; 124–10194–10229; 124–10194–10230; 124–10194–10231; 124–10194–10232; 124–10194–10233; 124–10194–10234; 124–10194–10236; 124–10194–10237; 124–10194–10239; 124–10194–10240; 124–10194–10241; 124–10194–10242; 124–10194–10243; 124–10194–10244; 124–10194–10245; 124–10194–10246; 124–10194–10247; 124–10194–10248; 124–10194–10249; 124–10194–10250; 124–10194–10252; 124–10194–10253; 124–10194–10254; 124–10194–10258; 124–10194–10259; 124–10194–10260; 124–10194–10261; 124–10194–10262; 124–10194–10263; 124–10194–10265; 124–10194–10268; 124–10194–10269; 124–10194–10270; 124–10194–10271; 124–10194–10274; 124–10194–10275; 124–10194–10276; 124–10194–10277; 124–10194–10278; 124–10194–10279; 124–10194–10280; 124–10194–10281; 124–10194–10282; 124–10194–10283; 124–10194–10284; 124–10194–10285; 124–10194–10287; 124–10194–10288; 124–10194–10289; 124–10194–10290; 124–10194–10291; 124–10194–10292; 124–10194–10293; 124–10194–10294; 124–10194–10295; 124–10194–10296; 124–10194–10297; 124–10194–10298; 124–10194–10299; 124–10194–10300; 124–10194–10301; 124–10194–10302; 124–10194–10304; 124–10194–10305; 124–10194–10306; 124–10194–10307; 124–10194–10308; 124–10194–10309; 124–10194–10310; 124–10194–10311; 124–10194–10312; 124–10194–10313; 124–10194–10315; 124–10194–10316; 124–10194–10317; 124–10194–10318; 124–10194–10319; 124–10194–10321; 124–10194–10322; 124–10194–10324; 124–10194–10326; 124–10194–10327; 124–10194–10328; 124–10194–10333; 124–10194–10343; 124–10194–10346; 124–10194–10347; 124–10194–10350; 124–10194–10351; 124–10194–10352; 124–10194–10353; 124–10194–10354; 124–10194–10356; 124–10194–10357; 124–10194–10424; 124–10194–10427; 124–10194–10431; 124–10194–10437; 124–10194–10450; 124–10194–10451; 124–10195–10000; 124–10195–10002; 124–10195–10003; 124–10195–10006; 124–10195–10007; 124–10195–10008; 124–10195–10010; 124–10195–10011; 124–10195–10013; 124–10195–10014; 124–10195–10016; 124–10195–10020; 124–10195–10021; 124–10195–10023; 124–10195–10026; 124–10195–10027; 124–10195–10028; 124–10195–10030; 124–10195–10031; 124–10195–10034; 124–10195–10035; 124–10195–10036; 124–10195–10037; 124–10195–10038; 124–10195–10039; 124–10195–10041; 124–10195–10042; 124–10195–10043; 124–10195–10044; 124–10195–10045; 124–10195–10046; 124–10195–10047; 124–10195–10049; 124–10195–10050; 124–10195–10051; 124–10195–10052; 124–10195–10053; 124–10195–10054; 124–10195–10055; 124–10195–10056; 124–10195–10058; 124–10195–10059; 124–10195–10061; 124–10195–10062; 124–10195–10063; 124–10195–10064; 124–10195–10065; 124–10195–10066; 124–10195–10068; 124–10195–10069; 124–10195–10071; 124–10195–10073; 124–10195–10074; 124–10195–10075; 124–10195–10076; 124–10195–10080; 124–10195–10081; 124–10195–10082; 124–10195–10083; 124–10195–10084; 124–10195–10085; 124–10195–10086; 124–10195–10087; 124–10195–10088; 124–10195–10089; 124–10195–10090; 124–10195–10091; 124–10195–10093; 124–10195–10094; 124–10195–10097; 124–10195–10098; 124–10195–10099; 124–10195–10102; 124–10195–10103; 124–10195–10104; 124–10195–10313; 124–10195–10314; 124–10195–10315; 124–10195–10316; 124–10195–10318; 124–10195–10320; 124–10195–10321; 124–10195–10325; 124–10195–10326; 124–10195–10329; 124–10195–10330; 124–10196–10386; 124–10196–10389; 124–10196–10390; 124–10196–10391; 124–10196–10392; 124–10196–10393; 124–10196–10394; 124–10196–10395; 124–10196–10398; 124–10196–10399; 124–10196–10400; 124–10196–10401; 124–10196–10402; 124–10196–10405; 124–10196–10406; 124–10196–10408; 124–10196–10409; 124–10196–10410; 124–10196–10412; 124–10196–10413; 124–10196–10414; 124–10196–10415; 124–10196–10417; 124–10196–10419; 124–10196–10420; 124–10196–10422; 124–10196–10426; 124–10196–10427; 124–10196–10428; 124–10196–10429; 124–10196–10431; 124–10196–10433; 124–10196–10434; 124–10196–10436; 124–10196–10437; 124–10196–10438; 124–10196–10440; 124–10196–10442; 124–10196–10443; 124–10196–10445; 124–10196–10448; 124–10197–10199; 124–10197–10200; 124–10197–10202; 124–10197–10204; 124–10197–10210; 124–10197–10212; 124–10197–10213; 124–10197–10219; 124–10197–10222; 124–10197–10223; 124–10197–10234; 124–10197–10262; 124–10197–10264; 124–10197–10266; 124–10197–10407; 124–10197–10409; 124–10197–10410; 124–10197–10411; 124–10197–10413; 124–10197–10414; 124–10198–10000; 124–10198–10001; 124–10198–10002; 124–10198–10003; 124–10198–10004; 124–10198–10005; 124–10198–10006; 124–10198–10007; 124–10198–10009; 124–10198–10011; 124–10198–10012; 124–10198–10014; 124–10198–10015; 124–10198–10016; 124–10198–10017; 124–10198–10018; 124–10198–10019; 124–10198–10020; 124–10198–10021; 124–10198–10022; 124–10198–10023; 124–10198–10024; 124–10198–10026; 124–10198–10027; 124–10198–10028; 124–10198–10029; 124–10198–10030; 124–10198–10031; 124–10198–10032; 124–10198–10033; 124–10198–10034; 124–10198–10036; 124–10198–10037; 124–10198–10038; 124–10198–10039; 124–10198–10040; 124–10198–10041; 124–10198–10042; 124–10198–10043; 124–10198–10044; 124–10198–10045; 124–10198–10046; 124–10198–10047; 124–10198–10049; 124–10198–10050; 124–10198–10051; 124–10198–10052; 124–10198–10053; 124–10198–10054; 124–10198–10055; 124–10198–10057; 124–10198–10058; 124–10198–10059; 124–10198–10060; 124–10198–10061; 124–10198–10062; 124–10198–10063; 124–10198–10064; 124–10198–10066; 124–10198–10067; 124–10198–10068; 124–10198–10241; 124–10198–10242; 124–10198–10243; 124–10198–10244; 124–10198–10245; 124–10198–10246; 124–10198–10248; 124–10198–10249; 124–10198–10250; 124–10198–10251; 124–10198–10252; 124–10198–10253; 124–10198–10254; 124–10198–10255; 124–10198–10257; 124–10198–10258; 124–10198–10259; 124–10198–10260; 124–10198–10261; 124–10198–10262; 124–10198–10263; 124–10198–10264; 124–10198–10266; 124–10198–10267; 124–10198–10268; 124–10198–10269; 124–10198–10270; 124–10198–10272; 124–10198–10273; 124–10199–10277; 124–10199–10279; 124–10199–10280; 124–10199–10281; 124–10199–10283; 124–10199–10284; 124–10199–10285; 124–10199–10286; 124–10199–10287; 124–10199–10288; 124–10199–10289; 124–10199–10290; 124–10199–10292; 124–10199–10293; 124–10199–10294; 124–10199–10295; 124–10199–10296; 124–10199–10297; 124–10199–10298; 124–10199–10299; 124–10199–10300; 124–10199–10301; 124–10199–10302; 124–10199–10303; 124–10199–10304; 124–10199–10305; 124–10199–10306; 124–10199–10307; 124–10199–10308; 124–10199–10309; 124–10199–10310; 124–10199–10311; 124–10199–10312; 124–10199–10313; 124–10199–10314; 124–10199–10315; 124–10199–10316; 124–10199–10317; 124–10199–10318; 124–10199–10319; 124–10199–10320; 124–10199–10321; 124–10199–10322; 124–10199–10323; 124–10200–10001; 124–10200–10002; 124–10200–10003; 124–10200–10004; 124–10200–10005; 124–10200–10006; 124–10200–10007; 124–10200–10008; 124–10200–10009; 124–10200–10010; 124–10200–10011; 124–10200–10012; 124–10200–10013; 124–10200–10015; 124–10200–10016; 124–10200–10017; 124–10200–10018; 124–10200–10019; 124–10200–10020; 124–10200–10022; 124–10200–10023; 124–10200–10025; 124–10200–10026; 124–10200–10027; 124–10200–10028; 124–10200–10029; 124–10200–10031; 124–10200–10032; 124–10200–10033; 124–10200–10036; 124–10200–10038; 124–10200–10039; 124–10200–10041; 124–10200–10044; 124–10200–10045; 124–10200–10047; 124–10200–10051; 124–10200–10055; 124–10200–10056; 124–10200–10057; 124–10200–10058; 124–10200–10059; 124–10200–10060; 124–10200–10061; 124–10200–10062; 124–10200–10063; 124–10200–10064; 124–10200–10072; 124–10200–10074; 124–10200–10075; 124–10200–10150; 124–10201–10418; 124–10201–10419; 124–10201–10420; 124–10201–10422; 124–10201–10423; 124–10201–10424; 124–10202–10144; 124–10202–10145; 124–10202–10146; 124–10202–10147; 124–10202–10151; 124–10202–10153; 124–10202–10154; 124–10202–10156; 124–10202–10158; 124–10202–10159; 124–10202–10160; 124–10202–10163; 124–10202–10165; 124–10202–10166; 124–10202–10171; 124–10202–10172; 124–10202–10173; 124–10202–10175; 124–10202–10178; 124–10202–10179; 124–10202–10180; 124–10202–10181; 124–10202–10182; 124–10202–10183; 124–10202–10184; 124–10202–10185; 124–10202–10186; 124–10202–10187; 124–10202–10188; 124–10202–10189; 124–10202–10190; 124–10202–10191; 124–10202–10192; 124–10202–10193; 124–10202–10194; 124–10202–10195; 124–10202–10196; 124–10202–10197; 124–10202–10198; 124–10202–10199; 124–10202–10200; 124–10202–10201; 124–10202–10202; 124–10202–10203; 124–10202–10204; 124–10202–10206; 124–10202–10207; 124–10202–10208; 124–10202–10209; 124–10202–10210; 124–10202–10211; 124–10202–10212; 124–10202–10213; 124–10202–10215; 124–10202–10216; 124–10202–10217; 124–10202–10218; 124–10202–10219; 124–10202–10220; 124–10202–10221; 124–10202–10222; 124–10202–10223; 124–10202–10224; 124–10202–10225; 124–10202–10227; 124–10202–10228; 124–10202–10229; 124–10202–10230; 124–10202–10231; 124–10202–10232; 124–10202–10234; 124–10202–10235; 124–10202–10236; 124–10202–10237; 124–10202–10238; 124–10202–10239; 124–10202–10240; 124–10202–10241; 124–10202–10242; 124–10202–10243; 124–10202–10244; 124–10202–10245; 124–10202–10246; 124–10202–10248; 124–10202–10249; 124–10202–10250; 124–10202–10251; 124–10202–10252; 124–10202–10253; 124–10202–10254; 124–10202–10255; 124–10202–10256; 124–10202–10257; 124–10202–10259; 124–10202–10260; 124–10202–10261; 124–10202–10262; 124–10202–10263; 124–10202–10264; 124–10202–10266; 124–10202–10267; 124–10202–10271; 124–10202–10272; 124–10202–10273; 124–10202–10274; 124–10202–10275; 124–10202–10276; 124–10202–10280; 124–10202–10281; 124–10202–10284; 124–10202–10286; 124–10202–10289; 124–10202–10292; 124–10202–10293; 124–10202–10294; 124–10202–10295; 124–10202–10297; 124–10202–10298; 124–10202–10301; 124–10202–10302; 124–10202–10303; 124–10202–10304; 124–10202–10305; 124–10202–10306; 124–10202–10307; 124–10202–10308; 124–10202–10309; 124–10202–10312; 124–10202–10313; 124–10202–10314; 124–10202–10315; 124–10202–10318; 124–10202–10319; 124–10202–10322; 124–10202–10323; 124–10202–10324; 124–10202–10326; 124–10202–10327; 124–10202–10446; 124–10202–10447; 124–10202–10448; 124–10202–10449; 124–10202–10450; 124–10202–10451; 124–10202–10452; 124–10202–10453; 124–10202–10454; 124–10202–10455; 124–10202–10456; 124–10202–10457; 124–10202–10458; 124–10203–10136; 124–10203–10138; 124–10203–10139; 124–10203–10140; 124–10203–10146; 124–10203–10147; 124–10203–10148; 124–10203–10150; 124–10203–10151; 124–10203–10152; 124–10203–10154; 124–10203–10156; 124–10203–10157; 124–10203–10160; 124–10203–10163; 124–10203–10167; 124–10203–10168; 124–10203–10171; 124–10203–10176; 124–10203–10178; 124–10203–10467; 124–10203–10470; 124–10203–10479; 124–10203–10481; 124–10203–10483; 124–10203–10486; 124–10203–10487; 124–10203–10488; 124–10203–10490; 124–10203–10495; 124–10203–10496; 124–10203–10498; 124–10203–10499; 124–10204–10003; 124–10204–10005; 124–10204–10006; 124–10204–10007; 124–10204–10011; 124–10204–10012; 124–10204–10014; 124–10204–10016; 124–10204–10018; 124–10204–10019; 124–10204–10020; 124–10204–10021; 124–10204–10022; 124–10204–10023; 124–10204–10024; 124–10204–10025; 124–10204–10026; 124–10204–10027; 124–10204–10029; 124–10204–10031; 124–10204–10032; 124–10204–10033; 124–10204–10034; 124–10204–10039; 124–10204–10045; 124–10204–10046; 124–10204–10049; 124–10204–10050; 124–10204–10051; 124–10204–10052; 124–10204–10053; 124–10204–10055; 124–10204–10056; 124–10204–10057; 124–10204–10058; 124–10204–10061; 124–10204–10064; 124–10204–10066; 124–10204–10071; 124–10204–10072; 124–10204–10074; 124–10204–10075; 124–10204–10077; 124–10204–10078; 124–10204–10079; 124–10204–10080; 124–10204–10085; 124–10204–10086; 124–10204–10087; 124–10204–10088; 124–10204–10091; 124–10204–10093; 124–10204–10094; 124–10204–10095; 124–10204–10096; 124–10204–10102; 124–10204–10106; 124–10204–10107; 124–10204–10111; 124–10204–10113; 124–10204–10116; 124–10204–10125; 124–10204–10126; 124–10204–10127; 124–10204–10131; 124–10204–10134; 124–10204–10167; 124–10204–10168; 124–10204–10172; 124–10204–10173; 124–10204–10174; 124–10204–10178; 124–10204–10180; 124–10204–10181; 124–10204–10185; 124–10204–10188; 124–10204–10190; 124–10204–10192; 124–10204–10194; 124–10204–10196; 124–10204–10199; 124–10204–10200; 124–10204–10201; 124–10204–10257; 124–10204–10258; 124–10204–10259; 124–10204–10260; 124–10204–10261; 124–10204–10262; 124–10204–10263; 124–10204–10265; 124–10204–10266; 124–10204–10267; 124–10204–10268; 124–10204–10269; 124–10204–10270; 124–10204–10271; 124–10204–10273; 124–10204–10274; 124–10204–10275; 124–10204–10276; 124–10204–10277; 124–10204–10279; 124–10204–10280; 124–10204–10281; 124–10204–10282; 124–10204–10284; 124–10204–10285; 124–10204–10287; 124–10204–10288; 124–10204–10289; 124–10204–10290; 124–10204–10292; 124–10204–10293; 124–10204–10294; 124–10204–10499; 124–10205–10004; 124–10205–10009; 124–10205–10010; 124–10205–10012; 124–10205–10013; 124–10205–10015; 124–10205–10019; 124–10205–10022; 124–10205–10023; 124–10205–10026; 124–10205–10028; 124–10205–10029; 124–10205–10035; 124–10205–10036; 124–10205–10037; 124–10205–10044; 124–10205–10045; 124–10205–10046; 124–10205–10047; 124–10205–10050; 124–10205–10053; 124–10205–10054; 124–10205–10056; 124–10205–10058; 124–10205–10062; 124–10205–10063; 124–10205–10065; 124–10205–10068; 124–10205–10071; 124–10205–10072; 124–10205–10074; 124–10205–10449; 124–10206–10000; 124–10206–10001; 124–10206–10002; 124–10206–10003; 124–10206–10005; 124–10206–10008; 124–10206–10010; 124–10206–10011; 124–10206–10012; 124–10206–10013; 124–10206–10015; 124–10206–10017; 124–10206–10018; 124–10206–10019; 124–10206–10020; 124–10206–10021; 124–10206–10022; 124–10206–10024; 124–10206–10025; 124–10206–10026; 124–10206–10028; 124–10206–10029; 124–10206–10031; 124–10206–10032; 124–10206–10034; 124–10206–10036; 124–10206–10038; 124–10206–10039; 124–10206–10040; 124–10206–10044; 124–10206–10045; 124–

10206–10046; 124–10206–10047; 124–
10206–10048; 124–10206–10049; 124–
10206–10050; 124–10206–10052; 124–
10206–10054; 124–10206–10055; 124–
10206–10056; 124–10206–10057; 124–
10206–10059; 124–10206–10060; 124–
10206–10061; 124–10206–10063; 124–
10206–10064; 124–10206–10065; 124–
10206–10068; 124–10206–10069; 124–
10206–10070; 124–10206–10071; 124–
10206–10072; 124–10206–10073; 124–
10206–10075; 124–10206–10076; 124–
10206–10078; 124–10206–10079; 124–
10206–10080; 124–10206–10082; 124–
10206–10083; 124–10206–10088; 124–
10206–10089; 124–10206–10090; 124–
10206–10093; 124–10206–10094; 124–
10206–10097; 124–10206–10099; 124–
10206–10100; 124–10206–10103; 124–
10206–10387; 124–10206–10389; 124–
10206–10390; 124–10206–10391; 124–
10206–10393; 124–10206–10397; 124–
10206–10398; 124–10206–10399; 124–
10206–10400; 124–10207–10260; 124–
10207–10262; 124–10207–10263; 124–
10207–10264; 124–10207–10265; 124–
10207–10266; 124–10207–10272; 124–
10207–10273; 124–10207–10274; 124–
10207–10275; 124–10207–10276; 124–
10207–10278; 124–10207–10279; 124–
10207–10281; 124–10207–10282; 124–
10207–10283; 124–10207–10285; 124–
10207–10286; 124–10207–10287; 124–
10207–10289; 124–10207–10291; 124–
10207–10292; 124–10207–10293; 124–
10207–10294; 124–10207–10295; 124–
10207–10296; 124–10207–10299; 124–
10207–10301; 124–10207–10302; 124–
10207–10303; 124–10207–10304; 124–
10207–10306; 124–10207–10307; 124–
10207–10309; 124–10207–10312; 124–
10207–10313; 124–10207–10314; 124–
10207–10316; 124–10207–10319; 124–
10207–10371; 124–10207–10372; 124–
10207–10373; 124–10207–10374; 124–
10207–10375; 124–10207–10443; 124–
10207–10444; 124–10207–10445; 124–
10207–10446; 124–10207–10447; 124–
10207–10448; 124–10208–10247; 124–
10208–10248; 124–10208–10249; 124–
10208–10250; 124–10208–10251; 124–
10208–10252; 124–10208–10253; 124–
10208–10254; 124–10208–10255; 124–
10208–10256; 124–10208–10257; 124–
10208–10258; 124–10208–10259; 124–
10208–10260; 124–10208–10261; 124–
10208–10262; 124–10208–10263; 124–
10209–10004; 124–10209–10005; 124–
10209–10006; 124–10209–10009; 124–
10209–10011; 124–10209–10012; 124–
10209–10013; 124–10209–10016; 124–
10209–10018; 124–10209–10019; 124–
10209–10028; 124–10209–10031; 124–
10209–10035; 124–10209–10036; 124–
10209–10039; 124–10209–10042; 124–
10209–10043; 124–10209–10044; 124–
10209–10046; 124–10209–10049; 124–
10209–10050; 124–10209–10051; 124–
10209–10053; 124–10209–10054; 124–
10209–10055; 124–10209–10056; 124–
10209–10057; 124–10209–10060; 124–
10209–10061; 124–10209–10064; 124–
10209–10065; 124–10209–10066; 124–
10209–10071; 124–10209–10072; 124–
10209–10076; 124–10209–10077; 124–
10209–10080; 124–10209–10081; 124–
10209–10083; 124–10209–10085; 124–
10209–10086; 124–10209–10088; 124–
10209–10089; 124–10209–10091; 124–
10209–10092; 124–10209–10093; 124–
10209–10094; 124–10209–10095; 124–
10209–10096; 124–10209–10097; 124–
10209–10098; 124–10209–10099; 124–
10209–10101; 124–10209–10102; 124–
10209–10103; 124–10209–10105; 124–
10209–10106; 124–10209–10107; 124–
10209–10108; 124–10209–10109; 124–
10209–10110; 124–10209–10111; 124–
10209–10112; 124–10209–10113; 124–
10209–10114; 124–10209–10115; 124–
10209–10116; 124–10209–10117; 124–
10209–10118; 124–10209–10119; 124–
10209–10120; 124–10209–10121; 124–
10209–10122; 124–10209–10123; 124–
10209–10124; 124–10209–10125; 124–
10209–10126; 124–10209–10127; 124–
10209–10128; 124–10209–10130; 124–
10209–10131; 124–10209–10132; 124–
10209–10133; 124–10209–10134; 124–
10209–10135; 124–10209–10137; 124–
10209–10139; 124–10209–10140; 124–
10209–10141; 124–10209–10142; 124–
10209–10143; 124–10209–10144; 124–
10209–10145; 124–10209–10146; 124–
10209–10148; 124–10209–10150; 124–
10209–10153; 124–10209–10154; 124–
10209–10155; 124–10209–10156; 124–
10209–10157; 124–10209–10158; 124–
10209–10159; 124–10209–10160; 124–
10209–10162; 124–10209–10163; 124–
10209–10164; 124–10209–10165; 124–
10209–10166; 124–10209–10167; 124–
10209–10168; 124–10209–10169; 124–
10209–10170; 124–10209–10172; 124–
10209–10173; 124–10209–10174; 124–
10209–10175; 124–10209–10176; 124–
10209–10177; 124–10209–10178; 124–
10209–10179; 124–10209–10180; 124–
10209–10181; 124–10209–10183; 124–
10209–10184; 124–10209–10185; 124–
10209–10186; 124–10209–10187; 124–
10209–10188; 124–10209–10192; 124–
10209–10193; 124–10209–10194; 124–
10209–10195; 124–10209–10197; 124–
10209–10198; 124–10209–10199; 124–
10209–10200; 124–10209–10201; 124–
10209–10202; 124–10209–10203; 124–
10209–10205; 124–10209–10207; 124–
10209–10208; 124–10209–10209; 124–
10209–10211; 124–10209–10212; 124–
10209–10213; 124–10209–10214; 124–
10209–10215; 124–10209–10216; 124–
10209–10218; 124–10209–10219; 124–
10209–10220; 124–10209–10221; 124–
10209–10222; 124–10209–10223; 124–
10209–10225; 124–10209–10226; 124–
10209–10227; 124–10209–10228; 124–
10209–10230; 124–10209–10231; 124–
10209–10232; 124–10209–10233; 124–
10209–10234; 124–10209–10235; 124–
10209–10236; 124–10209–10237; 124–
10209–10238; 124–10209–10239; 124–
10209–10240; 124–10209–10241; 124–
10209–10242; 124–10209–10243; 124–
10209–10244; 124–10209–10245; 124–
10209–10246; 124–10209–10247; 124–
10209–10248; 124–10209–10251; 124–
10209–10252; 124–10209–10257; 124–
10209–10260; 124–10209–10263; 124–
10209–10264; 124–10209–10265; 124–
10209–10270; 124–10209–10311; 124–
10209–10314; 124–10209–10315; 124–
10209–10318; 124–10209–10319; 124–
10209–10321; 124–10209–10331; 124–
10209–10332; 124–10209–10345; 124–
10209–10346; 124–10209–10349; 124–
10209–10350; 124–10209–10353; 124–
10209–10358; 124–10209–10358; 124–
10209–10359; 124–10209–10361; 124–
10209–10366; 124–10209–10367; 124–
10209–10373; 124–10209–10381; 124–
10210–10207; 124–10210–10208; 124–
10210–10209; 124–10210–10211; 124–
10210–10212; 124–10210–10214; 124–
10210–10215; 124–10210–10217; 124–
10210–10218; 124–10210–10221; 124–
10210–10222; 124–10210–10223; 124–
10210–10355; 124–10210–10359; 124–
10210–10360; 124–10210–10363; 124–
10210–10364; 124–10210–10366; 124–
10210–10367; 124–10210–10369; 124–
10210–10371; 124–10210–10372; 124–
10210–10373; 124–10210–10374; 124–
10210–10375; 124–10210–10376; 124–
10210–10379; 124–10210–10382; 124–
10210–10384; 124–10210–10385; 124–
10210–10387; 124–10210–10388; 124–
10210–10399; 124–10210–10410; 124–
10210–10411; 124–10210–10412; 124–
10210–10413; 124–10210–10414; 124–
10210–10415; 124–10210–10416; 124–
10210–10417; 124–10210–10418; 124–
10210–10419; 124–10210–10420; 124–
10210–10421; 124–10210–10422; 124–
10210–10423; 124–10210–10424; 124–
10210–10427; 124–10210–10428; 124–
10210–10429; 124–10210–10430; 124–
10210–10431; 124–10210–10432; 124–
10210–10434; 124–10210–10437; 124–
10210–10438; 124–10210–10439; 124–
10210–10440; 124–10210–10441; 124–
10210–10442; 124–10210–10443; 124–
10210–10444; 124–10210–10445; 124–
10210–10446; 124–10210–10447; 124–
10210–10448; 124–10210–10449; 124–
10210–10450; 124–10210–10451; 124–
10211–10054; 124–10211–10056; 124–
10211–10057; 124–10211–10060; 124–
10211–10061; 124–10211–10412; 124–
10211–10413; 124–10211–10414; 124–
10211–10415; 124–10211–10416; 124–
10211–10417; 124–10211–10418; 124–
10212–10129; 124–10212–10130; 124–
10212–10131; 124–10212–10133; 124–
10212–10134; 124–10212–10136; 124–
10212–10136; 124–10212–10140; 124–
10212–10142; 124–10212–10144; 124–
10212–10145; 124–10212–10146; 124–
10212–10149; 124–10212–10151; 124–
10212–10152; 124–10212–10153; 124–
10212–10155; 124–10212–10156; 124–
10212–10157; 124–10212–10158; 124–
10212–10159; 124–10212–10161; 124–
10212–10163; 124–10213–10278; 124–
10213–10279; 124–10213–10280; 124–
10213–10285; 124–10213–10286; 124–
10213–10287; 124–10213–10288; 124–
10213–10289; 124–10213–10290; 124–
10213–10291; 124–10213–10292; 124–
10213–10294; 124–10213–10295; 124–
10213–10296; 124–10213–10297; 124–
10213–10298; 124–10213–10299; 124–
10213–10300; 124–10213–10301; 124–
10213–10303; 124–10213–10304; 124–
10213–10305; 124–10213–10306; 124–
10213–10307; 124–10213–10308; 124–
10213–10309; 124–10214–10203; 124–
10214–10204; 124–10214–10205; 124–

10214–10206; 124–10214–10207; 124–
10214–10208; 124–10214–10209; 124–
10214–10211; 124–10214–10212; 124–
10214–10216; 124–10214–10218; 124–
10214–10220; 124–10214–10221; 124–
10214–10223; 124–10214–10224; 124–
10214–10228; 124–10214–10232; 124–
10214–10334; 124–10214–10335; 124–
10214–10338; 124–10215–10353; 124–
10215–10354; 124–10216–10344; 124–
10216–10345; 124–10216–10349; 124–
10216–10351; 124–10216–10354; 124–
10216–10356; 124–10216–10357; 124–
10216–10358; 124–10216–10359; 124–
10216–10360; 124–10216–10361; 124–
10216–10364; 124–10216–10366; 124–
10216–10367; 124–10216–10368; 124–
10217–10019; 124–10217–10020; 124–
10217–10021; 124–10217–10022; 124–
10217–10023; 124–10217–10024; 124–
10217–10025; 124–10217–10026; 124–
10217–10027; 124–10217–10028; 124–
10217–10030; 124–10217–10031; 124–
10217–10032; 124–10217–10033; 124–
10217–10035; 124–10217–10037; 124–
10219–10448; 124–10219–10450; 124–
10219–10451; 124–10219–10455; 124–
10219–10460; 124–10219–10461; 124–
10219–10463; 124–10219–10464; 124–
10219–10466; 124–10219–10468; 124–
10219–10469; 124–10219–10470; 124–
10219–10471; 124–10219–10472; 124–
10219–10473; 124–10219–10475; 124–
10219–10477; 124–10219–10478; 124–
10219–10479; 124–10219–10480; 124–
10219–10482; 124–10219–10484; 124–
10219–10485; 124–10219–10486; 124–
10219–10487; 124–10219–10488; 124–
10219–10489; 124–10219–10490; 124–
10219–10491; 124–10219–10493; 124–
10219–10494; 124–10219–10495; 124–
10219–10496; 124–10219–10497; 124–
10219–10498; 124–10219–10499; 124–
10220–10048; 124–10220–10049; 124–
10220–10051; 124–10220–10052; 124–
10220–10053; 124–10220–10054; 124–
10220–10055; 124–10220–10056; 124–
10220–10306; 124–10220–10307; 124–
10220–10308; 124–10220–10311; 124–
10220–10312; 124–10220–10314; 124–
10220–10315; 124–10220–10316; 124–
10220–10317; 124–10220–10318; 124–
10220–10319; 124–10220–10321; 124–
10220–10322; 124–10220–10323; 124–
10220–10324; 124–10220–10325; 124–
10220–10326; 124–10220–10327; 124–
10220–10328; 124–10220–10329; 124–
10220–10330; 124–10220–10331; 124–
10220–10445; 124–10220–10446; 124–
10220–10447; 124–10220–10448; 124–
10220–10451; 124–10220–10453; 124–
10220–10454; 124–10220–10455; 124–
10220–10456; 124–10220–10458; 124–
10220–10459; 124–10220–10460; 124–
10220–10461; 124–10220–10463; 124–
10221–10050; 124–10221–10055; 124–
10221–10058; 124–10221–10062; 124–
10221–10064; 124–10222–10197; 124–
10222–10199; 124–10222–10201; 124–
10222–10202; 124–10222–10203; 124–
10222–10204; 124–10222–10207; 124–
10222–10208; 124–10222–10209; 124–
10222–10211; 124–10222–10215; 124–
10222–10218; 124–10222–10219; 124–
10222–10220; 124–10222–10221; 124–
10222–10222; 124–10222–10223; 124–
10222–10226; 124–10222–10227; 124–
10222–10229; 124–10222–10231; 124–
10222–10233; 124–10222–10236; 124–
10222–10237; 124–10222–10238; 124–
10222–10239; 124–10222–10240; 124–
10222–10241; 124–10222–10282; 124–
10222–10283; 124–10222–10284; 124–
10222–10285; 124–10222–10286; 124–
10222–10287; 124–10222–10288; 124–
10222–10289; 124–10222–10290; 124–
10222–10291; 124–10222–10292; 124–
10222–10293; 124–10222–10294; 124–
10222–10295; 124–10222–10296; 124–
10222–10297; 124–10222–10298; 124–
10222–10299; 124–10222–10300; 124–
10222–10470; 124–10222–10473; 124–
10222–10474; 124–10223–10031; 124–
10223–10035; 124–10223–10036; 124–
10223–10037; 124–10223–10038; 124–
10223–10043; 124–10223–10045; 124–
10223–10050; 124–10223–10417; 124–
10223–10418; 124–10223–10419; 124–
10223–10420; 124–10223–10421; 124–
10223–10422; 124–10223–10423; 124–
10223–10424; 124–10223–10425; 124–
10224–10090; 124–10225–10308; 124–
10225–10309; 124–10225–10336; 124–
10225–10337; 124–10225–10339; 124–
10225–10342; 124–10225–10348; 124–
10225–10349; 124–10226–10074; 124–
10226–10075; 124–10226–10311; 124–
10226–10312; 124–10226–10313; 124–
10226–10314; 124–10226–10315; 124–
10226–10316; 124–10226–10317; 124–
10226–10322; 124–10226–10323; 124–
10226–10324; 124–10226–10325; 124–
10226–10326; 124–10226–10327; 124–
10226–10329; 124–10226–10330; 124–
10226–10331; 124–10226–10332; 124–
10226–10333; 124–10226–10334; 124–
10226–10335; 124–10226–10338; 124–
10226–10339; 124–10226–10340; 124–
10226–10342; 124–10226–10343; 124–
10226–10344; 124–10226–10346; 124–
10226–10347; 124–10226–10348; 124–
10226–10350; 124–10226–10351; 124–
10226–10352; 124–10226–10353; 124–
10226–10354; 124–10226–10356; 124–
10226–10359; 124–10226–10364; 124–
10226–10365; 124–10226–10367; 124–
10226–10369; 124–10226–10372; 124–
10226–10373; 124–10226–10375; 124–
10226–10376; 124–10226–10377; 124–
10226–10378; 124–10226–10380; 124–
10226–10381; 124–10226–10382; 124–
10226–10383; 124–10226–10385; 124–
10226–10386; 124–10226–10387; 124–
10226–10388; 124–10226–10393; 124–
10226–10394; 124–10226–10396; 124–
10226–10398; 124–10277–10006; 124–
10277–10008; 124–10277–10011; 124–
10277–10014; 124–10277–10016; 124–
10277–10019; 124–10277–10020; 124–
10277–10023; 124–10277–10024; 124–
10277–10025; 124–10277–10026; 124–
10277–10028; 124–10277–10029; 124–
10277–10031; 124–10277–10032; 124–
10277–10034; 124–10277–10036; 124–
10277–10037; 124–10277–10039; 124–
10277–10041; 124–10278–10002; 124–
10278–10003; 124–10278–10008; 124–
10278–10009; 124–10278–10011; 124–
10278–10012; 124–10278–10013; 124–
10278–10015; 124–10278–10018; 124–
10278–10019; 124–10278–10020; 124–
10278–10021; 124–10278–10023; 124–
10278–10025; 124–10278–10028; 124–
10278–10029; 124–10278–10031; 124–
10278–10033; 124–10278–10037; 124–
10278–10039; 124–10278–10042; 124–
10278–10045; 124–10278–10047; 124–
10278–10048; 124–10278–10050; 124–
10278–10051; 124–10278–10053; 124–
10279–10000; 124–10279–10001; 124–
10279–10002; 124–10279–10003; 124–
10279–10004; 124–10279–10109; 124–
10279–10110; 124–10279–10111; 124–
10279–10112; 124–10280–10164; 124–
10280–10167; 124–10280–10168; 124–
10281–10160; 124–10281–10161; 124–
10281–10162; 124–10281–10163; 124–
10282–10094; 124–10282–10095; 124–
10282–10096; 124–10282–10097; 124–
10282–10098; 124–10282–10099; 124–
10282–10100; 124–10282–10101; 124–
10282–10102; 124–10282–10103; 124–
10282–10104; 124–10282–10105; 124–
10282–10106; 124–10282–10107; 124–
10282–10108; 124–10283–10013; 124–
10283–10014; 124–10283–10015; 124–
10283–10018; 124–10283–10019; 124–
10283–10021; 124–10283–10022; 124–
10283–10023; 124–10283–10024; 124–
10283–10026; 124–10283–10028; 124–
10283–10030; 124–10283–10033; 124–
10283–10034; 124–10283–10036; 124–
10283–10037; 124–10283–10040; 124–
10283–10218; 124–10283–10219; 124–
10283–10220; 124–10283–10221; 124–
10283–10247; 124–10283–10260; 124–
10283–10261; 124–10283–10263; 124–
10283–10264; 124–10283–10266; 124–
10283–10267; 124–10283–10268; 124–
10283–10269; 124–10283–10270; 124–
10283–10271; 124–10283–10273; 124–
10283–10274; 124–10283–10276; 124–
10283–10281; 124–10283–10288; 124–
10283–10295; 124–10283–10296; 124–
10283–10299; 124–10283–10300; 124–
10283–10301; 124–10284–10045; 124–
10284–10053; 124–10284–10055; 124–
10284–10055; 124–10284–10056; 124–
10284–10060; 124–10284–10062; 124–
10284–10095; 124–10284–10096; 124–
10284–10097; 124–10284–10098; 124–
10284–10099; 124–10284–10100; 124–
10284–10101; 124–10284–10102; 124–
10284–10103; 124–10284–10104; 124–
10284–10105; 124–10284–10107; 124–
10284–10109; 124–10284–10111; 124–
10284–10116; 124–10284–10117; 124–
10284–10119; 124–10284–10120; 124–
10284–10122; 124–10284–10126; 124–
10284–10127; 124–10284–10129; 124–
10284–10131; 124–10284–10198; 124–
10284–10199; 124–10284–10200; 124–
10284–10201; 124–10284–10202; 124–
10284–10203; 124–10284–10204; 124–
10284–10205; 124–10284–10206; 124–
10284–10207; 124–10284–10208; 124–
10284–10209; 124–10284–10210; 124–
10284–10211; 124–10285–10003; 124–
10285–10005; 124–10285–10006; 124–
10285–10007; 124–10285–10008; 124–
10285–10009; 124–10285–10010; 124–
10285–10011; 124–10285–10208; 124–
10286–10100; 124–10286–10101; 124–
10286–10102; 124–10286–10103; 124–
10286–10104; 124–10286–10105; 124–
10286–10106; 124–10286–10107; 124–
10286–10108; 124–10286–10109; 124–
10286–10111; 124–10286–10112; 124–

10286–10113; 124–10286–10114; 124–10286–10115; 124–10286–10116; 124–10286–10117; 124–10286–10119; 124–10286–10120; 124–10286–10121; 124–10286–10122; 124–10286–10123; 124–10286–10124; 124–10287–10247; 124–10287–10246; 124–10287–10250; 124–10287–10251; 124–10287–10252; 124–10287–10253; 124–10287–10254; 124–10288–10255; 124–10288–10256; 124–10288–10257; 124–10288–10258; 124–10288–10259; 124–10288–10260; 124–10288–10261; 124–10288–10262; 124–10288–10263; 124–10288–10264; 124–10288–10265; 124–10288–10266; 124–10288–10267; 124–10288–10268; 124–10288–10269; 124–10288–10270; 124–10288–10271; 124–10288–10272; 124–10288–10273; 124–10288–10311; 124–10288–10312; 124–10288–10313; 124–10288–10314; 124–10288–10315; 124–10288–10316; 124–10288–10317; 124–10288–10318; 124–10288–10319; 124–10288–10320; 124–10288–10322; 124–10288–10323; 124–10288–10325; 124–10288–10326; 124–10288–10327; 124–10288–10328; 124–10288–10329; 124–10288–10333; 124–10288–10334; 124–10288–10335; 124–10288–10336; 124–10288–10337; 124–10288–10338; 124–10288–10339; 124–10288–10340; 124–10288–10342; 124–10288–10343; 124–10288–10345; 124–10288–10346; 124–10288–10347; 124–10288–10348; 124–10288–10349; 124–10288–10350; 124–10288–10352; 124–10288–10353; 124–10288–10355; 124–10288–10356; 124–10288–10357; 124–10288–10412; 124–10288–10413; 124–10289–10131; 124–10289–10132; 124–10289–10133; 124–10289–10134; 124–10289–10135; 124–10289–10136; 124–10289–10137; 124–10289–10138; 124–10289–10139; 124–10289–10140; 124–10289–10141; 124–10289–10143; 124–10289–10146; 124–10289–10147; 124–10289–10148; 124–10289–10149; 124–10289–10150; 124–10289–10151; 124–10289–10152; 124–10289–10153; 124–10289–10154; 124–10289–10155; 124–10289–10156; 124–10289–10157; 124–10289–10158; 124–10289–10160; 124–10289–10161; 124–10289–10163; 124–10289–10165; 124–10289–10170; 124–10289–10172; 124–10289–10174; 124–10289–10176; 124–10289–10177; 124–10289–10179; 124–10289–10180; 124–10289–10181; 124–10290–10139; 124–10290–10140; 124–10290–10141; 124–10290–10146; 124–10290–10147; 124–10290–10148; 124–10290–10149; 124–10290–10150; 124–10290–10151; 124–10290–10153; 124–10290–10154; 124–10290–10199; 124–10290–10200; 124–10290–10201; 124–10290–10202; 124–10290–10203; 124–10290–10204; 124–10290–10205; 124–10290–10207; 124–10290–10209; 124–10290–10210; 124–10290–10212; 124–10290–10213; 124–10290–10214; 124–10290–10215; 124–10290–10216; 124–10290–10217; 124–10290–10218; 124–10290–10221; 124–10290–10222; 124–10290–10224; 124–10290–10228; 124–10290–10229; 124–10290–10231; 124–10290–10232; 124–10290–10233; 124–10290–10236; 124–10290–10237; 124–10290–10238; 124–10290–10239; 124–10290–10240; 124–10290–10241; 124–10290–10242; 124–10290–10244; 124–10290–10245; 124–10290–10248; 124–10290–10249; 124–10290–10252; 124–10290–10254; 124–10290–10256; 124–10290–10258; 124–10290–10259; 124–10290–10260; 124–10290–10261; 124–10290–10263; 124–10290–10265; 124–10290–10266; 124–10290–10268; 124–10290–10269; 124–10290–10270; 124–10290–10271; 124–10290–10345; 124–10290–10412; 124–10290–10413; 124–10290–10414; 124–10290–10415; 124–10290–10417; 124–10290–10418; 124–10290–10419; 124–10290–10420; 124–10290–10421; 124–10290–10422; 124–10290–10423; 124–10290–10424; 124–10290–10425; 124–10290–10426; 124–10290–10427; 124–10290–10428; 124–10290–10429; 124–10290–10430; 124–10290–10431; 124–10292–10027; 124–10292–10028; 124–10292–10029; 124–10292–10030; 124–10292–10031; 124–10292–10032; 124–10292–10033; 124–10292–10034; 124–10292–10035; 124–10292–10036; 124–10292–10037; 124–10292–10038; 124–10292–10039; 124–10292–10040; 124–10292–10041; 124–10292–10042; 124–10292–10043; 124–10292–10044; 124–10292–10045; 124–10292–10169; 124–10292–10170; 124–10292–10171; 124–10292–10172; 124–10292–10176; 124–10292–10179; 124–10292–10180; 124–10292–10182; 124–10292–10184; 124–10292–10185; 124–10292–10188; 124–10292–10189; 124–10292–10190; 124–10292–10191; 124–10292–10192; 124–10292–10193; 124–10292–10194; 124–10292–10196; 124–10292–10197; 124–10292–10198; 124–10292–10199; 124–10292–10202; 124–10292–10203; 124–10292–10204; 124–10292–10205; 124–10292–10206; 124–10292–10207; 124–10292–10208; 124–10292–10209; 124–10292–10211; 124–10292–10213; 124–10292–10214; 124–10292–10215; 124–10292–10216; 124–10292–10217; 124–10292–10218; 124–10292–10219; 124–10292–10220; 124–10292–10222; 124–10292–10223; 124–10292–10224; 124–10292–10225; 124–10292–10226; 124–10292–10227; 124–10292–10229; 124–10292–10230; 124–10292–10231; 124–10292–10232; 124–10292–10233; 124–10292–10234; 124–10292–10235; 124–10292–10237; 124–10292–10238; 124–10292–10241; 124–10292–10242; 124–10292–10243; 124–10292–10244; 124–10292–10245; 124–10292–10246; 124–10292–10248; 124–10292–10249; 124–10292–10250; 124–10292–10251; 124–10292–10252; 124–10292–10253; 124–10292–10255; 124–10292–10256; 124–10292–10258; 124–10292–10260; 124–10292–10261; 124–10292–10262; 124–10292–10263; 124–10292–10264; 124–10292–10265; 124–10292–10267; 124–10293–10175; 124–10293–10176; 124–10293–10177; 124–10293–10179; 124–10293–10180; 124–10293–10181; 124–10293–10183; 124–10293–10186; 124–10293–10189; 124–10293–10190; 124–10293–10192; 124–10293–10193; 124–10293–10195; 124–10293–10196; 124–10293–10198; 124–10293–10199; 124–10293–10200; 124–10293–10202; 124–10293–10203; 124–10293–10204; 124–10293–10212; 124–10293–10213; 124–10293–10216; 124–10293–10217; 124–10293–10218; 124–10293–10219; 124–10293–10220; 124–10293–10221; 124–10293–10222; 124–10293–10224; 124–10293–10225; 124–10293–10378; 124–10293–10380; 124–10293–10381; 124–10293–10449; 124–10293–10450; 124–10293–10451; 124–10293–10452; 124–10293–10453; 124–10293–10454; 124–10293–10455; 124–10293–10461; 124–10293–10462; 124–10293–10463; 124–10293–10464; 124–10293–10465; 124–10293–10466; 124–10293–10467; 124–10293–10469; 124–10293–10471; 124–10293–10473; 124–10293–10477; 124–10293–10478; 124–10293–10479; 124–10293–10480; 124–10293–10481; 124–10293–10482; 124–10293–10483; 124–10293–10484; 124–10293–10485; 124–10293–10486; 124–10293–10489; 124–10293–10490; 124–10293–10492; 124–10293–10493; 124–10293–10494; 124–10293–10496; 124–10293–10497; 124–10293–10498; 124–10294–10248; 124–10294–10249; 124–10294–10250; 124–10294–10251; 124–10294–10252; 124–10294–10253; 124–10294–10254; 124–10294–10255; 124–10294–10256; 124–10294–10257; 124–10294–10258; 124–10294–10259; 124–10294–10260; 124–10294–10261; 124–10294–10262; 124–10294–10263; 124–10294–10415; 124–10294–10416; 124–10294–10417; 124–10294–10418; 124–10294–10419; 124–10294–10420; 124–10294–10422; 124–10294–10423; 124–10294–10424; 124–10294–10425; 124–10294–10427; 124–10294–10428; 124–10294–10432; 124–10294–10434; 124–10294–10435; 124–10294–10437; 124–10294–10438; 124–10294–10439; 124–10294–10441; 124–10294–10443; 124–10294–10444; 124–10294–10445; 124–10294–10447; 124–10294–10448; 124–10294–10449; 124–10294–10450; 124–10294–10451; 124–10294–10452; 124–10294–10453; 124–10294–10454; 124–10294–10455; 124–10294–10456; 124–10294–10457; 124–10294–10458; 124–10294–10459; 124–10294–10460; 124–10294–10461; 124–10294–10462; 124–10294–10463; 124–10294–10464; 124–10294–10465; 124–10294–10466; 124–10294–10467; 124–10294–10468; 124–10294–10470; 124–10294–10471; 124–10294–10472; 124–10294–10473; 124–10294–10475; 124–10294–10476; 124–10294–10477; 124–10294–10478; 124–10294–10480; 124–10294–10481; 124–10294–10482; 124–10294–10483; 124–10294–10486; 124–10294–10487; 124–10294–10488; 124–10294–10490; 124–10294–10493; 124–10294–10494; 124–10294–10496; 124–10294–10497; 124–10296–10005; 124–10296–10006; 124–10296–10007; 124–10296–10008; 124–10296–10010; 124–10296–10011; 124–10296–10012; 124–10296–10013; 124–10296–10014; 124–10296–10057; 124–10296–10058; 124–10296–10059; 124–10296–10060; 124–10296–10061; 124–10296–10062; 124–10296–10063; 124–10296–10064; 124–10296–10065; 124–10296–10072; 124–10296–10073; 124–10296–10074; 124–10296–10075; 124–10296–10076; 124–10296–10077; 124–10296–10078; 124–10296–10079; 124–10296–10080; 124–10296–10081; 124–10296–10082; 124–10296–10083; 124–10296–10084; 124–10296–10085; 124–10296–10086; 124–10296–10087; 124–10296–10088; 124–10296–10089; 124–10296–10090; 124–10296–10125; 124–10296–10126; 124–10296–10127; 124–10296–10128; 124–10297–10192; 124–10297–10194; 124–10297–10195; 124–10297–10196; 124–10297–10197; 124–10297–10198; 124–10297–10200; 124–10297–10201; 124–10297–10202; 124–10297–10203; 124–10297–10204; 124–10297–10205; 124–10297–10207; 124–10297–10208; 124–10297–10210; 124–10297–10212; 124–10297–10214; 124–10297–10215; 124–10297–10216; 124–10297–10218; 124–10297–10219; 124–10297–10220; 124–10297–10221; 124–10297–10222; 124–10297–10223; 124–10297–10224; 124–10297–10225; 124–10297–10226; 124–10297–10227; 124–10297–10228; 124–10297–10229; 124–10297–10230; 124–10297–10232; 124–10297–10234; 124–10298–10171; 124–10298–10172; 124–10298–10173; 124–10298–10174; 124–10298–10176; 124–10298–10177; 124–10298–10179; 124–10298–10180; 124–10298–10181; 124–10298–10182; 124–10298–10183; 124–10298–10184; 124–10298–10185; 124–10298–10186; 124–10298–10187; 124–10298–10188; 124–10298–10189; 124–10298–10190; 124–10298–10191; 124–10298–10192; 124–10298–10196; 124–10298–10197; 124–10298–10198; 124–10298–10203; 124–10298–10204; 124–10298–10206; 124–10298–10207; 124–10298–10208; 124–10298–10210; 124–10298–10211; 124–10298–10214; 124–10298–10215; 124–10298–10216; 124–10298–10217; 124–10298–10218; 124–10298–10221; 124–10298–10222; 124–10298–10223; 124–10298–10224; 124–10298–10225; 124–10298–10227; 124–10298–10228; 124–10298–10229; 124–10298–10230; 124–10298–10231; 124–10298–10232; 124–10298–10233; 124–10298–10234; 124–10298–10235; 124–10298–10236; 124–10298–10237; 124–10301–10211; 124–10301–10212; 124–10301–10213; 124–10301–10214; 124–10301–10215; 124–10301–10216; 124–10301–10217; 124–10301–10218; 124–10301–10219; 124–10301–10220; 124–10301–10221; 124–10301–10222; 124–10301–10223; 124–10301–10224; 124–10301–10225; 124–10301–10226; 124–10301–10227; 124–10301–10228; 124–10301–10229; 124–10301–10230; 124–10301–10231; 124–10301–10232; 124–10301–10233; 124–10301–10234; 124–10301–10235; 124–10301–10236; 124–10301–10237; 124–10301–10238; 124–10301–10239; 124–10301–10240; 124–10301–10241; 124–10301–10242; 124–10301–10243; 124–10301–10244; 124–10301–10245; 124–10301–10246; 124–10301–10247; 124–10301–10248; 124–10301–10249; 124–10301–10250; 124–10301–10251; 124–10301–10252; 124–10305–10000; 124–10305–10001; 124–10307–10003; 124–10307–10005; 124–10307–10006; 124–10307–10009; 124–10307–10010; 124–10307–10011; 124–10307–10012; 124–10307–10014; 124–10307–10015; 124–10307–10018; 124–10307–10018; 124–10307–10020; 124–10307–10021; 124–10307–10023; 124–10307–10024; 124–10307–10031; 124–10307–10032; 124–10307–10035; 124–10307–10038; 124–10307–10040; 124–10307–10041; 124–10307–10043; 124–10308–10000; 124–10308–10001; 124–10308–10003; 124–10308–10005; 124–10308–10006; 124–10308–10007; 124–10308–10010; 124–10308–10011; 124–10308–10012; 124–10308–10013; 124–10308–10014; 124–10308–10015; 124–10308–10020; 124–10308–10021; 124–10308–10023; 124–10308–10027; 124–10308–10029; 124–10308–10030; 124–10308–10031; 124–10308–10033; 124–10308–10034; 124–10308–10036; 124–10308–10037; 124–10308–10038; 124–10308–10039; 124–10308–10040; 124–10308–10041; 124–10308–10043; 124–10308–10044; 124–10308–10045; 124–10308–10047; 124–10308–10049; 124–10308–10050; 124–10308–10051; 124–10308–10052; 124–10308–10053; 124–10308–10054; 124–10308–10055; 124–10308–10056; 124–10308–10057; 124–10308–10058; 124–10308–10060; 124–10308–10061; 124–10308–10064; 124–10308–10065; 124–10308–10066; 124–10308–10067; 124–10308–10069; 124–10308–10070; 124–10308–10071; 124–10308–10072; 124–10308–10073; 124–10308–10075; 124–10308–10076; 124–10308–10077; 124–10308–10078; 124–10308–10079; 124–10308–10080; 124–10308–10081; 124–10308–10083; 124–10308–10084; 124–10308–10085; 124–10308–10090; 124–10308–10091; 124–10308–10093; 124–10308–10095; 124–10308–10098; 124–10308–10099; 124–10308–10100; 124–10308–10101; 124–10308–10107; 124–10308–10108; 124–10308–10109; 124–10308–10111; 124–10308–10112; 124–10308–10113; 124–10308–10114; 124–10308–10115; 124–10308–10116; 124–10308–10117; 124–10308–10120; 124–10308–10121; 124–10308–10122; 124–10308–10124; 124–10308–10125; 124–10308–10126; 124–10308–10128; 124–10308–10129; 124–10308–10130; 124–10308–10132; 124–10308–10134; 124–10308–10135; 124–10308–10137; 124–10308–10138; 124–10308–10140; 124–10308–10142; 124–10308–10143; 124–10308–10144; 124–10308–10145; 124–10308–10146; 124–10308–10147; 124–10308–10148; 124–10308–10151; 124–10308–10152; 124–10308–10154; 124–10308–10155; 124–10308–10157; 124–10308–10158; 124–10308–10160; 124–10308–10161; 124–20200–10054; 124–90021–10002; 124–90021–10005; 124–90021–10011; 124–90021–10016; 124–90021–10017; 124–90021–10018; 124–90021–10029; 124–90021–10030; 124–90021–10032; 124–90021–10040; 124–90021–10042; 124–90021–10053; 124–90021–10056; 124–90021–10057; 124–90021–10058; 124–90021–10072; 124–90021–10074; 124–90021–10075; 124–90021–10076

After consultation with appropriate Federal agencies, the Review Board announces that the following House Select Committee on Assassinations records are now being opened in full:

180–10065–10351; 180–10066–10449; 180–10067–10365; 180–10067–10417; 180–10067–10431; 180–10070–10420; 180–10071–10075; 180–10072–10081; 180–10072–10430; 180–10072–10433; 180–10072–10439; 180–10072–10462; 180–10073–10190; 180–10075–10118; 180–10075–10126; 180–10075–10127; 180–10075–10129; 180–10075–10152; 180–10076–10241; 180–10076–10478; 180–10077–10286; 180–10077–10445; 180–10078–10004; 180–10078–10301; 180–10080–10012; 180–10080–10296; 180–10080–10417; 180–10080–10470; 180–10082–10032; 180–10082–10076; 180–10082–10150; 180–10082–10193; 180–10082–10309; 180–10082–10353; 180–10084–10179; 180–10084–10180; 180–10085–10151; 180–10085–10152; 180–10085–10154; 180–10085–10202; 180–10085–10214; 180–10085–10216; 180–10087–10093; 180–10087–10302; 180–10088–10137; 180–10088–10149; 180–10088–10203; 180–10088–10219; 180–10088–10265; 180–10088–10293; 180–10089–10034; 180–10089–10035; 180–10089–10043; 180–10090–10205; 180–10090–10226; 180–10091–10194; 180–10093–10162; 180–10094–10189; 180–10095–10375; 180–10096–10416; 180–10096–10448; 180–10097–10473; 180–10100–10006; 180–10100–10018; 180–10101–10115; 180–10103–10337; 180–10103–10498; 180–10104–10224; 180–10105–10343; 180–10105–10344; 180–10105–10345; 180–10105–10346; 180–10105–10347; 180–10105–10348; 180–10105–10349; 180–10105–10350; 180–10105–10351; 180–10105–10367; 180–10106–10026; 180–10106–10027; 180–10106–10415; 180–10107–10480; 180–10107–10484; 180–10107–10488; 180–10107–10489; 180–10107–10493; 180–10107–10496; 180–10108–10116; 180–10108–10305; 180–10108–10327; 180–10108–10386; 180–10108–10387; 180–10108–10389; 180–10109–10449; 180–10112–10133; 180–10114–10143; 180–10114–10196; 180–10114–10259; 180–10115–10155; 180–10115–10156; 180–10116–10169; 180–10116–10171; 180–10116–10172; 180–10117–10208; 180–10117–10209; 180–10117–10210; 180–10117–10211; 180–10117–10212; 180–10117–10213; 180–10117–10214; 180–10117–10215; 180–10117–10216; 180–10117–10217; 180–10117–10227; 180–10119–10229; 180–10121–10010; 180–10131–10137

After consultation with appropriate Federal agencies, the Review Board announces that the following United States Army records are now being opened in full:

198–10004–10021; 198–10004–10022; 198–10004–10024; 198–10004–10025; 198–10004–10030; 198–10004–10031; 198–10004–10033; 198–10004–10034; 198–10004–10035; 198–10004–10036; 198–

10004–10037; 198–10004–10041; 198–10004–10042; 198–10004–10043; 198–10004–10044; 198–10004–10045; 198–10004–10046; 198–10004–10047; 198–10004–10048; 198–10004–10049; 198–10004–10050; 198–10004–10051; 198–10004–10052; 198–10004–10054; 198–10004–10055; 198–10004–10056; 198–10004–10058; 198–10004–10059; 198–10004–10062; 198–10004–10064; 198–10004–10065; 198–10004–10066; 198–10004–10067; 198–10004–10068; 198–10004–10069; 198–10004–10070; 198–10004–10071; 198–10004–10072; 198–10004–10073; 198–10004–10074; 198–10004–10077; 198–10004–10078; 198–10004–10079; 198–10004–10081; 198–10004–10082; 198–10004–10083; 198–10004–10084; 198–10004–10085; 198–10004–10086; 198–10004–10087; 198–10004–10088; 198–10004–10090; 198–10004–10091; 198–10004–10093; 198–10004–10094; 198–10004–10095; 198–10004–10096; 198–10004–10098; 198–10004–10099; 198–10004–10101; 198–10004–10102; 198–10004–10103; 198–10004–10104; 198–10004–10105; 198–10004–10107; 198–10004–10108; 198–10004–10111; 198–10004–10113; 198–10004–10114; 198–10004–10115; 198–10004–10116; 198–10004–10118; 198–10004–10119; 198–10004–10120; 198–10004–10121; 198–10004–10122; 198–10004–10123; 198–10004–10124; 198–10004–10125; 198–10004–10127; 198–10004–10128; 198–10004–10129; 198–10004–10130; 198–10004–10132; 198–10004–10133; 198–10004–10134; 198–10004–10136; 198–10004–10137; 198–10004–10138; 198–10004–10139; 198–10004–10140; 198–10004–10141; 198–10004–10142; 198–10004–10145; 198–10004–10146; 198–10004–10149; 198–10004–10151; 198–10004–10152; 198–10004–10154; 198–10004–10155; 198–10004–10158; 198–10004–10159; 198–10004–10160; 198–10004–10161; 198–10004–10162; 198–10004–10163; 198–10004–10164; 198–10004–10165; 198–10004–10166; 198–10004–10167; 198–10004–10169; 198–10004–10170; 198–10004–10171; 198–10004–10172; 198–10004–10173; 198–10004–10174; 198–10004–10175; 198–10004–10176; 198–10004–10177; 198–10004–10178; 198–10004–10179; 198–10004–10180; 198–10004–10181; 198–10004–10182; 198–10004–10183; 198–10004–10184; 198–10004–10185; 198–10004–10186; 198–10004–10187; 198–10004–10188; 198–10004–10189; 198–10004–10190; 198–10004–10191; 198–10004–10192; 198–10004–10193; 198–10004–10194; 198–10004–10197; 198–10004–10198; 198–10004–10201; 198–10004–10202; 198–10005–10001; 198–10005–10002; 198–10005–10003; 198–10005–10004; 198–10005–10005; 198–10005–10006; 198–10005–10007; 198–10005–10008; 198–10005–10009; 198–10005–10010; 198–10005–10011

After consultation with appropriate Federal agencies, the Review Board announces that the following Joint Chiefs of Staff records are now being opened in full:

202–10002–10000; 202–10002–10001; 202–10002–10002; 202–10002–10003; 202–10002–10004; 202–10002–10013; 202–10002–10027; 202–10002–10030; 202–10002–10048; 202–10002–10049; 202–10002–10050; 202–10002–10051; 202–10002–10052; 202–10002–10053; 202–10002–10054; 202–10002–10055; 202–10002–10056; 202–10002–10058; 202–10002–10059; 202–10002–10060; 202–10002–10061; 202–10002–10062; 202–10002–10063; 202–10002–10064; 202–10002–10067; 202–10002–10068; 202–10002–10069; 202–10002–10070; 202–10002–10071; 202–10002–10072; 202–10002–10073; 202–10002–10074; 202–10002–10075; 202–10002–10076; 202–10002–10077; 202–10002–10080; 202–10002–10081; 202–10002–10082; 202–10002–10085; 202–10002–10087; 202–10002–10089; 202–10002–10090; 202–10002–10091; 202–10002–10092; 202–10002–10093; 202–10002–10095; 202–10002–10096; 202–10002–10098; 202–10002–10099; 202–10002–10109; 202–10002–10110; 202–10002–10111; 202–10002–10113.

Dated: December 19, 1997.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 97–33529 Filed 12–23–97; 8:45 am]

BILLING CODE 6116–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:30 p.m. on Thursday, January 22, 1998, at the Graduate School and University Center of City University of New York, President's Conference Room, 18th Floor, 33 West 42nd Street, New York, NY 10011. The purpose of the meeting is to discuss the police-community relations briefing and the section 8 housing report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson M.D. Taracido, 212–645–8999, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–33559 Filed 12–23–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 4:45 p.m. on Thursday, January 15, 1998, at the General Services Administration, Wannamaker Building, Room 854, 100 Penn Square East, Philadelphia, Pennsylvania 19107. The purpose of the meeting is to provide an orientation session for new members and to plan a future briefing on barriers confronting women and minority business owners.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Sieglinde Shapiro, 215–204–6749, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 15, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–33558 Filed 12–23–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Saturday, January 17, 1998, at the Hitching Post Inn, 1700 West Lincolnway, Cheyenne, Wyoming 82001. The purpose of the meeting is to brief the Committee on Commission and regional programs and approve plans for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1400 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 15, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–33557 Filed 12–23–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–817]

Certain Cut-to-Length Carbon Steel Plate from Brazil: Antidumping Duty Administrative Review: Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of the antidumping duty administrative review of Certain Cut-to-Length Carbon Steel Plate from Brazil. This review covers the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Samantha Denenberg or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.; telephone (202) 482–0414 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: Due to the complexity of issues involved in this case, it is not practicable to complete this review within the original time limit. The Department is extending the time limit for completion of the final results until March 8, 1998, in accordance with Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. See memorandum to Robert S. LaRussa from Joseph A. Spetrini regarding the extension of the case deadline, dated December 16, 1997.

This extension is in accordance with 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: December 16, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–33605 Filed 12–23–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Amended Final Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan (A–588–028)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended final results of antidumping duty administrative order.

SUMMARY: On November 10, 1997, the Department of Commerce published the final results of its administrative review of the antidumping duty order on roller chain, other than bicycle, from Japan. This review covered six manufacturers/exporters of roller chain in Japan during the period April 1, 1995, through March 31, 1996: (1) Daido Kogyo Co., Ltd. (Daido); (2) Enuma Chain Mfg. Co., Ltd. (Enuma); (3) Izumi Chain Manufacturing Co., Ltd. (Izumi); (4) Hitachi Metals Techno Ltd. (Hitachi); (5) Pulton Chain Co., Ltd. (Pulton); and (6) R.K. Excel Co., Ltd. (RK) (collectively, the respondents).

Interested parties submitted ministerial error allegations with respect to the final results of administrative review for Daido and Enuma on November 17, 1997. Based on the correction of certain ministerial errors made in the final results of review, we are amending our final results of review with respect to Daido and Enuma.

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Jack Dulberger, AD/CVD Enforcement Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4793 and (202) 482–5505, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

The Department of Commerce (the Department) has now amended the final results of this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 353 (1997).

Scope of Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

Background

On November 10, 1997, we published in the **Federal Register** our notice of final results of administrative review of the antidumping duty order on roller chain, other than bicycle, from Japan (Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan (62 FR

60472, November 10, 1997) (Roller Chain Final FR Notice)).

On November 17, 1997, two of the respondents in the above-referenced review, Enuma and Daido, submitted timely written allegations that the Department made certain ministerial errors in the above-referenced administrative review. Enuma alleged two ministerial errors with respect to the following: (1) unmatched identical models within the 90–60 day rule period and (2) a data input error by respondent in the sales database. Daido alleged five ministerial errors with respect to the following three issues: (1) unmatched identical models within the 90–60 day rule period, (2) unmatched U.S. sales with identical sales in the home market database, and (3) data input errors by respondent in the sales database. Petitioner did not allege the existence of ministerial errors, nor has petitioner commented on respondent's allegations. For a complete discussion of the allegations, see the Department's December 17, 1997, Decision Memorandum Re: Ministerial Error Allegation in the Antidumping Administrative Review on Roller Chain, Other than Bicycle, from Japan (95–96).

As discussed below, in accordance with 19 CFR 353.28(d), we have determined that certain ministerial errors were made in our margin calculations for Enuma and Daido.

Alleged Ministerial Errors

Enuma

Issue 1: Unmatched U.S. Sales—Computer Searching Error

Enuma states that the Department incorrectly identified three U.S. sales as not having a home market match within the comparison period (*i.e.*, the 90–60 day period). Enuma contends that the printout of its November 15, 1996, sales tape, which the Department used in its final results calculations, shows home market sales of the identical model, during the 90–60 day period for these three sales. Enuma requests that the Department correct this error and to review its program to determine if any other currently designated unmatched U.S. sales have matches and to revise the dumping margins accordingly.

DOC Position: We agree with Enuma and have corrected this ministerial error. After review of Enuma's margin program, we found that we inadvertently failed to include a step in the product matching section of the program. This resulted in a failure to properly identify all home market sales of the identical model during the 90–60 day window period. Correction of the margin program resulted in matching two of the three previously unmatched U.S. sales identified by Enuma in its November 17, 1997, clerical error allegation and an additional unmatched U.S. sale not identified by Enuma. The third U.S. sale identified by Enuma could not be matched to the home market sale identified by Enuma because the home market sale was a sale to an affiliated customer which was determined not to be at arm's length and was subsequently excluded from our analysis. *See Roller Chain Final FR Notice.*

Issue 2: Unmatched U.S. Sales—Computer Input Error

In two instances, Enuma states that it inadvertently assigned slightly different control numbers for the same products on its home market and U.S. sales tapes. In the first instance, Enuma states that an extra digit was mistakenly added to the end of a home market control number. In the other, Enuma states that an extra digit was added to the end of a U.S. control number. As a result, Enuma argues that U.S. sales that should have had identical home market matches went unmatched. Enuma requests that we revise the control numbers for those two models so that the control numbers on both the home market and U.S. sales tapes are identical.

DOC Position: Section 751(h) of the Tariff Act of 1930, as amended (the Act), authorizes the Department to establish procedures for the correction of ministerial errors in final determinations. Section 751(h) provides that the term "ministerial" error includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

The Department's implementing regulations at 19 CFR 353.28 establish which errors the Department considers ministerial. A "ministerial error" is defined under 19 CFR 353.28 as: an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.

The Department interprets the authority granted to it by Section 751(h) of the Act as allowing the Department to make post-final results corrections only for its *own* ("ministerial") errors. *See* Preamble of 19 CFR § 351.224 (emphasis in original). Therefore, the Department does not believe that it may make corrections after final results of administrative review for errors committed by a party to the proceeding. Consequently, we made no revision to Enuma's margin calculation with regard to Enuma's alleged error.

Daido

Issue 1: Unmatched U.S. Sales—Computer Searching Error

Daido states that the Department incorrectly applied the 90–60 day window in its attempt to match U.S. and home market sales of identical or similar merchandise within the contemporaneous time period. Specifically, Daido states that the Department only applied the 90–60 day rule in a forward direction (*i.e.*, 60 days forward), but did not search for home market sales 90 days prior to the date of the U.S. sale. As a result, Daido maintains that numerous sales were designated as unmatched U.S. sales.

DOC Position: We agree with Daido and have corrected this ministerial error. After review of Daido's margin program, we found that we inadvertently failed to include a step in the product matching section of the program. This resulted in a failure to properly search for home market sales 90 days prior to the date of the U.S. sale. Correcting the margin program resulted in matching previously unmatched U.S. sales as identified by Daido in its November 17, 1997, clerical error allegation.

Issue 2: Unmatched U.S. Sales with Identical Sales in the Home Market Database

Daido states that its home market portion of its questionnaire response contained two matching control number fields—one for CEP sales matching purposes and another for EP sales matching purposes. Daido claims that it was necessary to report two control number fields in the database because, depending on the type of transaction (*i.e.*, CEP or EP), there were different codes applied to identical merchandise. Daido states that the Department correctly matched CEP sales against sales with an identical control number in the home market control number field corresponding to CEP sales. However, Daido argues that, the Department failed to match EP sales with an identical control number in the home market control number field corresponding to EP sales. Daido claims that this failure resulted in the Department designating these sales as unmatched.

DOC Position: We agree with Daido and have corrected this ministerial error. After review of Daido's margin program, we found that we inadvertently failed to include a step in the product matching section of the program. This resulted in a failure to properly search for identical control numbers in both of the home market control number fields for a given U.S. sale. Correcting the margin program resulted in matching previously unmatched U.S. sales as identified by Daido in its November 17, 1997, clerical error allegation.

Issue 3: Unmatched U.S. Sales—Computer Input Error by Respondent

Daido states that, in three instances, it inadvertently assigned slightly different control numbers for the same products on its home market and U.S. sales tapes. Specifically, in the first instance, Daido states that it made home market sales of a model identical to one sold in the United States. However, Daido states that although the digits in the control number are exactly the same in the U.S. and home market sales tapes, it inadvertently coded the home market model with a space in the middle. In the second instance, Daido claims that an extra digit was mistakenly added to the end of a home market control number. In the final instance, Daido maintains that although for one model the control number in the U.S. sales listing differs from the control number in the home market sales listing by one digit (*i.e.*, the use of a "C" in the home market and a "D" in the United States), the products are identical. As a result of these three errors, certain U.S. sales went unmatched. Daido requests that we revise the matching control numbers in the three instances listed above so that the control numbers on both the home market and U.S. sales tapes are identical.

DOC Position: The Department does not believe that it may make corrections after final results of administrative review for errors committed by a party to the proceeding. (*See* Enuma issue number 2). Consequently, we made no revision to Daido's margin calculation with regard to these alleged errors.

Amended Final Results

As a result of our correction of the ministerial errors, we have determined the following amended margins exist for Enuma and Daido for the period April 1, 1995 through March 31, 1996:

Manufacturer/exporter	Percentage*
Daido	3.09
Enuma	1.55

*Amended Weighted-Average Margin

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for each reviewed company named above will be the rate as stated above; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate for all other manufacturers or exporters will be 15.92 percent, the All Others rate based on the first review conducted by the Department in which a "new shipper" rate was established in the final results of antidumping administrative review (48 FR 51801, November 14, 1983).

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.28(c).

Dated: December 17, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–33606 Filed 12–23–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by 13 February 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Hq DAO ODCSPER (DAPE–PRO) ATTN: Mr. Robbie Robinson, 4000 Defense Pentagon, Washington, DC 20301–0300.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 614–4766.

Title, Associated Form, and OMB Control Number: Repatriation Processing Center Processing Sheet, DD Form 2585, OMB Number 0704–0334.

Needs and Uses: This information collection is necessary for personnel accountability of all evacuees,

regardless of nationality, who are processed through designated Repatriation Centers throughout the United States. The information obtained from the DD Form 2585 is entered into an automated system; a series of reports are accessible to DoD Components, Federal and State Agencies, and Red Cross as required.

Affected Public: Individuals or households, Federal Government; State and local governments; not-for-profit institutions.

Annual Burden Hours: 1,667.

Number of Respondents: 5,000.

Responses Per Respondent: One.

Average Burden per Response: 20 Minutes.

Frequency: One-time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Executive Order 12636 (Assignment of Emergency Preparedness Responsibilitis) assigns Federal departments and agencies responsibilities during emergency situations. In its supporting role to the Departments of State and Health and Human Services (DHHS), the Department of Defense will assist in planning for the protection, evacuation and repatriation of U.S. citizens in threatened areas overseas. The DD Form 2585, Repatriation Processing Center Processing Sheet, has numerous functions, but is primarily used for personnelaccountability of all evacuees who process through designated Repatriation Centers. During processing, evacuees are provided emergency human services, including food, clothing lodging, family reunification, social services and financial assistance through federal entitlements, loans, or emergency aid organizations. The information, once collected, is input into the Repatriation Automated Accounting and Reporting System, and available to designated offices throughout Departments of Defense, State, Health and Human Services, the American Red Cross, and State government emergency planning offices for operational inquiries and reporting and future planning purposes.

Dated: December 18, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33541 Filed 12–23–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force In-Progress A–76 Cost Comparisons and Direct Conversions (As of October 1, 1997)

The Force is conducting the following cost comparisons direct conversions in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation	State	Cost comparison function(s)	Total announced authorizations	Public announcement date	Solicitation scheduled for
Cost Comparisons					
EIELSON AFB	AK	MISC SERVICES	11	11/17/95	07/07/98
EIELSON AFB	AK	ADMIN TELEPHONE PBX	10	10/18/96	07/01/98
ELMENDORF AFB	AK	POWER PRODUCTION	36	09/22/95	06/15/97
ELMENDORF AFB	AK	MILITARY FAM HSG MGMT	22	09/19/96	02/02/98
ELMENDORF AFB	AK	ADMIN TELEPHONE PBX	16	07/09/97	02/01/98
EDWARDS AFB	CA	BASE SUPPLY	327	05/02/96	05/12/97
LOS ANGELES AFS	CA	COMMUNICATION FUNCTIONS	13	07/01/96	04/30/97
LOS ANGELES AFS	CA	EDUCATION SERVICES	28	07/01/96	07/01/97
LOS ANGELES AFS	CA	COMM O&M FUNCTIONS	85	07/01/97	07/30/98
LOS ANGELES AFS	CA	HOUSING MANAGEMENT	10	07/01/97	07/30/98
LOS ANGELES AFS	CA	SERVICES ACTIVITIES	8	07/01/97	07/30/98
MARCH AFB	CA	AIRFIELD OPS & WEATHER	41	06/13/96	12/30/98
MARCH AFB	CA	TRANSIENT AIRCRAFT MAINT	0	06/13/96	08/30/97
MARCH AFB	CA	BASE OPERATING SUPPORT	237	06/13/96	02/08/99
ONIZUKA AFS	CA	UTILITIES PLANT	25	05/06/96	11/01/97
TRAVIS AFB	CA	MIL FAM HSG MAINT	38	05/05/97	06/25/97
VANDENBERG AFB	CA	BASE OPERATING SUPPORT	217	07/29/96	10/30/97
VANDENBERG AFB	CA	STRUCTURAL MAINTENANCE	32	05/06/96	10/30/97
VANDENBERG AFB	CA	CE MATERIAL ACQUISITION	12	05/06/96	10/30/97
VANDENBERG AFB	CA	HOUSING MANAGEMENT	14	07/29/96	11/01/97
VANDENBERG AFB	CA	CIVIL ENGINEERING	5	07/29/96	11/01/97
BUCKLEY ANGB	CO	AIRFIELD MANAGEMENT	37	03/22/95	01/01/98
FALCON AFB	CO	UTILITIES PLANT	22	05/06/96	11/01/97
PETERSON AFB	CO	BASE OPERATING SUPPORT	179	07/29/96	07/03/97
PETERSON AFB	CO	CE MATERIAL ACQUISITION	8	07/29/96	01/09/98
USAF ACADEMY	CO	MESS ATTENDANTS	170	03/10/97	11/03/97
DOVER AFB	DE	TRANS ACFT MAINT/AGE	24	09/05/97	06/02/98
EGLIN AFB	FL	CIVIL ENGINEERING	96	12/03/96	04/15/98
HOMESTEAD AFB	FL	AIRFIELD OPS & WEATHER	25	06/13/96	04/13/99
HOMESTEAD AFB	FL	BASE OPERATING SUPPORT	149	06/13/96	06/10/99
HURLBURT COM FL	FL	GROUNDS MAINTENANCE	11	08/08/96	07/09/97
HURLBURT COM FL	FL	TRANSIENT AIRCRAFT MAINT	11	08/08/96	06/09/97
HURLBURT COM FL	FL	ENVIROMENTAL	13	09/23/97	07/20/98
PATRICK AFB	FL	BASE OPERATING SUPPORT	148	07/29/96	11/15/97
PATRICK AFB	FL	HOUSING MANAGEMENT	7	07/29/96	11/01/97
DOBBINS AFB	GA	CONTROL TOWER OPERATIONS	33	06/13/96	07/13/97
DOBBINS AFB	GA	COMMUNICATION FUNCTIONS	0	06/13/96	07/13/97
DOBBINS AFB	GA	WEATHER SERVICES	0	06/13/96	07/13/97
DOBBINS AFB	GA	BASE OPERATING SUPPORT	127	06/13/96	07/13/97
ROBINS AFB	GA	AUDIOVISUAL	42	05/02/96	03/18/97

Installation	State	Cost comparison function(s)	Total announced authorizations	Public announcement date	Solicitation scheduled for
ROBINS AFB	GA	MIL FAM HSG MAINT	12	05/02/96	05/09/97
ROBINS AFB	GA	EDUCATION SERVICES	29	02/28/97	12/15/97
RAMSTEIN AB	GERMY	MESS ATTENDANTS	33	04/02/96	08/22/97
RAMSTEIN AB	GERMY	MIL FAM HSG MAINT	129	06/19/97	03/01/98
RAMSTEIN AB	GERMY	PMEL	79	05/06/97	01/01/98
SPANGDAHLEM AB	GERMY	MESS ATTENDANTS	16	04/02/96	08/22/97
ANDERSEN AFB	GUAM	ADMIN TELEPHONE PBX	10	07/09/97	10/01/98
HICKAM AFB	HI	BASE OPERATING SUPPORT	528	03/11/97	10/30/97
SCOTT AFB	IL	BASE SUPPLY	106	06/03/97	08/28/98
GRISSOM ARB	IN	AIRFIELD OPS & WEATHER	35	06/13/96	02/11/98
GRISSOM ARB	IN	TRANSIENT AIRCRAFT MAINT	0	06/13/96	09/28/97
GRISSOM ARB	IN	BASE OPERATING SUPPORT	170	06/13/96	10/10/98
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	66	06/13/96	08/10/99
HANSCOM AFB	MS	AUDIOVISUAL	19	05/02/96	02/28/97
HANSCOM AFB	MS	VEHICLE O&M	64	05/02/96	02/28/97
HANSCOM AFB	MS	LABORATORY SPT SERVICES	14	05/02/96	08/06/97
HANSCOM AFB	MS	COMMUNICATION FUNCTIONS	93	02/28/97	12/15/97
HANSCOM AFB	MS	DATA PROCESSING	18	02/28/97	12/15/97
WESTOVER AFB	MS	CONTROL TOWER OPERATIONS	19	06/13/96	08/31/97
WESTOVER AFB	MS	WEATHER SERVICES	0	06/13/96	08/31/97
WESTOVER AFB	MS	BASE OPERATING SUPPORT	210	06/13/96	02/08/98
MINN/ST PAUL	MN	COMMUNICATION FUNCTIONS	0	06/13/96	11/13/97
MINN/ST PAUL	MN	BASE OPERATING SUPPORT	104	06/13/96	04/10/98
COLUMBUS AFB	MS	BASE OPERATING SUPPORT	341	05/24/93	07/18/96
KEESLER AFB	MS	TECH TRNG CTR EQ MAINT	253	06/13/96	08/25/97
ANDREWS AFB	MD	ACFT MAINT & SUPPLY	702	07/25/97	12/21/98
MALMSTROM AFB	MT	BASE SUPPLY	150	05/06/96	11/03/97
MULTIPLE INSTLNS	MULT	TECH TNG-ELECT PRIN TNG	157	12/03/96	09/12/97
MULTIPLE INSTLNS	MULT	ADMIN SWITCHBOARD	59	06/19/97	03/01/98
MULTIPLE INSTLNS	MULT	GENERAL LIBRARY	19	07/29/97	04/01/98
McGUIRE AFB	NJ	MIL FAM HSG MAINT	19	09/28/95	06/30/97
CANNON AFB	NM	MIL FAM HSG MAINT	21	04/16/96	07/23/97
HOLLOMAN AFB	NM	MIL FAM HSG MAINT	66	05/12/97	03/07/98
KIRTLAND AFB	NM	BASE SUPPLY	170	05/02/96	07/01/97
KIRTLAND AFB	NM	PMEL	51	05/02/96	08/06/97
KIRTLAND AFB	NM	COMMUNICATION FUNCTIONS	54	04/29/97	02/02/98
NIAGRA FALLS IAP	NY	WEATHER SERVICES	4	06/13/96	09/30/97
NIAGRA FALLS IAP	NY	BASE OPERATING SUPPORT	39	06/13/96	12/01/97
OFFUTT AFB	NE	HEATING SYSTEMS	30	01/27/97	12/01/97
WRIGHT PATTERSON	OH	BASE OPERATING SUPPORT	632	05/02/96	08/27/97
WRIGHT PATTERSON	OH	ACADEMIC & PLATFORM INSTRS	115	08/15/97	07/30/98
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	698	08/15/97	04/15/98
YOUNGSTOWN MUNI	OH	BASE OPERATING SUPPORT	102	06/13/96	06/10/98
TINKER AFB	OK	COMMUNICATION FUNCTIONS	138	05/02/96	08/14/97
TINKER AFB	OK	CIVIL ENGINEERING	567	04/15/97	02/13/98
GREATER PITTSBURG	PA	BASE OPERATING SUPPORT	111	06/13/96	12/10/98
WILLOW GROVE NAS	PA	BASE OPERATING SUPPORT	78	06/13/96	08/10/98
CHARLESTON AFB	SC	AUDIOVISUAL	13	06/06/97	06/05/98
SHAW AFB	SC	MIL FAM HSG MAINT	33	07/09/97	12/10/97
BROOKS AFB	TX	LABORATORY SPT SERVICES	44	05/02/96	07/25/97
CARSWELL AFB	TX	BASE OPERATING SUPPORT	91	06/13/96	04/10/99
LACKLAND AFB	TX	GROUNDS MAINTENANCE	16	06/22/95	10/15/96
LACKLAND AFB	TX	ANIMAL CARETAKING	26	10/02/95	01/30/97
SHEPPARD AFB	TX	TECH TRN-TELE SYSTEM	16	10/01/96	05/23/97
HILL AFB	UT	GROUNDS MAINTENANCE	12	05/02/96	07/28/97
HILL AFB	UT	RECREATIONAL SUPPORT	7	05/02/96	01/24/98
HILL AFB	UT	HEATING SYSTEMS	38	04/29/97	02/13/98
McCHORD AFB	WA	HEATING SYSTEMS	11	09/23/97	09/17/98
McCHORD AFB	WA	MIL FAM HSG MAINT	15	09/23/97	09/17/98
GENERAL MITCHELL	WI	BASE OPERATING SUPPORT	93	06/13/96	12/11/97
F E WARREN AFB	WY	BASE SUPPLY	187	05/06/96	11/01/97
F E WARREN AFB	WY	HEATING SYSTEMS	18	05/06/96	11/01/97
Direct Conversions					
EIELSON AFB	AK	TRANSIENT AIRCRAFT MAINT	14	10/18/96	07/01/98
DAVIS MONTHAN AFB	AZ	GENERAL LIBRARY	6	01/24/97	11/15/97
DAVIS MONTHAN AFB	AZ	CIVIL ENGINEERING	5	01/24/97	11/15/97
EDWARDS AFB	CA	LABORATORY SUPPLY SPT	10	06/04/97	10/01/97
LOS ANGELES AFS	CA	PACKING & CRATING	4	07/01/97	04/30/98
TRAVIS AFB	CA	FURNISHINGS MANAGEMENT	3	03/14/97	11/30/97
TRAVIS AFB	CA	GENERAL LIBRARY	6	03/14/97	11/14/97

Installation	State	Cost comparison function(s)	Total announced authorizations	Public announcement date	Solicitation scheduled for
TRAVIS AFB	CA	PROTECTIVE COATING	5	03/14/97	07/03/97
TRAVIS AFB	CA	ENVIROMENTAL	11	09/23/97	09/30/98
VANDENBERG AFB	CA	CIVIL ENGINEERING	9	07/29/96	11/01/97
FALCON AFB	CO	COMM O&M	205	05/06/96	11/01/97
FALCON AFB	CO	SITE INTEGRATION & SPT	144	05/06/96	10/15/97
PETERSON AFB	CO	PMEL	21	05/06/96	10/30/97
PETERSON AFB	CO	QUAL ASSUR TRAINING	1	05/06/96	11/15/97
PETERSON AFB	CO	PACKING & CRATING	9	09/10/97	09/01/98
DOVER AFB	DE	FURNISHINGS MANAGEMENT	2	03/14/97	11/13/97
DOVER AFB	DE	PROTECTIVE COATING	3	03/14/97	11/13/97
DOVER AFB	DE	GENERAL LIBRARY	5	05/09/97	01/04/98
MaxDILL AFB	FL	GENERAL LIBRARY	7	03/21/97	09/01/97
MaxDILL AFB	FL	MEDICAL TRANSCRIP CTR	4	06/03/97	10/03/97
PATRICK AFB	FL	CE MATERIAL ACQUISITION	6	05/06/96	10/30/97
PATRICK AFB	FL	TRANS ACFT MAINT/AGE	11	09/10/97	11/01/98
SCOTT AFB	IL	GENERAL LIBRARY	7	03/17/97	08/08/97
SCOTT AFB	IL	GROUNDS MAINTENANCE	3	03/17/97	10/01/97
SCOTT AFB	IL	MEDICAL FACILITY MAINT	8	03/17/97	10/15/97
AVIANO AB	ITALY	WAR RESERVE MAT (WRM)	30	08/16/96	
MISAWA	JAPAN	RANGE OPERATIONS	10	07/01/96	11/13/97
McCONNELL AFB	KS	GENERAL LIBRARY	5	03/14/97	10/04/97
McCONNELL AFB	KS	HEATING SYSTEMS	9	03/14/97	10/04/97
OSAN AFB	KOREA	RANGE O&M	83	07/15/96	09/15/97
BARKSDALE AFB	LA	GENERAL LIBRARY	6	06/11/97	02/01/98
BARKSDALE AFB	LA	CIVIL ENGINEERING	6	06/11/97	02/01/98
KEESLER AFB	MS	TECH TNG–HR SOLDERING	2	04/01/96	07/21/97
ANDREWS AFB	MD	LIBRARY	5	03/14/97	08/20/97
ANDREWS AFB	MD	MEDICAL FACILITY MAINT	11	03/11/97	10/23/98
ANDREWS AFB	MD	SOFTWARE PROGRAMMING	23	06/18/97	07/28/98
MULTIPLE INSTLNS	MULT	COMM O&M	27	02/21/96	11/29/97
MULTIPLE INSTLNS	MULT	MAINT DATA & T.O. LIBRARY	67	07/29/96	09/30/97
SEYMOUR JOHNSON	NC	GENERAL LIBRARY	7	06/11/97	10/14/97
GRAND FORKS AFB	ND	ADMIN SWITCHBOARD	12	07/26/95	10/31/97
GRAND FORKS AFB	ND	FURNISHINGS MANAGEMENT	3	09/19/96	12/30/97
GRAND FORKS AFB	ND	GENERAL LIBRARY	5	03/11/97	12/01/97
MINOT AFB	ND	HEATING SYSTEMS	13	09/23/97	11/01/97
McGUIRE AFB	NJ	GENERAL LIBRARY	6	03/17/97	05/28/98
KIRTLAND AFB	NM	DORMITORY MANAGEMENT	6	02/28/97	08/01/97
OFFUTT AFB	NE	HOSPITAL MAINTENANCE	7	05/01/96	03/01/97
OFFUTT AFB	NE	GENERAL LIBRARY	6	11/15/96	02/14/97
OFFUTT AFB	NE	PROTECTIVE COATING	8	06/11/97	10/15/97
NELLIS AFB	NV	WEAPONS SYS TRAINER OPNS	14	06/12/97	11/07/97
TINKER AFB	OK	GENERAL LIBRARY	5	07/01/96	11/21/97
CHARLESTON AFB	SC	GENERAL LIBRARY	6	03/11/97	08/18/97
CHARLESTON AFB	SC	HEATING SYSTEMS	9	03/14/97	10/24/97
CHARLESTON AFB	SC	AIRCRAFT MAINTENANCE	26	08/22/97	10/31/97
NORTH FIELD	SC	GROUNDS MAINTENANCE	1	03/14/97	10/14/97
RANDOLPH AFB	TX	GENERAL LIBRARY	7	12/03/96	02/02/98
INCIRLIK	TURKY	COMMUNICATION FUNCTIONS	56	09/08/97	07/21/97
INCIRLIK	TURKY	BASE OPERATING SUPPORT	220	09/08/97	07/21/97
HILL AFB	UT	GENERAL LIBRARY	5	05/02/96	01/15/98
HILL AFB	UT	HOUSING MANAGEMENT	8	03/10/97	12/28/97
HILL AFB	UT	FACILITIES SVCS MAINT	4	03/10/97	12/25/97
FAIRCHILD AFB	WA	FURNISHINGS MANAGEMENT	3	09/19/96	10/27/97
FAIRCHILD AFB	WA	GENERAL LIBRARY	4	03/15/97	07/14/97
FAIRCHILD AFB	WA	PROTECTIVE COATING	7	03/15/97	06/02/97
FAIRCHILD AFB	WA	TRANSIENT AIRCRAFT MAINT	5	03/15/97	06/02/97
MCCHORD AFB	WA	GENERAL LIBRARY	6	03/17/97	12/12/97
MCCHORD AFB	WA	GROUNDS MAINTENANCE	9	03/17/97	11/12/97
F E WARREN AFB	WY	FOOD SERVICES	17	07/29/97	12/01/98

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–33434 Filed 12–23–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES AND TIMES: January 20–21, 1998, 8:00 a.m. to 5:00 p.m.

ADDRESS: U.S. Department of Education, Office of Elementary and Secondary Education, 1250 Maryland Avenue, SW, Room 4001, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. David Beaulieu, Director, Office of Indian Education, 1250 Maryland Avenue, Portals 4300, Washington, DC 20202. Telephone: (202) 260–2431; Fax: (202) 260–7779.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is a Presidentially appointed advisory council on Indian education established under Section 9151 of Title IX of the Elementary and Secondary Education Act of 1965, as amended, (20 U.S.C. 7871). The Council advises the Secretary of Education and the Congress on funding and administration of programs with respect to which the Secretary has jurisdiction and that includes Indian children and adults as participants or from which they benefit. The Council also makes recommendations to the Secretary for filling the position of Director of Indian Education whenever a vacancy occurs.

This meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed above.

A summary of the proceedings and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting, and are available for public inspection at the Office of Elementary and Secondary Education, U.S. Department of Education, 1250 Maryland Avenue, SW, Washington, DC 20202 from the hours of 8:30 a.m. to 5:00 p.m.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

Meeting Agenda

Tuesday, January 20, 1998

8:00 a.m.
Call to Order
Roll Call of Membership (Establish Quorum, Introductions, Invocation
8:30 a.m.
Discussion: Setting NACIE Priorities, Office of Indian Education, National Indian Education Policy Statement Executive Order
12:00 Noon
Lunch
1:00 p.m.
Meeting with Dr. Gerald N. Tirozzi, Assistant Secretary, Office of Elementary and Secondary Education
5:00 p.m.
Adjournment

Wednesday, January 21, 1998

8:00 a.m.
Ethics Training by Office of General Counsel
10:00 a.m.
Discussion: Reports, Budget, Etc.
12:00 Noon
Lunch
1:00 p.m.
Related NACIE Business Council Deliberation and Recommendation
4:30 p.m.
Scheduling of next meeting, time and place
5:00
Adjournment

[FR Doc. 97–33593 Filed 12–13–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, January 15, 1998: 5:00 p.m.–10:00 p.m.

ADDRESS: Executive Inn, Van Buren Room, 1 Executive Boulevard, West Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Carlos Alvarado, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The meeting will include administrative plans for the board at the beginning of the meeting; Environmental Management and Enrichment Facilities (EMEF) Project updates; a review of the SSAB Draft Work Plan; updates on Waste Area Grouping (WAG) 22, Waste Management, Transportation, the Strategies for Effective and Meaningful Public Input Report , the Vortec Environmental Assessment (if it is available), and a Media Contact Discussion.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carlos Alvarado at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on December 18, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–33573 Filed 12–23–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board—Electric System Reliability Task Force.

DATES AND TIMES: Tuesday, January 13, 1998, 8:30 a.m.–4:00 p.m.

ADDRESSES: Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

Purpose of the Task Force

The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the nation's bulk electric system in the context of a more competitive industry.

Tentative Agenda

Tuesday, January 13, 1998

8:30—8:45 a.m.—Opening Remarks & Objectives—Philip Sharp, ESR Task Force Chairman
8:45—10:15 a.m.—Working Session: Discussion of Draft Position Paper on Technical Issues in Transmission System Reliability—Facilitated by Philip Sharp
10:15—10:30 a.m.—Break
10:30—11:30 a.m.—Working Session: Discussion of a Draft Position Paper on The Role and Shape of the Independent System Operator—Facilitated by Jose Delgado
11:30—12:00 p.m.—Public Comment Period
12:00—1:15 p.m.— Lunch
1:15—2:30 p.m. Working Session: Presentation & Discussion on The Provision of Ancillary Services—Eric Hirst (ORNL) & Facilitated by Philip Sharp
2:30—3:45 p.m.—Working Session: Presentation & Discussion on Transmission Pricing Issues—Susan Tierney & Facilitated by Philip Sharp
3:45—4:00 p.m.—Public Comment Period
4:00 p.m.–Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Information on the Electric System Reliability Task Force and the Task Force's interim report may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on December 18, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–33574 Filed 12–23–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–91–000]

CNG Transmission Corporation; Notice of Tariff Filing

December 18, 1997.

Take notice that on December 15, 1997, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with an effective date of January 1, 1998:

Second Revised Sheet No. 361A

CNG requests a waiver of the 30-day notice requirement pursuant to 18 CFR Section 154.207 to permit a January 1, 1998 effective date.

CNG states that the purpose of this filing is to comply with the Commission's directives in the July 31 Order, as clarified by the October 16 Order, to refile its gathering cost recovery proposal with the appropriate supporting data required by the Commission's regulations.

CNG states that copies of its filing have been mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33522 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–90–000]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

December 18, 1997.

Take notice that on December 15, 1997, K N Interstate Gas Transmission Company (KNI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume 1–C and Second Revised Volume 1–D, to be effective January 15, 1998:

Second Revised Volume No. 1–C
All Tariff Sheets
Second Revised Volume No. 1–D
All Tariff Sheets

KNI states that these tariff sheets are being filed pursuant to Section 154.204 of the Commission's regulations. KNI further states that it is submitting for filing and acceptance the above revised tariff sheet(s) related to the Commission's Order issued on August 1, 1996 in Docket Nos. RP94–328–001 and RP95–81–000 granting KNI's petition for a declaratory order that it lacks market power for its Buffalo Wallow System.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to be heard or to make any protest with reference to this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33521 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–127–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

December 18, 1997.

Take notice that on December 11, 1997, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–127–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate in interstate commerce certain facilities previously constructed and operated to effectuate transportation service pursuant to Section 311 of the Natural Gas Policy Act (NGPA). Koch Gateway makes such request, under its blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Koch Gateway states that it constructed the 2-inch tap and dual 2-inch meter station under Section 311 of the NGPA, on behalf of Mississippi Valley Gas Company (Mississippi Valley), a local distribution company in Rankin County, Mississippi. Koch Gateway avers that the cost of constructing the tap, approximately $83,000 was fully reimbursed by Mississippi Valley. Koch Gateway further states that certification of this point as a jurisdictional facility will provide Mississippi Valley with additional flexibility in obtaining gas supplies, thus enabling Mississippi Valley to receive gas shipped to this point pursuant to jurisdictional open-access transportation agreements as well as Section 311 agreements.

The estimated peak day requirement for this delivery point is 1,300 MMBtu. It is indicated that the gas volumes will be transported pursuant to Koch Gateway's No Notice Service (NNS) Transportation Rate Schedule. Koch Gateway avers that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33513 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–199–008 and RP98–8–002]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 18, 1997.

Take notice that on December 15, 19978, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets.

2nd Sub Twenty-Third Revised Sheet No. 7—Nov. 1, 1997; Sub Twenty-Fourth Revised Sheet No. 7—Jan. 1, 1998

MRT states that the purpose of this filing is to change the GSRC Volumetric Charge from $.0005 to $.0500 to correct the typographical error in the above mentioned tariff sheets.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33516 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–199–009]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 18, 1997.

Take notice that on December 15, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective January 1, 1998.

MRT states that the purpose of this filing is to place the Period III rates into effect and eliminate Flexible Contract Demand, in accordance with the Stipulation and Agreement filed in this proceeding and approved by the Commission. In addition, as a result of the Commission's comments in its order, MRT is not removing the definition of Receipt Point MDQ from the Tariff but is instead revising the definition to conform with the removal of Flexible Contract Demand.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33517 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–348–006]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

December 18, 1997.

Take notice that on December 12, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Refund Report in accordance with Ordering Paragraph (H) of the Commission's February 28, 1997 Order Following Technical Conference and Denying Requests for Rehearing, Clarification and Stay (February 28, 1997 Order), 78 FERC ¶61,202 (1997) and the Commission's letter order dated November 12, 1997 in the referenced proceeding.

Panhandle states that the February 28, 1997 Order directed Panhandle, inter alia, to make revisions to certain penalty provisions of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, First Revised Volume No. 1, and to make refunds of penalties collected in excess of the applicable tolerance levels. Also, Ordering Paragraph (H) of the February 28, 1997 Order directed Panhandle to file a refund report within thirty (30) days of the Commission's order on Panhandle's compliance filing, which filing was subsequently made on March 14, 1997. On November 12, 1997, the Commission issued a letter order approving Panhandle's March 14, 1997 compliance filing.

Panhandle further states that it has included, for all affected customers, its computation of the refunds consisting of (1) the principal portion of the refunds of the Section 12.16 Overrun Penalties and Daily Scheduling charges pursuant to Section 12.11(h) of the GT&C applicable to overrun volumes for the period October 1, 1996 through October 31, 1997 and (2) the carrying charges calculated through December 12, 1997 in accordance with Section 154.501(d) of the Commission's Regulations.

Panhandle states that copies of this filing have been served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before December 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33518 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

United States of America Federal Energy Regulatory Commission

[Project No. 2000–010 New York]

Power Authority of the State of New York; Correction to Notice of 1998 Schedule of Meetings To Discuss Settlement for Relicensing of the St. Lawrence-FDR Power Project

December 18, 1997.

On November 25, 1997, [FR Doc. 97–31481 (62 FR 63702, December 2, 1997)] a notice of a list of 1998 schedule of meetings for the Cooperative Consultation Process Team and Subcommittees to continue settlement negotiations for the St. Lawrence-FDR Power Project located on the St. Lawrence River, St. Lawrence County, New York, was issued. The following revisions should be made.

(a) Under the Land Management and Recreation Subcommittee, delete "January 28, 1998" and replace with "January 29, 1998". (62 FR 63703, column 1, item 3).

(b) Under the Socioeconomic Subcommittee, delete "January 29, 1998, and replace with "January 28, 1998". (62 FR 63703, column 1, item 4)

Lois D. Cashell,

Secretary.

[FR Doc. 97–33514 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–16–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

December 18, 1997.

Take notice that on December 11, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing, in compliance with the Commission's order of November 26, 1997, its Sub Fifth Revised Sheet No. 204, to be effective December 1, 1997, along with responses to the Commission's requests for information and further clarification regarding the tariff modifications at issue in this proceeding.

Tennessee states that Sub Fifth Revised Sheet No. 204 is filed to clarify that Maximum Allowed Volume (MAV) overrun penalties will be applied only to deliveries made after the eight-hour notice period ends. In addition, this revised tariff sheet specifies how Tennessee will notify its shippers of MAV enforcement when such notices are issued after normal business hours or on weekends. Tennessee states that the information submitted with the tariff sheets is provided in response to the Commission's directive in the November 26 order for additional information regarding modifications to Tennessee's Rate Schedules FS and IS.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33520 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–408–003]

Trailblazer Pipeline Company; Notice of Motion To Make Tariff Sheets Effective

December 18, 1997.

Take notice that on December 15, 1997, Trailblazer Pipeline Company (Trailblazer) file with the Federal Energy Regulatory Commission a Motion to Make Suspended Tariff Sheets Effective (Motion). Trailblazer moved to make effective on January 1, 1998, tariff sheets filed on July 1, 1997 in this proceeding.

Trailblazer states that the rates on the tariff sheets to be effective January 1, 1998 reflect the effect of removing from Trailblazer's rate base facilities which were not in service on November 30, 1997, the end of the test period. Trailblazer has also filed to make effective January 1, 1998, tariff sheets related to its revised treatment of line pack.

Trailblazer requested waiver of any applicable Commission Regulations and orders to the extent necessary to permit the proposed tariff sheets to become effective on January 1, 1998.

Trailblazer states that copies of the Motion, together with the tariff sheets and workpapers, are being served on Trailblazer's customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP97–408.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33519 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–22–000, et al.]

National Gas & Electric L.P., et al. Electric Rate and Corporate Regulation Filings

December 17, 1997.

Take notice that the following filings have been made with the Commission:

1. National Gas & Electric L.P.

[Docket No. EC98–22–000]

Take notice that National Gas & Electric L.P. (NG&E), a marketer of electric power, filed on December 8, 1997, a request for approval under Section 203 of the Federal Power Act of the merger of the general partner, PanCanadian Gas Marketing Inc. (PanCanadian Gas), and the limited partner, PanCanadian Ventures Inc. (PanCanadian Ventures), of NG&E, after which NG&E will be dissolved. PanCanadian Gas and PanCanadian Ventures are wholly-owned subsidiaries of PanCanadian Energy Inc. NG&E also requests approval of the transfer of its Rate Schedule FERC No. 1 and other jurisdictional assets to the merged entity.

Comment date: January 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. LG&E Energy Marketing Inc.

[Docket No. ER94–1188–017]

Take notice that on September 17, 1997, LG&E Energy Marketing Inc. (LEM), P.O. Box 32010, 220 West Main Street, Louisville, Kentucky, 40332, formerly known as LG&E Power Marketing Inc., filed a notification of change in status to reflect its intention to enter into (together with certain other subsidiaries of LG&E Energy Corp.) a series of agreements with Big Rivers Electric Corporation, including a long-term Power Purchase Agreement and a Transmission Service and Interconnection Agreement.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Rayburn County Electric Cooperative

[Docket No. ER97–1903–001]

Take notice that on November 26, 1997, Rayburn County Electric Cooperative tendered for filing its refund report in the above-referenced docket.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. PP&L, Inc.

[Docket No. ER98–786–000]

Take notice that on November 25, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated November 19, 1997, with SCANA Energy Marketing, Inc. (SCANA), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds SCANA as an eligible customer under the Tariff.

PP&L requests an effective date of November 25, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to SCANA and to the Pennsylvania Public Utility Commission.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PP&L, Inc.

[Docket No. ER98–787–000]

Take notice that on November 25, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated November 19, 1997, with NP Energy, Inc. (NPE), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds NPE as an eligible customer under the Tariff.

PP&L requests an effective date of November 25, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NPE and to the Pennsylvania Public Utility Commission.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER98–788–000]

Take notice that on November 25, 1997, Florida Power & Light Company (FPL), tendered for filing an Amendment Number Three to the Network Service Agreement between FPL and the Florida Municipal Power Agency. This Amendment Number Two adds the City of Starke, Florida as a Network Member. FPL proposes to make the Amendment Number Two effective November 1, 1997.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER98–789–000]

Take notice that on November 25, 1997, PECO Energy Company (PECO), filed under § 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction

Agreement dated October 30, 1997, with Delmarva Power & Light Company (DP&L), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Transaction Agreement is for a term of fourteen (14) months.

PECO requests an effective date of November 1, 1997, for the Transaction Agreement.

PECO states that copies of this filing have been supplied to DP&L and to the Pennsylvania Public Utility Commission.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Company

[Docket No. ER98–790–000]

Take notice that on November 25, 1997, Tampa Electric Company (Tampa Electric), tendered for filing a letter agreement with the City of Lakeland, Florida (Lakeland) that amends an existing letter of commitment providing for the sale by Tampa Electric to Lakeland of electric capacity and energy, and a notice of termination of the letter of commitment.

Tampa Electric proposes that the amendatory letter agreement be made effective on November 28, 1997, and that termination of the letter of commitment be made effective on December 1, 1997, and therefore requests waiver of the Commission's notice requirements.

Copies of the amendatory letter agreement and the notice of termination have been served on Lakeland and the Florida Public Service Commission.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Tampa Electric Company

[Docket No. ER98–791–000]

Take notice that on November 25, 1997, Tampa Electric Company (Tampa Electric), tendered for filing a notice of termination of the service agreement between Tampa Electric and Heartland Energy Service, Inc. (Heartland), for non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff. Tampa Electric also tendered for filing a revised tariff sheet showing the change to the index of customers under the tariff.

Tampa Electric proposes that the termination and the tariff sheet be made effective on November 25, 1997, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Heartland and the Florida Public Service Commission.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Edison Source

[Docket No. ER98–792–000]

Take notice that on November 25, 1997, Edison Source (Source), tendered for filing a Revised Market-Based Rate Tariff. Copies of the filing were served upon the California Public Utilities Commission and customers who Source has committed to sell power to under the Revised Market-Based Rate Tariff.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Delhi Energy Services, Inc.

[Docket No. ER98–793–000]

Take notice that on November 24, 1997, Delhi Energy Services, Inc. (DESI), tendered for filing a notice of cancellation of DESI's Rate Schedule FERC No. 1 to be effective November 24, 1997.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Delmarva Power & Light Company

[Docket No. ER98–794–000]

Take notice that on November 25, 1997, Delmarva Power & Light Company, tendered for filing executed umbrella service agreements with NorAm Energy Management, Inc., Columbia Power Marketing Corporation, NESI Power Marketing, Inc., and NP Energy Inc., under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER98–795–000]

Take notice that on November 25, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Avista Energy Inc., (Avista). The Transmission Service Agreement allows to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. Copies of the filing have been served on Avista, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–822–000]

Take notice that on November 26, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with DPL Energy, Inc., and CNG Retail Services Corporation under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: December 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33562 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–16–000, et al.]

Ogden Energy China (Alpha) Ltd., et al.; Electric Rate and Corporate Regulation Filings

December 15, 1997.

Take notice that the following filings have been made with the Commission:

1. Ogden Energy China (Alpha) Ltd.

[Docket No. EG98–16–000]

On December 5, 1997, Ogden Energy China (Alpha) Ltd. (OECA) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

OECA will own a sixty percent equity interest in a 24 MW eligible facility located in Linán Municipality, Zhejiang Province, People's Republic of China. OECA states that it will be engaged directly and exclusively in the business of owning and/or operating all or part of one of more eligible facilities (as defined in Section 32(a)(1) of the Public Utility Holding Company Act) and selling electricity at wholesale to the Linán Power Bureau and at retail to consumers none of which will be located within the United States.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Monmouth Energy, Inc.

[Docket No. EG98–17–000]

On December 8, 1997, Monmouth Energy, Inc. (Monmouth), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Monmouth is a New Jersey corporation and a wholly-owned subsidiary of DQE Energy Services, Inc. Monmouth's facility is capable of producing a nominal 10.0 MW of power from approximately 5.9 million standard cubic feet a day (dry basis) of landfill gas. Monmouth states that no rate or charge in connection with this facility was in effect under the laws of any state as of October 24, 1992 or any time thereafter. Monmouth further states that copies of the application were served upon the Securities and Exchange Commission, the New Jersey Board of Public Utilities, and Jersey Central Power and Light Co.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Ogden Energy China (Gamma) Ltd.

[Docket No. EG98–18–000]

On December 8, 1997, Ogden Energy China (Gamma) Ltd. (OECG), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

OECA will own a sixty percent equity interest in a 24 MW eligible facility located in Taixing City, Jiangsu Province, People's Republic of China. OECG states that it will be engaged directly and exclusively in the business of owning and/or operating all or part of one of more eligible facilities (as defined in Section 32(a)(1) of the Public Utility Holding Company Act) and selling electricity at wholesale to the Taixing City Power Bureau and at retail to consumers none of which will be located within the United States.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Ogden Energy China (Delta) Ltd.

[Docket No. EG98–19–000]

On December 8, 1997, Ogden Energy China (Delta) Ltd. (OECA), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

OECA will own a sixty percent equity interest in a 24 MW eligible facility located in Taixing City, Jiangsu Province, People's Republic of China. OECA states that it will be engaged directly and exclusively in the business of owning and/or operating all or part of one of more eligible facilities (as defined in Section 32(a)(1) of the Public Utility Holding Company Act) and selling electricity at wholesale to the Taixing City Power Bureau and at retail to consumers none of which will be located within the United States.

Comment date: January 2, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. San Francisco Bay Area Rapid Transit District, an Agency of the State of California v. Pacific Gas and Electric Company a Corporation, and California Independent System Operator Corporation, a Corporation

[Docket No. EL98–10–000]

Take notice that on November 28, 1997, San Francisco Bay Area Rapid Transit District (BART) tendered for filing a complaint seeking an order of the Commission directing Pacific Gas and Electric Company to (1) enter into a long-term network transmission agreement in compliance with the Commission's Orders Nos. 888 and 888–A and PG&E's open-access transmission tariff (OATT), and (2) to cease its discriminatory treatment of BART in refusing to enter into a network transmission agreement for the delivery of Federal preference power to BART and in asserting, contrary to Commission Order No. 888–A that BART is not an eligible customer entitled to network transmission service under PG&E's OATT.

Comment date: January 14, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before January 14, 1998.

6. Portland General Electric Company

[Docket No. ER96–333–001]

Take notice that on December 3, 1997, Portland General Electric Company (PGE) tendered for filing revised tariff sheets to its open access transmission tariff (PGE–8) in Docket No. OA96–137 as ordered by the Commission in Docket No. ER96–333–000. The revised tariff sheets reflect changes to PGE's Schedules 2, 7, 8, 9 and Attachment H to unbundle the charge for Reactive Power Supply and Voltage Control from Generation Sources from the base transmission rates.

PGE respectfully requests that the Commission grant a waiver of the applicable notice requirements of 18 CFR Section 35.3 to allow the revised tariff sheets to become effective July 9, 1996.

Copies of this filing were served upon entities noted in the filing letter.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Interstate Power Company

[Docket No. ER97–2667–000]

Take notice that on November 26, 1997, Interstate Power Company tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. PECO Energy Company

[Docket No. ER98–28–001]

Take notice that on December 5, 1997, PECO Energy Company filed a compliance filing in the above-captioned docket consisting of clean and redlined version of First Revised Sheet No. 13 to its Form of Installed Capacity Obligation Allocation Agreement filed in this docket on October 3, 1997.

Copies of this compliance filing are being served on all parties on the

official service list compiled by the Secretary for this proceeding.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Millennium Power Partners, L.P.

[Docket No. ER98–830–000]

Take notice that on November 26, 1997, Millennium Power Partners, L.P. (Millennium), submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity and energy at market-based rates from a proposed nominal 360 MW natural gas-fired, combined cycle power plant (the Millennium project) in the Town of Charlton, Massachusetts. A new 115 kV interconnection line extending from the switchyard at the proposed site to transmission lines owned by New England Power Service Company will serve to connect the project to the regional grid. The project, which will be a merchant plant, is expected to commence commercial operation in the year 2000.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER98–1036–000]

Take notice that on December 11, 1997, Southern California Edison Company (Edison) tendered for filing the Edison-Anaheim 1997 Restructuring Agreement (Restructuring Agreement) between Edison and the City of Anaheim, California (Anaheim), and a Notice of Cancellation of various agreements and rate schedules applicable to Anaheim. Included in the Restructuring Agreement as Appendices B, C, D, and E are: the Edison-Anaheim Interconnection Agreement, Amendment No. 1 to the Edison-Anaheim San Onofre Nuclear Generating Station Firm Transmission Service Agreement, Amendment No. 1 to the Edison-Anaheim 1995 San Juan Unit 4 Firm Transmission Service Agreement, and the Edison-Anaheim Four Corners-Mead Firm Transmission Service Agreement.

The Restructuring Agreement is the result of negotiations between Edison and Anaheim to modify existing contracts to accommodate the emerging Independent System Operator (ISO)/Power Exchange market structure. The Restructuring Agreement significantly simplifies the existing operational arrangements between Edison and Anaheim. In addition, the Restructuring Agreement provides for cancellation of existing bundled service arrangements and obligations between Edison and Anaheim. Edison is requesting that the Restructuring Agreement become effective on the date the ISO assumes operational control of Edison's transmission facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33563 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Allegheny Hydro No. 8 and 9 LP and Connecticut National Bank; Notice of Availability of Draft Environmental Assessment

[Project No. 3021–048]

December 18, 1997.

A draft environmental assessment (EA) is available for public review. The draft EA analyzes the environmental impacts of installing 15-inch flashboards on the top of Lock and Dam 9, part of the Allegheny River Lock and Dam 8 and 9 Hydroelectric Project No. 3021–048. The Commission is considering requiring flashboards, from about May 1 through October 31 each year, to rectify project-induced lower water levels and associated impacts to recreational boating in the Lock and Dam 9 pool. The draft EA contains Commission staff's preliminary analysis that 15-inch flashboards are needed and installation would not constitute a major federal action significantly affecting the quality of the human environment. The Allegheny River Lock and Dam 8 and 9 Project is on the Allegheny River near the City of Kittanning, in Armstrong County, Pennsylvania.

The draft EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the draft EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Please submit any comments on the draft EA within 60 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation. Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426. Please affix Project No. 3021–048 to all comments.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33515 Filed 12–23–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00229; FRL–5762–5]

TRI; Alternate Threshold for Low Annual Reportable Amounts; Agency Information Collection Activities; Proposed Renewal and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12. Before submitting the following ICR to OMB for review and reapproval, EPA is soliciting comments on specific aspects of the information collection, which is briefly described below. The ICR is a continuing ICR entitled "Alternate Threshold for Low Annual Reportable Amounts," EPA ICR No. 1704.05, OMB No. 2070–0143. This ICR covers the reporting and recordkeeping requirements associated with reporting

under the alternate threshold for reporting to the Toxic Release Inventory (TRI), which appear at 40 CFR part 372. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Written comments must be submitted on or before February 23, 1998.

ADDRESSES: Each comments must bear the docket control number "OPPTS–00229" and administrative record number 187. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.ep.gov. Follow the instructions under Unit III. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contains information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must be also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must asset a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection of Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404, TDD: 202–554–0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact: Tim Crawford, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1715; Fax: 202–401–8142; e-mail: crawford.tim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability

Internet

Electronic copies of the ICR are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). An electronic copy of the collection instrument referenced in this ICR and instructions for its completion is available at http://www.epa.gov/opptintr/afr96.

Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 4056 for a copy of the ICR and item number 4049 for a copy of an interim report on Form A.

I. Background

Affected entities: Entities potentially affected by this action are those chemical facilities that manufacture, process or otherwise use certain toxic chemicals listed on the Toxic Release Inventory (TRI) and which are required, under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), to report annually to EPA their environmental releases of such chemicals.

For the collection of information addressed in this notice, EPA would like to solicit comments to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

II. Information Collection

EPA is seeking comments on the following ICR, as well as the Agency's intention to renew the corresponding OMB approval, which is currently scheduled to expire on May 31, 1998.

Title: Alternate Threshold for Low Annual Reportable Amounts.

ICR Numbers: EPA ICR No. 1704.04, OMB No. 2070–0143.

Abstract: EPCRA section 313 requires certain facilities manufacturing, processing, or otherwise using certain toxic chemicals in excess of specified threshold quantities to report their environmental releases of such chemicals annually. Each such facility must file a separate report for each such chemical.

In accordance with the authority in EPCRA, EPA has established an alternate threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that otherwise meets the current reporting thresholds but estimates that the total amount of the chemical in total waste does not exceed 500 pounds per year, and that the chemical manufactured, processed, or otherwise used in a amount not exceeding 1 million pounds during the reporting year, can take advantage of reporting under the alternate threshold option for that chemical for that reporting year.

Each qualifying facility that chooses to apply the revised threshold must file the Form A (EPA Form 9350–2) in lieu of a complete TRI reporting Form R (EPA Form 9350–1). In submitting the Form A, the facility certifies that the sum of the amount of the EPCRA section 313 chemical in wastes did not exceed 500 pounds of the reporting year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year. Use of the Form A in place of the Form R represents a substantial savings to respondents, both in burden hours and in labor costs.

The primary function served by the submission of the Form A is to satisfy the statutory requirement to maintain reporting on a substantial majority of releases for all listed chemicals. Without the Form A, users of TRI data would not have access to any information on these chemicals. The Form A also serves as a *de facto* range report, which is useful to any party interested in amounts being handled at a particular facility or for broader statistical purposes. Additionally, the Form A provides compliance monitoring and enforcement programs and other interested parties with a means to track chemical management activities and verify overall compliance with the rule. Responses to this collection of information are mandatory (see 40 CFR part 372) and facilities subject to reporting must either submit a Form A or a Form R.

Burden Statement: The burden to respondents for complying with this ICR

is estimated to total 991,000 hours per year with an annual cost of $61.9 million. These totals are based on an average burden of 34.6 hours per response for an estimated 14,453 respondents making one response annually. These estimates include the time needed to determine applicability; review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The use of Form A may save reporting facilities a total of up to 500,000 hours and $30 million per year, compared to the cost of reporting on Form R.

III. Public Record and Electronic Submissions

The official record for this document as well as the pubic version, has been established for this document under docket control number "OPPTS–00229" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–00229" and administrative control number 187. Electronic comments on this document may be online at many Federal Depository Libraries.

List of Subjects

Environmental protection; information collection requests; reporting and recordkeeping.

Dated: December 16, 1997.
Susan H. Wayland,
Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.
[FR Doc. 97–33455 Filed 12–23–97; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5940–2]

Proposed Settlements; Petitions for Review of "National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlements; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("the Act"), notice is hereby given of three proposed settlement agreements regarding the following petitions for review: *Chemical Manufacturers Association* v. *EPA*, No. 96–1031(D.C. Cir.); Halogenated Solvents Industry Alliance, Inc. v. *EPA*, *No. 96–1036 (D.C. Cir.); and Society of the Plastics Industry, Inc.*, v. *Browner*, No. 96–1038 (D.C. Cir.). Each petition seeks judicial review under section 307(b) of the Act of the final rule entitled, "National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions from Wood Furniture Manufacturing Operations," 60 FR 62930 (Dec. 7, 1995) ("Wood Furniture NESHAP"), promulgated by the United States Environmental Protection Agency ("EPA"), respondent, and codified at 40 CFR part 63, subpart JJ.

There is a separate proposed settlement agreement ("PSA") for each petition for review, which addresses the specific issues raised by the respective petitioner. For convenience of interested parties, following is a brief summary of some of the key points of each PSA; however, interested parties are strongly encouraged to obtain a copy of the PSAs to discern for themselves the full scope of the proposed settlements instead of relying solely on the summaries below.

The PSA between EPA and the Chemical Manufacturers Association requires EPA to conduct notice and comment rulemaking proposing that certain glycol ethers be removed from Table 6 of the Wood Furniture NESHAP and that the de minimis value in Table 6 for 2-ethoxy ethyl acetate be revised to read 10.0 tons/year.

The PSA between EPA and the Halogenated Solvents Industry Alliance would require EPA: (1) to conduct notice-and-comment rulemaking in accordance with section 307(d) of the Act proposing that perchloroethylene and trichloroethylene be deleted from Table 4 of the Wood Furniture NESHAP; and (2) to give great weight to the recommendations of the Science Panel regarding whether a reassessment of the cancer hazard for methylene chloride should be undertaken based on the current state-of-the-science. This PSA also requires EPA to conduct additional notice and comment rulemaking with respect to methylene chloride if methylene chloride is reassessed and certain findings are made as a result of that reassessment.

The PSA between the Society of the Plastics Industry and EPA would require EPA to propose technical amendments to the Wood Furniture NESHAP that would remove the subheadings of "Nonthreshold Pollutants," "High-Concern Pollutants," and "Unrankable Pollutants" in Table 6 of the Wood Furniture NESHAP and to remove footnote "a" to Table 6, on the grounds that the subheadings and footnote are unnecessary because no subcategories of pollutants are created in Table 6.

Each of the proposed settlement agreements would require EPA to sign a notice of proposed rulemaking regarding the above amendments no later than six (6) months after the date the settlement agreement is signed, and a notice of final rulemaking no later than twelve (12) months after the date the settlement agreement is signed.

Notice of Proposed Settlement

For a period of thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the proposed settlement agreements may be requested from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606, or by e-mail at COCHRAN.PHYLLIS@EPAMAIL.EPA.GOV. Written comments should be sent to Jon Devine at the above address and must be submitted on or before January 23, 1998.

Dated: September 12, 1997.
Scott C. Fulton,
Principal Deputy General Counsel.
[FR Doc. 97–33612 Filed 12–23–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5487–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.
Weekly receipt of Environmental Impact Statements
Filed December 15, 1997 Through December 19, 1997
Pursuant to 40 CFR 1506.9.
EIS No. 970483, Draft EIS, FAA, FL, Miami International Airport Master Plan Update for the Proposed New Runway, Funding and COE Section 404 Permit, Miami-Dade County, FL, Due: February 20, 1998, Contact: Bart Vernace, P.E. (407) 812–6331.
EIS No. 970484, Draft Supplement, COE, CA, Napa River and Napa Creek Flood Protection Project, New Information, City of Napa, Napa County, CA, Due: February 06, 1998, Contact: Thomas Bonetti (916) 557–6727.
EIS No. 970485, Draft EIS, AFS, AK, Cascade Point Access Road, Construction, Maintenance and Operation, Road Easement within National Forest System land in the vicinity of Echo Cove, EPA Permit, COE Sections 10 and 404 Permits, Juneau, AK, Due: February 06, 1998, Contact: Jennett de Leeuw (907) 586–8800.
EIS No. 970486, Final EIS, AFS, WI, Oconto River Seed Orchard Pest Management Plan, Implementation, Nicolet National Forest, Oconto County, WI, Due: January 22, 1998, Contact: Bill Sery (715) 276–7400.
EIS No. 970487, Draft EIS, COE, GA, Brunswick Harbor Deepening Federal Navigation Project, Improvements, Brunswick, Glynn County, GA, Due: February 06, 1998, Contact: William G. Bailey (912) 652–5781.
EIS No. 970488, Final EIS, USN, NY, Naval Weapons Industrial Reserve Plant Calverton Disposal and Reuse, Implementation, Towns of Riverhead and Brookhaven on Long Island, Suffolk County, NY, Due: January 22, 1998, Contact: Kurt C. Frederick (610) 595–0728.
EIS No. 970489, DRAFT EIS, DOE, KY, TN, OH, TN, Programmatic EIS—Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride, Paducah Site, McCracken County, KY; Portsmouth Site, Pike County, OH; and K–25 Site on the Oak Ridge Reservation, Anderson and Roane Counties, TN, Due: April 28, 1998, Contact: Charles E. Bradley (301) 903–4781.
EIS No. 970490, Final EIS, FHW, MO, MO–21 Corridor Transportation Improvement, between Otto to DeSoto, Funding, COE Section 404 Permit and NPDES Permit, Jefferson County, MO, Due: January 22, 1998, Contact: Don Newmann (573) 636–7104.

Amended Notices

EIS No. 970464, Draft EIS, COE, AZ, Rio Salado Environmental Restoration of two Sites along the Salt River; (1) Phoenix Reach and (2) Tempe Reach, Feasibility Report, in the Cities of Phoenix and Tempe, Maricopa County, AZ, Due: January 26, 1998, Contact: Alex Watt (213) 452–3860. Published FR–12–12–97—Correction to Telephone.

Dated: December 19, 1997.
Anne N. Miller,
Deputy Director, Office of Federal Activities.
[FR Doc. 97–33607 Filed 12–23–97; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5941–2]

Technical Workshop on the Potential for Application of 2,3,7,8–TCDD Toxicity Equivalency Factors to Aquatic Life and Wildlife

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a workshop to evaluate the application of toxicity equivalency factors (TEFs) for 2,3,7,8–TCDD to the assessment of risks from polychlorinated dioxins, furans, and biphenyls to terrestrial and aquatic wildlife. The workshop will be open to members of the public as observers. The application of TEFs, which are based on different experimental systems and varying amounts of empirical data, will be studied in the context of representative case studies.

DATES: The workshop will begin on Tuesday, January 20, 1998, at 3 p.m. and end on Thursday, January 22, 1998, at 5 p.m. Members of the public may attend as observers.

ADDRESSES: The meeting will be held at the Chicago Hilton and Towers, 720 S. Michigan Ave., Chicago, IL 60605, Telephone (312) 922–4400.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Cynthia Nolt, U.S. EPA Office of Science Policy (8104R), 401 M Street SW, Washington, DC 20460, Telephone (202) 564–6763. Eastern Research Group, Inc., an EPA contractor, is convening this workshop. To attend the workshop as an observer, contact Eastern Research Group, Inc., Telephone (781) 674–7374.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to explore the application of additivity models for polychlorinated dioxins, furans, and biphenyls in problem formulations and effects characterizations of ecological risk assessments for aquatic life and avian and mammalian wildlife. In two previous workshops, convened by the World Health Organization in August 1996 and June 1997, scientific experts reached consensus on a scheme for prioritizing data sets and TEFs for aquatic life and wildlife. This third workshop will examine the use of a TEF approach in effects characterization in prospective risk assessments, as well as in retrospective risk assessments, where it may be applied as a diagnostic tool to assess relative risk.

The workshop will consist of three panels that are to address uncertainties, such as lack of knowledge and variability, associated with WHO consensus TEFs (and the data sets for aquatic, avian, and mammalian wildlife from which the TEFs were determined), in the context of two risk assessment case studies. The prospective case study involves a risk assessment for a hypothetical point source requiring a water quality permit with standards that will protect aquatic life and wildlife at the individual and population levels of biological organization. The retrospective case study focuses on a hypothetical freshwater ecosystem in which scientists have observed reproductive effects and have measured exposures in both biota and sediments. The panels will relate the exposure levels to a concentration of concern and a threshold for remediation.

To focus the workshop, the deliberations will address only compounds whose mode of action is elicited through the arylhydrocarbon receptor (AhR). The workshop will not address either chemicals with different modes of action or nonchemical stressors. In addition, the workshop deliberations will be restricted to the direct effects of AhR agonists, and will

not involve evaluations of indirect effects.

Each panel will be composed of experts from the public and private sector. They will use the two case studies to evaluate how the nature and extent of uncertainties associated with the TEF approach and with associated data sets can have varying implications in different types of risk assessments. The results of the workshop will be compiled and summarized by Eastern Research Group in a workshop report. The availability of this workshop report will be announced in a future **Federal Register** document.

Dated: December 19, 1997.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 97–33736 Filed 12–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5941–1]

Technical Workshop on Drake Site Incinerator Risk Issues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a workshop convened by Eastern Research Group, Inc., an EPA contractor, for scientific peer review of the EPA draft risk assessment for the Drake Chemical Superfund Site Incinerator full-scale operation in Lock Haven, Pennsylvania. The workshop will be held in Williamsport, Pennsylvania, and will be open to members of the public as observers. The peer review, to be conducted by scientists from outside EPA, is being organized to assist in completing the risk assessment.

DATES: The workshop will begin on Thursday, January 15, 1998 at 12 Noon and end on Friday, January 16, 1998 at 12:30 p.m. Members of the public may attend as observers.

ADDRESSES: The meeting will be held at the Genetti Hotel & Conference Center, 200 West 4th Street, Williamsport, Pennsylvania 17701. Since seating capacity is limited, please contact Eastern Research Group, Inc., Tel.: (781) 674–7374, by January 9, 1998 to attend the workshop as an observer.

FOR FURTHER INFORMATION CONTACT: For technical inquires, contact Mr. Gregg Crystall, U.S. EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107. Tel.: (215) 566–3207. Copies of the draft risk assessment will be available for inspection in the EPA Region III Library, Philadelphia, PA, and the EPA Headquarters Information Resources Center, Washington DC. In addition, the draft risk assessment will be available for inspection in: the Ross Public Library, West Main Street, Lock Haven, PA, 17745; the Stevenson Library, Lock Haven University, Lock Haven PA, 17745; and the Lock Haven City Hall, 20 East Church Street, Lock Haven, PA, 17745. Inquiries concerning additional opportunities for document review should be directed to Mr. Crystall.

SUPPLEMENTARY INFORMATION: While operational, the Drake Chemical Company in Lock Haven, Pennsylvania was sited numerous times by State and Federal agencies for violating environmental and health and safety regulations. In 1982 as a response to the Company's noncompliance with environmental regulations, EPA Region III undertook emergency removal actions. These actions included removal and disposal of surface drums, surface sludges, and liquids contained in process and storage tanks, and placement of fences around the property. Additional remediation actions have been conducted in several phases since then. Phase I remedial activities included the remediation of a leachate stream draining into Bald Eagle Creek. Phase II included drainage and removal of materials from two lined Lagoons, and demolition and removal of the on-site buildings. Subsequent studies conducted at the site indicated that the remaining contamination in soils presented a serious threat to the environment and human health. The 1988 Record of Decision concluded that the remaining site wastes, approximately 200,000 cubic yards of contaminated site soils, sediments, and sludges from the on-site lagoons, should be excavated and treated on-site in a high temperature incinerator. The excavated soils would be stockpiled temporarily, remediated in an on-site rotary kiln incinerator, then returned to the site. After all the contaminated soil had been remediated, the incinerator would be dismantled and removed from the site.

Prior to full-scale operation, a trial burn process was conducted to ensure incinerator equipment functioned according to operational and safety specifications. Prior to conducting this evaluation, EPA Region III prepared a trial burn process risk assessment (June, 1996). The trial burn process risk assessment was developed using approximated data drawn from site soil samples, anticipated soil feed rates, incinerator design parameters, and emissions data from other incinerators. Results of the trial burn risk assessment were presented during a public meeting held in September 1996. The trial burn process was conducted in January and February 1997.

Most recently, EPA Region III developed a full-scale operation risk assessment by utilizing actual data collected during the trial burn process. The resulting Draft Drake Chemical Site Incinerator Full-Scale Operation Risk Assessment (November 1997) is the subject of the current peer review.

For the current review, EPA is inviting a panel of 14 independent scientists from the fields of toxicology, environmental fate and transport, combustion engineering, atmospheric modeling, exposure assessment, and ecological assessment. These scientists will focus on the scientific data, methods, and analyses, along with the assumptions and uncertainties that are associated with full-scale operation risk estimates. Following the workshop; EPA will consider the scientist's individual recommendations in completing the risk assessment. The risk assessment documents undergoing review relate only to scientific issues. Although the completed risk assessment will be one of the factors considered in making future decisions for the Drake Chemical site, these decisions and other risk management issues will not be a part of the peer review process.

Dated: December 19, 1997.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 97–33735 Filed 12–23–97; 8:45 am]

BILLING CODE: 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5940–01]

Notice of Open Meeting of the Environmental Financial Advisory Board on February 10–11, 1998

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board on February 10–11, 1998. The meeting will be held at the National Press Club, 13th Floor in the Holeman Lounge, 14th and F Streets, NW, Washington, DC. The February 10 session will run from 9 am to 5 pm, while the February 11 session will run from 8:15 am to 11 am.

EFAB is chartered with providing analysis and advice to the EPA Administrator on environmental finance. The purpose of this meeting is to discuss work products under EFAB's current strategic action agenda and to develop an action agenda to direct the Board's activities over the remainder of this year and into 1999. Environmental financing topics expected to be discussed include: cost effective environmental management, community-based environmental protection, brownfields redevelopment, Drinking Water State Revolving Funds, and small business access to capital.

The meeting will be open to the public, but seating is limited. For further information, please contact Alecia Crichlow, U.S. EPA on 202–564–5188, or Joanne Lynch, U.S. EPA on 202–564–4999.

Dated: December 11, 1997.

Jack Shipley,

Acting Comptroller.

[FR Doc. 97–33610 Filed 12–23–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5939–9]

National Drinking Water Advisory Council Occurrence and Contaminant Selection Working Group; Notice of Open Meeting

Under section 10(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting (via conference call) of the Occurrence & Contaminant Selection Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (41 U.S.C. S300f *et seq.*), will be held on January 7, 1998 from 12:30 p.m. to 4:30 p.m. EST. The conference call is open to the public, but due to availability, conference lines are limited and access will be granted on a first-come first-served basis.

The purpose of this call is to review proposed changes to the first Drinking Water Contaminant Candidate List (CCL). The changes will be based on public comments and additional information received as a result of the October 6, 1997 document (62 FR 52193) of the draft CCL. The Working Group members will review and discuss the relevant issues and facts, and develop proposed recommendations for deliberation by the advisory council. Therefore, statements will be taken from the public as time allows.

For more information, please contact, Evelyn Washington, Designated Federal Officer, Occurrence & Contaminant Selection Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4607), 401 M Street SW., Washington, DC 20460. The telephone number is 202–260–3029, fax 202–260–3762, and e-mail address washington.evelyn@epamail.epa.gov.

Dated: December 18, 1997.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 97–33611 Filed 12–23–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5940–3]

Science Advisory Board; Notice of Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time and all meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating EPA Office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB Office. Details on availability are noted below.

1. Executive Committee (EC)

The Science Advisory Board's Executive Committee (EC) will meet on Tuesday, January 13, 1998, and Wednesday, January 14, 1998. The meeting will convene each day at 8:30 a.m., in the Administrator's Conference Room 1103 West Tower of the U.S. Environmental Protection Agency Headquarters Building, 401 M Street, SW, Washington, DC 20460, and will adjourn no later than 5:30 p.m. on each day (Eastern Time).

At this meeting, the Executive Committee will receive updates from its committees and subcommittees summarizing their recent and planned activities. As part of these updates, some committees expect to present draft reports for the Executive Committee review and approval. *Expected* drafts include:

(a) Environmental Engineering Committee

(1) Review of Pollution Prevention Research Plan

(2) Review of Surface Impoundments Survey

(b) Integrated Human Exposure Committee

(1) Update on Expedited Action on "Review of Indoor Air Source Ranking Database"

(2) Commentary on "Importance of Indoor Air Environments"

Other items on the agenda tentatively include, but are not limited to, the following:

(a) Discussion with Deputy Administrator Fred Hansen on various issues.

(b) Discussion with the Acting Assistant Administrator for Research and Development, Mr. Henry Longest on Peer Review at EPA.

(c) Updates on Activities of the Agency's FIFRA Scientific Advisory Panel (SAP) and the Board of Scientific Counselors (BOSC) and their interactions with the SAB.

(d) An update of the Futures activities of the SAB.

(e) An update on the Integrated Risk Project.

(f) A follow-up to the Board's Strategic Planning Retreat held in November 1997.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information concerning the meeting or who wish to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–4126; fax (202) 260–9232; or via the INTERNET at: barnes.don@epamail.epa.gov. Copies of the draft meeting agenda and available draft reports listed above can be obtained from Ms. Priscilla Tillery-Gadson on (202) 260–8414; fax (202) 260–7118; or via the INTERNET at: tillery.priscilla@epamail.epa.gov.

2. Advisory Council on Clean Air Compliance Analysis—Three Meetings

The Science Advisory Board's (SAB) Advisory Council on Clean Air Compliance Analysis (ACCACA, or the "Council"), its Air Quality Models Subcommittee (AQMS), and its Health and Ecological Effects Subcommittee (HEES) will each hold public meetings on the dates and times described below. All meetings are open to the public, and all times noted are Eastern Time. For further information concerning the specific meetings described in this section, please contact the individuals listed below. These public meetings are a follow-up to earlier Council public teleconference discussions held on March 14, March 19, May 15 and June 30, 1997, as well as the AQMS public teleconference meeting discussions of

May 5, 1997 pertaining to the 1990 Clean Air Act Amendments (CAAA) section 812 Prospective Study of Costs and Benefits (See 62 FR 10045, Wednesday, March 5, 1997, 62 FR 19320, April 21, 1997 and 62 FR 32605, June 16, 1997, for further information).

Consistent with the apparent Congressional intent behind section 812 of the 1990 CAAA, and with the Environmental Protection Agency's (EPA's) judgments regarding the potential utility of a comprehensive economic assessment of the Clean Air Act, the four fundamental goals of the first Prospective Study to be submitted to Congress are stated succinctly as follows:

(a) To facilitate greater understanding of the value of America's overall investment in clean air, particularly the value of the additional requirements established by the 1990–CAAA,

(b) To facilitate greater understanding of where future investments in air pollution control might yield the greatest reduction in adverse human health and/or environmental effects for the resources expended,

(c) To help evaluate the significance of potential new and emerging information pertaining to the benefits and costs of air pollution control, and

(d) To help identify areas of economic and scientific research where additional effort might improve the comprehensiveness of and/or decrease the uncertainty associated with future estimates of the benefits and costs of air pollution control.

Pursuant to the above four goals, the Agency has embarked on the Prospective Study activities. These activities involve a number of component studies, such as analytical design, scenario development, emissions profiles, air quality modeling, physical effects modeling, direct cost estimation, sector studies, air toxics analysis, economic valuation, comparison of benefits and costs, and report generation. Working drafts of relevant portions of these components, along with focused charges will be presented to the Council and its two subcommittees, the Air Quality Models Subcommittee (AQMS) and the Health and Ecological Effects Subcommittee (HEES), in the upcoming meetings described below. The draft documents that present, compile and document the results and methodologies used for the Prospective Study, including the Appendices to the future draft Prospective Study report, which are the subject of these reviews will be available upon request from the originating EPA office (See below for details).

2a. Air Quality Models Subcommittee

The Air Quality Models Subcommittee (AQMS) of the Advisory Council on Clean Air Compliance Analysis will meet Thursday, January 22, 1998, from 9 a.m. to 5 p.m. and Friday, January 23, 1998 from 9 a.m. to 4 p.m. The meeting will take place in the Science Advisory Board Conference Room 2103 of Waterside Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting on a space-available basis. Additional instructions about how to participate in the public meeting can be obtained by calling Ms. Diana L. Pozun at (202) 260–8432 prior to the meeting.

In this meeting, the Subcommittee plans to review the draft documents pertaining to the Clean Air Act Amendments (CAAA) section 812 Prospective Study data, emissions modeling assumptions, methodology, results and documentation. In previous public teleconference meetings of the Council (See 61 FR 54196, Thursday, October 17, 1996, and 62 FR 10045, Wednesday, March 5, 1997 for further information), the Council advised the Agency staff that the Subcommittee should review the emissions modeling information before proceeding to conduct any model runs. The May 5, 1997 public teleconference (See 62 FR 19320, Monday, April 21, 1997) of the AQMS was conducted for this purpose and produced a letter report (See EPA–SAB–COUNCIL–LTR–97–012, dated September 9, 1997 for further information).

2b. Health and Ecological Effects Subcommittee

The Health and Ecological Effects Subcommittee (HEES) of the Advisory Council on Clean Air Compliance Analysis will meet to review draft. documents pertaining to the health and ecological aspects of the Clean Air Act Amendments (CAAA) section 812 Prospective Study data, emissions modeling assumptions, methodology, results and documentation. The Subcommittee will meet on Thursday, January 29, 1998, from 9 a.m. to 5 p.m. and Friday, January 30, 1998 from 9 a.m. to 4 p.m. The meeting will take place in the Administrator's Conference Room 1103 West Tower of Waterside Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting on a space-available basis. Additional instructions about how to participate in the public meeting can be obtained by calling Ms. Diana L. Pozun at (202) 260–8432 prior to the meeting.

2c. Advisory Council on Clean Air Compliance Analysis (the "Council")

The Advisory Council on Clean Air Compliance Analysis (the "Council") of the Science Advisory Board (SAB) will meet on Thursday, February 5, 1998 from 9 a.m. to 5 p.m. and Friday, February 6, 1998 from 9 a.m. to 4 p.m. The meeting will take place in the Administrator's Conference Room 1103 West Tower of Waterside Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting on a space-available basis. Additional instructions about how to participate in the public meeting can be obtained by calling Ms. Diana L. Pozun at (202) 260–8432 prior to the meeting. The Council plans to discuss results of the preliminary findings and recommendations of its Air Quality Models Subcommittee (AQMS) and Health and Ecological Effects Subcommittee (HEES) in relation to the emissions estimates, modeling assumptions, methodology, results and documentation of the Prospective Study. The various draft documents pertaining to the draft Prospective Study are not available from the Science Advisory Board, but may be obtained by contacting Ms. Catrice Jefferson (see below for ordering information). To discuss technical aspects of the Prospective Study draft documents, please call Mr. James DeMocker, Office of Air and Radiation (see below for further information).

2d. For Further Information

Please contact the SAB staff (see below) to obtain agendas and to determine the logistics and details of the individual public meetings.

To discuss technical aspects of the draft documents pertaining to the CAA section 812 Prospective Study, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or via the Internet at: democker.jim@epamail.epa.gov. To obtain copies of the draft documents pertaining to the CAA Section 812 Prospective Study, please contact Ms. Catrice Jefferson, Office Manager, Office of Policy Analysis and Review (OPAR), (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260–5580; FAX (202) 260–9766, or via the Internet at jefferson.catrice @epamail.epa.gov.

To obtain copies of the meeting agendas, please contact Ms. Diana L. Pozun, Secretary to the Council, AQMS and HEES Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; at Tel. (202) 260–8432; FAX (202) 260–7118; or via the Internet: pozun.diana@epamail.epa.gov. To discuss technical or logistical aspects of the Council or its AQMS and HEES subcommittee review process or to submit written comments, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official to the Council, AQMS and HEES, at Tel. (202) 260–2560; FAX (202) 260–7118; or via the Internet: kooyoomjian.jack @epamail.epa.gov. Members of the public who wish to attend these public meetings should contact Ms. Pozun at least one week prior to the meeting of interest to express your intention to attend.

To request time to provide public comments at the meetings, please contact Ms. Diana L. Pozun *in writing* by mail, FAX or E–Mail addresses given above no later than one week prior to each of the meetings.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board (SAB) expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment at meetings will be usually limited to five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting), may be mailed to the Council and its respective AQMS and HEES subcommittees prior to its meeting; comments received too close to the meeting date will normally be provided to the Council and its subcommittees in the meeting. Written comments may be provided up until the time of the meeting.

Dated: December 18, 1997.

Donald G. Barnes, Ph. D.,

Staff Director, Science Advisory Board.

[FR Doc. 97–33613 Filed 12–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34119; FRL 5761–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 22, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the seven pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 22, 1998 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000241–00356	Triforine Technical	Triforine	Almonds, apples, apricots, cherries, nectarines, plums,prunes, asparagus, high bush blueberries, cranberries
004581–00280	TOPSIN M Technical	Thiophante-Methyl	Celery
004581–00322	TOPSIN M 70W	Thiophante-Methyl	Celery
004581–00352	TOPSIN M 4.5F	Thiophante-Methyl	Celery
004581–00372	TOPSIN M 85WDG	Thiophante-Methyl	Celery
004581–00377	TOPSIN M WSB	Thiophante-Methyl	Celery
008764–00001	Freshgard 25	Sodium *o*-phenylphenate	Apples, cantaloupes, carrots, cherries, cucumbers, nectarines, peaches, peppers, pineapples, plums, sweet potatoes, tomatoes

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000241	American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543.
004581	Elf Atochem North America, Inc., 2000 Market Street, Philadelphia, PA 19103.
008764	FMC Corporation, Citrus Systems Division, 1540 Linden St., Riverside, CA 92507.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: December 8, 1997.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 97–33450 Filed 12–23–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

December 17, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 23, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0348.

Title: Section 76.79, Records available for public inspection.

Form No.: FCC Form 457.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 2,125.

Estimated Time Per Response: 2 hours.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: N/A.

Total Annual Burden: 4,250 hours.

Needs and Uses: Section 76.79 requires that every cable and multichannel video program distributor (MVPD) employment unit maintain, for public inspection, a file containing copies of all annual employment reports and related documents. This collection involves the maintenance of a public inspection file. The Commission does not dictate how these records are to be kept. The data is used by the general public to assess a cable unit's/MVPD's EEO program.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–33580 Filed 12–23–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–2639; CC Docket No. 90–571]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted

Released: December 18, 1997.

Notice is hereby given that the state listed below has applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225. These rules are codified at 47 CFR 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments on or before January 20, 1997. Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to Magalie Roman Salas, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

Applications received after October 1, 1997, for which no extension has been requested before October 1, 1997, must be accompanied by a petition explaining the circumstances of the late-filing and requesting acceptance of the late-filed application.

File No: TRS–97–50.

Applicant: State of New Hampshire Public Utilities Commission, State of New Hampshire.

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–33579 Filed 12–23–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–2624]

Emergency Alert System National Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., Appendix 2) announcement is made of the following advisory committee meeting:

Name of Committee: National Advisory Committee.

Subject: Emergency Alert System.

Date of Meeting: January 27, 1998.

Time of Meeting: 9 am.

Place: National Association of Broadcasters, 1771 N Street, NW., Washington, DC 20036–2891.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Gay, Emergency Alert System Staff, Stop Code 1500B1, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554 (phone: 202–418–1228)(fax: 202–418–2817).

SUPPLEMENTARY INFORMATION: In 1994, the Federal Communications Commission (FCC) established the Emergency Alert System (EAS) to replace the Emergency Broadcast System (EBS). EAS uses various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies. At the same time, the FCC added a new part 11 to its rules containing EAS regulations. 47 CFR part 11. The National Advisory Committee (NAC) was established to assist the FCC administer EAS. Its first meeting will be held on January 27, 1998, in Washington, DC, and the general topic will be emergency communication matters relating to EAS.

Summary of Proposed Agenda

—Orientation.
—Remarks by FCC Chairman and/or FCC Defense Commissioner.
—Presentations by the National Weather Service and Federal Emergency Management Agency.
—Review of issues and FCC actions/items concerning EAS.
—Updates on state and local EAS plans.
—EAS working groups.
—Future EAS requirements and NAC recommendations to FCC.
—Other Business.
—Adjournment.

Administrative Matters

Attendance at the NAC meeting is open to the interested public, but limited to space availability. Members of the general public may file a written statement with the FCC at the above contact address before or after the meeting. Members of the public wishing to make an oral statement during the meeting must consult with the NAC at the above FCC contact address prior to the meeting. Minutes of the meeting will be available after the meeting at the above contact address.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–33578 Filed 12–23–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Public Comments Regarding Extensions to Existing OMB Clearances

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The FMC is preparing submissions to the Office of Management and Budget (OMB) for continued approval of the following information collections (extensions with no changes) under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. Chapter 35): OMB No. 3072–0055 (Tariffs and Service Contracts); OMB No. 3072–0045 (Agreements); and OMB No. 3072–0001 (Admission to Practice). Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval and will become a matter of public record.

DATES: Comments must be submitted on or before February 23, 1998.

ADDRESSES: Send comments to: Edward P. Walsh, Managing Director, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (Telephone: (202) 523–5800).

FOR FURTHER INFORMATION CONTACT: Send requests for copies of the current OMB clearances to: George D. Bowers, Director Office of Information Resources Management, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (Telephone: (202) 523–5834).

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3072–0055 Expires May 31, 1998.

Abstract: Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open for public inspection, tariffs showing all rates, charges, classifications, rules and practices for transportation of cargo between the U.S. and foreign ports. Section 8(c) of the Act also provides for the filing of service contracts and statements of the contracts' essential terms with the Commission. 46 CFR 514 establishes the requirements, format and user charges for the electronic publication, filing and retrieval of tariffs, as well as service contracts and their essential terms, covering the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984.

Needs and Uses: In order to effectively discharge its statutorily-assigned duties, the Commission uses filed tariff and service contract data for surveillance and investigatory purposes, and, in its proceedings, adjudicates related issues raised by private parties.

Frequency: The publishing and filing of tariffs and the filing of service contracts are not assigned a specific time frame by the Commission; they are submitted as circumstances warrant. That is, a common carrier or conference of such carriers can only charge its customers rates that are on file with the Commission. Rate increases must be filed on 30 days notice, while decreases can be filed to take effect on immediate notice.

Type of Respondents: Common carriers by water are persons who hold themselves out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation, who assume the responsibility for the transportation from origin to destination and use a vessel operating on the high seas or the Great Lakes between a U.S. port and a foreign country.

Number of annual respondents: The Commission estimates an annual respondent universe of 3,267. This number varies as persons file tariffs.

Estimated time per response: The average time for preparing and filing tariffs and service contracts is estimated at 122 person hours. Estimated time per respondent for recordkeeping requirements is estimated at 6 person hours.

Total Annual Burden: The Commission estimates the manhour burden to file foreign tariffs, service contracts and essential terms at 399,829; recordkeeping requirements are estimated at 12,080 person hours.

OMB Approval Number: 3072–0045 (Expires May 31, 1998).

Abstract: The Shipping Act of 1984, 46 U.S.C. app. § 1701 *et seq.*, requires certain classes of agreements between and among ocean common carriers and marine terminal operators to be filed with the Commission, specifies the mandatory content of those agreements, and defines the Commission's authorities and responsibilities in overseeing these agreements. 46 CFR 572 establishes the form and manner for filing agreements and for the underlying commercial data necessary to evaluate agreements.

Needs and Uses: Under its pre-effective review process, the Commission reviews agreement filings to determine statutory and regulatory compliance, as well as to assess their anticompetitive impact. After agreements becomes effective, the Commission monitors agreement activities to ensure continued statutory and regulatory compliance. To accomplish this, the Commission continually gathers, reviews, and interprets commercial data regarding the impact of agreements on competition, prices, and service in the U.S. foreign commerce.

Frequency: The Commission has no control over how frequently agreements are entered into; this is solely a matter between the negotiating parties. When parties do reach an agreement that falls under the jurisdiction of the 1984 Shipping Act, that agreement must be filed with the Commission. Ongoing surveillance of agreement activities is conducted through the review of minutes and quarterly monitoring reports filed by the more anticompetitive agreements.

Type of Respondents: Parties that enter into agreements subject to the Commission's oversight are ocean common carriers and marine terminal operators operating in the foreign oceanborne commerce of the United States.

Number of Annual Respondents: Over the last five years the Commission has averaged 358 agreement filings a year from an estimated potential universe of 764 regulated entities. Starting in mid-1996, certain agreements are required to file quarterly monitoring reports under these regulations. The number of annual respondents under this program will vary according to the number of agreements subject to the reporting obligation. Last year, 235 agreements were subject; they filed 940 monitoring reports.

Estimated Time Per Response: The time for preparing and filing an agreements can range anywhere from as little as three staff-hours to as much as 150 staff-hours. The estimated average burden per respondent is 90 staff-hours. Time required for preparing monitoring reports varies according to the complexity of the filing obligation. Class C agreements have the least burden, and it is estimated to be about 20 staff-hours. Class A/B agreements require more specific data and hence a greater burden. It is estimated that Class B monitoring reports require about 120 staff-hours, and Class A reports about 160 staff-hours. Estimated time per respondent under the record-keeping obligations of the regulation is five staff-hours.

Total Annual Burden: The total annual burden on respondents is estimated at 115,000 staff-hours, 110,000 staff-hours as the filing burden, and 5,000 staff-hours as the record-keeping burden. These estimates are based on anticipated filings over the next year.

OMB Approval Number: 3072–0001 (Expires May 31, 1998).

Abstract: Qualified persons who desire to practice before the Commission must complete and file Form FMC–12 (Application for Admission to Practice before the Federal Maritime Commission) with the Commission.

Needs and Uses: The Commission uses data contained in the application to determine to whether applicant have the necessary qualifications to enable them to represent others in matters before the Commission.

Frequency: The collection of the information is on a one-time only basis.

Type of Respondents: Persons desiring to practice before the Commission in quasi-judicial hearings.

Number of annual respondents: The Commission estimates there are approximately 10 respondents annually for this one-time response.

Estimated Time per response: Approximately one hour.

Total Annual Burden: Ten manhours per year.

Before the Commission submits these renewal packages to the Office of Management and Budget, the Commission is inviting public, written comments on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates for the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–33615 Filed 12–23–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–010714–023
Title: Trans-Atlantic American Flag Liner Operators
Parties:
Farrell Lines Incorporated
Lykes Lines Ltd., LLC
Sea-Land Service, inc.
Synopsis: The proposed amendment would sectionalize the Agreement's geographic scope into three subsections and would provide for sectional membership, voting, independent action, and service contracting. A member not participating in a section to which it otherwise provides service would be free to act unilaterally with respect thereto. The amendment also makes a number of nonsubstantive, administrative changes to the Agreement.

Agreement No.: 203–011325–013
Title: Westbound Transpacific Stabilization Agreement
Parties:
American President Lines, Ltd.
Evergreen Marine Corporation
Hanjin Shipping Co., Ltd.
Hapag-Lloyd Container Linie GmbH
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Synopsis: The proposed modification provides for the parties to exchange their rates on wastepaper and metal scrap, to charge only the rates and changes so declared, and to be subject to neutral body policing.

Agreement No.: 203–011506–001
Title: Matson/APL Space Sharing Agreement
Parties:
Matson Navigation Company, Inc.
American President Lines, Ltd.
Synopsis: The proposed modification expands the geographic scope of the parties' space sharing agreement include ports and points in Mexico. The modification also revises the vessels to be used under the agreement and provides for other conforming arrangements in connection with equipment interchange and stevedoring/terminal services.

Agreement No.: 202–011528–006
Title: Japan/U.S. Eastbound Freight Conference
Parties:
American President Lines, Ltd.
Hapag-Lloyd Container Line GMBH
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Orient Overseas Container Line (U.S.A.)
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Wilhelmsen Lines AS
Synopsis: The proposed amendment provides that P&O Nedlloyd, B.V. and P&O Nedlloyd Limited shall be considered a single member for voting and quorum purposes in conducting the Agreement's business.

Agreement No.: 224–200147–005
Title: Jacksonville Port Authority/Sea-Land Service, Inc., Marine Terminal Agreement
Parties:
Jacksonville Port Authority
Sea-Land Service, Inc.
Synopsis: The proposed modification permits Sea-Land to exercise its renewal option by extending the terms until October 31, 2001. In addition, the modification amends Section 4, Rental, in its entirety; revises Exhibit D—Throughput Rates; and increases the fees and charges for the rental and throughput rates.

Dated: December 18, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–33506 Filed 12–23–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 97–24]

Trade Net, Inc. v. Cho Yang Shipping Co., LTD.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Trade Net, Inc. ("Complainant") against Cho Yang Shipping Co., Ltd. ("Respondent") was served December 19, 1997. Complainant alleges that Respondent has violated section 8(c) of the Shipping Act of 1984 ("the Act"), 46 U.S.C. app. § 1707, by failing and refusing to make available the essential terms of a service contract to Complainant, a similarly situated shipper, on the same basis as they have been made applicable to the original contract shipper.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue in such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by December 21, 1998, and the final decision of the Commission shall be issued by April 20, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–33614 Filed 12–23–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Small Business Regulatory Enforcement Fairness Act: Implementation

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: On March 29, 1996, Public Law 104–121 was enacted. Title II of the bill, called the "Small Business Regulatory Enforcement Fairness Act of 1996" ("SBREFA"), affects the Federal Maritime Commission's ("Commission") rulemaking procedures and will attach additional requirements to other Commission regulatory activity that may impact upon small businesses.

This Notice defines "small business" for Commission regulatory purposes; announces new procedures for rulemakings affecting small businesses; and establishes two programs required by SBREFA: (1) A program for responding to certain informal inquiries from small businesses; and (2) a policy regarding reduction or waiver of civil penalties in certain cases involving small businesses.

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5783.

SUPPLEMENTARY INFORMATION: Sections 202–245, Title II of Public Law 104–121, effective June 27, 1996, place a number of obligations on the Commission whenever it regulates "small business concerns" as defined by 15 U.S.C. 632 and regulations issued thereunder by the Small Business Administration ("SBA").

"Small Business" Defined

Initially, the Commission must decide whether to adopt the SBA's definitions of "small business" as being appropriate for the Commission's regulatory purposes. Alternatively, the Commission may, after consultation with the Office of Advocacy of the SBA, and after providing opportunity for public comment, establish its own standards for determining which of its regulated entities should appropriately be considered small businesses within the context of Commission regulation,

and publish such standards in the **Federal Register**.

To make that initial determination, the Commission reviewed SBA classifications and standards, and consulted with the SBA's Office of Advocacy. From these sources, we learned that SBA definitions, classifications and standards are intended to be as inclusive of small businesses as possible; a purpose which does necessarily coincide with the Commission's regulatory mandate.

The SBA catalogues businesses along industry lines using the Standard Industrial Classification Manual ("SIC") published by the Executive Office of the President, Office of Management and Budget. SBA then, in accordance with its regulations at 13 CFR 121.201, determines which entities in each classification are small business establishments based upon the number of their employees or the establishment's annual receipts in millions of dollars.

The Commission identified the following SIC categories and codes as falling within our regulatory jurisdiction:

4412 Deep Sea Foreign Transportation of Freight (Vessel Operating Common Carriers—"VOCCs")
4481 Deep Sea Transportation of Passengers (Passenger Vessel Operators—"PVOs")
4491 Marine Cargo Handing (Marine Terminal Operators—"MTOs")
4731 Arrangement of Transportation of Freight and Cargo (Ocean Freight Forwarders—"OFFs"; and Non-Vessel Operating Common Carriers—"NVOCCs")

Business entities in Categories 4412 and 4481, VOCCs and PVOs, are evaluated by SBA according to their number of employees. The SBA has determined that if such business establishments have less than 500 employees, they qualify as a small businesses for SBA purposes. Business establishments in Categories 4491 and 4731, NVOCCs, OFFs and MTOs, are evaluated by their annual receipts in millions of dollars. For these categories, SBA determined that business establishments with annual receipts (gross annual revenues) or less than $18.5 million are small businesses.

As stated, the Commission could accept these SBA standards and treat VOCCs and PVOs having fewer than 500 employees, and MTOs, OFFs and NVOCCS having less than $18.5 million in gross annual revenues, as small businesses; or, following established procedures, we could develop our own standards more closely oriented to the Commission's regulatory framework.

The dilemma is that, unlike other agencies which may choose to develop their own standards, the Commission neither collects nor maintains any data regarding the number of employees or gross annual revenues of the entities it regulates. Indeed, we have no preexisting regulatory purpose for doing so. Thus, for the Commission to create standards by which to define "small businesses", and to determine which regulated entities fall within those standards, a major collection of data from all industry segments would have to be undertaken. Moreover, many of the Commission's regulated entities are foreign domiciles from whom such data is not readily accessible. Even assuming sufficient data could be obtained by the Commission, the collection and requisite economic analysis of that data would entail an unfeasible expenditure of time and resources. For these reasons, the Commission has determined to adopt the SBA's inclusive standards. Thus, in the future, the Commission will be considering the small business impact of many of its regulatory undertakings.

However, it is apparent that many Commission regulated entities are VOCCs, PVOs and MTOs which generally are very large companies with far in excess of 500 employees, in the case of VOCCs and PVOs, and $18.5 million in gross revenues in the case of MTOs. These companies, as well as conferences or associations of such companies, generally represented by retained counsel, frequently raise, informally, complex issues responding to which involves considerable Commission time and effort. Such entities are not the intended small business beneficiaries of SBREFA.

Accordingly, the Commission is making a rebuttable presumption that VOCCs and PVOs, as well as conferences and associations comprised of VOCC and PVO members, have more than 500 employees, and that MTOs at United States ports, as well as conferences and associations of such MTOs, earn gross revenues in excess of $18.5 million per year. Thus, VOCCs, PVOs and MTOs are presumed not to be small businesses encompassed within the programs and policies mandated by SBREFA.

Nevertheless, any VOCC or PVO with fewer than 500 employees, or any MTO with less than $18.5 million in gross annual revenues, that seeks to be treated as a small business for Commission regulatory purposes, may submit a request to such treatment to the Secretary of the Commission, along with payroll or gross annual revenues evidence, as applicable, sufficient to substantiate its claim and rebut the presumption.

Rulemaking Affecting Small Businesses

Section 241 of Title II amends the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, and sets forth additional requirements applicable to rulemaking proceedings that will have a significant economic impact on a substantial number of small businesses. Under section 242, small businesses now can seek judicial review of Commission compliance with RFA requirements.

Compliance Guides

As required by section 212, each rule promulgated by the Commission in the future that significantly affects a substantial number of small businesses will include a "compliance guide" to assist small businesses in complying with that rule. The content of the compliance guide may be taken into account by a reviewing court "as evidence of the reasonableness or appropriateness" of any proposed penalties for noncompliance with the rule.

Negative Certifications and Regulatory Flexibility Analyses

The RFA requires federal agencies either to certify that a "* * * rule will not have a significant economic impact on a substantial number of small entities", or to prepare a regulatory flexibility analysis. Because there are no developed standards or decisional guidelines available for measuring "significant economic impact" or "substantial number of small entities", the meaning of those terms will be developed on a case by case basis.

If a proposed rule will not have a significant economic impact on a substantial number of small entities, either adverse or beneficial, an initial regulatory flexibility analysis is not required. In these instances, the RFA authorizes the Commission's Chairman to make a negative certification with respect to that rulemaking. To make this threshold determination, the Commission will undertake a preliminary analysis to evaluate the economic impact of a proposed rule on small business entities. Once this preliminary analysis is completed, the Commission either will make a negative certification or undertake an initial regulatory flexibility analysis. A certification of a finding of no significant impact on a substantial number of entities will be published with the proposed rule in the **Federal Register** and will be accompanied by an explanation of the factual and economic bases for the certification. The negative certification is subject to judicial review.

When a proposed rule is expected to have a significant economic impact, beneficial or adverse, on a substantial number of small entities, an initial regulatory flexibility analysis will be prepared. The initial regulatory flexibility analysis or a summary of it will be published in the **Federal Register** with the proposed rule.

Under section 603(b) of the RFA, each initial regulatory flexibility analysis is required to address: (1) reasons why the agency is considering the action, (2) the objectives and legal basis for the proposed rule, (3) the kind and number of small entities to which the proposed rule will apply, (4) the projected reporting, record keeping and other compliance requirements of the proposed rule, and (5) federal rules that may duplicate, overlap or conflict with the proposed rule. In addition, each initial regulatory flexibility analysis must describe any significant alternatives to the proposal that accomplish the statutory objectives and minimize the significant negative economic impact of the proposal on small entities.

When the Commission issues a final rule, it will prepare a final regulatory flexibility analysis or certify that the rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will discuss the comments received, the alternatives considered and the rationale for the final rule. The analysis itself or a summary thereof will be published in the **Federal Register** with the final rule. The final regulatory flexibility analysis is subject to judicial review.

Programs and Policies To Address Small Business Concerns

SBREFA requires:

(1) That the Commission establish a program for responding to informal compliance inquiries from small businesses (section 213); and (2) That the Commission establish a policy or program for reduction or waiver of civil penalties for violations by small businesses of statutory or regulatory requirements (section 223).

Program to Respond To Informal Inquiries From Small Businesses

The staff of the Commission has always responded informally to telephonic inquiries from the regulated public. Such inquiries are received daily, and often are handled routinely. Many inquiries involve simple questions regarding matters such as tariff filings, licensing and bonding, as well as procedural matters. Others are far more complex and time consuming, involving contingencies and variables that must be clarified or resolved even before the precise issue can be identified. Most often, the latter type inquiries, and those requiring lengthy discussions and follow-up discussions, are from VOCCs, PVOs and MTOs through their retained counsel. For the same reasons discussed above, the Commission does not consider inquiries from these sources to be within the contemplation of the informal inquiry program required by SBREFA.

While the Commission will continue to provide informal assistance to all persons subject to its jurisdiction, with respect to inquiries from small businesses, current practices are being augmented because of SBREFA's new requirements that:

(1) After 2 years, the Commission must report on the scope of the Commission's program and the achievements of the program in assisting small businesses to comply with agency statutes and regulations; and

(2) The agency may be held accountable for the content of its advice regarding an inquirer's compliance with statutory or regulatory requirements. The substance of such advice can be raised in any subsequent appeal of a civil penalty imposed against a participating small business entity.

In accordance with SBREFA, and because of its reporting and accountability provisions, the Commission is establishing the following procedures:

Small businesses subject to Commission jurisdiction are invited to make informal inquiries regarding the lawfulness of their own activities. This program will apply to those small busineses that, at the time fo the inquiry, identify themselves and the type of their business operations, for example, NVOCC or OFF.

Inquiries may be submitted by telephone, letter or e-mail depending upon the nature and complexity of the inquiry as determined, ultimately, by the person receiving the inquiry. Additional information may be required and requested. Responses will be prvovided by telephone, letter or e-mail, as appropriate in the opinion of the person responding.

The program goal is to provide prompt telephonic advice when possible, or a written response within 20 days of the date that all necessary information has been received. The Commission will make and retain records of each informal inquiry made under this program in order to document the name and description of the inquirer, relevant dates, and the substance of the inquiry and the response thereto.

Depending on subject matter, inquiries by entities that are small businesses shall be submitted to the following individuals at the Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001; or at the telephone number or e-mail address listed below:

PASSENGER VESSEL CERTIFICATION

Theodore A. Zook .....202–523–5856; Theoz@fmc.gov
Curt L. Ohlsson .....202–523–5856; Curto@fmc.gov

OCEAN FREIGHT FORWARDERS

Betty J. Bennett .....202–523–5843; Bettyb@fmc.gov
Elnora V. Howard .....202–523–5843; Elnora@fmc.gov

VOCC, NVOCC and MTO TARIFF MATTERS

James G. Cannon .....202–523–5818; Jamesg@fmc.gov
Roland E. Ramlow .....202–523–5818; Rolandr@fmc.gov
Martin W. Wilson.....202–523–5818; Martinw@fmc.gov
Ernest L. Estes .....202–523–5818; Erneste@fmc.gov
James H. McEachin .....202–523–5818; Jamesmc@fmc.gov

SERVICE CONTRACT MATTERS

Theodore A. Zook .....202–523–5856; Theoz@fmc.gov
Mamie H. Black.....202–523–5856; Mamieb@fmc.gov
Roland E. Ramlow .....202–523–5856; Rolandr@fmc.gov

AUTOMATED TARIFF FILING AND INFORMATION ("ATFI") REGISTRATIONS

Anne E. Trotter .....202–523–5818; Anne@fmc.gov
Hattie R. Broadnax.....202–523–5818; Hattieb@fmc.gov

ATFI ACCESS, USE AND FEES

Pat N. Gorski .....202–523–5834; Pat@fmc.gov

AGREEMENT MATTERS

Jeremiah D. Hospital.....202–523–5793; Jeremiah@fmc.gov

TRADE MONITORING MATTERS

Frank J. Schwarz.....202–523–5845; Franks@fmc.gov

The Office of Informal Inquiries, Complaints and Informal Dockets ("OIIC") (Telephone: 202–523–5807, E-mail: Josephf@fmc.gov) will continue to receive informal complaints and will attempt informally to resolve related disputes. OIIC also will be the

designated recipient of inquiries from small businesses under SBREFA with respect to subjects not specified above.

Questions regarding the Commission's Rules of Practice and Procedure, 46 CFR Part 502, do not fall within the scope of this program and should be directed to the Office of the Secretary (202–523–5725). Other requests for assistance from persons not covered by SBREFA, as in the past, may be directed, as applicable, to the Office of the General Counsel (202–523–5740), Bureau of Enforcement (202–523–5783), Bureau of Economics and Agreement Analysis (202–523–5787) or the Bureau of Tariffs, Certification and Licensing (202–523–5796; FMCBTCL@fmc.gov).

Reduction or Waiver Of Civil Penalties for Violations by Small Business

As stated above, SBREFA (§ 223) requires that the Commission establish a policy for reduction or waiver of civil penalties for statutory or regulatory violations by small businesses. Within two years, the Commission must report to four Congressional Committees on: (1) The scope of the policy or program; (2) the number of enforcement actions that qualified or failed to quality for the program or policy; and (3) the total amount of penalty reductions and waivers granted. SBREFA and its legislative history suggest certain approaches, i.e., consider ability to pay; consider good faith shown by the small business; require that the violation be discovered through an agency supported compliance assistance program; and allow for violations to be corrected within a reasonable time. Repeat offenses or violations involving willful or criminal conduct are not intended to be included within the policy.

Reduction of Civil Penalties

The Commission already is subject to statutory requirements with regard to civil penalties, including consideration of a respondent's ability to pay, as well as its size and financial condition and the circumstances of the violation. The Commission has followed those requirements in the past and will continue to do so in the future. In addition, appropriate records will be maintained so that the Commission can fulfill its responsibility to file requisite reports to Congress.

Voluntary Compliance and Waiver of Civil Penalties

The Commission has established an internal policy, to be used in appropriate cases, to obtain "voluntary" compliance by, and waiver of civil penalties against, small businesses found to be violating Commission statutes or regulations.

Under this program, each subject of an investigation will be evaluated to determine whether, in the circumstances of that particular case, a demand for civil penalties, or compliance and waiver of civil penalties, would be the more effective regulatory tool. In making this determination, the following factors will be considered:

1. Whether the violation was knowing and willful, involved fraud or financial gain or caused injury to the public;
2. The subject's history of prior offenses;
3. Extent to which the subject demonstrates a good faith desire to comply with Commission requirements in the future; and
4. The subject's ability to pay a civil penalty.

Appropriate records will be maintained in order for the Commission to fulfill its responsibility for filing required reports to Congress.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–33560 Filed 12–23–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[File No. 962–3154]

Honeywell Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 23, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Linda K. Badger, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5270.

Kerry O'Brien, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 17, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Honeywell Inc. ("Honeywell") a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Honeywell manufacturers and markets various types of air cleaning products, including a line of portable, room air cleaners. These "Honeywell Air Purifiers" include an "enviracaire® True HEPA filter." The Commission's complaint charges that respondent's advertising for the Honeywell Air Purifier included unsubstantiated claims of efficacy and allergy relief. Specifically, the complaint alleges that the respondent did not possess adequate substantiation for claims that: (1) The filter in a Honeywell Air Purifier removes 99.97% of mold spores, dust mite allergens, bacteria and viruses from the air that people breathe under household living conditions; (2) The filter in a Honeywell Air Purifier removes nearly all or 99.97% of impurities from the air that people breathe under household living conditions; (3) Consumers who use a Honeywell Air Purifier that changes the air in a room six or more times per hour will experience noticeable symptom relief from allergies and other respiratory problems; and (4) Honeywell Air Purifiers provide proven relief from allergy symptoms.

According to the proposed complaint, the 99.97% figure used in Honeywell's advertisement refers to the filter's expected efficiency in removing particles that actually pass through the filter. While the filter's efficiency is a factor in assessing the effectiveness of an air purifier in particulate removal, this figure overstates the actual effectiveness of the air purifier in removing pollutants from the air in a user's environment. The actual effectiveness of an air purifier, according to the proposed complaint, depends on a variety of factors including, the amount of air that the air purifier processes, the nature of the pollutant, and the rate at which the pollutant is being introduced into the environment.

Additionally, with respect to the allergy relief claims made by Honeywell, the proposed complaint states that there is no guarantee that an individual who suffers from allergies or other respiratory problems will derive a discernible reduction in symptoms through the use of these or other air purifiers. Whether individuals will derive such relief depends on many variables including, the source and severity of their allergies, whether the allergens at issue tend to remain airborne, the rate at which the allergens are emitted into their homes or offices, and other environmental factors.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order would prohibit Honeywell from making certain efficacy claims about Honeywell Air Purifiers, enviracaire® True HEPA filters, or any other air cleaning product which is normally used for personal, family, or household purposes, unless at the time of making the claims it possesses and relies upon competent and reliable scientific evidence. Furthermore, claims that state or imply a level of performance under any set of conditions, such as household loving conditions, must be substantiated by evidence that either relates to such conditions or that was extrapolated to such conditions by generally accepted procedures. The specific claims covered by Part I include any representation: (1) about such products's ability to eliminate, remove, clear, or clean any quantity of indoor air contaminants under household living conditions; and (2) that such product will perform under any set of conditions, including household living conditions.

Part II of the proposed consent order includes fencing-in relief, requiring that Honeywell possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, for any claim about the performance, health or other benefits, or efficacy of any air cleaning product which is normally used for personal, family, or household purposes.

The proposed order also requires that respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements, as well as to all company executives and marketing and sales managers; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–33575 Filed 12–23–97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

[GAO/AIMD–98–21.3.1]

Standards for Internal Control in the Federal Government

AGENCY: General Accounting Office.

ACTION: Notice of document availability.

SUMMARY: The General Accounting Office (GAO) is seeking public comment on the proposed "Standards for Internal Controls in the Federal Government dated December 1997." The proposed standards are being issued to update the 1983 "Standards for Internal Controls in the Federal Government." The proposed standards incorporate the existing standards and the components of internal control covered in *Internal Control—Integrated Framework*, Committee of Sponsoring Organizations of the Treadway Commission (COSO), September 1992. The proposed standards are intended to assist program and financial managers achieve the internal control objectives of their organizations. This notice indicates that the proposed standards are available from GAO for review and comment.

DATES: Comments must be received by March 11, 1998.

ADDRESSES: Copies of the internal control standards draft are available by (1) pick-up at Document Distribution, U.S. General Accounting Office, Room 1100, 700 4th Street, NW. (corner of 4th and G Streets, NW.), Washington, DC; (2) mail from U.S. General Accounting Office, P.O. Box 37050, Washington, DC 20013; (3) phone at 202–512–6000 or FAX 202–512–6061 or TDD 202–512–2537; or (4) on GAO's home page (http://www.gao.gov) on the Internet. Comments should be addressed to the Robert W. Gramling, Director, Corporate Audits and Standards, Accounting and Information Management Division, U.S. General Accounting Office, 441 G Street NW., Room 5089, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Robert W. Gramling, 202–512–9406.

SUPPLEMENTARY INFORMATION: Beginning with the Accounting and Auditing Act of 1950, agency heads have been required to establish and maintain effective internal control. Since then, other laws have required renewed focus on internal control. The Federal Managers' Financial Integrity Act (FMFIA) of 1982, for example, requires agency heads periodically to evaluate their systems of internal control, using the guidance issued by the Office of Management and Budget, and to prepare a report on whether their systems conform to the standards issued by the GAO. Most recently, the Federal Financial Management Improvement Act (FFMIA) of 1996, in focusing on financial management systems, identified internal control as an integral part of those systems. The OMB Circular A–123, "Management Accountability and Control," June 21, 1995, provides the requirements for assessing controls. Over the years, GAO has issued numerous publications to assist agencies in establishing and maintaining effective internal control systems. In 1983, GAO drew on its

previously issued guidance and experts throughout government, private sector, and academic communities to develop and issue "Standards for Internal Controls in the Federal Government" to facilitate implementation of FMFIA. Although those standards remain conceptually sound and are used throughout the federal government, this update enhances the standards by recognizing recent internal control evaluation guidance developed by the private sector with assistance from GAO and others, as well as to giving greater recognition to the increasing use of information technology.

The internal control standards contained in the proposed standards follow the COSO guidance closely and refer to portions of OMB Circular A–123 that provide guidance for evaluating internal control. However, two of the standards concerning management reporting on internal control and resolution of audit findings are standards not addressed by COSO but reflect the public's demand for a high level of accountability for government stewardship of resources. These two standards are currently required by law and by the existing internal control standards. Appendix II cross-references the existing standards with those proposed in the document.

Comments received will be reviewed and the proposed standards will be revised as necessary. Publication of the final standards will be announced in the **Federal Register**.

Gene L. Dodaro,

Assistant Comptroller General for Accounting and Information Management.

[FR Doc. 97–33623 Filed 12–23–97; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Cooperative Agreement With the National Academy of Sciences

AGENCY: Office of Public Health and Science.

ACTION: Notice.

SUMMARY: On behalf of the Public Health Service agencies (PHS), the Office of Public Health and Science has entered into a cooperative agreement with the National Academy of Sciences to provide core support for activities in a number of health areas, including health promotion and disease prevention; health care services; neuroscience and behavioral health; health sciences policy; food and nutrition; international health; radiation effects research; environmental studies and toxicology; and children, youth and families. The purpose of this cooperative agreement is to provide access to expertise regarding matters of interest to PHS, including independent advice on how complex issues might be defined and addressed in discrete studies and on planning to address the problems and issues identified.

FOR FURTHER INFORMATION CONTACT: Cindy Oswald, Contract Specialist, Program Support Center, AOS/Division of Acquisition Management, 5600 Fishers Lane, Room 5–101, Rockville, Maryland 20857, for information about this program, and Linda Meyers, Ph.D., Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Avenue, S.W., Washington, DC 20201, for programmatic technical assistance.

SUPPLEMENTARY INFORMATION: Approximately $450,000 will be available in FY 1998 to support this project. This award was effective December 1, 1997, for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made if progress is satisfactory and funds are available.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, an HHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to objectives in nearly all priority areas. (To order a copy of "Healthy People 2000: Midcourse Review and Revisions," contact the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954; Telephone (202) 512–1800; Internet address: http://www.access.gpo.gov/index.html.)

Authority

This program is authorized under Sections 301 and 1701 of the Public Health Act.

Smoke-free Workplace

The PHS strongly encourages all funding recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children's Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to the children.

Eligible Applicant

Assistance was provided only to the National Academy of Sciences, Washington, D.C. No other applications were solicited. The National Academy of Sciences (NAS) is the only organization that has the ability to assemble such National scientific expertise in a range of health-related fields to furnish independent advice and guidance of the highest quality with an unparalleled level of objectivity. This combination of advice and objectivity is a distinct asset to the PHS in carrying out its mission.

Catalog of Federal Domestic Assistance Number

A Catalog of Federal Domestic Assistance Number is not required because the project is the only one funded in this activity.

Executive Order 12372 Review

This application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Dated: December 17, 1997.

Susanne A. Stoiber,

Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 97–33504 Filed 12–23–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Availability

AGENCY: Office of Disease Prevention and Health Promotion, Office of Public Health and Science.

ACTION: Commission on Dietary Supplement Labels: Notice of Availability of Final Report.

SUMMARY: The Department of Health and Human Services (HHS) is providing notice of the availability of the Report of the Commission on Dietary Supplement Labels.

DATES: The final report of the Commission on Dietary Supplement Labels was delivered to the Secretary, Health and Human Services, the President, and Congress on November 24, 1997.

FOR FURTHER INFORMATION CONTACT:

The final report of the Commission is available from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (202–512–1800) (Stock Number 017–001–00531–2). The final report is also available on the INTERNET at *http://web.health.gov/dietsupp/*. For additional information, contact Kenneth D. Fisher, Ph.D., Executive Director, Commission on Dietary Supplement Labels, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201, (202) 690–5526 or facsimile (202–205–0463).

SUPPLEMENTARY INFORMATION: Public Law 103–417, Section 12, authorized the establishment of a Commission on Dietary Supplement Labels whose seven members were appointed by the President in November, 1995. The appointments to the Commission by the President and the establishment of the Commission by the Secretary of Health and Human Services reflect the commitment of the President and the Secretary to the development of a sound and consistent regulatory policy on labeling of dietary supplements.

The Commission has conducted a study that provides recommendations for regulation of label claims and statements for dietary supplements, including the use of supplemental literature in connection with their sale and, in addition, procedures for evaluation of label claims. The Commission has also considered how best to provide truthful, scientifically valid, and non-misleading information to consumers in order that they may make informed health care choices for themselves and their families.

In accordance with the provisions of its Charter, dated February 13, 1997, delivery of the Commission's final report constitutes completion of the function of the Commission. Accordingly, the Commission has been discharged.

Dated: December 11, 1997.

Susanne A. Stoiber,

Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. 97–33502 Filed 12–23–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–131]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of three new final and eight updated final toxicological profiles of priority hazardous substances comprising the ninth set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 most hazardous substances was announced in the **Federal Register** on November 17, 1997 (62 FR 61332). For prior versions of the list of substances see **Federal Register** notices dated April 29, 1996 (61 FR 18744); April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); and February 28, 1994 (59 FR 9486).

Notice of the availability of drafts of the ninth set of toxicological profiles for public review and comment was published in the **Federal Register** on October 30, 1995 (60 FR 55272), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of each comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR–102. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of three new final and eight updated final toxicological profiles comprising the ninth set prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS order No.	CAS No.
Ninth Set:		
1. BENZENE (UPDATE)	PB98–101157	000071–43–2
2. CHLORFENVINPHOS	PB98–101116	000470–90–6
3. CHLOROFORM (UPDATE)	PB98–101140	000067–66–3
4. CHLORPYRIFOS	PB98–103088	002921–88–2
5. CYANIDE (UPDATE)	PB98–101207	000057–12–5
AMMONIUM THIOCYANATE		301762–95–4
CYANAZINE		021725–46–2
HYDROGEN CYANIDE		000074–90–8
SODIUM CYANIDE		000143–33–9

Toxicological profile	NTIS order No.	CAS No.
THIOCYANATE		000302–04–5
POTASSIUM CYANIDE		000151–50–8
CALCIUM CYANIDE		000592–01–8
COPPER(I) CYANIDE		000544–92–3
POTASSIUM SILVER CYANIDE		000506–61–6
CYANOGEN		000460–19–5
CYANOGEN CHLORIDE		000506–77–4
6. DICHLORVOS	PB98–101124	000062–73–7
7. NICKEL (UPDATE)	PB98–101199	007440–02–0
NICKEL CHLORIDE		007718–54–9
NICKEL OXIDE		001313–99–1
NICKEL SULFATE		007786–81–4
NICKEL SUBSULFIDE		012035–72–2
NICKEL ACETATE		000373–02–4
NICKEL NITRATE		013138–45–9
8. POLYCHLORINATED BIPHENYLS (UPDATE)	PB98–101173	001336–36–3
AROCLOR 1016		012674–11–2
AROCLOR 1221		011104–28–2
AROCLOR 1232		011141–16–5
AROCLOR 1242		053469–21–9
AROCLOR 1248		012672–29–6
AROCLOR 1254		011097–69–1
AROCLOR 1260		011096–82–5
AROCLOR 1262		037324–23–5
AROCLOR 1268		011100–14–4
9. TETRACHLOROETHYLENE (UPDATE)	PB98–101181	000127–18–4
10. TRICHLOROETHYLENE (UPDATE)	PB98–101165	000079–01–6
11. VINYL CHLORIDE (UPDATE)	PB98–101132	000075–01–4

Dated: December 17, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–33507 Filed 12–23–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR–132]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of nine final toxicological profiles on unregulated hazardous substances prepared by ATSDR for the Department of Defense.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) or CERCLA. Section 211 of SARA also amended Title 10 of the U.S. Code, creating the Defense Environmental Restoration Program. Section 2704(a) and (b) of Title 10 of the U.S. Code directs the Secretary of Defense to notify the Secretary of Health and Human Services of not less than 25 of the most commonly found, unregulated hazardous substances at defense facilities. The Secretary of HHS shall take necessary steps to ensure the timely preparation of toxicological profiles of these substances. Each profile includes an examination, summary and interpretation of available toxicological information and epidemiological evaluations. This information and these data are used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles include a determination of whether adequate information on the health effects of each substance is available or under development. When adequate information is not available, in cooperation with the National Toxicology Program (NTP), ATSDR may plan a program of research designed to determine these health effects.

Notice of the availability of nine new draft toxicological profiles for public review and comment was published in the **Federal Register** on October 18, 1994 (59 FR 52549), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of each comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile.

The public comments, the classification of and response to those comments, and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR–86. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of nine final toxicological profiles for the Department of Defense. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS order No.	CAS No.
1. Di–N–OCTYLPHTHALATE	PB98–101033	000117–84–0
2. ETHYLENE GLYCOL/	PB98–101108	000107–21–1
PROPYLENE GLYCOL		000057–55–6
3. HEXACHLOROETHANE	PB98–101041	000067–72–1
4. HMX	PB98–101058	002691–41–0
5. HYDRAULIC FLUIDS	PB98–101066	VARIOUS
6. HYDRAZINES	PB98–101025	000302–01–2
1,1-DIMETHYLHYDRAZINE		000057–14–7
1,2-DIMETHYLHYDRAZINE		000540–73–8
DIMETHYLHYDRAZINE		030260–66–3
7. MINERAL-BASED CRANKCASE OIL	PB98–101066	008002–05–9
8. TITANIUM TETRACHLORIDE	PB98–101074	007550–45–0
9. WHITE PHOSPHORUS	PB98–101082	007723–14–0

Dated: December 17, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–33508 Filed 12–23–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee (NVAC), Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–2 p.m., January 12, 1998. 8:30 a.m.–1:15 p.m., January 13, 1998.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters To Be Discussed: Agenda items will include updates on the National Vaccine Program Office (NVPO) activities; the National Vaccine Plan and NVAC's role in defining priorities for action; unmet needs funding—past, present and future; adult immunization: report of the workgroup; use of non-traditional sites for adult immunization; influenza: a growing need for pandemic preparedness; and a discussion on vaccines for international travel.

In addition, there will be updates on welfare reform and effects on immunization; moving towards a Department of Health and Human Services' vaccine safety action plan; work group on philosophical exemptions—final report; the presidential initiative on immunization registries; global use of critically needed vaccines—strategies to consider. There will be reports from the Subcommittee on Immunization Coverage, Subcommittee on Future Vaccines, and Subcommittee on Vaccine Safety.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2 p.m.–5 p.m., January 12, 1998.

Place: Hubert H. Humphrey Building, Room 423A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters To Be Discussed: This subcommittee will hold a discussion on the review of recommendations from the document, "Strategies to Sustain Immunization Coverage," and the finalization of those recommendations.

Name: Subcommittee on Future Vaccines.

Time and Date: 2 p.m.–5 p.m., January 12, 1998.

Place: Hubert H. Humphrey Building, Room 405A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Future Vaccines will develop policy options and guide national activities which will lead to accelerated development, licensure, and best use of new vaccines in the simplest possible immunization schedules.

Matters To Be Discussed: This subcommittee will hold discussions regarding the continued evaluation of methods to remove barriers to development, licensure and use of safe and effective new vaccines; combination vaccines, strategic options; and defining future vaccines policy issues for travelers' vaccines.

Name: Subcommittee on Vaccine Safety.

Time and Date: 2 p.m.–5 p.m., January 12, 1998.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will review issues relevant to vaccine safety and adverse reactions to vaccines.

Matters To Be Discussed: This subcommittee will hold discussions regarding its goals; a report from the Task Force on Safer Childhood Vaccines; a project report on benefit-risk communication curriculum development; and agenda items for the next meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Felecia D. Pearson, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S D50, Atlanta, Georgia 30333, telephone 404/639–4450.

Dated: December 19, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–33666 Filed 12–23–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0148]

International Conference on Harmonisation; Guidance on Impurities: Residual Solvents

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "Q3C Impurities:

Residual Solvents." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance recommends acceptable amounts of residual solvents in pharmaceuticals for the safety of the patient, and recommends the use of less toxic solvents in the manufacture of drug substances and dosage forms.

DATES: Effective December 24, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: John J. Gibbs, Center for Drug Evaluation and Research (HFD–820), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6430.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research (CDER) and Biologics Evaluation and Research (CBER), FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of May 2, 1997 (62 FR 24302), FDA published a draft tripartite guideline entitled "Impurities: Residual Solvents" (Q3C). The notice gave interested persons an opportunity to submit comments by June 16, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 17, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

Residual solvents in pharmaceuticals are organic volatile chemicals that are used or produced in the synthesis of drug substances or excipients, or in the preparation of drug products. They are not completely removed by practical manufacturing techniques. The guidance recommends acceptable amounts of residual solvents in pharmaceuticals for the safety of the patient. The guidance recommends the use of less toxic solvents and describes levels considered to be toxicologically acceptable for some residual solvents. The guidance applies to residual solvents in drug substances, excipients, and drug products, and to all dosage forms and routes of administration. The guidance does not apply to potential new drug substances, excipients, or drug products used during the clinical research stages of development, nor does it apply to existing marketed drug products.

This guidance represents the agency's current thinking on acceptable amounts of residual solvents in pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet (http://www.fda.gov/cder/guidance.htm).

The text of the guidance follows:

Q3C Impurities: Residual Solvents[1]

1. Introduction

The objective of this guidance is to recommend acceptable amounts for residual solvents in pharmaceuticals for the safety of the patient. The guidance recommends use of less toxic solvents and describes levels considered to be toxicologically acceptable for some residual solvents.

Residual solvents in pharmaceuticals are defined here as organic volatile chemicals that are used or produced in the manufacture of drug substances or excipients, or in the preparation of drug products. The solvents are not completely removed by practical manufacturing techniques. Appropriate selection of the solvent for the synthesis of drug substance may enhance the yield, or determine characteristics such as crystal form, purity, and solubility. Therefore, the solvent may sometimes be a critical parameter in the synthetic process. This guidance does not address solvents deliberately used as excipients nor does it address solvates. However, the content of solvents in such products should be evaluated and justified.

Since there is no therapeutic benefit from residual solvents, all residual solvents should be removed to the extent possible to meet product specifications, good manufacturing practices, or other quality-based requirements. Drug products should contain no higher levels of residual solvents than can be supported by safety data. Some solvents that are known to cause unacceptable toxicities (Class 1, Table 1) should be avoided in the production of drug substances, excipients, or drug products unless their use can be strongly justified in a risk-benefit assessment. Some solvents associated with less severe toxicity (Class 2, Table 2) should be limited in order to protect patients from potential adverse effects. Ideally, less toxic solvents (Class 3, Table 3) should be used where practical. The complete list of solvents included in this guidance is given in Appendix 1.

The lists are not exhaustive and other solvents can be used and later added to the lists. Recommended limits of Class 1 and 2 solvents or classification of solvents may change as new safety data becomes available. Supporting safety data in a marketing application for a new drug product containing a new solvent may be based on concepts in this guidance or the concept of qualification of impurities as expressed in the guidance for drug substance (Q3A, Impurities in New Drug Substances) or drug product (Q3B, Impurities in New Drug Products), or all three guidances.

2. Scope of the Guidance

Residual solvents in drug substances, excipients, and drug products are within the scope of this guidance. Therefore, testing should be performed for residual solvents when production or purification processes are known to result in the presence of such solvents. It is only considered necessary to test for solvents that are used or produced in the manufacture or purification of drug substances, excipients, or drug products. Although manufacturers may choose to test the drug product, a cumulative method may be used to calculate the residual solvent levels in the drug product from the levels in the ingredients used to produce the drug product. If the calculation results in a level equal to or below that recommended in this guidance, no testing of the drug product for residual solvents need be considered. If, however, the calculated level is above the recommended level, the drug product should be tested to ascertain whether the formulation process has reduced the relevant solvent level to within the acceptable amount. Drug product should also be tested if a solvent is used during its manufacture.

This guidance does not apply to potential new drug substances, excipients, or drug products used during the clinical research stages of development, nor does it apply to existing marketed drug products.

The guidance applies to all dosage forms and routes of administration. Higher levels of residual solvents may be acceptable in certain cases such as short-term (30 days or less) or topical application. Justification for these levels should be made on a case-by-case basis.

See Appendix 2 of this document for additional background information related to residual solvents.

3. General Principles

3.1 Classification of Residual Solvents by Risk Assessment

The term "tolerable daily intake" (TDI) is used by the International Program on Chemical Safety (IPCS) to describe exposure limits of toxic chemicals and the term "acceptable daily intake" (ADI) is used by the World Health Organization (WHO) and other national and international health authorities and institutes. The new term "permitted daily exposure" (PDE) is defined in the present guidance as a pharmaceutically acceptable intake of residual solvents to avoid confusion of differing values for ADI's of the same substance.

Residual solvents assessed in this guidance are listed in Appendix 1 by common names and structures. They were evaluated for their possible risk to human health and placed into one of three classes as follows:

Class 1 solvents: Solvents to be avoided—Known human carcinogens, strongly suspected human carcinogens, and environmental hazards.

Class 2 solvents: Solvents to be limited—Nongenotoxic animal carcinogens or possible causative agents of other irreversible toxicity such as neurotoxicity or teratogenicity.

Solvents suspected of other significant but reversible toxicities.

Class 3 solvents: Solvents with low toxic potential—

Solvents with low toxic potential to man; no health-based exposure limit is needed. Class 3 solvents have PDE's of 50 milligrams (mg) or more per day.

3.2 Methods for Establishing Exposure Limits

The method used to establish permitted daily exposures for residual solvents is presented in Appendix 3. Summaries of the toxicity data that were used to establish limits are published in *Pharmeuropa*, Vol. 9, No. 1, Supplement, April 1997.

3.3 Options for Describing Limits of Class 2 Solvents

Two options are available when setting limits for Class 2 solvents.

Option 1: The concentration limits in parts per million (ppm) stated in Table 2 can be used. They were calculated using equation (1) below by assuming a product mass of 10 grams (g) administered daily.

$$(1)\quad \text{Concentration (ppm)} = \frac{1000 \times \text{PDE}}{\text{dose}}$$

Here, PDE is given in terms of mg/day and dose is given in g/day.

These limits are considered acceptable for all substances, excipients, or products. Therefore, this option may be applied if the daily dose is not known or fixed. If all excipients and drug substances in a formulation meet the limits given in Option 1, then these components may be used in any proportion. No further calculation is necessary provided the daily dose does not exceed 10 g. Products that are administered in doses greater than 10 g per day should be considered under Option 2.

Option 2: It is not considered necessary for each component of the drug product to comply with the limits given in Option 1. The PDE in terms of mg/day as stated in Table 2 can be used with the known maximum daily dose and equation (1), as shown in Option 1 in the previous paragraph, to determine the concentration of residual solvent allowed in drug product. Such limits are considered acceptable provided that it has been demonstrated that the residual solvent has been reduced to the practical minimum. The limits should be realistic in relation to analytical precision, manufacturing capability, and reasonable variation in the manufacturing process and the limits should reflect contemporary manufacturing standards.

Option 2 may be applied by adding the amounts of a residual solvent present in each of the components of the drug product. The sum of the amounts of solvent per day should be less than that given by the PDE.

Consider an example of the use of Option 1 and Option 2 applied to acetonitrile in a drug product. The permitted daily exposure to acetonitrile is 4.1 mg per day; thus, the Option 1 limit is 410 ppm. The maximum administered daily mass of a drug product is 5.0 g, and the drug product contains two excipients. The composition of the drug product and the calculated maximum content of residual acetonitrile are given in the following table.

Component	Amount in formulation	Acetonitrile content	Daily exposure
Drug substance	0.3 g	800 ppm	0.24 mg
Excipient 1	0.9 g	400 ppm	0.36 mg
Excipient 2	3.8 g	800 ppm	3.04 mg
Drug product	5.0 g	728 ppm	3.64 mg

Excipient 1 meets the Option 1 limit, but the drug substance, excipient 2, and drug product do not meet the Option 1 limit. Nevertheless, the product meets the Option 2 limit of 4.1 mg per day and thus conforms to the recommendations in this guidance.

[1] This guidance represents the agency's current thinking on acceptable amounts of residual solvents in pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Consider another example using acetonitrile as residual solvent. The maximum administered daily mass of a drug product is 5.0 g, and the drug product contains two excipients. The composition of the drug product and the calculated maximum content of residual acetonitrile are given in the following table.

Component	Amount in formulation	Acetonitrile content	Daily exposure
Drug substance	0.3 g	800 ppm	0.24 mg
Excipient 1	0.9 g	2,000 ppm	1.80 mg
Excipient 2	3.8 g	800 ppm	3.04 mg
Drug product	5.0 g	1,016 ppm	5.08 mg

In this example, the product meets neither the Option 1 nor the Option 2 limit according to this summation. The manufacturer could test the drug product to determine if the formulation process reduced the level of acetonitrile. If the level of acetonitrile was not reduced during formulation to the allowed limit, then the manufacturer of the drug product should take other steps to reduce the amount of acetonitrile in the drug product. If all of these steps fail to reduce the level of residual solvent, in exceptional cases the manufacturer could provide a summary of efforts made to reduce the solvent level to meet the guidance value, and provide a risk-benefit analysis to support allowing the product to be utilized with residual solvent at a higher level.

3.4 Analytical Procedures

Residual solvents are typically determined using chromatographic techniques such as gas chromatography. Any harmonized procedures for determining levels of residual solvents as described in the pharmacopoeias should be used, if feasible. Otherwise, manufacturers would be free to select the most appropriate validated analytical procedure for a particular application. If only Class 3 solvents are present, a nonspecific method such as loss on drying may be used. Validation of methods for residual solvents should conform to ICH guidances "Q2A Text on Validation of Analytical Procedures" and "Q2B Validation of Analytical Procedures: Methodology."

3.5 Reporting Levels of Residual Solvents

Manufacturers of pharmaceutical products need certain information about the content of residual solvents in excipients or drug substances in order to meet the criteria of this guidance. The following statements are given as acceptable examples of the information that could be provided from a supplier of excipients or drug substances to a pharmaceutical manufacturer. The supplier might choose one of the following as appropriate:

- Only Class 3 solvents are likely to be present. Loss on drying is less than 0.5 percent.
- Only Class 2 solvents X, Y, * * * are likely to be present. All are below the Option 1 limit. (Here the supplier would name the Class 2 solvents represented by X, Y, * * * .)
- Only Class 2 solvents X, Y, * * * and Class 3 solvents are likely to be present. Residual Class 2 solvents are below the Option 1 limit and residual Class 3 solvents are below 0.5 percent.

If Class 1 solvents are likely to be present, they should be identified and quantified.

"Likely to be present" refers to the solvent used in the final manufacturing step and to solvents that are used in earlier manufacturing steps and not removed consistently by a validated process.

If solvents of Class 2 or Class 3 are present at greater than their Option 1 limits or 0.5 percent, respectively, they should be identified and quantified.

4. Limits of Residual Solvents

4.1 Solvents to Be Avoided

Solvents in Class 1 should not be employed in the manufacture of drug substances, excipients, and drug products because of their unacceptable toxicity or their deleterious environmental effect. However, if their use is unavoidable in order to produce a drug product with a significant therapeutic advance, then their levels should be restricted as shown in Table 1, unless otherwise justified. The solvent 1,1,1-Trichloroethane is included in Table 1 because it is an environmental hazard. The stated limit of 1,500 ppm is based on a review of the safety data.

TABLE 1.—CLASS 1 SOLVENTS IN PHARMACEUTICAL PRODUCTS (SOLVENTS THAT SHOULD BE AVOIDED)

Solvent	Concentration limit (ppm)	Concern
Benzene	2	Carcinogen
Carbon tetrachloride	4	Toxic and environmental hazard
1,2-Dichloroethane	5	Toxic
1,1-Dichloroethene	8	Toxic
1,1,1-Trichloroethane	1,500	Environmental hazard

4.2 Solvents to Be Limited

Solvents in Table 2 should be limited in pharmaceutical products because of their inherent toxicity. PDE's are given to the nearest 0.1 mg/day, and concentrations are given to the nearest 10 ppm. The stated values do not reflect the necessary analytical precision of determination. Precision should be determined as part of the validation of the method.

TABLE 2.—CLASS 2 SOLVENTS IN PHARMACEUTICAL PRODUCTS

Solvent	PDE (mg/day)	Concentration limit (ppm)
Acetonitrile	4.1	410
Chlorobenzene	3.6	360
Chloroform	0.6	60
Cyclohexane	38.8	3,880
1,2-Dichloroethene	18.7	1,870

TABLE 2.—CLASS 2 SOLVENTS IN PHARMACEUTICAL PRODUCTS—Continued

Solvent	PDE (mg/day)	Concentration limit (ppm)
Dichloromethane	6.0	600
1,2-Dimethoxyethane	1.0	100
N,N-Dimethylacetamide	10.9	1,090
N,N-Dimethylformamide	8.8	880
1,4-Dioxane	3.8	380
2-Ethoxyethanol	1.6	160
Ethyleneglycol	6.2	620
Formamide	2.2	220
Hexane	2.9	290
Methanol	30.0	3,000
2-Methoxyethanol	0.5	50
Methylbutyl ketone	0.5	50
Methylcyclohexane	11.8	1,180
N-Methylpyrrolidone	48.4	4,840
Nitromethane	0.5	50
Pyridine	2.0	200
Sulfolane	1.6	160
Tetralin	1.0	100
Toluene	8.9	890
1,1,2-Trichloroethene	0.8	80
Xylene[1]	21.7	2,170

[1] Usually 60% m-xylene, 14% p-xylene, 9% o-xylene with 17% ethyl benzene.

4.3 Solvents with Low Toxic Potential

Solvents in Class 3 (shown in Table 3) may be regarded as less toxic and of lower risk to human health. Class 3 includes no solvent known as a human health hazard at levels normally accepted in pharmaceuticals. However, there are no long-term toxicity or carcinogenicity studies for many of the solvents in Class 3. Available data indicate that they are less toxic in acute or short-term studies and negative in genotoxicity studies. It is considered that amounts of these residual solvents of 50 mg per day or less (corresponding to 5,000 ppm or 0.5 percent under Option 1) would be acceptable without justification. Higher amounts may also be acceptable provided they are realistic in relation to manufacturing capability and good manufacturing practice (GMP).

TABLE 3.—CLASS 3 SOLVENTS WHICH SHOULD BE LIMITED BY GMP OR OTHER QUALITY-BASED REQUIREMENTS

Acetic acid	Heptane
Acetone	Isobutyl acetate
Anisole	Isopropyl acetate
1-Butanol	Methyl acetate
2-Butanol	3-Methyl-1-butanol
Butyl acetate	Methylethyl ketone
tert-Butylmethyl ether	Methylisobutyl ketone
Cumene	2-Methyl–1-propanol
Dimethyl sulfoxide	Pentane
Ethanol	1-Pentanol
Ethyl acetate	1-Propanol
Ethyl ether	2-Propanol
Ethyl formate	Propyl acetate
Formic acid	Tetrahydrofuran

4.4 Solvents for Which No Adequate Toxicological Data Were Found

The following solvents (Table 4) may also be of interest to manufacturers of excipients, drug substances, or drug products. However, no adequate toxicological data on which to base a PDE were found. Manufacturers should supply justification for residual levels of these solvents in pharmaceutical products.

TABLE 4.—SOLVENTS FOR WHICH NO ADEQUATE TOXICOLOGICAL DATA WERE FOUND

1,1-Diethoxypropane	Methylisopropyl ketone
1,1-Dimethoxymethane	Methyltetrahydrofuran
2,2-Dimethoxypropane	Petroleum ether
Isooctane	Trichloroacetic acid
Isopropyl ether	Trifluoroacetic acid

Glossary

Genotoxic carcinogens: Carcinogens that produce cancer by affecting genes or chromosomes.

LOEL: Abbreviation for lowest-observed effect level.

Lowest-observed effect level: The lowest dose of substance in a study or group of studies that produces biologically significant increases in frequency or severity of any effects in the exposed humans or animals.

Modifying factor: A factor determined by professional judgment of a toxicologist and applied to bioassay data to relate that data safely to humans.

Neurotoxicity: The ability of a substance to cause adverse effects on the nervous system.

NOEL: Abbreviation for no-observed-effect level.

No-observed-effect level: The highest dose of substance at which there are no biologically significant increases in frequency or severity of any effects in the exposed humans or animals.

PDE: Abbreviation for permitted daily exposure.

Permitted daily exposure: The maximum acceptable intake per day of residual solvent in pharmaceutical products.

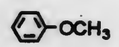
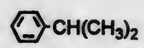
Reversible toxicity: The occurrence of harmful effects that are caused by a substance and which disappear after exposure to the substance ends.

Strongly suspected human carcinogen: A substance for which there is no epidemiological evidence of carcinogenesis but there are positive genotoxicity data and clear evidence of carcinogenesis in rodents.

Teratogenicity: The occurrence of structural malformations in a developing fetus when a substance is administered during pregnancy.

BILLING CODE 4160-01-F

Appendix 1. List of Solvents Included in the Guidance

Solvent	Other Names	Structure	Class
Acetic acid	Ethanoic acid	CH_3COOH	Class 3
Acetone	2-Propanone Propan-2-one	CH_3COCH_3	Class 3
Acetonitrile		CH_3CN	Class 2
Anisole	Methoxybenzene		Class 3
Benzene	Benzol		Class 1
1-Butanol	n-Butyl alcohol Butan-1-ol	$CH_3(CH_2)_3OH$	Class 3
2-Butanol	sec-Butyl alcohol Butan-2-ol	$CH_3CH_2CH(OH)CH_3$	Class 3
Butyl acetate	Acetic acid butyl ester	$CH_3COO(CH_2)_3CH_3$	Class 3
tert-Butylmethyl ether	2-Methoxy-2-methyl-propane	$(CH_3)_3COCH_3$	Class 3
Carbon tetrachloride	Tetrachloromethane	CCl_4	Class 1
Chlorobenzene			Class 2
Chloroform	Trichloromethane	$CHCl_3$	Class 2
Cumene	Isopropylbenzene (1-Methyl)ethylbenzene		Class 3
Cyclohexane	Hexamethylene		Class 2
1,2-Dichloroethane	sym-Dichloroethane Ethylene dichloride Ethylene chloride	CH_2ClCH_2Cl	Class 1

1,1-Dichloroethene	1,1-Dichloroethylene Vinylidene chloride	$H_2C=CCl_2$	Class 1
1,2-Dichloroethene	1,2-Dichloroethylene Acetylene dichloride	ClHC=CHCl	Class 2
Dichloromethane	Methylene chloride	CH_2Cl_2	Class 2
1,2-Dimethoxyethane	Ethyleneglycol dimethyl ether Monoglyme Dimethyl Cellosolve	$H_3COCH_2CH_2OCH_3$	Class 2
N,N-Dimethylacetamide	DMA	$CH_3CON(CH_3)_2$	Class 2
N,N-Dimethylformamide	DMF	$HCON(CH_3)_2$	Class 2
Dimethyl sulfoxide	Methylsulfinylmethane Methyl sulfoxide DMSO	$(CH_3)_2SO$	Class 3
1,4-Dioxane	p-Dioxane [1,4]Dioxane		Class 2
Ethanol	Ethyl alcohol	CH_3CH_2OH	Class 3
2-Ethoxyethanol	Cellosolve	$CH_3CH_2OCH_2CH_2OH$	Class 2
Ethyl acetate	Acetic acid ethyl ester	$CH_3COOCH_2CH_3$	Class 3
Ethyleneglycol	1,2-Dihydroxyethane 1,2-Ethanediol	$HOCH_2CH_2OH$	Class 2
Ethyl ether	Diethyl ether Ethoxyethane 1,1'-Oxybisethane	$CH_3CH_2OCH_2CH_3$	Class 3
Ethyl formate	Formic acid ethyl ester	$HCOOCH_2CH_3$	Class 3
Formamide	Methanamide	$HCONH_2$	Class 2
Formic acid		HCOOH	Class 3

Heptane	n-Heptane	$CH_3(CH_2)_5CH_3$	Class 3
Hexane	n-Hexane	$CH_3(CH_2)_4CH_3$	Class 2
Isobutyl acetate	Acetic acid isobutyl ester	$CH_3COOCH_2CH(CH_3)_2$	Class 3
Isopropyl acetate	Acetic acid isopropyl ester	$CH_3COOCH(CH_3)_2$	Class 3
Methanol	Methyl alcohol	CH_3OH	Class 2
2-Methoxyethanol	Methyl Cellosolve	$CH_3OCH_2CH_2OH$	Class 2
Methyl acetate	Acetic acid methyl ester	CH_3COOCH_3	Class 3
3-Methyl-1-butanol	Isoamyl alcohol Isopentyl alcohol 3-Methylbutan-1-ol	$(CH_3)_2CHCH_2CH_2OH$	Class 3
Methylbutyl ketone	2-Hexanone Hexan-2-one	$CH_3(CH_2)_3COCH_3$	Class 2
Methylcyclohexane	Cyclohexylmethane		Class 2
Methylethyl ketone	2-Butanone MEK Butan-2-one	$CH_3CH_2COCH_3$	Class 3
Methylisobutyl ketone	4-Methylpentan-2-one 4-Methyl-2-pentanone MIBK	$CH_3COCH_2CH(CH_3)_2$	Class 3
2-Methyl-1-propanol	Isobutyl alcohol 2-Methylpropan-1-ol	$(CH_3)_2CHCH_2OH$	Class 3
N-Methylpyrrolidone	1-Methylpyrrolidin-2-one 1-Methyl-2-pyrrolidinone		Class 2
Nitromethane		CH_3NO_2	Class 2
Pentane	n-Pentane	$CH_3(CH_2)_3CH_3$	Class 3

1-Pentanol	Amyl alcohol Pentan-1-ol Pentyl alcohol	$CH_3(CH_2)_3CH_2OH$	Class 3
1-Propanol	Propan-1-ol Propyl alcohol	$CH_3CH_2CH_2OH$	Class 3
2-Propanol	Propan-2-ol Isopropyl alcohol	$(CH_3)_2CHOH$	Class 3
Propyl acetate	Acetic acid propyl ester	$CH_3COOCH_2CH_2CH_3$	Class 3
Pyridine			Class 2
Sulfolane	Tetrahydrothiophene 1,1-dioxide		Class 2
Tetrahydrofuran	Tetramethylene oxide Oxacyclopentane		Class 3
Tetralin	1,2,3,4-Tetrahydro-naphthalene		Class 2
Toluene	Methylbenzene		Class 2
1,1,1-Trichloroethane	Methylchloroform	CH_3CCl_3	Class 1
1,1,2-Trichloroethene	Trichloroethene	$HClC{=}CCl_2$	Class 2
Xylene[1]	Dimethybenzene Xylol		Class 2

[1]Usually 60% m-xylene, 14% p-xylene, 9% o-xylene with 17% ethyl benzene.

BILLING CODE 4160-01-F

Appendix 2. Additional Background

A2.1 Environmental Regulation of Organic Volatile Solvents

Several of the residual solvents frequently used in the production of pharmaceuticals are listed as toxic chemicals in Environmental Health Criteria (EHC) monographs and the Integrated Risk Information System (IRIS). The objectives of such groups as the IPCS, the U.S. Environmental Protection Agency (EPA), and FDA include the determination of acceptable exposure levels. The goal is protection of human health and maintenance of environmental integrity against the possible deleterious effects of chemicals resulting from long-term environmental exposure. The methods involved in the estimation of maximum safe exposure limits are usually based on long-term studies. When long-term study data are unavailable, shorter term study data can be used with modification of the approach such as use of larger safety factors. The approach described therein relates primarily to long-term or *lifetime exposure of the general population* in the ambient environment, i.e., ambient air, food, drinking water, and other media.

A2.2 Residual Solvents in Pharmaceuticals

Exposure limits in this guidance are established by referring to methodologies and toxicity data described in EHC and IRIS monographs. However, some specific assumptions about residual solvents to be used in the synthesis and formulation of pharmaceutical products should be taken into account in establishing exposure limits. They are as follows:

(1) Patients (not the general population) use pharmaceuticals to treat their diseases or for prophylaxis to prevent infection or disease.

(2) The assumption of lifetime patient exposure is not necessary for most pharmaceutical products but may be appropriate as a working hypothesis to reduce risk to human health.

(3) Residual solvents are unavoidable components in pharmaceutical production and will often be a part of drug products.

(4) Residual solvents should not exceed recommended levels except in exceptional circumstances.

(5) Data from toxicological studies that are used to determine acceptable levels for residual solvents should have been generated using appropriate protocols such as those described, for example, by the Organization for Cooperation and Development, EPA, and the FDA Red Book.

Appendix 3. Methods for Establishing Exposure Limits

The Gaylor-Kodell method of risk assessment (Gaylor, D. W., and R. L. Kodell, "Linear Interpolation Algorithm for Low Dose Assessment of Toxic Substance," *Journal of Environmental Pathology and Toxicology*, 4:305, 1980) is appropriate for Class 1 carcinogenic solvents. Only in cases where reliable carcinogenicity data are available should extrapolation by the use of mathematical models be applied to setting exposure limits. Exposure limits for Class 1 solvents could be determined with the use of a large safety factor (i.e., 10,000 to 100,000) with respect to the NOEL. Detection and quantitation of these solvents should be by state-of-the-art analytical techniques.

Acceptable exposure levels in this guidance for Class 2 solvents were established by calculation of PDE values according to the procedures for setting exposure limits in pharmaceuticals (*Pharmacopeial Forum*, Nov-Dec 1989), and the method adopted by IPCS for Assessing Human Health Risk of Chemicals (EHC 170, WHO, 1994). These methods are similar to those used by the U.S. EPA (IRIS) and the U.S. FDA (Red Book) and others. The method is outlined here to give a better understanding of the origin of the PDE values. It is not necessary to perform these calculations in order to use the PDE values tabulated in Section 4 of this document.

PDE is derived from the NOEL or the LOEL in the most relevant animal study as follows:

$$PDE = \frac{NOEL \times \text{Weight Adjustment}}{F1 \times F2 \times F3 \times F4 \times F5} \quad (1)$$

The PDE is derived preferably from a NOEL. If no NOEL is obtained, the LOEL may be used. Modifying factors proposed here, for relating the data to humans, are the same kind of "uncertainty factors" used in EHC (EHC 170, WHO, Geneva, 1994), and "modifying factors" or "safety factors" in *Pharmacopeial Forum*. The assumption of 100 percent systemic exposure is used in all calculations regardless of route of administration.

The modifying factors are as follows:

F1 = A factor to account for extrapolation between species.

F1 = 5 for extrapolation from rats to humans.

F1 = 12 for extrapolation from mice to humans.

F1 = 2 for extrapolation from dogs to humans.

F1 = 2.5 for extrapolation from rabbits to humans.

F1 = 3 for extrapolation from monkeys to humans.

F1 = 10 for extrapolation from other animals to humans.

F1 takes into account the comparative surface area:body weight ratios for the species concerned and for man. Surface area (S) is calculated as:

$$S = kM^{0.67} \quad (2)$$

in which M = body mass, and the constant k has been taken to be 10. The body weights used in the equation are those shown below in Table A3.1.

F2 = A factor of 10 to account for variability between individuals.

A factor of 10 is generally given for all organic solvents, and 10 is used consistently in this guidance.

F3 = A variable factor to account for toxicity studies of short-term exposure.

F3 = 1 for studies that last at least one half-lifetime (1 year for rodents or rabbits; 7 years for cats, dogs and monkeys).

F3 = 1 for reproductive studies in which the whole period of organogenesis is covered.

F3 = 2 for a 6-month study in rodents, or a 3.5-year study in nonrodents.

F3 = 5 for a 3-month study in rodents, or a 2-year study in nonrodents.

F3 = 10 for studies of a shorter duration.

In all cases, the higher factor has been used for study durations between the time points, e.g., a factor of 2 for a 9-month rodent study.

F4 = A factor that may be applied in cases of severe toxicity, e.g., nongenotoxic carcinogenicity, neurotoxicity or teratogenicity. In studies of reproductive toxicity, the following factors are used:

F4 = 1 for fetal toxicity associated with maternal toxicity.

F4 = 5 for fetal toxicity without maternal toxicity.

F4 = 5 for a teratogenic effect with maternal toxicity.

F4 = 10 for a teratogenic effect without maternal toxicity.

F5 = A variable factor that may be applied if the no effect level was not established.

When only an LOEL is available, a factor of up to 10 could be used depending on the severity of the toxicity.

The weight adjustment assumes an arbitrary adult human body weight for either sex of 50 kilograms (kg). This relatively low weight provides an additional safety factor against the standard weights of 60 kg or 70 kg that are often used in this type of calculation. It is recognized that some adult patients weigh less than 50 kg; these patients are considered to be accommodated by the built-in safety factors used to determine a PDE. If the solvent was present in a formulation specifically intended for pediatric use, an adjustment for a lower body weight would be appropriate.

As an example of the application of this equation, consider a toxicity study of acetonitrile in mice that is summarized in *Pharmeuropa*, Vol. 9, No. 1, Supplement, April 1997, page S24. The NOEL is calculated to be 50.7 mg kg^{-1} day^{-1}. The PDE for acetonitrile in this study is calculated as follows:

$$PDE = \frac{50.7 \text{ mg kg}^{-1} \text{ day}^{-1} \times 50 \text{ kg}}{12 \times 10 \times 5 \times 1 \times 1} = 4.22 \text{ mg day}^{-1}$$

In this example,

F1 = 12 to account for the extrapolation from mice to humans.

F2 = 10 to account for differences between individual humans.

F3 = 5 because the duration of the study was only 13 weeks.

F4 = 1 because no severe toxicity was encountered.

F5 = 1 because the no effect level was determined.

TABLE A3.1—VALUES USED IN THE CALCULATIONS IN THIS DOCUMENT

Rat body weight	425 g	Mouse respiratory volume	43 liter (L)/day
Pregnant rat body weight	330 g	Rabbit respiratory volume	1,440 L/day
Mouse body weight	28 g	Guinea pig respiratory volume	430 L/day
Pregnant mouse body weight	30 g	Human respiratory volume	28,800 L/day
Guinea pig body weight	500 g	Dog respiratory volume	9,000 L/day
Rhesus monkey body weight	2.5 kg	Monkey respiratory volume	1,150 L/day
Rabbit body weight (pregnant or not)	4 kg	Mouse water consumption	5 milliliter (mL)/day
Beagle dog body weight	11.5 kg	Rat water consumption	30 mL/day
Rat respiratory volume	290 L/day	Rat food consumption	30 g/day

The equation for an ideal gas, PV = nRT, is used to convert concentrations of gases used in inhalation studies from units of ppm to units of mg/L or mg/cubic meter (m^3). Consider as an example the rat reproductive toxicity study by inhalation of carbon tetrachloride (molecular weight 153.84) summarized in *Pharmeuropa*, Vol. 9, No. 1, Supplement, April 1997, page S9.

$$\frac{n}{V}=\frac{P}{RT}=\frac{300\times10^{-6}\ \text{atm}\times153840\ \text{mg mol}^{-1}}{0.082\ \text{L atm K}^{-1}\ \text{mol}^{-1}\times298\ \text{K}}=\frac{46.15\ \text{mg}}{24.45\ \text{L}}=1.89\ \text{mg/L}$$

The relationship 1000 L = 1 m^3 is used to convert to mg/m^3.

Dated: December 16, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–33639 Filed 12–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form #HCFA–R–224]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHSS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of a statutory deadline imposed by section 1853(a)(3) of the Balanced Budget Act of 1997. Without this information, HCFA would not be able to properly implement the requirements set forth in the statute.

HCFA is requesting OMB review and approval of this collection by 12/31/97, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, by 12/29/97.

During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.5.

Type of Information Collection Request: New collection;

Title of Information Collection: Collection of Managed Care Data Using the Uniform Institutional Providers Form (HCFA–1450/UB–92) and Supporting Statute Section 1853(a)(3) of the Balanced budget Act of 1997;

Form No.: HCFA–R–224;

Use: Section 1853(a)(3) of the Balanced Budget Act (BBA) requires Medicare+Choice organizations, as well as eligible organizations with risk-sharing contracts under section 1876, to submit encounter data. Data regarding inpatient hospital services are required for periods beginning on or after July 1, 1997. These data may be collected starting January 1, 1998. Other data (as the Secretary deems necessary) may be required beginning July 1, 1998.

The BBA also requires the Secretary to implement a risk adjustment methodology that accounts for variation in per capita costs based on health status. This payment method must be implemented no later than January 1, 2000. The encounter data are necessary to implement a risk adjustment methodology.

Hospital data from the period, July 1, 1997—June 30, 1998, will serve as the basis for plan-level estimates of risk adjusted payments. These estimates will be provided to plans by March, 1999. Encounter data collected from subsequent time periods will serve as the basis for actual payments to plans for CY 2000 and beyond.

In implementing the requirements of the BBA, hospitals will submit data to the managed care plan for enrollees who have a hospital discharge using the HCFA–1450 (UB–92), Uniform Institutional Provider Claim Form. Encounter data for hospital discharges occurring on or after July 1, 1997 are required. While submission from the hospital to the plan is required, plans are provided with a start-up period during which time an alternate submission route is permitted.

The six month start up period, beginning January 1, 1998 will enable plans to accomplish the requirements of the BBA by the end of the start-up period, or June 30, 1998. Special procedures have been identified to ensure that hospital encounter data are submitted for discharges occurring on or after July 1, 1997 and before June 30, 1998. The special procedures for the start up period include the following:

1. In order to provide plans with an estimate of their Average Payment Rate (APR) by March, 1999, HCFA must receive data on hospital discharges that occurred on or after July 1, 1997 and before December 31, 1997, as well as encounter data on discharges that occur during the start up period, or January 1, 1998 through June 30, 1998. Currently, most plans do not have the capacity to submit data electronically to a fiscal intermediary (FI), and the FIs are not capable of receiving these data. Therefore, during this period only, unless an alternative approach is approved by HCFA, hospitals must submit completed UB–92s for the Plan's enrollees. These pseudo-claims must be submitted to the hospital's regular fiscal intermediary. This is a current requirement for hospitals, and they are expected to comply with this requirement throughout this period. Plans must provide hospitals with the Medicare identification number of all enrollees admitted who have Medicare coverage.

If hospitals are unable to submit these data on behalf of the plan during the start-up period, an alternate method of submitting the data may be developed by HCFA. If such a method is developed, it would require the plans to submit a subset of data elements that are found on the UB–92. Possible data elements include the following: Plan Contract Number; HIC (or Medicare Identification Number); enrollee's name; enrollee's state and county of residence; enrollee's birthdate and gender; Medicare Provider Number for the Hospital; claim from and thru date; admission date; and principal and secondary diagnoses codes. HCFA will specify the data elements, submission route, and format for these data.

2. During the start up period, the plan is expected to establish an electronic data linkage to a FI to be determined by HCFA. By June 30, 1998, the Plan is expected to have completed this linkage, including testing of the linkage, and to be capable of transmitting hospital encounter data to a FI. All data submitted after July 1, 1998 will be transmitted using this linkage. (See Attachment 1 for additional information on the transmission of data to HCFA.) Each plan and/or contract will use a single FI.

HCFA will establish a series of interim deadlines to ensure that plans are making sufficient progress toward accomplishing this linkage no later than June 30, 1998. HCFA will assist plans in initiating discussions with their FI.

After plans have established linkages to a FI, hospitals will submit HCFA–1450 (UB–92) forms to the managed care plan. The HCFA–1450 (UB92) form is identical to the one used by hospitals in billing for Medicare fee-for-service claims. After receiving the pseudo claim from the hospital, the plan attaches the plan identifier, which is the HCFA assigned managed care organization (MCO) Contract Number, and submits the pseudo-claim electronically to the fiscal intermediary (FI). The data processing flow by the FI is very similar to current claims processing for the fee-for-service system, except that no payment is authorized to the plan. Pseudo claims will flow though the FI to our Common Working File (CWF) and will be retained by HCFA;

Frequency: On occasion;

Affected Public: Business or other for-profit, not-for-profit institutions, and Federal government;

Number of Respondents: 6,700;

Total Annual Responses: 1.9 million;

Total Annual Hours: 32,833.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designee referenced below, by 12/29/97:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

42 CFR	OMB control Nos.
403.210	0938–0640

Dated: December 16, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33556 Filed 12–23–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Announcement of Office of Management and Budget (OMB) Control Numbers for Agency Information Collections Approved Under the Paperwork Reduction Act of 1995

AGENCY: Health Care Financing Administration.

This notice announces and displays OMB control numbers for Health Care Financing Administration (HCFA) information collections that have been approved by OMB.

Under OMB's regulations implementing the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, each agency that proposes to collect information must submit its proposal for OMB review and approval in accordance with 5 C.F.R. Part 1320. Once OMB has approved an agency's proposed collection of information and issues a control number, the agency must display the control number.

OMB regulations provide for alternative methods of displaying OMB control numbers. In the case of collections of information published in regulations, display is to be "provided in a manner that is reasonably calculated to inform the public." To meet this requirement an agency may display such information in the **Federal Register** by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information.

To comply with this requirement HCFA has chosen to publish this notice announcing OMB approval of the collections of information published in regulations. As stated above, this notice announces and displays the assigned OMB control numbers for HCFA's information collections that have been approved by OMB.

42 CFR	OMB control Nos.
405.262	0938–0267
405.374	0938–0270
405.427	0938–0155
405.711	0938–0045
405.807	0938–0033
405.821	0938–0034
405.1632	0938–0454
405.1701–.1726	0938–0273
405.2100–.2171	0938–0386
405.2110, 405.2112	0938–00657 & 0658
405.2133	0938–0046 & 0447 & 0448
405.2135–.2171	0938–0360
405.2401	0938–0685
406.13	0938–0080
406.15	0938–0501
406.28, 407.27	0938–0025
407.10, .11	0938–0245
407.18	0938–0679
407.40	0938–0035
408.6	0938–0041
409.40–.50, 410.36	0938–0357
410.1	0938–0679
410.38	0938–0534
410.40	0938–0042 & 0685
410.69	0938–0685
410.170	0938–0357
411.4–.15	0938–0357
411.15	0938–0224 & 0357
411.20–411.206	0938–0565
411.404, 411.406	0938–0465
411.408	0938–0566
412.20–.32	0938–0358
412.40–.62	0938–0359
412.44, 412.46	0938–0445
412.92	0938–0477
412.105	0938–0456
412.106	0938–0691
412.116	0938–0269
412.256	0938–0573
413.13	0938–0463
413.16	0938–0583
413.17, 413.20	0938–0202
413.20, 413.24	0938–0022 & 0037 & 0050 & 0102 & 0107 & 0301 & 0463 & 0511
413.56	0938–0463
413.64	0938–0269
413.157	0938–0463
413.170	0938–0296
414.40	0938–0008
414.330	0938–0372
414.451, 414.452, 414.456, 414.460	0938–0685
416.43	0938–0506
416.47	0938–0266 & 0506
417.1–.106	0938–0469
417.124	0938–0472
417.126	0938–0701
417.143, 417.408	0938–0470
417.436	0938–0610
417.470	0938–0701
417.479, 417.500	0938–0700
417.801	0938–0610
418.22, 418.24, 418.28, 418.30, 418.56, 418.58, 418.70, 418.74, 418.80, 418.83, 418.96, 418.100	0938–0302
420.200–.206	0938–0086
421.100	0938–0357
422.430	0938–0390
424.5	0938–0534
424.20	0938–0454
424.22	0938–0357 & 0589
424.32	0938–0008
424.57	0938–0685
424.73	0938–0685
424.123	0938–0484
424.124	0938–0042

42 CFR	OMB control Nos.
430.10–.20	0938–0193
430.12	0938–0610 & 0673
431.20	0938–0610
431.1–431.865	0938–0062
431.8	0938–0300
431.17	0938–0467
431.110	0938–0390
431.107	0938–0610
431.306	0938–0502
431.630	0938–0445
431.800	0938–0094
431.802–.822	0938–0246
431.814	0938–0146 & 0147
431.820	0938–0144
431.865	0938–0094 & 0246
431.940–431.965	0938–0467
433.68, 433.74	0938–0618
433.110–.131	0938–0487
433.110, 433.112–433.114, 433.116, 433.117, 433.119, 433.121, 433.122, 433.127, 433.130, 433.131	0938–0247
433.138	0938–0502
433.139	0938–0502
434.27	0938–0572
434.28	0938–0610
434.44, 434.67, 434.70	0938–0700
435.1–435.1011	0938–0062
435.217, 435.726, 435.735	0938–0449
435.940–.965	0938–0467
440.1–.270	0938–0062
440.10	0938–0449
440.30	0938–0685
441.250–.300	0938–0481
441.302	0938–0449
441.303	0938–0272
442.1–.119	0938–0062 & 0379
442.10–.119	0938–0355
442.30	0938–0678
447.31	0938–0287
447.53	0938–0429
447.253	0938–0523
447.255	0938–0193
447.272	0938–0618
447.280	0938–0624
447.299	0938–0618
455.100–.106	0938–0086
456.650–.657	0938–0061
456.654	0938–0445
456.700, 456.705, 456.709, 456.711, 456.712	0938–0659
466.71, 466.73, 466.74, 466.78, 466.80, 466.94	0938–0445
473.18, 473.34, 473.36, 473.42	0938–0443
476.104, 476.105, 476.116, 476.134	0938–0426
482.1–.66	0938–0380
482.2–.57	0938–0382
482.12, 482.22	0938–0328
482.27	0938–0328 & 0698
482.41	0938–0242
482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60–.62	0938–0328 & 0378
482.66	0938–0328 & 0624
483.10	0938–0610
483.70	0938–0242
483.400–.480	0938–0062 & 0678
483.440, 483.450, 483.460	0938–0366
483.470	0938–0242
484.1–.52	0938–0365
484.10	0938–0610
484.18	0938–0357
484.48	0938–0519
484.52	0938–0687
485.56, 485.58, 485.60, 485.64, 485.66	0938–0267
485.701–.729	0938–0273 & 0065
485.709, 485.711, 485.717, 485.719, 485.721, 485.723, 485.725, 485.727, 485.729	0938–0336
486.100–.110	0938–0338
486.150–.163	0938–0258 & 0071
486.155, 486.161, 486.163	0938–0336
486.301–.325	0938–0391, 0512 & 0688

42 CFR	OMB control Nos.
488.1–.28	0938–0355
488.4	0938–0690
488.18	0938–0667
488.26	0938–0379
488.60	0938–0360
489.20	0938–0667
489.21	0938–0357
489.24	0938–0667
489.27	0938–0692
489.40–.41	0938–0383
489.102	0938–0610
491.1–.11	0938–0074
491.2	0938–0685
491.9	0938–0334
493.1–.2001	0938–0151, 0170, 0544, 0581, 0612 & 0653
493.501, 493.506, 493.513, 493.515	0938–0686
493.1840	0938–0655
498.40–.95	0938–0486 & 0567
1003.100, 1003.101, 1003.103	0938–0700
1004.40, 1004.50, 1004.60, 1004.70	0938–0444

45 CFR	OMB control Nos.
146.111, .115, .117, .150, .152, .160, .180	0938–0702
148.120, .122, .124, .128	0938–0703

Dated: December 17, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group; Division of HCFA Enterprise Standards.

[FR Doc. 97–33555 Filed 12–23–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Criteria for Implementing Permissive Exclusion Authority Under Section 1128(b)(7) of the Social Security Act

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the non-binding guidelines, to be used by the OIG in assessing whether to impose a permissive exclusion in accordance with section 1128(b)(7) of the Social Security Act. These guidelines identify specific factors with regard to whether an individual's or entity's continued participation in the Medicare, Medicaid and other Federal health care programs will pose a risk to the programs or program beneficiaries, and explain how these factors would be used by the OIG to assess a permissive exclusion decision.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

Purpose and Rationale

Section 1128(b)(7) of the Social Security Act (the Act) authorizes the Secretary, and by delegation the Inspector General, to exclude a provider from Medicare, Medicaid and the other Federal health care programs for engaging in conduct described in sections 1128A and 1128B of the Act. These latter provisions establish administrative and criminal sanctions, respectively, against individuals and entities that (1) submit, or cause to be submitted, false or fraudulent claims to Medicare and the Federal and State health care programs; or (2) offer, pay, solicit or receive remuneration in return for the referral of business reimbursed by Medicare or Medicaid, a violation of the Medicare and Medicaid anti-kickback statute. Exclusions in accordance with section 1128(b)(7) of the Act, based on such conduct, are permissive in nature, that is, the Secretary has the discretion whether to exclude or not to exclude. Respondents in these administrative exclusion proceedings have the right to a hearing before a Department of Health and Human Services administrative law judge prior to the imposition of an exclusion.

On October 24, 1997, the OIG published a proposed policy statement in the **Federal Register** (62 FR 55410) in the form of non-binding guidelines to be used by the OIG in assessing whether to impose a permissive exclusion in accordance with section 1128(b)(7) of the Act. We indicated that these draft criteria were designed to allow for the more effective development of OIG investigations and investigative plans; establish an objective basis for the OIG's permissive exclusion decisions; evaluate a provider's trustworthiness to continue to conduct business with the Medicare, Medicaid and other Federal health care programs; and positively influence providers' future behavior through the development of corporate integrity programs and other conduct contemplated by the exclusion criteria.

The factors listed in these proposed guidelines were derived from two principal sources—the regulations governing exclusions under sections 1128(b)(7) and 1128A of the Act (42 CFR parts 1001 and 1003), and the decisions of the Departmental Appeals Board (DAB) in exclusion matters. The factors derived from DAB decisions reflected the analysis of the remedial purpose of program exclusion that is, to protect Federal health care programs by determining whether the respondent is sufficiently trustworthy to participate.

Structure of Permissive Exclusion Criteria

The proposed exclusion criteria were organized into four general categories of factors bearing on the trustworthiness of a provider that has allegedly engaged in health care fraud and abuse—

- The first category addressed the circumstances and seriousness of the underlying misconduct. The factors to be considered are historical in nature and rely on past misconduct as an indicator of the defendant's propensity for future abuse of the programs.
- The second category considered the defendant's response to the allegations or determination of wrongdoing. These factors indicate whether the defendant is willing to affirmately modify his or her conduct, make injured parties whole, and otherwise acknowledge and remedy past wrongdoing.
- The third category identified various other factors relevant to assessing the likelihood of a future violation of the law. The implementation of an adequate corporate integrity program is a key consideration.
- The fourth category related to the defendant's financial ability to provide quality health care services.

Interested parties were invited to comment on these draft criteria and submit their written comments to the OIG for consideration. The OIG received two timely-filed public comments in accordance with that solicitation request. As a result of those comments, we are making two technical revisions to the final guidelines. The first change relates to section D and the defendant's financial ability to provide quality health care services. We are clarifying this section to indicate its application only to entities and not individual practitioners. Second, we are revising the language in paragraph 3 of section A to address the "knowledge standard." Specifically, we are now indicating that a criterion would be whether there is evidence that the defendant knew, or should have known, that his or her conduct was prohibited.

We believe that the revised internal guidelines set forth below should now establish specific criteria on which the OIG may base its decision as to whether to seek the imposition of a permissive exclusion against a health care provider in accordance with section 1128(b)(7) of the Act. While these revised exclusion criteria will now serve as internal agency guidelines for the OIG, these criteria may be subject to further modification at any time. They are not intended to limit or bind the OIG's discretionary authority to exclude individuals or entities that pose a risk to Medicare, Medicaid and other Federal health care programs or program beneficiaries. These criteria do not create any rights or privileges in favor of any party. In addition, these criteria do not supplant to modify in any way the OIG regulations, codified at 42 CFR part 1001, governing program exclusions.

II. Criteria To Implement the OIG's Permissive Exclusion Authority Under Section 1128(b)(7)

The following criteria may be used to determine whether or not it is appropriate to impose a permissive exclusion in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)). These criteria are informal and non-binding, and may be used as a guide to assist the OIG in determining in which cases an exclusion should be imposed. The presence or absence of any or all of the factors that appear below does not constitute the sole grounds for determining whether exclusion is appropriate. There is a presumption that some period of exclusion should be imposed against an individual or entity that has defrauded Medicare or other Federal and State health care programs.

A. The Circumstances of the Misconduct and Seriousness of the Offense

1. Was a criminal sanction imposed? The amount of any criminal fine or penalty imposed, and the length of any period of incarceration that is ordered, is evidence of the seriousness of the statutory misconduct, and may have an impact on the exclusion determination.

2. Was there evidence of (i) physical or mental harm to patients or (ii) financial harm to the Medicare or any of the other Federal and State health care programs? If financial loss to the programs occurred, what was the extent of such loss? Exclusion may be appropriate not only in cases where actual harm is present, but potential harm as well.

3. Is the misconduct an isolated incident or a continuous pattern of wrongdoing over a significant period of time? Is there evidence that the defendant knew, or should have known, that his or her conduct was prohibited? Has the defendant had the same or previous problems with the OIG, the Health Care Financing Administration (HCFA), the carrier or intermediary, or the State? What was the nature of these problems?

4. Was the defendant's involvement in the misconduct active or passive? Was the defendant aware of the misconduct when it was occurring? Did the defendant play a role in the misconduct?

B. Defendant's Response to Allegations/ Determination of Unlawful Conduct

1. What was the defendant's response to any actual or potential legal violations or harm to the programs or their beneficiaries? Was the response appropriate and credible?

2. Did the defendant cooperate with investigators and prosecutors, and timely respond to lawful requests for documents and the provision of evidence regarding the involvement of other individuals in a particular scheme, thereby demonstrating trustworthiness?

3. Has the defendant made or agreed to make full restitution to the Federal and/or state health care programs, thereby demonstrating present responsibility and willingness to conform to applicable laws, regulations and program requirements?

4. Has the defendant paid or agreed to pay all criminal, civil, and administrative fines, penalties, and assessments resulting from the improper activity?

5. Has the defendant taken steps to undo the questionable conduct or mitigate the ill effects of the misconduct, e.g., appropriate disciplinary action against the individuals responsible for the activity that constitutes cause for exclusion, or other corrective action?

6. Has the defendant acknowledged its wrongdoing and changed its behavior, thereby demonstrating future trustworthiness?

C. Likelihood that Offense or Some Similar Abuse Will Occur Again

1. Was the misconduct the result of a unique circumstance not likely to recur? Is there minimal risk of repeat conduct?

2. Have prior and subsequent conduct been exemplary or improper?

3. What prior measures had been taken to ensure compliance with the law? Can the defendant demonstrate that it had an effective compliance plan in place when the activities that constitute cause for exclusion occurred?

A. Did the defendant make any efforts to contact the OIG, HCFA, or its contractors to determine whether its conduct complied with the law and applicable program requirements? Were any contacts documented?

B. Did the defendant bring the activity in question to the attention of the appropriate Government officials prior to any Government action, e.g., was there any voluntary disclosure regarding the alleged wrongful conduct?

C. Did the defendant have effective standards of conduct and internal control systems in place at the time of the wrongful activity, e.g., was there a corporate compliance program in place? If there was an existing corporate compliance plan:

(i) How long had the compliance plan been in effect?

(ii). What problems had been identified as a result of the compliance plan?

(iii). Were any overpayments or systemic changes made if problems were identified?

(iv) Were appropriate staff sufficiently trained in applicable policies and procedures pertaining to Medicare and other Federal and State health care programs?

(v) Was there a corporate compliance officer and an effective corporate compliance committee in place (if appropriate to the size of the company)?

(vi) Were regular audits undertaken at the time of the unlawful activity?

4. What measures have been taken, or will be taken, to ensure compliance with the law? Has the defendant agreed to implement adequate compliance measures, including institution of a corporate integrity plan?

D. Financial Responsibility

If the defendant is an entity and is permitted to continue program participation, is that defendant able to operate without a real threat of bankruptcy and without a real threat to its ability to provide quality health care items or services?

Dated: December 16, 1997.

June Gibbs Brown,

Inspector General.

[FR Doc. 97–33524 Filed 12–23–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of the National Advisory Council on Aging

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, Thursday, February 5, and Friday, February 6, 1998, to be held at the National Institutes of Health, Natcher Building, Conference Room F1 and 2, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 5, from 1:00 to 4:30 p.m. for a status report by the Director, NIA, and the Behavioral and Social Research Program and Intramural Research Program Reviews.

The meeting will be open again on Friday, February 6, from 8:00 to 10:00 a.m. for a report on the Working Group on Program, a report on the Council Task Force on Minority Aging and Highlights of Recent Research Findings. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on Thursday, February 5, from 4:30 p.m. to recess for the review of the Intramural Research Program.

The meeting will also be closed on Friday, February 6, from 10:00 a.m. to adjournment for the discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as a patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: December 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33490 Filed 12–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of Conference Grants (R13s) and Conference Cooperative Agreements (U13s) Telephone Conference Call.

Date: January 9, 1998.

Time: 2:30 p.m.

Place: National Institute of Environmental Health Sciences, North Campus, Building 4401, Room 3446, Research Triangle Park, NC 27709.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33491 Filed 12–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Allergy, Immunology, and Transportation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on February 10–12, 1998, at the Belmont Manor House and Conference Center, 6555 Belmont Woods Road, Elkridge, Maryland.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on February 10 to discuss administrative details relating to committee business and program review, and for a report from the Acting Director, Division of Extramural Activities, which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. on February 10 until adjournment on February 12. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C2, National Institute of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Kevin M. Callahan, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C20, Bethesda, Maryland 20892, telephone 301–496–8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health)

Dated: December 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33494 Filed 12–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on February 2–3, 1998. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee, NAAIDC Microbiology and Infectious Diseases Subcommittee and the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the National Institutes of Health, Bethesda, Maryland.

The meeting of the full Council will be open to the public on February 2 in Building 31C, Conference Room 6, from 1 p.m. to approximately 3:30 p.m. for general discussion and program presentations.

On February 3 the meetings of the NAAIDC Allergy and Immunology Subcommittee, NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittees will meet in Building 31C, conference rooms 8 and 6 respectively.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on February 2, in conference rooms 7, 8 and 6 respectively. The meeting of the full Council will be closed from 3:30 p.m. until recess on February 2 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Lawrence Deyton, Acting Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33495 Filed 12–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on January 21–22, 1998, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and the meeting of the Subcommittee will be in Conference Room 7, Building 31C.

The meeting of the Planning Subcommittee will be open to the public on January 21 from 2 p.m. until 3 p.m. for the discussion of policy issues. The meeting of the full Council will be open to the public on January 22 from 8:30 a.m. until 11:30 a.m. for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and Section 10(d) of Pub. L. 92–463, the meeting of the Planning Subcommittee on January 21 will be closed to the public from 3 p.m. to adjournment. The meeting of the full Council will be closed to the public on January 22 from 12:30 p.m. until adjournment. The meetings will include the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meeting may be obtained from Dr. Craig A. Jordan, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MSC67180, Bethesda, Maryland 20892, (301) 496–8693. A summary of the meeting and rosters of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Jordan at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: December 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33496 Filed 12–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: January 7, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4214, Telephone Conference.
Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435–1215.

Name of SEP: Biological and Physiological Sciences.
Date: January 14, 1998.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 6158, Telephone Conference.
Contact Person: Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 6158, Bethesda, Maryland 20892, (301) 435–1780

Name of SEP: Microbiological and Immunological Sciences.
Date: January 14, 1998.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Microbiological Sciences.
Date: March 19–20, 1998.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Purpose/Agenda: To review Small Business Innovaiton Research.
Name of SEP: Multidisciplinary Sciences.
Date: March 9–10, 1998.
Time: 8:00 a.m.
Place: Woodfin Suites, Rockville, MD.
Contact Person: Dr. Nadarajen A. Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.892, 93.893, National Institutes of Health, HHS)

Dated: December 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33492 Filed 12–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: January 6, 1998.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Behavioral and Neurosciences.
Date: January 7, 1998.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Behavioral and Neurosciences.
Date: January 8, 1998.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Behavioral and Neurosciences.
Date: January 9, 1998.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Biological and Physiological Sciences.
Date: January 19, 1998.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 4148, Telephone Conference.
Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

Name of SEP: Biological and Physiological Sciences.
Date: January 22, 1998.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 4148, Telephone Conference.
Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93,878, 93.892, 93,893, National Institutes of Health HHS)

Dated: December 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33493 Filed 12–23–97; 8:45 am]

BILLING CODE 23–414–001–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–35]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to idenfy Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Propertites listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Interior: Ms. Lola Knight, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; Navy: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: December 18, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/26/97

Suitable/Available Properties

Buildings (by State)

Michigan

Eagle Harbor Lighthouse/
Rt. 26
Eagle Harbor Co: Keweenaw MI 44950
Landholding Agency: GSA
Property Number: 549740018
Status: Excess
Comment: 2 bldgs., 3111 sq. ft. combined, presence of asbestos/lead paint, most recent use—museum and storage
GSA Number: 1–U–MI–420A

Virginia

Bldg. SP–247
Naval Base Norfolk
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779720106
Status: Unutilized
Comment: 3206 sq. ft., no utilities, presence of asbestos/lead paint, off-site use only

Bldg. NM–59A
Naval Base Norfolk
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779730069
Status: Excess
Comment: 14,044 sq. ft., presence of asbestos, most recent use—mobile facilities shop, off-site use only

West Virginia

Emit Jennings House
New River Gorge National River
Huffman Drive
McCreery Co: Raleigh WV 25934–
Landholding Agency: Interior
Property Number: 619740002
Status: Excess
Comment: 1400 sq. ft. concrete block, needs rehab, off-site use only

Webb House
New River Gorge National River
Rt. 41 North
McCreery Co: Raleigh WV 25934–
Landholding Agency: Interior
Property Number: 619740003
Status: Excess
Comment: 288 sq. ft. dwelling, off-site use only

Gilliam House
New River Gorge National River
Rt. 41 North
McCreery Co: Raleigh WV 25934–
Landholding Agency: Interior
Property Number: 619740004
Status: Excess
Comment: 448 sq. ft. dwelling, off-site use only

Unsuitable Properties

Buildings (by State)

Guam

Bldg. 609
Naval Forces Marianas
ComNavMar Co: Waterfront Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 779740085
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 611
Naval Forces Marianas
ComNavMar Co: Waterfront Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 779740086
Status: Unutilized
Reason: Secured Area Extensive deterioration

North Carolina

Bldg. 45, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779740087
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 420, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779740088
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. TP463, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779740089
Status: Excess
Reason: Secured Area Extensive deterioration

Ohio

Newtown Fish Toxicology
3411 Church Street
Newton Co: Hamilton OH 44244–
Landholding Agency: GSA
Property Number: 549740019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material within airport runway clear zone
GSA Number: 1–Z–OH–806

[FR Doc. 97–33503 Filed 12–23–97; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–

Endangered and Threatened Wildlife and Plants; Extension of Comment Period for Draft Conservation Agreement for the Wasatch Front and West Desert Populations (Utah) of Spotted Frog (Rana luteiventris)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: The Fish and Wildlife Service announces an extension of the public review and comment period for the Draft Conservation Agreement for the spotted frog *(Rana luteiventris)* in Utah. The Service announced the availability of the draft Conservation Agreement for the Wasatch Front and West Desert populations (Utah) of spotted frog for review and comment on November 28, 1997 (62 FR 63375). The original comment period requested comments be received on or before December 29, 1997. On December 16, 1997, the Service received an official request for an extension of the comment period to the week of January 13, 1998.

DATES: Comments on the Draft Conservation Agreement must now be received on or before January 16, 1998, to be considered by the Service during preparation of the final conservation agreement and prior to the Service's determination whether it will be a signatory party to the agreement.

ADDRESSES: Persons wishing to review the Draft Conservation Agreement may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written comments and materials regarding the Draft Conservation Agreement should also be directed to the same address. Comments and written materials will be available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Reed E. Harris, Field Supervisor (see **ADDRESSES** section) (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION: The spotted frog *(Rana luteiventris)* is a candidate for Federal listing pursuant to the Endangered Species Act of 1973, as amended. In 1989 the Service received a petition from the Board of Directors of the Utah Nature Study Society requesting that the Service add the spotted frog (then referred to as *Rana pretiosa)* to the List of Threatened and Endangered Species. The Service subsequently published a notice of a 90-day finding in the **Federal Register** (54 FR 42529) on October 17, 1990, and a notice of a 12-month petition finding in the **Federal Register** (58 FR 27260) on May 7, 1993. In the 12-month petition finding the Service found that listing of the spotted frog as threatened in some portions of its range was warranted but precluded by other higher priority listing actions.

Shortly after the 12-month petition finding the Utah Department of Natural Resources began development of a Conservation Agreement, working cooperatively with other agencies, in an effort to reduce the threats affecting the spotted frog.

Public Comments Solicited

The Service will use information received in its determination on whether it should be a signatory party to the agreement. Comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this draft document are hereby solicited. All comments and materials received will be considered prior to the approval of any final document.

Author

The primary author of this notice is Janet A. Mizzi, Utah Field Office (see **ADDRESSES** section) (telephone 801/524–5001).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Act of 1958, the Fish and Wildlife Service Coordination Act of 1964, and the National Memorandum of Understanding (94(SMU–056)).

Dated: December 18, 1997.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 97–33536 Filed 12–23–97; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgment of the Mobile-Washington County Band of Choctaw Indians of South Alabama (MOWA)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8.

Notice is hereby given that the Assistant Secretary declines to acknowledge that the Mobile—Washington County Band of Choctaw Indians of South Alabama (MOWA), 1080 West Red Fox Road, Mt. Vernon, Alabama 36560, exists as an Indian tribe within the meaning of Federal law. This notice is based on the determination that the group does not satisfy one of the mandatory criteria set forth in 25 CFR 83.7, namely criterion 83.7 (e). Therefore, the MOWA do not meet the requirements necessary for a government-to-government relationship with the United States, 25 CFR 83.10 (m).

DATES: This determination is final and is effective 90 days after publication in the **Federal Register**, unless a request for reconsideration is filed with the Interior Board of Indian Appeals (IBIA) by the petitioner or any interested party no later than 90 days after publication, 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592. A request for a copy of the report which summarizes the evidence and analyses that are the basis for this Final Determination should be addressed to the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street NW, Mailstop 4603-MIB, Washington, D.C. 20240, or is available at www.doi.gov/bia/ack__res.html.

SUPPLEMENTARY INFORMATION: The MOWA submitted a documented petition on April 28, 1988, and received an "obvious deficiency review" (OD) from the Bureau of Indian Affairs (BIA) dated February 15, 1990. On November 8, 1991, the MOWA responded to the OD review and on November 19, 1991, the petition was placed on the "ready" list of petitioners waiting to be placed on active consideration. The AS-IA's investigation of the petition and response to the OD review found little or no evidence that the petitioner can meet criterion (e) of 83.7, descent from a historical tribe or from historical tribes which combined and functioned as a single autonomous political entity.

Under 25 CFR 83.10 (e) of the Federal acknowledgment regulations, an expedited Proposed Finding may be issued by the Assistant Secretary when there is little or no evidence that the petitioner can meet one of the mandatory criteria (e), (f), or (g) of 83.7. Expedited findings may only be done after the petition is complete and before the petition has been placed on active consideration. A notice of the expedited Proposed Finding to decline to acknowledge the MOWA was published in the **Federal Register** on January 5, 1995 (60 FR 1874).

The Proposed Finding found that the petitioner clearly did not meet the requirements of criterion 83.7 (e), descent from a historical tribe. To make a Proposed Finding under 83.10 (e), the burden of proof is on the Government to show that the petitioner clearly does not meet the criterion. The Proposed Finding demonstrated that the MOWA clearly did not meet criterion 83.7 (e), thus meeting the burden of proof required of the Government for making a Proposed Finding under 83.10 (e).

Once the Proposed Finding has been issued, however, the burden of proof shifts to the petitioner for rebuttal. The standard of proof which must be met in the petitioner's response to the Proposed Finding is a lesser one, the "reasonable likelihood of the validity of the facts" standard described in 25 CFR 83.6, the same standard used for all acknowledgment determinations. If, in its response to the Proposed Finding, the petitioner can show that it meets the "reasonable likelihood of the validity of the facts" standard, and thus demonstrates descent from a historical tribe, or historical tribes which amalgamated, then the BIA will undertake a full review of the petition under all seven of the mandatory criteria. However, the MOWA's response to the Proposed Finding did not establish under the "reasonable likelihood of the validity of the facts" standard that the MOWA met criterion 83.7 (e). No new evidence was submitted or found which rebutted the conclusions of the Proposed Finding. Therefore, the MOWA response did not trigger a BIA evaluation of the MOWA petition under all seven mandatory criteria.

The Final Determination is based upon a new analysis of all the information in the record. This includes the information available for the Proposed Finding, the information submitted by the petitioner in its response to the Proposed Finding, and new evidence collected by the BIA researchers for evaluation purposes. Interested and informed parties did not submit evidence during the comment period. Two individuals submitted comments after the close of the response period, which were not considered in the preparation of the final determination in accord with 25 CFR 83.10 (l) (l). Also, numerous form letters were received out of time and all were transmitted to the Solicitor's office for retention for transmittal to the IBIA or the AS-IA in the event of a remand. None of the evidence submitted by the petitioner or located by the BIA during the evaluation process demonstrates that the core ancestors of the MOWA were Choctaw or of other Indian ancestry.

Initially the petitioner claimed descent from six historical Indian tribes: Apache, Cherokee, Chickasaw, Choctaw, Creek, and Houma. In its Response to the Proposed Finding, the petitioner continued to claim ancestry only from the historical Choctaw, Cherokee, and Creek tribes and narrowed its core ancestors from 30 to 5 individuals. The petitioner submitted additional evidence on four of the five of these ancestors from whom it claimed descent. The BIA searched for evidence, but could not locate any evidence connecting these four claimed core ancestors to the Choctaw or to any other historical tribe. Neither the petitioner nor the BIA found documentation acceptable to the Secretary that the core ancestors claimed to be Indian by the MOWA, were descendants of the historical Choctaw tribe or any other Native American tribe.

The BIA found that all the MOWA members descend from two core families that resided in southwestern Alabama by about 1830. Neither these two families nor their ancestors were found to be members of a historical tribe of American Indians, or of tribes which had combined and functioned as a single American Indian entity. The extensive evidence on these two families either does not support, or in part disproves, Indian ancestry. Only one percent of the petitioner's membership could document any American Indian ancestry through the fifth core ancestor (see above) whose lines married into the families in the late 1880's and early 1900's. Except for this one percent, Indian records for Alabama do not include the known ancestors of the petitioner. There was no evidence in the substantial body of documentation submitted by the petitioner, or in the independent research by the BIA, to demonstrate Choctaw ancestry or any other Indian ancestry for 99% of the petitioner's membership. Thus, the petitioner fails to meet criterion (e), descent from a historical tribe.

The Proposed Finding concluded that the petitioner's claim that its members descended from "full and mixed blood Choctaws, Creeks, Cherokees, and Chickasaws who avoided removal West during the Indian removal in the 1830's" is not valid. The AS-IA found that:

(1) The petitioner's core ancestral families did not have documented American Indian ancestry;

(2) The actual MOWA progenitors from the 1880's were not documented as descendants of the known, removal-era, Indians claimed by the petitioner; and

(3) Many of the persons in the early 19th century "founding Indian community" claimed by the petitioner were not demonstrated to be Choctaw, or even American Indian.

(4) Only one percent of the petitioner's membership can document American Indian ancestry.

In its response to the Proposed Finding, the petitioner submitted evidence including letters, photographs, interviews, school/church records, published secondary sources, newspaper/journal articles, court documents, Federal documents, land records, maps, and time lines. Every piece of evidence submitted was reviewed and it is concluded that:

(1) Some of the evidence was either irrelevant to criterion 83.7(e) because it did not demonstrate genealogical descent from four claimed ancestors or descent from any historical tribe;

(2) Much of the evidence was oral history and was unreliable when tested. Much of the evidence was found to be unsubstantiated by primary documentation; and

(3) The evidence did not connect known MOWA ancestors to the individuals whom the MOWA claimed were Native American or to a historical Indian tribe.

(4) The evidence disproved Indian ancestry to some of the MOWA ancestors.

The BIA searched for evidence on the local, state, and national levels. The core ancestors of the petitioning group are known. None of the primary records demonstrated that these documented, known core ancestors were American Indian, or were descendants of a historical tribe. The BIA also searched the records of the historical tribes which the petitioner claimed and found no connection between the MOWA core ancestors and these historical tribes.

The MOWA response to the Proposed Finding offered no basis for reversing the conclusions of the Proposed Finding against Federal acknowledgment of the MOWA. The evidence in the record does not support the petitioner's claim that it descends from a historical tribe. The record does not provide substantive evidence or any reason to believe that additional research might uncover such evidence. The MOWA petitioner has not demonstrated by a "reasonable likelihood of the validity of the facts" standard that it meets the requirements of criterion 83.7(e). There is thus no need to complete a full evaluation of the documented petition under all seven of the mandatory criteria. The petitioner fails to meet the requirements for Federal acknowledgment as an Indian Tribe.

The Proposed Finding which declined to acknowledge that the petitioner is an Indian tribe is affirmed. This determination is final and will become effective 90 days from the date of publication unless the petitioner or any interested party files a request for reconsideration of this determination with the Interior Board of Indian Appeals (83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after the publication of the Assistant Secretary's determination in the **Federal Register** (83.11(a)(2)).

Dated: December 17, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–33532 Filed 12–23–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability and Public Comment Period on Supplemental Analysis to Environmental Assessment No. CA–069–EA7–42; Tritium and Related Materials Testing on Public Lands in Ward Valley, San Bernardino County, CA

AGENCY: Bureau of Land Management.

ACTION: Public comment period on Supplemental Analysis.

SUMMARY: The Department of the Interior (DOI), Bureau of Land Management (BLM) has prepared a Supplemental Analysis on simultaneous drilling activities by DOI/BLM and the State of California, Department of Health Services, and on related issues.

EFFECTIVE DATE: Public comments on the Supplemental Analysis must be received by January 9, 1998.

ADDRESSES: Copies of the Supplemental Analysis may be obtained upon request. Submit requests to: External Affairs Staff, Bureau of Land Management, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507; or to: External Affairs Staff, Bureau of Land Management, California State Office, 2135 Butano Drive, Sacramento, California 95825. The EA is also available on the Internet at: www.ca.blm.gov.

SUPPLEMENTARY INFORMATION: DOI and BLM prepared an Environmental Assessment, EA No. CA–069–EA7–42, on proposed tritium and related materials testing and a proposal by the State of California to conduct rainfall infiltration studies. The EA was released for public review on November 6, 1997. Since the initial EA was released, new information has become available that is relevant to the DOI/BLM and State proposals. Specifically, a simultaneous drilling alternative is under consideration, and more information concerning unexploded military ordnance on site has become available. These topics are analyzed in the Supplemental Analysis which is being distributed for public review through January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ward Valley Project Coordinator Bureau of Land Management, California State Office, 2135 Butano Drive, Sacramento, California 95825; tel: (916) 978–4630.

Carl Rountree,

Deputy State Director, Natural Resources.

[FR Doc. 97–33544 Filed 12–23–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–0777–61–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces a tour and meeting of the Arizona Resource Advisory Council. The tour and meeting will be held January 23–24, 1998 in Safford, Arizona. On January 23, the RAC will tour a grazing allotment along the Gila River and discuss various issues involved in the Safford Field Office Livestock Grazing Biological Opinion. The tour will start at 8:00 a.m. from the BLM Safford Field Office and will conclude at 5:00 p.m. The Safford Field Office is located at 711 14th Avenue. On January 24, the RAC will conduct a one-day business meeting. Again, the meeting will be held at the Safford Field Office, starting at 8:00 am. until approximately 2:00 p.m. The agenda items to be covered at the meeting include review of previous meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Update on Safford and Tucson Biological Opinions; Presentation on a study performed on the Gila River Watershed and its Runoff; and Reports by the Standards and Guidelines, Recreation and Public Relations Working Groups; Reports from RAC members; RAC Discussion on future meeting dates and locations. A public comment period will take place at 11:30 a.m. January 24, 1998 for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 97–33539 Filed 12–23–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 126227]

Opening of Land in a Proposed Withdrawal; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice cancels a withdrawal application insofar as it affects 1410.00 acres of public land and opens the land to surface entry and mining. It has been and remains open to mineral leasing. The remaining portion of the withdrawal application will continue to be processed unless it is cancelled or denied.

EFFECTIVE DATE: December 24, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office (WY 921), P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal published in the **Federal Register**, 59 FR 5441, on February 4, 1994, for the Bureau of Land Management (BLM) to protect important paleontological resources on Big Cedar Ridge near Tensleep, Wyoming. After completing an environmental assessment, the BLM determined that certain land is no longer needed for the withdrawal. The land is described as follows:

Sixth Principal Meridian, Wyoming

T. 45 N., R. 89 W.,
Sec. 8, E½SE¼;
Sec. 9, W½SW¼;
Sec. 16, W½NW¼, S½SW¼SW¼;
Sec. 17, E½E½;
Sec. 20, E½E½;
Sec. 21, W½W½, NE¼NW¼, NE¼SE¼NW¼;
Sec. 28, W½E½NW¼, NE¼SE¼NW¼, W½NW¼, N½SW¼, N½SW¼SW¼, SW¼SW¼SW¼;
Sec. 29, E½E½;
Sec. 32, E½NE¼;
Sec. 33, NE¼NE¼NW¼, NW¼NW¼NW¼, S½N½NW¼, S½NW¼.

The area described contains 1,410 acres in Washakie County.

At 9 a.m. on December 24, 1997 the land will be opened to location and entry under the general land laws, including the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record.

Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Alan R. Pierson,

State Director.

[FR Doc. 97–33536 Filed 12–23–97; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1230–00]

Special Area—Fee Adjustment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of fee adjustment for use of Special Area within Butte County, California.

SUMMARY: The BLM is adjusting the daily fee from $2.50 per site, per day to $5.00 per site, per day for recreational mineral collection at the Forks of Butte Creek Special Recreation Management Area. This fee adjustment is required to reflect the current market value of the recreation opportunity being offered by BLM, and to reduce over-crowding and degradation within the Special Recreation Management Area.

DATES: This fee adjustment will take effect January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

SUPPLEMENTARY INFORMATION: The Forks of Butte Creek Special Recreation Management Area in Butte County, California, was placed under protective withdrawal (S 4528) by Public Land Order 5329 on January 18, 1973, to segregate the area from all forms of appropriation, including the mining laws. While the mineral rights to much of this area continue to be held under mining claims that pre-date this withdrawal, several segments (sites) of Butte Creek are not encumbered with mining claims. These sites have become extremely popular for recreational mineral collection via panning, sluicing and dredging.

The authority for this fee adjustment is 43 CFR 8372. Any person who engages in mineral collection within the Forks of Butte Creek Special Recreation Area in violation of permit terms or stipulations may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Charles M. Schultz,

Redding Area Manager.

[FR Doc. 97–33409 Filed 12–23–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–98–1610]

Arizona Strip District Resource Management Plan: Intent To Amend

AGENCY: Bureau of Land Management.

ACTION: Notice of intent to amend the Arizona Strip Resource Management Plan, Arizona.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR part 1600) this notice advises the public that the Arizona Strip Field Office, Bureau of Land Management, is proposing to amend the Arizona Strip Resource Management Plan to establish allowable resource uses on the Lee's Ferry Grazing Allotment. In accordance with 43 CFR part 4100.0–8 "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, * * *". The Bureau of Land Management, in cooperation with the Lee's Ferry Grazing permittee, desires to retire the grazing preferences associated with the grazing allotment to alleviate conflicts between livestock and recreationist using the narrow Paria River Canyon corridor.

The main issues anticipated in this plan amendment are: (1) potential impacts on recreation opportunities; (2), and potential impacts on the socio-economics of Coconino County, Arizona.

This amendment is limited to the area contained within the Lee's Ferry Allotment on the Arizona Strip.

A land use plan amendment and environmental analysis will be prepared for the subject lands by an interdisciplinary team including range, wildlife, and recreation specialists.

DATES: Interested parties may submit comments to the Field Manager at the address shown below on or before February 20, 1998.

ADDRESSES: Comments should be sent to the Field Manager, Bureau of Land Management, Arizona Strip BLM, 345 E. Riverside Drive, St. George, Utah 84790.

FOR FURTHER INFORMATION CONTACT: Robert Sandberg, Arizona Strip Field Office, Bureau of Land Management, 345 E. Riverside Drive, St. George, Utah 84790, (435) 688–3200 to obtain additional information regarding this plan amendment. The existing land use plans and maps are available for review at the Interagency Office in St. George, Utah.

George Cropper,

Program Manager.

[FR Doc. 97–33545 Filed 12–23–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

[NM–070–1050–00]

Cultural Resources Areas Critical Environmental Concern (ACECs) for the Farmington District, NM

AGENCY: Bureau of Land Management (BLM) Interior.

ACTION: Notice of availability and 60-day comment period.

SUMMARY: The BLM, Farmington District announces the availability of a draft Resource Management Plan (RMP) Amendment/preliminary Finding of No Significant Impact and Supporting Environmental Assessment (EA). This document discusses the designation of 44 new ACESs including the expansion of three existing Special Management Area and their designation as ACESs. Approximately 10,592.76 federal acres are identified for designation. In addition to designation, the plan amendment, when approved, will guide the BLM programs and management practices within the ACECs.

DATES: Written comments relating to the designation of ACECs, management activities within the ACECs, and the EA will be taken for the next 60 days. Comments must be postmarked on or before March 11, 1998.

ADDRESSES: Comments should be sent to District Manager, BLM Farmington District, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Lee Otteni, District Manager, BLM Farmington District at (505) 599–6300 or Peggy Gaudy, Project Leader, Farmington District at (505) 599–6337.

SUPPLEMENTARY INFORMATION: ACECs are land designations unique to the BLM. The purpose of ACECs is to recognize, protect, and manage unique or sensitive resources of potential hazards to the public. Each area receives management or protection based on its unique needs, in consultation and coordination with the public. The Farmington District has completed inventories of areas containing unique or sensitive cultural resources and has designated a sample as ACECs. In addition the District has reviewed nominations both internally and from the public to consider several areas as ACECs based on cultural values.

The draft document discusses two alternatives, the No Action Alternative and the Proposed Action. The BLM's preferred alternative is to implement the Proposed Action by designating and managing 44 new ACECs, including the expansion of three existing Special Management Areas and their designation as ACECs. These management prescription proposals represent the highest level of resource protection and continued public use.

The proposed ACECs represent seven site types: Chacoan Outliers, Chacoan Roads, Navajo Refugee (Pueblito) Sites, Navajo Habitation Sites (Non-pueblito), Pictograph and Petroglyph Sites, Historic Sites, and Native American Traditional Use and Sacred Areas. Management prescriptions are site specific depending on both the site type and the current development in each proposed ACEC.

Eight Chacoan Outliers have been identified and proposed for ACEC designation. They are:

Name	Legal description	
Toh-la-kai	T16N R18W	Sec. 33 SW/4SE/4SE/4.
Bee Burrow	T19N R11W	Sec. 27 W/2SW/4, S/2NW/4.
		Sec. 28 SE/4, S/2NE/4.
		Sec. 29 SW/4SE/4.
		Sec. 33 N/2N/2NE/4.
Indian Creek	T20N R13W	Sec. 7 S/2NW/4, W/2SW/4NE/4.
Upper Kin Klizhin	T20N R11W	Sec. 22 NE/4NE/4.
		Sec. 23 W/2NW/4NW/4.
Bis sa' ani	T21N R9W	Sec. 3 portions of N/2NW/4.
		Sec. 4 portions of N/2N/2.
Morris 41	T32N R13W	Sec. 15 SE/4SW/4, portions of NE/4SW/4, portions of W/2SW/4SE/4.
Andrews Ranch	T14N R11W	Sec. 32 NE/4NE/4SE/4, S/2SE/4NE/4.
		Sec. 33 all.
		Sec. 34 SW/4, NE/4SE/4, S/2SW/4NE/4, W/2NE/4SE/4, SW/4SE/4NE/4.
Church Rock Outlier	T16N R16W	Sec. 20 SE/4.

Management prescriptions for Chacoan Outliers vary slightly with the needs of each site, but in general they include preparation of Cultural Resources Management Plans at sites without existing plans, designation as "closed" or "limited" Off-Highway Vehicle (OHV) areas, if possible acquisition of non-federal minerals, withdrawal from mineral leasing or sale, coordination with lease holders to minimize resource damage and withdrawal from land or resource modification or sale. No new rights-of-way will be issued. The only exception is where a new right-of-way will be issued in existing disturbance at Church Rock Outlier. The BLM will coordinate with existing right-of-way and easement holders, and continue monitoring and patrol programs. Also proposed is complete Historic American Buildings Survey (HABS) documentation on sites which have not been documented, stabilize structures as needed, conduct cultural inventories, complete cadastral survey and fences as needed, nominate to the National Register of Historic Places and World Heritage List, consolidate previous research data, and designate as Class I Visual Resource Management areas. Church Rock Outlier will be proposed for inclusion as a Chaco Culture Archaeological Protection Site. Private and state lands have been identified for acquisition at Andrews Ranch if there are willing participants.

Three Chacoan Roads have been identified and proposed for ACEC designation. They are:

Name	Legal description	
North Road:.		
Segment 1	T23N R10W	Sec. 17 W/2W/2SW/4.
		Sec. 18 W/2W/2W/2.
		Sec. 19 W/2W/2W2.
		Sec. 30 W/2W/2W2.
	T23N R11W	Sec. 12 SE/4.
		Sec. 13 E/2.
		Sec. 24 E/4.
		Sec. 25 SE/4.
Segment 2	T23N R10W	Sec. 6 W/2W/2.
	T23N R11W	Sec. 1 N/2SE/4, SW/4SE/4, N/2SE/4SE/4.
	T24N 410W	Sec. 31 W/2W/2.
	T24N R11W	Sec. 36 E/2.
Segment 3	T24N R10W	Sec. 7 W/2W/2.
		Sec. 18 W/2W/2.
		Sec. 19 W/2W/2.
		Sec. 30 NW/4NW/4.
	T24N R11W	Sec. 12 E/2SE/4.
Segment 4	T24N R11W	Sec. 1 E/2SE/4.
Segment 5	T25N R10W	Sec. 30 SW/4.
		Sec. 31 NW/4.
Segment 6	T25N R10W	Sec. 19 E/2NW/4, E/2NW/4NW/4, E/2SW/4NW/4, W/2W/2NE/4.
Segment 7	T25N R10W	Sec. 6 E/2NW/4, E/2SW/4, W/2SE/4.
		Sec. 7 E/2W/2W/2.
	T26N R10W	Sec. 6 E/2.
		Sec. 18 E/2.
		Sec. 19 W/2E/2, W/2E/2E/2, E/2E/2W/2.
		Sec. 30 W/2E/2, W/2E/2E/2, E/2E/2W/2.
		Sec. 31 W/2E/2, E/2W/2.
	T27N R10W	Sec. 31 E/2.
Ah-shi-sle-pah Road	T22N R11W	Sec. 6 all.
Crownpoint Steps and Herradura	T16N R12W	Sec. 6 all.

Management prescriptions for Chacoan Roads vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as "closed" or "limited" Off-Highway Vehicle areas, if possible acquisition of minerals which are not under federal ownership, withdrawal from oil and gas leasing or sale under 160 acres, with other "no surface occupancy" lease stipulation on other parcels, withdrawal from other mineral entry, withdrawal from land or resource modification or sale, coordination with existing lease holders to minimize resource damage, and acquisition of identified private lands. No new rights-of-way will be issued in the 160 acres containing Halfway House or the Crownpoint Steps and Herradura parcel, or across parallel roads and the "Quads." In other areas, rights-of-way will only be authorized with intensive roads inventory. The BLM will coordinate with existing right-of-way holders. Also proposed is to conduct roads inventories, nominate to National Register of Historic Places, consolidate previous research date, and designate as Class II Visual Resource Management areas (the 40 acres containing Halfway House in Segment 6 have already been designated and will remain a Class I area).

Nine Navajo Refugee (Pueblito) Sites have been identified and proposed for ACEC designation. They are:

Name	Legal description	
Deer House	T24N R7W	Sec. 15 NW/4NW/4.
NM 01–39344	T27N R7W	Sec. 33 NE/4SW/4, NW/4SE/4.
Kachina Mask	T28N R8W	Sec. 11 SW/4SE/4SW/4.
Hummingbird	T24N R6W	Sec. 29 NW/4SW/4.
Blanco Mesa	T26N R8W	Sec. 12 S/2NW/4SE/4, N/2SW/4SE/4, S/2NE/4SW/4, SE/4NW/4SW/4, E/2SW/4SW/4, NE/4SE/4SW/4, W/2SE/4SW/4.
Ye'is-in-Row	T28N R6W	Sec. 20 NW/4NE/4.
Kiva	T26N R7W	Sec. 14 W/2NE/4NE/4, E/2NW/4NE/4.
Pretty Woman	T25N R8W	Sec. 21 E/2E/2NE/4.
		Sec. 22 W/2W/NW/4.
Gomez Point	T27N R7W	Sec. 1 S/2SW/4NW/4, N/2SW/4SW/4, SW/4SE/4NW/4, NW/4NE/4SE/4.

Management prescriptions for Navajo Refugee (Pueblito) Sites vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as "closed" or "limited" Off-Highway Vehicle areas, no surface occupancy oil and gas lease stipulation withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. New rights-of-way will only be authorized in existing right-of-way disturbance and the BLM will coordinate with existing right-of-way and easement holders. Also proposed is complete Historic America Building Survey documentation, nominate to National Register of Historic Places, and stabilize structure as needed. The proposed ACECs will be designated as Class II Visual Resource Management areas.

Two Navajo Habitation Sites (Non-pueblito) have been identified and proposed for ACEC designation. They are:

Name	Legal description	
Gould Pass Camp	T27N R7W	Sec. 6 W/2SW/4NW/4.

Name	Legal description
Superior Mesa Community	T27N R8W Sec. 1 E/2SE/4NE/4. T26N R7W Sec. 26 W/2W/2, W/2NE/4NW/4, W/2SE/4NW/4, W/2SNE/4SW/4, W/2SE/4SW/4. Sec. 27 E/2E/2

Management prescriptions for the Navajo Habitation Sites (Non-pueblito) include preparation of Cultural Resource Management Plans, designation as "closed" OHV area at Gould Pass Camp and "limited" OHV area at Superior Mesa Community, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. Also proposed is that new rights-of-way will only be authized in existing right-of-way disturbance, coordinate with exiting right-of-way holders, and designate as Class II Visual Resource Management areas. The ACECs will be nominated to the National Register of Historic Places.

Fifteen Petroglyph and Pictograph Sites have been identified and proposed for ACEC designation. They are:

Name	Legal description
Pregnant Basketmaker	T30N R8W Sec. 35 S/2SW/4NE/4SW/4, N/2NW/4SE/4SW/4.
Encierro Canyon	T28N R6W Sec. 29 S/2NE/4.
NM 01–39236	T27N R6W Sec. 6 NW/4NW/4SW/4.
Delgadita/Pueblo Canyons	T28N R7W Sec. 16 W/2NE/4, N/2N/2SW/4, S/2S/2NW/4, N/2N/2SE/4.
Cibola Canyon	T26N R7W Sec. 36 S/2SE/4SW/4. T25N R7W Sec. 1 N/2NE/4NW/4.
Bi Yaazh	T24N R7W Sec. 23 E/2NW/4NW/4, W/2NE/4NW/4.
Four Ye'i	T24N R6W Sec. 10 SE/4NW/4SE/4,SW/4NE/4SE/4, NE/4SW/4SE/4, NW/4SE/4SE/4.
Largo Canyon Star Ceiling	T27N R8W Sec. 3 N/2SE/4SE/4.
Star Spring	T29N R8W Sec. 35 E/2SE/4NE/4. Sec. 36 W/2W/2SW/4NW/4.
Blanco Star Panel	T28N R9W Sec. 26 S/2SE/4SW/4.
Shield Bearer	T30N R8W Sec. 34 SE/4NE/4NE/4, NE/4SE/4NE/4. Sec. 35 SW/4NW/4NW/4, NW/4SW/4NW/4.
Big Star	T27N R7W Sec. 3 SE/4SE/4.
Rabbit Tracks	T27N R6W Sec. 6 S/2NE/4NW/4NW/4, N/2SE/4NW/4NW/4.
Carrizo Cranes	T27N R6W Sec. 6 NE/4NE/4SW/4, N/2SE/4NE/4SW/4.
Martinez Canyon	T27N R6W Sec. 10 W/2SW/4SE/4, E/2SE/4SW/4.

Management prescriptions for Petroglyph and Piectograh Sites vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as "closed" or "limited" Off-Highway Vehicle areas, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. State land and minerals at two sites and private surface at one site have been identified for acquisition if there are willing participants. New rights-of-way will only be authorized in existing right-of-way disturbance and the BLM will coordinate with existing right-of-way holders. Also proposed is nomination to the National Register of Historic Places, Class III cultural inventories including detail documentation of images, withdrawal of 55 acres from grazing, and designation as Class II Visual Resource Management areas.

Six Historic Sites have been identified and are proposed for ACEC designation. They are:

Name	Legal description
Dogie Canyon School	T26N R6W Sec. 19 NW/4NE/4SW/4.
Rock House—Nestor Martin Homestead	T25N R6W Sec. 27 W/2SW/4SW/4. Sec. 28 E/2E/2SE/4SE/4.
Gonzales Canyon—Senon S	T25N R6W Sec. 23 E/2SE/4NE/4. Sec. 24 W/2SW/4NW/4.
Martin Apodaco Homestead	T25N R6W Sec. 35 NW/4NE/4SW/4, N/2NW/4SW/4, SE/4NW/4, S/2SW/4NW/4.
Margarita Martinez Homestead	T24N R6W Sec. 10 SE/4NW/4NW/4.
Santos Peak	T27N R5W Sec. 6 SE/4SE/4, S/2NE/4SE/4, SE/4NW/4SE/4, E/2,SW/4NE/4. Sec. 7 N/2NE/4NE/4, NE/4NW/4NE/4.

Management prescriptions for Historic Sites vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as "closed" or "limited" Off-Highway Vehicle areas, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. New rights-of-way will only be authorized in existing rights-of-way disturbance and the BLM will coordinate with existing right-of-way and easement holders. Also proposed is nomination to the National Register of Historic Places, conduct stabilization of structures as needed, withdrawal of 35 acres from grazing and designation as Class II Visual Resource Management area. Private minerals have been identified for acquisition at three sites.

One Native American Traditional Use and Sacred Area has been identified and is proposed for ACEC designation. It is:

Name	Legal description
Cho'li'i [Gobernador Knob]	T28N R5W Sec. 22 SE/4SE/4.

Name	Legal description
	Sec. 23 S/2SW/4. Sec. 26 NW/4. Sec. 27 E/2NE/4.

Management prescriptions for the Native American Traditional use and Sacred Area include preparation of a Cultural Resource Management Plan, designation as a "limited" Off-Highway Vehicle area, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. New rights-of-way will only be authorized in existing right-of-way disturbance and the BLM will coordinate with existing right-of-way holders. Also proposes is nomination to the National Register of Historic Places, conduct Class III cultural and ethnographic inventories, and designation as Class II Visual Resource Management area. The area will remain open for Native American religious practices.

Additional data on management prescriptions for individual ACECs can be found in this RMP amendment.

Public participation has occurred throughout the RMP Amendment process. A Notice of Intent was filed in the **Federal Register** (Vol. 61, No. 39 Pages 7273–7274) on February 27, 1996. An article was published in the Farmington Daily Times on March 6, 1996, notifying the public that the BLM was requesting public input on proposed ACECs. Comments received during this 60-day comment period will be considered in preparation of the Farmington RMP Amendment and supporting EA. Copies have been sent to identified concerned and affected publics. A public meeting on this document is scheduled for February 10, 1998. Single copies of the draft Farmington RMP Amendment/ Preliminary Finding of No Significant Impact (FONSI) and supporting EA for the 44 ACECs may be obtained from the BLM Farmington District, 1235 La Plata Highway, Suite A, Farmington, NM 87401. A public reading copy is available for review at the BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico.

Dated: December 22, 1997.

Lee Otteni,

District Manager, Farmington.

[FR Doc. 97–33540 Filed 12–23–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park and Preserve; Notice of Public Workshops on Commercial Fishing

AGENCIES: National Park Service, Interior.

ACTION: Notice of Public Workshops on Glacier Bay National Park Commercial Fishing Proposal

SUMMARY: The National Park Service will conduct public workshops on the Glacier Bay National Park commercial fishing proposal in Juneau, Alaska in January and February, 1998. The workshops will include discussion of data and management information regarding commercial fisheries occurring within the park, and ongoing and proposed research associated with commercial fishing activities. NPS published a Proposed Rule on April 16, 1997 (62 FR 18547) and is preparing an Environmental Assessment regarding commercial fishing within the park scheduled for release in March, 1998. NPS is sponsoring public workshops to improve public understanding of issues associated with commercial fishing in the park. Open houses and formal public hearings on the Proposed Rule and Environmental Assessment will be held in April, 1998 in Alaskan communities and Seattle, Washington before the May 15, 1998 public comment deadline. Notice of these hearings will be published in the **Federal Register.**

DATES: Public workshops will be held on January 8 and February 3, 1998 from 10:00 a.m. to 5:00 p.m.

LOCATIONS: The January 8 public workshop will be held in the Hickel Room at Centennial Hall in Juneau, Alaska. The February 3 public workshop will be held in the Lumberjack Room at the Westmark Hotel, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: J. M. Brady, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826, Telephone: (907) 697–2230.

Dated: December 12, 1997.

John Quinley,

Acting Regional Director, Alaska Region.

[FR Doc. 97–33543 Filed 12–23–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development One Hundred and Twenty-Fifth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and twenty-fifth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9 a.m. to 5 p.m. on February 9, and from 9 a.m. to 12:15 p.m. on February 10, 1998, both days, at the Pan-American Health Organization, located at 525 23rd Street NW., Washington, DC 20523, in Conference Room B.

As part of its two-day agenda, Board members will discuss the Food Aid Code of Conduct; enhancing interactions and information exchange among key groups such as the private sector and universities; and the involvement of the USDA's Agriculture Research Service in USAID's activities. It will also receive an update from the Board's task force reviewing the Collaborative Research Support Program guidelines.

The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue NW., Room 2.11–072, Washington, DC 20523–2110, telephone (202) 712–1436, fax (202) 216–3010 or internet [glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should

contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue NW., Room 2.11–005, Washington, DC 20523–2110, telephone him at (2020 712–5571, or fax (202) 216–3010.

Tracy Atwood,

AID Designated Federal Officer (Chief, Food Policy Division, Office of Agriculture and Food Security, Economic Growth Center, Bureau of Global Programs).

[FR Doc. 97–33523 Filed 12–23–97; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 753–TA–34]

Extruded Rubber Thread From Malaysia

AGENCY: United States International Trade Commission.

ACTION: Initiation and scheduling of a countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the initiation of countervailing duty investigation No. 753–TA–34 under section 753(a) of the Tariff Act of 1930 (19 U.S.C. 1675b(a)) (the Act) to determine whether an industry in the United States is likely to be materially injured by reason of imports from Malaysia of extruded rubber thread, provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States, if the countervailing duty order on such merchandise is revoked.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207 (19 CFR part 207).

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

Section 753(a) of the Act provides that, in the case of a countervailing duty order issued under section 303 of the Act with respect to which the requirement of an affirmative determination of material injury under section 303(a)(2) was not applicable at the time the order was issued, interested parties may request that the Commission initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked. Such a request concerning the countervailing duty order on extruded rubber thread from Malaysia was filed on June 30, 1995, by North American Rubber Thread, Fall River, MA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. Copies of draft questionnaires will be sent for comment to parties who filed an entry of appearance by January 16, 1998.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than 21 days prior to the hearing date specified in this notice. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on April 10, 1998, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 5, 1998, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 27, 1998. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 29, 1998, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 17, 1998. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 12, 1998; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 12, 1998. On June 4, 1998, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 8, 1998, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.46 of the Commission's rules.

Issued: December 18, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–33596 Filed 12–23–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities; Revision of a Current Approved Information Collection; Comment Request

ACTION: Notice of information collection under review; Application for Registration (DEA Form 363) and Application for Registration Renewal (DEA Form 363a).

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 7, 1997 at 62 FR 36306, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until January 23, 1998.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: DOJ Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of the Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Application for Registration (DEA Form 363) and Application for Registration Renewal (DEA Form 363a).

3. *Agency form number:* DEA Form 363, DEA Form 363a; Applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration; Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government, Other: Business or other for-profit and not-for-profit institutions.

Practitioners who dispense narcotic drugs to individuals for maintenance of detoxification treatment must register with the DEA under the Narcotic Addict Treatment Act of 1974. Registration is needed for control measures and is used to prevent diversion.

These revisions of the forms will not add any burden to the affected public. The subject forms are being revised to provide the ability to use an Optical Character Reader (OCR) for form processing and to provide for registrants' Social Security Number and/or Tax Identification Number. The OCR will enable DEA to increase efficiency and accelerate processing of registrant applications. Social Security Number and/or Tax Identification Numbers are requested to correctly identify registrants, to expedite application processing, database integration and telephone system upgrades.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,197 respondents at 1 response per year at 30 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 599 annual burden hours.

Public comments on this proposed information collection is strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: December 18, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33570 Filed 12–24–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Revision of a Current Approved Information Collection: Comment Request

ACTION: Notice of information collection under review; Application for Registration (DEA Form 225) and Application for Registration Renewal (DEA Form 225a).

Office of Management and Budget approval is being sought is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 7, 1997 at 62 FR 36306, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until January 23, 1998.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the

Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: DOJ Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Application for Registration (DEA Form 225) and Application for Registration Renewal (DEA Form 225a).

3. *Agency form number:* DEA Fort 225, DEA Form 225a; Applicable component of the Department of Justice sponsoring the collection; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, Other: individuals or households, Not-for-profit institutions and State, Local or Tribal Government.

The Controlled Substances Act requires all firms and individuals who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

These revisions of the forms will not add any burden to the affected public. The subject forms are being revised to provide the ability to use an Optical Character Reader (OCR) for form processing and to provide for registrants Social Security Number and/or Tax Identification Number. The OCR will enable DEA to increase efficiency and accelerate processing of registrant applications. Social Security Number and/or Tax Identification Numbers are requested to correctly identify registrants, to expedite application processing, database integration and telephone system upgrades.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 respondents at 1 response per year at 30 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

Public comments on this proposed information collection is strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: December 18, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33571 Filed 12–23–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities; Revision of a Current Approved Information Collection: Comment Request

ACTION: Notice of information collection under review; Application for Registration (DEA Form 224) and Application for Registration Renewal (DEA Form 224a).

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 7, 1997 at 62 FR 36306, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until January 23, 1998.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention DOJ Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of the Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Application for Registration (DEA Form 224) and Application for Registration Renewal (DEA Form 224a).

3. *Agency form number:* DEA Form 224, DEA Form 224a; Applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, Other: individuals or households, Not-for-profit institutions and State, Local or Tribal Government.

All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Registration is needed for control measures over legal handlers of controlled substances and is used to monitor their activities.

These revisions of the forms will not add any burden to the affected public. The subject forms are being revised to provide the ability to use an Optical Character Reader (OCR) for form processing and to provide for registrants Social Security Number and/or Tax Identification Number. The OCR will enable DEA to increase efficiency and accelerate processing of registrant applications. Social Security Number and/or Tax Identification Numbers are requested to correctly identify registrants, to expedite application processing, database integration and telephone system upgrades.

5. *An estimate of the total number of respondents and the amounts of time estimated for an average respondent to respond:* 355,000 respondents at 1 response per year at 12 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 71,000 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 18, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33572 Filed 12–23–97; 8:45 am]

BILLING CODE 4410–00–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Prison Population Reports Midyear Population Counts and Advance Year-end Population Counts—National Prisoner Statistics 1997.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days from the date listed at the top of this page in the **Federal Register**. This process is in accordance with the Paperwork Reduction Act of 1995.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Dr. Jan M. Chaiken, Director, Bureau of Justice Statistics, 810 Seventh St. NW, Washington, D.C. 20531. If you need a copy of the collection instruments with instructions, or have additional information, please contact James Stephan at (202) 616–3289, or via facsimile at 202–307–1463.

Overview of this information collection:

(1) Type of information collection. Revision of currently approved collection.

(2) The title of the Form/Collection: Prison Population Reports Midyear Counts; and Prison Population Report Advance Year-end Counts—National Prisoner Statistics 1997.

(3) The agency form number and the applicable component of the Department sponsoring the collection. Form: NPS–1A; and NPS–1B. Corrections Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State Departments of Corrections. Others: The Federal Bureau of Prisons. For the NPS–1A form, 52 central reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of June 30, 1996 and June 30, 1997, the number of male and female inmates under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates; and

(b) As of June 30, 1996 and June 30, 1997, the number of male and female inmates in their custody with maximum sentences of more than one year, one year or less; and unsentenced inmates.

For the NPS–1B form, 52 central reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of December 31, 1996 and December 31, 1997, the number of male and female inmates under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in county or other local authority correctional facilities, or in other state or Federal facilities on December 31, 1997 solely to ease prison crowding;

(c) As of the direct result of state prison crowding during 1997, the number of inmates released via court order, administrative procedure or statute, accelerated release, sentence reduction, emergency release, or other expedited release; and

(d) The aggregate rated, operational, and design capacities, by sex, of each State's correctional facilities at year-end 1997.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond: 52 respondents each taking an average 2.5 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 130 annual burden hours.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW Washington, DC 20530.

Dated: December 18, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33604 Filed 12–23–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 19, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen (202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before January 23, 1998.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau Labor Statistics.

Title: Construction Industry Benefits Test.

OMB Number: 1220–New.

Frequency: Annually.

Affected Public: Business or other for-profit.

Fiscal year average	Number of respondents per year	Responses per year	Total response per year	Average minutes per response	Total burden hours
BLS 3038A	550	1	468	75	585
BLS 3038B	550	1	468	35	273
BLS 3038D	550	1	468	180	1,404
Quality Assurance	117	1	117	10	20
Average Annual Burden	550	1	468	293	2,282

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintoining systems or purchasing services): 0.

Description: The Employment Standard Administration (ESA) and the Bureau of Labor Statistics (BLS) Office of Compensation and Working Conditions intend to test the availability and feasibility of collection and publication of benefit incidence and cost for specific construction occupations in local areas. The purpose is to provide ESA with an alternative method for arriving at determinations as stipulated by the Davis-Bacon Act.

Agency: Occupational Safety and Health Administration.

Title: Lead in General Industry (29 CFR Part 1910.1025).

OMB Number: 1218–0092 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 50,031.

Estimated Time Per Respondent: Time per response ranges from 5 minutes to maintain records to 2 hours for employees to have medical exams.

Total Burden Hours: 1,623,945.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintoining systems or purchasing services): $4,699,000.

Description: The purpose of this standard and its information collection is designed to provide protection from the adverse health effects associated with occupational exposure to lead. The standard requires employers to monitor employee health and to provide employees with information about their exposures and the health effects of injuries.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 97–33565 Filed 12–23–97; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1998 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments the proposed revision of the "International Price Program—U.S. Export Price Indexes".

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 23, 1998.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Export Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1971, measure price change over time for all categories of exported products, as well as many services. The Office of Management and Budget has listed the Export Price Indexes as a major economic indicator since 1982.

The indexes are widely used in both the public and private sectors. The primary public sector use is deflation of the U.S. Trade statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Export Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The International Price Program indexes are viewed as a sensitive indicator of the economic environment. The Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policy-makers in the Department of the Treasury, the Council of Economic Advisors, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy, and evaluation of the general business environment.

II. Current Actions

The IPP continues to modernize data collection and processing to permit more timely release of its indexes and to reduce reporter burden. The IPP is using the telephone rather than personal visits for new item initiation in limited situations. We believe that initiation by telephone reduces reporting burden with no loss in response. Other potential initiation techniques to reduce burden being reviewed includes less frequent sampling of more stable item areas, use of broader item areas in certain cases, and retention of items initiated in previous samples. To reduce the time required for processing new items, direct entry of initiation data from the field will be tested. Also, for repricing, the use of fax telephone lines to permit direct collection and entry into our database is being considered. In addition, use of the Internet for monthly repricing is being reviewed, contingent upon the resolution of questions relating to the security of the data.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: International Price Program/U.S. Export Product Information.

OMB Number: 1220–0025.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total annual responses	Average time per response (hours)	Estimated total burden (hours)
Form 2894B	1613	Annually	1,613	.75	1,210
Form 3008B	1613	Annually	1,613	.25	403.25
Form 3007D	3235	Monthly, quarterly	38,540	.53	20,426.2
Total	4848		41,766		22,039

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 18th day of December, 1997.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 97–33564 Filed 12–23–97; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises MSHA's user fees for testing, evaluation, and approval of certain products manufactured for use in underground mines. These fees are based on fiscal

year 1997 data and reflect changes in approval processing operations as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1998 through December 31, 1998. Approval applications postmarked before January 1, 1998 will be chargeable under the fee schedules as published on December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Steven J. Luzik, Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059, (304) 547–2029 or (304) 547–0400.

SUPPLEMENTARY INFORMATION: In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

For a majority of the services provided by A&CC, fees are charged on an hourly basis. The hourly rates are recalculated each year and published in the **Federal Register**. This calculation involves an assessment of the direct and indirect costs associated with the services performed. Direct costs are based on current compensation and benefit costs for technical and support personnel directly involved in providing the services. Indirect costs are based on a proportionate share of the cost of activities which support the approval service, including management and administration of the A&CC, facility operating costs and amortization and depreciation of facilities and equipment. Indirect costs have been applied uniformly in computing the hourly rates for the various services provided.

Direct costs, however, have been separately computed for each product approval program. This has resulted in the inclusion of over 100 different fee categories being published in the annual **Federal Register** notice. The intent of this breakdown has been to establish hourly rates which reflect as accurately as possible the actual cost of performing services by product type.

Experience has shown that since 1987, the year in which 30 CFR Part 5 was promulgated, there has been a relatively small range of difference in the separately computed direct costs for each product approval program. The result has been the annual publication of an unnecessarily complicated listing of separate hourly rates with relatively little variation. This has undoubtedly created confusion and frustration for those mining product manufacturers who submit requests for A&CC services under more than one product category.

A&CC is simplifying the computation of direct costs for 1998 so as to produce a uniform hourly rate across all of the product approval categories. This has been accomplished by simply calculating a weighted average direct cost for all the services provided by A&CC in the processing of requests for testing, evaluation and approval of mining products. The result is a single hourly rate which is now uniformly applied regardless of product type.

Programs that were previously administered using a flat rate billing convention will remain in the schedule as such. See the schedule for the appropriate flat/hourly rates.

Dated: December 18, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 1998

[(Based on FY 1997 data]

	Action Title	Hourly Rate	Flat Rate
	Testing, Evaluation, and Approval of all products	$59	
	30 CFR PART 15—EXPLOSIVES		
12	Approval Evaluation[1]	59	
	Permissibility Tests for Explosives:		
	Weigh-in		462
	Physical Exam: First size		325
	Chemical Analysis		1,977
	Air Gap—Minimum Product Firing Temperature		460
	Air Gap—Room Temperature		352
	Pendulum Friction Test		163
	Detonation Rate		352
	Gallery Test 7		7,436
	Gallery Test 8		5,533
	Toxic Gases (Large Chamber)		805
	Permissibility Tests for Sheathed Explosives:		
	Physical Examination		128
	Chemical Analysis		1,044
	Gallery Test 9		1,944
	Gallery Test 10		1,944
	Gallery Test 11		1,944
	Gallery Test 12		1,944
	Drop Test		648
	Temperature Effects/Detonation		672
	Toxic Gases		580
14	Approval Extension	59	
15	Statement of Test and Evaluation (ST&E)		54
17	Statement of Test and Evaluation (ST&E) Extension		54
20	Stamped Revision Acceptance (SRA)[2]		403
23	Field Approval		103
29	Dust Collector Approval with Cert. of Performance		297
40	Stamped Notification Acceptance Program (SNAP)		443
40	Stamped Notification Acceptance Program (SNAP) ST&E		33
47	Permit—Extension of Time		276
52	Mine Wide Monitoring System (MWMS) Barrier Classification		87

FEE SCHEDULE EFFECTIVE JANUARY 1, 1998—Continued

[(Based on FY 1997 data]

	Action Title	Hourly Rate	Flat Rate
00	Retesting for Approval as a Result of Post-Approval Product Audit[3]		

[1] Full approval fee consists of evaluation cost plus applicable test costs.
[2] Fee covers SRA application accompanied by up to five documents.
[3] Fee based upon the approval schedule in effect at the time of retest.
Note: When testing and evaluation are required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidental expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 97–33584 Filed 12–23–97; 8:45 am]
BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

Docket No. 50–354

Atlantic City Electric Company (Hope Creek Generating Station); Order Approving Application Regarding Merger Agreement Between Atlantic Energy, Inc. (Parent of Atlantic City Electric Company) and Delmarva Power and Light Company

I

Atlantic City Electric Company (ACE) and Public Service Electric and Gas Company (PSE&G) are co-holders of Facility Operating License No. NPF–57, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50) for operation of the Hope Creek Generating Station (Hope Creek). Under the license, PSE&G is authorized to possess, use, and operate the facility, and ACE is authorized to possess the facility. Hope Creek is located in Salem County, New Jersey.

II

By application filed by ACE under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, attorney for ACE, supplemented by letter dated November 7, 1997, ACE requested the Commission's approval, pursuant to 10 CFR 50.80, of the indirect transfer of the license, to the extent held by ACE, that would result from the consummation of a merger agreement between Atlantic Energy, Inc. (parent of ACE) and Delmarva Power and Light Company (DP&L). Under the merger agreement, Atlantic Energy, Inc. and DP&L would form a new holding company, Conectiv, Inc., under which ACE and DP&L would become wholly owned subsidiaries. No direct transfer of the license would occur. PSE&G is not involved in the merger.

A Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** on December 8, 1997 (62 FR 64600), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on December 8, 1997 (62 FR 64603).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the letter and application of April 30, 1997, and supplement dated November 7, 1997, the NRC staff has determined that the proposed merger of Atlantic Energy, Inc. and DP&L will not affect the qualifications of ACE as a holder of the license, and that the transfer of control of the license for Hope Creek, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions stated herein. These findings are supported by a safety evaluation dated December 18, 1997.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, it is hereby ordered that the Commission approves the application regarding the proposed merger of Atlantic Energy, Inc. and DP&L subject to the following conditions: (1) ACE shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ACE to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of ACE's consolidated net utility plant, as recorded on ACE's books of account; and (2) should the merger of Atlantic Energy, Inc. and DP&L, as described herein, not be completed by December 31, 1998, this Order shall become null and void, provided, however, on application and for good cause shown, such date is extended.

This Order is effective upon issuance.

IV

By January 23, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Copies should be also sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John H. O'Neill, Jr., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for ACE.

For further details with respect to this action, see the application filed by ACE under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, as supplemented by a letter dated November 7, 1997, and the safety evaluation dated December 18, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room

at the Pennsville Public Library, 190 South Broadway, Pennsville, NJ.

Dated at Rockville, Maryland, this 18th day of December 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33546 Filed 12–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Atlantic City Electric Company Delmarva Power and Light Company (Peach Bottom Atomic Power Station, Units 2 and 3); Order Approving Application Regarding Merger Agreement Between Atlantic Energy, Inc. (Parent of Atlantic City Electric Company) and Delmarva Power and Light Company

I

Atlantic City Electric Company (ACE) and Delmarva Power and Light Company (DP&L) are co-holders of Facility Operating Licenses Nos. DPR–44 and DPR–56, along with Public Service Electric and Gas Company (PSE&G) and PECO Energy Company, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50) for operation of the Peach Bottom Atomic Power Station, Units 2 and 3 (PBAPS). Under the licenses, PECO Energy Company is authorized to possess, use, and operate the facilities, and ACE, DP&L, and PSE&G are authorized to possess the facilities. PBAPS is located in York County, Pennsylvania.

II

By application filed by ACE and DP&L under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, attorney for ACE and DP&L, supplemented by letter dated November 7, 1997, ACE and DP&L requested the Commission's approval, pursuant to 10 CFR 50.80, of the indirect transfer of the licenses, to the extent held by ACE and DP&L, that would result from the consummation of a merger agreement between Atlantic Energy, Inc. (parent of ACE) and DP&L. Under the merger agreement, Atlantic Energy, Inc. and DP&L would form a new holding company, Conectiv, Inc., under which ACE and DP&L would become wholly owned subsidiaries. No direct transfer of the licenses would occur. PSE&G and PECO Energy Company are not involved in the merger.

A Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** on December 8, 1997 (62 FR 64601), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on December 8, 1997 (62 FR 64601).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the letter and application of April 30, 1997, and supplement dated November 7, 1997, the NRC staff has determined that the proposed merger of Atlantic Energy, Inc. and DP&L will not affect the qualifications of ACE and DP&L as holders of the licenses, and that the transfer of control of the licenses for PBAPS, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions stated herein. These findings are supported by a safety evaluation dated December 18, 1997.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the Commission approves the application regarding the proposed merger of Atlantic Energy, Inc. and DP&L subject to the following conditions: (1) ACE shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ACE to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of ACE's consolidated net utility plant, as recorded on ACE's books of account; (2) DP&L shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from DP&L to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of DP&L's consolidated net utility plant, as recorded on DP&L's books of account; and (3) should the merger of Atlantic Energy, Inc. and DP&L, as described herein, not be completed by December 31, 1998, this Order shall become null and void, provided, however, on application and for good cause shown, such date is extended.

This Order is effective upon issuance.

IV

By January 23, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the *Commission, U.S. Nuclear Regulatory* Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Copies should be also sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John H. O'Neill, Jr., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for ACE and DP&L.

For further details with respect to this action, see the application filed by ACE and DP&L under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, as supplemented by a letter dated November 7, 1997, and the safety evaluation dated December 18, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room in the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania.

Dated at Rockville, Maryland, this 18th day of December 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33547 Filed 12–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Atlantic City Electric Company Delmarva Power and Light Company (Salem Nuclear Generating Station, Units 1 and 2); Order Approving Application Regarding Merger Agreement Between Atlantic Energy, Inc. (Parent of Atlantic City Electric Company) and Delmarva Power and Light Company

I

Atlantic City Electric Company (ACE) and Delmarva Power and Light Company (DP&L) are co-holders of Facility Operating Licenses Nos. DPR–70 and DPR–75, along with Public Service Electric and Gas Company (PSE&G) and Philadelphia Electric Company [also known as PECO Energy Company], issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50), for operation of the Salem Nuclear Generating Station, Units 1 and 2 (Salem). Under the licenses, PSE&G is authorized to possess, use, and operate the facilities, and ACE, DP&L, and Philadelphia Electric Company are authorized to possess the facilities. Salem is located in Salem County, New Jersey.

II

By application filed by ACE and DP&L under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, attorney for ACE and DP&L, supplemented by letter dated November 7, 1997, ACE and DP&L requested the Commission's approval, pursuant to 10 CFR 50.80, of the indirect transfer of the licenses, to the extent held by ACE and DP&L, that would result from the consummation of a merger agreement between Atlantic Energy, Inc. (parent of ACE), and DP&L. Under the merger agreement, Atlantic Energy, Inc. and DP&L would form a new holding company, Conectiv, Inc., under which ACE and DP&L would become wholly owned subsidiaries. No direct transfer of the licenses would occur. PSE&G and Philadelphia Electric Company are not involved in the merger.

A Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** on December 8, 1997 (62 FR 64600), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on December 8, 1997 (62 FR 64602).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the letter and application of April 30, 1997, and supplement dated November 7, 1997, the NRC staff has determined that the proposed merger of Atlantic Energy, Inc. and DP&L will not affect the qualifications of ACE and DP&L as holders of the licenses, and that the transfer of control of the licenses for Salem, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions stated herein. These findings are supported by a safety evaluation dated December 18, 1997.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the Commission approves the application regarding the proposed merger of Atlantic Energy, Inc. and DP&L subject to the following conditions: (1) ACE shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ACE to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of ACE's consolidated net utility plant, as recorded on ACE's books of account; (2) DP&L shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from DP&L to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of DP&L's consolidated net utility plant, as recorded on DP&L's books of account; and (3) should the merger of Atlantic Energy, Inc. and DP&L, as described herein, not be completed by December 31, 1998, this Order shall become null and void, provided, however, on application and for good cause shown, such date is extended.

This Order is effective upon issuance.

IV

By January 23, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C. by the above date. Copies should be also sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John H. O'Neill, Jr., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for ACE and DP&L.

For further details with respect to this action, see the application filed by ACE and DP&L under cover of a letter dated April 30, 1997, from John H. O'Neill, Jr., of Shaw, Pittman, Potts & Trowbridge, as supplemented by a letter dated November 7, 1997, and the safety evaluation dated December 18, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ.

Dated at Rockville, Maryland, this 18th day of December 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 97–33548 Filed 12–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–31373–CivP; ASLBP No. 98–735–01–CivP; EA 97–207]

Atomic Safety and Licensing Board; In the Matter of Conam Inspection, Inc., Itasca, Illinois (License No. 12–16559–01), Order Imposing Civil Monetary Penalty; Notice of Hearing

December 18, 1997.

Notice is hereby given that, by Memorandum and Order (Granting Request for Hearing and Scheduling Prehearing Conference), dated December 17, 1997, the Atomic Safety and Licensing Board has granted the request of Conam Inspection, Inc. (Conam or Licensee), for a hearing in the above-titled proceeding. The hearing concerns the Order Imposing a Civil Monetary Penalty in the amount of $16,000, issued by the NRC Staff on November 5, 1997 (published at 62 FR 60923 (November 13, 1997)). The parties to the proceeding are Conam and the NRC Staff. The issues to be considered at the hearing are (a) whether the Licensee was in violation of the Commission's requirements as set forth in Violations I.B and I.C of the Notice of Violation and Proposed Imposition of Civil Penalty (NOV), dated June 9, 1997; and (b) whether, on the basis of such violations and the additional violations set forth in the NOV that the Licensee admitted, the Order Imposing a Civil Monetary Penalty should be sustained.

Materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L St. N.W., Washington, D.C. 20555, and at the Commission's Region III Office, 801 Warrenville Road, Lisle, Illinois 60532–4351.

During the course of this proceeding, the Licensing Board, as necessary, will conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Licensing Board Orders. The first prehearing conference is scheduled for January 14, 1998, and is to be conducted through a telephone conference call. Except for conferences conducted by telephone conference calls (which are in any event to be transcribed), members of the public are invited to attend any such sessions.

Dated: December 18, 1997 at Rockville, Maryland.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

0Chairman Administrative Judge.

[FR Doc. 97–33551 Filed 12–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on January 22, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 22, 1998–8:30 a.m. until the conclusion of business.

The Subcommittee will review the staff's schedule and status for the development of the proposed Fire Protection Rule. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: December 17, 1997.

Gail H. Marcus,

Acting Deputy Executive Director.

[FR Doc. 97–33552 Filed 12–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Human Factors; Revised

The meeting of the ACRS Subcommittee on Human Factors scheduled to be held on January 20, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland *has been rescheduled for Wednesday, January 21, 1998, 8:30 a.m. until 5:00 p.m.* Notice of this meeting was previously published in the **Federal Register** on Tuesday, December 16, 1997. (62 FR 65824). All other items pertaining to this meeting remain the same as previously published.

For further information please contact the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: December 17, 1997.

Gail H. Marcus,

Acting Deputy Executive Director.

[FR Doc. 97–33553 Filed 12–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–08968]

Hydro Resources, Inc.; Issuance of the Safety Evaluation Report for the Crownpoint Uranium Solution Mining Project, Crownpoint, NM

AGENCY: Nuclear Regulatory Commission.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has issued its Safety Evaluation Report (SER), dated December 1997, for Hydro Resources, Inc.'s (HRI's) proposed Crownpoint Uranium Solution Mining Project at Crownpoint, NM. The SER documents the NRC staff's safety review of the project. The SER and the Crownpoint Uranium Mining Project Final Environmental Impact Statement (FEIS), dated February 1997 (NUREG–1508), provide the basis for NRC's decision to issue a 10 CFR Part 40 source material license to HRI. The staff will issue a license to HRI 30 days from issuance of the SER. The license will authorize HRI to construct and operate in situ leach (ISL) mining facilities at the Crownpoint Project for a period of five years. In preparing the SER, the NRC staff reviewed HRI's license application submittals and its Consolidated Operations Plan, Revision 2.0 (dated August 15, 1997), against the applicable regulations in 10 CFR parts 19, 20, 40, and 71. The SER supports the NRC staff's finding that issuing the license to HRI will be in accordance with the aforementioned regulations, and with all applicable safety requirements of the Atomic Energy Act of 1954 (AEA), as amended.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Carlson of the Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301) 415–8165; e-mail RDC@NRC.GOV.

SUPPLEMENTARY INFORMATION: On April 25, 1998, HRI submitted an application to NRC proposing to construct and operate an ISL uranium mining facility in McKinley County, near Church Rock, New Mexico. HRI later amended its application to include additional ISL operations in McKinley County, near an area of land referred to as Unit 1, and Crownpoint, NM. Together, the three sites comprise HRI's Crownpoint Uranium Solution Mining Project.

The NRC staff's environmental review of the Crownpoint Project is documented in the FEIS, pursuant to CFR Part 51. The NRC staff concluded that HRI's proposed Crownpoint Project was environmentally acceptable, and that potential impacts of the proposed project could be mitigated. These mitigative measures will be enumerated as conditions in HRI's source materials license. Additionally, the NRC staff completed its safety evaluation of the Crownpoint Project and documented its review in the SER. Based on its review, the NRC staff concluded that issuance of a source material license, with certain conditions specified in the license, would not be inimical to the common defense and security or to the public's health and safety, and otherwise meets the requirements of 10 CFR parts 19, 20, 40, and 71, and the AEA. The NRC staff's conclusions in the FEIS and SER provide the bases for NRC's decision to tissue a source material license to HRI 30 days from issuance of the SER.

Dated at Rockville, Maryland, this 4th day of December 1997.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–33549 Filed 12–23–97; 8:45 am]

BILLING CODE 2590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Board Meeting: January 20 (beginning at 1 p.m.) & 21, 1998—Amargosa Valley, Nevada: Department of Energy (DOE) program update, public input to the Nuclear Waste Technical Review Board, the DOE thermal testing program, saturated zone hydrology, and the saturated zone expert elicitation project.

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its winter meeting on Tuesday and Wednesday, January 20–21, 1998, in Amargosa Valley, Nevada. The meeting, which is open to the public, will be held at the Longstreet Inn and Casino, HCR 70, Box 559, Amargosa Valley, Nevada 89020; Tel (702) 372–1777; Fax (702) 372–1280.

The meeting will include an update on the DOE's nuclear waste management program and activities at Yucca Mountain, Nevada, and sessions on the DOE's thermal testing program, saturated zone flow and transport modeling, and the saturated zone expert elicitation project. A session also will be held concerning the board's activities under the Government Performance and Results Act (GPRA). A detailed agenda will be available approximately two weeks prior to the meeting by fax or e-mail, or at the Board's website, www.nwtrb.gov.

In 1993, the Congress passed the Government Performance and Results Act, intending to improve confidence in government by holding agencies accountable for activities that affect taxpayers lives. The law requires every federal agency to develop a strategic plan, including the critical component of a statement addressing how the agency plans to conduct itself while carrying out its mission. During the GPRA session at the winter meeting in Amargosa Valley, Nevada, the Board would like to solicit comments from the public concerning the Board's value statement, which follows.

The Board takes very seriously its role as a major source of technical and scientific peer review of the nation's program to package, transport, and dispose of high-level radioactive waste and spent nuclear fuel. To that end, the Board will:

- Ensure Board practices and procedures are conducted with integrity and objectivity that are beyond reproach.
- Produce timely, complete, comprehensive, and thoughtful scientific and techical analyses.
- Communicate the Board's findings and recommendations at least twice a year clearly, and in a timely manner that is most beneficial to the Congress, the Department of Energy, and the public.
- Ensure the Board's findings and recommendations are based on current and accurate information.
- Ensure the Board conducts itself in an open and accessible manner.

The Board will ask those present to answer three questions:

1. Does the Board conduct its meetings in an open, objective, and fair manner? For example, are members of the public treated with respect and consideration when participating in the meetings?

2. Given the technical and often detailed nature of the Board's work, does the Board explain its major points and positions in reports and letters so that they are understandable? For example, is there a general understanding of the reasons for the Board's recommendation to construct an east-west crossing of the potential repository block at Yucca Mountain?

3. Most important, to what extent is the Board a credible source of scientific and technical advice to the Department of Energy and the Congress? In general, what is the basis for your opinion?

In responding to these questions, those present will be asked to keep in mind that the scope of the Board's work is defined specifically in federal law. That law, P.L. 100–203, December 22, 1987, mandates that the Board is to evaluate the scientific and technical work of the Department of Energy in its commercial nuclear waste disposal program, including waste packaging and transportation activities.

Time has been set aside for oral comments from the public on these issues. Depending on the number of speakers, time limits may have to be imposed. Preprinted comment sheets will be available at the meeting for use in submitting written comments.

Also, additional time has been set aside on both days for the public to

comment on the technical issues raised during the meeting. Those wishing to speak are encouraged to sign the Public Comment Register at the check-in table. A time limit may have to be set on the length of individual remarks; however, written comments of any length may be submitted for the record.

Transcripts of this meeting will be available via e-mail, on computer disk, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning February 18, 1998. For further information, contact Frank Randall, External Affairs, 2300 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201–3367; (Tel) 703–235–4473; (Fax) 703–235–4495; (E-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's commercial spent nuclear fuel and defense high-level waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Dated: December 19, 1997.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 97–33569 Filed 12–23–97; 8:45 am]

BILLING CODE 6820–AM–M

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Notice of Termination for Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Notice of Termination for Multiemployer Plans (29 CFR Part 4041A Subpart B) (OMB control number 1212–0020; expires March 31, 1998). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 23, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4041A(f)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA") gives the PBGC authority to prescribe reporting requirements for terminated multiemployer pension plans covered by Title IV of ERISA.

The PBGC's regulation on Notice of Termination for Multiemployer Plans (29 CFR Part 4041A Subpart B) requires the filing of a notice of termination with the PBGC by a multiemployer plan that has terminated either by plan amendment or by mass withdrawal. The notice must contain certain basic information such as the plan's identity, the date of termination, and the plan's most recent Form 5500. In addition, a plan that has terminated by mass withdrawal must supply certain financial information to enable the PBGC to assess the likelihood of benefit reductions or suspensions under the plan and the need for PBGC financial assistance to the plan. More information is required with respect to mass withdrawal terminations because the risk of plan insolvency is greater in these cases. (The regulation may be accessed on the PBGC's home page at http://www.pbgc.gov.)

The collection of information under the regulation has been approved by OMB under control number 1212–0020 through March 31, 1998. The PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The PBGC estimates that the total annual hour burden of the regulation is one hour and that the total annual cost burden is $34,125.

The PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 18th day of December, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–33576 Filed 12–23–97; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Extension of Special Withdrawal Liability Rules

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB control number 1212–0023; expires March 31, 1998). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 23, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Sections 4203(f) and 4208(e)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") provide for the PBGC's issuance of regulations under which the PBGC may approve a multiemployer pension plan's adoption of special rules for determining whether a complete or partial withdrawal from the plan has occurred. Section 4203(f) also sets standards for the approval of such special rules.

The PBGC's regulation on Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) requires the plan sponsor of a plan that adopts special rules to submit information about the rules, the plan, and the industry in which the plan operates with its request for PBGC approval of the rules. The PBGC uses that information in determining whether the plan's special withdrawal liability rules meet the requirements of ERISA. (The regulation may be accessed on the PBGC's home page at http://www.pbgc.gov.)

The collection of information under the regulation has been approved by OMB under control number 1212–0023 through March 31, 1998. The PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The PBGC estimates that the total annual hour burden of the regulation is one hour and that the total annual cost burden is $2,400.

The PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, this 18th day of December, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–33577 Filed 12–23–97; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 17a–23 SEC File No. 270–387, OMB Control No. 3235–0442

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17a–23 and Form 17A–23 Recordkeeping and Reporting Requirements Relating to Broker-Dealer Trading Systems

Rule 17a–23 and Form 17A–23 under the Securities Exchange Act of 1935 establish recordkeeping and reporting requirements for approximately 143 registered broker-dealers that operate certain automated trading systems ("Broker-Dealer Trading System" or "BDTS"). Rule 17a–23 requires any registered broker-dealer that sponsors a BDTS to maintain participant, volume, and transaction records. Rule 17a–23 and Form 17A–23 also require system sponsors to submit three reports to the Commission and, under certain circumstances, to an appropriate self-regulatory organization. These recordkeeping requirements assist the Commission with monitoring broker-dealers that operate BDTSs and with ensuring compliance with Rule 17a–23.

The Commission staff estimates the average number of hours necessary for each BDTS sponsor to comply with Rule 17a–23 is 46 hours annually. The total burden is 6,542 hours annually for the broker-dealers operating BDTSs, based upon past submissions. The average cost per hour is approximately $7.00. Therefore, the total annual cost of compliance for the 143 broker-dealers operating BDTSs is $46,046.00.

The retention period for the recordkeeping requirement under Rule 17a–23 is three years following the date of a record or notice prepared pursuant to the rule. The recordkeeping requirement under Rule 17a–23 is mandatory to assist the Commission with monitoring broker-dealers that operate BDTSs and with ensuring compliance with the rule. Rule 17a–23 does involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 17, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33585 Filed 12–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:
Rule 15c3–3, SEC File No. 270–87, OMB Control No. 3235–0078

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15c3–3 Customer Protection—Reserves and Custody of Securities

Rule 15c3–3 ("Rule") requires registered broker-dealers to maintain certain records in connection with their compliance with the Rule's requirements that broker-dealers maintain possession and control of and segregate customer funds and securities. Commission staff estimates that the average number of hours necessary for each broker-dealer to make the required computations pursuant to the Rule is 2.5 hours per response. In order to demonstrate compliance with the Rule, approximately 326 broker-dealers choose to make a weekly computation and 127 broker-dealers choose to make a monthly computation. Accordingly, the total is approximately 48,290 hours annually for all broker-dealers, based upon past submissions. The average cost per hour is approximately $60. Consequently, the staff estimates that the total cost of compliance with the Rule for all broker-dealers is $2,897,400.

The retention period for the recordkeeping requirement under the Rule is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under the Rule is mandatory to assist the Commission with monitoring broker-dealers and ensuring compliance with the Rule. The information collected under this Rule is kept confidential to the extent permitted by the Freedom of Information Act and any other applicable law. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 15, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33586 Filed 12–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22947; 812–10890]

Merrill Lynch & Co., Inc., et al.; Notice of Application

December 19, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

Summary of Application: Applicants seek an order to permit the implementation, without shareholder approval, of new investment advisory or sub-advisory agreements ("New Agreements") between Mercury Asset Management International Limited ("MAM International") and Mercury Asset Management International Channel Islands Ltd. ("MAM Channel Islands") (collectively, the "Advisers") and various registered investment companies (each a "Fund" and collectively, the "Funds") in connection with the acquisition of Mercury Asset Management Group plc ("Mercury") by Merrill Lynch & Co., Inc. ("Merrill Lynch"). The order would cover a period of up to 150 days following the later of the date on which the assignment of the existing investment advisory contracts is deemed to have occurred (*i.e.*, the date Merrill Lynch is deemed to control the issued share capital of Mercury (the "Assignment Date")) or the date upon which the requested order is issued (but in no event later than July 15, 1998) (the "Interim Period"). The order also would permit the Advisers to receive all fees earned under the New Agreements during the Interim Period following shareholder approval.

Applicants: Merrill Lynch, Mercury, and the Advisers.

Filing Dates: The application was filed on December 10, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 9, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Merrill Lynch, World Financial Center, North Tower, 250 Vesey Street, New York, New York 10281–1318; Mercury and MAM International, 33 King William Street, London, England EC4R 9AS; MAM Channel Islands, Forum House, Grenville Street, St. Helier, Jersey JE48RL, Channel Islands.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Merrill Lynch, through its subsidiaries, provides investment, financing, insurance, and related services on a global basis. Mercury, a holding company whose shares are listed on the London Stock Exchange, provides investment and related services through its subsidiaries on a global basis. The Advisers are investment advisers registered under the Investment Advisers Act of 1940. MAM International provides discretionary international investment portfolio management services to individual and institutional clients. MAM International provides investment advice to its wholly-owned subsidiary, MAM Channel Islands. MAM Channel Islands acts as investment adviser and MAM International acts as sub-adviser for The Europe Fund, Inc. and The United Kingdom Fund Inc., each a management investment company registered under the Act. MAM International also acts as investment sub-adviser to the Global Bond Series of Fortis Series Fund, Inc., a management investment company registered under the Act.

2. On November 19, 1997, the boards of directors of Merrill Lynch and Mercury announced that they had agreed on the terms of a recommended cash offer (the "Offer") under which Merrill Lynch, through its newly-formed wholly-owned subsidiary, ML Invest plc, would seek to acquire all of the issued share capital of Mercury (the "Transaction"). Applicants state that, upon completion of the Transaction, it is intended that Mercury will be combined with the worldwide institutional business of Merrill Lynch Asset Management, L.P. and Fund Asset Management, L.P., which are both owned and controlled by Merrill Lynch, to form Merrill Lynch Mercury Asset Management. Applicants expect that all conditions to the Offer, including receipt of all necessary regulatory approvals, will be fulfilled by or after late December 1997.

3. Applicants state that the Transaction could be deemed to result in an assignment of the existing advisory and sub-advisory contracts between the Funds and the Advisers (the "Existing Agreements") and, thus, their automatic termination. Applicants request an exemption to permit implementation, prior to obtaining shareholder approval, of the New Agreements. The requested exemption will cover the Interim Period of not more than 150 days beginning on the later of the Assignment Date or the date of the issuance of the requested order and continuing, in respect of each Fund, through the date on which each New Agreement is approved or disapproved by the respective Fund's shareholders, but in no event after July 15, 1998. Applicants represent that, during the Interim Period, the New Agreements will contain identical terms and conditions as the Existing Agreements, except in each case for the names of the parties, effective dates, termination dates, and the escrow provisions.

4. On December 11, 1997, the board of directors of each Fund (the "Board") met, in accordance with section 15(c) of the Act, so that they could evaluate whether the terms of the New Agreements, including the escrow provisions, are in the best interests of the Funds and their shareholders. Each of the Boards voted to approve the New Agreements in accordance with section 15(c).

5. Applicants submit that it will not be possible to obtain shareholder approval of New Agreements in accordance with section 15(a) of the Act prior to the Assignment Date. Applicants state the each Fund will promptly schedule a meeting of shareholders to vote on the approval of the New Agreements to be held within 150 days after the commencement of the Interim Period, but in no event later than July 15, 1998.

6. Applicants also request an exemption to permit the Advisers to receive from each Fund all fees earned under the New Agreements during the Interim Period, if an to the extent the New Agreements are approved by the shareholders of each Fund.[1] Applicants state that the fees to be paid during the Interim Period will not be greater than the fees currently paid by the Funds.

7. Applicants propose to enter into escrow arrangements with an unaffiliated financial institution (the "Escrow Agent"). The advisory fees payable by the Funds under the New Agreements during the Interim Period will be paid into an interest-bearing escrow account. The Escrow Agent will pay the amounts in the escrow account (including interest) to the Advisers only after the New Agreements are approved by the shareholders of the relevant Fund in accordance with section 15(a) of the Act. If shareholder approval is not given, the Escrow Agent will return the moneys to the appropriate Fund. Before any such release is made, the Boards will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires that the written contract provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines the term "assignment" to include any direct or indirect transfer of an investment advisory contract by the assignor or a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that it is possible that Merrill Lynch may be deemed to have obtained control of more than 25% of the voting securities of Mercury as early as mid-December. Applicants state that they are concerned that if an assignment does exist, the Existing Agreements will terminate by their terms.

3. Rule 15a–4 provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that (as) the new contract is approved by the company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser not any controlling person of the adviser "directly or indirectly receive money or other benefit" in connection with the assignment. Applicants state that because Merrill Lynch, Mercury and/or the Advisers may be deemed to receive a benefit in connection with the Transaction, there is a question as to applicants' ability to rely on rule 15a–4. However, applicants submit that granting the requested exemption would be within the spirit of rule 15a–4.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and the timing of the Transaction were determined by Merrill Lynch and Mercury in response to a number of factors beyond to scope of the Act and substantially unrelated to the Funds or the Advisers. Applicants state that it is not possible for the Funds to obtain shareholder approval of the New Agreements prior to the Assignment Date. Applicants submit that the Boards have approved the New Agreements, and the shareholders of the Funds will be further protected by the establishment of the escrow account described in the application.

6. Applicants submit that the Advisers will take all appropriate steps to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent to the scope

[1] Applicants state that if the Assignment Date precedes issuance of the requested order, the advisers will continue to serve as investment advisers after the Assignment Date (and prior to the issuance of the order) in a manner consistent with their fiduciary duty to continue to provide advisory services to the Funds even though approval of the new arrangements has not yet been secured from the Funds' shareholders. Applicants also state that the Funds may be required to pay, with respect to the period until receipt of the order, no more than the actual out-of-pocket cost to the Advisers for providing advisory services.

and quality of services previously provided. During the Interim Period, the Advisers would operate under the New Agreements, which would have the same terms and conditions as the respective Existing Agreements, except for the effective dates, termination dates and escrow provisions. Applicants believe that the level of service provided by the Advisers will remain the same under the New Agreements as under the existing ones.

7. Applicants believe that the best interests of shareholders of the Funds would be served by allowing for the implementation of the New Agreements during the Interim Period. Applicants state that allowing the implementation of the New Agreements will ensure that there will be no disruption to the investment program and the delivery of related services to the Funds because the personnel that provide such services to the Funds will remain substantially the same as before the Transaction.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreements to be implemented following the commencement of the Interim Period will have the same terms and conditions as the respective Existing Agreements, except for the effective dates, termination dates, and escrow provisions.

2. Fees payable to the Advisers by the Funds for the period covered by the order will be maintained during the Interim Period in an interest-bearing escrow account, and will be paid (1) to the Advisers after the requisite approval by shareholders is obtained, or (b) in the absence of such approval, to the relevant Fund.

3. Each Fund will promptly schedule a meeting of shareholders to vote on approval of the New Agreements to be held within 150 days after the commencement of the Interim Period, but in no event later than July 15, 1998.

4. Merrill Lynch and/or Mercury will pay the costs of preparing and filing the application and the costs relating to the solicitation of approval of the Funds' shareholders of the New Agreements.

5. The Advisers will take all appropriate steps to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the respective Boards, including a majority of the directors who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act (the "Disinterested Directors"), to the scope and quality of services previously provided. In the event of any material change in the personnel providing services pursuant to the advisory agreements, the Advisers will apprise and consult with the Boards of the affected Funds in order to assure that the Boards, including a majority of the Disinterested Directors, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33595 Filed 12–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39402A; File No. SR–Amex–97–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Incorporated Relating to the Listing of Commodity Indexed Preferred or Debt Securities

December 17, 1997.

Notice of Corrections

On December 4, 1997 the Securities and Exchange Commission ("SEC" or "Commission") issued a notice of filing and order granting immediate effectiveness of proposed rule change by the American Stock Exchange, Incorporated ("Amex") relating to the listing of commodity indexed preferred or debt securities [1] pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"),[2] and paragraph (e)(6) of Rule 19b–4 under the Act.[3] The following sentence should be deleted from the first paragraph of *Section A—Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change:* "[T]he Exchange also will require that the issuer have a minimum tangible net worth of $150 million."

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[1] Securities Exchange Act Release No. 34–39402 (December 4, 1997) 62 FR 65459 (December 12, 1997).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4(e)(6).

[4] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33525 Filed 12–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39449; File No. SR–MBSCC–97–06]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Electronic Pool Notification Service's Fee Schedule

December 15, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on October 22, 1997, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change consists of modifications to the Electronic Pool Notification ("EPN") schedule of charges, which is attached as Exhibit A to the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MBSCC currently assesses message processing fees as reflected in the EPN Schedule of Charges. MBSCC assesses "On Send" fees of $.25/million current face from 8:00 a.m. to 1:00 p.m. and $1.25/million current face from 3:00 p.m. to 5:00 p.m. MBSCC also assesses a message processing "On Receive" fee of $.50/million current face 8:00 a.m. to 1:00 p.m. MBSCC does not charge a message processing On Receive fee from 3:00 p.m. to 5:00.

On occasion, MBSCC may open the EPN service before 8:00 a.m. or close it after 5:00 p.m. to accommodate the processing needs of its participants.[3] When this happens, MBSCC does not charge higher fees for the additional usage. The proposed rule change codifies this practice by amending the EPN Schedule of Charges to reflect that the "On Send" fee will be $.25/million from the opening of business to 1:00 p.m. and $1.25/million from 3:00 p.m. to the close of business. The proposed rule change also amends fees to reflect that the EPN "On Receive" fee will be $.50/million from the opening of business to 1:00 p.m. and no charges from 3:00 p.m. to the close of business. As a result, MBSCC's schedule of charges now reflects that message processing fees will not be altered when the normal hours of operation for the EPN service are extended. MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[5] and pursuant to Rule 19b–4(e)(1)[6] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of existing MBSCC rules. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–97–08 and should be submitted by January 14, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33527 Filed 12–23–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] Conversation between Richard Paley, Associate Counsel, MBSCC, and Jeffrey Mooney, Attorney, Division of Market Regulation, Commission (November 6, 1997).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(e)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39458; File No. SR–NASD–97–87]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Extending the Pilot Injunctive Relief Rule

December 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulatory is herewith filing a proposed rule change to extend for six months the pilot injunctive relief rule, Rule 10335 (formerly Section 47) of the Code of Arbitration Procedure ("Code").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation's injunctive relief rule, Rule 10335 of the Code, provides a procedure for obtaining injunctive relief in arbitration and for expediting proceedings for injunctive relief in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

intra-industry disputes. Rule 10335 took effect on January 3, 1996, for a one-year pilot period. The initial pilot period was subsequently extended on January 3, 1997 for another year in order to permit NASD Regulation's Office of Dispute Resolution to gain additional experience with the rule before determining whether the rule should be made permanent, the pilot period should be extended, or the rule should be permitted to terminate by its terms.[3]

In September 1997, the NASD published a Notice to Members (97–59) requesting comment on the rule.[4] At that time, approximately 433 cases had been filed in which injunctive relief was sought pursuant to the rule. The average number of days between filing and the arbitrator's initial injunctive relief order was approximately 7.5 days. The majority of cases in which injunctive relief was sought involved associated persons leaving one firm for another. In most but not all cases, the associated person's former firm was the petitioner. The Notice to Members sought comment on how the injunctive relief and expedited proceedings work and how they could be improved, and identified more than twenty specific questions based on previous comments received from users of the rule. The comment period closed on October 31, 1997. The NASD has received 19 comment letters in response to the Notice to Members.[5]

On the basis of NASD Regulation's experience and the comments of the participants, NASD Regulation believes that the procedures set forth in Rule 10335 represent a significant improvement to the procedures for resolving intra-industry disputes. However, NASD Regulation also believes that additional time is necessary to adequately review the comments received about the rule and to evaluate how the Rule could be improved to meet the needs of the participants more effectively.

Accordingly, NASD Regulation is proposing to extend the injunctive relief Rule as a pilot program for another six months. During the next six months NASD Regulation will review the comments received in response to Notice to Members 97–59, as well as comments from arbitrators and NASD employees who have had experience with the application of the rule, and will develop modifications or interpretations of the Rule in response thereto.

The NASD requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. Rule 10335 expires by its terms on January 3, 1998. As discussed above, NASD Regulation believes that Rule 10335 represents a significant improvement to the procedures for resolving intra-industry disputes, and that an extension will permit more careful consideration of modifications in response to comments. Accordingly, NASD Regulation believes that it is in the interest of users of Rule 10335 for the procedures to remain in effect without interruption.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[6] in that extending the effectiveness of the injunctive relief procedures will serve the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–87 and should be submitted by January 14, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change to extend the pilot injunctive relief rule is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and particularly with Section 15A(b)(6) of the Act.[7] Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. The Rule is intended principally to facilitate the disposition of employment disputes and related disputes concerning whether registered representatives who move to other firms may transfer their accounts to their new firms. The Commission finds it is appropriate to extend the pilot for six months. During that time the NASD Regulation will be able to evaluate the success of the Rule, to adequately review the comments received, and to determine whether to extend the pilot further or make the Rule permanent.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because members will continue to have the benefit of injunctive relief in arbitration without interruption. The Rule was previously available through the pilot and the Commission is extending the pilot for only six months. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 15A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2)[8] that the proposed rule change (SR–NASD–97–87) is hereby approved on an accelerated basis for a six-month pilot basis, through July 3, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[3] *See* Securities Exchange Act Release No. 38069 (December 20, 1996), 61 FR 68806 (December 30, 1996).

[4] A copy of Notice to Members 97–59 is attached as Exhibit 2 to the filing.

[5] The comment letters are attached as Exhibit 3 to the filing.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33526 Filed 12–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39460; International Series Release No. 1109; File No. SR–Phlx–97–22]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change, as Amended, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Trading of Customized Foreign Currency Options on the Mexican Peso

December 17, 1997.

I. Introduction

On May 2, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend its rules to accommodate the trading of customized foreign currency options ("FCOs") on the Mexican peso.[3] On May 21, 1997, the Phlx submitted to the Commission Amendment No. 1 to the proposal.[4] Notice of the proposal was published for comment and appeared in the **Federal Register** on May 30, 1997.[5] On July 15, 1997, the Phlx submitted to the Commission Amendment No. 2 to the proposal.[6] On December 12, 1997, the Phlx submitted to the Commission Amendment No. 3 to the proposal.[7] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

II. Description of the Proposal

The Phlx proposes to amend its rules to accommodate the trading of customized foreign currency options on the Mexican peso. Currently, the Phlx offers listed FCOs on the British pound, French franc, Swiss franc, Japanese yen, Canadian dollar, Australian dollar, German mark and the European Currency Unit. Since November 1994, the Exchange has offered the ability to trade customized contracts on all of the above currencies in relation to the U.S. dollar or in relation to each other.[8] In 1995, the Exchange listed for trading customized options on the Italian Lira and the Spanish peseta.[9] The Exchange is proposing to list and trade customized options on the Mexican peso pursuant to Phlx Rule 1069. The Exchange is requesting approval to trade the peso only against the U.S. dollar and the Canadian dollar. In making this proposal, the Exchange states that it wants to capitalize upon Mexico's position near the forefront of the world's emerging markets, as well as the increased activity in Mexican equities and derivative securities based on Mexican markets.

Because the peso would only trade as a customized contract, there would be no continuously quoted series of peso contracts. Phlx Rule 1069(a)(1) provides that customized options contracts may be traded on any approved underlying foreign currency pursuant to Phlx Rule 1009. Therefore, the Exchange proposes to amend Phlx Rule 1009 to add the Mexican peso to the list of approved underlying foreign currencies. Pursuant to Phlx Rule 1069(a)(1)(B), users would be able to trade customized contracts between the Mexican peso ("MXP") and the U.S. dollar ("USD") in U.S. terms (USD/MXP), or as an inverse contract (MXP/USD) (*i.e.*, the trading currency is Mexican pesos and the underlying currency is U.S. dollars). The contract size for the customized contract in U.S. terms would be 250,000 MXP.[10] The premium will be .00001 USD per unit or 2.50 USD for an option contract having a unit of trading of 250,000 MXP. The contract size for the inverse would be 50,000 USD. The premium will be .0001 MXP per unit or 5.00 MXP for an option contract having a unit of trading of 50,000 USD.

No cross rate FCO on the peso will be offered at this time except for the Mexican peso against the Canadian dollar ("CAD"). The contract size for the cross-rate (CAD/MXP) would be 250,000 MXP. The premium will be .00001 CAD per unit or 2.50 CAD for an option contract having a unit of trading of 250,000 MXP. The contract size for the cross-rate (MXP/CAD) would be 50,000 CAD. The premium will be .0001 MXP per unit or 5.00 MXP for an option contract having a unit of trading of 50,000 CAD.

Consistent with Exchange Rule 1069(j), no quote spread parameters will apply to these contracts. The Exchange also proposes to amend Rules 1033 and 1034 to explain how premiums will be quoted and what the minimum fractional change will be for USD/MXP.

The Exchange proposes to apply customer margin "add-on" percentage of 17% for customized MXP contracts.[11] In no event will the Exchange reduce the margin levels for customized FCOs involving the peso below the 17% level without the prior approval of the Commission pursuant to Section 19(b) of the Act. Whenever the customer margin levels for customized FCOs on the peso are changed, the Exchange will promptly notify the Exchange's membership and the public. The Exchange represents that this margin level covers at least 99% of all five day price movements over the last three years.[12]

As with customized FCOs currently being listed by the Phlx. The Options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Customized FCOs provide investors with the ability, within specified limits, to trade FCOs with customized strike prices, cross-rate FCOs on any two approved currencies, and FCOs where the U.S. dollar is the underlying currency. In addition, FCO participants may express quotes for customized FCOs as a percentage of the underlying currency, in addition to quoting in terms of the base currency per unit of the underlying currency. *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1995) ("Release No. 34–34925").

[4] In Amendment No. 1, the Phlx clarified the contract specifications for the U.S. dollar/Mexican Peso contract, the loverse contract (Mexican Peso/U.S. dollar), and the Canadian dollar cross-rates, as described more fully herein. *See* Letter from Nandita Yagnik, Phlx, to Margaret Blake, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated May 21, 1997.

[5] *See* Securities Exchange Act Release No. 38667 (May 22, 1997), 62 FR 29385.

[6] In Amendment No. 2, the Phlx proposes to set the position limit for the Mexican Peso at 100,000 contracts. *See* Letter from Nandita Yagnik, Phlx, to Margaret Blake, OMS, Market Regulation, Commission, dated July 11, 1997 ("Amendment No. 2").

[7] In Amendment No. 3, the Phlx proposes to increase the proposed customer margin for FCOs on the Mexican Peso from 8% to 17%. Further, the Phlx states that the margin level of 17% will remain in effect until the Phlx receives Commission approval for the new customer margining system which will be filed with the Commission after it is approved by the Phlx Board of Directors. If approved by the Commission, margin for options on the Mexican peso would then be set at levels established by the new margining system. *See* Letter from Nandita Yagnik, Phlx, to John Ayanian, OMS, Market Regulation, Commission, dated December 10, 1997.

[8] *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994).

[9] *See* Securities Exchange Act Release No. 35255 (September 20, 1995), 60 FR 50229 (September 28, 1995).

[10] Based on an exchange rate of 8.1070 Mexican peso/U.S. dollars on December 9, 1997, as published in The Wall Street Journal, this would correspond to an opening position for a Mexican peso FCO transaction (*i.e.*, 100 contracts) valued at approximately $3,083,000.

[11] For these purposes, "add-on" is the percentage of the current market value of the currency e Customized FCO that the holder of a "short" position must pay in addition to the current market value of each Customized FCO. The 17% add-on applies to both initial and maintenance margin positions in Mexican peso options.

[12] *See* Amendment No. 3, *supra* note 7.

Clearing Corporation ("OCC") will clear and settle all trades in customized FCOs involving the peso. Because quotes in these options will not be continuously updated or otherwise priced by the Phlx, OCC will generate a theoretical price based on the prices and quotes of the customized FCOs and the closing value of the relevant underlying currency. OCC will use this price to market the customized FCO contracts involving the peso daily and to calculate margin requirements.[13]

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[14] First, the Commission believes that the trading of listed customized FCOs on the peso should provide investors with a hedging and risk transfer vehicle that will reflect the overall movement of the peso in relation to the U.S. dollar and the Canadian dollar. In this regard, customized FCOs on the peso should provide investors with an efficient and effective means of managing risk associated with the peso.[15]

Second, customized FCOs on the peso will trade within the Exchange's existing framework for customized FCOs, unless otherwise amended herein, which the Commission has previously found to adequately address the Commission's regulatory concerns.[16] Specifically, this framework includes, among other things, rules pertaining to: obligations of specialists and registered options traders (Rule 1014); position limits (Rule 1001);[17] exercise limits (Rule 1002); bids and offers (Rule 1033); minimum fractional changes (Rule 1034); and trading rotations, halts, and suspensions (Rule 1047).[18]

Third, the Commission believes it is reasonable for the Phlx to set a position limit of 100,000 contracts for options on the Mexican peso because the total U.S. dollar value position limit is similar to those approved for the Spanish peseta and the Italian lira. For example, the total U.S. dollar value position limit for FCOs on the Italian lira when approved was $3,096,000,000.[19] Currently, the total U.S. dollar value position limit for FCOs on the Mexican peso is approximately $3,083,000,000.[20] Additionally, the Commission notes that the proposed position limit of 100,000 contracts for customized FCOs (including customized cross-rates with the Canadian dollar) involving the Mexican peso imposes more restrictive limits than Phlx Rule 1001 would otherwise provide.[21]

Fourth, the Exchange has proposed adequate customer margin requirements for customized FCOs on the Mexican peso. The proposed add-on margin (i.e., 17%) provides sufficient coverage to account for historical and potential volatility in the peso in relation to the U.S. dollar. Moreover, customized cross-rates involving the peso and the Canadian dollar will be margined at the 17% margin add-on level. As a result, the Commission believes that the proposed customer margin levels will result in adequate coverage of contract obligations and are designed to reduce risks arising from inadequate margin levels for customized FCOs involving the Mexican peso.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As noted above, in proposed Amendment No. 2, the Phlx sets a position limit that, in total U.S. dollar value terms, is similar to position limits approved for options on the Spanish peseta and the Italian lira. In addition, the Phlx's proposal to set similar position limits for options on the Spanish peseta and the Italian lira was published in the **Federal Register** for the full 21-day comment period without any comments being received by the Commission.

Second, the proposal in Amendment No. 3 to increase the margin level for customized FCOs (including customized cross-rates with the Canadian dollar) involving the Mexican peso serves an investor protection purpose by reducing the risks that can arise from inadequate margin levels. Additionally, the Commission notes that the changes set forth in Amendment No. 3 impose more restrictive standards than those contained in the original proposal which was published in the **Federal Register** for the full 21-day comment period without any comments being received by the Commission.

Accordingly, the Commission believes that Amendment Nos. 2 and 3 are consistent with Section 6(b)(5) of the Act and that good cause exists to approve these amendments on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to SR–Phlx–97–22 and should be submitted by January 14, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (File No. SR–Phlx–97–22) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33587 Filed 12–23–97; 8:45 am]

BILLING CODE 8010–01–M

[13] Telephone conversation between Nandita Yagnik, Phlx, and John Ayanian, OMS, Market Regulation, Commission, on December 17, 1997.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Release No. 34–34925, *supra* note 3.

[17] Phlx Rule 1001 generally provides for position limits of 200,000 contracts on the same side of the market relating to the same foreign currency, unless otherwise noted in the text of the rule. In Amendment No. 2, the Phlx proposed lower position limits of 100,000 contracts for options on the Mexican peso. *See* Phlx Rule 1001, commentary .05(b).

[18] *Id.*

[19] Based on an exchange rate of 1.1615 Italian lira/U.S. dollar on August 23, 1995, as published in The Wall Street Journal. Based on an exchange rate of 1,753 Italian lira/U.S. dollar on December 9, 1997, as published in The Wall Street Journal, the total U.S. dollar value position limit was approximately $2,852,000,000.

[20] Based on an exchange rate of 8.1070 Mexican peso/U.S. dollar on December 9, 1997, as published in The Wall Street Journal.

[21] *See supra* note 17.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region IV, North Florida District, Jacksonville, Florida; Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12:00 p.m. to 2:00 p.m., January 8, 1998, at the Latin-American Club, 5110 Lourcey Road, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Claudia D. Taylor, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Debra Silimeo,

Deputy Associate Administrator, Office of Communications & Public Communications.

[FR Doc. 97–33497 Filed 12–23–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Boston, Region I—Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10:00a.m. on Thursday, January 15, 1998, at the Boston District Office, Room 265, to discuss such matters as may be presented by members and staff of the U.S. Small Business Administration, or others present.

For further information, please write or call Ms. Mary E. McAlency, District Director, U.S. Small Business Administration, 10 Causeway Street, Room 265, Boston, Massachusetts, 02222–1093, telephone (615) 565–5560.

Debra Silimeo,

Deputy Associate Administrator, Office of Communication & Public Liaison.

[FR Doc. 97–33498 Filed 12–23–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Request for Emergency Review by the Office of Management and Budget

The Social Security Administration publishes a list of information collection packages that will require clearance by OMB in compliance with P.L. 104–13 effective October 1, 1995, the Paperwork Reduction Act of 1995. The information collections listed below have been submitted to OMB for emergency clearance. OMB approval has been requested by December 29, 1997:

1. 0960-NEW. The Social Security Administration (SSA) is piloting disability redesign models, one of which is the Full Process Model (FPM). A key element of the FPM is the predecision interview (PDI) which gives claimants about to be denied disability benefits the opportunity to speak directly with the decision maker and/or submit additional medical evidence before a final decision is made. In the first 8 months of the pilot, SSA has found that only about half the applicants respond to the letter. SSA is concerned that applicants may not understand the letter, so it is proposing to conduct a survey to determine the reasons individuals are not responding. The respondents are a random sample of title II and title XVI applicants who have recently received a PDI letter.

Number of respondents: 500.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 42 hours.

To receive a copy of the form or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed below. Written comments and recommendations regarding the information collection(s) should be directed to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Dated: December 17, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–33432 Filed 12–23–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2669]

Proposed Unidroit Convention and its Aircraft Protocol Meeting Notice

AGENCY: Department of State.

ACTION: Notice is hereby given of an Advisory Committee meeting to be held on Thursday, February 26 starting at 9:00 a.m. in the Civil Aeromedical Institute auditorium, Room 254, located at 6500 S. MacArthur Blvd, Oklahoma City, Oklahoma. The meeting will end at or before 1:00 p.m. on February 26. There may be an afternoon session from 2:00 p.m. to 5:00 p.m. for further discussion.

Attendence: The meeting is open to the public, free of charge, and is limited to available seating. It may be of interest to persons associated with the selling, leasing, and financing of aircraft and aircraft engines, including persons who search title, give title opinions, submit conveyances for recordation to the FAA Aircraft Registry, or otherwise participate in aircraft financing.

Nature: The meeting is intended only to provide information. No formal record will be made. No written comments will be accepted from the audience.

Agenda:

(1) Introductory remarks.

(2) Purpose of UNIDROIT Convention.

(3) Status of actions taken (UNIDROIT Convention and Aircraft Protocol).

(4) Summary of UNIDROIT Convention with emphasis on registration of international interests.

(5) Summary of Aircraft Protocol.

(6) Relationship of UNIDROIT Convention to existing laws and treaties.

(7) Question and Answer Period.

Background: The United States Government, through the United States Department of State, has been participating with other nations in studying a proposed multilateral convention (UNIDROIT Convention) to protect international secured interests in mobile equipment, including aircraft.

A preliminary draft of the UNIDROIT Convention will be submitted to the UNIDROIT Governing Council in early 1998. Thereafter, it is expected that the draft will be circulated to States to determine whether to proceed to intergovernmental negotiations to conclude the Convention.

As proposed, the UNIDROIT Convention would not take effect unless a protocol has been adopted for a specific category of mobile objects. In that regard, UNIDROIT's Aircraft Equipment Protocol Group has completed a preliminary draft protocol

which would pertain to certain large airframes and large helicopters, and jet and turbine engines.

The UNIDROIT Convention and Aircraft Equipment Protocol together, when and if adopted and enacted into law by contracting states would provide a comprehensive international system to protect leasing and financing interests. Significant features might include default remedies, priorities, and establishment of an international registration system to register (record) international consensual interests, non-consensual interests, assignments, prospective assignments, and subordinations.

It is anticipated that the international registration system would be primarily an electronic notice system. As proposed, the international registration system is not intended to interfere with countries' existing national registration and recordation systems (e.g., Parts 47 and 49 of the Federal Aviation Regulations).

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125, telephone number (405) 954–3296; fax number (405) 954–4676.

Dated: December 17, 1997.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law, United States Department of State.

[FR Doc. 97–33626 Filed 12–23–97; 8:45 am]

BILLING CODE 4701–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–63]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 16, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 19, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29077.
Petitioner: Bombardier Inc.
Sections of the FAR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought: In lieu of the requirements of 14 CFR 25.1435(b)(1) for a complete hydraulic system proof pressure test on the airplane, Bombardier proposes to conduct a proof pressure test at the system relief pressure, 3400 psig, and component testing at 1.5 times operating pressure (4500 psi) per § 25.1435(a)(2).

Docket No.: 29052.
Petitioner: Business Airfreight.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought: To permit appropriately trained certificated pilots employed by Business Airfreight (BAF) to replace navigation lightbulbs, landing lightbulbs, taxi lightbulbs, missing or broken static wicks, and missing or broken bonding straps on BAF's aircraft used in operations conducted under 14 CFR part 135.

Dispositions of Petitions

Docket No.: 28357.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought Disposition: To permit United Airlines, Inc., to continue to make available to all of its supervisory and inspection personnel one copy of its repair station inspection procedures manual, rather than providing a copy of the manual to each of these individuals.
Grant, December 1, 1997, Exemption No. 6393A.

Docket No.: 28835.
Petitioner: Southwest Airlines Co.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought Disposition: To permit ramp supervisors employed by Southwest to take aircraft brake temperature readings on arrival of its aircraft.
Denial, December 5, 1997, Exemption No. 6704.

Docket No.: 28776.
Petitioner: Mr. Dwight E. Reber and Mrs. Cori P. Reber.
Sections of the FAR Affected: 14 CFR 21.25(a)(2), 21.29(a), and 21.185(c).
Description of Relief Sought Disposition: To permit Mr. And Mrs. Reber to be entitled to a restricted category type certificate and airworthiness certificate for their Kamov Ka–26 light twin-engine helicopter.
Denial, December 2, 1997, Exemption No. 6702.

Petition for Exemption

Docket No.: 29077.
Petitioner: Bombardier Inc.
Regulations Affected: 25.1435(b)(1).
Description of Petition: In lieu of the requirements of 14 CFR 25.1435(b)(1) for a complete hydraulic system proof pressure test on the airplane, Bombardier proposes to conduct a proof pressure test at the system relief pressure, 3400 psig, and component testing at 1.5 times operating pressure (4500 psi) per § 25.1435(a)(2).

[FR Doc. 97–33621 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Signal System Regulations

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3446

Applicant: SOO Line Railroad Company,
Mr. Roscoe VanPelt,
District Coordinator Signals & Communications,
Canadian Pacific Railway,
105 South 5th Street, Box 530,
Minneapolis, Minnesota 55440

The SOO Line Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signals, on the single main track, between milepost 12.27 and milepost 16.55, near St. Paul, Minnesota, on the Paynesville Subdivision, consisting of the removal of signals No. 2 and No. 3.

The reason given for the proposed changes is that the facilities are no longer needed for present operations and to reduce maintenance.

BS–AP–No. 3447

Applicant: Central Kansas Railway, L.L.C.,
Mr. L. R. Mitchell,
Superintendent,
1825 West Harry Street,
Wichita, Kansas 67213.

The Central Kansas Railway, L.L.C. seeks approval of the proposed discontinuance and removal of the automatic block signal (ABS) system, on the single main track, between Bridgeport, Kansas, milepost 491.2 and Towner, Colorado, milepost 747.5.

The reason given for the proposed changes is that the present train traffic in the area does not warrant the need for the ABS system, and the signal pole line is in fragile condition and will not survive the first ice storm of the season.

BS–AP–No. 3448

Applicant: Burlington Northern and Santa Fe Railway,
Mr. William G. Peterson,
Director Signal Engineering,
4515 Kansas Avenue,
Kansas City, Kansas 66106.

The Burlington Northern and Santa Fe Railway seeks approval of the proposed modification of the traffic control system, on the No. 2 Main Track, between 30th Street and Bravo, milepost 2.2 and milepost 5.6, near Kansas City, Kansas, Fort Scott Subdivision, Kansas Division, consisting of the discontinuance and removal of automatic absolute signal 6RB, which is located on the elevator track and controlled by the switch position of the Electric Lock 7.

The reason given for the proposed changes is to improve train operations in the area, and that the switch is electrically locked in CTC territory, and does not require a signal.

BS–AP–No. 3449

Applicant: Union Pacific Railroad Company,
Mr. P. M. Abaray,
Chief Engineer-Signals/Quality,
1416 Dodge Street, Room 1000,
Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the rail locks and associated power-operated switch machines, on the single main track Morley Bridge, milepost 95.0, near Morley, Louisiana, on the Alexandria Subdivision.

The reason given for the proposed changes is to modernize the operation of the Morley Bridge.

BS–AP–No. 3450

Applicant: Union Pacific Railroad Company,
Mr. P. M. Abaray,
Chief Engineer-Signals/Quality,
1416 Dodge Street, Room 1000,
Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the rail locks and associated power-operated switch machines, on the single main track Melville Bridge, milepost 129.7, near Melville, Louisiana, on the Alexandria Subdivision.

The reason given for the proposed changes is to modernize the operation of the Melville Bridge.

BS–AP–No. 3451

Applicant: Union Pacific Railroad Company,
Mr. P. M. Abaray,
Chief Engineer-Signals/Quality,
1416 Dodge Street, Room 1000,
Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the hand-operated electric rail locks, on the single main track Ouachita River Bridge, milepost 528.2, approximately 27 miles south of Monroe, Louisiana, on the Monroe Subdivision.

The reason given for the proposed changes is to modernize the operation of the Ouachita River Bridge.

BS–AP–No. 3452

Applicant: Union Pacific Railroad Company,
Mr. P. M. Abaray,
Chief Engineer-Signals/Quality,
1416 Dodge Street, Room 1000,
Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the rail locks and associated power-operated switch machines, on the single main track Canal Bridge, milepost 6.2, near Port Allen, Louisiana, on the Avoyelles Branch.

The reason given for the proposed changes is to modernize the operation of the Canal Bridge.

BS–AP–No. 3453

Applicant: National Railroad Passenger Corporation,
Mr. R. C. VanderClute,
Vice President, Operations,
60 Massachusetts Avenue, N.E.,
Washington, D.C. 20002.

The National Railroad Passenger Corporation seeks approval of the proposed conversion of a portion of "R" Interlocking, at Sunnyside Yard, milepost E3.7, Queens Borough, New York, on the Metropolitan Division of the Northeast Corridor, to a modern Yard Switching Center, with yard switches and route indicators to authorize non-passenger train movements to and from the yard. The proposed changes include reliable logic to protect against conflicting routes, yard switches locked for movements with non-vital logic, and route indicators which will not permit movements exceeding Restricted Speed.

The reasons given for the proposed changes are that the original electro-pneumatic switches with mechanical locking bed at "R" Interlocking is 87 years old and in need of replacement, and maintenance of the interlocking in a yard area, where no train movements carry revenue passengers, can no longer be justified.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the

proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 10, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 97–33554 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Nos. 97–060; Notice 2; 97–061; Notice 2; 97–064; Notice 2; 97–065; Notice 2; 97–068; Notice 2; 97–069; Notice 2; NHTSA–97–3021]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This notice announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective as of the date of their publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 19, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A.—Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. 97–060
   Nonconforming Vehicles: 1991–1996 Lexus SC300 and SC400
   Substantially similar U.S.-certified vehicles: 1991–1996 Lexus SC300 and SC400
   Notice of Petition published at: 62 FR 48709 (September 16, 1997)
   Vehicle Eligibility Number: VSP–225
2. Docket No. 97–061
   Nonconforming Vehicles: 1979 Jeep CJ–7
   Substantially similar U.S.-certified vehicles: 1979 Jeep CJ7
   Notice of Petition published at: 62 FR 48711 (September 16, 1997)
   Vehicle Eligibility Number: VSP–224
3. Docket No. 97–064
   Nonconforming Vehicles: 1990–1993 BMW K1 Motorcycles
   Substantially similar U.S.-certified vehicles: 1990–1993 BMW K1 Motorcycles
   Notice of Petition published at: 62 FR 51177 (September 30, 1997)
   Vehicle Eligibility Number: VSP–228
4. Docket No. 97–065
   Nonconforming Vehicles: 1986—1997 Suzuki GSXR 1100 Motorcycles
   Substantially similar U.S.-certified vehicles: 1986—1997 Suzuki GSXR 1100 Motorcycles
   Notice of Petition published at: 62 FR 51178 (September 30, 1997)
   Vehicle Eligibility Number: VSP–227
5. Docket No. 97–068
   Nonconforming Vehicles: 1990–1991 Mercedes Benz 420 SE
   Substantially similar U.S.-certified vehicles: 1990–1991 Mercedes Benz 420 SEL
   Notice of Petition published at: 62 FR 53047 (October 10, 1997)
   Vehicle Eligibility Number: VSP–230
6. Docket No. 97–069
   Nonconforming Vehicles: 1987–1995 BMW K75S Motorcycles
   Substantially similar U.S.-certified vehicles: 1987–1995 BMW K75S Motorcycles
   Notice of Petition published at: 62 FR 53048 (October 10, 1997)
   Vehicle Eligibility Number: VSP–229
7. Docket No. NHTSA 3021
   Nonconforming Vehicles: 1994–1997 BMW R1100 Motorcycles
   Substantially similar U.S.-certified vehicles: 1994–1997 BMW R1100 Motorcycles
   Notice of Petition published at: 62 FR 54896 (October 22, 1997)
   Vehicle Eligibility Number: VSP–231

[FR Doc. 97–33616 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Authorization Agreement for Preauthorized Payment

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Authorization Agreement for Preauthorized Payment."

DATES: Written comments should be received on or before February 23, 1998.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Cash Management Directorate, 401–14th Street, S.W., Washington, D.C. 20227, (202) 874–6540.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Authorization Agreement for Preauthorized Payment.

OMB Number: 1510–0059.

Form Number: SF 5510.

Abstract: This form is used to collect information from remitters (individuals and corporations) to authorize electronic fund transfers from accounts maintained at financial institutions to collect monies for government agencies.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 25,000.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 17, 1997.

Mitchell A. Devine,

Assistant Commissioner.

[FR Doc. 97–33505 Filed 12–23–97; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Exchange Visitor Program; Skills List

AGENCY: United States Information Agency.

ACTION: Amendment to delete the Czech Republic from the Exchange Visitor Skills List. Retroactive release from Skills List obligation for all countries without skills lists.

SUMMARY: The Exchange Visitor Skills List is amended by deleting the fields of specialization for the Czech Republic at the request of the Government of the Czech Republic. Also, in the case of all governments which have requested removal from the skills list, their citizens are retroactively no longer required, on the basis of the skills list, to comply with the two-year home residence requirement of 212(e) of the Immigration and Nationality Act.

DATES: This amendment shall become effective upon publication in the **Federal Register.**

ADDRESSES: Comments and requests for further information should be addressed to: Patricia B. Gribben, Chief, Waiver Review Branch, Exchange Visitor Program Services, USIA, 301 Fourth Street, SW, Suite 700, Washington, DC 20547, telephone (202) 401–9800.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(E), The Secretary of State designated on April 25, 1972, a list of fields of specialized knowledge or skill (referred to as the Exchange Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national or resident of one of those countries and obtained an exchange visitor visa and/or became a participant in an Exchange Visitor Program involving a designated field of specialized knowledge or skill after the effective date of that notice was subject to the two-year home country physical presence requirement of section 212(e) of the Immigration and Nationality Act and 22 CFR 41.65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of the United States Information Agency Authorization Act of August 24, 1982 (Pub. L. 97–241) and Executive Order Nos. 12048 (March 27, 1978) and 12388 (October 14, 1982) the Director, United States Information Agency, on June 12, 1984 further amended the 1972 Exchange Visitor Skills list, as revised in 1978, to increase the designated fields of specialized knowledge of skills. The 1984 amendment gave notice of the addition of China and the deletion of Cambodia, Iran and Viet-Nam from the skills list as well as the indefinite suspension of Afghanistan. In September, 1986 an amendment reflected the deletion of South Africa, addition of Iraq and changes in Group 4 for the People's Republic of China. It also clarifies that the skills list for the People's Republic of China is not applicable to exchange visitors from Taiwan. A February 1987 amendment gave notice of the indefinite suspension of Libya and the addition of two fields to Group (1) of the skills list for the People's Republic of China. Amendments in March and April, 1987, contained date corrections. An amendment in December, 1988 added additional fields to the skills list for the

People's Republic of China and in July, 1993 an amendment removed Spain from the skills list.

A comprehensive revised Skills List was published in the **Federal Register** on January 16, 1997. This list became effective March 17, 1997.

This notice amends FR Vol. 62, Doc. 97–677, January 16, 1997.

Accordingly, the Exchange Visitor Skills List, is further amended by deleting the Czech Republic from said list. It also provides retroactive release from the skills list obligation for citizens of countries which are not listed on the Exchange Visitor Skills List.

Dated: December 18, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–33499 Filed 12–23–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Voice of America Seeks Private Sector Partners, Joint Ventures & Corporate Underwriting

AGENCY: United States Information Agency.

ACTION: Seeking private sector partners, joint ventures & corporate underwriting.

SUMMARY: The Voice of America (VOA) is the United States Government's world-wide broadcasting service and a major component of the U.S. Information Agency's (USIA) International Broadcasting Bureau. VOA has an unparalleled worldwide news gathering service, with more than 25 bureaus around the globe; it produces a wide variety of programming in 52 languages, including English, reaching about 86 million people around the globe; it has a 55-year worldwide reputation for accuracy and excellence, making it far and away the best known and respected American source of news and information in the world; millions of people have learned English by listening to the English teaching and Special English programs of VOA; many of its language services, such as the Spanish and Portuguese Services for Latin America (VOA Latin America), now work with a strong line-up of about 107 local affiliate stations.

VOA is prepared to explore a variety of possible arrangements with the private sector and accept proposals for joint ventures, corporate underwriting, and other relationships designed to further its mission while reducing the expenditure of taxpayer dollars. The Agency is authorized, pursuant to 22 U.S.C. 1437, to encourage and utilize private agencies' participation, including existing American press, publishing, radio, et. al., in carrying out its mission.

Accordingly, the U.S. Information Agency and its International Broadcasting Bureau are seeking private sector partners for its various VOA programs and program services. Agreements with more than one organization could result from this announcement. Written expressions of interest should be submitted to John G. Busch, Office of Contracts, 301 4th St., SW., Room M–22, Washington, DC 20547; telephone no. 202–205–5480; fax no. 202–105–5466; or Internet: JBUSCH@USIA.GOV. All correspondence will be considered.

Dated: December 18, 1997.

John G. Busch,

Senior Contracting Officer, Office of Contracts.

[FR Doc. 97–33568 Filed 12–23–97; 8:45 am]

BILLING CODE 8230–01–M

federal register

Wednesday
December 24, 1997

Part II

Office of Personnel Management

Personnel Demonstration Project; Alternative Personnel Management System for the U.S. Department of Commerce; Notice

OFFICE OF PERSONNEL MANAGEMENT

Personnel Demonstration Project; Alternative Personnel Management System for the U.S. Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: Title VI of the Civil Service Reform Act, now codified in 5 U.S.C. 4703, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in policies and procedures result in improved Federal human resources management. This demonstration project is designed to replicate many of the features of the National Institute of Standards and Technology (NIST) demonstration project created by Congress pursuant to the National Bureau of Standards Authorization Act for Fiscal Year 1987 (Pub. L. 99–574). This project will cover units of four Department of Commerce (DoC) organizations:

(1) Technology Administration
—Office of the Under Secretary
—Office of Technology Policy
(2) Economics and Statistics Administration
—Bureau of Economic Analysis
(3) National Telecommunications and Information Administration
—Institute for Telecommunication Sciences
(4) National Oceanic and Atmospheric Administration
—Units of the Office of Oceanic and Atmospheric Research
—Units of the National Environmental Satellite, Data, and Information Service
—Units of the National Marine Fisheries Service

DATES: This demonstration project will be implemented on March 24, 1998.

FOR FURTHER INFORMATION CONTACT: (1) Department of Commerce: Darlene F. Haywood, U.S. Department of Commerce, 1400 Constitution Avenue, N.W., Room 5004, Washington, DC 20230, 202–482–3620; (2) OPM: Judith B. White, U.S. Office of Personnel Management, 1900 E Street, N.W., Room 7460, Washington, DC 20415, 202–606–1526.

SUPPLEMENTARY INFORMATION:

1. Background

The NIST Demonstration Project was successful and was made permanent by Congress in 1996 (Pub. L. 104–113). Independent surveys have demonstrated that a majority of NIST employees are satisfied with the demonstration project. The Federal Employees Pay Comparability Act of 1990 included many of the interventions tested successfully at NIST. The DoC project is designed to test whether the interventions of the NIST project can be successful in DoC environments with different missions and different organizational hierarchies. Like the NIST project, the DoC Demonstration Project involves simplified position classification, pay for performance, and simplified recruiting and examining processes.

2. Overview

A total of 67 oral and written comments were received in response to the first **Federal Register** Notice of May 2, 1997. These comments were a valuable source of input for the Department of Commerce Demonstration Project. All comments have been considered, and changes to the project plan have been made where deemed appropriate. Changes to the plan involve supervisory pay, performance-based reduction-in-force retention credit, and the extended probationary period for employees in the Scientific and Engineering Career Path. In addition to these changes, several sections of the plan have been clarified and expanded. Some editorial changes and corrections were also made.

3. Summary of Comments

Nine speakers commented on the first **Federal Register** Notice at the five public hearings. A total of 58 letters were received, with one letter bearing 20 signatures. A variety of issues and concerns were raised; however, recurring comments addressed five major topics:

(1) accountability, (2) reduction-in-force (RIF) retention credit, (3) impact of the project on equal employment opportunity (EEO)/Diversity, (4) pay administration, and

(5) performance appraisal. Other issues raised include classification, employee input, project evaluation, and communication. The following summarizes the written and oral comments by topic and provides a response to each.

(1) Accountability

Comments. A majority (about two-thirds) of the comments from individuals and organized groups expressed a high level of concern that the demonstration project gives more authority and responsibility to supervisors and managers. Believing that many supervisors do not properly and fairly execute supervisory responsibilities or utilize the power and tools provided under the current management system, these employees fear a new system that gives supervisors additional authority over their career and pay. Employees specifically questioned whether proper controls would be in place to prevent management abuse in the administration of the performance appraisal and classification systems. Comments focused on the potential for favoritism and unfair treatment of employees in the distribution of ratings and awards. Employees also questioned whether pay pool managers would have the requisite knowledge to make fair decisions about the work of all employees in the pay pool.

Response. The Department will implement a number of measures to ensure management accountability. These will include: (1) employee focus groups, (2) supervisory training, and (3) oversight.

Employee focus groups: Annual project evaluations will utilize employee focus groups as an important source of data in measuring the degree to which project interventions are accomplishing desired objectives.

Training: Supervisors and managers will receive detailed training in the new authorities they are to exercise. Classification training will emphasize the underlying principles of project classification and will instruct supervisors on the application of these principles to classification decisions. Training on the performance appraisal system will cover performance planning, monitoring, feedback, and appraisal. In addition, supervisors will receive training on the automated performance pay increase system and will be required to conduct a simulation of the performance evaluation and rewards system prior to the actual end-of-year performance appraisal. The training will also cover the pay pool manager's responsibilities for reviewing and reconciling ratings and ensuring equity and consistency in performance plans and ratings.

Oversight: The authorities delegated to supervisors under this demonstration project will be subject to three levels of oversight. The Office of Personnel Management will oversee the project under the authority of 5 U.S.C. 4703. The DoC Departmental Personnel Management Board (DPMB) will manage and oversee authority delegated to the Operating Personnel Management Boards (OPMBs) in participating organizations, and OPMBs will monitor authorities delegated to supervisors, withdrawing them when warranted.

(a) Classification: Under authority delegated by the OPMBs, servicing human resources management staff will monitor and review classification decisions made by managers to ensure consistent and uniform application of classification policies and guidelines. When classification actions are found to be inconsistent with established policies, the servicing human resources management specialist will attempt to resolve the inconsistency with the responsible supervisor. If agreement cannot be reached, the issue will be referred to a Classification Review Panel (CRP). The CRP is an ad hoc advisory panel established by authority of the OPMB to review proposed classification actions referred to it by the servicing Human Resources Manager.

(b) Performance Evaluation: OPMBs will oversee the operating unit annual performance appraisal process, from development of plans to individual pay increases and bonuses. OPMBs will also establish operating unit guidelines on performance elements.

(2) Reduction-in-Force (RIF) Retention Credit

About half of all comments received addressed two related concerns with respect to RIF retention credit: loss of current performance-based credit and the percentage of employees eligible for credit under the project.

(a) Loss of current credit

Comments. Employees thought it unfair that conversion to the demonstration project would result in the loss of performance-based RIF credit acquired under the current system.

Response. The demonstration project will introduce a new "pay-for-performance" personnel system, and it is intended that all employees enter the system on an equal basis, i.e, on a "level playing field." Allowing some employees to bring forward performance-based RIF credit gained under the current system would give those employees an unfair advantage.

(b) Percentage of Employees Eligible for Credit

Comments. A number of employees objected to the provision that would award performance-based credit for only those employees who rank in the top ten percent of their career paths.

Response. The objective of this feature is to reward performance that is truly outstanding. Consequently, the group of employees receiving this credit must, by definition, be limited. However, in order to more closely parallel agency historical experience, the project plan has been revised to grant performance-based RIF retention credit to employees who rank in the top 20 percent of their career path within a pay pool, rather than the top 10 percent.

(3) Impact of the Project on EEO and Diversity

Comments. Several employees expressed concern that the demonstration project would not support existing EEO and Diversity goals. Specific questions were raised about the impact of the project on the hiring of women and minorities and whether these groups would receive an equitable share of promotions, pay increases, and bonuses.

Response. EEO and Diversity goals of the Department will not change under the demonstration project. On an annual basis, the Department will continue to submit an annual report and update of affirmative employment to the Equal Employment Opportunity Commission. In addition, Diversity Plans and Diversity Councils now in place will continue to be required for organizations participating in the demonstration project. Also, Senior Executive Service managers will continue to be rated on a Diversity critical element. The Project Evaluation Model will include criteria that will track hiring, award, promotion, and retention data in order to closely monitor the impact of the project on workforce diversity. A variety of data sources will be used. These include records in servicing human resources management offices (including records of recruitment sources) and records of EEO complaints.

(4) Pay Administration

Two major compensation issues were raised. Several employees objected to the manner in which they would be compensated for time credited toward their next within-grade increase. In addition, some employees questioned the appropriateness of the supervisory pay differential.

(a) Within-Grade Increase (WIGI) Payout

Comments. Employees objected to the one-time lump sum payment for time credited toward the next within-grade increase on the grounds that it would result in a negative impact on their salary and retirement contributions and earnings. In lieu of the lump sum, some suggested that the WIGI payout be processed as a base pay increase. Others felt that they should be given a choice between a one-time payment and a permanent salary increase.

Response. Organizations participating in the demonstration project will be required to maintain compensation costs at the levels they would have reached under the current system. A decision to grant permanent salary increases for time credited toward within-grade increases would result in immediate cost escalation prior to implementation that would distort base cost calculations. Such a decision would be counter to Departmental cost containment goals. Moreover, under the demonstration project, the salaries of good performers will soon overtake salaries they would have reached with WIGIs through the following provisions of the project plan:

(1) Annual Performance Pay Increases: The new pay system provides an opportunity for a performance pay increase each year, regardless of an employee's position in the band. This is in contrast to the waiting periods of one to three years for a WIGI in the General Schedule (GS) system. The potential size of a performance pay increase in the new system is significantly higher than the size of a GS within-grade increase.

(2) Removal of Grade Barriers: Broad banding removes the pay barriers between the GS grades that are placed in the same band. For example, because grades GS–7 and GS–8 will be placed in the same band in the Support Career Path, employees who previously reached the top of the GS–7 grade will now have access to the GS–8 pay range.

(3) Potential for Higher Pay Increases Upon Promotion: When an employee is promoted to a higher band, the employee's salary may be set at any point in the range of the higher band as long as the new salary represents an increase of at least 6 percent.

(4) Supervisory Performance Pay: Through pay for performance, supervisors have salary potential 6 percent higher than the normal ceiling of a band.

(b) Supervisory Performance Pay

Comments. Several employees questioned the appropriateness of the immediate salary increase that supervisors would receive under the demonstration project. Some stated that supervisors would receive additional compensation because they would convert to a higher pay band on the basis of their supervisory duties, and therefore, an automatic pay increase would result in double compensation for supervision. Some asserted that this policy conflicts with the basic "pay-for-performance" concept and suggested that any pay incentive awarded supervisors should be given after the

first performance appraisal cycle, if earned through performance.

Response. The proposed project plan provided for an automatic pay differential for supervisors in the Scientific and Engineering (ZP) Career Path only. The amount of this type of differential was to be fixed at 3 percent or 6 percent, for first-level and second-level (and higher) supervisors, respectively. However, as a result of comments received, this feature of the system has been eliminated. ZP supervisors will not be given an immediate salary increase upon conversion to the demonstration project. Supervisors in all career paths will be eligible for salaries up to 6 percent higher than the maximum rates of their pay bands, and there will be no differentiation in the amount of the increase based on supervisory level. Any employee who meets the demonstration project definition of "supervisor" will be eligible for the 6 percent increase, which may be reached through performance pay increases granted through the regular performance appraisal process (see Section III(D)(4) *Supervisory Performance Pay*).

1. (5) Performance Appraisal

About half of all comments received addressed the performance appraisal process. Issues raised focused on three major areas: ranking versus teamwork, linking the annual comparability increase to performance, and the requirement for all performance elements to be critical.

(a) Impact of Ranking on Teamwork

Comments. Several employees commented that ranking employees by performance score will pit employees against each other, create a competitive work environment, and destroy teamwork.

Response. Under the demonstration project, employees will be rated against the criteria in their performance plans and ranked accordingly. There will be no direct comparison of employees' performance. It is expected that more competitive salaries that are directly tied to performance will improve both individual and organizational performance. Furthermore, the demonstration project performance appraisal system is flexible enough to reward those aspects of work that require cooperation and teamwork. For example, in units requiring high levels of cooperation and teamwork to accomplish organizational goals, supervisors may include contributions to the team's accomplishments in performance plans and rate employees accordingly.

(b) Linking the Annual Comparability Increase to Performance

Comments. Several employees expressed concern about the proposal to allow only those employees with a current annual performance rating of *Eligible* to receive the annual general comparability increase. They consider the annual increase a cost-of-living increase, which should not be tied to performance.

Response. The annual General Schedule (GS) pay adjustment is authorized under 5 U.S.C. 5303. It is based on the cost of labor, not the cost of living. GS pay adjustments are linked to changes in the Employment Cost Index (ECI), which measures the overall rate of change in employers' compensation costs in the private and public sector, excluding the Federal Government. The demonstration project is based on the principle of pay for performance; therefore, all pay increases, including the annual comparability increase, are tied to performance.

(c) Use of All Critical Elements in Performance Plans

Comments. Some employees expressed concern about the requirement for all elements in a performance plan to be critical elements. In their opinion, this will make it easier for supervisors to withhold pay increases or bonuses, or even initiate removal, when one element is rated *Unsatisfactory*.

Response. The requirement for all elements in a performance plan to be critical is not a departure from the current performance appraisal system. The demonstration project will not require that noncritical elements used in the current system be changed to critical elements under the project. The project simply eliminates noncritical elements. Also, while noncritical elements may now be included in an employee's performance plan, they have very little weight. Under the current system, unacceptable performance in one critical element results in a mandatory rating of *Unacceptable*. Likewise, under the demonstration project, unsuccessful performance on one element will result in a rating of *Unsatisfactory*.

(6) Other Comments

Employees addressed a number of other issues including classification, employee input to the project, project evaluation, and communication.

(a) Classification

Comments. One employee expressed concern that problems with the current GS classification standards would carry over into the demonstration project. Some questioned the basis for grouping occupations into four career paths, and a few employees questioned the career path decisions for their occupations. Others expressed dissatisfaction with what they consider the "arbitrary" structure of the pay bands, believing that employees who convert to the top of their bands will have minimal opportunity for pay increases.

Response. (1) Classification Standards: Under the demonstration project, OPM classification standards will not be used. They will be replaced with more streamlined classification standards that have been developed to cover the work in the participating organizations. Each pay band in a career path will have a narrative standard that uses two factors:

(1) Duties and Responsibilities and (2) Knowledge, Skills, and Abilities (KSAs). At each successively higher band, the standards describe a higher level of work and a higher level of KSAs required to successfully perform the work. These standards will simplify the classification process, make it more understandable to managers and employees, and reduce the time required to make classification decisions.

(2) Career Paths: The four career paths are intended to replace the GS method of grouping occupations. Under the current system, GS occupations are placed in occupational groups according to general subject matter. Each group includes both two-grade and one-grade interval occupations, with each type receiving different treatment for classification and other purposes. By contrast, career paths group occupations that have parallel career patterns and can be similarly treated for staffing, classification, pay, and other personnel purposes.

(3) Pay Bands: Pay bands are designed to parallel the typical career patterns for occupations in a career path. For example, in the Scientific and Engineering (ZP) Career Path, professional technical employees begin their careers as trainees (Band I), move through a developmental stage that builds on professional knowledge gained through undergraduate work (Band II), proceed to independent, full performance research or operational work (Band III), acquire program responsibility (Band IV), and achieve broad recognition as an authority in the field (Band V).

(4) Potential for Pay Increases: Within each pay band, the maximum potential for a performance pay increase is highest for employees in interval one and lowest for employees in interval three. This arrangement is intended to slow salary increases as employees move through a band, duplicating the effect of the longer waiting periods for GS within-grade increases as GS employees move through the steps of a grade.

Comments. Some employees questioned whether their occupations were assigned to the appropriate career paths.

Response. The four career paths used in the Department of Commerce Demonstration Project as well as placement of occupations in those paths replicate the NIST system. Career path determinations for occupations not covered by the NIST project are based on the definitions of career paths. However, after the first year of operation, questions concerning changes in career path may be considered.

(b) Employee Input

Comment. A few employees felt that the project plan had not received any input from employees and that this could adversely impact relationships between management and employees.

Response. Numerous briefings were provided to employees and union representatives prior to the public hearings. Employees were given an opportunity to provide oral comments at five public hearings held between June 9 and June 26, 1997. These hearings were held in locations across the country that were accessible to most employees. In addition, the first **Federal Register** Notice, published on May 2, 1997, informed employees that written comments would be accepted through July 10, 1997. As a result of comments received from employees during the public comment period, several changes have been made to the project plan.

(c) Project Evaluation

Comments. Several employees commented on the design of the Project Evaluation Model. Specifically, it was suggested that employee morale be measured since a direct link exists between morale and organizational performance, that employee opinions be one of the data sources for evaluation of the project, and that EEO complaints and grievance patterns be incorporated into the evaluations.

Response. The Project Evaluation Model will include employee surveys as a source of data. The surveys will include criteria to measure organizational climate and general concerns. In addition, as part of the evaluation process, data on EEO complaints and grievances will be monitored.

(d) Communication

Comment. One employee commented that the level of communication to employees about the project had been inadequate.

Response. All employees were invited to attend general briefings on the proposed demonstration project in March, April, and early May of this year. At these briefings, employees received handouts describing the key features of the project. The publication of the first **Federal Register** Notice was announced in a general bulletin issued to all employees during the week of May 5, 1997. In that announcement, employees were informed that the **Federal Register** Notice was immediately available on the Office of Personnel Management Internet Home Page. Shortly thereafter, the publication of the **Federal Register** Notice was announced on the Department of Commerce Internet Home Page, and numerous copies were distributed to all servicing human resources offices for dissemination to employees. An article on the demonstration project appeared in the May/June 1997 issue of the Department's *Commerce People* magazine. In addition, a video which provides an overview of the project was developed and made available to employees, and several follow-up briefings were conducted. To ensure that employees are kept informed on the project, the Department will issue a Demonstration Project Newsletter periodically.

4. Demonstration Project System Changes

The following directs readers to the substantive changes and clarifications to the project plan. The page numbers below refer to the pages of the proposed plan, published in the **Federal Register** on May 2, 1997.

(1) Page 24256, 24258, and 24260: The Office of the Chief Financial Officer/Assistant Secretary for Administration and the Office of the General Counsel have been deleted, as those organizations will not participate in the project.

(2) Page 24259: Two laboratories of the Office of Oceanic and Atmospheric Research (OAR) that were inadvertently listed have been deleted since they will not participate in the demonstration project. These are the Geophysical Fluid Dynamics Laboratory, in Princeton, New Jersey, and the Pacific Marine Environmental Laboratory, in Seattle, Washington. In addition, all of the locations for each of the participating laboratories have been listed.

(3) Page 24262: Table 3 has been changed to correct an error introduced by the printing process. Specifically the table has been corrected to show no GS–15 positions in the GS–1340 Meteorology Series and a total of 235 positions in this occupation.

(4) Page 24262: Mountain Administrative Support Center (MASC) has been deleted from Table 4, since MASC will not participate in the demonstration project.

(5) Page 24263: The definitions of the four career paths have been expanded for clarification.

(6) Page 24265: Paragraph B2(a) has been revised to restrict direct examination and the associated requirement for Applicant Supply Files to occupations for which there is documented evidence that skills are in short supply.

(7) The requirement for all employees in the Scientific and Engineering (ZP) Career Path to serve a three-year probationary period has been modified. The three-year probationary period will be applicable to only those ZP employees who are assigned to research and development positions as identified by the functional code assigned in conjunction with the classification process. All other ZP employees will serve a one-year probationary period. (For further explanation, see Section III(B)(10) *Probationary Period.*)

(8) Page 24266: The provisions for awarding performance-based RIF retention credit have been changed. An employee with an overall performance score in the top 20 percent (as opposed to the top 10 percent) of scores within a career path in a pay pool will be credited with 10 additional years of service for retention purposes.

(9) Page 24267: The demonstration project definition of "supervisor" has been clarified and expanded. Minimum criteria for classification of a position as "supervisory" have been included.

(10) Page 24267: The section "Locality Pay" has been clarified. Specifically, the sentence dealing with special rates and locality rates has been rewritten to indicate that for bands affected by special rates, the maximum rate will be the higher of the special rate *or* the locality rate, rather than the special rate *and* the locality rate.

(11) Page 24267: The policy on supervisory pay has been revised. Supervisors in the Scientific and Engineering (ZP) Career Path will not be eligible for immediate salary increases upon conversion to the demonstration project. Supervisors in all career paths will be eligible for salaries up to 6 percent higher than the maximum rates of their pay bands, and there will be no differentiation in the amount of the increase based on supervisory level.

Any employee who meets the demonstration project definition of "supervisor" will be eligible for the maximum increase of 6 percent, which may be reached through performance pay increases granted through the regular performance appraisal process.

(12) Page 24268: In the section entitled "Pay Setting Upon Movement of an Employee to a Different Pay Area," the formula for determining the pay rate in the new area was printed incorrectly and has been corrected.

(13) Page 24274: The Project Evaluation Model has been revised to include the objective of "Support for EEO and Diversity goals."

(14) Page 24276: In the "Project Management" section, the role of the DoC Acting Chief Financial Officer/Assistant Secretary for Administration (now the Director of the National Institute of Standards and Technology) as chairman has been clarified to show that the role is specific to the individual, who will serve as Chair of the DPMB through the first cycle of the project's operation. After the first cycle, chairmanship of the Board will be assumed by one of the members of the Board.

Janice R. Lachance,
Director.

Table of Contents

I. Executive Summary
II. Introduction
A. Purpose
B. Problems with the Present System
C. Changes Required/Expected Benefits
D. Participating Organizations
E. Participating Employees
F. Labor Participation
G. Project Design/Methodology
III. Personnel System Changes
A. Position Classification
B. Staffing
C. Reduction-in-Force
D. Pay Administration
E. Performance Evaluation and Rewards
IV. Conversion or Movement from a Project Position to a General Schedule Position
A. Grade-Setting Provisions
B. Pay-Setting Provisions
V. Budget Discipline
A. Reprogramming Costs
B. Base Cost Assessment
C. Funding Pools for Performance Pay Increases and Bonuses
D. Budget Monitoring
VI. Project Evaluation
VII. Project Management
VIII. Training
A. Manager and Supervisor Training
B. Employee Training
C. Support Staff Training
IX. Experimentation and Revision
X. Authorities and Waiver of Laws and Regulations Required

I. Executive Summary

This project was designed by the Department of Commerce with participation and review by the Office of Personnel Management (OPM). The demonstration project will pursue several key objectives of the National Performance Review: to simplify the current classification system for greater flexibility in classifying work and paying employees; to establish a performance management and rewards system for improving individual and organizational performance; and to improve recruiting and examining to attract highly qualified candidates and get new hires aboard faster. The duration of the project will be 5 years, except that the project may be extended by OPM if further testing and evaluation are warranted.

The proposed project will test whether the interventions of the NIST project can be successful in other environments. Other reasons for testing the NIST interventions in the Department are: (1) all of the diverse operating units in the proposed coverage are within the same Department, the U.S. Department of Commerce, which is also the parent agency of NIST; (2) several of the operating units in the proposed coverage have served for eight years as comparison sites for the NIST project; and (3) during the implementation and operation of the NIST project, DoC and NIST staff worked closely with the U.S. Department of Agriculture's National Finance Center, which provides personnel and payroll computing and database services to all of DoC, including NIST and the units proposed for the new project.

II. Introduction

A. Purpose

The purpose of the proposed project is to strengthen the contribution of human resources management in helping to achieve the missions of specific operating units of the Department of Commerce. The project conducted by NIST successfully demonstrated that certain innovative changes could improve human resources management in the NIST environment. The proposed project will test whether these same innovations will produce similarly successful results in other DoC environments.

B. Problems With the Present System

The Department of Commerce encourages, serves, and promotes the Nation's international trade, economic growth, and technological advancement. Within this framework, and in the interest of promoting the national interest through the encouragement of the competitive free enterprise system, the Department provides a wide variety of programs, some of which are included in the proposed coverage of the project.

The current system has three major impediments to a manager's ability to effectively manage human resources and shape the workforce: (1) Hiring restrictions, (2) an overly complex job classification system, and (3) poor tools for rewarding and motivating employees. These impediments, embedded in a system that does not assist managers in removing poor performers, build stagnation in the workforce and waste valuable time.

C. Changes Required/Expected Benefits

The innovations of the project and their objectives are:

1. Classification

Career paths will replace occupational groups, broad bands will replace grades, and Departmental broad-band standards will replace OPM classification standards. The classification system will be automated and classification authority will be delegated to line managers.

These changes are intended to simplify and speed up the classification process, make the process more serviceable and understandable, improve the effectiveness of classification decision-making and accountability, and facilitate pay for performance. Broad bands provide larger classification targets that can be defined by shorter, simpler, and more understandable classification standards. This simpler system will be easier to automate, will require fewer resources to operate, and will facilitate delegation to line managers.

By providing broader and more flexible pay ranges for setting entry pay, broad banding will provide hiring officials with an important tool for attracting high-quality candidates and thus contribute to the objective of increasing the quality of new hires.

By providing more flexible pay setting based on performance, broad banding will give managers the ability to increase the pay of good performers to higher and more competitive levels, thus improving the retention of good performers. At the same time, the potential for higher pay increases for good performance, supported by the broader pay ranges of broad banding, will contribute to the objective of improving organizational and individual performance.

2. Staffing

Staffing methods will include two that were implemented in the NIST Demonstration Project and which are now available to all agencies through examining authority delegated by OPM. For the sake of simplification and to parallel the NIST Demonstration Project, they are retained with the same titles under the Department of Commerce Demonstration Project: Direct Examination and Agency-Based Staffing. In addition, there will be placements under Merit Assignment and various noncompetitive appointing authorities. OPM registers will not be used, but positions in occupations covered by the *Luevano* Consent Decree (Administrative Careers with America or successor programs) will be filled using OPM guidance. Other supplemental staffing tools will include such elements as paid advertising, flexible entry salaries, probation, local authority for recruiting and retention payments, and more flexible pay increases associated with promotion.

These changes are intended to attract high-quality candidates, speed up the recruiting and examining process, increase the effectiveness of the probationary review process, and increase the retention of good performers.

Agency-based staffing, supported by paid advertising, will allow hiring officials to focus on more relevant recruiting sources. Direct examination will allow managers to hire individuals with shortage skills as they find them, get them on board faster, and avoid the loss of good candidates who may grow impatient with a long hiring process, thus contributing to the objectives of increased quality of new hires and better fit between position requirements and candidate skills.

The three-year probationary period will help ensure that scientists and engineers who are retained beyond probation are capable of carrying out the full cycle of research and development (R&D) work, thus contributing to the objectives of high-quality hires and a high-performing workforce. (See Section III(B)(10) *Probationary Period.*) Local authority for recruiting and retention payments will provide extra incentives for hiring and retaining individuals with shortage skills, thus contributing to the objectives of increasing the quality of new hires, improving the fit between position requirements and individual qualifications, and improving the retention of good performers.

3. Pay

The most important change in pay administration is the introduction of pay for performance, which will govern individual pay progression within bands. Funds currently applied to within-grade increases, quality step increases, and promotions from one grade to a higher grade when both grades are now in the same band, will be used instead to grant performance-based pay increases within bands. The amount of the basic pay and locality pay increases approved by Congress and the President, however, will continue to be applied to pay schedules and to the salaries of employees with a performance rating of *Eligible*. Other pay tools are supervisory performance pay, flexible pay setting for new hires, and more flexible pay setting upon promotion.

Pay for performance promotes fairness through the peer ranking process and provides a motivational tool and a retention tool. As a motivational tool, the promise of higher pay increases for good performance encourages high achievement. As a retention tool, pay for performance allows the organization to quickly move the salaries of good performers to levels that are more competitive in the labor market.

Supervisory performance pay provides an incentive for supervisors, addressing the objective of improved individual and organizational performance. Supervisory performance pay also addresses the objective of improving retention by raising the pay of high-performing supervisors to more competitive levels.

Flexible pay setting for new hires is a recruiting tool that gives hiring officials greater flexibility to offer more competitive salaries to high-quality candidates, addressing the objective of improving the quality of new hires. The greater flexibility in setting pay upon promotion gives managers another retention tool to help retain top performers.

4. Performance Appraisal

The new system replaces the current five-level rating system with a two-level rating system, using *Unsatisfactory* and *Eligible* labels. (*Unsatisfactory* is equivalent to *Unacceptable*, as used in Part 430 of Title 5, Code of Federal Regulations.) The most important feature of the proposed performance appraisal system is that it is based on the application of a weighted 100-point scoring system linked to pay for performance. As in the current system, each employee has an individual performance plan composed of several performance elements (all of which are critical elements) that are measured with the 100-point scoring system in conjunction with the application of benchmark performance standards. Based on the resulting total scores, supervisors rank employees by performance within peer groups and grant performance pay increases according to the ranking. Highly ranked employees within a peer group receive relatively high pay increases and lower ranked employees receive relatively lower pay increases. Bonuses are granted at the discretion of the supervisor following the performance appraisal process.

The performance appraisal process is intended to (1) promote good performance; (2) encourage a continuing dialogue between supervisors and employees on organizational objectives, supervisory expectations, employee performance, employee needs for assistance and guidance, and employee development; and (3) provide a basis for performance-related decisions in employee development, pay, rewards, assignment, promotion, and retention. The system will more effectively communicate to employees how they are performing in relation to their peers, the rewards of good performance, and the consequences of poor performance.

Performance-based pay increases give an operating unit the ability to raise the pay of good performers more rapidly, thus improving retention of good performers. The potential for higher pay increases for good performance will encourage achievement and promote the objective of improved individual and organizational performance.

5. Performance Bonuses

In accordance with 5 CFR 451, at the end of the annual performance period, Rating Officials, with the approval of Pay Pool Managers, will have the opportunity to reward employee performance with bonuses up to $10,000. Bonuses address two objectives. First, rewarding achievement will make high achievers more likely to remain, thus improving retention of the best performers. Second, the potential for bonuses for achievement will encourage improved individual performance.

6. More Efficient Systems

The Department will improve the efficiency of human resource systems by streamlining procedures, reducing paperwork, and automating processes wherever possible.

7. Line Management Authority

Under the demonstration project, greater authority and accountability will be delegated to line managers. This delegation is intended to improve the effectiveness of human resources management by strengthening the role of line managers as the human resources managers of their units. The project will

be managed by the Departmental Personnel Management Board (DPMB). Through the first cycle, the Board will be chaired by the Director of the National Institute of Standards and Technology. Following that, one of the Board members will assume the role of Chairman. Each major operating unit will have its own Operating Personnel Management Board (OPMB) to manage and oversee local operations. (See the section on *Project Management.*)

D. Participating Organizations

The Department of Commerce encourages, serves, and promotes the Nation's international trade, economic growth, and technological advancement. Within this framework, and in the interest of promoting the national interest through the encouragement of the competitive free enterprise system, the Department provides a wide variety of programs, some of which are included in the proposed coverage. The following organizations will participate in the project:

Technology Administration (TA)

The Technology Administration, which oversees NIST and the National Technical Information Service (NTIS), was established by Congress in 1988 as the premier technology agency working with U.S. industry in improving competitiveness and increasing the impact of technology on economic growth. The TA coverage would include only the Office of the Under Secretary for Technology Administration and the Office of Technology Policy. This coverage would be an opportunity to apply broad banding principles to a policy, planning, and development environment dealing with issues vital to the future of the U.S. economy as it is affected by technology. TA offices in the proposed coverage are located at the DoC headquarters building in Washington, D.C.

The key occupations are: General Administration, Management Analyst, and General Business Specialist.

Bureau of Economic Analysis (BEA), Economics and Statistics Administration

BEA is responsible for providing a current picture of the U.S. economy through the preparation, development, and interpretation of the national income and product accounts showing the gross domestic product, business and other components of the national wealth accounts, industrial market interrelationships traced by the input-output accounts, and other accounts showing such economic indicators as personal income, foreign investment, and balance of payments. The bureau also develops surveys and other tools for analyzing and forecasting economic developments. This coverage provides a test of the NIST system in an environment that uses economists and accountants as analysts, reporters, and forecasters. BEA is located at 1441 L Street, N.W., Washington, D.C.

The economic analysis work of the organization is reflected in the following key occupations: Economist, Accountant, Financial Administrator, Computer Specialist, Statistician, and Statistical Assistant.

Institute for Telecommunication Sciences (ITS), National Telecommunications and Information Administration

ITS is a major component of the National Telecommunications and Information Administration (NTIA). ITS is the principal Federal telecommunications research and engineering laboratory. The Institute conducts telecommunications research in support of NTIA's responsibilities in advising the President on telecommunications and information policy; developing U.S. plans and policies in international forums; and developing policy for Federal use of the radio frequency spectrum. This application will test how well the NIST interventions work in a research and development (R&D) environment quite different from the NIST environment. ITS is located in Boulder, Colorado.

The ITS R&D work is carried out primarily by Electronics Engineers, with help from Mathematicians.

The remaining units are subunits of the National Oceanic and Atmospheric Administration (NOAA):

Office of Oceanic and Atmospheric Research (OAR)

OAR is the primary research and development unit of NOAA. OAR provides the science and technology to support improvements in NOAA services and address current and future problems. OAR conducts research programs in coastal, marine, atmospheric, and space sciences through its own laboratories and offices, as well as through networks of university-based programs. The work consists of research, modeling, and environmental observations relating to weather, climate, and environmental resources. The laboratory component of OAR is the Environmental Research Laboratories (ERL). ERL includes research laboratories in space environment, aeronomy, environmental technology, weather forecast systems, climate monitoring and diagnostics, severe storms, air resources, oceanography, and geophysical fluid dynamics. This diversity provides a rich new R&D environment for the testing of broad banding principles. OAR and ERL headquarters are located in Silver Spring, Maryland. All ERL laboratories will be included in the project, except the Great Lakes Environmental Research Laboratory (Ann Arbor, MI), the Geophysical Fluid Dynamics Laboratory (Princeton, NJ), and the Pacific Marine Environmental Laboratory (Seattle, WA). The project laboratories are:

Aeronomy Laboratory—Boulder, CO
Atlantic Oceanographic and Meteorology Laboratory—Miami, FL; Silver Spring, MD; San Diego, CA; Norfolk, VA; and Seattle, WA.
Air Resources Laboratory—Silver Spring, MD; Boulder, CO; Research Triangle Park, NC; Oak Ridge, TN; Las Vegas, NV; and Idaho Falls, ID
Climate Diagnostic Center—Boulder, CO
Climate Monitoring and Diagnostics Laboratory—Boulder, CO; Hilo, HI; Barrow, AK; Pago Pago, American Samoa; South Pole, Antarctica
Environmental Technology Laboratory—Boulder, CO Forecast Systems Laboratory—Boulder, CO National Severe Storms Laboratory—Norman, OK Space Environmental Laboratory—Boulder, CO

The dominant occupation within OAR is Meteorologist. Other key occupations are Physical Scientist, Physicist, Electronics Engineer, Computer Specialist, Electronics Technician, Physical Science Technician, and Mathematician.

National Environmental Satellite, Data, and Information Service (NESDIS)

NESDIS operates NOAA's satellites and ground facilities; collects, processes, and distributes remotely sensed data; conducts studies, plans new systems, and carries out the engineering required to develop and implement new or modified satellite systems; carries out research and development on satellite products and services; provides ocean data management and services to researchers and other users; and acquires, stores, and disseminates worldwide data related to solid earth geophysics, solar-terrestrial physics, and marine geology and geophysics. NESDIS provides both a technical operations environment and a new R&D environment for testing the NIST interventions. NESDIS headquarters and most of its offices are located in Suitland, Maryland. Ground stations are located at Wallops Island, Virginia, and Fairbanks, Alaska. The National Climatic Data Center is located in Asheville, North Carolina. All of NESDIS will be included in the project, except for the Wallops Island ground station.

The key occupations within NESDIS are Physical Scientist, Meteorologist, Computer Specialist, Oceanographer, Physical Science Technician, Meteorological Technician, Electronics Engineer, Engineering Technician, Geophysicist, and Mathematician.

National Marine Fisheries Service (NMFS)

The mission of the National Marine Fisheries Service is the stewardship of living marine resources for the benefit of the Nation through their science-based conservation and management and promotion of the health of their environment. NMFS supports domestic and international conservation and management of living marine resources. The goals of NMFS are to rebuild and maintain sustainable fisheries, to promote the recovery of protected species, and to protect and maintain the health of coastal marine habitats. NMFS brings in a variety of work in the biological sciences never before addressed by broad banding principles.

In addition to the headquarters office in Silver Spring, Maryland, there are five regions, each of which consists of a Regional Office and a Fisheries Science Center. The regional offices are located in the following areas: Northeast (Gloucester, Massachusetts); Southeast (St. Petersburg, Florida); Northwest (Seattle, Washington); Southwest (Long Beach, California); and Alaska (Juneau). All the above units of NMFS will be included in the project except for the following: in Headquarters, the Office of Enforcement and the Inspection Services Division; and in the regions, the Fisheries Science Centers located in Woods Hole, Massachusetts; Miami, Florida; Seattle, Washington; La Jolla, California; and the Alaska Center located in Seattle, Washington.

NMFS is supported mainly by occupations in the biological sciences: Fish Biologist, Biologist, Microbiologist, and Biology Technician. Other important occupations are Chemist, Oceanographer, Wildlife Biologist, Computer Specialist, and General Business Specialist.

E. Participating Employees

The project covers all positions that would otherwise be in the General Schedule (GS) system. Wage Grade positions are not included.

Table 1 shows the total number of employees in each operating unit to be covered by the project. Table 2 lists the occupational series in which current positions are classified and shows the number of employees in each series. The OPM occupational series will be retained. The series are listed under the career path in which they will be placed. (See *Position Classification* for definitions of the four career paths.) Table 3 shows the number of covered employees in each series, by General Schedule grade.

TABLE 1.—NUMBER OF COVERED EMPLOYEES BY UNIT

Operating unit		Number
TA		35
BEA, ESA		414
ITS, NTIA		82
NOAA		2114
OAR	(640)	
NESDIS	(736)	
NMFS	(738)	
Total		2645

TABLE 2.—OCCUPATIONAL SERIES, BY CAREER PATH

Series	Title	Number
	Scientific and Engineering (ZP) Career Path	
101	Social Scientist	2
110	Economist	247
184	Sociologist*	1
190	Anthropologist*	1
334	Computer Specialist	267
401	Biologist	51
403	Microbiologist	4
408	Ecologist*	4
480	Fish Administrator*	43
482	Fish Biologist*	182
486	Wildlife Biologist*	2
499	Biological Science Student	1
701	Veterinary Medical Officer*	1
801	General Engineer	3
810	Civil Engineer	8
830	Mechanical Engineer	3
850	Electrical Engineer	1
854	Computer Engineer	2
855	Electronics Engineer	96
861	Aerospace Engineer*	1
899	Engineering Trainee	1
1301	Physical Scientist	198
1310	Physicist	71
1313	Geophysicist*	12
1315	Hydrologist*	1

TABLE 2.—OCCUPATIONAL SERIES, BY CAREER PATH—Continued

Series	Title	Number
1320	Chemist	23
1330	Astronomer	8
1340	Meteorologist*	226
1350	Geologist	2
1360	Oceanographer	77
1372	Geodesist	3
1382	Food Technologist*	2
1399	Physical Science Student	1
1515	Operations Research Analyst	1
1520	Mathematician	24
1529	Mathematical Statistician	1
1530	Statistician	13
1550	Computer Scientist	7
ZP	Total	1591
	Scientific and Engineering Technician (ZT) Career Path	
332	Computer Operator	3
392	Radio Frequency Technician	2
404	Biology Technician	9
802	Engineering Technician	28
856	Electronics Technician	22
1311	Physical Science Technician	79
1341	Meteorological Technician*	41
1531	Statistical Clerk/Assistant*	21
ZT	Total	205
	Administrative (ZA) Career Path	
130	Foreign Affairs Specialist*	11
131	International Relations Specialist*	7
260	Equal Employment Specialist	4
301	Miscellaneous Administration	77
340	Program Manager	2
341	Administrative Officer	22
342	Support Services Specialist*	3
343	Management Analyst	76
346	Logistics Management Specialist*	2
391	Telecommunications Specialist	1
501	Financial Administrator	10
510	Accountant	46
560	Budget Analyst	28
610	Nurse*	1
696	Consumer Safety Specialist*	1
930	Appeals Officer*	2
1001	General Arts and Information	3
1035	Public Affairs Specialist	6
1082	Writer/Editor	14
1083	Technical Writer/Editor	4
1084	Visual Information Specialist	7
1101	General Business Specialist	72
1140	Trade Specialist	8
1165	Loan Specialist*	16
1410	Librarian	13
1412	Technical Information Specialist	5
1654	Printing Manager	1
1670	Equipment Specialist	1
1712	Training Instructor*	1
1750	Instructional Systems Specialist*	1
ZA	Total	445
	Support (ZS) Career Path	
29	Environmental Protection Assistant*	1
303	Miscellaneous Clerk/Assistant	72
305	Mail and File Clerk	3
309	Correspondence Clerk/Assistant	1
318	Secretary	190
322	Clerk-Typist	2
326	Office Automation Clerk/Assistant	40
335	Computer Clerk/Assistant	43

TABLE 2.—OCCUPATIONAL SERIES, BY CAREER PATH—Continued

Series	Title	Number
344	Management Clerk/Assistant	5
399	Student Trainee	8
525	Accounting Technician	8
561	Budget Clerk/Assistant	3
963	Legal Instruments Examiner*	9
1087	Editorial Clerk/Assistant	1
1101	Trade Information/Financial Assistant*	7
1105	Purchasing Agent	4
1411	Library Technician	4
2005	Supply Clerk/Assistant	2
2102	Transportation Clerk/Assistant	1
ZS	Total	404

*These occupations were not tested by the NIST project.

BILLING CODE 6325-01-P

TABLE 3: COVERED EMPLOYEES, BY SERIES AND GRADE

Series	Grade															Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
029						1										1
101											1	1				2
110					1		15		17		27	80	45	37	25	247
130												1	5	4	1	11
131													2	4	1	7
184														1		1
190															1	1
260											1		3			4
301							2		11	1	17	11	8	13	14	77
303	4		3	1	14	12	28	7	2							72
305	1	1			1											3
309						1										1
318					17	69	59	31	13	1						190
322			1	1												2
326	2	3	4	7	17	5	2									40
332					1	1	1									3
334					1		7		17		46	87	72	33	4	267
335			2	3	6	8	11	5	4	3	1					43
340											1		1			2
341							3		2		5	8	3	1		22
342									1		1	1				3
343							7		7		10	15	20	12	5	76
344					1		1	1	2							5
346											2					2

Series	Grade															Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
391											1					1
392							1			1						2
399	4			3	1											8
401					1		2		7		6	18	11	3	3	51
403							2					1			1	4
404				3	6											9
408												1	1	1	1	4
480													8	20	15	43
482							2		11		29	69	50	18	3	182
486											1	1				2
499					1											1
501							1		1			7	1			10
510									3		8	19	8	7	1	46
525					3	4	1									8
560									6		7	3	7	3	2	28
561					1	1			1							3
610									1							1
696											1					1
701													1			1
801														1	2	3
802		2		1			1				1	23				28
810											1	5	2			8
830									1		1		1			3
850															1	1
854											1		1			2
855							1		4		10	17	34	16	14	96
856					1		1		2	3	7	8				22
861														1		1
899					1											1
930												1	1			2
963						4	4	1								9

Series	Grade															Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
1001									1			1	1			3
1035							1					2	3			6
1082									2		9	3				14
1083									1		1	1		1		4
1084							1		1		2	3				7
1087							1									1
1101						2	5		18		21	15	9	5	4	79
1105							3	1								4
1140												2	5		1	8
1165							1				10	2	2	1		16
1301							1		4		10	28	61	56	38	198
1310											1	10	16	23	21	71
1311			2	4		2	7	3	22	1	24	7	7			79
1313									1		1	2	2	4	2	12
1315												1				1
1320									2			6	6	7	2	23
1330												1	4	2	1	8
1340					1		1		5		8	60	75	50	26	226
1341				2		11	10	4	8	1	3	2				41
1350													1		1	2
1360									1		7	16	26	14	13	77
1372														1	2	3
1382											1		1			2
1399									1							1
1410									1		2	6	1	2	1	13
1411		1	2				1									4
1412									2		1		2			5
1515											1					1
1520									1		2	6	10	5		24
1529															1	1
1530							1		1		1	1	4	4	1	13

Series	Grade															Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
1531					1	1	6	1	9	2	1					21
1550											1		5	1		7
1654											1					1
1670												1				1
1712											1					1
1750											1					1
2005					1	1										2
2102							1									1
TOTAL	11	7	15	25	76	124	191	54	194	13	295	554	526	351	208	2645

BILLING CODE 6325-01-C

Senior Executive Service and ST–3104 Positions

The personnel systems for SES positions (see 5 U.S.C. 3131–3136 and 5 U.S.C. 5381–5385) will not change for the project. SES classification, staffing, compensation, performance appraisal, awards, and reduction-in-force will be based on standard SES methods. The personnel systems for ST–3104 positions (see 5 U.S.C. 3104 and 5376) will change only to the extent that ST–3104 positions are in the same performance appraisal, awards, and reduction-in-force systems as General Schedule positions. Classification, staffing, and compensation, however, will not change. Neither SES nor ST–3104 employees will be subject to the pro rata share payouts upon conversion to the demonstration project. Pay adjustments for their positions under the project will be carried out in accordance with existing Federal rules pertaining to SES and ST–3104 pay adjustments.

General Schedule Positions

All General Schedule (GS and GM) positions are incorporated in the new career path/pay band system. The within-grade increases of the General Schedule will be replaced by the annual performance pay increases. Except as otherwise provided in the project plan, laws and regulations pertaining to GS employees (e.g., overtime pay and cost-of living allowance provisions) continue in force for all project employees in the same way as they do for GS employees.

F. Labor Participation

All unions affected by the project are local units of the American Federation of Government Employees (AFGE). All of the AFGE representation is within the National Oceanic and Atmospheric Administration (NOAA). The following table shows the number of project employees represented by each union local.

TABLE 4.—BARGAINING UNIT COVERAGE

Operating unit	Location	Union local	Employees covered
NESDIS	Camp Springs, MD	AFGE 3680	118
	Asheville, NC	AFGE 146	146
NMFS	Silver Spring, MD	AFGE 2703	169
OAR	Research Triangle Park, NC	AFGE 3347	39

The project operating units provided numerous briefings on the project to employees and union representatives. Human resources representatives traveled to the various organizational locations to conduct three-hour information briefings. In addition, each bargaining unit covered was invited to send a representative to Boulder, Colorado, at management's cost to receive further information on the project and to interact with a panel of NIST managers and employees currently in the NIST project. The project operating units offered Impact and Implementation Bargaining to each of these unions on the conditions and provisions of the proposed project. All of the unions on the list have agreed to the project.

G. Project Design/Methodology

The project methodology is to introduce into selected DoC operating units certain innovations in human resources management, and to evaluate over time the effects of those innovations on the ability of the operating units to manage their human resources. The methodology includes the following steps:

1. Selection of Innovations: After review of the innovations tested at NIST, the Department has determined that all would have potential benefit in other DoC units and therefore should be included in the proposed project. These innovations, and the procedures associated with them, are described below under *Position Classification, Staffing, Reduction-in-Force, Pay Administration,* and *Performance Evaluation and Rewards.*

2. Selection of Operating Units: The Department has selected several operating units (See *Participating*

Organizations.) that will provide a useful test of whether the innovations successfully tested at NIST will produce similarly successful results in other environments.

3. Establishment of Goals and Objectives: The following section on *Goals and Objectives* describes the overall goals of the project and the objectives associated with each of the innovations.

4. Partnership: The Department has sought input on the proposal from each affected local union. (See *Labor Participation.*) The Department will also ensure that partnership in accordance with Executive Order 12871 continues to be an integral part of planning and implementation.

5. Baseline Evaluation: To provide a basis of comparison between employee opinions of the current system and their future opinions of the project system, each employee in the covered operating units will be asked to complete an opinion questionnaire on the current system prior to implementation of the project. To establish a baseline cost analysis, each operating unit will be required to analyze its personnel costs during fiscal years 1994, 1995, and 1996.

6. Training: The Department and the operating units will provide training to human resources staff, managers, and employees prior to implementation of the project and will provide additional training to managers on the pay-for-performance system prior to the end of the first performance cycle. (See *Training.*)

7. Implementation: To ensure a smooth implementation, the Department and the operating units will emphasize top management support; the development of detailed operating procedures prior to implementation; thorough training of managers and human resources office staff; step-by-step implementation planning; adequate backup systems, particularly in automated personnel and payroll systems; and sufficient operating resources.

8. Operation: The Department will exercise continual oversight, under the direction of the Departmental Personnel Management Board (See *Project Management.*) to ensure that project authorities and procedures are administered correctly.

9. Evaluation: The Department will arrange for an annual evaluation of the project under an OPM-approved evaluation plan. (See *Project Evaluation.*) The evaluation will be designed to determine whether the innovations are achieving the goals and objectives described in the following sections and are operating within acceptable cost limits. (See *Budget Discipline.*)

III. Personnel System Changes

A. Position Classification

1. Introduction

Career paths will replace occupational groups, broad bands will replace grades, and Departmental broad-band standards will replace OPM classification standards. The classification system will be automated, and classification authority will be delegated to line managers.

These changes are intended to simplify and speed up the classification process, make the process more serviceable and understandable, improve the effectiveness of classification decision-making and accountability, and facilitate pay for performance. Broad bands provide larger classification targets that can be defined by shorter, simpler, and more understandable classification standards. This simpler system will be easier to automate, will require fewer resources to operate, and will facilitate delegation to line managers.

By providing broader and more flexible pay ranges for setting entry pay, broad banding will provide hiring officials with an important tool for attracting high-quality candidates and thus will contribute to the objectives of increasing the quality of new hires and improving workforce performance.

By providing more flexible pay setting based on performance, broad banding will give managers the ability to increase the pay of good performers to higher and more competitive levels, thus improving the retention of good performers. At the same time, the promise of higher pay increases for good performance, supported by the broader pay ranges of broad banding, will contribute to the objective of improving organizational and individual performance.

2. Career Paths

A career path aggregates comparable occupations that have parallel career patterns and are suitable for similar treatment in staffing, classification, pay, and other personnel functions.

There are four career paths: (a) Scientific and Engineering (ZP): two-grade interval professional technical positions in the physical, engineering, biological, mathematical, computer and social science occupations; and student trainee positions in these disciplines.

(b) Scientific and Engineering Technician (ZT): one-grade interval positions support scientific and engineering activities through the application of various skills and techniques in the electrical, mechanical, physical science, biological, mathematical, and computer fields; and student trainee fields.

(c) Administrative (ZA): two-grade interval positions in such administrative and managerial fields as finance, procurement, personnel, librarianship, public information and program and management analysis; and student trainee positions in these fields.

(d) Support (ZS): one-grade interval positions that provide administrative support through the application of typing, clerical, secretarial, assistant, and similar knowledge and skills; positions that provide specialized facilities support, such as guards and firefighters; and student trainee positions in these areas.

3. Bands

Each career path is divided into five bands, which replace GS grades. The maximum rate of a band is step 10 of the highest GS grade in the band including locality rates in the 48 contiguous States and the District of Columbia. When a special rate for an occupation in the band is higher than the applicable locality rate, the Departmental Personnel Management Board will have to use the maximum applicable special rate to set the maximum rate of the band for specific occupations in certain geographical areas. (See Pay Administration.) For each regular band, there is a corresponding supervisory band for employees who receive supervisory performance pay. The supervisory band has the same minimum rate as the nonsupervisory band, but has a maximum rate 6 percent higher than the maximum rate of the nonsupervisory band. Positions in the supervisory band include positions that meet the DoC Demonstration Project definition of "supervisor". (See *Pay Administration.*) The following chart shows the four project career paths, the bands in each career path, and the relationship between bands and General Schedule grades.

BILLING CODE 6325-01-P

CHART 1: CAREER PATHS AND BANDS

CAREER PATHS	BANDS														
Scientific and Engineering (ZP)	I						II				III		IV		V
Scientific and Engineering Technician (ZT)	I						II				III		IV	V	
Administrative (ZA)	I						II				III		IV		V
Support (ZS)	I		II		III		IV		V						
GS Grades	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

BILLING CODE 6325-01-C

4. Occupational Series

The General Schedule occupational series will be retained. Existing OPM occupational series may be added or deleted in response to programmatic needs.

5. Classification Standards

Each classification standard will describe each band in two factors: (1) general duties and responsibilities and (2) knowledge, skills, and abilities. These two factors complement each other at each band in a career path and may not be separated in classifying a position. OPM classification standards will not be used.

6. Position Descriptions

Line managers will follow an automated menu-driven process to classify positions and produce position descriptions.

7. Delegation of Classification Authority

The Operating Personnel Management Boards (OPMBs) will oversee the delegation of classification authority to line managers. Under authority delegated by the DPMB, the Department's human resources staff will monitor and review classification decisions made by managers to ensure consistent and uniform application of classification policies and guidelines. Under this authority, the Department's Director for Human Resources Management will establish a plan to review the accuracy of classification decisions made by line managers and make periodic reports to the DPMB. A variety of approaches will be used to conduct classification reviews, such as regularly scheduled Departmental oversight reviews as well as ad hoc reviews conducted to address specific classification issues identified through data analysis, random sampling of classification actions, project evaluation reports, etc. The Governmentwide system of approval of SES and ST–3104 positions will be maintained.

8. Classification Appeals

An employee covered by the DoC Demonstration Project may appeal the career path (when the position is in a series that may be assigned to more than one career path, e.g., GS–1101), occupational series, or pay band of his or her position at any time. An employee wishing to formally appeal must first appeal to the Operating Unit (OU). If the employee is dissatisfied with the OU decision, he or she may appeal further to the Department level (DPMB or designee). The decision of the Department will be final.

Details pertaining to the classification appeals process are found in the project operating procedures.

B. Staffing

1. Introduction

The project operating units will use a variety of staffing methods to fill positions, including Direct Examination, Agency-Based Staffing, Merit Assignment, and various noncompetitive placements. Recruiting and examining will be carried out directly by the operating units except for positions covered by the *Luevano* Consent Decree. OPM registers will not be used. These methods will be supplemented by other staffing tools, such as paid advertising, flexible entry salaries, probation, recruitment and retention payments, and flexible pay increases associated with promotion. The Department will make necessary adjustments in response to future revisions in staffing statutes. These changes are intended to attract higher quality candidates, speed up the recruiting and examining process, increase the effectiveness of the probationary review process, and improve the retention of good performers.

Agency-based staffing, supported by paid advertising, will allow hiring officials to focus on more relevant recruiting sources. Direct examination will allow managers to hire individuals with shortage skills as they find them, get them on board faster, and avoid the loss of good candidates who may grow impatient with a long hiring process, thus contributing to the objectives of increasing the quality of new hires and improving the fit between position requirements and candidate skills. The three-year probationary period will help ensure that scientists and engineers who are retained beyond probation are capable of carrying out a full cycle of R&D work, thus contributing to the objectives of high-quality hires and a high-performing workforce (see Section III(B)(10)). Local authority for recruiting and retention payments will provide extra incentives for hiring and retaining individuals with shortage skills, thus contributing to the objectives of increasing the quality of new hires, improving the fit between position requirements and individual qualifications, and improving the retention of good performers.

2. Direct Examination

The project will apply two direct examination authorities: (a) Direct Examination: Critical Shortage Occupations and (b) Direct Examination: Critical Shortage Highly Qualified Candidates. These vacancies will normally be filled through direct recruiting by selecting officials, supplemented by a required search of the operating unit Applicant Supply File. Direct examination procedures are not exempt from the application of veteran preference rules.

(a) Direct Examination: Critical Shortage Occupations

Direct examination procedures will be used for categories of occupations that require skills that are in short supply. Included in this group are specific occupations in two categories listed in the Project Operating Procedures: (1) some occupations for which there is a special rate under the General Schedule pay system, and (2) some occupations at Pay Band III and above in the ZP Career Path. Any position in these shortage categories may be filled through direct examination procedures.

(b) Direct Examination: Critical Shortage Highly Qualified Candidates

Direct examination procedures will be used for additional positions for which there is a shortage of highly qualified candidates. Candidates for positions at Band I or II of the ZP Career Path who have a bachelor's degree with at least a 2.9 GPA (on a 4.0 scale) in a job-related major or a master's degree in a job-related field constitute a shortage category; candidates for positions at Band I of the ZT Career Path who have at least a 2.9 GPA in a job-related field during a minimum of at least 2 years in an accredited college, junior college, or technical institute constitute a shortage category; and candidates for positions at Band II of the ZT Career Path who have at least a 2.9 GPA in a job-related field in 4 years of college study constitute a shortage category.

3. Agency-Based Staffing

Agency-based staffing procedures will be used to fill vacancies not covered by direct examination or the project operating unit Merit Assignment Plan (MAP). Vacancies filled by agency-based procedures will be advertised at a minimum through the Governmentwide automated employment information system operated by OPM.

4. Merit Assignment Plan (MAP)

MAP procedures will be used to fill positions restricted to current or former Federal employees with competitive status. These plans will be amended to include any demonstration project flexibilities.

5. Applicant Supply Files

The operating units will advertise the availability of job opportunities in direct-examination occupations by continuous posting of an Applicant Supply Bulletin (that conforms with the requirements of 5 U.S.C. 3327) on the Governmentwide automated employment information system operated by OPM. The operating units will accept applications for this file on an open-continuous basis for all direct-hire authorities. Selecting officials will be able to recruit directly for applicants, but any applicants they find must compete with applicants who apply through the Applicant Supply Bulletin and other applicants whose applications are stored in the operating unit Applicant Supply File.

6. Referral Procedures for Direct Examination and Agency-Based Staffing Authorities

Either direct referral or rating and ranking will be used to refer applicants for vacancies under direct examination and agency-based staffing authorities.

(a) Direct referral

A qualified candidate may be referred directly without rating and ranking:

(1) When there are no more than three qualified candidates and no preference eligibles; or

(2) If the candidate is a preference eligible with a compensable Service-connected disability of 10 percent or more. (These preference eligibles are given absolute preference except when the position is at Band III or above in the Scientific and Engineering Career Path.) Selecting officials may choose any of these preference eligibles when more than one are referred.

(b) Rating and ranking

Rating and ranking (including veteran preference and "rule-of-three" procedures) will be used when the list of qualified candidates contains:

(1) More than three candidates; or

(2) Two or more candidates including at least one preference eligible (except when direct referral of a 10-point veteran is made under (a)(2) above).

7. Priority Placement

All Department of Commerce and OPM priority placement programs will be followed.

8. Paid Advertising

Paid advertising may be used as one of the first steps in recruitment without having to first try unpaid methods.

9. Private Sector Temporaries

Private sector temporary help services may be used as appropriate.

10. Probationary Period

Probation under the project will follow current law and regulations, except for employees in the Scientific and Engineering (ZP) Career Path performing research and development (R&D) work. ZP employees performing R&D work will be required to serve a probationary period of three years, except that a supervisor may end the probationary period of a subordinate R&D employee at any time after one year. Near the end of the first year of the R&D employee's probationary period, the supervisor will be required to decide whether to: (1) change the employee from probationary status to non-probationary status; (2) remove the employee; or (3) continue the employee on probation. If the employee is continued on probation, the supervisor must select from the same options near the end of the second year of probation. If probation is continued into the third year, the supervisor must make a final decision on whether to retain or remove the employee near the end of the third and final year of probation.

The purpose of the three-year probationary period for scientists and engineers performing R&D work is to allow a hiring official to view the full cycle of a research assignment before making a final decision on retaining the employee. The one-year probationary period is insufficient to cover the full cycle of research and development from assignment of a research project to publication of results. For other positions, the one-year probationary period is adequate.

11. Qualification Standards

The qualifications required for placement within a band and within a career path will be based on the OPM Qualification Standards for General Schedule Positions, except that testing requirements will not be used and the Superior Academic Criterion will be defined as a 2.9 GPA (on a 4.0 scale). The minimum qualifications for the occupation and for the GS grade corresponding to the lowest grade in the band will apply. The DPMB may authorize new or modified qualification standards based on current practices in the scientific, engineering, and computer science fields and to reflect modern curricula in recognized degree programs.

12. Recruitment and Retention Payments

The project operating units may grant recruiting and retention payments in appropriate circumstances, not to exceed $10,000 or 25 percent of basic pay, whichever is greater. Decisions on allowances will be based on market factors such as salary comparability and salary offer issues, relocation and dislocation issues, programmatic urgency, emerging technologies, turnover rates, special qualifications, and shortage categories or scarcity of positions unique to the operating unit. All scientific, engineering, and other hard-to-fill positions will be eligible. Recruitment and retention payments will not be considered part of basic pay.

13. Travel Expenses

Travel and transportation expenses, advancement of funds, per diem expenses incident to travel, and/or relocation expenses may be provided to new hires in the same manner as is authorized in sections 5723, 5724, 5724a, 5724b, and 5724c of title 5, U.S. Code. Recipients must sign service agreements indicating commitment to at least 12 months of continued service.

14. Promotion

A promotion is a change of an employee to (1) a higher band in the same career path, or (2) a band in another career path in combination with an increase in pay. To be eligible for promotion, an employee must have a current performance rating of *Eligible*. The time-in-band requirement for promotion eligibility is 52 weeks, with two exceptions: (1) an employee may be promoted from Band I to Band II in the Support Career Path without time restriction; and (2) an employee may be promoted from Band II to Band III in the Support Career Path without time restriction if the employee was not promoted from a Band I to a Band II position during the previous 52 weeks. (For pay provisions related to promotion, see *Pay Administration*.)

C. Reduction-in-force

1. Introduction

The project operating units will follow reduction-in-force procedures contained in law and regulation, except that career path will be added to the definition of competitive areas, retention credit for performance will be based on performance ranking, and grades will be converted to bands for the purpose of interpreting reduction-in-force regulations.

The objective of the link between career paths and competitive areas is to improve the fit between the skills of displaced employees and the positions they are offered through reduction-in-force procedures. The objective of the link between performance and retention standing is to continue to make performance a factor in retention during reduction-in-force.

2. Competitive Areas

Each of the four career paths in each project operating unit local commuting area will be a separate competitive area—separate from the other career paths and separate from the competitive areas of other operating unit employees.

3. Link Between Performance and Retention

An employee with an overall performance score in the top 20 percent of scores within a career path in a pay pool (See *Performance Evaluation and Rewards* below.) will be credited with 10 additional years of service for retention purposes. The total credit will be based on the employee's three most recent annual performance scores received during the 4-year period prior to an established cutoff date, for a potential total credit of 30 years. Career status and veteran preference will continue to have the same effect on retention standing as they now have under current regulations. No performance-related retention credit will convert to this system from any other performance appraisal system.

4. Link Between Bands and Grades

OPM reduction-in-force regulations on assignment rights (5 CFR 351.701) will be applied to the project by substituting "one band" for "three grades" and "two bands" for "five grades."

D. Pay Administration

1. Introduction

The most important change in pay administration is the introduction of pay for performance, which will govern individual pay progression within bands. The amount of the basic pay and locality pay increases approved by Congress and the President will continue to be applied to pay schedules and employee salaries, with the variations described below. Other pay tools are supervisory performance pay, flexible pay setting for new hires, and more flexible pay setting upon promotion.

Pay for performance promotes fairness and provides a motivational tool and a retention tool. It is fair that higher achievement should produce higher rewards. In particular, the quality work that arises from a commitment to the goals and objectives of the organization should be rewarded by higher pay increases. As a motivational tool, the promise of higher pay increases for good performance encourages high achievement. As a retention tool, pay for performance allows the organization to more quickly move the salaries of good performers to levels that are more competitive in the labor market.

Supervisory performance pay provides an extra performance incentive for supervisors, addressing the objective of improved individual and organizational performance. Supervisory performance pay also addresses the objective of improving retention by raising the pay of high-performing supervisors to more competitive levels. Flexible pay setting for new hires is a recruiting tool that gives hiring officials greater flexibility to offer more competitive salaries to high-quality candidates, addressing the objective of improving the quality of new hires. The greater flexibility in setting pay upon promotion gives managers another retention tool to help retain top performers.

2. Pay for Performance

Pay for performance has three components: (a) the annual adjustment to basic pay, which includes the annual general increase and the locality pay increase; (b) annual performance pay increases; and (c) bonuses. The first component, the annual adjustment to

basic pay, is set according to the subsections referring to general and locality increases. The second component, performance pay increases, is set according to the procedures under *Performance Evaluation and Rewards*. The third component, bonuses, is managed in accordance with the subsection on *Performance Bonuses* under *Performance Evaluation and Rewards*.

3. Placement in a Lower Band

An employee whose performance rating is *Unsatisfoctory* does not receive the annual adjustment to basic pay. Because the minimum pay rate for each band is increased each year by the amount of the annual adjustment to basic pay, it is possible that the new minimum rate of a band will exceed the basic pay of an employee in that band who does not receive the annual adjustment to basic pay due to unsatisfactory performance. When this happens, the employee is placed in the next lower band. This placement shall not be considered an adverse action under 5 U.S.C. 7512, nor shall grade (i.e., band) retention under 5 U.S.C. 5362 be applicable.

4. Supervisory Performance Pay

Employees who meet the demonstration project definition of "supervisor" will be eligible for supervisory performance pay. Positions that require incumbents to spend 25 percent or more of their time performing all of the following duties will be titled "supervisory" for classification and other official purposes and will be eligible for supervisory performance pay.

1. Assign and review work daily, weekly, or monthly;
2. Assure that production and accuracy requirements are met;
3. Approve leave;
4. Evaluate work performance of subordinates; and
5. Exercise at least four of the following authorities and responsibilities: (a) plan work to be accomplished by subordinates, set and adjust short-term priorities, and prepare schedules for completion of work; (b) assign work to subordinates based on priorities, selective consideration of the difficulty and requirements of assignments, and the capabilities of employees; (c) give advice, counsel, or instruction to employees on both work and administrative matters; (d) interview candidates for positions in the unit and recommend appointment, promotion, or reassignment to such positions; (e) hear and resolve complaints from employees, referring group grievances and more serious unresolved complaints to a higher level supervisor or manager; (f) effect minor disciplinary measures, such as warnings and reprimands, recommending other action in more serious cases; (g) identify developmental and training needs of employees, providing or arranging for needed development and training; (h) find ways to improve production or increase the quality of the work developed; and (i) develop performance standards.

Supervisory performance pay will be considered a part of basic pay. Upon conversion to the project, all eligible supervisory positions will be placed in the supervisory bands. The incumbents of these positions will be converted at their basic pay (including special rates or locality pay) at the time of conversion. New hires into supervisory positions after the date of conversion will have their pay set at the supervisor's discretion within the pay range of the applicable supervisory band.

Supervisors in all career paths will be eligible for salaries up to 6 percent higher than the maximum rate of their pay bands. The amount by which a supervisor's pay exceeds the maximum rate of the band constitutes supervisory performance pay. The higher salaries shall be reached through performance pay increases granted through the regular performance appraisal cycle.

The payment of supervisory performance pay is not considered a promotion or a competitive action. Supervisory performance pay will be canceled when an employee's supervisory responsibilities are discontinued. The cancellation of supervisory pay does not constitute an adverse action, and there is no right of appeal under 5 U.S.C. Chapter 75. Pay retention under 5 U.S.C. 5363 is not applicable. Before entering a supervisory position, an employee will be required to sign a statement certifying that the employee understands that the supervisory pay will be canceled when the employee ceases to be a supervisor.

5. Pay and Compensation Ceilings

The maximum rate for a band (excluding special bands established to allow for supervisory performance pay) will be equal to the maximum rate—GS rate, locality rate, or special rate, as applicable—payable to GS employees for the grades corresponding to the band. An employee's basic pay may not exceed the maximum rate of the employee's band (including a supervisory band), except for employees receiving retained rates of pay.

An employee's rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for Level IV of the Executive Schedule. An employee's aggregate monetary compensation for a calendar year may not exceed the basic rate of pay for Level I of the Executive Schedule, as required by 5 U.S.C. 5307 and OPM regulations in Subpart B of 5 CFR 530.

6. Locality Pay

Locality pay is implemented as basic pay for all purposes except as otherwise provided in this plan. The locality adjustment will be applied to the minimum and maximum rates of each band, as applicable. For bands affected by special rates, the maximum rate will be the higher of the special rate or the locality rate. A locality adjustment may be applied to an eligible employee's basic pay only to the extent that it does not cause the employee's basic pay to exceed the maximum rate of the band.

7. Special Salary Rates

When appropriate, special salary rates will be used to determine employees' maximum pay rates in lieu of the normal pay band ceilings. The provisions of current regulations (5 CFR 530.303) will be followed to determine the appropriateness of special salary rates. As provided for under these regulations, special salary rates will be restricted to occupations and/or geographic locations for which there is an existing or likely difficulty in the recruitment or retention of well-qualified personnel.

8. Effect of General and Locality Pay Increases on Bands

The minimum and maximum rates of each band will be increased at the time of a general pay increase under 5 U.S.C. 5303 and/or a locality pay increase under 5 U.S.C. 5304 or 5304a so that they equal the new locality-adjusted minimum and maximum rates of the grades corresponding to the band. The maximum rates of bands set according to special rates, however, may exceed this amount to the extent necessary to equal the 10th step of the appropriate special rate scale if that rate is higher.

9. Effect of General and Locality Pay Increases on Individual Pay

Only employees with a current annual performance rating of record of *Eligible* may receive an increase in their basic pay at the time of band adjustments. This increase in basic pay will reflect any applicable general and/or locality pay increase for General Schedule employees. The increase in basic pay for eligible employees whose basic pay is at

the ceiling of their band will equal the increase in the ceiling.

The basic pay increase for eligible employees whose basic pay is below the ceiling of their band will be calculated by applying two factors to the employee's rate of pay. One factor is the general increase factor representing the increase in General Schedule rates under 5 U.S.C. 5303 (e.g., 1.02 if the general increase is 2 percent). The second factor is the locality pay increase factor, which is derived by dividing the newly applicable locality pay percentage factor by the formerly applicable locality pay percentage factor. (For example, if the locality payment percentage for an area increased from 4.23 percent to 5.48 percent, the locality pay increase factor would be 1.0548 divided by 1.0423, or approximately 1.012.) Thus, the new rate of basic pay would be calculated using the following formula:

$$\text{new pay rate} = \text{general increase factor} \times \frac{1 + \text{newly applicable locality pay percentage}}{1 + \text{formerly applicable locality pay percentage}} \times \text{former pay rate}$$

However, a basic pay increase will be applied only to the extent that it does not cause an employee's basic pay to exceed the ceiling of the applicable band.

10. Basic Pay

Employees covered by the project will not have separate basic pay rates and locality pay rates, as do General Schedule employees. Project basic pay rates will be basic pay for all purposes, except as specifically provided in the demonstration project plan.

11. Pay Setting Upon Promotion

The new basic pay rate upon promotion may be set at any level in the new band (If the move is to a different career path, any band in the new career path would be considered a "new band."), except that the minimum pay increase upon promotion is 6 percent. OPMBs will establish operating unit guidelines and delegate approval authority for setting pay levels for promotions.

12. Pay Setting for New Hires

The setting of initial salaries within bands for new appointees will be flexible, particularly for hard-to-fill positions in the Scientific and Engineering Career Path. OPMBs will establish operating unit guidelines and delegate approval authority for setting pay levels for new hires.

13. Conversion of Employees From the General Schedule to the Demonstration Project

For employees being converted from the GS pay system to the demonstration project, GS grades will translate directly to the project's career path and band structure. Employees will be converted at their current highest rate under the GS pay system (i.e., highest of locality rate or special rate or similar rate) at the time of conversion. No one's salary will be reduced as a result of the conversion. When conversion of an employee into the project is accompanied by a geographic move, the employee's GS pay entitlements (including any locality rate or special rate) in the new area will be determined before converting the employee's pay to the demonstration project pay system.

At the time of conversion, each converted employee will be given a lump-sum cash payment for the time credited to the employee toward what would have been the employee's next within-grade increase. The payment for a General Schedule employee will be computed by (1) calculating the ratio of (a) the number of days the employee will have spent in the employee's current rate through the day prior to the day of conversion, to (b) the total number of days in the employee's current waiting period for a regular within-grade increase (364, 728, or 1092 days), and (2) multiplying that ratio by the dollar value of the employee's next within-grade increase, as in effect at the time of conversion.

14. Movement of GS Employees From Other Organizations to the Demonstration Project

GS employees can move into the project from other organizations through transfer, reassignment, promotion, or new appointment. When the movement is by lateral transfer or lateral reassignment, the employee's GS grade will translate directly to the project's career path/band structure, and the employee's rate of basic pay under the demonstration project will equal his or her current highest rate under the GS pay system (i.e., highest of locality rate or special rate or similar rate). When a lateral transfer or lateral reassignment is accompanied by a geographic move, the employee's GS pay entitlements (including any locality rate or special rate) in the new area will be determined before converting the employee's pay to the demonstration project pay system. When the movement is by new appointment, promotion, reassignment with pay adjustment (through merit assignment plan competition), or transfer to "higher grade" (i.e., to a band higher than the band that corresponds to the employee's current GS grade), the new pay rate is set according to project pay setting flexibilities for new hires and promotions.

15. Pay Setting Upon Movement of an Employee to a Different Pay Area

Employees who move (voluntarily or involuntarily) from one geographic area to another within their operating unit will have their pay adjusted to account for any change in the band maximum rates between the two areas. This adjustment ensures that the employee's relative position in the band (measured as a percentage of the band maximum rate) will be maintained upon movement. The pay rate in the new area will be derived using the following formula:

$$\text{new pay rate} = \text{former pay rate} \times \frac{\text{pay band maximum rate after movement}}{\text{pay band maximum rate before movement}}$$

The new pay rate is calculated before any other simultaneous pay action (e.g., general pay adjustment or promotion effective on the same date). Any reduction in pay solely attributable to a movement from one pay area to a lower-paying area shall not be considered a reduction in basic pay under the adverse action provisions of 5 U.S.C. 7512(4) or under the pay retention provisions of 5 U.S.C. 5363. (The employee retains the right to grieve or file a complaint regarding a geographic reassignment if there is an allegation of

a violation of nondiscrimination statutes or a prohibited personnel practice.)

16. Severance Pay

OPM severance pay regulations (5 CFR 550.703) will be applied to the project by substituting "one band" for "two grades" and "two grades or pay levels."

17. Grade and Pay Retention

Grade and pay retention will follow current law and regulations, except as allowed by specific waiver (e.g., "career path and band" for "grade"). Specific waivers are listed in the section entitled, *Authorities and Waiver of Laws and Regulations Required.*

E. Performance Evaluation and Rewards

1. Introduction

The most important feature of the performance evaluation system is that it is based on the application of a weighted 100-point scoring system in support of pay for performance. As in the current system, each employee has an individual performance plan composed of several performance elements. Through application of benchmark performance standards and a 100-point scoring system, supervisors rank employees by performance within peer groups and grant performance pay increases according to the ranking. Highly ranked employees within a peer group receive relatively high pay increases and lower ranked employees receive relatively lower pay increases.

The performance appraisal process is intended to (1) promote good performance; (2) encourage a continuing dialogue between supervisors and employees on organizational objectives, supervisory expectations, employee performance, employee needs for assistance and guidance, and employee development; and (3) provide a basis for performance-related decisions in employee development, pay, rewards, assignment, promotion, and retention. The system will more effectively communicate to employees how they are performing in relation to their peers, the rewards for good performance, and the consequences of poor performance.

Performance-based pay increases give an operating unit the ability to raise the pay of good performers more rapidly, thus improving retention of good performers. The promise of higher pay increases for good performance will encourage achievement and promote the objective of improved individual and organizational performance.

2. Coverage

All employees covered by the project will be covered by the project performance evaluation and rewards system, except that the Departmental Personnel Management Board may remove from the system any position not filled by career or career conditional appointment. ST–3104 employees will have their performance evaluated under the structure of the performance evaluation system and may receive bonuses, but do not receive performance pay increases. Members of the Senior Executive Service will remain under the non-demonstration DoC SES performance appraisal, pay, and bonus system.

Upon conversion to the demonstration project, any administrative action already initiated under a previous appraisal program will continue to be processed in accordance with the requirements and procedures of the program in effect when the action was initiated.

3. Performance Cycle

The performance year begins October 1 and ends September 30. The stages of the performance cycle are performance planning, performance review, performance appraisal, and performance-related decisions.

4. Performance Plans

Performance plans will be developed each year by supervisors with input from employees. Critical performance elements will be established for each position. (All elements are critical.) The supervisor weights each element so that the total weight of all elements is 100 points. Benchmark performance standards define the range of performance. A supervisor may add supplemental standards to a performance plan to further elaborate on the benchmark performance standards.

5. Mid-Year Review

A required mid-year review addresses mid-year accomplishments, performance successes and deficiencies, and any need for performance plan modifications. Additional reviews may be held as needed.

6. Performance Appraisal

Performance appraisals bring supervisors and employees together to discuss performance and accomplishments during the performance year. The appraisals lead to decisions by supervisors and Pay Pool Managers on performance scores, performance ratings, performance pay increases, and bonuses. Performance appraisal is scheduled for the final weeks of the performance year. However, at any time of the year, a supervisor may determine that an employee's performance is not satisfactory on one or more critical elements and place the employee on a Performance Improvement Plan.

7. Performance Ratings

The demonstration project performance ratings of record are *Eligible* (for performance pay increase, bonus, and annual adjustment to basic pay) and *Unsatisfactory*. The *Eligible* rating of record covers the same performance range as the former ratings of Marginal, Fully Successful, Commendable, and Outstanding. *Unsatisfactory* covers the same performance range as the former ratings of Unsatisfactory and Unacceptable. An employee whose performance is not satisfactory is placed on a performance improvement plan and given an opportunity to improve before a final rating of record is assigned.

8. Performance Scores

Each element is evaluated individually against the benchmark performance standards and any supplemental standards. If a single element in an employee's plan is rated *Unsatisfactory*, the rating of record is *Unsatisfactory* and there is no performance score. If all elements meet at least the minimally acceptable benchmark, the rating of record is *Eligible*. Rating Officials score the performance of employees rated *Eligible* on a 100-point scale, which corresponds to the 100-point element weighted scale. An individual element score may be as high as the weight of that element. The total performance score is the sum of the element scores. A perfect score on each element would produce a total score of 100 points.

9. Performance Ranking

Employees are ranked, by performance score, within a peer group. A peer group may involve no more than one career path, but may be otherwise organized by any combination of organization, occupation, band, or appointment type. Rating Officials rank their own employees, then Pay Pool Managers interleave the rankings of subordinate Rating Officials to produce peer group rankings at the pay pool level. A Pay Pool Manager is a line manager who manages his or her organization's pay increase and bonus funds and has final decision authority over the performance scores, performance pay increases, and bonuses of subordinate employees.

10. Performance Pay Decisions

The Performance Pay Table divides each band into three segments or *intervals*. Each interval is linked to a range of potential percentage pay increases beginning at zero and progressing to a maximum percentage pay increase. The maximum performance pay increase an employee may receive, therefore, depends on the interval into which the employee's salary falls. The Pay Pool Manager makes a performance pay decision for each employee in a peer group, based on the Pay Pool Manager's ranking and the pay increase ranges in the Performance Pay Table. Within a peer group, an employee may not receive a higher proportion-of-range than a higher-ranking employee or a lower proportion-of-range than a lower-ranking employee. Proportion-of-range is the percentage of the maximum pay increase allowed for a particular interval of a pay band, i.e., a percent of a percent. For example, if the pay increase range for the pay interval is 0–12 percent, and the employee receives a 9 percent increase, that employee receives a proportion-of-range that equals 75 percent of the maximum 12 percent.

11. Performance Bonuses

Bonuses are the only cash awards directly linked to the project performance appraisal system, and are awarded at the end of the performance year in conjunction with decisions on performance pay increases. A Pay Pool Manager may award a bonus to any employee with an *Eligible* rating. The OPMBs will determine the bonus authority to be delegated to their pay pool managers.

Bonuses address two objectives. First, the ability to reward the accomplishments of good performers will make them more likely to remain, thus improving the retention of high achievers. Second, the promise of bonuses for achievement will encourage improved individual performance.

12. Action Based on Unsatisfactory Performance

If, after an opportunity to improve, an employee's performance is still not satisfactory, the operating unit will give a rating of *Unsatisfactory* and must take action to reassign or remove the employee, or place the employee in a lower band, in accordance with performance action provisions in law and regulation.

IV. Conversion or Movement From a Project Position to a General Schedule Position

If a DoC Demonstration Project employee moves to a General Schedule position, the following procedures will be used to convert the employee's project pay band to an equivalent GS grade and the employee's project rate of pay to an equivalent GS rate of pay. The converted GS grade and rates of pay must be determined before movement out of the project and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments and lateral transfers, the converted GS grade and rates of pay will become the employee's actual GS grade and rates of pay, unless immediately affected by a simultaneous geographic movement or another pay action. For non-lateral transfers, promotions, and other actions, the converted GS grade and rates of pay will be deemed to be the employee's grade and rates of pay at the time of movement out of the project and will be used in applying applicable pay setting rules (e.g., promotion rules.)

A. Grade-Setting Provisions

An employee in a band corresponding to a single GS grade is converted to that grade. An employee in a band corresponding to two or more grades is converted to one of those grades according to the following rules:

1. The employee's project basic rate of pay is compared with step 4 rates in the highest applicable GS rate range (including a rate range in the GS base schedule, a rate range in the applicable locality rate schedule, or a rate range in a special rate schedule for the employee's occupation). If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

2. If the employee's pay rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

3. If the employee's pay rate is lower than the applicable step 4 rate of the highest grade, the pay rate is compared with the step 4 rate of the second highest grade in the employee's band. If the employee's pay rate equals or exceeds step 4 of the second highest grade, the employee is converted to that grade.

4. This process is repeated for each successively lower grade in the band until a grade is found in which the employee's rate of basic pay equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's rate of pay is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

5. Exceptions: (1) If the employee's pay rate exceeds the maximum rate of the grade assigned under the above-described "step 4" rule but fits in the rate range for the next higher applicable grade in the band (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade; (2) An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer in the project unless since that time the employee has undergone a reduction in band; (3) In Band I of the ZP and ZA Career Paths, students without a bachelor's degree or comparable experience are converted no higher than GS–4.

B. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the project rate to GS pay rates in accordance with the following rules:

1. The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement out of the demonstration project.

2. An employee's project rate is converted to a rate on the highest applicable rate range for the converted GS grade (including a rate range in the GS base schedule, a rate range in the applicable locality rate schedule, or a rate range in a special rate schedule for the employee's occupation).

3. If the highest applicable rate range is a locality pay rate range, the project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS rate of basic pay is the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

4. If the highest applicable rate range is a special rate range, the project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

5. Exception: If an employee's project rate exceeds the maximum rate of the highest applicable rate range upon conversion to the General Schedule, the affected employee's project rate will be converted to a retained rate under 5 U.S.C. 5363. If an employee is entitled to a special rate under the General Schedule, the project rate is converted

directly to a retained rate. If an employee is only entitled to locality pay under the General Schedule, the retained rate is derived by dividing the project rate by the applicable locality pay factor (i.e., 1 plus the locality payment percentage). Thus, the locality-adjusted retained rate will equal the project rate the employee had been receiving before conversion. Since the employee's total rate of pay is not reduced upon conversion, this change to converted rates under the General Schedule will not be considered a reduction in basic pay under 5 U.S.C. 5363 or 7512.

6. After conversion or movement out of the demonstration project, an employee's converted GS rates will be used in applying GS pay administration rules, as necessary, in lieu of using his or her demonstration project rate. Thus, for example, the converted GS rate of basic pay (or converted special rate, if applicable) will be used in applying GS rules for promotions, maximum payable rate determinations, and pay retention, as appropriate. For conversions upon termination of the project and for lateral reassignments, the converted GS rates will become the employee's GS rates immediately after movement out of the demonstration project (before processing any accompanying geographic move).

C. Equivalent Increase Determination

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

V. Budget Discipline

Each project operating unit will maintain compensation during the project at the level it would have reached under the current system. Current costs will be reallocated to cover project costs. To ensure appropriate carryover of costs from pre-project to project years, a base assessment will be made using three base years: Fiscal Years 1994, 1995, and 1996. Budget discipline will be required and achieved by imposing specific funding principles (described in detail in the section on Funding Pools for Performance Pay Increases and Bonuses). Finally, both longitudinal and site comparisons will be used to ensure that spending remains within acceptable limits.

A. Reprogramming Costs

The following actions and their costs will be eliminated by the new system:

1. Promotions from one grade to a higher grade where both grades are now in the same broad band. For example, because Band III of both the ZP and ZA career paths will cover the same pay range as current grades GS–11 and GS–12, there will be no more promotions from GS–11 to GS–12.

2. Regularly scheduled Within-Grade Increases and Quality Step Increases. There are no steps in the broad band system. These actions will be eliminated.

3. Cash awards related to the performance appraisal cycle. (These funds will be applied to bonus pools only—not to pay pools).

The cost savings from eliminating these actions will be used to finance the following new actions:

—Performance-based pay increases within bands, including the ability to increase the pay of supervisors, through performance-based pay increases, to a higher level than under the current system. There is no guaranteed performance pay increase in the proposed system, however, for *Eligible* performance; and

—Performance bonuses.

B. Base Cost Assessment

In order to determine whether project costs are being maintained at acceptable levels, a base assessment of pre-project costs will be needed. Costs will be computed as annual averages over three pre-project years: Fiscal Years 1994, 1995, and 1996. The costs of all personnel actions of types that are being replaced by project systems will be totaled and averaged.

C. Funding Pools for Performance Pay Increases and Bonuses

The results of the base cost assessment will provide a basis for: (1) setting maximum spending limits; and (2) constructing performance pay increase and bonus funding pools by organization, career path, band, and salary. Performance pay pools for project employees will be subject to the same budgetary constraints and reductions imposed on other Department funding allocations. Neither allocations nor authorizations convey funding. Therefore, managers will be required to make payout decisions tied to their individual budgets, within allocations. The following principles will be observed:

1. In terms of career paths and bands, costs will be kept for the most part where they are found in the base assessment. That is, base costs for promotions, within-grade increases, and cash awards in a particular band and career path will form the basis for project spending in the same band and career path.

2. Formulas will be devised to authorize pay increase and bonus pools up to the limits calculated from base-year spending. For each pool, the authorized spending ceiling will depend on the number of employees in the pool by career path, band, and salary.

3. No allocation will be placed in performance pay increase pools for employees who are not eligible for a performance pay increase, such as those who have insufficient time in the position to be rated and those whose salaries are at the ceilings of their bands. No money will be placed in bonus pools for employees not eligible for a bonus, such as those not eligible for a performance rating or who are not on the payroll the last day of the performance cycle.

4. The potential size of performance pay increases will be relatively high for employees whose salaries are near the minimum rate of the band and relatively low for those whose salaries are near the maximum rate of the band. This arrangement imposes a reduced rate of salary increases as an individual advances in the band, similar to the reduced rate of within-grade increases in a General Schedule grade imposed by the one-year, two-year, and three-year waiting periods.

5. There will be no guaranteed performance pay increase in the proposed system. An employee with an *Eligible* performance rating may, if ranked at or near the bottom of a peer group, get no performance pay increase.

6. Although Pay Pool Managers will not be allowed, under normal circumstances, to exceed their allocated pay increase and bonus pools, they will be allowed to spend less than the full amounts of their pools.

7. Funds previously used to pay cash awards will be applied to bonus pools only—not to performance pay pools.

D. Budget Monitoring

These procedures permit changes in operating unit expenditures which result from legislatively mandated program changes and changes in Federal pay and benefits. The operating units may offset selected salary increases with savings by reducing turnover, eliminating unnecessary overhead, and cutting other personnel costs.

The operating units will measure their adherence to cost control by preparing budget estimates based on prescribed Federal budget processes and monitoring actual spending under the project against these budget estimates. Two cost comparisons will be used:

1. Longitudinal Comparisons

a. Project costs will be calculated on an established schedule.

b. Costs will be compared against the spending limits calculated from the base years to ensure that budget limitations are not being exceeded.

c. Each year, the funding of the performance pay increase and bonus pools will be used as an opportunity to "balance the books." That is, the funding of the pools will be limited to the amount that is judged to maintain budget discipline.

2. Site Comparisons

a. A number of non-project units will be selected from within the Department to serve as comparison sites. The comparison sites will be selected to reflect, as nearly as possible, the missions and workforces of the project units.

b. Periodically, the rate of increase in salaries in the project units will be compared to the rate of increase in salaries in the comparison units.

c. When it is found that salaries in project units are outpacing salaries in comparison units, and the differences cannot be explained by non-project variables, appropriate adjustments will be made in project funding.

VI. Project Evaluation

The Department will arrange for annual evaluations of the project under an OPM-approved evaluation plan. The evaluation will be designed to determine whether the interventions are achieving the goals and objectives of the project within acceptable cost limits. (See *Costs.*)

The following table lays out the project evaluation model, beginning with and flowing from the objectives that the project is designed to achieve. The *Objectives* column and the *Interventions* column together serve as the project hypotheses; i.e., the hypotheses to be tested are that the objectives will be achieved by the interventions linked to them. Most objectives are linked to more than one intervention. Each intervention is associated with at least one expected result. The *Measures* column lists means by which actual results will be measured. Other measures of results may be used in order to fully evaluate the hypotheses. The *Data Sources* column shows where data required for the measurements can be found.

A hypothesis will be supported—that is, the intervention will be deemed to have achieved the objective—when actual results are found to match expected results. Tests of hypotheses will be made by comparing results to appropriately defined comparison groups.

TABLE 5.—PROJECT EVALUATION MODEL

Objectives	Interventions	Expected results	Measures	Data sources
Increased quality of new hires; improved fit between position requirements and individual qualifications; greater likelihood of getting a highly qualified candidate.	Agency-Based Staffing	Hiring officials will be able to focus on more relevant recruiting sources and avoid losing candidates who grow impatient with long hiring processes.	• Hiring officials' judgments of the improvement in the quality of new hires. • Hiring officials' judgments of improvements in the fit of qualifications of new hires. • Rate of acceptance of offers.	• Interviews with hiring officials. • Focus groups. • HRM office records on offers and acceptances. • Periodic employee/supervisor surveys. • Exit interviews.
	Direct Examination	For skill areas in which well qualified individuals are hard to find, managers will be able to hire good candidates as they find them, thus avoiding the loss of well qualified individuals through delays.	• Hiring officials' judgments of the improvement in the quality of new hires. • Hiring officials' judgments of improvements in the fit of qualifications of new hires. • Rate of acceptance of offers.	• Interviews with hiring officials. • Focus groups. • HRM office records on offers and acceptances. • Periodic employee/supervisor surveys.
	Broad-band Classification System, in conjunction with Flexible Entry Salaries.	Broad bands and flexible entry salaries within bands provide a more competitive range of entry salaries for managers to use in negotiating with candidates, thus increasing the ability to hire highly qualified candidates.	• Hiring officials' judgments of the improvement in the quality of new hires. • Hiring officials' judgments of improvements in the fit of qualifications of new hires. • Rate of acceptance of offers.	• Interviews with hiring officials. • Focus groups. • HRM office records on offers and acceptances. • Periodic employee/supervisor surveys.
	More Flexible Paid Advertising.	Managers will be able to make greater use of paid advertising, thus expanding the scope of recruiting efforts or focusing the recruitment effort on specialized sources.	Number of selections resulting from paid advertising.	HRM office records.

TABLE 5.—PROJECT EVALUATION MODEL—Continued

Objectives	Interventions	Expected results	Measures	Data sources
	3-Year Probationary Period for Scientists and Engineers.	Greater likelihood that scientists and engineers who are retained after probation will be capable of the full range of R&D functions.	Number of scientists and engineers released during probation after the first year.	• Automated history file data. • HRM office records.
	Local Authority for Recruitment Payments.	The ability of managers to grant recruitment payments during negotiations with highly qualified candidates will increase competitiveness.	Number of selections made for which the recruitment payment was instrumental in attracting the candidate.	• HRM office records. • Interviews with hiring officials. • Focus groups.
Increased retention of good performers.	Broad-Band Classification System.	Broad-banding gives an operating unit the ability to raise the pay of good performers to higher and *more competitive levels*, thus improving retention of good performers.	Turnover rates among good performers. Turnover rates of low performers.	Automated history file data.
	Performance-Based Pay Increases.	Performance-based pay increases give an operating unit the ability to raise the pay of good performers *more rapidly*, thus improving retention of good performers.	Turnover rates among good performers.	• Automated history file data. • Interviews with hiring officials. • Focus groups.
	Bonuses	The ability to reward the accomplishments of good performers will make them more likely to remain.	Turnover rates compared to size of bonus.	Automated history file data.
	Local Authority for Retention Payments.	The ability of managers to grant retention payments will improve their ability to retain employees in critical skill areas in a job-related course of study.	A count of the instances in which a retention payment is instrumental in retaining an employee who would otherwise have left.	• HRM office records. • Interviews with hiring officials. • Focus groups.
	Supervisory Performance Pay.	The ability to raise the pay of high-performance supervisors to higher levels will make their salaries more competitive, improving retention.	Turnover rates among supervisors in relation to pay and performance.	Automated history file data.
	More Flexible Pay Increase Upon Promotion.	Flexible pay increases upon promotion gives an operating unit the ability to raise the pay of high-performing employees and employees in critical skill areas to higher and *more competitive levels*, thus improving their retention.	Turnover rates in relation to pay and performance.	Automated history file data.
Improved individual and organizational performance.	Two-Level, 100-Point, Peer Group Performance Appraisal System.	This system will more effectively communicate to employees how they are performing in relation to their peers, the consequences of poor performance, and the rewards for good performance.	Judgments of Pay Pool Managers, Rating Officials, and Employees.	• Interviews with hiring officials. • Periodic employee/supervisor surveys. • Focus groups.
	Pay Increases Linked to Performance.	The promise of higher pay increases for high achievement will encourage improved performance.	Judgments of managers, supervisors, and employees.	• Periodic employee/supervisor surveys. • Focus groups.

TABLE 5.—PROJECT EVALUATION MODEL—Continued

Objectives	Interventions	Expected results	Measures	Data sources
	Supervisory Performance Pay.	The promise of higher pay levels for effective supervision will encourage improved supervisory performance.	Judgments of higher-level managers.	• Management interviews.
	Bonuses Linked to Performance.	The promise of bonuses for good performance will encourage improved performance.	Judgments of managers, supervisors, and employees.	• Periodic employee/supervisor surveys. • Focus groups.
	Hiring interventions (listed above).	By improving the quality of new hires, the hiring interventions will gradually produce a higher-performing workforce.	Judgments of managers and supervisors.	• Interviews with hiring officials. • Focus groups.
	Retention Interventions (listed above).	By improving the retention of good performers, the quality of the workforce will be higher than it otherwise would be.	Judgments of managers and supervisors.	• Interviews with hiring officials. • Focus groups.
More effective human resources management.	Broad-Band Classification	The broad-band classification system will be simpler to use, more understandable to managers and employees, and more accurate.	Judgments of managers, supervisors, and employees.	• Interviews with managers. • Periodic employee/supervisor surveys.
More effective human resources management (cont.)	Delegated Classification Authority to Managers.	Line managers understand the organizational mission and the work related to the mission and are therefore better prepared to classify the work.	Judgments of managers and supervisors.	• Interviews with hiring officials. • Periodic employee/supervisor surveys. Focus groups.
	Delegated Pay Authority to Managers.	Line managers are in a better position to understand the labor market forces related to the work they manage and will therefore be more effective pay mangers.	Judgments of managers and supervisors.	• Interviews with hiring officials. • Focus groups.
More efficient human resources management.	Automated Broad-Band Classification System.	The broad-band classification system will be simpler, faster, easier to automate, require fewer resources to operate, and involve fewer classification decisions.	• Judgments of managers and supervisors. • Time required to produce position descriptions and classify positions. • Number of classification decisions.	• Interviews with hiring officials. • Periodic employee/supervisor surveys. • Focus groups. • HRM office records. • Automated history file.
Support for EEO/Diversity goals in recruiting, rewarding, paying, and retaining minorities; providing opportunities for a diverse workforce; and in maximizing contributions of all employees.	Hiring Interventions (listed above).	Managers will be able to hire good minority candidates as they find them, thus avoiding the loss of well qualified minorities through delays.	• Increases in the numbers of minorities hired.	• HRM and EEO records on offers and acceptances.
	Performance-Based Pay Increases.	Performance-based pay increases give an operating unit the ability to raise the pay of good performers.	Comparisons between pay of minorities and non-minorities.	• HRM records.
	Bonuses	The ability to reward good performers will allow managers to more easily recognize the performance of minorities.	Comparisons between the bonuses received by minorities and non-minorities.	• HRM records.

TABLE 5.—PROJECT EVALUATION MODEL—Continued

Objectives	Interventions	Expected results	Measures	Data sources
	Pay Interventions (listed above).	Supervisory pay bands, flexible pay increases upon promotion, and flexible entry salaries will allow managers greater flexibilities in paying minorities at competitive salaries.	Comparisons between the salaries of minorities and non-minorities.	• HRM records.
	Retention Interventions (listed above).	Broad-banding, flexibilities in setting pay, performance pay increases, and bonuses, will make it easier for supervisors to retain good performing minorities.	Turnover rates of minorities in relation to pay for performance.	• Automated history file data/EEO records.

VII. Project Management

The Office of Personnel Management will oversee the project under its demonstration project authority in 5 U.S.C. 4703. The DoC Departmental Personnel Management Board will menage the project at the Department level. Each major operating unit will have its own Operating Personnel Management Board to oversee local operations.

The Director of NIST will chair the Departmental Personnel Management Board through the first cycle. After the first cycle, chairmanship of the Board will be assumed by one of the members of the Board. The DPMB members will be senior managers of the operating units in the project. The DoC Director for Human Resources Management will serve as Executive Secretary. Each OPMB will typically be chaired by the senior manager designated to serve on the DPMB. The operating units will appoint other key managers to their boards as they think appropriate.

The following table lists the separate responsibilities of these three bodies.

TABLE 6.—PROJECT AUTHORITIES

Arena	Project authorities		
	OPM	DPMB	OPMB
General	• Final approval authority for the Project Plan, operating procedures, and any future changes to the plan or operating procedures.	• Approval authority within the Department for the Project Plan and operating procedures. • Approval authority within the Department for proposing changes in the Project Plan or operating procedures to OPM. • Monitoring the success of project interventions so as to propose appropriate mid-course corrections to OPM. • Setting project policies within the parameters of the Project Plan and operating procedures. • Delegating authority to OPMBs, including the withdrawal of authority when warranted. • Exercising the authority to make exceptions to normal project procedures on a case-by-case basis when it believes an exception is warranted (the OPMBs will not have this authority). • Assuring adequate resources for designing, implementing, and operating the project. • Establishing a training plan to train managers, employees, and support staff in project policies and procedures.	• Establishing operating unit project guidelines within the Project Plan, operating procedures, and DPMB policies. • Management of authorities outlined below and any additional athorities delegated by the DPMB. • Delegating authority to managers within the operating unit, including the withdrawal of authority when warranted. • Assuring adequate resources for implementing and operating the project within the operating unit. • Overseeing training of operating unit managers, employees, and support staff in project policies and procedures.

TABLE 6.—PROJECT AUTHORITIES—Continued

Arena	Project authorities		
	OPM	DPMB	OPMB
Position Classification	• Approval of the project Classification Interventions.	• Setting project classification policy within the Project Plan and operating procedures. • Approving automated classification systems and classification standards.	• Establishing operating unit classification guidelines within the Project Plan, operating procedures, and DPMB policies. • Delegating classification authority to operating unit managers. • Establishing career ladders. • Ensuring proper classification of positions within the operating unit. • Resolving issues in operating unit classifications. • Approving or delegating the approval of new specialty descriptors.
Staffing	• Approval of the project Staffing Interventions.	• Approving project staffing policies. • Establishing policy and criteria for recruiting and retention payments.	• Establishing operating unit staffing guidelines within the Project Plan, operating procedures, and DPMB policies. • Approving or delegating the approval of individual recruiting and retention payments. • Establishing career ladders. • Approving use of recruiting services. • Delegating and overseeing use of paid advertising. • Overseeing the application of the three-year probationary period. • Establishing operating unit practices on vacancy distribution, opening timeframes, and similar local issues.
Reduction in Force	• Approval of the project reduction-in-force Interventions.	• Approving project reduction-in-force policies.	• Establishing operating unit reduction-in-force guidelines within the Project Plan, operating procedures, and DPMB policies. • Establishing procedures on operating unit competitive levels. • Establishing guidelines for, and overseeing, reductions in force within the operating unit.
Pay Administration	• Approval of the project Pay Administration Interventions.	• Approving project pay administration and pay for performance polices. • Approving project pay tables .... • Approving performance pay increase ranges. • Approving automated performance pay increase systems. • Approving formulas used to develop performance pay increase pools.	• Establishing operating unit guidelines within the Project Plan, operating procedures, and DPMB policies. • Establishing operating unit performance pay increase pools. • Establishing operating unit guidelines and delegating approval authorities for setting pay levels for new hires and promotions.
Performance Evaluation	• Approval of the project Performance Evaluation Interventions.	• Approving project performance evaluation policies. • Approving project-wide forms for performance plans and appraisals and for recording outcomes.	• Establishing operating unit performance evaluation guidelines within the Project Plan, operating procedures, and DPMB policies. • Overseeing the operating unit annual performance appraisal process, from development of plans to individual pay increases and bonuses. • Establishing operating unit guidelines on performance elements. • Delegating rating, review, and pay pool management authorities.
	•	•	
	•	•	

TABLE 6.—PROJECT AUTHORITIES—Continued

Arena	Project authorities		
	OPM	DPMB	OPMB
Bonuses	• Approval of the project Bonus Interventions.	• Approving project bonus policies. • Delegating bonus limits to OPMBs.	• Establishing operating unit bonus guidelines within the Project Plan, operating procedures, and DPMB policies. • Delegating bonus limits to pay pool managers. • Establishing operating unit bonus pools.
Costs and Budget Discipline	• Approval of the project cost plan.	• Approving project budget policies.	• Establishing and overseeing operating unit budget procedures. • Assuring operating unit budget discipline. • Designating pay pool managers. • Establishing and overseeing the use of operating unit performance pay increase and bonus pools.
Project Evaluation	• Approval of the project Evaluation Model. • Approval of evaluation reports ..	• Approving the approach for selecting an evaluator to carry out the annual project evaluation. • Assuring adequate resources for project evaluation. • Approving project policies for internal Departmental assessments.	• Overseeing and assuring operating unit participation in project evaluations, including data collection, focus group participation by operating unit employees, and availability of managers for interviews. • Approving objectives and procedures for internal operating unit assessments.

VIII. Training

The project operating units will schedule training for managers, supervisors, employees, and support staff.

A. Manager and Supervisor Training

The operating units will give managers and supervisors general training in the overall features of the project and specific hands-on training in the new authorities they are to exercise. Computer training facilities will be used to teach managers and supervisors how to use the automated classification system to produce position descriptions. The classification training will emphasize principles of project classification, such as the classification logic embedded in the automated classification system, career path coverage criteria, occupational series definitions and coverage, proper classification by bands in accordance with project classification standards, sound titling practices, and economic and effective position management.

Managers and supervisors will also be given specific training in performance appraisal and pay for performance. A key part of this training will be a simulation of the performance evaluation and rewards system prior to the actual end-of-year performance evaluation. Prior to the simulation, each Rating Official and Pay Pool Manager will be trained in the automated performance pay increase system. During the simulation, Rating Officials and Pay Pool Managers will carry out the appraisal, scoring, rating, and performance pay increase process just as they would at the end of a performance year, but for training purposes only. The results will not be official and will not be communicated to employees. This training exercise was used in the first year of the NIST project and was found to be an effective approach to revealing and correcting problems and misunderstandings prior to the real end-of-year process.

B. Employee Training

Through general presentations, handouts, and direct training from supervisors, employees will be given an understanding of project systems and how those systems affect them.

In the general presentations scheduled for everyone covered by the project, employees will be led through all project systems, from classification to pay administration to pay for performance. As each system is presented, it will be contrasted with the General Schedule system so employees can see how the system is changing and how the changes affect them. The presentations will also cover employee rights and grievance procedures. Employees will be given ample opportunity to ask questions at the presentations and will be given the names and numbers of individuals to call if they have questions later.

In addition to the general presentations that will be scheduled for all employees, supervisors will be instructed to pass along more individualized information about the system in conjunction with the implementation of those systems. For example, at the time supervisors give employees their new project position descriptions, the supervisors will explain the position descriptions, the process that produced them, and the process for keeping them current. Also, at the time of the performance appraisal simulation, supervisors will explain to employees how they fit into the performance scoring and peer-group ranking process and how the process leads to decisions on performance pay increases.

C. Support Staff Training

There are three categories of support staff: (1) Personnel specialists in the various HRM offices serving project operating units; (2) budget specialists in operating unit budget offices assigned to monitor and advise on budget discipline issues and specifically to assist in establishing performance pay increase and bonus pools; and (3) administrative officers in the operating units, who will assist in processing personnel actions, distributing local performance pay increase and bonus pools, and electronically transmitting Pay Pool Manager decisions to the automated payroll system.

Two of the HRM offices that will serve project operating units have served the NIST Demonstration Project since its implementation in 1988. These two offices will help train personnel specialists in the other HRM offices. Budget specialists in the operating units, besides receiving the general employee training, will receive advice from a NIST budget specialist and will receive further training on the distribution of performance pay increase and bonus pools during the simulation of the performance evaluation and rewards system. Administrative officers will be invited to take part in the supervisory training sessions and will also receive further training during the simulation of the performance evaluation and rewards system.

IX. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications must be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The DPMB, with OPM approval, will authorize minor modifications, such as changes in the occupational series in a career path, without further notice. Major changes, such as a change in the number of career paths, will require OPM approval and will be published in the **Federal Register**.

X. Authorities and Waiver of Laws and Regulations Required

The following waivers of law and regulation are necessary:

Title 5, U.S. Code

Section 3308 Competitive Service; examinations, educational requirements prohibited; exceptions

Section 3502(a)(4) Order of retention

(Waiver is applicable to allow the use of "performance scores" in lieu of "efficiency or performance ratings.")

Chapter 51 Classification

Section 5303 Annual adjustments to pay schedules

Section 5304 Locality-based comparability payments

Section 5305 Special Pay Authority

Subchapter III of chapter 53 General Schedule Pay Rates

Subchapter VI of chapter 53 Grade and Pay Retention

(Waiver is applicable only to allow the following modifications: (1) Using bands in lieu of grades; (2) providing no band retention if reduction in band is caused by employee's pay being exceeded by band minimum rate; (3) providing no pay retention upon reduction in pay caused solely by geographic movement; (4) providing no pay retention upon conversion to the General Schedule as long as the employee's total rate of pay is not reduced; and (5) providing no pay retention upon cancellation of supervisory performance pay).

Section 5753–5754 Recruitment and relocation bonuses; Retention allowances (except that relocation bonuses under Section 5753 continue to apply)

Section 7512(3) Actions covered

(Waiver is applicable only to use bands in lieu of grades and to exclude from section 7512(3) reductions in band not accompanied by a reduction in pay, due to the employee's pay being exceeded by the band minimum rate.)

Section 7512(4) Actions covered

(Waiver is applicable only to allow the following modifications: (1) Exclude reductions in pay that are solely due to recomputation upon geographic movement; (2) exclude conversions to GS pay that do not result in a reduction in the employee's total rate of pay; and (3) exclude reductions in pay due to the cancellation of supervisory performance pay.)

Title 5, Code of Federal Regulations

Section 315.801 Probationary period; when required

(Waived only for research and development positions in the Scientific and Engineering Career path).

Section 315.802 Length of probationary period

(Waived only for positions in the Scientific and Engineering Career path).

Section 351.401 Determining retention standing

Section 351.402 Competitive area in RIF

Section 351.403 Competitive level in RIF

Section 351.504 Credit for performance

Section 351.701 Assignment involving displacement

Part 511 Classification under the General Schedule

Part 530 Subpart C, Special salary rate schedules

Part 531 Pay under the General Schedule

Part 536 Grade and Pay Retention

(Waived only to allow the following modifications: (1) Using bands in lieu of grades; (2) providing no band retention if reduction in band is caused by employee's pay being exceeded by band minimum rate; (3) providing no pay retention upon reduction in pay caused solely by geographic movement; (4) providing no pay retention upon conversion to the General Schedule as long as the employee's total rate of pay is not reduced; and (5) providing no pay retention upon cancellation of supervisory performance pay.)

Section 550.703 Definition of reasonable offer

(Waiver is applicable only to allow substitution of (1) "one band" for "two grade or pay levels" and "two grades" and (2) "band" for "grade.")

Part 575, Subpart A, Recruitment bonuses

Part 575, Subpart C, Retention allowances

Section 752.401(a)(3) Coverage, Reductions in grade

(Waiver is applicable only to use bands in lieu of grades and to exclude reductions in band not accompanied by a reduction in pay due to the employee's pay being exceeded by the band minimum rate.)

Section 752.401(a)(4) Coverage, Reductions in pay

(Waiver is applicable only to exclude reductions in pay that are solely due to recomputation upon geographic movement; (2) exclude conversions to GS pay that do not result in a reduction in the employee's total rate of pay; and (3) exclude reductions in pay due to the cancellation of supervisory performance pay.)

[FR Doc. 97–33458 Filed 12–23–97; 8:45 am]
BILLING CODE 6325–01–P

federal register

Wednesday
December 24, 1997

Part III

Environmental Protection Agency

40 CFR Part 799
Amended Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42187L; FRL–5742–2]

RIN 2070–AC76

Amended Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amended proposed rule; extension of comment period.

SUMMARY: EPA is amending the proposed rule issued under section 4(a) of the Toxic Substances Control Act (TSCA) (61 FR 33178, June 26, 1996) that would require manufacturers and processors to test those hazardous air pollutants (HAPs) specified in the proposal for certain health effects. Under this amended HAPs test rule proposal ("amended HAPs proposal"), EPA would require that testing be conducted using eleven TSCA health effects test guidelines issued by EPA on August 15, 1997 (62 FR 43820), codified at 40 CFR part 799, subpart H, instead of the eleven OPPTS draft harmonized test guidelines cross-referenced in the June 26, 1996 proposed rule. The Agency is soliciting comments on the application of these part 799 test guidelines to the amended proposed HAPs test rule. In addition, the Agency is amending the proposed HAPs test rule by removing the testing requirements for phenol; specifying export notification requirements; reviewing the status of the proposals for enforceable consent agreements (ECAs) for pharmacokinetics (PK) studies submitted by industry; revising the economic assessment; including additional support documents in the rulemaking record; and describing other changes and clarifications to the proposed test rule. In addition, EPA is inviting ECA proposals for all of the HAPs chemicals for which PK proposals have not been received to provide for alternative testing to meet the requirements contained in the proposed HAPs test rule, as amended in this notice.

EPA is also extending the public comment period in order to provide interested individuals with sufficient time to consider the effects of the newly promulgated TSCA test guidelines referenced in enforceable test standards in this amended HAPs proposal, the economic assessment for this amendment, and other changes described in this action, and to comment accordingly.

DATES: Written comments on this proposed rule must be received by EPA on or before February 9, 1998. The public comment period on the June 26, 1996 proposed rule is being extended from January 9, 1998 to February 9, 1998.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, as amended, identified by document control number (OPPTS–42187A; FRL–4869–1) to: U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460. See Unit V. of this preamble for further instructions.

Comments and data may also be submitted electronically to oppt.ncic@epamail.epa.gov. Follow the instructions under Unit V. of this document. No confidential business information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For general information: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA–Hotline@epamail.epa.gov. For technical information contact: Richard W. Loukroth, Jr. , Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 26, 1996 (61 FR 33178), EPA issued a proposed test rule for the following hazardous air pollutant chemicals that would require health effects testing to be conducted using eleven draft harmonized test guidelines developed by EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS): 1,1'-biphenyl (CAS No. 92–52–4), carbonyl sulfide (CAS No. 463–58–1), chlorine (CAS No. 7782–50–5), chlorobenzene CAS No. 108–90–7), chloroprene (CAS No. 126–99–8), *ortho*-cresol (CAS No. 95–48–7), *meta*-cresol (CAS No. 108–39–4), *para*-cresol (CAS No. 106–44–5), diethanolamine (CAS No. 111–42–2), ethylbenzene (CAS No. 100–41–4), ethylene dichloride (CAS No. 107–06–2), ethylene glycol (CAS No. 107–21–1), hydrochloric acid (CAS No. 7647–01–0), hydrogen fluoride (CAS No. 7664–39–3), maleic anhydride (CAS No. 108–31–6), methyl isobutyl ketone (CAS No. 108–10–1), methyl methacrylate (CAS No. 80–62–6), naphthalene (CAS No. 91–20–3), phenol (CAS No. 108–95–2), phthalic anhydride (CAS No. 85–44–9), 1,2,4–trichlorobenzene (CAS No. 120–82–1), 1,1,2-trichloroethane (CAS No. 79–00–5), and vinylidene chloride (CAS No. 75–35–4).

The Agency also offered to consider the use of PK and other mechanistic data as a means to permit route-to-route extrapolation of data from the existing chemical data base as an alternative to conducting some or all of the testing that would be required under the proposed HAPs test rule. Since this original proposal, EPA has promulgated eleven new TSCA health effects test guidelines, received eight ECA proposals for PK studies and prepared preliminary technical analyses for each of these PK proposals, and updated the economic assessment in light of the changes to the guidelines that are explained in this amended HAPs test rule proposal. In addition, EPA has identified needed changes and clarifications to the proposed HAPs test rule. This action amends the original HAPs proposal to include these changes and clarifications.

For all aspects of the original HAPs test rule proposal that are not addressed by this amended proposal, the discussion in the preamble of the original HAPs test rule proposal continues to apply.

Table of Contents

I. Background
II. TSCA Test Guidelines for HAPs Chemicals
A. Background to Test Guidelines Used in this Amendment
B. Summary of Basic Testing Requirement Changes Proposed by this Amendment
III. Changes and Clarifications
A. Phenol—Removal of Testing Requirements
B. Export Notification Requirements
C. Persons Required to Test
D. Testing Subject to GLP Requirements
E. Cresols—Clarification of Test Substances
F. Use of Acute and Non-Acute Data in Residual Risk Determinations
G. Submission of Equivalence Data
H. Other Changes to Regulatory Text
IV. Status of Proposals for Pharmacokinetics Studies and Other Proposals for Enforceable Consent Agreements and Orders
A. Proposals for PK Studies
B. Other Proposals for ECAs
C. The ECA Negotiation Process
V. Public Record and Electronic Submissions
VI. Regulatory Assessment Requirements
A. Economic Assessment
B. Executive Order 12866 and Executive Order 12898; Unfunded Mandates Reform Act
C. Regulatory Flexibility Act
D. Paperwork Reduction Act
E. Executive Order 13045

I. Background

On June 26, 1996 (61 FR 33178), EPA proposed, under TSCA section 4(a), 15 U.S.C. 2603(a), the testing of 21 HAPs for certain health effects (the "original HAPs test rule proposal"). The proposal also invited the submission of proposals for enforceable consent agreements (ECAs) for the HAPs chemicals which would include pharmacokinetics (PK) studies (61 FR 33178, 33189). On September 11, 1996 (61 FR 47853) (FRL–5395–9), EPA announced a public meeting on the proposed HAPs test rule. The public meeting was held on October 1, 1996; a transcript of the meeting is included in the record for this rulemaking. In response to requests from industry, on October 2, 1996, EPA held a meeting with potential submitters of alternative testing proposals that would include PK studies. At this meeting, EPA clarified the types of information the Agency was seeking in the PK ECA proposals. A copy of the meeting summary is included in the record for this rulemaking.

The deadline for written comments on the proposed HAPs test rule contained in the June 26, 1996 **Federal Register** proposal was December 23, 1996. EPA has successively extended the comment period on this proposed rule as follows: On October 18, 1996 (61 FR 54383) (FRL–5571–3), the comment period was extended from December 23, 1996 to January 31, 1997; on December 23, 1996 (61 FR 67516) (FRL–5580–6), it was extended from January 31, 1997 to March 31, 1997; on February 28, 1997 (62 FR 9142) (FRL–5592–1), it was extended from March 31, 1997 to April 30, 1997; on March 28, 1997 (62 FR 14850) (FRL–5598–4), it was extended from April 30, 1997 to June 30, 1997; on May 30, 1997 (62 FR 29318) (FRL–5831–6), it was extended from June 30, 1997 to August 15, 1997; on July 15, 1997 (62 FR 37833) (FRL–5732–2), it was extended from August 15, 1997 to September 30, 1997; on September 26, 1997 (62 FR 50546) (FRL–5748–8), it was extended from September 30, 1997 to December 1, 1997; and on November 28, 1997 (62 FR 63299) (FRL–5759–2), it was extended from December 1, 1997 to January 9, 1998. These extensions to the comment period were necessary to allow the Agency more time to finalize eleven TSCA health effects test guidelines to be cross-referenced in this amended HAPs test rule proposal, and to respond to the PK ECA proposals submitted by industry.

By this action, EPA is extending the public comment period of the original HAPs proposed rule from January 9, 1998 to February 9, 1998. This extension of the comment period is needed to provide commenters with sufficient time to consider the effects of the TSCA test guidelines, the economic assessment for the amended HAPs proposal and other changes described in this action, and to comment accordingly.

II. TSCA Test Guidelines for HAPs Chemicals

A. Background to Test Guidelines Used in this Amendment

The original proposed HAPs test rule cross-referenced eleven draft harmonized health effects test guidelines developed by the Office of Pollution Prevention and Toxic Substances (OPPTS) of the EPA. These draft OPPTS harmonized guidelines had previously been made available for public comment in the **Federal Register** of June 20, 1996 (61 FR 31522 (FRL–5367–7)). The draft harmonized guidelines were designated as the OPPTS draft Series 870 test guidelines in the June 20, 1996 **Federal Register** announcement. In the original HAPs proposal, EPA stated that it was considering one of three alternative approaches for referencing test guidelines in the test standards proposed for HAPs testing (61 FR 33178, 33187). Deficiencies with each of the three approaches led EPA to promulgate eleven TSCA health effect guidelines on August 15, 1997 (62 FR 43820), codified at 40 CFR part 799, subpart H. EPA is proposing to cross-reference these guidelines in the test standards proposed for HAPs testing, and intends to cross-reference them, as appropriate, in subsequent TSCA section 4(a) test rules. Until the establishment of the new TSCA test guidelines in subpart H, EPA had been cross-referencing in test rules an earlier set of TSCA test guidelines in 40 CFR parts 795 through 798, originally promulgated in 1985 (50 FR 39252, September 27, 1985).

The Agency, in developing the TSCA test guidelines established in part 799, subpart H, adopted seven of the OPPTS final harmonized test guidelines and four guidelines developed by the Organization for Economic Cooperation and Development (OECD). The only significant difference between the TSCA test guidelines and the OPPTS final harmonized test guidelines is that certain recommended procedures in the OPPTS final harmonized test guidelines are made mandatory to provide for enforceability. Table 1 in § 799.5053 of this amended proposal shows how the TSCA test guidelines would be referenced in enforceable test standards for the HAPs test rule.

An explanation of the process by which the TSCA test guidelines were developed from the OPPTS draft harmonized test guidelines, along with a discussion of the significant changes made to the draft harmonized guidelines in developing the TSCA guidelines, is described in the final rule adding the new TSCA test guidelines to 40 CFR part 799, subpart H (62 FR 43820, August 15, 1997) (FRL–5719–5). The official record for the rulemaking for the TSCA test guidelines has been established under document control number OPPTS–42193, and has been included in the record for this rulemaking. This record contains the basic information considered by EPA in developing the TSCA test guidelines. The record includes the OPPTS draft harmonized health effects test guidelines, references contained in the TSCA test guidelines, an explanation of the process of developing OECD test guidelines for genetic toxicity with EPA's role in this international process, and the final report of the Scientific Advisory Panel that provided peer review comments to EPA which were considered by the Agency in developing the OPPTS final harmonized guidelines.

B. Summary of Basic Testing Requirement Changes Proposed by this Amendment

The eleven TSCA test guidelines which are specified as basic testing requirements in Table 1 of § 799.5053 that EPA is proposing to use for testing the chemicals in the HAPs test rule are as follows:

1. TSCA acute inhalation toxicity with histopathology, 40 CFR 799.9135.
2. TSCA subchronic inhalation toxicity, 40 CFR 799.9346.
3. TSCA prenatal developmental toxicity, 40 CFR 799.9370.
4. TSCA reproduction and fertility effects, 40 CFR 799.9380.
5. TSCA carcinogenicity, 40 CFR 799.9420.
6. TSCA bacterial reverse mutation test, 40 CFR 799.9510.
7. TSCA *in vitro* mammalian cell gene mutation test, 40 CFR 799.9530.
8. TSCA mammalian bone marrow chromosomal aberration test, 40 CFR 799.9538.
9. TSCA mammalian erythrocyte micronucleus test, 40 CFR 799.9539.
10. TSCA neurotoxicity screening battery, 40 CFR 799.9620.

11. TSCA immunotoxicity, 40 CFR 799.9780.

EPA is proposing to use the TSCA test guideline § 799.9370 "TSCA prenatal developmental toxicity" as the basic testing requirement for developmental toxicity testing in this amended proposal. This guideline is based on the OPPTS final harmonized 870.3700 guideline entitled "Prenatal Developmental Toxicity Study" (to be published when all OPPTS harmonized health effects guidelines have been finalized). The original HAPs proposal cross-referenced OPPTS draft 870.3600 "Inhalation Developmental Toxicity Study" as the guideline for the developmental toxicity endpoint. The Agency prefers the approach taken by the OPPTS final harmonized 870.3700 guideline (the basis for the TSCA § 799.9370 guideline) over that taken by the OPPTS draft 870.3600 guideline because the OPPTS final harmonized 870.3700 guideline provides a broader testing approach. Furthermore, the OPPTS final harmonized 870.3700 guideline incorporates the testing specifications included in the OPPTS draft 870.3600 guideline.

The original HAPs proposal cross-referenced four OPPTS draft Series 870 harmonized genotoxicity test guidelines: 870.5385 "*In vivo* Mammalian Cytogenetics Tests: Bone Marrow Chromosomal Analysis;" 870. 5395 "*In vivo* Mammalian Cytogenetics Tests: Erythrocyte Micronucleus Assay;" 870.5100 "*Escherichia coli* WP2 and WP2 uvrA Reverse Mutation Assays;" and 870.5300 "Detection of Gene Mutations in Somatic Cells in Culture." See Unit IV.C. "Test Guidelines" of the original HAPs test rule proposal and Table 1 in § 799.5053 of the original HAPs proposal (61 FR 33178, 33187, 33197–33199). OPPTS later determined that the above-referenced genotoxicity test guidelines would not provide a sufficient basis for developing OPPTS final harmonized test guidelines for genotoxicity and looked to international efforts begun in 1989 by the OECD to develop an internationally accepted set of genotoxicity test guidelines. By September 1996, four OECD genotoxicity test guidelines had undergone extensive peer review and revision that included participation by U.S. scientific experts in the area of genotoxicity. The four OECD final revision genotoxicity test guidelines were approved by the member countries of the OECD in September 1996. In February 1997, these four genotoxicity guidelines were read from the OECD homepage (http://www.oecd.org/ehs/test/testlist.htm). OPPTS reformatted these documents and designated them as OPPTS final Series 870 harmonized test guidelines, to be published when all OPPTS harmonized health effects guidelines have been finalized. These four Series 870 final OPPTS harmonized test guidelines were adopted and published as TSCA test guidelines at 40 CFR part 799, subpart H (62 FR 43820, August 15, 1997).

In summary, the genotoxicity test guidelines to be cross-referenced as basic testing requirements by this amended HAPs proposal were developed based on the following documents:

The OECD final revision test guideline 471/472 "Bacterial reverse mutation assay" was adopted as OPPTS final harmonized test guideline, 870.5100 "Bacterial reverse mutation test," which in turn, provided the basis for TSCA test guideline § 799.9510 "TSCA bacterial reverse mutation test."

The OECD final revision test guideline 476 "*In vitro* mammalian cell gene mutation test" was adopted as OPPTS final harmonized test guideline, 870.5300 "*In vitro* mammalian cell gene mutation test," which in turn, provided the basis for TSCA test guideline § 799.9530 "TSCA *in vitro* mammalian cell gene mutation test."

The OECD final revision guideline 475 "Mammalian bone marrow chromosome aberration test" was adopted as OPPTS final harmonized test guideline, 870.5385 "Mammalian bone marrow chromosomal aberration test," which in turn, provided the basis for TSCA test guideline § 799.9538 "TSCA mammalian bone marrow chromosomal aberration test."

The OECD final revision test guideline 474 "Mammalian erythrocyte micronucleus test" was adopted as OPPTS final harmonized test guideline, 870.5395 "Mammalian erythrocyte micronucleus test," which in turn, provided the basis for TSCA test guideline § 799.9539 "TSCA mammalian erythrocyte micronucleus test."

EPA has documented the Agency's participation in the OECD revision process for updating the genotoxicity test guidelines (U.S. EPA Memorandum, March 10, 1997 (a)), the relationship among the OPPTS draft Series 870 harmonized genotoxicity test guidelines cross-referenced in the original HAPs test rule proposal, the OECD test guidelines, and the OPPTS final Series 870 harmonized test guidelines (U.S. EPA Memoranda, February 27, 1997; and March 10, 1997(b)), and the relationship between the TSCA 40 CFR part 799 series test guidelines and the OECD test guidelines in the record for this rulemaking (see also 62 FR 43820, August 15, 1997). Copies of these documents are available as described in Unit V. of this preamble.

These changes are summarized in the following Table 1.

Table 1.—List of TSCA Test Guidelines Cross-referenced in the Proposed HAPs Test Rule, As Amended, and the Corresponding OPPTS Draft Harmonized Test Guidelines

TSCA test guidelines cross-referenced in the amended HAPs test rule proposal (40 CFR)	OPPTS draft harmonized test guidelines cross-referenced in the original HAPs test rule proposal
799.9135 TSCA acute inhalation toxicity with histopathology	870.1350 Acute Inhalation Toxicity with Histopathology
799.9346 TSCA subchronic inhalation toxicity	870.3465 Subchronic Inhalation Toxicity
799.9370 TSCA prenatal developmental toxicity (derived from 870.3700)[1]	870.3600 Inhalation Developmental Toxicity Study
799.9380 TSCA reproduction and fertility effects	870.3800 Reproduction and Fertility Effects
799.9420 TSCA carcinogenicity	870.4200 Carcinogenicity
799.9510 TSCA bacterial reverse mutation test (derived from OECD 471/472)[1]	870.5100 *Escherichia coli* WP2 and WP2uvrA Reverse Mutation Assays
799.9530 TSCA *in vitro* mammalian cell gene mutation test (derived from OECD 476)[1]	870.5300 Detection of Gene Mutations in Somatic Cells in Culture
799.9538 TSCA mammalian bone marrow chromosomal aberration test (derived from OECD 475)[1]	870.5385 *In vivo* Mammalian Cytogenetics Tests: Bone Marrow Chromosomal Analysis

Table 1.—List of TSCA Test Guidelines Cross-referenced in the Proposed HAPs Test Rule, As Amended, and the Corresponding OPPTS Draft Harmonized Test Guidelines—Continued

TSCA test guidelines cross-referenced in the amended HAPs test rule proposal (40 CFR)	OPPTS draft harmonized test guidelines cross-referenced in the original HAPs test rule proposal
799.9539 TSCA mammalian erythrocyte micronucleus test (derived from OECD 474)[1]	870.5395 *In vivo* Mammalian Cytogenetics Tests: Erythrocyte Micronucleus Assay
799.9620 TSCA neurotoxicity screening battery	870.6200 Neurotoxicity Screening Battery
799.9780 TSCA Immunotoxicity	870.7800 Immunotoxicity

[1] See explanation of derivation in Unit II.B. of this preamble.

A revised § 799.5053 "Chemical testing requirements for hazardous air pollutants," based on the use of the TSCA test guidelines for HAPs chemical testing, is included as part of this amended proposal.

The eleven TSCA test guidelines described in Table 1 of this preamble are included in the record for this rulemaking. The **Federal Register** notice containing the TSCA test guidelines is available electronically from the EPA's World Wide Web site, http://www.epa.gov/fedrgstr/, under the heading: "Rules and Regulations;" by internet e-mail: guidelines@epamail.epa.gov; by mail; or, from the TSCA Non-Confidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

EPA is soliciting comments on the eleven TSCA test guidelines to be incorporated in enforceable test standards under this amended HAPs proposal. To be considered in this rulemaking, comments must be submitted in the manner specified in the "ADDRESSES" section at the beginning of this document.

III. Changes and Clarifications

In addition to cross-referencing the TSCA test guidelines, this amended HAPs proposal is making other changes and clarifications to the original HAPs proposal, which are set forth as follows:

A. Phenol—Removal of Testing Requirements

The original HAPs proposal included testing requirements for phenol (CAS No. 108–95–2). On January 17, 1997, EPA published a document (62 FR 2607) which announced a testing consent order (Order) under TSCA section 4 that incorporated an ECA concluded between EPA and fourteen specified companies. In the ECA, the companies agreed to perform certain health effects tests on phenol. In addition, the January 17 document included a direct final rule which added phenol to the list of chemical substances in 40 CFR 799.5000 that are subject to testing consent orders and hence subject to export notification requirements under TSCA section 12(b). EPA received adverse comment with respect to making entities that are not signatory to the ECA subject to export notification requirements for phenol. Because of those adverse comments, on May 23, 1997 (62 FR 28368), EPA removed the export notification rule. EPA did not withdraw the Order or the ECA, and signatories to the ECA remain subject to export notification requirements. EPA intends to propose a phenol export notification rule at a future time. Because EPA anticipates receiving the necessary test data on phenol pursuant to the ECA and Order, EPA is amending the proposed HAPs test rule to remove all phenol testing requirements.

The documents entitled: "Economic Assessment for the Amended Proposed TSCA Section 4(a) Test Rule for 21 Hazardous Air Pollutants," discussed in Units VI.A. and VI.D. of this preamble, and "Additional Information on Small Entity Impacts of the Amended Proposed TSCA Section 4(a) Test Rule for 21 Hazardous Air Pollutants," discussed in Unit VI.C. of this preamble, have not yet been modified to reflect the reductions in impact and burden associated with the deletion of phenol testing, but will be so modified by the time the final rule is promulgated.

Unit VI. of this preamble contains data from the above economic assessment with all references to phenol removed. Similarly, Table 1 in § 799.5053, which sets forth the testing required for the chemicals in the proposed HAPs test rule, as amended, does not include phenol.

B. Export Notification Requirements

In the original HAPs proposal, EPA did not state that export notification under TSCA section 12(b), 15 U.S.C. 2611(b), would be required for the HAPs chemicals in the final rule. Section 12(b) of TSCA requires all persons who export or intend to export a chemical substance or mixture for which the submission of data is required under TSCA section 4 to notify EPA of this export or intent to export. Regulations interpreting the requirements of TSCA section 12(b) appear at 40 CFR part 707, subpart D. In brief, as of the effective date of the HAPs test rule, an exporter of any subject HAP chemical would be required to report to EPA the first export or intended export of the chemical to each foreign country of export. EPA would then notify the foreign government about the HAPs test rule as it relates to that chemical.

Accordingly, EPA is amending the original proposed HAPs test rule to require export notification for all the chemicals for which testing would be required under the amended HAPs proposal, and has changed § 799.5053 accordingly.

C. Persons Required to Test

1. *General.* In the original HAPs proposal, EPA indicated that persons who manufacture HAP chemicals included in the proposed rule as byproducts, as defined in 40 CFR 791.3(c), would be subject to the requirements set forth in the proposed rule. In addition, EPA proposed to exempt those manufacturers and processors that produce the HAP chemicals included in the proposed rule only as an impurity, as defined in 40 CFR 790.3, because it would be difficult and prohibitively expensive for EPA, manufacturers, and processors to identify with complete assurance all chemical substances that contain the HAP chemicals included in the proposed rule solely as an impurity and EPA would find it difficult to apply both the exemption and reimbursement processes to those who manufacture and/or process these HAP chemicals solely as an impurity. Furthermore, the Agency indicated that EPA's data reimbursement regulations established under TSCA section 4(c) (40 CFR part 791) state that those persons who manufacture or process chemical substances as impurities are not subject to test requirements unless a particular test rule specifically states otherwise (40 CFR 791.48(b)) and that EPA found no basis to propose such a requirement for

the original HAPs proposal (61 FR 33178, 33189, 33190).

EPA has received inquiries from industry seeking clarification of the distinction between byproduct and impurity in a variety of contexts in the manufacture of products and in the course of chemical processing (see document numbers 3, 8, 9, 10, 11, 12, and 14 referenced in Unit V.I. of this preamble). EPA's review has revealed that certain HAP chemicals included in this amended HAPs proposal are manufactured or processed as byproducts or impurities in quantities large enough that they can be identified in databases available to the Agency (Chemical Update System (CUS), Toxic Release Inventory (TRI), Aerometric Information Retrieval System Facility Subsystem (AFS)). Certain owners and operators of facilities that have, during the latest year prior to the publication of the final HAPs rule in the **Federal Register**, manufactured (including imported) or processed HAP chemicals included in this amended proposal in amounts equal to or greater than 25,000 lb are required under section 313 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. 11023, to report the TRI releases of these substances and, accordingly, know or should know whether they are manufacturing or processing these HAP chemicals. (EPCRA section 313 also requires reporting by facilities that use 10,000 lb or more of a listed toxic chemical during a calendar year). The toxic chemicals release reporting regulations promulgated pursuant to EPCRA section 313 additionally provide a de minimis exemption for chemicals otherwise subject to TRI requirements when the chemicals are present in mixtures in concentrations of less than one percent by weight (or 0.1% for carcinogens) (40 CFR 372.38(a)). Because chemical manufacturers and processors are among the persons required to report to TRI, manufacturers and processors generally should know the composition of chemicals that they manufacture or process at least at or above one percent by weight of composition.

By this amendment, EPA is proposing to modify criteria to determine when persons subject to the HAPs test rule must comply with the rule. The original HAPs proposal did not provide a volume cutoff beyond the provisions of 40 CFR 790.42(a) for manufacturers and processors as a means for determining when certain classes of persons would be required to comply with the rule. (The regulations cited above provide that, while legally subject to a test rule, processors, persons who manufacture less than 500 kg (1,100 lb) of the chemical annually, and persons who manufacture small quantities of the chemical solely for research and development, are not required to comply with the rule unless directed to do so by EPA in a subsequent notice if no manufacturer has submitted a notice of its intent to conduct testing.) Under the original HAPs proposal, all other manufacturers were required to comply with the rule when promulgated ("initially comply").

The criteria proposed in this amended proposed rule provide an equitable means for determining which entities would be initially and secondarily responsible for testing HAPs chemicals: testing would be conducted primarily by persons owning facilities at which large volumes of HAPs chemicals are manufactured, while persons owning facilities at which smaller volumes of HAPs chemicals are manufactured would only be required to comply with the rule if no manufacturer submits a notice of its intent to conduct testing.

It is reasonable to expect that persons who manufacture or process chemicals containing HAPs should know the composition of the chemicals they manufacture or process at or above one percent by weight, and should know if they manufacture or process 25,000 lb or more of a chemical per year at any facility. Accordingly, EPA is amending the proposal to specify those who must initially comply with the HAPs rule: (1) any person who during the last complete corporate fiscal year prior to the publication of the final rule in the **Federal Register**, manufactured (including imported) at a particular facility any of the HAP chemicals included in this amended HAPs proposal in an amount equal to or in excess of 25,000 lb (regardless of the form of the HAP chemical, i.e., as a Class 1 substance, as a component of a mixture, as a byproduct, as an impurity, as a component of a Class 2 substance, or as an isolated intermediate), and (2) any person who during the last complete corporate fiscal year prior to the publication of the final rule, manufactured (including imported) at a particular facility any of the HAP chemicals as a component of a chemical substance or mixture that comprises one percent or more by weight of the chemical substance or mixture, as long as the amount of the HAP chemical is equal to or in excess of 25,000 lb. EPA is proposing to amend the "Persons required to submit study plans, conduct tests and submit data" text of § 799.5053 to reflect this change. ("Naturally occurring substances," as described at 40 CFR 710.4(b), and non-isolated intermediates, as defined at 40 CFR 704.3, are not to be considered in determining whether a person is responsible for HAP chemical testing.) If, during the last complete corporte fiscal year prior to the publication of the final rule in the **Federal Register**, a person manufactured 25,000 lb or more of a HAP chemical, as such, or in another substance or mixture at a concentration of one percent or more (as long as the amount of the HAP chemical is equal to or in excess of 25,000 lb), that person would be required to comply initially with the rule.

This approach is consistent with the policy of the United States, expressed by Congress in section 2(b)(1) of TSCA, 15 U.S.C. 2601(b)(1), that development of data regarding the effect of chemical substances and mixtures on human health and the environment should be the responsibility of those who manufacture and process such chemicals. The following examples are provided to guide companies in determining whether they are subject to the proposed HAPs test rule, as amended:

a. *Class 1 and Class 2 substances.* Under the amended HAPs proposal, testing would be required for HAP chemicals included in the proposed rule that are manufactured (including imported) or processed in the form of a Class 1 substance or as a component of a Class 2 substance. A Class 1 substance is a chemical substance with a composition that can be represented by a specific, complete chemical structure diagram. Examples of Class 1 substances are 1,1,2-trichloroethane, 1,1'-biphenyl and hydrochloric acid. A Class 2 substance is a complex combination of substances that cannot be represented by a specific, complete chemical structure diagram. Examples of Class 2 substances are light paraffinic distillates (petroleum), brominated soybean oil, and propoxylated tall oil. Class 1 and Class 2 substances that are in U.S. commerce are listed on the TSCA chemical substance inventory and have Chemical Abstracts Service (CAS) numbers. See 40 CFR 720.45(a)(1)(i) for the distinction between Class 1 substances and Class 2 substances.

Example 1: Producer—Class 2 Substance Containing a HAP Chemical

Company Z produces chemical substance E. Chemical substance E has a Chemical Abstract Service (CAS) number, includes several different chemical species, and cannot be represented by a specific, complete chemical structure diagram, i.e., it is a Class 2 substance. Chemical substance E appears on the TSCA Chemical Substance Inventory and was reported as a Class 2 substance. The composition of chemical substance E includes chemical B (which is a HAP chemical that is included in the amended HAPs proposal) that was produced in the manufacture of chemical substance E. Chemical B is normally present in concentrations that range from 1 to 6 percent by weight of chemical substance E.

Company Status: EPA considers Company Z to be a producer of HAP chemical B. Irrespective of whether it intended HAP chemical B to be an integral part of chemical substance E, Company Z is a producer of HAP chemical B, if the amount of HAP chemical B produced at a concentration of one percent or greater at any facility during the company's last complete corporate fiscal year were more than 25,000 lb, Company Z would be required to comply initially with the rule.

Example 2: Processor—Class 2 Substance Containing a HAP Chemical

Company Z, which produces chemical substance E as discussed in Example 1, also applies chemical separation techniques on chemical substance E (a Class 2 substance that contains HAP chemical B) to produce chemical substances F and G. The separation proceeds without chemical reaction and no additional amount of HAP chemical B is produced. Chemical substance F, a Class 2 substance, contains some of the HAP chemical B that was a component of chemical substance E in concentrations that exceed one percent by weight. Chemical substance F has no separate commercial purpose and is disposed of as waste. Chemical substance G, a Class 1 substance, also contains some HAP chemical B in concentrations that exceed one percent by weight of G.

Company Status: Company Z is considered to be a processor of HAP chemical B with respect to the production of chemical substance F, a byproduct, and chemical substance G, a commercial product. However, Company Z remains responsible for producing HAP chemical B because of its original production of chemical substance E (see Example 1 above). Therefore, as a manufacturer and processor of HAP chemical B, Company Z would be required to comply initially with the amended HAPs test rule proposal if the total amount of the HAP chemical B component were 25,000 lb or more at any facility during the company's last complete corporate fiscal year after the publication of the rule. If another company had purchased chemical substance E from Company Z and had performed a similar separation process resulting in the production of chemical substances F and G, both of which contain HAP chemical B as an unintentionally present component, the purchaser would be considered only to be a processor of HAP chemical B as an impurity and, therefore, as a processor, must comply with the requirements of the rule only if directed to do so by EPA in a subsequent **Federal Register** notice because no manufacturer has submitted a notice of its intent to conduct testing. (Note that HAP chemical B was present in chemical substances F and G at greater than one percent concentration). Additional information regarding the status of processors is provided in this Unit of the preamble.

b. *HAPs present as part of mixtures.* Under the amended HAPs proposal, testing would be required for HAP chemicals included in the proposed rule that are manufactured (including imported) or processed as part of a mixture, as that term is defined by TSCA section 3(8). For example, a combination of substances that is manufactured as a result of a chemical reaction, but that could have been prepared without chemical reaction, is considered a mixture under TSCA section 3(8). If a HAP chemical is produced as a result of this chemical reaction, the person who manufactured the mixture has also manufactured the HAP chemical. A person who produced the same mixture but without chemical reaction would be considered to be a HAP processor.

Example 3: Manufacturers of Mixtures

Two companies, Company Y and Company Z, produce mixtures as commercial products that have the same composition and that contain HAP chemical B in concentrations that exceed one percent by weight of the mixture. Company Y purchases the components of the mixture and combines them without a chemical reaction occurring. Company Z creates the mixture by reacting chemicals. During the chemical reaction HAP chemical B is formed.

Company Status: Company Z has manufactured HAP chemical B and would be required to comply initially with the amended HAPs proposal if the total amount of chemical B manufactured is 25,000 lb or more at any facility during the company's last complete corporate fiscal year prior to the publication of the test rule. Company Y is a processor of HAP chemical B and, therefore, must comply with the requirements of the rule only if directed to do so by EPA in a subsequent **Federal Register** notice because no manufacturer has submitted a notice of its intent to conduct testing.

c. *Isolated intermediates.* Under the amended HAPs proposal, testing would be required for HAP chemicals included in the proposed rule that are manufactured (including imported) or processed in the form of isolated intermediates. HAP chemicals produced in the form of non-isolated intermediates (as defined at 40 CFR 704.3) are not subject to the amended HAPs proposal.

Example 4: Producer—Non-isolated and Isolated Intermediates

A company produces but does not isolate chemical substance H, a Class 2 substance that contains HAP chemical B in concentrations that exceed one percent by weight. Immediately following this production in a continuous flow process, chemical substance H is reacted with other chemicals to form chemical substance I, which the company isolates, packages and distributes in commerce. Chemical substance I does not contain any HAP chemical because chemical B in chemical substance H completely reacts in the formation of chemical substance I.

Company Status: Chemical substance H is a "non-isolated intermediate," defined at 40 CFR 704.3. Although HAP chemical B is formed as part of chemical substance H, chemical B is reacted entirely in the continuous flow process. Therefore, the company would not be subject to the requirements of the amended HAPs proposal because the final product, chemical substance I, does not contain HAP chemical B.

If Class 2 chemical substance H had been removed from the reaction vessel, stored, and reacted later to form chemical substance I, chemical substance H would have been an isolated intermediate that contained HAP chemical B. In this case, the company would be required to comply initially with the amended HAPs proposal, if the amount of HAP chemical B that is manufactured during the company's last complete corporate fiscal year prior to the publication of the rule in the **Federal Register** were 25,000 lb or more at any facility, due to the company's production of a HAP chemical as part of an isolated intermediate.

2. *Processors.* The Agency has proposed findings under TSCA sections 4(a)(1)(A) and 4(a)(1)(B) for the manufacturing and processing of the chemicals contained in the proposed HAPs test rule. See Supporting Documentation 3(a), (b) and (c) and References 11, 12 and 16 as cited in Unit III.C. "Review of Data and Selection of HAPs" and Unit V. "Findings" of the original HAPs test rule proposal (61 FR 33178, 3384, 33185, 33190). The terms "process" and "processor" are defined at TSCA sections 3(10) and 3(11), respectively

Accordingly, in the preamble to the original HAPs proposal (61 FR 33178, 33189), EPA stated that persons who manufacture (including import) or process, or intend to manufacture or process, any of the HAPs chemicals would be subject to the testing requirements in the rule. The preamble also explained that manufacturers would be required to submit letters of intent to conduct testing or exemption applications under 40 CFR 790.45. However, under 40 CFR 790.42, processors, small-quantity manufacturers, and manufacturers of small quantities solely for research and development purposes would not be required to submit letters of intent or exemption applications unless directed to do so in a subsequent notice as described in 40 CFR 790.48(b).

The text of § 799.5053 in the original HAPs test rule proposal did not include

processors in the class of persons required to submit study plans, conduct tests, and submit data. The text of § 799.5053, however, did reference the fact that processors (and small-quantity manufacturers and manufacturers of small quantities solely for research and development purposes) would become subject to these requirements only after notification in the **Federal Register** that no manufacturer had notified EPA of its intent to conduct testing.

The text of § 799.5053 of this amended HAPs proposal makes it clear that while processors would be included in the class of persons subject to the rule, processors, small quantity manufacturers, manufacturers of small quantities of HAP chemicals solely for research and development purposes and persons who, at any facility, manufacture a HAP chemical subject to this rule in an amount less than 25,000 lb or as a component of a chemical substance or mixture and comprises less than one percent by weight of the chemical substance or mixture (as long as the amount of the HAP chemical is equal to or in excess of 25,000 lb) would need to comply with the requirements to submit study plans, conduct tests, and submit data only if no manufacturer submits a notice of its intent to conduct testing and if these persons are directed to do so in a subsequent notice published in the **Federal Register**.

3. *Carbonyl sulfide.* The original HAPs proposal identified carbonyl sulfide as the first chemical substance to be subject to a TSCA section 4 test rule that is produced almost exclusively as a byproduct (61 FR 33178, 33190). In the original HAPs proposal, EPA noted that persons who manufacture the subject HAPs chemicals, including carbonyl sulfide, as byproducts, as defined in 40 CFR 791.3(c), would be subject to the testing requirements set forth in the proposed rule. EPA also indicated that all persons reporting the release of carbonyl sulfide to the TRI pursuant to section 313 of EPCRA would be considered to be manufacturers of carbonyl sulfide and would be subject to the provisions of the HAPs test rule.

In preparing the economic analysis for carbonyl sulfide for the amended HAPs proposal, EPA utilized information from 1995 reports to both the TRI and AFS databases. For 1995, all those reporting release information to the TRI and AFS databases on carbonyl sulfide are manufacturers.

The Agency is hereby clarifying that all persons who manufacture carbonyl sulfide would be subject to the HAPs testing requirements, whether or not they report release information to the TRI, or in EPA's AIRS AFS database. As explained in Appendix A of EPA's economic assessment and the additional information document on small business impacts prepared for this assessment, EPA relied on information taken from the TRI and AFS databases to identify facilities releasing carbonyl sulfide (see Units VI.A., VI.C., and VI.D. of this preamble). EPA recognizes that these facilities may not represent the complete universe of facilities that produce carbonyl sulfide and that the information derived from these databases is not exhaustive. To the extent that there are additional manufacturers not identified in the Agency's economic assessment, the testing burden on any individual manufacturer may be reduced.

D. Testing Subject to GLP Requirements

In this amended HAPs proposal, EPA is clarifying the text of § 799.5053 to indicate that the required testing under the HAPs test rule shall be carried out following TSCA Good Laboratory Practice Standards (40 CFR part 792). The text of § 799.5053 in the original HAPs proposal stated that, among other things, testing should be conducted as specified in 40 CFR part 792 (see 61 FR 33178, 33197), but did not indicate that GLPs are codified at 40 CFR part 792. The text of § 799.5053 contained in this amended HAPs proposal clarifies this point.

E. Cresols—Clarification of Test Substances

EPA is clarifying that the provision of the HAPs test rule relating to cresols requires separate testing of each cresol isomer (i.e., *ortho*-isomer (CAS No. 95–48–7), *meta*-isomer (CAS No.108–39–4), and *para*-isomer (CAS No. 106–44–5)), as indicated in Table 1 in § 799.5053 in both the original HAPs proposal and this amended HAPs proposal. Therefore, each cresol isomer is subject to acute toxicity, subchronic toxicity, neurotoxicity, and immunotoxicity testing (61 FR 33178, 33198). Documentation supporting the findings for each cresol isomer, and all other subject HAPs chemicals, was previously described in Unit III. C. "Review of Data and Selection of HAPs" and Unit V. "Findings" of the original HAPs proposal (61 FR 33178, 33184, 33185, 33190). See Unit X. A. "Supporting Documentation," Items (3)(a), (b), and (c) and Unit X. B. "References," Items (11), (12), and (16) of the original HAPs proposal (see 61 FR 33178, 33195). Testing of cresols in particular is discussed at Unit III. D. "Previous TSCA Testing Actions Affecting These Chemical Substances" and Unit IV. B. "Test Substance" of the original HAPs proposal (61 FR 33178, 33185, 33186). See Unit X. A. "Supporting Documentation" of the original HAPs proposal, Items (1)(g) and (j) (61 FR 33178, 33194). It should be noted that the data for cresols summarized in the table entitled "TSCA Section 4 (a) Statutory Findings" (61 FR 33178, 33191) are based on the mixture of all three cresol isomers. As previously stated (61 FR 33178, 33186), EPA believes that it would be very burdensome to test every possible variation of the cresol mixture and is therefore proposing to test each isomer. This approach follows that taken in the final test rule for cresols (51 FR 15771, 15776, April 28, 1986).

Table 1 in § 799.5053, which sets forth the testing required for the chemicals in the proposed HAPs test rule, as amended, has been changed to clarify that testing is required for each cresol isomer.

F. Use of Acute and Non-Acute Data in Residual Risk Determinations

EPA is correcting an error in the preamble to the original HAPs proposal. In Unit II. "Uses of Data" (61 FR 33178, 33179 (third column)), the Agency indicated that non-acute data will be used by EPA to meet its statutory obligation under section 112(f) of the Clean Air Act (CAA), 42 U.S.C. 7412(f), to assess residual risk after the imposition of technology-based emission standards (maximum achievable control technology or MACT standards) required by CAA section 112(d), 42 U.S.C. 7412(d). However, as discussed at the public meeting held on the proposed HAPs test rule on October 1, 1996, the Agency intends that the residual risk determinations under the Clean Air Act be based on both acute and non-acute data. See pages 24 and 25 of the official transcript of the October 1, 1996 public meeting on the proposed test rule, included as part of this rulemaking record.

G. Submission of Equivalence Data

In Unit V. F. "Persons Required To Test" of the original HAPs proposal (61 FR 33178, 33189–33190), EPA did not indicate that those who file exemption applications would not be required to submit equivalence data, although this was indicated in Unit VII.B. of the original HAPs proposal. EPA is clarifying that the Agency is not proposing to require those who file exemption applications to submit equivalence data as a condition for exemption from the testing for the chemical substances subject to the HAPs test rule.

H. Other Changes to Regulatory Text

In addition to the changes made to the text and table in § 799.5053 "Chemical testing requirements for hazardous air pollutants" of the amended HAPs proposal that are set forth in previous sections of Unit III. of this preamble, the following changes have been made:

1. EPA has changed the titles of columns 2, 3, and 4 in Table 1 of § 799.5053 of the original HAPs proposal (61 FR 33178, 33197–33199) from: "Chemical substance/required testing," "OPPTS harmonized guidelines," and "Specific requirements under this section" to: "Chemical name/types of testing," "Basic testing requirements (test guideline)," and "Changes from guideline." The Agency believes that this change of nomenclature clarifies the meaning of Table 1. The corresponding description throughout the text of § 799.5053 has been revised to incorporate these changes.

2. In the original HAPs proposal at § 799.5053, EPA indicated that "*E. coli* reverse mutation" and "gene mutation" tests would be required for the HAP chemical carbonyl sulfide. The titles of these tests have been changed in § 799.5053 of the amended HAPs proposal to "Bacterial reverse mutation" and "Mammalian gene mutation," respectively, to reflect corresponding changes in the titles of the referenced guidelines.

3. In the original HAPs proposal at § 799.5053, EPA designated paragraph (b)(1)(ii)(C) in Table 1 to indicate an oral route of exposure. No testing via an oral route of exposure was required in Table 1. Consequently, paragraph (b)(1)(ii)(C) has been changed. In the amended HAPs proposal, this paragraph now indicates a vapor-phase route of exposure specifically for *in vitro* cytogenetics testing.

4. In the original HAPs proposal, EPA did not indicate the route of exposure for the *in vitro* cytogenetics testing for the HAP chemical carbonyl sulfide (61 FR 33178, 33199). EPA is indicating in Table 1 of § 799.5053 that the route of exposure for the Bacterial reverse mutation and the Mammalian gene mutation testing would be vapor-phase as indicated in paragraph (b)(1)(ii)(C).

5. In the original HAPs proposal, EPA omitted additional testing requirements in the test standard for acute toxicity testing for chlorobenzene in Table 1 of § 799.5053 (61 FR 33178, 33198). Revised § 799.5053 corrects Table 1 to include the additional testing requirements specified in paragraph (b)(2) "*Modifications applicable to acute testing*" for chlorobenzene.

6. Paragraph (b)(5) "*Reproductive toxicity and fertility study test modifications*" of § 799.5053 in the original HAPs proposal has been deleted since it contains the same requirements as paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B), which specify that the route of exposure would be either vapor-phase inhalation or inhalation of aerosol.

7. In the original HAPs proposal, the guideline for developmental toxicity testing (OPPTS draft 870.3600) cited in Table 1 of § 799.5053 (61 FR 33178, 33197–33199) would have required developmental testing to be conducted using inhalation as the route of exposure. The TSCA prenatal developmental toxicity test guideline (40 CFR 799.9370) specified for developmental toxicity testing in this amended HAPs proposal does not indicate the route of exposure for testing. Table 1 of § 799.5053 has been changed to include specific references to the route of exposure for each HAP chemical substance for which developmental toxicity testing is proposed under this amended HAPs proposal.

8. In this amended HAPs proposal, EPA cites the TSCA immunotoxicity test guideline (40 CFR 799.9780) in Table 1 of § 799.5053 (61 FR 33178, 33197–33199). This test guideline contains four different test methods. EPA is proposing that immunotoxicity testing under the HAPs test rule include only the determination of antibody response to the administration of sheep red blood cell antigen. The Agency is further proposing that either the antibody plaque-forming cell assay (§ 799.9780(g)(1)(i)) or the ELISA immunoglobulin quantification assay (§ 799.9780(g)(1)(ii)) shall be used to meet the testing requirements. The natural killer cell assay (§ 799.9780(g)(1)(iii)) and the enumeration of splenic or peripheral blood cells (§ 799.9780(g)(2)) are not being proposed for HAPs testing. Accordingly, § 799.5053(b)(4) has been changed to clarify the immunotoxicity testing requirements and Table 1 of § 799.5053 includes notations to so indicate.

IV. Status of Proposals for Pharmacokinetics Studies and Other Proposals for Enforceable Consent Agreements and Orders

A. Proposals for PK Studies

1. EPA's Invitation for Proposals

In the original HAPs proposal, EPA invited proposals for pharmacokinetics studies and other mechanistic data to support route-to-route extrapolation of data from existing studies for the subject HAPs chemicals (61 FR 33178, 33188, 33189). The PK studies would be used to inform the Agency about route-to-route extrapolation of toxicity data from routes other than inhalation when it is scientifically defensible in order to empirically derive the inhalation risk. The PK proposals could form the basis for negotiation of enforceable consent agreements (ECAs) that would provide for testing in lieu of some or all of the tests proposed in the HAPs test rule, as amended.

The Agency has received alternative testing proposals for eight HAPs chemicals. These proposals are as follows:

(1) Diethanolamine (CAS No. 111–42–2), submitted by the Chemical Manufacturers Association, Alkanolamines Panel, and entitled "Proposal for Pharmacokinetics Studies of Diethanolamine" (November 25, 1996).

(2) Ethylene dichloride (CAS No. 107–06–2), submitted by the HAP Task Force, and entitled "Proposal for Pharmacokinetics Study of Ethylene Dichloride" (November 22, 1996).

(3) Ethylene glycol (CAS No. 107–21–1), submitted by the Chemical Manufacturers Association, Ethylene Glycol Panel, and entitled "Proposal for Pharmacokinetic Studies of Ethylene Glycol" (November 5, 1996).

(4) Hydrogen fluoride (CAS No. 7664–39–3), submitted by the Chemical Manufacturers Association, Hydrogen Fluoride Panel, and entitled "Proposal for a Physiologically-Based Pharmacokinetic (PBPK) Model for Hydrogen Fluoride" (November 22, 1996).

(5) Maleic anhydride (CAS No. 108–31–6), submitted by the Chemical Manufacturers Association, Maleic Anhydride Panel, and entitled "Developing an Inhalation Testing Program for Maleic Anhydride" (November 8, 1996).

(6) Phthalic anhydride (CAS No. 85–44–9), submitted by the Chemical Manufacturers Association, Phthalic Anhydride Producers Task Group, and entitled "Testing Proposal of the Chemical Manufacturers Association, Phthalic Anhydride Producers Task Group in Response to EPA's Proposed Rule for Phthalic Anhydride" (November 22, 1996).

(7) 1,2,4-Trichlorobenzene (CAS No. 120–82–1), submitted by the Chlorobenzene Producers Association (CPA), and entitled "Proposal to Use the Pharmacokinetics, Physical, and Chemical Properties of 1,2,4-Trichlorobenzene to Fill Data Gaps" (November 25, 1996).

(8) 1,1,2-Trichloroethane (CAS No. 79–00–5), submitted by the HAP Task Force, and entitled "Proposal for Pharmacokinetics Study of 1,1,2-Trichloroethane" (November 22, 1996).

Copies of the PK proposals and the Agency's preliminary technical analyses of these proposals have been placed in the public record for this action (OPPTS–42187B, FRL–4869–1).

2. The Agency's Evaluation of the Proposals

The following provides a background to EPA's method of evaluating the PK proposals. As the original HAPs proposal indicated (61 FR 33178, 33189), EPA used the Gerrity and Henry (1990) decision tree as an element in evaluating the PK proposals and also used mechanistic data in determining the appropriateness of route-to-route extrapolation from the existing data base as an alternative to conducting some or all of the testing required under the proposed HAPs test rule.

Pharmacokinetics and mechanistic data may be used to inform the Agency about route-to-route extrapolation when EPA determines that extrapolation from existing studies may provide sufficient data to substitute for required testing under the proposed rule.

Pharmacokinetics and mechanistic data alone may not be used to substitute for proposed required testing when studies by a route other than inhalation do not exist or are deemed by EPA to be inadequate. In such cases, however, pharmacokinetics and mechanistic data may be used to support a decision that required testing could be conducted using routes other than inhalation (see document referenced in Unit V.J.2. of this preamble).

In many cases, the proposals that EPA received went beyond PK by including alternate testing strategies to respond to the testing identified in the proposed HAPs test rule. EPA's evaluations of these proposals identify changes or additions that provide for testing of these HAP chemicals as an alternative to the testing contained in the proposed HAPs test rule. If this testing is incorporated into ECAs, and if the data resulting from testing under the ECAs are acceptable to the Agency, such testing will provide an alternative to some or all of the testing proposed for these substances in the HAPs test rule. If testing under these ECAs does not fulfill the Agency's needs, EPA reserves the right to meet these needs through rulemaking.

The Agency has prepared preliminary technical analyses of each PK proposal (ethylene dichloride, hydrogen fluoride, maleic anhydride, phthalic anhydride, 1,2,4-trichlorobenzene, ethylene glycol, diethanolamine and 1,1,2-trichloroethane) and sent each to the appropriate submitter. EPA notes that, as a result of unexpected complexities arising in the review of the PK proposals and contrary to the statement in the preamble to the proposed HAPs test rule, the Agency has not been able to conclude ECAs relating to PK studies within 12 months of the date of the HAPs test rule proposal. EPA expects to make further progress on these ECAs in the next few months.

In each preliminary technical response to a submitter of a PK proposal, EPA requested the submitter either to express a continued interest in pursuing the ECA process as an activity distinct from the test rule process, in light of the Agency's preliminary technical analysis, or to submit a revised proposal which takes into consideration the Agency's comments. Depending on each submitter's response, EPA will determine whether or not to proceed with the ECA process for that particular PK proposal.

B. Other Proposals for ECAs

EPA has received a proposal to develop a non-PK-related ECA for the HAP chemical methyl isobutyl ketone (CAS No. 108–10–1). This proposal was submitted to the Agency by the Chemical Manufacturers Association Ketones Panel on December 11, 1996, and is entitled "Alternative Testing Proposal for Methyl Isobutyl Ketone." In addition, the EPA has received a proposal to develop an ECA for the HAP chemical 1,1'-biphenyl (CAS No. 92–52–4). This proposal submitted by the Biphenyl Workgroup on October 7, 1997, is entitled "Developing a Test Plan for Assessing the Potential Risks of Inhaled Biphenyl." EPA has agreed to review the contents of these proposals and to provide comments on their technical merit and relevance to the proposed HAPs testing requirements.

EPA also received a proposal to enter into an ECA from the Chemical Manufacturers Association Cresols Panel to develop an alternative to the proposed HAPs testing for cresols. The proposal was dated April 9, 1997 and was accompanied by a document entitled "Toxicological Profile for Cresols." The proposal focused on testing for only the *ortho*-cresol isomer. Subsequent telephone conversations between EPA and the Panel representative identified that the proposal was not fully developed (see documents referenced in Units V.G.3. and V.G.4. of this preamble). The proposal was later withdrawn by the CMA Cresols Panel.

EPA is hereby inviting the submission of proposals for ECAs on all the HAPs chemicals for which ECA proposals have not been received, but not for phenol (see Unit III.A. of this preamble). Such proposals must clearly describe the rationale for proposing an alternative testing program, detail the full extent of the testing to be performed under the proposal, and describe how the proposed testing would meet the testing requirements contained in the proposed HAPs test rule, as amended.

ECA proposals to provide testing alternative to that described in the proposed HAPs test rule, as amended, should be labeled: "ECA Proposal for (HAP chemical name) to Provide Alternative Testing to Meet HAPs Rule Testing Requirements," identified by Document Control Number (OPPTS–42187B; FRL–5742–2), and sent to U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, Document Control Office (7407), Room G–099, 401 M St., SW., Washington, DC 20460. Proposals for ECAs must be received no later than February 9, 1998. EPA will also seek to complete the development of any ECAs expeditiously, and, whenever possible, will work to complete such agreements within 12 months from the date of the Agency's acceptance of the proposal.

EPA will review the submissions and may select candidates for negotiation based on the ability of the proposal to fulfill the data requirements that are set forth in this amended HAPs proposal. If the Agency decides to proceed with the ECA process, it will publish a notice in the **Federal Register** soliciting persons interested in participating in or monitoring negotiations for the development of ECAs for PK studies to notify the Agency in writing.

C. The ECA Negotiation Process

Under its regulations, EPA is required to provide the public with an opportunity to comment on and participate in the development of ECAs. (The procedures for ECA negotiations are described at 40 CFR 790.22(b).) Under the ECA process, EPA will publish a notice in the **Federal Register** soliciting interested parties to participate in or monitor negotiations for ECAs on those HAPs chemicals for which the Agency has decided to proceed. The notice will also announce a date for one or more public meetings to negotiate the ECAs. At the meetings to negotiate the PK ECAs, EPA may raise issues, based on the Agency's further review of the PK proposals, that differ from those contained in the Agency's preliminary technical analyses. If ECAs are successfully concluded, they will be incorporated into testing consent orders, by which means they become enforceable.

It is important that all submitters of ECA proposals—and potential submitters—recognize the significance of responding to the request for comments on the proposed HAPs test rule, as amended. The submission of a proposal to develop an ECA to conduct testing alternative to that contained in the HAPs test rule is no guarantee that the process will conclude with an agreement. Comments on the proposed HAPs test rule, as amended, should be submitted as an activity separate from the ECA process. To be considered in this rulemaking, comments must be submitted in the manner specified in the "ADDRESSES" section at the beginning of this document.

V. Public Record and Electronic Submissions

The official record for this rulemaking, including the public version, which does not include any information claimed as CBI, has been established for this rulemaking under document control number (OPPTS–42187A; FRL–4869–1). This docket also includes all material and submissions filed under docket number OPPTS–42193 (FRL–5719–5), the record for the rulemaking for the TSCA test guidelines, and all material and submissions filed under docket number OPPTS–42187B (FRL–4869–1), the record for the receipt of proposals for developing ECAs for alternative testing of HAPs chemicals. This record contains the basic information considered by EPA in developing this proposed rule, as amended, and appropriate **Federal Register** notices. The public version of this record, including printed, paper versions of electronic comments, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by document control number (OPPTS–42187A; FRL–4869–1). Electronic comments on this proposed rule, as amended, may be filed online at many Federal Depository Libraries.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter. No CBI should be submitted electronically.

Electronic Availability: *Internet:* Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under "Regulations" (http://www.epa.gov/fedrgstr/EPA-TOX/1997/). *Fax-On-Demand:* Using a faxphone call 202–401–0527 and select item 4640 for an index of available material and corresponding item numbers related to this document.

In addition to the documents listed in Unit X. of the original HAPs proposal, the record includes the following documents that are referenced in this amended HAPs proposal. Note that certain documents are listed in both the original HAPs proposal and the amended HAPs proposal.

A. **Federal Register** notices pertaining to this amended HAPs proposal consisting of:

1. "Toxic Substances Control Act Test Guidelines" (50 FR 39252, September 27, 1985).
2. "Cresols; Testing Requirements" (51 FR 15771, April 28, 1986).
3. "Small Business Size Standards" (61 FR 3280, January 31, 1996).
4. "Proposed Testing Guidelines; Notice of Availability and Request for Comments" (61 FR 31522, June 20, 1996).
5. "Proposed Test Rule for Hazardous Air Pollutants; Proposed Rule" (61 FR 33178, June 26, 1996).
6. "Proposed Test Rule for Hazardous Air Pollutants; Notice of Public Meeting" (61 FR 47853, September 11, 1996).
7. "Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule and Extension of Period for Receipt of Proposals for Enforceable Consent Agreements for Pharmacokinetics Studies" (61 FR 54383, October 18, 1996).
8. "Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule" (61 FR 67516, December 23, 1996).
9. "Testing Consent Order for Phenol" (62 FR 2607, January 17, 1997).
10. "Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule" (62 FR 9142, February 28, 1997).
11. "Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule" (62 FR 14850, March 28, 1997).
12. "Testing Consent Order for Phenol" (62 FR 28368, May 23, 1997).
13. "Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule" (62 FR 29318, May 30, 1997).
14. "Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule" (62 FR 37833, July 15, 1997).
15. "Toxic Substances Control Act Test Guidelines" (62 FR 43820, August 15, 1997).
16. "Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule" (62 FR 50546, September 26, 1997).
17. "Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule". (62 FR 63299, November 28, 1997).

B. TSCA Test guidelines referenced in this amended HAPs proposal consisting of:

1. 799.9135 TSCA acute inhalation toxicity with histopathology (62 FR 43820, 43824-43828, August 15, 1997).
2. 799.9346 TSCA subchronic inhalation toxicity (62 FR 43820, 43828-43832, August 15, 1997).
3. 799.9370 TSCA prenatal developmental toxicity (62 FR 43820, 43832-43834, August 15, 1997).
4. 799.9380 TSCA reproduction and fertility effects (62 FR 43820, 43834-43838, August 15, 1997).
5. 799.9420 TSCA carcinogenicity (62 FR 43820, 43838-43842, August 15, 1997).
6. 799.9510 TSCA bacterial reverse mutation test (62 FR 43820, 43842-43846, August 15, 1997).
7. 799.9530 TSCA *in vitro* mammalian cell gene mutation test (62 FR 43820, 43846-43850, August 15, 1997).
8. 799.9538 TSCA mammalian bone marrow chromosomal aberration test (62 FR 43820, 43850-43853, August 15, 1997).
9. 799.9539 TSCA mammalian erythrocyte micronucleus test (62 FR 43820, 43853-43857, August 15, 1997).

10. 799.9620 TSCA neurotoxicity screening battery (62 FR 43820, 43857-43860, August 15, 1997).

11. 799.9780 TSCA immunotoxicity (62 FR 43820, 43860-43864, August 15, 1997).

C. OPPTS draft harmonized test guidelines cross-referenced in the original HAPs proposal consisting of:

1. Acute Inhalation Toxicity with Histopathology, OPPTS 870.1350, EPA Pub. No. 712-C-96-291, June 1996.

2. Subchronic Inhalation Toxicity, OPPTS 870.3465, EPA Pub. No. 712-C-96-204, June 1996.

3. Inhalation Developmental Toxicity Study, OPPTS 870-3600, EPA Pub. No. 712-C-96-206, June 1996.

4. Reproduction and Fertility Effects, OPPTS 870.3800, EPA Pub. No. 712-C-96-208, February 1996.

5. Carcinogenicity, OPPTS 870.4200, EPA Pub. No. 712-C-96-211, June 1996.

6. *Escherichia coli* WP2 and WP2 uvrA Reverse Mutation Assays, OPPTS 870.5100, EPA Pub. No. 712-C-96-247, June 1996.

7. Detection of Gene Mutations in Somatic Cells in Culture, OPPTS 870.5300, EPA Pub. No. 712-C-96-221, June 1996.

8. *In Vivo* Mammalian Cytogenetics Tests: Bone Marrow Chromosomal Analysis, OPPTS 870.5385, EPA Pub. No. 712-C-96-225, June 1996.

9. *In Vivo* Mammalian Cytogenetics Tests: Erythrocyte Micronucleus Assay, OPPTS 870.5395, EPA Pub. No. 712-C-96-226, June 1996.

10. Neurotoxicity Screening Battery, OPPTS 870.6200, EPA Pub. No. 712-C-96-238, June 1996.

11. Immunotoxicity, OPPTS 870.7800, EPA Pub. No. 712-C-96-351, June 1996.

D. Other guidelines referenced in this proposal:

1. OECD final revision test guideline 471 / 472 "Bacterial reverse mutation assay," as read from the OECD homepage: http://www.oecd.org/ehs/test/ testlist.htm (February 1997).

2. OECD final revision test guideline 476 "*In vitro* mammalian cell gene mutation test," as read from the OECD homepage: http://www.oecd.org/ehs/test/ testlist.htm (February 1997).

3. OECD final revision guideline 475 "Mammalian bone marrow chromosome aberration test," as read from the OECD homepage: http://www.oecd.org/ehs/test/ testlist.htm (February 1997).

4. OECD final revision test guideline 474 "Mammalian erthyrocyte micronucleus test," as read from the OECD homepage: http://www.oecd.org/ehs/test/ testlist.htm (February 1997).

E. Test Guideline Support documents referenced in this proposal:

1. USEPA. Memorandum, Angela Auletta and Michael Cimino to Roger Nelson. HAPs Rule: OECD Process for Update of Genetic Toxicity Test Guidelines, March 10, 1997(a).

2. USEPA. Memorandum, Michael C. Cimino to Roger Nelson. Genotoxicity Test Guidelines for the HAPs Rule, February 27, 1997.

3. USEPA. Memorandum, Michael C. Cimino to Richard Leukroth. HAPs Rule: Adaptation of OECD Genotoxicity Test Guidelines, March 10, 1997(b).

4. Final report of the FIFRA Scientific Advisory Panel meeting, held October 29-30, 1996.

F. PK-related documents consisting of:

1. Chemical Manufacturers Association, Alkanolamines Panel, "Proposal for Pharmacokinetics Studies of Diethanolamine" (November 25, 1996).

2. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Diethanolamine" (November 21, 1997).

3. HAP Task Force, "Proposal for Pharmacokinetics Study of Ethylene Dichloride" (November 22, 1996).

4. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Ethylene Dichloride," with cover letter (June 26, 1997).

5. Chemical Manufacturers Association, Ethylene Glycol Panel, "Proposal for Pharmacokinetic Studies of Ethylene Glycol" (November 5, 1996).

6. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Ethylene Glycol, with cover letter (August 26, 1997).

7. Chemical Manufacturers Association, Hydrogen Fluoride (HF) Panel, "Proposal for a Physiologically-Based Pharmacokinetic (PBPK) Model for Hydrogen Fluoride" (November 22, 1996).

8. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Hydrogen Fluoride" (June 26, 1997).

9. Chemical Manufacturers Association, Maleic Anhydride Panel, "Developing an Inhalation Testing Program for Maleic Anhydride" (November 8, 1996).

10. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Maleic Anhydride," with cover letter (July 10, 1997).

11. Chemical Manufacturers Association, Phthalic Anhydride Producers Task Group, "Testing Proposal of the Chemical Manufacturers Association, Phthalic Anhydride Producers Task Group in Response to EPA's Proposed Rule for Phthalic Anhydride" (November 22, 1996).

12. U.S. EPA. "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for Phthalic Anhydride," with cover letter (July 10, 1997).

13. Chlorobenzene Producers Association, "Proposal to Use the Pharmacokinetics, Physical, and Chemical Properties of 1,2,4-Trichlorobenzene to Fill Data Gaps" (November 25, 1996).

14. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for 1,2,4-Trichlorobenzene," with cover letter (July 15, 1997).

15. HAP Task Force, "Proposal for Pharmacokinetics Study of 1,1,2-Trichloroethane" (November 22, 1996).

16. U.S. EPA, "Preliminary EPA Technical Analysis of Proposed Industry Pharmacokinetics (PK) Strategy for 1,1,2-Trichloroethane," with cover letter (June 26, 1997).

G. Other ECA proposals and related correspondence consisting of:

1. Chemical Manufacturers Association, Ketones Panel, "Alternative Testing Proposal for Methyl Isobutyl Ketone," December 11, 1996 .

2. Letter from Charles M. Auer, EPA, to Barbara Francis, Chemical Manufacturers Association, March 3, 1997.

3. Letter from Carol R. Stack, Chemical Manufacturers Association, Cresols Panel to Charles M. Auer, EPA, April 9, 1997 (with attachment).

4. Contact report by Richard W. Leukroth, EPA, regarding discussion with Leah Porter and Elizabeth Watson, Chemical Manufacturers Association, Cresols Panel, May 19, 1997.

5. Biphenyl Work Group, "Developing a Test Plan for Assessing the Potential Risk of Inhaled Biphenyl," with cover letter and attachment (October 7, 1997).

6. Letter from Charles Auer, EPA to John Murray, Biphenyl Work Group, November 4, 1997.

H. Technical support documents consisting of:

1. U.S. EPA, "Economic Assessment for the Amended Proposed TSCA Section 4(a) Test Rule for 21 Hazardous Air Pollutants," OPPT/EETD/EPAB, November 14, 1997.

2. U.S. EPA, "Section 4 Test Rule Support for 21 Hazardous Air Pollutants," OPPT/EETD/EPAB, April 4, 1995 (economic analysis for the original HAPs proposal).

3. U.S. EPA, "Additional Information on Small Entity Impacts for the Amended Proposed TSCA Section 4(a) Test Rule for 21 Hazardous Air Pollutants," OPPT/EETD/EPAB, November 14, 1997.

4. U.S. EPA, "TSCA Test Guidelines: Cost Estimates for Health Effects Testing," OPPT/EETD/RIB, various dates.

5. U.S. EPA, "EPA Interim Guidance for Implementing the Small Business Regulatory Enforcement Fairness Act," EPA SBREFA Task Force, February 5, 1997.

6. U.S. EPA, "Draft Review of Economic Impact Methodology Applied to TSCA Section 4 Test Rules," OPPT/ETD/RIB, September 23, 1988.

7. U.S. EPA, "Economic Analysis in Support of the Final Rule to Amend TSCA Section 12(b)," OPPT/ETD/RIB, June 1992.

I. Letters, Facsimiles, electronic correspondence, and contact reports consisting of:

1. Letter from Gene P. Current, Weirton Steel Corp., to Gary Timm, EPA, August 26, 1996.

2. Letter from Marian K. Stanley, Chemical Manufacturers Association, to Gary Timm, EPA, August 28, 1996.

3. Electronic correspondence from Ed J. Dulac, Air Products and Chemicals, Inc., to Gary Timm, EPA, September 11, 1996.

4. Letter from Charles M. Auer, EPA, to Kathleen Roberts, Chemical Manufacturers Association, September 20, 1996.

5. Letter from Charles M. Auer, EPA, to Elizabeth Watson, Chemical Manufacturers Association, September 20, 1996.

6. Letter from Charles M. Auer, EPA, to Jack Murray, Synthetic Organic Chemical Manufacturers Association, September 20, 1996.

7. Letter from Charles M. Auer, EPA, to Caffey Norman, Halogenated Solvents Industry Alliance, September 20, 1996.

8. Fax transmittal from Rudolph J. Breglia, BP Oil, to Gary Timm, EPA, September 26, 1996.

9. Electronic correspondence from Steve Vasko, Eastalco Aluminum Company, to Gary Timm, EPA, October 1, 1996.

10. Electronic correspondence from Charlie Gjersvik, Goodwin & Broms, Inc., to Gary Timm, EPA, October 25, 1996.

11. Fax transmittal from Rudolph J. Breglia, BP Oil, to Dayton Eckerson, EPA, November 21, 1996.

12. Letter from Charles M. Auer, EPA, to Rudolph J. Breglia, BP Oil, July 29, 1997.

13. Note from Angela F. Hofmann, EPA, to Kevin Bromberg, Small Business Administration, September 9, 1997.

14. Contact report from Richard Leukroth and George Semeniuk, EPA, of phone call from Sharon Berryhill, Samendon Oil Corp., October 17, 1997.

15. Contact report from Richard Leukroth and Gary Timm, EPA, of phone call from Ray Scholten, Union Camp, October 20, 1997.

16. Letter from Charles M. Auer, EPA, to Gene P. Current, Weirton Steel Corp., November 21, 1997.

17. Letter from Charles M. Auer, EPA, to Ed J. Dulac, Air Products and Chemicals, Inc., November 21, 1997.

18. Letter from Charles M. Auer, EPA, to Steve Vasko, Eastalco Aluminum Company, November 21, 1997.

19. Letter from Charles M. Auer, EPA, to Charlie Gjersvik, Goodwin & Broms, Inc., November 21, 1997.

20. Letter from Charles M. Auer, EPA, to Rudolph J. Breglia, BP Oil, November 21, 1997.

21. Letter from Charles M. Auer, EPA, to Sharon Berryhill, Samendon Oil Corp., November 21, 1997.

22. Letter from Charles M. Auer, EPA, to Roy Scholten, Union Camp, November 21, 1997.

J. Meeting summaries consisting of:

1. Transcript of Public Meeting. October 1, 1996. "Proposed Test Rule for Hazardous Air Pollutants 40 CFR Part 799." Prepared by: Carol J. Thomas Stenotype Reporting Services, Inc., 3162 Musket Court, Fairfax, VA 22030

2. Meeting Notes for the Pharmacokinetics Enforceable Consent Agreement Meeting. October 2, 1996. Prepared by: Leah Freeman and Michael Neal, Environmental Science Center, Syracuse Research Corporation, Syracuse, NY 13210.

3. Notes of EPA meeting with the Hydrogen Fluoride Panel, November 4, 1996.

4. Summary of meeting with Halogenated Solvents Industry Alliance HAP Task Force on 1,1,2-Trichloroethane and Ethylene Dichloride, November 5, 1996.

5. Summary of meeting with Small Business Administration on definition of "small business" to be proposed in the amended HAPs test rule, October 1, 1997.

VI. Regulatory Assessment Requirements

A. Economic Assessment

EPA has prepared a revised economic assessment entitled "Economic Assessment for the Amended Proposed TSCA Section 4(a) Test Rule for 21 Hazardous Air Pollutants." This report evaluates the potential for significant economic impacts as a result of the testing required by this amended HAPs proposal. The costs estimated in the economic assessment are based on the use of the 11 TSCA test guidelines cross-referenced in this amended proposal. The total cost of providing test data on the HAPs chemicals under this amended proposal is estimated to range from $22.6 million to $39.3 million. These costs do not include data for phenol, which, as explained in Unit III.A. of this preamble, has been removed from the amended HAPs proposal. By comparison, the costs of providing test data on the HAPs chemicals under the original proposal were estimated to range from $25.2 million to $41.4 million (as indicated in the economic analysis for the original proposal). The costs developed in the economic assessment are based on test cost estimates that have been placed in the record for this rulemaking.

According to 40 CFR 790.42(a)(2), while legally subject to the HAPs test rule, processors of a HAP chemical would be required to comply with the requirements of the rule only if they are directed to do so in a subsequent notice as set forth in 40 CFR 790.48(b). EPA would only issue such a notice if no manufacturer or importer submits a notice of its intent to conduct testing. The Agency has never in fact notified processors of their obligation to test under such a notice, or applied the reimbursement procedures of 40 CFR part 791 to processors or even to manufacturers. Since EPA has identified at least one manufacturer or importer for each HAP chemical, the Agency presumes that at least one such manufacturer or importer would submit a notice of intent to conduct testing for each chemical and would actually conduct such testing, and thus that processors would not, at least initially, be burdened with the need to comply with the rule. Thus, in the economic assessment processors of the subject chemicals are not included.

To evaluate the potential economic effect of testing on HAP manufacturers and importers, EPA estimated the impact of the testing requirements as a percentage of chemical sales price. This measure compares annual revenues from the sale of a chemical to the annualized testing costs for that chemical. Annualized testing costs divide testing expenditures in the first year into an equivalent, constant yearly expenditure over a longer period of time. To calculate the percent price impact, testing costs (which include both laboratory and administrative expenditures) are annualized over 15 years using a 7 percent discount rate. Annualized testing costs are then divided by the total supply of the HAP chemical to derive the annualized unit test costs. The percent price impact is

calculated by dividing the annualized unit test costs by the sales price and multiplying by 100.

The upper-bound estimated total costs of testing (including both laboratory costs and administrative costs), annualized tests costs, price impact, and public reporting burden hours for the HAP chemicals in this amended HAPs test rule proposal are presented in the following Table 2. This table shows the maximum test costs, maximum price impacts (see Table 26 of the economic assessment) and public reporting burden hours (see Table C–3 of the economic assessment) estimated by EPA, which are presented in greater detail in the revised economic assessment document included in the public record for this action.

Table 2.—Summary of Economic Analysis for the Amended HAPs Test Rule Proposal

Chemical substances[1]	Maximum test costs		Maximum price impact (%)	Public reporting burden hours
	Total ($)	Annualized ($)		
1,1'-Biphenyl	2,518,183	276,483	0.7292	20,540
Carbonyl Sulfide	3,873,496	425,289	0.0424	35,560
Chlorine	105,186	11,549	0.0005	1,102
Chlorobenzene	1,218,931	133,832	0.1315	9,625
Chloroprene	1,592,388	174,836	0.0601	12,705
Cresol (3 isomers)	3,656,794	401,496	0.6069	28,875
Diethanolamine	2,518,183	276,483	0.2451	20,540
Ethylbenzene	1,934,638	212,413	0.0111	16,200
Ethylene Dichloride	2,397,668	263,251	0.0076	19,816
Ethylene Glycol	1,218,931	133,832	0.0068	9,625
Hydrochloric Acid	105,186	11,549	0.0048	1,102
Hydrogen Fluoride	2,518,183	276,483	0.1108	20,540
Maleic Anhydride	2,220,874	243,840	0.1258	22,755
Methyl Isobutyl Ketone	1,182,703	129,854	0.1384	9,247
Methyl Methacrylate	1,934,638	212,413	0.0200	16,200
Naphthalene	1,182,703	129,854	0.2081	9,247
Phthalic Anhydride	3,761,420	412,984	0.1174	34,513
1,2,4-Trichlorobenzene	977,636	107,339	0.8587	8,780
1,1,2-Trichloroethane	3,839,620	421,570	0.4138	35,275
Vinylidene Chloride	514,871	56,530	0.0853	4,561
Total	39,272,229	4,311,879		336,808

[1] The requirement for phenol testing has been removed from the amended HAPs proposal (see Unit III.A. of this preamble).

EPA believes, on the basis of these calculations, that the proposed testing of the HAPs chemicals does not impose any significant economic impact. Because these chemical substances have relatively large production volumes, the annualized costs of testing, expressed as a percentage of annual revenue, are very small—ranging from 0.0005 to 0.86 percent. Costs of testing are therefore found to be insignificant relative to revenues for companies producing these chemical substances. In addition, the TSCA section 12(b) export notification requirements that would be triggered by the final rule are expected to have a negligible impact on exporters—that of less than 1 percent of sales revenue. As discussed in more detail in the economic assessment, the Agency expects that the impact of the final HAPs rule will be less than that estimated in the original proposal. Although not considered in the economic assessment, EPA also anticipates further reductions in the estimated cost of the final rule attributable to the conclusion of any ECAs between EPA and industry.

While the rule imposes costs, it also has significant benefits which were not evaluated in the Agency's economic assessment. The data obtained from the HAPs test rule will assist the Agency in making regulatory decisions concerning the protection of human health from respiratory diseases such as asthma, emphysema and respiratory cancer; neurotoxicity; birth defects; and reproductive malfunction that are believed to be related to exposure to the hazardous air pollutant chemicals included in this rule. Specifically, data from this test rule will be used for the determination of significant residual risk after the imposition of MACT efforts to reduce human exposure to these chemicals. The data will also assist other agenices (e.g., Agency for Toxic Substances and Disease Registry, National Institute for Occupational Safety and Health, Occupational Safety and Health Administration, Consumer Product Safety Commission) in assessing chemical risks and in taking appropriate action within their programs.

EPA is seeking comment on the revised economic assessment. To be considered in this rulemaking, comments must be submitted in the manner specified in the "ADDRESSES" section at the beginning of his document.

B. Executive Order 12866 and Executive Order 12898; Unfunded Mandates Reform Act

Because the overall costs associated with testing under the amended HAPs proposal are expected to decrease relative to the original proposal, the amended proposal does not contain any provisions that would require additional consideration by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993) or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in

Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). Similarly, the amended proposal does not require any actions under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). The Agency's activities related to these regulatory assessment requirements are discussed in the original proposed rule.

C. Regulatory Flexibility Act

For the original proposed HAPs test rule, EPA determined under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, that the HAPs test rule, if finalized as proposed, would not result in a significant economic impact on small businesses. See Unit XI.B. of the preamble to the original HAPs proposal (61 FR 33178, 33196). In conjunction with this amended proposal, EPA has prepared and placed in the record for this action, a document that gives additional information on small entity impacts. As presented in this additional analysis, the new TSCA test guidelines cross-referenced in the amended HAPs proposal do not affect the Agency's previous determination with regard to small entity impacts. Since processors would not, at least initially, be burdened with the need to comply with the rule, processors are not included in the small entity analysis (see explanation regarding processors in the discussion of the economic assessment in Unit VI.A. of this preamble).

EPA does not believe that the impacts described in the analysis constitute a significant economic impact on a substantial number of small entities. The analysis states that the worst-case estimate shows that, on a HAP chemical by HAP chemical basis, a total of 8 manufacturers/importers (out of 365 manufacturers/importers initially burdened) may be affected by the rule. No manufacturers/importers for whom revenue data were available would be impacted by test costs that exceed 1 percent of their sales. For 8 manufacturers/importers whose revenues could not be determined, the size of the testing burden could not be determined and, therefore, the potential for impacts at greater than 1 percent of sales could not be ruled out. Nevertheless, in this context the rule would be unlikely to have a significant economic impact on a substantial number of small entities because the impacts of 1 percent or greater would be on fewer than 100 affected small entities.

Therefore, the Agency certifies that the HAPs test rule, if finalized according to this amended proposal, will not have a significant economic impact on a substantial number of small entities.

In the small entity analysis, the Agency has used the definition of a "small business" that is codified at 40 CFR 704.3 as "small manufacturer or importer," which has been used for the general reporting and record keeping provisions for TSCA section 8(a) information gathering rules. According to section 601(3) of the RFA, agencies must use the definition of "small business" that is provided under the Small Business Act, 15 U.S.C. 631 *et seq.*, unless it establishes an alternative definition. The Agency may use the alternative definition for RFA purposes only after it has consulted with the Office of Advocacy of the Small Business Administration (SBA) and provided an opportunity for public comment.

Under the TSCA-related definition used by EPA, a manufacturer or importer is considered to be a "small business" if it meets either of the following criteria: (1) total annual sales of the company, combined with those of any parent company, are below $40 million and annual production volume or importation volume at the facility is less than or equal to 100,000 pounds; or (2) total annual sales of the company, combined with those of any parent company, are below $4 million (40 CFR 704.3). This definition also includes a provision that allows EPA to adjust the total annual sales values for inflation whenever the Agency deems it necessary to do so. EPA believes that specified levels of total annual sales, in conjunction with those for annual production or import volume, indicate the ability of a company to support chemical testing without significant costs or burden.

The small business size standards promulgated by the SBA (61 FR 3280, 3289–3291, January 31, 1996) for chemical manufacturers are based solely on the number of employees. For chemical manufacturing, however, the number of employees may not be closely related to the total annual sales of a company. Since chemical testing primarily requires a financial outlay, EPA believes that the number of employees is a less reliable measure of a company's ability to support testing than is a company's total annual sales. Therefore, in this rulemaking, the Agency is proposing to use the definition that appears at 40 CFR 704.3. This definition is discussed in the document entitled, "Additional Information on Small Entity Impacts of the Amended Proposed TSCA section 4(a) Test Rule for 21 Hazardous Air Pollutants" (see Unit V.H.3. of this document).

EPA is seeking comment on the use of the Agency's definition of "small business," the "Additional Information on Small Entity Impacts of the Amended Proposed TSCA Section 4(a) Test Rule for 21 Hazardous Air Pollutants" document, as well as the small entity impacts analysis in the original proposal (61 FR 33178, 33196). EPA has consulted with the Office of Advocacy of the SBA concerning the Agency's use of the EPA definition. A summary of the meeting is in the record for this rulemaking (see document referenced in Unit V.J.5. of this preamble).

Any comments regarding the impacts that this action may impose on small entities should be submitted to the Agency in the manner specified under "ADDRESSES" at the beginning of this document.

D. Paperwork Reduction Act

The information collection requirements associated with test rules under TSCA section 4(a) in general, have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA) under OMB control number 2070–0033 (EPA ICR No. 1139). The information collection requirements contained in this amended proposed rule, however, are not effective until the final rule, at which point the total estimated burden hours will be added to the total burden approved by OMB under control number 2070–0033. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

The list of public reporting burdens for the collection of information for chemical substances under the proposed HAPs test rule, as amended, as well as the numbers for the total public reporting burden and the overall average per chemical have changed from the numbers used in Unit XI.C. of the preamble to the original HAPs proposal (see: "Paperwork Reduction Act" (61 FR 33178, 33196)). As described in Unit VI.A. of this preamble, EPA has prepared an economic assessment which identifies the costs and burdens associated with the testing of the HAPs chemicals under the 11 TSCA test guidelines referenced in this amended

proposal. Table 3 compares the estimated public reporting burden hours for each of the HAPs chemicals in the amended proposal with the burden hours for each HAP chemical in the original proposal.

Table 3.—Comparison of Estimated Public Reporting Burden for the Original and Amended HAPs Test Rule Proposals

HAPs chemical	Estimated public reporting burden	
	Original HAPs test rule proposal	Amended HAPs test rule proposal
1,1'-Biphenyl	20,620	20,540
Carbonyl sulfide	47,644	35.560
Chlorine	693	1,102
Chlorobenzene	7,707	9,625
Chloroprene	13,039	12,705
ortho-Cresol	6,048	9,625
meta-Cresol	6,048	9,625
para-Cresol	6,048	9,625
Diethanolamine	21,826	20,540
Ethylbenzene	14,400	16,200
Ethylene dichloride	16,707	19,816
Ethylene glycol	7,816	9,625
Hydrochloric acid	693	1,102
Hydrogen fluoride	18,068	20,540
Maleic anhydride	35,849	22,755
Methyl isobutyl ketone	10,471	9,247
Methyl methacrylate	14,400	16,200
Naphthalene	10,580	9,247
Phenol[1]	693	
Phthalic anhydride	51,032	34,513
1,2,4-Trichlorobenzene	8,091	8,780
1,1,2-Trichloroethane	33,133	35,275
Vinylidene chloride	5,439	4,561
Av. Per HAPs response:	15,524	15,309
Total (all HAPs):	357,045	336,808

[1] The requirement for phenol testing has been removed from the amended HAPs proposal (see Unit III.A. of this preamble).

The total public reporting is now estimated to be 336,808 burden hours for all responses, as compared to the 357,045 burden hours indicated in the original proposal. The overall average public reporting burden for each HAP chemical is 15,309 burden hours, as compared to the 15,524 burden hours estimated in the original proposal. The overall average burden for each HAP chemical that is presented in the table in Unit XI.C. of the original HAPs proposal was calculated based on a total HAPs chemical count of 23 chemicals (each cresol isomer was considered to be a separate chemical moiety) (61 FR 33178, 33196). This method was also used to calculate the overall average public reporting burden for each HAP chemical for the amended HAPs proposal after the removal of data for phenol (a count of 22 chemicals).

As defined by the PRA and 5 CFR 1320.3, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The burden hours contained in the original economic analysis and the table in Unit XI.C. of the original HAPs proposal (61 FR 33178, 33196), however, were based only on burdens associated with the cost of laboratory testing and not the other activities described in the PRA.

In addition, the total burden hours for cresols that were presented in the "Paperwork Reduction Act" section of the original HAPs proposal were not reported correctly in the chemical-by-chemical table at 61 FR 33196. The reported 6,048 hours was the estimate calculated for each cresol isomer, not all three isomers as indicated in the table. Nevertheless, the total burden of 357,045 hours for all responses that was indicated in the original HAPs proposal did include the burdens for all three cresol isomers.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments to EPA as part of your overall comments on this proposed action in the manner specified in the "ADDRESSES" section at the beginning of this document, or to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, SW., Washington, DC 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the OMB control number in any correspondence. In developing the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposal.

E. Executive Order 13045

Neither the original HAPs proposal nor this amended proposal requires special consideration by OMB pursuant to the terms of Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because the Executive Order does not apply to rulemakings initiated prior to the issuance of the Order, in this instance, June 26, 1996, or actions expected to have an economic impact of less than $100 million.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: December 15, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I, subchapter R, be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5053 as proposed to be added at 61 FR 33197, June 26, 1996, is revised to read as follows:

§ 799.5053 Chemical testing requirements for hazardous air pollutants.

(a) *General testing provisions*—(1) *Identification of test substance.* Table 1 in paragraph (a)(6) of this section identifies those chemical substances that shall be tested in accordance with this section. The purity of each test substance shall be 97 percent or greater unless otherwise specified.

(2) *Persons required to submit study plans, conduct tests, and submit data.* (i) For purposes of this section, the term "facility" is defined as "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or is under common control with such person). A facility may contain more than one establishment." The facility for a person who imports a chemical substance is the facility of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the United States.

(ii) All persons who, during the last complete corporate fiscal year prior to the effective date specified in Table 1 in paragraph (a)(6) of this section, manufacture (including import, manufacture as a byproduct as defined in 40 CFR 791.3(c), and manufacture, including import, as an impurity as defined in 40 CFR 790.3) or process any chemical substance specified in Table 1 in the form of a Class 1 substance (as described in 40 CFR 720.45(a)(1)(i)), or a component of a Class 2 substance (as described in 40 CFR 720.45(a)(1)(i)) or mixture (as defined in TSCA section 3(8)), but not as a component of a naturally-occurring substance (as defined in 40 CFR 710.4(b)) or a non-isolated intermediate (as defined in 40 CFR 704.3), at a facility shall: submit letters of intent to conduct testing, submit study plans, conduct testing under TSCA Good Laboratory Practice Standards, and submit data, as specified in this section and part 792 of this chapter, or submit exemption applications, as specified in part 790 of this chapter.

(iii) As explained in part 790 of this chapter, processors, small-quantity manufacturers, and manufacturers of small quantities of the chemical substances specified in Table 1 solely for research and development purposes must comply with the requirements of the rule only if directed to do so by EPA in a subsequent notice because no manufacturer has submitted a notice of its intent to conduct testing.

(iv) Manufacturers of a chemical substance specified in Table 1 who, during the last complete corporate fiscal year prior to the effective date specified in Table 1, at no facility, manufacture such substance in an amount equal to or in excess of 25,000 lb must comply with the requirements of the rule only if directed to do so by EPA in a subsequent notice because no manufacturer has submitted a notice of its intent to conduct testing.

(v) Manufacturers of a chemical substance specified in Table 1 who, during the last complete corporate fiscal year prior to the effective date specified in Table 1, at no facility, manufacture such substance in an amount equal to or in excess of 25,000 lb as a component of another chemical substance or mixture in which the proportion of the substance specified in Table 1 is equal to or in excess of one percent by weight must comply with the requirements of the rule only if directed to do so by EPA in a subsequent notice because no manufacturer has submitted a notice of its intent to conduct testing.

(3) *Export notification.* All persons who export or intend to export a chemical substance listed in Table 1 in paragraph (a)(6) of this section are subject to part 707, subpart D, of this chapter.

(4) *Applicability of test guidelines.* The guidelines and test standards cited in Table 1 in paragraph (a)(6) of this section are referenced here as they exist on the effective date listed in Table 1 for that specific test. Testing shall be conducted in accordance with test standards specified in Table 1, which references TSCA health effects test guidelines codified at subpart H of this part.

(5) *Testing requirements.* The chemical substances identified by Chemical Abstracts Service (CAS) number and chemical name in Table 1 in paragraph (a)(6) of this section shall be tested in accordance with the test standards set forth in Table 1. The column labeled "Basic testing requirements (test guideline)" references the applicable TSCA test guideline on which the test standard is based, and the column entitled "Changes from guideline" lists the ways in which the specific test standard differs from the basic testing requirement (test guideline), as specified in paragraph (b) of this section.

(6) *Reporting requirements.* Interim progress reports for each test shall be submitted every 6 months, beginning 6 months after the effective date of any specific test listed in the following Table 1. Final reports for any specific test shall be submitted by the deadlines indicated as the number of months after the effective date shown in the following Table 1.

TABLE 1

CAS No.	Chemical name/types of testing	Test standard		Final report	Effective date
		Basic testing requirements (test guideline)	Changes from guideline		
75–35–4	Vinylidene chloride:				

TABLE 1—Continued

CAS No.	Chemical name/types of testing	Test standard		Final report	Effective date
		Basic testing requirements (test guideline)	Changes from guideline		
	Acute	799.9135	(b)(2)	21 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
79–00–5	1,1,2-Trichloroethane:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(3)	18 mo	
	Developmental	799.9370	(b)(1)(ii)(A)	12 mo	
	Reproductive	799.9380	(b)(1)(ii)(A)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Carcinogenicity	799.9420	(b)(1)(i)(D), (b)(1)(ii)(A)	60 mo	
	In vivo cytogenetics	799.9538 or 799.9539	(b)(1)(ii)(A)	14 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	18 mo	
80–62–6	Methyl methacrylate:				
	Acute	799.9135	(b)(2)	21 mo	
	Developmental	799.9370	(b)(1)(i)(A), (b)(1)(ii)(A)	12 mo	
	Reproductive	799.9380	(b)(1)(ii)(A)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	21 mo	
85–44–9	Phthalic anhydride:				
	Acute	799.9350	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(1)(ii)(B), (b)(3)	18 mo	
	Developmental	799.9370	(b)(1)(ii)(B)	12 mo	
	Reproductive	799.9380	(b)(1)(ii)(B)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(B), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Carcinogenicity	799.9420	(b)(1)(ii)(B)	60 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(B), (b)(4)	18 mo	
91–20–3	Naphthalene:				
	Acute	799.9135	(b)(2)	21 mo	
	Reproductive	799.9380	(b)(1)(ii)(A)	29 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	21 mo	
92–52–4	1,1'-Biphenyl:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(1)(ii)(B), (b)(3)	18 mo	
	Developmental	799.9370	(b)(1)(i)(A), (b)(1)(ii)(B)	12 mo	
	Reproductive	799.9380	(b)(1)(ii)(B)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(B), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(B), (b)(4)	18 mo	
95–48–7	*ortho*-Cresol:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(3)	18 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	18 mo	
108–39–4	*meta*-Cresol:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(3)	18 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	18 mo	
106–44–5	*para*-Cresol:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(3)	18 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	18 mo	

TABLE 1—Continued

CAS No.	Chemical name/types of testing	Test standard		Final report	Effective date
		Basic testing requirements (test guideline)	Changes from guideline		
100–41–4	Ethylbenzene:				
	Acute	799.9135	(b)(2)	21 mo	
	Developmental	799.9360	(b)(1)(i)(A), (b)(1)(ii)(A)	12 mo	
	Reproductive	799.9380	(b)(1)(ii)(A)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	21 mo	
107–06–2	Ethylene dichloride:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(3)	18 mo	
	Developmental	799.9370	(b)(1)(i)(C), (b)(1)(ii)(A)	12 mo	
	Reproductive	799.9380	(b)(1)(ii)(A)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
107–21–1	Ethylene glycol:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(3)	18 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	18 mo	
108–10–1	Methyl isobutyl ketone:				
	Acute	799.9135	(b)(2)	21 mo	
	Reproductive	799.9380	(b)(1)(ii)(A)	29 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	29 mo	
108–31–6	Maleic anhydride:				
	Acute	799.9135	(b)(2)	21 mo	
	Developmental	799.9370	(b)(1)(i)(A), (b)(1)(ii)(A)	12 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Carcinogenicity	799.9420	(b)(1)(ii)(A)	60 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	21 mo	
108–90–7	Chlorobenzene:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(3)	18 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	18 mo	
111–42–2	Diethanolamine:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(1)(ii)(B), (b)(3)	18 mo	
	Developmental	799.9370	(b)(1)(ii)(B)	12 mo	
	Reproductive	799.9380	(b)(1)(ii)(B)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(B), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(B), (b)(4)	18 mo	
120–82–1	1,2,4-Trichlorobenzene:				
	Acute	799.9135	(b)(2)	21 mo	
	Developmental	799.9370	(b)(1)(ii)(A)	12 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	21 mo	
126–99–8	Chloroprene:				
	Acute	799.9135	(b)(2)	21 mo	
	Reproductive	799.9380	(b)(1)(ii)(A)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	

TABLE 1—Continued

CAS No.	Chemical name/types of testing	Test standard		Final report	Effective date
		Basic testing requirements (test guideline)	Changes from guideline		
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	21 mo	
463–58–1	Carbonyl sulfide:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(3)	18 mo	
	Developmental	799.9370	(b)(1)(ii)(A)	12 mo	
	Reproductive	799.9380	(b)(1)(ii)(A)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Carcinogenicity	799.9420	(b)(1)(ii)(A)	60 mo	
	Bacterial reverse mutation	799.9510	(b)(1)(ii)(C)	6 mo	
	Mammalian gene mutation	799.9530	(b)(1)(ii)(C)	6 mo	
	In vivo cytogenetics	799.9538 or 799.9539	(b)(1)(ii)(A)	14 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	18 mo	
7647–01–0	Hydrochloric acid:				
	Acute	799.9135	(b)(2)	21 mo	
7664–39–3	Hydrogen fluoride:				
	Acute	799.9135	(b)(2)	21 mo	
	Subchronic	799.9346	(b)(3)	18 mo	
	Developmental	799.9370	(b)(1)(ii)(A)	12 mo	
	Reproductive	799.9380	(b)(1)(ii)(A)	29 mo	
	Neurotoxicity	799.9620	(b)(1)(ii)(A), (b)(1)(iii)(A), (b)(1)(iii)(B)	21 mo	
	Immunotoxicity	799.9780	(b)(1)(ii)(A), (b)(4)	18 mo	
7782–50–5	Chlorine:				
	Acute	799.9135	(b)(2)	21 mo	

(b) *Changes from TSCA test guidelines.* The provisions in paragraphs (b)(1) through (b)(4) of this section when referenced in Table 1 in paragraph (a)(6) of this section under the column "Changes from guideline," specify the manner in which the specific test standard differs from the TSCA test guideline upon which it is based.

(1) *Modifications applicable to all testing.* Only those provisions specifically referenced in Table 1 in paragraph (a)(6) of this section apply.

(i) *Test species.* The test animal shall be:

(A) A mammalian species other than the rat.

(B) A mammalian species other than the mouse.

(C) A mammalian species other than the rabbit.

(D) The male rat and the female mouse.

(ii) *Route of exposure.* Animals shall be exposed:

(A) Via vapor-phase inhalation.

(B) Via inhalation of aerosol.

(C) Via vapor-phase.

(iii) *Duration and frequency of exposure.* The test animal shall be:

(A) Exposed for a 4-hour period in an acute study.

(B) Exposed for 6 hours per day, 5 days per week for a 90-day period in a subchronic study.

(2) *Modifications applicable to acute testing.* When referenced in Table 1 in paragraph (a)(6) of this section, all provisions in this paragraph apply.

(i) The appraisal of pulmonary irritation shall be evaluated during exposure to the substance by the use of the mouse respiratory sensory irritation assay method as outlined in ASTM E–981–84 (see paragraph (b)(2)(iii)(C) of this section). This method assesses the breathing patterns of test animals. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval and notice of any change in this material will be published in the **Federal Register**. Copies of the incorporated material may be examined at the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC, 20460 or by contacting the American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, Conshohoken, PA 19428–2959. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. For information on this test guideline, the references in paragraph (b)(2)(iii) of this section should be consulted.

(ii) *Results of respiratory sensory irritation assay.* Results shall be reported as follows:

(A) Data shall be included in the final report and tabulated to show:

(*1*) The magnitude of change in respiratory rate with exposure concentration and with time for each animal.

(*2*) A response concentration, which indicates the concentration at which the respiration rate is decreased by 50% (RD_{50}), will be calculated, along with the 95% confidence limits.

(B) Time-effect curves shall be included in the final report to evaluate the onset and shape of the response.

(iii) *References.*

(A) Alarie, Y., and Luo, J.E. "Sensory Irritation by Airborne Chemicals: A basis to establish acceptable levels of exposure." *Toxicology of the Nasal Passages.* Hemisphere Publishing Corporation: New York pp. 91–100 (1986).

(B) Alarie, Y., and Stokinger, H.E. "Sensory Irritation by Airborne Chemicals." *CRC Critical Reviews in Toxicology.* pp. 299–363 (1973).

(C) ASTM. "Standard Test Method for Estimating Sensory Irritancy of Airborne Chemicals." In: *1984 Annual Book of ASTM Standards. Water and Environmental Technology.* Section 11. Volume 11.04 Designation E 981–84 pp. 572–584 (1984).

(3) *Modifications applicable to subchronic testing.* When referenced in Table 1 of this section, all provisions in this paragraph apply.

(i) *Respiratory tract pathology.* Respiratory tract pathology shall be performed as follows:

(A) Care shall be taken that the method used to kill the animal does not result in damage to the tissues of the upper or lower respiratory tract. The heart-lung, including the trachea, shall be removed in bloc.

(B) Representative sections of the lungs shall be examined histologically. This shall include trachea, major conducting airways, alveolar region, terminal and respiratory bronchioles, alveolar ducts and sacs, and interstitial tissues.

(C) The nasopharyngeal tissue shall be examined for histopathologic lesions. This shall include sections through the nasal cavity, and examination of the squamous, transitional, respiratory, and olfactory epithelia.

(D) The larynx mucosa shall be examined for histopathologic changes. Sections of the larynx to be examined include the epithelium covering the base of the epiglottis, the ventral pouch, and the medial surfaces of the vocal processes of the arytenoid cartilages.

(ii) *Bronchoalveolar lavage.* Bronchoalveolor lavage shall be performed as follows:

(A) The lungs shall be lavaged *in situ* or after sacrifice. If the study will not be compromised, one lobe of the lungs may be used for lung lavage while the other is fixed for histologic evaluation. The lungs shall be lavaged using physiological saline after cannulation of the trachea. The lavages shall consist of two washes each of which consists of approximately 80 percent (e.g., 5 ml in rats and 1 ml in mice) of total lung volume. Additional washes merely tend to reduce the concentrations of the material collected. The lung lavage fluid shall be stored on ice at approximately 5 deg. C until assayed.

(B) The following parameters shall be determined in the lavage fluid as indicators of cellular damage in the lungs: total protein, cell count and percent leukocytes. In addition; a phagocytosis assay using the procedure of Burleson or Gilmour and Selgrade (Burleson et al., 1987; Gilmour and Selgrade, 1993) shall be performed to determine macrophage activity. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval and notice of any change in this material will be published in the **Federal Register**. Copies of the incorporated material may be obtained from the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC, 20460, for the Burleson citation by contacting the Society for Experimental Biology and Medicine, at Blackwell Science Ltd., 238 Main Street, Cambridge, MA 02142, and for the Gilmour and Selgrade citation by contacting Academic Press, Inc., Toxicology and Applied Pharmacology, 62777 Sea Harbor Drive, Orlando, FL 32887. Copies may be inspected at the above address or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. The following references may be consulted:

(*1*) Burleson, G.R. et al. "Poly (I): poly (C)-enhanced alveolar peritoneal macrophage phagocytosis: Quantification by a new method utilizing fluorescent beads." *Proceedings of the Society for Experimental Biology and Medicine.* 184:468–476 (1987).

(*2*) Gilmour, G.I., and Selgrade, M.K. "A Comparison of the Pulmonary Defenses against Streptococcal Infection in Rats and Mice Following O_3 Exposure: Differences in Disease Susceptibility and Neutrophil Recruitment." *Toxicology and Applied Pharmacology.* 123:211–218 (1993).

(4) *Modifications applicable to immunotoxicity testing.* The natural killer cell assay and enumeration of splenic or peripheral blood cells in § 799.9789 (g)(1)(iii) and (g)(2) are not required.

[FR Doc. 97–33451 Filed 12–23–97; 8:45 am]
BILLING CODE 6560–50–F

federal register

Wednesday
December 24, 1997

Part IV

Department of Agriculture

Agricultural Research Service
Cooperative State Research, Education, and Extension Service

Biotechnology Risk Assessment Research Grants Program for Fiscal Year 1998; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Cooperative State Research, Education, and Extension Service

Biotechnology Risk Assessment Research Grants Program for Fiscal Year 1998; Solicitation of Applications

AGENCY: Agricultural Research Service; Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1998 solicitation of applications.

SUMMARY: Applications are invited for competitive grant awards under the Biotechnology Risk Assessment Research Grants Program (the "Program") for fiscal year (FY) 1998. The authority for the Program is contained in section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5921). The Program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) and the Agricultural Research Service (ARS) of the U.S. Department of Agriculture.

DATES: Proposals are due March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Edward K. Kaleikau, USDA/CSREES, (202) 401–1901, Dr. Daniel D. Jones, USDA/CSREES, (202) 401–6854, or Dr. Robert M. Faust, USDA/ARS, (301) 504–6918.

SUPPLEMENTARY INFORMATION:

Table of Contents

Purpose
Applicant Eligibility
Available Funding
Program Description
Proposal Evaluation
Areas of Research to be Supported in Fiscal Year 1998
Applicable Regulations
Programmatic Contact
How to Obtain Application Materials
Proposal Format
Compliance with the National Environmental Policy Act (NEPA)
Proposal Submission and Due Date
Additional Information

Purpose

The purpose of the Program is to assist Federal regulatory agencies in making science-based decisions about the safety of introducing into the environment genetically modified organisms, including plants, microorganisms, fungi, bacteria, viruses, arthropods, fish, birds, mammals and other animals. The Program accomplishes this purpose by providing scientific information derived from the risk assessment research that it funds. Research proposals submitted to the Program must be applicable to the purpose of the Program to be considered.

Applicant Eligibility

Proposals may be submitted by any United States public or private research or educational institution or organization.

Available Funding

Subject to the availability of funds, the anticipated amount available for support of the Program in FY 1998 is $1.5 million.

Section 712 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998 (Pub. L. 105–86), prohibits CSREES from using the funds available for the Program for FY 1998 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively awarded research grants.

Section 716 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, encourages entities to use grant funds to purchase only American-made equipment or products in the case of any equipment or product that may be authorized to be purchased with the funds provided under this program.

CSREES and ARS will competitively award research grants to support science-based biotechnology regulation and thus help address concerns about the effects of introducing genetically modified organisms into the environment and help regulators in developing policies regarding such introduction.

The Program's research emphasis is on risk assessment and not risk management. The Program defines risk assessment research as the science-based evaluation and interpretation of factual information in which a given hazard, if any, is identified, and the consequences associated with the hazard are explored. The Program defines risk management as (1) research aimed primarily at reducing risks of biotechnology-derived agents and (2) a policy and decision-making process that uses risk assessment data in deciding how to avoid or mitigate the consequences identified in a risk assessment. Proposals must be relevant to risk assessment to be eligible for this Program.

Proposals must include a statement describing the relevance of the proposed project to one or more of the topics requested in this solicitation. In addition, proposals must include detailed descriptions of the experimental design and appropriate statistical analyses to be done. The Program strongly encourages the inclusion of statisticians and risk analysis researchers as co-principal investigators or contractors.

Awards will not be made for clinical trials, commercial product development, product marketing strategies, or other research deemed not appropriate to risk assessment.

Proposal Evaluation

Proposals will be evaluated by the Administrator assisted by a peer panel of scientists for scientific merit, qualifications of project personnel, adequacy of facilities, and relevance to both risk assessment research and regulation of agricultural biotechnology.

Areas of Research To Be Supported in Fiscal Year 1998

Proposals addressing the following topics are requested:

1. Research on the introduction into the environment (not in a contained facility) of genetically engineered organisms. The data collected may include: survival; reproductive fitness; genetic stability; genetic recombination; horizontal gene transfer; loss of genetic diversity; or enhanced competitiveness. The organisms may include: fungi; bacteria; viruses; microorganisms; plants; arthropods; fish; birds; mammals; and other animals.

2. Research on large-scale deployment of genetically engineered organisms; especially commercial uses of such organisms, with special reference to considerations that may not be revealed through small-scale evaluations and tests. This may include monitoring locations where transgenic virus resistant plants (expressing viral transgenes) are grown on a commercial scale or in large-scale production for viral strains which overcome the resistance phenotype. The analysis of resistance-breaking strains should include analyzing whether the strain arose via recombination between viral transgenes and the viral genome. Such projects should survey the production sites for two to three years.

3. Research to develop statistical methodology and quantitative measures of risks associated with field testing of genetically modified organisms.

4. The Program will, subject to resource availability, provide partial funding to organize a scientific research conference that brings together scientists and regulators to review the science-based evidence, if any, that the introduction of a pest resistance gene into a crop plant poses the risk of increasing the fitness of weedy, sexually compatible relatives of the crop plant. Data considered should include the introduction of pest resistance genes by conventional breeding or by a process involving recombinant DNA. The conference should provide an opportunity to address how experiments could be designed to test whether a pest resistance gene increases the fitness of weeds in the field. The scientific steering committee for the conference should include a broad representation of disciplines, including ecology, population biology, plant pathology, entomology, plant breeding, and others as appropriate. Evaluation criteria of submitted proposals will include: choice of topics and selection of speakers; general format of the conference, especially with regard to its appropriateness for fostering scientific exchange; provisions for wide participation from the scientific and regulatory community and others as appropriate; qualifications of the organizing committee and appropriateness of invited speakers to the topic areas being covered; and appropriateness of the budget requested and qualifications of the project personnel.

Applicable Regulations

This Program is subject to the administrative provisions found in 7 CFR part 3415, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include but are not limited to:

7 CFR Part 3019, as amended by 62 FR 45934—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations.

Programmatic Contact

For additional information on the Program, please contact:

Dr. Edward K. Kaleikau, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2241, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2241, Telephone: (202) 401–1901
or
Dr. Daniel D. Jones, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2220, Telephone: (202) 401–6854
or
Dr. Robert M. Faust, Agricultural Research Service, U.S. Department of Agriculture, Room 338, Building 005, BARC-West, Beltsville, MD 20705, Telephone: (301) 504–6918

How To Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR Part 3415), and the Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting: Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245, Telephone Number: (202) 401–5048.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov which states that you wish to receive a copy of the application materials for the FY 1998 Biotechnology Risk Assessment Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Proposal Format

The format guidelines for full research proposals, found in the administrative provisions for the Program at § 3415.4(d), should be followed for the preparation of proposals under the Program in FY 1998. (Note that the Department elects not to solicit preproposals in FY 1998.)

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR Part 3407 and 7 CFR Part 520 (the CSREES and ARS regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSREES and ARS so that CSREES and ARS may determine whether any further action is needed. Form CSREES–1234, "NEPA Exclusions Form" (copy in Application Kit), indicating the applicant's opinion of whether or not the project falls within one or more categorical exclusions, along with supporting documentation, must be included in the proposal. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories:

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES and ARS Categorical Exclusions (7 CFR 3407.6 and 7 CFR 520.5)

Based on previous experience, the following categories of CSREES and ARS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small, isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES and ARS to determine whether any further action is

needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusions must be identified. The information submitted shall be identified as "NEPA Considerations" and the narrative statement shall be placed after the coversheet of the proposal.

Even though a project may fall within the categorical exclusions, CSREES and ARS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a *significant environmental effect.*

Proposal Submission and Due Date

What To Submit

An original and 14 copies of a proposal must be submitted. Proposals should be typed on one side of the page only. Each copy of each proposal must be stapled securely in the upper lefthand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When To Submit

Proposals must be postmarked by March 24, 1998 to be eligible for the program. Proposals received after the deadline date of March 24, 1998, as indicated either by the postmark date on First Class or express mail, or by the date on a courier bill of lading, will be returned without review. Proposals must be sent to the following address: Biotechnology Risk Assessment Research Grants Program, c/o Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Proposals delivered by hand must be received at the following address by March 24, 1998 (note that the zip code differs from that shown above): Biotechnology Risk Assessment Research Grants Program, c/o Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, Telephone: (202) 401–5048.

Additional Information

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the final rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 15 day of December, 1997.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

Edward B. Knipling,

Associate Administrator, Agricultural Research Service.

[FR Doc. 97–33500 Filed 12–23–97; 8:45 am]

BILLING CODE 3410–22–P

federal register

Wednesday
December 24, 1997

Part V

Department of Transportation

Coast Guard

33 CFR Part 96
46 CFR Part 2, et al.
International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code); Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 96

46 CFR Parts 2, 31, 71, 91, 107, 115, 126, 175, 176, and 189

[CGD 95–073]

RIN 2115–AF44

International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code)

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In a Notice of Proposed Rulemaking (NPRM) published on May 1, 1997, the Coast Guard proposed national regulations for responsible persons and their vessel(s) engaged on international and domestic voyages, to develop safety management systems to enhance vessel operating safety at sea, prevent human injury or loss of life, and avoid damage to the environment, in particular to the marine environment, and to property. Section 602 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324) requires this action. This final rule completes those standards which will allow U.S. vessels that are certificated to engage on international voyages to meet the mandatory certification requirements, or voluntarily meet these safety standards for domestic voyages. It also provides standards to permit recognized organizations to apply for authorization from the U.S. to complete external audits and issue international convention certificates for U.S. vessels on behalf of the U.S.

DATES: This final rule is effective on January 23, 1998. The incorporation by reference of certain publications listed in the rule are approved by the Director of the Federal Register on January 23, 1998.

ADDRESSES: Unless indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1053, or fax (202) 267–4570.

SUPPLEMENTARY INFORMATION:

Regulatory History

In May of 1994, the ISM Code was adopted as Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended. The ISM Code's adoption occurred at the International Maritime Organization's (IMO's) Conference of Contracting Governments to SOLAS in London at IMO's Headquarters.

On October 19, 1996, the President signed into law the Coast Guard Authorization Act of 1996 as Pub. L. 104–324, 110 Stat. 3901. Section 602 of the Act added Chapter 32 to Title 46 U.S. Code, "Management of Vessels." 46 U.S.C. 3203 mandated the Secretary of Transportation to develop regulations for the implementation of safety management systems which are consistent with the International Safety Management (ISM) Code, for vessels and their companies which are engaged on foreign voyages.

On April 24, 1997, the Secretary of Transportation delegated to the Commandant of the Coast Guard the responsibilities under 46 U.S.C. Chapter 32 and 46 U.S.C. 3103 for the implementation and enforcement of safety management systems on U.S. vessels engaged on foreign voyages. This delegation was published as a final rule in the **Federal Register** (62 FR 19935) and codified in 49 CFR 1.46 (fff) and (ggg).

On May 1, 1997, the Coast Guard published a NPRM (62 FR 23705) in the **Federal Register** on implementation standards for safety management systems for vessels and their companies that are certificated to engage on international voyages. These proposed regulations provided standards for:

- The development and compliance of safety management systems for U.S. vessels and their companies;
- Mandatory certification of safety management systems to international levels;
- Voluntary certification of safety management systems for U.S. domestic trading vessels; and
- Authorization by the U.S. to organizations to complete external audits and certification of U.S. vessels required to meet the U.S. and international safety management system standards.

The NPRM comment period closed on July 30, 1997. During the 90 day comment period, 51 documents were received that contained 118 comments. Seventeen comments requested public hearings but none were held. Reasons for not holding public hearings before the publishing of this rule are explained in the "Discussion of Comments and Changes" section of this rule.

Background and Purpose

This rule is necessary to fulfill the mandates of 46 U.S.C. 3203, as added by section 602 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324, 110 Stat. 3901). The purpose of this rule is to establish national safety management system standards and requirements for the development, documentation, auditing, and completion of certification by vessel owners or responsible persons. These vessel safety management system regulations are consistent with the international regulations of Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended. Chapter IX of SOLAS requires that all vessels to which SOLAS is applicable, and their companies, have effective safety management systems developed to meet the performance elements of the International Safety Management (ISM) Code (International Maritime Organization (IMO) Resolution A.741(18)).

The development of these requirements has been fueled by the continued occurrences of significant marine casualties despite engineering and technological innovations to stop such casualties over the last two decades. In an effort to further reduce these casualties, the Coast Guard evaluated the role of the "human element" in the maritime safety equation. Recent casualty studies concluded that in excess of 80 percent of all high consequence marine casualties may be directly or indirectly attributable to the "human element." Consequently, the international maritime community saw the need to emphasize shipboard safety management practices to minimize human errors or omissions. These types of errors play a part in virtually every casualty, including those where structural or equipment failure may be the direct cause.

The U.S. has been at the forefront providing input, analysis and direction for the IMO's development of these international regulations. The U.S. recognized that the human element needed to be addressed and initiated the Prevention Through People (PTP) program which examines and defines the critical role that the human element plays in maritime safety. The PTP concept asserts that safe and profitable operations require a systematic approach toward the constant and balanced interaction between the elements of management, the work environment, individual behavior, and appropriate technology. The ISM Code offers a systematic approach to mariners with the policy and procedures needed to understand their duties and address the human element issues and risks that can prevent casualties from occurring. The voluntary certification of safety management systems by U.S. vessels in domestic trade supports the PTP strategies to bring government and industry together in making cultural change and partnerships to address the human element in maritime operations and pollution prevention.

Accordingly, the Coast Guard endorsed the guidance provided by the ISM Code in IMO Resolution A.741(18), and provided it as a reference in Navigation and Vessel Inspection Circular No. 2–94 (NVIC 2–94) published March 15, 1994, "Guidance Regarding Voluntary Compliance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention."

In May 1994, Chapter IX of SOLAS, "Management for the Safe Operation of Ships," was adopted by the U.S. at the IMO's Conference of Contracting Governments to SOLAS, 1974. Chapter IX of SOLAS mandates that all vessels subject to SOLAS, and their companies, have effective safety management systems developed and in use that conform to the performance elements of the ISM Code (IMO Resolution A.741(18)). Companies whose U.S. flag vessels trade internationally (engaged on a foreign voyage) and are subject to SOLAS, must have their safety management system externally audited and must receive the appropriate international certificates from the U.S. or from an organization authorized to act on behalf of the U.S.

The ISM Code marks a significant philosophical shift in the maritime community's approach to safety by recognizing the human element's role in preventing marine casualties and ensuring vessels are operated responsibly in accordance with domestic and international standards. The ISM Code is seen as a major contributor to industry's self-evaluation and actions to address the human element concerns. It is intended to change the current approach of regulatory compliance from industry's passive defect notification and correction response mode to an aggressive approach to safety and environmental protection. Under this proactive approach, potential discrepancies are resolved by the companies themselves before casualties or incidents that can adversely impact the marine environment can occur.

The ISM Code performance elements require the development of safety management systems which document and communicate the owner's operation policy, chain of authority, and operational and emergency procedures. It also requires management reviews, internal audits and correction(s) of non-conformities as directed by company's management procedures. The documentation of a safety management system provides the basis for auditing an employee's knowledge, ashore and afloat, of the company's procedures and policies. It illustrates owner, manager and Master responsibilities specifically and ensures awareness of national and international standards in the system's procedures.

The ISM Code performance standards are broad based to allow flexibility for the differences that each responsible person has to work with in managing a variety of vessels or just one. A safety management system is seen as a living system that will change and grow as the responsible person, his or her managers and shore-based and vessel-based personnel see the need for change, or as technology and vessel operations change. The best safety management system is one where there is commitment from the top management of the company and its personnel to act safely and in an environmentally responsible manner at all times. The accessibility of senior management throughout the development of the safety management system and throughout the systems life, is also a key factor to its success.

To ensure that the U.S. public and maritime industry understood the mandatory requirements of the ISM Code, the Coast Guard published a notice in the **Federal Register** on October 5, 1995 (60 FR 52143). This notice explained the adoption of the ISM Code by the Contracting Parties of SOLAS, and scheduled four public meetings held at the following times and locations:

October 30, 1995, Federal Building, Seattle, Washington;
November 1, 1995, Port Authority Building, Long Beach, California;
November 13, 1995, Holiday Inn Downtown, New Orleans, Louisiana; and
November 16, 1995, Port Authority Building, New York City, New York.

At these public meetings, the Coast Guard received comments on implementation of the international requirements and provide a presentation on the U.S.'s voluntary safety management system guidelines in NVIC 2–94. Comments received at these meetings were audiotaped and are a part of this docket.

Discussion of Comments and Changes

The Coast Guard received a total of 51 documents containing 118 comments to the public docket. This section of the preamble discusses the comments received and the Coast Guard's responses and changes to the proposed rule. This section is divided into three parts. First, we discuss the comments that request public hearings. Second, we discuss the comments on specific CFR cites. Third, we discuss the general comments concerning other issues relating to this rulemaking and the implementation of safety management system requirements.

Comments Requesting Public Hearings

Sixteen comments requested a public hearing to discuss the requirements in 33 CFR 96.250(f)(4), involving the determination of medical fitness for seafarers. The concern expressed was that this section permitted amendments to the standards that determined the medical fitness of mariners. The Coast Guard is not amending any regulations or standards regarding the determination of medical fitness for mariners as part of this rulemaking. This rulemaking only requires that the responsible person provide procedures or policies in the safety management system on how these existing requirements are managed by the company. We do not intend to hold public hearings due to these requests, as they would require actions on regulations outside the scope of this rulemaking. We understand the importance of these requests and asked the Executive Director of the Merchant Marine Personnel Advisory Committee (MERPAC) to place these comments and concerns on the Committee's working agenda to discuss in its public meetings with the Coast Guard. The Executive Director of MERPAC and the Committee's Chairperson agreed to place it on MERPAC's working agenda.

MERPAC is a federal advisory committee appointed by the Secretary of the Department of Transportation under the Federal Advisory Committee Act (5 U.S.C. App. 2). MERPAC is composed of marine industry personnel appointed to advise the Coast Guard on merchant marine issues. The Committee offers an open forum to hear individuals, groups or industry specific concerns, then works to provide the Coast Guard with recommendations as to what actions may be needed. MERPAC has addressed the issue of mariner's physical fitness

standards in the past and will, when changes are proposed, address it in the future. MERPAC's next meeting is scheduled for May 1, 1996. A notice announcing the Committee's working agenda, schedule and place of meeting will be published in the **Federal Register**.

One comment requested a public hearing if the Coast Guard does not plan to include specific protections for the Northern Right Whale in the final rule. The focus of the proposed rule is to implement safety management systems consistent with the ISM Code. The Coast Guard does not intend to hold a public hearing in response to this request. Comments about protection of the Northern Right Whale and the ISM Code are addressed in detail in the final section of these comment responses.

Comments Relating to Specific CFR Sections

All changes to each section of the rule are discussed within the following paragraphs.

1. 33 CFR 96.110, 96.210, and 96.310. Four comments were received on these sections which discussed who these subparts apply to. Two comments found the use of the terminology "trades in U.S. waters," or "on an international voyage," or "engaged on a foreign voyage" to be confusing in determining which vessels and persons must comply with the proposed regulations. One comment requested that "vessel engaged on a foreign voyage," be used throughout the rulemaking as it conforms to the statutory requirements of 46 U.S.C. 3201. We agree and amend proposed §§ 96.110, 96.210 and 96.310, to use the phrase, "vessel engaged on a foreign voyage," as defined in § 96.120.

For purposes of clarification regarding foreign vessel voyages that come under U.S. jurisdiction, the Coast Guard amends §§ 96.110(c), 96.210(a)(3) and 96.310(c), by adding the words, "bound for ports or places under the jurisdiction of the U.S." This will ensure that a foreign vessel or self-propelled mobile offshore drilling unit (MODU) are held accountable to the requirements and certification of safety management systems when navigating in U.S. waters. A foreign vessel engaged on a foreign voyage, involving innocent passage through waters subject to the jurisdiction of the U.S. will not be boarded under these regulations.

The second and third of these comments also discussed the use of the phrase, "on an international voyage" in 46 CFR 31.40–30(a), 71.75–13(a), 91.60–30(a), 107.415(a), 115.925(a), 126.480(a), 176.925(a), and 189.60–30(a). The Coast Guard does not agree with a need to change this phrase. "On an international voyage" is described in 46 CFR 2.01–8, entitled "Application of regulations to vessels or tankships on an international voyage." For consistency throughout title 46 CFR, we have not changed the final rule.

The fourth comment on these sections recommends that a specific subpart be developed for foreign vessel requirements, separate from regulations for U.S. vessels in subparts A, B and C. The comment suggested that this new subpart include requirements for foreign vessels whose countries are parties to SOLAS and those vessels whose countries are not, similar to 33 CFR 96.370. The Coast Guard disagrees that a separate subpart is needed, but has added language in § 96.390(a) to ensure that it is understood that actions for safety management system certification by vessels whose countries are a party to SOLAS are acceptable as an equivalent to the requirements of 33 CFR part 96, subparts B and C. Further discussions of this matter are found in paragraph 27 of this comment reply section of the final rule preamble.

The Coast Guard amended § 96.210(a)(2)(I) by removing the word "passenger" in that sentence. Under 46 U.S.C. 3202(a)(1)(A) "a vessel transporting more than 12 passengers * * *" must comply with these regulations, not just a passenger vessel. The Coast Guard removed this word to ensure the meaning that all vessels carrying more than 12 passengers, not just passenger vessels, must comply with these regulations.

The Coast Guard amended §§ 96.210(a)(2)(i) and (d)(1)(i), 96.330(a) and (d), 96.340(a) and (d), 96.370(a), and 96.390(a)(2) as the statements were to require that these sections applied to vessels transporting or carrying "more than 12 passengers" as stated in 46 U.S.C. 3202(a)(1)(A), and not "12 or more passengers."

2. 33 CFR 96.120. Five comments were received on definitions in this section. One comment requested that a definition for "designated person" be added to this section to ensure that this person's responsibilities for overseeing the safety management system is not confused with the responsibilities of the "responsible person." It should also be understood that a responsible person with a large fleet of vessels can assign the responsibility of the designated person to more than one employee, or that a designated person could be responsible for more than one vessel. The Coast Guard agrees with the comment and has added a definition for designated person to this section.

One comment requested that the term "responsible person" be replaced by the term "owner" because of possible confusion with the term "responsible party," which is defined in the Oil Pollution Act of 1990 (OPA 90). The Coast Guard does not agree with this comment and has not changed the definition of the "responsible person." Responsible party is defined in section 1001(32) of OPA 90 to clarify liability of the owners and operators of vessels, onshore facilities, offshore facilities, deepwater ports, and pipelines in the event of an oil spill. The Coast Guard's definition of responsible person in this rulemaking clearly relates to responsbility surrounding the development and use of safety management systems ashore and aboard vessels.

One comment suggested redefining the term "company" to include the definition of an "operator" as defined in 30 CFR 250.2 of the Mineral and Management Service's regulations for offshore oil and gas exploration. The Coast Guard does not agree. There are times when a lessee or operator of an offshore oil or gas exploration vessel becomes responsible by contract with the owner of the vessel to assume the duties imposed by these rules. When this occurs, a written designation of that responsibility must be provided by the owner to the lessee or operator of the contracted vessel and placed in the documentation of the safety management system as required by the ISM Code. This is part of the safety management system's documents and reports required by § 96.250(b)(2), and there is no need to expand on the definition of "company".

One comment requested that the term "recognized organization" be changed to a "member of the International Association of Classification Societies (IACS)." The Coast Guard does not agree with this comment. Other organizations, outside the membership of IACS, may apply and be recognized if they meet the requirements of 46 CFR part 8. The regulations of that part do not limit the application or recognition of any organization because they are or are not, members of IACS. The Coast Guard has amended the definition of a recognized organization in this section to be clear on which requirements of 46 CFR part 8, an organization must meet to be accepted. As subparts C and D of 46 CFR part 8 provides requirements for other international certificate authorizations and the U.S. Alternate Compliance Program, which have no effect on U.S. ISM Code certification authorization, these subparts are removed from the definition. This change of definition has also required changes to the language in the definition of an "Authorized Organization Acting on behalf of the U.S." and §§ 96.400(a), 96.410 and 96.430(b) (formerly § 96.430(a)(5)). Also, we have removed the phrase "national or international" from the recognized organization definition for consistency with subpart D.

One comment inquired whether the phrase, "vessel engaged on a foreign voyage" includes the operation of U.S. flag oilfield crewboats to and from foreign ports during operations supporting oil exploration programs internationally. Such vessels that are offshore supply vessels (OSVs) of 500 gross tons or more, or are carrying more than 12 passengers, would be considered engaged on a foreign voyage under paragraph (b) of the term's definition. This definition states that a vessel is considered to be on a foreign voyage when, "making a voyage between places outside the United States" (§ 96.120). These crewboats must meet the requirements of 33 CFR part 96 and the ISM Code for safety management systems, when certificated for such voyages. No changes were made to the final rules in response to this comment.

In November 1997, the SOLAS Conference on the Safety of Bulk Carriers was held at IMO's headquarters in London. During this conference, a new Chapter XII of SOLAS was adopted, entitled "Additional Safety Measures for Bulk Carriers." During deliberations on this new chapter of SOLAS an interpretation was adopted regarding the definition of a bulk carrier. This interpretation is found in Resolution 6 of the resolutions adopted by the conference. This interpretation pertains to the definition of bulk carrier in Regulation 1.6 of Chapter IX of SOLAS on the ISM Code, as well as the new Chapter XII on Bulk Carrier Safety. The definition in Chapter IX is, "Bulk carrier means a ship which is constructed generally with single deck, top-side tanks and hopper side tanks in cargo spaces, and is intended primarily to carry dry cargo in bulk, and includes such types as ore carriers and combination carriers." The interpretation removes the ambiguity of the term "constructed generally." Specifically, the resolution "Urges SOLAS Contracting Governments to interpret the definition of the term "bulk carrier" given in regulation IX/1.6, for the purpose of the application of SOLAS regulation IX/2.1.2 * * * to mean: ships constructed with a single deck, top-side tanks and hopper side tanks in cargo spaces and intended primarily to carry dry cargo in bulk; or ore carriers; or combination carriers." Bulk carriers that meet this interpretation are required to meet the first effective date of the ISM Code, July 1, 1998. Other vessels, which carry bulk cargoes, but do not meet this interpretation, must meet the second effective date of the ISM Code (July 1, 2002), as required by § 96.210. The U.S. has decided to accept this IMO interpretation to SOLAS. This rulemaking has not defined bulk carriers, but intends to use all vessel type definitions as provided by Regulation 1 of Chapter IX of SOLAS. For clarity, we added a new paragraph (a) to the definition section to explain that we will use the definitions provided by Chapter IX of SOLAS, and not the definitions in Title 46 of the U.S. Code.

3. 33 CFR 96.230(a). Four comments were received on this paragraph. Two requested clarification whether these practices have to be in writing. One comment noted that requiring written practices would impose requirements on U.S. vessels that are not required on foreign vessels. We agree. Requiring these objectives in writing would extend U.S. vessel requirements beyond requirements for a foreign vessel under the ISM Code. This change would also require a foreign vessel that operates in the U.S. to complete further work on their safety management system that exceeds the requirements of the ISM Code. We amend the rule to remove the term "written" and have reworded the paragraph to ensure that the objectives required by this section are consistent with the ISM Code.

The third comment requested clarification of the term "type" of vessel, and suggested that this definition would have the same meaning as vessel "category." This terminology is required to be used on the Document of Compliance certificate to illustrate what type of vessel(s) a company's safety management system is developed to manage. If the type of vessel(s) a responsible person owns changes, then the safety management system must be amended to include the specifics of managing the new or different vessel type. Vessel types are: passenger ship; passenger high-speed craft; cargo high-speed craft; bulk carrier; oil tanker; chemical tanker; gas carrier; MODU; and other cargo ship. The term "cargo ship" used to describe a vessel type under SOLAS has the same meaning as "freight vessel" for these regulations.

The final comment on this paragraph noted that, as drafted, the meaning of this paragraph could be interpreted to require the safety management system to provide a safe work environment "for" the vessel. The intent of the ISM Code is to require a safe working environment "on board" the vessel. The Coast Guard agrees with the comment and has reworded the paragraph to clarify its meaning and be consistent with the ISM Code.

4. 33 CFR 96.230(b) and 96.230(c). Five comments requested that we amend these paragraphs because the "listing" of safeguards and continuous improvement methods is not the same as "establishing or implementing" those safeguards. The Coast Guard agrees with the comments and amends paragraphs (b) and (c) accordingly.

5. 33 CFR 96.230(d). One comment requested that this paragraph be struck from the final rule because ensuring compliance with the many international, national, industry standards and codes is unworkable and a second comment requested that the term "industry guidelines" be expanded to "maritime industry guidelines." We disagree that this paragraph is unworkable or should be struck, but have amended it to include maritime regulations and standards in the safety management system. It does not require any more actions than those already completed by foreign vessels under their ISM Code compliance responsibilities. The Coast Guard agrees with the comment recommending the use of the phrase, "maritime industry guidelines" and amends this paragraph in the final rule. To ensure clarity, we amended this paragraph to use the word "relevant."

6. 33 CFR 96.240(b). One comment discussed that this paragraph was unclear, because as drafted, it appeared that foreign vessels would be required to comply with U.S. national standards and U.S. regulations for ship construction and operation not normally applicable to foreign flag vessels. The comment pointed out that this is inconsistent with the ISM Code. This was not the intent of the proposed requirements. We have amended this paragraph to make it clear that foreign vessels need to follow U.S. regulations applicable to them when they operate in U.S. waters.

7. 33 CFR 96.240(c). One comment discussed that the documentation which describes the levels of communication was not a functional requirement of safety management systems. The comment suggests that requiring this documentation would be an arduous task with respect to the operation of a self-propelled MODU, because the organizational makeup of the vessel changes depending on whether the vessel is navigating, or is anchored in oil exploration operations. The Coast

Guard disagrees. The directions and management needed for this type of operation between the responsible person, the navigating crew, whomever manages the operational drilling crew and the supervising staff of the drilling crew aboard the MODU itself, is exactly the situation that this requirement addresses. No change has been made to this requirement in the final rule.

8. 33 CFR 96.240(d). One comment questioned the Coast Guard's authority to require "near accident reporting" in this paragraph, arguing that this was inconsistent with the ISM Code. We disagree. Section 9.1 of the ISM Code requires that, "The safety management system should include procedures ensuring that non-conformities, accidents and hazardous situations are reported to the company, investigated and analyzed with the objective of improving safety and pollution prevention." The Coast Guard interprets that near-accident reporting is hazardous situation reporting. The Coast Guard has also reinforced the meaning of this requirement in the standards provided by § 96.250(i).

The comment also suggests amending this paragraph to conform to the ISM Code. Specifically, the comment suggests revising the language to say "procedures for reporting * * * non-conformities with the ISM Code," as opposed to "non-conformities with the safety management system." The Coast Guard disagrees that only non-conformities with the ISM Code should be included here. The functional requirements of a safety management system must ensure the continuous evaluation and appropriate improvement of the safety management system by the company's management. However, to ensure clarity this paragraph is amended.

One comment supported § 96.240(d) as drafted, and emphasized the importance of near-miss reporting and follow-up to establish lessons learned. We agree. The Coast Guard, in partnership with the Federal Maritime Administration (MARAD), is developing a nationwide voluntary near-miss accident reporting program to compile lessons learned for the education of mariners and maritime industry. When completed, the Coast Guard will publish policy on the use of the national near-miss accident reporting program and a responsible person's ability to use the U.S. national program to conform with the requirements of near-accident or hazardous situation reporting required by the ISM Code. The Coast Guard's program manager for this project is the Chief, Office of Investigations and Analysis (G-MOA), at Coast Guard Headquarters.

9. 33 CFR 96.240(e). One comment objected to the use of the word "procedures" in this paragraph stating that the functional requirements should define a "process" for ensuring an appropriate response to emergency situations. The Coast Guard disagrees because the paragraph, as drafted, is interpreted broadly and will define a process for response as required by the ISM Code. Multiple levels of management, such as on a MODU and third party managed vessel, need to define their "processes" in terms of procedures in a safety management system for it to work. Procedures that define these processes can be used as training tools, tracking tools, and action tools. This requirement does not require a new process to be developed if they are already in hand or developed under current regulation or management procedures. No change is made in response to this comment.

10. 33 CFR 96.240(g). Two comments discussed expanding this paragraph to include the use of objective internal safety assessments in place of internal auditing, and stated that safety management systems should be reviewed to evaluate their efficiency against established industry evaluation procedures. Both comments contain merit, and the Coast Guard agrees that the efficiency and measurement of safety management system impacts and their effectiveness should be determined. However, the Coast Guard disagrees with the need for such requirements in the final rule. The suggested requirements would extend managerial responsibility past the minimum requirements of the ISM Code. Therefore, no changes are made in response to this comment.

11. 33 CFR 96.250. Five comments were received on this section. One comment noted that both functional and documentary requirements are included in the table within § 96.250. The comment recommended referencing the documentary requirements of § 96.240 to the table within § 96.250. The Coast Guard does not agree that there is a need to cross reference the requirements of § 96.240, as the requirements for performance objectives documentation are already covered within the requirements of the table in § 96.250.

Four comments suggested that these regulations should contain provisions to protect records that are maintained as part of a safety management system. The comments request that the regulations be amended to prohibit use of these records in civil or administrative proceedings. Specific concerns were that the documentation and reporting requirements will contain sensitive company information that, while essential for purposes of company personnel use, should not be made publicly available for use in civil proceedings. The Coast Guard agrees that for a safety management system to work correctly and to be continuously self-improving, it requires the proactive actions of the responsible person to have reports completed on non-conformities and hazardous situations, no matter how minor or major, so that management reviews can be completed and corrections made to the safety management system accordingly. However, the Coast Guard cannot provide any protection for these records because to do so would exceed its authority granted in 46 U.S.C. Chapter 32. To clarify our intent, a note has been added at the end of the table in § 96.250, in the final rule.

12. 33 CFR 96.250(b). Three comments were received on this paragraph. The first comment requested clarification whether the requirement for the company's responsibility and authority statement should extend to all vessels owned by the responsible person, or just the vessels of the company that must comply with this part. The Coast Guard contends that it would be to the responsible person's benefit to have all vessels that he or she owns meet the safety management system requirements of this part. However, only vessels required to meet 33 CFR part 96, are required to be covered by this requirement.

The second comment discussed the possibility of confusion regarding the determination of the responsible person on a self-propelled MODU, between the owner, operator, lessee, or drilling contractor. The delineation of the relationships of these persons or companies involved in a MODU's operation should be explained by the company's policies and procedures. Proper explanation of these relationships in the safety management system ensures that personnel responsible for specific duties involving safe operation, and the services provided to the vessel by contracted personnel, will understand their responsibilities correctly thereby reducing human element errors which can cause accidents. It will also enhance the vessel's response to casualties and accidents, resulting in mitigation damages to the vessel and the environment, or injury to vessel personnel.

The third comment on this paragraph discussed subparagraph (b)(4), which requires the safety management system

to contain a statement that describes the company's responsibilities to ensure adequate resources. The comment further states that describing this responsibility in the safety management system does not necessarily mean that the company bears responsibility. We understand that vessel resources can be provided by a myriad of contract companies and personnel not under the direct control of the responsible person. Safe management does not point fingers but ensures communications so when problems develop, there are clear policies that employees can follow to make decisions. The reasoning that the performance objectives of these safety management system standards are so general is to allow them to be customized to specific type vessel operation for ease of the user. No changes have been made to the final rule due to these comments.

13. 33 CFR 96.250(c). One comment requested that the term "oversee" used in this paragraph, be changed to the word "monitor" to describe the actions required of the designated person. The Coast Guard agrees with this comment and amends this paragraph in the final rule.

14. 33 CFR 96.250(d). Three comments were received on this paragraph. One comment stated that not all vessels are certificated or required by the provisions of national regulations to have Masters, but instead may have Persons-In-Charge. The Coast Guard agrees with this comment, but has not amended the regulation. The Coast Guard uses the term Master to be consistent with the ISM Code. Additionally, all U.S. vessels mandatorily required to meet the safety management system requirements of this part are certificated to have Masters on board. The Coast Guard understands that there are vessels which can voluntarily meet these standards, such as non self-propelled MODUs, which are not required to have a Master but a Person-In-Charge as senior manager of the vessel. The Coast Guard is developing a new chapter in Volume II of it's Marine Safety Manual (MSM), on the U.S. safety management system compliance and enforcement policies which will be used by the Coast Guard and organizations authorized, to audit and certificate safety management systems. The Coast Guard has not amended this paragraph because the MSM guidance will clarify that the term "Master" includes a Person-In-Charge in this situation.

The other two comments questioned whether a vessel's Master is capable of having responsibility and authority over shore-based resources, and asked that such contentions be deleted from this paragraph. During some duties, the Master of the vessel will be the responsible person's representative contracting and supervising vessel support from shore-based resources, as well as directing resources from the vessel managing company. The safety management system should clearly describe these duties to allow the Master to understand his or her responsibilities and decision-making policies. This will also help shore-based resources understand their duties, their importance to the vessel, and their responsibilities to the vessel Master as a manager. The Coast Guard does not agree with these comments and has not amended this paragraph of the final rule.

15. 33 CFR 96.250(e). Two comments were received on this paragraph. One discussed that the Master of a vessel does not have overall authority for vessel operation because the Master's authority is overridden by flag state, coastal state, and numerous other governmental authorities. We respond that the Master is the responsible person's representative on the vessel and all authorities that can be expected of the Master should be supported by the safety management system. The Master has overriding responsibility and authority to ensure that the vessel is operated safely, and consistently with all applicable laws. When the Master is not specified, it is impossible to expect the individual employed as the Master to provide proper leadership or decision making clarity. Where the Master follows international, national, coastal, or local regulations or directions, regarding management of a vessel, he/she is making decisions on how to use these factors in the efficient and safe operation of the vessel taking into account the policies provided by the safety management system.

The second comment encouraged the Coast Guard to amend this paragraph by adding a subparagraph (3) which states, "Responsibility with the bridge team and officers on watch to monitor navigation, collision avoidance, and communications while the ship is piloted." The Coast Guard does not agree that this statement needs to be added to this paragraph because this requirement for providing procedures for shipboard operations is covered by paragraphs (f) and (g) of the table in § 96.250. The Coast Guard has made no changes to the final rule due to either of these comments.

16. 33 CFR 96.250(f). Four comments were received on this paragraph. One comment discussed that the statement in § 96.250(f)(6) required knowledge of the relevant rules, regulations, codes and guidelines, which was a subtle difference from than "an adequate understanding" required by the ISM Code. We agree that this statement may be misinterpreted to require more than what would be consistent with the ISM Code and have changed the language accordingly.

One comment discussed that there should be an understanding that the documentation of training identified and required by other national regulations or international conventions, can be documented under the safety management system in compliance with these requirements and also meet the requirements for training and documentation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW). The Coast Guard agrees with this comment, and this understanding is stated in NVIC 4–97 (Guidance on Company Rules and Responsibilities under the 1995 Amendments to the STCW). NVIC 4–97 states, "If you operate your vessel under a safety management system (SMS) in compliance with the International Safety Management (ISM) Code and hold a valid Safety Management Certificate (SMC) and Document of Compliance issued by the Coast Guard under 46 U.S.C. 3205, you are presumed to be in compliance with STCW Regulation I/14." On the other hand, NVIC 7–97 (Guidance on the STCW Quality Standard System (QSS) for Merchant Mariner Courses or Training Programs), explains that, "* * * In order for shipping companies that are ISM Code certified to have their training meet the STCW QSS requirement, their training program must meet the criteria in 46 CFR 10.309.

It should be remembered that documentation and training requirement programs developed by a company can cover a magnitude of different vessel type specific requirements. Each vessel type, under the umbrella of a company's safety management system, may only need to use those portions of the training and documentation program of the total company system that are applicable due to the vessel type, area of operation, or specific requirements under other conventions, laws or regulations. No changes were made to this section in response to this comment.

One comment discussed the need to reevaluate federal manning levels required on U.S. vessels, suggesting that current manning levels do not reflect the additional personnel which will be needed to satisfy the requirements of the

ISM Code. The comment stated that the ISM Code places more duties on vessel personnel than were expected when manning levels were established. The Coast Guard disagrees with this comment. We received comments from companies that have safety management systems in operation. They developed those safety management systems by initially reviewing existing company management policies and procedures. By doing this, they found numerous antiquated, unnecessary or duplicative management procedures and documentation which could be eliminated. Thus, they reduced the management overhead that they had been experiencing before placing the safety management system in operation. If policies are not needed due to changes in the company, management, regulations, policies, or for a number of other different reasons, then they should be removed or amended. By doing this the management system and oversight reporting is reduced in size, which does not increase the personnel needed to operate a vessel safely. No changes have been made to the final rules due to this comment.

The final comment on this paragraph recommends that all personnel should receive general safety management system familiarization when joining a vessel and also six further specific levels of training. These include: three support level training programs; two operational level training programs; and one level of management training programs. The Coast Guard supports a company's use of training, at whatever level necessary to ensure that policies and procedures of the management system are understood by their staffs aboard a vessel or working ashore in support of a vessel. We agree that if a company evaluates its safety management system and finds a need to develop training to ensure the proper understanding and use of the system, then the training should be initiated by that company. In NVIC 4–97, the Coast Guard recommended that ship-specific familiarization include directing a new crew member's attention to the vessel's safety management system. However, the Coast Guard has not made changes to this section of the final rule, as the comment requests additional training which exceeds the requirements of the ISM Code.

17. 33 CFR 96.250(j). Three comments were received on this paragraph. One comment requested that the format of the paragraph and subparagraphs be changed to mirror the ISM Code, and two comments requested that subparagraph (2) have the word "non-conformity," changed to "deficiency." The Coast Guard disagrees with the first comment and has not altered the format of this section or table in the final rule. The Coast Guard agrees that there may be confusion understanding subparagraph (2) and has added the words "and deficiency" after "non-conformity" to ensure that the requirement is understood.

18. 33 CFR 96.250(k). Two comments were received on the control of documentation required by this paragraph. One comment requested that the word "destroyed" be changed to "removed" in subparagraph (4). We agree with this request and amend the word in the final rule. The second comment stated that the meaning of data maintenance is unclear and that the complete paragraph does not provide specific direction on data control. The requirements for safety management systems were written in general performance element style to allow different types of companies to tailor their systems to their specific needs. Some companies may use paper based systems, other computer based, a third company a mixture of both. No matter how this data is displayed or communicated, it will be controlled equally and in compliance with these standards. The Coast Guard disagrees that further amendments are needed, because these standards allow flexibility for development of systems documentation. Consequently, we have not made any changes to the final rule due to this comment.

19. 33 CFR 96.250(l). Two comments were received on this paragraph. One comment requested the word "deficiencies," in subparagraph (4) be changed to "non-conformities," to conform with the ISM Code. In this case, the Coast Guard agrees that confusion could occur on what requires timely action for the system and has added the words "non-conformities or" before the word "deficiencies" in subparagraph (4) in the final rule.

The second comment stated that proposed section § 96.240 of the regulations should include the requirements of section 12 of the ISM Code that require evaluating the efficiency of the system and reviewing the safety management system with established procedures. The Coast Guard agrees and notes that these requirements are already included in § 96.250(l)(1). Critical management review of the system, as well as non-conformity and deficiency reports, are necessary to evaluate whether the system is running properly. No changes to the text of the final regulations were made due to this comment.

20. 33 CFR 96.320(f). Three comments were received on this section regarding the reporting of non-conformities to the company's owner or vessel's Master at completion of a safety management audit. The comments requested that this paragraph be amended to require auditors to issue reports of non-conformities to the company's owner and vessel's Master. It was also recommended that the safety management system's designated person receive copies of this reports as well. The Coast Guard agrees in part and amends this section to require auditors to provide these reports to a company's owner when the company is audited, and to a vessel's owners and Master when a vessel is audited. If a company wants its designated person to receive a copy of this non-conformity report, it is recommended that this request be made to the auditors prior to the audit being completed on behalf of the company.

21. 33 CFR 96.330. One comment expressed concern that this section would require multiple Document of Compliance certificates to be issued by each flag state for a multi-flagged fleet under one responsible person's ownership. Multiple certificates may not be required as the international interpretation for their issuance allows flag states to agree to accept each others certificates for safety management system compliance. Each situation may be different and to verify the U.S. acceptance of other flag state certificates contact Commandant (G–MOC–2), Vessel Compliance Division, 2100 Second Street SW., Washington DC 20593–0001 in writing, by telephone (202) 267–1464, or by facsimile (202) 267–0506. No changes were made to this section of the final rule due to this comment.

22. 33 CFR 96.330(f). One comment requested that this paragraph be amended because it requires the Document of Compliance certificate to be verified annually, instead of the company's safety management system. The Coast Guard agrees and amends this paragraph to ensure the verification of the system and not the certificate in the final rule.

23. 33 CFR 96.330(g)(1), 96.340(g)(1), and 96.340(f). Four comments were received on these paragraphs. Two comments requested that the revocation of a Document of Compliance certificate or Safety Management Certificate not be based on the failure of the responsible person to request an audit, but rather on the failure to complete an audit. The Coast Guard agrees with this comment and amends these paragraphs in the final rule.

The next comment pointed out that when a vessel is laid up or taken out of service for a period of time the Safety Management Certificate may lapse, if the vessel is unmanned for long periods of time. Because there are no personnel working under a safety management system when a vessel is laid up, the certificate cannot be validated or endorsed. When brought back into service, the responsible person can request that an initial audit of the vessel be completed when the vessel is remanned, and a new Safety Management Certificate can be issued. No change to the final rule was made due to this comment.

The last comment stated that § 96.340(f) should be amended as it requires foreign vessels to meet U.S. requirements for safety management system audits. A foreign vessel which is certificated by its flag state or by an organization who acting on behalf of the flag state, completes a safety management system audit following the guidelines of IMO Resolution A.788(19), meeting the same requirements found in these regulations. The Coast Guard will accept such a determination as required by the articles of SOLAS. No changes have been made to this section of the final rule due to this comment.

The Coast Guard has added wording to § 96.330(g), with a new subparagraph (3), to ensure that their personnel and auditors of an authorized organization acting on their behalf, can complete audits and reviews of safety management systems properly and effectively. A Document of Compliance certificate may be revoked if the Coast Guard or an authorized organization is denied or restricted access to the vessel, records, or personnel necessary to ensure compliance with 33 CFR part 96. Neither the Coast Guard, nor an authorized organization acting on its behalf, should be expected to certificate compliance with any international convention regulation, unless all needed information and records for that review are provided by the vessel's or company's personnel.

24. 33 CFR 96.340(e)(2). One comment requested that the wording in this section regarding the "anniversary date" of the intermediate verification audit be amended for clarity. The Coast Guard agrees and amended the final rule with the words "period of validity" rather than the "anniversary date."

25. 33 CFR 96.360(a)(2). One comment was received on this section which requested a determination of "* * * a U.S. vessel which is new to the responsible person or their company." For an interim Safety Management Certificate to be issued, this vessel would be considered an individual vessel that was just purchased by or just brought under the management of a responsible person. No change to the final rule was made due to this comment.

26. 33 CFR 96.380. Two comments were received on this section: One comment stated that the use of a civil penalty under 46 USC 3318 is not consistent with the law for violations of compliance with documentation responsibilities under these regulations. The comment went further to state that a suitable grace period for the production of certificate copies, or a grace period to bring the vessel into compliance, along the line of a formal requirement (CG Form 835) be issued prior to actions to assess a civil penalty. The requirement as written states that the "* * * vessel owner, charterer, managing operator, agent, Master, or any other individual in charge of the vessel that is subject to this part, may be liable for a civil penalty * * *." The proposed regulations do not say that the Coast Guard must pursue a civil penalty.

Traditionally, the Coast Guard has considered all possible administrative actions in dealing with incidents of non-compliance. The Coast Guard wrote this section to ensure that affected companies and individuals were aware that civil penalties were a possible sanction for violations of these regulations. It is the Coast Guard's opinion that civil penalties authorized under 46 U.S.C. 3318 apply to violations of these regulations because these penalty provisions are applicable to violations of laws and regulations issued under the authority of 46 U.S.C. Part B, which includes 46 U.S.C. Chapter 32.

The second comment discussed concerns surrounding § 96.380(a)(2), which allows the Coast Guard to board a vessel to verify that the vessel's crew or shore-based personnel are following the procedures and policies of the safety management system while operating the vessel or transferring cargoes. The comment concluded that this action would go well beyond the authority internationally recognized for port state control examinations found in SOLAS: Chapter I, regulation 19; Chapter IX, regulation 6; Chapter XI, regulation 4; as well as the IMO Procedures for Port State Control. The comment also requested that we modify this subparagraph to conform with internationally recognized port state control guidelines. The comment further requested that we draft Coast Guard policy on these actions and distribute them for comment to the maritime industry prior to their implementation.

The Coast Guard is working to complete policy development which falls into line with this request. A port state control NVIC is being developed which describes the Coast Guard boarding policy for foreign vessels including examination of the vessel safety management system and certificates. This NVIC will discuss normal actions during a port state control examination of a foreign vessel by the U.S., and what clear grounds must be found of observed non-compliance with a safety management system before an expanded Coast Guard examination will be completed. The Coast Guard expects to have this NVIC published in the same time frame as this final rule. However, we disagree that this policy requires review and comment by the maritime industry. These procedures for safety management system evaluation fall in-line with the U.S. port state control program already in existence and meets the port state control regulations of SOLAS and the IMO Procedures for Port State Control. No changes have been made to this section of the final rule due to this comment.

27. 33 CFR 96.390(a). One comment stated that this subparagraph would prohibit Coast Guard acceptance of foreign issued international management certificates which met SOLAS guidelines, unless they would attest to full compliance with U.S. regulations. The Coast Guard agrees that as written, this requirement provides a limitation of acceptance of foreign issued certificates which is not consistent with SOLAS. This subparagraph has been amended in the final rule to ensure that such certificates would be acceptable when issued in accordance with Chapter IX of SOLAS and the IMO Guidelines for Contracting Parties to SOLAS.

28. 33 CFR 96, Part D. Two comments were received regarding organizations who have applied to be recognized and are authorized to complete external audits and certification of safety management systems for U.S. vessels and their companies. One comment questioned the use of the term "expertise," and whether that term encompassed the marine field, quality systems, or both, and whether this authorization should be limited to classification societies. The comment further stated that anyone with an appropriate marine business and academic background is qualified to act on behalf of the U.S. in ISM Code auditing and certification.

These requirements are based in part, on the guidelines provided by IMO Resolution A.739(18), which are

incorporated by reference in § 96.130. These international guidelines provide minimum standards to ensure organizations authorized by any flag state, worldwide, will provide uniform actions and oversight when their personnel complete actions regarding vessel surveying and auditing in the marine field. This is important to the owner of a vessel and the flag state, because as it ensures that the international certificates issued by authorized organizations acting on behalf of a flag state, will be accepted worldwide, on face value, for compliance with international conventions. The Coast Guard disagrees that "just anyone" can meet these requirements. Coast Guard requirements for recognition of organizations are rigorous and conform to the IMO guidelines. The Coast Guard expects and will ensure that actions by an organization acting on its behalf are incontestable under any port state scrutiny. Any organization, with a proven history of marine experience working with and making decisions based on maritime industry standards, national standards and regulations, and international guidelines and conventions, may meet these requirements. The organization, due to the auditing expertise needed for ISM Code certification, must also provide a certified level of standards that it can meet for its personnel to complete audits. The requirements are restrictive because the Coast Guard must ensure that the U.S. marine transportation industry is able to operate, uninterrupted, worldwide.

The second comment on this part recommended that organizations already accepted by the Coast Guard to issue voluntary certificates, under NVIC 2–94, should be automatically authorized to issue mandatory ISM Code certificates on behalf of the U.S. without having to reapply under these regulations. The Coast Guard disagrees and expects these organizations will apply under this part. No changes were made to this section of the final rule due to these comments.

29. 33 CFR 96.410. One comment was received on this section which stated that the term "safety management certificates" should not be used in this section because it has a specific meaning, and should not be used to refer to these certificates in a general way. The Coast Guard agrees with this comment and has changed this section to eliminate confusion. The Coast Guard has also edited this section to make it easier to read by removing the words "wish to" from this section.

30. 33 CFR 96.430. Four comments were received on this section. One comment discussed the reciprocity requirement of 46 U.S.C. 3316 for a foreign classification society to be authorized to act on behalf of the U.S. to complete external audits and certification of safety management systems. The comment stated reciprocity with ABS should not be required because a subsidiary corporate entity of ABS is providing these functions, not ABS, thus there is no need for the documentation of reciprocity by a foreign classification society. The Coast Guard does not agree. Currently, ABS certification comes under the voluntary system of NVIC 2–94 which is not subject to the provisions of 46 U.S.C. 3316. Under these regulations, all future written agreements for authorization to act on behalf of the U.S. regarding the mandatory certification of safety management systems will be made with ABS under the provisions of 46 U.S.C. 3316. Under this agreement, ABS will not be able to use subsidiary group offices to complete these actions for the U.S. No change was made in the final rule due to this comment.

The second comment recommended that the Coast Guard also accept the quality standards of ASQC Q9002 and quality management standards of ASQC C9001 and C9002. The Coast Guard disagrees. Under 46 CFR 8.230(a)(15), an organization must meet ANSI/ASQC Q9001 or an equivalent quality standard to be recognized. No other quality standard is incorporated in 46 CFR part 8. For purposes of consistency, no others will be incorporated here either. Quality management standards (ASQC C9001 and C9002) are not required for recognition of an organization, so none will be required here. No changes have been made to this section of the final rule due to this comment.

The third and fourth comments on this section questioned the terminology used in § 96.430(a)(3), and inquired whether a recognized organization could use subsidiary organizations and their auditors to carry out audits and certification in accordance with the IMO guidelines and the ISM Code. The Coast Guard disagrees and has explicitly written this subparagraph to ensure that only exclusive auditors of organizations authorized to act on behalf of the U.S. are used by these organizations to complete audits under this authorization. When the Coast Guard reviews an organization's application for authorization authority under this subpart, quality standards must: (1) Demonstrate how the organization selected individuals as auditors; (2) explain training and recertification methods; and (3) describe the code of ethics the auditors must follow. An organization's auditor standards will be approved as part of the organization's application package to be authorized to act on behalf of the U.S., and will be part of the U.S. written agreement with the organization as required by § 96.440(c). No change was made to this section of the final rule due to these comments.

As the reciprocity requirement effects only foreign classification societies which can be authorized to act on behalf of the Coast Guard under this section, old paragraph (a)(5) of this section has become a new paragraph (b) for clarity. Old paragraph (b) is now paragraph (c).

31. 33 CFR 96.460. One comment cautioned that the termination of authority from an organization acting on behalf of the U.S. could have extreme consequences on vessel operation for vessels certificated by that organization. Specific concern was expressed for situations in which the vessel's Safety Management Certificate is near expiration when the authorization is terminated. Also, the comment questioned the obligatory notification requirements of companies and vessels certificated by the terminated organization. In all cases, the Coast Guard will request information from the administrative files of the organization being terminated to understand the effect of termination on the companies and vessels certificated by the organization. The Coast Guard will assist any company and vessel to maintain certification while transferring to another authorized organization. The original certificates of the terminated organization will remain valid until expiration or periodic audit which will allow continuity with a new authorized organization. There should be no extra cost for the company or vessel as the audit actions required by the new organization are the same actions that would have been completed by the original certifying organization. This paragraph was also edited to ensure clarity.

The Coast Guard will enter into a written agreement with all organizations receiving authorization under this part, as stated in § 96.460. Failure to notify affected companies or vessels upon termination of authority for safety management system certification, will result in a review by the Coast Guard of the ability of the organization to complete any actions on behalf of the Coast Guard. Additionally, this termination could affect any or all other delegated authorities, in such a

situation. The final rule was not changed due to these comments.

32. 46 CFR 126.480(a). Three comments were received on this section. Two comments discussed the use of the phrase "offshore supply vessels (OSVs) engaged on foreign voyages" and questioned the applicability of the 33 CFR part 96 on OSVs and ocean-going towing vessels certificated for international voyages. The applicability of those regulations to OSVs and towing vessels on international voyages is determined by whether these vessels are over 500 gross tons and are "vessel(s) engaged on a foreign voyage" as that term is defined in 46 U.S.C. 3201 and this part. No change was made to the final rule due to these comments.

The final comment sought clarification when the ISM Code applied to OSVs and ocean-going towing vessels under the vessel admeasurement system. The ISM Code applies to vessels engaged on a foreign voyage. In the case of OSVs and ocean-going towing vessels, the ISM Code applies only if the vessel is 500 gross tons or greater, as OSVs and towing vessels are considered freight (cargo) vessels for purposes of SOLAS. Because the applicability of the statue implementing the ISM Code provisions is based on tonnage (see 46 U.S.C. 3202) and this statute was enacted after July 18, 1994, its applicability to vessels is based on their international convention tonnage because of 46 U.S.C. 14302(b). However, under 46 U.S.C. 14305, a vessel owner may request that a vessel be measured under the regulatory tonnage system and under those circumstances the applicability of SOLAS, as well as the other enumerated statutes, would be based on the vessel's regulatory tonnage. This means that the owner of an OSV or towing vessel that has a convention tonnage greater than 500 gross tons could elect to have the vessel admeasured under the regulatory tonnage system, and if the vessel had a regulatory tonnage of less than 500 gross tons, these regulations would not apply. However, the applicability of all other laws enumerated in 46 U.S.C. 14305 would also be determined based on the optional regulatory tonnage (see 46 U.S.C. 14305(b)). NVIC 11–93, Change 2, discusses when regulatory tonnages may be used by a vessel owner to determine the applicability of SOLAS requirements. No changes in the final rule have been made as a result of these comments.

33. 46 CFR 175.540(d). Four comments were received on this section. One comment stated that the applicability of the requirements of 33 CFR part 96 are mitigated by the addition of paragraph (d) to this section of the regulations for small passenger vessels. This amendment does not mitigate or soften the applicability. This paragraph provides an equivalent means for these small vessel owners to meet the safety management system requirements. An equivalence is not an exemption. The Coast Guard developed a job aid with the assistance of a marine industry working group. This job aid can be used as an example of what an owner of a small passenger vessel may do to establish an equivalent safety management system. Section 175.540(d) does not reduce the effectiveness of the safety management system, but instead provides direction to these small passenger vessel owners to help them develop their systems so they can be certificated by the cognizant Coast Guard OCMI.

Two comments did not support an exemption for small passenger vessels due to their limited operation or company sizes. The Coast Guard disagrees. These vessels are not being exempted from the requirements, but are offered a cost-effective course of action to implement the regulations due to their size, limitation of operation, and historical low risk with proven safety records. The Coast Guard job aid developed for these vessels provides a customized safety management system program, which will support small passenger vessels with limited international routes. It does not remove any of the requirements of 33 CFR part 96. A small passenger vessel owner can request a job aid at no charge from the local cognizant OCMI.

The final comment requested clarification whether the Coast Guard would allow a small passenger vessel approved and actively using the Streamlined Inspection Program (SIP) to use that program as an equivalent to the safety management system requirements. The SIP program is based on performance elements similar to the safety management system requirements. The Coast Guard may allow this if an owner developed a program that included all the requirements of 33 CFR part 96. This program would be provided to the cognizant OCMI for review and acceptance after discussion and recommendations are received from the authorized organization certificating the safety management system. However, the Coast Guard made no changes or amendments to this section due to these comments.

General Comments (Non-CFR Specific)

34. Four general comments were received which supported the proposed rules as written. One comment also requested confirmation that operation of large passenger vessels around the islands of Hawaii constituted coastal trade and would not require mandatory development and certification of a safety management system. A U.S. vessel certificated to a limited route of coastal operations within the Hawaiian island chain is not required to meet this part. However, if the vessel involved in this operation holds an international registry and a Certificate of Inspection authorizing international voyages, even though the owner of the vessel limits its operations, this vessel would have to meet all SOLAS requirements and be certificated to the ISM Code.

One comment requested that the safety management system requirements be placed in each part of title 46 of the CFR to correspond to each type of vessel required to meet the ISM Code. The Coast Guard does not agree that this should be done as the agency has actively reduced the number of regulations where possible, including elimination of redundant parallel regulations in the CFR. The limited reference in each part of Title 46 affected by the final rules in 33 CFR part 96 will allow ease of reference and continuity of using the regulations for all vessels affected by these requirements. No change to the final rule has been completed due to these comments.

35. Two general comments supported the use of plain English in the development of these regulations by the Coast Guard. Each described the use of the question and answer format as useful, but both felt that the style did not provide enough detail to really answer the questions posed. One comment stated that the questions did not appear to be answered. The other comment felt that the standards of plain English were not followed adequately.

The Coast Guard's authority for developing these regulations required consistency with the ISM Code. The ISM Code's standards are general in nature to allow flexibility for different types of vessel companies to meet them without restricting their creativity or mandating a specific management style. Other international or U.S. quality standards and management standards are written following the same logic. No change to the final rule has been made due to these comments.

36. Two general comments discussed the need to carefully oversee safety management system development and certification programs for U.S. and foreign vessels. The comments pointed out that Coast Guard personnel should

be specifically trained to oversee these new requirements. We agree.

U.S. Coast Guard marine inspectors and program managers have been trained to meet national auditing standards. Since 1995, approximately 120 Coast Guard marine inspectors completed a course which is specifically based on the auditor standards of ANSI ASQC Q 9001 and the ISM Code. The Coast Guard also reviewed its in-house training programs for marine safety responsibilities and included compliance and enforcement of the ISM Code in each basic marine safety training course. No changes have been made to the final rule due to these comments.

37. One general comment stated that there are numerous organizations worldwide, who may be authorized by an Administration to complete ISM Code audits and certification, whose abilities to act on behalf of an Administration may be questionable. Two other general comments alluded to the same problem, and provided suggestions on how these organizations should be rated for performance and how port state targeting schemes could be modified when a specific organization fails to complete its authorized responsibilities.

The Coast Guard agrees. Coast Guard program managers will monitor and compare compliance with the ISM Code for all flag states, authorized organizations, companies and foreign flagged vessels. Because this information will be monitored centrally by Coast Guard Headquarters program managers, compliance infractions will be tailed and may affect the targeting scheme for specific foreign vessels, flag states, and vessel owners or authorized organizations. This information will enable the Coast Guard to modify its targeting schemo, if necessary, to ensure that vessels with continuous noncompliance issues receive a higher level of oversight and boardings when in U.S. ports.

The Coast Guard will use the information collected to provide IMO and flag states with reports on port state interventions, detentions and denials of U.S. port entries required by the port state reporting requirements of SOLAS. If a specific authorized organization continuously fails to complete its assigned duties, such reports will illustrate these failures to all SOLAS Contracting Parties, who can increase their port state control requirements on vessels certificated by this organization on behalf of any flag state. This will help flag states recognize the need for extended oversight when continuous problems are documented, and promote revocation of authorizations by the flag state when necessary. In the event that these actions do not appropriately address non-compliance, the Coast Guard will continue to heighten its oversight and boardings of vessels certificated by these organizations. This may lead to interventions, detentions and denial of entry into U.S. ports and places. No change has been made to the final rule due to these comments.

38. One general comment recommended that a Master's or crew's unfamiliarity with the company's safety management system and training requirements of a safety management system should be clear grounds to perform a more extensive examination of a foreign flag vessel during a routine boarding by the Coast Guard. The Coast Guard agrees with the comment and developed its port state control boarding procedures to allow for an expanded examination of a foreign vessel's safety management system when this situation is found during a routine Coast Guard boarding. As the policy for Coast Guard actions required during port state examinations of foreign vessels are covered in the NVIC on ISM Code compliance for foreign vessels, the final rule has not been changed due to this comment.

39. Two general comments recommended the Coast Guard require foreign vessels to provide information in advance of their U.S. port arrivals to ensure their compliance with the ISM Code. The Coast Guard agrees with these comments and on December 11, 1997, published an Interim Rule in a separate rulemaking (CGD 97–067) to require this advance notice of arrival requirement (62 FR 65203). No change has been made to this rulemaking due to these comments.

40. One general comment requested the Coast Guard review all current regulations that place the responsibility for the safe operation of a vessel on the vessel's Master, and where appropriate, share some of that responsibility with the designated person. The Coast Guard disagrees. As defined in § 96.120, the designated person does not have a responsibility for operation of the vessel. The designated person's responsibility is to monitor the safety management system of the company and the vessel(s), as directed by the responsible person. If problems arise with the policies and procedures for the safe operations of the vessel which the Master does not believe he or she has the right tools to manage, those problems should be communicated to the vessel's owner. The Master can communicate through the safety management system, or directly to the vessel owner, or through the designated person to the vessel's owner. By documenting these circumstances in the safety management system, a critical review by the vessel management will be performed and new or corrected policies or procedures placed into the safety management system to assist the Master. The Coast Guard has made no change to the final rule due to this comment.

41. Two general comments recommended that the final rule provide a list of administrative requirements or detailed guidance on the issues of revocation of a Document of Compliance certificate or a Safety Management Certificate. The Coast Guard will provide guidance for such actions in the new chapter of Volume II of the Coast Guard Marine Safety Manual on the compliance and enforcement of safety management systems for U.S. vessels. The Coast Guard determined that placing this policy in regulations would limit its ability to consider all necessary circumstances and make decisions on a case-by-case basis.

All Coast Guard actions to enforce safety management system requirements on U.S. vessels and their companies can be appealed to the Coast Guard under 46 CFR 1.03, "Rights to Appeal." This section provides time frames and procedures for use by the maritime industry to effectively question actions taken by the Coast Guard in enforcing revocations on these certificates, as needed. No change has been made to the final rule due to these comments.

42. One comment stated that the proposed regulations do not fully anticipate problems and provide direction necessary to manage important day-to-day operations with regard to the endangered Northern Right Whale. In particular, the comment expressed concern that the ISM Code regulations were too narrowly focused and sought various clarifications regarding the application of the regulations to protected species and their critical habitats. It suggested that the language in proposed § 96.250(g) be amended to specifically include operation plans and instructions with respect to protected species in their critical habitats.

The ISM Code does not define specific operating procedures or practices, but instead provides broad, general performance elements as guidelines to be applied by ship owners and their companies to shoreside operations and to their vessels. Shipping is a varied industry with numerous types of companies operating under a large range of different conditions. The ISM Code guidelines

are based on general principles and objectives to promote the development of sound management and operating practices within the industry as a whole. Its purpose is to require companies to establish operating practices and policies so that company management will be in a position to ensure that their vessels comply with all applicable international and U.S. laws for purposes of safety and environmental protection. It does not seek to define or incorporate detailed regulatory requirements, but instead to establish the management structure that will ensure that requirements applicable to vessels are communicated to shoreside and vessel personnel, and complied with. Thus, the requirements in this regulation are expressed in broad terms so they may have widespread application. As expressed in the comment, the suggestions applicable to protected species are too narrow to be addressed in this rulemaking.

This does not mean that these regulations will not beneficially effect endangered species or their critical habitats. Besides the beneficial effect that company policies and management structures promoting safe, environmentally sound vessel operations will have on the marine environment in general, including protected species, the management structure and policies put in place through the ISM Code will promote compliance with all applicable laws, including environmental efforts. Under these regulations, company management would establish an operational and management structure that would ensure that vessel Masters and crews within their fleets would be provided with the applicable safety and environmental requirements for operations in U.S. waters. Additionally, the system would ensure that necessary training would be conducted. The system would then be audited periodically to determine whether the system is working and compliance is occurring.

An example of how this would work involves the Northern Right Whale. The Coast Guard is working closely with the National Marine Fisheries Service and its charter agency, the National Oceanographic and Atmospheric Administration (NOAA), to develop national programs to assist in protection of the Northern Right Whale by providing mariners operating directions for the whale's critical habitat areas on the east coast of the United States. Part of this effort is the publication of navigation warnings for the Northern Right Whale in Coast Guard Notices to Mariners and in the U.S. Coast Pilot publications covering critical habitat areas of the Northern Right Whale. These warnings include the requirements of 50 CFR parts 217 and 222 that establish Northern Right Whale avoidance measures for vessels and reporting criteria for whale strikes. Coast Guard navigation safety requirements for foreign and U.S. vessels are established in 33 CFR part 164. These regulations include requirements for vessels to have aboard the current edition of the U.S. Coast Pilot for the area in which vessels are operating. In addition, other regulations require vessels to have aboard proper operating radiotelephone equipment that will allow vessels to monitor frequencies over which Notices to Mariners are broadcast. Compliance with the ISM Code requirements in this part means that companies that own and operate vessels will have in place the means to ensure that vessel Master are aware of these requirements, that they comply and that corporate officers are aware of, and correct, instances of noncompliance. For these reasons, no change has been made to the final rule due to these comments.

43. One comment focused on the introduction of injurious exotic species into U.S. coastal and riparian waters through ballast water discharges by vessels engaged on foreign voyages to ports or places in the U.S. The Coast Guard is currently developing new regulations to address vessel discharges of ballast water into U.S. waters. The Coast Guard is also monitoring actions at IMO which involve these vessel operations. No change has been made to the final rule due to this comment.

44. One general comment requested that an interim rule be published by the Coast Guard for review and comment on this rulemaking prior to the final rule being published. We disagree. As written comments on the proposed rulemaking did not point to any significant problems nor any problems that have not been addressed in the final rule, the Coast Guard does not expect that publishing an interim rule would markedly improve the regulations nor assist vessel owners in complying with the ISM Code by its first effective date of July 1, 1998. Therefore, the Coast Guard has completed this rulemaking process by publishing this final rule.

45. Two general comments were made by one commentor on: (1) Mandatory requirements for safety management systems on U.S. domestic vessels; and (2) the benefits that would be reaped by these domestic vessels compliance with these regulations.

The Coast Guard contends that the use of safety management systems by all U.S. commercial vessels would result in significant benefits and we will support the development of such programs. 46 U.S.C. 3202 states that U.S. domestic vessels may voluntarily meet the requirements of that Chapter, but does not provide the Coast Guard with the authority to require such safety management systems on these U.S. domestic vessels. Thus, the final rule has not been changed due to these comments.

46. Editorial changes. 46 CFR §§ 33.40–30 (a) & (b), 71.75–13 (a) & (b), 91.60–30 (a) & (b), 107.415 (a) & (b), 126.480 (a) & (b), and 186.60–30 (a) & (b). In these sections, paragraphs (a) and (b) have been combined to make it clear that only those vessels to which 33 CFR part 96 applies must have the ISM certificates.

33 CFR 96.100. The public law cite was removed and replaced with 46 U.S.C. Chapter 32, which is the authority for this subparts purpose.

33 CFR 96.400(a). In the last sentence of this paragraph, the term "delegated to" is replaced with the term "delegated by". This will correctly reflect that audits and certification functions are not delegated "to" the Coast Guard. They are delegated to the recognized organization "by" the Coast Guard.

33 CFR 96.470. In this section, the terms "of recognized organizations" is added to clarify which Commandant's list the removal may be from.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 96.130 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in that section.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The basis for the number of vessels effected by this rulemaking was developed from the Coast Guard's Marine Safety Management System (MSMS) database on vessel inspection, documentation and certification files. From this source it was determined that there are 415 vessels with 163-discreet owners that hold Safety of Life at Sea (SOLAS) certificates and are considered to be subject to the mandatory

application of the ISM Code. There are 186 vessels that must comply with this regulation by July 1, 1998, and 229 vessels that must comply by July 1, 2002.

Costs

Three distinct processes were used to derive the costs to implement and maintain the ISM Code. They include developing a safety management system, certification and audit fees, and training Coast Guard and authorized organization personnel to conduct management system audits.

The following cost estimates are a result of one set of choices made by an organization managing relevant U.S. vessels in a normal and prudent manner, but not having a safety management program that meets the ISM Code. This scenario and maintenance of a safety management system assumes the employment of a separate staff person with fleet-wide responsibility for safety, environmental protection, and general quality control. On-going distribution of updated safety and technical documents is a normal company practice. The operator routinely maintains data-processing and communication capability adequate to handle the ship-to-shore information flow required by the ISM Code. It was assumed that the owner or operator is responsible for more than one vessel.

The start-up costs for initiating a safety management system is calculated at approximately $150K per company and $2K per vessel, with recurring expenses estimated to be $10K per vessel for system maintenance.

To clearly describe the effected population and improve the regulatory analysis, shipping concerns were separated into three categories of large, medium and small sized companies. For all companies, the cost is compiled for a 10-year period (1998–2007 inclusive). For large companies, which is estimated to be 71 of the total 163 companies effected, the start-up cost is approximately $38.5 million. The average cost for these 71 companies per year is estimated to be $3.8 million. For medium companies, the total cost for the 27 companies is approximately $7.8 million. The average cost for these medium companies is estimated to be $780,000 per year. Out of a total of 65 small companies, only 12 companies face these costs, and the total cost is approximately $3.2 million. The average cost per year for these 12 small companies is estimated to be $320,000.

Total Costs

- Small Companies: $3.2 million.
- Medium Companies: $7.8 million.
- Large Companies: $38.5 million.
- Total: $49.5 million (1998–2007 inclusive).
- The average cost per year: $5.0 million.

Benefits

A study was conducted to identify the significant types and circumstances of U.S. vessel accidents potentially preventable due to ISM Code compliance. The data used to support the analysis of ISM Code benefits was drawn from the MSMS Marine Investigation Module (MINMOD) and vessel information files. Marine Casualty Investigation Reports (MCIR's) were included in the study if they involved either currently-registered U.S. vessels, that would be subject to the ISM Code or if a Human Factors Supplement was filed in the case. A Human Factors Supplement contains a standardized "class" or "subclass" designation of a particular human factor or factors considered by the investigating officer to have contributed to the accident. Only MCIR with problems considered by the Coast Guard to be preventable through ISM Code procedures were retained. There were 214 such cases over the three year period (1993–1995). These benefits needed to be quantified. Five factors were used to estimate the cost of the 214 relevant casualties. The five factors are listed below: (The dollar figures below reflect a 1997 dollar value.)

1. Vessel and property damage: The total dollar damage value per casualty has been estimated to be $10,000.
2. Injuries: The total dollar damage value per injury has been estimated to be $424,174.
3. Deaths: The number of deaths or missing persons shown in the MCIR record multiplied by $2,700,000. This factor is currently recommended by DOT for use in regulatory impact estimation.
4. Vessel Downtime: An average vessel downtime cost of $224,337 was arrived at by averaging all vessel damage evaluations shown in the MICR records other than for vessels evaluated as either seaworthy or as a total loss. This is the same factor that was used in the study completed for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) rulemaking, implementation benefits.
5. Environmental Damage: Any spillage recorded in the MCIR record is converted to 42-gallon barrel terms and multiplied by $15,810. This is the average cost used in the benefit study done for STCW to represent per-barrel costs of natural resource damage, loss of beneficial use of shoreline and cleanup for "small" spills.

We identified relevant accidents that occurred between 1993–1995 and developed factors to estimate their cost to society. The following steps were used to estimate the annual reduction in future marine casualty costs that may be expected from ISM Code implementation:

1. The projected costs were divided into three categories depending on the cause of the casualty. The three categories were personnel nature, any primary nature other than pollution, and pollution casualties.
2. Based on the study's findings, a percentage range was created. This range expressed the expectation of future casualties with the implementation of the ISM Code final rule.
3. The STCW rulemaking creates some of the same benefits as implementation of the ISM Code. The average annual cost reduction from the implementation of STCW were taken into account to avoid double counting of benefits.
4. The expected percentage impact of ISM Code implementation was then applied to produce the expected cost reduction.

After all of these procedures were followed an estimated benefit range was determined. The range for the economic benefit of expected avoided costs of all relevant accident types combined was estimated to be $6.9 to $12.8 million per year, dominated by the $6.4 to $12.2 million estimated for reduction in the costs of personnel casualties.

Cost-Benefit

The total average cost for this final rule (1998–2007) has been estimated at $49.5 million. This is approximately $5.0 million per year. The range for the economic benefit of expected avoided costs of all relevant accident types combined was estimated to be $6.9 to $12.8 million per year.

The estimated cost-benefit for this final rule was calculated by dividing the measure's present value cost by the measure's present value benefit. The estimated cost-benefit range for this rule is 0.39 to 0.72. A rule with a cost-benefit factor of less than 1.0 implies that efficient standards have been set by balancing the costs of anticipated abatement against the benefits of expected avoided costs. Therefore, this rulemaking can be deemed as cost effective.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Our initial evaluation was that this rule would effect approximately 72 small entities, whose U.S. small passenger vessels operate on international voyages. For purposes of the "small entity" analysis, the Coast Guard considered the 72 vessels owned by 65 companies as small entities. To ease the burden on small entities 54 of these are allowed to apply for an equivalence to these requirements to significantly reduce their cost to develop and certify their safety management systems, if they opt to do so. No comments or statements were received during the NPRM on the impact of this rulemaking on small entities. No change or amendment to the final rule was completed that would alter the effect already stated in the NPRM on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No written requests were received by the Coast Guard to provided assistance for the development of safety management systems by small entities. One comment stated that the equivalence option provided for small passenger vessels as unnecessary, if the limiting factor is the cost incurred to be certificated by an organization acting on behalf of the U.S. The Coast Guard disagrees.

This final rule offers an option for small entities to develop an equivalent safety management system in concert with the cognizant Coast Guard OCMI. This option will significantly reduce the cost for the safety management system and will allow direct auditing and certification by the Coast Guard. No extra fee will be required for these owners who elect to take advantage of this option.

When developing the small passenger vessel equivalence, the Coast Guard considered cost issues. Cost was not the only reason used by the Coast Guard to determine that small passenger vessel operations could benefit equally by an equivalence to the requirements provided in these regulations. Their historical operational risk was evaluated, the traditional policies that are used to regulate international conventions on these vessels, and the small number of vessels within this type of vessels which would be impacted. The Coast Guard is also required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), to evaluate the impact of new federal regulations and the ability to assist these businesses. Also, what played a factor was verbal comments received from operators of such vessels at the public meetings held at four ports in the October and November 1995 time frame at the initiation of this rulemaking process. The Coast Guard has been great success with using an equivalence option with these vessel types and agreed that no reduction of safety would be incurred by using this option in the enforcement of these new regulations. No change has been made to the final rule due to this comment.

The Coast Guard is also providing these small entity owners with a job aid on safety management system development which will help them meet these standards and will cut the cost of their having to go to a third party source for support and training. These small passenger vessel owners will be provided with continued support by the local cognizant OCMI to ensure that their vessels have a properly operating safety management system which is certificated prior to the effective date of these requirements.

Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Information is collected to show the compliance status of responsible persons and their U.S. vessels to the Coast Guard by recognized organizations authorized by the Coast Guard to act on behalf of the U.S. A responsible person must establish a safety management system and prepare internal audit reports for the responsible person's company and vessel(s) which demonstrate compliance with the ISM Code. Preparation of these reports required a new information collection request submittal to OMB.

Title 46, chapter 32 also requires that a responsible person's company and U.S. vessel(s) possess Document of Compliance certificates and Safety Management Certificates, respectively, as evidence of compliance with the ISM Code. Recognized organizations authorized to act on behalf of the U.S. and the Coast Guard will issue these certificates. To prepare and issue these international management certificates, an amendment to existing information collection request 2115–0056 was submitted to OMB.

Safety management systems will be externally audited and reported on by an authorized organization through a review of the internal audit reports prepared by a company. Since the Coast Guard reviews this information that documents the ISM Code compliance, existing collection request 2115–0626 also requires amendment and was submitted to OMB for approval.

As described above, the Coast Guard submitted new and amended information collection requests pursuant to the estimates described in the NPRM. No comments were received to the NPRM docket regarding these estimates. No change was made to the proposed regulatory text which would require new information collection requests. Also, no change was made to the final rule which would affect those estimates.

As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. The section numbers are: 33 CFR 96.250, 96.320, 96.330, 96.340, 96.350, 96.360, and 46 CFR 2.01–25, 31.40–30, 71.75–13, 71.75–20, 91.60–30, 91.60–40, 107.417, 115.925, 126.480, 175.540, 176.925, 176.930,189.60–30, 189.60–40; and the corresponding approval numbers from OMB are OMB Control Number(s), 2115–0056; 2115–0057, and 2115–0626, which expire on August 31, 2000.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

The Coast Guard completed an analysis of this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Federal Preemption

Historically, the Coast Guard has inspected vessels for their compliance with Federal regulations and international standards to which the United States is a party that address the safety of vessels and protection of the marine environment. These regulations implement the provisions of the International Convention for the Safety of Life at Sea, 1974, (SOLAS) as amended, to which the United States is a party. As a party to this Convention, the United States has agreed to implement its provisions for vessels flying the flag of the United States and to apply these provisions to foreign vessels in accordance with the enforcement regime established within the Convention. In addition, actions by state and local governments that seek to impose different standards than those imposed by these regulations would frustrate the desire of Congress to impose uniform, international standards relating to the implementation of safety management systems for vessels when it enacted 46 U.S.C. Chapter 32. It is the Coast Guard's opinion that the Supremacy Clause of the Constitution would preempt state and local regulations that seek to impose different or higher standards than those established in these regulations.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded during the rulemaking stage that under paragraph 2.B.2.e(34) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. Paragraph 2.B.2.e(34)(d) categorically excludes regulations concerning manning, documentation, measurement, inspection and equipping of vessels. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 96

Administrative practice and procedure, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Safety management systems, Vessels.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Safety management systems, Vessels.

46 CFR Part 115

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 126

Marine safety, Offshore supply vessels, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 176

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements, Safety management systems.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Chapter I and 46 CFR Chapter I as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

1. Add part 96 to read as follows:

PART 96—RULES FOR THE SAFE OPERATION OF VESSELS AND SAFETY MANAGEMENT SYSTEMS

Subpart A—General

Sec.

96.100 Purpose.
96.110 Who does this subpart apply to?
96.120 Definitions.
96.130 Incorporation by reference.

Subpart B—Company and Vessel Safety Management Systems

96.200 Purpose.
96.210 Who does this subpart apply to?
96.220 What makes up a safety management system?
96.230 What objectives must a safety management system meet?
96.240 What functional requirements must a safety management system meet?
96.250 What documents and reports must a safety management system have?

Subpart C—How Will Safety Management Systems Be Certificated and Enforced?

96.300 Purpose.
96.310 Who does this subpart apply to?
96.320 What is involved to complete a safety management audit and when is it required to be completed?
96.330 Document of Compliance certificate: what is it and when is it needed?
96.340 Safety Management Certificate: what is it and when is it needed?
96.350 Interim Document of Compliance certificate: what is it and when can it be used?
96.360 Interim Safety Management Certificate: what is it and when can it be used?
96.370 What are the requirements for vessels of countries not party to Chapter IX of SOLAS?
96.380 How will the Coast Guard handle compliance and enforcement of these regulations?
96.390 When will the Coast Guard deny entry into a U.S. port?

Subpart D—Authorization of Recognized Organizations To Act on Behalf of the U.S.

96.400 Purpose.
96.410 Who does this subpart apply to?
96.420 What authority may an organization ask for under this regulation?
96.430 How does an organization submit a request to be authorized?
96.440 How will the Coast Guard decide whether to approve an organization's request to be authorized?
96.450 What happens if the Coast Guard disapproves an organization's request to be authorized?
96.460 How will I know what the Coast Guard requires of my organization if my organization receives authorization?
96.470 How does the Coast Guard terminate an organization's authorization?
96.480 What is the status of a certificate if the issuing organization has its authority terminated?
96.490 What further obligations exist for my organization if the Coast Guard terminates its authorization?
96.495 How can I appeal a decision made by an authorized organization?

Authority: 46 U.S.C. 3201 *et. seq.*; 46 U.S.C. 3103; 46 U.S.C. 3316, 33 U.S.C. 1231; 49 CFR 1.45, 49 CFR 1.46.

Subpart A—General

§ 96.100 Purpose.

This subpart implements Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, to establish an international standard of safety for the operation of ships and for pollution prevention (International Safety Management (ISM) Code), as required by 46 U.S.C. Chapter 32.

Note: Chapter IX of SOLAS is available from the International Maritime Organization, Publication Section, 4 Albert Embankment, London, SE1 75R, United Kingdom, Telex 23568. Please include document reference number "IMO–190E" in your request.

§ 96.110 Who does this subpart apply to?

This subpart applies to you if—

(a) You are a responsible person who owns a U.S. vessel(s) and must comply with Chapter IX of SOLAS;

(b) You are a responsible person who owns a U.S. vessel(s) that is not required to comply with Chapter IX of SOLAS, but requests application of this subpart;

(c) You are a responsible person who owns a foreign vessel(s) engaged on a foreign voyage, bound for ports or places under the jurisdiction of the U.S., which must comply with Chapter IX of SOLAS; or

(d) You are a recognized organization applying for authorization to act on behalf of the U.S. to conduct safety management audits and issue international convention certificates.

§ 96.120 Definitions.

(a) Unless otherwise stated in this section, the definitions in Chapter IX, Regulation 1 of the International Convention for the Safety of Life at Sea (SOLAS) apply to this part.

(b) As used in this part—

Administration means the Government of the State whose flag the ship is entitled to fly.

Authorized Organization Acting on behalf of the U.S. means an organization that is recognized by the Commandant of the U.S. Coast Guard under the minimum standards of subparts A and B of 46 CFR part 8, and has been authorized under this section to conduct certain actions and certifications on behalf of the United States.

Captain of the Port (COTP) means the U.S. Coast Guard officer as described in 33 CFR 6.01–3, commanding a Captain of the Port zone described in 33 CFR part 3, or that person's authorized representative.

Commandant means the Commandant, U.S. Coast Guard.

Company means the owner of a vessel, or any other organization or person such as the manager or the bareboat charterer of a vessel, who has assumed the responsibility for operation of the vessel from the shipowner and who on assuming responsibility has agreed to take over all the duties and responsibilities imposed by this part or the ISM Code.

Designated person means a person or persons designated in writing by the responsible person who monitors the safety management system of the company and vessel and has:

(1) Direct access to communicate with the highest levels of the company and with all management levels ashore and aboard the company's vessel(s);

(2) Responsibility to monitor the safety and environmental aspects of the operation of each vessel; and

(3) Responsibility to ensure there are adequate support and shore-based resources for vessel(s) operations.

Document of Compliance means a certificate issued to a company or responsible person that complies with the requirements of this part or the ISM Code.

International Safety Management (ISM) Code means the International Management Code for the Safe Operation of Ships and Pollution Prevention, Chapter IX of the Annex to the International Convention for the Safety of Life at Sea (SOLAS), 1974.

Non-conformity means an observed situation where objective evidence indicates the non-fulfillment of a specified requirement.

Major non-conformity means an identifiable deviation which poses a serious threat to personnel or vessel safety or a serious risk to the environment and requires immediate corrective action; in addition, the lack of effective and systematic implementation of a requirement of the ISM Code is also considered a major non-conformity.

Objective Evidence means quantitative or qualitative information, records or statements of fact pertaining to safety or to the existence and implementation of a safety management system element, which is based on observation, measurement or test and which can be verified.

Officer In Charge, Marine Inspection (OCMI) means the U.S. Coast Guard officer as described in 46 CFR 1.01–15(b), in charge of an inspection zone described in 33 CFR part 3, or that person's authorized representative.

Recognized organization means an organization which has applied and been recognized by the Commandant of the Coast Guard to meet the minimum standards of 46 CFR part 8, subparts A and B.

Responsible person means—

(1) The owner of a vessel to whom this part applies, or

(2) Any other person that—

(i) has assumed the responsibility from the owner for operation of the vessel to which this part applies; and

(ii) agreed to assume, with respect to the vessel, responsibility for complying with all the requirements of this part.

(3) A responsible person may be a company, firm, corporation, association, partnership or individual.

Safety management audit means a systematic and independent examination to determine whether the safety management system activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.

Safety Management Certificate means a document issued to a vessel which signifies that the responsible person or its company, and the vessel's shipboard management operate in accordance with the approved safety management system.

Safety Management System means a structured and documented system enabling Company and vessel personnel to effectively implement the responsible person's safety and environmental protection policies.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

Vessel engaged on a foreign voyage means a vessel to which this part applies that is—

(1) Arriving at a place under the jurisdiction of the United States from a place in a foreign country;

(2) Making a voyage between places outside the United States; or

(3) Departing from a place under the jurisdiction of the United States for a place in a foreign country.

§ 96.130 Incorporation by reference.

(a) The Director of the Federal Register approves certain material that is incorporated by reference into this subpart under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and the material must be available to the public. You may inspect all material at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Office of Design and Engineering Standards (G–MSE), 2100 Second St., SW., Washington, DC 20593–0001, and receive it from the source listed in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subpart and the sections affected are as follows:

American National Standards Institute (ANSI)—11 West 42nd St., New York, NY 10036.

ANSI/ASQC Q9001–1994, Quality Systems—Model for Quality Assurance in Design, Development, Production, Installation, and Servicing, 1994—96.430

International Maritime Organization IMO—4 Albert Embankment, London, SE1 7SR, United Kingdom.

Resolution A.741(18), International Management Code for the Safe Operation of Ships and for Pollution Prevention, November 4, 1993—96.220, 96.370

Resolution A.788 (19), Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations, November 23, 1995—96.320, 96.440

Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 4, 1993—96.440

Subpart B—Company and Vessel Safety Management Systems

§ 96.200 Purpose.

This subpart establishes the minimum standards that the safety management system of a company and its U.S. flag vessel(s) must meet for certification to comply with the requirements of 46 U.S.C. 3201–3205 and Chapter IX of SOLAS, 1974. It also permits companies with U.S. flag vessels that are not required to comply with this part to voluntarily develop safety management systems which can be certificated to standards consistent with Chapter IX of SOLAS.

§ 96.210 Who does this subpart apply to?

(a) This subpart applies—

(1) To a responsible person who owns or operates a U.S. vessel(s) engaged on a foreign voyage which meet the conditions of paragraph (a)(2) of this section;

(2) To all U.S. vessels engaged on a foreign voyage that are—

(i) A vessel transporting more than 12 passengers; or

(ii) A tanker, a bulk freight vessel, a freight vessel or a self-propelled mobile offshore drilling unit (MODU) of 500 gross tons or more; and

(3) To all foreign vessels engaged on a foreign voyage, bound for ports or places under the jurisdiction of the U.S., and subject to Chapter IX of SOLAS.

(b) This subpart does not apply to—

(1) A barge;

(2) A recreational vessel not engaged in commercial service;

(3) A fishing vessel;

(4) A vessel operating only on the Great Lakes or its tributary and connecting waters; or

(5) A public vessel, which includes a U.S. vessel of the National Defense Reserve Fleet owned by the U.S. Maritime Administration and operated in non-commercial service.

(c) Any responsible person and their company who owns and operates a U.S. flag vessel(s) which does not meet the conditions of paragraph (a), may voluntarily meet the standards of this part and Chapter IX of SOLAS and have their safety management systems certificated.

(d) The compliance date for the requirements of this part are—

(1) On or after July 1, 1998, for—.

(i) Vessels transporting more than 12 passengers engaged on a foreign voyage; or

(ii) Tankers, bulk freight vessels, or high speed freight vessels of at least 500 gross tons or more, engaged on a foreign voyage.

(2) On or after July 1, 2002, for other freight vessels and self-propelled mobile offshore drilling units (MODUs) of at least 500 gross tons or more, engaged on a foreign voyage.

§ 96.220 What makes up a safety management system?

(a) The safety management system must document the responsible person's—

(1) Safety and pollution prevention policy;

(2) Functional safety and operational requirements;

(3) Recordkeeping responsibilities; and

(4) Reporting responsibilities.

(b) A safety management system must also be consistent with the functional standards and performance elements of IMO Resolution A.741(18).

§ 96.230 What objectives must a safety management system meet?

The safety management system must:

(a) Provide for safe practices in vessel operation and a safe work environment onboard the type of vessel the system is developed for;

(b) Establish and implement safeguards against all identified risks;

(c) Establish and implement actions to continuously improve safety management skills of personnel ashore and aboard vessels, including preparation for emergencies related to both safety and environmental protection; and

(d) Ensure compliance with mandatory rules and regulations, taking into account relevant national and international regulations, standards, codes and maritime industry guidelines, when developing procedures and policies for the safety management system.

§ 96.240 What functional requirements must a safety management system meet?

The functional requirements of a safety management system must include—

(a) A written statement from the responsible person stating the company's safety and environmental protection policy;

(b) Instructions and procedures to provide direction for the safe operation of the vessel and protection of the environment in compliance with the applicable U.S. Code of Federal Regulations, and international conventions to which the U.S. is a party (SOLAS, MARPOL, etc.);

(c) Documents showing the levels of authority and lines of communication between shoreside and shipboard personnel;

(d) Procedures for reporting accidents, near accidents, and non-conformities with provisions of the company's and vessel's safety management system, and the ISM Code;

(e) Procedures to prepare for and respond to emergency situations by shoreside and shipboard personnel;

(f) Procedures for internal audits on the operation of the company and vessel(s) safety management system; and

(g) Procedures and processes for management review of company internal audit reports and correction of non-conformities that are reported by these or other reports.

§ 96.250 What documents and reports must a safety management system have?

The documents and reports required for a safety management system under § 96.330 or § 96.340 must include the written documents and reports itemized in Table 96.250. These documents and reports must be available to the company's shore-based and vessel(s)-based personnel:

TABLE 96.250.—SAFETY MANAGEMENT SYSTEM DOCUMENTS AND REPORTS

Type of documents and reports	Specific requirements
(a) Safety and environmental policy statements	(1) Meet the objectives of § 96.230; and (2) Are carried out and kept current at all levels of the company;
(b) Company responsibilities and authority statements	(1) The owners name and details of responsibility for operation of the company and vessel(s); (2) Name of the person responsible for operation of the company and vessel(s), if not the owner; (3) Responsibility, authority and interrelations of all personnel who manage, perform, and verify work relating to and affecting the safety and pollution prevention operations of the company and vessel(s); and (4) A statement describing the company's responsibility to ensure adequate resources and shore-based support are provided to enable the designated person or persons to carry out the responsibilities of this subpart.
(c) Designation in writing of a person or persons to monitor the safety management system for the company and vessel(s).	(1) Have direct access to communicate with the highest levels of the company and with all management levels ashore and aboard the company's vessel(s); (2) Have the written responsibility to monitor the safety and environmental aspects of the operation of each vessel; and (3) Have the written responsibility to ensure there are adequate support and shore-based resources for vessel(s) operations.
(d) Written statements that define the Master's responsibilities and authorities.	(1) Carry out the company's safety and environmental policies; (2) Motivate the vessel's crew to observe the safety management system policies; (3) Issue orders and instructions in a clear and simple manner; (4) Make sure that specific requirements are carried out by the vessel's crew and shore-based resources; and (5) Review the safety management system and report non-conformities to shore-based management.
(e) Written statements that the Master has overriding responsibility and authority to make vessel decisions.	(1) Ability to make decisions about safety and environmental pollution; and (2) Ability to request the company's help when necessary.
(f) Personnel procedures and resources which are available ashore and aboard ship..	(1) Masters of vessels are properly qualified for command; (2) Masters of vessels know the company's safety management system; (3) Owners or companies provide the necessary support so that the Master's duties can be safely performed; (4) Each vessel is properly crewed with qualified, certificated and medically fit seafarers complying with national and international requirements; (5) New personnel and personnel transferred to new assignments involving safety and protection of the environment are properly introduced to their duties; (6) Personnel involved with the company's safety management system have an adequate understanding of the relevant rules, regulations, codes and guidelines; (7) Needed training is identified to support the safety management system and ensure that the training is provided for all personnel concerned; (8) Communication of relevant procedures for the vessel's personnel involved with the safety management system is in the language(s) understood by them; and (9) Personnel are able to communicate effectively when carrying out their duties as related to the safety management system.
(g) Vessel safety and pollution prevention operation plans and instructions for key shipboard operations..	(1) Define tasks; and (2) Assign qualified personnel to specific tasks.
(h) Emergency preparedness procedures.	(1) Identify, describe and direct response to potential emergency shipboard situations; (2) Set up programs for drills and exercises to prepare for emergency actions; and (3) Make sure that the company's organization can respond at anytime, to hazards, accidents and emergency situations involving their vessel(s).
(i) Reporting procedures on required actions.	(1) Report non-conformities of the safety management system; (2) Report accidents; (3) Report hazardous situations to the owner or company; and (4) Make sure reported items are investigated and analyzed with the objective of improving safety and pollution prevention.

TABLE 96.250.—SAFETY MANAGEMENT SYSTEM DOCUMENTS AND REPORTS—Continued

Type of documents and reports	Specific requirements
(j) Vessel maintenance procedures. (These procedures verify that a company's vessel(s) is maintained in conformity with the provisions of relevant rules and regulations, with any additional requirements which may be established by the company.).	(1) Inspect vessel's equipment, hull, and machinery at appropriate intervals; (2) Report any non-conformity or deficiency with its possible cause, if known; (3) Take appropriate corrective actions; (4) Keep records of these activities; (5) Identify specific equipment and technical systems that may result in a hazardous situation if a sudden operational failure occurs; (6) Identify measures that promote the reliability of the equipment and technical systems identified in paragraph (j)(5), and regularly test standby arrangements and equipment or technical systems not in continuous use; and (7) Include the inspections required by this section into the vessel's operational maintenance routine.
(k) Safety management system document and data maintenance	(1) Procedures which establish and maintain control of all documents and data relevant to the safety management system. (2) Documents are available at all relevant locations, i.e., each vessel carries on board all documents relevant to that vessels operation; (3) Changes to documents are reviewed and approved by authorized personnel; and (4) Outdated documents are promptly removed.
(l) Safety management system internal audits which verify the safety and pollution prevention activities.	(1) Periodic evaluation of the safety management system's efficiency and review of the system in accordance with the established procedures of the company, when needed; (2) Types and frequency of internal audits, when they are required, how they are reported, and possible corrective actions, if necessary; (3) Determining factors for the selection of personnel, independent of the area being audited, to complete internal company and vessel audits; and (4) Communication and reporting of internal audit findings for critical management review and to ensure management personnel of the area audited take timely and corrective action on non-conformities or deficiencies found.

Note: The documents and reports required by this part are for the purpose of promoting safety of life and property at sea, as well as protection of the environment. The documents and reports are intended to ensure the communication and understanding of company and vessel safety management systems, which will allow a measure of the systems effectiveness and its responsible person to continuously improve the system and safety the system provides.

Subpart C—How Will Safety Management Systems Be Certificated and Enforced?

§ 96.300 Purpose.

This subpart establishes the standards for the responsible person of a company and its vessel(s) to obtain the required and voluntary, national and international certification for the company's and vessel's safety management system.

§ 96.310 Who does this subpart apply to?

This subpart applies:

(a) If you are a responsible person who owns a vessel(s) registered in the U.S. and engaged on a foreign voyage(s), or holds certificates or endorsement of such voyages;

(b) If you are a responsible person who owns a vessel(s) registered in the U.S. and volunteer to meet the standards of this part and Chapter IX of SOLAS;

(c) To all foreign vessels engaged on a foreign voyage, bound for ports or places under the jurisdiction of the U.S., and subject to Chapter IX of SOLAS; or

(d) If you are a recognized organization authorized by the U.S. to complete safety management audits and certification required by this part.

§ 96.320 What is involved to complete a safety management audit and when is it required to be completed?

(a) A safety management audit is any of the following:

(1) An initial audit which is carried out before a Document of Compliance certificate or a Safety Management Certificate is issued;

(2) A renewal audit which is carried out before the renewal of a Document of Compliance certificate or a Safety Management Certificate;

(3) Periodic audits including—

(i) An annual verification audit, as described in § 96.330(f) of this part, and

(ii) An intermediate verification audit, as described in § 96.340(e)(2) of this part.

(b) A satisfactory audit means that the auditor(s) agrees that the requirements of this part are met, based on review and verification of the procedures and documents that make up the safety management system.

(c) Actions required during safety management audits for a company and their U.S. vessel(s) are—

(1) Review and verify the procedures and documents that make up a safety management system, as defined in subpart B of this part.

(2) Make sure the audit complies with this subpart and is consistent with IMO Resolution A.788(19), Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations.

(3) Make sure the audit is carried out by a team of Coast Guard auditors or auditors assigned by a recognized organization authorized to complete such actions by subpart D of this part.

(d) Safety management audits for a company and their U.S. vessel(s) are required—

(1) Before issuing or renewing a Document of Compliance certificate, and to keep a Document of Compliance certificate valid, as described in §§ 96.330 and 96.340 of this part.

(2) Before issuing or renewing a Safety Management Certificate, and to maintain the validity of a Safety

Management Certificate, as described in § 96.340 of this part.

However, any safety management audit for the purpose of verifying a vessel's safety management system will not be scheduled or conducted for a company's U.S. vessel unless the company first has undergone a safety management audit of the company's safety management system, and has received its Document of Compliance certificate.

(e) Requests for all safety management audits for a company and its U.S. vessel(s) must be communicated—

(1) By a responsible person directly to a recognized organization authorized by the U.S.

(2) By a responsible person within the time limits for an annual verification audit, described in § 96.330(f) of this part, and for an intermediate verification audit, described in § 96.340(e)(2) of this part. If he or she does not make a request for a safety management annual or verification audit for a valid Document of Compliance certificate issued to a company or a valid Safety Management Certificate issued to a vessel, this is cause for the Coast Guard to revoke the certificate as described in §§ 96.330 and 96.340 of this part.

(f) If a non-conformity with a safety management system is found during an audit, it must be reported in writing by the auditor:

(1) For a company's safety management system audit, to the company's owner; and

(2) For a vessel's safety management system audit, to the company's owner and vessel's Master.

§ 96.330 Document of Compliance certificate: what is it and when is it needed?

(a) You must hold a valid Document of Compliance certificate if you are the responsible person who, or company which, owns a U.S. vessel engaged on foreign voyages, carrying more than 12 passengers, or is a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more.

(b) You may voluntarily hold a valid Document of Compliance certificate, if you are a responsible person who, or a company which, owns a U.S. vessel not included in paragraph (a) of this section.

(c) You will be issued a Document of Compliance certificate only after you complete a satisfactory safety management audit as described in § 96.320 of this part.

(d) All U.S. and foreign vessels that carry more than 12 passengers or a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more, must carry a valid copy of the company's Document of Compliance certificate onboard when on a foreign voyage.

(e) A valid Document of Compliance certificate covers the type of vessel(s) on which a company's safety management system initial safety management audit was based. The validity of the Document of Compliance certificate may be extended to cover additional types of vessels after a satisfactory safety management audit is completed on the company's safety management system which includes those additional vessel types.

(f) A Document of Compliance certificate is valid for 60 months. The company's safety management system must be verified annually by the Coast Guard or by an authorized organization acting on behalf of the U.S. through a safety management verification audit, within three months before or after the certificate's anniversary date.

(g) Only the Coast Guard may revoke a Document of Compliance certificate from a company which owns a U.S. vessel. The Document of Compliance certificate may be revoked if—

(1) The annual safety management audit and system verification required by paragraph (f) of this section is not completed by the responsible person; or

(2) Major non-conformities are found in the company's safety management system during a safety management audit or other related survey or inspection being completed by the Coast Guard or the recognized organization chosen by the company or responsible person.

(3) The Coast Guard or an authorized organization acting on its behalf is denied, or restricted access to, any vessel, record or personnel of the company, at any time necessary to evaluate the safety management system.

(h) When a company's valid Document of Compliance certificate is revoked by the Coast Guard, a satisfactory safety management audit must be completed before a new Document of Compliance certificate for the company's safety management system can be reissued.

§ 96.340 Safety Management Certificate: what is it and when is it needed?

(a) Your U.S. vessel engaged on a foreign voyage must hold a valid Safety Management Certificate if it carries more than 12 passengers, or if it is a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more.

(b) Your U.S. vessel may voluntarily hold a valid Safety Management Certificate even if your vessel is not required to by paragraph (a) of this section.

(c) Your U.S. vessel may only be issued a Safety Management Certificate or have it renewed when your company holds a valid Document of Compliance certificate issued under § 96.330 of this part and the vessel has completed a satisfactory safety management audit of the vessel's safety management system set out in § 96.320 of this part.

(d) A copy of your company's valid Document of Compliance certificate must be on board all U.S. and foreign vessels which carry more than 12 passengers, and must be onboard a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more, when engaged on foreign voyages or within U.S. waters.

(e) A Safety Management Certificate is valid for 60 months. The validity of the Safety Management Certificate is based on—

(1) A satisfactory initial safety management audit;

(2) A satisfactory intermediate verification audit requested by the vessel's responsible person, completed between the 24th and 36th month of the certificate's period of validity; and

(3) A vessel's company holding a valid Document of Compliance certificate. When a company's Document of Compliance certificate expires or is revoked, the Safety Management Certificate for the company-owned vessel(s) is invalid.

(f) Renewal of a Safety Management Certificate requires the completion of a satisfactory safety management system audit which meets all of the requirements of subpart B in this part. A renewal of a Safety Management Certificate cannot be started unless the company which owns the vessel holds a valid Document of Compliance certificate.

(g) Only the Coast Guard may revoke a Safety Management Certificate from a U.S. vessel. The Safety Management Certificate will be revoked if—

(1) The vessel's responsible person has not completed an intermediate safety management audit required by paragraph (e)(2) of this section; or

(2) Major non-conformities are found in the vessel's safety management system during a safety management audit or other related survey or inspection being completed by the Coast Guard or the recognized organization chosen by the vessel's responsible person.

§ 96.350 Interim Document of Compliance certificate: what is it and when can it be used?

(a) An Interim Document of Compliance certificate may be issued to help set up a company's safety management system when—

(1) A company is newly set up or in transition from an existing company into a new company; or

(2) A new type of vessel is added to an existing safety management system and Document of Compliance certificate for a company.

(b) A responsible person for a company operating a U.S. vessel(s) that meets the requirements of paragraph (a) of this section, may send a request to a recognized organization authorized to act on behalf of the U.S. to receive an Interim Document of Compliance certificate that is valid for a period up to 12 months. To be issued the Interim Document of Compliance certificate the vessel's company must—

(1) Demonstrate to an auditor that the company has a safety management system that meets § 96.230 of this part; and

(2) Provide a plan for full implementation of a safety management system within the period that the Interim Document of Compliance certificate is valid.

§ 96.360 Interim Safety Management Certificate: what is it and when can it be used?

(a) A responsible person may apply for an Interim Safety Management Certificate when—

(1) A responsible person takes delivery of a new U.S. vessel; or

(2) Takes responsibility for the management of a U.S. vessel which is new to the responsible person or their company.

(b) An Interim Safety Management Certificate is valid for 6 months. It may be issued to a U.S. vessel which meets the conditions of paragraph (a) of this section, when—

(1) The company's valid Document of Compliance certificate or Interim Document of Compliance certificate applies to that vessel type;

(2) The company's safety management system for the vessel includes the key elements of a safety management system, set out in § 96.220, applicable to this new type of vessel;

(3) The company's safety management system has been assessed during the safety management audit to issue the Document of Compliance certificate or demonstrated for the issuance of the Interim Document of Compliance certificate;

(4) The Master and senior officers of the vessel are familiar with the safety management system and the planned set up arrangements;

(5) Written documented instructions have been extracted from the safety management system and given to the vessel prior to sailing;

(6) The company plans an internal audit of the vessel within three months; and

(7) The relevant information from the safety management system is written in English, and in any other language understood by the vessel's personnel.

§ 96.370 What are the requirements for vessels of countries not party to Chapter IX of SOLAS?

(a) Each foreign vessel which carries more than 12 passengers, or is a tanker, bulk freight vessel, freight vessel, or self-propelled mobile offshore drilling unit of 500 gross tons or more, operated in U.S. waters, under the authority of a country not a party to Chapter IX of SOLAS must—

(1) Have on board valid documentation showing that the vessel's company has a safety management system which was audited and assessed, consistent with the International Safety Management Code of IMO Resolution A.741(18);

(2) Have on board valid documentation from a vessel's Flag Administration showing that the vessel's safety management system was audited and assessed to be consistent with the International Safety Management Code of IMO Resolution A.741(18); or

(3) Show that evidence of compliance was issued by either a government that is party to SOLAS or an organization recognized to act on behalf of the vessel's Flag Administration.

(b) Evidence of compliance must contain all of the information in, and have substantially the same format as a—

(1) Document of Compliance certificate; and

(2) Safety Management Certificate.

(c) Failure to comply with this section will subject the vessel to the compliance and enforcement procedures of § 96.380 of this part.

§ 96.380 How will the Coast Guard handle compliance and enforcement of these regulations?

(a) While operating in waters under the jurisdiction of the United States, the Coast Guard may board a vessel to determine that—

(1) Valid copies of the company's Document of Compliance certificate and Safety Management Certificate are on board, or evidence of the same for vessels from countries not party to Chapter IX of SOLAS; and

(2) The vessel's crew or shore-based personnel are following the procedures and policies of the safety management system while operating the vessel or transferring cargoes.

(b) A foreign vessel that does not comply with these regulations, or one on which the vessel's condition or use of its safety management system do not substantially agree with the particulars of the Document of Compliance certificate, Safety Management Certificate or other required evidence of compliance, may be detained by order of the COTP or OCMI. This may occur at the port or terminal where the violation is found until, in the opinion of the detaining authority, the vessel can go to sea without presenting an unreasonable threat of harm to the port, the marine environment, the vessel or its crew. The detention order may allow the vessel to go to another area of the port, if needed, rather than stay at the place where the violation was found.

(c) If any vessel that must comply with this part or with the ISM Code does not have a Safety Management Certificate and a copy of its company's Document of Compliance certificate on board, a vessel owner, charterer, managing operator, agent, Master, or any other individual in charge of the vessel that is subject to this part, may be liable for a civil penalty under 46 U.S.C. 3318. For foreign vessels, the Coast Guard may request the Secretary of the Treasury to withhold or revoke the clearance required by 46 U.S.C. App. 91. The Coast Guard may ask the Secretary to permit the vessel's departure after the bond or other surety is filed.

§ 96.390 When will the Coast Guard deny entry into a U.S. port?

(a) Except for a foreign vessel entering U.S. waters under force majeure, no vessel shall enter any port or terminal of the U.S. without a safety management system that has been properly certificated to this subpart or to the requirements of Chapter IX of SOLAS if—

(1) It is engaged on a foreign voyage; and

(2) It is carrying more than 12 passengers, or a tanker, bulk freight vessel, freight vessel, or self-propelled mobile offshore drilling unit of 500 gross tons or more.

(b) The cognizant COTP will deny entry of a vessel into a port or terminal under the authority of 46 U.S.C. 3204(c), to any vessel that does not meet the requirements of paragraph (a) of this section.

Subpart D—Authorization of Recognized Organizations To Act on Behalf of the U.S.

§ 96.400 Purpose.

(a) This subpart establishes criteria and procedures for organizations recognized under 46 CFR part 8, subparts A and B, to be authorized by the Coast Guard to act on behalf of the U.S. The authorization is necessary in order for a recognized organization to perform safety management audits and certification functions delegated by the Coast Guard as described in this part.

(b) To receive an up-to-date list of recognized organizations authorized to act under this subpart, send a self-addressed, stamped envelope and written request to the Commandant (G–MSE), 2100 Second Street SW., Washington, DC 20593–0001.

§ 96.410 Who does this regulation apply to?

This subpart applies to all organizations recognized by the U.S. under 46 CFR part 8, subpart A and B, who wish to seek authorization to conduct safety management audits and issue relevant international safety certificates under the provisions of the ISM Code and voluntary certificates on behalf of the U.S.

§ 96.420 What authority may an organization ask for under this regulation?

(a) An organization may request authorization to conduct safety management audits and to issue the following certificates:

(1) Safety Management Certificate;

(2) Document of Compliance certificate;

(3) Interim Safety Management Certificate; and

(4) Interim Document of Compliance certificate.

(b) [Reserved]

§ 96.430 How does an organization submit a request to be authorized?

(a) A recognized organization must send a written request for authorization to the Commandant (G–MSE), Office of Design and Engineering Standards, 2100 Second Street SW, Washington, DC 20593–0001. The request must include the following:

(1) A statement describing what type of authorization the organization seeks;

(2) Documents showing that—

(i) The organization has an internal quality system with written policies, procedures and processes that meet the requirements in § 96.440 of this part for safety management auditing and certification; or

(ii) The organization has an internal quality system based on ANSI/ASQC C9001 for safety management auditing and certification; or

(iii) The organization has an equivalent internal quality standard system recognized by the Coast Guard to complete safety management audits and certification.

(3) A list of the organization's exclusive auditors qualified to complete safety management audits and their operational area; and

(4) A written statement that the procedures and records of the recognized organization regarding its actions involving safety management system audits and certification are available for review annually and at any time deemed necessary by the Coast Guard.

(b) If the organization is a foreign classification society that has been recognized under 46 CFR part 8, subparts A and B, and wishes to apply for authorization under this part, it must demonstrate the reciprocity required by 46 U.S.C. 3316 for ISM Code certification. The organization must provide, with its request for authorization an affidavit from the government of the country in which the classification society is headquartered. This affidavit must provide a list of authorized delegations by the flag state of the administration of the foreign classification society's country to the American Bureau of Shipping, and indicate any conditions related to the delegated authority. If this affidavit is not received with a request for authorization from a foreign classification society, the request for authorization will be disapproved and returned by the Coast Guard.

(c) Upon the satisfactory completion of the Coast Guard's evaluation of a request for authorization, the organization will be visited for an evaluation as described in § 96.440(b) of this part.

§ 96.440 How will the Coast Guard decide whether to approve an organization's request to be authorized?

(a) First, the Coast Guard will evaluate the organization's request for authorization and supporting written materials, looking for evidence of the following—

(1) The organization's clear assignment of management duties;

(2) Ethical standards for managers and auditors;

(3) Procedures for auditor training, qualification, certification, and requalification that are consistent with recognized industry standards;

(4) Procedures for auditing safety management systems that are consistent with recognized industry standards and IMO Resolution A.788(19);

(5) Acceptable standards for internal auditing and management review;

(6) Record-keeping standards for safety management auditing and certification;

(7) Methods for reporting non-conformities and recording completion of remedial actions;

(8) Methods for certifying safety management systems;

(9) Methods for periodic and intermediate audits of safety management systems;

(10) Methods for renewal audits of safety management systems;

(11) Methods for handling appeals; and

(12) Overall procedures consistent with IMO Resolution A.739(18), "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration."

(b) After a favorable evaluation of the organization's written request, the Coast Guard will arrange to visit the organization's corporate offices and port offices for an on-site evaluation of operations.

(c) When a request is approved, the recognized organization and the Coast Guard will enter into a written agreement. This agreement will define the scope, terms, conditions and requirements of the authorization. Conditions of this agreement are found in § 96.460 of this part.

§ 96.450 What happens if the Coast Guard disapproves an organization's request to be authorized?

(a) The Coast Guard will write to the organization explaining why it did not meet the criteria for authorization.

(b) The organization may then correct the deficiencies and reapply.

§ 96.460 How will I know what the Coast Guard requires of my organization if my organization receives authorization?

(a) Your organization will enter into a written agreement with the Coast Guard. This written agreement will specify—

(1) How long the authorization is valid;

(2) Which duties and responsibilities the organization may perform, and which certificates it may issue on behalf of the U.S.;

(3) Reports and information the organization must send to the Commandant (G–MOC);

(4) Actions the organization must take to renew the agreement when it expires; and

(5) Actions the organization must take if the Coast Guard should revoke its authorization or recognition under 46 CFR part 8.

(b) [Reserved]

§ 96.470 How does the Coast Guard terminate an organization's authorization?

At least every 12 months, the Coast Guard evaluates organizations authorized under this subpart. If an organization fails to maintain acceptable standards, the Coast Guard may terminate that organization's authorization, remove the organization from the Commandant's list of recognized organizations, and further evaluate the organization's recognition under 46 CFR part 8.

§ 96.480 What is the status of a certificate if the issuing organization has its authority terminated?

Any certificate issued by an organization authorized by the Coast Guard whose authorization is later terminated remains valid until—

(a) Its original expiration date,

(b) The date of the next periodic audit required to maintain the certificate's validity, or

(c) Whichever of paragraphs (a) or (b) occurs first.

§ 96.490 What further obligations exist for an organization if the Coast Guard terminates its authorization?

The written agreement by which an organization receives authorization from the Coast Guard places it under certain obligations if the Coast Guard revokes that authorization. The organization agrees to send written notice of its termination to all responsible persons, companies and vessels that have received certificates from the organization. In that notice, the organization must include—

(a) A written statement explaining why the organization's authorization was terminated by the Coast Guard;

(b) An explanation of the status of issued certificates;

(c) A current list of organizations authorized by the Coast Guard to conduct safety management audits; and

(d) A statement of what the companies and vessels must do to have their safety management systems transferred to another organization authorized to act on behalf of the U.S.

§ 96.495 How can I appeal a decision made by an authorized organization?

(a) A responsible person may appeal a decision made by an authorized organization by mailing or delivering to the organization a written request for reconsideration. Within 30 days of receiving your request, the authorized organization must rule on it and send you a written response. They must also send a copy of their response to the Commandant (G–MOC).

(b) If you are not satisfied with the organization's decision, you may appeal directly to the Commandant (G–MOC). You must make your appeal in writing, including any documentation and evidence you wish to be considered. You may ask the Commandant (G–MOC) to stay the effect of the appealed decision while it is under review.

(c) The Commandant (G–MOC) will make a decision on your appeal and send you a response in writing. That decision will be the final Coast Guard action on your request.

TITLE 46—SHIPPING

PART 2—VESSEL INSPECTIONS

2. Revise the authority citation for part 2 to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3103, 3205, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat 1120 (see 46 U.S.C. App. note prec.1).

3. In § 2.01–25, add paragraph (a)(1)(ix) and revise paragraph (a)(2) to read as follows:

§ 2.01–25 International Convention for Safety of Life at Sea, 1974.

(a) * * *

(1) * * *

(ix) Safety Management Certificate.

(2) The U.S. Coast Guard will issue through the Officer In Charge, Marine Inspection, the following certificates after performing an inspection or safety management audit of the vessel's systems and determining the vessel meets the applicable requirements:

(i) Passenger Ship Safety Certificate.

(ii) Cargo Ship Safety Construction Certificate, except when issued to cargo ships by a Coast Guard recognized classification society at the option of the owner or agent.

(iii) Cargo Ships Safety Equipment Certificate.

(iv) Exemption Certificate.

(v) Nuclear Passenger Ship Safety Certificate.

(vi) Nuclear Cargo Ship Safety Certificate.

(vii) Safety Management Certificate, except when issued by a recognized organization authorized by the Coast Guard.

* * * * *

PART 31—INSPECTION AND CERTIFICATION

4. Revise the authority citation for part 31 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

5. Add § 31.40–30 to read as follows:

§ 31.40–30 Safety Management Certificate—T/ALL.

All tankships to which 33 CFR part 96 applies on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

6. In § 31.40–40, revise paragraph (b) to read as follows:

§ 31.40–40 Duration of Convention certificates—T/ALL.

* * * * *

(b) A Cargo Ship Safety Construction Certificate and a Safety Management Certificate shall be issued for a period of not more than 60 months.

* * * * *

PART 71—INSPECTION AND CERTIFICATION

7. Revise the authority citation for part 71 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

8. Add § 71.75–13 to read as follows:

§ 71.75–13 Safety Management Certificate.

All vessels to which 33 CFR part 96 applies on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

9. In § 71.75–20, revise paragraph (a) to read as follows:

§ 71.75–20 Duration of certificates.

(a) The certificates are issued for a period of not more than 12 months, with exception to a Safety Management Certificate which is issued for a period of not more than 60 months.

* * * * *

PART 91—INSPECTION AND CERTIFICATION

10. Revise the authority citation for part 91 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

11. Add § 91.60–30 to read as follows:

§ 91.60–30 Safety Management Certificate.

All vessels to which 33 CFR part 96 applies on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

12. In § 91.60–40, revise paragraph (b) to read as follows:

§ 91.60–40 Duration of certificates.

* * * * *

(b) A Cargo Ship Safety Construction Certificate and a Safety Management Certificate are issued for a period of not more than 60 months.

* * * * *

PART 107—INSPECTION AND CERTIFICATION

13. Revise the authority citation for part 107 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3205, 3306, 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

14. Add § 107.415 to read as follows:

§ 107.415 Safety Management Certificate.

(a) All self-propelled mobile offshore drilling units of 500 gross tons or over to which 33 CFR part 96 applies, on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) A Safety Management Certificate is issued for a period of not more than 60 months.

PART 115—INSPECTION AND CERTIFICATION

15. Revise the authority citation for part 115 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. Add § 115.925 to read as follows:

§ 115.925 Safety Management Certificate.

(a) All vessels that carry more than 12 passengers on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

PART 126—INSPECTION AND CERTIFICATION

17. Revise the authority citation for part 126 to read as follows:

Authority: 46 U.S.C. 3205, 3306; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

18. Add § 126.480 to read as follows:

§ 126.480 Safety Management Certificate.

(a) All offshore supply vessels of 500 gross tons or over to which 33 CFR part 96 applies, on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) A Safety Management Certificate is issued for a period of not more than 60 months.

PART 175—GENERAL PROVISIONS

19. Revise the authority citation for part 175 to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under authority of 44 U.S.C. 3507.

20. In § 175.540, add paragraph (d) to read as follows:

§ 175.540 Equivalents.

* * * * *

(d) The Commandant may accept alternative compliance arrangements in lieu of specific provisions of the International Safety Management (ISM) Code (IMO Resolution A.741(18)) for the purpose of determining that an equivalent safety management system is in place on board a vessel. The Commandant will consider the size and corporate structure of a vessel's company when determining the acceptability of an equivalent system. Requests for determination of equivalency must be submitted to Commandant (G–MOC) via the cognizant OCMI.

PART 176—INSPECTION AND CERTIFICATION

21. Revise the authority citation for part 176 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

22. Add § 176.925 to read as follows:

§ 176.925 Safety Management Certificate.

(a) All vessels that carry more than 12 passengers on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

23. Revise § 176.930 to read as follows:

§ 176.930 Equivalents.

As outlined in Chapter I (General Provisions) Regulation 5, of SOLAS, the Commandant may accept an equivalent to a particular fitting, material, apparatus, or any particular provision required by SOLAS regulations if satisfied that such equivalent is at least as effective as that required by the regulations. An owner or managing operator of a vessel may submit a request for the acceptance of an equivalent following the procedures in § 175.540 of this chapter. The Commandant will indicate the acceptance of an equivalent on the vessel's SOLAS Passenger Ship Safety Certificate or Safety Management Certificate, as appropriate.

PART 189—INSPECTION AND CERTIFICATION

24. Revise the authority citation for part 189 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

25. Add § 189.60–30 to read as follows:

§ 189.60–30 Safety Management Certificate.

All vessels to which 33 CFR part 96 applies on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

26. In § 189.60–40, revise paragraph (b) to read as follows:

§ 189.60–40 Duration of certificates.

* * * * *

(b) A Cargo Ship Safety Construction Certificate and a Safety Management Certificate are issued for a period of not more than 60 months.

* * * * *

Dated: December 16, 1997.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–33528 Filed 12–19–97; 3:32 pm]

BILLING CODE 4910–14–M

federal register

Wednesday
December 24, 1997

Part VI

Department of Energy

10 CFR Part 1008
Records Maintained on Individuals (Privacy Act); Final Rule
Privacy Act of 1974; Establishment of a New System of Records; Notice

DEPARTMENT OF ENERGY

10 CFR Part 1008

RIN 1901–AA62

Records Maintained on Individuals (Privacy Act)

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Privacy Act regulations by adding a system of records to the list of systems exempted from certain subsections of the Act. Exemption from certain subsections is needed to enable the Office of Inspector General (OIG) to perform its duties and responsibilities. The system of records is entitled "Allegation-Based Inspections Files of the Office of Inspector General," and allows the Office of Inspector General to perform its functions mandated by statute, regulation or executive order. This system will maintain documents collected in the process of conducting inspections. An Office of Inspector General inspection is an examination of DOE or DOE contractor organizations, programs, projects, functions, or activities. This system of records covers only the files of inspections predicated on allegations or complaints and which identify subjects or sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency and DOE contractor employees, or other persons or entities with some relationship to the agency. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; whistleblower reprisal; or other non-criminal violations of law, rules, or regulations.

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: Jacqueline M. Becker, Office of Inspector General, U.S. Department of Energy, IG–1, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4393; or GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–73, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–5955; or Abel Lopez, Office of General Counsel, U.S. Department of Energy, GC–80, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Regulatory Review
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act
G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

I. Background

The Privacy Act of 1974, as amended, at 5 U.S.C. 552a (k) provides that the head of an agency may exempt an agency system of records from certain provisions of the Act. Accordingly, this system of records is added to the list of systems exempted by the Department of Energy from certain subsections of the Act.

The purpose of this rule is to amend the DOE's Privacy Act regulations to enable the Office of Inspector General to carry out its duties and responsibilities as mandated by the Inspector General Act. The Inspector General is mandated to promote economy, effectiveness, and efficiency within the agency and to prevent and detect fraud, waste and abuse in agency programs and operations.

The Office of Inspections in the Office of Inspector General compiles various files that are collected and maintained to assist in the performance of the functions of the Office of Inspector General. The Office of Inspections performs various inspections and analyses as required by the Office of Inspector General. An inspection by the Office of Inspector General is an examination of a DOE or DOE contractor organization, program, project, function, or activity. This system of records covers only the files of inspections predicated on allegations or complaints and which identify subjects or sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency employees, or other persons or entities with some relationship to the agency and DOE contractors. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; whistleblower reprisal; or other non-criminal violations of law, rules, or regulations.

A notice of proposed rulemaking and corresponding system notice were published in the **Federal Register** on January 29, 1997 (62 FR 4404). No comments were received.

II. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today' s action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354. The Regulatory Flexibility Act requires the preparation of a regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a substantial number of small entities. The Department of Energy certified that the rule will not have a significant economic impact on a substantial number of small entities. The Department did not receive any comments on the certification.

D. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed by this rule. As a result, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a new policy action. This rule will not affect States, or the relationship between the Federal Government and the States, in any direct way.

F. Review Under the National Environmental Policy Act

This rulemaking amends the Department's regulations that implement the Privacy Act at 10 CFR part 1008, "Records Maintained on Individuals (Privacy Act)," by adding a new system of records to the list of systems exempted from certain subsections of the Privacy Act. Under the new system of records, the Department would maintain documents collected in inspections conducted by the Office of Inspector General. Implementation of this rule would only affect the manner in which certain files are maintained and made accessible to the public, and would not result in environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to the amendment or interpretation of existing regulation that does not change the environmental effect of the rule being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

List of Subjects in 10 CFR Part 1008

Privacy.

Issued in Washington, D.C. on November 25, 1997.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

For the reasons set forth in the preamble, 10 CFR part 1008 is amended as set forth below:

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7101, *et seq.*, Executive Order 12091, (42 FR 46267), 5 U.S.C. 552a.

2. Section 1008.12 is amended by adding paragraphs (b)(2)(ii)(M) and (b)(3)(ii)(O) to read as follows:

§ 1008.12 Exemptions.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(M) Allegation-Based Inspections Files of the Office of Inspector General (DOE–83).

(3) * * *

(ii) * * *

(O) Allegation-Based Inspections Files of the Office of Inspector General (DOE–83).

* * * * *

[FR Doc. 97–33600 Filed 12–23–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Department of Energy.

ACTION: Final notice; establishment of a new system of records.

SUMMARY: The Department of Energy (DOE) published in the **Federal Register** on January 29, 1997, (62 FR 4408) a proposed system of records identified as DOE–83, and entitled "Allegation-Based Inspections Files of the Office of Inspector General." The Office of Inspector General's Office of Inspections compiles various files that are collected and maintained to assist in the performance of the functions of the Office of Inspector General. The Office of Inspections performs various inspections and analyses as required by the Office of Inspector General. An Office of Inspector General inspection is an examination of a DOE or DOE contractor organization, program, project, function, or activity.

This system of records covers only the files of inspections based on allegations or complaints and which identify subjects or sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency or DOE contractor employees, or other persons or entities with some relationship to the agency. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; whistleblower reprisal; or other non-criminal violations of law, rules, or regulations. The system of records contains but is not limited to, work papers; summaries of work papers; memoranda of interviews; interview notes; memoranda to the file; memoranda for the record; information provided by complainants, contractors, and other interested parties; and related documentation.

FOR FURTHER INFORMATION CONTACT: Jacqueline M. Becker, Office of Inspector General, U.S. Department of Energy, IG–1, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4393; or GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–73, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–5955; or Abel Lopez, Office of General Counsel, U.S. Department of Energy, GC–80, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–8618.

EFFECTIVE DATE: December 24, 1997.

SUPPLEMENTARY INFORMATION: The DOE published for public comment in the **Federal Register** on January 29, 1997, (62 FR 4409) a proposed system of records entitled "Allegation-Based Inspections Files of the Office of Inspector General." No comments were received concerning the proposed system. This system of records covers only files of inspections based on allegations and complaints and which identify subjects or sources of information by name. The system of records is necessary to perform the functions of the Office of Inspector General. Exemptions to certain provisions of the Privacy Act also are necessary and are published herein.

Allegation-Based Inspections Files are maintained to document information concerning allegations or complaints about DOE or DOE contractor programs or operations. The files may contain information about civil or administrative wrongdoing, or about fraud, waste, or mismanagement, or other violations of law or regulation. This information could be the basis for administrative corrective action or referrals to appropriate authorities for civil or criminal investigation or prosecution.

The Allegation-Based Inspections Files contain information that if disclosed would substantially compromise the effectiveness of Office of Inspector General inspections and inquiries. These files contain information about informants, complainants, contractor personnel, sources of information, witnesses, and inspections personnel. These files also contain the names of persons or agencies who have received certain information contained in these files.

Information in this system of records is maintained pursuant to certain functions of the Inspector General (IG). Those functions require that the Office of Inspections conduct inspections and analyses of Departmental operations and programs. Exemptions from certain provisions of the Privacy Act are needed to accomplish the inspection function of the Office of Inspector General, to maintain the integrity and confidentiality of personal information, and to prevent disclosure of sensitive or classified information. These exemptions are also needed to prevent subjects of inspections or inquiries from frustrating the inspection or inquiry process and to prevent the disclosure of inspection or inquiry techniques. Finally, these exemptions enable the Inspector General to fulfill commitments to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering sources or Office of Inspections personnel.

The information that is exempt includes, but is not limited to, information that identifies program operating procedures, program operation violations, program management violations, and alleged violators. This information consists of identifying data and information about fraud, waste, or mismanagement. Other exempt data include documentation, information from informants, complainants, contractor personnel, reports by inspectors, and information that can identify an individual.

When a Privacy Act request for exempt records concerning an individual is received from that individual, that request will be processed under the Freedom of Information Act. This will provide the maximum disclosure of responsive records to the individual.

This system is established pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3. The statute mandates that the Inspector General provide leadership and coordination, and recommend policies for activities designed to promote economy, effectiveness, and efficiency in the administration of DOE programs or operations. The Inspector General is also mandated to conduct activities relating to the prevention or detection of fraud or abuse in these programs or operations.

The maintenance of this system could have a substantial effect on the privacy and other rights of individuals. However, the Department has adopted measures to ensure that maintaining this information will not compromise the privacy and other rights of the affected individuals. The information will be collected only for the stated purpose, access to the information will be restricted, and the information will be maintained in a secured manner.

The text of the system notice is set forth below.

Issued in Washington, D.C. on 1997.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–83

SYSTEM NAME:

Allegation-Based Inspections Files of the Office of Inspector General.

SECURITY CLASSIFICATION:

Generally unclassified. Some records may contain classified material.

SYSTEM LOCATION:

Official Allegation-Based Inspections Files are located at:

U.S. Department of Energy, Office of Inspector General, Headquarters, 1000 Independence Avenue, S.W., Washington, D.C. 20585.
U.S. Department of Energy, Office of Inspector General, P.O. Box 5400, Albuquerque, New Mexico 87115.
U.S. Department of Energy, Office of Inspector General, P.O. Box 2254, Livermore, California 94551.
U.S. Department of Energy, Office of Inspector General, P.O. Box 62, Room 502, Oak Ridge, Tennessee 37831.
U.S. Department of Energy, Office of Inspector General, Building 703–41A, Aiken, South Carolina 29802.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of inspections or inquiries concerning allegations or complaints, individuals who have pertinent knowledge about the inspection or inquiry, individuals authorized to furnish information, confidential informants, complainants, Office of Inspector General inspections personnel, and other individuals involved in these inspections.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inspection files predicated on allegations or complaints and which identify subjects or sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency employees, or other persons or entities with some relationship to the agency. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; whistleblower reprisal; or other non-criminal violations of law, rules, or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

PURPOSE(S):

Pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, the records in this system are used by the Office of Inspector General in furtherance of the responsibilities of the Inspector General. These responsibilities include evaluating the effectiveness and efficiency of an operation, determining compliance with laws and regulations, evaluating Departmental program operations and results, preventing and detecting fraud and abuse in such programs and operations, and assuring the investigation of complaints by contractor employees alleging retaliation for making disclosures protected under 10 CFR part 708 and 41 U.S.C. § 265.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, information contained in the files of the Office of Inspector General, Office of Inspections is collected and maintained in carrying out the duties and responsibilities of the Inspector General to evaluate the effectiveness and efficiency of an operation, determine compliance with laws and regulations, evaluate Departmental program operations and results, prevent and detect fraud and abuse in such programs and operations and, assure the investigation of complaints by contractor employees alleging retaliation for making disclosures protected under 10 CFR part 708 and 41 U.S.C. 265. Material compiled is used for prosecutive, civil, or administrative actions.

1. Pursuant to § 552a(b)(7), the Department will provide a record within this system of records for law enforcement purposes at the prior written request of the head (or designee of the head) of a Federal agency or instrumentality. In the event that a record within this system of records, alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy, or procedure, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the Department, at its initiative, may refer relevant records in the system of records as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order.

2. To disclose information to any source from which additional information is requested, when necessary to obtain information relevant to an Office of Inspector General inspection. The source will be provided such information from the system of records only to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

3. A record from this system of records may be disclosed to a Federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter and the Department deems the disclosure to be compatible with the purpose for which the Department collected the information.

4. For purposes of settlement of claims and the preparation and conduct of litigation, a record in this system of records may be disclosed to: (1) The Department's and its contractors' counsel; (2) other counsel representing the United States Government; (3) individuals or companies represented by Department counsel or counsel to other United States Government agencies; (4) opposing counsel; (5) persons possessing information pertaining to the claims or litigation to the extent necessary to obtain relevant information; and (6) claimants or other parties to the claim or litigation.

5. A record from this system of records may be disclosed in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings, or discussion in open court) when individuals or entities listed below are parties to, or have an interest in, the litigation or proceedings and the Department determines that such disclosure: (1) Is relevant to, and necessary for, the proceeding and (2) is compatible with the purpose for which the Department collected the records:

(a) The agency, or any component thereof;
(b) Any employee of the agency in his or her official capacity;
(c) Any employee of the agency in his or her individual capacity where the United States has agreed to represent the employee;
(d) The agency's contractors and contractors' employees where the Department has agreed, or is obligated by statute, to represent such persons; and
(e) The parties and their representatives in a 10 CFR part 708 or 41 U.S.C. § 265 proceeding.

6. A record from this system of records may be disclosed to foreign governments or international organizations, in accordance with treaties, international conventions, or executive agreements.

7. A record from this system of records may be disclosed as a routine use to the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and

clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed to Department contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system of records may be disclosed to a member of Congress submitting a request involving an individual when the individual has requested assistance from the member with respect to the subject matter of the record, and the member of Congress provides a copy of the individual's request or another written statement clearly delineating the scope of the individual's request for assistance.

10. A record from this system of records which contains medical and/or psychological information may be disclosed to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and the Department's Privacy Act regulations if, in its sole judgment and good faith, the Department believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable Department regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, micrographic, and/or electronic media.

RETRIEVABILITY:

By name of individual involved, case number, report title, or subject matter.

SAFEGUARDS:

Allegation-Based Inspections Files are maintained within locked containers or areas. Classified information is maintained in locked General Services Administration approved class 6 security containers. Data maintained on personal computers can be accessed only by authorized staff using established procedures.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE Order 200.1., "Information Management Program." Records within DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate. Automated files are handled and maintained according to approved security processes.

SYSTEM MANAGER AND ADDRESS:

Deputy Inspector General for Inspections, U.S. Department of Energy, Room 5B–250, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

NOTIFICATION PROCEDURES:

The Department of Energy has exempted the system from this requirement. See the Exemption section of this notice.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals and organizations that have pertinent knowledge about a subject individual or corporate entity; those authorized by an individual to furnish information; confidential informants; and Federal Bureau of Investigation (FBI) and other Federal, state, and local entities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(k) (1) and (2) of the Privacy Act, this system is exempt from the following subsections:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) (G) and (H)
5 U.S.C. 552a(f)

Exemption (k)(1) provides that the head of an agency may exempt an agency system of records from certain provisions of the Privacy Act if the system of records is subject to Section 552(b)(1) of the Freedom of Information Act, 5 U.S.C. 552. That section of the Freedom of Information Act protects from disclosure properly classified national security information.

The system of records will exempt properly classified national security information in the Office of Inspector General's Allegation-Based Inspections Files. The detailed reasons for exemptions under 5 U.S.C. 552a(k)(1) follow:

(1) 5 U.S.C. 552a(c)(3) requires that, upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The Department of Energy has programs involving classified material which may be the subject of Office of Inspections review. The application of this accounting provision to reviews involving properly classified material could reveal classified material. If this information about classified material were disclosed, national security might be compromised.

An example of an issue involving classified material which can affect national security would be a review of the Department's maintenance or transportation of special nuclear material. Such information could be utilized by terrorist groups. Another example would be Departmental work with intelligence information obtained from other Federal agencies.

(2) 5 U.S.C. 552a(d), (e)(4) (G) and (H), and (f) relate to the following: an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to or amendment of records; and agency procedures relating to access to and amendment of records and the content of information contained in such records. If these provisions were applied to classified material in the Allegation-Based Inspections Files, this could (1) interfere with inspections or inquiries undertaken in connection with national security; (2) disclose the identity of sources kept secret to protect national security and/or reveal classified information kept secret to protect national security information supplied by these sources; or (3) generally violate the secrecy of the classification.

Executive Order 12863 provides the Inspector General with oversight responsibilities pertaining to intelligence activities which are potentially unlawful or contrary to Presidential directive. When reviewing these issues, the Office of Inspections may compile information pertaining to foreign energy matters. Disclosure of such information could identify sensitive sources and methods used by the national intelligence community. The Office of Inspections may compile information regarding classified technology being developed by the Department or other agencies. Disclosure of this information could identify sensitive Departmental projects or operations that could be targets for foreign intelligence service collection operations.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. The Office of Inspector General does not create the material it collects and has no control over the content of that material.

There are additional reasons why application of this provision could impair inspections and interfere with the statutory responsibilities of the Office of Inspector General. It is not always possible to detect the relevance or necessity of specific information in the early stages of an inspection or inquiry. This applies when an inspection or inquiry uses properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevancy and necessity of such information can be established. Furthermore, information outside the scope of the Office of Inspector General's jurisdiction may be helpful in establishing patterns of activities or problems or in developing information that should be referred to other entities. Such information cannot always readily be segregated.

The detailed reasons for the exemptions under 5 U.S.C. 552a(k)(2) follow: (1) 5 U.S.C. 552a(c)(3) requires that, upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the records and the name and address of the recipient. To apply this provision would alert those who may be the subjects of an inspection or inquiry pertaining to an allegation or complaint to the existence of the inspection or inquiry or that they are the subjects of such an inspection or inquiry. Release of this information could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the inspection or inquiry.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to the following: an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to or amendment of records; and agency procedures relating to access to and amendment of records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: to notify an individual, at the individual's request, of the existence of records in an inspection file pertaining to a complaint or allegation about the individual or to grant access to this type of inspection file could (1) interfere with inspections or proceedings predicated on a complaint or allegation, (2) constitute an unwarranted invasion of the personal privacy of others, (3) disclose the identity of confidential sources and reveal confidential information supplied by those sources, or (4) disclose inspection techniques and procedures.

In addition, this system is exempt from paragraph (d)(2) of this section. To require the Office of the Inspector General to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its inspections attempting to resolve questions of accuracy.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed because:

a. It is not always possible to detect the relevance or necessity of specific information in the early stages of an inspection involving a complaint or allegation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated or the inspection is closed that the relevancy and necessity of such information can be established.

c. In any inspection involving a complaint or allegation, the Inspector General may obtain information concerning the violation of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should be able to retain this information as it may aid in establishing patterns of program violations or criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In conducting an inspection or inquiry involving a complaint or allegation, information obtained may relate to the main purpose of the inspection or inquiry as well as to matters under the jurisdiction of another agency. Such information is not readily segregable.

[FR Doc. 97–33601 Filed 12–23–97; 8:45 am]
BILLING CODE 6450–01–P

federal register

Wednesday
December 24, 1997

Part VII

Department of Transportation

Coast Guard

33 CFR Part 151
46 CFR Part 1, et al.
Alternate Compliance via Recognized Classification Society and U.S. Supplement to Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

46 CFR Parts 1, 8, 31, 69, 71, 91, 107, 153, and 154

[CGD 95–010]

RIN 2115–AF11

Alternate Compliance via Recognized Classification Society and U.S. Supplement to Rules

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations to provide owners of U.S. tank vessels, passenger vessels, cargo vessels, miscellaneous vessels and mobile offshore drilling units an alternative method to fulfill the requirements for vessel design, inspection and certification. Under this final rule, the Coast Guard can issue a certificate of inspection based upon reports by a recognized, authorized classification society that the vessel complies with the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), other applicable international conventions, classification society rules and other specified requirements. This new procedure will reduce the burden on vessel owners and operators by establishing an alternative to the current Coast Guard inspection system that results in plan reviews and inspections by the vessel's classification society as well as by the Coast Guard.

DATES: This final rule is effective January 23, 1998. Section 8.440 applied to existing vessels as of July 31, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on January 23, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Daniel Pippenger, Marine Safety and Environmental Protection (G–MSE–1), telephone (202) 267–2997, fax (202) 267–4816.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 27, 1996, the Coast Guard published an interim rule entitled "Vessel Inspection Alternatives; Classification Procedures" in the **Federal Register** (61 FR 68510). The Coast Guard received 17 letters commenting on the interim rule. No public hearing was requested, and none was held.

Background and Purpose

On October 4, 1994, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Alternate Inspection Compliance Programs for the U.S. Maritime Industry" in the **Federal Register** (59 FR 50537). In the comments submitted in response to this NPRM, members of the U.S. maritime industry noted the continuing economic pressure on the U.S. oceangoing merchant fleet and commercial shipbuilding industry. Additional comments were submitted calling for reduction of the cost disadvantage attributed to Coast Guard inspection and certification of U.S. merchant vessels in order to improve the international competitiveness of the U.S. merchant fleet.

In order to address these concerns, the Coast Guard sought a means to alleviate the cost burdens on the maritime industry that resulted from the Coast Guard inspection program. The Coast Guard has had authority under 46 U.S.C. § 3116 to rely on reports, documents and certificates issued by the American Bureau of Shipping (ABS) in carrying out its responsibilities for safety of U.S. merchant vessels and to delegate to ABS the inspection or examination of these vessels. The Coast Guard had in fact delegated to ABS the authority to issue certain certificates required by international conventions, such as the International Convention for the Safety of Life at Sea (SOLAS) Cargo Ship Safety Construction Certificate. Compliance with these standards is required for oceangoing vessels, *i.e.* vessels trading in foreign countries. Additionally, insurance companies require that, before a vessel is insured, it be classed. This means that a classification society must survey a vessel for compliance with its class rules. Class rules are rules developed by the particular classification society to cover the design, construction and maintenance of vessels. To ensure compliance with these class rules and with international standards, classification societies perform surveys on vessels using qualified marine surveyors. Many of the items examined by the classification society surveyors are the same as those examined by Coast Guard marine inspectors in their inspections for certification.

Thus, there is duplication of effort between the Coast Guard and the ABS involving safety of vessels that results in extra costs to U.S. vessel owners. In light of the authority in 46 U.S.C. 3316 to delegate vessel inspections and examinations to ABS, the Coast Guard, in order to address the concerns of the vessel owners regarding these costs, examined the feasibility of an alternative to the current situation that would avoid the duplication of inspections between ABS and the Coast Guard. A joint Coast Guard/ABS task force compared the Coast Guard requirements in the Code of Federal Regulations (CFR) to the class requirements in ABS class rules, SOLAS, and the International Convention for the Prevention of Pollution from Ships, as amended, (MARPOL 73/78) concerning the design, construction and safety systems for oceangoing merchant vessels. The purpose of this comparison was to identify redundancies between the requirements and to determine if the class and international requirements, which U.S. vessels must currently comply with, could be used in place of Coast Guard regulatory requirements. The standard used was whether compliance with the class and international standards would achieve a level of safety equivalent to compliance with Coast Guard regulatory requirements.

The task force determined that many Coast Guard regulatory requirements could be satisfied by certification of compliance with ABS classification rules, SOLAS, MARPOL 73/78, or combination of the three. This led to the development of a U.S. Supplement to the ABS classification rules. This supplement addresses those areas where current Coast Guard requirements are not embodied by either ABS classification rules or international conventions.

The Coast Guard concluded that the design requirements and survey provisions of ABS classification rules, applicable international conventions and the U.S. Supplement to the ABS classification rules provide a level of safety equivalent to corresponding Federal regulations.

As a result of this effort, the Alternate Compliance Program (ACP) was developed to reduce redundant inspection efforts without jeopardizing safety. The Coast Guard expects that, under the ACP, vessel owners and operators will have reduced vessel down time, greater flexibility in scheduling inspections, and greater flexibility in meeting required standards.

The Coast Guard conducted an ACP pilot program, which was announced by the **Federal Register** notice of February 3, 1995 (60 FR 6687). Its purpose was to test and evaluate the standards and procedures developed for the ACP. Sixty-two ships were enrolled in the pilot program which ended on July 31, 1997. The ACP was implemented on that date under the regulations described in the following paragraphs.

On June 22, 1995, the Coast Guard published a NPRM entitled "Alternate Compliance via Recognized Classification Society and U.S. Supplement to Rules" in the **Federal Register** (60 FR 32478). The NPRM proposed regulatory changes to allow owners, operators, shipbuilders, and designers of U.S. flagged tank vessels, passenger vessels, cargo vessels, miscellaneous vessels and mobile offshore drilling units to use the services of a recognized classification society to conduct inspection and plan review functions now performed by the Coast Guard.

The NPRM proposed establishment of the ACP through addition of new sections in 46 CFR parts 31 (31.01–3), 71 (71.15–5), 91 (91.15–5), and 107 (107.205). These sections would allow the owner or operator of a vessel to submit the vessel for inspection by a recognized classification society. The classification society would survey the vessel and document compliance with applicable international requirements, class rules and its U.S. supplement. The cognizant Coast Guard Officer-in-Charge, Marine Inspection, could then issue a certificate of inspection based upon the classification society's reports documenting that the vessel is classed and that it complies with all applicable requirements.

On December 27, 1996, the Coast Guard published an interim rule entitled "Vessel Inspection Alternatives; Classification Procedures" in the **Federal Register** (61 FR 68510). This rulemaking with the addition of other 46 CFR sections not included in the NPRM, implemented the ACP program.

Discussion of Comments and Changes

In a continuous effort to refine the ACP, several minor technical changes are needed to facilitate clear application of this rule.

The Coast Guard amended the text of 46 CFR 8.450 to clarify the status of international certificates issued by a classification society whose authority to participate in the ACP is terminated. If a classification society is no longer eligible to participate in the ACP, the certificates issued by that society would remain valid subject to any termination of authorization to issue those certificates on behalf of the Coast Guard as detailed in § 8.330. Also, the Coast Guard will notify a vessel owner of the time frame required for such action. Because of the many variables involved in the possible termination of authority of a classification society to participate in the ACP, such as the reason for termination or the number of ships involved, it is not reasonable to set a specific time limit for accomplishment of the required action.

The current regulatory text regarding four of the certificates listed in § 8.320 (International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk; International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk; MARPOL 73/78 International Oil Pollution Prevention Certificate; and MARPOL 73/78 International Oil Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk) allows only the Coast Guard to issue these certificates to U.S. flag vessels. The intent of this rulemaking is to allow certain classification societies to issue these certificates on behalf of the U.S. as well. Therefore, modification to 33 CFR part 151, 46 CFR part 153 and 154 are necessary.

In § 8.100, the definition of "MARPOL 73/78" was changed to be consistent with the definition in 33 U.S.C. 1901.

As the ACP has been implemented, the Coast Guard has recognized that additional references to rules and approved supplements are necessary. Because a supplement is approved related to a specific year of classification society rules and international conventions, it is appropriate to update and approve the supplement each time a new set of classification society rules are approved. Therefore, each year, the Coast Guard anticipates approving and incorporating a set of classification society rules and a companion supplement. To facilitate this process, the Coast Guard eliminated the direct listing of approved classification society rules and supplements in the applicable 46 CFR parts (31, 71, 91, and 107) and modified the language of those sections to refer the user to one section for a list of incorporated classification society rules and supplements in § 8.110(b).

In § 8.320, the list of certificates requires correction. The "SOLAS Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk" and the "SOLAS Certificate of Fitness for the Carriage of Liquefied Gases in Bulk" are correctly titled the "International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk" and the "International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk".

Participation of a vessel in the ACP is contingent upon several items in § 8.410. One requirement is that the vessel be "classed" by a recognized classification society that is authorized to participate in the ACP. To clearly convey the Coast Guard's understanding of what it means for a vessel to be "classed," the Coast Guard added a definition of the term to § 8.100.

The applicability in § 8.410 specified that the ACP applies to all U.S. flag vessels that meet certain requirements. However, the ACP is currently open to U.S. flag tank vessels, passenger vessels, cargo vessels, miscellaneous vessels, and mobile offshore drilling units (MODUs). To accurately reflect these limitations, § 8.410 will refer each vessel type to the appropriate subchapter of 46 CFR containing the authorization to use the ACP in place of other requirements.

46 CFR subchapter G, § 69.27(b) requires an organization to be a full member of the International Association of Classification Societies (IACS) and incorporated under the laws of the United States, a State of the United States, or the District of Columbia to be eligible for delegated tonnage measurement authority. There is no statutory requirement for these criteria and they are inconsistent with the intent of the ACP rulemaking, which is to allow classification societies, regardless of home country, meeting the standards in part 8, to be recognized and delegated authority to perform services on behalf of the Coast Guard. Therefore, the final rule modifies this section so the ACP can function as intended.

The Coast Guard received a total of 17 letters that commented on the ACP interim rule. All letters expressed support for the program. One comment specifically mentioned the reduced cost and increased options the ACP will give the maritime industry. Some letters contained suggestions for improvement in areas that may need adjustment. The following discussion addresses these comments.

Ten comments addressed issues relating to reciprocity. One comment noted that not all classification societies can "certify" in their own home country. These comments recommended modification of acceptance to include recognition when authorization to ABS is equal to that allowed by the country of origin. The Coast Guard will delegate

the authority to issue listed certificates when all of the conditions for reciprocity, recognition, and authorization are met. This approach is consistent with the language in the Coast Guard Authorization Act of 1996 (Pub. L. 140–324), and will result in the most efficient delegation program. To allow the appropriate flexibility needed for successful application of the ACP program, the Coast Guard will modify § 8.120(a). The Coast Guard will grant authorization to a foreign classification society to issue international certificates on a "case-by-case" basis. Some of the factors that the Coast Guard may consider in granting authorization are:

- Whether the foreign classification society has a satisfactory port state control history;
- Whether the foreign classification society has met the criteria contained in 46 CFR 8.230;
- Whether the foreign classification society developed a U.S. supplement to its class rules for use in the ACP that is in accordance with 46 CFR 8.430, as appropriate; and whether the home government of the foreign classification society has provided, or will simultaneously provide, ABS sufficient access to inspect, certify and provide related services to vessels documented in that country.

One of the comments suggested that the Coast Guard establish an annual review of reciprocity provisions. An annual review of reciprocity is unnecessary. In the event that the American Bureau of Shipping undergoes any changes in their foreign government authorizations, it is reasonable to expect that the Coast Guard will be notified by the American Bureau of Shipping of any such changes, at which time the Coast Guard will review the applicable reciprocity provisions for appropriate resolution.

Two comments recommended the removal of the 2-year trial period prior to being eligible to participate in the ACP as required in § 8.420. The Coast Guard does not agree. The ACP is a very comprehensive program that covers issues not addressed by international convention requirements. In the ACP, participating vessels have limited involvement with the Coast Guard and the Certificate of Inspection (COI) is based largely on classification society reports. The Coast Guard has limited experience with foreign classification societies. Therefore, it is prudent to maintain this 2-year trial period in order to gain experience with foreign classification societies, their rules, surveyors, and procedures. Additionally, the 2-year period will allow the Coast Guard to assess the capability and performance of the classification society to ensure they are adequate to perform the extensive delegations granted under the ACP. The Coast Guard is making no change to this requirement.

One comment requested that the Safety Certificate for High Speed Craft be added to the functions that may be delegated in § 8.320. The Coast Guard does not agree. The High Speed Craft Code is new and has had very limited application in the U.S. Until further experience and familiarity are gained with the High Speed Craft Code for U.S. flag vessels, the Coast Guard does not plan to delegate this function.

One comment suggested adding the SOLAS Passenger Vessel Safety Certificate to those listed in § 8.320. Passenger vessels may qualify for participation in the ACP. However, the Coast Guard intends to maintain first hand involvement in the issuance of this certificate due to the degree of risk involved. The Coast Guard will retain authority for issuance of the SOLAS Passenger Vessel Safety Certificate.

One comment was from the United States Environmental Protection Agency (EPA). The EPA expressed concern about authorizing a classification society to issue the International Air Pollution Prevention (IAPP) and the Engine International Air Pollution Prevention (EIAPP) certificates under MARPOL Annex VI. Section 8.320 does not permit delegation of these certificates to a classification society. No change is made in response to this comment.

One comment addressed the definition of the term "gross tons" in § 8.100. The comment stated that the terms "method used by flag state administration" are confusing and unnecessary since subpart A is limited to U.S. flag vessels. The Coast Guard does not concur. This terminology is necessary because classed tonnage is an element of the minimum standards for a recognized classification society in § 8.230. The Coast Guard intends to allow class societies to count all vessel tonnage they class, regardless of the flag administration. Because not all administrations apply the International Convention on Tonnage Measurement of Ships, 1969, to all measured vessels, this clause is necessary.

One comment questioned the use of the American National Standards Institute (ANSI) standard ANSI/ASQC Q9001 in place of the international standard ISO 9001. The Coast Guard agrees that the international standard is also acceptable. As stated in the rule, a classification society may meet the requirements of the ANSI/ASQC Q9001 or an equivalent quality standard. Therefore, the Coast Guard makes no change in response to this comment.

Five comments recommended changes to the applicability of the ACP. These comments noted that the ACP should not be restricted only to vessels engaged on international voyages but should be open to all vessels that meet international requirements regardless of their ports of call. The term international voyages was used in § 8.410 to ensure that vessels in the ACP carried all applicable international certificates and was not intended to restrict ACP to only those vessels that engage on international voyages. The Coast Guard will modify the wording of § 8.410(b). Instead of the phrase "engaged in international voyages", the Coast Guard will use the term "certificated for international voyages". This clearly expresses the intent that a vessel participating in the ACP will have a valid set of all certificates necessary to engage in an international voyage.

The ACP is solidly based on the safety system comprised of the following elements: Compliance with all relevant international requirements, classification society rules, and the relevant U.S. supplement. This safety system is being accepted in the ACP as an equivalent to the system embodied in Title 46 of the CFR. Thus, U.S. flagged vessels that do not carry valid and appropriate certificates necessary to engage in international voyages, regardless of class, are not eligible to participate in the ACP.

Two comments related to the use of exclusive surveyors for all work done on behalf of the Coast Guard. One comment requested the use of exclusive surveyors for all ACP work. With the exception of tonnage measurement, the Coast Guard agrees and notes that this is already required under § 8.130(a)(25). Restricting tonnage measurement to exclusive surveyors is contrary to current practice and would reduce flexibility and probably result in higher cost to the public. Section 8.130(a)(25) has been modified to allow the use of part-time employees or independent contractors to provide tonnage measurement services.

The other comment requested the use of one classification society's exclusive surveyors by other classification societies if the two societies involved have a bilateral agreement. The Coast Guard does not agree. When authorizing a classification society to do work related to the ACP, the Coast Guard accepts a classification society's rules, survey procedures and processes as an acceptable alternative to federal

regulations. A classification society's own exclusive surveyors are in the best position to accurately enforce these items. Given the scope of delegation and the minimal Coast Guard presence on ACP vessels, the Coast Guard makes no change in response to this comment. However, based on these comments, the Coast Guard has added a definition of "exclusive surveyor" to § 8.100 for clarification.

One comment recommended a specific classification society not be allowed to participate in the ACP. The Coast Guard appreciates the intent of the individual to improve the program. All applications for recognition and authorization are carefully reviewed in accordance with part 8. Any classification society meeting these requirements may enter the program. The Coast Guard has made no change in response to this comment.

One comment recommended that authority to issue certificates be revoked if reciprocity conditions were no longer being satisfied. Reciprocity is required by U.S. law in the Coast Guard Authorization Act of 1996 (Pub. L. 104–324, 110 Stat. 3901). The Coast Guard agrees and has modified §§ 8.330 and 8.450 accordingly.

One comment contained recommendations on document availability. It requested all documents to be maintained in a public docket. The Coast Guard disagrees. Some information submitted during the application for recognition of a classification society is clearly proprietary and therefore inappropriate for release. Information regarding recognition and authorization status will be available in accordance with the Freedom of Information Act. The Coast Guard is making no change in response to this comment.

One comment on § 8.320(a)(7) recommended the removal of the term "SOLAS" from the "SOLAS Mobile Offshore Drilling Unit Safety Certificate." The Coast Guard agrees and will correct this certificate title to "International Maritime Organization (IMO) Mobile Offshore Drilling Unit Safety Certificate."

One comment stated that load line and tonnage admeasurement should be harmonized to require reciprocity with the delegations under ACP. The Coast Guard does not agree. Delegation of these functions is permitted under 46 U.S.C. 5107 and 46 U.S.C. 14103, respectively, and reciprocity is not an element of the conditions of delegation. The Coast Guard is making no change in response to this comment.

One comment stated that a recognized classification society should have the right to refuse to conduct services. The Coast Guard agrees. However, the interim rule does not restrict the classification society actions in this regard. In consideration of this comment, the Coast Guard modified the text in § 8.130(a)(10) to recognize that a classification society may have occasion to refuse to attend a vessel for which it has performed a delegated function on behalf of the Coast Guard, when requested by the Coast Guard.

One comment requested that documents be "in a language which is mutually acceptable to both parties." The Coast Guard does not agree. The Coast Guard requires documents related to delegated functions to be in English. There is no change to § 8.130(a)(18) or § 8.230(a)(7) and (8) in response to this comment.

One comment suggests that the Coast Guard accept oversight monitoring by other administrations. The Coast Guard agrees that oversight and monitoring activities conducted by other administrations may be useful to the delegated functions of the ACP. The Coast Guard does not agree that any added text to § 8.130(a)(22) is warranted. The intent of this agreement condition is to ensure that an authorized classification society will allow the Coast Guard the necessary access to perform its own oversight activities. This agreement condition does not prohibit other means of attaining information as part of the Coast Guard's oversight activities.

One comment stated that reciprocity was intended to solidify ABS market shares and not to advance marine safety. The Coast Guard disagrees. Reciprocity is included because it is required under the Coast Guard Authorization Act of 1996 (Pub. L. 104–324). This provision may increase the choices available to the marine industry and result in lower costs. The Coast Guard makes no change in response to this comment.

One comment requested amendment to § 8.410(b) to further expand ACP applicability to foreign flag MODUs required to obtain a letter of compliance under 33 CFR subchapter N. The Coast Guard does not agree. The ACP is available for U.S. flag vessels as an alternative to compliance with U.S. regulations. The Coast Guard reiterates that the safety system of class rules, international conventions, and the supplement to class rules is considered as an alternative to U.S. regulations. Foreign flag vessels are not subject to U.S. vessel standards and therefore, are not considered in this program. There is no change in response to this comment.

One comment welcomed the ACP because COIs can be issued by foreign class societies. The Coast Guard agrees that the ACP allows foreign classification societies to apply for recognition and authorization to perform delegated functions under part 8. However, the Coast Guard retains the authority to issue COIs.

One comment recommended a change in the term "serviced" in § 8.230(a)(17). The Coast Guard agrees and has clarified the language. The change will ensure that vessels on which a delegated function has been performed comply with all statutory requirements related to the delegation functions.

Three comments encouraged user fee reduction. The Coast Guard agrees that participation in ACP may result in lower fees. However, the purpose of this rulemaking is not to make changes to user fees. There are no changes made to this rule in response to this comment.

Two comments concerned supplements. One pointed out the necessity of the supplement. The other encouraged that the supplement be simplified and used to lead to harmonization with industry standards. The Coast Guard agrees with the spirit of these comments. In general, a supplement for the ACP contains cites from four sources:

- Statutory Requirements,
- SOLAS Interpretations,
- Critical safety issues where the combination of classification society rules and international conventions do not provide an equivalent level of safety to the CFR, or
- Other requirements that apply to all ships (primarily navigation safety and pollution prevention).

Because all classification society rules are not identical in scope, the supplement is needed. The Coast Guard is actively pursuing harmonized international interpretations to SOLAS. Where the combination of classification society rules and international conventions do not provide an equivalent level of safety, the Coast Guard intends to pursue these items individually with the classification society or through amendment of the international convention as appropriate. Ideally, these Coast Guard efforts may result in an equivalent level of safety and remove the need for additions to classification society rules. In addition, the Coast Guard has pursued harmonization with industry standards and will continue to seek additional opportunities to do so. There are no changes as a result of these comments.

One comment encouraged the Coast Guard to accept foreign class standards without rigid adherence to U.S. regulations. The Coast Guard agrees that an individual regulation, considered in

isolation, may not always be the best or most suitable standard for a particular vessel. However, the Coast Guard considers the Code of Federal Regulations (CFR) to represent a comprehensive set of standards for commercial vessel safety. The Coast Guard has worked extensively with the U.S. maritime industry in the application of standards other than those specifically prescribed in the CFR, and has allowed use of equivalent standards in many cases. The Coast Guard will ensure that a double standard does not develop between vessels that participate in ACP and those that do not. ACP standards will remain equivalent in scope and result in no reduction in safety. There is no change made as a result of this comment.

Two comments addressed reporting requirements for port-state control violations. One comment recommended a change in the term "ensure" in § 8.230 paragraphs (a)(16) and (a)(17). The comment contends that no classification society has the power to ensure compliance. Compliance is dependent on factors outside of the control of the classification societies. The Coast Guard agrees and will modify the text to more accurately reflect this condition.

One comment recommended that Oil Spill Recovery Vessels (OSRVs) be included in ACP with appropriate modification to corresponding regulations for this vessel type. The absence of specific regulations for OSRVs precludes their inclusion in the ACP at this time. The Coast Guard will consider participation of OSRVs after determining what regulations apply to them.

One comment encouraged classification society fee restraints for vessels participating in the ACP. While the intent of this rulemaking is to reduce the cost associated with dual inspection, the Coast Guard will not be involved with the establishment of classification society fees for services related to the ACP program. The ACP is a voluntary program and traditional Coast Guard inspection remains available to U.S. flag vessels that require Coast Guard certification.

One comment expressed concern about the ACP being used to bring more vessels under ABS class. The Coast Guard disagrees. Initially, the ACP was developed with ABS based on the extensive experience that the Coast Guard has with delegation of certification functions to ABS. Until the passage of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324), delegation of this nature was restricted by law to U.S. classification societies. The ACP is now available to foreign based classification societies as well. There is no change made as a result of this comment.

One comment questioned how appeals will be handled. There are two different levels of appeals. In the first level, a vessel owner, operator, or builder may desire to appeal the decision of an ACP authorized classification society or the Coast Guard. This procedure is defined in Coast Guard policy guidance and is published as Navigation and Vessel Inspection Circular (NVIC) No. 2–95, Change 1. On another level, a classification society may wish to appeal the decision of the Coast Guard with respect to its application for recognition. There was no appeal provision in the Interim Rule for this condition. In response to this comment, the Coast Guard has added a provision for a classification society to appeal the decision of the Coast Guard in § 8.420, related to the recognition application.

One comment recommended that the criteria for recognition be modified to be performance based. The comment suggested dropping the size and age criteria and the use of the term "adequate" within the list. The Coast Guard agrees in part. Performance is important. However, other criteria required by the rule indicate characteristics of the classification society that the Coast Guard determines to be necessary to assess quality prior to recognition. Considering the importance of the delegated work, no change is made in response to this comment.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 8.110 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in that section.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Coast Guard expects this rule to provide an economic benefit to the owners and operators of U.S. flagged vessels. Currently, 549 U.S. vessels may be eligible to participate in this optional ACP. The Coast Guard estimates that while a vessel owner may have to pay an additional $5,000 in classification society fees for functions presently performed by the Coast Guard, the savings in design, construction and operating costs will recover this expense many times over during the lifetime of the vessel. Moreover, ships built and maintained to SOLAS, MARPOL 73/78, recognized classification society rules and accepted U.S. supplement are expected to experience greater competitiveness in the worldwide shipping market.

Additionally, streamlining the certification process will reduce time frames for Coast Guard involvement in the COI process from an average of over 50 hours to 10 hours or less. Because the vessel is already inspected by the classification society, this program will reduce duplication of effort, decrease vessel "down time" and permit greater scheduling flexibility. Lower construction and operating costs, greater flexibility for the vessel in the global market and additional availability for vessel hire will offset the costs incurred through the alternate plan review and inspection process utilizing a recognized classification society. The Coast Guard specifically solicits comments on potential costs, savings and benefits.

The Coast Guard expects no impact to the regulatory assessment as a result of changes to this rulemaking.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule change provides an alternative to complying with existing regulations. The Coast Guard determined this rulemaking will have a positive economic impact if the owner chooses to participate in the ACP. Because of the current structure of the industry, it is not expected that any small businesses will be affected by the rule. However, under Section 601 of the Regulatory Flexibility Act, the Coast Guard has provided a flexible approach which could benefit any small businesses which choose to enter this industry. This rulemaking will have no impact on vessel owners who do not choose to participate in this program. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. Assistance with provisions of this final rule can be obtained by contacting Commandant (G–MSE), Office of Design and Engineering Standards, 2100 Second Street, SW., Washington, DC 20593–0001, telephone 202–267–2997.

Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Vessel inspection reports are needed to document the compliance of a vessel with recognized classification society rules, the accepted U.S. supplement to rules, and applicable international maritime safety and marine environmental conventions. Classification societies recognized to participate in this program will submit copies of reports they routinely prepare to the Coast Guard.

As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. The section numbers are: §§ 31.01–3, 71.15–5, 91.15–5, and 107.205, and the corresponding approval number from OMB is OMB Control Number 2115–0626, which expires on June 30, 1999.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant a Federalism Assessment.

The authority to regulate safety requirements of U.S. vessels is committed to the Coast Guard by statute. Furthermore, since these vessels tend to move from port to port in the national market place, these safety requirements need to be national in scope to avoid numerous, unreasonable and burdensome variances. Therefore, this action will preempt State action addressing the same matter.

Federal Preemption

Historically, the Coast Guard has inspected vessels for their compliance with Federal regulations that address the safety of a vessel and protection of the marine environment. These regulations establish design, construction, equipment, manning and other inspection standards that are part of international conventions to which the U.S. is a party as well as other inspection standards that assure the safety of a vessel participating in this alternative inspection program. The certificate of inspection issued to a vessel by the Coast Guard as a result of this inspection program indicates that the vessel is safe for the service in which it is engaged. It is the Coast Guard's opinion that the Supremacy Clause of the Constitution would preempt state and local regulations that seek to impose different or higher standards governing the inspection of a U.S. vessel as established in these regulations.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is excluded based on its inspection and equipment aspects. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Since the combination of classification society rules, applicable international conventions and the U.S. supplement to the rules have been determined to provide a level of safety equivalent to current Coast Guard regulations, the Coast Guard expects that this rulemaking will have no adverse environmental impact.

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 8

Administrative practice and procedure, Incorporation by reference, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 31

Marine safety, Reporting and recordkeeping requirements, Tank vessels.

46 CFR Part 69

Measurement standards, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, under the authority of 46 U.S.C. 3306, the Coast Guard amends 33 CFR part 151 and 46 CFR parts 1, 8, 31, 69, 71, 91 107, 153, and 154 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(c) and 1903(b); E.O. 12777, 3 CFR, 1991 Comp. P. 351; 49 CFR 1.46.

2. Revise § 151.19(c) to read as follows:

§ 151.19 International Oil Pollution Prevention (IOPP) Certificates.

* * * * *

(c) An IOPP Certificate is issued by a COTP, OCMI, or a classification society authorized under 46 CFR part 8, after a satisfactory survey in accordance with the provisions of § 151.17.

* * * * *

§ 151.37 [Amended]

3. In § 151.37, in paragraphs (a), (b), and (c), remove the words "Coast Guard issues" and add, in its place, the words "Coast Guard or a classification society authorized under 46 CFR part 8 issues".

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

4. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 49 CFR 1045, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

5. Add § 1.03–15(h)(4) to read as follows:

§ 1.03–15 General.

* * * * *

(h) * * *

(4) Commandant (G–MSE) for appeals involving the recognition of a classification society.

* * * * *

6. Revise part 8 to read as follows:

PART 8—VESSEL INSPECTION ALTERNATIVES

Subpart A—General

Sec.
8.100 Definitions.
8.110 Incorporation by reference.
8.120 Reciprocity.
8.130 Agreement conditions.

Subpart B—Recognition of a Classification Society

8.200 Purpose.
8.210 Applicability.
8.220 Recognition of a classification society.
8.230 Minimum standards for a recognized classification society.
8.240 Application for recognition.
8.250 Acceptance of standards and functions delegated under existing regulations.
8.260 Revocation of classification society recognition.

Subpart C—International Convention Certificate Issuance

8.300 Purpose.
8.310 Applicability.
8.320 Classification society authorization to issue international certificates.
8.330 Termination of classification society authority.

Subpart D—Alternate Compliance Program

8.400 Purpose.
8.410 Applicability.
8.420 Classification society authorization to participate in the Alternate Compliance Program.
8.430 U.S. Supplement to class rules.
8.440 Vessel enrollment in the Alternate Compliance Program.
8.450 Termination of classification society authority.

Authority: 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703; 49 CFR 1.45, 1.46.

Subpart A—General

§ 8.100 Definitions.

Authorized Classification Society means a recognized classification society that has been delegated the authority to conduct certain functions and certifications on behalf of the Coast Guard.

Class Rules means the standards developed and published by a classification society regarding the design, construction and certification of commercial vessels.

Classed means that a vessel meets the classification society requirements that embody the technical rules, regulations, standards, guidelines and associated surveys and inspections covering the design, construction and through-life compliance of a ship's structure and essential engineering and electrical systems.

Commandant means the Commandant of the Coast Guard.

Delegated Function means a function related to Coast Guard commercial vessel inspection which has been delegated to a classification society. Delegated functions may include issuance of international convention certificates and participation in the Alternate Compliance Program under this part.

Delegated Function Related to General Vessel Safety Assessment means issuance of the SOLAS Cargo Ship Safety Construction Certificate or issuance of the SOLAS Cargo Ship Safety Equipment Certificate.

Exclusive Surveyor means a person who is employed solely by a classification society and is authorized to conduct vessel surveys. Independent surveyors, hired on a case-by-case basis, or surveyors of another classification society are not considered exclusive surveyors for the performance of delegated functions on behalf of the Coast Guard.

Gross Tons means vessel tonnage measured in accordance with the International Convention on Tonnage Measurement of Ships, 1969. Vessels not measured by this convention must be measured in accordance with the method utilized by the flag state administration of that vessel.

MARPOL 73/78 means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the Convention which means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and Annexes I, II, and V thereto, including any modification or amendments to the Convention, Protocols or Annexes which have entered into force for the United States.

Officer in Charge, Marine Inspection (OCMI) means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of a Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the inspection, enforcement, and administration of 46 U.S.C., Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder.

Recognized Classification Society means the American Bureau of Shipping or other classification society recognized by the Commandant under this part.

SOLAS means International Convention for the Safety of Life at Sea, 1974, as amended.

§ 8.110 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and the material must be available to the public. All material is available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Office of Design and Engineering Standards, 2100 Second St., SW., Washington, DC 20593–0001, and is available from the sources listed in paragraph (b).

(b) The material incorporated by reference in this subchapter and the sections affected are as follows:

American Bureau of Shipping (ABS)—Two World Trade Center, 106th Floor, New York, NY 10048.

Rules for Building and Classing Steel Vessels, 1996—31.01–3(b), 71.15–5(b), 91.15–5(b)

U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 21 October 1996—31.01–3(b), 71.15–5(b), 91.15–5(b)

American National Standards Institute (ANSI)—11 West 42nd St., New York, NY 10036.

ANSI/ASQC Q9001–1994, Quality Systems—Model for Quality Assurance in Design, Development, Production, Installation, and Servicing, 1994—8.230

§ 8.120 Reciprocity.

(a) The Commandant may delegate authority to a classification society that has its headquarters in a country other than the United States only to the extent that the flag state administration of that country delegates authority and provides access to the American Bureau of Shipping to inspect, certify and provide related services to vessels flagged by that country. The Commandant will determine reciprocity on a "case-by-case" basis.

(b) In order to demonstrate that the conditions described in paragraph (a) of this section are satisfied, a classification society must provide to the Coast Guard an affidavit, from the government of the country that the classification society is headquartered in, listing the authorities delegated by the flag state administration of that country to the American Bureau of Shipping, and indicating any conditions related to the delegated authority.

(c) The Commandant will not consider an application for authorization to perform a delegated function submitted under this part until the conditions described in paragraph (a) of this section are satisfied. Where simultaneous authorization by a foreign government for ABS is involved, this requirement may be waived.

(d) The Commandant will not evaluate a classification society for recognition until the conditions described in paragraph (a) of this section are satisfied for at least one of the authorized delegations being sought. Where simultaneous recognition by a foreign government for ABS is involved, this requirement may be waived.

(e) The Commandant may make a delegation regarding load lines under 46 U.S.C. 5107 or measurement of vessels under 46 U.S.C. 14103 without regard to the conditions described in paragraph (a) of this section.

§ 8.130 Agreement conditions.

(a) Delegated functions performed by, and statutory certificates issued by, an authorized classification society will be accepted as functions performed by, or certificates issued by, the Coast Guard, provided that the classification society maintains compliance with all provisions of its agreement with the Commandant. Any agreement between the Commandant and a recognized classification society authorizing the performance of delegated functions will be written and will require the classification society to comply with each of the following:

(1) Issue any certificates related to a delegated function in the English language.

(2) Maintain a corporate office in the United States that has adequate resources and staff to support all delegated functions and to maintain required associated records.

(3) Maintain all records in the United States related to delegated functions conducted on behalf of the Coast Guard.

(4) Make available to appropriate Coast Guard representatives vessel status information and records, including outstanding vessel deficiencies or classification society recommendations, in the English language, on all vessels for which the classification society has performed any delegated function on behalf of the Coast Guard.

(5) Report to the Commandant (G–MOC) the names and official numbers of any vessels removed from class for which the classification society has performed any delegated function on behalf of the Coast Guard and include a description of the reason for the removal.

(6) Report to the Commandant (G–MOC) all port state detentions on all vessels for which the classification society has performed any delegated function on behalf of the Coast Guard when aware of such detention.

(7) Annually provide the Commandant (G–MOC) with its register of classed vessels.

(8) Ensure vessels meet all requirements for class of the accepting classification society prior to accepting vessels transferred from another classification society.

(9) Suspend class for vessels that are overdue for special renewal or annual survey.

(10) Attend any vessel for which the classification society has performed any delegated function on behalf of the Coast Guard at the request of the appropriate Coast Guard officials, without regard to the vessel's location—unless prohibited to do so under the laws of the United States, the laws of the jurisdiction in which the vessel is located, the classification society's home country domestic law, or where the classification society considers an unacceptable hazard to life and/or property exists.

(11) Honor appeal decisions made by the Commandant (G–MSE) or Commandant (G–MOC) on issues related to delegated functions.

(12) Apply U.S. flag administration interpretations, when they exist, to international conventions for which the classification society has been delegated authority to certificate or perform other functions on behalf of the Coast Guard.

(13) Obtain approval from the Commandant (G–MOC) prior to granting exemptions from the requirements of international conventions, class rules, and the U.S. supplement to class rules.

(14) Make available to the Coast Guard all records, in the English language, related to equivalency determinations or approvals made in the course of delegated functions conducted on behalf of the Coast Guard.

(15) Report to the Coast Guard all information specified in the agreement at the specified frequency and to the specified Coast Guard office or official.

(16) Grant the Coast Guard access to all plans and documents, including reports on surveys, on the basis of which certificates are issued or endorsed by the classification society.

(17) Identify a liaison representative to the Coast Guard.

(18) Provide regulations, rules, instructions and report forms in the English language.

(19) Allow the Commandant (G–M) to participate in the development of class rules.

(20) Inform the Commandant (G–M) of all proposed changes to class rules.

(21) Provide the Commandant (G–M) the opportunity to comment on any proposed changes to class rules and to respond to the classification society's disposition of the comments made by the Coast Guard.

(22) Furnish information and required access to the Coast Guard to conduct oversight of the classification society's activities related to delegated functions conducted on behalf of the Coast Guard.

(23) Allow the Coast Guard to accompany them on internal and external quality audits and provide written results of such audits to appropriate Coast Guard representatives.

(24) Provide the Coast Guard access necessary to audit the authorized classification society to ensure that it continues to comply with the minimum standards for a recognized classification society.

(25) Use only exclusive surveyors of that classification society to accomplish all work done on behalf of, or under any delegation from, the Coast Guard. For tonnage-related measurement service only, however, classification societies

may use part-time employees or independent contractors in place of exclusive surveyors.

(26) Allow its surveyors to participate in training with the Coast Guard regarding delegated functions.

(b) Amendments to an agreement between the Coast Guard and an authorized classification society will become effective only after consultation and written agreement between parties.

(c) Agreements may be terminated by one party only upon written notice to the other party. Termination will occur sixty days after written notice is given.

Subpart B—Recognition of a Classification Society

§ 8.200 Purpose.

This subpart establishes criteria and procedures for vessel classification societies to obtain recognition from the Coast Guard. This recognition is necessary in order for a classification society to become authorized to perform vessel inspection and certification functions delegated by the Coast Guard as described in this part.

§ 8.210 Applicability.

This subpart applies to all vessel classification societies seeking recognition by the Coast Guard.

§ 8.220 Recognition of a classification society.

(a) A classification society must be recognized by the Commandant before it may receive statutory authority delegated by the Coast Guard.

(b) In order to become recognized, a classification society must meet the requirements of § 8.230.

(c) A classification society found to meet the criteria for recognition will be notified in writing by the Commandant.

(d) If the Coast Guard determines that a classification society does not meet the criteria for recognition, the Coast Guard will provide the reason for this determination.

(e) A classification society may reapply for recognition upon correction of the deficiencies identified by the Coast Guard.

§ 8.230 Minimum standards for a recognized classification society.

(a) In order to receive recognition by the Coast Guard a classification society must:

(1) Establish that it has functioned as an international classification society for at least 30 years with its own class rules;

(2) Establish that is has a history of appropriate corrective actions in addressing vessel casualties and cases of nonconformity with class rules;

(3) Establish that it has a history of appropriate changes to class rules based on their application and the overall performance of its classed fleet;

(4) Have a total classed tonnage of at least 10 million gross tons;

(5) Have a classed fleet of at least 1,500 ocean-going vessels over 100 gross tons;

(6) Have a total classed tonnage of ocean-going vessels over 100 gross tons totaling no less than 8 million gross tons;

(7) Publish and maintain class rules in the English language for the design, construction and certification of ships and their associated essential engineering systems;

(8) Maintain written survey procedures in the English language;

(9) Have adequate resources, including research, technical, and managerial staff, to ensure appropriate updating and maintaining of class rules and procedures;

(10) Have adequate resources and geographical coverage to carry out all plan review and vessel survey activities associated with delegated functions as well as classification society requirements;

(11) Employ a minimum of 150 exclusive surveyors;

(12) Have adequate criteria for hiring and qualifying surveyors and technical staff;

(13) Have an adequate program for continued training of surveyors and technical staff;

(14) Have a corporate office in the United States that provides a continuous management and administrative presence;

(15) Maintain an internal quality system based on ANSI/ASQC Q9001 or an equivalent quality standard;

(16) Determine classed vessels comply with class rules, during appropriate surveys and inspection;

(17) Determine that attended vessels comply with all statutory requirements related to delegated functions, during appropriate surveys and inspection;

(18) Monitor all activities related to delegated functions for consistency and required end-results;

(19) Maintain and ensure compliance with a Code of Ethics that recognizes the inherent responsibility associated with delegation of authority;

(20) Not be under the financial control of shipowners or shipbuilders, or of others engaged commercially in the manufacture, equipping, repair or operation of ships;

(21) Not be financially dependent on a single commercial enterprise for its revenue;

(22) Not have any business interest in, or share of ownership of, any vessel in its classed fleet; and

(23) Not be involved in any activities which could result in a conflict of interest.

(b) Recognition may be granted after it is established that the classification society has an acceptable record of vessel detentions attributed to classification society performance under the Coast Guard Port State Control Program.

§ 8.240 Application for recognition.

(a) A classification society must apply for recognition in writing to the Commandant (G–MSE).

(b) An application must indicate which specific authority the classification society seeks to have delegated.

(c) Upon verification from the Coast Guard that the conditions of reciprocity have been met in accordance with § 8.120, the requesting classification society must submit documentation to establish that it meets the requirements of § 8.230.

§ 8.250 Acceptance of standards and functions delegated under existing regulations.

(a) Classification society class rules will only be accepted as equivalent to Coast Guard regulatory standards when that classification society has received authorization to conduct a related delegated function.

(b) A recognized classification society may not conduct any delegated function under this title until it receives a separate written authorization from the Commandant to conduct that specific function.

§ 8.260 Revocation of classification society recognition.

A recognized classification society which fails to maintain the minimum standards established in this part will be reevaluated and its recognized status revoked if warranted.

Subpart C—International Convention Certificate Issuance

§ 8.300 Purpose.

This subpart establishes options for vessel owners and operators to obtain required international convention certification through means other than those prescribed elsewhere in this chapter.

§ 8.310 Applicability.

This subpart applies to:

(a) Recognized classification societies; and

(b) All U.S. flag vessels that are certificated for international voyages and are classed by a recognized classification society that is authorized by the Coast Guard to issue the applicable international certificate as specified in this subpart.

§ 8.320 Classification society authorization to issue international certificates.

(a) The Commandant may authorize a recognized classification society to issue certain international convention certificates. Authorization will be based on review of:

(1) Applicable class rules; and

(2) Applicable classification society procedures.

(b) The Coast Guard may delegate issuance of the following international convention certificates to a recognized classification society:

(1) International Load Line Certificate;

(2) International Tonnage Certificate (1969);

(3) SOLAS Cargo Ship Safety Construction Certificate;

(4) SOLAS Cargo Ship Safety Equipment Certificate;

(5) International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;

(6) International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk;

(7) International Maritime Organization (IMO) Mobile Offshore Drilling Unit Safety Certificate;

(8) MARPOL 73/78 International Oil Pollution Prevention Certificate; and

(9) MARPOL 73/78 International Oil Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

(c) The Coast Guard will enter into a written agreement with a recognized classification society authorized to issue international convention certificates. This agreement will define the scope, terms, conditions and requirements of that delegation. Conditions of these agreements are presented in § 8.130.

§ 8.330 Termination of classification society authority.

(a) The Coast Guard may terminate an authorization agreement with a classification society if:

(1) The Commandant revokes the classification society's recognition, as specified in § 8.260; or

(2) The classification society fails to comply with the conditions of the authorization agreement as specified in § 8.130.

(b) In the event that a flag administration of a country changes conditions related to the authority that is delegated to ABS, the Commandant may modify or revoke the Coast Guard's authorization of that classification society that has its headquarters in that country.

(c) Certificates issued by a classification society which has had its authorization terminated will remain valid until the next classification society survey associated with that certificate is required or until the certificate expires, whichever occurs first.

Subpart D—Alternate Compliance Program

§ 8.400 Purpose.

This subpart establishes an alternative to subpart 2.01 of this chapter for certification of United States vessels.

§ 8.410 Applicability.

This subpart applies to:

(a) Recognized classification societies; and

(b) U.S. flag vessels that are certificated for international voyages and are classed by a recognized classification society that is authorized by the Coast Guard to participate in the Alternate Compliance Program (ACP) as specified in this subpart and whose vessel type is authorized to participate in the ACP per the applicable subchapter of 46 CFR chapter I.

§ 8.420 Classification society authorization to participate in the Alternate Compliance Program.

(a) The Commandant may authorize a recognized classification society to participate in the ACP. Authorization will be based on a satisfactory review of:

(1) Applicable class rules; and

(2) Applicable classification society procedures.

(b) Authorization for a recognized classification society to participate in the ACP will require development of a U.S. Supplement to the society's class rules that meets the requirements of § 8.430 of this part, which must be accepted by the Coast Guard.

(c) A recognized classification society will be eligible to receive authorization to participate in the ACP only after it has performed a delegated function related to general vessel safety assessment, as defined in § 8.100, for a two-year period.

(d) If, after this two-year period, the Coast Guard finds that the recognized classification society has not demonstrated the necessary satisfactory performance or lacks adequate experience, the recognized classification society will not be eligible to participate in the ACP. The Coast Guard will provide the reason for this determination to the recognized classification society. A classification society may appeal the decision of the Coast Guard concerning recognition to the Commandant in writing in accordance with 46 CFR 1.03–15(h)(4).

(e) The Coast Guard will enter into a written agreement with a recognized classification society authorized to participate in the ACP. This agreement will define the scope, terms, conditions and requirements of the necessary delegation. Conditions of this agreement are presented in § 8.130.

§ 8.430 U.S. Supplement to class rules.

Prior to receiving authorization to participate in the ACP, a recognized classification society must prepare, and receive Commandant (G–MSE) approval of, a U.S. Supplement to the recognized classification society's class rules. This supplement must include all regulations applicable for issuance of a Certificate of Inspection (COI) which are not, in the opinion of the Commandant, adequately established by either the class rules of that classification society or applicable international regulations.

§ 8.440 Vessel enrollment in the Alternate Compliance Program.

(a) In place of compliance with other applicable provisions of this title, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a COI may submit the vessel for classification, plan review and inspection by a recognized classification society authorized by the Coast Guard to determine compliance with applicable international treaties and agreements, the classification society's class rules, and the U.S. Supplement prepared by the classification society and accepted by the Coast Guard.

(b) A vessel owner or operator wishing to have a vessel inspected under paragraph (a) of this section shall submit an Application for Inspection of U.S. Vessel (CG–3752) to the cognizant OCMI, and indicate on the form that the inspection will be conducted by an authorized classification society under the ACP.

(c) Based on reports from an authorized classification society that a vessel complies with applicable international treaties and agreements, the classification society's class rules, and the U.S. Supplement prepared by the classification society and accepted by the Coast Guard, the cognizant OCMI may issue a certificate of inspection to the vessel. If the OCMI declines to issue a certificate of inspection even though the reports made by the authorized classification society indicate that the vessel meets applicable standards, the vessel owner or operator may appeal the OCMI decision as provided in subpart 1.03 of this chapter.

(d) If reports from an authorized classification society indicate that a vessel does not comply with applicable international treaties and agreements, the classification society's class rules, and the U.S. Supplement prepared by the classification society and accepted by the Coast Guard, the cognizant OCMI may decline to issue a certificate of inspection. If the OCMI declines to issue a certificate of inspection, the vessel owner or operator may:

(1) Correct the reported deficiencies and make arrangements with the classification society for an additional inspection;

(2) Request inspection by the Coast Guard under other provisions of this subchapter; or

(3) Appeal via the authorized classification society to the Chief, Office of Compliance, Commandant (G–MOC), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001.

§ 8.450 Termination of classification society authority.

(a) The Coast Guard may terminate an authorization agreement with a classification society to participate in the Alternate Compliance Program if:

(1) The Commandant revokes the classification society's recognition, as specified in § 8.260; or

(2) The classification society fails to comply with the conditions of the authorization agreement as specified in § 8.130.

(b) In the event that a flag administration of a country changes conditions related to the authority that is delegated to ABS, the Commandant may modify or revoke the Coast Guard's authorization of that classification society that has its headquarters in that country.

(c) Certificates issued by a classification society which has had its authorization to participate in the Alternate Compliance Program terminated will be subject to the provisions of § 8.330.

(d) Owners or operators of vessels enrolled in the ACP and classed by a classification society that has its authority to participate in the ACP terminated must:

(1) Change the classification society for the vessel to a classification society that is authorized to participate in the ACP; or

(2) Disenroll the vessel from the ACP.

(e) The Coast Guard will provide guidance to a vessel owner affected by the revocation of a classification society's authority to participate in the ACP. This will include notification of when the action required under paragraph (d) of this section must be completed.

PART 31—INSPECTION AND CERTIFICATION

7. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

8. Revise § 31.01–3 to read as follows:

§ 31.01–3 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of part 8 of this chapter.

(b) For the purposes of this section, a list of authorized classification societies is available from Commandant (G–MSE). Approved classification society rules and supplements are contained in 46 CFR § 8.110(b).

PART 69—MEASUREMENT OF VESSELS

9. The authority citation for part 69 continues to read as follows:

Authority: 46 U.S.C. 2301, 14103; 49 CFR 1.46.

10. Amend § 69.27 by redesignating paragraphs (b)(3), (b)(4) and (b)(5) as paragraphs (b)(4), (b)(5), and (b)(6), respectively and by adding a new paragraph (b)(3) to read as follows:

§ 69.27 Delegation of authority to measure vessels.

* * * * *

(b) * * *

(3) In lieu of the requirements in paragraphs (b)(1) and (2) of this section, is a recognized classification society under the requirements of 46 CFR part 8.

* * * * *

PART 71—INSPECTION AND CERTIFICATION

11. The authority citation for part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; 49 CFR 1.46.

12. Revise § 71.15–5 to read as follows:

§ 71.15–5 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of part 8 of this chapter.

(b) For the purposes of this section, a list of authorized classification societies is available from Commandant (G–MSE). Approved classification society rules and supplements are contained in 46 CFR 8.110(b).

PART 91—INSPECTION AND CERTIFICATION

13. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

14. Revise § 91.15–5 to read as follows:

§ 91.15–5 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of part 8 of this chapter.

(b) For the purposes of this section, a list of authorized classification societies is available from Commandant (G–MSE). Approved classification society rules and supplements are contained in 46 CFR 8.110(b).

PART 107—INSPECTION AND CERTIFICATION

15. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C 5115; 49 CFR 1.45; 1.46; § 107.05 also issued under authority of 44 U.S.C. 3507.

16. Revise § 107.205 to read as follows:

§ 107.205 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate

Compliance Program provisions of part 8 of this chapter.

(b) For the purposes of this section, a list of authorized classification societies is available from Commandant (G-MSE). Approved classification society rules and supplements are contained in 46 CFR 8.110(b).

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

17. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.110 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

18. In § 153.12, revise the introductory paragraph to read as follows:

§ 153.12 IMO certificates for United States ships.

Either a classification society authorized under 46 CFR part 8, or the Officer in Charge, Marine Inspection, issues a United States ship an IMO Certificate endorsed to allow the carriage of a hazardous material or NLS cargo in Table 1 of this part if the following requirements are met:

* * * * *

PART 154—SAFTEY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

19. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703, 9101; 49 CFR 1.46.

20. Revise § 154.19(a) introductory text to read as follows:

§ 154.19 U.S. flag vessel: IMO certificate issuance.

(a) Either a classification society authorized under 46 CFR part 8, or the Coast Guard Officer in Charge, Marine Inspection, issues an IMO Certificate to a U.S. flag vessel when requested by the owner or representative, if—

* * * * *

Dated: December 17, 1997.

R. C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–33477 Filed 12–23–97; 8:45 am]

BILLING CODE 4910–14–U

federal register

Wednesday
December 24, 1997

Part VIII

Department of Education

The International Research and Studies Program; Publication of the 1997 Annual Report; Notice

DEPARTMENT OF EDUCATION

The International Research and Studies Program; Annual Report

AGENCY: Department of Education.

ACTION: Publication of the 1997 annual report.

SUMMARY: Section 606 of the Higher Education Act of 1965 (HEA), as amended, authorizes the Secretary of Education to provide assistance to conduct research, studies, and surveys, and develop specialized instructional materials that further the purposes of Part A of Title VI of the HEA.

Purpose

Under the International Research and Studies Program, the Secretary of Education awards grants and contracts for—

(a) Studies and surveys to determine the needs for increased or improved instruction in foreign language, area studies, or other international fields, including the demand for foreign language, area, and other international specialists in government, education, and the private sector;

(b) Studies and surveys to assess the use of graduates of programs supported under this title by governmental, educational, and private sector organizations and other studies assessing the outcomes and effectiveness of programs so supported;

(c) Comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education;

(d) Research on more effective methods of providing instruction and achieving competency in foreign languages;

(e) The development and publication of specialized materials for use in foreign language, area studies, and other international fields, or for training foreign language, area, and other international specialists; and

(f) The application of performance tests and standards across all areas of foreign language instruction and classroom use.

1997 Program Activities

In fiscal year 1997, 21 new grants ($1,822,145) and 12 continuation grants ($962,523) were awarded under the International Research and Studies Program. All of these grants are active currently and will be monitored through progress reports submitted by grantees. Grantees have 90 days after the expiration of the grant to submit the products resulting from their research to the Department of Education for review and acceptance.

Completed Research

The first grants under the authority of section 606, previously authorized under section 605, were awarded in fiscal year 1981. Most of the research projects funded in FY 1981 through FY 1993 have been completed and reported in previous annual reports. However, a number of completed research projects resulting from grants made during prior fiscal years have been received during the past year. A listing of this completed research follows. Grants from fiscal years 1994, 1995, and 1996 are still ongoing, or have recently expired.

Title	Author/location
Analysis of pre- and post-Program Performance Data for Participants in the American Council of Teachers of Russian (ACTR) Semester Programs of Advanced Russian Study in Moscow and St. Petersburg.	ACTR and Bryn Mawr College, 1776 Massachusetts Avenue NW, Washington, DC 20036, Dan Davidson.
The Foreign Language and International Studies Program of Title VI of the Higher Education Act Part A, Section 606: An Assessment Study.	Georgetown University, Department of Linguistics, 37th and O Streets NW., Washington, DC 20057, Richard T. Thompson.
Learning Strategies in Elementary Schools Language Immersion Programs.	Georgetown University, Language Research Projects, 2600 Virginia Avenue NW., Washington, DC 20037–1905, Anna Uhl Chamot.
Teaching Materials Relating to the Middle East for Middle and Secondary School Teachers.	Emory University, Middle East Research, Program, 203 Bowden Hall, Atlanta, GA 30322, Kenneth W. Stein.
Learner's Dictionary of Haitian Creole	Indiana University, Ballantine Hall 604, Bloomington, IN 47405, Albert Valdman.
A Reference Grammar of Hausa	Indiana University, Institute for the Study of Nigerian Languages and Cultures, Memorial Hall 215, Bloomington, IN 47405–6701, Paul Newman.
Business Arabic—Language, Culture and Communication. Intermediate and Advanced Levels.	The University of Michigan, Department of Near Eastern Studies, 3,074 Frieze Building, Ann Arbor, MI 48109–1285, Raji Rammuny.
Teaching about the Americas: Electronic Curriculum	University of New Mexico, Latin American Institute, 801 Yale NE, Albuquerque, NM 87131–1016, Roma Arellano and Lisa Falk.
Foreign Language Registrations in U.S. Colleges and Universities Fall 1995.	Modern Language Association, 10 Astor Place, New York, NY 10003, Richard Brod.
Foreign Language Enrollments in Public Secondary Schools Fall 1994	American Council on the Teaching of Foreign Languages, 6 Executive Plaza, Yonkers, NY 10701, Jamie B. Draper and June H. Hicks.
Textbook Component of a Russian Language Video Course *When in Russia.*	State University of New York at Albany, Office for Research Administration 216, Albany, NY 12222, Sophia Lubensky.
The China Curriculum Development and Dissemination Project	The American Forum for Global Education, 120 Wall Street Suite 2600, New York, NY 10005, Hazel Sara Greenberg.
Implementation and Evaluation of an Innovative Japanese Program for Elementary School (FLES).	Carnegie Mellon University, Department of Modern Languages, Baker Hall 160, Pittsburgh, PA 15213–3890, Richard Tucker and Richard Donato.
Competency-Based Materials for the Teaching of Reading in Indonesian.	University of Wisconsin, Department of South Asian Studies, Madison, WI 53706, Ellen Rafferty.

Title	Author/location
Development of Instructional Materials about Africa for Elementary and Secondary School Levels of Education.	University of Wisconsin, African Studies Program, 205 Ingraham Hall, 1155 Observatory Drive, Madison, WI 53706, James Delehanty.

To obtain a copy of a completed study, contact the author at the given address.

FURTHER INFORMATION: For a copy of this report and further information regarding the International Research and Studies Program, write to Jose L. Martinez, Program Officer, International Education and Graduate Programs Service, United States Department of Education, 600 Independence Avenue, S. W., Washington, DC 20202–5247. Telephone number: (202) 401–9784.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternative format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. *Electronic Access to This Document*

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text of portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C.

Dated: December 16, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–33598 Filed 12–23–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
December 24, 1997

Part IX

Department of Education

National Institute on Disability and Rehabilitation Research; Public Meeting and Request for Comments; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Meeting

AGENCY: Department of Education.

ACTION: Notice of Public Meeting and Request for Comments.

SUMMARY: The National Institute on Disability and Rehabilitation Research (NIDRR) is interested in gathering information from consumers, families, service providers, advocacy organizations, community groups, State agencies, and other stakeholders on existing and future needs for assistive technology services and devices, systemic barriers to meeting those needs, and successful approaches that have been used to remove barriers to the acquisition of assistive technology services and devices for individuals with disabilities.

NIDRR invites interested parties to submit written comments or present oral comments at a public meeting on current assistive technology needs and issues, as well as future directions for meeting those needs. The purpose of the meeting is to help formulate future policy related to assistive technology for persons with disabilities.

DATE AND TIME: The public meeting is scheduled to be held on Thursday, January 15, 1998 from 9:30 a.m. to 4:00 p.m.

ADDRESSES: The public meeting will be held at the Crystal Gateway Marriott at 1700 Jefferson Davis Highway, Arlington, Virginia.

COMMENTS: Persons desiring to provide oral comments at the public meeting should telephone Ms. Nell Bailey on (703) 524–6686, ext. 305. Individuals who use a telecommunications device for the deaf (TDD) may call 703–524–6639. Requests to provide oral comments may also be sent through the Internet: nbailey@resna.org.

NIDRR invites written comments from those who will be unable to provide oral comments at the public meetings. Written comments should be received by April 30, 1998. Written comments should be addressed to Ms. Nell Bailey, RESNA Technical Assistance Project, 1700 N. Moore St., Suite 1540, Arlington, VA 22209. Written comments may also be sent through the Internet: nbailey@resna.org.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g. interpreting service, assistive listening device, or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

FOR FURTHER INFORMATION CONTACT: Nell Bailey. Telephone: (703) 524–6686, ext. 305. Individuals who use a telecommunications device for the deaf (TDD) may call (703) 524–6639.

Individuals with disabilities who plan to attend the meeting and require reasonable accommodations should submit the request two week in advance of the meeting to Nell Bailey. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Nell Bailey.

SUPPLEMENTARY INFORMATION: There will be additional public meetings in other regions of the country during the months of February, March and April, 1998. The dates and locations of these meetings will be announced in a separate **Federal Register** notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text of portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register.**

Dated: December 18, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–33599 Filed 12–23–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
December 24, 1997

Part X

The President

Memorandum of December 19, 1997—Delegation of Authority Under Section 1212 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85)

Federal Register
Vol. 62, No. 247
Wednesday, December 24, 1997

Presidential Documents

Title 3—

The President

Memorandum of December 19, 1997

Delegation of Authority Under Section 1212 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85)

Memorandum for the Secretary of Commerce

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate the functions and authorities conferred upon the President by section 1212 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) to the Secretary of Commerce, who is authorized to redelegate these functions and authorities consistent with applicable law.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to published this memorandum in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, December 19, 1997.

[FR Doc. 97–33838
Filed 12–23–97; 8:45 am]
Billing code 3510–BP–M

Reader Aids

Federal Register

Vol. 62, No. 247

Wednesday, December 24, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10
65197–65308	11
65309–65592	12
65593–65740	15
65741–65990	16
65991–66250	17
66251–66494	18
66495–66812	19
66813–66972	22
66973–67256	23
67257–67548	24

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987
7061 66251

Executive Orders:
13069 65989
13070 66493

Administrative Orders:

Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005
No. 96–7 of December 5, 1997 66253
No. 96–8 of December 5, 1997 66255

5 CFR

213 63627
315 63627
410 63630
531 65311
532 ..... 66973, 67257, 67258
551 67238

Proposed Rules:
831 67295
842 67295
870 67295
890 67295
591 63630
1201 66813

7 CFR

2 65593
17 63606
58 66257
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741, 65991, 67117
927 66495
1209 66973
1412 63441
1944 67216
2003 67258

Proposed Rules:
51 66033
70 63471
205 65850
610 64174
729 63678
800 66036
810 66036
966 66312
980 66312
985 67297
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

50 66259
78 ..... 64134, 65596
91 64265
93 64265
94 ..... 65747, 65999

Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 ..... 63825, 66977
70 63825
73 63640
1008 67518
1703 66815

Proposed Rules:
40 65039
50 ..... 63892, 63911, 66038
70 63911

11 CFR

Proposed Rules:
100 66832
102 67300
104 67300
108 67300
114 ..... 65040, 66832

12 CFR

8 64135
202 66412
203 66259
226 ..... 63441, 66179
265 64996
506 ..... 66260, 67117
516 64138
543 64138
544 ..... 66260, 67117
545 ..... 64138, 66260, 67117
552 ..... 64138, 66260, 67117
556 64138
559 ..... 66260, 67117

560.....66260, 67117
561.....66260, 67117
563.....64138, 66260, 67117
565.....66260, 67117
567.....66260, 67117
575.....66260, 67117
614.....63644, 66816
703.....64146
704.....64148
790.....65197
791.....64266
934.....65197
960.....66977
1806.....64440

Proposed Rules:

225.....64997
226.....64769
404.....64177
405.....64177
708a.....64185
708b.....64187

14 CFR

39.....63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750, 66001, 66264, 66266, 66268, 66269, 66271, 66498, 66500, 66502, 66506, 66508, 66511, 66512, 66980
71.....64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606, 66179, 66818, 67265, 67266, 67267
73.....65359, 65360, 66002, 67268, 67269
91.....66248
93.....66248
95.....65016, 65361, 65363
97.....63447, 63449, 63451
121.....65202, 66248
135.....66248
255.....63837, 66272
1260.....63452

Proposed Rules:

39.....63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65768, 66315, 66317, 66560, 66561, 66562, 66563, 66565, 66567, 67300, 67303
71.....63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631, 66838, 66840

15 CFR

295.....64682
922.....66003

Proposed Rules:

806.....65043
960.....65384

17 CFR

15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

Proposed Rules:

1.....66569
33.....66569

18 CFR

35.....64688
37.....64715
401.....64154

19 CFR

4.....66521

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:

10.....67120
25.....67120
211.....64188
422.....63681

21 CFR

5.....67270
101.....63647, 63653, 64634, 66275
179.....64102, 64107
211.....66522
500.....66982
520.....65020
522.....66983
524.....65752
558.....66522, 66984, 66985, 66986, 67273
806.....67274
866.....66003

Proposed Rules:

200.....64048
801.....67011
803.....67011
804.....67011
806.....67011
807.....67011
808.....65384, 66179
810.....67011
820.....67011
821.....67011
876.....65770
1002.....67011
1020.....65235, 67011
1308.....64526

22 CFR

120.....67274
123.....67274
124.....67274
126.....67274
127.....67274
129.....67274

Proposed Rules:

22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:

655.....64324

24 CFR

100.....66424
103.....66424
201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

Proposed Rules:

180.....66488

25 CFR

Proposed Rules:

514.....65775

26 CFR

25.....66987
54.....66932
602.....66987

Proposed Rules:

1.....64190, 66575
31.....67304
52.....67013
54.....66967

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203, 66275
2590.....66932
4011.....65607
4022.....65607
4044.....65609, 65610

Proposed Rules:

1910.....65388
2550.....66908
4022.....66319

30 CFR

206.....65753
250.....67278
251.....67278
901.....66819

Proposed Rules:

56.....65777, 67013
57.....64789, 65777, 67013
62.....65777, 67013
70.....65777, 67013
71.....65777, 67013
75.....64789
913.....67014
917.....63684, 65044
926.....63685, 64327
936.....65632
946.....67016

31 CFR

500.....64720

Proposed Rules:

356.....64528

32 CFR

175.....66523
199.....66989, 66992
318.....67291
320.....65020

Proposed Rules:

199.....64191, 67018
901.....63485
989.....67305

33 CFR

96.....67492
100.....65021, 66995
117.....63847, 66005, 66006
151.....67526
160.....65203
165.....65022

Proposed Rules:

62.....67031
66.....67031
117.....66039

36 CFR

701.....64279

Proposed Rules:

1.....63488
14.....63488
242.....66216
327.....64192
1190.....67320
1191.....67320

37 CFR

202.....63657, 66822

Proposed Rules:

253.....63502, 65777
255.....63506, 65778

38 CFR

4.....65207
17.....64722
21.....63847, 63848, 66277
36.....63454

Proposed Rules:

21.....66320
20.....64790

39 CFR

111.....63850
255.....66996
262.....64280
265.....64280
954.....66997

40 CFR

9.....66278
52.....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613, 66007, 66279, 66822, 66998, 67000, 67002, 67004, 67006
58.....67009
62.....65616
63.....64736, 65022
64.....63662
70.....63662
71.....63662
72.....66278
73.....66278
74.....66278
75.....66278
77.....66278
78.....66278
80.....63853
81.....64284, 64725, 65025
180.....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369, 66008, 66014, 66020
185.....64048, 64284, 64287, 66020
186.....64048, 66020
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636

300.....65225
721.....64738

Proposed Rules:

51.....64532, 66841
52.....63687, 64329, 64543, 647389, 65046, 65634, 66040, 66042, 66043, 66046, 66576, 66843, 67034, 67035, 67320
62.....65635
63.....65049, 66049
80.....63918
81.....63687, 66578
85.....66841
112.....63812
144.....67035
146.....67035
194.....64327
441.....66182, 67323
721.....64738
799.....67036, 67038, 67466

41 CFR

51–2.....66527
51–4.....66527
51–6.....66527
60–1.....66970
60–999.....66970
105–60.....64740
301.....63798

42 CFR

416.....66726
417.....63669
482.....66726
483.....67174
485.....66726
489.....66726

Proposed Rules:

1001.....63689, 65049

43 CFR

418.....66442
3740.....65376
3810.....65376
3820.....65376

Proposed Rules:

4.....64544

44 CFR

61.....66026

45 CFR

Ch. XI.....66529
146.....66932
205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301
1110.....66825

Proposed Rules:

1302.....65778

46 CFR

1.....67526
2.....67492
8.....67526
31.....67492, 67526
69.....67526
71.....67492, 67526
91.....67492, 67526
107.....67492, 67526
114.....64303
115.....67492
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
126.....67492
153.....67526
154.....67526
175.....64303, 65739, 67492
176.....67492
177.....64303
178.....64303
180.....64303
185.....64303
189.....67492
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
69.....65619, 66029
73.....63674, 65392, 65764, 65765, 65766, 66030, 66031, 66294, 66295, 66530, 66826
74.....65392

Proposed Rules:

1.....65780, 66321
21.....65780
32.....65053
73.....63690, 65781, 65782, 66323, 66324
74.....65780

48 CFR

Ch. 1.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19.....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31.....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42.....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52.....64914, 64915, 64916
53.....64914, 64916, 64934, 64936, 64940
5231.....66826

Proposed Rules:

204.....65782
1843.....64545
1852.....64545

49 CFR

171.....65188, 66900
172.....66898
174.....66898
175.....66898
176.....66898
177.....66898
194.....67292
199.....67293
219.....63464, 63675
225.....63675
240.....63464
1241.....65378

Proposed Rules:

Ch. X.....64193
172.....66903
174.....66903
175.....66903
176.....66903
177.....66903
195.....65635
213.....65401
243.....65479
572.....64546

50 CFR

17.....64306, 66295
20.....63608
222.....63467
285.....66828
600.....66531
622.....63677, 66304, 67010
648.....63872, 64765, 66304
660.....63876
679.....63877, 63878, 63880, 64760, 65379, 65622, 65626, 66031, 66311, 66829

Proposed Rules:

14.....64335
17.....64337; 64340, 64799, 64800, 65237, 65783, 65787, 66325, 66583, 67041, 67324
23.....64347
100.....66216
226.....66584
227.....66325
229.....65402
425.....66325
600.....65055, 66844
622.....65056
648.....65055, 66844
660.....66049
679.....63690, 65402, 65635, 65638, 65644, 67041

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 24, 1997

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Pears (Bartlett) grown in Oregon et al.; published 11-24-97
AGRICULTURE DEPARTMENT
Farm Service Agency
Organization, functions, and authority delegations:
Rural Development Mission Area; published 12-24-97
AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Organization, functions, and authority delegations:
Rural Development Mission Area; published 12-24-97
AGRICULTURE DEPARTMENT
Rural Housing Service
Organization, functions, and authority delegations:
Rural Development Mission Area; published 12-24-97
AGRICULTURE DEPARTMENT
Rural Utilities Service
Organization, functions, and authority delegations:
Rural Development Mission Area; published 12-24-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Decoquinate and bacitracin zinc with roxarsone; published 12-24-97
Organization, functions, and authority delegations:
Center for Devices and Radiological Health; published 12-24-97
PERSONNEL MANAGEMENT OFFICE
Employment:
Reduction in force—
Retention service credit based on job performance, and other retention rights; published 11-24-97
STATE DEPARTMENT
International traffic in arms; miscellaneous amendments; published 12-24-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Walnuts grown in California; comments due by 12-29-97; published 10-30-97
AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Fresh market tomatoes, etc.; comments due by 12-29-97; published 12-2-97
COMMERCE DEPARTMENT
Export Administration Bureau
Export licensing:
Commerce control list—
Specially designed; definition; comments due by 12-29-97; published 10-29-97
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering sea and Aleutian Islands groundfish; comments due by 1-2-98; published 12-17-97
Caribbean, Gulf and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 12-29-97; published 12-10-97
Carribbean, Gulf, and South Atlantic fisheries—
Snapper grouper fishery; comments due by 12-29-97; published 10-30-97
Magnuson Act provisions; comments due by 12-29-97; published 12-10-97
Land Remote Sensing Policy Act of 1992:
Private land remote-sensing space systems; licensing provisions; comments due by 1-2-98; published 11-3-97
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Fuels and fuel additives—
Northern Mariana Islands; anti-dumping and detergent additization requirements for conventional gasoline; exemption petition; comments due by 1-2-98; published 12-3-97
Northern Mariana Islands; anti-dumping and detergent additization requirements for conventional gasoline; exemption petition; comments due by 1-2-98; published 12-3-97
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 1-2-98; published 12-2-97
Air quality planning purposes; designation of areas:
Alaska; comments due by 1-2-98; published 12-2-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile; comments due by 12-29-97; published 10-29-97
Avermectin; comments due by 12-29-97; published 10-29-97
Lambda-cyhalothrin; comments due by 12-29-97; published 10-29-97
Tebuconazole; comments due by 12-29-97; published 10-29-97
Water programs:
Oil pollution prevention and response; non-transportation related onhore and offshore facilities; comments due by 1-2-98; published 12-2-97
FARM CREDIT ADMINISTRATION
Farm credit system:
Loan policies and operations—
Loan sales into secondary markets; relief from minimum stock purchase and borrower rights requirements; comments due by 1-2-98; published 12-2-97
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Arizona; comments due by 12-29-97; published 11-19-97
Mississippi; comments due by 12-29-97; published 11-19-97
North Carolina et al.; comments due by 12-29-97; published 11-19-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Salt, salt substitutes, seasoning salt (e.g., garlic salt); serving sizes; reference amount; comments due by 1-2-98; published 12-2-97
HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Physician fee schedule (1998 CY); payment policies and relative value unit adjustments and clinical psychologist fee schedule; establishment; comments due by 12-30-97; published 10-31-97
Physician fee schedule (1998 CY); payment policies and relative value unit adjustments
Practice expense relative value units adjustments; implementation delay; comments due by 12-30-97; published 10-31-97
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Northern goshawk; comments due by 12-29-97; published 9-29-97
NUCLEAR REGULATORY COMMISSION
Production and utilization facilities; domestic licensing:
Light-water power reactors; criticality accident requirements; comments due by 1-2-98; published 12-3-97
Production and utilization facitilities; domestic licensing:
Light-water power reactors; criticality accident requirements; comments due by 1-2-98; published 12-3-97

PERSONNEL MANAGEMENT OFFICE
Absence and leave:
Emergency leave transfer program; comments due by 1-2-98; published 11-3-97
Excepted service:
Student educational employment program; comments due by 1-2-98; published 12-2-97
Health benefits, Federal employees:
Disenrollment; comments due by 12-29-97; published 11-28-97
SECURITIES AND EXCHANGE COMMISSION
Securities:
Shareholder proposals; comments due by 1-2-98; published 11-25-97
Small entities; penalty-reduction policy statement; comments due by 12-31-97; published 4-4-97
STATE DEPARTMENT
Consular services; fee schedule:
Adjustments; comments due by 12-31-97; published 12-1-97
TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Mississippi River, LA; regulated navigation area; comments due by 12-29-97; published 10-30-97
TRANSPORTATION DEPARTMENT
Privacy Act; implementation; comments due by 12-29-97; published 11-28-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Air tour operators; Hawaii; comments due by 12-29-97; published 10-30-97
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2)—
Noise limitations; comments due by 12-30-97; published 10-31-97
Airworthiness directives:
Airbus; comments due by 12-29-97; published 11-28-97
Airbus Industrie; comments due by 12-31-97; published 12-1-97
Boeing; comments due by 12-29-97; published 10-28-97
Dornier; comments due by 12-29-97; published 11-28-97
Empresa Brasileira de Aeronautica S.A.; comments due by 12-29-97; published 11-28-97
Extra Flugzeugbau GmbH; comments due by 12-29-97; published 10-23-97
Fairchild; comments due by 1-2-98; published 11-3-97
Fokker; comments due by 12-29-97; published 11-28-97
General Electric Co.; comments due by 12-30-97; published 10-31-97
Airworthiness standards:
Special conditions—
Learjet Inc. model 55 airplane; comments due by 12-29-97; published 11-12-97
Atlantic high offshore airspace area; comments due by 1-2-98; published 11-18-97
Class E airspace; comments due by 12-29-97; published 11-20-97
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Leak detection industry standard; incorporation by reference; comments due by 12-29-97; published 10-29-97
TREASURY DEPARTMENT
Customs Service
Export control:
Used motor vehicles; exportation requirements; comments due by 12-29-97; published 10-28-97

LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws will be published in the **Federal Register** on December 31, 1997.

Public Laws Electronic Notification Service (PENS)

Note: In order to provide better and faster service, PENS will begin using a new mailing-list management software. Effective January 5, 1997, if you wish to continue or begin receiving notification of newly enacted Public Laws, you will need to resubscribe or subscribe to PENS by sending E-mail to **LISTPROC@ETC.FED.GOV** with the message:

SUBSCRIBE PUBLAWS-L FIRSTNAME LASTNAME

The text of laws is not available through this service and we cannot respond to specific inquiries sent to this address.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before the shown date.

```
AFR  SMITH212J                DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before the shown date.

```
AFRDO  SMITH212J              DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and List of CFR Sections Affected (LSA), at $607 each per year.

____ subscriptions to **Federal Register**, *daily only* (FRDO), at $555 each per year.

The total cost of my order is $_____. (Price includes regular domestic postage and handling, and is subject to change.) International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

105th Congress, 2nd Session, 1998

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 105th Congress, 2nd Session, 1998.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code: * 6216

S3

☐ **YES,** enter my subscription(s) as follows:

Charge your order. It's Easy!

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 105th Congress, 2nd Session, 1998 for $190 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) 12/97

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...



Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $220.00
Six months: $110.00

Code of Federal Regulations:

Current year (as issued): $247.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5419

Charge your order. It's Easy!
Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** enter the following indicated subscriptions in 24x microfiche format:

___ **Federal Register** (MFFR) ☐ One year at $220 each ☐ Six months at $110

___ **Code of Federal Regulations** (CFRM7) ☐ One year at $247 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



(Rev. 12/97)

Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	**$51.00**
1993 (Book II)	**$51.00**
1994 (Book I)	**$56.00**
1994 (Book II)	**$52.00**
1995 (Book I)	**$60.00**
1995 (Book II)	**$65.00**
1996 (Book I)	**$66.00**

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.access.gpo.gov/su_docs/

To connect using telnet, open swais.access.gpo.gov and login as guest (no password required).

To dial directly, use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).



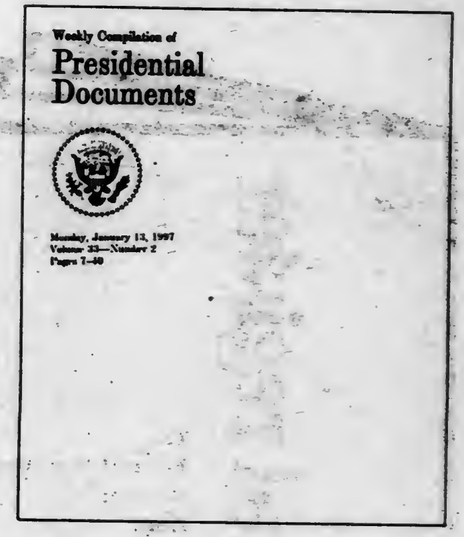
You may also connect using local WAIS client software. For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 4/23)

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
*** 5420**

Charge your order. It's Easy! VISA

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES,** please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $137.00 First Class Mail ☐ $80.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, Zip code)

_____
(Daytime phone including area code)

_____
(Purchase order no.)

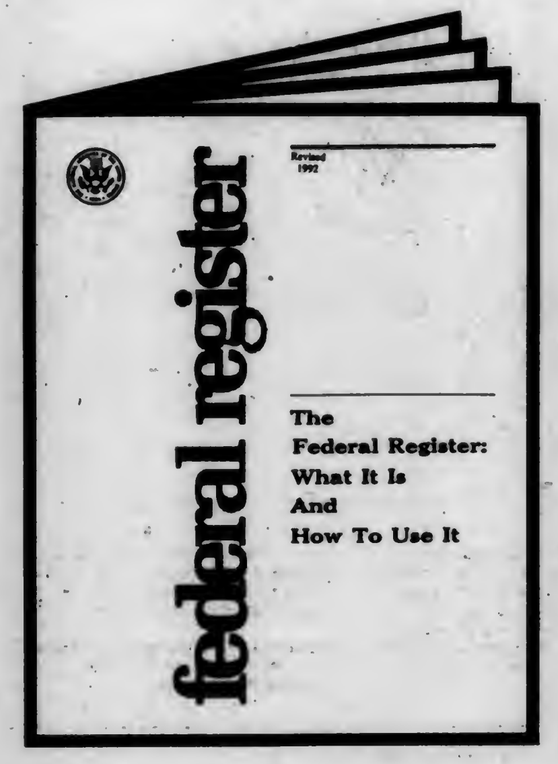
For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Authorizing signature) 1/97

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

Charge your order. It's Easy!
To fax your orders (202)-512-2250

☐ **YES**, please send me the following:

_____ copies of **The Federal Register - What It Is and How To Use It**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954



Printed on recycled paper

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

12–29–97
Vol. 62 No. 248

federal register

Monday
December 29, 1997

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 98 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

12–29–97
Vol. 62 No. 248
Pages 67549–67692

federal register

Monday
December 29, 1997

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530; 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 248
Monday, December 29, 1997

Agriculture Department
See Forest Service
See Rural Business-Cooperative Service

Air Force Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67631

Army Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Long-range nonlethal bullet, etc., 67632
Method to control computers by mental thought, etc., 67632

Coast Guard
RULES
Regattas and marine parades:
Events requiring permits, written notices, or neither; identification, 67570

Commerce Department
See Export Administration Bureau
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Grants and cooperative agreements; availability, etc.:
National Capital arts and cultural affairs program, 67620

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bahrain, 67620–67621
Brazil, 67621–67622
Dominican Republic, 67622–67623
El Salvador, 67623–67624
Guatemala, 67624
Indonesia, 67625–67626
Mauritius, 67626–67627
Oman, 67627
Pakistan, 67627–67628
Singapore, 67628–67629
Uruguay, 67629–67630

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Frozen pork bellies, 67630
New York Futures Exchange—
NYSE small composite index, 67630–67631

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 67631

Defense Department
See Air Force Department
See Army Department

Drug Enforcement Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67661–67662

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Federal TRIO programs (training program), 67692
Postsecondary education:
Accrediting agencies and State approval agencies for vocational and nurse education institutions; national recognition, 67632–67634

Employment Standards Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67662–67663
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 67663–67664

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Secretary of Energy Advisory Board, 67634

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Illinois, 67570–67572
Hazardous waste program authorizations:
Louisiana, 67572–67585
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Illinois, 67601
Hazardous waste program authorizations:
Louisiana, 67601–67602
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67637–67639
Meetings:
Local Government Advisory Committee, 67639

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Meetings:
Sensors and Instrumentation Technical Advisory Committee, 67618

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Reduced vertical separation minimum airspace operations; U.S.-registered aircraft requirements Comments disposition, 67555–67556

Airworthiness directives:
Boeing, 67550–67551
Empresa Brasileria de Aeronautica S.A., 67552–67553
Standard instrument approach procedures, 67556–67560
VOR Federal airways, 67553–67555
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 67685
Passenger facility charges; applications, etc.:
Akron-Canton Regional Airport, OH, 67685–67686
Rhinelander-Oneida County Airport, WI, 67686

Federal Communications Commission
NOTICES
Reporting and recordkeeping requirements, 67639–67640
Rulemaking proceedings; petitions filed, granted, denied, etc.; correction, 67640

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Nebraska, 67640
Northern Mariana Islands, 67640–67641

Federal Energy Regulatory Commission
NOTICES
Environmental statements; notice of intent:
ANR Pipeline Co., 67635–67636
Hydroelectric applications, 67636–67637
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 67634–67635
Michigan Gas Storage Co., 67635

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 67641
Permissible nonbanking activities, 67641–67642
Netherlands' government debt market; treatment of U.S. companies; study and comment request, 67642

Federal Trade Commission
RULES
Appliances, consumer; energy consumption and water use information in labeling and advertising:
Residential energy sources; average unit energy costs, 67560–67563

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
NOTICES
Migratory bird hunting and conservation stamp (Duck Stamp) contest, 67652–67653

Forest Service
NOTICES
Environmental statements; notice of intent:
Okanogan and Wenatchee National Forests, WA, 67616–67617

Health and Human Services Department
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
RULES
Group health plans; access, portability, and renewability requirements
Health flexible spending arrangements; clarification, 67688–67689
Individuals denied coverage due to health status-related factor; clarification, 67689–67690

Housing and Urban Development Department
NOTICES
Organization, functions, and authority delegations:
Personnel management authority; Deputy Assistant Secretary for Operations et al., 67649

Indian Affairs Bureau
NOTICES
Resource management plans, etc.:
Coquille Forest, OR, 67650

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Excise taxes:
Deposit safe harbor rules and fuel floor stocks taxes, 67568–67570
Group health plans; access, portability, and renewability requirements
Health flexible spending arrangements; clarification, 67688–67689
Individuals denied coverage due to health status-related factor; clarification, 67689–67690
PROPOSED RULES
Excise taxes:
Deposit safe harbor rules and fuel floor stocks taxes; cross reference, 67589–67590

International Trade Commission
NOTICES
Import investigations:
Ethyl alcohol for fuel use from Carribean Based Initiative (CBI) beneficiary countries—
Based quanity determination, 67657–67658

Justice Department
See Drug Enforcement Administration
See Parole Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67658–67661

Labor Department
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
PROPOSED RULES
Minerals management:
Special mining laws, areas subject to—
Bodie Bowl, CA; mineral activities; withdrawn, 67602
NOTICES
Environmental statements; availability, etc.:
Imperial Project gold mining/processing operation, CA, 67650
South Dakota Resource Area, ND, et al., 67651–67652
Meetings:
Resource advisory councils—
Northwest California, 67649–67650

Medicare Payment Advisory Commission
NOTICES
Meetings, 67667

Minerals Management Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67653–67654

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67664–67665

National Credit Union Administration
RULES
Credit unions:
Central liquidity facility; first priority security interest in specific assets, 67549–67550

National Institute of Standards and Technology
NOTICES
Meetings:
Manufacturing Extension Partnership National Advisory Board, 67618

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67642–67644
Grants and cooperative agreements; availability, etc.:
Ischemia, tissue protection from cell injury by; materials and methods development, evaluation, and commercialization, 67644–67645
Meetings:
National Institute of Neurological Disorders and Stroke, 67645
Research Grants Division initial review groups, 67645–67649

National Oceanic and Atmospheric Administration
RULES
Fishery products, etc,:
Inspection and certification fees and charges, 67585–67588
PROPOSED RULES
Fishery conservation and management:
Magnuson Act provisions—
National standards guidelines, 67608–67610
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 67610–67615
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Vandenberg AFB CA; Delta II, Titan II, Titan IV, and Taurus launch vehicles, 67618–67620

National Park Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67654–67656
Environmental statements; availability, etc.:
Soccoro County, NM, et al.; AT&T Corp. P140 coaxial cable removal project, 67656–67657
Meetings:
Acadia National Park Advisory Commission, 67657

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consumers Energy Co., 67667–67669
Applications, hearings, determinations, etc.:
Baltimore Gas Electric Co., 67667

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 67665–67666
Meetings:
Maritime Advisory Committee for Occupational Safety and Health, 67666

Office of United States Trade Representative
See Trade Representative, Office of United States

Parole Commission
NOTICES
Meetings; Sunshine Act, 67662

Pension and Welfare Benefits Administration
RULES
Group health plans; access, portability, and renewability requirements
Health flexible spending arrangements; clarification, 67688–67689
Individuals denied coverage due to health status-related factor; clarification, 67689–67690

Public Health Service
See National Institutes of Health

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Metric equivalents, 67602–67608
Pipeline Personnel Qualification Negotiated Rulemaking Committee—
Meetings, 67608

Rural Business-Cooperative Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Rural economic development loan and grant program; maximum dollar amount on loan and grant awards, 67617–67618

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 67672

MBS Clearing Corp., 67672–67673
Pacific Exchange, Inc., 67674–67680
Philadelphia Stock Exchange, Inc., 67680–67681
Applications, hearings, determinations, etc.:
Sierra Variable Trust et al., 67669–67671

State Department
RULES
Visas; immigrant and nonimmigrant documentation:
Consular posts abroad; affidavits of support; uniform acceptance procedures, 67563–67564
Ineligibility grounds, 67564–67568

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 67590–67592
Texas, 67592–67601

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Harmonized Tariff Schedule:
Technical corrections, 67681–67683
Trade Policy Staff Committee:
World Trade Organization; multilateral negotiations on expansion of list of pharmaceutical products receiving zero duties, 67683–67684

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 67684–67685

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration; Department of Labor, Pension and Welfare Benefits Administration; Department of the Treasury, Internal Revenue Service, 67688–67890

Part III
Department of Education, 67692

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

12 CFR
725.....67549

14 CFR
39 (2 documents).....67550, 67552
71.....67553
91.....67555
97 (3 documents).....67556, 67557, 67559

16 CFR
305.....67560

22 CFR
40 (2 documents).....67563, 67564

26 CFR
40.....67568
54 (2 documents).....67688, 67689
Proposed Rules:
40.....67589

29 CFR
2590 (2 documents).....67688, 67689

30 CFR
Proposed Rules:
938.....67590
943 (3 documents).....67592, 67596, 67598

33 CFR
100.....67570

40 CFR
62.....67570
271.....67572
272.....67578
Proposed Rules:
62.....67601
271.....67601
272.....67601

43 CFR
Proposed Rules:
3820.....67602

45 CFR
144 (2 documents).....67689
146 (2 documents).....67689

49 CFR
Proposed Rules:
191.....67602
192 (2 documents).....67602, 67608
193.....67602
194.....67602
195 (2 documents).....67602, 67608

50 CFR
260.....67585
Proposed Rules:
600.....67608
660.....67610

Rules and Regulations

Federal Register
Vol. 62, No. 248
Monday, December 29, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 725

Central Liquidity Facility

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The National Credit Union Central Liquidity Facility (the Facility), a mixed-ownership government corporation within the NCUA, serves as a liquidity source for its member credit unions. The NCUA Board is issuing this rule to permit the Facility to take, in lieu of a blanket security interest, a first priority security interest in specific assets of the credit union with a net book value at least equal to 110% of the amounts owed on the Facility advance or Agent loan. The final rule will provide credit unions with greater flexibility in their normal operations while ensuring that the Facility is adequately protected for any loans that it makes.

DATES: Effective January 28, 1998.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, President, National Credit Union Central Liquidity Facility, 1775 Duke Street, Alexandria, VA 22314–3428. Telephone Number (703) 518–6391 or (703) 518–6363.

SUPPLEMENTARY INFORMATION:

A. Background

Public Law 96–630, Title XVIII, 12 U.S.C. 1795, *et seq.*, enacted in 1979, created the Facility. Its purpose is to improve general financial stability by meeting the liquidity needs of credit unions and thereby encourage savings, support consumer and mortgage lending, and provide basic financial resources to all segments of the economy.

Most credit unions are members of a corporate credit union. In addition, credit unions are now eligible for Federal Home Loan Bank membership. Both corporate credit unions and Federal Home Loan Banks require that a credit union provide collateral for borrowing. In addition, credit unions may also borrow from other financial institutions and are required to provide collateral for such borrowings. While multiple security agreements are not prohibited under the current regulation, the presence of competing security interests could result in the Facility being under-collateralized for any advances.

B. Comments

Twenty-six comment letters were received. Of these, eleven were received from corporate credit unions, eleven from natural person credit unions and four from credit union associations. All twenty-six concurred with the final rule change. One natural person credit union commented that the requirement to provide collateral with a net book value of at least 110 percent of the amount owed appeared to be excessive. They recommend that NCUA establish a loan-to-value ratio of 100 percent unless an assessment of risk, i.e., as indicated by the credit union's last examination, indicated the need for a lower loan-to-value. The Board continues to believe that collateral with a net book value of at least 110 percent of the amount owed is needed to adequately protect the Facility.

Collateral—Net Book Value

Currently, Section 725.19 requires that the Facility secure each loan with a blanket security interest in all of the assets of the member credit union. The final rule gives the Facility the option of taking either a blanket security interest or a first priority security interest in specific collateral of the credit union with a net book value at least equal to 110% of the amounts owed on the Facility advance or Agent loan. This requirement will permit a credit union to provide collateral to other lenders and still have the ability to borrow from the Facility, so long as it has other assets with sufficient net book value to support the Facility advance or Agent loan. It also will permit the Facility to accept a security interest in all assets of the credit union as collateral for a Facility advance to a Regular member. However, the net book value of the assets will still have to be at least equal to 110% of the amounts owed on the Facility advance or Agent loan.

Superior Perfected Interest

In calculating the value of the assets covered by the security interest, assets in which any third party has a superior perfected interest will be excluded.

Section 208 Assistance

The final rule also expressly authorizes the Facility to accept the guarantee of the National Credit Union Share Insurance Fund as collateral for borrowings by a credit union. This provision facilitates advances by the Facility to credit unions receiving assistance under Section 208 of the Federal Credit Union Act.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that this final rule will not have a significant impact on a substantial number of small credit unions (those under $1 million in assets). The final rule will make it easier for credit unions to obtain loans from both Facility and other sources. Accordingly, a regulatory flexibility analysis was not required.

Paperwork Reduction Act

The final rule has no information collection requirements; therefore, no Paperwork Reduction Act analysis was required.

Executive Order 12612

The NCUA Board has determined that the final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects in 12 CFR Part 725

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 18, 1997.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, NCUA amends 12 CFR part 725 as set forth below:

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

1. The authority citation for part 725 continues to read as follows:

Authority: Secs. 301–307 Federal Credit Union Act, 92 Stat. 3719–3722 (12 U.S.C. 1795–1795f).

2. Section 725.19 is revised to read as follows:

§ 725.19 Collateral requirements.

(a) Each Facility advance and each Agent loan shall be secured by a first priority security interest in collateral of the credit union with a net book value at least equal to 110% of all amounts due under the applicable Facility advance or Agent loan, or by guarantee of the National Credit Union Share Insurance Fund.

(b) The Facility may accept as collateral for each Facility advance to a Regular member, a security interest in all assets of the Regular member; provided however, that the value of any assets in which any third party has a perfected security interest that is superior to the security interest of the Facility shall be excluded for purposes of complying with the requirements of paragraph (a) of this section.

(c) The Facility may accept as collateral for each Facility advance to an Agent member, a security interest in the Agent loans for which the Facility advance was made; provided however, that the collateral for such Agent loan meets the requirements of paragraph (a) of this section.

[FR Doc. 97–33750 Filed 12–24–97; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–294–AD; Amendment 39–10264; AD 97–26–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200, 747–300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–200, 747–300, 747SR, and 747SP series airplanes. This action requires a one-time inspection to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. This amendment is prompted by reports that fatigue cracking was found on longeron splice fittings. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could result in reduced controllability of the horizontal stabilizer.

DATES: Effective January 13, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–294–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received three reports indicating that fatigue cracking was found on the longeron splice fittings at stringer 11 on Boeing Model 747SR and 747–200 series airplanes. The most recent cracking was detected on an airplane that had accumulated 62,783 total flight hours and 16,867 total flight cycles. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced controllability of the horizontal stabilizer.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2410, Revision 2, dated October 30, 1997, including Addendum, which describes procedures for repetitive detailed inspections to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. The alert service bulletin specifies various compliance times for groups of airplanes having different flight hour and flight cycle thresholds.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747–100, 747–200, 747–300, 747SR, and 747SP series airplanes of the same type design, this AD requires a one-time detailed inspection to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Differences Between the AD and the Alert Service Bulletin

The AD differs from the previously described alert service bulletin in that the AD requires a one-time inspection and shortened compliance time, rather than the repetitive inspections and multiple compliance times specified in the referenced alert service bulletin. The recent report of cracking detected on a Boeing Model 747–200 series airplane at a relatively low threshold has indicated the need for interim action requiring inspection at an early date, directed to those airplanes that have accumulated the highest number of flight hours or flight cycles (i.e., 78,000 total flight hours or 22,000 total flight cycles).

In addition, the AD differs from the alert service bulletin by providing a compliance period in terms of calendar time, rather than flight cycles/hours, for those airplanes that have exceeded the threshold. Due to the limited availability of replacement fittings, a 90-day compliance period is provided by this AD. This compliance period will allow the operators of affected airplanes an opportunity to schedule the inspection and have necessary replacement fittings available if cracks are found during the inspection.

Interim Action

This AD is considered to be interim action. The FAA is considering separate rulemaking action that would propose similar inspections at repetitive intervals for all airplanes affected by the previously described alert service bulletin.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–294–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–26–21 Boeing: Amendment 39–10264. Docket 97–NM–294–AD.

Applicability: Model 747–100, 747–200, 747–300, 747SR, and 747SP series airplanes having line positions 201 through 886 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the longeron splice fittings at stringer 11, which could result in reduced controllability of the horizontal stabilizer, accomplish the following:

(a) Perform a one-time detailed visual inspection to detect cracking of the longeron fittings at stringer 11, on the left and right sides at body station 2598, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2410, Revision 2, dated October 30, 1997, including Addendum. If any crack is detected, prior to further flight, replace the cracked fitting with a new fitting, in accordance with the alert service bulletin.

(1) Inspect prior to the accumulation of 22,000 total flight cycles or 78,000 total flight hours, whichever occurs first; or

(2) Inspect within 90 days after the effective date of this AD.

Note 2: Where there are differences between the AD and the alert service bulletin, the AD prevails.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2410, Revision 2, dated October 30, 1997, including Addendum. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 13, 1998.

Issued in Renton, Washington, on December 19, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33668 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–299–AD; Amendment 39–10265; AD 97–26–22]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all EMBRAER Model EMB–120 series airplanes. This action requires a one-time inspection of the movable backstop of the elevator pitch trim command system to ensure that it is installed correctly, and corrective action, if necessary. This action also requires installation of a guide to maintain the movable backstop in its correct position. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent a sudden change in pitch attitude caused by autopilot disconnect, which could result in reduced controllability of the airplane.

DATES: Effective January 13, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–299–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviação Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on all EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received reports of uncommanded reversion of the elevator trim tab during the descent phase with the autopilot descent mode engaged. In one case, the movable backstop of the elevator pitch trim command system was found to be out of its proper position, which caused the autopilot to disengage when it reached the pitch down stop position. In another instance, the movable backstop was found to be completely out of the cursor gearing. This condition, if not corrected, could result in a sudden change in pitch attitude and reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 120–27-A081, Change 01, dated October 9, 1997, which describes procedures for a one-time inspection of the movable backstop of the elevator pitch trim command system to ensure that it is installed correctly, and corrective action, if necessary. The alert service bulletin also describes procedures for installation of a guide to maintain the movable backstop in position in the spiral groove on the pitch trim right control wheel. The DAC classified this alert service bulletin as mandatory and issued Brazilian emergency airworthiness directive 97–09–08R1, dated October 23, 1997, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD will require accomplishment of the actions specified in the alert service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–299–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–26–22 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–10265. Docket 97–NM–299–AD.

Applicability: All Model EMB–120 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a sudden change in pitch attitude caused by autopilot disconnect, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 20 flight hours after the effective date of this AD, perform a one-time inspection of the movable backstop of the elevator pitch trim command system to ensure that it is installed correctly, in accordance with Part I of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 120–27–A081, Change 01, dated October 9, 1997. If any discrepancy is found, prior to further flight, accomplish follow-on corrective actions, in accordance with the alert service bulletin.

(b) Within 75 flight hours after the effective date of this AD, install a guide for the movable backstop of the elevator pitch trim command system, in accordance with Part II of the Accomplishment Instructions of EMBRAER Alert Service Bulletin 120–27–A081, Change 01, dated October 9, 1997.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with EMBRAER Alert Service Bulletin 120–27–A081, Change 01, dated October 9, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian emergency airworthiness directive 97–09–08R1, dated October 23, 1997.

(f) This amendment becomes effective on January 13, 1998.

Issued in Renton, Washington, on December 19, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–33667 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–13]

RIN 2120–AA66

Realignment of VOR Federal Airway; Dallas/Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This rule realigns Federal Airway 369 (V–369) located in the Dallas/Fort Worth, TX, area. Specifically, V–369 will be realigned to include the newly activated Groesbeck, TX, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Navigational Aid (NAVAID) as part of its route structure. As a result, the minimum en route altitude (MEA) on V–369 between the Dallas/Fort Worth (DFW) Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), TX, and the Navasota, TX, VORTAC will be lowered. Lowering the MEA increases the capacity of the airway because it increases the number of altitudes that are available for air traffic control assignment to airway users. Overall, this action increases the efficiency of operations in the Dallas/Fort Worth area.

DATES: Effective 0901 UTC, February 26, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before January 28, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 97–ASW–13, Federal Aviation

Administration, 2601 Meacham Boulevard, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The addition of Groesbeck VOR/DME along the centerline of the current V–369 and realigning the airway to include Groesbeck will not alter the airway track significantly and will benefit users of the airway. Since previous rulemaking actions similar to this one have not been controversial, the FAA does not anticipate any adverse comments on this case. Therefore, unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the specified closing date for comments will be considered, and this rule may be amended or withdrawn in light of comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ASW–13." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to 14 CFR part 71 realigns V–369 located in the Dallas/Fort Worth area. Currently, V–369 consists of one leg spanning 162 nautical miles (NM) from the Navasota VORTAC to the DFW VORTAC. Activation of the Groesbeck VOR/DME near the centerline of V–369 and the realignment of the airway to include the Groesbeck VOR/DME will allow for a lower MEA to be flown between the two VORTAC's. Lowering the MEA increases the capacity of the airway because it increases the number of altitudes that are available for air traffic control assignment to airway users. Overall, this action increases the efficiency of operations between the DFW and the Navasota VORTAC's.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is not controversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–369 [Revised]

From Navasota, TX; via Groesbeck, TX; to Dallas-Fort Worth, TX.

* * * * *

Issued in Washington, DC, on December 17, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–33760 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 28870; Amendment No. 91–254]

RIN 2120–AE51

Reduced Vertical Separation Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on final rule.

SUMMARY: On March 27, 1997, the FAA adopted requirements for Reduced Vertical Separation Minimum (RVSM) airspace. The rule provided requirements for operating in airspace between flight level (FL) 290 and FL 410, with assigned altitudes separated by a minimum of 1,000 feet, rather than the 2,000 foot minimum separation previously required above FL 290. The amendment made more tracks and altitudes available for air traffic control to assign to operators, thus increasing efficiency of operations and air traffic capacity. The action maintained a level of safety equal to or greater than that provided by the previous regulations by requiring improved altitude-keeping performance to participate in RVSM. This action is a summary and disposition of comments received on the final rule.

ADDRESSES: The complete docket for the final rule on RVSM may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Room 915–G, Docket No. 28870, 800 Independence Ave., SW, Washington, DC 20591, weekdays (except federal holidays) between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, AFS–400 Technical Programs, Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3734.

SUPPLEMENTARY INFORMATION:

Background

With air traffic increasing annually worldwide, FAA airspace planners and their international counterparts continually study methods of enhancing the air traffic control (ATC) system's ability to accommodate this traffic in a safe and efficient manner. The traffic problem has become particularly acute in the North Atlantic (NAT) airspace, where the number of flight operations increased 30 percent from 1988 through 1992, according to the NAT Traffic Forecasting Group. The forecast indicated that traffic will rise 60 percent over the 1992 level of 228,200 operations by 2005. Currently, 27 percent of operations in the NAT airspace receive clearances on tracks and to altitudes other than those requested by the operators in their filed flight plans because of airspace limitations. These flights are conducted at less than optimum tracks and altitudes for the aircraft, resulting in time and fuel inefficiencies.

One limitation on air traffic management at high altitudes is the required vertical separation. At altitudes lower than FL 290, air traffic controllers can assign aircraft operating under Instrument Flight Rules (IFR) altitudes a minimum of 1,000 feet apart, however, above FL 290, the required vertical separation was a minimum of 2,000 feet prior to this final rule. (Note: Flight levels are stated in digits that represent hundreds of feet. The term flight level is used to describe a surface of constant atmospheric pressure related to a reference datum of 29.92 inches of mercury. Rather than adjusting altimeters for changes in atmospheric pressure, pilots base altitude readings above the transition altitude (in the United States, 18,000 feet) on this standard reference. FL 290 represents 29,000 feet; FL 310 represents 31,000 feet, and so on.)

The 2,000 ft minimum vertical separation above FL 290 previously restricted the number of flight levels available, even though many more air carrier and general aviation aircraft are capable of high altitude operations now than when the 2000-foot separation standard was established. Flight levels 310, 330, 350, 370, and 390 are flight levels at which aircraft crossing between North America and Europe operate most economically, thus causing congestion at peak hours. Now, with the issuance of the RVSM final rule, air traffic can make available other flight levels, such as 320, 340, 360, and 380. Exhaustive technical studies showed that a 1,000 ft minimum vertical separation was both feasible and safe. The solution was based on marked improvement in altitude-keeping technology and provided relief from the fuel and time inefficiencies seen in the North Atlantic Minimum Navigation Performance Specifications (NAT MNPS) airspace prior to the issuance of the RVSM final rule.

Discussion of Comments

The FAA received three comments on the RVSM final rule.

The first commenter, the Air Line Pilots' Association (ALPA), states that some pilots have been receiving traffic advisories (TA's) from their Traffic Alert and Collision Avoidance Systems (TCAS). The TA's have been encountered between same direction aircraft separated by 1000 feet, that are in close longitudinal proximity to each other with similar cruising speeds. ALPA writes that pilots have reported TA's lasting as long as twenty minutes, requiring innovative actions to eliminate them. They point out a lack of defined procedures for handling annoying TA's. Although ALPA is not aware of an occurrence, they believe the current TCAS logic leaves open the possibility of a disruptive long duration resolution advisory (RA) in the RVSM environment. Their concern is the possibility that this type of event could cause a serious problem in RVSM airspace from the close proximity of traffic and pilot training that requires compliance with RA commands.

ALPA's second area of concern is wake vortex encounters. Pilots have reported numerous encounters with turbulence produced by B–747 and B–777 aircraft using RVSM separation. Although ALPA is not aware of any serious cases reported, these operational characteristics did not exist when the 2000 foot standard was in use. ALPA points out the absense of procedures to help pilots avoid or exit areas of descending vortex.

ALPA recommends the development of an operations plan by the North Atlantic Systems Planning Group (NATSPG) which would provide procedures that could resolve both the TCAS and wake vortex problems. Some suggestions included lateral offset, Mach number change so as to change longitudinal geometries, and planned offset of each odd or even flight level.

ALPA also suggests a centralized data collecting effort that ensures the reporting of TCAS and wake vortex events. They believe the two problems could best be evaluated through the collection of data for analysis and processing.

The FAA appreciates ALPA's comments regarding the effect of RVSM on TCAS operations. The FAA, in conjunction with the other North Atlantic air traffic service (ATS) providers has requested that the ARINC

Corporation conduct a study of TCAS in NAT RVSM airspace. (ARINC already provides contract support to the FAA TCAS Program Office as well as the NATSPG). The purpose of this study is to better understand the parameters that can lead to multiple traffic alerts and also to understand better the performance of TCAS change 7 in the RVSM environment. This study began in September 1997.

In regards to wake turbulence encounters, the FAA, in coordination with the NAT ATS providers, has published a contingency procedure that gives a pilot encountering wake turbulence the option of offsetting from the track to avoid the turbulence. This procedure has been coordinated with the International Federation of Air Line Pilots' Association (IFALPA) and was published by the NAT ATS providers in September, 1997.

The second commenter, National Air Transportation Association (NATA), states concern that future expansion of the RVSM operational altitudes would not address the hundreds of business aircraft currently operating over the North Atlantic. NATA's concern comes from the apparent lack of concern from "aircraft manufacturers to provide support for upgrading a previously manufactured aircraft's systems to meet RVSM specifications." NATA also believes that a substantial financial investment is required to meet RVSM specifications, and that expenditure is beyond the ability of many aircraft operators.

The FAA will be working with the user community to develop a position on the expansion of RVSM flight levels in the NAT. A U.S. position on this issue will be needed for the December 1997 meeting of the NAT Implementation Managers' Group. To accomplish this, the FAA held a meeting of the RVSM Steering Group in September 1997. At this meeting, the user community, including NATA, was given the opportunity to express their views on RVSM expansion. There will also be a follow-up meeting in December, 1997. Also, the International Business Aviation Council has been given the opportunity to provide a representative to the December meeting. A major issue to be addressed is the readiness of the business aircraft fleet to operate within RVSM.

The third commenter, an individual pilot, believes the implementation of RVSM is too broad. The commenter asked why the program was not implemented in 'The Tracks' first. Then asked, why is there an absence of a 'Non RVSM' corridor similar to the VFR corridor in Los Angeles.

In response, the final rule provided for the phased implementation of RVSM over the North Atlantic between FL 330 and FL 370 initially. Other non-RVSM equipped aircraft are free to operate above or below the RVSM altitudes. The FAA has determined that the benefits of the increased efficiency within the RVSM airspace far outweigh the inconvenience this rule may impose on a small percentage of aircraft without the needed equipment.

Conclusion

After consideration of the comments submitted in response to the final rule, the FAA has determined that no further rulemaking action is necessary. Amendment 91–254 remains in effect as adopted.

Issued in Washington, DC on December 19, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 97–33753 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29074; Amdt. No. 1840]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for such SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAP's, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form

documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 28, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

** * * Effective Jan 1, 1998*

Foley, AL, Foley Muni, NDB or GPS RWY 18, Orig CANCELLED
Foley, AL, Foley Muni, NDB RWY 18, Orig
Audubon, IA, Audubon County, NDB or GPS RWY 32, Amdt 4 CANCELLED
Rensselaer, IN, Jasper County, NDB or GPS RWY 18, Amdt 3A CANCELLED
Rensselaer, IN, Jasper County, NDB RWY 18, Amdt 3A
Greenville, MS, Greenville Muni, VOR/DME or GPS RWY 18L, Amdt 12 CANCELLED
Greenville, MS Greenville Muni, VOR/DME RWY 18L, Amdt 12
Greenville, MS, Greenville Muni, VOR or GPS RWY 18R, Amdt 5A CANCELLED
Greenville, MS, Greenville Muni, VOR RWY 18R, Amdt 5A
Greenville, MS Greenville Muni, NDB or GPS RWY 36L, Amdt 5A CANCELLED
Greenville, MS, Greenville Muni, NDB RWY 36L, Amdt 5A
Greenville, MS, Greenville Muni, NDB or GPS RWY 36R, Amdt 8 CANCELLED
Greenville, MS, Greenville Muni, NDB RWY 36R, Amdt 8
Chapel Hill, NC, Horace Williams, VOR/DME RNAV or GPS RWY 9, Orig CANCELLED
Chapel Hill, NC, Horace Williams, VOR/DME RNAV RWY 9, Orig
Crete, NE, Crete Municipal, VOR/DME or GPS RWY 35, Amdt 2A CANCELLED
Crete, NE, Crete Municipal, VOR/DME RWY 35, Amdt 2A
Lovington, NM, Lea County-Zip Franklin Memorial, RNAV RWY 3, Orig CANCELLED
Lovington, NM, Lea Country-Zip Franklin Memorial, VOR/DME RNAV RWY 3, Orig
Syracuse, NY, Syracuse Hancock Intl, VOR/DME or TACAN or GPS RWY 32, Amdt 1 CANCELLED
Syracuse, NY, Syracuse Hancock Intl, VOR/DME or TACAN RWY 32, Amdt 1
Syracuse, NY, Syracuse Hancock Intl, VOR or GPS RWY 14, Amdt 21A CANCELLED
Syracuse, NY, Hancock Intl, VOR RWY 14, Amdt 21A
Syracuse, NY, Syracuse Hancock Intl, NDB or GPS RWY 28, Amdt 27 CANCELLED
Syracuse, NY, Syracuse Hancock Intl, NDB RWY 28, Amdt 27
Ashtabula, OH, Ashtabula County, VOR or GPS RWY 8, Orig CANCELLED
Ashtabula, OH, Ashtabula County, VOR RWY 8, Orig
East Liverpoll, OH, Columbiana County, VOR or GPS RWY 25, Amdt 3 CANCELLED
East Liverpoll, OH, Columbiana County, VOR RWY 25, Amdt 3
Philadelphia, PA, Philadelphia Intl, NDB or GPS RWY 27L, Amdt 5 CANCELLED
Philadelphia, PA, Philadelphia Intl, NDB RWY 27L, Amdt 5
Philadelphia, PA, Philadelphia Intl, VOR/DME RNAV or GPS RWY 35, Amdt 3A CANCELLED
Philadelphia, PA, Philadelphia Intl, VOR/DME RNAV RWY 35, Amdt 3A
York, PA, York, NDB or GPS RWY 16, Amdt 4 CANCELLED
York, PA, York, NDB RWY 17, Amdt 5
Tulsa, OK, Tulsa Intl, VOR or TACAN or GPS RWY 26, Amdt 22A CANCELLED
Tulsa, OK, Tulsa Intl, VOR or TACAN RWY 26, Amdt 22A
Osceola, WI, L O Simenstad Muni, NDB or GPS RWY 28, Amdt 9 CANCELLED
Osceola, WI, L O Simenstad Muni, NDB RWY 28, Amdt 9

[FR Doc. 97–33757 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29073; Amdt. No. 1839]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide

safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: Ths amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulation (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeranautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change consideration, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). The developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires makes them effective in less then 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluations as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 28, 1997.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standards Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29, ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
11/13/97	LA	New roads	False River Air Park	7/7436	Loc Rwy 36, Orig...
11/13/97	MO	Point Lookout	M. Graham Clark	7/7425	GPS Rwy 11 Orig...
11/16/97	MS	Greenwood	Greenwood-LeFlore	7/7443	VOR/DME RNAV Rwy 18, Amdt 6...
11/16/97	MS	Greenwood	Greenwood-LeFlore	7/7444	VOR/DME RNAV or GPS Rwy 36, Amdt 3...
11/17/97	CA	Bakersfield	Meadows Field	7/7540	ILS Rwy 30R Amdt 27...
11/17/97	CA	Bakersfield	Meadows Field	7/7541	NDB Rwy 30R Amdt 6...
11/17/97	KY	Louisville	Louisville Intl—Standiford Field	7/7531	ILS Rwy 35, ORIG–B...
11/17/97	KY	Louisville	Louisville Intl—Standiford Field	7/7535	ILS Rwy 17, ORIG–B...
11/18/97	MI	Grand Rapids	Kent County Intl	7/7557	ILS Rwy 8R, Amdt 5...
11/18/97	NJ	Atlantic City	Atlantic City Muni/Bader Field	7/7565	VOR or GPS–B Amdt 1...
11/20/97	AK	Klawock	Klawock	7/7621	NDB/DME Rwy 1, Orig...
11/21/97	NC	Edenton	Northeastern Regional	7/7654	GPS Rwy 1, Orig...
11/21/97	NC	Elizabeth City	Elizabeth City Coast Guard Air Station/ Muni.	7/7655	VOR/DME or GPS Rwy 19, Amdt 10...
11/21/97	NC	Elizabeth City	Elizabeth City Coast Guard Air Station/ Muni.	7/7656	NDB Rwy 10, Orig...
11/21/97	NC	Elizabeth City	Elizabeth City Coast Guard Air Station/ Muni.	7/7657	VOR/DME or GPS Rwy 10, Orig...
11/21/97	NC	Elizabeth City	Elizabeth City Coast Guard Air Station/ Muni.	7/7658	VOR/DME or GPS Rwy 28, Orig...
11/21/97	NC	Elizabeth City	Elizabeth City Coast Guard Air Station/ Muni.	7/7659	VOR/DME or GPS Rwy 1, Amdt 11...
11/21/97	TX	Amarillo	Amarillo Intl	7/7650	ILS Rwy 4, Amdt 21A...
11/24/97	NE	Holdrege	Brewster Field	7/7697	NDB or GPS Rwy 18, Amdt 6...
11/24/97	NE	Holdrege	Brewster Field	7/7699	VOR/DME or GPS–A, Amdt 2...
11/24/97	WV	Parkersburg	Wood County Airport—Gill Robb Wilson Field.	7/7698	ILS Rwy 3 Amdt 11...
11/25/97	CA	Sacramento	Sacramento Mather	7/7744	VOR/DME or GPS Rwy 22L Orig...
11/25/97	VA	Charlottesville	Charlottesville—Albemarle	7/7729	ILS Rwy 3 Amdt 12...
11/25/97	VA	Charlottesville	Charlottesville—Albemarle	7/7740	NDB Rwy 3 Amdt 15...

[FR Doc. 97–33756 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29072; Amdt. No. 1838]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a

special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 28, 1997.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SLAPs; and § 97.35 COPTER SLAPs, identified as follows:

** * * Effective January 1, 1998*

Columbia, CA, Columbia, NDB OR GPS–A, Orig, CANCELLED
St. Louis, MO, Lambert-St Louis Intl, VOR/DME RWY 17, Orig
St. Louis, MO, Lambert-St Louis Intl, LDA/DME RWY 12L, Amdt 5
St. Louis, MO, Lambert-St Louis Intl, LDA/DME RWY 30L, Amdt 2
St. Louis, MO, Lambert-St Louis Intl, ILS RWY 12L, Amdt 4
St. Louis, MO, Lambert-St Louis Intl, ILS RWY 12R, Amdt 21
St. Louis, MO, Lambert-St Louis Intl, ILS RWY 24R, Amdt 45
St. Louis, MO, Lambert-St Louis Intl, ILS RWY 30L, Amdt 11
St. Louis, MO, Lambert-St Louis Intl, ILS RWY 30R, Amdt 7
Omaha, NE, Eppley Airfield, ILS RWY 18, Amdt 6

** * * Effective January 29, 1998*

Camden, AR, Harrell Field, VOR/DME RWY 36, Amdt 8
Camden, AR, Harrell Field, NDB RWY 18, Amdt 10
Mason City, IA, Mason City Muni, ILS RWY 35, Amdt 6
Columbus, OH, Port Columbus Intl, NDB OR GPS RWY 10L, Amdt 8
Columbus, OH, Port Columbus Intl, ILS RWY 10L, Amdt 17
Columbus, OH, Port Columbus Intl, RADAR–1, Amdt 17, CANCELLED

** * * Effective February 26, 1998*

Guntersville, AL, Guntersville Muni, GPS–A, Orig
Klawock, AK, Klawock, GPS RWY 1, Orig
Phoenix, AZ, Phoenix Sky Harbor Intl, VOR/DME or GPS RWY 8R, Amdt 1, CANCELLED
Phoenix, AZ, Phoenix Sky Harbor Intl, VOR/DME–A, Orig
Phoenix, AZ, Phoenix Sky Harbor Intl, LOC BC RWY 26L, Amdt 9
Phoenix, AZ, Phoenix Sky Harbor Intl, ILS RWY 8R, Amdt 10
Phoenix, AZ, Phoenix Sky Harbor Intl, GPS RWY 8R, Orig
Phoenix, AZ, Phoenix Sky Harbor Intl, GPS RWY 26L, Orig
Fallbrook, CA, Fallbrook Community Airpark, GPS RWY 18, Orig
Brooksville, FL, Hernando County, ILS RWY 9, Amdt 1
Orlando, FL, Executive, VOR/DME RWY 25, Amdt 1
Orlando, FL, Executive, LOC BC RWY 25, Amdt 20
Richmond, KY, Madison, VOR/DME OR GPS RWY 18, Amdt 5
Duluth, MN, Sky Harbor, GPS RWY 32, Orig
Jackson, MN, Jackson Muni, NDB RWY 13, Amdt 8
Jackson, MN, Jackson Muni, GPS RWY 31, Orig
Hatteras, NC, Billy Mitchell, GPS RWY 25, Amdt 1
Somerset, PA, Somerset County, LOC RWY 24, Amdt 3
Somerset, PA, Somerset County, NDB RWY 24, Amdt 5
Somerset, PA, Somerset County, GPS RWY 6, Orig
Somerset, PA, Somerset County, GPS RWY 24, Orig
Fort Worth, TX, Bourland Field, GPS RWY 35, Orig

[FR Doc. 97–33755 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission ("Commission") revises Table 1 in section 305.9 of the Commission's Appliance Labeling Rule ("the Rule"), to incorporate the latest figures for average unit energy costs as published by the Department of Energy ("DOE") in the **Federal Register** on December 8, 1997. Table I sets forth the representative average unit energy costs for five residential energy sources, which the Commission revises periodically on the basis of updated information provided by DOE.

DATES: This rule is effective December 29, 1997. The mandatory dates for using these revised DOE cost figures in connection with the Appliance Labeling Rule are detailed in the **SUPPLEMENTARY INFORMATION** Section, below.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035 Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final rule in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201.[1] The Rule requires the disclosure of energy efficiency, consumption, or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that the energy costs, consumption, or efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in 305.9(a) of the Rule sets forth the representative average unit energy costs to be used for all cost-related requirements of the Rule. As stated in 305.9(b), the Table is to be revised periodically on the basis of updated information provided by DOE.

On December 8, 1997, DOE published the most recent figures for representative average unit energy costs.[2] Accordingly, Table 1 is revised to reflect these latest cost figures as set forth below.

How and when industry members must use (or not use) revised Table 1 to calculate cost disclosures for labeling and catalog sales is explained in detail in the paragraphs below. In sum:

- Manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners are not permitted to use the DOE cost figures published today to calculate the secondary operating cost figures on labels for their products until the Commission publishes new ranges of comparability for those products.
- Manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters have no need for the DOE cost figures for making data submissions under 305.8. The energy use information they must submit and use as primary energy use descriptions on labels for these products is now in terms of energy consumption, not operating cost.
- Manufacturers of products covered by the Rule must use the 1998 DOE cost figures published today to calculate operating cost representations in catalogs, point of sale literature and other point of sale representations, and advertisements that are drafted and printed after March 30, 1998.
- Beginning March 30, 1998 manufacturers of clothes dryers, television sets, kitchen ranges and ovens, and space heaters must begin using the 1998 representative average unit costs for energy in all operating cost representations.

For Labeling of Products Covered by the Commission's Rule[3]

Manufacturers of covered products are not permitted to use the National Average Representative Unit Costs published today on labels for their products until the Commission publishes new ranges of comparability for those products.

Manufacturers of storage-type water heaters must continue to use the 1994 DOE cost figures (8.41 cents per kilowatt-hour for electricity, 60.4 cents per therm for natural gas, $1.054 per gallon for No. 2 heating oil, and 98.3 cents per gallon for propane) in determining the operating cost disclosures on the labels on their products. This is because the 1994 DOE cost figures were in effect when the 1994 ranges of comparability for storage-type water heaters were published, and those 1994 ranges are still in effect for those products.[4] Manufacturers of storage-type water heaters must continue to use the 1994 cost figures to calculate the estimated annual operating cost figures on their labels until the Commission publishes new ranges of comparability for storage-type water heaters.

Manufacturers of refrigerators, refrigerator-freezers, freezers, heat pump water heaters, and room air conditioners must continue to derive the operating cost disclosures on labels by using the 1995 National Average Representative Unit Costs (8.67 cents per kilowatt-hour for electricity, 63 cents per therm for natural gas, $1.008 per gallon for No. 2 heating oil, and 98.5 cents per gallon for propane) that were in effect when the current (1995) ranges of comparability for these products were published.[5] Manufacturers of refrigerators, refrigerator-freezers, freezers, heat pump water heaters, and room air conditioners must continue to use the 1995 DOE cost figures to calculate the operating cost disclosure disclosed on labels until the Commission publishes new ranges of comparability for refrigerators, refrigerator-freezers, freezers, heat pump water heaters, or room air conditioners based on future annual submissions of data. In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

Manufacturers of instantaneous water heaters must continue to base the required secondary operating cost disclosures on labels on the 1996 National Average Representative Unit

[1] 44 FR 66466. Since its promulgation, the rule has been amended five times to include new product categories—central air conditioners (52 FR 46886, Dec. 10, 1987), fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989), certain plumbing products (58 FR 54955, Oct. 25, 1993), certain lamp products (59 FR 25176, May 13, 1994), and pool heaters and certain residential water heater types (59 FR 49556, Sept. 28, 1994). Obligations under the rule concerning fluorescent lamp ballasts, lighting products, plumbing products and pool heaters are not affected by the cost figures in this notice.

[2] 62 FR 64574.

[3] Sections 305.11(a)(5)(i)(H)(2) and (3) of the Rule (16 CFR 305.11(a)(5)(i)(H)(2) and (3)) require that labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners contain a secondary energy usage disclosure in terms of an estimated annual operating cost (labels for clothes washers and dishwashers will show two such secondary disclosures—one based on operation with water heated by natural gas, and one on operation with water heated by electricity). The labels also must disclose, below this secondary estimated annual operating cost, the fact that the estimated annual operation cost is based on the appropriate DOE energy cost figure, and must identify the year in which the cost figure was published.

[4] The 1994 DOE cost figures were published by DOE on December 29, 1993 (58 FR 68901), and by the Commission on February 8, 1994 (59 FR 5699). The current (1994) ranges of comparability for storage-type water heaters were published on September 23, 1994 (59 FR 48796). On August 21, 1995 (60 FR 43367), on September 16, 1996 (61 FR 48620), and again on August 25, 1997 (62 FR 44890), the Commission announced that the 1994 ranges for storage-type water heaters will continue to remain in effect.

[5] The 1995 DOE cost figures were published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9296). The current (1995) ranges of comparability for heat pump water heaters were published on August 21, 1995 (60 FR 43367). The current (1995) ranges for refrigerators, refrigerator-freezers, freezers, and room air conditioners were published on November 13, 1995 (60 FR 56945). On September 16, 1996 (61 FR 48620), and again on August 25, 1997 (62 FR 44890), the Commission announced that the 1995 ranges for heat pump water heaters and room air conditions would continue to remain in effect. On October 28, 1996 (61 FR 55563), the Commission announced that the 1995 rnages for refrigerators, refrigerator-freezes would continue to remain in effect.

Costs for electricity (8.6 centers per kilowatt-hour), natural gas (62.6 cents per therm), propane (90 cents per gallon), and/or heating oil (92 cents per gallon) that were published by DOE on January 19, 1996,[6] and by the Commission on February 14, 1996,[7] and that were in effect when the 1996 ranges of comparability for these products were published.[8]

Manufacturers of clothes washers and dishwashers must continue to base the required secondary operating cost disclosures on labels on the 1997 National Average Representative Unit Costs for electricity (8.31 cents per kilowatt-hour), natural gas (61.2 cents per therm), propane (98 cents per gallon), and/or heating oil (99 cents per gallon) that were published by DOE on November 18, 1996,[9] and by the Commission on February 5, 1997,[10] and that were in effect when the 1997 ranges of comparability for these products were published.[11]

For 1997 Submissions of Data Under Section 305.8 of the Commission's Rule

Manufacturers no longer need to use the DOE cost figures in complying with the data submission requirements of 305.8 of the Rule. Pursuant to amendments to the Rule published on July 1, 1994 [12] (with extended compliance dates published on December 8, 1994 [13]), the estimated annual operating cost is no longer the primary energy usage descriptor for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters. Under the amendments, the energy usage and the ranges of comparability for those product categories must be expressed in terms of estimated annual energy consumption (kilowatt-hour use per year for electricity, therms per year for natural gas, or gallons per year for propane and oil). Thus, the 1998 (and all subsequent) data submissions under 305.8 for these product categories (which are to enable the Commission to publish ranges of comparability) must be made in terms of estimated annual energy consumption, not cost. The energy efficiency descriptors for the other products covered by the Rule (room air conditioners, furnaces, boilers, central air conditioners, heat pumps, and pool heaters) are unaffected by the amendments mentioned above. The annual data submission requirements for those products, which are not based on the DOE cost figures, will continue to be in terms of energy efficiency.

For convenience, the annual dates for data submission are repeated here:

Clothes washers: March 1
Water heaters: May 1
Furnaces: May 1
Room air conditioners: May 1
Pool Heaters: May 1
Dishwashers: June 1
Central air conditioners: July 1
Heat pumps: July 1
Refrigerator: August 1
Refrigerators-freezers: August 1
Freezers: August 1

For Energy Cost Representations Respecting Covered Products in Catalogs

Energy cost representations in catalogs that are drafted and printed while the 1998 cost figures are in effect must be derived using the 1998 energy costs beginning March 30, 1998.

For Energy Cost Representations Respecting Products Covered by EPCA But Not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, 42 U.S.C. 6293(c), but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, and space heaters) must use the 1998 DOE energy costs in all operating cost representations beginning March 30, 1998.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR Part 305 is amended as follows:

1. The authority citation for Part 305 continues to read:

Authority: 42 U.S.C. 6294.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1 contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1998)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	8.42¢/kWh [2 3]	$0.0842/kWh	$24.68
Natural Gas	61.9¢/therm [4] or $6.36/MCF [5 6]	$0.00000619/Btu	6.19
No. 2 heating oil	$.95/gallon [7]	$0.00000685/Btu	6.85
Propane	$0.95/gallon [8]	$0.00001039/Btu	10.39
Kerosene	$1.01/gallon [9]	$0.00000748/Btu	7.48

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.

[6] 61 FR 1366.
[7] 61 FR 5679.
[8] The current ranges for instantaneous water heaters were published on September 16, 1996 (61 FR 48620). On August 25, 1997 (62 FR 44890), the Commission announced that the 1996 ranges for instantaneous water heaters would continue to remain in effect.
[9] 61 FR 58679.
[10] 62 FR 5316.
[11] The current (corrected) ranges for clothes washers were published on August 6, 1997 (62 FR 42209); the current ranges for dishwashers were published on August 25, 1997 (62 FR 44890).
[12] 59 FR 34014.
[13] 59 FR 63688.

[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

Donald S. Clark,
Secretary.

[FR Doc. 97–33686 Filed 12–24–97; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

[Public Notice 2674]

VISAS: Public Charge

AGENCY: Department of State, Bureau of Consular Affairs.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends Department of State regulations by establishing uniform procedures for the acceptance of affidavits of support by consular posts abroad as required by the Immigration and Nationality Act (INA). This rule is necessary to ensure proper adjudication of immigrant visas under the INA.

DATES: Effective Date: This interim rule is effective on December 19, 1997. Comment Date: Submit comments on or before February 27, 1998.

ADDRESSES: Please submit written comments to the Chief, Legislation and Regulations Division, Visa Office, Room L603-C, SA–1, Washington, D.C. 20520–0106. Comments will be made available for public inspection at the Department of State's Public Reading Room, 2201 C Street, NW, Washington, DC, 20520.

FOR FURTHER INFORMATION CONTACT: Ron Acker, Visa Regulations Coordinator, Legislation and Regulations Division, Visa Office, Room L603-C, SA–1, Washington, DC, 20520–0106 (ackerrl@SA1WPOA.us-state.gov).

SUPPLEMENTARY INFORMATION: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104 208, which, among numerous other changes, amended section 212(a)(4) of the Immigration and Nationality Act (INA) to provide that an alien is excludable or inadmissible to the United States based upon the likelihood of becoming a public charge if the alien is seeking an immigrant visa, admission as an immigrant, or adjustment of status as: (a) An immediate relative, (b) a family-based immigrant, or (c) an employment-based immigrant (if a sponsoring relative is the petitioning employer or owns a significant ownership interest in the entity that is the petitioning employer) unless the alien is the beneficiary of an affidavit of support filed under INA section 213A. INA 213A specifies the conditions that must be met in order for an affidavit of support to be acceptable for use by a visa applicant to establish eligibility under INA 212(a)(4)(C).

Under the provisions of IIRIRA (Title V, Subtitle C, Section 551(c)), the Attorney General is responsible for promulgating the standard forms to be used in connection with the filing of affidavits of support and in establishing the effective date upon which such forms are required. The Immigration and Naturalization Service (INS) published an interim rule on October 20, 1997 (**Federal Register**, Vol. 62, No. 202, pp. 54346–54356) describing the new "Affidavit of Support" (Form I–864), and two ancillary forms, the "Contract Between Sponsor and Household Member" (Form I–864A), and the "Sponsor's Notice of Change of Address" (Form I–865). INS's rule included procedural instructions for filling out the forms, and established December 19, 1997 as the effective date on which these forms would be required for submission to immigration and consular officers.

The net effect of the new affidavit of support is that it is must be fully executed in compliance with the provisions of INA 213A in order for an alien (as described above) to meet the requirements of INA 212(a)(4)(C). An affidavit of support that has been appropriately executed and submitted does not, however, necessarily establish that an alien is not within the purview of the public charge provisions of 212(a)(4)(A). That decision remains vested with the reviewing immigration or consular officer, who must be satisfied that the alien is otherwise not likely to become a public charge upon entering the United States.

Accordingly, the Department is (1) adding new regulations at 22 CFR 40.41(b) and (c), (2) amending regulations at 22 CFR 40.41(a), (b), and (d) to reflect the new affidavit of support requirements, and (3), redesignating 22 CFR 40.41(b), (c), and (d) as 40.41(d), (e), and (f), respectively. In addition, the current description of the poverty line contained in new 40.41(f), formerly (d), is being eliminated and replaced with a reference to new section, INA 213A(h), which contains the definition of the poverty line to be used for 213A purposes. Since both the old and the new description refer to the same poverty line established by the Department of Health and Human Services, this change will simply make uniform all references to the poverty line for purposes of 212(a)(4) in accordance with the latest description. The new (f) is also retitled to reflect the revised language.

Interim Rule

This rule modifies 22 CFR, Subchapter E, Subpart E to reflect changes made by IIRIRA. Title V, Subtitle C, of IIRIRA, which is implemented by this rule became effective December 19, 1997. The issuance of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and 553(d)(3) because it implements statutory provisions and an effective date set under statutory authority.

Pursuant to § 605(b) of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule and it has been determined, and the Assistant Secretary for Consular Affairs hereby certifies, that it will not have a significant economic impact on a substantial number of small entities. The rule has no economic effect beyond that of the statutory requirements already in effect which it implements.

As required by 5 U.S.C. chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

This rule imposes no reporting or record-keeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act.

This rule has been reviewed as required by E.O. 12988 and determined to meet the applicable regulatory standards it describes. Although exempted from E.O. 12866, this rule has been reviewed to ensure consistency with it.

List of Subjects in 22 CFR Part 40

Aliens, Immigrants, Immigration, Nonimmigrants, Passports and visas.

In view of the foregoing, 22 CFR is amended as follows:

PART 40—[AMENDED]

1. The authority citation for Part 40 is revised to read:

Authority: 8 U.S.C. 1104; Pub.L. 104–208, 110 Stat. 3009; 22 U.S.C. 2651a.

2. Section 40.41 is revised as follows:

§ 40.41 Public charge.

(a) Basis for Determination of Ineligibility. Any determination that an alien is ineligible under INA 212(a)(4) must be predicated upon circumstances indicating that, notwithstanding any affidavit of support that may have been filed on the alien's behalf, the alien is likely to become a public charge after admission, or, if applicable, that the alien has failed to fulfill the affidavit of support requirement of INA 212(a)(4)(C).

(b) Affidavit of Support. Any alien seeking an immigrant visa under INA 201(b)(2), 203(a), or 203(b), based upon a petition filed by a relative of the alien (or in the case of a petition filed under INA 203(b) by an entity in which a relative has a significant ownership interest), shall be required to present to the consular officer an affidavit of support on a form that complies with terms and conditions established by the Attorney General.

(c) Joint Sponsors. Submission of one or more additional affidavits of support by a joint sponsor/sponsors is required whenever the relative sponsor's household income and significant assets, and the immigrant's assets, do not meet the Federal poverty line requirements of INA 213A.

(d) Posting of Bond. A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(4) (subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 213A), upon receipt of a notice from INS of the giving of a bond or undertaking in accordance with INA 213 and INA 221(g), and provided further that the officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien will become a public charge within the meaning of this section of the law and that the alien is otherwise eligible in all respects.

(e) Prearranged Employment. An immigrant visa applicant relying on an offer of prearranged employment to establish eligibility under INA 212(a)(4), other than an offer of employment certified by the Department of Labor pursuant to INA 212(a)(5)(A), must provide written confirmation of the relevant information sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.

(f) Use of Federal Poverty Line Where INA 213A Not Applicable. An immigrant visa applicant, not subject to the requirements of INA 213A, and relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the Federal poverty line, as defined in INA 213A (h), and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).

Dated: December 19, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 97–33691 Filed 12–24–97; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

[Public Notice 2666]

Visas: Grounds of Ineligibility

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The act adds new grounds of inadmissibility to the United States for: certain aliens who have not been inoculated against infectious diseases designated by statute or by the Advisory Committee for Immunization Practices (ACIP); aliens who have been subject to certain civil penalties; alien student visa abusers; aliens present in the United States without admission or parole; aliens who fail to attend removal proceedings; unlawful alien voters; and former citizens who renounced United States citizenship in order to avoid paying taxes. Some of the sections cited above also provide for waivers of a number of grounds of inadmissibility. The rule also incorporates into the Department's regulations a delegation of authority from the Immigration and Naturalization Service pertaining to waivers of inadmissibility under § 212(a)(1)(A)(ii) of the Immigration and Nationality Act (INA), as amended. Finally, this rule makes a few miscellaneous technical corrections.

DATES: *Effective Dates:*

§ 40.11	September 30, 1996
§ 40.22	September 30, 1997.
§ 40.52	September 30, 1996
§ 40.61	April 1, 1997
§ 40.62	April 1, 1997
§ 40.66	September 30, 1996
§ 40.67	November 30, 1996
§ 40.91	April 1, 1997
§ 40.92	April 1, 1997
§ 40.93	April 1, 1997
§ 40.104	September 30, 1996
§ 40.105	September 30, 1996

Comment Date: Written comments must be submitted on or before February 27, 1998.

ADDRESSES: Written comments may be addressed to the Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Washington, D.C. 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, (202) 663–1204.

SUPPLEMENTARY INFORMATION: Some of the provisions of IIRIRA implemented by this rule became effective on the date of enactment, September 30, 1996. Others became effective on November 30, 1996. Still others became effective on April 1, 1997. Therefore, in order to coincide with the effective dates mandated by Congress, the effective dates are listed in the **DATES** section of this document. Division "C" of the Omnibus Consolidated Appropriations Act, 1997 (the Illegal Immigration Reform and Alien Responsibility Act of 1996 (IIRIRA)), made substantial changes and additions to the INA affecting numerous regulations at 22 CFR, Subchapter E. On November 21, 1996, the Department published a final rule [61 FR 59182] to restructure the numbering of 22 CFR Part 40 in light of these additions. This rule incorporates changes to those sections of Part 40 shown in the table below.

22 CFR Part Affected	Heading	IIRIRA Section No.
§ 40.11	Medical Grounds of Ineligibility	§ 341
§ 40.22(b)	Suspended Sentences	§ 322
§ 40.52	Unqualified Physicians	N/A (typographic correction)
§ 40.61	Aliens Present Without Admission or Parole	§ 301

22 CFR Part Affected	Heading	IIRIRA Section No.
§ 40.62	Failure to Attend Removal Proceedings	§ 301
§ 40.66	Aliens Subject of Civil Penalty	§ 345
§ 40.67	Student Visa Abusers	§ 346
§ 40.91	Certain Aliens Previously Removed	§ 301
§ 40.92	Aliens Unlawfully Present	§ 301
§ 40.93	Aliens Unlawfully Present After Previous Immigration Violations	§ 301
§ 40.104	Unlawful Voters	§ 347
§ 40.105	Former Citizens Who Renounced Citizenship to Avoid Taxation	§ 352

22 CFR 40.11—Medical Grounds of Ineligibility

Section 341 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amended the medical grounds of visa ineligibility under INA 212(a)(1)(A) to render inadmissible under INA 212(a)(1)(A)(ii) all applicants for immigrant visas and adjustment of status who fail to present documentation showing that they have been vaccinated against a broad range of vaccine-preventable diseases. The amendments to INA 212(a)(1)(A) by section 341 of IIRIRA became effective on the date of enactment, September 30, 1996. The diseases, as specifically identified in the statute are: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B "and any other diseases which are designated by the Advisory Committee for Immunization Practices (ACIP)." Section 341 of IIRIRA also prescribed new waiver provisions at INA 212(g)(2) for aliens: (1) who were initially missing required vaccinations but who subsequently obtained them; or (2) for whom one or more of the required vaccinations would be medically inappropriate as certified by the reviewing civil surgeon or panel physician in accordance with regulations established by the Department of Health and Human Services; or (3) who establish to the satisfaction of the Attorney General that compliance with the vaccination requirements under INA 212(a)(1)(A)(ii) would be contrary to the alien's religious beliefs or moral convictions. In its conference report, Congress indicated that the waiver authority of INA 212(g)(2) should be exercised in appropriate cases to permit admission where, for example: (1) the alien is unable to receive a safe dosage of a particular vaccine; (2) it is certified that the vaccine is unavailable in the alien's country of nationality; (3) an alien child undergoing a vaccination series over a given course of time has not had a reasonable opportunity to complete the required series; or (4) the alien is an active member of a religious faith that has notified the Attorney General that such vaccination(s) would contradict the fundamental tenets of the alien's religion.

The Department of State and the Immigration and Naturalization Service (INS) anticipate that large numbers of immigrant visa applicants will be rendered ineligible for visa issuance under the provisions of INA 212(a)(1)(A)(ii) but will routinely be eligible for waivers either because they initially did not have a required vaccination, but subsequently obtained it, or because the panel physician certified, in compliance with the HHS regulations, that a particular vaccination "would not be medically appropriate." To minimize the administrative burden on INS and State, section 40.11(c) of this rule incorporates into the Department's regulations INS's delegation to consular officers of the authority to grant waivers of inadmissibility under INA 212(g)(2)(A) and (B). Under this delegation by INS, no waiver application (currently INS Form I–601) or fee is required, and consular officers may grant waivers under INA 212(g)(2)(A) and (B) without consulting with INS beforehand. INS has not delegated the authority to grant waivers under 212(g)(2)(C) for religious/moral reasons, however. Consistent with the statute, these waiver requests will be processed by INS on a case-by-case basis pursuant to regulations published by the Attorney General.

22 CFR 40.22—Suspended Sentences

Section 322 of IIRIRA amended section 101(a) of the INA by adding new paragraph 101(a)(48) which defines "conviction" and "term of imprisonment." The new language of INA 101(a)(48)(B) is applicable to convictions and sentences at any time and directs that "any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or part." Under United States criminal law, courts may either impose a sentence or suspend imposition of the sentence. In *Matter of Castro*, 19 I&N Dec. 692 (BIA 1988), the Board of Immigration Appeals held that, when the imposition of a sentence is suspended no sentence has actually been imposed. This decision was codified at 22 CFR 40.22(b), but has now been effectively reversed by new INA paragraph 101(a)(48). Accordingly, the regulation at 22 CFR 40.22(b) is being removed, and 22 CFR 40.22(c), (d), (e), and (f) are being redesignated (b), (c), (d), and (e), respectively.

22 CFR 40.52—Unqualified Physicians

A technical correction is made to 22 CFR 40.52 changing the incorrect reference cite "INA 203(a)(2) and (3)" to read "INA 203(b)(2) and (3)."

22 CFR 40.61—Aliens Present Without Admission or Parole

Section 301(a), (b), and (d) of IIRIRA replaced the terms "entry" and "excludable" with "admission" and "inadmissibility" (see INA 101(a)(13) and 212(a)(6)(A) and (B)), and replaced the term "deportation" with "removal" (see INA 212(a)(9)).

Section 301(c) of IIRIRA essentially moved the former provisions of INA 212(a)(6)(A) and (B) to a new subparagraph (9)(A), and modified them by substituting new provisions relating to admissions at INA subparagraphs 212(a)(6)(A) and (B). The first of these, INA 212(a)(6)(A), makes inadmissible an alien who is in the United States without having been admitted or paroled or who has come into this country at a place other than a designated port of entry. This provision is written in the present tense and is designed to make the aliens described therein subject to grounds of inadmissibility rather than grounds of deportation. INA 212(a)(6)(A) applies only to aliens who are present in the United States. Thus, in the absence of an order of removal, it has no direct effect on the eligibility for a visa of an alien at a consular post and the regulation being added at 22 CFR 40.61 so states.

22 CFR 40.62—Failure To Attend Removal Proceedings

New INA 212(a)(6)(B) provides that an alien who, without reasonable cause, fails or refuses to attend or remain in attendance at removal proceedings shall be inadmissible for five years following departure or removal. Such an alien is thus also ineligible for a visa for that period of time. This ground of inadmissibility is being applied only to those aliens placed in removal proceedings on or after April 1, 1997, as set forth in INA 240, which was added by section 304(a) of IIRIRA.

Regulations pertaining to revised INA 212(a)(6) are being added to 22 CFR 40.61 and 40.62.

22 CFR 40.66—Subject of Civil Penalty

The Immigration Act of 1990, Pub. L. 101–649, added as a new ground of visa ineligibility, INA 212(a)(6)(F) rendering inadmissible any alien who is the subject of a final removal order for violating INA 274C relating to civil penalties for document fraud. INA 274C provides civil penalties for persons determined by an administrative law judge to have been involved in virtually any activity involving forged, altered or stolen documents used to meet a requirement or obtain a benefit under the INA. Section 345 of IIRIRA amended INA 212(a)(6)(F) by designating this ground of inadmissibility as subsection (F)(i) and creating a new subsection (F)(ii) providing for waivers of (F)(i) inadmissibilities under new INA 212(d)(12). (Waivers of the INA 212(a)(6)(F) (now (F)(i)) ground of inadmissibility were not available prior to the enactment of IIRIRA). Under INA 212(d)(12), the Attorney General may waive this ineligibility for certain permanent residents who have temporarily proceeded abroad voluntarily and not under an order of deportation or removal and are otherwise admissible to the United States as returning residents, and for aliens seeking admission or adjustment as immediate relatives or family-based beneficiaries, if the offense was committed solely to assist the alien's spouse or child and no previous civil money penalty was imposed against the alien under INA section 274C. The Department is, therefore, adding new regulations at 22 CFR 40.66 with respect to this new ground of inadmissibility and to provide for the above waiver.

22 CFR 40.67—Student Visa Abusers

Section 346 of IIRIRA added a new ground of inadmissibility for foreign student visa abusers. Under this ground, an alien having F–1 status as a student under INA 101(a)(15)(F)(i) who violates the provisions of INA 214(l) is inadmissible until he or she has been outside the United States for five continuous years after the date of violation. INA 214(l) became effective November 30, 1996, and applies only to aliens who initially obtain F–1 status on or after that date, or whose F–1 status is extended on or after that date. Under the provisions of INA 214(l), alien students may not be granted F–1 student status to attend a public elementary school or a publicly funded adult education program. Alien students may attend a public secondary school for no more than one year in F–1 classification and must reimburse the school system for the full, unsubsidized per capita cost of their education. Alien students may transfer from a private school to a public secondary school only if they meet the above payment requirements and can demonstrate that they will not exceed the one-year time limitation established for public secondary school attendance. However, INA 214(l) prohibits foreign students in F–1 status who are attending private schools from transferring into public elementary schools or publicly funded adult education programs (including language programs). The Department is, therefore, adding a new regulation at 22 CFR 40.67 to provide for the new ground of inadmissibility.

22 CFR 40.91—Certain Aliens Previously Removed

The provisions of INA 212(a)(9) were redesignated INA 212(a)(10) under IIRIRA 301(b). These regulations, formerly found at 22 CFR 40.91, 40.92 and 40.93, were redesignated as 40.101, 40.102 and 40.103 in the Department publication of November 21, 1996 [61 FR 59182]. The new provisions of INA 212(a)(9) (similar to the former INA 212(a)(6)(A) and (B)) were inserted as subparagraphs 212(a)(9)(A)(i) and (ii). The only substantive difference between the new INA 212(a)(9)(A) and the former INA 212(a)(6)(A) and (B) lies in the varying lengths of inadmissibility. The prior INA 212(a)(6)(A) provided for a one-year visa ineligibility period for an alien who had previously been excluded and deported. INA 212(a)(9)(A)(i) makes ineligible and inadmissible for 5 years an alien who has been found inadmissible and ordered removed, whether summarily at the port of entry or after removal proceedings under INA 240. The period of inadmissibility is 20 years after a second (or subsequent) removal and is permanent if the alien has been convicted of an aggravated felony. Similarly, the prior INA 212(a)(6)(B) rendered an alien who had previously been deported ineligible for a visa for 5 years (or 20 if the alien had been convicted of an aggravated felony), whereas in the new INA 212(a)(9)(A)(ii), the inadmissibility periods are 10 years following the first removal, 20 years after a second (or subsequent) removal, and permanently if the alien has been convicted of an aggravated felony. Either clause becomes inapplicable if prior to the alien's embarkation at a place outside the United States the Attorney General (in advance) grants the alien permission to reapply for admission. Regulations pertaining to the prior provisions of INA 212(a)(6), with appropriate amendments, have been moved to 22 CFR 40.91. The redesignated 22 CFR 40.91 contains the revised regulations implementing these changes.

22 CFR 40.92—Aliens Unlawfully Present

New INA 212(a)(9)(B)(i)(I) bars for three years after departure an alien who was "unlawfully present" in the United States (as defined in (B)(ii)) for a period of more than 180 days but less than one year, provided the alien departed voluntarily before the commencement of removal proceedings. Subparagraph (9)(B)(iv) provides for the "tolling" (suspension) of up to 120 days in the calculation of an alien's "unlawful presence" if: (1) the alien had been lawfully admitted or paroled and subsequently filed a nonfrivolous application for a change or extension of status before the end of the authorized period of stay (but became an overstay while the application was being adjudicated) and, (2) had not worked without authorization.

If the alien was in the United States unlawfully for one year or more as described at INA 212(a)(9)(B)(i)(II), the inadmissibility period is ten years. The new regulation at 22 CFR 40.92 provides for visa ineligibility under (9)(B)(i) for three years or ten years, as appropriate, and notes the possibility for a waiver under (9)(B)(v) for an immigrant applicant if the Attorney General finds that the refusal of admission would result in extreme hardship to the United States citizen (or lawful permanent resident) spouse or parent of such alien.

INA 212(a)(9)(B) does not contain a provision comparable to that in INA 212(a)(9)(A) for the Attorney General to consent to the alien's reapplying prior to the expiration of the time frames described therein. There are, however, exceptions to the provisions of INA 212(a)(9)(B)(i) for minors, asylees, the beneficiaries of family unity protection, and battered spouses and children who can establish there was a substantial connection between their status violation and the abuse.

The definition of "unlawfully present" under INA 212(a)(9)(B)(ii) includes both remaining in the United States beyond the period of authorized stay and having entered the United States without being admitted or paroled.

22 CFR 40.93—Aliens Unlawfully Present After Previous Immigration Violation

INA subparagraph 212(a)(9)(C)(i)(I) renders inadmissible any alien who has been in the United States unlawfully for an aggregate period of more than 1 year and who subsequently enters or attempts to enter without being admitted (i.e., without lawfully entering after inspection and authorization [see INA 101(a)(13)]). INA 212(a)(9)(C)(i)(II) renders inadmissible any alien who has been ordered removed under INA 235(b)(1), 240, or any other provision of law, and who enters or attempts to enter the United States without being admitted. INA 212(a)(9)(C)(ii) grants an exception to the (otherwise) permanent inadmissibility for an alien who, at least ten years after departure and prior to embarking for the United States, obtains the Attorney General's consent to reapply for admission. A new regulation is established at 22 CFR 40.93 pertaining to aliens removed as a result of unlawful entry (or attempted entry) following such prior immigration violation or removal order.

The amendments to INA 212(a)(6)(A) and (B) and 212(a)(9) described above went into effect on April 1, 1997.

22 CFR 40.104—Unlawful Voters

Section 347 of IIRIRA created a new ground of visa ineligibility (INA 212(a)(10)(D)) for any alien who has voted in violation of any Federal, State or local constitutional provision, statute, ordinance, or regulation. It applies to aliens voting before, on, or after September 30, 1996. The Department is providing new regulations at 22 CFR 40.104 to comport with this addition.

22 CFR 40.105—Former Citizens Who Renounced Citizenship To Avoid Taxation

Section 352(a) of IIRIRA amended the INA to add a new ground of ineligibility at INA 212(a)(10)(E), which renders ineligible for a visa any alien who has been determined by the Attorney General to have renounced United States citizenship to avoid taxation by the United States. This is effective for renunciations on or after September 30, 1996, the effective date of IIRIRA. New regulations are added at 22 CFR 40.105.

Interim rule

This rule modifies 22 CFR, Subchapter E, Subparts B, C, F, G and J, to reflect changes made by Division "C" of Pub. L. 104–208, the illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and 553(d)(3) because it implements statutory provisions already in effect. Some of the provisions of IIRIRA implemented by this rule became effective on the date of enactment, September 30, 1996. Another became effective on November 30, 1996. Still others became effective on April 1, 1997. Therefore, the provisions of this interim rule were effective on September 30, 1996, except that § 40.67 became effective November 30, 1996 and §§ 40.61, 40.62, 40.91, 40.92, and 40.93 were effective on April 1, 1997, to coincide with the dates mandated by Congress.

Pursuant to § 605(b) of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities because it merely implements statutory requirements already in effect. This rule imposes no reporting or record-keeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required by E.O. 12988 and is certified to meet the applicable regulatory standards it describes. Although exempted from E.O. 12866, this rule has been reviewed to ensure consistency with it.

List of Subjects in 22 CFR Part 40

Aliens, Immigrants, Immigration, Nonimmigrants, Passports and visas.

In view of the foregoing, 22 CFR is amended as follows:

PART 40—[AMENDED]

1. The authority citation for Part 40 is amended to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 104–208, 110 Stat. 3009; 22 U.S.C. 26512.

2. Section 40.11 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 40.11 Medical grounds of ineligibility.

* * * * *

(b) *Waiver of ineligibility—INA 212(g).* If an immigrant visa applicant is inadmissible under INA 212(a)(1)(A)(i), (ii), or (iii) but is qualified to seek the benefits of INA 212(g)(1)(A) or (B), 212(g)(2)(C), or 212(g)(3), the consular officer shall inform the alien of the procedure for applying to INS for relief under the applicable provision of law. A visa may not be issued to the alien until the consular officer has received notification from INS of the approval of the alien's application under INA 212(g), unless the consular officer has been delegated authority by the Attorney General to grant the particular waiver under INA 212(g).

(c) *Waiver authority—INA 212(g)(2)(A) and (B).* The consular officer may waive section 212(a)(1)(A)(ii) visa ineligibility if the alien qualifies for such waiver under the provisions of INA 212(g)(2)(A) or (B).

§ 40.22 Multiple criminal convictions.

3. Section 40.22 is revised by removing paragraph (b) and redesignating paragraphs (c), (d), (e) and (f) as (b), (c), (d) and (e), respectively.

§ 40.52 Unqualified physicians.

4. Section 40.52 is amended by revising "203(a)(2) or (3)" to read "203(b)(2) or (3)."

5. Section 40.61 is revised to read as follows:

§ 40.61 Aliens present without admission or parole.

INA 212(a)(6)(A)(i) does not apply at the time of visa issuance.

6. Section 40.62 is revised to read as follows:

§ 40.62 Failure to attend removal proceedings.

An alien who without reasonable cause failed to attend, or to remain in attendance at, a hearing initiated on or after April 1, 1997, under INA 240 to determine inadmissibility or deportability shall be ineligible for a visa under INA 212(a)(6)(B) for five years following the alien's subsequent departure or removal from the United States.

7. Section 40.66 is revised to read as follows:

§ 40.66 Subject of civil penalty.

(a) *General.* An alien who is the subject of a final order imposing a civil penalty for a violation under INA 274C shall be ineligible for a visa under INA 212(a)(6)(F).

(b) *Waiver of ineligibility.* If an applicant is ineligible under paragraph (a) of this section but appears to the consular officer to meet the prerequisites for seeking the benefits of INA 212(d)(12), the consular officer shall inform the alien of the procedure for applying to INS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from

INS of the approval of the alien's application under INA 212(d)(12).

8. Section 40.67 is added to read as follows:

§ 40.67 Student visa abusers.

An alien ineligible under the provisions of INA 212(a)(6)(G) shall not be issued a visa unless the alien has complied with the time limitation set forth therein.

9. Section 40.91 is revised to read as follows:

§ 40.91 Certain aliens previously removed.

(a) *5-year bar.* An alien who has been found inadmissible, whether as a result of a summary determination of inadmissibility at the port of entry under INA 235(b)(1) or of a finding of inadmissibility resulting from proceedings under INA 240 initiated upon the alien's arrival in the United States, shall be ineligible for a visa under INA 212(a)(9)(A)(i) for 5 years following removal from the United States if prior to the alien's reembarkation at a place outside the United States that is the alien's first such removal.

(b) *10-year bar.* An alien who has otherwise been removed from the United States under any provision of law, or who departed while an order of removal was in effect, is ineligible for a visa under INA 212(a)(9)(A)(ii) for 10 years following such removal or departure from the United States.

(c) *20-year bar.* An alien who has been removed from the United States two or more times shall be ineligible for a visa under INA 212(a)(9)(A)(i) or INA 212(a)(9)(A)(ii), as appropriate, for 20 years following the most recent such removal or departure.

(d) *Permanent bar.* If an alien who has been removed has also been convicted of an aggravated felony, the alien is permanently ineligible for a visa under INA 212(a)(9)(A)(i) or 212(a)(9)(A)(ii), as appropriate.

(e) *Exceptions.* An alien shall not be ineligible for a visa under INA 212(a)(9)(A)(i) or (ii) if the Attorney General has consented to the alien's application for admission.

10. Section 40.92 is revised to read as follows:

§ 40.92 Aliens unlawfully present.

(a) *3-year bar.* An alien described in INA 212(a)(9)(B)(i)(I) shall be ineligible for a visa for 3 years following departure from the United States.

(b) *10-year bar.* An alien described in INA 212(a)(9)(B)(i)(II) shall be ineligible for a visa for 10 years following departure from the United States.

(c) *Waiver.* If a visa applicant is inadmissible under paragraph (a) or (b) of this section but appears to the consular officer to meet the prerequisites for seeking the benefits of INA 212(a)(9)(B)(v), the alien shall be informed of the procedure for applying to INS for relief under that provision of law.

11. Section 40.93 is revised to read as follows:

§ 40.93 Aliens unlawfully present after previous immigration violation.

An alien described in INA 212(a)(9)(C)(i) is permanently ineligible for a visa unless the Attorney General consents to the alien's application for readmission not less than 10 years following the alien's last departure from the United States. Such application for readmission shall be made prior to the alien's reembarkation at a place outside the United States.

12. Section 40.104 is revised to read as follows:

§ 40.104 Unlawful voters.

An alien who at any time has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance or regulation is ineligible for a visa under INA 212(a)(10)(D).

13. Section 40.105 is revised to read as follows:

§ 40.105 Former citizens who renounced citizenship to avoid taxation.

An alien who is a former citizen of the United States, who on or after September 30, 1996, has officially renounced United States citizenship and who has been determined by the Attorney General to have renounced citizenship to avoid United States taxation, is ineligible for a visa under INA 212(a)(10)(E).

December 10, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 97–33257 Filed 12–24–97; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8740]

RIN 1545–AV03

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the availability of the safe harbor deposit rule based on look-back quarter liability and affects persons required to make deposits of excise taxes. This document also contains temporary regulations relating to floor stocks taxes and affects persons liable for those taxes. The regulations implement certain changes made by the Small Business Job Protection Act of 1996 (the 1996 Act) and the Airport and Airway Trust Fund Tax Reinstatement Act of 1997 (the 1997 Act). The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective December 29, 1997. For dates of applicability, see §§ 40.6302(c)–1T and 40.6302(c)–2T.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Excise Tax Procedural Regulations (26 CFR part 40) that implement certain changes made by the 1996 Act and the 1997 Act.

The aviation excise taxes that expired on December 31, 1995, were reinstated by the 1996 Act for the period from August 27 through December 31, 1996, by the 1997 Act for the period from March 7 through September 30, 1997, and were extended, with modifications, for the period from October 1, 1997, through September 30, 2007.

Deposit Safe Harbor Rules

Sections 40.6302(c)–1(c)(2) and 40.6302(c)–2(b)(2) (relating to deposit safe harbors) currently provide, generally, that a person can satisfy excise tax deposit obligations for a calendar quarter by depositing an amount equal to the person's excise tax liability reported on the return for the second preceding quarter (the look-back quarter). For this purpose, the tax liability for the look-back quarter must be modified to take into account any increase in rates in the current quarter, but the safe harbor does not specifically address the effect of the enactment of a new tax or the reinstatement of an expired tax. Notice 97–15, 1997–8 I.R.B. 23, and section 2(f) of the 1997 Act provide that the look-back safe harbor shall not apply with respect to any tax unless the tax was imposed throughout the look-back period.

The temporary regulations modify the look-back safe harbor rules to reflect this change. Under the temporary regulations, the general look-back safe harbor of § 40.6302(c)–1(c)(2) is modified for a class of tax that includes a tax that was not in effect at all times during the look-back quarter (or, in the case of an alternative method tax, that was not in effect at all times during the look-back quarter and the month preceding the look-back quarter). The safe harbor does not apply to that class of tax unless, for each semimonthly period, the deposit is not less than the greater of (1) ⅙ of the net tax liability reported for the class of tax for the look-back quarter, or (2) the sum of (i) 95 percent of the net tax liability incurred with respect to new or reinstated taxes during the semimonthly period, and (ii) ⅙ of the net tax liability reported for all other taxes in the class for the look-back quarter. Also, the section 4681 tax (ozone-depleting chemicals) look-back safe harbor provided under § 40.6302(c)–2(b)(2) is modified in a similar manner if the tax liability for the quarter includes liability for any chemical that was not subject to tax at all times during the look-back quarter.

The new rules apply to liabilities for new or reinstated taxes incurred after February 28, 1997.

Fuel Floor Stocks Taxes

Section 1609(h) of the 1996 Act imposes a floor stocks tax on aviation fuel (other than gasoline) on which tax was imposed by section 4091 before August 27, 1996, and that is held on the first moment of that date by any person. Section 2(d) of the 1997 Act imposes a floor stocks tax on aviation gasoline and aviation fuel (other than gasoline) on which tax was imposed by section 4081 or 4091 before March 7, 1997, and that is held on the first moment of that date by any person.

The temporary regulations provide that the rules set forth in 26 CFR part 40 (relating to administrative provisions for certain excise taxes, including the excise taxes on aviation fuels) also apply to related floor stocks taxes. Thus, persons liable for floor stocks taxes on aviation fuels must file returns reporting those taxes in accordance with the provisions of 26 CFR part 40.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 40 is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 40.0–1T is added to read as follows:

§ 40.0–1T Introduction (temporary).

(a) through (f). [Reserved]

(g) *Applicability to floor stocks taxes.* The regulations in this part 40 also apply with respect to floor stocks taxes imposed on articles subject to a tax described in § 40.0–1(a), beginning April 1, 1991.

Par. 3. Section 40.6011(a)–1T is added to read as follows:

§ 40.6011(a)–1T Returns (temporary).

(a)(1) through (a)(2)(ii). [Reserved]

(a)(2)(iii) *Floor stocks tax return.* A return reporting liability for a floor stocks tax described in § 40.0–1T(g) is a return for the calendar quarter in which the tax payment is due and not for the calendar quarter in which the liability for tax is incurred, beginning April 1, 1991.

Par. 4. Section 40.6302(c)–1T is added to read as follows:

§ 40.6302(c)–1T Use of Government depositaries (temporary).

(a) through (c)(2)(iii). [Reserved]

(c)(2)(iv) *Modification for new or reinstated taxes*—(A) *Applicability.* The safe harbor rule of § 40.6302(c)–1(c)(2)(i) is modified for any calendar quarter in which a person's liability for a class of tax includes liability for any new or reinstated tax. For this purpose, a new or reinstated tax is—

(*1*) Any tax (including an alternative method tax) that was not in effect at all times during the look-back quarter; and

(*2*) Any alternative method tax that was not in effect at all times during the month preceding the look-back quarter.

(B) *Modification.* The safe harbor rule of § 40.6302(c)–1(c)(2)(i) does not apply to a class of tax unless the deposit of taxes in that class for each semimonthly period in the calendar quarter is not less than the greater of—

(*1*) ⅙ of the net tax liability reported for the class of tax for the look-back quarter; or

(*2*) The sum of—

(*i*) 95 percent of the net tax liability incurred with respect to new or reinstated taxes during the semimonthly period; and

(*ii*) ⅙ of the net tax liability reported for all other taxes in the class for the look-back quarter.

(C) *Effective date.* This paragraph (c)(2)(iv) applies to tax liabilities for new or reinstated taxes incurred after February 28, 1997, except that paragraph (c)(2)(iv)(A)(*2*) of this section applies only for calendar quarters beginning after December 31, 1997.

(c)(3) through (f)(4). [Reserved]

(f)(5) *Taxes excluded; floor stocks taxes.* No deposit is required in the case of any floor stocks tax described in § 40.0–1T(g), beginning April 1, 1991.

Par. 5. Section 40.6302(c)–2T is added to read as follows:

§ 40.6302(c)–2T Special rule for use of Government depositaries under section 4681 (temporary).

(a) through (b)(2)(ii). [Reserved]

(b)(2)(iii) *Modification for new chemicals*—(A) *Applicability.* The safe harbor rule of § 40.6302(c)–2(b)(2)(i) is modified for any calendar quarter in which a person's liability for section 4681 tax includes liability with respect to any new chemical. For this purpose, a new chemical is any chemical that was not subject to tax at all times during the look-back quarter.

(B) *Modification.* The safe harbor rule of § 40.6302(c)–2(b)(2)(i) does not apply unless the deposit of section 4681 taxes for each semimonthly period in the calendar quarter is not less than the greater of—

(*1*) ⅙ of the net tax liability reported under section 4681 for the look-back quarter; or

(*2*) The sum of—

(*i*) 95 percent of the net tax liability incurred under section 4681 with

respect to the new chemical during the semimonthly period; and

(*ii*) 1/6 of the net tax liability reported under section 4681 with respect to all other chemicals for the look-back quarter.

(C) *Effective date.* This paragraph (b)(2)(iii) applies to tax liabilities for new chemicals incurred after February 28, 1997.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: November 6, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–33248 Filed 12–24–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 95–054]

RIN 2115–AF17

Regattas and Marine Parades

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; delay of effective date.

SUMMARY: The Coast Guard is delaying the effective date of the interim rule on regatta and marine parades published in the **Federal Register** on June 26, 1996. The interim rule more precisely identifies those marine events which require a permit, those which require only written notice to the Coast Guard, and those which require neither. A change in the effective date from January 1, 1998, to January 1, 1999, is necessary to allow additional time to further assess the potential impact, if any, of the interim rule on the environment.

EFFECTIVE DATE: The interim rule published on June 26, 1996 (61 FR 33027) and delayed by a document published on November 26, 1996 (61 FR 60027) is effective on January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Project Manager, Office of Boating Safety, Program Management Division, 202–267–0979. You may obtain a copy of the interim rule and subsequent notices by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or read it on the Internet at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org.

SUPPLEMENTARY INFORMATION: On June 26, 1996, the Coast Guard published an interim rule and notice of availability of environmental assessment (CGD 95–054) entitled "Regattas and Marine Parades" in the **Federal Register** (61 FR 33027). The interim rule, which was to become effective on January 1, 1997, revised the Coast Guard's marine event regulations to eliminate unnecessary requirements while continuing to protect the safety of life. The rule more precisely identifies those events which require a permit, those which require only written notice to the Coast Guard, and those which require neither. The environmental assessment and proposed finding of no significant impact which support this rulemaking were made available to the public.

Approximately 85 comments were received in response to the interim rule and notice of availability of the environmental assessment and to the Coast Guard's previous requests for comments. Many of these comments raised concerns regarding the reporting requirements placed on the marine event sponsors and the potential environmental effects associated with changing the current regulations on regatta and marine parade permitting procedures. In addition, several comments received in response to a draft environmental impact statement (EIS) entitled "U.S. Coast Guard Atlantic Protected Living Marine Resources Initiative" reiterated concerns raised by the comments on the interim rule. Based on these comments and on the concerns raised during the ongoing consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), the Coast Guard delayed the effective date of the interim rule to January 1, 1998 (61 FR 60027; November 26, 1996) to reconsider whether to proceed with a revision of the regulations on regatta and marine parade permitting procedures, as published, and to complete its consultation with FWS and NMFS. Because the Coast Guard has not yet completed its reconsideration and consultation with the FWS and NMFS or the required environmental documentation, the Coast Guard is delaying the effective date to January 1, 1999.

Accordingly, in FR Doc. 96–16319 published in the **Federal Register** on June 26, 1996, at 61 FR 33027, as amended by the notice of delay effective date published on November 26, 1996, at 61 FR 60027, the effective date for the referenced interim rule is changed from January 1, 1998, to January 1, 1999.

Dated: December 18, 1997.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 97–33682 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL159–1a; FRL–5938–4]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves the section 111(d)/129 State Plan submitted by Illinois on June 23, 1997, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons/day of municipal solid waste (MSW). Specifically, the State Plan imposes certain emission limits and control requirements for the existing such MWC in Illinois, the Robbins Resource Recovery Center (RRRC) in Robbins, Illinois.

DATES: This action is effective on February 27, 1998 unless significant adverse written comments (which have not already been responded to) are received by January 28, 1998. If such adverse written comments are received by the above date, this direct final rule will be withdrawn, and timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of this SIP revision request is available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo, Environmental Protection Specialist at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), the EPA promulgated New Source Performance Standards (NSPS) applicable to new MWCs, and EG applicable to existing MWCs. *See* 60 FR 65387. The NSPS and EG are codified at 40 CFR part 60, subparts Cb and Eb, respectively. Subparts Cb and Eb regulate the following air pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, carbon monoxide, lead, cadmium, mercury, dioxins and dibenzofurans, and visible emissions of fugitive ash.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons/day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb are being applied only to MWC units with individual capacity to combust more than 250 tons/day of MSW (large MWC units).

Subpart Eb of the NSPS provides federally enforceable control requirements for large MWC units for which construction is commenced after September 20, 1994, or for which modification or reconstruction is commenced after June 19, 1996. Large MWC units built before September 20, 1994, are affected by the NSPS subpart Cb EG. Under section 129 of the Act, EG are not directly federally enforceable. Section 129(b)(2) of the Act requires States to submit to the EPA for approval State Plans that implement and enforce the EG for existing large MWC units. State Plans must be at least as protective as the EG, and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under Section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

On June 23, 1997, the Illinois Environmental Protection Agency (IEPA) submitted to EPA a section 111(d)/129 plan to implement the subpart Cb EG for existing large MWC units. The only large MWC plant operating in the State is Robbins Resource Recovery Center (RRRC), located in Robbins, Illinois. The State Plan establishes EG control requirements for this facility through a Federally Enforceable State Operating Permit (FESOP) condition (special condition 18(c)) in RRRC's state operating permit (permit number 88120055), issued June 2, 1997. On April 26, 1997, a public hearing was held in Robbins, Illinois on the proposed operating permit and the plan for using the permit to apply the EG requirements. Illinois responded to a public comment regarding the EG requirements in the permit by revising and clarifying the permit.

II. EPA Review of State Plan

EPA reviewed Illinois' State Plan for consistency with section 111(d)/129 State Plan requirements under 40 CFR part 60, subpart B and Cb. According to the source inventory in Illinois' State Plan, RRRC is the only existing large MWC source in the State. RRRC is already subject to NSPS requirements for MWC sources under 40 CFR part 60, subpart Ea. Subpart Ea requires emission limitations for certain air pollutants which are equivalent or more stringent than the EG. These pollutants are opacity, carbon monoxide, dioxin/furans, hydrogen chloride, and nitrogen oxide. Therefore, Illinois did not have to adopt EG emission limits for these pollutants in the State Plan.

The State Plan's enforceable mechanism for implementing the remainder of the EG emission limits is through the application and enforcement of special condition 18(c) of operating permit number 88120055, issued to RRRC on June 2, 1997. This is a FESOP condition which requires RRRC to comply with EG limits for cadmium, lead, mercury, particulate matter, sulfur dioxide, and visible emissions of fugitive ash, as set forth under subpart Cb. Condition 18(c) also requires RRRC to comply with good combustor operating practices (including combustor load and particulate matter emission control device inlet temperature), requirements for compliance and performance testing, requirements for operator training and certification (including maintenance and periodic review of a site-specific facility operating manual), and requirements for reporting and recordkeeping, as set forth under subpart Cb. RRRC was required to comply with condition 18(c) beginning June 2, 1997, the date RRRC's operating permit was issued. This date is well within the December 19, 2000, deadline required by section 129 for existing large MWC units to come into compliance with the EG.

The FESOP condition also requires RRRC to comply with amendments made to the EG on August 25, 1997 (62 FR 45124). On that date, in response to the April 8, 1997 court opinion cited above, EPA amended EG emission limitations for lead, sulfur dioxide, hydrogen chloride and nitrogen oxides, to address changes in the Maximum Achievable Control Technology (MACT) floor for existing large MWC units (62 FR 45116). The EG amendments for hydrogen chloride and nitrogen oxides are still not as stringent as subpart Ea. However, the amendments slightly tighten the EG emission limits for sulfur dioxide and lead from the 1995 subpart Cb promulgation. Also on August 25, 1997, EPA promulgated certain amendments to clarify and make technical corrections to subpart Cb (62 FR 45124); these amendments are also enforceable under the RRRC FESOP condition. Since the August 1997 subpart Cb amendments are enforceable under Illinois' State Plan, Illinois will not need to revise the State Plan to include these amendments.

The Illinois State Plan adequately addresses all the essential elements of an approvable section 111(d)/129 State plan. On October 23, 1997, IEPA submitted to EPA a letter from IEPA's General Counsel demonstrating the State's legal authority to carry out the State Plan through the RRRC FESOP condition. To meet emission inventory requirements, the State Plan submittal includes test data collected during initial testing of RRRC's combustors conducted January 6 through January 11, 1997, at maximum combustor load. The State Plan includes emissions limits that are at least as protective as those in the subpart Ea EG. The RRRC FESOP condition provides for emission limitation and testing, monitoring, recordkeeping, and reporting requirements consistent with those specified in the EG. A transcript of the April 26, 1997 public hearing, and subsequent June 2, 1997 IEPA responsiveness summary were included in the State Plan submittal. Finally, the State Plan submittal provides for annual State progress reports to EPA on implementation of the State Plan.

In conclusion, the EPA finds the June 23, 1997 Illinois State Plan for large MWCs to meet the criteria for approval contained in subpart B and Cb. For a more detailed discussion of EPA's analysis, please refer to the Technical Support Document for this rulemaking

action, which can be obtained from the EPA Region 5 office listed above.

III. EPA Rulemaking Action

The EPA is approving, through direct final rulemaking action, Illinois' section 111(d)/129 plan for large MWCs. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical comments be filed. This action will be effective on February 27, 1998 unless, by January 28, 1998, such adverse or critical comments are received on the approval.

If the EPA receives such adverse comments, the approval will be withdrawn before the effective date by publishing a subsequent rulemaking that withdraws the final action. Comments will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on February 27, 1998.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under federal, State or local law, and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(a), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: December 11, 1997.

Gail A. Ginsberg,

Acting Regional Administrator, Region V.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart O—Illinois

2. Part 62 is amended by adding § 62.3350 and an undesignated heading to subpart O to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Conbustors with the Capacity to Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.3350 Identification of plan.

Illinois submitted "State Plan to Implement Emission Guidelines for Large Municipal Waste Combustors" on June 23, 1997. The plan applies specifically to Robbins Resource Recovery Center (RRRC), located in Robbins, Illinois. The enforceable mechanism for this source is special condition 18(c) of operating permit number 88120055, issued to RRRC by Illinois on June 2, 1997.

[FR Doc. 97–33765 Filed 12–24–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5937–2]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for authorization to revise its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Louisiana's revisions consist of regulations which specifically govern hazardous waste combustion at Boilers and Industrial Furnaces (BIF's). Louisiana requirements are listed on the chart included in this document. Upon approval, Louisiana will be authorized to regulate air emissions from the BIFs. Currently, such waste is regulated by EPA. Louisiana will be authorized to issue BIF permits and to ensure that all permits issued to hazardous waste combustion facilities are protective of human health and the environment. Louisiana agrees to ensure compliance with all terms of the trial burn plans and schedules that are approved by EPA prior to authorization. The EPA has reviewed Louisiana's application and determined that its hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Unless adverse written comments are received on this action during the review and comment period provided in a companion document in the "Proposed Rules" section of today's **Federal Register**, EPA's decision to approve Louisiana's hazardous waste program revision will take effect as provided below. Louisiana's application for the program revision is available for public review and comment.

DATES: This authorization for Louisiana shall be effective March 16, 1998 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. Any comments on Louisiana's program revision application must be filed as provided in the companion document on this action, appearing in the Proposed Rules section of today's **Federal Register**.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, phone (504) 765–0617 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–6444. Written comments, referring to Docket Number LA–97–1, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States authorized under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State Hazardous Waste Programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, and 279.

B. Louisiana

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its base hazardous waste management program. Louisiana received authorization for revisions to its program on January 29, 1990 (54 FR 48889), October 25, 1991 (56 FR 41958), and Corrections at (56 FR 51762), effective January 23, 1995 (59 FR 55368–55371), and Corrections at (60 FR 18360), March 8, 1995 (59 FR 66200), January 2, 1996 (60 FR 53707) and June 11, 1996 (61 FR 13777–13782). On December 4, 1996, Louisiana submitted a final complete program revision application for additional program approvals. Today, Louisiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In 1983, the Louisiana legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 *et seq.*, the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality (LDEQ), which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State.

C. BIF Revisions

The State of Louisiana has applied for authorization to revise its RCRA hazardous waste program to include regulations which specifically govern hazardous waste combustion at Boilers and Industrial Furnaces (BIFs). Hazardous waste combustion is a form of hazardous waste treatment under RCRA regulations. The regulatory form for combustion is defined as "the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of the hazardous waste." 40 Code of Federal Regulations (CFR) section 260.10. Hazardous waste combustion occurs at a variety of facilities including incinerators, boilers, and industrial furnaces. Louisiana requirements are listed on the chart included in this document. Upon approval, Louisiana will be authorized to regulate air emissions from the BIFs. Currently, such waste is regulated by EPA. Louisiana will be authorized to issue BIF permits and to ensure that all permits issued to hazardous waste combustion facilities are protective of human health and the environment. Louisiana has also agreed to ensure compliance with all terms of the trial burn plans and schedules that are approved by EPA prior to authorization.

The EPA reviewed Louisiana's application and is today making an immediate final decision, subject to review and comment, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant authorization for the additional program modifications to Louisiana. As provided in the Proposed Rules section of today's **Federal Register**, the public may submit written comments on EPA's proposed final decision until January 28, 1998. Copies of LDEQ's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of LDEQ's program revision shall become effective 75 days from the date this document is published, unless an adverse written comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If a adverse written comment is received, EPA will publish either a withdrawal of the immediate final decision or a document containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Louisiana's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–266, 268, and 270 that were published in the FR from July 1, 1993, through June 30, 1994. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Burning of Hazardous Waste in Boilers and Industrial Furnaces, [56 FR 7134] February 1991. (Checklist 85).	Louisiana Revised Statutes (LRS) 30: §2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §§ 105.D.13, 17, & 18, as amended September 20, 1994, effective September 20, 1994; 4105.B.13, as amended September 20, 1996, effective September 1996; 109, as amended September 20, 1995, effective September 20, 1995; 109.Solid Wst.b–4.b.iii & 5.d, as amended September 20, 1994, effective September 20, 1994; 1501.C.2, 3001.A, 3001.F.1.c, as amended March 20, 1995, effective March 29, 1995; 3001.C.1–C.1.b, 3001.C.2.a–C.3.b.iii, as amended September 20, 1996, effective September 20, 1996; 4307, as amended March 20, 1996, effective March 20, 1996; 321.C.a.iv, as amended September 20, 1995, effective September 20, 1995; 321.C.7–C.a.v, 321.C.a.i–iv, 322, 535.A–F, 537.A–C, as amended March 30, 1995, effective March 20, 1995; 3115.B.12–B.12.a, as amended September 20, 1996, effective September 20, 1996; 4303.A.6, & B.7, as amended December 20, 1992, effective December 20, 1992; 4305.C & D, as amended October 20, 1994, effective October 20, 1992; 105.D.33.b, as amended May 20, 1996, effective May 20, 1996; 105.H.1, 109 Infrared Incinerator, 109. Plasma arc Incinerator, as amended March 20, 1995, effective March 20, 1995; 110, as amended September 20, 1996; effective September 20, 1996; 3001.A–E, 3001.F, 3003.A–C.2, 3005.A–I, as amended September 20, 1995, effective September 20, 1995; 3007.A–L, 3007B.b.2ii.c 3009.A–, 3013.A–I, 3015.A–H, 3017.A–E, 3019.A–B.2, 3019.B.1, 3021, 3021 A, B, C, D & E, 3021.F.4, 3021.F, 1–3, 3023.A–E.6, 3025, 3025 A, A 1–3, 3025.B, 3025.B.1, 3025.B.1.a, 3025.B.1.b, 3025.B.2.a, 3025.C, 3025.C.1–2, 3025.C.2.a, as amended March 20, 1995, effective March 20, 1995; Chap 30 Appendices A–L, as amended May 20, 1996, effective May 20, 1996; 3105.A.I, as amended September 20, 1994, effective September 20, 1994; 3511.D.1, as amended March 20, 1995, effective March 20, 1995; 4105.C & C.2, as amended September 20, 1994, effective September 20, 1994; 4381.D.1, 4381.D.2–D.2.b, 4383.A–B, as amended March 20, 1995, effective March 20, 1995, 4513, as amended September 20, 1995, effective September 20, 1995; 4523, 1995; and 4523, as amended March 20, 1995, effective September 20, 1995.
2. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I, [56 FR 32688] July 17, 1991. (Checklist 94).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§321.C.7–C.a.v, 321.C.a.i–iv, 322, 535.A–F, 537.A–C, as amended March 30, 1995, effective March 20, 1995; 3115.B.12–B.12.a, as amended September 20, 1996, effective September 20, 1996; 4303.A.6, & B.7, as amended December 20, 1992, effective December 20, 1992; 4305.C & D, as amended October 20, 1994, effective October 20, 1992; 105.D.33.b, as amended May 20, 1996, effective May 20, 1996; 105.H.1, 109 Infrared Incinerator, 109. Plasma arc Incinerator, as amended March 20, 1995, effective March 20, 1995; 110, as amended September 20, 1996, effective September 20, 1996; 3001. A–E, 3001.F, 3001.B.2–3, 3003.A–C.2, 3005.A–I, 3005.B.1, 3005.D.4.d, 3005.E.3.a.iii, 3005.E.6.b, 3005.E.6.b.ii(b), 3005.E.d.ii, as amended September 20, 1995, effective September 20, 1995; 3007.A–L, 3007.A.1.b, 3007.B.2.b.i–ii, iv, 3007.B.2.d, 3007.B.2.e.i(e), 3007.B.2.l, 3007.B.3.b–ii, 3007.B.5.b.ii(b), 3007.B.6, 3009.A–I, 3011.A–C, 3013.A–I, 3015.A–H, 3017.A–E, 3019.A–B.2, 3019.B.1, 3021, 3021 A, B, C, D & E, 3021.F.3–4, 3021.F., 1–3, 3023.A–E.6, 3025, 3025 A, A 1–3, 3025.B, 3025.B.1, 3025.B.1.a, 3025.B.1.b, 3025.B.2.a, 3025.C, 3025.C.1–2, 3025.C.2.a, as amended March 20, 1995, effective March 20, 1995; Chap 30 Appendices A–L, as amended May 20, 1996, effective May 20, 1996; 3105.A.I, as amended September 20, 1994, effective September 20, 1994; 3511.D.1, as amended March 20, 1995, effective March 20, 1995; 4105.C & C.2, as amended September 20, 1994, effective September 20, 1994; 4381.D.1, 4381.D.2–D.2.b, 4383.A–B, as amended March 20, 1995, effective March 20, 1995, 4513, as amended September 20, 1995, effective September 20, 1995; 4523, 1995; and 4523, as amended March 20, 1995, effective September 20, 1995.

Federal citation	State analog
3. Burning of Hazardous Waste in Boilers and Industrial Furnaces, Technical Amendment II, [56 FR 42504–42517] August 27, 1991. (Checklist 96).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 109.Solid Wst.b–4.b.i–iii & 5.d, as amended September 20, 1994, effective September 20, 1994; 1501.C.2, 3001.A, 3001.F.1.c, as amended March 20, 1995, effective March 29, 1995; 3001.C.1–C.1.b, 3001.C.2.a–C.3.b.iii, as amended September 20, 1996, effective September 20, 1996; 4307, as amended March 20, 1996, effective March 20, 1996; 105.D.33.b, as amended May 20, 1996, effective May 20, 1996; 105.H.1, 109 Infrared Incinerator, 109. Plasma arc Incinerator, as amended March 20, 1995, effective March 20, 1995; 110, as amended September 20, 1996, effective September 20, 1996; 3001. A–E, 3001.F, 3003.A–C.2, 3005.A–I, as amended September 20, 1995, effective September 20, 1995; 3007.A–L, 3009.A–I, 3011.A–C, 3013.A–I, 3015.A–H, 3017.A–E, 3019.A–B.2, 3019.B.1, 3021, 3021 A, B, C, D & E, 3021.F.4, 3021.F., 1–3, 3023.A–E.6, 3023.D.2, 3025, 3025 A, A 1–3, 3025.B, 3025.B.1, 3025.B.1.a, 3025.B.1.b, 3025.B.2.a,c, 3025.C, 3025.C.1–2, 3025.C.2.a, as amended March 20, 1995, effective March 20, 1995; Chap 30 Appendices A–L, as amended May 20, 1996, effective May 20, 1996; 3105.A.I, as amended September 20, 1994, effective September 20, 1994; 3511.D.1, as amended March 20, 1995, effective March 20, 1995; 4105.C & C.2, as amended September 20, 1994, effective September 20, 1994; 4381.D.1, 4381.D.2 4381.D.2.a–2.b, 4383.A–B, as amended March 20, 1995, effective March 20, 1995, 4513, as amended September 20, 1995, effective September 20, 1995; 4523, 1995; and 4523, as amended March 20, 1995, effective September 20, 1995.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments III, [57 FR 38558–38566] August 25, 1992. (Checklist 111).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 109.Solid Wst.b–4.b.i–iii & 5.d, as amended September 20, 1994, effective September 20, 1994; 1501.C.2, 3001.A, 3001.F.1.c, as amended March 20, 1995, effective March 29, 1995; 3001.C.1–C.1.b, 3001.C.2.a–C.3.b.iii, as amended September 20, 1996, effective September 20, 1996; 4307, as amended March 20, 1996, effective March 20, 1996; 105.D.33.b, as amended May 20, 1996, effective May 20, 1996; 105.H.1, 109 Infrared Incinerator, 109. Plasma arc Incinerator, as amended March 20, 1995, effective March 20, 1995; 110, as amended September 20, 1996, effective September 20, 1996; 3001. A–E, 3001.F, 3003.C.1, 3003.A–C.2, 3005.A–I, as amended September 20, 1995, effective September 20, 1995; 3007.A–L, 3009.A–I, 3011.A–C, 3013.A–I, 3015.A–H, 3017.A–E, 3019.A–B.2, 3019.B.1, 3021, 3021 A, B, C, D & E, 3021.F.4, 3021.F., 1–3, 3023.A–E.6, 3023.D.2, 3025, 3025 A, A 1–3, 3025.B, 3025.B.1, 3025.B.1.a, 3025.B.1.b, 3025.B.2.a,c, 3025.C, 3025.C.1–2, 3025.C.2.a, as amended March 20, 1995, effective March 20, 1995; Chap 30 Appendices A–L, as amended May 20, 1996, effective May 20, 1996; 3105.A.I, as amended September 20, 1994, effective September 20, 1994; 3511.D.1, as amended March 20, 1995, effective March 20, 1995; 4105.C & C.2, as amended September 20, 1994, effective September 20, 1994; 4381.D.1, 4381.D.2 4381.D.2.a–2.b, 4383.A–B, as amended March 20, 1995, effective March 20, 1995, 4513, as amended September 20, 1995, effective September 20, 1995; 4523, 1995; and 4523, as amended March 20, 1995, effective September 20, 1995.
5. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV, [57 FR 44999–45001] September 30, 1992. (Checklist 114).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105.D.33.b, as amended May 20, 1996, effective May 20, 1996; 105.H.1, 109 Infrared Incinerator, 109. Plasma arc Incinerator, as amended March 20, 1995, effective March 20, 1995; 110, as amended September 20, 1996, effective September 20, 1996; 3001. A–E, 3001.F, 3003.C.1, 3003.A–C.2, 3005.A–I, as amended September 20, 1995, effective September 20, 1995; 3007.A–L, 3009.A–I, 3011.A–C, 3013.A–I, 3015.A–H, 3017.A–E, 3019.A–B.2, 3019.B.1, 3021, 3021 A, B, C, D & E, 3021.F.4, 3021.F., 1–3, 3023.A–E.6, 3023.D.2, 3025, 3025 A, A 1–3, 3025.B, 3025.B.1, 3025.B.1.a, 3025.B.1.b, 3025.B.2.a,c, 3025.C, 3025.C.1–2, 3025.C.2.a, as amended March 20, 1995, effective March 20, 1995; Chap 30 Appendices A–L, as amended May 20, 1996, effective May 20, 1996; 3105.A.I, as amended September 20, 1994, effective September 20, 1994; 3511.D.1, as amended March 20, 1995, effective March 20, 1995; 4105.C & C.2, as amended September 20, 1994, effective September 20, 1994; 4381.D.1, 4381.D.2 4381.D.2.a–2.b, 4383.A–B, as amended March 20, 1995, effective March 20, 1995, 4513, as amended September 20, 1995, effective September 20, 1995; 4523, 1995; and 4523, as amended March 20, 1995, effective September 20, 1995.

Federal citation	State analog
6. Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations, [58 FR 3881–38884] July 20, 1993. (Checklist 125).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§110, as amended September 20, 1996, effective September 20, 1996; 3009.E.3, as amended May 20, 1996, effective May 20, 1996; 3013.H, as amended May 20, 1995, effective May 20, 1995; and Chapter 30.App J, as amended May 20, 1996, effective May 20, 1996.
7. Testing and Monitoring Activities, [58 FR 46040–46051] August 31, 1993. (Checklist 126).	LRS 30: §2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §§110, 105.M.3.a.i, 537.B.2.b.ii(a)–(b), 529.C.1.c–d, 1901.A, 2223, 2223.A, 2515.D, 4431.A.1, 4507.D, 4903.c.1–2, 4903.E.1, Ch.49.App.A, Ch.49.App.B, Ch. 49.App.C, Chap 49 App A.Tbl 8–10, as amended September 20, 1996; effective September 20, 1996; §3115.B.1.c–d, as amended March 20, 1995; effective March 20, 1995.
8. Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues, [58 FR 59598–59603] November 9, 1993. (Checklist 127).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§3025.B.2.a, as amended September 20, 1996, effective September 20, 1996; Chap 30 App G, as amended May 20, 1996.
9. Hazardous Waste Management System; Identification and Listing of Hazardous Wastes from Wood Surface Protection, [59 FR 458–469] January 4, 1994. (Checklist 128)	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§110, and 3105.Tbl.1, as amended September, 20, 1996; effective September 20, 1996.
10. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion, [59 FR 8362–8366] February 18, 1994. (Checklist 129).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§105.D.37.b.i–ii, 105.D.37.c, 105.D.37.c.i–iii, 105.D.37.c.iii.(a)–(e), 105.D.38.c, 105.D.38.d, 105.D.38.e, as amended September 20, 1996; effective September 20, 1996.
11. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; [59 FR 10550–10560] March 4, 1994. (Checklist 130).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§4001, 4003.B.1.b, 4003.B.2.c, 4003.G, 4003.G.1–6, 4009.B.2, 4009.B.2.a, 4009.B.b, 4009.B.2.c–e, 4027.C, 4033.C, 4037.A.5, 4037.B.5, 4047.C, 4067.C, as amended March 20, 1995; effective March 20, 1995, §4003.G, 4003.G.1–6, 4009.B.2.c–e, as amended September 20, 1996; effective September 20, 1996.
12. Recordkeeping Instructions; Technical Amendment, [59 FR 13891–13893] March 24, 1994. (Checklist 131).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§1529.B.3.Tbl.1, 1529.B.4.Tbl.2, 4357.B.3.Tbl.1, and 4357.B.4.Tbl.2, as amended September 20, 1996; effective September 20, 1996.
13. Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Waste from Wood Surface Protection; Correction, [59 FR 28484] June 2, 1994. (Checklist 132).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §110, as amended September 20, 1996; effective September 20, 1996.
14. Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage Tanks, and Underground Injection Control Systems; Financial Assurance; Letter of Credit, [59 FR 29958–29960] June 10, 1994. (Checklist 133).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§3719.D, and 3719.K, as amended September 20, 1996; effective September 20, 1996.
15. Hazardous Waste Management System; Correction of Listing of P015–Beryllium Powder, [59 FR 31551] June 20 1994. (Checklist 134).	LRS 30: 2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §4901.E.Tbl.3, as amended September 20, 1996; effective September 20, 1996, §Ch.22.Tbl.2, as amended January 20, 1996; effective January 20, 1996.

Louisiana is not authorized to operate the Federal program on Indian lands, this authority remains with EPA.

D. Decision

I conclude that Louisiana's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Louisiana is granted final authorization to operate its hazardous waste program as revised, assuming no adverse comments are received as discussed above. Upon effective final approval Louisiana will be responsible for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also will have primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize Louisiana's program and for incorporation by reference of those provisions of Louisiana's statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart T until a later date.

F. Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of Louisiana's hazardous waste program referenced in today's document will result in annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program, except in certain cases where a "Federal intergovernmental mandate" affects an annual federal entitlement program of $500 million or more that are not applicable here. Louisiana's request for approval of a hazardous waste program is voluntary; if a state chooses not to seek authorization for administration of a hazardous waste program under RCRA subtitle C, RCRA regulation is left to the EPA.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures $100 million or more for state, local, and tribal governments in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of Louisiana's hazardous waste program referenced in today's document will result in annual costs of $100 million or more. The EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual federal and state compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs and underground storage tanks under the approved State program, in lieu of the Federal program.

H. Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether the EPA or the state administers the RCRA subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

I. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protections, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This document is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 11, 1997.

Lynda F. Carroll,

Acting Regional Administrator, Region VI.

[FR Doc. 97–33764 Filed 12–24–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–5935–7]

Louisiana: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Louisiana has revised its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Louisiana's changes to its program and has made a decision, subject to public review and comment, that Louisiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA's decision to approve Louisiana's hazardous waste program revisions will take effect as provided below. Louisiana's program revisions are available for public review and comment.

The EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference EPA's approval of those provisions of the State statutes and regulations that EPA will enforce under RCRA Sections 3008, 3013 and 7003. Thus, EPA intends to codify the Louisiana authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference EPA's approval of Louisiana's base hazardous waste program and its revisions to that program.

DATES: Final authorization for Louisiana's program revisions shall be effective March 16, 1998 unless EPA publishes a prior FR action withdrawing this immediate final rule. All comments on Louisiana's program revisions must be received by the close of business February 12, 1998. The incorporation of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1998 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Copies of Louisiana's program revisions and materials EPA used in evaluating the revisions are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday, at the following addresses. Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, Phone number: (504) 765–0617; EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444. Written comments referring to Docket Number LA97–2 should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

I. Authorization of State Initiated Changes

A. Background

States with final authorization under Section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter HSWA) allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, 270, 273, and 279.

B. Louisiana

Louisiana initially received final authorization to implement its base hazardous waste program on January 24, 1985, effective February 7, 1985 (50 FR 3348). In 1987, Louisiana renumbered the Louisiana Hazardous Waste Regulations (LHWR) and codified them in the Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials. Louisiana received final authorization for revisions to its program on November 28, 1989, effective January 29, 1990 (54 FR 48889), on August 26, 1991, effective October 25, 1991 (56 FR 41958) as corrected October 15, 1991 (56 FR 51762); November 7, 1994, effective January 23, 1995 (59 FR 55368) as corrected April 11, 1995 (60 FR 18360); December 23, 1994, effective March 8, 1995 (59 FR 66200); October 17, 1995, effective January 2, 1996 (60 FR 53704 and 60 FR 53707); and March 28, 1996, effective June 11, 1996 (61 FR 13777).

With respect to today's document, Louisiana has made conforming changes to make its regulations internally consistent relative to the revisions made for the above listed authorizations. Louisiana has also changed its regulations to make them more consistent with the Federal requirements. The EPA has reviewed these changes and has made an immediate final decision subject to public review and comment in accordance with 40 CFR 271.21(b)(3)), that Louisiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Louisiana's hazardous waste program. As explained in the Proposed Rule section of today's FR, the public may submit written comments on EPA's immediate final decision until February 12, 1998. Copies of Louisiana's program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of Louisiana's program revision shall become effective in 75 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Louisiana will be authorized to carry out, in lieu of the Federal program, the following State-initiated changes to provisions of the State's program, which are analogous to the indicated RCRA provisions found at Title 40 of the Code of Federal Regulations, as of July, 1993, unless otherwise stated. The Louisiana provisions are from the Louisiana Administrative Code (LAC), Title 33, Part V, Hazardous Waste and Hazardous

Materials, as amended through June, 1995, unless otherwise stated.

State requirement	Federal requirement
105.A	RCRA § 3010(a).
105.D.43 introductory paragraph and D.43.a-.e	261.4(a)(1)-(5).
109 "Designated facility", as amended through March 1996	260.10 "Designated facility".
109 "Existing facilities"	260.10 "Existing facility".
109 "Partial Closure"	260.10 "Partial closure".
109 "Solid Waste", as amended through March, 1996	261.2.
111	260.3.
305.A, as amended through March, 1996	270.1(c).
305.D.1.a	264.1(c), 270.60(a).
305.E	270.1(c)(4).
309.L.3.b, as amended through March, 1996	270.30(l)(2)(ii)(A)&(B).
309.L.7	270.30(l)(6).
317.C	260.2(a).
319	270.12.
321.C.2.i, as amended through March, 1996	270.42(b)(iv)(6)(A)(*1*)&(*2*).
323.B, as amended through March, 1996	270.41, 124.5.
507.A	270.11(a)(1).
509	270.11(b).
517.T.2.b.vi	270.14(b)(11)(iv)(C)(2).
523, except 523.G	270.16.
532	270.26.
706, as amended through March, 1996	270.29.
903.A	Part 262, Appendix.
903.C	262.22.
905.A.4	264.71(a)(4).
907.B	264.72(b).
909.G	264.76(g).
911	262.20(a).
1101.B	262.10(c).
1105.A	262.12(b).
1105.C	262.12(c).
1107.A&B	Part 262, Appendix.
1107.C	262.22.
1109.E.5 & E.6	262.34(c)(2).
1111.B.2, as amended April 20, 1991	262.41(b).
1501.C.10	264.1(g)(3).
1529.B.1	264.73(b)(1)–(2).
1529.D.6	264.75(g).
1903.A	264.191(a).
1903.B	264.191(b)–(d).
1905.A–.G	264.192(a)–(g).
1907	264.193.
1909.A–.C	264.194(a)–(c).
1911	264.195(a)–(d).
1913	264.196.
1915.A–.C	264.197(a)–(c).
2117	264.178.
2309.A	264.254(a).
2315.A	264.258(a).
2603.F.1	264.553(f)(1).
2719	264.280.
2911.A	264.228(a)(1).
2911.D.2	264.228(c)(2).
3105.A., as amended November 21, 1988	264.340(a)(1)&(2).
3107	264.341.
3111.A	264.343 introductory paragraph and 264.343(a).
3121	264.351.
3301.B	264.90(a)(2).
3315.A introductory paragraph	264.97(a).
3501.C	264.110(b).
3525	264.119.
3707.A.3.b	264.143(a)(3)(ii).
3707.A.5	264.143(a)(5).
3707.B.3.b	264.143(b)(3)(ii).
3707.C.1	264.143(c)(1).
3707.F.1 introductory paragraph	264.143(f)(1) introductory paragraph.
3707.H	264.143(h).
3711 introductory paragraph	264.145 introductory paragraph.
3711.A.3.b	264.145(a)(3)(ii).
3711.A.5	264.145(a)(5).
3711.B.4(b)	264.145(b)(4)(ii).

State requirement	Federal requirement
3711.C.1	264.145(c)(1).
3711.C.5	264.145(c)(5).
3711.D.9	264.145(d)(9).
3711.F.1 introductory paragraph	264.145(f)(1) introductory paragraph.
3711.F.11 introductory paragraph	264.145(f)(11) introductory paragraph.
3711.H	264.145(h).
3715.A.&.B	264.147(a)&(b).
3715.F.1 introductory paragraph	264.147(f)(1) introductory paragraph.
3715.F.3.c	264.147(f)(3)(iii).
3715.F.6	264.147(f)(6).
3715.G introductory paragraph	264.147(g)(1).
3715.G.1	264.147(g)(1)(i)&(ii).
3715.H–.J	264.147(h)–(j).
3715.K	264.147(k).
3719.A	264.151(a).
3719.C–.E	264.151(c)–(e).
4101	261.6(a)(1).
4103	261.6(b)&(c).
4105.A	261.6(a)(1).
4105.B.8–.14	261.6(a)(3)(v)–(ix).
4111	261.6(a)(1).
4115.C, as amended through March,	261.6(d).
4137	261.6(a)(2).
4139.A.2, except 4139.A.2.b&c	266.20(b).
4139.B.1	266.21.
4139.B.2, as amended through March, 1996	266.22.
4139.B.3, as amended through March,	266.23(a).
4145	266, Subpart G.
4301.H	270.70(b).
4302	270.71.
4353	265.71.
4355	265.72.
4371.A.4 Comment	265.92(a)(4) Comment.
4375.A.1	265.94(a)(1).
4389.E	265.117(d).
4393	465.119.
4399.A.7	265.141(f).
4401.C	265.142(c).
4403.B.4.b	265.143(b)(4)(ii).
4403.D.5	265.143(d)(5).
4403.E.1, as amended March 20, 1990	265.143(e)(1).
4403.G	265.143(g).
4405	265.144.
4407.C.9	265.143(c)(9).
4407.G	265.145(g).
4411.F.1	265.147(f)(1).
4433	265.191.
4435	265.192.
4437	265.193.
4439.C	265.194(c).
4440	265.195.
4443	265.198.
4445	265.200.
4461	265.230.
4475.B	265.258(b).
4477	265.270.
4479.A	265.272(a).
4489.D	265.280(d).
4501.A	265.310(a).
4501.B.3	265.310(a)(1).
4501.B.4–.B.7	265.310(a)(2)–(5).
4501.D.1	265.310(b)(1).
4501.D.4–.5	265.310(b)(3) and (4).
4501.D.7	265.310(b)(5).
4503.A.1	265.312(a)(1).
4535	265.400.
4555 through 4557	265.1033 and 265.1034.
4561.A–.C	265.1050(a)–(c).
4561.D	265.1050(d).
4563	265.1051.
4565 through 4589	265.1052 through 265.1064.
4591 through 4601	265, Subpart W.
4901.D.3, as amended September 20, 1994	261.33(c).
4901.G, Table 6, as amended through March, 1996	261, Appendix VII.

State requirement	Federal requirement
4907	261, subpart B.
Chapter 49, introductory paragraph to Appendix A, as amended through March, 1996	Part 261, Appendix III introductory paragraph.
Chapter 49, Appendix D, as amended through March, 1996	Part 261, Appendix I—Representative Sampling Methods.

In addition to the above listed changes, EPA is authorizing changes to the following State provisions. These provisions do not have a direct analog in the Federal RCRA regulations. However, none of these provisions are considered broader in scope than the Federal program. This is so because these provisions were either previously authorized as part of Louisiana's base authorization or have been added to make the State's regulations internally consistent with changes made for the other authorizations listed in the first paragraph of this section. EPA has reviewed these provisions and has determined that they are consistent with and no less stringent than the Federal requirements. Additionally, this authorization does not affect the status of State permits and those permits issued by EPA because no new substantive requirements are a part of these revisions. The Louisiana provisions are from LAC, Title 33, part V, Hazardous Waste and Hazardous Materials, as amended through June 1995.

STATE REQUIREMENT

105.J.1	305.C.10	913.A–.D	919	923
1519.B.5	1521	2305	2309.B.4	2503.K.3
4029.C	4029.D	4109	4373.K.4	

Louisiana is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that Louisiana's program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Louisiana is granted final authorization to operate its hazardous waste program as revised assuming no adverse comments are received, as discussed above.

Louisiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also will have primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013 and 7003 of RCRA.

II. Incorporation by Reference

A. Background

The EPA provides both, notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Louisiana. Such notice is particularly important in light of HSWA, (PL 98–616). Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Louisiana program and by amending the CFR whenever a new or different set of requirements is authorized in Louisiana, the status of Federally approved requirements of the Louisiana program will be readily discernible.

The Agency will only enforce those provisions of the Louisiana hazardous waste management program for which authorization approval has been granted by EPA which, by that approval, now act in lieu of similar federal regulations under RCRA section 3006 (b). This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

B. Louisiana Authorized Hazardous Waste Program

To incorporate by reference the Louisiana authorized hazardous waste program, EPA intends to add subpart T to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.951(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.951(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Louisiana enforcement authorities. Section 272.951(b)(2) of 40 CFR lists those authorized Louisiana authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These nonauthorized provisions include: (1) Provisions that are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (40 CFR 271.1(i)); (2) Unauthorized amendments to State provisions previously reviewed and approved by EPA.

State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part

272. Section 272.951(b)(3) of 40 CFR lists for reference and clarity the Louisiana statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Louisiana's hazardous waste regulations include amendments which have not been approved by EPA. Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State has made unauthorized amendments to previously authorized sections of State code, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.951(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Louisiana hazardous waste regulations incorporated by reference at 272.951(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at 272.951(b)(4) are compiled as a separate document, Addendum to the EPA-Approved Louisiana Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, June 1997. This document is available from U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

C. HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Louisiana and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

III. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under State law. Second, the Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. The requirements being authorized and codified today are the result of Louisiana's voluntary participation in accordance with RCRA Subtitle C.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing State program that EPA previously authorized. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate Treatment, storage, and Disposal Facilities (TSDFs), this codification incorporates into the CFR Louisiana's requirements which have already been authorized by EPA under 40 CFR part 271 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this authorization and codification.

IV. Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization and codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the state requirements authorized by EPA under 40 CFR part 271. The EPA's authorization and codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates Louisiana's requirements which have been authorized by EPA under 40 CFR Part 271 into the CFR. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VI. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 10, 1997.

Lynda F. Carroll,

Acting Regional Administrator, Region, VI.

40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart T is amended by adding § 272.951 to read as follows:

§ 272.951 Louisiana State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Louisiana has final authorization for the following elements as submitted to EPA in Louisiana's base program application for final authorizations which was approved by EPA effective on February 7, 1985. Subsequent program revision applications were approved effective on January 29, 1990, October 25, 1991, January 23, 1995, March 8, 1995, January 2, 1996, June 11, 1996 and March 16, 1998.

State Statutes and Regulations

(1) The Louisiana statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) EPA Approved Louisiana Statutory Requirements Applicable to the Hazardous Waste Management Program, dated June, 1997.

(ii) EPA Approved Louisiana Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated June, 1997.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Louisiana Statutes Annotated, Revised Statutes, 1989, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act, 1989: Chapter 2, Sections 2011.A(1)&(2), 2011.B, 2011.C (except 2011.C(1)(a)), 2011.D (introductory paragraph), 2011.D(1)–(3), 2011.D(5)–(9), 2011.D(13)–(15), 2011.D(17)&(18), 2011.D(21) (except 2011.D(21)(e)), 2011.D(22), 2011.E.–.G, 2012 (except 2012.F(4) and 2012.G), 2013, 2014.A, 2019.A&.B, 2020 through 2021, 2023, 2024.B–.C, 2025.A–.D, 2025.E(2)–(5), 2025.F (introductory paragraph), 2025.F(1)–(4), 2025.G–.I, 2026, 2027.C, 2028, 2029, 2033, 2037; Chapter 3, Sections 2054.B(1), 2054.B(2)(a); Chapter 9, sections 2174, 2175, 2180.A (introductory paragraph), 2180.A(2)–(8), 2180.B–.C, 2181–2182, 2183.C, 2183.F, 2183.G (except 2183.G(3)), 2183.H, 2186, 2187, 2188.A, 2188.C, 2189, 2190.A–.D, 2191.A–.C, 2192.A, 2192.B (except 2192.B(4)), 2192.C, 2196, 2199 through 2200, 2203.B–.C, 2204.A(2), and 2204.B.

(ii) Louisiana Statutes Annotated, Revised Statutes, 1992 Cumulative Annual Pocket Part, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act: Chapter 2, section 2011.C(1)(a), 2011.D(21)(e), 2012.F(4), 2012.G, 2018, 2019.C, 2022 (except the first sentence of 2022.A), 2024.A&.D, 2025.E(1), 2025.J, 2027.A&.B; Chapter 9, sections 2180.A(1), 2183.G(3), 2192.B(4).

(iii) Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Amendments through June 1995: Chapter 1, sections 101 107.A–.C; Chapter 3, Sections 301.A&.B, 311.A, 311.C, 315 (introductory paragraph), 323.B.3; Chapter 5, Section 503; Chapter 7, Sections 703, 705 and 707 through 721.

(iv) Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Amendments for July 1995—March 1996: Chapter 3, Section 323.B.4.d. & e.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Louisiana Statutes Annotated, Revised Statutes, 1989, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act, 1989: Chapter 2, sections 2014.B.–D.

(ii) Louisiana Statutes Annotated, Revised Statutes, 1992 Cumulative Annual Pocket Part, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act: Sections 2178 and 2197.

(iii) Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Amendments through June 1995: 327, 1313, and Chapter 51.

(4) Unauthorized State Amendments. The following authorized provisions of

the Louisiana regulations include amendments published in the Louisiana Register that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Louisiana hazardous waste regulations incorporated by reference at § 272.951(b)(1), EPA will only enforce the authorized State provisions with the effective dates indicated in the table below. The actual State regulatory text authorized by EPA for the listed provisions are available as a separate document, Addendum to the EPA-Approved Louisiana Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, June, 1997. Copies of the document can be obtained from EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

State provision	Effective date of authorized provision	Unauthorized state amendments	
		State reference	Effective date
LAC § 109 "Industrial furnace" introductory paragraph	November 20, 1988	LR 18:1375	December 20, 1992.
LAC § 303.K.1 (previously LHWR § 3.2(k)(1))	July 20, 1984	LR 14:790	November 20, 1988.
LAC § 901 (LHWR § 6.1)	March 20, 1984	LR 20:1000	September 20, 1994.
LAC § 1113.B.1.c (previously LHWR § 7.6(b)(1))	March 20, 1984	LR 16:220	March 20, 1990.
LAC § 1113 (previously LHWR § 7.7)	March 20, 1984	LR 16:220	March 20, 1990.
		LR 20:1000	September 20, 1994.
		LR 20:1109	October 20, 1994.
LAC § 2511.B (previously LHWR § 14.6(b))	March 20, 1984	LR 16:1057	December 20, 1990.
LAC § 3105.A	November 21, 1988	LR 18:1256	November 20, 1992.
		LR 18:1375	December 20, 1992.
		LR 20:1000	September 20, 1994.
LAC § 3309 (previously LHWR § 18.5)	July 20, 1984	LR 16:614	July 20, 1990.
LAC § 3707.F.1 (previously LHWR 20.4(f)(1))	August 20, 1987	LR 18:723	July 20, 1992.
LAC § 3707.F.2 (previously LHWR 20.4(f)(2))	August 20, 1987	LR 18:723	July 20, 1992.
LAC § 3711.F.1	November 21, 1988	LR 18:723	July 20, 1992.
LAC § 3711.F.2	November 21, 1988	LR 18:723	July 20, 1992.
LAC § 3711.G (previously LHWR 20.4(g))	March 20, 1984	LR 18:723	July 20, 1992.
LAC § 3715.F.1 (previously LHWR § 20.8(f)(1))	March 20, 1984	LR 18:723	July 20, 1992.
LAC § 4141	March 20, 1992	LR 18:1375	December 20, 1992.
LAC § 4307 (previously LHWR § 23.4)	March 20, 1984	LR 21:944	September 20, 1995.
LAC § 4397.B	August 20, 1987	LR 21:266	March 20, 1995.
LAC § 4403.E.1	March 20, 1990	LR 18:723	July 20, 1992.
LAC § 4403.E.2	November 21, 1988	LR 18:723	July 20, 1992.
LAC § 4403.F (previously LHWR § 23.52(f))	March 20, 1984	LR 18:723	July 20, 1992.
LAC § 4407.A.12 (previously LHWR § 23.54(a)(12))	March 20, 1984	LR 13:433	August 20, 1987.
		LR 18:723	July 20, 1992.
LAC § 4407.E.1&.2	August 20, 1987	LR 18:723	July 20, 1992.
LAC § 4407.F (previously LHWR § 23.54(f))	March 20, 1984	LR 18:723	July 20, 1992.
LAC § 4503.B introductory paragraph (previously LHWR § 23.102(b)).	March 20, 1984	LR 16:1057	December 20, 1990.
LAC § 4513.A	March 20, 1990	LR 18:1375	December 20, 1992.
		LR 20:1000	September 20, 1994.
LAC § 4901.D.3	September 20, 1994	LR 21:266	March 20, 1995.

(5) Memorandum of Agreement. The Memorandum of Agreement between EPA Region 6 and the Louisiana Department of Environmental Quality—Hazardous Waste Division, signed by the EPA Regional Administrator on December 18, 1995, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) Statement of Legal Authority. "Attorney General's Statement for Final Authorization", signed by the Attorney General of Louisiana on May 10, 1989 and revisions, supplements and addenda to that Statement dated May 13, 1991, May 3, 1994, December 2, 1994, May 31, 1995, July 24, 1995, and November 30, 1995, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) Program Description. The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to Part 272 is amended by adding in alphabetical order, "Louisiana" and its listing to read as follows:

Appendix A to Part 272—State Requirements

Louisiana

The statutory provisions include:

Louisiana Statutes Annotated, Revised Statutes, 1989, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act, 1989: Chapter 1, sections 2002, 2003, 2004 introductory paragraph, 2004(1)–(8), 2004(10), 2004(13), 2004(14) introductory paragraph, 2004(14)(a)&(e), 2004(15); Chapter 9, sections 2172, 2173 (except 2173(2), 2173(9) and 2173(11) introductory paragraph), 2183.A,B,D&E, 2183.I, 2188.B, 2201, 2202, 2203.A, 2204.A(1) and 2204.C.

Louisiana Statutes Annotated, Revised Statutes, 1992 Cumulative Annual Pocket Part, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act: Chapter 1, Section 2004(9); Chapter 2, Section 2022.A first sentence, Chapter 8, Section 2153(1); Chapter 9, Sections 2173(2) and 2173(11); Chapter 18, Section 2417.E(5).

Copies of the Louisiana statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Amendments through June 1995: Chapter 1, Sections 103, 105 introductory paragraph, 105.A–C, 105.D.2–.12, 105.D.13 (except the phrase "except as * * * process hazardous waste"), 105.D.14–.17, 105.D.18 (except the phrase "except as * * * process hazardous waste"), 105.D.19–.32, 105.D.33 (except 105.D.33.c), 105.D.34, 105.D.35, 105.D.37–.42, 105.D.43 (except 105.D.43.f), 105.D.45–.47, 105.E through 105.I, 105.J.1, 105.K, 105.L; 109 Definitions (except for "Carbon Regeneration Unit", "Commercial Boiler", "Commercial Industrial Furnace", "Consignee", "Containment Building", "Designated Facility", "EPA Acknowledgement of Consent", Item 7 of "Hazardous Waste", Item 2 of "Incinerator", Item 12 of "Industrial Furnace", "Infrared Incinerator", the phrase "containment building" in "Miscellaneous Unit", "Partial Closure", the phrase "and that is not a containment building" in "Pile", "Plasma Arc Incinerator", "Primary Exporter", "Receiving Country", "Sludge Dryer", "Solid Waste", "Transit Country" and "Waste Reduction"), 111; Chapter 3, Sections 303, 305.B–.E, 307, 309 (except 309.L.3.b), 311.B&.E, 313, 315.A–.D, 317, 319, 321 (except 321.C.2.i), 322, 323.A , 323.B introductory paragraph, 323.B.1, 323.B.2 (except 323.B.2.e), 323.B.4, 325 and 329; Chapter 5, Sections 501, 505, 507 through 513, 515 (except for 515.25), 516, 517 (except 517.V), 519, 520, 521 through 532, 533 (except 533.B), 534 and 536; Chapter 7, Section 701; Chapter 9, Sections 901 through 923; Chapter 11, Sections 1101 (except 1101.B&.F), 1103 introductory paragraph, 1103.B (except the phrase "For the purposes of compliance with LAC 33:V.Chapter 22, or"), 1105, 1107 (except 1107.A.4 and 1107.D.5), 1108, 1109 (except 1109.E.1.d, E.8 and E.9), 1111.A, 1111.B.1 introductory paragraph (except the phrase "to a treatment, storage, or disposal facility within the United States"), 1111.B.1.a–.c, 1111.B.1.d (except the phrase "within the United States"), 1111.B.1.e (except the phrase "within the United States"), 1111.B.1.f, 1111.B.2 (except the phrase "for a period of at least three years from the date of the report" and the third and fourth sentences), 1111.C–.D, 1113, 1115 through 1121; Chapter 13, Sections 1301 through 1305, 1307.A introductory paragraph (except last sentence), 1307.B, 1307.C (except last sentence), 1307.D, 1307.E (except the phrase "and, for exports, an EPA Acknowledgement of Consent" at 1307.E.2), 1307.F (except the phrase "and, for exports, an EPA Acknowledgement of Consent" at 1307.F.2), 1307.G (except 1307.G.4), 1307.H, 1309, 1311, 1315 through 1323; Chapter 15, Sections 1501 through 1517, 1519 (except 1519.B.8 and 1519.D), 1521 through 1527, 1529 (except 1529.B.12–.19), 1531; Chapter 17, Sections 1701 through 1745; Chapter 19, Sections 1901 (except 1901.C&.D), 1903, 1905.A–.G, 1907, 1909.A–.C, 1911, 1913, 1915.A–.C, 1917 and 1919; Chapter 21, Sections 2101 (except 2101.D), 2103 through 2117; Chapter 23, Sections 2301, 2303 (except 2303.K), 2304 through 2309, 2311 (except the phrase "the waste and the pile satisfy all applicable requirements of LAC 33:V.Chapter 22, and" at 2311.A), 2313, 2315 and 2317; Chapter 25, Sections 2501, 2503.A through 2503.J, 2503.K (except 2503.K.1.o), 2503.L–.N, 2504 through 2509, 2511.A introductory paragraph (except the phrase "the waste and landfill meet all applicable requirements of LAC 33:V.Chapter 22, and"), 2511.A.2 (except the phrase "or LAC 33:V.4321 for interim status facilities"), 2511.B, 2513 through 2517, 2519 (except 2519.F), 2521 (except 2521.B.2) and 2523; Chapter 26, Sections 2601, 2602 and 2603 (except 2603.F.1); Chapter 27, Sections 2701, 2703 (except for 2703.I&.J), 2705 through 2713, 2715 introductory paragraph (except the phrase "the waste and the treatment zone meet all applicable requirements of LAC 33:V.Chapter 22, and"), 2715.A&.B, 2717 through 2723; Chapter 29, Sections 2901, 2903 (except 2903.I), 2904 through 2911, 2913 introductory paragraph (except the phrase "the waste and impoundment satisfy all applicable requirements of LAC 33:V.Chapter 22, and"), 2913.A.1, 2913.A.2 (except the phrase "or for interim status facilities;"), 2915 and 2917; Chapter 31, Sections 3101, 3103 , 3105 (except 3105.D), 3107 through 3121; Chapter 32, sections 3201 through 3207; Chapter 33, Sections 3301, 3303 (except 3303.C&.D), 3305 through 3313, 3315 (except for 3315.K), 3317 through 3322, 3323 (except the phrase "or its successor agency" at 3323.D) and 3325; Chapter 35, Sections 3501 through 3505, 3507 (except the phrase "1803, 1911" at 3507.C), 3509 through 3527; Chapter 37, Sections 3701, 3703, 3705 (except the last sentence of 3705.D), 3707.A–.F, 3707.G (except the phrase "and financial test and guarantee, except that the financial test and guarantee may not be combined" in the second sentence), 3707.H, 3707.I (except the phrase ", and for facilities subject to LAC 33:V.3525 * * * LAC 33:V.3525.B.2", and the two occurrences of the phrase "or that the owner or operator has failed * * * LAC 33:V.3525"), 3709 through 3713, 3715 (except 3715.F.8), 3717 through 3719; Chapter 40, Sections 4001 through 4025, 4027 (except 4027.C), 4029 through 4093; Chapter 41, Sections 4101, 4103, 4105 introductory paragraph, 4105.A, 4105.B (introductory paragraph), 4105.B.1 introductory paragraph (except the phrase "except that"), 4105.B.1 (except 4105.B.1.a&.b), 4105.B.2, 4105.B.4–.14, 4105.C, 4105.E, 4107 through 4113, 4115.A (except the reference "22,"), 4115.B, 4137, 4139.A.1, 4139.A.2 (except 4139.A.2.b&.c), 4139.B.1, 4139.B.4, 4143, 4145; Chapter 43, Sections 4301 (except the last sentence of 4301.E), 4302, 4303 through 4305, 4307 through 4335, 4337 through 4349, 4351 through 4355, 4357 (except 4357.B.8–.14), 4359 through 4365, 4367 through 4375, 4377 (except 4377.B.4), 4379 (except the phrase "and LAC 33:V.4705" at 4379.C), 4381 through 4395, 4397, 4399 (except 4399.A.6.i), 4401, 4403 (except for the phrase "and after receiving the certification required under LAC 33:V.4393.B.2 for facilities subject to LAC 33:V.4393" and the two occurrences of the phrase "or that the owner or operator has failed * * * LAC 33:4393" in 4403.H), 4405 through 4411, 4413, 4417 through 4429, 4431 through 4445, 4447 through 4455, 4457.A, 4457.B (except the first occurrence of 4457.B.2), 4459 (except the phrase "the waste and impoundment satisfy all applicable requirements of LAC 33:V.Chapter 22." at 4459.A), 4461, 4462 (except 4462.H), 4463 through 4470, 4471 (except the phrase "the waste and pile satisfy all applicable requirements of LAC 33:V.Chapter 22 and"), 4472 through 4476, 4477 through 4493, 4495 through 4499, 4501 (except 4501.D.3), 4502, 4503 (except the phrase "and landfill meet all applicable requirements of LAC 33:V.Chapter 22, and the waste" at 4503.A introductory paragraph), 4505 through 4509, 4511 introductory paragraph, 4511.A–.D, 4511.E (except the two occurrences of the reference "and F"), 4512, 4513 through 4522, 4523 (except the phrase "and LAC 33:V.Chapter 30 * * * LAC 33:V.109" at the end of the paragraph), 4525 through 4534, 4535 through 4547, 4549 through 4559, 4561 through 4589, 4591 through 4601; Chapter 49, Sections 4901.A through 4901.F, 4901.G (except the entries for EPA Hazardous Waste Numbers K042 and 151 in Table 6), 4903 through 4907, Appendices A through D.

Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Amendments for July 1995—March 1996: Chapter 1, Sections 109 "Designated facility", 109 "Partial Closure", 109 "Solid Waste"; Chapter 3, Sections 305.A, 309.L.3.b, 321.C.2.i, 323.B.2.e, 323.B.4.c, Chapter 5, Section 533.B; Chapter 7, Section 706; Chapter 11, Section 1101.B; Chapter 25, Section 2521.B.2; Chapter 26, Section 2603.F.1; Chapter 28, Sections 2801 through 2809; Chapter 41, Sections 4115.C, 4139.B.2&.3; Chapter 49, Sections 4901.G Table 6 (entries for EPA Hazardous Waste Numbers K042 and 151 only), Appendix A (entry for 2,6–Toluenedine only) and Appendix B (paragraphs 8.2 and 8.2.5 through 8.2.5.4).

Copies of the Louisiana regulations that are incorporated by reference are available from Office of the State Register, P.O. Box 94095, Baton Rouge, LA 70804–9095.

[FR Doc. 97–33737 Filed 12–24–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 260

[Docket No. 971128280–7280–01; I.D. 090997C]

Inspection and Certification Fees and Charges

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inspection fees.

SUMMARY: NMFS announces changes in its fees and charges for voluntary fishery products inspection, grading, and certification services. NMFS increased the basic fee for full-time in-plant inspection services by $1.95, making the hourly rate $44.40. This fee reflects increases in salary and includes a 3-percent base salary increase and varying locality pay increases effective January 1998. NMFS is continuing its separate fee structure for facilities with less than full-time contract services.

DATES: These fee changes are effective on December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Richard V. Cano, Chief, Seafood Inspection Division, 301–713–2355.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) authorizes the voluntary fishery products inspection, grading, and certification program, as well as "assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered." Reorganization Plan No. 4 of 1970 delegated these authorities to NMFS. Regulations at 50 CFR 260.70 authorize the Secretary of Commerce to review and revise annually the rates for voluntary fishery products inspection, grading, and certification services by publishing a notice of fee changes in the **Federal Register**. NMFS' annual review of the projected income and costs for its various services serves as the basis for determining the fees as set forth below.

Effective October 1, 1997, the National Seafood Inspection Program (Program) increased the basic fee for full-time in-plant inspection services by $1.95, making the hourly rate $44.40. This fee reflects increases in salary, general operating, and overhead costs that are charged by NMFS and NOAA.

The basic fee will continue to apply to establishments contracting for 40 hours of inspection service per week. However, to recover estimated additional costs associated with servicing contract establishments receiving less than full-time inspection services, the fee for establishments with Type 1 and Type 3 contracts from 25 to 39 hours per week will be 5 percent above the basic fee; and for establishments with contracts less than 25 hours per week, the fee will be 10 percent above the basic fee.

NMFS' annual analysis of the actual costs and projected revenue for Type 2 and Type 3 services indicates that these fees are determined by adding factors of 60 and 35 percent, respectively, to the Type 1 service fee. Similarly, to ensure cost recovery, the fee for the Hazard Analysis Critical Control Point (HACCP)-based service is calculated by adding a factor of 65 percent to the Type 1 service fee.

Users of in-plant (Type 1) services are advised that the Program will charge for certain label reviews. There is a mechanism to permit pre-approval on labels reviewed by facilities that have demonstrated an adequate understanding of basic labeling requirements and proper use of the Program's marks. Charges for label review will be assessed at the consultative rate to those facilities not given pre-approval authority.

The Program will continue to require that new users of inspection services, except label review services, that are not under contract prepay via certified check, money order, Master Card or VISA, or maintain a surety (bond or check) equivalent to 3 months of estimated inspection services. Current users not under contract that have a record of late or nonpayment as determined by each Regional Inspection Branch will also be required to prepay or submit a surety. Prepayment is recommended for all non-contract users.

Effective October 1, 1997, the fees and charges for Type 1, 2, and 3 fishery products inspection services (except Alaska) are as follows.

	Per hour
a. Type 1—In-Plant Inspection Services	
Non-HACCP 40 Hr/Wk Contracts:	
Regular time	$44.40
Overtime	66.60
Sunday and legal holidays	88.80
Non-HACCP 25–39 Hr/Wk Contracts:	
Regular time	46.62
Overtime	69.93
Sunday and legal holidays	93.24
Non-HACCP <25 Hr/Wk Contracts:	
Regular time	48.84
Overtime	73.26
Sunday and legal holidays	97.68
HACCP Contracts:	
Regular time	73.26
Overtime	109.89
Sunday and legal holidays	146.52
b. Type 2—Lot Inspection—Officially and Unofficially Drawn Samples	
Regular time	$71.04
Overtime	106.56
Sunday and legal holidays	142.08
c. Type 3—Miscellaneous Inspection and Consultative Services	
40 Hr/Wk Contracts:	
Regular time	$59.94
Overtime	89.91
Sunday and legal holidays	119.88
25–39 Hr/Wk Contracts:	
Regular time	62.94
Overtime	94.41
Sunday and legal holidays	125.87
Under 25 Hr/Wk Contracts and Non-contract Consultative Services:	
Regular time	65.93
Overtime	98.90
Sunday and legal holidays	131.87

The basis for determining the appropriate fee to be charged is as follows:

A. Type 1—In-Plant Inspection Services

1. Regular time—Services provided during any 8-hour shift.

2. Overtime—Services provided in excess of 8 hours per shift per day.

In addition to any hourly service charge, a night differential fee of $2.25 per hour will be charged for each hour of service provided after 6 p.m. and before 6 a.m. Similarly, a Sunday differential fee of $5.75 per hour will be charged for each hour of service provided between midnight Saturday and midnight Sunday. A cost of living allowance (COLA) fee of $2.25 per hour will be charged for services in Puerto Rico; $5.75 per hour will be charged for services in American Samoa and Alaska.

b. Type 2 and 3—Lot Inspection and Miscellaneous Services

1. Regular time—Services provided within the inspector's normal work schedule, Monday through Friday.

2. Overtime—Services provided outside the inspector's normal work schedule, Monday through Friday, and on Saturdays.

It is the intent of the authorizing legislation and the policy of the Program to charge fees to recover, as nearly as possible, the costs of providing inspection services. Therefore, the hourly rates charged to contract lot inspection users who provide complete and acceptable inspection facilities will be those delineated under Type 1. In all other cases, contract lot inspection users will be charged Type 3 rates.

Analytical Services

Applicants requesting specific analyses to be performed in a NMFS laboratory will be charged at the following rates. Shipping costs for samples will also be assessed. Analyses performed in a private laboratory will be charged at the current rate of that laboratory. Charges based on these fees will be in addition to any hourly rates charged for lot, miscellaneous, and consultative inspection service as well as to any hourly rates charged for inspection services provided under a contract.

	Per analysis
Microbiology	
Total aerobic plate count	$19.00.
Presumptive coliform	15.00.
Confirmed total/fecal coliforms	15.00 additional.
E. coli	15.00 additional.
Staph. aureus	54.00.
Salmonella BAM Method:	
Step 1	40.00.
Step 2	18.00 additional.
Step 3	26.00 additional.
Listeria:	
Presumptive	28.00.
Confirmed	42.00.
Chemistry:	
Histamine	120.00.
Indole	90.00.
Ammonia	66.00.
Sodium Bisulfite	108.00.
Isoelectric Focusing: (Species Identification)	108.00.
Methylmercury	225.00.
Chlorinated pesticides	300.00.
Polychlorinated biphenyls	300.00.
Domoic acid	90.00.
Bioassay	
Paralytic Shellfish Poison: (minimum of 3 samples)	150.00 per sample

Notes on Analytical Services

Sampling time and travel time where applicable will be assessed using the Type 2 rates. Mileage costs will be assessed at the current rate. For other analyses not shown or not frequently requested, the charge will be assessed at the Type 3 hourly rate of $65.93 (2-hour minimum) or separately established based on the particular issues of the case involved. All charges are per sample.

Charges for services provided in Alaska by NMFS Inspectors will be at the rates specified below, plus cost of living allowances.

The rates outlined below for the State of Alaska are for services provided by cross-licensed State of Alaska inspectors. The rates charged in the State of Alaska are subject to change based on information supplied by the Alaska Department of Environmental Conservation.

STATE OF ALASKA

	Aleutian Chain, Bristol Bay, Dillingham (per hour)	Southeast & South Central, Anchorage, Kenai, Juneau, Ketchikan (per hour)	Remainder of Alaska, including Kodiak (per hour)
TYPE 1:			
Non-HACCP:			
Regular Time	$55.88	$46.10	$49.38
Overtime	83.82	69.15	74.07
Sunday/Holiday	111.76	92.20	98.76
HACCP:			
Regular Time	83.82	69.15	74.07
Overtime	125.75	103.73	111.05
Sunday/Holiday	167.64	138.30	148.14
TYPE 2:			
Regular Time	95.00	78.37	83.95
Overtime	142.50	117.56	125.92
Sunday/Holiday	190.00	156.74	167.90
TYPE 3:			
Regular Time	83.82	69.15	74.07
Overtime	125.73	103.74	111.11
Sunday/Holiday	167.64	138.03	148.14

A. Classification Under Executive Order 12866

This action is taken under the authority of 50 CFR 260.70 and has been determined to be not significant for purposes of E.O. 12866.

B. Regulatory Flexibility Act Analysis

The provisions of the Administrative *Procedure Act (5 U.S.C. 553)* requiring notice of proposed rulemaking, the opportunity for public participation, and delayed effectiveness are inapplicable because this rule falls within the proprietary exception of subparagraph (a)(2) of section 553. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable.

C. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements subject to the Paperwork Reduction Act of 1980.

D. E.O. 12612

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 260

Food grades and standards, Food labeling, Seafood.

Authority: 16 U.S.C. 742e and 7 U.S.C. 1622, 1624.

Dated: December 17, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–33640 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 62, No. 248

Monday, December 29, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[REG–102894–97]

RIN 1545–AV02

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to deposits of excise taxes. The temporary regulations contain rules relating to the availability of the safe harbor deposit rule based on look-back quarter liability and to floor stocks taxes. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by March 30, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–102894–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–102894–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit, (202) 622–7180; concerning the regulations, Ruth Hoffman, (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Excise Tax Procedural Regulations (26 CFR part 40). The temporary regulations contain rules relating to the availability of the safe harbor deposit rule based on look-back quarter liability and to floor stocks taxes.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 40 is proposed to be amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 40.0–1, paragraph (a) is amended by revising the second sentence to read as follows:

§ 40.0–1 Introduction.

(a) * * * The regulations set forth administrative provisions relating to the excise taxes imposed by chapters 31, 32, 33, 34, 36, 38, and 39 (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax) and 4481 (heavy vehicle use tax)), and to floor stocks taxes imposed on articles subject to any of these taxes. * * *

* * * * *

Par. 3. In § 40.6011(a)–1, add paragraph (a)(2)(iii) to read as follows:

§ 40.6011(a)–1 Returns.

(a) * * *

(2) * * *

(iii) *Floor stocks tax return.*

[The text of this proposed paragraph is the same as the text of § 40.6011(a)–1T(a)(2)(iii) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 40.6302(c)–1 is amended as follows:

1. Paragraph (c)(2)(iv) is added.

2. Paragraph (f)(1) is amended by adding a sentence to the end of the paragraph.

The additions read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(c) * * *

(2) * * *

(iv) *Modification for new or reinstated taxes.*

[The text of this proposed paragraph is the same as the text of § 40.6302(c)–1T(c)(2)(iv) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * * (1) * * * Also, no deposit is required in the case of any floor stocks tax described in § 40.0–1(a).

* * * * *

Par. 5. In § 40.6302(c)–2, add paragraph (b)(2)(iii) to read as follows:

§ 40.6302(c)–2 Special rules for use of Government depositaries under section 4681.

* * * * *

(b) * * *

(2) * * *

(iii) *Modification for new chemicals.* [The text of this proposed paragraph is the same as the text of § 40.6302(c)–2T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–33249 Filed 12–24–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–121–FOR]

Pennsylvania Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Pennsylvania Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Pennsylvania Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment adds a new section "F" entitled Government Financed Construction Contracts (GFCC) to authorize the incidental removal of coal at AML sites that would not otherwise be mined and reclaimed under the Title V program. The proposed amendment also includes the Program Requirements and Monitoring Requirements related to the use of GFCC for that purpose. The proposed amendment is intended to improve the efficiency of the Pennsylvania program by allowing the Government-financed construction exemption in Section 528 of SMCRA to be applied in cases involving less than 50% financing only in the limited situation where the construction constitutes a government approved and administered abandoned mine land reclamation project under Title IV of SMCRA.

DATES: Written comments must be received on or before 4:00 p.m. on January 28, 1998. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on January 23, 1998. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on January 13, 1998.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center (Amtrack), 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation, 400 Market Street, P.O. Box 8476, Harrisburg, Pennsylvania 17101, Telephone: (717) 783–2267.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 **Federal Register** (47 FR 33079). Subsequent actions concerning the AMLR program amendments are identified at 30 CFR 938.20 and 938.25.

II. Discussion of the Proposed Amendment

By letter dated November 21, 1997 (Administrative Record No. PA–855.00), the Pennsylvania Department of Environmental Protection (PADEP) submitted proposed Program Amendment No. 2 to the Pennsylvania Abandoned Mine Reclamation Plan. In addition, PADEP also submitted the following documents: Introduction; Basis of Authority for the Proposed Amendment; AML Amendment Conformance with 30 CFR Section 884.13; Assistant Counsel's Opinion of Authority for GFCC; PADEP Organization Chart and the Office of Mineral Resources Management Organization Chart. The proposed amendment in intended to improve the efficiency of the Pennsylvania program by allowing the Government-financed construction exemption in Section 528 of SMCRA to be applied to certain cases involving less than 50% financing.

The proposed amendment consists of new Part F, Program Requirements and Monitoring Program for GFCC's to be added as follows:

Part F: Government Financed Construction Contracts

(1) *Incidental Coal Removal*—PADEP proposes to authorize the incidental removal of coal at AML sites that would not otherwise be mined and reclaimed under the Title V program. Through its management of the permitting process and knowledge of the status of the AML lands in Pennsylvania, PADEP plans to enter into agreements with mining companies and adjacent permit holders to direct the reclamation of AML lands which involve some incidental removal of coal. Following are (3) examples of situations where PADEP proposes to utilize the GFCC to address AML liabilities.

(a) *Refuse Pile Reclamation*—As a result of an extensive history of mining in Pennsylvania, thousands of coal refuse piles are scattered throughout the state in both the bituminous and anthracite fields. In many cases these piles are unsightly, unsafe and are adding to the sedimentation and mine drainage pollution of Pennsylvania streams in areas that are economically deprived because of poor water quality and general aesthetics.

Dependng on the method used to clean the coal and the volume of material available, these piles have varying degrees of value. Those piles that are larger in volume and higher in quality have traditionally been permitted under the Title V program while the smaller, poorer quality have remained virtually untouched and are not and will not be likely candidates for permitting. These are the types of piles that are generally suitable for use in fluidized-bed combustion processes employed at cogeneration plants and the types of piles that will be reclaimed under the proposed program.

(b) *Reclamation of Abandoned Deep Mines*—An example specific to this initiative would be represented by an abandoned deep mine that includes subsidence problems and acid mine drainage discharges. The reclamation of this type of site would involve the daylighting of the deep mined area, the incidental and necessary removal of any coal encountered, the placement of alkaline material over the area of deep mine affected, and the construction of some type of passive treatment system to insure the reduction of pollutional loading from the discharges. Because of the limited amount of coal available, and the potential water quality liability for the discharges, this sample site would not be a candidate for a surface mine permit under the Title V program. This type of site would particularly appeal to the watershed organizations that have been formed to deal with exactly these reclamation opportunities with the potential to significantly increase water quality in a given watershed.

(c) *Unreclaimed High Walls Adjacent to Active Mine Sites*—Nearly all permits issued under the Title V program include varying levels of remining or are located within close proximity to previously affected areas located outside of permit boundaries. In some cases coal along the crop barrier may have gone unmined because of poor quality or high moisture content. In other cases an additional cut taken off the highwall may facilitate a reclamation plan that results in a more suitable post-mining land use or may facilitate an abatement project (alkaline addition—highwall drains, etc.) that will result in improved water quality. In those situations where a Title V permit is impractical due to limited coal recovery or poor coal quality, PADEP proposes to direct reclamation of these sites through a GFCC which allows for the incidental removal of coal to complete reclamation of the AML lands.

(2) *Placement of Excess Spoil on Adjacent AML Lands*—PADEP proposes to authorize the placement of excess spoil from active mining operations on AML sites that would not otherwise be mined and reclaimed under the Title V program. Through its management of the permitting process and the knowledge of the status of AML lands in Pennsylvania, PADEP plans to enter into agreements with mining companies and adjacent permit holders to direct the reclamation of AML lands adjacent to permitted operations. THe institution of this program will allow PADEP to maximize its reclamation efforts on AML lands at no expense to the funding sources for PADEP's AML program. Sevings to the AML program would be used for reclamation at other sites throughout the Commonwealth.

The proposed program amendment would offer solutions to the following problems that exist throughout Pennsylvania's coal field:

(1) Conditions which create a risk of fire, landslide, subsidence, cave-in or other unsafe, dangerous or hazardous conditions, including but not limited to any unguarded or unfenced open pit area, highwall, water pool, spoil bank and culm bank, abandoned structure, equipment, machinery, tools, or other property used in or resulting from surface mining operations, or other serious hazards to public health or safety.

(2) AMD pollution and sedimentation into Pennsylvania's streams.

(3) Unsightly, and unproductive property that has been largely unreclaimed through either the AML or active mining programs.

(4) Inadequate funding to address the above three Pennsylvania reclamation liabilities.

Generally speaking, the above conditions exist in areas that are economically depressed and environmentally damaged. The necessary reclamation represents an AML liability well in excess of hundreds of millions of dollars. The proposed program offers an additional solution to Pennsylvania's obligation to provide clean water and a safe and health environment to its citizens.

Program Requirements

A. The Department will solicit and accept proposals to enter into a GFCC for the purpose of reclamation of abandoned mine lands some of which may involve the incidental and necessary removal of coal.

To be an "eligible person" the person must clear the Department's standard compliance with the Applicant Violator System (AVS) checks. In addition, the person must clear a check through the Commonwealth's contractor responsibility program.

A GFCC under the terms of this amendment, is limited to those situations where a contractor proposes to enter into an agreement to perform reclamation on abandoned mine lands with the incidental and necessary removal of coal or to use excess spoil from a permitted site to reclaim an abandoned mine land. Reclamation should also include, where feasible, the installation of passive treatment systems and/or other measures to mitigate pre-exiting discharges. No processing of coal will be conducted on-site.

Coal refuse ash may be returned to the site consistent with a general permit issued by the Department.

Sewage sludge may be utilized for site reclamation consistent with a beneficial use order or land reclamation permit.

PADEP will conduct an expeditious review of the proposal for adequacy of the monitoring plan, erosion and sedimentation control plan, operation plan, and reclamation plan. Particular attention will be given to the feasibility of installing passive treatment systems and/or other measures to mitigate pre-existing discharges. Any deficiencies are to be communicated to the contractor in writing.

Even though reclamation activities under a GFCC are not subject to the barrier prohibitions of 86.102, precautions will be designed in the operation and reclamation plans to minimize any potential adverse impacts on areas that would be considered prohibited areas under a coal mining permit.

A performance bond in an amount determined by the PADEP shall be submitted on forms provided by the PADEP for all GFCC sites where bond is required.

B. A proposal for a GFCC will consist of a face sheet and the following modules as applicable:

Module #1—Ownership and Right of Entry
Module #2—Ownership and Right of Entry
Module #3—Hydrology
Module #4—Operational Information
Module #5—Streams
Module #25—Flyash
Module #27—Sewage Sludge

(a) The ownership and control information is to be entered into LUMIS and a compliance check/AVS check run. If a "bar" is found, the proposal is to be returned. If "no bar" is found, the proposal will be accepted and given on ID number.

(b) All proposals will be subject to the consultation requirements with other state agencies as prescribed by PA's approved AML plan.

(c) The PADEP will advertise receipt of the proposal (see draft notice). This notice shall be run once a week for two weeks in a newspaper local to the project area.

(d) The municipality and the county in which the site is located will be

noticed, by certified letter, that the PADEP received a proposal for a GFCC to perform reclamation activities within the municipality.

(e) Upon final execution of the contract, PADEP will notify the host municipality and county by certified mail of the action (see draft notice); notify any agencies who submitted comments; notify appropriate state Legislators, in writing, of the action; and issue a press release of the action (Regional Community Relations Coordinator to assist in preparation of this release). If a Small Projects Permit is issued with the executed contract, notice must be made in the PA Bulletin.

Monitoring Program for GFCC's

The PADEP will conduct monthly inspections of all GFCC's until the site is determined to be stabilized by vegetation. At that time, the PADEP will continue to conduct regular inspections on a quarterly basis until the contract receives final approval and final bond release.

The inspections forms and related instructions to be utilized to monitor the GFCC program are part of the amendment.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is now seeking comment on whether the amendment proposed by Pennsylvania satisfies the applicable requirements for the approval of State AMLR program amendments. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administration Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on January 13, 1998. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposal rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–33663 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–039–FOR]

Texas Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas abandoned mine land (AML) reclamation plan (hereinafter referred to as the "Texas plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to responsibilities, definitions, abandoned mine reclamation fund, eligible coal lands and water, reclamation objectives and priorities, utilities and other facilities, limited liability, contractor responsibility, eligible non-coal lands and water, reclamation priorities for non-coal program, exclusion of certain non-coal reclamation sites, land acquisition authority-non-coal, lien requirements, written consent for entry, entry and consent to reclaim, entry for emergency reclamation, land eligible for acquisition, procedures for acquisition, acceptance of gifts of land, management of acquire land, disposition of reclaimed lands, and liens. The amendment is intended to revise Texas' AML regulations to conform selected parts to amended Federal regulations. Texas also proposed to reorganize its AML regulations to align more clearly with Federal counterpart regulations.

DATES: Written comments must be received by 4:00 p.m., c.s.t., January 28, 1998. If requested, a public hearing on the proposed amendment will be held on January 23, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t., on January 13, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

Copies of the Texas plan, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Texas 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Plan

On June 23, 1980, the Secretary of the Interior approved the Texas Abandoned Mine Land Plan. General background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 23, 1980, **Federal Register** (45 FR 41937). Subsequent actions concerning the Texas program can be found at 30 CFR 943.25.

II. Description of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TAML–61), Texas submitted a proposed amendment to its plan pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. The provisions of the Texas plan proposed for review are:

1. AML Regulations Proposed for Repeal

a. Section 12.805 Reclamation Project Evaluation

Texas proposed to repeal this section and to add new § 12,805, Utilities and Other Facilities.

b. Section 12.806 Consent to Entry; § 12.807 Entry for Studies or Exploration; and § 12.808 Entry and Consent to Reclaim

Texas proposed to repeal §§ 12.806, 12.807, and 12,808 and to consolidate these sections and re-adopt them with revisions and additions as new § 12.813, Written Consent for Entry and § 12.814, Entry and Consent to Reclaim.

c. Section 12.809 Land Eligible for Acquisition

Texas proposed to repeal § 12.809 and to adopt with revised language as new § 12.816, Land Eligible for Acquisition, in conformance with Texas Natural Resources Code, § 134.145.

d. Section 12.810 Procedures for Acquisition

Texas proposed to repeal § 12.810 and to add new § 12.817, Procedures for Acquisition, with changes in conformance with amended Federal regulations at 30 CFR 879.12.

e. Section 12.811 Acceptance of Gifts of Land

Texas proposed to repeal § 12.811 and to add new § 12.818, Acceptance of Gifts of Land, in conformance with amended Federal regulations at 30 CFR 879.13.

f. Section 12.812 Management of Acquired Lands

Texas proposed to repeal § 12.812 and to add new § 12.819, Management of Acquired Lands, in conformance with amended Federal regulations at 30 CFR 879.14.

g. Section 12.813 Disposition of Reclaimed Land

Texas proposed to repeal § 12.813 and to add new § 12.820, Disposition of Reclaimed Land, in conformance with the Texas Surface Coal Mining and Reclamation Act of 1977.

h. Section 12.814 Operations on Private Land

Texas proposed to repeal § 12.814 and to add new § 12.814, Entry and Consent to Reclaim.

i. Section 12.815 Appraisals

Texas proposed to repeal § 12.815 and to add new § 12.815, Entry for Emergency Reclamation.

j. Section 12.816 Liens

Texas proposed to repeal § 12.816 and to add new § 12.820, Liens.

k. Section 12.817 Sotisfaction of Liens

Texas proposed to repeal § 12.817 and to add new § 12.817, Procedures for Acquisition.

2. Section 12.800 Responsibilities

Texas proposed to add this new section regarding the responsibilities of the Commission.

3. Section 12.801 Definitions

Texas proposed to revise this section by adding definitions for "abandoned mine reclamation fund or fund," "eligible lands and water," "emergency," "extreme danger," "left or abandoned in either an unreclaimed or inadequately reclaimed condition," "mineral owner," "OSM," "permanent facility," "project," "reclamation activity," "state reclamation program," and "Texas abandoned mine reclamation fund or state fund."

4. Section 12.802 Texas Abandoned Mine Reclamation Fund

Texas proposed to add a section pertaining to the type of revenue that shall be included in the State's abandoned mine land reclamation fund.

5. Section 12.803 Eligible Coal Lands and Water

Texas proposed to revise this section to conform to amended Federal regulations by making minor wording

changes, deleting paragraph (b) in its entirety, and by adding new paragraphs (4) through (8). paragraph (4) pertains to how coal lands and waters damaged by coal mining processes and abandoned after August 3, 1977, can become eligible for funding. Paragraph (5) pertains to when the Commission may expend funds for reclamation and abatement of any eligible site under paragraph (4). Paragraph (6) pertains to how monies obtained from sources outside the abandoned mine reclamation fund can be used. Paragraph (7) describes when permittees shall reimburse the abandoned mine land fund for reclamation costs. it also states that when performing reclamation under paragraph (4), Texas shall not be held liable for any violations of any performance standards or reclamation requirements. Paragraph (8) pertains to lands eligible for remining and the eligibility for funds for reclamation activities on these lands.

6. Section 12.804 Reclamation Objectives and Priorities

Texas proposed to repeal the existing language in this section and to replace it with new language to conform with amended Federal regulations at 30 CFR 874.13.

7. Section 12.805 Utilities and Other Facilities

Texas proposed to add new § 12.805, Utilities and Other Facilities, to conform with amended Federal regulations at 30 CFR 874.14. This new section pertains to the adverse effect of mining processes on water supplies occurring both before and after August 3, 1977, and the enhancement of facilities or utilities under this section.

8. Section 12.806 Limited Liability

Texas proposed to add new § 12.806, Limited Liability, to conform with amended Federal regulations at 30 CFR 874.15. This new section pertains to the limited liability the State has when performing reclamation activities according to approved abandoned mine reclamation plans.

9. Section 12.807 Contractor Responsibility

Texas proposed to add new § 12.807, Contractor Responsibility, to conform with amended Federal regulations at 30 CFR 874.16. This new section pertains to requirements necessary for a contractor to be a successful bidder for an AML contract.

10. Section 12.808 Eligible Non-coal Lands and Water

Texas proposed to add new § 12.808, Eligible Non-coal Lands and Water, to clearly define non-coal eligibility in conformance with amended Federal regulations at 30 CFR 875.14. This new section pertains to the criteria that non-coal lands, waters, and facilities should meet in order to be eligible for AML reclamation funds.

11. Section 12.809 Reclamation Priorities for Non-coal Program

Texas proposed to add new § 12.809, Reclamation Priorities for Non-coal Program, to clearly define non-coal reclamation priorities in conformance with amended Federal regulations at 30 CFR 875.15. This new section pertains to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities; and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

12. Section 12.810 Exclusion of Certain Non-coal Reclamation Sites

Texas proposed to add new § 12.810, Exclusion of Certain Non-coal Reclamation Sites, to clearly define the ineligibility of certain non-coal sites that are eligible for remediation under other Federal programs in conformance with amended Federal regulations at 30 CFR 875.16. This new section pertains to the sites and areas that monies from the Texas abandoned mine reclamation fund cannot be used for.

13. Section 12.811 Land Acquisition Authority—Non-coal

Texas proposed to add new § 12.811, Land Acquisition Authority—Non-coal, to conform with amended Federal regulations at 30 CFR 875.17. This new section states that the requirements specified in §§ 12.814 through 12.820 shall apply to the Commission's non-coal program except that, for purposes of this section, the references to coal shall not apply. In lieu of the term coal, the word non-coal should be used.

14. Section 12.812 Lien Requirements

Texas proposed to add new § 12.812, Lien Requirements, to comply with amended Federal regulations at 30 CFR 875.18. This new section states that the requirements found in § 12.821 shall apply to the Commission's non-coal reclamation program under § 12.808 except that for purposes of this section, the references to coal shall not apply. In lieu of the term coal, the word non-coal should be used.

15. Section 12.813 Written Consent for Entry

Texas proposes to add new § 12.813, Written Consent for Entry, to conform with amended Federal Regulations at 30 CFR 877.11. This new section reads as follows:

> Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

16. Section 12.814 Entry and Consent To Reclaim

Texas proposed to add new § 12.814(a) to conform with amended Federal regulations at 30 CFR 877.13 and new § 12.814(b) to conform with Texas Natural Resources Code § 134.143. This new section pertains to who may enter upon land, with the owner's consent, to perform reclamation activities or to conduct studies or exploratory work in order to determine the existence of the adverse effects of past coal mining.

17. Section 12.815 Entry for Emergency Reclamation

Texas proposed to add new § 12.815, Entry for Emergency Reclamation, to conform with Texas Natural Resources Code § 134.152 (b) and (c). This new section gives the commission authority to enter land where an emergency exists and other land necessary to have access to that land.

18. Section 12.816 Land Eligible for Acquisition

Texas proposed to add new § 12.816, Land Eligible for Acquisition, to conform with Texas Natural Resources Code § 134.145. This new section allows the state to acquire land that is adversely affected by past coal mining practices by purchase, donation or condemnation if certain conditions exist.

19. Section 12.817 Procedures for Acquisition

Texas proposed to add new § 12.817, Procedures for Acquisition, to conform with amended Federal regulations at 30 CFR 879.12. This new section sets forth the procedures that the State must follow when acquiring land.

20. Section 12.818 Acceptance of Gifts of Land

Texas proposed to add this new section regarding the Commission's acceptance of gifts of land. The proposed change would require that the deed of conveyance state that it is made as a gift under the Texas Surface Coal Mining and Reclamation Act.

21. Section 12.819 Management of Acquired Land

Texas proposed to add this new section to conform with amended Federal regulations at 30 CFR 879.14. The new section reads as follows:

> Land acquired under this title may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the Commission shall provide that all user fees collected shall be deposited in the Texas Abandoned Mine Reclamation Fund.

22. Section 21.820 Disposition of Reclaimed Lands

Texas proposed to add this new section to conform with Texas Natural Resources Code, §§ 134.148 and 134.149 (Sale of Acquired Land and Hearing on Sale, respectively). This section pertains to the conditions under which the State may sell land that it has acquired under § 12.818 and the disposition of the monies received from these sells.

23. Section 12.821 Liens

Texas proposed to add new § 12.821 (a) through (c) to conform with Texas Natural Resources Code, § 134.150 (Liens). This addition pertains to when liens may or may not be placed on lands the State reclaims and the procedures to follow when placing liens.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Texas plan.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMAITON CONTACT** by 4:00 P.M., c.s.t. on January 13, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Abandoned mine land reclamation, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 1997.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–33662 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–036–FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program and abandoned mine land reclamation plan (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Texas' statutes pertaining to small operator assistance, definitions, exemptions, applicability to governmental units, coal exploration operations, prohibition on surface and coal mining, notices of violation, improvidently issued permits, performance standards, eligibility of land and water, and cessation orders. The amendment is intended to revise the Texas program to be consistent with SMCRA.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., January 28, 1998. If requested, a public hearing on the proposed amendment will be held on January 28, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on January 13, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of Texas program the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas regulatory program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

On June 23, 1980, the Secretary of the Interior approved the Texas abandoned mine land reclamation plan. Background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the June 23, 1980, **Federal Register** (45 FR 41937). Subsequent actions concerning the Texas plan and amendments to the plan can be found at 30 CFR 943.25.

II. Description of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TX–643), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposes to amend the Texas Surface Coal Mining and Reclamation Act (TSCMRA) to reflect changes resulting from the passage of Senate Bills (SB) 636 and 898 by the 75th Texas Legislature. The full text of the proposed program amendment submitted by Texas is available for public inspection at the locations listed above under **ADDRESSES**. A discussion of the proposed amendment is presented below.

1. TSCMR § 134.004 Definitions (SB 898)

Texas added the following definition for the term "applicant" at section 134.004(3) and renumbered the existing definitions to reflect this addition:

> Applicant means a person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities under this chapter.

2. TSCMRA § 134.005 Exemptions (SB 898)

Section 134.005(a) was amended by removing the exemption for extraction of coal for commercial purposes if the surface mining operation affects two acres or less at paragraph (2). Paragraph (3) was renumbered (2) to reflect this deletion.

3. TSCMRA § 134.008 Applicability to Governmental Units (SB 898)

The following provision was added at section 134.008 to authorize regulation of governmental units who engage in surface coal mining operations:

> An agency, unit, or instrumentality of federal, state, or local government, including a publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to this chapter shall comply with this chapter.

4. TSCMRA § 134.014 Coal Exploration Operations (SB 898)

Section 134.014 was amended by adding the following new provision at subsection (b) and changing existing subsection (b) to (c).

> A person who conducts coal exploration operations that substantially disturb the natural land surface in violation of this section or rule adopted under this section is subject to Sections 134.174 through 134.181.

5. TSCMRA § 134.022 Prohibitions on Surface Coal Mining in Certain Areas (SB 898)

Section 134.022(c) was amended by changing the date relating to valid existing rights from May 9, 1979, to August 3, 1977.

6. TSCMRA § 134.056 Small Mine Exemption (SB 636)

At section 134.056(2), Texas increased the amount of probable total annual production allowed for surface coal mining operators under its small operator assistance program from 100,000 to 300,000 tons.

7. TSCMRA § 134.068 Schedule of Notices of Violations (SB 898)

Texas revised section 134.068(a) by requiring the applicant to file with the application a schedule listing any notices of violations of this chapter, the Federal Act, a Federal regulation or Federal or State program adopted under the Federal Act, or another law, rule, or regulation of the United States, this State, or a department or agency in the United States pertaining to air or water environmental protection. Texas also deleted the language "in this state" from the phrase "in connection with a surface coal mining operation in this state." At section 134.068(b), the language "applicant shall include in the schedule" was removed and the language "schedule must indicate" was added.

8. TSCMRA § 134.069 Effect or Past or Present Violation (SB 898)

Texas amended section 134.069(a) by removing paragraph (2), which allowed the commission to issue a permit to an applicant who had an unabated violation if the applicant was contesting the notice of violation. Texas amended section 134.069(b) by adding language that referenced this chapter and other laws in Section 134.068 in relation to a demonstrated pattern of willful violations.

9. TSCMRA § 134.084 Suspension or Rescission of Improvidently Issued Permit (SB 898)

Texas added the following new provision at section 134.084:

> (a) The commission may suspend or rescind an improvidently issued permit under rules adopted by the commission.
>
> (b) A rule adopted by the commission under this section must be consistent with and not less effective than a regulation adopted under the federal Act.
>
> (c) Except as provided by Subsection (d), Chapter 2001, Government Code, does not apply to an action by the commission under this section to suspend or rescind an improvidently issued permit.
>
> A permit holder who is given notice of suspension or rescission of an improvidently issued permit under this section may file an appeal for administrative review of the notice as provided by commission rules. The review is governed by Chapter 2001, Government Code.

10. TSCMRA § 134.092 Performance Standards (SB 898)

Texas amended section 134.092(a)(3) by adding the language "all highwalls, spoil piles, and" after the word "with" in the phrase "to restore the approximate original contour of the land with depressions eliminated."

11. TSCMRA § 134.142 Eligibility of Land and Water (SB 636)

Texas amended section 134.142 by removing its existing criteria at paragraphs (1) through (3) for determining if land and water are eligible for reclamation or abatement under its abandoned mine land reclamation program and adding the following new criteria:

> Land and water are eligible for reclamation or abatement expenditures under this subchapter if the land and water are eligible for reclamation or abatement expenditures under the federal Act.

12. TSCMRA § 134.163 Terms of Cessation Order (SB 898)

At section 134.163(1), Texas added the language "condition, practice, or" after the word "the" in the phrase "determines the violation has been abated."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on January 13, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section

702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 17, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–33661 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–035–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Texas' regulations pertaining to definitions, prime farmland, small operator assistance, release of performance bond, and backfilling and grading. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m. c.s.t., January 28, 1998. If requested, a public hearing on the proposed amendment will be held on January 23, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on January 13, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TX–644), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. 640) that OSM sent to Texas in accordance with 30 CFR 732.17(c). Texas proposes to amend Chapter 12 of the Texas Administrative Code (TAC).

1. TAC § 12.3 Definitions.

Texas added or revised the following definitions at § 12.3:

Previously mined area—Land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this Chapter (relating to Coal Mining Regulations).

Qualified laboratory—A designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at §§ 12.236 and 12.240 of this title (relating to Program Services, and to Data Requirements), and that meet the standards of § 12.241 of this title (relating to Qualified Laboratories).

Thick overburden—more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) Closely resemble the surface configuration of the land prior to mining; or (2) Blend into and complement the drainage pattern of the surrounding terrain.

Thin overburden—Insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) Closely resemble the surface configuration of the land prior to mining; or (2) Blend into and complement the drainage pattern of the surrounding terrain.

2. TAC § 12.201 Prime Farmland

Texas proposed to add the following requirement at § 12.201(d)(5):

The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations, must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Commission and the consent of all affected property owners within the permit area must be obtained.

3. TAC § 12.237 Eligibility for Assistance

At § 12.237(2), Texas proposed to amend the eligibility requirements for participation in its small operator assistance program (SOAP) by increasing the amount of the probable total actual and attributed production allowed for SOAP applicants from 100,000 to 300,000 tons. At § 12.237(2)(B) and (C), Texas increased the baseline percentage above which ownership will play a role in determining attributed coal production from 5 to 10 percent.

4. TAC § 12.243 Applicant Liability

Texas revised § 12.243(a) to require that a coal operator who has received assistance pursuant to §§ 12.236 and 12.240 reimburse the Commission for the cost of the services rendered. Texas revised § 12.243(a)(4) to specify that reimbursement will be required if the Commission finds that the operators actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit. Texas revised § 12.243(a)(5) to specify that reimbursement will be required if the permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000-ton production limit during the 12 months immediately following the date on which the permit was originally issued.

5. TAC § 12.312 Procedure for Seeking Release of Performance Bond

Texas entitled § 12.312(a) as "Bond release application" and revised it by adding the existing first sentence to § 12.312(a)(1) and adding the following new requirement:

Applications may be filed only at times or during seasons authorized by the Commission in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the regulatory program or identified in the mining and reclamation plan required in Subchapter G of this Chapter and approved by the Commission.

Texas added the balance of the existing language to § 12.312(a)(2) and added a requirement that the advertisement for bond release also contain the name and address of the Commission office to which written comments, objections, or requests for public hearings and informal conference may be submitted.

Texas added the following new requirement at § 12.312(a)(3):

The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

Texas entitled § 12.312(b) as "Inspection by Commission," added the existing language to § 12.312(b)(1), and changed the language "notification and request" to "bond release application." Texas removed § 12.312(c) and added its substantive requirements to § 12.312(b)(2) with the following revised language:

Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to § 12.313(c) of the title (relating to Criteria and Schedule for Release of Performance Bond, or, within 30 days after a public hearing has been held pursuant to § 12.313(c), the Commission shall notify in writing the permittee, the surety, or other persons with an interest in bond collateral who have requested notification under § 12.309(1) of this title (relating to Terms and Conditions of the Bond), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

6. TAC § 12.313 Criteria and Schedule for Release of Performance Bond

Texas proposed the following revision to the existing language at § 12.313(a):

The Commission may release all or part of the bond for the entire permit area or incremental area if the Commission is satisfied that the reclamation or a phase of the reclamation covered by the bond or deposit or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

At § 12.313(a)(1), Texas added the phrase "[a]t the completion of Phase I, after" to the beginning of the provision and deleted the word "[w]hen"; added the proviso that backfilling and regarding may include the replacement of topsoil; and made other nonsubstantive language changes.

At § 12.313(a)(2), Texas added the phrase "[a]t the completion of Phase II" to the beginning of the provision; removed the provision that the Commission may release up to 25 percent of the original bond amount and added the provision that the Commission may release an additional amount of bond; changed its reference to §§ 12.330 through 12.403 of this title to § 134.092(a)(10) of the Act and Subchapter K of this Chapter relating to its requirements for suspended solids; added a reference to §§ 12.620–12.625 relating to the prime farmland survey; added a reference to Subchapter K of this Chapter relating to its requirements for retention of a permanent impoundment.

At § 12.31(a)(3), Texas added the phrase "[a]t the completion of Phase III, after" to the beginning of the provision and deleted the word "[w]hen" and changed its reference to §§ 134.091 through 134.109 of the Act of § 12.395 or § 12.560 of this title.

Texas revised § 12.313(b) by requiring that the Commission notify the permittee, the surety, and any person with an interest in collateral if the Commission disapproves the application for release of the bond.

At § 12.313(d), Texas added the option that a public hearing may be held at the State capitol at its first reference to a public hearing regarding release of the bond and removed duplicative language at the end of the provision regarding holding of a public hearing.

7. TAC § 12.387 Backfilling and Grading—Thin Overburden

At § 12.387, Texas removed the existing requirements and added the following requirements:

Where thin overburden occurs within the permit area, the permittee, at a minimum,

shall: (1) Use all spoil and other waste materials available form the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and (2) Meet the requirements of § 12.385 of this title (relating to Backfilling and Grading: General Requirements).

8. TAC § 12.388 Backfilling and Grading—Thick Overburden

At § 12.388, Texas removed the existing requirements and added the following requirements:

Where thick overburden occurs within the permit area, the permittee at a minimum shall: (1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose; (2) Meet the requirements of § 12.385 of the title (relating to Backfilling and Grading: General Requirement); and (3) Dispose of any excess spoil in accordance with §§ 12.363–12.366 of this title (relating to Disposal of Excess Spoil: General Requirements, to Disposal of Excess Spoil: Valley Fills, to Disposal of Excess Spoil: Head-of-Hollow Fills, and to Disposal of Excess Spoil: Durable Rock Fills).

9. TAC § 12.620 Prime Farmland—Applicalbility and Special Requirements

At § 12.620(a)(1), Texas removed the existing language and added the following language:

Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes; or

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on January 13, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 17, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–33660 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL159–1b; FRL–5938–3]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Illinois' Section 111(d)/129 State Plan submitted on June 23, 1997, for implementing and enforcing the Emissions Guidelines applicable to existing municipal waste combustors with capacity to combust more than 250 tons/day of municipal solid waste. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse written comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments (which have not already been responded to), the direct final rule will be withdrawn and the written public comments will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments on this proposed rule must be received on or before January 28, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: December 11, 1997

Gail A. Ginsberg,

Acting Regional Administrator, Region V.

[FR Doc. 97–33766 Filed 12–24–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5937–1]

Hazardous Waste Management Program: Authorization of State Hazardous Waste Management Program for Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Louisiana Department of Environment Quality's (LDEQ) RCRA Cluster IV hazardous waste program. The Louisiana RCRA Cluster IV hazardous waste program consists of the regulation of "Burning of Hazardous Waste in Boilers and Industrial Furnaces". In the final rules section of this **Federal Register**, the EPA is approving the State's request as a immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to that immediate final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before January 28, 1998.

ADDRESSES: Written comments may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address listed below. Copies of the materials submitted by LDEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, Wells Fargo Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444. Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, Phone number: (504) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Authority: This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 11, 1997.

Lynda F. Carroll,

Acting Deputy Regional Administrator, Region VI.

[FR Doc. 97–33763 Filed 12–24–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–5935–6]

Hazardous Waste Management Program: Authorization and Incorporation by Reference of State Hazardous Waste Management Program for Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to incorporate by reference EPA's approval of the Louisiana Department of Environment Quality's (LDEQ) base hazardous waste program and to approve its revisions to that program submitted by the State of Louisiana. In the final rules section of this **Federal Register**, the EPA is approving the State's request as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale

for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to that immediate final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect.

The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before January 28, 1998.

ADDRESSES: Written comments may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address listed below. Copies of the materials submitted by LDEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, Wells Fargo Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444. Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, Phone number: (504) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Authority

This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 10, 1997.

Lynda F. Carroll,

Acting Regional Administrator, Region VI.

[FR Doc. 97–33739 Filed 12–24–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3820

RIN 1004—AC60

[WO–320–1990–01–24 1A]

Surface Management of Mineral Activities Within the Bodie Bowl Under the Bodie Protection Act of 1994

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Bureau of Land Management (BLM) is withdrawing the proposed rule concerning mineral development in the Bodie Bowl which was previously proposed to implement the Bodie Protection Act of 1994. Because this Act closed the area to location of mining claims, and the state of California and the Nature Conservancy have acquired all existing unpatented mining claims and mill sites so that they may be reconveyed to BLM, the development of locatable minerals will not occur on Federal lands within the Bodie Bowl. Thus, regulations are no longer necessary to carry out the provisions of the Act.

FOR FURTHER INFORMATION CONTACT: Chris Fontecchio, Regulatory Affairs Group, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, N.W., Washington, DC 20240; telephone (202) 452–5012 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: The Bodie Protection Act of 1994 (108 Stat. 4471, 4509), withdrew Federal lands within the Bodie Bowl to protect and preserve the historic mining town of Bodie. The withdrawal closed the area to further mineral location, and the Act compelled the Secretary of the Interior to manage those existing claims in accordance with rules which would minimize adverse effects on historic, cultural, recreational and natural resource values of the Bodie Bowl. Specifically, the Secretary was ordered to promulgate rules for management of mineral activities within the Bodie Bowl that are no less stringent than the rules promulgated by the National Park Service under the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), now codified at 36 CFR part 9. In consultation with the California State Department of Parks and Recreation, which administers the Bodie Historic Park, BLM issued proposed rules designed to carry out the terms of the Act on November 8, 1996 (61 FR 57837).

Since these rules were proposed, the State of California and the Nature Conservancy have acquired the remaining mining claims and mill sites in the Bodie Bowl. BLM expects that the final stages of the agreement, whereby the State and the Nature Conservancy will quitclaim all unpatented mining claims and mill sites back to the United States, will be completed sometime in the near future. As a result, there will be no future mineral development activities in the Bodie Bowl, making BLM regulations of mining in the Bodie Bowl unnecessary. Therefore, the proposed regulations are withdrawn. If for some unforeseen reason development of locatable minerals becomes possible on Federal lands in the Bodie Bowl in the future, BLM would take appropriate action to promulgate any needed rules.

Date: December 17, 1997.

Bob Armstrong,

Assistant Secretary for Land Minerals Management.

[FR Doc. 97–33725 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192, 193, 194, and 195

[Docket PS–153, Notice 3]

RIN 2137–AC98

Metric Equivalents

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the pipeline safety regulations to provide metric equivalents. The metric equivalents are being provided for informational purposes only. Operators would continue to use the English measures for purposes of compliance and enforcement. No changeover to the metric system of measurement is being contemplated at this time. This may be reconsidered in the future.

DATES: Interested persons are invited to submit written comments in duplicate by February 27, 1998. Late-filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all the material that is relevant to any statement of fact or argument.

ADDRESSES: Written comments on the subject of this notice may be submitted to the Dockets Facility, U.S. Department of Transportation, Research and Special Programs Administration 400 Seventh Street, SW, Dockets Unit Room 8421, Washington, DC 20590. Comments should identify the docket number stated in the heading of this notice. Persons should submit the original and one copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. The Dockets Unit is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202)366–6205, or by e-mail at fellm@rspa.dot.gov regarding the subject matter of this notice; or the RSPA Docket Unit, (202) 366–5046 regarding copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12770, "Metric Usage in the Federal Government" (July 25, 1991), requires Federal agencies to use metric measures in their business-related activities as a means to implement the metric system of measures as the preferred system of weights and measures for the United States.[1] In order to explore its responsibilities under this Executive Order, RSPA published an Advance Notice of Proposed Rulemaking (ANPRM) on October 23, 1996 (61 FR 55069). RSPA also held a public meeting on January 10, 1997 in Dallas, Texas. On March 11, 1997, RSPA published an additional notice seeking further comment on the metrication issue, particularly on the publication of metric equivalents for all numerical measures in the pipeline safety regulations. After considering the public comments to the notice and the opinions expressed at the public meeting, RSPA is publishing this Notice of Proposed Rulemaking (NPRM).

In its October 23, 1996, Notice of Public Meeting, RSPA requested comments on seven questions. These questions concerned the best method for providing metric conversion and the cost impact of conversion on the pipeline industry, including the impact on small entities. The majority of respondents were pipeline operators who opposed metric-only regulations. As a alternative, they favored providing metric equivalents. They cited the increased costs that could result from metric conversion with no increase in safety. Some operators contended that metric-only regulations might adversely impact small entities by imposing training and administrative costs that would not contribute to pipeline safety. A few commenters were in favor of metric only regulations.

By providing English measures and metric equivalents in its pipeline safety regulations, RSPA would provide the benefit of increasing public understanding of the metric system, the goal of Executive Order 12770. Providing metric equivalents also meets the requirement that "metric usage shall not be required to the extent that such use is impractical or cause significant inefficiencies or loss of markets to United States firms." (Executive Order 12770 of July 25, 1991, p. 344) A complete conversion to the metric system would prove extremely costly to pipeline operators because most pipelines were designed using English measures. Converting these pipelines to metric-only measures would be a very time-consuming process involving considerable expenditure, including educating pipeline employees in use of the metric system. One pipeline operator noted in its comments that the metrication process in pipeline safety dates to 1978 when sections 192.121 and 192.123 were amended to include both English and metric measures. No changeover to the metric system of measurement is being contemplated at this time. This may be reconsidered in the future.

II. Regulatory Analyses and Notices

A. The Department of Transportation (DOT) does not consider this action to be a significant regulatory action under section 3(f)of Executive Order 12866 (58 FR 51735; October 4, 1994) and does not consider this action significant under DOT's regulatory policies and procedures (44 FR 1103; February 26, 1979). Therefore, this rulemaking was not reviewed by the Office of Management and Budget.

Because this proposed change to the regulations providing metric equivalents for all English measures is for information and education purposes only, it will have no economic impact. Therefore, no regulatory evaluation is necessary.

B. Regulatory Flexibility Act

As discussed above this rule has no economic impact. Therefore, I certify pursuant to Section 605 of the regulatory Flexibility Act (5 U.S.C. 605) that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12612

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685). RSPA has determined that the action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Paperwork Reduction Act

This rule change has no impact on the amount of paperwork required by these regulations.

E. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State or local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 191

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas (LNG), Pipeline safety.

49 CFR Part 194

Oil pollution, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety.

In consideration of the foregoing, RSPA proposes to amend 49 CFR parts 191–195 as follows:

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, 60124, and 49 CFR 1.53.

2. In part 191, in the following section remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

[1] Section 2(a) of Executive Order 12770 states that "[t]he head of each executive department and agency shall use... the metric system of measurement in Federal Government procurements, grants and other business-related activities. Other business-related activities include all use of measurement units in agency programs and functions related to trade, industry, and commerce."

Section number	Remove	Add
191.23(b)(3)	220 yards	200 meters (220 yards)

3. Amend section 191.27 by revising paragraph (a)(4) to read as follows:

§ 191.27 Filing offshore pipeline condition reports.

(a) * * *

(4) Total length of pipeline inspected.

* * * * *

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118, and 49 CFR 1.53.

2. In part 192, for the following sections, remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

Section number	Remove	Add
192.3 Definitions:		
Exposed pipeline	15 feet	4.57 meters (15 feet)
Gulf of Mexico and its inlets	15 feet	4.57 meters (15 feet)
Hazard to navigation	12 inches	305 millimeters (12 inches)
	15 feet	4.57 meters (15 feet)
192.5(a)(1)	220 yards	200 meters (220 yards)
	1-mile	1.6 kilometers (1-mile)
192.5(b)(3)(ii)	100 yards	91 meters (100 yards)
192.5(c)(2)	220 yards	200 meters (220 yards)
192.55 (c)	6,000 p.s.i.	41.4 MPA (6,000 p.s.i.g.)
192.105	square inch gauge	kPa (square inch gauge)
	square inch	kPa (square inch)
	inches	millimeters (inches)
192.107(b)(2)	24,000 p.s.i.	165 MPA (24,000 p.s.i.)
192.109(b)	20 inches (twice)	508 millimeters (20 inches)
192.115	Fahrenheit	Centigrade (Fahrenheit)
	250° or less	121° (250°) or less
	300°	149° (300°)
	350°	177° (350°)
	400°	204° (400°)
	450°	232° (450°)
192.125(b)	inch (3 times)	millimeter (inch)
	½	12.7 (½)
	⅝	15.9 (⅝)
	¾	19.1 (¾)
	1	25.4 (1)
	1¼	31.8 (1¼)
	1½	38.1 (1½)
	.625	15.9 (.625)
	.750	19.1 (.750)
	.875	22.2 (.875)
	1.125	28.6 (1.125)
	1.375	34.9 (1.375)
	1.625	41.3 (1.625)
	.040	1.061 (.040)
	.042	1.067 (.042)
	.045	1.143 (.045)
	.050	1.270 (.050)
	.055	1.397 (.055)
	.060	1.524 (.060)
	.0035 (twice)	.0889 (.0035)
	.004 (twice)	.1016 (.004)
	.0045 (twice)	.1143 (.0045)
192.125(c)	100 p.s.i.g.	689 kPa (100 p.s.i.g)
192.125(d)	0.3 grains	19.4 milligrams (0.3 grains)
	100 standard cubic feet	2.8 meters (100 standard cubic feet)
192.145(d)(1)	1,000 p.s.i.g.	6.9 MPA (1,000 p.s.i.g)
192.150(b)(7)	10 inches	254 millimeters (10 inches)
192.151(c)(2)	1–¼ inch	32 millimeters (1–¼ inch)
	4-inch	102 millimeters (4-inch)
	6-inch	152 millimeters (6-inch)
192.153(d)	100 p.s.i.g.	689 kPa (100 p.s.i.g.)
	3 inch	76 millimeters (3 inch)
192.163(b)(1)	2 inches	51 millimeters (2 inches)
192.163(d)	200 feet	61 meters (200 feet)
192.167(a)	1000 horsepower	746 kilowatt (1000 horsepower)
192.167(a)(4)(iii)	500 feet	152 meters (500 feet)
192.175(b)	C=(3D×P×F/1,000)	C =(D×P×F/48.33) (C=(3D×P×F/1,000))

Section number	Remove	Add
	inches (twice)	millimeters (inches)
	p.s.i.g.	kPa (p.s.i.g.)
192.177(a)(1)	1,000 p.s.i.g. (twice)	6.9 MPA (1,000 p.s.i.g.)
	feet	meters (feet)
	25	7.62(25)
	100	30.5 (100)
192.179(a)(1)	2½ miles	4 kilometers (2½ miles)
192.179(a)(2)	4 miles	6.4 kilometers (4 miles)
192.179(a)(3)	7½ miles	12 kilometers (7½ miles)
192.179(a)(4)	10 miles	16 kilometers (10 miles)
192.183(c)	10 inch	254 millimeters (10 inch)
192.187(a)	200 cubic feet	5.663 cubic meters (200 cubic feet)
192.187(a)(1)	4 inches	102 millimeters (4 inches)
192.187(b)	75 cubic feet	2.12 cubic meters (75 cubic feet)
192.197(a)	60 p.s.i.g.	414 kPa (60 p.s.i.g.)
192.197(c)	60 p.s.i.g.	414 kPa (60 p.s.i.g.)
192.197(c)(1)	60 p.s.i.g. (3 times)	414 kPa (60 p.s.i.g.)
192.197(c)(3)	125 p.s.i.g.	862 kPa (125 p.s.i.g.)
192.201(a)(2)(i)	60 p.s.i.g.	414 kPa (60 p.s.i.g.)
192.201(a)(2)(ii)	12 p.s.i.g.	83 kPa (12 p.s.i.g.)
	60 p.s.i.g.	414 kPa (60 p.s.i.g.)
	6 p.s.i.g.	41 kPa (6 P.S.I.G.)
192.201(e)(2)(iii)	12 p.s.i.g.	83 kPa (12 p.s.i.g.)
192.229(d)(2)(ii)	2 inches	51 millimeters (2 inches)
192.203(b)(3)	400° F	204° C (400° F)
192.241(b)(1)	6 inches	152 millimeters (6 inches)
192.309(b)(3)(i)	one-quarter inch	6.35 millimeters (¼ inch)
	12¾ inches	324 millimeters (12¾ inches)
192.313(a)(3)(ii)	12 inches	304.8 millimeters (12 inches)
192.313(c)	2 inches	50.8 millimeters (2 inches)
	1 inch	25.4 millimeters (1 inch)
192.315(b)(3)	16 inches	406 millimeters (16 inches)
192.319(c)	12 feet	3.66 meters (12 feet)
	200 feet	61 meters (200 feet)
	15 feet	4.57 meters (15 feet)
	36 inches	914 millimeters (36 inches)
	18 inches	457 millimeters (18 inches)
192.321(d)	0.090 inch	2.286 millimeters (0.090 inch)
	0.875 inch	22.33 millimeters (0.875 inch)
	0.062 inch	1.575 millimeters (0.062 inch)
192.327(a)	Inches	Millimeters (Inches)
	30	762 (30)
	18	457 (18)
	36 (twice)	914 (36)
	24 (twice)	610 (24)
192.327(b)	24 inches	610 millimeters (24 inches)
192.327(d)	24 inches	610 millimeter (24 inches)
192.327(e)	48 inches	1219 millimeters (48 inches)
	24 inches	610 millimeters (24 inches)
192.327(f)	200 feet	60 meters (200 feet)
192.327(f)(1)	12 feet	3.66 meters (12 feet)
	36 inches	914 millimeters (36 inches)
	18 inches	457 millimeters (18 inches)
192.327(f)(2)	12 feet	3.66 meters (12 feet)
192.353(c)	3 feet	914 millimeters (3 feet)
192.359(b)	10 p.s.i.g.	68.9 kPa (10 p.s.i.g.)
192.361	12 inches	305 millimeters (12 inches)
	18 inches	457 millimeters (12 inches)
192.371	100 p.s.i.g. (twice)	689 kPa (100 p.s.i.g.)
192.373(a)	6 inches	152 millimeters (6 inches)
192.381(a)	10 p.s.i.g.	68.9 kPa (10 p.s.i.g.)
192.381(a)(3)	10 p.s.i.g.	68.9 kPa (10 p.s.i.g.)
192.381(a)(3)(i)(A)	20 cubic feet	0.566 cubic meters (20 cubic feet)
192.(a)(3)(ii)(B)	0.4 cubic feet	.011 cubic meters (0.4 cubic feet)
192.455	20 feet	6 meters (20 feet)
192.465(a)	100 feet	30 meters (100 feet)
192.475(c)	0.25 grain	16.2 milligrams (0.25 grain)
	100 standard cubic feet	2.8 cubic meters (100 cubic feet)

Section number	Remove	Add
192.505(a)	300 feet (twice)	91 meters (300 feet)
	600 feet (twice)	183 meters (600 feet)
192.507 (heading)	100 p.s.i.g.	689 kPa (100 p.s.i.g.)
192.507 (introductory text)	100 p.s.i.g.	689 kPa (100 p.s.i.g.)
192.507(b)(1)	100 p.s.i.g.	689 kPa (100 p.s.i.g.)
192.509	100 p.s.i.g.	689 kPa (100 p.s.i.g.)
192.509(b)	1 p.s.i.g. (twice)	6.89 kPa (1 p.s.i.g.)
	10 p.s.i.g.	68.9 kPa (10 p.s.i.g.)
	90 p.s.i.g.	621 kPa (90 p.s.i.g.)
192.511(b)	1 p.s.i.g.	6.89 kPa (1 p.s.i.g.)
	40 p.s.i.g.	276 kPa (40 p.s.i.g.)
	50 p.s.i.g.	345 kPa (50 p.s.i.g.)
192.511(c)	40 p.s.i.g.	276 kPa (40 p.s.i.g.)
	90 p.s.i.g.	621 kPa (90 p.s.i.g.)
192.513(c)	50 p.s.i.g.	345 kPa (50 p.s.i.g.)
192.557(c)	10 p.s.i.g.	68.9 kPa (10 p.s.i.g.)
192.557(d)(4)	11,000 p.s.i.	75.8 MPA (11,000 p.s.i.g.)
	31,000 p.s.i.	214 MPA (31,000 p.s.i.g.)
192.557(d)(3)	inches (twice)	millimeters (inches)
	3 to 8	76 to 203 (3 to 8)
	10 to 12	254 to 305 (10 to 12)
	14 to 24	356 to 610 (14 to 24)
	30 to 42	762 to 1067 (30 to 42)
	48	1219 (48)
	54 to 60	1372 to 1524 (54 to 60)
	0.075 (3 times)	1.905 (0.075)
	0.08 (4 times)	2.032 (0.08)
	0.09 (5 times)	2.286 (0.09)
	0.065 (twice)	1.651 (0.065)
	0.07 (twice)	1.778 (0.07)
192.612(b)(2)	500 yards	457 meters (500 yards)
	200 yards	183 meters (200 yards)
192.612(b)(3)	36 inches	914 millimeters (36 inches)
	18 inches	457 millimeters (18 inches)
192.619(a)(2)(ii)	100 p.s.i.g.	689 kPa (100 p.s.i.g.)
192.621(a)(2)	60 p.s.i.g. (twice)	414 kPa (60 p.s.i.g.)
192.621(a)(3)	25 p.s.i.g.	172 kPa (25 p.s.i.g.)
192.707(d)(1)	one inch	25 millimeters (1 inch)
	one-quarter inch	6.35 millimeters (¼ inch)
192.715(b)(3)	⅛ inch	3.175 millimeters (⅛ inch)
192.736(a)(2)	1,000 horsepower	746 kW (1,000 horsepower)
192.749(a)	200 cubic feet	5.66 cubic meters (200 cubic feet)
192.753(a)	25 p.s.i.g.	172 kPa (25 p.s.i.g.)
192.753(b)	25 p.s.i.g.	172 kPa (25 p.s.i.g.)
Appendix B (II)(A)	2 inches (twice)	51 millimeters (2 inches)
Appendix B (II)(B)	4 inches (twice)	102 millimeters (4 inches)
Appendix B (II)(D)	24,000 p.s.i.	165 MPA (24,000 p.s.i.g.)
Appendix C (I)	12 inches	305 millimeters (12 inches)
	⅛-inch	3.175 millimeters (0.125 inches)
Appendix C (III)	8 inches	203 millimeters (8 inches)
Appendix C (III)(1)	2 inches	51 millimeters (2 inches)

PART 193—[AMENDED]

1. The authority citation for part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

In part 193 for the following sections remove the numbers and words in the middle column and add the numbers and words in the third column in their place as follows:

Section	Remove	Add
193.2057 (d)	Btu/ft.² hour	watts/m² hour(Btu/ft²)
	1600	5047 (1600)
	4000 (twice)	12600 (4000)
	6700 (twice)	21100 (6700)
	10000	31500 (10000)
193.2059(c)(2)	4.5 miles per hour	7.24 km/hour (4.5 miles/hour)
193.2061(a)	70,000 gallons	265 cubic meters (70,000 gallons)
193.2061(b)(1)	70,000 gallons	265 cubic meters (70,000 gallons)
	2 feet	610 millimeters (2 feet)
193.2061 (e)(1)	100 miles	161 kilometers (100 miles)
193.2061 (e)(3)	10 miles	16.1 kilometers (10 miles)
193.2061(f)(2)	30 inches	762 millimeters(30 inches)
193.2061 (f)(3)	one mile	1.6 kilometers (1 mile)
	60 inches	1.52 meters (60 inches)

Section	Remove	Add
193.2067 (b)(1)	70,000 gallons	265 cubic meters (70,000 gallons)
193.2067 (b)(2)(i)	200 miles	322 kilometers (200 miles)
193.2133(b)	1 cubic foot per square foot	.028 cubic meters (1 cubic foot) per square meter (per square foot)
193.2153(a)	24 inches	610 millimeters(24 inches)
193.2191	5,000 barrels	795 cubic meters (5,000 barrels)
193.2195(d)	70,000 gallons	265 cubic meters (70,000 gallons)
193.2209(a)	70,000 gallons	265 cubic meters (70,000 gallons)
193.2209(b)	70,000 gallons	265 cubic meters (70,000 gallons)
193.2211(a)	15 p.s.i.g	103 kPa (15 p.s.i.g.)
193.2211(b)	15 p.s.i.g	103 kPa (15 p.s.i.g.)
193.2233(b)	50 feet	15.2 meters (50 feet)
193.2321(a)	2 inches (twice)	51 millimeters (2 inches)
193.2321(d)	15 p.s.i.g	103 kPa (15 p.s.i.g.)
193.2321(e)	15 p.s.i.g	103 kPa (15 p.s.i.g.)
193.2327(a)	15 p.s.i.g	103 kPa (15 p.s.i.g.)
193.2327(b)	15 p.s.i.g	103 kPa (15 p.s.i.g.)
193.2519(b)	70,000 gallons	265 cubic meters (70,000 gallons)

PART 194—[AMENDED]

1. The authority citation for part 194 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5) and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

2. In part 194, for the following sections remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

Section	Remove	Add
194.5 Definitions		
Barrel	42 United States gallons	159 liters (42 United States gallons)
	60 degrees Fahrenheit	15.6° Celsius (60° Fahrenheit)
High volume area	20 inches	508 millimeters (20 inches)
194.101(b)(1)	6⅝ inches	168 millimeters (6⅝ inches)
	10 miles	16.1 kilometers (10 miles)
194.101(b)(1)(i)	1,000 barrels	159 cubic meters (1,000 barrels)
194.101(b)(2)(ii)	6⅝ inches	168 millimeters (6⅝ inches)
	10 miles	16.1 kilometers (10 miles)
194.103(c)	6⅝ inches	168 millimeters (6⅝ inches)
	10 miles	16.1 kilometers (10 miles)
194.103(c)(1)	1,000 barrels	159 cubic meters (1,000 barrels)
194.103(c)(4)	five-mile	8 kilometers (5 miles)
194.103(c)(5)	one-mile	1.6 kilometers (1 mile)
194.105(b)	barrels	cubic meters (barrels)
194.105(b)(1)	barrels	cubic meters (barrels)
194.105(b)(2)	barrels	cubic meters (barrels)
194.105(b)(3)	barrels	cubic meters (barrels)
Appendix A: Section 9(h)(2)(i)	five miles	8 kilometers (5 miles)
Appendix A: Section 9(h)(2)(ii)	one mile	1.6 kilometers (1 mile)

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118, and 49 CFR 1.53.

2. In part 195; for the following sections, remove the numbers or words in the middle column and add the numbers or words in the third column in their place as follows:

Section	Remove	Add
195.2 Definitions:		
Exposed pipeline	15 feet	4.57 meters (15 feet)
Gulf of Mexico and its inlets	15 feet	4.57 meters (15 feet)
Hazard to navigation	12 inches	305 millimeters (12 inches)
	15 feet	4.57 meters (15 feet)
Specified minimum yield strength	pounds per square inch	kPa (p.s.i.g.)
195.50(b)	50 or more barrels	8 or more cubic meters (50 or more barrels)
195.50(c)	5 barrels	0.8 cubic meters (5 barrels)
195.55(b)(1)	220 yards	200 meters (220 yards)

Section	Remove	Add
195.57(a)(4)	miles	kilometers (miles)
195.106(a)	pounds per square inch	kPa (p.s.i.g.)
	inches (twice)	millimeters (inches)
195.120(b)(6)	10 inches	254 millimeters (10 inches)
195.208	100 p.s.i.g.	689 kPa (100 p.s.i.g.)
195.210(b)	50 feet	15.2 meters (50 feet)
	12 inches	305 millimeters (12 inches)
195.248(a)	inches	millimeters (inches)
	36 (4 times)	914 (36)
	30 (twice)	762 (30)
	48 (twice)	1219 (48)
	18 (3 times)	457 (18)
	24 (twice)	610 (24)
195.250	12 inches (3 times)	305 millimeters (12 inches)
	2 inches	51 millimeters (2 inches)
195.260(e)	100 feet	30.48 meters (100 feet)
195.302(c)(2)(i)(A)	mileage	length (mileage)
195.302(c)(2)(i)(B)	mileage	length (mileage)
195.302(c)(2)(ii)	mileage	length (mileage)
195.306(b)(2)	300 feet	91 meters (300 feet)
195.306(c)(2)	300 feet	91 meters (300 feet)
195.310(b)(9)	100 feet	30 meters (100 feet)
195.410(a)(2)(i)	one inch	25.4 millimeters (1 inch)
	one-quarter inch	6.35 millimeters (1/4 inch)
195.413(b)(2)	500 yards	457 meters (500 yards)
	200 yards	183 meters (200 yards)
195.413(b)(3)	36 inches	914 millimeters (36 inches)
	18 inches	457 millimeters (18 inches)
195.424(b)(3)(ii)	50 p.s.i.g.	345 kPa (50 p.s.i.g.)

Issued in Washington, DC, on December 22, 1997.

Richard B. Felder,

Associate for Pipeline Safety.

[FR Doc. 97-33687 Filed 12-24-97; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS-94; Notice 9]

RIN 2137-AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This announces the next RSPA Negotiated Rulemaking Committee. This committee is conducting a negotiated rulemaking to develop a proposed rule on qualification of pipeline employees performing certain safety-related functions on pipelines subject to the pipeline safety regulations. The advisory committee is composed of persons who represent the interests that would be affected by the rule, such as gas pipeline operators, hazardous liquid pipeline operators, representatives of state and federal governments, labor organizations, and other interested parties. The Committee hopes to conclude the development of this NPRM by the end of this meeting. OPS will then publish the NPRM in the **Federal Register** for public evaluation and comment.

DATES: The Committee will meet from 9:00 a.m. to 5:00 p.m. on January 27–29, 1997.

ADDRESSES: The Committee will meet at the American Gas Association, 1515 Wilson Boulevard, 11th floor, in Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov) regarding the subject matter of this Notice; or the Dockets Unit, (202) 366–4453, for copies of this document or other material in the docket.

Issued in Washington, DC on December 19, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97-33659 Filed 12-24-97; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970708168-7168-01; I.D. 061697B]

RIN 0648-AJ58

Magnuson-Stevens Act Provisions; National Standard Guidelines

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA); Commerce.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: On August 4, 1997, NMFS published a proposed rule to amend the national standard guidelines under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The public comment period for the proposed guidelines ended September 18, 1997. Because of remaining issues regarding interpretation of the Magnuson-Stevens Act's provisions relative to overfishing, NMFS is reopening the public comment period on national standard 1 for an additional 30 days.

DATES: The comment period reopens December 29, 1997; comments must be received on or before January 28, 1998.

ADDRESSES: Comments should be sent to Dr. Gary C. Matlock, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1997 (62 FR 41907), NMFS published a proposed rule to amend the guidelines interpreting the 10 national standards found in section 301(a) of the Magnuson-Stevens Act. Public comment received on the proposed rule indicated a broad range of views regarding interpretation of the provisions of the Magnuson-Stevens Act with respect to prevention of overfishing. Therefore, NMFS is reopening the comment period on the national standard 1 guidelines for an additional 30 days to obtain additional comment on specific issues regarding overfishing.

The Sustainable Fisheries Act (SFA), which amended the Magnuson-Stevens Act in 1996, contained several provisions that affected national standard 1, which was not itself amended. That standard requires that conservation and management measures "shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." The SFA added a definition of "overfishing" and "overfished," changed the definition of "optimum," required that each fishery management plan specify objective and measurable criteria for identifying when a fishery is overfished (section 303(a)(10)), and added a section (304(e)) on identifying and rebuilding overfished fisheries.

Issues

While NMFS received numerous comments on the proposed guidelines, it believes further comment on the national standard 1 guidelines would be useful. In particular, NMFS would like commenters to address the following issues:

1. Usage of "overfishing" and "overfished." The SFA adopted the regulatory definition of "overfishing" (at § 600.310(c)(1)), with two changes. The existing regulatory definition states: "Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis." The statutory definition in the SFA deleted the modifier "long-term" and substituted "fishery" for "stock or stock complex."

NMFS believes that the removal of "long-term" in the statutory language was intended to emphasize the need to address overfishing in the near term, and to rebuild overfished stocks to levels that would produce MSY (maximum sustainable yield) within a reasonably short period of time, rather than in some unspecified time frame. This interpretation is consistent with the fact that, taken as a whole, the SFA enacted several significant measures to address overfishing and rebuilding, including requiring specific time frames for action. Along with the amendment to the definition of "optimum," under which the optimum yield cannot be set above the MSY level, the addition of the definition of "overfishing" in the SFA (without reference to "long-term") seems to raise the standard to which conservation and management measures are held. Because NMFS understood deletion of the phrase "long-term" in the SFA to be significant, the proposed guidelines tie the meaning of "overfishing" to a rate or level of fishing mortality (i.e., removals of fish from the stock due to fishing) that jeopardizes the capacity of a stock to produce MSY, without regard to time frame.

The issue is whether NMFS has correctly interpreted the definition of overfishing, or whether it should adopt a more elastic guideline with MSY as only an eventual target.

2. "Fishery" versus "stock." As explained above, the statutory definition of "overfishing" uses the term "fishery" rather than "stock or stock complex." Both "fishery" and "stock" are defined in the Magnuson-Stevens Act; both are used in section 304(e) and elsewhere somewhat interchangeably.

The proposed guidelines, in large part, speak of "overfishing" and "overfished" in terms of a stock or stock complex. NMFS scientists who worked on the guidelines were concerned that a "fishery," in its most expansive sense, is not susceptible to being judged as overfished or not; only for a stock of fish can measurable, objective criteria of overfishing be established. The same applies to judging whether a fishery has been rebuilt; biologically, that can be determined only on a stock-by-stock basis.

Some commenters believe the requirement to prevent overfishing should apply only to fisheries in a broader sense, in order to provide the greatest benefit to the Nation. They believe that fishers may have to forego substantial economic value from a mixed-stock fishery if it must be managed to restore the most depleted stock component (species) in the fishery to the level that would produce MSY. (See issue 4 below.)

The issue is whether NMFS should change its focus in the national standard 1 guidelines to a "fishery," which may be comprised of dozens of stocks, or retain the requirements to prevent overfishing of stocks and rebuild overfished stocks.

3. Rebuilding schedules. The proposed guidelines repeated the statutory requirement that overfished stocks must be rebuilt in a time period that is as short as possible, taking into account the status and biology of the stock, the needs of fishing communities, recommendations by international organizations, and the interaction of the overfished stock within the marine ecosystem. However, in no case may the rebuilding time exceed 10 years, except where the biology of the stock, other environmental conditions, or management measures under an international agreement dictate otherwise.

NMFS received comments requesting clarification of the statutory language. One interpretation is that "as short as possible" means the length of time in which a stock could be rebuilt in the absence of fishing mortality on that stock. If that period is less than 10 years, then the factors listed in section 304(e)(4)(A)(i) of the Magnuson-Stevens Act (i.e., the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem) could be used to lengthen the rebuilding period to as much as 10 years. If the stock cannot be rebuilt within 10 years in the absence of fishing mortality on that stock, the rebuilding period based on the absence of fishing mortality would automatically become the maximum time for rebuilding, unless management measures under an international agreement dictate otherwise. Under this interpretation, the biology of the stock and other environmental conditions are taken into account in determining the rebuilding period that would be required, based on the absence of fishing mortality, and those factors would not be used to further extend the rebuilding period. Therefore, under this scenario, for a rebuilding period that exceeds 10 years, the only exception to allow extension of the rebuilding period beyond that based on an absence of fishing mortality would be for those instances that are dictated by measures under an

international agreement to which the United States is a party.

Another possible interpretation for those situations in which the rebuilding period would exceed 10 years in the absence of fishing is to treat the 10-year limit as a guide in determining the length of a rebuilding program. In these cases, the question that immediately arises is, how long can the rebuilding program be? Must it be constrained, as in the scenario above, or can it be longer? If so, how much longer? NMFS believes that it is not desirable to have an unspecified time period for rebuilding and that such an indeterminate rebuilding period would be inconsistent with the other provisions of the Magnuson-Stevens Act. The guidelines could potentially use the factors in section 304(e)(4)(A)(i) to interpret "as short as possible" to limit the time period beyond 10 years, but NMFS believes that any rebuilding program that exceeded the period based on no fishing mortality would need to be justified and constrained by the life history characteristics of the stock.

The issue is the interpretation of the statutory language and how much flexibility the statutory language allows. NMFS is specifically seeking comment on whether or not it is correct in its interpretation that the duration of rebuilding programs should not be unspecified and, if so, what factors should be considered in determining that duration.

4. Mixed-stock exception. The proposed guidelines, at § 600.310(6), relied on the statute's use of the term "fishery" to justify retention of a limited exception to the requirement to prevent overfishing on all stocks. The exception would allow overfishing of one species in a mixed-stock complex, but only if certain stringent conditions are met (i.e., analysis demonstrates that it will result in long-term net benefits to the Nation and that a similar level of benefits cannot be achieved through other means; and the resulting rate of fishing mortality will not cause any species or ecologically significant unit thereof to require protection under the Endangered Species Act (ESA) or any stock or stock complex to fall below its minimum stock size threshold).

This proposed provision has been criticized by those who believe the Magnuson-Stevens Act allows no exceptions to the requirement to prevent overfishing, even in mixed-stock fisheries. Others have criticized the provision as too stringent and believe the Magnuson-Stevens Act allows overfishing on one or more stocks in mixed-stock fisheries, even if the result is to maintain, or reduce stocks to, an overfished status.

The issue is whether to delete or liberalize the limited exceptions, and whether to add other exceptions. One suggestion is that the recovery of stocks listed under the ESA should be handled under that statute, not under the Magnuson-Stevens Act. Another is that stocks whose rebuilding would not be assisted by cessation of fishing mortality in the exclusive economic zone should be exempt from the provisions of section 304(e)(4) of the Magnuson-Stevens Act.

NMFS will respond to comments received on national standard 1 during this 30-day comment period, and to all comments received on the proposed national standard guidelines during the comment period for the proposed rule, in the preamble to the final rule.

Dated: December 19, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-33643 Filed 12-22-97; 2:13 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 971208294-7294-01; I.D. 103097B]

RIN 0648-AJ20

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Restrictions on Frequency of Limited Entry Permit Transfers; Sorting Catch by Species; Retention of Fish Tickets

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement management measures recommended by the Pacific Fishery Management Council (Council) that restrict the frequency of limited entry permit transfers to once every 12 months, with transfers taking effect on the first day of a cumulative landings limit period. This rule would also require the sorting of all groundfish species with trip limits, size limits, quotas, or harvest guidelines at the point of landing, and the retention of landings receipts on board the vessel that has made those landings. This proposed rule is intended to constrain the introduction of new fishing effort into the Pacific Coast groundfish fisheries, and to improve the enforceability of Federal and state fisheries regulations. This action would be taken under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be submitted in writing by February 12, 1998.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115-0070; or to William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Information relevant to this proposed rule is available for public review during business hours at the Office of the Administrator, Northwest Region, NMFS, and at the Office of the Administrator, Southwest Region, NMFS. Copies of the Environmental Assessments/Regulatory Impact Reviews (EA/RIRs) for these issues are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Svein Fougner at 562-980-4034, or the Pacific Fishery Management Council at 503-326-6352.

SUPPLEMENTARY INFORMATION: NMFS is proposing three separate regulatory changes: (1) Restricting the frequency of limited entry permit transfers to once every 12 months, with transfers taking effect only on the first day of a cumulative landings limit period; (2) providing Federal regulatory support for existing state requirements that require the sorting of all groundfish species with trip limits, size limits, quotas, or harvest guidelines; and (3) providing consistent regulatory requirements on the retention of landings receipts throughout the management area. These regulatory changes were recommended by the Council at its October 1996 and June 1995 meetings, respectively. The background and rationale for this proposed rule are summarized below. More details appear in the EA/RIRs for these actions.

Restrictions on Permit Transfer Frequency

Background. A license limitation program for the Pacific Coast groundfish fisheries went into effect at the beginning of the 1994 fishing season. The purpose of this program was to control the size and harvesting capacity of the Washington, Oregon, and California fleet, which had expanded far beyond the effort needed to catch the available groundfish resource. This license limitation program includes restrictions on the number of participants in a limited entry groundfish fishery, as well as restrictions on vessel length expansion and on gear used by permitted vessels, as measures to control total fleet harvesting capacity. However, the initial limited entry licensing formula was fairly liberal, capping fishery participation without reducing capacity, and in fact leaving opportunity for an increase in fishing effort.

Most of the West Coast groundfish catch is harvested by limited entry vessels, which use trawl, longline, or pot (or trap) gears. Vessels in the open access fishery use a variety of gear types, including pot and longline gears, to take the remainder of the harvest.

In 1996, the Council introduced 2-month cumulative landings limit periods for all gears. This cumulative landings approach allows each vessel to catch up to a specific amount of different groundfish species over a 2-month period, with not more than 60 percent of the cumulative period total to be taken in either month of the period. Cumulative period catch limits are set by comparing current or previous landings rates with the year's total available catch. Landing limits have been used to slow the pace of the fishery and stretch the fishing season out over as many months as possible, so that the overall harvest target is not reached until the end of the year.

Current Federal regulations place no restrictions on the frequency or timing of permit transfers, a situation that allows expansion of new effort into the fishery. In an open access fishery, the participating vessels do not participate constantly. For example, if there are 100 vessels in the fishery, they do not all participate for 12 months of the year. Most vessels are out of the fishery at times for repairs, or to participate in other fisheries. When the limited entry program went into effect, the vessels that received permits did not have a history of fishing constantly in the fishery. However, as the limited entry program has progressed, permit owners have realized that it is possible to use a permit for 12 months of the year by leasing the permit out to other vessels during times when the original vessel is not directly participating in the Pacific Coast groundfish fishery. If a permit is shared between two or more vessels in a year, those multiple vessels will exert more effort in the fishery than if just one vessel had used the permit, with the permit lying idle during that vessel's days away from the fishery. Historically, individual vessels have not participated in the Pacific groundfish fishery every day of the year.

Permits may also be transferred at any time during a cumulative limit period, which means that two or more vessels could use the same permit during the 2-month cumulative limit period, with each vessel fishing towards its own cumulative limit. Transferring limited entry permits between vessels or owners to circumvent vessel landing limits is inconsistent with specific language of the FMP. Transfers of this nature also increase effort in the fishery.

Council Action

At the October 1996 Council meeting, the Council recommended constraining groundfish fleet effort expansion by restricting the frequency of limited entry permit transfers to once every 12 months, with transfers taking effect only on the first day of a major cumulative limit period. These periods will be announced each year in the **Federal Register** with the annual specifications and management measures, or with routine management measures when the cumulative limit periods are changed. Cumulative limit periods that govern just a portion of the groundfish fisheries, such as the fixed gear regular sablefish season, are not considered "major" cumulative limit periods. For permit holders participating in the "B" delivery platoon, transfer effectiveness dates would align with "B" platoon cumulative limit period dates, and the new recipient of the "B" platoon permit would be required to participate in "B" platoon deliveries for the remainder of the calendar year.

The Council expects that this proposed action would constrain effort expansion in two ways: (1) it would prevent two or more vessels from sharing a limited entry permit during a single cumulative limit period and thereby landing more than one limit on that permit, and (2) it would discourage increased fishing effort in the fishery by preventing limited entry permit holders from temporarily transferring their permits during times when the vessel is undergoing repairs, operating in other fisheries, or otherwise idle.

Of the permit leases made in 1994 and 1995, 67 percent were shorter than 6 months in length, and 89 percent were shorter than one year in length. The Council's recommendation to limit the frequency of limited entry permit transfers to one time in any 12 month period would reduce most of the current leasing activity on limited entry permits. The average length of all limited entry permit leases, for all gears and for both years was 176 days, while the median lease length for those same conditions was 130 days, which means that the majority of permit leases have shorter than average durations.

Fixed gear permits are most frequently transferred as leases. Most fixed gear permits have longline gear endorsements. Because there are many open access vessels that fish with longline gear, there are always several open access fishers who are ready to transfer into the limited entry fisheries as longliners leasing limited entry permits. This easy transfer of additional effort from the open access fishery increases the number of potential participants in an already over-capitalized fleet. Council recommendations to restrict the frequency of limited entry permit transfer would eliminate the annual influx of short-term fixed gear participants into the large but brief, limited entry, fixed gear regular sablefish season.

Permit transfer trends for limited entry trawl vessels are more linked to sales activity than to lease transfers. Trawl permits had relatively low lease activity in 1994 and 1995, but a significant number of permits changed ownership more than once in those years. There were 105 permits that changed ownership more than once during the 1994-1995 period, 79 of which changed ownership twice during those years. The proposed Council action to limit the frequency of limited entry permit transfers to once every 12 months would eliminate documented permit activity of three, four, or five ownership changes in a 2-year period.

Members of the West Coast fishing industry commented on the crafting of this Council recommendation, and the Council's action on this issue was generally well received by the limited entry fleet. However, members of the at-sea component of the whiting fishery opposed the action, because motherships would no longer be able to lease Pacific coast permits for use by their high-power, Alaska-based catcher boats, which do not participate in the non-whiting portion of the groundfish fishery. Representatives from this sector of the fishery argued at the Council meeting that high-power catcher boats are necessary to fish farther offshore for whiting, where chances of yellowtail rockfish and salmon bycatch are lower. Certain fishing corporations that own Pacific Coast groundfish limited entry

permits have also been in the practice of leasing out their catcher boat permits during times outside of the at-sea component of the whiting fishery, and restrictions on lease transfers would eliminate that permit leasing income for those corporations. Analysis of the at-sea sector of the groundfish fleet has shown that in 1994 and 1995, out of 49 permits with at-sea deliveries, 13 permits had been transferred for periods less than 12 months in duration. The Council determined that the benefits to the fishery overall that could be gained from restricting the entrance of new effort into the fishery as a whole outweighed the concerns of the at-sea whiting sector.

Hardship Exemptions

In its October 1996 recommendation, the Council supported waiving the restriction on transferring permits once every 12 months in cases of hardship. Hardship exemptions could not be used to waive the requirement that transfers take effect only on the first day of a cumulative limit period. Hardship exemptions were defined for this issue as either death of the permit holder, or loss of the permitted vessel. In previous meetings, the Council and its advisory bodies had also considered exemptions in cases of serious illness of the permit holder, but then decided to define "hardship" narrowly, to limit the discretion in using the exemption. This narrow definition covers the cases most likely to require a transfer, but restricts the possibility of abuse of the process.

If a limited entry permit holder applies to transfer his or her permit within 12 months of the last transfer, the permit holder will be required to submit documents demonstrating that the transfer meets the exceptions of death of the permit holder or loss of the vessel. Loss of vessel is defined in the Pacific Coast groundfish regulations at § 660.302, "Totally lost means the vessel being replaced no longer exists in specie, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel." Death of a permit holder would be documented by a copy of the death certificate of the permit holder.

If the permit is owned by a partnership or a corporation, a transfer within 12 months of the last transfer would be allowed if a person or persons owning 50 percent or more of the ownership interest in the partnership or corporation has died. NMFS understands the Council's recommendation for allowance of a hardship exemption in cases of death to mean that a transfer should be allowed in cases where the primary owner of the permit has died. NMFS is also aware that many of the limited entry permits are owned by partnerships or corporations, entities that do not "die" in the same sense that a human person would die. However, the Pacific Coast groundfish fishery does include several permit-owning partnerships and corporations whose only shareholders are limited to one of the following: an individual, a husband and wife, or a parent and child.

NMFS includes the provision that the hardship exemption may be applied in cases of the death of a person who owned 50 percent or greater interest in the permit so that individuals and small businesses will not be denied use of the hardship exemption in cases where the businesses have been incorporated, but the primary owner of the business has died. In these situations, the business is more likely to be significantly affected by the death of the owner. For a larger corporation or partnership, the death of one stockholder or partner is much less likely to severely affect the operation of the business. NMFS selected the 50 percent ownership limit to have a clear, easy to implement standard that still accommodates those most likely to be adversely affected by death of an owner. NMFS particularly seeks comment on this provision.

If a request for transfer is denied, the Fisheries Management Division (FMD), NMFS Northwest Region, will explain in writing why the transfer request has been denied. Further, if the transfer is denied, the permit owner may appeal that decision within 30 days to the Regional Administrator, explaining the basis for the appeal. The Regional Administrator will decide upon the appeal within 45 days in a final agency action.

Sorting of Groundfish Catch by Species

Under current regulations at § 660.306, fishers landing groundfish at West Coast ports must sort, before the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 1,361 kg (3,000 lb) round weight. NMFS introduced this regulation in 1990, when a 1,361 kg (3,000 lb) landing was thought to be almost insignificant. When the Council decided to revisit this issue in 1995, however, the Council's analysis found that landings of less than 1,361 kg (3,000 lb) may comprise a significant portion of the catch, especially among landings to California ports. According to the July 1996 EA/RIR for this issue, in the 1993 California rockfish fishery, 96 percent of the hook-and-line trips (53 percent by weight) and 75 percent of the trawl trips (14 percent by weight) landed less than 1,361 kg (3,000 lb).

The Council has a policy of maintaining a year round groundfish fishery through adjustable 2-month cumulative limits. Capitalization of the fleet continues to rise, which means that individual vessels are more able to catch the available cumulative limits faster than in the past. To keep this overcapitalized fleet from exceeding harvest guidelines on the groundfish stocks that it manages, the Council has had to periodically decrease the 2-month cumulative limits. As these limits are decreased, small trips make up a greater portion of the overall catch. In order to improve enforcement efforts and prevent loss of data in a fishery with shrinking landings limits, the Council has proposed requiring the sorting of all species managed by trip limits, size limits, quotas, or harvest guidelines. This measure is consistent with regulations that Washington and Oregon already have in place; although Washington does not require sorting of species with harvest guidelines but with no trip limits. This regulation introduces a new requirement for California fishers landing less than 3,000 lb (1,361 kg) per trip, but most fishers, already sort their catch by species prior to offloading as part of the marketing transaction between fisher and fish processor. California commonly models its fisheries management regime on Federal regulations and is likely to change its state regulations to match the Federal sorting regulations if such regulations become final. Fishers landing shortbelly rockfish or jack mackerel in Washington would also be affected by this requirement, but these species are underutilized and neither species has been landed in Washington in any great quantity to date. Requiring the sorting of species with harvest guidelines but with no trip limits could have a future impact if the Council decides to implement new harvest guidelines for species not yet managed by harvest guidelines without also implementing trip limits for those species. This requirement would facilitate enforcement because agents would not have to examine unsorted catches. Compliance could be enhanced if fishers sorted at sea because fishers would be more aware of the harvest amount of individual species.

Retaining Fish Tickets On Board the Vessel

Groundfish trip limits are now specified as a cumulative amount that may be retained in any calendar month or 2-month period. Most vessels make multiple trips during a month or two-month period, and enforcement personnel at the dock would have difficulty determining whether a vessel has exceeded its limits if all the vessel's landings receipts were not readily accessible. Current Federal regulations at § 660.303 require that fishers comply with state law on retaining and filing all reports of groundfish landings. Each state has requirements for retaining fish tickets on board vessels for enforcement purposes; however, the regulations are inconsistent from state to state and there are no unifying Federal regulations on this subject.

Fishers landing groundfish in Washington and Oregon are required to keep their landings receipts on board for 90 days. In California, fish tickets must be kept throughout the cumulative trip limit period of the landings and for 15 days thereafter. When the Council addressed this issue at its June 1995 meeting, they recommended a change to Federal regulations that would both standardize the record retention requirements coastwide, and set regulatory language that would accommodate the different cumulative limit periods of the different sectors of the fishery. Consistency along the coast under Federal regulations is needed to ensure that enforcement agents have consistent access to on board landings records.

The Council forwarded a recommendation to NMFS on this issue because they saw a need to improve enforceability of landings restrictions across the three states with Federal regulatory language that recognizes a flexible management system with potentially changing cumulative limit period durations. This Proposed Rule would require that all West Coast groundfish fishers retain landings receipts on board their vessels throughout the cumulative trip limit period of the landings and for 15 days thereafter. The proposed rule also clarifies that the fish tickets must be provided to an authorized officer upon request. This is a minor regulatory change that is expected to eliminate confusion among fishers as to which state's landings receipts should be kept on board for what length of time.

Biological Impacts

Marine biological background and biological impacts of the groundfish fishery are analyzed in "Status of the Pacific Coast Groundfish Fishery Through 1996 and Recommended Acceptable Biological Catches for 1997: Stock Assessment and Fishery Evaluation" (SAFE Document), and in the Environmental Assessments for these actions. These documents may be obtained from the Pacific Fishery Management Council. (See **ADDRESSES** above).

Restricting the frequency of limited entry permit transfers is not expected to have a direct biological impact on the West Coast groundfish fishery, although it may trigger positive secondary impacts following the reduction of fishery effort. By reducing effort in the limited entry groundfish fishery, harvesting pressure on the targeted stocks will also decline, and annual harvest guidelines for the groundfish stocks will be achieved at a slower rate than under a system of unrestricted permit transfers.

Requiring fishers to sort their groundfish landings under 3,000 lb (1,361 kg) would also have minor, positive biological impacts. To the extent that more and better data on species composition become available, harvest monitoring would be improved. Complete sorting information is already required under Washington and Oregon State regulations, so the primary benefit would result from improved data on California groundfish landings from small vessels. In addition, enforcement would be facilitated, allowing for expanded enforcement coverage for the same amount of agent effort. No biological impacts, positive or negative, are expected to result from standardizing the required period of fish ticket retention.

Biological impacts from these actions are not significant, and where they occur, will likely be positive. The acceptable biological catches and harvest guidelines of West Coast groundfish stocks would not be affected by these actions.

Socio-Economic Impacts

Permit holders would be unable to lease their permits for short periods of time under the proposed action, as they might wish to do when pursuing another fishery, or when the permitted vessel is under repair. Thus, permit holders will lose the possibility of the dual revenues that might be made by both leasing out their own permit and simultaneously pursuing a fishery outside of the groundfish limited entry fishery.

This proposed measure would slow the rate of permit transfers, as it would reduce incentives for temporary permit transfers. If the benefits of temporarily transferring permits are reduced, the value of the permits will decrease. However, by reducing the benefits of temporary permit transfers, permit holders with minimal interest in the fishery may be more likely to sell their permits. As more permanent permit transfers are made, the permit prices should rise to compensate for the initial drop that may follow restrictions on permit transfer frequency. This proposed action may also lead to more fleet stability, as it will discourage the permit speculators who might lease out permits to several different boats throughout the year. Similarly, persons who have been temporarily transferring into the fishery will have a greater incentive to make long-term commitments to the fishery by buying a permit. The benefit of this restriction is that due to the reduction of effort, the value of the groundfish resource would be increased for permitted fisheries. The levels of trip limits should be higher than it would be without this restriction.

Requiring the sorting of groundfish species with trip limits, size limits, quotas, or harvest guidelines would not impose an additional burden on Washington and Oregon fishers, as those two states already have similar state regulations in place for landings sorting. Washington fishers are not required to sort harvest guideline species, but the only species for which there are harvest guidelines but no trip limits are shortbelly rockfish and jack mackerel, both of which are underutilized and infrequently caught. The additional burden of sorting would fall on fishers landing less than 3,000 lb (1,361 kg) per trip in California. However, many of the species landed in this sector of the fishery are already sorted during the sales transaction between fisher and processor into marketing categories that are the same as species sorting categories. This requirement would not affect the amount of fish that are harvested,

The measure to standardize fish ticket retention requirements may lead to some initial confusion among fishers from the three different states, but that should be resolved by the fact that state and Federal requirements will be consistent with each other. The sorting requirement, and the clear directive to make fish tickets available to authorized officers would facilitate enforcement.

Classification

The Assistant Administrator for Fisheries, NOAA, has initially determined that this action is consistent with the FMP and the national standards and other provisions of the Magnuson-Stevens Act.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Most of the permit holders and vessels in the Pacific Coast fleet are considered small entities. NMFS considers an impact to be "significant" if it results in a reduction in annual gross revenues by more than 5 percent, an increase in annual compliance costs of greater than 5 percent, compliance costs at least 10 percent higher for small entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business. NMFS considers a "substantial number" of small entities to be more than 20 percent of those small entities affected by the regulation engaged in the fishery.

The provision of the rule limiting the frequency of limited entry permit transfers would prevent permit holders from leasing their permits for periods shorter than 12 months. There may be economic losses resulting from this provision for permit holders who generate more income from short-term permit leases than they would from fishing those permits.

NMFS analyzed the transfer actions for each permit that existed in 1996. If a permit was transferred in 1996, 1995 and 1997 records would show whether that transfer had occurred within 12 months of a previous or subsequent transfer. At the time that the EA/RIR was written for this action, only 1994 and 1995 permit data were available, which made a full analysis of 1995 permit transfers impossible. In 1996, approximately 539 vessels were licensed to participate in the Pacific Coast limited entry groundfish fishery. Of those 539 permits, 75 permits (approximately 14 percent of permits held in 1996) were sold or leased for a duration of shorter than 12 months, with some of those permits being sold or leased more than once in 1996. Because 14 percent is below the 20 percent "substantial number" threshold, this provision would not impact a substantial number of small entities.

NMFS cannot quantify the level of economic impact to the 14 percent of the fleet that would be expected to transfer their permits more often than once every twelve months. The fishing strategies, permit lengths, gear endorsements, and reasons for transferring permits differ for each affected fisher. Permit holders who lease out their permits and permit lessees may both suffer economic losses from reduced opportunities to enter into short-term leases. It is not known how these individuals would change their fishing strategies if they cannot make leases for shorter than twelve months. Permit holder strategies may include increased personal participation in the groundfish fishery, hiring skippers to fish their groundfish permits, year-long leases for their permits, or sale of their permits. Persons who have taken short-term leases on permits in the past may change their fishing strategies to concentrate on non-groundfish species, fish for groundfish in the open access fishery, take year-long leases on limited entry permits, or buy limited entry permits. Therefore, the degree of economic loss that these two types of people would suffer will depend upon individual ability to alter fishing and business strategies. It is reasonable to expect that some small businesses may suffer significant economic losses if this rule is implemented. However, NMFS is not able to determine how many small businesses in the Pacific Coast groundfish fleet would have a reduction in annual gross revenues by more than 5 percent, for more than 20 percent of the participants; an increase in total costs of production of more than 5 percent as a result of an increase in compliance costs, for 20 percent or more of the affected small entities; compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, for 20 percent or more of the affected small entities; capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or two percent of the small business entities affected being forced to cease business operations.

The provision to require sorting of groundfish species with trip limits, size limits, quotas, or harvest guidelines is expected to have a minimal impact, if any, on small entities. Oregon and Washington already have species sorting requirements similar to those proposed by this rule; although Washington does not require the sorting of species with harvest guidelines but with no trip limits. The only species for which there are harvest guidelines but no trip limits are shortbelly rockfish and jack mackerel, both of which are underutilized and infrequently caught. California has similar species sorting requirements for groundfish landings greater than 3,000 pounds. Thus, only persons making landings of less than 3,000 pounds of groundfish in California will be affected by this rule. Because many of these persons already sort their catch by species during the sale of the fish to processors, this sorting requirement is expected to impose very little economic or other burdens on small entities. Furthermore, the time and effort that would be necessary to comply with this proposed sorting requirement would be minimal and would not be expected to result in a reduction in annual gross revenues by more than 5 percent, an increase in annual compliance costs of greater than 5 percent, compliance costs at least 10 percent higher for small entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business.

The provision to require retention of landings receipts on board the vessel that has made the landing is expected to have no economic impact on small entities. All three Pacific Coast states already require the retention of landings receipts on board the vessel that has made the landing. Because Federal requirements for landings receipt retention would standardize the requirements across the three states, these requirements are expected to eliminate the regulatory burden of following different rules when landing in different states.

This rule, if adopted, would not change the amount of fish caught or retained by limited entry permit holders or the number of vessels licensed in the limited entry fleet. None of the requirements of this proposed rule would have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, and May 14, 1996 pertaining to the impacts of the groundfish fishery on Snake River spring/summer chinook, Snake River fall chinook, and Sacramento River winter chinook. The opinions concluded that implementation of the FMP for the Pacific Coast Groundfish Fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This proposed rule is within the scope of these consultations. Because the impacts of this action fall within the scope of the impacts considered in these Biological Opinions, NMFS has determined that additional consultations are not required for this action. In addition, coho salmon south of Cape Blanco, OR, recently have been listed as threatened (northern CA/southern OR) and endangered (central CA) under the ESA. This action will not affect coho salmon.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 19, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For the reasons set forth in the preamble, 50 CFR 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.303, paragraph (c) is added to read as follows:

§ 660.303 Reporting and recordkeeping.

* * * * *

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

3. In § 660.306, paragraph (h) is revised and paragraph (x) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(h) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or harvest guideline, if the vessel fished or landed in an area during a time when such trip limit, size limit, harvest guideline or quota applied.

* * * * *

(x) Fail to retain on board a vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings, or receipts containing all data, and made in the exact manner required by the applicable state law throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

4. In § 660.333, paragraphs (c)(1) and (c)(2) are revised; paragraphs (c)(3) and (c)(4) are redesignated as (c)(4) and (c)(5) and a new (c)(3) is added; paragraph (d) introductory text is revised; paragraphs (f)(2) and (f)(3) are redesignated as (f)(3) and (f)(4) and a new (f)(2) is added to read as follows:

§ 660.333 Limited entry fishery - general.

* * * * *

(c) * * *

(1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder, with such gear endorsements, and, if applicable, species endorsements as are eligible for transfer with the permit. Permit transfers will take effect on the first day of the next major limited entry cumulative limit period following the date of the transfer. Transfers of permits designated as participating in the "B" platoon will become effective on the first day of the next "B" platoon major limited entry cumulative limit period following the date of the transfer. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the FMD and placed aboard the vessel before it is used under the permit. Registration of a permit to be used with a new vessel will take effect on the first day of the next major limited entry cumulative limit period following the date of the transfer.

(3) The major limited entry cumulative limit periods will be announced in the **Federal Register** each year with the annual specifications and management measures, or with routine management measures when the cumulative limit periods are changed.

* * * * *

(d) Evidence and burden of proof. A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, replacement, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met. The following evidentiary standards apply:

* * * * *

(f) * * *

(1)

(2) Limited entry permits may not be transferred to a different holder or registered for use with a different vessel more than once every 12 months, except in cases of death of the permit holder or if the permitted vessel is totally lost, as defined at § 660.302, The exception for death of a permit holder applies for a permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies.

* * * * *

[FR Doc. 97-33641 Filed 12-24-97; 8:45 am]
BILLING CODE 3510-22-F

Notices

Federal Register
Vol. 62, No. 248
Monday, December 29, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Sawtooth Ridge Trail and Improvement Project, Okanogan and Wenatchee National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) for the Sawtooth Ridge Trail and Improvement Project. The proposed action is to develop new trails, improve existing trails, and improve campgrounds and other areas to provide a diverse network of trails for motorized and non-motorized trail use and protect resources in the Sawtooth non-wilderness backcountry

The EIS will develop and evaluate a range of alternatives for providing motorized and non-motorized trails and access within the analysis area. The alternatives will include the no-action alternative, involving no change in current management, and no construction of new trails or improvement of existing trails, and additional alternatives in response to issues identified during the scoping process.

To date, a number of issues have been identified. The major issues focus on the following: on congestion at Horsehead Pass from Eagle Lake to Boiling Lake; conflicts between specific user groups; intrusion of recreationists into remote wildlife habitat within the late successional reserve (LSR); damage to riparian areas, stream banks, wet meadows, and other sensitive areas; lack of links between trailheads for motorcycles; and lack of trailhead and campground facilities to meet user needs.

This EIS will be consistent with and tier to the Okanogan and Wenatchee National Forest Land and Resource Management Plans (Forest Plan) and the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (Northwest Forest Plan).

The agency invites written comments on this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the decision making process.

DATE: Comment concerning this proposal must be received by January 30, 1998.

ADDRESS: Submit written comments and suggestions to Margi Gromek, Writer/Editor, Chelan Ranger District, 428 West Woodin Avenue, Chelan, Washington 98816.

FOR FURTHER INFORMATION CONTACT: Direct questions concerning proposed action and environmental analysis to Jim Archambeault, Project Coordinator, Methow Valley Ranger District, P.O. Box 188, Twisp, Washington 98856, phone 509–997–9738, or Margi Gromek, Writer/Editor, Chelan Ranger District, 428 West Woodin Avenue, Chelan, Washington 98816, phone 509–682–2576.

SUPPLEMENTARY INFORMATION: The purpose of this project is to provide trails and facilities for diverse motorized and non-motorized use in a mostly sub-alpine, semi-primitive recreation setting in the 77,000 acre Sawtooth non-wilderness backcountry. The need for the project is shown by: increasing use by all user groups in the area; conflicts between motorized and non-motorized users; commitments made in the Forest Plan to provide motorized, sub-alpine, semi-primitive recreation in the area; and concerns about soil and aquatic resources, particularly in LSRs and riparian areas.

The proposed action includes the following activities:

—Reduce congestion on Horsehead Pass from Eagle Lake to Boiling Lake by widening the trail and/or constructing turnouts.
—Construct a non-motorized user trail from the end of the Summer Blossom trail to the Lake Chelan-Sawtooth Wilderness boundary near Boiling Lake.
—Construct a motorized trail crossing Sawtooth Ridge near Bryan Butte from Foggy Dew drainage to the Summer Blossom/South Navarra area.
—Provide legal access from Crater Creek and Foggy Dew trailhead to Foggy Dew Campground and from Safety Harbor to South Navarre trailhead on or adjacent to existing Forest Service roads.
—Improve Crater Creek trailhead and Foggy Dew Trailhead and campground to meet the needs of trail users, including adding group sites and possible closure on some sites not meeting the Northwest Forest Plan's aquatic conservation strategy.
—Restrict travel to designated trails to protect interior and remote habitats in LSRs, and Safety Harbor and Falls Creek areas; and
—Re-route trails, use educational signs and/or close trails in riparian areas and around lakes.

This EIS will be consistent with and tier to the amended Forest Plans which provide forest-wide and management area specific standards and guidelines and desired future conditions for the various lands on the Okanogan and Wenatchee National Forests.

The Okanogan Forest Plan primarily allocates the analysis area to Management Area 4M, which emphasizes year round semiprimitive motorized recreation opportunities in a generally unroaded setting. The remaining part of the project area on the Okanogan National Forest side is allocated to Management Area 5, which provides recreation and scenic viewing opportunities in a roaded natural setting; Management Area 25, which emphasizes intensive timber and range management; Management Area 14, which emphasizes wildlife habitat diversity, including deer winter range, while producing merchantable wood fiber; Management Area 26 which emphasizes deer winter range; and Management Area 26 which emphasize deer winter range; and Management Area 17, which emphasizes developed recreation opportunities in a roaded, extensively modified setting.

The Wenatchee Forest Plan allocates its portions of the analysis area to RM–1, ST–2, Re–2a, and GF:

—RM–1 emphasizes intensive range management;
—ST–2 provides for near natural appearing foreground and middle ground along scenic travel corridors;

—RE–2a emphasizes dispersed, unroaded recreation in a semi-primitive setting having existing or potential trails for motorbikes, hikers and horseback riders;
—GF emphasizes long-term growth and production of commercially valuable wood products at a high level of investment in silvicultural practices.

The Northwest Forest Plan primarily allocates the area to late successional reserve, which is managed to protect and enhance conditions of late-successional and old-growth forest ecosystems. Other lands in the project area are allocated to matrix and administratively withdrawn in the Northwest Forest Plan. Matrix is designed to provide connectivity between the LSRs, and habitat for species needing both late successions and younger forests. Administratively withdrawn areas are areas identified in the current Forest Plans where management emphasis precludes scheduled timber harvest. All allocations in the Northwest Forest Plan are overlayed with Riparian Reserve direction designed to maintain and restore riparian structures and functions, benefit riparian dependent and other species, enhance habitat conservation for species dependent on transition zones between upland and riparian areas, improve travel and dispersal corridors for many terrestrial animals and plants, and provide for greater watershed connectivity.

Most of the lands affected lie within the Sawtooth Roadless Area, inventoried in Appendix C of the Okanogan Land and Resource Management Plan, final EIS.

The analysis will develop a range of alternatives to address the significant issues, from the no-action alternative which would not construct or improve any facilities and would not change current management of the trail network, to alternatives that address the significant issues to varying degrees.

Public participation will be especially important at several points during the analysis. The Forest Service is seeking information, comments and assistance from Federal, State, Indian Tribes, local agencies, and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process began in April, 1996, and resulted in significant issues being raised that could relate to significant impacts to the environment. The scoping process includes:

1. Identifying potential issues;
2. Identifying significant issues to be analyzed in depth;
3. Identifying issues which have been covered by a relevant previous environmental analysis;
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities;
5. Identifying potential environmental effects (i.e., direct, indirect and cumulative effects, and connected actions);
6. Determining potential cooperating agencies and task assignments;
7. Notifying interested members of the public of opportunities to participate in the process. Public involvement includes keeping the public informed through the media and/or written material.

The draft EIS is expected to be filed with the Environmental Protection Agency 9EPA) and to be available for public review by July, 1998. Your comments and suggestions are encouraged and should be in writing. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice et this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by January, 1999. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Sam Gehr, Forest Supervisor for the Okanogan National Forest, and Sonny O'Neal, Forest Supervisor for the Wenatchee National Forest are the responsible officials. The responsible officials will document the decision and rationale for the Sawtooth Ridge Trail and Improvement Project decision in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: December 16, 1997.

Allen N. Garr,

Acting Forest Supervisor, Okanogan National Forest.

Dated: December 18, 1997.

Paul Hart,

Acting Forest Supervisor, Wenatchee National Forest.

[FR Doc. 97–33664 Filed 12–24–97; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Loan and Grant Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year (FY) 1998

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant program for FY 1998. The maximum dollar award on zero-interest loans for FY 1998 is $750,000. The maximum dollar award on grants for FY 1998 is $330,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 1997, and ending September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Wing, Loan Specialist, Rural

Business-Cooperative Service, USDA, STOP 1521, Room 5412, 1400 Independence Avenue, SW, Washington, DC 20250, Telephone: (202) 720–9558. FAX: 202–720–6561. E-mail: PWing@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are calculated as 3.0 percent of the projected program level for zero-interest loans and grants during the fiscal year. The projected program level for zero-interest loans during FY 1998 is $25,000,000, and the projected program level for grants is $11,000,000. Applying the specified 3.0 percent to these program levels results in the maximum loan award of $750,000 and the maximum grant award of $330,000.

Dated: December 19, 1997.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 97–33696 Filed 12–24–97; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Open Meeting

A meeting of the Sensors and Instrumentation Technical Advisory Committee will be held January 13, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street & Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on the status of the National Defense Authorization Act implementation regulation.
4. Update on the status of the Wassenaar Arrangement implementation regulation.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA—MS:3886C, U.S. Department of Commerce, 14th St. & Pennsylvania Ave., N.W., Washington, D.C. 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: December 22, 1997.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 97–33685 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership (MEP) National Advisory Board, National Institute of Standards and Technology (NIST), will meet to hold a meeting on Wednesday, January 21, 1998. The Manufacturing Extension Partnership National Advisory Board is composed of 9 members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was set up under the direction of the Director of the National Institute of Standards and Technology to fill a need for outside input and advice for MEP, a unique program consisting of centers in all 50 states and Puerto Rico which are created by a state, federal and local partnership. The Board works closely with the Manufacturing Extension Partnership to provide input and advice on MEP's programs, plans and policies. The purpose of this meeting is to delve into areas the Board selected at the previous meeting. On January 21, 1998, the agenda for the meeting of the Board will include an ethics briefing by the Department of Commerce's Ethics Division, an overview of MEP's national marketing efforts to assist the centers in reaching their clients, studying the impacts of services provided by the centers and an overview of a national initiative-supply chain integration.

DATES: The meeting will convene on January 21, 1998 at 9:00 am and will adjourn at 3:00 pm.

ADDRESSES: The meeting will be held in Building 101, Employee Lounge (seating capacity 60, includes 15 participants), at NIST, Gaithersburg, Maryland.

SUPPLEMENTARY INFORMATION: MEP services to smaller manufacturers address the needs of the national market as well as the unique needs of each company. Since MEP is committed to providing this type of individualized service through its centers, the program requires the perspective of locally-based experts to be incorporated into its national plans. The MEP National Advisory Board was set up at the direction of the Director of the National Institute of Standards and Technology to maintain MEP's focus on local and market based needs. The MEP National Advisory Board was approved on October 24, 1996, in accordance with the Federal Advisory Committee Act, 5 U.S.C. app.2., to provide advice on MEP programs, plans, and policies; assess soundness of MEP plans and strategies; assess current performance against MEP program plans, and function in an advisory capacity. The Board will meet three times a year and reports to the Director of NIST. This will be the first meeting of the members in 1998.

FOR FURTHER INFORMATION CONTACT: Linda Acierto, Assistant to the Director for Policy, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone number (301) 975–5033.

Dated: December 22, 1997.

Michael R. Rubin,

Deputy Chief Counsel for NIST.

[FR Doc. 97–33762 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097E]

Small Takes of Marine Mammals Incidental to Specified Activities; Space Launch Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of incidental harassment authorizations.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that Incidental Harassment Authorizations to take small numbers of seals and sea lions by harassment incidental to launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg Air Force Base, CA (Vandenberg) have been issued to the U.S. Air Force.

DATES: Effective December 19, 1997.

ADDRESSES: The application and authorizations are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802. A copy of the application, previous documentation and **Federal Register** notices on this action may be obtained by writing to this address or by telephoning the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 562–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to one year. The MMPA defines "harassment" as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 7, 1997, NMFS received an application from the U.S. Air Force, Vandenberg, requesting continuation of authorizations for the harassment of small numbers of seals and sea lions incidental to launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg. This application incorporated by reference the information contained in applications provided last year for these rocket launches. These applications (Titan II and IV-January 24, 1996, Delta II-July 17, 1996, Taurus-August 14, 1996) are available upon request (see **ADDRESSES**).

Comments and Responses

A notice of receipt of the application and the proposed authorization was published on November 14, 1997 (62 FR 61092) and a 30-day public comment period was provided on the application and proposed authorization. No comments were received during the comment period.

Discussion

In addition to this action, NMFS has received a petition for regulations and an application for a small take authorization under section 101(a)(5)(A) of the MMPA. If implemented, this rulemaking will replace these 1-year authorizations, along with another issued previously for Lockheed launch vehicles (62 FR 40335, July 28, 1997) with a 5-year regulatory program, governing incidental takes of marine mammals by launches of all rocket and missile types from Vandenberg. A notice of this petition was published on November 14, 1997 (62 FR 61077).

Description of Marine Mammals and Potential Effects of Launches on Marine Mammals

The marine mammal species anticipated to be incidentally harassed by launches from Vandenberg are harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*) and possibly Guadalupe fur seals (*Arctocephalus townsendi*) in the vicinity of Vandenberg and on the Northern Channel Islands (NCI). In conjunction with publication of the previous application notices for launch activities, a description of the Southern California Bight population of seals and sea lions and the potential impacts from rocket launches on these species and stocks was provided on August 18, 1995 (60 FR 43120), and August 29, 1996 (61 FR 45404), for Delta II authorizations, September 25, 1996 (61 FR 50276), for Taurus rocket authorization, and March 15, 1996 (61 FR 10727), for Titan II and IV authorizations. Interested reviewers are encouraged to refer to those documents for the appropriate discussion. These documents are available from NMFS (see **ADDRESSES**).

As a result of the noise associated with launches and the sonic boom resulting from some launch vehicles at certain trajectories, there is a potential to cause a startle response to those seals and sea lions that haul out on the coastline of Vandenberg and on the NCI. The effect on the above listed seals and sea lions would be anticipated to result in a negligible short-term impact to small numbers of seals and sea lions that are hauled out at the time of a launch. No impacts are anticipated to animals that are in the water at the time of launch. Detailed descriptions of the expected impact from rocket launches on harbor seals and other marine mammals have been provided in the above referenced **Federal Register** notices and are not repeated here.

Conclusions

Based upon information provided by the applicant, and previous reviews of the incidental take of seals and sea lions by this activity, NMFS believes that the short-term impact of the rocket launches at Vandenberg and sonic booms on NCI is expected to result at worst, in a temporary reduction in utilization of the haulout as seals and/or sea lions leave the beach for the safety of the water. Launchings are not expected to result in any reduction in the number of seals or sea lions, and they are expected to continue to occupy the same areas. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on seals and sea lions at Vandenberg are unlikely. For these reasons, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued.

Authorization

For the above reasons, NMFS has issued an incidental harassment authorization for a period of time not to exceed 1 year for launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg provided the monitoring and reporting requirements currently in effect are continued.

Dated: December 19, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–33642 Filed 12-24-97; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

1998 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Pub. L. 105–83, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 1998 in the amount of $7,000,000.00. All requests for information and applications for grants should be addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, Pension Building, Suite 312, 441 F Street, N.W., Washington, D.C. 20001; Phone: 202–504–2200.

Deadlines for receipt of submission of grants applications is 2 March 1998.

This program provides grants for general operating support of organizations whose primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national repute, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 97–33720 Filed 12–24–97; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bahrain and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Bahrain of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I 237, 239pt.[1], 331–336, 338, 339, 340–342, 345, 347, 348, 350–352, 359pt.[2], 431, 433–436, 438, 440, 442–448, 459pt.[3], 631, 633–636, 638, 639, 640–647, 648, 649, 650–652, 659pt.[4], 831, 833–836, 838, 840, 842–847, 850–852, 858 and 859pt.[5], as a group.	43,267,869 square meters equivalent.
Sublevels in Group I	
338/339	601,216 dozen.
340/640	288,453 dozen of which not more than 216,339 dozen shall be in Categories 340–Y/640–Y[6].

[1] Category ,239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[4] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[5] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[6] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Bahrain of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33706 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit 200–227, 237, 239pt.[1], 300–326, 331–348, 350–352, 359pt.[2], 360–363, 369–D[3], 369pt.[4], 400–431, 433–438, 440–448, 459pt.[5], 464, 469pt.[6], 600–629, 631, 633–652, 659pt.[7], 666, 669–P[8], 669pt.[9] and 670, as a group.	500,650,808 square meters equivalent.
Sublevels within the aggregate	
218	6,221,165 square meters.
219	22,712,779 square meters.
225	10,887,040 square meters.
300/301	8,437,331 kilograms.
313	52,246,740 square meters.
314	8,554,104 square meters.
315	25,662,311 square meters.
317/326	23,329,372 square meters.
334/335	167,409 dozen.
336	93,006 dozen.
338/339/638/639	1,674,103 dozen.
342/642	492,929 dozen.
347/348	1,209,074 dozen.
350	187,577 dozen.
361	1,264,877 numbers.
363	26,995,523 numbers.
369–D	602,939 kilograms.
410/624	12,442,332 square meters of which not more than 2,696,502 square meters shall be in Category 410.
433	18,719 dozen.
445/446	73,328 dozen.
604	590,613 kilograms of which not more than 451,398 kilograms shall be in Category 604–A[10].
607	5,484,267 kilograms.
647/648	558,035 dozen.
669–P	2,009,800 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4]Category 369pt.: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5]Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6]Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[7]Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8]Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[9]Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10]Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 18, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Brazil of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33704 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in the Dominican Republic and exported during the periods January 1, 1998 through March 26, 1998 (Categories 352/652) and January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits and GALs.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6594, published on March 4, 1987; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 62 FR 49206, published on September 19, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the periods beginning on January 1, 1998 and extending through March 26, 1998 (Categories 352/652) and on January 1, 1998 and extending through December 31, 1998, in excess of the following limits:

Category	Restraint limit
338/638	868,533 dozen.
339/639	1,033,553 dozen.
340/640	894,107 dozen.
342/642	629,204 dozen.
347/348/647/648	2,140,318 dozen of which not more than 1,130,732 dozen shall be in Categories 647/648.
351/651	1,071,882 dozen.
352/652	2,485,773 dozen.
433	21,740 dozen.
442	73,811 dozen.
443	135,038 numbers.
444	73,811 numbers.
448	38,024 dozen.
633	131,192 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 6, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989) and 62 FR 49206, published on September 19, 1997, effective on January 1, 1998, guaranteed access levels are being established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in cotton, wool and man-made fiber textile products in the following categories for the periods January 1, 1998 through March 26, 1998 (Categories 352/652) and January 1, 1998 through December 31, 1998:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648.	8,050,000 dozen.
351/651	1,000,000 dozen.
352/652	6,986,301 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 25, 1987, as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33705 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels for textile products, produced or manufactured in El Salvador and exported during the periods January 1, 1998 through March 26, 1998 (Categories 352/652) and January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and Memoranda of Understanding (MOUs) dated September 26, 1994, July 6, 1995 and July 18, 1996 between the Governments of the United States and El Salvador.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 60 FR 2740, published on January 11, 1995, 62 FR 49206, published on September 19, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC); and Memoranda of Understanding (MOUs) dated September 26, 1996, July 6, 1995 and July 18, 1996 between the Governments of the United States and El Salvador, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in El Salvador and exported during the periods beginning on January 1, 1998 and extending through March 26, 1998 (Categories 352/652) and on January 1, 1998 and extending through December 31, 1998, in excess of the following restraint limits:

Category	Restraint limit
340/640	1,122,516 dozen.
342/642	357,750 dozen.
352/652	1,727,945 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 19, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC and Memoranda of Understanding dated September 26, 1994, July 6, 1995 and July 18, 1996 between the Governments of the United States and El Salvador; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989) and 62 FR 49206 (September 19, 1997), effective on January 1, 1998, guaranteed access levels are being established for properly certified textile products assembled in El Salvador from fabric formed and cut in the United States in the following categories which are re-exported to the United States from El Salvador during the periods January 1, 1998 through March 26, 1998 (Categories 352/652) and January 1, 1998 through December 31, 1998:

Category	Guaranteed Access Level
340/640	1,000,000 dozen.
342/642	400,000 dozen.
352/652	6,986,301 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements

established in the directive of January 6, 1995, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33703 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and guaranteed access levels for textile products, produced or manufactured in Guatemala and exported during the periods January 1, 1998 through May 30, 1998 and January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of Understanding (MOU) dated October 19, 1995 between the Governments of the United States and Guatemala.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 55 FR 3079, published on January 30, 1990, 62 FR 49206, published on September 19, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC); and a Memorandum of Understanding (MOU) dated October 19, 1995, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the periods January 1, 1998 through May 30, 1998 (Categories 342/642) and beginning on January 1, 1998 through December 31, 1998, in excess of the following restraint limits:

Category	Restraint limit
340/640	1,367,434 dozen.
342/642	188,442 dozen.
347/348	1,637,344 dozen.
351/651	288,453 dozen.
443	71,175 numbers.
448	44,595 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC and the MOU dated October 19, 1995 between the Governments of the United States and Guatemala; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989) and 62 FR 49206 (September 19, 1997), effective on January 1, 1998, guaranteed access levels are being established for properly certified textile products assembled in Guatemala from fabric formed and cut in the United States in the following categories which are re-exported to the United States from Guatemala during the periods January 1, 1998 through May 30, 1998 (Categories 342/642) and January 1, 1998 through December 31, 1998:

Category	Guaranteed Access Level
340/640	520,000 dozen.
342/642	41,096 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 24, 1990, as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33702 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Indonesia and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of Understanding (MOU) dated November 1, 1996 between the Governments of the United States and Indonesia.

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Indonesia of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC); and a Memorandum of Understanding dated November 1, 1996 between the Governments of the United States and Indonesia, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
200	840,115 kilograms.
219	9,332,338 square meters.
225	6,535,057 square meters.
300/301	3,993,647 kilograms.
313	16,933,428 square meters.
314	59,127,294 square meters.
315	26,866,342 square meters.
317/326/617	25,949,013 square meters of which not more than 3,834,249 square meters shall be in Category 326.
331/631	2,382,918 dozen pairs.
334/335	218,363 dozen.
336/636	609,941 dozen.
338/339	1,179,215 dozen.
340/640	1,452,234 dozen.
341	873,449 dozen.
342/642	363,059 dozen.
345	422,304 dozen.
347/348	1,597,458 dozen.
350/650	167,735 dozen.
351/651	471,976 dozen.
359–C/659–C [1]	1,379,623 kilograms.
359–S/659–S [2]	1,452,234 kilograms.
360	1,292,483 numbers.
361	1,292,483 numbers.
369–S [3]	891,445 kilograms.
433	11,495 dozen.
443	85,282 numbers.
445/446	57,147 dozen.
447	17,058 dozen.
448	21,004 dozen.
604–A [4]	693,341 kilograms.
611–O [5]	4,348,000 square meters.
613/614/615	24,615,378 square meters.
618–O [6]	5,808,939 square meters.
619/620	9,003,856 square meters.
625/626/627/628/629–O [7]	27,472,821 square meters.
634/635	290,447 dozen.
638/639	1,510,326 dozen.
641	2,214,226 dozen.
643	323,122 numbers.
644	452,369 numbers.
645/646	764,269 dozen.
647/648	3,166,258 dozen.
847	400,049 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [8], 332, 333, 352, 359–O [9], 362, 363, 369–O [10], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [11], 464, 469pt. [12], 603, 604–O [13], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [14], 666, 669–O [15], 670–O [16], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [17], as a group.	88,761,855 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group.	3,010,288 square meters equivalent.
In Group II subgroup	
435	47,259 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 604–A: only HTS number 5509.32.0000.

[5] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[6] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[7] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[8] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[9] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt.).

[10] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[11] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[12] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[13] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[14] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[15] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[16] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[17] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 29, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Indonesia of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33701 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Mauritius and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Knit Group 345, 438, 445, 446, 645 and 646, as a group.	181,759 dozen.
Levels not in a group	
237	234,389 dozen.
335/835	93,171 dozen.
336	109,640 dozen.
338/339	438,931 dozen.
340/640	714,329 dozen of which not more than 434,830 dozen shall be in Categories 340–Y/640–Y [1].
341/641	494,832 dozen.
347/348	923,930 dozen.
351/651	217,297 dozen.
352/652	1,842,673 dozen of which not more than 1,566,274 dozen shall be in Category 352.
442	11,987 dozen.
604–A [2]	402,406 kilograms.
638/639	504,772 dozen.
647/648/847	680,654 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated October 28, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33700 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATIONS OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a Memorandum of Understanding (MOU) dated October 17, 1997, the Governments of the United States and the Sultanate of Oman agreed to amend and extend the current bilateral agreement for three consecutive one-year periods, beginning on January 1, 1998 and extending through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period January 1, 1998 through December 31, 1998.

These limits may be revised if Oman becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Oman.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and a Memorandum of Understanding (MOU) dated October 17, 1997 between the Governments of the United States and the Sultanate of Oman; you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	150,000 dozen.
335/635	252,495 dozen.
338/339	523,928 dozen.
340/640	252,495 dozen.
341/641	189,371 dozen.
347/348	902,671 dozen.
647/648/847	387,080 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Sultanate of Oman.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 7, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Oman becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Oman.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33699 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S.

Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for cancelled swing, cancelled carryforward and recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68245, published on December 27, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on December 30, 1997, you are directed to adjust the limits the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
334/634	274,137 dozen.
338	4,905,754 dozen.
339	1,373,555 dozen.
340/640	678,891 dozen of which not more than 217,058 dozen shall be in Categories 340–D/640–D [2].
347/348	921,638 dozen.
363	46,485,918 numbers.
369–F/369–P [3]	2,429,063 kilograms.
369–R [4]	10,129,400 kilograms.
369–S [5]	722,829 kilograms.
625/626/627/628/629	48,981,664 square meters of which not more than 35,486,420 square meters shall be in Category 625; not more than 35,486,420 square meters shall be in Category 626; not more than 35,486,420 square meters shall be in Category 627; not more than 7,342,018 square meters shall be in Category 628; and not more than 35,486,420 square meters shall be in Category 629.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[4] Category 369–R: only HTS number 6307.10.2020.

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33707 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Singapore and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Singapore of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
222	503,778 kilograms.
237	280,220 dozen.
239pt. [1]	181,097 kilograms.
331	497,698 dozen pairs.
334	74,917 dozen.
335	225,354 dozen.
338/339	1,386,289 dozen of which not more than 810,160 dozen shall be in Category 338 and not more than 900,797 dozen shall be in Category 339.
340	970,197 dozen.
341	243,957 dozen.
342	150,126 dozen.
347/348	1,054,610 dozen of which not more than 659,131 dozen shall be in Category 347 and not more than 512,658 dozen shall be in Category 348.
435	6,912 dozen.
604	943,438 kilograms.
631	562,977 dozen pairs.
634	286,023 dozen.
635	292,699 dozen
638	1,050,516 dozen.
639	3,554,289 dozen.
640	206,837 dozen.
641	337,373 dozen.
642	331,267 dozen.
645/646	161,122 dozen.
647	628,872 dozen.
648	1,551,976 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated October 28, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Singapore of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33698 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the Republic of Uruguay

December 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Uruguay and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), as amended, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	154,726 dozen.
335	133,197 dozen.
410	2,904,423 square meters of which not more than 1,659,673 square meters shall be in Category 410–A [1] and not more than 2,673,912 square meters shall be in Category 410–B [2].
433	17,343 dozen.
434	25,873 dozen.
435	52,253 dozen.

Category	Twelve-month restraint limit
442	36,964 dozen.

[1] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020; Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33697 Filed 12–24–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the CME for Designation as a Contract Market in Futures and Options on Frozen Pork Bellies

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) applied for designation as a contract market in futures and options on frozen pork bellies. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 28, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the CME frozen pork bellies contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, telephone 202–418–5273. Facsimile number: (202) 418–5527. Electronic mail: flinse@cftc.gov.

SUPPLEMENTARY INFORMATION: The CME stated that:

In the eight months that have passed since the Fresh Pork Bellies futures contract began trading, the Exchange has become aware of a relatively small but still significant demand for a Frozen Pork Bellies contract. Just as the Exchange earlier acknowledged the difficulty of hedging fresh bellies with a frozen-based futures contract, it now recognizes the difficulty of hedging frozen bellies with a fresh-based futures contract. Therefore, the Exchange has decided to pursue a second, separate futures contract for Frozen Pork Bellies that could be listed and traded independent of the Fresh Pork Bellies futures contract. This proposed "new" Frozen Pork Bellies futures contract is identical to the existing Frozen Pork Bellies futures contract.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, rivacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 19, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–33729 Filed 12–24–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Application of the NYFE for Designation as a Contract Market in Futures on the NYSE Small Composite Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Futures Exchange (NYFE or Exchange) applied for designation as a contract market in futures on the NYSE small composite index.

DATES: Comments must be received on or before January 8, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the NYFE small composite index contract.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, 20581, telephone (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov.

SUPPLEMENTARY INFORMATION: There are no substantive issues raised by the application since futures contracts with similar terms based on the composite index are actively traded. The Division believes that for this reason, and in particular because the proposed contract is identical to the actively traded composite index contract (except for the contract size), a 15-day comment period is appropriate.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the NYFE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYFE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 18, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–33627 Filed 12–24–97; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, January 8, 1998, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bunk Beds

The staff will brief the Commission on options for Commission action to address entrapment hazards associated with bunk beds.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: December 22, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–33953 Filed 12–23–97; 1:56 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force.

ACTION: Notice.

In compliance with Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Air Force announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 27, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to HQ AFSPC/SCMA, 150 Vandenberg Street, Suite 1105, ATTN: MSgt. Gregory D. Stevens, Peterson Air Force Base, CO 80914–4400.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call HQ AFSPC/SCMA. Intercontinental Ballistic Missile Communications Mission Support Team, (719) 554–3806.

Title, Associated Form, and OMB Number: Intercontinental Ballistic Missile Hardened Intersite Cable Right-of-Way Landowner/Tenant Questionnaire, Air Force Form 3951, February 1996, OMB Number 0701–0141.

Needs and Uses: The information collection requirement is used to report changes in ownership/lease information, conditions of missile cable route and associated appurtenances, and projected building/excavation projects. The information collected is used to ensure system integrity and to maintain a close contact public relations program with involved personnel and agencies.

Affected Public: Individuals or households; Farms.

Number of Respondents: 4000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: Biennially.

Summary of Information Collection

Respondents are landowners/tenants. This form collects updated landowner/tenant information as well as data on local property conditions which could adversely affect the Hardened Intersite Cable System (HICS) such as soil erosion, projected/building projects, excavation plans, etc. This information also aids in notifying landowners/tenants when HICS preventive or corrective maintenance becomes necessary to ensure uninterrupted Intercontinental Ballistic Missile command and control capability.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–33723 Filed 12–24–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents cover a wide variety of technical arts including: A long-range nonlethal bullet, a device to detect muzzle flash from a gun.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Long-Range Nonlethal Bullet.

Inventor: Raine M. Gilbert.

Patent Number: 5,691,501.

Issued Date: November 25, 1997.

Title: Infrared Sniper Detection Enhancement.

Inventor: David B. Hillis.

Patent Number: 5,686,889.

Issue Date: November 11, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Vaught, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, Maryland 20832–1197, tel: (301) 394–2952; fax: (301) 394–5815 e-mail: nvaught@arl.mil.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–33777 Filed 12–24–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents cover a wide variety of technical arts including: a method of control computers by mental thought, an eyetracker to control heads-up displays and a means to detect an image on a screen by non-visible light.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Detecting Target Imaged on a Large Screen Via Non-Visible Light.

Inventor: Gordon L. Herald.

Patent Number: 5,690,492.

Issue Date: November 25, 1997.

Title: Eyetracker Control of Heads-Up Displays.

Inventor: Christopher C. Smyth.

Patent Number: 5,689,619.

Issue Date: November 18, 1997.

Title: Method and Apparatus for Estimating a Cognitive Decision Made in Response to a Known Stimulus from the Corresponding Single-Event Evoked Cerebral Potential.

Inventor: Christopher C. Smyth.

Patent Number: 5,687,291.

Issue Date: November 11, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rausa, Technology Transfer Office, AMSRL–CS–TT/Bldg 434, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5425, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–33773 Filed 12–24–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for comments on agencies applying to the Secretary for Initial or Renewed Recognition.

DATES: Commenters should submit their written comments by February 12, 1998 to the address below.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

Submission of Third-Party Comments

The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. A subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the Secretary's Criteria for Recognition. In order for Department staff to give full consideration to the comments received and to address them in the staff analyses that will be presented to the Advisory Committee at its June 1998 meeting, the comments must arrive at the address listed above not later than February 12, 1998. Comments received after the deadline will be reviewed by Department staff, which will take action, as appropriate, either before or after the meeting, should the comments suggest that an accrediting agency is not acting in accordance with the Secretary's Criteria for Recognition.

All comments must relate to the Secretary's Criteria for the Recognition of Accrediting Agencies. Comments pertaining to agencies whose interim reports will be reviewed must be restricted to the concerns raised in the Secretary's letter for which the report is requested.

The Advisory Committee advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet June 8–10, 1998 in Washington, D.C. All written comments in response to this notice that are received by the Department by the deadline will be considered by both the Advisory Committee and the Secretary. Comments received after the deadline, as indicated previously, will be reviewed by Department staff, which will take follow-up action, as appropriate, either before or after the meeting. Commenters whose comments are received after the deadline will be notified by staff of the disposition of those comments.

The following agencies will be reviewed during the June 1998 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petitions for Initial Recognition—

1. Council on Integrative Medical Education (requested scope of recognition: the accreditation of colleges and programs leading to the Doctor of Integrative Medicine (IMD) degree and Doctor of Physiatric Medicine (PMD))
2. Northwest Association of Schools and Colleges, Commission on Schools (requested scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of public vocational/technical schools offering non-degree postsecondary education in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington)

Petitions for Renewal of Recognition—

1. Association for Clinical Pastoral Education, Inc., Accreditation Commission (requested scope of recognition: the accreditation and preaccreditation ("Candidacy for Accredited Membership") of clinical pastoral education centers, as well as clinical pastoral education and supervisory clinical pastoral education programs.
2. Commission on Accreditation of Allied Health Education Programs, Council on Accreditation and Recognition (requested scope of recognition: the accreditation and preaccreditation ("Candidate status") of educational programs for the allied health occupations of cytotechnologist, diagnostic medical sonographer, electroneurodiagnostic technologist, emergency medical technician-paramedic, perfusionist, physician assistant, and surgical technologist)
3. Commission on Opticinary Accreditation (requested scope of recognition: the accreditation of two-year programs for the ophthalmic dispenser and one-year programs for the opthalmic laboratory technician)
4. Middle States Association of Colleges and Schools, Commission on Secondary Schools (requested scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of public vocational/technical schools offering non-degrees, postsecondary education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the Virgin Islands)
5. National Association of Nurse Practioners in Reproductive Health (requested scope of recognition: the accreditation of women's health nurse practitioner programs)
6. New York State Board of Regents (requested scope of recognition: the accreditation (registration) of collegiate degree-granting programs or curricula offered by institutions of higher education in the state of New York and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education in the state of New York)
7. North Central Association of Colleges and Schools, Commission on Schools (requested scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of schools offering non-degree, postsecondary education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming)

Interim Reports

(An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted initial or renewed recognition to the agency)—

1. Accrediting Association of Bible Colleges, Commission on Accrediting
2. American Association of Nurse Anesthetists, Council on Accreditation of Nurse Anesthesia Educational Programs
3. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar
4. Accreditation Commission for Acupuncture and Oriental Medicine
5. Accrediting Council on Education in Journalism and Mass Communication, Accrediting Committee
6. American Dietetic Association, Commission on Accreditation/Approval for Dietetics Education
7. American Osteopathic Association, Bureau of Professional Education
8. American Physical Therapy Association, Commission on Accreditation in Physical Therapy Education
9. Distance Education and Training Council, Accrediting Commission
10. Joint Review Committee on Education in Radiologic Technology
11. National Accrediting Agency for Clinical Laboratory Science
12. National Council for Accreditation of Teacher Education
13. National League for Nursing Accreditation Commission
14. Transitional Association of Christian Colleges and Schools, Accrediting Commission

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition—

1. Kansas Board of Education
2. New York State Board of Regents, Vocational Education

Interim Report—

1. Oklahoma State Board of Vocational and Technical Education

State Agency Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition—

1. New York State Board of Regents, Nursing Education Unit

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. U.S. Army War, Carlisle, PA (request to award the master's degree in Strategic Studies to students who complete its non-resident track)

Public Inspection of Petitions and Third-Party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, SW., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, until May 18, 1998. They will be available again after the June 8–10 Advisory Committee meeting. it is preferred that an appointment be made in advance of such inspection or copying.

Dated: December 17, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–33734 Filed 12–24–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Tennessee Valley Electric System Advisory Committee.

Date and Time: Tuesday, January 20, 1998, 3:00 P.M.—9:00 P.M.

Place: Nashville Convention Center, Room 204, 601 Commerce Street, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Tennessee Valley Electric System Advisory Committee is to provide advice, information, and recommendations to the Secretary of Energy Advisory Board on the role of the Tennessee Valley Authority (TVA) in a restructured competitive electric industry. The Tennessee Valley Electric System Advisory Committee will prepare a report for submission to the Secretary of Energy Advisory Board.

Tentative Agenda

Tuesday, January 20, 1998

3:00—5:30 PM Opening Remarks—The Honorable Butler Derrick, Chairman
Presentations
Working Session
5:30—6:30 PM Dinner Break
6:30—9:00PM Working Session
Public Comment Period
9:00 PM Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Tennessee Valley Electric System Advisory Committee is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Nashville, Tennessee, the Tennessee Valley Electric System Advisory Committee welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Tennessee Valley Electric System Advisory Committee will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Tennessee Valley Electric System Advisory Committee may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on December 18, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–33717 Filed 12–24–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–62–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 19, 1997.

Take notice that on December 17, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised No. 1, the following revised tariff sheets to be effective February 1, 1998:

Third Revised Sheet No. 137
First Revised Sheet No. 137A
Second Revised Sheet No. 138
Second Revised Sheet No. 139
First Revised Sheet No. 139A
Second Revised Sheet No. 140
First Revised Sheet No. 141
Second Revised Sheet No. 142
First Revised Sheet No. 143
Third Revised Sheet No. 144

ANR states that it is revising the cashout mechanism set forth in its tariff to: (1) Revise the methodology by which prices are determined for the purchase and sale of imbalance volumes that are cashed-out on its system; and (2) provide for a two-way flow-through of gains and losses from the purchase and sale of cashout volumes.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motion or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33658 Filed 12–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–563–001]

Michigan Gas Storage Company; Notice of Petition To Amend

December 19, 1997.

Take notice that on November 25, 1997, Michigan Gas Storage Company (MGSCo), 212 West Michigan Avenue, Jackson, Michigan 49201, filed with the Commission, pursuant to Section 7 of the Natural Gas Act (NGA), a petition to amend the order issued on September 19, 1997, in Docket No. CP97–563–000 to slightly modify the construction authorized in the Cranberry Lake Storage Field, Clare County, Michigan, all as more fully set forth in the application for amendment, which is open to the public for inspection.

Michigan Gas Storage Company (MGSCo) notified the Commission on November 25, 1997, that MGSCo has now developed an alternative, functionally equivalent piping configuration for the Cranberry Lake Storage Field in Clare County, Michigan, which varies slightly from what the Director, Office of Pipeline Regulation authorized on September 19, 1997, in Docket No. CP97–563–000. Specifically, MGSCo states that the existing 6-inch diameter (approximately 125 feet) and 4-inch diameter (approximately 625 feet) pipe on Lateral 63 East between wells C715 and C350 is in good condition and does not need to be replaced with the originally proposed 2-inch diameter pipe. This segment of the pipe only required minor repairs to the pipe coating.

Instead, MGSCo now proposes to cut and remove the 1,690 feet of existing 6-inch diameter pipe between wells C353 and C715 on Lateral 63 East, rather than replacing it with the 8-inch diameter pipe authorized in the September 19, 1997, order. MGSCo states that it can install the pig launcher at the eastern cut end of this segment. Gas would then flow westward from the storage wells along this section of lateral through 8-inch diameter pipe.

MGSCo also states that gas flowing through the existing 6-inch and 4-inch diameter segment (east of the 1,690 feet of removed pipe) on Lateral 63 East would flow northward through the existing 4-inch diameter tie-line between Laterals 62 East and 63 East. MGSCo further states that these minor modifications could save $80,000 in material and labor costs, as well as avoid the cutting of trees in a 15-foot by 300-foot temporary work area.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 29, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33655 Filed 12–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–2–000]

ANR Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Kent County Replacement Project and Request for Comments on Environmental Issues

December 19, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the replacement of about 0.96 mile of 22-inch-diameter pipeline proposed in the Kent County Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

ANR Pipeline Company (ANR) proposes to replace about 0.96 mile of 22-inch-diameter pipeline to maintain compliance with the U.S. Department of Transportation pipeline safety regulations. There would be no increase in the capacity of ANR's system as a result of this proposal. ANR seeks authority to construct and operate:

- 0.96 mile of 22-inch-diameter replacement pipeline in Kent County, Michigan.

No nonjurisdictional facilities would be constructed as a result of this proposal.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 8.6 acres of land, including a 75-foot-wide construction right-of-way, additional temporary work spaces, and a staging area. Following construction, no new permanent right-of-way would be required. All of the right-of-way would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage

[1] ANR Pipeline Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. This preliminary list of issues may be changed based on your comments and our analysis.

- Proximity of the replacement to 5 residences.
- Impact on cultivated croplands.
- Crossing of the East Fork of San Creek, a state-designated trout stream.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send *two* copies of your letter to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.W., Room 1A, Washington, DC 20426;
- Label *one* copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–2–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 20, 1998.

If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–33692 Filed 12–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

December 19, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Minor License.

b. *Project No.*: P–2487–006.

c. *Date Filed*: December 10, 1997.

d. *Applicant*: John M. Skorupski.

e. *Name of Project*: Hoosick Falls Water Power Project.

f. *Location*: On the Hoosic River in Rensselaer County, near Hoosick, New York.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact*: John M. Skorupski, 71 River Road, Hoosick Falls, NY 12090, (518) 686–0062; Douglas C. Clark, PE, Clark Engineering & Surveying, P.C., 658 Route 20, P.O. Box 730, New Lebanon, NY 12125, (518) 794–8613.

i. *FERC Contact*: Richard Takacs (202) 219–2840.

j. *Comment Date*: 60 days from the filing date shown in paragraph (c).

k. *Description of Project*: The proposed project would consist of: (1) An existing 16-foot-high and 149.5-foot-long dam; (2) an existing 16-acre reservoir; (3) a powerhouse containing two generating units for a total installed capacity of 830 kW; (4) a 500-foot-long transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,700 MWh, for the project.

l. With this notice, we are initiating consultation with the *New York State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to 18 CFR 4.32(b)(7), if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33656 Filed 12–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 19, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2935–013.

c. *Date filed:* November 13, 1997.

d. *Applicants:* GTXL, Inc. and Enterprise Mill, LLC.

e. *Name of Project:* Enterprise.

f. *Location:* On the Augusta Canal of the Savannah River in the City of Augusta, Richmond County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicants Contacts:* Kenneth G. Jaffe, Esq., Richard P. Sparling, Esq., Swidler & Berlin, 3000 K Street N.W., Washington, D.C. 20007–5116, (202) 424–7500. James E. Blanchard, Esq., 1200 First Union Bank Bldg., P.O. Box 905, Augusta, GA 30903, (706) 823–2411.

i. *FERC Contact:* Thomas F. Papsidero (202) 219–2715.

j. *Comment Date*: February 5, 1998.

k. *Description of Filing:* Application to transfer the license for the Enterprise Project to Enterprise Mill, LLC.

l. This notice also consists of the following standard paragraphs: B, C1 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–33657 Filed 12–24–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5940–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request National Pollutant Discharge Elimination System for the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request National Pollutant Discharge Elimination System Great Lakes Water Quality Guidance (EPA ICR Number 1639.03; OMB Control Number 2040–0180; expiration date March 31, 1998). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 27, 1998.

ADDRESSES: An original and four copies of comments should be submitted to Mark Morris (4301), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. This ICR concerning the Water Quality Guidance for the Great Lakes System is available upon request by contacting Mark Morris (4301), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460, (202) 260–0312. The ICR is also available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mary Willis Jackson (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460 (202–260–0312).

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry	Industries discharging toxic pollutants to waters in the Great Lakes System as defined in 40 CFR 132.2.
Municipalities	Publicly-owned treatment works discharging toxic pollutants to waters of the Great Lakes System as defined in 40 CFR 132.2.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final Water Quality Guidance for the Great Lakes System (the Guidance). This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this rule, you should examine the definition of "Great Lakes System" in 40 CFR 132.2 and examine 40 CFR 132 which describes the purpose of water quality standards and implementation procedures. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Title: Information Collection Request National Pollutant Discharge Elimination System Great Lakes Water Quality Guidance (OMB Control No. 2040–0180; EPA ICR No.1639.03) expiring March 31, 1998.

Abstract: The primary objective of the Clean Water Act (CWA) is "to restore and maintain the chemical, physical and biological integrity of the nation's waters" (section 101(a)). CWA section 402 establishes the National Pollutant Discharge Elimination System (NPDES) permit program to regulate the discharge of any pollutant or combination of pollutants from point sources into the waters of the United States. CWA

section 402(a), as amended, authorizes the EPA Administrator to issue permits for the discharge of pollutants if those discharges meet the following requirements:

- All applicable requirements of CWA sections 301, 302, 306, 307, 308, and 403; and
- Any conditions the Administrator determines are necessary to carry out the provisions and objectives of the CWA.

Section 101 of the Great Lakes Critical Programs Act (CPA) amends section 118 of the CWA and directs EPA to publish water quality guidance for the Great Lakes System. Provisions of the Guidance are codified in 40 CFR part 132. The Guidance establishes minimum water quality criteria, implementation procedures, and antidegradation provisions for the Great Lakes System.

EPA and delegated NPDES permitting authorities may need point source dischargers in the Great Lakes Basin to collect and submit information for the following reasons:

- To implement methodologies for setting numerical water quality criteria and values promulgated by States and Tribes for pollutants in the Great Lakes. The Great Lakes States will use the methodologies consistent with the final Guidance when revising existing or promulgating new water quality criteria.
- To evaluate requests for permit changes using antidegradation policies and procedures consistent with the final Guidance.
- To further the pollution prevention policy that focuses on the virtual elimination of toxic discharges into the Great Lakes System.
- To translate provisions consistent with the elements of the final Guidance into controls for point sources of pollutants.
- To identify the facilities that require additional permit conditions (i.e., those that are discharging pollutants at levels of concern into the Great Lakes System).
- To identify new pollutants in existing discharges.
- To evaluate water quality in the Great Lakes.
- To determine violations of State/Tribal provisions consistent with the Guidance.

Although the applicants collect and submit many types of information, this information can be broadly categorized as identification details (e.g., name, location, and facility description) and as information related to pollutant discharges into the Great Lakes.

Permitting authorities currently require dischargers to provide information such as the name, location, and description of facilities to identify the facilities that require permits. EPA and authorized NPDES States store much of this basic information in the Permit Compliance System (PCS) database. PCS provides EPA with a nationwide inventory of NPDES permit holders. EPA Headquarters uses the information contained in the PCS to develop reports on permit issuance, backlogs, and compliance rates. The Agency also uses the information to respond to public and Congressional inquiries, develop and guide its policies, formulate its budgets, assist States in acquiring authority for permitting programs, and manage its programs to ensure national consistency in permitting.

NPDES permit applications and requests for supplemental information currently require information about wastewater treatment systems, pollutants, discharge rates and volumes, whole effluent toxicity testing and other data. Additional information collection requirements that may be necessary to implement State, Tribal, or EPA promulgated provisions consistent with the final Guidance include:

- Monitoring (pollutant-specific and whole effluent toxicity or WET);
- Pollutant minimization programs;
- Bioassays to support the development of water quality criteria;
- Antidegradation policy/demonstrations; and
- Regulatory relief options (e.g., variances from water quality criteria).

This information may be used to ensure compliance with provisions consistent with the Guidance and re-evaluate existing permit conditions and monitoring requirements. Data on discharges is entered into STORET and PCS, EPA's databases for ambient water quality data and NPDES permits, respectively. Results of water quality criteria testing will be entered into an EPA Information Clearinghouse database.

Permit applications may contain confidential business information. If this is the case, the respondent may request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976. However, CWA section 308(b) specifically states that effluent data may not be treated as confidential. No questions of a sensitive nature are associated with this information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the continued collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the continued collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: This ICR has estimated the burden and costs associated with implementation of the final Great Lakes Water Quality Guidance. It was assumed for this ICR that, except for WET testing, that all analytical activities are performed inhouse. The total annual burden to all respondents is estimated to be 87,872 hours with an associated cost of $4,905,550. The total annual burden to local governments, as publicly owned treatment works (POTW) operators, is estimated to be 34,612 hours with an associated cost of $2,036,646. The total annual burden to State and Federal governments is estimated to be 6,478 hours with an associated cost of $205,234, of which 5,886 hours of the burden and $186,470 fall upon the State governments.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 19, 1997.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 97-33772 Filed 12-24-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5941-5]

Water Conservation Plan Guidelines Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On January 20-21, 1998, the Water Conservation Plan Guidelines Subcommittee of the Local Government Advisory Committee will hold a meeting in Austin, Texas. The Subcommittee will discuss the American Water Works Association's proposed guidelines and EPA's draft outline of the guidelines. The Subcommittee meeting is open and all interested persons are invited to attend on a space-available basis.

DATES: The Subcommittee meeting will be held from 8:30 a.m. to 5:00 p.m. on Tuesday, January 20, 1998, and from 8:30 a.m. to 12:00 noon on Wednesday, January 21, 1998.

ADDRESSES: The meeting will be held at the Waller Creek Center, 625 East 10th Street, Austin, Texas 78701. On Tuesday the meeting will be in Room 105, and on Wednesday the meeting will be in the Training Room.

Requests for a summary of the meeting can be obtained by writing to John E. Flowers, U.S. Environmental Protection Agency, Office of Wastewater Management (Mail Code 4204), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official for this Subcommittee is John E. Flowers. He is the point of contact for information concerning any Subcommittee matters and can be reached by calling (202) 260-7288.

Dated: December 19, 1997.

Alfred W. Lindsey,

Deputy Director, Office of Wastewater Management.

[FR Doc. 97-33741 Filed 12-24-97; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

December 18, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

Federal Communications Commission

OMB Control No.: 3060-0745.

Expiration Date: 12/31/2000.

Title: Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996—CC Docket No. 96-187.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 170 respondents; 25 hours per response (avg.); 4250 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $170,000.

Frequency of Response: On occasion.

Description: In the *Report and Order* issued in CC Docket No. 96-187, the Commission adopts measures to implement the specific streamlining tariff filing requirements for local exchange carriers (LECs) of the Telecommunications Act of 1996 (1996 Act). a. *Electronic filing requirement:* The 1996 Act provides that LECs may file tariffs on seven and fifteen days' notice (47 U.S.C. § 204(a)). The Common Carrier Bureau has established an Electronic Tariff Filing System (ETFS) that permits incumbent LECs to submit federal tariffs and associated documents electronically, via the Internet. At the present, use of EFTS by incumbent LECs for an official filing is voluntary. Mandatory use of ETFS by incumbent LECS is scheduled to commence on February 2, 1998. See Public Notice, DA 97-2491, released 11/25/97. (No. of respondents: 50; hours per response: 72 hours; total annual burden: 3600 hours). b. *Requirement that carriers desiring tariffs proposing rate decreases to be effective in seven days must be filed in separate transmittals:* The 1996 Act provides that LEC tariffs seeking rate increases shall be effective in fifteen days and LEC tariffs seeking rate decreases shall be effective in seven days. The 15 day notice period applies to transmittals that contain both rate increases and decreases. Carriers wishing to take advantage of the seven day notice period must file rate decreases in separate transmittals. This result will permit all of the carriers' rate changes will still receive streamlined treatment. Carriers filing a rate decrease have the opportunity to file on the shorter seven-day notice period by transmitting rate decrease in a separate filing. Any other tariff filed pursuant to section 204(a)(3) of the Communications Act, including those that propose a rate increase or any change in terms and conditions of service other than a rate charge, shall be filed on 15 days' notice. (No. of respondents: 10; hours per response: 4 hours; total annual burden: 40 hours). c. *Requirement that carriers identify transmittals filed pursuant to the streamlined provisions of the 1996 Act:* Because of the short notice periods, the Commission adopts the requirement that carriers identify specifically transmittals filed pursuant to Section 204(a)(3), including whether the transmittals contain rate increases, rate decreases or both. The Commission requires that LECs display prominently in the upper right hand corner of the tariff transmittal letters a statement indicating that the tariff is being filed on a streamlined basis under section 204(a)(3) of the Act and whether the tariff filing contains a proposed rate increase, decrease or both. This requirement will result in minimal inconvenience to the LECs while allowing the Commission and public to identify quickly whether the tariff is eligible for streamlined treatment and the notice period to be applied to the filing. Without such a statement, we will treat transmittal as filed outside of section 204(a)(3), i.e., not on a streamlined basis. (No. of respondents: 50; hours per response: 9 hours; total annual burden: 350 hours). d. *Requirement that price cap LECs file their Tariff Review Plans (TRPs) prior to filing their annual access tariffs:* Under existing Commission rules, LECs are required to submit revisions to their annual access tariffs on 90 days' notice to be effective on July 1. Because these revisions are eligible for streamlined treatment, we will require carriers subject to price cap regulation to file a TRP prior to the filing of the annual access tariff revisions absent any information on the carriers' rates proposed rates, and to make it available to the public. Early filing of the TRPs

will facilitate review of the annual access filings within the streamlined notice periods by resolving most of the major issues currently raised with the annual access proceedings. (This requirement does not impose any additional burden on the respondents since respondents are already required to file TRPs). e. *Petitions and Replies:* Petitions against LEC tariff transmittals that are effective 7 days from filing must be filed within 3 calendar days from the date of tariff filing, and replies must be filed within 2 calendar days of service of petition. Petitions against LEC tariff transmittals that are effective 15 days from filing will be filed as currently specified in sections 1.773(a)(2)(ii) and 1.773(b)(1)(ii). These rules require petitions to be filed within 4 days of service of the petition. All tariffs and associated documents filed on 15 days' notice or less must include, among other things, the facsimile number of the individual designated by the filing carrier to receive personal or facsimile service of petitions and that petitions and replies in connection with such tariff filings be served by hand or facsimile. (No. of respondents: 20; hours per response: 6 hours; total annual burden: 120 hours). f. *Standard Protective Orders:* In the Report and Order, the Commission issued a standard protective order for use in review of LEC tariff filings submitted pursuant to section 204(a)(3). Reviewing parties must keep a written record of all copies made and to provide this record to the Submitting Party on reasonable request. (No. of respondents: 20; hours per response: 2 hours; total annual burden: 40 hours). The information collected under the program of electronic filing will facilitate access to tariff and associated documents by the public, especially by interested persons who do not have ready access to the Commission's public reference rooms, and state and federal regulators. Ready electronic access to carrier tariffs should also facilitate the compilation of aggregate data for industry analysis purposes without imposing new reporting requirements on carriers. The Commission adopts its proposal to require that carriers desiring tariffs proposing rate decreases to be effective in seven days must be filed in separate transmittal. This requirement will ensure that a tariff filing proposing a rate decrease is given the shortest notice period possible under the 1996 Act. The Commission also adopts the requirement that carriers identify transmittals filed pursuant to the streamlining provisions of the 1996 Act. All of the requirements would be used to ensure that local exchange carriers comply with their obligations under the Communications Act and that the Commission be able to ensure compliance within the streamlined timeframes established by the 1996 Act. Obligation to respond: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–33684 Filed 12–24–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 85–166, Phase I]

Petitions for Reconsideration and Clarification

AGENCY: Federal Communications Commission.

ACTION: Notice: Correction.

FOR FURTHER INFORMATION CONTACT: Shari Spivey, (202) 418–0270.

SUMMARY: This document corrects Report No. 2240 regarding petitions for reconsideration and clarification published in the **Federal Register** on December 3, 1997, (FR Doc 97–31592). On page 63951, column two, the petition should be removed through lines 4–8.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–33683 Filed 12–24–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1190–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–1190–DR), dated November 1, 1997, and related determinations.

EFFECTIVE DATE: December 10, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska dated November 1, 1997, is hereby amended to include Category G under the Public Assistance program, for state management cost only, for all areas previously designated for Public Assistance as a result of the catastrophe declared a major disaster by the President in his declaration of November 1, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–33710 Filed 12–24–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1192–DR]

Commonwealth of the Northern Mariana Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–1192–DR), dated December 8, 1997, and related determinations.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 8, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of the Northern Mariana Islands (CNMI), resulting from Super Typhoon Keith on November 2–3, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of the Northern Mariana Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Hazard Mitigation may be added at a later date, if requested. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William L. Carwile of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of the Northern Mariana Islands to have been affected adversely by this declared major disaster:

The Islands of Saipan, Tinian, and Rota for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 97–33709 Filed 12–24–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Commercial Corporation, Little Rock, Arkansas; to acquire 100 percent of the voting shares of First Commercial Bank N.A. of West Memphis, West Memphis, Arkansas, which will be the successor to the conversion of Federal Savings Bank, Rogers, Arkansas, from a federally chartered savings bank to a nationally chartered commercial bank.

In connection with this application, Applicant also has applied to acquire KW Bancshares, Inc., Little Rock, Arkansas, and thereby indirectly acquire its wholly owned thrift subsidiary, Federal Savings Bank, Rogers, Arkansas, and thereby engage in acquiring a savings institution, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y. Following consummation of the acquisition, Federal Savings Bank will convert to a nationally chartered commercial bank.

2. United Bankshares, Inc., Charleston, West Virginia; to acquire 100 percent of the voting shares of George Mason Bankshares, Inc., Fairfax, Virginia, and thereby indirectly acquire The George Mason Bank, Fairfax, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Alliance Bancorporation, Inc., Hot Springs, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Alliance Bank of Hot Springs, Hot Springs, Arkansas.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Gold Banc Corporation, Inc., Leawood, Kansas; to acquire 100 percent of the voting shares of First National Bancshares, Inc., Alma, Kansas, and thereby indirectly acquire First National Bank in Alma, Alma, Kansas.

Board of Governors of the Federal Reserve System, December 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–33775 Filed 12–24–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 9, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Bayerische Vereinsbank AG, Munich, Germany; to acquire Hypo Securities Inc., New York, New York, and thereby engage in brokerage of equity securities, as agent for the account of customers, who are, for the most part, non-U.S. offices and affiliates of Hypo Bank, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y; brokerage of fixed income securities, as agent for the account of customers, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y; secondary market riskless principal transactions involving

fixed income securities, pursuant to § 225.28(b)(7(ii) of the Board's Regulation Y; and investment advisory activities, especially advice with respect to real estate equity and debt investments, pursuant to § 225.28(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–33637 Filed 12-24-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

[Docket No. R–0997]

Treatment of U.S. Companies Operating in Government Debt Market in the Netherlands

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of study and request for comment.

SUMMARY: Under the Primary Dealers Act of 1988, which became effective on August 23, 1989, the Federal Reserve may not designate or permit the continuation of the designation of any person of a foreign country as a primary dealer in government debt instruments if such foreign country does not accord to U.S. companies the same competitive opportunities in the underwriting and distribution of government debt instruments issued by such country as such country accords to its domestic companies. Pursuant to this Act, the Federal Reserve is reviewing the government debt market of the Netherlands and requests public comment on the treatment of U.S. companies with respect to the Netherlands' government debt market, focusing in particular on the treatment of U.S. companies relative to domestic firms.

DATE: Comments must be received by February 27, 1998.

ADDRESSES: Comments, which should refer to Docket No. R–0997, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, D.C. 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in section 261.8 of the Board's Rules Regarding the Availability of Information.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Day, Associate General Counsel (202/452–3786), or Ann Misback, Managing Senior Counsel (202/452–3788), Legal Division; or Larry Promisel, Senior Advisor (202/452–3533), Division of International Finance; Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Under the Primary Dealers Act of 1988 ("Act"), 22 U.S.C. §§ 5341–5342, the Federal Reserve may not permit a person of a foreign country to act as a primary dealer in U.S. government securities if the person's home country does not accord U.S. companies the same competitive opportunities as the foreign country accords domestic companies in underwriting and distributing government debt obligations of such foreign country. A "person of a foreign country" includes any foreign individual or company that directly or indirectly controls a primary dealer.

A subsidiary of a bank organized in the Netherlands proposes to be designated as a primary dealer in U.S. government securities. Accordingly, in order to make the determination required by the Act, the Federal Reserve is undertaking a study of the government debt market of the Netherlands to determine whether U.S. companies are accorded national treatment in their access to that market.

The Federal Reserve would welcome the views of U.S. firms or other persons on the specific respects in which U.S. companies are accorded, or are not accorded, the same competitive opportunities in the underwriting and distribution of Dutch government debt instruments as the Netherlands accords to Dutch domestic companies. All such comments, which should be submitted by February 27, 1998, would be considered in the context of the study of this market.

By order of the Board of Governors of the Federal Reserve System, December 19, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–33652 Filed 12–24–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Submission for OMB Review; Comment Request, The Atherosclerosis Risk in Communities Study

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Heat, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 10, 1997 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

5 CFR 1320.5 (General requirements) Reporting and Recordkeeping Requirements: Finale Rule requires that the agency inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. This information is required to be stated in the 30-day **Federal Register** Notice.

Proposed Collection

Title: The Atherosclerosis Risk in Communities (ARIC) Study. *Type of Information Collection Request:* Revision of a currently approved collection (OMB No. 0925–0281). *Need and Use of Information Collection:* This project involves a physical examination and a survey of an additional sample of 45–64 year old persons living in the same communities as the original ARIC Study participant. Information from this sample and from the original cohort collected 10 years earlier will be used to assess temporal trends in selected atherosclerosis risk factor domains. *Frequency of Response:* The recruited individuals will participate in a home interview and an in-clinic examination. *Affected Public:* Individuals or households. *Type of Respondents:* Adults 45–64 years old. The annual reporting burden is as follows: *Estimated Number of Respondents:* 8356; *Estimated Number of Responses per Respondent:* 4.071; *Average Burden Hours per Response:* 0.5211; and *Estimated Total Annual Burden Hours Requested:* 17,726. The cost to the respondents consists of their time; time is estimated using a rate of $10.00 per hour. The annualized cost to respondents is estimated at: $23,820. There are no Capital Costs. There are no Operating and Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Suzanne Anthony, Project Clearance Liaison, National Heart, Lung, and Blood Institute, NIH, Building 31, Room 5A10, MSC 2490, 31 Center Drive, Bethesda, MD 20892–2490 or call non-toll free number (301) 496–9737, or e-mail your request or comments, including your address, to: AnthonyS@gwgate.nhlbi.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before January 28, 1998.

Dated: December 17, 1997.

Sheila E. Merritt,

Executive Officer, NHLBI.

[FR Doc. 97–33744 Filed 12–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Submission for OMB Review; Comment Request, National Donor Research and Education Study–II

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval. This proposed information collection was previously published in Volume 62, Number 86 of the **Federal Register** on May 5, 1997 (page 24,492) and allowed 60 days for public comment. One comment was received. An individual requested a summary of the study protocol, which was provided to them. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995 unless it displays a currently valid OMB control number.

Proposed Collection

Title: National Donor Research and Education Study–II. *Type of Information Collection Request:* Reinstatement with changes to OMB #0925–0383, Expiration date: 1/31/96. *Need and Use of Information Collection:* This study is the second large anonymous mail survey to be sent to a random sample of blood donors at five blood centers participating in the Retrovirus Epidemiology Donor Study (REDS). In addition to the REDS blood centers, this survey will also be sent to a sample of donors in selected non-REDS regions that utilize a variety of donor incentives. Study results will provide data for monitoring the safety of the U.S. blood supply, and will facilitate the development, evaluation and refinement of educational, recruitment and qualification strategies for U.S. blood donors. The proposed new study will update and extend the unique findings obtained in the first blood donor survey so as to minimize the likelihood that donors with risk factors for transfusion-transmitted diseases will enter the blood donor pool. There is a strong likelihood that, like the first survey effort, the resulting findings will be directly applied to blood banking operational practice. The new survey is specifically designed to obtain data on the prevalence and impact of donor incentives on donor retention and blood safety. The FDA has identified this as a priority area for investigation. Other specific objectives of this survey are to: (1) Evaluate donor understanding and acceptance, and the safety impact of newly-changed laboratory and donor screening procedures that have been implemented since the previous donor survey study (e.g., removal of the confidential unit exclusion "CUE" process at two REDS sites; additional questions about Creutzfeldt-jakob and parasitic diseases; and addition of HIV p24 antigen testing); (2) Estimate the efficacy, safety impact and donor acceptance of new donor screening procedures that are anticipated to occur within the next 12–24 months (e.g., improved CUE procedures, implementation of computer-assisted donor screening); (3) Provide "pre-" (baseline) and "post-" (evaluation) measures for new donor qualification procedures expected to occur operationally at blood centers within the time period of study including: deferral for intranasal cocaine use in the past year; modification of the time period for sexual risk deferrals from "since 1977" to within the past (12 or 24) months; clarification of wording regarding sexual contact with "at-risk" individuals; and addition of questions about donating primarily for the purpose of receiving the test results for the AIDS virus; (4) Assess changes in the prevalence and characteristics of donors who report donating for therapeutic reasons (e.g., those with iron storage disease), and donors who report donating primarily to receive test results for the AIDS virus as a result of the March 1996 implementation of HIV p24 antigen testing; (5) Determine the extent to which active donors with reactive tests for anti-HBc and syphilis have increased levels of behavioral risks that should have resulted in deferral; (6) Measure the extent to which seropositivity for current syphilis screening tests predicts a recent history of diagnosed syphilis; (7) Measure blood donor knowledge of infectious disease risks and the behavioral factors that should defer them from donating, to identify weaknesses in the current donor educational process, and (8) Assess the attitudes of donors regarding establishment of stored frozen repositories from their donations, use of these samples for future research testing designed to improve transfusion safety, and the adequacy of different levels of

informed consent. *Frequency of Response:* One-time data collection.
Affected Public: Individuals.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per responses	Estimated total annual burden hours requested
Blood Donors	78,000	1	.3333	25,997

The annualized cost to respondents is estimated at: $259,974 (based on $10 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request For Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Direct Comments To OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or obtain a copy of the data collection plans and instruments contact: Dr. George J. Nemo, Group Leader, Transfusion Medicine, Scientific Research Group, Division of Blood Diseases and Resources, NHLBI, NIH, Two Rockledge Centre, Suite 10042, 6701 Rockledge Drive, MSC 7950, Bethesda, MD 20892–7950, or call non-toll free number (301) 435–0075 or e-mail your request, including your address to: nemog@gwgate.nhlbi.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before January 28, 1998.

Dated: December 17, 1997.

Sheila E. Merritt,

Executive Officer, NHLBI.

[FR Doc. 97–33745 Filed 12–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Cooperative Research and Development Agreement (CRADA) Opportunity and/or Licensing Opportunity for Materials and Methods for Protection of Tissue From Ischemic Damage

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking CRADA partners and/or licensees for the further development, evaluation, and commercialization of materials and methods for protecting tissues from cell injury by Ischemia. The invention claimed in U.S. Patent Application Serial No. 60/053,843, "12(S)=HpETE (A 12=Lipoxygenase Metabolite) Significantly Reduces Cell Injury," is available for licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under one or more CRADAs in several clinically important applications as described below in the **SUPPLEMENTARY INFORMATION.**

DATES: CRADA proposals should be received on or before March 30, 1998 for priority consideration. However, CRADA proposals submitted thereafter will be considered until a suitable CRADA Collaborator is selected.

ADDRESSES: CRADA proposals and questions should be addressed to Dr. Jonathan Gottlieb, National Heart, Lung, and Blood Institute, Technology Transfer Service Center, 31 Center Drive MSC 2490, Room 1B32, Bethesda, Maryland 20892–2490; Telephone: 301/402–5579; Fax: 301/594–3080; E-mail: GottlieJ@gwgate.nhlbi.nih.gov.

Questions about the licensing opportunity should be addressed to Carol Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone 301/496–7735 ext. 287; Fax 301/402–0220; E-mail: Carol—Lavrich@nih.gov.

SUPPLEMENTARY INFORMATION: Ischemia and reperfusion injury are significant causes of tissue damage in diseases and conditions such as heart attack, stroke and in organ transplantation. Recently, scientists at the National Institute of Environmental Health Sciences and Duke University, while investigating the phenomena of preconditioning, discovered and developed a highly effective method for protecting tissues from cell injury by ischemia by use of 12(S)=HpETE.

Previously developed treatments to prevent ischemic damage are greatly limited in their effectiveness. TPA, routinely used to dissolve blood clots, thereby allowing greater blood flow, does not prevent ischemic tissue injury. Aspirin has been shown to have only a small protective effect in the cardiovascular system. However, the above new method demonstrates a dramatic protective effect—up to 82% recovery in initial studies—when administered during injury, as seen in animal models. The protective effect of 12(S)-HpETE was discovered during investigation of the 12-lipoxygenase-related protective effect of ischemic preconditioning and, unlike other agents, 12(S)-HpETE has no known undesirable side effects.

Uses of such an invention may include treatment of tissue during angioplasty and treatment of organs intended for transplantation to limit the chance of damage.

This research was published in Circulation Research 76: 457–467, 1995.

Information about the patent application and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA.

Dated: December 16, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–33746 Filed 12–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute of Neurological Disorders and Stroke (NINDS).

The National Advisory Neurological Disorders and Stroke Council and its subcommittee meetings will be open to the public as indicated below. Attendance by the public will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications.

These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed for the meeting.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.
Date: February 11, 1998.
Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: 1:30 p.m.—recess.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.
Date: February 12–13, 1998.
Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.
Open: February 12, 8:30 a.m.—approximately 3:00 p.m.
Agenda: A report by the Acting Director, NINDS; a report by the Director, Division of Extramaural Activities, NINDS; a report by the Scientific Director; NINDS; and a scientific presentation by a NINDS intramural scientist.
Closed: February 13, approximately 3:00 p.m.—recess; February 14, 8:30 a.m.—adjournment.
Executive Secretary: Constance W. Atwell, Ph.D., Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9248.

The following meetings will be totally closed to review and evaluate grant applications:

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group (Neurological Sciences and Disorders A).
Date: February 8–9, 1998.
Time: February 8, 8:30 a.m. to recess; February 9, 8:30 a.m. to adjournment.
Place: The Enclave Suites, 6165 Carrier Drive, Orlando, FL 32819.
Contact Person: Dr. Katherine Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group (Neurological Sciences and Disorders B).
Date: February 18–20, 1998.
Time: February 18, 7:00 p.m.—recess; February 19, 8:00 a.m.—recess; February 20, 8:00 a.m. to adjournment.
Place: Crowne Plaza Hotel, 14th and K Streets, Washington, DC 20005.
Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Training Grant and Career Development Review Committee.
Date: February 20, 1998.
Time: 8:00 a.m. to adjournment.
Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Dr. Alfred Gordon, Scientific Review Administrator, Scientific Review Branch, NINDS, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: December 18, 1997.

LaVerne Stringfield,

NIH Committee Management Officer.

[FR Doc. 97–33747 Filed 12–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

Study section/contact person	February–March 1998 meetings	Time	Location
AIDS and Related Research Initial Review Group			
AIDS & Related Research 1, Dr. Sami Mayyasi, 301–435–1216.	Mar. 4–5	8:00 a.m.	Hilton Hotel, Palm Springs, CA.
AIDS & Related Research 2, Dr. Gilbert Meier, 301–435–1219.	Mar. 13	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Bruce Maurer, 301–435–1225.	Mar. 4–5	8:30 a.m.	Hilton Hotel, Palm Springs, CA.
AIDS & Related Research 4, Dr. Mohindar Poonian, 301–435–1218.	Mar. 12–13	8:30 a.m.	Olympia Hotel, Park City, UT.
AIDS & Related Research 5, Dr. Mohindar Poonian, 301–435–1218.	Mar. 3	8:30 a.m.	Hyatt Regency Hotel, Bethesda, MD.

Study section/contact person	February–March 1998 meetings	Time	Location
AIDS & Related Research 6, Dr. Gilbert Meier, 301–435–1219.	Mar. 6	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, 301–435–1219.	Mar. 20	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Behavioral and Social Sciences Initial Review Group			
Behavioral Medicine, Ms. Carol Campbell, 301–435–1257.	Feb. 25–26	8:30 a.m.	St. James Hotel, Washington, DC.
Community Prevention & Control, Dr. Robert Weller, 301–435–1259.	Feb. 26–27	8:00 a.m.	Hyatt Regency Hotel, Bethesda, MD.
Human Development & Aging–1, Dr. Anita Miller Sostek, 301–435–1260.	Feb. 12–13	9:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging–2, Dr. Michael Micklin, 301–435–1258.	Feb. 23–24	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Human Development & Aging–3, Dr. Anita Miller Sostek, 301–435–1260.	Feb. 26–27	8:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, 301–435–1259.	Feb. 18–19	8:00 a.m.	Hyatt Regency Hotel, Bethesda, MD.
Biochemical Sciencies Initial Review Group			
Biochemistry, Dr. Chhanda Ganguly, 301–435–1739.	Feb. 18–20	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Medical Biochemistry, Dr. Alexander Liacouras, 301–435–1740.	Feb. 19–20	8:00 a.m.	Wyndham Bristol Hotel, Washington, DC.
Pathobiochemistry, Dr. Zakir Bengali, 301–435–1742.	Feb. 12–13	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Physiological Chemistry, Dr. Richard Panniers, 301–435–1741.	Feb. 19–20	8:00 a.m.	Carlton Ritz, Arlington, VA.
Biophysical and Chemical Sciences Initial Review Group			
Bio-Organic & Natural, Products Chemistry, Dr. Harold Radtke, 301–435–1728.	Feb. 26–27	9:00 a.m.	Holiday Inn, Silver Spring, MD.
Biophysical Chemistry, Dr. Donald Schneider, 301–435–1727.	Feb. 19–20	8:30 a.m.	Ramada Inn, Rockville, MD.
Medicinal Chemistry, Dr. Ronald Dubois, 301–435–1722.	Feb. 18–20	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Matallobiochemistry, Dr. John Bowers, 301–435–1725.	Feb. 19–20	8:30 a.m.	St. James Hotel, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, 301–435–1726.	Feb. 19–20	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Physical Biochemistry, Dr. Gopa Rakhit, 301–435–1721.	Mar. 2–3	8:30 a.m.	Double Tree Hotel, Rockville, MD.
Cardiovascular Sciences Initial Review Group			
Cardiovascular, Dr. Gordon Johnson, 301–435–1212.	Mar. 4–6	8:00 a.m.	Holiday Inn, Silver Spring, MD.
Cardiovascular & Renal, Dr. Anthony Chung, 301–435–1213.	Mar. 2–3	8:30 a.m.	Holiday Inn, Silver Spring, MD.
Experimental Cardiovascular Sciences, Dr. Anshumali Chaudhari, 301–435–1210.	Feb. 23–24	8:00 a.m.	Double Tree Hotel, Rockville, MD.
Hematology-1, Dr. Clark Lum, 301–435–1195.	Feb. 5–6	8:00 a.m.	Ramada Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, 301–435–1777.	Mar. 11–12	8:30 a.m.	Holiday Inn, Bethesda, MD.
Pathology A, Dr. Larry Pinkus, 301–435–1214.	Feb. 10–11	8:00 a.m.	One Washington Circle Hotel, Washington, DC.
Pharmacology, Dr. Jeanne Ketley, 301–435–1789.	Feb. 19–20	8:00 a.m.	American Inn, Bethesda, MD.
Cell Development and Function Initial Review Group			
Biological Sciences–2, Dr. Anthony Carter, 301–435–1024.	Mar. 9–10	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Cellular Biology and Physiology–1, Dr. Gerald Greenhouse, 301–435–1023.	Feb. 4–5	8:00 a.m.	Sheraton Reston Hotel, Reston, VA.
Cellular Biology and Physiology–2, Dr. Gerhard Ehrenspeck, 301–435–1022.	Feb. 18–19	8:30 a.m.	Holiday Inn, Bethesda, MD.

Study section/contact person	February–March 1998 meetings	Time	Location
Human Embryology & Development–2, Dr. Sherry Dupere, 301–435–1021.	Feb. 5–6	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects, Dr. G.B. Warren, 301–435–1019.	Feb. 26–27	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular Biology, Dr. Robert Su, 301–435–1025.	Feb. 12–13	8:30 a.m.	The Georgetown Inn, Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, 301–435–1026.	Feb. 5–6	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Endocrinology and Reproductive Sciences Initial Group			
Biochemical Endocrinology, Dr. Michael Knecht, 301–435–1046.	Feb. 19–20	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Syed Amir, 301–435–1043.	Feb. 17–18	8:30 a.m.	Ramada Inn, Rockville, MD.
Human Embryology & Development–1, Dr. Michael Knecht, 301–435–1046.	Feb. 26–27	8:00 a.m.	Ramada Inn, Rockville, MD.
Reproductive Biology, Dr. Dennis Leszcyzynski, 301–435–1044.	Feb. 9–10	8:30 a.m.	Hyatt Regency Hotel, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubakar Shaikh, 301–435–1042.	Feb. 23–24	8:00 a.m.	Woodfin Suites, Rockville, MD.
Genetic Sciences Initial Review Group			
Biological Sciences-1, Dr. Nancy Pearson, 301–435–1047.	Mar. 4–6	8:30 a.m.	St. James Hotel, Washington, DC.
Genetics, Dr. David Remondini, 301–435–1038.	Feb. 12–13	9:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Genome, Dr. Cheryl Corsaro, 301–435–1045.	Feb. 12–13	9:00 a.m.	Holiday Inn, Bethesda, MD.
Mammalian Genetics, Dr. Camilla Day, 301–435–1037.	Feb. 12–13	8:30 a.m.	Embassy Suites, Chevy Chase Pavilion, Washington, DC.
Health Promotion and Disease Prevention Initial Review Group			
Nursing Research, Dr. Gertrude McFarland, 301–435–1784.	Mar. 2–3	8:30 a.m.	DoubleTree Hotel, Rockville, MD.
Immunological Sciences Initial Review Group			
Allergy & Immunology, Dr. Gene Zimmerman, 301–435–1220.	Feb. 26–27	8:30 a.m.	Holiday Inn, Bethesda, MD.
Experimental Immunology, Dr. Calbert Laing, 301–435–1221.	Feb. 12–13	8:30 a.m.	Holiday Inn Hotel, Chevy Chase, MD.
Immunobiology, Dr. Betty Hayden, 301–435–1223.	Feb. 19–20	9:00 a.m.	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Antia Corman Weinblatt, 301–435–1224.	Feb. 25–27	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Infectious Diseases and Microbiology Initial Review Group			
Bacteriology & Mycology–1, Dr. Timothy Henry, 301–435–1147.	Feb. 23–24	8:30 a.m.	Holiday Inn Hotel, Alexandria, VA.
Bacteriology & Mycology–2, Dr. William Branche, Jr., 301–435–1148.	Feb. 19–20	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett Keefer, 301–435–1152.	Feb. 23–24	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics–1, Dr. Martin Slater, 301–435–1149.	Feb. 25–27	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics–2, Dr. Gerald Liddel, 301–435–1150.	Feb. 19–20	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Tropical Medicine & Parasitology, Dr. Jean Hickman, 301–435–1146.	Feb. 19–20	8:30 a.m.	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, 301–435–1151.	Mar. 10–11	8:30 a.m.	Wyndham Bristol Hotel, Washington, DC.
Musculoskeletal and Dental Sciences Initial Review Group			
General Medicine A–1, Dr. Harold Davidson, 301–435–1776.	Feb. 2–3	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
General Medicine B, Dr. Shirley Hilden, 301–435–1198.	Feb. 5–6	8:30 a.m.	Holiday Inn, Chevy Chase, MD.

Study section/contact person	February–March 1998 meetings	Time	Location
Oral Biology & Medicine–1, Dr. Priscilla Chen, 301–435–1787.	Feb. 10–11	8:30 a.m.	Holiday Inn-Old Town, Alexandria, VA.
Oral Biology & Medicine–2, Dr. Priscilla Chen, 301–435–1787.	Feb. 23–24	8:30 a.m.	Holiday Inn-Old Town, Alexandria, VA.
Orthopedics & Musculoskeletal, Dr. Daniel McDonald, 301–435–1215.	Feb. 23–24	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Neurological Sciences Initial Review Group			
Neurological Sciences–1, Dr. Carl Banner, 301–435–1251.	Feb. 11–12	8:30 p.m.	Holiday Inn, Bethesda MD.
Neurological Sciences–2, Dr. Kathleen Michels, 301–435–1250.	Feb. 24–26	8:00 a.m.	Holiday, Bethesda MD.
Neurology B–1, Dr. Lawrence Stanford, 301–435–1255.	Feb. 25–26	8:30 a.m.	Governors House Hotel, Washington, DC.
Neurology C, Dr. Kenneth Newrock, 301–435–1252.	Feb. 25–26	8:30 a.m.	The Hotel George, Washington, DC.
Nutritional and Metabolic Sciences Initial Review Group			
General Medicine A–2, Dr. Mushtaq Khan, 301–435–1778.	Feb. 19–20	8:30 a.m.	Westin Hotel, Washington, DC.
Metabolism, Dr. Krish Krishnan, 301–435–1779.	Feb. 26–27	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Nutrition, Dr. Sooja Kim, 301–435–1780.	Feb. 23–24	8:30 a.m.	Double Tree Hotel, Rockville, MD.
Oncological Sciences Initial Review Group			
Chemical Pathology, Dr. Edmund Copeland, 301–435–1715.	Feb. 25–27	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Therapeutics–1, Dr. Philip Perkins, 301–435–1718.	Feb. 19–20	8:30 a.m.	Hyatt Hotel, Key Bridge, Arlington, VA.
Experimental Therapeutics–2, Dr. Marcia Litwack, 301–435–1719.	Mar. 2–4	8:30 a.m.	The Lodge at Torrey Pines, La Jolla, CA.
Metabolic Pathology, Dr. Marcelina Powers, 301–435–1720.	Feb. 23–25	8:00 a.m.	Holiday Inn, Silver Spring, MD.
Pathology B, Dr. Martin Padarathsingh, 301–435–1717.	Mar. 2–4	8:00 a.m.	The Lodge at Torrey Pines, La Jolla, CA.
Radiation, Dr. Paul Strudler, 301–435–1716.	Feb. 23–25	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pathophysiological Sciences Initial Review Group			
Lung Biology & Pathology, Dr. Andrea Harabin, 301–435–1017.	Feb. 25–26	8:00 a.m.	Hyatt Regency, Bethesda, MD.
Physiology, Dr. Michael Lang, 301–435–1015.	Mar. 5–6	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Respiratory & Applied, Physiology, Dr. Everett Sinnett, 301–435–1016.	Mar. 9–10	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Sensory Sciences Initial Review Group			
Hearing Research, Dr. Joseph Kimm, 301–435–1249.	Mar. 2–3	8:30 a.m.	Embassy Square Suites, Washington, DC.
Sensor Disorders & Language, Dr. Sam Rawlings, 301–435–1243.	Feb. 11–13	8:30 a.m.	Capitol Holiday Inn, Washington, DC.
Visual Sciences A, Dr. Luigi Giacometti, 301–435–1246.	Feb. 19–20	8:30 a.m.	Ramada Inn, Rockville, MD.
Visual Sciences B, Dr. Leonard Jakubczak, 301–435–1247.	Feb. 11–12	8:30 a.m.	Radisson Barcelo Hotel, Washington, DC.
Visual Sciences C, Dr. Carole Jelsema, 301–435–1248.	Feb. 12–13	8:00 a.m.	Embassy Square Suites, Washington, DC.
Surgery, Radiology and Bioengineering Intial Review Group			
Diagnostic Radiology, Dr. Eileen Bradley, 301–435–1178.	Feb. 24–25	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Surgery & Bioengienering, Dr. Lee Rosen, 301–435–1171.	Feb. 23–24	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.

Study section/contact person	February–March 1998 meetings	Time	Location
Surgery, Anesthesiology & Trauma, Dr. Gerald Becker, 301–435–1750.	Feb. 18–19	1:00 p.m.	Georgetown Holiday Inn, Washington, DC.

The meetings will be closed in accordance with the Provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would contstitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893 National Institutes of Health, HHS)

Dated: December 19, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–33748 Filed 12–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4278–D–02]

Redelegation of Personnel Management Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Secretary redelegates personnel management authority relating to HUD 2020 Management Reform.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Virginia Stephens, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, (202) 708–0622. (This is not a toll-free number.) For hearing/speech-impaired individuals, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Secretary redelegates this authority in order to facilitate the selection of candidates for the approximately 1,400 merit staffing positions announced in connection with the HUD 2020 Management Reform Plan. Consistent with merit staffing principles and Union agreements, standard personnel procedures will be followed in this process. In addition, no political appointee will serve as selecting official. All selections will be made by senior level career employees. To the greatest extent practical and feasible, rating and ranking panels will consist of representatives of multiple program offices with representatives from both Headquarters and the field. A representative from HUD Unions will observe the rating and ranking process.

Accordingly, the Secretary redelegates authority as follows:

Section A. Authority Redelegated

The authority to make HUD 2020 merit staffing selections for candidates at grades GS–14 and GS–15 is redelegated to the following selecting officials for each of the Program and other offices identified below:

Office and Selecting Official

Office of Housing—Deputy Assistant Secretary for Operations
Office of Public and Indian Housing—General Deputy Assistant Secretary (Acting)
Office of Fair Housing and Equal Opportunity—General Deputy Assistant Secretary
Office of Public Affairs—Deputy Assistant Secretary for Public Affairs/Managing Editor
Office of General Counsel—Deputy General Counsel for Operations
Office of Chief Financial Officer—Deputy CFO for Finance (Director, Accounting Center)
Enforcement Center—Director
Assessment Center—Deputy General Counsel for Operations
Section 8, Financial Management Center—General Deputy Assistant Secretary, PIH (Acting)
Office of Community Planning and Development—Deputy Assistant Secretary for Economic Development
Office of Field Management, Senior Community Builder positions—Deputy Assistant Secretary for Resource Management and Operations, Administration
Office of Field Management, non-Senior Community Builder positions—Career Deputy Assistant Secretary for: Housing, CPD, PIH, FHEO, and Administration

Section B. No Authority To Further Redelegate

The authority redelegated in Section A., above, may not be further redelegated.

Section C. Expiration of Redelegation

This redelegation of authority expires on June 30, 1998.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C., Section 3535(d).

Dated: December 15, 1997.

Andrew Cuomo,

Secretary of Housing and Urban Development.

[FR Doc. 97–33648 Filed 12–24–97; 8:45 am]

BILLING CODE 4210–32–W

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

1998 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service) announces the dates and locations of the 1998 Federal Duck Stamp Contest; the public is invited to attend.

DATES: 1. The 1998 contest opens for submission July 1, 1998.

2. Persons wishing to enter this year's contest may submit entries anytime after Wednesday, July 1, but all must be postmarked no later than midnight Tuesday, September 15, 1998.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights and the display and participating agreements should be addressed to: Federal Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, N.W., Suite 2058, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mrs. Lita F. Edwards, telephone: (202) 208–4354; or fax: (202) 208–6296.

SUPPLEMENTARY INFORMATION: Location of Contest: Department of the Interior Building, Auditorium ("C" Street entrance) 1849 C Street, N.W., Washington, D.C. The public may view the 1998 Federal Duck Stamp Contest

entries on Tuesday, November 3, 1998, from 10:00 a.m. to 2:00 p.m., in the Department of the Interior Auditorium. This year's judging will be held from November 4–5, 1998, beginning at 10:30 a.m. on Wednesday, November 4, and continuing at 9:00 a.m. on Thursday, November 5.

The following five eligible species for the 1998 duck stamp contest are as follows:

(1) American Green-winged Teal
(2) Black Duck
(3) Greater Scaup
(4) Northern Pintail
(5) Ruddy Duck

The primary author of this document is Mrs. Lita F. Edwards, U.S. Fish and Wildlife Service.

Dated: December 17, 1997.

Jamie Rappaport Clark,

Director.

[FR Doc. 97–33665 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Adopt the Bureau of Land Management (BLM) Coos Bay District Final Proposed Resource Management Plan (PRMP)/ Environmental Impact Statement (EIS), Dated September 1994, as the Resource Management Plan and Environmental Impact Statement for the 5,410 Acre Coquille Forest.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) is considering adopting the BLM's Final PRMP/EIS as the resource management plan and environmental impact statement for management of the 5,410 acre Coquille Forest. A description of the proposal is provided below. The BIA will make an independent analysis of the Final PRMP/EIS to determine its adequacy to meet the BIA's responsibilities under the National Environmental Policy Act (NEPA) in accordance with 40 CFR 1506.3(a).

The Coquille Restoration Act (P.L. 101–42), as amended by P.L. 104–208 of September 30, 1996, (110 STAT. 3009–537: 25 U.S.C. 715c) provides that "* * * the Assistant Secretary for Indian Affairs, acting on behalf of and in consultation with the [Coquille] Tribe, is authorized to initiate development of a forest management plan for the Coquille Forest." Section 501.(a)(d)(5) of the Act requires that the Secretary shall manage the Coquille Forest "* * * under applicable State and Federal forestry and environmental protection laws, and subject to critical habitat designations under the Endangered Species Act, and subject to the standards and guidelines of Federal forest plans on adjacent or nearby Federal lands, now and in the future." Consultation meetings with the Coquille Tribe and its members will be scheduled and carried out until February 1998.

A summary of public involvement associated with the Coos Bay District's Draft and Final Resource Management Plan/Environmental Impact Statement can be found on page ROD–5 of the BLM's Record of Decision and Resource Management Plan of May 1995, and is hereby incorporated by reference. A summary of public involvement associated with the July 1993 Draft and February 1994, Final Supplemental Environmental Impact Statement on Management of Habitat of Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl is included on pages 58–73 of the April 1994 interagency Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and is hereby incorporated by reference.

Additional public input, issue identification, and scoping efforts are described on pages S–17 and 1–6 of the Coos Bay District Final Proposed Resource Management Plan/ Environmental Impact Statement of September 1994, and are hereby incorporated by reference.

DATES: Written comments may be submitted through January 26, 1998.

ADDRESSES: Address comments to Stanley Speaks, Portland Area Office, Bureau of Indian Affairs, The Federal Building, 911 NE, 11th Avenue, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Gary Varner, Siletz Agency, P.O. Box 569, Siletz, Oregon 97380, telephone 541–444–2679. For information regarding the Bureau of Land Management, Coos Bay District Resource Management Plan and Environmental Impact Statement, contact the Coos Bay District at 541–756–0100.

SUPPLEMENTARY INFORMATION: The Coquille Forest has been created pursuant to P.L. 104–208 from existing federal lands managed by the BLM, Coos Bay District, in North Bend, Oregon. For purposes of management direction set forth in the law, the surrounding BLM lands are the "adjacent or nearby Federal lands." The BLM's Final PRMP/EIS will define the objectives, scope and direction for managing the natural resources of the Coquille Forest. In addition, specific tribal goals, objectives, and cultural interests will be incorporated through consultation between the BIA and the Coquille Indian Tribe.

Dated: December 12, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–33724 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–7122–6606; CACA–35511]

Environmental Impact Statement; California

AGENCY: Bureau of Land Management.

ACTION: Notice of Extension of Public Comment Period for the Imperial Project Draft Environmental Impact Statement on the Imperial Project Proposed Gold Mining/Processing Operation, Imperial County.

SUMMARY: Notice is hereby given that the comment period of the joint Draft Environmental Impact Statement/ Impact Report (DEIS/EIR) prepared by the Bureau of Land Management and the County of Imperial for an additional 30-days.

DATES: Written comments must be postmarked no later than February 26, 1998.

ADDRESSES: Written comments should be addressed to the Area Manager, Attn: Imperial Project, El Centro Resource Area, 1661 South Fourth St., El Centro, California 92243.

FOR FURTHER INFORMATION CONTACT: Douglas Romoli (909) 697–5237.

SUPPLEMENTARY INFORMATION: The end of comment period as noted in the Draft EIS/EIR for the Imperial Project DEIS/ EIR was January 27, 1998. The comment period is now extended to February 26, 1998.

Dated: December 19, 1997.

Thomas F. Zale,

Acting Area Manager.

[FR Doc. 97–33669 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1610–00]

Notice of Availability

AGENCY: Bureau of Land Management (BLM), Montana/Dakotas, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976, an environmental assessment has been prepared for proposed Areas of Critical Environmental Concern (ACEC) on BLM-administered surface estate in the South Dakota Resource Area, Dakotas District, North Dakota; and the Billings and Powder River Resource Areas, Miles City District, Montana. The document will amend three Resource Management Plans: Billings (1983), Powder River (1984) and South Dakota (1985). The Environmental Assessment and Draft Resource Management Plan Amendment evaluates the relevance and importance of areas nominated for ACEC designation in portions of the following counties: Carbon, Carter, Custer, Golden Valley, Musselshell, Powder River, Rosebud, Treasure, Yellowstone (Montana); Big Horn (Wyoming); and Fall River (South Dakota). The amendment is a comprehensive plan for managing the areas BLM proposes for ACEC designation.

DATES: Comments on BLM's management prescriptions for areas proposed for ACEC designation should be submitted to BLM on or before March 9, 1998.

ADDRESS: All comments should be sent to the following address: BLM, Tim Murphy, District Manager, 111 Garryowen Road, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Mary Bloom, Team Leader, at (406) 233–2826.

SUPPLEMENTARY INFORMATION: A Notice of Intent to plan was filed in the **Federal Register** on April 6, 1995. The public was asked to submit nominations, issues and alternatives. All comments received were considered in the preparation of the plan.

The environmental assessment and draft resource management plan amendment analyzes three alternatives to resolve the issues. Each alternative represents a complete management plan. The alternatives are summarized as (1) No Action, where no areas of critical environmental concern would be designated, (2) Protection For Relevant and Important Values and (3) the Preferred Alternative, which may be a previous alternative, a combination of, or a new alternative.

One area nominated, Pompeys Pillar, has already been planned for and designated in BLM's 1996 "Pompeys Pillar Resource Management Plan Amendment and Environmental Assessment Record of Decision". That document approved the designation and management for Pompeys Pillar Area of Critical Environmental Concern.

The Area of Critical Environmental Concern Environmental Assessment and Draft Resource Management Plan Amendment evaluates 21 areas of critical environmental concern nominations. BLM proposes designation and special management for 12 areas. Six areas did not meet the relevance and/or importance criteria. Three areas were considered but not analyzed in detail. The 12 areas proposed for designation are:

1. The *Bridger Fossil* area (575 public surface acres) in Carbon County would be designated an area of critical environmental concern. This significant fossil area would be retained in public ownership and managed to enhance and protect the paleontological resources. Management actions affecting this area are: rights-of-way, and mineral material sales and permits would be allowed with stipulations; oil and gas leasing would be allowed with a Controlled Surface Use stipulation; underground explosives for geophysical exploration for oil and gas would not be allowed, other geophysical exploration methods for oil and gas would be allowed if the method would not damage the paleontology resource; livestock grazing would be allowed; and off-road vehicle use would be limited to designated roads and trails.

2. *Castle Butte* (185 public surface acres) in Yellowstone County would be designated an area of critical environmental concern. The area would be retained in public ownership and managed to enhance and protect significant cultural resources. Management actions affecting this area are: fire would be managed with conditional fire suppression; wood product sales and geophysical exploration for oil and gas would be allowed; rights-of-way would be allowed when they avoid the significant cultural resource sites; livestock grazing and range improvements would be allowed; and off-road vehicle use would be limited to designated roads and trails.

3. The *East Pryor Mountains* (29,500 public surface acres) in Carbon County, Montana and Big Horn County, Wyoming would be designated an area of critical environmental concern. The area would be retained in public ownership and managed for its wild horse and wildlife values, and long-term conservation and recreational use for the public. Management actions affecting this area are: fire would be managed with conditional fire suppression; wood product sales, rights-of-way, livestock grazing, mineral material sales and permits, geophysical exploration for oil and gas, and oil and gas leasing would not be allowed; locatable minerals would be withdrawn from entry; and off-road vehicle use would be limited to the designated trails.

4. *Meeteetse Spires* (960 public surface acres) in Carbon County would be designated an area of critical environmental concern. The area would be retained in public ownership and managed to enhance and protect the rare plants and scenery in the area, and to help protect the public from dangerous cliffs. Management actions affecting this area are: an easement across state land (T. 8 S., R. 20 E., Section 36) would be obtained; fire would be managed with conditional fire suppression; selected timber harvests may be periodically necessary to protect the area's overall resource value; wood product sales would not be allowed; livestock grazing, except for sheep, would be allowed; rights-of-way, oil and gas leasing, and mineral material sales and permits would not be allowed; locatable minerals would be withdrawn from entry; in the sensitive plant area, geophysical exploration for oil and gas would not be allowed by any method; on the remaining area, geophysical exploration would be accessed by air only; exploration would be shot holes and above-ground shots, vibroseis would not be allowed; and off-road vehicle use would be limited to designated roads and trails.

5. *Petroglyph Canyon* (240 public surface acres) in Carbon County would be designated an area of critical environmental concern. This significant site would be retained in public ownership and managed to protect and enhance the cultural resources. Management actions affecting this area are: wood product sales, rights-of-way, oil and gas leasing and geophysical exploration would not be allowed; livestock grazing and range improvements would be allowed; and locatable minerals would be withdrawn from entry. The area would be closed to off-road vehicle use.

6. *Stark Site* (800 public surface acres) in Musselshell County would be designated an area of critical environmental concern. The area would

be retained in public ownership and managed to enhance and protect significant cultural resources. Management actions affecting this area are: fire would be managed with conditional fire suppression; wood product sales, livestock grazing and range improvements would be allowed; rights-of-way, and mineral material sales and permits would not be allowed; oil and gas leasing would be allowed with a No Surface Occupancy stipulation; the area would be closed to geophysical exploration for oil and gas on the cultural resource sites and allowed (surface methods and vibroseis) in the remainder of the area; and off-road vehicle use would be limited to designated roads and trails.

7. *Weatherman Draw* (4,268 public surface acres) in Carbon County would be designated an area of critical environmental concern. This significant cultural site would be retained in public ownership and managed to enhance and protect the cultural resources. Management actions affecting this area are: fire would be managed with conditional fire suppression; wood product sales would not be allowed; rights-of-way associated with valid existing oil or gas lease rights would be allowed with restrictions, other rights-of-way would not be allowed; livestock grazing would be allowed; range improvements would be allowed when they do not conflict with the area of critical environmental concern values; locatable minerals would be withdrawn from entry; mineral material sales and permits would not be allowed; oil and gas leasing would be allowed with a No Surface Occupancy stipulation with no waiver, exception or modification provisions; geophysical exploration for oil and gas would be closed; and off-road vehicle use would be limited to authorized use.

8. *Battle Butte* (120 public surface acres) in Rosebud County would be designated an area of critical environmental concern. This historic battlefield would be retained in public ownership and managed to enhance and protect the cultural resources. Management actions affecting the area are: fire would be managed with conditional fire suppression; livestock grazing and range improvements would be allowed; rights-of-way, coal leasing, and mineral material sales and permits would not be allowed; oil and gas leasing would be allowed with a No Surface Occupancy stipulation; geophysical exploration for oil and gas would be allowed on designated roads and trails with restrictions; and off-road vehicle use would be limited to designated roads and trails.

9. *Finger Buttes* (6,206 public surface acres) in Carter County would be designated an area of critical environmental concern. The area would be retained in public ownership and managed for its scenic values. Management actions affecting this area are: fire would be managed with conditional fire suppression; wood product sales would be allowed with restrictions; rights-of-way would avoid the area; livestock grazing and range improvements would be allowed; mineral material sales and permits and nonenergy leasable mineral leasing would not be allowed; oil and gas leasing would be allowed with a Controlled Surface Use stipulation; geophysical exploration for oil and gas would be allowed on designated roads and trails with restrictions; and off-road vehicle use would be limited to designated roads and trails.

10. *Howrey Island* (321 public surface acres) in Treasure County would be designated an area of critical environmental concern. The area would be retained in public ownership and managed for its special wildlife habitat. Management actions affecting this area are: fire would be managed with conditional fire suppression; wood product sales would be allowed with restrictions; rights-of-way would not be allowed; livestock grazing would be allowed; range improvements would be allowed when they do not degrade the area's values; and off-road vehicles would be limited to the BLM road except from February 15th to June 1st. During that time, no vehicles would be allowed, including on the BLM road.

11. *Reynolds Battlefield* (336 public surface acres) in Powder River County would be designated an area of critical environmental concern. This historic battlefield would be retained in public ownership and managed to enhance and protect the cultural resources. Management actions affecting the area are: fire would be managed with conditional fire suppression; timber sales and wood product sales would be allowed with restrictions; rights-of-way would avoid the area; livestock grazing and range improvements would be allowed; coal leasing and mineral material sales and permits would not be allowed; oil and gas leasing would be allowed with a No Surface Occupancy stipulation; geophysical exploration for oil and gas would be allowed on designated roads and trails with restrictions; and off-road vehicle use would be limited to designated roads and trails.

12. The *Fossil Cycad* area (320 public surface acres) in Fall River County, South Dakota, would be designated an area of critical environmental concern. The surface and minerals would be retained in public ownership and managed to protect and enhance significant paleontological resources. Management actions affecting this area are: fire would be managed with conditional fire suppression; timber sales, wood product sales, and geophysical exploration for oil and gas would not be allowed; rights-of-way would be allowed with stipulations; oil and gas leasing would be allowed with a No Surface Occupancy stipulation; livestock grazing would be allowed; locatable minerals would be withdrawn from entry; and off-road vehicle use would be limited to designated roads and trails.

This notice meets the requirements of 43 CFR 1610.7–2 for designation of areas of critical environmental concern.

Dated: December 16, 1997.

Timothy M. Murphy,

District Manager.

[FR Doc. 97–33719 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Ukiah, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, Feb. 5 and 6, 1998, at the BLM's Clear Lake Field Office, 2550 North State Street, Ukiah.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Feb. 5. Agenda items include discussion of a proposal to close Black Sands Beach to motor vehicle access, the status of an environmental impact statement on Healthy Rangeland Standards and Guidelines, discussion of recreation user fees, the status of planning in the Sacramento River Bend Area of Critical Environmental Concern, reports on the status of the plan amendment for South Cow Mountain, and reports from the managers of BLM's Arcata, Clear Lake and Redding field offices. Public comments will be taken at 4 p.m. Depending on the number of persons wishing to speak, a time limit could be established.

On Friday, the council will convene at 8 a.m. at the Clear Lake Field Office and depart immediately for a field tour in the Cache Creek area. Members of the public are welcome, but they must provide their own transportation.

FOR ADDITIONAL INFORMATION: Contact Jeff Fontana, public affairs officer, at (530) 257–5381.

Jeff Fontana,

Public Affairs Officer.

[FR Doc. 97–33695 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved collection, 1010–0049.

SUMMARY: The Department of the Interior has submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act) the collection of information discussed below. The Act requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests. The Act also provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by January 28, 1998.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0049), 725 17th Street, N.W., Washington, D.C. 20503. Send a copy of your comments to the Rules Processing Team, Mail Stop 4020, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the supporting statement and collection of information by contacting the MMS Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart B, Exploration and Development and Production Plans.

OMB Number: 1010–0049.

Abstract: Respondents provide information and maintain records on their proposed exploration or development and production activities on the Outer Continental Shelf (OCS). The MMS uses the information to ensure that OCS operations are carried out in a manner that is safe, pollution free, do not interfere with the rights of other users, and conserve the resources of the OCS. Responses to this collection of information are mandatory. The MMS will protect proprietary information in accordance with the Freedom of Information Act and 30 CFR 250.18, Data and information to be made available to the public.

Description of Respondents: Federal OCS oil and gas and sulphur lessees.

Estimated Number of Respondents: 130.

Frequency: The frequency of response is on occasion.

Estimated Annual Burden on Respondents: Reporting and recordkeeping "hour" burden of 269,438 hours (see chart below); no reporting and recordkeeping "cost".

BURDEN BREAKDOWN

	Reporting requirement	Average number per year	Burden per requirement	Annual burden hours
Citation 30 CFR 250 subpart B and related NTLs:				
31	Notify MMS of preliminary activities	10 notices	1	10
33	Submit initial exploration plan, including surveys, reports, studies, etc.	288 plans	580 hours	167,040
33	Submit revised exploration plan, including surveys, reports, studies, etc.	185 revisions	80 hours	14,800
34	Submit initial development and production plan (or development operations coordination document used in western GOM), including surveys, reports, studies, etc.	97 plans	580 hours	56,260
34	Submit revised development and production plan (or development operations coordination document used in western GOM), including surveys, reports, studies, etc.	294 revisions	82 hours	24,108
34	Submit supplemental deepwater operations plans for projects in GOM water depths greater than 1,000 feet and projects utilizing subsea production technology.	12 plans	580 hours	6,960
Total Reporting		886 responses		269,178
Citation 30 CFR 250 subpart B and related NTLs: Supplemental NTLs	Retain original copies of surveys, studies, reports, etc. (Note: Respondents would retain these as part of usual & customary business activities. The burden is to make them available to MMS if needed.).	130	2 hours	260
Total recordkeeping.				260

Comments: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), each agency must provide notice and otherwise consult with members of the public and affected agencies concerning this collection of information. Comments are specifically solicited in order to: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) evaluate the accuracy of the burden estimates for the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Submit your comments to the offices listed in the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, in order to assure maximum consideration, OMB should receive your comments by January 28, 1998.

Bureau Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: November 25, 1997.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–33749 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, and 13 Units of the National Park Service.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service is proposing to sponsor during the summer of 1998 a project to determine how park visitors at a sample of thirteen parks feel about the recreation fee demonstration program that currently is being tested in approximately 100 projects that involve more than 100 units of the National Park System. The parks proposed to be surveyed in 1998 include:

NPS unit	Estimated number responses	Estimated burden hours
(1) Allegheny Portage Railroad National Historical Site	300	100
(2) Colonial National Historical Park	300	100
(3) Everglades National Park	300	100
(4) Frederick Douglass National Historic Site	300	100
(5) Glen Canyon National Recreation Area	300	100
(6) Golden Gate National Recreation Area	300	100
(7) Grand Canyon National Park	300	100
(8) Independence National Historical Park	400	200
(9) Mesa Verde National Park	300	100
(10) Sitka National Park	300	100
(11) Sleeping Bear Dunes National Lakeshore	300	100
(12) Yellowstone National Park	400	200
(13) Yosemite National Park	400	200
Totals	4,200	1,600

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in this proposed visitor study. The NPS is also asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting this survey is to identify what influences, if any, changes in park fee structures have had on the characteristics and relative mix of different types of park visitors who use the parks, on how implementing the demonstration fee program is affecting the operations of the parks from the perspective of the visitors, and on how the changes associated with the changed fee structures and any resulting changes in park operations affect the experiences of the visitors using these parks. In addition, at the three more intensively surveyed parks, the project goal is to determine how changes caused by the fee demonstration program may be impacting local and regional communities and economies. Results of the surveys proposed to be conducted at these 13 parks will be used by NPS managers in their ongoing planning and management activities to improve visitor services, protect park resources, and better serve the parks' current and future visitors. Results of the recreation fee demonstration program of which this proposed survey activity will be a part will be used by the National Park Service, the Department of the Interior, and the Congress to evaluate the outcome of the trial recreation fee demonstration program and to consider whether or not to enact legislation to establish permanent recreation fee authority for the National Park Service.

DATES: Public comments will be accepted on or before February 27, 1998.

Send Comments To: Dr. John Duffield, 3699 Larch Camp Road, Missoula, Montana 59803, phone and fax: 406–728–9510.

FOR FURTHER INFORMATION CONTACT: Dr. John Duffield at the above address.

SUPPLEMENTARY INFORMATION:

Title: Visitor and Related Survey at 13 Recreation Fee Demonstration Parks.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: Request for new clearance.

Description of Need: NPS needs information concerning park visitor demographics and visitor opinions about the fee demonstration program that the National Park Service is testing. The information proposed to be collected from visitors and park managers in these 13 parks to meet these needs is not available from existing records, sources, or observations.

Automated Date Collection: At the present time, there is no automated way to gather this information, since it includes asking visitors to react to fees, park management, and visitor services at the parks they are visiting. The intrusion on visitors is minimized by contacting them only once during their visit to the park.

Description of Respondents: A sample of visitors to each park.

Estimated Average Number of Respondents: 300 visitors per park at ten of the parks and 400 visitors per park at the other three parks.

Estimated Average Number of Responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated Average Burden Hours Per Response: 20 minutes at each of the 10 parks and 30 minutes at each of the remaining 3 parks.

Frequency of Response: 1 time per respondent.

Estimated Annual Reporting Burden: The total for all parks is estimated to be 1,600 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 97–33727 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, and 11 Units of the National Park System.

ACTION: Notice and request for comments.

SUMMARY: The Cooperative Park Studies Unit of the University of Minnesota is proposing to conduct five projects at up to eleven parks during FY 98:

NPS unit	Estimated number responses	Estimated burden hours
(1) Hopewell Culture National Historical Park	800	270
(2) Canyonlands National Park, Green and Colorado Rivers	1,200	600
(3) Voyageurs National Park	600	300
(4) Perry's Victory & International Peace Memorial	400	135
(5) Great Plains Prairie Cluster parks, including:		
Agate Fossil Beds National Monument	250	85
Effigy Mounds National Monument	250	85
Homestead National Monument of America	250	85
Mount Rushmore National Memorial	250	85
Pipestone National Monument	250	85
Scotts Bluff National Monument	250	85
Wilson's Creek National Battlefield	250	85
Totals	4,750	1,900

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed visitor studies listed above. The NPS is also asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting these surveys generally is to identify characteristics, use patterns, perceptions, preferences and opinions of visitors about management and services in these parks. Each project will have a slightly different focus. Project 1, Hopewell Culture National Historical Park, also will involve a survey mailed to community members to identify characteristics, perceptions and attitudes of people who do not visit the park. This information will help the park be more responsive to, and better serve, the local community. Projects 2 and 3, the Green and Colorado Rivers in Canyonlands National Park and park-wide in Voyageurs National Park, will obtain visitor reactions to managing conflicting uses, management strategies used in the parks, and definitions of standards for quality visitor experiences on both the Green and Colorado Rivers that flow through Canyonlands NP. Project 4, Perry's Victory and International Peace Memorial, will obtain vistor reactions to recent changes made in park management based on past research in the park. Project 5, Great Plains Prairie Cluster parks, will ask visitors to provide information that will contribute to the development of protocols for future monitoring to identify trends. Results of all the surveys at all of the parks will be used by NPS managers in their ongoing planning and management activities to improve vistor services, protect park resources, and better serve the park's current and future visitors.

DATES: Public comments will be accepted on or before February 27, 1998.

Send Comments To: Dr. David W. Lime, Senior Research Associate, Cooperative Park Studies Unit, College of Natural Resources, 115 Green Hall, University of Minnesota, 55108, phone: 612–624–2250.

FOR FURTHER INFORMATION CONTACT: David W. Lime. Voice: 612–624–2250, Fax: 612–625–5212, Email: <dlime@forestry.umn.edu>.

SUPPLEMENTARY INFORMATION:

Title: Visitor and Related Surveys at up to 11 Parks.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: Request for new clearance.

Description of Need: NPS needs information concerning park visitor demographics and visitor opinions about the services that the National Park Service provides. For Project (1), Hopewell Culture National Historical Park Visitor and Community Survey, NPS also needs information about the perceptions of people who do not visit the park to help the park be more responsive to community needs. For Projects 2&3, Canyonlands National Park (Green and Colorado Rivers) Visitor Study, and Voyageurs National Park Visitor Study, NPS also needs information about visitor perceptions of standards for achieving quality visitor experiences. For Project 4, Perry's Victory and International Peace Memorial Visitor Study, NPS also needs information about how visitors are reacting to changes made in park management based on past research in the park. For Project 5, Great Plains Prairie Cluster Visitor Studies at 7 parks, NPS also needs information about visitor perceptions of standards for achieving quality visitor experiences. The information proposed to be collected from visitors in these parks and from community residents to meet these needs is not available from existing records, sources, or observations.

Automated Data Collection: At the present time, there is no automated way to gather this information, since it includes asking visitors to react to management and services at the parks they are visiting. The intrusion on visitors is minimized by contacting them only once during their visit to the park.

Description of Respondents: Project 1: A sample of visitors to the park and a sample of individuals from Ross County, Ohio. Projects 2&3: A sample of visitors on the Green and Colorado Rivers and at Voyageurs National Park. Projects 4&5: A sample of visitors to each park.

Estimated Average Number of Respondents: Project 1: 400 visitors contacted at the park and 400 residents of Ross county. Projects 2&3: 600 at each location. Project 4: 400. Project 5: 250 at each park.

Estimated Average Number of Responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated Average Burden Hours Per Response: Projects 1, 4, and 5: 20 minutes. Projects 2&3: 30 minutes.

Frequency of Response: 1 time per respondent.

Estimated Annual Reporting Burden: Project 1: 270 hours. Projects 2&3: 900 hours. Project 4: 135 hours. Project 5: 85 hours at each park for a total of 595 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 97–33728 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

[DES 97–46]

Availability of the Draft Environmental Impact Statement for the AT&T Corporation P140 Coaxial Cable Removal Project, Soccoro County, New Mexico, Clark County, Nevada, and Kern and San Bernardino Counties, California

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 the National Park Service announces the availability of the Draft Environmental Impact Statement (DEIS). The Superintendent of Mojave National Preserve, is the Department of the Interior's designated lead federal agency official in accordance with 516 DM 2.4(A), the Bureau of Land Management, Riverside District Office, is the designated cooperating agency; and the U.S. Fish and Wildlife Service (USFWS), Ventura Office, is a coordinating agency. This notice also announces public meetings for the purpose of receiving public comments on the DEIS.

The National Park Service (NPS) and the Bureau of Land Management (BLM) received a request from AT&T Corp. to remove portions of a telecommunications system, that is non-supportive to their fiber optic network and to relinquish associated rights-of-way easements. As jurisdictional agencies of federal lands crossed by the project, the NPS and the BLM are responsible for determining terms and conditions of any removal activity and rehabilitation actions to promote restoration of the land. AT&T owns and maintains approximately 709 miles of coaxial communications cable and equipment generally between Mojave, California and Socorro, New Mexico known as the P140 cable system consisting of underground cable, repeater huts, manholes, cable markers, other electronic equipment and access corridor. The project addresses a 220 mile portion of the system including 7.7 miles in New Mexico, 7.4 miles in Nevada, and 205.2 miles in California.

Alternatives

The DEIS describes and analyzes four alternatives in response to AT&T's request to remove cable and to terminate the associated rights-of-way. The original right-of-way grants for public and state lands in New Mexico and private and state lands in California provide AT&T a right to remove cable and equipment; so it was necessary to assume cable and equipment removal in these areas. The proposed action, and two additional action alternatives have been developed to reduce or avoid adverse effects on desert vegetation, wilderness, the desert tortoise and recreational access. The No Action alternative is included as a baseline for comparison of the action alternatives. To varying degrees all action alternatives include cable and structure removal along with rehabilitation of the access corridor and repeater hut sites.

The No Action Alternative includes no cable or structural removal nor any rehabilitation action. AT&T would retain its right-of-way easements and would continue to patrol and maintain the access corridor. The Proposed Action-Alternative A, includes the removal of 174.5 miles of cable, repeater huts and manholes along 220 miles of the right-of-way. Removal of marker posts along 174.2 miles and elimination of 39.8 miles of the access corridor and 4 miles of dual track. In addition, the proposed action includes rehabilitation actions to promote restoration and habitat recovery at the repeater hut sites and along portions of the access corridor. Alternative B, was developed to protect desert tortoise critical habitat on federal lands by not removing cable from these areas and eliminating more of the access corridor within critical habitat. Cable would be removed along 113.7 miles outside of critical habitat on federal lands, repeater huts and manholes would be removed along 174.7 miles, and 51.6 mlles of the access corridor and 4 miles of dual track would be eliminated and rehabilitated. Alternative C, was developed to minimize construction related impacts on desert vegetation and desert tortoise on federal lands by not removing any cable on federal lands and by eliminating the access corridor in wilderness areas only. Cable would be removed along 72.3 miles on primarily state and private lands. Repeater huts and manholes would be removed along 220 miles, marker posts would be removed along 174.7 miles, and 5.4 miles of the access corridor and 4 miles of dual tract would be eliminated and rehabilitated.

Environmental Consequences

In general, the Proposed Action would involve trade-offs between long term, adverse affects on desert resources as a result of cable removal activities and permanent gains or benefits associated with removal of structures and rehabilitation actions at the repeater hut sites and along the access corridor. Removal and rehabilitation activities would result in unavoidable, long term adverse effects on desert vegetation, animal species of concern, soil productivity, and visual aesthetics. Construction activities would also result in temporary adverse air quality and noise impacts. Removal of marker posts along 220 miles would enhance desert tortoise habitat by eliminating predator perches and removal of repeater huts would enhance desert aesthetics. Rehabilitation actions along the access corridor would have an unavoidable, permanent adverse effect on recreational access to open desert areas on federal land. Rehabilitation action along the access corridor and at the repeater hut sites, overall, would have a beneficial impact on desert resources. Alternative B would result in long term losses of desert vegetation and desert tortoise habitat due to 113.7 fewer miles of cable removal activities, but would affect 61 fewer miles than the Proposed action. The enhancement of desert tortoise habitat by eliminating predator perches would be the same as the proposal. Elimination of 12 more miles of the access corridor would result in a greater permanent gain to desert tortoise habitat by eliminating the vehicle related impacts, but would have greater impacts on recreation access than the proposal. The permanent enhancement of habitat values at the repeater hut sites would be the same as the proposal. The permanent visual enhancement associated with removal of aboveground structures would be the same as the proposal. Impacts of Alternative C would result in long term loss of desert vegetation and desert tortoise habitat due to 72.3 fewer miles of cable removal, but would affect 102 miles less than the proposal. The enhancement of desert tortoise habitat by eliminating predator perches along 220 miles would be the same as the proposal. Eliminating 34 fewer miles of the access corridor as compared with the proposal would result in a smaller permanent gain to desert tortoise habitat but would avoid the recreational access impacts of the proposal. The permanent enhancement of habitat values at the repeater hut sites would be the same as the proposal. The permanent visual enhancement associated with removal of the aboveground structures would be the same as the proposal.

The DEIS was prepared in order to evaluate a range of alternatives, assess the impacts of these alternatives and to provide the public with an opportunity to comment. This document will be on public review for at least 60 days. The NPS and the BLM would appreciate any comments on the project.

DATES: Comments on the Draft EIS should be received no later than March 27, 1998. Two public meetings are scheduled for Wednesday, January 14, 1998 (10:00 a.m. until 3:00 p.m.) at the Hole-in-the-Wall Visitor Center within the Mojave National Preserve; and (7:00 p.m.—9:00 p.m.) at the Holiday Inn, 1511 E. Main Street, in Barstow, California. Further information can be obtained by contacting Joan DeGraff of the NPS at (303) 969–2464.

ADDRESSES: Written comments on the Draft EIS should be submitted to Joan DeGraff National Park Service, Denver Service Center, P.O. BOX 25287, Denver, CO. 80225–0287.

SUPPLEMENTARY INFORMATION: Copies of the DEIS are available on the Internet at the NPS web site http://www.nps.gov/planning/index.html. Public reading copies of the DEIS are available for review at local NPS and BLM Offices and at local public libraries. For information on these locations contact: Joan DeGraff at (303) 969–2464.

Dated: December 19, 1997.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 97–33650 Filed 12–24–97; 8:45 am]

BILLING CODE 2310–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, January 12, 1998.

The Commission was established pursuant to Public Law 99–420, Section 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1:00 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held October 27, 1997.
2. Committee reports.
3. Old business.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: December 18, 1997.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 97–33721 Filed 12–24–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

EFFECTIVE DATE: December 19, 1997.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act, as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market estimate made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as

determined by the Commission. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For the 12-month period ending September 30, 1997, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 1.1 billion gallons. Seven percent of this amount is 80.3 million gallons (these figures have been rounded). Therefore, the base quantity for 1998 should be 80.3 million gallons.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Harman (202) 205–3313 in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at (202) 205–3091.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Background

For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Department of Energy to make these determinations as well as the PIERS database of the Journal of Commerce, which is based on U.S. export declarations.

Section 225 of the Customs and Trade Act of 1990 (Public Law 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. The amendment requires the Commission to make a determination of the U.S. domestic market for fuel ethyl alcohol for each year after 1989.

By order of the Commission.

Issued: December 19, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–33676 Filed 12–24–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Criminal Division

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of existing collection: Foreign Agents Registration Act Form (Registration Statement) as required by Rule 200(b) of the Act.

Office of Management and Budget approval is being sought for the information collection listed below. This collection was previously published in the **Federal Register** on September 23, 1997, allowing for a 60-day public comment period. No comments were received by the Criminal Division.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 28, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Registration Statement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form CRM–153. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Others: Not-for-profit institutions, and individuals or households. Form contains registration statement and information used for registering foreign agents under 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 respondents at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information please contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 22, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33670 Filed 12–24–97; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of existing collection: Foreign Agents Registration Act Form (Supplemental Registration Statement) as required by Rule 200(a) of the Act.

Office of Management and Budget approval is being sought for the information collection listed below. This collection was previously published in the **Federal Register** on September 23, 1997, allowing for a 60-day public comment period. No comments were received by the Criminal Division.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 28, 1998. This process is conducted in accordance with 5 CFR 3120.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Supplemental Registration Statement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form CRM–154. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, Not-for-profit institutions, and individuals or households. Form contains supplemental registration and information used in registering foreign agents under 22 U.S.C. 611 *et seq.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,200 respondents at 1.375 hours per response (2 responses annually).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information please contact, Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 22, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33671 Filed 12–24–97; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of existing collection: Foreign Agents Registration Act Form (Exhibit A) as required by Rule 201(a)(1) of the Act.

Office of Management and Budget approval is being sought for the information collection listed below. This collection was previously published in the **Federal Register** on September 23, 1997, allowing for a 60-day public comment period. No comments were received by the Criminal Division.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 28, 1998. This process is conducted in accordance with 5 CFR 3120.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Exhibit A.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form CRM–157. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Others: Not-for-profit institutions, and individuals or households. Form is used to register foreign agents as required by 22 U.S.C. 611, *et seq.*, and must be utilized within 10 days of date contract is made or when initial activity occurs, whichever is first.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75 respondents at .49 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 38 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information please contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 22, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33672 Filed 12–24–97; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of existing collection: Amendment to Registration or Supplemental Registration Reports (Foreign Agents).

Office of Management and Budget approval is being sought for the information collection listed below. This collection was previously published in the **Federal Register** on September 23, 1997, allowing for a 60-day public comment period. No comments were received by the Criminal Division.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 28, 1998. This process is conducted in accordance with 5 CFR 3120.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Amendment to Registration or Supplemental Registration Reports (Foreign Agents).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form CRM–158. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, Others: Not-for-profit institutions, and individuals or households.

This Form is used in registration of foreign agents when changes are required under provisions 22 U.S.C. 611 *et seq.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 respondents at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information please contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 22, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33673 Filed 12–24–97; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division

Agency Information Collection Activities: existing collection; Comment Request

ACTION: Extension of existing collection: Foreign Agents Registration Act Form (Exhibit B) as required by Rule 201(a)(2) of the Act.

Office of Management and Budget approval is being sought for the information collection listed below. This collection was previously published in the **Federal Register** on September 23, 1997, allowing for a 60-day public comment period. No comments were received by the Criminal Division.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until January 28, 1998. This process is conducted in accordance with 5 CFR 3120.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Exhibit B.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form CRM–155. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Others: Not-for-profit institutions, and individuals or households.

Form is used to augment the registration statement of foreign agents as required by the provisions of 22 U.S.C. 611, *et seq.*, within 10 days of the date of a contract is made or when initial activity occurs, whichever is first.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75 respondents at .33 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information please contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 22, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33674 Filed 12–24–97; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Criminal Division

Agency Information Collection Activities: existing collection; Comment Request

ACTION: Extension of existing collection: Foreign Agents Registration Act Form (Short-Form Registration Statement) as required by Rule 202(e) of the Act.

Office of Management and Budget approval is being sought for the information collection listed below. This collection was previously published in the **Federal Register** on September 23, 1997, allowing for a 60-day public comment period. No comments were received by the Criminal Division.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 24, 1998. This process is conducted in accordance with 5 CFR 3120.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Short-form Registration Statement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form CRM–156. Criminal Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Others: Not-for-profit institutions, and individuals or households. Form is used to register foreign agents as required by 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 350 respondents at .429 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information please contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 22, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33675 Filed 12–24–97; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; application for permit to import controlled substances for domestic and/or scientific purposes pursuant to 21 U.S.C. 952.

The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 23, 1998.

We are requesting written comments and suggestions from the public and affected agencies concerning the collection of information. Your comments should address one or more of the following four points:

1. Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Mr. Paul Hugentober, 202–307–2414, Chief, International Drug Unit, Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. If you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, or additional information, please contact Mr. Paul Hugentober.

Additionally, comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530. Additional comments may be submitted to DOJ via facsimile at 202–514–1590.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952.

3. *Agency form number:* DEA Form 357; Applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Title 21, CFR, 1312.12 requires any registrant who desires to import certain controlled substances into the United States to apply on DEA Form 357. Information is needed to determine the suitability for issuance of an Import Permit, ensure that import quotas are not exceeded, and provide the United Nations with information concerning legitimate traffic in narcotics.

1. An estimate of the total estimated number of respondents and the amount of time estimated for an average respondent to respond: 237 respondents at 1 response per year at 15 minutes per response.

2. An estimate of the total public burden (in hours) associated with the collection: 59.25 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: December 19, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–33654 Filed 12–24–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Parole Commission

[Public Law 94–409; 5 U.S.C. Sec. 552b]

Record of Vote of Meeting Closure

I, Michael J. Gaines, Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately 9:30 a.m. on Tuesday, December 16, 1997 at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide three appeals from the National Commissioners' decisions pursuant to 28 CFR Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Michael J. Gaines, Edward F. Reilly, Jr., and John R. Simpson.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 19, 1997.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 97–33845 Filed 12-23-97; 10:18 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning four information collections: (1) Claim for Reimbursement-Assisted Reemployment, CA–2231; (2) Vehicle Mechanical Inspection Report for Transportation Subject to Department of Transportation Requirements, WH–514, and Vehicle Mechanical Inspection Report for Transportation Subject to Department of Labor Safety Standards, WH–514a; (3) Records to be Kept by Employers (Fair Labor Standards Act); (4) Certification by School Official, CM–981. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 5, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: Contact Ms. Patricia Forkel at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA). The Act provides vocational rehabilitation services to eligible injured Federal employees which are paid from the Employees' Compensation Fund. Authority has been granted to provide amounts from the fund to reimburse the employer for a portion of the salary of reemployed disabled Federal workers. The information collected on the Form CA–2231 is used to facilitate prompt reimbursement to certain employers who employ such workers.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect information necessary to ensure timely and accurate payments to eligible employers for reimbursement claims.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Claim for Reimbursement—Assisted Reemployment.

OMB Number: 1215–0178.

Agency Numbers: CA–2231.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Total Respondents: 180.

Frequency: Quarterly.

Total Responses: 720.

Average Time Per Response for Reporting: ½ hour.

Estimated Total Burden Hours: 360.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $230.40.

I. Background

Section 401 of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that farm labor contractors, agricultural employers, or agricultural associations who use any vehicle to transport a migrant or seasonal agricultural worker, ensure that such vehicle conforms to vehicle safety standards prescribed by MSPA and other applicable Federal and State safety standards. The use of the forms WH–514 and the 514a enable an applicant to verify to the Department of Labor or appropriate State agency that the vehicles used to transport such workers meet these safety standards. The WH–514 is used to verify that Department of Transportation safety standards are met for all vehicles other than passenger automobiles or station wagons, and the WH–514a is used to verify that Department of Labor safety standards are met for all vehicles including passenger automobiles or station wagons.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to verify that farm labor contractors, agricultural employers, and agricultural associations have complied with applicable safety standards.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Vehicle Mechanical Inspection Report for Transportation Subject to DOT Requirements and Vehicle Mechanical Inspection Report for Transportation Subject to DOL Safety Standards Request for Employment Information.

OMB Number: 1215–0036.

Agency Numbers: WH–514, WH–514a.

Affected Public: Business or other for profit; Farms.

Total Respondents: 1,050.

Frequency: On occasion.

Total Responses: 3,150.

Average Time Per Response: 45 minutes.

Estimated Total Burden Hours: 2,363.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

I. Background

The Fair Labor Standards Act (FLSA) sets minimum wage, overtime pay, child labor and recordkeeping standards for employees engaged in interstate commerce or in the production of goods for interstate commerce and to employees in certain enterprises. The Fair Labor Standards Act requires that all employers covered by the Act make, keep and preserve records of employees and of wages, hours and other conditions and practices of employment.

Current Actions

The Department of Labor seeks extension of approval to collect this information in order to carry out its responsibility to enforce the provisions of the Fair Labor Standards Act.

Type of Review:: Extension.

Agency: Employment Standards Administration.

Title: Records to be Kept by Employers (Fair Labor Standards Act).

OMB Number: 1215–0017.

Affected Public: Individuals or households; Farms; Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal government.

Total Recordkeepers: 3.7 million.

Frequency: Weekly.

Average Time Per Recordkeeper: 1 hour.

Total Recordkeeping Hours: 819,231.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Background

In order to be a dependent who is eligible for black lung benefits, a child aged 18 to 23 must be a full-time student as described in the Black Lung Benefits Act. The form CM–981 is used to verify full-time student status.

Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to determine continued eligibility of a claimant for benefits.

Type of Review:: Extension.

Agency: Employment Standards Administration.

Title: Certification by School Official.

OMB Number: 1215–0061.

Affected Public: State, Local or Tribal Government; Business or other for-profit; not-for-profit institutions.

Total Respondents: 1,000.

Frequency: Annually.

Total Responses: 1,000.

Average Time Per Response: 10 minutes.

Total Hours: 150.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 19, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–33679 Filed 12–24–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fring benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment

procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the previsions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of the publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Maine:

ME 970037 (Feb. 14, 1997)

Volume II

Pennsylvania:
PA970014 (Feb. 14, 1997)
Virginia:
VA970026 (Feb. 14, 1997)

Volume III

Florida:
FL970045 (Feb. 14, 1997)
Georgia:
GA970003 (Feb. 14, 1997)
GA970022 (Feb. 14, 1997)
GA970031 (Feb. 14, 1997)
GA970032 (Feb. 14, 1997)
GA970039 (Feb. 14, 1997)
GA970040 (Feb. 14, 1997)
GA970050 (Feb. 14, 1997)
GA970065 (Feb. 14, 1997)
GA970073 (Feb. 14, 1997)
GA970083 (Feb. 14, 1997)
GA970084 (Feb. 14, 1997)
GA970085 (Feb. 14, 1997)
GA970086 (Feb. 14, 1997)
GA970087 (Feb. 14, 1997)
GA970088 (Feb. 14, 1997)
North Carolina:
NC970050 (Feb. 14, 1997)
South Carolina:
SC970036 (Feb. 14, 1997)

Volume IV

Illinois:
IL970018 (Feb. 14, 1997)
Michigan:
MI970001 (Feb. 14, 1997)
MI970002 (Feb. 14, 1997)
MI970003 (Feb. 14, 1997)
MI970031 (Feb. 14, 1997)

Volume V

None.

Volume VI

None.

Volume VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 19th day of December 1997.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–33533 Filed 12–24–97; 8:45 am]

BILLING CODE 4510–22–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Program To Prevent Smoking in Hazardous Areas

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Program to Prevent Smoking in Hazardous Areas. MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the For Further Information Contact section of this notice.

DATES: Submit comments on or before February 27, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 317(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 877(c), and 30 CFR § 75.1702 prohibits persons from smoking or carrying smoking materials underground or in places where there is a fire or explosion hazard. Under the Mine Act and § 75.1702, coal mine operators are required to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives magazines, etc. The Mine Act and the standard further require that the mine operator submit the program plan to MSHA for approval. The purpose of the program is to insure that a fire or explosion hazard does not occur.

II. Current Actions

It is necessary to continue this paperwork burden in order to ensure that mine operators continue to submit smoking materials search plans and that miners are continually protected from the hazards of igniting mine explosions or mine fires by the open flames of cigarette lighters and matches and smoldering tobacco products. Smoking continues to be a prevalent habit of underground coal miners when off work when engaged in surface activities. Both the accidental or intentional carrying of smoking materials underground and the deliberate disregard for the safety of other miners can only be mitigated by the systematic programs to prohibit the carrying and use of smoking materials underground as required by 30 CFR § 75.1702.

Type of Review: Extension (without change).

Agency: Mine Safety and Health Administration.

Title: Program to Prevent Smoking in Hazardous Areas.

OMB Number: 1219–0041.

Affected Public: Business or other for-profit institutions.

Cite/Reference/Form/etc: 30 CFR 75.1702.

Total Respondents: 328.

Frequency: On occasion.

Total Responses: 328.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 164.

Estimated Total Burden Cost: $6,888.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 18, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 97–33677 Filed 12–24–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–97–49]

Agency Information Collection Activities; Proposed Collection; Comment Request; Portable Fire Extinguishers—Annual Maintenance Certification Record

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in 29 CFR 1910.157(e)(3). The Agency is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

• Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before February 27, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket

No. ICR–97–49, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 219–8061. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kennedy at (202) 219–8061, ext. 100, or Barbara Bielaski at (202) 219–8078, ext. 142. For electronic copies of the Information Collection Request on the certification requirements for Portable Fire Extinguishers, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on "standards."

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statue specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The inspection certification record required in 29 CFR 1910.157(e)(3) is necessary to assure compliance with the inspection requirements for portable fire extinguishers. They are intended to assure that portable fire extinguishers have an annual maintenance check.

II. Current Actions

This notice requests Office of Management and Budget (OMB) approval of the annual inspection certification requirements contained in 29 CFR 1910.157(e)(3)—Portable Fire Extinguishers.

Type of Review: Existing Collection in Use Without an OMB Control Number.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Portable Fire Extinguishers (29 CFR 1910.157(e)(3))—Annual Maintenance Certification Record.

OMB Number: 1218–.

Agency Number: Docket Number ICR–97–49.

Affected Public: State or local governments; Business or other for-profit.

Number of Respondents: 127,500.

Frequency: Annually.

Average Time per Response: 30-minutes (0.50 hour).

Estimated Total Burden Hours: 63,750.

Total Annualized Capital/Startup Costs: $9,180,000.

Signed at Washington, DC, this 19th day of December 1997.

John F. Martonik,

Acting Director, Directorate of Safety Standards Programs.

[FR Doc. 97–33708 Filed 12–24–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health; notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health, (MACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), to advise the Secretary of Labor on matters relating to occupational safety and health programs, policies, and standards in the maritime industries of the United States, is holding a meeting.

DATES: The meeting will be held January 28 and 29, 1998, beginning at 9:00 a.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Ramada Hotel, Old Town, 901 North Fairfax Street, Alexandria, Virginia 22314.

Any written comments in response to this notice should be sent to the following address: OSHA, Office of Maritime Standards, Room N–3621, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Phone (202) 219–7234, fax (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Office of Maritime Standards, OSHA, (202) 219–7234, extension 141.

SUPPLEMENTARY INFORMATION: At this meeting, the Committee will (1) advise OSHA on the development of an Operating Plan to meet its Strategic Goal of achieving a 15% reduction in injuries and illnesses in the Shipyard Industry; (2) explore innovative outreach and training partnerships; (3) discuss maritime applications of cooperative compliance programs; and (4) receive an update of major Fiscal Year 98 OSHA initiatives.

All interested persons are invited to attend the public meetings of MACOSH, including this one at the time and place indicated above. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Theda Kenney at 202–219–8061, no later than January 15, 1998, to obtain appropriate accommodations.

MACOSH will meet as a whole and also in small focus groups. Written data, views or comments for consideration by the Committee may be submitted, preferably with 20 copies, to Larry Liberatore at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Members of the general public may request an opportunity to make oral presentations at the meeting. Oral presentations will be limited to statements of fact and views, and will not include any questioning of the committee members or other participants unless these questions have been specifically approved by the chairperson. Anyone wishing to make an oral presentation should notify Larry Liberatore before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee.

Authority: This notice is issued under the authority of section 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (19 U.S.C. 655,666), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR Part 1912.

Signed at Washington, D.C., this 17th day of December 1997.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 97–33678 Filed 12–24–97; 8:45 am]

BILLING CODE 4510–26–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, January 15, 1998 and Friday, January 16, 1998 at the Embassy Suites Hotel, 1250 22nd Street N.W., Washington, DC in the Consulate/Ambassador Room. The meetings are tentatively scheduled to begin at 10:00 a.m. on January 15 and at 8:30 a.m. on January 16.

At the meeting, the Commission will be reviewing a draft of its March 1998 report to the Congress. Among the topics the Commission will discuss are: improving Medicare+Choice capitation payments, risk adjustment, the adjusted community rate, PPS operating and capital updates, disproportionate share payments, moving to prospective payment systems for post-acute care, payment policy for hospital outpatient department services, physician payment policy, payment issues for special populations, and graduate medical education.

Final agendas will be mailed on January 9, 1998 and will be available on the Commission's web sites (WWW.PPRC.GOV and WWW.PROPAC.GOV) at that time.

ADDRESSES: 2120 L Street, N.W.; Suite 200; Washington, D.C. 20037. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Ann Johnson, Executive Assistant, at 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220 after January 9, 1998.

Lauren LeRoy,

Executive Director.

[FR Doc. 97–33733 Filed 12–24–97; 8:45 am]

BILLING CODE 6820–BW–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317, 50–318 and 72–8]

Baltimore Gas Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and the Independent Spent Fuel Storage Installation); Order Extending the Effectiveness of the Approval of the Transfer of Licenses

I

By Order dated October 18, 1996, the Nuclear Regulatory Commission (the Commission or NRC) approved the proposed transfer of Operating Licenses Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and Material Licenses No. SNM–2505 for the Calvert Cliffs Independent Spent Fuel Storage Installation from Baltimore Gas and Electric Company (BGE) to Constellation Energy Corporation. The approval was given in response to an application filed by BGE dated April 5, 1996, for consent under Sections 50.80 and 72.50 of Title 10 of the *Code of Federal Regulations* (10 CFR 50.80 and 10 CFR 72.50). By its terms, the Order of October 18, 1996, becomes null and void if the transfer of the licenses is not consummated by December 31, 1997, unless on application and for good cause shown, such date is extended by the Commission.

II

By letter dated November 21, 1997, BGE submitted a request for an extension of the effectiveness of the Order of October 18, 1996, such that approval of the transfers would remain effective until December 31, 1998. According to this submittal, all of the necessary regulatory approvals have been obtained to permit the consummation of the merger between BGE and Potomac Electric Power Company, resulting in Constellation Energy Corporation. BGE asserts, however, that the Maryland and District of Columbia Public Service Commission attached conditions to their approvals that are inconsistent with the respective merger applications. The companies proposing to merge have filed joint requests with the Maryland and District of Columbia Commissions for rehearing of their original orders approving the merger.

According to BGE, an intervenor in the Maryland case appealed the Maryland Commission's order approving the merger to the Circuit Court in Baltimore Count, and this appeal has delayed the expected merger process. The Circuit Court affirmed the Maryland Commission's order on October 27, 1997, but the Court's order has now been appealed to the Court of Special Appeals of Maryland. The issues being appealed, and those that are contained in the requests for rehearing in both Maryland and the District of Columbia, do not change the information provided to the NRC on which its October 18, 1996, Order was based.

The staff has considered the foregoing request of November 21, 1997, and has determined that BGE has demonstrated good cause to extend the effectiveness of the Order of October 18, 1996, approving the license transfers.

III

Accordingly, pursuant to Sections 161b and 161i of the Atomic Energy Act, as amended, 42 USC §§ 2201(b) and 2201(l), *It is hereby ordered* that the effectiveness of the Order of October 18, 1996, approving the transfer of the licenses described herein is extended such that if the subject transfer of licenses is not consummated by December 31, 1998, the Order of October 18, 1996, shall become null and void.

This Order is effective upon issuance.

For further details with respect to this action, see the letter dated November 21, 1997, from BGE which is available for public inspection at the Commission's Public Document Room, the Gelman Building 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of December 1997.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–33680 Filed 12–24–97; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Energy Company; Big Rock Point Nuclear Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, regarding biennial exercise of the offsite emergency plan to Consumers Energy Company (Consumers or the licensee), for the Big Rock Point (BRP) Nuclear Plant located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would allow a one-time schedular exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, which states that each licensee at each site

shall exercise its offsite plans biennially with full participation by each offsite authority having a role under the plan.

By letter dated July 17, 1997, as supplemented or modified by letters dated August 5 and 8, September 4, December 9, 1997, the licensee requested exemption from the above requirement to delay the 1997 offsite biennial exercise (initially scheduled for October 21, 1997, and then rescheduled to December 16, 1997) for the BRP facility until June 1998, on the basis, in part, that "additional time would allow the Big Rock Point staff to revise the October 1997 exercise scenario to reflect actual plant configuration during decommissioning." Notwithstanding this request, the NRC staff proposes to grant a one-time schedular exemption for the 1997 biennial offsite exercise to be performed on or before March 31, 1998.

The State of Michigan also described its position that the offsite biennial emergency exercise should reflect actual plant conditions. As noted in a letter from the State of Michigan to the Federal Emergency Management Agency (FEMA) Region IV, dated November 25, 1997, the State feels that "requiring the State and counties to conduct an exercise at this time, based on assumptions of an operating full-power reactor, would be unrealistic and counterproductive to all parties involved." The State further asserted that a "more realistic test of local and State capabilities would be to assess response to an accident once all plans and procedures have been revised to reflect the status of the plant." By letter dated December 5, 1997, the State reiterated its intent to participate in an exercise of more clearly defined scope, if the exercise scenario were revised to reflect the permanently shut down and defueled condition of the BRP facility.

By letter dated December 17, 1997, FEMA informed the Commission that the current offsite emergency plan and the implementation capabilities of the associated offsite emergency staff are adequate. Further, FEMA agreed that the exercise scenario should be revised to be consistent with the defueled and permanently shut down condition of the BRP facility (as proposed by the licensee in their letter to the NRC dated August 8, 1997) and that the biennial exercise be delayed to allow all parties sufficient time to prepare and conduct the revised exercise scenario. The licensee provided a similar assessment of the adequacy of the offsite emergency plan and the capability of the offsite emergency preparedness response organizations in a letter to the Commission dated December 9, 1997.

The previous emergency preparedness exercise at BRP involving both offsite and onsite participation was successfully conducted on August 22–23, 1995. By letter dated December 13, 1995, FEMA informed the NRC Region III office that the emergency plans at BRP can be implemented and are adequate to give reasonable assurance that appropriate measures can be taken offsite to protect the health and safety of the public in the event of a radiological emergency. No deficiencies were noted during this exercise. On September 10, 1996, an onsite emergency preparedness exercise was also successfully conducted.

The schedule for future exercises will not be affected by the proposed exemption. The staff is still reviewing licensee request for exemption from certain 10 CFR Part 50 requirements for emergency planning (Consumers letter to the Commission, dated September 19, 1997). Therefore, except for the proposed schedular change for the offsite exercise, the licensee is required to comply with all NRC rules and regulations and Consumers' current emergency plan, as approved or until revised by subsequent Commission approval.

Need for the Proposed Action

The proposed exemption is needed because additional time is required for Consumers to revise the December 16, 1997, offsite exercise scenario to reflect the permanently shutdown and defueled condition of the BRP facility. Further, because the exercise scenario will be changed, additional time will be needed for FEMA and the State of Michigan to prepare appropriate exercise objectives and for the NRC staff to review the revised exercise scenario.

Environmental Impacts of the Proposed Action

The NRC evaluation of the proposed exemption from 10 CFR Part 50, Appendix E, Section IV.F.2.c, indicates that the granting of the proposed exemption will not involve any measurable environmental impacts, since the exemption deals with the exercise of the licensee's emergency preparedness plan. The BRP facility permanently ceased reactor power operations on August 30, 1997, and permanently transferred all reactor fuel to the spent fuel pool on September 20, 1997. The licensee maintains and operates the plant in a configuration necessary to support the safe storage of spent fuel and compliance with the facility operating licensee and NRC rules and regulations.

No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action. With regard to potential nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request, thereby requiring the licensee to perform the offsite exercise with a scenario that does not reflect the configuration of the BRP facility; such an action would not enhance the protection of the environment. Denial of the application would result in no change in current environmental impacts. The impacts of the proposed action and the alternative are similar.

Alternative Use of Resources

This action does not affect the use of resources, since the schedule for future exercises will not be affected by this exemption. Further, this action does not involve the use of any resources not previously considered in BRP's Environmental Report for Decommissioning, dated February 27, 1995.

Agencies and Persons Consulted

In accordance with its stated policy, on December 18, 1997, the NRC staff consulted with the Michigan State Official, David W. Minnaar, Chief, Radiological Protection Section, Drinking Water and Radiological Protection Division, Michigan Department of Environmental Quality, and FEMA Official, Ihor W. Husar, Chief, State and Local Regulatory Evaluation and Assessment Branch, Exercises Division, regarding the environmental impact of the proposed action. State and FEMA Officials support the granting of the proposed exemption and had no comments regarding environmental impacts.

Finding of No Significant Impact

On the basis of the environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed exemption, see licensee letters dated July 17, August 5 and 8, September 4, and December 9, 1997, which are available at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room, North Central Michigan College, 1515 Howard Street, Petosky, MI 49770.

Dated at Rockville, Maryland, this 19th day of December 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–33681 Filed 12–24–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22948; File No. 812–10886]

The Sierra Variable Trust, et al.; Notice of Application

December 19, 1997.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under Section 17(b) of the Investment Company Act of 1940 ("1940 Act"), exempting Applicants from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit the merger of two series of a registered management investment company and the combination of corresponding sub-accounts of a separate account investing therein.

SUMMARY OF APPLICATION: Applicants seek an order exempting them from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit the merger of the Trust's Short Term Global Government Fund (the "Global Government Fund") into the Trust's Short Term High Quality Bond Fund (the "High Quality Bond Fund") (the "Merger") and the combination of corresponding sub-accounts of the Separate Account investing therein.

APPLICANTS: The Sierra Variable Trust ("Trust"), American General Life Insurance Company ("Insurance Company") and American General Life Insurance Company Separate Account D ("Separate Account").

FILING DATES: The application was filed on December 5, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1997, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o J.B. Kittredge, Esq., Ropes & Gray, One International Place, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Michael Koffler, Attorney, or Mark Amorosi, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, an open-end, management investment company, is a Massachusetts business trust. It is a series investment company currently comprised of fourteen separate investment portfolios, two of which are the High Quality Bond Fund and the Global Government Fund. Five portfolios are asset allocation portfolios (the "Asset Allocation Portfolios") investing in six to eight of the other funds (the "Funds") (the Asset Allocation Portfolios and the Funds are hereafter referred to collectively as the "Portfolios"). The Trust issues a separate series of shares of beneficial interest in connection with each Portfolio and has registered these shares under the Securities Act of 1933 (the "1933 Act") on Form N1–A (File No. 33–57732).

2. The Trust has sold shares of the Portfolios to the Separate Account, which is a separate account established by the Insurance Company to receive and invest net purchase payments paid under variable annuity contracts issued by the Insurance Company (the "Contracts"). The Separate Account is registered as a unit investment trust under the 1940 Act (File No. 811–2441). The Funds are investment options available under one form of the Contract (the "Primary Contracts"). The Asset Allocation Portfolios are investment options currently available under a second form of the Contract (the "Secondary Contracts"). Owners of the Contracts ("Owners") may choose to have their net purchase payments allocated among investment divisions ("Divisions") of the Separate Account, which Divisions correspond to the fourteen series of the Trust.

3. The Insurance Company, a stock life insurance company, is leased to sell life, accident and health insurance and annuities in the District of Columbia and 49 states. The Insurance Company is the depositor and sponsor of the Separate Account.

4. Sierra Investment Advisors Corporation ("SIAC"), an indirect, wholly owned subsidiary of Washington Mutual, Inc. ("WMI"), is the investment manager the High Quality Bond Fund and the Global Government Fund. Under an investment sub-advisory agreement with SIAC, Scudder, Stevens & Clark, Inc. ("Scudder"), an unaffiliated corporation, manages the High Quality Bond Fund and the Global Government Fund. SIAC receives a fee for its investment advisory services at an annual percentage of the average daily net assets of each Find,. Neither of these two Funds pays Scudder directly for its services, which are paid for by SIAC. Sierra Fund Administration Corporation ("SFAC") serves as the administrator for both Funds and receives from each Fund an administrative fee equal to 0.18% of average daily net assets.

5. Applicants state that the Trustees of the Trust, including a majority of those trustees who are not interested persons of the Trust, SIAC, WMI and their affiliates or the Insurance Company, have unanimously approved a Plan of Reorganization (the "Plan") pursuant to which the High Quality Bond Fund and the Global Government Fund would be merged. Applicants state that the principal purposes of the Merger are (1) to eliminate a Fund for which there is limited demand in a way that provides current shareholders of the Global Government Fund with the opportunity to pursue compatible investment goals,

(2) to reduce management and transaction costs, and (3) to improve investment performance.

6. Applicants state that, pursuant to the Plan, on the closing date ("Closing Date"), the High Quality Bond Fund would acquire all of the assets and liabilities of the Global Government Fund. The net asset value of the shares of the High Quality Bond Fund issued in exchange shall equal the net asset value of the shares of the Global Government Fund then outstanding. Each Global Government Fund shareholder (which term includes both the Global Government Fund Division as well as the Asset Allocation Portfolios investing in the Global Government Fund) will receive the number of full and fractional shares of the High Quality Bond Fund equal in value at the date of the exchange to the value of such shareholder's shares of the Global Government Fund. Thereafter, the expenses borne by such shareholders will be those applicable to the High Quality Bond Fund. The shares of the High Quality Bond Fund issued pursuant to the Merger have been registered under the 1933 Act on Form N–14 (File No. 333–37637).

7. Applicants state that the Trust intends to submit the proposed Merger to shareholders for approval. Owners of a Primary Contract may provide voting instructions to the Insurance Company for the number of full or fractional shares of a Fund equal to the cash value of the Primary Contract held in the Division of the Separate Account investing in the Global Government Fund, divided by the net asset value per share. Fund shares attributable to the Secondary Contracts or to Primary Contracts for which no voting instructions are received will be voted by the Insurance Company in the same proportion as the instructions by Owners of Primary Contracts. The affirmative vote of a majority of the outstanding shares of the Global Government Fund will be required to approve the transaction.

8. Applicants also state that, contemporaneously with the Merger and subject to shareholder approval, Composite Research & Management Corporation ("Composite"), another indirect, wholly-owned subsidiary of WMI, will become the investment manager of the High Quality Bond Fund, with Composite providing the same services as are currently provided by SIAC and Scudder for a fee equal to the fee currently charged by SIAC. Murphey Favre Shareholders Services, Inc. ("MFSS"), an affiliate of Composite, would provide at the same rate the same administrative services that are currently provided by SFAC.

9. Applicants state that if Composite is approved as the investment manager for the High Quality Bond Fund and the Merger is effected, Composite and MFSS have undertaken from the date of the Merger and at least through December 31, 1998, to waive their fees and/or to bear certain expenses to the extent necessary to limit total operating expenses of the High Quality Bond Fund to the annual rate of 1.00% (which equals the annualized rate of the High Quality Bond Fund for the first six months of 1997, taking into account the waiver of certain advisory fees during this time). Neither SIAC, SFAC, Composite nor MFSS has indicated their intentions with respect to the Global Government Fund should the merger not be approved. However, assuming the SIAC/SFAC waivers remain in effect, Applicants assert that the Merger would lower the expenses for Global Government Fund shareholders from the annual rate of 1.26% (1.28% during the last complete fiscal year) to the annual rate of 0.92%, with a guarantee through December 31, 1998, that the expense ration could not exceed 1.00%.

10. Applicants assert that the High Quality Bond Fund and the Global Government Fund have substantially similar investment objectives: the High Quality Bond Fund's objective is to provide "as high a level of current income as is consistent with prudent investment management and stability of principal." The Global Government Fund's objective is "to provide high current income consistent with protection of principal." Applicants state that the Global Government Fund generally has a substantially higher percentage of its assets in securities of foreign issuers, has greater flexibility to invest in lower-rated securities, and is non-diversified within the meaning of the 1940 Act. The High Quality Bond Fund is diversified and may invest only in investment grade securities. Applicants maintain, however, that there is a substantial overlap in the securities eligible for purchase by both Funds and each seeks to maintain a targeted average weighted maturity of less than 3 years.

11. Applicants state that the Trustees have determined that the interests of Owners of Contract indirectly invested in the Global Government Fund and the High Quality Bond Fund will not be diluted as a result of the proposed transactions and that the Merger is in the best interests of each affected Fund and the shareholders thereof. Applicants represent that the Merger is expected to result in economies of the scale and cost savings which will be reflected in improved performance prospects. Certain expenses of the affected Funds that are incurred by each Fund, such as fees for independent auditors and custodial fees, will be reduced on a percentage basis as the Funds are combined. The larger fund also will allow the adviser the opportunity to better able to choose new investments, reinvest funds from maturing investments and manage cash flows.

12. Applicants represent that apart from the fact that the future cash value of Contracts indirectly invested in the Global Government Fund will reflect the investment performance and expenses of the High Quality Bond Fund, the Merger will have no economic impact on Contract values, fees or charges under the Contracts. Applicants also represent that the Merger will have no effect on the rights or interests of Owners, other than reducing from 9 to 8 the number of investment options available to Owners of Primary Contract and reducing by 1 the number of asset classes available to the Asset Allocation Portfolios. Applicants state that the proposed transaction will not have adverse tax consequences for the Owners.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting the Merger from the provisions of Section 17(a) of the 1940 Act, to the extent necessary to permit the High Quality Bond Fund to acquire substantially all of the assets of the Global Government Fund in exchange for shares of the High Quality Bond Fund.

2. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to the registered investment company. Section 17(a)(2) of the 1940 Act, generally, prohibits the persons described above, acting as principal, from knowingly purchasing any security of other property from the registered investment company.

3. Section 2(a)(3) of the 1940 Act defines the term "affiliated person," in relevant part, as (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum of more of the outstanding voting securities of such other person; (b) any person 5 per centum of more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by such person; and (c) any person directly or indirectly controlling, controlled by, or under common control with, such other persons.

4. Applicants state that because the Insurance Company, through the Separate Account, technically owns 100% of the outstanding shares of each Fund, it is arguably an affiliate of each Portfolio. In this case, each Fund may be an affiliated person of an affiliated person (*i.e.*, the Insurance Company) and transactions between the Funds may be subject to the prohibition of Section 17(a) of the 1940 Act. Applicants also state that an affiliation between the Funds also may arise if they are deemed to be under common control. Since the Funds are part of the same investment company, they each have common directors and officers as well as a common investment adviser. If the Funds are considered to be under common control, they could be affiliated persons of one another.

5. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in the registration statement and reports filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants represent that the terms of the proposed Merger as set forth in the Plan, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also represent that the proposed Merger is consistent with the policies of the High quality Bond Fund and the Global Government Fund as recited in the Trust's current registration statement and reports filed under the 1940 Act, and with the general purposes of the 1940 Act. Applicants state that the Merger does not present any of the conditions or abuses that the 1940 Act was designed to mitigate or eliminate.

7. Applicants state that the Board of Trustees of the Trust, including a majority of the disinterested Trustees, has reviewed and approved the terms of the Merger as set forth in the Plan, including the consideration to be paid or received by all parties. Applicants also state that they have independently determined that the proposed Merger will be in the best interests of each affected Fund and of the Owners indirectly invested in each affected Fund and that the consummation of the Merger will not result in the dilution of the current interests of any shareholder or Owner.

8. Applicants state that in determining whether to recommend approval of the Plan to shareholders and Owners, the Board of Trustees of the Trust, including a majority of disinterested Trustees, inquired into a number of matters and considered various factors, as described in the application. The Trustees noted, in particular, the potential benefits to shareholders and Owners, the substantially similar investment objectives of the affected Funds, the terms and conditions of the Plan which might affect the price of shares (or Owner interests) to be exchanged, and the direct or indirect costs to be incurred by the affected Funds or shareholders or Owners invested in such Funds. The Board of Trustees also considered the recent trend of declining annuity contract purchase payments and increased redemptions, as well as expectations of future payments under the variable annuity contracts which permit allocation to the global Government Fund. Applicants state that the Board of Trustees believes action is necessary to provide Owners certain benefits and to avoid certain adverse consequences to the Owners. Applicants also state that, in addition to anticipated lower expenses, a merger of the Global Government Fund and the High Quality Bond Fund should result in a larger portfolio which can be managed more effectively.

9. Applicants state that the proposed Merger will not in any way affect the price of outstanding shares of the High Quality Fund, nor will it in any way affect the Contract values or interests of Owners indirectly invested therein. Under the Plan, the transfer of assets of the Global Government Fund to the High Quality Bond Fund, and the issuance of shares of the High Quality Bond Fund in exchange therefor, will be made on the basis of the relative net asset values of the affected Funds on the Closing Date.

10. Applicants represent that the aggregate value of shares to be issued to the Global Government Fund Division under the Plan will exactly equal the aggregate value of shares held by that Division immediately prior to the proposed Merger. The aggregate value of all Owner's outstanding units of interest of the Global Government Fund Division will not change on the Closing Date as a result of the Merger and the aggregate value of such units supporting the cash value of each Owner indirectly invested in that Division immediately prior to the Merger will remain unchanged immediately after the Merger. The same is true for Divisions owning Global Government Fund shares through the Asset Allocation Portfolios. Applicants state that Composite, WMI or one of its affiliates will pay all of the Trust's direct and indirect expenses of the Merger.

11. Rule 17a–8 under the 1940 Act exempts from Section 17(a) mergers, consolidations or purchases or sales of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors and/or common officers. Because of the potential affiliations noted above, the Funds may not be able to rely on rule 17a–8. Applicants state, however, that the Trustees have evaluated the relevant considerations and have determined that the Plan will comply with the conditions that rule 17a–8 requires.

Conclusion

Applicants submit that, for all of the reasons summarized above, the terms of the proposed Merger as set forth in the Plan, including the consideration to be paid and received, are reasonable and fair to the Trust, to the affected Funds and to shareholders and Owners invested therein and do not involve overreaching on the part of any person concerned. Furthermore, the proposed Merger will be consistent with the policies of each of the affected Funds as recited in the Trust's registration statement and reports filed under the 1940 Act and with the general purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–33713 Filed 12–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39462; File No. SR-Amex-97-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Fee Rebate

December 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 16, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is issuing a one-time credit against the Exchange's monthly Floor Facility Fee for those members who were charged such fee during 1997 (the fee is at a rate of $1,400.00 per annum for regular and option principal members and $700.00 per annum for limited trading permit holders).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As the Exchange has had a rewarding year from a financial perspective, it has decided to issue a one-time credit against its monthly Floor Facility Fee for those members who were charged such fee during 1997 (the fee is at a rage of $1,400.00 per annum for regular and option principal members and $700.00 per annum for limited trading permit holders).

2. Statutory Basis

This Exchange represents that proposed rule change is consistent with section 6(b) of the Act,[2] in general, and furthers the objectives of Section 6(b)(4)[3] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e) of Rule 19b-4 thereunder.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No.SR-Amex-97-47 and should be submitted by January 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-33711 Filed 12-24-97; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b-4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39448; File No. SR-MBSCC-97-6]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Trade Restrictions Between Accounts and Transfer of Trades

December 15, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 15, 1997, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") and on September 24, 1997, amended the proposed rule change (File No. SR-MBSCC-97-6) as described in Items I and II below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend MBSCC's rules to incorporate previously approved procedures regarding trade restrictions between accounts and transfer of trades.

[1] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MBSCC publishes a manual known as the Clearing Source Book ("Source Book"). The Source Book is designed to be a self-instructional tool for MBSCC participants that offers guidance about MBSCC services, procedures, forms, schedules, and regulations. It is referred to in the rules of MBSCC as the "Procedures."

In 1996, the Commission approved a proposed rule change to the Source Book relating to trade restrictions between accounts.[3] Upon subsequent review, MBSCC realized it inadvertently omitted this Source Book section from the rules of MBSCC. The proposed rule change will add a new Article II, Section 3 to MBSCC's rules to restrict participants with multiple accounts from submitting to the settlement balance order ("SBO") system trades between those accounts as well as between a participant's account and the account of a related participant. The SBO settlement netting process was not intended for such trades, and the implementation of these trading restrictions is designed to help prevent MBSCC's clearance and settlement process from being inappropriately influenced. However, MBSCC will waive the restrictions upon a showing by a participant that its trades will not be effected for an improper purpose. In all instance, participants may record these trades on a trade-for-trade basis.

To provide participants with operational and administrative flexibility, the Source book provides that, subject to contraside approval, MBSCC participants may transfer trades from one account to another or may change the type of trades recorded within a specific account under specified circumstances.[4] The proposed rule change will add Article II, Section 4, to MBSCC's rules to mirror this provision. Where participants are parties to an acquisition, merger, or reorganization, this process assists participants when they must assume obligations or transfer trades. It also aids participants generally in facilitating transfers through a uniform and streamlined process as compared to a multistep cancellation and rebooking procedure.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it clarifies the rules of MBSCC relating to trade restrictions between accounts and transfer of trades and thereby should facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received. MBSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The proposed rule facilitates a uniform and streamlined process by clarifying the rules of MBSCC relating to trade restrictions and transfer of trades and thus should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register because the procedures incorporated in the proposed rule change were previously approved by the Commission, they have no substantive effect on participants, and they eliminate inconsistencies between MBSCC's rules and Source Book.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR-MBSCC-97-6 and should be submitted by January 20, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MBSCC-97-6) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-33716 Filed 12-24-97; 8:45 am]

BILLING CODE 8010-01-M

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] Securities and Exchange Act Release No. 37205 (May 13, 1996), 61 FR 24989 (File No. SR-MBSCC-95-8).

[4] Since its inclusion in the October 1992 edition of the Source Book, the transfer of trade process has been an unchanged component of MBSCC's procedures. Source book Chapter III, Account Structure.

[5] 15 U.S.C. 78q-1.

[6] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39461; File No. SR–PCX–97–35]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Pacific Exchange Inc., Relating to Listing and Trading Standards for Portfolio Depositary Receipts

December 17, 1997.

I. Introduction

On August 25, 1997, the Pacific Exchange Inc., ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2], a proposed rule change to add Commentary to Rule 5.3(b) and add Rule 8.300 of PCX's rules relating to the listing and trading of Portfolio Depositary Receipts ("PDRs").

The proposed rule change together with the substance of the proposal, was published for comment in the **Federal Register** on October 14, 1997.[3] No comments were received on the proposal. This order approves the proposal.

II. Background and Description

The Exchange proposes to adopt new Commmentary to Rule 5.3(b) and new Rule 8.300 to accommodate the trading of PDRs, *i.e.*, securities which are interests in a unit investment trust ("Trust") holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (i) closely tracks the underlying portfolio of securities, (ii) trades like a share of common stock, and (iii) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade, or trade pursuant to unlisted trading privileges ("UTP"), PDRs based on one or more stock indexes or securities portfolios. PDRs based on each particular stock index or portfolio shall be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based shall be selected by the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised as deemed necessary or appropriate to maintain the quality and character of the index or portfolio. As discussed in more detail below, PCX intends to trade two existing PDRs currently traded on the American Stock Exchange ("Amex")—Standard & Poor's Depositary Receipts ("SPDRs") and Standard & Poor's MidCap 400 Depositary Receipts ("MidCap SPDRs")—pursuant to UTP upon approval of these listing standards. PCX is not asking for permission to list SPDRs or MidCap SPDRs at this time, but rather will trade SPDRs and MidCap SPDRs pursuant to UTP once the generic listing standards set forth herein are approved. Pursuant to Rule 12f–5 under the Act, in order to trade a particular class or type of security pursuant to unlisted trading privileges, PCX must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for PDRs, and PCX's proposed rule change is designed to create similar standards for PDR listing and/or trading on PCX.

If at a later time PCX and the issuer of the product desire to list SPDRs and MidCap SPDRs or any other PDRs on the Exchange, the Exchange will request Commission approval for that listing in a separate proposed rule the change filed pursuant to Section 19(b) of the Act.[4] Additionally, in the event a new PDR is listed on another exchange using listing standards that are different than current PCX listing standards or the PCX listing standards proposed in this filing, the PCX will file a proposed rule change pursuant to Section 19(b) of the Act to adopt the listing standard before it trades that PDR pursuant to unlisted trading privileges.

Criteria for Initial and Continued Listing

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust. If the Exchange trades a particular PDR pursuant to UTP, the Exchange will follow the listing exchange's determination of the appropriate minimum number.

Because the Trust operates on an open-end type basis, and because the number of PDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the index on which the Trust is based is no longer calculated; or

(c) If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs will be redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the sponsor of the Trust ("Sponsor"), following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

Trading of PDRs

Dealings in PDRs on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures will also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.[5]

With respect to trading halts, the trading of PDRs will be halted, along with the trading of all other listed or traded stocks, in the event the "circuit breaker" thresholds are reached.[6] In addition, for PDRs tied to an index, the triggering of futures price limits for the Standard & Poor's 500 Composite Price Index ("S&P 500 Index"), Standard & Poor's 100 Composite Price Stock Index ("S&P 100 Index"), or Major Market Index ("MMI") futures contracts will not in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in trading in S&P 100 Index Options ("OEX"), S&P 500 Index Options ("SPX"), or MMI Options ("XMI"), in deciding whether to halt trading in PDRs.

The Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 7.11 the Exchange's rule governing trading halts for index options in exercising its discretion to halt or suspend trading. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value, or whether other unusual conditions or circumstance detrimental to the maintenance of a fair and orderly market are present.

Disclosure

Proposed Rule 8.300(c) requires that members and member organizations provide to all purchasers of each series of PDRs a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a member or member organization carrying an omnibus account for a non-member broker-dealer will be required to inform such non-member that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to member and member organizations. The written description must be included with any sales material on that series of PDRs that a member provides to customers or the public. Moreover, other written materials provided by a member or member organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristic of [the series of PDRs] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs]." Additionally, as noted above, the Exchange requires that members and member organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

With respect to disclosure, because SPDRs and MidCap SPDRs will be traded pursuant to UTP and will not be listed on PCX at this time, PCX does not intend to create its own product description to satisfy the requirements of proposed Rule 8.300(c) which requires members to provide to purchasers, a written description of the terms and characteristics of SPDRs and MidCap SPDRs in a form approved by the Exchange. Instead, the PCX will deem a member or member organization to be in compliance with this requirement if the member delivers either (i) the current product description produced by the Amex from time to time, or (ii) the current prospectus for the SPDR or MidCap SPDR, as the case may be.[7] It will be the member's responsibility to obtain these materials directly from Amex for forwarding to purchasers in the time frames prescribed by PCX and Commission rules. The PCX will notify members and member organizations of this requirement in a notice to members.

SPDRs and MidCap SPDRs Generally

As discussed above, rules to accommodate the trading of PDRs generally on Amex, along with Amex's trading of SPDRs and MidCap SPDRs, were previously approved by the Commission.[8] The information provided below is intended to provide a description of how SPDRs and MidCap SPDRs are created and traded and is almost identical to that discussed in the original Amex Approval Order. The Sponsor of each series of PDRs traded on the Amex is PDR Services Corporation, a wholly-owned subsidiary of the Amex. The PDRs are issued by a Trust in a specified minimum aggregate quantity ("Creation Unit") in return for a deposit consisting of specified numbers of shares of stock plus a cash amount.

The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Index, known as SPDRs. SPDRs have been trading on the Amex since January 29, 1993. The second Trust to be formed in connection with the issuance of PDRs was based on the S&P MidCap 400 index,[9] known as MidCap SPDRs.[10] The Sponsor of the two Trusts has entered into trust agreements with a trustee in accordance with Section 26 of the Investment Company Act. PDR Distributors, Inc. ("Distributor") acts as underwriter of both SPDRs and MidCap SPDRs on an agency basis. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.[11]

SPDR and MidCap SPDR Creation

All orders to create SPDRs or MidCap SPDRs in creation unit size must be placed with the Distributor, and it is the responsibility of the Distributor to transmit such orders to the Trustee.[12]

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39186 (October 2, 1997), 62 FR 53373.

[4] The Commission notes that PCX, if it were to file a proposed rule change to list and trade a new PDR, would have to request the appropriate exemptions for the new product under the Investment Company Act of 1940 ("Investment Company Act") (such as those exemptions requested for SPDRs and MidCap SPDRs), such an exemption from Investment Company Act Section 22(d) and Rule 22c–1 thereunder to allow the PDR to trade in the secondary market.

[5] PCX Rule 9.2(a) will also apply to transactions in PDRs, including SPDRs and MidCap SPDRs. That rule provides, in part, that every member and member firm shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such member or member firm.

[6] See Securities Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) and not 7 therein.

[7] PCX plans to notify its members in an information circular that it is their responsibility to inform customers of the nature and terms of SPDRs and MidCap SPDRs prior to recommending their purchase. The circular also states that members must deliver a SPDR or MidCap SPDR product description to all purchasers of the products and that they must provide the prospectus upon request.

[8] See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) ("Amex Approval Order").

[9] The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each with a year-end market-value capitalization of between $200 million and $5 billion. The issues included in the Index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

[10] See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) ("Amex MidCap Approval Order").

[11] The Commission recently approved rule change proposals covering the trading and listing of PDRs on the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE"), including SPDRs and MidCap SPDRs. See Securities Exchange Act Release Nos. 39076 (September 15, 1997), 62 FR 49270 (September 19, 1997) ("CHX approval order"); 39268 (October 22, 1997), 62 FR 56211 (October 29, 1997) ("CSE approval order").

[12] To be eligible to place orders to create MidCap SPDRs as described below, an entity or person

Continued

Payment with respect to creation orders placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments. The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."[13] Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of SPDRs or MidCap SPDRs, which aggregate numbers are referred to as a "Creation Unit." Currently, a Creation Unit will be made up of 25,000 MidCap SPDRs or 50,000 SPDRs.[14] Individual SPDRs or MidCap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitragers, and the Exchange specialist. The price of SPDRs and MidCap SPDRs will be based on a current bid/offer market. The minimum fraction for trading in SPDRs and MidCap SPDRs on Amex is 1/64ths. The PCX has proposed this same minimum variation for the trading of SPDRs and MidCap SPDRs on PCX.

The Trustee or Sponsor will make available (1) on a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per SPDR or MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day; and (3) on a daily basis, the accumulated dividends, less expenses, per outstanding SPDR or MidCap SPDR.[15]

Redemption of SPDRs and MidCap SPDRs

SPDRs and MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell SPDRs and MidCap SPDRs in the secondary market at any time, they must accumulate at least 50,000 (or multiples thereof) to redeem SPDRs or 25,000 (or multiples thereof) to redeem MidCap SPDRs through the Trust. SPDRs and MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.[16]

Distribution of SPDRs and MidCap SPDRs

The SPDR Trust and the MidCap SPDR Trust pay dividends quarterly. The regular quarterly ex-dividend date for SPDRs and MidCap SPDRs is the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of SPDRs and MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with fund received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participants brokers for reinvestment of their cash proceeds. The DTC DRS is also available to holders of SPDRs. Because some brokers may choose not to offer the DTC DRS, an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use the cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.[17] Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[18] The Commission believes that providing for the exchange-trading on PCX of PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will offer investors an efficient way of participating in the securities markets. Specifically, the

either must be a participant in the Continuous Net Settlement. ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

[13] A Portfolio Deposit also will include a cash payment equal to a pro rata portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the underlying Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

[14] The Trust will issue SPDRs in exchange for "Portfolio Deposits" of all of the S&P 500 Index securities, weighted according to their representation in the Index. The Trust is structured so that the net asset value of an individual SPDR should equal one-tenth of the value of the S&P 500 Index.

[15] The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as all other voting shares of that issuer voted. Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying the SPDRs.

[16] An investor redeeming a Creation Unit will receive index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trustee will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the underlying index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemptions.

[17] The creation of PDRs in connection with the DTC DRS represents the only circumstances under which PDRs can be created in other than Creation Unit size aggregations.

[18] 15 U.S.C. 78f(b)(5).

Commission believes that the trading on PCX of PDRs, in general, and SPDRs and MidCap SPDRs pursuant to UTP, in particular, will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day, and by increasing the availability of SPDRs and MidCap SPDRs as an investment tool. The Commission also believes that PDRs will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.[19] Accordingly, as discussed below, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act that Exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.[20]

As the Commission noted in the orders approving SPDRs and MidCap SPDRs for listing and trading on Amex,[21] the Commission believes that the trading on PCX of a security like PDRs in general, and SPDRs and MidCap SPDRs in particular, which replicate the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as PDRs, can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[22]

An individual SPDR has a value approximately equal to one-tenth of the value of the S&P 500 Index, and an individual MidCap SPDR has a value of approximately one-fifth of the value of the S&P MidCap 400 Index, making them more available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that trading of SPDRs and MidCap SPDRs on PCX will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole and may provide market participants several advantages over existing methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will provide investors with several advantages over standard open-end S&P 500 Index and S&P MidCap 400 Index mutual fund shares. In particular, investors will have the ability to trade PDRs continuously throughout the business day in secondary market transactions at negotiated prices.[23] In contrast, pursuant to Investment Company Act Rule 22c–1,[24] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[25] Accordingly, PDRs in general, and SPDRs and MidCap SPDRs in particular, will allow investors to (1) respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although PDRs in general, and SPDRs and MidCap SPDRs in particular, are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P 500 Index and MidCap SPDRs are equity securities that are price off a portfolio of stocks based on the S&P MidCap 400 Index. Accordingly, the level of risk involved in the purchase or sale of a SPDR or MidCap SPDR (or a PDR in general) is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for SPDRs and MidCap SPDRs (and PDRs in general) is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, PDRs raise disclosure, market impact, and secondary market trading issues that must be addressed adequately. As discussed in more detail below, and in the Amex Approval Order,[26] the Commission believes PCX adequately addresses these concerns.

The Commission believes that the PCX proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading PDRs. As noted above, the proposal contains four aspects addressing disclosure concerns. First, PCX members must provide their customers trading PDRs with a written explanation of any special characteristics and risks attendant to trading such PDR securities (such as SPDRs or MidCap SPDRs), in a form approved by PCX. As discussed above, PCX's filing states that SPDRs and MidCap SPDRs product descriptions should be obtained from Amex.[27] The

[19] The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem PDRs in creation unit share sizes. Nevertheless, PDRs would have the added benefit of liquidity from the secondary market and PDR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[20] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] See supra notes 8 and 10.

[22] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of fifteen or more stocks having a total market value of $1 million or more.

[23] Because of potential arbitrage opportunities, the Commission believes that PDRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a PDR comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trust will tract the underlying index more closely than an open-end index fund because the Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will redeem in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying index.

[24] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted SPDRs and MidCap SPDRs an exemption from this provision in order to allow them to trade at negotiated prices. In the secondary market. The Commission notes that PCX would need to apply for a similar exemption in the instance that it wishes to list and trade a new PDR because the exemptions are specific to SPDRs and MidCap SPDRs.

[25] *Id.*

[26] See supra note 8.

[27] The Commission notes that, in the context of a proposed change by the Chicago Stock Exchange ("CHX") to add rules for listing and trading of PDRs in general, and to trade SPDRs and MidCap SPDRs pursuant to UTP, Amex commented on CHX's proposed method regarding the delivery of the SPDR and the MidCap SPDR product descriptions, and reserved the right to charge CHX members for supplying the product description should the task become burdensome to Amex. Amex did not object to the underlying policy of CHX members obtaining the product description from Amex. See CHX Approval Order, supra note 11.

Commission believes that it is reasonable under the Act to allow PCX to require its members to obtain the product description for SPDRs and MidCap SPDRs from Amex.[28] Amex might decide to impose a reasonable charge for this service.[29] The Commission also notes that Amex states that the SPDR and MidCap SPDR product descriptions are only available from Amex, not the Distributor, and therefore PCX members cannot obtain them from the Distributor.

Second, members and member organizations must include this written product description with any sales material relating to the series of PDRs that is provided to customers or the public. Third, any other written materials provided by a member or member organization to customers or the public referencing PDRs as an investment vehicle must include a statement, in a form specified by PCX, that a circular and prospectus are available from a broker upon request.

Fourth, a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of PDRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms. Accordingly, the Commission believes that investors in PDR securities, in general, and SPDRs and MidCap SPDRs, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments. Finally, PCX's rule 9.2(a), Diligence as to Accounts, will apply to the trading of PDRs, including transactions in SPDRs and MidCap SPDRs.[30]

The Commission believes PCX has adequately addressed the potential market impact concerns raised by the proposal. First, PCX's proposal permits listing and trading of specific PDRs only after review by the Commission. Second, PCX has developed policies regarding trading halts in PDRs. Specifically, the exchange would halt PDR trading if the circuit breaker parameters under PCX Rule 7.11 were reached.[31] In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and SPDRs and MidCap SPDRs, in particular, PCX represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. Specifically, consistent with PCX Rule 7.11, PCX may consider whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Commission believes that the trading of PDRs in general on PCX should not adversely impact U.S. securities markets. As to the trading of SPDRs and MidCap SPDRs pursuant to UTP, the Commission notes that the corpus of the SPDR Trust is a portfolio of stocks replicating the S&P 500 Index, a broad-based capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S. The corpus of the MidCap SPDR Trust is a portfolio of stocks replicating the S&P MidCap 400 Index, also a broad-based, capitalization-weighted index consisting of 400 actively traded and liquid U.S. stocks. In fact, as described above, the Commission believes SPDRs and MidCap SPDRs may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.[32] Accordingly, the Commission believes that SPDRs and MidCap SPDRs do not contain features that will make them likely to impact adversely the U.S. securities markets, and that the addition of their trading on PCX pursuant to UTP could produce added benefits to investors through the increased competition between other market centers trading the product.

Finally, the Commission notes that PCX has submitted surveillance procedures for the trading of PDRs, specifically SPDRs and MidCap SPDRs, and believes that those procedures, which incorporate and rely upon existing PCX surveillance procedures governing equities, are adequate under the Act.

The Commission finds that PCX's proposal contains adequate rules and procedures to govern the trading of PDR securities, including trading SPDRs and MidCap SPDRs pursuant to UTP. Specifically, PDRs are equity securities that will be subject to the full panoply of PCX rules governing the trading of equity securities on PCX, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists. In addition, PCX has developed specific listing and delisting criteria for PDRs that will help to ensure that the markets for PDRs will be deep and liquid. As noted above, PCX's proposal provides for trading halt procedures governing PDRs. Finally, the Commission notes that PCX has stated that Rule 9.2(a), Diligence as to Accounts, will apply to the trading of PDRs in general, and SPDRs and MidCap SPDRs, in particular.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–PCX–97–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

---

[28] The Commission notes that the exemptions granted by the Commission under the Investment Company Act that permit the secondary market trading of SPDRs and MidCap SPDRs are specifically conditioned upon the customer disclosure requirements described above. Accordingly, PCX rules adequately ensure its members must deliver the current product description to all investors in SPDRs and MidCap SPDRs.

[29] The Commission notes that Amex would need to file a proposed rule change under Section 19(b) of the Act in the event it decides to charge a fee for supplying the SPDR or MidCap SPDR product descriptions. The Commission notes that reasonable fees would have to be imposed on the member firms rather than the customers entitled to receive the prospectus or the product description.

[30] See supra note. 5.

[31] In addition, for PDRs tied to an index, the triggering of futures price limits for the S&P 500 Index, S&P 100 Index, or MMI futures contracts will not, in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in trading in OEX, SPX, or MMI options, in deciding whether to halt trading in PDRs.

[32] Even though PDR transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs and SPDRs and MidCap SPDRs, in particular, will serve as a vehicle to accommodate and "bundle" order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although PDRs and SPDRs and MidCap SPDRs could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–33712 Filed 12–24–97; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCANAGE COMMISSION

[Release No. 34–39469; File No. SR–PCX–97–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to ASAP Membership Requirements

December 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 1997,[3] the Pacific Exchange, Inc. ("PCX" or "Echange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-reuglaory organization. The Exchange has designated this proposal as non-controversial pursuant to Rule 19b-4(e)(b) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to amend its rules on Automated System Access Privilege ("ASAP") Memberships.[5] The text of teh proposed rule change is available at the Office of Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of the and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examed at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify Rule 1.14 in two respects. First, Rule 1.14(a)(3) currently provides that telephone access is prohibited to ASAP Members, except by special exemption granted by the Board of Governors. The Exchange is proposing to eliminate this provision, so that ASAP Members may place orders over the telephone with Floor Brokers without first obtaining an exemption from the Board of Governors.

Second, the Exchange is proposing to add a provision to Rule 1.14 stating that at least 80% of an ASAP Member's total PCX trade (per calendar quarter) and at least 80% of an ASAP Member's total PCX volume (per calandar quater) must be executed electronically through POETS on P/COAST. The 80% requirements will apply to option contracts and equity securities individually. The proposed rule futher states that the Board of Governors may grant exemptions to the 80% requirements on a case-by-case basis.

Currently, under PCX Rules. 1.14(a)(3) and (1)(5), as ASAP Member may receive access to P/COAST and POETS (and other systems approved by the Board of Governors), but may not have telephone access to the Trading Floors without and exemption from the Board of Governors. Thus, currently, the only orders that an ASAP Member may send directly to the Trading Floors are orders entered electronically (unless and exemption has been granted). The rule change will codify a limited exemption to the current requirement that, in general ASAP Members may only enter orders electronically. Specifically, it will allow up to 20% of an ASAP Member's PCX orders to be executed by telephone. The Exchange believes that codifying this limited exemption will make the ASAP Membership program more attractive to investors and thus will promote a greaer use of electronic entry orders on the Exchange. It will also assure that Members holding "electronic" memberships are entering the vast majority of their PCX trades electronically.

The Exchange believes the proposal will make the Exchange's program for electronic membership more viable, and as such, will allow the Exchange to be more competive in attracting order flow to the Exchange.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that its designed to facilitate in securities and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has asserted that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On November 3, 1997, the Exchange filed with the Commission a proposed rule change (PCX–97–42) containing the same substance as the present filing. That filing was submitted pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(6) thereunder. The filing was withdrawn on November 6, 1997. See letter from Michael D. Pierson, Senor Attorney, Regulatory Policy, PCX, to Michael A. Walinskas, Division of Market Regulation, SEC, date November 6, 1997. Regarding the present filing (PCX–97–45), on November 21, 1997, the Exchange filed Amendment No. 1 with the Commission. Amendments No. 1 constitute a substantive change in the proposal in that it redesignates the proposal as a "non-controversial" rule filing under Rule 19b–4(e)(6) rather than Rule 19b–(e)(5). See letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Victoria Berberi-Doumar, Division of Market Regulation, Commission, dated November 21, 1997. On December 17, 1997. the Exchange filed Amendment No. 2 with the Commission. Amendment No. 2 modified the text of the rule to clarify the proposed change.

[4] The Exchange has represented that the proposed rule change will not significantly affect the protection of investors or the public interest, and will not impose any significant burden on competition. See, letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Vitoria Berberi-Doumar, Division of Market Regulation, SEC, date December 17, 1997.

[5] ASAP Memberships are governed by PCX Rule 1.14. Rule 1.14 sets for the terms and conditons of the Exchange's program for Electronic. Access Membership. The rule provides that ASAP Members must be registered broker-dealers subject to the Exchange's disciplinary jurisdiction, and must pay an annual fee. The Rule further provides that such Members are entitled to access to Pacific Computerized Order Access sySTem ("P/COAST"), Pacific Options Exchange Trading System ("POETS"), and other systems approved by the Board of Governors.

this filing. The proposed rule change was originally submitted to the Commission on November 11, 1997. However, the submission of substantive Amendments No. 1 and No. 2 on November 21, and December 17, 1997, respectively, delay the statutorily required implementation date to January 16, 1998.[6] For the foregoing reasons the rule filing will become operative as a "non-controversial" rule change pursuant to Rule 19b–4(e)(6) under the Act.[7]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission; and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–45 and should be submitted by January 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[6] The Commission notes that any substantive amendment to a proposed rule change filed under Section (e)(6) of Rule 19b–4 causes the 30 day delayed implementation period to be restarted from the date of the filing of the amendment. In addition, the Commission has waived the requirement that the Exchange notify the Commission of its intent to file this proposed rule change five business days prior to the filing. *See* Securities Exchange Act Release No. 35123 (December 20, 1994), 59 FR 66692 (December 28, 1994).

[7] 17 CFR 240.19b–4(e)(6).

[8] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–33714 Filed 12–24–97; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39466; File No. SR–PHLX 97–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc., Relating to Exchange Approval of Member Advertising

December 18, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1997, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization ("SRO"). On December 15, 1997, the Exchange filed Amendment No. 1 to the rule proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 of the Act, the PHLX proposes to amend Phlx Rule 605 to require member or foreign currency option participant organizations for which the Phlx is the designated examining authority ("DEA"): (1) To receive Exchange consent prior to using the Internet to provide market quotations or to advertise to the general public; (2) to receive prior Exchange consent before making use of radio or television broadcasts for any business purpose or broadcasting Exchange quotations on radio or television programs or via public telephone reports; and (3) to submit the text of all commercials or program materials about securities or investing sponsored by the firm on radio, television, public telephone or on the Internet, promptly following the program in which it was used. Further, the commentary to the rule which states that the provisions of the rule do not apply to advertisements, market letters and sales literature relating to options as defined in Rule 1049 would be deleted so that the rule would apply to all products traded on the Exchange, including options. The Exchange filed Amendment No. 1 to make clear that print advertisements are also subject to prior Exchange review and approval under the new proposed language of PHLX Rule 605. The Amendment changed the proposed new language of the rule to reflect this change. The text of the proposed rule change, as amended, is below. Brackets represent deletions; italics represent additions.

Rule 605

Advertisements, Market Letters, Research Reports and Sales Literature

(a) No member, foreign currency option participant, member organization or foreign currency option participant organization shall issue any advertisement, market letter, research report, telemarketing script or sales literature unless such member, foreign currency option participant or a general partner or holder of voting stock in such organization shall have endorsed his approval prior to publication or distribution thereof on an exact copy thereof bearing the name of the person who wrote such material. Such copy so endorsed shall be made part of the permanent records of such member or foreign currency option participant organization and shall be retained for three years, two years in an easily accessible location.

(b) Member or foreign currency option participant organizations for which the Exchange is the designated examining authority ("DEA") desiring to broadcast Exchange quotations on radio or television programs, or in public telephone market reports, or make use of radio or television broadcast or print advertising for any business purpose, or to make use of the Internet for the purpose of providing market quotations or advertising to the general public must first obtain the consent of the Exchange by submitting an outline of the program material to the Exchange.

(c) The text of all commercials, advertisements and program material (except lists of market quotations) about securities or investing sponsored by Exchange designated member or foreign currency option participant organizations on radio, television, or public telephone reports, or on the Internet, or program material supplied to these media must be sent to the Exchange promptly following the program in which it is used.

[Commentary: The provisions of this rule do not apply to advertisements, market letters and sales literature relating to options as defined in Rule 1049.]

Supplementary Material: No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend PHLX Rule 605, Advertisements, Market Letters, Research Reports and Sales Literature, in order to assure that the Exchange has the opportunity to review and approve advertisements, including market quotation reports, which are disseminated over the Internet, radio, television and via public telephone prior to their dissemination. Exchange Rule 605 currently requires prior approval only by the member/participant or its general partner or voting stock holder. The Exchange has recently become aware of certain Internet advertisements by at least one of its members which it believes may not comply with the communication guidelines contained in the Supplementary Material to PHLX Rule 605. The Exchange therefore, believes that prior Exchange approval is warranted. The rule will be amended to apply to members and foreign currency options participants for which the Exchange is the DEA so that firms for which another SRO is the DEA will not have to be burdened by duplication of approvals.

The revised language will apply to advertisements, broadcasts of Exchange market quotations or broadcasts for any other business purpose, which could even include advertisements for brokers or traders. It will also specify that it applies to advertisements and broadcasts that are disseminated over radio, television, public telephone and the Internet.

Another new requirement under the proposed rule will be that these firms must also supply to the Exchange the text of all commercials and program material (except lists of market quotations) about securities or investing promptly following the program in which it is used. This will assure that the approved text is actually the one that was publicly disseminated. Finally, the Commentary to Rule 605 which made the rule specifically not applicable to options will be deleted. The Exchange believes that the requirements imposed under this rule are equally important for option advertising as for advertising of any other type of securities.

2. Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and to protect investors and the public interest by assuring that the Exchange reviews its designated firms' advertisements

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commissions, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–97–49 and should be submitted by January 20, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H.McFarland,
Deputy Secretary.

[FR Doc. 97–33715 Filed 12–24–97; 8:45 am]
BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Technical corrections to the Harmonized Tariff Schedule of the United States.

SUMMARY: The United States Trade Representative (USTR) is making technical corrections to the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice, pursuant to authority granted by Congress to the President in section 604 of the Trade Act of 1974 and delegated by the President to the USTR in Presidential Proclamation No. 6969 of January 27, 1997 (62 FR 4415). These modifications will correct errors in prior proclamations, so that the intended tariff treatment is accorded.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Barbara Chattin, Director for Tariff Affairs (202) 395–5097, or Catherine Field, Senior Counsel for Multilateral Affairs, (202) 395–3432.

Explanation of Proposed Changes

This notice makes several technical corrections to the Harmonized Tariff Schedule of the United States (HTS) to remedy omissions, misspellings, or other problems included in previously issued proclamations, or to make conforming changes in HTS provisions previously proclaimed to reflect previous modifications to the HTS. The

modification made in each paragraph is explained in turn.

The action designated as 1. conforms certain provisions for goods returned from Canada or Mexico after alterations or repairs with U.S. obligations under the NAFTA. This modification is effective as of the date of entry into force of the NAFTA, i.e., January 1, 1994.

The action designated as 2.(a) modifies an HTS category to allow duty-free entry of a product enumerated in the Intermediate Chemicals for Dyes appendix to the HTS, as provided for in Schedule XX as annexed to the Marrakesh Protocol to the Agreement Establishing the World Trade Organization (WTO Agreement). The special duty rate symbol "L" must appear in the HTS tariff category containing an intermediate chemical enumerated in this HTS appendix for Customs to allow duty-free entry upon claims therefor by importers. This action is effective as of the date of entry into force of the WTO Agreement, i.e., January 1, 1995.

Actions 2. (b) and (c) realign language in particular HTS legal notes to ensure that the tariff treatment intended under the NAFTA is achieved. The modification corrects an error incorporated in a previous proclamation and is effective as of the date of that erroneous modification. The correction ensures that particular provisions dealing with textile and apparel differentiate between originating goods (including "products of" Canada or Mexico) and non-originating goods (including "imports from" these countries—potentially applicable to transshipped third-country goods as well as other goods not substantially transformed into NAFTA originating goods) under the terms of HTS general note 12.

The actions designated as 2.(d) and 2.(e) correct typographical or spelling errors and are effective as of the date the particular HTS categories were established or modified.

The action in section 3.(a) make a conforming change (reflecting a renumbering of an HTS category) in one NAFTA tariff shift rule in general note 12(t), and reinsert another tariff shift rule that previously was erroneously deleted, effective as of the date of the prior action or deletion, respectively.

Actions designated as 3.(b) and 3.(c) make conforming changes that reflect in one set of HTS provisions the previous, but unrecognized, modifications to other provisions. The changes are effective as of the date of the previous modifications to these corresponding HTS provisions.

The action designated as 3.(d) corrects the omission of a conforming change from Proclamation 6857 of December 11, 1995. The cited note to subchapter II of chapter 98 should have been modified to reflect a World Customs Organization (WCO) change in the status of the note. The WCO elevated additional U.S. note 1 to section XV from its prior status as a U.S. note to the status of international-level note 3 to section XV. As a result of this WCO action the note is now included in the annex to the Harmonized System Convention.

The action designated as 4. corrects an omission from Proclamation 6982 of April 1, 1997, which modified the scope of duty-free treatment accorded under the pharmaceuticals appendix to the HTS.

Section 5. corrects 3 typographical errors in the **Federal Register** notice that was published and was effective on April 28, 1997, which made certain changes in NAFTA rules of origin set forth in general note 12 to the HTS.

The actions in section 6. correct an omission and errors in Proclamation 7007 of May 30, 1997, which modified duty-free treatment under the GSP for least-developed beneficiary developing countries. The first action provides such treatment to a subheading created in the proclamation, and the second action deletes from the list of HTS subheadings that were designated for the new GSP treatment certain tariff categories that were already eligible for GSP benefits.

The action designated as 7. corrects the advertent deletion of a preexisting duty suspension provision from the HTS and recognize the goods covered under the former duty suspension now fall in another provision of chapter 84. As a result of this prior change in classification, the duty suspension provision of chapter 99 must be amended to reflect the permanent tariff subheading now applicable to these goods. The continuation of the duty suspension (which had been scheduled to continue through the close of 2000) allows the subject products to continue to enter the customs territory free of duty.

The actions designated as 8. correct errors in dates in provisions of the cited proclamation so that future proclaimed actions could be administered as intended.

Actions designated as 9. (a) and (b) correct two errors in staging tables in the HTS. The staging table for general rates of duty contained erroneous 1997 and 1998 duty rates for subheading 2620.90.20, in that the two rates shown in the staging table should have been reversed. Thus, as presently proclaimed, the 1997 duty rate is too low and the 1998 duty rate would increase before returning to the scheduled 1999 stage; it was intended that the 1998 and 1999 rates be the same. This notice also corrects the inadvertent omission of the final staged Canada rate under the NAFTA for subheading 8529.90.88. As presently proclaimed, the 1997 duty rate of "0.5% (CA)" would not be eliminated as scheduled on January 1, 1998.

Actions designated as 9. (c) through (h) correct previously proclaimed provisions of the general notes to the HTS to update statutory references and thereby reflect the amendments to title V of the Trade Act of 1974 concerning the Generalized System of Preferences (GSP). Some of these provisions deal with the freely associated states (see general note 10), because the statute implementing the compacts of free association imposed certain criteria of the GSP program as limitations on imports.

The action designated as 10. corrects omissions from Proclamation 6914 of August 28, 1966, which modified the allocation of tariff-rate quotas for certain cheeses from the EC 15. For the enumerated cheese quota notes, Proclamation 6914 modified the notes by changing the references to "EC 12" to read "EC 15" but did not provide for the increased quota access for the years 1999 and 2000 as set forth in Proclamation 6763 of December 23, 1994.

Ambassador Charlene Barshefsky,
United States Trade Representative.

Annex

Corrections: The HTS is modified as set forth below with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective dates specified for the enumerated actions:

1. Effective on January 1, 1994, U.S. note 3 to subchapter II of chapter 98 of the HTS is modified by redesignating subdivision (d) as subdivision (e), and by inserting the following new subdivision in alphabetical sequence:

"(d) For the purposes of subheadings 9802.00.40 and 9802.00.50, the rates of duty in the "Special" subcolumn of column 1 followed by the symbol "CA" or "MX" in parentheses shall apply to any goods which are returned to the United States after having been repaired or altered in Canada or in Mexico, respectively, whether or not such goods are goods of Canada or goods of Mexico under the terms of general note 12 to the tariff schedule."

2. Effective on January 1, 1995, the HTS is modified as follows:

(a) For subheading 2922.49.37, the Rates of Duty 1—Special subcolumn is modified by inserting, in alphabetical sequence, the symbol "L" in the parentheses following the "Free" rate of duty in such subcolumn.

(b) In the additional U.S. notes to HTS section XI listed below, the expression "articles the product of Canada" is deleted at each instance and the expression "Imports from Canada" is inserted in lieu thereof.

additional U.S. note 3(a); additional U.S. note 4(c)

additional U.S. note 3(f); additional U.S. note 5(a)

additional U.S. note 4(a); additional U.S. note 5(c)

(c) In the additional U.S. notes to HTS section XI listed below, the expression "articles the product of Mexico" is deleted at each instance and the expression "imports from Mexico" is inserted in lieu thereof.

additional U.S. note 3(b); additional U.S. note 4(b)

additional U.S. note 3(c); additional U.S. note 4(d)

additional U.S. note 3(d); additional U.S. note 5(b)

additional U.S. note 3(e); additional U.S. note 5(d)

additional U.S. note 3(g)

(d) The article description for HTS heading 9817.29.01 is modified by deleting "3701.90.32" and by inserting in lieu thereof "3707.90.32".

(e) The Intermediate Chemicals for Dyes Appendix to the HTS is modified by deleting the chemical name "Banzamine, 2, 6–dichloro–4–nitro" and by inserting "Benzamine, 2, 6–dichloro–4–nitro" in lieu thereof, and by deleting the chemical name "Benzeneamine, 2–(trifluoromethyl)–" and by inserting "Benzeneamine, 2–(trifluoromethyl)–" in lieu thereof.

3. Effective on January 1, 1996, the HTS is modified as follows:

(a) The tariff classification rules ("TCRs") in subdivision (t) of general note 12 to the HTS are modified by deleting from chapter rule 1 to chapter 61 and from chapter rule 1 to chapter 62 the subheading number "5407.60" and by inserting in lieu thereof "5407.61".

(b) The article description for HTS subheading 6303.92.10 is modified by deleting "5407.60.11, 5407.60.21 or 5407.60.91" and by inserting in lieu thereof "5407.61.11, 5407.61.21 or 5407.61.91".

(c) The article description for HTS subheading 9017.20.50 is modified by deleting "8456.90.20" and by inserting in lieu thereof "8456.99.10".

(d) U.S. note 3(d) to subchapter II of chapter 98 is modified by deleting "additional U.S. note 1" and inserting "note 3" in lieu thereof.

4. Effective April 1, 1997, for subheading 2933.59.95, the Rates of Duty 1—special subcolumn is modified by inserting, in alphabetical sequence, the symbol "K" in the parentheses following the "Free" rate of duty in such subcolumn.

5. Effective April 28, 1997, general note 12 to the HTS is modified as follows:

(a) by numbering the tariff classification rule to chapter 82 that reads "A change to subheadings 8202.39 through 8202.99 from any other chapter." as TCR 4 to that chapter;

(b) by modifying TCR 231 for chapter 84 by deleting "tariff items," and by inserting in lieu thereof "tariff item, "; and

(c) by deleting from TCR 90 for chapter 85 "8428.12.62" and by inserting in lieu thereof "8528.12.62".

6. Effective May 31, 1997:

(a) For HTS subheading 0802.90.98, the Rates of Duty 1—Special subcolumn is modified by inserting, immediately before the symbol "CA" in parentheses, the symbol "A+,"; and

(b) Section (c) to Annex II to Presidential Proclamation 7007 is modified by deleting HTS subheadings 0802.90.90, 2901.29.50, 8607.19.03, 9603.10.50 and 9603.10.60.

7. Effective July 1, 1997, section B of Annex I to Presidential Proclamation 7011 of June 30, 1997, is modified by deleting the text of paragraph (68) and by inserting in lieu thereof the following: 'Heading 9902.84.77 is modified by deleting "8477.10.80" and by inserting in lieu thereof "8477.10.70".'

8. Effective on the date of publication of this notice in the **Federal Register**, section A(5) of Annex II to Presidential Proclamation 6969 is modified as follows:

(a) by deleting, from subparagraph (a) of such section, the expression "April 1, 1998, through March 31, 1999, inclusive" and by inserting "April 1 in any year through March 31, inclusive" in lieu thereof; and

(b) by deleting, from subparagraph (b) of such section, the expression "April 1, 1999, through March 31, 2000, inclusive" and by inserting "April 1, 2000, through March 31, 2001, inclusive" in lieu thereof.

9. Effective January 1, 1998:

(a) Section D of the Annex to Proclamation 6763 is modified by striking from the column headed "1998" for subheading 2620.90.20 the duty rate of "18.5¢/kg on tungsten content + 4%" and by inserting the duty rate "17.6¢/kg on tungsten content + 4%" in lieu thereof; and

(b) Subheading 8529.90.88 is modified by striking from the "Special" rates of duty subcolumn the rate "0.5% (CA)" and by inserting in alphabetical sequence in the parenthetical expression following the duty rate of "Free" in such subcolumn the symbol "CA,".

(c) General note 3(iv)(C) is modified by deleting "sections 503(b) and 504(c) and by inserting "sections 503(a)(2), 503(a)(3) and 503(c)" in lieu thereof.

(d) General note 4(a) is modified by deleting "section 502(a)(3) of the Trade Act of 1974 (19 U.S.C. 2462(a)(3)" and by inserting "section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2)" in lieu thereof.

(e) General note 4(b)(i) is modified by deleting "section 504(c)(6)" and by inserting "section 502(a)(2)" in lieu thereof, by deleting "section 504(c)" and by inserting "section 503(c)(2)(A)" in lieu thereof, and by deleting "19 U.S.C. 2464(c)" and by inserting "19 U.S.C. 2463(c)(2)(A)" in lieu thereof.

(f) The last paragraph of general note 4(c) is modified by deleting "section 503(a)(3)" and by inserting "section 507(2)" in lieu thereof.

(g) General note 10(e)(i)(A) is modified by deleting "section 504(c)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2464(c)(1)(A)" and by inserting "sections 503(c)(2)(A)(i)(I) and 503(c)(2)(A)(ii)(A) of the Trade Act of 1974 (19 U.S.C. 2463(c)(2)(A)(i)(I) and 503(c)(2)(A)(ii)" in lieu thereof.

(h) General note 10(f) is modified by deleting "section 504(c)(3) of the Trade Act of 1974 (19 U.S.C. 2464(c)(3)" and by inserting "section 503(c)(2)(F) of the Trade Act of 1974 (19 U.S.C. 2463(c)(2)(F)" in lieu thereof.

10. Effective on January 1 in each of the following years, the enumerated additional U.S. notes to chapter 4 of the HTS are each modified by deleting the existing quantitative limitation set forth therein for the EC 15 and by inserting in lieu thereof the new quantitative limitation set forth in this table:

	1999	2000
(a) Additional U.S. note 17 to chapter 4 ...	2,729,000	2,779,000
(b) Additional U.S. note 18 to chapter 4 ...	1,096,333	1,263,000
(c) Additional U.S. note 19 to chapter 4 ...	337,333	354,000
(d) Additional U.S. note 21 to chapter 4 ...	3,965,333	4,082,000

Additional information regarding these technical modifications can be obtained by contacting the above-named officials of the USTR at the number noted above.

[FR Doc. 97–33752 Filed 12–24–97; 8:45 am]
BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments for Multilateral Negotiations in the World Trade Organization on Expansion of the List of Pharmaceutical Products Receiving Zero Duties

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments with respect to expansion of the list of pharmaceuticals subject to reciprocal duty elimination by certain members of the World Trade Organization (WTO). The specific information being sought is described in the background section below.

DATES: Public comments are due by noon, January 30, 1998.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Barbara Chattin, Director for Tariff Negotiations, USTR, (202–395–5097).

SUPPLEMENTARY INFORMATION: The Chairman of the TPSC invites written comments from the public on the expansion of the list of pharmaceutical products receiving duty-free treatment from certain members of the World Trade Organization, specifically additions to the lists of pharmaceutical active ingredients, prefixes and suffixes that could be associated with an active ingredient in order to designate its salt, ester or hydrate form, or chemical intermediates intended for the manufacture of pharmaceutical active ingredients. Negotiations will take place during 1998 in the WTO with a view to adding new pharmaceuticals to the zero duty list. Any amendments to the list of pharmaceuticals will be subject to approval by all participants in the negotiations.

Background

During the Uruguay Round of multilateral trade negotiations, the United States and 16 trading partners agreed to reciprocal elimination of duties on approximately 7,000 pharmaceuticals on January 1, 1995. Participants also recognized the need to periodically update the zero duty list of pharmaceuticals in order to keep pace with the dynamic nature of the industry. As a result of multilateral negotiations in the World Trade Organization (WTO) during 1996, the United States and other participants in the negotiations eliminated duties on an additional 750 pharmaceuticals on April 1, 1997.

The results of the Uruguay Round agreement on pharmaceuticals and the subsequent update by WTO members is reflected in the Pharmaceutical Appendix to the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS can be purchased from the United States Government Printing Office. An electronic version of HTSUS can be found at www.usitc.gov. the Pharmaceutical Appendix of the HTSUS consists of three tables. Table 1 lists active pharmaceutical ingredients and dosage-form products by their International Nonproprietary Names (INNs) from the World Health Organization (WHO). Currently, the items in Table 1 are drawn from the INN lists 1–73 of the WHO. Prefixes and suffixes that can be associated with an INN in Table 1 are contained in Table 2. Chemical intermediates intended for the manufacture of pharmaceuticals are listed in Table 3. Working with appropriate industry associations and private sector advisory groups, the interagency TPSC committee led by USTR is in the process of preparing negotiating positions. Comments are requested for pharmaceutical items which would be in the interest of the United States to add to the existing WTO agreement.

Negotiators will be reviewing the more recent INN lists (e.g., 74–78) in the updating exercise. Comments pertaining to the pharmaceutical active ingredients covered by INN list 74 and higher need only provide the INN name and reference the appropriate WHO list. Otherwise, the following information must be supplied for each pharmaceutical active ingredient or chemical intermediate to provide the technical basis for reviewing the submissions: (1) The precise chemical name; (2) the Chemical Abstracts Service (CAS registry number; (3) a diagram of the molecular structure; and (4) the six-digit Harmonized System classification number. Submissions of chemical intermediates also must provide the INN and chemical name of the active ingredient into which it is incorporated, the CAS number of this active ingredient, and a diagram of the molecular structure of this active ingredient. A suggested format for presenting this information is attached. In addition, submissions of chemical intermediates must demonstrate that the product meets the following conditions; (1) The chemical is a sole-pharmaceutical use intermediate; (2) some portion of the intermediate is incorporated in the final active ingredient molecule, regardless of what proportion the intermediate represents in the final molecule of the active ingredient; and (3) the intermediate is used in producing an active ingredient that has reached at least Phase III of clinical trials of the Food and Drug Administration (or other national equivalent). Comments pertaining to the additions to the list of prefixes or suffixes for salt, ester or hydrate forms of an INN active ingredient should state a rationale for the nomination. Only comments containing all of the above information will be considered in developing U.S. positions for the negotiations.

Persons submitting written comments should provide a statement, in twenty copies, by noon, January 30, 1998 to Gloria Blue, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room 503, 600 17th Street, NW., Washington, D.C. 20508. In addition, a helpful supplement to the written statement would be to provide a disk containing as much of the technical details of the submission as possible, either in a spreadsheet format or in a word processing table format. The disk should have a label identifying the software used and the submitter. Non-confidential information received will be available for public inspection by appointment in the USTR Reading Room, Room 101, Monday through Friday, 10:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

HS code (6-digit)	CAS number	Chemical name (e.g., chemical abstracts index name

Molecular structure

For all chemical intermediates, the following information is provided on the pharmaceutical active ingredient into which the intermediate is incorporated.

INN of active ingredient	CAS number of active ingredient	Chemical name of active ingredient

Molecular structure of active ingredient

[FK Doc. 97–33751 Filed 12–24–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in 62 FR 52611, October 8, 1997.

DATES: Comments on this notice must be received on or before January 28, 1998.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness, Office of Aviation Analysis, Office of the Secretary; U.S. Department of Transportation, 400 Seventh St. SW., Washington, DC 20590 at (202) 366–2340.

SUPPLEMENTARY INFORMATION: Office of the Secretary.

Title: Aircraft Accident Liability Insurance.

OMB Control Number: 2106–0030

Affected Public: U.S. and foreign air carriers.

Type of Request: Extension of a previously approved collection.

Form(s): OST Form 6410, OST Form 6411.

Abstract: 14 CFR Part 205 contains the minimum requirements for air carrier accident liability insurance to protect the public from losses, and directs that certificates evidencing appropriate coverage must be filed with the Department.

Estimated Annual Burden Hours: 2,763 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to OMB are best assured of having their full effect if OMB receives them within 30 days of publication.

Issued in Washington, DC, on December 18, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–33689 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 8, 1998, at 1 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Room 810, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on January 8, 1998, at the Federal Aviation Administration, 800 Independence Avenue, SW., Room 810, Washington, DC, 1 p.m. The purpose of the meeting is to review and discuss a proposed new task—Prevention of Fuel Tank Explosions.

Attendance is open to the interested public but will be limited to the space available. The public may participate by teleconference by calling 202–493–4180, pass code 2222. Written statements from the public may be presented to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 22, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–33861 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–03–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Akron-Canton Regional Airport, Akron, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 28, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frederick J. Krum, Director of Aviation of the Akron-Canton Regional Airport Authority Board at the following address: Akron-Canton Regional Airport, 5400 Lauby Road, P.O. Box 9, North Canton, Ohio 44720–1598.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Akron-Canton Regional Airport Authority Board under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence C. King, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7293). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990).(Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 21, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Akron-Canton Regional Airport Authority Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 6, 1998.

The following is a brief overview of the application.

PFC Application No.: 98–03–C–00–CAK.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1999.

Proposed charge expiration date: February 1, 2003.

Total estimated PFC revenue: $2,481,900.00.

Brief description of proposed projects: (1) Acquire wheel loader with snow blade; (2) overlay access road and taxiways; (3) seal coat aircraft parking aprons; (4) stormwater drainage improvement; (5) Runway 1–19 and Taxiway "A" and "B" rehabilitation. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Akron-Canton Regional Airport Authority Board.

Issued in Des Plaines, Illinois, on December 17, 1997.

Benito De Leon,

Manager, Planning/Programming Branch Airports Division, Great Lakes Region.

[FR Doc. 97–33759 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Rhinelander-Oneida County Airport, Rhinelander, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Rhinelander-Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 28, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Joseph Brauer, Manager of the Rhinelander-Oneida County Airport at the following address: Rhinelander-Oneida County Airport, 3375 Airport Road, Rhinelander, Wisconsin 54501–9178.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Rhinelander and County of Oneida under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy M. Nistler, Assistant Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4350. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use a PFC at Rhinelander-Oneida County Airport under the provisions of the Aviation Safety an Capacity Expansion Act of 1990 (Title IX of the Part 158 if the Federal Aviation Regulations (14 CFR Part 158).

On December 8, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the City of Rhinelander and County of Oneida was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in apart, no later than March 10, 1998.

The following is a brief overview of the application.

PFC application number: 98–04–U–00–RHI.

Level of the PFC: $3.00.

Actual charge effective date: June 1, 1996.

Estimated charge expiration date: January 1, 2001.

Total opproved net PFC revenue: $525,301.

Brief description of proposed project: Terminal Building Improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request , inspect the application, notice and other documents germane to the application in person at the Rhinelander-Oneida County Airport.

Issued in Des Plaines, Illinois on December 17, 1997.

Benito De Leon,

Monagement, Planning ond Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–33758 Filed 12–24–97; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
December 29, 1997

Part II

Department of the Treasury
Internal Revenue Service
26 CFR Part 54

Department of Labor
Pension Welfare Benefits Administration
29 CFR Part 2590

Department of Health and Human Services
Health Care Financing Administration
45 CFR Subtitle A, Parts 144 and 146

Application of HIPAA Group Market Portability Rules to Health Flexible Spending Arrangements; Final Rule

Application of HIPAA Group Market Rules to Individuals Who Were Denied Coverage Due to a Health Status-Related Factor; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2590

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

45 CFR Subtitle A, Parts 144 and 146

Application of HIPAA Group Market Portability Rules to Health Flexible Spending Arrangements

AGENCIES: Internal Revenue Service, Department of the Treasury; Pension and Welfare Benefits Administration, Department of Labor; Health Care Financing Administration, Department of Health and Human Services.

ACTION: Clarification of regulations.

SUMMARY: This document clarifies that it is appropriate to treat benefits under certain health flexible spending arrangements as excepted benefits for purposes of the group market portability provisions added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

FOR FURTHER INFORMATION CONTACT: Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622–4695; Amy Scheingold, Pension and Welfare Benefits Administration, Department of Labor, at (202) 219–4377; or Joan Kral, Health Care Financing Administration, Department of Health and Human Services, at (410) 786–9539.

Customer service information. Individuals interested in obtaining a copy of the Department of Labor's booklet entitled "Questions and Answers: Recent Changes in Health Care Law," may call the following toll-free number: 1–800–998–7542. This information is also available on the Department's website at: http://www.dol.gov/dol/pwba

SUPPLEMENTARY INFORMATION:

I. Purpose

This document addresses the application of certain portability provisions added by the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191 (HIPAA), to flexible spending arrangements (FSAs). The Departments of the Treasury, Labor, and Health and Human Services (the Departments) have concluded that it is appropriate to treat benefits under certain health FSAs as excepted benefits under sections 9831 and 9832(c) of the Internal Revenue Code of 1986 (Code), sections 732 and 733(c) of the Employee Retirement Income Security Act of 1974 (ERISA), and sections 2721 and 2791(c) of the Public Health Service Act (PHS Act).

II. Background

HIPAA Group Market Portability Provisions

HIPAA provides measures to improve portability and continuity with respect to group health plan coverage provided in connection with employment. These provisions include limitations on preexisting condition exclusions, rules prohibiting discrimination on the basis of any health status-related factor, and rules requiring special enrollment. These provisions are generally effective for group health plans and group health insurance coverage for plan years beginning on or after July 1, 1997. The Departments of the Treasury, Labor, and Health and Human Services (the Departments) issued regulations implementing these group market provisions at 26 CFR 54.9801–1T through 54.9801–6T, 54.9802–1T, 54.9831–1T (formerly 54.9804–1T), 54.9833–1T (formerly 54.9806–1T); 29 CFR part 2590; and 45 CFR parts 144 and 146 (made available to the public on April 1, 1997 and published in the **Federal Register** on April 8, 1997, 62 FR 16893).

The HIPAA portability provisions in section 9801 of the Internal Revenue Code of 1986 (Code), section 701 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 2701 of the Public Health Service Act (PHS Act), and the implementing regulations impose limits on the maximum preexisting condition exclusion period that may be imposed by a group health plan or a group health insurance issuer. In general, neither a group health plan nor a group health insurance issuer may impose more than a 12-month preexisting condition exclusion for individuals enrolling in the plan or coverage, although a plan or issuer can impose an 18-month preexisting condition exclusion for late enrollees. In either case, the exclusion period must be reduced by the amount of an individual's prior "creditable coverage." Plans and issuers subject to the HIPAA requirements generally must also issue certificates of creditable coverage for an individual to use as proof of creditable coverage for subsequent coverage.

In general, these group market portability provisions apply to group health plans (generally plans sponsored by employers or employee organizations, or both) and health insurance issuers providing coverage under a group health plan, effective for plan years beginning after June 30, 1997, except that the obligation to provide certain information relating to creditable coverage became effective as early as June 1, 1997. However, the group market portability provisions do not apply to certain excepted benefits. For example, the group market portability provisions do not apply to certain types of supplemental coverage provided under a separate policy, certificate, or contract of insurance. In general, if benefits under a plan or coverage are excepted benefits, then plans and issuers do not have to provide certificates for the coverage, and the coverage may not qualify as creditable coverage.

Health Flexible Spending Arrangements

Under proposed Treasury Regulations, a health FSA generally is a benefit program that provides employees with coverage under which specified, incurred expenses may be reimbursed (subject to reimbursement maximums and any other reasonable conditions) and under which the maximum amount of reimbursement that is reasonably available to a participant for a period of coverage is not substantially in excess of the total premium (including both employee-paid and employer-paid portions of the premium) for the participant's coverage. Coverage and reimbursements provided to an individual under a group health plan that is a health FSA and that conforms to the generally applicable rules for accident or health plans qualify for the same tax-favored treatment that generally is extended to coverage and reimbursements under employer-provided accident or health plans.[1] Health FSA reimbursements typically provide coverage for medical care expenses not otherwise covered by the employer's primary group health plan.

A health FSA is permitted to operate under a cafeteria plan described in section 125 of the Code. Pursuant to the rules of section 125, an employee can elect to reduce the employee's salary in order to pay for health FSA coverage without the employee having to include that portion of the salary in gross income. Commonly, the maximum benefit payable under a health FSA for any year is equal to the amount of the employee's salary reduction election for the year, plus any additional employer contribution for the year.

[1] See Q&A–7, prop. Treas. Reg., proposed 26 CFR 1.125–2 (54 FR 9460, 9502, March 7, 1989).

III. Clarification

This document clarifies the conditions under which it is appropriate to treat benefits under a health FSA as excepted benefits. Specifically, benefits under a health FSA are excepted benefits if the maximum benefit payable for the employee under the health FSA for the year does not exceed two times the employee's salary reduction election under the health FSA for the year (or, if greater, the amount of the employee's salary reduction election under the health FSA for the year, plus $500), the employee has other coverage available under a group health plan of the employer for the year, and the other coverage is not limited to benefits that are excepted benefits.

The effect of treating benefits under a health FSA as excepted benefits is that the health FSA is not subject to the group market portability provisions. Accordingly, there would be no requirement under section 9801 of the Code, section 701 of ERISA, or section 2701 of the PHS Act and the implementing regulations to issue a certificate of creditable coverage for such a health FSA. In addition, coverage that consists solely of coverage under such a health FSA does not constitute creditable coverage.

Group health plans, issuers, and other entities subject to the group market portability provisions of HIPAA may rely on this document in treating benefits under health FSAs described in the first paragraph of this section III as excepted benefits.

Dated: December 18, 1997.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Signed at Washington, DC, this 19th day of December, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

Dated: December 18, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 97–33602 Filed 12–24–97; 8:45 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2590

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

45 CFR Subtitle A, Parts 144 and 146

Application of HIPAA Group Market Rules to Individuals Who Were Denied Coverage Due to a Health Status-Related Factor

AGENCIES: Internal Revenue Service, Department of the Treasury; Pension and Welfare Benefits Administration, Department of Labor; Health Care Financing Administration, Department of Health and Human Services.

ACTION: Clarification of regulations.

SUMMARY: This document addresses certain issues arising under the group market portability provisions added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) with respect to employees (or their dependents) who, until the effective date of the HIPAA nondiscrimination provisions, were denied coverage under a group health plan, including group health insurance coverage, because of a health status-related factor.

FOR FURTHER INFORMATION CONTACT: Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622–4695; Amy Scheingold, Pension and Welfare Benefits Administration, Department of Labor, at (202) 219–4377; or Joan Kral, Health Care Financing Administration, Department of Health and Human Services, at (410) 786–9539.

Customer service information. Individuals interested in obtaining a copy of the Department of Labor's booklet entitled "Questions and Answers: Recent Changes in Health Care Law," which includes information on the nondiscrimination provisions of HIPAA, may call the following toll-free number: 1–800–998–7542. This information is also available on the Department's website at: http://www.dol.gov/dol/pwba.

SUPPLEMENTARY INFORMATION:

I. Purpose

This document addresses certain issues arising under the group market portability provisions added by the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191 (HIPAA), with respect to employees (or their dependents) who, until the effective date of the HIPAA nondiscrimination provisions, were denied coverage under a group health plan, including health insurance coverage offered in connection with a group health plan, because of a health status-related factor. Under those provisions and the implementing regulations, neither a group health plan nor group health insurance coverage can continue to exclude such individuals from enrolling in the plan or coverage. This document clarifies certain rights of these individuals.

II. Background

HIPAA contains provisions designed to improve portability and continuity with respect to group health plan coverage provided in connection with employment. These provisions include limitations on preexisting condition exclusions, rules prohibiting discrimination on the basis of any health status-related factor, and rules requiring special enrollment. These provisions are generally effective for group health plans and group health insurance coverage for plan years beginning on or after July 1, 1997. The Departments of the Treasury, Labor, and Health and Human Services (the Departments) issued interim final regulations implementing these group market provisions at 26 CFR 54.9801–1T through 54.9801–6T, 54.9802–1T, 54.9831–1T (formerly 54.9804–1T), 54.9833–1T (formerly 54.9806–1T); 29 CFR part 2590; and 45 CFR parts 144 and 146 (made available to the public on April 1, 1997 and published in the **Federal Register** on April 8, 1997, 62 FR 16893).

The HIPAA portability provisions in section 9801 of the Internal Revenue Code of 1986 (Code), section 701 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 2701 of the Public Health Service Act (PHS Act), and the implementing regulations impose limits on the maximum preexisting condition exclusion period that may be imposed by a group health plan or group health insurance issuer. In general, neither a group health plan nor a group health insurance issuer may impose more than a 12-month preexisting condition exclusion for individuals enrolling in the plan or

coverage, although the plan or issuer can impose an 18-month preexisting condition exclusion for late enrollees. In either case, the exclusion period must be reduced by the amount of an individual's prior "creditable coverage." Most, but not all, types of health coverage are creditable coverage.

The nondiscrimination provisions in section 9802 of the Code, section 702 of ERISA, and section 2702 of the PHS Act and the implementing regulations provide that neither a group health plan nor a health insurance issuer offering group health insurance coverage may establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. Health status-related factors include health status, medical condition, claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence), and disability.

Under these nondiscrimination provisions, an employee (and any dependent of the employee) cannot be denied coverage under a group health plan or group health insurance coverage based on a health status-related factor on or after the effective date of HIPAA. The interim final regulations clarify that an employee or dependent cannot be required to pass a physical examination as a condition of enrollment, even if the individual is a late enrollee.[1]

III. Clarification

Although the interim final regulations make clear that group health plans and group health insurance issuers cannot continue to exclude employees (and their dependents) from coverage based on a health status-related factor, questions have arisen concerning the application of the HIPAA group market portability rules to individuals who previously were denied coverage based on a health status-related factor. This document clarifies the circumstances under which these individuals cannot be treated as late enrollees for purposes of applying a preexisting condition exclusion period.

Any individual to whom coverage has not been made available before the effective date of HIPAA because of a health status-related factor, and who enrolls when first eligible on or after the effective date of the HIPAA nondiscrimination provisions (which are generally effective on the first day of the first plan year beginning on or after July 1, 1997), may not be treated as a late enrollee for purposes of section 9801(a) of the Code, section 701(a) of ERISA, or section 2701(a) of the PHS Act or the implementing regulations.[2] This includes any individual who failed to apply for coverage before the effective date of the HIPAA nondiscrimination provisions because it was reasonable to believe that an application for coverage would have been futile due to a plan provision that discriminated on the basis of a health status-related factor. These rules apply whether or not the plan offers late enrollment.[3] These rules do not change the special enrollment rules that prohibit treating a special enrollee as a late enrollee.

These rules are illustrated by the following example:

Example: (i) Employee *A* is an active employee of Employer *X*. A was hired on May 3, 1992. *X* maintains a group health plan with a plan year beginning on January 1. Under the terms of the plan, employees and their dependents are allowed to enroll when the employee is first hired and on each January 1, but only if they can pass a physical examination. *A*'s application to enroll in May of 1992 was denied because *A* had diabetes and could not pass a physical examination. *A* has not applied since then because *A* has reasonably believed that the application would be denied because *A* has diabetes.

(ii) In this *Example*, effective January 1, 1998, *X*'s plan cannot deny coverage to *A* based on a health status-related factor. If *A* enrolls effective January 1, 1998, *A* may not be treated as a late enrollee for the purpose of determining the maximum period of any preexisting condition exclusion that may be imposed by the plan with respect to *A* (or for the purpose of determining *A*'s enrollment date).

HIPAA provides that no enforcement action can be taken against a plan or issuer with respect to a violation of the group market rules before January 1, 1998 if the plan or issuer has sought to comply in good faith with such rules. The preamble to the interim final regulations extended this good faith period with respect to the nondiscrimination provisions until further regulations are issued by the Departments. Compliance with the terms of this document is considered good faith for this purpose.

Dated: December 18, 1997.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Signed at Washington, DC, this 19th day of December 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

Dated: December 18, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 97–33603 Filed 12–24–97; 8:45 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

[1] Note, however, that under section 1532 of the Taxpayer Relief Act of 1997, Pub. L. 105–34 (enacted after interim final regulations were published), certain church plans may require evidence of good health of certain individuals without violating the nondiscrimination requirements of HIPAA. This document does not apply to those church plans under those circumstances.

[2] For related rules to determine the individual's enrollment date, see the interim final regulations at 26 CFR 54.9806–1T(a)(3), 29 CFR 2590.736(a)(3), and 45 CFR 146.125(a)(3).

[3] For a definition of late enrollment, see the interim final regulations at 26 CFR 54.9801–3(a)(2)(iv), 29 CFR 2590.701–3(a)(2)(iv), 45 CFR 146.111(a)(2)(iv).

federal register

Monday
December 29, 1997

Part III

Department of Education

Training Program for Federal TRIO Programs (Training Program); Notice Inviting Applications for New Awards Under the Training Program for Federal TRIO Programs for Fiscal Year (FY) 1998

DEPARTMENT OF EDUCATION

[CFDA No. 84.103A]

Training Program for Federal TRIO Programs (Training Program); Notice Inviting Applications for New Awards Under the Training Program for Federal TRIO Programs for Fiscal Year (FY) 1998

Purpose of Programs: (a) To provide Federal financial assistance to train the staff and leadership personnel employed in, or preparing for employment in, projects under the Federal TRIO Programs.

Eligible Applicants: Institutions of higher education; and public and nonprofit private agencies and organizations.

SUPPLEMENTARY INFORMATION: *Priorities:* Under 34 CFR 75.105(c)(2) and 642.34(a) the Secretary gives competitive preference to applications that meet one or more of the following priorities. The Secretary awards up to 8 ⅓ points to an application that provides effective training in one or more of the following subjects:

(1) Student financial aid.

(2) General project management for new directors.

(3) Legislative and regulatory requirements for the operation of the Federal TRIO Programs.

(4) The design and operation of model programs for projects funded under the Federal TRIO Programs.

(5) Retention and graduation strategies.

(6) Counseling.

(7) Reporting student and project performance.

(8) Coordinating project activities with other available resources and activities.

Deadline for Transmittal of Applications: February 20, 1998.

Applications Available: December 22, 1997.

Available Funds: The estimated amount of funds available for this program is based on the FY 1998 Appropriation Act for the Department.

Estimated Range of Awards: $170,000–$280,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 16.

Note: The Department is not bound by any of the estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 642.

FOR FURTHER INFORMATION CONTACT: Patricia S. Lucas, Federal TRIO Programs, U.S. Department of Education, 600 Independence Avenue, S.W., The Portals Building, Suite 600 D, Washington, DC 20202–5249. Telephone: (202) 708–4804 or by Internet to TRIO @ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain this document in an alternate format (e.g., Braile, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package. Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the internet Gopher Server (at gopher://gcs.ed.gov/); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg/htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S., Government Printing Office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 1070d–1d.

Dated: December 18, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–33690 Filed 12–24–97; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 62, No. 248

Monday, December 29, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
E-mail	info@fedreg.nara.gov
Laws	
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626	1
63627–63824	2
63825–64130	3
64131–64262	4
64263–64510	5
64511–64676	8
64677–65004	9
65005–65196	10
65197–65308	11
65309–65592	12
65593–65740	15
65741–65990	16
65991–66250	17
66251–66494	18
66495–66812	19
66813–66972	22
66973–67256	23
67257–67548	24
67549–67692	29

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987
7061 66251

Executive Orders:
13069 65989
13070 66493

Administrative Orders:
Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005
No. 96–7 of December 5, 1997 66253
No. 96–8 of December 5, 1997 66255

5 CFR

213 63627
315 63627
410 63630
531 65311
532 ..... 66973, 67257, 67258
551 67238
Proposed Rules:
831 67295
842 67295
870 67295
890 67295
591 63630
1201 66813

7 CFR

2 65593
17 63606
58 66257
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741, 65991, 67117
927 66495
1209 66973
1412 63441
1944 67216
2003 67258
Proposed Rules:
51 66033
70 63471
205 65850
610 64174
729 63678
800 66036
810 66036
966 66312
980 66312
985 67297
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

50 66259
78 ..... 64134, 65596
91 64265
93 64265
94 ..... 65747, 65999
Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 ..... 63825, 66977
70 63825
73 63640
1008 67518
1703 66815
Proposed Rules:
40 65039
50 ..... 63892, 63911, 66038
70 63911

11 CFR

Proposed Rules:
100 66832
102 67300
104 67300
108 67300
114 ..... 65040, 66832

12 CFR

8 64135
202 66412
203 66259
226 ..... 63441, 66179
265 64996
506 ..... 66260, 67117
516 64138
543 64138
544 ..... 66260, 67117
545 ..... 64138, 66260, 67117
552 ..... 64138, 66260, 67117
556 64138
559 ..... 66260, 67117

560.....66260, 67117
561.....66260, 67117
563.....64138, 66260, 67117
565.....66260, 67117
567.....66260, 67117
575.....66260, 67117
614.....63644, 66816
703.....64148
704.....64148
725.....67549
790.....65197
791.....64266
934.....65197
960.....66977
1806.....64440

Proposed Rules:

225.....64997
226.....64789
404.....64177
405.....64177
708a.....64185
708b.....64187

14 CFR

39.....63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750, 66001, 66264, 66266, 66268, 66269, 66271, 66498, 66500, 66502, 66506, 66508, 66511, 66512, 66980, 67550, 67552
71.....64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606, 66179, 66818, 67265, 67266, 67267, 67555
73.....65359, 65360, 66002, 67268, 67269
91.....66248, 67555
93.....66248
95.....65016, 65361, 65363
97.....63447, 63449, 63451, 67556, 67559
121.....65202, 66248
135.....66248
255.....63837, 66272
1260.....63452

Proposed Rules:

39.....63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65768, 66315, 66317, 66560, 66561, 66562, 66563, 66565, 66567, 67300, 67303
71.....63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631, 66838, 66840

15 CFR

295.....64682
922.....66003

Proposed Rules:

806.....65043
960.....65384

16 CFR

305.....67560

17 CFR

15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

Proposed Rules:

1.....66569
33.....66569

18 CFR

35.....64688
37.....64715
401.....64154

19 CFR

4.....66521

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:

10.....67120
25.....67120
211.....64188
422.....63681

21 CFR

5.....67270
101.....63647, 63653, 64634, 66275
179.....64102, 64107
211.....66522
500.....66982
520.....65020
522.....66983
524.....65752
558.....66522, 66984, 66985, 66986, 67273
806.....67274
866.....66003

Proposed Rules:

200.....64048
801.....67011
803.....67011
804.....67011
806.....67011
807.....67011
808.....65384, 66179
810.....67011
820.....67011
821.....67011
876.....65770
1002.....67011
1020.....65235, 67011
1308.....64526

22 CFR

40.....67563, 67564
120.....67274
123.....67274
124.....67274
126.....67274
127.....67274
129.....67274

Proposed Rules:

22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:

655.....64324

24 CFR

100.....66424
103.....66424
201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

Proposed Rules:

180.....66488

25 CFR

Proposed Rules:

514.....65775

26 CFR

25.....66987
40.....67568
54.....66932, 67688, 67689
602.....66987

Proposed Rules:

1.....64190, 66575
31.....67304
40.....67589
52.....67013
54.....66967

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203, 66275
2590.....66932, 67689
4011.....65607
4022.....65607
4044.....65609, 65610

Proposed Rules:

1910.....65388
2550.....66908
4022.....66319

30 CFR

206.....65753
250.....67278
251.....67278
901.....66819

Proposed Rules:

56.....65777, 67013
57.....64789, 65777, 67013
62.....65777, 67013
70.....65777, 67013
71.....65777, 67013
75.....64789
913.....67014
917.....63684, 65044
926.....63685, 64327
936.....65632
938.....67590
943.....67592, 67596, 67598
946.....67016

31 CFR

500.....64720

Proposed Rules:

356.....64528

32 CFR

175.....66523
199.....66989, 66992
318.....67291
320.....65020

Proposed Rules:

199.....64191, 67018
901.....63485
989.....67305

33 CFR

96.....67492
100.....65021, 66995, 67570
117.....63847, 66005, 66006
151.....67526
160.....65203
165.....65022

Proposed Rules:

62.....67031
66.....67031
117.....66039

36 CFR

701.....64279

Proposed Rules:

1.....63488
14.....63488
242.....66216
327.....64192
1190.....67320
1191.....67320

37 CFR

202.....63657, 66822

Proposed Rules:

253.....63502, 65777
255.....63506, 65778

38 CFR

4.....65207
17.....64722
21.....63847, 63848, 66277
36.....63454

Proposed Rules:

20.....64790
21.....66320

39 CFR

111.....63850
255.....66996
262.....64280
265.....64280
954.....66997

40 CFR

9.....66278
52.....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613, 66007, 66279, 66822, 66998, 67000, 67002, 67004, 67006
58.....67009
62.....65616, 67570
63.....64736, 65022
64.....63662
70.....63662
71.....63662
72.....66278
73.....66278
74.....66278
75.....66278
77.....66278
78.....66278
80.....63853
81.....64284, 64725, 65025
180.....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369, 66008, 66014, 66020
185.....64048, 64284, 64287, 66020
186.....64048, 66020
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
271.....67572
272.....67578
300.....65225
721.....64738

Proposed Rules:

51.....64532, 66841
52.....63687, 64329, 64543, 647389, 65046, 65634, 66040, 66042, 66043, 66046, 66576, 66843, 67034, 67035, 67320,
62.....65635, 67601
63.....65049, 66049
80.....63918
81.....63687, 66578
85.....66841
112.....63812
144.....67035
146.....67035
194.....64327
271.....67601
272.....67601
441.....66182, 67323
721.....64738
799.....67036, 67038, 67466

41 CFR

51–2.....66527
51–4.....66527
51–6.....66527
60–1.....66970
60–999.....66970
105–60.....64740
301.....63798

42 CFR

416.....66726
417.....63669
482.....66726
483.....67174
485.....66726
489.....66726

Proposed Rules:

1001.....63689, 65049

43 CFR

418.....66442
3740.....65376
3810.....65376
3820.....65376

Proposed Rules:

4.....64544
3820.....67602

44 CFR

61.....66026

45 CFR

Ch. XI.....66529
144.....67689
146.....66932, 67689
205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301
1110.....66825

Proposed Rules:

1302.....65778

46 CFR

1.....67526
2.....67492
8.....67526
31.....67492, 67526
69.....67526
71.....67492, 67526
91.....67492, 67526
107.....67492, 67526
114.....64303
115.....67492
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
126.....67492
153.....67526
154.....67526
175.....64303, 65739, 67492
176.....67492
177.....64303
178.....64303
180.....64303
185.....64303
189.....67492
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
69.....65619, 66029
73.....63674, 65392, 65764, 65765, 65766, 66030, 66031, 66294, 66295, 66530, 66826
74.....65392

Proposed Rules:

1.....65780, 66321
21.....65780
32.....65053
73.....63690, 65781, 65782, 66323, 66324
74.....65780

48 CFR

Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19.....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31.....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42.....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52.....64914, 64915, 64916
53.....64914, 64916, 64934, 64936, 64940
5231.....66826

Proposed Rules:

204.....65782
1843.....64545
1852.....64545

49 CFR

171.....65188, 66900
172.....66898
174.....66898
175.....66898
176.....66898
177.....66898
194.....67292
199.....67293
219.....63464, 63675
225.....63675
240.....63464
1241.....65378

Proposed Rules:

Ch. X.....64193
172.....66903
174.....66903
175.....66903
176.....66903
177.....66903
191.....67602
192.....67602, 67608
193.....67602
194.....67602
195.....65635, 67608
213.....65401
243.....65479
572.....64546

50 CFR

17.....64306, 66295
20.....63608
222.....63467
260.....67585
285.....66828
600.....66531
622.....63677, 66304, 67010
648.....63872, 64765, 66304
660.....63876, 67610
679.....63877, 63878, 63880, 64760, 65379, 65622, 65626, 66031, 66311, 66829

Proposed Rules:

14.....64335
17.....64337, 64340, 64799, 64800, 65237, 65783, 65787, 66325, 66583, 67041, 67324
23.....64347
100.....66216
226.....66584
227.....66325
229.....65402
425.....66325
600.....65055, 66844, 67608
622.....65056
648.....65055, 66844
660.....66049, 67610
679.....63690, 65402, 65635, 65638, 65644, 67041

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 29, 1997

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod; published 10-2-97
Fishery products, etc.:
Inspection and certification fees and charges; published 12-29-97

ENERGY DEPARTMENT
Acquisition regulations:
Management and operating contracts—
Diversity policy; published 11-28-97

FEDERAL TRADE COMMISSION
Appliances, consumer; energy consumption and water use information in labeling and advertising:
Residential energy sources; average unit energy costs; published 12-29-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Cigarettes and smokeless tobacco products; restriction of sale and distribution to protect children and adolescents
Federal preemption; State and local government exemption applications; published 11-28-97

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Chinese Student Protection Act; implementation; published 11-28-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 12-12-97
Burkhardt Grob; published 11-26-97
Eurocopter Deutschland; published 12-11-97
Raytheon Aircraft Co.; published 11-20-97

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Deposit safe harbor rules and fuel floor stocks taxes; published 12-29-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Chilling processes; retained water in poultry products; protocols for obtaining data; comments due by 1-8-98; published 12-9-97

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Technical assistance:
State Technical Committees; membership and role expansion; comments due by 1-5-98; published 12-4-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pelagic shelf rockfish; comments due by 1-5-98; published 11-5-97
Atlantic highly migratory species—
Scoping document; availability and comment request; comments due by 1-9-98; published 11-26-97
Northeastern United States fisheries—
Experimental fishing permit applications; comments due by 1-8-98; published 12-22-97

EDUCATION DEPARTMENT
Privacy Act; implementation; comments due by 1-8-98; published 11-24-97

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Perchloroethylene; dry cleaning facilities; comments due by 1-9-98; published 12-10-97
Pesticide active ingredient production; comments due by 1-9-98; published 11-10-97
Air pollution control; new motor vehicles and engines:
Inspection/maintenance program requirements; on-board diagnostic checks; comments due by 1-6-98; published 12-22-97
Air pollution; standards of performance for new stationary sources:
Test methods and performance specifications; editorial changes and technical corrections; comments due by 1-5-98; published 11-18-97
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 1-5-98; published 12-9-97
California; comments due by 1-5-98; published 12-5-97
Wisconsin; comments due by 1-9-98; published 12-10-97
Clean Air Act:
Compliance assurance monitoring; comments due by 1-5-98; published 12-2-97
Toxic substances:
Significant new uses—
Methylenebistrisubstituted aniline-, etc.; comments due by 1-8-98; published 12-9-97
Testing requirements—
Biphenyl, etc.; comments due by 1-9-98; published 11-28-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Montana; comments due by 1-5-98; published 11-20-97
Television broadcasting:
Two-way transmissions; multipoint distribution service and instructional television fixed service licensees participation; comments due by 1-8-98; published 12-16-97

FEDERAL DEPOSIT INSURANCE CORPORATION
Practice and procedure:
Application, notice and request procedures, and authority delegations; technical amendments; comments due by 1-7-98; published 10-9-97

FEDERAL RESERVE SYSTEM
Bank holding companies and change in bank control (Regulation Y):
Real estate appraisals; comments due by 1-8-98; published 12-9-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Communicable diseases control:
Lather brushes; treatment, sterilization, handling, storage, marking, and inspection; revocation; comments due by 1-5-98; published 10-20-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Home health agency physician certification regulations; comments due by 1-5-98; published 11-5-97

INTERIOR DEPARTMENT
Land Management Bureau
Range management:
Wild horse and burro adoptions; power of attorney use disallowed; comments due by 1-9-98; published 11-10-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Arkansas River shiner; comments due by 1-5-98; published 12-5-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 1-7-98; published 12-23-97
Kentucky; comments due by 1-9-98; published 12-10-97

POSTAL SERVICE
Freedom of Information Act; implementation:; comments due by 1-5-98; published 12-5-97

SECURITIES AND EXCHANGE COMMISSION
Securities:
Equity index insurance products; structure, marketing, etc.; comments due by 1-5-98; published 11-21-97

SOCIAL SECURITY ADMINISTRATION
Social security benefits:
Disability benefits reduction on account of workers' compensation and public disability benefits and payments; proration methods; comments due by 1-5-98; published 11-12-97

TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades:
U.S. National Waterski Racing Championship; comments due by 1-9-98; published 11-25-97
Tank vessels:
Towing vessel safety; comments due by 1-5-98; published 10-6-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Aerospatiale; comments due by 1-8-98; published 12-9-97
American Champion Aircraft Corp.; comments due by 1-8-98; published 11-3-97
Boeing; comments due by 1-5-98; published 11-25-97
Dornier; comments due by 1-8-98; published 12-9-97
Fokker; comments due by 1-8-98; published 12-9-97
Grumman; comments due by 1-8-98; published 12-9-97
Lockheed; comments due by 1-5-98; published 11-25-97
SAAB; comments due by 1-8-98; published 12-9-97
Twin Commander Aircraft Corp.; comments due by 1-6-98; published 10-31-97
Class D and E airspace; comments due by 1-8-98; published 11-24-97
Class E airspace; comments due by 1-5-98; published 11-19-97

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Sales of obligations between interest payment dates; witholding on interest; comments due by 1-5-98; published 10-14-97
Source of income from sales of inventory partly from sources within possession of United States, etc.; comments due by 1-8-98; published 10-10-97

VETERANS AFFAIRS DEPARTMENT
Vocational rehabilitation and education:
Veterans education—
Service Members Occupational Conversion and Training Act; certification deadlines; comments due by 1-9-98; published 11-10-97

LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws will be published in the **Federal Register** on December 31, 1997.

Public Laws Electronic Notification Service (PENS)

Note: In order to provide better and faster service, PENS will begin using a new mailing-list management software. Effective January 5, 1997, if you wish to continue or begin receiving notification of newly enacted Public Laws, you will need to resubscribe or subscribe to PENS by sending E-mail to **LISTPROC@ETC.FED.GOV** with the message:

SUBSCRIBE PUBLAWS-L FIRSTNAME LASTNAME

The text of laws is not available through this service and we cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A "●" precedes each entry that is now available on-line through the Government Printing Office's *GPO Access* service at http://www.access.gpo.gov/nara/cfr. For information about *GPO Access* call 1-888-293-6498 (toll free).

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512-1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2250.

Title	Stock Number	Price	Revision Date
●1, 2 (2 Reserved)	(869-032-00001-8)	$5.00	Feb. 1, 1997
●3 (1996 Compilation and Parts 100 and 101)	(869-032-00002-6)	20.00	[1] Jan. 1, 1997
●4	(869-032-00003-4)	7.00	Jan. 1, 1997
5 Parts:			
●1-699	(869-032-00004-2)	34.00	Jan. 1, 1997
●700-1199	(869-032-00005-1)	26.00	Jan. 1, 1997
●1200-End, 6 (6 Reserved)	(869-032-00006-9)	33.00	Jan. 1, 1997
7 Parts:			
●0-26	(869-032-00007-7)	26.00	Jan. 1, 1997
●27-52	(869-032-00008-5)	30.00	Jan. 1, 1997
●53-209	(869-032-00009-3)	22.00	Jan. 1, 1997
●210-299	(869-032-00010-7)	44.00	Jan. 1, 1997
●300-399	(869-032-00011-5)	22.00	Jan. 1, 1997
●400-699	(869-032-00012-3)	28.00	Jan. 1, 1997
●700-899	(869-032-00013-1)	31.00	Jan. 1, 1997
●900-999	(869-032-00014-0)	40.00	Jan. 1, 1997
●1000-1199	(869-032-00015-8)	45.00	Jan. 1, 1997
●1200-1499	(869-032-00016-6)	33.00	Jan. 1, 1997
●1500-1899	(869-032-00017-4)	53.00	Jan. 1, 1997
●1900-1939	(869-032-00018-2)	19.00	Jan. 1, 1997
●1940-1949	(869-032-00019-1)	40.00	Jan. 1, 1997
●1950-1999	(869-032-00020-4)	42.00	Jan. 1, 1997
●2000-End	(869-032-00021-2)	20.00	Jan. 1, 1997
●8	(869-032-00022-1)	30.00	Jan. 1, 1997
9 Parts:			
●1-199	(869-032-00023-9)	39.00	Jan. 1, 1997
●200-End	(869-032-00024-7)	33.00	Jan. 1, 1997
10 Parts:			
●0-50	(869-032-00025-5)	39.00	Jan. 1, 1997
●51-199	(869-032-00026-3)	31.00	Jan. 1, 1997
●200-499	(869-032-00027-1)	30.00	Jan. 1, 1997
●500-End	(869-032-00028-0)	42.00	Jan. 1, 1997
●11	(869-032-00029-8)	20.00	Jan. 1, 1997
12 Parts:			
●1-199	(869-032-00030-1)	16.00	Jan. 1, 1997
●200-219	(869-032-00031-0)	20.00	Jan. 1, 1997
●220-299	(869-032-00032-8)	34.00	Jan. 1, 1997
●300-499	(869-032-00033-6)	27.00	Jan. 1, 1997
●500-599	(869-032-00034-4)	24.00	Jan. 1, 1997
●600-End	(869-032-00035-2)	40.00	Jan. 1, 1997
●13	(869-032-00036-1)	23.00	Jan. 1, 1997
14 Parts:			
●1-59	(869-032-00037-9)	44.00	Jan. 1, 1997
●60-139	(869-032-00038-7)	38.00	Jan. 1, 1997
●140-199	(869-032-00039-5)	16.00	Jan. 1, 1997
●200-1199	(869-032-00040-9)	30.00	Jan. 1, 1997
●1200-End	(869-032-00041-7)	21.00	Jan. 1, 1997
15 Parts:			
●0-299	(869-032-00042-5)	21.00	Jan. 1, 1997
●300-799	(869-032-00043-3)	32.00	Jan. 1, 1997
●800-End	(869-032-00044-1)	22.00	Jan. 1, 1997
16 Parts:			
●0-999	(869-032-00045-0)	30.00	Jan. 1, 1997
●1000-End	(869-032-00046-8)	34.00	Jan. 1, 1997
17 Parts:			
●1-199	(869-032-00048-4)	21.00	Apr. 1, 1997
●200-239	(869-032-00049-2)	32.00	Apr. 1, 1997
●240-End	(869-032-00050-6)	40.00	Apr. 1, 1997
18 Parts:			
●1-399	(869-032-00051-4)	46.00	Apr. 1, 1997
●400-End	(869-032-00052-2)	14.00	Apr. 1, 1997
19 Parts:			
●1-140	(869-032-00053-1)	33.00	Apr. 1, 1997
●141-199	(869-032-00054-9)	30.00	Apr. 1, 1997
●200-End	(869-032-00055-7)	16.00	Apr. 1, 1997
20 Parts:			
●1-399	(869-032-00056-5)	26.00	Apr. 1, 1997
●400-499	(869-032-00057-3)	46.00	Apr. 1, 1997
●500-End	(869-032-00058-1)	42.00	Apr. 1, 1997
21 Parts:			
●1-99	(869-032-00059-0)	21.00	Apr. 1, 1997
●100-169	(869-032-00060-3)	27.00	Apr. 1, 1997
●170-199	(869-032-00061-1)	28.00	Apr. 1, 1997
●200-299	(869-032-00062-0)	9.00	Apr. 1, 1997
●300-499	(869-032-00063-8)	50.00	Apr. 1, 1997
●500-599	(869-032-00064-6)	28.00	Apr. 1, 1997
●600-799	(869-032-00065-4)	9.00	Apr. 1, 1997
●800-1299	(869-032-00066-2)	31.00	Apr. 1, 1997
●1300-End	(869-032-00067-1)	13.00	Apr. 1, 1997
22 Parts:			
●1-299	(869-032-00068-9)	42.00	Apr. 1, 1997
●300-End	(869-032-00069-7)	31.00	Apr. 1, 1997
●23	(869-032-00070-1)	26.00	Apr. 1, 1997
24 Parts:			
●0-199	(869-032-00071-9)	32.00	Apr. 1, 1997
●200-499	(869-032-00072-7)	29.00	Apr. 1, 1997
●500-699	(869-032-00073-5)	18.00	Apr. 1, 1997
●700-1699	(869-032-00074-3)	42.00	Apr. 1, 1997
●1700-End	(869-032-00075-1)	18.00	Apr. 1, 1997
●25	(869-032-00076-0)	42.00	Apr. 1, 1997
26 Parts:			
●§§ 1.0-1-1.60	(869-032-00077-8)	21.00	Apr. 1, 1997
●§§ 1.61-1.169	(869-032-00078-6)	44.00	Apr. 1, 1997
●§§ 1.170-1.300	(869-032-00079-4)	31.00	Apr. 1, 1997
●§§ 1.301-1.400	(869-032-00080-8)	22.00	Apr. 1, 1997
●§§ 1.401-1.440	(869-032-00081-6)	39.00	Apr. 1, 1997
●§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
●§§ 1.501-1.640	(869-032-00083-2)	28.00	Apr. 1, 1997
●§§ 1.641-1.850	(869-032-00084-1)	33.00	Apr. 1, 1997
●§§ 1.851-1.907	(869-032-00085-9)	34.00	Apr. 1, 1997
●§§ 1.908-1.1000	(869-032-00086-7)	34.00	Apr. 1, 1997
●§§ 1.1001-1.1400	(869-032-00087-5)	35.00	Apr. 1, 1997
●§§ 1.1401-End	(869-032-00088-3)	45.00	Apr. 1, 1997
●2-29	(869-032-00089-1)	36.00	Apr. 1, 1997
30-39	(869-032-00090-5)	25.00	Apr. 1, 1997
●40-49	(869-032-00091-3)	17.00	Apr. 1, 1997
●50-299	(869-032-00092-1)	18.00	Apr. 1, 1997
●300-499	(869-032-00093-0)	33.00	Apr. 1, 1997
500-599	(869-032-00094-8)	6.00	[4] Apr. 1, 1990
●600-End	(869-032-00095-3)	9.50	Apr. 1, 1997
27 Parts:			
●1-199	(869-032-00096-4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
●200-End	(869-032-00097-2)	17.00	Apr. 1, 1997
28 Parts:			
●1-42	(869-032-00098-1)	36.00	July 1, 1997
●43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
●0-99	(869-032-00100-5)	27.00	July 1, 1997
●100-499	(869-032-00101-4)	12.00	July 1, 1997
●500-899	(869-032-00102-2)	41.00	July 1, 1997
●900-1899	(869-032-00103-1)	21.00	July 1, 1997
●1900-1910 (§§ 1900 to 1910.999)	(869-032-00104-9)	43.00	July 1, 1997
●1910 (§§ 1910.1000 to end)	(869-032-00105-7)	29.00	July 1, 1997
●1911-1925	(869-032-00106-5)	19.00	July 1, 1997
●1926	(869-032-00107-3)	31.00	July 1, 1997
●1927-End	(869-032-00108-1)	40.00	July 1, 1997
30 Parts:			
●1-199	(869-032-00109-0)	33.00	July 1, 1997
●200-699	(869-032-00110-3)	28.00	July 1, 1997
●700-End	(869-032-00111-1)	32.00	July 1, 1997
31 Parts:			
●0-199	(869-032-00112-0)	20.00	July 1, 1997
●200-End	(869-032-00113-8)	42.00	July 1, 1997
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
●1-190	(869-032-00114-6)	42.00	July 1, 1997
●191-399	(869-032-00115-4)	51.00	July 1, 1997
●400-629	(869-032-00116-2)	33.00	July 1, 1997
●630-699	(869-032-00117-1)	22.00	July 1, 1997
●700-799	(869-032-00118-9)	28.00	July 1, 1997
●800-End	(869-032-00119-7)	27.00	July 1, 1997
33 Parts:			
●1-124	(869-032-00120-1)	27.00	July 1, 1997
●125-199	(869-032-00121-9)	36.00	July 1, 1997
●200-End	(869-032-00122-7)	31.00	July 1, 1997
34 Parts:			
●1-299	(869-032-00123-5)	28.00	July 1, 1997
●300-399	(869-032-00124-3)	27.00	July 1, 1997
●400-End	(869-032-00125-1)	44.00	July 1, 1997
●35	(869-032-00126-0)	15.00	July 1, 1997
36 Parts			
●1-199	(869-032-00127-8)	20.00	July 1, 1997
●200-299	(869-032-00128-6)	21.00	July 1, 1997
300-End	(869-032-00129-4)	34.00	July 1, 1997
●37	(869-032-00130-8)	27.00	July 1, 1997
38 Parts:			
●0-17	(869-032-00131-6)	34.00	July 1, 1997
●18-End	(869-032-00132-4)	38.00	July 1, 1997
●39	(869-032-00133-2)	23.00	July 1, 1997
40 Parts:			
●1-49	(869-032-00134-1)	31.00	July 1, 1997
●50-51	(869-032-00135-9)	23.00	July 1, 1997
52 (52.01-52.1018)	(869-032-00136-7)	27.00	July 1, 1997
52 (52.1019-End)	(869-032-00137-5)	32.00	July 1, 1997
●53-59	(869-032-00138-3)	14.00	July 1, 1997
60	(869-032-00139-1)	52.00	July 1, 1997
●61-62	(869-032-00140-5)	19.00	July 1, 1997
●63-71	(869-032-00141-3)	57.00	July 1, 1997
●72-80	(869-032-00142-1)	35.00	July 1, 1997
●81-85	(869-032-00143-0)	32.00	July 1, 1997
86	(869-032-00144-8)	50.00	July 1, 1997
●87-135	(869-032-00145-6)	40.00	July 1, 1997
●136-149	(869-032-00146-4)	35.00	July 1, 1997
●150-189	(869-032-00147-2)	32.00	July 1, 1997
●190-259	(869-032-00148-1)	22.00	July 1, 1997
●260-265	(869-032-00149-9)	29.00	July 1, 1997
●266-299	(869-032-00150-2)	24.00	July 1, 1997
●300-399	(869-032-00151-1)	27.00	July 1, 1997
●400-424	(869-032-00152-9)	33.00	[5] July 1, 1996
●425-699	(869-032-00153-7)	40.00	July 1, 1997
●700-789	(869-032-00154-5)	38.00	July 1, 1997
●790-End	(869-032-00155-3)	19.00	July 1, 1997
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
●1-100	(869-032-00156-1)	14.00	July 1, 1997
101	(869-032-00157-0)	36.00	July 1, 1997
●102-200	(869-032-00158-8)	17.00	July 1, 1997
201-End	(869-032-00159-6)	15.00	July 1, 1997
42 Parts:			
●1-399	(869-028-00163-7)	32.00	Oct. 1, 1996
●400-429	(869-032-00161-8)	35.00	Oct. 1, 1997
●430-End	(869-028-00165-3)	44.00	Oct. 1, 1996
43 Parts:			
●1-999	(869-028-00166-1)	30.00	Oct. 1, 1996
●1000-end	(869-028-00167-0)	45.00	Oct. 1, 1996
●44	(869-028-00168-8)	31.00	Oct. 1, 1996
45 Parts:			
●1-199	(869-032-00166-9)	30.00	Oct. 1, 1997
●200-499	(869-032-00167-7)	18.00	Oct. 1, 1997
●500-1199	(869-032-00168-5)	29.00	Oct. 1, 1997
●1200-End	(869-028-00172-6)	36.00	Oct. 1, 1996
46 Parts:			
●1-40	(869-028-00173-4)	26.00	Oct. 1, 1996
●41-69	(869-028-00174-2)	21.00	Oct. 1, 1996
●70-89	(869-032-00172-3)	11.00	Oct. 1, 1997
●90-139	(869-028-00176-9)	26.00	Oct. 1, 1996
●140-155	(869-028-00177-7)	15.00	Oct. 1, 1996
●156-165	(869-028-00178-5)	20.00	Oct. 1, 1996
●166-199	(869-028-00179-3)	22.00	Oct. 1, 1996
●200-499	(869-032-00177-4)	21.00	Oct. 1, 1997
●500-End	(869-032-00178-2)	17.00	Oct. 1, 1997
47 Parts:			
●0-19	(869-028-00182-3)	35.00	Oct. 1, 1996
●20-39	(869-032-00180-4)	27.00	Oct. 1, 1997
●40-69	(869-028-00184-0)	18.00	Oct. 1, 1996
●70-79	(869-028-00185-8)	33.00	Oct. 1, 1996
●80-End	(869-028-00186-6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1-51)	(869-028-00187-4)	45.00	Oct. 1, 1996
●1 (Parts 52-99)	(869-028-00188-2)	29.00	Oct. 1, 1996
●2 (Parts 201-251)	(869-028-00189-1)	22.00	Oct. 1, 1996
●2 (Parts 252-299)	(869-028-00190-4)	16.00	Oct. 1, 1996
●3-6	(869-028-00191-2)	30.00	Oct. 1, 1996
●7-14	(869-028-00192-1)	29.00	Oct. 1, 1996
●15-28	(869-028-00193-9)	38.00	Oct. 1, 1996
●29-End	(869-028-00194-7)	25.00	Oct. 1, 1996
49 Parts:			
●1-99	(869-032-00191-0)	31.00	Oct. 1, 1997
●100-185	(869-028-00196-3)	50.00	Oct. 1, 1996
186-199	(869-032-00193-6)	11.00	Oct. 1, 1997
●200-399	(869-028-00198-0)	39.00	Oct. 1, 1996
●400-999	(869-028-00199-8)	49.00	Oct. 1, 1996
●1000-1199	(869-028-00200-5)	23.00	Oct. 1, 1996
●1200-End	(869-028-00201-3)	15.00	Oct. 1, 1996
50 Parts:			
●1-199	(869-028-00202-1)	34.00	Oct. 1, 1996
●200-599	(869-028-00203-0)	22.00	Oct. 1, 1996
●600-End	(869-028-00204-8)	26.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-032-00047-6)	45.00	Jan. 1, 1997
Complete 1997 CFR set		951.00	1997
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
Complete set (one-time mailing)		264.00	1996
Complete set (one-time mailing)		264.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

Printed on recycled paper

END